

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 II of V

JOHN H. BLUME, III
Blume Norris & Franklin-Best, LLC
900 Elmwood Ave., Suite 101
Columbia, SC 29201

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General

LINDSEY STERLING VANN
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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1 MR. DELGADO: YES, SIR.

2 THE COURT: NOW, I HAD HELD THERE ARE THREE
3 REQUIREMENTS FOR THE AUTHENTICATION OF A DOCUMENT. ONE,
4 IT MUST BE IN EXISTENCE FOR A PERIOD OF 20 YEARS.

5 ALL OF THE DOCUMENTS THAT HAVE BEEN ENTERED INTO
6 EVIDENCE HAVE BEEN IN EXISTENCE FOR MORE THAN 20 YEARS.

7 IT CAME FROM A PROPER PLACE OF CUSTODY. AS TO
8 THE CITY OF COLUMBIA REQUIRING REPORTING, THOSE DOCUMENTS
9 HAVE BEEN IN THE CUSTODY OF THE CITY OF COLUMBIA POLICE
10 DEPARTMENT, WHICH IS A PROPER PLACE OF CUSTODY, FOR A --
11 PROPER PLACE OF CUSTODY FOR SUCH A DOCUMENT AND FREE FROM
12 SUSPICION.

13 THE ONLY THING THAT EVEN CAME CLOSE TO THAT WAS
14 THE ISSUE ABOUT WHETHER IT WAS A 22 OR A 32. THERE WERE
15 OTHER AREAS OF INDICIA OF RELIABILITY, THAT IS THE SERIAL
16 NUMBER ON THE WEAPON MATCHED THE DOCUMENT. MS. RUSS WAS
17 ADAMANT IN HER TESTIMONY THAT 32, MISTAKES HAD BEEN MADE.

18 I MAKE THAT RULING AS TO ALL OF THE DOCUMENTS,
19 INCLUDING THE LAST ROUND THAT WE HAD HERE, WHICH WAS
20 MR. JOE BERRY'S DAUGHTER.

21 ANYTHING ELSE, SPECIFICALLY?

22 MR. DELGADO: YES, SIR, THERE WAS.

23 JUDGE, I'M CERTAINLY TIRED TODAY. THIS IS JULY.
24 I KNOW IT HAPPENED TODAY. THERE WAS A SOMETHING, A
25 STATEMENT THE PROSECUTOR -- THAT YOU LET IN THAT I WAS

1 CONCERNED ABOUT.

2 MS. HUDGINS: IT WAS THE NARRATIVE THAT WAS
3 READ.

4 MR. DELGADO: THAT'S WHAT IT WAS, YOUR HONOR.
5 IT WAS THE NARRATIVE. THAT'S RIGHT, MR. CLARK READ IT, IF
6 I'M NOT MISTAKEN. THAT'S IT.

7 THE COURT: ALL RIGHT. I'M PREPARED TO DEAL
8 WITH THAT, TOO.

9 MR. DELGADO: ALL RIGHT.

10 THE COURT: FIRST OFF, I'M GOING TO TAKE A
11 HARD-LINE POSITION WITH YOU THAT YOU WAIVED YOUR
12 OBJECTION; THAT IS THERE WAS SUBSTANTIAL QUESTIONING ABOUT
13 THE DOCUMENT BEFORE ANY OBJECTION AS TO HEARSAY WAS
14 RAISED.

15 HOWEVER, ASSUMING THAT'S NOT A VIABLE POSITION,
16 EVERYTHING IN THE -- UNTIL YOU OBJECTED HAD BEEN CONFIRMED
17 BY THE PRECEDING WITNESSES, THAT IS THAT THE SON-IN-LAW,
18 STEPSON MADE THE CALL; THAT THE IDENTIFICATION OF THE
19 LICENSE AND FORT JACKSON PASSES WERE TESTIFIED BY SOMEONE
20 PREVIOUSLY.

21 THEN, OF COURSE, THE INVENTORY -- INVENTORY WAS
22 TAKEN, AND, OBVIOUSLY, THIS -- IT POINTS -- IT DOES NOT
23 POINT ANY FINGERS AT YOUR CLIENT. IT'S SIMPLY A MATTER OF
24 COLLECTING THE -- WHATEVER WAS IN THE CAR, AND THAT WOULD
25 SHOW THE AMOUNT OF FARE, MILEAGE, THAT TYPE OF THING THAT

1 WAS REPORTED. IT'S BEEN KEPT IN --

2 MR. DELGADO: YOUR HONOR, I UNDERSTAND WHAT
3 YOU'RE SAYING. THE PROBLEM WITH IT IS THAT THE RULE HAS
4 NEVER BEEN INTERPRETED IN A CRIMINAL CASE IN THE HISTORY
5 OF SOUTH CAROLINA.

6 WHEN YOU LOOK AT JOHNSON VS. PRITCHARD, WHICH
7 TALKS ABOUT THESE THINGS THAT NOT ONLY ARE
8 SELF-AUTHENTICATING, BUT THERE ALMOST NO PROBLEM WITH WHY
9 THEY WERE BROUGHT FORWARD.

10 IN OTHER WORDS, WE'RE TALKING ABOUT PROPERTY AND
11 TITLES, THOSE TYPES OF THINGS. WE DON'T HAVE THAT TYPE OF
12 SITUATION. IT'S JUST RIGHT NOW, WITH MR. CLARK DOING
13 THAT, I GUESS HE HAD JUST STARTED WORKING WITH C.P.D., BUT
14 I MEAN, THERE'S NO WAY FOR ME TO BE ABLE TO CROSS-EXAMINE
15 ANYONE ABOUT THAT NARRATIVE.

16 I UNDERSTAND IT DOESN'T DIRECTLY IMPLICATE
17 MR. FRIEBURGER, BUT MY FRIEND'S FROM THE SOLICITOR'S
18 OFFICE IS NOT PUTTING THAT IN TO HELP US. THEY'RE THERE
19 TO MAKE CERTAIN IT'S --

20 THE COURT: WELL, OF COURSE, THERE'S ALWAYS A
21 BIT OF TENSION BETWEEN THE CONFRONTATION CLAUSE AND THE
22 HEARSAY RULE, BUT THERE ARE A NUMBER OF CASES TO SAY THAT
23 803 EXCEPTIONS FIVE THROUGH 17 ARE DEEMED RELIABLE
24 EXCEPTIONS TO THE HEARSAY RULE AND -- PROVIDED A
25 FOUNDATION IS LAID.

1 IN THIS CASE, A FOUNDATION WAS LAID EITHER ONE
2 OF TWO WAYS, EITHER UNDER THE ANCIENT DOCUMENT RULE OR
3 UNDER THE BUSINESS RECORDS ACT.

4 SO, YOU KNOW, I DON'T THINK -- I MEAN, WE HAD
5 THIS CONVERSATION THE OTHER DAY ABOUT HOW FAR I WOULD GO
6 TO LET SOME OF THIS STUFF IN.

7 RIGHT OFF THE BAT, I TOLD YOU OF 900 PAGES, ONLY
8 ABOUT TEN OR 12 OF THEM ARE ADMISSIBLE. CLEARLY, THE REST
9 OF THIS STUFF, WITHOUT THE WITNESSES HERE, THEY MAKE
10 OPINIONS ABOUT THINGS AND DRAW INFERENCES ABOUT THINGS,
11 CERTAINLY, I WOULD NOT LET IN.

12 MR. DELGADO: YES, SIR.

13 THE COURT: BUT WHEN IT COMES TO DOCUMENTS THAT
14 HAVE AN INDICIA OF RELIABILITY, I THINK I COVERED THAT.

15 MR. DELGADO: YOUR HONOR, MAY I JUST BE VERY
16 QUICK AND VERY BRIEF? FIRST, IT'S OUR FEELING THAT THE
17 ANCIENT DOCUMENTS RULE IS NOT A WELL ESTABLISHED EXCEPTION
18 TO THE HEARSAY RULE.

19 IT'S BEEN INVOKED IN THIS STATE -- I THINK WE
20 ONLY FOUND THREE CASES IN THE HISTORY OF OUR
21 JURISPRUDENCE, NONE IN A CRIMINAL CASE; SECONDLY, IF THIS
22 THING IS TO BE ALLOWED AND ADMITTED, AND WE ARGUE THAT IT
23 SHOULD NOT UNDER EITHER EXCEPTION, BUT IF IT IS A BUSINESS
24 RECORD UNDER 803 EXCEPTION SIX, THAT IS SPECIFICALLY THE
25 TYPES OF THINGS THAT ARE NOT ALLOWED.

1 IN OTHER WORDS, IT'S A NARRATIVE. IT'S A POLICE
2 REPORT. IT'S THE SAME THING AS MR. MCMAHON SAID THE OTHER
3 DAY, I COULDN'T GET IN AN INCIDENT REPORT. THAT'S EXACTLY
4 WHAT IT IS. IT'S A NARRATIVE OF WHAT HAPPENED.

5 SO IN OTHER WORDS, IN OUR MIND -- THAT'S
6 OBVIOUSLY WHY YOU MAKE THE CALLS. WE THINK IT'S
7 INAPPLICABLE UNDER EITHER OF THOSE TWO EXCEPTIONS AND ASK
8 THE COURT TO SO ORDER.

9 THE COURT: WELL, I MEAN, EVEN IF YOU ARE RIGHT
10 BASED UPON THE CORROBORATIONS OF THE WITNESSES, I THINK
11 THE APPELLANT COURT IS GOING TO TAKE THE POSITION IT'S AN
12 EXCEPTION.

13 IT'S JUST EVERYTHING THERE HAS BEEN PRETTY MUCH
14 CORROBORATED BY INDEPENDENT WITNESSES.

15 MR. DELGADO: JUST --

16 THE COURT: AND ONE OTHER THING, YOU BOTH HAD A
17 WITNESS ON THE STAND THAT YOU COULD ASK QUESTIONS OF ABOUT
18 THAT.

19 MR. DELGADO: WELL, AS A MATTER OF FACT, I
20 HAVEN'T CROSS-EXAMINED HIM YET, MR. CLARK.

21 THE COURT: NO. I'M TALKING ABOUT REVETTA WHO
22 WAS ALIVE AND WELL.

23 MR. DELGADO: YES, SIR, EXCEPT MR. REVETTA KNOWS
24 NOTHING ABOUT THAT.

25 THE COURT: NOBODY ASKED HIM THAT.

1 MR. DELGADO: NO, I DID. I MEAN, I -- HE SAID
2 HE LEFT. REMEMBER, I SAID, I ASKED HIM, "YOU WAITED UNTIL
3 THE DETECTIVE CAME", AND HE LEFT.

4 THE COURT: WELL, DID YOU JUST ASK HIM WHAT HE
5 SAW?

6 MR. DELGADO: DID I ASK HIM WHAT HE SAW IN THE
7 CAR?

8 THE COURT: DID HE TAKE A LOOK?

9 MR. DELGADO: NO, SIR, I DIDN'T.

10 THE COURT: I'M JUST SAYING. HE'S STILL OUT
11 THERE.

12 ALL RIGHT. HOW MANY MORE WITNESSES DO YOU HAVE,
13 MR. SOLICITOR, DO YOU KNOW?

14 MR. MCMAHON: ABOUT, ONE, TWO, THREE, FOUR,
15 FIVE, SIX, SEVEN, EIGHT, NINE -- 12.

16 THE COURT: YOU'LL BE FINISHED BY WHEN?

17 MR. MCMAHON: ONE OF THOSE IS THE
18 CROSS-EXAMINATION OF CHIEF CLARK.

19 THE COURT: OKAY.

20 MR. MCMAHON: AND I THINK WE PUT UP 12 TODAY.

21 THE COURT: I THINK SO, THAT'S RIGHT.

22 THE CLERK: THIRTEEN IF YOU COUNT --

23 MR. MCMAHON: MR. BOONE?

24 THE CLERK: YEAH.

25 MR. MCMAHON: YES, SIR. I AGREE WITH HER

1 NUMBERS.

2 THE COURT: ALL RIGHT.

3 MS. HUDGINS: JUDGE, OUR OBJECTIONS TO THE OTHER
4 DOCUMENTS ARE PROTECTED FOR THE RECORD, THE OTHER
5 DOCUMENTS THAT WERE ADMITTED?

6 THE COURT: YES. I MEAN -- IN OTHER WORDS, I
7 MADE THE SAME RULING ON ALL OF THOSE DOCUMENTS.

8 MS. HUDGINS: I JUST WANT TO MAKE SURE WE'RE
9 PROTECTED.

10 THANK YOU, JUDGE.

11 (WHEREUPON, THE PROCEEDING WERE CONCLUDED FOR THE
12 EVENING.

13 (WHEREUPON, STATE'S EXHIBIT NO. 43 WAS MARKED
14 FOR IDENTIFICATION ONLY.)

15 (WHEREUPON, STATE'S EXHIBIT NO. 44 WAS MARKED
16 FOR IDENTIFICATION ONLY.)

17 (WHEREUPON, STATE'S EXHIBITS NOS. 45, 46, 47
18 WERE MARKED FOR IDENTIFICATION ONLY.)

19 THE COURT: OKAY. EVERYBODY READY TO GO?

20 MS. CAMPBELL: YES, SIR. WE'RE READY.

21 THE COURT: ALL RIGHT. BRING THE JURY IN.

22 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
23 APPROXIMATELY 9:06 A.M.)

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
25 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF

1 THE JURY.)

2 THE BAILIFF: JURY'S PRESENT, YOUR HONOR.

3 THE COURT: ALL RIGHT. BOTH SIDES WAIVE
4 POLLING.

5 GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY
6 STATE.

7 CALL YOUR NEXT WITNESS, PLEASE.

8 MS. CAMPBELL: MAY IT PLEASE THE COURT, THE
9 STATE CALLS SAM FREED.

10 THE CLERK: COME FORWARD, PLEASE. RAISE YOUR
11 RIGHT HAND, PLACE YOUR LEFT HAND ON THE BIBLE.

12 SAMUEL FREED, AFTER BEING DULY SWORN, TESTIFIED AS
13 FOLLOWS:

14 THE WITNESS: MY NAME IS SAMUEL FREED,
15 F-R-E-E-D.

16 DIRECT EXAMINATION:

17 BY MS. CAMPBELL

18 Q MR. FREED, HOW OLD ARE YOU?

19 A SIXTY-THREE.

20 Q WHERE DO YOU LIVE?

21 A CURRENTLY, I RESIDE IN KEY GARDENS, NEW YORK, WHICH
22 IS IN QUEENS COUNTY, NEW YORK, NEW YORK CITY.

23 Q NEW YORK CITY?

24 A UH-HUH.

25 Q AND HOW LONG HAVE YOU BEEN LIVING IN THE NEW YORK

1 AREA?

2 A SINCE ABOUT 1965.

3 Q AND WHAT DO YOU DO FOR A LIVING?

4 A I'M AN ATTORNEY.

5 Q WHERE DID YOU GROW UP?

6 A COLUMBIA.

7 Q AND WHAT DID YOUR PARENTS DO HERE IN COLUMBIA?

8 A MY FATHER AND MOTHER WORKED -- THEY OWNED A JEWELRY

9 AND LUGGAGE AND PAWNSHOP.

10 Q AND WHERE WAS THAT PAWNSHOP LOCATED?

11 A WELL, THE FIRST PAWNSHOP WAS ON [REDACTED] [REDACTED],

12 [REDACTED]. THEN AFTER A WHILE, THEY MOVED IT TO THE

13 MIDDLE OF THE BLOCK, AND THEY ENDED UP -- THEIR LAST

14 STORE WAS ON MAIN STREET.

15 Q AND WHAT YEAR DID THEY OPEN THEIR PAWNSHOP FREED'S

16 JEWELERY?

17 A 1946, 1947.

18 Q IN 1961, SIR, WHERE WOULD FREED'S HAVE BEEN LOCATED?

19 A [REDACTED] [REDACTED] [REDACTED].

20 Q AND WASHINGTON STREET, THAT'S HERE IN THE DOWNTOWN

21 AREA?

22 A YES, BETWEEN MAIN AND ASSEMBLY.

23 Q BETWEEN MAIN AND ASSEMBLY. I WANT TO SHOW YOU A

24 DIAGRAM, WHICH IS STATE'S EXHIBIT 16. DOES THIS

25 DIAGRAM SHOW WHERE WASHINGTON STREET IS?

1 A YES, YES.

2 Q IS THIS WASHINGTON STREET?

3 A RIGHT, YES.

4 Q AND IN THIS DIAGRAM, DOES IT ALSO POINT OUT THE

5 APPROXIMATE LOCATION OF 1108?

6 A YEAH, APPROXIMATELY, BUT IT'S ONE STORE OVER.

7 Q SO IT'S ACTUALLY THIS STORE HERE (INDICATING). WAS

8 THIS AN ALLEY?

9 A YES, THERE'S AN ALLEY.

10 Q SO IT WOULD ACTUALLY BE THIS STORE RIGHT HERE; IS

11 THAT CORRECT?

12 A THAT'S CORRECT.

13 Q AND THAT WAS BACK IN 1961, THAT'S WHERE FREED'S

14 JEWELERS IS LOCATED?

15 A THAT'S CORRECT

16 Q AND WASHINGTON STREET IS SHOWN ON HERE AS ONE STREET

17 OVER, ONE BLOCK EXACTLY OVER FROM LADY STREET?

18 A I BELIEVE THAT'S THE CASE, YES.

19 Q AND FREED'S JEWELRY WAS LOCATED BETWEEN -- JUST

20 HALFWAY DOWN THE BLOCK FROM ASSEMBLY AND MAIN STREET?

21 A IT WAS CLOSER TO ASSEMBLY, BUT YEAH.

22 Q IT WAS CLOSER TO ASSEMBLY STREET?

23 A UH-HUH.

24 Q AND ONE BLOCK OVER FROM LADY STREET?

25 A THAT'S CORRECT.

1 Q AND THAT'S WHERE IT WAS IN 1961?

2 A YES, MA'AM.

3 Q GROWING UP WITH -- AND YOUR PARENTS HAVING A SHOP,

4 DID YOU EVER PARTICIPATE IN STORE ACTIVITIES?

5 A YES, I DID.

6 Q WERE YOU FAMILIAR WITH THEIR -- DID THEY KEEP CERTAIN

7 BUSINESS RECORDS?

8 A YES.

9 Q THOSE WERE KEPT IN THE NORMAL COURSE OF THEIR

10 BUSINESS?

11 A YES, THEY WERE.

12 Q AND AS PART OF THOSE BUSINESS RECORDS, WOULD THEY

13 KEEP THINGS SUCH AS PAWN CARDS AND SLIPS?

14 A YES.

15 Q AND LOGS REQUIRED BY THE POLICE?

16 A YES.

17 Q AND THINGS OF THAT NATURE? I'VE ALSO ASKED YOU TO

18 REVIEW -- WHAT TYPES OF THINGS DID YOU DO IN THE

19 STORE, SIR?

20 A OVER THE YEARS -- I WORKED THROUGH HIGH SCHOOL AND

21 COLLEGE AND CHRISTMAS SEASON. WE WOULD DO EVERYTHING

22 FROM SELLING, TO TAKING IN THE PLEDGES, TO CLEANING

23 UP, TO EVERYTHING.

24 Q SO YOU WERE FAMILIAR WITH THEIR PRACTICES AND THEIR

25 POLICIES?

1 A UH-HUH.

2 Q I'VE SHOWN YOU SOME DOCUMENTS EARLIER AND YOU'VE

3 REVIEWED THOSE FOR ME; IS THAT CORRECT?

4 A YES.

5 Q WHICH HAVE BEEN MARKED AS STATE'S EXHIBIT 45, 46 AND

6 47?

7 A OKAY.

8 Q ARE THOSE COPIES OF DOCUMENTS THAT WOULD HAVE BEEN

9 KEEP IN THE NORMAL COURSE OF BUSINESS AT FREED'S?

10 A YES, YES.

11 MS. CAMPBELL: YOUR HONOR, AT THIS TIME, WE'D

12 OFFER THESE INTO EVIDENCE AND ALSO THE CORRESPONDING BLOW

13 UPS, WHICH ARE STATE'S EXHIBIT 21, 20, AND 43.

14 MS. HUDGINS: THAT'S WITHOUT OBJECTION.

15 THE COURT: WITHOUT OBJECTION.

16 (WHEREUPON, STATE'S EXHIBITS NOS. 20, 21, 43,

17 45, 46, 47 WERE ADMITTED INTO EVIDENCE.)

18 BY MS. CAMPBELL

19 Q SIR, I'LL GIVE YOU STATE'S EXHIBITS 45, 46, AND 47

20 FOR YOU TO REFER TO, AND I'M GOING TO PULL OUT THE

21 BLOW UPS.

22 THE FIRST DOCUMENT I'M GOING TO REFER TO, SIR,

23 IS THE ACTUAL PAWN CARD OR TICKET, WHICH IS ON THIS,

24 STATE'S EXHIBIT 20?

25 A RIGHT.

1 Q AND THIS IS JUST A LITTLE LARGER VERSION OF THAT.
2 CAN YOU TELL THE JURY GENERALLY WHAT TYPE OF
3 INFORMATION WAS RECORDED ON THIS CARD AND WHEN WOULD
4 IT HAVE BEEN RECORDED?

5 A WELL, WHEN THE CUSTOMER WOULD COME IN TO PAWN AN
6 ITEM, AFTER EVERYTHING WAS AGREED TO, WHETHER MY
7 FATHER OR MOTHER WANTED TO ACCEPT THE ITEM AND HOW
8 MUCH THEY WERE GOING TO LOAN ON IT, THEY WOULD FILL
9 OUT -- WELL, FIRST THEY WOULD GET IDENTIFICATION FROM
10 THE INDIVIDUAL, AND THEY WOULD FILL OUT THIS CARD,
11 WHICH I THINK AT THAT TIME WAS A LITTLE YELLOW THREE
12 BY FIVE CARD, GIVING ALL THE INFORMATION OF THE
13 PAWNED ITEM AND WHO PAWNED IT. IT'S GOT A
14 DESCRIPTION OF THE PARTICULAR PERSON AT THE BOTTOM.

15 Q OKAY. IN THIS CASE THE HANDWRITING, OTHER THAN THE
16 PLACE WHERE IT SAYS SIGNATURE, WHOSE HANDWRITING
17 WOULD THAT?

18 A THAT'S PROBABLY MY MOTHER'S.

19 Q THAT'S PROBABLY'S YOUR MOTHER'S HANDWRITING ON THIS
20 CARD?

21 A UH-HUH.

22 Q AND UP HERE AT THE TOP, IT SAYS THE ARTICLE. WAS
23 DOES IT INDICATE WAS PAWNED THAT DAY?

24 A IT SAYS PHILCO. I GUESS A RADIO.

25 Q PHILCO IS THE MAKE AND UP HERE --

1 A YES.

2 Q DOES IT ALSO INDICATE THE AMOUNT IT WAS PAWNED FOR?

3 A YES, IT DOES.

4 Q AND HOW MUCH WAS THIS PHILCO RADIO PAWNED FOR?

5 A EIGHT DOLLARS.

6 Q EIGHT DOLLARS?

7 A UH-HUH.

8 Q ON THIS DOES IT ALSO INDICATE WHAT DATE THIS WOULD

9 HAVE BEEN PAWNED AT FREED'S?

10 A YES, FEBRUARY 25TH, 1961.

11 Q AND THAT'S THE DAY THAT THE ACTUAL PERSON WOULD HAVE

12 COME IN, PAWNED THE ITEM AND GOTTEN THE MONEY?

13 A THAT'S CORRECT.

14 Q AND DOWN HERE AT THE BOTTOM YOU SAY IT'S GOT A

15 DESCRIPTION OF WHO PAWNED IT?

16 A YES.

17 Q WHAT IS THAT DESCRIPTION?

18 A WHAT DO YOU MEAN.

19 Q SEX?

20 A SEX IS MALE.

21 Q "M" FOR MALE?

22 A AGE 19, HEIGHT IS 5'8," WEIGHT IS 140.

23 Q OR 160?

24 A YEAH, EXCUSE ME, 160.

25 Q AND OVER HERE IT ALSO HAS THE ADDRESS; IS THAT

1 CORRECT?

2 A YES. APPARENTLY, THAT'S THE COMPANY AT FORT JACKSON.

3 Q THE COMPANY AT FORT JACKSON, YOU'RE FAMILIAR WITH --

4 SO SOLDIERS WOULD COME IN AND PAWN ITEMS FROM TIME TO

5 TIME; IS THAT CORRECT?

6 A WELL, THIS WAS A SOLDIER.

7 Q HOW DO YOU KNOW IT WAS A SOLDIER?

8 A BECAUSE UNDER "RACE", IT'S GOT W.S.

9 Q WHAT DOES THAT INDICATE, SIR?

10 A WHITE SOLDIER.

11 Q THAT WOULD HAVE BEEN OF A WHITE SOLDIER?

12 AND OVER HERE WHERE IT SAYS SIGNATURE, WHOSE

13 HANDWRITING WOULD THAT HAVE BEEN?

14 A I GUESS THE PERSON WHO PAWNED IT. THAT WOULD BE THE

15 PERSON WHO WOULD SIGN THE CARD.

16 Q AND THIS WOULD HAVE BEEN A WHITE SOLDIER THAT CAME IN

17 AND PAWNED THIS PHILCO RADIO FOR \$8?

18 A YES, MA'AM.

19 Q AND THIS WOULD HAVE BEEN HIS SIGNATURE RIGHT THERE;

20 IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AT THE SAME TIME -- OR ON THE SAME DAY, WERE YOU

23 ALSO, IN THE PAWN SHOPS, REQUIRED TO FILL OUT A LOG

24 FOR THE POLICE?

25 A YES.

1 Q I'M SHOWING YOU WHAT'S STATE'S EXHIBIT 21, I BELIEVE
2 YOUR 46 --

3 A YES.

4 Q -- WOULD THIS LOG HAVE BEEN FILLED OUT ON THE SAME
5 DATE THAT ITEM WAS PAWNED?

6 A YES.

7 Q WHO WOULD HAVE FILLED OUT THIS LOG?

8 A WELL, MY MOTHER'S HANDWRITING ON THIS ONE.

9 Q AND ON THIS ONE, WHAT'S THE DATE THAT THIS LOG WAS
10 FILLED OUT?

11 A FEBRUARY 25TH. WELL, THERE'S TWO DATES. I CAN'T
12 READ THE DATE AT THE TOP.

13 Q OKAY. OVER HERE ON THE FIRST COLUMN WHERE IT SAYS
14 NUMBER, WHAT NUMBER WOULD THAT PREFERENCE?

15 A THAT'S A NUMBER ON THE RECEIPT WHEN THEY COME IN, AND
16 AFTER THEY PAWNED THE ITEM, A RECEIPT IS FILLED OUT
17 AND THEN A COPY OF THE RECEIPT IS GIVEN TO THE PERSON
18 WHO PLEDGED THE ITEM. THAT'S WHAT YOU NEED TO REDEEM
19 THE PLEDGE OF THAT. THAT'S THE NUMBER OF THE
20 RECEIPT.

21 Q OF THE RECEIPT. I'LL GET TO THAT IN A MINUTE. THAT
22 RECEIPT NUMBER IS HERE ON THE LITTLE YELLOW CARD WE
23 REFERRED TO A MINUTE AGO; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND IT'S ALSO HERE ON THIS DOCUMENT; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q AND HERE NEXT TO THIS ONE, TWO, THREE, FOUR, FIVE,
3 SIX, SEVEN DOWN, IT INDICATES THAT ON THAT DATE, THE
4 25TH, THAT EDWARD FRIEBURGER --

5 A YES.

6 Q AND IT DOESN'T HAVE AN ADDRESS IN THERE. IS THAT
7 BECAUSE IT SAYS FORT JACKSON?

8 A YES. IT SEEMS TO BE QUOTES, JUST CARRYING IT DOWN.

9 Q OVER HERE DOES IT INDICATE WHAT HE PAWNED?

10 A YES, PHILCO RADIO.

11 Q AND THIS DOCUMENT WAS KEPT IN THE NORMAL COURSE OF
12 BUSINESS BUT WOULD HAVE BEEN TURNED OVER TO THE
13 POLICE?

14 A YES. I THINK THEY ACTUALLY CAME IN AND COLLECTED IT.

15 Q YOU MENTIONED, SIR, WHEN A PERSON CAME IN AND PAWNED
16 AN ITEM THAT THEY RECEIVED AN ACTUAL TICKET AT
17 FREED'S?

18 A YES.

19 Q I'M GOING TO SHOW YOU THIS DOCUMENT, WHICH IS STATE'S
20 EXHIBIT 43.

21 A YES.

22 Q TELL THE JURY, WHAT IS THIS?

23 A WELL, IF YOU CORRELATE THIS TO A CHECKBOOK, THIS IS
24 THE LEDGER PORTION OF THE BOOK. EXTENDED FROM THAT
25 WRITING AREA WOULD BE THE TICKET.

- 1 Q OVER HERE ON THIS SIDE?
- 2 A YEAH. IT WOULD BE FILLED OUT IN A SIMILAR VEIN.
- 3 Q SIMILAR TO A CHECK?
- 4 A YEAH.
- 5 Q AND THIS WOULD BE TORN OUT AND LEFT?
- 6 A TORN OUT AND GIVEN -- I THINK THERE WAS A CARBON, I
7 BELIEVE. ONE COPY WOULD BE GIVEN TO WHOEVER PLEDGED
8 THE ITEM, AND THIS WOULD BE WHAT REMAINS AS A
9 PERMANENT RECORD.
- 10 Q AND THE PERSON THAT WAS GIVEN A TICKET WAS SO WHEN
11 THEY WANTED TO GET THE ITEM BACK, THAT THEY WOULD
12 HAVE THE TICKET TO DO IT?
- 13 A THAT'S CORRECT.
- 14 Q WAS THE TICKET REQUIRED IN ORDER TO REDEEM THE
15 PURCHASE?
- 16 A YES.
- 17 Q ON THIS BLOWUP, STATE'S EXHIBIT 43, DOES IT INDICATE
18 ON TICKET NUMBER 9214 THAT AN ITEM WAS PAWNED TO AN
19 EDWARD FRIEBURGER?
- 20 A YES.
- 21 Q AND WHAT ITEM WAS THAT?
- 22 A A PHILCO TRANSISTOR RADIO.
- 23 Q DOES IT INDICATE HOW MUCH IT WAS PAWNED FOR?
- 24 A EIGHT DOLLARS.
- 25 Q AND AGAIN DOES IT GIVE A DESCRIPTION OF THE PERSON?

1 A YES, IT DOES.

2 Q AND WE KNOW THAT PERSON WAS A WHITE SOLDIER, CORRECT?

3 A THAT'S CORRECT.

4 Q AND THIS WOULD HAVE BEEN HIS ADDRESS ON THE BASE; IS

5 THAT CORRECT?

6 A THAT'S CORRECT.

7 Q AND UP HERE IN THIS FIRST RIGHT HAND COLUMN, THERE'S

8 A DAY?

9 A YES.

10 Q AND IT'S STAMPED ON THERE. CAN YOU TELL WHAT DATE

11 THAT IS?

12 A THAT'S THE DATE HE BROUGHT IT IN, PAWNED IT.

13 Q AND WHAT IS THAT DATE?

14 A FEBRUARY 25TH, 1961.

15 Q FEBRUARY 25TH, 1961. SO ALL THIS WRITING AND THIS

16 DATE WOULD HAVE BEEN FILLED IN, AS WELL AS THIS

17 TICKET NUMBER?

18 A WELL, THE TICKET NUMBER WAS PROBABLY A PRINTED FORM,

19 YEAH.

20 Q STAMPED. AND ALL THAT WOULD HAVE BEEN FILLED OUT ON

21 THE 25TH; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q THIS OTHER STAMP UP HERE IN THIS CORNER, IS WHAT

24 SIGNIFICANT, SIR?

25 A YES.

1 Q HOW IS THAT SIGNIFICANT, FOR THE JURY?

2 A WELL, THAT'S THE DATE THE ITEM WAS REDEEMED.

3 Q THE ITEM WAS REDEEMED. AND WHAT DATE IS INDICATED

4 THIS ITEM WAS REDEEMED?

5 A FEBRUARY 28TH, 1961.

6 Q AND WHEN YOU SAY AN ITEM WAS REDEEMED, THAT MEANS THE

7 PERSON WHO HAD THE TICKET THAT WAS ATTACHED TO THIS

8 CAME IN AND GOT IT?

9 A YES.

10 Q AND AGAIN, WHEN THE PERSON PAWNED THIS ITEM, THEY

11 WOULD HAVE TO HAVE GIVEN IDENTIFICATION; IS THAT

12 CORRECT?

13 A THAT'S CORRECT.

14 Q AND THAT DATE, SIR, IS FEBRUARY 28TH OF 1961?

15 A YES.

16 Q AND THE AMOUNT THAT HE WOULD HAVE BEEN ABLE TO REDEEM

17 IT FOR WOULD HAVE BEEN \$8, SIR, OR \$8 PLUS INTEREST?

18 A EIGHT DOLLARS PLUS INTEREST.

19 Q , AND THAT WOULD HAVE BEEN REFERRING BACK TO THE FIRST

20 DOCUMENT, STATE'S EXHIBIT 20, WHICH I BELIEVE IS THE

21 YELLOW CARD?

22 A YES.

23 Q AND HE WOULD HAVE HAD TO HAVE GIVEN IDENTIFICATION AT

24 THE TIME HE REDEEMED IT, RIGHT?

25 A YES.

1 Q AND TO REDEEM IT, HE WOULD ALSO HAVE HAD TO HAVE THE
2 TICKET HE GOT AT THE TIME HE PAWNED IT?

3 A THAT'S CORRECT.

4 MS. CAMPBELL: THAT'S ALL I'D HAVE, SIR.

5 THE COURT: CROSS-EXAMINATION, MS. HUDGINS?

6 MS. HUDGINS: THANK YOU, YOUR HONOR. MAY IT
7 PLEASE THE COURT.

8 CROSS-EXAMINATION:

9 BY MS. HUDGINS

10 Q GOOD MORNING, MR. FREED?

11 A GOOD MORNING.

12 Q I'D LIKE TO, IF I MAY, TALK WITH YOU ABOUT SOME OF
13 THE DOCUMENTS THAT THE SOLICITOR HAS TALKED ABOUT.

14 I'M REFERRING TO -- FIRST OF ALL, IT'S MARKED
15 HERE AS STATE'S EXHIBIT 20. THAT WOULD BE -- YOU
16 TESTIFIED THAT THIS, IN ITS ORIGINAL, WOULD HAVE BEEN
17 A THREE BY FIVE YELLOW CARD?

18 A THAT'S CORRECT.

19 Q AT THE BOTTOM OF THIS, IT SAYS IT'S A FORM SEVEN.

20 A WELL, IT WAS PRINTED, PROBABLY R. L. BRYAN OR
21 SOMETHING LIKE THAT, BUT IT CAME IN STACKS. I DON'T
22 THINK THAT IS OF ANY IMPORTANCE UNLESS IT WAS
23 DESIGNED BY SOMEBODY. I DON'T REALLY KNOW WHAT A
24 FORM SEVEN IS.

25 Q WELL, LESS TALK ABOUT -- DO YOU RECALL THESE FORMS

1 BEING USED IN YOUR FAMILY'S BUSINESS?

2 A YES.

3 Q AND THESE FORM SEVENS WERE PROVIDED BY THE CITY OF

4 COLUMBIA POLICE DEPARTMENT. ARE YOU AWARE OF THAT?

5 A OKAY. I WASN'T AWARE OF THAT.

6 Q OKAY. YOU WEREN'T AWARE THAT THIS WAS REQUIRED BY

7 THE CITY OF COLUMBIA POLICE DEPARTMENT?

8 A I KNOW IT WAS REQUIRED TO BE FILLED OUT. I DIDN'T

9 KNOW WHERE IT CAME FROM.

10 Q OKAY. VERY GOOD. AND ON THIS, WHAT WE'LL REFER TO

11 AS A FORM SEVEN, THE THREE BY FIVE YELLOW CARD, THERE

12 ARE CERTAIN IDENTIFYING CHARACTERISTICS ON HERE,

13 FIRST BEING A DATE STAMPED ON THERE, CORRECT?

14 A THAT'S CORRECT.

15 Q AND THE ITEM THAT WAS PAWNED, WHICH WAS A RADIO?

16 A RIGHT.

17 Q AND THE DATE ON THAT IS FEBRUARY 25TH, LIKE I SAID.

18 IT ALSO GIVES A TICKET NUMBER, TICKET NUMBER 9124.

19 A RIGHT.

20 Q WHICH WILL CORRELATE BACK LATER WITH SOME OF THESE

21 OTHER DOCUMENTS. IT ALSO GIVES A SIGNATURE NAME AND

22 AN ADDRESS WHICH IS PROVIDED --

23 A THAT'S CORRECT.

24 Q -- BY THE PERSON THAT HAS COME IN. NOW I'D LIKE TO

25 TALK WITH YOU ABOUT THE DAILY REPORT TO THE POLICE

1 DEPARTMENT OF ARTICLES PAWNED AND BOUGHT AND THE
2 BLOWN UP VERSION, MR. FREED, LOOKS LIKE THIS. IT'S
3 MARKED AS STATE'S EXHIBIT 21.

4 A YES, MA'AM.

5 Q ARE WE REFERRING TO THE SAME DOCUMENT NOW?

6 A YES.

7 Q AT THE TOP OF THAT DOCUMENT, IT SAYS "DAILY REPORT TO
8 THE POLICE DEPARTMENT OF ARTICLES PAWNED AND BOUGHT"?

9 A RIGHT.

10 Q AND ACCORDING TO THE WRITING ON THIS DOCUMENT, THIS
11 IS A REPORT THAT HAD TO BE GIVEN TO THE CITY OF
12 COLUMBIA POLICE DEPARTMENT EACH MORNING BY 10 A.M.?

13 A THAT'S CORRECT.

14 Q AND IT'S YOUR RECOLLECTION THAT THEY ACTUALLY CAME BY
15 AND PICKED THESE UP OR THEY WERE SENT IN?

16 A I THINK SO. AT SOME POINT BACK IN THOSE DAYS, I
17 DON'T GUESS THE TOWN WAS REALLY THAT BIG.

18 Q YES, SIR.

19 A I HAVE SOME RECOLLECTION OF THAT. I DON'T KNOW FOR A
20 FACT.

21 Q AND THIS WOULD BE ITEMS THAT WERE PAWNED AND BOUGHT
22 ON THE DATE AND ON THIS FORM. IT'S GOT
23 FEBRUARY 25TH, 1961.

24 A THAT'S CORRECT.

25 Q AND IF YOU GO DOWN ONE, TWO, THREE, FOUR, FIVE LINES,

1 THERE APPEARS THAT PAWN NUMBER, NUMBER 9214, CORRECT?

2 A CORRECT.

3 Q AND THE NAME EDWARD FRIEBURGER?

4 A UH-HUH.

5 Q THE ADDRESS IS LISTED AS FORT JACKSON, ALTHOUGH IT'S

6 NOT LISTED HERE. IT'S IN QUOTES.

7 A RIGHT.

8 Q THE NEXT -- LET'S TALK ABOUT THAT. THE NEXT NAME,

9 CAN YOU MAKE OUT THAT NAME?

10 A YOU MEAN THE ONE ABOVE IT?

11 Q UH-HUH. ON PAWN. IT WOULD HAVE BEEN PAWNED.

12 A IT LOOKS LIKE JAMES WHITE, JR.

13 Q JAMES WHITE. WHAT'S HIS ADDRESS?

14 A IT LOOKS LIKE FORT JACKSON.

15 Q CORRECT. AND THE NAME ABOVE THAT?

16 A JACK MASON.

17 Q AND HIS ADDRESS?

18 A FORT JACKSON.

19 Q OKAY. SO ALL THREE OF THESE PEOPLE WERE SOLDIERS OUT

20 AT FORT JACKSON THAT HAD COME IN AND PAWNED ITEMS IN

21 YOUR FAMILY'S PAWNSHOP?

22 A SEEMS TO BE, YES.

23 Q AND THAT WAS A FAIRLY COMMON PRACTICE AMONG THE

24 PAWNSHOPS IN COLUMBIA AT THAT TIME?

25 A TO TAKE IN ITEMS PAWNED BY SOLDIERS AT FORT JACKSON,

1 YES.

2 Q AND THEY, OF COURSE, THEY HAVE THE ITEM TAKEN IN
3 LISTED AS A PHILCO RADIO?

4 A UH-HUH.

5 Q THIS IS STAMPED, AGAIN, FEBRUARY 25TH, 1961. THEN
6 THE LAST DOCUMENT THAT WE TALKED ABOUT, WHAT'S MARKED
7 AS STATE'S EXHIBIT 43. THIS IS, FOR LACK OF A BETTER
8 WORD, LET'S CALL IT A REDEMPTION TICKET. WOULD THAT
9 BE FAIR?

10 A WELL, I GUESS WE -- I THINK THEY USED TO CALL IT THE
11 PAWN BOOK, BUT YOU KNOW, IT'S NOT THE TICKET. THAT'S
12 JUST, AS I UNDERSTAND IT, I BELIEVE THAT'S THE EDGE
13 OF THE TICKET. THE TICKET IS A SEPARATE PIECE OF
14 PAPER.

15 Q OKAY. SO THIS WAS KEPT IN YOUR BOOKS. IT WAS TORN
16 OFF AND THE OTHER PART WAS GIVEN TO WHOEVER CAME IN
17 AND TOOK THIS.

18 THIS IS -- THE 9214, THAT IS WHAT IS REFERRED TO
19 RIGHT HERE IN THIS DAILY REPORT TO THE COLUMBIA
20 POLICE DEPARTMENT, 9214, CORRECT?

21 A THAT'S CORRECT.

22 Q IT'S ALSO REFERRED TO ON THIS ITEM WHERE IT SAYS
23 TICKET NUMBER.

24 A RIGHT.

25 Q 9214.

1 A UH-HUH.

2 Q CORRECT?

3 A YES, MA'AM, IT APPEARS THAT WAY.

4 Q WITH A NAME, FORT JACKSON ADDRESS. NAME, FORT
5 JACKSON ADDRESS, TICKET NUMBER 9214; AND ONCE AGAIN,
6 YOU GOT THE NAME, THE TICKET NUMBER, AND A FORT
7 JACKSON ADDRESS, CORRECT?

8 A IT SEEMS TO BE, YES, UH-HUH.

9 Q AND THE DATE, AGAIN, IS STAMPED ON WHAT'S MARKED AS
10 STATE'S EXHIBIT NO. 43?

11 A THAT'S CORRECT.

12 Q AND AGAIN, OBVIOUSLY, YOU WEREN'T PRESENT WHEN THIS
13 TRANSACTION TOOK PLACE, CORRECT?

14 A I WAS IN TOWN, BUT I DON'T THINK I WAS PRESENT, NO.

15 MS. HUDGINS: OKAY. BEG THE COURT'S INDULGENCE
16 FOR ONE MOMENT, YOUR HONOR.

17 (PAUSE.)

18 THANK YOU VERY MUCH, MR. FREED. I DON'T HAVE
19 ANY FURTHER QUESTIONS.

20 THE COURT: ANYTHING FURTHER ON REDIRECT?

21 MS. CAMPBELL: NO, SIR.

22 THE COURT: YOU CAN STEP DOWN.

23 ANY REASON THE WITNESS CANNOT BE EXCUSED?

24 MR. MCMAHON: NO, SIR.

25 THE COURT: OKAY.

1 MR. MCMAHON: THE STATE CALLS CHARLES CLARK,
2 RECALLS CHARLES CLARK.

3 THE COURT: CHIEF, YOU'RE STILL UNDER OATH.

4 CHARLES CLARK (CONT.), AFTER BEING PREVIOUSLY DULY
5 SWORN, CONTINUED TO TESTIFY AS FOLLOWS:

6 DIRECT EXAMINATION:

7 BY MR. MCMAHON

8 Q CHIEF, I HAD ASKED YOU YESTERDAY AFTERNOON, MAYBE
9 YESTERDAY MORNING. MAYBE YOU SAT HERE YESTERDAY
10 AFTERNOON ALSO, BUT I ASKED YOU ABOUT THE
11 RELATIONSHIP, IF ANY, LEGALLY, BETWEEN THE PAWNSHOP
12 AND THE CITY OF COLUMBIA AND THE COLUMBIA POLICE
13 DEPARTMENT. DO YOU RECALL THAT?

14 A YES, SIR.

15 Q AND WHAT WAS THAT RELATIONSHIP? WHAT WAS THE LEGAL
16 REQUIREMENTS, AS FAR AS THE PAWNSHOPS WERE CONCERNED?

17 A WELL, THE CITY OF COLUMBIA HAS A CITY ORDINANCE THAT
18 REQUIRES THE PAWNSHOPS AND PAWNBROKERS TO FILL OUT A
19 SLIP GIVING ANY INFORMATION ON ITEMS PAWNED OR
20 BOUGHT. THEY ARE TO FURNISH AN ITEM TO THE POLICE
21 DEPARTMENT ON A DAILY BASIS.

22 Q AND HOW WOULD THE COLUMBIA POLICE DEPARTMENT RECEIVE
23 THOSE ITEMS?

24 A WE USUALLY SENT A DETECTIVE BY THE PAWNSHOP AND
25 PICKED THEM UP DAILY, TWICE A WEEK.

- 1 Q SO AN INDIVIDUAL OFFICER, AN INDIVIDUAL DETECTIVE,
2 WOULD GO BY EACH PAWNSHOP IN COLUMBIA KIND OF MAKING
3 HIS OR HER ASSIGNED ROUNDS TO PICK THESE ITEMS UP?
- 4 A THAT'S CORRECT.
- 5 Q AND ARE THOSE DOCUMENTS THAT YOU WOULD BE FAMILIAR
6 WITH?
- 7 A YES.
- 8 Q THE WAY THEY LOOK AND THE FACT THEY WOULD BE KEPT AS
9 PART OF THE BUSINESS RECORDS OF THE COLUMBIA POLICE
10 DEPARTMENT?
- 11 A YES, SIR.
- 12 Q WHY WOULD YOU DO THAT?
- 13 A TO CHECK FOR STOLEN ITEMS OR LOST ITEMS.
- 14 Q AND CHIEF, I BELIEVE YESTERDAY I SHOWED YOU A SERIES
15 OF ITEMS. I'LL TRY TO GET THEM BACK STRAIGHT THIS
16 MORNING, STATE'S EXHIBIT 18 AND 19, YES. DO YOU
17 RECOGNIZE THESE TWO ITEMS, CHIEF?
- 18 A YES, I DO.
- 19 Q ARE THESE ENLARGEMENTS OF COPIES OF THE TYPES OF
20 ITEMS THAT WOULD HAVE BEEN KEPT BY THE COLUMBIA
21 POLICE DEPARTMENT IN THE NORMAL COURSE OF THEIR
22 BUSINESS AS A RESULT OF THIS ORDINANCE FROM THE
23 PAWNSHOPS?
- 24 A THAT'S CORRECT.
- 25 Q AND STATE'S EXHIBIT NO. 18, WHAT WOULD THIS ITEM BE,

1 CHIEF?

2 A THAT'S THE PAWN TICKET.

3 Q OKAY. AND IT APPEARS THAT THIS IS DATED

4 FEBRUARY 17TH, 1961?

5 A THAT'S CORRECT.

6 Q AND JUST FOR THE RECORD, OBVIOUSLY, THAT'S MORE THAN

7 20 YEARS OLD?

8 A YES, SIR.

9 Q AND ALONG WITH THE PAWN TICKET, WOULD YOU RECEIVE A

10 DOCUMENT SIMILAR, STATE'S EXHIBIT NO. 19, WHICH

11 APPEARS "ARTICLES PAWNED AND BOUGHT"?

12 A YES, SIR.

13 Q AND DOES THAT CORRESPOND TO THE SAME DATE,

14 FEBRUARY 17TH, 1961?

15 A THAT'S CORRECT.

16 Q NOW, THERE'S A NUMBER ON TICKET 18, 9304. SHOULD

17 THERE BE A CORRESPONDING 9304 ON STATE'S --

18 A SHOULD BE. THAT'S A DAILY ACTIVITY OF THAT PAWN SHOP.

19 Q SO IF I LOOK IN HERE IS 9304, AND IT WOULD HAVE THE

20 NAME HERE, EDWARD FRIEBURGER, AND THAT SHOULD

21 CORRELATE TO THE NAME EDWARD FRIEBURGER ON THE 9304

22 RECEIPT, CORRECT?

23 A IT SHOULD, YES.

24 Q NOW, CHIEF, IT SAYS THESE REPORTS MUST REACH THE

25 POLICE DEPARTMENT BY 10 A.M. EACH DAY AND BE PROPERLY

1 SIGNED. IS THE SIGNATURE OF THE SHOP OWNER OR
2 EMPLOYEE APPEAR ON THIS FORM?
3 A YES, IT DOES.
4 Q AND WHEN YOU SAY IT SHOULD REACH THE POLICE
5 DEPARTMENT BY 10 A.M. EACH MORNING, HOW WOULD IT
6 REACH YOU?
7 A I BELIEVE WE WOULD GO BY THE PAWNSHOPS AND PICK THEM
8 UP.
9 Q WOULD YOU NECESSARILY GO EVERY DAY BY TEN O'CLOCK
10 EACH MORNING?
11 A NO, SIR.
12 Q ANY REASON YOU WOULD QUESTION THE AUTHENTICITY OF
13 THESE TWO DOCUMENTS, CHIEF?
14 A I HAVE NO REASON, NO.
15 Q NOW, IF I GO TO THE DOCUMENTS THAT -- WELL, FOR
16 EXAMPLE THIS, 22 AND 23. AGAIN, DOES THIS APPEAR TO
17 BE A PAWN TICKET?
18 A YES, SIR.
19 Q NOW, WOULD YOU ALL GET, IN THE NORMAL COURSE OF
20 Y'ALL'S BUSINESS, PAWN TICKETS FOR ITEMS SOLD OR JUST
21 FOR ITEMS PAWNED, TAKEN IN ON PAWN?
22 A ON BOTH.
23 Q ON BOTH. SO THIS -- THIS FORM, THEY CALL IT A FORM
24 SEVEN?
25 A LET ME CLEAR THAT UP.

1 Q YES, SIR.

2 A ON ITEMS BOUGHT, NOT SOLD, PAWNED AND BOUGHT. IF A

3 PAWNSHOP SOLD AN ITEM, THEY WERE NOT REQUIRED TO

4 NOTIFY THE POLICE DEPARTMENT.

5 Q SO I NOTICE, FOR EXAMPLE, ON 22 AND 23, WE HAVE NO

6 CORRESPONDING FORMS SUCH AS THIS?

7 A CORRECT.

8 Q CORRECT? THEREFORE, IT WOULDN'T HAVE BEEN PAWNED?

9 A THAT'S CORRECT.

10 Q NOW, THIS FORM SEVEN, THIS FORM SEVEN ON THE BERRY'S

11 LOAN, FORM SEVEN ON THE REVOLVER PAWN TICKET, WAS

12 THAT -- WHO DESIGNED THOSE? NOT WHO AS A PERSON, BUT

13 DO YOU KNOW HOW THOSE FORMS WERE DESIGNED, HOW THEY

14 CAME TO BE?

15 A IT WAS A CITY FORM. IT WAS PRINTED BY THE CITY AND

16 FURNISHED TO THE SHOPS.

17 Q SO BY COURTESY OF THE CITY OF COLUMBIA, THEY MADE YOU

18 USE THEIR DOCUMENTS?,

19 A CORRECT.

20 Q REQUIRED TO IN SOME CIRCUMSTANCES?

21 A CORRECT.

22 Q AND MAY HAVE USED THEM FOR OTHER CIRCUMSTANCES FOR

23 WHICH THEY WERE NOT REQUIRED?

24 A THAT'S TRUE.

25 Q AND THEN LASTLY, MR. FREED, FREED'S JEWELERS -- DID

1 YOU KNOW MR. FREED, BY THE WAY?

2 A I KNEW HIS FATHER.

3 Q YOU KNEW HIS FATHER.

4 THE DAILY REPORT, EXHIBIT 29, WOULD YOU HAVE

5 GOTTEN A DOCUMENT SUCH AS THIS?

6 A NO, SIR.

7 Q THAT WOULD NOT HAVE BEEN A DOCUMENT THAT WAS PART OF

8 YOUR RECORDS?

9 A NO, SIR.

10 Q AND ON THE DOCUMENTS THAT MR. FREED TALKED ABOUT, AND

11 I'M JUST GOING TO USE THE ENLARGEMENT, STATE'S 20, 21

12 AND 43. WOULD 43 BE A DOCUMENT Y'ALL WOULD HAVE

13 REQUIRED?

14 A NO, SIR.

15 Q THAT WOULD NOT HAVE BEEN PART OF YOUR RECORDS?

16 A NO, SIR.

17 Q 20, 21?

18 A THAT IS REQUIRED.

19 Q AND IF I LOOK AT THAT, IF I PUT 21 UP HERE, IT LOOKS

20 LIKE A PAWN TICKET?

21 A YES, SIR.

22 Q FEBRUARY 25TH OF '61 AT FREED'S JEWELER AND

23 LUGGAGE --

24 A YES.

25 Q -- IS THAT CORRECT? THAT WOULD BE REQUIRED, JUST

1 LIKE THE BERRY'S LOAN FORM SEVEN, FEBRUARY 17TH OF
2 '61.
3 A THAT'S CORRECT.
4 Q NOW, WITH THE CORRESPONDING DAILY SUMMARY THAT WE
5 TALKED ABOUT --
6 A YES, SIR.
7 Q -- BERRY'S LOAN WITH THE 9304, THERE SHOULD BE A
8 CORRESPONDING 9214?
9 A THAT'S CORRECT.
10 Q SO STATE'S EXHIBIT NO. 21?
11 A YES, SIR.
12 Q I SHOULD SEE A 9214 HERE?
13 A THAT'S CORRECT.
14 Q AND THIS SHOULD CORRESPOND TO THE "PAWNEE", IF I CAN
15 USE THAT TERM, ON FEBRUARY 25TH OF '61?
16 A THAT'S CORRECT.
17 Q NOW, I DO NOTICE SOMETHING ELSE ON THIS FORM, CHIEF.
18 ANY REASON YOU QUESTION THE AUTHENTICITY OF EITHER 21
19 OR 20?
20 A I HAVE NO REASON TO QUESTION IT.
21 Q AND THESE FORMS HAVE BEEN IN EXISTENCE IN EXCESS OF
22 20 YEARS?
23 A YES, SIR.
24 Q AND THOSE WOULD HAVE BEEN FORMS HELD IN THE NORMAL
25 COURSE OF BUSINESS AT THE COLUMBIA POLICE DEPARTMENT?

1 A THAT'S CORRECT.

2 Q NOW, I NOTICED CHIEF, ON THIS FORM, THE DATE HERE,
3 FEBRUARY 23TH, AND 9209, AND THEN A NUMBER 9210,
4 BLANK, AND THEN A DATE, FEBRUARY 25TH, 1961?

5 A THAT'S CORRECT.

6 Q DOES IT APPEAR THAT TWO DAYS WERE PLACED ON THIS ONE
7 FORM?

8 A THAT'S CORRECT.

9 Q AND IT SHOULD HAVE BEEN ONE DAY, BUT AS A RESULT OF
10 IT BEING TWO DAYS, DO YOU QUESTION ITS AUTHENTICITY?

11 A NO, I DO NOT.

12 Q AT ALL?

13 A AT ALL.

14 MR. MCMAHON: THANK YOU, CHIEF. ANSWER ANY
15 QUESTIONS THE DEFENSE WITNESS HAS.

16 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

17 YOUR HONOR, I OFFER ALL OF THOSE IN EVIDENCE IF
18 THEY AREN'T ALREADY IN.

19 THE COURT: ANY OBJECTIONS UNDER --

20 MR. DELGADO: NO, SIR.

21 THE COURT: ALL RIGHT. WITHOUT OBJECTION.

22 THE COURT REPORTER: WHAT NUMBERS ARE THOSE
23 AGAIN? I WANT TO MAKE SURE.

24 THE COURT: GIVE HER THE NUMBERS AGAIN,

25 MR. SOLICITOR.

1 MR. MCMAHON: I THINK IT'S 18, 19, 20, 21, 43.

2 THE COURT REPORTER: OKAY. I THINK THEY WERE
3 ALL IN EXCEPT 19 -- OR 18, RATHER.

4 MR. DELGADO: YOUR HONOR, MAY WE -- YOUR HONOR,
5 I APOLOGIZE. MS. HUDGINS HAS DIRECTED THE PAWN SLIP ON
6 THE GUN FROM CAPITAL, I BELIEVE WE HAVE DISCUSSED THAT
7 MATTER. I DIDN'T WANT TO WAIVE ANY OBJECTIONS TO THAT.

8 THE COURT: ALL RIGHT. THE OBJECTION IS NOTED
9 AND OVERRULED.

10 MR. DELGADO: ALL RIGHT, SIR.

11 (WHEREUPON, STATE'S EXHIBITS NOS. 18
12 WAS ADMITTED INTO EVIDENCE.)

13 CROSS-EXAMINATION:

14 BY MR. DELGADO

15 Q MR. CLARK, I'VE KNOWN YOU BY SO MANY TITLES I DON'T
16 KNOW IF "MR." COMES OUT OF MY MOUTH VERY EASILY.

17 MR. CLARK, LETS TALK ABOUT LIFE AT FORT JACKSON.
18 YOU HAD THE VERY UNIQUE AND PROBABLY DISTINGUISHED
19 EXPERIENCE OF BEING FROM COLUMBIA DOING YOUR BASIC
20 TRAINING AT FORT JACKSON?

21 A THAT'S CORRECT.

22 Q NOW, WITHOUT DISCLOSING ANYTHING YOU DON'T WANT TO
23 HAVE TO DISCLOSE, AS PART OF THE TIME THAT YOU WERE
24 AT FORT JACKSON, DO YOU THINK YOU EVER WENT IN THE
25 POLKA DOT CLUB?

1 A NO, SIR.

2 Q SO A LOT OF THE FELLOWS THAT YOU WERE WITH IN YOUR
3 BARRACKS OR AT FORT JACKSON GO TO -- I'M GOING TO SAY
4 THE POLKA DOT CLUB BECAUSE THAT'S THE MOST
5 PICTURESQUE ONE I CAN RECALL.

6 THE AREA OF DOWNTOWN COLUMBIA, MAIN STREET, LADY
7 STREET, ASSEMBLY STREET, WHAT I THINK MR. TILBURY HAS
8 CALLED COMBAT ALLEY, THAT WAS ON PAYDAYS AND POSSIBLY
9 WEEKENDS, A PLACE WHERE G.I.'S AT FORT JACKSON WOULD
10 GO AND CONGREGATE?

11 A THE CORRECT NAME IS COMBAT ZONE.

12 Q COMBAT ZONE, SO SORRY. THAT COMBAT ZONE HAD A LOT
13 OF, SHALL WE SAY ATTRACTIONS?

14 A IT DID.

15 Q NOW, THOSE ATTRACTIONS WOULD ATTRACT FOLKS THAT YOU
16 WERE IN TRAINING WITH?

17 A THAT'S CORRECT.

18 Q BUT IF YOU HAD A WEEKEND, YOU WERE GOING TO GO
19 SOMEPLACE ELSE, RIGHT?

20 A YES, SIR.

21 Q WOULD IT BE FAIR TO SAY, MR. CLARK, THAT PROBABLY
22 75 PERCENT OF THE FOLKS THAT YOU WERE WITH AT FORT
23 JACKSON WHILE THEY WERE ENLISTEES PROBABLY CAME DOWN
24 INTO THE COMBAT ZONE AND MAY OR MAY NOT HAVE GONE
25 THROUGH THE ESTABLISHMENTS KNOWN AS THE POLKA DOT

1 CLUB?

2 A IT WOULD PROBABLY BE A LOW NUMBER.

3 Q THAT'S RIGHT. IT WOULD PROBABLY BE MORE THAN

4 75 PERCENT, WOULDN'T IT?

5 A THAT CORRECT.

6 Q THAT AREA, AS A MATTER OF FACT, ATTRACTED SO MANY

7 FOLKS THAT FROM TIME TO TIME, ESPECIALLY WEEKENDS AND

8 PAYDAYS, EVEN MILITARY POLICE WOULD COME DOWN TO

9 ASSIST THE CITY OF COLUMBIA POLICE DEPARTMENT IN

10 PATROLLING; ISN'T THAT CORRECT?

11 A THAT'S CORRECT.

12 Q YOU USED TO HAVE SOME FOLKS, MAYBE HAVE HELMETS ON,

13 EITHER M.P.'S ON THEIR SLEEVES OR ON THEIR HELMETS TO

14 COORDINATE WITH YOUR FUTURE EMPLOYER, THE CITY OF

15 COLUMBIA POLICE DEPARTMENT, TO MAKE SURE EVERYTHING

16 WAS ALL RIGHT DOWN IN THE COMBAT ZONE?

17 A COURTESY PATROL.

18 Q COURTESY PATROL. THEY WOULD ASSIST LAW ENFORCEMENT

19 WITH ANY FOLKS THAT GOT UNRULY, THAT TYPE OF THING.

20 A THEY USUALLY ASSISTED THE MILITARY PLACE, WHICH

21 ASSISTED THE LOCAL POLICE.

22 Q I'M SORRY, THAT'S WHAT I MEANT EXACTLY. THERE WAS A

23 CONCENTRATION OF POLICE IN THAT AREA ON PAYDAY,

24 WOULDN'T THAT BE FAIR?

25 A THAT'S CORRECT.

1 Q ALL RIGHT. MR. CLARK, THIS IS STATE'S EXHIBIT
2 NO. 16. THIS SHOWS THE DOWNTOWN AREA OF COLUMBIA.
3 IF WE ARE POINTING OUT MAIN STREET -- EXCUSE ME,
4 GERVAIS STREET AND THE STATE CAPITAL, THIS IS WHERE
5 THAT GEORGE WASHINGTON STATUE IS, MAIN STREET LOOKING
6 NORTH, THERE'S THE WHIP CLUB.
7 A THE [REDACTED] [REDACTED] [REDACTED] [REDACTED].
8 Q YES, SIR, AND YOU NEVER WENT INTO THE WHIP CLUB, BUT
9 YOU MIGHT HAVE KNOWN FOLKS THAT WENT INTO THE WHIP
10 CLUB?
11 A I WENT IN THE WHIP CLUB AS A POLICE OFFICER.
12 Q THAT'S WHAT I MEANT, BEFORE THAT, WHILE YOU WERE AN
13 ENLISTEE OR AT FORT JACKSON.
14 A NO, I DID NOT.
15 Q ALL RIGHT. ALL THESE PLACES, THIS AREA WAS KNOWN AS
16 THE COMBAT ZONE, CORRECT?
17 A WELL, THE UPPER END OF MAIN STREET WAS KNOWN AS THE
18 COMBAT ZONE.
19 Q ALL RIGHT.
20 A THAT WAS AN AREA WE HAD SOME 24 BARS IN THREE BLOCKS,
21 A CASE OF BEER PER THREE BLOCKS.
22 Q THIS AREA WAS ALSO PATROLLED, AS WELL, WAS IT NOT?
23 A YES, SIR.
24 Q MR. CLARK, JUST SO I CAN DO THIS PROPERLY, THIS
25 LITTLE STICKY, WHICH IS THE TAXI CAB THAT MR. MCMAHON

1 PUT ON HERE, FIRST OF ALL, THIS IS NOT TO SCALE IS
2 IT, SIR?
3 A NO, SIR.
4 Q BECAUSE IF I TOOK MAYBE THREE, THREE-AND-A-HALF OF
5 THESE TAXI CABS, IT WOULD BE THE WHOLE WIDTH OF THAT
6 BLOCK, CORRECT?
7 A YES, SIR.
8 Q SO IN OTHER WORDS, THIS TAXI CAB IS PLACED JUST FOR
9 LOCATION PURPOSES, BUT NOT IN PROPORTION TO ANYTHING
10 ELSE ON THAT BLOCK, CORRECT, SIR?
11 A THAT'S CORRECT.
12 Q THIS, WHERE THAT TAXI CAB IS, IS WHERE MR. ORNER'S
13 TAXI CAB WAS FOUND BY MR. REVETTA OR CALLED IN TO
14 MR. REVETTA ON THE MORNING OF MARCH 1ST; IS THAT
15 CORRECT?
16 A THAT'S CORRECT.
17 Q ALL RIGHT. NOW, IN THE SAME WAY, MR. CLARK, THIS IS
18 NOT TO SCALE, AS WELL, IS IT, SIR?
19 A I DON'T KNOW WHETHER THAT'S TO SCALE OR NOT, TO BE
20 QUITE HONEST WITH YOU.
21 Q I WANT YOU TO LOOK DOWN AT THE BOTTOM RIGHT?
22 A IT SAYS IT'S NOT TO SCALE.
23 Q NOT TO SCALE, ALL RIGHT. I GUESS WHAT I'M SAYING IS
24 THIS IS JUST A GENERAL GEOGRAPHIC VIEW BUT NOT
25 INTENDED TO SHOW THAT FORT JACKSON LOOKS LIKE IT'S

1 ABOUT -- OH, ABOUT TEN TAXI CAB WIDTHS TO COLUMBIA?
2 A THAT'S RIGHT.
3 Q ALL RIGHT. THOSE OF US WHO EITHER LIVE HERE IN
4 COLUMBIA OR IN RICHLAND COUNTY KNOW WHERE THAT'S
5 LOCATED IN OUR COUNTY; IS THAT CORRECT?
6 A THAT'S CORRECT.
7 Q AND EITHER FURTHER, SIR, IF YOU HAD TO GO FROM
8 DOWNTOWN COLUMBIA DOWN TO WHERE THE CAB WAS FOUND
9 JUST ON THE RICHLAND COUNTY SIDE OF -- WELL, ACTUALLY
10 601 IS REALLY NOT LEXINGTON. THAT'S CALHOUN COUNTY,
11 ISN'T IT?
12 A I THINK IT'S CALHOUN COUNTY.
13 Q YES, SIR. AND THAT WOULD BE ABOUT -- OH, I DON'T
14 KNOW. WHAT, 15, 20 OF THOSE CABS? WHAT THAT HE'S
15 SAYING, SIR, IS THAT'S NOT TO SCALE EITHER.
16 A THAT'S CORRECT.
17 Q IT'S JUST A GENERAL GEOGRAPHIC VIEW.
18 A YES.
19 Q NOW, MR. CLARK, IN EITHER LAW ENFORCEMENT OR IN ANY
20 OF YOUR LIVING OUTSIDE OF BEING AT FORT JACKSON, HAVE
21 YOU LIVED ANYPLACE ELSE IN COLUMBIA?
22 A NO, SIR.
23 Q ALL RIGHT. DO YOU KNOW THIS GENERAL AREA OF RICHLAND
24 COUNTY?
25 A PRETTY WELL.

1 Q IT'S A GOOD LONG DISTANCE DOWN THERE, ISN'T IT?

2 A A GOOD LONG DRIVE.

3 Q AS A MATTER OF FACT, IF YOU DRIVE ANY MORE, YOU'RE

4 GOING TO GET OUT OF THE COUNTY AND GO INTO CALHOUN

5 COUNTY, CORRECT, SIR?

6 A THAT'S CORRECT.

7 Q AS A MATTER OF FACT, IF MY GEOGRAPHY IS CORRECT, THE

8 NEXT PLACE ON 601 IS A PLACE CALLED FORT MOTT,

9 M-O-T-T; IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q ALL RIGHT. I WANTED TO MAKE CERTAIN. THEN THE NEXT

12 ONE IS -- DON'T TELL ME. ST. MATTHEWS?

13 A ST. MATTHEWS.

14 Q ALL RIGHT. CHIEF -- EXCUSE ME, MR. CLARK, THAT WOULD

15 BE A GOOD 25-MILES, MAYBE EVEN AS A CROW FLIES, FROM

16 WHERE MR. ORNER'S BODY WAS FOUND TO DOWNTOWN

17 COLUMBIA?

18 A I WOULD SAY 25 MILES WOULD BE IN THE NEIGHBORHOOD.

19 Q ALL RIGHT, SIR. WOULD IT TAKE SOMEBODY WHO KNEW

20 COLUMBIA, SOUTH CAROLINA, RICHLAND COUNTY, PRETTY

21 WELL TO KNOW THAT AREA OF THE COUNTY?

22 A THAT -- I DON'T KNOW THE ANSWER TO THAT.

23 Q ALL RIGHT, SIR. LET'S TALK ABOUT THIS CAB FOUND ON

24 THE MORNING OF MARCH 1ST ON ASSEMBLY STREET POINTING

25 NORTH, JUST RIGHT ABOUT WHERE LADY STREET AND

1 ASSEMBLY CONNECT?

2 A THAT'S CORRECT.

3 Q RIGHT NOW THERE IS NONE OF THIS. THERE'S A BIG

4 PARKING GARAGE THERE, THE BEST I RECALL.

5 A THAT'S CORRECT.

6 Q MCCRORY CONSTRUCTION OR SOMETHING LIKE THAT.

7 A THERE ON THE FIRST LEVEL, THAT'S RIGHT.

8 Q ALL RIGHT. WHEN THAT CAR WAS FOUND, DID THE COLUMBIA

9 POLICE DEPARTMENT IN MARCH OF 1961 HAVE THE ABILITY

10 TO TAKE AND LIFT FINGERPRINTS?

11 A YES, SIR.

12 Q DID THE CITY OF COLUMBIA POLICE DEPARTMENT HAVE AN

13 OPPORTUNITY TO DO OTHER FORENSIC TESTS ON THE CAR?

14 BY THAT I MEAN TO SEE IF THERE WAS ANY HAIR, ANY

15 FIBERS, IF THERE WAS ANYTHING ELSE THAT WOULD CONNECT

16 THAT CAR WITH THE PERSON WHO WAS INVOLVED IN THIS

17 TRAGEDY WITH MR. ORNER?

18 A I DON'T KNOW THE ANSWER TO THAT, SIR.

19 Q BUT FINGERPRINTS WOULD HAVE BEEN PART OF THAT, SIR?

20 A THEY HAD THE ABILITY TO LIFT LATENT FINGERPRINTS,

21 YES.

22 Q DO YOU KNOW, SIR, WHETHER OR NOT THAT CAR WAS A STICK

23 SHIFT OR WHETHER OR NOT IT WAS AN AUTOMATIC?

24 A I DO NOT KNOW.

25 Q IF SOMEBODY HAD TO DRIVE THAT CAR THERE. I'M ASKING

1 YOU AN OBVIOUS QUESTION, DRIVING A CAR AND IT'S A
2 STICK SHIFT, YOU WOULD HAVE LEFT FINGERPRINTS, PALM
3 PRINTS, SOMETHING ON THOSE TWO THINGS THAT WOULD HAVE
4 GUIDED THE CONTROLS ON THE CAR, CORRECT, SIR?
5 A YOU COULD HAVE.
6 Q DO YOU KNOW WHETHER OR NOT THERE WERE ANY
7 FINGERPRINTS ATTEMPTED TO BE LIFTED FROM THE INTERIOR
8 OF THAT CAR?
9 A NO, SIR, I DO NOT.
10 Q MR. CLARK, WHEN YOU WERE AT FORT JACKSON, IF MY
11 REMEMBRANCE OF THE NUMBERS, THERE WERE FOUR PLATOONS
12 TO A COMPANY; IS THAT CORRECT, SIR?
13 A THAT'S CORRECT.
14 Q ABOUT 80 SOME FOLKS TO A PLATOON; IS THAT RIGHT?
15 A SOME OF THEM WERE LARGER.
16 Q OH REALLY?
17 A YES, SIR.
18 Q A COMPANY CONSISTED OF 300 PLUS MEN, MAYBE AS MUCH AS
19 350?
20 A YES, SIR.
21 Q ALL RIGHT, SIR. WHEN YOU'RE IN A COMPANY AT FORT
22 JACKSON, YOU ALL LIVE TOGETHER IN A BARRACKS,
23 CORRECT, SIR?
24 A THE COMPANY USUALLY HAD FOUR DIFFERENT BARRACKS.
25 Q ALL RIGHT, SIR. BUT IN THOSE BARRACKS, YOU WOULD

1 ONLY BE A MEMBER OF COMPANY "B" OR COMPANY "A" OR
2 THAT ONE COMPANY WOULD ONLY LIVE IN THAT ONE BARRACK?

3 A THAT'S CORRECT.

4 Q ALL RIGHT. CHIEF, MY NEPHEW IS GOING THROUGH BASIC
5 TRAINING AT FORT JACKSON RIGHT AT THIS MOMENT. WHEN
6 I WENT TO SEE HIM A WEEK OR SO AGO, I FOUND SOME
7 PICTURES OF OLD BARRACKS.

8 NOW, THOSE MAY SHOCK YOU, BUT DO ANY OF THOSE
9 THINGS LOOK FAMILIAR TO YOU, LIKE BARRACKS, THAT WE
10 USE TO TRAIN G.I.'S?

11 A VERY FAMILIAR.

12 Q WHAT'S THAT, SIR?

13 A VERY FAMILIAR.

14 Q IN A FOND WAY, MR. CLARK?

15 A NO, SIR.

16 Q ALL RIGHT. YOUR HONOR, LET ME JUST -- FIRST OF ALL,
17 SIR, MR. CLARK, THOSE BARRACKS ARE TWO-STORY
18 BARRACKS?

19 A TWO STORY WOODEN BARRACKS.

20 MR. MCMAHON: I HAVE NO OBJECTION.

21 THE COURT: NO OBJECTION.

22 (WHEREUPON, DEFENDANT'S EXHIBITS NO. 1, 2, 3
23 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO
24 EVIDENCE.)

25 BY MR. DELGADO

1 Q MR. CLARK, AND AGAIN, I KNOW HOW IMPRECISE SOMETIMES
2 THESE THINGS CAN BE. WHY DON'T YOU JUST TAKE --
3 THAT'S DEFENDANT'S EXHIBIT NUMBER 3. I'M JUST GOING
4 TO HOLD THESE OTHER TWO. THAT'S DEFENDANT'S EXHIBITS
5 1 AND 2.

6 NOW, AS THE JURY LOOKS AT THESE, FROM EACH
7 BARRACK, HOW MUCH FELLOWS, HOW MANY ENLISTEES WOULD
8 YOU BE IN EACH ONE, WOULD YOU IMAGINE?

9 A I'D SAY IN THE NEIGHBORHOOD OF 80.

10 Q OKAY. EIGHTY FELLOWS IN EACH BARRACKS?

11 A CORRECT, SIR.

12 Q ALL RIGHT. THAT WOULD INCLUDE MAYBE 40 ON THE
13 BOTTOM, 40 ON THE TOP?

14 A YES.

15 Q ALL RIGHT. MAY I JUST GET THAT BACK FROM YOU?

16 MR. CLARK, NOW, I'M GOING TO REFER YOU TO
17 STATE'S EXHIBIT NO. 17, WHICH IS A MAP MADE IN 1964
18 THAT SHOWS AN OVERVIEW OF FORT JACKSON. I THINK
19 YOU'VE LOOKED AT THAT BEFORE AND MAYBE TESTIFIED TO,
20 THAT WITH MR. MCMAHON. DO YOU RECALL THAT, SIR?

21 A THAT'S CORRECT.

22 Q LET ME ORIENT YOU TO IT AGAIN. THIS IS THE MAIN
23 GATE. THIS IS FORT JACKSON BOULEVARD. THE CIRCLE --
24 FORT JACKSON GOES -- JACKSON BOULEVARD GOES THIS WAY,
25 CORRECT, SIR?

1 A CORRECT.

2 Q AND YOU GO PASS THE N.C.O. CLUB RIGHT HERE?

3 A YES, SIR.

4 Q OR ALSO CALLED THE N.C.O. OPEN MESS.

5 A YES, SIR.

6 Q EXPLAIN THAT TO OUR JURY, WHAT DOES OPEN MESS MEAN?

7 A I DON'T KNOW. WHAT IS N.C.O.? I DON'T KNOW.

8 Q YOU WERE AN ENLISTEE, CORRECT, SIR?

9 A RIGHT.

10 Q AND N.C.O. STANDS FOR NON-COMMISSIONED OFFICERS,

11 CORRECT?

12 A CORRECT.

13 Q A NON-COMMISSIONED OFFICER'S OPEN MESS, THAT'S THEIR

14 RESTAURANT?

15 A YES, SIR.

16 Q THE MESS HALL IS THE RESTAURANT OR THE FOOD PLACE FOR

17 NON-COMMISSIONED OFFICERS?

18 A THAT'S RIGHT.

19 Q ENLISTEES LIKE YOU WOULD HAVE BEEN FED, NOT AT AN

20 N.C.O. CLUB, MUCH LESS THE OFFICER'S CLUB. Y'ALL

21 WERE FED IN MESS HALL?

22 A THAT'S CORRECT.

23 Q ALL RIGHT. YOU GO DOWN FORT JACKSON BOULEVARD, YOU,

24 SIR, POINTED OUT, AS BEST YOU RECALL IT, YOUR

25 BARRACKS, FOURTH TRAINING BRIGADE, COMPANY "A" WAS IN

1 THIS GENERAL AREA, CORRECT, SIR?

2 A THAT'S CORRECT.

3 Q ALL RIGHT. DOES EACH ONE OF THESE THINGS LOOK LIKE A

4 BARRACKS TO YOU, MR. CLARK?

5 A THAT'S WHAT IT APPEARS, YES, SIR.

6 Q SO FOR EACH BARRACK THAT WE SEE HERE, THERE'S GOING

7 TO BE 80 FELLOWS LIVING IN THERE, 40 ON TOP OF EACH

8 OTHER?

9 A THAT'S CORRECT.

10 Q IF I'VE GOT 22 IN THIS SMALL LITTLE AREA HERE, THAT'S

11 22 TIMES 80, THAT'S ABOUT 1600 GUYS JUST IN THE

12 GENERAL AREA THAT I'M CIRCLING WITH MY FINGER. WOULD

13 THAT BE FAIR? I'M NOT DOING A MATH TEST. I'M SAYING

14 IF I DO IT OFF THE TOP OF MY HEAD, THAT'S ABOUT

15 RIGHT.

16 A THAT SOUNDS REASONABLE.

17 Q ALL RIGHT. AGAIN, I'M NOT TRY TO INVOKE IMAGES OF

18 THE PAST, BUT YOU WERE STUFFED IN THERE, YOU LIVED

19 CLOSE TO CLOSE, SHOULDER TO SHOULDER, AND OTHER PARTS

20 TO THAT, RIGHT?

21 A IT WAS CROWDED, YES, SIR.

22 Q THINGS THAT WENT ON IN THE BARRACKS WOULD HAVE BEEN

23 NOTICEABLE TO OTHER FOLKS IN THE BARRACKS; IS THAT

24 CORRECT?

25 A THAT'S TRUE.

1 MR. DELGADO: ALL RIGHT. MR. CLARK, LET ME JUST
2 CONFER WITH MY COLLEAGUES JUST ONE SECOND.

3 (PAUSE)...

4 MR. DELGADO: MR. CLARK, THANK YOU, SIR.

5 THE COURT: REDIRECT, MR. SOLICITOR?

6 MR. MCMAHON: JUST A COUPLE, THANK YOU.

7 REDIRECT EXAMINATION:

8 BY MR. MCMAHON

9 Q CHIEF CLARK, AS FAR AS YOUR CAREER, THERE WAS A TIME
10 YOU WERE A CRIME SCENE OFFICER, CORRECT?

11 A YES, SIR.

12 Q AND MR. DELGADO ASKED YOU A FEW QUESTIONS ABOUT
13 FINGERPRINTS AND LATENT FINGERPRINTS.

14 A CORRECT.

15 Q AND THERE WAS A CRIME SCENE OFFICER, I BELIEVE
16 SERGEANT HARTELL --

17 A YES, SIR.

18 Q -- AT THE TIME THAT PROCESSED THE TAXI CAB?

19 A YES.

20 Q IN YOUR CAREER, HAD YOU EVER PROCESSED VEHICLES FOR
21 LATENT PRINTS?

22 A I HAVE, YES, SIR.

23 Q I BELIEVE IN THAT LINE OF QUESTIONING YOUR RESPONSES
24 WERE YOU COULDN'T GET A PRINT?

25 A THERE'S A POSSIBILITY, YES, SIR.

1 Q AND BY THE SAME TOKEN, WHEN YOU SAY THERE'S A
2 POSSIBILITY YOU COULD NOT GET A PRINT?

3 A THAT'S TRUE.

4 Q NOT NECESSARILY THAT YOU WOULD, NOT NECESSARILY THAT
5 YOU WOULDN'T?

6 A THAT'S CORRECT.

7 Q BUT CAPTAIN HARTEL, THEN SERGEANT HARTEL, DID PROCESS
8 THE CAB FOR PRINTS?

9 A HE WAS A CRIME SCENE OFFICER. I DON'T KNOW WHETHER
10 HE PROCESSED THE CAB OR NOT.

11 Q ACCORDING TO EXHIBIT 24, IT INDICATES HE WAS THE
12 CRIME SCENE OFFICER THAT WENT THERE AND HE WAS -- AND
13 PROCESSED THE CAB, I GUESS WOULD BE MY QUESTION.

14 A THAT'S CORRECT.

15 MR. MCMAHON: THANK YOU, CHIEF. I HAVE NO
16 FURTHER QUESTIONS.

17 THE COURT: ANYTHING ELSE?

18 MR. DELGADO: NO, SIR.

19 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY
20 STEP DOWN.

21 THE WITNESS: THANK YOU, JUDGE..

22 LADIES AND GENTLEMEN, BEFORE THE NEXT WITNESS
23 TESTIFIES, I HAVE TO COVER ONE LITTLE ISSUE WITH THE
24 ATTORNEYS, SO LET ME LET YOU JUST GO TO YOUR JURY ROOM
25 JUST FOR ONE MOMENT.

1 (WHEREUPON, THE JURY LEFT OPEN COURT AT
2 APPROXIMATELY 9:57.)

3 THE COURT: ALL RIGHT. ON THE ISSUE OF --
4 MR. MCMAHON: YOUR HONOR, MAY THE CHIEF BE
5 EXCUSED?

6 THE COURT: SURE.

7 MR. MCMAHON: THANK YOU.

8 THE COURT: ON THE ISSUE OF TROOPER MEREDITH, I
9 DON'T SEE ANY SENSE IN CONTAMINATING THIS RECORD BEYOND --
10 WITH THE CONCEPT OF WE TURNED HIM OVER TO MILITARY
11 AUTHORITIES OR THEY TOOK HIM TO JAIL.

12 THE ISSUE, THE RELEVANT EVIDENCE, IS I SAW A GUY
13 HITCHHIKING, WHICH WAS A VIOLATION OF TENNESSEE LAW,
14 PULLED HIM, CHECKED HIM OUT, PADDED HIM DOWN FOR HIS OWN
15 SECURITY, FOUND A GUN. THAT KEEPS THE RECORD REAL CLEAN.
16 IT ALSO GETS THE NECESSARY EVIDENCE THE STATE WOULD LIKE
17 TO ELICIT FROM THAT WITNESS. SO I WILL GRANT A MOTION IN
18 LIMINE TO THE DEFENSE TO THAT EXTENT.

19 MR. DELGADO: THANK YOU, YOUR HONOR.

20 THE COURT: YOU MOVED UP HERE A WHILE AGO.

21 MR. DELGADO: YES, I GUESS I DID.

22 MR. MCMAHON: JUDGE, I JUST WANT TO MAKE REAL
23 CLEAR, I WANT TO BE CLEAR.

24 THE COURT: YES, SIR.

25 MR. MCMAHON: NOT THAT YOUR RULING IS NOT CLEAR.

1 I WANT TO BE CLEAR WITH YOUR RULINGS. I CAN'T BRING OUT
2 THAT HE WAS ARRESTED OR TAKEN INTO CUSTODY?

3 THE COURT: I JUST DON'T SEE THE NECESSITY OF
4 THAT. I MEAN, HE HAD THE RIGHT TO PAT HIM DOWN. I RULED
5 AS A MATTER OF LAW THAT HE HAD A RIGHT TO PAT HIM DOWN AND
6 HE FOUND THE GUN.

7 MR. MCMAHON: I CAN'T BRING OUT HE WAS PLACED
8 INTO JAIL.

9 THE COURT: THAT'S RIGHT.

10 MR. MCMAHON: AND I CANNOT BRING OUT THAT HE WAS
11 RELEASED TO MILITARY AUTHORITIES?

12 THE COURT: AT THIS POINT.

13 MR. MCMAHON: THANK YOU.

14 MR. DELGADO: YOUR HONOR, JUST SO WE DON'T WAIVE
15 ANYTHING. I WANT THE COURT -- IT ALWAYS SEEMS TO ME THAT
16 TRYING TO PRESERVE THE RECORD IS LIKE HIDING A PEA. I
17 DON'T KNOW IF WE'VE DONE OR IF WE HAVEN'T DONE IT WELL
18 ENOUGH.

19 I'D RENEW THE MOTION ON THAT EVIDENCE, AND I'D
20 ASK THE COURT TO SUPPRESS THAT EVIDENCE. I BELIEVE WE DO
21 HAVE TO PRESERVE IT BECAUSE WHILE WE MOVED IN LIMINE, WE
22 KNOW NOW IT'S IN TRIAL.

23 THANK YOU.

24 THE COURT: ALL RIGHT. I'LL OVERRULE YOUR
25 REQUEST.

1 MR. MCMAHON: NOW, JUDGE THE OTHER ISSUE I HAVE
2 BEFORE I CALL TROOPER MEREDITH IS, OF COURSE, THE ISSUE ON
3 THE LETTER.

4 THE COURT: YES. WE CAN SOLVE THAT PROBLEM.
5 I'LL GIVE YOU A CASE ON THAT.

6 AGAIN, LADIES AND GENTLEMEN, THERE ARE THREE
7 BASES FOR AUTHENTICATION OF THE ANCIENT DOCUMENT RULE:
8 IN EXISTENCE FOR 20 YEARS, CAME FROM A PROPER PLACE OF
9 CUSTODY, FREE FROM SUSPICION.

10 THE CASE OF MCCRARY VS. COGSHAWL, 1906. IT SAYS
11 THAT A LETTER IN THE CUSTODY OF AN ADDRESSEE IS AN EXAMPLE
12 OF A DOCUMENT FOUND IN PROPER CUSTODY.

13 HOWEVER, SOLICITOR, YOU HAVE TWO WAYS YOU COULD
14 APPROACH THAT SITUATION, TOO. YOU HAD THE S.L.E.D. AGENT
15 WHO WAS HERE YESTERDAY. HE COULD HAVE CONFIRMED CATE'S
16 SIGNATURE OR YOU SAID YOU HAD HIS SON HERE.

17 MR. MCMAHON: HIS SON IS A DOCTOR, YES, SIR, IN
18 LEXINGTON -- IN WEST COLUMBIA.

19 JUDGE -- YES, SIR, I REALIZE I COULD HAVE ASKED
20 THE AGENT YESTERDAY, BUT I HAVE NOT GONE OVER THAT WITH
21 HIM.

22 THE COURT: I THINK IT'S SAFE ON THE RULING THAT
23 EXAMPLES OF OTHER DOCUMENTS FOUND TO BE IN CUSTODY. WE
24 CLEARLY KNOW THE LETTER IS MORE THAN 20 YEARS OLD.
25 SECONDLY, WE KNOW THE PROPER PLACE OF CUSTODY, THE LETTER

1 IN THE CUSTODY OF AN ADDRESSEE IS ONE OF THOSE EXAMPLES,
2 AND FREE FROM SUSPICION.

3 WE WILL KNOW BY THE TIME THIS RECORD IS COMPLETE
4 THAT THE GUN HAS BEEN IN THE POSSESSION OF S.L.E.D.
5 SINCE -- THE INQUIRY IS "WHERE IS THE GUN," ET CETERA; IS
6 THAT CORRECT?

7 MR. MCMAHON: YES, SIR. NOW, JUDGE, I DON'T
8 HAVE A PROBLEM WITH -- THE SUBSTANCE OF THE LETTER DOESN'T
9 COME IN EITHER.

10 I MEAN, IF THAT'S THAT DOES ANYTHING ABOUT THE
11 SUBSTANCE OF THE RULING.

12 THE COURT: I MEAN, I --

13 MR. MCMAHON: IT'S NOT SO MUCH THE SUBSTANCE,
14 JUST THAT HE'S GETTING A LETTER ABOUT THIS GUN, YOU KNOW,
15 TO CONFIRM THAT THAT'S THE GUN, IF THAT MAKES A
16 DIFFERENCE.

17 THE COURT: THAT WILL CERTAINLY KEEP IT CLEAR.

18 MR. MCMAHON: YES, SIR. I MEAN, I DON'T HAVE A
19 PROBLEM WITH THAT. I JUST WANT TO MAKE SURE THAT I TRACK
20 THAT SERIAL NUMBER. I MEAN, OBVIOUSLY --

21 THE COURT: I SEE WHAT YOU'RE DOING. I WOULD
22 FIND ITS ADMISSIBLE WITH THE EXCEPTION OF THE HEARSAY
23 RULE.

24 MR. MCMAHON: OKAY.

25 THE COURT: YOU CAN ASK HIM ABOUT THAT.

1 MR. MCMAHON: ALL RIGHT.

2 THE COURT: I MEAN, THE BACKGROUND OF THE LETTER
3 IS NOT ADMISSIBLE. YOU DO NOT PLAN ON PUTTING IT IN AS
4 SUCH.

5 MR. DELGADO: YOUR HONOR, IS IT YOUR THOUGHT
6 THAT I NEED TO OBJECT TO BOTH THAT AND -- THAT, BEING THE
7 REFRESHMENT -- OR WHATEVER IT IS THAT MR. --

8 THE COURT: IF I WAS TRYING THIS CASE, I'D BE
9 WHERE YOU ARE.

10 MR. DELGADO: YES, SIR. DO YOU NEED FOR ME TO
11 DO THAT IN THE PRESENCE OF THE JURY? IN OTHER WORDS, IF
12 I'M DOING THAT NOW, IS THAT SUFFICIENT UNDER WHIPPLE AND
13 PATTERSON?

14 THE COURT: YOU'RE MAKING CONTEMPORANEOUS
15 OBJECTIONS.

16 MR. DELGADO: OKAY.

17 THE COURT: WHY DON'T WE JUST TAKE A QUICK TEN
18 MINUTES, THAT WAY WE'LL GO A LITTLE LONGER.

19 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

20 THE COURT: ALL RIGHT. IS EVERYBODY READY FOR
21 THE JURY?

22 MR. MCMAHON: THE STATE IS READY, YES, SIR.

23 THE COURT: ALL RIGHT. BRING THE JURY.

24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
25 APPROXIMATELY 10:15.)

1 THE BAILIFF: THE JURY IS PRESENT.

2 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS,
3 MR. MCMAHON.

4 MR. MCMAHON: THE STATE CALLS DON MEREDITH.

5 THE CLERK: ~ IF YOU'D COME FORWARD PLEASE. PLACE
6 YOUR LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

7 DONALD MEREDITH, AFTER BEING DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
10 NAME, SPELL YOUR LAST NAME.

11 THE WITNESS: DONALD MEREDITH, M-E-R-E-D-I-T-H.

12 DIRECT EXAMINATION:

13 BY MR. MCMAHON

14 Q MR. MEREDITH, WHERE ARE YOU FROM, SIR?

15 A NEWPORT, TENNESSEE.

16 Q IS THAT WHERE YOU LIVE NOW?

17 A YES, SIR.

18 Q AND HOW OLD ARE YOU?

19 A SEVENTY-SIX.

20 Q ARE YOU MARRIED?

21 A YES, SIR.

22 Q AND IS YOUR WIFE PRESENT WITH YOU IN THE COURTROOM?

23 A YES, SIR, SHE IS.

24 Q AND MS. MEREDITH, STAND UP FOR ME. THIS IS

25 MS. MEREDITH HERE?

1 A YES.

2 Q THANK YOU, MS. MEREDITH.

3 HOW LONG HAVE YOU BEEN MARRIED?

4 A FORTY-SIX YEARS, I BELIEVE.

5 Q DO YOU HAVE ANY CHILDREN?

6 A ONE, YES.

7 Q AND A BOY, GIRL?

8 A IT'S A GIRL.

9 Q IS SHE GROWN?

10 A YES.

11 Q AND WHAT IS HER OCCUPATION?

12 A SHE'S A POLICE OFFICER AT THE KNOXVILLE POLICE

13 DEPARTMENT.

14 Q NOW, WERE YOU IN THE MILITARY, MR. MEREDITH?

15 A YES, SIR, I WAS.

16 Q WHAT BRANCH?

17 A MARINE CORPS.

18 Q WHAT YEARS?

19 A FROM '44 UNTIL '46.

20 Q WHAT YEAR DID YOU GRADUATE FROM HIGH SCHOOL?

21 A '43.

22 Q '43, AND THEN WENT IN THE MARINE CORPS. IN '44?

23 A WELL, YES. I WAS DRAFTED IN '43 AND THEN SWORN IN

24 NEW YEAR'S DAY '44.

25 Q AND WHERE DID YOU SERVE IN '44, '45?

1 A IN THE SOUTH PACIFIC, SAIPAN, TINIAN, OKINAWA.
2 Q SAY IT AGAIN.
3 A SAIPAN, TINIAN, OKINAWA, THEN OCCUPATION, ZIFIRMIN
4 (PHONETIC), NAGASAKI, JAPAN.
5 Q AND WHEN WERE YOU IN NAGASAKI?
6 A SEPTEMBER OF '45, EARLY PART OF SEPTEMBER.
7 Q AND THAT WAS ABOUT FOUR WEEKS AFTER THEY DROPPED THE
8 BOMB?
9 A SHORTLY AFTER, YES, SIR.
10 Q NOW, WHEN YOU GOT OUT OF THE MARINE CORPS., DID YOU
11 GO BACK TO TENNESSEE?
12 A YES, SIR, I DID.
13 Q AND WHAT WAS YOUR CAREER? YOU'RE RETIRED NOW,
14 MR. MEREDITH?
15 A YES, SIR.
16 Q WHAT WAS YOUR CAREER?
17 A TENNESSEE STATE TROOPER.
18 Q AND WHAT IS YOUR TOTAL NUMBER OF YEARS IN LAW
19 ENFORCEMENT?
20 A THIRTY.
21 Q OF THOSE 30 YEARS, WHAT WAS THE MAJORITY OF THAT TIME
22 SPENT AS?
23 A TENNESSEE HIGHWAY PATROL.
24 Q DID YOU HAVE A BREAK IN THERE FROM THE HIGHWAY PATROL
25 OF ABOUT FIVE YEARS?

1 A YES, SIR.

2 Q AND WHAT DID YOU DO DURING THAT FIVE-YEAR PERIOD OF

3 TIME?

4 A I WAS CHIEF OF POLICE AT THE NEWPORT POLICE

5 DEPARTMENT.

6 Q IN TENNESSEE?

7 A IN TENNESSEE.

8 Q SO FOR THOSE 30 YEARS TOTAL LAW ENFORCEMENT --

9 A YES, SIR.

10 Q -- FIVE OF THOSE 30 YEARS, YOU WERE CHIEF OF POLICE

11 IN NEWPORT?

12 A YES, SIR.

13 Q BUT WHAT YEAR DID YOU RETIRE?

14 A FROM HIGHWAY PATROL?

15 Q YES, SIR.

16 A JANUARY OF 1983.

17 Q AND WHAT RANK DID YOU RETIRE AS?

18 A LIEUTENANT.

19 Q NOW, I WANT TO DIRECT YOUR ATTENTION BACK TO MARCH OF

20 1961. WERE YOU A TENNESSEE HIGHWAY PATROLMAN AT THAT

21 TIME?

22 A YES, SIR, STATIONED IN NEWPORT.

23 Q NOW, HOW WERE YOU ASSIGNED TO A PARTICULAR AREA OR

24 TERRITORY?

25 A BY COUNTIES. WE HAVE LIKE TWO MEN IN THAT COUNTY AT

1 THAT TIME. THAT WAS QUITE A FEW.

2 Q OKAY. HOW MANY -- WHAT COUNTY WERE YOU ASSIGNED TO

3 AT THAT TIME, LIEUTENANT?

4 A COBB COUNTY.

5 Q IS THAT THE COUNTY OF WHICH NEWPORT IS THE COUNTY

6 SEAT?

7 A YES, SIR, IT IS.

8 Q NOW, IF WE WERE TO LEAVE HERE TODAY TO GO TO NEWPORT

9 TENNESSEE, GENERALLY WHAT ROADS WOULD WE TAKE?

10 A INTERSTATE 26 TO ASHEVILLE AND THEN YOU PICK UP I-40.

11 Q BACK IN 1960, '61, WOULD YOU PICK UP I-40?

12 A THERE WASN'T I-40 THEN.

13 Q IT WASN'T I-40 AT THAT TIME?

14 A NO.

15 Q WHAT WAS THE MAIN ROAD TO COME THROUGH NEWPORT,

16 TENNESSEE?

17 A HIGHWAY 25 AND 70.

18 Q NOW, WHAT IS THE -- IF YOU'RE ON HIGHWAY 25, 70 GOING

19 WEST, LET'S SAY WEST, FROM NEWPORT, WHAT MAJOR TOWN

20 WOULD WE GO INTO?

21 A AFTER YOU LEAVE ASHEVILLE AND HOT SPRINGS, IT'S A

22 PLACE IN NORTH CAROLINA, AND THEN YOU ENTER INTO COBB

23 COUNTY. THEN KNOXVILLE IS THE NEXT LARGEST PLACE.

24 Q SO NEWPORT, TENNESSEE IS BETWEEN KNOXVILLE, TENNESSEE

25 AND ASHEVILLE, NORTH CAROLINA?

1 A YES.

2 Q AND THAT HIGHWAY YOU TALK ABOUT, 25, 70, THAT'S THE

3 SAME HIGHWAY, RIGHT, TWO NUMBERS?

4 A RIGHT.

5 Q WAS THAT A ROAD BACK AT THAT TIME THAT RAN BETWEEN

6 KNOXVILLE AND ASHEVILLE?

7 A THAT'S RIGHT. THAT WAS A MAIN ROAD.

8 Q AND BEING THE MAIN ROAD, WAS THAT THE ROAD THAT YOU

9 WOULD PATROL PRIMARILY?

10 A QUITE A BIT, YES, SIR.

11 Q NOW, I WANT TO DIRECT YOUR ATTENTION BACK TO

12 SPECIFICALLY MARCH 29TH OF '61, AND SINCE MARCH 29TH

13 OF '61, YOU'VE HAD AN OPPORTUNITY TO LOOK AT CERTAIN

14 RECORDS FROM BACK AT THAT TIME; IS THAT RIGHT,

15 LIEUTENANT?

16 A YEAH, THAT'S RIGHT.

17 Q AND CERTAIN OF THOSE RECORDS REFRESHED YOUR MEMORY;

18 IS THAT CORRECT?

19 A YES, SIR, THEY HAD.

20 Q SO MARCH 29TH OF '61, YOU WERE A TENNESSEE STATE

21 TROOPER. WERE YOU WORKING THAT EVENING?

22 A YES, SIR.

23 Q AND WHAT ROAD, PRIMARILY, WERE YOU ASSIGNED TO

24 PATROL?

25 A WELL, I WASN'T ASSIGNED TO ANY. WE JUST HAD TO WORK

1 THEM ALL, BUT THAT WAS THE MOST TRAVELED ROAD, BUT WE
2 SPENT MORE TIME ON THAT.

3 Q AND DID YOU HAVE OCCASION TO BE ON THAT HIGHWAY 25?

4 A YES.

5 Q NOW, DID YOU HAVE AN OCCASION TO COME IN CONTACT WITH
6 AN INDIVIDUAL NAMED EDWARD E. FRIEBURGER?

7 A YES, SIR.

8 Q AND ABOUT WHAT TIME ARE WE TALKING ABOUT THAT YOU
9 FIRST OBSERVED THIS INDIVIDUAL?

10 A APPROXIMATELY 11 P.M.

11 Q AT NIGHT?

12 A YES, SIR.

13 Q AND APPROXIMATELY WHAT AREA, GENERALLY, DID YOU FIRST
14 OBSERVE THIS INDIVIDUAL?

15 A WELL, IT WAS CLOSE TO NEWPORT, NOT TOO FAR OUT OF
16 TOWN ON HIGHWAY 25, 70.

17 Q BUT IT WAS OUT OF TOWN?

18 A YES, SIR.

19 Q AND WAS IT A DARK AREA?

20 A YES, SIR.

21 Q OUT THERE ON 25 THAT NIGHT?

22 A YES, IT WAS.

23 Q NOW, AS YOU WERE ON 25 PATROLLING, WHAT, IF ANYTHING,
24 DID YOU SEE THIS INDIVIDUAL THAT YOU LATER IDENTIFIED
25 AS EDWARD E. FRIEBURGER DOING?

1 A HE WAS HITCHHIKING.

2 Q NOW, IN MARCH, SPECIFICALLY MARCH 29TH OF '61, WAS

3 HITCHHIKING A VIOLATION OF THE TENNESSEE LAW?

4 A YES, SIR, IT WAS.

5 Q WHAT DID YOU DO -- DID HE ACTUALLY HAVE HIS THUMB OUT

6 THUMBING A RIDE WHEN YOU SAY HITCHHIKING?

7 A YES, SIR.

8 Q WHAT EXACTLY DID YOU DO WHEN YOU SAW THIS INDIVIDUAL

9 YOU LATER IDENTIFIED AS FRIEBURGER HITCHHIKING,

10 LIEUTENANT?

11 A I STOPPED AND TALKED TO HIM.

12 Q NOW, WHY DID YOU DO THAT? WHY WOULD YOU STOP TO

13 CHECK A HITCHHIKER?

14 A WELL, WE HAD -- AT THAT AREA AND THAT PARTICULAR TIME

15 WE HAD SOME PEOPLE STRUCK BY CARS AND HAD ONE

16 FATALITY. IT WAS A NARROW ROAD. IT WAS QUITE A BIT

17 MORE NARROW THAN IT IS NOW.

18 IT WAS DANGEROUS JUST TO BE OUT WALKING OR OUT

19 HITCHHIKING ON THE ROAD, SO WE KIND OF WATCHED -- WE

20 HAD SOME PROBLEMS ANYWAY.

21 Q SO YOU STOPPED TO CHECK HIM BECAUSE HE'S HITCHHIKING;

22 IS THAT RIGHT?

23 A YES.

24 Q WERE YOU ABLE TO -- DID YOU IDENTIFY HIM AS EDWARD E.

25 FRIEBURGER AFTER YOU GOT OUT AND TALKED WITH HIM?

1 A I BELIEVE HE TOLD ME THAT WAS HIS NAME AT THE TIME.
2 I'M NOT SURE JUST WHEN HE DID TELL ME, BUT I BELIEVE
3 IT WAS WHILE I WAS ON THE ROADSIDE.
4 Q AND COULD YOU DESCRIBE IF YOU RECALL WHETHER HE WAS
5 IN A MILITARY UNIFORM OR CIVILIAN CLOTHES?
6 A CIVILIAN CLOTHES.
7 Q NOW, WHEN YOU GOT OUT TO CHECK HIM, WHAT WAS THE
8 NORMAL PROCEDURE THAT A TENNESSEE STATE TROOPER WOULD
9 TAKE AT THAT TIME TALKING TO AN INDIVIDUAL THAT TIME
10 OF NIGHT, VIOLATING THE HITCHHIKING LAW?
11 A WELL, I ASKED HIM WHERE HE WAS GOING OR WHERE HE WAS
12 HEADED, WHERE HE WAS COMING FROM MAYBE, JUST
13 QUESTIONS SUCH AS THAT NATURE.
14 Q WOULD YOU PAT HIM DOWN IN ANY WAY?
15 A YES, SIR. I DID BECAUSE OF SAFETY PRECAUTIONS.
16 Q AND WHAT'S THE PURPOSE OF PATTING HIM DOWN?
17 A FOR SAFETY REASONS.
18 Q NOW, WHEN WE SAY PAT HIM DOWN, LIEUTENANT, ARE YOU
19 TALKING ABOUT AN EXTENSIVE, INTRUSIVE SEARCH ONTO A
20 PERSON?
21 A NO, SIR.
22 Q WHAT ARE YOU PATTING A PERSON DOWN FOR?
23 A JUST TO SEE IF HE HAD ANY WEAPONS.
24 Q AND WHAT, IF ANYTHING, DID YOU DISCOVER AS A RESULT
25 OF THAT SEARCH?

1 MR. DELGADO: YOUR HONOR, AT THIS TIME I THINK
2 I'M REQUIRED UNDER THE RULES...

3 THE COURT: OVERRULED.

4 MR. DELGADO: YES, THANK YOU.

5 BY MR. MCMAHON

6 Q WHAT, IF ANYTHING, DID YOU DISCOVER AS A RESULT OF
7 THAT SEARCH, LIEUTENANT?

8 A I DISCOVERED HE HAD A PISTOL IN HIS POCKET.

9 Q AND WHAT, IF ANYTHING, DID YOU DO WITH THAT PISTOL?

10 A I CONFISCATED IT.

11 Q YOU TOOK IT INTO YOUR CUSTODY?

12 A YES, SIR.

13 Q DO YOU RECALL WHAT KIND OF PISTOL IT WAS, LIEUTENANT
14 MEREDITH?

15 A IT WAS A 32 HARRINGTON AND RICHARDSON.

16 Q NOW, DID HE SAY ANYTHING ABOUT A GUN?

17 A YES, SIR. HE ADVISED ME THAT HE BOUGHT IT IN A
18 PAWNSHOP IN KNOXVILLE, TENNESSEE.

19 Q AT A PAWNSHOP IN KNOXVILLE, TENNESSEE?

20 A YES, SIR.

21 Q NOW, LIEUTENANT, DID YOU MAINTAIN CUSTODY OF THAT GUN
22 ONCE YOU TOOK IT INTO YOUR CUSTODY FROM 3/29/61 UNTIL
23 A DATE LATER ON; IS THAT CORRECT?

24 A YES, SIR, I DID.

25 Q DID YOU EVER TURN IT BACK OVER TO EDWARD E.

1 FRIEBURGER?

2 A NO.

3 Q NOW, I WANT TO ASK YOU, GOING ON UP INTO, I GUESS
4 APRIL OF '61, WERE YOU CONTACTED IN ANY MANNER BY ANY
5 OTHER LAW ENFORCEMENT OFFICER OR AGENCY ABOUT THAT
6 WEAPON?

7 A YES, SIR, I WAS.

8 Q AND WHO CONTACTED YOU?

9 A SHERIFF S.S. SLY OF THE RICHLAND COUNTY --

10 Q AND DID YOU HAVE A CONVERSATION WITH SHERIFF SLY?

11 A YES, SIR, I DID.

12 Q AND AS A RESULT -- WHAT WAS THAT CONVERSATION?

13 A HE WANTED TO KNOW IF I HAD THAT PISTOL IN MY
14 POSSESSION. I TOLD HIM I DID. HE WANTED TO KNOW IF
15 I WOULD LET HIM HAVE IT. IT WAS FOR A MURDER CASE
16 THAT HE WAS INVESTIGATING.

17 Q NOW, LIEUTENANT, IS IT FAIR TO SAY, I BELIEVE YOU
18 SAID YOU RETIRED IN '83 --

19 A YES, SIR.

20 Q -- IS THAT RIGHT?

21 A YES, SIR.

22 Q IS IT FAIR TO SAY THE MANNER IN WHICH YOU MAINTAINED
23 CUSTODY OF EVIDENCE IN '61 CHANGED FROM THE MANNER IN
24 WHICH YOU MAINTAINED CUSTODY OF EVIDENCE IN '83?

25 A YES, SIR, VERY MUCH.

1 Q HOW WOULD A STATE TROOPER MAINTAIN CUSTODY OF A
2 WEAPON SUCH AS THIS THAT WAS CONFISCATED MARCH 29TH
3 OF '61?
4 A JUST KEEP IT IN YOUR HOME OR IN YOUR CAR OR
5 SOMEWHERE.
6 Q AND YOU DID SO?
7 A YES, SIR.
8 Q YOU HAD IT IN YOUR POSSESSION?
9 A I DID.
10 Q DID YOU STILL HAVE THAT WEAPON IN YOUR POSSESSION
11 WHEN SHERIFF SLY CALLED?
12 A YES, SIR, I DID.
13 Q DID YOU KNOW, BY THE WAY, SHERIFF SLY AT ALL BEFORE
14 THIS --
15 A NO, SIR, I DID NOT.
16 Q EVEN KNOW HIS NAME?
17 A NO, SIR.
18 Q NOW, AS A RESULT OF THAT PHONE CALL FROM SHERIFF SLY,
19 WHAT DID YOU TELL HIM?
20 A I TOLD HIM THAT HE COULD HAVE THE GUN, THAT I WOULD
21 BE GLAD TO TURN IT OVER TO HIM.
22 Q AND ABOUT WHEN ARE WE TALKING ABOUT?
23 A I'M NOT FOR SURE. IT WAS JUST -- I'D SAY A FEW DAYS
24 OR WEEKS. I'M NOT POSITIVE WHEN IT WOULD BE WHEN HE
25 CALLED ME.

1 Q A FEW DAYS OR WEEK OR SO AFTER MARCH 29TH OF '61?

2 A YES, SIR.

3 Q THAT IS WHEN YOU AGREED TO TURN THE WEAPON OVER TO

4 HIM; IS THAT CORRECT?

5 A YES, SIR.

6 Q NOW, DID YOU TURN THAT WEAPON OVER TO OTHER OFFICERS?

7 A HE SENT TWO OFFICERS FROM HIS DEPARTMENT OVER TO MY

8 HOME TO GET IT, AND I TURNED IT OVER TO THEM.

9 Q AND WHAT DEPARTMENT WERE THEY FROM?

10 A FROM THE SHERIFF'S DEPARTMENT, FROM WHAT I

11 UNDERSTOOD, HERE IN RICHLAND COUNTY.

12 Q AND YOU TURNED THAT WEAPON OVER TO THEM?

13 A YES.

14 Q NOW, LIEUTENANT, WAS THAT WEAPON LOADED --

15 A YES, IT WAS.

16 Q -- WHEN YOU CONFISCATED IT?

17 A YES.

18 Q WHAT TYPE OF BULLETS DID IT HAVE IN IT?

19 A IT HAD 32 LONGS. IT WAS -- I CAN'T REMEMBER THE NAME

20 OF IT OFFHAND. THEY CALLED THEM, BUT IT WAS A 32

21 LONG.

22 Q NOW, DO YOU RECALL IF YOU TURNED THE BULLETS OVER,

23 ALSO?

24 A NO, I DON'T RECALL WHETHER I DID OR NOT. I DON'T

25 REMEMBER THAT.

1 Q BUT YOU DID THE GUN?

2 A YES, SIR.

3 Q NOW, LIEUTENANT, HAVE YOU EVER HAD AN OCCASION IN THE

4 PAST BEFORE THIS WEEK TO TESTIFY IN COURT IN SOUTH

5 CAROLINA?

6 A YES, SIR.

7 Q AS A MATTER OF FACT, 36 -- ABOUT 38 YEARS AGO?

8 A I BELIEVE IT WAS 1964.

9 Q '64, HOW EVER MANY YEARS AGO?

10 A THAT'S WHAT I WAS THINKING IT WAS.

11 Q DID YOU HAVE AN OCCASION TO TESTIFY IN COURT?

12 A YES, SIR.

13 Q IN ANOTHER MATTER?

14 A YES, SIR.

15 Q IN A WRECK CASE; IS THAT CORRECT?

16 A YES, SIR.

17 Q NOW, AS A RESULT OF THAT, DID YOU INQUIRE ABOUT THAT

18 PISTOL?

19 A YES, SIR, I DID.

20 Q AND TALKED WITH AN ATTORNEY ABOUT IT?

21 A YES. HE WAS INVOLVED IN THE CASE, AND I WAS TALKING

22 TO HIM ABOUT IT WHILE WE WERE WAITING FOR THE TRIAL.

23 Q AND AS A RESULT OF TALKING TO THAT ATTORNEY, DID YOU

24 LATER ON RECEIVE A LETTER ABOUT THAT PISTOL?

25 A I DID.

1 Q NOW, I WANT TO SHOW YOU ACTUALLY TWO DOCUMENTS. LET
2 ME HAVE THIS OTHER ONE MARKED, YOUR HONOR.

3 (WHEREUPON, STATE'S EXHIBIT NO. 48 WAS MARKED
4 FOR IDENTIFICATION ONLY.)

5 MR. MCMAHON: MAY I SHOW IT TO HIS HONOR BEFORE
6 I PRESENT IT TO THE WITNESS, MR. DELGADO?

7 MR. DELGADO: THAT'S FINE.

8 BY MR. MCMAHON

9 Q NOW, LIEUTENANT, I WANT TO SHOW YOU TWO DOCUMENTS AND
10 I'LL ASK YOU MORE SPECIFICALLY ABOUT ONE OF THEM.
11 THIS ONE IS MARKED COURT'S EXHIBIT NO. 5. THIS ONE
12 IS MARKED STATE'S EXHIBIT 38 (SIC).

13 IS NUMBER 5 A LETTER THAT YOU RECEIVED BACK IN
14 1964 CONCERNING THAT WEAPON?

15 A YES, SIR, IT IS.

16 Q AND THIS COURT'S (SIC) EXHIBIT NO. 38 (SIC), IS THAT
17 A COPY OF THAT LETTER WITH THE NARRATIVE OF THE
18 LETTER REMOVED FROM IT, CORRECT?

19 A YES, SIR, IT IS.

20 Q IT IS -- STATE'S EXHIBIT NO. 38 IS CORRECT IN ALL
21 ASPECTS, JUST THE BODY OF THE LETTER DOESN'T APPEAR?

22 A THAT'S CORRECT.

23 Q ALL RIGHT. NOW, LET'S TALK ABOUT THE HISTORY OF THIS
24 LETTER A LITTLE BIT. WERE YOU CONTACTED, I BELIEVE,
25 IN APRIL OF 2000 ABOUT THIS CASE, BY OFFICERS FROM

1 RICHLAND COUNTY?

2 A IT WAS 2000 OR --

3 Q 2001?

4 A -- 2001, I BELIEVE.

5 Q I BELIEVE IT WAS, YES, SIR. APRIL OF 2001 ABOUT THIS

6 CASE?

7 A YEAH.

8 Q AND DO YOU RECALL THE OFFICERS THAT CONTACTED YOU AT

9 THAT TIME?

10 A YEAH, CARL -- I'M NOT TOO SURE ON NAMES. I KNOW HE'S

11 SITTING RIGHT THERE.

12 Q CARL CRAIG?

13 A CRAIG, THAT'S RIGHT.

14 Q AND SERGEANT METZ?

15 A YES, THAT'S RIGHT. THEY WERE AT MY RESIDENCE.

16 Q THEY TALKED TO YOU ON THE PHONE AND THEN THEY CAME TO

17 NEWPORT TO TALK TO YOU; IS THAT CORRECT?

18 A YES, SIR.

19 Q IS THIS ABOUT THIS PARTICULAR WEAPON?

20 A YES, SIR.

21 Q AT THE TIME THEY TALKED TO YOU ABOUT THIS WEAPON, DID

22 YOU TELL THEM ABOUT A LETTER THAT YOU HAD?

23 A YES, SIR, I DID.

24 Q AND WHAT LETTER WAS THAT? WHO WAS THAT LETTER FROM?

25 A THIS LETTER RIGHT HERE. WELL, LET ME SEE. LET ME

1 READ HERE.

2 YEAH, I GUESS THIS IS WHAT I WAS TALKING TO HIM

3 ABOUT.

4 Q AS A MATTER OF FACT, DID YOU TURN OVER TO THEM A COPY

5 OF THE LETTER?

6 A YES, SIR.

7 Q AND WHAT IS THIS LETTER DATED?

8 A THAT'S THE 21ST OF APRIL, '64.

9 Q SO FROM APRIL 21ST, '64, THE DATE OF THIS LETTER TO

10 WHENEVER YOU RECEIVED IT IN THE MAIL THEREAFTER, YOU

11 MAINTAINED IT INTO YOUR CUSTODY UNTIL YOU TURNED A

12 COPY OF IT OVER IN APRIL OF 2001 TO MR. CRAIG AND

13 SERGEANT METZ; IS THAT CORRECT?

14 A YES, SIR.

15 Q AND IS THIS LETTER IN COURT'S (SIC) EXHIBIT 38 IN

16 RESPONSE TO YOUR INQUIRY ABOUT THE PARTICULAR WEAPON?

17

18 A IT WAS.

19 Q NOW, THE ADDRESSEE ON THAT LETTER, WHO IS IT? WHO IS

20 IT ADDRESSED TO?

21 A IT'S ADDRESSED TO TROOPER DON MEREDITH.

22 Q AND THE ADDRESS?

23 A [REDACTED] [REDACTED] [REDACTED], NEWPORT, TENNESSEE.

24 Q AND IF I MAILED YOU A LETTER TODAY TO [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] IT WOULD GET TO YOU; IS THAT CORRECT?

1 A THAT'S RIGHT.

2 Q AND DOES IT HAVE IDENTIFYING INFORMATION ABOUT THE

3 WEAPON ON COURT'S EXHIBIT NO. 38?

4 A YES, SIR.

5 Q NOW, I WANT TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED

6 AS STATE'S EXHIBIT NO. 6 FOR IDENTIFICATION. DOES

7 THIS APPEAR TO BE THE WEAPON?

8 A YES, SIR, IT DOES.

9 Q AND DOES THE SERIAL NUMBER APPEAR ON THE LETTER?

10 A YES, SIR, IT DOES.

11 Q WOULD YOU READ THAT SERIAL NUMBER OFF FOR US, PLEASE?

12 A THE SERIAL NUMBER IS W 9948

13 Q AND IT APPEARS ON THE BUTT OF STATE'S EXHIBIT NO. 6.

14 CAN YOU READ THAT FOR US, LIEUTENANT?

15 A YES. IT'S THE SAME, W 9948.

16 Q SERIAL NUMBER ON THIS OBJECT IS THE SAME AS THE

17 SERIAL NUMBER ON THIS LETTER?

18 A THAT'S CORRECT.

19 Q AND DOES THE MODEL AND THE BRAND APPEAR ON THERE?

20 A YES, SIR, IT DOES.

21 Q AND WHAT IS THE BRAND AND MODEL?

22 A H & R REVOLVER, MODEL 722.

23 Q AND DOES THAT APPEAR RIGHT THERE ALSO, LIEUTENANT?

24 A YES, SIR.

25 Q H & R MODEL 732?

1 A YES, SIR.

2 Q AND THIS IS A 32 CALIBER; IS THAT CORRECT?

3 A YES.

4 Q AND ALSO IN THE IDENTIFYING INFORMATION, THEY HAVE
5 "REFERENCE, ORNER CASE"?

6 A THAT'S CORRECT.

7 Q AND LIEUTENANT, IT APPEARS THAT LETTER CAME FROM M.N.
8 CATE, LIEUTENANT, FIREARMS LABORATORY --

9 A YEAH.

10 Q -- SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

11 A YES.

12 MR. MCMAHON: MAY I PUBLISH THIS TO THE JURY,
13 YOUR HONOR?

14 BY MR. MCMAHON

15 Q IS STATE'S EXHIBIT NO. 6 THE GUN THAT YOU TOOK OFF OF
16 THE INDIVIDUAL YOU IDENTIFIED AS EDWARD E. FRIEBURGER
17 ON MARCH 26TH, 1961?

18 A THAT'S CORRECT.

19 Q IT'S THE GUN YOU TURNED OVER TO OFFICERS OF THE
20 RICHLAND COUNTY SHERIFF'S DEPARTMENT WITHIN ABOUT A
21 WEEK OR SO OF MARCH 29TH OF '61?

22 A THE BEST I REMEMBER, IT WAS SOMEWHERE -- IT WASN'T
23 TOO LONG AFTER THAT, AFTER I CONFISCATED IT.

24 MR. MCMAHON: MAY I APPROACH THE BENCH?

25

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
3 THE JURY.)

4 BY MR. MCMAHON

5 Q AND JUST A VERY SPECIFIC QUESTION, LIEUTENANT, DID
6 YOU, DURING THIS TIME OR LATER ON WITHIN THE
7 IMMEDIATE FUTURE PAST THAT TIME, LEARN THAT THE
8 EDWARD E. FRIEBURGER THAT YOU TOOK THIS PISTOL OFF OF
9 WAS IN THE MILITARY?

10 A YES, SIR, I DID.

11 MR. MCMAHON: THANK YOU. I DON'T HAVE ANYTHING
12 FURTHER.

13 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

14 MR. DELGADO: THANK YOU.

15 CROSS-EXAMINATION:

16 BY MR. DELGADO

17 Q GOOD AFTERNOON, SIR. MR. MEREDITH, I WANT YOU TO
18 CAST YOUR EYES OVER HERE.

19 NOW, I KNOW IT'S 41 PLUS YEARS, BUT YOU HAVE NO
20 INDEPENDENT RECOLLECTION, KNOWLEDGE, THAT THE
21 INDIVIDUAL THAT YOU TOOK THAT PISTOL OFF OF IS THIS
22 GENTLEMAN, WHO IS, IN FACT, ED FRIEBURGER? YOU
23 WOULDN'T KNOW HIM BY FACE, WOULD YOU?

24 A NO, TIME HAS CHANGED. I WOULDN'T RECOGNIZE HIM.

25 Q I UNDERSTAND. NOW, ONE THING THAT I NEED TO ASK YOU

1 ABOUT, SIR, AND I -- SINCE WE HAVE THE INTERSTATES, I
2 GUESS WE DON'T GO THE SAME ROUTES ANY MORE.

3 THE AREA THAT YOU DID, IN FACT, STOP
4 MR. FRIEBURGER, HE WAS HITCHHIKING, YOU SAID.

5 A YES, SIR.

6 Q ALL RIGHT, SIR. WAS HE HITCHHIKING TOWARDS
7 ASHEVILLE?

8 A YES, SIR.

9 Q YES, SIR. NOW, LET ME JUST -- AND PLEASE BEG MY
10 DRAWING SKILLS, BECAUSE THIS ISN'T GOING TO BE GOOD.

11 MR. MEREDITH, I'M GOING TO -- MY REMEMBRANCE OF
12 THE GREAT STATE OF TENNESSEE, IT'S KIND OF LIKE A
13 RECTANGLE, KIND OF NORTH CAROLINA KIND OF COMES OFF
14 THIS WAY, GEORGIA KIND OF COMES DOWN HERE.

15 WELL, LET ME DO THIS.

16 MR. MCMAHON: IS THIS TO SCALE?

17 MR. DELGADO: NOT QUITE.

18 BY MR. DELGADO

19 Q THAT IS HORRIBLE. LET ME SEE IF I CAN GENERALLY SHOW
20 YOU WHAT THAT MAY MEAN. TENNESSEE,
21 T-E-N-N-E-S-S-E-E, TENNESSEE, NORTH CAROLINA, N.C.,
22 SOUTH CAROLINA, GEORGIA, WOULD THAT BE CHICKEN
23 SCRATCH, WOULD THAT BE ABOUT RIGHT?

24 A YES, SIR.

25 Q ALL RIGHT. KNOXVILLE, TENNESSEE IS APPROXIMATELY IN

1 THE ONE-THIRD OF EASTERN TENNESSEE, WOULD THAT BE
2 ABOUT RIGHT?

3 A YES.

4 Q IF I PUT IT RIGHT ABOUT HERE, WOULD THAT BE FAIR?

5 A YES, THAT'S ABOUT RIGHT.

6 Q OKAY. I'M GOING TO PUT KNOXVILLE K-N-O-X-V-I-L-L-E,
7 BUT THE NEXT LARGEST CITY YOU FIND THAT WILL HIT US
8 IS ASHEVILLE, NORTH CAROLINA.

9 RIGHT HERE, COLUMBIA, SOUTH CAROLINA.

10 IF, SIR, WITH THIS PINK HIGHLIGHTER, IF THE ROAD
11 GENERALLY WENT FROM KNOXVILLE TO ASHEVILLE AND DOWN
12 TO COLUMBIA, NEWPORT TENNESSEE SITS RIGHT ABOUT HERE,
13 IS THAT ABOUT RIGHT?

14 A 17 MILES FROM THE NORTH CAROLINA LINE, INTERSTATE 40.

15 Q HOW ABOUT RIGHT THERE, WOULD THAT BE ABOUT FAIR?

16 A WELL, KNOXVILLE TO NEWPORT IS ABOUT 40 MILES AND
17 ABOUT 17 MORE ONTO --

18 Q SO WHAT DO YOU THINK, ABOUT RIGHT HERE?

19 A I GUESS.

20 Q ALL RIGHT. THAT LITTLE DOT IS NEWPORT, TENNESSEE,
21 AND WHERE YOU FOUND MR. FRIEBURGER, HE WAS
22 HITCHHIKING IN THE DIRECTION OF ASHEVILLE FROM
23 COLUMBIA, SOUTH CAROLINA?

24 A YES.

25 Q ALL RIGHT. NOW, MR. MEREDITH, LET ME ASK YOU THIS,

1 THIS INDIVIDUAL -- FIRST LET ME TALK TO YOU ABOUT
2 HITCHHIKING FOR JUST A SECOND. THERE WERE OCCASIONS
3 AS A HIGHWAY PATROLMAN, THAT I KNOW YOU WOULD HAVE
4 SAFETY REQUIREMENTS OF -- YOU WOULDN'T TRY TO PROTECT
5 EVERYBODY, WHETHER THEY'RE IN CARS OR NOT, WHERE YOU
6 HAD FATALITIES FROM FOLKS WHO WERE HITCHHIKING?

7 A YES, SIR.

8 Q ALL RIGHT, SIR.

9 A THAT'S RIGHT.

10 Q AND IT WOULD BE YOUR RESPONSIBILITY TO MAKE CERTAIN
11 THAT NOBODY GOT HURT, AS BEST YOU COULD?

12 A RIGHT.

13 Q SOMETIMES WHAT YOU'D DO IS YOU EITHER TRANSPORT THEM
14 YOURSELF TO SOMEPLACE SAFE, WOULD THAT BE FAIR?

15 A I'D DO THAT, YES.

16 Q SOMETIMES YOU'D MAYBE TAKE THEM TO THE BUS STATION,
17 CORRECT?

18 A WE HAD A LITTLE BUS STOP THERE IN TOWN. YOU KNOW, AT
19 TIMES I'D TAKE THEM BACK DOWN THERE AND LEAVE THEM
20 THERE, LET THEM RIDE THE BUS.

21 Q ALL RIGHT. SO YOU DIDN'T ARREST EVERYBODY FOR
22 HITCHHIKING. IT JUST DEPENDED ON HOW IT LOOKED TO
23 YOU, RIGHT?

24 A THAT'S RIGHT.

25 Q ALL RIGHT. SO WHEN YOU FIRST SAW ED FRIEBURGER OUT

1 WITH HIS HAND, YOU DIDN'T NECESSARILY THINK YOU WERE
2 GOING TO HAVE TO ARREST HIM FOR HITCHHIKING, DID YOU?

3 A NO, SIR.

4 Q ALL RIGHT. NOW, TALK WITH OUR JURY, SIR, ABOUT THE
5 DEMEANOR THAT MR. FRIEBURGER SHOWED TO YOU WHEN YOU
6 FIRST CAME UP TO TALK TO HIM.

7 TELL THEM ABOUT DID HE TRY TO RUN AWAY FROM YOU,
8 SIR?

9 A NO, SIR.

10 Q WAS HE COUPTEOUS TO YOU?

11 A YES, SIR, HE WAS.

12 Q PLEASANT?

13 A YES, SIR.

14 Q DID HE OBEY ANY COMMAND THAT YOU GAVE HIM?

15 A YES, SIR.

16 Q DID YOU HAVE ANY PROBLEMS WITH HIM WHATSOEVER?

17 A NO, SIR.

18 Q NONE AT ALL?

19 A NO, SIR.

20 MR. DELGADO: ALL RIGHT. THANK YOU,

21 MR. MEREDITH. THANK YOU FOR BEING HERE.

22 THE COURT: ANYTHING ELSE OF THIS WITNESS?

23 MR. MCMAHON: YES, SIR, I HAVE A MOTION.

24 THE COURT: LET ME GUESS.

25 MR. MCMAHON: SIR?

1 THE COURT: COME ON UP.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
3 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
4 THE JURY.)

5 MR. MCMAHON: THANK YOU. MAY IT PLEASE THE
6 COURT.

7 THE COURT: YES, SIR.

8 REDIRECT EXAMINATION:

9 BY MR. MCMAHON

10 Q MR. DELGADO, ASKED YOU DIFFERENT QUESTIONS ABOUT
11 PROCEDURES YOU MAY TAKE WITH HITCHHIKING; IS THAT
12 CORRECT?

13 A YES, SIR.

14 Q DID YOU TAKE MR. FRIEBURGER TO THE BUS STATION?

15 A NO, SIR.

16 Q WHAT DID YOU DO WITH MR. FRIEBURGER?

17 A I PUT HIM IN JAIL.

18 Q YOU ARRESTED HIM?

19 A I ARRESTED HIM, PUT HIM IN JAIL.

20 Q WHAT DID YOU CHARGE HIM WITH?

21 A CARRYING ARMS.

22 Q AND HE WAS PLACED IN JAIL THAT NIGHT?

23 A THAT'S CORRECT, YES, SIR.

24 MR. MCMAHON: THANK YOU. I DON'T HAVE ANYTHING
25 FURTHER.

1 THE COURT: ANYTHING?

2 MR. DELGADO: NOTHING.

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

5 CALL YOUR NEXT WITNESS, SOLICITOR.

6 MS. CAMPBELL: THE STATE WOULD CALL DAVID
7 WILSON.

8 THE CLERK: IF YOU COME FORWARD PLEASE, PLACE
9 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

10 DAVID WILSON, AFTER BEING DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 THE CLERK: HAVE A SEAT, STATE YOUR FULL NAME.

13 THE WITNESS: DAVID WILSON.

14 DIRECT EXAMINATION:

15 BY MS. CAMPBELL

16 Q MAJOR WILSON, WHERE ARE YOU EMPLOYED?

17 A WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

18 Q AND WHAT IS YOUR POSITION THERE?

19 A DEPUTY CHIEF OVER THE INVESTIGATIVE DIVISION.

20 Q AND AS DEPUTY CHIEF OVER THE INVESTIGATIVE DIVISION,
21 CAN YOU TELL THE JURY WHAT YOUR DUTIES INCLUDE?

22 A SUPERVISION OF ALL INVESTIGATORS THAT WOULD INCLUDE
23 THE EVIDENCE ROOM, NARCOTICS AGENTS, MAJOR CRIMES
24 INVESTIGATORS, JUVENILE INVESTIGATORS, THE WHOLE
25 GAMUT.

1 Q AND APPROXIMATELY HOW MANY INVESTIGATORS, NARCOTICS
2 AGENTS, ARE CURRENTLY UNDER YOUR SUPERVISION AT THE
3 SHERIFF'S DEPARTMENT?

4 A WE HAVE A TOTAL OF ABOUT 94 AGENTS AND SUPPORT STAFF.

5 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT, SIR?

6 A ABOUT 23-AND-A-HALF YEARS.

7 Q AND WHO IS THE SHERIFF IN THIS COUNTY, RIGHT NOW?

8 A SHERIFF LEON LOTT.

9 Q AND THAT WOULD BE YOUR IMMEDIATE SUPERVISOR?

10 A WELL, I HAVE A CHIEF DEPUTY I REPORT TO AS WELL,
11 HUBERT HARRELL.

12 Q BUT SHERIFF LOTT IS THE ACTUAL SHERIFF IN THIS
13 COUNTY; IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q AS PART OF THE YOUR INVESTIGATIVE UNIT, YOU ALSO HAVE
16 CERTAIN PEOPLE WHO ALSO INVESTIGATE WHAT WE CALL
17 "COLD CASES" OR OLDER CASES?

18 A YES, MA'AM, WE DO.

19 Q CAN YOU EXPLAIN TO THE JURY WHAT THEY DO AND WHY THEY
20 DO THAT?

21 A YES, MA'AM. WITH THE 90 SOMETHING INVESTIGATORS, WE
22 RUN ABOUT 800 TO 1200 CASES PER MONTH HERE IN
23 RICHLAND COUNTY OR ARE ASSIGNED TO OUR INVESTIGATORS,
24 WHICH IS AN ENORMOUS AMOUNT.

25 AS YOU WILL IMAGINE, WE HAVE VERY LITTLE TIME TO

1 GO BACK INTO OLD CASES AND LOOK INTO OLD CASES TO TRY
2 TO SOLVE THEM.

3 WHEN SHERIFF LOTT WAS ELECTED SHERIFF IN THIS
4 AREA, HE CAME UP WITH THE IDEA OF HAVING A DIVISION
5 OF -- CREATING A COLD CRIMES CASE UNIT THAT IS THERE
6 OF VOLUNTEERS AND RETIRED INVESTIGATORS. THAT'S WHY
7 IT WAS CREATED.

8 Q SO YOU HAVE AN ACTIVE UNIT UNDER YOUR SUPERVISION
9 THAT ACTUALLY LOOK INTO OLDER CASES?

10 A YES, SIR.

11 Q THEY MIGHT BE TEN YEARS OLD?

12 A THEY MIGHT BE.

13 Q OR THEY MIGHT BE 50 YEARS OLD?

14 A THAT'S CORRECT.

15 Q AND AS PART OF YOUR INVESTIGATIVE UNIT, ARE YOU
16 FAMILIAR WITH CARL CRAIG?

17 A YES, MA'AM, I AM.

18 Q AND WHAT IS HIS POSITION?

19 A HE'S A VOLUNTEER. HE VOLUNTEERS AT LEAST TWO DAYS A
20 WEEK, SOMETIMES MORE, SOMETIMES LESS, DEPENDING ON
21 HIS SCHEDULE. HE HAS EXTENSIVE BACKGROUND IN
22 INVESTIGATIONS, BOTH C.I.D. AND LAW ENFORCEMENT.

23 Q I WAS GOING TO ASK YOU THAT. CAN ANYONE JUST
24 VOLUNTEER TO DO INVESTIGATIONS IN YOUR DEPARTMENT?

25 A NO, MA'AM.

1 Q BUT HE HAS CERTAIN QUALIFICATIONS THAT ALLOW HIM TO
2 VOLUNTEER TO DO THAT?

3 A THAT'S CORRECT.

4 Q AND WHAT DOES DO THOSE QUALIFICATIONS INCLUDE?

5 MR. DELGADO: YOUR HONOR, I'M GLAD WE HAVE THIS
6 EXPERT, BUT I JUST DON'T KNOW THE RELEVANCE OF ALL THIS.

7 THE COURT: I DON'T KNOW WHERE YOU'RE HEADED
8 WITH THAT.

9 MS. CAMPBELL: WELL, YOUR HONOR, I'LL TIE IT UP.
10 BY MS. CAMPBELL

11 Q HE HAS AN INVESTIGATIVE BACKGROUND.

12 A YES, MA'AM, HE DOES.

13 Q AND DO YOU KNOW SERGEANT BRIAN METZ?

14 A YES, I DO.

15 Q IS THAT HIM SITTING AT THE TABLE?

16 A THAT'S CORRECT.

17 Q AND IS HE ALSO UNDER YOUR SUPERVISION?

18 A YES, MA'AM, HE IS.

19 Q WHAT CAPACITY DOES HE WORK?

20 A HE WORKS BOTH IN THE COLD CASE UNIT AS WELL AS A
21 MISSING PERSONS INVESTIGATOR.

22 Q I WANT TO TURN YOUR ATTENTION BACK TO 1999. AT THAT
23 POINT, DID YOU BECOME AWARE OF THE CASE INVOLVING
24 EDWARD FRIEBURGER AND JOHN ORNER?

25 A YES, MA'AM.

1 Q WHO BRIEFED YOU ON THAT CASE AT THAT POINT?

2 A INVESTIGATOR CRAIG.

3 Q AND WERE YOU AWARE THAT INVESTIGATOR CRAIG AND
4 SERGEANT METZ WERE GOING TO BE LOOKING INTO THE
5 CIRCUMSTANCES OF THAT CASE?

6 A THAT'S CORRECT.

7 Q TURNING YOUR ATTENTION NOW SPECIFICALLY TO AUGUST OF
8 THE YEAR 2000, DID CERTAIN THINGS DEVELOP IN THAT
9 SUMMER THAT YOU SUPERVISED AND ALSO REQUIRED YOUR
10 ATTENTION?

11 A YES.

12 Q AND CAN YOU EXPLAIN TO THE JURY ANY REQUESTS YOU MADE
13 AS OF AUGUST OF 2000?

14 A WELL, AUGUST 11TH, 2000, I ASSIGNED A REQUEST TO
15 CHIEF STEWART WITH THE STATE LAW ENFORCEMENT DIVISION
16 STATING THAT WE HAD REOPENED THIS HOMICIDE CASE FROM
17 FEBRUARY 28TH, 1961, THE SHOOTING DEATH OF JOHN
18 ORNER, AND ASKED THAT THEIR CURRENT BALLISTICS
19 EXAMINER RELOOK AT THE BALLISTICS EVIDENCE THAT WAS
20 COLLECTED BACK IN 1961.

21 Q AND AT THE TIME YOU MADE THAT REQUEST, YOU WERE AWARE
22 THAT THE BULLET HAD BEEN LOOKED AT BACK IN 1961?

23 A THAT'S CORRECT.

24 Q AND THE RESULTS OF THAT WERE INCONCLUSIVE?

25 A THAT'S CORRECT.

1 Q AND WHY WERE YOU REQUESTING THEY LOOK AT IT AGAIN,
2 MAJOR?

3 A OBVIOUSLY, 40 YEARS HAD PASSED. THERE'S A MASSIVE
4 CHANGE IN TECHNOLOGY AND ABILITIES AND TRAINING, SO
5 WE WANTED TO HAVE IT LOOKED AT BY TODAY'S EXPERTS.

6 Q SUBSEQUENT TO THAT, TURNING YOUR ATTENTION TO
7 FEBRUARY, THE END OF JANUARY, 1ST OF FEBRUARY, THE
8 YEAR 2001, DID YOU AGAIN BECOME INVOLVED IN CERTAIN
9 ASPECTS OF THIS CASE?

10 A YES, MA'AM.

11 Q AND DURING THIS TIME PERIOD, I DON'T WANT THE JURY TO
12 BE MISLED, YOU WERE AWARE OF WHAT WAS GOING ON; IS
13 THAT CORRECT?

14 A I WAS BRIEFED ON OCCASION, YES, MA'AM.

15 Q BUT THE PEOPLE CONDUCTING THE INVESTIGATION WERE
16 SERGEANT METZ AND INVESTIGATOR CRAIG?

17 A THAT'S CORRECT.

18 Q AT THE END OF JANUARY, THE FIRST OF FEBRUARY, DID
19 YOU -- WERE YOU APPRISED AS TO THE RESULTS FROM
20 S.L.E.D.'S EXAMINATION OF THE BULLET? DON'T SAY WHAT
21 THEY WERE, JUST THAT YOU WERE APPRISED.

22 A I WAS.

23 Q AND AS A RESULT OF THAT, DID YOU CONSULT WITH ANYONE
24 IN MY OFFICE?

25 A YES, I DID.

1 Q AND WHO WAS THAT?

2 A ASSISTANT SOLICITOR JOHNNY GASSER.

3 Q HE IS ACTUALLY THE DEPUTY SOLICITOR IN THE OFFICE?

4 A THAT'S CORRECT.

5 Q AND AS A RESULT OF CONVERSATIONS WITH HIM, DID YOU

6 OBTAIN A RESUME OF A CERTAIN EXPERT?

7 A YES, MA'AM, I DID.

8 Q AND WHO WAS THAT?

9 A THAT WAS MR. JOHN CAYTON.

10 Q AND DID YOU GIVE THE INFORMATION ON THE RESUME, C.V.

11 I GUESS YOU WOULD CALL IT, DID YOU FAX THAT AT ONE

12 POINT TO MR. GASSER IN OUR OFFICE?

13 A YES, MA'AM, I DID.

14 Q DID YOU HAVE DISCUSSIONS ABOUT HOW TO PROCEED AT THAT

15 POINT?

16 A YES, MA'AM.

17 Q AND AS A RESULT OF THOSE DISCUSSIONS, WHAT DID YOU

18 DO?

19 A AS A RESULT OF THOSE DISCUSSIONS AND WITH THE

20 AGREEMENT OF THE ASSISTANT SOLICITOR JOHNNY GASSER,

21 WE CONTACTED MR. CAYTON AND REQUESTED THAT HE REVIEW

22 THIS EVIDENCE.

23 Q AND IN FACT, YOU ACTUALLY SIGNED A LETTER AND SENT IT

24 TO HIM REQUESTING THAT HE LOOK AT THE EVIDENCE?

25 A YES, MA'AM.

1 Q AND BEFORE WE TALK ABOUT THE EVIDENCE THAT WAS FOUND,
2 LET'S BE SPECIFIC. WHAT EVIDENCE ARE WE TALKING
3 ABOUT?

4 A THE BULLET FRAGMENTS FROM MR. ORNER'S HEAD AND TWO
5 WEAPONS THAT WERE SEIZED IN THE ORIGINAL CASE.

6 Q AND WHY WAS MR. CAYTON THE EXPERT THAT YOU CHOSE TO
7 SEND THIS EVIDENCE TO? THAT WOULD BE THE WEAPON IN
8 THIS CASE, CORRECT, STATE'S EXHIBIT 6?

9 A THAT WOULD BE CORRECT.

10 Q AND THEN THE BULLET FRAGMENTS, WHICH ARE STATE'S
11 EXHIBITS 32, 31, AND 30?

12 A YES, MA'AM.

13 Q WHY WAS MR. CAYTON, THE EXPERT, CHOSEN? DID YOU KNOW
14 HIM?

15 A NO, MA'AM, I DIDN'T. I NEVER HEARD HIS NAME BEFORE.

16 Q DO YOU KNOW WHY HE WAS -- YOU CHOSE TO SEND THIS
17 EVIDENCE TO HIM?

18 A YES.

19 Q WHAT'S THE REASON?

20 A WE HAD DISCUSSED THIS, MYSELF AND THE INVESTIGATORS,
21 CONTEMPLATED USING AN OUTSIDE EXPERT, WHICH IS
22 SOMETHING WE DO FROM TIME TO TIME.

23 MR. DELGADO: YOUR HONOR, I'D JUST OBJECT TO
24 THAT ON THE HEARSAY, JUST RELYING -- THINGS THAT PEOPLE --

25 MS. CAMPBELL: I'VE BEEN VERY SPECIFIC, YOUR

1 HONOR, NOT TO GO INTO THE SUBSTANCE OF THE CONVERSATIONS.

2 THE COURT: SO FAR SO GOOD.

3 MS. CAMPBELL: AND I'VE TRIED TO BE VERY CAREFUL
4 TO MAKE SURE THAT I DIDN'T --

5 BY MS. CAMPBELL

6 Q YOU HAD CONVERSATIONS, DON'T TELL US WHAT THEY WERE,
7 WITH HIM?

8 A THAT'S CORRECT.

9 Q AND WAS IT YOUR INFORMATION THAT HE HAD CERTAIN
10 EXPERTISE?

11 A YES, MA'AM. I DECIDED TO CONDUCT THE SEARCH WITH AN
12 OUTSIDE BALLISTICS EXPERT. I GAVE THOSE DUTIES
13 MR. CRAIG AND MR. METZ. THEY CAME UP WITH SEVERAL
14 POSSIBLE NAMES.

15 THIS PARTICULAR GENTLEMEN HAD EXTENSIVE
16 EXPERIENCE WITH THIS TYPE OF WEAPON AND THIS TYPE OF
17 AMMUNITION.

18 Q MAJOR WILSON, YOU WERE AWARE THAT S.L.E.D. HAD LOOKED
19 AT THIS EVIDENCE FOR THE SECOND TIME, RIGHT?

20 A VERY MUCH AWARE OF IT, YES, MA'AM.

21 Q AND IT WAS UNUSUAL IN YOUR EXPERIENCE AND YOUR --

22 MR. DELGADO: OBJECTION, LEADING, PLEASE.

23 THE COURT: SUSTAINED.

24 BY MS. CAMPBELL

25 Q WOULD IT BE UNUSUAL AT THAT POINT FOR YOU TO SEND OFF

1 EVIDENCE OF ANY KIND FOR ANOTHER OPINION?

2 A IT IS NOT UNCOMMON, NO, MA'AM.

3 Q AND HAVE YOU DONE THAT BEFORE?

4 A YES, MA'AM.

5 Q IN WHAT TYPES OF EVIDENCE, TELL THE JURY, HAVE YOU

6 DONE THAT WITH?

7 A IT'S MUCH MORE COMMON TO SEND OUT D.N.A. TYPE

8 EVIDENCE, BLOOD EVIDENCE, TO INDEPENDENT

9 LABORATORIES, ESPECIALLY WHEN S.L.E.D. DOES NOT HAVE

10 THE EXPERTISE TO CONDUCT THE EXAMINATION.

11 Q AND IS THERE ACTUALLY A FUND SET UP IN YOUR

12 DEPARTMENT TO PAY FOR THESE EXAMINATIONS?

13 A YES, MA'AM.

14 Q AND THE EXAMINATIONS THAT WERE CONDUCTED IN THIS

15 CASE, THOSE WERE NOT FREE, WERE THEY?

16 A NO, MA'AM, THEY WERE NOT.

17 Q AND YOU MADE PAYMENTS FOR THE EXAMINATION?

18 A YES, MA'AM.

19 Q AND YOU WOULD PAY FOR THOSE EXAMINATIONS REGARDLESS

20 OF THE RESULTS?

21 A THAT'S CORRECT.

22 Q AND HOW MUCH WAS MR. CAYTON ACTUALLY PAID BY YOUR

23 DEPARTMENT?

24 A WE PAID HIM \$1,350, WHICH IS EXACTLY HALF OF THE

25 ORIGINAL BILL.

1 Q OKAY.

2 A THE SOLICITOR'S OFFICE OR THE CLERK OF THE COURT PAID
3 THE OTHER HALF.

4 Q AND SUBSEQUENT TO THAT, THERE'S BEEN ANOTHER BILL IN
5 PREPARATION FOR THIS CASE?

6 A YES, MA'AM. WE RECENTLY RECEIVED A BILL FOR A TRIP
7 THAT KNOX MCMAHON TOOK, WHICH HAS NOT BEEN PAID YET.

8 Q AND KNOX MCMAHON WAS NOT ALONE, WAS HE?

9 A NO, MA'AM. HE WAS NOT, IRA PARNELL FROM THE STATE
10 LAW ENFORCEMENT DIVISION.

11 Q IRA PARNELL FROM THE STATE LAW ENFORCEMENT DIVISION.

12 MS. CAMPBELL: THAT'S ALL I HAVE.

13 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

14 MR. DELGADO: GIVE ME JUST ONE SECOND, PLEASE.

15 CROSS-EXAMINATION:

16 BY MR. DELGADO

17 Q MAJOR, IT WOULD BE FAIR TO SAY, SIR, THAT WHAT HAS
18 HAPPENED IN THIS CASE IS THAT THE STATE LAW
19 ENFORCEMENT DIVISION IN 1961, MR. CATE SAYS BULLET
20 FRAGMENTS OF THE GUN ARE INCONCLUSIVE, CORRECT, SIR?

21 A THAT'S CORRECT.

22 Q AND THE INDIVIDUAL WHO GAVE THAT OPINION WAS MR. M.N.
23 CATE AND MR. PETE STOKES, CORRECT, SIR?

24 A I KNOW MR. CATE'S NAME. I DID NOT KNOW MR. STOKES
25 WAS INVOLVED.

1 Q YOU KNOW MR. PETE STOKES?
2 A YES, I DO.
3 Q THE FIRST NAME, I THINK, IS CARL, EVERYBODY CALLS HIM
4 PETE?
5 A RIGHT.
6 Q M.N. CATE, FROM 1961 UNTIL THE YEAR 2000, THOSE
7 BULLET FRAGMENTS AND THAT GUN WERE AT THE STATE LAW
8 ENFORCEMENT DIVISION?
9 A THAT'S CORRECT.
10 Q UNTIL -- MR. CRAIG, STAND UP FOR A MINUTE, SIR.
11 MR. CARL CRAIG IS THE COLD CASE INVESTIGATOR
12 WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT,
13 CORRECT, SIR?
14 A HE IS ONE OF THEM, YES, SIR.
15 Q THANK YOU, SIR.
16 MR. CRAIG USED TO BE WITH THE CRIMINAL
17 INVESTIGATION DIVISION OF THE UNITED STATES ARMY; IS
18 THAT CORRECT, SIR?
19 A THAT'S CORRECT.
20 Q AND HE USED TO BE WITH -- THE ACRONYM FOR THAT IS
21 C.I.D., CORRECT, SIR?
22 A CORRECT.
23 Q MR. CRAIG USED TO BE A C.I.D. INVESTIGATOR WITH THE
24 UNITED STATES ARMY AT, AMONG OTHER PLACES, FORT
25 JACKSON, SOUTH CAROLINA, CORRECT, SIR?

1 A THAT'S CORRECT.

2 Q AND IN MARCH 1961, MR. CRAIG WAS A C.I.D.

3 INVESTIGATOR AT FORT JACKSON, CORRECT, SIR?

4 A THAT'S WHAT HE'S TOLD ME, YES, SIR.

5 Q YES, SIR. HE GOES ON TO HAVE A CAREER WITH THE

6 C.I.D., RETIRES FROM THAT AND THEN GOES ON TO HAVE

7 ANOTHER LAW ENFORCEMENT CAREER WITH THE UNIVERSITY OF

8 SOUTH CAROLINA POLICE DEPARTMENT, CORRECT?

9 A THAT'S CORRECT.

10 Q AND NOW VOLUNTEERS WITH THE SHERIFF'S DEPARTMENT HERE

11 IN RICHLAND COUNTY?

12 A THAT'S CORRECT.

13 Q AND WHAT HE WAS HANDED, HE WAS HANDED THIS CASE,

14 CORRECT, SIR?

15 A MY UNDERSTANDING, YES, SIR.

16 Q ALL RIGHT. SO MR. CRAIG THEN -- AS A MATTER OF FACT,

17 MR. CRAIG IS THE ONE THAT FOUND MR. CAYTON, ISN'T

18 THAT CORRECT, SIR?

19 A EITHER HIM OR INVESTIGATOR METZ.

20 Q MR. CAYTON, WOULD YOU STAND UP, THIS IS MR. JOHN

21 CAYTON; IS THAT CORRECT, SIR?

22 A I DON'T KNOW, SIR, NEVER MET HIM.

23 Q HE IS FROM OSBORNE, MISSOURI. THIS IS THE GENTLEMAN

24 THAT YOU HIRED?

25 A PARDON ME.

1 Q YOU DON'T KNOW HIM BY FACE, DO YOU?

2 A DON'T KNOW HIM BY FACE, NO, SIR. I TALKED TO HIM ON
3 THE PHONE ONCE.

4 Q YOU KNOW THAT MR. CRAIG, FORMERLY WITH THE C.I.D.,
5 RETAINS AND FINDS OUT ABOUT MR. CAYTON, CORRECT, SIR?

6 A I KNOW THAT EITHER HIM OR INVESTIGATOR METZ LOCATED
7 MR. CAYTON.

8 Q MR. CAYTON USED TO WORK WITH THE C.I.D., AS WELL,
9 DIDN'T HE?

10 A I'M NOT AWARE OF THAT, IT'S POSSIBLE.

11 Q SO WHAT OCCURS IS THAT IN THE YEAR 1999, THE COLD
12 CASE UNIT GETS STARTED, I THINK THROUGH THE SHERIFF.
13 MR. CRAIG COMES ON?

14 A ACTUALLY YOU'RE INCORRECT. IT WAS 1997 WHEN IT
15 STARTED.

16 Q THAT'S CORRECT, GET THAT DOWN, ABSOLUTELY. IN THE
17 YEAR AUGUST 2000, MR. CRAIG EITHER IS ASSIGNED THIS
18 CASE OR HE COMES TO WORK WITH THE COLD CASE UNIT?

19 A ACTUALLY, HE PICKED IT UP IN 1999.

20 Q ALL RIGHT. IN THE YEAR 2000, MR. CRAIG OPENS AT
21 LEAST -- EXCUSE ME, 1999 STARTS HIS INVESTIGATION
22 INTO THIS CASE AGAIN, CORRECT, SIR?

23 A THAT'S MY UNDERSTANDING, YES, SIR.

24 Q HE, MR. CRAIG, FINDS OUT THAT THE GUN AND THE BULLETS
25 ARE AT S.L.E.D. AND ASKS S.L.E.D. TO COMPARE THESE

1 THREE BULLET FRAGMENTS WITH THIS GUN, CORRECT, SIR;
2 IS THAT RIGHT?
3 A YES, SIR.
4 Q NOW, BECAUSE OF THE WAY POLICE AGENCIES HAVE TO DO
5 DIFFERENT THINGS, YOU HAD TO MAKE AN AUTHORIZATION.
6 IN OTHER WORDS, YOU HAVE TO WRITE -- DO YOU HAVE TO
7 WRITE CHIEF STEWART, ROBERT STEWART?
8 A YES, SIR. THEY REQUEST A COVER LETTER.
9 Q DO YOU HAVE THAT LETTER WITH YOU?
10 A YES, SIR. I HAVE A COPY OF IT.
11 Q MAY I SEE IT FOR JUST ONE SECOND?
12 A SURE.
13 Q (PAUSE.) MR. WILSON ON AUGUST 11TH, 2000, THROUGH
14 CHIEF STEWART, THE HEAD OF OUR STATE LAW ENFORCEMENT
15 DIVISION, YOU ASKED THAT THIS GUN AND THESE BULLETS
16 BE EVALUATED AGAIN BY THE STATE LAW ENFORCEMENT
17 DIVISION, CORRECT, SIR?
18 A CORRECT.
19 Q ALL RIGHT. NOW, MAJOR, DURING THE PERIOD OF TIME
20 THAT YOU HAVE BEEN A LAW ENFORCEMENT OFFICER, HAVE
21 YOU BEEN OUT TO STATE LAW ENFORCEMENT DIVISION ON
22 NUMEROUS OCCASIONS?
23 A YES, SIR.
24 Q ALL RIGHT, SIR. YOU ARE A GRADUATE OF THE SOUTH
25 CAROLINA CRIMINAL JUSTICE ACADEMY; IS THAT CORRECT,

1 SIR?

2 A YES, SIR.

3 Q HAVE YOU BEEN TO THE F.B.I. NATIONAL ACADEMY?

4 A YES, SIR.

5 Q BY GOING TO THE STATE LAW ENFORCEMENT DIVISION, IN

6 OTHER WORDS, THAT SERVES AS A RESOURCE FOR POLICE

7 AGENCIES THROUGHOUT THIS STATE, DOES IT NOT, SIR?

8 A THAT'S CORRECT.

9 Q WHEN YOU SUBMIT SOMETHING TO S.L.E.D., A FOOTPRINT

10 THAT YOU WANT TO MATCH TO SOMETHING ELSE, THE STATE

11 LAW ENFORCEMENT DIVISION ATTEMPTS TO DO THAT FOR THE

12 RICHLAND COUNTY SHERIFF'S DEPARTMENT?

13 A IF WE WILL DO THAT, YES, SIR.

14 Q YES, SIR. FINGERPRINTS?

15 A THEY WOULD DO THAT.

16 Q TIRE MARKS?

17 A YES, SIR.

18 Q FIBER ANALYSIS?

19 A I'M NOT SURE THEY DO THAT.

20 Q ALL RIGHT, SIR. D.N.A.?

21 A SOMETHING LIKE THAT, YES, SIR.

22 Q ALL RIGHT. AND THE STATE LAW ENFORCEMENT DIVISION

23 DOES THAT, NOT ONLY AT NO COST TO THE RICHLAND COUNTY

24 SHERIFF'S DEPARTMENT, BUT TO ANY LAW ENFORCEMENT

25 AGENCY IN SOUTH CAROLINA, CORRECT, SIR?

1 A THAT'S CORRECT.

2 Q THEY SERVE AS THE RESOURCE TO WHOM ALL LAW
3 ENFORCEMENT AGENCIES FROM THE CITY OF DENMARK, SOUTH
4 CAROLINA TO SPARTANBURG COUNTY, CORRECT, SIR?

5 A YES, SIR.

6 Q AND EVERYBODY IN BETWEEN, CORRECT, SIR?

7 A ALL POLICE AGENCIES, YES, SIR.

8 Q ALL RIGHT, SIR.

9 JUST ONE SECOND PLEASE, YOUR HONOR.

10 (PAUSE).

11 MR. WILSON, IF I SHOWED YOU A PICTURE, COULD YOU
12 IDENTIFY THAT, PLEASE, SIR?

13 A THAT'S ONE OF THE BUILDINGS AT THE STATE LAW
14 ENFORCEMENT DIVISION.

15 Q WELL, ACTUALLY, WHAT THAT BUILDING IS, IS SOMETHING
16 THAT'S ENTITLED THE FORENSIC SERVICES LABORATORY,
17 CORRECT, SIR?

18 A I THINK THAT'S PART OF WHAT THAT BUILDING IS, YES,
19 SIR.

20 THE COURT: ANY OBJECTION?

21 MS. CAMPBELL: NO, YOUR HONOR, NO OBJECTION.

22 THE COURT: WITHOUT OBJECTION.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 4 WAS MARKED
24 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

25 BY MR. DELGADO

1 Q THIS IS THE FORENSIC LABORATORY AT THE SOUTH CAROLINA
2 LAW ENFORCEMENT DIVISION, CORRECT, SIR?

3 A AS FAR AS I KNOW, YES, SIR.

4 Q WHAT WE DO THERE WITH THE VARIOUS SCIENTISTS THAT ARE
5 EMPLOYED, WE DO ALL SORTS OF FORENSIC EXAMINATIONS,
6 CORRECT?

7 A CORRECT

8 Q ONE OF THOSE IS WHERE BALLISTICS EXAMINERS ATTEMPT TO
9 MATCH UP DIFFERENT BULLET, BULLET FRAGMENTS, THAT ARE
10 SUPPOSED TO BE FIRED BY DIFFERENT WEAPONS, CORRECT?

11 A THAT'S CORRECT.

12 Q AS A MATTER OF FACT, THIS IS, IN EFFECT, THE GREAT
13 GRANDSON, IF YOU WILL, OF MR. MILLARD CATE. BY THAT
14 I MEAN NOT THE SAME PERSON, BUT THE POINT IS HE IS
15 THE ONE WHO STARTED THE FORENSIC DIVISION AT
16 S.L.E.D.; CORRECT, SIR?

17 A I HAVE NO IDEA, SIR.

18 Q THAT WAS BEFORE YOUR TIME?

19 A VERY MUCH SO.

20 Q MR. CATE, YOU KNOW BY REPUTATION, AS BEING THE
21 BALLISTICS EXAMINER IN 1961?

22 A ONLY WITH THIS CASE, SIR. I HAVE NO OTHER KNOWLEDGE.

23 Q ALL RIGHT, SIR. BUT IN ANY EVENT, WHAT THE STATE LAW
24 ENFORCEMENT DIVISION DID AS A RESULT OF YOUR REQUEST
25 TO THEM, THEY RE-EVALUATED -- PURSUANT TO YOUR

1 LETTER, THEY RE-EVALUATED THAT GUN AND THOSE BULLETS,
2 CORRECT, SIR?
3 A THAT'S CORRECT.
4 Q DO YOU HAVE THERE IN YOUR REPORT, SIR, THE REPORT
5 FROM MR. IRA PARNELL?
6 A I DON'T THINK I DO. LET ME LOOK.
7 Q IF YOU DON'T, I THINK I HAVE ONE.
8 A I DON'T THINK I BROUGHT THEM.
9 (PAUSE).
10 Q SEE IF YOU CAN IDENTIFY THAT, PLEASE, SIR.
11 A IT SEEMS TO BE A STANDARD FIREARMS REPORT FROM
12 S.L.E.D. IT'S ADDRESSED TO INVESTIGATOR BRIAN METZ.
13 Q BEFORE WE GET ANY FURTHER, LET'S MAKE CERTAIN WE
14 UNDERSTAND WHO THESE FOLKS ARE.
15 A YES.
16 Q THIS IS MR. METZ RIGHT HERE AT THE TABLE?
17 A THAT'S CORRECT.
18 Q HE IS WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT,
19 CORRECT?
20 A YES, HE IS.
21 Q AND HE DOES A LOT OF WORK WITH MISSING PERSONS, BUT
22 HE'S WORKING COLD CASE IN THIS UNIT WITH MR. CRAIG?
23 A THAT'S CORRECT.
24 Q ALL RIGHT, SIR. SO MR. IRA PARNELL DOES ANOTHER
25 EVALUATION OF -- WITH THIS GUN AND THESE BULLET

1 FRAGMENTS, CORRECT, SIR?

2 A THAT'S CORRECT.

3 Q PURSUANT TO YOUR REQUEST?

4 A THAT'S CORRECT.

5 Q WHAT IS THE DATE ON THAT, SIR?

6 A MARCH 20TH, 2001.

7 Q THAT LOOKS TO ME LIKE IT'S 40 YEARS TO AT LEAST THE

8 MONTH. WOULD THAT BE FAIR, MR. WILSON, 1961 TO 2001?

9 A I DON'T HAVE THE DATE OF THE ACTUAL CASE, I DON'T

10 BELIEVE. WELL, I'VE GOT FEBRUARY 28TH, '61, THAT

11 WOULD BE CORRECT, SIR.

12 Q ALL RIGHT, SIR. AND THE INDIVIDUAL WHO SUBMITTED

13 THAT REPORT WAS LIEUTENANT IRA PARNELL, CORRECT, SIR?

14 A YES.

15 Q AND YOU KNOW MR. PARNELL, DO YOU NOT, SIR?

16 A I TALKED TO HIM ON THE PHONE.

17 Q YOU NEVER MET HIM, AS FAR AS YOU KNOW?

18 A I MAY HAVE.

19 Q ALL RIGHT. IF I TOLD YOU HE WAS A LIEUTENANT WITH

20 THE FORENSICS SERVICES DIVISION OF THE STATE LAW

21 ENFORCEMENT DIVISION, WOULD THAT SURPRISE YOU?

22 A NO, SIR, BECAUSE IT SAYS LIEUTENANT ON THE REPORT.

23 Q VERY GOOD. NOW, IN BETWEEN 1961 AND MARCH 20TH,

24 2001, WAS THERE ANY OTHER EVALUATIONS BY ANY OTHER

25 LAW ENFORCEMENT AGENCIES, SIR?

1 A ON THE WEAPONS?

2 Q NO, SIR, I'M SORRY.

3 A NO, SIR, NOT THAT I'M AWARE OF.

4 (COUGHING).

5 Q WE'LL GET YOU SOME WATER.

6 A IT'S NOT GOING TO HELP. I'M GETTING OVER PNEUMONIA.
7 I'VE GOT IT.

8 Q I'M SO SORRY..

9 WOULD YOU SHARE WITH OUR JURY, SIR, THE
10 OPERATIVE PART OF THAT, AND BY THAT, SIR, I MEAN,
11 WHAT IS MR. PARNELL'S REPORT? WHAT IS THE BOTTOM
12 LINE OF HIS REPORT? WHAT DOES HE SAY?

13 A "ON ITEMS THREE, FOUR, AND FIVE COULD HAVE BEEN FIRED
14 BY ITEM ONE, ITEM TWO, OR ANY OTHER SIMILARLY RIFLED
15 FIREARMS OF THE SAME CALIBER."

16 Q THE FIRST PAGE ON THE BOTTOM, WHERE DOES IT SAY THE
17 WORD "INCONCLUSIVE" AND READ THAT FOR OUR JURY,
18 PLEASE?

19 A IT SAYS THE RESULTS OF THIS REEXAMINATION WERE
20 INCONCLUSIVE.

21 Q THE RESULTS OF THIS REEXAMINATION WERE INCONCLUSIVE,
22 CORRECT?

23 A THAT'S CORRECT.

24 Q THAT LETTER OF MARCH 20TH FROM LIEUTENANT IRA
25 PARNELL, OR THAT REPORT, IS SENT TO MR. METZ; IS THAT

1 CORRECT?

2 A THAT'S CORRECT.

3 Q BUT DO YOU, SIR, DO YOU FEEL, MR. WILSON, THAT THE

4 STATE LAW ENFORCEMENT DIVISION DOESN'T HAVE THE

5 ABILITY TO BE ABLE TO EVALUATE BALLISTICS LIKE THIS,

6 SIR?

7 A RUN THAT BY ME AGAIN.

8 Q HUH?

9 A CAN YOU RESTATE THAT?

10 Q CERTAINLY. CAN YOU SAYING FOR OUR JURY THAT, IN YOUR

11 OPINION, THE STATE LAW ENFORCEMENT DIVISION DOES NOT

12 HAVE THE ABILITY TO CONDUCT ADEQUATE AND PROFESSIONAL

13 EXAMINATIONS OF THIS GUN TO ATTEMPT TO MATCH THEM TO

14 THESE FRAGMENTS, SIR?

15 A NO, SIR.

16 Q SO YOU'RE NOT CHALLENGING THEIR REPORT, ARE YOU,

17 MAJOR WILSON?

18 A NO, SIR, I'M NOT.

19 Q WELL, MR. CRAIG MUST HAVE CHALLENGED THAT REPORT,

20 DIDN'T HE, BECAUSE HE WENT OUT AND GOT ANOTHER

21 EVALUATION, DIDN'T HE?

22 A NO, SIR, I DID.

23 Q THROUGH HIM. YOU DIDN'T KNOW ANYTHING ABOUT THIS

24 CASE AT ALL.

25 A I WASN'T WORKING DAY-TO-DAY, NO, SIR.

1 Q YES, SIR, TO BE ACCURATE, BUT AS ADMINISTRATOR, YOU
2 MOVE UP IN RANK, WOULD THAT BE FAIR?

3 A THAT WOULD BE FAIR.

4 Q YOU DIDN'T KNOW ABOUT THIS CASE AT ALL, DID YOU?

5 A PRIOR TO MR. CRAIG BRINGING IT TO MY ATTENTION, NO,
6 SIR, I DIDN'T. I NEVER HEARD OF THE CASE.

7 Q SO, MR. CRAIG WENT OUT AND HE GOT -- FOUND AN
8 EXAMINER, RIGHT?

9 A HIM AND BRIAN METZ, YES, SIR.

10 Q YES, SIR, ALL RIGHT. AND THEN IN APRIL -- I THINK IT
11 WAS APRIL -- WAS IT APRIL THE 3RD WAS WHEN MR. CAYTON
12 FROM OSBORNE, MISSOURI GIVES HIS REPORT. HE SAYS
13 IT'S A MATCH, CORRECT, SIR? BY THAT HE SAYS ITS
14 "CONCLUSIVE", WOULD THAT BE FAIR?

15 A GIVE ME ONE SECOND PLEASE.

16 (PAUSE).

17 I THOUGHT I HAD A COPY OF HIS REPORT, BUT I
18 DON'T HAVE THE EXACT DATE.

19 Q IF I TOLD YOU APRIL 3RD, WOULD THAT SURPRISE YOU?

20 A IT COULD BE. I'M JUST NOT FAMILIAR WITH IT.

21 Q LET ME JUST CHECK MY NOTES.

22 (PAUSE).

23 IT'S APRIL 2ND, I FOUND IT, ALL RIGHT. MR. JOHN
24 CAYTON FROM MISSOURI, APRIL 2ND?

25 A YES, SIR.

1 MR. DELGADO: YOUR HONOR, MAY WE MOVE
2 MR. PARNELL'S REPORT INTO EVIDENCE PLEASE.
3 THE COURT: DO YOU HAVE ANY OBJECTION?
4 MS. CAMPBELL: YES, SIR.
5 THE COURT: YOU OBJECT?
6 MS. CAMPBELL: IT'S HEARSAY.
7 SUSTAINED.
8 MS. CAMPBELL: MR. PARNELL WILL BE TESTIFYING.
9 THE COURT: SUSTAINED.
10 BY MR. DELGADO
11 Q AS A MATTER OF FACT, YOU ALL -- MR. WILSON, YOU ALL,
12 BY THAT I MEAN THE RICHLAND COUNTY SHERIFF'S
13 DEPARTMENT AND/OR THE SOLICITOR'S OFFICE PAID A
14 LITTLE OVER \$4,300 TO MR. CAYTON SO FAR FOR HIS
15 EVALUATION, HELP IN THIS CASE; IS THAT CORRECT, SIR?
16 A NO, \$2,700 SO FAR.
17 Q I'M TALKING ABOUT TOGETHER, MR. WILSON.
18 A THAT'S WHAT I'M TALKING ABOUT. WE PAID \$1,350,
19 APPROXIMATELY HALF OF THE \$2,700 FOR THE ORIGINAL
20 EXAMINATION. WE HAVE RECEIVED A BILL FOR ADDITIONAL
21 STUFF, BUT WE HAVE NOT PAID.
22 Q THAT'S RIGHT, \$1,600?
23 A APPROXIMATELY.
24 Q IF YOU ADD THOSE TOGETHER, A LITTLE OVER \$4,300 SO
25 FAR?

1 A APPROXIMATELY, YES.

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

4 (PAUSE).

5 MR. WILSON, THAT'S ALL THE QUESTIONS I HAVE FOR
6 YOU, SIR.

7 THE WITNESS: ALL RIGHT.

8 THE COURT: ANY REDIRECT?

9 MS. CAMPBELL: YES, SIR.

10 REDIRECT EXAMINATION:

11 BY MS. CAMPBELL

12 Q I WANT TO ASK YOU A FEW THINGS, MAJOR. I CALL YOU
13 MAJOR YOU'RE ACTUALLY CHIEF DEPUTY?

14 A YES.

15 Q MR. DELGADO WAS ASKING YOU ABOUT SUBMITTING EVIDENCE
16 AND THAT ALL EVIDENCE GOES TO S.L.E.D. THAT IS NOT
17 TRUE, IS IT, SIR?

18 A NOT ALL EVIDENCE, NO, MA'AM.

19 Q AND DIFFERENT EVIDENCE GOES TO DIFFERENT DEPARTMENTS
20 WITHIN YOUR PURVIEW.

21 A WE DO A LOT OF OUR OWN EXAMINATIONS.

22 Q AGAIN, AS WE TALKED ABOUT EARLIER, IT'S NOT UNUSUAL
23 FOR EVIDENCE TO BE SENT TO OTHER LABORATORIES IN THE
24 STATE OR OUT OF THE STATE, CORRECT?

25 A THAT'S CORRECT.

1 Q AND IN EVERY ONE OF THOSE CASES, BE IT A RAPE CASE,
2 AN ARMED ROBBERY, WHATEVER --

3 MR. DELGADO: OBJECTION.

4 THE COURT: SUSTAINED, AND DON'T TALK SO FAST,
5 MADAM SOLICITOR.

6 MS. CAMPBELL: YES, SIR.

7 THE COURT: THE COURT REPORTER HAS TO GET IT
8 DOWN.

9 MS. CAMPBELL: YES, SIR. I'M SORRY, JUDGE. I'M
10 WORRIED I'M GOING TO FORGET SOMETHING.

11 BY MS. CAMPBELL

12 Q IN EVERY ONE OF THOSE CASES, WE PAY FOR THE RESULTS,
13 CORRECT?

14 A IN MOST CASES, YES, MA'AM.

15 Q AND HE ALSO ASKED YOU ABOUT THE DECISION TO GET
16 MR. CAYTON TO REVIEW THIS EVIDENCE, CORRECT?

17 A THAT'S CORRECT.

18 Q AND THIS IS A DECISION THAT WAS NOT MADE JUST BY YOUR
19 DEPARTMENT; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q AND YOU HAD MULTIPLE -- YOU CAN'T TALK ABOUT WHAT YOU
22 SAID, BUT YOU HAD MANY CONVERSATIONS?

23 MR. DELGADO: OBJECTION AS TO THE LEADING.

24 THE COURT: SUSTAINED, REPHRASE.

25 BY MS. CAMPBELL

1 Q DID YOU HAVE ANY CONVERSATIONS WITH PEOPLE FROM MY
2 OFFICE, AS WELL AS OTHER PEOPLE, ABOUT WHETHER OR NOT
3 TO GET THIS EVIDENCE REVIEWED?
4 A YES, MA'AM, WE DID.
5 Q AND YOU WERE AWARE AT THAT POINT IN EARLY FEBRUARY OF
6 2001 OF WHAT THE RESULTS WERE AT S.L.E.D.?
7 A WE HAD GOTTEN THE RESULTS VERBALLY, YES.
8 Q VERBALLY. EVEN THOUGH THE REPORT WASN'T DONE, THEY
9 TYPED THE REPORT LATER?
10 A THAT'S CORRECT.
11 Q BUT YOU KNEW WHAT THOSE RESULTS WERE BEFORE YOU WENT
12 AND INVESTIGATED -- GETTING SOMEONE ELSE TO DO IT?
13 A THAT'S CORRECT.
14 Q AND YOU'VE WORKED ON MANY HOMICIDE CASES; IS THAT
15 CORRECT?
16 A I'M SORRY, I COULDN'T HEAR.
17 Q YOU WORKED ON MANY HOMICIDES -- YOU'VE JUST GOTTEN
18 OUT OF THE HOSPITAL RECENTLY WITH PNEUMONIA?
19 A THAT'S CORRECT.
20 Q YOU'VE WORKED ON MANY HOMICIDE CASES; IS THAT
21 CORRECT?
22 A THAT'S CORRECT.
23 Q AND YOU ARE FAMILIAR WITH THE TERM "INCONCLUSIVE"?
24 A YES.
25 Q DOES THAT MEAN THAT THIS GUN DIDN'T FIRE THESE

1 BULLETS?

2 A NO, MA'AM, IT DOESN'T.

3 Q WELL, WHAT DOES THAT MEAN?

4 A THAT MEANS BASED ON THEIR EXPERTISE AND EXPERIENCE,
5 THEY COULD NOT MATCH THE GUN.

6 Q THEY COULDN'T MATCH IT?

7 A THEY COULDN'T MATCH THOSE BULLETS TO THAT GUN UNDER
8 THEIR EXPERTISE.

9 Q THEY DIDN'T SAY THESE BULLETS WEREN'T FIRED BY THIS
10 GUN?

11 A NO, MA'AM, THEY DID NOT.

12 Q AND IN FACT, THE OPPOSITE IS WHAT WAS SAID?

13 A THAT'S CORRECT, THAT THEY COULD HAVE BEEN.

14 Q AND AT THAT POINT, YOU WENT AND SENT IT TO SOMEONE
15 ELSE?

16 A AT THAT POINT, WE INITIATED THE SEARCH FOR SOMEBODY
17 WHO WOULD HAVE MORE EXPERTISE ON THIS PARTICULAR TYPE
18 OF GUN AND AMMUNITION.

19 Q AND LET ME GET ONE THING STRAIGHT, ALL OF THIS WAS
20 DONE PROPERLY IN THE CHAIN OF COMMAND, AS IT SHOULD
21 BE?

22 A THAT'S CORRECT.

23 Q AND YOU'RE THE PERSON THAT REQUESTED THAT MR. CAYTON
24 LOOK AT THESE ITEMS?

25 A THAT'S CORRECT.

1 MS. CAMPBELL: I DON'T HAVE ANYTHING ELSE.

2 THE COURT: ANY RECROSS?

3 MR. DELGADO: YES, SIR. JUST ONE QUESTION.

4 RECROSS-EXAMINATION:

5 BY MR. DELGADO

6 Q MR. WILSON, I'M SORRY. THE REASON SOMEBODY MAY SAY
7 IT'S INCONCLUSIVE IS BECAUSE THEY HAVE A REASON TO
8 DOUBT IT'S A MATCH; ISN'T THAT RIGHT?

9 A I WOULD SAY AT THAT POINT THEY'RE NOT CONFIDENT THAT
10 IT'S A MATCH, YES, SIR.

11 Q THEY'RE NOT CONFIDENT THAT IT'S A MATCH.

12 A THAT'S CORRECT.

13 MR. DELGADO: LET ME PUT THAT DOWN, I LIKE THAT.
14 THANK YOU, SIR.

15 MS. CAMPBELL: THANK YOU.

16 THE COURT: YOU MAY STEP DOWN -- YOU SAID ONE
17 THING.

18 MR. DELGADO: YES, I'M THROUGH.

19 THE COURT: ALL RIGHT. THANK YOU, SIR. WHO IS
20 YOUR NEXT WITNESS?

21 MR. MCMAHON: IRA PARNELL.

22 THE COURT: ALL RIGHT. CALL HIM.

23 THE CLERK: IF YOU COME FORWARD PLEASE, PLACE
24 YOUR LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

25 IRA PARNELL, 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 MR. MCMAHON: CAN YOU TAKE THAT WITH YOU?

5 MR. DELGADO: HUH?

6 MR. MCMAHON: CAN YOU TAKE THAT WITH YOU.

7 THE WITNESS: MY NAME IS IRA BYRD PARNELL, JR.,
8 P-A-R-N-E-L-L.

9 DIRECT EXAMINATION:

10 BY MR. MCMAHON

11 Q MR. PARNELL, WE'VE HEARD A LOT ABOUT YOU. WE FEEL
12 LIKE WE ALREADY KNOW YOU. BY WHOM ARE YOU EMPLOYED?

13 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
14 DIVISION, ALSO KNOWS AS S.L.E.D.

15 Q HOW LONG HAVE YOU BEEN WITH S.L.E.D., MR. PARNELL?

16 A THIS COMING SEPTEMBER 5TH, IT WILL BE 30 YEARS.

17 Q AND WHAT VARIOUS POSITIONS AND DUTIES HAVE YOU HELD
18 DURING THAT 30-YEAR PERIOD OF TIME?

19 A I STARTED OFF AS AN ASSISTANT AGENT ANSWERING THE
20 TELEPHONE AT NIGHT AND RUNNING THE BLOOD HOUNDS. I
21 DID THAT FOR ABOUT TEN MONTHS. ON JUNE 30TH, 1973, I
22 WAS ASSIGNED TO THE FIREARMS IDENTIFICATION
23 LABORATORY AT S.L.E.D.

24 Q DID YOU KNOW MR. CATE?

25 A I DID.

1 Q DID YOU WORK FOR LIEUTENANT CATE IN THE LAB?

2 A I DID.

3 Q WHEN DID HE RETIRE? I'M NOT REALLY SURE.

4 A HE RETIRED IN 1977.

5 Q SO NOW, IN THAT FOUR YEAR PERIOD OF TIME, YOU WORKED

6 WITH AND KNEW HIM BEFORE '73, BUT FOR THAT FOUR YEAR

7 PERIOD OF TIME, YOU WERE UNDER HIS SUPERVISION; IS

8 THAT CORRECT?

9 A THAT'S CORRECT.

10 Q OKAY. AND YOUR CURRENT POSITION IS WHAT, LIEUTENANT

11 PARNELL?

12 A I'M SUPERVISOR OF THE FIREARMS IDENTIFICATION

13 LABORATORY.

14 Q AND HOW MANY FIREARMS EXAMINERS DO YOU HAVE AT

15 S.L.E.D.?

16 A THERE ARE FIVE TRAINED EXAMINERS, INCLUDING MYSELF,

17 AND TWO EXAMINERS IN TRAINING.

18 Q NOW, LIEUTENANT, OBVIOUSLY IN THE PAST, YOU HAVE BEEN

19 OFFERED AND ACCEPTED AS AN EXPERT IN THE FIELD OF

20 FIREARMS IDENTIFICATION?

21 A YES, SIR, I HAVE.

22 Q ON NUMEROUS OCCASIONS?

23 A YES, SIR.

24 Q HAVE YOU EVER BEEN OFFERED AND NOT ACCEPTED AS AN

25 EXPERT IN THE FIELD OF FIREARMS IDENTIFICATION?

1 A NO, SIR.

2 Q AS A MATTER OF FACT, I HAVE CALLED YOU ON NUMEROUS

3 CASES I HAVE TRIED OVER MY 32-YEAR CAREER IN THIS

4 FIELD AS AN EXPERT IN THE AREA OF FIREARMS

5 IDENTIFICATION; IS THAT CORRECT?

6 A THAT'S CORRECT, SIR.

7 MR. MCMAHON: YOUR HONOR, I WOULD OFFER

8 LIEUTENANT PARNELL AS AN EXPERT IN THE AREA OF FIREARMS

9 IDENTIFICATION.

10 MR. DELGADO: YES, YOUR HONOR, WITHOUT

11 OBJECTION.

12 THE COURT: WITHOUT OBJECTION.

13 BY MR. MCMAHON

14 Q NOW, LIEUTENANT, WELL, FIRST OFF, LET ME ASK YOU A

15 QUESTION: YOU HAVEN'T ALWAYS BEEN IN DEFENSE EXHIBIT

16 NO. 4, HAVE YOU?

17 A NO, SIR, WE HAVE NOT.

18 Q AND HOW OLD IS THAT BUILDING NOW?

19 A IT'S 12 YEARS OLD.

20 Q BEFORE Y'ALL WERE IN THIS BUILDING, WHERE WERE Y'ALL

21 AT?

22 A WE WERE IN THE BACK PORTION OF WHAT WE CALL THE ROCK

23 BUILDING OR THE MAIN S.L.E.D. HEADQUARTERS BUILDING.

24 Q PRETTY CRAMPED QUARTERS, THE OLD BUILDING?

25 A IT'S PRETTY CRAMPED, YES, SIR.

1 Q AND IN FACT, IS THIS BUILDING GETTING A LITTLE
2 CRAMPED?
3 A YES, SIR.
4 Q YOUR OPINIONS WEREN'T ANY BETTER OR ANY WORSE WHEN
5 YOU WERE DOWN IN THE BASEMENT NEXT DOOR, WERE YOU?
6 A I DON'T THINK SO, NO, SIR.
7 Q I DON'T EITHER. A NEWER BUILDING DOESN'T MEAN BETTER
8 OPINIONS, DOES IT?
9 A NO, SIR.
10 Q A SMALLER BUILDING DOESN'T MEAN WORSE OPINIONS?
11 A NO, SIR.
12 Q YOU HAVE QUALITY EQUIPMENT IN THE OLD BUILDING AND
13 QUALITY EQUIPMENT IN THE NEW BUILDING.
14 A THAT'S CORRECT.
15 Q NOW, LIEUTENANT WERE YOU -- WHEN WERE YOU FIRST
16 CONTACTED BY ANY OFFICER OR OFFICERS WITH THE
17 RICHLAND COUNTY SHERIFF'S DEPARTMENT ABOUT THIS
18 PARTICULAR CASE? CAN YOU TELL US ABOUT THAT?
19 A LET ME LOOK BACK AND SEE. IT WAS APPROXIMATELY
20 AUGUST OF 2000.
21 Q AND WHO CONTACTED YOU?
22 A I TALKED WITH CARL CRAIG AND BRIAN METZ.
23 Q SO YOU TALKED BOTH WITH MR. CRAIG AND SERGEANT METZ,
24 CORRECT?
25 A THAT'S CORRECT, SIR.

1 Q NOW, AS A RESULT OF -- WHAT WERE THEY REQUESTING YOU
2 TO DO?
3 A THEY WERE ASKING FOR ANY INFORMATION THAT WE MIGHT
4 HAVE HAD REGARDING THE CASE OF MR. JOHN ORNER.
5 Q WERE THEY LOOKING FOR ITEMS OF PHYSICAL EVIDENCE?
6 A THEY WERE BASICALLY ASKING FOR INFORMATION, TO BEGIN
7 WITH.
8 Q THEY DIDN'T KNOW WHETHER YOU HAD ANY INFORMATION OR
9 ITEMS OF PHYSICAL EVIDENCE WHATSOEVER; IS THAT
10 CORRECT?
11 A THAT'S CORRECT.
12 Q AS A RESULT OF THAT CONVERSATION YOU HAD WITH
13 SERGEANT METZ AND MR. CRAIG, WHAT DID YOU DO,
14 LIEUTENANT?
15 A I ADVISED THEM THAT -- AGAINST ALL ODDS I, IN FACT,
16 DID HAVE THE PHYSICAL EVIDENCE ON THE CASE THEY WERE
17 ASKING ABOUT.
18 Q AND AGAINST ALL ODDS, YOU'RE TALKING ABOUT THE
19 PASSAGE OF TIME?
20 A EXACTLY.
21 Q IS THAT RIGHT, THAT YOU WOULD STILL HAVE THESE
22 PHYSICAL ITEMS OF EVIDENCE IN THE POSSESSION AND
23 CUSTODY OF S.L.E.D.?
24 A THAT'S CORRECT.
25 Q WHERE DID YOU FIND THEM? TELL THE JURY HOW YOU FOUND

1 THEM, WHERE YOU FOUND THEM?

2 A WE HAD TO BACK UP JUST A LITTLE BIT TO LIEUTENANT
3 CATE'S CAREER. AS I SAID, HE RETIRED IN 1977, AND HE
4 PASSED HIS OPEN CASES OR UNSOLVED CASES TO ONE OF OUR
5 OTHER EXAMINERS.

6 WHEN THAT EXAMINER MOVED ON TO ANOTHER
7 ASSIGNMENT, HE PASSED IT ON TO ME, SO I KIND OF
8 INHERITED THIS PARTICULAR EVIDENCE. IT WAS IN A BOX
9 IN MY EVIDENCE ROOM SECURED WITH EVIDENCE TAPE AND
10 INITIALLED. I HAD LOOKED IN THE BOX, I THINK ONE
11 TIME THAT I REMEMBER IN THE LAST 29 YEARS.

12 Q OKAY.

13 A IT WAS IN -- WHEN I OPENED IT, IT WAS IN PRISTINE
14 CONDITION.

15 Q ALMOST LIKE -- WHEN YOU SAY PRISTINE CONDITION, THERE
16 WERE -- HOW MANY WEAPONS WERE IN THERE?

17 A THERE WERE TWO FIREARMS.

18 Q TWO FIREARMS, AND TEST BULLETS FROM '61?

19 A CORRECT.

20 Q AND THE THREE FRAGMENTS THAT WE'VE ALREADY HAD
21 INTRODUCED TO EVIDENCE, AND I'M GOING TO SHOW THEM TO
22 YOUR SHORTLY; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q AND AS A MATTER OF FACT, DO YOU REMEMBER SOME OF THE
25 BOXES THAT WERE IN THE BOXES THE EVIDENCE WAS IN?

1 A I DO, SIR.

2 Q AND WHAT TYPE OF BOXES WERE THEY?

3 A THEY WERE THE OLD CARDBOARD CIGAR BOXES.

4 Q MY GRANDDADDY SMOKED THOSE TAMPA NUGGET?

5 A YES, SIR.

6 Q AND THERE WAS SOME EVIDENCE IN THIS BOX?

7 A THAT'S CORRECT.

8 Q AND THEN THAT WAS IN A CIGAR BOX; IS THAT RIGHT?

9 A YES, SIR, IN THAT WHITE BOX YOU HAVE THERE ON YOUR

10 DESK.

11 Q YES. SO AGAINST ALL ODDS, IF THIS WAS IN 2000, THIS

12 39-YEAR-OLD CASE, YOU FOUND THOSE PHYSICAL ITEMS OF

13 EVIDENCE?

14 A YES, SIR. AS SOON AS THEY STARTED ASKING ABOUT IT, I

15 WAS FAMILIAR WITH THE NAME ORNER, SO I KNEW THAT I

16 HAD IT.

17 Q AND YOU WERE FAMILIAR WITH THE NAME ORNER FROM THE

18 PAST, FROM WORKING WITH MR. CATE, LIEUTENANT CATE,

19 KNOWING LIEUTENANT CATE HAD WORKED ON THE CASE?

20 A ACTUALLY, FROM HAVING WRITTEN IT ON THE SIDE OF THE

21 BOX, JUST AN UNUSUAL NAME. I HAD HEARD HIM MENTION

22 THE CASE OVER THE YEARS, NOT WITH ANY DISCUSSION OR

23 ANYTHING, BUT JUST MENTION IT.

24 Q OH, SO YOU SAW THE NAME ON THE BOX IN YOUR EVIDENCE

25 ROOM --

1 A YES.

2 Q -- IS WHAT YOU'RE SAYING? AND YOU WERE FAMILIAR WITH

3 THAT SOMEWHAT UNUSUAL NAME.

4 A CORRECT.

5 Q NOW, ONCE YOU LOCATED THESE ITEMS OF EVIDENCE, WHAT'S

6 THE NEXT STEP YOU TOOK?

7 A I ADVISED MR. METZ AND MR. CRAIG THAT I DID, IN FACT,

8 HAVE THE EVIDENCE, AND THEY WERE UNDERSTANDABLY

9 EXCITED OVER THAT FACT AND WANTED TO KNOW IF I WOULD

10 RE-EXAMINE IT.

11 I REQUESTED THAT THEY GET A LETTER OF REQUEST

12 FROM SOMEONE OF AUTHORITY AT THE SHERIFF'S DEPARTMENT

13 TO MY CHIEF TO BASICALLY AUTHORIZE MY RE-EXAMINING A

14 CASE THAT S.L.E.D. HAD ALREADY EXAMINED PREVIOUSLY.

15 Q SO YOU DID THIS ON THE REQUEST OF SOMEONE UP THEIR

16 CHAIN OF COMMAND?

17 A YES, SIR; THAT'S CORRECT.

18 Q AND I BELIEVE THAT WAS PERHAPS THEN MAJOR, AND SINCE

19 THEN, DEPUTY CHIEF WILSON, I BELIEVE?

20 A THAT'S CORRECT, SIR. I HAVE A COPY OF THAT LETTER.

21 Q YOU HAVE A COPY OF THAT LETTER? CAN I SEE THAT, SIR?

22 YOU HAVE IT? I JUST WANT TO SEE THE DATE.

23 A YES.

24 Q ALL RIGHT. SO APRIL 11TH OF 2000, THEN MADE -- TO

25 NOW DEPUTY CHIEF WILSON, WRITES THE LETTER REQUESTING

1 THE RE-EXAMINATION --

2 A YES, SIR.

3 Q -- IS THAT RIGHT OR EXAMINATION?

4 A THAT'S CORRECT.

5 Q NOW, AS A RESULT OF THAT, WHAT DID YOU DO? HOW DID
6 YOU CONDUCT THIS EXAMINATION? JUST TALK US THROUGH
7 ONE GENERALLY, AND THEN WE'LL TALK ABOUT THIS ONE
8 SPECIFICALLY.

9 A IN ALMOST ANY FIREARMS COMPARISON CASE, THE QUESTION
10 GENERALLY IS WAS OR WAS NOT A FIRED BULLET OR A FIRED
11 CARTRIDGE CASE FIRED BY THE FIREARM THAT IS
12 SUBMITTED. THAT WAS BASICALLY THE QUESTION HERE.

13 WE JUST HAD TWO FIREARMS, AND WE HAD THREE
14 BULLET FRAGMENTS. WE HAD SOME TEST BULLETS TO
15 EXAMINE, AND I JUST SIMPLY WAS ASKED TO TRY TO
16 DETERMINE WHETHER OR NOT EITHER ONE OF THE GUNS THAT
17 WERE IN EVIDENCE THAT I HAD FIRED OR DID NOT FIRE THE
18 THREE BULLET FRAGMENTS THAT WERE ALSO IN THAT
19 EVIDENCE PACKAGE.

20 Q AND I'M GOING TO SHOW YOU THESE THREE BULLET
21 FRAGMENTS THAT HAVE BEEN PREVIOUSLY MARKED 30, 31,
22 AND 32 AND ASK YOU IF THESE ARE, IN FACT, THE SAME
23 FRAGMENTS THAT YOU FOUND LOCATED IN YOUR EVIDENCE
24 ROOM IN A BOX MARKED "ORNER" IN YOUR EVIDENCE ROOM IN
25 AUGUST OF 2000?

1 A (PAUSE). YES, SIR. THESE ARE THE SAME FRAGMENTS
 2 THAT I RE-EXAMINED.
 3 Q AND WHEN YOU WERE LOOKING THEN, TELL THE JURY,
 4 EXPLAIN TO THE JURY WHAT YOU WERE DOING THEN,
 5 LIEUTENANT.
 6 A I WAS USING A MAGNIFIER TO ENLARGE MY SMALL
 7 HANDWRITING ON THE OUTSIDE OF THE EVIDENCE PACKAGES.
 8 Q AND YOU WOULD NORMALLY MARK THE EVIDENCE PACKAGE OF
 9 ANY EVIDENCE THAT YOU EXAMINED, CORRECT?
 10 A YES, SIR, ALL THE TIME.
 11 Q AND AMONG THOSE WEAPONS THAT YOU EXAMINED, I WANT TO
 12 SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS STATE'S
 13 EXHIBIT NO. 6 FOR IDENTIFICATION AND ASK YOU IF YOU
 14 CAN IDENTIFY THAT ITEM.
 15 A YES, SIR, I CAN.
 16 Q IS THAT ONE OF THE TWO FIREARMS THAT YOU EXAMINED?
 17 A IT IS, SIR.
 18 Q AND FOUND IN THE BOX MARKED ORNER IN REGARDS TO THIS
 19 CASE?
 20 A THAT'S CORRECT.
 21 Q AND WHAT IS THE SERIAL NUMBER ON THAT PARTICULAR
 22 ITEM?
 23 A THE SERIAL NUMBER ON THIS GUN IS W, WILLIAM, 9948.
 24 MS. CAMPBELL: YOUR HONOR, I WOULD OFFER ITEM 6
 25 INTO EVIDENCE.

1 THE COURT: ANY FURTHER OBJECTION?
2 MR. DELGADO: SUBJECT TO THE PREVIOUS OBJECTION.
3 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS ADMITTED
4 INTO EVIDENCE.)
5 BY MR. MCMAHON
6 Q AND THERE WAS ANOTHER WEAPON?
7 A THAT'S CORRECT, YES, SIR.
8 Q CAN YOU IDENTIFY THIS ITEM FOR US, PLEASE?
9 A YES, SIR, I CAN.
10 Q AND WHAT'S THE SERIAL NUMBER ON THAT ITEM?
11 A W, WILLIAM, 9893.
12 Q AND WAS THAT ONE OF THE TWO REVOLVERS THAT WAS IN THE
13 BOX MARKED "ORNER" THAT YOU LOCATED IN AUGUST OF
14 2000?
15 A YES, SIR, IT WAS.
16 Q AND YOU SAY THAT SERIAL NUMBER WAS W 9893?
17 A THAT'S CORRECT.
18 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THAT
19 ITEM INTO EVIDENCE ALSO.
20 THE COURT: ALL RIGHT. ANY OBJECTION TO THAT?
21 MR. DELGADO: JUST RELEVANCE.
22 MR. MCMAHON: SURE, IF THEY DON'T WANT IT IN.
23 THE COURT: OKAY. WITHDRAWN.
24 MR. MCMAHON: THAT'S THE W 9893.
25 BY MR. MCMAHON

1 Q NOW, ONCE YOU LOCATED THIS ITEM, AND I TALKED YOU
2 THROUGH IT, HOW DO YOU CONDUCT AN EXAMINATION? JUST
3 TALK US THROUGH THAT.

4 A THIS PARTICULAR EXAMINATION WAS A LITTLE UNUSUAL IN
5 THAT IT WAS 40 YEARS OLD AND SOMETHING THAT I HAD
6 HEARD ABOUT IN MY YOUNG CAREER EARLY ON MENTIONED IN
7 A CONVERSATION OR TWO.

8 WHEN I GOT TO RE-EXAMINE IT, IT WAS KIND OF
9 UNUSUAL, NUMBER ONE, THAT THE EVIDENCE WAS WHERE IT
10 WAS AND THAT IT WAS IN EXCELLENT CONDITION.

11 BASICALLY WHAT I DID WAS I WENT THROUGH THE BOX
12 THAT I HAD SEALED THE EVIDENCE UP IN TO DETERMINE
13 WHAT, IN FACT, WAS THERE, BECAUSE I HAD NEVER LOOKED
14 THROUGH IT.

15 THERE WERE TWO FIREARMS, AS WE DISCUSSED, THE
16 THREE BULLET FRAGMENTS. THERE WERE TEST BULLETS, IN
17 OTHER WORDS, BULLETS THAT WERE SIMILAR IN
18 CONSTRUCTION AND CALIBER TO THE EVIDENCE THAT WERE
19 FIRED THROUGH STATE'S EXHIBIT 6 BY LIEUTENANT CATE
20 EARLY ON.

21 I EXAMINED THOSE TEST BULLETS WITH EACH OTHER
22 FROM BOTH FIREARMS AND DETERMINED THAT BOTH FIREARMS
23 WERE, IN FACT, CONSISTENT IN THEIR MARKINGS.

24 IN OTHER WORDS, EACH BULLET THAT EXPIRED THROUGH
25 EACH GUN BARREL WAS MARKED BY THE IMPERFECTIONS

1 INSIDE THAT GUN BARREL AND BY NO OTHER BARREL. I
2 COULD MICROSCOPICALLY DIFFERENTIATE BETWEEN THE TWO.

3 I THEN EXAMINED THE ITEMS OF EVIDENCE, STATE'S
4 EXHIBITS 30, 31, AND 32, THE THREE BULLET FRAGMENTS
5 THAT WERE REPORTED TAKEN FROM MR. ORNER'S HEAD.

6 I CLEANED THEM, SOAKED THEM OVERNIGHT WITH SOME
7 SALINE SOLUTION, BRUSHED THEM WITH A SOFT BRUSH. I
8 MICROSCOPICALLY EXAMINED EACH OF THESE SPECIMENS
9 HERE.

10 I THEN TEST FIRED STATE'S EXHIBIT NO. 6, THAT
11 PARTICULAR REVOLVER, MYSELF USING THE SAME CALIBER,
12 THE SAME BRAND, AND THE SAME STYLE OF AMMUNITION.

13 I WAS ABLE TO MATCH THE TEST THAT I FIRED TO THE
14 TEST MR. CATE FIRED 40 YEARS AGO, MICROSCOPICALLY, BY
15 LOOKING AT THE MARKS LEFT ON THE TEST BULLETS TO THE
16 IMPERFECTIONS INSIDE OF THIS GUN BARREL.

17 I THEN MICROSCOPICALLY COMPARED STATE'S
18 EXHIBITS 30, 31, AND 32 WITH MY TEST.
19 MICROSCOPICALLY SPEAKING, TWO OF THE FRAGMENTS THAT I
20 REEVALUATED INDEPENDENTLY WERE WHAT WE TERM
21 "UNSUITABLE".

22 THEY WERE NOT IN ANY CONDITION -- THEY HAD NO
23 INDIVIDUAL MARKINGS LEFT ON THEM SUITABLE TO IDENTIFY
24 THAT PARTICULAR FRAGMENT WITH A PARTICULAR GUN.

25 THE THIRD FRAGMENT BORE A STRIKING SIMILARITY TO

1 TEST BULLETS THAT I FIRED, AS WELL AS THE TEST
2 BULLETS MR. CATE FIRED TO STATE'S EXHIBIT 6.

3 IF, IN FACT, THIS IS ONE BULLET, I COULD NOT
4 PHYSICALLY MATCH THESE FRAGMENTS BACK TOGETHER LIKE A
5 PUZZLE AND SAY YES, IN FACT, THEY WERE ONE BULLET AT
6 ONE TIME.

7 SO I INDEPENDENTLY EVALUATED EACH FRAGMENT ON
8 ITS OWN MERITS. THE ONE THAT WAS MARKED THE BEST,
9 WHICH I CAN TELL YOU EXACTLY WHICH ONE THAT WAS.

10 MY ITEM THREE BULLET, AS I REMARKED THEM, WHICH
11 IS -- THEY'RE MARKED NOW, IT WOULD BE STATE'S
12 EXHIBIT 30.

13 Q WHAT'S THE WEIGHT OF THAT, CAN YOU SEE ON THERE?

14 A 31.3 GRAINS.

15 Q OKAY.

16 A IT'S APPROXIMATELY A THIRD OF A BULLET OF A 32
17 CALIBER. I MICROSCOPICALLY COMPARED MY TEST TO ALL
18 THREE OF THESE FRAGMENTS, AND I WAS UNABLE TO REACH A
19 POSITIVE CONCLUSION BECAUSE OF THE DAMAGE TO THE
20 BULLETS AND THE SMALL AMOUNT OF STRIATED MARKINGS
21 THAT WERE LEFT.

22 Q NOW, I WANT TO BREAK THAT DOWN A LITTLE BIT, IF I
23 COULD. WHAT CAUSES A BULLET TO -- WELL, FIRST OFF,
24 YOU SAID YOU DIDN'T MAKE THE ASSUMPTION OR COULD NOT
25 MAKE THE ASSUMPTION THAT THESE THREE FRAGMENTS WERE

1 FIRED BY ONE BULLET OR WERE PARTS OF ONE BULLET?
2 A THAT'S CORRECT, YES.
3 Q AND CAN YOU TELL US THE WEIGHT OF EACH OF THOSE
4 FRAGMENTS?
5 THE COURT: 403, MR. SOLICITOR.
6 MR. MCMAHON: SIR?
7 THE COURT: 403. YOU JUST TOOK THAT WEIGHT
8 DOWN. YOU'VE ALREADY GOT THAT. YOU JUST TOOK THAT DOWN,
9 403.
10 MR. MCMAHON: YES, SIR.
11 THE COURT: MOVE ON, NEXT QUESTION.
12 MR. MCMAHON: I'M ASKING HIS WEIGHTS.
13 THE COURT: ARE THEY GOING TO BE DIFFERENT?
14 MR. MCMAHON: I DON'T KNOW.
15 THE COURT: ALL RIGHT.
16 MR. MCMAHON: YES, SIR.
17 THE WITNESS: ALL RIGHT. STATE'S EXHIBIT 30 IS
18 31.1 GRAINS.
19 BY MR. MCMAHON
20 Q 31.3?
21 A YES, SIR.
22 Q 31?
23 A STATE'S EXHIBIT 31 IS 23.8.
24 Q OKAY.
25 A AND STATE'S EXHIBIT 32 IS 36.5.

1 Q NOW, APPROXIMATELY 91.6 GRAINS. NOW, WERE YOU ABLE
2 TO DETERMINE FROM THOSE FRAGMENTS WHAT THE CALIBER OF
3 THE BULLET WAS?

4 A IT WAS MY OPINION IT WAS A 32 SMITH AND WESSON LONG
5 CALIBER PROJECTILE.

6 Q AND WERE YOU ABLE DO DETERMINE ANY OTHER TYPE OF
7 COATING THE BULLET HAD?

8 A IT HAD WHAT WE CALL A LUBALOY COATING. IT'S A VERY
9 THIN COPPER GILDING THAT WAS PUT ON BULLETS, ALMOST
10 ALL BULLETS, AT THIS PARTICULAR TIME 40 YEARS AGO.

11 THE PURPOSE OF THIS COATING WAS BASICALLY
12 LUBRICATION, TO KEEP THE BARREL FROM LEADING UP OR
13 GETTING MELTED LEAD INSIDE OF IT.

14 Q WHEN YOU USE THE TERM "SMITH AND WESSON", THAT HAS
15 NOTHING TO DO WITH THE MAKER OF THE WEAPON, CORRECT?

16 A THAT'S CORRECT.

17 Q THAT'S THE MAKER OF THE AMMUNITION, WHEN YOU SAY 32
18 SMITH AND WESSON, OR IS THAT A TERM OF ART?

19 A IT'S ACTUALLY A CALIBER.

20 Q OKAY.

21 A THE 32 SMITH AND WESSON IS A CARTRIDGE THAT WAS
22 ORIGINATED AND MARKETING UNDER SMITH AND WESSON'S
23 NAME. SO WHETHER IT WAS FIRED IN AN H & R OR COLT OR
24 WHATEVER IT WAS, THE CALIBER IS STILL 32 SMITH AND
25 WESSON.

1 Q NO QUESTION, THOUGH, IT WAS A 32 CALIBER SMITH AND
2 WESSON LUBALOY BULLET?
3 A THAT'S MY OPINION, YES, SIR.
4 Q NOW, WHAT IS THE WEIGHT OF INTACT 32 CALIBER SMITH
5 AND WESSON LUBALOY BULLET?
6 A IN THIS CASE, WE'RE TALKING ABOUT A 32 CALIBER SMITH
7 AND WESSON LONG, WHICH IS DIFFERENT FROM A 32 SMITH
8 AND WESSON. A 32 SMITH AND WESSON LONG NORMALLY OR
9 USUALLY WEIGHS 98 GRAINS OR SO.
10 Q SO, OBVIOUSLY, THIS IS LESS THAN A TOTAL INTACT
11 BULLET OF THAT DESCRIPTION; IS THAT CORRECT?
12 A THAT'S CORRECT.
13 Q AND IF YOU MAKE AN ASSUMPTION WITH ONE ENTRANCE WOUND
14 AND NO EXIT WOUND.
15 MR. DELGADO: OBJECTION, YOUR HONOR. I DON'T
16 KNOW IF MR. PARNELL KNOWS THAT.
17 THE COURT: I'LL OVERRULE THAT OBJECTION. GO
18 AHEAD.
19 BY MR. MCMAHON
20 Q IF YOU MAKE THE ASSUMPTION THERE WAS ONE ENTRANCE
21 WOUND AND NO EXIT WOUND AND THESE THREE FRAGMENTS
22 CAME OUT OF THE HEAD OF MR. ORNER, IT'S NOT AN
23 UNREASONABLE ASSUMPTION TO SAY THERE'S ONE BULLET?
24 A NO, SIR, THERE ISN'T.
25 Q THAT'S THE POINT I WAS MAKING.

1 NOW, DID YOU DETERMINE THAT THIS WAS FIRED BY A
2 32 HARRINGTON AND RICHARDSON REVOLVER?

3 A YES. THE CLASS CHARACTERISTICS ARE CONSISTENT. IN
4 OTHER WORDS, LET ME BACK UP JUST A LITTLE BIT.

5 Q SURE, CERTAINLY.

6 A STATE'S EXHIBIT NO. 6, 32 H & R OR HARRINGTON AND
7 RICHARDSON REVOLVER HAS WHAT WE CALL SIX LANDS AND
8 SIX GROOVES. THESE ARE WAVES THAT ARE PUT INSIDE THE
9 BARREL TO CAUSE A BULLET TO SPIN, TO STABILIZE.

10 IF YOU LOOK DOWN THE GUN BARREL FROM THE MUZZLE
11 END TOWARDS YOUR HAND, YOU WOULD SEE WHAT WOULD
12 APPEAR TO BE A SERIES OF SPIRALLING LINES, AND THERE
13 WOULD BE SIX.

14 YOU MIGHT BE ABLE TO SEE 12, BUT THERE ARE SIX
15 RAISED PLACES WITH FLAT TOP ALMOST EQUAL DISTANCE
16 FROM SIX DEPRESSED PLACES OR PLACES WHICH METAL HAD
17 BEEN REMOVED. IT'S ALMOST LIKE A LITTLE SMALL SQUARE
18 BOTTOMED DITCH.

19 DURING THE RIFLING PROCESS OR THE CUTTING OF
20 THIS RIFLING, IMPERFECTIONS ARE LEFT INSIDE THAT GUN
21 BARREL BY RIFLING TUBES.

22 THESE IMPERFECTIONS ARE TRANSFERRED OR
23 TRANSPPOSED BY EACH BULLET THAT IS FIRED THROUGH THAT
24 BARREL. THESE IMPERFECTIONS ARE UNIQUE AND
25 INDIVIDUAL TO EACH PARTICULAR FIREARM.

1 32 H & R REVOLVERS TYPICALLY HAVE SIX LANDS AND
2 GROOVES WITH A RIGHT DIRECTIONAL TWIST, WHICH IS JUST
3 LIKE THROWING A FOOTBALL AND SPINNING IT TO THE
4 RIGHT.

5 A LEFT-HANDED QUARTERBACK WOULD SPIN IT TO THE
6 LEFT. THE PURPOSE OF RIFLING IS TO STABILIZE THE
7 BULLET AND SPIN, THAT'S ALSO TO STABILIZE THE BULLET,
8 AND THAT'S WHAT WE TERM "TWIST".

9 THE CLASS CHARACTERISTICS OR THE IMPRESSIONS
10 LEFT ON AT LEAST STATE'S EXHIBIT NO. 30 WERE
11 CONSISTENT WITH HAVING BEEN FIRED THROUGH A 32 SMITH
12 AND WESSON -- I MEAN, NOT A 32 SMITH AND WESSON,
13 CALIBER H & R MANUFACTURED REVOLVER.

14 Q NOW, DID YOU SEE ANY INDIVIDUAL CHARACTERISTIC
15 AGREEMENT NOTED BETWEEN 9948, STATE'S 6, AND THE
16 BULLET FRAGMENT THAT YOU USED IN YOUR EVALUATION?

17 A YES, SIR, I DID.

18 Q AND TELL US AGAIN -- HOLD UP WHAT STATE'S EXHIBIT
19 THAT IS.

20 A THAT WOULD BE STATE'S EXHIBIT NO. 30.

21 Q ALL RIGHT, SIR. SO STATE'S EXHIBIT NO. 30, YOU
22 SAW -- WHAT DID YOU SEE IN THIS COMPARISON TO STATE'S
23 EXHIBIT NO. 6?

24 A I SAW A REMARKABLE INDIVIDUAL SIMILARITY, BUT A VERY
25 SMALL BIT OF IT.

1 Q AND AS YOU SAID, IN YOUR OPINION, THESE TWO WERE NOT
2 SUITABLE, AND YOU DIDN'T ASSUME THAT THIS WAS ALL ONE
3 BULLET --

4 A THAT'S CORRECT.

5 Q -- IN YOUR EVALUATION; IS THAT CORRECT?

6 A YES, SIR.

7 Q DID YOU SEE ANY REMARKABLE INDIVIDUAL CHARACTERISTIC
8 AGREEMENT BETWEEN STATE'S EXHIBIT NO. 30, I BELIEVE
9 IS YOUR TERMINOLOGY, AND THE OTHER WEAPON YOU
10 EXAMINED?

11 A NO, SIR. I SAW NO SIMILARITY BETWEEN THOSE TWO
12 ITEMS.

13 Q THOSE TWO ITEMS BEING --

14 A STATE'S 30 --

15 Q -- THE BULLET FRAGMENT?

16 A -- AND THE OTHER REVOLVER.

17 Q NOW, OPINION, DID YOU EXCLUDE THIS WEAPON, STATE'S
18 30, AS BEING THE WEAPON THAT FIRED THIS BULLET
19 FRAGMENT?

20 A NO, SIR.

21 Q YOU DIDN'T MAKE ANY EVALUATION AS TO THESE FRAGMENTS
22 AND THIS WEAPON BECAUSE YOUR OPINION IS THEY'RE NOT
23 SUITABLE FOR IDENTIFICATION?

24 A I EVALUATED STATE'S EXHIBIT 30 AND 31, BUT I SAW
25 INSUFFICIENT MARKINGS ON THERE FOR ME TO GO ANY

1 FURTHER WITH.

2 Q CORRECT.

3 A SO TO ANSWER YOUR QUESTION, NO.

4 Q DID YOU FIND THIS TO BE POSITIVE, THIS WEAPON AND

5 ONLY THIS WEAPON, FIRED THIS FRAGMENT?

6 A NO, SIR, I DID NOT.

7 Q WHAT WAS YOUR OPINION?

8 A MY OPINION WAS THAT IT WAS AN INCONCLUSIVE RESULT,

9 AND THERE ARE DEGREES OF INCONCLUSIVE SHADING FROM NO

10 SIMILARITIES NOTED, TO A LOT OF SIMILARITIES NOTED,

11 TO NOT QUITE ENOUGH.

12 IN THE CASE OF STATE'S EXHIBIT 30, THE BULLET

13 FRAGMENT FROM MR. ORNER'S HEAD, THE FRAGMENT, AND

14 STATE'S EXHIBIT NUMBER 6, THIS PARTICULAR REVOLVER, I

15 FOUND A REMARKABLE SIMILARITY BETWEEN THOSE TWO

16 ITEMS. IT WAS JUST NOT QUITE ENOUGH FOR ME TO

17 CONCLUDE THAT IT WAS FIRED OUT OF THAT REVOLVER AND

18 NO OTHER GUN EVER MADE.

19 Q A MATTER OF DEGREES?

20 A YES, SIR.

21 Q A MATTER OF DEGREES. YOU KNOW PEDRO, YOU KNOW

22 MR. STOKES?

23 A I DO.

24 Q YOU KNOW MR. STOKES UNDER MR. CATE.

25 A YES.

1 Q YOU KNOW HIS OPINION EXCLUDED THE OTHER WEAPON.

2 A THAT'S CORRECT.

3 Q AND THE OTHER EXAMINERS AT S.L.E.D. NOW, I MEAN, THEY
4 MAY BRING A STRING OF THEM IN HERE, WHICH IS FINE,
5 LIEUTENANT DEFRESE, MR. COLLINS, MR. WHITTIER,
6 MR. PAAVEL, THEIR OPINION AGREES WITH YOURS.

7 A THAT'S CORRECT.

8 MR. MCMAHON: THANK YOU, LIEUTENANT.

9 THE COURT: ALL RIGHT. MR. FOREMAN LADIES AND
10 GENTLEMEN, WE'LL TAKE A SHORT BREAK. DON'T BEGIN ANY
11 COMMENT OR DISCUSSION ABOUT THE CASE AND WE'LL COME BACK
12 AND GO UNTIL 1 O'CLOCK.

13 (WHEREUPON, THE JURY LEFT OPEN COURT AT
14 APPROXIMATELY 11:47 A.M.)

15 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

16 THE COURT: OKAY. BRING THE JURY IN.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
18 APPROXIMATELY 12:01.)

19 THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

20 THE COURT: ALL RIGHT. MR. DELGADO.

21 CROSS-EXAMINATION:

22 BY MR. DELGADO

23 Q MR. PARNELL, LET'S GET RIGHT TO IT, YOUR EVALUATION
24 MARCH OF 2001, YOUR TEST RESULTS ARE INCONCLUSIVE,
25 CORRECT?

1 A THAT'S CORRECT.

2 Q DO YOU TODAY CHANGE THAT RESULT?

3 A NO, SIR.

4 Q YOU STAND BY THAT RESULT?

5 A I DO.

6 Q ONE OF THE THINGS THAT HAPPENED TO MR. MCMAHON, I

7 DON'T KNOW WHEN WHETHER HE TALKED ABOUT IT OR NOT,

8 BUT SOMETIME AFTER MR. CAYTON GAVE HIS EVALUATION,

9 YOU AND MR. MCMAHON WENT TO KANSAS CITY, DID YOU NOT,

10 SIR?

11 A THAT'S CORRECT.

12 Q NOW, HE'S PUT YOU UP ON, AS HIS EXPERT IN A WHOLE

13 VARIETY OF CASES OVER THE YEARS, CORRECT?

14 A YES, SIR; YES, SIR.

15 Q SPANNING 20, 25 YEARS PROBABLY?

16 A AT LEAST, YES, SIR.

17 Q BOTH HERE AND IN LEXINGTON COUNTY WHERE HE USED TO

18 WORK?

19 A CORRECT.

20 Q AT ANY OTHER TIME, AT ANY OTHER TIME, HAVE YOU EVER

21 GONE WITH A PROSECUTOR TO MEET ANOTHER BALLISTICS

22 EXAMINER WITH WHOM YOU HAD A DISAGREEMENT?

23 A I CAN'T THINK OF ANOTHER TIME WHERE I WAS ASKED TO

24 ACCOMPANY OUT OF THE STATE, BUT WE REALLY DIDN'T HAVE

25 A DISAGREEMENT AS SUCH WITH A DIFFERENT CONCLUSION, A

1 LITTLE DIFFERENT DEGREE OF CONCLUSION.

2 Q IN THIS CASE, YOU DO HAVE A DIFFERENT CONCLUSION, DO

3 YOU NOT, SIR?

4 A A DIFFERENT DEGREE OF CONCLUSION, YES, SIR.

5 Q BECAUSE HIS IS CONSISTENT AND YOURS IS INCONSISTENT,

6 CORRECT?

7 A MINE IS INCONCLUSIVE.

8 Q INCONCLUSIVE, I'M SORRY, INCONCLUSIVE. ISN'T THAT

9 CORRECT, SIR?

10 A THAT'S CORRECT.

11 Q YOU STOOD BY THAT REPORT THAT YOU ISSUED TO MR. METZ

12 IN MARCH OF 2001, CORRECT, SIR?

13 A I DO.

14 Q NOW, LET'S BACK UP FOR JUST ONE SECOND, THE STATE LAW

15 ENFORCEMENT DIVISION, WHICH IS THE LABORATORY

16 DIVISION, WHICH IS HOUSED IN THIS BUILDING, THAT'S

17 WHERE YOU WORK EVERY DAY?

18 A YES, SIR.

19 Q AND IF YOU WEREN'T HERE TODAY TESTIFYING IN THIS

20 COURT, WHERE WOULD YOU BE?

21 A GETTING READY TO GO TO LUNCH.

22 Q I DESERVED THAT. THAT WAS PERFECT. ALL RIGHT.

23 WHERE WOULD YOU RETURN AFTER LUNCH IF YOU WERE NOT

24 HERE, SIR?

25 A TO THE SECOND FLOOR OF THAT BUILDING, SIR.

1 Q THAT'S RIGHT, BECAUSE THAT'S WHERE YOU WORK, THAT'S
2 WHERE YOUR OFFICES ARE LOCATED, CORRECT, SIR?
3 A THAT'S CORRECT.
4 Q THAT'S WHERE YOU DO THIS SCIENTIFIC TECHNICAL WORK AS
5 A FORENSICS BALLISTICS EXAMINER?
6 A YES, SIR.
7 Q YOU HEAD UP THAT PART OF THE STATE LAW ENFORCEMENT
8 DIVISION LABORATORY?
9 A I DO.
10 Q YOU SUPERVISE, I THINK YOU SAID, FIVE DIFFERENT OTHER
11 INDIVIDUALS?
12 A SEVEN, I'M SORRY.
13 Q I'M SORRY, SEVEN OF THEM, ALL RIGHT. AT THE STATE
14 LAW ENFORCEMENT DIVISION, THERE ARE RULES AND
15 REGULATIONS ABOUT HOW WE DO THINGS IN THE SCIENTIFIC
16 FIELD, WOULD THAT BE FAIR?
17 A YES, WE HAVE A PROTOCOL.
18 Q EXACTLY. THOSE PROTOCOLS ARE WRITTEN DOWN ABOUT
19 DETAILS ABOUT HOW WE RECEIVE EVIDENCE, HOW WE
20 EVALUATE IT, HOW AND WHEN WE DO A REPORT, ALL SORTS
21 OF DIFFERENT THINGS.
22 A YES, SIR; THAT'S CORRECT.
23 Q AS A MATTER OF FACT, SIR, I WANT TO -- YOU WERE THE
24 ONE FROM THE STATE LAW ENFORCEMENT DIVISION FOR THE
25 FIREARMS PROVISION -- I MEAN PORTION. YOU WERE THE

1 ONE WHO SIGNED OFF ON THE PROTOCOLS FOR THE LAB, SIR?

2 A CORRECT, THAT'S CORRECT.

3 Q I WANT TO HAND YOU THIS.

4 I'M SORRY, JUST ONE SECOND.

5 (PAUSE).

6 MR. PARNELL, I'M SORRY. I THINK THEY ARE HERE.

7 NO, SIR, I DON'T KNOW WHAT I DID WITH THEM.

8 I'LL FIND THEM ONE DAY.

9 THOSE ARE THE WRITTEN RULES AND REGULATIONS

10 ABOUT HOW YOU AND THOSE UNDERNEATH YOU OPERATE IN THE

11 FORENSIC DIVISION?

12 A YES, SIR; THAT'S CORRECT.

13 Q YOU, IN FACT, ARE THE PERSON WHO PUT THOSE TOGETHER?

14 A YES, SIR.

15 Q YOU PASS THEM UP THE LINE FOR REVIEW, CORRECT, SIR?

16 A CORRECT.

17 Q PART OF WHAT WE DO IN THAT TYPE OF A CASE, SIR, IN A

18 BALLISTICS EXAMINATION, WOULD YOU TELL OUR JURY, IT'S

19 NOT JUST YOUR TESTIMONY ALONE THAT GOES INTO THAT

20 INCONCLUSIVE, IS IT, SIR?

21 A NO, SIR. WE HAVE WHAT WE CALL A PEER REVIEW PROCESS.

22 THE PEER REVIEW PROCESS INVOLVES THE EXAMINATION OR

23 THE REEXAMINATION OF EVIDENCE BY ANOTHER QUALIFIED

24 EXAMINER.

25 THIS IS PART OF OUR ACCREDITATION PROCESS, WHICH

1 IS REQUIRED FOR THE S.L.E.D. LABORATORY TO REMAIN
2 ACCREDITED NATIONALLY.

3 Q AND IN TRUTH, THIS FORENSIC LABORATORY IS ACCREDITED
4 NATIONALLY, IS IT NOT, SIR?

5 A YES, IT IS.

6 Q AND BY WHOM IS IT ACCREDITED, SIR?

7 A THE ACRONYM IS A.S.C.L.D., BUT IT'S THE ASSOCIATION
8 OF CRIME LABORATORY DIRECTORS. IT'S NATIONWIDE GROUP
9 OF INDIVIDUALS WHO BASICALLY GO AROUND AND INSPECT
10 LABORATORIES FOR ADHERENCE TO CERTAIN STANDARDS.

11 Q THE ASSOCIATION OF CRIME LAB DIRECTORS, THEY GIVE
12 THAT AWAY, THAT NATIONAL ACCREDITATION, DO THEY?

13 A NO, SIR.

14 Q TELL US ABOUT THAT.

15 A WELL, THERE'S A PROCESS WHERE A TEAM OF INSPECTORS
16 COMES IN, AND THE HOST AGENCY OR THE REQUESTING
17 AGENCY HAS TO BASICALLY FOOT THE BILL TO BE
18 INSPECTED.

19 Q WHAT TYPE OF WRITTEN PAPER PRODUCT DO YOU NEED BEFORE
20 A.S.C.L.D. WOULD GIVE YOU THAT NATIONAL
21 CERTIFICATION, SIR?

22 A WELL, ONE OF THEM IS A PROTOCOL MANAGER, THE OTHER,
23 OF COURSE, APPLY, WHICH IS A LENGTHY APPLICATION, AND
24 YOU HAVE TO ADHERE TO STRINGENT STANDARDS. THAT IS A
25 MANUAL THAT IS MAYBE ABOUT AN INCH-AND-A-HALF THICK

1 OF ANY REQUIREMENTS.

2 Q DO YOU KNOW OF ANY OTHER CRIME LABORATORY IN SOUTH

3 CAROLINA THAT IS SO ACCREDITED BY A.S.C.L.D.?

4 A CRIME LABORATORY, NO, SIR, OTHER DEPARTMENTS ARE

5 ACCREDITED BY A SISTER AGENCY, WHICH IS NOT THE

6 LABORATORY. I DON'T KNOW OF A LABORATORY THAT IS.

7 Q ALL RIGHT, SIR. S.L.E.D. IS THE ONLY LABORATORY IN

8 THIS STATE, AS BEST AS YOU UNDERSTAND IT?

9 A TO MY KNOWLEDGE.

10 Q THAT'S SOMETHING THE STATE LAW ENFORCEMENT DIVISION

11 TAKES SERIOUSLY AND IS AN ACCOLADE TO THE STATE LAW

12 ENFORCEMENT DIVISION, CORRECT, SIR?

13 A THAT'S CORRECT.

14 Q YOU ALL TAKE PRIDE IN YOUR WORK, WOULD THAT BE FAIR?

15 A WE DO.

16 Q PART OF THIS PEER REVIEW PROCESS; IS THAT RIGHT?

17 A YES, SIR.

18 Q THIS PEER REVIEW PROCESS IS A MULTISTEP PROCESS.

19 WOULD THAT BE FAIR TO SAY?

20 A YES, SIR. IT'S DONE ONLY AFTER I COMPLETE MY

21 EXAMINATION OF A PARTICULAR ITEM OF EVIDENCE.

22 Q ALL RIGHT, SIR. LET'S EXPLAIN THAT TO THE JURY.,

23 AFTER YOU CAME TO YOUR OPINION THAT THE RESULTS WERE

24 INCONCLUSIVE, YOU PASSED THIS GUN AND THESE FRAGMENTS

25 TO ANOTHER EXAMINER IN YOUR OFFICE, DID YOU NOT, SIR?

1 A THAT'S CORRECT.

2 Q ALL RIGHT. HIS NAME IS DAN DEFREESE, CORRECT, SIR?

3 A YES, SIR.

4 Q MR. DEFREESE, IN FACT, WAS YOUR PREDECESSOR HANGING
5 OVER THAT DIVISION; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q HE HAS NOW COME BACK TO WORK SOME IN YOUR DIVISION,
8 CORRECT?

9 A YES, SIR; THAT'S CORRECT.

10 Q WOULD YOU TELL OUR JURY, SIR, WHEN MR. DEFREESE
11 LOOKED AT THIS, THIS WOULD HAVE BEEN JANUARY,
12 FEBRUARY, MARCH OF 2001?

13 A IT'S FEBRUARY 6TH OF 2001.

14 Q ALL RIGHT, SIR. NOW, WOULD YOU TELL OUR JURY, SIR,
15 WHETHER OR NOT MR. DEFREESE IS TOLD BY YOU WHAT YOUR
16 RESULTS ARE?

17 A NO, SIR. IT'S A BLIND REEXAMINATION.

18 Q THAT MEANS, THAT'S TO ENSURE THE SCIENTIFIC
19 RELIABILITY, WOULD THAT BE FAIR?

20 A YES, SIR.

21 Q SO WHEN DAN DEFREESE LOOKED AT THIS AND LOOKED AT
22 THESE BULLETS, HE DIDN'T KNOW WHAT YOUR OPINION WAS,
23 DID HE?

24 A NO, SIR.

25 Q IS IT D-E-F-R-E-E-Z-E?

1 A S-E.

2 Q S-E, I'M SORRY, YOU'RE, RIGHT.

3 MR. DEFREESE ENGAGES IN THIS -- IN A BLIND

4 SENSE. HE DOESN'T KNOW ANYTHING.

5 A NO, SIR.

6 Q TELL OUR JURY, SIR, WHAT HIS -- EXCUSE ME, HOW LONG

7 HAD MR. DEFREESE WORKED AS A BALLISTICS EXAMINER WITH

8 THE FORENSIC DIVISION OF YOUR LAB?

9 A HE CAME TO WORK IN 1967, TO THE BEST OF MY

10 RECOLLECTION.

11 Q AND BY WHOM WAS HE TRAINED, SIR?

12 A BY LIEUTENANT CATE.

13 Q AND IF HE IS STILL WORKING THERE, HE'S BEEN WORKING

14 THERE A GOOD 35 YEARS.

15 A YES, SIR, WITH A SHORT GAP IN BETWEEN FOR OTHER

16 DUTIES.

17 Q WOULD YOU TELL OUR JURY, SIR, WHAT DAN DEFREESE

18 REPORTED BACK TO YOU WAS HIS EVALUATION?

19 A HE WAS ALSO IN AGREEMENT WITH MY FINDINGS OF

20 INCONCLUSIVE.

21 Q AND THAT'S CALLED A MICROVERIFICATION; IS THAT

22 CORRECT?

23 A THAT'S CORRECT.

24 Q TELL OUR JURY WHAT THAT MEANS, SIR?

25 A IT MEANS THAT HE VERIFIED WHAT I SAW MICROSCOPICALLY.

1 Q HE LOOKED AT IT UNDER A MICROSCOPE TO DO THE SAME
2 THING THAT YOU HAD DONE?
3 A THAT'S CORRECT.
4 Q BUT HE DIDN'T LOOK AT IT WHILE YOU WERE STANDING
5 THERE. HE EITHER HAD IT AT A DIFFERENT TIME OR
6 DIFFERENT PLACE OR A DIFFERENT MICROSCOPE?
7 A TYPICALLY, I'LL HAND THE SPECIMEN TO WHOEVER HANDED
8 IT TO ME. HE WOULD EITHER GO SIT DOWN, GO GET A CUP
9 OF COFFEE.
10 Q IN FACT, YOU LEAVE THE ROOM?
11 A VERY OFTEN I DO.
12 Q AND THE REASON FOR THAT IS SO THAT YOU DON'T
13 INFLUENCE HIM OR HER OR WHAT YOU SAW OR DIDN'T SEE,
14 WHAT YOUR OPINION IS OR ANYTHING, CORRECT?
15 A THAT'S CORRECT.
16 Q BUT IT DOESN'T STOP THERE WITH DAN DEFREESE. WHO
17 ELSE LOOKED AT THAT BULLET AND THIS GUN, SIR?
18 A IN THIS PARTICULAR CASE, ALL THE OTHER EXAMINERS IN
19 THAT OFFICE. DO YOU WANT THEM BY NAME?
20 Q YEAH, AND DO IT SLOW SO I CAN WRITE IT.
21 A VELLO PAAVEL.
22 Q I'M SORRY, VELLO?
23 A YES.
24 Q P-A-A-V-E-L?
25 A CORRECT.

1 Q JUST FOR OUR EDIFICATION OF OUR JURY, DO YOU HAPPEN
2 TO KNOW WHERE MR. PAAVEL USED TO WORK BEFORE HE CAME
3 TO THE STATE LAW ENFORCEMENT DIVISION?
4 A I'M PRETTY SURE IT WAS AT RICHLAND COUNTY, BUT I'M
5 NOT POSITIVE.
6 Q ALL RIGHT, SIR. HE WAS A FORENSIC INVESTIGATOR WITH
7 THE SHERIFF'S DEPARTMENT.
8 A I WOULDN'T SWEAR TO THAT, BUT I UNDERSTAND IT MAY BE
9 CORRECT.
10 Q WHAT DID MR. PAAVEL REPORT BACK TO YOU WAS HIS
11 OPINION?
12 A HE ALSO DID NOT SEE ANYTHING THAT BASICALLY SAID THIS
13 IS THE GUN, SO HE WAS INCONCLUSIVE ALONG WITH US.
14 Q INCONCLUSIVE?
15 A YES, SIR.
16 Q WHO ELSE?
17 A DAVID COLLINS.
18 Q AND WHAT DID MR. COLLINS SAY?
19 A INCONCLUSIVE.
20 Q WAS THERE ANOTHER PERSON?
21 A KENNETH WHITTLE.
22 Q AND MR. WHITTLE'S EVALUATION?
23 A INCONCLUSIVE ALSO.
24 Q THESE WERE ALL DONE BLIND; IS THAT CORRECT, SIR?
25 A WELL, FRANKLY, THE LAST THREE EXAMINERS, PAAVEL,

1 COLLINS, AND WHITTIER WERE NOT THE MICROVERIFYING OF
2 RECORD AGENT.

3 Q I UNDERSTAND.

4 A THEY CAME IN AND BRIEFLY LOOKED. I MAY HAVE BEEN IN
5 THE ROOM. I MAY NOT HAVE BEEN IN THE ROOM.

6 Q I UNDERSTAND. AND THEIR OPINION WAS WHAT, SIR?

7 A IT WAS ALSO INCONCLUSIVE. THEY SAW NOTHING
8 REMARKABLE THAT SAID, "HEY, I MAY BE WRONG OR
9 WHATEVER."

10 Q AS A MATTER OF FACT, LIEUTENANT PARNELL, I'VE COME
11 OUT TO S.L.E.D. AND WE'VE DISCUSSED THIS CASE,
12 CORRECT, SIR?

13 A YES.

14 Q IF YOU WOULD, TELL THE JURY HOW YOU BROKE THIS DOWN
15 FOR ME. YOU CAN SAY YES, IT IS, NO, IT'S NOT.

16 A IT'S UNSUITABLE OR I CAN'T TELL.

17 Q CAN'T TELL. THAT'S WHAT YOU TOLD ME, RIGHT, SIR?

18 A THAT'S CORRECT.

19 Q NOW, WHEN MR. MCMAHON TOOK YOU OUT TO KANSAS CITY --

20 A YES, SIR.

21 Q -- Y'ALL WENT OUT THERE. DID YOU GO OUT AND COME
22 BACK IN ONE DAY, SPEND A NIGHT?

23 A WE SPENT ONE NIGHT.

24 Q ALL RIGHT. IF I TOLD YOU THAT -- DID YOU MEET WITH
25 MR. CAYTON AT THAT TIME?

1 A WE DID.

2 Q ALL RIGHT, SIR. DO YOU KNOW MR. CAYTON SEATED BACK

3 THERE AT THE FIRST ROW?

4 A I'VE BEEN KNOWING JOHN 25 YEARS.

5 Q ALL RIGHT. YOU MET WITH MR. CAYTON AND DISCUSSED

6 THIS CASE, CORRECT, SIR?

7 A HE DID.

8 Q DID HE BRING HIS NOTES, DO YOU RECALL?

9 A I'M PRETTY SURE HE DID, YES.

10 Q DID YOU BRING YOUR LAB NOTES?

11 A I DON'T THINK I TOOK MY CASE FILE.

12 Q ALL RIGHT. OKAY. WHEN YOU AND MR. CAYTON MET, YOU

13 MET WHERE, SIR?

14 A AT THE HOTEL NEAR THE AIRPORT.

15 Q THAT'S WHERE YOU AND MR. MCMAHON SPENT THE DAY OR THE

16 NIGHT?

17 A YES, SIR.

18 Q ALL RIGHT, SIR. HOW LONG A PERIOD OF TIME DID YOU

19 AND MR. CAYTON TALK ABOUT THIS SUBJECT?

20 A OFF AND ON FOR SEVERAL HOURS. JUST BASICALLY I WAS

21 THERE BECAUSE I KNEW JOHN AND WAS A FIREARMS EXAMINER

22 AT THE TIME AND KIND OF ADVISED KNOX OF THIS, THAT OR

23 THE OTHER, IF THINGS WERE VALID, INVALID OR WHATEVER.

24 Q ALL RIGHT, SIR. DID YOU GO TO MR. CAYTON'S LAB OR

25 WERE YOU JUST RIGHT THERE AT THE HOTEL?

1 A NO. MR. CAYTON CAME TO MEET US.

2 Q ALL RIGHT. YOU REMEMBER THAT?

3 A HE WAS ABOUT SEVEN OR EIGHT MILES AWAY FROM WHERE WE

4 WERE.

5 Q DO YOU REMEMBER HOW LONG THAT MEETING WAS? DID YOU

6 GO AND HAVE LUNCH?

7 A YES, SIR.

8 Q OKAY. HOW LONG OF A PERIOD OF TIME WERE YOU MEETING,

9 TALKING ABOUT THIS?

10 A I WOULD SAY MAYBE FIVE, SIX HOURS OR SO.

11 Q ALL RIGHT, SIR. AND DURING THAT PERIOD OF TIME, THAT

12 FRIDAY JUNE 21ST WAS THE DATE. DO YOU REMEMBER THAT,

13 SIR?

14 A I'D HAVE TO LOOK BACK, BUT I TRUST YOU RESEARCHED IT.

15 Q I HAVE. AND FRIDAY JUNE 21ST WAS AN IMPORTANT DAY

16 FOR CLEMSON AND CAROLINA FANS, WAS IT NOT, SIR?

17 A IT WAS.

18 Q WHAT WAS HAPPENING WITH THE COLLEGE WORLD SERIES ON

19 THAT FRIDAY, JUNE 21?

20 A CLEMSON AND CAROLINA WERE PLAYING EACH OTHER.

21 Q AND WHOEVER DIDN'T MAKE THAT WASN'T GOING TO GET TO

22 THE FINALS OF THE WORLD SERIES?

23 A THAT'S CORRECT.

24 Q DID YOU HAVE AN OPPORTUNITY TO REVIEW THAT GAME FROM

25 TIME TO TIME?

1 A FROM TIME TO TIME.

2 Q YES, SIR. THAT'S WHILE MR. CAYTON WAS THERE, TOO?

3 A SAY THAT AGAIN?

4 Q YES, SIR. WAS MR. CAYTON THERE DURING THAT PERIOD OF

5 TIME?

6 A HE WAS, YES.

7 Q OKAY. NOW, MR. CAYTON SAYS THAT HE DISAGREES WITH

8 YOUR OPINION?

9 A NO, WE DON'T DISAGREE.

10 Q HE SAYS IT'S CONCLUSIVE, AND YOU SAY IT'S

11 INCONCLUSIVE.

12 A THAT'S CORRECT; HOWEVER, THE DEGREE OF INCONCLUSIVE,

13 WHICH I'M TELLING YOU IS VERY NEARLY A POSITIVE. IT

14 WAS A SMALL AMOUNT OF STRIATED MARKINGS THAT I

15 VISUALLY OBSERVED UNDER THE MICROSCOPE.

16 MR. CAYTON SAW MORE OR LIKED WHAT HE SAW BETTER.

17 I UNDERSTAND HE MAY HAVE EVEN CLEANED THE BULLET A

18 LITTLE DIFFERENTLY.

19 IF HE SAW MORE THAN WHAT I SAW, THEN HE MAY HAVE

20 VERY WELL REACHED A POSITIVE CONCLUSION.

21 Q BUT WHAT YOU SAW DOESN'T ALLOW YOU, BECAUSE AS HOAGY

22 CARMICHAEL ONCE PUT IT, YOU'VE GOT TO STAY AWAY FROM

23 MR. IN BETWEEN?

24 A THAT'S CORRECT.

25 Q DO YOU KNOW WHERE THAT CAME FROM?

1 A WELL, I HEARD MR. CATE SAY IT MANY TIMES EARLY IN MY
2 CAREER.
3 Q ACCENTUATE THE POSITIVE, ELIMINATE THE NEGATIVE, STAY
4 AWAY FROM MR. IN BETWEEN.
5 A THAT'S CORRECT.
6 Q THAT'S WHAT MR. CATE TRIED TO DO, DIDN'T HE?
7 A YES, SIR.
8 Q IN THIS CASE, YOU, MR. DEFREESE, IN A BLIND
9 EXAMINATION AND THREE OTHER INVESTIGATORS ALL SAY
10 INCONCLUSIVE?
11 A THAT'S CORRECT.
12 Q JUST CAN'T TELL, RIGHT, SIR?
13 A CAN'T QUITE GO OVER THE EDGE TO A POSITIVE; THAT'S
14 CORRECT.
15 Q BECAUSE YOU'VE GOT A DOUBT ABOUT WHETHER OR NOT IT'S
16 A REAL MATCH, DO YOU?
17 A JUST A BIT OF A DOUBT, YES, SIR.
18 Q DOES MR. PARNELL -- DID YOU TELL ME, SIR, THAT IT
19 JUST DIDN'T MEET MY STANDARDS? DO YOU REMEMBER
20 MAKING THAT STATEMENT TO ME?
21 A YES, SIR.
22 MR. MCMAHON: NO, SIR, I OBJECT TO THE FORM OF
23 THE QUESTION.
24 THE COURT: SUSTAINED.
25 BY MR. DELGADO

1 Q NOW, WITH ALL DUE RESPECT, MR. PARNELL, THIS PUTS YOU
2 ALL S.L.E.D. IN A REAL BIND, DOESN'T IT, NOT?

3 MR. MCMAHON: NO, SIR, I OBJECT TO THE FORM OF
4 THE QUESTION.

5 THE COURT: LET ME HEAR THE QUESTION AGAIN.

6 MR. DELGADO: I'LL REPHRASE IT.

7 THE COURT: ALL RIGHT. REPHRASE IT.

8 BY MR. DELGADO

9 Q MR. PARNELL, DOES THE RICHLAND COUNTY SHERIFF'S
10 DEPARTMENT HAVE THE AUTHORITY TO TAKE YOUR EVIDENCE
11 AND SEND IT TO SOMEBODY ELSE?

12 MR. MCMAHON: YOUR HONOR, I OBJECT ON RELEVANCE.

13 THE COURT: OVERRULED.

14 BY MR. DELGADO

15 Q DOES IT, SIR?

16 A TECHNICALLY, IT'S THEIR EVIDENCE.

17 Q AND YOU HAD BEEN HOLDING IT FOR 40 YEARS; IS THAT
18 CORRECT?

19 A THAT'S CORRECT; THAT'S CORRECT.

20 Q AS A MATTER OF FACT, IN THE MIDDLE OF YOUR REPORT
21 RIGHT HERE --

22 MR. MCMAHON: NO, SIR. I OBJECT. I OBJECT TO
23 THIS.

24 THE COURT: I DON'T KNOW WHAT THE QUESTION IS
25 YET. LET ME HEAR THE QUESTION.

1 BY MR. DELGADO

2 Q AS A MATTER OF FACT, SIR, ON THIS PRINTED FORM FROM
3 THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION --

4 MR. MCMAHON: WHICH I'M OBJECTING TO. I DON'T
5 WANT HIM TO READ IT UNTIL I GET A RULING ON MY OBJECTION.

6 THE COURT: I DON'T EVEN KNOW WHAT IT IS,
7 SOLICITOR. COME UP HERE AND SEE.

8 MR. MCMAHON: YES, SIR.

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: OBJECTION SUSTAINED.

13 BY MR. DELGADO

14 Q DOES THE STATE LAW ENFORCEMENT DIVISION ALLOW
15 RE-EVALUATIONS OF ITS EVIDENCE THAT'S BEEN EVALUATED
16 BY YOU ALL ONE TIME?

17 A ONCE EVIDENCE LEAVES OUR CONTROL, WE REALLY HAVE NO
18 CONTROL OVER WHAT HAPPENS TO IT ONCE WE RELINQUISH
19 IT. THE VERBIAGE THAT'S ON SOME OF OUR
20 DOCUMENTATION --

21 MR. MCMAHON: NO, SIR, I OBJECT TO THAT.

22 THE COURT: SUSTAINED.

23 MR. DELGADO, YOU CAN'T DO INDIRECTLY WHAT YOU
24 CAN'T DO DIRECTLY.

25 MR. DELGADO: ALL RIGHT, SIR.

1 BY MR. DELGADO

2 Q HAVE YOU EVER HAD YOUR EVALUATION LOOKED AT BY

3 ANOTHER PRIVATE EVALUATOR?

4 A YES, SIR.

5 Q WAS THAT OKAYED BY THE STATE LAW ENFORCEMENT

6 DIVISION?

7 A YES, SIR.

8 Q YOU KNEW ABOUT IT IN ADVANCE?

9 A SOMETIMES, SOMETIMES NOT.

10 Q MR. PARNELL, IN YOUR REPORT BACK TO MR. METZ WITH THE

11 SHERIFF'S DEPARTMENT, IN YOUR WRITTEN REPORT, DID YOU

12 INDICATE TO HIM UNDER WHAT AUTHORITY YOU HAD ISSUED

13 THIS OPINION? IN OTHER WORDS, DID YOU NOTE IN YOUR

14 REPORT WHY AND WHO HAD ASKED FOR THIS REPORT?

15 A I DID. I BELIEVE I DID.

16 Q AND WHO ASKED FOR THE REPORT?

17 A THE SHERIFF'S DEPARTMENT. I THINK SPECIFICALLY MAJOR

18 WILSON AT THAT TIME SENT THE LETTER OF REQUEST.

19 Q AND YOU ADDRESSED IT BACK TO MR. METZ, YOUR FINDINGS,

20 CORRECT, SIR?

21 A I DID, SIR.

22 Q ALL RIGHT. NOW, WHEN YOU TALKED TO MR. CAYTON ABOUT

23 THE TYPE OF EQUIPMENT THAT HE USES, IS THAT IN ANY

24 SUBSTANTIAL WAY DIFFERENT FROM THE EQUIPMENT THAT YOU

25 ALL USE AT THE STATE LAW ENFORCEMENT DIVISION NOW?

1 A NO, SIR, NOT TO MY KNOWLEDGE.

2 Q IN TRUTH, SIR, WHAT HAS HAPPENED WITH THIS CASE IS
3 YOU, MR. CATE, PETE STOKES, DAN DEFREESE, VELLO
4 PAAVEL, DAVID COLLINS, AND KEITH WHITTIER ALL SAY
5 IT'S INCONCLUSIVE, CORRECT, SIR?

6 A CORRECT.

7 Q UNTIL THEY WENT AND HIRED SOMEBODY TO SAY THAT'S NOT
8 SO; IS THAT RIGHT?

9 A THE RESULTS ARE SOMEWHAT DIFFERENT, YES, SIR.

10 Q SOMEWHAT DIFFERENT?

11 A THE DEGREE OF DIFFERENCE. THERE IS NOT GREAT
12 DEGREE --

13 Q AND YOURS IS INCONCLUSIVE?

14 A THAT'S CORRECT.

15 Q AND YOU ISSUED THAT IN MARCH, 2001, CORRECT, SIR?

16 A I DID.

17 Q AND THAT'S YOUR OPINION TODAY?

18 A IT IS.

19 MR. DELGADO: ALL RIGHT. THANK YOU.

20 THE COURT: REDIRECT?

21 REDIRECT EXAMINATION:

22 BY MR. MCMAHON

23 Q KANSAS CITY. WE WERE PRETTY EXCITED ABOUT THE BALL
24 GAME, WEREN'T WE?

25 A YES, SIR.

1 Q WE HAD IT ON WHILE WE TALKED?

2 A WE DID.

3 Q EVERY NOW AND THEN IT WOULD GET MY ATTENTION.

4 A A FEW TIMES.

5 Q IN FACT, I WAS PRETTY UPSET WE COULDN'T HEAR IT ON

6 THE WAY HOME SATURDAY; IS THAT RIGHT?

7 A THAT'S RIGHT.

8 Q WE LEFT EARLY FRIDAY MORNING AND CAME BACK SATURDAY.

9 A THAT'S RIGHT.

10 Q WE COULDN'T GET IT ON THE AIRPLANE IN KANSAS CITY.

11 A NO, SIR.

12 Q WE SAT IN THE AIRPORT IN ATLANTA AND LISTENED TO IT.

13 A CORRECT.

14 Q NOW, WE TALKED ABOUT GOING TO KANSAS CITY AND WE

15 TALKED TO ANOTHER EXPERT. YOU DON'T KNOW IF I'VE

16 GONE OUT OF TOWN WITH OTHER FORENSIC S.L.E.D. AGENTS

17 IN PREPARATION FOR TRIAL AND TALKED TO OUT OF TOWN

18 NON-S.L.E.D. FORENSIC EXPERTS?

19 MR. DELGADO: I'M SORRY. I DIDN'T HEAR THAT, I

20 APOLOGIZE.

21 THE COURT: HE'S ASKING IF HE'S AWARE OF HIS

22 ACCOMPANYING OTHER FORENSIC AGENTS.

23 MR. DELGADO: ALL RIGHT.

24 THE WITNESS: I DON'T, NO, SIR.

25 BY MR. MCMAHON

1 Q IT WOULDN'T SURPRISE YOU IF I HAD?

2 A NO, SIR, IT WOULDN'T.

3 Q YOU WOULDN'T KNOW IF I TRIED A CASE THAT I HAVE AT

4 LEAST NOT TRIED TO BE PREPARED FOR?

5 A THAT'S CORRECT.

6 Q I CAME OUT AND TALKED TO YOU?

7 A THAT'S CORRECT.

8 Q AND TALKED WITH ALL THESE OTHER OFFICERS, CORRECT?

9 A CORRECT.

10 Q I TALKED WITH OTHER OFFICERS, CORRECT?

11 A YES, SIR.

12 Q IS THIS THE OLDEST CASE THAT YOU EVER WORKED ON?

13 A YES, SIR.

14 Q AND HE ASKED YOU A QUESTION ABOUT DISAGREEMENT AND

15 YOU SAID, "WE", I THINK REFERRING YOURSELF AND

16 MR. CAYTON "DON'T DISAGREE"?

17 A THAT'S CORRECT.

18 Q IF I USE THE TERM "WE", CAN I INCLUDE ALL THESE

19 INDIVIDUALS AS PART OF THE "WE" WITH MR. CAYTON AND

20 SAY Y'ALL AND --

21 MR. DELGADO: YOUR HONOR, I OBJECT. THAT CALLS

22 FOR SPECULATION.

23 THE COURT: OVERRULED. I THINK YOU ASKED THE

24 QUESTION.

25 MR. DELGADO: OKAY.

1 BY MR. MCMAHON

2 Q IN OTHER WORDS, ALL THIS IS THE SAME OPINION?

3 A YES, SIR.

4 Q CORRECT?

5 A CORRECT.

6 Q AND I'M JUST SAYING RATHER THAN ME GOING THROUGH AND

7 SAYING DOES MR. DAN DEFREESE AND MR. CAYTON DISAGREE,

8 DOES MR. COLLINS AND MR. WHITTler, Y'ALL AND MR.

9 CAYTON DON'T DISAGREE?

10 A THAT'S CORRECT.

11 Q IT'S A MATTER OF DEGREE.

12 A THAT'S CORRECT.

13 Q EXPLAIN THAT FOR THE JURY WHEN YOU SAY IT'S A MATTER

14 OF DEGREE.

15 A THERE ARE FOUR RESULTS THAT WE CAN COME TO AS

16 FIREARMS EXAMINERS IN OUR LABORATORY, ONE IS

17 ABSOLUTELY NOT, WHICH WE TERM NEGATIVE; ONE IS BEYOND

18 A SHADOW OF A DOUBT, WHICH IS A POSITIVE; ONE IS

19 UNSUITABLE, IN OTHER WORDS, THERE ARE NOT ENOUGH

20 MARKINGS LEFT ON THE BULLET TO TELL OR THE SPECIMEN

21 IS TOO SMALL. AT ANY RATE, IT'S UNSUITABLE. YOU'D

22 NEVER BE ABLE TO MATCH THAT PARTICULAR ITEM TO

23 ANYTHING; THE OTHER ONE, THE BIG ONE IN THE MIDDLE IS

24 INCONCLUSIVE.

25 INCONCLUSIVE, THE BOTTOM LINE IS THAT I CAN'T

1 SAY THAT THERE COULD NOT HAVE BEEN ANOTHER GUN
2 SOMEWHERE, SOME TIME, THAT MARKED SIMILARLY.

3 INCONCLUSIVE CAN ALSO MEAN VERY CLOSE TO BEING
4 POSITIVE EXCEPT FOR THE FACT OF THE SMALLNESS OF THE
5 SPECIMEN. EVERYTHING THERE AGREES. THERE'S NOTHING
6 THERE TO SAY IT DOESN'T AGREE, BUT THAT IT'S JUST NOT
7 QUITE ENOUGH THERE TO MAKE ME KNOW THAT THIS IS A
8 POSITIVE.

9 Q AND THAT'S WHERE YOU'RE AT?

10 A THAT'S WHERE I AM IN THIS CASE.

11 Q AND THAT'S WHERE THESE OFFICERS ARE AT?

12 MR. DELGADO: I OBJECT, YOUR HONOR. HE DOESN'T
13 KNOW THAT.

14 THE COURT: SUSTAINED.

15 BY MR. MCMAHON

16 Q THAT'S WHERE THESE OFFICERS ARE AT?

17 THE COURT: SUSTAINED.

18 MR. MCMAHON: SIR? HE ASKED HIM -- MAY I BE
19 HEARD?

20 THE COURT: YES, SIR, BUT YOU ALL COME UP HERE
21 JUST A MINUTE, MR. DELGADO.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
23 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
24 THE JURY.)

25 MR. DELGADO: YOUR HONOR, RIGHT. THANK YOU.

1 BY MR. MCMAHON

2 Q THESE INDIVIDUALS AGREE WITH THE REMARKABLE,
3 INDIVIDUAL CHARACTERISTICS BETWEEN STATE'S
4 EXHIBIT 30.

5 THE DEFENDANT: OBJECTION, YOUR HONOR.

6 MR. MCMAHON: AND STATE'S EXHIBIT --

7 THE COURT: FOUNDATION. HE'S AN EXPERT WITNESS.
8 GO AHEAD.

9 BY MR. MCMAHON

10 Q THESE INDIVIDUALS AGREE WITH YOUR OPINION OF
11 REMARKABLE INDIVIDUAL CHARACTERISTICS BETWEEN STATE'S
12 30 AND STATE'S 6. YOU ALL AGREE?

13 A MR. DEFREESE DID THE MICROVERIFICATION. HE IS THE
14 ONLY ONE THAT I CAN SAY FOR CERTAIN AGREES WITH THE
15 VERBIAGE THAT YOU DESCRIBED. THE OTHER EXAMINERS
16 WERE INCONCLUSIVE ALSO.

17 Q THEY DIDN'T LOOK AT IT TO THAT DEGREE?

18 A NO, NOT TO THE LENGTH OR THE DEGREE THAT MR. DEFREESE
19 OR MYSELF DID.

20 Q THEIRS WOULD BE CURSORY. IS THAT A FAIR STATEMENT?

21 MR. DELGADO: OBJECTION, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MR. MCMAHON

24 Q HOW WOULD THEIR EXAMINATIONS COMPARE WITH YOURS OR
25 MR. DEFREESE?

1 A NOT AS LENGTHY OR IN DETAIL.

2 MR. MCMAHON: THANK YOU. THAT'S ALL I HAVE.

3 THE COURT: ANYTHING ON REDIRECT? YOU MAY STEP
4 DOWN.

5 WHO IS GOING TO BE YOUR NEXT WITNESS?

6 MR. MCMAHON: LIEUTENANT CRAIG.

7 THE COURT: CAN YOU DO HIM IN 30 MINUTES?

8 MR. MCMAHON: NO, SIR. I DON'T THINK SO.

9 THE COURT: I'LL TELL YOU WHAT --

10 MR. MCMAHON: I DON'T THINK. WE CAN TRY BUT I
11 DON'T THINK SO.

12 THE COURT: WE'LL STOP HERE AND ASK YOU TO COME
13 BACK AT 1:30. I'D RATHER NOT BREAK UP HIS EXAMINATION IF
14 I CAN HELP IT. BE BACK AT 1:30.

15 (WHEREUPON, THE JURY LEFT OPEN COURT AT
16 APPROXIMATELY 12:31 P.M.)

17 THE COURT: MS. CAMPBELL, SINCE YOU WEREN'T UP
18 HERE, LET ME INCLUDE YOU IN THIS CONVERSATION NOW. I
19 WATCHED THIS JURY PRETTY GOOD, AND ALL OF YOU ARE BEING
20 TOO REPETITIVE, THE DEFENSE IS, THE STATE IS, AND
21 SOMETIMES YOU'RE GOING TO LOSE. I DON'T WANT ANYONE TO
22 GET HURT BY THAT, BUT IT'S HARD ON A JURY.

23 MR. DELGADO: I AGREE.

24 THE COURT: I'M TELLING YOU. ALL RIGHT. BE
25 BACK AT 1:30.

1 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)
2 THE COURT: ARE YOU READY?
3 MS. CAMPBELL: YES, SIR.
4 MR. MCMAHON: YES, SIR.
5 THE COURT: THIS IS THE BEST JURY I'VE HAD HERE
6 ALL YEAR READY TO GO.
7 ALL RIGHT. BRING THE JURY IN.
8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 1:35 P.M.)
10 MR. MCMAHON: JUDGE, CAN I APPROACH THE BENCH
11 AND ASK YOU A QUESTION REAL QUICK?
12 THE COURT: SURE.
13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
14 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
15 THE JURY.)
16 THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.
17 THE COURT: ALL RIGHT. THANK YOU.
18 ALL RIGHT. MR. SOLICITOR, YOU CAN CALL YOUR
19 NEXT WITNESS.
20 MR. MCMAHON: THE STATE CALLS CARL CRAIG.
21 THE CLERK: COME FORWARD, PLEASE. PLACE YOUR
22 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.
23 CARL CRAIG, AFTER BEING DULY SWORN, TESTIFIED AS
24 FOLLOWS:
25 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL

1 NAME, SPELL YOUR LAST NAME.

2 THE WITNESS: CARL CRAIG, C-R-A-I-G.

3 DIRECT EXAMINATION:

4 BY MR. MCMAHON

5 Q MR. CRAIG, HOW OLD ARE YOU, SIR?

6 A SEVENTY-THREE.

7 Q ARE YOU CURRENTLY RETIRED?

8 A YES.

9 Q MR. CRAIG, PRIOR TO YOUR -- HOW MANY TIMES HAVE YOU
10 BEEN RETIRED?

11 A TWICE.

12 Q TWICE. THE FIRST TIME YOU RETIRED, WHEN WAS THAT,
13 SIR?

14 A 1969.

15 Q AND WHERE DID YOU RETIRE FROM?

16 A FEDERAL AGENT, U.S. ARMY, C.I.D.

17 Q AND HOW LONG WERE YOU IN THE ARMY?

18 A TWENTY-THREE YEARS.

19 Q SO IF YOU RETIRED IN '69, FROM '46 TO '69, YOU WERE
20 IN THE ARMY?

21 A CORRECT.

22 Q AND YOU SAY YOU WERE A C.I.D. AGENT?

23 A YES.

24 Q AND WHAT IS THAT, MR. CRAIG?

25 A ACCREDITED CRIMINAL INVESTIGATOR BY THE OFFICE OF THE

1 MARSHAL, GENERAL WASHINGTON, TO INVESTIGATE CRIME IN
2 THE MILITARY ON A WORLDWIDE BASIS.

3 Q NOW, AND YOU SERVED IN VARIOUS POSTS THROUGHOUT THE
4 WORLD --

5 A THAT'S CORRECT.

6 Q -- IN YOUR MILITARY CAREER; IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q NOW, AFTER YOU RETIRED IN '69, MR. CRAIG, DID YOU GO
9 INTO ANOTHER JOB, ANOTHER OCCUPATION?

10 A YES, I DID.

11 Q WHAT WAS THAT?

12 A I WAS EMPLOYED BY THE UNIVERSITY OF SOUTH CAROLINA
13 POLICE DEPARTMENT IN THE CAPACITY OF A CRIMINAL
14 INVESTIGATOR AND COMMISSIONED WITH THE STATE LAW
15 ENFORCEMENT DIVISION AS AN AGENT.

16 Q AND HOW LONG WERE YOU WITH THE UNIVERSITY POLICE
17 DEPARTMENT?

18 A A TOTAL OF 22 YEARS.

19 Q SO DID YOU START IN '69?

20 A THAT'S CORRECT.

21 Q SO YOU WENT FROM A MILITARY UNIFORM TO A UNIVERSITY
22 UNIFORM AND THEN AS A CRIMINAL INVESTIGATOR WITH THE
23 UNIVERSITY POLICE?

24 A YES.

25 Q FROM '69, '79, '89, ABOUT '91?

1 A CORRECT.

2 Q ABOUT '91?

3 A CORRECT.

4 THE COURT: COULD I GET YOU TO LIFT THAT MIC UP
5 SO YOU'RE TALKING DOWN INTO IT?

6 (COMPLIES.)

7 THERE YOU GO.

8 THE WITNESS: CERTAINLY.

9 BY MR. MCMAHON

10 Q AND MR. CRAIG, YOU WERE A CRIMINAL INVESTIGATOR
11 DURING A SUBSTANTIAL PART, IF NOT ALL OF THAT TIME,
12 FOR THE UNIVERSITY POLICE DEPARTMENT?

13 A THAT'S CORRECT.

14 Q AND THE UNIVERSITY OFFICERS, THEY WERE COMMISSIONED
15 THROUGH S.I.E.D. AT THAT TIME?

16 A THAT'S CORRECT.

17 Q AND MAY STILL BE SO.

18 A YES, THEY ARE -- I'M NOT SURE.

19 Q SO YOUR SECOND RETIREMENT WAS IN 1991, CORRECT?

20 A THAT'S CORRECT.

21 Q HAVE YOU HAD ANY OTHER EMPLOYMENT FOR WHICH YOU GET
22 PAID SINCE 1991?

23 A VERY BRIEFLY AFTER MY SECOND RETIREMENT, I WORKED
24 WITH A TECHNICAL SURVEILLANCE SERVICE SYSTEM OUT OF
25 FLORIDA, WHICH WAS A HIGH-TECH SURVEILLANCE

1 ORGANIZATION TEACHING BASIC CRIMINAL INVESTIGATIONS
2 PROCEDURES DEALING WITH BODY WIRES AND SEARCH AND
3 SEIZURES.
4 Q AND THAT WAS FOR A BRIEF PERIOD OF TIME?
5 A A BRIEF PERIOD OF TIME.
6 Q NOW, OUR PRESENT SHERIFF OF -- I'VE GOT TO GET MY
7 COUNTIES STRAIGHT. OUR PRESENT SHERIFF OF RICHLAND
8 COUNTY, WHO IS THAT, SIR?
9 A LEON LOTT.
10 Q AND HOW LONG HAVE YOU KNOWN SHERIFF LOTT?
11 A ALL OF HIS POLICE CAREER.
12 Q DID YOU KNOW HIM DURING THE PERIOD OF TIME YOU WERE
13 WITH THE UNIVERSITY PATROL?
14 A YES, I DID.
15 Q AND AFTER HE WAS ELECTED SHERIFF, DID HE CONTACT YOU
16 AND REQUEST OF YOU TO COME TO WORK AT THE RICHLAND
17 COUNTY SHERIFF'S DEPARTMENT?
18 A YES, HE DID.
19 Q DID YOU AGREE TO DO THAT?
20 A YES, I DID.
21 Q AND UNDER WHAT CAPACITY DID YOU AGREE TO COME TO WORK
22 FOR THE RICHLAND COUNTY POLICE DEPARTMENT?
23 A ON A VOLUNTARY BASIS TWO DAYS A WEEK FOR NO PAY.
24 Q AND WHAT TYPES OF DUTIES OR RESPONSIBILITIES WAS IT
25 YOUR UNDERSTANDING YOU WOULD BE ASSIGNED?

1 A WORKING STRICTLY UNSOLVED HOMICIDES.

2 Q AND ABOUT WHEN DID YOU START DOING THIS, MR. CRAIG?

3 A FEBRUARY 1997.

4 Q '97. AND DID YOU, SINCE FEBRUARY OF '97 AS A
5 VOLUNTEER WORKING THESE COLD CASES, DID YOU HAVE AN
6 OPPORTUNITY TO WORK WITH SERGEANT METZ?

7 A YES. HE WAS MY ASSIGNED PARTNER BY THE CHIEF OF
8 INVESTIGATIONS FROM DAY ONE.

9 Q CHIEF OF INVESTIGATIONS AT THAT TIME --

10 A MAJOR WILSON.

11 Q MAJOR WILSON THEN NOW --

12 A NOW DEPUTY CHIEF WILSON.

13 Q DEPUTY CHIEF WILSON, OKAY.

14 NOW, YOU CONTINUED TO WORK '97, '98, '99. I
15 WANT TO ASK YOU, IN 1999, WERE YOU APPROACHED BY ANY
16 OFFICER CONCERNING THE ORNER CASE?

17 A YES, I WAS.

18 Q AND WHAT OFFICER? WHAT TRANSPIRED?

19 A CAPTAIN BILL BROWN, WHOM I'VE ALSO KNOWN FOR ABOUT 30
20 YEARS, CAME INTO MY CUBICLE ONE DAY AROUND THE 10TH
21 OF SEPTEMBER, THE BEST I CAN RECALL, ASKED ME
22 SPECIFICALLY, KNOWING THAT I WAS A FORMER MILITARY
23 INVESTIGATOR AND I WAS ASSIGNED TO FORT JACKSON IF,
24 IN FACT, I HAD REMEMBERED A HOMICIDE OCCURRING AT
25 FORT JACKSON IN THE EARLY '60S.

1 I TOLD HIM THAT I HAD REMEMBERED THE CASE, CITED
2 THE INSTANCE AND GAVE HIM THE VICTIM'S NAME AND THE
3 NAME OF THE SUSPECT.

4 Q WERE YOU AT -- STATIONED AT FORT JACKSON IN THE EARLY
5 '60S?

6 A I WAS STATIONED AT FORT JACKSON FROM AUGUST 1960
7 UNTIL JULY 1963.

8 Q NOW, DID YOU ACTIVELY WORK OR WERE YOU A PRINCIPAL
9 INVESTIGATOR ON THE ORNER CASE FOR C.I.D. IN 1961?

10 A NO, I WAS NOT.

11 Q BUT YOU HAD SOME MEMORY OF IT?

12 A YES. MY WORKING PARTNER, JOHN, IF I CAN NAME HIM, MY
13 WORKING PARTNER DID ASSIST RICHLAND COUNTY IN THIS
14 INVESTIGATION.

15 Q BACK IN '61?

16 A BACK IN '61.

17 Q BUT YOU WERE NOT A PRINCIPAL OFFICER INVOLVED IN IT?

18 A NO.

19 Q BUT HAD SOME MEMORY?

20 A YES.

21 Q NOW, AS A RESULT OF THAT CONVERSATION, WHAT ELSE, IF
22 ANYTHING, HAD CAPTAIN BROWN ASKED YOU?

23 A CAPTAIN BROWN ADVISED ME THAT HE WENT TO CHURCH WITH
24 THE RELATIVES OF THE ORNER'S AND HAD ADVISED THEM OF
25 MY PRESENCE AT THE SHERIFF'S DEPARTMENT AND DOING

1 WHAT I WAS DOING ON COLD CRIMES AND ASKED ME
2 SPECIFICALLY IF I WOULD HAVE A LOOK AT THIS CASE.
3 Q AND DID YOU AGREE?
4 A YES, I AGREED.
5 Q AND THEREAFTER, WERE YOU PROVIDED A FILE?
6 A YES. A FEW WEEKS AFTER, I WAS GIVEN THE ENTIRE FILE
7 OUT OF THE ARCHIVES OUT OF THE SHERIFF'S DEPARTMENT.
8 Q NOW, WOULD THIS TYPE OF ASSIGNMENT HAVE BEEN APPROVED
9 BY MAJOR WILSON?
10 A I'M CERTAIN IT WOULD HAVE BEEN.
11 Q AND WHEN YOU SAID THE GENTLEMAN THAT WENT TO CHURCH
12 WITH CAPTAIN BROWN -- AND CAPTAIN BROWN IS NOW
13 RETIRED; IS THAT CORRECT?
14 A THAT'S CORRECT, JUST RECENTLY.
15 Q THAT WOULD BE MR. JOYNER YOU LATER LEARNED --
16 A THAT'S CORRECT.
17 Q -- THAT WAS A SURVIVOR OF MR. ORNER; IS THAT CORRECT?
18 A THAT'S CORRECT.
19 Q NOW, THIS BEING ABOUT SEPTEMBER 10TH OF '99, DID YOU
20 RECEIVE A FILE FROM CAPTAIN BROWN?
21 A YES, I DID.
22 Q DID YOU REVIEW THAT FILE?
23 A YES, SIR.
24 Q NOW, WAS THAT, IN FACT, THE FILE THAT YOU -- THE
25 INCIDENT THAT YOU HAD SOME CURSORY MEMORY OF?

1 A YES, SIR, REMARKABLY SO.

2 MR. DELGADO: OBJECTION, YOUR HONOR, LEADING,

3 AGAIN, THE WITNESS, PLEASE.

4 THE COURT: SUSTAINED.

5 BY MR. MCMAHON

6 Q YOU SAID YOU REMEMBERED THE ORNER CASE IN '61?

7 A YES, I DID.

8 Q THE FILE THAT MR. -- CAPTAIN BROWN PROVIDED YOU --

9 A THAT'S CORRECT.

10 Q -- HOW DID THAT COMPARE TO THE CASE YOU HAD MEMORY OF

11 IN '61?

12 A ONCE I OPENED THE BULK OF THE CASE AND STARTED TO

13 READ, I WAS TOTALLY AWARE OF THE CASE IN QUESTION.

14 Q NOW, WERE YOU ASSIGNED AND DID YOU BEGIN WORKING ON

15 THE CASE --

16 A YES, I DID.

17 Q -- WITH ANY OTHER OFFICER?

18 A INVESTIGATOR BRIAN METZ, WHO HAD BEEN MY ASSIGNED

19 PARTNER AS A REPRESENTATIVE OF THE SHERIFF'S

20 DEPARTMENT IN THAT CAPACITY AS THE COLD CRIMES SQUAD

21 SINCE DAY ONE.

22 Q NOW, WHAT STEPS DID YOU TAKE, JUST EXPLAIN FOR THE

23 JURY, WHAT DIRECTION DID YOU GO TO WORK THIS FILE?

24 A THIS WAS A VERY BULKY FILE. IT CONTAINED, I WOULD

25 SAY, THOUSANDS OF -- PROBABLY A THOUSAND OR MORE.

1 PIECES OF PAPER AND DOCUMENTS.

2 WE VERY METICULOUSLY SAT DOWN AND WENT THROUGH
3 IT FOR SEVERAL DAYS TRYING TO PUT IT IN A BACKWARD
4 PERSPECTIVE TO SEE IF WE COULD SEE WHAT WAS THE LAST
5 THING THAT WAS DONE IN THIS CASE.

6 WE DID ALL OF THAT AND HAD THE LADIES IN THE
7 OFFICE PREPARE US WITH A WORKING COPY BECAUSE THE
8 CONDITION OF THE PAPER ON THE ORIGINAL FILES WERE
9 VERY BRITTLE.

10 Q NOW, AS A RESULT OF REVIEWING THAT FILE, WERE YOU
11 INTERESTED IN LOCATING ANY PARTICULAR PERSON --

12 A ABSOLUTELY.

13 Q -- OR PERSONS? WHO?

14 A THEN PRIVATE FRIEBURGER, WHO WAS A SUSPECT IN 1961.

15 Q AND WERE YOU ALSO INTERESTED IN DETERMINING IF THERE
16 WAS ANY EVIDENCE THAT MAY STILL BE THERE?

17 A ABSOLUTELY.

18 Q AND WHAT EVIDENCE?

19 A WE, MEANING MR. METZ AND MYSELF, WENT TO THE EVIDENCE
20 ROOM TO BACKTRACK ANY POSSIBILITY OF EVIDENCE AND
21 COMPARE WHATEVER DATA WE HAD FROM THE FILE.

22 FINDING NONE, OUR NEXT STEP WAS TO GO TO THE
23 STATE LAW ENFORCEMENT DIVISION BALLISTICS DIVISION
24 AND INQUIRE THERE.

25 Q WHAT, IF ANY -- WHO DID YOU INQUIRE WITH?

1 A AGENT LIEUTENANT PARNELL.

2 Q AND WHAT, IF ANYTHING, DID YOU DISCOVER AT S.L.E.D.?

3 A WE DISCOVERED THAT AFTER HE HAD MADE A SEARCH OF HIS

4 VAULT, HE ADVISED US THAT HE HAD, IN FACT, TWO

5 WEAPONS AND THE FORENSICS EXAMINATIONS THAT WERE DONE

6 ON THIS CASE ORIGINALLY IN 1961.

7 Q AND THIS WOULD HAVE BEEN ABOUT WHEN, LIEUTENANT

8 CRAIG?

9 A THIS, I BELIEVE, WAS IN AUGUST OF 2000.

10 Q ALL RIGHT. SO YOU FIRST GOT THE FILE SEPTEMBER '99

11 AND AUGUST AND YOU HAD BEEN REVIEWING AND SEARCHING

12 AND ALL?

13 A YES.

14 Q AUGUST OF 2000, YOU LOCATED THIS FORENSIC EVIDENCE AT

15 S.L.E.D.?

16 A THAT'S CORRECT.

17 Q DID YOU AND SERGEANT METZ ACTUALLY GO OUT THERE AND

18 LOOK AT IT?

19 A WE DID.

20 Q AS A RESULT OF LIEUTENANT PARNELL LOCATING THE ITEMS

21 OF EVIDENCE, WHAT, IF ANYTHING, WAS REQUESTED?

22 A WE DISCUSSED IT WITH THE CHIEF OF THE LAB, LIEUTENANT

23 PARNELL, AND REACHED SOME KIND OF A VERBAL AGREEMENT

24 THAT IF WE NEEDED TO RE-EXAMINE THIS, THAT WE WOULD

25 GO BACK AND MAKE A BASIC REQUEST OF THE DEPARTMENT,

1 WHICH WAS DONE.

2 Q AND THAT REQUEST WAS MADE BY, I BELIEVE, CHIEF --
3 DEPUTY CHIEF WILSON?

4 A DEPUTY CHIEF WILSON.

5 Q IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q NOW, THIS WAS ALL AROUND THAT AUGUST OF 2000 PERIOD?

8 A YES, SIR.

9 Q NOW, WHAT ABOUT LOCATING THE SUSPECT, PRIVATE
10 FRIEBURGER? WHAT STEPS HAD YOU TAKEN UP UNTIL THEN?

11 A WE USED ALL AVAILABLE MEANS TO OUR DISPOSAL, THE
12 NATIONAL INLETS, THE N.C. I.C. SYSTEM, THE COMPUTER
13 PROGRAMS THAT LOCATE PEOPLE AS WE NOW HAVE TODAY AND
14 CAME UP WITH A GOOD POSSIBILITY THAT MR. FRIEBURGER
15 WAS RESIDING IN INDIANA.

16 Q AND AS A RESULT OF BELIEVING THAT POSSIBILITY OF
17 EDWARD FRIEBURGER THAT WAS THE PRIVATE IN '61 AND WAS
18 RESIDING IN INDIANA IN 2000, WHAT STEPS DID YOU TAKE
19 AS FAR AS CONTACTING ANY LAW ENFORCEMENT AGENCY IN
20 INDIANA?

21 A REALIZING THE GRAVITY OF THIS PARTICULAR MATTER, WE
22 CONTACTED THE INDIANA STATE POLICE, THE BARRACKS
23 HEADQUARTERS NEAR THERE, AND WERE REFERRED TO
24 INVESTIGATOR ROCKY STOTTS OF THE INDIANA STATE
25 POLICE.

1 Q AND I BELIEVE THIS IS -- STAND UP FOR ME, PLEASE,
2 SIR.

3 I BELIEVE THIS IS INVESTIGATOR STOTTS HERE OF
4 THE INDIANA STATE POLICE; IS THAT CORRECT?

5 A THAT IS CORRECT, SIR.

6 Q AND PRIOR TO YOUR INVOLVEMENT IN THIS CASE, YOU DID
7 NOT KNOW, HAD NEVER MET DETECTIVE STOTTS?

8 A NO, SIR; THAT'S CORRECT.

9 Q NOW, DID YOU ALL HAVE SOME PHONE CONTACT WITH
10 DETECTIVE STOTTS IN THAT AREA OF SEPTEMBER OF 2000?

11 A YES, WE DID.

12 Q AND AS A RESULT OF THAT, DID Y'ALL MAKE ANY PLANS TO
13 GO TO INDIANA IN, I BELIEVE, OCTOBER OF 2000?

14 A THAT'S CORRECT. WE MADE THE PRELIMINARIES AND ASKED
15 DETECTIVE STOTTS IF HE WOULD DO A SUBSTANTIAL
16 BACKGROUND INVESTIGATION ON THE SUSPECT AND DETERMINE
17 IF, IN FACT, THIS IS THE PERSON WHOM WE WANTED TO
18 CONTACT.

19 AFTER THAT VERIFICATION WAS MADE AND WE WERE
20 SATISFIED BY VERIFICATION OF DATES OF BIRTH, ET
21 CETERA, AND HIS LOCATION, WE THEN DETERMINED THAT WE
22 WOULD GO TO INDIANA AND TALK TO MR. FRIEBURGER.

23 Q AND WHO WENT TO INDIANA?

24 A INVESTIGATOR METZ AND MYSELF.

25 Q AND WHEN DID YOU ALL GO?

1 A OCTOBER, EXCUSE ME, 2001.
2 Q DO YOU RECALL THE DATE?
3 A ONE MOMENT, PLEASE.
4 (PAUSE).
5 WE WENT ON THE 21ST OF OCTOBER.
6 Q OF 2000?
7 A 2000.
8 MR. DELGADO: I OBJECT, YOUR HONOR, TO THE
9 LEADING.
10 THE COURT: SUSTAINED.
11 MR. MCMAHON: EXCUSE ME, I THOUGHT HE ALREADY
12 SAID OCTOBER OF 2000.
13 MR. DELGADO: 2001.
14 MR. MCMAHON: I'M SORRY.
15 BY MR. MCMAHON
16 Q CHECK YOUR NOTES WHEN YOU WENT TO INDIANA. I
17 APOLOGIZE.
18 A I STAND CORRECTED. THAT IS 21 OCTOBER, 2000. WE
19 WENT OUT AND WE TALKED AND WE MADE ARRANGEMENTS TO
20 SPEAK WITH MR. FRIEBURGER ON THE 22ND OF OCTOBER,
21 2000.
22 Q DO YOU RECALL WHETHER OR NOT THAT WAS A WEEKEND?
23 A YES. WE WENT ON A SATURDAY AND RETURNED ON SUNDAY.
24 Q NOW, WHAT WAS YOUR -- BY THE WAY, DID YOU HAVE ANY
25 BALLISTICS REPORT BACK FROM S.L.E.D. BY THEN?

1 A WE DID NOT.

2 Q WHAT WAS YOUR PURPOSE IN GOING AND TALKING TO

3 MR. FRIEBURGER?

4 A WE WENT OUT ON A CURSORY INVESTIGATION TO DETERMINE

5 IF WE COULD TALK TO HIM AND ASCERTAIN ANY FACTS OR

6 ANYTHING HE WOULD TELL US.

7 Q NOW, DID YOU TALK WITH HIM ON THAT SATURDAY?

8 A NO, SIR.

9 Q SPECIFICALLY, WHEN DID YOU TALK WITH HIM?

10 A I TALKED TO HIM ON SUNDAY AFTERNOON, 22 OCTOBER.

11 Q AND WHERE DID YOU TALK WITH HIM AT?

12 A THAT WAS THE WHITLEY COUNTY SHERIFF'S DEPARTMENT,

13 INDIANA.

14 Q AND HOW DID MR. FRIEBURGER COME TO BE AT THE

15 SHERIFF'S OFFICE?

16 A DETECTIVE STOTTS MADE AN AGREEMENT THAT HE WOULD GO

17 BY MR. FREIBURGER'S HOME, SPEAK WITH HIM IN PRIVATE

18 AND ADVISE HIM THAT TWO PEOPLE FROM COLUMBIA, SOUTH

19 CAROLINA, RICHLAND COUNTY SHERIFF'S DEPARTMENT,

20 WANTED TO SPEAK WITH HIM AND ASK IF HE WOULD COME

21 VOLUNTARILY TO WHITLEY COUNTY IN PRIVACY SO WE MAY

22 SPEAK WITH HIM.

23 Q AND DID HE DO SO?

24 A HE CAME OF HIS OWN VOLITION AND FREE WILL.

25 Q DO YOU KNOW HOW HE ARRIVED?

1 A HIS OWN VEHICLE.

2 Q HIS OWN VEHICLE, THAT BEING MR. FREIBURGER'S VEHICLE?

3 A HIS VEHICLE.

4 Q WHAT TYPE OF SETTING DID YOU AND SERGEANT METZ TALK
5 TO MR. FRIEBURGER. IN?

6 A THIS WAS PREARRANGED BY INVESTIGATOR STOTTS,
7 DETECTIVE STOTTS, AND WE HAD THE USE OF THE
8 ADMINISTRATIVE OFFICES OF THE WHITLEY COUNTY
9 SHERIFF'S OFFICE, WHICH WAS FAR AWAY FROM THE
10 INCARCERATION AREA OR ANYTHING THAT REPRESENTED A
11 JAIL.

12 Q NOW, WAS HE HANDCUFFED IN ANY MANNER?

13 A IN NO WAY, NO, SIR.

14 Q AND WHEN HE FIRST ARRIVED, WHO ALL WAS IN THE OFFICE?

15 A DETECTIVE STOTTS, INVESTIGATOR METZ, MR. FRIEBURGER
16 AND MYSELF.

17 Q AND WERE Y'ALL INTRODUCED TO MR. FRIEBURGER?

18 A YES, BY INVESTIGATOR STOTTS.

19 Q AND HOW WERE Y'ALL INTRODUCED?

20 A WE WERE INTRODUCED AS OFFICERS OF THE RICHLAND COUNTY
21 SHERIFF'S DEPARTMENT, COLUMBIA, SOUTH CAROLINA.

22 Q DID Y'ALL THEN TALK WITH MR. FRIEBURGER?

23 A WE DID.

24 Q NOW, WHAT, IF ANYTHING, DID Y'ALL TELL HIM Y'ALL'S
25 PURPOSE WAS IN BEING THERE?

1 A WE EXPLAINED TO MR. FRIEBURGER WHY WE HAD COME TO SEE
2 HIM AND GAVE HIM THE BASIC INFORMATION ABOUT THE CASE
3 OCCURRING IN 1961 AT FORT JACKSON, SOUTH CAROLINA
4 WHILE HE WAS IN THE MILITARY AND ASKED HIM IF WE
5 COULD ASK HIM SOME QUESTIONS ABOUT THE MATTER.

6 Q AND YOU SAY YOU EXPLAINED TO HIM WHY YOU WERE THERE
7 TO TALK TO HIM. SPECIFICALLY, WHAT DID YOU EXPLAIN
8 TO HIM, LIEUTENANT?

9 A WE TOLD HIM WE WERE THERE TO TALK WITH HIM ABOUT A
10 HOMICIDE WHICH OCCURRED AT COLUMBIA, SOUTH CAROLINA
11 ON 28, FEBRUARY, OR 1 MARCH, 1961.

12 Q NOW, WERE YOU IN HIS PRESENCE TO SUCH AN EXTENT THAT
13 YOU COULD OBSERVE HIS Demeanor WHEN HE FIRST CAME IN?

14 A YES.

15 Q WOULD YOU DESCRIBE FOR THE JURY, PLEASE, WHAT HIS
16 Demeanor WAS WHEN HE FIRST CAME IN THERE WITH Y'ALL?

17 A HIS Demeanor WAS SEMI-NORMAL, WHICH YOU WOULD THINK
18 WHEN HE WAS FIRST INTRODUCED, WHEN HE LEARNED THAT --

19 MR. DELGADO: OBJECTION. YOUR HONOR.

20 THE WITNESS: -- THAT WE WERE THERE TO TALK WITH
21 HIM --

22 MR. DELGADO: OBJECTION. SPECULATION.

23 MR. MCMAHON: NO, SIR. I CAN GO INTO CHANGE OF
24 Demeanor.

25 THE COURT: WAIT A MINUTE, GENTLEMEN. SO FAR

1 OKAY.

2 MR. MCMAHON: YES, SIR.

3 THE COURT: YOU MAY PROCEED.

4 MR. MCMAHON: YES, SIR.

5 BY MR. MCMAHON

6 Q AND THEN YOU EXPLAINED HIS DEemeanOR APPEARED NORMAL
7 AT THAT TIME?

8 A HIS DEemeanOR APPEARED NORMAL AT OUR FIRST MEETING;
9 HOWEVER, IT IS MY OPINION THAT HIS DEemeanOR --

10 THE COURT: NO, DON'T ANSWER THE QUESTION.

11 MR DELGADO: OBJECTION.

12 THE COURT: NOW, I WARNED YOU THE OTHER DAY
13 ABOUT THIS STUFF, JUST WHAT HE SAW, JUST WHAT HE HEARD.

14 MR. MCMAHON: YES, SIR.

15 BY MR. MCMAHON

16 Q AFTER YOU EXPLAINED YOUR PURPOSE IN BEING THERE,
17 LIEUTENANT, EXPLAIN TO THE JURY YOUR OBSERVATIONS OF
18 MR. FREIBURGER'S DEemeanOR.

19 A HE BECAME FLUSHED IN THE FACE, APPEARED TO BE
20 PERSPIRING. HIS VOICE WAS SLIGHTLY TREMBLING.

21 Q NOW, WAS HE UNDER ARREST?

22 A NO, HE WAS NOT.

23 Q DID YOU HAVE ANY DOCUMENTS WITH Y'ALL TO PLACE HIM
24 UNDER ARREST?

25 A NONE WHATSOEVER.

1 Q WAS HE TOLD HE WAS UNDER ARREST?

2 A HE WAS NOT, NO.

3 Q WAS HE FREE TO LEAVE?

4 A HE WAS FREE TO LEAVE AT ANY TIME HE WANTED TO.

5 Q WAS HE TOLD HE WAS FREE TO LEAVE?

6 A YES.

7 Q NOW, Y'ALL BEGAN TALKING WITH HIM; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND WHAT, IF ANYTHING, DID YOU ASK HIM ABOUT THE

10 ARMY?

11 A I ASKED MR. FRIEBURGER IF HE REMEMBERED HIS DAYS IN

12 THE ARMY IN FORT JACKSON. HE CAME BACK WITH A

13 QUESTION, "I WAS IN THE ARMY?"

14 Q YOUR QUESTION WAS, "DO YOU REMEMBER YOUR DAYS IN THE

15 ARMY?"

16 A THAT'S CORRECT.

17 Q AND HOW DID HE RESPOND TO THAT QUESTION?

18 A "I WAS IN THE ARMY?"

19 Q WITH A QUESTION?

20 A YES.

21 Q DID YOU FOLLOW UP ON THAT ANY?

22 A YES. I ADVISED HIM THAT I DID, IN FACT, BELIEVE HE

23 WAS IN THE ARMY, AND I PRODUCED A PICTURE OF HIM,

24 WHICH I HAD RECEIVED PRIOR, IN AN ARMY UNIFORM.

25 Q AND I WANT TO SHOW YOU AN ITEM AND ASK IF YOU CAN

1 IDENTIFY THIS FOR US, PLEASE.

2 A YES, SIR.

3 Q AND WHAT IS THAT ITEM?

4 A THAT'S A PICTURE OF EDWARD E. FRIEBURGER.

5 Q IS THAT THE PICTURE THAT YOU PRODUCED FOR HIM THAT
6 AFTERNOON OF OCTOBER 22ND, 2000, AT THE WHITLEY
7 COUNTY SHERIFF'S OFFICE?

8 A IT IS THE SAME PICTURE.

9 MR. MCMAHON: YOUR HONOR, I WOULD OFFER STATE'S
10 EXHIBIT 7 INTO EVIDENCE.

11 THE COURT: ANY OBJECTION?

12 MR. DELGADO: NO, SIR.

13 THE COURT: NO OBJECTION.

14 (WHEREUPON, STATE'S EXHIBIT NO. 7 WAS ADMITTED
15 INTO EVIDENCE.)

16 BY MR. MCMAHON

17 Q AFTER YOU SHOWED MR. FREIBURGER THIS PHOTOGRAPH, WHAT
18 DID HE THEN SAY ABOUT THE ARMY?

19 A HE THEN ADMITTED THAT HE WAS IN THE ARMY.

20 MR. DELGADO: OBJECTION, YOUR HONOR, "ADMITTED".

21 THE WITNESS: HE ADVISED ME THAT HE HAD BEEN IN
22 THE SERVICE.

23 THE COURT: I DON'T UNDERSTAND THE BASIS.

24 MR. DELGADO: "ADMITTED" IS INCULPATORY. THAT'S
25 EXACTLY WHAT THIS MAN IS CAPABLE OF DOING.

1 THE COURT: OVERRULED.

2 BY MR. MCMAHON

3 Q NOW, IN ADDITION TO ASKING HIM QUESTIONS ABOUT THE
4 ARMY GENERALLY, DID YOU ASK HIM ANY QUESTIONS
5 SPECIFICALLY?

6 A YES.

7 Q AND WHAT QUESTIONS SPECIFICALLY DID YOU ASK?

8 A WE ASKED HIM SOME PERSONAL QUESTIONS ABOUT HIS
9 CURRENT EMPLOYMENT, HIS FAMILY AT THIS PARTICULAR
10 TIME, WHAT HE DID, WHEN HE WAS MARRIED, HOW MANY
11 CHILDREN HE HAD, THINGS OF A GENERAL NATURE.

12 Q HOW DID HE RESPOND TO THOSE QUESTIONS, LIEUTENANT
13 CRAIG?

14 A HE RESPONDED THAT HE HAD BEEN A HANDYMAN FOR
15 MILLENNIUM INDUSTRIES IN LIGONIER, INDIANA THE LAST
16 FIVE YEARS, '95 TO THAT PARTICULAR TIME.

17 HE ADVISED ME THAT HE HAD WORKED AT G.E. IN FORT
18 WAYNE FROM '62 TO '70; SELF-EMPLOYED FROM '70 TO '73;
19 WORKED FOR NABISCO ABOUT FIVE YEARS, HE SAID. THEN
20 HE WAS IN LANDSCAPING FROM '78 TO '95.

21 HE SAID HE WAS MARRIED, HAD THREE CHILDREN, ONE
22 IN FORT WAYNE, ONE IN CHICAGO, AND ONE IN CHARLOTTE,
23 MICHIGAN.

24 Q ANY OF THOSE AREAS THAT YOU JUST LISTED FOR THE JURY,
25 DID HE ANSWER ANY OF THOSE QUESTIONS --

1 MR. DELGADO: OBJECTION, YOUR HONOR. LEADING,
2 PLEASE.

3 THE COURT: SUSTAINED.

4 BY MR. MCMAHON

5 Q DID HE GIVE ANSWERS TO THOSE QUESTIONS?

6 A YES.

7 Q DID HE ANSWER ANY OF THOSE QUESTIONS WITH QUESTIONS?

8 A HE ONLY ANSWERED THE QUESTIONS WITH QUESTIONS AS
9 PERTAINS TO HIS BEING IN THE MILITARY AND ABOUT A
10 REVOLVER THAT WAS ALLEGEDLY PURCHASED BY HIM IN
11 COLUMBIA, SOUTH CAROLINA.

12 Q NOW, WHAT, IF ANYTHING, DID YOU ASK HIM ABOUT A
13 REVOLVER?

14 A WE SHOWED HIM A PAWNSHOP OR A SALES RECEIPT FOR A
15 REVOLVER THAT HE ALLEGEDLY PURCHASED ON THE AFTERNOON
16 OF 28 FEBRUARY, 1961, AND HE DENIED PURCHASING THAT
17 GUN.

18 Q I WANT TO SHOW YOU A DOCUMENT, STATE'S EXHIBIT
19 NO. 25. CAN YOU IDENTIFY THAT ITEM FOR US, PLEASE?

20 A YES, SIR. THIS IS A LIKE ITEM, OR A COPY OF THE
21 SAME, THAT WAS PRESENTED FOR MR. FREIBURGER'S REVIEW.

22 Q AND WHAT WAS HIS RESPONSE WHEN YOU SHOWED HIM THIS
23 ITEM, STATE'S EXHIBIT -- OR A COPY OF STATE'S
24 EXHIBIT 25?

25 A DENIED BUYING THE WEAPON.

1 Q DID YOU ASK HIM ANY SPECIFICS ABOUT OTHER LOCATIONS
2 IN THE MILITARY HE MAY HAVE BEEN STATIONED?
3 A YES.
4 Q SPECIFICALLY, DID YOU ASK HIM ABOUT BEING STATIONED
5 AT FORT LEAVENWORTH?
6 A I DID.
7 Q AND WHAT, IF ANYTHING, WAS HIS RESPONSE TO THAT,
8 LIEUTENANT?
9 A HE FIRST DENIED IT.
10 Q DID YOU THEREAFTER SHOW HIM ANY DOCUMENTATION? JUST
11 YES OR NO.
12 A YES.
13 Q AND AFTER YOU SHOWED HIM THE DOCUMENTATION, WHAT WAS
14 HIS RESPONSE?
15 A HE LATER ADMITTED THAT HE WAS.
16 Q NOW, LIEUTENANT, ABOUT HOW LONG, TELL THE JURY, WAS
17 IT, THAT YOU AND SERGEANT METZ WERE IN
18 MR. FREZBURGER'S PRESENCE ON THE AFTERNOON OF 22
19 OCTOBER, 2000.
20 A MY RECORDED TIME IS 1:45 P.M. THAT AFTERNOON, AND THE
21 INTERVIEW TERMINATED ABOUT TWO HOURS FROM THAT.
22 AROUND, I DON'T KNOW THE EXACT TIME, ABOUT TWO HOURS.
23 Q WAS LIEUTENANT -- OR WAS DETECTIVE STOTTS IN THERE
24 ALL OF THAT PERIOD OF TIME?
25 A NO, HE WAS NOT. HE WAS OUT LOCATING ANOTHER WITNESS.

- 1 Q APPROXIMATELY HOW LONG, IN YOUR RECOLLECTION, WAS
2 DETECTIVE STOTTS IN THERE?
- 3 A FROM THE ONSET, JUST A FEW MINUTES. A BREAK AT
4 MIDPOINT, MAYBE ABOUT AFTER AN HOUR. THE DOOR WAS
5 OPENED AND WE WERE OUT IN THE HALLWAY. THEN ABOUT AN
6 HOUR AFTER THAT, MR. STOTTS CAME BACK, AND WE
7 DISCUSSED MATTERS AGAIN.
- 8 Q BUT THE TWO-HOUR PERIOD OF TIME WAS YOU, SERGEANT
9 METZ, AND MR. FRIEBURGER; IS THAT CORRECT?
- 10 A THAT'S CORRECT.
- 11 Q WITH A BREAK AFTER ABOUT AN HOUR?
- 12 A YES.
- 13 Q NOW, WERE THERE ANY OTHER AREAS, CONCERNING 1961,
14 JUST ANSWER YES OR NO, THAT YOU QUESTIONED
15 MR. FRIEBURGER ABOUT?
- 16 A NO.
- 17 Q HOW DID THIS CONVERSATION ON THE AFTERNOON OF THE
18 22ND END?
- 19 A MR. FRIEBURGER DECIDED THAT HE HAD GUESTS, OR SO HE
20 SAID, AT HIS HOME, WHICH I DIDN'T DOUBT. HE SAID HE
21 WAS ABOUT TO DEPART, AND WE DID NOT IMPEDE HIS
22 DEPARTING.
- 23 Q DID HE LEAVE?
- 24 A YES, SIR.
- 25 Q AND YOU ALLOWED HIM TO LEAVE?

1 A ABSOLUTELY.

2 Q AND HOW DID HE LEAVE?

3 A ON HIS OWN, IN HIS OWN VEHICLE.

4 Q NOW, SIR, WHEN Y'ALL CAME BACK FROM INDIANA, DID YOU

5 REMAIN INVOLVED IN THE FOLLOW-UP INVESTIGATION OF

6 THIS CASE?

7 A YES, SIR.

8 Q AND I WANT TO DIRECT YOUR ATTENTION TO JANUARY,

9 FEBRUARY OF 2001. THE BALLISTICS REPORT, PRIOR TO

10 RECEIVING A WRITTEN REPORT FROM S.L.E.D., DID YOU

11 HAVE ANY KNOWLEDGE OF -- DID YOU RECEIVE A VERBAL

12 REPORT?

13 A WE ASKED FOR A REPORT AS SOON AS POSSIBLE.

14 Q AND DID YOU RECEIVE ONE?

15 A I ASSUMED THAT WAS RECEIVED, AS I WAS ADVISED BY

16 INVESTIGATOR METZ THAT HE HAD RECEIVED A WRITTEN

17 REPORT BACK FROM LIEUTENANT PARNELL.

18 Q AND PRIOR TO THE WRITTEN REPORT, DO YOU KNOW WHETHER

19 OR NOT YOU HAD RECEIVED A VERBAL REPORT?

20 A I DIDN'T RECEIVE ONE, NO, SIR.

21 Q IN JANUARY OF 2001, WHAT STEPS, IF ANY, DID YOU TAKE

22 WITH OTHER OFFICERS AS FAR AS ANY OTHER EXPERT OR

23 EXPERTS WERE CONCERNED?

24 A AFTER THIS REPORT WAS RECEIVED BACK FROM S.L.E.D., IN

25 WHICH IT STATED "INCONCLUSIVE", IT WAS A DECISION OF

1 THE CHIEF OF INVESTIGATIONS, INVESTIGATOR METZ, AND
2 MYSELF TO SEEK AN OUTSIDE SECOND OPINION.

3 Q NOW, COULD YOU HAVE MADE THAT DECISION ON YOUR OWN?

4 A NO, SIR.

5 Q NOW, AS A RESULT OF THAT DECISION BEING MADE, WHAT
6 STEPS DID EITHER -- DID BOTH YOU AND SERGEANT METZ
7 TAKE STEPS IN AN ATTEMPT TO LOCATE AN OUTSIDE EXPERT?

8 A YES.

9 Q OKAY.

10 A INVESTIGATOR METZ WORKED INDEPENDENTLY, INTERNET, AND
11 I WORKED INDEPENDENTLY ON MY OWN IN TRYING TO LOCATE
12 ANOTHER EXAMINER.

13 Q NOW, WHAT STEPS DID YOU TAKE IN AN ATTEMPT TO LOCATE
14 ANOTHER EXAMINER?

15 A I CALLED A PERSONAL FRIEND WHO IS A RETIRED
16 BALLISTICS EXAMINER FROM THE U.S. ARMY C.I.D.

17 Q AND WHO WAS THIS?

18 A PATRICK GARLAND.

19 Q AND DID YOU HAVE A CONVERSATION WITH MR. GARLAND?
20 DON'T TELL ME WHAT HE SAID, BUT DID YOU HAVE A
21 CONVERSATION WITH HIM?

22 A YES, I DID.

23 Q AND WHAT TYPE OF EXAMINER WERE YOU LOOKING FOR,
24 LIEUTENANT CRAIG?

25 A WE'RE LOOKING FOR AN EXAMINER WHO WAS FAMILIAR WITH

1 THIS TYPE OF GUN AND THIS TYPE OF AMMUNITION FROM 40
2 YEARS AGO.

3 Q AND DID YOU RECEIVE CERTAIN NAMES FROM MR. GARLAND?

4 A YES. HE PROVIDED ME THREE NAMES.

5 Q AMONG THOSE THREE NAMES, WAS ONE OF THEM MR. CAYTON
6 WHO IS HERE IN THE COURTROOM TODAY?

7 A THAT'S CORRECT.

8 Q NOW, ADDITIONALLY TO MR. GARLAND, DID YOU CONTACT
9 ANYONE ELSE?

10 A YES, I DID.

11 Q AND WHO WAS THAT?

12 A I CONTACTED MR. DON MICO, WHO IS THE CHIEF
13 CRIMINALIST OF THE U.S. ARMY C.I.D., COMMAND
14 LABORATORY IN FORT GILLEM, GEORGIA, WHOM I NEVER MET,
15 AND ASKED HIS OPINION SINCE THERE ARE NUMEROUS OTHER
16 PEOPLE IN THE RESERVES IN C.I.D. COMMAND THAT CALLS
17 IN HIS PURVIEW.

18 HE GAVE ME ALSO THE NAME OF MR. JOHN CAYTON AS
19 AN EXPERT.

20 Q NOW, WOULD THIS ALL HAVE BEEN PRIOR TO WHENEVER YOU
21 SENT THE EVIDENCE OUT TO MR. CAYTON; IS THAT CORRECT?

22 A ALL OF THIS OCCURRED AFTER OUR REQUEST TO S.L.E.D.

23 Q YES, SIR. ALL OF IT OCCURRED PRIOR TO WHEN YOU SENT
24 ANY EVIDENCE OUT TO MR. CAYTON --

25 A THAT'S CORRECT.

1 Q -- IS THAT CORRECT?

2 A THAT'S CORRECT.

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

4 IDENTIFY WHAT THIS IS A COPY OF.

5 A THIS IS A COPY OF A FED EX U.S. AIR BILL DATED

6 2/8/01.

7 Q AND WHO FILLED THAT OUT?

8 A I DID.

9 Q AND WHAT WAS THAT DOCUMENT?

10 A IT IS A TRANSMISSION OF EVIDENCE TO MR. JOHN CAYTON,

11 ACCESS FORENSICS LABORATORIES IN OSBORNEE, MISSOURI.

12 Q SO ALL THIS RESEARCH YOU WERE DOING WOULD HAVE BEEN

13 PRIOR TO THIS DATE?

14 A ABSOLUTELY.

15 Q PRIOR TO 2/8/01?

16 A YES, SIR.

17 Q AND YOU CHECKED WITH THESE TWO FOLKS, MR. GARLAND AND

18 MR. MICO, AND BOTH OF THEM GAVE YOU THE NAME OF JOHN

19 CAYTON?

20 A YES, ALONG WITH TWO OTHERS.

21 Q HAD YOU EVER MET JOHN CAYTON BEFORE?

22 A NO, SIR. TODAY IS THE FIRST TIME I'VE EVER MET

23 MR. CAYTON.

24 Q NEVER MET HIM BEFORE?

25 A NEVER EVER.

1 Q HAVE YOU EVER BEEN INVOLVED IN WORKING ON CASES WITH
2 MR. CAYTON IN THE PAST?

3 A NO, SIR.

4 Q AND WAS THE EVIDENCE A RESULT OF THAT JOINT DECISION
5 BETWEEN YOU AND SERGEANT METZ AND DEPUTY CHIEF WILSON
6 MADE TO SEND THE EVIDENCE OUT --

7 A YES. THERE WAS A JOINT MEETING, AND IT WAS AGREED TO
8 SEND IT.

9 Q AND HE FIT THOSE CHARACTERISTICS --

10 A YES, SIR.

11 Q -- THE TYPE OF EXPERT YOU WERE LOOKING FOR?

12 NOW, YOU ALL RECEIVED THE REPORT BACK FROM
13 MR. CAYTON APRIL 2ND OF '01?

14 A YES, SIR.

15 Q AND WHEN WAS MR. FRIEBURGER ARRESTED?

16 A I'D HAVE TO REFER TO THE ARREST WARRANT. I BELIEVE
17 IT'S IN THE FILE, SIR.

18 Q I'M SORRY, WHAT DID YOU SAY?

19 A I BELIEVE YOU HAVE TO REFER TO THE ARREST WARRANT
20 WHICH IS ON FILE.

21 Q ALL RIGHT. WOULD IT HAVE BEEN AFTER THE DATE OF
22 MR. CAYTON'S REPORT?

23 A YES, SIR.

24 MR. MCMAHON: OKAY. THANK YOU. I DON'T HAVE
25 ANY FURTHER QUESTIONS.

1 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

2 MR. DELGADO: THANK YOU.

3 CROSS-EXAMINATION:

4 BY MR. DELGADO

5 Q EXCUSE ME ONE SECOND, SIR.

6 A YES, SIR.

7 Q MR. CRAIG?

8 A YES, SIR.

9 Q YOU ASKED SOME QUESTIONS OF ED TO DETERMINE BASIC
10 THINGS ABOUT HIS MEMORY, WOULD THAT BE FAIR?

11 A THAT'S CORRECT, SIR.

12 Q HE TOLD YOU THAT HE HAD WORKED AT G.E. FROM 1962 TO
13 1970; IS THAT RIGHT?

14 A YES, SIR. THAT'S WHAT I PUT IN MY NOTES.

15 Q WHAT IF I TOLD YOU IT WAS HIS WIFE WHO WORKED AT G.E.
16 FROM '62 TO '70? WOULD THAT KIND OF GIVE YOU A
17 LITTLE BIT OF INCLINATION MAYBE HE JUST HAD A MEMORY
18 PROBLEM?

19 A I WOULDN'T KNOW, SIR. THAT'S WHAT HE TOLD ME. HE
20 ANSWERED IT VERY FORTHRIGHT.

21 Q YES, SIR. HOW ABOUT THE 23 YEARS HE WAS AT SEARS?
22 DID HE TELL YOU ANYTHING ABOUT WORKING AT SEARS FOR
23 23 YEARS?

24 A NO, SIR.

25 Q DO YOU THINK THAT SOMEBODY WHO HAD WORKED AT ONE

1 PLACE FOR 23 YEARS STRAIGHT WOULD HAVE REMEMBERED
2 THAT, OR MAYBE HE HAS A MEMORY PROBLEM?

3 A I WOULDN'T KNOW, SIR.

4 Q ACTUALLY, MR. CRAIG, YOU'VE GOT A LITTLE BIT OF A
5 MEMORY PROBLEM. DO YOU REMEMBER THAT? BECAUSE SEE,
6 YOU DIDN'T GO FROM C.I.D. TO THE UNIVERSITY OF SOUTH
7 CAROLINA POLICE, DID YOU?

8 A I WAS INTERIMLY AN INVESTIGATOR WITH THE DEPARTMENT
9 OF MENTAL HEALTH.

10 Q YEAH, INTERIMLY FOR TWO-AND-A-HALF, ALMOST THREE
11 YEARS, YOU WORKED FOR THE D.M.H. OUT HERE AT THE
12 STATE HOSPITAL, RIGHT?

13 A YES.

14 Q BUT YOU DIDN'T LIST THAT AS KIND OF A JOB, THAT
15 TWO-AND-A-HALF, THREE YEARS?

16 A IT WAS ALL MY RETIREMENT PERIOD. IT WAS ALL UNDER
17 THE SAME RETIREMENT SYSTEM.

18 Q I UNDERSTAND. SO IN OTHER WORDS, FOR TWO-AND-A-HALF
19 TO THREE YEARS WHEN YOU SAID YOU WORKED AT U.S.C.,
20 YOU SAID YOU WORKED, YOU RETIRED FROM C.I.D. IN 1969.
21 YOU WORKED FROM 1969 AT THE UNIVERSITY OF SOUTH
22 CAROLINA TO 1991. THAT'S REALLY NOT TRUE, IS IT? IS
23 IT?

24 A IT'S A STATEMENT OF FACT, SIR, WHERE I WORKED.

25 Q WOULD YOU LIKE TO SEE YOUR APPLICATION, SIR, ABOUT

1 WHEN YOU WORKED AT THE DEPARTMENT OF MENTAL HEALTH?
2 WOULD YOU LIKE TO SEE THOSE DATES?
3 A I DON'T NEED TO, SIR.
4 Q THAT'S TWO-AND-A-HALF YEARS, RIGHT, MR. CRAIG?
5 A I HAD A LATERAL TRANSFER.
6 Q I GOT IT. OKAY. BUT YOU DIDN'T TELL THE JURY ABOUT
7 THE LATERAL TRANSFER. YOU SAID YOU WORKED AT THE
8 UNIVERSITY OF SOUTH CAROLINA POLICE FROM '69 TO 1991,
9 RIGHT, CORRECT, SIR?
10 A THAT'S CORRECT, SIR.
11 Q ALL RIGHT. MR. CRAIG, THE WHITLEY COUNTY SHERIFF'S
12 DEPARTMENT IS LOCATED IN A LITTLE PLACE CALLED
13 COLUMBIA CITY, INDIANA, CORRECT?
14 A COLUMBIA CITY, INDIANA, CORRECT.
15 Q WHEN YOU AND MR. METZ WENT THERE, MR. ROCKY STOTTS,
16 THE GENTLEMAN SEATED BACK HERE IN THE THIRD, FOURTH
17 ROW, WHEN YOU ALL WERE TALKING TO ED, TELL OUR JURY
18 ABOUT BESIDES THE TWO PAGES OF NOTES THAT YOU HAVE,
19 DO WE HAVE ANY OTHER WHAT WE CALL MEMORIALIZATION OF
20 THAT? BY THAT, SIR, I MEAN ANY TAPE-RECORDING OF IT?
21 A NONE WHATSOEVER.
22 Q ANY VIDEO OF IT?
23 A NO, SIR.
24 Q SO FOR TWO HOURS, WHAT WE HAVE IS YOUR TWO PAGES OF
25 WRITTEN NOTES, CORRECT, SIR?

1 A THAT'S CORRECT.

2 Q ALL RIGHT. NOW, DURING THAT PERIOD OF TIME, SIR,

3 WOULD IT BE FAIR TO SAY, MR. CRAIG -- AND I MEAN YOU

4 NO DISRESPECT, SIR, WOULD IT BE FAIR TO SAY, SIR,

5 THAT YOU DID 95 PERCENT OF THAT TALKING, THAT

6 QUESTIONING?

7 A I WOULDN'T SAY 95 PERCENT, NO, SIR.

8 Q RIGHT ON UP THERE, WOULD YOU IMAGINE?

9 A NO.

10 Q WOULD YOU SAY, SIR, THAT YOU DID THE VAST MAJORITY OF

11 THE QUESTIONING OF ED?

12 A NO, SIR.

13 Q OKAY. MR. CRAIG, IF I'M NOT MISTAKEN, SIR, WHILE

14 THIS HAS BEEN A THREE-WAY EFFORT, AS YOU SAY, BETWEEN

15 YOURSELF AND MR. WILSON, AND MR. METZ, DID I NOT SEE

16 YOUR PICTURE ON THE FRONT PAGE OF THE STATE NEWSPAPER

17 AFTER THIS THING HAPPENED?

18 A IT WAS.

19 Q YES, SIR.

20 A NOT WITH MY APPROVAL, BUT IT GOT THERE.

21 Q SO -- AND YOU MADE QUOTES TO THE STATE NEWSPAPER

22 ABOUT VARIOUS THINGS ABOUT THIS CASE, DID YOU NOT,

23 SIR?

24 A NOT TO MY KNOWLEDGE ABOUT VARIOUS THINGS, ABOUT THE

25 SPECIFICS ON THIS CASE, NO, SIR.

1 Q YES, SIR. DID YOU EVER MAKE ANY STATEMENT TO THE
2 PRESS, SIR, ABOUT HOW FORENSIC EVALUATIONS NOW ARE SO
3 MUCH BETTER THAN THEY WERE 40 YEARS AGO?

4 A I MIGHT HAVE EXPRESSED AN OPINION. IT WOULD HAVE
5 BEEN SOLELY MY OPINION.

6 Q ACTUALLY, WHAT THAT MEANS IS FORENSIC EVALUATIONS
7 HAVE INCREASED IN THEIR ABILITIES OVER THE PAST 40
8 YEARS, AS LONG AS IT'S NOT OUT ON BROAD RIVER ROAD AT
9 S.L.E.D., RIGHT?

10 A NO, SIR, THAT'S NOT THE CASE.

11 Q WOULD YOU LIKE TO SEE THE QUOTE, SIR? DO YOU AGREE
12 WITH ME THAT YOU SAID THAT? DO YOU UNDERSTAND MY
13 QUESTION TO YOU, SIR?

14 A THAT I SAID TECHNIQUES OR EQUIPMENT WERE BETTER TODAY
15 THAN THEY WERE BACK THEN, YES, I MADE THAT STATEMENT.

16 Q I THINK "TENFOLD" BETTER. DO YOU REMEMBER THAT?

17 A I MIGHT HAVE.

18 Q YES, SIR. AND THAT TENFOLD BETTER WOULD ALSO INVOLVE
19 OUR FRIENDS AT THE STATE LAW ENFORCEMENT DIVISION
20 FORENSICS LAB, CORRECT?

21 A THEY HAVE THE SAME EQUIPMENT.

22 Q YES, SIR. BUT IT'S ALMOST LIKE, MR. CRAIG, WHEN YOU
23 GOT THE REPORT BACK, IT DIDN'T MATTER. IF S.L.E.D.
24 HAD SAID "CONCLUSIVE", WE WOULDN'T HAVE DONE ANYTHING
25 ELSE, WOULD WE?

1 A I BEG YOUR PARDON?

2 Q IF THE STATE LAW ENFORCEMENT DIVISION HAD SAID THAT
3 THE TEST RESULTS ARE CONCLUSIVE, Y'ALL WOULDN'T HAVE
4 GONE AND HIRED ANYBODY ELSE, WOULD YOU?

5 A I ASSUME WE WOULDN'T HAVE IF THEY HAD SAID THAT WAS
6 THE WEAPON.

7 Q EXACTLY. SO IN EFFECT, WHEN THEY CAME BACK AND SAID
8 TO YOU "INCONCLUSIVE", THAT WASN'T VERY GOOD NEWS FOR
9 YOU ALL, WAS IT?

10 A WELL, THE CONNOTATION OF THE NEWS WAS --

11 Q YOU DON'T HAVE TO LOOK OVER THERE, SIR. YOU CAN LOOK
12 STRAIGHT --

13 MR. MCMAHON: NO, SIR. HE'S NOT LOOKING OVER
14 HERE. I OBJECT TO THAT CHARACTERIZATION.

15 THE COURT: I SUSTAIN THE OBJECTION. JUST NOTE
16 YOUR OBJECTION IS ALL.

17 ALL RIGHT.

18 BY MR. DELGADO

19 Q WAS IT GOOD NEWS FOR YOU, MR. CRAIG, WHEN THE STATE
20 LAW ENFORCEMENT DIVISION, THROUGH MR. PARNELL, SAID
21 TO YOU ALL, YOURSELF, MR. METZ, MAYBE MR. WILSON KNEW
22 ABOUT IT, THAT THE RESULTS ARE THE SAME AS THEY WERE
23 IN 1961?

24 A I WOULDN'T PUT IT IN PERSPECTIVE, GOOD NEWS OR BAD
25 NEWS, SIR.

1 Q OKAY. WELL, DID THE RESULTS FROM MR. CAYTON, WAS
2 THAT DESCRIBED AS GOOD NEWS?

3 A IF YOU WANT TO PUT IT IN THAT PERSPECTIVE, YES.

4 Q ALL RIGHT, SIR. WELL, ACTUALLY, THE LITTLE IN-HOUSE
5 NEWSPAPER THAT THE RICHLAND COUNTY SHERIFF'S
6 DEPARTMENT, IT'S CALLED "THE DEPUTY" -- YOU KNOW THAT
7 LITTLE MAGAZINE, DON'T YOU, THAT LITTLE NEWSPAPER?

8 A I'VE PROBABLY SEEN IT ONCE.

9 Q THAT'S WHEN YOU AND MR. MEREDITH HAD YOUR PICTURE ON
10 THE FRONT OF IT. DO YOU REMEMBER THAT?

11 A YES. I WAS GIVEN A COPY OF THAT.

12 Q AND THEY TERMED IT, "MR. CAYTON CALLED BACK WITH THE
13 GOOD NEWS," CORRECT, DO YOU REMEMBER THAT?

14 A MAYBE HE DID.

15 Q YES, SIR. WHICH MEANS THEN THAT MR. PARNELL'S NEWS
16 WAS THE BAD NEWS, WOULDN'T THAT BE FAIR?

17 A NOT EXACTLY, NO, SIR, BECAUSE AN INCONCLUSIVE
18 SITUATION STILL MEANS IT STILL COULD BE THE GUN.

19 Q YES, SIR, WHICH IS WHAT S.L.E.D. HAS BEEN SAYING FOR
20 40 YEARS, CORRECT?

21 A YES, SIR.

22 Q YES, SIR. SO IN EFFECT, CARL CRAIG SAID, WELL, IT
23 DOESN'T REALLY MATTER WHAT S.L.E.D. SAYS. I'M GOING
24 TO GO -- AND WITH ALL DUE RESPECT, SIR, YOU'RE THE
25 ONE WHO FOUND THE EXPERT WHO IS GOING TO TESTIFY,

1 CORRECT, SIR?

2 A I CALLED AN EXPERT AT THE ADVICE OF MY SUPERVISOR --

3 Q YES, SIR --

4 A -- WHO WAS THEN MAJOR WILSON --

5 Q YES, SIR.

6 A -- WITH THE CONCRETE CONCLUSION BETWEEN THE THREE

7 THAT THIS WAS THE ROUTE THAT WE WOULD TAKE. IT WAS

8 NOT MY DECISION.

9 Q I UNDERSTAND, SIR. THE REALITY OF THINGS, SIR, IS

10 YOU WERE THE ONE WHO FOUND THIS GENTLEMAN, CORRECT,

11 SIR?

12 A YES, I DISCOVERED HIM.

13 Q YES, SIR. AND MR. WILSON HAD NEVER MET THIS

14 GENTLEMAN BEFORE, HAD HE?

15 A I DON'T BELIEVE SO.

16 Q MR. METZ HAD NEVER KNOWN OF HIS NAME, HAD HE?

17 A NOT TO MY KNOWLEDGE.

18 Q AND THE ONE THING THAT YOU AND MR. CAYTON SHARE IN

19 YOUR CONNECTION IS YOUR ARMY C.I.D. BACKGROUND,

20 CORRECT, SIR?

21 A YES, SIR.

22 Q C.I.D. STANDS FOR CRIMINAL INVESTIGATION DIVISION?

23 A THAT'S CORRECT..

24 Q AS A MATTER OF FACT, SIR, YOU KNEW THE DECEASED IN

25 THIS MATTER, MR. JOHN ORNER, DID YOU NOT, SIR?

1 A I KNEW HIM BY SIGHT, SIR. I KNEW HIM BACK IN THE
2 '50S WHEN HE WAS A MESS SERGEANT AT FORT JACKSON. I
3 KNEW HIM BY SIGHT. I DIDN'T KNOW HIM PERSONALLY TO
4 TALK WITH HIM. I RECOGNIZED HIM AT CERTAIN TIMES IN
5 THE LATE '50S --

6 Q YES, SIR.

7 A -- WHILE I WAS STATIONED THERE AS A PRIVATE WHEN HE
8 WAS DRIVING A CAB.

9 Q YES, SIR. AND -- I'M SORRY, DID YOU SAY THAT YOU
10 KNEW HIM WHEN HE WAS DRIVING A CAB, AS WELL?

11 A YES, SIR.

12 Q AND YOU KNEW HIM. YOU KNEW HIM BY THE NAME "YANKEE
13 JOHN" OR DID YOU JUST KNOW HIM BY ORNER?

14 A THAT'S WHAT HE WAS CALLED.

15 Q YES, SIR. AND THAT'S WHAT YOU KNEW HIM BY, TOO?

16 A I DIDN'T KNOW HIM BY THAT.

17 Q OKAY. BUT YOU KNEW THE LAST NAME. I THINK HE WAS A
18 MASTER SERGEANT; IS THAT RIGHT?

19 A MASTER SERGEANT. HE RAN THE -- ONE OF THE
20 CONSOLIDATED MESS HALLS AT FORT JACKSON, THE BEST I
21 RECALL.

22 Q WHICH YOU WOULD FREQUENT, OR THAT'S HOW YOU CAME TO
23 KNOW HIM?

24 A IN SOME INSTANCES, INVESTIGATORS WOULD HAVE OCCASION
25 TO GO TO THOSE PLACES AND SEE CERTAIN KEY PERSONNEL,

1 MOSTLY.

2 Q ALL RIGHT, SIR. DID YOU TELL MR. WILSON THAT YOU
3 KNEW THE DECEASED IN THIS CASE, SIR?

4 A I TOLD HIM, YES, I DID.

5 Q ALL RIGHT. NOW, BEFORE OR AFTER YOU GOT INVOLVED IN
6 THIS CASE?

7 A BEFORE I GOT INVOLVED, NO, SIR, NEVER.

8 Q SO WHEN THE FILE WAS HANDED TO YOU, MR. CRAIG, THIS
9 WAS, WITH ALL DUE RESPECT, SIR, THIS WAS AN
10 OPPORTUNITY FOR YOU TO BE ABLE TO RESOLVE SOMETHING
11 THAT YOU KNEW ABOUT 40 SOME YEARS BEFORE, CORRECT?

12 A IF YOU PUT IT IN THAT PERSPECTIVE, BUT I DIDN'T HAVE
13 THE WHEREWITHAL TO SAY WHAT CASES I WORK.

14 Q ABSOLUTELY.

15 A THIS CASE WAS GIVEN TO ME.

16 Q ABSOLUTELY, I UNDERSTAND.

17 A JUST BY HAPPENSTANCE, IT HAPPENED TO BE SOMETHING
18 THAT OCCURRED WHEN I WAS IN THE ARMY.

19 Q AND FOR WHICH YOUR PARTNER AT THAT TIME, IN THE SAME
20 WAY THAT MR. METZ IS YOUR PARTNER NOW, YOUR PARTNER
21 AT THAT TIME, A FELLOW BY THE NAME OF REEVES, HELPED
22 THE RICHLAND COUNTY SHERIFF'S DEPARTMENT ---

23 A ABSOLUTELY.

24 Q THIS WAS AN OPPORTUNITY FOR YOU TO COME IN BEHIND
25 MR. REEVES, IN EFFECT, SOME 40 YEARS LATER, WOULD

1 THAT BE FAIR?

2 A I DON'T CONSIDER IT AN OPPORTUNITY, SIR.

3 Q I UNDERSTAND.

4 A IT'S A PART OF MY DUTY, TO SEEK JUSTICE.

5 Q ABSOLUTELY, SIR. THAT'S WHAT WE'RE ALL HERE FOR.

6 MR. CRAIG, IS THIS YOUR PICTURE TAKEN WITH

7 MR. MEREDITH?

8 A THAT LOOKS LIKE ME, SIR.

9 Q YES, SIR. DOES THAT LOOK LIKE MR. MEREDITH, TOO?

10 A YES.

11 Q OKAY. NOW, THIS IS PART OF THIS LITTLE IN-HOUSE

12 MAGAZINE, CORRECT, SIR?

13 A I BELIEVE SO.

14 Q AND THIS IS --

15 A I HAVE NO IDEA WHO PRODUCES IT.

16 Q RIGHT, SIR. IT'S STYLED, "METZ AND CRAIG SOLVE 1961

17 MURDER OF COLUMBIA CAB DRIVER," RIGHT?

18 A I ASSUME THAT'S WHAT IT SAYS ON THE FRONT, SIR.

19 Q YES, SIR. MR. CRAIG, LET'S TALK TO OUR LADIES AND

20 GENTLEMEN OF THE JURY ABOUT POLICE TRAINING AND

21 TENURE WITHIN THE LAW ENFORCEMENT COMMUNITY.

22 I BELIEVE I ASKED MR. WILSON THIS. I THINK I

23 ASKED MR. PARNELL THIS. YOU HAVE NEVER GRADUATED OR

24 GONE TO THE F.B.I. NATIONAL ACADEMY --

25 A I DIDN'T HAVE THAT OPPORTUNITY, SIR.

1 Q OKAY. AS A MATTER OF FACT, SIR, YOU NEVER WENT TO
2 THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY AND
3 GRADUATED FROM THERE, DID YOU, SIR?

4 A I WAS GRANDFATHERED IN.

5 Q EXACTLY.

6 A IMMEDIATELY UNDER RETIREMENT UNDER STATE REGULATION
7 AT THAT TIME --

8 Q YES, SIR.

9 A -- BY THE CHIEF OF THE STATE LAW ENFORCEMENT
10 DIVISION.

11 Q SO THE ANSWER TO MY QUESTION IS YES, YOU'VE NEVER
12 BEEN THERE?

13 A I'VE NEVER BEEN TO THE ACADEMY.

14 Q IN TRUTH AND IN FACT, SIR, YOU HAVE NEVER REALLY
15 WORKED FOR A MAINLINE CIVILIAN LAW ENFORCEMENT AGENCY
16 IN ANY CAPACITY IN THE TIME THAT YOU HAVE BEEN A LAW
17 ENFORCEMENT OFFICER, HAVE YOU, SIR?

18 A I WOULD CALL THE POLICE I WORKED AT U.S.C --

19 Q ALL RIGHT.

20 A -- AND THE NINE REGIONAL CAMPUSES AND BEING
21 COMMISSIONED AS A STATE LAW ENFORCEMENT OFFICER, I
22 WOULD CONSIDER THAT MAINLINE, SIR.

23 Q ALL RIGHT, SIR. WELL, LET ME REPHRASE IT. YOU HAVE
24 NEVER WORKED FOR A MUNICIPAL LAW ENFORCEMENT AGENCY?

25 A NOT A MUNICIPAL AGENCY.

1 Q YOU HAVE NEVER WORKED FOR A COUNTY --

2 A NO.

3 Q -- LAW ENFORCEMENT AGENCY?

4 A NO.

5 Q AND TODAY YOU REPORT TWO DAYS A WEEK, CORRECT, SIR?

6 A YES, SIR.

7 Q AND YOU WORK BASICALLY WHEN YOU WANT TO, WHEN YOU
8 NEED TO, IS THAT FAIR?

9 A I WORK DILIGENTLY TWO DAYS A WEEK.

10 Q I UNDERSTAND THAT, SIR. I'M SIMPLY SAYING YOU COME
11 IN WHEN YOU CAN, WHEN YOU HAVE TO, WHEN YOU GET THE
12 TIME TO DO THAT.

13 A YES, SIR. IT'S MY TIME AND I DEVOTE THAT TIME.

14 Q YES, SIR. I UNDERSTAND THAT.

15 MR. CRAIG, WERE YOU QUOTED IN U.S.A. TODAY AS
16 SAYING, "THEY DID THE BEST THEY COULD WITH THE TOOLS
17 THEY HAD AT THAT PARTICULAR TIME. CURRENT DAY
18 FORENSICS ARE TENFOLD BETTER THAN WHAT WAS AVAILABLE
19 10 YEARS AGO"?

20 A I MIGHT NOT HAVE SAID IT IN THAT EXACT WORDAGE
21 BECAUSE I DIDN'T WRITE THE ARTICLE, SIR.

22 Q YES, SIR.

23 A I MIGHT HAVE ALLUDED TO THAT SOMEWHAT BUT NOT TO THAT
24 DEGREE.

25 Q ALL RIGHT, SIR. SO YOU DENY MAKING IT EXACTLY THAT

1 WAY.

2 A NOT EXACTLY THAT WAY.

3 Q ALL RIGHT. DID YOU WRITE A THANK YOU LETTER TO
4 SHERIFF RAMSEY OF COOK COUNTY TENNESSEE RELATIVE TO
5 THE ASSISTANCE MR. MEREDITH HAS BEEN, ON BEHALF OF
6 SHERIFF LOTT, SAYING, "THIS DEPARTMENT RECENTLY
7 RESOLVED A 40-YEAR-OLD HOMICIDE WHICH OCCURRED IN
8 RICHLAND COUNTY." DID YOU EVER SAY THAT?

9 A I MIGHT HAVE.

10 Q ALL RIGHT. WOULD IT BE FAIR TO SAY, SIR, THAT WHEN
11 YOU WERE WITH MR. CRAIG -- EXCUSE ME, MR. METZ AND
12 INVESTIGATOR STOTTS UP IN WHITLEY COUNTY, COLUMBIA
13 CITY, INDIANA, WOULD IT HAVE BEEN FAIR OR UNFAIR FOR
14 SOMEBODY TO CHARACTERIZE YOU AS RUNNING THIS
15 INVESTIGATION?

16 A I DON'T SEE HOW YOU COULD ARRIVE AT THAT, NO, SIR.

17 Q THAT YOU WERE RUNNING THE SHOW?

18 A NO, SIR.

19 MR. DELGADO: ALL RIGHT, SIR. JUST ONE SECOND
20 MR. CRAIG, PLEASE.

21 (PAUSE).

22 MR. CRAIG, THAT'S ALL THE QUESTIONS I HAVE OF
23 YOU, SIR. THANK YOU.

24 THE COURT: REDIRECT, MR. SOLICITOR?

25 MR. MCMAHON: NO, SIR.

1 QUESTIONING THE LAWYER, ET CETERA?

2 MR. MCMAHON: WELL --

3 THE COURT: I MEAN, I NEED TO KNOW WHAT YOU --

4 MR. DELGADO: WELL, MR. CRAIG WENT INTO IT, TOO.

5 MR. MCMAHON: NO, SIR, HE DID NOT.

6 THE COURT: NO, HE DIDN'T.

7 MR. MCMAHON: MR. CRAIG DID NOT. I DID NOT ASK
8 MR. CRAIG.

9 THE COURT: I WAS SITTING UP HERE ON PINS AND
10 NEEDLES BECAUSE I HADN'T RULED ON IT.

11 MR. MCMAHON: THAT'S WHY I DIDN'T GO INTO IT. I
12 HADN'T GONE INTO IT WITH MR. CRAIG AT ALL.

13 MR. DELGADO: OKAY. I STAND CORRECTED, SORRY.
14 I GUESS I WAS ANTICIPATING IT.

15 THE COURT: I TOLD YOU YESTERDAY, I WASN'T
16 GIVING YOU AN ADVISORY OPINION ABOUT IT. I DON'T KNOW
17 WHETHER YOU'RE GOING TO OBJECT TO IT OR NOT. YOU MAY
18 DECIDE YOU DON'T WANT TO.

19 MR. DELGADO: A CONTEMPORANEOUS OBJECTION,
20 STATEMENT --

21 THE COURT: WELL --

22 MR. MCMAHON: WE'LL DECIDE DURING THE BREAK. IF
23 WE'RE NOT GOING INTO IT, WE'LL STATE SO.

24 THE COURT: IF YOU GO INTO IT, I MIGHT -- OR YOU
25 THINK YOU'RE GOING THAT WAY, I MIGHT THINK ABOUT IT.

1 MR. DELGADO: ALL RIGHT.

2 MR. MCMAHON: ALL RIGHT.

3 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

4 THE COURT: OKAY. BRING THE JURY IN.

5 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
6 APPROXIMATELY 2:42 P.M.)

7 THE BAILIFF: THE JURY'S PRESENT, YOUR HONOR.

8 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS,
9 MR. SOLICITOR.

10 MR. MCMAHON: THE STATE CALLS JOHN CAYTON.

11 THE CLERK: IF YOU'D COME FORWARD PLEASE.

12 PLEASE PLACE YOUR LEFT HAND ON THE BIBLE, RAISE YOUR
13 RIGHT.

14 JOHN CAYTON, AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
17 NAME, SPELL YOUR LAST NAME.

18 THE WITNESS: JOHN CHARLES CAYTON, C-A-Y-T-O-N.

19 DIRECT EXAMINATION:

20 BY MR. MCMAHON

21 Q MR. CAYTON, WHAT IS YOUR CURRENT OCCUPATION?

22 A I'M A FIREARMS AND TOOL MARK EXAMINER WITH THE
23 JOHNSON COUNTY, KANSAS SHERIFF'S DEPARTMENT.

24 Q AND HOW LONG HAVE YOU BEEN WITH THE JOHNSON COUNTY
25 SHERIFF'S DEPARTMENT?

1 A SINCE AUGUST 6TH OF 2001.

2 Q NOW, SIR, ARE YOU -- YOU'RE WORKING NOW, BUT HAD YOU
3 PREVIOUSLY RETIRED?

4 A YES.

5 Q AND WHAT DID YOU RETIRE FROM?

6 A I RETIRED AS A CHIEF CRIMINALIST WITH THE KANSAS
7 CITY, MISSOURI POLICE REGIONAL CRIMINALISTICS
8 LABORATORY. I RETIRED WITH 33 YEARS SERVICE.

9 Q NOW, DURING THAT 33-YEAR PERIOD OF TIME, JUST VERY
10 GENERALLY AND BRIEFLY, WHAT DIFFERENT POSITIONS DID
11 YOU HOLD WITH THAT DEPARTMENT?

12 A I WAS HIRED AS A FIREARMS AND EVIDENCE EXAMINER, AND
13 THEN I WAS PROMOTED TO AN EXAMINER, II. I WAS
14 PROMOTED TO THE SUPERVISOR WHO HEADED THE SECTION,
15 AND THEN I WAS A CHIEF FORENSIC FIREARMS AND TOOL
16 MARK EXAMINER, WHICH WAS ONLY A TITLE CHANGE. THEN A
17 FEW YEARS BEFORE I RETIRED, THEY CHANGED OUR TITLE TO
18 CHIEF CRIMINALIST.

19 Q SO WHEN -- WHAT YEAR DID YOU START DOING FIREARMS AND
20 TOOL MARK EXAMINATIONS, MR. CAYTON?

21 A JANUARY OF 1969.

22 Q HAVE YOU BEEN INVOLVED IN THE EXAMINATION OF FIREARMS
23 AND TOOL MARKS ON A CONTINUING BASIS SINCE 1969?

24 A YES. BOTH AS A KANSAS CITY FORENSIC EXAMINER AND
25 ALSO IN THE C.I.D. LABORATORY IN FRANKFORT GERMANY,

1 FORT GORDON, GEORGIA AND FORT GILLEM, GEORGIA.

2 Q SO YOU'RE BOTH -- YOU WERE A CIVILIAN EXAMINER FOR
3 THAT 33-YEAR PERIOD OF TIME?

4 A YES.

5 Q AND ALSO A MILITARY EXAMINER WITH C.I.D.?

6 A YES. I'M A WARRANT OFFICER OF THE ARMY LAB RESERVES.

7 Q AND HOW MANY YEARS HAVE YOU BEEN DOING THAT?

8 A I WAS COMMISSIONED AS A WARRANT OFFICER IN FEBRUARY
9 OF 1980. PRIOR TO THAT, I SERVED THREE YEARS IN THE
10 NAVY RIGHT OUT OF HIGH SCHOOL, AND I WAS DISCHARGED
11 FROM THE NAVY, WENT BACK INTO THE ARMY IN '71 AS A
12 BRANCH SERGEANT, DETENTION FACILITY SUPERVISOR FOR
13 MILITARY PRISONS.

14 THEN I -- BECAUSE OF A CASE LOAD AT THE LAB, I
15 COULDN'T GET AWAY FOR RESERVE DUTIES, SO I WAS
16 DISCHARGED FROM THE RESERVES.

17 THEN IN 1980, I WAS COMMISSIONED AS A WARRANT
18 OFFICER IN THE ARMY LAB AS A RESERVE.

19 Q AND YOUR MAIN DUTIES AS A WARRANT OFFICER IN THE ARMY
20 IS ALSO FIREARMS AND TOOL MARK IDENTIFICATION?

21 A YES.

22 Q HAVE YOU TESTIFIED IN COURTS OF RECORD IN -- I
23 BELIEVE YOU'RE FROM MISSOURI: IS THAT CORRECT?

24 A YES.

25 Q HAVE YOU TESTIFIED IN COURTS OF RECORD IN THE PAST IN

1 THE STATE OF MISSOURI AS AN EXPERT IN THE FIELD OF
2 FIREARMS IDENTIFICATION?

3 A I'VE TESTIFIED IN MISSOURI, LOUISIANA, NEBRASKA,
4 IOWA, ILLINOIS, KANSAS, PENNSYLVANIA, OHIO, ALSO IN
5 FRANCE, IN A MILITARY COURT MARTIAL.

6 Q SO YOU TESTIFIED IN BOTH CIVILIAN COURTS AND MILITARY
7 COURTS AS AN EXPERT IN THE FIELD OF FIREARMS AND TOOL
8 MARK IDENTIFICATION?

9 A YES.

10 Q AS A MATTER OF FACT, YOU TESTIFIED ON THE U.S.S.
11 THEODORE ROOSEVELT?

12 A YES, I DID.

13 Q AS AN EXPERT.

14 A YES.

15 Q HAVE YOU EVER BEEN OFFERED AS AN EXPERT AND NOT
16 ACCEPTED AS AN EXPERT IN THE FIELD OF FIREARMS
17 IDENTIFICATION?

18 A NO.

19 Q ABOUT HOW MANY TIMES DO YOU THINK YOU'VE TESTIFIED?

20 A OVER 500.

21 MR. MCMAHON: YOUR HONOR, I WOULD OFFER
22 MR. CAYTON AS AN EXPERT IN THE FIELD OF FIREARMS
23 IDENTIFICATION.

24 THE COURT: MR. DELGADO, DO YOU WISH TO EXAMINE
25 HIM NOW?

1 MR. DELGADO: YES. YOUR HONOR, MAY I JUST
2 BRIEFLY?

3 THE COURT: AS TO QUALIFICATIONS.

4 MR. DELGADO: YES.

5 MR. CAYTON, AGAIN, FOR YOUR WORK HISTORY, SIR,
6 YOU WERE WITH THE POLICE LAB IN KANSAS CITY, MISSOURI
7 FOR -- I'M SORRY, SIR, 33 YEARS, DID YOU SAY, 30 YEARS?

8 THE WITNESS: OVER 31 YEARS. I RETIRED AFTER 33
9 YEARS.

10 MR. DELGADO: ALL RIGHT. AND YOU LEFT THAT
11 APPROXIMATELY WHEN, SIR?

12 THE WITNESS: SEPTEMBER 9TH, 1999.

13 MR. DELGADO: ALL RIGHT, SIR. AND FROM THERE
14 YOU WENT TO YOUR PRESENT OCCUPATION WITH JOHNSON COUNTY?

15 THE WITNESS: WELL, I WAS RETIRED FOR A COUPLE
16 OF YEARS. I WORKED IN TOPEKA, KANSAS FOR A COUPLE OF
17 MONTHS AS AN EXAMINER. THEN I RETIRED FOR A COUPLE OF
18 YEARS AND THEN I WENT BACK TO WORK.

19 I DID PRIVATE CONSULTING WORK, IS THE WAY I WAS
20 CONTACTED TO DO IN THIS CASE.

21 MR. DELGADO: YES, SIR.

22 THE WITNESS: AND THEN ON AUGUST 6TH OF LAST
23 YEAR, I WAS REHIRED OR HIRED BY THE JOHNSON COUNTY
24 SHERIFF'S CRIME LAB.

25 MR. DEIGADO: ALL RIGHT, SIR. I GUESS WHAT I'M

1 SAYING TO YOU IS DURING THE TIME AND TESTIMONY OF THE
2 REPORT YOU MAY BE ABLE TO GIVE IN THIS CASE, YOU WERE IN
3 PRIVATE PRACTICE. YOU WERE NOT DOING THIS AS A LINE
4 POLICE OFFICER OR WITH A LINE LABORATORY, WOULD THAT BE
5 FAIR?

6 THE WITNESS: YES.

7 MR. DELGADO: YOUR HONOR, I CAN'T ADMIT HIS
8 CREDENTIALS. I CAN'T DENY THEM.

9 THE COURT: ALL RIGHT. MR. SOLICITOR, YOU MAY
10 PROCEED AS REQUESTED.

11 MR. MCMAHON: THANK YOU.

12 BY MR. MCMAHON

13 Q NOW, MR. CAYTON, I WAS GOING TO FOLLOW UP AND ASK YOU
14 A FEW QUESTIONS. WAS THERE A PERIOD OF TIME THAT YOU
15 HAD DONE PRIVATE CONSULTING WORK?

16 A WELL, I'VE DONE PRIVATE CONSULTING FOR MANY YEARS
17 WHILE I WORKED AT THE KANSAS CITY POLICE DEPARTMENT.
18 THEY ALLOWED IT ON OUR OWN TIME. WE TOOK VACATION,
19 USED OUR OWN EQUIPMENT, SO I HAD DONE THAT UP UNTIL
20 AUGUST OF LAST YEAR.

21 Q SO EVEN WHEN YOU WERE EMPLOYED BY KANSAS CITY, YOU
22 WERE AUTHORIZED TO TAKE IN PRIVATE CASES; IS THAT
23 CORRECT?

24 A YES.

25 Q AND WOULD DO SC?

1 A YES.

2 Q AND YOU TOOK IN A CASE IN REGARDS TO THE RICHLAND
3 COUNTY SHERIFF'S DEPARTMENT AS A PRIVATE CONSULTANT;
4 IS THAT RIGHT?

5 A YES, I DID.

6 Q DO YOU RECALL APPROXIMATELY WHEN YOU WERE FIRST
7 CONTACTED ABOUT THIS PARTICULAR CASE, MR. CAYTON?

8 A I BELIEVE IT WOULD HAVE BEEN MAYBE THE LAST PART OF
9 JANUARY OF LAST YEAR.

10 Q 2001?

11 A YES. I GOT A CALL FROM MR. CRAIG.

12 Q NOW, MR. CRAIG, PRIOR TO JANUARY OF 2001, DID YOU
13 KNOW MR. CRAIG?

14 A NO.

15 Q HAD YOU EVER MET MR. CRAIG?

16 A NO, JUST MET HIM TODAY.

17 Q AND THAT WAS MY NEXT QUESTION. WHEN WAS THE FIRST
18 TIME YOU EVER MET HIM AND THAT WAS TODAY?

19 A YES, YES.

20 Q DO YOU KNOW HOW MR. CRAIG WAS REFERRED TO YOU?

21 A WELL, I BELIEVE HE MENTIONED PAT GARLAND, WHO IS AN
22 OLD RETIRED ARMY EXAMINER. I DIDN'T KNOW HIM AS AN
23 ARMY EXAMINER. I KNEW HIM THROUGH OUR PROFESSIONAL
24 ASSOCIATION OF FIREARM AND TOOL MARK EXAMINERS.

25 Q YOU'RE TALKING ABOUT MR. GARLAND?

1 A PAT GARLAND, YES. I'VE KNOWN HIM AND HIS WIFE IN
2 THAT CAPACITY. AFTER HE RETIRED FROM THE ARMY, HE
3 WENT TO WORK IN TENNESSEE IN THE LABORATORY SYSTEM;
4 THEN FROM THERE, I BELIEVE HE WENT TO FLORIDA, WHERE
5 HE IS NOW.

6 Q ADDITIONALLY, DO YOU KNOW AN INDIVIDUAL NAMED DON
7 MICO?

8 A YES. DON MICO IS ASSIGNED TO THE FIREARM AND TOOL
9 MARKS SECTION OF THE C.I.D. LABORATORY. I'VE KNOWN
10 DON MICO SINCE HE STARTED TRAINING THERE IN, I
11 BELIEVE, ABOUT 1990.

12 Q PRIOR TO JANUARY OF 2001, YOU DID NOT KNOW OF, HAD
13 NEVER MET, NEVER HAD ANY CONTACT WITH CARL CRAIG, TO
14 YOUR KNOWLEDGE?

15 A NO.

16 Q NOW, WAS THERE ANY INFORMATION PROVIDED TO YOU PRIOR
17 TO YOU TAKING THE CASE CONCERNING THIS PARTICULAR
18 CASE, MR. CAYTON?

19 A MR. CRAIG TOLD ME THAT IT WAS AN OLD HOMICIDE THAT
20 HAD HAPPENED IN COLUMBIA. HE SAID THAT MR. CATE HAD
21 LOOKED AT IT, AND THEY WANTED TO KNOW IF I WOULD LOOK
22 AT IT.

23 Q AND DID YOU AGREE TO DO SO?

24 A YES.

25 Q AND IN ADDITION TO THE PHONE CALL, DID YOU RECEIVE

1 ANY WRITTEN REQUESTS TO EXAMINE THIS PARTICULAR --
2 THESE PARTICULAR ITEMS OF EVIDENCE?

3 A YES. I GOT A LETTER FROM MAJOR WILLIAMS -- EXCUSE
4 ME, WILSON, THAT FOLLOWED UP ON THE CONVERSATION.

5 Q NOW, I WANT TO SHOW YOU A DOCUMENT. IS THAT THE
6 LETTER YOU RECEIVED FROM MAJOR WILSON?

7 A YES.

8 Q ALL RIGHT, SIR. AND YOU DID NOT -- WERE YOU AWARE OF
9 ANY FINDINGS OR CONCLUSIONS OF ANY OTHER EXAMINERS AS
10 TO ANY PARTICULAR ITEM OF EVIDENCE THAT YOU WERE TO
11 EXAMINE; IS THAT CORRECT?

12 A NO.

13 Q NOW, LET ME ASK YOU SOMETHING ELSE. IS THIS THE
14 OLDEST CASE YOU EVER WORKED ON?

15 A NO.

16 Q WHAT WAS THE OLDEST CASE YOU EVER WORK ON?

17 A I WORKED ON THE JESSIE JAMES HOMICIDE. HE WAS SHOT
18 IN 1882.

19 Q MR. CAYTON, WE'VE HAD SOME OLD WITNESSES IN HERE, BUT
20 NOT ONE FROM 1882. JUST VERY GENERALLY AND VERY
21 BRIEFLY, HOW DID YOU COME TO WORK ON A HOMICIDE OVER
22 100 YEARS OLD, JUST VERY BRIEFLY?

23 A THE COUNTY WAS GIVEN THE JESSIE JAMES FAMILY FARM IN
24 1978, AND AS PART OF THE INFORMATION, THE CURATOR
25 WANTED TO OPEN THE ORIGINAL GRAVE THAT WAS ON THE

1 FARM WHERE HE WAS BURIED.

2 THEN HIS WIFE DIED IN 1902, AND THEY TRANSFERRED
3 HIS REMAINS FROM THE FARM INTO THE TOWN OF CARNEY,
4 MISSOURI.

5 IN THAT PROCESS, THE CASKET WAS OPENED. THE
6 REMAINS WERE TRANSFERRED. SOME OF THEM WERE DROPPED.
7 THEY WANTED TO GO BACK IN 1978 AND SEE IF THERE WERE
8 ANY ARTIFACTS STILL IN THE ORIGINAL CASKET.

9 WE FOUND TAILBONES, SOME SCALP, PIECES OF THE
10 SKULL AND A BULLET.

11 Q YOU FOUND A BULLET?

12 A YES.

13 Q DID YOU EXAMINE THAT BULLET?

14 A YES, I DID.

15 Q SO THIS IS CERTAINLY NOT THE OLDEST CASE YOU'VE EVER
16 WORK ON, A 1961 CASE?

17 A NO. I ALSO WORKED ON THE SHOOTING AT KANSAS CITY,
18 UNION STATION MASSACRE, THAT INVOLVED PRETTY BOY
19 FLOYD IN 1933 AT KANSAS CITY.

20 Q AND YOU REVIEWED THAT EVIDENCE IN THAT CASE?

21 A YES.

22 Q AND THIS MR. GARLAND YOU REFERRED TO, AS A MATTER OF
23 FACT, DID HE WORK ON ONE OF THE KENNEDY
24 ASSASSINATIONS?

25 A YES.

1 Q NOW, DID YOU RECEIVE CERTAIN ITEMS OF EVIDENCE FROM
2 THE RICHLAND COUNTY SHERIFF'S DEPARTMENT IN REGARDS
3 TO THIS CASE?
4 A YES, I DID.
5 Q CAN YOU TELL US SPECIFICALLY WHEN YOU RECEIVED THESE
6 ITEMS?
7 A YES. IT WAS ON FEBRUARY 9TH, 2001.
8 Q AND WHAT WAS THE NAME OF YOUR CONSULTING BUSINESS
9 THAT YOU RECEIVED THESE ITEMS AT?
10 A ACCESS FORENSIC LABORATORY.
11 Q AND THAT WAS IN THE CAPACITY OF BEING A PRIVATE
12 CONSULTANT; IS THAT RIGHT?
13 A YES.
14 Q AS A PRIVATE CONSULTANT, DO YOU GET PAID FOR THE WORK
15 THAT YOU PERFORM?
16 A YES.
17 Q HAVE YOU BEEN PAID FOR CERTAIN WORK THAT YOU HAVE
18 PERFORMED IN REGARDS TO THIS CASE ALREADY?
19 A YES.
20 Q HAVE THEY PAID YOU EVERYTHING THEY OWE YOU?
21 A NO.
22 Q NOT SO FAR?
23 A NO.
24 Q DO YOU RECALL WHAT THE INITIAL INVOICE WAS THAT YOU
25 BILLED THE COUNTY FOR?

1 A I BELIEVE IT WAS \$2,700.
2 Q \$2,700?
3 A YES.
4 Q AND THERE'S BEEN AN ADDITIONAL INVOICE WHERE YOU MET
5 WITH ME AND LIEUTENANT PARNELL --
6 A YES.
7 Q -- BACK SEVERAL MONTHS OR WEEKS AGO; IS THAT CORRECT?
8 A YES.
9 Q HOW MUCH WAS THAT FOR, DO YOU RECALL?
10 A I DON'T RECALL.
11 Q IF I SAID \$1,600, YOU DON'T ARGUE WITH THAT?
12 A THAT WOULD BE CLOSE, YES.
13 Q I'M SURE MR. DELGADO WILL HAVE AN EXACT FIGURE MORE
14 OR LESS. IT COULD BE A LITTLE MORE OR A LITTLE LESS?
15 A YES.
16 Q HAVE YOU EVER MADE A MISTAKE?
17 A YES.
18 Q DO YOU RECALL SPECIFICALLY THE MISTAKE YOU MADE?
19 A WELL, MY WIFE REMEMBERS A LOT OF THEM.
20 Q YES, SIR, BUT SPECIFICALLY, IN THIS REGARD, DO YOU
21 RECALL A MISTAKE YOU MADE?
22 A IN CONNECTION WITH A BULLET IDENTIFICATION.
23 Q YES, SIR.
24 A YES. I HAD A CASE IN 1983 THAT I LOOKED AT. IT WAS
25 A POLICE OFFICER SHOOTING, AND IT WAS A CASE WHERE HE

1 WAS CONFRONTED AT A BURGLARY CALL IN A HIGH SCHOOL AT
2 NIGHT. HE WAS KILLED.

3 WE GOT A BULLET OUT OF HIM, AND LATER A FIREARM
4 WAS RECOVERED IN ANOTHER POLICE INVOLVED SHOOTING
5 FROM A SUSPECT, AND I DID AN IDENTIFICATION
6 COMPARISON ON THAT CASE.

7 THE BULLET WAS A 38 SPECIAL FIVE LANDS AND
8 GROOVES TO THE RIGHT, A JACKETED BULLET. THE GUN
9 RECOVERED IN THE SECOND CASE WAS A 38 SPECIAL CALIBER
10 FIVE LANDS AND GROOVES TO THE RIGHT.

11 MY IDENTIFICATION WAS BASED ON SOME REAL THIN
12 MINUTIA THAT CORRESPONDED. LATER I DISCOVERED I MADE
13 A MISTAKE WHEN THE OFFICER'S OWN REVOLVER WAS
14 RECOVERED.

15 Q SO THE OFFICER WHO GOT KILLED, HIS GUN WAS MISSING?

16 A YES, HIS GUN WAS MISSING, YES.

17 Q AND THEN AT A LATER TIME, WAS HIS GUN RECOVERED?

18 A YES.

19 Q AT A LATER TIME?

20 A YES.

21 Q AND WHEN HIS GUN WAS RECOVERED, WHAT DID YOU DO?

22 A WELL, I DID AN EXAMINATION, AND I DISCOVERED THAT I
23 HAD MADE A MISTAKE ON THE FIRST GUN THAT I HAD LOOKED
24 AT.

25 I CALLED MY -- INFORMED MY SUPERVISOR, AND OUR

1 CHIEF WAS INFORMED, AND THE PROSECUTOR, AND THE
2 DEFENSE COUNSEL, AND THE JUDGE.

3 IT WAS -- WE HAD SEVERAL MEETINGS ABOUT THAT
4 CASE AND ACTUALLY HAD A COURT HEARING ABOUT THAT.
5 THE CONCLUSION WAS THAT THE -- BASICALLY, WE HAD
6 OTHER PEOPLE COME IN. MY DIRECTOR ASKED ME HOW WE
7 SHOULD RESOLVE IT. I SAID, WELL, THERE WAS A
8 QUESTION BEFORE ABOUT SOME CASEWORK.

9 I SUGGESTED AN OUTSIDE EXAMINER COME IN AND
10 RE-EXAMINE MY WORK, AND SO IN THAT CASE -- THAT WAS
11 BACK IN PROBABLY '74.

12 MY DIRECTOR THEN BROUGHT IN JOHN SOZIAT
13 (PHONETIC) FROM CHICAGO ON THE WEEKEND. I GAVE HIM
14 THE FOUR CASES, SO WE DIDN'T FIND ANY RESULTS OR
15 ANYTHING. HE LOOKED AT ALL FOUR CASES AND HIS
16 RESULTS WERE THE SAME AS MINE.

17 SO WHEN THIS MISTAKE HAPPENED IN '83, I SAID
18 THIS WILL BE A WAY TO RESOLVE IT, TO HAVE OUTSIDE
19 EXPERTS COME IN AND REVIEW THE EVIDENCE IN BOTH
20 CASES.

21 SO DAVE FRENDICH (PHONETIC), THE TRAINING
22 OFFICER FROM THE STATE OF JOLIET, ILLINOIS WAS
23 CONTACTED, AND BOB SIMPSON FROM TORONTO, CENTER OF
24 FORENSIC SCIENCE, THEY CAME TO OUR LAB FOR A WEEK.
25 THEY GOT THE EVIDENCE INVOLVED IN BOTH SHOOTING CASES

1 AND REVIEWED THAT, AND THEY CAME TO THE SAME
2 CONCLUSIONS I DID BOTH IN THE FIRST CASE WHERE THEY
3 SAW THE MATCHING LINES. THEY REFERRED TO THEM AS
4 TEASING LINES.

5 Q TEASING LINES?

6 A YES. WHERE YOU COULD SEE MATCHING AREAS. A BULLET,
7 WHEN IT GOES THROUGH A BODY OR IT GOES THROUGH
8 THINGS, SOMETIMES IT PICKS UP SURFACE MARKS AND OTHER
9 DEBRIS.

10 THEN THEY REVIEWED 100 CASES BEFORE THAT AND 100
11 CASES AFTER THAT.

12 Q OF YOUR CASES?

13 A YES. AND THEY CAME UP WITH THE SAME CONCLUSIONS THAT
14 I DID. SO WHAT WE WERE WORKING ON AT THE TIME WERE
15 QUALITY CONTROL PROCEDURES FOR EXAMINATION OF
16 EVIDENCE.

17 PART OF THAT IS PEER REVIEW AND DOCUMENTING THE
18 WORK THAT YOU DO ON EVIDENCE SO THAT HAS BEEN
19 IMPLEMENTED AND THAT IS WHAT IS GENERALLY USED ACROSS
20 THE INDUSTRY TODAY WITH PEER REVIEW AND THE QUALITY
21 ASSURANCE PROGRAM.

22 AS PRESIDENT OF OUR INTERNATIONAL GROUP OF
23 FIREARMS AND TOOL MARK EXAMINERS, I PRESENTED THIS
24 PROGRAM TO THE JOINT MEETING OF A.S.C.L.D., THAT'S
25 THE LABORATORY DIRECTORS ACROSS THE COUNTRY, AN

1 INTERNATIONAL GROUP.

2 Q AND WHEN YOU SAY YOU PRESENTED THIS, YOU PRESENTED

3 YOUR MISTAKE?

4 A YES.

5 Q TO Y'ALL'S -- TO YOUR COLLEAGUES WITHIN THIS FIELD OF

6 EXPERTISE; IS THAT CORRECT?

7 A YES.

8 Q AND YOU PRESENTED IT?

9 A YES.

10 Q OKAY, SIR. GO AHEAD.

11 A ALSO, I WAS THE PRESIDENT OF OUR INTERNATIONAL GROUP,

12 THE ASSOCIATION OF FIREARMS AND TOOL MARK EXAMINERS.

13 I CALLED OUR BOARD OF DIRECTOR AND INFORMED THEM OF

14 WHAT HAD HAPPENED, THE MISTAKE THAT I'D MADE, SO THAT

15 THEY COULD CONSIDER WHAT TO DO.

16 Q SO THE MISTAKE THAT WAS MADE, TELL THE JURY, WHO

17 DISCOVERED THAT MISTAKE?

18 A I DID.

19 Q YOU DISCOVERED IT YOURSELF?

20 A YES.

21 Q NOBODY ELSE POINTED IT OUT FOR YOU?

22 A NO.

23 Q AND WHEN YOU DISCOVERED IT, DID YOU BRING IT ALL TO

24 LIGHT TO THE VARIOUS PARTIES INVOLVED?

25 A YES.

1 Q AND THAT WAS ABOUT 19 YEARS AGO?

2 A YES.

3 Q TELL US, MR. CAYTON, HOW HAS THAT AFFECTED YOUR
4 CAREER SINCE THEN OR YOUR OPINIONS SINCE THEN?

5 A WELL, IT WAS VERY TRAUMATIC, FIRST OF ALL, REALIZING
6 WHAT I HAD DONE, AND IT WAS AN HONEST MISTAKE.

7 I DIDN'T WANT TO COVER IT UP. I THOUGHT THAT IT
8 NEEDED TO BE CORRECTED AS SOON AS IT COULD. IT
9 CERTAINLY MADE ME A LOT MORE CAREFUL ABOUT
10 EXAMINATIONS I CONDUCTED AND TO VALIDATE THE WORK
11 THAT I HAD DONE.

12 Q NOW, MR. CAYTON, GOING BACK, I BELIEVE YOU TESTIFIED
13 YOU RECEIVED CERTAIN ITEMS OF EVIDENCE IN REGARDS TO
14 THIS CASE ON 2/9/01; IS THAT CORRECT?

15 A YES.

16 Q SPECIFICALLY, WOULD YOU RELATE TO THE JURY WHAT ITEMS
17 YOU RECEIVED FROM THE RICHLAND COUNTY SHERIFF'S
18 DEPARTMENT IN REGARDS TO THIS CASE?

19 A YES. I RECEIVED A -- IT WAS A BOX, A 13 BY ONE AND
20 AN EIGHTH, TWO-INCH SEALED T.V. TYPE BOX. IT WAS A
21 GUN BOX WHICH CONTAINED A VIAL, A SMALL PLASTIC VIAL.

22 THERE WERE THREE VIALS. EACH ONE OF THEM
23 CONTAINED A LEAD FRAGMENT, BULLET FRAGMENT, MARKED
24 E-3 -- EXCUSE ME, E-1, 3-3-61.

25 THE NEXT ONE WAS E-2, 3-3-61, AND THE THIRD ONE

1 WAS E-3, 3-3-61, AND THEY ALL HAD M.M.C. THE FIRST
2 ONE WAS MARKED WITH THE WEIGHT OF 31 GRAINS; THE ONE,
3 E-2, IS MARKED 26 GRAINS, AND E-3 IS MARKED 36
4 GRAINS. THESE WERE LEAD LUBALOY PLATED BULLET
5 FRAGMENTS.

6 Q I WANT TO SHOW YOU THESE ITEMS. IN ADDITION TO THOSE
7 ITEMS, DID YOU RECEIVE CERTAIN WEAPONS?

8 A YES, I DID.

9 Q AND HOW MANY WEAPONS?

10 A TWO.

11 Q AND WHAT TYPE OF WEAPONS DID YOU RECEIVE?

12 A THERE WERE TWO HARRINGTON AND RICHARDSON 32 CALIBER
13 REVOLVERS, MODEL 732, AND 32 SMITH AND WESSON LONG
14 CALIBER.

15 Q AND SERIAL NUMBERS ON THOSE WEAPONS?

16 A THE SERIAL NUMBER ON EXHIBIT 4 IN MY REPORT IS W
17 9893, AND IT HAD TEST STANDARDS WITH IT. THE SECOND
18 ONE WAS W 9948.

19 Q AND I WANT TO REFER YOU NOW TO THE THREE ITEMS I
20 HANDED YOU UP HERE, 30, 31 AND 32. ARE THOSE THE
21 THREE BULLET FRAGMENTS THAT YOU RECEIVED ON
22 FEBRUARY 9TH, '01 FROM THE PICHLAND COUNTY SHERIFF'S
23 DEPARTMENT?

24 A YES, THEY ARE. THEY HAD MY NAME ON THEM, THEY'RE
25 SEALED. MY NAME IS ON THE VIALS INSIDE AND ON THE

1 TAPE SEALS.

2 Q AND ADDITIONALLY, STATE'S EXHIBIT NO. 6, IS THIS ONE
3 OF THE TWO FIREARMS THAT YOU RECEIVED, ALSO FROM THE
4 RICHLAND COUNTY SHERIFF'S DEPARTMENT?

5 A YES. THIS IS W 9948, AND IT HAS MY NAME ON THE SIDE,
6 THE LEFT SIDE.

7 Q POINT TO THAT FOR ME, SIR.

8 A JUST TO THE SIDE, THE RIGHT SIDE, RIGHT NEXT TO THE
9 CYLINDER ABOVE THE TRIGGER.

10 Q ALL RIGHT, SIR. HERE?

11 NOW, MR. CAYTON, TO BEGIN WITH, THE THREE BULLET
12 FRAGMENTS, TELL THE JURY, HOW DID YOU GO ABOUT
13 EXAMINING AND PROCESSING THESE ITEMS OF EVIDENCE?

14 A WELL, I CONDUCT A MICROSCOPIC, A VISUAL AND A
15 MICROSCOPIC EVALUATION, TO SEE THE CONDITION OF THE
16 REMAINING ORIGINAL SURFACE AREA, THE BULLET. A LOT
17 OF TIMES WHEN THEY HIT BONE, THEY'LL FRAGMENT.

18 Q AND THAT'S SPLITTING INTO TWO OR THREE OR HOWEVER
19 MANY?

20 A YES.

21 Q GO AHEAD, SIR.

22 A SO I WANTED TO SEE IF THIS WAS -- IF I COULD
23 DETERMINE THE CALIBER AND THE GENERAL RIFLING
24 DESCRIPTION AS TO THE NUMBER OF LANDS AND GROOVE
25 IMPRESSIONS AND THE DIRECTION.

1 SO IN DOING THAT, I SAW THERE WAS A LUBALOY
2 COPPER PLATING, WHICH IS CHARACTERISTIC OF WINCHESTER
3 WESTERN AMMUNITION.

4 THE 32 SMITH AND WESSON LONG CALIBER IS CALLED
5 SMITH AND WESSON BECAUSE THAT'S THE COMPANY THAT
6 DEVELOPED THAT CARTRIDGE.

7 SO WHOEVER DEVELOPS A NEW CARTRIDGE CAN PUT
8 WHATEVER NAME THEY WANT ON IT. A LOT OF TIMES THE
9 MANUFACTURERS PUT THEIR OWN NAME. SO EVEN THOUGH
10 IT'S A 32 SMITH AND WESSON' -- EXCUSE ME, 32 SMITH AND
11 WESSON LONG CALIBER, IT'S A WINCHESTER MANUFACTURED
12 CARTRIDGE.

13 Q NOW, IN THE EXAMINATION OF THOSE THREE FRAGMENTS,
14 WHAT, IF ANYTHING, DID YOU NOTICE ABOUT THEM?

15 A WELL, ON THE BULLETS THERE WERE SOME BONE FRAGMENTS
16 AND SOME TISSUE AND BLOOD ON THE BULLETS, AND SO TO
17 PREPARE THEM FOR EXAMINATION, I SOAKED THEM. I TOOK
18 SOME OF THE TISSUE OFF OF THE BULLETS, COLLECTED
19 THEM.

20 BY DOING THIS, IT ACTUALLY REVEALED MORE RIFLING
21 MARKS THAT WERE UNDERNEATH THE TISSUE, AND SO AFTER
22 CLEANING THEM, THEN THEY WERE MORE USABLE FOR
23 EXAMINATION.

24 I SAVED THE TISSUE THAT I COLLECTED IN A VIAL
25 AND RETURNED IT WITH THE EVIDENCE.

1 Q I WANT TO SHOW YOU AN ITEM AND ASK IF YOU CAN LOOK AT
2 THE ITEM IN THERE, THE VIAL IN THERE, AND TELL THE
3 JURY WHAT THAT IS.

4 A YES. THIS IS THE VIAL THAT I COLLECTED AND THE
5 CONTAINER. IT HAS MY INFORMATION THAT I MARKED ON
6 THE TISSUE HERE. IT WAS SUBMITTED. I GOT SOME OFF
7 THE BULLET AND ALSO SOME RESIDUE UNDER THE GRIP.

8 Q ALL RIGHT, SIR. NOW, THIS ITEM, STATE'S 6 -- EXCUSE
9 ME, NOT STATE'S 6. THE WRITING ON THERE IS WRITING
10 YOU PLACED ON THERE, BEING REMOVED FROM THE BULLET?

11 A YES.

12 Q AND IS THAT FROM ALL THREE FRAGMENTS OF THE BULLET?

13 A YES.

14 Q AND THAT WAS RETURNED ALONG WITH THE OTHER ITEMS OF
15 EVIDENCE BACK TO THE RICHLAND COUNTY SHERIFF'S
16 DEPARTMENT?

17 A YES.

18 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THIS
19 INTO EVIDENCE.

20 MR. DELGADO: WITHOUT OBJECTION.

21 THE COURT: WITHOUT OBJECTION.

22 (WHEREUPON, RE EXHIBIT NO. 49 WAS MARKED FOR
23 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

24 MR. MCMAHON: STATE'S 59 (SIC) IN EVIDENCE, YOUR
25 HONOR.

1 BY MR. MCMAHON

2 Q TO BE CLEAR, STATE'S 59, THE ITEM IN THE VIAL, YOU

3 REMOVED FROM STATE'S 30, 31, AND 32?

4 A YES.

5 Q YOU'RE NOT A FORENSIC SEROLOGIST OR D.N.A. EXAMINER?

6 A NO.

7 Q NOW, DID YOU DETERMINE WHETHER OR NOT, IN YOUR

8 OPINION, THESE THREE FRAGMENTS CAME FROM ONE OR MORE

9 BULLETS?

10 A THERE WAS ONCE ONE BULLET.

11 Q AND THAT WAS YOUR OPINION; IS THAT CORRECT?

12 A YES.

13 Q AND DID YOU ALSO HAVE -- I BELIEVE YOU ALREADY

14 TESTIFIED HAD THE OPPORTUNITY TO EXAMINE STATE'S

15 EXHIBIT NUMBER 6?

16 A YES.

17 Q STATE'S EXHIBIT NO. 6, WHAT, IF ANYTHING, DID YOU

18 NOTICE ABOUT THE CONDITION OF STATE'S EXHIBIT NO. 6?

19 A WELL, I NOTICED THAT THE RIGHT -- THE GRIP WAS BROKEN

20 AND --

21 Q SHOW ME WHERE YOU'RE REFERRING TO.

22 A RIGHT HERE ON THE BASE OF THE GRIP. THERE IS A STUD

23 THAT'S ON THE INSIDE THAT LOCKS UP THE GRIP IN THE

24 FRAME AS PART OF THE WAY THE GRIP LOCKS INTO PLACE

25 WITH THE SCREW. IT'S RIGHT IN THE CENTER, RIGHT

1 HERE. RIGHT DOWN THE CENTER.

2 Q RIGHT DOWN HERE (INDICATING)?

3 A YES, SIR.

4 Q ALL RIGHT, SIR.

5 A AND THE STUD THAT HOLDS THE GRIP IN PLACE IS BROKEN

6 OFF UNDERNEATH IT.

7 Q SO YOU ACTUALLY TOOK THE GRIPS OFF OF THE WEAPON?

8 A YES.

9 Q AND WHAT DID YOU THEN DO ONCE YOU TOOK THOSE GRIPS

10 OFF?

11 A THERE WAS SOME RESIDUE AND SOME MOIST FLUID, RESIDUE,

12 UNDER THAT GRIP.

13 Q DID YOU ALSO COLLECT THAT --

14 A YES.

15 Q -- AND FORWARD IT BACK WITH THE EVIDENCE?

16 A YES.

17 Q NOW, DID YOU DETERMINE WHETHER OR NOT THESE THREE,

18 30, 31, AND 32, WERE SUITABLE FOR IDENTIFICATION?

19 A YES, I DID.

20 Q AND IN DOING THAT, DID YOU TEST FIRE 9948?

21 A YES.

22 Q DID YOU ALSO TEST FIRE 9893?

23 A YES, I DID.

24 Q WERE THOSE -- DID THE WEAPONS CONSISTENTLY MARK

25 BULLETS WHERE YOU WOULD THEN HAVE AN APPROPRIATE TEST

1 BULLET TO COMPARE WITH THE MURDER BULLET?

2 A YES, I DID.

3 Q WHAT WAS YOUR CONCLUSION THAT YOU REACHED AS FAR AS
4 9893?

5 A IT WAS MY CONCLUSION THAT IT WAS NOT -- THERE WAS NO
6 REPRODUCED INDIVIDUAL SIMILARITIES.

7 Q 9893 DID NOT FIRE 30, 31, 32?

8 A NO.

9 Q TOTALLY EXCLUDED?

10 A YES.

11 Q ALL RIGHT. WHAT WERE YOUR CONCLUSIONS AS FAR AS
12 9948, STATE'S EXHIBIT NO. 6?

13 A IT'S MY OPINION THAT THE BULLET FRAGMENTS WERE FIRED
14 FROM STATE'S EXHIBIT 6, THAT 32 HARRINGTON AND
15 RICHARDSON REVOLVER, SERIAL NUMBER 9948.

16 Q IS THAT TO THE EXCLUSION OF ANY OTHER AND EVERY OTHER
17 32 HARRINGTON AND RICHARDSON?

18 A YES.

19 Q NOW, YOU TALKED ABOUT A WASH. DESCRIBE FOR THE JURY
20 WHAT TYPE OF WASH YOU DID ON 30, 31, 32 PRIOR TO YOUR
21 EXAMINATION AND COMPARISONS.

22 A I EXAMINED THEM MICROSCOPICALLY AND RECOVERED --
23 FIRST OF ALL, I SOAKED THE BULLETS TO SOFTEN SOME OF
24 THE TISSUE. THEN I TOOK IT OFF. THEN I USED A SONIC
25 CLEANER SIMILAR TO THE THING JEWELERS WOULD USE TO

1 PUT A RING IN. THEN I PUT A SMALL GLASS BEAKER IN
2 THAT WITH SOME MILD DETERGENT AND SOME WARM WATER,
3 AND I SONICATED IT ABOUT A MINUTE, AND THEN FLUSHED
4 OFF ANY LOOSE TISSUE AFTER THAT.

5 THIS WAS AFTER I HAD PULLED OFF SOME OF THE
6 TISSUE WITH TWEEZERS UNDERNEATH THE MICROSCOPE THAT I
7 SUBMITTED.

8 Q AND THAT CLEANS IT UP?

9 A YES.

10 Q SO YOU COMPARE IT BETTER WITH THE TEST BULLETS; IS
11 THAT RIGHT?

12 A YES.

13 Q COULD AN EXAMINER STILL COME ALONG AND EXAMINE THIS?

14 A YES, THEY CAN.

15 Q IN OTHER WORDS, POST CAYTON WASH, SO TO SPEAK?

16 A YES.

17 Q SOMEONE COULD AGAIN TEST FIRE 6 OR 9893?

18 A YES.

19 Q AND COMPARE IT TO --

20 A YES.

21 Q 30, 31, 32?

22 A YES.

23 Q ANY DOUBT IN YOUR MIND, MR. CAYTON?

24 A PARDON ME?

25 Q ANY DOUBT IN YOUR MIND AS TO YOUR RESULTS IN THIS

1 CASE?

2 A NO.

3 Q AND YOU GET PAID FOR YOUR WORK NOT FOR YOUR OPINION?

4 A THAT'S RIGHT.

5 Q WE'D HAVE TO PAY YOU REGARDLESS; IS THAT RIGHT?

6 A YES.

7 MR. MCMAHON: THANK YOU. I DON'T HAVE ANY
8 FURTHER QUESTIONS.

9 THE COURT: CROSS-EXAMINATION, MR. DELGADO.

10 MR. DELGADO: THANK YOU.

11 CROSS-EXAMINATION:

12 BY MR. DELGADO:

13 Q MR. CAYTON, LET ME JUST ASK, JUST SO I DON'T FORGET
14 IT RIGHT NOW, AFTER YOU TOOK OFF SOME OF THIS TISSUE
15 OR WHATEVER IT IS THAT YOU FOUND, I THINK YOU SAID
16 YOU ALSO HAD SOME -- MAYBE SOME MOIST LIQUID. DID
17 YOU SAY MOIST? I DIDN'T CATCH THAT EXACTLY.

18 A YES. IT LOCKED DAMP, MOIST, UNDER THE GRIP OF THE
19 REVOLVER.

20 Q ALL RIGHT, SIR. NOW, AFTER YOU TOOK OFF WHATEVER IT
21 WAS YOU TOOK OFF, SOME TISSUE I THINK YOU SAID?

22 A YES.

23 Q ALL RIGHT, SIR. YOU EITHER LABELED THAT OR YOU SENT
24 THAT BACK TO THE RICHLAND COUNTY SHERIFF'S
25 DEPARTMENT --

1 A YES.

2 Q -- TO SEE WHETHER OR NOT THAT COULD BE EVALUATED

3 FORENSICALLY; IS THAT CORRECT, SIR?

4 A YES.

5 Q TO SEE WHETHER OR NOT THAT, IN FACT, MIGHT LINK THE

6 PERSON WHO FIRED THE GUN FORENSICALLY? WOULD THAT BE

7 FAIR? THROUGH THAT I MEAN THROUGH D.N.A. ANALYSIS.

8 A NO. THE RESIDUE OFF THE BULLET OR OFF THE GUN?

9 Q YES, SIR, EITHER.

10 A WELL, THAT WAS JUST PRESERVED AS DISCOVERED EVIDENCE,

11 YOU KNOW, EXTRA -- AND FOR ANY FUTURE POTENTIAL LINK

12 TO SOMEONE.

13 Q SURE. I UNDERSTAND. WOULD IT SURPRISE YOU TO LEARN

14 THAT MY FRIENDS AT THE SHERIFF'S DEPARTMENT SUBJECTED

15 THAT TO D.N.A. ANALYSIS?

16 A WELL, I DIDN'T REALLY KNOW ABOUT THAT.

17 Q OKAY. DID YOU KNOW THAT THEY TOOK SOME BLOOD FROM

18 MR. FRIEBURGER, AND THAT DIDN'T LINK UP WITH ANY OF

19 THE TISSUE THROUGH ANY D.N.A. ANALYSIS? DID YOU KNOW

20 ABOUT THAT, SIR?

21 A WELL, I WOULDN'T THINK ANY OF THE TISSUE ON THE

22 BULLET WOULD MATCH HIM.

23 Q OKAY. ALL RIGHT. OR ANYTHING ELSE ON THE GUN.

24 A WELL, ACTUALLY IF SOMEBODY IS HIT WITH A GUN,

25 SOMETIMES THEY MIGHT LEAVE RESIDUE.

- 1 Q YES, SIR.
- 2 A IN THE FORCE. THAT WAS A NEW GUN, I UNDERSTOOD. TO
- 3 HAVE THAT GRIP BROKEN LIKE THAT, THAT WOULD HAVE
- 4 TAKEN SOME FORCE.
- 5 Q RIGHT.
- 6 A SOMETIMES WHEN PEOPLE ARE STRUCK WITH THE BUTT OF THE
- 7 GUN, THEY COULD BREAK THE GRIP AND ALSO THERE COULD
- 8 BE A FLUID TRANSFER.
- 9 Q RIGHT.
- 10 A AND USUALLY, IT'S NOT THE PERSON HOLDING THE GUN THAT
- 11 WOULD LEAVE THAT.
- 12 Q MY QUESTION TO YOU, SIR, DID YOU KNOW THAT THEY HAD
- 13 ATTEMPTED, WHATEVER YOU SENT BACK FROM KANSAS CITY,
- 14 THEY, THE SHERIFF'S DEPARTMENT, ATTEMPTED TO LINK IT
- 15 TO MR. FRIEBURGER THROUGH FORENSIC EVALUATIONS
- 16 THROUGH D.N.A.?
- 17 A NO, I HAD NOT.
- 18 Q LET ME REFER TO SOMETHING MR. MCMAHON MADE NOTE OF ON
- 19 THE BOARD. IF WE SAY TO YOU THAT ITEMS 30, 31, AND
- 20 32 ARE CHARACTERIZED BY THEIR WEIGHTS HERE, 31.3
- 21 GRAINS, AS I RECALL; IS THAT CORRECT, SIR?
- 22 A YES.
- 23 Q WE'RE TALKING ABOUT INFINITESIMALLY SMALL AMOUNTS OF
- 24 MEASURE NOW, ARE WE NOT, SIR?
- 25 A YES.

1 Q HOW MANY GRAINS IN A GRAM, SIR?

2 A I THINK IT'S ABOUT 16.

3 Q ALL RIGHT, SIR. A GRAM IS A LITTLE SUCRETS (SIC), AN

4 ARTIFICIAL SWEETENER, THAT YOU FIND IN A RESTAURANT?

5 A UH-HUH.

6 Q THAT'S A GRAM, RIGHT? SO THAT WOULD BE 31.3 GRAINS.

7 THAT WOULD BE ABOUT TWO GRAMS; IS THAT CORRECT, SIR,

8 THE ITEM NUMBER 30, 31, AND 32?

9 A WELL, I'D HAVE TO LOOK AT THE CHART BECAUSE I DON'T

10 DEAL WITH GRAINS THAT MUCH.

11 Q ALL RIGHT.

12 A WE STRICTLY DEAL WITH GRAINS. WE HAVE CONVERSION

13 TABLES.

14 Q OKAY. I'M SORRY. GRAINS, I APOLOGIZE. I GUESS WHAT

15 I'M SAYING, SIR, IS AFTER YOU TOOK OFF TISSUE, YOU

16 WEIGHED WHAT WAS LEFT, CORRECT, SIR?

17 A I WEIGHED IT BEFORE I DID ANYTHING.

18 Q BEFORE YOU MOVED ANY TISSUE AT ALL, OKAY.

19 DID YOU WEIGH IT AGAIN AFTER YOU TOOK OFF THE

20 TISSUE?

21 A NO.

22 Q ALL RIGHT. NOW, MR. CAYTON, YOUR INVOLVEMENT IN THIS

23 MATTER STARTED WHEN YOU WERE CONTACTED BY MR. CRAIG,

24 AND HE TALKED TO YOU ABOUT THIS SITUATION; IS THAT

25 CORRECT, SIR?

1 A YES. HE GAVE ME -- HE SAID THEY HAD AN OLD CASE, AND
2 HE HAD BEEN ASSIGNED TO LOOK AT IT. HE WANTED TO
3 KNOW -- HE HAD TALKED TO SOME OTHER PEOPLE, AND THEY
4 REFERRED HIM TO ME, AND ASKED ME IF I WOULD HELP HIM.
5 I TOLD HIM I WOULD.

6 Q NOW, DID HE GIVE YOU THE NAME OF THE DECEASED IN THIS
7 MATTER, MR. ORNER?

8 A I DON'T BELIEVE SO.

9 Q ALL RIGHT, SIR. DID HE GIVE YOU THE NAME OF HIS
10 SUSPECT IN THIS CASE?

11 A NO.

12 Q DID YOU EVER COME TO LEARN THE NAME OF THE VICTIM?

13 A BEFORE I FINISHED MY REPORT --

14 Q YES, SIR.

15 A -- I DID. I THINK I GOT A LETTER FROM THE MAJOR THAT
16 HAD GIVEN ME A LITTLE BIT MORE INFORMATION ABOUT THE
17 CASE.

18 Q YES, SIR. DID YOU AT ANY TIME EVER LEARN THE NAME OF
19 THE SUSPECT IN THIS CASE, MR. FRIEBURGER?

20 A I DID BEFORE I DID MY REPORT.

21 Q ALL RIGHT, SIR. AND IN TRUTH, SIR, YOUR WRITTEN
22 REPORT IDENTIFIES THE SUSPECT AS MR. FRIEBURGER,
23 CORRECT, SIR?

24 A YES.

25 Q ALL RIGHT. AND YOU WOULD HAVE GOTTEN THAT FROM THE

1 SHERIFF'S DEPARTMENT, CORRECT?

2 A YES.

3 Q ALL RIGHT. WHEN WE DO FORENSIC EVALUATIONS, AS YOU

4 HAVE DONE OVER THE YEARS WITH YOUR LABORATORIES, AND

5 I WOULD IMAGINE AT THE KANSAS CITY POLICE LAB WHERE

6 YOU USED TO WORK FOR SOME 30, 33 YEARS, WHICHEVER IT

7 WAS, YOU HAD ABILITIES TO EVALUATE THESE SAME TYPES

8 OF THINGS, CORRECT, SIR?

9 A YES.

10 Q ALL RIGHT. CAN YOU SHARE WITH US, SIR, WHERE YOUR

11 LAB WHERE YOU DID THIS REPORT OR YOUR INVESTIGATION,

12 WHERE THIS IS LOCATED?

13 A IT'S AT OSBORNEEE, MISSOURI.

14 Q OKAY.

15 A IT'S ABOUT 50-MILES NORTH OF KANSAS CITY, MISSOURI.

16 Q RIGHT. AS A MATTER OF FACT, IT'S ON A PLACE CALLED

17 WAINSLEY (PHONETIC) ROAD, IF I'M NOT MISTAKEN?

18 A YES.

19 Q YOUR OFFICE IS IN TRUTH, SIR, YOUR HOME, RIGHT?

20 A YES. WE HAVE A SEPARATE MOBILE OFFICE.

21 Q IT'S A LITTLE KIND OF TRAILER. IT SITS OFF FROM THE

22 HOUSE; IS THAT RIGHT?

23 A YES.

24 Q ALL RIGHT. AND THAT'S WHERE YOU DO YOUR

25 INVESTIGATIVE WORK FOR BALLISTICS?

1 A YES.

2 Q ALL RIGHT. NOW, IS IT MY UNDERSTANDING, SIR, YOU
3 WORK THERE ALONE? YOU HAVE SOME FOLKS THERE THAT
4 WORK THERE WITH YOU?

5 A I HAVE MY SON, WHO ALSO DOES FORENSIC BALLISTICS
6 WORK.

7 Q YES, SIR.

8 A AND MY SON-IN-LAW ALSO HELPS WITH SOME OF THE CRIME
9 SCENE RECONSTRUCTION AND DIAGRAMING.

10 Q OKAY.

11 A SO WE -- SOMETIMES I HAVE DIFFERENT PEOPLE THAT HELP
12 ME.

13 Q I GOT YOU. SO TELL US, SIR, ABOUT WHEN YOU MADE THIS
14 REPORT. IN OTHER WORDS, YOU GO THROUGH ALL OF YOUR
15 TESTING, AND YOU LOOK AT IT THROUGH A MICROSCOPE TO
16 LINE UP THESE LANDS AND GROOVES AND THE STRIATIONS,
17 AS THEY'RE CALLED.

18 DOES YOUR REPORT SHOW, SIR, WHO MAY HAVE
19 VERIFIED THAT, IN OTHER WORDS, WHO CAME BEHIND YOU TO
20 PROVIDE VERIFICATION OF IT?

21 A NO.

22 Q SO THERE WAS NO VERIFICATION BY ANYONE OF YOUR
23 FINDINGS?

24 A NO.

25 Q ALL RIGHT. NOW, VERIFICATION IS A PART OF WHAT WE

1 SEEK IN BALLISTICS, IS IT NOT, SIR?

2 A WELL, THE QUALITY CONTROL --

3 Q YES, SIR.

4 A -- I TOLD YOU ABOUT EARLIER --

5 Q YES, SIR.

6 A -- WAS ONE WAY FOR EXAMINATION. THERE ARE SEVERAL

7 WAYS TO EVALUATE AN EXAMINATION. ONE WAY IS A PEER

8 REVIEW.

9 Q YES, SIR.

10 A ANOTHER WAY IS MAYBE TO PHOTOGRAPH IT. ANOTHER WAY

11 IS TO DOCUMENT IT WITH CHARTS OR DIAGRAMS, SKETCHES,

12 AND THAT'S WHAT I DID. I SKETCHED. I DREW OUT THE

13 AREA THAT I WAS LOOKING AT, AND I MADE MY EXAMINATION

14 FROM IT.

15 Q I UNDERSTAND. SO MY QUESTION TO YOU, SIR, IS IN THE

16 SAME WAY -- WELL, LET'S TALK ABOUT YOUR LAB AS

17 OPPOSED TO THE STATE LAW ENFORCEMENT DIVISION LAB.

18 HAVE YOU EVER HAD A CHANCE TO GO OUT AND SEE OUR LAB

19 AT BROAD RIVER ROAD IN COLUMBIA?

20 A NO.

21 Q DO YOU KNOW, SIR, THAT THAT LABORATORY IS ACCREDITED

22 BY THE ASSOCIATION OF CRIME LAB DIRECTORS,

23 A.S.L.A.B.?

24 A A.S.C.L.D.

25 Q A.S.C.L.D., I APOLOGIZE. YOU GOT THAT. THAT IS A

1 NATIONALLY RECOGNIZED CERTIFICATION AGENCY, IS IT
2 NOT?

3 A YES.

4 Q IT IS THE HIGHEST ACCOLADE A CRIME LAB CAN BE GIVEN.
5 WOULD THAT BE FAIR?

6 A WELL. I MEAN, IT CERTAINLY TAKES A LOT OF WORK TO
7 GET ACCREDITATION.

8 Q YES, SIR.

9 A ALL LABORATORIES ARE NOT ACCREDITED.

10 Q YES, SIR.

11 A SOMETIMES IT'S NOT BECAUSE THEY DON'T DO GOOD WORK.
12 IT'S BECAUSE THEIR FACILITY, THEIR PLANT, DOESN'T
13 NECESSARILY MEET THEIR CRITERIA.

14 KANSAS CITY WAS ONE OF THE FIRST ACCREDITED LABS
15 WHEN I WORKED THERE. BECAUSE THE ADVANCEMENTS IN
16 D.N.A. AND HAVING TO DEAL WITH RADIOACTIVE MATERIAL,
17 WE DIDN'T MEET THE CRITERIA FOR ACCREDITATION, SO WE
18 LOST OUR ACCREDITATION. WE STILL WORK CASES THE SAME
19 WAY.

20 Q CERTAINLY.

21 A THERE ARE A LOT OF LABORATORIES THAT AREN'T
22 ACCREDITED. THEY'RE STILL WORKING CASES THE SAME
23 WAY.

24 Q ABSOLUTELY.

25 A SO IT TAKES A LOT OF WORK TO GET ACCREDITED, AND YOU

1 HAVE TO REDO THE ACCREDITATION EVERY FIVE YEARS.

2 Q THAT'S RIGHT.

3 A SO IT'S AN ON-GOING PROCESS, AND EVERYBODY STRIVES TO

4 DO GOOD WORK.

5 Q YES, SIR.

6 A IT'S OPEN TO PEER REVIEW.

7 Q ABSOLUTELY.

8 A AND WE ALL LOOK FOR THAT.

9 Q ABSOLUTELY. MY QUESTION TO YOU, SIR, IS THAT THE

10 ACCESS FORENSIC LAB LOCATED ON WAINSLEY ROAD IN

11 OSBORNEEE, MISSOURI, THAT'S NOT ACCREDITED BY

12 A.S.L.A.B., IS IT, SIR?

13 A A.S.C.L.D.

14 Q A.S.C.L.D. I APOLOGIZE AGAIN.

15 A NO, AND IT WOULDN'T MEET THE CRITERIA.

16 Q I UNDERSTAND. MY POINT TO YOU, SIR, IS THIS, THAT

17 PART OF WHAT YOU DO AS A BALLISTICS EXAMINER, AND

18 WHAT YOU TRY TO DO WITH THE LAB IN KANSAS CITY IS YOU

19 WOULD HAVE A PEER REVIEW.

20 WOULD YOU NOT HAVE A MICROVERIFICATION AT THE

21 LAB AT KANSAS CITY?

22 A YES.

23 Q BUT YOU DON'T HAVE THAT IN THIS CASE?

24 A CORRECT.

25 Q IF THERE WAS ANY VERIFICATION TO BE DONE, IT WAS DONE

1 BY YOUR SON OR SON-IN-LAW AT SOMETIMES; IS THAT
2 RIGHT?

3 A YEAH, I BELIEVE THEY DID LOOK AT IT, BUT I DON'T KNOW
4 THAT I WAS FINISHED WITH IT.

5 Q ALL RIGHT.

6 A THIS LABORATORY IS LIKE MY FRIEND IN ALASKA. HE'S BY
7 HIMSELF.

8 Q YES, SIR.

9 A AND HE DOESN'T HAVE ANYONE WORKING FOR HIM.

10 Q MY POINT BEING, SIR, IS THAT WE MAKE CERTAIN WE HAVE
11 FOLKS COMING BEHIND US BECAUSE AS WE ALL KNOW, IN
12 1983, 1984, YOUR TESTIMONY WAS AS YOU -- AND HONESTLY
13 COME TO POINT OUT --

14 A YES.

15 Q -- YOU MADE A MISTAKE BECAUSE NOBODY CHECKED BEHIND
16 YOU, CORRECT?

17 A YES.

18 Q WHICH IN TRUTH, NO ONE HAS CHECKED BEHIND YOU IN THIS
19 CASE?

20 A THAT'S TRUE.

21 Q NOW, LET ME EXPLAIN TO THE JURY. A FELLOW IN THAT
22 CASE WAS A FELLOW BY THE NAME OF TROTTER.

23 MR. MCMAHON: NO, SIR. I HAVE A MATTER OF LAW.

24 THE COURT: COME UP HERE. I THINK I CAN
25 STRAIGHTEN THAT OUT.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
3 THE JURY.)

4 THE COURT: LET ME LET YOU GO TO THE JURY ROOM
5 FOR A MINUTE.

6 (WHEREUPON, THE JURY LEFT OPEN COURT AT
7 APPROXIMATELY 3:30 P.M.)

8 THE COURT: ALL RIGHT, MR. DELGADO, TELL ME
9 WHERE YOU'RE HEADED.

10 MR. DELGADO: YES, SIR. I HAVE, YOUR HONOR,
11 CERTIFIED COPIES OF WHAT WOULD, FOR MISSOURI PROCEDURE, BE
12 A POST CONVICTION RELIEF APPLICATION, A HABEAS IN THE
13 STATE OF MISSOURI, RELATIVE TO QUESTIONS ASKED OF
14 MR. CAYTON BY COUNSEL FOR THE DEFENDANT IN A CASE CALLED
15 STATE VS. TROTTER.

16 WHAT I WAS GOING TO ASK MR. CAYTON IS QUESTIONS
17 FROM THAT RELATIVE TO HIS DEGREE OF ASSURANCE THAT WHAT HE
18 FELT AT THAT TIME WAS LATER ADMITTED BY HIMSELF TO BE
19 WRONG.

20 SPECIFICALLY, YOUR HONOR, HE WAS ASKED WHETHER
21 OR NOT HE WAS POSITIVE OF HIS FIRST -- ACTUALLY, WHAT
22 HAPPENED, YOUR HONOR, AND MR. CAYTON COULD TELL US,
23 MR. CAYTON, I BELIEVE, TESTIFIED TWICE IN THE TROTTER
24 CASE. IT WAS EITHER A RETRIAL OR SOMETHING HAPPENED.

25 MR. CAYTON TESTIFILS TWICE. BOTH TIMES HE SAYS

1 THE 357 MAGNUM RUGER FIRED THE FATAL BULLET. WELL, WHAT
2 HE COMES TO FIND OUT LATER, TO HIS CREDIT, HE ADMITTED,
3 LATER HAD TO SAY NO, IT WASN'T A 357, IT WAS A 38.

4 WHAT I WISH TO ASK MR. CAYTON IS THE
5 QUESTIONS -- WHETHER OR NOT HE WAS POSITIVE OF HIS
6 IDENTIFICATIONS IN TROTTER, WHETHER HE'S POSITIVE NOW.
7 WHETHER OR NOT HE COULD BE WRONG, WHETHER OR NOT THE SAME
8 TYPES OF -- LACK OF VERIFICATION PROCEDURES THAT RESULTED
9 IN THE TROTTER MISIDENTIFICATION HAVE OCCURRED HERE.

10 THE COURT: AS TO THOSE THREE QUESTIONS,
11 SOLICITOR, WHAT IS YOUR OBJECTION?

12 MR. MCMAHON: WELL, I THINK IT'S WAY BEYOND THE
13 SCOPE OF WILLIAMS VS. STANDARD OIL. THAT'S WHAT HIS
14 HONOR'S RULING WAS BASED ON. I THINK YOU HAVE THE
15 DISCRETION TO ALLOW OR DISALLOW THE SCOPE OF
16 CROSS-EXAMINATION.

17 WITH YOUR PRIOR RULING, HE COULD GO INTO THE
18 MISTAKE. I BROUGHT THE MISTAKE OUT. HE CAN ASK HIM IF HE
19 MADE A MISTAKE; "YOU WERE POSITIVE AT THAT TIME AND YOU
20 WENT BACK AND CORRECTED IT."

21 NOW, WE'RE GETTING INTO COURT TRANSCRIPTS ABOUT
22 THAT. I THINK UNDER THE 403 ANALYSIS, I THINK "A", THAT
23 GOES BEYOND THE SCOPE OF WHAT YOUR RULING WAS; "B", I
24 THINK UNDER THE 403 ANALYSIS, THAT'S HIGHLY PREJUDICIAL TO
25 GO INTO THAT.

1 JUDGE, STILL WE'RE DEALING WITH SOMETHING 19
2 YEARS AGO, 19 YEARS AGO.

3 THE COURT: I UNDERSTAND. THERE ARE TWO
4 PROBLEMS. NUMBER ONE, THE STANDARD OIL CASE IS A CIVIL
5 CASE. WE'RE IN A CRIMINAL CONTEXT WHERE THERE IS A RIGHT
6 OF CONFRONTATION.

7 THOSE THREE QUESTIONS ARE ESSENTIALLY WHAT HE
8 HAS SAID HERE ALREADY, THAT HE MADE A MISTAKE.

9 MR. MCMAHON: NO, SIR. I NEVER WENT -- IF
10 THAT'S YOUR RULING, I'M NOT TRYING TO ARGUE WITH THE
11 COURT.

12 I JUST DON'T THINK YOU GET BEYOND THE FACT THAT
13 HE MADE THE MISTAKE NOW INTO THE TRANSCRIPT OF THE POST
14 CONVICTION RELIEF HEARING, AND THEN YOU END UP WITH YOUR
15 THINKING BECAUSE OF HIS TESTIMONY, AN INNOCENT PERSON WAS
16 CONVICTED, WHICH HE WASN'T.

17 NOW, IF I CAN THEN BRING OUT THE GUY IN MISSOURI
18 WAS GUILTY REGARDLESS OF HIS TESTIMONY, BUT THAT'S WHAT
19 YOU'RE GOING TO HAVE.

20 YOU'RE GOING TO HAVE THEM RUNNING DOWN THE
21 TROTTER TRAIL AND ANOTHER RABBIT TRAIL, JUST LIKE THEY
22 WENT AROUND BEFORE.

23 THE COURT: WELL, I'M GOING TO GIVE YOU THAT
24 OPPORTUNITY, MR. SOLICITOR. IF HE WANTS TO PROCEED WITH
25 THAT, YOU CAN ASK HIM WHETHER OR NOT THE CONVICTION STOOD.

1 MR. MCMAHON: JUDGE, I'M JUST SAYING, THAT'S A
2 COLLATERAL MATTER. I MEAN, THAT'S A POINT -- THAT'S PART
3 OF THE POINT I'M ARGUING IS THE 403 ANALYSIS AND THE
4 COLLATERAL MATTER.

5 THE FACT HE MIGHT HAVE MADE THE MISTAKE IN '83,
6 THAT ISSUE, I MEAN, I'M NOT ARGUING WITH ANY OF THE
7 COURT'S RULINGS. I DON'T MEAN IT LIKE THAT. THEN I GET
8 OFF WITH THIS JURY. THAT SURELY SHOWS THE CONFUSION OF
9 THE JURY AND MISLEADING THE JURY THAT THEY'VE FOCUSED ON
10 THAT COLLATERAL MATTER.

11 THEY CAN FOCUS ON THE EXPERTISE OF MR. CAYTON
12 BECAUSE HE WORKS IN A NON-ACCREDITED LAB THAT I'M NOT
13 GOING TO SAY WHAT THOSE INITIALS ARE BECAUSE I CAN'T
14 REMEMBER NO BETTER THAN MR. DELGADO AND THE FACT HE MADE A
15 MISTAKE 19 YEARS AGO.

16 I THINK IT GOES BEYOND THE SCOPE OF APPROPRIATE
17 CROSS-EXAMINATION TO THEN GET INTO TRANSCRIPTS ABOUT THAT
18 IN A TRIAL IN EXCESS OF 19 YEARS AGO.

19 THE COURT: MR. DELGADO, I WILL LIMIT YOU
20 ASKING -- NOT DETAILING THE NATURE OF THE PROCEEDING,
21 WHETHER IT WAS A TRIAL OR HABEAS CORPUS PROCEEDING, BUT
22 WHETHER OR NOT "DID YOU TESTIFY TO THE FOLLOWING" AND
23 - LEAVE IT LIKE THAT.

24 MR. DELGADO: YOUR HONOR, THE OTHER PART OF IT
25 IS LACK OF VERIFICATION. I THINK THAT'S --

1 THE COURT: RIGHT, YOU GOT THAT.

2 MR. DELGADO: RIGHT BUT I NEED TO ASK HIM THAT
3 FROM THIS TRANSCRIPT.

4 THE COURT: YOU CAN ASK HIM.

5 MR. DELGADO: ALL RIGHT.

6 THE COURT: BUT NOT TO TELL THE JURY WHAT THE
7 NATURE OF THE PROCEEDING WAS.

8 MR. DELGADO: NO, SIR, JUDGE, I APOLOGIZE. IF
9 YOU -- IF YOU -- THAT WAS NOT -- I'M TELLING YOU FROM MY
10 HEART, THAT WAS NOT WHAT I WAS INTENDING TO DO. THAT WAS
11 MISPERCEIVED. I APOLOGIZE. NO, SIR.

12 THE COURT: ALL RIGHT. BRING THE JURY IN.

13 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
14 APPROXIMATELY 3:36.)

15 THE COURT: ALL RIGHT. THE OBJECTION IS
16 SUSTAINED IN PART, OVERRULED IN PART.

17 YOU MAY PROCEED, MR. DELGADO.

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

19 MR. DELGADO: THANK YOU.

20 BY MR. DELGADO

21 Q MR. CAYTON, THE MATTER I WISH TO DISCUSS WITH YOU,
22 SIR, INVOLVES TESTIMONY THAT YOU'VE GIVEN IN THE
23 STATE OF MISSOURI. JUST BECAUSE WE HAVE TO CALL IT
24 SOMETHING, THE NAME TROTTER, DO YOU RECOGNIZE THAT
25 NAME?

1 A YES.

2 Q THIS IS THE THING THAT YOU TOLD OUR JURY ABOUT --

3 A YES.

4 Q -- THAT YOU TESTIFIED AND THEN TO YOUR CREDIT, SIR,

5 REALIZED "I MADE A MISTAKE" AND YOU CORRECTED THAT

6 MISTAKE.

7 A YES.

8 Q SIR, DO YOU REMEMBER BEING ASKED IN THAT MATTER

9 WHETHER OR NOT WHEN YOU TESTIFIED IN TROTTER, WHETHER

10 OR NOT YOU -- I'M SORRY, FIRST OF ALL, LET ME BACK

11 UP. WHEN YOU EVALUATED THAT GUN IN TROTTER, YOU GAVE

12 IT THE STANDARD TYPE OF TESTING THAT YOU HAD DONE AND

13 TESTIFIED TO HERE TODAY, CORRECT, SIR?

14 A YES.

15 Q COMPARISON MICROSCOPE, DO YOU REMEMBER THAT, SIR?

16 A YES.

17 Q DID YOU HAVE ALL THE TIME AND WHATEVER ELSE YOU

18 NEEDED TO BE ABLE TO EVALUATE THOSE BULLETS AS

19 SUPPOSEDLY COMING FROM A GUN?

20 A RIGHT.

21 Q ALL RIGHT, SIR. DO YOU RECALL BEING ASKED, SIR,

22 WHETHER OR NOT WHEN YOU GAVE YOUR TESTIMONY

23 IDENTIFYING WHEN YOU MADE THE MISTAKE WHETHER OR NOT

24 YOU WERE POSITIVE, AT THE TIME THAT YOU TESTIFIED,

25 YOU WERE POSITIVE THAT THE 357 HAD KILLED THE POLICE

1 OFFICER? DO YOU RECALL THAT, SIR?

2 A ARE YOU TALKING ABOUT THE HEARING TESTIMONY?

3 Q YES, SIR, THE HEARING TESTIMONY.

4 A I SAID IT WAS MY OPINION.

5 Q DO YOU REMEMBER MR. MCMULLEN IN KANSAS CITY ASKING
6 YOU, "MR. CAYTON, DIDN'T I ASK YOU WHETHER OR NOT YOU
7 WERE POSITIVE, AND YOU SAID YES." DO YOU REMEMBER
8 THAT, SIR?

9 A WELL, IF I COULD LOOK AT THE TRANSCRIPT.

10 Q SURE, ABSOLUTELY. LET ME REFER YOU, SIR, TO PAGE --
11 JUST ONE SECOND.

12 JUST ONE SECOND MR. CAYTON. LET ME MAKE
13 CERTAIN.

14 (PAUSE).

15 MR. CAYTON AT PAGE 46, LINES 19 THROUGH 25. LET
16 ME JUST MAKE CERTAIN I'VE GOT THAT HERE, TOO. DO YOU
17 RECOGNIZE THAT, SIR?

18 A YES. IN THIS TRANSCRIPT IT SAYS I ANSWERED "YES".

19 Q TO THAT QUESTION?

20 A TO THE OPINION. "YOU TOLD US WHEN YOU EXAMINED THE
21 FIRST 357 MAGNUM, IN YOUR OPINION, YOU WERE POSITIVE
22 THAT WAS THE WEAPON THAT KILLED HIM" -- I BELIEVE I
23 ANSWERED YES TO THAT QUESTION.

24 Q YES, SIR. SO YOU WERE POSITIVE. WHETHER YOU WERE
25 POSITIVE OR NOT, IT WAS A POSITIVE OPINION THAT THE

1 357 HAD KILLED THE POLICE OFFICER, CORRECT, SIR?

2 A YES.

3 Q ALL RIGHT. NOW, AND LATER YOU WERE ASKED, SIR,
4 WHETHER OR NOT NOW, AFTER YOU HAD -- IN FACT, YOU
5 TESTIFIED TO THAT ON TWO DIFFERENT OCCASIONS, DID YOU
6 NOT, SIR, TWO DIFFERENT TRIALS, IF I'M NOT MISTAKEN.

7 A I DON'T RECALL.

8 Q ALL RIGHT, SIR. BUT IN ANY EVENT, SOMETIME LATER,
9 SOME TWO, MAYBE THREE YEARS LATER, YOU FOUND ANOTHER
10 GUN?

11 A YES.

12 Q THAT'S A 38. THAT'S DIFFERENT THAN A 357, RIGHT?

13 A YES.

14 Q AND TO YOUR CREDIT, SIR, WHEN YOU EVALUATED IT, YOU
15 CAME TO FIND OUT, THAT IN TRUTH, IT WASN'T THE 357
16 THAT KILLED THE POLICE OFFICER. IT WAS THE 38 THAT
17 HAD KILLED THE POLICE OFFICER.

18 A YES.

19 Q CORRECT, SIR?

20 A YES.

21 Q SO WHILE YOU WERE POSITIVE THE FIRST TIME, YOU THEN
22 CHANGED YOUR MIND AND SAID I'M POSITIVE ABOUT THE 38,
23 CORRECT, SIR?

24 A YES.

25 Q ALL RIGHT, SIR. AND THE REASON THAT THE 357 YOU HAD

1 IDENTIFIED THE MISTAKE THAT YOU HAD MADE ABOUT THE
2 357 WAS BECAUSE YOU HAD NO VERIFICATION, NO ONE CAME
3 BEHIND YOU, SIR, TO DO A MICROVERIFICATION OF YOUR
4 OPINION, CORRECT, SIR?

5 A WELL, WE HAD OTHER EXAMINERS THAT WOULD LOOK AT
6 OUR -- BUT WE DIDN'T HAVE THE QUALITY ASSURANCE
7 PROGRAM IN EFFECT, BUT WE ROUTINELY HAVE PEOPLE LOOK
8 AT OUR EXAMINATION.

9 Q CERTAINLY. AND THAT'S WHAT GOOD LABS ATTEMPT TO DO
10 NOW, CORRECT?

11 A YES.

12 Q AS A MATTER OF FACT, SIR, PAGE 56, LINE 23, TURN WITH
13 ME, IF YOU WILL.

14 THE JUDGE ASKED YOU A QUESTION ABOUT, "IS IT NOW
15 CORRECT THAT THE PROCEDURE IN THE KANSAS CITY,
16 MISSOURI POLICE DEPARTMENT NOW WHEN THEY'RE MATCHING
17 AND COMPARING BALLISTIC TESTS, SUCH THAT YOU WERE
18 GOING TO HAVE EXPERT'S OPINIONS FROM MORE THAN ONE
19 SOURCE OR EXAMINATIONS BY MORE THAN ONE EXPERT," AND
20 YOUR ANSWER TO THAT, SIR, WAS WHAT? IF YOU WOULD
21 READ THAT TO ME FROM LINE 23 UP THROUGH THE NEXT
22 PAGE, LINE THREE.

23 A YES. WE'VE IMPLEMENTED A BACK-UP SYSTEM THAT IS
24 PRETTY WELL ACROSS THE COUNTRY. LABORATORIES ARE
25 DOING THIS TO PROTECT THE CASE AND THE EXAMINATION,

1 NOT ONLY IN FIREARMS BUT ALSO IN HAIR, FIBER, AND
2 VARIOUS OTHER DISCIPLINES, AND I'VE IMPLEMENTED IT IN
3 OUR SECTION.

4 Q ALL RIGHT, SIR. AND I GUESS WHAT I'M SAYING, SIR, IS
5 IN THE TROTIER CASE, YOU DIDN'T HAVE ANY BACK UP.
6 YOU DIDN'T HAVE ANY MICROVERIFICATION. YOU DIDN'T
7 HAVE ANY PEER REVIEW? WOULD THAT BE FAIR?

8 MR. MCMAHON: YOUR HONOR, THAT'S BEEN ASKED AND
9 ANSWERED SEVERAL TIMES.

10 THE COURT: SUSTAINED, SUSTAINED.

11 BY MR. DELGADO

12 Q ALL RIGHT. THE KEY IS, IN THIS CASE, IN YOUR OPINION
13 IN THIS MATTER, YOU DON'T HAVE ANYBODY TO FOLLOW UP,
14 AS YOU SAID IS THE THING NOW ACROSS THE COUNTRY, AS A
15 RESULT OF THIS; JSN'T THAT CORRECT, SIR?

16 A I DIDN'T HAVE ANYBODY TO BACK ME UP ON THIS.

17 Q YES.

18 A BUT I DID DO ONE OF THE REQUIREMENTS, WHICH IS
19 DOCUMENTING THE AREAS I LOOK AT --

20 Q CERTAINLY.

21 Q -- WHICH IS ONE OF THE WAYS TO DO IT, BESIDES HAVING
22 SOMEBODY LOCK AT IT TO BACK IT UP.

23 A YES, SIR.

24 Q ABSOLUTELY. SO IN TRUTH AND IN FACT, MR. CAYTON,
25 NOBODY HAS LOOKED AT IT BUT JUST YOU, CORRECT?

1 A WELL, OTHER PEOPLE LOOKED AT IT. I LOOKED AT IT
2 AFTER SOME OTHERS HAD LOOKED AT IT.
3 Q IN THIS CASE?
4 A WELL, I MEAN, IT HAD BEEN LOOKED AT BEFORE I GOT IT.
5 I WAS ONE OF SEVERAL.
6 Q I'M JUST TALKING ABOUT YOUR REPORT, SIR.
7 A OH NO.
8 Q NOBODY HAS LOOKED BEHIND YOUR REPORT?
9 A NO.
10 Q ALL RIGHT. WOULD IT BE FAIR TO SAY, SIR, THAT YOU'RE
11 POSITIVE IN THIS IDENTIFICATION, AS WELL?
12 A YES.
13 Q DO YOU KNOW, SIR, WHETHER OR NOT A.S.C.L.D. CERTIFIED
14 LABS, SUCH AS OUR STATE LAW ENFORCEMENT DIVISION,
15 HAVE PROTOCOLS RELATING TO MICROVERIFICATION FOR ALL
16 BALLISTIC EVALUATIONS?
17 A DO I KNOW?
18 Q YES, SIR.
19 A I'M NOT SURE OF THE POLICY AND PROCEDURE FOR SOUTH
20 CAROLINA. I ASSUME THEY WOULD HAVE.
21 Q AND IF IT'S VERIFIED -- EXCUSE ME. IF IT'S CERTIFIED
22 BY A.S.C.L.D., YOU WOULD EXPECT THAT THE LEVEL OF
23 SOPHISTICATION AND PROFESSIONISM THAT WOULD BE
24 IMPOSED ON A LAB WOULD BE MICROVERIFICATION AND OTHER
25 PEER REVIEWS, CORRECT, SIR?

1 A WELL, AS I SAID BEFORE, THE LABORATORY DOESN'T HAVE
2 TO HAVE A PEER REVIEW MICROSCOPICALLY TO HAVE AN
3 ACCEPTABLE.

4 Q CERTAINLY.

5 A THE LABORATORY IN ANCHORAGE IS A ONE-MAN SECTION.
6 THERE'S NO ONE ELSE TO REVIEW IT.

7 Q CERTAINLY.

8 A SO AS LONG AS YOU DOCUMENT IT --

9 Q RIGHT.

10 A -- ONE OF THE WAYS, AND IF YOU PUT IT IN YOUR
11 PROCEDURE AND PROTOCOL THE WAY YOU DOCUMENT IT --

12 Q RIGHT, SIR.

13 A -- AND THE WAY I DOCUMENT IT WAS BY THE DIAGRAM
14 POINTING OUT THE AREAS THAT I LOOKED AT.

15 Q ABSOLUTELY. BUT NOBODY HAS LOOKED AT THAT BEYOND
16 YOU, SIR, CORRECT? I MEAN, YOU KNOW --

17 A OH, I SENT YOU GUYS COPIES OF THE REPORTS. THEY GOT
18 COPIES. IT'S ON THERE JUST WHAT I DID.

19 Q I UNDERSTAND. I GUESS WHAT I'M SAYING, SIR, IS
20 NOBODY -- SEE, I'M NOT A BALLISTICS EXPERT. SEE,
21 NOBODY HAS CHECKED BEHIND YOU. WOULD THAT FAIR,
22 MR. CAYTON?

23 A WELL, I TOOK THE NOTES AND DID THE DRAWINGS FOR
24 SOMEBODY TO REVIEW IT IF THEY WANTED TO REVIEW IT.

25 Q MR. CAYTON, JUST ONE SECOND, PLEASE, SIR.

1 (PAUSE).

2 MR. CAYTON, I APOLOGIZE, SIR. I THOUGHT I HAD
3 IT RIGHT HERE IN MY HAND.

4 DO YOU HAVE A COPY OF THOSE PROTOCOLS? DO YOUR
5 PROTOCOLS FOR THE ACCESS LAB IN OSBORNEEE, MISSOURI,
6 DO THEY REQUIRE VERIFICATION?

7 A DO THEY REQUIRE WHAT?

8 Q VERIFICATION.

9 A NO.

10 Q OKAY. LET ME JUST -- I THINK I'M JUST ABOUT THROUGH,
11 MR. CAYTON. YOU MET WITH MR. MCMAHON AND OUR FRIEND,
12 MR. IRA PARNELL FROM S.L.E.D.?

13 A YES.

14 Q THEY CAME TO KANSAS CITY, I THINK, ONE DAY?

15 A YES.

16 Q SPENT THE NIGHT AND CAME BACK TO SOUTH CAROLINA THE
17 NEXT DAY?

18 A YES.

19 Q I THINK YOU EVEN MET THEM AT THE AIRPORT?

20 A YES.

21 Q I SEE FROM YOUR VOUCHER YOU PUT DOWN EIGHT HOURS
22 SPENDING TIME WITH MR. MCMAHON AND MR. PARNELL. DO
23 YOU RECALL THAT, SIR?

24 A YES.

25 MR. DELGADO: ALL RIGHT.

1 YOUR HONOR, MAY I HAVE JUST ONE MOMENT PLEASE,
2 SIR? I NEED TO REVIEW SOMETHING. IS THAT ALL RIGHT?

3 THE COURT: YES, NOT TOO LONG.

4 MR. DELGADO: I UNDERSTAND.

5 (PAUSE).

6 MR. CAYTON, I HAVE NOTHING FURTHER FOR YOU, SIR.
7 THANK YOU VERY MUCH.

8 THE COURT: REDIRECT, MR. SOLICITOR?

9 MR. MCMAHON: JUST A COUPLE OF QUESTIONS.

10 REDIRECT EXAMINATION:

11 BY MR. MCMAHON

12 Q ALL THE INFORMATION YOU SAY YOU PROVIDED TO ME AS FAR
13 AS CHARTING AND NOTES AND SUCH, HAVE BEEN PROVIDED TO
14 THEM; IS THAT CORRECT?

15 A I BELIEVE SO.

16 Q ALL RIGHT, SIR. AND EIGHT HOURS WITH ME AND
17 LIEUTENANT PARNELL IN KANSAS CITY IS ABOUT ALL --

18 MR. DELGADO: OBJECTION.

19 MR. MCMAHON: HE ASKED HIM ABOUT THAT.

20 THE COURT: WHAT'S YOUR OBJECTION?

21 MR. DELGADO: WITHDRAWN.

22 BY MR. MCMAHON

23 Q EIGHT HOURS WITH ME AND LIEUTENANT PARNELL IN KANSAS
24 CITY TALKING WITH ME ABOUT THE BALLISTICS WAS ABOUT
25 ALL YOU COULD STAND THAT DAY. IS THAT A FAIR

1 STATEMENT?

2 A WELL, YEAH, THAT AND WE TOOK A LUNCH BREAK.

3 Q AND THIS STUFF SITTING UP HERE RIGHT NOW, THE GUN,
4 THE BULLETS, THE FRAGMENTS, ANYBODY COULD COME BEHIND
5 YOU RIGHT NOW, COULDN'T THEY, MR. CAYTON?

6 A YES.

7 MR. MCMAHON: THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY
9 STEP DOWN.

10 CALL YOUR NEXT WITNESS, PLEASE.

11 MS. CAMPBELL: THE STATE CALLS DAVID MCCLURE.

12 THE CLERK: IF YOU COME FORWARD, PLEASE. PLACE
13 YOUR LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

14 DAVID MCCLURE. AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
17 NAME, SPELL YOUR LAST NAME.

18 THE WITNESS: IT'S DAVID MCCLURE.

19 DIRECT EXAMINATION:

20 BY MS. CAMPBELL

21 Q AGENT MCCLURE, WHERE ARE YOU EMPLOYED?

22 A WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

23 Q WHAT DO YOU DO THERE?

24 A I WORK IN THE SEROLOGY D.N.A. ANALYSIS UNIT.

25 Q THE SEROLOGY AND D.N.A. ANALYSIS UNIT?

1 A THAT'S CORRECT.

2 Q CAN YOU TELL THIS JURY A LITTLE BIT ABOUT YOUR
3 TRAINING, YOUR EDUCATION, IN THAT AREA?

4 A I HAVE A BACHELOR OF SCIENCE DEGREE IN MICROBIOLOGY
5 FROM CLEMSON UNIVERSITY. I'VE ALSO ATTENDED GRADUATE
6 LEVEL CLASSES BOTH AT CLEMSON AND THE UNIVERSITY OF
7 SOUTH CAROLINA AND IN MOLECULAR BIOLOGY.

8 I SPENT FOUR WEEKS AT THE F.B.I.'S D.N.A.
9 ANALYSIS SCHOOL LEARNING D.N.A. ANALYSIS FOR FORENSIC
10 USE. I ALSO SPENT 15 WEEKS AT THEIR RESEARCH
11 FACILITY, WITH THE F.B.I. RESEARCHING IN THE FIELD OF
12 D.N.A. ANALYSIS.

13 Q AND HAVE YOU TESTIFIED BEFORE AS AN EXPERT IN THE
14 AREAS OF D.N.A. ANALYSIS?

15 A ON NUMEROUS OCCASIONS.

16 Q JUST WHEN I'VE BEEN IN COURT ON NUMEROUS OCCASIONS,
17 SO IT'S WELL OVER TEN, 20 OCCASIONS?

18 A YES, SIR.

19 Q AND YOU'VE BEEN QUALIFIED AS AN EXPERT IN D.N.A.
20 ANALYSIS EVERY TIME?

21 A YES, MA'AM.

22 Q IS THAT CORRECT?

23 A YES, MA'AM.

24 MS. CAMPBELL: YOUR HONOR, AT THIS TIME, WE'D
25 OFFER HIM AS AN EXPERT IN D.N.A. ANALYSIS.

1 THE COURT: ANY OBJECTION?

2 MR. DELGADO: NO OBJECTION.

3 THE COURT: YOU MAY PROCEED.

4 BY MS. CAMPBELL

5 Q AGENT MCCLURE, LAST YEAR, DID YOU RECEIVE SOME

6 EVIDENCE INVOLVING A VICTIM NAMED JOHN ORNER AND A

7 DEFENDANT NAMED EDWARD FREIBURGER?

8 A YES, MA'AM, I DID.

9 Q AND I BELIEVE THAT WOULD BE YOUR CASE NUMBER, L

10 011623?

11 A THAT'S CORRECT.

12 Q AND I'M GOING TO SHOW YOU THIS STATE'S EXHIBIT 59 AND

13 ASK IF YOU RECOGNIZE THAT.

14 A YES, MA'AM.

15 Q IS THAT PART OF THE EVIDENCE THAT YOU RECEIVED IN

16 THIS CASE?

17 A YES, MA'AM, IT IS.

18 Q AND WHO DID YOU RECEIVE THIS EVIDENCE FROM?

19 A I RECEIVED THAT EVIDENCE, ACTUALLY, FROM A D.N.A.

20 REFRIGERATOR AFTER IT WAS LOGGED INTO S.L.E.D.

21 WHOEVER LOGGED IT IN AND SEALED THE EVIDENCE PLACES

22 IT IN THE D N.A. REFRIGERATOR.

23 Q AND JUST TO REFRESH YOUR MEMORY, I SHOW YOU THIS

24 EVIDENCE SHEET. DOES THAT INDICATE WHERE YOU

25 RECEIVED IT AFTER INVESTIGATOR METZ LOGGED IT IN?

1 A THAT'S CORRECT.

2 Q AND WHEN DID YOU ACTUALLY RECEIVE THIS EVIDENCE?

3 A ON JANUARY 25TH OF THIS YEAR.

4 Q TELL THIS JURY, WHEN YOU'RE DOING D.N.A. ANALYSIS,

5 WHAT KIND OF MATERIAL OR THE PRESENCE OF WHAT THINGS

6 CAN YOU TEST FOR?

7 A WELL, THE FIRST THING WE DO IS WHEN WE RECEIVE AN

8 ITEM OF EVIDENCE, AS WELL AS DO A SEROLOGY ON THAT

9 ITEM OF EVIDENCE TO SEE IF THAT ITEM IS POSSIBLY

10 BLOOD, SEMEN, OR SALIVA, WE CAN TEST ANY BIOLOGICAL

11 MATERIAL FOR THE PRESENCE OF D.N.A.

12 Q SO THE MATERIALS YOU CAN TEST, WHEN YOU SAY

13 BIOLOGICAL MATERIALS, IT'S LIKE BODY FLUIDS, AS WELL

14 AS TISSUE?

15 A IT DEPENDS ON WHAT THE BODY FLUID IS. THE BODY

16 FLUID, SUCH AS BLOOD, THE WHITE BLOOD CELLS CONTAIN

17 D.N.A. BODY FLUIDS SUCH AS SEMEN AND SPERM CONTAIN

18 D.N.A.

19 IF YOU HAVE A BODY FLUID THAT IS JUST A WATERY

20 MATERIAL WITHIN THE CELLS, THAT DOES NOT CONTAIN ANY

21 D.N.A. BUT THE CELL ITSELF WILL.

22 Q AND ONE OF THE PRIMARY THINGS Y'ALL TEST FOR ARE

23 ITEMS FROM CRIME SCENES, SUCH AS BLOOD?

24 A THAT'S CORRECT.

25 Q IN THIS CASE, WHAT ITEMS DID YOU RECEIVE TO DO YOUR

1 TESTING, AGENT?

2 A I RECEIVED ITEM NUMBER TWO, WHICH WAS AN H AND R 32

3 CALIBER HANDGUN, SERIEL NUMBER W 9948.

4 Q WAIT A MINUTE.

5 A 9948.

6 Q H & R WHAT, 32?

7 A THIRTY-TWO.

8 Q OKAY.

9 A I RECEIVED AN ITEM MARKED AS A VIAL OF TISSUE.

10 Q OKAY.

11 A I RECEIVED A BAG OF MATERIAL FROM UNDER THE GRIP OF

12 ITEM NUMBER TWO, WHICH WAS THE H & R 32 HANDGUN.

13 Q AND FINALLY, WHAT WAS LEFT?

14 A A BLOOD STANDARD FROM EDWARD FRIEBURGER.

15 Q WHEN YOU SAY A BLOOD STANDARD FROM A KNOWN PERSON --

16 A THAT WOULD BE A TUBE OF BLOOD COLLECTED FROM THAT

17 PERSON.

18 Q TURNING YOUR ATTENTION TO STATE'S EXHIBIT 59, LOOKING

19 AT THIS ITEM, DOES IT HAVE SOME WRITING ON IT?

20 A YES, IT DOES.

21 Q AND WHICH ITEM IS THAT DEPICTED ON THAT BOARD THAT I

22 JUST WROTE? IS THAT THE VIAL OF TISSUE?

23 A THAT'S CORRECT.

24 Q SO THIS ITEM, DOES IT HAVE SOME WRITING ON IT?

25 A IT HAS "TISSUE REMOVED FROM E-1, BULLET FRAGMENT, '

1 JOHN CAYTON." IT ALSO HAS OUR LAB ITEM, OUR LAB ITEM
 2 NUMBER AND MY INITIALS.
 3 Q OKAY. YOU INDICATED THAT WHEN YOU DO YOUR TESTING
 4 AND YOU RECEIVE CERTAIN ITEMS FOR TESTING, INITIALLY,
 5 YOU DO A SEROLOGY TEST ON IT?
 6 A THAT'S CORRECT.
 7 Q AND DID YOU DO THAT IN THIS CASE?
 8 A YES, I DID. I TESTED FOR THE PRESENCE OF HUMAN
 9 BLOOD.
 10 Q HUMAN BLOOD?
 11 A CORRECT.
 12 Q OR ANY D.N.A.? IN THIS CASE, YOU WERE LOOKING FOR
 13 BLOOD; IS THAT RIGHT?
 14 A THAT'S CORRECT.
 15 Q AND SOME OF WHAT YOU LOOK FOR IS BASED ON THE TYPE OF
 16 CASE YOU HAVE?
 17 A YES.
 18 Q AND THIS WASN'T A RAPE CASE.
 19 A NO.
 20 Q OKAY. SO YOU'RE LOOKING FOR BLOOD. WHEN YOU TESTED
 21 THIS FIRST ITEM, WHICH WAS THE ACTUAL GUN, WERE YOU
 22 ABLE TO TEST FOR THE PRESENCE OF BLOOD?
 23 A THERE WAS NO BLOOD DETECTED.
 24 Q AND THEN THE VIAL OF TISSUE THAT WAS TAKEN FROM THE
 25 ACTUAL BULLETS, WERE YOU ABLE TO DETECT ANYTHING

1 THERE?

2 A THERE WAS NO BLOOD DETECTED ON THAT SAMPLE.

3 Q WHAT ABOUT THE BAG, THE MATERIAL ON THE GRIP?

4 A THERE WAS NO BLOOD DETECTED ON THAT MATERIAL.

5 Q AND, OF COURSE, THE BLOOD STANDARD WOULD BE BLOOD; IS

6 THAT CORRECT?

7 A WE DO NOT TEST THE BLOOD STANDARD FOR THE PRESENCE OF

8 BLOOD. IT'S A KNOWN STANDARD.

9 Q AND AGENT, TYPICALLY BECAUSE THERE IS FOUND NO BLOOD,

10 DID YOU DO ANY FURTHER TESTING IN THIS CASE?

11 A I DID ON THE TISSUE SAMPLE BECAUSE QUITE OFTEN, YOU

12 WON'T FIND BLOOD PRESENT WITH THE TISSUE. SINCE IT

13 WAS INDICATED THERE WAS TISSUE THERE AND WE CAN

14 EXTRACT D.N.A. FROM TISSUE, WE DID DO D.N.A. ON THAT

15 ITEM.

16 Q AND AGENT, ON CASES -- IN FORENSIC INVESTIGATION,

17 IT'S ALWAYS BETTER TO TRY TO COLLECT EVIDENCE THAN TO

18 NOT, RIGHT?

19 A THAT'S CORRECT.

20 Q BUT IN THIS CASE, EVEN THOUGH THERE WAS NO BLOOD, AND

21 YOU WERE AWARE THAT THIS CASE WAS 40 YEARS OLD --

22 A THAT'S CORRECT.

23 Q -- YOU WENT AHEAD AND DID SOME D.N.A. TESTING; IS

24 THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND THE MATERIAL THAT WAS PROVIDED TO YOU FROM THOSE
2 BULLETS, IS THAT WHAT YOU TESTED, RIGHT?
3 A THAT'S CORRECT.
4 Q AGENT, ARE YOU ALWAYS -- WHENEVER A MATERIAL, EVEN IF
5 IT IS BLOOD, IS SUBMITTED TO YOU, ARE YOU ALWAYS ABLE
6 TO GET RESULTS?
7 A NOT NECESSARILY. IT DEPENDS ON HOW MUCH BLOOD IS
8 THERE AND HOW MANY WHITE BLOOD CELLS ARE PRESENT.
9 Q SO THERE HAS TO BE A CERTAIN AMOUNT OF BLOOD OR
10 TISSUE THERE FOR YOU TO BE ABLE TO DO ANY TESTING?
11 A THAT'S CORRECT.
12 Q IN THIS CASE, WERE YOU ABLE TO DEVELOP A D.N.A.
13 PROFILE FROM THE VIAL OF TISSUE FROM THE BULLET
14 FRAGMENTS?
15 A YES. WE WERE ABLE TO DEVELOP A PARTIAL PROFILE.
16 Q AND AGAIN, THERE HAS TO BE D.N.A. PRESENT; IS THAT
17 CORRECT?
18 A THAT'S CORRECT.
19 Q SO YOU HAD ENOUGH MATERIAL TO TEST TO GET A D.N.A.
20 PROFILE?
21 A A PARTIAL D.N.A. PROFILE, YES.
22 Q AND YOU WERE ALSO ABLE TO GET A D.N.A. PROFILE FROM
23 THE BLOOD STANDARD?
24 A YES, MA'AM.
25 Q AND DID THE TWO D.N.A. PROFILES MATCH?

1 A NO, MA'AM, THEY DID NOT.

2 Q AND LET ME ASK YOU THIS, IN YOUR EXPERIENCE, THE
3 BULLET FRAGMENTS THAT HAD THE TISSUE ON THEM WERE
4 FROM THE BRAIN OF VICTIM, AND YOU KNEW THE KNOWN
5 DEFENDANT IN THIS CASE WAS FRIEBURGER; IS THAT
6 CORRECT?

7 A I KNEW WHO THE DEFENDANT WAS. I DID NOT KNOW WHERE
8 THE BULLET FRAGMENT WAS COLLECTED.

9 MS. CAMPBELL: THAT'S ALL I HAVE.

10 THE COURT: CROSS-EXAMINATION.

11 MR. DELGADO: YES, SIR.

12 CROSS-EXAMINATION:

13 BY MR. DELGADO

14 Q MR. MCCLURE, WHAT THAT MEANS BY MS. CAMPBELL IS NONE
15 OF THAT HAS ANY RELATIONSHIP AT ALL TO ED FRIEBURGER,
16 DOES IT?

17 A THERE IS NOTHING THAT MATCHED EDWARD FRIEBURGER.

18 MR. DELGADO: JUST ONE SECOND PLEASE, YOUR
19 HONOR.

20 (PAUSE).

21 BY MR. DELGADO

22 Q YOU CAN'T FIND IT WHEN YOU NEED IT. WOULD YOU
23 DESCRIBE FOR THESE FOLKS WHICH BUILDING YOU WORK IN,
24 WHERE IT'S LOCATED?

25 A IT'S LOCATED AT 4416 BROAD RIVER ROAD. IT'S A BRICK

1 BUILDING, AND FOUR STORIES, A PARTIAL BRICK.

2 Q YOU WORK AT THE FORENSIC DIVISIONS LAB AT THE STATE

3 LAW ENFORCEMENT DIVISION?

4 A THAT'S CORRECT.

5 Q YOU WORK EITHER THE SAME BUILDING OR RUB SHOULDERS

6 WHERE FOLKS LIKE IRA PARNELL, DAN DEFREEZE, VELLO

7 PAAVEL, DAVE COLLINS, KEN HAMMOND?

8 A THEY'RE ON THE SECOND FLOOR. WE'RE ON THE THIRD

9 FLOOR.

10 MR. DELGADO: THAT'S ALL THANK YOU VERY MUCH,

11 SIR.

12 THE COURT: ANY REDIRECT?

13 MS. CAMPBELL: NO, SIR. MAY HE BE EXCUSED?

14 THE COURT: YES, WITHOUT OBJECTION.

15 MS. CAMPBELL: THANK YOU.

16 THE COURT: CALL YOUR NEXT WITNESS.

17 MS. CAMPBELL: THE STATE WOULD CALL INVESTIGATOR

18 STOTTS.

19 THE CLERK: COME FORWARD PLEASE, PLACE YOUR LEFT

20 HAND ON THE BIBLE, RAISE YOUR RIGHT.

21 ROCKY STOTTS, AFTER BEING DULY SWORN, TESTIFIED AS

22 FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL

24 NAME, SPELL YOUR LAST NAME.

25 THE WITNESS: ROCKY STOTTS, S-T-O-T-T-S.

DIRECT EXAMINATION:

BY MS. CAMPBELL

Q AND I SAID INVESTIGATOR. ACTUALLY, I SHOULD REFER TO
YOU AS DETECTIVE STOTTS, RIGHT?

A EITHER ONE.

Q EITHER ONE?

A YES.

Q AND WHERE DO YOU WORK?

A FOR THE INDIANA STATE PLACE.

Q WHAT DO YOU DO FOR THE INDIANA STATE POLICE?

A I'M A CRIMINAL INVESTIGATOR, DETECTIVE WITH THE
BUREAU OF CRIMINAL INVESTIGATIONS.

Q AND WHERE DO YOU LIVE, SIR?

A IN WHITLEY COUNTY, INDIANA.

Q AND WHEN YOU SAY WHITLEY COUNTY, INDIANA, WHAT'S THE
BIGGEST TOWN IN WHITLEY COUNTY?

A COLUMBIA CITY.

Q COLUMBIA CITY.

A I'M SORRY, DID YOU SAY WHITLEY COUNTY?

Q YES, SIR.

A YES, THAT'S CORRECT.

Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

A NOT QUITE 28 YEARS.

Q AND AS PART OF YOUR DUTIES, DO YOU HELP WITH
FOLLOW-UP INVESTIGATIONS FROM OTHER AGENCIES?

- 1 A YES, THAT'S CORRECT.
- 2 Q IN THIS CASE, TURNING YOUR ATTENTION SPECIFICALLY TO
- 3 THIS CASE, SEPTEMBER OF 2000, WERE YOU CONTACTED BY A
- 4 LIEUTENANT IN YOUR DEPARTMENT?
- 5 A YES, I WAS.
- 6 Q DID HE INDICATE THAT YOU NEEDED TO GIVE AN
- 7 OUT-OF-STATE AGENCY SOME ASSISTANCE?
- 8 A YES, HE DID.
- 9 Q AND WHAT WAS THE PURPOSE -- WHAT WERE YOU ASKED TO DO
- 10 AT THAT POINT?
- 11 A I WAS ASKED TO CONTACT DETECTIVE BRIAN METZ AND CARL
- 12 CRAIG WITH THE RICHLAND COUNTY SHERIFF'S DEPARTMENT
- 13 IN REGARDS TO AN INVESTIGATION THEY WERE WORKING.
- 14 Q DID YOU DO THAT?
- 15 A YES, I DID.
- 16 Q AND AS A RESULT OF A CONVERSATION WITH THEM, DID YOU
- 17 DO ANY FOLLOW-UP INVESTIGATION IN INDIANA?
- 18 A YES, I DID.
- 19 Q AND SPECIFICALLY, WERE YOU LOOKING TO LOCATE CERTAIN
- 20 WITNESSES IN AN OLD MURDER CASE?
- 21 A YES.
- 22 Q AND THAT WOULD BE THE CASE WE'RE HERE ABOUT TODAY?
- 23 A THAT'S CORRECT.
- 24 Q WHO SPECIFICALLY WERE YOU LOOKING FOR, SIR?
- 25 A MR. EDWARD FRIEBURGER AND ARTHUR TILBURY.

1 Q WERE YOU GIVEN ANY INFORMATION TO HELP YOU LOCATE
2 THOSE TWO MEN?

3 A I WAS GIVEN POSSIBLE ADDRESSES. I SIMPLY VERIFIED
4 THAT THEY LIVED AT THOSE ADDRESSES.

5 Q AND YOU WERE ABLE TO -- WELL, YOU JUST SAID YOU WERE
6 ABLE TO VERIFY THAT THEY LIVED IN YOUR COUNTY?

7 A YES, THAT'S CORRECT.

8 Q AND WHAT COUNTY IS THAT?

9 A WHITLEY COUNTY, INDIANA.

10 Q AND WHAT TOWN DID ED FRIEBURGER LIVE WHEN YOU
11 INITIALLY VERIFIED THAT?

12 A AS I RECALL, HIS ADDRESS IS APPROXIMATELY EIGHT MILES
13 NORTH AND SLIGHTLY WEST OF COLUMBIA CITY, WHICH IS IN
14 THE CENTER OF WHITLEY COUNTY, THE COUNTY SEAT.

15 Q AND YOU WERE ALSO ABLE TO LOCATE MR. TILBURY?

16 A YES, THAT'S CORRECT.

17 Q AFTER VERIFYING WHERE THEY LIVED AND PASSING THAT
18 INFORMATION ALONG TO THE INVESTIGATORS FROM RICHLAND
19 COUNTY, DID YOU HAVE AN OPPORTUNITY TO MEET WITH THE
20 INVESTIGATORS FROM RICHLAND COUNTY?

21 A YES, I DID.

22 Q WHEN DID THAT OCCUR, SIR?

23 A OCTOBER 21ST, 2000.

24 Q AND HOW DID YOU MEET UP WITH THEM ON OCTOBER 21?

25 A I MET WITH THEM AT THE FORT WAYNE INTERNATIONAL

1 AIRPORT WHEN THEY ARRIVED.

2 Q SO THEY HAD FLOWN UP TO FORT WAYNE. HOW FAR IS FORT

3 WAYNE FROM THE WHITLEY COUNTY SHERIFF'S DEPARTMENT?

4 A APPROXIMATELY 25 MILES.

5 Q YOU MET THEM THERE, AND WHAT DAY OF THE WEEK WAS

6 THAT, SIR?

7 A I MET THEM AT THE FORT WAYNE INTERNATIONAL AIRPORT ON

8 SATURDAY.

9 Q AND THAT WAS THE 21ST?

10 A YES, MA'AM.

11 Q AND THE NEXT DAY, DID YOU HAVE AN OPPORTUNITY TO MEET

12 WITH THEM AGAIN?

13 A YES, I DID.

14 Q AND WHAT WAS THE PURPOSE OF THAT MEETING?

15 A TO ESCORT THEM TO THE WHITLEY COUNTY SHERIFF'S

16 DEPARTMENT FROM THE FORT WAYNE AREA.

17 Q AND DID THEY COME TO THE WHITLEY COUNTY SHERIFF'S

18 DEPARTMENT?

19 A YES, THEY FOLLOWED ME THERE.

20 Q AND ONCE YOU GOT TO THE WHITLEY COUNTY SHERIFF'S

21 DEPARTMENT, WHAT WAS THE PLAN? WHAT WERE Y'ALL GOING

22 TO DO THAT DAY?

23 A THE IDEA WAS TO HAVE INVESTIGATORS METZ AND CRAIG

24 REMAIN AT THE WHITLEY COUNTY SHERIFF'S DEPARTMENT

25 BECAUSE THEY WERE NOT FAMILIAR WITH THE AREA, AND I

1 WOULD GO TO MR. FREIBURGER'S RESIDENCE AND ASK HIM IF
2 HE WOULD COME IN TO BE INTERVIEWED.

3 Q PRIOR TO THAT DATE, SIR, HAD YOU -- YOU HAVEN'T HAD
4 ANY CONTACT WITH MR. FRIEBURGER AS FAR AS THIS CASE
5 WAS CONCERNED?

6 A NO, I HAD NOT.

7 Q DID YOU, IN FACT, GO TO MR. FREIBURGER'S RESIDENCE
8 THAT DAY?

9 A YES, I DID, ON SUNDAY.

10 Q APPROXIMATELY WHAT TIME DID YOU GET THERE?

11 A AS I RECALL, IT WAS APPROXIMATELY 1:30 IN THE
12 AFTERNOON.

13 Q WHEN YOU GOT TO MR. FREIBURGER'S RESIDENCE, WERE YOU
14 ABLE TO SPEAK TO HIM?

15 A YES, I WAS.

16 Q WHAT, IF ANYTHING, DID YOU SAY TO HIM?

17 A I TOLD MR. FRIEBURGER THAT THE INVESTIGATORS FROM THE
18 RICHLAND COUNTY SHERIFF'S DEPARTMENT IN SOUTH
19 CAROLINA HAD CONTACTED OUR DEPARTMENT AND REQUESTED
20 ASSISTANCE WITH AN INVESTIGATION.

21 THEY FELT THAT HE MAY POSSIBLY HAVE INFORMATION
22 THAT WOULD ASSIST THEM WITH THEIR INVESTIGATION AND
23 ASKED HIM IF HE WOULD SUBMIT TO AN INTERVIEW WITH
24 THOSE INVESTIGATORS.

25 Q DID HE AGREE TO COOPERATE AT THAT TIME?

1 A YES, HE DID.

2 Q DID HE COME IMMEDIATELY DOWN TO THE SHERIFF'S

3 DEPARTMENT?

4 A IT WAS A SHORT TIME AFTER THAT. AS I RECALL, HE TOLD

5 ME THAT HE WANTED TO CHANGE CLOTHES. HE WASN'T QUITE

6 READY TO COME IN AS FAR AS HIS ATTIRE. AS I RECALL,

7 HE MAY HAVE HAD COMPANY THAT DAY.

8 Q AND WHEN YOU INITIALLY MADE CONTACT WITH HIM, YOU

9 DIDN'T THREATEN HIM OR FORCE HIM TO COME DOWN TO THE

10 STATION, DID YOU?

11 A NO.

12 Q AND DID HE APPEAR AT THAT POINT TO BE COOPERATIVE?

13 A YES, MA'AM.

14 Q ONCE YOU GOT DOWN TO THE -- OR GOT BACK TO THE

15 STATION, DID HE COME WITH YOU OR DID HE COME

16 SEPARATELY?

17 A HE DROVE IN ON HIS OWN.

18 Q ONCE HE GOT TO THE STATION, WERE YOU PRESENT FOR THE

19 ENTIRE INTERVIEW?

20 A NO, MA'AM, I WASN'T.

21 Q WERE YOU PRESENT FOR THE INITIAL PART OF THE

22 INTERVIEW?

23 A YES, I WAS.

24 Q AND TELL THE JURY WHAT YOU REMEMBER ABOUT THAT, SIR.

25 A I ESCORTED MR. FRIEBURGER INTO AN OFFICE WHERE

1 DETECTIVES METZ AND CRAIG WERE WAITING.

2 I INTRODUCED MR. FREIBURGER TO THE DETECTIVES,
3 AND THEY BEGAN TELLING MR. FRIEBURGER WHY THEY WERE
4 THERE.

5 Q WHAT WERE THEY TELLING MR. FREIBURGER ABOUT WHY THEY
6 WERE THERE?

7 A THEY TOLD MR. FREIBURGER THEY WERE INVESTIGATING A
8 HOMICIDE THAT OCCURRED IN 1961 WHILE HE WAS IN THE
9 ARMY, I BELIEVE AT THAT TIME, AND BEGAN ASKING HIM IF
10 HE REMEMBERED HIS ARMY TIME OR HIS PERIOD IN THE ARMY
11 AT THAT TIME.

12 Q AND WHAT DID HE REPLY WHEN HE WAS ASKED ABOUT WHAT HE
13 REMEMBERED BEING IN THE ARMY IN COLUMBIA?

14 A HE INDICATED HE DIDN'T REMEMBER THAT.

15 Q HE DIDN'T REMEMBER THAT. DID THEY ASK HIM ANY
16 FURTHER QUESTIONS IN YOUR PRESENCE?

17 A THEY ALSO ASKED HIM IF HE RECALLED SPEAKING WITH A
18 SHERIFF SLY, I BELIEVE IT WAS, ON AT LEAST ONE,
19 POSSIBLY TWO OCCASIONS. HE DIDN'T REMEMBER THAT
20 EITHER.

21 Q DO YOU RECALL ANY OTHER QUESTIONS THEY ASKED HIM IN
22 YOUR PRESENCE?

23 A NOT SPECIFICALLY.

24 Q DID YOU -- YOU INDICATED THAT YOU DIDN'T STAY AFTER
25 THE INITIAL PART OF THE INTERVIEW. WHY IS THAT, SIR?

1 A I STAYED LONG ENOUGH TO MAKE SURE THAT THE INTERVIEW
2 WAS APPARENTLY GOING TO GO ON, THAT MR. FRIEBURGER
3 WAS GOING TO REMAIN COOPERATIVE, AND THEY WERE GOING
4 TO BE INTERVIEWING HIM FOR SOME TIME.

5 WHEN I WAS CONFIDENT THAT WAS GOING TO HAPPEN, I
6 FELT THAT WAS A GOOD TIME TO EXCUSE MYSELF AND
7 ATTEMPT TO LOCATE MR. TILBURY, WHICH I DID.

8 Q AT ANY TIME, WAS MR. FRIEBURGER DETAINED THERE AT THE
9 STATION?

10 A NO. IN FACT, I DO RECALL THE OFFICERS, DETECTIVE
11 METZ AND CARL CRAIG, TELLING HIM THAT HE WAS NOT
12 UNDER ARREST, THAT HE WAS FREE TO LEAVE AT ANY TIME,
13 AND THEY APPRECIATED HIM COMING IN AND COOPERATING
14 WITH THE INVESTIGATION.

15 Q AND MR. FRIEBURGER LEFT OF HIS OWN FREE WILL AND
16 ACCORD THAT DAY?

17 A YES.

18 Q THE NEXT DAY I BELIEVE, DETECTIVE, YOU ALSO HAD AN
19 OPPORTUNITY TO SET UP A MEETING WITH MR. TILBURY WITH
20 THE INVESTIGATORS?

21 A I ACTUALLY SET THAT MEETING UP THIS SAME DAY, ON
22 SUNDAY THE 22ND, AND MR. TILBURY AGREED TO COME TO
23 THE STATE POLICE POST IN FORT WAYNE FOR AN INTERVIEW
24 WITH DETECTIVES ON MONDAY, I BELIEVE, THE 23RD.

25 Q AND THAT IS THIS EXTENT OF YOUR INVOLVEMENT IN THIS

1 CASE, SIR?

2 A YES, SIR.

3 MS. CAMPBELL: THANK YOU. I HAVE NOTHING
4 FURTHER.

5 THE COURT: CROSS-EXAMINATION.

6 MR. DELGADO: THANK YOU, SIR.

7 CROSS-EXAMINATION:

8 BY MR. DELGADO

9 Q GOOD AFTERNOON, SIR.

10 A GOOD AFTERNOON.

11 Q WELCOME TO SOUTH CAROLINA.

12 A THANK YOU.

13 Q YOU AND I HAVE MET BEFORE, HAVEN'T WE?

14 A THAT'S CORRECT.

15 Q IN YOUR OFFICE IN WHITLEY COUNTY?

16 A THE SHERIFF'S OFFICE, YES.

17 Q WHEN WE WERE THERE, YOU TOLD ME ABOUT THE TIME THAT
18 MR. METZ AND MR. CRAIG HAD COME UP TO COLUMBIA CITY,
19 INDIANA.

20 A YES.

21 Q AND MET WITH ED FRIEBURGER.

22 A YES.

23 Q THEY MET WITH HIM ON A SUNDAY, BUT ACTUALLY FLEW IN
24 TO THE FORT WAYNE AIRPORT AROUND 8:30 ON THE NIGHT
25 BEFORE, ON SATURDAY?

1 A THAT'S CORRECT.

2 Q YOU PICKED HIM UP AND TOOK HIM TO THE INDIANA STATE
3 POLICE BARRACKS OR MAYBE A HOTEL?

4 A I MET THEM AT THE AIRPORT, ESCORTED THEM TO THE
5 INDIANA STATE POLICE POST, WHICH WAS ACROSS THE
6 STREET, BASICALLY, FROM WHERE THEY WERE STAYING.

7 Q OKAY.

8 A JUST TO WELCOME THEM INTO THE AREA.

9 Q ALL RIGHT. YOU MET WITH THEM THE NEXT MORNING AND
10 TOOK THEM TO YOUR OFFICE IN COLUMBIA CITY, WHICH WAS
11 ABOUT 45 MINUTES AWAY, WOULD THAT BE FAIR?

12 A ABOUT 30 MINUTES AWAY.

13 Q ABOUT 30 MINUTES AWAY?

14 A YES.

15 Q ALL RIGHT. AND THEN YOU WENT TO FIND ED AND THEN
16 LATER YOU WENT TO FIND ART TILBURY; IS THAT CORRECT,
17 SIR?

18 A YES.

19 Q YOU MET ED. YOU ASKED HIM TO COME. HE SAID, "LET ME
20 PUT SOME CLOTHES ON, AND I'LL COME ON DOWN," AND HE
21 DID, CORRECT, SIR?

22 A YES, SIR.

23 Q NOW, YOU WERE IN ON THE CONVERSATION BETWEEN MR. METZ
24 AND MR. CRAIG AND ED FOR -- ON TWO DIFFERENT PARTS OF
25 THAT AFTERNOON, THE FIRST PART OF THE TWO-HOUR

1 QUESTIONING AND THEN THE LATTER PART OF THE TWO-HOUR
2 QUESTIONING. WOULD THAT BE FAIR?
3 A YES, YES
4 Q OKAY. TOTAL, HOW MUCH TIME DO YOU THINK YOU WERE IN
5 THE PRESENCE OF THESE THREE INDIVIDUALS?
6 A FOUR OR FIVE MINUTES, POSSIBLY.
7 Q ALL RIGHT, SIR. CAN YOU TELL US A LITTLE BIT ABOUT
8 THE DEMEANOR OF MR. METZ AND MR. CRAIG, WHO OF THOSE
9 TWO DID THE MAJORITY OF THE TALKING OR WHO DID YOU
10 EVALUATE AS BEING IN CHARGE IN THAT MATTER?
11 A THAT WOULD BE HARD TO SAY. IT SEEMED TO BE AN EQUAL
12 INVESTIGATION ON THEIR PART.
13 Q ALL RIGHT, SIR. MR. CRAIG DID NOT -- BE THAT AS IT
14 MAY, MR. CRAIG AND MR. METZ WERE EQUAL IN THEIR
15 EVALUATIONS ABOUT THE QUESTIONING; IS THAT CORRECT,
16 SIR?
17 A I THINK THAT'S FAIR TO SAY, YES.
18 Q ALL RIGHT. WAS THERE ANY TIME, SIR, THAT ED SAID
19 ANYTHING ABOUT WANTING TO LEAVE? YOU WEREN'T PRESENT
20 FOR ANY OF THAT, WERE YOU? HE JUST FINALLY -- WERE
21 YOU THERE WHEN HE LEFT? HE SAID HE HAD TO GET BACK
22 TO THE FRIENDS THAT WERE AT THE HOUSE; IS THAT RIGHT?
23 A I WAS THERE WHEN HE LEFT. IT WAS MY UNDERSTANDING HE
24 SAID HE WANTED TO LEAVE, AND NO ONE TRIED TO STOP
25 HIM. HE WANTED TO LEAVE.

1 Q I UNDERSTAND THAT. HE SAID HE HAD TO GO BACK BECAUSE
2 HE HAD SOME COMPANY AT THE HOUSE?

3 A I DON'T RECALL THAT CONVERSATION.

4 Q DO YOU REMEMBER WHEN YOU WENT TO SEE HIM THAT SUNDAY
5 AFTERNOON WHETHER, IN FACT, THERE WAS COMPANY AT THE
6 HOUSE?

7 A THERE WERE SEVERAL PEOPLE AT MR. FREIBURGER'S HOUSE.

8 Q FAMILY?

9 A I ASSUME SO, YES. I BELIEVE HE INDICATED THAT.

10 MR. DELGADO: ALL RIGHT. JUST ONE SECOND.

11 (PAUSE).

12 MR. STOTTS, I THINK THAT'S ALL. THANK YOU, SIR.

13 THE WITNESS: THANK YOU.

14 THE COURT: ANY REDIRECT?

15 MS. CAMPBELL: NO, SIR.

16 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY
17 STEP DOWN.

18 ANY REASON HE CAN'T BE RELEASED FROM THE
19 SUBPOENA?

20 MR. DELGADO: NO.

21 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
22 GENTLEMEN OF THE JURY, I NEED TO GIVE THE COURT REPORTER
23 JUST A SHORT BREAK, SO LET ME LET YOU TAKE A SHORT BREAK,
24 TOO.
25

1 (WHEREUPON, THE JURY LEFT OPEN COURT AT
2 APPROXIMATELY 4:12.)
3 THE COURT: HOW MANY MORE WITNESSES?
4 MS. CAMPBELL: ONE.
5 MR. MCMAHON: TWO, TWO, I'M SORRY.
6 THE COURT: DID YOU MAKE A DECISION ABOUT THE
7 LAWYER ISSUE?
8 MR. MCMAHON: CAN WE CONFER?
9 (PAUSE).
10 WE WON'T BRING OUT THAT ISSUE.
11 THE COURT: OKAY. THAT WILL SOLVE THAT. I
12 WON'T HAVE TO DO ANY RESEARCH THERE.
13 THANK YOU VERY MUCH.
14 (WHEREUPON, A SHORT BREAK WAS TAKEN.)
15 THE COURT: EXHIBIT NO. 4, WE THINK AGENT
16 PARNELL MAY HAVE IT WITH HIM. WE'RE GOING TO CALL HIM.
17 MR. DELGADO: YOU KNOW, THAT COULD BE.
18 THE COURT: DO YOU HAVE ANOTHER ONE?
19 MR. DELGADO: NO. IT'S A DIFFERENT PICTURE, A
20 DIFFERENT VIEW, BUT IT'S THE SAME SCENE.
21 THE COURT: THEY'LL CALL HIM. HE'S PROBABLY GOT
22 IT.
23 MR. DELGADO: DO YOU THINK I NEED TO ASK FOR A
24 MISTRIAL OR ANYTHING?
25 THE COURT: I DON'T THINK SO.

1 MR. DELGADO: YOUR HONOR, THERE IS ONE THING.
2 MR. STOTTS SAID SOMETHING ABOUT THE INTERVIEW BY SHERIFF
3 SLY.

4 THE COURT: YES.

5 MR. DELGADO: WE DIDN'T OBJECT TO THAT, BECAUSE
6 I'M NOT GOING TO HONOR IT AS SOMETHING MORE THAN ITS VIEW.

7 I WOULD LIKE TO ASK THE COURT IF YOU COULD
8 REQUEST OF THE SOLICITOR THAT THAT NOT BE ARGUED. I THINK
9 THAT'S PART OF HIS --

10 THE COURT: THAT KIND OF DEPENDS ON WHAT HAPPENS
11 IN YOUR CASE. IT MAY NOT BE AN ISSUE.

12 MR. DELGADO: I JUST WANTED TO PUT THAT ON THE
13 RECORD.

14 THANK YOU.

15 MS. CAMPBELL: JUDGE, LET ME CLARIFY. SO WE
16 AREN'T SUPPOSED TO MENTION THAT THEY CONFRONTED HIM WITH
17 SHERIFF SLY?

18 THE COURT: NO. I SAID YOU COULD ASK THAT
19 QUESTION.

20 MS. CAMPBELL: OKAY.

21 THE COURT: BUT I'M NOT -- HE'S JUST ASKING.

22 MS. CAMPBELL: AND THE SAME WAY IT CAME OUT WITH
23 DETECTIVE STOTTS I JUST WANT TO MAKE SURE I --

24 THE COURT: NO.

25 ALL RIGHT. BRING THE JURY IN.

1 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
2 APPROXIMATELY 4:27.)

3 THE BAILIFF: THE JURY IS PRESENT, YOUR HONOR,
4 ALL RIGHT MR. FOREMAN, LADIES AND GENTLEMEN, THE STATE
5 ADVISES ME WE HAVE TWO WITNESSES LEFT. I'M GOING TO TRY
6 TO SEE IF WE CAN GET THOSE IN TODAY.

7 IF IT GOES TOO FAR, I'LL GIVE YOU AN OPTION.
8 WE'LL SEE WHERE WE ARE AT 5:30.

9 CALL YOUR NEXT WITNESS, PLEASE.

10 MS. CAMPBELL: MAY IT PLEASE THE COURT, THE
11 STATE CALLS BRIAN METZ.

12 THE CLERK: IF YOU'D COME FORWARD, PLEASE.
13 PLACE YOUR LEFT HAND ON THE BIBLE, RAISE YOUR RIGHT.

14 BRIAN METZ, AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
17 NAME.

18 THE WITNESS: IT'S BRIAN METZ.

19 DIRECT EXAMINATION:

20 BY MS. CAMPBELL

21 Q INVESTIGATOR METZ, WHERE ARE YOU EMPLOYED?

22 A AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

23 Q AND HOW LONG HAVE YOU BEEN THERE?

24 A FOR 20 YEARS.

25 Q AND WHAT DO YOU DO AT THE RICHLAND COUNTY SHERIFF'S

1 DEPARTMENT?

2 A I AM A CRIMINAL INVESTIGATOR IN THE INVESTIGATIVE

3 DIVISION.

4 Q AND WHAT PART OF THAT DIVISION ARE YOU ASSIGNED TO

5 CURRENTLY?

6 A CURRENTLY, I DO MISSING PERSONS CASES AND ALSO COLD

7 CRIMES.

8 Q AND IN THE COLD CRIMES, YOU WORK WITH INVESTIGATOR

9 CRAIG?

10 A THAT'S RIGHT.

11 Q I'M NOT GOING TO REHASH. HE'S ALREADY TESTIFIED, BUT

12 YOU BECAME INVOLVED IN THIS CASE WHEN AND HOW? TELL

13 THE JURY.

14 A IT WAS IN LATE '99 WHEN MR. CRAIG TOLD ME THAT HE HAD

15 BEEN APPROACHED ABOUT THE CASE, HAD RECEIVE THE FILE

16 LATER AFTER THAT, AND WE READ THE FILE.

17 Q AND I BELIEVE HE WAS APPROACHED BY CAPTAIN BROWN?

18 A THAT'S CORRECT.

19 Q AND THEN YOU WERE ABLE TO RETRIEVE THE FILE FROM

20 ARCHIVES?

21 A THAT'S CORRECT.

22 Q SO THE FILE HAD BEEN IN YOUR -- IN THE CARE AND

23 CUSTODY OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT

24 FOR -- IT WOULD BE ALMOST 40 YEARS PRIOR TO THAT; IS

25 THAT CORRECT?

1 A YES, MA'AM.

2 Q ONCE YOU WERE ABLE TO RETRIEVE THE FILE, DID IT

3 BECOME APPARENT THAT YOU NEEDED TO CHECK TO SEE IF

4 THERE WAS SOME EVIDENCE IN EXISTENCE?

5 A I DID.

6 Q AND WHAT DID YOU DO AS FAR AS THAT?

7 A WE CHECKED WITH OUR EVIDENCE DEPARTMENT AT THE

8 SHERIFF'S DEPARTMENT AND FINALLY WE CHECKED WITH THE

9 STATE LAW ENFORCEMENT DIVISION BALLISTICS SECTION.

10 Q AND WERE YOU ABLE TO DETERMINE WHETHER OR NOT -- IN

11 FACT, THE EVIDENCE WE'RE TALKING ABOUT, WHICH WE HAVE

12 HERE, CERTAIN BULLET FRAGMENTS AND A GUN?

13 A I WAS.

14 Q AND SPECIFICALLY, STATE'S EXHIBIT 6, 30, 31 AND 32;

15 IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q IN ADDITION, THAT WAS THE SECOND GUN THAT'S BEEN

18 ELIMINATED IN THIS CASE, BUT THERE WAS A SECOND GUN

19 THAT WAS ALSO LOCATED?

20 A THERE WAS.

21 Q AND ONCE YOU HAD REVIEWED THE FILE AND DETERMINED

22 THAT THE EVIDENCE WAS STILL IN THE CARE AND CUSTODY

23 OF S.L.E.D.; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q WHAT, IF ANY, REQUESTS OF S.L.E.D. DID YOU MAKE?

- 1 A WE ASKED THEM TO RE-EXAMINE THE BALLISTICS IN THE
2 CASE.
- 3 Q AND WHO ACTUALLY MADE THAT REQUEST IN THIS CASE?
- 4 A THE ORIGINAL WAS MYSELF AND MR. CRAIG GOING TO
5 S.L.E.D. LIEUTENANT PARNELL ADVISED US THAT HE WOULD
6 NEED A WRITTEN LETTER FROM OUR DEPARTMENT TO HIS
7 CHIEF.
- 8 Q AND THAT WOULD BE MAJOR WILSON OR CHIEF DEPUTY
9 WILSON?
- 10 A FROM CHIEF DEPUTY WILSON.
- 11 Q AND HE MADE THE FORMAL REQUEST IN THIS CASE?
- 12 A THAT'S CORRECT.
- 13 Q ONCE YOU DETERMINED THERE WAS STILL EVIDENCE IN THE
14 CASE THAT YOU COULD FOLLOW UP ON, DID YOU ALSO REVIEW
15 THE INITIAL FINDINGS FROM, I BELIEVE, IT WAS MR. CATE
16 IN HIS EXAMINATION?
- 17 A WE DID.
- 18 Q BASED ON THAT INFORMATION, DID YOU DECIDE IT WAS A
19 WORTHY OCCASION TO FOLLOW UP ON?
- 20 A WE DID.
- 21 Q AND WHAT, IF ANYTHING, DID YOU DO THE FALL OF, I
22 BELIEVE THE YEAR 2000, WE'RE IN NOW?
- 23 A 2000.
- 24 Q WHAT DID YOU DO AS FAR AS ATTEMPTING TO INVESTIGATE
25 THIS CASE 40 YEARS LATER?

1 A AFTER REVIEWING THE FILE, WE DETERMINED THAT WE
2 WANTED TO TALK TO TWO INDIVIDUALS.
3 Q AND WHAT INDIVIDUALS WERE THOSE?
4 A THE DEFENDANT, MR. FRIEBURGER, AND MR. TILBURY, WHO
5 WE FOUND POSSIBLE ADDRESSES FOR THEM IN INDIANA.
6 Q DID YOU CONTACT ANYONE IN INDIANA TO ASSIST YOU IN
7 TRYING TO LOCATE THESE PEOPLE?
8 A WE DID.
9 Q AND WHO WAS THAT, SIR?
10 A WE CONTACTED THE INDIANA STATE PATROL, WHICH OUR
11 TROOPERS WOULD FUNCTION AS THEIR STATE POLICE, AND
12 WERE PUT IN CONTACT WITH DETECTIVE STOTTS.
13 Q AND THAT WAS DETECTIVE STOTTS WHO JUST TESTIFIED A
14 FEW MINUTES AGO?
15 A THAT'S CORRECT.
16 Q DID YOU HAVE AN OCCASION TO ACTUALLY GO TO INDIANA IN
17 AN ATTEMPT TO INVESTIGATE THIS CASE?
18 A WE DID.
19 Q WHEN DID THAT TAKE PLACE?
20 A IN OCTOBER OF 2000.
21 Q WHAT WAS THE PURPOSE OF YOU GOING TO INDIANA AT THAT
22 POINT?
23 A THERE WERE QUESTIONS IN OUR MIND, SO WE WANTED TO GO
24 AND TALK TO MR. FRIEBURGER AND GET HIS ACCOUNTING OF
25 WHAT HAPPENED IN 1961.

1 Q AND WAS THIS PRIOR TO ANY FURTHER EXAMINATIONS BY
2 S.L.E.D. OF THIS PISTOL?
3 A WE HAD NOT RECEIVED ANY CONCLUSIONS OR ANYTHING, BUT
4 WE WERE IN THE PROCESS, WAS MY UNDERSTANDING.
5 Q BUT YOU KNEW WHAT MR. CATE HAD CONCLUDED?
6 A WE DID.
7 Q BASED ON THAT, YOU FELT IT WAS WORTH YOUR TIME TO
8 TALK TO MR. FRIEBURGER?
9 A IT WAS.
10 Q HOW DID THE INTERVIEW WITH MR. FRIEBURGER GET SET UP?
11 A WE CONTACTED DETECTIVE STOTTS, SPOKE TO HIM BY PHONE.
12 HE CONFIRMED THE ADDRESSES THAT WE HAD, SO WE FLEW TO
13 FORT WAYNE, INDIANA AND MET WITH DETECTIVE STOTTS.
14 MR. DELGADO: YOUR HONOR, APOLOGIZE.
15 THE COURT: YES, SIR.
16 MR. DELGADO: MAY WE APPROACH THE BENCH JUST A
17 SECOND? I'M SORRY.
18 THE COURT: SURE.
19 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
21 THE JURY.)
22 THE COURT: ALL RIGHT. YOU MAY PROCEED.
23 MS. CAMPBELL: THANK YOU.
24 BY MS. CAMPBELL
25 Q DID YOU, IN FACT, HAVE AN OPPORTUNITY TO MEET WITH

1 MR. FRIEBURGER ON THE 22ND OF OCTOBER?

2 A WE DID.

3 Q AND WHERE DID THAT TAKE PLACE?

4 A AT THE WHITLEY COUNTY SHERIFF'S OFFICE.

5 Q AND HOW DID YOU GET INTRODUCED TO MR. FRIEBURGER THAT

6 DAY?

7 A HE CAME TO THE OFFICE FOLLOWING SHORTLY BEHIND

8 DETECTIVE STOTTS, AND DETECTIVE STOTTS INTRODUCED HIM

9 TO US.

10 Q WHEN YOU INITIALLY CAME IN CONTACT WITH

11 MR. FRIEBURGER, AT THAT POINT DID YOU TELL HIM WHAT

12 YOU WANTED TO TALK ABOUT?

13 A WE DID.

14 Q AND WHAT DID YOU WANT TO TELL HIM?

15 A WE TOLD HIM THAT WE WERE FROM COLUMBIA, SOUTH

16 CAROLINA, AND WE WERE THERE TO TALK TO HIM ABOUT A

17 HOMICIDE.

18 Q SO AT THAT POINT HE WAS INFORMED YOU WERE THERE TO

19 TALK ABOUT A HOMICIDE IN COLUMBIA, SOUTH CAROLINA?

20 A THAT'S CORRECT.

21 Q DID YOU INDICATE THE TIME PERIOD THIS HOMICIDE

22 OCCURRED?

23 A THAT IT WAS WHILE HE WAS AT FORT JACKSON.

24 Q AND WHAT WAS MR. FREIBURGER'S REACTION?

25 A HE RESPONDED WITH A QUESTION.

1 Q AND WHAT WAS THE QUESTION?

2 A THE QUESTION WAS HE WAS IN COLUMBIA. WE STATED,
3 "YES, SIR." HE SAID -- WE SAID YOU WERE IN THE ARMY
4 IN COLUMBIA. HE SAID, "I WAS IN THE ARMY?"

5 WE THEN SHOWED HIM A PICTURE OF HIM IN ARMY
6 UNIFORM, AND HE BEGAN TO RECALL HAVING BEEN IN
7 COLUMBIA IN THE ARMY.

8 Q DID YOU THEN QUESTION HIM ANY FURTHER ABOUT ANY OTHER
9 ASPECTS OF THIS CASE?

10 A WE DID.

11 Q AND WHAT WAS THAT?

12 A WE ASKED HIM IF HE REMEMBERED HAVING BEEN INTERVIEWED
13 ON TWO OCCASIONS WITH THE SHERIFF OF RICHLAND COUNTY,
14 THEN SHERIFF SLY. HE STATED HE DID NOT REMEMBER
15 THAT.

16 Q LET ME BACK UP A MINUTE. WHEN HE LATER ADMITTED HE
17 WAS IN THE ARMY AND THAT WAS AFTER YOU SHOWED HIM
18 THIS PHOTOGRAPH?

19 A YES, MA'AM.

20 Q AND STATE'S EXHIBIT 7 IS A PHOTOGRAPH OF --

21 A MR. FRIEBURGER IN THE MILITARY.

22 Q IN THE MILITARY. THEN YOU ASKED HIM ABOUT
23 CONVERSATIONS WITH SHERIFF SLY?

24 A WE DID.

25 Q AND WHAT WAS HIS INITIAL REACTION TO THAT?

1 A HE STATED HE DID NOT REMEMBER SPEAKING TO SHERIFF
2 SLY.
3 Q DID YOU ASK HIM ANY FURTHER QUESTIONS?
4 A WE ASKED HIM IF HE REMEMBERED PURCHASING A HANDGUN IN
5 COLUMBIA, SOUTH CAROLINA.
6 Q AND WHAT WAS HIS REACTION TO THAT?
7 A HE DID NOT REMEMBER PURCHASING A HANDGUN FROM
8 COLUMBIA, SOUTH CAROLINA.
9 Q DID YOU THEN CONFRONT HIM WITH ANY OTHER EVIDENCE
10 ABOUT THE HANDGUN?
11 A WE SHOWED HIM THE PAWN SLIP RECEIPT FROM WHERE THE
12 GUN WAS PURCHASED.
13 Q AND IT'S IN EVIDENCE, AND I CAN'T FIND IT RIGHT NOW,
14 BUT THAT'S THE RECEIPT FROM -- THAT'S WHERE THE GUN
15 WAS BOUGHT ON FEBRUARY 28TH?
16 A YES, MA'AM.
17 Q AND WHEN YOU SHOWED HIM THE RECEIPT WHEN HE BOUGHT
18 THE GUN ON THE 28TH, WHAT DID HE SAY?
19 A HE STILL SAID HE DID NOT REMEMBER BUYING THAT GUN.
20 Q DID YOU ASK HIM ANY OTHER QUESTIONS ABOUT THAT TIME
21 PERIOD?
22 A WELL, I ASKED HIM SOME FURTHER QUESTIONS ABOUT THE
23 GUN AND ABOUT HIS LIFE IN GENERAL AT FORT JACKSON.
24 Q DID YOU ASK HIM ABOUT ANY OTHER PLACES HE HAD BEEN IN
25 THE MILITARY?

1 A WE ASKED HIM ABOUT WHEN HE HAD BEEN AT DIFFERENT
2 INSTITUTIONS IN THE MILITARY.
3 Q SPECIFICALLY?
4 A HE HAD BEEN AT FORT MCPHEARSON, GEORGIA AND AT FORT
5 LEAVENWORTH, KANSAS WHICH WAS THE TWO LOCATIONS HE
6 HAD BEEN INTERVIEWED BY SHERIFF SLY.
7 Q DID HE RECALL EITHER ONE OF THOSE?
8 A HE STATED HE DID NOT. HE DID NOT RECALL THE
9 INTERVIEWS. AT FIRST HE DID NOT RECALL BEING AT FORT
10 LEAVENWORTH. THEN LATER HE REMEMBERED THAT HE HAD
11 BEEN AT FORT LEAVENWORTH.
12 Q THAT'S WHEN YOU CONFRONTED HIM WITH OTHER
13 DOCUMENTATIONS?
14 A WE SHOWED HIM DOCUMENTATION OF HIS STAY THERE AND HE
15 REMEMBERED.
16 Q DID YOU CONTINUE TO HAVE A CONVERSATION WITH HIM?
17 A WE DID.
18 Q AND WHAT KIND OF QUESTIONS DID YOU FOLLOW UP WITH?
19 A WELL, I BEGAN TO ASK HIM QUESTIONS ABOUT HIS GOING TO
20 SCHOOL, WHERE HE HAD GONE TO SCHOOL, WHERE HE HAD
21 WORKED OVER THE YEARS TRYING TO -- I ASKED HIM IF HE
22 HAD ANY ACCIDENTS OR ANYTHING SUCH AS THAT,
23 INDUSTRIAL ACCIDENTS, ANY CAR ACCIDENTS OR ANYTHING
24 THAT WOULD CAUSE HIM TO HAVE MEMOPY LOSS.
25 I ALSO WENT INTO ASKING HIM ABOUT IF HE HUNTED

1 GROWING UP, AND IF HE DID, DID THEY HAVE ANY HANDGUNS
2 IN HIS HOUSE. HE STATED THEY DID NOT.

3 Q DID YOU ASK HIM ANY QUESTIONS ABOUT THE TIME PERIOD
4 PRIOR TO HIM BEING AT FORT JACKSON IN THE ARMY?

5 A WE PRETTY MUCH WENT BACK FROM HIM COMING IN HIGH
6 SCHOOL. HE REMEMBERED THE HIGH SCHOOL HE WENT TO.
7 HE REMEMBERED THE MIDDLE SCHOOL AND ELEMENTARY
8 SCHOOLS WHERE HE HAD GROWN UP. HE RECALLED HIS
9 TEACHER'S NAME, HIS FAVORITE TEACHER TYPE THING.

10 Q SO HE WAS ABLE TO REMEMBER THE TIME PERIOD UP TO THE
11 POINT THAT HE WAS IN COLUMBIA, SOUTH CAROLINA AT FORT
12 JACKSON?

13 A THAT'S CORRECT.

14 Q DID YOU QUESTION HIM ABOUT THE TIME PERIOD OF --

15 MR. DELGADO: OBJECTION, YOUR HONOR.

16 THE COURT: BASIS?

17 MR. DELGADO: LEADING.

18 THE COURT: OKAY. GO AHEAD.

19 MR. DELGADO: JUDGE, JUDGE, AFTER A WHILE, I
20 MEAN, I CAN'T DO IT ENOUGH.

21 THE COURT: I UNDERSTAND. SUSTAINED. MOVE ON.

22 BY MS. CAMPBELL

23 Q WHAT OTHER QUESTIONS DID YOU GO OVER ABOUT THE TIME
24 PERIOD AFTER HE HAD BEEN AT FORT JACKSON?

25 A WELL, WE QUESTIONED HIM ABOUT OTHER THINGS WHILE HE

1 WAS AT FORT JACKSON. HE REMEMBERED -- I SPECIFICALLY
 2 REMEMBER HAWAIIAN CLUB HE HAD BEEN TO AND THE GRESHAM
 3 MOTEL.
 4 THEN WE ASKED HIM ABOUT AFTER HE LEFT THE
 5 MILITARY WHERE HE HAD GONE AND PLACES HE HAD WORKED
 6 WHILE HE WAS IN FORT WAYNE.
 7 Q AND HE WAS ABLE TO RECALL THOSE?
 8 A HE WAS.
 9 Q HOW LONG DID THIS CONVERSATION OR THIS INTERVIEW WITH
 10 THE DEFENDANT LAST, APPROXIMATELY?
 11 A IN TOTAL, ABOUT TWO HOURS.
 12 Q WHY DID YOU GO BACK AND ASK HIM THOSE QUESTIONS YOU
 13 JUST INDICATED ABOUT THE TIME PERIODS BEFORE AND
 14 AFTER?
 15 A TO DETERMINE IF HE HAD ANY REASON FOR A MEMORY LOSS.
 16 Q AND HE WAS ABLE TO REMEMBER THE TIMES BEFORE AND
 17 AFTER?
 18 A HE WAS.
 19 Q AFTER THAT INTERVIEW THAT DAY WITH THE DEFENDANT, DID
 20 YOU, THE NEXT DAY HAVE AN OPPORTUNITY TO MEET WITH A
 21 WITNESS IN THIS CASE, MR. TILBURY?
 22 A YES, I DID.
 23 Q AND YOU INTERVIEWED HIM AT THAT TIME?
 24 A YES, MA'AM.
 25 Q AND THEN YOU RETURNED BACK TO SOUTH CAROLINA?

1 A THAT'S CORRECT.

2 Q AND THE INVESTIGATION CONTINUED?

3 A YES, MA'AM.

4 Q AND IN JANUARY, FEBRUARY OF THE NEXT YEAR, THAT WOULD

5 BE 2001; IS THAT CORRECT?

6 A YES, MA'AM.

7 Q DID YOU RECEIVE THE VERBAL RESULTS FROM S.L.E.D. AS

8 FAR AS THE BALLISTICS REEXAMINATION?

9 A I'M NOT SURE OF THE EXACT DATE THAT WE DID RECEIVE

10 VERBAL AND THEN LATER A LETTER FROM MR. PARNELL.

11 Q AND THEN SUBJECT TO THAT, YOU AND MR. CRAIG,

12 INVESTIGATOR CRAIG, WERE CHECKING, INDEPENDENT OF

13 EACH OTHER, ABOUT EXPERTS THAT COULD POSSIBLY ALSO

14 LOOK AT THE GUN?

15 A THAT'S CORRECT.

16 Q AND WHO ACTUALLY FORWARDED THE GUN TO MR. CAYTON?

17 A MR. CRAIG AND I.

18 Q AND WHEN WAS MR. CAYTON ABLE TO GIVE YOU A REPORT ON

19 THE GUN?

20 A I DON'T HAVE A COPY OF IT, BUT HE DID RETURN A REPORT

21 TO US.

22 Q AND THAT WOULD HAVE BEEN IN THE SPRING OF 2001?

23 A I BELIEVE THAT'S CORRECT.

24 Q AT MY REQUEST, INVESTIGATOR, DID YOU ALSO CHECK INTO

25 SOME MILEAGE IN THE COLUMBIA AREA FOR ME?

1 A YES, MA'AM, I DID.

2 Q AND SPECIFICALLY, WHAT WAS I ASKING YOU TO TRACK OR

3 TO CHECK THE MILEAGE ON?

4 A A POSSIBLE ROUTE THAT COULD HAVE BEEN TAKEN FROM FORT

5 JACKSON TO WHERE THE BODY HAD BEEN LOCATED ON HIGHWAY

6 601 AND THEN BACK TO ASSEMBLY STREET IN COLUMBIA.

7 Q AND SPECIFICALLY STARTING WITH FORT JACKSON, THE

8 CIRCLE STARTS WITH PERCIVAL?

9 A STARTS FROM THERE, YES, MA'AM.

10 MR. DELGADO: YOUR HONOR, MAY WE APPROACH THE

11 BENCH A MINUTE AGAIN, PLEASE?

12 THE COURT: SURE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE

14 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF

15 THE JURY.)

16 BY MS. CAMPBELL

17 Q HOW MANY MILES IS THAT?

18 A FROM THE CIRCLE TO PERCIVAL ROAD IS THREE-AND-A-HALF

19 MILES.

20 Q 3.5?

21 A YES, MA'AM.

22 Q AND THEN FROM PERCIVAL TO SCREAMING EAGLE?

23 A THAT'S 8.4 MILES.

24 Q PERCIVAL TO HIGHWAY 601?

25 A CONTINUED ON PERCIVAL TO HIGHWAY 601 AND LUGOFF IS

1 18 MILES.

2 Q HIGHWAY 601?

3 A YOU COULD TAKE HIGHWAY 601 TO SCREAMING EAGLE ROAD,

4 THAT WOULD BE 7.3 MILES.

5 Q AND ARE SOME OF THESE ALTERNATE ROUTES?

6 A YOU COULD HAVE TURNED ON SCREAMING EAGLE AND CAME

7 BACK OUT ONTO 601, SCREAMING EAGLE.

8 Q AND HIGHWAY 601 --

9 A CONTINUING DOWN --

10 Q -- TO THE BODY?

11 A -- WHERE THE BODY WAS FOUND IS 27.4 MILES.

12 Q 27.4?

13 A YES, MA'AM.

14 Q AND THE BODY TO THE CORNER OF ASSEMBLY AND LADY?

15 A IS 28.9.

16 Q TAKING -- AND YOU CAN DO THIS EITHER WAY, EXCLUDING

17 THE ALTERNATE ROUTES, WHAT DO THOSE ADD UP TO?

18 A 77.8 MILES.

19 Q FINALLY, INVESTIGATOR -- LET ME BACK UP TO ONE QUICK

20 QUESTION I ASKED. WHEN YOU WERE INTERVIEWING THE

21 DEFENDANT AND WHEN YOU INITIALLY TOLD HIM WHY YOU

22 WERE THERE AND WHAT YOU WERE GOING TO INVESTIGATE,

23 DID YOU OBSERVE, AND ONLY YOUR OBSERVATIONS, ANY

24 CHANGE IN HIS DEMEANOR?

25 A I DID.

1 Q TELL THE JURY ABOUT THAT.

2 A HE HAD FIRST CAME IN AND SAT DOWN IN A CHAIR ACROSS

3 FROM ME AND WAS INTRODUCED TO ME AT THAT TIME. WE

4 EXPLAINED WHO WE WERE A LITTLE FURTHER AND THEN TOLD

5 HIM WHAT WE WERE THERE FOR

6 MR. DELGADO: YOUR HONOR, COULD I ASK HIM --

7 THE COURT: YEAH, YOU NEED TO SPEAK UP.

8 THE WITNESS: EXCUSE ME.

9 MS. CAMPBELL: I'M SORRY.

10 THE WITNESS: WE THEN TOLD HIM WHAT WE WERE

11 THERE FOR, CONCERNING THE HOMICIDE FROM 1961 IN COLUMBIA.

12 I NOTICED AT THAT TIME THAT HE BECAME FLUSH IN

13 THE FACE. HIS FACE TURNED RED. HE BEGAN TO SWEAT AROUND

14 THE TOP OF HIS FOREHEAD, THE SIDE OF HIS FOREHEAD. HIS

15 THROAT APPEARED TO BE DRY AND CONSTRICTED, AND HE HAD

16 PROBLEMS SPEAKING AT THAT POINT.

17 BY MS. CAMPBELL

18 Q FINALLY INVESTIGATOR, AT MY REQUEST WE GOT THESE

19 MILITARY RECORDS; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q AND WHO DO THOSE MILITARY RECORDS BELONG TO?

22 A FOR EDWARD FRIEBURGER.

23 Q FOR EDWARD FRIEBURGER. AND IN THOSE MILITARY

24 RECORDS, DOES IT INDICATE AN IDENTIFICATION NUMBER?

25 A IT INDICATES HIS SERVICE NUMBER, YES, MA'AM, HIS

1 MILITARY SERVICE NUMBER.

2 Q HIS MILITARY SERVICE NUMBER. AND WHAT IS THAT NUMBER

3 AS INDICATED ON THOSE RECORDS?

4 A IT IS R A 16685305.

5 Q AND THROUGH THOSE MILITARY RECORDS, WERE YOU ABLE TO

6 CONFIRM THAT THE MAN THAT THOSE MILITARY RECORDS

7 BELONGED TO IS THE SAME PERSON THAT WAS ARRESTED BY

8 TROOPER MEREDITH ON MARCH 29TH, 1961?

9 A WE WERE.

10 Q AND IN THOSE MILITARY RECORDS, DOES IT ALSO HAVE SOME

11 FINGERPRINTS?

12 A IT DOES.

13 Q I'M GOING TO SHOW YOU A BLOWUP, IF I CAN FIND IT. I

14 SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION AT

15 THIS POINT AS STATE'S EXHIBIT 44, AND YOU HAVE THE

16 ACTUAL MILITARY RECORDS IN FRONT OF YOU?

17 A THAT'S CORRECT.

18 Q AND HERE ON THE RIGHT, IS THAT AN ENLARGEMENT OF THE

19 FINGERPRINTS --

20 A YES, MA'AM.

21 Q -- THAT ARE IN THAT RECORD?

22 A YES, THEY ARE.

23 Q AND THAT YOU'RE ABLE TO DETERMINE IS THE SAME PERSON

24 THAT WAS ARRESTED BY TROOPER MEREDITH ON THE 29TH OF

25 MARCH, 1961?

1 A THAT'S CORRECT.

2 MS. CAMPBELL: THAT'S ALL I HAVE.

3 THE COURT: CROSS-EXAMINATION, MR. DELGADO.

4 MR. DELGADO: YES, SIR.

5 CROSS-EXAMINATION:

6 BY MR. DELGADO

7 Q MR. METZ, WHAT IT IS ABOUT THOSE RECORDS SHOWS HE
8 ENLISTED IN THE ARMY IN OCTOBER OF 1960. THOSE
9 ENLARGEMENTS ARE TO BE MATCHED TO WHEN HE WAS
10 ARRESTED HERE IN APRIL OF THE YEAR 2001. IS THAT
11 YOUR UNDERSTANDING?

12 A THEY WERE MATCHED TO THAT, YES, SIR.

13 Q OKAY. SO FROM OCTOBER OR NOVEMBER OF 1960 TO APRIL
14 OF 2001, THAT'S WHAT THOSE RECORDS GO TO, RIGHT?

15 A THEY GO TO THAT AND ALSO HIS ENTIRE MILITARY,
16 INCLUDING BEING ARRESTED BY TROOPER MEREDITH.

17 Q YES, SIR. NOW, SIR, YOU SAID THAT HE, ED, HAD SOME
18 PROBLEM REMEMBERING SOME THINGS. DO YOU RECALL THAT,
19 SIR?

20 A I DO.

21 Q ALL RIGHT, SIR. YOU WERE HERE TO HEAR MR. METZ --
22 EXCUSE ME, MR. CRAIG'S TESTIMONY EARLIER TODAY ABOUT
23 WHAT TRANSPIRED AT THE WHITLEY COUNTY COURTHOUSE -- I
24 MEAN, THE WHITLEY COUNTY SHERIFF'S DEPARTMENT?

25 A I WAS.

1 Q AND THE ONLY REMEMBRANCE WE HAVE FOR THAT IS HIS TWO
2 PAGES OF NOTES, BECAUSE YOU DIDN'T TAKE ANY NOTES,
3 DID YOU, SIR?

4 A I DID NOT.

5 Q AS A MATTER OF FACT, WE HAD A CHANCE TO TALK ABOUT
6 THIS JUST YESTERDAY, OR MAYBE IT WAS MONDAY, AND YOU
7 SAID THAT ONE OF THE QUESTIONS THAT WAS ASKED OF ED
8 WAS, "WERE YOU IN THE ARMY IN 1961?" HE SAID BACK IN
9 A WAY OF A QUESTION, "WAS I IN THE ARMY IN 1961?"

10 A IT WAS "WAS I IN THE ARMY."

11 Q YOU SAID ON MONDAY AFTERNOON, "WERE YOU IN THE ARMY
12 IN 1961." DO YOU RECALL ME ASKING YOU THAT? ARE YOU
13 SAYING THAT?

14 A I MAY HAVE.

15 Q MY QUESTION TO YOU IS NOT AVOIDING OR EVADING WHETHER
16 OR NOT HE WAS IN THE ARMY. HE WAS JUST MAKING
17 CERTAIN, HE WAS IN THE ARMY IN 1961. HE WAS ASKING
18 YOU ALL THAT, RIGHT?

19 A THAT WAS NOT THE CONTEXT OF THE DISCUSSION WE HAD.

20 Q THE POINT BEING THAT THAT WAS THE QUESTION THAT WAS
21 ASKED, AND THAT WAS THE QUESTION THAT HE ANSWERED IN
22 RETURN, RIGHT?

23 A HIS QUESTION WAS, "I WAS IN THE ARMY?" WAS HIS
24 QUESTION TO ME.

25 Q AND I ASKED YOU -- I'LL GO INTO SOMETHING ELSE.

1 DO YOU HAVE ANY IDEA WHATSOEVER, SIR, THAT THOSE
2 ARE THE ROUTES THAT SUPPOSEDLY THIS POOR MAN'S CAB
3 TOOK?

4 A NO, I DO NOT.

5 Q NO. AS A MATTER OF FACT, MR. METZ, HE COULD COME
6 DOWN FORT JACKSON AT PERCIVAL AND TURN LEFT ON
7 PERCIVAL, NOT GONE OUT TO SCREAMING EAGLE ROAD,
8 RIGHT?

9 A THAT COULD BE POSSIBLE, SURE.

10 Q HE COULD HAVE COME DOWN THROUGH TWO NOTCH AND GONE
11 RIGHT DOWN SUMTER HIGHWAY AGAIN, RIGHT?

12 A THAT WOULD HAVE BEEN POSSIBLE.

13 Q WHEN SHE SCRATCHES SOME OF THESE THINGS OFF, YOU
14 DON'T HAVE THE SLIGHTEST IDEA WHETHER OR NOT THAT, IN
15 FACT, IS THE CASE OR NOT. WOULDN'T THAT BE FAIR,
16 SIR?

17 A I'M NOT SURE WHAT YOU MEAN BY SCRATCH THEM OFF.

18 Q SURE. WELL, SHE'S THE ONE THAT SAID THE ALTERNATE
19 ROUTES, IF YOU TAKE THE ALTERNATE ROUTES OUT. I'M
20 SAYING DON'T TAKE THE ALTERNATE ROUTES OUT.

21 A THEN YOU WOULD TAKE THE 18 MILES FROM PERCIVAL TO
22 HIGHWAY 601.

23 Q THAT'S RIGHT. AND WHAT YOU'D DO IS YOU'D ADD BACK
24 THE 7.3 AND THE 8.4, RIGHT? THAT'S ANOTHER WAY TO
25 GET THERE, CORRECT, SIR? I GUESS WHAT I'M SAYING TO

1 YOU, MR. METZ, IS THIS, Y'ALL DON'T KNOW ANYTHING
2 ABOUT ANY ROUTE THAT THE CAB SUPPOSEDLY TOOK THAT
3 NIGHT, DO YOU?
4 A NO, WE DO NOT.
5 Q SLIGHTEST IDEA. SO WHEN YOU COME UP WITH A FIGURE OF
6 77.8 MILES, THAT'S -- WITH ALL DUE RESPECT, SIR,
7 THAT'S CONJECTURE AND BACKWARD MATH FOR Y'ALL, WOULD
8 THAT BE FAIR?
9 A THAT'S ATTEMPTING TO FIGURE A LOGICAL ROUTE.
10 Q CERTAINLY. BECAUSE WHAT YOU'RE GOING TO TRY TO DO IS
11 YOU'RE GOING TO TRY TO MATCH IT TO WHAT'S SUPPOSEDLY
12 ON THAT METER; ISN'T THAT RIGHT, SIR?
13 A THAT'S CORRECT.
14 Q YEAH, BUT YOU DON'T KNOW THE ROUTE AT ALL, DO YOU?
15 A WE DO NOT.
16 Q SO ALL OF THIS IS JUST CONJECTURE ON YOUR PART.
17 A IT IS.
18 Q ALL RIGHT. NOW, LET'S TALK ABOUT MEMORY FOR JUST A
19 SECOND. AS A MATTER OF FACT, SIR, EXPLAIN TO OUR
20 JURY WHAT A PRELIMINARY HEARING IS, MR. METZ.
21 A A PRELIMINARY HEARING IS A HEARING THAT IS HELD
22 SHORTLY AFTER ARREST TO DETERMINE IF PROBABLE CAUSE
23 EXISTS FOR THE CHARGES TO CONTINUE.
24 Q AND AT THAT PRELIMINARY HEARING, YOU TESTIFIED ON
25 BEHALF OF THE STATE, CORRECT, SIR?

1 A I BELIEVE SO. I DON'T RECALL.

2 Q YOUR MEMORY DOESN'T SERVE YOU WELL. YOU DON'T
3 REMEMBER THAT, DO YOU?

4 A I DON'T RECALL IF I TESTIFIED TO IT OR NOT.

5 Q WOULD YOU LIKE TO SEE A TRANSCRIPT OF IT THAT SHOWS
6 YOUR NAME ON THE FRONT?

7 MR. MCMAHON: YOUR HONOR, I HAVE A MATTER. CAN
8 I COME UP THERE TO THE COURT?

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
11 THE JURY.)

12 MR. DELGADO: MR. METZ --

13 THE COURT: I WANT TO DO IT NOW.

14 MR. DELGADO: WHAT'S THAT?

15 THE COURT: EVERYBODY IN HERE IS ENTITLED TO BE
16 IN HERE, BUT DON'T BE GIVING FACIAL EXPRESSIONS IN HERE
17 ONE WAY OR THE OTHER WHERE THE JURY MIGHT SEE IT.
18 OTHERWISE, I'LL TOLD HOLD YOU IN CONTEMPT AND PUT YOU IN
19 JAIL.

20 THANK YOU.

21 MR. DELGADO: THANK YGU.

22 THE COURT: OKAY.

23 BY MR. DELGADO

24 Q MR. METZ. DO YOU REMEMBER, SIR, ON JUNE 12TH AT THE
25 RICHLAND COUNTY DETENTION CENTER ON JOHN MARK DIAL

1 DRIVE IN COLUMBIA, YOU TESTIFIED ON BEHALF OF THE
2 STATE IN THAT PRELIMINARY HEARING?
3 A I REMEMBER THE PRELIMINARY HEARING. I DON'T REMEMBER
4 EXACTLY WHAT I SAID IN IT, YES, SIR.
5 Q WELL --
6 A THIS WOULD BE A TRANSCRIPT OF IT, YES, SIR.
7 Q IS THIS A BIG IMPORTANT CASE FOR YOU, MR. METZ?
8 A IT'S AN IMPORTANT CASE.
9 Q YES, SIR. YOU CAN'T EVEN REMEMBER WHETHER YOU WERE
10 AT THE PRELIMINARY HEARING AND TESTIFIED AS THE ONLY
11 WITNESS FOR THE STATE?
12 A NO, SIR. I REMEMBER I WAS AT THE PRELIMINARY
13 HEARING.
14 Q OH?
15 A I DON'T REMEMBER EXACTLY WHAT MY TESTIMONY WAS.
16 Q SO KIND OF LIKE IN 1961, BUT YOU DON'T REMEMBER
17 EXACTLY WHEN IT WAS, AND YOU DON'T REMEMBER WHETHER
18 YOU EVEN TESTIFIED, RIGHT?
19 A I DON'T REMEMBER THE DATE OF THE PRELIMINARY HEARING.
20 Q GOT IT, GOT IT. DO YOU REMEMBER IN THAT PRELIMINARY
21 HEARING, SIR, MY ASKING YOU SOME QUESTIONS ABOUT WHAT
22 INFORMATION YOU HAD RECEIVED FROM MR. PARNELL PRIOR
23 TO YOUR GETTING AN ARREST WARRANT. DO YOU RECALL
24 THAT, SIR?
25 A I DON'T RECALL IT OFFHAND, NO, SIR.

1 Q ALL RIGHT, SIR. WELL, IRA PARNELL SENT YOU A WRITTEN
2 REPORT ON MARCH 20TH, 2001. DO YOU RECALL THAT, SIR?
3 A I RECALL GETTING A REPORT FROM LIEUTENANT PARNELL,
4 YES, SIR.
5 Q ADDRESSED TO YOU AT THE RICHLAND COUNTY SHERIFF'S
6 DEPARTMENT?
7 A YES, SIR.
8 Q MR. CAYTON FAXED A REPORT TO EITHER YOU OR TO
9 MR. CRAIG AT THE SHERIFF'S DEPARTMENT ON APRIL THE
10 2ND, SOME WHAT 12, 13 DAYS LATER. DO YOU RECALL
11 THAT, SIR?
12 A I RECALL THE FACTS FROM MR. CAYTON, YES, SIR.
13 Q FOUR DAYS LATER, AN ARREST WARRANT WAS TAKEN OUT ON
14 APRIL 6TH; IS THAT CORRECT, SIR?
15 A THAT SOUNDS ABOUT RIGHT.
16 Q THE PRELIMINARY HEARING, AS YOU NOTE FROM THAT, WAS
17 HELD ON JUNE 12TH?
18 A THAT'S RIGHT.
19 Q IS THERE ANY REASON -- LET ME JUST PUT THOSE DOWN.
20 YOU DON'T EVEN HAVE TO MOVE.
21 MARCH 20TH, PARNELL REPORT. IS THAT FAIR?
22 A I BELIEVE THAT'S CORRECT.
23 Q ALL RIGHT.
24 A I DON'T HAVE THE REPORT IN FRONT OF ME.
25 Q ALL RIGHT. APRIL 3RD, CAYTON REPORT, CORRECT, SIR?

1 A THAT SOUNDS CORRECT, YES, SIR.

2 Q ARREST WARRANT, APRIL 6TH; PRELIMINARY HEARING, WHAT

3 WAS IT, SIR, JUNE 12TH?

4 A JUNE 12TH, 2001.

5 Q NOW, I'M NOT GOING TO STAND IN FRONT OF YOU, IN YOUR

6 WAY.

7 AT THE TIME OF THE PRELIMINARY HEARING, YOU HAD

8 THE REPORT FROM MR. PARNELL FOR SOME PERIOD OF TIME,

9 A GOOD APRIL, MAY, JUNE, ALMOST THREE MONTHS,

10 CORRECT, SIR?

11 A I WOULD ASSUME SO, SIR.

12 Q YES, SIR.

13 A THAT WOULD HAVE BEEN THE ISSUE DATE ON THE REPORT,

14 I'M ASSUMING MARCH THE --

15 Q ADDRESSED TO YOU, GOES TO YOU, RIGHT?

16 A YES.

17 Q WHEN YOU WENT, YOU WENT TO GET THE ARREST WARRANT

18 BEFORE ONE OF OUR LOCAL MAGISTRATES.

19 I'M CERTAIN YOU MUST HAVE TOLD HIM ABOUT THE

20 CAYTON REPORT, DIDN'T YOU? THAT'S PART OF YOUR --

21 WHAT DO YOU CALL IT, ENOUGH EVIDENCE TO GET THE

22 ARREST WARRANT FOR PROBABLE CAUSE, CORRECT, SIR?

23 A I'M SURE THAT WOULD HAVE BEEN AN AFFIDAVIT, YES, SIR.

24 Q WOULD YOU LIKE TO SEE THE AFFIDAVIT, JUST TO REFRESH

25 YOUR MEMORY?

1 A I'VE SEEN IT. I'M SURE IT'S IN THERE.

2 Q YES, SIR. DID YOU SAY ANYTHING TO THE JUDGE WHEN YOU

3 GOT THE ARREST WARRANT? DID YOU SAY ANYTHING TO HIM

4 ABOUT MR. PARNELL'S REPORT?

5 A I WOULD NOT THINK SO.

6 Q I'M SORRY, SIR?

7 A I WOULD NOT THINK SO.

8 Q BECAUSE THAT WASN'T HELPFUL TO GET THE ARREST

9 WARRANT, WAS IT?

10 A IT WAS NOT WHAT I WOULD NEED.

11 Q YES, SIR. IT CERTAINLY WASN'T WHAT YOU WANTED

12 EITHER, WAS IT?

13 A I HAD NO PROBLEM WITH IT.

14 Q AT THE PRELIMINARY HEARING, SIR, DO YOU RECALL ME

15 ASKING YOU THAT QUESTION, WHAT YOU HAD SAID TO THE

16 MAGISTRATE. YOU DIDN'T RECALL WHETHER OR NOT YOU HAD

17 EVEN SHOWN HIM THE PARNELL REPORT; ISN'T THAT RIGHT,

18 SIR?

19 A I DON'T RECALL YOU ASKING HIM THAT, BUT I MAY HAVE

20 NOT RECALLED IT.

21 Q BASICALLY, WHAT YOU TOLD THE MAGISTRATE WAS YOU ONLY

22 TOLD ONE SIDE. THAT'S THE CAYTON REPORT, DIDN'T YOU?

23 A I TOLD HIM THE INFORMATION THAT I NEEDED TO ASSURE

24 THE MAGISTRATE THAT I HAD PROBABLE CAUSE TO GET THE

25 WARRANT.

1 Q AND DID HE SWEAR YOU UNDER OATH BEFORE YOU DID THAT?
2 A YES.
3 Q JUST LIKE YOU WERE SWORN HERE TODAY?
4 A YES, SIR.
5 Q TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
6 THE TRUTH?
7 A YES, SIR.
8 Q YOU DIDN'T TELL HIM THE WHOLE TRUTH, DID YOU?
9 A I DIDN'T TELL HIM A LOT OF THINGS THAT WERE IN THE
10 FILE FOLDER, BUT I TOLD HIM WHAT WAS THE TRUTH OF
11 WHAT I WAS ASKED.
12 Q AND THE SINGLE MOST IMPORTANT PART OF THAT WHOLE
13 TRUTH WAS THAT SIX OR SEVEN S.L.E.D. BALLISTICS
14 EXAMINERS SAID IT WAS INCONCLUSIVE, WASN'T IT?
15 A NO, SIR.
16 Q YOU DIDN'T TELL THAT TO THE JUDGE, DID YOU?
17 A FIRST, I DIDN'T KNOW THAT, AND I DISAGREE THAT THAT'S
18 THE SINGLE MOST IMPORTANT PART.
19 Q I'LL GIVE YOU THAT. YOU DID KNOW IT BECAUSE HE SENT
20 IT TO YOU ON MARCH 20TH. MR. PARNELL SENT IT TO YOU
21 ON MARCH 20TH, RIGHT?
22 A I DON'T RECALL THAT REPORT SAYING ANYTHING ABOUT SIX
23 OR SEVEN S.L.E.D. AGENTS.
24 Q YOU'RE RIGHT. YOU'RE ABSOLUTELY CORRECT, SIR. I
25 STAND CORRECTED. SO MR. PARNELL'S REPORT, KNOWING

1 WHAT YOU ALREADY KNEW ABOUT MR. CATE BEING INVOLVED
2 IN THIS THING SINCE 1961, YOU KNEW ABOUT THAT, DIDN'T
3 YOU?

4 A I DID.

5 Q SO YOU KNEW MR. CATE, AND YOU KNEW MR. STOKES HAD
6 SAID IT WAS INCONCLUSIVE, DIDN'T YOU?

7 A I DID NOT KNOW ABOUT MR. STOKES, NO.

8 Q YOU KNEW MR. CATE, YOU KNEW IRA PARNELL, CORRECT,
9 SIR?

10 A I KNEW ABOUT MR. PARNELL, YES, SIR.

11 Q AND WHEN YOU WENT BEFORE THE JUDGE AND SWORE UNDER
12 OATH TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING
13 BUT THE TRUTH, YOU DIDN'T TELL HIM ABOUT MR. PARNELL,
14 DID YOU?

15 A NO, I DID NOT.

16 Q YES, SIR. ISN'T IT KIND OF TRUE, MR. METZ, THAT WHEN
17 YOU ALL WENT UP THERE, YOU KNEW WHO YOU WANTED TO GET
18 ARRESTED. YOU WERE JUST TRYING TO MAKE CERTAIN THAT
19 YOU COULD GET ANYTHING HE COULD SAY, YOU WERE GOING
20 TO USE AGAINST HIM. ANY REACTION HE HAD, YOU WERE
21 GOING TO USE AGAINST HIM, WEREN'T YOU?

22 A I'M NOT SURE WHAT YOU MEAN BY ANY REACTION BEING USED
23 AGAINST HIM. HIS REACTIONS WERE HIS REACTIONS.

24 Q YES, SIR. AND YOU ALL HAVE USED THOSE IN THIS
25 TESTIMONY HERE TODAY, IN THIS MURDER TRIAL, HAVEN'T

1 YOU?

2 A YES, SIR.

3 MR. DELGADO: YES, SIR.

4 I THINK THAT'S ALL, YOUR HONOR. THANK YOU.

5 THE COURT: ANYTHING ON REDIRECT?

6 MS. CAMPBELL: NO, SIR, NOTHING ELSE.

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

8 CALL YOUR NEXT WITNESS.

9 MR. MCMAHON: THE STATE CALLS CHUCK EARLES.

10 THE CLERK: IF YOU WOULD COME FORWARD, PLEASE.

11 PLACE YOUR LEFT HAND ON THE BIBLE. RAISE YOUR RIGHT.

12 CHARLES EARLES, AFTER BEING DULY SWORN, TESTIFIED

13 AS FOLLOWS:

14 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL

15 NAME, SPELL YOUR LAST NAME.

16 THE WITNESS: MY NAME IS CHARLES EARLES,

17 E-A-R-L-E-S.

18 DIRECT EXAMINATION:

19 BY MR. MCMAHON

20 Q SIR, BY WHOM ARE YOU EMPLOYED?

21 A THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

22 Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE SHERIFF'S

23 DEPARTMENT?

24 A I'VE BEEN EMPLOYED BY THE SHERIFF'S DEPARTMENT SINCE

25 1997.

1 Q AND WHAT IS YOUR CURRENT POSITION?

2 A I'M THE SERGEANT IN THE FORENSIC SCIENCE SECTION.

3 Q AND HOW LONG HAVE YOU HELD THAT POSITION AS SERGEANT
4 IN FORENSIC SCIENCE?

5 A I'VE HELD THAT POSITION SINCE JANUARY OF 2000.

6 Q PRIOR TO THAT, WHAT POSITIONS DID YOU HOLD?

7 A I WAS A FORENSIC INVESTIGATOR AND ALSO A LINE DEPUTY
8 WITH THE SHERIFF'S DEPARTMENT.

9 Q NOW, AS A FORENSIC INVESTIGATOR, WHAT ARE YOUR
10 DUTIES, SERGEANT EARLES, JUST VERY GENERALLY AND
11 BRIEFLY?

12 A VERY GENERALLY, IT'S CRIME SCENE PROCESSING, EVIDENCE
13 PROCESSING, FINGERPRINT, LATENT PRINT DETECTION,
14 DEVELOPMENT AND ANALYSIS AND COMPARISON.

15 Q WOULD YOU RELATE FOR THE JURY, PLEASE, YOUR
16 EDUCATIONAL BACKGROUND, TRAINING AND EXPERIENCE,
17 SPECIFICALLY IN THE FIELD OF FINGERPRINT
18 IDENTIFICATION?

19 A I WAS TRAINED BY THE SOUTH CAROLINA CRIMINAL JUSTICE
20 ACADEMY IN THE YEAR 2000 FOR THE BASIC FINGERPRINT
21 COURSE, WHICH IS THE F.B.I. SANCTIONED COURSE.

22 I'VE ALSO ATTENDED ADVANCED PALM PRINT
23 IDENTIFICATION AND A VARIETY OF IN-HOUSE TRAINING.

24 Q HAVE YOU TESTIFIED IN THE PAST IN COURTS OF RECORD AS
25 AN EXPERT IN THE FIELD OF FINGERPRINT IDENTIFICATION?

1 A NO, SIR, I HAVE NOT.

2 Q YOU HAVE NOT YET HAD THE OPPORTUNITY?

3 A THAT'S CORRECT.

4 Q HAVE YOU PROVIDED EVIDENCE IN CASES THAT HAVE --
5 INDIVIDUALS PLED GUILTY IN FINGERPRINT CASES IN WHICH
6 YOU WORKED IN THE PAST?

7 A NUMEROUS TIMES.

8 MR. MCMAHON: NOW, SIR, DID YOU -- AND YOUR
9 HONOR, I'M GOING TO OFFER SERGEANT EARLES AS AN EXPERT IN
10 THE FIELD OF FINGERPRINT IDENTIFICATION.

11 MR. DELGADO: WITHOUT OBJECTION.

12 THE COURT: WITHOUT OBJECTION.

13 BY MR. MCMAHON

14 Q AT OUR REQUEST, DID YOU EXAMINE CERTAIN ITEMS OF
15 FINGERPRINT IDENTIFICATION IN THIS PARTICULAR CASE,
16 SERGEANT EARLES?

17 A I DID.

18 Q I WANT TO SHOW YOU AN ITEM THAT'S PREVIOUSLY BEEN
19 MARKED STATE'S EXHIBIT NO. 44. DO YOU KNOW WHAT THIS
20 ITEM IS, SIR?

21 A YES. THAT'S THE FINGERPRINT CHART THAT I PREPARED IN
22 THIS CASE.

23 Q AND, OBVIOUSLY, IT'S MARKED UP AT THE TOP MILITARY
24 RECORDS ON ONE SIDE AND INKED FINGERPRINTS ON THE
25 OTHER; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q AND YOU RECOGNIZE THIS CHART AND DIAGRAM?

3 A YES.

4 Q AND YOU PREPARED IT?

5 A YES, SIR.

6 Q AND IT WOULD ASSIST YOU IN YOUR TESTIMONY BEFORE THE
7 JURY TODAY?

8 A YES.

9 MR. MCMAHON: YOUR HONOR, I WOULD OFFER THIS
10 INTO EVIDENCE.

11 THE COURT: ANY OBJECTION?

12 MR. DELGADO: NONE AT ALL.

13 THE COURT: WITHOUT OBJECTION.

14 (WHEREUPON, STATE'S EXHIBIT NO. 44 WAS ADMITTED
15 INTO EVIDENCE.)

16 MR. MCMAHON: YOUR HONOR, MAY THE WITNESS STEP
17 DOWN?

18 THE COURT: YES, SIR.

19 BY MR. MCMAHON

20 Q NOW, IF YOU'LL STAND ON THIS SIDE FOR ME, SERGEANT
21 EARLES. JUST KEEP YOUR VOICE UP.

22 AS I LOOK AT STATE'S EXHIBIT NO. 44, WOULD YOU
23 EXPLAIN TO THE JURY, PLEASE, WHAT ARE THE ITEMS THAT
24 ARE REPRESENTED ON THIS SIDE OF THE DOCUMENT?

25 A WELL, STARTING AT THE BOTTOM, THIS IS A PHOTOGRAPH

1 THAT I TOOK. THAT IS A PHOTOGRAPH THAT I TOOK OF A
2 PORTION OF MILITARY RECORD, OR THE CERTIFIED COPY OF
3 THE MILITARY RECORD, THAT WAS PROVIDED TO ME BY
4 MR. MCMAHON.

5 THIS IS THE PORTION THAT CONTAINS THE FIVE INKED
6 FINGERPRINTS, COPIES OF THE FIVE INKED FINGERPRINTS
7 THAT WERE ROLLED. IT'S DATED OCTOBER 29TH, 1960, AND
8 BEARS THE SIGNATURE OF EDWARD EUGENE FRIEBURGER.

9 UP ABOVE THIS, FOR ILLUSTRATION IN COURT, I TOOK
10 A CLOSE-UP PHOTOGRAPH OF THE RIGHT INDEX FINGER, THE
11 NUMBER TWO FINGER. THIS IS JUST A PHOTOGRAPHIC
12 ENLARGEMENT OF THAT.

13 Q NOW, LET ME STOP YOU A MINUTE. YOU SAY YOU GOT THOSE
14 FROM CERTIFIED MILITARY RECORDS PROVIDED TO YOU; IS
15 THAT CORRECT?

16 A THAT'S CORRECT, SIR.

17 Q AND LET ME SHOW YOU THIS ITEM AND ASK YOU IF YOU CAN
18 IDENTIFY THAT ITEM FOR ME, PLEASE.

19 A YES. THESE WERE RECORDS THAT WERE PROVIDED TO ME.

20 Q AND THE DOCUMENTATION ON THE TOP APPEARS THAT THEY
21 CAME FROM THE NATIONAL ARCHIVES IN RECORD
22 ADMINISTRATION, CORRECT?

23 A THAT'S CORRECT.

24 Q AND THEY'RE SEALED AND BOUND?

25 A CORRECT.

1 Q IS THAT CORRECT? AND THESE APPEAR TO BE THE RECORDS
2 OF WHO?

3 A EDWARD EUGENE FRIEBURGER.

4 Q AND DOES A SERVICE NUMBER APPEAR ON THESE DOCUMENTS?

5 A YES, IT DOES.

6 Q AND WHAT IS THAT SERVICE NUMBER?

7 A R.A. 16685305.

8 Q NOW, AS I LOOK THROUGH THESE DOCUMENTS, IT APPEARS
9 ACTUALLY PAGE THREE OF THE DOCUMENT. WHAT IS THIS,
10 SIR?

11 A THIS IS THE DOCUMENT THAT I PHOTOGRAPHED THE LOWER
12 PORTION OF AND DISPLAYED IT HERE, THE PHOTOGRAPH IS
13 DISPLAYED HERE.

14 Q SO FROM ABOUT THIS LINE DOWN IS WHAT'S DISPLAYED
15 HERE, CORRECT?

16 A CORRECT.

17 Q AND THAT'S PART OF THE DOCUMENT UNDER SEAL?

18 A THAT'S RIGHT.

19 Q SERVICE RECORD OF EDWARD E. FRIEBURGER. NOW,
20 SPECIFICALLY, YOU TOOK ONE OF THE FINGERS -- NOT ONE
21 OF THE FINGERS, ONE OF THE FINGERPRINTS, AND ENLARGED
22 IT IN THIS MANNER?

23 A THAT'S CORRECT.

24 Q ALL RIGHT, SIR. AND WHICH FINGER WAS THAT?

25 A THAT WOULD BE THE RIGHT INDEX FINGER.

1 Q ALL RIGHT. NOW, WHAT DO WE HAVE ON THE RIGHT OF
2 STATE'S EXHIBIT NO. 44?

3 A ON THIS SIDE, WE HAVE A PHOTOGRAPH THAT I MADE OF THE
4 ROLLED IMPRESSIONS THAT I ACTUALLY ROLLED WHEN THE
5 DEFENDANT, MR. FRIEBURGER, WAS IN OUR OFFICE ON
6 APRIL 9TH, 2001.

7 Q YOU TOOK THESE PRINTS?

8 A I ROLLED THESE PRINTS, THAT'S CORRECT.

9 Q AND WHEN DID YOU ROLL THESE PRINTS?

10 A APRIL 9TH, 2001.

11 Q AND THESE ARE PRINTS OF?

12 A EDWARD EUGENE FRIEBURGER.

13 Q ALL RIGHT, SIR. AND THEN WHAT DID YOU DO? HOW DID
14 YOU GO FROM HERE TO HERE?

15 A OKAY. THIS ENLARGEMENT UP HERE IS A PHOTOGRAPHIC
16 ENLARGEMENT OF THE FINGER, THE RIGHT INDEX FINGER
17 THAT APPEARS ON THIS CARD.

18 Q AND HOW DID THE PRINTS FROM THE MILITARY RECORDS
19 MARKED EDWARD EUGENE COMPARE TO THE INKED
20 FINGERPRINTS OF EDWARD FRIEBURGER THAT YOU ROLLED
21 APRIL 9TH, 2000?

22 A IT WAS A POSITIVE MATCH. THE PERSON WHOSE
23 FINGERPRINT APPEARED ON THIS CARD FROM APRIL 9TH,
24 2001 IS ALSO THE PERSON WHOSE FINGERPRINT APPEARS ON
25 THE MILITARY RECORD.

1 Q AND ALL OF THE DOCUMENTATION ON THE LEFT OF THIS YOU
2 GOT FROM THESE RECORDS UNDER SEAL?

3 A THAT'S CORRECT.

4 MR. MCMAHON: THANK YOU, SERGEANT EARLES. YOU
5 CAN RETAKE THE STAND.

6 I HAVE NO OTHER QUESTIONS.

7 THE COURT: CROSS-EXAMINATION, MR. DELGADO?

8 CROSS-EXAMINATION:

9 BY MR. DELGADO

10 Q MR. EARLES, ALL THAT WAS TO SHOW THE SAME ED
11 FRIEBURGER THAT WENT INTO THE ARMY IN OCTOBER 1960 IS
12 THE SAME PERSON, AFTER HE TURNS HIMSELF INTO YOUR
13 OFFICE AFTER HIS ARREST ON APRIL 6TH, THAT'S THE SAME
14 FELLOW?

15 A YES, THAT'S THE SAME FELLOW.

16 Q SAME FELLOW SITTING RIGHT HERE?

17 A YES, SIR.

18 MR. DELGADO: ALL RIGHT. THAT'S ALL THE
19 QUESTIONS.

20 THANK YOU, SIR.

21 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY
22 STEP DOWN.

23 ANY FURTHER WITNESSES FROM THE STATE?

24 MR. MCMAHON: NO, YOUR HONOR

25 MR. DELGADO: HAS THE STATE RESTED YET, YOUR

1 HONOR.

2 THE COURT: NOT YET. I'LL GIVE THEM A CHANCE TO
3 DOUBLE CHECK THEIR EVIDENCE.

4 MR. DELGADO: I'M SORRY.

5 THE COURT: THEY INTEND TO REST, RIGHT?

6 MR. MCMAHON: CAN I CHECK WITH THE COURT
7 REPORTER JUST VERY BRIEFLY?

8 THE COURT: YES, BUT I'M GOING TO LET YOU --

9 MR. MCMAHON: ALL RIGHT, SIR.

10 THE COURT: I'LL KNOW TOMORROW A LITTLE BIT MORE
11 ABOUT THE SCHEDULING. I HAVE ONE MATTER AT NINE O'CLOCK
12 IN THE MORNING. IT WILL TAKE ABOUT 15 MINUTES TO DO THAT
13 I'VE GOT TO TAKE UP.

14 I WILL ASK YOU TO BE HERE AT 9:15 AND THEN WE'LL
15 GET STARTED AT THAT POINT IN TIME.

16 IF IT LOOKS LIKE WE CANNOT FINISH THE CASE ON
17 FRIDAY, I MIGHT GIVE YOU SOME OPTIONS. WE'LL TALK ABOUT
18 THAT TOMORROW. I DON'T KNOW YET WHERE WE ARE SO JUST BEAR
19 WITH ME.

20 PLEASE DON'T WATCH ANY NEWS ACCOUNT OR READ OR
21 LISTEN TO ANY OTHER TYPE OF NEWS ACCOUNT ABOUT THE TRIAL
22 OR DISCUSS THE CASE WITH ANYONE OR ALLOW ANYONE TO DISCUSS
23 IT WITH YOU.

24 WE HAVE TWO HARD DAYS -- THREE HARD DAYS IN THIS
25 TRIAL, SO JUST BE CAREFUL OUT THERE, AS THE SERGEANT USED

1 TO SAY. SO WE'LL SEE YOU IN THE MORNING AT 9:15.

2 THE BAILIFF: JUST LEAVE YOUR PADS.

3 THE COURT: YES, WE'LL TAKE CARE OF YOUR PADS.

4 (WHEREUPON, THE JURY LEFT OPEN COURT AT

5 APPROXIMATELY 5:12 P.M.)

6 THE COURT: ALL RIGHT. DO YOU WANT TO DOUBLE

7 CHECK THE EXHIBITS BEFORE YOU REST?

8 MR. MCMAHON: YES, SIR. I APPRECIATE IT.

9 THE COURT: MR. PARNELL BELIEVES YOU HELD THAT
10 PICTURE UP IN FRONT OF HIM AND HE NEVER TOUCHED IT, SO IF
11 YOU CAN CHECK YOUR FILES.

12 MR. DELGADO: I SURE WILL.

13 THE COURT: I THINK I REMEMBER THAT, TOO. YOU
14 JUST SHOWED IT TO HIM.

15 MR. DELGADO: I THOUGHT I PUT IT ON THE JURY
16 RAIL.

17 THE COURT: OKAY. JUST LOOK IN YOUR FILES.

18 MR. MCMAHON: JUDGE, THE ONLY TWO ISSUES I WOULD
19 HAVE IS I DON'T THINK I HAD OFFERED STATE'S 40.

20 THE COURT: THAT IS THE --

21 MR. MCMAHON: I HAD IT MARKED FOR IDENTIFICATION
22 BY MR. AEBERSOLD, AND THAT'S FINE.

23 THE OTHER ISSUE I HAVE IS ON THE ORIGINAL
24 EXHIBIT 27, I ONLY REFERRED TO ONE PAGE OF THAT EXHIBIT,
25 THE PAGE WHERE IT SHOWS 7/30/60, BUT I DON'T THINK THE

1 ENTIRE EXHIBIT HAS BEEN INTRODUCED.

2 THE COURT: DO YOU HAVE ANY OBJECTION TO
3 SUBSTITUTING A COPY?

4 MR. DELGADO: YES.

5 MR. MCMAHON: ALTHOUGH, THERE IS AN ORIGINAL.

6 THE COURT: THEY HAVE NO OBJECTION.

7 MS. HUDGINS: WE DO.

8 MR. DELGADO: WE DO.

9 THE COURT: OH, YOU DO HAVE AN OBJECTION?

10 MS. HUDGINS: THAT'S THE WAY IT WAS ADMITTED.
11 THAT'S THE WAY WE --

12 MR. MCMAHON: WELL, NO, SIR, THAT WAS NOT THE
13 WAY IT WAS ADMITTED.

14 THE COURT: WELL, NO, IT WAS NOT.

15 MR. MCMAHON: THE BOOK WAS ADMITTED.

16 THE COURT: I MEAN, NOW, YOU MIGHT HAVE TALKED
17 ABOUT JUST ONE PAGE.

18 MR. MCMAHON: ALL I DID -- OKAY.

19 I MEAN, I KNOW THERE ARE PAGES THEY WANT IN, AND
20 I HAVE NO OBJECTION TO THOSE PAGES THEY WANT IN, BUT THE
21 HANDWRITING, I HAVE OBJECTIONS THAT IT WOULD BE IRRELEVANT
22 MATERIAL.

23 THE COURT: LET'S WAIT UNTIL WE GET --

24 MR. MCMAHON: IF THAT'S THE RULES THEY WANT TO
25 PLAY BY, THAT'S FINE.

1 THE COURT: ALL RIGHT. LET'S WAIT UNTIL WE GET
2 TO THE END OF THE CASE. WE CAN HANDLE IT THEN.

3 MR. MCMAHON: YES, SIR.

4 THE COURT: ALL RIGHT. YOU HAVE EVERYTHING
5 ACCOUNTED FOR?

6 MR. MCMAHON: YES, SIR. THE ONLY THING I SAY IS
7 NOT IN IS STATE'S 40.

8 THE COURT: 40, OKAY.

9 MR. MCMAHON: IT'S MY UNDERSTANDING THAT
10 EVERYTHING ELSE HAS BEEN MARKED AND INTRODUCED.

11 THE COURT: ALL RIGHT. THE STATE RESTS.

12 MR. DELGADO: YOUR HONOR, COINCIDENTALLY, I
13 HAPPEN TO HAVE MORE THAN ONE OF WHAT I THINK WAS ADMITTED,
14 WHICH WAS THIS ONE.

15 THE COURT: I THINK THAT'S RIGHT.

16 MR. MCMAHON: I'M GOING TO OBJECT TO THAT.

17 THE COURT: WHAT IS THAT?

18 MR. MCMAHON: I'M GOING TO OBJECT TO ANY
19 PHOTOGRAPH COMING IN THAT HASN'T ALREADY BEEN MARKED.

20 MR. DELGADO: IT HAS BEEN MARKED.

21 THE COURT: ALL RIGHT. HANG ON. YOU JUST LOOK
22 A LITTLE FURTHER.

23 MR. DELGADO: YES, SIR.

24 YOUR HONOR, DOES THAT MEAN THAT NOBODY LEAVES
25 UNTIL I FIND IT?

1 THE COURT: I UNDERSTAND.

2 MR. DELGADO: WELL, HE MAKES IT SOUND LIKE IT'S
3 MY FAULT.

4 MR. MCMAHON: WAIT A MINUTE. I'M NOT ADMITTING
5 TO NOTHING.

6 THE COURT: ALL RIGHT. MOTIONS?

7 MS. HUDGINS: JUDGE, IF WE CAN ARGUE MOTIONS
8 NOW, WHAT I WOULD RESPECTFULLY REQUEST FROM THE COURT IS
9 AN OPPORTUNITY TONIGHT TO REVIEW MY NOTES TO DETERMINE
10 EXACTLY WHAT -- JUDGE, I KNOW IN THE COURSE OF BEING AN
11 ATTORNEY, WE SOMETIMES SIMPLY, AS A MATTER OF COURSE, MAKE
12 A DIRECTED VERDICT MOTION.

13 YOUR HONOR, I SUBMIT TO YOU THAT IS NOT THE CASE
14 IN THIS CASE, AND I WOULD JUST RESPECTFULLY REQUEST AN
15 OPPORTUNITY TO REVIEW MY NOTES TO SEE EXACTLY WHAT HAS
16 BEEN INTRODUCED INTO EVIDENCE SO I CAN MAKE MY DIRECTED
17 VERDICT MOTION AT THE APPROPRIATE TIME.

18 I CAN DO IT NOW. I'D PREFER AN OPPORTUNITY TO
19 REVIEW MY NOTES.

20 THE COURT: WELL, LET ME HAVE -- LET ME HAVE
21 SOME INSIGHT ABOUT HOW MANY WITNESSES YOU'RE GOING TO
22 CALL, AND I HAVE SOME SCHEDULING STUFF I NEED TO KNOW
23 ABOUT.

24 MR. DELGADO: I EXPECT JUST OFF THE TOP OF MY
25 HEAD -- WELL, THAT'S WHAT WE NEEDED TO TALK ABOUT TONIGHT.

1 OF COURSE, SOME THINGS CAME UP THIS AFTERNOON, SEVEN
2 MAYBE?

3 THE COURT: OKAY. DO YOU THINK THAT YOU WILL
4 FINISH TOMORROW? I'M TRYING TO --

5 MR. DELGADO: YES, YOUR HONOR, I DO. I DO.

6 NOW, AGAIN, I DON'T KNOW WHAT DIRECTION
7 CROSS-EXAMINATION IS GOING TO TAKE.

8 THE COURT: ALL RIGHT. 9:15 IN THE MORNING.

9 MR. DELGADO: THANK YOU.

10 MS. HUDGINS: THANK YOU, YOUR HONOR.

11 (THERE WAS AN OVERNIGHT RECESS.)

12 THE COURT: ARE YOU READY, MS. HUDGINS?

13 MS. HUDGINS: I AM, YOUR HONOR. I'M READY
14 WHENEVER THE COURT IS READY.

15 THE COURT: I'M READY.

16 MS. HUDGINS: JUDGE, DID YOU WANT TO TAKE UP
17 MOTIONS NOW, HAVE THE STATE REST IN FRONT OF THE JURY AND
18 THEN TAKE UP MOTIONS?

19 THE COURT: NO. AS FAR AS I'M CONCERNED, THE
20 STATE HAS RESTED.

21 MS. HUDGINS: YOUR HONOR, AT THIS TIME THE
22 DEFENSE WOULD MOVE FOR A DIRECTED VERDICT, A VERDICT OF
23 ACQUITTAL, FOR ED FRIEBURGER IN THIS CASE.

24 YOUR HONOR, I THINK IT'S CLEAR AS A RESULT OF
25 THE TESTIMONY THAT THE COURT HAS HEARD OVER THE COURSE OF

1 THE LAST TWO TO THREE DAYS THAT THIS IS A CASE BASED
2 ENTIRELY ON CIRCUMSTANTIAL EVIDENCE, YOUR HONOR.

3 THERE IS ABSOLUTELY NO DIRECT EVIDENCE LINKING
4 MR. FRIEBURGER TO THE DEATH OF MR. ORNER, ABSOLUTELY NONE.
5 IT IS CLEAR.

6 I THINK IT'S UNDISPUTED THIS IS A CIRCUMSTANTIAL
7 EVIDENCE CASE. AS A RESULT OF IT BEING A CIRCUMSTANTIAL
8 EVIDENCE CASE, AND THAT ALONE, YOUR HONOR, THE DEFENSE
9 SUBMITS THAT THE EVIDENCE ADDUCED BY THE STATE SIMPLY DOES
10 NOT MEET THE SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE TEST AS
11 REQUIRED BY OUR CASE LAW, UNDER STATE V. MARTIN, STATE VS.
12 SCHROCK, COURT OF APPEALS CASE OF STATE V. ARNOLD.

13 YOUR HONOR, LAST NIGHT MR. DELGADO AND MY LAW
14 CLERK SAT DOWN AND METICULOUSLY WENT THROUGH THE EVIDENCE
15 THAT WAS ADDUCED BY THE STATE. THAT'S WHY I ASKED FOR A
16 RECESS LAST NIGHT SO THAT I COULD DO THAT AND COULD PUT
17 THAT BRIEF RECITATION ON THE RECORD, IF I COULD, YOUR
18 HONOR.

19 THE STATE IS SIMPLY MISSING A MAJOR LINK IN THIS
20 CASE. THERE IS ABSOLUTELY NOTHING CONNECTING ED
21 FRIEBURGER TO THE CRIME SCENE.

22 IN FACT, YOUR HONOR, THE STATE HAS NOT EVEN
23 ESTABLISHED WHERE THE CRIME SCENE WAS. THAT, ACCORDING TO
24 THE APPELLATE COURT OPINIONS, THAT HAS BEEN A CRITICAL
25 FACTOR OF WHEN THE COURT CAN REVERSE DECISIONS OF NOT TO

1 GRANT DIRECTED VERDICTS OF ACQUITTAL IN THE CASES THEY
2 HAVE HEARD, THE FAILURE OF THE STATE TO PLACE THE
3 DEFENDANT AT THE SCENE OF THE CRIME.

4 JUDGE, THERE IS ABSOLUTELY NO EVIDENCE OF
5 MR. FRIEBURGER BEING ANYWHERE NEAR THE SCENE OF THE CRIME.
6 IN FACT, WE DON'T EVEN KNOW WHERE THE CRIME TOOK PLACE.

7 YOU KNOW, WHAT WE DO HAVE IS THAT MR. ORNER WAS
8 LAST SEEN ON -- APPROXIMATELY 11:15 ON THE EVENING OF
9 FEBRUARY 28TH, 1961, I BELIEVE IT WAS THE TESTIMONY OF
10 CAPTAIN CLARK. I'M NOT SURE IF THAT'S CHARLIE CLARK
11 FORMERLY WITH THE COLUMBIA POLICE DEPARTMENT, I BELIEVE,
12 THAT MR. ORNER RECEIVED A PHONE CALL TO PICK UP SOMEONE AT
13 THE N.C.O. CLUB APPROXIMATELY 11:15.

14 THE NEXT THING WE KNOW, MR. ORNER IS REPORTED
15 MISSING AT 7:30 A.M. ON THE FOLLOWING MORNING, WHICH IS
16 MARCH 1ST.

17 MR. REVETTA TESTIFIED THAT THE CAB WAS FOUND
18 LATER THAT MORNING BETWEEN 7:15 AND 7:45 ON THE MORNING OF
19 MARCH 1ST. IT WAS FOUND IN THE [REDACTED] [REDACTED] [REDACTED]
20 STREET NEXT TO THE DESOTO HOTEL. THE BODY IS NOT FOUND,
21 YOUR HONOR, UNTIL MARCH 3RD, 1961, WAY OUT ON HIGHWAY 601.

22 THE EVIDENCE THEN FURTHER GOES TO SHOW IF YOU
23 TAKE THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
24 STATE, WHICH WE MUST DO, ACCORDING TO THE CASE LAW, THE
25 EVIDENCE VIEWED IN THAT LIGHT IS THAT ED FREIBURGER BOUGHT

1 A GUN ON FEBRUARY 28TH.

2 THERE IS ALSO EVIDENCE IN THE RECORD THAT ED
3 PAWNED AN ELECTRIC RAZOR AT BERRY'S PAWNSHOP ON
4 FEBRUARY 16TH, 1961. THERE IS EVIDENCE THAT HE PAWNED A
5 TRANSISTOR RADIO AT FREED'S PAWNSHOP ON FEBRUARY 25TH,
6 1961.

7 THE NEXT BIT OF EVIDENCE THAT I SUPPOSE THAT THE
8 STATE IS TRYING TO LINK ED FRIEBURGER TO THIS IS THE
9 TESTIMONY OF MR. AEBERSOLD THAT HE RECEIVED A LIVE ROUND,
10 A LIVE 32 ROUND, FROM ED FRIEBURGER AT SOME POINT IN TIME
11 IN LATE FEBRUARY 1961. HE CANNOT RECALL WHEN. THAT WAS
12 CLEAR FROM THE TESTIMONY, YOUR HONOR.

13 THEN, OF COURSE, THERE IS THE BALLISTICS
14 TESTIMONY. THAT'S FROM S.L.E.D. STATING THAT THE BULLET
15 FRAGMENTS FOUND RECOVERED FROM MR. ORNER WERE INCONCLUSIVE
16 TO THE WEAPON THAT WAS FOUND ON MR. FRIEBURGER ON
17 MARCH 29TH, WEEKS AFTER THIS TOOK PLACE.

18 THEN, OF COURSE, THERE'S TESTIMONY FROM
19 MR. CAYTON THAT THE BULLET FRAGMENTS ARE CONSISTENT WITH
20 OR MATCH THE GUN FOUND ON MR. FRIEBURGER ON MARCH 29TH,
21 1961, AGAIN, WEEKS AFTER THE ALLEGED INCIDENT TOOK PLACE.

22 AGAIN, YOUR HONOR, THERE IS ABSOLUTELY NOTHING
23 IN THE RECORD THAT CONNECTS ED FRIEBURGER TO THIS CRIME
24 SCENE IN ANY WAY

25 THE ONLY, ONLY EVIDENCE, THAT THE STATE IS

1 ATTEMPTING TO INTRODUCE IS EVIDENCE, AGAIN, VIEWING THE
2 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THAT ED
3 BOUGHT A GUN ON FEBRUARY 28TH. THEN A GUN MATCHING,
4 ALLEGEDLY, THAT SERIAL NUMBER AND MATCHING THE BULLETS
5 FROM MR. ORNER WAS FOUND ON HIM MANY WEEKS LATER.

6 JUDGE, IF WE WERE TO SUBMIT THE CASE TO THE JURY
7 AT THIS POINT, ANY VERDICT WOULD ONLY BE BASED ON
8 SUSPICION. THAT'S EXACTLY WHAT OUR CASE LAWS HAVE TOLD US
9 IS UNACCEPTABLE.

10 THERE'S ABSOLUTELY NOTHING TO DIRECTLY CONNECT
11 OR INDIRECTLY CONNECT ED FRIEBURGER TO THE SCENE OF THIS
12 CRIME.

13 WE'D ASK THAT YOU DIRECT A VERDICT OF ACQUITTAL
14 IN THIS CASE, YOUR HONOR.

15 THE COURT: MADAM SOLICITOR?

16 MS. CAMPBELL: BRIEFLY, YOUR HONOR. I DON'T
17 KNOW THAT I NEED TO RESPOND BECAUSE SHE'S PRETTY MUCH LAID
18 OUT THE ARGUMENT BEFORE ME AS FAR AS THE FACTS IN THE
19 CASE, AND WHAT POINTS TO THE GUILT OF THIS DEFENDANT.

20 I BELIEVE THAT THE STANDARD, PERHAPS, WE HAVE TO
21 MEET AT THIS POINT GOES TO THE LIGHT MOST FAVORABLE TO THE
22 STATE.

23 YOUR HONOR, I THINK WE CAN SEE THAT THAT -- PUT
24 THE DEFENDANT DOWNTOWN THE DAY OF IT, BUYING THE GUN THE
25 DAY THE VICTIM IS MISSING.

1 WE FIND HIS BLOODY CAB WITHIN LESS THAN 12 HOURS
2 AFTER HE IS LAST SEEN. HIS BODY IS FOUND TWO DAYS LATER
3 DUMPED ON THE SIDE OF THE ROAD IN AN APPARENT ROBBERY.

4 IT IS CLEAR THAT THE DEFENDANT WAS DOWNTOWN THAT
5 DAY. IT IS ALSO CLEAR THAT THE DEFENDANT BOUGHT THE GUN
6 THAT DAY, WHICH ULTIMATELY, YOUR HONOR, IS -- WE'VE HEARD
7 A LOT OF TESTIMONY ABOUT THE GUN THAT WAS USED TO KILL
8 MR. ORNER.

9 MR. ORNER HAS ONE GUNSHOT WOUND TO THE BACK OF
10 HIS HEAD. THERE IS NO SIGN OF ANY KIND OF STRUGGLE OF ANY
11 SORT.

12 ACCORDING TO MS. HUDGINS' THEORY, YOUR HONOR, I
13 DON'T KNOW THAT YOU WOULD EVER BE ABLE TO PROSECUTE ANY
14 CASE, ACCORDING TO HER THEORY, IF THERE WASN'T AN
15 EYEWITNESS.

16 THE EVIDENCE IN THIS CASE, YOUR HONOR, I THINK
17 FAR EXCEEDS THE STANDARD WE HAVE TO MEET.

18 I DON'T KNOW HOW TO ADD TO WHAT -- SHE'S
19 MENTIONED SOME CASE LAW. THE CASE LAW I'M FAMILIAR WITH,
20 YOUR HONOR, I THINK THIS CASE FAR EXCEEDS THAT STANDARD.

21 THE COURT: WELL, WHAT ABOUT HER ARGUMENT
22 THAT -- AND IT IS TRUE THAT SOME OF THE CASES IN THE LAST
23 COUPLE OF -- THREE YEARS FOCUSED ON THE STATE'S INABILITY
24 TO PUT SOMEONE AT A SCENE OF A CRIME.

25 MS CAMPBELL: YOUR HONOR, I THINK THE EVIDENCE

1 LINKED THROUGH THE GUN PUTS THIS DEFENDANT AT THE SCENE OF
2 THE CRIME.

3 IT'S THE GUN HE PURCHASES ON THE 28TH, WHICH
4 HAPPENS TO BE THE DAY THE VICTIM IS MISSING, THAT HIS BODY
5 IS FOUND AT 7:30 THE NEXT -- OR THE BLOODY CAB IS FOUND AT
6 7:30 THE NEXT MORNING.

7 HIS BODY IS FOUND TWO DAYS LATER, AND THE GUN IS
8 RECOVERED OFF THIS SAME MAN WHO PURCHASED IT ON THE 28TH,
9 WITHIN THE MONTH.

10 THAT GUN HAPPENS TO, FROM THE TESTIMONY, IS
11 THAT'S THE GUN THAT SHOT MR. ORNER. I DON'T KNOW HOW MUCH
12 MORE WE COULD DO TO PUT THIS MAN AT THE SCENE AS FAR AS,
13 YOU KNOW, THIS CASE CIRCUMSTANTIALY, CLEARLY, THAT PLACES
14 HIM AT THE SCENE SINCE THE BULLET FRAGMENTS, AND I THINK
15 IT'S UNDISPUTED AT THIS POINT THAT ONE BULLET CAME FROM
16 MR. ORNER'S HEAD, MATCHED THE GUN, EVEN WITH S.L.E.D.'S
17 TESTIMONY.

18 I THINK CIRCUMSTANTIALY, YOUR HONOR, THAT
19 CLEARLY PUTS HIM AT THE SCENE.

20 THE COURT: YOUR MOTION FOR DIRECTED VERDICT IS
21 DENIED GIVING THE STATE THE BENEFIT OF EVERY REASONABLE
22 INFERENCE WHICH COULD BE DRAWN FROM THE EVIDENCE IN THE
23 CASE.

24 WE HAVE ONE JUROR MATTER. WE THOUGHT WE HAD A
25 JUROR THAT WAS SICK WHO WAS NOT.

1 MR. MCMAHON: JUDGE, I DO HAVE ONE JUROR MATTER.

2 MAJOR SMITH INFORMED ME THIS MORNING, WHO IS
3 HERE UNDER SUBPOENA FOR THE DEFENSE, THAT WHEN HE WAS
4 COMING THOUGH SECURITY THIS MORNING AND HAD PUT HIS ITEMS
5 IN THE SECURITY TRAY, THERE WAS EVIDENTLY A JUROR IN OR
6 NEAR OR AROUND WHERE HE WAS AT THAT LOST AN ITEM, I THINK
7 THE JUROR TAG.

8 HE DIDN'T KNOW IT WAS A JUROR ON THIS CASE. HE
9 ENDED UP RETRIEVING AND KIND OF ASSISTING THAT JUROR TO
10 GET HIS TAG BACK.

11 HE INFORMED ME OF IT. I WANTED TO INFORM THE
12 COURT OF IT. HE HAD NO CONVERSATION WITH THE JUROR.

13 THERE WERE ACTUALLY TWO JURORS, AND THEY WERE
14 TRYING TO DECIDE WHO HAD LOST THEIR TAG. SINCE MAJOR
15 SMITH INFORMED ME OF IT, I CERTAINLY WANTED TO INFORM THE
16 COURT OF IT. HE IS PRESENT. WHATEVER QUESTIONS YOU MAY
17 HAVE.

18 THE COURT: ANY NEED FOR INQUIRY FROM THE
19 DEFENSE?

20 MR. DELGADO: NO, SIR.

21 MR. MCMAHON: THANK YOU, YOUR HONOR.

22 THE COURT: THE JUROR THAT WE THOUGHT WAS ON OUR
23 PANEL IS NOT, SO WE WON'T HAVE A PROBLEM.

24 MR MCMAHON: HE WASN'T EVEN SURE THAT THESE
25 JURORS WERE ON OUR PANEL EITHER.

1 THE COURT: ALL RIGHT. MR. DELGADO, REMEMBER ON
2 THE CHARACTER ISSUE.

3 MR. DELGADO: I'M SORRY, YOUR HONOR?

4 THE COURT: REMEMBER THE -- WHAT I TOLD YOU
5 ABOUT CHARACTER ISSUES.

6 WHEN HE PLACES HIS -- I LOOKED AT THE NUMBER OF
7 YOUR WITNESSES, AND I CAN ANTICIPATE WHAT MIGHT BE --

8 MR. DELGADO: YES, SIR, I UNDERSTAND.

9 THE COURT: OKAY. ALL RIGHT. THEN WE DON'T
10 HAVE TO WORRY ABOUT THE JUROR. THAT'S GOOD.

11 ALL RIGHT. BRING THE JURY IN.

12 THE BAILIFF: YES, SIR.

13 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
14 APPROXIMATELY 9:33.)

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

16 THE COURT: DOES THE STATE WAIVE POLLING?

17 MR. MCMAHON: YES, SIR.

18 THE COURT: DOES THE DEFENSE WAIVE POLLING?

19 MR. DELGADO: YES, SIR.

20 THE COURT: ALL RIGHT. GOOD MORNING

21 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THE STATE
22 HAS RESTED. THE DEFENSE WILL PROCEED AT THIS POINT.

23 MR. DELGADO, MS. HUDGINS.

24 MS. HUDGINS: THANK YOU, YOUR HONOR. IT'S ME
25 THIS MORNING.

1 THE DEFENSE CALLS MARVIN DAWSON, YOUR HONOR.

2 MARVIN DAWSON, AFTER BEING DULY SWORN, TESTIFIED AS
3 FOLLOWS:

4 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR FULL
5 NAME FOR THE RECORD.

6 THE WITNESS: MARVIN H. DAWSON, JR., KNOWN ALSO
7 AS MICKEY DAWSON.

8 DIRECT EXAMINATION:

9 BY MS. HUDGINS

10 Q GOOD MORNING, MR. DAWSON.

11 A GOOD MORNING.

12 Q MR. DAWSON, CAN YOU TELL THIS JURY WHAT YOU DO FOR A
13 LIVING, SIR?

14 A I AM A FORENSIC DOCUMENT EXAMINER, MANY TIMES CALLED
15 A HANDWRITING EXPERT.

16 Q AND TELL US WHAT A FORENSIC DOCUMENT EXAMINER OR A
17 HANDWRITING EXPERT IS, TELL US A LITTLE BIT ABOUT
18 WHAT THAT IS.

19 A A DOCUMENT EXAMINER WILL -- MANY TIMES IS INVOLVED IN
20 CASES INVOLVING HANDWRITING, HANDPRINTING,
21 TYPEWRITING, MECHANICAL IMPRESSION, PAPER INKS, ET
22 CETERA. ANYTHING BASICALLY DEALING WITH THE ENTRY OR
23 MARK OR PROBLEM DEALING WITH DOCUMENTS.

24 PROBABLY ABOUT 70 PERCENT, 75 PERCENT OF OUR
25 WORKLOAD DOES DEAL WITH HANDWRITING, HANDPRINTING.

1 Q HOW LONG HAS HANDWRITING ANALYSIS BEEN IN EXISTENCE?

2 A AS WE WOULD KNOW IT TODAY IN OUR SYSTEM, SINCE THE
3 LATE 1800S.

4 Q RECOGNIZED SCIENTIFIC METHOD?

5 A YES. IT'S A COMBINATION OF SCIENCE AND ART, OF
6 COURSE.

7 Q AND WHAT, IF ANY, ORGANIZATIONS OR PROFESSIONAL
8 BOARDS ARE THERE THAT GOVERN HANDWRITING EXPERTS, THE
9 FORENSIC DOCUMENT EXAMINERS?

10 A THE BOARD RECOGNIZED BY MOST OF THE JUDICIAL SYSTEM
11 IS THE AMERICAN BOARD OF FORENSIC DOCUMENT EXAMINERS.

12 Q AND MAY I INTERRUPT YOU FOR A MINUTE THERE. ARE YOU
13 A MEMBER OF THAT BOARD?

14 A YES. I AM BOARD CERTIFIED, CERTIFIED BY THE AMERICAN
15 BOARD OF FORENSIC DOCUMENT EXAMINERS. MY
16 CERTIFICATION NUMBER IS 251.

17 THERE IS ALSO THE AMERICAN SOCIETY OF QUESTIONED
18 DOCUMENT EXAMINERS. I AM A MEMBER OF THAT; THE
19 AMERICAN ACADEMY OF FORENSIC SCIENCES, I'M A MEMBER
20 OF THE DOCUMENT SECTION, AND THE SOUTHEASTERN
21 ASSOCIATION OF FORENSIC SCIENCES.

22 Q NOW, THESE BOARDS AND THESE ORGANIZATIONS THAT YOU
23 TOLD THE JURY ABOUT, WHAT DO THEY DO? WHAT'S THEIR
24 PURPOSE?

25 A THE PRIMARY PURPOSE OF THE AMERICAN BOARD, THE

1 CERTIFYING ORGANIZATION, IS TO ENSURE THAT THE PROPER
2 PROTOCOL, TRAINING IS AVAILABLE FOR, AND AS PART OF A
3 FORENSIC DOCUMENT EXAMINER'S EXPERIENCE, AND ALSO TO
4 MAINTAIN CONTINUING EDUCATION CREDIT TO ENSURE THAT
5 PROPER PROTOCOL AND EXPERIENCE IS WITHIN THEIR
6 MEMBERSHIP.

7 Q AND WHAT IS THE PURPOSE OF ESTABLISHING PROPER
8 PROTOCOL?

9 A CONSISTENCY, THAT YOU WOULD HAVE RELIABLE,
10 PROFESSIONAL DOCUMENT EXAMINERS WHO ARE GOOD AT THEIR
11 WORK.

12 Q AND ARE YOU AWARE OF TREATISES OR ARTICLES OR BOOKS
13 THAT HAVE BEEN WRITTEN ABOUT THE SCIENCE OF FORENSIC
14 DOCUMENT EXAMINATION?

15 A YES. THERE ARE PROBABLY A HALF A DOZEN PRIMARY
16 BOOKS. APPROXIMATELY SEVEN, 8,000 RESEARCH PAPERS ON
17 FILE.

18 Q AND MR. DAWSON, HAVE YOU TESTIFIED AS A FORENSIC
19 DOCUMENT EXAMINER IN THE PAST?

20 A YES, MANY TIMES, IN STATE, FEDERAL, MUNICIPAL COURTS,
21 BOARDS, HEARINGS, COURT MARTIALS.

22 Q HAVE YOU, IN FACT, TESTIFIED ON BEHALF OF THE STATE
23 IN VARIOUS CASES?

24 A MANY TIMES, FOR APPROXIMATELY 28 YEARS OF MY STATE
25 SERVICE, YES.

1 Q HAVE YOU, IN FACT, TESTIFIED FOR THE STATE IN
2 LEXINGTON WHERE KNOX MCMAHON, MR. MCMAHON, WAS DEPUTY
3 SOLICITOR?

4 A I HAVE IN YEARS PAST ON OCCASION, YES.

5 MS. HUDGINS: YOUR HONOR, AT THIS POINT, WE
6 WOULD OFFER MR. DAWSON AS AN EXPERT IN FORENSIC DOCUMENT
7 EXAMINATION.

8 MR. MCMAHON: NO QUESTIONS.

9 THE COURT: YOU MAY PROCEED ON THAT BASIS.

10 MS. HUDGINS: THANK YOU, YOUR HONOR.

11 BY MS. HUDGINS

12 Q MR. DAWSON, WHY IS HANDWRITING -- THROUGH YOUR
13 SCIENCE AS A HANDWRITING EXPERT, WHY IS HANDWRITING
14 IDENTIFIABLE TO AN INDIVIDUAL? WHY IS THAT?

15 A BASICALLY, WHEN WE FIRST START AS YOUNG STUDENTS IN
16 SCHOOL, WE LEARN -- WE'RE GIVEN A COPY BOOK THAT OUR
17 BOARD OF EDUCATION SELECTS, A PARTICULAR STYLE, A
18 COPY BOOK.

19 WE START PRINTING, HANDPRINTING, AND THEN WE
20 START CONNECTING THE PRINTED LETTERS INTO A CURSIVE
21 STYLE, IF YOU WOULD.

22 WE PRETTY MUCH MAINTAIN THAT UNTIL OUR LATE
23 TEENS OR EARLY 20S. THAT'S WHEN A DOCUMENT EXAMINER
24 SAYS THE HANDWRITING MATURES, PRETTY MUCH. THAT'S
25 NOT A MENTAL OR EMOTIONAL MATURITY, BUT IT MEANS WE

1 HAVE OUR OWN HABITS.

2 HANDWRITING IS IDENTIFIABLE TO ONE PERSON AND
3 ONE PERSON ONLY BECAUSE OF THE WAY WE DEVIATE.

4 WE MAY CHANGE OUR -- WE MAY LIKE THE WAY A
5 PARENT OR SIBLING OR SOMEONE DOES SOMETHING, OR WE
6 BECOME SLOPPY. INSTEAD OF MAINTAIN PROPER HEIGHT
7 RATIOS, UPPER CASE, LOWER CASE, WE MAY DEVIATE.

8 WE DEVELOP WHAT WE CALL SIGNIFICANT
9 SIMILARITIES. THIS IS TO AN INDIVIDUAL'S STYLE OF
10 WRITING.

11 WE LOOK FOR THESE INDIVIDUAL SIGNIFICANT
12 SIMILARITIES WHEN WE APPROACH A PROBLEM FOR
13 IDENTIFICATION OR ELIMINATION TO DETERMINE IF A
14 SIGNATURE IS GENUINE OR NONGENUINE. SO IT'S A MATTER
15 OF HOW WE DEVIATE FROM OUR COPYBOOK DESIGN, AND THE
16 DEVIATION IS UNIQUE TO THAT WRITER AND THAT WRITER
17 ONLY.

18 Q MR. DAWSON, WERE YOU ASKED TO EXAMINE SOME DOCUMENTS
19 IN THIS CASE?

20 A YES, I WAS.

21 Q AND BY WHOM WERE YOU ASKED?

22 A BY THE LAW FIRM OF MR. DELGADO.

23 Q AND YOU HAVE TALKED WITH ME BEFORE?

24 A YES. YOU HAVE BEEN MY CONTACT SINCE THEN.

25 Q AND AT THIS POINT, I'D LIKE TO SEE IF YOU RECOGNIZE

1 SOMETHING THAT'S BEEN MARKED AS DEFENSE EXHIBIT NO. 5
2 FOR IDENTIFICATION, I BELIEVE.

3 MR. DAWSON, DO YOU RECOGNIZE THIS DOCUMENT?

4 A YES, I DO.

5 Q WHAT IS THAT DOCUMENT? DON'T TELL US WHAT'S ON THE
6 DOCUMENT. JUST TELL US WHAT IT IS.

7 A DEFENSE EXHIBIT NO. 5 IS A CHART I'VE PREPARED.
8 THESE ARE ENLARGEMENTS OF VARIOUS SIGNATURES I'VE
9 EXAMINED.

10 Q AND WHERE DID YOU RECEIVE THOSE SIGNATURES FROM?

11 A FROM YOUR OFFICE.

12 MS. HUDGINS: YOUR HONOR, AT THIS TIME WE WOULD
13 MOVE TO ADMIT DEFENSE EXHIBIT NO. 5 INTO EVIDENCE.

14 MR. MCMAHON: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 5 WAS
17 ADMITTED INTO EVIDENCE.)

18 BY MS. HUDGINS

19 Q NOW, MR. DAWSON, LET'S TALK ABOUT WHAT ITEMS WERE
20 SUBMITTED TO YOU FOR EXAMINATION, AND LET'S JUST GO
21 THROUGH IT STARTING WITH -- CAN YOU SEE THAT?

22 A I REALLY --

23 Q DO YOU HAVE A COPY HERE?

24 A YES, I CAN REFERENCE THAT.

25 Q OKAY. IF WE START WITH WHAT'S LISTED AS ITEM NUMBER

1 ONE, I BELIEVE --

2 A YES, MA'AM.

3 Q -- WHAT IS THAT?

4 A ITEM NUMBER ONE WAS SUBMITTED TO ME AS A PHOTOCOPY OR
5 A VERIFAX COPY OF A DOCUMENT PURPORTED TO BE A
6 PAWNSHOP TICKET, AND IT WAS SUBMITTED TO ME AS
7 BEARING A PURPORTED SIGNATURE OF EDWARD E.
8 FRIEBURGER.

9 Q AND BEAR WITH ME FOR ONE MOMENT. I WANT TO SHOW YOU
10 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 22.

11 MR. DAWSON, LET ME SHOW YOU WHAT'S BEEN MARKED
12 AS STATE'S EXHIBIT NO. 22 AND SEE IF YOU CAN IDENTIFY
13 THAT?

14 A THIS IS THE DOCUMENT I REFERENCED AS ITEM NUMBER ONE.
15 IT'S A DOCUMENT I EXAMINED. IT'S ALSO REFERRED TO AS
16 A QUESTIONED SIGNATURE OR A QUESTIONED DOCUMENT.

17 Q OKAY. SO THIS IS WHAT YOU REFER TO AS A QUESTIONED
18 DOCUMENT --

19 A YES.

20 Q -- OR A QUESTIONED SIGNATURE?

21 A THAT IS CORRECT.

22 Q AND THAT WOULD BE THIS SIGNATURE RIGHT HERE?

23 A THAT'S CORRECT, YES..

24 Q AND CAN YOU TELL US WHAT THAT IS? WHAT NAME IS BORNE
25 OUT BY THAT SIGNATURE?

1 A IT IS EDWARD E. FRIEBURGER.

2 Q OKAY. AND AGAIN, WHAT IS THIS DOCUMENT?

3 A THAT WAS SUBMITTED TO ME AS AN OFFICE DOCUMENT FROM A
4 PAWNSHOP.

5 Q DO YOU RECALL WHAT PAWNSHOP?

6 A I BELIEVE IT WAS CAPITAL LOAN IN COLUMBIA, SOUTH
7 CAROLINA.

8 Q AND THAT WOULD BE NUMBER -- ITEM ONE, YOUR QUESTIONED
9 SIGNATURE?

10 A THAT'S CORRECT.

11 Q OKAY. TELL THE JURY, IF YOU WILL, A LITTLE BIT ABOUT
12 THE DIFFERENCE BETWEEN A QUESTIONED SIGNATURE AND A
13 KNOWN SIGNATURE.

14 A IN CASES INVOLVING COMPARISONS, CASES SUBMITTED AS
15 BEARING A QUESTIONED ENTRY, AND I'LL DIRECT THIS
16 STRICTLY TO HANDWRITING FOR PURPOSES OF THIS
17 CONVERSATION, THERE'S A QUESTIONED SIGNATURE, IS IT
18 AUTHENTIC, IS IT GENUINE? DID A PARTICULAR
19 INDIVIDUAL OR PERSON WRITE THIS AS THEIR SIGNATURE?
20 THAT'S A QUESTIONED SIGNATURE. THERE'S SOME QUESTION
21 ABOUT THE AUTHENTICITY OF IT.

22 KNOWN SIGNATURES, THERE ARE TWO TYPES OF KNOWN
23 STANDARDS OR EXEMPLARS. THOSE ARE REQUESTED AND
24 COLLECTED.

25 REQUESTED EXEMPLARS ARE SIGNATURES THAT YOU GO

1 OUT INTO THE PERSON'S WORK OR SOCIAL COMMUNITY AND
2 OBTAIN SIGNATURES THEY HAVE PREPARED IN THE NORMAL
3 COURSE OF BUSINESS.

4 REQUESTED EXEMPLARS ARE WHERE WE SIT SOMEONE
5 DOWN AND SAY "WRITE YOUR SIGNATURE FOR ME". THERE'S
6 A PROCEDURE YOU GO THROUGH TO OBTAIN THOSE STANDARDS
7 AND SPECIMENS.

8 THE REASON FOR THIS IS TO GET A NUMBER OF, AND A
9 WIDE VARIATION OF, THAT PERSON'S WRITING TO SEE THEIR
10 HABITS AND VARIATIONS.

11 NO PERSON WRITES THE SAME NAME TWICE. THERE'S A
12 NATURAL VARIATION THERE. WHAT I HAVE HERE IS A
13 COMBINATION OF COLLECTED AND QUESTIONED SIGNATURES
14 RANGING FROM 1961 THROUGH 2002.

15 THESE ARE ONLY A FEW OF THE SIGNATURES ACTUALLY
16 EXAMINED. I JUST SHOWED THESE FOR THE PURPOSE OF
17 PUTTING THEM ON THIS CHART TO BETTER DEMONSTRATE MY
18 TESTIMONY.

19 Q SO HERE YOU HAVE QUESTIONED, AND YOU HAVE THIS
20 SIGNATURE FROM THE CAPITAL LOAN PAWN SHOP. HERE YOU
21 HAVE KNOWN, QUESTIONED, AND THESE ARE KNOWN?

22 A THAT'S CORRECT.

23 Q LET'S GO THROUGH EACH OF THESE KNOWN SIGNATURES --

24 A YES, MA'AM.

25 Q -- STARTING WITH ITEM NUMBER FOUR, IF YOU WILL,

1 MR. DAWSON.

2 A ITEM NUMBER FOUR IS A PHOTOCOPY OF BERRY'S LOAN AND

3 ARMY STORE TICKET FOR A RAZOR DATED FEBRUARY 16TH,

4 1961. IT WAS SUBMITTED TO ME AS BEARING A KNOWN

5 EDWARD E. FRIEBURGER SIGNATURE.

6 Q OKAY. AND THAT'S FROM BERRY'S LOAN?

7 A THAT'S MY UNDERSTANDING, YES, MA'AM.

8 Q BEAR WITH ME JUST ONE MINUTE. LET ME FIND WHAT'S

9 BEEN MARKED, I BELIEVE AS STATE'S NUMBER 18.

10 (PAUSE).

11 MR. DAWSON, I SHOW YOU WHAT'S BEEN MARKED AS

12 STATE'S EXHIBIT NO. 18. DO YOU RECOGNIZE THAT?

13 A YES, I DO.

14 Q AND WHAT IS THAT?

15 A THAT IS WHAT I REFERENCED AS ITEM NUMBER FOUR OR A

16 KNOWN SIGNATURE. THAT WAS THE REPRODUCTION OF THE

17 DOCUMENT I JUST READ.

18 Q OKAY. SO WHERE DOES THIS SIGNATURE THAT'S MARKED AS

19 ITEM NUMBER FOUR ON YOUR CHART, WHERE DOES THIS

20 SIGNATURE COME FROM, MR. DAWSON?

21 A FROM THE DOCUMENT IN YOUR HAND ON THE LINE NOTED

22 "SIGNATURE".

23 Q OKAY. AND YOU CAN TELL -- IT SAYS BERRY'S LOAN AND

24 ARMY STORE AT THE TOP?

25 A THAT'S CORRECT.

1 Q AND THE SIGNATURE APPEARS AT THE BOTTOM?

2 A YES, MA'AM.

3 Q AND THIS IS ADDITIONAL FORM SEVEN?

4 A YES, MA'AM.

5 Q WHAT I'D LIKE TO DO FIRST IS JUST GO THROUGH THESE
6 KNOWN, AND THEN WE'LL COME BACK AND TALK ABOUT THE
7 RESULTS OF YOUR EXAMINATION.

8 ITEM NUMBER FIVE, MR. DAWSON, CAN YOU TELL THE
9 JURY ABOUT ITEM NUMBER FIVE?

10 A ITEM NUMBER FIVE WAS SUBMITTED TO ME AS A PHOTOCOPY
11 OF FREED'S JEWELRY AND LUGGAGE TICKET FOR A RADIO
12 THAT WAS STAMPED FEBRUARY 25TH, 1961 AND WAS
13 SUBMITTED TO ME AS BEARING A KNOWN SIGNATURE OF
14 EDWARD FRIEBURGER.

15 Q AND MR. DAWSON, I'M GOING TO SHOW YOU WHAT'S BEEN
16 MARKED AS STATE'S EXHIBIT NO. 20. MR. DAWSON, DO YOU
17 RECOGNIZE STATE'S 20?

18 A YES, I DO.

19 Q OKAY. AND WHAT IS STATE'S 20, MR. DAWSON?

20 A STATE'S 20 IS MY ITEM FIVE. IT WAS THE ITEM I JUST
21 REFERENCED.

22 Q OKAY. AND THIS SIGNATURE THAT APPEARS ON YOUR CHART,
23 ITEM NUMBER FIVE, WHERE DOES THAT COME FROM,
24 MR. DAWSON?

25 A FROM THE DOCUMENT YOU'RE HOLDING, THE ENLARGEMENT.

1 Q OKAY. WHICH IS FROM WHERE?

2 A FREED'S --

3 Q OKAY.

4 A -- JEWELRY AND LUGGAGE.

5 Q SO THE SIGNATURE THAT APPEARS ON THE FREED'S LUGGAGE,

6 FORM SEVEN, IS LISTED AS ITEM NUMBER FIVE ON YOUR

7 CHART?

8 A THAT'S CORRECT.

9 Q OKAY. HOW ABOUT ITEM NUMBER NINE, MR. DAWSON?

10 A ITEM NUMBER NINE IS A ONE-PAGE PHOTOCOPY OF A GUEST

11 REGISTER DATED THURSDAY, MARCH 2ND, 1961. IT WAS

12 SUBMITTED TO ME AS BEARING A KNOWN SIGNATURE OF

13 EDWARD E. FRIEBURGER.

14 Q AND I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

15 NO. 35. DO YOU RECOGNIZE STATE'S 35, MR. DAWSON?

16 A YES, I DO.

17 Q AND WHAT IS STATE'S 35?

18 A THE ENLARGEMENT OF THE DOCUMENT I JUST REFERENCED,

19 AND THAT'S A REGISTRATION -- I GUESS REGISTER 1961,

20 AND IT BEARS A SIGNATURE OF EDWARD E. FRIEBURGER.

21 Q AND YOU HAVE THAT DOCUMENT. ABOUT HOW MANY LINES

22 DOWN?

23 A ELEVEN LINES DOWN.

24 Q WHAT APPEARS ABOVE THE NAME EDWARD FRIEBURGER?

25 A THERE'S A HANDWRITTEN ENTRY R.A. 16685305, IT APPEARS

1 TO BE. TO THE RIGHT IT HAS FORT JACKSON, SOUTH
2 CAROLINA.

3 Q AND ITEM NUMBER NINE ON YOUR CHART, WHERE DOES THAT
4 COME FROM?

5 A THE DOCUMENT ENLARGEMENT YOU'RE HOLDING.

6 Q OKAY. CAN YOU TELL THE JURY ABOUT ITEM NUMBER 29?

7 A ITEM NUMBER 29 IS A REPORT CARD OF JOHN FRIEBURGER,
8 AND THE TEACHER WAS -- IT WAS MS. TOUPULO (PHONETIC),
9 AND IT WAS DATED 1970 TO '71.

10 Q OKAY. AND THE DATE AGAIN?

11 A 1970 THROUGH '71.

12 Q LET ME GO --

13 A IT'S A SCHOOL YEAR. IT'S A REPORT CARD.

14 Q OKAY. LET'S TALK ABOUT DATES. WHY ARE DATES
15 IMPORTANT? BECAUSE YOU MENTIONED EARLIER THAT YOU
16 HAVE A SPAN FROM '61 TO 2002. WHY IS THAT IMPORTANT,
17 MR. DAWSON?

18 A DATES ARE IMPORTANT BECAUSE IT SHOWS THE RANGE OF A
19 PERSON'S WRITING, IF THEY CHANGE THE WRITING VERY
20 MUCH, AND ALSO THE DATE 1961 IS IMPORTANT BECAUSE
21 THAT IS AROUND THE SAME TIME AS THE SIGNATURE IN
22 QUESTION, AND IT SHOWS CONTEMPORARY SIGNATURES WITH
23 THE DOCUMENT IN QUESTION

24 Q LET'S TALK ABOUT ITEM NUMBER 31. TELL THE JURY ABOUT
25 ITEM NUMBER 31.

1 A ITEM 31 ALSO BEARS EDWARD FREIBURGER'S SIGNATURE ON
2 HIS, APPARENTLY, CHILD'S REPORT CARD. IT'S DATED
3 '73, '74.

4 Q AND ITEM NUMBER 34, MR. DAWSON?

5 A THIRTY-FOUR IS ALSO A REPORT CARD BEARING THE
6 SIGNATURE OF EDWARD E. FRIEBURGER IN THE SCHOOL YEAR
7 '76 THROUGH '77.

8 Q AND YOU'VE GOT TWO ITEMS LISTED AS ITEM NUMBER TEN.

9 A ITEM NUMBER TEN, JULY 2002, REPRESENTS
10 MR. FREIBURGER'S SIGNATURE. I TOOK THOSE EXEMPLARS
11 FROM HIM IN YOUR LAW OFFICE. I ASKED HIM TO SIGN HIS
12 SIGNATURE ON INDIVIDUAL CARDS, WHICH HE DID. I USED
13 THOSE TO COMPARE TO THE SIGNATURES RANGING AS FAR
14 BACK AS 1961.

15 Q NOW, YOU MENTIONED EXEMPLARS. WOULD YOU PLEASE TELL
16 THE JURY WHAT HANDWRITING EXEMPLARS ARE?

17 A EXEMPLARS, STANDARDS, ALL THE SAME THING. IT'S KNOWN
18 SIGNATURES, AUTHENTIC SIGNATURES, SIGNATURES WHICH
19 HAVE BEEN AUTHENTICATED.

20 A DOCUMENT EXAMINER, WHEN A DOCUMENT EXAMINER
21 RECEIVES A CASE AND YOU HAVE KNOWN SIGNATURES, ONE OF
22 THE FIRST THINGS A DOCUMENT EXAMINER DOES IS TO
23 EXAMINE ALL OF THE SIGNATURES TO MAKE SURE THEY WERE,
24 INDEED, PREPARED BY A COMMON AUTHOR.

25 WHEN YOU HAVE AUTHENTICATED THOSE SIGNATURES

1 WITH A COMMON AUTHORSHIP, THEN YOU COMPARE THEM TO
2 WHATEVER QUESTIONED SIGNATURES YOU MAY HAVE.

3 Q DID YOU, IN FACT, COMPARE THE KNOWN SIGNATURES IN
4 ITEMS FOUR, FIVE, NINE, 29, 31, 34, TEN AND TEN?

5 A YES. THOSE AND OTHERS I HAD, AS WELL.

6 Q AND WHAT WAS YOUR OPINION IN REGARD TO THOSE KNOWN
7 SIGNATURES, MR. DAWSON?

8 A THEY WERE PREPARED BY A COMMON AUTHOR.

9 Q AND THAT COMMON AUTHOR BEING?

10 A EDWARD E. FRIEBURGER.

11 Q AND ITEM NUMBER TEN AND ITEM NUMBER TEN, TELL THE
12 JURY AGAIN WHEN THAT SIGNATURE WAS TAKEN.

13 A ITEM NUMBER TEN, I TOOK THOSE REQUESTED SIGNATURES
14 FROM MR. FRIEBURGER JULY 26TH, 2002.

15 Q SO YOUR OPINION IS THAT ALL OF THESE ITEMS WERE MADE
16 BY THE SAME AUTHOR, THAT BEING EDWARD FRIEBURGER?

17 A THAT IS CORRECT, YES.

18 Q NOW, LET'S TALK ABOUT THE QUESTIONED SIGNATURE THAT
19 WAS SUBMITTED TO YOU. DID YOU HAVE AN OPPORTUNITY TO
20 EXAMINE IT?

21 A YES, I DID.

22 Q AND TELL THE JURY WHAT -- TELL THEM ABOUT YOUR
23 COMPARISON AND TELL THEM WHY COMPARISONS ARE
24 IMPORTANT, IF YOU WOULD.

25 A I COMPARED THE QUESTIONED SIGNATURE WITH THE KNOWN

1 SIGNATURES, AND I LOOK FOR SIGNIFICANT SIMILARITIES
2 OR DIFFERENCES.

3 IN THIS PARTICULAR CASE, THERE WERE SIGNIFICANT
4 DIFFERENCES. THERE WERE CERTAIN WAYS THE LETTER,
5 LETTER FORMS, LETTER COMBINATIONS WERE MADE, AND THE
6 QUESTIONED, WHICH WERE DIFFERENT FROM THE LETTER,
7 LETTER FORMS. AND LETTER COMBINATIONS AND THE KNOWN.

8 Q SIGNIFICANT DIFFERENCES BETWEEN THIS, ITEM NUMBER
9 ONE, AND THE KNOWN SIGNATURES?

10 A YES, MA'AM; THAT'S CORRECT.

11 Q TELL THIS JURY ABOUT THOSE SIGNIFICANT DIFFERENCES,
12 IF YOU WILL, MR. DAWSON, SPECIFICALLY, AND I CAN
13 POINT, IF YOU NEED ME TO.

14 A I MAY BE ABLE TO DO IT LIKE THIS.

15 THE FIRST THING WE LOOK AT ON THE QUESTIONED
16 SIGNATURE IS THAT WE SEE THAT THE UPPER CASE "E"
17 SLANTS BACK TO THE LEFT. ALL THE KNOWN WRITINGS, THE
18 UPPER CASE "E" WILL SLANT TO THE RIGHT AND RIGHT OVER
19 IN THE "D" FORM.

20 WE'LL ALSO SEE THAT IN THE QUESTIONED THAT THE
21 "E, D" THESE TWO LETTERS ARE APPROXIMATELY THE SAME
22 HEIGHT RATIO, BOTH BEING UPPERCASE EXTENDERS, IF YOU
23 WOULD.

24 WE NOTICE THAT IN THE KNOWN, THE "D" IS LARGER
25 THAN THE "E". THIS IS A DIFFERENCE IN HEIGHT RATIO.

1 IT'S AN INDIVIDUAL CHARACTERISTIC.

2 WE WILL ALSO NOTE THAT THE "E", THE INITIAL
3 STROKE STARTS AT MAYBE ONE O'CLOCK AND CONTINUES
4 AROUND IN A VERY ROUNDED FORM.

5 THE MIDDLE INITIAL "E" IS THE SAME. THE INITIAL
6 STROKE STARTS AROUND ONE O'CLOCK, CONTINUES AROUND IN
7 A ROUNDED FORM.

8 THEN YOU NOTE IN THE KNOWN MATERIAL, THE KNOWN
9 EXEMPLARS, THE INITIAL STROKE OF "E" STARTS INSIDE
10 AND LOOPS IN THE INITIAL STROKE, BOTH IN THE "E" IN
11 EDWARD AND THE MIDDLE INITIAL OF "E" IN THE "ED", AS
12 WELL.

13 SO THIS WRITER HAS A HABIT OF LOOPING THE
14 INITIAL STROKE OF "E" FROM 1961 TO THE YEAR 2000.

15 Q AND THESE ARE THE KNOWN WRITING OF EDWARD FRIEBURGER?

16 A YES, MA'AM. CONTINUING, EVEN THOUGH THIS IS A
17 PHOTOCOPY, YOU CAN SEE THAT THERE APPEARS TO BE A PEN
18 STOP BETWEEN THE "W" AND THE "A" AND A PEN LIFT.

19 THERE IS ALSO A PEN LIFT BETWEEN THE "R" AND THE
20 "D" IN EDWARD. WE DID NOT NOTE ANY PEN STOPS OR PEN
21 LIFTS IN THE KNOWN WRITING IN ANY OF THE SIGNATURES I
22 HAD.

23 THE INITIAL STROKE OF THE "D", THE TERMINAL
24 STROKE OF THE "D", CAME DOWN THE BASELINE AS PRETTY
25 MUCH STRAIGHT --

1 Q OKAY. LET ME INTERRUPT YOU THERE. WHEN YOU SAY
2 "TERMINAL STROKE", TELL US EXACTLY WHAT YOU'RE
3 TALKING ABOUT.

4 A I'M SORRY, THAT'S JARGON. WHERE THE STROKE ENDS, THE
5 LETTER STROKE ENDS, YOU HAVE THE INITIAL STROKE WHERE
6 YOU PUT THE PEN DOWN AND START MAKING A LETTER FORM.

7 THIS TERMINAL STROKE IS THE ENDING STROKE OF A
8 LETTER FORM. IN THIS CASE, IT'S WHERE THE STROKE OF
9 THE "E" COMES DOWN TO THE BASELINE AND LIFT OF THE
10 PEN.

11 Q AND THESE WOULD BE CONSIDERED CHARACTERISTICS,
12 DIFFERENTIATING CHARACTERISTICS?

13 A IN THIS PARTICULAR SIGNATURE, THAT'S CORRECT.

14 Q NOW, BEFORE YOU GO ON FARTHER IN THE SPECIFIC
15 DIFFERENCES BETWEEN THE QUESTIONED AND THE KNOWN,
16 LET'S JUST TALK ABOUT SOME OF THE GENERAL DIFFERENCES
17 THAT, AS A HANDWRITING EXPERT YOU CAN OBSERVE, JUST
18 GENERAL CHARACTERISTICS OF LETTER FORMS.

19 A YOU WOULD LOOK FOR HEIGHT RATIOS.

20 Q NOW, A HEIGHT RATIO WOULD BE -- EXPLAIN IT.

21 A UPPER CASE LETTERS AND LOWER CASE LETTERS. A CAPITAL
22 LETTER WOULD NORMALLY GO UP TO A CERTAIN HEIGHT,
23 DEPENDS ON THE COPYBOOK OF STYLE, ROUGHLY TWICE THE
24 HEIGHT OF THE LOWER CASE LETTER, OR WE CONSIDER AN
25 UPPER EXTENDER.

1 WE LIKE THE TOP LOOP OF THE "B" THAT GOES UP, AN
2 "L" OR AN "H", THAT'S AN UPPER EXTENDER. NORMALLY,
3 THAT GOES TO THE SAME HEIGHT AS YOUR CAPITAL LETTER.

4 SO -- AND THEN YOU HAVE YOUR LOWER CASE LETTERS,
5 SO THAT'S A HEIGHT RATIO BETWEEN WHERE THE TOPS OF
6 THOSE LETTERS, LETTER FORMS END.

7 Q AND IN YOUR EXAMINATION, HAVE YOU NOTICED SIGNIFICANT
8 DIFFERENCES BETWEEN THE QUESTIONED AND THE KNOWN IN
9 REGARDS TO HEIGHT RATIOS?

10 A IN CERTAIN LETTERS, YES.

11 Q CAN YOU JUST DEMONSTRATE THAT FOR THE JURY?

12 A YES. SUCH AS I DID AWHILE AGO WITH THE UPPER CASE
13 "E" AND "D" AT APPROXIMATELY THE SAME HEIGHT IN THE
14 QUESTIONED. THE KNOWN, THE "E" IS LARGER THAN THE
15 "D". THIS IS THE HABIT OF THIS WRITER.

16 Q SO THE "D" IS SMALLER IN THE KNOWN --

17 A IN THE AIR.

18 Q -- THAN THE QUESTIONED?

19 A ALSO, IF YOU'LL NOTICE, THE "D", TERMINAL "D", IF YOU
20 WOULD, THE LAST "D" IN EDWARD.

21 Q TERMINAL?

22 A YES. COMPARED TO THE MIDDLE INITIAL "E", IT'S THE
23 SAME HEIGHT RATIO. HOWEVER --

24 Q SO IN OTHER WORDS, THEY'RE THE SAME HEIGHT?

25 A UH-HUH.

1 Q IN THE QUESTIONED?

2 A HOWEVER -- IN THE QUESTIONED. IN THE KNOWN, AS YOU
3 COME DOWN, YOU WILL FIND THAT THE "D" IS SMALLER THAN
4 THE "E" WHEN YOU USE THIS COMBINATION COMING DOWN.

5 Q IT'S THE LAST "D" IN EDWARD, MIDDLE INITIAL "E"?

6 A IN 1961, THAT WAS A WRITING HABIT, YES, MA'AM.

7 Q OKAY. TELL US A LITTLE BIT MORE ABOUT THE
8 DIFFERENCES YOU NOTICED, MR. DAWSON.

9 A ALSO, THE MIDDLE INITIAL "E" IS VERY ROUNDED IN
10 LETTER FORM, SORT OF SHORT AND SQUATTY, IF YOU WOULD,
11 AND IT IS A DRAWN LETTER, VERY SLOWLY DRAWN, VERY
12 SLOWLY EXECUTED.

13 IT DOES NOT HAVE A NATURALNESS OR FLUENCY TO IT.
14 IT DOES NOT FLOW.

15 THE MIDDLE INITIAL "E" IN THE KNOWN SIGNATURES
16 IS RATHER TALL, ELONGATED AND RATHER NARROW, NOT TO
17 MENTION THE LOOP DIFFERENCES WE DISCUSSED EARLIER, SO
18 YOU HAVE A LETTER DIFFERENCE BETWEEN THE QUESTIONED
19 AND THE KNOWN.

20 Q AND YOU TALKED ABOUT THIS EARLIER, BUT I WANT TO GO
21 BACK. YOU TALKED ABOUT ANGLE?

22 A YES, MA'AM.

23 Q CAN YOU JUST BRIEFLY MENTION THAT AGAIN BETWEEN THE
24 QUESTIONED AND THE KNOWN?

25 A YES. THE "E" IN EDWARD SLANTS TO THE LEFT AND AWAY

1 FROM THE "D". IN THE QUESTIONED AND IN THE KNOWN,
2 THE "E" AND "D" SLANT TOGETHER.

3 Q LET'S TALK ABOUT SOME OTHER NOTED DIFFERENCES, IF YOU
4 WILL.

5 A NO PUNCTUATION WAS NOTED AT THE "E". THIS WRITER
6 DOES USE PUNCTUATION BEHIND THE UPPER CASE, MIDDLE
7 INITIAL "E" AS YOU GO DOWN.

8 Q OKAY. SO THERE'S A PERIOD AFTER THE MIDDLE INITIAL
9 "E" IN THE KNOWN?

10 A IN THE KNOWN, YES, MA'AM.

11 Q AND NOT IN THE QUESTIONED?

12 A I DID NOT DETECT IT; THAT'S CORRECT.

13 Q OKAY.

14 A FRIEBURGER, WE'LL TALK ABOUT THE "F" VERY QUICKLY.
15 THE INITIAL STROKE LEADING INTO THE "F" STARTS DOWN
16 AROUND NINE O'CLOCK AND GOES UP TO AN ANGLE.

17 Q SO THAT'S WHEN YOU'RE -- WHEN THE PERSON IS SITTING
18 DOWN TO WRITE THE LETTER THAT YOU TALKED ABOUT THE
19 INITIAL STROKE, THE INITIAL STROKE IS WHAT?

20 A THE INITIAL STROKE IS WHEN YOU START THE LETTER FORM.
21 IT'S A STARTING POINT, A REFERENCE POINT.

22 Q THE FIRST PLACE YOUR PEN HITS ON THE PAPER?

23 A THAT'S CORRECT. AND GOING BACK TO THE QUESTIONED, IT
24 STARTS AROUND NINE O'CLOCK AND GOES UP AT A VERY
25 ACUTE ANGLE. THE "F" IN THE KNOWN SIGNATURES STARTS

1 UPWARD AND COMES DOWN, IF NOT GENERALLY HORIZONTALLY.
2 IT'S AN ENTIRELY DIFFERENT ANGLE, DIFFERENT BETWEEN
3 QUESTIONED AND KNOWN.

4 Q DIFFERENT "F"?

5 A YES.

6 Q OKAY.

7 A THE "F", THE PEAK OR APEX OF THE "F" IN THE
8 QUESTIONED IS TINTED, WHICH MEANS THE PEN HITS, GOES
9 UP AND COMES DOWN.

10 IN THE KNOWN, THERE'S A SLIGHT LOOP. THE PEN
11 STARTS A STROKE, COMES OVER TO THE TOP AND THEN LOOPS
12 AND COMES DOWN, SO IT'S A DIFFERENT LOOPING
13 ALTOGETHER. THAT'S HABIT. THAT'S INDIVIDUAL
14 CHARACTERISTICS.

15 THE "F" ALSO TERMINATES DOWN AND ENDS AT THE
16 BASELINE INTO WHEN IT'S IN A SIX O'CLOCK POSITION IN
17 THE QUESTIONED; STRAIGHT LINE, IT STOPS.

18 IN THE KNOWN, THE "F" COMES DOWN AND THEN MOVES
19 WITH A FLOURISH TO THE LEFT AND HAS AN EXTENSION TO
20 THE LEFT SIDE OF THE LETTER FORM.

21 IT HAS MORE FLOURISH IN THE 2002 SIGNATURES
22 WHERE IT CIRCLES BACK IN THE COUNTERCLOCKWISE
23 MOVEMENT.

24 THE CROSS BAR TO THE "F", IF YOU WOULD, IS
25 ACTUALLY THE INITIAL STROKE LEADING INTO THE "R" IN

1 THE QUESTIONED.

2 Q RIGHT THERE?

3 A THAT'S CORRECT. SO THE INITIAL STROKE IN THE "R",
4 THE CROSSBAR OF THE "R" STARTS ABOUT MIDLINE AND GOES
5 ACROSS IN THE QUESTIONED.

6 IN THE KNOWN, THE CROSSBAR TO THE "F" IS BY
7 ITSELF. IT GOES TO THE STAFF AND ENDS. THE INITIAL
8 STROKE OF THE "R" STARTS AT THE BASELINE AND GOES UP.
9 IT'S NOT CONNECTED IN THE LEAST BIT.

10 ANOTHER CHARACTERISTIC IN THE QUESTIONED IS THE
11 "R-E-I" IN FRIEBURGER, IT'S MORE OR LESS TRADITIONAL
12 LETTER FORMS. IT'S LEGIBLE. YOU CAN READ IT.

13 THIS WRITER JUST USED A SERIES OF TINTED LINES
14 FOR THE "R-E-I" LETTER FORMS. THEY REALLY ARE NOT
15 THAT LEGIBLE. THEY'RE NOT TRADITIONAL LETTER FORMS.
16 IT'S A HABIT OF JUST MAKING SEVERAL LITTLE TINTED
17 MOVES.

18 Q AND WHO IS THIS WRITER?

19 A MR. FRIEBURGER. ALSO, THE "G", THE LOWER EXTENDER
20 THAT WE TALKED ABOUT AWHILE AGO, IS TRIANGULAR AND
21 OPEN.

22 Q ON THE QUESTIONED?

23 A ON THE QUESTIONED. IN THE KNOWN, THE "G" QUESTION IS
24 MORE CLOSED AND ELONGATED. SO I EXAMINED THE
25 QUESTIONED NOTING -- AND THE EXAMINER COMPARED THE

1 QUESTIONED TO THE KNOWN AND NOTICED SIGNIFICANT
2 DIFFERENCES BETWEEN THE TWO. BASED UPON THAT, I
3 REACHED AN OPINION.

4 Q AND MR. DAWSON, AFTER EXAMINING THE KNOWN WITH THE
5 QUESTIONED, WHAT IS YOUR OPINION ABOUT ITEM NUMBER
6 ONE?

7 A AS COMPARED TO THE KNOWN?

8 Q AS COMPARED TO THE KNOWN SIGNATURES OF ED FRIEBURGER.

9 A THE AUTHOR OF THE KNOWN STANDARDS, 1961 THROUGH 2002,
10 DID NOT EXECUTED, DID NOT PREPARE OR WRITE, THE
11 EDWARD E. FRIEBURGER IN THE QUESTIONED DOCUMENT.

12 Q SO YOU EXCLUDE ED FRIEBURGER AS THE WRITER OF THIS?

13 A YES; THAT IS CORRECT.

14 Q AND WHEN I SAY "THIS", YOUR ITEM NUMBER ONE, THAT
15 CAME FROM WHAT'S MARKED AS STATE'S EXHIBIT NO. 22,
16 CORRECT?

17 A THAT'S CORRECT, YES.

18 Q AND THAT IS A PAWN SLIP FROM THE CAPITAL LOAN?

19 A THAT'S MY UNDERSTANDING, YES.

20 Q MR. DAWSON, I'D LIKE TO TALK WITH YOU A LITTLE BIT.
21 YOU HAD AN OPPORTUNITY TO EXAMINE NOT ONLY THESE
22 SIGNATURES, BUT YOU EXAMINED THIS DOCUMENT, ITEM
23 STATE'S EXHIBIT NO. 22, CORRECT?

24 A YES, I HAD AN OPPORTUNITY TO.

25 Q OKAY. DID YOU EXAMINE AN ORIGINAL?

1 A NO. I ASKED FOR AN ORIGINAL. I WAS INFORMED THE
2 ORIGINAL WAS NOT AVAILABLE.

3 Q LET'S TALK ABOUT SOME OF THE HANDWRITING.
4 SPECIFICALLY, IF YOU WILL LOOK UNDER -- DO YOU HAVE A
5 COPY OF THIS FORM?

6 A YES, I DO.

7 Q I'D LIKE YOU TO TALK A LITTLE BIT ABOUT UNDER WHERE
8 IT SAYS "SIZE".

9 A I'M SORRY, WOULD YOU REFERENCE THAT AGAIN?

10 Q ON THIS FORM SEVEN FROM THE CAPITAL LOAN COMPANY
11 WHERE IT SAYS SIZE --

12 A YES, MA'AM.

13 Q -- WHAT, IF ANYTHING, IS SIGNIFICANT ABOUT THAT?

14 A IT WOULD APPEAR THAT THE THREE AND TWO -- ONE OR THE
15 OTHER WAS WRITTEN OVER THE OTHER ONE. WITH A
16 PHOTOCOPY, I CANNOT TELL WHICH CAME FIRST, BUT THERE
17 IS AN OVERWRITING.

18 Q AN OVERWRITING. PLAINLY AND SIMPLY, WHAT'S AN
19 OVERWRITING?

20 A ONE NUMBER IS WRITTEN ON TOP OF THE OTHER.

21 Q LET'S TALK ABOUT -- YOU WERE ABLE TO FORM AN OPINION
22 ABOUT VARIOUS HANDWRITING ON THIS DOCUMENT. HOW MANY
23 DIFFERENT TYPES OF HANDWRITING APPEAR ON THIS
24 DOCUMENT?

25 A WELL, MY PRIMARY INTEREST WAS IN WHAT APPEARED TO BE

1 A SIGNATURE.

2 Q WHICH IS NOT THE SIGNATURE OF ED FRIEBURGER?

3 A THAT'S CORRECT. I DID NOTE THAT EVEN WITH THE

4 PHOTOCOPY, IT WOULD APPEAR TO BE TWO WRITERS ON THAT

5 DOCUMENT. THAT'S VERY OBVIOUS FROM THE TWO DIFFERENT

6 INKS.

7 Q NOW, LET'S TALK ABOUT THE TWO DIFFERENT INKS. TELL

8 US EXACTLY WHAT YOU'RE TALKING ABOUT.

9 A EVEN WITH THE PHOTOCOPY, YOU CAN SEE THE WIDTH OF THE

10 WRITING INSTRUMENT IS DIFFERENT. THE ENTRY OF BLUE

11 HERE AND THE ENTRY AT THE TOP UP HERE, THE "LEFT

12 WHEELER" OR SOMETHING APPEARED TO BE -- AND THE 43.90

13 APPEARS TO BE BY A COMMON AUTHOR.

14 Q WHAT IS THE AMOUNT?

15 A 43.98, MAYBE. I CAN'T SEE FROM HERE, I'M NOT SURE,

16 91, 94. IT'S VERY POORLY EXECUTED.

17 Q AND COMPARING THAT WITH OTHER HANDWRITING THAT

18 APPEARS ON THAT, WHAT WAS YOUR --

19 A THERE WOULD APPEAR TO BE TWO WRITERS, AND THEN I

20 COMPARED THIS WRITING WITH OTHER AVAILABLE WRITINGS.

21 Q MR. DAWSON, WERE YOU PROVIDED WITH OTHER DOCUMENTS TO

22 EXAMINE OTHER THAN THE ONES THAT WE'VE TALKED ABOUT

23 HERE TODAY?

24 A YES, MA'AM.

25 Q AND WHY DID YOU CHOOSE TO INCLUDE THESE DOCUMENTS TO

1 REFERENCE AND BASE YOUR OPINION ON IN YOUR REPORT?

2 A TO KEEP IT SIMPLE AND SHORT WITHOUT HAVING 40
3 DIFFERENT SIGNATURES UP THERE, THIS GIVES US A RANGE
4 BETWEEN 1961 AND 2002.

5 Q AND AGAIN, WHY IS THE DATE IMPORTANT?

6 A THE 1961 SIGNATURES ARE CONTEMPORANEOUS WITH THE
7 SIGNATURE IN QUESTION. ALSO, THIS PARTICULAR WRITER
8 SHOWS A CONSISTENCY IN THE LETTER FORMS FOR SOME 40
9 YEARS.

10 IT REALLY DOES NOT DEVIATE THAT MUCH EXCEPT FOR
11 A LITTLE CURL ON THE "F", LOWER EXTENDER OF THE "F".
12 BASICALLY, THE LETTER FORMS ARE THE SAME FOR 40
13 YEARS

14 Q WERE YOU ABLE TO -- WERE YOU ASKED TO EXAMINE SOME
15 OTHER DOCUMENTS FROM CAPITAL LOAN COMPANY,
16 MR. DAWSON?

17 A YES.

18 Q AND DID YOU FORM ANY OPINIONS ABOUT THOSE?

19 A YES. I WAS PROVIDED THREE PHOTOCOPY SHEETS OF WHAT
20 WOULD APPEAR TO BE OFFICE RECORDS FROM CAPITAL LOAN
21 FROM A SPIRAL NOTEBOOK.

22 Q AND WERE YOU ABLE TO FORM ANY OPINION ABOUT THOSE?

23 A YES. I NOTED CERTAIN LETTER SIMILARITIES FROM THE
24 QUESTIONED EDWARD E. FRIEBURGER WITH OTHER ENTRIES IN
25 CAPITAL LOAN'S NORMAL COURSE OF BUSINESS ENTRIES.

1 Q , BUT AS OPPOSED TO YOUR EXCLUSION BETWEEN THIS
2 SIGNATURE AND THE SIGNATURES OF ED FRIEBURGER, YOU
3 WEREN'T ABLE TO SAY, FOR INSTANCE, WHO WROTE EDWARD
4 E. FRIEBURGER, CORRECT?

5 A I COULD NOT IDENTIFY THE WRITER, NO.

6 Q YOU CAN, HOWEVER, EXCLUDE ED FRIEBURGER AS BEING THE
7 WRITER OF THIS SIGNATURE?

8 A YES. THERE'S NO QUESTION ABOUT THAT. I'VE
9 DEMONSTRATED THAT. IT'S NOT A COMMON AUTHORSHIP AT
10 ALL.

11 MS. HUDGINS: BEG THE COURT'S INDULGENCE ONE
12 MOMENT, YOUR HONOR.

13 (PAUSE).

14 THANK YOU, MR. DAWSON, I DON'T HAVE ANY FURTHER
15 QUESTIONS. PLEASE ANSWER ANY QUESTIONS THAT MR. MCMAHON
16 HAS.

17 THE COURT: CROSS-EXAMINATION, MR. SOLICITOR.

18 CROSS-EXAMINATION:

19 BY MR. MCMAHON

20 Q GOOD MORNING, MR. DAWSON.

21 A GOOD MORNING, SOLICITOR.

22 Q IT'S BEEN A WHILE.

23 A SIR, IT HAS, SIR.

24 Q ARE YOU STILL IN SPARTANBURG?

25 A YES, SIR. I'VE BEEN THERE ABOUT THREE YEARS.

- 1 Q AND THAT'S WHERE YOU BOTH LIVE AND WORK?
- 2 A THAT'S CORRECT, SIR.
- 3 Q HANDWRITING EXAMINATIONS, LIKE MOST FORENSIC SCIENCE,
- 4 IS PRECISE?
- 5 A THE FINAL RESULTS ARE PRECISE, YES, SIR, AS A RULE.
- 6 Q PRECISION IS IMPORTANT IN YOUR FIELD OF FORENSIC
- 7 SCIENCE?
- 8 A ACCURACY, YES, SIR.
- 9 Q OKAY, SURE. AND IF I USE THE WORD PRECISION,
- 10 ACCURACY, THAT'S -- I'M NOT QUESTIONING THE ACCURACY.
- 11 I DON'T MEAN IT LIKE THAT, BUT YOU DO MICROSCOPIC
- 12 EXAMINATIONS AND STUFF SUCH AS THAT?
- 13 A YES, SIR.
- 14 Q WHEN YOU SAY THAT YOU HAVE KNOWN SAMPLES IN THIS
- 15 CASE, FOR EXAMPLE, THE KNOWN FROM '61 AT BERRY'S AND
- 16 FREED'S --
- 17 A YES, SIR.
- 18 Q -- HOW DO YOU KNOW THOSE ARE SAMPLES OF
- 19 MR. FREIBURGER'S SIGNATURE?
- 20 A BY THE PROTOCOL THAT A DOCUMENT EXAMINER USES, AND AS
- 21 I MENTIONED EARLIER, YOU NEVER START AN EXAMINATION
- 22 UNTIL YOU VERIFY OR VALIDATE COMMON AUTHORSHIP WITHIN
- 23 YOUR SAMPLING PRODUCT, WITHIN YOUR STANDARDS.
- 24 Q SO THAT'S BASED ON YOUR EXAMINATION?
- 25 A YEAH.

- 1 Q NOBODY TOLD YOU THOSE WERE HIS SIGNATURES?
- 2 A EVEN IF THEY HAD TOLD ME, I STILL WOULD HAVE VERIFIED
- 3 IT.
- 4 Q WELL, MY QUESTION IS DID SOMEBODY TELL YOU THOSE WERE
- 5 HIS SIGNATURES?
- 6 A NO, SIR. THEY WERE SUBMITTED TO ME AS HIS KNOWN
- 7 SIGNATURES.
- 8 Q ALL RIGHT. AND THEIR SUBMISSION TO YOU, 4 AND 5, THE
- 9 BERRY'S AND THE FREED'S, WERE REPRESENTED TO YOU AS
- 10 BEING MR. FREIBURGER'S SIGNATURE?
- 11 A YES, SIR.
- 12 Q THAT'S ALL I'M SAYING.
- 13 A YES, SIR.
- 14 Q I'M NOT SAYING YOU DIDN'T INDEPENDENTLY VERIFY THAT
- 15 AT ALL --
- 16 A THAT'S CORRECT, SIR.
- 17 Q -- BUT YOU WERE TOLD THAT GOING IN, SO TO SPEAK?
- 18 A YES, SIR.
- 19 Q JUST LIKE, I BELIEVE YOU SAID, SOME OF THESE ITEMS
- 20 WERE REPORT CARDS?
- 21 A REPORT CARDS.
- 22 Q SIGNATURES. SOME OF THEM WERE EXEMPLARS THAT YOU
- 23 ACTUALLY SAW HIM WRITE.
- 24 A THAT'S CORRECT, SIR.
- 25 Q AND SO JUST LIKE BERRY'S AND FREED'S, AND I DON'T

1 KNOW THE EXHIBIT NUMBERS RIGHT NOW IN MY MIND, BEING
2 TOLD AND VERIFYING, YOU WERE ALSO TOLD THAT THE
3 REPORT CARDS WERE KNOWN SIGNATURES OF MR. FRIEBURGER?

4 A THAT'S CORRECT, SIR.

5 Q AND YOU VERIFIED IT?

6 A THAT'S CORRECT.

7 Q THERE'S NO QUESTION ABOUT THAT. I BELIEVE YOU ALSO
8 SAID THAT YOUR -- I'M NOT SURE HOW YOU SAID IT. OUR
9 WRITING CHANGES FROM A CHILD LIKE FROM PRINTING TO
10 CURSIVE, AND THEN IT GETS KIND OF SET LATE TEENS,
11 EARLY 20S?

12 A YES, SIR.

13 Q IS THAT A FAIR STATEMENT?

14 A THAT'S FAIR.

15 Q AND THEN DOES IT CHANGE OVER TIME WITH AGE, LIKE MY
16 EYESIGHT DOES, FOR EXAMPLE, OR MY HEARING OR THE
17 COLOR OF MY HAIR?

18 A BASICALLY, WE ALL HAVE NATURAL VARIATION, AND THERE
19 IS A POSSIBILITY IT COULD CHANGE WITH AGE AS FAR AS A
20 PICTORIAL LOOK, BUT GENERALLY, THE WAY THE LETTER AND
21 LETTER FORMS ARE CONSTRUCTED WOULD NORMALLY STAY THE
22 SAME UNLESS WE START DEVIATING AND HAVE ANOTHER
23 LETTER DESIGNED, SUCH AS THE "F" RIGHT HERE, WHERE
24 THE INDIVIDUAL FOR SOME REASON PICKED UP A LITTLE
25 REVERSE MOVEMENT, BUT IT BASICALLY STAYS THE SAME,

1 SIR.

2 Q NOW, THERE ARE DIFFERENT TYPES OF FORGERIES, CORRECT?

3 A THERE ARE DIFFERENT METHODS OF -- YES, SIR.

4 Q METHODS, PERHAPS. FOR EXAMPLE, I DIDN'T STUDY YOUR

5 SIGNATURE THIS MORNING ON THE REPORT THAT YOU

6 SUBMITTED SO I DON'T KNOW IT, BUT I COULD PROBABLY,

7 PROBABLY, DO A PRETTY GOOD FORGERY OF MY WIFE'S

8 SIGNATURE BECAUSE I HAVE THAT IN MY MIND.

9 A UH-HUH.

10 Q IS THAT A FAIR STATEMENT?

11 A THAT'S FAIR BUT I'D PROBABLY CATCH YOU.

12 Q I DIDN'T SAY YOU WOULDN'T CATCH ME. SHE'D CATCH ME,

13 I KNOW IN THE CHECKBOOK, BUT WHAT I'M SAYING IS THAT

14 THERE'S SOME PEOPLE WHOSE SIGNATURE I KNOW.

15 A YES, SIR.

16 Q AND I COULD WRITE THAT OUT, AND IT WOULD LOOK PRETTY

17 GOOD.

18 A PICTORIALLY, JUST TO GET PAST THE GATEKEEPER, THAT'S

19 ALL THAT TYPE OF FORGERY IS SUPPOSED TO BE.

20 Q IN OTHER WORDS, YOU COULD HAVE A MODEL IN YOUR MIND.

21 A MODEL, THAT'S A GOOD WORD, YES, SIR.

22 Q AND I COULD SIGN THE SIGNATURE OF MY WIFE'S, MY SON'S

23 PERHAPS?

24 A YES, SIR.

25 Q SOMETHING LIKE THAT. THEN I COULD PERHAPS HAVE

1 SOMEBODY'S I.D. OR YOUR CARD AND WRITE IT OUT.

2 A YES.

3 Q I'M NOT SAYING I WOULDN'T BE CAUGHT, BUT IT WOULD BE

4 LIKE A TRACING ALMOST?

5 A PERHAPS A SIMULATION.

6 Q SURE.

7 A BY MEMORY, BY SIMULATION BY EYEBALL OR TRACING BY

8 MECHANICAL MEANS, YES, SIR.

9 Q AND THEN YOU COULD HAVE -- THAT'S A RANK FORGERY,

10 THAT I'VE NEVER SEEN YOUR SIGNATURE BEFORE. I DON'T

11 KNOW ANYTHING ABOUT IT.

12 A YES, SIR.

13 Q YOU KNOW, FOR EXAMPLE, WHOEVER -- AND I JUST SIGNED

14 THE NAME AND IT WOULD HAVE NO SIMILARITIES

15 WHATSOEVER; IS THAT RIGHT?

16 A THAT'S CORRECT, SIR.

17 Q ALL RIGHT. OKAY. NOW, THERE HAVE BEEN CASES IN THE

18 PAST, IS THIS A CORRECT STATEMENT, IN WHICH YOU HAVE

19 CHOSEN NOT TO MAKE EXAMINATIONS BECAUSE YOU DIDN'T

20 HAVE THE ORIGINALS?

21 A THAT'S CORRECT. I THINK QUANTITY AND QUALITY WERE

22 NOT SUFFICIENT FOR AN EXAM.

23 Q HERE YOU DIDN'T HAVE THE ORIGINALS, BUT IT WAS

24 SUFFICIENT FOR YOU TO CONDUCT YOUR EXAMINATIONS AND

25 REACH YOUR CONCLUSIONS?

- 1 A YES, SIR.
- 2 Q AND OF THE, I BELIEVE YOU SAID 40, I THINK IT'S
3 ACTUALLY ITEMS ONE THROUGH 34, I BELIEVE, UNLESS
4 THERE'S BEEN MORE SINCE THEN --
- 5 A I THINK PROBABLY WITH LIKE ITEM 10, I HAD ITEM 10 BUT
6 ACTUALLY 12 OR 14 EXHIBITS.
- 7 Q I SEE, SO YOU'RE ADDING IT IN LIKE THAT. I WAS JUST
8 GOING FROM 1 TO 34. HAVING THOSE, THESE WERE NOT
9 ORIGINALS --
- 10 A NO, SIR.
- 11 Q -- THESE COPIES ARE VERIFAX COPIES?
- 12 A YES, SIR.
- 13 Q NOW, BY THE WAY, YOU SAY THIS IS A REPORT CARD. DOES
14 A PERSON'S ACTIVITY THAT HE'S ENGAGED IN AT THE TIME
15 CHANGE OR ALTER HIS OR HER WRITING IN ANY MANNER?
- 16 A CERTAINLY. IF WE'RE DOING -- SIGNING A GASOLINE
17 CREDIT CARD ON THE HOOD OF A CARD, IT'S GOING TO BE
18 DIFFERENT THAN JUST SIGNING A SIGNATURE IN YOUR
19 ATTORNEY'S OFFICE, BUT THE LETTER FORMS AND THE WAY
20 YOU MAKE THOSE LETTERS AND THE RELATIONSHIP OF THOSE
21 LETTERS WILL STAY THE SAME, BUT THE PICTORIAL LOOK OF
22 IT MAY BE A LITTLE BIT SLOPPY, BUT IT STILL HAS YOUR
23 SIGNIFICANT CHARACTERISTICS, THE SIMILARITIES AND
24 DIFFERENCES.
- 25 Q LIKE IF I SIGN MY SON'S REPORT CARD WHEN HE CAME HOME

1 WITH AN "A", IF HE EVER DID --

2 A YES, SIR.

3 Q -- YOU COULD READ THAT, NO QUESTION ABOUT IT. BUT IF

4 HE CAME HOME WITH BAD GRADES, I'D SCRIBBLE IT OUT AND

5 THAT CAN COME INTO PLAY. IS THAT WHAT YOU'RE SAYING?

6 A WE ALL HAVE SEVERAL TYPES OF SIGNATURES, A FORMAL

7 SIGNATURE, AN INFORMAL SIGNATURE; THAT'S CORRECT.

8 Q MR. DAWSON, ARE YOU IN THE MILITARY?

9 A I HAVE BEEN, YES.

10 Q YOU HAVE BEEN. IF IT'S LIKE YOU AND LIKE ME, IT WAS

11 THE ONLY TIME I WAS KNOWN AS ROYCE AND NOT KNOX

12 BECAUSE THEY CALLED YOU BY YOUR FIRST NAME. IT

13 BECOMES MUCH MORE FORMAL IN THE MILITARY. DO YOU

14 RECALL THAT?

15 A GENERALLY, YES.

16 Q SO IF A PERSON IS ENGAGING IN OR CONTEMPLATES,

17 PERHAPS, CRIMINAL ACTIVITY, THAT COULD CHANGE A

18 PERSON'S SIGNATURE SOMEWHAT. IS THAT A FAIR

19 STATEMENT?

20 A I WOULD RESPECTFULLY DISAGREE WITH YOU BECAUSE NOW

21 YOU'RE GETTING INTO AN AREA OF GRAPHOLOGY AND

22 GRAPHOLOGISTS SAY THEY CAN TELL A PERSONALITY,

23 CHARACTERISTICS. THEY CAN TELL WHETHER YOU HAVE

24 CANCER BY YOUR WRITING OR WHATEVER.

25 I DO NOT SUBSCRIBE TO GRAPHOLOGY. I'VE NOT BEEN

1 TRAINED IN GRAPHOLOGY. I'M A FORENSIC DOCUMENT
2 EXAMINER. I LOOK AT THE FACTS AND WHAT I HAVE IN
3 FRONT OF ME.

4 Q BUT LIKE YOU SAY, YOU WOULD HAVE -- WE MAY HAVE
5 DIFFERENT SIGNATURES OF OUR OWN, OUR OWN SIGNATURE
6 CAN APPEAR DIFFERENT AT DIFFERENT TIMES?

7 A YES, SIR.

8 Q BASED ON WHAT WE'RE DOING. THAT'S THE ONLY POINT I'M
9 MAKING. I'M NOT ASKING ABOUT GRAPHOLOGY. I DIDN'T
10 EVEN KNOW THE TERM, AS A MATTER OF FACT.

11 A YES, SIR.

12 Q OKAY. NOW, HOW MANY REPORTS DID YOU ISSUE IN THIS
13 CASE?

14 A I ISSUED A DRAFT. THE REPORT OF THAT, INCIDENTALLY,
15 THE DRAFT WAS I WAS INFORMED I WOULD NEED A COPY OF A
16 RECORD ON FRIDAY AFTERNOON. THEN LATE THURSDAY NIGHT
17 I WAS TOLD THAT THE COURT HAD ASKED FOR A COPY AT
18 NINE O'CLOCK. ALL I HAD WAS A ROUGH DRAFT ON MY
19 COMPUTER. I RAN IT OUT, AND THAT WAS THE FIRST THING
20 YOU GOT.

21 Q OKAY.

22 A SINCE THEN I RAN SPELL CHECK, CHANGED MY SYNTAX AND
23 GRAMMAR AND CLEANED IT UP A LOT.

24 Q OKAY. AND WHEN WERE YOU FIRST CONTACTED ABOUT THIS
25 CASE?

1 A I WAS CONTACTED ABOUT THIS CASE AROUND JUNE THE 27TH,
2 SIR.

3 Q JUNE 27TH OF '01, '02, THIS YEAR?

4 A YES, SIR.

5 Q SO A LITTLE OVER A MONTH AGO. HOW MANY DIFFERENT
6 TIMES OR DATES DID YOU EXAMINE THE ITEMS OF EVIDENCE?

7 A I EXAMINED, I BELIEVE, ON JUNE -- I'M SORRY, I STAND
8 CORRECTED. I EXAMINED -- BEAR WITH ME ONE SECOND.

9 (PAUSE).

10 I EXAMINED JULY 7TH, 8TH, 23RD, 24TH, 26TH, SIR.

11 Q IS THAT RIGHT, JULY 7TH, 8TH, 23RD, 26TH?

12 A 7TH, 8TH, 23RD, 24TH, 26TH.

13 Q 24TH, THAT'S A WRITE UP; IS THAT RIGHT?

14 A YES, SIR.

15 Q OKAY. ALL RIGHT. AND YOU ISSUED A DRAFT REPORT, A
16 SECOND REPORT. YOU CHARACTERIZE IT HOWEVER YOU WANT.

17 A YEAH, LET ME EXPLAIN THIS.

18 Q YEAH, SURE.

19 A WHEN A CASE COMES INTO MY LAB, TO INVENTORY THE CASE,
20 TO SHOW WHAT EXHIBITS I HAVE, I JUST SIT DOWN AND
21 MAKE A ROUGH DRAFT OR DO A ROUGH TAKE IN.

22 THEN LATER ON WHEN A REPORT IS REQUESTED, I GO
23 BACK, CHANGE IT, CLEAN IT UP, WHATEVER. SO WE SAY A
24 DRAFT REPORT, THAT WAS NOT ACTUALLY A REPORT. THAT
25 WAS A TAKE IN DOCUMENT, A VERY ROUGH TAKE IN

1 DOCUMENT, THAT I JUST ADDED TO.

2 Q IS THIS A COPY OF THAT -- NOT ACTUALLY THAT REPORT,
3 TAKE IN DOCUMENT OR AT LEAST AN ENLARGEMENT?

4 A QUITE FRANKLY, I'M NOT SURE. LET ME -- I CAN TELL
5 YOU THIS JUST ONE SECOND.

6 Q SURE.

7 A YES. THAT'S OBVIOUSLY ONE OF THE FIRST GENERATION
8 DOCUMENTS.

9 Q AND THAT'S JUST AN ENLARGEMENT OF THE FOUR-PAGE FIRST
10 GENERATION DOCUMENT?

11 A I DIDN'T RECOGNIZE THE MISSPELLINGS, YES, SIR.

12 Q AND THAT'S YOUR SIGNATURE?

13 A YES, SIR.

14 Q ALL RIGHT. NOW, I WANT TO TALK A MINUTE ABOUT THIS
15 FIRST GENERATION, AND NOT REALLY A REPORT, DOCUMENT
16 AND ASK YOU -- DO YOU HAVE A COPY OF IT UP THERE?

17 A NO, SIR. I HAVE A COPY OF MY FINAL REPORT.

18 Q IS THIS -- GO THROUGH THERE AND SEE IF THIS IS A COPY
19 OF IT.

20 A THIS VERY WELL COULD BE. I DON'T KNOW WHICH
21 GENERATION THIS IS. IF THIS IS THE FIRST ONE GIVEN
22 TO YOU AND THIS IS A DRAFT -- THIS DOES NOT HAVE A
23 DRAFT ON IT, THOUGH.

24 MS. HUDGINS: JUDGE, MAY WE APPROACH FOR A
25 MOMENT?

1 THE COURT: SURE.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
3 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
4 THE JURY.)

5 THE COURT: YOU MAY PROCEED, SOLICITOR.

6 MS. HUDGINS: THANK YOU, YOUR HONOR.

7 BY MR. MCMAHON

8 Q MR. DAWSON, BEFORE I GO ANY FURTHER, DO YOU HAVE ANY
9 QUESTION ABOUT THE AUTHENTICITY OF THE DOCUMENT I'VE
10 HANDED YOU?

11 A ABOUT WHAT, SIR?

12 Q THE AUTHENTICITY OF IT.

13 A NO, I DO NOT, SIR.

14 Q OKAY. AND THIS NEXT ONE I'M SHOWING YOU, WOULD THAT
15 BE THE NEXT GENERATION?

16 A THAT'S PART OF THE SECOND GENERATION, YES, SIR.

17 Q WELL, DO YOU WANT TO TAKE SOME TIME TO DETERMINE
18 WHETHER IT IS PROBABLY OR WHETHER IT IS?

19 A I WOULD SAY IT IS.

20 Q OKAY. NOW, I'VE GOT A THIRD, OR PERHAPS WE COULD
21 CALL IT A FINAL GENERATION DOCUMENT, TODAY.

22 A YES, SIR.

23 Q I BELIEVE THAT IS THAT; IS THAT CORRECT?

24 A YES, IT LOOKS TO BE; THAT'S CORRECT.

25 Q THANK YOU. NOW, DO YOU NEED A COPY OF THIS ONE UP

1 HERE WITH YOU?

2 A NOT REALLY.

3 Q OKAY. NOW, I WANT TO GO THROUGH, FIRST WE'VE GOT
4 ITEMS ONE THROUGH NINE LISTED.

5 A UH-HUH, YES, SIR.

6 Q AND ITEM SEVEN, WHAT DO YOU HAVE LISTED AS ITEM SEVEN
7 ON YOUR FIRST GENERATION DOCUMENT?

8 A THAT'S WHAT YOU HAVE THERE, SIR. I DO NOT HAVE IT
9 BECAUSE ITEM SEVEN AND ITEM SIX WERE REMOVED.

10 Q YES, SIR. MY QUESTION IS WHAT DO YOU HAVE ON YOUR
11 REPORT AS ITEM NUMBER SEVEN?

12 A WHAT I HAVE ON MY REPORT AS ITEM NUMBER SEVEN. I'M
13 SORRY, I HAVE ITEM NUMBER SEVEN NOT USED.

14 Q MR. DAWSON, WOULD YOU READ THIS FOR ME, PLEASE?

15 A PHOTOCOPY PAGE BEARING THREE TRANSACTIONS, THE
16 FIRST --

17 MS. HUDGINS: YOUR HONOR, I WOULD OBJECT. THAT
18 WAS A DRAFT COPY.

19 THE COURT: OVERRULED.

20 MS. HUDGINS: THANK YOU, YOUR HONOR.

21 THE WITNESS: PHOTOCOPY PAGE, ITEM NUMBER SEVEN,
22 PHOTOCOPY PAGE BEARING THREE TRANSACTIONS, THE FIRST BEING
23 THAT OF EDWARD E. FRIEBURGER DATED 2/24/61.

24 BY MR. MCMAHON

25 Q NOW, LET'S BACK UP ONE. WHAT DO YOU HAVE FOR ITEM

1 NUMBER SIX?

2 A NUMBER SIX IS A PHOTOCOPY OF A REGISTER. I REALLY

3 CAN'T SEE IT, SIR.

4 Q YOU HAVE A COPY UP HERE, SIR, I GAVE YOU?

5 A OH, SIR. I'M SORRY. I WAS LOOKING AT THE --

6 Q IF YOU CAN'T SEE IT, THERE'S A LARGER --

7 A ALL RIGHT. NUMBER SIX, PHOTOCOPY OF REGISTER NUMBER

8 9214 STAMPED FEBRUARY 28TH, 1961, BEARING AN EDWARD

9 E. FRIEBURGER SIGNATURE.

10 Q ON YOUR FIRST REPORT, YOUR DRAFT REPORT, YOU LISTED

11 AN ITEM SIX AND AN ITEM SEVEN, CORRECT?

12 A THAT'S CORRECT.

13 Q NOW, AS WE GO THROUGH THIS DRAFT REPORT, IF YOU WILL

14 GO TO PAGE THREE OF YOUR DRAFT REPORT.

15 A PAGE THREE, SIR.

16 Q ALL RIGHT, SIR. YOU LIST ITEM SIX, SUBMITTED AS

17 BUSINESS RECORDS OF CAPITAL LOAN; IS THAT CORRECT?

18 A THAT'S CORRECT, SIR.

19 Q DO YOU HAVE THAT DOCUMENT THAT YOU HAVE THAT WAS

20 SUBMITTED TO YOU AS A BUSINESS RECORD FROM CAPITAL

21 LOAN? DO YOU HAVE A COPY OF IT?

22 A ITEM SIX? -

23 Q YES, SIR.

24 A NO, SIR, I DO NOT.

25 Q YOU DON'T?

1 A NO, SIR.

2 Q SO YOU CAN'T TELL US RIGHT NOW, BESIDES WHAT'S ON THE
3 FIRST PAGE, WHAT ITEM SIX WAS?

4 A NO, SIR, I CANNOT. THAT WAS NOT USED IN THE FINAL
5 EXAMPLE, SIR.

6 THAT WAS A -- KEEP IN MIND, SIR, THAT ONCE
7 AGAIN, THAT WAS A TAKE IN. IT WAS SENT TO ME IN THE
8 MAIL, AS SAID, THESE ARE BUSINESS DOCUMENTS. I JUST
9 TYPE A GENERAL DESCRIPTION AS I WENT DOWN.

10 THEN AS THE EXAMINATION CONTINUED AND YOU FINE
11 TUNE WHAT YOU HAD, YOU MADE ADJUSTMENTS, AND THAT'S
12 WHAT I DID.

13 Q YOU MADE ADJUSTMENTS.

14 WELL, IT SAYS PHOTOCOPY OF REGISTER 9214,
15 STAMPED FEBRUARY 28TH, 1961, BEARING EDWARD E.
16 FRIEBURGER'S SIGNATURE?

17 A I BELIEVE EDWARD E. FRIEBURGER IS IN QUESTION MARKS,
18 WHICH MEANS IT WAS DOUBTED, CHALLENGED AT THE TIME.
19 THAT'S JUST A LOG IN OF WHAT I HAVE.

20 Q DOES THIS APPEAR TO BE AN ENLARGEMENT OF THAT?

21 A THAT'S CORRECT, SIR.

22 Q ALL RIGHT. SO IT WOULD BE THIS ITEM, STATE'S EXHIBIT
23 NO. 43 WOULD BE THIS --

24 A WITHIN --

25 Q -- WITHIN YOUR EXHIBIT OR ITEM SIX --

1 A THAT IS --

2 Q -- ON YOUR DRAFT REPORT?

3 A THAT'S CORRECT, SIR.

4 Q THAT IS THE ONLY POINT I'M MAKING.

5 A YES, SIR; THAT'S CORRECT.

6 Q NOW, YOU LISTED THAT ON PAGE THREE AS BUSINESS

7 RECORDS OF CAPITAL LOAN.

8 A I DID.

9 Q IF THAT -- IF I WERE TO TELL YOU THAT CAME FROM

10 FREED'S, THIS WOULD BE A MISTAKE, WOULDN'T IT?

11 A NOT IN MY FINAL DRAFT. THAT'S A MISTAKE ON THE

12 DRAFT. IF YOU'RE GOING TO PUT A MISTAKE, IT'S AN

13 ADMINISTRATIVE ERROR, IF YOU WANT TO PUT IT LIKE

14 THAT, BUT ON MY FINAL DRAFT, THAT'S NOT NOTED.

15 Q I'M TALKING ABOUT THIS. I'M TALKING ABOUT THE

16 PRECISION OF A QUESTIONED DOCUMENT EXPERT, THIS IS A

17 MISTAKE.

18 A I WILL RESPECTFULLY DISAGREE. I THINK MY PRECISION

19 AS A DOCUMENT EXPERT, YOU WOULD REFERENCE MY FINAL

20 REPORT.

21 Q SO IT IS NOT A MISTAKE TO SAY THAT ITEM THREE WAS

22 SUBMITTED AS THE BUSINESS RECORDS OF CAPITAL LOAN?

23 A A DRAFT IS A DRAFT, AND THAT WAS THE WAY IT WAS

24 SUBMITTED TO ME AT THE TIME. THEN AS WE CONTINUED

25 THE EXAMINATION AND FINE TUNED THE EXHIBITS, WHAT

1 COMES WHERE.

2 MANY TIMES AN EXAMINER DOES NOT KNOW THE ORIGIN.
3 IT'S ALMOST LIKE A BLIND EXAM. THEY SUBMIT DOCUMENTS
4 TO YOU AND SAY, "TELL ME ABOUT IT."

5 IF YOU DON'T HAVE IDENTIFIERS ON IT, YOU PUT IT
6 DOWN AS IT COMES IN. THAT'S WHAT I DID.

7 Q WHY WOULDN'T YOU PUT THAT DOWN THEN? WHY WOULDN'T
8 YOU PUT DOWN THAT ITEM SIX IS "A DOCUMENT PRESENTED,
9 BUT I DON'T KNOW WHAT IT IS"?

10 A THAT'S A VERY GOOD POINT. I PUT IT UNDER THE CAPITAL
11 LOAN AT THE TIME.

12 Q NOW, BUT YOU --

13 A I'M SORRY, BUT REGARDLESS OF THAT, SOLICITOR, EXCUSE
14 ME TO STEP ON YOU.

15 Q YES, SIR.

16 A REGARDLESS OF THAT, IT IS IN QUOTES, WHICH MEANS I
17 WAS NOT SATISFIED WITH IT. YOU KNOW, IT WAS NOT HIS
18 SIGNATURE. IT WAS THE NAME "EDWARD FRIEBURGER".

19 Q SIX ISN'T IN QUOTES. THE SIGNATURE IS IN QUOTES
20 LISTING ITEM SIX ON THE FIRST PAGE OF YOUR ORIGINAL
21 DRAFT?

22 A THAT IS CORRECT, SIR.

23 Q THAT'S THE POINT I'M MAKING. NOW, ACTUALLY, FOUR --
24 SO WE CAN GET THIS STRAIGHT, FOUR IS IN PARENTHESIS?

25 A FOUR IS IN PARENTHESIS.

1 Q ON YOUR DRAFT.

2 A WHAT'S IN PARENTHESIS, SIR? WHAT PART OF NUMBER FOUR

3 WAS TAKEN OFF?

4 Q THE EDWARD E. FRIEBURGER SIGNATURE IS IN PARENTHESIS

5 IN FOUR JUST LIKE IT IS --

6 A I'M SORRY.

7 Q -- OR QUOTATION MARKS, I APOLOGIZE, QUOTATION MARKS,

8 JUST LIKE IT IS.

9 A CORRECT, THAT IS CORRECT, SIR.

10 Q IS THAT CORRECT?

11 A YES, SIR. I WAS REFERENCING THE OFFICIAL COPY, SO TO

12 SPEAK, FINAL COPY, BUT ON THIS DRAFT; THAT'S CORRECT,

13 ON THE DRAFT.

14 Q I'LL GET TO THE FINAL COPY MOMENTARILY.

15 A YES, SIR.

16 Q BERRY'S, ULTIMATELY, YOU SAY THAT IS MR. FREIBURGER'S

17 SIGNATURE ON ITEM NUMBER FOUR?

18 A YES.

19 Q NO QUESTION ABOUT THAT?

20 A AFTER I CONTINUED DOWN THE LINE, I VERIFIED IT IS,

21 CORRECT, SIR.

22 Q THAT IS MR. FREIBURGER'S SIGNATURE, BERRY'S LOAN, NO

23 QUESTION WHATSOEVER, UNDISPUTED?

24 A YES, SIR.

25 Q LET ME SEE IF I CAN FIND FREED'S HERE. ITEM FIVE,

1 FRIEBURGER IN QUOTATION MARKS. UNDISPUTED,
2 FREIBURGER'S SIGNATURE, CORRECT?
3 A AS THE EXAMINATION CONTINUED, YES, SIR.
4 Q AND THAT'S THIS DOCUMENT HERE, THE RADIO?
5 A YES, SIR.
6 Q YES, THE RADIO. AND AS YOU SAY, PRECISION IS
7 IMPORTANT, AND BEING A HANDWRITING EXAMINER, WORDS
8 AND SPELLING ARE VERY IMPORTANT?
9 A IN THE FINAL PRODUCT, YES, SIR.
10 Q ALL RIGHT. IN THE INITIAL PRODUCT, THEY MIGHT NOT BE
11 AS IMPORTANT BECAUSE THE QUESTIONED SIGNATURE HERE
12 YOU HAVE EDWARD E. FREEBURGER (SIC)?
13 A ABSOLUTELY.
14 Q THAT'S A MISTAKE?
15 A IT'S SPELLING ERROR; THAT'S CORRECT, SIR. I WAS JUST
16 TYPING AWAY.
17 Q AND A SPELLING ERROR MAY BE MORE OF A MISTAKE TO A
18 HANDWRITING EXAMINER THAN PERHAPS IT WOULD BE TO A
19 BODY AND FENDER MAN?
20 A ON A DRAFT?
21 Q ON A DOCUMENT THAT YOU SIGNED IN THE COURSE OF YOUR
22 OCCUPATION AS AN EXPERT FORENSIC DOCUMENT EXAMINER.
23 MS. HUDGINS: JUDGE, I HAVE ANOTHER MATTER OF
24 LAW.
25 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND

1 GENTLEMEN, LET ME LET YOU GO TO THE JURY ROOM JUST A
2 MOMENT, PLEASE.

3 (WHEREUPON, THE JURY LEFT OPEN COURT AT
4 APPROXIMATELY 10:35 A.M.)

5 THE COURT: YES, MA'AM.

6 MS. HUDGINS: JUDGE, I DIDN'T HAVE THE COURTESY
7 OF OBSERVING WHAT MR. MCMAHON WAS SHOWING TO MR. DAWSON,
8 BUT IT'S APPARENT TO ME THAT THE FIRST DRAFT, WHICH WAS
9 REQUIRED OF US TO BE PROVIDED TO THE SOLICITOR'S OFFICE,
10 WHICH WAS PROVIDED TO THEM, AS YOUR HONOR REQUIRED, HAD
11 "DRAFT" PRINTED ON THE FRONT.

12 NOW, HE'S EXAMINING HIM ABOUT THIS DRAFT, BUT
13 MYSTERIOUSLY, "DRAFT" IS TAKEN OUT OF HIS PHOTOCOPY. I
14 WOULD OBJECT TO THAT.

15 IF WE CAN PLACE "DRAFT" ON THIS AND ALLOW HIM TO
16 CROSS-EXAMINE, THAT WOULD BE, BUT THIS HAS BEEN ALTERED
17 FROM WHAT WAS ORIGINALLY SUBMITTED, YOUR HONOR.

18 THE COURT: SOLICITOR?

19 MP. MCMAHON: I HAVE NOT ALTERED THAT IN ANY WAY
20 EXCEPT TO ENLARGE IT.

21 THE COURT: DO YOU HAVE "DRAFT" ON YOUR COPY?

22 MR. MCMAHON: I HAVE "DRAFT" ON THIS.

23 THE COURT: THAT'S WHAT SHE'S COMPLAINING ABOUT.

24 MR. MCMAHON: THAT'S NOT THE DOCUMENT I HAVE --

25 THE COURT: OH.

1 MR. MCMAHON: I MEAN, CLEARLY, I DON'T HAVE THAT
2 PAGE UP HERE. IF SHE WANTS TO PUT IT IN, THAT'S FINE.
3 I'M NOT QUESTIONING THAT'S A DRAFT. I NEVER TRIED TO SHOW
4 THAT THAT WASN'T A DRAFT.

5 MS. HUDGINS: I'M SORRY, YOUR HONOR. I THOUGHT
6 BOTH COPIES WERE -- I MAY APOLOGIZE. I MAY BE INCORRECT.
7 I THOUGHT WE HAD STAMPED BOTH OF THEM. THAT'S MY FAULT.
8 I APOLOGIZE, YOUR HONOR. I WOULD LIKE IT TO BE CLEAR IT'S
9 A DRAFT.

10 THE COURT: I THINK THAT'S PERFECTLY CLEAR. YOU
11 ARE WEARING THAT JURY OUT WITH THAT ISSUE.

12 MS. HUDGINS: THAT'S FINE. I APOLOGIZE, YOUR
13 HONOR. I THOUGHT THAT BOTH COPIES HAD BEEN STAMPED.

14 THE COURT: AND LET ME ADDRESS, AT BENCH
15 CONFERENCE, THERE WAS AGAIN A CLAIM OF DISCOVERY
16 VIOLATION.

17 EVEN IF THERE IS A DISCOVERY VIOLATION, THE
18 OTHER SIDE HAS TO SHOW PREJUDICE THAT THE DOCUMENT WAS IN
19 YOUR CONTROL. SO I --

20 MS. HUDGINS: I UNDERSTAND, YOUR HONOR, BUT IT'S
21 JUST AN ONGOING PROBLEM IN THIS CASE. WE'VE HAD CONTINUED
22 DISCOVERY VIOLATIONS.

23 THE COURT: WELL, NOW TELL ME WHAT THE OTHERS
24 ARE SO I CAN ADDRESS IT BECAUSE I DON'T WANT TO LEAVE THE
25 RECORD OPEN LIKE THAT.

1 MS. HUDGINS: WELL, THE FIRST WOULD BE THE METER
2 THAT WAS NEVER, EVER SHOWN TO US. I ASKED SEVERAL TIMES
3 TO BE ABLE TO SEE THE EVIDENCE THAT THEY PLANNED AND
4 INTENDED ON INTRODUCING INTO EVIDENCE. THAT WAS
5 INTRODUCED INTO EVIDENCE, YOUR HONOR.

6 THE BALLISTICS DIAGRAM, WE HAD NEVER SEEN THAT
7 BEFORE. YOU KNOW, IT'S AN ON-GOING PROBLEM, YOUR HONOR.
8 THE FINGERPRINT EXAMINATION BLOWUP. I MEAN, NONE OF THAT
9 HAD BEEN PROVIDED TO US. WE PROVIDED THEM WITH
10 EVERYTHING, AS REQUIRED.

11 THE COURT: MR. SOLICITOR, WHAT ABOUT THAT?

12 MR. MCMAHON: THEY SHOWED ME PHOTOGRAPHS THIS
13 MORNING THAT I NEVER SEEN BEFORE.

14 THE COURT: NO, NO.

15 MR. MCMAHON: JUDGE, WE PROVIDED EVERYTHING.

16 THE COURT: I'M TALKING ABOUT YOUR EVIDENCE, NOT
17 HER EVIDENCE.

18 MR. MCMAHON: JUDGE, WE'VE PROVIDED THEM
19 EVERYTHING. THEY HAVE GONE OUT AND LOOKED THROUGH THE
20 ORIGINAL FILE.

21 I DON'T SEE HOW THEY SAY THIS IS A DISCOVERY
22 VIOLATION WHEN HE ACTUALLY HAD THE DOCUMENT --

23 THE COURT: I'VE ALREADY HELD THAT ONE WAS NOT.

24 MR. MCMAHON: YES, SIR.

25 THE COURT: HOW ABOUT THE METER AND OTHER ISSUE?

1 MR. MCMAHON: I JUST HAD THE METER SITTING BACK
2 IN MY OFFICE. I BROUGHT IT OVER HERE BECAUSE I HAD
3 MR. ANDERSON GO OUT TO THE CAB COMPANY TO SEE IF HE COULD
4 LOCATE ONE.

5 JUDGE, THAT'S WORKING. I WASN'T TRYING TO HIDE
6 IT FROM THEM. WHEN WE STARTED TUESDAY MORNING, IT WAS
7 SITTING OVER THERE, AND I SHOWED IT TO THEM. THEY
8 OBJECTED.

9 I DON'T KNOW WHAT THE OTHER ISSUES -- I
10 APOLOGIZE. I WAS LOOKING AT THESE FORMS.

11 THE COURT: BALLISTICS.

12 MR. MCMAHON: WHAT OTHER ONES?

13 MS. HUDGINS: FINGERPRINTS.

14 MR. MCMAHON: NO, SIR. NO, SIR. I TOLD
15 MR. DELGADO ABOUT THE FINGERPRINTS ON THE TELEPHONE ONE
16 DAY AND TOLD HIM I HAD THEM COMPARED, TOLD HIM I HAD --

17 MR. DELGADO: YOUR HONOR, I AGREE. THAT IS
18 RIGHT.

19 THE COURT: OKAY.

20 MR. MCMAHON: AND TOLD HIM I WAS GOING TO HAVE
21 CHARTS PREPARED AND HAD NOT HAD THEM PREPARED YET.

22 MS. HUDGINS PROBABLY DID NOT KNOW THAT. I MEAN,
23 OBVIOUSLY, I'M NOT TRYING TO --

24 THE COURT: OKAY. I DON'T FIND ANYTHING THAT
25 WOULD PREJUDICE EITHER SIDE. I OVERRULE IT.

1 MS. HUDGINS: THANK YOU, YOUR HONOR.

2 THE COURT: OKAY. WHILE WE'RE OUT, LET'S TAKE A
3 QUICK TEN-MINUTE BREAK.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

5 THE COURT: ALL RIGHT. BRING THE JURY IN.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 10:50.)

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

9 THE COURT: MR. MCMAHON, YOU MAY PROCEED.

10 MR. MCMAHON: THANK YOU, YOUR HONOR.

11 BY MR. MCMAHON

12 Q MR. DAWSON, SO THERE IS NO QUESTION WHATSOEVER, NO
13 QUESTION THAT THIS IS A DRAFT?

14 A THAT'S CORRECT, SIR.

15 Q AND YOU HAVE SAID THAT?

16 A IT IS A WORKSHEET DRAFT.

17 Q WORKSHEET DRAFT, OKAY. NOW, IN THIS -- AND THE
18 DIFFERENCE BETWEEN THIS WORKSHEET DRAFT AND WHAT
19 WOULD YOU CALL THE FIRST PAGE OF THE SECOND, WHAT
20 WOULD YOU CALL THE SECOND DOCUMENT?

21 A THAT'S PRETTY MUCH THE SECOND DRAFT, WE CALL IT, SIR.

22 Q SECOND DRAFT?

23 A YES, SIR.

24 Q OKAY. NOW, THERE IS A DIFFERENCE BETWEEN THE
25 WORKSHEET DRAFT AND THE SECOND DRAFT?

- 1 A YES, SIR.
- 2 Q ON THE FIRST PAGE FROM THE WORKSHEET DRAFT TO THE
- 3 SECOND DRAFT, YOU SAY NUMBER SEVEN WAS NOT USED.
- 4 A THAT'S CORRECT, SIR.
- 5 Q CORRECT? THEN, YOUR FINAL REPORT THAT WE RECEIVED
- 6 THIS MORNING, THERE IS A DIFFERENCE BETWEEN THE
- 7 WORKSHEET DRAFT, THE SECOND DRAFT, AND YOUR FINAL
- 8 PRODUCT?
- 9 A THAT IS CORRECT, SIR.
- 10 Q AND THAT SAYS NOT ONLY NUMBER SEVEN IS NOT USED,
- 11 NUMBER SIX IS NOT USED.
- 12 A THAT'S CORRECT, SIR.
- 13 Q OKAY. SO THERE ARE DIFFERENCES. NOW, IN THIS
- 14 WORKSHEET DRAFT, YOU HAVE THREE, SIX, EIGHT, AND 11
- 15 ARE SUBMITTED AS CAPITAL LOAN -- BUSINESS RECORDS OF
- 16 CAPITAL LOAN.
- 17 AND THERE ARE VARIOUS SIMILARITIES BETWEEN
- 18 THREE, SIX, EIGHT, AND 11 AND THE QUESTIONED, EDWARD
- 19 E. FRIEBURGER SIGNATURE IN BUSINESS RECORDS OF
- 20 CAPITAL LOAN, CORRECT?
- 21 A THAT'S WHAT IT SAYS, THAT'S CORRECT.
- 22 Q SO THREE IS A PHOTO VERIFAX COPY, WHICH IS THIS
- 23 DOCUMENT.
- 24 A ALL RIGHT, SIR.
- 25 Q DO YOU AGREE?

1 A LET ME DOUBLE CHECK.

2 Q I THINK IT'S GOT THAT.

3 A I THINK THAT'S CORRECT, YES.

4 Q I'M GOING TO TRY TO NOT HAND YOU THE WRONG ONE.

5 A I UNDERSTAND SOLICITOR, NO PROBLEM.

6 Q THREE, SIX, IS THE 9214, THIS (INDICATING).

7 A OKAY.

8 Q WHICH LATER ON YOU WITHDRAW.

9 A YES, SIR.

10 Q THREE, SIX. EIGHT IS A PHOTOCOPY FROM THE A.T.F.

11 BOOK.

12 A YES, SIR.

13 Q I THINK. THERE IS AN ENLARGEMENT.

14 A THAT'S CORRECT.

15 Q THERE IS AN ENLARGEMENT OF THAT. I THINK THAT'S THIS

16 DOCUMENT HERE.

17 A ACTUALLY, PROBABLY NOT UNLESS THERE HAS BEEN SOME

18 ADDENDUMS TO IT.

19 Q OKAY. WHAT DOCUMENT DO YOU THINK THAT WAS, A ONE

20 PAGE PHOTOCOPY?

21 A SIR, THIS IS MY NUMBER EIGHT RIGHT HERE.

22 Q OKAY. WELL, I'LL SHOW YOU WHAT THAT IS NOW. LET'S

23 SEE IF WE AGREE WITH WHAT THAT IS. THAT APPEARS TO

24 BE THE LEFT, DEPENDING ON WHICH SIDE YOU ARE, HALF.

25 A NO, SIR, THAT'S NOT CORRECT. IF YOU NOTICE, THIS HAS

1 "ENTRY" AT THE TOP RIGHT THERE.

2 MR. MCMAHON: ALL RIGHT. IT'S CUT OFF AT THE
3 TOP. ALL RIGHT.

4 YOUR HONOR, I WOULD OFFER THIS INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MS. HUDGINS: NO, YOUR HONOR, I THINK IT'S
7 ALREADY IN EVIDENCE.

8 THE COURT: ALL RIGHT.

9 MR. MCMAHON: IF SHE'LL FIND IT, I'LL BE GLAD TO
10 USE THAT, BUT HE SAYS THAT'S NOT HIS.

11 (WHEREUPON, STATE'S EXHIBIT NO. 50 WAS MARKED
12 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

13 MR. MCMAHON: STATE'S EXHIBIT NO. 50.

14 BY MR. MCMAHON

15 Q AND IF I LOOK AT STATE'S EXHIBIT NO. 50, IT APPEARS
16 THAT THE FIRST DATED ENTRY 10/8/03 IS SOLD TO BONDED
17 LOAN COMPANY, CORRECT?

18 A THAT'S CORRECT, SIR.

19 Q AND IF YOU COME DOWN ONE, TWO, THREE, FOUR, WHAT
20 DATE -- WHOSE -- WHAT NAME APPEARS ON THAT LINE?

21 A THE DATE IS 2/28/61, AND IT'S EDWARD FRIEBURGER.

22 Q AND THEN AN ADDRESS?

23 A FORT WAYNE, INDIANA.

24 Q OKAY. SO AS FAR AS IT DOESN'T HAVE THE TOP OF YOUR
25 DOCUMENT EIGHT ON THIS ENLARGEMENT --

1 A THAT'S CORRECT.

2 Q -- THIS APPEARS TO BE AN ENLARGEMENT OF AT LEAST PART

3 OF YOUR DOCUMENT?

4 A THAT'S CORRECT, SIR.

5 Q OKAY. ALL RIGHT. THAT'S ALL I WANTED TO DO.

6 BASICALLY, WHAT YOU WERE SAYING ARE THERE ARE

7 SIGNIFICANT AGREEMENTS BETWEEN PERHAPS A WRITER THAT

8 WROTE SOME ENTRIES ON THIS ITEM --

9 A ALL RIGHT, SIR.

10 Q -- WITHOUT ME GOING OVER AND PICKING UP THE SMALL ONE

11 IF YOU DON'T MIND --

12 A YES, SIR.

13 Q -- STATE'S EXHIBIT NO. 26, THE EDWARD E. FRIEBURGER

14 ENTRY. THERE MAY BE OTHER ENTRIES ON THAT.

15 A ALL RIGHT, SIR.

16 Q THIS DOCUMENT --

17 A ALL RIGHT, SIR.

18 Q -- AND THE QUESTIONED SIGNATURE ON THE GUN PURCHASE

19 RECORD. IS THAT WHAT YOU'RE SAYING HERE?

20 A IN ESSENCE. HOWEVER, THAT WASN'T JUST NECESSARILY

21 SIGNATURE. YOU HAD THE WORD "REVOLVER", INITIALS

22 "H.R."

23 Q OKAY. SO THEY COULD -- BUT THE SIGNIFICANT AGREEMENT

24 IS NOTED BETWEEN THE QUESTIONED EDWARD E. FRIEBURGER,

25 AGAIN, SIGNATURE AND THE ONE WHO EXECUTED VARIOUS

1 ENTRIES ON THOSE DOCUMENTS?

2 A YES, SIR.

3 Q WOULD IT MAKE ANY DIFFERENCE, IN YOUR OPINION, IF YOU
4 NOTED THIS DOCUMENT HERE WAS NOT A DOCUMENT OF
5 CAPITAL LOAN. IT WAS A DOCUMENT OF FREED'S?

6 IT WOULD OBVIOUSLY HAVE MADE A DIFFERENCE
7 BECAUSE YOU WOULD --

8 A IT WOULD OBVIOUSLY MAKE A DIFFERENCE, BECAUSE
9 BEFORE -- THAT WAS PUT IN, COLLECTIVELY INITIALED, AS
10 A TAKE IN PROCEDURE.

11 Q I UNDERSTAND.

12 A OKAY.

13 Q I DIDN'T MEAN TO CUT YOU OFF.

14 A NO PROBLEM.

15 Q THREE, SIX, EIGHT, NINE. OKAY. NOW, DID YOU GO ON
16 TO THE -- LET ME SEE, THIS DRAFT, WHERE YOU WITHDRAW
17 SEVEN, CORRECT?

18 A ALL RIGHT, SIR.

19 Q OKAY. DID YOU LEARN THAT WASN'T A CAPITAL BUSINESS
20 LOAN RECORD?

21 A EVENTUALLY, I DID, YES, SIR.

22 Q OKAY. AND ALL YOU'RE SAYING IS MY DRAFT WAS WRONG?

23 A THE VERBIAGE, THAT'S AN ADMINISTRATIVE THING, NOT A
24 TECHNICAL THING, SIR. THE TECHNICAL THING STILL
25 REMAINS AS TO WHO DID NOT WRITE WHAT. IT'S AN

1 ADMINISTRATIVE THING, AND I'M NOT A SECRETARY.

2 Q I UNDERSTAND. AND HERE -- DO YOU HAVE A SECRETARY?

3 A A PART-TIME SECRETARY, YES, SIR.

4 Q ALL RIGHT. NOW, HERE YOU HAVE THREE, SIX, SEVEN,
5 EIGHT, AND 11 ARE SUBMITTED, SO BOTH YOUR WORKSHEET
6 DRAFT AND THIS DRAFT, YOU STILL HAVE AS CAPITAL LOAN
7 RECORDS.

8 A THAT'S TRUE.

9 Q YOU HAVE EDWARD "FREEBURGER"?

10 A MISPELLING, THAT'S CORRECT, SIR.

11 Q AND YOU HAVE SIMILARITIES INCLUDED, SO NOW, WE'VE GOT
12 WHATEVER ITEM SEVEN IS, AND ITEM SEVEN, I BELIEVE, IS
13 THIS DOCUMENT HERE.

14 A YES, SIR.

15 Q AND THAT DOCUMENT IS A POLICE OFFICER'S WRITING. DID
16 YOU LATER LEARN THAT?

17 A WELL, LET'S BRING THIS IN PERSPECTIVE. WHEN I WAS
18 GIVEN THESE DIFFERENT DOCUMENTS, I PICKED OUT FOUR
19 THAT OBVIOUSLY WERE NOT INVOLVED IN IT, AND MY
20 INITIAL REPORT, IF YOU WOULD, LISTED FOUR QUESTIONED
21 SIGNATURES I DID NOT AGREE WITH.

22 EVENTUALLY, MY INITIAL EXAM WAS PROVEN CORRECT
23 BECAUSE THOSE WERE PULLED OUT.

24 Q YOU SAID THERE WAS A SIGNIFICANT AGREEMENT BETWEEN
25 RECORDS OF CAPITAL LOAN, FREED'S JEWELERS, AND THE

1 POLICE OFFICER'S WRITING FROM '61?

2 A NO, SIR, NO POLICE OFFICER'S WRITING. I NEVER SAID
3 THAT.

4 Q SIR?

5 A I DON'T BELIEVE I SAID -- LET ME SEE THE DOCUMENT.

6 Q NO, SIR. YOU DIDN'T SAY POLICE OFFICER'S WRITING. I
7 JUST ASKED YOU WAS THIS THE NOTE FROM THE POLICE CASE
8 FILE?

9 MS. HUDGINS: OBJECTION, YOUR HONOR.

10 THE WITNESS: I WOULDN'T KNOW WHAT --

11 THE COURT: WHAT'S THE BASIS OF THE OBJECTION?

12 MS. HUDGINS: HE HAS NO WAY OF KNOWING WHAT THAT
13 DOCUMENT IS.

14 THE COURT: SUSTAINED.

15 BY MR. MCMAHON

16 Q YOU DON'T KNOW WHERE THAT DOCUMENT CAME FROM?

17 A I DON'T KNOW. ALL I CAN TELL YOU IS THAT IS NOT
18 MR. FREIBURGER'S SIGNATURE. THAT WAS NEVER INTENDED
19 TO BE HIS SIGNATURE.

20 Q WHAT YOU CAN TELL US, THOUGH, OR WHAT YOU SAID ONE
21 TIME WAS THAT DOCUMENT HAD SIGNIFICANT AGREEMENT WITH
22 THE "FREEBERG" SIGNATURE?

23 A I DON'T THINK SO. SHOW ME WHAT YOU'RE TALKING ABOUT.

24 Q ISN'T THAT ITEM SEVEN?

25 A THAT'S ITEM SEVEN COLLECTIVELY, THAT'S CORRECT. THAT

1 WAS A TYPO. IT SHOULD NOT HAVE BEEN IN THERE.

2 Q SIR?

3 A IT'S OBVIOUSLY FROM THIS REPORT OVER HERE.

4 Q SIR?

5 A IT'S OBVIOUSLY FROM THE FINAL REPORT. IT WAS NOT TO

6 BE IN THERE.

7 Q FROM THE FINAL REPORT. FROM THIS DRAFT, ITEM SEVEN

8 IS IN THERE.

9 A THAT'S AN ADMINISTRATIVE ERROR ON MY PART. IT'S NOT

10 A TECHNICAL ERROR.

11 Q WHATEVER ERROR --

12 A A TECHNICAL --

13 Q -- YOU MADE, MR. DAWSON, IS ADMINISTRATIVE?

14 A THAT'S RIGHT.

15 Q IN THIS PARTICULAR CASE?

16 A THAT'S CORRECT. THIS IS A DRAFT; LIKE ALL REPORTS

17 HAVE DRAFTS, THE MAJORITY OF THEM.

18 Q SO YOU USED SEVEN ONCE, WITHDRAW IT. YOU USED SIX.

19 TWICE AND WITHDRAW IT, AND THEN YOU COME DOWN TO YOUR

20 OPINION TODAY.

21 A NO. MY OPINION WAS -- IF YOU'RE GOING TO PUT IT LIKE

22 THAT, YES. THE NUMBERS WERE IN THERE COLLECTIVELY.

23 NOT SPECIFICALLY, AND THEN WHEN WE GOT DOWN TO THE

24 FINAL EDITING, THE PROOFING, IF YOU WOULD, IT WAS

25 ADJUSTED ACCORDINGLY.

1 Q WHEN DID YOU ACTUALLY GET HIS EXEMPLARS?
2 A IT WAS THE MORNING OF -- SOLICITOR, IT WAS THE
3 MORNING OF JULY 26TH, SIR.
4 Q JULY 26TH.
5 A IF I RECALL, THAT MAY HAVE BEEN A FRIDAY MORNING.
6 I'M NOT SURE.
7 Q 26TH WAS A FRIDAY BECAUSE MY DAUGHTER'S BIRTHDAY WAS
8 THE 25TH, SO THE 26TH WAS A FRIDAY.
9 A YES, SIR.
10 Q OKAY. AND THAT'S WHEN YOU GOT HIS EXEMPLARS?
11 A APPROXIMATELY 8:45 IN THE MORNING I DROVE IN BECAUSE
12 THAT REPORT HAD TO BE IN THE COURT'S HAND. THAT'S
13 WHY THEY TOOK THE DRAFT; STAMPED DRAFT ON IT, AND
14 SAID THAT'S ALL I HAD.
15 Q AND YOU ACTUALLY ISSUED THE DRAFT BEFORE YOU GOT HIS
16 EXEMPLARS? THE DRAFT EXISTED. I'M NOT SAYING YOU
17 ISSUED IT --
18 A NO.
19 Q -- BEFORE YOU GOT HIS EXEMPLARS?
20 A THE DRAFT -- THAT'S THE TAKE IN SHEET EXISTED, YES,
21 SIR.
22 Q THE TAKE IN SHEET EXISTED, AND YOU SIGNED THE FINAL
23 PAGE OF IT?
24 A YES, SIR, I GUESS THAT'S CORRECT.
25 Q OKAY. NOW, ALL OF THESE DOCUMENTS, THE GRESHAM

1 HOTEL, BERRY'S, CAPITAL LOAN, ALL OF THEM THAT YOU
2 HAVEN'T WITHDRAWN, YOU CONSIDERED ALL THOSE DOCUMENTS
3 SIGNATURES OF EDWARD E. FRIEBURGER EXCEPT ITEM ONE?

4 A THAT'S CORRECT, SIR.

5 Q THAT'S CORRECT. AND WHETHER THE PERSON SIGNED THIS
6 DOCUMENT OR NOT, MR. FRIEBURGER, HAS NO WAY OF SAYING
7 WHETHER OR NOT HE PURCHASED A WEAPON.

8 A I DON'T KNOW NOTHING ABOUT THAT. I ONLY KNOW ONE
9 THING ABOUT THIS CASE, SOLICITOR, AND THAT IS THE
10 PERSON WHO DID THOSE DIDN'T DO THAT. THAT'S ALL I
11 KNOW ABOUT THIS CASE.

12 Q AND MR. DAWSON, JUST LIKE OTHER EXPERTS WHO DO
13 PRIVATE CONSULTING WORK, THIS ISN'T WHAT THEY CALL
14 "PRO BONO", IS IT?

15 A NO, SIR.

16 Q YOU DON'T WORK FOR FREE?

17 A NO, SIR, I DON'T.

18 Q NONE OF US DO.

19 A TRUE.

20 MR. MCMAHON: THANKS. NO FURTHER QUESTIONS.

21 THE COURT: ANY REDIRECT?

22 MS. HUDGINS: BRIEFLY, YOUR HONOR.

23 THE COURT: YES, MA'AM.

24 REDIRECT EXAMINATION:

25 BY MS. HUDGINS

1 Q MR. DAWSON, DO YOU RECALL WHEN I CALLED YOU AND ASKED
2 YOU TO PROVIDE A DRAFT FOR THE COURT?

3 A LATE THURSDAY NIGHT. THE PANIC BUTTONS WERE GOING.

4 Q AND MR. DAWSON, WHO PROVIDED YOU THE INFORMATION
5 THAT'S ON THIS DRAFT AS FAR AS ITEM NUMBER SIX AND
6 ITEM NUMBER SEVEN GO?

7 A IT WAS A STAFFER IN YOUR OFFICE.

8 Q SOMEBODY IN OUR OFFICE MADE A MISTAKE?

9 A WELL, ACTUALLY THE PAPERS WERE HANDED TO ME IN BULK
10 AND SAID "CAN YOU LOOK AT IT AND TELL US SOMETHING?"

11 I REALLY DIDN'T KNOW WHAT WAS WHAT, SO I MADE A
12 TAKE IN SHEET. I MADE A TAKE IN SHEET, AND THEN AS
13 THE CASE PROGRESSED, I FINE TUNED IT AS TO EXACTLY
14 WHAT WAS THERE.

15 Q THE EXTENT OF YOUR INFORMATION CAME FROM OUR OFFICE?

16 A THAT'S CORRECT, FROM ONE OF YOUR STAFFERS.

17 Q VERY GOOD.

18 NOW, THE SOLICITOR HAS GONE BACK AND FORTH AND
19 BACK AND FORTH WITH ITEMS NUMBER SIX AND SEVEN, WHICH
20 YOU DID NOT RELY UPON IN YOUR FINAL REPORT.

21 A NO, I DID NOT.

22 Q DOES THE FACT THAT ITEM NUMBER SIX AND ITEM NUMBER
23 SEVEN WERE TAKEN OUT OF YOUR FINAL REPORT IN ANY WAY
24 CHANGE YOUR OPINION THAT THE SIGNATURE APPEARING ON
25 WHAT'S MARKED STATE'S EXHIBIT 22 IS NOT THE SIGNATURE

1 OF EDWARD FRIEBURGER?

2 A THAT DOESN'T IMPACT IT WHATSOEVER BECAUSE WHY WE CALL
3 IT A DRAFT, IT'S REALLY A TAKE IN SHEET TO SHOW WHAT
4 EVIDENCE I'M TAKING IN FROM YOUR OFFICE IN CASE I'M
5 ASKED TO ACCOUNT FOR IT. THAT'S ALL THAT IS.

6 Q PREPARING --

7 A IT MAKES AN EARLIER EDITION FOR A REPORT FOR THEM,
8 THAT'S ALL.

9 Q ARE PREPARING DRAFTS UNUSUAL?

10 A NOT IN THE LEAST BIT.

11 Q THE ONLY DIFFERENCE BETWEEN -- DO YOU RECALL A
12 CONVERSATION WE HAD ABOUT SOME SPELLING ERRORS?

13 A ABSOLUTELY.

14 Q WHAT WAS YOUR REACTION TO THAT?

15 A WELL, I PROBABLY SAID THAT REPORT GOING OUT OF MY
16 OFFICE LIKE THAT IS ONE OF MY MOST EMBARRASSING
17 MOMENTS IN MY PROFESSIONAL CAREER, BUT ONCE AGAIN,
18 THAT'S AN ADMINISTRATIVE FUNCTION, NOT A TECHNICAL
19 FUNCTION.

20 Q AND IT HAS NOTHING TO DO WITH YOUR ACTUAL EXAMINATION
21 IN REGARD TO THIS SIGNATURE AND THE KNOWN SIGNATURE
22 OF EDWARD FRIEBURGER?

23 A NOT IN THE LEAST BIT IN THE WORLD.

24 MS. HUDGINS: THAT'S ALL.

25 THE COURT: ANY FURTHER RECROSS?

1 MR. MCMAHON: NO, YOUR HONOR. THANK YOU.

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

3 CALL YOUR NEXT WITNESS.

4 MR. DELGADO: MAY WE CONFER JUST A MINUTE?

5 (PAUSE).

6 THE COURT: YES, SIR..

7 MS. HUDGINS: THE DEFENSE RESTS.

8 THE COURT: REPLY? ANY REPLY, MS. SOLICITOR,

9 MR. SOLICITOR?

10 MR. MCMAHON: CAN I HAVE JUST A MOMENT?

11 THE COURT: ALL RIGHT.

12 (PAUSE).

13 MR. MCMAHON: NO, SIR, WE HAVE NO REPLY.

14 THE COURT: ALL RIGHT. MR. FOREMAN AND LADIES
15 AND GENTLEMEN OF THE JURY, I NEED TO TAKE UP A COUPLE OF
16 MATTERS WITH THE ATTORNEYS, INCLUDING WHAT POTENTIAL
17 CHARGES I WILL GIVE.

18 THAT TAKES -- IT WILL TAKE US ABOUT 20 OR 30
19 MINUTES TO DO THAT.

20 LET ME START DOING IT, AND I'LL KIND OF SEE
21 WHERE I AM IN TERMS OF -- WE MIGHT HAVE AN EARLY LUNCH AND
22 COME BACK AND DO THE ARGUMENT AND THE CHARGE ALTOGETHER.
23 I'LL JUST KIND OF GET A FEEL FOR THAT.

24 ALL RIGHT. DON'T BEGIN ANY COMMENT OR
25 DISCUSSION ABOUT THE CASE. IT WILL TAKE US --

1 MR. JOHNSON, IF THEY WANT TO TAKE A WALK OR WHATEVER, AS
2 LONG AS THEY'RE BACK IN THE JURY ROOM BY 11:30, THAT'S
3 FINE.

4 THE BAILIFF: ALL RIGHT, SIR.
5 (WHEREUPON, THE JURY LEFT OPEN COURT AT
6 APPROXIMATELY 11:10 A.M.)

7 THE COURT: ALL RIGHT. MOTIONS?

8 MS. HUDGINS: JUDGE, AT THIS POINT, WE WOULD
9 ONCE AGAIN RENEW OUR DIRECTED VERDICT MOTION.

10 THE COURT: ALL RIGHT. I WOULD RESPECTFULLY
11 DENY THAT MOTION.

12 AS FAR AS THE CHARGE IS CONCERNED, THE FUNCTION
13 OF THE JUDGE, THE JURY DECIDES THE FACTS, PRIOR
14 INCONSISTENT STATEMENTS.

15 MR. DELGADO: PRIOR INCONSISTENT STATEMENT?

16 THE COURT: THAT'S WHAT ALL THAT EXAMINATION WAS
17 FROM.

18 MR. DELGADO: OH, I'M SORRY ABOUT THAT, OKAY.

19 THE COURT: NOBODY TESTIFIED WHO HAD A RECORD AS
20 I RECALL, OKAY.

21 FACTORS FOR CREDIBILITY WHICH YOU'VE HEARD
22 BEFORE, GRIPPON, CIRCUMSTANTIAL EVIDENCE.

23 MS. HUDGINS: JUDGE, COULD I BE HEARD ON
24 GRIPPON?

25 THE COURT: YES, BUT LET ME GET THROUGH.

1 MS. HUDGINS: OKAY.

2 THE COURT: CHARGE, ARREST, INDICTMENT ARE NOT
3 EVIDENCE, PRESUMPTION OF INNOCENCE, REASONABLE DOUBT,
4 VICTOR V. NEBRASKA, EXPERT WITNESS TESTIMONY.

5 THERE WAS NO MIRANDA STATEMENT IN THE CASE. THE
6 FACT THAT THE DEFENDANT DID NOT TESTIFY CAN'T BE HELD
7 AGAINST HIM.

8 MR. DELGADO: YOUR HONOR, MAY I ASK, DO YOU USE
9 THE WORD "ELECTION" RATHER THAN -- HOW DO YOU PHRASE THAT,
10 I GUESS IS WHAT I'M SAYING?

11 THE COURT: I JUST SIMPLY SAY THE FACT HE DID
12 NOT TESTIFY IS NOT A FACT TO BE CONSIDERED. HE HAS A
13 CONSTITUTIONAL RIGHT.

14 MR. DELGADO: ALL RIGHT, THAT'S FAIR, THAT'S
15 FINE.

16 THE COURT: I DON'T USE THE WORD "FAIR", IF
17 THAT'S WHAT YOU'RE ASKING.

18 MR. DELGADO: YES, SIR. THAT'S FINE.

19 THE COURT: CRIMINAL INTENT, THE MURDER CHARGE
20 INCLUDING THE INFERENCE OF MALICE MAY ARISE FROM THE USE
21 OF A DEADLY WEAPON.

22 ALL RIGHT. MS. HUDGINS, I'LL BE GLAD TO HEAR
23 FROM YOU ON GRIPPON.

24 MS. HUDGINS: YOUR HONOR, I DON'T KNOW HOW TO
25 SAY THIS OTHER THAN JUST TO BE QUITE HONEST, I'M UNCERTAIN

1 WHAT CIRCUMSTANTIAL EVIDENCE LAW OF THIS STATE IS.

2 I HAVE READ STATE V. YUKOTO CHERRY. JUDGE, I
3 DON'T KNOW WHAT THAT CASE MEANS. I'VE READ IT AND READ
4 IT. IT'S MY UNDERSTANDING FROM THE RESEARCH I'VE DONE
5 THAT THE EDWARDS CHARGE -- THERE'S NOTHING IN THE CASE LAW
6 THAT SAYS THE EDWARDS CHARGE IS AN ILLEGAL CHARGE.

7 IN OTHER WORDS, IT'S STILL ACCEPTABLE. I THINK
8 UNDER THE PARTICULAR -- AND I MAY BE WRONG, BUT I THINK
9 UNDER THE PARTICULAR AND UNUSUAL FACTS OF THIS CASE, THAT
10 AN EDWARDS CIRCUMSTANTIAL EVIDENCE CHARGE IS MOST
11 APPROPRIATE, AND WE WOULD REQUEST AN EDWARDS CHARGE.

12 THE COURT: WELL, LET ME JUST MAKE MY PUBLIC
13 COMMENT ABOUT IT. IT'S THE DEFENSE LAWYERS THAT SHOT THE
14 CHARGE IN THE FOOT. IT WAS NOT THE PROSECUTION.

15 MS. HUDGINS: I UNDERSTAND, YOUR HONOR.

16 THE COURT: THEY GOT WHAT THEY ASKED FOR. I
17 THOUGHT I HAD A REALLY GOOD CHARGE.

18 MR. DELGADO: YES.

19 THE COURT: AND THE DEFENSE ASKED FOR IT AND
20 THEN TURNED AROUND AND RAISED AN ISSUE ABOUT IT.

21 MS. HUDGINS: YES, SIR.

22 THE COURT: I HAVE A CHARGE THAT JUDGE CLARY AND
23 I HAVE WRITTEN AS -- THAT IS INCLUDED IN OUR BENCH BOOK
24 FOR THE NEW JUDGES.

25 IT ELIMINATED THE USE OF THE WORD THE JURY MUST

1 SEEK SOME OTHER REASONABLE EXPLANATION, USING THE BALANCE
2 OF, AND KEEPING THE LANGUAGE, INTACT.

3 DOES THE STATE HAVE ANY POSITION OTHER THAN --

4 MS. CAMPBELL: YES, YOUR HONOR. WE WOULD
5 REQUEST THAT YOU CHARGE GRIPPON.

6 THE COURT: WELL, WHY NOT THE TRADITIONAL
7 CIRCUMSTANTIAL EVIDENCE CHARGE?

8 MS. CAMPBELL: I THINK GRIPPON IS WHAT HAS BEEN
9 TRADITIONAL OVER THE LAST SEVERAL YEARS, EVER SINCE IT
10 CAME OUT, YOUR HONOR. I DON'T KNOW WHAT YOU CHARGE. I
11 HAVEN'T READ YOUR CHARGE.

12 THE COURT: IT'S THE SAME THING THAT WE'VE GIVEN
13 BEFORE EXCEPT IT DOES NOT INCLUDE YOU, THE JURY, MUST SEEK
14 SOME OTHER EXPLANATION. WHATEVER THE OFFENDING LANGUAGE
15 ABOUT IT WAS, THAT YOU MUST SEEK SOME OTHER REASONABLE
16 EXPLANATION, WHICH THE DEFENSE LAWYERS SAY CASTS THE
17 BURDEN OF PROOF UPON SOMEBODY ELSE. I REALLY NEVER
18 UNDERSTOOD THAT.

19 MS. CAMPBELL: YOUR HONOR, I UNDERSTAND THAT
20 WOULD BE YOUR CHARGE. WE WOULD JUST ASK THAT IF YOU WERE
21 GOING TO CHARGE THAT, THEN I'D ASK THAT WE HAVE THE
22 GRIPPON CHARGE ALSO INCLUDED.

23 THE COURT: I'LL DO THAT.

24 MS. CAMPBELL: IF WE COULD BALANCE IT THAT WAY.
25 YOU ARE ELIMINATING IT, THOUGH, THAT WAY ABOUT THE

1 LANGUAGE OF "MUST"?

2 THE COURT: TO MY KNOWLEDGE, THAT'S THE ONLY
3 THING OBJECTIONABLE ABOUT THE OLD EDWARDS CHARGES.

4 MS. HUDGINS: JUDGE, MY UNDERSTANDING IS THAT
5 EDWARDS MAKES A DISTINCTION BETWEEN DIRECT AND
6 CIRCUMSTANTIAL EVIDENCE, AND WE THINK THAT'S IMPORTANT.

7 THE COURT: NO, NO. THE LAW MAKES NO
8 DISTINCTION BETWEEN CIRCUMSTANTIAL EVIDENCE OR DIRECT
9 EVIDENCE, NOR IS ANY GREATER DEGREE OF CERTAINTY REQUIRED.
10 HOWEVER, IT DOES PROVIDE FOR A TEST, WHICH ARE THOSE FOUR
11 OR FIVE THINGS, EXCLUDING THAT SEEKS SOME OTHER
12 EXPLANATION LANGUAGE.

13 NOW, TO ARGUE TO THE JURY THAT THE GREATER
14 BURDEN REQUIRES CIRCUMSTANTIAL RATHER THAN THE REST WOULD
15 BE INAPPROPRIATE. THEY HAVE THE SAME WEIGHT, PROVIDED THE
16 CIRCUMSTANTIAL EVIDENCE MEETS THE TEST, WHICH I'LL KEEP
17 OUT.

18 MS. HUDGINS: MAYBE -- COULD WE SEE YOUR
19 CIRCUMSTANTIAL EVIDENCE CHARGE, JUDGE?

20 THE COURT: SURE.

21 MS. HUDGINS: FRANKLY, I THINK I MAY HAVE SEEN
22 IT.

23 THE COURT: ANY OTHER REQUESTS TO CHARGE?

24 MS. HUDGINS: JUDGE, DOES YOUR CHARGE INCLUDE A
25 MERE SUSPICION CHARGE AND THE CIRCUMSTANTIAL EVIDENCE?

1 THE COURT: IT DOES. WELL, YOU'LL SEE IT.

2 MS. HUDGINS: OKAY.

3 MR. DELGADO: YOUR HONOR, COULD -- I'M SORRY,
4 JUST IN MY HASTE THIS MORNING, THE VICTOR VS. NEBRASKA, I
5 UNDERSTAND THIS IS ABOUT -- TALKING ABOUT THE MOMENTOUS
6 DECISIONS IN ONE'S LIFE. IS THAT PHRASING IN YOUR CHARGE?

7 THE COURT: NO, SIR.

8 MR. DELGADO: DOES THE EVIDENCE LEAVE YOU
9 FIRMLY -- OR IS THE EVIDENCE --

10 THE COURT: IF YOU'RE FIRMLY CONVINCED --

11 MR. DELGADO: FIRMLY CONVINCED.

12 THE COURT: -- OF THE GUILT OF THE DEFENDANT,
13 YOU MUST FIND HIM GUILTY. ON THE OTHER HAND, YOU HAVE --

14 MR. DELGADO: YES.

15 THE COURT: IF YOU'RE FIRMLY CONVINCED THE
16 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND
17 HIM GUILTY.

18 IF, ON THE OTHER HAND, YOU THINK THERE'S A REAL
19 POSSIBILITY HE'S NOT GUILTY, YOU MUST GIVE THE DEFENDANT
20 THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

21 MR. DELGADO: YES, SIR.

22 THE COURT: RIGHT OUT OF THE FEDERAL CHARGE.

23 ALL RIGHT. ANY OTHER REQUESTS?

24 (THERE WAS NO RESPONSE.)

25 THE COURT: ALL RIGHT. DO YOU WANT TO TAKE A

1 FEW MINUTES AND GET YOUR THOUGHTS TOGETHER?
2 MR. DELGADO: YES.
3 THE COURT: BUT MR. DELGADO, LET ME MAKE SURE
4 YOU UNDERSTAND, YOU DON'T GET THE LAST ARGUMENT.
5 MR. DELGADO: OH, I UNDERSTAND.
6 THE COURT: BECAUSE YOU PUT EVIDENCE IN THE
7 CASE.
8 MR. DELGADO: ABSOLUTELY.
9 THE COURT: ALL RIGHT.
10 MR. DELGADO: YOUR HONOR, JUST SO THE COURT IS
11 CLEAR, MS. HUDGINS MIGHT BE ABLE TO OPEN ON THE LAW FOR
12 THE DEFENSE, AND I'LL ARGUE THE FACTS.
13 THE COURT: WITHIN ONE ARGUMENT, YOU MEAN.
14 MR. DELGADO: OH SURE, YES. I JUST WANTED TO --
15 THE COURT: I DON'T HAVE ANY PROBLEM WITH THAT.
16 HOW LONG DO YOU THINK YOU'RE GOING TO TALK?
17 MS. CAMPBELL: I'M GOING TO OPEN ON THE LAW,
18 JUDGE. I SHOULD BE BRIEF. OTHER THAN CIRCUMSTANTIAL
19 EVIDENCE AND THE ELEMENTS OF MURDER, THERE'S NOT A LOT TO
20 TALK ABOUT.
21 MR. MCMAHON WILL BE CLOSING ON THE FACTS.
22 THE COURT: WE'LL FEED THE JURY IN TODAY SINCE
23 THEY'RE GOING TO GET THE CASE. I DON'T WANT THEM OUT
24 WANDERING AROUND.
25 DO YOU THINK YOU WILL -- DO YOU HAVE ANY PROBLEM

1 NOT BREAKING THE ARGUMENTS UP AND GOING UNTIL ONE O'CLOCK?
2 IT'S JUST TOO EARLY FOR ME TO SEND THEM TO LUNCH.

3 MR. DELGADO: YOUR HONOR, COULD YOU -- I'LL BET
4 YOU BETWEEN US, WE'LL TALK 45 MINUTES MAXIMUM.

5 THE COURT: ALL RIGHT. IF THE STATE CAN DO IT
6 IN AN HOUR OR LESS, THEN WE CAN MAKE THE ONE O'CLOCK TIME.

7 MR. MCMAHON: I WOULD PREFER NOT TO BREAK THE
8 ARGUMENTS UP.

9 THE COURT: WELL, I UNDERSTAND THAT, BUT I JUST
10 HAVE A DILEMMA HERE. I MEAN, I'M EITHER GOING TO HAVE TO
11 SIT AROUND AND DO NOTHING OR SEND THEM BACK OUT. I DON'T
12 SEE ANY SENSE SENDING THEM TO LUNCH AT 11:15

13 MR. MCMAHON: IF YOU DON'T SEND THEM TO LUNCH,
14 WHAT TIME ARE YOU STARTING, TALKING ABOUT STARTING?

15 I WOULD PREFER NOT TO BREAK THE ARGUMENTS AND
16 THE CHARGE EITHER. WHAT WOULD BE -- IF YOU'RE NOT GOING
17 TO SEND THEM TO LUNCH, WHAT TIME ARE YOU TALKING ABOUT
18 STARTING WITH THE ARGUMENTS?

19 THE COURT: RIGHT NOW, IN ABOUT 15 MINUTES, TEN
20 MINUTES.

21 MS. CAMPBELL: JUDGE, IT WAS REPRESENTED TO US
22 JUST YESTERDAY THAT THEY HAD SEVEN WITNESS, SO I MEAN, I
23 JUST -- I'M SORRY, THAT'S MY FAULT, YOU KNOW. THIS
24 HAPPENS ALL THE TIME. I'M NOT SAYING THEY MISREPRESENTED
25 ANYTHING, BUT AS FAR AS PREPARATION GOES --

1 THE COURT: ALL RIGHT. I'LL TELL YOU WHAT WE'LL
2 DO. I'LL CUT THEM LOOSE UNTIL 12 O'CLOCK -- I MEAN,
3 ONE O'CLOCK. THEY CAN EAT IN THE MEANTIME.

4 YOU CAN COME BACK, AND WE'LL KEEP ARGUMENTS AND
5 CHARGE TOGETHER.

6 MR. DELGADO: YES, SIR.

7 THE COURT: SINCE I'M GIVING THEM ABOUT -- LET'S
8 SAY A QUARTER TO ONE.

9 MS. CAMPBELL: THAT'S GOOD.

10 MR. MCMAHON: THANK YOU, JUDGE.

11 MS. HUDGINS: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT. BRING THE JURY IN.

13 (PAUSE).

14 WELL, THEY'RE FLOATING AROUND OUT THERE ANYWAY
15 RIGHT NOW, SO I MAY NOT HAVE THEM.

16 THE COURT: ALL RIGHT. ANY OBJECTION TO MY --
17 IF YOU WANT TO STAY IN HERE, BUT ANY OBJECTION TO ME JUST
18 CUTTING THEM LOOSE, JUST TELL THEM NOT TO DISCUSS IT AND
19 BE CAREFUL?

20 MR. MCMAHON: NO.

21 MR. DELGADO: NO, SIR.

22 THE COURT: ALL RIGHT. BOTH SIDES WAIVE ANY
23 RIGHT OF PRESENCE ON THAT INSTRUCTION.

24 ALL RIGHT. IF YOU WANT TO LOOK AT THAT
25 CIRCUMSTANTIAL EVIDENCE CASE LAW, THAT'S FINE.

1 WE'RE AT EASE AS FAR AS THE AUDIENCE IS
2 CONCERNED.

3 (THERE WAS A SHORT RECESS.)

4 THE COURT: ALL RIGHT. BRING THE JURY IN. LET
5 ME SEND THEM OUT.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 11:29.)

8 THE COURT: ALL RIGHT. MR. FOREMAN -- LET'S
9 SEE. WE'RE MISSING ONE MORE.

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

11 THE COURT: WE HAVE A LITTLE BIT OF A TIMING
12 PROBLEM. I FIGURED OUT HOW LONG THEY'RE GOING TO TAKE TO
13 ARGUE.

14 RATHER THAN BREAK UP THE ARGUMENTS, SOMETIMES IT
15 WILL GIVE ONE SIDE OR THE OTHER SOME ADVANTAGE. WE'RE
16 GOING TO KEEP THEM TOGETHER.

17 WE'LL LET YOU GO TO LUNCH. IF YOU BE BACK AT A
18 QUARTER TO ONE. I KNOW THAT'S A LITTLE BIT LONGER THAN
19 NECESSARY, BUT JUST FROM THE TIMING STANDPOINT, THAT'S
20 ABOUT AS QUICK AS YOU CAN GET IT.

21 I DIDN'T WANT TO SEND YOU TO LUNCH AT 11:15,
22 THAT'S TOO EARLY.

23 THEY'LL BE READY TO GO AT A QUARTER TO ONE.
24 WE'LL GET EVERYTHING DONE IN ONE BLOCK OF TIME. DON'T
25 DISCUSS THE CASE WITH ANYONE OR ALLOW ANYONE TO DISCUSS IT

1 WITH YOU. WE'LL SEE YOU BACK AT A QUARTER TO ONE.

2 (WHEREUPON, THE JURY LEFT OPEN COURT AT
3 APPROXIMATELY 11:31 A.M.)

4 THE COURT: ALL RIGHT. ANY OBJECTIONS TO THE
5 CIRCUMSTANTIAL EVIDENCE CHARGE?

6 MS. HUDGINS: IF I AM -- JUST TO BE CLEAR,
7 JUDGE, IT'S LISTED UNDER ALTERNATIVES.

8 THE COURT: THAT'S IT.

9 MS. HUDGINS: I HAVE NO OBJECTIONS. I WOULD
10 REQUEST THE CONJECTURE, SPECULATION, SUSPICION PROBABLY DO
11 NOT CONSTITUTE CIRCUMSTANTIAL EVIDENCE. I DON'T THINK
12 THAT'S INCLUDED IN HERE.

13 THE COURT: WELL, THAT'S IN THE FIRST PART OF
14 IT. THE OTHER -- YOU NEED TO HEAR IT ALL.

15 MS. HUDGINS: OKAY. AS LONG AS THAT'S IN THERE,
16 JUDGE.

17 THE COURT: I'VE GOT IT IN TWO PLACES.

18 HERE IS WHAT I SAY ABOUT THAT...

19 MS. CAMPBELL: YOUR HONOR, I WOULD NOTE IT IS IN
20 YOUR CHARGE. IT SAYS IT IS NOT SUFFICIENT IF
21 CIRCUMSTANCES CREATE SUSPICION OR PROBABILITY.

22 THE COURT: WELL, I'LL LOOK AT THAT AGAIN. WHAT
23 I USUALLY DO IS JUST USE THE STATE VS. GRIPPON. WHAT I
24 SAY IS CONJECTURE, SPECULATION, SUSPICION OR PROBABILITY
25 DO NOT CONSTITUTE CIRCUMSTANTIAL EVIDENCE. IF I ALREADY

1 SAID THAT, I'LL GO BACK TO THE LONG CHARGE AND SEE WHAT
2 I'VE GOT THERE.

3 MS. CAMPBELL: AND THE ONLY THING WE WOULD
4 REQUEST IS THAT YOU NOT SAY IT OVER AND OVER AGAIN. ONCE
5 WOULD BE SUFFICIENT.

6 THE COURT: DO YOU KNOW THE SUPREME COURT --

7 MS. CAMPBELL: IT'S --

8 THE COURT: THE SUPREME COURT COUNTED HOW MANY
9 TIMES I USED "REASONABLE DOUBT" IN A CASE ONE TIME. IT
10 WAS 26.

11 MS. CAMPBELL: I KNOW, JUDGE.

12 MR. DELGADO: IS THAT ALL, YOUR HONOR, JUST 26?

13 THE COURT: THAT'S MORE THAN MOST.

14 ALL RIGHT. A QUARTER TO ONE.

15 MS. HUDGINS: THANK YOU, YOUR HONOR.

16 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

17 THE COURT: ALL RIGHT. IS EVERYONE READY?

18 MS. CAMPBELL: STATE'S READY, YOUR HONOR.

19 THE COURT: ALL RIGHT. BRING THE JURY IN.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
21 APPROXIMATELY 12:53.)

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

23 THE COURT: THANK YOU, SIR.

24 ALL RIGHT. MR. FOREMAN, LADIES AND GENTLEMEN OF
25 THE JURY, YOU HAVE HEARD ALL THE TESTIMONY UPON WHICH YOU

1 WOULD BE ENTITLED TO BASE YOUR DECISION.

2 WE'RE AT THAT STAGE OF THE TRIAL WHERE THE
3 ATTORNEYS WILL MAKE A CLOSING SUMMATION TO YOU. DURING
4 THAT TIME, THEY CAN TALK WITH YOU ABOUT WHAT THEY THINK
5 THE EVIDENCE HAS SHOWN OR NOT SHOWN, AS THE CASE MAY BE.
6 THEY CAN ALSO DISCUSS WITH YOU THE LEGAL PRINCIPLES THAT
7 THEY BELIEVE ARE APPLICABLE IN THIS CASE.

8 WHAT THEY HAVE TO SAY TO YOU, OBVIOUSLY, IS
9 IMPORTANT BECAUSE THEY'VE LIVED WITH THIS CASE A LOT
10 LONGER THAN YOU AND I HAVE.

11 HOWEVER, A COUPLE OF THINGS ABOUT ATTORNEY'S
12 CLOSING ARGUMENTS TO YOU. WHAT THEY SAY TO YOU DOES NOT
13 CONSTITUTE EVIDENCE. IT'S MERELY THEIR OPINION OF THE
14 EVIDENCE.

15 SO IF THEIR VERSION OF THE FACTS DIFFERS FROM
16 YOUR UNANIMOUS VERSION, OBVIOUSLY YOURS COUNTS BECAUSE
17 YOU'RE ENTITLED TO JUDGE THE FACTS.

18 LIKEWISE, IF THEIR DISCUSSIONS WITH YOU ABOUT
19 THE LEGAL PRINCIPALS DIFFERS FROM THE INSTRUCTIONS THAT I
20 GIVE YOU, THEN I'D ASK YOU TO FOLLOW MY INSTRUCTIONS AS
21 YOU'VE SWORN TO DO.

22 THE ORDER OF ARGUMENT IS THE STATE WILL OPEN ON
23 THE LAW FIRST. THEN THE DEFENSE GETS THEIR OPPORTUNITY TO
24 MAKE THEIR ARGUMENT, AND THEN THE STATE HAS THE RIGHT TO
25 CLOSE.

1 DEFENDING ON HOW LONG THEY ARGUE, WE MAY TAKE A
2 BREAK OR GO STRAIGHT INTO THE JURY CHARGE. IF WE'RE OUT
3 HERE TOO LONG, JUST GIVE ME A HIGH SIGN. I'LL BE GLAD TO
4 LET YOU TAKE A BREAK.

5 I'M ANTICIPATING THE ARGUMENTS WILL BE LESS THAN
6 TWO HOURS.

7 MADAM SOLICITOR.

8 CLOSING STATEMENT:

9 MS. CAMPBELL: MAY IT PLEASE THE COURT.

10 LADIES AND GENTLEMEN, THE FIRST THING I WANT TO
11 DO IS TAKE THIS OPPORTUNITY TO THANK YOU FOR YOUR
12 ATTENTION IN THIS CASE IN THIS COURT.

13 THIS IS THE FIRST TIME I'VE HAD THE OPPORTUNITY
14 TO ADDRESS YOU AND THE LAST TIME, ACTUALLY, THAT I'LL HAVE
15 THE OPPORTUNITY.

16 I HAVE WATCHED YOU OVER THE LAST SEVERAL DAYS.
17 IT HAS BECOME APPARENT TO YOU AND EVERYONE IN THIS
18 COURTROOM IT IS A VERY IMPORTANT CASE. IT IS IMPORTANT TO
19 THE STATE OF SOUTH CAROLINA, AND IT IS IMPORTANT TO THE
20 DEFENDANT. YOU HAVE PAID VERY CLOSE ATTENTION, AND I JUST
21 WANT TO TAKE THIS OPPORTUNITY TO THANK YOU.

22 I KNOW AT TIMES IT'S TEDIOUS, THE LEGAL
23 WRANGLING BACK AND FORTH. THAT SHOULD NOT AFFECT YOU WITH
24 YOUR JUDGMENT.

25 AS THE JUDGE JUST TOLD YOU, I'M GOING TO GET UP

1 HERE, AND I'M GOING TO TALK TO YOU A LITTLE BIT ABOUT THE
2 LAW IN THE CASE. THEN THE DEFENSE IS GOING TO GET UP
3 HERE, AND ONE OR BOTH OF THEM WILL GET UP HERE AND TALK TO
4 YOU ABOUT WHATEVER. THEN MR. MCMAHON IS GOING TO ADDRESS
5 THE FACTS IN THE CASE.

6 LET ME TELL YOU RIGHT OFF THE BAT UP FRONT THAT
7 IF I SAY ANYTHING DIFFERENT THAN WHAT THE JUDGE SAYS ABOUT
8 THE LAW, YOU TAKE THE LAW AS THE JUDGE GIVES IT TO YOU.

9 HE IS THE PERSON WHO GOVERNS WHAT THE LAW IS IN
10 THIS CASE. SO IF I SAY ANYTHING DIFFERENT, IT'S NOT
11 INTENTIONAL, BUT TAKE THE LAW AS THE JUDGE GIVES IT TO
12 YOU.

13 IN THE SAME FASHION, AS YOU LISTEN TO THESE
14 CLOSING ARGUMENTS, IF YOU HEAR ANYONE MISCHARACTERIZE THE
15 FACTS IN ANY WAY, YOU REMEMBER THE FACTS AS YOU HEARD
16 THEM.

17 LADIES AND GENTLEMEN, THE ROLES IN THIS
18 COURTROOM ARE VERY WELL DEFINED. THE PROSECUTION'S ROLE
19 IS TO BRING FORTH ALL THE RELEVANT ADMISSIBLE EVIDENCE
20 CONCERNING THIS CASE, THIS DEFENDANT, AND THIS CRIME.

21 THE ROLE OF THE DEFENSE IS ALSO OBVIOUS. IT'S
22 TO DEFEND THEIR CLIENT TO THE BEST OF THEIR ABILITY. THE
23 JUDGE'S ROLE, HE DETERMINES WHAT EVIDENCE YOU ARE ALLOWED
24 TO HEAR IN THE CASE, AS WELL AS HE WILL TELL YOU WHAT THE
25 LAW IS AFTER YOU LISTEN TO US FOR A WHILE, THE LAW THAT

1 YOU MUST APPLY. THAT'S WHERE WE GET TO YOUR ROLE, EACH OF
2 YOU INDIVIDUALLY AND THEN COLLECTIVELY.

3 YOUR ROLE, LET'S FACE IT, BY FAR IS THE MOST
4 IMPORTANT ROLE IN THIS COURTROOM. YOU, LADIES AND
5 GENTLEMEN, AND YOU ALONE, MUST DECIDE WHAT HAPPENED BACK
6 ON FEBRUARY 28TH OF 1961, WHAT HAPPENED TO JOHN ORNER AND
7 WHO DID IT.

8 THERE'S NO ONE THAT'S GOING TO GET UP HERE AND
9 SAY THAT YOUR ROLE IS NOT THE MOST IMPORTANT ONE IN THIS
10 COURTROOM.

11 I ALSO WANT TO -- WELL, AT THIS POINT YOU HEARD
12 ALL THE EVIDENCE THAT YOU CAN CONSIDER, AND YOU MUST BASE
13 YOUR VERDICT, LADIES AND GENTLEMEN, AS THE JUDGE WILL TELL
14 YOU, ON THE EVIDENCE, ON THE TESTIMONY, NOT ON ANY
15 INNUENDO, NOT SPECULATION OR CONJECTURE. NOR CAN YOU BASE
16 IT ON QUESTIONS BY THE LAWYERS OR JUST ON WISHFUL
17 THINKING. YOU MUST BASE IT ON THE ANSWERS TO THE
18 QUESTIONS, THE RELIABLE, CREDIBLE EVIDENCE.

19 NOW, I ALSO WANT TO TAKE JUST ONE SECOND AND
20 APOLOGIZE IF I HAVE DONE ANYTHING OVER THE LAST SEVERAL
21 DAYS TO OFFEND YOU.

22 SOMETIMES WE GET SO CAUGHT UP IN THE LEGAL
23 WRANGLING, IT CAN BE SOMETIMES FRUSTRATING. SOMETIMES
24 SOMETHING IS ADMISSIBLE LATER. PART OF IT IS ADMISSIBLE,
25 THEN NONE OF IT IS ADMISSIBLE OR ALL OF IT MAY COME IN.

1 WE GET CAUGHT UP IN THAT SOMETIMES.

2 I JUST WANT TO TAKE THIS OPPORTUNITY ON BEHALF
3 OF THE STATE AND ON BEHALF OF JOHN ORNER IN THIS CASE. IF
4 I HAVE DONE ANYTHING IN ANY WAY TO OFFEND ANY ONE OF YOU,
5 PLEASE DON'T HOLD IT AGAINST THE STATE, AND PLEASE DON'T
6 HOLD IT AGAINST JOHN ORNER.

7 NOW, CRIMINAL CASES, LADIES AND GENTLEMEN, IN
8 THIS COUNTRY ARE SOMEWHAT UNIQUE BECAUSE THE DEFENDANT HAS
9 THE ABSOLUTE RIGHT TO CONFRONT EACH AND EVERY WITNESS IN A
10 CRIMINAL CASE.

11 AS YOU MAY HAVE NOTICED OVER THE LAST SEVERAL
12 DAYS, YOU HAVE HEARD FROM DOCTORS, FROM EXPERTS, FROM
13 POLICE OFFICERS, AND LAY WITNESSES. THEY HAVE ALL HAD TO
14 COME BEFORE YOU.

15 THE REASON IS THAT, LADIES AND GENTLEMEN, YOU
16 AREN'T GOING TO HEAR ANY DEPOSITIONS IN A CRIMINAL CASE.
17 THE REQUIREMENTS ARE STRICTER THAN THAT. YOU DIDN'T SEE
18 ANY INCIDENT REPORTS. YOU DIDN'T SEE ANY TEST RESULTS.
19 YOU HEARD THE LIVE TESTIMONY, AND THE PURPOSE OF THAT IS
20 VERY IMPORTANT. IT'S SO THAT YOU CAN JUDGE THE
21 CREDIBILITY AND THE BELIEVABILITY OF EVERY WITNESS THAT
22 COMES BEFORE YOU, NOT WHAT'S ON A PIECE OF PAPER, NOT
23 WHAT'S TAKEN DOWN BY A STENOGRAPHER, BUT YOU MUST JUDGE
24 THE CREDIBILITY OF EACH WITNESS.

25 NOW, LADIES AND GENTLEMEN, THE BURDEN OF PROOF

1 IS ON THE STATE OF SOUTH CAROLINA, AS IT SHOULD BE IN
2 EVERY CRIMINAL CASE, TO PROVE THE DEFENDANT, ED
3 FRIEBURGER, GUILTY BEYOND A REASONABLE DOUBT. THAT IS
4 TRUE IN EVERY CRIMINAL CASE. THAT IS THE WAY IT SHOULD
5 BE.

6 LET ME BE THE FIRST TO TELL YOU, LADIES AND
7 GENTLEMEN, IN THIS CASE, THAT IS A BURDEN THE STATE
8 WELCOMES.

9 I WANT TO TALK TO YOU A LITTLE BIT ABOUT THE
10 PARTICULARS OF THE LAW, AND THE JUDGE IS GOING TO TALK TO
11 YOU A LITTLE BIT ABOUT THIS.

12 FIRST, I WANT TO TALK TO YOU ABOUT WHAT IS
13 GUILTY BEYOND A REASONABLE DOUBT. OVER THE YEARS, OUR
14 COURTS HAVE TRIED TO COME UP WITH SOME DEFINITIONS THAT
15 COULD BE HELPFUL TO YOU, A JURY, IN DETERMINING EXACTLY
16 WHAT DOES THE TERM "REASONABLE DOUBT" MEAN.

17 IN A CASE CALLED THE STATE VS. DARBY, OUR COURTS
18 HERE IN SOUTH CAROLINA HAVE USED THIS DEFINITION WHICH YOU
19 CAN USE AS AN AID IN DETERMINING WHETHER OR NOT REASONABLE
20 DOUBT EXISTS IN THIS CASE.

21 WHAT IS REASONABLE DOUBT? PROOF BEYOND A
22 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED
23 OF THE DEFENDANT'S GUILT.

24 NOW, THERE ARE VERY FEW THINGS IN THIS WORLD
25 THAT WE KNOW WITH ABSOLUTE CERTAINTY. IN CRIMINAL CASES,

1 THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY
2 POSSIBLE DOUBT, BUT IF, BASED ON YOUR CONSIDERATION OF THE
3 EVIDENCE, YOU ARE FIRMLY, JUST FIRMLY CONVINCED, OF THE
4 DEFENDANT'S GUILT, YOU MUST FIND HIM GUILTY.

5 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL
6 POSSIBILITY THAT THIS DEFENDANT IS NOT GUILTY, THEN YOU
7 MUST ACQUIT HIM.

8 THAT, LADIES AND GENTLEMEN, THE JUDGE WILL
9 INSTRUCT YOU AT THE END, IS THE TOOL YOU CAN USE IN
10 DETERMINING WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF
11 PROOF.

12 NOW, I'D SUBMIT, LADIES AND GENTLEMEN, THE STATE
13 HAS NOT ONLY MET ITS BURDEN OF PROOF, IT'S PROVED IT
14 BEYOND ANY DOUBT.

15 THE CHARGE IN THIS CASE IS MURDER. YOU HAVE ONE
16 INDICTMENT BEFORE YOU. THE DEFINITION OF MURDER IN OUR
17 CODE OF LAWS IS AS FOLLOWS: MURDER, VERY SIMPLY, LADIES
18 AND GENTLEMEN, NOBODY IS GOING TO GET UP HERE AND ARGUE
19 THAT JOHN ORNER WASN'T MURDERED, BUT MURDER IS SIMPLY,
20 LADIES AND GENTLEMEN, THE UNLAWFUL KILLING OF ANOTHER
21 PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR
22 IMPLIED.

23 I WANT TO TALK TO YOU ABOUT WHAT THOSE TERMS
24 MEAN. THE UNLAWFUL KILLING OF A PERSON, AND NO ONE IS
25 GOING TO DISPUTE THAT 63 YEAR OLD JOHN ORNER, WHO WAS IN

1 HIS TAXI CAB ON FEBRUARY 28TH, WAS UNLAWFULLY KILLED WHEN
2 HE WAS SHOT IN THE BACK OF HIS HEAD. IT'S THE UNLAWFUL
3 KILLING WITH MALICE AFORETHOUGHT.

4 WHAT DO THOSE TERMS MEAN? LADIES AND GENTLEMEN,
5 THE LAW HAS DEFINED MALICE -- THE CASE LAW HAS DEFINED
6 MALICE IN THE FOLLOWING WAYS: IN ITS POPULAR SENSE, THE
7 TERM MALICE MEANS HATRED, ILL WILL OR HOSTILITY TOWARDS TO
8 OTHER.

9 THE WORD MALICIOUS, THE BEST WAY I CAN USE TO
10 EXPLAIN IT, COMES FROM THE WORD "MALICE". IN ITS LEGAL
11 SENSE, MALICE DOESN'T NECESSARILY MEAN ILL WILL TOWARDS
12 ANOTHER BUT SIGNIFIES A GENERAL MALIGNANT RECKLESSNESS OF
13 THE LIVES AND SAFETY OF OTHERS, A GENERAL MALIGNANT
14 RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS, OR A
15 CONDITION OF THE MIND WHICH SHOWS A HEART REGARDLESS OF
16 SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.

17 LADIES AND GENTLEMEN, IN DETERMINING WHETHER OR
18 NOT MALICE EXISTS, YOU LOOK AT THE CIRCUMSTANCES, AND
19 THERE IS NO DISPUTE THAT JOHN ORNER WAS MALICIOUSLY
20 MURDERED IN 1961.

21 MALICE ALSO CAN BE EXPRESSED OR IMPLIED.
22 EXPRESSED MALICE IS WHEN SOMEONE WALKS UP TO ANOTHER
23 PERSON AND SAYS, "I'M GOING TO KILL YOU," PULLS OUT A GUN
24 AND KILLS THEM, BUT LADIES AND GENTLEMEN, THE LAW
25 RECOGNIZES THAT THAT DOESN'T HAPPEN UP HERE. MURDER IS

1 MORE LIKELY TO BE EXPRESSED.

2 IN DETERMINING WHETHER OR NOT MALICE IS
3 EXPRESSED, THE LAW SAYS THE FOLLOWING: MALICE MAY MERELY
4 BE IMPLIED WITH THE WILLFUL, DELIBERATE, INTENTIONAL DOING
5 OF AN UNLAWFUL ACT WITHOUT JUST EXCUSE.

6 PULLING OUT A GUN AND SHOOTING SOMEONE IN THE
7 BACK OF THE HEAD, AND I WOULD SUBMIT WITH THE MOTIVE OF
8 ROBBERY, IS AN UNLAWFUL ACT. IT HAS NO JUST EXCUSE.

9 VERY SIMPLY, LADIES AND GENTLEMEN, THE LAW MAKES
10 IT SIMPLER THAN THAT. BECAUSE YOU CAN INFER MALICE --
11 WHEN THERE IS A KILLING, YOU CAN INFER MALICE, THAT THERE
12 WAS THE USE OF A DEADLY WEAPON. THAT ALONE IS ENOUGH.
13 THOSE ARE SOME OF THE TERMS.

14 IN THIS STATE, LADIES AND GENTLEMEN, THE LAW
15 DOESN'T REQUIRE THAT THERE IS ANY PREMEDITATION. IT
16 DOESN'T REQUIRE THAT MALICE EXISTS FOR ANY APPRECIABLE
17 TIME PRIOR TO THE POINT AT WHICH ED FRIEBURGER PULLED OUT
18 THAT GUN AND SHOT JOHN ORNER IN THE BACK OF THE HEAD.

19 ALL IT SAYS IS THAT AT THE TIME THAT THE FATAL
20 BLOW IS STRUCK, THIS TIME, AT THE POINT WHEN THAT BULLET
21 WENT IN THE BACK OF HIS HEAD, THAT HE WAS ACTING WITHOUT
22 JUST CAUSE OR EXCUSE OR THAT HE WAS USING A DEADLY WEAPON.
23 YOU CAN INFER MALICE FROM THAT ALONE.

24 THERE ARE TWO TYPES OF EVIDENCE, LADIES AND
25 GENTLEMEN, AND THE JUDGE IS GOING TO TELL YOU THAT IN MOST

1 CASES YOU GOT ONE OR THE OTHER OR BOTH, A COMBINATION.
2 ONE IS CALLED DIRECT EVIDENCE AND ONE IS CALLED
3 CIRCUMSTANTIAL EVIDENCE.

4 THE JUDGE WILL ALSO TELL YOU, AND HE'LL GO ON
5 ABOUT THE KINDS OF EVIDENCE INVOLVED. IT DOESN'T MATTER
6 WHICH ONE THE STATE USES TO PROVE ITS CASE, ONE IS JUST AS
7 GOOD AS THE OTHER, BUT THERE IS A DISTINCTION
8 TRADITIONALLY. ONE IS CALLED DIRECT EVIDENCE, AND THAT'S
9 EYEWITNESS TESTIMONY, LADIES AND GENTLEMEN. THAT'S
10 EVIDENCE WHERE A PERSON SEES A CRIME COMMITTED AND SEES
11 THINGS THROUGH THEIR SENSES SUCH AS TASTE, FEEL, SIGHT,
12 HEARING, THINGS OF THAT NATURE. THINGS YOU PERCEIVE WITH
13 YOUR SENSES.

14 LADIES AND GENTLEMEN, INHERENTLY, THE LAW ALSO
15 RECOGNIZES THAT ESPECIALLY IN VIOLENT CRIMES, SUCH AS
16 MURDERS, SUCH AS MURDERS WITH ROBBERIES, THAT INHERENTLY
17 EYEWITNESSES TEND TO BE SCARE, SO THEY HAVE GONE FURTHER
18 THAN THAT. THEY RECOGNIZE THE FACT THAT MOST CASES
19 INHERENTLY WILL BE PROVEN WITH CIRCUMSTANTIAL EVIDENCE.

20 WHAT IS CIRCUMSTANTIAL EVIDENCE, LADIES AND
21 GENTLEMEN? ALL CIRCUMSTANTIAL EVIDENCE IS, IS THE
22 EXISTENCE OF CERTAIN FACTS WHEN YOU TAKE ALL THE FACTS
23 TOGETHER, THEY POINT CONCLUSIVELY TO THE GUILT OF THE
24 DEFENDANT.

25 CERTAIN OTHER FACTS AND CIRCUMSTANCES,

1 CIRCUMSTANTIAL EVIDENCE IN THIS CASE, LET'S FACE IT, THE
2 GUN, THAT ALONE, AND I SUBMIT LADIES AND GENTLEMEN,
3 ALTHOUGH WE HAVE A LOT MORE THAN THAT, THAT ALONE, THAT
4 ONE PIECE OF EVIDENCE, THAT ONE GUN WITH THOSE THREE
5 FRAGMENTS, POINTS CONCLUSIVELY TO HIS GUILT.

6 LUCKILY, LADIES AND GENTLEMEN, IN THIS CASE, YOU
7 DON'T HAVE TO STOP THERE. THERE'S A LOT MORE.

8 CIRCUMSTANTIAL EVIDENCE HAS BEEN DEFINED IN THE
9 FOLLOWING WAY: I NEED TO READ IT BECAUSE I GET TONGUE
10 TIED. IT SAYS THAT EVERY CIRCUMSTANCE RELIED UPON BY THE
11 STATE MUST BE PROVEN BEYOND A REASONABLE DOUBT. REMEMBER
12 THAT, WE MUST. THAT'S OUR BURDEN, AS IT SHOULD BE.

13 EVERY CIRCUMSTANCE MUST BE PROVEN BEYOND A
14 REASONABLE DOUBT. NOW, ALL THE CIRCUMSTANCES PROVEN MUST
15 BE CONSISTENT WITH EACH OTHER. REMEMBER THE TESTIMONY OF
16 THE LAST THREE DAYS, CONSISTENT WITH EACH OTHER, AND POINT
17 CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION
18 OF EVERY OTHER REASONABLE OR LOGICAL OR RATIONAL
19 EXPLANATION.

20 REMEMBER THOSE WORDS, VERY IMPORTANTLY, LADIES
21 AND GENTLEMEN, AS YOU LISTEN TO THE ARGUMENTS BECAUSE
22 THOSE WORDS: REASONABLE, RATIONAL, LOGICAL, ARE SO
23 ESSENTIAL TO MAKING THIS SYSTEM WORK.

24 WHAT IS REASONABLE, RATIONAL, OR LOGICAL?
25 BECAUSE ANYONE CAN COME UP WITH ILLOGICAL, IRRATIONAL,

1 UNREASONABLE EXPLANATION.

2 ALL WE ASK IS THAT YOU USE YOUR COMMON SENSE,
3 JUDGE THE CREDIBILITY AND REMEMBER WHAT'S REASONABLE,
4 RATIONAL, AND LOGICAL. WHAT DOES EVERY PIECE OF EVIDENCE
5 BEFORE YOU POINT TO THAT ONE CONCLUSION?

6 IN DEFINING CIRCUMSTANTIAL EVIDENCE, THE LAW
7 EVEN TALKS ABOUT WHAT WEIGHT YOU CAN GIVE IT.
8 TRADITIONALLY, IT RECOGNIZES, AS IN MOST CASES, THEY HAVE
9 PROVEN CIRCUMSTANTIAL EVIDENCE.

10 IN THIS CASE, YOU HAVE GOT SOME DIRECT
11 TESTIMONY. YOU HAVE TROOPER MEREDITH. YEAH, HE SEES THE
12 WITNESS, GETS A GUN. THAT'S WHAT WE CALL DIRECT. HE'S AN
13 EYEWITNESS.

14 THERE ARE TWO TYPES OF EVIDENCE THAT ARE
15 GENERALLY PRESENTED IN A TRIAL, DIRECT EVIDENCE AND
16 CIRCUMSTANTIAL EVIDENCE.

17 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
18 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH
19 AS AN EYEWITNESS, TROOPER MEREDITH.

20 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
21 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A
22 FACT.

23 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
24 THE WEIGHT OR VALUE TO BE GIVEN EITHER DIRECT OR
25 CIRCUMSTANTIAL EVIDENCE, LADIES AND GENTLEMEN, NOR IS A

1 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
2 EVIDENCE.

3 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN A CASE.
4 AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED
5 OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT,
6 YOU MUST FIND THE DEFENDANT NOT GUILTY.

7 IF, ON THE OTHER HAND, YOU ARE CONVINCED OF THE
8 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU SHOULD
9 FIND HIM GUILTY.

10 THE REASON I PUT THIS DEFINITION BEFORE YOU,
11 LADIES AND GENTLEMEN, IT'S VERY IMPORTANT, AS THE JUDGE
12 WILL INSTRUCT YOU YOU SHOULD WEIGH ALL OF THE EVIDENCE
13 IN THE CASE, AND ALL OF THE EVIDENCE IN THIS CASE, LADIES
14 AND GENTLEMEN, NOT SOME OF IT JUST INDIVIDUALLY, TAKE IT
15 ALL.

16 WHEN YOU LOOK AT ALL THE EVIDENCE, THERE IS NO
17 RATIONAL, LOGICAL, REASONABLE CONCLUSION TO THE EXCLUSION
18 OF ANY OTHER IN THIS CASE.

19 I'M GOING TO TALK TO YOU JUST ABOUT A COUPLE OF
20 MORE THINGS AND THEN I'LL MOVE ON.

21 IN EVERY CASE, OF COURSE, WE MUST PROVE CRIMINAL
22 INTENT. CRIMINAL INTENT, LADIES AND GENTLEMEN, IS A STATE
23 OF MIND THAT THE DEFENDANT IS CONSCIOUS OF WRONGDOING.

24 THE LAW RECOGNIZES, ALSO, THAT WE CAN'T TAKE A
25 DEFENDANT AND CUT OPEN HIS HEAD AND DISSECT HIS BRAIN TO

1 FIGURE OUT WHAT HE WAS THINKING AT THE TIME HE DECIDED IT
2 WAS TIME FOR HIM TO ROB THAT MAN AND SHOOT HIM.

3 WHAT THE LAW DOES RECOGNIZE, AND WHAT THE JUDGE
4 WILL TELL YOU, IS THAT YOU LOOK AT ACTIONS OF THE
5 DEFENDANT, THE CIRCUMSTANCES OF THE CRIME ITSELF, TO
6 DETERMINE WHETHER OR NOT THERE WAS CRIMINAL INTENT.

7 LADIES AND GENTLEMEN, WHEN YOU LOOK AT THE
8 CIRCUMSTANCES AND THE ACTIONS OF THAT DEFENDANT, THIS CASE
9 REEKS OF CRIMINAL INTENT.

10 YOU'VE ALSO HEARD FROM A SERIES OF WITNESSES,
11 EXPERT WITNESSES, AND LET ME TELL YOU ABOUT THAT. THE
12 JUDGE WILL TELL YOU BETTER THAN I WILL. EXPERT WITNESSES
13 ARE ALLOWED, BECAUSE OF SOME CERTAIN TRAINING OR
14 QUALIFICATIONS, TO GET UP HERE AND NOT ONLY TESTIFY TO
15 WHAT THEY OBSERVED, BECAUSE USUALLY THEY DON'T OBSERVE
16 ANYTHING, BUT THEY GET TO GIVE YOU AN OPINION BASED ON
17 TESTIMONY AND EVIDENCE.

18 THE JUDGE WILL ALSO TELL YOU, AND THIS IS VERY
19 IMPORTANT, WHEN YOU LISTEN TO AN EXPERT WITNESS, JUST
20 BECAUSE THEY HAVE A DEGREE FROM SOMEONE DOESN'T MAKE THEM
21 AUTOMATICALLY CREDIBLE. YOU JUDGE THEM THE SAME WAY AS
22 ANY OTHER WITNESS. YOU JUDGE THEIR CREDIBILITY. YOU LOOK
23 AT THEIR DOCUMENTATION. YOU LOOK AT THE BASIS FOR THE
24 RESULTS.

25 AND THAT'S TRUE BECAUSE THE DEFENSE, AND LET ME

1 BE THE FIRST TO TELL YOU, LADIES AND GENTLEMEN, THE
2 DEFENSE HAS ABSOLUTELY NO OBLIGATION TO PROVE ANYTHING,
3 BUT ONCE THEY DO CHOOSE TO PUT UP A WITNESS, AN EXPERT
4 WITNESS, YOU MUST JUDGE THEIR CREDIBILITY THE SAME WAY YOU
5 DO ANY WITNESS.

6 IN CONSIDERING THAT, THE JUDGE IS ALSO GOING TO
7 INSTRUCT YOU ABOUT PRIOR INCONSISTENT STATEMENTS. HE WILL
8 TELL YOU THAT THE REASON YOU ARE ALLOWED TO HEAR THAT IS
9 BECAUSE IF A PERSON HAS PRIOR INCONSISTENT STATEMENTS OR
10 REPORTS, THAT YOU CAN CONSIDER THAT IN CONSIDERING WHETHER
11 OR NOT THEIR OPINION IS CREDIBLE.

12 FINALLY, LADIES AND GENTLEMEN, I WANT TO TALK TO
13 YOU JUST BRIEFLY ABOUT CREDIBILITY BECAUSE THAT'S WHAT
14 THIS CASE IS ABOUT, CREDIBILITY.

15 THE JUDGE WILL TELL YOU SOME OF THE GUIDES YOU
16 CAN USE IN DETERMINING CREDIBILITY. YOU CAN LOOK AT HOW A
17 WITNESS -- YOU CAN LOOK AT THEIR DEemeanor ON THE STAND.
18 WERE THEY HESITANT? WERE THEY FORTHRIGHT? WAS THEIR
19 TESTIMONY CONSISTENT WITH THE EVIDENCE? WAS THEIR
20 TESTIMONY CONSISTENT WITH OTHER EVIDENCE? WHEN DID THEY
21 COME FORWARD WITH THEIR KNOWLEDGE?

22 YOU CAN CONSIDER ALL OF WHAT ONE WITNESS SAYS IS
23 CREDIBLE OR BELIEVABLE, NONE OF WHAT THEY SAY IS
24 BELIEVABLE, PART, SOME, NONE. YOU CAN BELIEVE ONE AGAINST
25 MANY, MANY AGAINST ONE.

1 THAT IS TOTALLY UP TO YOU, AND THAT IS YOUR ROLE
2 IN THIS COURTROOM, THE MOST IMPORTANT ROLE IN THIS
3 COURTROOM.

4 THE JUDGE WILL TELL YOU, TOO, THAT AFTER YOU
5 HEAR FROM ALL OF US AND YOU GO BACK TO YOUR JURY ROOM THAT
6 YOU WILL BE ASKED TO REACH A VERDICT. YOU'VE HEARD ALL
7 THE EVIDENCE, OKAY.

8 THE WORD VERDICT, LADIES AND GENTLEMEN, COMES
9 FROM A LATIN WORD, VEREDICTO. IT VERY SIMPLY MEANS TO
10 SPEAK THE TRUTH, AND THAT'S WHAT YOUR VERDICT SHOULD DO.

11 ALL THE STATE ASKS IN THIS CASE, LADIES AND
12 GENTLEMEN, IS THAT YOU CONSIDER ALL OF THE EVIDENCE, ALL
13 OF THE CREDIBLE EVIDENCE IN THIS CASE, AND THAT YOU REACH
14 A VERDICT THAT DOES SPEAK THE TRUTH.

15 YOU KNOW, THEY SAY THAT JUSTICE IS TIMELESS, AND
16 I GUESS IT'S NEVER BEEN MORE TRUE THAN IN THIS CASE.

17 GIVE THIS CASE, GIVE JOHN ORNER AND HIS FAMILY,
18 THE JUSTICE THAT THEY HAVE WAITED SO LONG FOR AND HOLD ED
19 FRIEBURGER RESPONSIBLE FOR HIS CHOICES AND HIS ACTIONS
20 BACK ON FEBRUARY 28TH, 1961.

21 THANK YOU.

22 THE COURT: MS. HUDGINS.

23 CLOSING STATEMENT:

24 MS. HUDGINS: THANK YOU, YOUR HONOR. MAY IT
25 PLEASE THE COURT, COUNSEL, LADIES AND GENTLEMEN OF THE

1 JURY.

2 IT WILL BE YOUR TURN SOON, AND I'M GOING TO BE
3 VERY SHORT AND BRIEF WITH YOU TODAY.

4 MS. CAMPBELL HAS TALKED WITH YOU ABOUT THE LAW,
5 AND I'D LIKE TO TAKE THE OPPORTUNITY TO DISCUSS THE LAW
6 WITH YOU A BIT TODAY, AND THEN JOHN DELGADO IS GOING TO
7 GET UP HERE AND TALK TO YOU ABOUT THE FACTS. MR. MCMAHON
8 WILL GET UP HERE AND TALK ABOUT THE FACTS, AND THEN IT
9 WILL BE YOUR TURN BECAUSE YOU, LADIES AND GENTLEMEN, ARE
10 THE JUDGES OF THE FACTS IN THIS CASE.

11 YOU HAVE HEARD ALL OF THE EVIDENCE AND ALL OF
12 THE TESTIMONY. IT IS NOW UP TO YOU.

13 I WANT TO TALK WITH YOU, BASICALLY, ABOUT THREE
14 GENERAL AREAS OF THE LAW. JUDGE FLOYD IS GOING TO
15 INSTRUCT YOU ON THE LAW. HE'S GOING TO GIVE YOU WHAT'S
16 CALLED JURY INSTRUCTIONS.

17 BASICALLY, WHAT A JURY INSTRUCTION IS SIMPLY
18 JUDGE FLOYD IS GOING TO GIVE YOU THE LAW AS YOU MUST APPLY
19 IT, THE LAW OF SOUTH CAROLINA, AS YOU MUST APPLY IT TO THE
20 FACTS OF THIS CASE AS YOU HEARD FROM THIS WITNESS STAND
21 OVER THE COURSE OF THE LAST SEVERAL DAYS. THAT'S ALL JURY
22 INSTRUCTION IS.

23 I'D LIKE TO TALK WITH YOU ABOUT THREE GENERAL
24 AREAS OF THE LAW, AND THEN I'M GOING TO SIT DOWN. THE
25 FIRST AREA I WANT TO TALK TO YOU ABOUT IS CIRCUMSTANTIAL

1 EVIDENCE. I'LL TALK TO YOU A LITTLE BIT ABOUT THAT; THEN
2 I'D LIKE TO TALK TO YOU ABOUT THE PRESUMPTION OF INNOCENCE
3 AND THE BURDEN OF PROOF AND PROOF BEYOND A REASONABLE
4 DOUBT.

5 NOW, THOSE ARE TERMS THAT WE SOMETIMES HEAR
6 QUITE OFTEN, BUT IN THIS COURTROOM TODAY AND AS YOUR ROLE
7 AS JURORS IN THIS CASE, THESE TERMS BECOME CRITICAL. THEY
8 ARE TERMS OF ART, LADIES AND GENTLEMEN.

9 I ASK THAT YOU LISTEN VERY, VERY CLOSELY TO
10 JUDGE FLOYD AS HE INSTRUCTS YOU ON THESE TERMS, BECAUSE
11 THEY'RE VERY IMPORTANT.

12 ALTHOUGH YOU HAVE HEARD THEM PROBABLY ALL OF
13 YOUR LIFE, NOW YOU HAVE TO APPLY THOSE TERMS TO THE FACTS
14 OF THIS CASE AS JURORS IN THIS CASE.

15 THREE THINGS I WANT TO TALK TO YOU ABOUT:
16 CIRCUMSTANTIAL EVIDENCE, THERE'S TWO KINDS OF EVIDENCE.
17 THERE'S DIRECT EVIDENCE AND THERE'S CIRCUMSTANTIAL
18 EVIDENCE.

19 DIRECT EVIDENCE, SOMETIMES PRODUCED THROUGH
20 EYEWITNESSES. AS MS. CAMPBELL SAID, IT'S SOMETHING THAT
21 YOU PERCEIVE WITH YOUR SENSES.

22 THERE'S CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL
23 EVIDENCE HAS A PARTICULAR DEFINITION, AND I, TOO, WOULD
24 LIKE TO READ TO YOU WHAT CIRCUMSTANTIAL EVIDENCE HAS BEEN
25 DEFINED AS.

1 IT IS NECESSARY THAT EVERY CIRCUMSTANCE RELIED
2 UPON BY THE STATE BE PROVEN BEYOND A REASONABLE DOUBT AND
3 THAT ALL OF THE CIRCUMSTANCES SO PROVEN BE CONSISTENT WITH
4 EACH OTHER AND TAKEN TOGETHER POINT CONCLUSIVELY TO THE
5 GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER
6 REASONABLE, RATIONAL, LOGICAL HYPOTHESIS.

7 IT IS NOT SUFFICIENT, AND THIS IS IMPORTANT, IT
8 IS NOT SUFFICIENT THAT THE CIRCUMSTANCES CREATE A
9 SUSPICION OR A PROBABILITY. THAT IS THE REQUIREMENT OF
10 THE LAW OF CIRCUMSTANTIAL EVIDENCE.

11 NOW, I HAVE HEARD CIRCUMSTANTIAL EVIDENCE
12 DESCRIBED IN A WAY I'D LIKE TO GIVE YOU AN ANALOGY. I'VE
13 HEARD IT DESCRIBED SOMETIMES AS YOU GO TO BED AT NIGHT IN
14 THE WINTERTIME AND YOUR YARD IS CLEAR. YOU GO TO SLEEP.
15 THE NEXT MORNING YOU WAKE UP AND YOUR YARD IS COVERED WITH
16 SNOW. YOU HEAR PEOPLE SAY THAT IS AN EXAMPLE OF
17 CIRCUMSTANTIAL EVIDENCE.

18 WELL, I'D LIKE TO SHARE WITH YOU ANOTHER
19 POSSIBLE DEFINITION OF CIRCUMSTANTIAL EVIDENCE. I HAVE
20 TWO SMALL GIRLS, AND THEY BELIEVE THAT IF THEY'RE GOOD ON
21 DECEMBER 24TH, THEY BELIEVE SANTA CLAUS WILL BRING THEM
22 GIFTS. SO LO AND BEHOLD, DECEMBER 24TH COMES ALONG AND
23 THEY GO TO BED. WHEN THEY WAKE UP IN THE MORNING, THERE
24 ARE GIFTS IN THEIR STOCKING.

25 NOW, LADIES AND GENTLEMEN, THAT'S NOT BECAUSE

1 SANTA CLAUS CAME. WE ALL KNOW THAT. WE ALL KNOW IT'S
2 BECAUSE MOMMY AND DADDY WERE UP LATE AT NIGHT PUTTING
3 TOGETHER BICYCLES.

4 THERE'S A MAJOR, MAJOR MISSING LINK IN THAT
5 LOGICAL DEDUCTION. IT'S A FLAW IN THE LOGIC. IF "A"
6 EQUALS "B" THEN "B" EQUALS "C." THAT'S FLAWED LOGIC.

7 IT DOESN'T WORK, LADIES AND GENTLEMEN, AND
8 THAT'S THE PROBLEM WITH THE STATE'S CASE. THERE'S FLAWED
9 LOGIC. THEY HAVE "A" AND THERE'S PROBLEMS WITH "A". THEY
10 HAVE "C" AND THERE'S PROBLEMS WITH "C", BUT WHERE IS "B?"
11 THEY DON'T HAVE "B." THEY ARE MISSING THAT LINK, AND THAT
12 MEANS THE CIRCUMSTANTIAL EVIDENCE IN THIS CASE DOES NOT
13 MEET THE REQUIREMENTS OF THE LAW AS JUDGE FLOYD WILL GIVE
14 THEM TO YOU.

15 DO YOU KNOW WHY? DO YOU KNOW WHY IT DOESN'T
16 MEET THE REQUIREMENTS OF THE LAW? BECAUSE ED FRIEBURGER
17 IS NOT GUILTY.

18 I'D LIKE TO TALK WITH YOU A LITTLE BIT ABOUT
19 PRESUMPTION OF INNOCENCE.

20 AS ED SITS BEFORE YOU TODAY, LADIES AND
21 GENTLEMEN, HE IS ABSOLUTELY PRESUMED INNOCENT. AS JURORS,
22 YOU HAVE SWORN AN OATH TO PRESUME HIM INNOCENT, AND THAT
23 PRESUMPTION REMAINS WITH HIM THROUGHOUT THE COURSE OF THIS
24 TRIAL, OVER THE COURSE OF THIS TESTIMONY OVER THESE LAST
25 FEW DAYS, REMAINS WITH HIM RIGHT NOW

1 THE ONLY TIME THAT THAT PRESUMPTION OF INNOCENCE
2 COULD BE LIFTED WOULD BE IF, AND ONLY IF, THE STATE PROVES
3 EVERY SINGLE ELEMENT OF THE OFFENSE TO EVERY SINGLE ONE OF
4 YOU BEYOND A REASONABLE DOUBT.

5 LADIES AND GENTLEMEN, THEY SIMPLY CANNOT MEET
6 THAT BURDEN IN THIS CASE.

7 LET'S TALK ABOUT THE BURDEN OF PROOF. THE
8 BURDEN OF PROOF RESTS SOLELY AND EXCLUSIVELY ON THE
9 SHOULDERS OF THE STATE.

10 ED DOESN'T HAVE TO PROVE HE IS INNOCENT. ED
11 DOESN'T HAVE TO SAY ANYTHING AT ALL. THEY HAVE TO TRY TO
12 PROVE THAT HE'S GUILTY, AND THEY HAVEN'T DONE IT IN THIS
13 CASE.

14 THE REASON THEY CAN'T DO IT IN THIS CASE IS
15 BECAUSE HE'S NOT GUILTY, LADIES AND GENTLEMEN.

16 I ASK YOU TO LISTEN TO THE LAW AS JUDGE FLOYD
17 GIVES IT TO YOU, AND IF YOU APPLY THE LAW AS JUDGE FLOYD
18 GIVES IT TO YOU TO THE FACTS AND THE TESTIMONY OF THIS
19 CASE THAT YOU HAVE HEARD TODAY, YOU WILL FIND ED
20 FRIEBURGER NOT GUILTY.

21 THE COURT: MR. DELGADO.

22 CLOSING STATEMENT:

23 MR DELGADO: MAY IT PLEASE THE COURT.

24 THE COURT: YES, SIR.

25 MR. DELGADO: COUNSEL, LADIES AND GENTLEMEN.

1 IN THE BEGINNING, LET ME SAY THIS TO YOU, FROM
2 THE VERY START OF THIS CLOSING ARGUMENT, WE WILL NOT LET
3 ANYONE PRETEND OR INSINUATE THAT WE DID NOT CARE AND COULD
4 NOT CARE FOR THE LIFE OF JOHN ORNER.

5 I WANT YOU TO HEAR ME. THAT MAN WAS AN INNOCENT
6 VICTIM OF A HORRIFIC CRIME. YOU HAVE SEEN THE PICTURES.
7 ALL OF US WILL PASS, ALL OF US WILL MEET OUR MAKER, BUT
8 NOT LIKE THAT, NOT UNDER THOSE CIRCUMSTANCES.

9 I WISH TO SAY TO YOU NO ONE -- WE'LL HONOR HIS
10 MEMORY, WITH THE LOVING MEMORY BY MR. TOM JOYNER OF HIS
11 STEPFATHER, WHAT A FINE MAN, NO ONE, BECAUSE THIS IS
12 UNACCEPTABLE. THIS IS UNACCEPTABLE AND HORRIFIC, A
13 TRAGEDY.

14 LADIES AND GENTLEMEN, IN THAT SAME SENSE THAT
15 KATHRINE AND CHRIS AND I HAVE HAD OF REPRESENTING THE
16 HONOR AND THE PRIVILEGE WE HAVE OF REPRESENTING ED
17 FRIEBURGER AND HIS FAMILY, HOPEFULLY YOU UNDERSTAND THAT
18 NOW, WHY WE TOOK THIS SO SERIOUSLY AND WHY WE NOW GIVE
19 THIS TO YOU IN THE SAME SERIOUS SENSE.

20 WE'VE WORKED AS HARD AS WE CAN FOR IT AND IT'S
21 ALMOST OVER. IT WILL BE YOURS VERY SHORTLY, BACK IN THE
22 ROOM.

23 LIKE I SAID THE OTHER DAY WHEN YOU'RE TALKING
24 AND SITTING THERE, WE KNOW YOU'RE TALKING. WE KNOW YOU'RE
25 BACK IN THE ROOM AND THAT YOU'RE DISCUSSING THE OTHER

1 AFFAIRS OF YOUR LIFE. WE'RE NOT FOOLS ABOUT THAT. WE
2 UNDERSTAND THAT.

3 IN SO DOING, NOW AS WE GET TO THE END OF OUR
4 CASE, I WANT TO TELL YOU A STORY THAT -- I COULDN'T TELL
5 THIS STORY, BUT I HEARD A LAWYER SAY THIS ONCE; I THOUGHT
6 IT WAS SO APPROPRIATE FOR THIS CASE. THIS IS A FELLOW
7 FROM AIKEN COUNTY, A YOUNG LAWYER, ACTUALLY, AND HE TALKED
8 ABOUT HOW HE GREW UP ON A FARM IN AIKEN. WHEN HE WAS A
9 YOUNG BOY, HE SAW HIS DADDY PLOWING BEHIND A MULE, AND HE
10 SAID TO HIS DADDY, "DADDY, WHY DO YOU HAVE THE BLIND ON
11 THE MULE?" HIS DADDY SAID, "SO THEY CAN'T SEE ANYWHERE
12 ELSE."

13 LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO
14 TAKE OFF THE BLINDERS THEY MAY WANT TO PUT ON YOU BECAUSE
15 YOU SEE, WHAT YOU ALL HAVE NOW, THE JUDGE IS GOING TO BE
16 SUBMITTING TO YOU ALL WHAT WE CALL AN INDICTMENT. AN
17 INDICTMENT IS SOMETHING THAT WAS -- IT'S A LEGAL PAPER
18 THAT WAS RETURNED BY THE RICHLAND COUNTY GRAND JURY.

19 NOW, THE GRAND JURY, ALL IT MEANS IS THAT THERE
20 ARE 18 PEOPLE ON THAT JURY. YOU ALL HAVE 12 AND TWO
21 ALTERNATES, BUT NOBODY HAS EVER TRIED THIS CASE BEFORE. A
22 GRAND JURY IS A ONE-SIDED PROCEEDING. NOBODY EVER HEARS
23 THE OTHER SIDE. SO I SAY, TAKE OFF YOUR BLINDERS.

24 MR. MCMAHON WANTS YOU TO SAY, "LOOK AT MY HAND,
25 LOOK AT MY HAND." SEE, BUT YOU CAN'T SEE THAT UNTIL WE

1 CROSS-EXAMINE THEIR WITNESSES AND YOU SEE THE OTHER SIDE
2 SO YOU CAN SEE BOTH SIDES. SO I'M GOING TO ASK YOU, TAKE
3 OFF YOUR BLINDERS. THAT'S WHAT HE WANTS YOU TO DO.

4 SEE, BECAUSE THE SAME WAY THAT I ASKED MR. METZ,
5 THE SAME WAY I ASKED HIM, DID YOU TELL THE JUDGE,
6 MR. METZ, WHEN YOU GOT THE ARREST WARRANT THAT ALL THOSE
7 OTHER S.L.E.D. AGENTS HADN'T SAID CONCLUSIVELY? I DON'T
8 THINK SO.

9 SEE, THAT'S THE FULL, COMPLETE, WHOLE, HONEST
10 TRUTH, NOT JUST ONE SIDE OF IT. SO AS WE BEGIN THIS, LET
11 ME JUST SAY TO YOU LOOK AT ALL OF THIS. LOOK AT
12 EVERYTHING THAT'S BEEN PRESENTED HERE. I'M GOING TO RUN
13 THROUGH THAT IN JUST A MINUTE.

14 I WANT TO FOLLOW UP ON SOMETHING THAT KATHRINE
15 SAID AND MS. CAMPBELL SAID, REASONABLE DOUBT, ALL RIGHT,
16 THAT PHRASE.

17 WHAT THAT MEANS, IS IT'S DOUBT THAT LEAVES YOU
18 FIRMLY CONVINCED OF HIS GUILT. THEY'VE GOT TO PROVE
19 BEYOND A REASONABLE DOUBT. BEYOND A REASONABLE DOUBT
20 MEANS A DOUBT THAT LEAVES YOU -- I MEAN, EVIDENCE THAT
21 LEAVES YOU FIRMLY CONVINCED OF ED FREIBURGER'S GUILT.

22 LET ME GIVE YOU A THOUGHT, IF YOU WILL. THE
23 FIRST THING BACK IN YOUR JURY ROOM, YOU SEE THAT
24 CHALKBOARD UP THERE? IT'S THERE FOR A REASON. IT'S FOR
25 YOU TO USE IT.

1 REMEMBER IN SCHOOL, KINDERGARTEN, PROBABLY THERE
2 WAS A BLACKBOARD IN THAT ROOM. WHY? BECAUSE WE LEARNED
3 FROM BLACKBOARDS. WE USED BLACKBOARDS AS A LEARNING TOOL.
4 FIRST THING IN THE JURY ROOM, PUT UP THE WORDS "REASONABLE
5 DOUBT" ON THE BLACKBOARD. THEN AMONG YOURSELVES, ONE
6 JUROR SHARES REASONABLE DOUBT WITH ANOTHER JUROR, AND
7 ANOTHER JUROR SAYS, YEAH, BUT WHAT ABOUT THIS, TOO. SHARE
8 THE REASONABLE DOUBTS THAT 12 OF YOU HAVE ABOUT THIS CASE.

9 COUNT THE NUMBER OF TIMES, COUNT THEM IN YOUR
10 MIND, BECAUSE I GUESS YOU DON'T HAVE FINGERS -- COUNT IN
11 YOUR MIND THE NUMBER OF TIMES JUDGE FLOYD TELLS YOU IT'S
12 THE STATE'S RESPONSIBILITY TO PROVE BEYOND A REASONABLE
13 DOUBT, BECAUSE THAT'S THEIR RESPONSIBILITY TO DO IT.

14 WHEN YOU DO THAT, YOU WILL BE FIRMLY CONVINCED
15 OF HIS GUILT, MR. SOLICITOR, MS. SOLICITOR.

16 LADIES AND GENTLEMEN, LET ME GIVE TO YOU MY
17 AREAS OF REASONABLE DOUBT, IF YOU WILL, BECAUSE I WANT TO
18 GIVE THOSE TO YOU, SHARE THOSE WITH YOU, AND YOU CAN DO
19 WITH THEM AS YOU WILL.

20 BEFORE I FLIP THESE THINGS OVER, DO YOU REMEMBER
21 WHAT THIS ONE WAS? LET ME JUST RUN THROUGH THIS SO I CAN
22 GO THROUGH MY REASONABLE DOUBT IN A MINUTE.

23 THEIR THEORY OF THE CASE IS THAT ED FRIEBURGER,
24 HAVING BOUGHT A GUN, STOPPED BY MR. MEREDITH IN THAT
25 LITTLE PLACE CALLED NEWPORT, TENNESSEE WITH THE GUN AND

1 WHERE IS HE HEADED? COLUMBIA, SOUTH CAROLINA.

2 WHAT WOULD HE BE DOING, REJOINING THE ARMY?

3 THAT MEANS THAT THE MURDERER IS RETURNING TO THE SCENE OF
4 THE CRIME WITH THE GUN IN HIS POCKET. EITHER THAT OR HE
5 WASN'T THE MURDERER.

6 I WONDER HOW MUCH RIVERS, LAKES, PONDS, DITCHES
7 THERE ARE BETWEEN COLUMBIA, SOUTH CAROLINA AND FORT WAYNE,
8 INDIANA.

9 I WONDER HOW MANY OPPORTUNITIES THERE WOULD BE
10 TO THROW AWAY THE GUN, DISPOSE OF THE GUN AND NEVER GET
11 CAUGHT? WHAT ABOUT THAT VIOLENT CONFRONTATION BETWEEN
12 MR. MEREDITH AND ED FRIEBURGER KNOWING LAW ENFORCEMENT IS
13 ON ME NOW. I'VE GOT THE MURDER WEAPON. PLEASANT,
14 COURTEOUS, POLITE, NOT DISRESPECTFUL. REASONABLE DOUBT,
15 MR. SOLICITOR? LEAVES YOU FIRMLY CONVINCED, DOES IT,
16 LADIES AND GENTLEMEN?

17 WHAT WOULD -- WHO KNOWS, "OH MY GOD, I'M BEING
18 ARRESTED. I'M BEING ARRESTED FOR HAVING THIS GUN. I'VE
19 GOT TO GET OUT OF HERE."

20 WHAT DOES HE DO? NO PROBLEMS WITH MR. MEREDITH.
21 "REAL NICE FELLOW." IN YOUR EQUATION, HOW DOES THAT SIT?

22 1961, MARCH 20TH, 1961, SAME THING, EVERY TIME.
23 UNTIL MR. CAYTON -- I'LL TALK ABOUT HIM. BELIEVE ME, I'LL
24 TALK ABOUT HIM IN JUST A MINUTE.

25 DO YOU ALL REMEMBER THIS QUOTE FROM MY FRIEND

1 MR. WILSON AT THE SHERIFF'S DEPARTMENT? I ASKED HIM,
2 INCONCLUSIVE. DO YOU REMEMBER WHAT HE SAID? HE DEFINED
3 THAT AS NOT CONFIDENT THAT IT'S A MATCH, A DOUBT BASED ON
4 A REASON, MR. WILSON? CONVINCED, ARE YOU, THE 12 OF YOU,
5 THAT'S THE GUN THAT KILLED POOR MR. ORNER?

6 I'LL GET BACK TO IT, BECAUSE THIS IS WHERE I
7 WANT TO GO. REASONABLE DOUBT, EVIDENCE THAT LEAVES YOU
8 FIRMLY CONVINCED OF HIS GUILT?

9 HE REPORTED INCONCLUSIVE BY NOT ONE, NOT TWO,
10 NOT THREE, SEVEN DIFFERENT S.L.E.D. AGENTS. MR. CATE,
11 BACK IN 1961, FOLLOWED BY MR. STOKES. DO YOU REMEMBER
12 THAT GENTLEMAN, PETE STOKES, WHO SAID YEAH, I WAS RIGHT
13 THERE. HE WAS AT THE AUTOPSY OF THIS POOR MAN.

14 WHAT DID HE SAY? I DIDN'T KNOW WHAT HE WAS
15 GOING TO SAY ABOUT HOAGY CARMICHAEL. I MEAN, I KNOW THAT
16 HE WAS A SONGWRITER AND AN AUTHOR, I THINK.

17 WHAT DID HE TELL YOU ABOUT HOAGY CARMICHAEL?
18 ACCENTUATE THE POSITIVE, ELIMINATE THE NEGATIVE, DON'T GO
19 WITH MR. IN BETWEEN. HE WOULD FIGHT HARD NOT TO HAVE TO
20 FIND AN INCONCLUSIVE REPORT.

21 THEY WORKED HOURS TRYING TO SEE IF THEY COULD DO
22 THIS, COULDN'T DO IT, WOULDN'T FIT, JUST LIKE IRA PARNELL
23 SAYS, IT'S YES, NO, OR CAN'T TELL. THAT'S EXACTLY WHAT
24 THEY'D BEEN SAYING TO YOU SINCE 1961. THAT'S WHAT
25 MR. CATE SAYS. THAT'S WHAT MR. STOKES SAYS. THAT'S WHAT

1 MR. PARNELL SAYS. THAT'S WHAT MR. COLLINS SAYS. THAT'S
2 WHAT MR. PAAVEL SAYS. THAT'S WHAT MR. WHITTIER SAYS, ALL
3 SEVEN OF THEM, PLUS WE HAVE DAN DEFREESE.

4 NOW, THE REASON I PUT THAT IN GREEN IS FOR A
5 REASON. DO YOU REMEMBER WHAT MR. DEFREESE -- MR. DEFREESE
6 IS THE ONE WHO DID THIS BLIND. DO YOU REMEMBER THAT?

7 WHAT DID MR. PARNELL SAY? LIEUTENANT PARNELL
8 SAYS, "I GAVE IT TO HIM, AND I WENT OUT OF THE ROOM AND
9 WENT DOWNSTAIRS TO GO GET SOME COFFEE."

10 HE'S NOT TELLING HIM WHAT THE RESULTS ARE. HE'S
11 NOT TELLING HIM WHAT HE'S THINKING, WHAT HE'S SENSING,
12 WHAT HE'S FEELING. WHAT DOES MR. DEFREESE COME BACK AND
13 SAY, INCONCLUSIVE.

14 MR. SOLICITOR, CAN WE COUNTER THAT WITH THE
15 TESTIMONY OF THIS ONE MAN, MR. CAYTON, CAN WE? DOES IT
16 LEAVE YOU FIRMLY CONVINCED, LADIES AND GENTLEMEN?

17 WHAT DOES MR. WILSON SAY, YEAH, INCONCLUSIVE
18 MEANS HE'S NOT CONFIDENT IT'S A MATCH.

19 NOW, FOLKS, I HOPE I WAS FIRM BUT GENTLE ENOUGH
20 WITH MR. CAYTON. HE SEEMS LIKE AN HONEST ENOUGH GUY. I
21 MEAN, LET'S BE CANDID. HE IS THE ONE THAT REPORTED THE
22 MISTAKE THAT HE MADE. I MEAN THAT WOULD BE TOUGH FOR
23 ANYONE TO DO.

24 I DON'T THINK HE'S AN INCOMPETENT EXAMINER. DO
25 YOU REMEMBER MR. MCCLURE? I COULDN'T FIND THIS PICTURE

1 BEFORE YOU ALL AT THE SAME TIME.

2 DO YOU REMEMBER MR. MCCLURE WHO DID THE D.N.A.
3 EVIDENCE, DO YOU REMEMBER THAT? SEE, MR. MCCLURE FROM
4 S.L.E.D. -- OH, THEY'LL USE S.L.E.D. NOW. DON'T GET ME
5 WRONG. THEY'LL USE S.L.E.D. WHEN IT HELPS THEM.

6 SEE, THEY DID THE D.N.A. TESTING WITH
7 MR. MCCLURE. WHAT DOES MR. MCCLURE SAY, THERE'S NO D.N.A.
8 THAT LINKS YOUR CLIENT TO ANYBODY, TO ANYTHING.

9 THAT'S WHAT YOU CALL PROFESSIONALISM, LADIES AND
10 GENTLEMEN. THAT'S WHAT YOU CALL SCIENTIFIC RELIABILITY,
11 AND THAT'S WHAT YOU HEARD FROM MR. PARNELL ON THE STAND
12 BOTH FROM THE FOLKS BEFORE HIM AND THE FOLKS AFTER HIM SAY
13 IT'S INCONCLUSIVE.

14 MY BROTHER MR. CAYTON, HE WORKS IN A TRAILER
15 JUST OUTSIDE HIS HOME IN OSBORNEEE, MISSOURI. I MEAN YOU
16 NO DISRESPECT, BUT LOOK AT THAT VERSUS WHERE THAT MAN MUST
17 HAVE WORKED. HIS TRAILER VERSUS THE S.L.E.D. LAB. IT'S
18 FOR Y'ALL TO DECIDE.

19 OH, MR. MCMAHON ASKED HIM ABOUT THAT. SEE, HE
20 KNEW IT WAS COMING. WHAT HE TRIED TO DO, WELL, IT DOESN'T
21 MATTER HOW BIG THE LAB IS. YOU COULD DO IT IN YOUR
22 BASEMENT. SEE, HE KNEW THAT WAS COMING. HE TRIED TO
23 POOH, POOH THAT A LITTLE BIT.

24 NO VERIFICATION BY MR. CAYTON. NOW, LET'S TALK
25 ABOUT THAT FOR JUST A SECOND. THE PROTOCOLS OF THE STATE

1 LAW ENFORCEMENT DIVISION, LIKE EVERYTHING ELSE, THAT'S
2 SUPPOSED TO BE SCIENTIFIC AND ACCURATE AND DETAILED
3 REQUIRE THAT YOU HAVE SOMEBODY ELSE THAT CHECKS IT.

4 DO YOU REMEMBER, THAT'S WHAT LIEUTENANT PARNELL
5 SAYS, WE HAVE MICROVERIFICATION, AND WHO DID THE
6 MICROVERIFICATION IN THIS CASE, BLIND TESTING, WITHOUT
7 KNOWING ANYTHING? DAN DEFREESE. WHAT DOES HE COME BACK
8 AND SAY? INCONCLUSIVE.

9 I MEAN, I KNOW, SOME OF YOU MAY SAY, ALL RIGHT,
10 WE HEARD YOU. WE UNDERSTAND WHERE YOU'RE GOING. I'M
11 SORRY. SEE, THAT'S THE PROBLEM WITH THIS CASE.

12 THEY ARE LIKE, "DON'T CONFUSE ME WITH THE FACTS.
13 MY MIND IS MADE UP. JUST KEEP ON PLOWING STRAIGHT AHEAD.
14 IT DOESN'T MATTER WHAT IS ON THE RIGHT OR WHAT'S ON THE
15 LEFT. SEE, WE'RE GOING TO MAKE CERTAIN WE GET SOMEBODY
16 ARRESTED."

17 IT DOESN'T MATTER WHAT S.L.E.D. SAYS. IT
18 DOESN'T MATTER WHAT THEY SAY IN 1960. IT DOESN'T MATTER
19 WHAT THEY SAY IN MARCH. WE'RE GOING TO SEND IT AWAY TO
20 MR. CAYTON.

21 NOT ONLY MR. CAYTON, HE DOESN'T HAVE ANY
22 VERIFICATION OF THAT. I MEAN NOBODY CHECKS BEHIND HIM.
23 YOU KNOW, HE SAID SOMETHING ABOUT WELL, IF THERE WAS ANY
24 VERIFICATION, IT COULD BE DONE BY MY SON OR MY SON-IN-LAW.
25 THAT'S NOT WHAT WE'RE TALKING ABOUT. WE'RE TALKING ABOUT

1 PROFESSIONAL LABORATORIES.. YOU DON'T HAVE ANYBODY LIKE
2 THAT DO THIS. THAT'S WHY S.L.E.D. IS S.L.E.D. THAT'S WHY
3 S.L.E.D. IS NATIONALLY ACCREDITED BY THE ASSOCIATION OF
4 STATE CRIME LAB DIRECTORS, LAB DIRECTORS.

5 DO YOU REMEMBER THAT A.S.C.L.A.B., DO YOU
6 REMEMBER THAT ACRONYM? I'M SORRY. I MESS IT UP EVERY
7 TIME I TRY, I'M SORRY. THAT'S WHAT THIS IS A NATIONALLY
8 ACCREDITED LAB AND MR. CAYTON IS WORKING OUT OF HIS
9 TRAILER. DOES IT GIVE YOU CONFIDENCE, DOES IT? FIRMLY
10 CONVINCED, MR. SOLICITOR?

11 AND THEN AS IF THAT WEREN'T ENOUGH, IF THAT
12 WEREN'T ENOUGH, THIS POOR MAN, KNOWING HE'S ALREADY -- NOT
13 ONCE BUT TWICE IN A BALLISTICS EXAMINATION INVOLVING A
14 HOMICIDE, THINGS BEGIN TO ADD UP HERE, RESISTING -- IS
15 THIS WHAT WE'RE TALKING ABOUT HERE? NOT A FOOTPRINT, NOT
16 A CLAW MARK, NOT A BITE, BALLISTICS EXAMINATION IN A
17 MURDER CASE.

18 HE TESTIFIES THAT THIS FRAGMENT -- OF COURSE,
19 NOT THIS ONE. I'M USING THIS AS A STORE, "THIS BULLET WAS
20 SHOT FROM THIS GUN. I AM POSITIVE."

21 NOW, HE'S POSITIVELY WRONG, BLESS HIS HEART, AND
22 HE TESTIFIED NOT JUST ONCE, HE TESTIFIED TWICE, THE SAME
23 CASE. HE WAS POSITIVE, HE WAS POSITIVE TWICE, SAME CASE.

24 TO HIS CREDIT, I MUST SAY TO HIM, HE DISCOVERED
25 IT AND HE COMES AND HE'S MAN ENOUGH TO SAY, "I MADE A

1 MISTAKE. IT WASN'T THIS GUN. IT'S ANOTHER GUN." FIRMLY
2 CONVINCED, MR. SOLICITOR?

3 WELL, EVERYBODY MAKES MISTAKES, YOU KNOW.
4 THINGS HAPPEN. NOT IN A MURDER CASE. NOT FOR YOUR
5 SATISFACTION, NOT HERE TODAY.

6 SO HOW DOES HE SAY WELL, WE CLEARED ALL THOSE
7 THINGS UP. WE DON'T DO THAT TYPE OF THING ANYMORE. WE
8 DON'T MAKE THOSE TYPES OF MISTAKES. DO YOU KNOW HOW HE
9 DOES IT? "WE'VE IMPLEMENTED A BACK-UP SYSTEM.

10 DO YOU KNOW WHAT A BACK-UP SYSTEM IS? IT'S A
11 DAN DEFREESE, A MICROVERIFICATION. SEE, I THINK HE LEAVES
12 SOMETHING OUT OF THIS QUOTE.

13 NOW WE'VE IMPLEMENTED A BACK-UP SYSTEM TO
14 PROTECT THE CASE AND THE EXAMINATION. HOW ABOUT THE
15 DEFENDANT? HOW ABOUT PROTECTING THE DEFENDANT? SEE,
16 THAT'S MY ROLE, AND I TAKE IT SERIOUS.

17 HOW ABOUT THAT, MR. CAYTON? I'M NOT GOING TO
18 TALK ABOUT THE \$4,300 WE'VE ALREADY SPENT BEFORE
19 YESTERDAY. DO YOU REMEMBER THE EIGHT HOURS HE CHARGED
20 FOR, BUT WHAT DID MR. PARNELL SAY, OH FIVE, SIX HOURS.
21 DURING THAT FIVE OR SIX HOURS, SOMEONE MAY HAVE WATCHED A
22 BASEBALL GAME. THAT'S ALL RIGHT.

23 I'M NOT HERE TO TALK ABOUT THE \$4,300, BUT THAT
24 WAS IN ADDITION TO WHAT HAPPENED YESTERDAY AT THIS TIME.
25 REASONABLE DOUBTS, MR. SOLICITOR? LEAVE YOU FIRMLY

1 CONVINCED OF HIS GUILT, DOES IT?

2 HOW ABOUT... (PAUSE)

3 HOW ABOUT THE D.N.A. FROM THE CAB? LET'S
4 JUST -- LET ME JUST BACK UP NOW. DO YOU REMEMBER THE CAB?
5 THE CAB IS PARKED. THIS IS OUR STATE CAPITAL, RIGHT DOWN
6 GERVAIS STREET, YOU TURN RIGHT. THAT'S WHERE THE CAB --
7 ON THE EAST SIDE OF ASSEMBLY STREET RIGHT AT THE CORNER.

8 MS. CAMPBELL SAID SOMETHING INTERESTING. SHE
9 SAID, WE'LL, THAT'S WHERE -- SHE WAS ASKING MS. HARMON
10 (SIC). I DON'T REMEMBER THE LADY'S FIRST NAME. SHE SAID
11 THAT'S WHERE A CAB STAND WAS LOCATED, ON THE CORNER OF
12 ASSEMBLY AND LADY STREET. A CAB STAND, AND THAT'S WHERE
13 THE CAB WAS.

14 SEE, THIS CAB, WHILE THE STATE -- THEY USED THE
15 STATE LAW ENFORCEMENT DIVISION BACK IN 1961, TOO. DO YOU
16 REMEMBER THAT? THEY GOT THE CAR AND SCRAPED OFF SOME MUD
17 OR SOME SAND FROM IT TO DETERMINE WHERE MAYBE IT HAD BEEN
18 DRIVEN. DO YOU REMEMBER THAT? SO WE USED S.L.E.D. NOW.

19 DID THEY FIND ANYTHING ELSE ON THE INTERIOR OF
20 THAT CAR THAT COULD MATCH ANYBODY AT ALL, HAIR, BLOOD,
21 SALIVA, ANYTHING NOW WE COULD USE TO BE ABLE TO SAY TO YOU
22 CONCLUSIVELY, TO REMOVE ALL DOUBT, SO THAT YOU'RE FIRMLY
23 CONVINCED, MR. SOLICITOR, OF THE GUILT OF ED FRIEBURGER?
24 NO, THEY DON'T HAVE THAT.

25 HOW ABOUT THIS, FOLKS. HOW DID THAT CAR GET UP

1 THERE? SOMEBODY HAD TO DRIVE IT, I'LL BET. I'LL BET
2 SOMEBODY HAD TO DRIVE IT BACK IN 1961. I'LL BET YOU IT
3 HAD A GEAR SHIFT ON IT. I'LL BET YOU IT HAD A WHEEL ON
4 IT. I'LL BET IT HAD DOOR HANDLES.

5 NOW, I WONDER IF SOMEBODY WAS IN THAT CAB,
6 GETTING IN THAT CAB, DRIVING THAT CAB WAY DOWN IN THE
7 COUNTRY, UP? DO YOU THINK MAYBE SOMEBODY MAY HAVE LEFT
8 SOME FINGERPRINTS ON IT? I UNDERSTAND. THEY JUST DIDN'T
9 DO THAT. IT'S ALL RIGHT. I UNDERSTAND. WHAT WOULD THAT
10 HAVE SAID TO YOU THEN, LADIES AND GENTLEMEN? WELL, THAT'S
11 SOME EVIDENCE, NOW

12 SEE, BECAUSE THEY DON'T HAVE THAT. THEY WON'T
13 BE ABLE TO GET THAT. THAT'S THE REASON YOU'LL RETURN A
14 VERDICT OF NOT GUILTY, BECAUSE YOU DON'T HAVE THAT, NO
15 D.N.A. AND NO FINGERPRINT.

16 LET'S TALK ABOUT COMBAT ALLEY DOWN HERE, THIS
17 AREA NORTH, THIS AREA IN HERE. DO YOU REMEMBER MR. CLARK
18 SAYING ESPECIALLY ON PAYDAYS -- NOW, PAYDAYS, LET'S BE
19 HONEST -- LET ME BACK UP. BEFORE WE HAD A.T.M. CARDS,
20 SEE, IT'S A WAY OF LIFE FOR THE ARMY FOR THESE FELLOWS, TO
21 COME IN, HAWK SOMETHING, GET SOME CASH, IF THEY NEEDED TO
22 MAKE TO THE NEXT PAYDAY BECAUSE WE HAVE THINGS LIKE WE
23 HAVE NOW, 41 YEARS LATER, WITH P I.N. NUMBERS.

24 SEE, THAT'S THE WAY SOME THINGS HAD TO HAPPEN
25 BACK THEN. SOME OF YOU ARE SO YOUNG YOU JUST DON'T EVEN

1 HAVE TO REMEMBER THAT. WE'RE SO DIGITAL NOW, IN OUR NEW
2 GENERATION. WE DRIVE UP TO THE A.T.M., NEVER GET OUT OF
3 THE CAR AND GET MONEY, UNHEARD OF.

4 DO YOU THINK IF SOMEBODY DROVE THAT CAR UP,
5 TWO O'CLOCK, THREE O'CLOCK, SEE, BY FOUR O'CLOCK, IT'S
6 SEEN WITH THE MP'S AND THE POLICE AND MAYBE SOME OTHER
7 FOLKS FROM FORT JACKSON THERE. DO YOU THINK SOMEBODY
8 MIGHT HAVE SEEN SOMETHING? DO YOU THINK THERE MIGHT HAVE
9 BEEN AN EYEWITNESS, A WHITE MAN, 18 TO 25 YEARS OLD,
10 SLENDER, 5'8" I DON'T KNOW, 160 POUNDS. THAT'S SOMETHING
11 TO GO ON.

12 "YEAH, I SAW HIM GET OUT OF THE CAB. WELL, HE
13 WALKED AWAY FROM THE CAB REAL FAST." THEY DON'T HAVE
14 THAT. THEY WON'T HAVE THAT.

15 LET'S TALK ABOUT THE CAPITAL RECORDS FOR A
16 MINUTE, CAPITAL PAWNSHOP FOR A MINUTE, LADIES AND
17 GENTLEMEN.

18 OH, IF MY FRIENDS SAY TO YOU, "TIME IS TICKING
19 OUT FOR JOHN ORNER, IT'S ROTATING, \$17.57 OR WHATEVER IT
20 WAS ON THAT POOR MAN'S METER, CLICK, CLICK, CLICK," SEE,
21 WHAT THEY'RE TRYING TO DO IS WHEN YOU DON'T HAVE ANYTHING
22 TO PUT IN THE COFFEE CUP, YOU MAKE SOMETHING UP. THAT'S
23 WHY THIS COMES IN. SEE, THIS ISN'T THE ONE NOW, LET ME
24 JUST EXPLAIN THIS TO YOU HERE. THIS AIN'T THE ONE, ALL
25 RIGHT.

1 THEY GOT THIS FROM ANOTHER CAB COMPANY. I MEAN,
2 THIS PROBABLY WAS USED AS A METER IN A CAB, BUT THIS AIN'T
3 THE ONE.

4 WHAT THEY'RE TRYING TO DO IS TRY TO CONFUSE YOU
5 ABOUT WHAT'S REAL IN A CASE AND WHAT AIN'T REAL IN THE
6 CASE.

7 INCONSISTENCY OF THE PAWNSHOP RECORDS, LET'S BE
8 VERY CLEAR, FOLKS. MR. DAWSON, Y'ALL LOOK AT IT. I MEAN,
9 I LEARNED A LOT, TOO. Y'ALL CAN LOOK AT THIS, AND WHAT
10 YOU SEE, YOU SAY TO YOURSELF, HUH, AIN'T THAT SOMETHING, I
11 HAVEN'T SEEN IT THAT WAY. HUH, OKAY, THAT MAKES SENSE
12 BECAUSE ALL OF US, I'LL BET YOU'LL FIND YOURSELF SAY, OH,
13 I WRITE LIKE THAT. WHERE DO I LIFT THE PEN, WHERE DO I
14 PUT THE PEN DOWN. HOW BIG DO I MAKE THE LOOP? WHERE DO I
15 THEN DOT, HOW DO I CROSS?

16 SEE, THAT'S EXACTLY WHAT MR. DAWSON IS SAYING
17 HERE. THAT'S NOT ED FREIBURGER'S SIGNATURE. ARE WE CLEAR
18 ABOUT THAT? I MEAN, THAT AIN'T HIS SIGNATURE.

19 NOW, THE PROBLEM WITH THE INCONSISTENCIES ARE
20 SEE, IT SAYS SIGNATURE. SEE, SIGNATURE. RIGHT HERE,
21 EDWARD E. FRIEBURGER. THAT IS THIS. WHAT DID MR. DAWSON
22 SAY TO YOU, NO, THAT AIN'T IT. THAT'S NOT EDWARD
23 FREIBURGER'S SIGNATURE. LET'S GET THIS THING FIRST.

24 WHAT I WANT TO TALK TO YOU ABOUT ARE THE WRITE
25 OVERS. HUH, WELL THAT WAS A 22. LOOK AT IT. IT'S A 22.

1 SOMEBODY PUT A THREE ON IT. AIN'T NO QUESTION ABOUT IT,
2 LOOK AT IT.

3 HERE IT IS RIGHT HERE. YOU CAN SEE IT. I DON'T
4 KNOW WHICH IS CLEARER, THIS ONE OR THAT THING, BUT IT'S
5 CLEAR. SOMEBODY THEN WRITES EITHER IN A DIFFERENT PEN OR
6 WITH A DIFFERENT STYLE DOWN HERE, WHICH IS THE ED
7 FRIEBURGER SIGNATURE. LOOK AT THE WRITE OVERS ON THE BACK
8 OF IT, SCRATCH THROUGH'S, ADDITIONS, BUT IT DON'T END THERE
9 ON THIS FORM SEVEN.

10 DON'T JUST LOOK AT THE -- SEE, IT'S KIND OF
11 INTERESTING. LET ME FIND THE PAGE, ALL RIGHT, ALL THE H &
12 R'S THAT ARE MARKED. THIS IS MINE -- THIS IS MY EASY WAY
13 TO FIND IT. ALL THE H & R'S, THAT'S A HARRINGTON AND
14 RICHARDSON REVOLVER. EVERY ONE OF THEM HAD IT. LISTEN TO
15 ME, EVERY ONE OF THEM HAS A MARKOVER ON IT EXCEPT THIS
16 ONE.

17 SEE, THIS IS THE H & R THAT COMES IN AT THIS
18 DATE, H & R. WELL, THEN THAT MODEL NUMBER WAS CHANGED.
19 WELL, THEN THE SECOND ONE, THAT ONE WAS CHANGED, TOO.

20 NOW, THIS H AND R, YOU LOOK AT THIS. WHAT YOU
21 SEE, YOU SEE IS RIGHT HERE. YOU SEE, THIS IS THE ONE
22 THAT'S SUPPOSED TO BE ED FREIBURGER. SIGNATURE EVIDENCE.
23 THAT'S NOT HIS SIGNATURE EITHER.

24 OKAY. THIS ONE RIGHT HERE, IF YOU LOOK AT IT IN
25 THIS BOOK, WHAT YOU'RE GOING TO SEE IS THIS IS AN EIGHT

1 UNDERNEATH WHAT THEY NOW SAY IS A NINE. SOMEBODY CHANGED
2 THAT NUMBER, SO IT'S NOT JUST 9949. IT WAS 98 SOMETHING
3 48 BEFORE IT WAS CHANGED ON THAT ONE. WHAT ABOUT THAT?
4 AIN'T THAT SOMETHING.

5 SEE, THIS NEXT H & R, THAT ONE WAS MESSED OVER,
6 TOO. WELL, THIS H & R -- WELL, H & R'S HAD A BAD DAY THAT
7 DAY, DIDN'T THEY? FIRMLY CONVINCED OF HIS GUILT,
8 MR. SOLICITOR?

9 IT DOESN'T END THERE. THE PRICE ON THE BACK
10 DOESN'T ADD UP. LOOK AT IT, THAT PRICE IS GOING TO MATCH
11 ONE OF THE OTHER THINGS IN HERE. IT DOESN'T MATCH. IT
12 DOESN'T ADD UP. I'M NOT SAYING THAT TO MEAN -- I'M SIMPLY
13 SAYING, "I WONDER WHAT HAPPENED."

14 ALL WE KNOW IS THIS: YOU TAKE A LOOK AT IT. IF
15 YOU DON'T SEE THAT CHANGED TO A NINE, THAT WAS AN EIGHT
16 BEFORE IT. LOOK AT IT REAL CLOSE. PUT THAT UP ON YOUR
17 BOARD IN THE BACK.

18 WHAT ABOUT MS. LILA, DO YOU REMEMBER THE POOR
19 LADY WHO WAS IN THE WHEELCHAIR, MS. RUSS? DO YOU REMEMBER
20 WHAT SHE SAID TO YOU, "WELL, I'VE GOT THE ORIGINAL IN MY
21 OFFICE. IT'S A LITTLE YELLOW THREE BY FIVE CARD." DO YOU
22 REMEMBER THAT?

23 THEN WHAT WAS INTERESTING WAS DO YOU REMEMBER
24 MR. FREED, THE LAWYER FROM NEW YORK? WHAT DID HE SAY TO
25 YOU, YEAH, THOSE FORM SEVENS WERE PROVIDED FOR US BY THE

1 CITY. IT WAS ON A LITTLE YELLOW CARD. AIN'T THAT
2 SOMETHING. I WONDER WHERE THE ORIGINAL IS.

3 MR. MCMAHON: YOUR HONOR, I HAVE AN OBJECTION.
4 I HAVE AN OBJECTION.

5 THE COURT: COME UP HERE, LET ME DEAL WITH IT.
6 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF
8 THE JURY.)

9 MR. DELGADO: REASONABLE DOUBT, MR. SOLICITOR?
10 YOU LOOK AT IT, LOOK AT IT, BUT DO YOU KNOW WHAT IS FUNNY
11 IS ALL THE OTHERS HAVE SOMETHING REALLY KIND OF
12 INTERESTING ON THEM. THIS IS THE ONE FROM -- THIS IS
13 FREED'S JEWELERS AND LUGGAGE PAWNSHOP.

14 SEE, THIS TIME ED FRIEBURGER, HE GIVES THE
15 [REDACTED] [REDACTED] [REDACTED], FORT JACKSON. SEE, THAT'S THE
16 ADDRESS THERE, NOT [REDACTED] [REDACTED] [REDACTED], FORT WAYNE,
17 INDIANA.

18 WELL, I'LL BET YOU BERRY'S LOAN COMPANY WAS
19 ASKING FOR YOUR HOME ADDRESS, TOO, WEREN'T THEY? NO,
20 EDWARD E. FRIEBURGER, COMPANY B. TRAINED AT FORT JACKSON.
21 I DON'T KNOW. I'M JUST THINKING OUT LOUD.

22 I WONDER -- I DON'T KNOW. THE ONLY THING I KNOW
23 IS THIS ONE HAS HIS R.A. NUMBER, THAT STANDS FOR REGULAR
24 ARMY. THAT'S WHAT THAT MEANS. IT'S AN ARMY
25 IDENTIFICATION NUMBER. THAT'S FROM BERRY'S.

1 NOW, THE REVOLVER, THAT DOESN'T HAVE THE R.A.
2 NUMBER. FREED'S, YEAH, DOES FREED'S HAVE THE R.A. NUMBER
3 ON IT? I DON'T KNOW ABOUT THAT. IT'S THE PHILCO. ALL I
4 KNOW, IT'S GOT THE FORT JACKSON ADDRESS ON IT.

5 YOU ALL LOOK AT IT, BUT THIS IS THE TRUTH AND,
6 IN FACT, WHAT DOES HAPPEN FOLKS, MARCH 20TH, 2001,
7 MR. PARNELL GIVES THE BAD NEWS, IT'S INCONCLUSIVE AGAIN.
8 NOT JUST ME, THE OTHER FOLKS, MR. DEFREESE, BUT THEY SEND
9 IT AWAY TO MR. CAYTON IN MISSOURI, A THOUSAND MILES AWAY,
10 AND PAY FOR HIS EVALUATION.

11 AGAIN, I'M NOT SAYING TO YOU THAT -- I JUST
12 THINK HE'S INCOMPETENT. I THINK HE'S WORTHY OF TESTIFYING
13 TO YOU IN THIS CASE ABOUT THESE FACTS, BUT THEY GET IT
14 BACK FROM MR. CAYTON ON THE 3RD. THEY ISSUE AN ARREST
15 WARRANT ON THE 6TH AND WE HAD A PRELIMINARY HEARING ON THE
16 12TH.

17 MY FRIENDS FROM THE SHERIFF'S DEPARTMENT FAILED
18 TO TELL THE JUDGE CERTAIN THINGS WHEN THEY WERE UNDER
19 OATH, SWORN TO TELL THE TRUTH, AND THEY'RE SUPPOSED TO DO
20 THAT.

21 SO WHAT YOU'RE LEFT WITH, YOU'RE LEFT WITH
22 CIRCUMSTANTIAL EVIDENCE. THERE'S NOTHING DIRECT HERE.
23 NOBODY SEES ANYTHING. THERE'S NO FINGERPRINT, THERE'S NO
24 D.N.A., THERE'S NO FOOTPRINT, THERE'S NOTHING.

25 CAN I JUST GET BACK TO ONE THING FOR A MINUTE?

1 MS. CAMPBELL SAYS THAT THERE WAS A CAB STAND RIGHT IN
2 HERE. WELL, DOES THAT MEAN IF SOMEBODY DROVE THE CAB
3 THERE THAT YOU WOULD THEN CATCH ANOTHER CAB BACK TO FORT
4 JACKSON? IS THAT REASONABLE, WOULD SOMEBODY DO THAT?
5 DON'T YOU THINK EVERY CABBIE IN SOUTH CAROLINA KNEW ABOUT
6 THAT? NO. SO WHY DID SHE PUT THAT IN?

7 WELL, WHY DID THEY PUT IN THINGS ABOUT THE
8 BULLET WOUND TO THE BACK OF THE HEAD? OF COURSE,
9 MR. ORNER WAS SHOT IN THE BACK OF THE HEAD, OF COURSE, HE
10 WAS. HE DIED IMMEDIATELY OF THAT SHOT. WHY HE DID THAT
11 THAT? BECAUSE IT'S A COTTON CANDY APPROACH TO
12 PROSECUTION. THERE AIN'T NOTHING THERE.

13 YOU TRY, THERE'S NOTHING THERE. SO WHY DID THEY
14 PUT IN THE D.N.A. REPORT FROM MR. MCCLURE? D.N.A. DOESN'T
15 LINK ED FRIEBURGER TO ANYTHING. NOTHING IN THIS CASE, WHY
16 DO THEY PUT IT IN? WELL, BECAUSE IT LOOKS PRETTY.

17 WHY DID THEY PUT IN THE FINGERPRINTS? DO YOU
18 REMEMBER THOSE? SURE, IT'S THE SAME ED FRIEBURGER THAT
19 ENTERED THE ARMY IN OCTOBER OF 1960. THAT'S HIS
20 FINGERPRINT, WHEN HE WAS ARRESTED HERE AND TURNED HIMSELF
21 IN WHEN HE CAME BACK DOWN FROM FORT WAYNE, WELL, YEAH,
22 SAME ED FRIEBURGER, SURE IT. WHY? JUST KEEP PLOWING
23 AHEAD, BECAUSE THEY DON'T WANT YOU TO SEE THAT
24 (INDICATING) SEE, BECAUSE THAT'S THIS CASE. WHAT THAT
25 LEAVES YOU WITH IS CIRCUMSTANTIAL EVIDENCE.

1 ALL THEY REALLY ARE SAYING TO YOU, LADIES AND
2 GENTLEMEN, IS THEY HAVE SUSPICION. THEY SAY IT BOILS UP
3 INTO THIS MONSTER OF A CASE. THAT'S JUST NOT SO. DOES IT
4 POINT CONCLUSIVELY? DOES IT POINT CONCLUSIVELY TO THE
5 GUILT OF THE DEFENDANT? LISTEN TO THE JUDGE TELL YOU THAT
6 NOW, PLEASE.

7 ALL THE CIRCUMSTANCES MUST POINT CONCLUSIVELY TO
8 THE GUILT OF THE DEFENDANT.

9 LET ME JUST REVIEW MY NOTES FOR ONE SECOND. AS
10 SOON AS I SIT DOWN, I KNOW I'LL SEE SOMETHING THAT I
11 WANTED TO SAY TO YOU.

12 (PAUSE).

13 OH, I FORGOT ONE THING. DO YOU REMEMBER WHEN
14 MS. CAMPBELL WAS UP HERE YESTERDAY WITH MR. METZ, DO YOU
15 REMEMBER, THEY SAID SOMETHING, YOU KNOW, ALL THE ROUTES
16 THAT YOU COULD VARIOUSLY TAKE AND ADD IT UP TO 77? DO YOU
17 REMEMBER THAT?

18 SEE, WHAT THEY'RE TRYING TO DO IS THEY'RE TRYING
19 TO GET AS CLOSE AS THEY CAN TO 80 MILES, BECAUSE THAT
20 80 MILES IS WHAT'S NOTED IN THE BOTTOM LEFT-HAND PORTION
21 OF THIS REPORT FROM THE CITY POLICE DEPARTMENT.

22 IT SAYS 80 MILES ON SPEEDOMETER. SEE, THE
23 CLOSER THEY GET TO 80, THEN MY GOODNESS, IT HAD TO BE
24 RIGHT THERE, IT HAD TO HAVE HAPPENED RIGHT THERE. CAME
25 OUT FORT JACKSON, OUT PERCIVAL ROAD, HOWEVER THEY SAID IT.

1 SEE, NOW, THE PROBLEM IS, THEY COME UP
2 THREE MILES SHORT BECAUSE THIS SAYS 80. EVEN IF YOU TAKE
3 THAT SPECULATION THAT THEY SAID, REMEMBER, MR. METZ SAID,
4 WELL, DO YOU KNOW HOW -- NO, YOU DON'T KNOW HOW, AND SHE
5 CROSSED THROUGH A COUPLE OF ROUTES. BECAUSE I SAID, WELL,
6 WHY DO YOU CROSS THOSE OUT? WELL, WE JUST CROSSED THEM
7 OUT.

8 THEY COME UP THREE MILES SHORT. I WONDER IF
9 THAT THREE MILES, IF YOU CONTINUED OUT PERCIVAL ROAD, IF
10 YOU TURNED LEFT ONTO DECKER, I WONDER IF THAT WOULD TAKE
11 YOU OVER TO MAYBE WHERE THE DELI WAS?

12 DO YOU REMEMBER WHERE MR. ORNER STOPPED ALL THE
13 TIME, ACCORDING TO MR. TOM JOYNER? I WONDER IF THAT WOULD
14 PUSH YOU RIGHT AT 80 MILES? WHAT DO YOU THINK?

15 I WONDER IF SOMETHING COULD HAVE HAPPENED THERE
16 AND THE CAB WINDS UP HERE, BUT NOBODY EVER SEES ANYTHING.
17 LEAVES YOU FIRMLY CONVINCED OF HIS GUILT, DOES IT? POINT
18 CONCLUSIVELY TO HIS GUILT, DOES IT?

19 I'M ALMOST THROUGH. LET ME JUST SAY THIS TO
20 YOU, HOW DO YOU FEEL? I WANT YOU TO BE PROUD OF YOUR WORK
21 THIS WEEK. DO YOU REMEMBER WHAT MRS. SCOTT SAID TO YOU ON
22 MONDAY? WORK WITH HER, ABSOLUTELY, MRS. SCOTT SAID.

23 I WANT YOU TO BE PROUD. I WANT YOU TO BE PROUD
24 OF WHAT YOU DO. WHEN YOU ARE PROUD OF WHAT YOU DO,
25 NOBODY, NOBODY, NOBODY CAN CHANGE WHAT HAPPENS HERE.

1 I KNOW IT'S BEEN A LONG DAY FOR SOME OF YOU. I
2 CAN SEE IT IN YOUR FACE. WE KNOW THAT. THEN YOU HAVE TO
3 SIT HERE, NOT SAY ANYTHING.

4 WE'VE DONE EVERYTHING WE CAN DO. KAT, CHRIS AND
5 I, SO NOW WE'RE GOING TO HAND IT TO YOU. WE'RE GOING TO
6 HAND IT TO YOU AND ASK YOU TO CONTINUE TO PROTECT HIM, AS
7 HOPEFULLY WE HAVE, AND THAT HOPEFULLY WE'VE DONE YOU THE
8 PROFESSIONAL SERVICE THAT YOU NEEDED TO BE ABLE TO SEE THE
9 OTHER SIDE OF THIS CASE. IF WE KEEP THE BLINDERS ON,
10 THAT'S WHAT THEY WANT.

11 I'D ASK THAT YOU RETURN A VERDICT OF NOT GUILTY
12 BECAUSE IT'S NOT JUST WHAT THE FACTS AND THE EVIDENCE
13 REQUIRE. IT'S WHAT THE LAW SAYS YOU MUST AND SHOULD DO,
14 SO WE HAND IT TO YOU. WE ASK YOU TO PROTECT HIM. WE ASK
15 YOU TO RETURN HIM TO HIS WIFE AND TO HIS FAMILY.

16 THANK YOU.

17 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN,
18 I'M GOING TO LET YOU TAKE A SHORT BREAK WHILE WE GIVE THE
19 STATE AN OPPORTUNITY TO REARRANGE THEIR EXHIBITS. DON'T
20 BEGIN ANY COMMENT OR DISCUSSION ABOUT THE CASE.

21 (WHEREUPON, THE JURY LEFT OPEN COURT AT
22 APPROXIMATELY 2:05.)

23 THE COURT: ALL RIGHT. IN TERMS OF THE
24 OBJECTION MADE BY MR. MCMAHON IN TERMS OF MR. DELGADO'S
25 ARGUMENT, THE FOLLOWING SCENARIO IS WHAT OCCURRED: IN

1 FRONT OF THE JURY, MS. RUSS TESTIFIED THAT OH YES, SHE HAD
2 THAT RECORD.

3 THEN THE DEFENSE MOVED FOR A HEARING ON A
4 DISCOVERY VIOLATION. WE HAD A HEARING ON THE DISCOVERY
5 VIOLATION WHERE THE MANAGER FOR MS. RUSS CAME AND
6 TESTIFIED, SAID HE DIDN'T HAVE THE RECORD. THAT WAS
7 OUTSIDE THE PRESENCE OF THE JURY.

8 THE STATE HAD THE RIGHT TO CALL THE WITNESS IN
9 THEIR CASE TO CONTRADICT WHAT MS. RUSS SAID. THAT'S NOT
10 IN THE RECORD BEFORE THE JURY, AND I COULD NOT SUSTAIN
11 THAT OBJECTION.

12 MR. MCMAHON: THANK YOU, YOUR HONOR.

13 THE COURT: IT WOULD HAVE BEEN A COMMENT ON THE
14 FACTS.

15 MR. MCMAHON: THANK YOU.

16 THE COURT: ALL RIGHT. WE'LL TAKE A TEN-MINUTE
17 BREAK.

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 THE COURT: ALL RIGHT. MR. MCMAHON, ARE YOU
20 READY?

21 MR. MCMAHON: YES, SIR.

22 ALL RIGHT. YOU CAN BRING THE JURY IN,
23 MR. BAILIFF.

24 THE BAILIFF: YES, SIR.
25

1 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
2 APPROXIMATELY 2:22.)

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

4 THE COURT: ALL RIGHT. MR. SOLICITOR.

5 CLOSING STATEMENT:

6 MR. MCMAHON: THANK YOU, YOUR HONOR. MAY IT
7 PLEASE THE COURT.

8 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
9 CIRCUMSTANTIAL EVIDENCE. THEY SAY THAT'S THE KEY TO THE
10 CASE. THAT'S THE KEY TO THE CASE. THAT'S WHERE YOU
11 START, THE PHOTOGRAPH OF A 63 YEAR OLD, BORN IN 1898,
12 WORLD WAR I, WORLD WAR II VETERAN, WALKS WITH A LIMP,
13 STROKE ON HIS LEFT SIDE, "YANKEE JOHN."

14 HE'S RETIRED. HE'S AN INDEPENDENT CAB DRIVER.
15 BEFORE (INDICATING), AFTER (INDICATING). BEFORE AND
16 AFTER, SAME MAN, SAME PERSON.

17 BUT NOW, THE MOST DESPICABLE ACT KNOWN TO
18 MANKIND, THE MOST SELFISH ACT, TO TURN A LIVING,
19 BREATHING, LIVING FAMILY PERSON INTO A CORPSE, THROWN ON
20 THE SIDE OF THE ROAD WITH LESS DIGNITY THAN MOST PEOPLE
21 WOULD SHOW TO THE BURIAL OF THEIR DOG.

22 HOW DO YOU GO FROM THERE TO HERE? BECAUSE
23 THAT'S THE CHAIN. WHEN YOU LOOK AT THAT CHAIN, THAT'S
24 WHERE WE FOCUS.

25 WELL, WE KNOW ONE THING, WE KNOW THIS, AND THIS,

1 AND THIS WAS PUT INTO THE BRAIN OF MR. ORNER. THAT'S THE
2 BEGINNING OF THAT CHAIN RIGHT THERE. THAT'S THE BEGINNING
3 OF THE INVESTIGATION RIGHT THERE.

4 THE MURDER VICTIM, THE MURDER BULLET, NO DOUBT
5 ABOUT THAT. REASONABLY OR UNREASONABLY, THERE'S NO DOUBT
6 ABOUT THAT.

7 THE MURDER WEAPON, WE'VE GOT A MURDER BULLET.
8 YOU LOOK FOR A MURDER WEAPON. OBVIOUSLY, I'M GOING TO
9 SPEAK MORE ABOUT IT, BUT THIS, LADIES AND GENTLEMEN, I
10 SUBMIT TO YOU IS THE MURDER WEAPON THAT CHANGED JOHN ORNER
11 FROM A LIVING, BREATHING, LOVING HUMAN BEING INTO A
12 CORPSE.

13 SO WHAT'S THE CONNECTION? WHAT'S THE LAST LINK
14 IN THIS OPENING CHAIN, NOT 59-YEAR-OLD ED FRIEBURGER.
15 THAT'S NOT THE PERSON AT THAT AGE THAT JOHN ORNER PICKED
16 UP, 2/28/61; NO, SIR, NO, MA'AM.

17 THAT IS THE LAST LINK IN THE CHAIN, 18-YEAR-OLD
18 ED FRIEBURGER, RECRUIT, PRIVATE ED FRIEBURGER, AND THAT'S
19 HOW YOU GO VERY PURELY AND SIMPLY FROM THAT TO THIS
20 (INDICATING).

21 FOLLOW THE CHAIN. LADIES AND GENTLEMEN, FOLLOW
22 THE TIME LINE, WHICH I KNOW YOU WILL DO. I'VE SEEN YOU.
23 I DON'T WATCH JURORS BECAUSE WHEN I DO, I TRY TO READ WHAT
24 THEY'RE THINKING AND I MIGHT BE WRONG. I'M USUALLY WRONG.

25 I SAY, OH, THEY LIKE THIS EVIDENCE. THEY DON'T

1 LIKE THIS EVIDENCE. . I TRY NOT TO WATCH YOU, BUT THE TIMES
2 I HAVE LOOKED OVER, DIFFERENT TIMES I'VE SEEN DIFFERENT
3 ONES OF Y'ALL TAKING NOTES. WHEN I SEE YOU TAKING NOTES
4 WHEN I'M SAYING SOMETHING, I DON'T KNOW IF THAT'S GOOD OR
5 BAD, BUT I KNOW YOU PAID ATTENTION. I KNOW YOU FOCUSSED.

6 SOMEBODY SAID THIS IS A CASE OF DESTINY,
7 DESTINY; NO, SIR, NO, MA'AM. DESTINY IS SOMETHING TO BE
8 ACCOMPLISHED, AND DESTINY IN THIS CASE IS JUSTICE, PURE
9 AND SIMPLE.

10 WE'VE BEEN LOOKING FOR JUSTICE FOR 41 YEARS, AND
11 IT'S GOING TO RING OUT TODAY, RING OUT TODAY.

12 FOLLOW THE TIME LINE IN THE CHAIN. GO BACK TO
13 FEBRUARY OF 1961. WHEN MS. CAMPBELL TALKS OF
14 CIRCUMSTANTIAL EVIDENCE IN THAT CHAIN, IT'S NOT JUST
15 THIS --

16 IT'S NOT JUST THE BULLET. IT'S EVERYTHING THAT
17 SURROUNDS THIS TIME, THAT SURROUNDS THE LAST MOMENTS,
18 HOURS OF THIS MAN'S LIFE AND THE FIRST NEXT FEW DAYS OF
19 THIS MAN'S DEATH, AND THE INTERSECTION OF HIS LIFE AND HIS
20 DEATH WITH HIM ON WITH THIS WEAPON.

21 NOW, FEBRUARY 17TH, THERE'S NOTHING WRONG WITH
22 GOING AND PAWNING SOMETHING. YOU GO TO PAWN SOMETHING
23 BECAUSE YOU NEED SOME MONEY, YOU NEED TO GET A LOAN.

24 ON FEBRUARY 17TH, PRIVATE ED FRIEBURGER PAWNED A
25 RAZOR. EVERYBODY AGREES WITH THAT. EVERYBODY,

1 UNDISPUTED, UNCONTROVERTED. EDWARD E. FREIBURGER
2 FRIEBURGER, COMPANY "B", WHICH WAS HIS COMPANY, R.A.
3 NUMBER, RAZOR, AND IT LOOKS LIKE \$4, FEBRUARY 17TH, 1961,
4 9304.

5 THERE'S A CORRESPONDING POLICE TICKET ON THERE
6 ALSO. WELL, WHY IS THAT IMPORTANT? YOU KNOW, OBVIOUSLY,
7 MR. ORNER WASN'T KILLED WITH THAT RAZOR; NO, SIR, NO,
8 MA'AM, BUT WHERE THAT ITEM WAS PAWNED WAS AS CLOSE TO
9 WHERE THAT CAB, BLOODY CAB, WAS ABANDONED AS YOU NOW SIT
10 TO THE BACK OF THIS COURTROOM, THAT CLOSE, THAT CLOSE.

11 NOW, THAT BEGINS A CHAIN OF CIRCUMSTANCES
12 BECAUSE IF THIS WAS PAWNED IN A PAWNSHOP IN KNOXVILLE,
13 TENNESSEE OR NEWPORT, TENNESSEE OR FORT WAYNE, INDIANA,
14 THAT MIGHT NOT BE VERY RELEVANT AT ALL, BUT THAT STARTS
15 GETTING RIGHT DOWN HERE.

16 NOW, LADIES AND GENTLEMEN, I NEVER MET -- YOU
17 CAN ASK ANYBODY IN MY OFFICE, I HAVE NEVER MET A CHART AND
18 A DIAGRAM I DIDN'T LIKE. I CAN'T HELP IT. I CAN'T HELP
19 IT.

20 I PUT ON THERE "NOT TO SCALE", AND IF YOU THINK
21 BECAUSE MY CAB IS TOO BIG, YOU FIND HIM NOT GUILTY, FIND
22 HIM NOT GUILTY. THAT'S NOT TO MISLEAD YOU IN ANY WAY.
23 THAT IS TO SHOW YOU WHAT OCCURRED AND WHAT WAS FOUND
24 BECAUSE OF THE SOLEMN DUTY AND THE RESPONSIBILITY THAT YOU
25 WILL SHORTLY FULFILL, SO YOU WILL KNOW, SO YOU WILL KNOW

1 WHAT PEOPLE LIKE MR. JOYNER HAS LIVED WITH FOR 41 YEARS,
2 AND HIS WIFE AND HIS FAMILY.

3 CAPTAIN BILL BROWN, MR. CRAIG, SERGEANT METZ,
4 DEPUTY CHIEF WILSON, SHERIFF LOTT, SO YOU WILL KNOW ALL
5 THOSE FACTS AND CIRCUMSTANCES, BUT LOOK, JUST LOOK AT THIS
6 RIGHT HERE, LADIES AND GENTLEMEN. IT'S ABANDONED WITHIN
7 STEPS, STEPS OF WHERE HE PAWNED THAT RAZOR.

8 HE NEEDED MONEY HE NEEDED MONEY, \$68 A MONTH.
9 I REMEMBER THOSE DAYS AT FORT DIX; YES, SIR, YES, MA'AM,
10 SURE. ABOUT THE MIDDLE OF THE MONTH, IF IT LASTS THAT
11 LONG. OF COURSE, IT WASN'T NOTHING TO SPEND \$68 AT FORT
12 DIX, NEW JERSEY. YOU NEEDED MONEY.

13 NOW, GO TO THE NEXT WEEK, THE NEXT WEEK, HE'S
14 DOWN ONE BLOCK, ONE BLOCK RIGHT HERE, FREED'S
15 JEWELERS, FEBRUARY 25TH, PAWNING A RADIO.

16 NOW, THEY'VE GOT \$4 ON THE 17TH, AND THEN \$8 ON
17 THE 25TH, AND I UNDERSTAND FOUR AND \$8 WAS A LOT MORE IN
18 1961 THAN IT IS IN 2002. I UNDERSTAND THAT, BUT HE NEEDED
19 MONEY AGAIN, AND WHERE IS HE AT THIS SECOND TIME?

20 ONE BLOCK DOWN, A FEW DOORS OVER, LADY STREET,
21 WASHINGTON STREET. HUSBAND AND WIFE, NAMED AFTER GEORGE
22 WASHINGTON AND HIS WIFE, LADY AND WASHINGTON, A BLOCK
23 DOWN.

24 SO WE KNOW HE'S FAMILIAR WITH PAWN SHOPS, AND WE
25 ALSO KNOW CIRCUMSTANTIALLY NOW, NO, MAYBE DIRECTLY, I

1 DON'T KNOW, THAT HE'S FAMILIAR WITH THE PAWNSHOP ON THE
2 1100 BLOCK OF WASHINGTON STREET, WASHINGTON STREET. NEED
3 MORE MONEY.

4 NOW, GO FORWARD TO THE LAST DAY OF THE MONTH OF
5 FEBRUARY, AND I BELIEVE PRIVATE, NOW GARY, MR. AEBERSOLD,
6 AND I BELIEVE MR. TILBURY ALSO TESTIFIED, PAYDAY FOR
7 SOLDIERS, LAST DAY OF THE MONTH. LAST DAY OF THE MONTH,
8 UNLESS IT WAS A WEEKEND OR A HOLIDAY. THE LAST DAY OF THE
9 MONTH.

10 HOW MUCH DID YOU MAKE MR. TILBURY, \$68? \$68.
11 AND WHAT DOES HE DO, ED FRIEBURGER WITH HIS \$68? HE
12 REDEEMS HIS RADIO, NUMBER ONE

13 SO FOR THE THIRD TIME IN THE MONTH OF FEBRUARY,
14 AND I'M NOT TALKING ABOUT OTHER TIMES HE MIGHT HAVE BEEN
15 IN DOWNTOWN COLUMBIA. WE'LL TALK ABOUT THAT SHORTLY.
16 HE'S AT A PAWNSHOP IN DOWNTOWN COLUMBIA AGAIN ON THE 1100
17 BLOCK OF WASHINGTON STREET REDEEMING HIS RADIO.

18 YOU REMEMBER MR. FREED, THE ATTORNEY FROM NEW
19 YORK THAT WAS RAISED HERE IN COLUMBIA, AND HIS MOM AND DAD
20 RAN FREED'S. HE IDENTIFIED ALL OF THESE DOCUMENTS. HE
21 SAID IT HAD BEEN \$8 PLUS INTEREST. THAT'S HOW A PAWN SHOP
22 WORKED. SO HE GOES AND HE GETS HIS RADIO BACK FOR \$8.

23 NOW, LET'S SEE, IF HE HAD \$68, WHAT DOES THAT
24 LEAVE, \$60, AND THEN RIGHT DOWN THE STREET, HE GOES AND
25 SPENDS -- WELL, YOU DO THE MATH, WHETHER IT'S \$50 OR \$52,

1 WHETHER THAT'S 90 OR 95 PERCENT, HE SPENDS OF HIS MONEY,
2 OF HIS \$60 PLUS INTEREST, SO IT'S LESS THAN \$60. HE BUYS
3 A GUN.

4 WHETHER YOU SAY, "WELL, SOLICITOR, HE DIDN'T
5 SIGN THE GUN RECEIPT." I SUBMIT TO YOU HE DID, BUT IF YOU
6 WANT TO BELIEVE MR. DAWSON, THAT'S FINE. I'M GOING TO
7 TALK ABOUT THAT SHORTLY, BUT I'LL TELL YOU THIS, IT
8 DOESN'T MATTER WHETHER HE SIGNED IT OR NOT, WHOSE POCKET
9 DID IT COME OUT OF?

10 ARE YOU TELLING ME IT'S COMMON SENSE THAT
11 SOMEBODY ELSE WENT DOWN THERE AND WAS ABLE TO SIGN HIS
12 NAME THAT GOOD, THAT GOOD, AND THEN WAS OUTLAWED ENOUGH
13 THAT HE COULD TAKE THIS GUN AND GO KILL MR. ORNER AND THEN
14 SLIP IT IN HIS POCKET? MAN, THAT GUY IS BETTER THAN
15 JESSIE JAMES, BUT HE'S DEAD.

16 THINK ABOUT THE ILLOGIC OF THAT, THE
17 UNREASONABLENESS OF THAT, BUT ON PAYDAY, PAYDAY OF
18 FEBRUARY 1961, HE TAKES LESS THAN HIS LAST \$6 AND BUYS A
19 GUN, NOT BECAUSE OF THESE RECORDS, BECAUSE WE'RE TALKING
20 ABOUT THE HIGHWAY PATROL GETTING IT OFF OF HIM.

21 I'VE GOT A NEPHEW THAT'S A SUBCONTRACTOR.
22 EVERYBODY GETS A BAD LOOK ON THEIR MOUTH, BUT AS A
23 SUBCONTRACTOR, HE'LL SPEND HIS LAST FEW DOLLARS BUYING
24 TOOLS. I DON'T EVEN KNOW WHAT THEY ARE, SKILL SAWS,
25 LEVELS, HACKSAWS, BLADES, IT WILL CUT THIS, THAT AND THE

1 OTHER. I CAN'T FIX A WATER FAUCET. I CAN DO DISHES. I
2 CAN DO LAUNDRY. I CAN'T FIX NOTHING.

3 THE POINT I'M MAKING IS HE SPENDS HIS MONEY, AND
4 HIS LAST LITTLE BIT OF MONEY, ON THE TOOLS OF HIS TRADE
5 BECAUSE THAT'S WHERE HE GETS HIS MONEY FROM.

6 NOW, WHAT'S THE TOOLS OF THIS TRADE? WHAT DOES
7 AN AMERICAN SOLDIER IN 1961 THAT'S JUST BEEN THROUGH BASIC
8 TRAINING WITH A RIFLE AND A WEAPON, AD NAUSEAM, NEED WITH
9 THIS IN 1961? DO YOU THINK MAYBE HE NEEDS MONEY? DO YOU
10 THINK MAYBE THERE'S A PATTERN HERE, AND DO YOU THINK MAYBE
11 THAT'S THE TOOL OF HIS TRADE?

12 IS THAT A REASONABLE INFERENCE TO DRAW FROM
13 THIS? I SUBMIT TO YOU, YES, SIR, YES, MA'AM, IT IS.
14 ABSOLUTELY; IT IS.

15 GO ON DOWN, THAT'S WHERE HE PURCHASES THE
16 REVOLVER. IN THAT SAME DAY, THAT SAME DAY IS THE LAST DAY
17 THAT JOHN ORNER IS SEEN ALIVE, THE LAST DAY,
18 FEBRUARY 28TH, FEBRUARY 28TH. THIS ISN'T JUST BECAUSE OF
19 THESE RECORDS EITHER, LADIES AND GENTLEMEN.

20 YOU REMEMBER MR. AEBERSOLD I TALKED TO YOU
21 ABOUT. REMEMBER, HE WAS ASKED QUESTIONS AND ANSWERS, THE
22 QUESTIONS THAT HE WAS ASKED BACK IN 1961, ANSWERS THAT HE
23 GAVE BACK IN 1961. "DID YOU EVER AT ANY TIME ACCOMPANY
24 FRIEBURGER TO COLUMBIA?"

25 "YES. ON ONE OCCASION WE WENT INTO TOWN TO PAWN

1 A RADIO. WE WENT INTO ONE BAR, HAD A FEW DRINKS AND WENT
2 BACK TO POST."

3 "TO THE BEST OF YOUR KNOWLEDGE, WHEN WAS IT YOU
4 WENT INTO TOWN?"

5 "TOWARDS THE LAST PART OF FEBRUARY, '61, I WENT
6 TO COLUMBIA ON A PASS WITH FRIEBURGER ACCOMPANIED BY
7 HINTON (PHONETIC), A PERSON WHO WAS WITH MY COMPANY. WE
8 WENT INTO TOWN TO PAWN FREIBURGER'S TRANSISTOR RADIO. WE
9 DID GO INTO A PAWN SHOP LOCATED ON MAIN STREET IN
10 COLUMBIA, BUT SINCE HE COULDN'T GET THE RIGHT PRICE FOR
11 THE RADIO, WE LEFT, WENT DOWN TO A BAR AND HAD A FEW BEERS
12 AND WENT BACK TO BASE."

13 THAT'S CORROBORATION, IN ADDITION TO THE
14 CORROBORATION THAT THESE ARE THE RECORDS. THE AMMO, AND
15 THAT'S ON THE BACK OF THIS FORM, BULLETS, BULLETS, AND
16 IT'S ALSO ON THE DAILY LOG WHICH IS, I THINK STATE'S
17 EXHIBIT NO. 29 RIGHT HERE, THE 27 AND 28, THE REVOLVER AND
18 THE BULLETS, RIGHT THERE.

19 "WHAT DID PRIVATE AEBERSOLD TELL YOU? I
20 UNDERSTAND YOU TURNED OVER A ROUND OF 32 CALIBER
21 AMMUNITION TO CAPTAIN NICHOLS?"

22 "YES."

23 "WHERE DID YOU GET IT FROM?"

24 "FRIEBURGER. HE GAVE IT TO ME IN THE BARRACKS
25 NEAR THE WALL LOCKER. HE GAVE ME TWO DECKS OF CARDS

1 ALSO."

2 WHAT ABOUT THAT? HE'S THE PURCHASER OF THIS
3 WEAPON. HE'S THE PURCHASER OF THIS WEAPON ON THE 28TH OF
4 FEBRUARY, NOT ONLY BECAUSE OF THE RECORDS, ALSO BECAUSE OF
5 THE COOPERATION WITH PRIVATE AEBERSOLD, ALSO BECAUSE A MAN
6 WHO SERVED HIS COUNTRY IN THE PACIFIC, IN SAIPAN, IN
7 OKINAWA, IN KENYA, AND NAGASAKI.

8 NOW, IF YOU DON'T WANT TO BELIEVE HIM, THAT'S
9 FINE, THAT'S FINE, BUT I SUBMIT TO YOU THAT'S WITHOUT
10 DOUBT, WITHOUT DOUBT, THE LAST DAY JOHN ORNER IS SEEN
11 ALIVE.

12 THEN WE GO TO THE MORNING OF MARCH 1ST. YOU'LL
13 HAVE A COPY OF THIS. YOU'LL HAVE THIS RIGHT HERE, STATE'S
14 EXHIBIT NUMBER 21. IT'S THE ORIGINAL POLICE REPORT FROM
15 MARCH 1ST OF 1961 WHERE THEY FOUND MR. ORNER'S CAB.

16 AS I UNDERSTOOD IT, IT WAS NOT AT THE CAB STAND.
17 I UNDERSTOOD A YOUNG LADY, MS. HORTON, WHOSE PARENTS OWNED
18 CROWN SAID THE CAB STAND IS OVER HERE ON LADY STREET.

19 I UNDERSTAND SERGEANT REVETTA SAID THE CAB OF
20 MR. ORNER WAS FOUND HERE (INDICATING). THOSE ARE ACTUALLY
21 SOME OF THE OLD LOOKING AUTOMOBILES. I THINK THOSE ARE
22 TRINOES (PHONETIC). THEY WERE POPULAR BACK THEN. I
23 DIDN'T HAVE ONE. IT WAS CLOSE TO THE CAB STAND, BUT IT
24 WAS NOT AT THE CAB STAND.

25 THE MORNING OF MARCH 1ST, HIS CAB IS FOUND.

1 MR. AEBERSOLD, WHO SLEEPS IN THE BUNK -- I FORGET WHO WAS
2 ON THE TOP OR THE BOTTOM, HE DOESN'T KNOW WHERE ED
3 FRIEBURGER WAS.

4 MR. TILBURY, HIS BEST FRIEND, BORN ON THE SAME
5 DAY AT THE SAME HOSPITAL RAISED ON THE SAME STREET, SAME
6 SCHOOL, SAME TIME GOING IN THE ARMY, HE DOESN'T KNOW WHERE
7 HE IS. HE DOESN'T KNOW WHERE HE IS. THE CAB IS FOUND,
8 AND THEY SAY HERE THAT THE DISPATCHER TOLD HIM THAT ABOUT
9 4 A.M. THE CAB WAS SEEN.

10 MR. STONE, MR. ORNER'S STEPSON, CALLED THE
11 DISPATCHER, SAID WE SAW THE CAB ABOUT 4 O'CLOCK IN THE
12 MORNING, SOME OTHER DRIVER DID, AT ASSEMBLY AND LADY
13 STREET.

14 THE LAST CALL HE RECEIVED, 11:15 P.M., 2/28/61
15 TO GO TO THE N.C.O. CLUB AT FORT JACKSON. HE LIKED TO
16 WORK FORT JACKSON. YOU KNOW WHERE THE CAB STAND WAS. YOU
17 HEARD ALL OF THAT TESTIMONY.

18 THEY'VE SEEN THE CAB, AND THEY FIND
19 IDENTIFICATION PAPERS IN THE BACKSEAT AND A SMALL AMOUNT
20 OF CHANGE IN THE FRONT. THEY FOUND SOME BLOOD ON THE
21 FRONT SEAT WHERE THE DRIVER SITS.

22 I SUBMIT TO YOU, THAT WOULD HAVE BEEN
23 MR ORNER'S BLOOD, MR. ORNER'S BLOOD.

24 NOW, GO TO, AS YOU CONTINUE ON RIGHT HERE,
25 MARCH 1ST, MARCH 1ST. A WEEKDAY, JUST LIKE FEBRUARY 28TH,

1 THE DAY HE BUYS THE GUN, A WEEKDAY.

2 MARCH 1ST IS A WEEKDAY AT THE CAB STAND. MARCH
3 2ND IS A THURSDAY, ANOTHER WEEKDAY, AND HE'S A RECRUIT AT
4 FORT JACKSON.

5 HE SPENT ALL OF HIS MONEY ON THE 28TH. HE GOT
6 HIS RADIO OUT OF HOCK, AND HE BOUGHT A GUN ON THE 28TH, SO
7 WHAT'S MY POINT? HE'S CHECKING INTO A MOTEL, A HOTEL, ON
8 THE 2ND.

9 I THOUGHT HE WAS SUPPOSED TO BE CHECKED INTO
10 8-16-4, COMPANY EIGHT, 16TH BATTALION, FOUR BRIGADE. I
11 DIDN'T KNOW THESE BARRACKS WERE THE GRESHAM OR THE DESOTO
12 OR WHENEVER HE STAYED.

13 SO WHERE DOES THAT COME FROM, BECAUSE WHERE IS
14 THAT TESTIMONY OR EVIDENCE IN HERE? WHETHER IT'S THE
15 17.55 OR THE MONEY THAT HE WOULD USE TO GO TO THE DELI?

16 BY THE WAY, WHAT EVIDENCE DO YOU SEE WHERE IT
17 SMELLED LIKE SALAMI? WHAT EVIDENCE DO YOU SEE THERE'S ANY
18 INDICIA OF HIM GOING BY THE DELI?

19 WHAT DID MR. JOYNER SAY, THEY CHECKED THAT OUT.
20 HE DIDN'T GO BY THE DELI. HE TESTIFIED TO THAT. HE
21 TESTIFIED TO THAT.

22 LOOK AT THAT PICTURE AGAIN AND SEE HIS POCKET
23 TURNED OUT. WHAT IS THE MOTIVE? WHAT IS THE MOTIVE?

24 WHERE DOES HE END UP? NOT IN THE BARRACKS BUT
25 IN THE GRESHAM, IN THE GRESHAM. LOOK AT THE, LADIES AND

1 GENTLEMEN, THE GRESHAM RECEIPT, REGISTER RIGHT THERE, HE'S
2 IN THE GRESHAM.

3 WE DON'T KNOW WHAT TIME OF DAY. WE KNOW HE HAD
4 TO BE, I SUBMIT TO YOU, BROKE ON THE AFTERNOON OF THE 28TH
5 WHEN HE PURCHASED THE TOOLS OF HIS TRADE.

6 HE HAD TO BE, AND TWO DAYS LATER HE'S CHECKING
7 INTO A HOTEL, CHECKING INTO A HOTEL. WHILE HE'S IN THE
8 HOTEL, OUR SHERIFF AT THE TIME, SHERIFF SLY, PREDECESSOR
9 OF SHERIFF LOTT, HAS FORMED A POSSE. YOU DON'T HEAR THAT
10 TERM MUCH ANYMORE.

11 HE'S EXAMINED THAT CAB, AND THEY'RE GOING TO
12 LOOK AT THE LOWER END OF RICHLAND COUNTY BECAUSE OF SOME
13 MATERIAL, SAND AND MICA, I THINK THEY CALLED IT.

14 ON THE 2ND, WHILE HE'S IN THE GRESHAM, THE NEXT
15 DAY, THE NEXT DAY, JOHN ORNER'S BODY IS RECOVERED FROM 601
16 HIGHWAY, 601 HIGHWAY.

17 NOW, GO TO THE INVESTIGATION. I KNOW I GO
18 FORWARD AND BACKWARD, BUT YOU DO YOUR AUTOPSY, YOU GET THE
19 BULLETS, GO BACK TO MR. CATE, GO BACK TO MR. STOKES.

20 BY THE WAY, HE SAID OH, THEY'RE THE ONE WHO IS
21 WANTING TO CALL MR. STOKES. WELL, WHO CALLED MR. STOKES?
22 THE STATE. WHAT KIND OF WEAPON WAS IT? WHAT KIND OF
23 BULLET IS IT?

24 FROM MARCH THE 3RD OR WHENEVER THEY EXAMINED
25 THAT BULLET, SHORTLY AFTER, IT WAS A 32 HARRINGTON AND

1 RICHARDSON REVOLVER THAT SHOOTS 32 LONGS. NOBODY DISPUTES
2 THAT, NOBODY DISPUTES THAT.

3 NOW, THAT'S WHAT THEY BEGIN LOOKING FOR. NOW,
4 THE NEXT EVIDENCE WE HAVE OF THE SITE -- EVEN BEFORE WE
5 GET TO THAT, EVEN BEFORE WE GET TO THE NEXT EVIDENCE OF
6 FRIEBURGER, TALK ABOUT THAT COMMON DENOMINATOR OF FORT
7 JACKSON ALONG WITH FRIEBURGER, ALONG WITH YANKEE JOHN:
8 MAIN GATE, CAB STAND, JACKSON BOULEVARD, N.C.O. CLUB IS
9 RIGHT ON JACKSON BOULEVARD. YOU'LL SEE IT RIGHT HERE,
10 JACKSON. YOU'LL HAVE THIS WITH YOU. YOU'LL HAVE THIS
11 WITH YOU.

12 I BELIEVE, AMAZINGLY, WHEN THEY SAY DESTINY, YOU
13 REMEMBER CHIEF CLARK SAID THE YEAR BEFORE I WAS IN SUPPLY
14 SCHOOL OUT THERE RIGHT THERE ON JACKSON BOULEVARD, RIGHT
15 THERE ON JACKSON BOULEVARD.

16 WE ALL KNOW THERE'S SEVERAL WAYS YOU CAN GET A
17 CAB. YOU CAN CALL THEM, YOU CAN FLAG THEM DOWN. THAT'S
18 THE CIRCUMSTANCE. THAT'S A CIRCUMSTANCE BECAUSE THAT TIME
19 OF NIGHT, 11:15 AT NIGHT, OF COURSE, IT SAYS HE GOT A CALL
20 TO GO TO THE N.C.O. CLUB, BUT EVEN IF HE DIDN'T, THAT WAS
21 HIS NORMAL HABITUAL ROUTE HOME, JACKSON TO PERCIVAL.

22 YOU CAN FOLLOW THIS ALL THE WAY DOWN HERE,
23 JACKSON TO PERCIVAL RIGHT HERE, RIGHT THERE, PERCIVAL TO
24 DECKER, PERCIVAL TO DECKER RIGHT HERE, TURN LEFT, DECKER
25 TO DENTSVILLE.

1 IT'S AMAZING, AS I SAY, NO ONE EVEN TALKS ABOUT
2 DENTSVILLE ANYMORE. IT'S NORTHEAST OR SPRING VALLEY OR
3 DUTCH RIDGE OR WHATEVER IT IS NOW. THEY EVEN HAVE THAT ON
4 THERE, DENTSVILLE, SOUTH CAROLINA AS HIS ADDRESS. TAKE A
5 RIGHT, TURN LEFT, [REDACTED] [REDACTED] [REDACTED] [REDACTED] RIGHT THERE AT
6 COLUMBIA MALL.

7 THAT IS A CIRCUMSTANCE, A REASONABLE
8 CIRCUMSTANCE, REASONABLE INFERENCE YOU MAY DRAW FROM
9 EITHER THE EVIDENCE ON HERE OF THE LAST CALL BEING AT THE
10 N.C.O. CLUB OR THE FACT THAT MR. ORNER WOULD DRIVE RIGHT
11 BY HIS BARRACKS, RIGHT BY HIS BARRACKS.

12 HE HAD TO BE IN THE BARRACKS AFTER HE BOUGHT THE
13 GUN FOR A PERIOD OF TIME, BECAUSE OF MR. AEBERSOLD GIVING
14 HIM THE BULLET, GIVING HIM THE BULLET.

15 THEN NOBODY KNOWS WHERE HE IS EXCEPT ONE PERSON,
16 EXCEPT ONE PERSON. AND, OF COURSE, HE SILENCED HIM. HE
17 SILENCED HIM.

18 THEY BEGAN THE SHOE LEATHER PART OF THE
19 INVESTIGATION, AS I SAID. THEY FIND THESE RECORDS, THEY
20 FIND THIS RECORD WITH HIS NAME ON THERE. USE YOUR COMMON
21 SENSE.

22 - YOU DON'T HAVE TO HAVE 50 YEARS EXPERIENCE OR 20
23 YEARS EXPERIENCE OR 40 YEARS EXPERIENCE. I THINK
24 MR. HARMON WAS WHAT, 87, BEEN MARRIED LONGER THAN I'VE
25 BEEN ON EARTH; MR. CRAIG, 73; TROOPER MEREDITH, 77.

1 WHAT DID BROKAW CALL THEM AGAIN, THE GREATEST
2 GENERATION. IS THAT WHAT I REMEMBER? TOM BROKAW SAID
3 THAT.

4 BUT ANYWAY, YOU'RE INVESTIGATING A CASE WITH NO
5 EXPERIENCE AND AN EXPERT TELLS YOU A 32 HARRINGTON AND
6 RICHARDSON REVOLVER KILLED MR. ORNER, YOU'RE GOING TO
7 START LOOKING FOR A 32 HARRINGTON AND RICHARDSON REVOLVER.

8 AND THEY FIND THOSE RECORDS. WELL, THEN WHAT'S
9 THE NEXT STEP YOU'RE GOING TO DO? I DON'T HAVE TO TELL
10 YOU. YOU'RE GOING TO WANT TO GO TALK TO THE PERSON OR
11 FIND THE PERSON THAT BOUGHT THAT REVOLVER.

12 BUT GUESS WHAT, THE NEXT SIGHTING WE HAVE,
13 FRIEBURGER SIGHTING, IS ONLY WITH HIS FRIEND GOING TO
14 INDIANA. HE'S GOING TO INDIANA ON ANOTHER WEEKDAY,
15 ANOTHER WEEKDAY.

16 MR. TILBURY SAID, I GOT AN EXTENDED PASS BECAUSE
17 I WAS FIXING -- WAITING ON ORDERS TO GO TO FORT RICKS
18 (PHONETIC) IN ATLANTA.

19 HE DIDN'T HAVE ANY MONEY AGAIN, AGAIN WITHOUT
20 MONEY. I BOUGHT HIM A TICKET AND WE GO -- MR. TILBURY
21 ALSO SAID HE HAD BEEN DOWNTOWN WITH HIM BEFORE, SAID HE
22 HAD BEEN AT THE GRESHAM BEFORE. NO EVIDENCE HE WAS IN THE
23 GRESHAM WITH HIM ON 3/2/61, SO THAT'S ANOTHER TIME THAT
24 HE'S DOWNTOWN IN COLUMBIA. THAT'S DOWN LIKE WHEAT STREET
25 DOWN BY CALIFORNIA DREAMING.

1 AND WHEN IS THE NEXT SIGHTING? ARRESTED BY
2 TROOPER DON MEREDITH, W 9948, W 9948, AND YOU'VE GOT A
3 LETTER, THE SUBSTANCE OF WHICH HAS BEEN DELETED.

4 W 9948 IN '64, IN '61, HE'S ARRESTED.
5 HITCHHIKING, IS HE IN HIS UNIFORM? IS HE STANDING TALL
6 WITH HIS SUPPLY CLERK EMBLEM ON, OR IS HE THUMBING ON THE
7 SIDE OF HIGHWAY 25, NO EVIDENCE WHERE HE WAS GOING, ONE
8 WAY OR THE OTHER.

9 HE'S IN CIVILIAN CLOTHES, CIVILIAN CLOTHES.
10 HE'S ARMED WITH A LOADED 32 CALIBER HARRINGTON AND
11 RICHARDSON, AND WHAT DOES HE SAY? "I GOT IT FROM A
12 PAWNSHOP IN KNOXVILLE. I GOT IT FROM A PAWNSHOP IN
13 KNOXVILLE."

14 I DON'T KNOW ABOUT ALL THOSE LAKES AND RIVERS.
15 I DROVE UP TO NEWPORT JUST LIKE I DO OUT TO KANSAS CITY.
16 THERE'S A LOT. I KNOW ONE THING, THE TRUTH DON'T CHANGE.

17 WHY IS HE LYING ABOUT THIS? WHY IS HE IN
18 CIVILIAN CLOTHES AT 11 O'CLOCK AT NIGHT HITCHHIKING,
19 HITCHHIKING. DESTINY? HOW THANKFUL WE ARE THAT TROOPER
20 MEREDITH DIDN'T JUST GO ON.

21 SOMETIMES WE HAVE IMAGES OF OUR OFFICERS EATING
22 DONUTS AND DRINKING COFFEE, AND I WAS AN OFFICER AND
23 SOMETIMES THAT'S CORRECT, THAT'S CORRECT, A CORRECT IMAGE.

24 THERE'S A GUY WHO WOULD HAVE BEEN IN '61, I
25 GUESS ABOUT 30, 36 YEARS OLD AT THE TIME, TROOPER MEREDITH

1 OUT THERE CHECKING A HITCHHIKER, CHECKING A HITCHHIKER,
2 ULTIMATELY SOLVING A CASE.

3 TURN THIS WEAPON OVER, AND IT GOES TO LIEUTENANT
4 CATE, IT GOES TO LIEUTENANT CATE, AND MR. STOKES, PEDRO.

5 THEY EXCLUDE EVERY 32 CALIBER. THEY EXCLUDE --
6 THIS IS CIRCUMSTANTIAL EVIDENCE, LADIES AND GENTLEMEN.
7 THIS AIN'T REASONABLE DOUBT; NO, SIR, NO, MA'AM.

8 IF TWO PEOPLE SEE A GETAWAY CAR LEAVING THE
9 SCENE, AND ONE OF THEM SAYS IT WAS A DARK CAR. THEN WHEN
10 YOU CATCH THE GUY, HE'S GOT A BLACK FORD, THAT AIN'T
11 REASONABLE DOUBT. THAT'S CIRCUMSTANTIAL EVIDENCE, THE
12 DARK CAR AND THE BLACK CAR.

13 SO THEY LOOK AT THIS GUN AND MR. CATE MUST HAVE
14 BEEN A HECK OF A MAN, A HECK OF A MAN, AND HE DIDN'T WANT
15 "MR. IN BETWEEN", NO, SIR, NO, MA'AM. HE EXCLUDED
16 EVERYTHING. HE WOULDN'T OBJECT TO A SECOND OPINION.

17 MR. PARNELL, OH, WE USE S.L.E.D. WHEN WE NEED
18 THEM BUT NOT WHEN WE DON'T, WHO CALLED MR. PARNELL?

19 NOW, LADIES AND GENTLEMEN, THEY DON'T HAVE TO
20 CALL A WITNESS. WE HAVE THE BURDEN OF PROOF. I PRESENT
21 TO YOU THE ENTIRE STORY BECAUSE OF THE DUTY AND
22 RESPONSIBILITY THAT YOU ALL HAVE.

23 WHO EXCLUDES THIS GUN? IF IT'S EXCLUDED, FIND
24 HIM NOT GUILTY. IF ONE PERSON PUT THEIR HAND ON THIS
25 BIBLE, SWORE TO TELL THE TRUTH AND SAID, "THIS IS NOT THE

1 GUN THAT MURDERED JOHN ORNER," FIND HIM NOT GUILTY, BUT IF
2 SIX PEOPLE SAY, "OH MAN, MAN, IT'S LIKE THIS, IT'S LIKE
3 THIS. IT'S SO CLOSE, SO CLOSE."

4 WE SEE THAT IN -- WE READ THAT SOMETIMES. IT'S
5 SO CLOSE. WE SEE IT WHEN WE WATCH BASEBALL GAMES, AND
6 THEY HAVE THE INSTANT REPLAYS. MAN, THAT'S CLOSE. I JUST
7 COULDN'T QUITE -- THAT WAS CLOSE. THERE ARE DEGREES, I
8 THINK. WELL, I HAVE A LITTLE CHART. THERE ARE DEGREES, I
9 THINK MR. PARNELL SAID.

10 NOW, EVERYBODY AGREES WITH THIS, EVERYBODY
11 AGREES WITH THIS, MATTER OF DEGREES, CAN'T EXCLUDE IT.
12 EVERY OTHER 32 THEY LOOKED AT WAS EXCLUDED.

13 ONE AND ONLY ONE 32 THAT WAS BOUGHT WITHIN ONE
14 BLOCK OF THE BLOODY CAB THE DAY THE VICTIM WAS LAST SEEN
15 ALIVE ON THIS EARTH. THAT'S SO CLOSE, SO CLOSE.

16 FREIBURGER'S, FREIBURGER'S, BUT HE DIDN'T THROW
17 IT AWAY, SO HE DIDN'T THROW THE MURDER WEAPON AWAY,
18 TROOPER MEREDITH FOUND IT, FIND HIM NOT GUILTY. HE WASN'T
19 A GOOD ENOUGH OUTLAW, MR. FRIEBURGER? WE GOING TO REWARD
20 YOU FOR STILL TOTING THE MURDER WEAPON?

21 WELL, I'M GLAD MR. MEREDITH WAS DRIVING A PATROL
22 CAR AND NOT A TAXI CAB; YES, SIR, YES, MA'AM. THAT WAS A
23 FAIR MATCH, NOT THAT, NOT THAT.

24 HE COULDN'T EVEN -- DIDN'T EVEN SEE IT COMING.
25 NOW GO FROM THERE ON UP TO THE '90S, LATE '90S.

1 I TOLD YOU IT TAKES TWISTS AND TURNS, TRINITY
2 UNITED METHODIST CHURCH, IT'S UP IN BLYTHEWOOD, A
3 CONVERSATION BETWEEN MR. JOYNER, CAPTAIN BROWN, A
4 CONVERSATION WITH MR. CRAIG, LIKE SOMEHOW MR. CRAIG HAS
5 DONE SOMETHING WRONG.

6 SOMEHOW MR. CRAIG AND YOU, VOLUNTEERING YOUR
7 TIME IN A COLD CASE UNIT THAT OUR SHERIFF HAD THE
8 FORESIGHT, THE FORESIGHT, TO CREATE SO THAT NOBODY'S
9 FAMILY MEMBER IS FORGOTTEN JUST BECAUSE OF THE PASSAGE OF
10 TIME, BUT YOU'RE WRONG, MR. CRAIG, BECAUSE YOU WORKED AT
11 THE DEPARTMENT OF MENTAL HEALTH.

12 YOU'RE WRONG BECAUSE YOU'RE C.I.D. AND YOU TOOK
13 OVER THE INVESTIGATION, JOHN CAYTON'S C.I.D. YOU'RE
14 WRONG, MR. CRAIG. HE WASN'T RUNNING AROUND IN THE
15 BASEMENT OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

16 SHERIFF LOTT HAD THE FORESIGHT TO CREATE THAT
17 UNIT AND THE CASE CAME TO HIM, TO MR. CRAIG, IN THE
18 NATURAL COURSE OF BUSINESS ASSIGNED WITH SERGEANT METZ,
19 AND I SALUTE, AND I SUBMIT TO YOU, YOU SHOULD SALUTE THAT
20 GOOD LAW ENFORCEMENT, THAT NEVER GIVING UP, NEVER; NOBODY
21 EVER, NO VICTIM SHOULD EVER BE LEFT BEHIND, EVER.

22 WELL, HE STARTS PROSPECTING. HE GETS THAT FILE,
23 AND SERGEANT METZ GETS THAT FILE, AND THEY MEET WITH THE
24 DEPUTY CHIEF, WITH MR. WILSON.

25 AMAZINGLY, THIS IS AMAZING, THIS IS AMAZING THAT

1 THEY FIND THESE ITEMS IN MR. PARNELL'S CUSTODY. THERE HAD
2 TO BE A WRITTEN AGREEMENT, A WRITTEN REQUEST TO REQUEST
3 HIM TO EXAMINE THEM, AND HE DOES.

4 YOU REMEMBER MR. STOKES SAYS THERE'S NOTHING
5 WRONG WITH THAT, S.L.E.D. HAS NEVER CHANGED THEIR OPINION.
6 THERE'S NOTHING WRONG WITH THAT. IT'S NOT A RIGHT OR
7 WRONG, BUT IT'S STILL INCLUDED.

8 MR. PARNELL TELLS THEM THAT, THAT IT'S NOT
9 EXCLUDED, IT'S NOT EXCLUDED. IT'S SO CLOSE, REMARKABLE
10 INDIVIDUAL SIMILARITIES, EXCLUDED ALL OTHER 32S,
11 CIRCUMSTANTIAL EVIDENCE.

12 THEN THEY HAVE THE FORESIGHT TO GO A STEP
13 FURTHER, LIKE SOMEHOW THEY'RE WRONG, BUT THEN THEY'VE GOT
14 TO QUIT. WE WANT YOU TO GIVE UP. THAT'S WHAT THE DEFENSE
15 WANTS THEM TO DO, GIVE UP, BUT EVEN BEFORE THEY GET THAT
16 NEWS, WHAT DO THEY DO?

17 THEY GO OUT THERE TO TALK TO ED FRIEBURGER.
18 LET'S NOT WASTE ANYBODY'S TIME. LET'S SEE WHAT HE'S GOT
19 TO SAY. WHAT DOES HE HAVE TO SAY? "I WAS IN THE ARMY? I
20 WAS AT FORT JACKSON? A SHERIFF TALKED TO ME? I BOUGHT A
21 GUN?"

22 HOW MANY LIES IS THAT ON THAT GUN, NOW? WHAT
23 DID HE SAY, TURNED RED, PROFUSE SWEATING. WHAT IS THAT AN
24 INDICATION OF IN YOUR COMMON SENSE? GUILTY KNOWLEDGE,
25 GUILTY KNOWLEDGE

1 DEMEANOR AND SELECTIVE MEMORY, HE REMEMBERED
2 EVERYTHING, ELEMENTARY SCHOOL, HIGH SCHOOL, FAVORITE
3 TEACHERS. HE REMEMBERS THAT. AFTERWARDS, JOBS, CAREERS,
4 CHILDREN, WHERE THEY LIVE, WHAT THEY DO, AND WHAT DOES HE
5 NOT REMEMBER? WHAT DOES HE NOT REMEMBER? LADIES AND
6 GENTLEMEN, SELECTIVE LOSS OF MEMORY.

7 WHY IS THAT? CHANGE IN DEMEANOR. WHY IS THAT?
8 THEY COME BACK. THEY GET GOOD NEWS, BAD NEWS, FACTS,
9 FACTS.

10 THEY STILL HAVE THE COURAGE TO GO OUT TO GET A
11 SECOND OPINION, A SECOND OPINION. WE HEAR THAT ALL THE
12 TIME, ALL THE TIME, WHAT DID THE DOCTOR TELL YOU? OH, I'M
13 GOING TO GO GET A SECOND OPINION; NO, SIR, NO, 'MA'AM.

14 THEY GO TALK TO MR. CAYTON, AND I GUESS THE
15 ARGUMENT IS I WAS WATCHING A BALL GAME IN KANSAS CITY. I
16 WAS. THAT'S EXCITING. IT WAS ON. I KEPT MISSING IT, BUT
17 BE THAT AS IT MAY, MR. CAYTON EXAMINES THIS AND TELL US
18 YOU, AND I'M GOING TO SHOW YOU WHAT MR. CAYTON SAYS.

19 YOU KNOW WHEN IT BECOMES A MATCH? DO YOU KNOW
20 WHEN IT'S A MATCH? THERE'S ONE MORE UP. MR. PARNELL
21 SAID, I DON'T DISAGREE. I DON'T DISAGREE WITH MR. CAYTON.
22 IT'S A MATTER OF DEGREE. I DON'T EXCLUDE IT. IT WAS SO
23 CLOSE, AND THERE'S A DIFFERENCE. THERE'S A DIFFERENCE.
24 THERE'S A DIFFERENCE IN WHAT MR. PARNELL AND OTHERS LOOKED
25 AT AND WHAT MR. CAYTON LOOKED AT. THAT'S THE WASH. THAT

1 IS THE D.N.A.

2 THAT'S THE D.N.A. BECAUSE IT'S THERE, AND IT
3 WILL INTERFERE WITH YOUR VISION. WE ALL KNOW THAT. YOU
4 WASH A WINDOW, YOU CAN SEE OUT OF IT BETTER. YOU CAN SEE
5 IT BETTER.

6 IT'S NOT TECHNOLOGY. IT'S TECHNIQUE. THAT'S
7 WHAT HE'S DONE, AND THAT'S UNCONTROVERTED S.L.E.D. SAYS
8 THAT'S BIOLOGICAL MATERIAL; YES, SIR, YES, MA'AM. IT'S
9 GOT TO BE, BECAUSE IT CAME OUT OF HIS HEAD, OUT OF HIS
10 BRAIN.

11 THAT'S WHAT INTERFERED WITH THESE VIEWS AND
12 THAT'S THE DIFFERENCE RIGHT THERE. THAT'S THAT LAST ONE
13 THERE, THE LAST ONE. THEY SAID WAIT A MINUTE, WAIT A
14 MINUTE. WE MADE A MISTAKE. HE WORKS IN A TRAILER.

15 YOU KNOW, THE SMARTEST FELLOW I EVER KNEW HAD
16 ABOUT AN EIGHTH GRADE EDUCATION. THE SMARTEST MAN I EVER
17 KNEW HAD AN EIGHTH GRADE EDUCATION. HE LIVED DOWN HERE IN
18 THE MILL VILLAGE.

19 I GUESS HE WOULD BE WHAT I WAS CALLED, A LINT
20 HEAD, A LINT HEAD, WORKED OUT OF THE SHACK. HE WAS MY
21 DADDY, MY DADDY.

22 I'LL TELL YOU WHAT HE'D TELL ME, YOU DON'T HAVE
23 TO BE IN A BIG FINE OFFICE; NO, SIR, NO, MA'AM. YOU DON'T
24 HAVE TO LIVE IN NO BIG FINE HOUSE. YOU DON'T HAVE TO HAVE
25 A STRING OF DEGREES TO HAVE AN OPINION AND TO BE RIGHT.

1 EVERYBODY DRINKS FROM THE SAME CUP OF JUSTICE.
2 EVERYBODY IS ENTITLED TO THE SAME LEVEL OF RESPECT AND
3 CREDIBILITY.

4 AND YOU KNOW WHAT HE'D SAY? THE MARK OF A MAN
5 IS WHEN THEY MAKE A MISTAKE, AND THEY ADMIT IT AND THEY
6 DON'T REPEAT IT. YOU ADMIT IT AND YOU DON'T REPEAT IT.

7 HOW MANY TIMES DO WE HEAR NOWADAYS ON THE
8 NEWS -- IT'S SICKENING. I ALMOST WANT TO GO BACK TO THE
9 '60S -- OF OUR CEO'S AND PEOPLE WITH ALL THESE FAMOUS
10 AMOUNTS OF MONEY SHREDDING DOCUMENTS, HIDING, COVERING IT
11 UP?

12 WHAT DID JOHN CAYTON DO? HE FOUND HIS OWN
13 MISTAKE, TOLD THE PROSECUTOR, TOLD THE DEFENSE LAWYER,
14 TOLD THE COURT, STOOD BEFORE HIS ORGANIZATION AND TOLD
15 THEM, BUT YOU CAN'T BELIEVE HIM BECAUSE HE WORKS IN A
16 TRAILER.

17 WELL, LADIES AND GENTLEMEN, FIND HIM NOT GUILTY,
18 IF THAT'S A REASON TO DO IT, BUT I SUBMIT TO YOU THAT
19 ENHANCES, ENHANCES HIS CREDIBILITY, ENHANCES IT,
20 PARTICULARLY WHEN HE'LL SIT UP HERE AND PUT HIS HAND RIGHT
21 HERE AND ADMIT A MISTAKE 19 YEARS AGO, 19 YEARS AGO.

22 HE SAID, "IT'S MADE ME MORE-CIRCUMSPECT, MADE ME
23 MORE CIRCUMSPECT." HE OUGHT TO BE SALUTED. HE OUGHT TO
24 BE SALUTED.

25 HE ALSO DID THIS, AND I SUBMIT TO YOU IF MILLARD

1 CATE WALKED IN THAT BACK DOOR RIGHT NOW, HE'D SHAKE JOHN
2 CAYTON'S HAND. HE'D HAVE HIGH REGARD FOR HIM, HE'D
3 WELCOME IT, WELCOME IT, WITHOUT A DOUBT.

4 FROM THE LOOK ON YOUR FACES, I GUESS YOU HOPE
5 I'M THROUGH. YOU KNOW, IT'S HARD TO WRAP UP A 41-YEAR-OLD
6 CASE, IT REALLY IS.

7 I JUST HAVE GOT A COUPLE MORE THINGS. THE JUDGE
8 WILL TELL YOU YOU CAN'T BASE YOUR VERDICT ON SYMPATHY,
9 PASSION, PREJUDICE, AND YOU WON'T. YOU'RE NOT FEELING
10 SORRY FOR ANYBODY.

11 YOU SHOW HIM THE JUSTICE THAT HE SHOWED JOHN
12 ORNER.

13 ANOTHER THING MY DADDY ALWAYS TOLD ME, A LEOPARD
14 DON'T CHANGE ITS SPOTS. A LEOPARD DON'T CHANGE ITS SPOTS.

15 THE WAY A PERSON LOOKED, YOU CAN'T SEE INTO THE
16 HEART, LIKE MS. CAMPBELL SAYS, YOU CAN'T LOOK INTO THE
17 BRAIN AND SEE THE EMOTIONS. YOU JUDGE THAT BY THE
18 ACTIONS. THEY DON'T CHANGE; NO, SIR, NOT IN TEN YEARS,
19 NOT IN 20 YEARS, NOT IN 30 YEARS, NOT IN 40 YEARS.

20 SO YOU DECIDE IT BASED ON THE FACTS PRESENTED IN
21 THIS COURTROOM, AND YOU GIVE THAT MEASURE OF JUSTICE THAT
22 HE GAVE TO MR. ORNER.

23 YOU KNOW, I THOUGHT IF HE'S NOT GUILTY, HE'S THE
24 UNLUCKIEST MAN ON THE PLANET.

25 OH, ONE OTHER THING, MY SECRETARY TOLD ME --

1 WHAT DID I DO WITH THAT? OH, HERE THEY ARE. THERE WERE
2 SO MANY ERRORS AND MISTAKES, DON'T GET ME WRONG. I DON'T
3 MIND MISSPELLINGS. I'M SUPERSTITIOUS. I LIKE THINGS
4 MISSPELLED ON MY DIAGRAMS. IT'S A SUPERSTITION OF MINE.
5 GO BACK THERE AND LOOK. I DON'T DO IT INTENTIONALLY.

6 I DON'T DO THE DIAGRAMS, AN ARTIST DOES. I
7 DON'T HAVE A PROBLEM WITH A PERSON MISSPELLING UNLESS HE'S
8 AN EXPERT FORENSIC HANDWRITING EXAMINER.

9 COUNT UP THE TIMES HE MISSPELLED "FRIEBURGER".
10 AT LEAST YOU WOULD THINK HE WOULD SPELL THE NAME RIGHT OF
11 THE SUSPECT WRITING.

12 COUNT UP THE TIMES THAT HE WITHDREW OBJECTS OF
13 EVIDENCE BECAUSE HE SAYS THE WRITING WAS SIMILAR FROM
14 CAPITAL, FROM FREED'S, FROM THE FILES. HE'S GOT IT ALL
15 MIXED UP. HE SAYS, OH, THAT'S NOT A MISTAKE. IT'S AN
16 ADMINISTRATIVE ERROR.

17 WELL, LADIES AND GENTLEMEN, I AIN'T POLITICALLY
18 CORRECT ENOUGH TO TALK ABOUT AN ADMINISTRATIVE ERROR.
19 CALL IT WHAT IT IS, A MISTAKE.

20 THAT'S WHERE YOUR CREDIBILITY COMES IN. THAT'S
21 WHY YOU CAN BELIEVE JOHN CAYTON, AND THIS IS, QUITE
22 FRANKLY, A BUNCH OF BUNK, AND GUESS WHAT? IT DOESN'T
23 MATTER BECAUSE THIS IS IN HIS POCKET. IT WAS IN HIS
24 POCKET. NOT GUILTY? UNLUCKIEST MAN ON THE PLANET? NO,
25 SIR, NO, MA'AM, THE SECOND MOST. THAT'S THE UNLUCKIEST

1 MAN ON THE PLANET RIGHT THERE (INDICATING), WHEN HE RAN
2 INTO HIM, RAN INTO HIM.

3 SO WHERE ARE YOU LEFT WITH YOUR CIRCUMSTANCES?
4 YOU KNOW, THEY TALK ABOUT THE BLIND MULE. THEY TALK ABOUT
5 SNOW FOR CIRCUMSTANTIAL EVIDENCE. WELL, IT'S A SNOW JOB
6 IS WHAT THEY'RE TRYING TO DO. IT'S A SNOW JOB.

7 NOW, THEY'RE TRYING TO SAY BECAUSE OF THE
8 PASSAGE OF TIME, YOU CAN'T BELIEVE IT. YOU CAN'T BELIEVE
9 IT, BUT ONCE THEY SAY, ONCE IS A HAPPENSTANCE, ANY ONE OF
10 THESE THINGS.

11 IT MAY BE JUST A HAPPENSTANCE THAT HE WAS ON THE
12 CORNER OF ASSEMBLY AND LADY STREET, A COUPLE OF DAYS
13 BEFORE THE BLOODY CAB, JUST A HAPPENSTANCE. TWICE IS A
14 COINCIDENCE, OKAY.

15 SO THE FACT THAT HE'S THERE TWICE, THE FACT THAT
16 HE BUYS THE GUN THE DAY BEFORE, THAT'S MORE THAN TWICE.
17 THEY'LL SAY THAT'S COINCIDENCE. THIRD, I CAN'T QUOTE HOGI
18 CARMICHAEL (PHONETIC). I KNOW WHERE HE'S FROM, BUT I
19 CAN'T QUOTE HIM.

20 THE FIRST IS A HAPPENSTANCE; SECOND IS A
21 COINCIDENCE; THIRD IS ENEMY ACTION, ENEMY ACTION.

22 YOU COUNT THEM UP. YOU COUNT THEM UP, AND
23 DESTINY BEING SOMETHING TO BE ACCOMPLISHED, JUSTICE IN
24 THIS CASE. THERE IS ONE AND ONLY ONE VERDICT THAT YOU CAN
25 RETURN. I DON'T HAVE TO TELL YOU ALL WHAT IT IS.

1 YOU FOLLOW THAT EVIDENCE. YOU'LL KNOW IT UP
2 HERE AND YOU'LL FEEL IT RIGHT HERE (INDICATING). GIVE HIM
3 THE MEASURE OF JUSTICE THAT HE GAVE JOHN ORNER. FINALLY,
4 FINALLY, GIVE HIM JUSTICE.

5 THANK YOU.

6 THANK YOU, YOUR HONOR.

7 THE COURT: MR. FOREMAN. IT TAKES ME ABOUT 30
8 MINUTES TO DO THIS, ARE YOU ALL RIGHT?

9 (THERE WAS NO RESPONSE.)

10 THE COURT: MR. SOLICITOR.

11 MR. MCMAHON: YES, SIR.

12 THE COURT: TAKE YOUR SIGNS DOWN.

13 JURY CHARGE:

14 THE COURT: ALL RIGHT. MR. FOREMAN AND LADIES
15 AND GENTLEMEN OF THE JURY, LET ME REMIND YOU OF A COUPLE
16 OF THINGS THAT I TOLD YOU AT THE OUTSET OF THE TRIAL.
17 FIRST OF ALL, IT'S BEEN MY RESPONSIBILITY TO PRESIDE OVER
18 THE TRIAL AND TO RULE UPON THE ADMISSIBILITY OF THE
19 EVIDENCE IN THE CASE.

20 UNDER YOUR OATH, LADIES AND GENTLEMEN, YOU ARE
21 TO CONSIDER ONLY THAT TESTIMONY THAT WAS ALLOWED INTO THE
22 RECORD, AND YOU ARE TO DISREGARD ANY TESTIMONY SUCH AS
23 WHERE AN OBJECTION WAS SUSTAINED OR TESTIMONY WAS ORDERED
24 STRICKEN.

25 THE SECOND PART OF MY RESPONSIBILITY IS TO GIVE

1 YOU A SET OF LEGAL PRINCIPLES THAT YOU NEED TO APPLY
2 DURING YOUR DELIBERATIONS.

3 UNDER YOUR OATH, LADIES AND GENTLEMEN, IT IS
4 YOUR OBLIGATION TO ACCEPT AND TO APPLY THE LAW AS YOU'RE
5 INSTRUCTED.

6 SO IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT
7 THE LAW IS OR OUGHT TO BE IN THIS CASE AND THAT DOES NOT
8 NOW AGREE WITH THESE INSTRUCTIONS, I WOULD ASK YOU TO
9 ABANDON YOUR PRECONCEIVED IDEAS AND TO APPLY THE LAW AS
10 YOU SWORE TO DO.

11 NOW, LADIES AND GENTLEMEN, THE SAME CONSTITUTION
12 THAT GIVES ME THE AUTHORITY TO INSTRUCT YOU ON THE LEGAL
13 PRINCIPLES IN THIS CASE AND TO PRESIDE OVER THE TRIAL
14 MAKES YOU THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS IN
15 THE CASE.

16 OUR STATE CONSTITUTION CONTAINS A UNIQUE
17 PROVISION THAT PROHIBITS A TRIAL JUDGE FROM MAKING ANY
18 STATEMENT, COMMENT, OR INFERRING TO A TRIAL JURY ABOUT
19 WHAT THE FACTS OF A CASE ARE OR ABOUT WHAT YOUR VERDICT
20 SHOULD BE. I HAVE NOT INTENTIONALLY DONE SO; HOWEVER, IF
21 YOU HAVE INFERRED FROM ANYTHING THAT I HAVE SAID OR DONE
22 IN PRESIDING OVER THE TRIAL OR ANYTHING THAT I MIGHT SAY
23 TO YOU NOW THAT I HAVE AN OPINION ABOUT WHAT THE FACTS ARE
24 OR ABOUT WHAT YOUR VERDICT SHOULD BE, I WANT YOU TO
25 DISREGARD THAT.

1 I WOULD NOT WANT TO INVADE YOUR RIGHT AS A FACT
2 FINDER ANY MORE THAN I'D WANT YOU TO INVADE MY RIGHTS AS A
3 LAW GIVER.

4 NOW, LADIES AND GENTLEMEN, AS JURORS, IT'S YOUR
5 DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND
6 THE TRUTH OF THE EVIDENCE THAT HAS BEEN PRESENTED TO YOU.

7 NECESSARILY, YOU'LL HAVE TO ASSESS THE
8 CREDIBILITY OF THE WITNESSES AND THE EVIDENCE THAT HAS
9 BEEN PRESENTED TO YOU.

10 CREDIBILITY IS SIMPLY A LEGALISTIC TERM FOR
11 BELIEVABILITY. IT IS YOUR DUTY AS JURORS TO TAKE ALL THE
12 ADMISSIBLE EVIDENCE, ANALYZE IT, EVALUATE IT AND DETERMINE
13 WHAT PORTIONS CONVINCE YOU OF ITS TRUTH.

14 NOW, THE LAW PROVIDES SOME TOOLS TO ASSIST YOU,
15 AS JURORS, IN DETERMINING THE CREDIBILITY OR THE
16 BELIEVABILITY OF WITNESSES AND EVIDENCE IN THE CASE.

17 YOU MAY BELIEVE ONE WITNESS AS AGAINST SEVERAL
18 WITNESSES OR SEVERAL WITNESSES AGAINST ONE. YOU MAY
19 BELIEVE A PART OF A WITNESS'S TESTIMONY AND REJECT THE
20 REMAINING PART OF THAT SAME WITNESS'S TESTIMONY.

21 FOR A GOOD AND SOUND REASON, LADIES AND
22 GENTLEMEN, YOU MAY BELIEVE A WITNESS'S TESTIMONY IN ITS
23 ENTIRETY OR YOU MAY REJECT A WITNESS'S TESTIMONY IN ITS
24 ENTIRETY.

25 YOU MAY CONSIDER WHETHER OR NOT ANY WITNESS HAS

1 EXHIBITED TO YOU ANY INTEREST, ANY BIAS, ANY PREJUDICE OR
2 OTHER MOTIVE IN THE CASE. YOU MAY ALSO EVALUATE THE
3 DEMEANOR OF A WITNESS, THAT MEANS THE MANNER AND THE STYLE
4 OF THE WITNESS WHILE HE OR SHE WAS TESTIFYING. THAT WOULD
5 INCLUDE SUCH THINGS AS WAS A WITNESS HESITANT OR WAS A
6 WITNESS FORTHRIGHT AND THINGS LIKE THAT.

7 YOU MAY ALSO CONSIDER, LADIES AND GENTLEMEN,
8 WHETHER OR NOT THE TESTIMONY OF A WITNESS HAS BEEN
9 IMPEACHED OR DISCREDITED BY SHOWING THAT HE OR SHE MADE
10 PREVIOUSLY INCONSISTENT STATEMENTS WITH THEIR PRESENT
11 TRIAL TESTIMONY.

12 ANY EARLIER CONTRADICTORY STATEMENTS ARE ALSO
13 ADMISSIBLE TO ESTABLISH THE TRUTH OF THESE STATEMENTS.
14 THIS WOULD BE WITHIN YOUR PROVINCE TO DETERMINE THE
15 CREDIBILITY, IF ANY, TO BE GIVEN TO THE EARLIER STATEMENTS
16 AND TO BE GIVEN TO THE TESTIMONY OF THE WITNESS WHOSE
17 TESTIMONY HAS BEEN IMPEACHED OR CHALLENGED.

18 IF A WITNESS -- IF A WITNESS HAS SHOWN KNOWINGLY
19 TO HAVE TESTIFIED FALSELY CONCERNING ANY MATERIAL MATTER,
20 YOU MAY TAKE THIS INTO CONSIDERATION IN DETERMINING
21 WHETHER TO TRUST THAT WITNESS'S TESTIMONY AND OTHER
22 PARTICULARS.

23 YOU MAY REJECT ALL OF THE TESTIMONY OR GIVE THAT
24 WITNESS -- OR GIVE OF THAT WITNESS -- OR GIVE ALL OR PART
25 OF SUCH TESTIMONY OF THAT WITNESS THE CREDIBILITY THAT YOU

1 THINK IT DESERVES.

2 OF COURSE, LADIES AND GENTLEMEN, YOU MAY ALSO
3 CONSIDER THE OPPORTUNITY FOR KNOWLEDGE ABOUT THOSE THINGS
4 WHICH A WITNESS HAS TESTIFIED TO, AS WELL AS THE
5 REASONABLENESS OF THEIR TESTIMONY.

6 NOW, THESE TOOLS, LADIES AND GENTLEMEN, YOU
7 DON'T USE ARBITRARILY BUT IF IN YOUR GOOD JUDGMENT, YOU
8 NEED TO USE ONE OR MORE OF THEM, YOU MAY DO SO, BECAUSE
9 YOUR OBJECTIVE IN THIS CASE IS TO FIND THE TRUTH, WHETHER
10 IT COMES FROM A WITNESS OR WITNESSES FOR THE STATE OR
11 WITNESS OR WITNESSES FOR THE DEFENDANT.

12 I WOULD TELL YOU HOWEVER, LADIES AND GENTLEMEN,
13 THAT YOU DO NOT DETERMINE TRUTH BY COUNTING THE NUMBER OF
14 WITNESSES WHO MIGHT TESTIFY FOR ONE SIDE OR THE OTHER.

15 IN JUST A FEW MINUTES YOU'LL BE UNDERTAKING A
16 DELIBERATION PROCESS. THAT'S A MENTAL PROCESS WHEREIN
17 YOU'LL BE DEBATING AND DECIDING AND CONSIDERING WHAT YOU
18 BELIEVE TO BE TRUE ABOUT THE FACTS IN THE CASE.

19 THE LAW SIMPLY REQUIRES UNDER YOUR DELIBERATIONS
20 THAT YOU USE YOUR GOOD JUDGMENT, YOUR COMMON SENSE, YOUR
21 SENSE OF LOGIC AND REASONING AND YOUR EXPERIENCES IN LIFE.

22 YOU THEN TAKE THOSE ATTRIBUTES AND TEST THE
23 EVIDENCE AND DETERMINE WHAT YOU, THE JURY, CONSIDER TO BE
24 TRUTHFUL EVIDENCE. TO THOSE TRUE STATEMENTS OF FACT AS
25 YOU FIND THEM TO BE, THEN YOU WOULD APPLY THESE LEGAL

1 PRINCIPLES THAT I'M NOW GIVING YOU. THAT'S HOW YOU WOULD
2 ARRIVE AT YOUR VERDICT.

3 NOW, LADIES AND GENTLEMEN, YOUR VERDICT SHOULD
4 NOT BE THE RESULT OF ANY PASSION, SYMPATHY, OR PREJUDICE.
5 BY YOUR VERDICT, YOU HAVE NO FRIENDS TO REWARD OR ENEMIES
6 TO PUNISH. RATHER, IT SHOULD SPEAK THE TRUTH BASED UPON
7 THE LAW AND THE EVIDENCE IN THE CASE.

8 NOW, THERE ARE TWO TYPES OF EVIDENCE FROM WHICH
9 A JURY MAY PROPERLY FIND THE TRUTH AS FACTS OF THE CASE,
10 ONE IS BY DIRECT EVIDENCE SUCH AS THE TESTIMONY OF AN
11 EYEWITNESS. THE OTHER IS BY INDIRECT OR CIRCUMSTANTIAL
12 EVIDENCE, THE PROOF OF A CHAIN OF CIRCUMSTANCES POINTING
13 TO THE EXISTENCE OR NONEXISTENCE OF CERTAIN FACTS.

14 BY THE TERM DIRECT EVIDENCE, THE LAW MEANS THE
15 TESTIMONY OF PERSON OR PERSONS WHO HAVE PERCEIVED ITS
16 EXISTENCE BY MEANS OF THEIR SENSES, AS IN AN INSTANCE WHEN
17 A PERSON SEES A CRIME COMMITTED AND COMES INTO COURT AND
18 TESTIFIES AS TO WHAT HE OR SHE SAW. THIS IS FREQUENTLY
19 CALLED EYEWITNESS TESTIMONY.

20 IN OTHER WORDS, IT COMES FROM A PERSON WHO BY
21 HIS OR HER OWN SENSES HAD ACTUAL PERSONAL KNOWLEDGE THAT
22 AN EVENT HAS OCCURRED OR NOT OCCURRED OR THAT A FACT DOES
23 EXIST OR DOES NOT EXIST.

24 DIRECT EVIDENCE MAY ARISE FROM THE USE OF ANY OF
25 OUR SENSES, SIGHT, SMELL, TASTE, SOUND, OR TOUCH WITHOUT

1 THE AID OF ANY INFERENCES.

2 CIRCUMSTANTIAL EVIDENCE INVOLVES THE TESTIMONY
3 OR EVIDENCE OF SURROUNDING FACTS FROM WHICH ONE MAY OR MAY
4 NOT INFER THAT AN EVENT HAS OCCURRED OR THAT A FACT HAS
5 BEEN ESTABLISHED.

6 CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND,
7 MEANS THE PROOF OF SOME OTHER FACT OR FACTS FROM WHICH
8 TAKEN EITHER SINCLY OR COLLECTIVELY THE EXISTENCE OF A
9 PARTICULAR FACT IN QUESTION MAY BE INFERRED AS A NECESSARY
10 CONSEQUENCE.

11 CIRCUMSTANTIAL EVIDENCE CAN EXIST WHERE CERTAIN
12 FACTS ARE KNOWN THROUGH ONE OR MORE OF OUR FIVE SENSES AND
13 GIVE RISE TO THE LOGICAL INFERENCES THAT OTHER FACTS DO
14 EXIST WITHOUT HAVING TO DIRECTLY PROVE THOSE FACTS.

15 A VIOLATION OF LAW MAY BE PROVED BY
16 CIRCUMSTANTIAL EVIDENCE, AS WELL AS BY DIRECT TESTIMONY OF
17 AN EYEWITNESS.

18 ON A CONTESTED FACTJAL. ISSUE, YOU MAY HAVE SOME
19 DIRECT EVIDENCE, AND YOU MAY HAVE SOME CIRCUMSTANTIAL
20 EVIDENCE. THAT IS A COMBINATION OF THE TWO TYPES OF
21 EVIDENCE UPON A DISPUTED FACI.

22 THE STATE IN THE PROOF OF ITS CASE MAY RELY ON
23 EITHER OR BOTH OF THESE TYPES OF EVIDENCE, THAT IS DIRECT
24 OR CIRCUMSTANTIAL EVIDENCE.

25 WITH REGARD TO BOTH DIRECT AND CIRCUMSTANTIAL

1 EVIDENCE, IT MUST BE SUCH SO AS TO PROVE THE GUILT OF THE
2 ACCUSED, THE DEFENDANT, BEYOND A REASONABLE DOUBT.

3 CIRCUMSTANTIAL EVIDENCE IS ALSO GOOD EVIDENCE,
4 PROVIDED IT MEETS CERTAIN LEGAL TESTS THAT I'LL NOW DEFINE
5 FOR YOU.

6 BEFORE YOU CAN CONVICT A DEFENDANT UPON
7 CIRCUMSTANTIAL EVIDENCE ALONE, THE CIRCUMSTANTIAL EVIDENCE
8 MUST MEASURE UP TO THE REQUIREMENTS OF LAW.

9 IT IS NECESSARY THAT EVERY CIRCUMSTANCE RELIED
10 UPON BY THE STATE MUST BE PROVEN BEYOND A REASONABLE DOUBT
11 AND THAT ALL THE CIRCUMSTANCES SO PROVEN BE CONSISTENT
12 WITH EACH OTHER AND TAKEN TOGETHER POINT CONCLUSIVELY TO
13 THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER
14 REASONABLE, RATIONAL, OR LOGICAL EXPLANATION.

15 IT IS NOT SUFFICIENT THAT THE CIRCUMSTANCES
16 CREATE SUSPICION OR PROBABILITY, THOUGH A STRONG ONE.
17 EVEN ASSUMING THE CIRCUMSTANCES TO BE TRUE, IF THEY MAY BE
18 ACCOUNTED FOR UPON ANY REASONABLE, RATIONAL OR LOGICAL
19 EXPLANATION, WHICH DOES NOT INCLUDE THE GUILT OF THE
20 ACCUSED, THEN THE PROOF HAS FAILED.

21 THIS PART OF THE TEST REGARDING THE
22 CONSIDERATION OF CIRCUMSTANTIAL EVIDENCE SHALL IN NO WAY
23 BE CONSTRUED AS REQUIRING THE DEFENDANT TO PROVE ANYTHING
24 OR OFFER ANY EXPLANATION. THE BURDEN OF PROOF IS UPON THE
25 STATE TO PROVE THE DEFENDANT'S GUILT BEYOND A REASONABLE

1 DOUBT.

2 THEREFORE, IF YOU, THE JURY, MAKE A
3 DETERMINATION THAT SUCH CIRCUMSTANTIAL EVIDENCE DOES NOT
4 MEET THE TEST THAT I HAVE OUTLINED FOR YOU, THEN IN SUCH
5 CASE YOU WOULD SET SUCH CIRCUMSTANTIAL EVIDENCE ASIDE,
6 DISREGARD IT AND FIND THE DEFENDANT NOT GUILTY UNLESS THE
7 STATE HAS PROVED BY DIRECT OR THROUGH A COMBINATION OF
8 DIRECT AND CIRCUMSTANTIAL EVIDENCE THE GUILT OF THE
9 DEFENDANT BEYOND A REASONABLE DOUBT.

10 THE REASON FOR THE PRECEDING PRINCIPLE IS THAT
11 ALL PRESUMPTIONS OF THE LAW, INDEPENDENT OF THE EVIDENCE,
12 ARE IN FAVOR OF THE INNOCENT AND EVERY PERSON IS PRESUMED
13 TO BE INNOCENT UNTIL THIS GUILT IS PROVED BEYOND A
14 REASONABLE DOUBT.

15 A VERDICT OF GUILTY CAN BE BASED UPON
16 CIRCUMSTANTIAL EVIDENCE AS SAFELY AS UPON DIRECT EVIDENCE
17 PROVIDED THE CIRCUMSTANTIAL EVIDENCE RELIED UPON MEASURES
18 UP TO THE REQUIREMENTS OF LAW THAT I HAVE JUST STATED TO
19 YOU.

20 SO IN SUMMARY, THERE ARE TWO TYPES OF EVIDENCE
21 WHICH ARE GENERALLY PRESENTED DURING A TRIAL, DIRECT AND
22 CIRCUMSTANTIAL EVIDENCE.

23 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
24 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH
25 AS AN EYEWITNESS.

1 CIRCUMSTANTIAL EVIDENCE IS A PROOF OF FACTS AND
2 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW
3 MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR
4 VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL
5 EVIDENCE, NOR IS ANY GREATER DEGREE OF CERTAINTY REQUIRED
6 OF CIRCUMSTANTIAL EVIDENCE THAN THAT OF DIRECT EVIDENCE.

7 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE
8 CASE, AND IF AFTER WEIGHING ALL THE EVIDENCE IN THE CASE,
9 YOU'RE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND
10 A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT
11 GUILTY.

12 I ALSO INSTRUCT YOU, LADIES AND GENTLEMEN, THAT
13 THE FACT THAT THE DEFENDANT WAS ARRESTED AND CHARGED AND
14 INDICTED IN THE CASE IS NOT EVIDENCE OF GUILT IN THE CASE,
15 NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT.

16 IT IS MERELY THE PROCEDURAL PROCESS BY WHICH THE
17 STATE HAS LODGED THE CHARGE AGAINST THE DEFENDANT, AND
18 HAVING DONE SO, THEY MUST NOW COME FORWARD AND MEET THEIR
19 BURDEN OF PROOF.

20 THE DEFENDANT HAS PLED NOT GUILTY TO THE
21 INDICTMENT. THAT PLEA CASTS THE BURDEN OF PROOF UPON THE
22 STATE TO PROVE THE DEFENDANT GUILTY.

23 THAT IS BECAUSE A PERSON CHARGE WITH COMMITTING
24 A CRIMINAL OFFENSE IN THE STATE OF SOUTH CAROLINA IS NEVER
25 REQUIRED TO PROVE HIMSELF INNOCENT.

1 IT IS A CARDINAL AND IMPORTANT RULE OF LAW AND
2 EVIDENCE THAT A DEFENDANT IN A CRIMINAL TRIAL, NO MATTER
3 THE SERIOUSNESS OF THE CHARGE MADE AGAINST HIM, WILL
4 ALWAYS BE PRESUMED INNOCENT OF THE CRIME FOR WHICH HE
5 STANDS INDICTED UNLESS HIS GUILT HAS BEEN PROVEN BY
6 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
7 DOUBT.

8 THIS PRESUMPTION OF INNOCENCE, LADIES AND
9 GENTLEMEN, DOES NOT CEASE WHEN YOU RETIRE TO DELIBERATE,
10 BUT IT HAS ACCOMPANIED THE DEFENDANT FROM THE TIME OF HIS
11 ARRAIGNMENT THROUGHOUT THIS TRIAL AND WILL CONTINUE
12 THROUGH YOUR DELIBERATIONS UNTIL AND UNLESS YOU ARRIVE AT
13 A UNANIMOUS VERDICT OF GUILT BASED UPON EVIDENCE
14 SATISFYING YOU OF THAT FACT BEYOND A REASONABLE DOUBT.

15 OUR SUPREME COURT HAS LIKENED THE PRESUMPTION OF
16 INNOCENCE TO A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE
17 SHOULDERS OF A DEFENDANT, AND IT REMAINS WITH HIM AND
18 ASSIGNS HIM TO A CLASS KNOWN AS THE INNOCENT UNTIL THAT
19 PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED OF HIS
20 PERSON BY EVIDENCE SATISFYING YOU OF HIS GUILT BEYOND A
21 REASONABLE DOUBT.

22 THE PRESUMPTION OF INNOCENCE, LADIES AND
23 GENTLEMEN, IS NOT A MERE LEGAL THEORY. IT'S NOT JUST A
24 LEGAL PHRASE, AND IT'S CERTAINLY NOT A LEGAL TECHNICALITY.
25 IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS

1 ENTITLED TO UNLESS YOU, THE JURY, ARE SATISFIED FROM THE
2 EVIDENCE OF HIS GUILT BEYOND A REASONABLE DOUBT.

3 THE STATE HAS THE BURDEN OF PROVING THE
4 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU
5 MAY HAVE SERVED AS JURORS IN A CIVIL CASE WHERE YOU WERE
6 TOLD IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE
7 LIKELY TRUE THAN NOT.

8 THERE ARE BASICALLY THREE LEVELS OF PROOF IN OUR
9 SYSTEM OF JURISPRUDENCE ON THE CIVIL SIDE: MORE LIKELY
10 THAN NOT, OR GREATER WEIGH OR THE PREPONDERANCE OF THE
11 EVIDENCE STANDARD, WHICH IS THE LOWEST. FRAUD CASES ARE
12 BY CLEAR, COGENT, AND CONVINCING EVIDENCE.

13 IN CRIMINAL CASES, THE STATE'S PROOF MUST BE
14 MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE
15 DOUBT.

16 PROOF BEYOND A REASONABLE DOUBT -- PROOF BEYOND
17 A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
18 CONVINCED OF THE DEFENDANT'S GUILT.

19 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE
20 KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES, THE
21 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
22 DOUBT.

23 IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE,
24 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
25 THE CRIME CHARGED. YOU MUST FIND HIM GUILTY.

1 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL
2 POSSIBILITY HE IS NOT GUILTY, YOU MUST GIVE HIM THE
3 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

4 LADIES AND GENTLEMEN, THE RULES OF EVIDENCE DO
5 NOT ORDINARILY PERMIT WITNESSES TO TESTIFY AS TO OPINIONS
6 OR CONCLUSIONS, BUT THERE IS AN EXCEPTION TO THAT RULE
7 KNOWN AS THE EXPERT WITNESS RULE.

8 UNDER THAT RULE, WITNESSES, WHO BY EDUCATION AND
9 EXPERIENCE HAVE BECOME AN EXPERT IN SOME ART, SCIENCE,
10 PROFESSION OR CALLING, MAY STATE AN OPINION AS TO RELEVANT
11 AND MATERIAL MATTERS IN WHICH THEY PROFESS TO BE AN
12 EXPERT.

13 THEY MAY ALSO GIVE YOU THEIR REASONS FOR THAT
14 OPINION. YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED
15 IN EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU
16 THINK IT DESERVES.

17 IF YOU SHOULD DECIDE THAT THE OPINION OF AN
18 EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION AND
19 EXPERIENCE, OR IF YOU SHOULD CONCLUDE THE REASONS GIVEN IN
20 SUPPORT OF THE OPINION ARE NOT SOUND OR THAT THE OPINION
21 IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE
22 OPINION IN ITS ENTIRETY.

23 AN EXPERT'S TESTIMONY IS TO BE GIVEN NO GREATER
24 WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY BECAUSE HE OR
25 SHE IS AN EXPERT, AND YOU'RE NOT REQUIRED TO ACCEPT A

1 PURPORTED EXPERT'S OPINION, EVEN THOUGH IT IS
2 UNCONTRADICTED.

3 I ALSO INSTRUCT YOU, LADIES AND GENTLEMEN, THE
4 FACT THAT A DEFENDANT IN THE TRIAL OF A CRIMINAL CASE DID
5 NOT HIMSELF TESTIFY ON HIS OWN BEHALF IS NOT A FACTOR TO
6 BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND
7 IN YOUR CONSIDERATION OF THE QUESTION OF THE GUILT OR
8 INNOCENCE OF THE ACCUSED.

9 IT MUST NOT BE CONSIDERED BY YOU IN ANY WAY
10 AGAINST THE DEFENDANT. A DEFENDANT HAS A CONSTITUTIONAL
11 RIGHT TO REMAIN SILENT, AND THE ASSERTION OF SUCH
12 CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERED BY
13 YOU IN YOUR DELIBERATIONS.

14 UNDER YOUR OATH, YOU ARE TO REACH NO INFERENCE
15 AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE
16 DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY. THE FACT
17 THAT THE DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE
18 DISCUSSED BY YOU IN THE JURY ROOM.

19 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU IS
20 UPON THE STATE. IT IS NOT INCUMBENT UPON THE ACCUSED TO
21 PROVE HIS INNOCENCE.

22 THE BURDEN OF PROOF, AS I SAY, REMAINS UPON THE
23 STATE, AND THE FACT THAT THE DEFENDANT DID NOT TESTIFY IS
24 NOT A FACTOR TO BE CONSIDERED BY YOU IN DETERMINING THE
25 GUILT OR INNOCENCE OF THE DEFENDANT.

1 NOW, A NECESSARY ELEMENT OF THE CRIME OF MURDER,
2 LADIES AND GENTLEMEN, IS CRIMINAL INTENT. CRIMINAL
3 INTENT, AS I SAY, CRIMINAL INTENT MUST BE PROVEN BY THE
4 STATE BEYOND A REASONABLE DOUBT.

5 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
6 DETERMINED BY YOU, THE JURY, FROM CIRCUMSTANCES SHOWN TO
7 SURROUND THE SITUATION. THERE IS NO WAY TO PROVE CRIMINAL
8 INTENT TO A MATHEMATICAL CERTAINTY.

9 WE DO NOT POSSESS ANY MEDICAL SCIENCE WHEREBY WE
10 CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE HAD IN
11 MIND. SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE
12 INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

13 CRIMINAL INTENT IS A STATE OF MIND WHICH
14 OPERATES JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME.
15 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING.
16 SO IT IS UP TO YOU, THE JURY, TO DETERMINE WHAT THE
17 DEFENDANT INTENDED TO DO BASED UPON THE CIRCUMSTANCES
18 SHOWN TO HAVE EXISTED.

19 UNDER THE INDICTMENT, LADIES AND GENTLEMEN, THE
20 DEFENDANT IS CHARGED WITH THE OFFENSE OF MURDER. MURDER
21 IS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT.

22 IN ORDER FOR THE STATE TO PROVE THE DEFENDANT
23 GUILTY OF MURDER, IT MUST BE PROVED BEYOND A REASONABLE
24 DOUBT THAT THE DEFENDANT DID KILL A PERSON AND THAT THE
25 KILLING WAS DONE WITH MALICE AFORETHOUGHT.

1 THE STATE IS NOT REQUIRED TO PROVE ANY MOTIVE
2 FOR THE KILLING. THE STATE MUST PROVE THAT THE DEFENDANT
3 DID KILL ANOTHER PERSON WITH MALICE AFORETHOUGHT.

4 MALICE IS THE INTENTIONAL DOING OF A WRONGFUL
5 ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO
6 INFLECT INJURY.

7 MALICE AFORETHOUGHT IS THE DELIBERATE AND WELL
8 FORMED PURPOSE TO DO AN UNLAWFUL ACT. AFORETHOUGHT MEANS
9 THAT THE INTENTION TO DO THE UNLAWFUL ACT WAS CONCEIVED OR
10 PLANNED SOMETIME BEFORE THE ACTUAL COMMISSION OF THE
11 UNLAWFUL ACT.

12 MALICE NEED NOT EXIST FOR ANY PARTICULAR LENGTH
13 OF TIME PRIOR TO THE KILLING.

14 MALICE IS A WORD THAT SUGGESTS A WICKEDNESS OR A
15 HATRED OR A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG
16 WITHOUT JUST CAUSE OR EXCUSE OR LEGAL PROVOCATION.

17 MALICE NEED NOT BE IN THE MIND OF THE ONE DOING
18 THE KILLING ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT
19 OF KILLING IN ORDER TO RENDER THE KILLING MURDER.

20 IF IT IS PRESENT IN THE MIND OF THE ONE DOING
21 THE KILLING ANY LENGTH OF TIME BEFORE THE ACT, THEN ITS
22 PRESENCE WOULD BE SUFFICIENT TO RENDER THE KILLING MURDER.

23 MALICE MAY BE EXPRESSED MALICE OR INFERRED
24 MALICE. THE WORDS EXPRESSED OR INFERRED DO NOT MEAN
25 DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH

1 THE ONLY KIND KNOWN IN THE LAW MAY BE SHOWN TO EXIST.

2 MALICE IS SAID TO BE EXPRESSED MALICE WHERE
3 THERE IS MANIFESTED A VIOLENT, DELIBERATE INTENTION TO
4 UNLAWFULLY TAKE AWAY THE LIFE OF A HUMAN BEING.

5 MALICE MAY BE INFERRED WHERE ONE INTENTIONALLY
6 AND DELIBERATELY DOES AN UNLAWFUL ACT WHICH HE OR SHE
7 KNOWS TO BE WRONG AND IN VIOLATION OF HIS DUTY TO ANOTHER.

8 MALICE MAY BE INFERRED WHERE NO EXCUSE OR LEGAL
9 PROVOCATION FOR THE KILLING APPEARS AND WHEN THE
10 CIRCUMSTANCES ATTENDING A KILLING SHOW AN ABANDONED HEART
11 OR A MALIGNANT HEART FATAALLY BENT ON MISCHIEF.

12 THE LAW SAYS THAT IF ONE INTENTIONALLY KILLS
13 ANOTHER WITH A DEADLY WEAPON, THE INFERENCE OF MALICE MAY
14 ARISE.

15 A DEADLY WEAPON IS ANY OBJECT OR SUBSTANCE WHICH
16 REASONABLY COULD CAUSE BODILY HARM OR DEATH. MALICE MAY
17 BE INFERRED FROM THE USE OF A DEADLY WEAPON.

18 YOU, THE JURY, ARE PERMITTED TO INFER MALICE
19 FROM THE CONDUCT OF THE DEFENDANT IN THE USE OR HANDLING
20 OF A DEADLY WEAPON IF SUCH CONDUCT RESULTS DIRECTLY IN THE
21 DEATH OF ANOTHER AND IF SUCH CONDUCT WAS SO INEXCUSABLE,
22 SO AGGRAVATED AND GROSSLY RECKLESS, AS TO SHOW AN ACTUAL
23 INTENTIONAL DISREGARD OF CONSEQUENCES TO HUMAN LIFE.

24 IF CONDUCT IS SUFFICIENT TO SHOW A DELIBERATE
25 INTENTIONAL DESIGN TO USE, EMPLOY, OR HANDLE A DEADLY

1 WEAPON AS TO ENDANGER THE LIFE OF ANOTHER OR OTHERS
2 WITHOUT JUST CAUSE OR EXCUSE IS SUFFICIENT TO RAISE AN
3 INFERENCE OF MALICE.

4 IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT
5 SUFFICIENT TO RAISE THE INFERENCE OF MALICE, IF ANY, FROM
6 THE USE OF A DEADLY WEAPON TO YOUR SATISFACTION, THIS
7 INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
8 INTO CONSIDERATION BY YOU, ALONG WITH ALL THE OTHER
9 EVIDENCE IN THE CASE BEARING UPON THE ISSUE OF MALICE.

10 YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT
11 SHOULD RECEIVE. THE DEFENDANT IS NOT REQUIRED TO PROVE
12 THE ABSENCE OF MALICE; RATHER, THE STATE IS REQUIRED TO
13 PROVE IT.

14 FURTHERMORE, YOU MAY ACCEPT OR REJECT THE
15 INFERENCES BASED UPON YOUR VIEW OF THE CASE.

16 MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
17 JURY, THERE ARE TWO POSSIBLE FORMS OF A VERDICT. THE
18 ORDER IN WHICH I GIVE THEM TO YOU HAS NO MEANING
19 WHATSOEVER. I MUST GIVE YOU ONE BEFORE I GIVE YOU THE
20 OTHER.

21 IF YOU FIND THE STATE OF SOUTH CAROLINA HAS
22 PROVEN EACH AND EVERY ELEMENT OF THE CRIME CHARGED BEYOND
23 A REASONABLE DOUBT, YOUR VERDICT WOULD BE GUILTY.

24 IF, ON THE OTHER HAND, YOU FIND THE STATE HAS
25 FAILED TO PROVE EACH AND EVERY ELEMENT OF THE CRIME .

1 CHARGED BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE
2 NOT GUILTY.

3 ON THE BACK OF THE INDICTMENT, MR. FOREMAN, IS A
4 BLOCK THAT IS ENTITLED "VERDICT". I'LL REVERSE THE ORDER
5 THAT I JUST GAVE THEM TO YOU.

6 EITHER WRITE THE WORDS NOT GUILTY OR GUILTY
7 BASED ON THE JURY'S UNANIMOUS VIEW OF THE EVIDENCE IN THE
8 CASE. SIGN YOUR NAME AND PUT THE DATE UPON WHICH THE JURY
9 ARRIVES AT ITS VERDICT.

10 THE VERDICT OF THE JURY MUST BE UNANIMOUS. THAT
11 SIMPLY MEANS THAT ALL 12 OF YOU MUST AGREE TO THAT
12 VERDICT.

13 LET ME REVISIT, ALSO, THE ISSUE OF NOTE TAKING.
14 SOME OF YOU HAVE TAKEN NOTES AND SOME OF YOU HAVE NOT.
15 THAT WAS, OBVIOUSLY, YOUR CHOICE.

16 JUST REMEMBER WHAT I SAID TO YOU, IF YOU HAVE
17 DIFFERENCES OF OPINION BETWEEN THE NOTE TAKERS AND THE
18 NON-NOTE TAKERS, YOU HAVE TO WORK THAT OUT ON A FACTUAL
19 BASIS. AS I SAY, SOME ARE BETTER AT MEMORY JUST BY
20 SITTING AND LISTENING. SOME DO BETTER BY TAKING NOTES.

21 AS TO THE TWO ALTERNATES, LET ME -- MR. JOHNSON,
22 LET'S SEE. WE WANT TO TAKE THE TWO ALTERNATES AND JUST
23 FOR THE TIME BEING PUT THEM IN THE CHAIRS OUTSIDE THE JURY
24 ROOM.

25 THE BAILIFF: YES, SIR.

1 THE COURT: I INTEND TO KEEP THEM WITH US
2 BECAUSE I DON'T KNOW HOW LONG THE JURY IS GOING TO
3 DELIBERATE.

4 THE BAILIFF: "ALL RIGHT, SIR.

5 THE COURT: AND ONCE WE GET THE RECORD SETTLED,
6 WE'LL FIND SOME COMFORTABLE PLACE FOR THEM TO BE, ALL
7 RIGHT.

8 THE BALANCE OF THE JURY, IF YOU'LL GO TO THE
9 JURY ROOM AND LET ME GO OVER THE CHARGE WITH THE LAWYERS
10 AND MAKE SURE I DIDN'T SAY ANYTHING WRONG.

11 IF I DID, THEN THE INDICTMENT WILL BE BROUGHT
12 BACK TO YOU ALONG WITH ANY OF THE -- WITH ALL OF THE
13 EVIDENCE. AT THAT POINT IN TIME, YOU MAY BEGIN YOUR
14 DELIBERATIONS.

15 IF YOU HAVE A QUESTION OR A PROBLEM DURING THE
16 COURSE OF DELIBERATIONS, PLEASE WRITE IT OUT AND LET ME
17 KNOW. I'LL LET THE BAILIFF KNOW, AND WE'LL ATTEMPT TO
18 ASSIST YOU.

19 REMEMBER, YOU ARE THE FINDERS OF FACTS, SO IF
20 THERE'S A DISPUTE ABOUT EVIDENCE, THAT'S SOMETHING YOU'LL
21 HAVE TO WORK OUT AMONG YOURSELVES.

22 I HAVE NO IDEA HOW LONG YOU'LL DELIBERATE. YOU
23 TAKE AS LONG AS IS NECESSARY TO CONSIDER ALL THE EVIDENCE
24 IN THE CASE.

25 WE WILL CHECK ON YOU SOMEWHERE AROUND SIX OR SO

1 JUST TO SEE, AND WE'LL DISCUSS OPTIONS AT THAT POINT IN
2 TIME DEPENDING ON HOW YOU'RE DOING. LET ME LET YOU GO
3 WITH THE BAILIFF AT THIS POINT.

4 (WHEREUPON, THE JURY LEFT OPEN COURT AT
5 APPROXIMATELY 3:37 P.M.)

6 THE COURT: ALL RIGHT. EXCEPTION OR REJECTION
7 OF THE CHARGE BY THE STATE?

8 MR. MCMAHON: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MS. HUDGINS: NONE, YOUR HONOR.

11 THE COURT: ALL RIGHT. PLEASE MAKE SURE YOU
12 HAVE ALL YOUR EVIDENCE ACCOUNTED FOR AND YOU AGREE ON WHAT
13 GOES BACK THERE.

14 I'M GOING TO KEEP THE ALTERNATES SEGREGATED AND
15 IN ANOTHER JURY ROOM, JUST IN CASE THEY DON'T REACH A
16 VERDICT TONIGHT OR SOMETHING HAPPENS.

17 (WHEREUPON, THE JURY BEGAN THEIR DELIBERATIONS
18 AT 3:43 P.M. AND THE COURT STOOD AT EASE.)

19 (WHEREUPON, AT 4:37 P.M., THE JURY SENT OUT A NOTE.)

20 THE COURT: WHAT DO YOU WANT ME TO DO, BRING
21 THEM?

22 MR. MCMAHON: WHAT ARE MY CHOICES?

23 THE COURT: I WILL WRITE THEM AND SAY NO, THAT
24 EVIDENCE IS NOT IN THE RECORD. THOSE REASONS ARE OF NO
25 CONCERN TO YOU. THIS IS NOT IN THE RECORD.

1 MR. MCMAHON: THIS BEING THE DRAWINGS?
2 THE COURT: BOTH.
3 MR. MCMAHON: WELL --
4 THE COURT: I'M NOT COMMENTING ON THAT. I'M
5 JUST SAYING -- THEY'RE ASKING -- NO.
6 MR. MCMAHON: ARE YOU GOING TO SAY THESE
7 DOCUMENTS ARE NOT IN THE RECORD?
8 THE COURT: RIGHT.
9 MR. MCMAHON: I DON'T HAVE A PROBLEM WITH THAT.
10 THE COURT: DO YOU WANT ME TO BRING THEM OUT TO
11 DO THAT? I PROBABLY SHOULD.
12 MR. MCMAHON: I'LL LEAVE IT UP TO YOU.
13 THE COURT: THE FIRST TIME OUT, I PROBABLY
14 SHOULD.
15 MR. DELGADO: YOU'RE PROBABLY RIGHT.
16 THE COURT: ALL RIGHT. LET'S SEE. WE NEED THE
17 DEFENDANT.
18 MR. DELGADO: HE'S COMING.
19 (WHEREUPON, THE DEFENDANT ENTERED THE
20 COURTROOM.)
21 THE COURT: ALL RIGHT. BRING THE JURY IN,
22 MR. BAILIFF.
23 THE BAILIFF: YES, SIR.
24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
25 APPROXIMATELY 4:40 P.M.)

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

2 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
3 GENTLEMEN OF THE JURY, LET ME -- THE REASON I BROUGHT YOU
4 OUT HERE, I COULD ORDINARILY JUST PUT A NO, NOT IN THE
5 RECORD, AND THAT WILL BE THE ULTIMATE ANSWER, BUT LET ME
6 TELL YOU, WITH REGARD YOUR REQUEST ABOUT CERTAIN DOCUMENTS
7 OR RECORDS, THERE ARE REASONS, EITHER BY RULES OF EVIDENCE
8 OR DECISIONS BY THE COURT, DECISIONS BY THE PARTIES AS TO
9 WHY EVIDENCE IS IN OR NOT IN.

10 THESE DOCUMENTS OR RECORDS THAT YOU ARE ASKING
11 FOR ARE NOT A PART OF THE TRIAL RECORD; THEREFORE, THEY'RE
12 NOT THERE FOR YOUR CONSIDERATION. YOU SHOULD NOT
13 SPECULATE OR CONCERN YOURSELF WITH WHY THAT IS. THAT'S
14 JUST THOSE ARE DECISIONS THAT ARE EITHER MADE BY THE COURT
15 OR MADE BY THE PARTIES.

16 SO BASE YOUR DECISION ON WHAT WAS ALLOWED INTO
17 THE RECORD, OKAY. SO I'D ASK YOU TO RESUME YOUR
18 DELIBERATIONS.

19 (WHEREUPON, THE JURY LEFT OPEN COURT AT
20 APPROXIMATELY 4:42 P.M.)

21 THE COURT: EXCEPTION OR REJECTION OF THE
22 PROCEDURE FROM THE STATE? MR. MCMAHON, ANY EXCEPTION OR
23 REJECTION?

24 MR. MCMAHON: NO, SIR. I DON'T HAVE ANY
25 OBJECTIONS.

1 THE COURT: MR. DELGADO?

2 MR. DELGADO: YOUR HONOR, COULD YOU JUST MAKE
3 THAT A PART OF THE RECORD?

4 THE COURT: YES. I'M GOING TO MARK IT AS A
5 COURT'S EXHIBIT. ALL RIGHT. WE'LL BE AT EASE.

6 (WHEREUPON, COURT'S EXHIBIT NO. 9 WAS MARKED FOR
7 IDENTIFICATION ONLY.)

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 THE COURT: ALL RIGHT. I UNDERSTAND WE HAVE GOT
10 A VERDICT. I'VE PUT THE TWO ALTERNATES IN HERE SO THEY
11 CAN AT LEAST HEAR THE VERDICT.

12 I HAVE NO IDEA WHICH WAY THE VERDICT IS AND
13 EVERYBODY HAS BEEN REAL NICE AND POLITE THIS WEEK, SO
14 LET'S KEEP IT THIS WAY. I DON'T ALLOW ANY OUTBURSTS IN
15 THE COURTROOM.

16 IT'S HARD ENOUGH ON THE JURORS TO HAVE TO
17 PARTICIPATE IN THE TRIAL. IF YOU DON'T THINK YOU CAN
18 CONTROL YOURSELF, I'D ASK YOU TO STEP OUT BECAUSE THE
19 PENALTY IS CONTEMPT.

20 ALL RIGHT. BRING THE JURY IN.

21 THE BAILIFF: YES, SIR.

22 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH
23 THE VERDICT AT 6.02 P.M.)

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

25 THE COURT: ALL RIGHT. MR. FOREMAN, I

1 UNDERSTAND THE JURY HAS REACHED A UNANIMOUS VERDICT; IS
2 THAT CORRECT?

3 THE FOREMAN: WE HAVE, YOUR HONOR.

4 THE COURT: ALL RIGHT. IF YOU'D HAND IT UP TO
5 THE BAILIFF, PLEASE.

6 (COMPLIES.)

7 YOU MAY PUBLISH THE VERDICT.

8 VERDICT:

9 THE CLERK: INDICTMENT NUMBER 2001-GS-40-2955,
10 THE STATE OF SOUTH CAROLINA VS. EDWARD FRIEBURGER, IT'S AN
11 INDICTMENT FOR MURDER. WE, THE JURY, FIND THE DEFENDANT
12 GUILTY. THIS IS SIGNED FOREPERSON, SCOTT SYLVESTER,
13 AUGUST 1ST, 2002.

14 MR. FOREMAN, IS THIS YOUR VERDICT AND THE
15 VERDICT OF THE ENTIRE JURY?

16 THE FOREMAN: YES, IT IS.

17 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
18 THE JURY FROM THE STATE?

19 MS. CAMPBELL: NO, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MR. DELGADO: YOUR HONOR, WE NEED TO POLL THE
22 JURY, PLEASE.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
24 THE CLERK WILL CALL YOUR NAME. THE QUESTION WILL BE WAS
25 THIS YOUR VERDICT, IS IT STILL YOUR VERDICT. ANSWER

1 ACCORDING TO YOUR CONSCIENCE.
2 MADAM CLERK.
3 THE CLERK: SCOTT SYLVESTER, WAS THIS YOUR
4 VERDICT?
5 JUROR: YES.
6 THE CLERK: IS IT STILL YOUR VERDICT?
7 JUROR: YES.
8 THE CLERK: CHRISTOPHER THATCH, WAS THIS YOUR
9 VERDICT?
10 JUROR: YES.
11 THE CLERK: IS IT STILL YOUR VERDICT?
12 JUROR: YES.
13 THE CLERK: DONNA CUNNINGHAM, WAS THIS YOUR
14 VERDICT?
15 JUROR: YES.
16 THE CLERK: IS IT STILL YOUR VERDICT?
17 JUROR: YES.
18 THE CLERK: SHARON HOPKINS, WAS THIS YOUR
19 VERDICT?
20 JUROR: YES.
21 THE CLERK: IS IT STILL YOUR VERDICT?
22 JUROR: YES.
23 THE CLERK: OLIVER THOMAS, WAS THIS YOUR
24 VERDICT?
25 JUROR: YES.

1 THE CLERK: IS IT STILL YOUR VERDICT?
2 JUROR: YES.
3 THE CLERK: STEVEN DENMARK, WAS THIS YOUR
4 VERDICT?
5 JUROR: YES.
6 THE CLERK: IS IT STILL YOUR VERDICT?
7 JUROR: YES.
8 THE CLERK: JAMES LEE, WAS THIS YOUR VERDICT?
9 JUROR: YES.
10 THE CLERK: IS IT STILL YOUR VERDICT?
11 JUROR: YES.
12 THE CLERK: ALICE MCCURRY, WAS THIS YOUR
13 VERDICT?
14 JUROR: YES.
15 THE CLERK: IS IT STILL YOUR VERDICT?
16 JUROR: YES.
17 THE CLERK: KENYA WANNAMAKER, WAS THIS YOUR
18 VERDICT?
19 JUROR: YES.
20 THE CLERK: IS IT STILL YOUR VERDICT?
21 JUROR: YES.
22 THE CLERK: TINA SHEALY, WAS THIS YOUR VERDICT?
23 JUROR: YES.
24 THE CLERK: IS IT STILL YOUR VERDICT?
25 JUROR: YES.