

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Certiorari to the Court of Appeals

Opinion No. 5295 (Ct. App. filed Feb. 11, 2015)
Appellate Case No. 2010-177147

EDWARD FREIBURGER

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

AMENDED APPENDIX
VOLUME I of V

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ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS
01-GS-40-2955

THE STATE)

VS.)

EDWARD FRIEBURGER)

DEFENDANT)

TRANSCRIPT OF RECORD

JULY 29 - AUGUST 2, 2002
COLUMBIA, SOUTH CAROLINA

BEFORE:

THE HONORABLE HENRY F. FLOYD, JUDGE AND A JURY.

APPEARANCES:

R. KNOX MCMAHON, ASSISTANT SOLICITOR
LUCK CAMPBELL, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

KATHRINE HUDGINS, ESQ.
JOHN DELGADO, ESQ.
ATTORNEYS FOR THE DEFENDANT

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JOHN DELGADO
ATTORNEY AT LAW

KAREN TRACY
OFFICIAL COURT REPORTER

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1 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS MARKED FOR
2 IDENTIFICATION ONLY.)

3 MS. HUDGINS: YOUR HONOR, JOHN RAN DOWN TO GET A
4 COPY OF THE WITNESS LIST. HE'LL BE RIGHT BACK. I
5 APOLOGIZE.

6 THE COURT: OKAY.

7 (PAUSE).

8 THE COURT: ALL RIGHT. MADAM CLERK, BRING THE
9 JURY PANEL IN. THERE'S GOING TO BE 60 RATHER THAN THE
10 NORMAL 30 OR 40.

11 MR. MCMAHON: JUDGE, WHILE WE'RE WAITING FOR THE
12 JURY, CAN I MOVE TO AMEND THE SPELLING ON THE INDICTMENT?

13 THE COURT: IT SHOULD BE "I-E".

14 MR. MCMAHON: ACCORDING TO HIS MILITARY RECORDS,
15 IT'S F-R-I-E-B-U-R-G-E-R.

16 THE COURT: ANY OBJECTION?

17 MR. DELGADO: NO, YOUR HONOR.

18 THE COURT: MOTION GRANTED..

19 WE'LL JUST GO WITH WHAT WE'VE GOT.

20 JURY QUALIFICATION:

21 GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY.
22 MY NAME IS HENRY FLOYD. I'M THE ADMINISTRATIVE JUDGE HERE
23 IN RICHLAND COUNTY FOR THIS YEAR. I ACTUALLY LIVE IN
24 PICKENS, ON THE OTHER PART OF THE STATE.

25 WE'RE GOING TO IMPANEL A JURY IN JUST A FEW

1 MINUTES. BEFORE WE DO THAT, LET ME ASK THE CLERK TO ALL
2 GET YOU TO STAND FOR THE CLERK TO ADMINISTER THE OATH TO
3 YOU. FOLLOWING THAT, WE'LL GO THROUGH THE QUESTIONING
4 PROCESS.

5 MADAM CLERK.

6 (WHEREUPON, THE JURY PANEL WAS SWORN.)

7 THANK YOU, LADIES AND GENTLEMEN.

8 THE STATE OF SOUTH CAROLINA IS CALLING FOR TRIAL
9 THE CASE OF THE STATE OF SOUTH CAROLINA VS. EDWARD
10 FRIEBURGER. MR. FRIEBURGER HAS BEEN INDICTED BY THE
11 RICHLAND COUNTY GRAND JURY FOR THE OFFENSE OF MURDER.

12 TO THAT INDICTMENT, HE PLEADS NOT GUILTY, AND
13 THAT WOULD REQUIRE A JURY OF 12 MEN AND WOMEN TO LISTEN TO
14 THE EVIDENCE AND DECIDE WHETHER OR NOT THE STATE CAN MEET
15 ITS BURDEN OF PROOF.

16 IF THE STATE CAN DO THAT, THEN THE STATE IS
17 ENTITLED TO A CONVICTION AT YOUR HANDS. IF THEY CANNOT,
18 MR. FRIEBURGER IS ENTITLED TO AN ACQUITTAL AT YOUR HANDS.

19 THE STATE ALLEGES THAT EDWARD FRIEBURGER DID IN
20 RICHLAND COUNTY ON OR ABOUT FEBRUARY 28TH, 1961
21 FELONIOUSLY, WILLFULLY, AND WITH MALICE AFORETHOUGHT KILL
22 ONE JOHN ORNER BY MEANS OF SHOOTING HIM IN THE HEAD, AND
23 THAT THE SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.

24 AS I'VE INDICATED TO YOU, MR. FRIEBURGER, HAS
25 PLED NOT GUILTY, AND WE THEREFORE NEED TO GO THROUGH A

1 SERIES OF QUESTIONS TO DETERMINE YOUR FAIRNESS AND
2 IMPARTIALITY TO SIT IN JUDGMENT OF THIS CASE.

3 WHILE SOME OF THE QUESTIONS WILL BE SOMEWHAT
4 PERSONAL IN NATURE, AND WHEN WE GET TO THOSE AND WE NEED
5 TO ENTERTAIN A RESPONSE, WE CAN HAVE YOU COME DOWN HERE.

6 FIRST OF ALL, IS THERE ANY MEMBER OF THE JURY
7 PANEL RELATED BY BLOOD, CONNECTED BY MARRIAGE OR
8 EMPLOYMENT OR A CLOSE PERSONAL ACQUAINTANCE WITH THE
9 DEFENDANT, EDWARD FRIEBURGER?

10 MR. FRIEBURGER, WOULD YOU STAND AND FACE THE
11 JURY PANEL FOR ME, PLEASE, SIR?

12 IF SO, PLEASE INDICATE BY STANDING.

13 (THERE WAS NO RESPONSE.)

14 ALL RIGHT. THANK YOU, SIR.

15 I'M GOING TO GIVE A LIST OF POTENTIAL WITNESSES,
16 ALL OF THESE PEOPLE WILL NOT NECESSARILY TESTIFY BUT THEY
17 COULD.

18 I'LL DO IT IN GROUPS OF ABOUT FIVE OR SIX. THE
19 QUESTION WILL BE IS THERE ANY MEMBER OF THE JURY PANEL WHO
20 IS RELATED BY BLOOD, CONNECTED BY MARRIAGE OR EMPLOYMENT
21 OR A CLOSE PERSONAL ACQUAINTANCE WITH ANY OF THESE
22 POTENTIAL WITNESSES?

23 SO WHEN I GET THROUGH A GROUP OF, SAY, FIVE OR
24 SIX, I'LL ASK IF ANY MEMBER OF THE JURY PANEL NEEDS
25 TO RESPOND TO A RELATIONSHIP QUESTION, AND THAT'S

1 WHAT I'M ASKING FROM YOU.

2 POTENTIAL WITNESSES WOULD BE GARY AEBERSOLD,
3 NELL BERRY, CURTIS BOONE, V. W. CATE, JOHN CAYTON,
4 SAMUEL B. FREED.

5 IS THERE ANY MEMBER OF THE JURY PANEL THAT NEEDS
6 TO RESPOND TO THE RELATIONSHIP QUESTION, OR DO THOSE
7 NAMES RING A BELL? DO YOU NEED MORE INFORMATION IN
8 ORDER TO RESPOND?

9 (THERE WAS NO RESPONSE.)

10 CONTINUING, L. B. HARMON, CHERYL HORTON, THOMAS
11 JOYNER, GEORGE LIPPARD, DON MEREDITH, W. J. O'NEILL.
12 ANYONE NEED TO RESPOND TO THE RELATIONSHIP QUESTION?
13 (THERE WAS NO RESPONSE.)

14 CONTINUING WITH FRANK REVETTA, LILA F. RUSH,
15 CARL B. STOKES, EARL STONE, ROCKY STOTTS, ARTHUR
16 TILBURY, JAMES WILSON.

17 ANY MEMBER OF THE JURY PANEL NEED TO RESPOND TO
18 THE RELATIONSHIP QUESTION OF THOSE POTENTIAL
19 WITNESSES?

20 CONTINUING FROM THE I'M SORRY -- YES, SIR, COULD
21 I GET YOU TO STAND.

22 PROSPECTIVE JUROR: YES, SIR.

23 THE COURT: AND YOUR NAME?

24 PROSPECTIVE JUROR: ROBERT COLEMAN. I'M A
25 FRIEND AND ACQUAINTANCE OF CARL B. STOKES, IF IT'S WHO I

1 THINK IT IS.

2 THE COURT: WHAT DOES HE DO, MR. SOLICITOR?

3 MR. MCMAHON: HE'S RETIRED CHIEF OF SECURITY FOR
4 THE UNIVERSITY OF SOUTH CAROLINA, FORMERLY WITH S.L.E.D.

5 THE COURT: ALL RIGHT. SIR, THE FACT THAT YOU
6 HAVE THAT RELATIONSHIP IS NOT AUTOMATICALLY A
7 DISQUALIFIER. THE QUESTION IS COULD YOU LISTEN TO THE
8 EVIDENCE AND FAIRLY AND IMPARTIALLY TRY THE CASE?

9 PROSPECTIVE JUROR: YES, SIR.

10 THE COURT: ALL RIGHT. WE'LL LEAVE YOU IN THE
11 PANEL.

12 CONTINUING, WALLY CARLO.

13 YES, MA'AM?

14 PROSPECTIVE JUROR: I ALSO KNOW CARL STOKES.

15 THE COURT: AND YOUR NAME, PLEASE, MA'AM?

16 PROSPECTIVE JUROR: GENEVA CURTIS.

17 THE COURT: ALL RIGHT. THE FACT THAT YOU KNOW
18 HIM, WOULD THAT AFFECT YOUR ABILITY TO LISTEN TO THE
19 EVIDENCE AND FAIR AND IMPARTIALLY TRY THE CASE?

20 PROSPECTIVE JUROR: NO.

21 THE COURT: YOU COULD DO? ALL RIGHT. WE'LL
22 LEAVE YOU IN THE PANEL.

23 CONTINUING WITH THE LIST: WALLY CARLO, WHO IS
24 EMPLOYED BY THE ALVIN GLENN DETENTION CENTER; CHARLES
25 CLARK WITH THE COLUMBIA POLICE DEPARTMENT; DR. CLAY

1 NICHOLS FROM PALMETTO RICHLAND MEMORIAL HOSPITAL; GARY
2 WATTS, RICHLAND COUNTY CORONER'S OFFICE.

3 THE FOLLOWING PERSONS ARE EMPLOYED BY THE
4 SHERIFFS OFFICE: BILL BROWN, CARL CRAIG, CHARLES EARLES,
5 TINA GOFF, BRAIN METZ, AND DAVE WILSON.

6 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
7 RELATED BY BLOOD, CONNECTED BY MARRIAGE OR A FORMER OR
8 CLOSE PERSONAL ACQUAINTANCE TO ANY POTENTIAL WITNESS?

9 COULD I GET YOUR NAME, PLEASE, SIR?

10 PROSPECTIVE JUROR: CHRISTOPHER WILSON.

11 THE COURT: AND WHAT RELATIONSHIP, MR. WILSON?

12 PROSPECTIVE JUROR: DAVID WILSON IS MY FATHER.

13 THE COURT: ALL RIGHT. THEN THAT WOULD EXCUSE
14 YOU FOR CAUSE. HAVE A SEAT. THAT'S CLOSE ENOUGH, JUST
15 HAVE A SEAT, THOUGH.

16 ALL RIGHT. CONTINUING WITH THE LIST, FROM THE
17 SOUTH CAROLINA LAW ENFORCEMENT DIVISION: DAVID MCCLURE,
18 LIEUTENANT IRA PARNELL, SPECIAL AGENT DAN DEFREEZE, CHIEF
19 ROBERT STEWART, MAJOR STEVE SMITH, SPECIAL AGENT VELLO
20 PAAVEL, SPECIAL AGENT DAVID COLLINS, AND SPECIAL AGENT
21 KEN -- YOU DIDN'T GIVE ME A LAST NAME.

22 MR. DELGADO: I APOLOGIZE. YES, SIR. I'M
23 SORRY. THE LAST NAME STARTS WITH AN "H," I THINK,
24 HARRINGTON, HUDDINGTON, SOMETHING LIKE THAT.

25 I APOLOGIZE.

1 THE COURT: ALL RIGHT. KEN HUDDINGTON.

2 ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD,
3 CONNECTED BY MARRIAGE OR EMPLOYMENT OR A CLOSE PERSONAL
4 ACQUAINTANCE WITH ANY OF THESE POTENTIAL WITNESSES?

5 (THERE WAS NO RESPONSE.)

6 CONTINUING, THE FOLLOWING PERSONS MAY TESTIFY:
7 ED FRIEBURGER, MARTI FRIEBURGER, JOHN FRIEBURGER, CHRIS
8 FRIEBURGER, LORRIE FRIEBURGER BANDOR, TOM BANDOR, MARVIN
9 DAWSON, CHIEF DEPUTY DAVID WILSON, DR. TARA BRAWLEY, AND
10 DR. DONNA WATTS.

11 ANY MEMBER OF THE JURY PANEL NEED TO
12 RESPONSIBILITY TO THE RELATIONSHIP QUESTION OF THESE
13 POTENTIAL WITNESSES?

14 (THERE WAS NO RESPONSE.)

15 DID I GET ALL THE WITNESSES?

16 MR. DELGADO: YES.

17 THE COURT: ALL RIGHT. IS THERE ANY MEMBER OF
18 THE JURY PANEL OR A MEMBER OF YOUR IMMEDIATE FAMILY EITHER
19 EMPLOYED BY THE SOUTH CAROLINA STATE LAW ENFORCEMENT
20 DIVISION, THE FEDERAL BUREAU OF INVESTIGATION, THE
21 COLUMBIA CITY POLICE DEPARTMENT, THE RICHLAND COUNTY
22 SHERIFF'S DEPARTMENT, OR ANY OTHER STATE, FEDERAL, COUNTY
23 OR LOCAL LAW ENFORCEMENT AGENCY?

24 IF SO, PLEASE STAND.

25 YES, MA'AM, YOUR NAME?

1 PROSPECTIVE JUROR: BETH HOOVER, MY HUSBAND IS A
2 RICHLAND COUNTY SHERIFF'S DEPUTY.

3 THE COURT: ALL RIGHT. MA'AM, THE FACT THAT YOU
4 HAVE THAT RELATIONSHIP, WOULD THAT AFFECT YOUR ABILITY TO
5 LISTEN TO THE EVIDENCE?

6 PROSPECTIVE JUROR: NO.

7 THE COURT: BE FAIR AND IMPARTIAL?

8 PROSPECTIVE JUROR: NO.

9 THE COURT: HAVE YOU DISCUSSED THIS CASE IN ANY
10 WAY WITH YOUR HUSBAND?

11 PROSPECTIVE JUROR: NO.

12 THE COURT: THANK YOU.

13 YES, MA'AM?

14 PROSPECTIVE JUROR: MY HUSBAND WORKS FOR THE
15 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

16 THE COURT: OKAY. AND THE FACT THAT YOU HAVE
17 THAT RELATIONSHIP, WOULD THAT AFFECT YOUR ABILITY TO BE
18 FAIR AND IMPARTIAL?

19 PROSPECTIVE JUROR: NO.

20 THE COURT: I'LL LEAVE YOU IN THE PANEL.

21 ANYBODY ELSE?

22 MR. MCMAHON: YOUR HONOR, WHAT WAS THAT YOUNG
23 LADY'S NAME?

24 THE COURT: I'M SORRY. I DIDN'T ASK FOR YOUR
25 NAME.

1 PROSPECTIVE JUROR: AMY DEWITT.

2 THE COURT: ALL RIGHT, MS. DEWITT, THANK YOU.

3 LET ME EXTEND THAT QUESTION TO ANY MILITARY LAW
4 ENFORCEMENT AGENCY, AS WELL. ANY MEMBER OF THE JURY PANEL
5 OR A MEMBER OF YOUR IMMEDIATE FAMILY ARE A CLOSE PERSONAL
6 ACQUAINTANCE, EMPLOYED BY THE ATTORNEY GENERAL'S OFFICE,
7 FIFTH CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE INDICATE.

8 (THERE WAS NO RESPONSE.)

9 THOSE WHO NEED TO RESPOND TO THIS QUESTION,
10 SIMPLY GIVE US THE BRANCH OF THE MILITARY THAT YOU SERVED
11 IN AND WHETHER YOU WERE IN THE RESERVE OR ON ACTIVE DUTY.

12 ANY MEMBER OF THE JURY PANEL A MEMBER OF THE
13 UNITED STATES MILITARY EITHER AS A RESERVIST OR ON ACTIVE
14 DUTY? IF YOU'LL JUST STAND. I KNOW THERE'S GOING TO BE
15 SEVERAL, SO WE'LL NEED TO CATCH YOU AS YOU GO.

16 PROSPECTIVE JUROR: CURRENTLY OR IN THE PAST?

17 THE COURT: IN THE PAST, IN THE PAST.

18 OKAY. LET ME START HERE AND JUST TELL ME WHAT
19 BRANCH, ACTIVE OR RESERVES.

20 IF YOU'LL GIVE ME YOUR NAME.

21 PROSPECTIVE JUROR: LOGAN DRAKE, MARINE CORP.

22 THE COURT: ALL RIGHT. THANK YOU, SIR.

23 YES, SIR.

24 PROSPECTIVE JUROR: PAUL LLOYD, AIR FORCE.

25 THE COURT: YES, SIR.

1 PROSPECTIVE JUROR: DILLARD TRAPP, UNITED STATES
2 ARMY.

3 THE COURT: THANK YOU, SIR.

4 PROSPECTIVE JUROR: KENNETH TERRY, UNITED STATES
5 MARINE CORP.

6 PROSPECTIVE JUROR: HERBERT LANFORD, UNITED
7 STATES ARMY.

8 PROSPECTIVE JUROR: CHARLES WENTWORTH, U.S.
9 COAST GUARD RESERVE.

10 THE COURT: YES.

11 PROSPECTIVE JUROR: SCOTT SYLVESTER, ACTIVE DUTY
12 ARMY.

13 THE COURT: YES, SIR, IN THE BACK.

14 PROSPECTIVE JUROR: TOBY KYZER, SOUTH CAROLINA
15 AIR NATIONAL GUARD.

16 THE COURT: YES, SIR.

17 PROSPECTIVE JUROR: HENRY BETCHER, ACTIVE DUTY
18 ARMY, RESERVE ARMY.

19 THE COURT: ALL RIGHT. THANK YOU, GENTLEMEN.

20 ANY MEMBER OF THE JURY PANEL EITHER A
21 CONTRIBUTOR OR A MEMBER OF ANY OF THE FOLLOWING
22 ORGANIZATIONS, AND THERE'S NOTHING WRONG WITH IT. WE JUST
23 NEED TO KNOW WHO YOU ARE: C.A.V.E., C.A.D.R.E., M.A.D.D.
24 OR S.A.D.D. IF SO, PLEASE INDICATE. C.A.V.E.,
25 C.A.D.R.E., M.A.D.D., MOTHER'S AGAINST DRUNK DRIVERS,

1 STUDENTS AGAINST DRUNK DRIVERS.

2 MR. LANFORD?

3 PROSPECTIVE JUROR: SOMETIME AGO I WAS A MEMBER
4 OF C.A.V.E.

5 THE COURT: ALL RIGHT. WOULD THE FACT THAT YOU
6 HAD THAT INVOLVEMENT, WOULD THAT AFFECT YOUR ABILITY TO BE
7 FAIR AND IMPARTIAL?

8 PROSPECTIVE JUROR: NO, SIR.

9 THE COURT: ALL RIGHT. THANK YOU, SIR.

10 IF YOU NEED TO RESPOND TO THIS QUESTION, I'LL BE
11 GLAD TO ENTERTAIN YOUR RESPONSE DOWN HERE PRIVATELY.

12 IS THERE ANY MEMBER OF THE JURY PANEL OR A
13 MEMBER OF YOUR IMMEDIATE FAMILY WHO HAS BEEN THE VICTIM OF
14 A VIOLENT CRIME?

15 IF ANYBODY NEEDS TO RESPOND, IF YOU'LL COME DOWN
16 HERE, I'LL TALK TO YOU PRIVATELY, OR A CLOSE PERSONAL
17 ACQUAINTANCE.

18 (THERE WAS A RESPONSE.)

19 THE CLERK: IF YOU'LL JUST FORM A LINE RIGHT
20 OVER HERE FOR ME, PLEASE.

21 THE COURT: LET ME WAIT FOR THE LAWYERS TO GET
22 UP HERE.

23 PROSPECTIVE JUROR: I FIGURED I WAS GOING TO GET
24 PULLED OFF OF THIS ONE.

25 THE COURT: FIRST GIVE ME YOUR NAME.

1 PROSPECTIVE JUROR: GLYNN ELLEN.

2 THE COURT: OKAY. NOW YOU MAY RESPOND.

3 PROSPECTIVE JUROR: MY FATHER WAS MURDERED
4 AROUND 15 YEARS AGO IN FLORIDA.

5 THE COURT: OKAY. ALL RIGHT. THE FACT THAT YOU
6 HAD THAT EXPERIENCE, WOULD THAT AFFECT YOUR ABILITY TO
7 BE --

8 PROSPECTIVE JUROR: I DON'T THINK SO, NO.

9 THE COURT: YOU COULD BE FAIR AND IMPARTIAL?

10 PROSPECTIVE JUROR: I FEEL LIKE I COULD.

11 THE COURT: AND BASE IT SOLELY ON THIS EVIDENCE,
12 NOT WHAT HAPPENED --

13 PROSPECTIVE JUROR: RIGHT, YEAH. I FEEL PRETTY
14 CONFIDENT THAT THAT WOULDN'T COME INTO PLAY.

15 THE COURT: LET ME HAVE YOUR NAME AGAIN.

16 PROSPECTIVE JUROR: GLYNN ELLEN.

17 THE COURT: WE'LL LEAVE YOU IN THE PANEL.

18 YES, SIR. HOW ARE YOU DOING?

19 PROSPECTIVE JUROR: I'M FINE.

20 THE COURT: FIRST, SIR, GIVE ME YOUR NAME AND
21 THE RESPONSE TO THE QUESTION.

22 PROSPECTIVE JUROR: WILLIAM NUMBERGER, MY
23 SISTER-IN-LAW WAS MURDERED.

24 THE COURT: OKAY. THE FACT THAT YOU HAD THAT
25 HAPPEN IN YOUR FAMILY, WOULD THAT AFFECT YOUR ABILITY TO

1 LISTEN TO THE EVIDENCE AND BE FAIR AND IMPARTIAL IN THIS
2 CASE?

3 PROSPECTIVE JUROR: I BELIEVE SO.

4 THE COURT: YOU COULD BE FAIR TO EITHER SIDE?

5 PROSPECTIVE JUROR: YES, SIR.

6 THE COURT: WE'LL LEAVE YOU IN THE PANEL.

7 YES, SIR.

8 MR. DELGADO: CAN I BE HEARD ON THAT ONE?

9 THE COURT: YES, SIR.

10 MR. DELGADO: I'M SORRY?

11 THE COURT: YOUR NAME PLEASE, MA'AM?

12 (INAUDIBLE WHISPERING).

13 THE COURT REPORTER: I'M SORRY, I CANNOT HEAR.

14 (INAUDIBLE WHISPERING).

15 PROSPECTIVE JUROR: MY AUNT WAS KILLED.

16 THE LAW CLERK: MOORE IS LAST NAME AND HIS AUNT
17 WAS KILLED.

18 THE COURT: WOULD THE FACT THAT YOU HAD THAT
19 EXPERIENCE IN YOUR FAMILY, WOULD THAT AFFECT YOUR ABILITY
20 TO LISTEN TO THE EVIDENCE AND BE FAIR AND IMPARTIAL?

21 PROSPECTIVE JUROR: NO.

22 THE COURT: YOU CAN BE FAIR AND IMPARTIAL?

23 PROSPECTIVE JUROR: YES.

24 THE COURT: I'LL LEAVE YOU IN THE PANEL.

25 YES, MA'AM. HOW ARE YOU DOING?

1 PROSPECTIVE JUROR: ALL RIGHT.

2 BRENDA JEFFCOAT, MY SON MURDERED SOMEBODY.

3 THE COURT: YOUR SON MURDERED SOMEBODY?

4 PROSPECTIVE JUROR: UH-HUH.

5 THE COURT: THE FACT THAT YOU HAD THAT
6 EXPERIENCE, WOULD THAT AFFECT YOUR ABILITY TO LISTEN TO
7 THE EVIDENCE IN THIS CASE?

8 PROSPECTIVE JUROR: YES.

9 THE COURT: YOU THINK IT WOULD?

10 PROSPECTIVE JUROR: YES.

11 THE COURT: AND YOUR NAME PLEASE, MA'AM?

12 PROSPECTIVE JUROR: BRENDA JEFFCOAT.

13 THE COURT: I'LL EXCUSE YOU FOR CAUSE.

14 YES, MA'AM -- YES, SIR.

15 IF YOU'LL HAVE A SEAT.

16 PROSPECTIVE JUROR: MY MOTHER WAS THE VICTIM OF
17 SPOUSAL ABUSE FOR A NUMBER OF YEARS.

18 THE COURT: AND YOUR NAME PLEASE, SIR.

19 PROSPECTIVE JUROR: EDWARD ROCK.

20 THE COURT: AND THE FACT THAT YOU HAD THAT
21 SITUATION IN YOUR FAMILY, WOULD THAT AFFECT YOUR ABILITY
22 TO LISTEN TO THE EVIDENCE IN THIS CASE AND BE FAIR AND
23 IMPARTIAL?

24 PROSPECTIVE JUROR: I CAN'T SAY THAT THAT WOULD
25 AFFECT MY JUDGMENT IN ANY WAY.

1 THE COURT: YES, MA'AM. HOW ARE YOU? YOUR
2 NAME, PLEASE.

3 PROSPECTIVE JUROR: JULIA BUSSELLS.

4 THE COURT: WHAT IS YOUR --

5 PROSPECTIVE JUROR: MY BROTHER WAS SHOT IN A
6 ROBBERY IN NORTH CAROLINA IN THE '60S.

7 THE COURT: OKAY. WAS HE KILLED?

8 PROSPECTIVE JUROR: NO.

9 THE COURT: THE FACT THAT HAPPENED, WOULD THAT
10 AFFECT YOUR ABILITY TO LISTEN TO THE EVIDENCE IN THIS CASE
11 AND BE FAIR AND IMPARTIAL?

12 PROSPECTIVE JUROR: NO.

13 THE COURT: YOU CAN DO THAT?

14 PROSPECTIVE JUROR: YES.

15 THE COURT: YES, MA'AM. HOW ARE YOU DOING?

16 PROSPECTIVE JUROR: HI. I JUST WAS IN TRIAL
17 WITH THE FOUR BOYS THAT KILLED MY BROTHER TWO WEEKS AGO IN
18 ORANGEBURG, GREGORY MCDONALD. MY BROTHER WAS KILLED.

19 THE COURT: WOULD THAT AFFECT YOU?

20 PROSPECTIVE JUROR: NO.

21 THE COURT: CAN YOU BE FAIR AND IMPARTIAL?

22 PROSPECTIVE JUROR: YEAH.

23 THE COURT: YOUR BROTHER WAS KILLED?

24 PROSPECTIVE JUROR: YES. I WAS THE ONE THAT
25 FOUND HIS BODY.

1 THE COURT: WHAT WAS THE OUTCOME OF THE TRIAL?

2 PROSPECTIVE JUROR: WELL, ONE OF THEM GOT 45
3 YEARS, TWO OF THE BOYS HAVEN'T GONE TO TRIAL. ONE OF THEM
4 GOT LIFE WITHOUT THE POSSIBILITY OF PAROLE.

5 THE COURT: ALL RIGHT. AND YOU'RE TELLING ME IN
6 THIS CASE YOU CAN LISTEN TO THE EVIDENCE AND BE FAIR AND
7 IMPARTIAL?

8 PROSPECTIVE JUROR: YES.

9 THE COURT: COULD I HAVE YOUR NAME?

10 PROSPECTIVE JUROR: DEBBIE MCDONALD.

11 MS. CAMPBELL: THANK YOU.

12 THE COURT: YES, MA'AM. HOW ARE YOU DOING?

13 PROSPECTIVE JUROR: MY NAME IS MARY SYKES. I
14 HAD A NEPHEW THAT WAS KILLED, OH, ABOUT TEN YEARS AGO WITH
15 GANG BANGERS.

16 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO
17 LISTEN TO THE EVIDENCE IN THIS CASE AND BE FAIR AND
18 IMPARTIAL?

19 PROSPECTIVE JUROR: NO, SIR.

20 THE COURT: YOU THINK YOU COULD DO THAT?

21 PROSPECTIVE JUROR: UH-HUH.

22 THE COURT: ALL RIGHT.

23 HOW ARE YOU DOING?

24 PROSPECTIVE JUROR: HI.

25 THE COURT: I NEED YOUR NAME FIRST.

1 PROSPECTIVE JUROR: LORETTA WALKER. IT'S A CASE
2 OUT OF NEW YORK. MY SECOND COUSIN KILLED THE FIRST
3 COUSIN.

4 THE COURT: HOMICIDE?

5 PROSPECTIVE JUROR: YEAH.

6 THE COURT: OKAY. THE FACT THAT YOU HAD THAT
7 HAPPEN TO YOUR FAMILY, WOULD THAT AFFECT YOUR ABILITY TO
8 BE FAIR AND IMPARTIAL?

9 PROSPECTIVE JUROR: NO.

10 THE COURT: YOU COULD DO THAT?

11 PROSPECTIVE JUROR: YES.

12 THE COURT: OKAY. I'LL LEAVE YOU IN THE PANEL.

13 YES, MA'AM.

14 PROSPECTIVE JUROR: HI.

15 THE COURT: CAN I HAVE YOUR NAME PLEASE.

16 PROSPECTIVE JUROR: JANET PEARCE.

17 THE COURT: YES, MA'AM.

18 PROSPECTIVE JUROR: MY -- A FEW MONTHS BACK, MY
19 HUSBAND WAS ARRESTED FOR CRIMINAL DOMESTIC VIOLENCE.

20 IT HADN'T BEEN -- HE'S GOING TO A JURY TRIAL, SO
21 HE HADN'T BEEN CONVICTED YET.

22 THE COURT: THE FACT THAT THE STATE IS
23 PROSECUTING THE CASE, WOULD THAT AFFECT YOUR ABILITY TO BE
24 FAIR AND IMPARTIAL?

25 PROSPECTIVE JUROR: NO.

1 THE COURT: YOU COULD DECIDE THIS CASE ON ITS
2 MERITS?

3 PROSPECTIVE JUROR: YES.

4 THE COURT: ALL RIGHT. I'LL LEAVE YOU IN THE
5 PANEL.

6 MR. NUMBERGER.

7 MR. DELGADO: THAT WASN'T THE HUSBAND, THAT WAS
8 THE BROTHER-IN-LAW, I'M SORRY.

9 THE COURT: I'M SORRY. I MISSED IT.

10 (INAUDIBLE WHISPERING.)

11 THE COURT REPORTER: I'M SORRY, I CANNOT HEAR.
12 IF THIS IS SUPPOSED TO BE ON THE RECORD, I CAN'T HEAR A
13 WORD YOU'RE SAYING.

14 THE COURT: MR. NUMBERGER, COULD I GET YOU TO
15 COME BACK JUST A MINUTE?

16 THEY HAD AGREED PRIOR TO -- TO EXCUSE YOU FOR
17 CAUSE. MR. DELGADO REPRESENTED THE DEFENDANT IN THE CASE
18 AND NOT TO PUT YOU IN A CONFRONTATION LIKE THAT.

19 PROSPECTIVE JUROR: OKAY.

20 THE COURT: WE'RE GOING TO EXCUSE YOU FOR CAUSE
21 IN THIS PARTICULAR CASE.

22 PROSPECTIVE JUROR: YES, SIR.

23 THE COURT: JUST TO AVOID ANYTHING.

24 PROSPECTIVE JUROR: OKAY. OKAY.

25 MR. MCMAHON: DID YOU EXCUSE ONE MORE?

1 MS. CAMPBELL: JEFFCOAT.

2 MR. MCMAHON: JEFFCOAT.

3 THE COURT: THIS ALLEGED INCIDENT OCCURRED
4 FEBRUARY 28TH, 1961, SOMEWHERE IN THE FORT JACKSON
5 VICINITY.

6 IS THERE ANYBODY IN THE JURY PANEL WHO KNOWS
7 ANYTHING ABOUT THE FACTS OF THIS CASE? IF SO, PLEASE
8 INDICATE.

9 (THERE WAS NO RESPONSE.)

10 ANY MEMBER OF THE JURY PANEL HAVE ANY PARTICULAR
11 INTEREST IN THE OUTCOME OF THE CASE? IF SO, PLEASE
12 INDICATE.

13 (THERE WAS NO RESPONSE.)

14 ANY MEMBER OF THE JURY PANEL --

15 PROSPECTIVE JUROR: IF -- I READ THE PAPER THIS
16 MORNING.

17 THE COURT: I'M GETTING TO THAT.

18 PROSPECTIVE JUROR: OKAY.

19 THE COURT: HAS ANY MEMBER OF THE JURY PANEL
20 FORMED OR EXPRESSED ANY OPINION AS TO THE INNOCENCE OR
21 GUILT OF MR. FRIEBURGER? IF SO, PLEASE INDICATE.

22 (THERE WAS NO RESPONSE.)

23 YES, THERE HAS BEEN MEDIA COVERAGE. THERE WAS A
24 HEADLINE STORY IN THE STATE NEWSPAPER TODAY. THERE HAS
25 BEEN SOME PRELIMINARY TELEVISION COVERAGE ABOUT IT.

1 THE QUESTION WOULD BE, AND IT WAS PROBABLY YOU
2 DIDN'T KNOW WHICH TRIAL YOU WERE GOING TO BE ON OR THAT
3 YOU WERE GOING TO BE ON A JURY THIS WEEK.

4 SOME OF YOU MAY HAVE READ THE STORY. THERE'S
5 NOTHING WRONG WITH THAT. THERE'S NOTHING WRONG WITH
6 HAVING LISTENED TO AN ACCOUNT ON TELEVISION.

7 THE QUESTION IS WHETHER YOU CAN AGREE TO SET
8 THAT INFORMATION ASIDE AND AGREE TO TRY THE CASE SOLELY
9 UPON WHAT IS PRESENTED OR NOT PRESENTED IN THIS COURTROOM
10 WITHOUT ANY OUTSIDE INFLUENCE.

11 SO LET ME ASK YOU, IS THERE ANY MEMBER OF THE
12 JURY BEEN EXPOSED TO, SEEN, READ OR HEARD AN ACCOUNT OF
13 THE TRIAL?

14 YOU NEED TO IDENTIFY WHO YOU ARE, AND I'LL NEED
15 TO ASK YOU WHETHER OR NOT YOU CAN SET THAT ASIDE. IF YOU
16 CAN'T, JUST TELL ME YOU CAN'T DO THAT. IF NOT, THAT'S
17 FINE, TOO.

18 ANY MEMBER OF THE JURY ROOM SEEN, READ, HEARD OR
19 WATCHED ON ACCOUNT IN THIS CASE?

20 YES, SIR.

21 PROSPECTIVE JUROR: ROBERT BRUCE SHAW. I READ
22 THE NEWSPAPER ABOUT IT, AND I'VE SEEN, I THINK, ONE
23 TELEVISION PROGRAM.

24 THE COURT: AND MR. SHAW, YOU'RE AN ATTORNEY, SO
25 LET ME ASK YOU THIS, CAN YOU AGREE TO SET THAT INFORMATION

1 ASIDE AND TRY IT SOLELY UPON WHAT IS PRESENTED HERE IN THE
2 COURTROOM?

3 PROSPECTIVE JUROR: YES, I CAN.

4 THE COURT: I'LL LEAVE YOU IN THE PANEL.

5 YES, SIR.

6 PROSPECTIVE JUROR: STEVEN DENMARK. I READ THE
7 STATE PAPER TODAY.

8 THE COURT: ALL RIGHT. THE FACT YOU READ THAT,
9 NOW, CAN YOU AGREE TO SET THAT INFORMATION ASIDE AND TRY
10 THE CASE BASED ON WHAT'S PRESENTED OR NOT PRESENTED IN
11 COURT TODAY?

12 PROSPECTIVE JUROR: I THINK SO.

13 THE COURT: YOU THINK YOU CAN OR YOU CAN'T?

14 PROSPECTIVE JUROR: I CAN.

15 THE COURT: ALL RIGHT.

16 YES, SIR.

17 PROSPECTIVE JUROR: OLIVER THOMAS. I READ THE
18 ACCOUNT IN THE PAPER.

19 THE COURT: ALL RIGHT. MR. THOMAS, AS I
20 INDICATED, THERE'S NOTHING WRONG WITH THAT. THE QUESTION
21 IS CAN YOU NOW SET THAT ASIDE AND TRY THE CASE BASED ON
22 WHAT'S PRESENTED OR NOT PRESENTED IN THIS COURTROOM?

23 PROSPECTIVE JUROR: YES, SIR.

24 THE COURT: YES, MA'AM.

25 PROSPECTIVE JUROR: WILLIE MAE BOSTIC. I SAW

1 JUST BITS AND PIECES ON THE NEWS.

2 THE COURT: OKAY. MA'AM, THE FACT YOU WERE
3 EXPOSED TO THAT, CAN YOU AGREE TO SET THAT INFORMATION
4 ASIDE AND DECIDE THE CASE BASED ON WHAT'S PRESENTED OR NOT
5 PRESENTED IN THIS COURTROOM?

6 PROSPECTIVE JUROR: YES.

7 THE COURT: YES, SIR.

8 PROSPECTIVE JUROR: HENRY BETHCHER. BOTH
9 NEWSPAPER AND THE TELEVISION GOING BACK TO WHEN THE ARREST
10 WAS MADE, SOME OF THOSE THINGS AND SO ON.

11 THE COURT: SIR, THE FACT YOU HAD THAT EXPOSURE,
12 CAN YOU AGREE TO SET THAT INFORMATION ASIDE AND TRY IT
13 BASED ON WHAT IS PRESENTED OR NOT PRESENTED IN THIS COURT?

14 PROSPECTIVE JUROR: YES, SIR.

15 THE COURT: I'LL LEAVE YOU IN THE PANEL.

16 YES, SIR.

17 PROSPECTIVE JUROR: ROBERT COLEMAN. I'VE READ
18 THE ACCOUNTS SINCE THE ARREST WAS MADE.

19 THE COURT: SAME QUESTION OF YOU, SIR, CAN YOU
20 AGREE TO SET THAT INFORMATION ASIDE AND BASE YOUR DECISION
21 SOLELY ON WHAT'S PRESENTED OR NOT PRESENTED IN THE
22 COURTROOM?

23 PROSPECTIVE JUROR: YES.

24 THE COURT: ALL RIGHT. THANK YOU, SIR.

25 YES, MA'AM.

1 PROSPECTIVE JUROR: MONICA BRANCH. I'VE READ
2 ARTICLES ON IT IN THE NEWSPAPER.

3 THE COURT: ALL RIGHT. MA'AM, THE FACT THAT YOU
4 HAD THAT EXPOSURE, CAN YOU AGREE TO SET THAT INFORMATION
5 ASIDE AND TRY IT SOLELY UPON WHAT IS PRESENTED OR NOT
6 PRESENTED IN THE COURTROOM?

7 PROSPECTIVE JUROR: YES.

8 THE COURT: ALL RIGHT. THANK YOU.

9 YES, MA'AM.

10 PROSPECTIVE JUROR: SAMIRA SALMON. I HEARD
11 ABOUT IT ON THE NEWS THIS MORNING.

12 THE COURT: ALL RIGHT. MA'AM, THE FACT YOU HAD
13 THAT EXPOSURE, CAN YOU AGREE TO SET IT ASIDE AND DECIDE
14 THIS CASE ON WHAT IS PRESENTED OR NOT PRESENTED IN THIS
15 COURTROOM?

16 PROSPECTIVE JUROR: YES.

17 THE COURT: THANK YOU. I'LL LEAVE YOU IN THE
18 PANEL.

19 ALL RIGHT. PROSECUTING THE CASE ARE SOLICITORS
20 KNOX MCMAHON AND LUCK CAMPBELL TO MY RIGHT. DEFENDING THE
21 CASE IS MR. JOHN DELGADO AND MS. KATHRINE HUDGINS TO MY
22 LEFT.

23 IF YOU'LL STAND AND LET THE JURY SEE WHO YOU
24 ARE.

25 (COMPLIES.)

1 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
2 ANY BUSINESS, PERSONAL OR PROFESSIONAL OR SOCIAL
3 RELATIONSHIP WITH THESE ATTORNEYS THAT WOULD AFFECT YOUR
4 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THE CASE?
5 IF SO, PLEASE INDICATE.

6 ALL RIGHT. THANK YOU.

7 I'M SORRY. WAIT -- LET -- DON'T TELL ME WHAT IT
8 IS.

9 PROSPECTIVE JUROR: I TAUGHT MR. DELGADO'S
10 CHILDREN AT ONE TIME.

11 THE COURT: OKAY. AND THE FACT THAT YOU HAD
12 THAT RELATIONSHIP, WOULD THAT AFFECT YOUR ABILITY TO BE
13 FAIR AND IMPARTIAL?

14 PROSPECTIVE JUROR: NO, I DON'T BELIEVE SO, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. I'LL LEAVE YOU ON THE
17 PANEL.

18 ALL RIGHT. NOW, YOU'VE HEARD THE SUBJECT
19 MATTER. YOU'VE BEEN INTRODUCED TO THE DEFENDANT, TO THE
20 PROSECUTORS, AND TO THE DEFENSE ATTORNEYS. YOU HEARD A
21 LIST OF WITNESSES WHO MIGHT TESTIFY DURING THE COURSE OF
22 THE TRIAL.

23 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
24 SENSIBLE OR AWARE OF ANY BIAS OR ANY PREJUDICE IN
25 CONNECTION WITH ANYTHING ABOUT THIS CASE? IF SO, PLEASE

1 INDICATE.

2 (THERE WAS NO RESPONSE.)

3 DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY
4 REASON WHATSOEVER WHY HE OR SHE COULD NOT GIVE EDWARD
5 FRIEBURGER AND THE STATE OF SOUTH CAROLINA A FAIR AND
6 IMPARTIAL TRIAL? IF SO, PLEASE INDICATE.

7 (THERE WAS NO RESPONSE.)

8 ANYTHING FURTHER FROM THE STATE?

9 MR. MCMAHON: NO, SIR.

10 THE COURT: FROM THE DEFENSE?

11 MS. HUDGINS: BEG THE COURT'S INDULGENCE.

12 (PAUSE).

13 MR. DELGADO: YOUR HONOR, NUMBER SIX ON OURS.

14 THE COURT: I APOLOGIZE. I HAD IT MARKED AND I
15 FORGOT.

16 MR. DELGADO: THANK YOU.

17 THE COURT: ONE LAST QUESTION, ANY MEMBER OF THE
18 JURY PANEL OR A MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN
19 EMPLOYED BY A CAB COMPANY?

20 PROSPECTIVE JUROR: WHAT DID YOU SAY, SIR?

21 THE COURT: CAB, C-A-B, COMPANY, LIKE THE YELLOW
22 CAB.

23 NOW ANYTHING FURTHER FROM THE DEFENSE?

24 MR. DELGADO: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,

1 THE CLERK WILL RANDOMLY DRAW YOUR NAME. WE'D SIMPLY ASK
2 YOU TO STAND IN PLACE WHEN YOUR NAME IS CALLED. THE STATE
3 IS THEN ASKED WHETHER OR NOT THEY WISH TO SEAT YOU AS A
4 JUROR OR STRIKE YOU FROM SERVICE IN THIS CASE.

5 IF THEY SAY SEAT YOU, THEN THE QUESTION IS
6 PASSED TO THE DEFENSE. THEY HAVE A RIGHT TO SEAT YOU OR
7 STRIKE YOU FROM SERVICE IN THIS CASE.

8 IF EITHER SIDE STRIKES YOU, PLEASE HAVE A SEAT.
9 DON'T BE PERSONALLY OFFENDED BY THAT OR UPSET. THEY HAVE
10 SO MANY STRIKES THEY'RE GOING TO USE. IT'S NOTHING
11 PERSONAL.

12 IF BOTH SIDES PASS UPON YOU, WE'D ASK YOU TO
13 COME OUT AND HAVE A SEAT IN THE JURY BOX UNTIL WE GET A
14 JURY OF 12 PLUS TWO ALTERNATES.

15 MADAM CLERK.

16 THE CLERK: YES, SIR.

17 NUMBER 281, CHRISTOPHER THATCH.

18 WHAT SAYS THE STATE?

19 MR. MCMAHON: PRESENT MR. THATCH.

20 THE CLERK: WHAT SAYS THE DEFENSE?

21 MR. DELGADO: YOUR HONOR, PLEASE SWEAR

22 MR. THATCH.

23 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.

24 NUMBER 301, LORETTA WALKER.

25 WHAT SAYS THE STATE?

1 MR. MCMAHON: PRESENT MR. WALKER.
2 THE CLERK: WHAT SAYS THE DEFENSE?
3 MR. DELGADO: YOUR HONOR, MAY WE EXCUSE
4 MS. WALKER FROM THIS TRIAL?
5 THE CLERK: PLEASE HAVE A SEAT.
6 NUMBER 193, INDIA MCKINNEY.
7 WHAT SAYS THE STATE?
8 MR. MCMAHON: PRESENT MS. MCKINNEY.
9 THE CLERK: WHAT SAYS THE DEFENSE?
10 MR. DELGADO: YOUR HONOR, MAY WE APPROACH FOR
11 JUST ONE SECOND?
12 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
13 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
14 THE JURY.)
15 THE COURT: MS. MCKINNEY, DO YOU HAVE A RELATIVE
16 THAT'S A MASTER DEPUTY WITH THE RICHLAND COUNTY SHERIFF'S
17 DEPARTMENT?
18 PROSPECTIVE JUROR: MY FATHER.
19 THE COURT: WHY DIDN'T YOU ANSWER THAT QUESTION
20 A MOMENT AGO?
21 PROSPECTIVE JUROR: I WASN'T AWARE OF IT.
22 THE COURT: EXCUSE FOR CAUSE.
23 MR. MCMAHON: SHE SAID SHE WASN'T AWARE OF IT.
24 THE COURT: I ASKED THE QUESTION.
25 YOU CAN HAVE A SEAT.

1 THE CLERK: NUMBER 217; JANET PEARCE.
2 WHAT SAYS THE STATE?
3 MR. MCMAHON: PRESENT MS. PIERCE.
4 THE CLERK: WHAT SAYS THE DEFENSE?
5 MR. DELGADO: YOUR HONOR, MAY WE EXCUSE
6 MS. PEARCE, PLEASE?
7 THE CLERK: PLEASE HAVE A SEAT.
8 NUMBER 66, DONNA CUNNINGHAM.
9 WHAT SAYS THE STATE?
10 MR. MCMAHON: PRESENT MS. CUNNINGHAM.
11 THE CLERK: WHAT SAYS THE DEFENSE?
12 MR. DELGADO: PLEASE SWEAR MS. CUNNINGHAM.
13 THE CLERK: IF YOU COME FORWARD TO THE JURY BOX.
14 NUMBER 138, SHARON HOPKINS.
15 WHAT SAYS THE STATE?
16 MR. MCMAHON: PRESENT MS. HOPKINS.
17 MR. DELGADO: JUST A SECOND PLEASE.
18 (PAUSE).
19 YOUR HONOR, MAY WE SWEAR, MS. HOPKINS?
20 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
21 NUMBER 168, HERBERT LANFORD.
22 WHAT SAYS THE STATE?
23 MR. MCMAHON: PRESENT MR. LANFORD.
24 THE CLERK: WHAT SAYS THE DEFENSE?
25 MR. DELGADO: YOUR HONOR, MAY WE EXCUSE

1 MR. LANFORD?

2 THE CLERK: HAVE A SEAT.

3 NUMBER 274, SCOTT SYLVESTER.

4 MR. MCMAHON: PLEASE PRESENT MR. SYLVESTER.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. DELGADO: PLEASE SWEAR MR. SYLVESTER.

7 THE CLERK: IF YOU'D PLEASE COME FORWARD TO THE
8 JURY BOX.

9 NUMBER 83, LOGAN DRAKE.

10 WHAT SAYS THE STATE?

11 MR. MCMAHON: PLEASE PRESENT MR. DRAKE.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MR. DELGADO: YOUR HONOR, PLEASE EXCUSE

14 MR. DRAKE FROM SERVICE IN THIS TRIAL.

15 THE CLERK: PLEASE HAVE A SEAT.

16 NUMBER 45, KENNETH PERRY.

17 WHAT SAYS THE STATE?

18 MR. MCMAHON: PLEASE PRESENT PERRY.

19 THE CLERK: WHAT SAYS THE DEFENSE?

20 MR. DELGADO: PLEASE EXCUSE MR. PERRY FROM THIS
21 TRIAL.

22 THE CLERK: PLEASE HAVE A SEAT.

23 NUMBER 282, OLIVER THOMAS.

24 WHAT SAYS THE STATE?

25 MR. MCMAHON: PLEASE PRESENT MR. THOMAS.

1 THE CLERK: WHAT SAYS THE DEFENSE?

2 MR. DELGADO: YOUR HONOR, MAY WE SWEAR THE

3 JUROR?

4 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.

5 NUMBER 75, STEVEN DENMARK.

6 WHAT SAYS THE STATE?

7 MR. MCMAHON: PLEASE PRESENT MR. DENMARK.

8 THE CLERK: WHAT SAYS THE DEFENSE?

9 MR. DELGADO: PLEASE SWEAR MR. DENMARK.

10 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.

11 NUMBER 20, HENRY BETCHER.

12 WHAT SAYS THE STATE?

13 MR. MCMAHON: PLEASE PRESENT MR. BETCHER.

14 THE CLERK: WHAT SAYS THE DEFENSE?

15 MR. DELGADO: YOUR HONOR, MAY WE EXCUSE THE

16 JUROR FROM THIS TRIAL?

17 THE CLERK: PLEASE HAVE A SEAT.

18 NUMBER 48, KRYSTAL CATO.

19 WHAT SAYS THE STATE?

20 MR. MCMAHON: PLEASE EXCUSE MS. CATO.

21 THE CLERK: PLEASE HAVE A SEAT.

22 NUMBER 43, RUSSELL BUTLER.

23 WHAT SAYS THE STATE?

24 MR. MCMAHON: PLEASE EXCUSE MR. BUTLER.

25 THE CLERK: PLEASE HAVE A SEAT.

1 NUMBER 172, JAMES LEE.
2 WHAT SAYS THE STATE?
3 MR. MCMAHON: PLEASE PRESENT MR. LEE.
4 THE CLERK: WHAT SAYS THE DEFENSE?
5 MR. DELGADO: PLEASE SWEAR MR. LEE.
6 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
7 NUMBER 182, ALICE MCCURRY.
8 WHAT SAYS THE STATE?
9 MR. MCMAHON: PLEASE PRESENT MS. MCCURDY.
10 THE CLERK: WHAT SAYS THE DEFENSE?
11 MR. DELGADO: PLEASE SWEAR MS. MCCURDY.
12 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
13 NUMBER 100, JANINE FLETCHER.
14 WHAT SAYS THE STATE?
15 MR. MCMAHON: PRESENT MS. FLETCHER.
16 THE CLERK: WHAT SAYS THE DEFENSE?
17 MR. DELGADO: MAY WE EXCUSE THIS JUROR?
18 THE CLERK: PLEASE HAVE A SEAT.
19 NUMBER 200, IS IT BERNIK MOORE?
20 WHAT SAYS THE STATE?
21 MR. MCMAHON: PLEASE PRESENT MR. MOORE.
22 THE CLERK: WHAT SAYS THE DEFENSE?
23 MR. DELGADO: YOUR HONOR, MAY WE EXCUSE
24 MR. MOORE AT THIS TIME?
25 THE CLERK: PLEASE HAVE A SEAT.

1 THE STATE HAS USED TWO STRIKES, THE DEFENSE HAS
2 USED THREE.

3 NUMBER 137, BETH HOOVER.

4 WHAT SAYS THE STATE?

5 MR. MCMAHON: PLEASE PRESENT MS. HOOVER.

6 THE CLERK: WHAT SAYS THE DEFENSE?

7 MR. DELGADO: YOUR HONOR, WE WOULD HAVE TO

8 EXCUSE MS. HOOVER AS A RESULT OF HER HUSBAND.

9 THANK YOU.

10 THE CLERK: PLEASE HAVE A SEAT.

11 NUMBER 190, DEBBIE MCDONALD.

12 WHAT SAYS THE STATE?

13 MR. MCMAHON: PLEASE PRESENT MS. MCDONALD.

14 THE CLERK: WHAT SAYS THE DEFENSE?

15 MR. DELGADO: MAY WE EXCUSE MS. MCDONALD?

16 THE CLERK: PLEASE HAVE A SEAT.

17 NUMBER 303, KENYA WANNAMAKER.

18 WHAT SAYS THE STATE?

19 MR. MCMAHON: PLEASE PRESENT MS. WANNAMAKER.

20 THE CLERK: DOES THE DEFENSE CHALLENGE FOR

21 CAUSE?

22 MR. DELGADO: PLEASE HAVE A SEAT IN THE JURY

23 BOX.

24 THE CLERK: NUMBER 251, TINA SHEALY.

25 WHAT SAYS THE STATE?

1 MR. MCMAHON: PLEASE PRESENT MS. SHEALY.
2 THE CLERK: DOES THE DEFENSE CHALLENGE FOR
3 CAUSE?
4 MR. DELGADO: WE DO NOT.
5 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
6 NUMBER 77, AIMEE DEWHITT.
7 WHAT SAYS THE STATE?
8 MR. MCMAHON: PLEASE PRESENT MS. DEWHITT.
9 THE CLERK: DOES THE DEFENSE CHALLENGE FOR
10 CAUSE?
11 MR. DELGADO: WE DO NOT.
12 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
13 NUMBER 177, TOMMY LLOYD.
14 WHAT SAYS THE STATE?
15 MR. MCMAHON: EXCUSE MR. LLOYD.
16 THE CLERK: PLEASE HAVE A SEAT.
17 NUMBER 28, JIMMY BOYD.
18 WHAT SAYS THE STATE?
19 MR. MCMAHON: PRESENT MR. BOYD.
20 THE CLERK: DOES THE DEFENSE CHALLENGE FOR
21 CAUSE?
22 MR. DELGADO: WE DO NOT.
23 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
24 THE COURT: TWO ALTERNATES.
25 THE CLERK: WILLIE M. BOSTIC.

1 WHAT SAYS THE STATE?
2 MR. MCMAHON: PLEASE PRESENT MS. BOSTIC.
3 THE CLERK: WHAT SAYS THE DEFENSE?
4 MR. DELGADO: PLEASE SWEAR MS. BOSTIC.
5 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
6 THE COURT: ALTERNATE TWO.
7 THE CLERK: NUMBER 304, PATRICK WASHINGTON.
8 WHAT SAYS THE STATE?
9 MR. MCMAHON: PLEASE PRESENT MR. WASHINGTON.
10 THE CLERK: WHAT SAYS THE DEFENSE?
11 MR. DELGADO: YES, PLEASE SWEAR MR. WASHINGTON.
12 THE CLERK: PLEASE COME FORWARD TO THE JURY BOX.
13 THE COURT: ANY EXCEPTION OR OBJECTION TO THE
14 METHOD OF SELECTION OF THE JURY PANEL FROM THE STATE?
15 MR. MCMAHON: NO, YOUR HONOR.
16 THE COURT: FROM THE DEFENSE?
17 (PAUSE).
18 MR. DELGADO: YES, YOUR HONOR, I'M SORRY TO SAY
19 THERE IS.
20 THE COURT: ALL RIGHT. MR. BAILIFF, WOULD YOU
21 TAKE THIS JURY TO THE JURY ROOM FOR A FEW MINUTES?
22 (WHEREUPON, THE JURY LEFT OPEN COURT AT
23 APPROXIMATELY 12:45.)
24 THE COURT: I'M GOING TO HAVE TO HEAR THIS
25 OUTSIDE OF YOUR PRESENCE. GO BACK IN THE HALLWAY AND COME

1 BACK IN ABOUT FIVE MINUTES, OKAY.

2 (WHEREUPON, THE UNSELECTED MEMBERS OF THE JURY
3 PANEL LEFT THE COURTROOM.)

4 THE COURT: ALL RIGHT, MR. DELGADO.

5 MR. DELGADO: YOUR HONOR, THE 14TH AND 15TH AND
6 25TH JURORS CALLED, THAT IS REPRESENTATIVELY MS. CATO,
7 MR. BUTLER, AND THEN MR. LLOYD WERE ALL STRUCK BY THE
8 STATE.

9 OF THE THREE STRIKES USED BY THE STATE, EACH OF
10 THOSE THREE WERE USED AGAINST AN AFRICAN AMERICAN, THAT IS
11 MR. CATO, MR. BUTLER, AND MR. BOYD.

12 IT MAY VERY WELL BE, YOUR HONOR, THAT THE LAST
13 ONE, MR. LLOYD, THAT IS JUROR NUMBER 177, THE 25TH JUROR
14 BROUGHT OUT OF THE BOX, HAS A CRIMINAL RECORD, THAT
15 MS. HUDGINS TELLS ME, WE DISCOVERED THIS MORNING THROUGH
16 SOME OF THE OTHER JURY QUALIFICATIONS.

17 THE OTHERS, I'D LIKE TO ASK THE COURT TO INQUIRE
18 INTO AS TO THE RACIALLY NEUTRAL REASON FOR STRIKING
19 MS. CATO AND MR. BUTLER.

20 THE COURT: MR. SOLICITOR?

21 MR. MCMAHON: YES, SIR. IF I COULD, JUST TO SET
22 THE RECORD BETWEEN -- MR. CATO AND MR. BUTLER CAME UP.

23 THE SECOND JUROR THAT CAME OUT OF THE BOX WAS A
24 BLACK FEMALE, MS. WALKER, WHICH THE STATE ACCEPTED; THE
25 DEFENSE STRUCK.

1 THE THIRD JUROR THAT CAME OUT OF THE BOX WAS
2 193, MS. MCKINNEY, A BLACK FEMALE, WHICH THE STATE
3 ACCEPTED AND THE DEFENSE CHALLENGED FOR CAUSE AND WAS SET
4 ASIDE.

5 THE 11TH JUROR THAT CAME OUT OF THE BOX WAS
6 NUMBER 282, MR. THOMAS, A BLACK MALE, RETIRED, WHICH THE
7 STATE ACCEPTED, AND THE DEFENSE ACCEPTED.

8 I BELIEVE THEN MS. CATO, WHICH I BELIEVE IS THE
9 14TH JUROR, NOW THAT'S THE FIRST STRIKE THAT THE STATE
10 CHOSE.

11 MS. CATO, AS BEST I CAN DETERMINE, WAS THE ONLY
12 ONE THAT CAME OUT OF THE JURY PANEL THAT WAS UNEMPLOYED.

13 I WOULD HAVE STRUCK ANY INDIVIDUAL THAT WAS
14 UNEMPLOYED. EACH AND EVERY JUROR FROM THE JURY
15 QUALIFICATIONS THIS MORNING, THE INFORMATION I HAD WAS
16 EITHER EMPLOYED OR RETIRED FROM EMPLOYMENT AND OF THE
17 APPROPRIATE RETIREMENT AGE. THAT IS WHY I STRUCK MS. CATO
18 AS THE STATE'S FIRST STRIKE.

19 THE NEXT ONE, MR. BUTLER, NUMBER 43, THE STATE
20 STRUCK BECAUSE I UNDERSTAND HE HAS AN APRIL '02 MARIJUANA
21 CHARGE, AND HE'S CURRENTLY IN P.T.I. BEING PROSECUTED BY
22 THIS OFFICE, IS MY UNDERSTANDING. THAT IS WHY I STRUCK
23 NUMBER 43, MR. BUTLER.

24 THEN AS I GO ON DOWN, YOUR HONOR, 172, MR. LEE,
25 THE NEXT ONE OUT OF THE BOX, THE AFRICAN AMERICAN THE

1 STATE ACCEPTED.

2 189, MS. MCCURDY, A BLACK AFRICAN AMERICAN
3 FEMALE, THE STATE ACCEPTED.

4 NUMBER 100, MS. FLETCHER, AN AFRICAN AMERICAN
5 FEMALE, THE STATE ACCEPTED; THE DEFENSE STRUCK. I'M NOT
6 QUESTIONING THEIR STRIKES. I'M JUST PUTTING THIS IN THE
7 RECORD.

8 NUMBER 200, MS. MOORE, AN AFRICAN AMERICAN, THE
9 STATE ACCEPTED; THE DEFENSE STRUCK.

10 NUMBER 190, MS. MCDONALD, AN AFRICAN AMERICAN,
11 THE STATE ACCEPTED; THE DEFENSE STRUCK.

12 THAT WOULD HAVE BEEN THE DEFENSE'S TENTH STRIKE.
13 SO I STILL HAD THREE STRIKES LEFT AT THAT POINT. THE NEXT
14 ONE THAT CAME OUT OF THE BOX AFTER THE STATE HAD STRUCK
15 THAT ONE WAS NUMBER 313, MS. WANNAMAKER, AN AFRICAN
16 AMERICAN, WHICH THE STATE ACCEPTED.

17 THEN NUMBER 77, MS. DEWHITT, AN AFRICAN AMERICAN
18 FEMALE, WHICH THE STATE ACCEPTED.

19 THEN WE GET TO MR. LLOYD, THE STATE'S THIRD
20 STRIKE, WHICH WAS AN AFRICAN AMERICAN. I UNDERSTAND -- I
21 THINK MR. DELGADO SAID MAYBE HE DOES NOT CHALLENGE HIM;
22 HOWEVER, I WILL ADVISE THE COURT THAT HIS RECORD WAS A
23 RECORD FOR CRIMES THAT I CONSIDER OF VIOLENCE, FOR
24 EXAMPLE, A C.D.V. CONVICTION.

25 THERE ARE OTHER INDIVIDUALS, BOTH AFRICAN

1 AMERICAN AND THE CAUCASIAN RACE ON THE JURY WITH OTHER
2 CONVICTIONS. I BELIEVE THERE'S AN AFRICAN AMERICAN FEMALE
3 WITH A FRAUDULENT CHECK CONVICTION. I BELIEVE THERE IS A
4 CAUCASIAN MALE WITH A 15-YEAR-OLD D.U.I. CONVICTION.

5 I STRUCK MR. LLOYD BECAUSE OF HIS VIOLENT
6 CONVICTION. I WOULD HAVE STRUCK ANY CAUCASIAN WITH THE
7 SAME RECORD AS MR. LLOYD.

8 THANK YOU, YOUR HONOR.

9 THE COURT: ANYTHING FURTHER, MR. DELGADO?

10 MR. DELGADO: YOUR HONOR, YES. MY UNDERSTANDING
11 AND AGAIN, SIR, MS. HUDGINS POINTED THIS OUT TO ME, WE
12 WATCHED THE QUALIFICATIONS EARLIER THIS MORNING BEFORE
13 JUDGE LEE.

14 WHILE HER JURY SUMMONS, THAT IS MS. CATO, NOTES
15 UNEMPLOYMENT, IT'S MY UNDERSTANDING, MS. HUDGINS TELLS ME
16 SHE IS A STUDENT. I LOOKED BACK TO MY NOTES. I MUST SAY
17 TO YOU IN ALL CANDOR I DID NOT PUT THAT DOWN.

18 I JUST SIMPLY WILL GO TO THE OTHER THINGS THEN,
19 BUT I DO NOT KNOW IF THAT WOULD NECESSARILY QUALIFY AS A
20 RACIALLY NEUTRAL STRIKE SIMPLY BECAUSE SOMEONE IS
21 UNEMPLOYED.

22 I TRY, THE BEST WAY I CAN, THERE MAY VERY WELL
23 BE THAT THERE ARE NO OTHER INDIVIDUALS THAT HAVE THAT
24 PROFILE, THAT IS THAT THEY ARE AFRICAN AMERICAN AND ARE
25 UNEMPLOYED, WHICH BEGS THE QUESTION, YOUR HONOR, I MEAN,

1 IF SOMEONE IS UNEMPLOYED, DO WE USE THAT -- IS THAT A FAIR
2 CHARACTERIZATION -- IS THAT A FAIR EMPLOYMENT OF A CORRECT
3 CHALLENGE BECAUSE SOMEONE DOES NOT EITHER NOW OR DOES NOT
4 HAVE ONE IN THE PAST?

5 I WOULD SUBMIT TO THE COURT THAT REALLY IS A
6 PRETEXT.

7 THE COURT: WELL, I'M REASONABLY SURE THERE IS A
8 CASE ON THAT.

9 MR. MCMAHON: YES, SIR. I THINK THERE IS, AND
10 IT'S CLEARLY NOT A PRETEXT IN A SITUATION WHERE THERE ARE
11 NO CAUCASIANS THAT ARE UNEMPLOYED.

12 IT'S MY UNDERSTANDING FROM MS. CAMPBELL, AS SHE
13 WAS THERE THIS MORNING, SHE HAD NO INDICATION THAT SHE HAD
14 ANY EMPLOYMENT WHOSOEVER. SHE WAS UNEMPLOYED. THAT'S
15 CLEARLY NOT ASSOCIATED WITH EITHER THE AFRICAN AMERICAN
16 RACE OR THE CAUCASIAN RACE.

17 THE COURT: I DON'T HAVE MY LIST OF CASES, BUT
18 I'M SURE THERE'S A CASE ON POINT, AND I'LL FIND IT AND PUT
19 IT IN THE RECORD. SO I'LL FIND THAT AS A RACIALLY NEUTRAL
20 REASON FOR STRIKING THE JUROR. THERE APPEARS TO BE NO
21 PRETEXT ON THIS RECORD.

22 THE STATE TOOK A NUMBER OF MINORITY MEMBERS OF
23 THE JURY, SO I WOULD FIND NO VIOLATION OF THAT.

24 MR. DELGADO: YOUR HONOR, MAY I ASK THE COURT,
25 WOULD THE COURT ALLOW ME TO MAKE AS PART OF THE COURT'S

1 RECORD THE JUROR INFORMATION THAT THE RICHLAND COUNTY
2 CLERK OF THE COURT PRODUCES? IN OTHER WORDS, WE HAVE TWO
3 DIFFERENT SETS, ONE WILL SHOW A RACIAL BACKGROUND AND THEN
4 ONE WILL NOT?

5 I SIMPLY, JUST BECAUSE OF OUR HURRIED PROCEDURE
6 THIS MORNING, I HAVE NOT -- I WANT TO MAKE CERTAIN THAT IF
7 THERE'S A NEED TO APPEAL ON THAT ISSUE, AND IF THERE IS AN
8 ISSUE OF WHERE SOMEONE ELSE MAY HAVE BEEN UNEMPLOYED THAT
9 WAS DRAWN OR CALLED BY THE CLERK, I'D LIKE TO BE ABLE TO
10 PRESERVE THAT. I JUST CAN'T FIND IT TODAY. IF THE COURT
11 WOULD ALLOW ME TO DO THAT, I WOULD LIKE TO BE ABLE TO
12 PRESERVE THAT, IF THAT'S ALL RIGHT.

13 THE COURT: YOU'RE TALKING ABOUT THIS LIST, THE
14 \$7 LIST, IS THAT THE ONE?

15 MR. DELGADO: WELL, THE \$7 LIST WHICH DOES NOT,
16 YOUR HONOR, IT DOES NOT SHOW A RACE.

17 THE COURT: OKAY. WE'LL PUT OUR TWO IN THERE.

18 MR. DELGADO: ALL RIGHT.

19 THE COURT: MARK IT AS A COURT'S EXHIBIT.

20 ALL RIGHT. MR. BAILIFF, YOU CAN TELL THOSE
21 JURORS -- THANK YOU FOR THEIR SERVICE AND THEY CAN GO BACK
22 TO THE JURY ASSEMBLY ROOM.

23 (WHEREUPON, THE UNSELECTED JURORS WERE DISMISSED).

24 (WHEREUPON, COURT'S EXHIBIT NO. 2 WAS MARKED FOR
25 IDENTIFICATION ONLY.)

1 THE COURT: ALL RIGHT. WE'RE READY FOR THIS
2 JURY. BRING THEM IN. I'M GOING TO LET THEM GO UNTIL THE
3 MORNING.

4 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
5 APPROXIMATELY 12:55 P.M.)

6 THE BAILIFF: YOUR HONOR, THE JURY IS PRESENT.

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, AS
8 YOU WILL LEARN ABOUT THE TRIAL, THERE ARE A NUMBER OF OUT
9 OF STATE WITNESSES INVOLVED, AND THEY HAVE BEEN UNABLE TO
10 COME HERE UNTIL TODAY, WHICH HAS PREVENTED ME FROM DOING
11 SOME OF THE PRETRIAL THINGS AHEAD OF TIME WHICH I WOULD
12 PREFER TO DO.

13 HOWEVER, WHAT WE'RE GOING TO DO IS ASK YOU TO
14 REPORT BACK TO THE JURY ROOM IN THE MORNING AT 9 O'CLOCK,
15 AND WE'LL START THE TRIAL WITH YOUR PARTICIPATION. I WILL
16 MAKE RULINGS ON THE PRETRIAL ISSUES BETWEEN NOW AND THEN.

17 AS I'VE INDICATED TO YOU, THERE WILL BE PRESS
18 COVERAGE OF THE TRIAL, AND I WOULD INSTRUCT YOU NOT TO
19 READ ANY ACCOUNT OR LISTEN TO OR WATCH ANY ACCOUNT.

20 I'D ALSO INSTRUCT YOU NOT TO DISCUSS THE CASE
21 WITH ANYONE, ALLOW ANYONE TO DISCUSS IT WITH YOU.

22 NOW, YOU HAVE BEEN SELECTED AS FAIR AND
23 IMPARTIAL JURORS TO COME HERE AND TO TRY THIS CASE
24 BEGINNING IN THE MORNING.

25 AS TO THE -- WHEN YOU GET HERE IN THE MORNING,

1 I'D ASK YOU TO SELECT A FOREPERSON. YOU CAN DO THAT BY
2 MAJORITY VOTE. EVERYBODY CAN PARTICIPATE IN THAT VOTE
3 EXCEPT FOR THE TWO ALTERNATES.

4 WHOEVER YOU SELECT WILL COME AND HAVE A SEAT ON
5 THE FRONT ROW WHERE THE LADY WITH THE BURGUNDY TOP IS.
6 THAT PERSON PRESIDES OVER THE JURY DELIBERATION AND HAS NO
7 MORE AUTHORITY THAN ANY OTHER MEMBER OF THE JURY; JUST
8 ANYBODY YOU'D LIKE.

9 IF THE TWO ALTERNATES, IF YOU WILL STAY IN THE
10 BACK AREA SO I CAN KEEP TRACK OF YOU THROUGHOUT THE TRIAL.
11 THE REST OF YOU MAY SIT WHEREVER YOU LIKE, EXCEPT FOR THE
12 ALTERNATES AND THE FOREPERSON.

13 AGAIN, THIS CASE WILL TAKE SEVERAL DAYS, SO BE
14 CAREFUL WHAT YOU'RE EXPOSED TO IN TERMS OF CONVERSATION.
15 WALK AWAY FROM IT.

16 THERE WILL BE SOME PEOPLE THAT HAVE SOMETHING TO
17 SAY, PARTICULARLY IF THEY FIND OUT YOU'RE ON A JURY.

18 IF SOMEBODY TRIES TO TALK TO YOU ABOUT THE CASE,
19 JUST TRY TO GET THEIR NAME. JUST TRY TO KEEP YOURSELF AS
20 UNCONTAMINATED AS POSSIBLE.

21 WE'LL SEE YOU IN THE MORNING AT 9 O'CLOCK. WE
22 NORMALLY WORK NINE UNTIL FIVE, 5:30, SOMETIMES SIX. IT
23 JUST KIND OF DEPENDS ON WHERE WE ARE.

24 FOR PLANNING PURPOSES, I THINK MS. SCOTT TOLD
25 YOU WE'LL NOT BE HERE ON FRIDAY. THAT KIND OF DEPENDS ON

1 WHERE WE ARE IN THE CASE. IF I CAN'T FINISH IT ON FRIDAY,
2 WE MAY HAVE TO CARRY IT OVER A DAY. WE ANTICIPATE IT WILL
3 MOVE A LOT QUICKER ONCE WE GET STARTED.

4 SEE YOU IN THE MORNING, NINE O'CLOCK.

5 (WHEREUPON, THE JURY LEFT OPEN COURT AT
6 APPROXIMATELY 1 O'CLOCK.)

7 THE COURT: ALL RIGHT. WE'RE BREAKING UNTIL TWO
8 O'CLOCK AND PICK UP WITH MOTIONS AND WHATEVER YOU WANT TO
9 HEAR THIS AFTERNOON, AND WE'LL GO FROM THERE.

10 MR. MCMAHON: JUDGE, WHAT ABOUT THE BOND?

11 THE COURT: IT'S EXPIRED AND MR. FRIEBURGER IS
12 IN CUSTODY THROUGHOUT THE TRIAL.

13 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

14 THE COURT: ALL RIGHT. ON THAT ISSUE ABOUT THE
15 UNEMPLOYMENT, STATE VS. GREEN, 409 S.E. 2D 785, AND STATE
16 VS. MARTINEZ, 362 S.E. 2D 1601, UNEMPLOYMENT IS A RACIALLY
17 NEUTRAL REASON FOR EXERCISING A STRIKE.

18 ALL RIGHT, SOLICITOR, ARE YOU READY TO PROCEED?

19 MR. MCMAHON: YES, SIR, THE STATE IS READY. THE
20 STATE CALLS L. B. HARMON.

21 THE CLERK: WOULD YOU COME FORWARD, PLEASE. IF
22 YOU'D PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
23 RIGHT.

24 L. B. HARMON (IN CAMERA), AFTER BEING DULY SWORN,
25 TESTIFIED AS FOLLOWS:

1 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
2 NAME, SPELL YOUR LAST NAME.

3 (THERE WAS NO RESPONSE.)

4 THE CLERK: STATE YOUR NAME.

5 THE WITNESS: LAWRENCE B. HARMON.

6 DIRECT EXAMINATION:

7 BY MR. MCMAHON

8 Q GOOD AFTERNOON, MR. HARMON. IF I DON'T SPEAK LOUD
9 ENOUGH FOR YOU, YOU JUST MOTION FOR ME AND I'LL SPEAK
10 UP.

11 A YES, SIR.

12 Q HOW OLD ARE YOU?

13 A EIGHTY-SEVEN.

14 Q AND WHERE DO YOU LIVE?

15 A 12 MILES OUT OF COLUMBIA ON THE [REDACTED] [REDACTED],
16 HORRELL HILL.

17 Q IS THAT WHERE YOU'RE FROM, MR. HARMON, HORRELL HILL?

18 A YES, SIR.

19 Q HOW LONG HAVE YOU LIVED ON [REDACTED] [REDACTED] AT THE
20 HORRELL HILL?

21 A 87 YEARS EXCEPT FOR THE FOUR YEARS I WAS AWAY.

22 Q AND IF FOUR YEARS YOU WERE AWAY, WHY WERE YOU AWAY IN
23 THOSE FOUR YEARS?

24 A IN THE SERVICE.

25 Q WHERE WERE YOU AT IN THE SERVICE?

1 A ALL AROUND.

2 Q NOW, ARE YOU MARRIED?

3 A YES, SIR.

4 Q AND HOW LONG HAVE YOU AND MRS. HARMON BEEN MARRIED?

5 A JUST ABOUT 60 YEARS.

6 Q ABOUT 60?

7 A JUST ABOUT. IT SEEMS LIKE A LITTLE MORE BUT JUST

8 ABOUT.

9 Q NOW, MR. HARMON, YOU'RE RETIRED NOW, SIR?

10 A YES, SIR.

11 Q AT ONE TIME -- WHAT DID YOU RETIRE AS? WHAT WAS YOUR

12 OCCUPATION?

13 A A SCHOOL TEACHER.

14 Q NOW, PRIOR TO THAT?

15 A LAW ENFORCEMENT.

16 Q YOU WERE IN LAW ENFORCEMENT. WHAT AGENCIES DID YOU

17 WORK FOR AND DURING WHAT PERIOD OF TIME DID YOU WORK

18 FOR THOSE AGENCIES, MR. HARMON?

19 A I STARTED OFF AS A MAGISTRATE'S CONSTABLE, WENT TO

20 THE SHERIFF'S OFFICE A FEW YEARS AND THEN OVER TO

21 S.L.E.D.

22 Q AND WHAT MAGISTRATE WERE YOU THE CONSTABLE FOR?

23 A REESE.

24 Q MAGISTRATE REESE?

25 A HOPKINS MAGISTRATE.

1 Q AND THEN YOU WENT TO THE SHERIFF'S DEPARTMENT IN WHAT
2 SHERIFF'S OFFICE?
3 A WELL, I WORKED UNDER HYCEE (PHONETIC) FOR A WHILE.
4 Q SHERIFF HYCEE, RICHLAND COUNTY SHERIFF?
5 A YES, SIR, THEN SLY..
6 Q AND YOU'RE TALKING ABOUT THE RICHLAND COUNTY
7 SHERIFF'S DEPARTMENT?
8 A YES, SIR.
9 Q AND THEN YOU WENT TO S.L.E.D.?
10 A YES, SIR.
11 Q IN 1961, HOW WERE YOU EMPLOYED?
12 A S.L.E.D.
13 Q AND WHAT POSITION DID YOU HAVE WITH S.L.E.D.?
14 A AGENT.
15 Q AND MR. HARMON, DID YOU KNOW THE SHERIFF, WHO THE
16 SHERIFF OF RICHLAND COUNTY WAS, IN 1961?
17 A YES, SIR.
18 Q AND WHO WAS THAT?
19 A SLY.
20 Q SHERIFF SLY?
21 A YES, SIR.
22 Q AND DO YOU RECALL WHO HIS CHIEF DEPUTY WAS AT THAT
23 TIME?
24 A JIMMY HARRISON.
25 Q ARE BOTH MR. SLY AND MR. HARRISON BOTH DECEASED?

1 A THAT'S WHAT THEY TOLD ME. I DON'T KNOW.

2 Q YOU HAVEN'T SEEN THEM LATELY?

3 A I HAVEN'T SEEN THEM LATELY, NO, SIR.

4 Q NOW, MR. HARMON, DID YOU BECOME INVOLVED IN A
5 HOMICIDE INVESTIGATION THE FIRST PART OF MARCH 1961?

6 A YES, SIR.

7 Q AND DO YOU RECALL THE VICTIM'S NAME?

8 MR. DELGADO: YOUR HONOR, MAY I ENTER,
9 HOPEFULLY, A GRACEFUL OBJECTION TO LEADING BY MY FRIEND,
10 THE PROSECUTOR?

11 I DON'T THINK THERE'S A FOUNDATION, AND I
12 HAVEN'T DONE IT BEFORE THAT. I KNOW WE'RE KIND OF GETTING
13 TO THAT POINT.

14 THE COURT: SUSTAINED.

15 BY MR. MCMAHON

16 Q DO YOU RECALL THE VICTIM'S NAME, MR. HARMON?

17 A YES, SIR.

18 Q AND WHAT WAS THAT NAME?

19 A MR. ORNER.

20 Q AND DID YOU GO TO A PARTICULAR LOCATION IN RICHLAND
21 COUNTY AS PART OF THAT INVESTIGATION?

22 A I DID.

23 Q AND WHAT LOCATION WAS THAT, MR. HARMON?

24 A ON HIGHWAY 601 JUST ACROSS THE RAILROAD TRACKS AT
25 WATeree, SOUTH CAROLINA.

1 Q AND WHAT DID YOU OBSERVE AT THAT LOCATION,
2 MR. HARMON?

3 A I OBSERVED MR. ORNER LAYING ON THE EMBANKMENT.
4 THERE'S A FIELD JUST ACROSS THE RAILROAD TRACK THAT
5 WENT INTO THE CONGAREE SWAMP. HE WAS LAYING MIDWAY
6 DOWN BACK WITH THE EMBANKMENT, HIS HEAD FURTHER DOWN
7 THAN HIS FEET.

8 Q I WANT TO SHOW YOU SOME PHOTOGRAPHS. DO YOU
9 RECOGNIZE THAT PHOTOGRAPH?

10 A VERY WELL, SIR.

11 Q ALL RIGHT. SO NOW, SIR, WHAT -- AND YOU CAN IDENTIFY
12 VARIOUS LOCATIONS ON THAT PHOTOGRAPH; IS THAT
13 CORRECT?

14 A YES; YES, SIR.

15 Q ADDITIONALLY, DO YOU RECOGNIZE THESE TWO PHOTOGRAPHS?

16 A YES, SIR.

17 Q AND DO THOSE APPEAR TO BE FAIR AND ACCURATE
18 REPRESENTATIONS OF THE SCENE AS YOU SAW IT ON HIGHWAY
19 601, BACK IN MARCH OF 1961?

20 A YES, SIR.

21 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THESE, I
22 GUESS, STATE'S FOR IDENTIFICATION AT THIS POINT.

23 THE COURT: ANY OBJECTION?

24 MR. DELGADO: YOUR HONOR, JUST -- OBJECTION.

25 THIS SEEMS TO BE A DUPLICATION OF ONE PHOTOGRAPH.

1 MR. MCMAHON: I THINK IT IS, YES, SIR.

2 MR. DELGADO: WAIT A MINUTE.

3 MR. MCMAHON: NO.

4 MR. DELGADO: YOUR HONOR, TO KEEP ONE OF THEM
5 OUT, IT ALMOST SEEMS TO BE ALMOST THE EXACT DUPLICATE.

6 THE COURT: ALL RIGHT.

7 (WHEREUPON, STATE'S EXHIBITS NOS. 1 - 5 WERE
8 MARKED FOR IDENTIFICATION ONLY.)

9 MR. MCMAHON: AND THESE ARE JUST FOR
10 IDENTIFICATION PURPOSES ONLY AT THIS TIME, YOUR HONOR.

11 MAY IT PLEASE THE COURT.

12 THE COURT: YES.

13 BY MR. MCMAHON

14 Q MR. HARMON, GOING BACK TO STATE'S EXHIBIT, WHAT'S
15 MARKED NO. 1 FOR IDENTIFICATION, WHAT HIGHWAY WOULD
16 THIS BE?

17 A 601.

18 Q WHAT WOULD THIS STRUCTURE BE RIGHT HERE?

19 A THAT'S A STORE AT WATEREE.

20 Q AND WHAT IS THIS OBJECT RIGHT HERE?

21 A MR. ORNER.

22 Q RATHER THAN GOING THROUGH EACH OF THESE PHOTOGRAPHS,
23 NO. 2 REPRESENTS THE SCENE CLOSER?

24 A YES, SIR.

25 Q YOU SEE THIS OBJECT RIGHT HERE. WHAT WOULD THAT BE?

1 A THAT OBJECT THERE, THAT WHOLE OBJECT, IS MR. ORNER.
2 Q ADDITIONALLY, AS YOU GO THROUGH THESE PHOTOGRAPHS,
3 THERE WOULD BE CLOSER SHOTS OF THAT EMBANKMENT AREA
4 UP TO AND INCLUDING THE BODY OF MR. ORNER; IS THAT
5 CORRECT?
6 A THAT'S CORRECT.
7 Q AND MR. HARMON, YOU ACTUALLY WENT TO THE SCENE,
8 CORRECT?
9 A YES, SIR.
10 Q NOW, MR. HARMON, DID YOU REMAIN INVOLVED AND ASSIST
11 IN THE INVESTIGATION AFTER THE DATE YOU WENT TO THE
12 SCENE WHEN THE BODY WAS RECOVERED?
13 A YES, SIR.
14 Q DID YOU HAVE AN OCCASION TO GO TO ANY PARTICULAR
15 LOCATION WITH SHERIFF SLY, AND I BELIEVE YOU SAID
16 CHIEF DEPUTY HARRISON IN REGARDS TO THIS CASE?
17 A I WAS ASKED -- OF COURSE, I WASN'T WORKING FOR HIM,
18 BUT I WAS ASKED TO GO LOOK FOR THE GUN, A GUN.
19 Q ADDITIONALLY, DID YOU GO TO A LOCATION IN GEORGIA?
20 A YES, SIR.
21 Q AND WHO DID YOU GO TO THIS LOCATION IN GEORGIA WITH?
22 A I CARRIED SLY, THE SHERIFF, AND THE CHIEF DEPUTY
23 HARRISON.
24 Q WHAT WAS YOUR PURPOSE IN GOING TO GEORGIA,
25 MR. HARMON?

1 A TO QUESTION MR. FRIEBURGER OR FREEBURGER.

2 Q AND DID YOU KNOW BEFORE THIS TIME MR. FREIBURGER OR

3 "FREEBURGER", AS YOU SAID?

4 A YES, SIR.

5 Q DID YOU KNOW HIM?

6 A NO, SIR.

7 Q AS PART OF YOUR INVESTIGATION, DID YOU DETERMINE WHAT

8 HIS OCCUPATION HAD BEEN?

9 A YES, SIR.

10 Q AND WHAT WAS THAT?

11 A HE'S IN THE SERVICE, ARMY.

12 Q NOW, DO YOU RECALL GOING TO FORT MCPHERSON, GEORGIA

13 WITH THE SHERIFF AND CHIEF DEPUTY HARRISON; IS THAT

14 RIGHT?

15 A YES, SIR.

16 Q WOULD THAT HAVE BEEN ON OR ABOUT JUNE 9TH OF '61?

17 A IT COULD BE, YES, SIR.

18 Q NOW, WHEN YOU GOT DOWN THERE, DID YOU END UP IN A

19 ROOM ALONG WITH THE SHERIFF AND MR. HARRISON AND THE

20 DEFENDANT IN THIS CASE, MR. FRIEBURGER?

21 A YES, SIR.

22 Q WHAT, IF ANYTHING, DID THE SHERIFF, THE CHIEF DEPUTY

23 OR YOU ADVISE THE DEFENDANT OF?

24 A THE SHERIFF READ THE MIRANDA RIGHTS, I GUESS YOU CALL

25 IT.

1 Q ALL RIGHT, SIR. NOW, DO YOU RECALL SPECIFICALLY WHAT
2 HE MIGHT HAVE SAID?

3 A SOME OF WHAT YOU SAY CAN BE HELD AGAINST YOU, BUT YOU
4 DON'T HAVE TO ANSWER ANY QUESTIONS.

5 Q DID THE SHERIFF TELL HIM THAT?

6 A YES, SIR.

7 Q AND YOU HEARD THE SHERIFF TELL HIM THAT?

8 A YES, SIR.

9 Q DO YOU RECALL THE SHERIFF TELLING HIM ANY OTHER
10 PARTICULAR RIGHTS OR ANYTHING ABOUT A LAWYER OR
11 ANYTHING OF THAT NATURE?

12 A NO, I DIDN'T HEAR ANYTHING ELSE OTHER THAN THE
13 RIGHTS. HE WAS ASKING A LOT OF QUESTIONS.

14 Q WHEN YOU SAY HE WAS ASKING A LOT OF QUESTIONS, WHO IS
15 THE "HE" YOU'RE REFERRING TO?

16 A SLY, THE SHERIFF.

17 Q THE SHERIFF. NOW DID MR. FRIEBURGER ASK FOR A
18 LAWYER? DID HE REQUEST A LAWYER?

19 A NO.

20 Q DID HE TALK? IN YOUR PRESENCE, DID HE TALK? DID
21 MR. FRIEBURGER TALK?

22 A I WAS SITTING ABOUT THERE, AND THEY WERE QUESTIONING
23 HIM. I COULDN'T CATCH ALL OF IT, ALL THE WORDS ON
24 ALL THE QUESTIONS.

25 Q BUT YOU COULD HEAR QUESTIONS BY THE SHERIFF?

1 A ADVISING HIM, YES, OF HIS RIGHTS.
2 Q AND YOU COULD HEAR ANSWERS BY MR. FRIEBURGER; IS THAT
3 CORRECT?
4 A YES, SIR.
5 Q AND YOU JUST POINTED -- DID YOU POINT OVER TOWARDS
6 THIS RAIL?
7 A ABOUT WHERE THOSE CHAIRS ARE.
8 Q SO YOU WERE ABOUT THAT FAR AWAY?
9 A FROM THE QUESTIONS.
10 Q FROM WHERE MR. FRIEBURGER IS BEING QUESTIONED?
11 A YES, SIR.
12 Q IN THE SAME ROOM?
13 A YES, SIR.
14 Q NOW, DID HE TALK -- DID HE ANSWER SOME QUESTIONS FOR
15 THE SHERIFF?
16 A HE ANSWERED SOME OF THEM.
17 Q AND DID THOSE ANSWERS APPEAR TO YOU TO BE MADE FREELY
18 AND VOLUNTARILY?
19 A YES, SIR. HE DIDN'T HAVE TO ANSWER THEM.
20 Q DID YOU THREATEN HIM IN ANY WAY --
21 A NO, SIR.
22 Q -- OR THE SHERIFF OR THE CHIEF DEPUTY?
23 A NO, SIR.
24 Q DID YOU MAKE ANY PROMISES TO HIM, ANYTHING OF THAT
25 NATURE?

1 A IF THEY DID, I DIDN'T HEAR IT.

2 Q YOU DIDN'T MAKE ANY PROMISES?

3 A NO.

4 Q SO WHATEVER STATEMENTS HE MAY HAVE MADE, WHATEVER

5 STATEMENTS YOU MAY REMEMBER, IN YOUR OPINION WERE

6 MADE FREELY AND VOLUNTARILY?

7 A I AM PRETTY SURE OF THAT, SIR.

8 Q NOW, MR. HARMON, YOU WERE LOOKING FOR A PARTICULAR

9 GUN OR HAD LOCATED A PARTICULAR GUN; IS THAT RIGHT?

10 A YES, SIR.

11 Q AND WHAT TYPE OF GUN WAS THAT?

12 A IT WAS A 32 HARRINGTON & RICHARDSON.

13 Q A 32 --

14 A 32 CALIBER, HARRINGTON AND RICHARDSON.

15 Q HARRINGTON AND RICHARDSON?

16 A YES, SIR.

17 Q WHAT, IF ANYTHING, DID THAT DEFENDANT SAY ABOUT THAT

18 32 HARRINGTON AND RICHARDSON WHEN YOU ASKED HIM IN

19 JUNE OF '61?

20 A HE SAID HE BOUGHT IT BACK ON FEBRUARY 22ND, I

21 BELIEVE, OR SOMEWHERE IN THAT AREA.

22 MR. DELGADO: OBJECTION, YOUR HONOR.

23 THE COURT: BASIS OF THE OBJECTION?

24 MR. DELGADO: YES, SIR. THE NEXT WITNESS WILL

25 BE LEADING.

1 MR. MCMAHON: HE'S OBJECTING TO THE FUTURE?
 2 MR. DELGADO: YES, SIR.
 3 MR. MCMAHON: THAT'S KIND OF LIKE WINSTON
 4 CHURCHILL SAID.
 5 THE COURT: LET ME TELL YOU ALL THIS, YOU ARE
 6 NOTORIOUS ABOUT IT, WHO, WHAT, WHEN, WHERE, AND HOW. YOU
 7 CAN'T ASK A LEADING QUESTION UNLESS YOU ASK A DUMB
 8 QUESTION.
 9 GO AHEAD.
 10 MR. MCMAHON: JUDGE, I DON'T KNOW HOW TO
 11 RESPOND, NOT TO YOU. SIMPLY, I'M JUST ASKING WHAT, IF
 12 ANYTHING, HE SAID ABOUT THE WEAPON.
 13 THE COURT: THAT'S FINE.
 14 MR. MCMAHON: AND HE RESPONDED.
 15 THE COURT: OKAY.
 16 BY MR. MCMAHON
 17 Q AND WHAT WAS HIS RESPONSE, MR. HARMON, AS YOU RECALL?
 18 A ASK THE QUESTION AGAIN, MAKE SURE.
 19 Q WHAT, IF ANYTHING, DID THE DEFENDANT SAY ABOUT THE
 20 WEAPON?
 21 A HE SAID HE HAD BOUGHT IT, I BELIEVE, SOMEWHERE AROUND
 22 THE 22ND OF FEBRUARY -- OF FEBRUARY, FEBRUARY. I
 23 MIGHT HAVE SAID MARCH BUT IT'S FEBRUARY.
 24 Q DO YOU RECALL HIM SAYING ANYTHING ELSE ABOUT THE
 25 WEAPON?

1 A NO; NO, SIR.

2 Q DO YOU RECALL HIM SAYING WHERE HE BOUGHT THE WEAPON?

3 A NO, I DON'T.

4 MR. MCMAHON: THANK YOU, MR. HARMON. ANSWER ANY
5 QUESTIONS THE DEFENSE MAY HAVE.

6 THE COURT: CROSS-EXAMINE.

7 CROSS-EXAMINATION:

8 BY MR. DELGADO

9 Q I'M JOHN DELGADO. I'M SORRY TO SAY I NEVER HAD AN
10 OPPORTUNITY TO MET YOU, SIR. IT'S A PLEASURE.

11 A MY PLEASURE, TOO, SIR.

12 Q MR. HARMON, YOUR INVOLVEMENT IN THIS CASE, DID IT
13 EVER END? I KNOW THERE WAS NEVER AN ARREST MADE, BUT
14 DID YOUR INVOLVEMENT AS A S.L.E.D. AGENT EVER END, OR
15 WAS IT FOCUSSED ON ANOTHER MATTER AND YOU ENDED YOUR
16 ACTIVE INVOLVEMENT IN THIS CASE AT ANY TIME?

17 A WAS ANYTHING HAPPENING?

18 Q NO, SIR. LET ME REPHRASE IT. THAT'S MY FAULT. AS
19 FAR AS YOUR INVOLVEMENT AS BEING A S.L.E.D. AGENT IN
20 THIS CASE, IN HELPING THE LOCAL LAW ENFORCEMENT,
21 MR. SLY OR MR. HARRISON, DID YOUR INVOLVEMENT IN THIS
22 EVER END? DID IT EVER TERMINATE?

23 A IT SEEMS LIKE EVERYBODY TERMINATED IT, TO ME, BUT
24 THERE WASN'T NO MORE SAID ABOUT IT.

25 Q ALL RIGHT, SIR. MR. HARMON, DID YOU EVER GO WITH ANY

1 OTHER LAW ENFORCEMENT AGENCIES, NOT MR. SLY OR ANY
2 CRIMINAL INVESTIGATION DIVISION FOLKS FROM FORT
3 JACKSON OR MR. HARRISON? DID YOU EVER GO OUT TO FORT
4 LEAVENWORTH, KANSAS?

5 A NO, SIR.

6 Q ALL RIGHT, SIR. YOUR INVOLVEMENT HERE WAS ON THE
7 LOCAL LEVEL?

8 A YES, SIR.

9 Q NOW, YOUR REMEMBRANCE, DID YOU HAVE ANY NOTICE,
10 MR. HARMON, OF WHAT TRANSPIRED BACK IN JUNE OF 1961?
11 DO YOU HAVE ANY NOTICE ABOUT THAT YOURSELF? DID YOU
12 EVER MAKE ANY WRITINGS, MAKE ANY REPORTS TO S.L.E.D.
13 OR ANYBODY ABOUT WHAT YOU RECALLED?

14 A I NEVER MADE A REPORT.

15 Q ALL RIGHT, SIR.

16 A A WRITTEN REPORT.

17 Q YES, SIR, I UNDERSTAND. DO YOU HAVE ANY NOTICE,
18 MR. HARMON, ABOUT WHAT MAY OR MAY NOT -- WHAT YOU PUT
19 DOWN THAT YOU DIDN'T PUT IN A REPORT?

20 A I HAVE NO LEGIBLE NOTICE.

21 Q ALL RIGHT, SIR. MR. HARMON, WHEN, OVER THE PAST TWO
22 TO THREE YEARS, HAVE YOU BEEN CONTACTED ABOUT YOUR
23 REMEMBRANCES OF SOME 41 YEARS AGO?

24 I HOPE I -- LET ME SEE IF I CAN MAKE MY QUESTION
25 TO YOU CLEAR. WHEN IS THE FIRST TIME ANYBODY FROM

1 THE SOLICITOR'S OFFICE OR THE SHERIFF'S DEPARTMENT OR
2 ANYONE ELSE GOT IN TOUCH WITH YOU TO SAY, "MR. BRICE
3 (SIC), TELL US ABOUT WHAT YOU RECALL BACK IN 1961?"
4 A YOU SAID HAS ANYBODY DONE THIS?
5 Q YES, SIR.
6 A YES, SIR; YES, SIR.
7 Q AND WHEN WAS THAT, MR. HARMON?
8 A I GUESS -- I DON'T HAVE THE DATE DOWN, BUT I GUESS
9 IT'S BEEN TWO OR THREE MONTHS AGO MAYBE, LONGER THAN
10 THAT. I'M NOT SURE.
11 Q PLEASE, I UNDERSTAND. THIS ISN'T A TEST. I'M NOT
12 TRYING TO TRICK YOU. IT'S BEEN WITHIN TWO OR THREE
13 MONTHS AGO TODAY, SPRING OF 2002 SOMEBODY FROM THE
14 SHERIFF'S DEPARTMENT OR INVESTIGATORS ARE TALKING TO
15 YOU ABOUT WHAT YOU REMEMBERED FROM JUNE OF 1961?
16 A YES.
17 Q ALL RIGHT, SIR. BETWEEN JUNE OF 1961 AND THE SPRING
18 OF 2002, SOME 41 YEARS, DID YOU HAVE AN OCCASION TO
19 EVER TALK TO ANYBODY ABOUT WHAT YOU RECALL ABOUT THE
20 ORNER MURDER OR MR. FRIEBURGER OR ANYTHING ELSE LIKE
21 THAT?
22 A YES, SIR.
23 Q AND TO WHOM DID YOU TALK?
24 A TO ANYBODY THAT WOULD LISTEN.
25 Q I UNDERSTAND.

1 A THE REASON I SAW MR. ORNER LAYING ON THE SIDE OF
2 THAT -- THROW OUT LIKE HE WAS A DOG IN THAT FIELD.
3 Q YES, SIR. I UNDERSTAND.
4 A AND LEFT THERE. I WOULDN'T DO MY DOG THAT WAY.
5 Q I UNDERSTAND, SIR.
6 A AND THAT STILL HOLDS A VERY BLACK MARK IN MY LIFE --
7 Q YES, SIR.
8 A -- TO HAVE TO SEE THAT.
9 Q YES, SIR. YOU, AT THAT TIME IN JUNE OF 1961, YOU HAD
10 BEEN A S.L.E.D. AGENT FOR HOW LONG, MR. HARMON?
11 A I BELIEVE A YEAR OR SO, I'M NOT QUITE SURE OF THAT.
12 Q ALL RIGHT, SIR. AND HOW LONG DID YOU CONTINUE YOUR
13 EMPLOYMENT WITH THE STATE LAW ENFORCEMENT DIVISION
14 AFTER 1961?
15 A NOT TOO LONG AFTER THAT.
16 Q ALL RIGHT, SIR. SO YOU WENT INTO EDUCATION SOME TIME
17 SHORTLY AFTER THAT?
18 A SHORTLY AFTER THAT, YES, SIR.
19 Q ALL RIGHT, SIR. WOULD IT BE FAIR TO SAY THAT THIS
20 ORNER MATTER WAS ONE OF THE THINGS THAT PROMPTED YOU
21 INTO GOING INTO TEACHING?
22 A IT HELPED.
23 Q YES, SIR. YOU DIDN'T LIKE WHAT YOU SAW.
24 MR. BRICE (SIC), IF YOU HAD TO LOOK OUT IN THAT
25 COURTROOM, WOULD YOU HAPPEN TO KNOW WHO ED FRIEBURGER

1 IS?

2 A NO, SIR. I SAW HIM ONE TIME.

3 Q AND WHEN WAS THAT, SIR?

4 A WHEN SHERIFF SLY WAS QUESTIONING HIM.

5 Q AND THAT WAS BACK IN FORT MCPHERSON, GEORGIA?

6 A I TOOK THEM DOWN THERE, AND JIMMY HARRISON.

7 Q I HAPPEN TO KNOW YOUNG JIM HARRISON. I DIDN'T KNOW

8 HIS DADDY.

9 A GOOD MAN.

10 Q YES, SIR. YOU WENT DOWN ONE DAY AND CAME BACK ONE

11 DAY FROM ATLANTA TO FORT MCPHERSON?

12 A NO, SIR. WE CAME BACK THE SAME DAY.

13 Q THAT'S WHAT I MEANT. YOU MADE THE TRIP AND CAME BACK

14 IN ONE DAY.

15 A YES, SIR.

16 Q YOU DON'T HAVE ANY NOTICE TO REFRESH YOUR MEMORY

17 ABOUT WHAT WENT ON, OR YOU CAN'T RECALL WHAT WENT ON

18 EXCEPT WHAT YOU RELATED HERE ON THE STAND TODAY?

19 A I THINK SO. THAT'S ABOUT THE SIZE OF IT, YES, SIR.

20 MR. DELGADO: YES, SIR. MR. HARMON, LET ME

21 CONFER WITH MY COLLEAGUE ONE SECOND, SIR.

22 THE WITNESS: YES, SIR. YES, SIR.

23 (PAUSE).

24 MR. DELGADO: MR. HARMON, THAT'S ALL I HAVE.

25 THANK YOU, SIR.

1 MR. MCMAHON: I HAVE NOTHING FURTHER ON
2 REDIRECT.

3 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

4 MR. MCMAHON: YOUR HONOR, MAY I EXCUSE
5 MR. HARMON FOR THE AFTERNOON, PLEASE?

6 THE COURT: YES.

7 MR. DELGADO: ABSOLUTELY, ABSOLUTELY.

8 MR. MCMAHON: YOUR HONOR, THAT WOULD BE THE ONLY
9 WITNESS I WOULD HAVE TO THE JUNE 9TH, '61 STATEMENT. I
10 HAVE WITNESSES ON OTHER AREA. IF YOU WANT ME TO JUST
11 CONTINUE ON WITH THE WITNESSES.

12 THE COURT: I THINK IT WOULD HELP ME TO DO ONE
13 THING AT A TIME.

14 DO YOU WISH TO OFFER ANY TESTIMONY, MR. DELGADO?

15 MR. DELGADO: JUST ONE SECOND, YOUR HONOR,
16 PLEASE.

17 (PAUSE).

18 IF THAT IS, IN FACT, LET ME THEN ASK THE COURT
19 TO INQUIRE WHAT IT IS THAT'S PROBATIVE ABOUT THAT
20 STATEMENT THAT HE SAYS -- I'M NOT TALKING AND THE WAIVER
21 OF COUNSEL. I'M SIMPLY SAYING WHAT IS IT THAT'S PROBATIVE
22 ABOUT THAT STATEMENT THAT MR. HARMON -- IS GOING TO GET
23 IN?

24 THE COURT: I DON'T KNOW.

25 MR. DELGADO: THAT'S WHAT I'M SAYING.

1 THE COURT: I DON'T KNOW WHERE THE STATE IS
2 HEADED WITH IT.

3 MR. DELGADO: LET ME JUST PUT IT TO YOU THIS
4 WAY: THERE IS NOTHING, YOUR HONOR, IN ANY DOCUMENT THAT
5 WE HAVE FOUND THAT NO INVOLUNTARY WAIVER IS REDUCED TO
6 WRITING, INITIALLED BY THE DEFENDANT, ACQUIESCED BY THE
7 DEFENDANT IN ANY SHAPE, FORM, OR FASHION.

8 I WOULD SUBMIT TO THE COURT THAT THE TESTIMONY
9 OF THIS ELDERLY GENTLEMEN SOME 41-AND-A-HALF YEARS AFTER
10 THE FACT -- IT'S NOT ONLY HARD TO CROSS-EXAMINATION A
11 GENTLEMAN LIKE THAT, IT'S HARD TO ASK HIM SPECIFIC
12 QUESTIONS BECAUSE HIS MEMORY OF WHAT HAPPENED AT THAT TIME
13 IS GOING TO BE IMPRECISE.

14 THE REASON I OBJECTED, YOUR HONOR, IS MR. HARMON
15 DIDN'T GET THE DATE RIGHT. WHAT HE WAS HOPING THEY WERE
16 GOING TO SAY WAS ANOTHER TIME AND DATE. HE DIDN'T ANSWER
17 THAT RIGHT.

18 MY FRIEND WAS GOING TO ASK HIM ANOTHER QUESTION.
19 THAT'S THE REASON I OBJECTED RIGHT THERE. THE POINT
20 BEING -- I'D LIKE TO ASK UNDER 403, WHAT'S PROBATIVE ABOUT
21 THAT IF MR. HARMON IS GOING TO BE RECALLED; IS THAT RIGHT?

22 THE COURT: WELL, I THINK THE ISSUE IS, IS THERE
23 ANY OBJECTION UNDER THE PRE-MIRANDA RULES.

24 THE STATEMENT WAS MADE BACK IN 1961. MIRANDA
25 WAS HANDED DOWN IN 1966. HE TESTIFIED TO THE TWO KEY

1 ELEMENTS THAT EXISTED IN 1961, WHICH IS YOU DON'T HAVE TO
2 TALK, BUT IF YOU DO, IT COULD BE USED AGAINST YOU IN A
3 COURT OF LAW. THERE AREN'T ANY OTHER RIGHTS THAT YOU
4 BELIEVE ATTACHED IN 1961 BEFORE MIRANDA WAS DECIDED?

5 MR. DELGADO: YOUR HONOR --

6 THE COURT: LET ME CROSS THAT BRIDGE FIRST.
7 ASSUMING ITS PROBATIVE --

8 MR. DELGADO: ALL RIGHT.

9 THE COURT: -- IS THERE ANY LEGAL OBJECTION
10 UNDER SO-CALLED PRE-MIRANDA RULE?

11 MR. DELGADO: YOUR HONOR, YES. I WOULD LIKE TO
12 AS AN OUT OF COURT PROFFER -- IT'S FOUND IN TWO DIFFERENT
13 PLACES IN YOUR -- I'M SORRY TO SAY ALL TOGETHER TWO LARGE
14 MASS MATERIALS, PAGE 12, AND AGAIN AT 361, WHICH ARE THE
15 NOTICE BY SHERIFF SLY AS TO WHAT IS ALLEGED TO HAVE
16 HAPPENED AT FORT MCPHERSON, GEORGIA, PAGE 12, 361, YOUR
17 HONOR.

18 JUNE 9TH, 1961, THESE ARE THE NOTES OF SHERIFF
19 SLY. IT SAYS NOTHING ABOUT ANY WAIVER OF RIGHTS. IT SAYS
20 NOTHING ABOUT ANY ACQUIESCENCE IN PROCEEDING WITHOUT
21 COUNSEL. THERE'S NOTHING ABOUT HIM BEING WARNED THAT
22 ANYTHING HE SAYS CAN BE USED AGAINST HIM IN ANY
23 PRE-MIRANDA.

24 IT WOULD BE INTERESTING THAT THE CHIEF
25 INVESTIGATING OFFICER IN THIS CASE WHO TOOK A MAJOR ROLE

1 IN THIS MATTER, SHERIFF SLY, DOES NOT PLACE THAT IN HIS
2 NOTES. IT MAY VERY WELL BE THAT MR. HARMON IS NOT
3 CORROBORATED BY THE WRITTEN PRODUCTION BY THE SHERIFF.

4 THE COURT: WELL, THAT GOES TO THE WEIGHT AND
5 NOT THE ADMISSIBILITY.

6 MR. DELGADO: WELL, IT DOES, BUT IN OTHER WORDS,
7 EVEN THE THRESHOLD ASPECT OF THAT NOW -- IN OTHER WORDS,
8 IT'S NOT EVEN CORROBORATED BY SHERIFF SLY'S NOTICE.

9 SO IN OTHER WORDS, WE HAVE THIS ELDERLY
10 GENTLEMEN WHO IS SAYING THIS SOME 41 YEARS DISTANCE AFTER
11 THE FACT, AND THAT'S NOT CORROBORATED IN ANY OTHER WAY.

12 THE COURT: AGAIN THAT'S WEIGHT.

13 MR. DELGADO: I UNDERSTAND. I UNDERSTAND.

14 THE COURT: HEARING NO LEGAL BASIS TO OBJECT TO
15 THE WARNINGS THAT WEPE GIVEN, I WOULD FIND THAT IF THE
16 TESTIMONY IS PROBATIVE, IT'S ADMISSIBLE.

17 NOW, I DON'T KNOW, MR. SOLICITOR WHAT THE
18 PROBATIVE VALUE OF IT IS, WHERE YOU'RE HEADED, I DON'T
19 KNOW.

20 MR. MCMAHON: YES, SIR. I UNDERSTAND. I JUST
21 THOUGHT WE WERE DOING THE JACKSON VS. DENNO AND
22 VOLUNTARINESS.

23 DO YOU WANT ME TO CALL MY NEXT WITNESS?

24 THE COURT: YES, SIR.

25 MR. MCMAHON: THE STATE CALLS--

1 MS. HUDGINS: JUDGE, I KNOW WE HAVE TO STICK TO
2 ONE LAWYER ARGUING ONE ISSUE, AND I MAY BE OFF TRACK HERE,
3 BUT IT SEEMS TO ME THE ARGUMENT AND THE OBJECTION TO
4 THIS -- I DON'T WANT THE RECORD TO APPEAR THAT WE HAVEN'T
5 MADE AN OBJECTION.

6 THE OBJECTION TO THIS IS THAT THE VOLUNTARINESS
7 OF THIS STATEMENT WAS NOT ESTABLISHED BY THIS ELDERLY
8 GENTLEMAN THAT DOESN'T HAVE AN INDEPENDENT RECOLLECTION OF
9 THIS.

10 THE COURT: I THINK HIS TESTIMONY AS A WHOLE, HE
11 SAID HE TALKED. HE DIDN'T REFUSE TO TALK.

12 MS. HUDGINS: BUT THERE'S ABSOLUTELY NOTHING TO
13 CORROBORATE THE VOLUNTARINESS, AND WITH THE LENGTH OF TIME
14 THAT HAS ELAPSED, I THINK IN ORDER FOR THIS COURT TO FIND
15 THAT STATEMENT WAS, IN FACT, VOLUNTARY, THAT THERE HAS TO
16 BE SOMETHING MORE THAN THE TESTIMONY OF THIS WITNESS,
17 WHICH WE'RE NOT EVEN SURE WHAT HE'S USED TO REFRESH HIS
18 MEMORY ABOUT.

19 MR. DELGADO: YOUR HONOR --

20 THE COURT: YOU COULD HAVE ASKED HIM THAT.
21 ALSO, BESIDES THAT, HE'S THE ONLY LIVING WITNESS THAT WAS
22 THERE. I MEAN --

23 MS. HUDGINS: AGAIN, I THINK IT GOES BACK TO OUR
24 POSITION THAT IT'S JUST A BLATANT VIOLATION OF DUE PROCESS
25 TO GO FORWARD WITH THIS CASE.

1 THE COURT: WE'LL CROSS THAT BRIDGE WHEN WE GET
2 TO IT.

3 MR. DELGADO: AND AGAIN, I APOLOGIZE. I'M NOT
4 TRYING TO ATTACK. I'M JUST MAKING NOTE, IF MR. HARMON --
5 DID MR. HARMON, IN YOUR RECOLLECTION, SAY THAT THE SHERIFF
6 SAID HE HAD A RIGHT TO HAVE AN ATTORNEY?

7 THE COURT: NO, HE DIDN'T.

8 MR. DELGADO: BUT MIRANDA IS GOING TO REQUIRE
9 THAT.

10 THE COURT: WELL, THIS IS A 1961 CASE, NOT A
11 1966.

12 MR. DELGADO: I KNOW, BUT YOUR HONOR, LET ME
13 JUST GIVE YOU SOMETHING THAT I THINK -- CASE LAW JOHNSON
14 VS. NEW JERSEY, 1966.

15 I'LL JUST GIVE YOU A SYNOPSIS OF IT: THE COURT
16 IN JOHNSON HELD THE REQUIREMENTS OF MIRANDA WOULD APPLY TO
17 CASES WHOSE TRIAL BEGINS AFTER THE DATE IN WHICH MIRANDA
18 WAS DECIDED. IT WAS DECIDED JUNE 13TH, 1966. QUOTE,
19 FUTURE DEFENDANTS WILL BENEFIT FULLY FROM OUR NEW
20 STANDARDS GOVERNING IN CUSTODY INTERROGATION.

21 LAW ENFORCEMENT OFFICERS AND TRIAL COURTS WILL
22 HAVE FAIR NOTICE THAT STATEMENTS TAKEN IN VIOLATION OF
23 THESE STANDARDS MAY NOT BE USED AGAINST AN ACCUSED.

24 SO IN OTHER WORDS, NOT THE VOLUNTARINESS OF IT,
25 BUT WHETHER OR NOT HE WAS AFFORDED THE RIGHT TO COUNSEL

1 UNDER JOHNSON RELIES OR APPLIES MIRANDA EVEN BACK IN TIME
2 TO THE POINT WHERE THE STATEMENT WAS MADE.

3 THE COURT: MR. SOLICITOR?

4 MR. MCMAHON: JUDGE, AS I RECALL HIS TESTIMONY,
5 HE SAID, I DON'T RECALL WHETHER HE HAD A RIGHT TO HIS
6 LAWYER OR NOT. HE NEVER SAID HE NEVER ASKED FOR A LAWYER.

7 AS I UNDERSTAND MIRANDA, AND THE PROPERTY OF
8 MIRANDA, IF IT DOES APPLY, I DON'T KNOW IF IT DOES OR NOT,
9 THERE IS NOT A REQUIREMENT OF AN ABSOLUTE INCANTATION OF
10 THE RIGHTS UNDER MIRANDA FOR A STATEMENT TO BE ADMISSIBLE
11 UNDER MIRANDA.

12 I DON'T THINK THERE'S ANY QUESTION AS TO THE
13 VOLUNTARINESS OF THE STATEMENT. I THINK THAT'S TWO
14 DIFFERENT ISSUES IN TIME.

15 HE SAID THE SHERIFF GAVE HIM HIS RIGHTS. AS A
16 MATTER OF FACT, HE USED MIRANDA. THAT'S HOW MUCH MIRANDA
17 HAS PERMEATED OUR SOCIETY, THAT IT WAS NOT EVEN HANDED
18 DOWN UNTIL FIVE YEARS AFTER THIS, AND IT STILL PERMEATED
19 OUR ENTIRE SOCIETY, AND THIS PARTICULAR WITNESS SAYS HE
20 ADVISED HIM OF HIS MIRANDA RIGHTS.

21 I ASKED HIM SPECIFICALLY ABOUT THE RIGHT TO
22 REMAIN SILENT COULD BE USED AGAINST HIM AND SUCH, AND THEN
23 HE WENT ON TO SAY, HE DIDN'T ASK FOR A LAWYER. I DON'T
24 REMEMBER HEARING WHETHER THE SHERIFF TOLD HIM THAT OR NOT,
25 BUT HE DIDN'T ASK FOR A LAWYER.

1 SO I THINK IT STILL MEETS THAT THRESHOLD
2 REQUIREMENT OF MIRANDA AND JOHNSON VS. -- I THINK THAT'S
3 NEW JERSEY, I'M NOT SURE, JOHNSON VS. NEW JERSEY, UNDER
4 THIS SET OF FACTS. CLEARLY, THERE'S NO ISSUE ABOUT THE
5 VOLUNTARINESS, NO ISSUE WHATSOEVER.

6 I NOTICED HE DIDN'T MARK THE SHERIFF'S NOTES,
7 PAGES EIGHT, NINE, AND TEN OF THE SHERIFF'S NOTES. I
8 WOULDN'T MIND MARKING THOSE SINCE HE BROUGHT THEM UP, THAT
9 IT ACTUALLY CORROBORATES THE VOLUNTARINESS OF THE
10 STATEMENT, AND THERE'S NO REQUIREMENT OF THE WRITTEN
11 WAIVER EVEN NOW.

12 IF I COULD MARK THESE AS A COURT'S EXHIBIT.
13 (WHEREUPON, COURT'S EXHIBIT NO. 3 WAS MARKED FOR
14 IDENTIFICATION ONLY.)

15 MR. DELGADO: YOUR HONOR, MAY I JUST TALK TO YOU
16 ABOUT PLACING THAT BEFORE THE COURT? THOSE ARE EXACTLY
17 THE TYPES OF BUSINESS RECORDS EXCEPTIONS THAT I THINK ARE
18 IMPROPER.

19 MR. MCMAHON: JUDGE, HE BROUGHT THEM UP. I
20 DIDN'T BRING THEM UP.

21 MR. DELGADO: HE BROUGHT IT UP.

22 THE COURT: TALK TO ME, GENTLEMEN. DON'T TALK
23 TO EACH OTHER. I'M GOING TO TELL YOU WHAT, I CAN RUN A
24 REAL TIGHT SHIP HERE.

25 MR. MCMAHON: JUDGE, I'M JUST ADDRESSING THE

1 COURT. I DIDN'T BRING THOSE RECORDS UP WHATSOEVER WITH
2 MR. HARMON.

3 THE DEFENSE LAWYER BRINGS THEM UP AS A SHIELD
4 AND THEN TRIES TO SLICE MY HEAD OFF WITH THEM WHEN I USE
5 THEM BECAUSE THEY DON'T SHOW WHAT HE SAYS THEY'RE GOING TO
6 SHOW. I'M USING THEM FOR AN IN-CAMERA HEARING WHEN HE
7 BRINGS THEM UP AS TO THE VOLUNTARINESS.

8 IF YOU READ THOSE, WHICH I'M SURE HIS HONOR
9 ALREADY HAS, IT SHOWS HOW THEY GAVE MR. FRIEBURGER THE
10 OPPORTUNITY TO SAY WHATEVER HE WANTED TO SAY.

11 THE COURT: WELL, NOW, GENTLEMEN, YOU OBVIOUSLY
12 KNOW, YOU ALL PUT THESE DOCUMENTS IN FRONT OF ME. SO YOU
13 CAN'T JUST SAY -- ARE YOU SUGGESTING I SHOULDN'T CONSIDER
14 ANY OF THEM?

15 MR. DELGADO: MAYBE THAT OUGHT TO BE PART OF THE
16 COURT RECORD. YOU HAVE A COPY OF THE DISCOVERY.

17 THE COURT: YOU GAVE IT TO ME.

18 MR. DELGADO: I DON'T THINK IT OUGHT TO BE A
19 PART OF THE COURT RECORD.

20 THE COURT: I DON'T KNOW THAT YET. WE'LL WAIT
21 AND SEE WHEN I WORK MY WAY THROUGH IT.

22 MR. MCMAHON: JUDGE, THE ONLY POINT I'M MAKING
23 IS THAT PART OF YOUR RULING IS GOING TO BE BASED ON THOSE
24 RECORDS THAT HE'S GOING TO ARGUE TO YOU, THEN I THINK THEY
25 SHOULD BE PART OF THE COURT'S RECORD, NOT NECESSARILY GO

1 TO THE JURY.

2 THE COURT: I'M NOT LETTING THEM GO TO THE JURY.

3 MR. MCMAHON: NO, SIR. I MEAN, I JUST OFFERED
4 THEM IN CAMERA BECAUSE HE USED THEM AS PART OF HIS
5 ARGUMENT.

6 THE COURT: ALL RIGHT. WE'LL LEAVE THEM MARKED,
7 AND I'LL DEAL WITH THAT ISSUE FURTHER DOWN. LET ME HAVE
8 THE CASE YOUR RELYING ON.

9 ALL RIGHT. WHAT'S YOUR NEXT ISSUE, SOLICITOR?

10 MR. MCMAHON: THE STATE CALLS DON MEREDITH.

11 THE COURT: WHAT'S THE ISSUE?

12 MR. MCMAHON: THE SEARCH, THE WEAPON.

13 THE BAILIFF: RAISE YOUR RIGHT HAND, PLACE YOUR
14 LEFT HAND ON THE BIBLE, FACE THE CLERK.

15 DONALD MEREDITH (IN CAMERA), AFTER BEING DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
18 NAME FOR THE RECORD.

19 THE WITNESS: MY NAME IS DONALD L. MEREDITH.

20 DIRECT EXAMINATION:

21 BY MR. MCMAHON

22 Q OKAY. MR. MEREDITH, WHERE DO YOU LIVE?

23 A NEWPORT, TENNESSEE.

24 Q AND HOW OLD ARE YOU, SIR?

25 A SEVENTY-SIX.

1 Q AND WHAT IS YOUR CURRENT OCCUPATION?

2 A RETIRED.

3 Q AND WHAT DID YOU DO PRIOR TO RETIREMENT,

4 MR. MEREDITH?

5 A I WAS A TENNESSEE STATE TROOPER AND CHIEF OF POLICE

6 IN NEWPORT, TENNESSEE.

7 Q HOW LONG WERE YOU A TENNESSEE STATE TROOPER?

8 A TWENTY-SIX YEARS.

9 Q AND WHAT YEAR DID YOU START?

10 A 1953.

11 Q AND WHAT YEAR DID YOU RETIRE FROM LAW ENFORCEMENT?

12 A NINETEEN -- JANUARY 1983.

13 Q SO YOU HAVE APPROXIMATELY 30 YEARS?

14 A YES, SIR.

15 Q AND OF THAT 30 YEARS, FIVE YEARS WAS SPENT AS CHIEF

16 OF POLICE?

17 A NO. IT WAS OVER FOUR, I GUESS.

18 Q AND WHAT TOWN WAS THAT IN?

19 A NEWPORT, TENNESSEE.

20 Q WHERE IS NEWPORT, TENNESSEE IN RELATION TO SAY,

21 KNOXVILLE AND ASHEVILLE?

22 A IT'S ABOUT 35, 40 MILES EAST OF KNOXVILLE, AND IT'S

23 17 MILES FROM THE NORTH CAROLINA LINE ON INTERSTATE

24 40.

25 Q ALL RIGHT. SO IF YOU LEAVE KNOXVILLE, YOU WILL GO

1 THROUGH NEWPORT IF YOU'RE HEADED TOWARDS ASHEVILLE;
2 IS THAT RIGHT?
3 A YES, SIR.
4 Q NOW, YOU HAVE BEEN IN THE MILITARY?
5 A YES, SIR.
6 Q WHAT YEARS AND WHERE DID YOU SERVE?
7 A I WAS IN THE MARINE CORP. FROM JANUARY 1, '44 TO
8 MARCH, '46.
9 Q ALL RIGHT, SIR. WHAT AREAS DID YOU SERVE IN,
10 MR. MEREDITH?
11 A SOUTH PACIFIC AND BASICALLY JAPAN.
12 Q NOW, I WANT TO DIRECT YOUR ATTENTION TO MARCH OF
13 1961, SPECIFICALLY MARCH 29TH OF 1961. WERE YOU A
14 TENNESSEE STATE TROOPER BACK AT THAT TIME?
15 A YES, SIR, I WAS.
16 Q AND WHAT AREA WERE YOU ASSIGNED TO PATROL BACK IN
17 MARCH OF '61?
18 A IT WAS COBB COUNTY, AND NEWPORT IS THE COUNTY SEAT.
19 Q SO NOW, WAS THERE -- DOESN'T I-40 GO OUT OF NEWPORT?
20 A IT DOES NOW, YES, SIR.
21 Q SO WAS THERE AN I-40 IN 1961?
22 A NO, SIR.
23 Q WHAT WAS THE MAIN ROADS THAT CAME THROUGH NEWPORT,
24 THE MAIN HIGHWAYS BACK IN '61?
25 A U.S. 25 AND 70.

1 Q ALL RIGHT. WOULD THAT HAVE BEEN THE BUSIEST HIGHWAYS
2 AT THAT PARTICULAR TIME?
3 A THAT WAS THE ROUTE BETWEEN KNOXVILLE AND ASHEVILLE,
4 NORTH CAROLINA.
5 Q NOW, IN WORKING THAT DAY, WOULD YOU HAVE BEEN
6 ASSIGNED TO WORK HIGHWAY 25 AND HIGHWAY 70?
7 A YES, SIR.
8 Q DO YOU RECALL WHETHER YOU WORKED DAY OR NIGHT THAT
9 PARTICULAR DAY?
10 A IF I WAS WORKING MY REGULAR DAY, I WAS WORKING
11 EVENING.
12 Q DID YOU COME INTO CONTACT WITH AN INDIVIDUAL THAT YOU
13 IDENTIFIED AS EDWARD E. FRIEBURGER ON MARCH 29TH OF
14 '61?
15 A YES, SIR.
16 Q COULD YOU TELL US ABOUT WHAT TIME IT WAS AND WHERE
17 YOU WERE WHEN YOU CAME IN CONTACT WITH HIM?
18 A IT WAS ON 25, 70 AT APPROXIMATELY 11 O'CLOCK AT
19 NIGHT.
20 Q AND IT WAS AT NIGHT?
21 A YES, SIR.
22 Q AND IT WAS ON THAT HIGHWAY, 25, 70, CORRECT?
23 A I THINK IT WAS OUT AT THE END. I'M NOT SURE.
24 Q IN THAT PARTICULAR AREA YOUR REFERRING TO, HAD YOU
25 HAD ANY PARTICULAR PROBLEMS BASED ON YOUR EXPERIENCE

1 AS FAR AS HITCHHIKERS WERE CONCERNED?

2 A YES, SIR, WE SURE DID.

3 Q AND WHAT WAS THAT? EXPLAIN THAT TO THE COURT.

4 A WE HAD A PROBLEM WHERE ONE PARTICULAR ONE WAS KILLED
5 AND THERE WAS QUITE A FEW JUST, YOU KNOW, WE'D PICK
6 THEM UP AND CHECK THEM.

7 Q PRIOR TO MARCH 29TH OF 1961, HAD YOU EVER STOPPED AND
8 CHECKED ANYBODY THAT WAS HITCHHIKING?

9 A YES, SIR.

10 Q HAD YOU EVER ARRESTED ANYBODY FOR HITCHHIKING?

11 A WELL, SIR, A FEW. MOST OF THE TIME I MAY TAKE THEM
12 TO THE BUS STOP OR GET THEM OFF THE ROAD.

13 Q SOMETIMES YOU WOULD, SOMETIMES YOU WOULDN'T; IS THAT
14 CORRECT?

15 A YES, SIR.

16 Q WAS HITCHHIKING A VIOLATION OF THE LAW IN THE STATE
17 OF TENNESSEE IN MARCH OF 61?

18 A YES, SIR, IT WAS.

19 Q NOW, THIS PERSON YOU IDENTIFIED AS EDWARD E.
20 FRIEBURGER, WHAT DID YOU OBSERVE HIM DOING?

21 A JUST HITCHHIKING, THUMBING A RIDE.

22 Q HAD HE ACTUALLY HAD HIS HAND OUT THUMBING, TRYING TO
23 HITCHHIKE A RIDE?

24 A YES, SIR.

25 Q ON THIS HIGHWAY YOU'RE REFERRING TO?

1 A YES, SIR.

2 Q AS A RESULT OF SEEING THAT, MR. MEREDITH, WHAT ACTION

3 DID YOU TAKE? WHAT DID YOU DO WHEN YOU SAW THIS?

4 A I STOPPED AND GOT OUT AND CHECKED HIM AND TALKED TO

5 HIM. AS A PRECAUTION WE DID A SAFETY SEARCH OF HIM,

6 PAT HIM DOWN TO SEE IF HE HAD ANY WEAPONS.

7 Q WHEN YOU PATTED HIM DOWN, YOU HAD ALREADY SEEN HIM

8 HITCHHIKING, CORRECT?

9 A YES, SIR.

10 Q AND LET'S TALK ABOUT THIS PAT DOWN. IS THAT AN

11 INTRUSIVE SEARCH OR IS IT JUST A PAT DOWN ON THE

12 CLOTHING?

13 A JUST PAT HIM DOWN TO SEE IF WE COULD FIND ANY WEAPONS

14 OR ANYTHING.

15 Q AND WHAT, IF ANYTHING, DID YOU LOCATE ON THE PERSON

16 OF MR. FRIEBURGER?

17 A I LOCATED A 32 CALIBER HARRINGTON AND RICHARDSON

18 PISTOL.

19 Q AS A RESULT OF THAT, WHAT DID YOU DO?

20 A WELL, I TOOK THE PISTOL OFF OF HIM AND TOOK HIM TO

21 THE COUNTY JAIL, BOOKED HIM FOR CARRYING A CONCEALED

22 WEAPON.

23 Q NOW, WHAT, IF ANYTHING, DID HE SAY ABOUT THAT WEAPON,

24 FRIEBURGER?

25 A AS I RECALL, HE SAID HE BOUGHT IT IN A PAWNSHOP IN

1 KNOXVILLE, TENNESSEE.

2 Q NOW, I GUESS FROM MARCH 29TH OF '61 -- WELL, 'LET'S
3 TALK A LITTLE BIT MORE ABOUT THAT TIME. DO YOU
4 RECALL WHAT HAPPENED WITH -- WHAT DID YOU CHARGE HIM
5 WITH UNDER TENNESSEE LAW?

6 A CARRYING A CONCEALED WEAPON.

7 Q AND DO YOU RECALL WHAT HAPPENED TO THAT PARTICULAR
8 CHARGE?

9 A OUR NEW JUDGE TRIED HIM AND GAVE HIM 30 DAYS, AND
10 AFTER I FOUND OUT HE WAS A.W.O.L., I CALLED THE M.P.
11 IN KNOXVILLE. THEY CAME -- IN ABOUT SIX DAYS THEY
12 PICKED HIM UP, AND THE JUDGE SUSPENDED THE REST OF
13 HIS SENTENCE AND THEY TOOK HIM.

14 Q I'M GOING TO SHOW YOU THIS DOCUMENT. DOES THIS
15 APPEAR TO BE THE ENTRY ON THAT PARTICULAR CHARGE
16 4/1/61, EDWARD FRIEBURGER, OFFENSE C.A.?

17 A CARRYING ARMS.

18 Q CARRYING ARMS. AND DOES THAT SHOW A PLEA OF GUILTY,
19 30 DAYS IN JAIL SUSPENDED TO THE ARMY.

20 A YES, SIR.

21 Q AND THE NAME OF THE PROSECUTOR?

22 A THAT'S ME, DON MEREDITH.

23 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THIS
24 ONLY AS A COURT'S EXHIBIT.

25 MR. DELGADO: YOUR HONOR, WITHOUT WAIVING ANY

1 OBJECTION TO THE PREVIOUSLY FILED MOTIONS ABOUT GIDEON AND
2 THE RIGHT TO COUNSEL. REMEMBER, WE ARGUED THAT ON
3 THURSDAY? WE WERE GOING TO WORK ON IT OVER THE WEEKEND?

4 THE COURT: SUBJECT TO THAT OBJECTION.

5 (WHEREUPON, COURT'S EXHIBIT NO. 4 WAS MARKED FOR
6 IDENTIFICATION ONLY.)

7 BY MR. MCMAHON

8 Q NOW, MR. MEREDITH, I BELIEVE I UNDERSTOOD YOU TO SAY
9 THAT YOU DETERMINED FRIEBURGER WAS A.W.O.L.?

10 A YES.

11 Q AND YOU UNDERSTOOD WHAT THAT MEANT BEING IN THE
12 MILITARY?

13 A YES, SIR.

14 Q AND YOU NOTIFIED THE MILITARY AUTHORITIES?

15 A I DID.

16 Q NOW, DID YOU MAINTAIN POSSESSION OF THE GUN?

17 A YES, SIR, I DID.

18 Q BACK IN '61, WHAT OCCURRED AS FAR AS THAT 32
19 HARRINGTON AND RICHARDSON THAT YOU REMOVED FROM
20 MR. FRIEBURGER? WHAT HAPPENED TO THAT GUN?

21 A WELL, AT THAT TIME WE DIDN'T HAVE ANY MEANS OF
22 LOCKING IT UP IN THE COURT. THE JUDGE HAD US KEEP IT
23 IN OUR POSSESSION.

24 AFTER THE TRIAL -- WELL, PROBABLY BEFORE THAT,
25 SHERIFF S. S. SLY HERE IN COLUMBIA CALLED ME AND

1 WANTED TO KNOW IF I HAD SUCH GUN IN MY POSSESSION. I
2 TOLD HIM I DID.

3 HE WANTED TO KNOW IF I WOULD TURN IT OVER TO
4 THEM FOR INVESTIGATION IN A MURDER TRIAL. I TOLD HIM
5 I WOULD. HE SENT TWO OFFICER TO MY HOUSE IN NEWPORT
6 TO PICK IT UP.

7 Q AND THIS WAS BACK IN 1961 THAT YOU TURNED THIS GUN
8 OVER TO THESE OFFICERS?

9 A YES, SIR.

10 Q AND YOU UNDERSTOOD THEM TO BE RICHLAND COUNTY
11 SHERIFF'S DEPUTIES?

12 A YES, SIR.

13 Q DID YOU EVER, I GUESS WHAT YOU'D SAY, CHECK UP ON
14 THAT GUN LATER ON?

15 A YES, SIR. AROUND '64, I GUESS IT WAS, I BELIEVE IT
16 WAS A TRUCKER I WAS INVOLVED IN INVESTIGATING. HE
17 WAS TRIED HERE IN FEDERAL COURT.

18 I TALKED TO THE ATTORNEY WINEBURGER OR
19 WHIBURGER. HE SAID, "I'LL CHECK ON IT." THEN HE
20 DID. HE WROTE ME A LETTER STATING THAT -- THAT WAS
21 ABOUT '64 I GUESS. HE WROTE A LETTER TELLING ME THAT
22 THE CASE HAD NOT COME TO TRIAL, PROBABLY BE ANOTHER
23 YEAR OR SO BEFORE IT CAME TO TRIAL.

24 Q AND THAT WOULD HAVE BEEN IN ABOUT '64; IS THAT
25 CORRECT?

1 A SIXTY-FOUR, YES, SIR.

2 Q NOW, BACK IN APRIL OF 2001, DID YOU HAVE AN OCCASION

3 TO TALK TO RICHLAND COUNTY SHERIFF'S OFFICERS AGAIN?

4 A YES, SIR, I DID.

5 Q AND DID YOU PROVIDE THEM WITH A STATEMENT AT THAT

6 TIME?

7 A YES, SIR.

8 Q ADDITIONALLY, DID YOU STILL HAVE A COPY OF THAT 1964

9 LETTER?

10 A YES, SIR.

11 Q WHAT DID YOU DO WITH THAT?

12 A I GAVE IT TO THEM, AND THEY MADE COPIES OF IT. I HAD

13 A COPY IN MY POSSESSION.

14 Q I WANT TO SHOW YOU A DOCUMENT AND ASK IF YOU CAN

15 IDENTIFY THIS DOCUMENT FOR US, PLEASE?

16 A YES, SIR. THAT IS THE ONE THAT THIS -- OH...

17 LET ME LOOK HERE. YEAH, THAT WAS LIEUTENANT

18 CATE, I BELIEVE.

19 Q AND WHO IS THIS LETTER ADDRESSED TO?

20 A ADDRESSED TO ME.

21 Q AND WAS THAT YOUR ADDRESS? IS THAT STILL YOUR

22 ADDRESS, [REDACTED], NEWPORT, TENNESSEE?

23 A YES, IT IS.

24 Q IN OTHER WORDS, IN '64 I COULD MAIL YOU A LETTER, AND

25 IT WOULD GET TO YOU THERE. I COULD MAIL YOU ONE

1 TONIGHT AND IT WOULD GET TO YOU.

2 A YES, SIR.

3 Q AND THIS LETTER, WHAT IS IT IN REFERENCE TO?

4 A HARRINGTON AND RICHARDSON REVOLVER, A 32.

5 Q DOES IT HAVE A MODEL NUMBER THERE?

6 A MODEL AND SERIAL NUMBER.

7 Q AND SERIAL NUMBER?

8 A IT'S W-9948.

9 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THIS
10 LETTER AS A COURT'S EXHIBIT.

11 THE COURT: ANY OBJECTION?

12 MR. DELGADO: YES, SIR. THE OBJECTION, YOUR
13 HONOR, IS THAT IS NOT QUALIFIED UNDER THE ANCIENT
14 DOCUMENTS RULE AS -- UNDER 803(60) SUBJECT TO HEARSAY IN
15 THAT WHILE IT IS MORE THAN 20 YEARS OLD, THAT IS FOR SURE.
16 THE PROBLEM WITH THAT, YOUR HONOR, IS THAT IS NOT WHAT THE
17 ANCIENT DOCUMENT RULE CONTEMPLATES.

18 IN OTHER WORDS, I THINK WE MAY HAVE DONE THIS
19 WITH OUR MOTIONS PREVIOUSLY, NEVER BEFORE IN THE HISTORY
20 OF JURISPRUDENCE AS FAR AS THE EVIDENCE IS CONCERNED HAVE
21 WE HAD ANCIENT DOCUMENTS USED IN A CRIMINAL CASE.

22 NOT ONLY THAT, THAT LETTER WAS PREPARED IN
23 ADVANCE IN ANTICIPATION OF LITIGATION. NUMBER, WE'RE
24 DENIED THE RIGHT TO CONFRONT MR. CATE WHO IS NO LONGER A
25 WITNESS AS A RESULT.

1 THE COURT: LET ME SEE THE LETTER.

2 (WHEREUPON, COURT'S EXHIBIT NO. 5 WAS MARKED FOR
3 IDENTIFICATION ONLY.)

4 MR. DELGADO: YOUR HONOR THE MEMORANDUM OF THE
5 DOCUMENTS, I THINK WE DID THIS.

6 THE COURT: YES, SIR?

7 MR. DELGADO: WELL --

8 THE COURT: IT CONTAINS NO INFORMATION OR CAUSES
9 YOUR CLIENT ANY PROBLEM.

10 MR. DELGADO: YES, IT DOES, BECAUSE IT LINKS HIM
11 TO THE GUN AS A RESULT OF THE SERIAL NUMBER.

12 THE COURT: WELL, HIS TESTIMONY DOES THAT.

13 MR. DELGADO: WELL, THEN THE TESTIMONY DOES
14 THAT. THE REASON I CAN'T DO THAT IS I CAN'T CROSS-EXAMINE
15 MR. CATE.

16 THE COURT: WELL, THIS CAN COME IN AS A BUSINESS
17 RECORD AS TO -- IN THAT IT WAS MAINTAINED IN THE S.L.E.D.
18 FILE TRACKING THE CUSTODY OF THAT GUN.

19 THIS GENTLEMAN WHO GOT THE GUN TO START WITH
20 WANTED IT BACK. HE WROTE THEM AND ASKED WHY CAN'T I GET
21 IT BACK?

22 MR. DELGADO: I UNDERSTAND, JUDGE, BUT NOT ONLY
23 DO I BELIEVE IT'S AN ANCIENT DOCUMENT, THEREFORE, IT'S
24 NOT -- I MEAN, IT'S NOT AN ANCIENT DOCUMENT, I REALLY
25 THINK THE BUSINESS RECORD EXCEPTION HERE -- IN OTHER

1 WORDS, WE DON'T KNOW WHETHER MR. CATE DID THIS ON A
2 ROUTINE PRACTICE.

3 WE DON'T KNOW IF HE EVER HAD AN OPPORTUNITY TO
4 WRITE AN INDIVIDUAL OUT OF STATE AND EXPLAIN WHY HE CAN'T
5 GIVE A GUN BACK, NO, SIR.

6 I UNDERSTAND THE PARTICULAR EVIDENTIARY PROBLEM,
7 YOUR HONOR. IT'S JUST THAT MR. CATE IS NOT HERE, AND
8 WE'RE DENIED THE RIGHT TO CONFRONT HIM WITH THAT.

9 THE COURT: MR. DELGADO, I DON'T QUITE FOLLOW
10 YOU.

11 THE ANCIENT DOCUMENT QUESTION IS ONE, CAN THE
12 DOCUMENT BE AUTHENTICATED; TWO, YOU KNOW, IS IT A
13 DOCUMENT; THREE, HAS IT BEEN IN THE POSSESSION -- IN
14 EXISTENCE 20 YEARS UNDER THE RULES?

15 THIS IS MERELY A DOCUMENT THAT TRACKS THE
16 CUSTODY OF THE WEAPON, NO MORE, NO LESS. THE SOLICITOR
17 CAN -- IS THERE ANY CHALLENGE TO THE AUTHENTICITY OF THIS?

18 MR. DELGADO: YES, SIR. I MEAN, I WOULDN'T KNOW
19 MR. MILLARD CATE FROM ANYBODY ELSE. I'M NOT TRYING TO SAY
20 THAT ISN'T HIS SIGNATURE, BUT PURELY FOR THE SAKE OF THIS
21 RECORD, HAS ANYBODY BEEN ABLE TO DOCUMENT THAT AS HIS
22 SIGNATURE?

23 THE COURT: I KNOW.

24 MR. DELGADO: WHAT I'M SAYING IS IT'S
25 PREMATURELY ADMITTED AT THIS TIME.

1 THE COURT: IT'S ONLY A COURT'S EXHIBIT AT THIS
2 TIME.

3 MR. DELGADO: I UNDERSTAND.

4 THE COURT: OBJECTION PREMATURE AT THIS TIME,
5 OVERRULED.

6 YOU MAY PROCEED.

7 MR. MCMAHON: YES, SIR.

8 THE COURT: SOLICITOR, LET ME ASK YOU THIS, WHY
9 DO YOU NEED IT IN THE FIRST PLACE, BECAUSE YOU HAVE THE
10 S.L.E.D. -- ASSUMING THEY KEPT IT IN THEIR POSSESSION, HE
11 GAVE IT TO THEM. WHY DO YOU NEED IT?

12 MR. MCMAHON: WELL, SIR, AS HIS HONOR POINTED
13 OUT, I'M TRACKING 9948. I'M TRACKING 9948, AND I'M
14 TRACKING BACK TO 1961.

15 9948 APPEARS ON THE CAPITAL LOAN RECORD. THEN
16 9948 WILL APPEAR ON THAT.

17 I HAVE MR. CATE'S SON ON THE WITNESS LIST, IF I
18 NEED TO, TO AUTHENTICATE HIS SIGNATURE, IF THAT'S A
19 QUESTION. BUT GIVEN THE FACT ALSO, JUST LIKE HE
20 CROSS-EXAMINED LAST WITNESS, DID YOU KEEP ANY NOTES ABOUT
21 THIS.

22 WELL, THIS WITNESS IS 76 YEARS OLD, HAS KEPT THE
23 LETTER FOR 37 YEARS ABOUT THIS PARTICULAR WEAPON. THEN I
24 HAVE A WEAPON, 9948. I THINK ON ANY CASE, PARTICULARLY A
25 41-YEAR-OLD MURDER CASE, I SHOULD DOT THE "I'S" AND CROSS

1 THE "T'S".

2 I MEAN, THAT'S MY POINT IN THAT PARTICULAR --

3 THE COURT: WELL, I'M NOT DEBATING IT, BUT I'M
4 NOT SO SURE YOU HAVE TO OVERTRY EVERY ISSUE. FOR EXAMPLE,
5 JUST LIKE THE GENTLEMAN THERE THAT MADE THE ARREST. THERE
6 WAS A PAT DOWN. WE DON'T NEED THE CONVICTION. WE DON'T
7 NEED TO GUM IT UP. YOU DON'T HAVE TO EXPLAIN TO THE JURY
8 YOU TOOK THE GUN OFF. THEN WE DON'T HAVE THAT APPELLATE
9 ISSUE.

10 MR. MCMAHON: JUDGE, I UNDERSTAND --

11 THE COURT: THAT'S WHAT I'M --

12 MR. MCMAHON: JUDGE, I WILL TAKE THAT AS A
13 COMPLIMENT WHEN YOU TELL ME I'M OVERTRYING MY CASE AS
14 OPPOSED TO CRITICISM.

15 I'M NOT SAYING ALL THIS IS GOING TO GO BEFORE
16 THE JURY, BUT WHEN HIS HONOR IS RULING ON THESE VARIOUS
17 THINGS, I WANT THAT SCALE AS WEIGHTED DOWN AS POSSIBLE, IS
18 WHAT I'M SAYING.

19 THE COURT: I UNDERSTAND.

20 MR. MCMAHON: RESPECTIVELY, IS WHAT I'M SAYING.

21 THE COURT: ALL RIGHT. YOU MAY PROCEED.

22 MR. MCMAHON: YES, SIR.

23 BY MR. MCMAHON

24 Q IF I SHOWED YOU THIS DOCUMENT, AND I'M NOT SAYING YOU
25 NEED A MAGNIFYING GLASS, MR. MEREDITH, I DO, BUT IF

1 I'M SHOWING YOU THIS ITEM HERE AND YOU LOOK AT THE
2 BOTTOM PLATE, ARE YOU ABLE TO READ THAT SERIAL
3 NUMBER?

4 A THAT IS W 9948.

5 Q W 9948. WITHOUT ME WALKING BACK OVER THERE, THAT'S
6 THE SAME SERIAL NUMBER THAT'S ON YOUR LETTER FROM
7 BACK IN MARCH OF 196--- WELL, YOUR LETTER FROM 1964?

8 A YES, SIR.

9 MR. MCMAHON: AND, YOUR HONOR, I WOULD OFFER
10 THIS FOR IDENTIFICATION PURPOSES ONLY AT THIS TIME.

11 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS MARKED FOR
12 IDENTIFICATION ONLY.)

13 BY MR. MCMAHON

14 Q IF THAT'S THE WEAPON, MR. MEREDITH, AND I APOLOGIZE.
15 YOU WERE A LIEUTENANT WITH THE HIGHWAY PATROL WHEN
16 YOU RETIRED?

17 A WHEN I RETIRED, YES, SIR.

18 Q LIEUTENANT MEREDITH, THAT'S THE WEAPON, W 9948, THAT
19 YOU TURNED OVER TO THE RICHLAND COUNTY OFFICERS BACK
20 IN 1961; IS THAT CORRECT?

21 A THAT IS CORRECT, YES, SIR.

22 MR. MCMAHON: I DON'T HAVE ANY FURTHER
23 QUESTIONS, YOUR HONOR.

24 THE COURT: CROSS-EXAMINATION?

25 CROSS-EXAMINATION:

1 BY MR. DELGADO

2 Q GOOD AFTERNOON, MR. MEREDITH. MY NAME IS JOHN
3 DELGADO. I'M AN ATTORNEY, AND I REPRESENT MR. ED
4 FRIEBURGER.

5 MR. MEREDITH, WHEN THE RICHLAND COUNTY SHERIFF'S
6 DEPARTMENT CONTACTED YOU AGAIN ABOUT THE LETTER THAT
7 HAS BEEN MARKED AS A COURT'S EXHIBIT, AND YOU TURNED
8 THAT OVER TO THEM, THAT IS MY FRIEND EITHER MR. METZ
9 OR MR. CRAIG; IS THAT RIGHT, SIR?

10 A YES, SIR.

11 Q THEY CAME UP TO NEWPORT TO SEE YOU?

12 A YES, SIR, THEY DID.

13 Q AND RECEIVED THAT LETTER FROM YOU?

14 A THAT'S RIGHT.

15 Q DID YOU TELL THEM, SIR, ABOUT THE FACTS ABOUT --
16 FIRST OF ALL, DO YOU KNOW MR. ED FRIEBURGER, THE
17 GENTLEMAN SEATED, WOULD YOU RECOGNIZE HIM?

18 A NO, SIR. I WOULDN'T RECOGNIZE HIM.

19 Q THAT IS HIM.

20 A ALL RIGHT, SIR.

21 Q IF I SAY TO YOU, SIR, YOU ARRESTED HIM ON THE LATE
22 EVENING OF MARCH 29TH, YOUR REMEMBRANCE OF THAT, SIR,
23 WAS THAT YOU ALL HAD HAD -- YOU ALL WOULD BE LAW
24 ENFORCEMENT OR HIGHWAY PATROL -- YOU HAD FOLKS THAT
25 WERE EITHER HITCHHIKING OR WALKING ALONG THE ROAD AND

1 AT LEAST ONE PERSON HAD BEEN HIT, STRUCK, AND
2 POSSIBLY KILLED?
3 A YES, SIR.
4 Q WHEN YOU SAW HIM, YOU STOPPED AND WENT UP TO HIM,
5 CORRECT, SIR?
6 A YES, SIR.
7 Q DID HE IN ANY WAY ATTEMPT TO ASSAULT YOU, ATTEMPT TO
8 BATTER YOU, OR ATTEMPT TO RUN FROM YOU IN ANY WAY,
9 SIR?
10 A NO, SIR.
11 Q DID HE COOPERATE WITH YOU?
12 A HE SURE DID.
13 Q WAS HE PLEASANT AND COURTEOUS?
14 A YES.
15 Q WHEN YOU -- DID HE GIVE YOU HIS NAME AT THAT TIME?
16 IN OTHER WORDS, WAS THE FIRST THING THAT YOU AND I --
17 "I'M MR. FRIEBURGER" ON THE SIDE OF THAT ROAD THAT
18 EVENING? WHEN YOU CAME UP TO HIM THAT EVENING, DID
19 YOU SAY TO HIM, "HOW ARE YOU DOING? WHAT'S YOUR
20 NAME?" DO YOU RECALL?
21 A I DON'T RECALL.
22 Q I UNDERSTAND. THIS ISN'T A QUIZ. IT'S A LONG TIME
23 AGO. YOU SAY, SIR, THAT YOU PADDED HIM DOWN --
24 A YES, SIR.
25 Q -- BUT AT THAT TIME HE WAS NOT UNDER ARREST, WAS HE?

1 A NO. HE WASN'T, BUT HE WAS GOING TO BE FOR
2 HITCHHIKING, OR I WAS GOING TO TAKE HIM BACK TO THE
3 JAIL.

4 Q ALL RIGHT, SIR.

5 A BUT WE DID A SAFETY SEARCH BEFORE WE PUT SOMEBODY IN
6 THE CAR. YOU CHECK THEM TO SEE IF THEY HAVE ANY
7 WEAPONS.

8 Q SO YOU PUT HIM IN THE CAR BEFORE YOU PATTED HIM DOWN?

9 A NO. I SAID I PATTED HIM DOWN BEFORE I PUT HIM IN THE
10 CAR.

11 Q I GOT YOU. NOW, AT THE TIME THAT YOU PATTED HIM
12 DOWN, SOMETIMES IN THE WAY LAW ENFORCEMENT DOES, DID
13 YOU PUT HIS HANDS ABOVE HIS HEAD, DID YOU ASK HIM TO
14 SPREAD HIS FEET, IF YOU RECALL.

15 A NO, SIR, I DON'T RECALL THAT.

16 Q ALL RIGHT, SIR. YOU DID THAT, SIR, AS A SAFETY
17 PRECAUTION FOR YOURSELF?

18 A RIGHT.

19 Q BUT BEFORE YOU DID THAT, YOU DIDN'T SUSPECT HIM OF
20 DOING ANYTHING WRONG OR IMPROPER, DID YOU?

21 A I'D RATHER HIM NOT BE HITCHHIKING ON THE HIGHWAY.

22 Q ALL RIGHT, SIR. SO HE HADN'T CONSTITUTED A THREAT TO
23 YOU OR TO ANYBODY ELSE OUT THERE ON THE SIDE OF THE
24 ROAD THAT EVENING?

25 A TO HIMSELF OUT THERE HITCHHIKING.

1 Q WAS THERE ANYTHING, SIR, THE WAY YOU PERCEIVED THAT
2 EVENING, THAT WOULD HAVE GIVEN YOU SUSPICION THAT HE
3 WAS ENGAGED IN SOME SORT OF ACTIVITY THAT WAS A CRIME
4 EXCEPT FOR POSSIBLY HITCHHIKING?

5 A NO.

6 Q ALL RIGHT, SIR. MR. MEREDITH, I HAVE HAD A PRIVATE
7 INVESTIGATOR CONTACT YOU, IN FACT, EVEN WENT UP TO
8 NEWPORT.

9 A YES, SIR.

10 Q THE NAME IS MR. DAVID MCDUGAL.

11 A YES, SIR.

12 Q I THINK HE MET YOU AT YOUR HOUSE, IF I'M NOT
13 MISTAKEN.

14 A THAT'S RIGHT.

15 Q HE ASKED YOU SOME QUESTIONS ABOUT THAT EVENING SO HE
16 COULD REPORT THAT BACK TO ME. DO YOU RECALL THAT,
17 SIR?

18 A UH-HUH.

19 Q DO YOU RECALL SOMETIME AFTER THAT, MR. MEREDITH, THAT
20 HE EITHER CONTACTED YOU BY PHONE AND ASKED IF HE
21 COULD RECOUNT WHAT YOU HAD TOLD HIM, AND IF THAT MET
22 WITH YOUR APPROVAL, SEND IT BACK TO YOU, AND IF YOU
23 COULD, IF YOU'D SIGN IT AND RETURN IT BACK TO HIM.
24 DO YOU RECALL THAT, SIR?

25 A YES, SIR.

1 Q AND YOU GOT THAT STATEMENT, SIGNED IT AND RETURNED IT
2 TO MR. MCDOUGAL.

3 A YES, SIR.

4 Q OKAY. AND KEPT ONE FOR YOURSELF?

5 A YES, SIR.

6 Q HAVE YOU SHARED THAT WITH THE SOLICITOR'S OFFICE?

7 A YES, SIR.

8 Q ALL RIGHT, SIR. NOW, DURING THAT TIME -- LET ME JUST
9 SHOW THIS TO YOU, MR. MEREDITH. SEE IF YOU CAN
10 IDENTIFY THAT MR. MEREDITH AND SEE IF THAT IS THE --

11 A THAT'S IT.

12 MR. DELGADO: THAT'S IT.

13 YOUR HONOR, IF THE STATE -- DO YOU HAVE A COPY?

14 MR. MCMAHON: YES, SIR.

15 MR. DELGADO: YOUR HONOR, WE'D LIKE TO BE ABLE
16 TO MAKE THIS A PART OF THE COURT'S EXHIBIT, IF WE COULD.

17 MR. MCMAHON: NO OBJECTION.

18 (WHEREUPON, COURT'S EXHIBIT NO. 6 WAS MARKED FOR
19 IDENTIFICATION ONLY.)

20 BY MR. DELGADO

21 Q MR. MEREDITH, LET ME JUST GIVE THIS BACK TO YOU, SIR.
22 I'M GOING TO SHOW HIS HONOR A COPY OF THIS.

23 YOUR HONOR, THIS IS A COPY OF IT. YOU MAY WANT
24 TO JUST LOOK AT IT WITH US.

25 MR. MEREDITH, IN THE SECOND -- WELL, I GUESS IN

1 THE THIRD PARAGRAPH IN THAT STATEMENT, AND FIRST
2 MR. MEREDITH, THAT STATEMENT WAS SIGNED THE TENTH DAY
3 OF JUNE, 2002; IS THAT CORRECT, SIR?

4 A YES, SIR.

5 Q ALL RIGHT, SIR. THE SECOND OR THE THIRD PARAGRAPH
6 THAT STARTS WITH THE WORDS, "I FOUND ED FRIEBURGER",
7 WOULD YOU JUST READ MAYBE THE FIRST FOUR OR FIVE
8 SENTENCES OF THAT PARAGRAPH OUT LOUD, SIR?

9 A "I FOUND ED FRIEBURGER HITCHHIKING ALONG 25 AND 70 IN
10 THE VICINITY OF NEWPORT, TENNESSEE. OUT OF POLICY
11 AND PROCEDURE AT THAT TIME, I STOPPED TO CHECK HIM
12 PRIMARILY FOR SAFETY REASONS.

13 WE HAD HAD HITCHHIKERS STRUCK BY VEHICLES. AT
14 THAT TIME, WE DIDN'T ALWAYS ARREST HITCHHIKERS UNLESS
15 THEY HAD COMMITTED ANOTHER VIOLATION.

16 I DOUBT I WOULD HAVE ARRESTED ED FRIEBURGER IF I
17 HAD NOT FOUND THE GUN HE WAS CARRYING.

18 Q HOW ABOUT READ THE VERY NEXT ONE.

19 A "I DO NOT RECALL HOW I FOUND THE GUN, BUT IT MAY BE
20 THAT I -- IT MAY HAVE BEEN DURING A PAT DOWN. AFTER
21 I ARRESTED HIM, I TRANSPORTED HIM TO JAIL."

22 Q ALL RIGHT, SIR. NOW, LET ME SEE IF I CAN GET THAT
23 CORRECTLY.

24 IN OTHER WORDS, YOU SAY IN YOUR STATEMENT TO
25 MR. MCDUGAL THAT YOU DOUBT YOU WOULD HAVE ARRESTED

1 HIM IF YOU HADN'T FOUND THE GUN HE WAS CARRYING,
2 CORRECT, SIR?

3 A CORRECT.

4 Q THAT'S RIGHT. AND HE HAD DONE NOTHING AT THE TIME
5 THAT YOU FIRST MET HIM TO INDICATE TO YOU THAT HE WAS
6 IN VIOLATION -- THAT HE WAS A THREAT OR A DANGER TO
7 YOU OR TO ANYONE ELSE IN THE WAY OF ACTIVITY OR WAS
8 ENGAGED IN CRIMINAL ACTIVITY, CORRECT, SIR?

9 A THAT'S TRUE.

10 Q ALL RIGHT, SIR. IF YOU LOOK DOWN TO THE FOURTH
11 PARAGRAPH THAT STARTS WITH THE WORD "AT THE TIME."
12 READ DOWN INTO THAT PARAGRAPH.

13 A "AT THE TIME I ARRESTED ED FRIEBURGER, HE GAVE ME NO
14 INDICATION HE WAS INVOLVED OR WANTED FOR ANY OTHER
15 CRIME. HE MADE NO STATEMENTS TO ME ABOUT ANY OTHER
16 CRIME.

17 I HAVE NO RECOLLECTION IF HE STATED WHERE HE WAS
18 GOING. SOMETIME AFTER I ARRESTED HIM, I FOUND HE WAS
19 A.W.O.L. FROM THE ARMY. I CONTACTED THE M.P.'S TO
20 INFORM THEM WHERE ED FRIEBURGER WAS SO THEY COULD
21 PICK HIM UP."

22 Q ALL RIGHT.

23 A TO THE BEST OF MY KNOWLEDGE, THEY DID.

24 Q ALL RIGHT, SIR. AND THEY DID AFTER HE WENT TO -- I
25 THINK YOU CALL IT YOUR "SESSIONS" COURT?

1 A GENERAL SESSIONS COURT.

2 Q THAT'S WHAT WE CALL IT HERE, TOO, GOOD. SO YOU WENT
3 TO YOUR GENERAL COURT -- MR. MEREDITH, IF I TELL YOU
4 I HAD AN INVESTIGATOR GO UP THERE, SOMEBODY OTHER
5 THAN MR. MCDOUGAL, AND THERE WAS SOMETHING IN THAT
6 SESSIONS BOOK THAT HAS THE INITIALS "C.A." DOES THAT
7 STAND FOR CARRYING ARMS?

8 A CARRYING ARMS.

9 Q I KNOW HOW WE DO THIS. I MEAN, SOMETIMES YOU ARREST
10 THEM, AND YOU CALL IT UNLAWFUL CARRYING OF A WEAPON,
11 BUT SOMETIMES WE PUT IT ON THE DOCKET SHEET OR
12 SOMETHING ELSE, WE CALL IT C.A., CARRYING -- THE SAME
13 OFFENSE, CORRECT, SIR?

14 A YES, SIR.

15 Q AND THAT'S WHAT HE WAS SENTENCED TO BY YOUR JUDGE,
16 FOR 30 DAYS SUSPENDED AS SOON AS THE MILITARY GUYS
17 CAME TO GET HIM?

18 A SIX DAYS.

19 Q SIX DAYS LATER. ALL RIGHT. SO IN OTHER WORDS, YOU
20 DID NOT ARREST HIM FOR BEING A.W.O.L. BECAUSE YOU
21 DIDN'T KNOW THAT UNTIL YOU GOT DOWN TO THE POLICE
22 DEPARTMENT?

23 A THAT'S CORRECT.

24 Q ALL RIGHT. YOU CONDUCTED A SAFETY SEARCH. YOU JUST
25 PATTED HIM DOWN FOR WEAPONS?

1 A THAT'S RIGHT.

2 MR. DELGADO: ALL RIGHT. JUST ONE SECOND
3 PLEASE, YOUR HONOR.

4 (PAUSE).

5 THAT'S ALL THE QUESTIONS I HAVE.

6 THE COURT: ANY REDIRECT?

7 MR. MCMAHON: NOTHING ON REDIRECT.

8 THE COURT: YOU MAY STEP DOWN.

9 ANYTHING FURTHER FROM THE STATE ON THAT?

10 MR. MCMAHON: NO, YOUR HONOR.

11 THE COURT: MR. DELGADO?

12 MR. DELGADO: YOUR HONOR, THIS HAS BEEN A LAW
13 SCHOOL EXAMINATION FOR ALL OF US IN A LOT OF WAYS. IT HAS
14 FOR ME, LET ME PUT IT THAT WAY.

15 TERRY VS. OHIO IS NOT PROMULGATED BY THE UNITED
16 STATES SUPREME COURT UNTIL SOMETIME LONG AFTER THIS
17 INCIDENT. HOWEVER, IT, ALONG WITH THE OTHER
18 CONSTITUTIONAL RIGHTS, BECAUSE THIS CASE WAS NOT FINALLY
19 DECIDED PRIOR TO THE TIME THAT TERRY WAS PROMULGATED,
20 APPLIES RETROACTIVELY.

21 IN OTHER WORDS, WHILE MAPP VS. OHIO, MAKING THE
22 FOURTH AMENDMENT APPLICABLE TO THE STATES, AND IMPOSING AN
23 EXCLUSIONARY RULE ON THE STATES, IS NOT PROMULGATED BY THE
24 SUPREME COURT UNTIL JUNE OF 1961, SOME THREE MONTHS LATER,
25 TWO-AND-A-HALF MONTHS LATER.

1 THE UNITED STATES SUPREME COURT HAS A VARIETY OF
2 CASES, STONER VS. CALIFORNIA, FAHY VS. CONNECTICUT,
3 APPLIED THE MAPP DECISION RETROACTIVELY.

4 SO IN OTHER WORDS, JUNE 1961 WHEN MAPP VS. OHIO
5 BECOMES APPLICABLE IS NOT THE DECIDING TIME. THE DECIDING
6 TIME IS WHETHER OR NOT IT APPLIES AND WHETHER OR NOT THERE
7 IS AN EXCLUSIONARY RULE THAT'S IN EFFECT.

8 I THINK THE CONSTITUTIONAL LAW ON THAT IS CLEAR.
9 I CAN GIVE YOU A MEMORANDUM OF LAW ABOUT THAT, BUT THE KEY
10 IS EVEN MORE IMPORTANTLY, YOUR HONOR, IN THAT, WHILE TERRY
11 VS. OHIO WAS NOT PROMULGATED IN JUNE -- EXCUSE ME, IN
12 APRIL, MARCH 1961 WHEN MR. MEREDITH APPLIES A GENERAL PAT
13 DOWN. AND WE ARE NOW IN THE PROCESS OF MOVING TO SUPPRESS
14 THE H&R 32, WE THEN HAVE THE RIGHT TO APPLY THE FACTS AND
15 CIRCUMSTANCES OF THIS CASE, VIS A VIS, TERRY.

16 THERE IS NO ARTICULABLE SUSPICION. THE POLICE
17 OFFICER MUST BE ABLE TO POINT TO SPECIFIC AND ARTICULABLE
18 FACTS, WHICH TAKEN TOGETHER WITH THE INFERENCES FROM THOSE
19 FACTS, REASONABLY WARRANT THE INTRUSION.

20 THE FACTS MUST BE JUDGED AGAINST THE OBJECTIVE
21 STANDARD, WHETHER THE FACTS AVAILABLE TO THE OFFICER AT
22 THE MOMENT OF SEIZURE OR SEARCH WOULD WARRANT A MAN
23 REASONABLE CAUTION, BELIEF THAT AN ACTION WAS TAKEN
24 APPROPRIATELY.

25 INTRUSIONS MUST BE BASED ON MORE THAN

1 INARTICULABLE HUNCHES AND SIMPLE GOOD FAITH ON THE PART OF
2 THE OFFICER, THAT NOT BEING ENOUGH.

3 POLICE OFFICERS WHO HAVE REASON TO BELIEVE HE'S
4 DEALING WITH AN ARMED AND DANGEROUS INDIVIDUAL, REGARDLESS
5 OF WHETHER HE HAS PROBABLE CAUSE TO ARREST MAY MAKE A
6 REASONABLE SEARCH FOR WEAPONS, EVEN THOUGH HE'S NOT
7 ABSOLUTELY CERTAIN THAT THE INDIVIDUAL WAS ARMED.

8 REASONABLE IS THE ACTION, HAS -- NOT ONLY IS THE
9 COAGENT UNDER A PARTICULARIZED SUSPICION OR HUNCH, BUT ON
10 SPECIFIC REASONABLE INFERENCES WHICH HE'S ENTITLED TO DRAW
11 FROM THE FACTS IN LIGHT OF HIS EXPERIENCE.

12 THE STATEMENT THAT HE GIVES MR. MCDUGAL, YOUR
13 HONOR, THAT "I DOUBT I WOULD HAVE ARRESTED ED FRIEBURGER
14 IF I HAD NOT FOUND THE GUN HE WAS CARRYING."

15 WITH ALL THE SINCERITY THAT I MUST MUSTER HERE,
16 IT SEEMS TO ME, YOUR HONOR, THAT THE STATE CANNOT MEET ITS
17 BURDEN OF PERSUASION OR BURDEN OF PROOF IN THIS MATTER
18 BASED ON THE STATEMENTS OF MR. MEREDITH.

19 I SPECIFICALLY ASKED HIM HOW DID MR. FRIEBURGER
20 TREAT HIM? WAS HE ANYTHING BUT POLITE AND COURTEOUS? WAS
21 HE VIOLENT? DID HE ATTEMPT TO ASSAULT HIM? DID HE TRY TO
22 RUN AWAY FROM HIM? WAS HE ENGAGED IN ANY CRIMINAL
23 ACTIVITY? NOTHING.

24 IT SEEMS TO ME, YOUR HONOR, THAT THIS FOURTH
25 AMENDMENT SEARCH IS UNCONSTITUTIONAL BASED ON TERRY VS.

1 OHIO, EVEN THOUGH IT IS ARTICULATED BY OUR SUPREME COURT
2 FIVE YEARS LATER.

3 THE COURT: MR. SOLICITOR?

4 MS. CAMPBELL: YOUR HONOR, IF I MAY.

5 DEFENSE COUNSEL DOES CORRECTLY POINT OUT TERRY
6 VS. OHIO DID COME INTO EFFECT, I BELIEVE, IN JUNE OF 1968.
7 I BELIEVE SOME OF MR. DELGADO'S RECITATION IS CORRECT,
8 YOUR HONOR.

9 AT THIS TIME I WOULD HAND UP A COPY OF THE LAW
10 AS IT WAS IN 19 -- I BELIEVE IT WAS PASSED IN 1955 WHERE
11 IT DID MAKE HITCHHIKING A VIOLATION OF THE LAW IN
12 TENNESSEE, YOUR HONOR.

13 AS THE WITNESS IN THIS CASE TESTIFIED, HE
14 OBSERVED HIMSELF, THIS DEFENDANT, VIOLATING THE LAW. YOUR
15 HONOR, AT THAT POINT HE HAS PROBABLE CAUSE, NOT JUST MERE
16 SUSPICION, AS YOU MUST HAVE, BUT PROBABLE CAUSE IN THIS
17 CASE TO ARREST THIS MAN.

18 I WOULD ALSO NOTE THE CASE, CLAUDE WILLIAMS,
19 WHICH WAS FROM NOVEMBER 7TH, 1960 WHERE A HIGHWAY
20 PATROLMAN IS EMPOWERED TO ARREST, WITHOUT A WARRANT, ANY
21 PERSON WHO COMMITS A MISDEMEANOR IN HIS PRESENCE.

22 I DON'T THINK ANYBODY IS GOING TO ARGUE THIS IS
23 ANYTHING BUT A MISDEMEANOR; HOWEVER, AND THIS DID HAPPEN
24 IN HIS PRESENCE.

25 YOUR HONOR, IN LOOKING AT THE TOTALITY OF THE

1 CIRCUMSTANCES OF OUR CASE LAW, AND STATE CASES, HAVE HELD
2 IN RELYING ON TERRY IN THE LAST SEVEN YEARS, AND I THINK
3 THIS SEARCH IN PARTICULAR PASSES UPON TWO DIFFERENT
4 LEVELS, YOUR HONOR.

5 IN TAKING THE TERRY CASES FIRST, I WOULD JUST
6 HAND UP A COPY OF STATE VS. CALVIN SMITH, WHICH IS A 1998
7 CASE, THE COURT OF APPEALS OF SOUTH CAROLINA. IN THAT
8 CASE, IT ACTUALLY JUST INVOLVED A TRAFFIC STOP. THERE'S
9 JUST A MERE TRAFFIC VIOLATION, BUT THEY NOTE IN THAT CASE
10 YOU LOOK AT ALL OF THE CIRCUMSTANCES. SOME OF THE
11 CIRCUMSTANCES THEY LOOKED AT PARALLELED THE ONES HERE,
12 YOUR HONOR.

13 IN THAT CASE, THERE WAS A TRAFFIC STOP. THE GUY
14 WAS SITTING IN HIS CAR, BUT THEY NOTE IT WAS A DESERTED
15 AREA. IT WAS AT NIGHT, AND THIS WAS ACTUALLY AFTER A
16 SECOND OFFICER HAD COME ON THE SCENE.

17 SO HE EVEN HAS THE -- AND THEY ALLOWED THIS
18 SEARCH. THIS IS EVEN AFTER THIS SECOND OFFICER IS THERE
19 SO THE SAFETY OF THE OFFICER HIMSELF IS A LITTLE MORE
20 SECURE THAN WHEN IT'S JUST A LONE OFFICER, AS WE HAVE IN
21 THIS CASE.

22 THERE'S NO DISPUTE IN THIS CASE, IT'S IN THE
23 MIDDLE OF THE NIGHT, AT 11 O'CLOCK AT NIGHT. IT'S 10
24 MILES OUT OF TOWN ON A ROAD, YOUR HONOR, IN 1961.

25 YEAH, IT WAS A HIGHWAY, BUT THAT WAS A TWO-LANE

1 ROAD BACK THEN, AND IT WAS DESERTED. THIS OFFICER IS BY
2 HIMSELF, AND I THINK THAT'S IMPORTANT IN THIS CASE, YOUR
3 HONOR.

4 AS HE SAID, IT'S A SAFETY SEARCH. AS HE
5 TESTIFIED, IT'S UNDISPUTED WHETHER HE PLACED HIM UNDER
6 ARREST, WHICH HE TESTIFIED ON DIRECT HE WAS GOING TO,
7 WHICH HE HAD A RIGHT TO BECAUSE HE OBSERVED HIM
8 HITCHHIKING. HE HAD A RIGHT TO PAT HIM DOWN.

9 HE ALSO TESTIFIED TO KIND OF SEARCH HE DID IN
10 THIS CASE, THAT HE WAS ALONE. HE WAS OUT IN THE MIDDLE OF
11 NOWHERE IN THE MIDDLE OF THE NIGHT WITH THIS MAN WHO HE
12 KNEW WAS VIOLATING THE LAW. HE WAS HITCHHIKING.

13 AT THAT POINT, YOUR HONOR, HE HAD THE RIGHT TO
14 PLACE HIM UNDER ARREST. WE CAN ARGUE ABOUT CHRONOLOGY.
15 LASTLY, YOUR HONOR, I WOULD JUST ARGUE THAT IT WOULD BE
16 ABSOLUTELY UNREASONABLE FOR ANYONE TO PLACE ANYONE IN HIS
17 CAR, WHETHER HE WAS ARRESTED OR NOT, AND ASSUME FOR HIS
18 ARGUMENT HE'S NOT UNDER ARREST. HE'S GOING TO JUST
19 TRANSPORT HIM.

20 NO OFFICER IN THEIR RIGHT MIND WOULD PLACE A MAN
21 HE'S NEVER SEEN BEFORE IN HIS CAR WITHOUT PATTING HIM
22 DOWN. UNFORTUNATELY IN YOUR HONOR'S EXPERIENCE WITH LAW
23 ENFORCEMENT, WE KNOW IT'S A NECESSARY SEARCH.

24 YOUR HONOR, HE ALSO TESTIFIED IN THIS CASE ON
25 DIRECT EXAMINATION THAT HE WAS GOING TO ARREST HIM.

1 AS SUCH, THIS CAN BE JUST A SEARCH INCIDENT TO
2 ARREST, BUT, OF COURSE, HE WOULD SEARCH HIM BEFORE
3 THAT.

4 SO I THINK ON TWO DIFFERENT LEVELS THIS SEARCH
5 EXCEEDS, ASSUMING -- AND EVEN THOUGH THIS ALL
6 PREDATES TERRY, ASSUMING IT IS THE LAW, YOUR HONOR, I
7 THINK WE HAVE MORE THAN MET OUR BURDEN AS FAR AS WHAT
8 A REASONABLY PRUDENT MAN, AND THAT'S THE SATURDAY,
9 ACCORDING TO THE CASES I LOOKED AT, YOUR HONOR; THAT
10 A REASONABLY PRUDENT MAN AND AN OFFICER IN LIEUTENANT
11 MEREDITH'S POSITION ON THAT NIGHT, WHERE HE WAS, WHO
12 HE WAS WITH, WHAT HE OBSERVED, AND WHAT HE FOUND.

13 FOR HIM TO HAVE DONE ANYTHING ELSE, YOUR HONOR,
14 SIMPLY WOULDN'T HAVE BEEN PRUDENT.

15 I THINK UNDER THE TOTALITY OF THE CIRCUMSTANCES,
16 AND IT'S ALWAYS A CASE-BY-CASE. IN THIS CASE, THE
17 SEARCH WAS REASONABLE.

18 IN ADDITION TO THAT, YOUR HONOR, I THINK IT CAN
19 MERELY GO BY AS A SEARCH INCIDENT TO ARREST.
20 WHICHEVER WAY YOU WISH TO ADDRESS THAT, I THINK IT
21 MEETS BOTH OF THOSE.

22 MR. DELGADO: WELL, I'M NOT CERTAIN THE SEARCH
23 INCIDENT TO THE ARREST. THE ARREST OCCURS, THE GUN. THE
24 SEARCH IS PRIOR TO HIS FINDING THE GUN. IT CAN'T BE THE
25 SEARCH INCIDENT TO ARREST.

1 THE KEY IS DID MR. MEREDITH HAVE ARTICULABLE,
2 REASONABLY ARTICULABLE SUSPICION, NOT JUST A HUNCH, THAT
3 MR. FRIEBURGER WAS ENGAGED IN CRIMINAL ACTIVITIES SUCH
4 THAT WOULD WARRANT HIM BEING IN FEAR OF HIS LIFE OR IN
5 FEAR OF AN ACTION BY MR. FRIEBURGER, NOT BY WHAT
6 MR. MEREDITH SAID HERE TODAY.

7 THE COURT: MR. DELGADO, WE ALL KNOW WHAT
8 HAPPENED. HE WAS STOPPED FOR HITCHHIKING, WHICH WAS IN
9 VIOLATION OF TENNESSEE LAW. HE PATTED HIM DOWN. THEN HE
10 FOUND THE GUN. INSTEAD OF CHARGING HIM WITH BOTH
11 OFFENSES, HE CHARGED HIM WITH THE GREATER OFFENSE.

12 I THINK UNDER THE TOTALITY OF THE CIRCUMSTANCES,
13 THE SEARCH WAS APPROPRIATE AND REASONABLE, WHETHER YOU
14 WANT TO APPLY THE TERRY STANDARD OR NOT. YOU KNOW,
15 CLEARLY HE HAD SUSPICION WHEN HE SAW HIM VIOLATING THE
16 HITCHHIKING STATUTE. HE HAD OTHER REASONS TO STOP HIM,
17 PRACTICALLY THAT'S WHAT HAPPENED, SO I'LL DENY YOUR MOTION
18 TO SUPPRESS.

19 MR. DELGADO: ALL RIGHT.

20 THE COURT: NEXT MOTION.

21 MR. MCMAHON: YOUR HONOR, COULD I HAVE A FEW
22 MINUTES BEFORE I DO MY NEXT WITNESS?

23 THE COURT: YES. WE'LL TAKE ABOUT TEN MINUTES.

24 MR. MCMAHON: THANK YOU, YOUR HONOR.

25 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1 THE COURT: MR. SOLICITOR, TELL ME, WHAT IS THE
2 STATEMENT THAT YOU'RE TRYING TO GET? I NEVER CLEARLY
3 UNDERSTOOD WHAT THE STATEMENT EXACTLY WAS.

4 MR. MCMAHON: TO MR. HARMON?

5 THE COURT: YES.

6 MR. MCMAHON: HE WAS ASKED ABOUT THE GUN, AND HE
7 ADMITTED PURCHASING THE GUN, HE SAID ON FEBRUARY 22ND AS
8 OPPOSED TO FEBRUARY 28TH, BUT IT'S THE MENTION OF THE 32
9 HARRINGTON AND RICHARDSON, WHICH HE KNOWS WAS THAT MAKE OF
10 GUN.

11 THE COURT: YES.

12 MR. MCMAHON: I THINK IT'S HARRINGTON AND
13 RICHARDSON.

14 THE COURT: WELL, I GUESS UNLESS YOU CAN TELL ME
15 OTHERWISE, MIRANDA APPLIES TO CASES TRIED AFTER THE DATE
16 THE DECISION WAS HANDED DOWN.

17 THEY USE THE WORD CASES TRIED, SO MIRANDA WOULD
18 APPLY IN THIS SITUATION, AND THE FOUR BASIC RIGHTS UNDER
19 MIRANDA AT THAT TIME WERE THE RIGHT TO REMAIN SILENT,
20 ANYTHING THAT WAS SAID COULD BE USED AGAINST YOU IN A
21 COURT OF LAW, THE RIGHT TO A LAWYER, A FREE PRIVATE
22 LAWYER. I SEE NO EVIDENCE IN THE RECORD OF THE LAST TWO
23 PARTS. FOR THAT REASON, I WILL SUPPRESS THE STATEMENT.

24 HOWEVER, OBVIOUSLY, YOU ARE AWARE THAT IF
25 MR. FRIEBURGER TAKES THE STAND, IT CAN BE USED FOR

1 IMPEACHMENT PURPOSES.

2 MR. MCMAHON: THAT'S MY NEXT QUESTION. WOULD
3 YOU MAKE A FINDING NOW THAT THAT STATEMENT WAS GIVEN
4 FREELY AND VOLUNTARILY?

5 THE COURT: I SEE NO EVIDENCE OF ANYTHING IN THE
6 JACKSON V. DENNO HEARING. THERE WAS NO EVIDENCE OFFERED
7 AS TO ITS INVOLUNTARINESS.

8 THEREFORE, FROM THE TESTIMONY, I SAW NOTHING
9 THAT WOULD MAKE IT, AS A MATTER OF LAW, RISE TO
10 INVOLUNTARY STATEMENTS. IT CAN BE USED FOR IMPEACHMENT
11 PURPOSES BUT NOT IN YOUR CASE IN CHIEF.

12 MR. MCMAHON: THANK YOU, YOUR HONOR.

13 THE COURT: NEXT ISSUE.

14 MR. MCMAHON: THE STATE CALLS BRIAN METZ.

15 BRIAN METZ (IN CAMERA), AFTER BEING DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 THE CLERK: WOULD YOU HAVE A SEAT. STATE YOUR
18 FULL NAME FOR THE RECORD.

19 THE WITNESS: IT'S BRIAN METZ, M-E-T-Z.

20 DIRECT EXAMINATION:

21 BY MR. MCMAHON

22 Q SIR, BY WHOM ARE YOU EMPLOYED?

23 A THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

24 Q IN THE LATTER PART OF 1999, DID YOU BECOME INVOLVED
25 IN THE FOLLOW UP OF A COLD CASE INVESTIGATION OF THE

1 HOMICIDE OF JOHN ORNER?

2 A I DID.

3 Q DID YOU REMAIN INVOLVED IN THAT INVESTIGATION FROM

4 THE FALL OF 1999 ON AND UP UNTIL THE PRESENT?

5 A I DID.

6 Q AS A RESULT OF YOUR REVIEW OF THAT PARTICULAR CASE,

7 DID YOU IDENTIFY A PARTICULAR SUSPECT THAT YOU

8 ATTEMPTED TO, AND IN FACT, DID LOCATE?

9 A YES, SIR, WE DID.

10 Q WHO WAS THAT SUSPECT, AND WHERE WAS HE LOCATED AT?

11 A HE WAS ED FRIEBURGER, AND HE WAS LOCATED IN INDIANA.

12 Q NOW, DURING THE COURSE OF YOUR FOLLOW-UP, SERGEANT

13 METZ, DID YOU WORK COME IN CONTACT WITH ANY INDIANA

14 STATE POLICE OFFICER?

15 A YES, SIR, I DID.

16 Q AND WHO WAS THAT, AND HOW DID THAT ASSOCIATION COME

17 ABOUT?

18 A KNOWING THAT WE WERE GOING TO INDIANA, WE CONTACTED

19 THE INDIANA STATE PATROL. THEY ASSIGNED ROCKY STOTTS

20 TO ASSIST US IN THE CASE.

21 Q AND WAS HE AN INDIANA STATE INVESTIGATOR?

22 A HE'S AN INVESTIGATOR WITH THE INDIANA STATE PATROL.

23 Q AS PART OF YOUR INVESTIGATION, DID YOU HAVE AN

24 OCCASION TO GO TO FORT WAYNE, INDIANA, 21 OCTOBER,

25 2000?

1 A WE DID, SIR.

2 Q AND WHEN I SAY Y'ALL, WHO ALL WENT ON THAT TRIP, AND

3 WHAT WAS THE PURPOSE OF Y'ALL'S GOING THERE?

4 A MYSELF AND CARL CRAIG, WHO WORKS WITH THE SHERIFF'S

5 DEPARTMENT, WENT TO INDIANA TO TALK TO MR. FRIEBURGER

6 AND SEE WHAT HIS VERSION OF THE INCIDENT WAS.

7 Q NOW, WHAT WAS YOUR REQUEST OF DETECTIVE STOTTS, THE

8 INDIANA OFFICER?

9 A WE HAD ASKED HIM TO DO SOME BACKGROUND IN AN ATTEMPT

10 TO LOCATE THE ACTUAL ADDRESS OF MR. FRIEBURGER AND

11 ONE OTHER INDIVIDUAL, WHICH HE HAD KNOWN.

12 Q SO WHEN YOU FIRST ARRIVED THERE, I BELIEVE THAT WOULD

13 HAVE BEEN SATURDAY?

14 A WE ARRIVED ON SATURDAY EVENING, YES, SIR.

15 Q DID YOU MEET WITH DETECTIVE STOTTS?

16 A HE PICKED US UP AT THE AIRPORT.

17 Q WHAT DID YOU LEARN AS FAR AS THE WHEREABOUTS OF

18 MR. FRIEBURGER?

19 A HE WAS IN AN ADJACENT COUNTY, WHITLEY COUNTY, IT WAS

20 NEARBY, AND HE KNEW HIS ADDRESS.

21 Q KNOW, GOING ON INTO THE NEXT DAY I BELIEVE 22

22 OCTOBER, 2000, THAT SUNDAY, WHERE DID YOU AND

23 MR. CRAIG, DETECTIVE CRAIG, GO TO?

24 A WE FOLLOWED DETECTIVE STOTTS TO THE WHITLEY COUNTY

25 SHERIFF'S DEPARTMENT IN INDIANA.

1 Q AND WHERE WAS THAT IN RELATION TO WHERE Y'ALL FIRST
2 MET WITH DETECTIVE STOTTS? WAS IT CLOSER TO
3 MR. FREIBURGER'S HOME?
4 A YES, SIR. IT WAS IN THE SAME AREA AS HIS HOME, IS MY
5 UNDERSTANDING.
6 Q AND WHAT, IF ANYTHING, DID YOU AND MR. CRAIG REQUEST
7 OF MR. STOTTS AT THAT TIME, DETECTIVE STOTTS?
8 A WE ASKED DETECTIVE STOTTS TO GO TO MR. FREIBURGER'S
9 HOME TO SEE IF HE WOULD COME BACK TO THE SHERIFF'S
10 DEPARTMENT TO TALK TO US.
11 Q DID YOU HAVE AN ARREST WARRANT?
12 A NO, SIR.
13 Q AN INDICTMENT?
14 A NO, SIR.
15 Q ANY LEGAL PROCESS?
16 A NO, SIR.
17 Q AND WAS YOUR REQUEST OF MR. STOTTS, TO ASK
18 MR. FRIEBURGER TO COME VOLUNTARILY?
19 A THAT'S CORRECT.
20 Q DID EITHER YOU OR MR. CRAIG GO FROM THE WHITLEY
21 COUNTY SHERIFF'S DEPARTMENT WITH DETECTIVE STOTTS OUT
22 TO MR. FREIBURGER'S RESIDENCE?
23 A NO, SIR.
24 Q DID YOU REMAIN AT THE SHERIFF'S DEPARTMENT?
25 A WE REMAINED AT THE SHERIFF'S DEPARTMENT.

1 Q NOW, APPROXIMATELY 1:45 THAT AFTERNOON AT THE WHITLEY
2 COUNTY SHERIFF'S DEPARTMENT, WHO ARRIVED?
3 A DETECTIVE STOTTS ARRIVED IN HIS VEHICLE, AND THEN
4 MR. FRIEBURGER ARRIVED IN HIS SEPARATE VEHICLE.
5 Q SO BOTH THE DETECTIVE CAME BACK IN HIS PATROL
6 VEHICLE?
7 A YES, SIR.
8 Q HIS OFFICIAL VEHICLE, I TAKE IT?
9 A YES.
10 Q AND THEN MR. FRIEBURGER ARRIVED, AS FAR AS YOU KNOW,
11 IN HIS PERSONAL VEHICLE?
12 A YES, SIR.
13 Q AND WHERE IN THE SHERIFF'S DEPARTMENT DID
14 MR. FRIEBURGER GO?
15 A HE WAS BROUGHT TO AN OFFICE WHERE MR. CRAIG AND I
16 WERE SEATED WAITING ON HIM.
17 Q NOW, WAS THIS THE FIRST TIME, DETECTIVE METZ, YOU HAD
18 EVER BEEN IN THE WHITLEY COUNTY SHERIFF'S OFFICE?
19 A IT IS.
20 Q DO YOU KNOW WHETHER OR NOT YOU WERE IN A SECURED
21 SECTION OF THAT OFFICE OR IN A BUSINESS SECTION OF
22 THE OFFICE?
23 A IT WAS AN OFFICE SECTION OF THE OFFICE.
24 Q IT WASN'T BACK IN JAIL?
25 A NO, SIR.

1 Q WHEN MR. FRIEBURGER ARRIVED, WAS HE HANDCUFFED IN ANY
2 MANNER?
3 A NO, SIR.
4 Q WERE YOU PLANNING ON PLACING HIM UNDER ARREST AT ANY
5 TIME?
6 A NO, SIR.
7 Q NOW, WHAT HAPPENED,, WHERE DID YOU AND MR. CRAIG AND
8 MR. FRIEBURGER AND MR. STOTTS GO WHEN MR. FRIEBURGER
9 FIRST ARRIVED?
10 A WE WENT INTO AN OFFICE AT THE SHERIFF'S DEPARTMENT UP
11 THERE.
12 Q DID YOU HAVE THE ABILITY TO OBSERVE MR. FRIEBURGER
13 AND HIS DEMEANOR DURING THIS PERIOD OF TIME?
14 A YES, SIR.
15 Q HOW WERE -- IF YOU WERE, HOW WERE YOU AND MR. CRAIG
16 INTRODUCED TO MR. FRIEBURGER?
17 A DETECTIVE STOTTS INTRODUCED US AS BEING INVESTIGATORS
18 FROM COLUMBIA, SOUTH CAROLINA.
19 Q DID HE USE YOUR NAMES?
20 A HE D'D, SIR.
21 Q WERE YOU IN UNIFORM?
22 A NO, SIR.
23 Q WERE YOU IN BUSINESS CLOTHES,, BUSINESS ATTIRE? .
24 A CAUSAL CLOTHES.
25 Q CAUSAL CLOTHES BETNG A SUNDAY?

1 A YES, SIR.

2 Q OKAY. NOW, WHAT, IF ANYTHING, DID YOU THEN SAY TO

3 MR. FRIEBURGER?

4 A WE EXPLAINED TO HIM THAT WE WERE FROM COLUMBIA, SOUTH

5 CAROLINA AND HAD COME TO TALK TO HIM.

6 Q AND DID YOU EXPLAIN WHAT YOU HAD WANTED TO TALK TO

7 HIM ABOUT?

8 A I ASKED HIM IF HE HAD ANY IDEA WHAT WE WERE THERE TO

9 TALK TO HIM ABOUT.

10 Q WHAT WAS HIS RESPONSE?

11 A HE STATED HE DID NOT.

12 Q AS A RESULT OF THAT, DID YOU ELABORATE?

13 A YES, SIR, WE DID.

14 Q WHAT WAS YOUR ELABORATION?

15 A WE TOLD HIM WE WERE THERE TO TALK ABOUT A HOMICIDE

16 THAT HAD OCCURRED IN COLUMBIA IN 1961.

17 Q NOW, DID YOU HAVE THE OPPORTUNITY TO OBSERVE

18 MR. FREIBURGER'S DEemeanOR DURING THIS TIME?

19 A I DID, SIR.

20 Q COULD YOU DESCRIBE FOR THE COURT IF HIS DEemeanOR

21 CHANGED IN ANY MANNER AT THIS TIME?

22 A I NOTICED AT THE POINT HE BEGAN TO PERSPIRE ON HIS

23 FOREHEAD SLIGHTLY. HE SEEMED TO HAVE DRY THROAT, HAD

24 PROBLEMS SWALLOWING, AND HIS FACE GOT RED AND

25 FLUSHED, WHICH IT HAD NOT BEEN EARLIER.

1 Q AND THIS WAS A CHANGE YOU PERCEIVED IN YOUR
2 OBSERVATIONS?
3 A NO, SIR.
4 Q YOU HAD NEVER MET HIM BEFORE AS FAR AS ANY MEDICAL
5 PROBLEMS OR ANYTHING OF THAT NATURE?
6 A THAT'S CORRECT.
7 Q AND THIS CHANGE CAME ABOUT AFTER YOU TOLD HIM WHAT
8 YOU WANTED TO TALK TO HIM ABOUT?
9 A THAT'S CORRECT.
10 Q DID YOU TELL HIM HE WAS NOT UNDER ARREST?
11 A I TOLD HIM HE WAS NOT UNDER ARREST.
12 Q DID YOU TELL HIM HE WAS FREE TO LEAVE?
13 A HE WAS FREE TO LEAVE.
14 Q HAD HE COME TO THE SHERIFF'S OFFICE VOLUNTARILY OF
15 HIS OWN ACCORD?
16 A HE HAD.
17 Q WHAT RIGHTS, IF ANY, DID YOU AND MR. CRAIG ADVISE HIM
18 OF AT THAT TIME?
19 A I DID NOT ADVISE HIM OF HIS RIGHTS AT THAT TIME.
20 Q AND WHY WERE YOU WANTING TO TALK TO HIM? WHY HAD YOU
21 MADE THIS TRIP IN OCTOBER OF 2000?
22 A BECAUSE OF THE INFORMATION THAT WAS LISTED IN THE
23 CASE FILE LISTING HIM AS A POSSIBLE SUSPECT.
24 Q NOW, AT THIS POINT, DID YOU BEGIN A CONVERSATION WITH
25 HIM?

1 A WE DID.

2 Q WOULD YOU ADVISE THE COURT HOW THAT CONVERSATION

3 BEGAN AND HOW IT PROCEEDED?

4 A WELL, WE ASKED HIM IF HE REMEMBERED THE INCIDENT THAT

5 OCCURRED WHILE HE WAS IN THE ARMY IN COLUMBIA IN

6 1961, WHICH HE ANSWERED WITH A QUESTION, BEING "I WAS

7 IN THE ARMY IN 1961?" WE WERE LIKE, "YES, SIR."

8 Q SO HIS ANSWER TO YOU WAS IN THE FORM OF A QUESTION?

9 A YES, SIR.

10 Q AND HOW WAS THE QUESTION PUT TO Y'ALL?

11 A THE QUESTION WAS, "I WAS IN THE ARMY IN 1961?"

12 Q AND HOW DID YOU RESPOND TO THAT?

13 A WE SHOWED HIM A PICTURE OF HIM IN MILITARY UNIFORM.

14 Q AT THE TIME?

15 A IT WAS FROM 1961.

16 Q I GUESS MY QUESTION IS VERY AMBIGUOUS, YOU SHOWED A

17 PICTURE OF WHAT YOU PERCEIVED TO BE EDWARD FRIEBURGER

18 IN AN ARMY UNIFORM IN 1961?

19 A YES, SIR.

20 Q YOU SHOWED IT TO HIM IN RESPONSE TO THAT QUESTION BY

21 HIM; IS THAT CORRECT?

22 A YES, SIR.

23 Q I WANT TO SHOW YOU AN ITEM. CAN YOU IDENTIFY THAT

24 FOR US, PLEASE?

25 A THAT'S THE PICTURE WE SHOWED TO HIM, YES, SIR.

1 MR. MCMAHON: MARK THIS AS A STATE'S EXHIBIT.

2 (WHEREUPON, STATE'S EXHIBIT NO. 7 WAS MARKED FOR
3 IDENTIFICATION ONLY.)

4 BY MR. MCMAHON

5 Q STATE'S EXHIBIT NO. 7 IS A PHOTOGRAPH OF

6 MR. FRIEBURGER YOU SHOWED HIM AT THAT TIME, CORRECT?

7 A YES, SIR.

8 Q AND AFTER YOU SHOWED THAT TO HIM, WHAT WAS HIS
9 RESPONSE?

10 A HE REMEMBERED BEING IN THE ARMY AT THAT POINT. HE
11 WAS STILL A LITTLE DISTANT ABOUT BEING IN COLUMBIA AT
12 THAT POINT.

13 Q WHERE DID YOU GO -- SO IT WASN'T UNTIL AFTER YOU
14 SHOWED HIM A PHOTOGRAPH OF HIMSELF IN AN ARMY UNIFORM
15 THAT HE REMEMBERED BEING IN THE ARMY; IS THAT
16 CORRECT?

17 A YES, SIR.

18 Q NOW, DID YOU FOLLOW UP SPECIFICALLY ABOUT QUESTIONS
19 ABOUT FORT JACKSON AND COLUMBIA?

20 A WE DID, SIR.

21 Q AND WHAT WAS HIS RESPONSE TO THAT?

22 A HE EVENTUALLY REMEMBERED THAT HE HAD BEEN IN COLUMBIA
23 AT FORT JACKSON AND SEVERAL OTHER LOCATIONS AND SUCH
24 THAT HE HAD BEEN TO.

25 Q INITIALLY HE DID NOT?

1 A INITIALLY HE DID NOT.

2 Q IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q THAT WAS A QUESTION, I APOLOGIZE.

5 NOW, DID YOU QUESTION HIM ANY FURTHER ABOUT

6 HIS -- ANY LOCATIONS HE HAD BEEN TO IN THE MILITARY

7 BESIDES FORT JACKSON?

8 A WE DID.

9 Q AND WHAT LOCATION?

10 A SPECIFICALLY FORT LEAVENWORTH.

11 Q AND WHY DID YOU QUESTION HIM ABOUT FORT LEAVENWORTH?

12 A WE TALKED TO HIM ABOUT FORT LEAVENWORTH BECAUSE

13 SHERIFF SLY HAD GONE TO TALK TO HIM AT FORT

14 LEAVENWORTH AT LENGTH, AND WE WERE ATTEMPTING TO SEE

15 IF HE RECALLED, OR WHAT HIS VERSION WAS, OF THAT

16 STATEMENT GIVEN TO SHERIFF SLY.

17 Q AND WHAT WAS HIS RESPONSE CONCERNING FORT

18 LEAVENWORTH?

19 A AT FIRST HE AGAIN ANSWERED THAT WITH A QUESTION, "I

20 WAS AT FORT LEAVENWORTH?"

21 Q SO HIS RESPONSE IS NOT AN AFFIRMATIVE, "I WAS AT FORT

22 LEAVENWORTH." HIS RESPONSE IS IN THE NATURE OF A

23 QUESTION, CORRECT?

24 A CORRECT.

25 Q AND WHAT DID Y'ALL DO AT THAT POINT?

1 A WE SHOWED HIM A COPY OF HIS CRIMINAL HISTORY SHOWING
2 THAT HE HAD BEEN SENT TO FORT LEAVENWORTH.
3 Q AND AS A RESULT -- SIMILAR IN NATURE TO THE WAY YOU
4 DID WITH HIS PHOTOGRAPH; IS THAT CORRECT?
5 A YES, SIR.
6 Q AND WHAT WAS HIS RESPONSE ONCE YOU SHOWED HIM THE
7 CRIMINAL HISTORY SHOWING HIM, HIMSELF,
8 MR. FRIEBURGER, BEING AT FORT LEAVENWORTH?
9 A HE RECALLED THAT HE HAD BEEN AT FORT LEAVENWORTH.
10 Q NOW, WERE THERE OTHER PARTICULAR AREAS THAT YOU
11 QUESTIONED HIM ABOUT CONCERNING THIS INCIDENT?
12 A THERE WERE.
13 Q AND WHAT OTHER AREAS SPECIFICALLY CONCERNING THE
14 INCIDENT, SERGEANT METZ?
15 A WE INQUIRED WITH HIM ABOUT THE GUN.
16 Q AND WHAT WAS THE INQUIRY ABOUT THE GUN AND HIS
17 RESPONSES?
18 A I ASKED HIM IF HE REMEMBERED PURCHASING THE GUN IN
19 COLUMBIA. HE STATED HE DID NOT REMEMBER PURCHASING
20 THE GUN.
21 Q AGAIN, DID YOU SHOW HIM ANY DOCUMENTATION? DID YOU
22 HAVE ANY DOCUMENTATION WITH YOU ABOUT THE GUN?
23 A WE HAD A COPY OF THE PAWN REGISTER RECORDS AND SHOWED
24 THAT TO HIM WITH HIS SIGNATURE ON IT.
25 Q CAN YOU IDENTIFY THAT FOR US, PLEASE?

METZ - DIRECT (IN CAMERA)

1 A THAT'S IT. THAT'S THE COPY OF THE PAWN REGISTER
2 RECORD.

3 Q AND YOU SHOWED THIS TO HIM?

4 A WE DID.

5 Q SIMILAR IN NATURE TO THE WAY YOU SHOWED HIM HIS
6 PHOTOGRAPH?

7 A YES, SIR.

8 Q AND HIS CRIMINAL HISTORY?

9 A YES, SIR.

10 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THIS
11 ONLY AS A COURT'S EXHIBIT.

12 MR. DELGADO: YOUR HONOR, SAME PURPOSES,
13 BUSINESS RECORDS EXCEPTION AND --

14 THE COURT: I DIDN'T HEAR THE FIRST ONE.

15 MR. DELGADO: BUSINESS RECORDS EXCEPTION, NUMBER
16 ONE; NUMBER TWO, THE ANCIENT DOCUMENTS RULE. IT'S THE
17 SAME TYPE OF THING WE WENT INTO AGAIN.

18 MR. MCMAHON: JUDGE, I UNDERSTOOD LAST WEEK YOU
19 RULED ON THESE DOCUMENTS NUMERICALLY BY THE BATES STAMP
20 NUMBER.

21 THE COURT: ASSUMING YOU COULD AUTHENTICATE IT.

22 MR. MCMAHON: THIS BEING ONE OF THEM. OF
23 COURSE, THIS IS ONLY FOR THE PURPOSES OF THIS HEARING
24 ALSO, FOR THE JACKSON VS. DENNO.

25 THE COURT: AND THOSE --

1 MR. MCMAHON: I UNDERSTAND I HAVE --

2 THE COURT: THOSE PAWN RECORDS AND THERE WERE
3 ABOUT A DOZEN RECORDS, I WENT THROUGH ALL THAT STUFF. I
4 INDICATED TO YOU IF THEY CAN AUTHENTICATE THEM, THEY COME
5 IN UNDER THE ANCIENT DOCUMENTS RULE OR EITHER THEY DON'T
6 COME IN UNDER THE --

7 MR. MCMAHON: BUSINESS.

8 THE COURT: -- BUSINESS RECORDS EXCEPTION.

9 MR. DELGADO: ALL RIGHT. THAT CONFUSED ME. I
10 THOUGHT YOU HAD SAID THAT IT WOULD NOT COME IN AS ANCIENT
11 DOCUMENTS. I THOUGHT WHAT YOU HAD SAID --

12 THE COURT: WELL, IT DEPENDS ON HOW THEY
13 APPROACHED IT. I MEAN, WE DIDN'T GO THROUGH EACH ONE OF
14 THEM. I JUST TOLD THEM THAT MY GENERAL VIEW WAS THAT
15 THOSE WERE THE KIND OF DOCUMENTS THAT WOULD COME UNDER
16 EITHER ONE OF THOSE, DEPENDING ON HOW IT'S PRESENTED.

17 (WHEREUPON, COURT'S EXHIBIT NO. 7 WAS MARKED FOR
18 IDENTIFICATION ONLY.)

19 MR. DELGADO: YOUR HONOR, MY APOLOGIES, TOO.
20 THIS ONE IS DIFFERENT IN SOME WAYS, AND I'D LIKE TO BE
21 ABLE TO POINT THAT OUT TO THE COURT SO WE COULD MAYBE TAKE
22 THAT UP OR MS. HUDGINS MIGHT BE ABLE TO TAKE THAT UP IN
23 HER ARGUMENTS.

24 THE COURT: IT'S THE NATURE OF THIS.

25 MR. DELGADO: YES, SIR.

1 THE COURT: ANY FURTHER OBJECTION?

2 MR. DELGADO: YES, SIR, YOUR HONOR. THE
3 OBJECTION, YOUR HONOR, IS IT'S SUSPICIOUS ON ITS FACE.
4 NOW, LET ME SAY THIS: YOU'VE GOT TO UNDERSTAND SOMETHING,
5 WHAT IS WRITTEN ON THAT RECEIPT IS OBVIOUSLY 22. YOU CAN
6 SEE IT, AND SOMEONE HAS COME BACK ON TOP OF THAT AND PUT
7 32. THE REASON YOU KNOW IT'S A 22 IS BECAUSE IF YOU TURN
8 THAT RECEIPT OVER, ON THE BACK, IT SAYS 22.

9 THE COURT: WELL, MORE IMPORTANTLY, THOUGH, THIS
10 W9944 MATCHES IT.

11 MR. DELGADO: OKAY. I UNDERSTAND. I
12 UNDERSTAND.

13 THE COURT: I WOULD NOT SAY IT'S SUSPICIOUS ON
14 IT'S FACE. THE CORRECT SERIAL NUMBER IS THERE.

15 MR. DELGADO: ALL RIGHT.

16 THE COURT: AND YOU COULD EASILY MAKE A MISTAKE
17 OF WHAT CALIBER IT IS.

18 MR. DELGADO: WOULD THE COURT ALLOW US TO
19 INQUIRE IF THERE IS SOMETHING OF -- IN OTHER WORDS, IF ON
20 THE FACE OF THAT DOCUMENT THERE HAS BEEN REWRITING OR
21 WRITING OVER THE FACE OF THAT DOCUMENT. WOULD THAT BE
22 FAIR?

23 THE COURT: YOU CAN ASK ABOUT IT.

24 MR. DELGADO: OKAY.

25 MR. MCMAHON: YOUR HONOR, DID THAT GET MARKED?

1 THE COURT REPORTER: NOT YET.

2 MR. DELGADO: MAY WE ASK THE SOLICITOR WHERE THE
3 ORIGINAL OF THAT IS, IF IT EXISTS?

4 THE COURT: THERE WAS A CONVERSATION IN MY
5 CHAMBERS TODAY WITH MS. HUDGINS, AND MR. MCMAHON WAS
6 PRESENT. THEY INDICATED THEY DON'T KNOW IF IT EXISTS.

7 MR. DELGADO: IS THERE ANY WAY TO DETERMINE THIS
8 IS A VERIFAX COPY WAS SENT BY WHOM AND RECEIVED BY WHOM I
9 GUESS IS ANOTHER WAY TO PUT THE AUTHENTICITY TO THE TEST.
10 DOES THAT MAKE SENSE?

11 THE COURT: IT DOES. AS I UNDERSTAND, MOST ALL
12 OF THESE DOCUMENTS ARE VERIFAX, A LOT OF THEM.

13 THERE WILL -- OBVIOUSLY, THERE HAVE TO BE PEOPLE
14 TO AUTHENTICATE A COPY OF THE DOCUMENT.

15 MR. DELGADO: ALL RIGHT, SIR.

16 THE COURT: OF COURSE, RIGHT NOW WE HAVE SOME
17 THINGS TO WORK THROUGH. WE'RE JUST IN THE JACKSON V DENNO
18 HEARING. YOU MAY PROCEED.

19 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
20 PLEASE THE COURT.

21 HAVE YOU MARKED THAT, MADAM REPORTER?

22 THE COURT REPORTER: NOT YET.

23 BY MR. MCMAHON

24 Q SO THE NATURE OF THIS DOCUMENT NOW, COURT'S EXHIBIT
25 NUMBER SEVEN, YOU USED THIS IN THE SAME MANNER IN

1 WHICH YOU USED PHOTOGRAPH OF MR. FRIEBURGER,
2 COURT'S 6, PERHAPS AND ALSO HIS CRIMINAL HISTORY; IS
3 THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND WHAT WAS HIS RESPONSES ONCE HE WAS SHOWN THIS
6 DOCUMENT, COURT'S 7?

7 A HE STATED HE STILL DID NOT REMEMBER PURCHASING THE
8 GUN.

9 Q NOW, ADDITIONALLY, DID YOU ASK HIM SPECIFICALLY ABOUT
10 OTHER OCCURRENCES THAT YOU LEARNED OF IN YOUR REVIEW
11 OF THE INVESTIGATIVE POWER?

12 A YES, MA'AM.

13 Q AND WHAT OTHER OCCURRENCES DID YOU ASK HIM ABOUT?

14 A WELL, WE ASKED HIM ABOUT BEING INTERVIEWED BY SHERIFF
15 SLY WHILE HE WAS AT LEAVENWORTH.

16 Q AND AS FAR AS BEING INTERVIEWED BY SHERIFF SLY, IN
17 YOUR REVIEW, HOW MANY TIMES HAD HE BEEN INTERVIEWED
18 BY SHERIFF SLY?

19 A HE HAD BEEN INTERVIEWED TWICE, ONE AT FORT MCPHERSON
20 IN GEORGIA AND ONE AT FORT LEAVENWORTH.

21 Q AND WHAT WAS THE DEFENDANT'S RESPONSES TO YOU
22 CONCERNING THE INTERVIEW BY SHERIFF SLY?

23 A HE STATED HE DID NOT RECALL BEING INTERVIEWED.

24 Q NOW, AS A RESULT OF THESE -- OF THIS CONVERSATION AT
25 THIS POINT CONCERNING THE ARMY, FORT JACKSON AND FORT

1 LEAVENWORTH, THE GUN RECORD, AND THE INTERVIEW BY THE
2 SHERIFF, WHAT DID YOU AND MR. CRAIG THEN DO AS FAR AS
3 QUESTIONING MR. FRIEBURGER?
4 A WE BECAME CONCERNED ABOUT HIS MEMORY AND WE BEGAN TO
5 ASK HIM IF HE EVER HAD ANY TYPE OF INDUSTRIAL
6 ACCIDENTS, ANY BAD CAR WRECKS, ANY HEAD INJURIES,
7 ANYTHING SUCH AS THAT THAT WOULD CAUSE MEMORY LOSS.
8 Q LET ME SLOW YOU DOWN, INDUSTRIAL ACCIDENTS --
9 A YES, SIR.
10 Q -- HEAD INJURIES, CAR ACCIDENTS, OR ANYTHING OF THAT
11 NATURE?
12 A YES.
13 Q ALL RIGHT. AND WHAT ELSE, YOU WERE GOING INTO
14 ANOTHER AREA?
15 A I THINK I ALSO ASKED HIM IF THERE HAD BEEN ANYTHING
16 IN THE ARMY OR FORT OR ANYTHING THAT CAUSED ANY
17 INJURY.
18 Q AND WHAT WAS HIS RESPONSES CONCERNING THOSE AREAS YOU
19 HAD JUST IDENTIFIED FOR US?
20 A HE SAID THERE HAD NOT BEEN.
21 Q NO INDUSTRIAL ACCIDENTS, NO HEAD INJURIES, NO CAR
22 ACCIDENTS OR OTHER TYPE OF INCIDENTS WOULD AFFECT HIS
23 MEMORY; IS THAT CORRECT?
24 A THAT'S CORRECT.
25 Q DID YOU ASK HIM ABOUT OTHER DETAILS OF HIS LIFE?

1 A I DID.

2 Q AND WHAT OTHER DETAILS OF HIS LIFE DID YOU ASK HIM

3 ABOUT, WHAT OTHER AREAS?

4 A I ASKED HIM IF HE REMEMBERED THE HIGH SCHOOL THAT HE

5 WENT TO, WHO HIS BEST FRIEND WAS, WHERE HE HAD GROWN

6 UP, THE HOUSE HE HAD GROWN UP IN, THE MIDDLE SCHOOL

7 HE HAD GONE TO, THE ELEMENTARY SCHOOL HE HAD GONE TO.

8

9 Q AND WHAT WAS HIS MEMORY OF THOSE TYPES OF INSTANCES?

10 A HE REMEMBERED THOSE. HE REMEMBERED SOME OF HIS

11 TEACHERS, THAT TYPE OF THING.

12 Q WHAT ABOUT HIS BEST FRIEND? DID HE REMEMBER?

13 A HIS BEST FRIEND HAD GROWN UP BESIDE HIM FOR 12 YEARS.

14 HE KNEW HIM, HAD SEEN HIM.

15 Q WHO WAS THAT?

16 A MR. TILBURY.

17 Q MR. TILBURY.

18 A TILBURY.

19 Q AND THAT'S MR. TILBURY PRESENT IN THE COURTROOM

20 TODAY, I BELIEVE. STAND UP FOR ME. THIS IS

21 MR. TILBURY HERE; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q THANK YOU, MR. TILBURY.

24 YOU UNDERSTOOD HE HAD BEEN RAISED, GREW UP IN

25 THE SAME STREET AS HE HAD?

1 A THAT'S CORRECT.

2 Q IN FACT, BORN ON THE SAME DAY IN THE SAME HOSPITAL?

3 A THAT'S CORRECT.

4 Q DID YOU QUESTION MR. FRIEBURGER ABOUT FACTS, DETAILS,
5 INCIDENTS IN HIS LIFE BOTH PRE-ARMY AND POST-ARMY?

6 A YES, SIR.

7 Q AND AS FAR AS POST-ARMY, WHAT DIFFERENT AREAS DID YOU
8 QUESTION HIM ABOUT CONCERNING HIS MEMORY?

9 A WE ASKED HIM ABOUT HIS JOB EXPERIENCES, WHERE HE HAD
10 LIVED AND THAT TYPE OF THING.

11 Q WAS HE ABLE TO RELATE VARIOUS JOBS HE HELD?

12 A HE WAS.

13 Q WHAT ABOUT HIS FAMILY, FAMILY MEMBERS.

14 A HE RELATED THE INFORMATION ON HIS CHILDREN AND WHERE
15 THEY LIVED AND THAT TYPE OF THING.

16 Q AND AS FAR AS YOU KNOW, THIS WAS ACCURATE
17 INFORMATION?

18 A YES, SIR.

19 Q NOW, GOING BACK TO THAT PERIOD OF TIME IN '61 WHEN HE
20 WAS AT FORT JACKSON, WAS HE ABLE TO RELATE ANY
21 EVENTS, ANY LOCATION, ANY SPECIFICS ABOUT THE TIMES
22 HE WAS IN COLUMBIA, OR AREAS OR LOCATIONS HE WAS AT
23 IN COLUMBIA?

24 A HE WAS.

25 Q AND WHAT AREAS?

1 A HE REMEMBERED A NIGHT CLUB THAT HE HAD BEEN TO, THE
2 HAWAIIAN OR SOMETHING SUCH AS THAT.
3 Q THE HAWAIIAN STAGE DOOR, IS THAT IT?
4 A I WASN'T AROUND THEN, BUT I BELIEVE SO.
5 Q I WAS. GO AHEAD.
6 A HE REMEMBERED -- WE ASKED HIM SOMETHING ABOUT
7 CATCHING CAB RIDES. HE SAID HE USUALLY CAUGHT A
8 SHUTTLE OR A BUS INTO COLUMBIA INSTEAD OF A CAB RIDE.
9 Q DID HE SAY HE NEVER CAUGHT A CAB?
10 A I BELIEVE HE SAID HE WASN'T SURE ABOUT THAT BUT THAT
11 HE PROBABLY HAD. HE COULDN'T TELL YOU FOR SURE WHAT
12 CAB OR WHAT PERSON OR ANYTHING LIKE THAT.
13 HE REMEMBERED STAYING AT THE GRESHAM MOTEL AND
14 GOING THERE.
15 Q AS A MATTER OF FACT, IN THE CASE FILE YOU HAD A
16 RECORD?
17 A THAT'S RIGHT.
18 Q THAT APPEARED TO BE FROM THE GRESHAM HOTEL; IS THAT
19 CORRECT?
20 A THAT'S CORRECT.
21 Q WITH HIS NAME ON IT?
22 A THAT'S CORRECT.
23 Q NOW, DID YOU ASK HIM ABOUT ANY MENTAL DISORDERS OR
24 ANY MEDICAL PROBLEMS HE WAS SUFFERING FROM?
25 A WELL, IN THE LINE OF QUESTIONING, WE WERE ASKING HIM

1 ABOUT ANY OTHER HEAD INJURIES OR ANYTHING LIKE THAT,
2 YES, SIR, IF HE HAD ANY PROBLEMS, MEDICAL, MENTAL,
3 THAT WOULD CAUSE HIM TO HAVE MEMORY LOSS.

4 Q AND WHAT, IF ANYTHING, DO YOU RECALL HIM SAYING?

5 A HE STATED HE DID NOT HAVE THE BEST MEMORY IN THE
6 WORLD BUT NO, THERE WERE NO, YOU KNOW, PROBLEMS SUCH
7 AS THAT.

8 Q NOW, WHAT, IF ANYTHING, DID HE SAY ABOUT THE ARMY,
9 MR. ORNER?

10 A I DON'T RECALL IF WE SHOWED HIM A PICTURE OF
11 MR. ORNER, BUT AT SOME POINT HE MORE OR LESS TO
12 HIMSELF, "I THINK I'M GOING TO NEED AN ATTORNEY."

13 I STOPPED HIM. I SAID, YOU KNOW, "YOU'RE NOT
14 UNDER ARREST. ARE YOU SAYING THAT YOU WANT TO HAVE
15 AN ATTORNEY, OR DO YOU WANT TO KEEP TALKING TO US?"
16 HE SAID THAT HE WANTED TO KEEP TALKING TO US. HE
17 DIDN'T WANT AN ATTORNEY AT THAT TIME.

18 Q AND YOU CONTINUED TALKING TO HIM?

19 A WE DID.

20 Q NOW, THAT DAY DID YOU TAKE HIM INTO CUSTODY?

21 A NO, SIR.

22 Q DID YOU ARREST HIM IN ANY MANNER?

23 A NO, SIR.

24 Q DID YOU DEPRIVE HIM OF HIS FREEDOM IN ANY MANNER?

25 A NO, SIR.

1 Q HOW DID HE COME TO LEAVE THAT DAY?

2 A HE BASICALLY STATED THAT HE HAD PEOPLE IN HIS HOUSE

3 THAT WERE THERE VISITING HIM FROM OUT OF TOWN, THAT

4 HE NEEDED TO GO. HE HAD BEEN THERE A COUPLE OF HOURS

5 AND THAT HE COULDN'T LOSE ANY MORE TIME.. HE GOT UP

6 AND LEFT.

7 Q AS A RESULT OF SAYING THAT, HE GOT UP AND LEFT?

8 A YES, SIR.

9 Q AND YOU ALLOWED HIM TO LEAVE?

10 A YES.

11 Q THIS WAS OCTOBER 22ND, 2000?

12 A YES, SIR.

13 Q AND I BELIEVE HE WAS ARRESTED IN APRIL OF 2001?

14 A THAT'S CORRECT.

15 Q I DON'T KNOW THE EXACT DATE IN MY MIND RIGHT AT THIS

16 MINUTE BUT A NUMBER OF MONTHS LATER THAT; IS THAT

17 CORRECT?

18 A YES.

19 Q NOW, WHEN HE LEFT THAT DAY, HOW DID HE LEAVE?

20 A IN THE VEHICLE HE CAME IN. HE DROVE HIMSELF.

21 Q SO HE LEFT DRIVING?

22 A YES, SIR.

23 Q IN HIS OWN VEHICLE?

24 A YES, SIR.

25 MR. MCMAHON: THANK YOU. I HAVE NO FURTHER

1 QUESTIONS.

2 THE COURT: CROSS-EXAMINATION MR. DELGADO.

3 CROSS-EXAMINATION:

4 BY MR. DELGADO

5 Q MR. METZ, FOR THE JUDGE HAVE YOU MADE ANY NOTES
6 YOURSELF ON WHAT HAPPENED AT THE WHITLEY COUNTY
7 SHERIFF'S DEPARTMENT IN COLUMBIA CITY, INDIANA ON THE
8 AFTERNOON OF THAT SUNDAY IN OCTOBER OF 2000?

9 A NO, SIR.

10 Q YOU DON'T HAVE ANY NOTES AT ALL?

11 A I DON'T HAVE ANY THAT I MADE, NO, SIR.

12 Q SO WHAT YOU ARE DOING THEN IS YOU ARE RECITING THIS
13 FROM YOUR MEMORY THEN, RIGHT?

14 A YES, SIR.

15 Q TELL THE JUDGE EVERY -- BECAUSE I DON'T WANT -- IF
16 THIS COMES IN, I DON'T WANT TO HEAR SOMETHING FOR THE
17 FIRST TIME ON THE STAND IN FRONT OF A JURY. WHAT DID
18 HE SAY ABOUT SCHOOLS? TELL ME SPECIFICALLY WHAT HE
19 SAID ABOUT SCHOOLS.

20 A HE REMEMBERED, AND I DON'T RECALL THE TEACHERS'
21 NAMES. HE RECALLED ONE OF HIS TEACHERS. I ASKED HIM
22 SOMETHING ABOUT FAVORITE TEACHER. HE REMEMBERED A
23 FAVORITE TEACHER. I DON'T REMEMBER WHICH GRADE. HE
24 HAD SAID THE NAMES OF THE SCHOOLS HE HAD GONE TO.

25 Q WHAT WERE THE NAMES?

1 A I DON'T NOT RECALL. I DIDN'T WRITE THEM DOWN.
2 Q WHO WROTE THEM DOWN?
3 A I DON'T KNOW IF MR. CRAIG DID. I DID NOT.
4 Q THERE'S NO OTHER INDEPENDENT MEMORIALIZATION OF THAT,
5 EXCEPT WHAT YOU SAY. IN OTHER WORDS, THERE'S NO
6 TAPE-RECORDER, NO VIDEOTAPE?
7 A NO, SIR.
8 Q YOU DON'T HAVE ANY NOTES?
9 A NO, SIR.
10 Q DOES MR. CRAIG HAVE NOTES?
11 A I THINK HE DID, YES, SIR.
12 Q DO HIS NOTES REFLECT THE NAMES OF THOSE SCHOOLS?
13 A I'M SURE.
14 Q KEEP GOING. BESIDES SCHOOLS, WHAT ELSE?
15 A WHAT ELSE AS FAR AS WHAT?
16 Q WHAT HE SAID ABOUT HIS BEST FRIEND.
17 A THAT THEY HAD JOINED ON MORE OR LESS THE BUDDY PLAN
18 AND GONE INTO THE ARMY TOGETHER.
19 Q WHAT ELSE?
20 A I DON'T RECALL ANYTHING RIGHT NOW.
21 Q WHAT ABOUT HIGH SCHOOL?
22 A JUST THAT HE REMEMBERED THE HIGH SCHOOL HE WENT TO
23 AND THAT TYPE OF THING.
24 Q WHAT WAS THE HIGH SCHOOL'S NAME?
25 A I DON'T RECALL.

1 Q DO YOU HAVE ANY WAY OF BEING ABLE TO RECALL THAT FROM
2 ANY NOTES OR ANYTHING ELSE?

3 A NO, SIR.

4 Q WHERE DID HE SAY HE WORKED?

5 A I KNOW MR. CRAIG WROTE THOSE NOTES DOWN. HE WENT
6 THROUGH A CHRONOLOGY OF WHERE HE HAD WORKED, SEVERAL
7 PLANT LOCATIONS. I THINK HE RAN HIS OWN BUSINESS AT
8 ONE POINT.

9 Q IF I SHOWED YOU MR. CRAIG'S NOTES, WOULD THAT REFRESH
10 YOUR MEMORY ABOUT WHAT, WHERE --

11 A IT MAY.

12 MR. DELGADO: MAY I SEE THOSE A MINUTE?

13 MR. MCMAHON: ARE YOU GOING TO OFFER THOSE
14 NOTES, THESE TWO PAGES?

15 MR. DELGADO: JUST ONE SECOND, I APOLOGIZE.

16 (PAUSE).

17 LET ME JUST USE THOSE FOR A MOMENT.

18 BY MR. DELGADO

19 Q DO THOSE LOOK LIKE NOTES? I MEAN, FIRST OF ALL, DO
20 YOU KNOW MR. CRAIG'S HANDWRITING?

21 A YES, SIR.

22 Q DO THOSE NOTES HAVE A BATES STAMP AT THE BOTTOM OF
23 THEM, EITHER OF THEM, BY CHANCE?

24 A NO, SIR, THEY DO NOT.

25 Q ALL RIGHT. WHAT DOES IT SAY IN THERE ABOUT JOBS, IF

1 YOU COULD?

2 A IT SAID HE HAD WORKED AS A HANDYMAN FOR MILLENNIUM
3 INDUSTRIES IN LIGONIER, INDIANA FOR THE LAST FIVE
4 YEARS. HE HAD WORKED FOR G.E. IN FORT WAYNE FROM
5 1962 TO 1970, SELF-EMPLOYED FROM '70 TO '73.
6 NABISCO, HE WASN'T SURE ABOUT THE DATES, FOR FIVE
7 YEARS, AND LANDSCAPING FROM '78 TO '95.

8 Q ALL RIGHT, SIR. DID HE EVER TELL YOU ANYTHING ELSE
9 ABOUT BEING INVOLVED IN A TRAFFIC ACCIDENT WHERE, AS
10 A MATTER OF FACT, HIS WIFE WAS INVOLVED WHERE SHE HAD
11 SCARING THAT SHE HAS TO THIS DAY? DID HE SAY
12 ANYTHING ABOUT THAT?

13 A NO, SIR.

14 Q THERE MUST HAVE BEEN SOMETHING, MR. METZ, THAT WOULD
15 HAVE INDICATED TO YOU ALL BESIDES THE QUESTIONING,
16 "DID YOU PURCHASE THE GUN IN COLUMBIA?"

17 "I DON'T REMEMBER PURCHASING THE GUN."

18 YOU TALKED WITH HIM ABOUT OTHER OCCURRENCES,
19 THOSE ARE THE TWO THINGS BY SHERIFF SLY, CAN'T RECALL
20 BEING INTERVIEWED BY SLY, AND THEN YOU BEGAN TALKING
21 TO HIM ABOUT HIS MEMORY, THE REASON FOR POSSIBLE LOSS
22 OF MEMORY, INDUSTRIAL ACCIDENTS, OR CAR ACCIDENTS, OR
23 ANYTHING ELSE THAT WOULD IMPACT HIS MEMORY. WOULD
24 THAT BE FAIR?

25 A I'M NOT SURE WHAT THE QUESTION IS.

1 Q ALL RIGHT. THE POINT IS THAT'S WHAT YOU TALKED TO
2 HIM ABOUT. YOU ALL NOTICED HE WAS HAVING PROBLEMS
3 WITH MEMORY, RIGHT?
4 A IN CERTAIN AREAS, YES, SIR.
5 Q BUT IN CERTAIN AREAS, YOU SAY HE WASN'T.
6 A THAT'S CORRECT.
7 Q AND THOSE CERTAIN AREAS WOULD BE WHAT THAT HE DIDN'T
8 HAVE PROBLEMS WITH?
9 A THAT HE DID NOT HAVE PROBLEMS WITH?
10 Q DID NOT HAVE PROBLEMS WITH, YES, SIR.
11 A HE DIDN'T HAVE PROBLEMS IN HIS PERSONAL LIFE. HE
12 DIDN'T HAVE PROBLEMS REMEMBERING.
13 Q WHAT ABOUT HIS PERSONAL LIFE? LET ME BACK UP.
14 A HE TALKED ABOUT HIS CHILDREN, HE TALKED ABOUT HIS
15 WIFE.
16 Q WHAT DID HE SAY ABOUT HIS CHILDREN?
17 A THE LOCATIONS WHERE THEY LIVED. HE SPOKE ABOUT
18 GRANDKIDS, TALKED ABOUT HIS WIFE, I BELIEVE, HOW LONG
19 THEY HAD BEEN MARRIED OR WHEN THEY HAD GOTTEN
20 MARRIED.
21 Q SO YOU SAY HE REMEMBERED SOME THINGS AND APPARENTLY
22 DIDN'T REMEMBER OTHER THINGS, AND YOU ALL WERE ON
23 ALERT AS A RESULT OF THAT?
24 A YES.
25 Q DID ANYTHING HE SAY TO YOU AT THE WHITLEY COUNTY

1 SHERIFF'S DEPARTMENT, ON THAT AFTERNOON IN OCTOBER OF
2 2000, INCULPATE HIMSELF IN THIS CRIME? BY THAT I
3 MEAN IMPLICATE HIMSELF IN ANY WAY.
4 A AS FAR AS HIM SAYING ANYTHING THAT HE DID?
5 Q YES, SIR.
6 A NOT IN THAT SENSE, NO, SIR.
7 Q WELL, IN ANY OTHER SENSE THEN?
8 A NO, SIR. IT WAS JUST THE MEMORY LOSS.
9 Q THE MEMORY LOSS.
10 A CORRECT.
11 Q YOU ALL WENT UP THERE BECAUSE YOU THOUGHT -- YOU AND
12 MR. CRAIG THOUGHT HE WAS A POSSIBLE SUSPECT, I THINK
13 WAS YOUR WORDS, IS THAT FAIR?
14 A YES, SIR.
15 Q WASN'T HE AT THAT TIME THE ONLY SUSPECT?
16 A THERE HAD BEEN OTHER SUSPECTS MENTIONED IN THE CASE
17 FILE AND, OF COURSE, WITH A FILE THAT WAS
18 40-SOMETHING YEARS OLD, THERE COULD BE SOMETHING
19 MISSING. I WAS WONDERING WHY THERE WAS NOTHING ELSE
20 THERE, SO I DIDN'T KNOW THE SITUATION. I NEEDED TO
21 GO TALK TO HIM TO FIND OUT.
22 Q WOULD IT BE FAIR TO SAY, SIR, THAT MR. CRAIG -- WHO
23 WAS THE LEAD INVESTIGATOR IN THIS MATTER?
24 A I DON'T KNOW THAT THERE WAS A LEAD INVESTIGATOR. WE
25 WORKED TOGETHER.

1 Q ALL RIGHT, SIR. BUT YOU WERE ASSIGNED TO THE
2 DETECTIVE DIVISION -- PRIMARILY, MR. CRAIG IS
3 ASSIGNED WITH THE COLD CASE UNIT.

4 A YES, SIR.

5 Q ALL RIGHT. YOU, NOT ASSIST HIM BUT IN OTHER WORDS,
6 YOU WORK WITH HIM, BUT YOUR PRIMARY DUTIES ARE WITHIN
7 THE DETECTIVE DIVISION OF THE RICHLAND COUNTY
8 SHERIFF'S DEPARTMENT?

9 A THAT'S CORRECT.

10 Q SO IF YOU WENT UP THERE TO INTERVIEW A POSSIBLE
11 SUSPECT, AND THAT'S WHAT YOU TOLD HIM THAT'S WHY YOU
12 AND MR. CRAIG WERE THERE, THAT HE WAS A POSSIBLE
13 SUSPECT?

14 A THAT'S CORRECT.

15 Q WHEN YOU SAID TO HIM -- YOU ASKED HIM IF HE WAS IN
16 THE ARMY IN 1961, IS THAT HOW YOU PHRASED THE
17 QUESTION? BECAUSE WE DON'T HAVE ANY RECOUNTING OF
18 IT, TELL US WHAT YOU SAID.

19 A TO THE BEST OF MY RECOLLECTION, IT WAS, "DO YOU
20 REMEMBER BEING IN THE ARMY IN 1961?"

21 Q WOULD THAT HAVE THREE POSSIBLE PARTS TO IT, MR. METZ,
22 WERE YOU IN THE ARMY, IN COLUMBIA, IN 1961?

23 A IT COULD, SIR.

24 Q JUST ONE SECOND PLEASE.

25 (PAUSE).

1 OH, EXCUSE ME, THE PLACES IN COLUMBIA THAT YOU
2 TALKED TO HIM ABOUT, HE RECALLS A NIGHT CLUB, THE
3 HAWAIIAN SOMETHING OR ANOTHER, CORRECT, SIR?
4 A I THINK THERE WAS ONE OTHER THAT HE MENTIONED, BUT I
5 DON'T RECALL THE NAME OF IT. I REMEMBER THE HAWAIIAN
6 JUST BECAUSE OF THAT NAME, FOR SOME REASON, AND THEN
7 THE GRESHAM, I REMEMBER THAT.
8 Q WELL, DO MR. CRAIG'S NOTES HAVE ANYTHING ABOUT THE
9 OTHER CLUBS?
10 A I WOULD HAVE TO READ THEM, SIR, TO MAKE SURE. I
11 DON'T KNOW IF THEY HAVE THEM OR NOT, SIR.
12 Q SO YOU SAID SOMETHING AND THE HAWAIIAN CLUB,
13 ACCORDING YOUR MEMORY, AND THE GRESHAM HOTEL, RIGHT?
14 A YES, SIR.
15 Q BESIDES THAT, DOES HE RECALL ANYTHING ELSE?
16 A HE RECALLED COLUMBIA IN GENERAL AND, YOU KNOW, AFTER
17 WE TALKED TO HIM ABOUT IT.
18 Q WHAT ELSE DID HE RECALL IN GENERAL?
19 A JUST THAT HE REMEMBERED BEING THERE. YOU KNOW, WE
20 DIDN'T GO INTO A LOT OF DETAIL IN THAT.
21 Q HE DID NOT OR YOU DID NOT?
22 A WE DIDN'T PERCEIVE WE NEEDED TO ASK A LOT OF
23 QUESTIONS ON THAT.
24 Q HE DOES SAY TO YOU, "I DON'T HAVE THE BEST MEMORY IN
25 THE WORLD?"

1 A HE SAID SAY SOMETHING LIKE THAT, YES, SIR.

2 Q HOW LONG AFTER THAT TIME, SIR, DID HE EITHER REQUEST

3 A LAWYER OR SAY THAT "I NEED A LAWYER." WAS THE WORD

4 "LAWYER" MENTIONED? LET ME PUT IT THAT WAY.

5 A HE WAS LOOKING AT SOMETHING. LIKE I SAID, I DON'T

6 REMEMBER IF IT WAS PICTURE OF MR. ORNER OR WHAT IT

7 WAS. IT MIGHT HAVE BEEN THE STATEMENT FROM -- THE

8 CRIMINAL HISTORY FROM LEAVENWORTH, I DON'T RECALL,

9 BUT AT ONE POINT HE -- AT FIRST HE SAID, "I THINK I'M

10 GOING TO NEED AN ATTORNEY" OR TO THAT EFFECT. IT WAS

11 MORE OR LESS TO HIMSELF, BUT I STOPPED HIM AND ASKED

12 HIM WHAT HE MEANT BY THAT.

13 Q AND WHAT DID HE RESPOND?

14 A JUST THAT HE KNEW THAT THIS WAS PRETTY SERIOUS AND

15 THAT HE WAS GOING TO NEED AN ATTORNEY, BUT THAT HE

16 DID NOT NEED ONE AT THAT TIME.

17 Q DID Y'ALL TELL HIM THAT HE WAS MORE THAN JUST A

18 POSSIBLE SUSPECT AT THAT TIME?

19 A IN RELATION TO THAT STATEMENT OR AT ALL?

20 Q YES, SIR. AT ANY TIME, AFTER THE INITIAL TIME, DID

21 YOU TELL HIM HE WAS A POSSIBLE SUSPECT?

22 A NO, SIR.

23 Q DID EITHER YOU OR MR. CRAIG SAY TO HIM IT'S OUR

24 EVALUATION THAT YOU ARE A SUSPECT IN THIS MANNER?

25 A YES, SIR.

1 Q WHO TOLD HIM THAT?

2 A I THINK WE BOTH DID.

3 Q AND WHEN DID YOU TELL HIM THAT, SIR?

4 A SEVERAL TIMES DURING THAT INTERVIEW.

5 Q SO YOU GO UP THERE AND TELL HIM HE'S A POSSIBLE
6 SUSPECT TO INITIATE THE MEETING, AND THEN AS THE
7 MEETING STARTS, YOU ALL THEN START SAYING TO HIM THAT
8 HE IS MORE THAN A POSSIBLE SUSPECT, HE IS A SUSPECT.

9 A YES, SIR.

10 Q IS THAT CORRECT?

11 A YES, SIR.

12 Q HE DECIDES HE DOESN'T NEED A LAWYER, BUT AT LEAST THE
13 CONVERSATION, THE INTERROGATION INTERVIEW ENDS SOME
14 SHORTER TIME AFTER THAT, CORRECT?

15 A HE ACTUALLY MADE REFERENCE TO AN ATTORNEY TWICE. THE
16 FIRST ONE WAS NOT TOO LONG INTO THE INTERVIEW.

17 HE THEN LATER MADE ANOTHER REFERENCE, AND THAT'S
18 WHEN I STOPPED HIM AGAIN AND SAID NOW, YOU SAID THAT
19 EARLIER. YOU KNOW, I NEED TO MAKE SURE. I MEAN, ARE
20 YOU ASKING FOR AN ATTORNEY? DO YOU WANT AN ATTORNEY
21 BEFORE WE GO ON?

22 HE STATED THAT HE DID NOT, BUT THAT HE KNEW HE
23 WAS GOING TO NEED AN ATTORNEY. IT WAS SHORTLY AFTER
24 THAT THAT HE TERMINATED THE INTERVIEW.

25 Q NOW, I'M CONFUSED. I DIDN'T KNOW THAT HE HAD

1 MENTIONED THE WORD "ATTORNEY" TWICE. THE
2 CONVERSATION, INTERVIEW, INTERROGATION LASTED SOME
3 TWO HOURS?
4 A YES, SIR.
5 Q IN THAT SPACE OF TWO HOURS, WHEN IS THE FIRST TIME
6 THAT ED FRIEBURGER SAYS THE WORD "LAWYER"? HE SAYS
7 IT TWICE?
8 A YES, SIR. HE SAYS IT TWICE.
9 Q ONCE EARLY IN THE CONVERSATION AND ONCE LATER IN THE
10 CONVERSATION?
11 A CORRECT.
12 Q WHEN DOES HE SAY IT EARLIER IN THE CONVERSATION?
13 A AS I SAID BEFORE, THAT WAS EARLIER WHEN HE HAD LOOKED
14 AT ONE OF THE DOCUMENTS. I DON'T REMEMBER WHAT IT
15 WAS.
16 Q AND THEN HE SAYS, BUT I'LL CONTINUE TO TALK WITH YOU?
17 A YES, SIR.
18 Q HE CONTINUES TO TALK WITH YOU AND A LOT OF THIS OTHER
19 STUFF COMES OUT ABOUT MEMORY, PLACES IN COLUMBIA,
20 THAT TYPE OF THING.
21 A YES, SIR.
22 Q AND THEN HE SAYS, "I THINK I NEED TO GET A LAWYER"
23 AGAIN, AND AT THAT TIME YOU ALL HAD TOLD HIM HE WAS
24 MORE THAN JUST A POSSIBLE SUSPECT, CORRECT?
25 A THE WAY I UNDERSTOOD IT WAS HE SAID, AND I ASKED HIM,

1 "ARE YOU SAYING THAT YOU NEED TO HAVE AN ATTORNEY
2 NOW?"

3 I EXPLAINED TO HIM, "YOU'RE NOT UNDER ARREST.
4 WE CAME HERE TO TALK TO YOU, TO GET YOUR SIDE."

5 Q YOU WERE THERE TO HELP HIM, RIGHT, MR. METZ?

6 A I WAS THERE TO FIND OUT WHAT HIS STORY WAS, YES, SIR.

7 Q SO THE SECOND TIME HE SAYS "ATTORNEY", HOW LONG AFTER
8 THAT DOES THE CONVERSATION END?

9 A NO MORE THAN 30 MINUTES, SOMEWHERE IN THAT TIME.

10 Q AND HE'S THE ONE THAT AFFIRMATIVELY TERMINATES THAT
11 CONVERSATION BY GETTING UP AND LEAVING THE SHERIFF'S
12 DEPARTMENT, CORRECT, SIR?

13 A YES.

14 Q NOW, DURING THAT TWO HOURS, TELL US HOW LONG
15 INVESTIGATOR STOTTS WAS PRESENT IN THE ROOM.

16 A HE WAS THERE FOR THE BEGINNING OF THE INTERVIEW. HE
17 HAD GONE OUT IN AN ATTEMPT TO LOCATE MR. TILBURY AND
18 CAME BACK AT SOME POINT, BUT I'M NOT SURE HOW LONG HE
19 WAS IN THE ROOM, IF ANY, AFTER THAT.

20 Q WELL, LET'S TRY TO PUT IT DOWN.

21 A WE BROKE IT AT ONE TIME, AND I WENT TO TALK TO
22 DETECTIVE STOTTS. I KNOW HE WAS BACK IN THE
23 BUILDING, BUT I DON'T KNOW IF HE CAME BACK INTO THE
24 --

25 Q SO ONE TIME YOU LEFT MR. CRAIG ALONE WITH

1 MR. FRIEBURGER?

2 A I BELIEVE MR. FRIEBURGER WAS ALONE.

3 Q OH, MR. FRIEBURGER WAS ALONE, IN THE ROOM BY HIMSELF?

4 A YES, SIR.

5 Q WHERE WAS MR. CRAIG?

6 A IN THE HALLWAY WITH MYSELF AND MR. STOTTS.

7 Q HOW LONG INTO THE TWO HOURS WAS THAT?

8 A PROBABLY HALFWAY.

9 Q SO HALFWAY INTO THE TWO HOURS, THE TWO OF YOU LEFT

10 AND WERE OUTSIDE IN THE HALLWAY OR WHEREVER IT IS

11 TALKING TO MR. STOTTS?

12 A YES, SIR.

13 Q ALL RIGHT, SIR. APPROXIMATELY AN HOUR INTO THE

14 TWO-HOUR THE CONVERSATION?

15 A THAT'S MY RECOLLECTION, YES, SIR.

16 Q ALL RIGHT. LET'S START FROM THE START AGAIN. IF

17 IT'S A TWO-HOUR CONVERSATION HOW LONG -- ARE THERE

18 THREE LAW ENFORCEMENT OFFICERS AND ED FRIEBURGER IN

19 THE ROOM?

20 A TO BEGIN WITH, YES, SIR.

21 Q AND HOW LONG BEFORE MR. STOTTS, THE THIRD LAW

22 ENFORCEMENT OFFICER FROM WHITLEY COUNTY, HOW LONG IS

23 IT BEFORE HE LEAVES AND DOES SOMETHING ELSE?

24 A I DIDN'T TIME IT. IT WASN'T VERY LONG.

25 Q FIVE MINUTES?

- 1 A I WOULD SAY LONGER THAN THAT.
- 2 Q TEN MINUTES?
- 3 A IN THE TEN, 15-MINUTE RANGE, SOMEWHERE IN THERE.
- 4 Q SO FOR THE FIRST TEN TO 15 MINUTES HE'S THERE. THEN
- 5 HE LEAVES. DOES HE EVER COME BACK INTO THE OFFICE?
- 6 A I DON'T RECALL IF HE DID COME BACK IN THE OFFICE.
- 7 IT'S MY RECOLLECTION --
- 8 Q BY THE OFFICE I MEAN WHERE YOU AND MR. FRIEBURGER AND
- 9 MR. CRAIG WERE?
- 10 A THERE AGAIN, I'M NOT SURE IF HE CAME BACK IN. IF HE
- 11 DID, MY RECOLLECTION WAS JUST TO LET US KNOW HE WAS
- 12 BACK TYPE OF THING.
- 13 Q WAS HE THERE WHEN THE CONVERSATION TERMINATED WHEN
- 14 MR. FRIEBURGER LEFT THE OFFICE?
- 15 A HE WAS OUTSIDE OF THE OFFICE BUT, IN THE WHITLEY
- 16 COUNTY SHERIFF'S DEPARTMENT AT THE TIME.
- 17 Q SO HE'S THERE FOR TEN, 15 MINUTES, LEAVES. THE NEXT
- 18 TIME YOU SEE HIM IS HALFWAY INTO THE CONVERSATION OR
- 19 THE TWO HOURS YOU ALL GO OUTSIDE, AND YOU MET
- 20 MR. STOTTS AGAIN?
- 21 A I KNEW THAT HE WAS THERE.
- 22 Q OKAY. WHAT WERE YOU ALL TALKING ABOUT, YOU,
- 23 MR. CRAIG, AND MR. STOTTS?
- 24 A IN THE HALLWAY?
- 25 Q YES, SIR.

- 1 A JUST THE GENERAL NATURE OF THE WAY THE INTERVIEW WAS
2 GOING AND ALSO HIS LOCATING MR. TILBURY.
- 3 Q AND WHAT DID YOU SAY TO EACH OTHER ABOUT HOW THE
4 GENERAL NATURE OF THE CONVERSATION WAS GOING?
- 5 A THE GENERAL NATURE OF IT?
- 6 Q YES.
- 7 A THAT HE WAS TALKING. HE WOULD CONTINUE TO TALK TO
8 US, BUT THAT IT WAS OBVIOUS HE DID NOT WANT TO TALK
9 ABOUT CERTAIN THINGS.
- 10 Q SO YOU SAY HIS MEMORY IMPACTS WHAT HE DIDN'T WANT TO
11 SAY TO YOU ALL; IS THAT CORRECT?
- 12 A IT APPEARED, THAT WAY, YES.
- 13 Q HAVE YOU HAD AN OPPORTUNITY, SIR, TO TALK TO ANY
14 FAMILY MEMBERS, MR. METZ, ABOUT ANY POSSIBLE LOSS OF
15 MEMORY THAT THE FAMILY WOULD BE ABLE TO RECOUNT FOR
16 YOU?
- 17 A ABOUT LOSS OF MEMORY?
- 18 Q YES, SIR.
- 19 A NO, SIR.
- 20 Q HAVE YOU TALKED TO ANYBODY IN THE FAMILY?
- 21 A HIS SON-IN-LAW, I BELIEVE, CALLED ME JUST A MONTH OR
22 SO AGO.
- 23 Q HAS ANYBODY GIVEN YOU INFORMATION ABOUT LOSS OF
24 MEMORY BY ED FRIEBURGER?
- 25 A JUST THROUGH THE SOLICITOR'S OFFICE.

1 Q AND WHAT DID THEY SAY?

2 A SOMETHING ABOUT A TEST HE HAD TAKEN.

3 Q AN ARSENIC CONCENTRATION, A CHRONIC ARSENIC
4 CONCENTRATION LEVEL.

5 A YES, SIR, THAT'S WHAT I UNDERSTAND.

6 Q DO THEY TELL YOU ABOUT TWO, WHAT THEY CALL CLOSED
7 HEAD INJURIES, AS A RESULT OF AUTOMOBILE ACCIDENTS HE
8 HAS SUFFERED?

9 A I HAVE NOT HEARD THAT.

10 Q DO THEY TELL YOU ANYTHING ABOUT THE DOCTORS THAT WE
11 HAVE RETAINED, TALKING ABOUT LOSS OF MEMORY AS A
12 RESULT OF DEMENTIA? HAVE THEY SAID ANYTHING TO YOU
13 ABOUT THAT?

14 A NO, SIR.

15 Q KNOWING THAT, DO THEY GIVE YOU MORE INFORMATION ABOUT
16 WHAT YOU OBSERVED IN OCTOBER IN WHITLEY COUNTY,
17 INDIANA?

18 A MY OBSERVATIONS WOULD STILL BE THE SAME AS WHAT I
19 SAW.

20 Q SO THE MEMORY AND THE LOSS THAT INITIALLY YOU ALL
21 QUESTIONED DOESN'T CHANGE. YOU STILL -- IT'S NOT
22 MEMORY LOSS. HE'S JUST NOT GOING TO TALK ABOUT
23 CERTAIN THINGS, CORRECT?

24 A THAT WAS MY OBSERVATION, YES.

25 Q IS THERE ANYTHING HE SAYS THAT IMPLICATES HIM IN THIS

1 CRIME IN ANY WAY AS A RESULT OF THE INTERVIEW IN
2 WHITLEY COUNTY?

3 A NO, SIR.

4 MR. DELGADO: JUST ONE SECOND PLEASE, SIR.

5 (PAUSE).

6 BY MR. DELGADO

7 Q DID YOU VERIFY ANY OF THAT, MR. METZ? LET'S TALK
8 ABOUT THE JOBS, OKAY. DID YOU VERIFY THAT OR DID YOU
9 JUST TAKE WHAT HE SAID TO YOU AND BECAUSE HE WAS ABLE
10 TO SAY CERTAIN THINGS, YOU TOOK THAT AS GOOD MEMORY
11 ABOUT CERTAIN THINGS IN HIS LIFE?

12 I GUESS WHAT I'M SAYING IS DID YOU EVER CHECK TO
13 SEE WHETHER HIS MEMORY WAS, IN FACT, CORRECT?

14 A NO, SIR.

15 Q TELL US ABOUT WHAT WAS IT, WESTINGHOUSE, G.E., WHAT
16 WAS IT?

17 A IT WAS MILLENNIUM INDUSTRIES AND SEVERAL OTHERS.

18 Q MR. METZ, IF I SAID TO YOU HE HAS NEVER WORKED A DAY
19 IN HIS LIFE AT WESTINGHOUSE, AND IT'S HIS WIFE WHO
20 WORKED AT WESTINGHOUSE FOR SIX YEARS, WOULD THAT BE
21 KIND OF AN INDICATOR THAT MAYBE HIS MEMORY IS NOT
22 WHAT YOU THINK IT IS?

23 A IT COULD BE.

24 MR. DELGADO: THANK YOU.

25 THE COURT: ANYTHING ELSE ON REDIRECT?

1 MR. MCMAHON: I'M SORRY, YOUR HONOR?
 2 THE COURT: ANYTHING ELSE ON REDIRECT?
 3 MR. MCMAHON: NO, SIR, YOUR HONOR.
 4 THE COURT: THANK YOU. YOU MAY STEP DOWN.
 5 ANY FURTHER WITNESSES ON THIS ISSUE?
 6 MR. MCMAHON: NO, SIR.
 7 THE COURT: MR. DELGADO?
 8 MR. DELGADO: YOUR HONOR, NO, SIR.
 9 YOUR HONOR, YES, I'M SORRY, THERE IS.
 10 YOUR HONOR, WE CALL MS. ELAINE FRIEBURGER.
 11 MR. MCMAHON: WELL, I ASSUME THAT WOULD GO TO
 12 THE ISSUE OF VOLUNTARINESS?
 13 MR. DELGADO: NO, SIR, THE ACCURACY OF THAT
 14 STATEMENT.
 15 THE COURT: THAT'S FOR TOMORROW. THAT'S FOR THE
 16 TRIAL.
 17 MR. DELGADO: YOUR HONOR, CAN I INQUIRE WITH THE
 18 COURT AS TO WHAT PART OF THAT STATEMENT IS RELEVANT UNDER
 19 A 403 ANALYSIS?
 20 THE COURT: I DON'T KNOW WHAT THE STATE'S THEORY
 21 IS.
 22 MR. DELGADO: OKAY. JUDGE, THE PROBLEM IS THAT
 23 WHEN THAT STATE'S THEORY COMES OUT, IT'S TOO DOGGONE LATE
 24 FOR ME TO OBJECT TO IT. THAT'S THE PROBLEM, SEE.
 25 I GUESS WHAT I'M SAYING IS WHAT IN THAT

1 STATEMENT IS RELEVANT? HOW ABOUT THAT?

2 THE COURT: WELL, THE WAY THEY PUT IT FORTH IS
3 NOT AS TROUBLESOME AS IT WAS THE OTHER DAY. I'M NOT GOING
4 TO LET THEM TESTIFY TO A CONCLUSION THAT HE HAS SELECTIVE
5 MEMORY, BUT AS TO OBSERVATIONS, HE DIDN'T ANSWER THIS
6 QUESTION, HE DID ANSWER THAT QUESTION.

7 THAT'S CLEARLY, DEMEANOR AND CLEARLY ADMISSIBLE
8 TO SHOW, I ASSUME, THE STATEMENT. I DON'T WANT TO BE -- I
9 GUESS WHAT THEY'RE TRYING TO SAY IS HE WAS EVASIVE AND
10 EVASIVENESS MEANS, FROM THE STATE'S THEORY, THAT IS A SIGN
11 OF GUILT. YOUR SIDE OF IT IS IT'S A LOSS OF MEMORY.
12 THAT'S A QUESTION OF FACT FOR THE JURY.

13 MR. DELGADO: DOES MY INVOCATION OF 403 HAVE ANY
14 WEIGHT AT ALL WITH THE COURT? IN OTHER WORDS, DOES THE
15 PREJUDICE SUBSTANTIALLY OUTWEIGH WHATEVER PROBATIVE VALUE
16 MAY BE INHERENT IN WHATEVER THEY'RE SAYING?

17 THE COURT: I DON'T SEE THAT.

18 MR. DELGADO: OKAY.

19 THE COURT: I DO SEE TWO THINGS IN THE STATEMENT
20 THAT CAUSES ME -- THERE'S ONE THING THAT CAUSES ME
21 CONCERN.

22 IT'S GOING TO BE -- AND I SEE AN OBJECTION
23 COMING TO WHEN WE SHOWED HIM THE CRIMINAL HISTORY.

24 MR. DELGADO: YES, SIR.

25 THE COURT: I THINK YOU'RE GOING TO HAVE TO

1 SANITIZE THAT AND SAY -- SHOW HIM THE RECORDS ABOUT HIS
2 STAY AT FORT LEAVENWORTH OR HIS ASSIGNMENT AT FORT
3 LEAVENWORTH. THAT WOULD PASS THE MUSTER, BUT HIS
4 STATEMENT OF CRIMINAL HISTORY, THAT'S AN ATTACK ON
5 CHARACTER.

6 MR. DELGADO: JUDGE, THAT'S KIND OF LIKE SAYING
7 YOUR ASSIGNMENT AT SING SING.

8 THE COURT: HE COULD HAVE BEEN A GUARD. HE
9 COULD HAVE BEEN A GUARD.

10 MR. DELGADO: WELL.

11 THE COURT: IT'S GOING TO COME OUT, I ASSUME, HE
12 WAS A.W.O.L. AT SOME POINT.

13 MS. HUDGINS: I'LL BE ADDRESSING THAT ISSUE A
14 LITTLE BIT LATER. I HAVE A MOTION.

15 MR. DELGADO: COULD WE JUST -- I THOUGHT THE
16 SAME THING ABOUT THAT, BUT HOW ABOUT RECORDS WHILE HE WAS
17 IN THE MILITARY? IT'S AT ARMY DISCIPLINARY BARRACKS.

18 THE COURT: AS LONG AS THEY DON'T SAY CRIMINAL
19 HISTORY. YOU KNOW, I WAS SURPRISED, THERE WEREN'T BUT
20 ABOUT NINE OR TEN MILITARY PEOPLE ON THAT WHOLE PANEL.
21 THERE ARE VERY FEW MILITARY PEOPLE ON THAT JURY. THEY'RE
22 NOT GOING TO KNOW WHAT FORT LEAVENWORTH IS.

23 MR. DELGADO: YOUR HONOR, I SIMPLY SAY THAT I
24 THINK THE STATEMENT IS MORE PREJUDICIAL THAN PROBATIVE ON
25 ANY ISSUE. I UNDERSTAND THE COURT'S POSITION. I SIMPLY

1 NEED TO PLACE THAT ON THE RECORD.

2 THANK YOU.

3 THE COURT: OKAY. I DENY YOUR RELIEF UNDER 603,
4 BUT I'LL GRANT YOUR RELIEF ON 608 AS TO CRIMINAL HISTORY.

5 NEXT ISSUE?

6 MR. MCMAHON: JUDGE, I'M ASSUMING THEN THE
7 JACKSON VS. DENNO RULING IS IT WAS FREELY AND VOLUNTARILY?

8 THE COURT: NUMBER ONE, IT WAS NOT A CUSTODIAL
9 PROCEEDING. HE WAS FREE TO LEAVE AND IT WOULD NOT HAVE
10 REQUIRED THE WARNINGS.

11 MR. MCMAHON: AND JUDGE, THAT WOULD BE ALL THE
12 WITNESSES I WOULD HAVE, I THINK, FOR MY MOTIONS AT THIS
13 TIME.

14 THE COURT: DO YOU HAVE ANY OTHER MOTIONS I NEED
15 TO HEAR BEFORE WE START TOMORROW?

16 MR. MCMAHON: JUDGE, THE ONLY ISSUE I'D HAVE IS
17 WHEN MR. DELGADO CROSS-EXAMINED LIEUTENANT METZ ABOUT
18 CLOSED HEAD INJURIES, WE HAVE NO DISCOVERY AS TO THOSE
19 ISSUES.

20 IF HE'S GOING TO GET INTO THAT, I'D LIKE TO BE
21 PROVIDED THE RECORDS. AT LEAST I HAVE NOT SEEN ANY.

22 MR. DELGADO: I THINK DR. WATTS SAID THAT. IT
23 MAY BE IN HER NOTES.

24 MS. CAMPBELL: WE DON'T HAVE ANY -- I ASSUME
25 IT'S MEDICAL RECORDS, LIKE CLOSED HEAD INJURIES. I DON'T

1 KNOW -- HE'S JUST GOING TO HAVE -- IF THOSE ARE RECORDS
2 SHE RELIED ON, I THINK WE'RE ENTITLED TO THEM
3 ADDITIONALLY. IF THOSE ARE RECORDS HE INTENDS TO
4 INTRODUCE, WE JUST DON'T HAVE A COPY OF THEM.

5 MR. DELGADO: YOUR HONOR, IT MAY LITERALLY BE IN
6 A BIG STACK OF MATERIALS, A GOOD TWO, THREE INCHES THICK.
7 I'LL TRY TO FIND THAT OUT BY DR. WATTS AND POINT THAT OUT
8 TO THE SOLICITOR.

9 MS. CAMPBELL: I CAN REVIEW THAT IN OUR RECORDS
10 AND SEE IF IT'S IN THERE AGAIN.

11 MR. DELGADO: YOUR HONOR, THERE IS ONE ISSUE --
12 I DON'T KNOW IF YOUR HONOR WANTS TO CALL IT A DAY, BUT
13 THERE'S AN ISSUE ABOUT MR. CAYTON, A BALLISTICS EXPERT
14 FROM KANSAS CITY. THE SOLICITOR HAS MADE A MOTION IN
15 LIMINE TO PROHIBIT ME FROM CROSS-EXAMINING HIM AS IT
16 RELATES TO A MISDIAGNOSIS IN A BALLISTICS CASE IN 1986 OR
17 1987. I STAND READY TO DO THAT. I DON'T KNOW IF WE NEED
18 MR. CAYTON HERE.

19 THE COURT: CAN YOU AGREE THERE WAS A MISTAKE
20 MADE OR TELL ME?

21 MR. MCMAHON: YES, SIR, I DO.

22 THE COURT: I DON'T THINK YOU NEED TO --

23 MR. MCMAHON: I DON'T THINK I NEED MR. CAYTON
24 HERE. HE'S NOT HERE YET.

25 THE COURT: OKAY.

1 MR. MCMAHON: I HAD ASKED YOU AT THE END OF THE
2 DAY WHENEVER WE HAD OUR MOTIONS LAST WEEK IF THAT WAS HELD
3 IN ABEYANCE.

4 YOU SAID YOU THOUGHT YOU HAD WORKED OUT IN YOUR
5 MIND THE RULING. I WOULD LIKE TO KNOW -- IT'S ALMOST LIKE
6 SETTLING THE RECORD. I THINK IT'S PRIOR TO '86. I THINK
7 IT ACTUALLY GOES -- THE APPELLATE DECISION WAS EITHER '86
8 OR '87. THAT'S THE APPELLATE DECISION AFTER THE
9 DISCOVERY.

10 NOW, THE APPELLATE DECISION WAS IN '87. THE
11 ORIGINAL CONVICTION WAS IN '86, SO IT WOULD HAVE BEEN
12 PRIOR TO THAT, AND I TRIED TO -- WHEN I PULLED THE
13 ORIGINAL OPINION OF THE CASE, THINKING IT WOULD HAVE THE
14 FACTS AND THE DATES OF WHEN IT ACTUALLY OCCURRED, IT
15 DIDN'T.

16 I JUST WANT TO GET IN THE RECORD AT LEAST 16
17 YEARS -- IN EXCESS OF 16 YEARS OLD. IF THEIR APPEALS
18 PROCESS IS ANYTHING LIKE OURS, IT WOULD BE A COUPLE OF
19 YEARS TACKED ONTO THAT.

20 THE COURT: MR. DELGADO, I CAN'T FIND ANYTHING
21 DIRECTLY ON POINT. THERE IS BY WAY OF ANALOGY. IF YOU
22 CAN SHOW ME THAT.

23 MR. DELGADO: YOUR HONOR, THERE SEEMS TO BE A
24 CASE DIRECTLY ON POINT.

25 MR. MCMAHON: WHAT IS THAT, I'M SORRY?

1 MR. DELGADO: WILLIAMS VS. STANDARD OIL.

2 YOUR HONOR, I'M SORRY. I GOT THIS AROUND
3 9 O'CLOCK THIS MORNING. I FAILED TO GIVE THIS TO THE
4 SOLICITOR. I JUST HAVEN'T HAD A CHANCE TO DO IT.

5 (PAUSE).

6 MR. DELGADO: YOUR HONOR, THERE ARE TWO
7 DIFFERENT ONES, SEE THE LAST PAGE? THE DISSENT EVEN
8 EXCEEDS TO THE POINT IN THE MAJORITY OPINION.

9 THE COURT: I THINK I DID.

10 THE PURPOSE OF YOUR OFFERING THAT GOES TO THE
11 CREDIBILITY OF THE WITNESS?

12 MR. DELGADO: WELL, I DON'T KNOW IF IT GOES INTO
13 CREDIBILITY AS MUCH AS MY RIGHT TO CONFRONT HIM UNDER THE
14 SIXTH AMENDMENT.

15 THE COURT: THE QUESTION IS WHAT TYPE OF
16 EVIDENCE IS IT.

17 MR. DELGADO: IT'S NOT A 608 VIOLATION. WE'RE
18 NOT TALKING ABOUT THE CREDIBILITY OF THE WITNESS AS
19 OPPOSED TO A CHARACTER.

20 WE'RE NOT TALKING ABOUT TRUTHFULNESS,
21 PEACEFULNESS, GOOD ORDER, THAT TYPE OF THING. WE'RE
22 TALKING ABOUT WHETHER OR NOT HE HAS MADE MISTAKES IN THE
23 PAST.

24 LET ME SEE IF I CAN PUT THIS -- JUST SO I'M
25 CLEAR ABOUT THIS, THIS WAS TWO DIFFERENT OCCASIONS.

1 MR. CAYTON, FIRST OF ALL, HE DOES A BALLISTICS EVALUATION
2 OF A 357 MAGNUM LUGER THAT HE THEN TESTIFIES IN COURT,
3 FIRED A BULLET THAT KILLED A POLICE OFFICER IN KANSAS
4 CITY. HE TESTIFIED TO THOSE FINDINGS ON TWO DIFFERENT
5 OCCASIONS.

6 APPARENTLY, THERE WAS A MISTRIAL OR A REVERSAL
7 AND THE CASE GOES BACK AGAIN. HE TESTIFIES TO IT TWICE.
8 HE GOES THROUGH THE BALLISTIC ANALYSIS, THE TYPES OF
9 THINGS HE DOES, I THINK WITH HAIRS AND MICROSCOPIC AND
10 STRIATIONS. THAT SORT OF THING.

11 THEN WHAT HE DOES IS HE GIVES HIS OPINION THAT
12 THAT BULLET FRAGMENT WAS FIRED FROM THAT GUN, BASED ON MY
13 EXAMINATION. THE SAME TYPE OF THING WE HAVE HERE.

14 COME TO FIND OUT, LATER, TO HIS CREDIT, I WILL
15 SAY, YOUR HONOR, HE VOLUNTARILY DISCLOSED THIS. I'M NOT
16 DEMEANING HIM AS A PROFESSIONAL. I'M SIMPLY SAYING A GUN
17 THAT HE THEN FINDS WAS RELATED TO THE CASE, A 38, HE
18 EVALUATES THAT. THEN HE CHANGES HIS OPINION. THAT'S WHAT
19 STATE VS. TROTTER IS ABOUT.

20 SO IN OTHER WORDS, IT'S RIGHT ON ALL FOURS WITH
21 EXACTLY THE SAME TYPE OF TESTIMONY HE'S GOING TO GIVE IN
22 THIS CASE. IT'S NOT SOME SORT OF EXPERT TESTIMONY ABOUT
23 SOME OTHER SORT OF TOOL MARK EXAMINATIONS, BALLISTICS
24 EXAMINATIONS, WHERE A HOMICIDE IS INVOLVED.

25 IT SEEMS TO ME, YOUR HONOR, THAT I HAVE A RIGHT,

1 STRICTLY UNDER THE WILLIAMS CASE THAT I JUST SAID TO YOU,
2 I UNDERSTAND THAT CASE HAS NOT ONLY NEVER BEEN REVERSED OR
3 COMMENTED UPON AT ALL, I WOULD SUBMIT TO THE COURT IT
4 STILL IS GOOD LAW.

5 WHAT IT DOES IS IT GIVES ME THE RIGHT TO BE ABLE
6 TO CONFRONT. AND, YOUR HONOR, IF THE COURT HAS SEEN THAT
7 FOR SOME REASON THIS IS PREJUDICIAL TO THE STATE, 403
8 TALKS ABOUT UNFAIR PREJUDICE, AND IF THAT IS SUBSTANTIALLY
9 OUTWEIGHED.

10 I WOULD SUBMIT TO THE COURT IT PROBABLY IS
11 PREJUDICIAL TO THE STATE'S CASE. IT CERTAINLY IS. I
12 MEAN, THAT'S THE TYPE OF THING THAT MR. MCMAHON WOULDN'T
13 HAVE BROUGHT IT IF IT WASN'T PREJUDICIAL TO THE STATE.
14 IT'S AN UNFAIR PREJUDICE UNDER THE FACTS AND CIRCUMSTANCES
15 OF THIS CASE.

16 THE COURT: WELL, MR. DELGADO, JUST FOR THE SAKE
17 OF DISCUSSION, BECAUSE IT'S KIND OF AN INTERESTING
18 DISCUSSION IN LIGHT OF OUR RULES OF EVIDENCE, IF HE HAD
19 COMMITTED MURDER 20 YEARS AGO OR SOME REASON HAD GOTTEN
20 OUT, WASN'T IN CUSTODY, UNDER 609; YOU COULDN'T ASK THAT.

21 MR. DELGADO: OKAY.

22 THE COURT: SO THAT'S WHAT I STARTED OUT WITH.
23 THE ISSUE IS YOU'RE OFFERING IT FOR PURPOSES OF
24 CREDIBILITY, RIGHT?

25 MR. DELGADO: AND THIS TIME CONTINUED. THEN,

1 YOUR HONOR, THE SAME WAY YOU SAID A MINUTE AGO, DOESN'T
2 THAT GO TO THE WEIGHT OF THE EVIDENCE?

3 THE COURT: WELL, UNDER THE RULE -- IT DOESN'T
4 GO TO THE WEIGHT, YOU FOLLOW THE ANALYSIS. THAT'S NOT
5 WHAT I'M SAYING I'M GOING TO DO, BUT THAT'S WHERE I'M
6 HEADED.

7 MR. DELGADO: RIGHT.

8 THE COURT: IT STARTED OUT UNDER 609, A CRIMINAL
9 CONVICTION CAN ONLY GO BACK TEN YEARS.

10 MR. DELGADO: I AGREE.

11 THE COURT: THAT EVIDENCE IS OFFERED, AND IT'S
12 ADMISSIBLE UNDER 609. IT GOES TO THE CREDIBILITY OF THE
13 WITNESS.

14 MR. DELGADO: AND YET, YOUR HONOR, WHEN IT'S
15 USED AGAINST US, IF SOMEBODY HAS DONE TIME 20 YEARS AGO
16 AND THEIR PROBATION IS EXTENDED 10 MORE YEARS --

17 THE COURT: OH, I UNDERSTAND THAT.

18 MR. DELGADO: DO YOU UNDERSTAND HOW THAT WORKS,
19 TOO? THERE COULD BE A 20 YEAR -- THERE COULD BE MORE THAN
20 A 20-YEAR GAP. SO IN OTHER WORDS, YOU COULD BE IMPEACHED
21 BY IT, IF WITHIN THAT SAME 10 YEARS, YOU'RE DOING AN
22 ACTIVE PROBATION OR PAROLE.

23 THE COURT: WE DON'T HAVE THAT.

24 MR. DELGADO: I UNDERSTAND.

25 THE COURT: LET'S ASSUME FOR THE SAKE OF

1 DISCUSSION THAT YOU HAVE A GOOD CLEAN 15, 16, 17 YEAR
2 PERIOD OF TIME, HOW FAR BACK DO YOU WANT TO GO?

3 MR. DELGADO: I THINK IT GOES TO THE WEIGHT OF
4 THE EVIDENCE. I MEAN, THE ADMISSIBILITY --

5 THE COURT: YOU WOULDN'T MAKE THAT ARGUMENT
6 UNDER A CRIMINAL CONVICTION, WOULD YOU?

7 MR. DELGADO: THEY DID DO IT ALL THE TIME IF
8 IT'S WITHIN TEN YEARS, BUT DO YOU UNDERSTAND WHAT I'M
9 SAYING?

10 THE COURT: WELL, THE RULE CLEARLY SAYS YOU
11 CAN'T GO BACK MORE THAN 10 YEARS.

12 MR. DELGADO: THEY SAY DOING AN ACTIVE PAROLE OR
13 PROBATION.

14 THE COURT: THAT'S QUESTIONS ON THE FACTS.
15 FORGET ABOUT THE TIME. JUST FORGET ABOUT THE TIME. THE
16 QUESTION IS YOU WOULDN'T MAKE THAT ARGUMENT IF IT CLEARLY
17 WAS OUTSIDE THE TIME LIMIT, AND IT GOES TO THE WEIGHT,
18 WOULD YOU?

19 MR. DELGADO: YES, SIR.

20 THE COURT: YOU WOULD?

21 MR. DELGADO: I'M SORRY?

22 THE COURT: IF YOU WERE DEFENDING?

23 MR. DELGADO: I'M SORRY, IF I WAS DEFENDING, NO,
24 I COULD NOT, OF COURSE NOT.

25 THE COURT: SO TELL ME WHAT'S DIFFERENT OTHER

1 THAN --

2 MR. DELGADO: SURE.

3 THE COURT: THERE ARE SOME ISSUES IN THIS CASE.

4 (THE SOUND SYSTEM MAKES A LOUD NOISE.)

5 MR. DELGADO: YOUR HONOR, I APOLOGIZE. WE ARE
6 GOING TO HAVE TO GET THIS FIXED. WE'RE NOT GOING IT
7 INTENTIONALLY. WE HAVE A HOT WIRE DOWN HERE.

8 609 PROTECTS THE DEFENDANT. I THINK IT'S
9 MORE -- THE WITNESSES ARE STRICTER THAN THE BROADER
10 CONFRONTATIONAL ISSUE THAT I SUBMIT IS WHAT I WOULD LIKE
11 TO DO WITH MR. CAYTON.

12 YOUR HONOR, I GUESS FROM WHAT THAT CASE SAYS, IT
13 SEEMS TO BE ON ALL FOURS WITH OUR CASE, AND EVEN THE
14 DISSENT DOESN'T DICKER WITH THAT OPINION.

15 THE COURT: SOLICITOR, DO YOU HAVE ANY
16 PARTICULAR ARGUMENT?

17 MR. MCMAHON: WELL, JUDGE, I WASN'T SURE
18 INITIALLY WHETHER IT WAS EVEN DISCOVERABLE. AS I GO -- AS
19 I WENT THROUGH THE ANALYSIS, I FIGURED I'D ERR ON THE SIDE
20 OF DISCOVERY. THAT'S WHY, OBVIOUSLY, I TOLD MR. DELGADO,
21 TURNED IT OVER.

22 OF COURSE, I KNOW HE'S A GOOD INVESTIGATOR, AND
23 HE WOULD HAVE KNOWN ABOUT IT ANYWAY. THAT WAS KIND OF A
24 DOOR TO THE FRONT THERE.

25 THE COURT: OF COURSE, IT CUTS BOTH WAYS,

1 DOESN'T IT? IF A GUY GETS UP AND ADMITS HIS ERROR AND
2 CORRECTED IT AND DOES ALL THESE OTHERS THINGS --

3 MR. MCMAHON: JUDGE, I THINK GIVEN THE FACT,
4 BOTH OF THEM IN YOUR 609 ANALOGY, WHICH I CONCUR WITH, BUT
5 ADDITIONALLY, GOING TO 403, I THINK GIVEN THE FACT THAT IT
6 WAS A BALLISTICS EXAMINATION THAT MANY YEARS AGO, ALMOST
7 GETS TO -- DOES GET TO THE UNFAIR PREJUDICE OF THAT THAT
8 MANY YEARS AGO.

9 NOW, I UNDERSTAND THE PRACTICALITIES OF -- I'M
10 NOT SAYING I UNDERSTAND HOW MR. DELGADO WOULD HANDLE IT.
11 I WOULDN'T PRESUME TO SPEAK FOR SUCH A FINE LAWYER.

12 I UNDERSTAND HOW I WOULD TRY TO ATTEMPT TO
13 HANDLE IT IF IT WERE TO ATTEMPT TO COME IN. I JUST THINK
14 IT'S TOO REMOTE. IT'S DIRECTLY ANALOGOUS TO 609, AND THEN
15 I THINK UNDER THE 403 UNFAIR PREJUDICE ANALYSIS, I MEAN,
16 THAT HUGE LEAP WAS TAKEN FROM 17 YEARS AGO.

17 FOR EXAMPLE, IF I WAS TRYING SOMEBODY FOR ARMED
18 ROBBERY, AND HE HAD AN ARMED ROBBERY EVEN WITHIN THE TIME
19 FRAME, WE HAD A CASE SIMILAR TO THAT LAST WEEK IN FRONT OF
20 JUDGE COTTINGHAM.

21 HE SHOWED ME A CASE, AN UNPUBLISHED OPINION OF
22 HIS, WHERE IT WAS SO CLOSELY ON POINT, THE PRIOR BAD ACTS
23 OF THE PRIOR OFFENSE, THAT YOU COULDN'T LET IT IN THERE
24 ALTHOUGH IT WAS ADMISSIBLE UNDER 609. SO EVEN IF IT DID
25 MEET THAT ANALYSIS, WHICH I DON'T THINK IT DOES, I THINK

1 403 WOULD VERY READILY KICK IN.

2 THE COURT: I'M GOING TO SLEEP ON THAT ONE. YOU
3 NEED TO BE PREPARED TO ARGUE IT EITHER WAY, THOUGH.

4 MR. DELGADO: THANK YOU, YOUR HONOR.

5 THE COURT: I'LL GIVE YOU A RULING BEFORE YOUR
6 OPENING STATEMENT.

7 MR. DELGADO: YOUR HONOR, WHEN YOU DO THIS, 609,
8 OBVIOUSLY RELATES TO WHETHER OR NOT IT'S A CRIME. I KNOW
9 WHAT YOU'RE SAYING. IT'S A TEN YEAR CONTINUATION, I
10 UNDERSTAND THAT.

11 BUT MOST IMPORTANTLY, WHEN YOU SAW THIS IN THE
12 CONTEXT OF THE EVIDENCE, WHAT'S GOING TO BE PRESENTED TO
13 THE JURY, THIS IS THE ONLY EXPERT -- THERE ARE SIX --
14 EXCUSE ME, THERE ARE SEVEN S.L.E.D. INVESTIGATORS, SEVEN
15 S.L.E.D. EXAMINERS WHO SAY IT'S INCONSISTENT. ONE SAYS
16 IT'S A MATCH.

17 WHEN YOU LOOK AT IT IN THAT CONTEXT, I THEN
18 SHOULD BE ABLE TO HAVE THE RIGHT TO CONFRONT THAT WITNESS
19 MORE PROPERLY THEN BECAUSE OF THE NATURE OF THIS CASE.

20 THE COURT: THERE ARE SOME AREAS --

21 MR. MCMAHON: JUDGE, COULD I SAY ONE THING FOR
22 THE RECORD?

23 THE COURT: YES.

24 MR. MCMAHON: NO S.L.E.D. AGENT SAYS IT'S
25 INCONSISTENT. THAT'S A MISSTATEMENT. NO S.L.E.D. AGENT

1 SAID IT'S INCONSISTENT.

2 MR. DELGADO: INCONSISTENT, INCONCLUSIVE.

3 MR. MCMAHON: NUMBER ONE, AND NUMBER TWO, THAT
4 MAKES MY ARGUMENT, EXACTLY. 609 SAYS WELL, IT'S SO CLOSE
5 BECAUSE OF THIS ONE BALLISTICS EXPERT, THAT'S MY ARGUMENT
6 ENTIRELY UNDER 403.

7 IF YOU'RE TRYING SOMEBODY FOR ARMED ROBBERY AND
8 YOU PUT UP A PRIOR ARMED ROBBERY, THIS THING IS IN EXCESS
9 OF 17 -- HOWEVER MANY YEARS AGO. I JUST WANTED TO PLACE
10 THAT IN THE RECORD.

11 THE COURT: YES, SIR. ANYTHING ELSE?

12 MR. DELGADO: YOUR HONOR, THERE ARE MORE ISSUES
13 OF THE 404(B).

14 THE COURT: IF THEY'RE GOING TO COME UP IN
15 OPENING ARGUMENT, I NEED TO KNOW ABOUT THEM NOW.

16 MR. DELGADO: I BELIEVE WE PROBABLY OUGHT TO DO
17 THAT, YOUR HONOR.

18 MS. HUDGINS: IN ADDITION, JUDGE, BEFORE I GET
19 INTO THE LYLE, IF I MAY, WE WERE PROVIDED ON JULY 25TH, A
20 TWO-PAGE STATEMENT OF MR. FRIEBURGER. WE HAVEN'T SEEN THE
21 STATEMENT BEFORE. THAT'S NOT THE ISSUE.

22 WE HAVEN'T HELD A JACKSON V. DENNO HEARING IN
23 REGARDS TO THAT STATEMENT. I AM ASSUMING BY THE FACT THAT
24 I DON'T INTEND TO INTRODUCE THE STATEMENT.

25 IF THEY DO INTEND TO INTRODUCE THE STATEMENT, WE

1 WOULD REQUEST A JACKSON V. DENNO.

2 THE COURT: SOLICITOR, ARE YOU GOING TO BE USING
3 IT?

4 MR. MCMAHON: I ACTUALLY DID MEAN TO ASK
5 INVESTIGATOR METZ THAT QUESTION, THAT WAS THE QUESTION
6 ABOUT THE STATEMENT IN APRIL WHEN HE WAS ARRESTED.

7 MR. DELGADO: NO, NO, NO, IT WASN'T THE
8 STATEMENT.

9 MR. MCMAHON: I'M SORRY?

10 MR. DELGADO: WE GOT SOME EVIDENCE THURSDAY
11 AFTERNOON, YOUR HONOR, A TWO-PAGE STATEMENT FROM THE
12 C.I.D., THE UNITED STATES ARMY, THAT SUPPOSEDLY -- THAT
13 THEY HAD GIVEN TO US. UNLESS THEY -- DO YOU KNOW WHAT I'M
14 TALKING ABOUT?

15 MS. HUDGINS: MARCH 15TH, 1961 STATEMENT.

16 MR. MCMAHON: I DID NOT INTEND TO OFFER THAT IN
17 MY CASE IN CHIEF.

18 MS. HUDGINS: THEN WE DON'T NEED TO ADDRESS
19 THAT.

20 THE COURT: ALL RIGHT.

21 MS. HUDGINS: JUDGE, AT THE PRETRIAL HEARING
22 THAT WAS HELD ON THURSDAY, THE STATE DECLARED THAT IT WAS
23 INTENDING TO RELY ON SOME LYLE EVIDENCE, SOME PRIOR BAD
24 ACT EVIDENCE.

25 ALSO, THEY DIDN'T CHARACTERIZE SOME OF THE

1 EVIDENCE. SOME OF IT IS CLEARLY LYLE ON 404(B). THEY
2 CHARACTERIZE SOME OF THE EVIDENCE, YOUR HONOR, AS EVIDENCE
3 OF FLIGHT. I DON'T KNOW IF YOU WANT TO HEAR THAT THIS
4 AFTERNOON.

5 THE COURT: IF IT'S GOING TO COME UP IN OPENING
6 ARGUMENT, I WANT TO HEAR ABOUT IT NOW.

7 MS. HUDGINS: YES, SIR, YOUR HONOR. I HAVE
8 PREPARED A MEMORANDUM. WE HAD ALREADY FILED A MOTION TO
9 EXCLUDE PRIOR BAD ACTS, YOUR HONOR.

10 JUDGE, I THINK THE TWO MAIN AREAS THAT I WANT TO
11 ADDRESS ON THE LYLE, 404(B). IT'S MY UNDERSTANDING THAT
12 THE STATE INTENDS TO INTRODUCE EVIDENCE THAT
13 MR. FRIEBURGER WAS ABSENT WITHOUT LEAVE AT SOME POINT.

14 IF THEY'RE GOING TO INTRODUCE IT UNDER LYLE, I
15 WOULD SIMPLY ASK THAT THEY GO UNDER THROUGH THE PROPER
16 PROCEDURES UNDER LYLE. WE HAVE SOME OBJECTIONS TO THAT,
17 SAYING THAT IT'S IMPERMISSIBLE, PRIOR BAD ACT EVIDENCE,
18 UNDER LYLE AND 404(B).

19 IF THEY INTEND TO OFFER IT RES GESTAE, I HAVE
20 ARGUMENTS TO THAT. IF THEY INTEND TO OFFER IT AS TO
21 EVIDENCE OF FLIGHT, I HAVE ARGUMENTS AGAINST THAT, YOUR
22 HONOR.

23 THAT'S THE FIRST OBJECTION TO ANY EVIDENCE THAT
24 THE STATE INTENDS TO INTRODUCE IN REGARDS TO 404(B), LYLE,
25 IN REGARDS TO THE ALLEGATIONS THAT MR. FRIEBURGER IS

1 A.W.O.L., ABSENT WITHOUT LEAVE.

2 THE SECOND GENERAL AREA OF THAT TYPE OF EVIDENCE
3 IS THAT WE WOULD BE OBJECTING TO ANY EVIDENCE -- THERE
4 WERE SOME ALLEGATIONS THAT A BUILDING ON THE FORT WAS
5 BROKEN INTO, I BELIEVE, AND I DON'T WANT TO PUT WORDS IN
6 MR. MCMAHON'S MOUTH, BUT I BELIEVE HE HAD INDICATED AT THE
7 PRETRIAL HEARING THAT HE DID NOT INTEND TO INTRODUCE ANY
8 EVIDENCE ON THE BREAK IN. HOWEVER, IT WAS MY
9 UNDERSTANDING THAT HE DID WISH TO INTRODUCE EVIDENCE THAT
10 MR. FRIEBURGER WAS IN POSSESSION OF STOLEN GOODS.

11 CLEARLY, THAT'S PRIOR BAD ACT EVIDENCE. WE
12 WOULD ASK FOR A LYLE HEARING ON THAT IN REGARD TO THAT.

13 THE COURT: WHAT ARE THE FIVE EXCEPTIONS AS TO
14 THAT PRIOR BAD ACT?

15 MS. HUDGINS: I THINK THAT WOULD BE THE STATE'S
16 POSSESSION OF STOLEN GOODS.

17 THE COURT: WELL, I MEAN --

18 MS. HUDGINS: IT'S ACTUALLY NOT A PRIOR BAD ACT.
19 IT WOULD BE A SUBSEQUENT BAD ACT, BUT I THINK THAT UNDER
20 LYLE I THINK THERE ARE CASES THAT SAY THAT.

21 I WOULD ALLEGE THAT IT DOESN'T MEET ANY
22 EXEMPTIONS, YOUR HONOR.

23 THE COURT: ALL RIGHT, MR. SOLICITOR. WHAT
24 ABOUT THE A.W.O.L. ISSUE?

25 MR. MCMAHON: JUDGE, I INTEND TO OFFER THAT AS

1 EVIDENCE OF FLIGHT. I THINK THE TIMING ON THAT IS
2 IMPORTANT. I THINK THAT GOES TO KNOWLEDGE, AND I THINK IT
3 GOES TO YOUR ISSUES IN STATE VS. BECKHAM. I DO NOT INTEND
4 TO OFFER THAT AS LYLE TESTIMONY.

5 THE WAY THE ISSUE WOULD DEVELOP IS THAT HE WAS
6 A.W.O.L. AT LEAST TWICE, IN MARCH OF 1961, I THINK AND THE
7 OTHER WAS MARCH 16TH OR THE 18TH. THE OTHER WAS
8 MARCH 21ST, 22ND. THEN HE WAS ARRESTED MARCH 29TH, '61 IN
9 POSSESSION OF THE WEAPON.

10 ALL OF THESE, OF COURSE, COME AFTER THE
11 HOMICIDE, WHICH THE BODY IS FOUND MARCH 3RD. SO I THINK
12 THAT'S SOME EVIDENCE OF GUILTY KNOWLEDGE, AND I THINK THAT
13 GOES TO THE ISSUES UNDER STATE VS. BECKHAM OF FLIGHT AND
14 NOT LYLE.

15 YOU KNOW, THAT PART OF THAT TESTIMONY,
16 OBVIOUSLY -- I THINK I GOT MORE THAN A CLEAR AND
17 CONVINCING STANDARD, JUDGE, BOTH WITH THE TROOPER AND WITH
18 THE MILITARY RECORDS UNDER SEAL, WHICH CERTAINLY WOULD
19 SHOW THE DATES OF THE A.W.O.L.

20 THE COURT: ALL RIGHT. THEY'RE OFFERING IT
21 UNDER FLIGHT.

22 MS. HUDGINS: I UNDERSTAND, YOUR HONOR. I,
23 OBVIOUSLY, WOULD OBJECT. I DO NOT BELIEVE THAT
24 CONSTITUTES PERMISSIBLE EVIDENCE OF FLIGHT. THIS CASE IS
25 CLEARLY DISTINGUISHABLE FROM THE BECKHAM CASE.

1 I KNOW THE PARTIES IN THIS COURTROOM ARE FAR
2 MORE FAMILIAR WITH THE BECKHAM CASE THAN I AM, BUT MY
3 UNDERSTANDING OF THE CASE IN BECKHAM IS HE WENT TO FLORIDA
4 WITH HIS FAMILY, FOUND OUT THERE WERE WARRANTS PENDING
5 AGAINST HIM, THEN WENT TO KENTUCKY. THAT'S A VERY
6 DIFFERENT SITUATION THAT WE HAVE WITH MR. FRIEBURGER, YOUR
7 HONOR.

8 HE WAS ALLEGED TO HAVE GONE A.W.O.L. ON
9 MARCH 16TH. THIS MURDER WAS SAID TO HAVE TAKEN PLACE ON
10 FEBRUARY 28TH TO MARCH 1ST.

11 THE KEY POINT, THOUGH, YOUR HONOR, IS THEY
12 DIDN'T EVEN QUESTION MR. FRIEBURGER ABOUT THIS MURDER
13 UNTIL JUNE

14 SO HOW IN THE WORLD, WHEN THEY DON'T EVEN
15 QUESTION HIM ABOUT THIS MURDER, CAN THIS BE EVIDENCE OF
16 FLIGHT WHEN THEY DON'T EVEN QUESTION HIM ABOUT IT UNTIL
17 JUNE, TWO OR THREE MONTHS AFTER HE ALLEGEDLY GOES A.W.O.L.

18 I THINK THE FACTS ARE VERY DIFFERENT. I HAVE
19 RESEARCHED THE CASES IN SOUTH CAROLINA DEALING WITH
20 EVIDENCE OF FLIGHT, AND NONE OF THEM -- MOST OF THEM DEAL
21 WITH A SITUATION WHERE THE DEFENDANT KNOWS THAT THERE IS A
22 WARRANT COMING, AND THEY FLEE ON THOSE GROUNDS. THEY HAVE
23 POSSESSION OF THE STOLEN GOODS IN THEIR HANDS. HERE THE
24 POLICE COME ON THEIR DOOR, AND THEY RUN OUT THE BACK DOOR.
25 THOSE ARE THE TYPES OF SITUATIONS WHERE OUR COURTS HAVE

1 HELD THAT EVIDENCE OF FLIGHT IS PERMISSIBLE.

2 JUDGE, IF I COULD, AND I'VE GOT THIS IN MY
3 MEMORANDUM. IF I COULD JUST QUOTE FROM -- I THINK IT'S
4 THE BYERS CASE, AND THEY'RE TALKING ABOUT WHEN EVIDENCE OF
5 FLIGHT IS PERMISSIBLE AND WHEN IT'S NOT.

6 IT SAYS, "WHETHER THE REQUISITE DEGREE OF
7 RELEVANCY EXISTS AND IS A JUDICIAL QUESTION IS TO BE
8 RESOLVED IN THE LIGHT OF THE CONSIDERATION THAT THE
9 INEVITABLE TEST, THE TENDENCY OF SUCH EVIDENCE IS TO RAISE
10 A LEGALLY STURDY PRESUMPTION OF GUILT IN THE MINDS OF THE
11 JURORS. HENCE, IF THE COURT DOES NOT CLEARLY PERCEIVE THE
12 CONNECTION BETWEEN THE TWO CRIMES," THAT WOULD BE IN THIS
13 CASE THE A.W.O.L. AND THE MURDER, "THEN THE ACCUSED SHOULD
14 BE GIVEN THE BENEFIT OF THE DOUBT, AND THE EVIDENCE SHOULD
15 BE REJECTED."

16 THERE IS NO CONNECTION IN THIS CASE BETWEEN THE
17 MURDER THAT TOOK PLACE ON FEBRUARY 28TH, MARCH 1ST, AND
18 THE ALLEGED A.W.O.L. OF MARCH 16TH AND MARCH 22ND,
19 ESPECIALLY IN LIGHT OF THE FACT THAT MR. FRIEBURGER WAS
20 NOT EVEN QUESTIONED ABOUT THIS MURDER UNTIL JUNE OF 1961,
21 YOUR HONOR.

22 THE COURT: WHAT DO YOU DO ABOUT THE STATE'S
23 EVIDENCE, THOUGH, THAT THEY CONTEND THE GUN HE HAD IN HIS
24 POSSESSION IS THE GUN THAT KILLED ORNER?

25 MS. HUDGINS: I THINK THEY CAN CERTAINLY -- I'M

1 NOT WAIVING OUR OBJECTIONS TO THE COMPETENCY OF THE
2 EVIDENCE, BUT THEY CAN OFFER THE EVIDENCE WITHOUT GOING
3 INTO THE FACT THAT HE WAS ABSENT WITHOUT LEAVE, A.W.O.L.

4 I MEAN THEY CAN -- IF THEY CAN ESTABLISH
5 COMPETENT EVIDENCE, THEY DON'T HAVE -- THERE'S NO REASON
6 FOR THEM TO BRING UP THE FACT THAT HE WAS ABSENT WITHOUT
7 LEAVE.

8 THEY CAN TALK ABOUT THE OFFICER. THEY CAN TALK
9 ABOUT THE PAT DOWN IN THE SAME WAY THAT WE TALKED ABOUT
10 WHETHER OR NOT -- AND THERE WERE TWO MINOR ISSUES I'D LIKE
11 TO GO TO THEY HAVEN'T MENTIONED, BUT THE SAME WAY THEY
12 DON'T HAVE TO TALK ABOUT THE CHARGE, HE WAS CHARGED WITH
13 THE UNLAWFUL CARRYING OF ARMS. THEY DON'T NEED TO GO INTO
14 THE FACT THAT HE WAS ABSENT WITHOUT LEAVE.

15 IT'S NOT NECESSARY IN ORDER FOR THE STATE TO
16 PROVE ITS CASE, AND THERE IS NO CONNECTION THAT IT IS
17 EVIDENCE OF FLIGHT. I THINK IT'S RELEVANT, TOO, TO
18 UNDERSTAND THAT HE LEFT ON MARCH 16TH AND THEN CAME BACK.

19 THE COURT: IS THERE EVIDENCE IN THE RECORD THAT
20 HE WAS A.W.O.L. PRIOR TO THE ALLEGE OFFENSE?

21 MR. MCMAHON: NO, SIR, AND THERE'S NO
22 EVIDENCE -- THAT'S THE POINT I WAS GOING TO MAKE. THERE'S
23 NO EVIDENCE HE WAS EVER A.W.O.L. PRIOR TO THE HOMICIDE.
24 THAT'S CONTAINED IN HIS MILITARY RECORDS UNDER SEAL, AND
25 IT'S JUST MARCH 16TH WAS THE FIRST ONE. THEN HE RETURNED

1 AND LEAVES AGAIN THE NIGHT OF THE 21ST AND THE MORNING OF
2 THE 22ND.

3 ALL OF THAT IS AFTER THE STATE'S -- THE DAY OF
4 THE HOMICIDE, AT THE LATEST IS MARCH, 3RD, '61. ALTHOUGH,
5 WE ALLEGE IT HAPPENED EARLIER.

6 THE COURT: ALL RIGHT. WHAT ARE YOUR OTHER
7 ISSUE, MS. HUDGINS?

8 MS. HUDGINS: YOUR HONOR, THE OTHER ISSUE IS
9 ABOUT THE STATE ATTEMPTING TO INTRODUCE ANY EVIDENCE THAT
10 MR. FRIEBURGER WAS IN POSSESSION OF STOLEN PROPERTY.

11 I UNDERSTAND WHY THE STATE WANTS TO GET THAT
12 EVIDENCE IN. I THINK THE STATE CAN DO THAT WITHOUT
13 REFERENCING THE FACT THAT THIS WAS ALLEGEDLY STOLEN
14 PROPERTY.

15 THE COURT: WELL, HELP ME OUT THEN. TELL ME HOW
16 THEY CAN DO THAT.

17 MS. HUDGINS: NOW, THIS IS ASSUMING AGAIN, YOUR
18 HONOR, THAT THERE IS COMPETENT EVIDENCE OF THIS.

19 THE COURT: SURE.

20 MS. HUDGINS: IF THERE IS COMPETENT EVIDENCE,
21 THEY CAN SIMPLY STATE, AND I THINK THE KEY PIECE OF
22 EVIDENCE IS GOING TO BE SOME PLAYING CARDS, AND I DON'T
23 MEAN TO BE PRETENDING TO ASSUME I KNOW WHAT THE STATE'S
24 CASE IS, BUT IT WOULD SEEM TO ME THAT THAT WOULD BE THEIR
25 KEY PIECE OF EVIDENCE, THE PLAYING CARDS.

1 IF THEY HAVE COMPETENT EVIDENCE TO PROVE THIS,
2 THEY CAN SIMPLY PUT FORTH THE EVIDENCE THAT MR. FRIEBURGER
3 RECEIVED THESE PLAYING CARDS. THERE DOESN'T NEED TO BE
4 ANY MENTION OF THE FACT THAT THEY WERE STOLEN.

5 IT'S NOT A SITUATION -- FIRST OF ALL, IT DOESN'T
6 FIT ANY OF THE EXCEPTIONS OF LYLE. I MEAN, I THINK AT
7 THIS POINT THEY WOULD NEED TO OFFER THAT AS ONE OF THE
8 EXCEPTIONS. IT DOESN'T GO TO IDENTITY. IT'S NOT A
9 SITUATION WHERE THIS BUILDING WAS BROKEN INTO PRIOR TO THE
10 MURDER. THERE WERE STOLEN PLAYING CARDS, AND ALL OF THE
11 SUDDEN, LO AND BEHOLD THERE'S STOLEN PLAYING CARDS FOUND
12 IN THE DEAD CAB DRIVER'S CAB. I MEAN, IT'S NOT A
13 SITUATION LIKE THAT. THERE IS NO CONNECTION BETWEEN THE
14 BREAK IN AND THE MURDER, YOUR HONOR.

15 THE COURT: ALL RIGHT, SOLICITOR?

16 MR. MCMAHON: YOUR HONOR, I RESPECTFULLY
17 DISAGREE. I CITE STATE VS. SOUTHERLAND, 447 S.E. 2D, 862,
18 WHERE SUTHERLAND CONTENDS THE TRIAL JUDGE ERRED BY
19 INTRODUCING EVIDENCE THAT THE STOLEN SHOTGUN USED TO KILL
20 THE VICTIM, FROM THE TRAILER TWO WEEKS BEFORE THE MURDER,
21 WAS THE TRADED SHOTGUN FOR DRUGS THE DAY AFTER THE MURDER.

22 NOW, WHAT WE HAVE HERE IS A BREAK IN THAT I WILL
23 NOT ALLEGE THAT THE DEFENDANT PERPETRATED. ON THE NIGHT
24 OF MARCH 2ND AND EARLY MORNING HOURS OF -- EXCUSE ME, THE
25 NIGHT OF MARCH 1ST, EARLY MORNING HOURS OF MARCH 2ND OF

1 1961, FROM A BUILDING ON POST AT FORT JACKSON.

2 AS A RESULT OF THAT BREAK IN, NUMEROUS ITEMS
3 WERE STOLEN, A TYPEWRITER, AN ADDING MACHINE AND A CARTON
4 OF PLAYING CARDS.

5 MR. FRIEBURGER DID BECOME A SUSPECT IN THE BREAK
6 IN, AND HE ULTIMATELY GAVE A STATEMENT. THAT STATEMENT
7 WAS THAT IN WALKING THROUGH THIS AREA HERE --

8 MS. HUDGINS: WAIT, WAIT, WAIT. I WOULD OBJECT
9 TO THE SOLICITOR TESTIFYING TO THE CONTENTS OF THE
10 STATEMENT BECAUSE HE JUST SAID HE WASN'T GOING TO
11 INTRODUCE THE STATEMENT, SO I DON'T THINK HE NEEDS BE
12 GETTING INTO THAT.

13 MR. MCMAHON: I THOUGHT YOU WERE GOING TO HEAR
14 THE MOTION. SHE BROUGHT IT UP. I'M JUST TRYING TO RELAY
15 THE EVIDENCE TO YOU.

16 THE COURT: YES.

17 MR. MCMAHON: THAT -- AND THIS IS WHY I'M NOT
18 BRINGING UP THE FACT THAT HE DID BREAK IN TO STEAL THEM.
19 I'M NOT BRINGING THAT UP. HE SAID, "I WAS WALKING THROUGH
20 THE AREA, AND I BOUGHT THESE FROM A SOLDIER THAT I DID NOT
21 KNOW FOR \$15, AND I" --

22 MS. HUDGINS: JUDGE, JUST FOR THE RECORD -- I
23 WANT TO OBJECT TO THIS. JUST FOR THE RECORD, I UNDERSTAND
24 YOUR RULING. I WANT TO OBJECT TO THIS. THIS DOESN'T GO
25 TO THE LYLE ISSUE. I STILL DON'T KNOW WHAT THE STATE --

1 WHAT EXCEPTION TO LYLE IS --

2 THE COURT: WELL, I NEED TO HEAR IT FIRST.

3 MS. HUDGINS: I KNOW, YOUR HONOR.

4 THE COURT: OKAY.

5 MR. MCMAHON: "AND I PAWNED THEM THE NEXT DAY
6 FOR \$25" OR WHAT HAVE YOU.

7 NO, COINCIDENCE, PAWN, TYPEWRITER, ADDING
8 MACHINE. WELL, WHEN THE POLICE INVESTIGATE THIS CASE,
9 NUMEROUS INDIVIDUALS, THEY SEND QUESTIONNAIRES OUT TO, ONE
10 OF WHICH IS THEN PRIVATE GARY AEBERSOLD, WHO IS PRESENT IN
11 THE COURTROOM, FROM MISSOURI. HE WAS AT THAT TIME
12 ASSIGNED TO GERMANY.

13 THEY SENT OUT QUESTIONNAIRES AND INTERVIEWED HIM
14 ABOUT HIS KNOWLEDGE OF MR. FRIEBURGER.

15 IN HIS FIRST STATEMENT, QUESTIONNAIRE, HE STATES
16 THAT HE WAS GIVEN A 32 CALIBER ROUND OF A CERTAIN
17 DESCRIPTION DURING BASIC -- DURING THE TIME HE WAS AT FORT
18 JACKSON. HE DOESN'T EXACTLY REMEMBER WHO.

19 THEY DO A FOLLOW UP QUESTIONNAIRE WITH PRIVATE
20 AEBERSOLD AT THE TIME. HE SAYS, "I DO REMEMBER I WAS
21 GIVEN THIS 32 CALIBER," PARTICULARLY DESCRIBED, "AMMO BY
22 MR. -- BY PRIVATE FRIEBURGER NEAR THE BARRACKS ALONG WITH
23 A DECK OF CARDS."

24 NOW, I THINK THAT'S WHERE THE CORROBORATION
25 COMES IN THAT THAT HELPS TIME THE PERIOD OF TIME WHEN HE

1 PURCHASED THE BULLETS AND WHEN HE WOULD HAVE HAD
2 POSSESSION OF THE DECK OF CARDS, AS EARLY AS MARCH 1ST OR
3 MARCH 2ND OF 1961; THEREFORE, I THINK THAT TIMING IS VERY
4 IMPORTANT IN THAT PARTICULAR CASE.

5 I DO NOT, AND I THINK I SAID FRIDAY, I DO NOT
6 INTEND TO GET INTO HE PERPETRATED THE BURGLARIES, BUT THAT
7 HE DID HAVE POSSESSION OF THESE ITEMS, AND THAT AMONG ONE
8 OF THOSE ITEMS, THIS DECK OF CARDS WAS TURNS OVER TO
9 PRIVATE AEBERSOLD ALONG WITH THE BULLET.

10 THAT BULLET, WE WOULD CONTEND, CIRCUMSTANTIALLY,
11 IS CONSISTENT WITH THE TYPE OF BULLET THAT WAS THE
12 HOMICIDE BULLET. SO THAT'S KIND OF LAYING OUT THAT
13 TESTIMONY FOR HIS HONOR.

14 THE COURT: SO ARE YOU OFFERING IT UNDER LYLE OR
15 JUST --

16 MR. MCMAHON: WELL, JUDGE, I GUESS I'M OFFERING
17 IT --

18 THE COURT: IF YOU DON'T GET INTO THE QUESTION
19 OF THE BREAK INS, THEN --

20 MR. MCMAHON: WELL, I'M NOT GETTING INTO THE
21 QUESTION OF IF HE PERPETRATED THE BREAK IN. FOR EXAMPLE,
22 UNDER SOUTHERLAND, WE OFFERED IT UNDER LYLE AND IT WAS THE
23 SHOTGUN THAT WAS STOLEN BEFORE AND DISPOSED OF AFTER.

24 THERE THEY WERE TALKING ABOUT IDENTITY AND
25 COMMON SCHEME AND ADMITTING THE EVIDENCE.

1 I THINK HERE -- I GET A LITTLE CONFUSED OVER THE
2 DIFFERENCE BETWEEN LYLE AND CIRCUMSTANTIAL EVIDENCE, THAT
3 WHEN HE'S GOT THESE TWO ITEMS INTERSECTED AT A PARTICULAR
4 POINT IN TIME, AND THAT POINT IN TIME IS IMPORTANT TO THE
5 TRIAL OF THE CASE AND THE TIME LINE IN THE CASE, THAT THE
6 CARDS, IN SHOWING WHEN THOSE CARDS WERE LAST AT A
7 PARTICULAR LOCATION, AND THEN THOSE CARDS END UP -- ONE
8 DECK OF THOSE CARDS END UP BEING TURNED OVER TO A FELLOW
9 RECRUIT, A FELLOW SOLDIER, ALONG WITH THE BULLET, ALONG
10 WITH THE BULLET, I THINK THAT GOES A LONG WAY
11 CIRCUMSTANTIALLY TO TIME.

12 I THINK THAT GOES TO THE IDENTITY AS FAR AS A
13 LYLE ISSUE IS CONCERNED. I THINK IT'S ALSO CIRCUMSTANTIAL
14 EVIDENCE.

15 THE COURT: WHAT DOES IT MATTER, SOLICITOR, THAT
16 HE GAVE THE OTHER PRIVATE A DECK OF CARDS AND A 32 BULLET?
17 IF HE DID THAT, WHY DO YOU HAVE TO GO BEHIND THAT?

18 MR. MCMAHON: TIMING.

19 THE COURT: TIMING FOR WHAT?

20 MR. MCMAHON: WHEN HE CAME IN POSSESSION OF
21 THAT. CARDS WOULD HAVE BEEN LAWFULLY HELD IN THE PLACE
22 THEY WERE BROKEN INTO UP UNTIL MARCH 1ST OR THE MORNING OF
23 MARCH 2ND.

24 YOU'RE SAYING ON THE DAY, THE 28TH OF FEBRUARY
25 IS THE LAST DAY MR. ORNER EVER SAW THE LIGHT OF DAY. ON

1 THE MORNING OF MARCH 1ST, HIS BLOODY CAB IS FOUND WITHIN
2 FOUR BLOCKS OF THIS COURTHOUSE.

3 NOW, THEY'RE TALKING WITH HIM ABOUT THIS EVENT,
4 ABOUT THE BREAK IN EVENT, BY THE FIRST WEEK IN MARCH. SO
5 WE KNOW -- SEE JUDGE, SEE JUDGE, IT GETS VERY IMPORTANT
6 BECAUSE HE ALLEGES SOMEWHERE ALONG THE WAY HE FINDS THAT
7 GUN MARCH 22ND. SO THERE YOU GO THREE WEEKS EARLIER.
8 THREE WEEKS EARLIER, WE JUST DON'T HAVE A RECORD FOR THEM
9 TO RELY ON THAT SAYS HE DIDN'T SIGN IT OR THE DATE IS
10 WRONG.

11 YOU GOT A COLD SOLDIER, ANOTHER RECRUIT, SAYING
12 HE GAVE ME THIS ALONG WITH THAT DECK OF CARDS. THAT'S
13 GOING TO BE WELL BEFORE MARCH 22ND THAT HE'S GOT THE SAME
14 TYPE OF BULLETS AS THE MURDER BULLET, THE SAME TYPE OF
15 BULLET AS THE MURDER BULLET. I MEAN, THAT'S THE
16 CIRCUMSTANTIAL NATURE OF THAT TYPE OF EVIDENCE.

17 THAT'S WHY THAT CARD IS CRITICAL, AND THAT'S WHY
18 I THINK TRACKING THOSE ITEMS TO WHEN THEY WERE LAST IN
19 LAWFUL CUSTODY, WHEN THEY'RE NOT IN LAWFUL CUSTODY, AND
20 I'M NOT SAYING HE BROKE IN, NOT AT ALL. I'M NOT SAYING HE
21 COULDN'T HAVE PURCHASED THEM LEGITIMATELY. I HAVE NO
22 PROBLEM WITH THAT, BUT THAT HE HAD THEM ON THIS DATE AND
23 HE TURNED THEM OVER WITH THE DECK OF CARDS AND THE BULLET,
24 ALONG WITH MR. AEBERSOLD. THAT'S GOING TO BE PRIOR TO
25 3/22, WHICH HE SAID IN OTHER STATEMENTS IS WHEN HE BOUGHT

1 THAT GUN. THAT'S NOT WHEN HE BOUGHT THAT GUN.

2 THE COURT: ALL RIGHT. WHAT'S YOUR ISSUE?

3 MS. HUDGINS: THE ONLY OTHER TWO ISSUES, YOUR
4 HONOR, ARE TWO MINOR ISSUES THAT AREN'T INTRODUCED INTO
5 THE MEMORANDUM. I WOULD LIKE TO MAKE OUR MEMORANDUM A
6 PART OF THE RECORD. I DON'T THINK I DID THAT.

7 THERE WAS REFERENCE TO MR. FRIEBURGER BEING
8 ARRESTED AND CHARGED WITH CARRYING ARMS. WE WOULD OBJECT
9 TO THAT.

10 I THINK THERE WAS ANOTHER MOTION MADE DURING THE
11 PRETRIAL HEARING ON THURSDAY THAT STILL HADN'T BEEN RULED
12 ON, IF I'M NOT MISTAKEN, ABOUT THE RIGHT TO COUNSEL ON
13 THAT CHARGE.

14 THE COURT: WELL, LET ME SAY THAT GIDEON VS.
15 WAINWRIGHT IS RETROACTIVE AND WILL APPLY TO THIS
16 CONVICTION.

17 YOU DON'T NEED THIS CONVICTION. YOU ONLY NEED
18 THE SEARCH ISSUE TO GET THE GUN, SO I WOULD EXCLUDE ANY
19 EVIDENCE OF THE CONVICTION.

20 MS. HUDGINS: AND THE ONLY OTHER THING --
21 THERE'S REFERENCE FROM -- THERE WAS REFERENCE FROM
22 INVESTIGATOR METZ TODAY ABOUT MR. FRIEBURGER BEING AT FORT
23 LEAVENWORTH.

24 YOUR HONOR, I WOULD RESPECTFULLY DISAGREE WITH
25 THE COURT FOR THE JURY MEMBERS TO TAKE A BAD CONNOTATION

1 FROM SOMEONE BEING AT FORT LEAVENWORTH. I'M NOT MILITARY.
2 MY DAD MIGHT HAVE BEEN IN THE ARMY AT SOME POINT.

3 WHEN I THINK OF FORT LEAVENWORTH, A BAD
4 CONNOTATION COMES TO MIND. WE WOULD CERTAINLY OBJECT TO
5 ANY -- I THINK THAT'S THE EQUIVALENT OF SAYING SOMEBODY
6 WAS AT SAN QUINTON.

7 I THINK THAT'S VERY HIGHLY PREJUDICIAL AND
8 SHOULD BE EXCLUDED. THE STATE DOESN'T NEED THAT
9 INFORMATION, JUDGE. THEY COULD SAY THAT HE WAS
10 INTERVIEWED IN WHATEVER STATE FORT LEAVENWORTH IS IN, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT, SOLICITOR. DO YOU HAVE
13 ANY STRONG FEELINGS ABOUT THAT?

14 MR. MCMAHON: AND THAT POINT GOES TO THE
15 STATEMENTS OF MR. METZ, NOT FORT LEAVENWORTH.

16 THE COURT: ALL RIGHT. WELL, I'LL TELL YOU HOW
17 IT'S GOING TO FALL: IF I RULE THE A.W.O.L. EVIDENCE IS
18 NOT ADMISSIBLE, IT'S NOT GOING TO MAKE A DIFFERENCE, BUT
19 IF I RULE IT'S ADMISSIBLE, THEN IT WILL BE AN ARMY
20 FACILITY IN KANSAS, SOMETHING LIKE THAT.

21 MR. MCMAHON: YES, SIR.

22 WELL, I GUESS I'LL WAIT ON YOUR RULING BEFORE --

23 THE COURT: AND I'M NOT QUITE SURE -- AND THE
24 ISSUE ABOUT FLIGHT --

25 MR. MCMAHON: WELL, THE POINT OF THAT, OF

1 COURSE, IS BEFORE AND AFTER ON THE TIMEFRAME.

2 THE COURT: MS. HUDGINS, NOW HE WAS UNDER
3 INVESTIGATION --

4 MS. HUDGINS: NOT FOR THE MURDER THOUGH, YOUR
5 HONOR.

6 THE COURT: BUT --

7 MR. MCMAHON: HE WAS UNDER INVESTIGATION FOR THE
8 PART OF THE BREAK IN. THEY MIGHT HAVE THOUGHT -- HE MIGHT
9 HAVE THOUGHT HE WAS UNDER INVESTIGATION FOR THE OTHER.
10 NOW, IF HE WANTS TO GET UP THERE AND EXPLAIN THAT, HE
11 CERTAINLY CAN.

12 MS. HUDGINS: YOUR HONOR --

13 MR. MCMAHON: BUT I'M NOT BOUND TO THAT.

14 MS. HUDGINS: YOUR HONOR, IT'S CLEAR THEY
15 QUESTIONED HIM ABOUT THE BREAK IN AND NOT ABOUT THE
16 MURDER, SO THAT'S TOTALLY UNJUSTIFIED.

17 MR. MCMAHON: NO, SIR.

18 THE COURT: ALL RIGHT. LET ME THINK ABOUT IT
19 OVERNIGHT. WE'VE GOT TO TALK ABOUT FLIGHT. WE'VE GOT TO
20 TALK ABOUT THE TYPEWRITER, THE PLAYING CARDS, AND THE
21 EXPERT WITNESS, RIGHT?

22 MR. MCMAHON: YES, SIR, BUT I MEAN, THAT'S THE
23 NOOSE TIGHTENING ON HIM.

24 THE COURT: WHICH ONE?

25 MR. MCMAHON: WELL, FROM THE BREAK IN AND WHEN

1 HE RUNS. I MEAN, JUST BECAUSE THE POLICE MIGHT NOT YET BE
2 ONTO HIM ABOUT THE MURDER, THE C.I.D. IS CERTAINLY ONTO
3 HIM ABOUT THE HOMICIDE. THAT'S GUILTY KNOWLEDGE, AND
4 THERE'S A LOT MORE TO RUN FROM ON THE HOMICIDE THAN THE
5 BREAK IN, AND STILL, ALL OF THAT IS POST HOMICIDE. ALL OF
6 THAT A.W.O.L. IS POST HOMICIDE.

7 I THINK THAT'S ALL I HAVE. THANK YOU, YOUR
8 HONOR.

9 THE COURT: OKAY. I'LL GIVE YOU A RULING AT
10 9 O'CLOCK IN THE MORNING. JUST BE READY TO MOVE AROUND
11 DEPENDING ON THAT.

12 MS. HUDGINS: THANK YOU, YOUR HONOR. I'D JUST
13 LIKE TO MAKE THIS A PART OF THE RECORD.

14 THE COURT: SURE.

15 (WHEREUPON, COURT'S EXHIBIT NO. 8 WAS MARKED FOR
16 IDENTIFICATION ONLY.)

17 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR
18 THE EVENING.)

19 THE COURT: ALL RIGHT. ON THE THREE EVIDENTIARY
20 RULES, AND ONE COMMENT TO THE DEFENSE ABOUT ARGUMENT OR
21 WITNESSES, BASED UPON THE TOTALITY OF THE CIRCUMSTANCES
22 WITH REGARD TO THE EXPERT WITNESS TESTIMONY, I'M GOING TO
23 ALLOW THE DEFENSE TO PROBE THE EXPERT WITNESS ON ANY PRIOR
24 MISTAKE UNDER THE AUTHORITY OF JOHNSON VS. -- WILLIAMS VS.
25 SPANDOOR (PHONETIC).

1 WITH REGARD TO THE TESTIMONY ABOUT THE A.W.O.L.,
2 I FIND THAT TO BE MORE PREJUDICIAL THAN PROBATIVE IN THE
3 CASE IN CHIEF, IN THAT THE A.W.O.L. CONNOTATION CARRIES
4 CLEARLY A GREATER ATTACK ON CHARACTER THAN JUST SIMPLY
5 FLIGHT.

6 WITH REGARD TO THE TYPEWRITER -- OR INVOLVEMENT
7 OF THE PAWNSHOP WITH REGARD TO THE TYPEWRITER AND PLAYING
8 CARDS, I WOULD EXCLUDE THAT IN THE CASE IN CHIEF.

9 THE PRIVATE WHO GOT THE BULLET, OBVIOUSLY, CAN
10 TESTIFY WHEN HE GOT THAT. IT PRECEDES MARCH 22ND. HE
11 ALSO TESTIFIED -- HE ALSO HAD THE PAWNSHOP RECORDS THAT
12 CLEARLY INDICATE THE GUN WAS ACQUIRED PRIOR TO ANY TIME
13 THAT THE DEFENDANT CLAIMS HE GOT IT. THOSE ARE THE
14 RELEVANT ISSUES.

15 NOW, MR. DELGADO --

16 MR. DELGADO: YES, YOUR HONOR.

17 THE COURT: -- LAWYERS GET UP ALL THE TIME IN
18 OPENING ARGUMENTS, AND THEY START IN ON THIS CHARACTER
19 STUFF. IF YOU OPEN THE DOOR, I'M GOING TO LET THEM RUN
20 THROUGH IT.

21 MR. DELGADO: YES, SIR.

22 THE COURT: UNTIL HE TAKES THE STAND, THERE'S
23 NOT GOING TO BE ANY COMMENT, CHARACTERIZATION, WHATEVER
24 ABOUT CHARACTER.

25 MR. DELGADO: THANK YOU, YOUR HONOR.

1 THE COURT: I WANT TO TIGHTEN IT DOWN IN THIS
2 CASE. IT'S A CHESS GAME FOR BOTH OF YOU. BOTH SIDES HAVE
3 TO BE CAREFUL. I WANT TO KEEP THE RECORD CLEAN, BUT I'M
4 NOT GOING TO LET EITHER SIDE TAKE ADVANTAGE.

5 MR. DELGADO: THANK YOU.

6 MR. MCMAHON: JUDGE, COULD I JUST GET ONE MORE
7 RULING OR AT LEAST ASK YOU TO START PONDERING IT?

8 THE COURT: YES.

9 MR. MCMAHON: ON THE EXPERT, AND IT WON'T COME
10 UP TODAY, BUT I ASSUME THIS WILL BECOME ADMISSIBLE UNDER
11 613 OF A PRIOR WITNESS WHERE HE MADE A MISTAKE.

12 NOW, IS THE QUESTION GOING TO BE -- I WANT TO
13 KNOW HOW FAR THE DEFENSE IS GOING TO BE ALLOWED TO GO,
14 "HAVE YOU EVER MADE A MISTAKE IN THE PAST." IF THE ANSWER
15 TO THAT IS YES, THEN THEY CANNOT GO INTO THE DETAILS OF
16 THAT OTHER CASE; IS THAT CORRECT?

17 THE COURT: WELL, LET ME PUT IT TO YOU THIS WAY:
18 I THOUGHT I WOULD BE A LITTLE LIBERAL ABOUT THAT BECAUSE
19 YOUR EXPERT MIGHT WANT TO EXPLAIN THAT.

20 MR. MCMAHON: YES, SIR. I MEAN, I UNDERSTAND --
21 THAT'S WHY I WANTED TO GET A THOUGHT OR I GUESS GUIDANCE
22 ON YOUR RULING AS FAR AS HOW FAR THEY'RE ALLOWED TO GO.

23 THE COURT: WELL, I THINK IT'S DIFFERENT FROM --
24 MY INTENTION IS TO GIVE BOTH SIDES A LITTLE PLAY ON THAT.
25 IT'S DIFFERENT FROM A CRIMINAL GETTING UP AND SAYING, YOU

1 KNOW, KIND OF I DID IT BUT I REALLY DIDN'T DO IT.

2 MR. MCMAHON: YES, SIR, I UNDERSTAND.

3 THE COURT: I THINK IN THIS CASE -- AND THAT
4 HAPPENS, AS YOU KNOW. IN THIS CASE, YOU'RE TALKING ABOUT
5 A PROFESSIONAL, AND HE'S GOT A REPUTATION.

6 I TEND TO LET PEOPLE -- GIVE YOU THE ROOM TO
7 EXPLAIN IT, LET THEM PROTEST IT.

8 MR. MCMAHON: I JUST DIDN'T WANT TO -- OKAY.
9 THANK YOU, JUDGE.

10 THE CLERK: STILL MISSING ONE.

11 THE COURT: WE'RE STILL MISSING ONE?

12 THE CLERK: YES, SIR.

13 THE COURT: ARE THERE A BUNCH OF EXHIBITS THAT
14 WE COULD GO AHEAD AND PREMARK WHILE WE'RE HERE? IS THERE
15 ANYTHING WE CAN PREMARK?

16 MS. HUDGINS: JUDGE, COULD I JUST REQUEST A
17 CLARIFICATION? I'M NOT SURE IF YOUR RULING ON A.W.O.L.
18 REFERENCE ENCOMPASSES THE FORT LEAVENWORTH. I CAN'T
19 PERCEIVE HOW THAT MAKES THEM UP BASED ON THAT RULING, BUT
20 I DON'T --

21 THE COURT: WELL, THERE ARE OTHER MILITARY
22 BASES. THAT'S HOW IT WAS. I'M NOT GOING TO JUST SANITIZE
23 IT. HE MAY HAVE BEEN THERE AS AN OFFICER. HE MAY HAVE
24 BEEN THERE AS A GUARD. HE WAS AT LEAVENWORTH.

25 MS. HUDGINS: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT. WE'VE GOT THEM ALL NOW
2 SO WE CAN START.

3 ALL RIGHT. BRING THE JURY IN.

4 DO YOU WANT THE JURY POLLED?

5 MR. MCMAHON: NO, SIR.

6 THE COURT: THERE WASN'T ANY DISCUSSION ABOUT
7 ANY RULINGS OR THAT SUBSTANCE.

8 THE BAILIFF: BRING THEM?

9 THE COURT: YES, SIR.

10 NOW, THOSE RULINGS ARE LIMITED TO THE CASE IN
11 CHIEF, OBVIOUSLY.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 9:13 A.M.)

14 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
16 THE CLERK NEEDS TO SWEAR YOU IN, AND THEN WE'LL GET
17 STARTED WITH THE TRIAL.

18 MADAM CLERK?

19 THE CLERK: MR. FOREMAN, LADIES AND GENTLEMEN OF
20 THE JURY, PLEASE STAND AND RAISE YOUR RIGHT HAND TO BE
21 SWORN.

22 YOU SHALL WELL AND TRULY TRY AND TRUE
23 DELIVERANCE MAKE, BETWEEN THE STATE AND THE DEFENDANT,
24 WHOM YOU SHALL HAVE IN CHARGE, AND A TRUE VERDICT GIVE,
25 ACCORDING TO THE LAW AND THE EVIDENCE, SO HELP YOU GOD.

1 PLEASE HAVE A SEAT.

2 THE COURT: MR. SYLVESTER, THEY APPOINTED YOU
3 THE FOREMAN; IS THAT CORRECT?

4 THE FOREMAN: YES, YOUR HONOR.

5 PRETRIAL CHARGE:

6 THE COURT: ALL RIGHT. MR. FOREMAN AND LADIES
7 AND GENTLEMEN OF THE JURY, AS WE INDICATED TO YOU
8 YESTERDAY, THERE IS A DISPUTE BETWEEN THE STATE OF SOUTH
9 CAROLINA AND MR. FRIEBURGER ABOUT WHETHER OR NOT HE
10 COMMITTED THE OFFENSE OF MURDER.

11 WE IMPANEL A JURY LIKE YOU, LADIES AND
12 GENTLEMEN, TO LISTEN TO THE EVIDENCE AND DECIDE QUESTIONS
13 OF FACT AND CREDIBILITY ARISING OUT OF THE EVIDENCE IN THE
14 CASE.

15 WE DO THAT BY WAY OF A TRIAL. A TRIAL IS
16 ESSENTIALLY A FIVE-PART PROCEEDING. THE FIRST PART IS IN
17 JUST A FEW MINUTES THE ATTORNEYS WILL GET UP AND MAKE
18 BRIEF OPENING STATEMENTS TO YOU KIND OF GIVING YOU A ROAD
19 MAP, IF YOU WILL, ABOUT HOW THEY'RE GOING TO PROCEED AND A
20 LITTLE BIT ABOUT WHAT YOU MIGHT EXPECT DURING THE COURSE
21 OF THE TRIAL.

22 AFTER THE OPENING STATEMENTS, WE'LL GO TO THE
23 SECOND PART OF THE TRIAL. THAT'S THE EVIDENTIARY PHASE.
24 THAT'S, OBVIOUSLY, THE LONGEST PART OF THE TRIAL.

25 DURING THAT TIME, WITNESSES ARE CALLED, PUT ON

1 THE STAND UNDER OATH, AND THEY'RE EXAMINED BY BOTH SIDES,
2 DIRECT EXAMINATION, CROSS-EXAMINATION, REDIRECT AND
3 RECROSS, IF NECESSARY.

4 DURING THAT EVIDENTIARY PHASE, ALSO THERE MAY BE
5 SOME PHYSICAL EXHIBITS FOR YOU TO CONSIDER ALONG WITH THE
6 TESTIMONY THAT YOU WILL HEAR.

7 THE THIRD PART OF THE TRIAL IS THE -- AT THE END
8 OF THE EVIDENTIARY PHASE, THE ATTORNEYS WILL GET AN
9 OPPORTUNITY TO MAKE A CLOSING SUMMATION TO YOU.

10 DURING THAT TIME, THEY CAN DISCUSS WITH YOU WHAT
11 THEY THINK THE EVIDENCE HAS SHOWN OR NOT SHOWN AS THE CASE
12 MAY BE, AND THEY ARE ALSO PERMITTED TO TALK WITH YOU ABOUT
13 THE LEGAL PRINCIPLES THAT THEY BELIEVE ARE APPLICABLE IN
14 THE CASE.

15 THE FOURTH PART OF THE TRIAL IS THAT I'LL GIVE
16 YOU A SET OF LEGAL INSTRUCTIONS THAT YOU'LL NEED TO USE
17 DURING YOUR DELIBERATIONS IN ARRIVING AT A VERDICT IN THIS
18 CASE.

19 FOR EXAMPLE, I'LL GIVE YOU SOME TOOLS TO ASSESS
20 CREDIBILITY OR BELIEVABILITY OF WITNESSES. I'LL ALSO GIVE
21 YOU A DEFINITION OF MURDER SO YOU CAN SEE WHETHER OR NOT
22 THE ELEMENTS HAVE BEEN PROVEN OR NOT.

23 I'LL ALSO GIVE YOU A DEFINITION OF THE
24 PRESUMPTION OF INNOCENCE, PROOF BEYOND A REASONABLE DOUBT,
25 AND OTHER THINGS LIKE THAT YOU'LL NEED IN ORDER TO MAKE

1 YOUR DECISION.

2 THEN LASTLY, AND MOST IMPORTANTLY, YOU'LL GO
3 BACK IN YOUR JURY ROOM AND DELIBERATE AND ARRIVE AT A
4 DECISION BASED UPON THE EVIDENCE AND THE LAW IN THE CASE.

5 NOW, LET ME ASK YOU TO DO THREE THINGS TO
6 PROTECT AND PROMOTE THE INTEGRITY OF THE JURY SYSTEM AND
7 OF OUR JUDICIAL PROCESS: NUMBER ONE, PLEASE DON'T MAKE UP
8 YOUR MIND ABOUT THE OUTCOME OF THIS CASE UNTIL YOU HEARD
9 ALL THE EVIDENCE, THE ARGUMENTS, THE CHARGE, AND MOST
10 IMPORTANTLY, YOUR FELLOW JUROR'S VIEWS ABOUT THE CASE.

11 A TRIAL IS A LITTLE BIT LIKE A JIGSAW PUZZLE.
12 SO UNTIL YOU'RE ABLE TO SEE THE WHOLE PICTURE, I'D ASK YOU
13 NOT TO DISCUSS THE CASE OR MAKE UP YOUR MIND.

14 IN ADDITION TO THAT, WHILE YOU'RE GOING TO AND
15 FROM THE COURTHOUSE, EITHER AT LUNCH OR GOING HOME AT
16 NIGHT, I WOULD ASK YOU NOT TO DISCUSS THE CASE WITH ANYONE
17 OR ALLOW ANYONE TO DISCUSS IT WITH YOU OR WATCH OR READ
18 ANY NEWS ACCOUNT OF THE TRIAL.

19 YOU HAVE BEEN CHOSEN TO MAKE THE DECISION HERE
20 IN THIS COURTROOM BASED ON WHAT IS PRESENTED OR NOT
21 PRESENTED, AS THE CASE MAY BE, WITHOUT THE BENEFIT OF ANY
22 OUTSIDE INFLUENCE.

23 LASTLY, EVEN THOUGH YOU, LADIES AND GENTLEMEN,
24 ARE ULTIMATELY GOING TO MAKE A DECISION IN THIS CASE, I'D
25 ASK YOU WHILE THE TRIAL IS IN PROGRESS NOT TO DISCUSS THE

1 CASE AMONG YOURSELVES, EITHER WHILE YOU'RE ON LUNCH OR
2 BACK THERE ON A BREAK OR OTHER BREAKS LIKE THAT.

3 I THINK YOU CAN UNDERSTAND THE RATIONALE FOR
4 THAT. REMEMBER, I TOLD YOU THAT A TRIAL IS A LITTLE BIT
5 LIKE A JIGSAW PUZZLE. IT COMES IN A PIECE AT A TIME.

6 IF YOU GET BACK THERE AND SAY SOMETHING LIKE,
7 FOR EXAMPLE, "I REALLY LIKED THAT WITNESS," OR "I DIDN'T
8 BELIEVE THAT WITNESS AT ALL," THAT'S A PROCESS BY WHICH
9 YOU'D BE MAKING UP YOUR MIND. THAT WOULD NOT BE FAIR TO
10 EITHER SIDE. I'D ASK YOU NOT TO DO THAT WHILE THE TRIAL
11 IS IN PROGRESS.

12 NOW, EVERYBODY HERE IN THIS COURTROOM HAS A ROLE
13 TO PLAY.

14 SOME OF YOU WHO -- HOW MANY OF YOU HAVE SERVED
15 ON A JURY BEFORE? (INDICATING) OKAY. THAT'S ABOUT
16 AVERAGE NOWADAYS.

17 WELL, FOR THOSE OF YOU WHO HAVE NOT BEEN IN A
18 COURTROOM BEFORE, THIS IS GOING TO KIND OF GIVE YOU THE
19 LAYOUT. THE LADY OVER HERE TO MY RIGHT IS THE COURT
20 REPORTER. SHE TAKES DOWN EVERYTHING THAT'S SAID, MARKS
21 EXHIBITS AND THAT TYPE OF STUFF.

22 MS. EARLY, TO MY RIGHT, WHO IS MY LAW CLERK, SHE
23 HELPS KEEP ME STRAIGHT, KIND OF LIKE MY LAWYER, I GUESS
24 YOU COULD SAY.

25 THEN YOU MET -- YOU WILL MEET MR. MCMAHON AND

1 MS. CAMPBELL WHO ARE PROSECUTORS IN THE CASE; MR. DELGADO
2 AND MS. HUDGINS, WHO ARE DEFENSE ATTORNEYS IN THE CASE,
3 THEY HAVE THEIR RESPECTIVE ROLES WHICH THEY WILL OUTLINE
4 FOR YOU.

5 THE BAILIFFS ARE AROUND TO ASSIST YOU, AND THE
6 CLERK OF COURT IS ALSO HERE FOR PURPOSES OF SWEARING
7 WITNESSES AND KEEPING UP WITH THE PAPERWORK AND THAT TYPE
8 OF THING.

9 THERE WILL BE CAMERAS IN THE COURTROOM, PROVIDED
10 THEY COMPLY WITH THE RULES, AND THAT IS THAT YOU WILL NOT
11 BE PHOTOGRAPHED, NOR YOUR NAMES BE EXPOSED BY WAY OF THE
12 MEDIA, SO DO NOT WORRY ABOUT THAT. THERE ARE CERTAIN
13 LIMITATIONS AND RULES THAT THEY HAVE TO FOLLOW. AFTER A
14 WHILE, YOU WON'T NOTICE THAT THEY'RE IN HERE ANYWAY.

15 WE'LL GO ESSENTIALLY ABOUT AN HOUR,
16 HOUR-AND-A-HALF DEPENDING ON THE TIME OF DAY, TAKE A QUICK
17 BREAK, CONTINUE ALONG UNTIL WE GET THROUGH THE TRIAL.

18 IF WE'RE OUT HERE TOO LONG, FOR EXAMPLE, AND YOU
19 NEED A BREAK, JUST KIND OF GIVE ME A HIGH SIGN, AND I'LL
20 TRY TO TAKE CARE OF THAT FOR YOU.

21 NOTE TAKING, I SAW THE FOREMAN HAD A PAD AND
22 THAT'S FINE. I DON'T HAVE A PROBLEM WITH NOTE TAKING.
23 DOES ANYBODY ELSE WANT TO TAKE NOTES?

24 (INDICATING IN THE AFFIRMATIVE.).

25 OKAY. MADAM CLERK, DO THAT FOR US.

1 WE'LL GIVE YOU A NOTEPAD. WHAT I'D ASK YOU TO
2 DO IS TAKE AN OUTSIDE SHEET, SIGN IT -- PUT YOUR NAME
3 ACROSS THE FRONT SO THAT WE'LL KNOW WHOSE IT IS, AND YOU
4 ALSO USE IT AS A COVER SHEET SO THAT NOBODY ELSE CAN BE
5 READING YOUR NOTES.

6 WE'LL TAKE THEM UP AT THE END OF THE DAY AND
7 SECURE THEM SO NOBODY ELSE WILL HAVE ACCESS TO THEM.

8 NOW, LET ME TELL YOU ABOUT NOTE TAKING. MY WIFE
9 AND I HAVE A DIFFERENCE OF OPINION AS TO WHO HAS THE BEST
10 MEMORY. SHE IS A NOTE TAKER, AND I AM NOT.

11 NOW, THE PURPOSE OF SAYING THAT IS SOME PEOPLE
12 DO BETTER BY TAKING NOTES AND SOME PEOPLE DO BETTER JUST
13 BY SITTING THERE AND LISTENING.

14 AT THE END OF THE DAY WHEN YOU GET BACK THERE TO
15 DELIBERATE, YOU'LL OFTEN HEAR SOMEBODY SAY, "I HEARD IT
16 BECAUSE I WROTE IT DOWN." THAT'S NOT NECESSARILY SO.

17 IF THERE ARE DIFFERENCES OF OPINION, YOU'LL JUST
18 HAVE TO WORK THAT OUT BETWEEN THE NOTE TAKERS AND THE
19 NON-NOTE TAKERS. THOSE NOTES ARE JUST FOR YOUR BENEFIT
20 AND NOT FOR ANYONE ELSE.

21 SO I DON'T HAVE A PROBLEM WITH THAT. JUST
22 FOLLOW BY THOSE RULES, WORK OUT THOSE DIFFERENCES OF FACT.

23 I THINK THAT ABOUT COVERS IT.

24 OH, I WANT TO TELL YOU ONE OTHER THING THAT KIND
25 OF Baffles JURORS, SOMETIMES. THERE ARE RULES OF

1 EVIDENCE, AND WE TRIED TO GO THROUGH A NUMBER OF RULINGS
2 YESTERDAY AFTERNOON ON SOME OF THE KEY ISSUES IN THE CASE,
3 AND I'VE ALREADY MADE THOSE, BUT THERE WILL, FROM TIME TO
4 TIME, BE OBJECTIONS MADE BY ONE SIDE OR THE OTHER AS TO
5 THE ADMISSIBILITY OF EVIDENCE OR SOME PROCEDURAL MATTER.

6 WHEN THEY DO THAT, THEY'LL SAY "I OBJECT" AND
7 GIVE ME A REASON FOR IT. I'LL TRY TO RULE ON THE SPOT.
8 I'LL EITHER SAY "I SUSTAIN YOUR OBJECTION", WHICH MEANS I
9 AGREE WITH IT, OR "OVERRULE THE OBJECTION" WHICH MEANS I
10 DISAGREE WITH IT.

11 SOMETIMES THEY'LL ASK TO COME UP HERE TO GIVE ME
12 A LITTLE BIT MORE CONTEXT AND AVOID SENDING YOU OUT. THEN
13 SOMETIMES IT WILL BE NECESSARY THAT I ACTUALLY HAVE TO
14 SEND YOU TO THE JURY ROOM SO I CAN HEAR THEM ON THE RECORD
15 AND MAKE SURE I TRY NOT TO MAKE A MISTAKE IN THE COURSE OF
16 THE TRIAL. JUST BEAR WITH US IN THAT SITUATION.

17 SO WITH HAVING SAID THAT, WE'LL GET STARTED WITH
18 THE OPENING STATEMENTS.

19 I'LL TELL YOU WHAT, LET ME LET THE CAMERAMAN GET
20 SET UP SO HE WON'T BE DISTRACTING ANYBODY, AND THE NOTE
21 PADS WILL BE BACK UP HERE IN JUST A MINUTE.

22 (PAUSE).

23 THE COURT: MR. JOHNSON.

24 THE BAILIFF: YES, SIR.

25 THE COURT: THE NEXT ONE THAT IS LATE STAYS OUT

1 THERE UNTIL WE TAKE A BREAK.

2 (PAUSE).

3 ALL RIGHT. ARE WE READY TO GO? MR. MCMAHON.

4 OPENING STATEMENT:

5 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
6 PLEASE THE COURT.

7 GOOD MORNING. MR. FOREMAN, LADIES AND GENTLEMEN
8 OF THE JURY, MARCH 1ST, 1961, BEFORE MANY FOLKS IN THIS
9 COURTROOM WERE BORN, WITHIN FIVE BLOCKS OF THIS VERY SPOT,
10 THE BLOODY CAB OF JOHN ORNER WAS DISCOVERED ON THE CORNER
11 OF ASSEMBLY AND LADY STREET.

12 SINCE THAT EXCESS OF A 40-YEAR PERIOD OF TIME,
13 THIS CASE HAS TAKEN MANY TWISTS AND TURNS. IT'S GONE FROM
14 THE BLOODY CAB AT ASSEMBLY AND LADY TO THE DISCOVERY OF
15 MR. ORNER'S BODY TWO DAYS LATER ON MARCH 3RD OF '61 ON
16 HIGHWAY 601 OFF OF BLUFF ROAD IN RICHLAND COUNTY.

17 IT'S GONE ON THROUGH A METICULOUS POLICE SHOE
18 LEATHER INVESTIGATION, I'LL CALL IT, BACK IN THE '60S.

19 AS IT PROGRESSED, IT ENDED UP IN A CONVERSATION
20 AT TRINITY UNITED METHODIST CHURCH IN BLYTHEWOOD IN 1999
21 BETWEEN MR. TOM JOYNER, WHO IS SEATED ON THE FIRST ROW
22 BEHIND THE BENCH. MR. JOYNER IS A RELATIVE OF JOHN ORNER.

23 HE ASKED ABOUT THE CASE IN 1999, ASKED A YOUNG
24 MAN THAT WAS A SHERIFF'S CAPTAIN ABOUT IT, TO LOOK IT UP,
25 SEE IF YOU COULD FIND THE FILE. SEE IF THERE'S ANY

1 EVIDENCE OF WHAT HAPPENED TO, AS MR. ORNER WAS KNOWN BY
2 HIS NICKNAME, "YANKEE JOHN".

3 THEY LOOKED THAT FILE UP AND LOCATED IT AT OUR
4 SHERIFF'S DEPARTMENT, LOCATED OTHER ITEMS OF EVIDENCE,
5 WHICH I'LL TALK ABOUT SHORTLY.

6 IN EACH TWIST AND TURN THIS CASE TOOK, IN 1961,
7 1999, 2000, 2001, AND 2002 LED BACK TO THE SAME
8 CONCLUSION, THE DEFENDANT, ED FRIEBURGER, WAS THE MURDERER
9 OF JOHN ORNER.

10 LADIES AND GENTLEMEN, IT WILL SHORTLY BE YOUR
11 DUTY AS JURORS TO FOCUS YOUR ATTENTION, TO LISTEN TO THE
12 EVIDENCE, AND DECIDE THE TRUTH OF THE FACTS OF THIS CASE
13 BASED ON SOME EVIDENCE IN EXCESS OF 40 YEARS AND SOME
14 CURRENT EVIDENCE.

15 HOW DO WE DO THAT IN THIS COUNTRY? REGARDLESS
16 OF THE AGE OF THE CASE, THAT IMMATERIAL, THAT'S
17 IRRELEVANT. JUSTICE IS AGELESS. WE ALL KNOW THAT. IT'S
18 AGELESS.

19 WE DON'T HAVE COURSES THAT YOU TAKE TO QUALIFY
20 TO BE A JUROR. YOU DON'T TAKE JURY 101 IN SCHOOL, BUT
21 EACH AND EVERY DAY OF YOUR LIFE LEADING UP TO THIS POINT
22 HAS PREPARED YOU FOR THIS SOLEMN AND SACRED DUTY, BECAUSE
23 YOU COME IN HERE INDIVIDUALLY AND COLLECTIVELY WITH YOUR
24 BACKGROUND, YOUR HISTORY, YOUR WORK EXPERIENCES, YOUR LIFE
25 EXPERIENCES, AND YOUR COMMON SENSE.

1 YOU FOCUS IT INDIVIDUALLY AND COLLECTIVELY, LIKE
2 A JUDICIAL LASER, ON THIS EVIDENCE, ON THE EVIDENCE
3 PRESENTED, WHETHER IT BE BY WAY OF TESTIMONY, DOCUMENTS,
4 EXHIBITS, PHYSICAL ITEMS.

5 LISTEN TO ALL THE PARTIES INVOLVED. WEIGH THAT
6 AGAINST THE STANDARD OF THE LAW AS JUDGE FLOYD WILL TELL
7 YOU THE LAW IS, THAT YOU MUST ACCEPT, AND DECIDE THE
8 TRUTH. THAT WILL BE YOUR DUTY.

9 IT'S SIMPLE OR IT'S COMPLEX IN IT'S SIMPLICITY,
10 SO TO SPEAK, COMPLEX IN ITS SIMPLICITY.

11 NOW, JOHN ORNER, WAS A 63 YEAR OLD, 5'5",
12 145-POUND MALE, SMALL, SLY. HE WAS A WORLD WAR I AND A
13 WORLD WAR II VETERAN, AND HE WAS RETIRED FROM THE UNITED
14 STATES ARMY, RETIRED OUT OF FORT JACKSON.

15 AFTER HIS RETIREMENT, HE BECAME AN INDEPENDENT
16 CAB OPERATOR FOR STATE CAB COMPANY. BACK IN '61, IT'S
17 HARD FOR MANY OF US TO PERCEIVE IN THIS INTERNET WORLD AND
18 ELECTRONIC AGE THE METERS THAT WERE IN CABS AND THE FACT
19 THAT MANY OF THEM DIDN'T EVEN HAVE TWO-WAY RADIOS.

20 THEY WOULD STAY AT PLACES CALLED CAB STANDS, AND
21 THEN THE PERSON WOULD PHONE IN, AND THE CAB WOULD LEAVE
22 OUT FROM THERE. THERE COULD BE A NUMBER OF CABS AROUND
23 THAT CAB STAND.

24 BEING RETIRED MILITARY, BEING A TWO-WAR VETERAN,
25 HE LIKED TO STAY IN AN AREA OF THE CAB STAND ON FORT

1 JACKSON BOULEVARD NEAR THE MAIN GATE.

2 HE LIKED TO WORK THAT AREA OF FORT JACKSON,
3 MAINLY FERRYING SOLDIERS. FORT JACKSON WAS ONE OF THE
4 LARGEST RECRUIT BASES, RECRUIT TRAINING BASES, ON THE EAST
5 COAST BACK IN THE '60S, MAY STILL BE, MAY STILL BE.

6 DOWNTOWN COLUMBIA WAS VERY DIFFERENT THAN WHAT
7 IT IS NOW, BUT THERE WERE MANY ESTABLISHMENTS THAT WOULD
8 CATER TO PATRONIZE RECRUITS AT FORT JACKSON, ALL ARMY
9 TOWNS HAVE THEM, AND COLUMBIA, OF COURSE, BEING NO
10 EXCEPTION BEING PART OF AN ARMY TOWN.

11 MR. ORNER WOULD WORK THAT AREA, AND HE LIVED OUT
12 ON [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. YOU CAN'T FIND
13 THAT ADDRESS NOWADAYS.

14 IF YOU RIDE OUT THERE NOWADAYS, YOU BE SOMEWHERE
15 IN THE VICINITY OF COLUMBIA MALL. PEOPLE DON'T EVEN KNOW
16 THAT'S DENTSVILLE, SOUTH CAROLINA ANYMORE.

17 IF YOU ASK SOMEBODY, "WHERE ARE YOU FROM," IF
18 THEY SAY DENTSVILLE, YOU KNOW THEY'RE FROM COLUMBIA.

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] IS RIGHT NEAR THAT AREA OF
20 WHERE COLUMBIA MALL IS.

21 OF COURSE, YOU COULD GO THROUGH THE POST IN
22 THOSE DAYS. NOT ONLY WAS IT PRE9/11 FROM NEW YORK, IT WAS
23 PRE-911, THE PHONE NUMBER.

24 YOU COULD RIDE THROUGH THE POST. YOU COULD GO
25 IN THE MAIN GATE ON JACKSON BOULEVARD, COME OUT ON

1 PERCIVAL ROAD, HIT DECKER BOULEVARD, GO IN FRONT OF OLD
2 DENTSVILLE HIGH SCHOOL, TURN LEFT RIGHT ON [REDACTED] [REDACTED] [REDACTED]
3 IF YOU LIVED IN THAT VICINITY, BE RIGHT THERE AT THE [REDACTED]
4 BLOCK.

5 THE DEFENDANT, ED FRIEBURGER, BORN IN 1942, IN
6 NOVEMBER OF 1960, HE REPORTED TO FORT JACKSON, SOUTH
7 CAROLINA FACING COMBAT TRAINING.

8 HE WAS STATIONED AT FORT JACKSON UP THROUGH THE
9 FIRST PART OF MARCH, FIRST PART OF MARCH OF '61. HE WAS A
10 RECRUIT THERE. THAT'S A COMMON DENOMINATOR.

11 IN FEBRUARY OF '61, HE WAS ASSIGNED TO ADVANCED
12 INDIVIDUAL TRAINING, COMPANY 8, 16TH BATTALION, FORT
13 TRAINING BRIGADE AS A SUPPLY CLERK.

14 THE AREA OF HIS BARRACKS WAS RIGHT IN THAT AREA
15 OF JACKSON BOULEVARD, RIGHT IN THAT AREA WHERE YOU GO FROM
16 THAT CAB STAND TO JOHN ORNER'S HOUSE. THAT IS A COMMON
17 DENOMINATOR IN THIS CASE, FORT JACKSON, FORT JACKSON.

18 NOW, AFTER THE POLICE, AND WE HAVE ONE OF THE
19 OFFICERS THAT WERE ON THE SCENE WHERE THAT CAB WAS FOUND
20 THAT MORNING, AFTER THE POLICE LOCATED MR. ORNER'S MISSING
21 OR BLOODY CAB, AFTER HE WAS REPORTED MISSING ON THE
22 MORNING OF MARCH 1ST, '61, THAT CAB WAS EXAMINED, AND
23 THERE BEGAN A POLICE INVESTIGATION IN AN ATTEMPT TO LOCATE
24 MR. ORNER.

25 UNFORTUNATELY, THAT DID NOT END WITH GOOD NEWS.

1 HIS BODY WAS FOUND ON THE SIDE OF HIGHWAY 601. YOU GO ALL
2 THE WAY DOWN BLUFF ROAD, 48, TURN -- THERE'S A STORE,
3 RIGHT NEAR THAT INTERSECTION, WATEREE COUNTRY STORE.
4 RIGHT BEYOND THE RAILROAD TRACKS IS A LITTLE CREEK.

5 OVER ON THE EMBANKMENT, SOME INDIVIDUALS HAD
6 DISCOVERED, PART OF A POSSE THAT THE SHERIFF HAD GOTTEN,
7 DISCOVERED THE BODY OF JOHN ORNER.

8 AN AUTOPSY WAS CONDUCTED, AS IT SHOULD HAVE
9 BEEN, IN '61. THEY FOUND THAT MR. ORNER HAD BEEN SHOT
10 ONCE IN THE BACK OF THE HEAD, CONSISTENT WITH BEING SHOT
11 FROM THE BACK, FROM A PASSENGER IN HIS CAB. THAT AUTOPSY
12 WAS CONDUCTED BY A DR. LEONARD.

13 THERE WERE SOME S.L.E.D. AGENTS AT THAT AUTOPSY.
14 AS A MATTER OF FACT, ONE OF THEM WILL BE PRESENT IN THE
15 COURTROOM TODAY.

16 THEY ASSISTED IN CONDUCTING THAT AUTOPSY, AND
17 THEY SIFTED THROUGH MATERIAL FROM MR. ORNER'S BODY AND
18 WERE ABLE TO RECOVER THREE FRAGMENTS, THREE FRAGMENTS OF
19 ONE BULLET FROM THE BRAIN OF MR. ORNER.

20 IT WAS TAKEN INTO CUSTODY BY THE STATE LAW
21 ENFORCEMENT DIVISION ON MARCH 3RD, 1961, AND EXAMINED
22 BALLISTICALLY BY ONE OF THE OFFICERS IN THE COURTROOM
23 TODAY, AND ONE OFFICER WHO IS NOW DECEASED AND FOUND TO BE
24 FROM A 32 HARRINGTON AND RICHARDSON REVOLVER.

25 THE POLICE BEGAN LOOKING FOR THAT TYPE OF

1 WEAPON. YOU GOT THE CAB. YOU GOT THE BODY. YOU GOT THE
2 CAUSE OF DEATH. YOU LOOK FOR THE WEAPON.

3 THEY LOOKED AND THEY SEARCHED. THAT'S THE SHOE
4 LEATHER PART YOU HEAR ABOUT. THEY FOUND WHERE A SUBJECT
5 BOUGHT A 32 HARRINGTON AND RICHARDSON ON 2/28/61, AND IT
6 WASN'T LEAP YEAR, THE DAY BEFORE THAT BLOODY CAB WAS
7 FOUND, BOUGHT IT FROM 1124 WASHINGTON STREET, CAPITAL
8 LOAN.

9 WE HAVE THOSE DOCUMENTS. THAT PURCHASER, WE
10 SUBMIT, WAS ED FRIEBURGER, ED FRIEBURGER, A 32 CALIBER
11 HARRINGTON AND RICHARDSON.

12 THEY RECOVERED ANOTHER 32 CALIBER HARRINGTON AND
13 RICHARDSON ALSO, AND THEY WERE BOTH EXAMINED, BOTH
14 EXAMINED. ONE WAS EXCLUDED, NOT HIS. ONE WAS EXCLUDED,
15 AND THE GUN THAT HE HAD PURCHASED, THAT HE HAD PURCHASED,
16 WAS INCONCLUSIVE. IT MAY HAVE BEEN. IT MAY NOT HAVE
17 BEEN. IT WAS INCONCLUSIVE, NOTHING INCONSISTENT WITH IT
18 BEING THE MURDER WEAPON.

19 NOW, ALL THEY HAD WERE THEIR RECORDS. THEY
20 DIDN'T HAVE THE GUN. THEY DIDN'T HAVE ED FRIEBURGER, SO
21 THEY GOT TO LOOKING, WELL, WHO IS THIS ED FRIEBURGER AND
22 FOUND OUT THAT HE WAS A RECRUIT, BUT HE WASN'T AT FORT
23 JACKSON AT THAT TIME, NO, SIR, NO, MA'AM.

24 HE HAD BEEN ARRESTED BY THE TENNESSEE HIGHWAY
25 PATROL ON MARCH 29TH OF '61.

1 MR. DELGADO: YOUR HONOR, AM I NOT CORRECT IN MY
2 MEMORY THAT WE EXCLUDED THAT EVIDENCE?

3 THE COURT: YOU ALL COME UP HERE JUST ONE
4 SECOND.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
6 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
7 THE JURY.)

8 MR. DELGADO: THANK YOU, YOUR HONOR.

9 THE COURT: OBJECTION OVERRULED.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
11 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
12 THE JURY.)

13 THE COURT: ALL RIGHT. FOREMAN, LADIES AND
14 GENTLEMEN, LET ME LET YOU GO TO YOUR JURY ROOM FOR JUST A
15 MINUTE.

16 (WHEREUPON, THE JURY LEFT OPEN COURT AT
17 APPROXIMATELY 9:40 A.M.)

18 THE COURT: MR. DELGADO, YOU CAN'T JUST SANITIZE
19 THIS CASE COMPLETELY. THIS IS PART OF THE RES GESTE OF
20 THE CASE, HOW THEY FOUND THE GUN. IT'S ON THE SIDE OF THE
21 ROAD.

22 MS. HUDGINS: JUDGE, MY CLEAR UNDERSTANDING FROM
23 OUR LYLE MOTIONS YESTERDAY, I SPECIFICALLY ASKED ABOUT THE
24 CARRYING OF THE ARMS, AND PERHAPS I MISUNDERSTOOD THE
25 COURT'S RULING, BUT I THOUGHT IT --

1 THE COURT: ALL I EXCLUDED WAS THAT HE WAS
2 CONVICTED OF CARRYING ARMS. NOW, HOW ELSE ARE YOU GOING
3 TO PROVE THAT THEY FOUND THE GUN OTHER THAN HE WAS ON THE
4 SIDE OF THE ROAD AND THE TROOPER PULLED UP, THOUGHT HE WAS
5 HITCHHIKING AND SEARCHED HIM.

6 MS. HUDGINS: THAT WOULD BE ACCEPTABLE, AND WE
7 WOULDN'T HAVE AN OBJECTION TO THAT, BUT NOW HE SAID HE WAS
8 ARRESTED FOR CARRYING ARMS. I MEAN, I THINK THAT --

9 THE COURT: HE DID NOT SAY THAT. HE DID NOT SAY
10 THAT. HE SIMPLY SAID HE WAS ARRESTED.

11 MS. HUDGINS: JUDGE, HE WASN'T ARRESTED FOR
12 ANYTHING BUT CARRYING ARMS. I MEAN --

13 THE COURT: WELL, THEN I -- IT WAS A PAT DOWN
14 SEARCH UNDER TERRY, AND HE HAD A RIGHT TO DO IT.

15 NOW, HOW ELSE CAN YOU EXPLAIN THAT?

16 MS. HUDGINS: THAT HE WAS STOPPED FOR
17 HITCHHIKING.

18 THE COURT: WE CAN DO THAT, SEARCH PURSUANT TO
19 THAT, THAT'S RIGHT.

20 MS. HUDGINS: WELL, JUDGE, WE'VE ALREADY HAD
21 MR. MCMAHON TELL THE JURY THAT HE WAS ARRESTED. I MEAN, I
22 THINK I HAVE TO MOVE FOR A MISTRIAL AT THIS POINT, JUDGE.

23 THE COURT: MOTION DENIED.

24 MS. HUDGINS: THEN IN THE ALTERNATIVE, WE WOULD
25 ASK FOR AN ALTERNATIVE -- A CURATIVE INSTRUCTION AS TO THE

1 ARREST, JUDGE.

2 MR. MCMAHON: NOW, JUDGE, THAT WAS NOT SUBJECT
3 TO YOUR RULING.

4 AS I RECALL, THIS WAS THE POINT THAT YOU SAID I
5 OVERTRIED MY CASE, AND YOU WERE TALKING ABOUT THE COBB
6 COUNTY RECORD OF THE CONVICTION OF GUILTY OF CARRYING
7 ARMS.

8 I NEVER THOUGHT ANYTHING FACTUALLY ABOUT THAT
9 EVENT WHERE THE OFFICER CONDUCTED THE STOP, THE ARREST, OR
10 ANYTHING THAT WAS INADMISSIBLE.

11 I WAS GOING TO SAY HE WAS ARRESTED, AND AS A
12 RESULT OF THAT ARREST, HE WAS PATTED DOWN. THE RESULT OF
13 THAT SEARCH IS THEY FOUND THAT VERY WEAPON.

14 I AM NOT GOING INTO -- I THOUGHT I COULD SAY HE
15 WAS TAKEN TO THE NEWPORT COUNTY JAIL.

16 THE COURT: YOU CAN.

17 MR. MCMAHON: YES, SIR. I JUST WASN'T GOING
18 INTO THE CONVICTION, THE CONVICTION OF GUILTY, BECAUSE I
19 UNDERSTOOD YOUR RULING ON THAT WAS UNDER --

20 THE COURT: HE DIDN'T HAVE A LAWYER UNDER GIDEON
21 VS. WAINWRIGHT.

22 MR. MCMAHON: THAT WAS MY UNDERSTANDING OF THAT
23 I THOUGHT FACTUALLY ALL THE OFFICER TESTIFIED TO, WITH THE
24 EXCEPTION OF THE GUILTY PLEA, YOU RULED IT WAS ADMISSIBLE.

25 IF I MISUNDERSTOOD, I OBVIOUSLY WILL STAND

1 CORRECTED.

2 THE COURT: I STAND BY THE RULING.

3 BRING THE JURY BACK IN.

4 MS. HUDGINS: JUDGE.

5 THE COURT: YES, SIR.

6 MS. HUDGINS: WE WOULD OBJECT TO ANY REFERENCE
7 THAT HE WAS TAKEN TO THE COUNTY JAIL. WHAT POSSIBLE
8 PROBATIVE VALUE DOES THAT HAVE, JUDGE? THAT'S FAR MORE
9 PREJUDICIAL THAN PROBATIVE.

10 I WOULD LIKE THE RECORD TO BE CLEAR THAT WE ALSO
11 WERE OBJECTING TO THE FACT THAT THE SOLICITOR WAS TALKING
12 ABOUT OUR CLIENT BEING ARRESTED. I WANT THE RECORD TO BE
13 CLEAR THAT WE OBJECT TO THAT, YOUR HONOR.

14 MR. MCMAHON: JUDGES, U.S. VS. MASTERS
15 (PHONETIC), AND THE DISSENT IN STATE VS. SMITH WHICH IS
16 NOW THE LAW, DISSENT BY JUSTICE TOAL, UNDER THE RES GESTAE
17 THEORY OF GOING INTO THE FACTS OF THE CASE.

18 AM I TO TELL THIS JURY THAT TROOPER DON MEREDITH
19 IN 1961 COMES ALONG HIGHWAY 25/7, STOPS HIM AND CHECKS HIM
20 FOR HITCHHIKING, PATS HIM DOWN, GETS A GUN OFF OF HIM AND
21 THEN DRIVES OFF? I MEAN, THAT FLIES IN THE FACE OF
22 LOGICAL AND COMMON SENSE.

23 I JUST STOP THERE? AS I UNDERSTOOD IT, I
24 COULDN'T GET INTO THE FACTS OF THE GUILTY PLEA BECAUSE HE
25 DIDN'T HAVE A LAWYER, AND I WAS NOT INTENDING TO GO INTO

1 THAT. BUT I HAVE TO PROVE POSSESSION OF THE WEAPON, AND
2 HOW THE WEAPON COMES INTO THE CUSTODY OF ANY OFFICER AND
3 THAT STARTS WITH TROOPER MEREDITH.

4 THE COURT: I STAND BY THE RULING.

5 MR. MCMAHON: THANK YOU.

6 THE COURT: BRING THE JURY IN.

7 THE BAILIFF: YES, SIR.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 9:45.)

10 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

11 THE COURT: ALL RIGHT. YOU MAY PROCEED, SIR.

12 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
13 PLEASE THE COURT.

14 TO RECAP JUST VERY BRIEFLY, THE OFFICERS HAVE
15 THE RECORD OF THE PURCHASE OF THE WEAPON ON 2/28/61, THE
16 DATE WE ALLEGES THE WEAPON WAS PURCHASED, THE 32
17 HARRINGTON AND RICHARDSON, THE 32 CALIBER, AND THEY
18 IDENTIFIED BY NAME THE PURCHASER, FRIEBURGER, AND
19 DETERMINED HE HAD BEEN AT FORT JACKSON AND BEGAN THEN
20 ATTEMPTING TO LOCATE HIM.

21 ON MARCH 29TH OF '61, MR. FRIEBURGER WAS STOPPED
22 AND CHECKED BY THE TENNESSEE HIGHWAY PATROL RIGHT OUTSIDE
23 OF NEWPORT, TENNESSEE. HE WAS HITCHHIKING. HE WAS PATTED
24 DOWN, AND REMOVED FROM HIS PERSON WAS A 32 HARRINGTON AND
25 RICHARDSON CALIBER REVOLVER, THE SAME CALIBER, SAME MAKE,

1 SAME TYPE, SAME SERIAL NUMBER AS THE ONE PURCHASED THE DAY
2 BEFORE THE BLOODY CAB WITH MR. ORNER WAS FOUND AT ASSEMBLY
3 AND LADY STREET.

4 THAT IS THE GUN THAT BECAME THE FOCUS OF THE
5 INVESTIGATION IN '61. THAT'S THE SUSPECT THAT BECAME THE
6 FOCUS OF THE INVESTIGATION IN '61 AND IN 2001 AND 2000.

7 THE OFFICERS THEN EXAMINED THAT GUN, AND YOU CAN
8 HAVE ONE OF THREE OPINIONS AS I UNDERSTAND IT, POSITIVE,
9 NEGATIVE, OR MAYBE, IN MY SIMPLE TERMS. NEGATIVE, IT
10 AIN'T THE GUN. POSITIVE, IT ABSOLUTELY IS. MAYBE, JUST
11 WHAT IT SAYS, MIGHT BE, MIGHT NOT BE.

12 BACK IN '61, THAT WAS THE OPINION OF THE
13 S.L.E.D. OFFICERS, MIGHT BE, MIGHT NOT BE, IN '61.

14 WELL, WHEN THE CASE CAME BACK UP AND THE OFFICER
15 IS ATTEMPTING TO DETERMINE IF EVIDENCE WAS STILL
16 AVAILABLE, WHAT DID THEY FIND?

17 WELL, WHEN YOU GO PROSPECTING FOR NUGGETS,
18 SOMETIMES YOU FIND THEM. THEY FOUND BOTH GUNS. THEY
19 FOUND THREE FRAGMENTS IN THE BODY OF MR. ORNER, AND THE
20 TEST BULLETS FROM 1961, AND IT WAS RE-EXAMINED.

21 S.L.E.D. HAD THE SAME OPINION, MAYBE. DIDN'T
22 EXCLUDE IT, MAYBE. OUR SHERIFF'S DEPARTMENT WENT OUT,
23 WENT OUT, AND GOT ANOTHER, A SECOND OPINION BESIDES THAT
24 S.L.E.D. OPINION, AND IT AIN'T NEGATIVE. IT WAS POSITIVE,
25 POSITIVE.

1 SO THE BODY IS FOUND, THE BULLET IS REMOVED, AND
2 THEN THE GUN THAT FIRED THAT BULLET WAS FOUND IN THE
3 PERSON'S POCKET, PURCHASED THE GUN. WHAT DOES COMMON
4 SENSE TELL YOU?

5 NOW, LADIES AND GENTLEMEN, THERE WILL BE OTHER
6 FACTS, THERE WILL BE OTHER CIRCUMSTANCES IN THIS CASE,
7 OTHER DETAILS OF WHERE HE FREQUENTED PAWN SHOPS, ONE
8 WITHIN STEPS, CLOSER TO HERE PROBABLY THAN THE BACK DOOR
9 OF WHERE THAT CAB WAS FOUND, BACK IN FEBRUARY OF '61.

10 WHERE ON THE SAME DATE, FEBRUARY 28TH OF '61, HE
11 WAS NOT JUST IN THE ONE PAWNSHOP ON CAPITAL LOAN, BUT HE
12 WAS IN ANOTHER PAWNSHOP ON THE SAME BLOCK OF WASHINGTON
13 STREET, FREED'S JEWELERS AT 1108 WASHINGTON STREET.

14 ALL RIGHT THERE WITHIN WALKING DISTANCE OF WHERE
15 THAT CAB WAS FOUND, ALL RIGHT THERE WITHIN IN AREA, RIGHT
16 IN THAT VICINITY.

17 WHAT I ASK YOU TO DO, WHAT I ASK YOU TO DO,
18 WHETHER A CASE IS FOUR DAYS OLD, FOUR YEARS OLD, OR 40
19 YEARS OLD, ALL I ASK YOU TO DO IS DO JUROR JUSTICE TO THE
20 CASE.

21 THESE OFFICERS, LIEUTENANT CRAIG, SERGEANT METZ,
22 THEY HAVE DONE INVESTIGATIVE JUSTICE. HIS HONOR WILL DO
23 LEGAL, JUDICIAL JUSTICE, AND YOU WILL DO JUROR JUSTICE.
24 THAT WILL BE BASED ON YOUR EXAMINING, EVALUATING, FOCUSING
25 ON THE EVIDENCE OF WHAT YOU HEAR IN THIS COURTROOM WITHOUT

1 PASSION, SYMPATHY, NO FRIENDS, NO ENEMIES, JUST EVALUATING
2 THE EVIDENCE.

3 YOU WILL FIND WHEN YOU GO PROSPECTING FOR THAT
4 JUSTICE, YOU FIND THAT NUGGET OF JUSTICE OF THE TRUTH AND
5 THE FACTS OF THIS CASE.

6 THANK YOU.

7 THANK YOU, YOUR HONOR.

8 THE COURT: MR. DELGADO.

9 OPENING STATEMENT:

10 MR. DELGADO: THANK YOU, YOUR HONOR. MAY IT
11 PLEASE THE COURT.

12 GOOD MORNING. LADIES AND GENTLEMEN, MY NAME IS
13 JOHN DELGADO, AND I AM A CRIMINAL DEFENSE ATTORNEY. I AM
14 GOING TO SAY THIS THAT TO YOU WITH THE PRIDE THAT I BRING
15 TO THIS JOB. I MAKE NO BONES ABOUT THAT.

16 I PRESERVE AND PROTECT AND DEFEND THE
17 CONSTITUTIONAL RIGHTS OF INDIVIDUALS WHO ARE CHARGED, AND
18 I TAKE PRIDE IN THAT.

19 I WANT TO INTRODUCE YOU TO -- AS THE JUDGE SAID
20 HE HAS A LAWYER, HIS LAWYER. I HAVE HAD TWO LAWYERS,
21 KATHRINE HUDGINS, MY ASSOCIATE, AND THE LADY IN THE
22 PURPLE, OUR LAW CLERK NAMED CHRIS HINES, WHO IS A LAWYER
23 IN TRAINING. THOSE TWO FOLKS, AS THE JUDGE SAID, ARE
24 GOING TO KEEP ME STRAIGHT.

25 THE GENTLEMAN SEATED AT THE TABLE IS THE

1 DEFENDANT. HIS NAME IS ED FRIEBURGER. BEHIND HIM ARE
2 MEMBERS OF HIS FAMILY. HE IS FROM A LITTLE TOWN OUTSIDE
3 FORT WAYNE, INDIANA CALLED COLUMBIA CITY, INDIANA, LIKE
4 OUR TOWN BUT COLUMBIA CITY, INDIANA.

5 I WANT ONE THING TO BE VERY CLEAR, BETWEEN MARCH
6 OF 1961 WHEN MR. ORNER'S BODY WAS FOUND, WAY DOWN ON 601
7 HIGHWAY, ALMOST IN CALHOUN COUNTY. IN FACT, IT'S GOING
8 OVER NOT INTO ST. MATTHEWS BUT FORT MOTTE, SOMEWHERE IN
9 THAT AREA.

10 BETWEEN THAT TIME AND TODAY, THIS CASE HAS NEVER
11 BEEN TRIED BEFORE. I WANT YOU TO UNDERSTAND THAT.
12 SOMETIMES JURORS MAY THINK WELL, WHY DOES IT TAKE SO LONG
13 TO GET HERE THIS MORNING? IT'S NOT A RETRIAL.

14 ED FRIEBURGER WAS ARRESTED IN APRIL OF 2001, 15
15 MONTHS AGO, 16 MONTHS AGO, THE FIRST TIME.

16 HE CAME DOWN FROM COLUMBIA CITY AND WAS ARRESTED
17 HERE, TURNED HIMSELF IN BECAUSE THERE WAS AN ARREST
18 WARRANT FOR HIM.

19 I WANT TO BE VERY CLEAR ABOUT THIS. THIS MURDER
20 TRIAL HAS NEVER BEEN TRIED BEFORE ANYBODY. I WANT YOU TO
21 UNDERSTAND THAT.

22 MY FRIEND, MR. MCMAHON, WILL SAY TO YOU MIGHT
23 BE. THAT'S WHAT HE'S SAYING TO YOU THAT FOR NOT ON ONE
24 BUT ON TWO DIFFERENT EVALUATIONS BY THE STATE LAW
25 ENFORCEMENT DIVISION, THE BUILDING IN WHICH THEY HAVE OVER

1 HERE, AND THERE ARE THREE -- ABOUT THE SIZE OF YOUR
2 FINGERNAIL, THREE BULLET FRAGMENTS WERE TAKEN FROM THE
3 BODY OF MR. JOHN ORNER AT THE AUTOPSY.

4 CONNECT, THAT'S WHAT HE SAID, BUT THE STATE LAW
5 ENFORCEMENT DIVISION SAID IN 1961 AND AGAIN IN 2001 MAYBE,
6 MAYBE NOT.

7 THEN MY FRIENDS FROM THE RICHLAND COUNTY
8 SHERIFF'S DEPARTMENT WENT AND HIRED A BALLISTICS EXPERT
9 OUT OF KANSAS CITY, MISSOURI. THAT GENTLEMAN'S NAME IS
10 JOHN CAYTON. MR. CAYTON COMES BACK AND SAYS NO, THAT'S A
11 MATCH, THAT'S POSITIVE.

12 THE STATE LAW ENFORCEMENT DIVISION, NOT JUST TWO
13 EXAMINERS, AT LEAST FIVE OR SIX DIFFERENT FOLKS LOOKED AT
14 IT AT THE STATE LAW ENFORCEMENT DIVISION.

15 GUESS WHAT ALL THEIR OPINIONS WERE,
16 INCONCLUSIVE, BUT WE SENT IT OVER 1,000 MILES TO A
17 GENTLEMAN IN KANSAS CITY, MISSOURI.

18 HE COMES BACK AND SAYS YES. THAT'S IT. THAT'S
19 THEIR CASE. THAT'S IT, BUT WHEN MR. CAYTON TAKES THE
20 STAND, PLEASE LOOK FORWARD TO THE TIME WHEN I IMAGINE
21 MR. MCMAHON IS GOING TO ASK HIM WHETHER OR NOT IN SIMILAR
22 BALLISTICS EXAMINATION WHETHER HE'S EVER MADE A MISTAKE IN
23 COMPARING A GUN AND A BULLET BEFORE IN A MURDER CASE.

24 MR. CAYTON, THEIR EXPERT, THE ONE -- WHEN OUR
25 FRIENDS AT THE SHERIFF'S DEPARTMENT IS NOT GOOD ENOUGH, WE

1 SEND IT TO KANSAS CITY, MISSOURI. THIS GENTLEMAN COMES
2 BACK AND HE SAYS, OH, YEAH, THAT'S IT.

3 WAIT UNTIL WE TALK TO YOU AND SHOW YOU HOW
4 MR. CAYTON HAS MADE A MISTAKE EXACTLY IN A SITUATION LIKE
5 THIS BEFORE.

6 SO THEN YOU ARE LEFT, I'M SORRY TO SAY, YOU ARE
7 LEFT WITH "MAYBE" FROM THE STATE LAW ENFORCEMENT DIVISION
8 WITH THE HIRED TESTIMONY OF AN INDIVIDUAL FROM KANSAS
9 CITY, MISSOURI.

10 I'M GETTING AHEAD OF MYSELF. I KNOW YOU RAISED
11 YOUR HANDS, ONE OF TWO OF YOU HAVE BEEN IN THE JURY BOX
12 BEFORE.

13 FOLKS, PLEASE UNDERSTAND, I KNOW THERE'S GOING
14 TO BE SOMEBODY ON THIS JURY THAT WAS GOING TO SAY, "IF I
15 HAD KNOWN I WOULD WIND UP IN THIS COURTROOM ON THIS CASE,
16 I WOULDN'T HAVE EVEN REGISTERED TO VOTE. I'D GIVE UP THAT
17 RIGHT."

18 I KNOW, BECAUSE WE'RE TAKING YOUR TIME THIS WEEK
19 TO DO THIS MOST IMPORTANT JOB FOR THAT MAN. SO WE BRING
20 YOU 12, 14, WE BRING YOU FROM ALL SECTIONS OF OUR COUNTY
21 AND SAY HERE, DECIDE THIS CASE ON ALL THE EVIDENCE YOU'RE
22 GOING TO HEAR FROM THIS WITNESS STAND.

23 I WANT TO EXPLAIN TO YOU VERY BRIEFLY, AND THE
24 JUDGE HAS ALREADY DONE THE JOB. I'M GOING TO SEE IF I CAN
25 EMPHASIZE IT AGAIN. WHAT YOUR ROLE IS DURING THIS WEEK,

1 PLEASE UNDERSTAND, LADIES AND GENTLEMEN, WE KNOW YOU HAVE
2 VOICES. WE KNOW YOU'RE THINKING AND BACK IN THE BACK YOU
3 TALK, BUT YOU CAN'T TALK HERE.

4 SEE, WE DO THE TALKING. PLEASE UNDERSTAND WE'RE
5 NOT SAYING YOU'RE BUMPS ON A LOG. WE CAN'T COMMUNICATE
6 WITH YOU. WE ASK QUESTIONS AND RECEIVE ANSWERS FROM THE
7 WITNESSES.

8 WE CAN'T SAY TO YOU ALL HOW ARE YOU DOING? IS
9 THAT ENOUGH QUESTIONS? WE CAN'T STOP AND KIND OF GAUGE
10 YOUR TEMPERAMENT.

11 YOU ALL DO YOUR DISCUSSION BACK IN THE BACK
12 AFTER THIS CASE IS OVER, NOT HERE WITH US. SO WHAT RULES
13 ARE YOU TO APPLY TO IT, IF YOU WILL?

14 YOU LOOK OVER MY SHOULDER AND SEE JUDGE HENRY
15 FLOYD FROM PICKENS, SOUTH CAROLINA. SEE, HE SITS UP
16 HIGHER THAN ANYBODY ELSE IN THE ROOM. HE WEARS THE FORMAL
17 BLACK ROBE FOR A REASON, TO SAY TO US WHEN YOU LOOK AT
18 JUDGE FLOYD, HE LOOKS DIFFERENT, HE IS DIFFERENT. SO I
19 HAVE TO GIVE THAT DIFFERENT LOOK A REASON. THE REASON IS
20 BECAUSE HE IS A JUDGE. HE'S THE JUDGE OF THE LAW AND THE
21 PROCEDURE THAT'S TO BE APPLIED TO THESE FACTS.

22 IN THE SAME WAY, IF WE HAD 12 ROBES TO GIVE YOU
23 ALL, YOU, TOO, ARE JUDGES. YOU ARE THE JUDGES OF THE
24 FACTS OF THIS CASE, SO WHAT DO YOU DO AS JUDGES OF THE
25 FACTS? YOU TRY THIS CASE FAIRLY AND IMPARTIALLY AND YOU

1 DO JUSTICE, AND WHAT YOU DO IS YOU PRESUME ED FRIEBURGER
2 NOT GUILTY. THAT'S A RULE THAT THE JUDGE HAS ALREADY TOLD
3 YOU ABOUT AND WILL CONTINUE TO TELL YOU ABOUT AT THE
4 CONCLUSION OF THIS CASE.

5 ED FRIEBURGER, LIKE ANYONE ELSE, CHARGED WITH AN
6 OFFENSE BY THE STATE OF SOUTH CAROLINA OR THE FEDERAL
7 GOVERNMENT IS PRESUMED INNOCENT.

8 LEGALLY, HE IS NOT GUILTY. HE IS PRESUMED
9 INNOCENT. ONLY WHEN MR. MCMAHON AND HIS CAMPBELL, HIS
10 ASSOCIATE, AND THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
11 AND WHATEVER ELSE THEY BRING FORWARD PROVE TO EACH OF YOUR
12 12 SATISFACTION, EACH OF THE 12 OF YOU, THAT ED FRIEBURGER
13 IS GUILTY BEYOND EVERY REASONABLE DOUBT THAT YOU ALL WILL
14 HAVE -- LET ME SAY IT AGAIN, THAT YOU WILL HAVE IN THIS
15 CASE, ONLY THEN CAN YOU RETURN A VERDICT OF GUILTY.

16 BUT YOU WON'T DO THAT BECAUSE THERE IS SUCH
17 REASONABLE DOUBT, SO MANY DOUBTS BASED ON A REASON ABOUT
18 THIS CASE, LET ME TELL YOU WHAT THE MAIN ONE IS: THE MAIN
19 ONE IS THE STATE LAW ENFORCEMENT DIVISION WILL SAY TO THIS
20 DAY, TO THIS DAY, THE RESULT ARE INCONCLUSIVE, NOT YES,
21 NOT NO, JUST CAN'T TELL. A DOUBT, BASED ON A REASON,
22 MR. MCMAHON, A REASONABLE DOUBT FOR YOU 12 TO CONSIDER,
23 YES. AND THAT IS WHAT YOU WILL FIND AT THE CONCLUSION OF
24 THIS CASE.

25 WE CAN'T TELL SOMETIMES HOW LONG CASES TAKE

1 BECAUSE SOME THINGS GO VERY FAST AND OTHER THINGS TAKE A
2 LONG TIME. SO IF WE SAY TO YOU THIS CASE WILL END BY
3 FRIDAY, WE CAN'T TELL YOU THAT. WE WISH WE COULD.

4 SO PLEASE UNDERSTAND, WE KNOW THIS IS NOT JUST
5 AN INCONVENIENCE FOR YOU ALL. ALL 14 OF YOU WANT TO BE
6 SOME PLACE ELSE. WE UNDERSTAND THAT, GOING BACK TO YOUR
7 INDIVIDUAL PURSUITS OF WHAT YOU DO ON A DAILY BASIS WITH
8 YOUR JOBS AND WITH YOUR FAMILIES. WE APPRECIATE THAT, BUT
9 WHAT YOU DO, YOU ARE THE OIL IN OUR SYSTEM. YOU MAKE THIS
10 JURY SYSTEM WORK, THE 12, THE 14 OF YOU ALL.

11 WE APPRECIATE YOUR TIME. WE KNOW THAT WHEN THE
12 JUDGE INSTRUCTS YOU AT THE CONCLUSION OF THIS CASE AND
13 WHAT YOU HEAR FROM THIS STAND, YOU WILL RETURN A VERDICT
14 OF NOT GUILTY FOR ED FRIEBURGER, NOT GUILTY BECAUSE IT
15 CAN'T BE, WELL, IT MIGHT BE, HOPE SO, COULD HAVE BEEN.

16 THEY'VE GOT TO PROVE TO YOU BEYOND EVERY
17 REASONABLE DOUBT THAT YOU HAVE IN THIS CASE, AND YOU WILL
18 RETURN A VERDICT OF NOT GUILTY.

19 THE COURT: ALL RIGHT. YOUR FIRST WITNESS,
20 MADAM SOLICITOR.

21 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE
22 STATE CALLS THOMAS JOYNER.

23 THE CLERK: IF YOU COME FORWARD, PLEASE. PLACE
24 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

25 THOMAS JOYNER, AFTER BEING DULY SWORN, TESTIFIED AS

1 FOLLOWS:

2 THE CLERK: .PLEASE HAVE A SEAT, STATE YOUR FULL

3 NAME, SPELL YOUR LAST NAME.

4 THE WITNESS: THOMAS AVERY JOYNER.

5 DIRECT EXAMINATION:

6 BY MS. CAMPBELL

7 Q MR. JOYNER, HOW OLD ARE YOU?

8 A SEVENTY-FOUR.

9 Q AND ARE YOU CURRENTLY EMPLOYED?

10 A NO, MA'AM.

11 Q AND TELL THIS JURY WHAT WAS YOUR OCCUPATION BACK WHEN

12 YOU DID WORK?

13 A I WAS WITH THE MILITARY WITH THE AIR NATIONAL GUARD

14 IN SOUTH CAROLINA.

15 Q AND WHEN YOU WERE WITH THE AIR NATIONAL GUARD, WHAT

16 YEAR WERE YOU ACTUALLY IN THE AIR NATIONAL GUARD,

17 SIR?

18 A I WAS IN THERE FROM 1950 TO 1984.

19 Q SO YOU RETIRED IN 1984?

20 A YES, MA'AM.

21 Q AND AFTER RETIRING -- SO YOU WERE IN THERE FOR 34 --

22 AM I DOING MY MATH RIGHT, 34 YEARS?

23 A ABOUT THIRTY-FIVE YEARS, NINE MONTHS, AND 27 DAYS.

24 Q THAT WOULD BE CORRECT, SIR. AFTER RETIRING IN 1984,

25 DID YOU HAVE ANY OTHER EMPLOYMENT OPPORTUNITIES AFTER

1 THAT?

2 A OH YES.

3 Q AND WHAT KIND OF EMPLOYMENT DID YOU HAVE AFTER YOUR

4 RETIREMENT IN '84?

5 A I WORKED HERE IN RICHLAND COUNTY AS A BAILIFF HERE IN

6 THIS COURTHOUSE FOR ABOUT SIX-AND-A-HALF YEARS.

7 Q YOU WORKED HERE IN THIS COURTHOUSE AS A BAILIFF?

8 A YES, MA'AM.

9 Q SO YOU'RE FAMILIAR WITH THE PROCESS, MR. JOYNER?

10 A YES, MA'AM.

11 Q AND YOU SAT THROUGH MANY TRIALS; IS THAT CORRECT?

12 A MANY OF THEM, YES, MA'AM.

13 Q ARE YOU MARRIED, SIR?

14 A YES, MA'AM.

15 Q AND WHO ARE YOU MARRIED TO?

16 A MARRIED TO VERNEL STONE.

17 Q VERNEL STONE?

18 A YES, MA'AM.

19 Q HOW LONG HAVE YOU BEEN MARRIED?

20 A FIFTY-FIVE YEARS LAST WEEK.

21 Q FIFTY-FIVE YEARS. DO YOU HAVE ANY CHILDREN?

22 A THREE.

23 Q AND ARE YOUR CHILDREN GROWN?

24 A OH YES.

25 Q AND ANY GRANDCHILDREN, SIR?

1 A SEVEN.

2 Q ARE YOU FAMILIAR OR DID YOU EVER KNOW A MAN NAMED

3 JOHN ORNER?

4 A OH YES.

5 Q LET ME BACK UP FOR A MOMENT. YOUR WIFE, HOW OLD IS

6 SHE, SIR?

7 A SHE IS 73.

8 Q IS SHE HERE IN THE COURTROOM TODAY?

9 A YES, MA'AM.

10 Q AND WHERE IS SHE?

11 A SITTING RIGHT HERE, THE LADY ON THE RIGHT.

12 Q RIGHT THERE?

13 YOU KNEW A MAN NAMED JOHN ORNER?

14 A OH YES.

15 Q AND CAN YOU TELL THIS JURY, HOW DID YOU KNOW JOHN

16 ORNER?

17 A HE WAS MY WIFE'S STEPFATHER.

18 Q HE WAS YOUR WIFE'S STEPFATHER?

19 A YES, MA'AM.

20 Q SO HE WAS -- DID YOU CONSIDER HIM YOUR FATHER-IN-LAW?

21 A OH YES.

22 Q WHEN DID YOU FIRST MEET MR. ORNER?

23 A WHEN HE MARRIED MY WIFE'S MOTHER.

24 Q AND DO YOU REMEMBER APPROXIMATELY WHAT YEAR THAT WAS,

25 SIR?

1 A NO, I DON'T REALLY. |

2 Q WHAT YEAR WERE YOU MARRIED, SIR?

3 A IN 1947.

4 Q IN 1947. AND WHAT YEARS WERE YOUR CHILDREN BORN?

5 A 1952, '57, AND '60, I BELIEVE.

6 Q AND DURING THAT PERIOD OF TIME, WHERE WERE YOU

7 LIVING?

8 A AT DENTSVILLE.

9 Q AND THAT WOULD BE IN THE 1950S?

10 A YES.

11 Q UP UNTIL 1961?

12 A UH-HUH.

13 Q WHERE WAS MR. ORNER AND HIS WIFE LIVING AT THAT

14 POINT?

15 A THEY LIVED IN DENTSVILLE, NEXT DOOR TO US.

16 Q SO YOU LIVED NEXT DOOR TO MR. ORNER --

17 A YES.

18 Q -- AND YOUR WIFE'S MOTHER?

19 A YES.

20 Q WHAT KIND OF RELATIONSHIP DID JOHN ORNER HAVE WITH

21 YOU AND YOUR CHILDREN AND YOUR FAMILY?

22 A OH, WELL, IT WAS GREAT. HE WORSHIPPED THOSE

23 GRANDCHILDREN.

24 Q AND HOW DID YOUR GRANDCHILDREN FEEL ABOUT MR. ORNER?

25 A OH, HE WAS THE THING. THEY JUST WERE -- JUST

1 COULDN'T GET OVER HIM. JUST LOVED HIM JUST LIKE HE
2 WAS SANTA CLAUS.

3 Q MR. ORNER, YOU SAID HE LIVED NEXT DOOR TO Y'ALL.
4 WHERE DID HE LIVE? YOU SAID THE DENTSVILLE AREA.
5 CAN YOU TELL THE JURY MORE SPECIFICALLY WHERE THAT
6 IS?

7 A WELL, THAT AREA RIGHT NOW WHERE WE LIVED IS NOT THERE
8 ANYMORE. COLUMBIA MALL HAS TAKEN IN THAT AREA NOW.

9 Q SO THAT WOULD BE RIGHT THERE ON TWO NOTCH ROAD?

10 A YES, MA'AM.

11 Q NEAR THE CORNER WHERE PARKLANE COMES ACROSS?

12 A NO. IT'S BACK ABOUT A BLOCK-AND-A-HALF BACK SOUTH
13 FROM WHERE PARKLANE CROSSES TWO NOTCH.

14 Q SO THAT WOULD BE ABOUT A BLOCK-AND-A-HALF TOWARDS
15 TOWN THEN?

16 A YES.

17 Q RIGHT WHERE COLUMBIA MALL IS THOUGH, RIGHT?

18 A YES.

19 Q AND DO YOU REMEMBER WHAT YOUR ADDRESS WAS, SIR?

20 A ████ WAS OUR ADDRESS AND THEIRS WAS █████ I THINK.

21 Q SO IN YOUR RAISING OF YOUR FAMILY AND LIVING NEXT
22 DOOR TO MR. ORNER, DID YOU HAVE PRETTY MUCH DAILY
23 CONTACT WITH HIM?

24 A OH YES.

25 Q AND YOU WERE FAMILIAR WITH HIS HABITS AND HIS

1 ROUTINES?

2 A OH YES.

3 Q I WANT TO TURN YOUR ATTENTION BACK TO THE SPRING OR

4 EARLY FEBRUARY, MARCH, OF 1961. WAS MR. ORNER

5 WORKING BACK THEN?

6 A OH YES.

7 Q AND WHAT KIND OF JOB DID HE HAVE AT THAT POINT, IN

8 FEBRUARY OF 1961?

9 A HE OWNED HIS OWN CAB AND DROVE A CAB, WAS AFFILIATED

10 WITH STATE CAB COMPANY.

11 Q AND HOW LONG HAD HE BEEN DRIVING A CAB, SIR?

12 A EVER SINCE HE HAD GOTTEN OUT OF THE ARMY.

13 Q AND PRIOR TO DRIVING A CAB, HE HAD BEEN IN THE ARMY?

14 A YES.

15 Q AND HOW LONG WAS HE IN THE ARMY, APPROXIMATELY?

16 A I'M NOT SURE. I KNOW HE WAS IN WORLD WAR I AND WORLD

17 WAR II.

18 Q AND IN FACT, HE SERVED IN BOTH OF THOSE WARS; IS THAT

19 CORRECT?

20 A YES.

21 Q DO YOU KNOW APPROXIMATELY HOW MANY YEARS HE HAD BEEN

22 DRIVING A CAB?

23 A NO, I'M NOT SURE.

24 Q BUT IT WAS DURING THE PERIOD OF TIME THAT HE WAS

25 LIVING NEXT DOOR TO YOU; IS THAT CORRECT?

1 A OH, YES, YES.

2 Q AND AS PART OF YOUR PERSONAL KNOWLEDGE, ARE YOU

3 FAMILIAR, WHAT AREAS OF TOWN, TYPICALLY, WOULD

4 MR. ORNER LIKE TO WORK?

5 A WELL, WE WORKED FORT JACKSON MAINLY.

6 Q AND WHY DID HE WORK FORT JACKSON MAINLY?

7 A HE FELT LIKE HE WAS FAMILIAR WITH THE MILITARY SINCE

8 HE HAD SERVED IN THE MILITARY THAT LONG.

9 Q AND THAT WAS HIS AREA HE LIKED TO WORK?

10 A YES.

11 Q AND SPECIFICALLY, DID HE HAVE A PARTICULAR GATE THAT

12 HE WOULD WORK?

13 A YES. HE WORKED AT THE CAB STAND RIGHT OUTSIDE THE

14 MAIN GATE.

15 Q AND WHEN YOU SAY RIGHT OUTSIDE THE MAIN GATE, WHICH

16 GATE IS THAT?

17 A THAT'S ON JACKSON BOULEVARD.

18 Q SO THAT'S DOWN THERE AT FORT JACKSON BOULEVARD?

19 A YES.

20 Q YOU SAID HE DROVE A CAB. WHAT KIND OF CAB DID HE

21 DRIVE? WHAT KIND OF CAR WAS IT, DO YOU REMEMBER?

22 A IT WAS A CHEVROLET.

23 Q AND AS PART OF HIS DUTIES IN DRIVING A CAB, HE WOULD

24 LIKE TO WORK THE MAIN GATE?

25 A OH YES.

1 Q TYPICALLY WHERE WOULD THE SOLDIERS LIKE TO GO?

2 A OH, WELL, I DON'T KNOW. I NEVER RODE WITH HIM WHEN

3 HE WAS WORKING SO I DON'T KNOW WHERE. I'M SURE

4 COLUMBIA WAS PROBABLY THE MAIN DESTINATION FOR MOST

5 OF THEM.

6 Q OKAY. AND THAT WOULD BE DOWNTOWN COLUMBIA?

7 A YES.

8 Q TURNING YOUR ATTENTION BACK TO FEBRUARY 28TH, THE

9 MORNING OF MARCH 1ST, 1961, DID ANYTHING UNUSUAL

10 HAPPEN WITH MR. ORNER?

11 A YES, HE DIDN'T COME HOME.

12 Q WAS THAT UNUSUAL FOR HIM?

13 A OH YES.

14 Q AND USUALLY WHEN HE WOULD WORK, WHAT HOURS WOULD HE

15 WORK, SIR?

16 A HE USUALLY WORKED UP UNTIL ABOUT 11 O'CLOCK AT NIGHT.

17 HE USUALLY CAME HOME AFTER THAT.

18 Q AND AT 11 O'CLOCK ON FEBRUARY 28TH, DID HE SHOW UP AT

19 HOME?

20 A NO.

21 Q AND UP UNTIL THE EARLY MORNING HOURS, WAS THERE ANY

22 SIGN OF MR. ORNER?

23 A NO.

24 Q DID YOU HAVE AN OPPORTUNITY THAT NEXT MORNING TO

25 REPORT -- YOU AND YOUR FAMILY TO REPORT HIM MISSING?

1 A YES, HIS SON, HIS OLDEST STEPSON REPORTED HIM MISSING
2 BECAUSE HE DID NOT COME HOME THAT NIGHT.

3 Q ONCE HE HAD BEEN REPORTED MISSING, DID YOU ATTEMPT TO
4 STILL FIND MR. ORNER?

5 A OH YES. WE CONTACTED THE CAB COMPANY AND TRIED TO
6 SEE IF ANYBODY KNEW WHERE HE WAS.

7 Q DID YOU HAVE AN OCCASION TO -- OR WHERE ARE YOU AWARE
8 THAT THEY WERE ABLE TO FIND HIS CAB?

9 A YES. LATER WE FOUND OUT THAT THEY HAD FOUND THE CAB.

10 Q AND THAT WOULD HAVE BEEN ON MARCH 1ST, CORRECT?

11 A YES.

12 Q WERE YOU MADE AWARE -- YOU CAN'T SAY WHAT YOU WERE --
13 YOU WERE AWARE THERE WERE SOME SUSPICIOUS
14 CIRCUMSTANCES IN FINDING THE CAB?

15 A YES.

16 Q WAS MR. ORNER FOUND WITH HIS CAB ON MARCH 1ST?

17 A NO.

18 Q OVER THE NEXT SEVERAL DAYS, SPECIFICALLY MARCH 1,
19 MARCH 2ND, MARCH 3RD, WAS THERE ANY SIGN OF
20 MR. ORNER?

21 A NO.

22 Q WHAT, IF ANYTHING -- WHAT ATTEMPT WERE YOU AWARE OF
23 THAT WERE MADE TO FIND HIM AT THAT POINT ONCE HIS CAB
24 HAD BEEN FOUND?

25 A WELL, THE OTHER INDIVIDUAL DRIVERS WERE FORMING

1 GROUPS TO GO OUT AND HUNT FOR HIM SINCE THEY HAD
2 FOUND HIS CAB. .
3 Q THEY FORMED GROUPS, THE OTHER INDEPENDENT CAB
4 DRIVERS?
5 A YEAH.
6 Q IN ADDITION TO THAT, WAS LAW ENFORCEMENT MAKING ANY
7 ATTEMPTS TO FIND MR. ORNER?
8 A YES.
9 Q WERE YOU AWARE OF WHAT PARTS OF THE COUNTY THEY WERE
10 LOOKING?
11 A YES. S.L.E.D. HAD ANALYZED SOME SAND THAT WAS FOUND
12 ON THE CAB AND HAD DESIGNATED AN AREA IN THE COUNTY
13 WHERE THIS PARTICULAR TYPE OF SAND WAS LOCATED.
14 Q AND WHAT AREA WAS THAT, SIR?
15 A IT WAS DOWN IN THE LOWER PART OF THE STATE, DOWN IN
16 THE LOWER PART OF THE COUNTY.
17 Q IN THE LOWER PART OF THE STATE OR THE COUNTY, SIR?
18 A IN THE COUNTY.
19 Q AND WHEN YOU SAY THE LOWER PART OF THE COUNTY,
20 SPECIFICALLY WHERE IS THAT?
21 A DOWN NEAR EASTOVER, DOWN IN THAT AREA.
22 Q DOWN NEAR EASTOVER IN THAT AREA?
23 A YEAH.
24 Q THE BLUFF ROAD AREA?
25 A UH-HUH.

1 Q ON MARCH 3RD, DID THEY FIND MR. ORNER?
2 A YES.
3 Q WHAT WAS HIS CONDITION WHEN THEY FOUND HIM?
4 A HE HAD BEEN MURDERED.
5 Q AND ARE YOU AWARE OF WHAT PART OF THE COUNTY HE WAS
6 FOUND?
7 A YES.
8 Q WHAT PART WAS THAT, SIR?
9 A DOWN OFF OF HIGHWAY 601 DOWN NEAR THE CALHOUN COUNTY
10 LINE.
11 Q AND YOU DIDN'T FIND HIM YOURSELF, DID YOU?
12 A NO.
13 Q LATER THAT DAY, DID YOU -- I BELIEVE YOUR
14 BROTHER-IN-LAW, I BELIEVE, HAVE TO GO TO THE COLUMBIA
15 HOSPITAL FOR AN IDENTIFICATION PROCEDURE?
16 A YES.
17 Q AND WHAT WAS THAT, SIR?
18 A THEY HAD INFORMED US THAT HIS BODY HAD BEEN FOUND,
19 AND THEY WANTED AN IDENTIFICATION.
20 Q WHERE DID YOU GO TO DO THE IDENTIFICATION?
21 A WHERE?
22 Q YES, SIR.
23 A THE OLD COLUMBIA HOSPITAL.
24 Q AND WERE YOU ABLE TO MAKE AN IDENTIFICATION?
25 A YES.

- 1 Q YOU MENTIONED THAT MR. ORNER USUALLY WORKED NIGHTS;
2 IS THAT CORRECT?
- 3 A YES.
- 4 Q AND ARE YOU FAMILIAR WITH WHAT'S CALLED PAYDAY AT THE
5 BASE AT FORT JACKSON?
- 6 A YES.
- 7 Q AND DID MR. ORNER LIKE TO WORK THOSE DAYS?
- 8 A OH YES.
- 9 Q AND THE 28TH, WAS THAT A PAYDAY?
- 10 A YES.
- 11 Q YOU ALSO MENTIONED THAT HE LIKED TO WORK FROM THE
12 MAIN GATE; IS THAT CORRECT?
- 13 A RIGHT, UH-HUH.
- 14 Q WERE YOU FAMILIAR, ALSO, WITH MR. ORNER'S ROUTINE
15 TYPICALLY WHEN HE GOT OFF WORK AND WOULD LIKE TO GAS
16 UP HIS CAR?
- 17 A YES. USUALLY AT NIGHT WHEN HE LEFT THE CAB STAND, HE
18 WOULD COME OUT THROUGH THE PERCIVAL ROAD, THE
19 DENTSVILLE AREA, AND STOP AT A DELI AND PICK HIM UP
20 SOME THINGS THAT HE LIKED AT THE DELI OUT ON DECKER
21 BOULEVARD.
- 22 Q AND SIR, WHAT WOULD BE THE MOST DIRECT ROUTE FROM THE
23 MAIN GATE AT FORT JACKSON TO GET TO YOUR HOUSE WHERE
24 YOU LIVED?
- 25 A COME THROUGH FORT JACKSON.

1 Q AND BACK THEN IN 1961 -- YOU CAN'T DO THAT ANY MORE.
2 YOU CAN'T JUST GO THROUGH FORT JACKSON?
3 A NO.
4 Q BUT BACK IN 1961, WOULD MR. ORNER HAVE HAD ACCESS TO
5 BE ABLE TO GO THROUGH FORT JACKSON?
6 A OH YES.
7 Q AND CAN YOU TELL THIS JURY, TO GET FROM THE CAB STAND
8 AND WHERE HE GASSED UP, WHAT WOULD BE THE MOST DIRECT
9 ROUTE FROM THERE TO GET TO YOUR HOUSE OVER THERE ON
10 TWO NOTCH?
11 A GONE THROUGH FORT JACKSON TO PERCIVAL ROAD AND COME
12 OUT PERCIVAL ROAD TO DECKER BOULEVARD, AND DOWN
13 DECKER BOULEVARD TO TWO NOTCH.
14 Q AND THEN TAKE A LEFT ON TWO NOTCH?
15 A RIGHT.
16 Q AND I BELIEVE YOU WOULD HAVE BEEN, DID YOU SAY A
17 BLOCK-AND-A-HALF INTO TOWN?
18 A YES.
19 Q BUT THE MOST DIRECT ROUTE WOULD HAVE BEEN TO GO
20 DIRECTLY THROUGH FORT JACKSON?
21 A YES.
22 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
23 EXHIBIT 7. DO YOU RECOGNIZE THAT? EXCUSE ME, THIS
24 IS THE WRONG PICTURE.
25 A NO, I DON'T KNOW WHO THAT IS.

1 Q I SHOW YOU THIS PHOTOGRAPH AND ASK YOU, DO YOU
2 RECOGNIZE THIS?

3 A YES.

4 Q AND WHAT IS THIS A PHOTOGRAPH OF?

5 A THAT'S JOHN ORNER.

6 Q HOW OLD WAS JOHN ORNER WHEN HE WAS MURDERED?

7 A SIXTY-THREE.

8 MS. CAMPBELL: YOUR HONOR, AT THIS TIME, WE'D
9 OFFER THIS INTO EVIDENCE.

10 MR. DELGADO: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION.

12 (WHEREUPON, STATE'S EXHIBIT NO. 8 WAS MARKED FOR
13 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

14 BY MS. CAMPBELL

15 Q MR. ORNER, YOU ALREADY TESTIFIED, WAS A WORLD WAR I
16 AND II VETERAN.

17 A YES.

18 Q WHAT WAS HIS BUILD LIKE?

19 A HE WAS A SMALL MAN.

20 Q AND WHEN YOU SAY A SMALL MAN, HOW TALL ARE YOU, SIR?

21 A I'M 5'11".

22 Q WAS HE AS TALL AS YOU?

23 A NO..

24 Q WAS HE SIGNIFICANTLY SMALLER THAN YOU?

25 A YES.

1 Q TYPICALLY, HOW MANY DAYS A WEEK WOULD MR. ORNER WORK,
2 DO YOU REMEMBER?

3 A HE USUALLY WORKED, MOST OF THE TIME, SEVEN DAYS A
4 WEEK.

5 Q YOU WERE FAMILIAR WITH HIS CAB?

6 A YES, MA'AM.

7 Q AND WHEN HE WOULD PICK UP A FARE, WOULD HE --
8 MR. DELGADO: YOUR HONOR.

9 BY MS. CAMPBELL

10 Q HOW WOULD HE REGULATE HOW MUCH...
11 MR. DELGADO: I'M SORRY. CAN I SPEAK WITH
12 COUNSEL?

13 THE COURT: SURE.
14 (PAUSE).

15 MR. DELGADO: I'VE NEVER SEEN THEM BEFORE. I
16 DON'T HAVE ANY OBJECTION.

17 THE COURT: NO OBJECTION. YOU MAY PROCEED.

18 BY MS. CAMPBELL

19 Q YOU WERE FAMILIAR WITH HOW THE METER WAS PLACED IN
20 HIS CAB?

21 A YES.

22 Q I'M GOING TO SHOW YOU THIS ITEM. DO YOU RECOGNIZE
23 THIS?

24 A THAT'S SIMILAR TO THE ONE THAT HE HAD IN HIS CAB,
25 YES.

1 Q AND WHERE WOULD THAT HAVE BEEN MOUNTED?

2 A ON THE DASH ON THE PASSENGER'S SIDE IN THE FRONT OF
3 THE CAR.

4 Q AND YOU WERE FAMILIAR WITH HIS HABITS AS FAR AS
5 PICKING UP A FARE AND HOW HE WOULD USE THE METER?

6 A YES.

7 Q AND CAN YOU EXPLAIN TO THIS JURY, WHEN HE PICKED UP A
8 FARE, WHAT WOULD HE HAVE DONE TO SHOW HOW MUCH TO
9 CHARGE SOMEBODY?

10 A THIS LEVER WOULD BE PULLED DOWN, AND THE METER WOULD
11 START RUNNING AT THAT TIME.

12 Q AND THIS IS LIKE THE ONE THAT HE HAD IN HIS CAB AT
13 THE TIME?

14 A YES.

15 Q AND THIS METER WOULD RECORD, NOT THE MILEAGE
16 NECESSARILY, BUT HOW MUCH TIME PASSED IN ORDER TO
17 DETERMINE HOW MUCH TO CHARGE?

18 A YES.

19 MS. CAMPBELL: YOUR HONOR, AT THIS TIME, WE
20 WOULD OFFER IT INTO EVIDENCE, I THINK WITHOUT OBJECTION.

21 MR. DELGADO: I THOUGHT IT WAS A DEMONSTRATIVE
22 AID.

23 THE COURT: ANY OBJECTION?

24 MR. DELGADO: YES, SIR. IT'S NOT THE SAME ONE,
25 HAVEN'T SEEN IT BEFORE, DIDN'T KNOW IT WAS COMING.

1 THE COURT: OVERRULED.

2 MS. CAMPBELL: THANK YOU.

3 (WHEREUPON, STATE'S EXHIBIT NO. 9 WAS MARKED FOR
4 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

5 MS. CAMPBELL: BEG THE COURT'S INDULGENCE.

6 (PAUSE).

7 BY MS. CAMPBELL

8 Q DID MR. ORNER, AT THE TIME OR SHORTLY BEFORE HIS
9 DEATH, DID HE HAVE ANY PHYSICAL INFIRMITIES?

10 A YES, MA'AM, HE HAD A STROKE.

11 Q AND THE STROKE, WHAT KIND OF EFFECT DID THAT HAVE ON
12 HIS ABILITY TO MOVE?

13 A WELL, HE HAD A SLIGHT LIMP, AND HE HAD MOVED A LITTLE
14 SLOW.

15 Q AND HE MOVED A LITTLE SLOW?

16 A YES.

17 Q SO IT IMPAIRED HIS ABILITY SOMEWHAT?

18 A YES.

19 Q SAY, TO GET INTO A PHYSICAL ALTERCATION OF SOME SORT?

20 A OH YES.

21 Q MR. JOYNER, I WANT TO TURN YOUR ATTENTION TO A COUPLE
22 OF YEARS AGO BACK IN 1999. WHAT CHURCH DO YOU GO TO,
23 SIR?

24 A TRINITY UNITED METHODIST CHURCH.

25 Q AND DO YOU KNOW A MAN NAMED BILL BROWN?

1 A YES, MA'AM.

2 Q AND HOW DO YOU KNOW BILL BROWN?

3 A BILL BROWN AND I HAVE BEEN FRIENDS FOR A NUMBER OF

4 YEARS. WE WORKED TOGETHER ON SUMMER PROJECTS WITH

5 THE CHURCH.

6 Q ON SUMMER PROJECTS WITH THE CHURCH?

7 A YES.

8 Q AND YOU HAD KNOWN HIM A NUMBER OF YEARS?

9 A YES.

10 Q BACK IN 1999, WERE YOU FAMILIAR WITH WHERE MR. BROWN

11 WORKED?

12 A YES.

13 Q WHAT DID HE DO?

14 A HE WAS WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

15 Q BACK IN 1999, DID YOU HAVE AN OPPORTUNITY TO HAVE A

16 CONVERSATION WITH HIM AT CHURCH?

17 A YES.

18 Q AND TELL THIS JURY HOW THAT CAME ABOUT.

19 A WELL, I HAD BEEN WONDERING FOR A LONG TIME WHAT THE

20 STATUS OF THE CASE WAS, AND I ASKED BILL AT CHURCH

21 ONE DAY IF THERE WAS ANY WAY WE COULD FIND OUT WHAT

22 THE STATUS WAS, IF THERE WAS A WAY HE COULD

23 INVESTIGATE. HE SAID HE'D CHECK INTO IT AND SEE.

24 Q SO YOU ACTUALLY INITIATED THIS CONVERSATION WITH --

25 IT'S ACTUALLY CAPTAIN BROWN; IS THAT CORRECT?

1 A YES.

2 Q AND HE INDICATED HE WOULD CHECK INTO THE CASE FOR

3 YOU?

4 A YES.

5 MS. CAMPBELL: NO FURTHER QUESTIONS.

6 CROSS-EXAMINATION:

7 BY MR. DELGADO

8 Q GOOD MORNING. MR. JOYNER, HOW ARE YOU?

9 A FINE.

10 Q MR. JOYNER, IT'S YOUR UNDERSTANDING OF THE WAY YOUR

11 FATHER-IN-LAW CONDUCTED HIMSELF IS THAT WHEN HE WOULD

12 LEAVE FORT JACKSON, HE WOULD STOP AT A LITTLE DELI

13 OVER ON DECKER BOULEVARD. IS THAT WHAT YOU SAID TO

14 US?

15 A YES.

16 Q CAN YOU TELL US A LITTLE BIT MORE ABOUT THAT? IN

17 OTHER WORDS, WAS THAT LIKE A 24-HOUR PLACE BACK THEN?

18 I DON'T KNOW WHAT TYPES OF STUFF THEY HAD.

19 A I NEVER WENT TO THE DELI. I PASSED IT MANY TIMES.

20 Q YES, SIR.

21 A BECAUSE I LIVED IN THE AREA, BUT I NEVER DID GO INTO

22 THE DELI MYSELF.

23 Q YES, SIR.

24 A SO ALL I KNEW WAS WHAT HE WOULD COME BY AND PICK UP

25 SOME SANDWICH MEAT AND STUFF LIKE THAT.

1 Q SURE.

2 A FOR SANDWICHES AND ALL.

3 Q SOMETIMES BUY THINGS FOR THE FAMILY, MILK, BREAD,

4 EGGS, THAT TYPE OF THING?

5 A YES.

6 Q SOMETIMES WHEN HE WOULD DO THAT, HE WOULD DO THAT ON

7 HIS WAY BACK HOME FROM FORT JACKSON, CORRECT?

8 A YES.

9 Q SO HE WOULD BE STOPPING AT LEAST AFTER -- IF HE WOULD

10 LEAVE FORT JACKSON 11 TO 11:30, HE WOULD BE STOPPING

11 BACK THERE AFTER THAT ON HIS WAY TO HIS HOME THERE IN

12 DENTSVILLE?

13 A YES.

14 Q HAD YOU EVER BEEN IN THAT STORE WITH HIM AT ANY TIME

15 WHEN HE -- I'M SORRY. YOU SAID YOU HAD NEVER BEEN

16 THERE BEFORE.

17 A NEVER BEEN IN THE STORE, NO, SIR.

18 Q YOU DON'T KNOW, SIR, THAT ON THE NIGHT OF

19 FEBRUARY 28TH, MR. TOM, WHETHER HE STOPPED THERE OR

20 NOT, BUT HIS HABIT WAS TO STOP THERE ALMOST EVERY

21 NIGHT?

22 A I DON'T KNOW THAT HE STOPPED EVERY NIGHT.

23 Q YES, SIR.

24 A BUT HE STOPPED THERE FREQUENTLY.

25 Q ALL RIGHT. SO IT'S POSSIBLE THAT ON THAT TUESDAY

1 NIGHT, FEBRUARY 28TH, 1961, MR. ORNER ON HIS WAY BACK
2 TO THE HOME, NEXT DOOR TO WHERE YOU ALL SHARED, HE
3 COULD HAVE STOPPED RIGHT AT THAT DELI RIGHT THERE ON
4 DECKER AND GONE IN TO BUY SOMETHING OR A CUP OF
5 COFFEE, DO SOMETHING, CORRECT, SIR?

6 A WELL, I UNDERSTAND THAT THEY CHECKED THE DELI, THE
7 PEOPLE THAT OPERATED THE DELI, AND THAT HE DID NOT
8 STOP THERE THAT NIGHT.

9 Q THE POINT, THOUGH, SIR, IS THOSE PEOPLE ARE NOT
10 PRESENT HERE TODAY, ARE THEY?

11 A OH THEY'RE ALL GONE.

12 Q OKAY.

13 A THEY'RE DEAD. THEY'VE BEEN DEAD FOR YEARS.

14 Q BUT IT WAS HIS HABIT OR ROUTINE TO STOP THERE ON A
15 FREQUENT BASIS?

16 A YES, SIR.

17 Q AND ON THAT NIGHT, YOU YOURSELF, DON'T KNOW WHAT
18 TRANSPIRED ON ANY PART OF THAT ROUTE HOME TOWARDS --

19 A OH, NO. I WAS NOT THERE.

20 Q YES, SIR. YOU WERE HOME WITH YOUR FAMILY?

21 A YES, SIR.

22 Q YES, SIR. SO WHAT TRANSPIRED THAT NIGHT AND WHERE
23 MR. ORNER WENT, WHERE HE MET SOMEBODY, YOU HAVE NO
24 TESTIMONY TO THAT AT ALL, DO YOU, SIR?

25 A NO.

1 MR. DELGADO: THANK YOU, MR. TOM.

2 ANYTHING ELSE ON REDIRECT?

3 MS. CAMPBELL: NO, SIR.

4 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

5 ALL RIGHT. MR. FOREMAN, LADIES AND GENTLEMEN,
6 WE'LL TAKE A SHORT BREAK AND CONTINUE ALONG.

7 YOU CAN JUST LEAVE YOUR PADS IN THE SEAT, IF
8 YOU'D LIKE.

9 (WHEREUPON, THE JURY LEFT OPEN COURT AT
10 APPROXIMATELY 10:26 A.M.)

11 THE COURT: ALL RIGHT. MR. CAMPBELL,
12 MS. MCMAHON, I NEED TO MAKE SURE THAT YOU CAUTION THE
13 THESE WITNESSES ABOUT THE ISSUES I RULED ON, THE A.W.O.L.
14 ISSUE AND ALL.

15 YOU MAY NOT HAVE HAD A CHANCE TO DO THAT SINCE
16 THE RULING THIS MORNING.

17 MR. MCMAHON: YES, MA'AM.

18 THE COURT: TAKE A SHORT BREAK.

19 MS. HUDGINS: I CAN DO IT NOW OR AFTER THE
20 BREAK, WHICHEVER THE COURT PREFERENCES. I THINK AT THIS POINT
21 NOW THAT WE'RE SEEING EVIDENCE THAT WE'VE NEVER EVER SEEN
22 BEFORE, I'D LIKE TO MAKE A MOTION TO RENEW OUR DISCOVERY
23 MOTION.

24 IF THERE'S ANY OTHER EVIDENCE THAT THE STATE HAS
25 THAT THEY INTEND TO INTRODUCE IT INTO EVIDENCE, I WOULD

1 ASK THAT THEY SHOW IT TO US, JUDGE.

2 THE COURT: YES, MA'AM.

3 MS. CAMPBELL: THEY'VE HAD AN OPPORTUNITY, AND
4 AGAIN HAD THE OPPORTUNITY, TO REVIEW ANY PHYSICAL EVIDENCE
5 WE HAVE. THEY'VE SEEN THE PHOTOS, I'M SURE. I'D LIKE
6 THEM TO REVIEW THEM AGAIN TO MAKE SURE THEY'VE SEEN
7 EVERYTHING.

8 MS. HUDGINS: JUDGE, WE'VE NEVER SEEN THIS METER
9 BEFORE.

10 THE COURT: MAKE SURE THEY KNOW WHERE IT'S
11 COMING FROM.

12 MS. CAMPBELL: I'LL MEET WITH MS. HUDGINS OVER
13 THE BREAK TO MAKE SURE SHE SEES EVERYTHING.

14 THE COURT: ALL RIGHT. TAKE A SHORT BREAK.

15 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

16 THE COURT: ALL RIGHT. DID YOU WORK OUT YOUR
17 DISCOVERY PROBLEM?

18 MS. HUDGINS: YES, YOUR HONOR.

19 THE COURT: OKAY. ALL RIGHT. BRING THE JURY
20 IN.

21 THE BAILIFF: YES, SIR.

22 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
23 APPROXIMATELY 10:40 A.M.)

24 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

25 THE COURT: ALL RIGHT. YOU MAY PROCEED, MADAM

1 SOLICITOR.

2 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE
3 STATE CALLS FRANK REVETTA.

4 THE CLERK: IF YOU COME FORWARD PLEASE. PLACE
5 YOU'RE LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

6 FRANK REVETTA, AFTER BEING DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
9 NAME. SPELL YOUR LAST NAME.

10 THE WITNESS: FRANK REVETTA, R-E-V-E-T-T-A.

11 DIRECT EXAMINATION:

12 BY MS. CAMPBELL

13 Q MR. REVETTA, HOW OLD ARE YOU?

14 A SEVENTY-SEVEN.

15 Q AND ARE YOU CURRENTLY EMPLOYED?

16 A PARDON?

17 Q ARE YOU CURRENTLY EMPLOYED?

18 A NO, MA'AM.

19 Q YOU'RE RETIRED?

20 A YES.

21 Q AND WHERE DID YOU RETIRE FROM, SIR?

22 A CITY OF COLUMBIA.

23 Q AND WHAT DID YOU DO FOR THE CITY OF COLUMBIA?

24 A TRAFFIC SAFETY OFFICER.

25 Q AND AS A TRAFFIC SAFETY OFFICER, YOU WERE ACTUALLY A

1 POLICEMAN?

2 A I WAS A POLICEMAN.

3 Q HOW MANY YEARS DID YOU ACTUALLY WORK FOR THE CITY OF

4 COLUMBIA?

5 A THIRTY-EIGHT YEARS.

6 Q THIRTY-EIGHT YEARS.

7 A YES, MA'AM.

8 Q AND WHEN DID YOU RETIRE, SIR?

9 A 1987 -- NO, I'M SORRY, 1997.

10 Q 1997?

11 A YES.

12 Q AND AS A SAFETY OFFICER, I BELIEVE YOU SAID, OR A

13 TRAFFIC OFFICER, WHAT WERE YOUR DUTIES?

14 A BACK THEN I WAS A TRAFFIC PATROLMAN. I WORKED WITH

15 THE TRAFFIC DIVISION.

16 Q AND AS A TRAFFIC PATROLMAN, TYPICALLY, WHAT TYPES OF

17 THINGS WOULD YOU DO WHILE YOU WERE ON --

18 A I INVESTIGATED ACCIDENTS AND TOOK REPORTS AND FILLED

19 OUT THE ACCIDENT REPORTS IN THE CITY OF COLUMBIA.

20 Q IN THE CITY OF COLUMBIA. THAT WOULD INCLUDE THE

21 DOWNTOWN AREA?

22 A YES.

23 Q AND AS PART OF YOUR DUTIES ALSO, DID YOU PATROL THE

24 DOWNTOWN AREA?

25 A YES.

1 Q TYPICALLY WHAT SHIFTS WOULD YOU WORK?
2 A VARIOUS SHIFTS OF 11 TO SEVEN, EIGHT-HOUR SHIFTS.
3 Q EIGHT-HOUR SHIFTS?
4 A YES.
5 Q TURNING YOUR ATTENTION BACK TO THE EVENING OF
6 FEBRUARY 28TH, 1961, WERE YOU WORKING THAT EVENING?
7 A YES.
8 Q AND WHAT TIME WOULD YOU HAVE GONE TO WORK ON THE
9 28TH, SIR?
10 A 11 O'CLOCK AT NIGHT.
11 Q THAT WOULD HAVE BEEN 11 O'CLOCK, SO ONE HOUR BEFORE
12 MIDNIGHT?
13 A RIGHT.
14 Q AND AS PART OF YOUR DUTIES THAT EVENING, WHAT AREA OF
15 THE CITY WERE YOU PATROLLING?
16 A I WAS PATROLLING THE SOUTH AREA.
17 Q ALL RIGHT. AND WHEN YOU --
18 A THE DIVIDING LINE WAS TAYLOR STREET. WE HAD A
19 TRAFFIC SAFETY OFFICER AT -- NOW THAT'S AN
20 INVESTIGATOR, AN ACCIDENT INVESTIGATOR IN THE SOUTH
21 AREA.
22 Q AND WHEN YOU SAY THE SOUTH AREA, THAT WOULD HAVE BEEN
23 THE SOUTH PART OF DOWNTOWN ITSELF?
24 A YEAH, THE WHOLE CITY.
25 Q THE WHOLE CITY. WOULD THAT HAVE INCLUDED THE AREAS

1 INCLUDING THE CORNER OF ASSEMBLY AND LADY STREET?

2 A YES.

3 Q WHAT TIME DID YOU GET OFF THAT MORNING,

4 APPROXIMATELY?

5 A I'M SUPPOSED TO GET OFF AT SEVEN.

6 Q AND AS YOU WERE GOING IN, I GUESS BACK TO THE STATION

7 THAT MORNING, DID YOU RECEIVE SOME INFORMATION OVER

8 THE RADIO?

9 A ON THE WAY IN WE DID, YES, I DID. I RECEIVED A CALL,

10 LOOKING FOR THIS CAB.

11 Q AND WERE YOU GIVEN A LICENSE NUMBER?

12 A I DON'T RECALL THE NUMBER. I DON'T RECALL WHAT IT

13 WAS BACK THEN. I MEAN, THAT'S 41 YEARS AGO.

14 Q YES, SIR. I DON'T EXPECT YOU TO RECALL THE NUMBER.

15 YOU WERE GIVEN INFORMATION ABOUT A CAB TO LOOK FOR?

16 A YES.

17 Q AND AS A RESULT OF THE INFORMATION THAT WAS GIVEN TO

18 YOU ON THE RADIO, DID YOU NOTICE ANYTHING?

19 A YES. I SEEN THE CAB PARKED IN THE [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] NEXT TO THE DESOTO HOTEL, FACING

21 NORTH.

22 Q OKAY. SO IT WOULD BE THE [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED]?

24 A YES.

25 Q YOU NOTICED IT. DID IT MATCH THE INFORMATION THAT

1 HAD BEEN GIVEN TO YOU TO LOOK FOR IT?

2 A THE INFORMATION RELAYED TO ME THAT THAT CAB --

3 Q THAT WAS THE CAB YOU WERE LOOKING FOR?

4 A YEAH, LOOKING FOR, RIGHT.

5 Q ONCE YOU SPOTTED THE CAB PARKED ON THE SIDE OF THE

6 ROAD ON ASSEMBLY STREET, WHAT, IF ANYTHING, DID YOU

7 DO?

8 A I IMMEDIATELY NOTIFIED HEADQUARTERS, AND THEY

9 INFORMED ME TO SECURE THE CAB. DON'T LET ANYBODY

10 TOUCH IT. I PARKED MY VEHICLE, AND THAT'S WHAT I DID

11 UNTIL THE INVESTIGATING OFFICER ARRIVED.

12 Q AND YOU MENTIONED THIS WAS IN THE [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED]. IS THAT NEAR THE INTERSECTION OF LADY AND

14 ASSEMBLY?

15 A LADY AND ASSEMBLY.

16 Q AND YOU --

17 A JUST SOUTH OF LADY.

18 Q JUST SOUTH OF LADY. YOU ALSO MENTIONED A HOTEL?

19 A DESOTO HOTEL IS RIGHT THERE.

20 Q AND I'M GOING TO SHOW YOU THESE TWO PHOTOGRAPHS AND

21 ASK YOU, SIR, DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

22 A YES.

23 Q AND --

24 A THAT'S THE DESOTO HOTEL, AND THAT IS THIS [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED] [REDACTED].

1 Q AND THIS SECOND PHOTOGRAPH, DO YOU RECOGNIZE THAT
2 ALSO?

3 A THIS IS PART OF ASSEMBLY STREET.

4 Q IS THAT THE SIDE OF THE HOTEL ALSO?

5 A THAT SIDE OF THE HOTEL.

6 Q AS DEPICTED IN THE OTHER PHOTO. EVEN THOUGH THESE
7 WERE TAKEN A FEW YEARS LATER, DOES THIS REPRESENT HOW
8 IT APPEARED BACK IN 1961 WHEN YOU FOUND THAT CAB?

9 A YES.

10 MS. CAMPBELL: 'YOUR HONOR, AT THIS TIME, WE'D
11 OFFER IT INTO EVIDENCE.

12 MR. DELGADO: WITHOUT OBJECTION.

13 THE COURT: WITHOUT OBJECTION.

14 (WHEREUPON, STATE'S EXHIBITS NOS. 10, 11 WERE
15 MARKED FOR IDENTIFICATION AND RECEIVED INTO
16 EVIDENCE.)

17 BY MS. CAMPBELL

18 Q AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
19 STATE'S EXHIBIT 10. YOU MENTIONED THAT YOU FOUND THE
20 CAB IN THE 1200 BLOCK. IS THAT AREA WHERE YOU FOUND
21 THAT CAB DEPICTED ON THIS PHOTOGRAPH?

22 A YES, RIGHT NEAR THE CROWN.

23 Q RIGHT IN FRONT OF THE CROWN? SIMILAR TO WHERE THAT
24 CAR IS PARKED?

25 A SIMILAR TO THAT AREA RIGHT THERE.

1 Q AND THE CAB, WHEN YOU FOUND IT IN THE EARLY MORNING
2 HOURS, WHICH WAY WAS IT FACING?

3 A IT WAS FACING NORTH ON ASSEMBLY STREET.

4 Q SO THAT WOULD BE IN THE SAME MANNER AS THIS CAR?

5 A RIGHT.

6 Q AND THEN THIS JUST SHOWS THE OTHER SIDE IN FRONT OF
7 THE HOTEL; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q YOU SECURED THE SCENE THAT MORNING?

10 A YES, MA'AM.

11 Q AND YOU MADE SURE THAT NO ONE GOT INTO THE CAB OR
12 DISTURBED ANY EVIDENCE THERE?

13 A I MADE SURE THE CAB WAS NOT DISTURBED.

14 Q AND WHEN YOU FOUND THAT CAB THAT MORNING, WAS
15 MR. ORNER IN THE CAB?

16 A NOBODY WAS IN THE CAB.

17 MS. CAMPBELL: THANK YOU, MR. REVETTA.

18 THE COURT: CROSS-EXAMINATION.

19 CROSS-EXAMINATION:

20 BY MR. DELGADO

21 Q GOOD MORNING, MR. REVETTA.

22 SIR, YOU MAY HAVE SAID IT. I APOLOGIZE. I WAS
23 TAKING ANOTHER NOTE. WHAT TIME DID YOU SAY THAT YOU
24 SAW OR FOUND THE CAB IN THE PHOTOGRAPHS?

25 A I WAS GETTING OFF DUTY ON THE WAY INTO HEADQUARTERS.

1 SOMEWHERE BETWEEN -- I CAN'T SAY EXACTLY.

2 Q YES.

3 A SOMEWHERE BETWEEN 7:15 AND MAYBE A QUARTER TO EIGHT,

4 30 MINUTES IN BETWEEN THERE.

5 Q ALL RIGHT, SIR. THE CAB THAT YOU FOUND, YOU ALERTED

6 YOUR COLLEAGUES IN LAW ENFORCEMENT. THEY TOLD YOU TO

7 SECURE IT, AND OTHERS CAME TO THE SCENE?

8 A I DON'T RECALL ANYBODY ELSE COMING TO THE SCENE OTHER

9 THAN THE INVESTIGATOR.

10 Q I SEE. SO IN OTHER WORDS, AS SOON AS YOU WERE

11 RELIEVED, YOU LEFT AND LEFT THAT TO YOUR COLLEAGUES

12 TO CONTINUE WHATEVER THEY WERE TO DO?

13 A THAT'S CORRECT.

14 Q SO BY THE TIME YOU LEFT, THERE WERE NO OTHER

15 INVESTIGATORS THERE EXCEPT MAYBE ONE DETECTIVE, IS

16 THAT CORRECT, AS YOU RECALL IT?

17 A THAT'S CORRECT.

18 Q ALL RIGHT. IN YOUR ROUTINE, YOU MAY HAVE SAID THAT

19 AGAIN, MR. REVETTA, I'M SORRY, YOU WALKED AN AREA OF

20 DOWNTOWN; IS THAT CORRECT, SIR?

21 A NO. I WAS IN A SAFETY CAR. I WAS IN A TRAFFIC

22 SAFETY CAR.

23 Q I UNDERSTAND. DURING THE TIME THAT YOU WERE IN A

24 TRAFFIC CAR, THE CITY POLICE DEPARTMENT CAR --

25 A RIGHT.

1 Q -- YOU HADN'T SEEN THAT CAR PARKED THERE UNTIL SEVEN,
2 7:15 THAT MORNING?

3 A THAT'S CORRECT.

4 Q ALL RIGHT, SIR. NOW, WHEN YOU SAW THAT CAR -- LET ME
5 RETRACT THAT -- WOULD IT BE FAIR TO SAY, MR. REVETTA,
6 THAT ON PAYDAYS AT FORT JACKSON THAT MILITARY WOULD
7 COME INTO THE DOWNTOWN AREA ON A FREQUENT BASIS?

8 A OH DEFINITELY, SIR.

9 Q YES, SIR. AS A MATTER OF FACT, WHAT WOULD HAPPEN IS
10 WHEN FOLKS WERE PAID, DOWNTOWN WAS, SHALL WE SAY NOT
11 FLOODED, BUT THERE WAS AN OBVIOUS NUMBER OF YOUNG MEN
12 IN UNIFORMS DOWN ON THE MAIN STREET AREA. WOULD THAT
13 BE FAIR?

14 A IT ALL DEPENDS ON THE TIME.

15 Q ALL RIGHT.

16 A THE TIME ELEMENT.

17 Q THE TIME THAT YOU SAW THE CAR, YOU DIDN'T SEE ANYBODY
18 AROUND IT OR NEAR IT?

19 A IT WAS ISOLATED, YES.

20 MR. DELGADO: I THINK SO THAT'S ALL I HAVE.

21 THANK YOU, MR. REVETTA.

22 THE COURT: REDIRECT?

23 MS. CAMPBELL: NO, SIR.

24 THE COURT: THANK YOU. YOU MAY STEP DOWN.

25 CALL YOUR NEXT WITNESS.

1 MR. MCMAHON: THE STATE CALLS CHARLES CLARK.

2 THE CLERK: IF YOU COME FORWARD PLEASE. PLACE
3 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

4 CHARLES CLARK, 'AFTER BEING DULY SWORN, TESTIFIED AS
5 FOLLOWS:

6 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
7 NAME. SPELL YOUR LAST NAME.

8 THE WITNESS: CHARLES CLARK, C-L-A-R-K.

9 DIRECT EXAMINATION:

10 BY MR. MCMAHON

11 Q MR. CLARK, WHERE ARE YOU FROM, SIR?

12 A COLUMBIA.

13 Q AND WHAT IS YOUR CURRENT OCCUPATION?

14 A I'M RETIRED.

15 Q HOW OLD ARE YOU, MR. CLARK?

16 A SIXTY-THREE.

17 Q SIXTY-THREE, SO YOU ARE OUR YOUNGEST WITNESS SO FAR,
18 I BELIEVE, IS THAT RIGHT, SIR? NOW, WHEN DID YOU
19 RETIRE?

20 A JULY 1ST, THIS YEAR.

21 Q JULY 1ST OF THIS YEAR?

22 A YES, SIR.

23 Q AND WHERE DID YOU RETIRE FROM?

24 A COLUMBIA POLICE DEPARTMENT.

25 Q MR. CLARK, WHEN DID YOU START WITH THE COLUMBIA

1 POLICE DEPARTMENT?

2 A THE 18TH DAY OF DECEMBER, 1960.

3 Q HOW OLD WERE YOU THEN, SIR?

4 A TWENTY-TWO.

5 Q SO HOW MANY YEARS, TOTAL, WERE YOU WITH THE COLUMBIA
6 POLICE DEPARTMENT?

7 A ALMOST 42.

8 Q WOULD YOU RELATE FOR THE JURY, PLEASE, THE VARIOUS
9 POSITIONS YOU HELD DURING THAT 42-YEAR PERIOD OF
10 SERVICE WITH THE COLUMBIA POLICE DEPARTMENT?

11 A WELL, I STARTED AS A FOOT PATROLMAN ON THE MIDNIGHT
12 SHIFT IN THE WAREHOUSE DISTRICT AND ENDED UP AS CHIEF
13 OF POLICE.

14 IN THE MIDDLE THERE, I SERVED AS A PATROLMAN
15 FIRST CLASS. I SERVED AS A CRIME SCENE TECHNICIAN.
16 I SERVED AS A CRIMINAL INVESTIGATOR, A SERGEANT,
17 LIEUTENANT, CAPTAIN, COMMANDER, MAJOR, AND CHIEF OF
18 POLICE.

19 Q WHEN WERE YOU APPOINTED CHIEF?

20 A JUNE OF 2001.

21 Q AND THEN RETIRED THIS PAST JUNE, THIS PAST MONTH,
22 CORRECT?

23 A JULY, 2002.

24 Q NOW, CHIEF, WHEN YOU FIRST WENT TO WORK NOVEMBER OF
25 '60, THAT WOULD HAVE BEEN AS A FOOT PATROLMAN?

1 A YES, SIR.

2 Q AND I BELIEVE MR. DELGADO ASKED MR. REVETTA, THERE

3 WERE FOOT PATROLMAN IN THE DOWNTOWN AREA AT THAT

4 TIME; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q DO YOU RECALL THE BEAT NUMBERS?

7 A YES, SIR.

8 Q HOW MANY BEATS WERE THERE DOWNTOWN?

9 A WE HAD APPROXIMATELY TEN.

10 Q WHAT BEAT DO YOU RECALL WALKING IN JANUARY, FEBRUARY,

11 MARCH OF 1961?

12 A BEAT THREE.

13 Q BEAT THREE?

14 A YES, SIR.

15 Q AND TELL THE JURY, WHAT WERE THE BOUNDARIES OF BEAT

16 THREE.

17 A BEAT THREE WAS GENERALLY WHAT THE VISTA IS TODAY. IT

18 WAS A WAREHOUSE DISTRICT STARTING AT ASSEMBLY STREET

19 ON GERVAIS AND WEST ON GERVAIS STREET DOWN TO THE

20 CONGAREE RIVER.

21 Q THAT'S BASICALLY FROM THE STATE HOUSE TO THE RIVER?

22 A YES.

23 Q AND YOU WALKED DOWN?

24 A IT WAS A TWO-HOUR TURNAROUND, ONE HOUR DOWN, ONE HOUR

25 BACK.

1 Q AND WHAT HOURS WERE YOU WORKING BACK FEBRUARY, MARCH
2 OF '61?
3 A MIDNIGHT TO 8 A.M.
4 Q HOW LONG DID YOU STAY ON THE MIDNIGHT SHIFT?
5 A THIRTY DAYS.
6 Q NOW, CHIEF, OF COURSE, BEAT THREE DOESN'T LOOK LIKE,
7 IN '61, LIKE BEAT THREE LOOKS TODAY, THE VISTA AREA?
8 A NO, SIR.
9 Q YOU CALLED IT THE WAREHOUSE DISTRICT?
10 A YES.
11 Q WERE YOU ALSO FAMILIAR WITH WHAT WAS KNOWN AS BEAT
12 ONE?
13 A YES.
14 Q AND WHAT AREA WAS THAT?
15 A BEAT ONE WAS ASSEMBLY STREET FROM GERVAIS STREET
16 NORTH TO TAYLOR STREET.
17 Q AND THEN BEATS TWO AND SIX, I BELIEVE?
18 A WERE ON MAIN STREET.
19 Q STARTING AT THE CAPITAL RUNNING THREE BLOCKS NORTH?
20 A YEAH, FOR BEAT TWO.
21 Q AND THEN BEAT SIX STARTED THREE BLOCKS ON UP CITY
22 HALL?
23 A CORRECT.
24 Q AND YOU'RE FAMILIAR WITH ALL OF THIS AREA BACK AT
25 THAT TIME, CORRECT?

1 A YEAH.

2 Q NOW, THE NIGHT OF THE 28TH OF FEBRUARY, '61, YOU
3 WOULD HAVE COME TO WORK AT WHAT TIME?

4 A WE STARTED ROLL CALL AT 11:30 P.M. AND WENT ON THE
5 STREET AT MIDNIGHT.

6 Q SO YOU WOULD HAVE GONE ON THE STREET MIDNIGHT THE
7 28TH AND WORKED ON UNTIL 8 A.M. ON THE 1ST OF MARCH;
8 IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND CHIEF, I'M GOING TO SHOW YOU A DOCUMENT, I
11 UNDERSTAND WITHOUT OBJECTION.

12 THIS APPEARS TO BE A CALENDER, FEBRUARY OF '61.
13 YOU WOULD HAVE COME TO WORK, ROLL CALL AT 11:30 ON
14 THE 28TH?

15 A THAT'S CORRECT.

16 Q AND GONE ON UNTIL EIGHT O'CLOCK IN THE MORNING ON THE
17 1ST; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 MR. MCMAHON: AND WHILE I'M AT IT, LET ME SEE IF
20 I'VE GOT A MARCH CALENDER.

21 DO YOU HAVE ANY OBJECTION TO THAT?

22 MR. DELGADO: NO.

23 BY MR. MCMAHON

24 Q AND THIS GOES ON UP UNTIL SHOWING TUESDAY IS THE 28TH
25 AND THEN WEDNESDAY BEING THE 1ST OF MARCH?

1 A THAT'S CORRECT.

2 MR. MCMAHON: YOUR HONOR, I'LL MARK BOTH OF
3 THESE, I UNDERSTAND, WITHOUT OBJECTION.

4 MR. DELGADO: THAT'S CORRECT.

5 THE COURT: ALL RIGHT.

6 (WHEREUPON, STATE'S EXHIBITS NOS. 12, 13 WERE
7 MARKED FOR IDENTIFICATION AND RECEIVED INTO
8 EVIDENCE.)

9 BY MR. MCMAHON

10 Q NOW, THE NIGHT OF THE 28TH, MORNING OF THE 1ST,
11 CHIEF, DID YOU SEE THE CAB ON ASSEMBLY AND LADY
12 STREET?

13 A NO, SIR.

14 Q WHEN YOU CAME TO WORK -- DID YOU HAVE TO WORK THE
15 NIGHT OF THE 1ST?

16 A YES, SIR.

17 Q THE MORNING OF THE 2ND?

18 A YES, SIR.

19 Q WHEN YOU CAME TO WORK THAT NIGHT, WHAT, IF ANYTHING,
20 WAS REQUIRED OF YOU?

21 A WE HAD TO ATTEND ROLL CALL TRAINING WHERE WE WERE
22 UPDATED ON THE CRIMES OF THE PREVIOUS TWO SHIFTS.

23 Q AND AS PART OF THAT, WERE YOU UPDATED ON THE
24 DISCOVERY AND THE LOCATION OF THE CAB?

25 A YES.

1 Q AND THAT WOULD HAVE BEEN GONE ON UP INTO WEDNESDAY
2 THE 1ST. YOU GOT OFF. YOU WOULD HAVE COME BACK TO
3 WORK AT 11:30 THAT NIGHT?

4 A THAT'S RIGHT.

5 Q AND THAT'S WHEN YOU WERE UPDATED ON THE DISCOVERY OF
6 THE CAB?

7 A WEDNESDAY NIGHT, YES, SIR.

8 Q NOW, FURTHER CHIEF, WOULD YOU HAVE HAD KNOWLEDGE THEN
9 ABOUT MR. ORNER BEING MISSED?

10 A THE DETECTIVES ISSUED CRIME BULLETINS TO UPGRADE THE
11 PATROL OFFICERS, SO WE WERE -- THEY WERE SEEKING
12 INFORMATION.

13 Q NOW, CHIEF, I WANT TO GO BACK TO THE AREA OF DOWNTOWN
14 COLUMBIA, RICHLAND COUNTY, AND SPECIFICALLY BACK IN
15 '61.?

16 MR. DELGADO: WITHOUT OBJECTION, YOUR HONOR.

17 MR. MCMAHON: THREE DIAGRAMS WITHOUT OBJECTION.

18 CHIEF, YOU CAN IDENTIFY THESE. I GUESS I'LL
19 SHOW THEM TO MY WITNESS FIRST.

20 BY MR. MCMAHON

21 Q YOU CAN IDENTIFY THESE TIMES, THE LOCATIONS, VARIOUS
22 LOCATIONS THEY DEPICT?

23 A YES.

24 MR. MCMAHON: YOUR HONOR, I'M OFFERING THREE
25 DIAGRAM, I UNDERSTAND WITHOUT OBJECTION.

1 THE COURT: NO OBJECTION.
2 (WHEREUPON, STATE'S EXHIBITS NOS. 14, 15, 16
3 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO
4 EVIDENCE.)
5 MR. MCMAHON: NOW MARKED, YOUR HONOR, AS STATE'S
6 EXHIBIT 14, 15, 16.
7 MAY THE WITNESS STEP DOWN?
8 THE COURT: SURE.
9 BY MR. MCMAHON
10 Q STEP ON THIS SIDE FOR ME, CHIEF, AND KEEP YOUR VOICE
11 UP.
12 NOW, STATE'S EXHIBIT NO. 14, YOU'RE FAMILIAR
13 WITH WHAT THIS SHOWS GENERALLY; IS THAT CORRECT?
14 A YES.
15 Q AND DOES THIS SHOW A PORTION OF RICHLAND COUNTY?
16 A IT DOES, YES, SIR.
17 Q CAN YOU POINT OUT FOR US -- I DON'T HAVE A POINTER --
18 YES, I DO, YES, I DO.
19 CAN YOU POINT OUT FOR THE JURY, PLEASE, ON THIS
20 DIAGRAM WHERE THE AREA OF WHAT I'M GOING TO CALL
21 DOWNTOWN COLUMBIA, WOULD BE?
22 A YES, SIR, IT WOULD BE HERE (INDICATING).
23 Q SO THIS ROAD RUNNING THROUGH HERE WHERE IT'S NUMBER
24 ONE HERE, WHAT ROAD WOULD THAT BE?
25 A GERVAIS STREET.

- 1 Q SO WHERE APPROXIMATELY WOULD THE CAPITAL BE THEN?
- 2 A MAIN AND GERVAIS.
- 3 Q NOW, DOES THIS SHOW GENERALLY THE FORT JACKSON AREA?
- 4 A YES, SIR.
- 5 Q AND WOULD YOU POINT THAT OUT FOR US, PLEASE, AND ALSO
- 6 THE BLUFF ROAD AREA?
- 7 A (THE WITNESS COMPLIES.)
- 8 Q AND NOW, ARE YOU FAMILIAR WITH TRAVELING, THIS WOULD
- 9 BE, I THINK, SOUTH ON BLUFF ROAD?
- 10 A IT'S ACTUALLY ASSEMBLY STREET, AND IT JUST COMES ON
- 11 OUT THAT BLUFF ROAD HIGHWAY, STATE HIGHWAY 48.
- 12 Q AND DOWN HERE AT 48, DOES 48 END AT A PARTICULAR
- 13 INTERSECTION DOWN THERE?
- 14 A IT INTERSECTS WITH HIGHWAY 601.
- 15 Q NOW, ALL OF THIS AREA HERE, THAT'S IN RICHLAND
- 16 COUNTY?
- 17 A THAT'S CORRECT.
- 18 Q AND IF YOU'RE GOING ON 601 DOWN TOWARDS OFF OF THIS
- 19 MAP, WHAT COUNTY WOULD YOU BE GOING TOWARDS?
- 20 A WELL, WHEN YOU CROSS THE CONGAREE RIVER, YOU'RE GOING
- 21 TOWARD CALHOUN COUNTY.
- 22 Q CALHOUN COUNTY, BUT ALL THIS AREA BETWEEN 48 AND 601
- 23 AND THE RIVER WOULD BE RICHLAND COUNTY?
- 24 A RICHLAND COUNTY.
- 25 Q NOW, CHIEF, DOES THIS GENERALLY DEPICT THE AREA OF

1 WHAT WE WOULD KNOW AS DENTSVILLE?

2 A YES, SIR, DENTSVILLE WOULD BE OUT NUMBER ONE HIGHWAY.

3 Q AND APPROXIMATELY WHERE WOULD -- DO YOU REMEMBER WHAT

4 I CALL OLD DENTSVILLE HIGH SCHOOL?

5 A YES.

6 Q DO YOU REMEMBER WHERE IT WAS AT?

7 A YES, SIR.

8 Q CAN YOU POINT ON THIS MAP APPROXIMATELY WHERE THAT

9 WOULD BE?

10 A IT WOULD BE ON DECKER BOULEVARD JUST EAST OF TWO

11 NOTCH ROAD.

12 Q WHERE IS PRESENT DAY COLUMBIA MALL?

13 A WELL, IT WOULD BE ON THE WEST SIDE OF [REDACTED] [REDACTED] [REDACTED],

14 BACK A LITTLE BIT SOUTH FROM THE INTERSECTION HERE.

15 Q AND ABOUT WHAT BLOCK OF TWO NOTCH ROAD IS COLUMBIA

16 MALL LOCATED ON?

17 A I WOULD SAY [REDACTED] [REDACTED]

18 Q WOULD THE [REDACTED] BLOCK BE GOING -- WOULD YOU GO SOUTH

19 ON TWO NOTCH FROM DECKER TO GET TO THE [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]?

21 A YES, THE SECOND BLOCK SOUTH.

22 Q NOW, CHIEF, IF I GO TO THE NEXT DIAGRAM, STATE'S

23 EXHIBIT NO. 15, THAT APPEARS TO BE JUST A MORE

24 SPECIFIC VIEW OR PART OF 14; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q SO AGAIN, POINT OUT FOR OUR JURY WHERE THE DOWNTOWN
2 AREA WOULD BE.
3 A RIGHT HERE (INDICATING).
4 Q AND SPECIFICALLY, I BELIEVE THE CAPITAL IS MARKED,
5 CORRECT?
6 A YES, THE CAPITAL IS HERE.
7 Q CAN YOU SHOW US APPROXIMATELY WHERE LADY STREET WOULD
8 INTERSECT WITH ASSEMBLY?
9 A WELL, LADY STREET IS ONE BLOCK NORTH OF GERVAIS
10 STREET. ONE BLOCK NORTH OF THE STATE CAPITAL RUNS
11 PARALLEL WITH GERVAIS STREET.
12 Q AGAIN ON THIS MAP, IS THE INTERSECTION OF TWO NOTCH
13 AND DECKER SHOWN?
14 A YES, SIR, HERE (INDICATING).
15 Q AND POINT OUT APPROXIMATELY WHERE THE [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED]?
17 A IT WOULD BE SOUTH.
18 Q NOW, GOING BACK ON THIS MAP TO THE FORT JACKSON AREA,
19 BACK IN '61, DO YOU RECALL HOW MANY GATES THERE WERE
20 AT FORT JACKSON?
21 A THEY PROBABLY HAD SIX OR SEVEN GATES.
22 Q WHAT WAS KNOWN AS THE MAIN GATE?
23 A THAT WAS FORT JACKSON BOULEVARD.
24 Q AND WHEN YOU ENTER THE POST FROM FORT JACKSON
25 BOULEVARD, IS THERE ANY TYPE OF TRAFFIC CIRCLE?

1 A YES, SIR, THERE'S A TRAFFIC CIRCLE WHERE YOU ENTER
2 IT.
3 Q AS A MATTER OF FACT, IT WAS OUT THERE IN '61. YOU GO
4 OUT THERE NOW, IS THE TRAFFIC CIRCLE STILL THERE?
5 A STILL THERE.
6 Q NOW, WHAT IS THE ROAD KNOWN AS FROM THE TRAFFIC
7 CIRCLE COMING ON BACK IN TOWARDS COLUMBIA, TOWARDS
8 GARNER'S FERRY ROAD?
9 A FORT JACKSON BOULEVARD.
10 Q AND YOU WERE FAMILIAR WITH THAT?
11 A YES, SIR.
12 Q NOW, TODAY IS THAT PART OF THE CITY OF COLUMBIA?
13 A IT IS, YES, SIR.
14 Q AS A MATTER OF FACT, TODAY HAS FORT JACKSON BEEN
15 ANNEXED BY THE CITY OF COLUMBIA?
16 A IT HAS, YES, SIR.
17 Q IN 1961, WAS JACKSON BOULEVARD PART OF THE CITY OF
18 COLUMBIA?
19 A NOW, PART OF IT WAS AND PART OF IT WAS NOT.
20 Q ARE YOU FAMILIAR WITH WHAT WAS JIMMY'S DRIVE IN?
21 A YES, SIR.
22 Q WAS THAT IN THE CITY LIMITS IN '61?
23 A NO, SIR.
24 Q ARE YOU FAMILIAR WITH ANY CAB STANDS THAT WERE ON
25 JACKSON BOULEVARD?

1 A YES, SIR.

2 Q WHERE WAS IT LOCATED?

3 A WELL, THE STATE CAB COMPANY WAS LOCATED ON FORT
4 JACKSON BOULEVARD ON THE SOUTH SIDE OF THE ROAD. IT
5 WAS THE LAST ESTABLISHMENT BEFORE YOU GET TO JIMMY'S
6 DRIVE IN.

7 Q NOW, JIMMY'S DRIVE IN WASN'T A MOVIE DRIVE IN, WAS
8 IT?

9 A NO, IT WASN'T.

10 Q WHAT TYPE OF ESTABLISHMENT WAS JIMMY'S DRIVE IN?

11 A IT WAS A RESTAURANT, BAR.

12 Q IF I WOULD DESCRIBE IT AS KIND OF HONKY TONK, THAT
13 WOULDN'T HAVE BEEN A BAD DESCRIPTION, WOULD IT?

14 A 1961, YOU WOULD HAVE BEEN EXACTLY RIGHT.

15 Q ALL RIGHT, SIR. NOW, THE AREA WHERE CAB STAND WAS AT
16 AND WHERE JIMMY'S WAS AT IN '61, WAS THAT IN THE
17 CITY'S JURISDICTION?

18 A NO, SIR.

19 Q IN WHOSE JURISDICTION WOULD THAT HAVE BEEN?

20 A IT WOULD HAVE BEEN IN THE RICHLAND COUNTY SHERIFF'S
21 OFFICE.

22 Q NOW, JUST TO SHOW THE RELATIONSHIP BETWEEN 15 AND 14,
23 DOES BLUFF ROAD, WHICH YOU POINTED OUT FOR US ON 14,
24 GOING ALL THE WAY DOWN TO ITS INTERSECTION OF 601,
25 DOES ANY PART OF BLUFF ROAD APPEAR ON STATE'S EXHIBIT

1 NO. 15?

2 A YES, SIR, THIS PART HERE.

3 Q AND YOU SAY THAT COMES BACK INTO ASSEMBLY STREET?

4 A YES, SIR.

5 Q NOW, GOING TO THE NEXT DIAGRAM, STATE'S EXHIBIT

6 NO. 16, IS THIS EVEN A MORE SPECIFIC AREA PRIMARILY

7 OF THE DOWNTOWN AREA OF COLUMBIA; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q NOW, WHERE WOULD THE CAPITAL BE WITH THE INTERSECTION

10 OF MAIN AND GERVAIS STREET?

11 A THE INTERSECTION IS HERE, AND THE CAPITAL IS HERE.

12 Q AND POINT OUT FOR THE JURY THE DIRECTION GERVAIS RUNS

13 AND WHICH WAY IS GOING TOWARDS THE VISTA AND WHICH

14 WAY IS GOING TOWARDS HARDEN STREET.

15 A GERVAIS STREET RUNS EAST AND WEST. THIS IS WEST

16 TOWARDS THE VISTA, TOWARDS THE RIVER, WEST COLUMBIA.

17 THIS IS EAST.

18 Q NOW, MAIN STREET RUNNING NORTH, WHERE WOULD THAT

19 APPEAR?

20 A MAIN STREET RUNS NORTH AND SOUTH. THIS IS THE NORTH.

21 Q AND ONE BLOCK PARALLEL TO MAIN STREET SOUTH, WHAT

22 ROAD WOULD THAT BE?

23 A THAT WOULD BE ASSEMBLY STREET.

24 Q AND THE DIRECTION YOU'RE POINTING NOW WOULD BE --

25 A NORTH.

1 Q -- NORTH.

2 NOW, CHIEF, I BELIEVE YOU HEARD MR. REVETTA,

3 OFFICER REVETTA, TESTIFY AS TO STATE'S EXHIBIT NO. 10

4 AND 11. ARE YOU FAMILIAR WITH THESE PHOTOGRAPHS?

5 A YES, SIR.

6 Q AND WHAT AREA THEY DEPICT?

7 A YES, SIR.

8 Q DOES EITHER ONE OF THESE PHOTOGRAPHS DEPICT THE AREA

9 OF ASSEMBLY AND TAYLOR STREET? EXCUSE ME, ASSEMBLY

10 AND LADY STREET.

11 A BOTH OF THEM.

12 Q WHERE CAN YOU SEE THE MOST PART OF THE INTERSECTION?

13 A THIS ONE.

14 Q AND POINT TO THAT INTERSECTION FOR US.

15 A THIS WOULD BE LADY STREET WEST, AND BETWEEN EAST, AND

16 ASSEMBLY STREET SOUTH.

17 Q POINT ON STATE'S EXHIBIT 11 WHERE THIS VEHICLE WOULD

18 BE IN STATE'S EXHIBIT NO. 10.

19 A IT WOULD BE ON ASSEMBLY STREET ON THIS CORNER FACING

20 NORTH.

21 Q SO THIS HAS THE NAME "CROWN" ON IT?

22 A CROWN LOAN.

23 Q WHERE WOULD THAT BE IN RELATIONSHIP HERE?

24 A IT WOULD BE THIS BUILDING HERE.

25 Q SO CHIEF, COULD YOU PLACE A STICKER ON STATE'S

1 EXHIBIT NO. 16 --

2 A YES, SIR.

3 Q -- IN THE AREA OF ASSEMBLY AND LADY STREET WHERE THE

4 CAB WAS LOCATED?

5 A APPROXIMATELY HERE.

6 Q AND FROM HERE, MR. REVETTA, THIS CAB IS POINTING

7 NORTH?

8 A CORRECT.

9 Q IF YOU AGREE WITH MY ART WORK THERE.

10 A CORRECT.

11 Q MY ARTIST ART WORK THERE. CROWN WOULD BE WHERE?

12 A JUST EAST OF WHERE THE CAB IS AT.

13 Q NOW, ALL THIS AREA HERE, HOW MANY BUILDINGS WAS THAT,

14 NOT BUSINESSES. HOW MANY BUILDINGS WAS THAT?

15 A IT WAS ACTUALLY ONE BUILDING, THE HOTEL, AND THE

16 GROUND FLOOR OF THE HOTEL HOUSED FOUR OR FIVE

17 COMMERCIAL BUSINESSES.

18 Q VARIOUS BUSINESSES; IS THAT RIGHT?

19 A THAT'S RIGHT.

20 Q NOW, WHAT HOTEL ARE WE TALKING ABOUT?

21 A THE DESOTO HOTEL.

22 Q NOW, WHAT WAS THE ADDRESS OF THE DESOTO HOTEL?

23 A THE DESOTO WOULD ACTUALLY BE THE [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] IS THE ENTRANCE.

25 Q CAN YOU SEE THE ENTRANCE TO THE DESOTO LOBBY ON

1 STATE'S EXHIBIT NO. 10?

2 A YES, SIR.

3 Q RIGHT THERE?

4 A YES.

5 Q AND SOME OF THOSE OTHER BUSINESSES WERE IN THE SAME

6 BUILDING?

7 A ON THE FIRST FLOOR.

8 Q PARTITIONED OFF AREAS IN THE SAME BUILDING; IS THAT

9 CORRECT?

10 A THAT'S CORRECT.

11 Q NOW, ONE SUCH BUSINESS, WERE YOU FAMILIAR WITH ANY --

12 WELL, JUST LIKE CROWN LOAN, WHAT WAS CROWN LOAN?

13 A IT WAS A PAWNSHOP.

14 Q WERE THERE OTHER PAWNSHOPS LOCATED IN THE DOWNTOWN

15 AREA?

16 A YES, SIR.

17 Q WERE YOU FAMILIAR WITH SOME OF THESE PAWNSHOPS?

18 A I WAS, YES, SIR.

19 Q BERRY'S LOAN AND ARMY STORE?

20 A LOCATED ON THE [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. IT WAS IN

21 THE SAME BUILDING AS THE HOTEL.

22 Q ACTUALLY [REDACTED] [REDACTED] CORRECT?

23 A YEAH, I BELIEVE THAT'S CORRECT, YES.

24 Q AND CAN YOU ACTUALLY SEE THAT BUILDING? ALTHOUGH,

25 THIS PICTURE IS TAKEN AT A LATER TIME, DO YOU KNOW

1 WHAT MOVED INTO THAT BUILDING AFTER BERRY'S MOVED.
2 OUT?

3 A I THINK IT WAS MEAT STORE THAT MOVED IN.

4 Q THAT WOULD BE BOYER'S?

5 A BOYER'S MEAT MARKET.

6 Q BUT IN '61 BERRY'S WAS LOCATED THERE ON [REDACTED] [REDACTED]?

7 A [REDACTED] [REDACTED].

8 Q AND WHERE WOULD ONE GO TO GO FROM BERRY'S TO THE CAB?

9 A TRAVEL WEST ON LADY STREET TO THE CORNER AND TAKE A
10 LEFT, AND THE CAB WOULD BE A SHORT DISTANCE.

11 Q POINT THAT OUT FOR US ON STATE'S 16?

12 A I BELIEVE THEY TRAVELED WEST AND MAKE A LEFT, AND THE
13 CAB WOULD BE HERE.

14 Q SINCE I HAVE BEGUN TALKING ABOUT THE PAWNSHOP, LET ME
15 CONTINUE ON. THERE WOULD BE OTHER PAWNSHOPS IN THE
16 DOWNTOWN AREA --

17 A YES, SIR.

18 Q -- IN COLUMBIA IN '61. WERE YOU FAMILIAR WITH
19 FREED'S JEWELERS?

20 A YES, SIR.

21 Q WHERE WAS IT LOCATED?

22 A THE [REDACTED] [REDACTED] [REDACTED] [REDACTED].

23 Q AND WOULD YOU POINT THAT OUT FOR US ON STATE'S 16, IF
24 IT'S DEPICTED?

25 A ONE BLOCK NORTH IN THE 1100 BLOCK OF WASHINGTON.

1 Q AND WERE YOU FAMILIAR WITH CAPITAL LOAN AND PAWN?
2 A SAME BLOCK.
3 Q AND WHAT ADDRESS IS CAPITAL LOAN?
4 A I'M NOT SURE OF THE EXACT ADDRESS. IT WAS ON THE
5 [REDACTED]
6 Q JUST DOWN FROM FREED'S?
7 A TOWARD MAIN STREET, YES, SIR.
8 Q NOW, YOU TALKED ABOUT THE WAREHOUSE DISTRICT THAT YOU
9 WALKED BEAT THREE WOULD BE VERY DIFFERENT TODAY,
10 BEING THE VISTA TODAY. WAS THE [REDACTED]
11 [REDACTED] VERY DIFFERENT IN '61 THAN IT WAS TODAY?
12 A YES, SIR.
13 Q WHAT TYPE OF ESTABLISHMENTS WERE LOCATED ON THE [REDACTED]
14 [REDACTED] IN '61?
15 A WELL, YOU HAD A LARGE NUMBER OF RESTAURANTS AND CLUBS
16 AND BARS.
17 Q AND WHAT WERE MANY OF THESE PATRONS OF THE CLUBS AND
18 BARS?
19 A MILITARY PERSONNEL.
20 Q AND PRIMARILY, MILITARY PERSONNEL WOULD HAVE BEEN
21 RECRUITS, PRIMARILY?
22 A YES.
23 Q AND ARE YOU FAMILIAR WITH THE NAMES AND THE LOCATIONS
24 OF SOME OF THESE?
25 A YES, SIR.

1 Q WAS THERE ONE KNOWN AS HAWAIIAN STAGE DOOR?
2 A YES, SIR.
3 Q COULD YOU POINT THAT OUT FOR US, PLEASE?
4 A THE [REDACTED] [REDACTED] [REDACTED] ON THE WEST SIDE.
5 Q WAS THERE ONE KNOWN AS THE WHIP?
6 A YES.
7 Q POINT THAT OUT.
8 A THE WHIP WAS ON THE SAME BLOCK ACROSS THE STREET.
9 Q THE POLKA DOT CLUB?
10 A SAME BLOCK.
11 Q THE CIRCLE BAR?
12 A SAME BLOCK.
13 Q NOW, THERE ARE SOME BUILDINGS THAT STILL EXIST ON THE
14 [REDACTED] [REDACTED] [REDACTED].
15 A A FEW OF THEM, YES.
16 Q ON THE NORTH SIDE, CORRECT? ONE RECENTLY CLOSED,
17 CAPITAL CAFE. IS THAT BUILDING STILL THERE?
18 A YES.
19 Q AS A MATTER OF FACT, CAPITAL LOAN WAS LOCATED HERE IN
20 '61 MOVED THERE?
21 A MOVED OVER THERE, YEAH.
22 Q AND WHERE WOULD CAPITAL CAFE HAVE BEEN?
23 A IT WOULD BE ON THE EAST SIDE.
24 Q AND CHIEF, I WANT TO ASK YOU ANOTHER QUESTION A
25 LITTLE BIT OUT OF THE DOWNTOWN AREA BUT NOT MUCH. ON

1 THE OTHER SIDE OF THE CAPITAL, SOUTH ON MAIN, ARE YOU
2 FAMILIAR WITH THAT AREA ALSO?

3 A YES, SIR.

4 Q WHAT WAS LOCATED AT THE INTERSECTION OF MAIN AND
5 WHEAT?

6 A THE GRESHAM MOTEL.

7 Q AND WHERE IS THE INTERSECTION OF MAIN AND WHEAT WITH
8 WHERE WE MAY KNOW WHERE PRESENT DAY CALIFORNIA
9 DREAMING IS AT, THE TRAIN STATION?

10 A CALIFORNIA DREAMING IS ONE BLOCK FURTHER SOUTH ON
11 MAIN STREET. THAT'S THE OLD UNION DEPOT.

12 Q IS GRESHAM HOTEL STILL THERE? DOES THE BUILDING
13 STILL EXIST, TO YOUR KNOWLEDGE?

14 A NO, SIR.

15 Q A COUPLE OF OTHER THINGS, IF WE WERE TO GO DOWN AND
16 WALK DOWN THE STREET NOW TO THE [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED] WHERE IT INTERSECTS WITH LADY, IS THE DESOTO
18 THERE?

19 A NO, SIR.

20 Q IS BERRY'S LOAN?

21 A NO, SIR.

22 Q CROWN?

23 A NO, SIR.

24 Q HAS THAT AREA CHANGED IN ITS APPEARANCE AND THE
25 STRUCTURES THAT ARE THERE NOW COMPARED TO '61?

1 A THAT'S THE CITY OF COLUMBIA PARKING GARAGE.

2 Q NOW, CHIEF, I WANT TO GO BACK TO FORT JACKSON FOR A

3 MOMENT. I BELIEVE YOU SAID YOU WENT TO THE POLICE

4 DEPARTMENT IN NOVEMBER OF '60?

5 A DECEMBER OF '60.

6 Q EXCUSE ME, I'M SORRY, DECEMBER OF '60. WHERE WERE

7 YOU AT THE PREVIOUS WINTER, IN '59?

8 A FORT JACKSON.

9 Q AND WHAT WERE YOU DOING AT FORT JACKSON?

10 A I WENT IN BASIC TRAINING IN NOVEMBER OF 1959 AND WENT

11 TO FOURTH BATTALION SUPPLY SCHOOL IN 1960.

12 Q SO YOU ARE FAMILIAR WITH COLUMBIA DOWNTOWN, RICHLAND

13 COUNTY, AND FORT JACKSON?

14 A YES, SIR.

15 Q NOW, I WANT TO SHOW YOU THIS MAP AND THIS DIAGRAM.

16 EXCUSE ME, I APOLOGIZE, JOHN. IF I COULD GET

17 THIS MARKED, YOUR HONOR. I APOLOGIZE.

18 MR. DELGADO: EXCUSE ME, EXCUSE ME. KNOX,

19 EXCUSE ME JUST ONE SECOND.

20 (PAUSE).

21 MR. DELGADO: WITHOUT OBJECTION, YOUR HONOR.

22 THE COURT: WITHOUT OBJECTION.

23 (WHEREUPON, STATE'S EXHIBIT NO. 17 WAS MARKED

24 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

25 BY MR. MCMAHON

1 Q AND CHIEF, YOU SEEN THIS DIAGRAM BEFORE, STATE'S
2 EXHIBIT -- OR THIS MAP ACTUALLY, STATE'S EXHIBIT
3 NO. 17, CORRECT?
4 A YES, SIR.
5 Q AND IF I GO BACK TO EITHER ONE OF THESE OVERALL
6 DIAGRAMS, SAY FOR EXAMPLE, STATE'S 15, AND I POINT TO
7 THE TRAFFIC CIRCLE, COULD YOU POINT OR DO YOU SEE THE
8 TRAFFIC CIRCLE ON STATE'S 17?
9 A IT'S INDICATED HERE, MAIN GATE, AND THAT'S THE
10 TRAFFIC CIRCLE RIGHT BEHIND IT.
11 Q SO WHERE WOULD JACKSON BOULEVARD BE?
12 A JACKSON BOULEVARD, THE TRAFFIC CIRCLE IS HERE.
13 Q ALL RIGHT. NOW, IS THAT JACKSON BOULEVARD ON THE
14 POST?
15 A YES, SIR.
16 Q AND WHERE IS JACKSON BOULEVARD OFF POST?
17 A RIGHT HERE.
18 Q THE MAIN GATE?
19 A RIGHT.
20 Q SO POINT OUT FOR OUR JURY WHERE -- ORIENT THEM FROM
21 JIMMY'S DRIVE IN TO THE TAXI STAND WOULD BE ON THIS
22 DIAGRAM, STATE'S 17.
23 A IT WOULD BE OFF TO YOUR RIGHT JUST BEFORE YOU ENTER
24 THE MAIN GATE.
25 Q ALL RIGHT. SO RIGHT BACK OVER HERE?

1 A RIGHT.

2 Q ALL RIGHT. NOW, JACKSON BOULEVARD, DO YOU SEE

3 JACKSON BOULEVARD ON POST?

4 A IT'S HERE (INDICATING).

5 Q SO YOU COME OFF THE CIRCLE AND YOU COME STRAIGHT DOWN

6 JACKSON BOULEVARD HERE, CORRECT?

7 A CORRECT.

8 Q NOW, CAN YOU FOLLOW THAT OUT FOR US?

9 A (COMPLIES).

10 Q NOW, WHAT INTERSECTION IS RIGHT HERE?

11 A PERCIVAL ROAD AND JACKSON BOULEVARD.

12 Q NOW, IN 1961, COULD YOU GO FROM THE MAIN GATE AT FORT

13 JACKSON DOWN JACKSON BOULEVARD TO WHERE IT INTERSECTS

14 WITH PERCIVAL ROAD AND EXIT FORT JACKSON ONTO

15 PERCIVAL ROAD?

16 A YES, YOU COULD.

17 Q AND POINT THAT INTERSECTION OUT FOR US AGAIN.

18 A RIGHT HERE.

19 Q RIGHT HERE. IF I GO BACK TO STATE'S 15, FOR EXAMPLE,

20 DO YOU SEE THAT SAME INTERSECTION HERE?

21 A YES. IT WOULD BE HERE AT GATE THREE.

22 Q NOW, PERCIVAL ROAD RUNS OFF OF FOREST DRIVE?

23 A CORRECT.

24 Q DO YOU KNOW THE HIGHWAY NUMBER?

25 A TWELVE.

1 Q HIGHWAY 12. THAT WASN'T A TRICK QUESTION. I THOUGHT
2 YOU HAD SAID THAT EARLIER, AND IT RUNS ON UP TOWARDS
3 CAMDEN, CORRECT?
4 A CORRECT.
5 Q NOW, WHAT ROAD IS THIS RIGHT HERE OFF TO THE LEFT?
6 A DECKER BOULEVARD.
7 Q AND THAT TAKES YOU ON OVER TO DECKER --
8 A TWO NOTCH.
9 Q TWO NOTCH.
10 A YES.
11 Q BACK THEN CITIZENS COULD DRIVE IN AND OUT OF FORT
12 JACKSON?
13 A YES, SIR.
14 Q CABS?
15 A YES, SIR.
16 Q AND I'M GOING TO ASK YOU A LITTLE BIT MORE ABOUT THE
17 LICENSE AND REGISTRATION OF CABS IN A LITTLE BIT, BUT
18 YOU SAID YOU WERE IN THE FOURTH TRAINING DIVISION?
19 A FOURTH TRAINING BRIGADE.
20 Q AND WHERE WAS YOUR AREA THAT YOU WERE AT IN NOVEMBER
21 OF '59 IN RELATIONSHIP TO JACKSON BOULEVARD?
22 A MY BARRACKS WERE JUST EAST OF FORT JACKSON BOULEVARD.
23 Q COULD YOU SEE FORT JACKSON BOULEVARD FROM COMPANY
24 STREET, AS THEY CALLED IT?
25 A YES.

1 Q DO YOU REMEMBER ANY PARTICULAR LANDMARKS?

2 A THERE'S A LITTLE DAIRY QUEEN, AN ESKIMO HUT,
3 SOMETHING UP ON JACKSON. YOU COULD SEE IT FROM
4 COMPANY STREET.

5 Q IS IT COMMON FOR RECRUITS TO GO --

6 MR. DELGADO: OBJECTION, YOUR HONOR.

7 THE COURT: I'M SORRY?

8 MR. DELGADO: LEADING THE WITNESS.

9 THE COURT: SUSTAINED.

10 BY MR. MCMAHON

11 Q DID YOU HAVE AN OCCASION TO GO TO THE ESKIMO HUT?

12 A YES.

13 Q WAS IT COMMON OR UNCOMMON?

14 A IT WAS COMMON.

15 Q NOW, CHIEF, I WANT TO ASK YOU ABOUT -- GO BACK TO
16 SOME QUESTIONS ABOUT THE PAWNSHOPS. WAS THERE ANY
17 ORDINANCE RELATIONSHIP BETWEEN THE COLUMBIA POLICE
18 DEPARTMENT AND THE PAWNSHOPS IN THE CITY OF COLUMBIA?

19 A YES, SIR.

20 Q AND WHAT WAS THAT? AS A RESULT OF THAT, WERE THERE
21 ANY RECORDS THAT WERE KEPT?

22 A COLUMBIA HAD A CITY ORDINANCE THAT REQUIRED THE
23 PAWNSHOP OPERATORS TO KEEP A RECORD OF ITEMS TAKEN IN
24 ON PAWN, GIVING THE PERSON'S NAME, THE DESCRIPTION OF
25 THE ARTICLE, HOW MUCH WAS THE LOAN, SERIAL NUMBERS,

1 ET CETERA.

2 Q DID THAT RECORD ALSO INCLUDE ANY ITEMS SOLD?

3 A YES.

4 Q NOW, DID Y'ALL RECEIVE CERTAIN BUSINESS RECORDS AS A

5 RESULT OF THAT ORDINANCE THAT WERE MADE IN THE NORMAL

6 COURSE OF BUSINESS?

7 A WE DID.

8 Q AND THOSE RECORDS WERE THEN MAINTAINED AS PART OF THE

9 OFFICIAL RECORDS AT THE COLUMBIA POLICE DEPARTMENT?

10 A THAT'S CORRECT.

11 Q PRIOR TO TODAY, HAVE I SHOWN YOU A NUMBER OF PAWNSHOP

12 RECORDS?

13 A YES, SIR.

14 Q I WANT TO SHOW YOU WHAT HAS BEEN...

15 CHIEF, ARE THESE ENLARGEMENTS OF VARIOUS RECORDS

16 HELD IN THE NORMAL COURSE OF BUSINESS BY THE COLUMBIA

17 POLICE DEPARTMENT IN RELATIONSHIP TO THE ORDINANCE --

18 A YES, SIR.

19 Q -- WITH THE PAWNSHOPS?

20 A YES, SIR.

21 Q AND I'LL SHOW YOU THE ORIGINAL OF THAT. THAT APPEARS

22 TO BE THE BACK OF THIS. I WILL SHOW YOU THE VERIFAX

23 COPY OF THAT.

24 A OKAY.

25 Q DOES THIS APPEAR TO BE AN ENLARGEMENT OF ANOTHER ONE

1 OF THOSE RECORDS?

2 A YES, SIR.

3 Q ALONG WITH THIS EXHIBIT?

4 A YES, SIR.

5 Q AGAIN, THIS EXHIBIT?

6 A YES, SIR.

7 Q ALONG WITH THIS?

8 A YES, SIR.

9 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THESE
10 INTO EVIDENCE.

11 MR. DELGADO: YOUR HONOR, MAY I LOOK AT THESE
12 AGAIN JUST ONE SECOND?

13 MR. MCMAHON: SURE. I'M GOING TO PUT THESE
14 RIGHT HERE JUST A SECOND.

15 MR. DELGADO: YES, SIR, YOUR HONOR, WE DO HAVE
16 AN OBJECTION. BECAUSE OF THE DATES OF THESE MATTERS
17 INVOLVED, THESE MATTERS HAVE NOT BEEN AUTHENTICATED YET.
18 I THINK WE HAVE TO DO THAT PRIOR TO THEIR ADMISSION.

19 THE COURT: HOW MANY OF THEM -- IF WE HAVE ALL
20 OF THEM, LET'S DO THEM ALL AT ONE TIME. ARE THERE MORE OF
21 THOSE?

22 MR. MCMAHON: NOT WITH THIS WITNESS, NO, SIR.

23 THE COURT: OKAY.

24 MR. MCMAHON: THAT'S WHY I HAVE THEM ALL UP
25 HERE. JUDGE, I DIDN'T WANT TO MAKE THE ARGUMENT IN FRONT

1 OF THE JURY, I APOLOGIZE.

2 THE COURT: THAT'S ALL RIGHT. I WAS TRYING TO
3 FIGURE OUT A WAY TO DO THAT WITHOUT SENDING THEM OUT, BUT
4 I DON'T THINK I CAN.

5 LET ME LET YOU GO TO YOUR JURY ROOM JUST FOR A
6 MOMENT.

7 (WHEREUPON, THE JURY LEFT OPEN COURT AT
8 APPROXIMATELY 11:23 A.M.)

9 MR. DELGADO: YOUR HONOR, MAY THE DEFENDANT TAKE
10 A SHORT BREAK?

11 MR. MCMAHON: MAY SERGEANT REVETTA BE EXCUSED?

12 THE COURT: YES, WITHOUT OBJECTION.

13 ALL RIGHT. MR. DELGADO, MR. HUDGINS, TELL ME
14 WHAT YOU --

15 MS. HUDGINS: YOUR HONOR, IF I MAY, I KNOW THE
16 SOLICITOR IS ATTEMPTING TO INTRODUCE THESE AS BUSINESS
17 RECORDS.

18 MY UNDERSTANDING IS THEY STILL HAVE TO BE
19 AUTHENTICATED AS BUSINESS RECORDS, AS SOMEBODY THAT HAS
20 KNOWLEDGE OF THOSE BUSINESS RECORDS.

21 I THINK THEY'RE PREPARED TO DO THAT ANYWAY. I
22 DON'T THINK THAT'S A PROBLEM.

23 THE COURT: WELL, ALL HE'S ATTEMPTING TO DO NOW
24 THROUGH THE CHIEF IS THAT THESE WERE RECORDS THAT WERE
25 KEPT IN THE ORDINARY COURSE OF BUSINESS BY THE CITY OF

1 COLUMBIA, AT OR NEAR THE TIME OF THE ACT, OMISSION, OR
2 EVENT, IF HE CAN IDENTIFY WHAT THE RECORDS ARE AND HE'S A
3 QUALIFIED WITNESS.

4 MR. SOLICITOR, I THINK WHAT MS. HUDGINS IS
5 SAYING IS THAT YOU CAN MARK THEM FOR IDENTIFICATION FOR
6 PURPOSES OF ESTABLISHING IDENTITY.

7 THEN YOU COULD GO BACK THROUGH AND WHO -- AS I
8 UNDERSTAND, YOU HAVE PEOPLE HERE WHO CAN THEN AUTHENTICATE
9 THE DOCUMENTS EITHER BY THEY KNOW THE SIGNATURE, OR
10 THEY'RE KEPT BY THEM OR THEY MIGHT COME IN UNDER THE
11 ANCIENT DOCUMENT RULE.

12 SO OTHER THAN HIS IDENTIFYING THESE DOCUMENTS,
13 WHAT OTHER INFORMATION DO YOU NEED TO GET OUT OF HIM ABOUT
14 THAT?

15 MR. MCMAHON: WELL, I'M GOING TO GET OUT OF THE
16 LOCATIONS OF BERRY'S LOAN, FOR EXAMPLE, AND GO BACK TO THE
17 DIAGRAM OF WHERE BERRY'S LOAN IS.

18 THE COURT: ALL RIGHT.

19 MR. MCMAHON: IN OTHER WORDS, I DON'T MIND
20 MARKING THEM FOR IDENTIFICATION PURPOSES ONLY; HOWEVER, IT
21 KIND OF HARKENS BACK TO A MEMORY OF JUDGE GEORGE BELL
22 TIMMERMAN. HE USED TO SAY, YOU KNOW, YOU CAN'T PROVE
23 EVERYTHING ON A PINPOINT IN A CHAIN OF WITNESSES.

24 THE COURT: I UNDERSTAND.

25 MR. MCMAHON: AND I DON'T WANT TO HAVE TO RECALL

1 CHIEF CLARK. THAT'S WHY I'M BRINGING HIM UP NOW, AND I
2 WANT TO BE ABLE TO PUBLISH THEM TO THE JURY AND LET HIM
3 EXPLAIN WHAT THEY ARE NOW.

4 I REPRESENT TO THE COURT THAT I HAVE WITNESSES
5 THAT WILL AUTHENTICATE, ADDITIONALLY, EACH AND EVERY ONE
6 OF THOSE ITEMS.

7 IN FACT, MY NEXT WITNESS IS IN THE COURTROOM,
8 MS. RUSS, WHO IS THE LADY THAT WAS WITH CAPITAL LOAN,
9 WHOSE PARENTS OWNED CAPITAL LOAN, THAT INVOLVES THE
10 PURCHASE OF THE WEAPON.

11 NOW, IF I HAVE TO RECALL CHIEF CLARK --
12 THE COURT: NOW, LET ME JUST TELL YOU THIS:
13 WHAT IF YOU GOOF? THEN I HAVE A PROBLEM. I'M NOT SAYING
14 YOU WILL, BUT IT HAPPENED TO US EARLIER THIS YEAR ON SOME
15 D.N.A.

16 I CONDITIONALLY ALLOWED THE D.N.A. IN, AND THE
17 ATTORNEY COULDN'T CLOSE THE LOOP, MISTRIAL.

18 MR. MCMAHON: SO I'LL HAVE TO RECALL --

19 THE COURT: I THINK IT'S A SAFE THING.

20 MR. MCMAHON: I'M ASSUMING IT'S GOING TO CUT
21 BOTH WAYS NOW.

22 THE COURT: ABSOLUTELY.

23 MR. MCMAHON: JUST LIKE WITH THE GUN, NOW, IF
24 THE WHOLE CHAIN IS NOT PROVED WITH THE GUN, I'VE ALWAYS,
25 YOU KNOW, USED THE GUN WITH THE BALLISTICS EXPERT.

1 ALTHOUGH, IT'S GONE BACK TO THE COUNTY.

2 I'M NOT ARGUING WITH HIS HONOR. I MEAN, I'LL
3 JUST BE PREPARED TO RECALL CHIEF CLARK IF THAT'S WHAT THEY
4 WANT.

5 THE COURT: WELL, IN TERMS OF THE GUN, THAT'S
6 DIFFERENT FROM DRUGS, AND THE CHAIN DOESN'T HAVE TO BE
7 QUITE AS TIGHT. I'VE GOT A RULING READY FOR THAT WHEN WE
8 GET TO IT.

9 MR. MCMAHON: ALL RIGHT, SIR.

10 MS. CAMPBELL: THANK YOU, YOUR HONOR.

11 THE COURT: ALL RIGHT. WE'LL MARK THEM FOR
12 IDENTIFICATION, AND THEN I THINK YOU'RE GOING TO HAVE TO
13 LET HIM STAND DOWN.

14 MR. MCMAHON: I HAVE A FEW OTHER QUESTIONS IN
15 ANOTHER AREA.

16 THE COURT: ALL RIGHT.

17 MR. MCMAHON: BUT THAT'S FINE.

18 THE COURT: MS. HUDGINS, SINCE YOU MADE THE
19 OBJECTION, I ASSUME YOU'RE HANDLING THE WITNESS?

20 MR. DELGADO: NO, YOUR HONOR, I MADE THE
21 OBJECTION. SHE IS GOING TO MAKE THE ARGUMENT.

22 THE COURT: I WANT YOU TO ELIMINATE THAT. I CAN
23 ONLY HANDLE ONE OF YOU AT A TIME. THAT KEEPS ME STRAIGHT.

24 MR. DELGADO: YES, SIR.

25 MS. HUDGINS: I APOLOGIZE, YOUR HONOR. I'M

1 DEALING WITH THESE PARTICULAR ITEMS.

2 (WHEREUPON, STATE'S EXHIBIT NO. 18 WAS MARKED
3 FOR IDENTIFICATION ONLY.)

4 (WHEREUPON, STATE'S EXHIBIT NO. 19 WAS MARKED
5 FOR IDENTIFICATION ONLY.)

6 (WHEREUPON, STATE'S EXHIBIT NO. 20 WAS MARKED
7 FOR IDENTIFICATION ONLY.)

8 (WHEREUPON, STATE'S EXHIBIT NO. 21 WAS MARKED
9 FOR IDENTIFICATION ONLY.)

10 (WHEREUPON, STATE'S EXHIBIT NO. 22 WAS MARKED
11 FOR IDENTIFICATION ONLY.)

12 (WHEREUPON, STATE'S EXHIBIT NO. 23 WAS MARKED
13 FOR IDENTIFICATION ONLY.)

14 THE COURT: LET'S TAKE ABOUT FIVE OR TEN
15 MINUTES, AND THAT WILL PUT US WHERE WE CAN PUSH OURSELVES
16 ALL THE WAY TO 1 O'CLOCK.

17 MR. MCMAHON: YES, SIR.

18 THE COURT: ABOUT TEN MINUTES.

19 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

20 THE COURT: OKAY. WE ARE READY FOR THE JURY.

21 MR. DELGADO: YOUR HONOR, THESE ARE MARKED FOR
22 IDENTIFICATION, AS I UNDERSTAND IT?

23 THE COURT: THAT'S RIGHT. FINISH UP AND STAND
24 HIM DOWN.

25

1 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
2 APPROXIMATELY 11:40.)

3 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

4 THE COURT: ALL RIGHT. MR. MCMAHON.

5 MR. MCMAHON: MAY IT PLEASE THE COURT.

6 BY MR. MCMAHON

7 Q BEFORE THE BREAK, I WAS ASKING YOU ABOUT SOME ITEMS.
8 NOW THAT THEY'VE BEEN MARKED, I WANT TO MAKE SURE
9 WE'RE TALKING ABOUT THE SAME THING, STATE'S FOR
10 IDENTIFICATION 18, 19, 20, 21, 22 AND 23 WERE ALL
11 ITEMS THAT WOULD HAVE BEEN KEPT IN THE NORMAL COURSE
12 OF BUSINESS BY THE COLUMBIA POLICE DEPARTMENT WITH
13 THEIR RELATIONSHIP WITH THE VARIOUS LOCAL PAWNSHOPS
14 WITH COLUMBIA --

15 A THAT'S CORRECT.

16 Q -- BACK IN 1961; IS THAT CORRECT?

17 A THAT'S CORRECT, YES.

18 Q NOW, THE NEXT AREA I WANT TO TALK WITH YOU ABOUT, WAS
19 THERE -- ARE YOU FAMILIAR WITH WHETHER OR NOT THERE
20 WAS ANY LICENSING REQUIREMENTS FOR CABS BY THE CITY?

21 A THEY WERE REQUIRED TO BE LICENSED BY THE CITY OF
22 COLUMBIA.

23 Q ADDITIONALLY, ARE YOU FAMILIAR WITH WHETHER OR NOT
24 THERE WERE ANY LICENSE REQUIREMENTS FOR CABS BY THE
25 FORT?

1 A FORT JACKSON REQUIRED THEM TO BE LICENSED ALSO.

2 Q NOW, AS PART OF THE CITY REQUIREMENTS, WHAT TYPES OF
3 CHECK, IF ANY, WOULD THE POLICE DEPARTMENT HAVE TO
4 PERFORM ON CABS?

5 A ON THE CAB ITSELF, WE WOULD DO A SAFETY INSPECTION,
6 TIRES, WINDSHIELD WIPERS, ET CETERA. WE WOULD ALSO
7 CHECK THE CAB METER, RUN IT ON A MEASURED COURSE TO
8 CHECK ITS ACCURACY.

9 Q AS PART OF YOUR -- ANY PART OF YOUR 42-YEAR CAREER,
10 CHIEF, DID YOU CHECK SAFETY CHECK ON CABS?

11 A YES, SIR.

12 Q DID YOU ALSO CHECK THE METERS?

13 A YES, SIR.

14 Q AND WHAT'S BEEN PREVIOUSLY MARKED, I THINK, STATE'S
15 EXHIBIT NO. 9, ARE YOU FAMILIAR WITH THE OBJECT,
16 THIS OBJECT, OR AN OBJECT SIMILAR TO THIS?

17 A YES, SIR.

18 Q AND WHAT IS THIS OBJECT, CHIEF?

19 A IT'S A CAB METER.

20 Q AND HOW WAS IT MOUNTED, AND HOW DID THEY WORK BACK IN
21 '61?

22 A MOST OF THEM MOUNTED THEM ON THE DASH POCKET OF THE
23 CAR ON THE PASSENGER'S SIDE.

24 Q NOW, WHAT WOULD THE CAB DRIVER DO? WELL, FIRST OFF,
25 WHY WERE THERE CAB STANDS?

- 1 A CAB STANDS, A LOT OF THEM WERE DESIGNATED BY THE CITY
2 FOR THE CABS TO WAIT. THEY HAD A TELEPHONE THERE TO
3 RECEIVE A CALL TO PICK UP A FARE.
- 4 Q DID ALL THE CABS HAVE TWO-WAY RADIOS BACK THEN?
- 5 A NO, THEY DIDN'T.
- 6 Q WAS THAT UNCOMMON BACK THEN TO HAVE A TWO-WAY RADIO?
- 7 A THERE WERE A SMALL PERCENT OF THEM THAT HAD TWO-WAY
8 RADIOS.
- 9 Q AND THEREFORE, THEY WOULD STAY AT THE CAB STANDS?
- 10 A YES.
- 11 Q NOW, WHEN A PASSENGER GOT IN A CAB, TYPICALLY WHERE
12 WOULD THEY GET, WHERE WOULD THEY SIT?
- 13 A ON THE PASSENGER'S SIDE.
- 14 Q AND WHAT WOULD THE CAB DRIVER DO AS FAR AS THE METER
15 IS CONCERNED?
- 16 A HE'D PULL THE ARM DOWN ON THE METER.
- 17 Q NOW, SO IF YOU -- YOU PULL IT IN THIS DIRECTION?
- 18 A CORRECT.
- 19 Q NOW, IF I LOOK AT IT HERE, CHIEF, IT'S GOT FARE NOT
20 RECORDED?
- 21 A RIGHT.
- 22 Q AND THEN WHEN YOU PULL IT DOWN IN THIS DIRECTION --
23 IT MIGHT NOT BE ELECTRONIC, BUT IT SHOWS SOME MONEY?
- 24 A IT'S A MECHANICAL METER.
- 25 Q AND THAT'S YOUR BASE RATE?

1 A YES.

2 Q SO RIGHT AS SOON AS YOU GET IN AND SIT DOWN, THAT

3 GOES DOWN?

4 A CORRECT.

5 Q NOW, DID THE CABS IN '61 HAVE A LIGHT IN THEM?

6 A THEY DID.

7 Q HOW WAS THAT LIGHT INTEGRATED INTO THE METER?

8 A THE SWITCH ON THE LIGHT WAS HOOKED TO THE METER.

9 WHEN THE ARM WENT DOWN, THE LIGHT WENT OFF.

10 Q SO YOU KNEW THE CAB HAD A PASSENGER?

11 A CORRECT.

12 Q IF THERE WAS A PASSENGER IN THE CAB AND THE LIGHT WAS

13 ON, WHAT WAS THAT CALLED? WHAT DID THAT MEAN?

14 A HALF FLAGGING.

15 Q WHAT DOES THAT MEAN?

16 A HALF FLAGGING IS TRANSPORTING A PASSENGER WITHOUT THE

17 METER BEING OPERATED.

18 Q SO THE 125, FOR EXAMPLE, ON THIS ONE, AND IT APPEARS

19 IT'S GOT AN INSPECTION ON HERE. THIS IS NOT THE

20 METER FROM MR. ORNER'S CAB. LET ME MAKE THAT CLEAR.

21 A OKAY.

22 Q BUT THEN WHEN YOU SAY YOU WOULD CHECK A METER, WHAT

23 WOULD YOU THEN DO TO DETERMINE THE ACCURACY OF THE

24 METER?

25 A WE WOULD ACTUALLY PLACE A SEAL ON THE METER ONCE WE

1 CHECKED IT.

2 Q OKAY. SO HOW DID THE FARE CHANGE?

3 A IT WAS SET TO CHANGE EVERY EIGHTH OF A MILE.

4 Q SO HOWEVER FAR YOU DROVE, IT WOULD CHARGE YOU
5 WHATEVER THE GOING RATE WAS AT THE TIME, CORRECT?

6 A CORRECT.

7 Q DO YOU REMEMBER, BACK IN YOUR TIME, CHECKING THEM
8 BACK IN THE '60S, HOW OFTEN THEY REQUIRED THEM TO BE
9 CHECKED?

10 A ONCE A YEAR.

11 Q ONCE A YEAR FOR ACCURACY?

12 A CORRECT.

13 Q FOR CALIBRATION?

14 A CORRECT.

15 Q NOW, CHIEF, I WANT TO GO TO ONE OTHER AREA -- LET ME
16 SHOW YOU A DOCUMENT AND ASK YOU, DO YOU HAVE A COPY
17 OF THIS DOCUMENT?

18 A YES, SIR, I DO.

19 Q AND WHAT IS THAT DOCUMENT, CHIEF?

20 A IT'S A CITY OF COLUMBIA POLICE DEPARTMENT OFFENSE
21 REPORT.

22 Q AND IS THERE AN OFFENSE NUMBER ON THERE?

23 A IT IS, YES, SIR.

24 Q WHAT IS THE OFFENSE NUMBER?

25 A 61-2859.

1 Q AND WHAT IS THE DATE OF THAT REPORT?
2 A IT'S DATED MARCH THE 1ST, 1961.
3 Q AND WHAT IS THAT REPORT IN RELATION TO?
4 A A MISSING PERSON.
5 Q ON WHO?
6 A MR. JOHN ORNER.
7 Q AND DOES IT HAVE HIS AGE?
8 A AGE 63.
9 Q IN '61, HE WAS 63, BORN IN 1898, IF MY MATH IS RIGHT.
10 NOW, DOES IT HAVE HIS ADDRESS ON THERE, CHIEF?
11 A YES, SIR.
12 Q AND WHAT ADDRESS?
13 A [REDACTED], DENTSVILLE.
14 Q SO IT HAS DENTSVILLE, SOUTH CAROLINA?
15 A CORRECT.
16 Q AND THEN THAT ADDRESS. DOES IT ALSO HAVE THE REPORT,
17 WHO REPORTED THE MISSING PERSON?
18 A YES, SIR.
19 Q AND WHO WAS THAT?
20 A JAMES STONE.
21 Q AND HIS RELATIONSHIP, OCCUPATION?
22 A HE WAS -- HE'S LISTED AS A STEPSON OF THE MISSING
23 PERSON, AND HE'S REPORTING THIS INCIDENT FROM
24 POWELL'S WRECKER SERVICE, WHICH WAS ON MILLWOOD
25 AVENUE IN COLUMBIA.

1 Q NOW, CHIEF, THERE'S SOME NAMES THAT APPEAR ON HERE,
2 FLETCHER. DO YOU RECALL FLETCHER?
3 A FLETCHER WAS THE DETECTIVE CLERK.
4 Q AND IS HE STILL LIVING?
5 A I DON'T THINK SO.
6 Q NOW, THERE'S SOME OTHER NAMES OVER TO THE RIGHT OF
7 THAT. WHAT ARE THOSE OTHER NAMES?
8 A DETECTIVE ROLLINSON, SERGEANT ARTEL AND F.J. REVETTA.
9 Q NOW, DETECTIVE ROLLINSON, IS HE STILL LIVING?
10 A NO, SIR.
11 Q I TAKE IT YOU DID WORK WITH HIM, OBVIOUSLY?
12 A YES, SIR.
13 Q AND WHAT WAS HIS POSITION AT THAT TIME, IN '61, WITH
14 THE COLUMBIA POLICE DEPARTMENT?
15 A HE WAS A DETECTIVE ASSIGNED TO CRIMINAL
16 INVESTIGATIONS.
17 Q I WANT TO SHOW YOU A PHOTOGRAPH. DO YOU RECOGNIZE
18 THAT INDIVIDUAL (INDICATING).
19 A YES, SIR, THAT'S BILL ROLLINSON.
20 Q AND I'M REFERRING YOU NOW TO STATE'S EXHIBIT NO. 2?
21 A YES, SIR.
22 Q THAT IS BILL ROLLINSON, WHO WAS THEN CHIEF OF
23 DETECTIVES?
24 A THAT'S CORRECT.
25 Q YOU DON'T KNOW WHERE OR WHEN THAT PHOTOGRAPH WAS

1 TAKEN?

2 A NO, SIR.

3 MR. MCMAHON: HE'S IDENTIFIED STATE'S EXHIBIT
4 NO. 2 FOR IDENTIFICATION. I OFFER IT FOR IDENTIFICATION
5 PURPOSES ONLY AT THIS TIME.

6 YOU DON'T NEED TO REMARK IT; IS THAT CORRECT?

7 (THE COURT REPORTER SHAKES IN THE NEGATIVE.)

8 BY MR. MCMAHON

9 Q SERGEANT HARTELL, BY THE TIME I LEFT THE POLICE
10 DEPARTMENT, I THINK HE WAS A CAPTAIN; IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 Q IS CAPTAIN HARTELL STILL LIVING?

14 A HE'S DECEASED.

15 Q HE'S DECEASED. SO THE NAMES ON THERE, THE ONLY ONES
16 ON THERE, THE ONLY ONE THAT'S STILL LIVING WOULD BE
17 MR. --

18 A FRANK REVETTA.

19 Q -- FRANK REVETTA. IS THIS A REPORT THAT WOULD HAVE
20 BEEN MADE AT THE TIME THE INCIDENT OCCURRED?

21 A SHORTLY AFTER, YES.

22 Q CONCERNING THE RECOVERY OF THE CAB?

23 A YES.

24 Q AND DOES IT INDICATE WHERE THE CAB WAS LOCATED?

25 A [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 Q AND THAT'S CONSISTENT WITH THE LOCATION TESTIFIED TO
2 BY MR. REVETTA AND POINTED OUT BY YOU EARLIER ON
3 STATE'S EXHIBIT NUMBER --

4 A THAT'S CORRECT.

5 Q DOES IT INDICATE WHETHER OR NOT THERE WAS A METER IN
6 THE CAB?

7 MR. DELGADO: YOUR HONOR, MAY I OBJECT TO THIS
8 NOW? COULD WE APPROACH THE BENCH?

9 THE COURT: SURE.
10 COULD I HAVE THE DOCUMENTS?

11 MR. MCMAHON: OH, YES, SIR.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
13 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
14 THE JURY.)

15 THE COURT: ALL RIGHT. THE EXCEPTION UNDER
16 803(6), 16 IS OVERRULED. I'LL LET HIM PUT A BASIS IN THE
17 RECORD AT A LATER TIME.

18 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
19 PLEASE THE COURT.

20 THE COURT: YES.

21 MR. MCMAHON: CHIEF, I WANT TO GO -- COULD I
22 HAVE THIS MARKED FOR IDENTIFICATION PURPOSES AT THIS TIME,
23 AND I'M GOING TO MARK A COPY IF THAT'S APPROPRIATE, YOUR
24 HONOR.

25 THE COURT: OKAY. NO OBJECTION TO THE COPY, IS

1 THERE?

2 MR. DELGADO: NO. WE'RE PRESERVING OUR RIGHT TO
3 OBJECT.

4 THE COURT: ALL RIGHT.

5 (WHEREUPON, STATE'S EXHIBIT NO. 24 WAS MARKED
6 FOR IDENTIFICATION ONLY.)

7 BY MR. MCMAHON

8 Q CHIEF, I'M GOING TO REFER YOU TO STATE'S EXHIBIT
9 NO. 24 FOR IDENTIFICATION AND ASK YOU IF THIS
10 DOCUMENT THAT I'M HOLDING APPEARS TO BE A TATTERED,
11 MISCOLORED COPY OF STATE'S -- OR STATE'S 24 APPEARS
12 TO BE A COPY OF THE ONE I AM HOLDING?

13 A THAT'S CORRECT.

14 Q AND FROM YOUR VIEW OF THIS DOCUMENT AND YOUR YEARS
15 WITH THE COLUMBIA POLICE DEPARTMENT, DOES THIS APPEAR
16 TO BE A BUSINESS RECORD THAT THE COLUMBIA POLICE
17 DEPARTMENT PREPARED IN 1961 WITH REGARDS TO THIS
18 CASE?

19 A YES, SIR, IT WAS.

20 Q SO IT HAS BEEN IN EXISTENCE, IN YOUR OPINION --

21 MR. DELGADO: OBJECTION TO THE LEADING.

22 THE COURT: SUSTAINED.

23 BY MR. MCMAHON

24 Q HOW LONG WOULD YOU SAY THIS DOCUMENT HAS BEEN IN
25 EXISTENCE?

1 A SINCE 1961.

2 Q IN EXCESS OF 20 YEARS?

3 A YES, SIR.

4 Q WOULD THIS BE THE TYPE OF RECORD THAT WOULD NORMALLY

5 BE HELD IN THE NORMAL COURSE OF BUSINESS BY THE

6 COLUMBIA POLICE DEPARTMENT?

7 A YES, SIR.

8 Q AND YOU WOULD HAVE BEEN, DURING PART OF THAT PERIOD

9 OF TIME, DESIGNATED CUSTODIAN OF THE RECORDS OF THE

10 COLUMBIA POLICE DEPARTMENT?

11 A AS THE CHIEF OF POLICE, YES, SIR.

12 Q ANYTHING THAT YOU SEE ON HERE THAT APPEARS SUSPICIOUS

13 TO YOU AS NOT BEING AN AUTHENTIC DOCUMENT?

14 A NO, SIR.

15 Q NOTHING WHATSOEVER?

16 A NO, SIR.

17 Q NAMES ON THERE, NAMES OF OFFICERS THAT AT ONE TIME

18 WERE EMPLOYED BY THE COLUMBIA POLICE DEPARTMENT?

19 A YES, SIR.

20 Q LOCATIONS ON THERE ARE LOCATIONS WITHIN THE CITY OF

21 COLUMBIA?

22 A YES, SIR.

23 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THE

24 DOCUMENT UNDER THE BUSINESS RECORDS OBJECTION AND THE

25 ANCIENT RULE DOCUMENT.

1 THE COURT: ALL RIGHT.

2 MR. DELGADO: YOUR HONOR, UNDER OUR
3 PREVIOUSLY -- ABOUT THE EXCEPTIONS TO THAT RELATED TO THE
4 PRE-EXISTING REPORTS NOT BEING INCLUDED UNDER 803(6).

5 THE COURT: I'LL OVERRULE YOUR OBJECTION, ALLOW
6 THEM IN, UNDER 803(6) AND/OR 16.

7 MR. DELGADO: AND, OF COURSE, YOUR HONOR, I
8 OBJECT AS WELL AS FOR IDENTIFICATION.

9 MR. MCMAHON: AND NOW STATE'S 24 FOR
10 IDENTIFICATION WILL BE STATE'S 24?

11 THE COURT: THAT'S THE COPY?

12 MR. MCMAHON: YES, SIR.

13 (WHEREUPON, STATE'S EXHIBIT NO. 24 WAS ADMITTED
14 INTO EVIDENCE.)

15 BY MR. MCMAHON

16 Q NOW, CHIEF I HAD DISCUSSED THE TOP PART, ALMOST, WITH
17 YOU, WHERE IT HAS AN ADDRESS, DENTSVILLE, SOUTH
18 CAROLINA, [REDACTED] [REDACTED] [REDACTED] [REDACTED]. THEN IT'S GOT PHONE.
19 DO YOU SEE THAT, SIR?

20 A YES, SIR.

21 Q WHAT IS THAT PHONE NUMBER?

22 A S.U. 76847

23 Q FOR THOSE THAT MAY NOT RECALL, WHAT DOES S.U. AND THE
24 NUMBERS MEAN?

25 A THAT'S THE SUNSET EXCHANGE.

- 1 Q SO BACK IN '61, THAT WAS AN EXCHANGE IN COLUMBIA,
2 SUNSET?
- 3 A YES, SIR.
- 4 Q AND YOU WOULD DIAL WHATEVER S.U. WAS, WAS IT 78?
- 5 A I THINK SO.
- 6 Q 78 NOW. AS WE RUN OVER THIS OTHER, AS WE GO DOWN TO
7 DETAILS OF OFFENSE, IS THAT THE NARRATIVE OF THE
8 BEGINNING OF THE INVESTIGATION?
- 9 A YES, SIR.
- 10 Q AND WHAT IS THAT? RELATE THAT FOR THE JURY PLEASE,
11 CHIEF.
- 12 A THE NARRATIVE?
- 13 Q YES, SIR.
- 14 A DO YOU WANT ME TO READ IT?
- 15 Q YES, SIR. JUST READ THAT FOR THE JURY.
- 16 A THE STEPSON OF COMPLAINANT, WHO WORKS AT POWELL'S
17 WRECKER SERVICE REPORTED AT 7:30 A.M. THIS DATE THAT
18 HIS STEPFATHER DID NOT COME HOME THIS MORNING.
- 19 Q AND THAT'S 7:30 A.M. THIS DATE. WHAT DATE IS ON THE
20 DOCUMENT?
- 21 A 7:30 A.M. ON MARCH 1ST, 1961.
- 22 Q SO THAT'S WHEN HE WOULD HAVE REPORTED IT, MARCH 1ST,
23 '61?
- 24 A YES, SIR.
- 25 Q ALL RIGHT. GO AHEAD, CHIEF.

1 A HIS STEPSON CALLED THE OFFICE OF STATE CAB COMPANY
2 NEAR GATE ONE ON -- THEY HAVE JACKSONVILLE ROAD,
3 JACKSONVILLE BOULEVARD.

4 THE DISPATCHER TOLD HIM THAT ONE OF THE DRIVERS
5 SAW THE COMPLAINANT'S CAB D 1115, FORT JACKSON
6 STICKER A 18117 PARKED ON THE [REDACTED] [REDACTED] [REDACTED]
7 STREET NEAR LADY STREET AT 4 A.M. THIS DATE.

8 Q NOW, D 1115, WOULD THAT BE CONSISTENT WITH THE
9 LICENSING NUMBER FOR A CAB BY THE COLUMBIA POLICE
10 DEPARTMENT IN '61?

11 A YES, SIR.

12 Q AND THE FORT JACKSON STICKER, YOU TESTIFIED
13 PREVIOUSLY, THEY ALSO LICENSE CABS, CORRECT?

14 A THAT'S CORRECT.

15 Q AND THAT WOULD BE CONSISTENT WITH A 18117?

16 A YES, SIR.

17 Q ALL RIGHT. GO AHEAD, SIR. PICK UP WITH DETECTIVE
18 ROLLINSON.

19 A DETECTIVE ROLLINSON, SERGEANT HARTELL, AND F.J.
20 REVETTA LOCATED THE CAB THERE, AND THE METER SHOWED
21 AN AMOUNT OF \$17.55.

22 ALSO, THE DISPATCHER STATED THAT THE COMPLAINANT
23 RECEIVED HIS LAST CALL AT 11:15 P.M. ON
24 FEBRUARY 28TH, 1961 TO GO TO THE N.C.O. CLUB AT FORT
25 JACKSON.

1 Q AND THE N.C.O. CLUB, JUST VERY QUICKLY, DO YOU RECALL
2 WHERE THAT WAS AT?

3 A YES, SIR.

4 Q WHERE WAS THAT AT?

5 A IT WAS ON JACKSON BOULEVARD ON THE LEFT JUST BEFORE
6 YOU GET TO HEADQUARTERS.

7 Q IF I SHOW YOU STATE'S EXHIBIT NO. 17 WHERE IT'S GOT
8 "N.C.O. OPEN MESS"?

9 A THAT'S IT.

10 Q IN THAT AREA HERE. ALL RIGHT. GO AHEAD, CHIEF.

11 A THAT WAS THE LAST THEY HEARD FROM HIM. SERGEANT
12 HARTELL PROCESSED THE CAB, WHICH WAS TOWED TO THE
13 PARKING LOT AT POLICE HEADQUARTERS.

14 HE FOUND BLOOD ON THE SEAT WHERE THE DRIVER
15 SITS, HIS IDENTIFICATION PAPERS WERE FOUND IN THE
16 BACKSEAT, A SMALL AMOUNT OF CHANGE WAS FOUND ON THE
17 FRONT SEAT. THIS INVESTIGATION IS CONTINUING.

18 Q CHIEF, IS THERE AN INDICATION ON THE BOTTOM LEFT OF
19 THE MILEAGE? CAN YOU SEE IT ON THE COPY?

20 A 80 MILES ON THE SPEEDOMETER.

21 Q YES, SIR. AND HOW MUCH WAS ON THE METER, THE AMOUNT?

22 A \$17.55.

23 Q AND WHAT THREE ITEMS WERE FOUND IN THE CAB?

24 A THEY FOUND BLOOD, IDENTIFICATION PAPERS, AND A SMALL
25 AMOUNT OF CHANGE.

1 MR. MCMAHON: THANK YOU, CHIEF. ANSWER ANY
2 QUESTIONS THE DEFENSE LAWYER HAS.

3 THE COURT: DO YOU WANT TO EXAMINE HIM NOW OR
4 WAIT? HE'S GOING TO RECALL HIM?

5 MR. DELGADO: YOUR HONOR, MAYBE I OUGHT TO JUST
6 DO THIS IN TOTAL, YEAH.

7 THE COURT: ALL RIGHT. THEN THE WITNESS CAN
8 STAND DOWN, SUBJECT TO THE RIGHT OF FULL CROSS-EXAMINATION
9 BY THE DEFENSE.

10 A CALL YOUR NEXT WITNESS, PLEASE.

11 MR. MCMAHON: THE STATE CALLS LILA RUSH.

12 THE CLERK: PLACE YOUR LEFT HAND ON THE BIBLE,
13 RAISE YOUR RIGHT.

14 LILA RUSH, AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 THE CLERK: STATE YOUR FULL NAME.

17 THE WITNESS: LILA, L-I-L-A, RUSS, R-U-S-S.

18 THE COURT: TURN THE MIC AROUND SO SHE CAN TALK
19 INTO THAT.

20 DIRECT EXAMINATION:

21 BY MR. MCMAHON

22 Q MS. RUSS, AGAIN, WOULD YOU TELL THE JURY YOUR NAME.

23 A LILA, L-I-L-A, RUSS, R-U-S-S.

24 Q AND MS. RUSS, WHERE DO YOU LIVE NOW?

25 A I AM TEMPORARILY AT THE ATRIUM, BUT I LIVE AT [REDACTED]

1 [REDACTED] [REDACTED].

2 Q ALL RIGHT. SO TEMPORARILY IN ATRIUM. THAT'S OUT ON

3 FOREST DRIVE?

4 A YES.

5 Q IN FACT, I SAW THEM ON T.V. THIS MORNING, AS A MATTER

6 OF FACT, THE NEWS OUT THERE.

7 HOW OLD ARE YOU MS. RUSS?

8 A SEVENTY-SEVEN.

9 Q WHERE ARE YOU FROM?

10 A I WAS BORN IN ATLANTA, BUT I LIVED IN COLUMBIA SINCE

11 1939.

12 Q NOW, YOUR MOM AND DAD, DID THEY ALSO LIVE IN

13 COLUMBIA?

14 A YES.

15 Q AND WHAT WAS YOUR MOM AND DAD'S NAME?

16 A NAOMI LIFSHIZ RUSS AND JOSEPH RUSS.

17 Q AND WHERE WAS YOUR FATHER FROM?

18 A ATLANTA.

19 Q ATLANTA. AND YOUR MOTHER WAS FROM --

20 A COLUMBIA.

21 Q -- FROM COLUMBIA. NOW, DID THEY HAVE ANY TYPE OF

22 BUSINESS IN COLUMBIA?

23 A YES.

24 Q AND WHAT TYPE OF BUSINESS WAS IT?

25 A IT WAS A PAWNSHOP.

1 Q AND WHAT WAS THE NAME OF IT, MS. RUSS?

2 A CAPITAL LOAN OFFICE.

3 Q AND IS IT STILL IN BUSINESS, AS A MATTER OF FACT?

4 A YES.

5 Q AND WHERE IS IT LOCATED NOW?

6 A AT [REDACTED] [REDACTED] [REDACTED].

7 Q DO YOU OPERATE IT?

8 A UH-HUH.

9 Q DO YOU WORK EVERY DAY AT IT NOW?

10 A NO, NOT NOW BECAUSE I'M DISABLED TEMPORARILY.

11 Q OKAY. AND WHO WORKS THERE NOW FOR YOU?

12 A CURTIS BOONE.

13 Q AND HOW LONG HAS CURTIS WORKED FOR YOU, MS. RUSS?

14 A ABOUT -- BETWEEN SEVEN AND EIGHT YEARS.

15 Q NOW, I BELIEVE I ASKED YOU THIS, HAS CAPITAL LOAN

16 ALWAYS BEEN ON THE [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

17 A NO.

18 Q BACK IN '61, WAS IT LOCATED ON WASHINGTON STREET?

19 A YES.

20 Q DO YOU REMEMBER THE ADDRESS ON WASHINGTON STREET?

21 A IT WAS EITHER [REDACTED] OR [REDACTED] WE HAD TWO LOCATIONS.

22 Q SO IT WAS TWO LOCATIONS ON --

23 A WASHINGTON.

24 Q -- ON WASHINGTON STREET. NOW, LET ME ASK YOU, DID

25 YOU HAVE AN OCCASION TO WORK IN THE STORE?

1 A I WORKED THERE AFTER SCHOOL, AND I'VE WORKED THERE
2 EVER SINCE.
3 Q NOW, AFTER SCHOOL, WHAT SCHOOL DID YOU GO TO?
4 A COLUMBIA HIGH.
5 Q NOW, YOU'RE TALKING ABOUT THE REAL COLUMBIA HIGH, THE
6 ONE AT WASHINGTON AND MARION?
7 A RIGHT.
8 Q IT DOESN'T EXIST ANY MORE?
9 A THAT'S RIGHT.
10 Q WHAT YEAR DID YOU GRADUATE FROM COLUMBIA HIGH?
11 A FORTY-TWO.
12 Q FORTY-TWO. EVEN PRIOR TO GRADUATING FROM HIGH
13 SCHOOL, DID YOU WORK IN YOUR MOM AND DAD'S STORE?
14 A YES.
15 Q CAPITAL --
16 A I USED TO GO THERE AFTER SCHOOL.
17 Q YOU DID. THAT WAS BACK WHEN IT WAS LOCATED ON
18 WASHINGTON STREET?
19 A UH-HUH.
20 Q AND HOW FAR WAS THE HIGH SCHOOL FROM THE STORE'S
21 LOCATION ON WASHINGTON STREET?
22 A IF YOU COMPARE A HALF A BLOCK AND A BLOCK AND A
23 HALF -- A BLOCK, IT WAS ABOUT TWO-AND-A-HALF BLOCKS.
24 Q WALKING DISTANCE?
25 A OH YES.

1 Q YOU WOULD WALK FROM SCHOOL TO THE STORE AFTER SCHOOL?

2 A UH-HUH.

3 Q BACK PRIOR TO '42?

4 A YES.

5 Q AND EVEN AFTER THAT WHEN YOU FINISHED SCHOOL, YOU
6 STAYED EMPLOYED AT YOUR MOM AND DAD'S STORE?

7 A YES.

8 Q NOW, MS. RUSS, WHEN YOU SAY A PAWNSHOP, CAN YOU JUST
9 GENERALLY EXPLAIN TO US THE BUSINESS, HOW IT WAS
10 CONDUCTED?

11 A PEOPLE BRING IN COLLATERAL, BORROW MONEY OFF IT.
12 IT'S TICKETED WITH A NUMBER THAT'S COMPARABLE --
13 WELL, NOT COMPARABLE. IT'S IDENTICAL TO THE TICKET
14 THAT'S GIVEN TO THE PERSON WHO PAWNS AN ITEM.

15 Q NOW --

16 A AND THEN WHEN THEY COME BACK, THEY GIVE YOU THE
17 TICKET AND YOU GIVE THEM BACK THEIR ITEM.

18 Q NOW, CAN YOU ALSO BUY ITEMS --

19 A YES.

20 Q -- FROM A PAWNSHOP?

21 AMONG ITEMS THAT YOU SOLD AT THE PAWNSHOP, WOULD
22 YOU SELL FIREARM, GUNS?

23 A YES.

24 Q WOULD ALL THE GUNS YOU SOLD NECESSARILY BE GUNS THAT
25 YOU HAD TAKEN IN ON PAWN?

1 A NO.

2 Q EXPLAIN THAT FOR THE JURY, PLEASE.

3 A WE BOUGHT IT FROM WHOLESALERS AND DISTRIBUTORS, SO WE

4 SOLD A LOT OF NEW GUNS.

5 Q SO, I COULD BRING A GUN IN TO YOU AND PAWN IT?

6 A YES.

7 Q AND I COULD COME BACK AND GET IT IF I CAME WITHIN THE

8 APPROPRIATE PERIOD OF TIME?

9 A THAT'S CORRECT.

10 Q AND I'D HAVE TO PAY WHAT YOU GAVE ME FOR THE PAWN?

11 A PLUS THE CHARGES.

12 Q PLUS THE CHARGE FOR THE PAWN. IF I DIDN'T COME BACK

13 AND GET MY GUN, YOU WOULD HAVE THE RIGHT AFTER A

14 PERIOD OF TIME TO SELL IT?

15 A YES.

16 Q ADDITIONALLY TO THAT, Y'ALL WERE A DEALER OF NEW

17 GUNS?

18 A YES.

19 Q AND WHERE WOULD YOU GET THESE NEW GUNS FROM?

20 A FROM MANUFACTURES AND DISTRIBUTORS.

21 Q AMONG ANY OF THOSE MANUFACTURERS, DID Y'ALL GET ANY

22 GUNS FROM HARRINGTON AND RICHARDSON?

23 A YES.

24 Q YOU DID?

25 A YES.

1 Q NEW GUNS?

2 A YES.

3 Q NOW, FIREARM SALES, DID YOU HAVE TO KEEP A PARTICULAR

4 TYPE OF RECORDS WHEN YOU SOLD FIREARMS?

5 A THE TRUTH OF THE MATTER IS I DON'T REMEMBER WHAT THE

6 FEDERAL REQUIREMENTS THEN WERE, BUT WE ALSO KEPT --

7 WE HAD -- WHEN WE RECEIVED A GUN OR PUT A GUN OUT FOR

8 SALE, NEW OR PAWNED, IT WENT IN A BOOK THAT WE HAD TO

9 MAINTAIN FOR THE FEDERAL GOVERNMENT.

10 Q AND Y'ALL WOULD KEEP THAT BOOK, CORRECT?

11 A OH YES.

12 Q IS THAT A BOOK THAT YOU KEPT IN THE NORMAL COURSE OF

13 BUSINESS OF BUYING AND SELLING FIREARMS?

14 A YES.

15 Q ADDITIONALLY, IF I CAME IN TO BUY A GUN AS A

16 CUSTOMER, WHAT TYPES OF ITEMS, PAPERWORK, WOULD Y'ALL

17 FILL OUT, IF ANY, WHEN I PURCHASED THE GUN?

18 A WE USED COURTESY OF THE CITY, A CARD, ABOUT "YEAH

19 LONG" THAT HAD THE NAME OF THE GUN. IT HAD WHAT THE

20 ITEM WAS, THE TYPE, THE SERIAL NUMBER, AND THE

21 MANUFACTURER.

22 WE HAD PEOPLE THAT PURCHASED THEM SIGN THEIR

23 NAME. THEY HAD TO GIVE US I.D., AND I DON'T KNOW

24 WHERE WE GOT THE ADDRESS TO PUT ON THE CARD. THEY

25 DIDN'T HAVE TO DO ANYTHING BUT SIGN THE CARD.

1 Q I SEE.

2 A AND WE FILLED OUT THE REST OF IT.

3 Q I SEE. AND THESE -- WHEN YOU SAY COURTESY OF THE

4 CITY, YOU HAD CERTAIN LEGAL REQUIREMENTS --

5 A YES.

6 Q -- THAT YOU HAD TO PROVIDE INFORMATION TO THE CITY

7 BEING IN THE PAWN BUSINESS?

8 A THEY DIDN'T GET THOSE CARDS. WE HAD TO FOR FEDERAL

9 REQUIREMENTS. WE DIDN'T HAVE TO REPORT IT -- IF WE

10 TOOK ONE IN PAWN, IT WAS REPORTED ON A LOG SHEET, BUT

11 WE DID NOT HAVE TO REPORT ONES THAT WE PURCHASED THAT

12 WENT IN THE FEDERAL FIREARM BOOK.

13 Q NOW, THE INFORMATION THAT WAS FILLED OUT ON THE

14 CARDS --

15 A YES.

16 Q -- WOULD THAT BE DONE AT THE TIME THE GUN WAS

17 PURCHASED?

18 A YES.

19 Q AND THE TIME THE GUN WAS SOLD; IS THAT CORRECT?

20 A YES.

21 Q AND THEN -- SO THERE MAY HAVE BEEN FEDERAL

22 REQUIREMENTS. THERE WERE REQUIREMENTS OF -- OTHER

23 REQUIREMENTS THAT YOU WOULD PROVIDE INFORMATION,

24 BUSINESS RECORDS TO THE CITY, CORRECT?

25 A NO. IF THEY WERE PAWNED, THEY WERE REPORTED TO THE

1 CITY.

2 Q I UNDERSTAND.

3 A IF THEY WERE NEW GUNS, THEY ONLY HAD TO GO INTO A

4 BOOK WHEN WE PURCHASED THEM, WHEN WE BOUGHT THEM.

5 Q I UNDERSTAND. NOW, BEFORE I ASKED YOU SPECIFICALLY

6 ABOUT A PARTICULAR TRANSACTION. WERE YOU FAMILIAR

7 WITH OTHER INDIVIDUALS IN THE PAWN BUSINESS IN THE

8 DOWNTOWN AREA OF COLUMBIA?

9 A YES. IT WAS A SMALL COMMUNITY.

10 Q A SMALL COMMUNITY, AND YOU KNEW EACH OTHER; IS THAT

11 CORRECT?

12 A THAT'S RIGHT.

13 Q DO YOU REMEMBER FREED'S LUGGAGE?

14 A YES. THEY WERE DOWN THE STREET FROM US.

15 Q DOWN THE STREET FROM YOU WHEN YOU WERE DOWN

16 WASHINGTON STREET?

17 A HEADED WEST.

18 Q HEADED WEST, SO THEY WOULD HAVE BEEN CLOSER TO

19 ASSEMBLY STREET THAN YOU WERE, CORRECT?

20 A YES.

21 Q WHO RAN FREED'S JEWELERS?

22 A MR. AND MRS. FREED.

23 Q DID THEY HAVE ANY CHILDREN THAT YOU KNOW OF?

24 A YES, THEY HAD ONE SON, SAM.

25 Q SAM FREED. DO YOU KNOW WHAT SAM DOES NOW OR WHERE HE

1 LIVES?

2 A I BELIEVE HE IS AN ATTORNEY IN NEW YORK.

3 Q AN ATTORNEY IN NEW YORK. AND YOU KNEW MR. FREED?

4 A OH YES.

5 Q AND WHAT ABOUT BERRY'S? WERE YOU FAMILIAR WITH

6 BERRY'S LOAN ON LADY STREET?

7 A YOU MEAN BERRY'S?

8 Q YES, MA'AM, BERRY'S.

9 A YES.

10 Q AND WHO RAN THAT?

11 A JOE BERRY.

12 Q AND ARE YOU FAMILIAR WITH CHERYL HORTON?

13 A THAT'S HIS NIECE.

14 Q HIS NIECE. SO Y'ALL KNEW EACH OTHER IN THAT SMALL

15 PAWN --

16 A I DON'T THINK THERE WERE TEN OR 11 AT THAT TIME.

17 Q WAS THERE ONE KNOWN AS COLUMBIA LOAN, BY THE WAY?

18 A I THINK SO.

19 Q NOW, I WANT TO SHOW YOU SOME DOCUMENTS, AND I HAVE

20 SOME ENLARGEMENTS AND I HAVE SOME SMALL. CAN YOU SEE

21 THAT DOCUMENT?

22 A YES.

23 Q DO YOU RECOGNIZE THAT?

24 A YES.

25 Q WHAT IS THAT DOCUMENT?

1 A THAT'S THE CARD THAT I SAID WAS COURTESY OF THE CITY.
2 WHEN WE TOOK SOMETHING IN PAWN, WE HAD TO FILL THIS
3 OUT, SO WE JUST USED THOSE AS ADDITIONAL INFORMATION
4 BY OURSELVES FOR THE FEDERAL GOVERNMENT.
5 Q SO YOU WOULD USE THOSE IF YOU SOLD A FIREARM?
6 A YES.
7 Q AND WHAT I'VE SHOWN YOU, IS THIS AN ENLARGEMENT --
8 A YES.
9 Q -- OF THE FRONT OF THAT?
10 A YES.
11 Q AND "THIS" BEING STATE'S EXHIBIT NO. 22 FOR
12 IDENTIFICATION. LET ME ASK YOU, ON THE BACK, IF YOU
13 WOULD LOOK AT IS THE SMALL ITEM, DO YOU SEE ANY
14 WRITING ON THE BACK?
15 A YEAH.
16 Q IS STATE'S EXHIBIT 23 FOR IDENTIFICATION AN
17 ENLARGEMENT OF THE WRITING ON THE BACK OF THE SMALL
18 CARD?
19 A THAT'S THE WAY MY FATHER DID HIS FIGURING ON THE
20 SALE.
21 Q DO YOU RECOGNIZE SOME OF THE WRITING ON THESE
22 DOCUMENTS, ON THE FRONT OF THESE DOCUMENTS, ON THE
23 FRONT OR THE BACK?
24 A I RECOGNIZE SOME ON THE FRONT. I'M NOT SURE I
25 RECOGNIZE THE FIGURES. THAT'S PROBABLY MY FATHER'S

1 FIGURES, I WOULD PROBABLY SAY.

2 Q DOES THAT APPEAR TO BE AN AUTHENTIC VERIFAX COPY OF A
3 DOCUMENT THAT WOULD HAVE BEEN INTRODUCED AT CAPITAL
4 LOAN CONCERNING THE SALE OF A PARTICULAR FIREARM?

5 A YES.

6 MR. MCMAHON: YOUR HONOR, I WOULD NOW OFFER 22
7 AND 23 INTO EVIDENCE ALONG WITH THE SMALL DOCUMENT.

8 THE COURT: ANY OBJECTION?

9 MS. HUDGINS: BEG THE COURT'S INDULGENCE ONE
10 MOMENT, YOUR HONOR.

11 (PAUSE).

12 NO OBJECTION, YOUR HONOR.

13 THE COURT: WITHOUT OBJECTION.

14 (WHEREUPON, STATE'S EXHIBITS NOS. 22, 23 WERE
15 ADMITTED INTO EVIDENCE.)

16 (WHEREUPON, STATE'S EXHIBIT NO. 25 WAS MARKED
17 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

18 BY MR. MCMAHON

19 Q MS. RUSS, I'M GOING TO HAND YOU BACK WHAT'S NOW BEEN
20 MARKED AS STATE'S EXHIBIT NO. 25. I'M GOING TO TRY
21 TO GET THIS IN A POSITION WHERE YOU TALK ABOUT IT,
22 THE JURY CAN LOOK.

23 DO YOU SEE THE FRONT? AND AGAIN, STATE'S
24 EXHIBIT NO. 22 IS THE FRONT PART OF 25, CORRECT?

25 NOW, YOU RECOGNIZE THIS AS A DOCUMENT FROM THE

1 CAPITAL LOAN; IS THAT CORRECT?

2 A YES.

3 Q NOW, THERE'S SOME WRITING ON HERE. I WANT TO ASK YOU

4 ABOUT THE VARIOUS ITEMS OF WRITING.

5 UNDER "ARTICLE" IT APPEARS SOME WRITING. CAN

6 YOU TELL WHOSE WRITING THAT IS?

7 A APPARENTLY, THAT WAS MY FATHER'S.

8 Q CAN YOU SEE WHERE I'M POINTING, THAT FIRST THING?

9 A YEAH.

10 Q THEN DESIGN OR STYLE, IT HAS AN L.H. SOMETHING. WHAT

11 IS THAT WORD THERE, MS. RUSS?

12 A THAT WAS THE EXPRESSION MY FATHER USED FOR GUNS THAT

13 DIDN'T -- THEY WERE ALL IN ONE PIECE, AND IT TOOK A

14 SAFETY LATCH TO REACH IT.

15 Q WHAT WAS THIS EXPRESSION?

16 A LEFT-HAND WHEELER.

17 Q LEFT-HAND WHEELER. AND WHO WOULD USE THAT

18 EXPRESSION?

19 A MY FATHER.

20 Q YOUR FATHER. AND WOULD THIS -- LET ME SHOW YOU AN

21 ITEM THAT'S BEEN MARKED PREVIOUSLY FOR

22 IDENTIFICATION, STATE'S EXHIBIT NO. 6. WOULD THIS BE

23 THE TYPE OF OBJECT THAT HE WOULD CALL A LEFT-HAND

24 WHEELER?

25 A YES.

1 MR. MCMAHON: MAY I DEMONSTRATE THIS TO THE JURY
2 AT THIS POINT, YOUR HONOR?
3 THE COURT: WITHOUT OBJECTION?
4 MS. HUDGINS: WITHOUT OBJECTION.
5 BY MR. MCMAHON
6 Q SO YOU'RE REFERRING TO A LEFT-HAND WHEELER WHERE YOU
7 HAVE TO PULL THIS OUT TO COME OUT THERE?
8 A YES.
9 Q AND THAT WAS AN EXPRESSION YOUR FATHER USED; IS THAT
10 CORRECT?
11 A YES.
12 Q NOW, THE NEXT SERIAL OR MOVEMENT NUMBER, WHAT DOES
13 THAT APPEAR TO BE?
14 A IT'S A SERIAL NUMBER FOR A GUN.
15 Q CAN YOU READ THAT?
16 A I BELIEVE IT'S W 9428; IS THAT CORRECT?
17 Q WELL, WHATEVER YOU CAN SEE THERE, OKAY, BUT, I WANT
18 TO SHOW YOU ANOTHER ITEM BEFORE WE GO FURTHER. LET
19 ME SHOW YOU ANOTHER BOOK THAT YOU SAID YOU WOULD
20 KEEP. DO YOU RECOGNIZE THIS BOOK?
21 A YES.
22 Q AS A MATTER OF FACT, IS THIS -- WHAT IS THIS ITEM?
23 A THAT'S A BOOK THAT WE WROTE GUNS THAT WE PURCHASED.
24 AT THAT TIME, WE DIDN'T HAVE TO PUT ANYTHING ON THE
25 PAWN, ONLY WHEN THEY WENT IN STOCK DID WE HAVE TO DO

1 THAT.

2 Q IS THIS NEW GUNS?

3 A THAT'S BOTH.

4 Q BOTH. ALL RIGHT. AND THIS IS FROM 1959?

5 A YES.

6 Q NOW, HOW WOULD Y'ALL FILL THESE ITEMS OUT? WHAT ARE

7 THE VARIOUS COLUMNS THAT APPEAR THERE?

8 A THERE'S AN -- I'M SORRY, THE DATE THAT IT CAME INTO

9 OUR POSSESSION, THE TYPE OF GUN IT WAS, THE MODEL

10 NUMBER, THE SOURCE, THE NEXT COLUMN WAS THE CALIBER,

11 AND THEN THE SERIAL NUMBER.

12 THEN THE NEXT LINE ON THE NEXT PAGE, IT'S THE

13 DATE IT WAS SOLD, THE PARTY TO WHOM IT WAS SOLD, HIS

14 ADDRESS AND HIS DESCRIPTION AS TO WHITE MALE OR BLACK

15 MALE.

16 Q AND THIS, IS THAT THE ORIGINAL GUN BOOK?

17 A YES.

18 Q FROM 1960 TO '61?

19 A I THINK ON THE FRONT IT SAYS '59.

20 Q FROM '59 AND SOMETIME FORWARD?

21 A YES.

22 Q AND IF I SHOW YOU THIS ITEM, DOES THAT APPEAR TO BE

23 AN ENLARGEMENT OF THE PAGE --

24 A YES.

25 Q -- YOU WERE JUST REFERRING TO?

1 A YES.

2 Q AND AGAIN, THESE WERE RECORDS THAT YOU KEPT IN YOUR
3 NORMAL COURSE OF BUSINESS?

4 A YES.

5 MR. MCMAHON: YOUR HONOR, I WOULD OFFER BOTH THE
6 ORIGINAL AND THE ENLARGEMENT.

7 THE COURT: ANY OBJECTION?

8 MS. HUDGINS: THAT'S WITHOUT OBJECTION, YOUR
9 HONOR.

10 THE COURT: WITHOUT OBJECTION.

11 (WHEREUPON, STATE'S EXHIBITS NO. 26, 27 WERE
12 MARKED FOR IDENTIFICATION AND RECEIVED INTO
13 EVIDENCE.)

14 BY MR. MCMAHON

15 Q I'M GOING TO HAND YOU BACK THE ORIGINAL TO STATE'S
16 EXHIBIT NO. 27. I'M GOING TO USE THE ENLARGEMENT
17 AGAIN.

18 MY ENLARGEMENT HAS GOT A LITTLE BIT OF THE FIRST
19 COLUMN CUT OFF. IT APPEARS TO BE DATE RECEIVED. DO
20 YOU SEE THAT?

21 RIGHT HERE, 736, OKAY. IF YOU COUNT DOWN TO
22 ONE, TWO, THREE, FOUR, TO THE FOURTH COLUMN --

23 A YEAH.

24 Q -- DO YOU SEE THAT?

25 A YES.

1 Q ALL RIGHT. NOW, THAT FIRST DATE, 7/30/60, WHAT DATE
2 WOULD THAT BE?
3 A THAT'S THE DATE IT CAME INTO OUR POSSESSION.
4 Q ALL RIGHT. NOW, WOULD THIS BE A NEW GUN?
5 A YES.
6 Q SO THIS GUN, IF WE FOLLOW THIS ACROSS, WOULD HAVE
7 COME INTO YOUR POSSESSION JULY 30TH, '60; IS THAT
8 CORRECT?
9 A YES.
10 Q AND THEN THE SECOND COLUMN TITLE, WHAT TYPE OF WEAPON
11 WAS THAT?
12 A A REVOLVER.
13 Q AND THEN THE THIRD COLUMN, MODEL?
14 A THAT WAS A MODEL NUMBER FROM HARRINGTON AND
15 RICHARDSON.
16 Q AND WHAT WAS THAT MODEL NUMBER?
17 A 732.
18 Q AND IT LOOKS LIKE THERE WERE TWO OF THEM, RIGHT
19 TOGETHER, A THIRD COLUMN AND THE FOURTH COLUMN,
20 CORRECT?
21 A YES.
22 Q BOTH OF THEM WERE A REVOLVERS, 732 MODEL, AND SOURCE
23 "H & R", WHAT DOES THAT MEAN, SOURCE?
24 A HARRINGTON AND RICHARDSON.
25 Q WOULD THAT BE WHERE YOU GOT THE GUN FROM?

1 A YES.

2 Q DID BOTH OF THESE 32 MODEL 732 HARRINGTON AND

3 RICHARDSON COME INTO THE POSSESSION --

4 MS. HUDGINS: JUDGE, I JUST HAVE TO OBJECT TO

5 THE LEADING.

6 THE COURT: SUSTAINED AS TO THE LEADING.

7 BY MR. MCMAHON

8 Q WHEN DID THESE TWO GUNS COME INTO THE POSSESSION OF

9 CAPITAL LOAN?

10 A JULY 30TH, 1960.

11 Q NOW, AS I FOLLOW THE COLUMN OVER WHERE IT SAYS "CAL",

12 WHAT DOES THAT INDICATE?

13 A I DON'T KNOW WHAT YOU'RE TALKING ABOUT.

14 Q THIS COLUMN HERE.

15 A OH, THAT'S THE CALIBER.

16 Q AND WHAT CALIBER IS LISTED BY THOSE GUNS?

17 A THIRTY-TWOS.

18 Q NOW, THE NEXT COLUMN, DOES THERE APPEAR TO BE A

19 SERIAL NUMBER?

20 A YES.

21 Q THE FOURTH COLUMN DOWN, CAN YOU SEE THAT SERIAL

22 NUMBER?

23 A IT'S 9948.

24 Q 9948. NOW, AS YOU FOLLOW THIS PAGE ON ACROSS, THIS

25 ITEM IN THE MIDDLE APPEARS TO BE A DIVIDER. CAN YOU

1 TELL US IF 9948 WAS SOLD, AND WHEN IT WAS SOLD?

2 A YES, FEBRUARY 28TH, 1961.

3 Q CAN YOU TELL US FROM LOOKING AT THAT DOCUMENT WHO IT

4 WAS SOLD TO?

5 A IT APPEARS TO BE EDWARD FRIEBURGER.

6 Q DO YOU RECOGNIZE THE WRITING 2/28/61?

7 A THAT'S THIS COLUMN?

8 Q NO, MA'AM, IN THIS COLUMN HERE, I'M SORRY.

9 A YES, SIR.

10 Q DO YOU RECOGNIZE THAT 02/28/61?

11 A YES, THAT'S MY HANDWRITING.

12 Q THAT'S YOUR HANDWRITING. THEN THE NAME TO WHOM,

13 EDWARD FRIEBURGER, DO YOU RECOGNIZE THAT WRITING?

14 A THE WHOLE THING ACROSS IT IS MINE.

15 Q AND WHEN YOU SAY THE WHOLE THING ACROSS THERE, TO

16 WHOM SOLD AND THE ADDRESS?

17 A YES.

18 Q AND THE DESCRIPTION?

19 A THE DESCRIPTION.

20 Q ALL THAT IS YOURS, CORRECT?

21 A YES.

22 Q WHAT ADDRESS DID YOU WRITE DOWN?

23 A [REDACTED], FORT WAYNE, INDIANA.

24 Q AND THE DESCRIPTION?

25 A W.M., WHICH IS WHITE MALE.

1 Q NOW, ADDITIONALLY -- NOW, ADDITIONALLY, THIS OTHER
2 PAPERWORK WOULD HAVE BEEN FILLED OUT AT THE TIME.
3 GOING BACK TO STATE'S EXHIBIT 22, BACK TO THE SMALL
4 PART; IS THAT CORRECT?
5 A YES.
6 Q AND DOES IT APPEAR ON THERE THE SIZE OF THIS WEAPON?
7 A YES.
8 Q AND WHAT SIZE?
9 A THIRTY-TWO.
10 Q DOES THE MATERIAL APPEAR?
11 A IT JUST SAYS BLUE. YOU AUTOMATICALLY NOTICE IT.
12 Q DOES THE MAKER APPEAR?
13 A NO.
14 Q MAKER OR MAKER'S NAME?
15 A YOU MEAN ON THE SMALL --
16 Q YES, MA'AM.
17 A YES.
18 Q AND WHAT DOES IT SAY?
19 A H & R.
20 Q AND WHAT DOES H & R STAND FOR?
21 A HARRINGTON AND RICHARDSON.
22 Q DOES THE AMOUNT APPEAR?
23 A YES, THAT WAS THE AMOUNT OF THE GUN.
24 Q AND HOW MUCH WAS IT?
25 A \$43.95.

1 Q NOW, DOES THE DATE OF THIS TRANSACTION APPEAR ON THIS
2 CARD, STATE'S EXHIBIT NO. 22?
3 A YES, IT DOES.
4 Q AND WHAT DATE?
5 A IT'S A STAMPED DATE THAT SAYS FEBRUARY 28TH, 1961.
6 Q WHEN WOULD Y'ALL PLACE THE STAMPED DATE ON THE CARD?
7 A THE DATE IT WAS SOLD.
8 Q THE DATE IT WAS SOLD?
9 A YES.
10 Q DOES THE PURCHASER'S NAME APPEAR ON THERE?
11 A YES.
12 Q AND AGAIN, WHAT NAME IS IT?
13 A EDWARD E. FRIEBURGER.
14 Q AND DO YOU RECOGNIZE THAT WRITING?
15 A NO.
16 Q IS THAT YOUR HANDWRITING?
17 A NO.
18 Q NOW, DOES THE ADDRESS OF THE PURCHASER APPEAR ON
19 THERE?
20 A THAT SEEMS TO BE MY FATHER'S ADDRESS -- I MEAN, MY
21 FATHER'S WRITING.
22 Q AND WHAT IS THAT WRITING?
23 A [REDACTED], FORT WAYNE, INDIANA.
24 Q AND IF YOU LOOK BACK TO THE BOOK, IS THAT THE SAME
25 NAME AND THE SAME ADDRESS THAT APPEARS ON THE BOOK?

1 A YES, YES.

2 Q SO WHEN WAS THIS GUN SOLD?

3 A FEBRUARY 28TH.

4 Q OF WHAT YEAR?

5 A 1961.

6 Q TO WHOM?

7 A TO ARTHUR FRIEBURGER, FRIEBURGER.

8 Q YOU SAID ARTHUR.

9 A BEG YOUR PARDON?

10 Q YOU SAID ARTHUR. WHAT NAME?

11 A EDWARD.

12 Q I'M SORRY?

13 A IT'S EDWARD "FREEBURGER", FRIEBURGER.

14 Q SAY THAT AGAIN. I'M SORRY. I INTERRUPTED YOU,

15 MS. RUSS.

16 A IT SAYS EDWARD E. FRIEBURGER.

17 Q AND MS. RUSS, WILL YOU TURN OVER THE SMALL CARD, AND

18 I'M REFERRING NOW TO STATE'S 23. DOES THIS APPEAR TO

19 BE AN ENLARGEMENT OF THE SMALLER CARD?

20 A YES.

21 Q COULD YOU EXPLAIN THIS DOCUMENT FOR US, PLEASE?

22 A WELL, MY FATHER WROTE, HE WROTE 22 H & R, BUT HE MAY

23 HAVE BEEN IN A HURRY, BUT THE RECORD SHOWS IT WAS A

24 32.

25 Q OKAY.

1 A AND HE ADDED THE TAXES TO THAT. THEN BELOW THAT
2 \$45.27 MUST -- IT MUST INDICATE -- OH, I SEE, 45.
3 THERE'S SOME ERRORS IN THIS, BUT THE \$45.20, I THINK
4 HE MEANT TO WRITE -- WAIT A MINUTE?
5 Q DOES THIS APPEAR TO BE YOUR DAD'S WRITING?
6 A YES.
7 Q IT DOES?
8 A IT IS CORRECT. I WAS LOOKING AT IT WRONG.
9 Q OKAY. EXPLAIN TO US.
10 A WELL, IT IS THE PRICE OF THE GUN.
11 Q OKAY.
12 A AND THE TAX, WHICH CAME TO A TOTAL OF \$45 -- OH, I
13 SEE. WAIT A MINUTE, OVER ON THE LEFT IS A NOTATION.
14 Q THE \$1.32, 15, \$1.47?
15 A YES, THAT WAS THE TAX.
16 Q OKAY.
17 A THE TOTAL ON THE THING WAS \$5.15, SO THE TOTAL AMOUNT
18 THAT THE COMPANY GOT WAS \$50.42.
19 Q ALL RIGHT. LET ME ASK YOU THIS, DO YOU SEE THIS WORD
20 RIGHT HERE?
21 A BULLETS.
22 Q BULLETS. NOW, YOU DIDN'T GIVE BULLETS AWAY, DID YOU?
23 A NO, SIR.
24 Q DID YOU SELL BULLETS?
25 A YES.

1 Q DID IT APPEAR TO BE BULLETS WERE SOLD, ALONG WITH THE
2 GUN?
3 A YES.
4 Q AND THAT'S THE BACK OF THE ORIGINAL CARD COURTESY OF
5 THE CITY, AS YOU SAY?
6 A YES.
7 Q NOW, DID Y'ALL ALSO DO DAILY REPORTS?
8 A YES, FOR THE SALE OF IT, BUT THE SALE OF THE GUNS
9 DIDN'T HAVE ANYTHING TO DO WITH THE CITY.
10 Q CORRECT. I UNDERSTAND BUT Y'ALL TELL -- Y'ALL DID
11 REPORTS IN Y'ALL'S NORMAL COURSE OF BUSINESS AS
12 Y'ALL'S TRANSACTION IN A DAILY -- EVERY DAY NORMAL
13 COURSE OF BUSINESS..
14 A CORRECT.
15 Q IF I SHOW YOU AN ITEM, DO YOU RECOGNIZE THIS ITEM?
16 A YEAH, THAT ALSO IS COURTESY OF THE CITY.
17 Q YOU USED A LOT OF THEIR FORMS IN YOUR BUSINESS; IS
18 THAT RIGHT?
19 A YES.
20 Q BUT YOU KEPT THIS AS PART OF YOUR BUSINESS RECORDS?
21 A YES.
22 Q AND DOES IT COVER THE DATE FEBRUARY 27TH AND
23 FEBRUARY 28TH OF '61?
24 A YES.
25 Q LET ME SEE IF I HAVE A SMALLER COPY OF IT. LET ME

1 SEE.

2 A I DON'T THINK YOU HAVE ONE BECAUSE I DON'T KNOW THAT

3 WE KEPT THEM THAT FAR BACK.

4 Q MA'AM?

5 A I DON'T KNOW IF YOU HAVE THAT -- OH YOU DO HAVE IT.

6 Q YES, MA'AM. DOES THAT APPEAR --I HAVEN'T BEEN HIDING

7 IT FROM YOU, MS. RUSS.

8 DOES THAT APPEAR TO BE AN AUTHENTIC COPY OF THE

9 ORIGINAL?

10 A YES.

11 Q AND THIS BEING THE ENLARGEMENT, CORRECT?

12 A YES.

13 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THESE

14 ITEMS INTO EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MS. HUDGINS: JUDGE, MAY WE APPROACH ON THIS?

17 THE COURT: SURE.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE

19 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF

20 THE JURY.)

21 MR. MCMAHON: THANK YOU, YOUR HONOR. MARK

22 THESE, YOUR HONOR?

23 THE COURT: YES, SIR.

24 MS. HUDGINS: SUBJECT TO THE BENCH CONFERENCE.

25 THE COURT: SUBJECT TO THE BENCH CONFERENCE

1 WHICH I'LL ELABORATE ON IN A FEW MOMENTS.
 2 (WHEREUPON, STATE'S EXHIBITS NOS. 28, 29 WERE
 3 MARKED FOR IDENTIFICATION AND RECEIVED INTO
 4 EVIDENCE.)
 5 BY MR. MCMAHON
 6 Q NOW, I'M GOING TO HAND YOU BACK STATE'S EXHIBIT
 7 NO. 28. DOES THIS APPEAR TO BE A DOCUMENT WHICH WAS
 8 PREPARED AND KEPT BY CAPITAL LOAN?
 9 A YES.
 10 Q BACK ON FEBRUARY 28TH -- 27TH, 28TH?
 11 A YES.
 12 Q DO YOU RECOGNIZE ANY OF THE WRITING ON THIS,
 13 MS. RUSS, ANY OF THE FIGURING?
 14 A IT'S A COMBINATION OF MY FATHER AND MY HANDWRITING.
 15 Q A COMBINATION OF YOUR FATHER AND YOURS?
 16 A THAT WAS A DAILY SHEET THAT WE KEPT, AND AT THE END
 17 OF THE DAY OR WHENEVER, WE'D CLOSE THAT OUT, WE
 18 TRANSFERRED IT TO A BOOK THAT WE WOULD GIVE THE
 19 BOOKKEEPER.
 20 Q IF I LOOK UP HERE, DO YOU SEE THIS AREA I'M POINTING
 21 TO UP HERE?
 22 A YEAH.
 23 Q DO YOU SEE A STAMPED DATE AND A WRITTEN DATE?
 24 A YES.
 25 Q WHAT DATES APPEAR UP THERE?

1 A FEBRUARY 27TH IS STAMPED AND THEN AT THE BOTTOM WE
2 ADDED PLUS 28.
3 Q OKAY. NOW, WHAT DOES THE LEFT SIDE, THE LEFT COLUMN,
4 WHAT DOES THAT COLUMN REPRESENT, MS. RUSS?
5 A THAT REPRESENTS MONEY THAT'S EXPENDED.
6 Q AND IN THE MIDDLE COLUMN?
7 A THE MIDDLE COLUMN ARE SALES FOR THE DAY.
8 Q OKAY. AND DO YOU SEE DOWN -- OR RIGHT BEFORE THE
9 WORD "ON ACCOUNT"?
10 A YES, I SEE THAT.
11 Q YOU SEE THAT? WHAT IS THE NEXT WORD UP FROM "ON
12 ACCOUNT"?
13 A \$43.95.
14 Q OKAY. AND WHAT'S THE WORD UP ABOVE "ON ACCOUNT", NOT
15 THE AMOUNT? DO YOU SEE THIS WORD RIGHT HERE?
16 A THAT SAYS REVOLVER.
17 Q WHOSE WRITING IS THAT?
18 A THAT APPEARS TO BE MY FATHER'S.
19 Q AND AS YOU TESTIFIED PREVIOUSLY ON STATE'S 22, DOES
20 THIS APPEAR TO BE YOUR FATHER'S HANDWRITING --
21 A YES.
22 Q -- REVOLVER? AND WHAT IS THE AMOUNT OF THE REVOLVER?
23 A \$43.95.
24 Q AND WHAT IS THE NEXT WORD UP FROM THAT?
25 A BULLETS.

1 Q BULLETS. AND WHOSE WRITING DOES THAT APPEAR TO BE?

2 A THAT APPEARS TO BE MY FATHER'S.

3 Q IS THERE AN AMOUNT OVER TO THE RIGHT OF THE WORD
4 "BULLETS"?

5 A YES, \$5.00.

6 Q FIVE DOLLARS. AND MS. RUSS, ALL OF THESE RECORDS
7 APPEAR TO BE AUTHENTIC TO YOU, CORRECT?

8 A YES.

9 MR. MCMAHON: JUST ONE MOMENT, YOUR HONOR.

10 BY MR. MCMAHON

11 Q OH, W 9948 WOULD BE THE SERIAL NUMBER.

12 A WELL, THAT WOULDN'T BE ON HERE.

13 Q IT WOULDN'T BE ON THERE, BUT IT'S ON SOME OF THESE
14 OTHER DOCUMENTS, CORRECT?

15 A YES, YES, YES.

16 Q SO I SHOULD BE ABLE TO SEE THE SERIAL NUMBER ON THE
17 WEAPON, W 9948?

18 A YES, I THINK THERE'S A "W" IN FRONT OF THAT.

19 Q YES, MA'AM.

20 MR. MCMAHON: FOR IDENTIFICATION PURPOSES ONLY
21 AT THE TIME, STATE'S SIX, YOUR HONOR.

22 I HAVE NO FURTHER QUESTIONS.

23 THE COURT: CROSS-EXAMINATION, MS. HUDGINS?

24 MS. HUDGINS: THANK YOU, YOUR HONOR. MAY IT
25 PLEASE THE COURT, YOUR HONOR.

1 CROSS-EXAMINATION:

2 BY MS. HUDGINS

3 Q HEY, MS. RUSS.

4 I'M OVER HERE.

5 A OH, OKAY.

6 Q HOW ARE YOU? MS. RUSS, MY NAME IS KATHRINE HUDGINS.

7 I BELIEVE YOU AND I HAVE TALKED ON THE PHONE.

8 A YES.

9 Q IT'S NICE TO MEET YOU IN PERSON. WE MET A FEW

10 MINUTES AGO BEFORE COURT STARTED.

11 WHAT I'D LIKE TO DO IS GO THROUGH SOME OF THE

12 DOCUMENTS. YOU GOT THE SMALLER DOCUMENTS IN YOUR

13 HANDS.

14 WHAT I'D LIKE TO DO WITH YOU IS PICK UP THE

15 BIGGER DOCUMENTS SO THE JURY CAN REFER TO WHAT YOU

16 ARE LOOKING AT.

17 NOW, WHERE I'D LIKE TO START IS THE -- LET'S

18 JUST START WITH THIS FORM SEVEN THAT'S MARKED AS

19 STATE'S NUMBER 22, AND THAT WOULD BE THE SMALL FRONT

20 OF THIS WHAT'S CALLED A VERIFAX COPY. FIRST OF ALL,

21 WHAT'S A VERIFAX COPY?

22 A APPARENTLY, IT IS A PHOTOCOPY OF AN ORIGINAL.

23 Q OKAY. THAT'S --

24 A THIS IS MARKED 28 EXHIBIT, HOWEVER. OH, NO, NO, NO,

25 I'M SORRY.

1 Q IT MAY BE MARKED DIFFERENTLY THAN THE LARGER ONE.
2 A IT IS.
3 Q LET'S JUST MAKE SURE --
4 A IT IS. IT'S MARKED 25 ON THE BACK.
5 Q AND ON THE BACK OF IT?
6 A ON THE BACK OF IT -- IT HAS NO COPY NUMBER.
7 Q MS. RUSS, WOULD YOU AGREE WITH ME THAT WHAT'S BEEN
8 MARKED AS EXHIBIT NUMBER 22 IS AN ENLARGEMENT OF WHAT
9 YOU'RE HOLDING IN YOUR HAND NOW --
10 A YES.
11 Q -- WHICH IS ON THE BACK MARKED STATE'S 25, I BELIEVE.
12 I JUST WANT TO MAKE SURE WE'RE LOOKING AT THE SAME
13 THING.
14 A YES.
15 Q OKAY. VERY GOOD. THIS SMALLER DOCUMENT YOU HAVE IN
16 YOUR HAND, MS. RUSS, THIS IS NOT AN ORIGINAL
17 DOCUMENT, CORRECT?
18 A NO, THIS IS A PHOTOCOPY OF IT, A VERIFAX.
19 Q DO YOU RECALL WHAT A VERIFAX WAS? YOU SAID -- I
20 THINK YOU SAID COPY MACHINE, BUT THE PRECURSOR TO
21 COPY MACHINES AND PROBABLY A PRECURSOR TO
22 MIMEOGRAPHS. DO YOU RECALL WHAT A VERIFAX MACHINE
23 WAS?
24 A YES. I NEVER SAW ONE, BUT I KNOW WHAT THE WORD
25 MEANS.

- 1 Q YOU NEVER SAW IT?
- 2 A A VERIFAX COPY, NO.
- 3 Q YES, MA'AM. SO YOU DID NOT HAVE A VERIFAX MACHINE IN
- 4 THE CAPITAL LOAN OFFICE?
- 5 A NOT THAT WE USED, NO.
- 6 Q YOU MIGHT HAVE HAD ONE THAT YOU HAD SOLD OR TAKEN IN
- 7 ON PAWN?
- 8 A OH YES.
- 9 Q BUT YOU NEVER HAD ONE THAT YOU USED FOR BUSINESS
- 10 PURPOSES THERE?
- 11 A (THE WITNESS SHAKES IN THE NEGATIVE).
- 12 Q NOW, IF YOU LOOK AT THIS DOCUMENT, MS. RUSS, NONE OF
- 13 THE HANDWRITING THAT APPEARS ON THIS DOCUMENT IS YOUR
- 14 HANDWRITING, CORRECT?
- 15 A NO.
- 16 Q BUT YOU STATED THAT SOME OF THAT HANDWRITING ON THIS
- 17 DOCUMENT YOU OBSERVED AS BEING HANDWRITING OF YOUR
- 18 FATHER?
- 19 A APPARENTLY.
- 20 Q APPARENTLY.
- 21 A UH-HUH.
- 22 Q IS THERE SOME HANDWRITING ON THIS DOCUMENT, MS. RUSS,
- 23 THAT YOU DON'T RECOGNIZE AT ALL?
- 24 A YES, THERE'S ONE THAT SAYS "SIGNATURE".
- 25 Q OKAY. YOU DON'T RECOGNIZE THAT?

1 A NO.

2 Q WHERE IT SAYS "ARTICLE", WHOSE HANDWRITING IS THAT?

3 A I DO RECOGNIZE THAT.

4 Q WHOSE HANDWRITING IS THAT, MS. RUSS?

5 A MY FATHER'S.

6 Q ALL RIGHT. WHERE IT SAYS REVOLVER, THAT'S YOUR

7 FATHER'S HANDWRITING?

8 A THAT'S MY FATHER'S, YES.

9 Q AND WHERE IT SAYS DESIGN OR STYLE, WHOSE HANDWRITING

10 IS THAT?

11 A THAT APPEARS TO BE MY FATHER'S, BECAUSE I DON'T THINK

12 I USED THAT EXPRESSION.

13 Q WHO ELSE AT THE SHOP AT THE TIME WOULD HAVE BEEN

14 FILLING THIS FORM OUT?

15 A NO ONE.

16 Q SO IT WOULD HAVE BEEN EITHER YOU OR YOUR FATHER?

17 A YES.

18 Q THERE WERE NO OTHER EMPLOYEES OF THE CAPITAL LOAN

19 COMPANY?

20 A THAT HANDLED GUNS, NO.

21 Q SO IT WOULD HAVE BEEN JUST YOU OR YOUR FATHER, AND

22 YOU'RE SAYING THIS IS NOT YOUR HANDWRITING ON ANY OF

23 THIS DOCUMENT?

24 A NO.

25 Q SO IN OTHER WORDS, YOU HAD NOTHING TO DO WITH THE

1 SALE OF THIS GUN ON FEBRUARY 28TH, 1961?

2 A NO. IT LOOKS LIKE I MAY HAVE FILLED OUT THE

3 MATERIAL, BUT THE "H & R" IS DEFINITELY MY FATHER'S,

4 AND THE "REVOLVER" IS DEFINITELY MY FATHER'S.

5 Q SO WHERE IT SAYS "H & R", YOUR TESTIMONY IS THAT THAT

6 IS DEFINITELY YOUR FATHER'S?

7 A YES.

8 Q AND WHERE IT SAYS "REVOLVER", YOUR TESTIMONY IS THAT

9 IS DEFINITELY YOUR FATHER'S?

10 A YES.

11 Q AND WHERE IT SAYS "MATERIAL", YOU THINK THAT APPEARS

12 TO BE YOUR HANDWRITING?

13 A YES.

14 Q I KNOW IT'S HARD TO REMEMBER, MS. RUSS, MY GOODNESS,

15 BUT THAT APPEARS TO BE YOUR HANDWRITING?

16 A YEAH, I FILLED IN THE DESCRIPTION OF THE THING.

17 Q AND THAT WAS DONE SOMETIME AFTER THE SALE?

18 A APPARENTLY, RIGHT AFTER IT. I DID STAMP IT.

19 Q YOU ACTUALLY STAMPED THIS?

20 A YEAH.

21 Q OKAY. BUT YOU DIDN'T ACTUALLY TAKE PART IN THE SALE?

22 A I DON'T REMEMBER.

23 Q YOU SIMPLY DON'T REMEMBER, BUT YOUR HANDWRITING IS

24 NOT -- OTHER THAN PERHAPS THE MATERIAL, WHICH MAY

25 HAVE BEEN PLACED ON AFTER THE SALE TOOK PLACE, YOU

1 DIDN'T -- NONE OF THE REST OF THE HANDWRITING ON HERE
 2 IS YOURS?
 3 A NO.
 4 Q OKAY. UNDERNEATH WHERE IT SAYS "SIZE", IT LOOKS LIKE
 5 THERE WAS "22" WRITTEN ON THERE?
 6 A I THINK MY FATHER MADE AN ERROR.
 7 Q YOU THINK HE MADE AN ERROR?
 8 A AND THEN HE WENT BACK AND CORRECTED IT BECAUSE THE
 9 BOOK SAID IT WAS A 32.
 10 Q OKAY.
 11 A AND THEN ON THE BACK HE MARKED 22.
 12 Q WELL, LET'S LOOK AT THAT. AND YOU'RE LOOKING AT THE
 13 BACK OF THIS. AT THE BOTTOM OF THAT, IT SAYS "FORM
 14 SEVEN"?
 15 A YEAH.
 16 Q AND THAT WAS A FORM THAT WAS PROVIDED TO YOU BY THE
 17 CITY OF COLUMBIA POLICE DEPARTMENT?
 18 A YEAH, NOT FOR THIS, BUT WE USED THEM.
 19 Q RIGHT, OKAY. AND THEN ON THE BACK OF THIS FORM,
 20 WHOSE HANDWRITING IS THIS, MS. RUSS? DO YOU BELIEVE
 21 THIS IS --
 22 A THAT'S DEFINITELY MY FATHER'S.
 23 Q THAT'S DEFINITELY YOUR FATHER'S HANDWRITING, OKAY.
 24 A YES.
 25 Q AND AT THE TOP IT SAYS "22"?

1 A WELL, THAT WAS A MISTAKE. 22'S AND 32'S LOOK EXACTLY
2 LIKE UNLESS YOU SPECIFICALLY LOOK DOWN THE BARREL.
3 Q YES, MA'AM.
4 A BUT HE WENT BACK AND CORRECTED IT OR I WENT -- NO, HE
5 WENT BACK AND CORRECTED IT ON THE FRONT.
6 Q OKAY. AND THAT WAS SOMETIME LATER?
7 A NO, I WOULD IMAGINE IT'S WHEN WE GOT READY TO CHECK
8 IT OFF THE BOOK.
9 Q OKAY. BUT INITIALLY, IT APPEARS TO YOU THAT HE WROTE
10 "22" ON HERE, ON THE FRONT?
11 A OH, I THINK 22'S WERE LESS MONEY.
12 Q YOU THINK THEY WERE LESS MONEY?
13 A I'M NOT SURE.
14 Q OKAY. AND ON THE BACK OF THIS, IT SAYS "22"?
15 A YEAH.
16 Q NOW, I'M NOT VERY -- OH, I'M SORRY, MS. RUSS, GO
17 AHEAD.
18 A I'M NOT VERY SURE WHETHER WE HANDED THIS TO THE
19 POLICE DEPARTMENT. I DON'T THINK WE GAVE THIS TO
20 ANYBODY. WE JUST HAD TO MAINTAIN OUR RECORDS.
21 Q OKAY. SO YOUR RECOLLECTION IS THAT YOU DID NOT
22 PROVIDE THIS TO THE POLICE DEPARTMENT?
23 A NO, I DIDN'T.
24 Q THIS FORM SEVEN IS WHAT YOU'RE SAYING, AT ANY TIME?
25 A NO.

1 Q AND THIS IS -- YOU'RE SAYING THAT YOU DIDN'T GIVE THE
2 ORIGINAL OR THAT AT SOME TIME YOU -- THIS IS A
3 VERIFAX COPY.

4 I GUESS MY QUESTION IS THE POLICE DEPARTMENT HAD
5 TO HAVE MADE A VERIFAX COPY AT SOME POINT.

6 A I WOULD EXPECT SO, I DON'T KNOW.

7 Q BUT WE DON'T HAVE THE ORIGINAL TO LOOK AT?

8 A NO, I HAVE IT IN MY POSSESSION.

9 Q YOU HAVE THE ORIGINAL DOCUMENT IN YOUR POSSESSION?

10 A THIS DOCUMENT, YES.

11 Q YES, MA'AM.

12 A THIS SMALL, YES, I HAVE THAT.

13 MS. HUDGINS: YOUR HONOR, WE'D HAVE A MATTER OF
14 LAW TO MAKE UP AT THIS POINT.

15 THE WITNESS: WE'RE REQUIRED BY FEDERAL LAW TO
16 KEEP A RECORD.

17 MS. HUDGINS: YES, MA'AM.

18 THE COURT: ALL RIGHT. LET ME LET YOU GO TO
19 YOUR JURY ROOM FOR A MINUTE.

20 (WHEREUPON, THE JURY LEFT OPEN COURT AT
21 APPROXIMATELY 12:44 P.M.)

22 THE COURT: YES, MA'AM.

23 MS. HUDGINS: JUDGE, I SPECIFICALLY ASKED THE
24 STATE YESTERDAY, SPECIFICALLY GAVE THEM INFORMATION THAT I
25 HAD OF MS. RUSS THAT SHE HAD AN ORIGINAL COPY. THEY SAID

1 THEY DIDN'T HAVE IT.

2 I WOULD HAVE ASSUMED BASED ON THAT, THEY WOULD
3 HAVE CHECKED WITH THEIR WITNESS TO DETERMINE WHETHER OR
4 NOT AN ORIGINAL EXISTED. WE NEEDED THE ORIGINAL, YOUR
5 HONOR.

6 THE COURT: YOU'VE GOT THE SUBPOENA POWER. IF
7 YOU KNEW IT EXISTED, WHY DIDN'T YOU SUBPOENA IT?

8 MS. HUDGINS: YOUR HONOR, BECAUSE THAT'S
9 REQUIRED TO BE PROVIDED TO US UNDER OUR DISCOVERY RULE 5.
10 I DON'T KNOW THAT --

11 THE COURT: IF YOU KNEW, WHY DIDN'T YOU SUBPOENA
12 IT?

13 MS. HUDGINS: WE DIDN'T KNOW. THIS IS WHAT I
14 THOUGHT, YOUR HONOR, AND THIS IS THE EXPLANATION THAT WAS
15 GIVEN TO ME BY THE STATE WHEN THEY SHOWED -- MS. RUSS, MAY
16 I HAND, JUST SHOW THE JUDGE, THIS?

17 WHEN THEY SHOWED ME THIS, IT APPEARED YELLOWED.
18 WHEN I TALKED TO MS. RUSS, SHE HAD INDICATED THAT SHE
19 THOUGHT THE ORIGINAL WAS YELLOWED.

20 THE EXPLANATION THAT I GOT FROM THE STATE IS
21 SURELY THIS IS WHAT SHE IS REFERRING TO, BECAUSE IT IS
22 SORT OF A YELLOWED DOCUMENT.

23 THE COURT: WHEN DID YOU TALK TO MS. RUSS?

24 MS. HUDGINS: I'LL HAVE TO CHECK MY NOTES, YOUR
25 HONOR. I BELIEVE IT WAS SATURDAY, ACTUALLY.

1 THE COURT: MADAM SOLICITOR?

2 WELL, WHAT KIND OF RELIEF ARE YOU ASKING FOR?

3 MS. HUDGINS: OBVIOUSLY, I WOULD LIKE TO TAKE A
4 LOOK AT THE ORIGINAL DOCUMENT.

5 THE WITNESS: THIS IS A FORM OF THE ORIGINAL ONE
6 THAT WE GAVE THE CITY OR THE STATE, WHICHEVER.

7 MS. HUDGINS: YES, MA'AM.

8 THE COURT: SOLICITOR?

9 MR. MCMAHON: IS THIS A TRUE, FALSE QUESTION?
10 I'M NOT TRYING TO BE SMART, BUT I DON'T HAVE THE ORIGINAL.
11 I THINK YOU ACTUALLY OVERHEARD THAT CONVERSATION.

12 THE COURT: I DID.

13 MR. MCMAHON: I DIDN'T HAVE IT THEN; I DON'T
14 HAVE IT NOW. SHE TALKED TO MS. RUSS MORE THAN I HAVE, HER
15 AND HER INVESTIGATORS WENT OUT THERE AND TALKED TO
16 MS. RUSS.

17 IF MS. RUSS HAS THE ORIGINAL, SHE CAN TURN IT
18 OVER. I HAVE NO PROBLEM WITH THAT. THE ONLY ORIGINAL
19 DOCUMENT THAT I KNOW THAT EXISTS IS THE BULLET, AND I HAD
20 THE BULLET BROUGHT DOWN HERE TODAY. THE BOOK HAS BEEN IN
21 THE CUSTODY OF CAPITAL LOAN. I BELIEVE WE TOOK IT INTO
22 OUR CUSTODY. THEY'VE BEEN BY TO SEE THE ORIGINAL BOOK. I
23 HAVE NO ORIGINAL. I WISH I DID, BUT I DON'T.

24 THE WITNESS: I DON'T THINK THAT FEDERAL LAW
25 WOULD ALLOW US TO LET THAT GO OUT.

1 MR. MCMAHON: AND YOUR HONOR, I'D ASK YOU TO
2 INQUIRE, IF SHE'S GOT IT --

3 THE COURT: DO YOU REALLY THINK YOU HAVE IT,
4 MS. RUSS?

5 THE WITNESS: OH, I KNOW WE DO.

6 THE COURT: HOW DIFFICULT IS IT GOING TO BE TO
7 FIND?

8 THE WITNESS: I BEG YOUR PARDON?

9 THE COURT: HOW DIFFICULT WOULD IT BE TO FIND
10 IT?

11 THE WITNESS: THE YOUNG MAN THAT WORKS FOR ME
12 WOULD HAVE TO DIG IT OUT.

13 MR. MCMAHON: JUDGE, THAT IS -- I DO NOT MEAN TO
14 INTERRUPT MS. RUSS. I HAVE INTERVIEWED MR. BOONE, AS THEY
15 HAVE. I HAVE ASKED MR. BOONE FOR ANY ORIGINALS.

16 THE ONLY THING HE HAS PRODUCED TO ME IS THE
17 BOOK, WHICH I PRODUCED TO MS. RUSS TODAY. NO OTHER
18 ORIGINALS THAT I'M AWARE OF, I'VE ASKED FOR THEM, CHIEF
19 O'NEILL HAS ASKED FOR THEM. AS FAR AS I KNOW,
20 INVESTIGATOR MCDUGAL HAS ASKED FOR THEM. TO MY
21 KNOWLEDGE, THEY DON'T EXIST.

22 THE COURT: WELL, WE --

23 THE WITNESS: EXCUSE ME, I WAS NEVER THERE WHEN
24 THEY WENT TO THE STORE AND GOT THESE COPIES. THE YOUNG
25 MAN THAT WORKS FOR ME HAS ONLY WORKED THERE ABOUT EIGHT

1 YEARS. HE'S NOT TERRIBLY FAMILIAR...

2 THE COURT: WHY DON'T YOU --

3 THE WITNESS: HE KNOWS WHERE WE KEEP THE
4 RECORDS, AND HE'S THE ONE WHO SORTS THEM OUT.

5 MR. MCMAHON: AND I'VE ASKED MR. BOONE.

6 THE COURT: WHY DO YOU NEED THE DOCUMENT?

7 MS. HUDGINS: YOUR HONOR, IF YOU LOOK AT THE
8 VERIFAX COPY, IT'S OBVIOUS THAT THERE'S BEEN A MARKOVER.
9 IT'S OBVIOUS THAT THERE'S AN ERROR HERE.

10 I DON'T KNOW THAT THIS IS THE CASE. WHAT IF
11 THERE'S NOT A MARKOVER OR ERROR ON THE ORIGINAL DOCUMENT.
12 I MEAN, I THINK IT'S CRITICAL THAT --

13 THE WITNESS: THERE IS ONE ON THE ORIGINAL
14 DOCUMENT.

15 MS. HUDGINS: I THINK FOR NUMBER ONE, WE NEED TO
16 TAKE A LOOK AT THAT; NUMBER TWO, FOR PURPOSES OF AN EXPERT
17 THAT WE HAVE HIRED, THAT EXPERT MAY NEED TO TAKE A LOOK AT
18 THAT DOCUMENT, AS WELL.

19 THE COURT: ALL RIGHT. MS. RUSS, I'M GOING TO
20 ORDER YOU TO PRODUCE THE ORIGINAL DOCUMENT. HOW LONG DO
21 YOU THINK IT WILL TAKE THAT YOUNG MAN TO FIND IT?

22 THE WITNESS: WELL, HE'S PROBABLY HAVING SOME
23 LUNCH NOW.

24 IS HE IN HERE?

25 MR. MCMAHON: NO, SIR.

1 I MEAN, JUDGE, I CAN GET CURTIS HERE. HE'S
2 RIGHT DOWN THE STREET. I HAVE HIM SUBPOENAED.
3 THE WITNESS: YOU'D HAVE TO GIVE HIM A LITTLE
4 TIME TO --
5 THE COURT: I MEAN, I THINK WE'RE CHASING
6 RABBITS HERE.
7 MR. MCMAHON: YES, SIR.
8 THE COURT: BUT THE SERIAL NUMBER IS THE SAME ON
9 ALL THE DOCUMENTS, SO THE SERIAL NUMBER IS UNIQUE TO THE
10 WEAPON.
11 THE FACT THAT SOMEBODY CHARACTERIZES IT AS A 22,
12 IF YOU LOOK DOWN THE BARREL, SOMETIMES YOU CAN BE FOOLED.
13 I MEAN, I UNDERSTAND IT'S A CRIMINAL TRIAL, AND HE'S ON
14 TRIAL FOR HIS LIFE. SO OUT OF AN ABUNDANCE OF PRECAUTION,
15 LET'S FIND THE ORIGINAL DOCUMENT RIGHT NOW. I GUESS WHEN
16 WE GET IT, THEN WE'LL DEAL WITH IT.
17 MS. CAMPBELL: I'LL GET IT.
18 MR. MCMAHON: I HAVE MR. BOONE ON STANDBY. YOU
19 KNOW, I DON'T -- I WANT THE COURT TO REALIZE THAT I ASKED
20 THAT QUESTION NUMEROUS TIMES IN THE PAST.
21 MS. HUDGINS: AND TO BE CANDID WITH THE COURT --
22 MR. MCMAHON: AND AS FAR AS I KNOW, THEIR
23 INVESTIGATOR HAS ASKED HIM IN THE PAST.
24 THE COURT: WELL --
25 MR. MCMAHON: THE ONLY ORIGINAL DOCUMENT I'VE

1 EVER BEEN PROVIDED IS A BOOK.

2 I DON'T WANT THE COURT TO THINK I'M HIDING
3 ANYTHING WHATSOEVER. I WISH I HAD ALL THE ORIGINALS.

4 THE COURT: THE THING THAT CONCERNS ME A LITTLE
5 BIT ABOUT THE DEFENSE HERE IS IF YOU BELIEVE THAT'S THE
6 CASE, WHY DIDN'T YOU ISSUE A SUBPOENA TO PRODUCE THAT
7 DOCUMENT, AND WE WOULDN'T HAVE THIS PROBLEM. THE STATE
8 HAS SAID AND TOLD ME AND TOLD YOU THAT IT HASN'T --

9 MS. HUDGINS: WELL, I ASSUMED THEY HAD CHECKED
10 WITH THEIR WITNESS, YOUR HONOR. I FEEL LIKE I WAS A
11 LITTLE BIT MISLEAD. I DON'T THINK IT'S PERSONAL. I'M NOT
12 SAYING THAT.

13 BY TELLING ME THAT THERE WASN'T AN ORIGINAL,
14 THEY OBVIOUSLY HAVEN'T CALLED MS. RUSS. I SPECIFICALLY
15 TOLD THEM THAT SHE HAD TOLD ME THAT, JUDGE.

16 THE COURT: ALL RIGHT.

17 THE WITNESS: I WAS NOT IN THE PLACE OF BUSINESS
18 WHEN THIS YOUNG LADY EITHER PHONED HIM OR SAW HIM.

19 THE COURT: ALL RIGHT. WE'LL GET TO THE BOTTOM
20 OF IT.

21 I'M GOING TO SEND THE JURY TO LUNCH.

22 MR. MCMAHON: YOUR HONOR, CAN WE FINISH WITH
23 MS. RUSS?

24 THE COURT: WELL, SHE IS GOING TO HAVE TO COME
25 BACK. IT LOOKS TO ME LIKE -- I DON'T KNOW IF THAT'S THE

1 DOCUMENT -- I DON'T KNOW WHAT THE DOCUMENT IS GOING TO
2 SHOW.

3 THE WITNESS: CURTIS CAN BRING IT BACK, BUT I
4 HAVE AN APPOINTMENT THIS AFTERNOON.

5 MR. MCMAHON: JUDGE, I HAVE --

6 THE COURT: WE'LL LET YOU FINISH.

7 MR. MCMAHON: AND IF WE NEED HER BACK, SHE IS
8 ACTUALLY SUPPOSED TO HAVE CATARACT SURGERY TOMORROW.
9 THAT'S WHY I TOOK HER OUT OF ORDER TODAY.

10 I WOULD LIKE TO FINISH WITH HER, AND IF WE NEED
11 TO GET HER BACK, OF COURSE, WE CAN DO THAT. I'D JUST LIKE
12 TO BE ABLE TO LET HER GO BACK HOME.

13 THE COURT: ALL RIGHT. BRING THE JURY IN.

14 THE BAILIFF: YES, SIR.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
16 APPROXIMATELY 12:51 P.M.)

17 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

18 THE COURT: ALL RIGHT. MR. FOREMAN AND LADIES
19 AND GENTLEMEN, WITH REGARD TO THE ISSUE OF THE EXISTENCE
20 OF AN ORIGINAL DOCUMENT, WE'LL HAVE TO SORT THAT OUT LATER
21 ON THIS AFTERNOON; HOWEVER, WE WANT TO GO AHEAD AND FINISH
22 THE EXAMINATION OF THIS WITNESS RIGHT NOW, SUBJECT TO ANY
23 OTHER RELIEF YOU MIGHT NEED.

24 MS. HUDGINS: THANK YOU, YOUR HONOR.

25 THE COURT: YOU MAY PROCEED.

1 BY MS. HUDGINS

2 Q MS. RUSS, TO GET BACK TO WHAT WE WERE TALKING ABOUT,

3 I THINK WE WERE DISCUSSING WHAT YOU HAVE IN YOUR HAND

4 AS THE SMALL FORM SEVEN --

5 A YES.

6 Q -- AND THE WRITING THAT'S ON THAT, NONE OF WHICH IS

7 YOURS EXCEPT FOR POSSIBLY THE MAKE?

8 A EXHIBIT 7?

9 Q NO, MA'AM, THIS SMALL DOCUMENT.

10 A THAT'S STAMPED EXHIBIT 25.

11 Q YES, MA'AM, STATE'S EXHIBIT NO. 25, WHICH I BELIEVE

12 HAS TWO SIDES.

13 A YEAH.

14 Q AND THE FIRST SIDE IS BLOWN UP. IT'S DEMONSTRATED BY

15 WHAT HAS BEEN MARKED AS STATE'S EXHIBIT 22?

16 A WELL, MY FATHER MAY HAVE VERY WELL BEEN IN A HURRY.

17 WHEN YOU LOOK AT "H & R'S", 32'S AND 22'S LOOK

18 EXACTLY ALIKE UNLESS YOU OPEN THEM AND LOOK AT THE

19 CYLINDER AND THEN LOOK AT THE BARREL.

20 Q OKAY.

21 A AND WHEN WE WENT BACK TO THE BOOK, HE CHECKED THE

22 NUMBER CORRESPONDED TO A 32. THERE WERE TWO OF THOSE

23 BROUGHT IN, PURCHASED AT THE SAME TIME.

24 Q OKAY. AND LET'S TAKE A LOOK AT THAT. AND THAT'S

25 GOING TO BE CONTAINED IN YOUR LOGBOOK THAT I BELIEVE

1 YOU HAVE IN YOUR HAND.

2 A YES.

3 Q AND I'M GOING TO REFER TO WHAT'S BEEN MARKED AS

4 STATE'S EXHIBIT NO. 26, AND YOU HAVE YOUR LOGBOOK IN

5 YOUR HAND?

6 A YES.

7 Q AND IF WE COULD JUST START ON THE VERY TOP, MS. RUSS.

8 A YEAH.

9 Q IT LOOKS LIKE THERE'S A DATE SOMETHING THE 30TH OF

10 1960, THE PORTION OF THE BLOWN UP EXHIBIT HAS BEEN

11 CUT OFF, BUT IT TALKS ABOUT THE TYPE. IT LOOKS LIKE

12 REVOLVER?

13 A YES.

14 Q AND THEN IT SAYS MODEL NUMBER?

15 A THAT'S 929.

16 Q 929?

17 A WHICH IS A 22.

18 Q YES, MA'AM, AND THERE'S A CROSS THROUGH THERE?

19 A BECAUSE EVIDENTLY, SOMEBODY WAS IN A HURRY WHEN HE

20 CAME IN AND PUT THE WRONG NUMBER.

21 Q YES, MA'AM. SOMEBODY PUT THE WRONG NUMBER AND THEN

22 WENT BACK IN AND PUT 929?

23 A THEY'RE ALL AT THE SAME TIME BECAUSE WHEN THEY GOT --

24 IT'S 622 BECAUSE HE REENTERS IT -- HE CORRECTED THE

25 NUMBER DOWN BELOW IT.

1 Q YES, MA'AM. AND THE VERY NEXT ENTRY IS MARKED.

2 A IT WAS THE SAME THING. IT WAS MARKED 622, BUT IT WAS

3 ACTUALLY A 929.

4 Q OKAY. AND THIS IS -- WHOSE HANDWRITING -- YOU

5 BELIEVE THIS IS YOUR FATHER'S HANDWRITING?

6 A YES.

7 Q OKAY. AND THIS SOURCE AGAIN IS H & R, H & R?

8 A THERE ARE SIX GUNS, ACTUALLY.

9 Q SIX GUNS, ALL BEING H & R'S?

10 A YES.

11 Q OKAY. AND THEN WE HAVE 732, SEVEN --

12 A WELL, HE PULLED THEM DOWN OUT OF ORDER. HE SHOULD

13 ACTUALLY HAVE PUT THE FOUR -- STICK THE 22'S

14 TOGETHER.

15 Q OKAY.

16 A BUT AFTER THIS NUMBER HE USED --

17 Q MAY I TAKE YOU, MS. RUSS, DOWN TO ONE, TWO, THREE,

18 FOUR, FIVE ENTRIES IN THE COLUMNS IN YOUR BOOKS?

19 A THAT SAYS 622.

20 Q THAT SAYS 622 HERE. CAN YOU SEE WHAT'S WRITTEN

21 UNDERNEATH THAT?

22 A YES. IT WAS ANOTHER 622.

23 Q HOW ABOUT IF YOU GO TO THE LINE DIRECTLY BELOW THAT,

24 IT'S A MARKOVER OF 622, AND THERE'S SOMETHING BELOW

25 THAT, AS WELL, CORRECT?

1 A NO.

2 Q NO?

3 A ON LINE NUMBER SIX.

4 Q ONE, TWO, THREE, FOUR, FIVE, SIX; YES, MA'AM.

5 A THEY ALL SAY 622.

6 Q DOES YOUR COPY --

7 A HUH?

8 Q I'M SORRY?

9 A WHERE WE CORRECTED THE MARKING NUMBER.

10 Q YES, MA'AM. SO ON LINES FIVE AND SIX, IT LOOKS LIKE

11 SOMETHING'S BEEN WRITTEN OVER THERE?

12 A HE WROTE OVER THE TWO BECAUSE THAT'S A 22 CALIBER.

13 Q YES, MA'AM.

14 A SO THAT WOULD BE 622, I EXPECT.

15 Q SO AGAIN, LINES FIVE AND SIX, THERE ARE WRITTEN OVER

16 PORTIONS. I JUST WANT TO MAKE SURE WHAT YOU'RE

17 REFERRING TO AND WHAT I'M LOOKING AT ARE THE SAME,

18 AND IT APPEARS --

19 A YES.

20 Q IT APPEARS THERE IS SOME WRITING OVER IT?

21 A YES.

22 Q AND THE TOP TWO LINES, IT'S CROSSED OUT WITH 929.

23 A WELL, YOU SAID THAT BEFORE.

24 Q RIGHT. I'M JUST REPEATING MYSELF.

25 A YEAH.

1 Q AND THESE ARE ALL H & R. TELL US AGAIN WHAT H & R
2 IS?
3 A THE HARRINGTON AND RICHARDSON.
4 Q SO THESE WERE ERRORS? THESE WERE ERRORS IN THE BOOK?
5 A YOU MEAN THE SCRATCH OVER?
6 Q THE SCRATCH OVERS.
7 A YES.
8 Q OKAY. AND THIS IS YOUR FATHER'S HANDWRITING HERE?
9 A YES.
10 Q OKAY. NOW, IF WE GO OVER TO THE OTHER SIDE OF THE
11 BOOK, THIS IS YOUR HANDWRITING ON THIS OTHER SIDE ON
12 THE RIGHT-HAND PAGE?
13 A IT'S A MIXTURE.
14 Q OKAY. IT'S YOUR HANDWRITING. DO YOU RECOGNIZE
15 ANYONE ELSE'S HANDWRITING ON THAT PAGE, MS. RUSS?
16 A MY FATHER'S PROBABLY.
17 Q YOU THINK IT'S PROBABLY YOUR FATHER'S?
18 A YEAH.
19 Q BUT THAT'S ON THE LINE THAT HAS THE NAME EDWARD
20 FRIEBURGER, WHOSE HANDWRITING IS THAT? IS THAT YOUR
21 HANDWRITING?
22 A IT WOULD EITHER BE ONE OF THE OTHER BECAUSE NOBODY
23 HAD ACCESS TO THIS EXCEPT US.
24 Q RIGHT.
25 A AND I DON'T KNOW. THAT PROBABLY IS MINE.

1 Q YOU BELIEVE THAT IS PROBABLY YOUR HANDWRITING?

2 A UH-HUH.

3 Q SO YOU ENTERED THIS INTO YOUR LOGBOOKS AFTER YOUR

4 FATHER MADE THE SALE?

5 A YEAH.

6 Q NOW, MS. RUSS, I WANT TO TALK ABOUT ONE OTHER EXHIBIT

7 WITH YOU. THAT IS NOT THE LOGBOOK AND NOT THE FORM

8 SEVEN THAT WE REFERRED TO BUT THE OTHER PIECE OF

9 PAPER.

10 A I SEE IT.

11 Q I'LL SHOW IT TO YOU, AND THEN WE'LL PUT IT UP. THIS

12 HAS BEEN MARK AS STATE'S EXHIBIT NO. 29, I BELIEVE.

13 A YEAH.

14 Q AND ON --

15 A YOUR EXHIBIT 29.

16 Q AND AGAIN, THE ORIGINAL DOCUMENT IS NOT -- YOU DON'T

17 HAVE THE ORIGINAL DOCUMENT ON THIS, CORRECT?

18 A RIGHT.

19 Q AND WHAT --

20 A WE REFER TO THESE AS DAILY SHEETS.

21 Q THIS IS WHAT'S REFERRED TO AS A DAILY SHEET?

22 A AN ALLEN CODE (PHONETIC). IT'S NOT -- EVERYBODY

23 DOESN'T USE THAT EXPRESSION.

24 Q OKAY. SO THAT'S YOUR EXPRESSION FOR THIS FORM?

25 A YES.

1 Q AND UP AT THE DAILY SHEET UP AT THE TOP, IT'S STAMPED
2 FEBRUARY 27TH, 1961.

3 A AND RIGHT BELOW IT, WHEN BUSINESS WAS SLOW, IN ORDER
4 TO NOT MAKE EXCESS WORK, WE RAN THESE TOGETHER.

5 Q OKAY. SO RATHER THAN STAMPING FEBRUARY 27TH AND
6 FEBRUARY 28TH, SOMEBODY JUST WROTE IN FEBRUARY 28TH?

7 A YES.

8 Q AND YOU BELIEVE THAT, AS YOU EXPLAINED TO THE JURY
9 EARLIER, THE COLUMN ON THE LEFT-HAND SIDE HAS TO DO
10 WITH ITEMS THAT WERE --

11 A IT'S MONEY THAT WAS EXPENDED.

12 Q OKAY. THIS WAS MONEY THAT WAS SPENT.

13 A AND BELOW IT WERE REDEMPTIONS.

14 Q OKAY. AND THE SECOND COLUMN?

15 A WAS THE SALE, THE MONEY THAT CAME INTO THE CASH
16 REGISTER.

17 Q OKAY. AND THIS IS YOUR FATHER'S HANDWRITING, THIS
18 SECOND COLUMN?

19 A IT'S A COMBINATION.

20 Q OKAY. A COMBINATION OF YOURS AND YOUR FATHER'S.

21 A YES.

22 Q OKAY. AND MS. RUSS, I JUST WANT TO MAKE SURE I
23 UNDERSTAND YOU STRAIGHT. YOU AND YOUR FATHER WERE
24 THE ONLY EMPLOYEES.

25 A NO. WE'VE HAD --- OFF AND ON WE'VE HAD SEVERAL

1 EMPLOYEES. I DON'T KNOW WHETHER THIS WAS ONE THE
2 FIRST ONE THAT WORKED FOR US UNTIL HE DIED. SINCE
3 THEN, WE'VE HAD OTHERS OFF AND ON, BUT THEY DON'T
4 INVOLVE ANY ONE OF THESE THREE THINGS.

5 Q OKAY. BY THERE ARE OTHER -- THERE WERE OTHER
6 EMPLOYEES OF THE CAPITAL LOAN SHOP --

7 A YEAH.

8 Q -- AT THE TIME WE'RE TALKING ABOUT --

9 A I BEG YOUR PARDON?

10 Q AT THE TIME WE WERE TALKING ABOUT IN 19 --

11 A I DON'T REMEMBER.

12 Q YOU DON'T REMEMBER. THAT'S FAIR ENOUGH.

13 MS. RUSS, I'D LIKE TO TALK TO YOU A LITTLE BIT
14 ABOUT WHAT THE CITY OF COLUMBIA WAS LIKE IN 1961. I
15 BELIEVE -- I KNOW YOU SAID YOU WERE A GRADUATE OF
16 COLUMBIA HIGH SCHOOL. DID YOU ATTEND THE UNIVERSITY,
17 I BELIEVE, THE UNIVERSITY OF SOUTH CAROLINA?

18 A YEAH.

19 Q AND YOU ALSO WORKED AT YOUR FATHER'S PAWNSHOP AFTER
20 ATTENDING THE UNIVERSITY?

21 A (THE WITNESS NODS IN THE AFFIRMATIVE).

22 Q OKAY.

23 A IN FACT, I DID NOT FINISH.

24 Q YES, MA'AM.

25 A AND THEN I WORKED FULL-TIME. THAT APPARENTLY WAS

1 AFTER MR. DONALD DIED. HE WAS OUR ORIGINAL EMPLOYEE.

2 Q WHAT WAS HIS NAME?

3 A CAROL BILL DONALD.

4 Q MR. DONALD? HE WAS AN EMPLOYEE OF YOUR FATHER'S

5 BUSINESS, AS WELL?

6 A UH-HUH.

7 Q TELL US A LITTLE BIT ABOUT THE CUSTOMERS THAT YOU HAD

8 IN THE PAWNSHOP. FORT JACKSON WAS HERE IN COLUMBIA.

9 WOULD YOU SAY --

10 A THERE WAS A CROSS-SECTION. I COULDN'T TELL YOU WHAT

11 PERCENTAGE, BECAUSE I DON'T REMEMBER.

12 Q YES, MA'AM. WOULD IT BE FAIR TO SAY THAT THERE WERE

13 A GREAT NUMBER OF SOLDIERS FROM FORT JACKSON WHO

14 FREQUENTED YOUR PAWNSHOP?

15 A SOME CAME IN TO LOOK AROUND AND SOME CAME IN TO

16 PURCHASE. DON'T ASK ME THE PERCENTAGE, BECAUSE I

17 DON'T KNOW.

18 Q OKAY. I UNDERSTAND THAT. I WON'T ASK YOU THE

19 PERCENTAGE. WAS THAT A NORMAL CUSTOMARY THING FOR

20 SOLDIERS FROM THE FORT TO DO?

21 A EVERYBODY WHO HAS NEVER BEEN IN A PAWNSHOP COMES INTO

22 ONE. THEY'RE JUST CURIOUS.

23 Q YES, MA'AM.

24 A SOME OF THEM COULD HAVE BEEN CUSTOMERS AND SOME OF

25 THEM COULD HAVE BEEN PEOPLE THAT WERE JUST

1 INQUISITIVE.

2 Q RIGHT. YOU DON'T REMEMBER ANYTHING ABOUT THE DETAILS

3 OF THE FEBRUARY 28TH, 1961 --

4 A ABSOLUTELY NOT.

5 Q YOU DON'T REMEMBER ANYTHING ABOUT THE DETAILS OF THIS

6 SALE THAT TOOK PLACE?

7 A NO. I CAN IDENTIFY HANDWRITINGS --

8 Q YES, MA'AM.

9 A -- TO A DEGREE, BUT IF YOU GET IN A HURRY AND WRITE

10 RAPIDLY --

11 Q YES, MA'AM.

12 A -- THEN I MIGHT NOT COULD IDENTIFY THAT.

13 MS. HUDGINS: YES, MA'AM.

14 BEG THE COURT'S INDULGENCE FOR ONE MOMENT, YOUR

15 HONOR.

16 (PAUSE).

17 BY MS. HUDGINS

18 Q MS. RUSS, I HAVE TWO MORE QUESTIONS FOR YOU. I'M

19 GOING TO GO BACK TO THE FRONT OF THAT FORM. WHAT I'M

20 REFERRING TO IS FORM SEVEN, WHAT'S BEEN MARKED AS

21 STATE'S EXHIBIT 25. THAT LITTLE CARD.

22 A YES, MA'AM.

23 Q AND I AM NOW REFERRING TO WHAT'S MARKED AS STATE'S

24 EXHIBIT NO. 22.

25 WHEN YOU SOLD -- OR WHEN YOUR DAD'S PAWNSHOP

1 SOLD ITEMS, I BELIEVE YOU STATED THAT PEOPLE HAD TO
 2 SIGN FOR THOSE ITEMS; IS THAT CORRECT?
 3 A YES.
 4 Q OKAY. BUT YOU'RE NOT SURE WHERE THE ADDRESS MAY HAVE
 5 COME FROM?
 6 A NO.
 7 Q THAT MAY HAVE COME FROM A DIFFERENT SOURCE?
 8 A IT PROBABLY -- WELL, WE ALWAYS REQUIRED I.D.
 9 Q YES, MA'AM.
 10 A HE MAY WELL HAVE GIVEN HIS DRIVER'S LICENSE AND
 11 ADDRESS.
 12 Q OKAY.
 13 A THEY'RE SUPPOSED TO, THE OTHER ONE COULD HAVE BEEN
 14 FORT JACKSON.
 15 Q OKAY. ALL RIGHT. THANK YOU.
 16 (PAUSE.)
 17 MS. RUSS, BACK IN 1961, I.D. CARDS SOMETIMES
 18 DIDN'T HAVE THOSE I.D. PICTURES, CORRECT?
 19 A I DON'T KNOW.
 20 Q DRIVER'S LICENSE BACK IN 1961, CAN YOU REMEMBER
 21 WHETHER OR NOT THOSE HAD PHOTOGRAPHS ON THEM OR NOT?
 22 A NO.
 23 Q OKAY.
 24 A BECAUSE I THINK I HAD A METAL ONE THAT DID NOT HAVE A
 25 PICTURE ON IT.

1 Q SO YOU HAD A METAL I.D. CARD THAT DID NOT HAVE A
2 PHOTOGRAPH ON IT?

3 A I HAD A METAL DRIVER'S LICENSE, WHICH IS APPARENTLY
4 WHERE THIS CAME FROM. I DON'T KNOW.

5 MS. HUDGINS: OKAY. THANK YOU, MS. RUSS. I
6 DON'T HAVE ANY MORE QUESTIONS.

7 THE WITNESS: YOU'RE WELCOME.
8 THANK YOU.

9 THE COURT: REDIRECT, MR. SOLICITOR?

10 MR. MCMAHON: NOTHING ON REDIRECT, YOUR HONOR.
11 THANK YOU.

12 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

13 ALL RIGHT. MR. FOREMAN, LADIES AND GENTLEMEN OF
14 THE JURY, WE'LL ASK YOU TO GO TO LUNCH NOW. I'D ASK YOU
15 TO BE BACK AT 2:15. DON'T BEGIN ANY COMMENT OR
16 DISCUSSIONS OR READ, WATCH, OR LISTEN TO ANY ACCOUNTS OF
17 THE TRIAL.

18 (WHEREUPON, THE JURY LEFT OPEN COURT AT
19 APPROXIMATELY 1:06.)

20 THE COURT: ALL RIGHT. WHAT'S YOUR PLAN ON THE
21 ORIGINAL DOCUMENT?

22 MS. CAMPBELL: WE HAVE OUR PERSON.

23 THE COURT: WHAT DO YOU WANT TO DO?

24 MS. CAMPBELL: IT MIGHT BE SOMETHING WE COULD DO
25 OUTSIDE THE PRESENCE OF THE JURY.

1 THE COURT: OKAY. WERE YOU INTENDING TO CALL
2 HIM OR JUST FIND OUT?

3 ALL RIGHT. WHAT IS HIS NAME?

4 MR. MCMAHON: CURTIS BOONE.

5 THE COURT: ALL RIGHT. MR. BOONE.

6 SHOW HIM THE DOCUMENT.

7 THE CLERK: IF YOU'D PLACE YOUR LEFT A HAND ON
8 THE BIBLE, RAISE YOUR RIGHT.

9 CURTIS BOONE (IN CAMERA), AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 THE CLERK: STATE YOUR FULL NAME, SPELL YOUR
12 LAST NAME.

13 THE WITNESS: MY NAME IS CURTIS BOONE,
14 B-O-O-N-E.

15 THE COURT: SHOW HIM THE DOCUMENT, MR.
16 SOLICITOR.

17 DIRECT EXAMINATION:

18 BY MR. MCMAHON

19 Q I WANT TO SHOW YOU THESE VARIOUS DOCUMENTS, STATE'S
20 EXHIBIT NUMBER 25. DO YOU RECOGNIZE THAT DOCUMENT?

21 A I'VE SEEN PHOTOCOPIES OF IT.

22 Q DO YOU HAVE THE ORIGINAL?

23 A NO, SIR.

24 Q HAVE YOU BEFORE ASKED ABOUT THE ORIGINAL?

25 A YES, SIR.

1 Q HAVE YOU BEEN ASKED BY ME ABOUT THE ORIGINAL?

2 A YES, SIR.

3 Q HAVE YOU BEEN ASKED BY CHIEF O'NEILL ABOUT THE

4 ORIGINAL?

5 A YES, SIR.

6 Q HAVE YOU BEEN ASKED BY DAVE MCDUGAL, A PRIVATE

7 INVESTIGATOR FOR THE DEFENSE, ABOUT THE ORIGINAL?

8 A YES.

9 Q HAVE YOU BEEN ASKED BY ANYBODY ELSE WITH THE DEFENSE

10 ABOUT THE ORIGINAL?

11 A THE RED HAired GENTLEMEN.

12 Q THE RED HAired GENTLEMEN? OKAY. HE'S NOT THE

13 DEFENSE.

14 A OKAY.

15 Q IF HE'S ACTING LIKE THE DEFENSE, I NEED TO STRAIGHTEN

16 THAT OUT RIGHT NOW.

17 ARE YOU TIRED OF BEING ASKED ABOUT THE ORIGINAL?

18 A ABSOLUTELY.

19 Q DO YOU HAVE THE ORIGINAL?

20 A NO, SIR.

21 Q STATE'S EXHIBIT NO. 28, HAVE YOU BEEN ASKED FOR THE

22 ORIGINAL?

23 A YES.

24 Q BY ME?

25 A YES.

1 Q CHIEF O'NEILL? J
2 A YES.
3 Q PRIVATE INVESTIGATOR MCDOUGAL?
4 A YES.
5 Q MR. SCOTT?
6 A YES.
7 Q ABOUT -- DO YOU HAVE THE ORIGINAL?
8 A NO, SIR.
9 Q ARE YOU TIRED OF GETTING ASKED ABOUT THE ORIGINALS?
10 A ABSOLUTELY.
11 Q IF YOU HAD THE ORIGINALS, CURTIS, WOULD YOU TURN THEM
12 OVER TO US?
13 A SURE.
14 Q AT YOUR REQUEST?
15 A YES.
16 Q JUST AS YOU DID THIS BOOK?
17 A YES.
18 Q AND YOU KEPT THIS BOOK UNTIL TODAY, AS A MATTER OF
19 FACT, RIGHT?
20 A YES.
21 Q I CAME UP AND LOOKED AT IT AS THE ORIGINAL, LEFT IT
22 WITH YOU. AT A LATER TIME, THE DEFENSE -- OR MAYBE
23 BEFORE I GOT THERE, THE DEFENSE ALSO LOOKED AT IT,
24 CORRECT?
25 A YES.

1 Q SO ALL THE ORIGINALS YOU HAVE, YOU HAVE PROVIDED TO
2 BOTH THE STATE AND TO THE DEFENSE?

3 A YES.

4 THE COURT: MS. HUDGINS?

5 BY MR. MCMAHON

6 Q WERE THERE ANY OTHER DOCUMENTS BESIDES THE ONE --

7 THE COURT: THAT'S THE ONLY ONE.

8 MR. MCMAHON: WELL, THERE IS -- NO, THAT'S
9 RIGHT. THANK YOU.

10 THE COURT: COULD IT BE HE'S JUST MISTAKEN?

11 MS. HUDGINS: I JUST FELT LIKE I NEEDED TO
12 VERIFY OR CHECK IT OUT, YOUR HONOR.

13 THE COURT: DO YOU HAVE ANY ORIGINAL DOCUMENTS
14 BETWEEN THE YEARS 1958 AND THE YEARS 1965 IN YOUR CONTROL?

15 THE WITNESS: NO, SIR.

16 THE COURT: POSSESSION, BURIED SOMEWHERE,
17 ANYWHERE?

18 THE WITNESS: NO, SIR.

19 WITNESS RUSS: EXCUSE ME.

20 THE COURT: YES, MA'AM.

21 WITNESS RUSS: DO YOU MEAN DAILY SHEETS OR
22 POLICE REPORTS?

23 THE COURT: THAT ONE LITTLE CARD THAT HAS THE
24 WRITE OVER ON THE CALIBER.

25 WITNESS RUSS: WE DO HAVE THAT.

1 THE COURT: WOULD YOU TELL HIM, PLEASE, WHERE IT
2 WOULD BE SO HE CAN GO FIND IT?

3 WITNESS RUSS: IN OUR POSSESSION. IT'S IN THAT
4 METAL BOX, THAT YELLOW CARD.

5 WITNESS BOONE: METAL BOX?

6 WITNESS RUSS: YEAH, WHERE THAT COPY CAME FROM.

7 WITNESS BOONE: THAT YELLOW BOX HAS THE 4473
8 FORMS AND A COUPLE OF SPIRAL BOUND BOOKS.

9 WITNESS RUSS: NO. THAT'S NOT WHAT I'M TALKING
10 ABOUT.

11 WITNESS BOONE: IT HAS THE CARDS IN IT.

12 WITNESS RUSS: YOU KNOW WHERE THOSE YELLOW CARDS
13 ARE FILED?

14 WITNESS BOONE: I'VE LOOKED ALL OVER THE STORE.

15 WITNESS RUSS: THEY'RE IN THAT METAL BOX
16 UNDERNEATH THE FORM FOUR IN THE BACK, BECAUSE THIS IS
17 WHERE WE KEEP THEM. THAT'S WHERE THEY GOT THIS ONE FROM.

18 WITNESS BOONE: A SMALL METAL BOX?

19 WITNESS RUSS: HUH?

20 WITNESS BOONE: A SMALL OR LARGE ONE?

21 WITNESS RUSS: THEY'RE ABOUT THAT BIG
22 (INDICATING).

23 WITNESS BOONE: I WOULD HAVE SEEN IT IN THERE.

24 WITNESS RUSS: IN FACT, YOU TOOK IT OUT AND
25 SHOWED IT TO ME.

1 WITNESS BOONE: NO, NOT THE CARD. I HAVEN'T
2 SEEN THE CARD SINCE --

3 THE COURT: LET ME ASK YOU THIS NOW, THAT'S NOT
4 HER DOCUMENT. IT WAS PROVIDED AND SUBMITTED TO THE
5 POLICE. THEY HAD THE DOCUMENT, THE ORIGINAL DOCUMENT.

6 MR. MCMAHON: THE POLICE?

7 THE COURT: YES. WHERE DID YOU GET IT FROM?

8 MR. MCMAHON: THE POLICE HAD THE VERIFAX COPY
9 OUT OF THE POLICE FILE.

10 THE COURT: OKAY.

11 MR. MCMAHON: WE NEVER HAD THE ORIGINAL COPY.
12 THEN WE HAD A COPY OF THE BOOK.

13 WHEN I GO TO TALK TO MR. BOONE, HE HAS HIS
14 ORIGINAL BOOKS, STATE'S EXHIBIT -- I THINK IT'S 29, BUT
15 THERE WAS NEVER AN ORIGINAL COPY.

16 IT WAS ONLY THIS -- THERE WAS NEVER AN ORIGINAL.
17 IT'S ONLY WHAT'S NOTED AS A VERIFAX COPY THAT WAS IN THE
18 POLICE FILE FROM 40 YEARS AGO. THAT'S WHAT WE GOT FROM
19 THE POLICE FILE.

20 THERE WAS A COPY OF THE PAGE, THE RELEVANT PAGE
21 OF THIS BOOK ALSO IN THE POLICE FILE, BUT THIS BOOK,
22 STATE'S 27, WAS STILL IN HIS POSSESSION--UP UNTIL TODAY.

23 THE COURT: MS. HUDGINS, I DON'T KNOW WHAT ELSE
24 I CAN DO FOR YOU. I MEAN, I CAN'T --

25 WITNESS RUSS: I'M SORRY IF I MISLED CURTIS INTO

1 THINKING I HAD SEEN THE CARD.

2 WITNESS BOONE: I CAN BRING -- WE HAVE TWO, YOU
3 KNOW, FOOT LOCKER BOXES THAT HAS ALL OF OUR GUN RECORDS IN
4 IT, EVERYTHING GUN RELATED, BUT I'VE BEEN -- A.T.F.
5 FREQUENTLY CALLS US TO LOOK FOR SOMETHING, OLDER CASES,
6 OLDER GUN SALES.

7 I'VE SCANNED ALL OF THOSE LOTS OF TIMES. I HAD
8 NEVER SEEN THAT LITTLE CARD UNTIL HE SHOWED ME A COPY OF
9 IT. THAT'S WHY I WAS WONDERING WHERE HE GOT THAT FROM.

10 MR. MCMAHON: AND I'LL BE GLAD TO GIVE HIS HONOR
11 THE ORIGINAL POLICE FILE TO LOOK, BUT ALL I'VE EVER SEEN
12 IS THE VERIFAX COPY OR COPIES.

13 THE COURT: MS. HUDGINS?

14 MS. HUDGINS: MY CONCERN THEN BECOMES, JUDGE, I
15 BELIEVE MS. RUSS' TESTIMONY WAS THIS WAS SOMETHING THAT
16 WAS REQUIRED TO BE SUBMITTED TO THE COLUMBIA POLICE
17 DEPARTMENT. DOESN'T THAT TAKE IT OUT OF BUSINESS RECORDS
18 EXCEPTION?

19 THE COURT: NO.

20 MR. MCMAHON: NO, IT'S HERS.

21 THE COURT: THAT'S NOT REQUIRED, BUT SHE
22 SUBMITTED IT. IT WAS SUBMITTED. IT'S BEEN THERE FOR OVER
23 40 YEARS.

24 MS. HUDGINS: I THINK IT WAS SUBMITTED AS A
25 RESULT OF THEIR INVESTIGATION, BUT IT WASN'T IN THE COURSE

1 OF NORMAL BUSINESS.

2 MR. MCMAHON: I MEAN, SHE'S AUTHENTICATED THE
3 RECORDS.

4 THE COURT: THERE'S NO QUESTION THE DOCUMENT HAS
5 BEEN AUTHENTICATED BY HER. YOU DON'T HAVE TO WORRY ABOUT
6 THE ANCIENT DOCUMENT RULE OR THE BUSINESS RECORDS
7 EXCEPTION.

8 MS. HUDGINS: WELL, I --

9 THE COURT: AND SHE GAVE YOU AN EXPLANATION AS
10 TO WHY THE CALIBER WAS DIFFERENT.

11 MS. HUDGINS: I UNDERSTAND.

12 THE COURT: I DON'T KNOW OF ANY OTHER WAY -- I
13 DON'T HAVE ANY IDEA HOW TO HELP YOU FURTHER. HE SAYS HE'S
14 BEEN THROUGH IT AND THROUGH IT AND THROUGH IT. OKAY.

15 AND EVEN IF IT DID EXIST, THAT COPY HAS BEEN IN
16 EXISTENCE FOR MORE THAN 20 YEARS, BEEN IN THE CUSTODY OF
17 THE POLICE, SO IT'S OBVIOUS -- IT PROBABLY WAS IN THEIR
18 POSSESSION FOR 40 YEARS SO I DON'T KNOW. ALL RIGHT.
19 THANK YOU.

20 WE'LL BREAK FOR LUNCH. BE BACK AT 2:15.

21 MR. MCMAHON: MAY MS. RUSS BE EXCUSED?

22 THE COURT: ANY OBJECTION?

23 MS. HUDGINS: YES, YOUR HONOR, THAT'S FINE.

24 MR. MCMAHON: THANK YOU.

25 THE COURT: ALL RIGHT. THANK YOU.

1 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

2 THE COURT: OKAY. ARE YOU READY?

3 MR. DELGADO: YES, SIR. MY UNDERSTANDING IS
4 THAT THE NEXT WITNESS FOR THE STATE IS MR. HARMON WHO
5 TESTIFIED YESTERDAY.

6 THE COURT: RIGHT.

7 MR. DELGADO: I KNOW THE COURT EXCLUDED THAT
8 TESTIMONY. I'M JUST TRYING TO FIGURE OUT IF THAT'S THE
9 ONLY THING HE HAS EVER BEEN A PART OF. I'M JUST TRYING TO
10 SEE WHAT ELSE HE IS GOING TO RELAY.

11 THE COURT: I DIDN'T EXCLUDE ALL OF HIS
12 TESTIMONY. WHAT'S LEFT OF IT, PART OF IT IS THE CHAIN OF
13 CUSTODY, UNLESS YOU WANT TO CONCEDE THE CHAIN OF CUSTODY.
14 IT GETS THROUGH THAT WITNESS.

15 MR. DELGADO: WHAT? I'M SORRY, YOUR HONOR, I
16 THOUGHT -- I WAS TALKING.

17 THE COURT: HOW ELSE ARE YOU GOING TO PUT YOUR
18 GUN IN?

19 MR. MCMAHON: I TRIED NOT TO.

20 THE COURT: I UNDERSTAND THAT.

21 MR. DELGADO: MY ISSUE WAS MR. HARMON. I
22 THOUGHT BECAUSE OF THE MIRANDA PROBLEM THAT NONE OF THAT
23 TESTIMONY WAS COMING IN. IF I MISUNDERSTOOD, I STAND
24 CORRECTED BY THE COURT.

25 THE COURT: NO. THERE'S NO MIRANDA ISSUE ON THE

1 STOP.

2 MR. DELGADO: NO, NO. WE'RE CONFUSING HIM WITH
3 THE OTHER. NOT MR. MEREDITH, NOT THE TROOPER FROM
4 TENNESSEE.

5 THE COURT: OH HARMON, HARMON.

6 MR. DELGADO: YES.

7 THE COURT: THE S.L.E.D. AGENT.

8 MR. DELGADO: THAT'S COFRECT.

9 THE COURT: I'M SORRY.

10 MR. DELGADO: THAT'S ALL RIGHT.

11 THE COURT: I DON'T KNOW.

12 MR. MCMAHON: I'M NOT GOING INTO THE STATEMENT.

13 THE COURT: ALL RIGHT.

14 MR. MCMAHON: I'M GOING INTO THE FACT THAT HE
15 WENT DOWN AND TALKED WITH HIM. YOU SAID THAT I COULD SAY
16 HE WENT TO TAKE A STATEMENT, BUT I COULDN'T GO INTO THE
17 SUBSTANCE OF THE STATEMENT. HE WENT TO THE SCENE. I'M
18 GOING INTO ALL THE SCENE WITH MR. HARMON.

19 THE COURT: WELL, WHY SHOULD HE BE PERMITTED TO
20 TALK ABOUT WHETHER HE TALKED TO HIM IF THE STATEMENT IS
21 NOT ADMISSIBLE?

22 MR. MCMAHON: I THOUGHT YOU TOLD ME I COULD.

23 THE COURT: WELL, COULD OR COULD NOT?

24 MR. MCMAHON: COULD.

25 THE COURT: I CAN SEE THE RELEVANCE TO THAT.

1 MR. MCMAHON: OH, I'M STILL GOING TO THE SCENE.

2 THE COURT: OH, I UNDERSTAND THAT.

3 MR. MCMAHON: SURE.

4 THE COURT: LET ME ALSO TELL YOU, I WORRY AND
5 YOUR -- WELL, WE'LL TAKE IT UP LATER.

6 YOU KNOW, THERE WAS A LIVE WITNESS ON THE STAND
7 EARLIER THIS MORNING WHO WAS PRESENT WHEN THE INVENTORY
8 WAS TAKEN ON THE EXHIBITS YOU'RE WORRIED ABOUT, THE
9 INCIDENT REPORT. MR. REVETTA WAS HERE THIS MORNING,
10 SUBJECT TO CROSS-EXAMINATION AND WAS THERE WHEN THE CAR
11 WAS --

12 MR. DELGADO: NO, HE SAID HE LEFT.

13 THE COURT: I UNDERSTAND HE SAID HE WAS THERE.

14 MR. DELGADO: I UNDERSTAND. SO IN OTHER
15 WORDS --

16 THE COURT: I HAVE OTHER GROUNDS FOR DEALING
17 WITH IT. I'M JUST TELLING YOU HE WAS THERE. SEE, I DON'T
18 KNOW HOW YOU ARE TRYING THE CASE. I CAN'T ANTICIPATE WHAT
19 YOU'RE GOING TO DO.

20 HAD I KNOWN THAT THIS WAS COMING LATER, I WOULD
21 HAVE MADE HIM GO INTO IT AT THAT POINT.

22 MR. DELGADO: I SEE, BUT I DON'T THINK HE COULD
23 IDENTIFY ANYTHING THAT WAS IN THAT CAR OR ANYTHING
24 RELATING TO THE METER.

25 THE COURT: WELL, I KNOW THAT. SEE, NOBODY

1 ASKED.

2 MR. DELGADO: NOBODY ASKED. ALL RIGHT. THANK
3 YOU.

4 THE COURT: BRING THE JURY IN.

5 THE BAILIFF: YES, SIR.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 2:22.)

8 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

9 THE COURT: MR. SOLICITOR, YOU CAN CALL YOUR
10 NEXT WITNESS.

11 MR. MCMAHON: THE STATE CALLS L. B. HARMON.

12 L. B. HARMON, AFTER BEING DULY SWORN, TESTIFIED AS
13 FOLLOWS:

14 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
15 NAME.

16 DIRECT EXAMINATION:

17 BY MR. MCMAHON

18 Q GOOD AFTERNOON, MR. HARMON.

19 A GOOD AFTERNOON, SIR.

20 Q COULD YOU TELL THE JURY YOUR NAME, PLEASE, SIR?

21 A LAWRENCE BURTS HARMON, H-A-R-M-O-N.

22 Q MR. HARMON, HOW OLD ARE YOU, SIR?

23 A EIGHTY-SEVEN PLUS.

24 Q OKAY. AND WHERE DO YOU LIVE, MR. HARMON?

25 A HORRELL HILL.

1 Q AND HOW LONG HAVE YOU LIVED IN HORRELL HILL?
2 A ALL MY LIFE EXCEPT ABOUT FOUR YEARS WHEN I WAS AWAY
3 IN THE SERVICE.
4 Q AND WHAT PERIOD OF TIME WERE YOU AWAY IN THE SERVICE,
5 MR. HARMON?
6 A '41 TO '46.
7 Q AND WHAT BRANCH OF SERVICE WERE YOU IN, SIR?
8 A F. CORP.
9 Q NOW, WHEN YOU SAY YOU LIVE IN HORRELL HILL,
10 SPECIFICALLY WHERE IS YOUR HOME LOCATED AT?
11 A JUST ON THE LEFT BEFORE YOU REACH THE RED LIGHT, THE
12 STOPLIGHT AT THE SHOPS OF HORRELL HILL.
13 Q AND HORRELL HILL IS ON WHAT HIGHWAY?
14 A [REDACTED].
15 Q IS THAT [REDACTED] HIGHWAY?
16 A YES, SIR.
17 Q YOU GO OUT TO [REDACTED] HIGHWAY, AND THERE'S A FLASHING
18 LIGHT OR A STOPLIGHT NOW I BELIEVE --
19 A RIGHT.
20 Q -- AND YOU LIVE RIGHT INSIDE OF THAT STOPLIGHT,
21 CORRECT?
22 A YES, SIR.
23 Q AND YOU LIVED THERE ALL OF YOUR LIFE?
24 A EXCEPT FOR THE TIME I LIVED IN NEW YORK.
25 Q NOW, ARE YOU MARRIED?

1 A SIR?

2 Q ARE YOU MARRIED?

3 A YES, SIR.

4 Q AND YOU SAID THAT WITH GREAT EXPRESSION, MR. HARMON.

5 A YES, SIR.

6 Q HOW LONG HAVE YOU BEEN MARRIED, SIR?

7 A SOON IT WILL BE 59 YEARS.

8 Q AND WHERE IS YOUR WIFE FROM?

9 A BROOKLYN, NEW YORK.

10 Q SO YOU BROUGHT HER FROM BROOKLYN, NEW YORK TO HORRELL

11 HILL, SOUTH CAROLINA?

12 A SHE KIND OF SENT ME, SIR.

13 Q AND THAT'S WORKED OUT ALL RIGHT, I TAKE IT?

14 A YES, SIR.

15 Q DO YOU HAVE ANY CHILDREN?

16 A YES, SIR.

17 Q HOW MANY CHILDREN DO YOU HAVE, SIR?

18 A TWO LIVING.

19 Q WHERE ARE YOUR CHILDREN AT? THEY'RE GROWN?

20 A YES, SIR.

21 Q WHERE ARE THEY AT?

22 A MY SON IS LIVING IN THOMASVILLE, GEORGIA. MY

23 DAUGHTER LIVES HERE IN COLUMBIA.

24 Q NOW, MR. HARMON, YOU'RE RETIRED NOW?

25 A YES, SIR.

1 Q WHAT DID YOU DO JUST PRIOR TO YOUR RETIREMENT, AND
2 WHEN DID YOU RETIRE, SIR?
3 A I BELIEVE IT WAS AROUND '70 SOME ODD, BUT I WAS
4 WORKING FOR SCHOOL DISTRICT I TEACHING.
5 Q SCHOOL TEACHING?
6 A YES, TEACHER.
7 Q AND YOU'RE TALKING ABOUT RICHLAND SCHOOL DISTRICT I?
8 A YES.
9 Q WHERE DID YOU TEACH AND WHAT TYPE OF COURSES?
10 A THEY CALLED IT A TRADE SCHOOL. IT WAS A CAREER
11 CENTER IS WHAT IT WAS. I TAUGHT BUILDING
12 CONSTRUCTION.
13 Q NOW, PRIOR TO THAT, WERE YOU EVER A LAW ENFORCEMENT
14 OFFICER?
15 A YES, SIR.
16 Q FOR WHAT PERIOD OF TIME WERE YOU AN OFFICER,
17 MR. HARMON?
18 A IN THE '40S TO '60S.
19 Q NOW, WHAT DIFFERENT AGENCIES DID YOU WORK FOR?
20 A CONSTABLE, MAGISTRATE'S CONSTABLE, SHERIFF'S OFFICE,
21 S.L.E.D.
22 Q AND THE SHERIFF'S OFFICE, WAS THAT THE RICHLAND
23 COUNTY SHERIFF'S DEPARTMENT?
24 A YES. BACK THEN I WORKED UNDER GOVERNOR BANKWOOD FOR
25 A WHILE, IT WAS A STATE.

1 Q A STATE CONSTABLE?

2 A A STATE CONSTABLE, YES, SIR.

3 Q AND THAT WAS GOVERNOR BLACKWOOD?

4 A YES, SIR.

5 Q WHEN WAS THAT, SIR?

6 A IN THE '30S.

7 Q IN THE '30S. SO THAT WAS EVEN BEFORE YOU WENT INTO

8 THE MILITARY; IS THAT CORRECT?

9 A YES, YES.

10 Q NOW, MR. HARMON, I WANT TO GO BACK TO EARLY 1961.

11 BEFORE YOU A S.L.E.D. AGENT THEN?

12 A YES, SIR.

13 Q AND WERE YOU LIVING IN HORRELL HILL AND ASSIGNED TO

14 THIS GENERAL AREA OF SOUTH CAROLINA AS FAR AS

15 ASSISTING OTHER AGENCIES?

16 A I WAS, YES.

17 Q DID YOU HAVE AN OCCASION IN THE FIRST PART OF MARCH,

18 '61, SPECIFICALLY MARCH 3RD, TO GO TO A LOCATION IN

19 RICHLAND COUNTY WHERE A BODY HAD BEEN LOCATED?

20 A YES, SIR.

21 Q AND WHERE WAS THIS LOCATION THAT YOU WENT TO,

22 MR. HARMON?

23 A IT WAS ON 601, JUST A COUPLE OF HUNDRED YARDS BEYOND

24 THE RAILROAD AT WATEREE, SOUTH CAROLINA, SIR, 601.

25 Q NOW, WHERE WOULD THAT LOCATION BE IN RELATIONSHIP TO

1 BLUFF ROAD? ARE YOU FAMILIAR WITH BLUFF ROAD?

2 A YES, SIR; YES, SIR.

3 Q WHERE WOULD THIS 200 YARDS BE WITH THE RAILROAD

4 TRACKS TO THE INTERSECTION OF BLUFF ROAD AND 601?

5 A THE BLUFF ROAD INTERSECTION, I'D SAY ABOUT A QUARTER

6 OF A MILE BEFORE YOU GET TO WATEREE WHERE THE

7 RAILROAD COMES THROUGH BY WATEREE.

8 Q SO IF YOU GO DOWN BLUFF ROAD AND YOU COME TO THE

9 INTERSECTION OF 601, WOULD YOU GO TO THE RIGHT ON 601

10 TO GO TO THIS LOCATION YOU TALKED ABOUT?

11 A YES, SIR; YES, SIR.

12 Q IS THERE A PARTICULAR STORE, AN ESTABLISHMENT THAT

13 WAS THERE IN 1961?

14 A YES, SIR.

15 Q AND WHAT TYPE OF ESTABLISHMENT WAS IT?

16 A WELL, THEY HAD ONE OLD GAS PUMP UP, I THINK, IF I

17 REMEMBER WELL. THEY HAD JUST SOME VERY SMALL AMOUNT

18 OF GROCERIES.

19 Q SO IT WAS A COUNTRY STORE?

20 A YES, SIR.

21 Q AND THEN YOU SAY THERE WAS A RAILROAD TRACK?

22 A YES, SIR.

23 Q AND YOU SAID IT WAS ABOUT 200 YARDS BEYOND THE

24 RAILROAD TRACKS?

25 A SOMETHING OF THAT NATURE, YES, SIR.

1 Q AND WHAT DID YOU GO DOWN THERE FOR, MR. HARMON?

2 A AS A RESULT OF A CALL FROM THE SHERIFF'S OFFICE, I
3 WENT DOWN THERE. THERE WAS A MAN LAYING ON THE SIDE
4 OF THE ROAD DEAD.

5 Q I WANT TO SHOW YOU SOME PHOTOGRAPHS, STATE'S FOR
6 IDENTIFICATION, 2 -- 1, 2, 3, 4 AND 5.

7 DO YOU RECOGNIZE THESE PHOTOGRAPHS, MR. HARMON?

8 A YES, SIR.

9 Q DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT
10 THAT AREA WHERE YOU WENT TO ON THE MARCH 3RD OF 1961?

11 A YES, SIR, THAT'S IT.

12 Q AS A MATTER OF FACT, YOU RECOGNIZE SOME OF THE --

13 A PEOPLE.

14 Q -- THE PEOPLE IN SOME OF THESE PHOTOGRAPHS?

15 A I DO.

16 MR. MCMAHON: YOUR HONOR, I WOULD NOW OFFER 1
17 THROUGH 5 INTO EVIDENCE.

18 THE COURT: ANY OBJECTION?

19 MR. DELGADO: IF I COULD SEE THOSE JUST FOR A
20 SECOND?

21 (PAUSE).

22 WITHOUT OBJECTION.

23 MR. MCMAHON: WITHOUT OBJECTION 1 THROUGH 5.

24 (WHEREUPON, STATE'S EXHIBITS NOS. 1 - 5 WERE
25 ADMITTED INTO EVIDENCE.)

1 BY MR. MCMAHON

2 Q NOW, MR. HARMON, I'M NOT GOING TO ASK YOU TO GET

3 DOWN. I MAY HAVE TO GO BACK AND FORTH WITH THE JURY.

4 STATE'S EXHIBIT NUMBER 1, THIS ROAD THAT I'M POINTING

5 TO HERE --

6 A YES, SIR.

7 Q -- WHAT ROADWAY IS THAT?

8 A THAT IS 601.

9 Q AND WHERE I'M POINTING TO THERE?

10 A THAT'S THE STORE.

11 Q THAT'S THE STORE.

12 A AT WATEREE.

13 Q SO THE MAIN ROAD THAT YOU SEE IN THIS PICTURE WITH

14 THE BRIDGE, THAT'S HIGHWAY 601, CORRECT?

15 A YES, SIR.

16 Q AND BACK UP HERE, THAT IS WATEREE COUNTRY STORE; IS

17 THAT CORRECT?

18 A YES, SIR; YES, SIR.

19 Q NOW, I SEE A GROUP OF INDIVIDUALS UP ON THE BANK. DO

20 YOU RECOGNIZE ANY OF THOSE OFFICERS?

21 A YES. I RECOGNIZE TWO OR THREE OF THEM.

22 Q AND WHAT WERE THEIR OCCUPATIONS?

23 A ONE WAS THE SHERIFF, ONE WAS CHIEF DEPUTY. ALSO, THE

24 CORONER CAME IN THERE PRETTY SOON. I DON'T KNOW

25 WHETHER HE WAS IN THAT PICTURE THERE OR NOT.

1 Q WHO WAS THE CORONER?
2 A CECIL WILES.
3 Q NOW, IF I LOOK RIGHT HERE, WHAT IS THAT OBJECT RIGHT
4 THERE ON STATE'S EXHIBIT 1?
5 A THAT'S THE DEAD MAN, MR. ORNER.
6 Q NOW, EVEN TODAY, 2001, DID YOU INDEPENDENTLY REMEMBER
7 THE LAST NAME OF THE VICTIM?
8 A MR. ORNER.
9 Q YOU REMEMBERED THAT ON YOUR OWN?
10 A YES, SIR, ON MY OWN, YES, SIR.
11 Q AND WHAT WAS HIS OCCUPATION, MR. HARMON?
12 A CAB DRIVER, ANYTHING ELSE I DON'T KNOW.
13 Q AND IF I GO NOW, LET'S SAY, TO STATE'S EXHIBIT NO. 2,
14 AGAIN, DO YOU SEE CERTAIN INDIVIDUALS UP HERE?
15 A YES, SIR.
16 Q THOSE APPEAR TO BE LAW ENFORCEMENT OFFICERS KNOWN TO
17 YOU AT THE TIME?
18 A YES, SIR.
19 Q AND RIGHT HERE, CAN YOU SEE WHAT THAT IS, MR. HARMON?
20 A YES, SIR.
21 Q WHAT IS THAT, SIR?
22 A YES, SIR.
23 Q WHAT IS THAT?
24 A THAT'S SLY.
25 Q THAT'S SHERIFF SLY?

1 A YES, SIR.

2 Q AND THIS OBJECT RIGHT HERE, WHAT IS THIS? CAN YOU

3 SEE THAT?

4 A THAT'S PART OF THE BODY.

5 Q NOW, DO YOU KNOW, MR. HARMON, IF MR. ORNER HAD BEEN

6 REPORTED MISSING?

7 A YES, SIR.

8 Q HE HAD?

9 A YES, SIR.

10 Q AND DO YOU KNOW THE DETAILS OF THE DISCOVERY OF

11 MR. ORNER'S BODY?

12 A NO, SIR, I DO NOT.

13 Q BUT YOU ACTUALLY WENT DOWN TO THE SCENE?

14 A YES, SIR.

15 Q NOW, AGAIN, STATE'S EXHIBIT NO. 3, THIS WOULD BE A

16 CLOSER PHOTOGRAPH OF MR. ORNER?

17 A YES, SIR.

18 Q AND STATE'S 4?

19 A YES, SIR, THAT'S IT.

20 Q AND STATE'S 5 WOULD BE THE CLOSEST?

21 A YES, SIR, THAT'S IT.

22 Q NOW, COULD YOU DESCRIBE FOR US, IS HE ON HIS STOMACH

23 OR ON HIS BACK?

24 A PARTIALLY ON HIS STOMACH AND SIDE.

25 Q AND WHAT IS THIS ITEM HERE, CAN YOU SEE THAT?

1 A THAT LOOKS LIKE A LITTLE MONEY BELT, I'M NOT SURE.
2 Q BUT THAT'S THE POSITION IN WHICH YOU OBSERVED THE
3 BODY OF JOHN ORNER --
4 A YES, SIR.
5 Q -- ON THAT MARCH 3RD OF '61?
6 A YES, SIR.
7 Q WERE THERE OTHER OFFICERS WITH S.L.E.D., BESIDES
8 YOURSELF, THAT ASSISTED IN THIS INVESTIGATION?
9 A YEAH, WE HAD SOME THERE. I DIDN'T SEE ANYBODY FROM
10 S.L.E.D. THERE.
11 MR. MCMAHON: MAY I HAND THIS TO THE JUROR?
12 THE COURT: SURE.
13 BY MR. MCMAHON
14 Q WERE YOU AWARE AT THE TIME OF THIS INVESTIGATION
15 WHETHER OR NOT MR. ORNER'S CAB HAD BEEN LOCATED?
16 A YES.
17 Q AND DO YOU KNOW WHERE IT HAD BEEN LOCATED?
18 A AS A RESULT OF THE CONVERSATION WITH THE -- I CAN
19 GIVE IT TO YOU;
20 Q YOU DON'T KNOW OF YOUR OWN KNOWLEDGE BACK THEN?
21 A NO, I DIDN'T SEE IT, NO.
22 Q YOU DIDN'T GO TO THE LOCATION OF WHERE THE CAB WAS
23 FOUND?
24 A NO, NEVER WENT THERE.
25 Q BUT IT WASN'T FOUND DOWN ON 601?

1 A NO.

2 Q IT WASN'T DOWN WHERE THE BODY WAS LOCATED?

3 A NO.

4 Q NOW, DID YOU REMAIN INVOLVED IN THE INVESTIGATION AND
5 ASSIST IN THE INVESTIGATION FOR A PERIOD OF TIME,
6 MR. HARMON?

7 A YES, SIR.

8 Q AND AS PART OF THAT INVOLVEMENT, DID YOU HAVE AN
9 OPPORTUNITY OR AN OCCASION TO TALK TO ANOTHER
10 S.L.E.D. AGENT, MR. MILLARD CATE?

11 A YES, SIR.

12 Q AND WHO WAS MR. CATE?

13 A HE WAS THE BALLISTICS EXPERT, I BELIEVE THEY CALLED
14 HIM, AT S.L.E.D.

15 Q AND DO YOU KNOW WHETHER OR NOT THEY WERE ABLE TO
16 DETERMINE THE CAUSE OF MR. ORNER'S DEATH?

17 A YES, SIR, I WAS THERE AT PART OF THE AUTOPSY. I WAS
18 AT DUNBAR'S FUNERAL HOME WHEN THEY DONE THE AUTOPSY.
19 THAT WAS DONE WHEN CECIL WILES WAS THERE, THE
20 CORONER.

21 Q AND WHO PERFORMED THE AUTOPSY?

22 A DR. LINDLER.

23 Q LINDLER?

24 A AND THE CORONER WAS PRESENT.

25 Q AND WERE THEY ABLE TO RECOVER CERTAIN ITEMS FROM THE

1 BODY OF MR. ORNER?

2 A YES, SIR. THEY TOOK THE TOP OF HIS HEAD OFF, HIS

3 SKULL. I WAS THERE AFTER THEY TOOK IT OFF. THEY

4 WERE GOING THROUGH HIS BRAIN WHEN I WALKED IN.

5 Q AND WHAT ITEM OR ITEMS DID THEY RECOVER AT THAT

6 AUTOPSY AS FAR AS YOU RECALL, MR. HARMON?

7 A I SAW THREE PIECES OF LEAD THAT LOOKED TO ME TO BE

8 PART OF A BULLET.

9 Q NOW, WERE THOSE ITEMS EXAMINED, TO YOUR KNOWLEDGE, BY

10 LIEUTENANT CATE?

11 A THEY WERE.

12 Q AND AS A RESULT OF HIS EXAMINATION, WERE YOU AND THE

13 OTHER OFFICERS LOOKING FOR A PARTICULAR TYPE OR KIND

14 OF WEAPON?

15 A YES, SIR.

16 Q AND WHAT TYPE OR KIND OF WEAPON WERE Y'ALL LOOKING

17 FOR?

18 A IT WOULD BE -- I WOULD SAY I WAS LOOKING FOR A

19 HARRINGTON AND RICHARDSON, A 32 REVOLVER, BECAUSE

20 CATE HAD ONE JUST LIKE IT.

21 Q A 32 HARRINGTON AND RICHARDSON REVOLVER?

22 A YES, SIR.

23 Q AND DO YOU KNOW WHETHER OR NOT A CERTAIN REVOLVER

24 DESCRIBED SUCH AS THAT HAD BEEN RECOVERED FROM A

25 SOLDIER AT FORT JACKSON?

1 A I DON'T KNOW WHETHER IT HAD BEEN RECOVERED OR NOT BUT
2 I REMEMBER ONE, NOT AT THAT TIME, BEING RECOVERED
3 LATER.

4 Q ALL RIGHT. LATER AS THE INVESTIGATION PROGRESSED,
5 THOUGH?

6 A YES, SIR.

7 Q NOW, MR. HARMON YOU REMAINED INVOLVED IN THE
8 INVESTIGATION AFTER THE DATE YOU WENT DOWN TO THE
9 BODY, CORRECT?

10 A YES, SIR, SOMEWHAT, YES.

11 Q AND YOU ASSISTED THE RICHLAND COUNTY SHERIFF'S
12 DEPARTMENT, COLUMBIA POLICE DEPARTMENT IN CERTAIN
13 ASPECTS OF THE FOLLOW-UP INVESTIGATION; IS THAT
14 RIGHT?

15 A YES, SIR.

16 Q DESCRIBE FOR THE JURY THE SCENE AS YOU OBSERVED IT ON
17 601 AND THE CONDITION AND POSITION OF MR. ORNER'S
18 BODY.

19 A IT WAS ABOUT 100, 200 YARDS FROM THE RAILROAD TRACK,
20 WHICH IS A SPUR TRACK WHICH RUNS FROM CAMBILL
21 (PHONETIC) TO CAMDEN.

22 I WENT THERE AFTER THE CONVERSATION WITH THE
23 SHERIFF'S OFFICE. THERE WAS A BODY LAYING JUST OFF
24 601 ON THE EMBANKMENT. IT LOOKED LIKE HE HAD ROLLED
25 OVER TO BE -- HE ROLLED OVER AND NEVER DID FINISH HIS

1 ROLLING OVER. ONE KNEE AND LEG WAS KIND OF UP. THAT
2 WAS THE FIRST THING THAT STRUCK ME. I DIDN'T DO MUCH
3 LOOKING AFTER THAT. THAT WAS ENOUGH FOR ME.

4 MR. MCMAHON: THANK YOU, MR. HARMON. I DON'T
5 HAVE ANY FURTHER QUESTIONS.

6 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

7 MR. DELGADO: I DON'T HAVE ANY QUESTIONS.

8 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

9 CALL YOUR NEXT WITNESS, PLEASE.

10 MR. MCMAHON: CARL STOKES.

11 YOUR HONOR, MAY MR. HARMON BE EXCUSED?

12 THE COURT: WITHOUT OBJECTION.

13 CARL STOKES, AFTER BEING DULY SWORN, TESTIFIED AS
14 FOLLOWS:

15 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
16 NAME, SPELL YOUR LAST NAME.

17 THE WITNESS: I'M CARL B. STOKES, S-T-O-K-E-S.

18 DIRECT EXAMINATION:

19 BY MR. MCMAHON

20 Q MR. STOKES, WHERE ARE YOU FROM, SIR?

21 A ORIGINALLY FROM DARLINGTON.

22 Q AND ARE YOU PRESENTLY EMPLOYED?

23 A UNEMPLOYED, RETIRED.

24 Q RETIRED. AND HOW LONG HAVE YOU BEEN RETIRED?

25 A SINCE '98, JULY OF '98.

1 Q AND WHAT WAS YOUR OCCUPATION PRIOR TO YOUR
2 RETIREMENT?

3 A I WAS EMPLOYED AS THE DIRECTOR OF LAW ENFORCEMENT AND
4 SAFETY AT THE UNIVERSITY OF SOUTH CAROLINA.

5 Q AND HOW LONG WERE YOU DIRECTOR OF LAW ENFORCEMENT AT
6 CAROLINA?

7 A SEVENTEEN YEARS.

8 Q SEVENTEEN?

9 A SEVENTEEN YEARS.

10 Q SO YOU WENT THERE IN '81?

11 A '81.

12 Q PRIOR TO THAT, MR. STOKES, WHAT LAW ENFORCEMENT
13 EXPERIENCE DO YOU HAVE?

14 A I WAS WITH THE SOUTH CAROLINA LAW ENFORCEMENT
15 DIVISION, S.L.E.D.

16 Q AND WHEN DID YOU START WITH THEM, SIR?

17 A IN 1954.

18 Q AND WHEN DID YOU LEAVE S.L.E.D.?

19 A 1981.

20 Q SO YOU WENT STRAIGHT FROM S.L.E.D., A LAW ENFORCEMENT
21 POSITION, TO THE UNIVERSITY OF SOUTH CAROLINA AS
22 CHIEF OF LAW ENFORCEMENT?

23 A THAT'S CORRECT, THE NEXT DAY.

24 Q NOW, THAT PERIOD OF TIME FROM '54 TO '81, THAT
25 VARIOUS POSITIONS DID YOU HOLD WITH S.L.E.D.?

1 A I BEGAN AS A NIGHT CLERK, ATTENDING THE UNIVERSITY OF
2 SOUTH CAROLINA, GRADUATED THE UNIVERSITY, AND THEN I
3 WENT INTO THE LAB AS AN UNDERSTUDY TO LIEUTENANT CATE
4 IN THE FIREARMS SECTION, FINGERPRINT SECTION.

5 THEN IN 1970 I TOOK OVER AS DIRECTOR OF THE
6 INFORMATION COMMUNICATIONS SYSTEM, WHICH BROUGHT THE
7 CENTRAL COMPUTER TO LAW ENFORCEMENT IN SOUTH
8 CAROLINA. I REMAINED THERE UNTIL I WENT TO THE
9 UNIVERSITY.

10 Q SO FROM ABOUT YOUR GRADUATION FROM CAROLINA?

11 A '59.

12 Q '59 UNTIL '70, YOU WERE ASSIGNED IN THE LAB OR EVEN
13 PRIOR TO YOUR GRADUATION?

14 A I WAS WORKING IN THE LAB PRIOR TO MY GRADUATION
15 BECAUSE I WAS LIVING THERE AT S.L.E.D. AND GOING TO
16 THE UNIVERSITY. THEN AFTER '70, I HAD SOME CASES
17 THAT I STILL WORKED WITH, HAD TO GO AND BE EDUCATED
18 IN '72. I THINK THAT WAS PROBABLY MY LAST CASE.

19 Q NOW, MR. CATE, WAS HE HEAD OF THE LAB BACK IN THE
20 LATE --

21 A MR. CATE WAS THE FORENSICS EXAMINER. WE HAD A LAB,
22 AS WELL. JIM WILSON WAS OVER THE LAB, THE CHEMICAL
23 LAB, BUT I WORKED WITH MR. CATE IN THE FORENSICS
24 AREA.

25 Q NOW, WERE YOU -- I BELIEVE YOU SAID YOU WERE KIND OF

1 AN UNDERSTUDY OF MR. CATE?

2 A CORRECT, I WAS HIS FIRST UNDERSTUDY.

3 Q IS HE STILL ALIVE?

4 A NO, SIR.

5 Q IS ANY OF HIS FAMILY STILL AROUND HERE?

6 A HE HAS A SON WHO IS A DOCTOR OVER IN LEXINGTON.

7 Q THAT'S DR. VASA CATE?

8 A VASA CATE.

9 Q NOW, I WANT TO TALK TO YOU ABOUT YOUR FORENSIC

10 TRAINING. WERE YOU TRAINING IN VARIOUS OF FORENSIC

11 WORK DURING YOUR TIME AT S.L.E.D.?

12 A YES, SIR. I WAS COURT QUALIFIED TO GIVE OPINIONS AND

13 TESTIMONY IN FINGERPRINTS, FIREARMS IDENTIFICATION,

14 TOOL MARKS AND IN-QUESTION DOCUMENTS.

15 Q AND WHAT TYPE OF TRAINING, BREAK IT DOWN FOR ME, SO

16 YOU HAD QUESTIONED DOCUMENT, FIREARMS

17 IDENTIFICATION --

18 A TOOL MARKS.

19 Q -- TOOL MARKS AND FINGERPRINT?

20 A FINGERPRINT.

21 Q YOU HAD ALL THOSE FOUR VARIOUS AREAS?

22 A THAT'S CORRECT.

23 Q THEY'RE MORE SPECIALIZED TODAY, I TAKE IT.

24 A IT'S RARE YOU FIND ANYBODY WHO HAS MORE THAN ONE

25 AREA. AT THAT PARTICULAR TIME, WE DIDN'T HAVE THAT

1 MANY PEOPLE WORKING FOR S.L.E.D., AND WE ASSISTED THE
2 COUNTIES IN VARIOUS AREAS OF IDENTIFICATION. WE
3 WOULD GO AND PROCESS CRIME SCENES AND SO FORTH.

4 Q AND YOU LEARNED, LET'S SAY, FOR EXAMPLE THE FIREARMS
5 IDENTIFICATION AS AN UNDERSTUDY OF LIEUTENANT CATE?

6 A THAT'S CORRECT.

7 Q IS THAT CORRECT? AND WHEN YOU SAY YOU'RE COURT
8 QUALIFIED, YOU HAD TESTIFIED AS AN EXPERT BEFORE IN
9 THESE VARIOUS FIELDS?

10 A YES, SIR.

11 Q THE FIELDS OF QUESTIONED DOCUMENTS?

12 A YES, SIR.

13 Q FINGERPRINTS?

14 A YES, SIR.

15 Q TOOLMARKS?

16 A YES, SIR.

17 Q WHEN DID YOU LEAVE THE LAB? I BELIEVE YOU SAID '70?

18 A I ACTUALLY MOVED OUT OF THE LAB IN '70 TO TAKE OVER
19 THE COMPUTER SCIENCE. I WAS STILL AFFILIATED WITH
20 THE LAB THROUGH ABOUT '72 BECAUSE I HAD CASES PENDING
21 THAT I WAS INVOLVED IN.

22 Q STILL HAD SOME ACTIVE CASES?

23 A CASES, YES.

24 Q AND THEN FROM ABOUT '72 ON, YOU BECAME MORE INVOLVED
25 WITH THE COMPUTER ASPECT AT S.L.E.D., AND THEN IN '81

1 WENT TO BE CHIEF OF SECURITY IN LAW ENFORCEMENT AT
2 CAROLINA?

3 A THAT'S CORRECT.

4 Q NOW, IN '61, YOU WERE QUALIFIED TO GIVE AN OPINION AS
5 TO FIREARMS EXAMINATION?

6 A YES, SIR.

7 Q AND REMAINED QUALIFIED TO DO THAT ON UP UNTIL THE
8 '70S?

9 A AS FAR AS I KNOW, I'M STILL QUALIFIED.

10 Q I'M NOT SAYING YOU AREN'T QUALIFIED, BUT YOU HAVEN'T
11 HAD AN OCCASION TO TESTIFY SINCE THE '70S; IS THAT
12 CORRECT?

13 A MY LAST WORD ON THE BENCH WOULD HAVE BEEN PROBABLY
14 1970.

15 Q AND THAT WAS THE --

16 A OKAY.

17 Q THE ACTUAL POINT OF THAT QUESTION CERTAINLY WASN'T
18 QUESTIONING YOUR QUALIFICATION.

19 YOUR HONOR, I WOULD OFFER MR. STOKES AS AN
20 EXPERT IN THE FIELD, AS FAR AS THE RELEVANCY OF THIS
21 CASE, OF FIREARMS IDENTIFICATION.

22 MR. DELGADO: ABSOLUTELY.

23 THE COURT: WITHOUT OBJECTION.

24 MR. DELGADO: WITHOUT OBJECTION.

25 BY MR. MCMAHON

1 Q NOW, THIS CASE WE'RE HEAR ABOUT TODAY, PRIOR TO ANY
2 EXAMINATIONS YOU MAY HAVE CONDUCTED IN THE LAB, DID
3 YOU HAVE AN OCCASION TO BECOME INVOLVED IN THIS CASE?

4 A I DID.

5 Q AND SPECIFICALLY ON MARCH 3RD OF 1961, DID YOU BECOME
6 INVOLVED IN THIS CASE AND IN WHAT CAPACITY?

7 A YES, SIR. AS A RESULT OF A CALL, MR. CATE AND I WENT
8 TO THE DUNBAR FUNERAL HOME.

9 Q AND WHAT WAS BEING CONDUCTED AT DUNBAR FUNERAL HOME?

10 A WE WERE TOLD THAT THE BODY OF JOHN ORNER WAS THERE,
11 AND THERE HAD BEEN SOME REASON TO BELIEVE THAT HE HAD
12 BEEN SHOT IN THE HEAD, AND WE WERE THERE TO ASSIST IN
13 THE RECOVERY OF THE BULLET.

14 Q AND THAT WAS COMMON IN BOTH THE '60S AND ON UNTIL
15 TODAY, AN OFFICER MAY ATTEND AND ASSIST IN A FORENSIC
16 AUTOPSY?

17 A WE DID THAT, YES, SIR.

18 Q AND THAT WOULD HAVE BEEN BOTH YOU AND MR. CATE?

19 A THAT'S CORRECT.

20 Q AND I BELIEVE MR. HARMON, YOU KNEW MR. HARMON?

21 A YES, SIR, I DID.

22 Q I BELIEVE YOU SAID HE WAS ALSO PRESENT THERE, BUT HE
23 WAS NOT IN THE LAB; IS THAT CORRECT?

24 A I DON'T RECALL SEEING HIM THERE IN THE ROOM WHERE WE
25 WERE PERFORMING THIS.

1 Q AND HE WAS NOT ASSIGNED TO THE FORENSIC LAB EITHER?

2 A NO, NO. HE WAS THE INVESTIGATOR.

3 Q AND THIS WOULD HAVE BEEN THAT FRIDAY MARCH 3RD OF '61

4 AS YOU RECALL?

5 A YEAH.

6 Q AND LOOKING AT SOME PAPERWORK HAS REFRESHED YOUR

7 MEMORY?

8 A THAT'S CORRECT.

9 Q AND WHAT PARTICIPATION DID YOU AND MR. CATE HAVE IN

10 THE CONDUCT OF THIS AUTOPSY, MR. STOKES?

11 A RECOVERING THE BULLET THAT WAS SUPPOSED TO BE IN

12 MR. ORNER'S HEAD.

13 Q AND SPECIFICALLY, HOW DID Y'ALL PERFORM THAT TEST --

14 TASK? WHAT DID YOU DO?

15 A DR. LINDLER DID THE MAJORITY OF THE WORK. DO YOU

16 WANT ME TO DESCRIBE HOW HE DID IT?

17 Q YES, SIR, HOW HE DID IT, WHAT YOU OBSERVED, WHAT YOU

18 DID.

19 A HE CUT FROM ONE EAR ACROSS THE TOP OF HIS HEAD TO THE

20 OTHER EAR, PULLED THE HAIR OVER, THE FRONT AND BACK

21 OF HIS HEAD, EXPOSED THE SKULL, TOOK THE SAW AND TOOK

22 THE SKULL OFF OF -- THE HEAD AND THE BRAIN WERE

23 PLACED ON THE SLAB.

24 MR. DELGADO: YOUR HONOR.

25 MR. MCMAHON: NOW --

1 THE COURT: SUSTAINED. WE DON'T NEED TO GO INTO
2 THAT MUCH DETAIL. CHAIN OF CUSTODY. THE JURY WILL
3 DISREGARD THAT.

4 MR. DELGADO: YOUR HONOR, COULD WE JUST ASK THE
5 JURY JUST -- I DON'T MEAN DISSERVICE.

6 THE COURT: I'VE DONE THAT.

7 MR. DELGADO: I'M SORRY.

8 BY MR. MCMAHON

9 Q NOW, WHAT WAS THE CAUSE OF MR. ORNER'S DEATH?

10 A GUNSHOT WOUND.

11 Q AND DO YOU RECALL WHERE -- WAS IT JUST ONE ENTRANCE
12 WOUND?

13 A ONE ENTRANCE WOUND, NO EXIT.

14 Q NO EXIT WOUND. AND WHAT AREA OF THE BODY HAD THE
15 BULLET ENTERED?

16 A THE BACK OF THE HEAD.

17 Q NOW, WHAT AREA OF THE BODY DID YOU HAVE TO SEARCH IN
18 AN ATTEMPT TO RECOVER THE BULLET?

19 A THE BRAIN.

20 Q AND WERE YOU ABLE TO DO THAT?

21 A YES, SIR.

22 Q AND DESCRIBE WHAT ITEM OR ITEMS Y'ALL RECOVERED FROM
23 THE BRAIN OF MR. ORNER.

24 A WE RECOVERED THREE FRAGMENTS OF A BULLET.

25 Q NOW, THESE THREE FRAGMENTS THAT YOU RECOVERED, DID

1 YOU TAKE THEM INTO YOUR CUSTODY THAT DAY?

2 A WE DID, SIR. THEY REMAINED IN OUR CUSTODY AT THAT
3 POINT.

4 Q AND I WANT TO SHOW YOU SOME ITEMS. I WANT TO SHOW
5 YOU SOME ITEMS. I'VE SHOWN THEM TO MR. DELGADO, AND
6 ASK YOU IF YOU COULD LOOK AT THEM.

7 DON'T TELL ME WHAT THEY ARE YET, BUT IF YOU
8 COULD LOOK AT THEM AND IDENTIFY THEM FOR US, IF YOU
9 CAN TELL US WHAT THEY ARE.

10 A THESE ARE THREE VIALS WITH A NOTE, E-1, E-2, AND E-3
11 ON EACH ONE SEPARATE, AND MR. M.M. CATE'S INITIALS
12 ARE ON THE VIAL.

13 WHAT APPEARS INSIDE IS THE FRAGMENTS THAT WE
14 WOULD HAVE RECOVERED.

15 Q AND THOSE INITIALS ARE THE INITIALS OF MR. CATE?

16 A THEY ARE, SIR.

17 Q AND THAT WOULD HAVE BEEN THE WAY HE MARKED THEM ON
18 MARCH 3RD, 1961?

19 A THAT'S CORRECT.

20 Q AND IT WAS THREE SEPARATE FRAGMENTS; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THESE
23 ITEMS INTO EVIDENCE.

24 MR. DELGADO: WITHOUT OBJECTION, YOUR HONOR.

25 THE COURT: WITHOUT OBJECTION.

1 (WHEREUPON, STATE'S EXHIBITS NOS. 30 - 32 WERE
2 MARKED FOR IDENTIFICATION AND RECEIVED INTO
3 EVIDENCE.)

4 MR. MCMAHON: THEY'RE MARKED 30, 31 AND 32, YOUR
5 HONOR.

6 BY MR. MCMAHON

7 Q I'M GOING TO HAND JUST ONE, FOR EXAMPLE, 31. I'M
8 GOING TO HOLD 32 -- OR EXCUSE ME.

9 IT LOOKS LIKE E-1 AND SOME KIND OF YELLOWED
10 PAPER THERE.

11 A THAT'S CORRECT.

12 Q AND UNDER THAT IT APPEARS A DATE. CAN YOU READ THAT
13 DATE?

14 A 3/3/61.

15 Q AND THEN UNDER THERE, IT APPEARS LIKE SOME INITIALS?

16 A M.M.C.

17 Q AND M.M.C., WHO WOULD THAT BE?

18 A MILLARD M. CATE, MILLARD MILLICENT CATE.

19 Q AND IS THAT INFORMATION THE DATE -- EXCUSE ME, E-1,
20 OR E-2, OR E-3 AND THEN THE DATE AND THE INITIALS
21 APPEAR ON EACH ONE OF THESE ITEMS?

22 A THEY DO.

23 Q AND THAT'S ON THIS KIND OF YELLOWED STRIP HERE?

24 A IT WAS A LITTLE TAB THAT WAS PLACED ON HERE AND
25 PLACED ON THE VIAL.

1 Q NOW, UNDER THAT ON THIS ONE, IT APPEARS 31 G.R.S. IT
2 APPEARS. NOW, WHAT IS THAT?
3 A THAT WOULD HAVE BEEN THE WEIGHT OF THE FRAGMENT.
4 Q SO THAT FRAGMENT WOULD HAVE WEIGHED WHAT 31 WHAT,
5 G.R.?
6 A GRAINS.
7 Q GRAINS. AND THAT'S E-1, CORRECT?
8 A THAT WAS E-1, YES, SIR.
9 Q E-1, 31 GRAINS. AND THEN GO TO NUMBER 30, STATE'S
10 EXHIBIT 31. DOES ALL THIS SAME INFORMATION APPEAR,
11 THE E-2?
12 A THAT'S CORRECT.
13 Q AND THEN THE DATE?
14 A THAT'S CORRECT.
15 Q MR. CATE'S INITIALS?
16 A CORRECT.
17 Q AND THE WEIGHT?
18 A TWENTY-SIX GRAINS.
19 Q AND THEN IF YOU GO TO STATE'S 32, THAT WOULD BE E-3?
20 A IT SHOULD BE.
21 Q IS THAT CORRECT?
22 A I DON'T HAVE IT.
23 Q I'M SORRY, RIGHT HERE. I'M SORRY.
24 A E-3 WAS 3/3/61, M.M.C. AND IT WAS 36 GRAINS.
25 Q THIRTY-SIX GRAINS. APPROXIMATELY 93 GRAINS; IS THAT

1 CORRECT?

2 A YES, SIR.

3 Q NOW, WHEN YOU'RE IN THE LABORATORY, AND AS A FIREARMS

4 EXPERT WHICH WE ALL AGREE YOU ARE, ARE YOU ABLE TO

5 LOOK AT A FRAGMENT OR FRAGMENTS AND DETERMINE CERTAIN

6 CHARACTERISTICS ABOUT THE TYPE OF BULLET IT IS OR

7 ABOUT THE TYPE OF WEAPON THAT FIRED THE BULLET?

8 A NOT THE FRAGMENT. YOU DO IT ON THE BULLET, YES, SIR.

9 Q ON THE BULLET?

10 A IT HAS WHAT WE CALL CLASS CHARACTERISTICS TO FIND

11 MAYBE WHAT WEAPON FIRED IT.

12 Q AND THAT'S WITHIN THAT FORENSIC FIELD, CORRECT?

13 A THAT'S CORRECT.

14 Q DID YOU EXAMINE E-1, TWO AND THREE?

15 A YES, SIR.

16 Q AND WHAT WAS YOUR EVALUATION AND EXAMINATION AND THE

17 RESULT OF THAT -- OF THOSE THREE FRAGMENTS?

18 A FROM THAT, WE WERE ABLE TO DETERMINE THAT THE

19 FRAGMENTS WERE FIRED FROM AN H & R 32 REVOLVER.

20 Q AN H AND R 32 REVOLVER?

21 A THAT'S CORRECT.

22 Q AND EXPLAIN JUST VERY GENERALLY AND BRIEFLY HOW ARE

23 YOU ABLE TO DO THAT? I GUESS THERE'S A SCIENCE

24 INVOLVED IN THAT EXAMINATION?

25 A IN IDENTIFYING A BULLET?

1 Q YES, SIR.

2 A WHEN THE BARREL IS MADE, IT'S A SOLID PIECE OF IRON,
3 STEEL, AND THE CALIBER IS BORE INTO THE BARREL. SO
4 IF A PROJECTILE WERE TO PASS THROUGH IT, AFTER THE
5 HOLE IS BORED THREW IT, THEN THE MANUFACTURER TAKES
6 AN INSTRUMENT AND CARVES GROOVES INTO THAT BORE SO
7 THAT THE PROJECTILE PASSING THROUGH IT SPINS IN A
8 GYRAL STABILITY, SO IT WILL GO IN A STRAIGHT LINE AND
9 NOT TUMBLE.

10 THE INSTRUMENT THAT IS USED TO MAKE THE GROOVES
11 OF THE BARREL WHERE THE LAND AND THE GROOVES COME ARE
12 IMPARTED ON THE BULLET, THE LEAD PART IS IMPARTED TO
13 THE PROJECTILE PASSING THROUGH IT, AND WE COMPARE
14 THOSE MARKINGS WHICH ARE INDIVIDUAL CHARACTERISTICS
15 VERSUS THE CLASS CHARACTERISTICS OF THE BORING THAT
16 EVERY MANUFACTURER USES.

17 IT IS A SPECIFIED STANDARD THAT THEY USE SO
18 THEIR WEAPON CAN BE IDENTIFIED.

19 Q IN EXAMINING THESE FRAGMENTS WERE YOU ABLE -- CAN YOU
20 TELL US IF THIS IS FROM ONE BULLET WITH ONE ENTRANCE
21 WOUND AND NO EXIT WOUND?

22 A YES, SIR. WE CONCLUDED IT WAS FROM ONE BULLET.

23 Q AND TELL US WHAT CHARACTERISTICS, BEFORE WE GET TO
24 THE GUN, THE HARRINGTON AND RICHARDSON 32 REVOLVER,
25 WHAT WERE THE CHARACTERISTICS YOU SAW WITH THAT

1 BULLET?

2 A WELL, WE WERE ABLE TO MEASURE THE GROOVE OF THE
3 BULLET AND DETERMINE THAT IT WAS THE SAME WIDTH AS A
4 HARRINGTON AND RICHARDSON WEAPON. IT BEING A LEAD
5 BULLET LED US TO KNOW IT WAS FROM A REVOLVER RATHER
6 THAN AN AUTOMATIC WEAPON.

7 Q WAS THERE ANY TYPE OF COATING ON THAT PARTICULAR
8 BULLET?

9 A THIS PARTICULAR COATING HAD WAS REFERRED TO AS A
10 LUBALLOY COATING.

11 Q LUBALLOY?

12 A A LUBALLOY COATING.

13 Q EXPLAIN THAT TERM FOR THE JURY, PLEASE.

14 A LUBALLOY COATING IS A COATING THAT'S PUT ON BY THE
15 MANUFACTURER OF THE CARTRIDGES SO THAT IT'S EASY TO
16 PASS THROUGH THE STEEL BARREL, SO A COATING OF OIL.

17 LUBALLOY IS THE BRAND NAME FOR REMINGTON.

18 WINCHESTER HAS A GOLD COATING ON THERE SO THAT THE
19 APPEARANCES ARE DIFFERENT THAN THIS BEING A LUBALLOY
20 COATING.

21 Q NOW, DO YOU RECALL FROM MEMORY WHAT THE TOTAL GRAINS
22 OF A ONE SINGLE 32 --

23 A I DO NOT.

24 Q NOW, DID Y'ALL COMPARE -- WHEN YOU HAVE A BULLET LIKE
25 THIS, ARE YOU ABLE TO COMPARE IT TO A WEAPON AND

1 DETERMINE IF A PARTICULAR WEAPON FIRED A PARTICULAR
2 BULLET?

3 A YES, SIR.

4 Q AND DID YOU EXAMINE CERTAIN -- ARE YOU ALWAYS ABLE TO
5 MAKE THAT DECISION?

6 A NO, SIR.

7 Q THAT A PARTICULAR WEAPON DID OR THAT IT DIDN'T?

8 A WE DID SOME, BUT IT DIDN'T, YES, SIR.

9 Q BUT YOU'RE NOT ALWAYS ABLE TO MAKE A CONCLUSION
10 EITHER WAY; IS THAT CORRECT?

11 A MOST OF THE TIME YOU ARE.

12 Q I WANT TO SHOW YOU TWO OTHER ITEMS, ONE OF WHICH HAS
13 NOT PREVIOUSLY BEEN MARKED, WHICH IS A 32 HARRINGTON
14 AND RICHARDSON, W 9893, AND ALSO STATE'S FOR
15 IDENTIFICATION NUMBER 6, A 32 HARRINGTON -- IT'S
16 HARRINGTON --

17 A RIGHT.

18 Q -- AND RICHARDSON W 9948. DID YOU AND MR. CATE HAVE
19 THE OPPORTUNITY TO EXAMINE THESE TWO REVOLVERS?

20 A YES, SIR.

21 Q ALL RIGHT, SIR. AND WHAT WERE YOU LOOKING AT THEN,
22 MR. STOKES?

23 A MR. CATE PUT HIS INITIALS ON THE INSIDE OF THE HANDLE
24 OF EACH WEAPON.

25 Q ALL RIGHT. NOW, I'M RETURNING 9893 INTO A BAG MARKED

1 9893, AND THE OTHER BAG, STATE'S EXHIBIT NO. 6, 9948,
2 OKAY.

3 A OKAY.

4 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THESE
5 TWO ITEMS INTO EVIDENCE.

6 (PAUSE.)

7 I'LL MARK THEM FOR IDENTIFICATION.

8 THE COURT: ALL RIGHT.

9 MR. MCMAHON: I DON'T WANT TO OFFER THIS ONE IN
10 UNLESS YOU WANT ME TO.

11 MR. DELGADO: ALL RIGHT.

12 THE COURT: IDENTIFICATION.

13 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS ADMITTED
14 INTO EVIDENCE.)

15 BY MR. MCMAHON

16 Q NOW, YOU COMPARED -- WHEN YOU GET A SUSPECTED WEAPON
17 IN, WHAT DO YOU HAVE TO DO TO PREPARE TO COMPARE IT
18 TO A BULLET OR A FRAGMENT?

19 A WE HAVE TO TEST FIRE IT AND RECOVER THE TEST BULLET.

20 Q AND DID YOU TEST FIRE BOTH OF THESE?

21 A YES, SIR.

22 Q AND DO YOU RECALL THE RESULTS OF THOSE COMPARISONS?

23 A COMPARING THEM WITH THE EVIDENCE?

24 Q YES, SIR.

25 A YES, SIR. WE WERE ABLE TO EXCLUDE THE FIRST H & R WE

1 GOT WITH THE OTHER ONE, THE ONE THAT WE UNDERSTOOD
2 CAME FROM A SOLDIER. WE WERE NOT ABLE TO EXCLUDE IT.

3 Q SO ONE WAS EXCLUDED?

4 A THAT'S CORRECT.

5 Q AND WHEN YOU SAY EXCLUDED, EXPLAIN WHAT THAT MEAN TO
6 US, MR. STOKES.

7 A IN COMPARING THE TEST BULLET WITH THE KNOWN SPECIMEN,
8 YOU'RE LOOKING FOR IDENTIFYING CHARACTERISTIC, THOSE
9 CHARACTERISTICS THAT HAVE BEEN IMPARTED ON THE BULLET
10 FROM THE BARREL, NOT THE CLASS CHARACTERISTICS BUT
11 THE INDIVIDUAL SCRATCH MARKS AS IT PASSES THROUGH THE
12 BARREL.

13 WE LOOK FOR THOSE IDENTIFYING CHARACTERISTICS TO
14 MATCH TOGETHER, AND WE DID THAT IN THIS PARTICULAR
15 CASE.

16 Q AND THE GUN THAT DID NOT COME FROM THE SOLDIER WAS
17 EXCLUDED?

18 A WE EXCLUDED IT, YES, SIR.

19 Q IT DID NOT FIRE THAT BULLET?

20 A IT DID NOT FIRE THE FRAGMENTS THAT WE HAD.

21 Q NOW, WHAT ABOUT THIS GUN, 9948?

22 A WE COMPARED THE IDENTIFYING CHARACTERISTICS OF THAT,
23 AND THERE WERE INSUFFICIENT NUMBERS OF STRIATIONS
24 THERE FOR THE INDIVIDUAL TYPE -- FOR US TO SAY THAT
25 THAT GUN FIRED THAT BULLET IN EXCLUSION OF ALL OTHER

1 WEAPONS.

2 Q WERE YOU ABLE TO EXCLUDE THAT GUN, STATE'S EXHIBIT 6

3 FOR IDENTIFICATION?

4 A WE WERE NOT ABLE TO EXCLUDE IT, NO, SIR.

5 Q DID THE CLASS CHARACTERISTICS MATCH?

6 A YES, SIR.

7 Q WERE THERE ANY CHARACTERISTICS THAT YOU OBSERVED THAT

8 DID NOT MATCH THAT YOU RECALL?

9 A THAT I RECALL, NO, SIR.

10 Q AND WHEN YOU SAY COULD NOT EXCLUDE, WOULD THAT BE IT

11 COULD HAVE FIRED THIS BULLET?

12 A IT COULD HAVE, YES, SIR.

13 Q OR COULD NOT HAVE? IT COULD HAVE OR COULD NOT?

14 A YES, SIR.

15 Q IS THAT CORRECT?

16 A YES, SIR.

17 Q BUT YOU CAN'T EXCLUDE IT?

18 A NO, COULD NOT EXCLUDE IT.

19 Q AND IT'S INCLUDED?

20 A THAT'S WHAT INCONCLUSIVE MEANS.

21 Q AND THAT WAS AN EXAMINATION DONE IN '61?

22 A MARCH OF '61, YES, SIR.

23 Q AS FAR AS THE ADVANCEMENT, IF ANY, OF BALLISTICS AS

24 OF THE '70S, '80S, AND '90S, HAVE THERE BEEN

25 ADVANCEMENTS IN GLASS AND OPTICS?

1 A I DON'T KNOW, SIR.

2 Q YOU DON'T KNOW?

3 A I DON'T KNOW, SIR.

4 Q SO YOU NO LONGER BECAME ACTIVE IN BALLISTICS
5 EXAMINATION?

6 A I DID NOT.

7 MR. MCMAHON: OKAY. THANK YOU, MR. STOKES.
8 ANSWER ANY QUESTIONS.

9 THE COURT: CROSS-EXAMINATION, MR. DELGADO.

10 MR. DELGADO: THANK YOU.

11 CROSS-EXAMINATION:

12 BY MR. DELGADO

13 Q MR. STOKES, YOU STARTED YOUR WORK WITH THE STATE LAW
14 ENFORCEMENT DIVISION WHEN YOU WERE STILL IN SCHOOL?

15 A YES, SIR.

16 Q YOU WERE KNOWN AS ONE OF THOSE FOLKS, YOU WERE THE
17 PHONE BOY AT S.L.E.D. WHILE YOU WERE GOING TO SCHOOL
18 AND WORKED YOUR WAY UP TO THE HEAD OF SECURITY AT THE
19 UNIVERSITY OF SOUTH CAROLINA?

20 A YES, SIR.

21 Q DURING THE TIME THAT YOU WERE THERE, YOU WERE UNDER
22 THE TUTELAGE OF AN INDIVIDUAL BY THE NAME OF MILLARD
23 CATE C-A-T-E?

24 A NOT THE WHOLE TIME I WAS THERE.

25 Q I'M SORRY. WHEN YOU FIRST STARTED, HE WAS YOUR

1 MENTOR?

2 A WHEN I STARTED IN THE LAB AFTER I GRADUATED THE

3 UNIVERSITY --

4 Q THAT'S WHAT I MEANT.

5 A -- AND I WAS IN THE FORENSICS AREA, HE WAS MY TUTOR,

6 YEAH.

7 Q WOULD YOU EXPLAIN FOR OUR JURY, SIR, WHETHER OR NOT

8 HE WAS AN EASY TEACHER OR WAS HE A HARD, HARSH

9 TEACHER?

10 A HE WAS AN EXCELLENT TEACHER.

11 Q AND I DON'T MEAN HARSH IN A PERSONAL SENSE, BUT HE

12 DEMANDED CERTAIN THINGS OF HIMSELF, DID HE NOT, SIR?

13 A YES, SIR.

14 Q HE DEMANDED THINGS OF HIMSELF AND HE DEMANDED THINGS

15 OF FOLKS HE TAUGHT?

16 A THAT'S CORRECT.

17 Q SOME OF THE FOLKS HE TAUGHT WERE -- IN HIS DEPARTMENT

18 FELT -- FIRST OF ALL, DO YOU KNOW AN INDIVIDUAL BY

19 THE NAME OF DAN DEFREESE?

20 A YES, SIR.

21 Q MR. DEFREESE IS -- WELL, NOW HE'S RETIRED FROM

22 S.L.E.D. BUT NOW HE'S COME BACK TO WORK AT S.L.E.D.

23 DID YOU KNOW THAT, SIR?

24 A I DID NOT KNOW THAT, SIR.

25 Q DID MR. MILLARD CATE TRAIN MR. DEFREESE?

1 A I HAD A LITTLE BIT IN THAT MYSELF.

2 Q YOU DID. I THINK I KNEW THAT. DID MR. MILLARD CATE

3 TRAIN AN INDIVIDUAL BY THE NAME OF IRA PARNELL?

4 A HE DID, SIR.

5 Q ALL OF THOSE INDIVIDUALS, YOURSELF, DAN DEFREESE, IRA

6 PARNELL LEARNED FROM MR. MILLARD CATE?

7 A I KNOW THAT DAN AND MYSELF DID, AND I THINK IRA CAME

8 THERE JUST BEFORE CATE RETIRED, BUT IT WAS CLOSE, SO

9 I WOULD SAY YES.

10 Q ALL RIGHT, SIR. WOULD YOU TELL OUR JURY, SIR,

11 WHETHER OR NOT MR. MILLARD CATE -- FIRST OF ALL, HOW

12 LONG WAS HE EMPLOYED WITH THE STATE LAW ENFORCEMENT,

13 IF YOU KNOW?

14 A MR. CATE CAME TO WORK IN '48, RETIRED SOMEWHERE WHERE

15 IN THE MID '70S. I DON'T KNOW HOW MANY YEARS.

16 Q CLOSE TO 30 YEARS?

17 A I WOULD THINK SO.

18 Q WOULD IT BE FAIR TO SAY, SIR, THAT MR. MILLARD CATE

19 WAS ONE OF THE BUILDING BLOCKS OF THE STATE LAW

20 ENFORCEMENT DIVISION?

21 A NO DOUBT.

22 Q AS ONE OF THE BUILDING BLOCKS OF THE STATE LAW

23 ENFORCEMENT DIVISION, HIS WHOLE FOCUS WAS FORENSICS;

24 IS THAT CORRECT, SIR?

25 A THAT'S CORRECT.

1 Q IN OTHER WORDS, THE TYPES OF THE THINGS THAT WE'RE
2 DISCUSSING HERE, IN ADDITION TO WHICH, NOT ONLY
3 BALLISTICS EXAMINATIONS BUT HE EITHER HELPED TRAIN
4 YOU OR WAS INVOLVED IN ALL SORTS OF OTHER SORTS OF
5 FORENSICS EXAMS, WOULD THAT BE CORRECT?

6 A THAT'S CORRECT.

7 Q FINGERPRINTS?

8 A HE WAS THE REASON THAT I DID FINGERPRINTS FIRST AND
9 THEN QUESTIONING ABOUT DOCUMENT BECAUSE HE DID NOT
10 CARE THAT MUCH FOR IDENTIFYING FINGERPRINTS.

11 HE DID NOT WANT TO TOUCH QUESTIONED DOCUMENTS,
12 AND CHIEF STROM WANTED SOMEONE, SO I BECAME TRAINED
13 IN THOSE OTHER AREAS, AS WELL AS HELPING MR. CATE IN
14 THE FIREARMS AREA BECAUSE THE WORKLOAD WAS SUCH THAT
15 WE WERE NEEDED.

16 Q WHEN MR. CATE TRAINED YOU, HE DEMANDED OF YOU
17 PROFICIENCY, DID HE NOT, SIR?

18 A WELL, THE FIRST THING HE TAUGHT ME, AND I MEAN
19 LITERALLY THE FIRST THING, HE HAD A LITTLE SAYING
20 FROM A HOAGY CARMICHAEL SONG FROM UNDER HIS GLASS ON
21 THE DESK. IT SAYS, "YOU'VE GOT TO ACCENTUATE THE
22 POSITIVE, ELIMINATE THE NEGATIVE, AND NEVER MESS WITH
23 MR. IN BETWEEN." WE LIVED BY THAT IN HIS LAB, YES,
24 SIR.

25 Q ALL RIGHT. DON'T MESS WITH MR. IN BETWEEN, CORRECT?

1 A THAT'S CORRECT.

2 Q HOW HARD DID MR. MILLARD CATE ATTEMPT TO AVOID AN
3 INCONCLUSIVE DIAGNOSIS ON A BULLET?

4 A ALWAYS.

5 Q EXPLAIN THAT TO OUR JURY PLEASE, SIR.

6 A WE DID EVERYTHING POSSIBLE THAT WE COULD TO IDENTIFY
7 ANY WEAPON THAT WE GOT. AS I STATED, HE LIVED BY NOT
8 MESSING WITH MR. IN BETWEEN, AND WE HAD VERY FEW
9 INCONCLUSIVES.

10 Q WHY DID HE WORK SO HARD TO AVOID AN INCONCLUSION
11 SUFFICIENT, SIR?

12 A HE FELT THAT A PROJECTILE, PARTICULARLY IN FIREARMS
13 COMING THROUGH A BARREL, WOULD LEAVE ENOUGH
14 IDENTIFYING CHARACTERISTICS THERE FOR US TO PICK UP
15 ON.

16 Q HOW MANY --

17 A PROVIDED IT WAS A WHOLE BULLET.

18 Q HOW MANY HOURS WOULD YOU IMAGINE, SIR, THAT MR. CATE
19 WORKED ON THIS CASE, THE CASE WE'RE TALKING ABOUT
20 TONIGHT, THIS AFTERNOON?

21 A A GREAT NUMBER. I WOULD HATE TO PUT A NUMBER ON IT.
22 IT WAS A LONG TIME.

23 Q DID YOU YOURSELF ALSO WORK A LONG NUMBER, A LARGE
24 NUMBER OF HOURS, EITHER ASSISTING HIM OR ATTEMPTING
25 TO ASSIST HIM IN THIS CASE?

1 A HE AND I BOTH SPENT A NUMBER OF HOURS WORKING ON THIS
2 CASE.

3 MR. DELGADO: LET ME JUST ASK MS. HUDGINS,
4 EXCUSE ME JUST ONE SECOND, YOUR HONOR.

5 (PAUSE).

6 BY MR. DELGADO

7 Q MR. STOKES, DID I HEAR YOU SAY JUST A MOMENT AGO TO
8 SAY THAT YOU WERE TRAINED TO FIRST EVALUATE AS TO
9 WHETHER OR NOT SOMETHING HAD THE GENERAL CLASS
10 CHARACTERISTICS AND THAT YOU WOULD DO THAT ON THE
11 BULLET ITSELF; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q AND NOT THE FRAGMENT; IS THAT CORRECT?

14 A WELL, WHATEVER PROJECTILE CAME IN, WHETHER IT WAS
15 FRAGMENTS OR WHAT, WHAT WAS ONE OF THE FIRST THINGS
16 WE TRIED TO DO, ESTABLISH THE CLASS CHARACTERISTICS
17 SO WE WOULD KNOW WHAT TYPE OF WEAPON WE WERE LOOKING
18 FOR.

19 Q ALL RIGHT, SIR. DID YOU SAY THAT, SIR, THAT WE WOULD
20 DO THAT ON A BULLET BUT NOT THE FRAGMENTS?

21 A NO, I DID NOT.

22 Q I'M SORRY, SIR. I TOOK IT DOWN WRONG. I APOLOGIZE.

23 THE GENERAL CLASS CHARACTERISTICS GAVE YOU AND
24 MR. CATE THE OPINION THAT THIS BULLET FRAGMENT, OR
25 THE THREE FRAGMENTS, WAS FIRED BY A GUN WHICH YOU

1 BELIEVED TO BE A 32 H & R REVOLVER; IS THAT CORRECT?

2 A CORRECT, SIR.

3 Q NOW, THOSE, WHEN WE SAY GENERAL CLASS

4 CHARACTERISTICS, DO WE HAVE AN ACRONYM THAT WE

5 SOMETIMES CALL A G.C.C. DO YOU KNOW WHAT THAT IS?

6 A I DON'T KNOW WHAT THAT IS.

7 Q ALL RIGHT, SIR. WELL, LET ME SPELL IT.

8 I THINK I SPELLED IT RIGHT, GENERAL CLASS

9 CHARACTERISTICS. WOULD YOU EXPLAIN THAT FOR OUR

10 JURY, SIR, WHAT DOES THAT MEAN GENERALLY AND THEN

11 WE'LL GET TO THE INDIVIDUAL CHARACTERISTICS.

12 A IT MEANS THAT THE GROOVES IN THE BARREL ARE A CERTAIN

13 WIDTH.. EACH MANUFACTURER PUTS THE SAME WIDTH IN

14 ORDER TO MAKE THEIR BARREL. IN ORDER TO PUT THAT

15 GYRAL STABLE SPIN ON IT, SOME -- THE MAJORITY OF THEM

16 TWIST TO THE RIGHT. SOME TWIST TO THE LEFT. SO FROM

17 THE DIRECTION OF TWIST, IT WOULD HELP US WITH THE

18 GENERAL CHARACTERISTICS, AS WELL AS THE MEASUREMENTS

19 OF THE LAND AND THE GROOVE.

20 Q ALL RIGHT, SIR. NOW, AFTER YOU GET THE GENERAL

21 CHARACTERISTIC, THEN YOU ATTEMPT TO SEE WHETHER OR

22 NOT THE INDIVIDUAL CHARACTERISTICS EITHER KEPT OR

23 LEFT ON THE FRAGMENT MATCH WHAT COULD HAVE COME FROM

24 A WEAPON; IS THAT CORRECT.

25 A THAT'S CORRECT.

1 Q WOULD YOU EXPLAIN TO OUR JURY, AND I'M SORRY WE HAVE
2 TO GO INTO SCIENCE HERE, HOW WOULD YOU OR MR. CATE
3 COMPARE THIS BULLET FRAGMENT WITH THIS GUN? WHAT
4 WOULD YOU DO WITH THIS GUN?

5 A WE WOULD TEST FIRE THAT GUN AND ULTIMATELY COMPARE
6 UNDER A BINOCULAR MICROSCOPE THE STRIATIONS THAT ARE
7 IMPARTED ON BOTH THE TEST BULLET AND THE EVIDENCE
8 BULLET.

9 Q ALL RIGHT, SIR.

10 A AND WE WOULD LINE UP THOSE INDIVIDUAL IDENTIFYING
11 STRIATIONS THAT ARE ON THE BULLET, BOTH BULLETS.

12 Q ALL RIGHT. NOW, LET'S EXPLAIN THIS TO OUR JURY. SO
13 IN OTHER WORDS, YOU WOULD TAKE THIS GUN, THE
14 QUESTIONED GUN, AND YOU WOULD PUT IN AMMUNITION OF IT
15 THAT WAS THE SAME MAKE OR MODEL OF THE SUSPECTED
16 BULLET?

17 A THAT'S CORRECT.

18 Q FIRE THAT?

19 A THAT'S CORRECT.

20 Q RETRIEVE IT?

21 A RETRIEVE THE BULLETS.

22 Q COMPARE IT TO THIS; IS THAT CORRECT, SIR?

23 A THAT'S CORRECT.

24 Q TELL US WHAT STRIATIONS ARE, PLEASE, SIR.

25 A SCRATCH MARKS.

1 Q OKAY.

2 A THAT ARE IMPARTED ON THE PROJECTILE FROM THE

3 MANUFACTURING OF THE BARREL ITSELF.

4 Q NOW, THE STRIATIONS ARE NOT PART OF THE GENERAL CLASS

5 CHARACTERISTICS, ARE THEY?

6 A NO, SIR.

7 Q THOSE ARE THE INDIVIDUAL.

8 A INDIVIDUAL.

9 Q AND WE CALL THOSE INDIVIDUAL CLASS CHARACTERISTICS OR

10 JUST INDIVIDUAL CHARACTERISTICS?

11 A CLASS -- NO, THEY'RE INDIVIDUAL IDENTIFYING

12 CHARACTERISTICS.

13 Q AND I JUST PUT INDIVIDUAL I.D.ING CHARACTERISTICS.

14 WHAT YOU'RE SAYING HERE IS THE BULLETS, BULLET

15 FRAGMENTS THAT YOU HAVE HERE IN STATE'S -- I DON'T

16 HAVE MY GLASSES -- IN STATE'S EXHIBITS NO. 30, 31,

17 AND NO. 32 WERE COMPARED BY YOU AND MR. CATE, FIRST

18 THE GENERAL CLASS CHARACTERISTICS, THEN THE

19 INDIVIDUAL CLASS CHARACTERISTICS --

20 A INDIVIDUAL IDENTIFYING.

21 Q -- INDIVIDUAL IDENTIFYING CHARACTERISTICS.

22 MR. STOKES, NOW, CAN YOU SPELL STRIATIONS FOR

23 ME?

24 A S-T-R-I-A-T-I-O-N.

25 Q THE WORD STRIATIONS MEANS SCRATCH MARKS?

1 A SCRATCH MARKS.

2 Q NOW, THOSE STRIATIONS OR CLASS MARKS, EXCUSE ME, OR

3 SCRATCH MARKS IS WHAT YOU ALL WENT UNDER YOUR

4 BINOCULARS -- EXCUSE ME, BINOCULARS?

5 A BINOCLE.

6 Q BINOCLE. YOU ARE LOOKING TO SEE IF THEY LINE UP,

7 SIR, CORRECT?

8 A THAT'S CORRECT, SIR.

9 Q AND IF YOU DO, THAT TELLS YOU, IN YOUR EXPERIENCE,

10 THAT THIS WAS FIRED FROM THIS BECAUSE IT MATCHES

11 ANOTHER BULLET THAT WE FIRED OURSELVES?

12 A THAT'S CORRECT.

13 Q YOU WORK REAL HARD TO TRY TO DO THAT; IS THAT

14 CORRECT, SIR?

15 A THAT'S CORRECT.

16 Q STATE LAW ENFORCEMENT, SIR, THROUGH MR. CATE AND

17 YOURSELF, ISSUED AN OPINION THAT THIS GUN AND THESE

18 BULLET FRAGMENTS ARE INCONCLUSIVE?

19 A THAT'S CORRECT.

20 Q BECAUSE THEY DIDN'T MEET YOUR LEVEL OF PROOF FOR

21 YOURSELF CORRECT, SIR?

22 A THAT'S CORRECT. THERE WERE AN INSUFFICIENT NUMBER OF

23 IDENTIFYING CHARACTERISTICS FOR US TO CONCLUDE THAT

24 IT WAS.

25 Q SAME THING FOR MR. MILLARD CATE. IT DIDN'T MEET HIS

1 STANDARDS EITHER, CORRECT, SIR?

2 A NO, SIR.

3 Q AND HE WAS THE ONE WHO WAS TRYING TO FIND NO "MR. IN

4 BETWEEN", CORRECT, SIR?

5 A CORRECT.

6 Q MR. STOKES, EXCUSE ME, SIR. LET ME JUST GO BACK ONE

7 SECOND.

8 (PAUSE).

9 DID MR. CATE EVER SAY TO YOU THAT INCONCLUSIVE

10 OPINIONS WERE NOT ACCEPTABLE?

11 A NO.

12 Q HE WOULD DO THIS, BUT HE WOULD AGONIZE OVER ISSUING

13 AN INCONCLUSIVE OPINION, WOULD HE NOT, SIR?

14 A I DON'T KNOW IF AGONIZE IS THE PROPER WORD, BUT WE

15 DID NOT LIKE TO HAVE INCONCLUSIVE.

16 Q AND IN THIS CASE AFTER HOURS, YOU AND MR. CATE CAME

17 TO THE SAME OPINION?

18 A THAT'S CORRECT.

19 Q DID EITHER YOU OR MR. CATE EVER DIFFER WITH EACH

20 OTHER SOMETIMES ABOUT OPINIONS ON GUNS?

21 A PRELIMINARILY WE WOULD, WHICH WOULD MAKE US SIT DOWN

22 AND WORK HARDER, BUT I DON'T EVER RECALL ANY RESULTS

23 COMING OUT OF THE LAB THAT WE DIDN'T AGREE ON. IT

24 MIGHT HAVE TAKEN LONGER FOR US TO DO IT.

25 Q IF MR. MILLARD CATE WERE HERE ALIVE TODAY, WOULD HE

1 STAND BY HIS INCONCLUSIVE REPORT?

2 A YES, SIR.

3 Q AND YOU, MR. CARL STOKES, YOU STAND AS AN EXPERT IN
4 BALLISTICS WITH YOUR INCONCLUSIVE REPORT; IS THAT
5 CORRECT?

6 A CORRECT.

7 MR. DELGADO: THANK YOU, SIR, VERY MUCH.

8 THAT'S ALL, YOUR HONOR.

9 THE COURT: REDIRECT?

10 MR. MCMAHON: JUST A COUPLE OF QUESTIONS.

11 REDIRECT EXAMINATION:

12 BY MR. MCMAHON

13 Q MR. STOKES, DID I UNDERSTAND YOU TO SAY JUST NOW YOU
14 KNOW OF NO SITUATION WHEN DIFFERING OPINIONS CAME OUT
15 OF THE S.L.E.D. LAB?

16 A NOT FINAL OPINIONS.

17 Q THAT'S WHAT I'M SAYING.

18 A NO.

19 Q YOU KNOW OF NO SITUATION WHERE A FINAL OPINION CAME
20 OUT OF THE S.L.E.D. LAB DIFFERENT --

21 A NO.

22 Q -- BETWEEN ONE EXAMINER TO THE OTHER?

23 A NO.

24 Q AND MR. CATE WOULD HAVE NO OBJECTION TO A SECOND
25 OPINION?

1 A NO, SIR.

2 MR. MCMAHON: THANK YOU.

3 MR. DELGADO: WAIT, I HAVE ONE.

4 THE COURT: LIMITED TO REDIRECT NOW.

5 MR. DELGADO: WHAT'S THAT? OH ABSOLUTELY.

6 REXCROSS-EXAMINATION:

7 BY MR. DELGADO

8 Q MR. STOKES, WOULD YOU TELL THE JURY WHETHER OR NOT IF
9 THE STATE LAW ENFORCEMENT DIVISION ISSUED AN OPINION,
10 WHETHER THE F.B.I. WOULD THEN GO BACK IN AND CHECK
11 THAT OPINION BEHIND S.L.E.D.?

12 MR. MCMAHON: NO, SIR; NO, SIR; NO, SIR. NOW, I
13 OBJECT TO THIS. I OBJECT TO THAT.

14 MR. DELGADO: HE OPENED THAT DOOR, DIDN'T HE?

15 MR. MCMAHON: NO. I DIDN'T OPEN THAT DOOR.

16 THE COURT: COME UP HERE AND TALK TO ME. DON'T
17 TALK IN FRONT OF THE JURY.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
19 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
20 THE JURY.)

21 MR. DELGADO: I WITHDRAW IT.

22 THE COURT: ALL RIGHT. THE QUESTION IS
23 WITHDRAWN. THE JURY IS TO DISREGARD IT.

24 BY MR. DELGADO

25 Q THERE WAS NEVER AN OPINION THAT CAME OUT AT S.L.E.D.

1 THAT WAS DIFFERENT. EVERYBODY AT S.L.E.D. WOULD
2 AGREE BEFORE THAT FINAL OPINION WAS ISSUED. WOULD
3 THAT BE FAIR TO SAY?
4 A YOU MEAN IN GENERAL?
5 Q WELL, YOUR OPINION AS TO WHETHER OR NOT A BULLET
6 MATCHED, A BULLET DIDN'T MATCH, OR A BULLET WAS
7 INCONSISTENT?
8 A YES, SIR; THAT'S CORRECT. WE WOULD AGREE.
9 Q INCONSISTENT MEANS SIR, YOU JUST CAN'T TELL, CORRECT,
10 SIR?
11 A INCONCLUSIVE MEANS THAT.
12 Q I'M SORRY.
13 A NOT INCONSISTENT.
14 Q I'M SORRY. INCONCLUSIVE MEANS YOU JUST CAN'T TELL?
15 A THAT'S CORRECT.
16 MR. DELGADO: THANK YOU, SIR.
17 THE COURT: ALL RIGHT.
18 MR. MCMAHON: CAN I ASK JUST ONE MORE QUESTION?
19 THE COURT: NO, SIR. YOU ALL KNOW THAT RULE.
20 YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS.
21 MR. DELGADO --
22 MR. MCMAHON: THE STATE CALLS DR. --
23 THE COURT: YOU HAVEN'T HAD THAT EXPERIENCE WITH
24 ME. I DON'T KNOW IF YOU KNOW --
25 MR. DELGADO: I'M SORRY, JUDGE. YOU MEAN

1 DIRECT, CROSS, AND REDIRECT?

2 THE COURT: YES.

3 MR. DELGADO: NO REDIRECT -- I MEAN RECROSS?

4 THE COURT: RECROSS AND THAT'S IT. I DON'T GO
5 BEYOND THAT.

6 GEORGE LIPPARD, AFTER BEING DULY SWORN, TESTIFIED
7 AS FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
9 NAME. SPELL YOUR LAST NAME.

10 THE COURT: MR. SOLICITOR, YOU NEED TO HAND
11 HER -- DIDN'T YOU WANT THAT MARKED FOR IDENTIFICATION, THE
12 WEAPON?

13 MR. MCMAHON: JUDGE, I THINK IT WAS ALREADY
14 MARKED, STATE'S 6.

15 THE COURT: OKAY. YOU GOT THAT.

16 MR. MCMAHON: YES, SIR. I THANK YOU FOR
17 REMINDING ME.

18 THANK YOU, SIR.

19 DIRECT EXAMINATION:

20 BY MR. MCMAHON

21 Q GOOD AFTERNOON, SIR.

22 A GEORGE A. LIPPARD, JR., L-I-P-P-A-R-D.

23 Q AND, SIR, WHAT IS YOUR OCCUPATION?

24 A WELL, I'M RETIRED.

25 Q I HAVEN'T HAD ANYBODY UP HERE YET WHO WASN'T RETIRED,

1 I DON'T THINK. WHAT WAS YOUR OCCUPATION PRIOR TO
2 YOUR RETIREMENT?

3 A I PRACTICED DENTISTRY IN COLUMBIA FOR 42 YEARS.

4 Q AND WHEN DID YOU RETIRE, DR. LIPPARD?

5 A JUNE OF LAST YEAR.

6 Q NOW, COULD YOU TELL US A LITTLE BIT ABOUT YOURSELF?
7 HOW OLD ARE YOU? WHAT YEAR WERE YOU BORN?

8 A I WAS BORN IN 1931. MY PARENTS MOVED TO COLUMBIA IN
9 1933 FROM CHARLOTTE. MY DAD MANAGED THE OLD GRESHAM
10 HOTEL DOWN BY THE UNION STATION FOR 30 YEARS UNTIL IT
11 WAS BOUGHT IN 1963 BY THE UNIVERSITY AND THEN TORN
12 DOWN.

13 Q AND WHEN DID YOU MOVE -- OR WHERE WERE YOU RAISED,
14 SPECIFICALLY?

15 A IN THE HOTEL. WE HAD A -- OUR FAMILY HAD -- MY DAD
16 WAS MANAGER, AND WE HAD AN APARTMENT IN THE HOTEL.

17 Q AND YOU ACTUALLY LIVED AND WERE RAISED IN THE GRESHAM
18 HOTEL?

19 A UH-HUH, THAT'S RIGHT.

20 Q AND THIS WAS DURING THE ENTIRE PERIOD OF TIME THAT
21 YOUR FATHER WOULD HAVE BEEN THE GENERAL MANAGER
22 THERE?

23 A YES. WELL, THAT WAS MY PERMANENT RESIDENCE UNTIL --
24 WELL, ACTUALLY 1956 WHEN I GOT MARRIED.

25 Q DID YOU EVER WORK AT THE GRESHAM?

1 A OH YES.

2 Q AND WHAT TYPE OF WORK DID YOU DO THERE, DOCTOR?

3 A WELL, FROM MOPPING FLOORS TO WASHING DISHES TO
4 WAITING TABLE, PAINTING, JUST GENERAL MAINTENANCE,
5 AND I DID SOME CLERKING, TOO, ESPECIALLY IN THE
6 SUMMERTIME. I'D RELIEVE THE NIGHT CLERK WHEN THEY
7 WERE ON VACATION AND OTHER CLERKS, TOO. THAT WAS
8 WHEN I WAS OLDER WHEN I WAS IN COLLEGE AT DENTAL
9 SCHOOL.

10 Q WHAT TYPE OF CLIENTELE DID YOU HAVE THERE AT THE
11 GRESHAM, AS YOU RECALL?

12 A WELL, BEING AS CLOSE AS WE WERE TO THE TRAIN STATION,
13 WE HAD A LOT OF RAILROADMEN, CONDUCTORS, AND
14 ENGINEERS AND RAILWAY MAIL CLERKS. JUST, YOU KNOW, A
15 LOT OF GENERAL -- A LOT OF TRAVELING MEN.

16 Q AND HOW FAR WAS THE GRESHAM LOCATED FROM THE TRAIN
17 STATION? YOU WERE SPEAKING OF WHERE CALIFORNIA
18 DREAMING IS LOCATED NOW, RIGHT?

19 A RIGHT, IT'S JUST ONE BLOCK UP THE HILL TOWARDS THE
20 CAPITAL.

21 Q I'M GOING TO SHOW YOU A PHOTOGRAPH AND ASK IF YOU CAN
22 IDENTIFY THIS PHOTOGRAPH FOR US, PLEASE.

23 A THAT'S THE OLD GRESHAM HOTEL.

24 Q AND DID YOU -- AS A MATTER OF FACT, YOU PROVIDED ME A
25 PRINT OF THE ORIGINAL OF THAT, AND I MADE A PRINT OF

1 IT; IS THAT RIGHT, SIR?

2 A RIGHT.

3 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THAT
4 INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MS. HUDGINS: THAT'S WITHOUT OBJECTION, YOUR
7 HONOR.

8 THE COURT: WITHOUT OBJECTION.

9 (WHEREUPON, STATE'S EXHIBIT NO.. 33 WAS MARKED
10 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

11 BY MR. MCMAHON

12 Q AND IT WAS LOCATED AT THE INTERSECTION OF WHAT
13 STREETS, DOCTOR?

14 A MAIN AND WHEAT STREETS.

15 Q AND THIS SIDE HERE, WHAT SIDE WOULD THAT BE?

16 A THAT'S MAIN STREET?

17 Q SO THE TRAIN STATION WOULD BE DOWN TOWARDS THIS
18 DIRECTION?

19 A IT WOULD BE THAT WAY ON THE OPPOSITE SIDE OF THE
20 STREET.

21 Q NOW, CAN YOU POINT OUT ON THIS PHOTOGRAPH, FOR
22 EXAMPLE, THE AREA OF THE GRESHAM HOTEL WHERE YOUR
23 FAMILY RESIDED?

24 A THESE THREE ACROSS HERE AND THEN TWO WINDOWS DOWN
25 THAT WAY. WE HAD LIKE FOUR ROOMS.

1 Q RIGHT IN HERE. RIGHT WHERE I'M POINTING AT HERE?
2 A UH-HUH, SECOND FLOOR.
3 Q THAT WAS YOU, YOUR MOM, DAD AND --
4 A MY BROTHER.
5 Q -- YOUR BROTHER. WHAT WAS YOUR BROTHER'S NAME?
6 A JIM.
7 Q NOW, AS A RESULT OF BEING RAISED IN THE GRESHAM,
8 COULD YOU TELL US, WHERE WOULD YOU HAVE GONE TO HIGH
9 SCHOOL?
10 A I WENT TO UNIVERSITY HIGH, WHICH IS JUST THREE BLOCKS
11 AWAY RIGHT UP THE HILL.
12 Q NOW, THE UNIVERSITY EDUCATION DEPARTMENT --
13 A THAT'S RIGHT.
14 Q -- OR LAST I HEARD IT WAS THE UNIVERSITY EDUCATION
15 DEPARTMENT.
16 A RIGHT. IT IS. THE SCHOOL WAS CLOSED DOWN IN 1966.
17 Q NOW, BEING THE GRESHAM HOTEL, DID YOU MAINTAIN A
18 REGISTRY?
19 A OH YES.
20 Q OF GUESTS THAT WERE REGISTERED?
21 A OH YES.
22 Q WERE THERE SOME INDIVIDUALS THAT REGISTERED THERE
23 THAT WERE KIND OF PERMANENT OR SEMIPERMANENT?
24 A WELL, WE HAD -- THERE WERE PERMANENT RESIDENTS THERE.
25 I THINK AT THE BEGINNING OF EACH MONTH, THEY WOULD

1 REREGISTER THEM. THE CLERK WOULD DO THAT VERSUS
2 SOMEBODY WHO WAS JUST COMING IN WANTING A ROOM FOR A
3 NIGHT OR SO, BUT THEY REREGISTERED AT THE END OF THE
4 EACH MONTH BECAUSE THEY USUALLY PAID FOR THEIR ROOM
5 BY THE MONTH.

6 Q DR. LIPPARD, I WANT TO SHOW YOU A DOCUMENT AND ASK,
7 CAN YOU IDENTIFY THAT DOCUMENT FOR US, PLEASE? IS
8 THAT SOMETHING YOU WOULD BE FAMILIAR WITH?

9 A YES.

10 Q IS THIS A DOCUMENT, A BUSINESS DOCUMENT, THAT WOULD
11 HAVE BEEN HELD IN THE NORMAL COURSE OF BUSINESS BY
12 THE GRESHAM HOTEL?

13 A OH YES. THIS IS A COPY OF THE REGISTER, REGISTRATION
14 SHEET. THERE WAS JUST ONE BIG REGISTRATION SHEET,
15 AND AS PEOPLE CAME IN, THEY WOULD SIGN IT, ONE RIGHT
16 UNDER THE OTHER.

17 Q AND THIS DOCUMENT HERE, WOULD THAT BE AN ENLARGEMENT
18 OF THE SHEET THAT YOU HAVE IN FRONT OF YOU?

19 A UH-HUH.

20 Q AND DOES THIS APPEAR TO BE AUTHENTIC COPIES OF THE
21 ORIGINALS?

22 A AS BEST I CAN TELL.

23 Q ALL RIGHT, SIR. AND YOU HAVE NO REASON TO BELIEVE
24 THIS IS NOT AUTHENTIC?

25 A NO.

1 Q YOUR HONOR, I -- AND IS THERE A DATE APPEARING RIGHT
2 UP HERE?

3 A YES, MARCH 2ND, 1961.

4 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THESE
5 DOCUMENTS INTO EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MS. HUDGINS: IF I CAN JUST LOOK AT IT.

8 (PAUSE).

9 I'M SORRY, YOUR HONOR. BEG THE COURT'S
10 INDULGENCE ONE MOMENT. I JUST NEED TO CHECK THIS.

11 (PAUSE).

12 MR. DELGADO: YOUR HONOR, IF WE COULD JUST HAVE
13 A MOMENT. THERE'S SOMETHING WE NEED TO SHOW THE SOLICITOR
14 HE DOESN'T KNOW IS THERE.

15 (PAUSE).

16 THE COURT: BATES STAMP 31.

17 MR. DELGADO: WELL, YOUR HONOR, IT'S TWO
18 DIFFERENT PLACES, THAT'S IT.

19 MS. HUDGINS: IF I CAN CONFER WITH THE
20 SOLICITOR, I CAN CURE THIS.

21 (PAUSE).

22 MR. MCMAHON: I DON'T MIND TAKING THEIR COPY.
23 IT'S THE SAME INFORMATION. I DON'T MIND TAKING THE COPY.

24 MR. DELGADO: YOUR HONOR, IF YOU LOOK AT 547,
25 YOU'LL SEE THE DIFFERENCE.

1 MS. HUDGINS: AS OPPOSED TO --

2 MR. MCMAHON: AND THERE'S NO SUBSTANTIVE
3 DIFFERENCE.

4 MR. DELGADO: THAT'S RIGHT.

5 MR. MCMAHON: THERE'S NO SUBSTANTIVE DIFFERENCE.

6 MR. DELGADO: I WOULDN'T SAY -- THERE'S A
7 SUBSTANTIVE DIFFERENCE.

8 MS. HUDGINS: BUT WE WOULD OBJECT TO THIS
9 BECAUSE THIS IS --

10 THE COURT: WELL, YOU HAVE TO EXPLAIN TO ME. I
11 CAN'T GUESS, FOLKS. COME UP HERE.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
13 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
14 THE JURY.)

15 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF
16 THE JURY, LET ME LET YOU TAKE A SHORT BREAK AND THIS WILL
17 SOLVE THIS CASE.

18 (WHEREUPON, THE JURY LEFT OPEN COURT AT
19 APPROXIMATELY 3:29 P.M.)

20 THE COURT: WE'LL TAKE ABOUT TEN MINUTES.

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 THE COURT: ARE YOU READY?

23 MR. MCMAHON: YES, SIR. I'M MARKING THESE TWO
24 ITEMS THAT HAVE BEEN RECOPIED AND ENLARGED.

25 THE COURT: ALL RIGHT. BRING THE JURY IN.

1 (WHEREUPON, STATE'S EXHIBITS NOS. 34, 35 WERE
2 MARKED FOR IDENTIFICATION ONLY.)

3 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
4 APPROXIMATELY 3:43 P.M.)

5 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MR. MCMAHON: THANK YOU, YOUR HONOR.

8 THE COURT: YOU MAY PROCEED.

9 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
10 PLEASE THE COURT.

11 (A JUROR HAD DIFFICULTY GETTING TO HIS SEAT IN
12 THE JURY BOX.)

13 THE COURT: MR. BAILIFF, WOULD IT BE MORE
14 COMFORTABLE FOR HIM BEING ON THE BACK ROW RATHER THAN HIM
15 HAVING TO HANDLE THAT. NEXT TIME JUST LET HIM SIT ON THE
16 BACK, IF YOU PREFER. I KNOW THAT STEP IS KIND OF TRICKY
17 THERE, OKAY.

18 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
19 PLEASE THE COURT.

20 BY MR. MCMAHON

21 Q DR. LIPPARD, I HAVE HANDED A DOCUMENT UP HERE,
22 STATE'S EXHIBIT NO. 34. DO YOU RECOGNIZE THAT
23 DOCUMENT?

24 A YEAH. IT DOESN'T HAVE THE HOTEL NAME AT THE TOP,
25 NOW, BUT I THINK WHAT IT IS -- I SEE WHAT YOU'VE

1 DONE. IT'S THE SAME REGISTRATION, I THINK.

2 Q ALL RIGHT. SO THIS STATE'S EXHIBIT NO. 35 APPEARS TO
3 BE AN ENLARGEMENT OF THAT, CORRECT?

4 A RIGHT.

5 Q AND ADDITIONALLY, IF I SHOW YOU THIS DOCUMENT HERE,
6 DOES THIS APPEAR TO BE WHAT YOU HAVE, STATE'S 34, A
7 PARTIAL COPY OF THIS DOCUMENT I AM SHOWING?

8 A RIGHT, RIGHT.

9 Q AND AT THE TOP OF THIS, DO YOU SEE THE WORD "GRESHAM"
10 HOTEL?

11 A CERTAINLY.

12 Q AND IS THERE ANY SUBSTANTIVE DIFFERENCE THERE BETWEEN
13 THE INFORMATION CONTAINED ON STATE'S 34 AND THIS
14 DOCUMENT I'M SHOWING YOU FROM THE ORIGINAL?

15 A NO, IT'S IDENTICAL.

16 Q IT APPEARS TO BE THE SAME. IT JUST DIDN'T COPY THAT
17 TOP PART THAT SAYS "GRESHAM HOTEL"?

18 A RIGHT.

19 Q ALL RIGHT. NOW, DOCTOR, WHAT I WILL DO IS TRY TO
20 DISPLAY THIS STATE'S 35 TO THE JURY AS I ASK YOU
21 QUESTIONS ABOUT 34.

22 A OKAY.

23 Q UP AT THE TOP OF THAT ORIGINAL WERE THE WORDS
24 "GRESHAM HOTEL", CORRECT?

25 A RIGHT.

1 Q AND WHAT DOES THIS APPEAR TO BE, SIR?

2 A IT WAS A REGISTRATION SHEET. IT WAS A LARGE
3 REGISTRATION SHEET THAT WAS IN LIKE A BLOTTER HOLDER,
4 YOU KNOW, THAT YOU HAVE ON A DESK AND THERE ARE
5 LITTLE THINGS ON EACH CORNER.

6 AS EACH GUEST CAME IN, THEY WOULD REGISTER.
7 THEY WOULD PUT WHERE THEY WERE FROM, THE TOWN, AND
8 THEN THE NEXT NUMBER WAS THE ROOM NUMBER THAT THEY
9 WERE ASSIGNED.

10 Q RIGHT IN HERE, THIS RIGHT SIDE?

11 A THAT'S RIGHT. AND THEN I THINK THAT'S ALL THAT'S
12 SHOWN ON THAT.

13 Q NOW, IS THERE A DATE AND A DAY THAT APPEARS UP AT THE
14 TOP OF STATE'S 34 AND 35?

15 A YES, IT'S MARCH 2ND, 1961.

16 Q IS THERE A DAY?

17 A I BELIEVE IT SAYS THURSDAY.

18 Q SO IF I GO TO MY MARCH 2ND, '61 CALENDER, THAT SHOULD
19 HAVE BEEN A THURSDAY; IS THAT CORRECT?

20 A UH-HUH.

21 Q RIGHT THERE. NOW, DO YOU RECOGNIZE ANY NAMES ON THIS
22 DOCUMENT, DOCTOR?

23 A A FEW OF THE NAMES CAME BACK. I KNOW THEY WERE
24 RESIDENTS THERE.

25 Q AND THOSE WERE THE PERMANENT RESIDENTS THAT YOU

1 REFERRED TO?

2 A YES.

3 Q WHAT ARE THE NAMES THAT YOU RECOGNIZE?

4 A WELL, R.E. EDWARDS WAS ONE.

5 Q THAT'S ONE, TWO, THREE, THE FOURTH NAME DOWN.

6 A AND THERE WAS A MR. PARRISH. I'M NOT SURE IF THAT'S

7 THE SAME ONE. IT'S BEEN SO LONG AGO, BUT EDWARDS

8 DEFINITELY, MR. ROY EDWARDS.

9 Q AND YOU RECOGNIZED MR. R.E. EDWARDS WHO WAS A

10 PERMANENT RESIDENCE OF THE GRESHAM BACK IN MARCH OF

11 '61?

12 A YES.

13 Q AND WHEN WOULD THE PERMANENT RESIDENTS USUALLY PAY UP

14 FOR THE MONTH?

15 A USUALLY AT THE FIRST OF THE MONTH.

16 Q AND IT --

17 A WE WOULD REREGISTER THEM THE BEGINNING OF EACH MONTH.

18 THEY DIDN'T HAVE TO DO IT EVERY DAY.

19 Q SO, IF I GO DOWN TO, I THINK THE 11TH, ONE, TWO,

20 THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, TEN, 11,

21 WHAT NAME APPEARS THERE, DOCTOR? DO YOU SEE WHERE

22 I'M POINTING HERE?

23 A IT LOOKS LIKE EDWARD E. FRIEBURGER.

24 Q AND THERE IS A NUMBER THAT APPEARS THERE ABOVE IT,

25 CORRECT?

1 A UH-HUH.

2 Q WOULD YOU BE FAMILIAR IF A SOLDIER CHECKED IN

3 SOMETIMES IF THEY WOULD USE THEIR SERVICE NUMBER?

4 A I THINK THEY DID, A LOT OF TIMES, YOU KNOW, BACK

5 THEN.

6 Q AND DOES THAT APPEAR TO BE A SERVICE NUMBER TO YOU?

7 A IT LOOKS LIKE IT.

8 Q NOW, WOULD THE CLERK FILL OUT THE NAME, OR WOULD THE

9 INDIVIDUAL SIGN HIS OR HER NAME?

10 A WELL, THE INDIVIDUAL IN A CASE LIKE THIS WHEN

11 SOMEBODY WAS JUST REGISTERING ON THE ONE -- IF THEY

12 WERE A PERMANENT RESIDENT AND THEY WERE REGISTERING,

13 SOMETIMES THE CLERK WOULD DO THAT, BUT IF IT'S

14 SOMEBODY JUST COMING IN FROM ONE NIGHT OF A COUPLE --

15 SEVERAL NIGHTS, THE INDIVIDUAL WOULD SIGN IT

16 THEMSELVES AND PUT THEIR PLACE OF RESIDENCE. THEN

17 THE CLERK WOULD DO THE ROOM NUMBER.

18 Q AND THAT NAME LOOKS LIKE EDWARD E. FRIEBURGER, AND

19 THAT NUMBER APPEARS TO BE R.A.?

20 A RA 16685. I CAN'T TELL IF IT'S A FIVE OR A THREE,

21 305 OR 505.

22 Q 305 OR 505. THAT'S WHAT IT APPEARS TO BE TO YOU?

23 A IT'S A LITTLE BLURRY ON THIS COPY.

24 Q AND THEN THE NEXT COLUMN IS THE PERSON'S RESIDENCE?

25 A RIGHT.

1 Q AND WHAT IS DEPICTED THERE?

2 A FORT JACKSON, SOUTH CAROLINA.

3 Q AND THIS WOULD HAVE BEEN THE REGISTRATION FOR
4 MARCH 2ND, '61?

5 A THAT'S WHAT IT APPEARS TO BE.

6 Q AND YOU DON'T RECOGNIZE THAT SIGNATURE, EDWARD E.
7 FRIEBURGER?

8 A NO. I WAS NOT LIVING THERE ANYMORE. I HAD BEEN GONE
9 FOR FIVE YEARS.

10 MR. MCMAHON: THANK YOU, DOCTOR. I DON'T HAVE
11 ANY FURTHER QUESTIONS.

12 THE COURT: CROSS-EXAMINATION, MS. HUDGINS.

13 MS. HUDGINS: THANK YOU, YOUR HONOR. MAY IT
14 PLEASE THE COURT.

15 CROSS-EXAMINATION:

16 BY MS. HUDGINS

17 Q GOOD AFTERNOON, DR. LIPPARD. I JUST HAVE A COUPLE OF
18 QUICK QUESTIONS FOR YOU. YOU SAY THAT WHEN A GUEST
19 CAME INTO THE GRESHAM HOTEL, YOU HAD WHAT APPEARED --
20 WELL, IT LOOKS LIKE A REGISTER THAT YOU WOULD SIGN.

21 A RIGHT. IT WAS A BIG, LIKE A -- YOU KNOW, IT WAS IN A
22 LITTLE ENCASEMENT LIKE A DESK BLOTTER WITH THE LITTLE
23 THINGS IN EACH CORNER.

24 Q YES, SIR.

25 A THEY WOULD JUST SIGN IT. IT STAYED UP ON THE DESK,

1 AND THEY WOULD JUST SIGN.

2 Q AND SO WHAT'S BEEN MARKED AS STATE'S EXHIBIT 35, AND
3 I BELIEVE YOU HAVE A SMALLER COPY OF --

4 A YES.

5 Q -- THAT WOULD BE A COPY OF YOUR DESK REGISTER --

6 A THAT'S RIGHT.

7 Q -- THAT APPEARED IN THE LOBBY, I GUESS, WHEN --

8 A RIGHT. IT WAS ON THE COUNTER OF THE DESK.

9 Q THE COUNTER WHERE YOU CHECKED IN?

10 A YES, RIGHT.

11 Q AND I'D JUST LIKE TO TALK TO YOU ABOUT -- I BELIEVE
12 THE SOLICITOR TALKED ABOUT LINE NUMBER 11 WITH THE
13 SIGNATURE THERE.

14 A UH-HUH.

15 Q WHAT DOES THAT APPEAR TO BE TO YOU, EDWARD E.
16 FRIEBURGER?

17 A RIGHT, YES.

18 Q AND THAT NUMBER APPEARING BEFORE HIS NAME?

19 A IT LOOKS LIKE AN ARMY SERIAL NUMBER TO ME.

20 Q AND WHAT ARE THOSE NUMBERS AS YOU CAN SEE THEM, JUST
21 TO YOUR BEST KNOWLEDGE? IT IS A BIT BLURRY THERE.

22 A IT LOOKS LIKE RA 16685 -- 505 OR 305. IT'S KIND OF
23 HARD TO TELL. IT'S A LITTLE BIT BLURRY.

24 Q IT COULD BE 305, THOUGH?

25 A IT COULD BE. I'M NOT SURE.

1 Q AND THE RESIDENCE THAT THIS PERSON LISTED?

2 A FORT JACKSON, SOUTH CAROLINA.

3 Q FORT JACKSON, SOUTH CAROLINA, AND THE TIME IS LISTED?

4 A NO. THAT'S THE ROOM NUMBER.

5 Q THAT'S THE ROOM NUMBER?

6 A YES. I THINK IT HAD TIME AT THE TOP OF THAT SLIP,
7 BUT IT'S THE ROOM NUMBER IS WHAT IT IS.

8 I THINK THE REGISTER DID HAVE THE TIME, BUT IT'S
9 ACTUALLY THE ROOM NUMBER.

10 Q SO WHERE IT LISTS THAT 409, THAT WOULD BE THE ROOM
11 NUMBER?

12 A ROOM 409.

13 Q AT THE GRESHAM HOTEL?

14 A YES.

15 MS. HUDGINS: THANK YOU, DR. LIPPARD. I DON'T
16 HAVE ANY FURTHER QUESTIONS.

17 THE COURT: ANY REDIRECT?

18 MR. MCMAHON: NO, YOUR HONOR.

19 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

20 ANY OBJECTION TO THE WITNESS BEING RELEASED?

21 MS. HUDGINS: NO, YOUR HONOR.

22 THE COURT: CALL YOUR NEXT WITNESS.

23 MS. CAMPBELL: THE STATE WOULD CALL GARY WATTS.

24 THE CLERK: IF YOU'D COME FORWARD, PLEASE.

25 PLACE YOUR LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

1 GARY WATTS, AFTER BEING DULY SWORN, TESTIFIED AS
2 FOLLOWS:

3 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
4 NAME.

5 THE WITNESS: IT'S GARY WATTS, W-A-T-T-S.

6 DIRECT EXAMINATION:

7 BY MS. CAMPBELL

8 Q MR. WATTS, HOW OLD ARE YOU?

9 A FORTY-FIVE. I'VE GOT A BIRTHDAY COMING UP.

10 Q OKAY. AND WHAT DO YOU DO FOR A LIVING, SIR?

11 A I AM THE CORONER FOR RICHLAND COUNTY.

12 Q SO YOU'RE ACTUALLY THE ELECTED CORONER OF OUR COUNTY?

13 A THAT'S CORRECT.

14 Q AND AS CORONER OF THIS COUNTY, CAN YOU TELL THIS JURY
15 WHAT KIND OF DUTIES YOU PERFORM FOR CITIZENS.

16 A WELL, ONE OF THE MAIN FUNCTIONS OF THE CORONER'S
17 OFFICE IS TO DETERMINE MANNER AND CAUSES OF DEATH IN
18 INDIVIDUALS THAT DIE IN THE COUNTY UNDER CERTAIN
19 CIRCUMSTANCES.

20 Q AND TYPICALLY, WHEN A PERSON IS FOUND DEAD IN EITHER
21 SUSPICIOUS OR UNUSUAL CIRCUMSTANCES, WILL YOU RESPOND
22 TO THE SCENE OR SOMEONE FROM YOUR STAFF?

23 A SUSPICIOUS OR UNATTENDED DEATHS, WE RESPOND, THAT'S
24 CORRECT.

25 Q AND HOW LONG HAS THE CORONER'S OFFICE BEEN IN

1 EXISTENCE IN THIS COUNTY? DO YOU EVEN KNOW?

2 A IT'S A CONSTITUTIONAL OFFICE. IT'S BEEN HERE
3 PROBABLY AS LONG AS ANYTHING ELSE. I DON'T KNOW AN
4 EXACT DATE, BUT I WOULD IMAGINE WHEN THE COUNTY --

5 Q SO BACK IN 1961, THE CORONER WAS ACTIVE --

6 A ABSOLUTELY.

7 Q -- IN INVESTIGATIONS, ESPECIALLY HOMICIDE
8 INVESTIGATIONS; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND TELL THIS JURY, TYPICALLY, IN A HOMICIDE
11 INVESTIGATION, EVEN TODAY, WHAT KIND OF -- WHAT DO
12 YOU DO? WHAT IS YOUR ROLE?

13 A OUR ROLE, WE HELP COORDINATE SOME OF THE DIFFERENT
14 ASPECTS OF THE INVESTIGATION BY PROVIDING EITHER
15 FORENSIC PATHOLOGISTS TO DO EXAMS AND/OR AUTOPSIES.
16 WE GENERALLY HANDLE ANY STUDIES THAT ARE SENT TO
17 S.L.E.D. FOR TOXICOLOGY AND THINGS LIKE THAT.

18 Q AND ARE PART OF YOUR DUTIES AS CORONER, ARE THERE
19 ALSO CERTAIN RECORDS THAT ARE MAINTAINED IN YOUR
20 OFFICE?

21 A WE DO MAINTAIN A RECORD OF EVERY INVESTIGATION THAT
22 WE HAVE.

23 Q AND SPECIFICALLY REFERRING TO THIS CASE, I BELIEVE
24 YOU HAVE IN YOUR HAND THE RECORDS FROM THE CASE
25 INVOLVING MR. JOHN H. ORNER?

1 A I ACTUALLY LEFT THEM ON YOUR DESK OVER THERE.
2 THEY'RE SITTING ON THE CORNER OF YOUR DESK.
3 Q THOSE WERE MAINTAINED IN YOUR POSSESSION?
4 A THAT'S CORRECT.
5 Q AND THOSE ARE MAINTAINED AS THE NORMAL COURSE OF YOUR
6 BUSINESS; IS THAT CORRECT?
7 A THAT'S CORRECT.
8 Q AND I'M GOING TO SHOW YOU TWO DOCUMENTS, MR. WATTS,
9 ACTUALLY THREE DOCUMENTS, A COPY OF TWO. THESE TWO
10 DOCUMENTS ARE ACTUAL COPIES FROM YOUR FILE; IS THAT
11 CORRECT?
12 A THAT'S CORRECT.
13 Q AND IN ADDITION, I'M GOING TO SHOW YOU THIS BLUE
14 CERTIFICATE OF DEATH. DO YOU RECOGNIZE THAT?
15 A I DO.
16 Q DOES THAT APPEAR TO BE A VALID DEATH CERTIFICATE?
17 A THIS IS A CERTIFIED CERTIFICATE OF DEATH FROM THE
18 DIVISION OF VITAL RECORDS, STATE OF SOUTH CAROLINA.
19 Q AND IN ADDITION, THESE ARE ACCURATE COPIES OF
20 DOCUMENTS FROM YOUR FILE THAT WAS MAINTAINED IN YOUR
21 OFFICE AS PART OF YOUR BUSINESS RECORDS?
22 A THAT'S CORRECT.
23 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
24 OFFER THESE THREE ITEMS INTO EVIDENCE.
25 MR. DELGADO: CAN I SEE?

1 MS. CAMPBELL: SURE.

2 MR. DELGADO: WITHOUT OBJECTION.

3 THE COURT: WITHOUT OBJECTION.

4 (WHEREUPON, STATE'S EXHIBITS NOS. '36, 37, 38
5 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO
6 EVIDENCE.)

7 BY MS. CAMPBELL

8 Q MR. WATTS, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
9 AS STATE'S EXHIBIT 36 AND 37 FIRST. CAN YOU IDENTIFY
10 THOSE FOR THE JURY?

11 A THIRTY-SIX IS A HANDWRITTEN REPORT FROM A DR. LINDLER
12 IN REFERENCE TO JOHN ORNER.

13 Q AND IN YOUR REVIEW OF THE FILE, WAS DR. LINDLER THE
14 PERSON THAT ACTUALLY PERFORMED THE AUTOPSY ON MR.
15 ORNER BACK IN MARCH OF '61?

16 A HE PERFORMED THE EXAM. HOW MUCH WAS DONE, I DON'T
17 REALLY KNOW. THIS IS THE ONLY REPORT WE HAVE. IT
18 CERTAINLY SHOWS THAT HE DID SOME WORK WITH THE POST
19 MORTEM EXAM, BUT IT'S NOT A FULL AUTOPSY REPORT.

20 Q BUT THESE ARE THE NOTES FROM DR. LINDLER --

21 A THAT'S CORRECT.

22 Q -- FROM MARCH OF 1961?

23 A IT'S DATED MARCH 3RD, 1963.

24 Q MARCH 3RD, 1961, AND THE SIGNATURE ON THE BOTTOM,
25 AGAIN, WHOSE SIGNATURE IS THAT IN THOSE NOTES?

1 A DR. -- IT LOOKS LIKE C.H. OR C.L. LINDLER.
2 Q AND THE SECOND ITEM YOU'VE GOTTEN, WHICH IS STATE'S
3 EXHIBIT 37, I BELIEVE. WHAT IS THAT?
4 A THIS IS ANOTHER REPORT THAT WAS ISSUED FROM A DOCTOR
5 AT THE COLUMBIA HOSPITAL, ALSO DATED 3/3/61. IT'S AN
6 X-RAY REPORT BASICALLY OR READING OF AN X-RAY REPORT.
7 Q A READING OF SOME X-RAYS IN THIS CASE?
8 A CORRECT.
9 Q AND THAT IS, AGAIN, INVOLVING THE VICTIM, JOHN ORNER?
10 A JOHN ORNER, AND AGAIN, THE DATE OF MARCH 3RD, 1961.
11 Q AND WHOSE ATTENTION WAS THAT REPORT FORWARDED TO?
12 A THIS REPORT WAS ADDRESSED TO CECIL WILES WHO WAS THE
13 CORONER AT THE TIME OF MR. ORNER'S DEATH.
14 Q OKAY. SO THAT WAS ADDRESSED TO CECIL WILES, WHO WAS
15 THE CORONER AT THE TIME OF MR. ORNER'S DEATH; IS THAT
16 CORRECT?
17 A THAT'S CORRECT.
18 Q AND AGAIN, DR. LINDLER IS THE PERSON WHO MADE THE
19 NOTES ON STATE'S EXHIBIT 36 INDICATING HE DID SOME
20 POST MORTEM EXAMINATIONS ON MR. ORNER?
21 A THAT'S CORRECT.
22 Q FINALLY, I'M GOING TO SHOW YOU THIS STATE'S
23 EXHIBIT 38 ENTITLED "CERTIFICATE OF DEATH". WHOSE
24 CERTIFICATE OF DEATH WAS THAT?
25 A THIS IS A CERTIFICATE OF DEATH ON JOHN ORNER, JOHN

1 HOWARD ORNER.

2 Q AND ON THAT, DOES IT INDICATE MR. ORNER'S AGE?

3 A IT DOES, 63.

4 Q HE WAS 63 AT THE TIME OF HIS DEATH THEN?

5 A YES. IT SHOWS HIM WITH A DATE OF BIRTH OF MAY 12TH,
6 1897.

7 Q AND IN THAT CERTIFICATE DOES IT ALSO INDICATE A
8 MANNER OF DEATH OR CAUSE OF DEATH?

9 A WELL, I WOULD SAY IT DOES BOTH.

10 Q OKAY. AND CAN YOU EXPLAIN BOTH OF THOSE TO THE JURY,
11 WHAT IT SAYS?

12 A WELL, THE CAUSE OF DEATH LISTED IS "A BULLET WOUND OF
13 HEAD" IS THE WAY THEY HAVE THE CAUSE OF DEATH LISTED.
14 THE MANNER OF DEATH IS LISTED AS A HOMICIDE.

15 Q SO THE MANNER OF DEATH WAS CALLED A HOMICIDE ON THIS
16 DEATH CERTIFICATE, CORRECT?

17 A THAT'S CORRECT.

18 Q AND IT ALSO INDICATES "A BULLET WOUND OF HEAD", AND
19 THAT'S DIAGNOSED BY WHOM?

20 A DR. C.K. LINDLER, AND THIS WAS SIGNED BY CECIL WILES,
21 THE CORONER.

22 Q AND, OF COURSE, MR. WATTS, A MURDER WOULD BE A
23 HOMICIDE; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 MS. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

1 THE COURT: CROSS-EXAMINATION, MR. DELGADO?
2 MR. DELGADO: YOUR HONOR, I HAVE NO QUESTIONS OF
3 MR. WATTS.
4 THE COURT: THANK YOU. NO QUESTIONS. YOU MAY
5 STEP DOWN.
6 ANY OBJECTIONS TO THE CORONER BEING RELEASED?
7 MR. DELGADO: NO OBJECTION.
8 MS. CAMPBELL: THE STATE WOULD CALL DR. CLAY
9 NICHOLS.
10 THE CLERK: IF YOU'D COME FORWARD PLEASE. PLACE
11 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.
12 CLAY NICHOLS, AFTER BEING DULY SWORN, TESTIFIED AS
13 FOLLOWS:
14 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
15 NAME. SPELL YOUR LAST NAME.
16 THE WITNESS: CLAY ALLEN NICHOLS, N-I-C-H-O-L-S.
17 MR. DELGADO: YOUR HONOR, EXCUSE ME JUST ONE
18 SECOND.
19 MS. HUDGINS JUST TOLD ME SOMETHING. COULD WE
20 JUST ADDRESS SOMETHING JUST ONE MINUTE?
21 THE COURT: SURE.
22 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
23 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
24 THE JURY.)
25 DIRECT EXAMINATION:

1 BY MS. CAMPBELL

2 Q DR. NICHOLS, WHERE ARE YOU EMPLOYED?

3 A AT PALMETTO RICHLAND MEMORIAL HOSPITAL.

4 Q AND WHAT DO YOU DO AT PALMETTO RICHLAND MEMORIAL

5 HOSPITAL?

6 A I'M A FORENSIC PATHOLOGIST.

7 Q AND CAN YOU TELL THIS JURY, AS A FORENSIC

8 PATHOLOGIST, WHAT YOU DO?

9 A I DO AUTOPSIES ON PEOPLE WHO DIE OF SUSPICIOUS AND

10 UNNATURAL DEATHS.

11 Q AND DOCTOR, CAN YOU TELL THE JURY A LITTLE BIT ABOUT

12 YOUR QUALIFICATIONS, YOUR TRAINING?

13 A I RECEIVED MY BACHELOR OF SCIENCE DEGREE FROM THE

14 UNIVERSITY OF OKLAHOMA IN 1981. FOLLOWING THAT, I

15 RECEIVED MY DEGREE FROM THE UNIVERSITY OF OKLAHOMA IN

16 1985. FOLLOWING THAT, I ENTERED A RESIDENCY IN

17 ANATOMIC AND FORENSIC PATHOLOGY AT THE MEDICAL

18 UNIVERSITY OF CHARLESTON, COMPLETING THAT IN 1989.

19 FOLLOWING THAT, I WAS ON THE FACULTY AT M.U.S.C.

20 WHERE I WAS AN ASSOCIATE PROFESSOR UNTIL DECEMBER OF

21 1999 -- EXCUSE ME, 2000, WHEN I LEFT AND JOINED THE

22 STAFF HERE AT PALMETTO RICHLAND.

23 Q AND OVER THE COURSE OF YOUR EXPERIENCE, APPROXIMATELY

24 HOW MANY AUTOPSIES HAVE YOU PERFORMED OVER THE YEARS?

25 A APPROXIMATELY THREE OR 4,000.

1 Q AND DOCTOR, YOU'VE BEEN QUALIFIED BEFORE AS AN EXPERT
2 IN THE FIELD OF FORENSIC PATHOLOGY, CORRECT?

3 A SEVERAL HUNDRED TIMES.

4 Q SEVERAL HUNDRED TIMES.

5 A YES, MA'AM.

6 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
7 OFFER HIM AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.

8 MR. DELGADO: YOUR HONOR, NOT ONLY THAT, WE
9 STIPULATE TO THE CAUSE OF DEATH.

10 THE COURT: ALL RIGHT.

11 MS. CAMPBELL: THANK YOU.

12 BY MS. CAMPBELL

13 Q DOCTOR, AT YOUR REQUEST, DID YOU HAVE AN OPPORTUNITY
14 TO REVIEW SOME NOTES IN THIS CASE?

15 A YES, I DID.

16 Q I'LL SHOW YOU STATE'S EXHIBIT 36 AND 37. ARE THOSE
17 COPIES OF THE ACTUAL NOTES YOU REVIEWED?

18 A YES, THEY ARE.

19 Q AND HAVING REVIEWED THOSE RECORDS AND READ -- THOSE
20 ARE ACTUALLY DR. LINDLER'S NOTES, AS WELL AS SOME
21 NOTES ON SOME X-RAYS THAT WERE DONE; IS THAT CORRECT?

22 A YES, MA'AM.

23 Q WERE YOU ABLE TO DETERMINE THE MANNER AND CAUSE OF
24 DEATH INVOLVING MR. ORNER BACK IN 1961?

25 A YES, MA'AM.

1 Q AND CAN YOU EXPLAIN TO THE JURY WHAT YOUR FINDINGS
2 WERE AFTER YOUR REVIEW OF THE NOTES?

3 A ESSENTIALLY, MR. ORNER DIED OF A GUNSHOT WOUND TO THE
4 BACK RIGHT OF HIS HEAD. UPON ENTERING THE VERTEBRAL
5 COLUMN, THE BULLET FRAGMENTED INTO THREE PIECES. TWO
6 OF THE PIECES REMAINED ABOVE THE SPINAL COLUMN. ONE
7 PIECE ACTUALLY WENT INTO THE SKULL AND WENT TO THE
8 BASE OF THE BRAIN NEAR WHAT'S CALLED THE PITUITARY
9 GLAND. DURING THE COURSE OF THE AUTOPSY, THREE
10 FRAGMENTS WERE RECOVERED.

11 Q OKAY. DOCTOR, YOU'VE GOT TO SLOW DOWN A LITTLE. YOU
12 TALK FASTER THAN I DO.

13 YOU SAID WHEN THE BULLET ENTERED. WHERE DID IT
14 HIT? PUT IT IN TERMS I CAN UNDERSTAND.

15 A WELL, THE -- I HAVE A DIAGRAM, IF THAT MIGHT BE
16 HELPFUL.

17 Q DID YOU PREPARE A DIAGRAM IN THIS CASE?

18 A YES, I DID.

19 Q AND I SHOW YOU THIS DIAGRAM. IS THIS WHAT YOU
20 PREPARED?

21 A YES.

22 Q A BLOW UP, ACTUALLY.

23 A YES.

24 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
25 OFFER IT INTO EVIDENCE, I BELIEVE WITHOUT OBJECTION.

1 THE COURT: ANY OBJECTION?

2 MR. DELGADO: I'VE NEVER SEEN IT BEFORE, BUT NO
3 OBJECTION.

4 MS. CAMPBELL: IT'S BEEN SHOWN TO CO-COUNSEL.

5 THE COURT: ALL RIGHT.

6 (WHEREUPON, STATE'S EXHIBIT NO. 39 WAS MARKED
7 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

8 BY MS. CAMPBELL

9 Q NOW, REFERRING TO STATE'S EXHIBIT 39, DOCTOR, YOU
10 INDICATED THAT THE BULLET ACTUALLY ENTERED THE BACK
11 OF THE HEAD OR THE SKULL?

12 A RIGHT, CORRECT. APPROXIMATELY ONE HALF-INCH TO THE
13 RIGHT OF THE MIDLINE. YOU CAN SEE IT'S RIGHT AT THE
14 BASE OF THE SKULL WHERE THE FIRST OR SECOND VERTEBRA
15 ENTER THE SKULL.

16 RIGHT IN THAT AREA WHERE THE SOLICITOR IS
17 POINTING.

18 Q WHERE MY FINGER IS POINTING RIGHT HERE?

19 A YES, IT IS.

20 Q AND THAT WOULD BE WHERE THE ENTRY WOUND -- TELL THIS
21 JURY, WHAT IS THE DIFFERENCE BETWEEN AN ENTRY AND AN
22 EXIT WOUND WHEN BULLETS ARE INVOLVED.

23 A AN ENTRANCE WOUND OCCURS WHEN A BULLET ACTUALLY
24 GRINDS ITS WAY INTO THE SKULL. YOU HEARD TESTIMONY
25 ABOUT THAT, HOW THE PROSTRATIONS ARE PERFORMED,

1 BECAUSE OF THE RIFLING OF BARREL.

2 AS THE BULLET IS SPINNING AND ENTERING THE BODY,
3 IT'S ACTUALLY DRILLING A LITTLE HOLE INTO THE SKIN.
4 YOU CAN SEE AN ABRASION BORDER AROUND IT WHERE THE
5 DRILLING OF A BULLET OCCURS.

6 IF A BULLET EXITS, THEN WE HAVE WHAT'S CALLED
7 LACERATED TORN EDGES AS THE BULLET EXITS. IT DOESN'T
8 HAVE ANYTHING TO DO WITH THE SIZE OF THE HOLE. IT
9 HAS TO DO WITH THE PHYSICAL CHARACTERISTICS.

10 Q AND IN THIS CASE I BELIEVE YOU INDICATED WHEN YOU
11 TESTIFIED A FEW MINUTES AGO THAT WHEN THIS BULLET
12 ENTERED, THAT THERE WAS -- I THINK YOU CALLED IT
13 FRAGMENTS?

14 A FRAGMENTS, RIGHT. THE BULLET --

15 Q EXPLAIN THAT TO THE JURY A LITTLE BIT.

16 A THE BULLET BROKE INTO THREE PIECES AS IT HIT MAINLY
17 THE VERTEBRAL COLUMN. TWO OF THE PIECES REMAINED
18 AROUND THE VERTEBRAL COLUMN OR THE SPINE, AND ONE
19 FRAGMENT OF THE BULLET ACTUALLY ENTERED THE SKULL
20 CAUSING CEREBRAL LACERATION AND GOING TOWARDS THE
21 BASE OF THE BRAIN TOWARDS THE STRUCTURE KNOWN AS THE
22 PITUITARY.

23 Q OKAY. SO TWO OF THE FRAGMENTS ENTERED RIGHT AS IT
24 HIT BONE?

25 A THAT'S CORRECT.

1 Q AND THAT WOULD BE RIGHT AS IT ENTERED THE BACK OF THE
2 HEAD?
3 A THAT'S CORRECT.
4 Q AND THOSE REMAIN RIGHT AT THAT SAME AREA?
5 A THAT'S CORRECT.
6 Q AND YOU INDICATED THAT ONE OF THOSE FRAGMENTS
7 CONTINUED ON INTO THE BRAIN?
8 A THAT'S CORRECT.
9 Q AND WHICH DIRECTION DID IT GO, AND IS IT INDICATED
10 HERE ON THE DIAGRAM?
11 A IT'S INDICATED IN THE LOWER LEFT DIAGRAM WHERE IT'S
12 GOING UP AND TOWARDS THE MIDDLE A LITTLE BIT.
13 Q AND -- IT WAS DEPOSITED SOMEWHERE IN THIS AREA AROUND
14 THIS ARROW?
15 A RIGHT AT THE BASE OF THE BRAIN ALMOST RIGHT IN THE
16 MIDDLE.
17 Q AND THE DAMAGE TO THE BRAIN IS ULTIMATELY WHAT CAUSED
18 HIS DEATH?
19 A THAT'S CORRECT.
20 Q DOCTOR, FROM YOUR REVIEW OF THE NOTES, WERE YOU ABLE
21 TO DETERMINE WHAT KIND OF DISTANCE THE GUN WOULD HAVE
22 BEEN FROM THE BACK OF THE HEAD WHEN IT WAS SHOT?
23 A DR. LINDLER INDICATES THAT THERE'S NO EVIDENCE OF
24 BURNING AROUND THE WOUND.
25 Q YES, SIR.

1 A SO AS A MINIMUM DISTANCE, WE'RE TALKING ABOUT SEVERAL
2 INCHES. THE EXACT DISTANCE I CAN'T SAY, BUT THERE'S
3 AT LEAST SEVERAL INCHES BACK TO WHATEVER THE DISTANCE
4 OF THE FIRING RANGE OF THE WEAPON WOULD BE, BUT THAT
5 WAS ALSO LIMITED BY THE CIRCUMSTANCES OF THE
6 SHOOTING, MAINLY A TAXI CAB SEAT.

7 Q MR. ORNER WAS A CAB DRIVER?

8 A YES.

9 Q WOULD THAT BE CONSISTENT WITH A FARE HE PICKED UP
10 SHOOTING HIM FROM THE BACKSEAT?

11 A YES.

12 MS. CAMPBELL: THAT'S ALL I HAVE.

13 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

14 MR. DELGADO: YOUR HONOR, WE HAVE NO QUESTIONS
15 OF THE DOCTOR.

16 THE COURT: THANK YOU. YOU MAY HAVE STEP DOWN.

17 CALL YOUR NEXT WITNESS, PLEASE.

18 MR. MCMAHON: THE STATE CALLS GARY AEBERSOLD.

19 THE CLERK: IF YOU'D COME FORWARD PLEASE, PLACE
20 YOUR LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

21 GARY ABERSOLD, AFTER BEING DULY SWORN, TESTIFIED AS
22 FOLLOWS:

23 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME,
24 SPELL YOUR LAST NAME.

25 THE WITNESS: GARY ABERSOLD, A-B-E-R-S-O-L-D.

DIRECT EXAMINATION:

BY MR. MCMAHON

Q MR. AEBERSOLD, WHERE ARE YOU FROM, SIR? WHERE DO YOU
LIVE NOW?

A KANSAS CITY, MISSOURI.

Q IS THAT WHERE YOU'RE FROM, MISSOURI?

A YES.

Q AND HOW OLD ARE YOU, SIR?

A FIFTY-NINE.

Q AND WHAT IS YOUR OCCUPATION?

A RETAIL LUMBER SALES.

Q AND HOW LONG HAVE YOU BEEN IN THAT OCCUPATION?

A SINCE 1964.

Q NOW, SIR, ARE YOU MARRIED?

A YES, SIR.

Q AND HOW LONG HAVE YOU BEEN MARRIED?

A 38 YEARS.

Q AND IS YOUR WIFE PRESENT WITH YOU IN THE COURTROOM
TODAY, AND SHE CAME OUT HERE WITH YOU?

A YES, SIR.

Q NOW, I WANT TO DIRECT YOUR ATTENTION BACK TO 1960,
THE LATTER PART OF 1960. WHAT WAS YOUR OCCUPATION?

A I GRADUATED OUT OF SCHOOL, QUIT A SUMMER JOB AND
JOINED THE ARMY OCTOBER 30TH, 1960.

Q AND FOR WHAT PERIOD OF TIME WAS YOUR ARMY ENLISTMENT?

1 A THE PERIOD OF TIME OF ENLISTMENT WAS FROM OCTOBER OF
2 '60 TO OCTOBER OF '63.
3 Q SO THREE YEARS; IS THAT CORRECT?
4 A YES, SIR.
5 Q AND YOU WEREN'T DRAFTED. YOU WENT DOWN AND
6 VOLUNTEERED?
7 A YES, SIR.
8 Q IS THAT CORRECT? NOW, WHERE DID YOU FIRST GO IN
9 OCTOBER OF '60, THE FIRST POST YOU WENT TO,
10 MR. ABERSOLD?
11 A FORT LEONARDWOOD, MISSOURI.
12 Q AND WERE YOU ASSIGNED THERE? YOU MAY HAVE TO SPEAK
13 UP. YOU'RE KIND OF SOFT SPOKEN.
14 WHAT PERIOD OF TIME WERE YOU THERE, SIR?
15 A APPROXIMATELY TWO WEEKS MAYBE, TWO-AND-A-HALF, THREE
16 WEEKS.
17 Q AND FROM FORT LEONARDWOOD WHERE WERE YOU ASSIGNED?
18 A FORT JACKSON, SOUTH CAROLINA.
19 Q AND DID YOU KNOW VARIOUS RECRUITS AT FORT LEONARDWOOD
20 AFTER YOU GOT THERE? DID YOU MEET VARIOUS RECRUITS?
21 A YES, SIR.
22 Q AND WERE SOME OF THE RECRUITS THAT YOU MET AT FORT
23 LEONARDWOOD, DID THEY LEAVE THERE AND ALSO COME TO
24 FORT JACKSON?
25 A YES, SIR.

1 Q AND WHAT WAS THE PURPOSE OF GOING FROM LEONARDWOOD TO
2 JACKSON?

3 A WE PROCESSED AT LEONARDWOOD, AND THEY SENT US DOWN
4 HERE FOR OUR BASIC TRAINING.

5 Q AND DID YOU KNOW A RECRUIT, EDWARD FRIEBURGER?

6 A I PROBABLY MET HIM AT LEONARDWOOD FOR THE FIRST TIME.

7 Q PRIOR TO THE ARMY, PRIOR TO OCTOBER, NOVEMBER OF '60,
8 YOU DID NOT KNOW EDWARD FRIEBURGER; IS THAT CORRECT?

9 A NO, SIR; NO, SIR.

10 Q NOW, WHEN YOU CAME TO FORT JACKSON FOR BASIC
11 TRAINING, WHAT LENGTH OF TIME IS BASIC TRAINING?

12 A BASIC TRAINING IS EIGHT WEEKS.

13 Q AND DO YOU RECALL THE COMPANY, THE UNIT YOU WERE
14 ASSIGNED TO FOR BASIC TRAINING?

15 A WE WERE ON WHAT THEY CALL TANK HILL, WHICH I FOUND
16 OUT YESTERDAY WAS B11, COMPANY B, FIRST BATTALION,
17 FIRST TRAINING RIG.

18 Q AND TANK HILL, WHY DO THEY CALL IT TANK HILL?

19 A THE WATER TANK WAS ON TOP OF THE HILL.

20 Q MOST PEOPLE THINK IT'S THE ARMY TANK, BUT IT'S
21 ACTUALLY THE BIG WATER TANK OUT THERE, CORRECT?

22 A YES, SIR.

23 Q AND WAS EDWARD FRIEBURGER ASSIGNED TO THAT SAME BASIC
24 TRAINING COMPANY?

25 A HE WAS IN THE SAME COMPANY, YES.

1 Q AND IS THE COMPANY MADE UP OF A NUMBER OF PLATOONS?
2 A FOUR PLATOONS.
3 Q AND ABOUT HOW MANY MEN ARE WE REFERRING TO IN A
4 COMPANY, APPROXIMATELY?
5 A APPROXIMATELY 80 TO A PLATOON, I GUESS.
6 Q OKAY. 80 TO A PLATOON, FOUR PLATOONS. I GUESS
7 YOU'RE TALKING ABOUT 320 MEN, ROUGHLY, FOR A COMPANY
8 BACK THEN?
9 A I DON'T REMEMBER EXACTLY HOW MANY.
10 Q OKAY. SO HE WAS ONE OF THE MEN IN THE COMPANY BUT
11 NOT IN THE SAME PLATOON AS YOU WERE IN BASIC
12 TRAINING?
13 A NOT IN THE SAME PLATOON, NO.
14 Q DID YOU KNOW HIM, KNOW OF HIM DURING BASIC?
15 A YES, SIR.
16 Q AND BASIC IS SUCH THAT YOU WERE TRAINING TOGETHER,
17 CORRECT?
18 A YES, SIR.
19 Q GO TO THE RIFLE RANGE, FIRST AID RANGES, HAND GRENADE
20 RANGES?
21 A YES, SIR.
22 Q ALL DID THAT TOGETHER AS A COMPANY?
23 A YES, SIR.
24 Q IS THAT CORRECT? DO YOU REMEMBER YOUR DRAFT
25 SERGEANT'S NAME, THE FIRST ONE YOU EVER MET AT FORT

1 JACKSON?

2 A YES, SIR.

3 Q WHAT WAS HIS NAME?

4 A SERGEANT ARVELLO.

5 Q DID HE MAKE AN IMPRESSION ON YOU?

6 A YES, SIR, THEY ALL DID.

7 Q NOW, AFTER BASIC, AFTER EIGHT WEEKS OF BASIC, WHERE

8 DID YOU GO? WHERE WERE YOU ASSIGNED?

9 A I WENT TO WHAT I DETERMINE WAS SEVEN OR EIGHT WEEKS

10 OF TRAINING, WHICH APPARENTLY WAS SUPPLY SCHOOL.

11 Q AND HOW ABOUT -- YOU WERE A PRIVATE THEN?

12 A YES, SIR.

13 Q AND WAS MR. FRIEBURGER A PRIVATE ALSO?

14 A YES, SIR.

15 Q AND DO YOU KNOW WHERE HE WAS ASSIGNED AFTER BASIC?

16 A HE WAS ASSIGNED TO THE SAME SUPPLY SCHOOL TRAINING

17 THAT I WAS.

18 Q NOW, WERE YOU IN CLOSER PROXIMITY TO EACH OTHER IN

19 SUPPLY SCHOOL AS OPPOSED TO BASIC?

20 A YES, SIR.

21 Q AND HOW SO? EXPLAIN THAT FOR THE JURY, PLEASE?

22 A WELL, WE SLEPT IN BUNK BEDS. FRIEBURGER SLEPT THE

23 LOWER BUNK, AND I SLEPT THE UPPER BUNK.

24 Q AND THAT WAS, OF COURSE, NOT THE CASE IN BASIC

25 TRAINING; IS THAT CORRECT?

1 A NO, SIR.

2 Q NOW, FOR THOSE MEMBERS OF THE JURY THAT MAY NOT HAVE
3 BEEN IN THE MILITARY, DURING THIS RECRUIT TRAINING
4 PROCESS, BASIC, AND SUPPLY SCHOOL, WERE YOU ALLOWED
5 TO HAVE AN AUTOMOBILE?

6 A NO, SIR.

7 Q EVEN IF YOU COULD AFFORD ONE PERHAPS BACK THEN, YOU
8 WEREN'T ALLOWED TO HAVE ONE?

9 A NO, SIR.

10 Q WERE YOU ALLOWED TO HAVE CIVILIAN CLOTHES?

11 A NO, SIR.

12 Q NOW, WERE THERE TIMES DURING BASIC THAT YOU WOULD GET
13 PASSES, GET LIBERTY TO BE ABLE TO LEAVE FORT JACKSON?

14 A NOT TO THE BEST OF MY KNOWLEDGE. BASIC TRAINING, YOU
15 JUST COULDN'T GET PASSES.

16 Q NOW, WHAT ABOUT DURING SUPPLY SCHOOL?

17 A YES, SIR.

18 Q SO YOU COULD GET PASSES, AND THOSE PASSES, WOULD THAT
19 AUTHORIZE YOU TO LEAVE POST?

20 A YES.

21 MR. DELGADO: YOUR HONOR, I DON'T KNOW HOW MANY
22 TIMES I NEED TO MAKE THE OBJECTION, LEADING.

23 THE COURT: SUSTAINED, REPHRASE.

24 BY MR. MCMAHON

25 Q EXPLAIN WHAT A PASS WAS AND WHAT IT AUTHORIZED TO YOU

1 TO DO, PRIVATE ABERSOLD, MR. ABERSOLD?

2 A WELL, TO THE BEST OF MY KNOWLEDGE, A PASS AUTHORIZED
3 YOU TO GO OFF BASE AND EITHER SPEND THE NIGHT, LIKE
4 AN OVERNIGHT PASS, OR A WEEKEND PASS WITHOUT HAVING
5 TO REPORT BACK.

6 Q AND NOT HAVING TRANSPORTATION, IF YOU WANTED TO LEAVE
7 BASE, WHAT MODE OF TRANSPORTATION WAS AVAILABLE TO
8 YOU?

9 A YOU EITHER TOOK A BUS OR A CAB.

10 Q AND GENERALLY, WERE THERE PARTICULAR AREAS OF
11 COLUMBIA THAT YOU MAY GO TO?

12 A REPEAT THE QUESTION, PLEASE.

13 Q WERE THERE GENERALLY PARTICULAR AREAS OF THE COMPANY
14 THAT YOU -- OF COLUMBIA THAT YOU MAY GO TO WHEN YOU
15 LEFT THE POST?

16 A WELL, GENERALLY THE RECRUITS OR THE ARMY GUYS WOULD
17 GO DOWNTOWN TO THE BARS, WHERE THE PLACES WHERE THE
18 RECRUITS WENT.

19 Q NOW, DO YOU RECALL WHEN YOU FINISHED SUPPLY SCHOOL?

20 A I THINK THAT WE SHIPPED UP TO FORT DIX, NEW JERSEY
21 THE FIRST PART OF MARCH, BUT I CAN'T RECALL THE DATE.

22 Q OF '61?

23 A '61, YES.

24 Q NOW, DURING THE TIME YOU WERE IN SUPPLY SCHOOL, DID
25 YOU GET A PASS OR PASSES?

1 A I'M SURE THAT I DID. I DON'T RECALL EXACTLY HOW
2 MANY.
3 Q AND DO YOU RECALL THAT YOU HAD COME TO COLUMBIA ANY
4 TIME DURING THAT SUPPLY SCHOOL?
5 A I'M SURE I DID, YES.
6 Q NOW, I BELIEVE YOU SAID YOU WENT FROM FORT JACKSON
7 THEN TO FORT DIX, NEW JERSEY --
8 A YES, SIR.
9 Q -- AND PREPARED TO GO WHERE?
10 A GERMANY.
11 Q DO YOU RECALL WHAT UNIT YOU WERE ASSIGNED TO IN
12 GERMANY?
13 A YES, SIR.
14 Q WHAT WAS THAT?
15 A HEADQUARTERS GROUP, 521 ENGINEER GROUP.
16 Q DID PRIVATE FRIEBURGER GO FROM JACKSON TO DIX WITH
17 YOU?
18 A NO, SIR.
19 Q WITH YOU OR ANY OTHER RECRUITS ASSIGNED TO THE 521ST?
20 A HE DIDN'T LEAVE WITH US WHEN WE SHIPPED OUT.
21 Q WAS HE ASSIGNED, TO YOUR KNOWLEDGE, TO THE 521ST
22 ENGINEER GROUP IN GERMANY?
23 A OH NO, SIR, NO.
24 Q AFTER SUPPLY SCHOOL, DID YOU EVER SEE HIM AGAIN?
25 A NO, SIR.

1 Q NOW, I WANT TO DIRECT YOUR ATTENTION FORWARD TO THE
2 PERIOD OF TIME WHEN YOU WERE IN GERMANY, SPECIFICALLY
3 JULY 28TH OF '61 AND SEPTEMBER 20TH OF '61. WERE YOU
4 ASSIGNED IN GERMANY IN JULY AND SEPTEMBER OF '61?

5 A YES, SIR.

6 Q AND DID YOU HAVE AN OCCASION TO BE INTERVIEWED IN
7 GERMANY IN JULY AND SEPTEMBER OF '61 CONCERNING
8 PRIVATE FRIEBURGER?

9 A YES, SIR.

10 Q AND BACK AT THOSE TWO DATES, I BELIEVE IT WAS
11 JULY 28TH OF '61 AND SEPTEMBER 20TH OF '61, WOULD
12 EVENTS FROM SUPPLY SCHOOL OF '61 AND THE TIME YOU
13 WERE ASSIGNED TO JACKSON HAVE BEEN FRESHER IN YOUR
14 MIND THAN THEY ARE NOW?

15 A NOT A LOT. IT'S BEEN A LONG TIME.

16 Q HERE'S MY QUESTION. IN JULY OF '61 --

17 MR. DELGADO: OBJECTION. OBJECTION. I MEAN, HE
18 ANSWERED THE QUESTION, ASKED AND ANSWERED.

19 THE COURT: OVERRULED.

20 BY MR. MCMAHON

21 Q WOULD YOUR MEMORY HAVE BEEN BETTER IN JULY OF '61 FOR
22 EVENTS THAT OCCURRED IN FEBRUARY OF '61?

23 A YES, SIR.

24 Q AS OPPOSED TO YOUR MEMORY NOW IN -- WHAT IS THIS,
25 JULY OF 2002?

1 A YES, SIR; YES, SIR.

2 Q CONCERNING '61? IS THAT A FAIR STATEMENT? .

3 A YES, YES.

4 Q AND YOU REVIEWED THOSE STATEMENTS. DO YOU SEE

5 QUESTIONS THAT WERE ASKED AND ANSWERS THAT WERE

6 GIVEN --

7 A YES.

8 Q -- IN THOSE STATEMENTS --

9 A YES.

10 Q -- THAT YOU SIGNED. YOU DON'T CONTEST THAT THOSE ARE

11 STATEMENTS THAT YOU GAVE; IS THAT CORRECT?

12 A THESE STATEMENTS I GAVE, YES.

13 Q AND YOU DON'T QUESTION THE AUTHENTICITY OF THOSE

14 STATEMENTS; IS THAT CORRECT, MR. AEBERSOLD?

15 A NO.

16 Q IS IT FAIR TO SAY SOME OF THE INFORMATION IN THOSE

17 STATEMENTS YOU HAVE NO INDEPENDENT RECOLLECTION OF?

18 MR. DELGADO: OBJECTION, YOUR HONOR, LEADING.

19 THE COURT: THAT'S FOUNDATION, OVERRULED.

20 BY MR. MCMAHON

21 Q IS THAT A FAIR STATEMENT?

22 A REPEAT THE QUESTION, PLEASE.

23 Q IS IT A FAIR STATEMENT TO SAY THAT THERE'S ANSWERS TO

24 CERTAIN QUESTIONS, FACTUAL INFORMATION IN THOSE

25 STATEMENTS, THAT YOU HAVE NO INDEPENDENT RECOLLECTION

1 OF?

2 A YES.

3 Q BUT THE STATEMENTS AT THE TIME YOU GAVE THEM WERE
4 TRUTHFUL AND CORRECT STATEMENTS?

5 A YES, SIR.

6 MR. MCMAHON: YOUR HONOR, I HAVE A MOTION. CAN
7 I TAKE IT UP?

8 THE COURT: YES.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
11 THE JURY.)

12 THE COURT: LET ME LET YOU GO TO THE JURY ROOM
13 FOR A MINUTE.

14 (WHEREUPON, THE JURY LEFT OPEN COURT AT
15 APPROXIMATELY 4:25 P.M.)

16 THE COURT: ALL RIGHT, SOLICITOR. EXPLAIN TO ME
17 WHAT YOU WANT ME TO DO ON THE RECORD.

18 MR. MCMAHON: YOUR HONOR, THAT -- I'M GOING TO
19 ASK HIM SOME QUESTIONS ABOUT HIS STATEMENTS THAT HE GAVE
20 IN JULY AND SEPTEMBER OF '61, THE QUESTIONS ASKED AND THE
21 ANSWERS GIVEN.

22 I HAVE PRETTY MUCH HIGHLIGHTED THOSE AND SHOWN
23 MR. DELGADO THE AREAS I INTENDED TO GO INTO.

24 THERE'S A QUESTION IN HERE ABOUT A WATCH. I AM
25 NEITHER GOING TO ASK THAT QUESTION NOR ASK FOR AN ANSWER

1 THAT WOULD GO INTO ANYTHING ABOUT A WATCH WHATSOEVER.

2 ONE QUESTION IN HERE IS CONCERNING -- "I
3 UNDERSTAND THAT YOU TURNED OVER A ROUND OF 32 CALIBER
4 AMMUNITION TO CAPTAIN NICHOLS, ADJUTANT 521ST ENGINEER
5 GROUP; IS THAT CORRECT?" HIS ANSWER IS "YES."

6 "WHERE DID YOU GET THIS ROUND 32 CALIBER AMMO?"
7 ANSWER, "FRIEBURGER GAVE IT TO ME."

8 "WHAT WERE THE CIRCUMSTANCES", I'M GOING INTO
9 THAT, AND WHAT HIS ANSWER WAS THERE.

10 THEN WITH THAT DOCUMENT, I WAS JUST GOING TO
11 HAVE HIM IDENTIFY THE NAME OF -- I BELIEVE IT WAS ELWOOD
12 NICHOLS, AND THAT ELWOOD NICHOLS IS THE SAME CAPTAIN
13 NICHOLS THAT HE WAS REFERRING THAT WAS ADJUTANT OF THE
14 521ST ENGINEER GROUP.

15 AGAIN, JUDGE, I'M NOT OFFERING IT INTO EVIDENCE
16 NOW. I'M OFFERING IT FOR IDENTIFICATION PURPOSES ONLY.

17 AT A LATER TIME, I INTEND TO ATTEMPT TO GET THAT
18 PARTICULAR DOCUMENT IN UNDER THE ANCIENT DOCUMENT RULE;
19 HOWEVER, RIGHT NOW I JUST WANT IT AUTHENTICATED TO THE
20 POINT THIS MAN CAN AUTHENTICATE CAPTAIN NICHOLS AS BEING
21 IN HIS UNIT IN GERMANY, CORROBORATING THE ANSWER TO THIS
22 QUESTION.

23 I'M NOT OFFERING IT RIGHT NOW. I'M JUST
24 OFFERING IT FOR IDENTIFICATION PURPOSES ONLY RIGHT NOW.

25 THE COURT: OKAY.

1 MR. DELGADO: YOUR HONOR, HE SAYS IF IT WAS
2 INITIALLY -- IF MR. AEBERSOLD IS REFRESHED BY THE
3 STATEMENT OF SEPTEMBER 20TH, THAT PROVES WHO HE ANSWERED
4 TO IN THE SCHEME OF THINGS, CAPTAIN NICHOLS.

5 TO PLACE INTO EVIDENCE, EITHER AS MARKED FOR
6 IDENTIFICATION, THAT HAS ABSOLUTELY NOTHING THAT THIS
7 GENTLEMAN CAN -- MR. AEBERSOLD HAS NOTHING TO DO WITH THIS
8 PIECE OF PAPER THAT'S IN FRONT OF HIM.

9 NUMBER TWO, YOUR HONOR, THAT'S EXACTLY THE TYPE
10 OF THING UNDER THE ANCIENT DOCUMENT RULE, AND UNDER THE
11 MEMO WE SUBMITTED TO THE COURT, THAT IS EXACTLY THE TYPE
12 OF THING THAT IT IS MORE THAN 20 YEARS OLD.

13 THE PROBLEM WITH IT, JUDGE, IS IT WAS PREPARED
14 IN ANTICIPATION OF LITIGATION, WHICH IN TRUTH, IS THIS
15 CASE IN THE YEAR 2002.

16 WE CANNOT CROSS-EXAMINE MR. SUDANO (PHONETIC) OR
17 CAPTAIN NICHOLS; WHOSE NAMES ARE PRESENT THERE. WE CAN'T
18 CROSS-EXAMINE DEPUTY SHERIFF LEX PRICE WHO HAS PASSED. IN
19 OTHER WORDS, HE CAN GET OUT EVERYTHING HE WANTS WITHOUT
20 THAT.

21 I'M NOT TRYING TO BE OBSTRUCTIVE. I'M JUST
22 SIMPLY SAYING THAT'S OVER THE LINE.

23 THE COURT: I'M NOT SURE IF I HAVE TO CROSS THIS
24 BRIDGE YET. I THINK FOR THE PURPOSE OF AT THIS MOMENT,
25 I'LL ALLOW HIM TO MARK IT FOR IDENTIFICATION IF THE

1 WITNESS ANSWERS THE QUESTION APPROPRIATELY. THEN I'LL
2 ACROSS THE BRIDGE ON THE ANCIENT DOCUMENTS RULE LATER.

3 I HAVEN'T SEEN THESE MILITARY RECORDS. I DON'T
4 KNOW IF -- THERE ARE SOME THINGS I DON'T KNOW ABOUT THE
5 EXISTENCE OR NONEXISTENCE OF THAT SHELL.

6 IT MAY LEAD -- IT MAY REQUIRE A 403 ANALYSIS,
7 BUT I'M NOT PREPARED TO DO THAT RIGHT NOW.

8 MR. DELGADO: YOUR HONOR, WOULD IT BE -- I'M NOT
9 TRYING TO ARGUE WITH YOU ABOUT IT. SHOULD WE GET A
10 PROFFER, THEN, FROM THE STATE NOW WHILE THE JURY IS OUT AS
11 TO HOW THAT'S GOING TO COME IN?

12 THE COURT: HE'S NOT GOING TO IDENTIFY -- HE'S
13 NOT GOING TO TESTIFY AS TO WHAT THE DOCUMENT SAYS. HE'S
14 JUST SIMPLY GOING TO ASK HIM IS THIS CAPTAIN ELWOOD
15 NICHOLS THE SAME PERSON THAT YOU TALKED TO AND GAVE A
16 STATEMENT TO ON SUCH AND SUCH A DATE.

17 MR. DELGADO: I'LL STIPULATE.

18 THE COURT: WELL, I KNOW --

19 MR. MCMAHON: SO HE'S GOING TO STIPULATE. HE'S
20 GOING TO STIPULATE. I MAY NOT HAVE ANY MORE QUESTIONS FOR
21 MR. ABERSOLD.

22 MR. DELGADO: NO, I'M NOT STIPULATING TO THE
23 CHAIN OF CUSTODY. I'M SAYING IT'S THE SAME PERSON, THAT'S
24 ALL.

25 HIS CAPTAIN, THE MAN THAT HE ANSWERED TO IN THE

1 CHAIN OF COMMAND IS A FELLOW NAMED NICHOLS.

2 THE COURT: WELL, IT STILL -- WELL, IF THAT'S
3 TRUE, THEN IT FALLS, SOLICITOR, THAT YOU DON'T HAVE TO
4 HAVE HIM IDENTIFY THIS DOCUMENT BECAUSE YOU CAN'T. THE
5 QUESTION IS WHETHER IT WILL COME THROUGH UNDER THE
6 MILITARY RECORDS UNDER SEAL.

7 MR. MCMAHON: I UNDERSTAND.

8 THE COURT: ALL RIGHT.

9 MR. MCMAHON: NOW, JUDGE, THAT DOCUMENT IS IN
10 THE POLICE FILE.

11 THE COURT: I UNDERSTAND.

12 MR. MCMAHON: OKAY. IF HE'S GOING TO STIPULATE,
13 THEN WE'RE TELLING --

14 MR. DELGADO: NO, YOUR HONOR. I'M STIPULATING
15 ONLY THAT CAPTAIN NICHOLS WAS HIS COMMANDING OFFICER IN
16 THE ENGINEERING BRIGADE. THAT'S ALL. LET'S BE VERY CLEAR
17 ABOUT THAT.

18 MR. MCMAHON: JUDGE, I STILL -- I'M KIND OF
19 LOST. I'M ON THAT RABBIT TRAIL, I THINK. I DON'T MEAN TO
20 BE. I'M JUST RUNNING WITH THE PACK RIGHT NOW. I'M NOT
21 TRYING TO GET THAT IN RIGHT NOW.

22 THE COURT: I UNDERSTAND THAT. THAT'S WHY I
23 AGREE WITH YOU THAT IT CAN BE MARKED FOR IDENTIFICATION IF
24 HE SAYS CAPTAIN NICHOLS WAS THE SAME NICHOLS HE TALKED TO
25 AND GAVE A BULLET TO.

1 MR. MCMAHON: I JUST DON'T WANT MY WITNESS TO GO
2 BACK TO MISSOURI AND THEN THERE BE SOME QUESTION ABOUT
3 THAT. THAT'S THE ONLY -- I DON'T KNOW IF I'M GOING TO BE
4 ABLE TO GET IT IN. I'VE GOT AN IDEA, BUT I DON'T KNOW.

5 THE COURT: YOU MIGHT NOT.

6 MR. MCMAHON: YES, SIR, AND I UNDERSTAND.

7 THE COURT: AND HE'S NOT GOING TO BE PERMITTED
8 TO TESTIFY TO THE SUBSTANCE.

9 MR. MCMAHON: THE SUBSTANCE.

10 THE COURT: THAT IS THE ROUND WAS TAKEN AND
11 TURNED OVER TO SOMEBODY ELSE.

12 MR. MCMAHON: AS FAR AS FROM THAT DOCUMENT.

13 THE COURT: THAT'S CORRECT.

14 HE CAN TESTIFY FROM HIS QUESTIONNAIRE OTHERWISE.

15

16 THE COURT: THAT HE GAVE HIM.

17 MR. MCMAHON: YES, SIR. THAT'S ALL I'M TRYING
18 TO DO RIGHT NOW.

19 THE COURT: LET ME HEAR FROM MR. DELGADO.

20 MR. DELGADO: YOUR HONOR, AS I UNDERSTAND IT,
21 THERE'S NOTHING TO ELICIT FROM THIS WITNESS VIS A VIS ANY
22 PLAYING CARDS WHICH WAS --

23 MR. MCMAHON: YES, SIR.

24 THE COURT: NO, YOU'RE JUMPING THE GUN. THE
25 ONLY THING I SAID ABOUT THE PLAYING CARDS IS WE WEREN'T

1 GOING TO GET INVOLVED IN THE BURGLARY AT THIS MOMENT.

2 NOW, AGAIN, I DON'T KNOW WHAT YOUR CLIENT IS GOING TO DO.

3 MR. DELGADO: I UNDERSTAND.

4 THE COURT: BUT THIS IS THE GUY THAT CAN
5 IDENTIFY THE PLAYING CARDS, AND THEN THAT WILL HAVE SOME
6 BEARING. MAYBE, MAYBE NOT, BUT HE CAN IDENTIFY THE
7 PLAYING CARDS.

8 HE DOESN'T KNOW ANYTHING ABOUT THEM BEING STOLEN
9 OR ANYTHING LIKE THAT. THEY WERE GIVEN TO HIM.

10 MR. MCMAHON: HE MIGHT KNOW SOMETHING ABOUT IT
11 FROM THE STATEMENT. I'M NOT GOING INTO IT.

12 THE COURT: OKAY.

13 MR. MCMAHON: I'M NOT GOING INTO IT. I'M GOING
14 INTO THE FACT THAT THE ROUND WAS GIVEN TO HIM: "A ROUND
15 OF 32 CALIBER AMMO TO ME, AND I RECALL HIM GIVING ME TWO
16 DECKS OF PLAYING CARDS. FRIEBURGER HAD IN HIS POSSESSION
17 A NEW CARTON OF PLAYING CARDS, IN HIS POSSESSION."

18 THE COURT: OKAY.

19 MR. DELGADO: YOUR HONOR, MAY I JUST INQUIRE,
20 AND I'M NOT ASKING FOR ANY ADVISORY OPINION, BUT THERE ARE
21 TWO STATEMENTS FROM MR. AEBERSOLD, ONE IN JULY, JULY 28TH,
22 AND THEN AGAIN, SEPTEMBER 20TH. IN OTHER WORDS, THEY WERE
23 ALMOST TWO MONTHS APART.

24 THE FIRST STATEMENT IN JULY, HE DOESN'T REMEMBER
25 ANYTHING ABOUT WHO GAVE HIM ANYTHING. HE DOESN'T RECALL

1 IT.

2 THEN HE'S REINTERVIEWED BY CAPTAIN NICHOLS, AND
3 MR. SUDANO FROM C.I.D. AND NOW HE REMEMBERS. I'M
4 WONDERING IF I ASKED HIM IF THERE WERE TWO STATEMENT THAT
5 HE MADE IF THAT'S OPENING THE DOOR TO ANYTHING. I JUST
6 WANT TO MAKE CERTAIN THAT I'M NOT CROSSING THAT LINE.

7 THE COURT: WHAT DOOR DO YOU THINK IT'S OPENING
8 UP?

9 MR. DELGADO: WHAT'S THAT, SIR?

10 THE COURT: WHAT DOOR DO YOU THINK YOU'RE
11 OPENING?

12 MR. MCMAHON: JUDGE, I THINK THAT IS AN ADVISORY
13 OPINION.

14 THE COURT: I'M ASKING WHAT DOOR THAT IS. I
15 DON'T KNOW.

16 MR. DELGADO: WELL, IF I SIMPLY ASK THE FIRST
17 QUESTION. IN OTHER WORDS, YOU MADE TWO STATEMENTS, AND IF
18 I USE ONLY A PORTION OF THOSE STATEMENTS AND HE TRIES TO
19 GET IN SOME OTHER STUFF, WHICH MR. AEBERSOLD DOESN'T
20 REMEMBER EITHER --

21 THE COURT: WELL, YOU FOLKS ARE CONFUSING THE
22 WEIGHT OF THE EVIDENCE AGAINST THE ADMISSIBILITY.

23 YOU CAN CROSS-EXAMINE HIM ON INCONSISTENT
24 STATEMENTS. THE EFFECT OF IT, I DON'T KNOW WHAT IT IS,
25 BUT YOU HAVE THAT RIGHT. I DON'T KNOW WHAT DOOR IT OPENS,

1 MR. DELGADO. I DON'T KNOW.

2 MR. DELGADO: ALL RIGHT.

3 THE COURT: IF I DID, I'D BE ON THAT SIDE TRYING
4 THIS CASE.

5 MR. DELGADO: WOULD YOU LIKE TO LOOK AT THE TWO
6 STATEMENTS?

7 THE COURT: I'D RATHER NOT.

8 ALL RIGHT. BRING THE JURY IN.

9 THE BAILIFF: YES, SIR.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
11 APPROXIMATELY 4:34 P.M.)

12 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 ALL RIGHT, MR. SOLICITOR.

15 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
16 PLEASE THE COURT.

17 BY MR. MCMAHON

18 Q MR. AEBERSOLD, TO BEGIN WITH, I WANT TO ASK YOU JUST
19 A COUPLE OF VERY SPECIFIC QUESTIONS ABOUT THE
20 STATEMENT THAT YOU GAVE JULY 28TH OF 1961.

21 IF YOU'LL NOTICE, I BELIEVE THEY OBVIOUSLY ASKED
22 YOU ABOUT YOUR KNOWLEDGE AND YOUR KNOWING
23 MR. FRIEBURGER. THAT'S WHAT THIS QUESTIONNAIRE WAS
24 ABOUT; IS THAT CORRECT?

25 A YES.

1 Q AND IT APPEARS TO BE ONE, TWO, THREE, FOUR, THE FIFTH
2 QUESTION DOWN, "DID YOU AT ANY TIME ACCOMPANY
3 FRIEBURGER TO COLUMBIA FROM THE FORT?" WHAT WAS YOUR
4 RESPONSE?
5 A THE FIFTH QUESTION DOWN? ALL RIGHT. I'M WITH YOU.
6 MY ANSWER WAS "YES, YES."
7 Q AND DID YOU FOLLOW UP ON YOUR RESPONSE TO THAT ANSWER
8 "YES"?
9 A YES.
10 Q AND WHAT WAS YOUR FOLLOW UP RESPONSE?
11 A "ON ONE OCCASION, WE WENT INTO TOWN TO PAWN A RADIO.
12 WE WENT INTO ONE BAR, HAD A FEW DRINKS AND WENT BACK
13 TO POST."
14 Q NOW, IF YOU'LL GO TO THE SECOND PAGE OF THAT
15 STATEMENT OF FEBRUARY 28TH OF '61, I BELIEVE THEY
16 ASKED YOU WHETHER OR NOT YOU HAD HEARD ABOUT THE CAB
17 DRIVER WHO WAS MURDERED RIGHT UP HERE AT THE TOP; IS
18 THAT CORRECT?
19 A YES.
20 Q AND WHAT WAS YOUR RESPONSE?
21 A "I REMEMBER THE CAB DRIVER WAS KILLED, BY THE
22 NEWSPAPER. I DID NOT HEAR ANY CONVERSATION ABOUT
23 IT."
24 Q NOW, THE LAST QUESTION THEY ASKED, DO YOU SEE THAT
25 DOWN THERE? "DO YOU KNOW DIRECTLY OR INDIRECTLY

1 ANYTHING THAT WOULD THROW A LIGHT ON THIS MURDER
2 CASE?" WHAT WAS YOUR RESPONSE?

3 A "YES."

4 Q AND WHAT WAS YOUR FOLLOW UP TO THAT?

5 A "I HAVE A LIVE 32 CALIBER WESTERN ROUND WHICH I GOT
6 FROM SOMEONE DURING SUPPLY SCHOOL. I DO NOT REMEMBER
7 WHO GAVE ME THE ROUND OF AMMUNITION."

8 Q AND YOU SIGNED IT. OF COURSE, YOU'VE GOT YOUR
9 ENGINEERING ADDRESS DOWN THERE?

10 A YES.

11 Q AND THIS INFORMATION WAS OBTAINED BY WHO?

12 A ELWOOD B. NICHOLS, CAPTAIN. HE WAS THE ADJUTANT.

13 Q AND HE WOULD HAVE BEEN ONE OF YOUR COMMANDERS UP THE
14 CHAIN OF COMMAND IN GERMANY; IS THAT CORRECT?

15 A YES.

16 Q SO NOW, I WANT TO REFER YOU TO A STATEMENT THAT YOU
17 GAVE SEPTEMBER 20TH OF '61, MR. ABERSOLD. THAT
18 APPEARS TO BE A FAIR AND ACCURATE COPY OF THAT
19 STATEMENT, CORRECT?

20 A YES.

21 Q AND ON THE FIRST -- AND THAT IS A STATEMENT THAT YOU
22 GAVE AT THE TIME WHILE YOU WERE STILL IN GERMANY; IS
23 THAT RIGHT?

24 A YES, SIR.

25 Q AND IS THIS A FOLLOW-UP STATEMENT TO THE STATEMENT

1 THAT YOU GAVE JULY 28TH OF '61?

2 MR. DELGADO: OBJECTION, YOUR HONOR, THE
3 CHARACTERIZATION IT'S A FOLLOW-UP STATEMENT.

4 MR. MCMAHON: I'LL REPHRASE.

5 THE COURT: REPHRASE.

6 BY MR. MCMAHON

7 Q WAS THIS THE FIRST STATEMENT OR THE SECOND STATEMENT?

8 A THIS WAS THE SECOND STATEMENT.

9 Q NOW, I WANT TO ASK YOU, AND I DIDN'T NUMBER THESE
10 QUESTIONS AND ANSWERS. I APOLOGIZE, MR. AEBERSOLD.

11 IT APPEARS ABOUT THE EIGHTH QUESTION DOWN,
12 "WOULD YOU RELATE TO ME, TO THE BEST OF YOUR
13 KNOWLEDGE, AS TO WHEN YOU WENT TO TOWN WITH
14 FRIEBURGER AND WHAT YOU DID IN TOWN?"

15 DO YOU SEE THAT QUESTION, SIR?

16 A I SEE THE QUESTION.

17 Q AND DID YOU RESPOND TO THAT QUESTION?

18 A YES, I DID.

19 Q AND WHAT WAS THAT RESPONSE?

20 A "TOWARDS THE LAST PART OF FEBRUARY OF '61, I WENT TO
21 COLUMBIA, SOUTH CAROLINA ON A PASS WITH FRIEBURGER..
22 ALSO ACCOMPANIED BY HENSEN, A PERSON WHO WAS FROM MY
23 COMPANY. WE WENT INTO TOWN TO PAWN FREIBURGER'S
24 TRANSISTOR RADIO."

25 "WE DID GO INTO A PAWNSHOP LOCATED ON THE MAIN

1 STREET IN COLUMBIA, BUT SINCE HE COULDN'T GET THE
2 RIGHT PRICE FOR THE RADIO, WE LEFT, WENT TO A BAR,
3 HAD A FEW BEERS, WENT BACK TO THE POST."
4 Q AND IF YOU WOULD THEN GO TO THE NEXT PAGE OF THIS
5 SEPTEMBER 20TH, '61 STATEMENT. THE FIRST QUESTION
6 ASKED ON THAT SECOND PAGE, "I UNDERSTAND THAT YOU
7 TURNED OVER A ROUND OF 32 CALIBER AMMUNITION TO
8 CAPTAIN NICHOLS, ADJUTANT WITH THE 521ST ENGINEER
9 GROUP; IS THAT CORRECT?" WHAT WAS YOUR RESPONSE?
10 A "YES."
11 Q "WHERE DID YOU GET THIS ROUND OF 32 CALIBER AMMO?"
12 WERE YOU ASKED THAT QUESTION?
13 A YES, I WAS.
14 Q AND WHAT WAS YOUR RESPONSE?
15 A "FRIEBURGER GAVE IT TO ME."
16 Q THE NEXT QUESTION, "WHAT WAS THE CIRCUMSTANCES
17 SURROUNDING THIS ROUND OF AMMO FRIEBURGER GAVE TO
18 YOU?" THAT QUESTION WAS ASKED OF YOU?
19 A YES.
20 Q AND WHAT WAS YOUR RESPONSE BACK ON SEPTEMBER 20TH OF
21 '61?
22 A THE FIRST WORD LOOKS LIKE, "WELL, IT WAS PROBABLY IN
23 THE BARRACKS WHEN I GOT THIS AMMO FROM HIM. I CAN'T
24 RECALL WHEN HE GAVE IT TO ME OR UNDER WHAT
25 CIRCUMSTANCES I GOT IT FROM HIM."

1 "ALL I CAN REMEMBER IS THAT ONE DAY WHEN WE WERE
2 BY OUR WALL LOCKERS IN OUR BARRACKS AT JACKSON,
3 FRIEBURGER GAVE ME THIS ROUND OF 32 CALIBER AMMO, TO
4 ME, AND I RECALL HIM GIVING ME TWO DECKS OF PLAYING
5 CARDS. FRIEBURGER HAD IN HIS POSSESSION A CARTON OF
6 NEW PLAYING CARDS IN HIS POSSESSION."

7 Q NOW, I WANT TO ASK YOU ONE MORE THING, MR. AEBERSOLD.
8 THIS DOCUMENT HERE HAS THE NAME ELWOOD B. NICHOLS,
9 CAPTAIN. IS THAT THE SAME ELWOOD B. NICHOLS,
10 CAPTAIN, THAT YOU REFERRED TO IN THIS SECOND
11 STATEMENT OF SEPTEMBER 20TH OF '61 THAT YOU GAVE THE
12 ROUND TO?

13 A YES, SIR.

14 Q IS THAT THE SAME CAPTAIN NICHOLS THAT TOOK THE FIRST
15 STATEMENT FROM YOU ON JULY 28TH OF 1961?

16 A YES, IT IS.

17 MR. MCMAHON: YOUR HONOR, I WOULD JUST MARK THIS
18 FOR IDENTIFICATION PURPOSES ONLY.

19 THE COURT: SUBJECT TO THE IN CAMERA HEARING WE
20 HAD.

21 (WHEREUPON, STATE'S EXHIBIT NO. 40 WAS MARKED
22 FOR IDENTIFICATION ONLY.)

23 MR. MCMAHON: THANK YOU. I HAVE NO FURTHER
24 QUESTIONS.

25 THE COURT: CROSS-EXAMINATION MR. DELGADO?

CROSS-EXAMINATION:

BY MR. DELGADO

Q MR. ABERSOLD, SIR, WAS -- (PAUSE).

MR. AEBERSOLD, I APOLOGIZE. AT THE TIME YOU WERE IN THE ARMY HERE AT FORT JACKSON, HOW OLD WOULD YOU HAVE BEEN AT THAT TIME, ABOUT 18?

A EIGHTEEN.

Q EIGHTEEN. ALL RIGHT. WHEN YOU SHIPPED OUT AND WENT TO GERMANY, YOU WERE PROBABLY 18?

A EIGHTEEN-AND-A-HALF, YEAH.

Q YOU MADE THE STATEMENT IN JULY WHERE YOU DON'T RECALL ANYTHING ABOUT WHO GAVE YOU THIS, CALLED BACK IN BY THE CAPTAIN, AND NOW YOU HAVE REMEMBERED TWO MONTHS LATER IT WAS ED FRIEBURGER, RIGHT?

A YES.

Q WAS IS IT ANYTHING IN PARTICULAR THAT GOT YOU TO REMEMBER THE DIFFERENCE NOW AND IN BETWEEN?

A NO, SIR.

MR. DELGADO: ALL RIGHT. THANK YOU, SIR.
THAT'S ALL I HAVE.

THE COURT: ANYTHING ELSE ON REDIRECT?

MR. MCMAHON: NO, SIR, NOTHING ON REDIRECT.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MR. MCMAHON: MAY HE BE EXCUSED?

THE COURT: ANY OBJECTION?

1 MR. DELGADO: NO OBJECTION.

2 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

3 MS. CAMPBELL: THE STATE CALLS CHERYL HORTON.

4 THE CLERK: COME FORWARD PLEASE. PLACE YOUR
5 LEFT HAND ON THE BIBLE, RIGHT YOUR RIGHT.

6 CHERYL HORTON, AFTER BEING DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
9 NAME, SPELL YOUR LAST NAME.

10 THE WITNESS: CHERYL BERRY HORTON, H-O-R-T-O-N.

11 DIRECT EXAMINATION:

12 BY MS. CAMPBELL

13 Q MS. HORTON, WHERE DO YOU LIVE?

14 A [REDACTED]

15 Q HERE IN COLUMBIA?

16 A HERE IN COLUMBIA.

17 Q AND YOU'VE LIVED IN COLUMBIA ALL YOUR LIFE?

18 A YES, I HAVE.

19 Q AND HOW OLD ARE YOU?

20 A FORTY-FOUR.

21 Q AND WHAT DID YOUR PARENTS DO HERE IN COLUMBIA? THEY
22 RAISED YOU HERE?

23 A THAT'S CORRECT.

24 Q AND WHAT DID THEY DO FOR A LIVING, MA'AM?

25 A THEY HAD A PAWNSHOP.

1 Q OKAY. CAN YOU TALK A LITTLE BIT LOUDER. IT'S HARD
2 TO HEAR.
3 A THEY HAD A PAWNSHOP.
4 Q THEY HAD A PAWNSHOP?
5 A UH-HUH.
6 Q AND WHAT WAS THE NAME OF YOUR PARENT'S PAWNSHOP?
7 A CROWN LOAN AND OFFICE.
8 Q AND WHAT WAS YOUR PARENT'S NAME?
9 A JOE AND NELL BERRY.
10 Q JOE AND NELL BERRY?
11 A UH-HUH.
12 Q AND THEY HAD A PAWNSHOP CALLED CROWN PAWNSHOP?
13 A CORRECT.
14 Q IS THE CROWN PAWNSHOP STILL OPENED?
15 A YES, IT IS.
16 Q WHERE IS IT LOCATED NOW.
17 A ON 12TH STREET IN WEST COLUMBIA.
18 Q ON 12TH STREET IN WEST COLUMBIA. BUT PRIOR TO BEING
19 ON 12TH STREET IN WEST COLUMBIA, THE CROWN PAWNSHOP
20 WAS LOCATED WHERE?
21 A ON ASSEMBLY STREET.
22 Q ON ASSEMBLY STREET?
23 A COLUMBIA.
24 Q WAS THAT NEAR THE CORNER OF LADY AND ASSEMBLY?
25 A YES, IT WAS.

1 Q DID YOU ALSO HAVE AN UNCLE THAT HAD A PAWN SHOP?
2 A I DID.
3 Q WHAT WAS HIS NAME?
4 A JAKE BERRY.
5 Q JAKE BERRY?
6 A UH-HUH.
7 Q THAT WOULD HAVE BEEN YOUR FATHER'S BROTHER?
8 A UH-HUH.
9 Q AND HE WAS ALSO IN THE PAWN BUSINESS?
10 A HE WAS.
11 Q AND WHAT WAS THE NAME OF HIS PAWN SHOP, MA'AM?
12 A BERRY'S LOAN AND ARMY SUPPLY, I BELIEVE.
13 Q BERRY'S LOAN AND ARMY SUPPLY. BACK IN THE EARLY
14 1960S, WERE BOTH BERRY'S PAWN SHOP -- OR LOAN AND
15 PAWN SUPPLY, AND YOUR PARENTS, THE CROWN PAWN, WERE
16 THOSE BOTH OPERATING AT THAT TIME?
17 A WHAT, I'M SORRY?
18 Q BACK OF THE EARLY '60S.
19 A CORRECT.
20 Q '61, '62?
21 A CORRECT.
22 Q AND THOSE WERE BOTH OPERATING AT THAT TIME?
23 A UH-HUH.
24 Q AND I'M GOING TO SHOW YOU SOME PHOTOGRAPHS, IF YOU'LL
25 BEAR WITH ME WHILE I FIND THEM. THE FIRST ONE I SHOW

1 YOU IS STATE'S EXHIBIT 10. DO YOU RECOGNIZE THAT
2 PHOTO?

3 A YES.

4 Q AND WHAT DOES THAT PHOTO DEPICT?

5 A IT'S MY FATHER'S STORE THERE, CROWN, AND THEN
6 BOYER'S MEAT MARKET WAS WHERE MY UNCLE'S STORE WAS
7 TAKEN.

8 Q AND THIS WAS TAKEN ABOUT A DECADE AFTER THE EARLY
9 '60S. THIS WAS ACTUALLY IN THE EARLY '70S, SO I SHOW
10 YOU STATE'S EXHIBIT 11. DOES THAT SHOW WHERE YOUR
11 UNCLE BERRY'S PAWNSHOP WAS?

12 A IT'S WHERE BOYER'S IS NOW -- OR WAS THEN.

13 Q AND BOYER'S, AM I POINTING TO THAT?

14 A YES.

15 Q AND YOU CAN SEE THAT IN THE CORNER OF STATE'S
16 EXHIBIT 10, RIGHT?

17 A THAT'S CORRECT.

18 Q BUT THE CROWN'S PAWNSHOP, THAT WOULD BE YOUR PARENTS
19 RIGHT, WHICH IS RIGHT AROUND THE CORNER, IS DEPICTED
20 IN THIS ONE; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND IN GROWING UP, DID YOU PARTICIPATE, OR DID YOU
23 BECOME FAMILIAR WITH THE PRACTICES OF YOUR PARENT'S
24 PAWNSHOP?

25 A YES.

1 Q AS WELL AS YOUR -- YOU WERE FAMILIAR WITH WHAT YOUR
2 UNCLE'S PRACTICES WERE?

3 A YES.

4 Q AND BOTH OF THOSE STORES KEPT RECORDS AS A NORMAL
5 PART OF THEIR BUSINESS; IS THAT CORRECT?

6 A YES.

7 Q AND I'M GOING TO SHOW YOU TWO ITEMS AND SEE IF YOU
8 RECOGNIZE THOSE. HAVE I SHOWN YOU THOSE BEFORE?

9 A YES.

10 Q AND ON THIS ONE, IT SAYS BERRY'S LOAN AND ARMY STORE?

11 A UH-HUH, THAT'S CORRECT.

12 Q AND THAT WOULD HAVE BEEN YOUR UNCLE'S?

13 A UNCLE'S STORE.

14 Q AND THEN ON THIS ITEM, IT STARTS OFF WITH ARTICLES
15 PAWNED AND BOUGHT. WOULD THAT HAVE BEEN KEPT IN THE
16 NORMAL COURSE OF BUSINESS?

17 A YES, UH-HUH.

18 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D GO
19 AHEAD AND OFFER IT FOR -- I'M SORRY.

20 (PAUSE).

21 THE COURT: ANY EXCEPTION OR REJECTION?

22 MS. HUDGINS: JUDGE, CAN WE APPROACH?

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
25 THE JURY.)

1 THE COURT: BASED ON THE BENCH CONFERENCE, THE
2 OBJECTION IS OVERRULED. YOU MAY PROCEED.

3 MS. CAMPBELL: THANK YOU, YOUR HONOR.

4 (WHEREUPON, STATE'S EXHIBITS NOS. 41, 42 WERE
5 MARKED FOR IDENTIFICATION AND RECEIVED INTO
6 EVIDENCE.)

7 BY MS. CAMPBELL

8 Q MS. HORTON, FOR THE RECORD, WHEN THESE RECORDS WERE
9 ACTUALLY MADE BACK IN 1961, YOU WERE JUST A SMALL
10 CHILD?

11 A THAT'S CORRECT.

12 Q BUT YOU ARE FAMILIAR WITH THE PRACTICES PRACTICED BY
13 BOTH YOUR UNCLE AND YOUR FATHER IN THE PAWN STORES?

14 A YES.

15 Q AND AS PART OF THEIR PRACTICE, AND I SHOW YOU STATE'S
16 EXHIBIT NUMBER 41. WHAT IS AT THE TOP OF THAT
17 DOCUMENT? WHAT IS THE NAME ON IT?

18 A BERRY'S PAWN AND ARMY STORE.

19 Q AND THAT WOULD HAVE BEEN WHICH STORE THE ITEM WAS
20 ACTUALLY PAWNED AT?

21 A THAT'S CORRECT.

22 Q AND THAT WOULD HAVE BEEN YOUR UNCLE'S STORE RIGHT
23 THERE ON THE CORNER OF LADY AND ASSEMBLY; IS THAT
24 CORRECT?

25 A THAT'S CORRECT.

1 Q AND AS PART OF THEIR PRACTICE, AS PART OF YOUR
2 FATHER'S PRACTICE AND WHAT YOU KNOW HIS PRACTICE TO
3 BE, HOW WOULD THIS DOCUMENT HAVE BEEN FILLED OUT?
4 HOW WOULD THIS HAVE COME INTO EXISTENCE WITH THE
5 WRITING? CAN YOU EXPLAIN THAT TO THE JURY?

6 A OKAY. THE PERSON IN THE STORE, THE EMPLOYEE OR THE
7 OWNER OF THE STORE WOULD FILL OUT THE CARD WITH ALL
8 THE INFORMATION ABOUT THE ITEM THAT WAS PAWNED AND
9 THE PERSON PAWNING THE ITEM. THEN THE PERSON PAWNING
10 THE ITEM WOULD SIGN THE CARD.

11 Q SO THE SIGNATURE THAT IS INDICATED HERE IS RIGHT --
12 IT SAYS SIGNATURE RIGHT THERE?

13 A THAT'S CORRECT.

14 Q AND ARE YOU ABLE TO READ THAT? I DON'T KNOW IF YOU
15 CAN OR NOT.

16 A EDWARD E. "FIREBURGER"?

17 Q FRIEBURGER?

18 A FRIEBURGER.

19 Q AND WHAT IS THE DATE INDICATED ON THIS DOCUMENT?

20 A FEBRUARY 17TH, 1961.

21 Q AND WHAT WAS THE ITEM THAT MR. FRIEBURGER WAS PAWNING
22 THAT DAY?

23 A ELECTRIC RAZOR.

24 Q WERE THERE ANY OTHER FORMS OF IDENTIFICATION OR
25 IDENTIFYING NUMBERS ON THAT DOCUMENT?

1 A DOWN ON THE BOTTOM HERE WOULD HAVE BEEN THE I.D.
2 NUMBER THAT HE USED.
3 Q AND I'M GOING TO SHOW YOU THESE TWO DOCUMENTS. THESE
4 ACTUALLY HAVE BEEN MARKED AS STATE'S EXHIBIT 18 AND
5 19. THESE ARE ACTUALLY JUST BLOW-UPS OF THE TWO
6 DOCUMENTS YOU'RE REFERRING TO?
7 A THAT'S CORRECT.
8 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
9 OFFER THESE INTO EVIDENCE.
10 THE COURT: SUBJECT TO THE BENCH CONFERENCE.
11 GO AHEAD.
12 MS. CAMPBELL: SO THE JURY CAN SEE BETTER AND I
13 CAN EXPLAIN.
14 (MOVING EASLE TOWARD JURY BOX.)
15 (WHEREUPON, STATE'S EXHIBITS NOS. 18, 19 WERE
16 ADMITTED INTO EVIDENCE.)
17 BY MS. CAMPBELL
18 Q THE FIRST DOCUMENT WE'RE REFERRING TO, WHICH IS THE
19 BLOW UP ON STATE'S EXHIBIT 18. AGAIN, YOU INDICATED
20 THE DATE WRITTEN ON THIS IS FEBRUARY 16TH, 1961?
21 A CORRECT.
22 Q WHAT WAS THE ARTICLE THAT WAS ACTUALLY PAWNED ON THAT
23 DAY?
24 A IT SAYS RAZOR, ELECTRIC.
25 Q AND DOWN BELOW, IT SAYS MAKER OR MAKER'S NAME?

1 A REMINGTON ROLLTRONIC.

2 Q AND DOES IT ALSO INDICATE THE AMOUNT OF THE LOAN MADE

3 TO MR. FRIEBURGER ON THAT DAY?

4 A FOUR DOLLARS.

5 Q AND AGAIN, THE PART THAT WOULD NOT HAVE BEEN -- THIS

6 WOULD HAVE ALL BEEN FILLED OUT BY THE PERSON WHO WAS

7 IN THE STORE WORKING?

8 A THAT'S CORRECT.

9 Q BUT THIS, WHERE IT SAYS "SIGNATURE", THAT WOULD HAVE

10 BEEN FILLED OUT BY WHOM?

11 A BY THE CUSTOMER PAWNING THE ITEM.

12 Q THE CUSTOMER PAWNING THE ITEM. THAT INDICATES EDWARD

13 E. FREIBURGER?

14 A THAT'S CORRECT.

15 Q AND IDENTIFYING NUMBER I ASKED YOU ABOUT IS HERE ON

16 THE BOTTOM?

17 A UH-HUH, YES, MA'AM.

18 Q AND WHAT WOULD THAT INDICATE?

19 A THAT WOULD BE THE NUMBER ON THE IDENTIFICATION CARD

20 USED, PICTURE I.D., DRIVER'S LICENSE, OR MILITARY

21 I.D.

22 Q AND YOU'RE FAMILIAR WITH MILITARY I.D.S?

23 A YES.

24 Q AND DOES THAT LOOK LIKE WHAT WOULD BE A MILITARY I.D.

25 NUMBER?

- 1 A YES, MA'AM.
- 2 Q THERE WAS A SECOND DOCUMENT, WHICH IS A BLOWUP OF
3 STATE'S EXHIBIT 19. DO YOU HAVE THAT DOCUMENT IN
4 FRONT OF YOU?
- 5 A YES.
- 6 Q AND TELL THE JURY, WHAT IS THIS ITEM?
- 7 A OKAY. THAT WAS THE LIST OF ITEMS THAT ARE PAWNED
8 DURING THE COURSE OF BUSINESS ON A DAILY BASIS. THE
9 FIRST COLUMN WOULD BE THE PAWN TICKET NUMBER, AND
10 THAT WAS ISSUED TO THE CUSTOMER; THEN THE NAME OF THE
11 CUSTOMER PAWNING THE ITEM OR ITEMS, THEIR ADDRESS,
12 AND THEN A DESCRIPTION OF WHAT THEY PAWNED.
- 13 Q AND YOU INDICATED THE FIRST ITEM IS A NUMBER. THAT'S
14 THE TICKET NUMBER?
- 15 A PAWN TICKET NUMBER.
- 16 Q AND ON THE FIRST -- ON STATE'S EXHIBIT 18, WHAT IS
17 THE TICKET NUMBER ON THAT RAZOR?
- 18 A 9304.
- 19 Q 9304?
- 20 A UH-HUH.
- 21 Q AND WHEN WOULD THIS LOG HAVE BEEN FILLED OUT?
- 22 A ON THE DAY THAT THE ITEM WAS PAWNED?
- 23 Q AND THAT DATE WOULD BE INDICATED DOWN HERE AT THE
24 BOTTOM?
- 25 A CORRECT.

1 Q FEBRUARY 17TH OF 1961?

2 A YES, MA'AM.

3 Q AND GOING DOWN TO WHERE YOU SEE 9304, WHICH IS THE

4 CORRESPONDING PAWN TICKET, DOES IT INDICATE WHOSE

5 NAME AN ITEM WAS PAWNED TO?

6 A YES, EDWARD E. FRIEBURGER.

7 Q ACTUALLY MONEY WAS GIVEN TO THE PAWN?

8 A UH-HUH.

9 Q DOES IT INDICATE AN ADDRESS?

10 A COMPANY B. FORT JACKSON.

11 Q AND WHAT DOES IT INDICATE HE PAWNED?

12 A AN ELECTRIC RAZOR.

13 Q AND DOWN HERE AT THE BOTTOM UNDERNEATH THE DATE THERE

14 IS A SIGNATURE, I BELIEVE?

15 A UH-HUH.

16 Q DO YOU KNOW WHOSE SIGNATURE THAT IS?

17 A MY UNCLE, JAKE BERRY.

18 Q AND HE OR ONE OF HIS PEOPLE WOULD HAVE FILLED OUT

19 THIS DOCUMENT?

20 A THAT'S CORRECT.

21 Q JUST A COUPLE MORE QUESTIONS, MS. HORTON.

22 I SEE IN STATE'S EXHIBIT 10 AT THE TOP OF THAT,

23 THAT'S A BUILDING CALLED THE DESOTO HOTEL?

24 A THAT'S CORRECT.

25 Q AND TELL ME HOW THIS WAS SET UP. THE PAWN SHOPS ARE

1 HERE ON THE FIRST FLOOR?

2 A RIGHT.

3 Q AND WAS THE HOTEL ABOVE THAT?

4 A RIGHT, SECOND, AND THIRD FLOORS.

5 Q HOW HAD YOU ENTERED THAT HOTEL, DO YOU REMEMBER?

6 A ON THE LADY STREET SIDE.

7 Q ON THE LADY STREET SIDE?

8 A UH-HUH.

9 Q SO THAT WOULD BE DOWN HERE, THE SMALLER SIDE?

10 A RIGHT, CORRECT.

11 Q THAT'S THE ENTRANCE TO THE ACTUAL DESOTO HOTEL?

12 A RIGHT.

13 Q AND AS IS COMMON WITH THE HOTEL, PEOPLE WOULD ARRIVE

14 THERE OFTEN IN TAXI CABS?

15 A YES.

16 Q IS THERE A PLACE WHERE TAXI CABS WOULD PICK UP FARES

17 AND THINGS OF THAT NATURE?

18 A YES.

19 Q AND WHERE WAS THAT?

20 A ON THE LADY STREET SIDE, ON THE CORNER THERE.

21 Q ON THE CORNER HERE. IT'S DEPICTED HERE, ACTUALLY, ON

22 STATE'S EXHIBIT 10?

23 A YES.

24 Q AND THAT WOULD HAVE BEEN RIGHT HERE?

25 A YES, UH-HUH.

1 Q AND IT WAS NOT UNUSUAL FOR A CAB TO WAIT FOR FARES
2 RIGHT THERE?

3 A THAT'S CORRECT.

4 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: CROSS-EXAMINATION?

6 MS. HUDGINS: THANK YOU, YOUR HONOR. MAY IT
7 PLEASE THE COURT.

8 CROSS-EXAMINATION:

9 BY MS. HUDGINS

10 Q GOOD AFTERNOON, MS. HORTON.

11 A HELLO.

12 Q HOW OLD ARE YOU?

13 A FORTY-FOUR.

14 Q I'M SORRY TO HAVE TO ASK YOU THAT.

15 A THAT'S OKAY.

16 Q SO IN 1961, THAT WOULD MAKE YOU?

17 A THREE.

18 Q ABOUT THREE YEARS OF AGE?

19 A THREE YEARS OLD.

20 Q SO THE DOCUMENTS THAT THE STATE HAS ASKED YOU ABOUT
21 THIS AFTERNOON, YOU DON'T HAVE ANY INDEPENDENT
22 RECOLLECTION OF?

23 A WELL, WE USED THESE SAME DOCUMENTS UNTIL LIKE THE
24 EARLY '90S.

25 Q WHEN DID YOU WORK IN THE PAWN SHOP?

1 A FROM -- I STARTED LIKE IN 1980 FULL-TIME WORKING
2 THERE.

3 Q WERE YOU --

4 A I WORKED THERE AS A CHILD ON SATURDAYS.

5 Q DID YOU WORK FOR YOUR UNCLE'S PAWNSHOP, AS WELL AS
6 YOUR FATHER'S?

7 A NO, JUST MY FATHER'S.

8 Q JUST YOUR FATHER'S. SO YOU NEVER ACTUALLY WORKED AT
9 BERRY'S?

10 A NO.

11 Q SO --

12 A IT WAS NO LONGER IN BUSINESS AFTER MY UNCLE DIED IN
13 LIKE '65, I BELIEVE.

14 Q AND DO YOU STILL HAVE THE DOCUMENTS IN FRONT OF YOU?
15 I THINK THEY'RE MARKED AS STATE'S EXHIBIT 18 AND 19
16 THAT MS. CAMPBELL WAS REFERRING TO?

17 A YES.

18 Q AND I'D JUST LIKE TO ASK YOU A LITTLE BIT ABOUT
19 STATE'S 18.

20 MS. HORTON, DO YOU KNOW THE ORIGIN OF THIS --
21 FIRST OF ALL, IT SAYS FORM SEVEN DOWN HERE AT THE
22 BOTTOM; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q DO YOU KNOW THE ORIGIN OF FORM SEVEN THAT WAS USED BY
25 BERRY'S LOAN AND ARMY STORE?

1 A THE POLICE DEPARTMENT GAVE IT TO THEM, TO ALL THE
2 PAWN SHOPS.
3 Q THAT WOULD BE THE CITY OF COLUMBIA --
4 A RIGHT.
5 Q -- POLICE DEPARTMENT REQUIRED THIS FORM SEVEN TO BE
6 USED BY THE PAWN SHOPS.
7 A CORRECT.
8 Q AND YOU DON'T HAVE ANY IDEA WHOSE WRITING THIS WAS?
9 A I DON'T. IT WAS EITHER MY AUNT OR MY UNCLE, I WOULD
10 ASSUME.
11 Q AND AT THE BOTTOM OF THIS FORM SEVEN IS AN I.D.
12 NUMBER. CAN YOU, ON YOUR COPY, TELL WHAT THAT I.D.
13 NUMBER IS TO THE BEST OF YOUR...
14 A R A 16685305.
15 Q 305. AND THE ADDRESS THAT'S GIVEN, CAN YOU SEE THAT
16 ON YOUR COPY?
17 A COMPANY B. I CAN JUST READ COMPANY B.
18 Q COMPANY B. IT APPEARS TO BE A FORT JACKSON TYPE OF
19 ADDRESS?
20 A CORRECT.
21 Q AND THE I.D. WAS REQUIRED FOR THESE FORM SEVENS?
22 A YEAH, WE HAD TO HAVE I.D. FOR EVERYTHING THAT WAS
23 PAWNED.
24 Q OKAY. AND NOW, I'D LIKE TO JUST REFER YOU QUICKLY TO
25 STATE'S 19. MS. HORTON, AT THE VERY TOP OF THAT,

1 WHAT DOES THAT SAY AT THE VERY TOP?

2 A ARTICLES PAWNED AND BOUGHT.

3 Q ARTICLES PAWNED AND BOUGHT, CORRECT?

4 A I'M SORRY.

5 Q THAT'S ALL RIGHT. AGAIN, DO YOU KNOW FROM YOUR

6 EXPERIENCE IN THE PAWNSHOP, ARE YOU AWARE OF THE

7 ORIGIN OF THIS DOCUMENT?

8 A THE POLICE DEPARTMENT.

9 Q THE CITY OF COLUMBIA POLICE DEPARTMENT?

10 A THE CITY OF COLUMBIA POLICE DEPARTMENT.

11 Q AND IN FACT, DOWN AT THE BOTTOM, THERE IS

12 CERTIFICATION THAT'S REQUIRED BY THE CITY OF COLUMBIA

13 POLICE DEPARTMENT.

14 CAN YOU READ THAT, BECAUSE I THINK THE PORTION

15 THAT THE JURY IS LOOKING AT RIGHT NOW, YOU MAY HAVE A

16 BETTER COPY THAN WHAT WE'RE LOOKING AT.

17 A I'M THINKING IT'S SUPPOSED TO SAY LIKE "I CERTIFY

18 THAT THIS REPORT IS CORRECT IN EVERY RESPECT AND

19 SHOWS EACH AND EVERY ARTICLE TAKEN AND PAWNED OR

20 BOUGHT THIS DAY."

21 Q OKAY. AND THIS WAS REQUIRED TO BE SUBMITTED TO THE

22 CITY OF COLUMBIA POLICE DEPARTMENT BY 10 A.M. EVERY

23 DAY?

24 A THAT'S CORRECT.

25 Q AND THAT'S MEMORIALIZED AT THE TOP OF THIS DOCUMENT?

1 A THAT'S CORRECT.

2 Q AND IF I BRING YOUR ATTENTION DOWN ONE, TWO, THREE,
3 FOUR, FIVE NAMES, WHAT'S THE NAME AND ADDRESS THAT
4 APPEARS THERE, MS. HORTON?

5 A EDWARD E. FRIEBURGER, COMPANY B., FORT JACKSON, OR
6 FORT J. IS WHAT IT SAYS.

7 Q AND THAT WAS FOR FEBRUARY 17TH FOR AN ELECTRIC RAZOR?

8 A CORRECT.

9 MS. HUDGINS: BEG THE COURT'S INDULGENCE ONE
10 MOMENT, YOUR HONOR.

11 (PAUSE).

12 THANK YOU, YOUR HONOR. I HAVE NO FURTHER
13 QUESTIONS.

14 THE COURT: ANYTHING FURTHER ON REDIRECT?

15 MS. CAMPBELL: YOUR HONOR, MAY SHE BE EXCUSED?

16 MS. HUDGINS: WITHOUT OBJECTION.

17 THE COURT: THANK YOU. CALL YOUR NEXT WITNESS.

18 MR. MCMAHON: THE STATE CALLS ROBERT TILBURY.

19 THE CLERK: PLEASE COME PARDON, PLACE YOUR LEFT
20 HAND ON THE BIBLE, RAISE YOUR RIGHT.

21 ARTHUR TILBURY, AFTER BEING DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
24 NAME, SPELL YOUR LAST NAME.

25 THE WITNESS: ARTHUR M. TILBURY, T-I-L-B-U-R-Y.

DIRECT EXAMINATION:

BY MR. MCMAHON

Q MR. TILBURY, WHERE DO YOU CURRENTLY RESIDE?

A CHURUBUSCO, INDIANA.

Q IS THAT WHERE YOU'RE FROM, INDIANA?

A YES, SIR.

Q AND HOW OLD ARE YOU, SIR?

A FIFTY-NINE.

Q AND WHAT IS YOUR OCCUPATION, MR. TILBURY?

A REAL ESTATE BROKER AND DEVELOPER.

Q NOW, DID YOU KNOW THE DEFENDANT, EDWARD FRIEBURGER,
IN THE MILITARY?

A YES, I DID.

Q IN FACT, DID YOU KNOW HIM PRIOR TO THE MILITARY?

A YES, I DID.

Q WHAT IS YOUR DATE OF BIRTH, MR. TILBURY?

A 13, NOVEMBER, '42.

Q AND WHAT IS MR. FREIBURGER'S DATE OF BIRTH?

A 13, NOVEMBER, '42.

Q AS A MATTER OF FACT, YOU WERE BORN THE SAME DAY?

A CORRECT.

Q SAME HOSPITAL?

A YES, SIR.

Q AND WHERE WERE YOU RAISED IN RELATIONSHIP TO WHERE
MR. FRIEBURGER WAS RAISED?

1 A RIGHT NEXT DOOR.

2 Q SAME STREET?

3 A SAME STREET, 20 FEET AWAY ON THE HOUSES.

4 Q DID YOU GO TO THE SAME ELEMENTARY SCHOOLS AND HIGH

5 SCHOOLS?

6 A YES, WE DID.

7 Q AND WHAT SCHOOLS WERE THEY?

8 A PRECIOUS BLOOD SCHOOL WAS THE GRADE SCHOOL AND

9 CENTRAL CATHOLIC HIGH SCHOOL IN FORT WAYNE, INDIANA.

10 Q ABOUT WHAT YEAR -- NOT ABOUT, BUT WHAT YEAR DID YOU

11 GRADUATE FROM HIGH SCHOOL?

12 A 1960.

13 Q AND AFTER GRADUATION, DID Y'ALL MAKE ANY PLANS

14 BEYOND?

15 A WE DIDN'T AT THAT TIME, BUT WE ENDED UP IN THE FALL.

16 Q AND WHAT DID YOU DECIDE TO DO THAT FALL?

17 A ENLIST IN THE MILITARY SERVICE. I WAS GOING IN, AND

18 I ASKED ED IF HE WANTED TO GO ALONG.

19 Q YOU WENT IN TOGETHER?

20 A CORRECT.

21 Q ON THE BUDDY PLAN?

22 A CORRECT.

23 Q AND WHAT WAS YOUR PERIOD OF TIME, PERIOD OF

24 ENLISTMENT?

25 A THIRTY-SIX MONTHS.

- 1 Q AND DO YOU RECALL WHEN YOU WENT IN?
- 2 A YES, RIGHT AROUND, I THINK, THE 29TH OF OCTOBER.
- 3 Q OF '60?
- 4 A CORRECT.
- 5 Q AND WHERE DID YOU FIRST GO?
- 6 A FORT LEONARDWOOD, MISSOURI.
- 7 Q AND MR. FRIEBURGER ALSO WENT IN THAT SAME DAY AND
- 8 WENT TO FORT LEONARDWOOD?
- 9 A YES.
- 10 Q YOU SAW MR. AEBERSOLD TESTIFY PREVIOUSLY?
- 11 A YES, SIR.
- 12 Q DID YOU RECALL MEETING HIM OR KNOWING HIM, KNOWING
- 13 THAT HE WAS IN THE SAME UNIT, SOME OF THE SAME UNITS?
- 14 A AFTER I SAW HIM IN YOUR OFFICE THE OTHER DAY.
- 15 Q AND YOU WENT FROM FORT LEONARDWOOD TO FORT JACKSON?
- 16 A CORRECT, SIR.
- 17 Q AND WHAT WAS YOUR PURPOSE IN COMING TO FORT JACKSON?
- 18 A THEY DIDN'T HAVE SPACE FOR US FOR BASIC AT
- 19 LEONARDWOOD, AND THEY HAD AN OPENING HERE IN JACKSON.
- 20 THEY SENT A WHOLE COMPLETE COMPANY DOWN HERE.
- 21 Q SO YOU CAME TO BASIC TRAINING. WHEN I SAY Y'ALL, I'M
- 22 REFERRING PRIMARILY TO YOU AND MR. FRIEBURGER. YOU
- 23 CAME TO BASIC TRAINING AT FORT JACKSON?
- 24 A YES, SIR.
- 25 Q AND WERE YOU IN THE SAME COMPANY?

1 A WE WERE IN THE SAME COMPANY BUT NOT THE SAME PLATOON.
2 Q NOT THE SAME PLATOON, BUT IT WOULD BE FAIR TO SAY
3 THAT YOU KNEW MR. FRIEBURGER BETTER THAN ANYBODY ELSE
4 IN THE COMPANY OR THE PLATOON FROM BEING RAISED
5 TOGETHER?
6 A YES, I WOULD SAY THAT.
7 Q NOW, AFTER BASIC, DID Y'ALL GO TO THE SAME ADVANCED
8 TRAINING AT FORT JACKSON?
9 A AGAIN, THE SAME COMPANY BUT NOT THE SAME PLATOON, AND
10 IN MY CASE, NOT THE SAME M.O.S. OR TRAINING.
11 Q M.O.S., MILITARY OCCUPATION SPECIALIST?
12 A RIGHT, SIR.
13 Q AND YOURS WAS NOT SUPPLY?
14 A NO, MINE WAS A COMPANY CLERK.
15 Q COMPANY CLERK, AND THAT WAS TWO DIFFERENT SECTIONS;
16 IS THAT RIGHT?
17 A CORRECT.
18 Q NOW, DURING THE TIME Y'ALL WERE EITHER IN BASIC OR
19 ADVANCED TRAINING, I CALL IT, REALIZING YOU WERE IN
20 CLERK SCHOOL AND HE WAS IN SUPPLY SCHOOL, Y'ALL WOULD
21 STILL SEE EACH OTHER; IS THAT CORRECT?
22 A CORRECT. WE WERE IN THE SAME BATTALION.
23 Q DID Y'ALL EVER HAVE AN OPPORTUNITY TO COME TO
24 COLUMBIA, DOWNTOWN COLUMBIA, DURING THAT PERIOD OF
25 TIME?

1 A BEFORE THAT PERIOD OF TIME, WE DID ONCE, AND ONCE
2 DURING THAT PERIOD OF TIME.
3 Q SO A COUPLE OF TIMES?
4 A UH-HUH.
5 Q IS THAT CORRECT?
6 A YES, TWICE.
7 Q AND WHAT WAS THE PURPOSE IN COMING, JUST GENERALLY?
8 A JUST TO GO TO TOWN.
9 Q JUST RECREATION?
10 A CORRECT.
11 Q GET AWAY FROM THE FORT?
12 A THAT'S RIGHT.
13 Q WHAT MODES OF TRANSPORTATION WOULD YOU USE?
14 A IT'S SO FAR BACK TO TELL BUT PROBABLY LIKE HE SAID
15 BUS OR CAB. I KNOW ONE TIME BY CAB. I CAN'T TELL
16 YOU WHETHER THE OTHER TIME WAS BY CAB OR BUS.
17 Q DID YOU COME TO A PARTICULAR AREA IN DOWNTOWN
18 COLUMBIA?
19 A YEAH, OR DOWNTOWN. THEY USED TO CALL IT COMBAT
20 ALLEY.
21 Q COMBAT ALLEY. WHY DID THEY CALL IT THAT,
22 MR. TILBURY?
23 A I DON'T KNOW. WE NEVER HEARD ABOUT IT.
24 Q WHAT KIND OF ESTABLISHMENTS WERE DOWN IN THIS AREA OF
25 COLUMBIA?

1 A OH, PAWN SHOPS AND BARS.

2 Q AND IS IT FAIR TO SAY THEY CATERED TO -- THERE WOULD
3 BE OTHER MILITARY PERSONNEL, RECRUITS THERE
4 PRIMARILY?

5 A PRIMARILY I'D SAY, SURE.

6 Q NOW, WAS THERE EVER A TIME YOU REMEMBER COMING TO
7 COLUMBIA WITH MR. FRIEBURGER AND STAYING AT THE OLD
8 GRESHAM HOTEL?

9 A YES, THERE WAS ONE. I BELIEVE IT WAS THE VERY FIRST
10 TIME WE CAME TO TOWN.

11 Q AND BOTH YOU AND HE STAYED THERE?

12 A YES.

13 Q DO YOU REMEMBER ANY OTHER HOTELS THAT YOU MAY HAVE
14 STAYED AT?

15 A I NEVER STAYED AT ANY PLACE BUT THAT ONE, ONE NIGHT.

16 Q NOW, CONTINUING ON, DO YOU RECALL PAYDAY BEING THE
17 LAST DAY OF THE MONTH?

18 A OH, I SURE DO.

19 Q AND THAT WAS KIND OF AN ANTICIPATED DAY?

20 A CORRECT.

21 Q HOW MUCH DID YOU MAKE BACK THEN?

22 A SIXTY-EIGHT DOLLARS A MONTH

23 Q WAS THAT BEFORE OR AFTER TAXES?

24 A THAT WAS BEFORE.

25 Q THAT WAS IT?

1 A THAT WAS IT.

2 Q AND THAT WAS ALWAYS THE LAST DAY OF THE MONTH IF IT

3 WASN'T A HOLIDAY OR A WEEKEND; IS THAT CORRECT?

4 A CORRECT, CORRECT. I BELIEVE IT WAS, YES.

5 Q DO YOU RECALL IF IT WAS A WEEKDAY WHETHER OR NOT YOU

6 WOULD HAVE GONE INTO TOWN ON PAYDAY?

7 A NO, I CAN'T REMEMBER.

8 Q YOU DON'T RECALL?

9 A WHETHER IT WAS WEEKDAY OR WEEKEND?

10 Q IF I TOLD YOU FEBRUARY 28TH, SPECIFICALLY, THE LAST

11 DAY OF THE MONTH WAS A TUESDAY --

12 A OKAY.

13 Q -- THAT PAYDAY, DO YOU RECALL WHETHER OR NOT YOU

14 WOULD HAVE BEEN ABLE TO GO TO TOWN ON FEBRUARY 28TH

15 OF '61?

16 A I WOULD SAY I WAS NOT IN TOWN FEBRUARY 28TH, BUT

17 POSSIBLY A MONTH BEFORE THAT.

18 Q DO YOU KNOW WHERE MR. FRIEBURGER WAS ON THAT DAY?

19 A NO, I DON'T, BECAUSE I WAS JUST FAR ENOUGH AWAY I

20 COULD NOT TELL YOU WHERE HE WOULD HAVE BEEN.

21 Q AND YOU HAD BEEN ASKED THESE QUESTIONS BACK IN '61?

22 A CORRECT, SIR.

23 Q I MEAN, OFFICERS INTERVIEWED YOU BACK IN '61, AS THEY

24 DID AEBERSOLD; IS THAT CORRECT?

25 A YES.

1 Q AND YOU GAVE STATEMENTS TO THEM?

2 A CORRECT. MINE WERE GIVEN IN JUNE ONLY, THOUGH.

3 Q NOW, A COUPLE OF OTHER THINGS: DO YOU RECALL IN

4 MARCH OF '61 GOING FROM THE FORT TO YOUR HOME IN

5 INDIANA?

6 A YES, I DO, SIR.

7 Q NOW, MR. TILBURY, WAS THAT AFTER YOU HAD GRADUATED

8 FROM CLERK SCHOOL?

9 A YES, THAT WAS AFTER CLERK SCHOOL.

10 Q AND YOU HAD A PASS?

11 A I HAD AN EXTENDED PASS, YES, SIR.

12 Q AND FOR YOUR NEXT ASSIGNMENT, WERE YOUR ORDERS

13 ALREADY CUT FOR YOUR NEXT ASSIGNMENT?

14 A YES, I WAS WAITING ON TRAVEL ORDERS.

15 Q AND WHERE WERE YOU GOING?

16 A ALASKA.

17 Q AND WHERE, RICHARDSON?

18 A FORT RICHARDSON.

19 Q FORT RICHARDSON. SO BETWEEN THE END OF CLERK SCHOOL

20 AND BEFORE YOUR TRAVEL ORDERS FOR FORT RICHARDSON,

21 YOU HAD A PASS, AN EXTENDED PASS, TO GO HOME TO

22 INDIANA; IS THAT CORRECT?

23 A CORRECT.

24 Q DO YOU REMEMBER THE DATES OF THAT?

25 A NOT THE EXACT DATES, NO.

1 Q IF I --

2 A IT WAS REAL CLOSE. IT WAS BEFORE THE 21ST, SO IT WAS

3 PROBABLY AROUND THE TENTH OR 12TH OF MARCH.

4 Q YES, SIR. AND I DON'T WANT YOU TO THINK THAT'S --

5 A I SAW ON THAT PAPER.

6 Q -- IT'S A TRICK QUESTION AT ALL. I'LL REFRESH YOUR

7 MEMORY HERE.

8 A I KNOW I DEPARTED HERE ON THE 21ST FOR ALASKA.

9 Q THEY ASKED YOU A QUESTION HERE, "HOW MUCH MONEY DID

10 HE HAVE WHEN YOU AND FRIEBURGER LEFT FORT JACKSON FOR

11 FORT WAYNE ON MARCH 16TH OF '61?"

12 A YOU'RE CORRECT.

13 Q I MEAN, THAT REFRESHES YOUR MEMORY?

14 A CORRECT.

15 Q SO IF THIS WAS MARCH 16TH OF '61, YOU WOULD HAVE BEEN

16 HERE. WHO DID YOU LEAVE FORT JACKSON WITH? WHO DID

17 YOU TRAVEL WITH FROM FORT JACKSON WITH TO INDIANA?

18 A JUST ME AND MR. FRIEBURGER.

19 Q HOW LONG WERE YOU GONE?

20 A IF I REMEMBER CORRECTLY, IT WOULD BE THREE, FOUR,

21 FIVE DAYS, FIVE TO SIX DAYS.

22 Q ALL RIGHT. SO 16, 17, 18, 19, MAYBE BACK ON THE 20TH

23 OR THE 21ST?

24 A CORRECT.

25 Q IS THAT A FAIR STATEMENT?

- 1 A YES.
- 2 Q HOW DID --
- 3 A NO. IT HAD TO BE BEFORE THE 21ST. IT MUST HAVE BEEN
- 4 THE 20TH.
- 5 Q OKAY, 16, 17, 18, 19, 20?
- 6 A CORRECT.
- 7 Q AND HOW DID YOU GET FROM COLUMBIA TO INDIANA?
- 8 A BY BUS.
- 9 Q NOW, DID MR. FRIEBURGER HAVE ANY MONEY?
- 10 A SINCE I READ THAT STATEMENT, I DIDN'T REMEMBER IT
- 11 BEFORE THAT, NO, I PAID FOR THE TICKET, A ONE-WAY
- 12 TICKET FOR US TO INDIANA.
- 13 Q YOU PAID FOR HIS BUS -- YOUR TICKET AND FOR HIS BUS
- 14 TICKET TO GO FROM FORT JACKSON TO INDIANA?
- 15 A CORRECT.
- 16 Q NOW, Y'ALL TRAVELED THERE TOGETHER AND DID YOU COME
- 17 BACK BY BUS?
- 18 A YES. HE CAME BACK WITH ME.
- 19 Q AND THE TICKET YOU BOUGHT, I GUESS YOU COULD BUY A
- 20 ONE-WAY OR A ROUND-TRIP TICKET?
- 21 A I DIDN'T HAVE MONEY FOR A TWO-WAY TICKETS.
- 22 Q YOU DIDN'T HAVE ENOUGH MONEY. YOU BOUGHT HIM A
- 23 ONE-WAY TICKET?
- 24 A CORRECT, AND MYSELF A ONE-WAY TICKET.
- 25 Q DO YOU KNOW HOW HE GOT THE TICKET TO COME BACK?

1 A OH, I IMAGINE THE SAME WAY I GOT MINE, HIS FOLKS.
2 Q SURE. AND THEN HE CAME BACK WITH YOU ON THE 20TH OF
3 MARCH, '61?
4 A RIGHT.
5 Q NOW, WHEN DID YOU SHIP OUT, MR. TILBURY? WHEN DID
6 YOU LEAVE FORT JACKSON?
7 A '21 MARCH, '61.
8 Q '21ST OF MARCH?
9 A I LEFT FOR SEATTLE, FORT LEWIS, WASHINGTON, WHICH WAS
10 THE DEMARCATION POINT FOR ALASKA.
11 Q AND AFTER 21 MARCH, '61, DID YOU SEE MR. FRIEBURGER
12 ANYMORE IN MARCH?
13 A NO. I NEVER SAW HIM FOR PROBABLY A YEAR OR TWO AFTER
14 THAT.
15 Q FOR A YEAR OR TWO AFTER THAT. THE NEXT TIME YOU SAW
16 HIM, WOULD THAT HAVE BEEN AT YOUR HOME OR INDIANA?
17 A YES, INDIANA HOME.
18 Q MONEY, DO YOU KNOW ANYBODY THAT MR. FRIEBURGER MAY
19 HAVE LOANED MONEY TO WHILE HE WAS IN BASIC?
20 A NO. I WAS ASKED ABOUT THAT ON THE INTERVIEW YEARS
21 AGO, NO, I DIDN'T.
22 Q AND WOULD YOU BE AWARE OF ANY WAY HE WOULD BE ABLE TO
23 LOAN ANYONE \$52 BACK IN THOSE DAYS?
24 A NOT TO MY KNOWLEDGE. I KNOW HE DIDN'T HAVE MONEY IN
25 THE SAVINGS.

1 Q BUT IF HE HAD MONEY IN SAVINGS, HE DIDN'T USE IT TO
2 BUY A BUS TICKET?

3 A WELL, IF HE COULD HAVE GOT TO IT.

4 MR. MCMAHON: THANK YOU, MR. TILBURY. I HAVE NO
5 FURTHER QUESTIONS.

6 MR. DELGADO: YOUR HONOR, MAY WE APPROACH THE
7 BENCH JUST A NEW MINUTES BEFORE I ASK MR. TILBURY ANY
8 QUESTIONS?

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
11 THE JURY.)

12 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

13 MR. DELGADO: YOUR HONOR, COULD WE JUST HAVE ONE
14 MOMENT?

15 (PAUSE).

16 MR. DELGADO: MR. TILBURY?

17 THE WITNESS: YES, SIR.

18 MR. DELGADO: I'M GOING TO SEND YOU RIGHT ON
19 BACK TO CHURUBUSCO, INDIANA.

20 THANK YOU. I DON'T HAVE ANY QUESTIONS.
21 APPRECIATE IT.

22 THE COURT: ANY OBJECTION TO THIS WITNESS BEING
23 RELEASED?

24 MR. MCMAHON: NO, YOUR HONOR.

25 THE COURT: WITHOUT OBJECTION.

1 ALL RIGHT. MR. FOREMAN AND LADIES AND GENTLEMEN
2 OF THE JURY, LET'S TAKE A LITTLE BREAK HERE AND START IN
3 THE MORNING BACK AT NINE.

4 AGAIN, PLEASE DON'T WATCH ANY OR LISTEN TO ANY
5 NEWS ACCOUNT OR READ ANY NEWS COVERAGE ABOUT THE TRIAL.
6 WE'LL PICK BACK UP AT NINE IN THE MORNING.

7 I'M GOING TO TRY TO DO A FEW THINGS HERE TO HELP
8 US MOVE ALONG A LITTLE QUICKER IN THE MORNING, SO THEY'RE
9 GOING TO STAY A LITTLE BIT LONGER. HAVE A NICE EVENING.

10 WE NEED TO TAKE UP THOSE PADS, IF YOU DON'T
11 MIND, MR. JOHNSON.

12 WE'LL PUT THEM IN AN ENVELOPE AND HOLD ONTO THEM
13 MADAM CLERK.

14 (WHEREUPON, THE JURY LEFT OPEN COURT AT
15 APPROXIMATELY 5:21 P.M.)

16 MR. MCMAHON: IT'S BATES STAMP 112.

17 THE COURT: YES.

18 MR. MCMAHON: JUDGE, I JUST WANT TO PUT ON THE
19 RECORD --

20 THE COURT: YES.

21 MR. MCMAHON: -- THAT THAT QUESTION CAME FROM A
22 STATEMENT THAT MR. TILBURY GAVE.

23 MR. DELGADO: I STAND CORRECTED, YOUR HONOR.

24 MR. MCMAHON: AND THAT'S ALL THAT -- IT'S ALSO
25 IN THAT OTHER STATEMENT, BUT I ASKED IT BASED ON THIS.

1 THE COURT: RIGHT. THAT'S IT.

2 MR. MCMAHON: JUDGE, I HAVE ONE FURTHER MATTER
3 ABOUT MR. TILBURY, THOUGH, BEFORE HE IS RELEASED FROM THE
4 SUBPOENA.

5 THE COURT: ALL RIGHT. HANG ON JUST ONE MINUTE.
6 IT'S BATES STAMP NUMBER 112, OKAY. ALL RIGHT.

7 MR. MCMAHON: SHOULD THE A.W.O.L. ISSUE EVER
8 COME UP IN THE STATE'S CASE, I DON'T WANT TO HAVE TO BRING
9 MR. TILBURY BACK CONCERNING THE FACT THAT MR. FRIEBURGER
10 WAS A.W.O.L. ON THE MARCH 16TH TRIP, AND I DIDN'T WANT TO
11 GO INTO IT NOW BECAUSE I DIDN'T WANT TO GET CLOSE TO THAT
12 EDGE.

13 ON THE 21ST OR THE 22ND OF MARCH AFTER
14 MR. TILBURY AND FRIEBURGER GOT BACK TO FORT JACKSON, AN
15 ARMY SERGEANT, I BELIEVE, CAME LOOKING FOR MR. TILBURY IN
16 AN ATTEMPT TO LOCATE PRIVATE FRIEBURGER.

17 AS A RESULT OF THAT, HE LEARNED THAT
18 MR. FRIEBURGER HAD LEFT POST AGAIN. HE CALLED HIS,
19 MR. TILBURY'S, FATHER.

20 MR. TILBURY CALLED HIS DADDY AND ASKED HIS DADDY
21 TO CONTACT MR. FRIEBURGER AND TELL HIM TO TELL
22 MR. FRIEBURGER TO GET BACK TO FORT JACKSON, AND SO HE WAS
23 A.W.O.L. FOR THAT SECOND TIME.

24 I DON'T WANT TO MAKE MR. TILBURY HAVE TO SIT
25 AROUND HERE IN ANTICIPATION OF EVER GETTING INTO THAT

1 EVIDENCE.

2 IS THERE A WAY I CAN -- I MEAN, I DON'T WANT TO
3 HAVE TO DO THAT. I MEAN, I'LL DO IT IF I HAVE TO. I
4 DON'T KNOW IF IT WILL EVER BECOME ADMISSIBLE OR NOT.

5 DO I NEED TO LAY THE FOUNDATION FOR THAT NOW
6 WHILE HE'S STILL IN SOUTH CAROLINA, OR WILL THEY ALLOW ME
7 TO ATTEMPT TO PROVE THAT, SHOULD IT BECOME ADMISSIBLE,
8 THROUGH THE RECORDS AND THROUGH HIS STATEMENTS?

9 THIS IS KIND OF AN ADMINISTRATIVE DILEMMA.

10 THE COURT: I MEAN, WE DON'T HAVE -- THE ONLY
11 SPECIFIC RULE WE HAVE TO ALLOW EXAMINATION OF A WITNESS
12 OUTSIDE THE JURY'S PRESENCE IN A JURY PROCEEDING IS, OF
13 COURSE, IN A CRIMINAL SEXUAL CONDUCT CASE.

14 I'M NOT AWARE -- I DON'T KNOW WHETHER THERE WILL
15 BE ANY OBJECTION TO IT -- I DON'T KNOW.

16 MR. DELGADO: YES, SIR. I THINK I WOULD, I'M
17 SORRY TO SAY. I'M NOT GOING TO GET INTO THAT AREA BUT...

18 MR. MCMAHON: WELL, THEN, I WOULD HAVE TO THEN
19 RECANT MY RELEASE OF MR. TILBURY FROM HIS SUBPOENA JUST TO
20 SEE WHERE THAT GOES. I HATE TO DO THAT TO MR. TILBURY.

21 THE COURT: OKAY. WELL, WE'RE GOING TO MOVE A
22 LITTLE FASTER TOMORROW.

23 MR. DELGADO: YES, SIR.

24 THE COURT: OBVIOUSLY, IF THERE WERE A RETRIAL
25 OR SOMETHING, THE FACT THAT SOMEBODY WAS ON THE STAND

1 SUBJECT TO RECROSS-EXAMINATION, THEN YOU COULD USE THAT
2 TESTIMONY UNDER THE RULES OF EVIDENCE BUT NOT JUST TO HAVE
3 AN IN CAMERA EXAMINATION, EVEN THOUGH HE'D HAVE THE RIGHT
4 AT CROSS-EXAMINATION, I DON'T KNOW THAT IT WOULD SURVIVE
5 THE JURY TRIAL ISSUE ABOUT THE EVIDENCE.

6 MR. MCMAHON: ALL RIGHT, SIR.

7 THE COURT: ALL RIGHT. HOW MANY MORE EXHIBITS
8 DO YOU HAVE?

9 MR. MCMAHON: JUDGE, I STILL HAVEN'T GOTTEN INTO
10 FREED'S.

11 MR. FREED IS FLYING IN, I THINK, TONIGHT. HE'LL
12 BE HERE IN THE MORNING. I'VE GOT TWO EXHIBITS ON FREED'S.
13 I'VE GOT ACTUALLY THREE EXHIBITS ON FREED'S. I HAVEN'T
14 HAD THIS ONE MARKED YET. I'VE GOT THE FINGERPRINTS
15 EXHIBITS. I'VE OBVIOUSLY STILL GOT THE PHOTOGRAPH OF
16 MR. FRIEBURGER.

17 I HATE TO ANSWER THAT BY SAYING NOT MANY.

18 THE COURT: WELL, WHAT I'D LIKE FOR YOU TO DO IS
19 MARK THEM, AND Y'ALL SHOW THEM TO EACH OTHER, THE
20 EXAMINATION STUFF.

21 I CAN'T TELL YOU HOW MUCH TIME WE WASTED LOOKING
22 AT STUFF TODAY. THAT'S A LOT.

23 MR. MCMAHON: I THINK THEY HAVE SEEN ALL THESE
24 EXHIBITS.

25 THE COURT: I THINK, I MEAN, BEING AN OLD

1 DEFENSE LAWYER MYSELF, YOU DON'T WANT THE STICKER TO
2 CHANGE OR SOMETHING. I'M NOT SAYING THAT. THAT'S ALWAYS
3 THEIR CONCERN, NOT THAT YOU WOULD DO IT, BUT JUST LAST
4 MINUTE TYPE OF THINGS.

5 I'D LIKE TO GET A LITTLE MORE COOPERATION ON
6 BOTH SIDES ABOUT MOVING ALONG WITH EXHIBITS COMING IN.
7 MAYBE STAY AND LOOK AT IT TONIGHT OR SOMETHING.

8 MARK THEM AND WE CAN PUT THEM IN THE CONTROL OF
9 THE COURT REPORTER FOR THAT MATTER, SOLVE THAT ISSUE.

10 ALL RIGHT. ANYTHING ELSE WE NEED TO TALK ABOUT?

11 MR. MCMAHON: NO, SIR.

12 THE COURT: THERE WERE A COUPLE OF TIMES WHEN
13 YOU ALL INDICATED YOU MIGHT WANT TO PUT SOMETHING ELSE ON
14 THE RECORD, AND I TOLD I'D GIVE YOU THAT CHANCE IF YOU
15 WANTED TO ADD TO IT.

16 THERE WERE AT LEAST TWO OCCASIONS. IF YOU WANT
17 TO ADDRESS THEM, I'LL BE GLAD TO HEAR FROM YOU.

18 MR. DELGADO: YOUR HONOR, THERE MIGHT BE A
19 THIRD, AND MAYBE I JUST OUGHT TO BRING THIS UP WITH YOU
20 NOW.

21 DURING THE TESTIMONY YESTERDAY IN CAMERA OF
22 MR. METZ, ON TWO DIFFERENT OCCASIONS, MR. METZ MENTIONED
23 THE DEFENDANT'S INVOKING EITHER THE RIGHT TO AN ATTORNEY
24 OR ASKING WHETHER OR NOT HE OUGHT TO GET AN ATTORNEY, ONE
25 MAYBE WITHIN THE FIRST SHORT PERIOD OF THE TWO-HOUR

1 INTERVIEW; THE SECOND ONE TOWARDS THE LATTER PART OF THE
2 INTERVIEW.

3 I AM UNCLEAR WHETHER OR NOT THAT'S INVOCATION
4 UNDER DOOR VS. OHIO (PHONETIC) IF THAT NEEDS TO BE -- IF
5 MR. METZ WAS GOING TO GET INTO THAT, WHETHER OR NOT THAT'S
6 SOMETHING -- WE WEREN'T EVEN THINKING ABOUT THAT WHEN WE
7 DEBATED YESTERDAY.

8 THE COURT: WELL, I WROTE THAT DOWN SOMEWHERE,
9 BUT SINCE I DIDN'T HEAR FROM YOU, I KIND OF THOUGHT YOU
10 MIGHT THINK IT CUTS BOTH WAYS.

11 MR. DELGADO: NO. I'M JUST SLOW. I DIDN'T
12 THINK ABOUT IT. THAT'S ALL.

13 THE COURT: WELL, IN THAT HE DID NOT INVOKE IT.
14 HAD HE INVOKED IT, THERE'S ALWAYS SOME PROBLEM ABOUT THAT,
15 MAYBE SOME COMMENT FROM THE JURY.

16 THAT'S GOING TO BE A -- THAT WILL BE A TRIAL
17 STRATEGY QUESTION FOR YOU, WHETHER YOU WANT TO OBJECT AND
18 SEE IF IT CAN BE SUSTAINED OR WHETHER YOU WANT TO LEAVE IT
19 ALONE.

20 MR. DELGADO: ALL RIGHT, SIR.

21 YOUR HONOR, TO BE CANDID WITH YOU, I'M SO TIRED
22 I CAN'T RECALL WHAT ELSE WE OBJECTED TO IT THAT WE SAID WE
23 WANTED TO DISCUSS IT ON THE RECORD.

24 THE COURT: WELL, THEY ALL HAD TO DO WITH THE
25 ANCIENT DOCUMENTS RULE.