

VOLUME EIGHT OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

DEC 8 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

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*NOTE: COURT'S EXHIBIT 10 (DVD OF REENACTMENT) ARE FILED AT THE SOUTH CAROLINA SUPREME COURT

1 As far as I know, he has the middle of August to the end
2 of August open on his schedule right now, if that's what
3 you are talking about moving it approximately a month.

4 CLERK: All I was requesting was a farther out
5 date to mail. That's my main thing, getting all this
6 done so when we do do it, there is not the problems with
7 it. He still has got stuff to go over before we even
8 do all this other with the other questionnaires and
9 all.

10 MR. STARNES: I don't object to it going in
11 August. I don't. It's more time to prepare.

12 MR. DELGADO: Sit-by counsel is going to have
13 an objection. There's going to be some problems with
14 that. Mr. Nettles -- and I just heard it circulate
15 through the office -- he had some time where he was
16 going to be out of the country. I can't tell you when
17 that was.

18 THE COURT: It may be August?

19 MR. DELGADO: Yes.

20 THE COURT: Mr. Nettles is also supposed to
21 begin a trial with me up in Abbeville, a death penalty
22 in October.

23 MR. DELGADO: You are right. Judge, let me
24 tell you another thing. Judge Curry and the Federal
25 Government, just ten days ago, withdrew a death notice

1 on two codefendants in federal court that we are to
2 strike a jury on Thursday, the 7th, and we start the
3 next day.

4 THE COURT: Of August?

5 MR. DELGADO: No, sir, of September. What I'm
6 saying is that's a lengthy trial. That's a good two
7 weeks, maybe closer to three. Here is what I'm saying.
8 I will put July 18 in red letters.

9 I tell you what we will do, Your Honor, to
10 facilitate my client. I will do whatever we can. In
11 fact, I just sent him a questionnaire. In fact, he just
12 got it yesterday, I think.

13 MR. STARNES: Last night.

14 MR. DELGADO: Last night that he hasn't even
15 had a chance to read, he said. Be if we get the
16 questionnaire business done, the Clerk's Office could
17 send it out before the first of June.

18 CLERK: That's what I was wanting to do is get
19 it out there so the people won't be gone, and we are in
20 a good time frame.

21 THE COURT: What about that, Solicitor?

22 MR. GRAHAM: As far as her getting it out, we
23 have to have time to review it. We have to have a
24 hearing to do that. I guess I'm not sure what you are
25 asking, Judge.

1 THE COURT: Mr. Delgado is talking in terms of
2 keeping the July 18th date.

3 MR. GRAHAM: As of this time, I don't know. I
4 have not had any conversations with the Solicitor about
5 him saying anything that was wrong with that date.

6 THE COURT: We'll see what we can do. I guess
7 we need to look at the calendar and see whether or not
8 we can go in July. I gather if it does get delayed,
9 Mr. Delgado, you are saying that August and
10 September wouldn't work; is that right?

11 MR. DELGADO: Yes, sir. Then just, Your
12 Honor, literally I had a letter from my friend,
13 Mr. Gowdy, who is the Solicitor in Spartanburg in
14 response to our speedy trial motion in a case that has
15 been going on almost ten years. He said November for
16 what will be here in Lexington, and that's still without
17 a penalty phase.

18 THE COURT: That's not a death case now
19 though.

20 MR. DELGADO: The Radwell matter is a good two
21 weeks.

22 THE COURT: That's November.

23 MR. DELGADO: That's what he said. He didn't
24 give us a date yet.

25 MR. STARNES: I don't object to it going in

1 January.

2 THE COURT: I'm sure.

3 MR. STARNES: It would give me more time to
4 prepare. I have run into a lot of stumbling blocks
5 doing this. It was a lot more than I thought, but I am
6 trying to do the best I can.

7 MR. DELGADO: Your Honor, may I hear that
8 again? He has run into stumbling blocks. "It's more
9 than I thought." I just want to make certain that I
10 heard that correctly.

11 THE COURT: I understand. Any other motions
12 at this point then to be heard? We have got these
13 things we will take up with you ex parte, Mr. Starnes.
14 Other than that, anything else?

15 MR. STARNES: No, sir, I believe that is it.
16 If they would, before they move me, and if the jail
17 would be kind enough to talk to me, Captain Quig or
18 somebody to talk to me so I will know what I'm facing
19 before they move me. I might just have to settle with
20 what I got and do the best I can.

21 Like I say, the communication is just
22 difficult for me to communicate. If they would show me
23 that courtesy, I would appreciate it.

24 MR. TATE: I am sure the captain will speak
25 with him.

1 THE COURT: Thank you, sir.

2 (All attorneys and parties for the State leave
3 the courtroom at this time).

4 THE COURT: We are now in an ex parte hearing.
5 I want to be sure that everyone understands that
6 anything that comes out in this hearing is not to be
7 divulged or talked about outside of the courtroom under
8 pain of contempt of Court.

9 Mr. Starnes, one thing, the order you have
10 given up for me to sign, which I won't have to sign
11 right now, is an order of protection for Mr. Delgado and
12 Mr. Nettles from July 5th to the 15th.

13 Obviously I will hold off on that for now and
14 wait and see what is going to happen, but I will give
15 them protection during that time if the trial goes
16 July 18.

17 MR. STARNES: I didn't know that motion
18 existed. I don't know anything about that.

19 THE COURT: I thought it came from you. I've
20 got a whole stack of stuff from you.

21 MR. DELGADO: No, I dropped that at your
22 office.

23 THE COURT: Oh, you did. That's just as good.
24 That's even better. It came from Mr. Delgado. Anyway,
25 obviously, Mr. Starnes, Mr. Delgado, I will sign that if

1 it comes down to it.

2 MR. DELGADO: Absolutely. Thank you, Judge.

3 THE COURT: Here is an order that came -- this
4 is from Mr. Nettles' office related to how to go about
5 doing the disbursements and so forth. I need to sign
6 that. Aren't these things going through Mr. Nettles'
7 office?

8 MR. DELGADO: Yes, Your Honor, they are.

9 MR. STARNES: I think that's somewhat of a
10 problem, Your Honor. I sent some material over to a
11 court reporter and spoke -- well, I didn't speak with
12 them. Mr. Walker spoke with them, certain experts and
13 stuff. They want to be paid or retained, pay the
14 retainer fee or something to that effect, before they
15 will do the service.

16 We are just a couple of months away, two
17 months away from trial. I haven't consulted with any
18 experts. I've got Mr. Walker still trying to locate
19 them. We are back to that telephone thing because I
20 can't pick the phone up and call him and talk to him
21 without other people hearing me.

22 I have no way of having a private conversation
23 with these experts. In addition, they are not willing
24 to do the work, especially when if they talk to me or I
25 write them and they know it's from an inmate. They feel

1 more comfortable through an attorney.

2 I did file a motion back in September to have
3 Mr. Delgado or Mr. Nettles' office handle this funding.

4 THE COURT: That's what this is doing.

5 Officer, could you hand this to him.

6 This is on disbursements and how to go about
7 it. You need to sign that right there where that yellow
8 sticky is.

9 (Pause).

10 MR. STARNES: Your Honor, will I get a copy of
11 this? I will need it.

12 THE COURT: We will get you a copy of it.

13 MR. STARNES: All of the funding orders on the
14 last hearing we had, that Your Honor signed and Ms. Hope
15 give to me, I give all that to Mr. Nettles' office; and
16 I don't have copies of any funding.

17 THE COURT: That may be attached. We will
18 give you a copy of every bit of that. We will be sure
19 you get a copy of this, Mr. Starnes. Everything in here
20 we will make a copy for you.

21 Also, there is an order for the Office of
22 Indigent Defense to pay to Correctional Billing
23 Services. Is that one of the ones?

24 MR. STARNES: Yes, sir, that's the phone
25 service provider at the detention center.

1 Your Honor, the phone number the account is at
2 is -- for instance, I can't call your office because the
3 line is restricted.

4 THE COURT: Right.

5 MR. STARNES: The only way I can do that is I
6 have to violate policy and call my mother and have my
7 mother do a three-way call. I have to disturb her at
8 work at her desk. I have to call her. Then she in turn
9 initiates a three-way call to contact different people.

10 Because the only way I can make these calls is
11 to do it collect call only. I can't call these
12 individuals, different people, because the phone
13 accounts, most of have have to be prepaid.

14 THE COURT: I understand.

15 MR. STARNES: A lot of these agencies don't
16 accept collect calls.

17 THE COURT: I wasn't questioning it. I signed
18 it.

19 MR. STARNES: Yes, sir.

20 THE COURT: There is also one sealing orders
21 from the Solicitor's Office. I signed it. You don't
22 need that anyway. They are sealed anyway.

23 MR. STARNES: Yes, sir.

24 THE COURT: There are also orders here for
25 subpoenas to Visa, Master Card, and the Division of

1 Motor Vehicles. It says that they are to provide for
2 what you have asked for. Is that on your accounts?

3 MR. STARNES: I don't know what you have.
4 What I did is I asked Mr. Walker to draft up -- Your
5 Honor had signed some subpoena orders. What I do is
6 when I send these subpoenas out, a lot of places will
7 not do research. They will not make the copies and not
8 provide the stuff, unless there is funding to pay for
9 it. I don't have any way of doing that.

10 THE COURT: Okay. Again, I will sign these.
11 These are obviously -- they can't be on somebody else's
12 account, for example. You can't get information on
13 somebody else's Visa or Master Card. You can get it on
14 yours obviously.

15 MR. STARNES: Okay. The State relied on
16 robbery and larceny as an aggravating circumstance.
17 There is no way I can subpoena the account records for
18 the victims, alleged victims?

19 THE COURT: Account records?

20 MR. STARNES: Yes, sir, such as Visa and
21 Master Card. There was an allegation that the State
22 made that I took their Visa and Master Cards and robbed
23 them after they were shot. That's the reason I wanted
24 to subpoena those records. In other words, if that
25 becomes an issue at trial, I want to show the jury --

1 THE COURT: You don't have those documents
2 already?

3 MR. STARNES: No, sir.

4 THE COURT: All right. I signed those then.
5 What other motions do you have?

6 MR. STARNES: The first one I believe, Your
7 Honor, is -- it's an order actually -- it's not a
8 funding motion. One of the jailhouse snitches that
9 testified against me, he is incarcerated in the South
10 Carolina Department of Corrections.

11 My investigator can't get in there to
12 interview him. The only way he can do that is if the
13 Court will order it or allow him access to interview
14 that individual. He has tried to get in there twice to
15 interview him. They won't do it. They said they would
16 need a Court order.

17 THE COURT: Now, even though they get in
18 there, you understand they may get to Mr. Hartley, and
19 Mr. Hartley says: I ain't talking with you.

20 MR. STARNES: That's understood.

21 THE COURT: There is nothing you can do about
22 that.

23 MR. STARNES: Right, I understand. The second
24 one, Your Honor, is I believe the subpoena order for the
25 Dorchester County Sheriff's Office. What that relates

1 to is arrest records on one of the alleged victims in
2 the case.

3 THE COURT: You can't just get a rap sheet on
4 him? If you want to do it this way, that's fine. Also,
5 you want autopsy reports. Do you not have the autopsy
6 reports yet?

7 MR. STARNES: Yes, sir, I have got the written
8 report, but there is some other material in there, such
9 as photographs and stuff. I looked at that estimate
10 from Dr. Sexton's office.

11 From what I have seen, for instance, on
12 Mr. Welbourn, there was 50 photographs that were taken.
13 There's two prices on there. One price, I think, is
14 four by six photographs and then there is another one
15 for eight by ten.

16 In other words, like for Mr. Welbourn, there
17 is a price for \$300 for photos. I think that is just a
18 duplicate blow-up copy that I don't think we would need.

19 THE COURT: Okay. I have signed it. I will
20 allow the funds. You understand there's limitations on
21 what they can or cannot give you, I guess. We will make
22 that available.

23 MR. STARNES: Yes, sir. The reason I needed
24 that was because the pathologist needed all that
25 information to do the autopsy.

1 THE COURT: Okay. What is this to Wachovia
2 Bank?

3 MR. STARNES: It's an account of one of the
4 alleged victims.

5 THE COURT: Is it an issue in the case?

6 MR. STARNES: Yes, sir, it is.

7 THE COURT: What's the issue?

8 MR. STARNES: The issue is, again, the robbery
9 and larceny that the State relied on and made
10 allegations that I took their credit cards and stuff.

11 THE COURT: All right. We will allow that.
12 Let me do this if I can. I have signed these, but let
13 me hold onto these and get copies made. We will get a
14 copy to you also of all of them. I will go ahead and I
15 will get copies to you, and I will arrange for them to
16 be filed.

17 MR. STARNES: All right.

18 THE COURT: Then you won't have to do that.

19 MR. STARNES: Your Honor, there's a couple
20 more. I don't have these reduced in writing. I don't
21 know if you would want me to address them. There's a
22 few other additional funding matters that I would need
23 consideration.

24 One of them is a search and recovery team,
25 some scuba drivers to go into Black Creek. Mr. Chapman

1 pulled a gun on Mr. Fogle that night when all this
2 shooting happened. Anyway, I threw his gun into Black
3 Creek.

4 The gun that I shot these individuals with,
5 the State recovered that gun out of the North Edisto
6 River. Mr. Chapman's gun was tossed into Black Creek.
7 I would ask the Court for funding for a search and
8 recovery team to go out there and locate that weapon.
9 It's in Black Creek off of 178.

10 THE COURT: As I recall, it seems like --
11 wasn't there some testimony that they did that? They
12 tried to locate it and couldn't locate it, the State
13 did.

14 MR. STARNES: The Sheriff's Office did.

15 THE COURT: Somebody did. Wasn't that right
16 though, that they tried for some period of time, as I
17 recall, and couldn't locate it?

18 MR. STARNES: They did it in mid trial. I
19 think they went out there for an hour and a half because
20 that night it stormed. The night they went to dive into
21 the creek, it stormed real bad. We lost power at the
22 jail that night. It was done in the middle of my trial.

23 THE COURT: What is finding the gun going to
24 do? What issue does that relate to?

25 MR. STARNES: Well, Your Honor, it's a gun

1 that one of the alleged victims pulled on Mr. Fogle when
2 this shooting happened. The State can say: Well, there
3 never was a gun, that he never -- there was never no gun
4 pulled, that I just shot them out of meanness or however
5 they are going to present their defense (sic).

6 In addition, the investigator has determined
7 or has advised me that Mr. Chapman was prohibited from
8 carrying a gun, and he never purchased a gun and nothing
9 like that is on record. We don't know the history
10 behind the gun.

11 THE COURT: Did Mr. Fogle testify to that? I
12 don't recall him testifying. He may have, but I don't
13 remember it.

14 MR. STARNES: I believe, yes, sir, he did
15 testify that Mr. Chapman pulled a gun on him.

16 THE COURT: At the time of the shooting at the
17 house?

18 MR. STARNES: Yes, sir.

19 THE COURT: He may have. The only thing I can
20 remember of his testimony, just his testimony, was that
21 as you came in the house, you immediately started
22 shooting at the victims; but I don't recall him saying
23 anything about the gun. He may have.

24 MR. STARNES: It's just different when you've
25 got a weapon to show a jury. Plus, we don't know -- I

1 mean, we don't know the history of that weapon. If we
2 had the weapon, we could run the number and find out it
3 may be stolen.

4 THE COURT: I may be able to do that. That's
5 one, I think, that will have to be done with the
6 Solicitor, in front of the Solicitor, and him having an
7 opportunity to respond. You need to do a written motion
8 on that one.

9 MR. STARNES: All right. Another thing, Your
10 Honor, and I am trying to get through this very quickly.

11 THE COURT: That's fine. No hurry.

12 MR. STARNES: We don't have a place -- I
13 understand the clerk didn't have room to store the
14 mockup of the house. I would probably need, I would
15 guess, probably a hundred dollars to store the mockup of
16 the house that we are going to bring and use for Court's
17 exhibit and use it in the jail. We can store it here
18 locally. The investigator on the case, he is from Rock
19 Hill. They don't have anywhere to store it.

20 THE COURT: Madame Clerk, would the Clerk's
21 Office be able to store a house?

22 CLERK: We can possibly store it. I know some
23 of these pieces of board were regular size standard
24 plywood because I remember the windows and all. It's
25 not just little short pieces. It's tall pieces. The

1 evidence room that's in courtroom four -- as long as
2 it's not put together, we can store it up there.
3 Security is the only one with the key to that room as
4 far as I know. I don't have a key to it.

5 MR. STARNES: The only time that we are going
6 to put it together is we are going to put it together at
7 the jail so I can do the reenactment for the gentleman
8 to do the video animation because he needs to see what
9 happened so he can recreate the video. Then he will
10 probably install it as an exhibit at trial.

11 THE COURT: Let's see if the clerk can store
12 it. Just check with the Clerk's Office and see if they
13 can store it first.

14 CLERK: I'm pretty sure we can. There is
15 nothing in that room. It's rather tall. So we can
16 stand it up. I don't see a problem with that.

17 MR. STARNES: I believe the other orders that
18 I have, I believe Ms. Parker has forwarded them to your
19 office.

20 THE COURT: Okay.

21 MR. STARNES: We can take them up the next
22 time.

23 THE COURT: Let me note one thing in closing
24 here, and, Mr. Delgado, I want you to listen to this,
25 too.

1 MR. DELGADO: Yes, sir.

2 THE COURT: I know you are listening.

3 MR. DELGADO: I was e-mailing my colleague
4 right now on this matter.

5 THE COURT: That's good. Mr. Starnes, we have
6 been through a great deal on some of these things with
7 trying to get other documents and going through the
8 various spending things.

9 Certainly I don't want you to feel like in any
10 way that I am denigrating your efforts. I think you
11 have done a very admirable job for someone doing pro se.
12 As this thing gets closer to trial, Mr. Delgado will
13 tell you, it's going to get fast and furious. You think
14 it's been an accelerated schedule now. It's going to
15 get more.

16 I don't know that I am in a position to do
17 anything or change anything, but my own feeling is that
18 I think you are in some real serious trouble in terms of
19 preparing for this case.

20 There are just some things here that -- and
21 just from my experience from going from hearing to
22 hearing to hearing, things keeping popping up that you
23 don't seem to anticipate; and you are not supposed to
24 anticipate them.

25 Lawyers are supposed to anticipate them. They

1 know them. But the problem is they are not allowed to
2 basically sit down and go through all these things with
3 you under the circumstances.

4 I guess what I'm saying is. This pro se
5 thing, you may need to take another look at. You may
6 need to think about it again. I'm not telling you I can
7 even change it. It may be too late to change it. I
8 don't know. You may need to talk with the lawyers or
9 something.

10 I just don't know how well this is going to go
11 for you when it comes to the time for trial because,
12 like I said a minute ago, it is going to get a whole
13 more more accelerated once we get there.

14 MR. STARNES: Yes, sir.

15 THE COURT: You are going to find yourself at
16 some point overwhelmed. The problem is you are going to
17 find yourself overwhelmed at a time when your head
18 should be very clear to get ready for trial.

19 Lawyers do that. They go through the
20 discipline with that. They are disciplined to do that.
21 They know how to do it. I know a lot of people say:
22 Well, you know, I can do this or I can do that.

23 I know you saw Johnny Brewer do it. One of
24 the problems was and one of the reasons that Johnny was
25 able to do it very frankly was that there was a judge on

1 it before me who just -- the feeling was he just went
2 way beyond the bounds in terms of what he let Johnny do
3 early on.

4 Basically at that point it really just
5 disrupted the whole Lexington County jail letting him do
6 it. It's something that we don't normally do in any
7 kind of a case. It's just -- it's just some things we
8 can't do now.

9 He even -- I think Johnny even asked for a
10 tanning bed or something like that. I know you are not
11 going to do anything that silly. I understand that.
12 But at the same time, these are just some things you
13 need to think about, just food for thought more than
14 anything.

15 I'm not telling you what to do. It's up to
16 you to decide how you are going to do with it. The
17 Constitution says you have the right to do that, but I
18 think I have a duty as the judge in this thing, just
19 from my experience and seeing what is going to come, of
20 just basically telling you I see some real problems
21 coming down the line on this.

22 MR. STARNES: Yes, sir.

23 THE COURT: It's up to you to make those
24 decisions.

25 MR. STARNES: Yes, sir. Your Honor, there was

1 one more thing I meant to address. I just overlooked
2 it. Mr. Walker has a daytime job now. He has took a
3 job at a law firm up in Charlotte, I think, doing some
4 paralegal work up there. So he is tied up during the
5 day.

6 Is there any way possible that I could get
7 someone and get some funding for someone just to do
8 running, such as go pick up transcripts from the court
9 reporter? We had some stuff taken from V.H.S. and
10 placed on D.V.D., to pick up stuff and kind of do that
11 stuff during business hours.

12 Mr. Walker can't do it. Here is what I have
13 been having to do. I've been having to get my
14 investigators do that. Their billing and Mr. Walker's
15 billing, you are familiar, is totally different.

16 THE COURT: Right. Do you think somebody
17 could do it cheaper?

18 MR. STARNES: I think they can do it cheaper
19 than investigators. I am just trying to --

20 THE COURT: I don't have a problem with doing
21 that. That's one of the essential elements that
22 basically if you look at what this person is doing and
23 that person and that person and so forth, between each
24 of those people doing things, there has to be some kind
25 of connector, in other words, how you get the document

1 from this place to that place and that sort of thing.
2 Somebody has got to do it. I agree, paying
3 investigators and paralegals is a pretty high rate to
4 what somebody could do at a cheaper rate.

5 MR. STARNES: Yes, sir.

6 THE COURT: Mr. Delgado, do you know of
7 anybody or do you have something in mind, Mr. Starnes?

8 MR. STARNES: I spoke with Mr. Delgado about
9 it, and I haven't run it across my mom yet; but I think
10 there may be someone at my mother's church that may be
11 willing to do it that is available during the daytime.

12 Mr. Walker's rate is \$15 an hour, and he was
13 doing a lot of running around. He can't do it now
14 because he has taken on another job. I can try to
15 locate somebody or possibly call Teresa Norris over at
16 the Center for Capital Litigation and see if she has got
17 a law student to do it, but they are in the middle of
18 exams, and we are at the end of the school season.

19 THE COURT: Right. Do you know of anybody,
20 Mr. Delgado?

21 MR. DELGADO: The church thing was something I
22 suggested to Norman. It would somebody that would know
23 him, know Sylvia, his mom, and would be able to take
24 this and run with it. That was my thought. I didn't
25 know anybody off the top of my head, but I thought maybe

1 that would be a compromise.

2 THE COURT: Get an order done on that. I will
3 do that. Get the name of a person to do it, and we will
4 set an hourly rate. It will probably have to be minimum
5 wage or something. I apologize for it not being more
6 than that, but I think it would have to be that.

7 MR. STARNES: What is minimum wage?

8 THE COURT: About six dollars an hour, plus
9 any gas expenses and whatever.

10 MR. STARNES: Mr. Walker had his expenses
11 for -- I had to have some photos recopied, some
12 duplicates of some photos done. I think he spent some
13 money over at Office Depot because he got some file
14 boxes for me and some office material: File folders and
15 legal pads, stuff of that nature.

16 Can he be rebursed for that or do I need to
17 do a separate order for that? He has taken his money
18 because I mentioned about I needed him to go by Office
19 Depot and pick up some more writing paper and stuff for
20 me. He just told me he was broke because he has already
21 spent money out of his pocket for office supplies and
22 things of that nature. I guess what I'm asking is how
23 can we pay Mr. Walker back?

24 THE COURT: Can we not include that in one of
25 the orders or something? It's got to be in an order.

1 That's the only way I can do it, through the vehicle of
2 an order authorizing the payment. Somebody needs to do
3 an order. That's all.

4 MR. STARNES: I spoke to Ms. Parker about it
5 since he has already done it and it wasn't preapproved,
6 I don't know if he could still be paid.

7 THE COURT: I will approve it.

8 MR. STARNES: He's got receipts for
9 everything.

10 THE COURT: I will approve it.

11 MR. STARNES: That will make him feel, I'm
12 sure, much better. Your Honor, I believe that's it. We
13 will back on the week of 16th?

14 THE COURT: Yes, sir. We will try to get you
15 a date. Get that stuff served on the Solicitor's
16 Office, and we will get a date set.

17 MR. STARNES: I will get right on it. I thank
18 the Court and everybody for their time.

19 THE COURT: Yes, sir.

20 (Whereupon the proceedings were concluded
21 for April 29, 2005).

22 (The following proceedings were reported on
23 June 9, 2005).

24 THE COURT: This is in the matter of the State
25 versus Norman Starnes. We are present for some various

1 matters to be heard. Let me do this. I need to --
2 Mr. Starnes, I need to go over with you, first of all,
3 some issues related to some of the financial matters.

4 As you know, I had beaucoup of them a couple
5 of weeks ago. Let me do this. Let me ask if the State,
6 Mr. Myers and y'all, if you would just vacate the
7 courtroom for a moment. Let me take some matters up
8 with Mr. Starnes.

9 In fact, we will ask that anyone not involved
10 in the case also leave the courtroom. The only ones we
11 need in the courtroom are Mr. Starnes, his standby
12 attorneys, and anybody who is working with him.
13 Security can remain, enough security, and also the clerk
14 and bailiff and court reporter. The other folks need to
15 step out, too.

16 MR. STARNES: My mother?

17 THE COURT: Let's let her step out.

18 (All attorneys and parties for the State leave
19 the courtroom at this time).

20 THE COURT: The reason we do that is because
21 whoever is in here is in here in an official capacity
22 and is going to be bound not to discuss any of these
23 matters at all.

24 Siller, how about be sure that no one goes
25 into that room back there.

1 DEPUTY: I will leave it locked, Your Honor.

2 THE COURT: There is a speaker system that
3 goes into that room. I want to be sure nobody sneaks in
4 there -- not sneaks -- but goes in there. It's not a
5 good word. I know nobody would do that.

6 Mr. Starnes, let me note, first of all, there
7 are several financial things that I have signed, a
8 number of them. What is the status of those at this
9 point? Let me ask, everybody here is basically staff
10 people working with you; right?

11 MR. STARNES: Yes, sir, that is correct.

12 THE COURT: You've got a lot of people behind
13 you.

14 MR. STARNES: I've got a big fan club, Your
15 Honor.

16 THE COURT: It makes you wonder, if somebody
17 is pro se, are they really pro se? They have got more
18 people working for them and doing everything than
19 somebody who has got a lawyer.

20 MR. NETTLES: Thank you for pointing that out.

21 THE COURT: Also there are security people
22 back there. I think Mr. Walker's wife brought some
23 documents by when I was in York, and I think I finally
24 got a number of those signed and got a number of things
25 to Mr. Nettles also. Are all of these signed now and

1 done?

2 MR. STARNES: Yes, sir, I believe they are. I
3 haven't been given copies of all of this, Your Honor.
4 Ms. Hope give me some documents today. I'm a little bit
5 confused as to all this. Ms. Parker is here. She is
6 pretty much handling the funding for Mr. Nettles'
7 office, and she has been helping me.

8 As I understand it, Your Honor, there's two
9 pending motions, actually three. One is relation to an
10 engineer building contractor that Your Honor had
11 previously signed, and I believe we needed Your Honor's
12 signature on that for advance payment.

13 Your Honor had originally signed this order on
14 March 23, 2005. It's in relation to an engineer and
15 building contractor, an individual that will probably
16 have to testify as to the dimensions of the room where
17 this shooting occurred at.

18 I provided Ms. Parker with this order. The
19 language had to be redone on it and have your signature
20 on it for advance payment. I have a copy of that here,
21 Your Honor, if you would like it.

22 THE COURT: That's something I need to sign;
23 is that right?

24 (Hands to Court).

25 MR. STARNES: I believe actually this is the

1 motion. Yes, sir, that is one. The second one, Your
2 Honor --

3 THE COURT: Let me note, Mr. Nettles, I
4 believe you have been working on these with him; is that
5 right?

6 MR NETTLES: My office has been serving as a
7 conduit, yes, sir.

8 THE COURT: By that way, I appreciate you
9 doing that. I think that really resolved a lot of the
10 problems for us.

11 MR NETTLES: Yes, sir, we are happy to do it.
12 Actually, I am not doing anything. Ms. Parker is doing
13 it all.

14 THE COURT: Sorry, Ms. Parker. We will give
15 you credit then. I signed that one. I will have my law
16 clerk have a copy of this made and bring it back.

17 MR. STARNES: I have got another one.

18 THE COURT: Whatever you've got, go ahead and
19 hand them up. You don't need to hand them up one at a
20 time. Give them all to me now, okay.

21 (Hands to Court).

22 (Pause).

23 THE COURT: I will go ahead and sign this one
24 also. You understand in order to get them paid there,
25 there will actually have to be another order later. The

1 investigator and whoever else will have to show a bill
2 for what they have done.

3 MR. STARNES: Yes, sir.

4 THE COURT: And this is all; is that right?

5 MR. STARNES: Yes, sir. There is one, Your
6 Honor, I haven't reduced it in writing. Your Honor,
7 back in 1996 and 1997, there was an investigator
8 involved in this case who knows numerous individuals
9 around the Pelion area. He is a local investigator. I
10 would like to, if possible, get a funding order for this
11 individual. He is in the courtroom here today.

12 THE COURT: Who is it?

13 MR. STARNES: Mr. Jim Sangster of J.& D.
14 Research. He is the individual that was actually
15 involved in the investigation back in '96 and '97.

16 THE COURT: Well, you've got one investigator;
17 right?

18 MR. STARNES: Yes, sir.

19 THE COURT: I don't think I can give you a
20 second one. If you want to replace the investigators, I
21 don't mind that; but I don't think we can't starting
22 adding on to the investigators.

23 MR. STARNES: Okay.

24 THE COURT: Do you want to think about it and
25 decide what you want to do with it?

1 MR. STARNES: He was local and I just needed
2 somebody to do process serving. If Mr. Skidmore needs
3 to do all that if that is what the Court issues, he is
4 local.

5 There's one witness I wanted him to interview.
6 I figure it would probably save the Court some money,
7 the State some money, since he is local, doing some of
8 the process serving and coming over to the jail and
9 serving some subpoenas for me.

10 THE COURT: We better not start expanding too
11 much like that. Let's stay with the one investigator.
12 Again, if you want to replace him with another one, we
13 will work with you on that. Why don't you think about
14 it and decide which one you want to do it and maybe have
15 an order and a motion sent along. I will get it signed
16 when you send it to me.

17 MR. STARNES: Okey-doke. I believe that is it
18 with the money. Your Honor, will I be provided clocked
19 copies of those two orders today?

20 THE COURT: Yes, sir. The clerk is going to
21 get them true copied and then get the copies back to
22 you, and we will have them filed with the Clerk of Court
23 for you.

24 CLERK: How many sets do you need?

25 MR. STARNES: I will need one. Before you

1 leave, there is an order back before that Judge
2 Westbrook signed. It's relating to assessability to
3 experts. It's filed under seal. I believe it was filed
4 on the 29th of April.

5 It's so people can come into the jail, certain
6 experts, can come and see me. There is a copy that I
7 have provided to the jail. They have lost it, and I
8 will need another copy of that to give to the visitation
9 officer.

10 CLERK: April 29th. It was clocked in on
11 April 29th or signed on April 29th?

12 MR. STARNES: I believe it was clocked in on
13 April 29th. It's an order that says: Assessability to
14 experts. What it is is an order allowing these
15 individuals to come into the jail to consult with me.
16 The visitation officers up front have lost the
17 paperwork.

18 CLERK: I will see if I can find it.

19 THE COURT: Mr. Starnes, anything else?

20 MR. STARNES: Mr. Walker, on several
21 occasions, he has come down to see me at the jail; and
22 the people at the jail have turned him away and he has
23 had to go back. This has happened again recently, and
24 the staff at the jail supposedly had the situation
25 rectified.

1 He come and seen me about two weeks ago, and
2 he had problems getting in the jail. Luckily the
3 supervisor that was working that night was the
4 supervisor that was working when this happened on a
5 previous occasion, and he got in.

6 But I am having problems with individuals
7 coming to consult with me at the jail and having
8 problems with having access to Mr. Walker because he
9 comes down here and they don't let him in.

10 THE COURT: How many people are coming to see
11 you is the first issue? Have you got a pretty good
12 many? Obviously the jail has got certain regulations
13 they have got to work with. I don't have a problem with
14 an order ordering them to allow a reasonable number of
15 people to have direct access to you, but certainly there
16 will have to be a limit to that.

17 MR. STARNES: Right. Mr. Walker has been
18 coming for a couple of months now, and I figured they
19 would know him by now. It's a handful, four or five.
20 I've got my investigator, another investigator that
21 works in his office, Mr. Walker. Some of the experts
22 involved in the case, I haven't been able to consult
23 with because I can't get any experts until this funding
24 situation is straightened out.

25 THE COURT: Straightened out? I have been

1 signing orders left and right funding stuff for you. Do
2 you know that I counted it up, and I think it's getting
3 close to a hundred thousand dollars in expenses,
4 Mr. Starnes.

5 MR. STARNES: We just got advance funding
6 yesterday.

7 THE COURT: I understand. What I'm saying is
8 there is a lot of money being ordered. It may take a
9 while getting expended. Sometimes that is the way
10 Indigent Defense works, but I'm not sure I would call it
11 straightening out so much.

12 Again, Mr. Nettles is helping with that now.
13 I think that is going to make some difference. It will
14 help some things move along. It doesn't have to be
15 straightened out. I just sort of take exception to that
16 term.

17 MR. STARNES: I didn't mean no offense to it.

18 THE COURT: I understand. You are getting
19 probably more than most defense lawyers actually get
20 when they try their cases. I don't think you quite
21 understand how much folks are bending over backward for
22 you very frankly.

23 I have seen virtually no capital cases where
24 this many staff people were sitting behind a defendant.
25 So you need to understand that a lot of folks are

1 bending over backwards for you very frankly.

2 Anyway, on this issue of the jail who do want
3 to have access to you? We need to include in the order
4 who it is you want to have access to.

5 MR. STARNES: Mr. Walker will need access to
6 me, Mr. Skidmore, and his staff.

7 THE COURT: What is Mr. Skidmore's full name?

8 MAN: Peter Skidmore.

9 MR. STARNES: Then Mr. Jim Lubben is an
10 investigator that works in his office.

11 THE COURT: How do you spell that?

12 MR. STARNES: L-U-B-B-E-N.

13 THE COURT: Who else?

14 MR. STARNES: Pete Skidmore, Jr.

15 THE COURT: Who is that?

16 MR. SKIDMORE: My son.

17 THE COURT: Who else?

18 MR. STARNES: I haven't gotten a toxicologist.
19 We are looking at a D.N.A. expert and some other
20 experts, and I can't give you those names right now
21 because I haven't secured those individuals.

22 THE COURT: Okay. Why don't you, whenever you
23 get names, just send them along; and we will do
24 something with it. I really feel like a lot of folks
25 are being thrown back and forth for you in this process,

1 Mr. Starnes. We need to get some kind of semblance of
2 order to it. We will try to keep working with you on
3 it.

4 In the meantime I will do an order with these
5 names in it. What it's going to say is that the jail is
6 required to allow them to have direct access to you on a
7 reasonable basis, consistent with not disrupting the
8 procedures at the jail. I assume they can do that
9 frankly.

10 MR. STARNES: Yes, sir. They are doing that
11 now. It just sometimes when Mr. Walker comes down here,
12 he gets turned around. They already have this
13 paperwork. They got the order granting that that Your
14 Honor signed. They've got this paperwork. The problem
15 is they continuously lose it. He makes a trip down here
16 from Fort Mill, and they turn him around.

17 THE COURT: You said last time they didn't.
18 You said somebody did finally get him in.

19 Mr. Walker, what is the status on that?

20 MR. WALKER: I would like to add to that, at
21 no time has the Lexington County jail intentionally
22 turned me away with ill will or malice. Both instances
23 it has been a mistake.

24 One time I didn't get in because there was a
25 new staff member. He had never done visitation before.

1 It was very crowded, and he didn't know where to look,
2 who to call or what to do.

3 I just thought it would be best, instead of
4 sitting there arguing with him after standing there an
5 hour, to just leave and address it with Captain Harrell,
6 who is very helpful and congenial about the matter, and
7 has corrected the matter.

8 The time that I came and I was delayed for
9 awhile, that was due to the fact that the paperwork --
10 they keep a memo on the wall in the booth where the
11 visitation officer sits.

12 For some reason that memo wasn't up there. He
13 didn't know where to find it. He couldn't get the duty
14 officer down there at that time to help him look for it
15 or whatever.

16 Finally he did find someone to come down
17 there. They did find the memo in a box, and I was
18 allowed to go in. Those are the only two instances.
19 Other than that I have been treated very well by
20 Lexington County jail.

21 But it is sometimes inconvenient to be coming
22 in from Fort Mill and be turned around. I'm not -- I
23 believe I sent you an e-mail to this effect. I'm not
24 upset. I'm not mad. It's not willful.

25 It's just that I think what Mr. Starnes is

1 asking for assurance that as much as possible to
2 preclude this from happening, just because Mr. Skidmore
3 and myself, we do have to travel.

4 THE COURT: We are going to do an order to
5 that effect and try to get that worked out. What other
6 issues, Mr. Starnes?

7 MR. STARNES: There was a matter that we
8 addressed the last time we were in court, Your Honor,
9 about possibly having someone do a courier service for
10 me, to run errands. I could have Mr. Walker do that,
11 but he has to travel so far. He works another job also,
12 I believe. I believe you wanted me to get somebody for
13 minimum wage.

14 THE COURT: You can't use the mail or
15 something like that to do that? You need a courier
16 service?

17 MR. STARNES: Well, to go pick up Court
18 exhibits, to go get photos developed, things of that
19 nature. I can have my investigator do that. We are
20 talking about some extensive billing for that.

21 THE COURT: But your investigator has staff
22 people that can do that, can't they? He is back there
23 nodding his head that he can. I don't think you have to
24 pay an investigator's fee to do that.

25 If he has got staff people, you can do it

1 without having to hire a courier service. I just think
2 they can do that within their offices rather than having
3 to have a courier service. We don't need to do that. I
4 hope we don't start asking about tanning booths.

5 MR. STARNES: Sir?

6 THE COURT: We are not going to start asking
7 about tanning booth, are we?

8 MR. STARNES: No, your Honor.

9 THE COURT: That's what Mr. Brewer wanted as I
10 recall. What else have you got?

11 MR. STARNES: I believe that's it as far as
12 funding. Beg the Court's indulgence.

13 (Pause).

14 MR. STARNES: Your Honor, there is probably
15 going to be -- well, I am sure there is going to be
16 another order for additional services for an
17 investigator, for Mr. Skidmore, for some additional
18 funding.

19 The case is nine years old. We have to locate
20 a lot of the witnesses. Some of them we can locate.
21 Some of them we can't. He is going to have to travel
22 out of state to interview some of these witnesses; and
23 we will need some additional funding for that, Your
24 Honor.

25 THE COURT: Okay.

1 MR. STARNES: We don't have nothing put
2 together in writing now.

3 THE COURT: Just go ahead and send it to me in
4 writing. If I can go ahead and sign it, I will do that.
5 If we have to have a hearing, we will have a hearing on
6 it. But if I can sign it, I will do it. We have
7 generally been able to work that out. Any others?

8 MR. STARNES: Beg the Court's indulgence just
9 one moment.

10 THE COURT: Yes, sir.

11 (Pause).

12 MR. STARNES: Your Honor, can Mr. Skidmore
13 address the Court as far as his staff in the funding and
14 stuff like that?

15 THE COURT: Go ahead, Mr. Skidmore.

16 MR. SKIDMORE: Your Honor, I've never done, as
17 Norman put it, a courier service type thing. What would
18 the Court feel would be fair for that service when my
19 staff people have to do it? Instead of the regular \$50
20 an hour fee, what would the Court feel would be
21 reasonable? I just haven't done it.

22 THE COURT: When he is talking about a courier
23 service, he is talking about documents and things to
24 people, Mr. Starnes; is that right?

25 MR. STARNES: Someone to come over here and

1 file motions, to pick up -- for instance, I had some
2 V.H.S. tapes put on D.V.D., to have somebody go do these
3 last minute running around errands and stuff.

4 THE COURT: Your people don't do that as part
5 of their job anyway, Mr. Skidmore? In other cases they
6 don't do that?

7 MR. SKIDMORE: Well, they do but we charge the
8 \$50 an hour.

9 THE COURT: Even for a staff person you charge
10 \$50 an hour?

11 MR. SKIDMORE: Well, no. I don't have staff
12 people that run errands like he is speaking. No, I've
13 never incurred that.

14 THE COURT: All I can tell you for now is you
15 need to do it by mail. I know there is some interoffice
16 mail between the jail and the courthouse. I don't know
17 if it applies to the inmates or not. You need to do it
18 by mail. I will not pay to have the State pay for
19 courier service.

20 I can tell one thing real fast. If we do
21 that, the Indigent Defense people, who have been pretty
22 patient, will start looking at these things real
23 closely. Like I say, we are getting up toward a hundred
24 thousand dollars on expenses on this thing already.

25 I suspect they are starting to ask some

1 questions over there by now, I would imagine. If we
2 start talking about a courier service, we are going to
3 have some problems. I will just not do that. What
4 other issues do you have?

5 MR. STARNES: I believe that is it on the
6 funding, Your Honor.

7 THE COURT: One thing that came up last time
8 that we didn't get resolved, and we need to get the
9 Solicitor in here on a minute on this is the issue of
10 the date for a trial.

11 Obviously, we can't get the trial in July. I
12 expect we need to look a little bit later. I am also
13 advised -- and as I indicated to everyone in this
14 courtroom, if this goes outside of this courtroom, I
15 will have a hearing and find somebody in contempt. This
16 must not go from this courtroom.

17 My understanding is that you have filed some
18 sort of a grievance against the Solicitor. Before we go
19 any further with it and before it becomes any kind of
20 problem, I am going to find out: Are you going to move
21 to have him recused from the case for that? I ask that
22 because I had a case where somebody did that before.

23 MR. STARNES: Your Honor, that will probably
24 be part of it, yes, sir.

25 THE COURT: Obviously if you did, we would

1 have to continue it for that anyway. We need to work
2 with you, and we need to think about a date and place.
3 Apparently we are going to have to continue it, I think,
4 anyway to some degree. Let's do this.

5 MR. STARNES: Your Honor, before the State
6 comes in, can I just get the Court's position on
7 something?

8 THE COURT: Yes, sir.

9 MR. STARNES: I didn't mean it the way I
10 probably said it in relation to the funding.

11 THE COURT: Right.

12 MR. STARNES: The problem I am having with the
13 funding, for instance, I call a D.N.A. expert about
14 doing the D.N.A. testing and stuff. They are concerned
15 because I'm an inmate calling from the jail. They are
16 concerned about how they are going to get paid.

17 They want to know where the funding is coming
18 from. They want to know if the funding is approved, is
19 it in an escrow account and will they get paid. The
20 problem I am having is when I call these experts, like a
21 D.N.A. expert, a toxicologist, and so forth, these
22 people are reluctant to do business with me because I'm
23 an inmate.

24 THE COURT: Yes, sir.

25 MR. STARNES: It's my understanding that

1 Mr. Nettles' office just got the advance funding
2 yesterday for the orders that we submitted back, I
3 believe, on the 23rd of March.

4 THE COURT: Is it advance funding or funding
5 for services? I've very rarely seen them do advance
6 funding.

7 MR. STARNES: Your Honor, can I let Ms. Parker
8 address the Court on that? She is more familiar with
9 it.

10 (Pause).

11 MR. STARNES: Your Honor, it is advance
12 funding.

13 THE COURT: That's fine. It's something that
14 I ordered?

15 MR. STARNES: Yes, sir.

16 THE COURT: That's the only way they would do
17 it would be it I ordered it. It seems like I recall
18 doing one where it was ordered in advance. Don't worry.
19 I'm not offended with anybody. I'm not irritated.

20 I just want you to be sure you understand,
21 Mr. Starnes, and sometimes you don't understand, that a
22 lot of people are actually bending over way backwards.
23 These thing don't happen like this in capital cases this
24 much.

25 The other thing is I remind you, and I do it

1 gently, and not in a I-told-you-so sort of fashion, if
2 you will remember when you made the decision to become
3 pro se, I told you these things were going to happen. I
4 said that things that are normally fairly easy to be
5 done are going to be harder to do because you are in
6 jail. That's what is happening.

7 So you've got to understand that I gave you
8 advance warning on it. So when these things come up,
9 you've got to understand that they are going to happen.
10 We are going to continue to work with you.

11 Nobody will cut you off because of it. We
12 will keep working with you. You've got to understand
13 that these things are going to continue, and they are
14 going to happen because of the status that you are in.
15 You've got to understand that's the way it's going to
16 be.

17 MR. STARNES: Yes, sir.

18 THE COURT: We will work with you on it.
19 Don't worry. Let's go back to this other issue. Before
20 we go further on that issue and the recusal issue, let
21 let's the State come in and let Mr. Myers respond to it.

22 MR. STARNES: I haven't filed -- there's a few
23 witnesses we need to interview that haven't been
24 interviewed.

25 THE COURT: About what now?

1 MR. STARNES: I haven't even drafted the
2 recusal motion or anything, any of that up yet. What I
3 was going to do is I was going to draft a recusal motion
4 up.

5 THE COURT: You want to call witnesses on a
6 recusal motion?

7 MR. STARNES: No, sir. We've got to interview
8 these witnesses. Back in '97 we had --

9 THE COURT: You are talking about what part of
10 the case now?

11 MR. STARNES: It's a pretrial motion.

12 THE COURT: I'm not sure I understand.

13 MR. STARNES: At the last hearing I brought up
14 the issue that I would file a motion to have the
15 Solicitor's Office recused.

16 THE COURT: Right.

17 MR. STARNES: Before I could do that, we were
18 trying to locate a witness. There was evidence in the
19 record of the last trial that one of the assistant
20 solicitors came into the jail and asked an inmate to
21 perjure himself on the record.

22 THE COURT: You brought that up during the
23 trial, about Dayton Riddle?

24 MR. STARNES: Right, yes, sir. We are trying
25 to locate the witness.

1 THE COURT: I think the term your lawyer used
2 was that he was trolling the jail looking for snitches.
3 It may have been Mr. Nettles who said that.

4 MR NETTLES: I don't know who the lawyer was
5 that said that, but, God, I admire him.

6 THE COURT: Let's do this. Let's just take
7 this first thing. We can take the other up later. It's
8 obvious because the way things are going, we have got to
9 carry it over some anyway. Let's let the State come in
10 and Mr. Myers respond to that and see where we go from
11 there.

12 MR. STARNES: Yes, sir.

13 (All attorneys and parties for the State enter
14 the courtroom at this time).

15 THE COURT: Let me note that we are back out
16 of the ex parte session as allowed by State law and back
17 in regular session.

18 Solicitor, let me go ahead and bring up one
19 matter if I might right away, and let's just discuss
20 this issue. We have discussed funding issues with
21 Mr. Starnes, as we are allowed to discuss.

22 I also note that he is making a motion to
23 have, I guess, your office recused, either you or your
24 office recused. I say this in the courtroom. I expect
25 that everyone in here understands that this is not to be

1 repeated outside of the courtroom.

2 I said it once a little while ago, and I will
3 say it again. If this is discussed outside of this
4 courtroom, I will find somebody in contempt. We will
5 get to the bottom of whoever discusses it.

6 But he, from what I understand, apparently has
7 filed a grievance against you related to the Asheville
8 issue and apparently is asking to have you recused in
9 the case and have you not participate in the case.

10 Do you want to state a position on it? I
11 think this would include your office, too, I assume. Do
12 you want to state a position on it at all?

13 SOLICITOR MYERS: Yes, sir. I can make some
14 statements, and I can make some statements in an in
15 camera hearing if you prefer. That is basically
16 incorrect. He is not a complainant under the rules.
17 But prior to this sometime ago, he made some other
18 allegations against other members of our office.

19 This is an extraordinary and unique set of
20 circumstances. It doesn't apply to any other case that
21 we have. Based on that and some other correspondence
22 that I have seen generated by Mr. Starnes, I can
23 understand him making such a motion.

24 While I don't particularly think a recusal is
25 necessary and wouldn't affect me in this case or any

1 other case that we have pending in this circuit in this
2 county, I can clearly understand the Court, in an
3 abundance of caution and in the interest of justice and
4 bringing this matter to a final conclusion without other
5 extraneous facts being introduced into the case, I can
6 understand the Court recusing my office. If the Court
7 did that, that's the Court's ruling.

8 THE COURT: Anything else you want to say
9 about it?

10 SOLICITOR MYERS: I think that pretty much
11 covers it. Under the rules and under the facts, it's an
12 extraordinary and unique set of facts.

13 THE COURT: It is.

14 SOLICITOR MYERS: Not necessarily against me
15 but the office in totality. I don't want anything to be
16 injected in this case, other than the guilt and
17 sentencing of Mr. Starnes. In the interest of justice
18 and abundance of caution and bringing it to a final
19 conclusion, I can understand the Court's ruling.

20 THE COURT: Based on that then, counsel, this
21 morning what I will do is -- and I don't know whether I
22 say consent, but I will say it's without objection from
23 the Solicitor's Office -- I am going to grant the motion
24 to have the Solicitor's Office not participate in this
25 case.

1 The normal procedure, as I understand, is that
2 the Attorney General is to basically select another
3 prosecutor. Is that your understanding?

4 SOLICITOR MYERS: Yes, sir.

5 THE COURT: Do you want to contact the
6 Attorney General?

7 SOLICITOR MYERS: I will.

8 THE COURT: We will let Mr. Myers contact the
9 Attorney General and let the Attorney General select
10 another prosecutor for the case and let them go from
11 there.

12 I don't know when it will be actually ready to
13 be tried. I think we are going to have to hold the date
14 off for right now until we find out what the Solicitor,
15 what the new Solicitor or the new prosecutor, I guess,
16 will have to say about it. It may not be a solicitor.

17 SOLICITOR MYERS: I don't know either.

18 THE COURT: Anything else? I don't know if
19 there is anything else we can do at this point.

20 SOLICITOR MYERS: No, sir.

21 THE COURT: Mr. Starnes, do you know of
22 anything else we can do at that point?

23 MR. STARNES: No, sir. That's all, Your
24 Honor.

25 THE COURT: Let's hold off. Let's just do

1 this. We will suspend any further hearings or anything
2 until we hear from the Attorney General on what he
3 decides to do.

4 SOLICITOR MYERS: Thank you, Your Honor.

5 THE COURT: Mr. Myers, let me know what
6 happens on it.

7 SOLICITOR MYERS: I will. I will ask them to
8 contact you directly.

9 THE COURT: Good. That's fine. We will stand
10 in recess until we hear further from the Attorney
11 General.

12 (Whereupon the proceedings were concluded for
13 June 9, 2005).

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings requested and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 18th and 27th days of August, 2003; the 28th day of January, 2005; the 23rd of March, 2005; the 29th day of April, 2005; and the 9th day of June, 2005.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 25, 2006

L. Coconut Pantsari

Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF GENERAL SESSIONS

State of South Carolina,)
PLAINTIFF,) MOTIONS HEARING
-VS-) 96-GS-32-3339
Norman Edward Starnes,)
DEFENDANT.)

BEFORE THE HONORABLE MARC H. WESTBROOK, JUDGE
MARCH 11, 2004
LEXINGTON, SOUTH CAROLINA

A P P E A R A N C E S:

Dayton Riddle, Esq.
For the State

William N. Nettles, Esq.
John Delgado, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

E X H I B I T S

(THERE WERE NO EXHIBITS INTRODUCED AT THIS HEARING.)

1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: Let's begin by taking up the
5 matter of the State versus Norman Starnes. Mr.
6 Starnes is present at this time with Mr. Delgado and
7 Mr. Nettles.

8 Mr. Starnes -- well, let me ask Mr.
9 Delgado. I understand that Mr. Starnes again is
10 moving to be allowed to proceed pro se. Is that
11 correct?

12 MR. DELGADO: That's correct, Your Honor,
13 yes, sir.

14 THE COURT: Okay. And I would note that
15 at a prior hearing, we went through all the Faretta
16 factors with him pretty thoroughly, I think. And he
17 understood and at that time was willing to go
18 forward with you and Mr. Nettles as counsel. And I
19 gather he has changed his mind since.

20 MR. DELGADO: Yes, sir, I think he has
21 changed his mind.

22 THE COURT: Okay. Mr. Starnes, let me ask
23 you if you'd stand, please, sir.

24 (Whereupon, the witness
25 complied.)

1 Madam Clerk, would you put him under
2 oath for me, just for purposes of my questions.

3 (Whereupon, the witness was
4 sworn.)

5 THE COURT: Mr. Starnes, as you know, we
6 previously went through a bunch -- you remember the
7 day we went through a bunch of questions about
8 representing yourself and if you knew what you were
9 doing and everything?

10 MR. STARNES: Yes, sir. I believe that
11 was on August 27, 2003, Your Honor.

12 THE COURT: Okay. I guess you remember
13 it, then.

14 MR. STARNES: Very well.

15 THE COURT: And do you recall -- is there
16 any of that you want to go back over? I don't think
17 it's necessary to go back over it, because we went
18 through it pretty thoroughly. Do you feel a need to
19 go back through any of it?

20 MR. STARNES: No, sir. I just wanted to
21 preserve the record, to preserve the record that I
22 requested under Faretta, 422-US-806, to permit
23 hybrid representation.

24 And it's my understanding the South
25 Carolina Supreme Court noted in Sanders that this

1 issue has never been before the U.S. Supreme Court.
2 And I just wanted to note my objection as far as not
3 being allowed to move forward hybrid or actually as
4 co-counsel, because my main focus was to voir dire
5 my jury and to make the opening statement.

6 And it's my understanding that Your
7 Honor denied those motions. And I really don't feel
8 that I need to reargue anything. I just -- if Your
9 Honor would note my previous objection to that under
10 the Fifth Amendment to due process; Sixth Amendment,
11 compulsory process and assistance of counsel; the
12 Eighth Amendment and the Fourteenth Amendment to the
13 Federal Constitution, equal protection.

14 Also, I've raised those issues under
15 Federal 1996 Anti-Terrorism Effective Death Penalty
16 Act, United States versus Doltrey, 473-Federal-2nd-
17 1113; under United States versus Singleton, 107-
18 Federal-3rd-1091; also under the Supreme Court
19 decisions Faretta versus California -- those cites
20 are already on record, Your Honor -- Castle versus
21 Wiggins and Martinez versus the Court of Appeals of
22 California.

23 And as the United States Supreme
24 Court said in Faretta that Faretta's logic is to
25 allow a defendant to present his case in his own

1 way. And that was my main focus and my main
2 argument.

3 At the August 27, 2003, it was my
4 understanding -- and I'm not here to talk bad about
5 my counsel or nothing. But we had an agreement that
6 counsel would compel the State to release the
7 discovery in this case. Your Honor is aware this is
8 a capitol case where the State is seeking the death
9 penalty on me.

10 And on May 21, 2001, counsel filed a
11 motion for disclosure in this case, and the State
12 has not released the evidence. And I can't get my
13 counsel to do it, so I feel at this time, Your
14 Honor, that I need to proceed pro se to compel the
15 State to try me and to release the evidence.

16 There are some other things that I
17 need to take up with Your Honor. I don't feel that
18 it's appropriate to do it at this time. These are
19 matters that are ex parte relating to funding and
20 some other matters.

21 I think there's a Lexington County
22 case where the State can't be present. And if Your
23 Honor could please afford me a hearing on that so
24 Your Honor and I -- and if counsel wants to be
25 present to stand by, that's fine; I don't object to

1 that -- so we can take those matters up.

2 There's a matter also that I would
3 like to take up relating to housing in the jail,
4 just some few things, and access to WESLAW or LEXIS,
5 if I could get a clerk and some other things. But I
6 feel it would probably be best if we take those
7 matters up in chambers.

8 And if Your Honor could please afford
9 me an opportunity to take those matters up as soon
10 as the Court would permit. I understand y'all moved
11 from the old courthouse, and it seems like when I
12 request a hearing on these matters that it's several
13 months, because I requested this hearing back on
14 October the 12th, and it was five months before we
15 could get back up here and hear this.

16 And I don't know who's responsible
17 for that. And I had wrote Your Honor numerous
18 requests if I could get up here and get this taken
19 care of, because I checked with some state agencies
20 and some other areas to obtain some records that is
21 favorable to the defendant in this case.

22 But, unfortunately, too much time has
23 passed, and I can't get those records. And there's
24 some other records that I need to obtain or get
25 subpoenaed. And if more time passes, Your Honor,

1 those records are going to be gone.

2 And these are records that's
3 favorable to me and that I need for a complete
4 defense. Also, I would like to get a copy of my
5 entire file from the original case, ex parte orders
6 and motions that were filed by Mr. Salley, Mr.
7 Nettles -- and Mr. Banks.

8 Also, if I could get a copy of my
9 original file from the Clerk of Court. I talked
10 with Ms. Frick prior to Your Honor coming out, and I
11 needed to get the jury questionnaire, letters from
12 the Solicitor's Office that reflect the Bates stamp
13 to all the disclosure that they made in the original
14 case.

15 My file originally went to Lourie
16 Salley, because he was the lead attorney in this
17 case. But he lost part of it, Your Honor. And some
18 of this stuff I've never seen.

19 And for me to prepare for a complete
20 defense, I'm going to need access to all of this
21 stuff. In addition, there's some defense exhibits,
22 some Court exhibits, and some exhibits that I would
23 like to -- I would like the opportunity to look over
24 this stuff.

25 I've got a transcript from the

1 original trial, and when I read it, it refers to
2 these exhibits, and I can't look into the record and
3 see what these things are. And I spoke to Ms. Frick
4 about that. I understand -- she advised me that the
5 things that were done for demonstrative purposes,
6 that stuff has been destroyed.

7 The stuff that I believe the State
8 had, I believe Mr. Myers' office has that. I don't
9 know if we could get them to turn that over, or at
10 least let me get photographs of it so I can see it
11 and use that stuff to prepare for my retrial.

12 In addition, I need -- I would
13 request Your Honor to order the State to produce all
14 the evidence pursuant to Brady versus Maryland. And
15 I would like to see all of the evidence -- the
16 physical evidence, not only just the motions and
17 things like that, photographs. But there's some
18 evidence in this case that I've never seen, some of
19 it that was brought into court in the original trial
20 and some of it that was -- they never produced or
21 never brought into court.

22 I'm sure that the custodian at the
23 courthouse here still has that stuff. And I want to
24 be able to look at it, photograph it, and document
25 those items, Your Honor. In addition, there --

1 we've been through this since 1996, and at my
2 original trial, the State relied on the inmates out
3 of the jail come out and testify against me.

4 It's my understanding that they're
5 back in the jail fishing again. I gave a Freedom of
6 Information request to Major Tate over at the jail
7 to obtain some jail records, some other things, some
8 video surveillance and some things of that nature.

9 Mr. Tate forwarded those things to
10 Mr. Delgado, and if I could, I need to get those
11 things. I have copies of the Freedom of Information
12 request that I sent to Major Tate to get those
13 things. But today I would like to exercise that
14 right under Faretta and move forward on this case,
15 Your Honor.

16 THE COURT: Okay. The only thing I need
17 to remind you of, as I did before, Mr. Starnes, was
18 to be sure to remember that when you make the motion
19 -- and if I grant your motion, which I'm probably
20 going to do -- that you do so within the confines of
21 the jail cell and that I'm not going to require the
22 Lexington County Detention Center to adjust their
23 schedule in order to let you do all this.

24 I know that there was a prisoner a
25 few years ago in a death case that another Judge

1 allowed to do that, and it's the only time that's
2 ever happened. And that really got -- I think
3 everybody agrees that that just went too far, that
4 even Public Defenders were complaining that they
5 couldn't get in and talk with their clients because
6 he had a couple of conference rooms tied up at one
7 point.

8 And, obviously, we can't do that.
9 You just need to be sure to understand that some of
10 these things that you're asking for you're probably
11 going to be able to get; some you probably are not
12 going to be able to get. Whatever your lawyers have
13 got, of course, they'll turn over to you, so you
14 won't have to ask for those particular things.

15 But bearing those limitations in
16 mind, do I understand that you still want to
17 represent yourself?

18 MR. STARNES: Well, could we go over the
19 housing issue at the jail? I'm housed with -- the
20 jail cells at the jail were constructed to house two
21 inmates. I have to sleep by the toilet. I've got
22 two other inmates in my room.

23 And I've got four file boxes of
24 stuff. And given the nature of this case, Your
25 Honor, and the fact that the State is again seeking

1 the death penalty on me, is it asking too much for
2 the jail to leave me in the housing area where I'm
3 at?

4 On the first floor of the old jail is
5 where they house inmates that have assaulted
6 officers, that have been caught with contraband, and
7 have disruptive behavior at the jail. And would it
8 be too much to ask the Court to allow me to be
9 housed in the maximum security housing unit that I'm
10 in now and to house me alone -- because the problem
11 that I have is if I'm in a cell with two other cell
12 mates, and I have this discovery, they can go
13 through it, they can look at it.

14 In all capitol cases that I know of,
15 they rely on jailhouse informants. And they can go
16 through this stuff. And I think the Sixth Amendment
17 should protect me from another inmate going through
18 things of that nature -- photographs that I'll have,
19 police reports, incident reports.

20 And it's the defense's position that
21 asking to be housed alone, they do this in
22 circumstances where inmates are disruptive, where
23 they assault other inmates. The jail facilitates
24 this for inmates that have mental conditions.

25 And, Your Honor, given the fact that

1 the State is asking for the death penalty and I'm
2 going to have all this privileged information in my
3 cell, I don't think it's asking too much to have
4 Captain Williams facilitate me in a cell alone. And
5 Captain Williams is here, and could we get his
6 position on that, Your Honor?

7 THE COURT: I understand what you're
8 asking for, Mr. Starnes. And certainly if the jail
9 wants to let you do that, they can. I'm not going
10 to require them to do that, though.

11 There are just too many problems
12 concomitant with that sort of order. And I just
13 cannot order them to do that. We're not going to do
14 that. Understanding that, is it still your desire
15 to represent yourself?

16 MR. STARNES: Yes, sir. I note my
17 objection as far as to the housing issue. Also --
18 now, this worked for Johnny Brewer. He won his
19 case. It's my
20 -- it's the defense's position that this is
21 prejudice to me, Your Honor.

22 He was allowed access to a telephone
23 so he could call experts. The phones at the jail is
24 recorded and monitored. I can't call an
25 investigator and talk with him without the jail

1 monitoring those things?

2 THE COURT: Yes, sir. He also locked down
3 the phones where other inmates couldn't call family,
4 couldn't call lawyers, couldn't get in touch with
5 people. It was just -- another Judge, again, had
6 allowed him to do so. I stopped it, frankly, when
7 his case was reassigned to me.

8 But another Judge had handled the
9 case, and it had just really gone -- I recall he
10 wanted to be able to go to a tanning booth so he
11 could get rid of the prison pallor, whatever that
12 was. And it was just going too far.

13 But, obviously, we certainly want to
14 do anything we can for you that's reasonable. But
15 those requests are just not reasonable.

16 MR. STARNES: Okay. One other request,
17 Your Honor, for two years --

18 MR. RIDDLE: Your Honor, excuse me.
19 Before we move into more requests and more requests
20 and more requests, can we settle the issue about
21 whether or not he is going to be representing
22 himself --

23 THE COURT: Well, let me find out --

24 MR. RIDDLE: -- so we'll know on the
25 State's side who to deal with?

1 THE COURT: Are you wanting to know what
2 you can or can't do before you decide to represent
3 yourself, Mr. Starnes? I don't understand where
4 you're going.

5 MR. STARNES: Yes, sir, kind of, I do.
6 Kind of, I do.

7 THE COURT: All right, I'll let him ask.

8 You can't go too far with it, Mr.
9 Starnes, but go ahead.

10 MR. STARNES: For two years, I had Hi-
11 Liters, things of that nature, that I used to
12 prepare for the case. Is that asking too much, Your
13 Honor?

14 THE COURT: Well, again, it depends on
15 what's within the rules of the jail, the operations
16 of the jail. If they'll allow you those things,
17 that's fine. I certainly can't make them give them
18 to you. But if you can get them and it's within
19 their rules to let you use them, fine.

20 MR. STARNES: So basically if the jail
21 says that I'm limited to my discovery and I can't
22 have that, you're not going to intervene on that?

23 THE COURT: Well, the jail doesn't have
24 anything to do with discovery. That's between you
25 and the Solicitor.

1 MR. STARNES: But it's a housing matter as
2 far as what they'll let me have in my cell and what
3 they won't.

4 THE COURT: Certainly. I certainly
5 understand that. I'm sure there are reasons they do
6 that.

7 MR. STARNES: Well, Your Honor, I guess --
8 I have a list of requests here, and it looks like
9 you're not going to grant me anything.

10 THE COURT: Well, obviously, on anything I
11 don't know whether I'll grant it or not until I hear
12 it, obviously.

13 MR. STARNES: The electricity in the cell,
14 they can leave the light on 24 hours. They operate
15 it from a control panel. I usually work at night
16 when it's quiet and the other inmates are sleeping.
17 I guess that's up to the jail, too, to have the
18 light on?

19 THE COURT: Yes, sir.

20 MR. STARNES: Will you allow me the
21 opportunity to subpoena Mr. Brewer so we can take
22 some testimony just to preserve the record.

23 THE COURT: No, sir. About what he got to
24 do while he was there?

25 MR. STARNES: Yes, sir.

1 THE COURT: No, sir. Again, that has
2 nothing to do with this case.

3 MR. STARNES: It's part of the procedure,
4 Your Honor.

5 THE COURT: Well, no, actually, it's not.
6 It was what one Judge allowed him to do at one time.
7 But that's just apples and oranges. It doesn't have
8 anything to do with this case.

9 MR. STARNES: And is it possible the jail
10 could house me in the Department of Corrections?

11 THE COURT: If that's what they want to
12 do, if they can work it out with the Department of
13 Corrections. But it's up to them if they decide
14 they want to do that. And, of course, I think the
15 Department of Corrections has some say on that, too.

16 MR. STARNES: Right. Because down at
17 Death Row, I had access to a law library. I had
18 access to all that. How about access to WESLAW,
19 LEXIS?

20 THE COURT: Well, I don't know. Major
21 Tate, what does the jail have in terms of access to
22 research?

23 MR. TATE: Access to counsel, and we
24 satisfy the constitutional requirement by giving
25 them 16 to 18 hours of access to counsel, any legal

1 material that counsel may provide, with the usual
2 contraband restrictions. Binders aren't allowed --

3 THE COURT: Yes, sir.

4 MR. TATE: -- hardbound books.

5 THE COURT: But what if he's representing
6 himself, though?

7 MR. TATE: Anything that he can --
8 paperwork things, however they're provided. I
9 believe Mr. Brewer was provided by his family.
10 Softbound books, printed material are certainly
11 permissible. We do get into a size allocation
12 problem.

13 Instead of one most inmates are
14 allowed, you know, five or six bankers boxes make it
15 difficult. Plus, it creates a fire hazard for the
16 facility. Paper material is provided by counsel or
17 whatever source he has.

18 THE COURT: Yes, sir, okay.

19 Anything else, Mr. Starnes?

20 MR. STARNES: Yes, sir. I had a letter
21 from Mr. Delgado. He explained to me that -- in the
22 letter that if I represented myself that they would
23 no longer provide opinions for me, access to the
24 Court. And I think it's mandated under Vines versus
25 Smith and Casey versus Lewis that, of course, after

1 conviction, the institution is required to have law
2 libraries for inmates to effect their sentences --
3 challenge their sentences.

4 In the situation that I'm in, if the
5 jail does not provide it -- if Major Tate is not
6 going to provide me access to WESLAW or LEXIS,
7 somewhere where I can get these court opinions to
8 file briefs, to do motions, and present an adequate
9 defense, and Mr. Delgado and Mr. Nettles isn't going
10 to do it, then it's going to leave me absolutely no
11 access to the courts.

12 I think, Your Honor, the Casey versus
13 Lewis decision says that the defendant or appellant
14 has to show an actual injury or cause. And given
15 the fact that -- again, that this is a death penalty
16 case, there is no way that I can prepare this case
17 if I don't have access to law material.

18 If I don't have access, they restrict
19 me, I cannot get the "Advance Sheets." I subscribed
20 to the "Advance Sheets" while I was in the
21 Department of Corrections, and I got the "Advance
22 Sheets." But they stopped that when I was here at
23 the jail.

24 They put mail restrictions in. My
25 mother used to send me the "Advance Sheets" off the

1 Supreme Court website, and they restricted that
2 because I can't receive a nine-by-twelve envelope
3 with Supreme Court opinions it. It's considered
4 contraband because of the size of the envelope, Your
5 Honor. And is there any way that I could get
6 a law clerk?

7 THE COURT: No, sir, I'm not going to
8 provide that. I think Mr. Brewer had a law clerk at
9 one point -- in fact, wound up with five or six
10 different law clerks, I think.

11 MR. STARNES: I'm just asking for one.

12 THE COURT: I understand.

13 MR. STARNES: I'm just asking for one.

14 THE COURT: I'm not going to do that.

15 MR. STARNES: There's really no use to tie
16 the Court's time up. I'll file these as motions so
17 they'll be made a part of the record, if you'll do
18 that.

19 On our August 27th hearing, I raised
20 an issue -- and this is not a personal issue between
21 you and I. Your Honor was my original trial judge,
22 and you found as an affirmative fact that the
23 evidence in this case warranted the death penalty.
24 There was no passion or prejudice.

25 And I would again renew my objection

1 to Your Honor being my retrial Judge. I just want
2 to note it for the record. It's nothing personal
3 against you. I raised that issue, and I had asked
4 counsel to file a motion, because when we had the
5 bond hearing in Richland County a couple of years, I
6 asked him to please take me before Judge Keesley
7 because he was here. And, instead, I was taken to
8 Richland County to go before Your Honor.

9 THE COURT: It was because the Supreme
10 Court assigned me to hear the case. I'm not going
11 to refuse on the case. I've ruled on that before.

12 MR. STARNES: I understand. I would like
13 to move pro se.

14 THE COURT: Okay. Mr. --

15 MR. STARNES: Also, if --

16 THE COURT: I'm sorry, go ahead.

17 MR. STARNES: -- any way possible, there
18 are some opinions that I'm going to need to have in
19 relation to this case. Is it possible in the next
20 term of Court, would you take that up?

21 THE COURT: We probably can. I don't have
22 a problem with that. And what we'll do is get it
23 scheduled in. We'll get it set so you can do that.
24 You need to go ahead and get your motions -- have
25 you got your motions already filed?

1 MR. STARNES: No, sir, I haven't filed
2 anything because the Clerk will not accept anything
3 --

4 THE COURT: Right.

5 MR. STARNES: -- unless I have counsel.
6 Everything that I sent them, they returned.

7 THE COURT: When you get them filed, just
8 send a letter and let us know, and we'll take it
9 from there.

10 All right, Mr. Delgado, did you want
11 to say anything else about this?

12 MR. DELGADO: No, sir, Your Honor, nothing
13 else.

14 THE COURT: Do you want to serve as
15 standby counsel, Mr. Delgado?

16 MR. DELGADO: Your Honor, I think I speak
17 for Mr. Nettles and myself, that we would be willing
18 to do that. We want to be able to do that.

19 THE COURT: All right.

20 Mr. Nettles, do you want to do that
21 also?

22 MR. NETTLES: Yes, sir.

23 THE COURT: Okay.

24 All right, Mr. Starnes, I'll grant
25 your motion, and we'll let you proceed pro se. Mr.

1 Delgado and Mr. Nettles will serve as your standby
2 counsel.

3 Again, I caution you, as I've done
4 before, if you decide at some point that you want to
5 use regular counsel -- well, I think we've gone too
6 far; I don't know -- there may be some situation
7 where they're willing to, and it would be up to
8 them.

9 And, frankly, they'd have to convince
10 me to do it. But I'd certainly listen to what they
11 have to say. But once you get into trial, you're
12 not going to be able to do that.

13 MR. STARNES: Right, I understand that.

14 THE COURT: If you get in trial and you
15 realize you're in trouble --

16 MR. STARNES: Yes, sir.

17 THE COURT: -- then it's too late, yes.

18 MR. STARNES: You're ruling on the access
19 to the WESLAW and opinions. What was your ruling on
20 that? Will Mr. Tate provide that for me? Mr.
21 Delgado provides me with what? Once I go pro se,
22 they're not going to provide that stuff for me.

23 THE COURT: Yes, sir, they're not bound
24 to. Again, those limitations -- certainly, we'll do
25 what we can to work with you in terms of getting

1 access to research within whatever limitations are
2 necessary. But, again, we can't turn the jail
3 upside-down just to let you be able to do what you
4 want to do.

5 But we certainly will work with you
6 and do what we can, at least on a reasonable basis,
7 to let you try to have what you can. But, now that
8 we've done this, just go ahead and make your
9 motions, and then let's take a look at them, okay?

10 MR. STARNES: Thank you. Do you want me
11 to send them to Your Honor or go through --

12 THE COURT: You can go ahead and file them
13 with the Clerk.

14 Madam Clerk, you can go ahead and
15 take his motions now.

16 CLERK OF COURT: Yes, sir.

17 THE COURT: They'll be coming from him pro
18 se.

19 CLERK OF COURT: Yes, sir. I will make
20 sure it's noted on the file also --

21 THE COURT: Okay.

22 CLERK OF COURT: -- so there will be no
23 more confusion.

24 THE COURT: What you can do, Mr. Starnes,
25 is go ahead and file them and send a copy to my

1 office, okay?

2 MR. STARNES: Okay.

3 THE COURT: And, of course, you've got to
4 serve a copy on the Solicitor also.

5 MR. STARNES: This funding issue I needed
6 to take up, and I don't think appropriate that we do
7 it in open court, Your Honor. Can we take that up
8 ex parte?

9 THE COURT: What we can do is when you
10 come back for those next motions, let's take that up
11 then. And I'll give you what we normally would give
12 the attorneys for funding for investigation and that
13 sort of thing.

14 Okay?

15 CLERK OF COURT: I do have a matter as far
16 as the Clerk's Office. At the last hearing, there
17 was a motion made by the defense for the release of
18 their evidence. I have returned the State their
19 evidence. I have had Mr. Starnes' evidence in a box
20 ready for pickup release to the defense, but it's
21 never been picked up. I don't know who to get that
22 to now.

23 THE COURT: All right. Any objection from
24 the State on that? I assume you have no objection.

25 MR. RIDDLE: We don't have any objection

1 subject to whatever the position is, which I don't
2 take a position on, because I don't know what's in
3 that box.

4 THE COURT: Okay. Well, what we'll do is
5 we'll release to him whatever the jail will let him
6 take over there. I think it just comes down to
7 that.

8 CLERK OF COURT: For the record, it's
9 mainly photos and some fold-up charts. It was
10 pieces of paper, and it's all folded up in an
11 envelope box.

12 MR. TATE: I'll have the jail
13 administrator take a look at it and apply the normal
14 contraband rules, as it would apply to any other
15 incarcerated person.

16 THE COURT: Okay.

17 CLERK OF COURT: And then it will be sent
18 to Mr. Starnes at the jail, Your Honor?

19 THE COURT: Yes, ma'am.

20 CLERK OF COURT: Okay.

21 MR. STARNES: Your Honor, is there any way
22 that I could get a protection order on my stuff?

23 THE COURT: I'm sorry?

24 MR. STARNES: Is there any possible way
25 that I could get a protection order or prevent the

1 State from offering inmates out of the jail? When I
2 came back here in 2000, in early 2001 I had an
3 inmate -- when I came into my cell, he was going
4 through some of my stuff.

5 And some of the stuff was attorney
6 letters. They made arrangements to move that inmate
7 out, but I'm not saying that's not going to occur
8 again. And that's one of the things that I'm very
9 concerned with, because the things that I have in my
10 cell will be things that I plan for my defense.

11 THE COURT: Let me ask this. Mr. Tate, is
12 there any way you can arrange to secure whatever
13 boxes he might have in the cell? Is there any sort
14 of lock or something that could be put on the boxes,
15 some way they can be secured?

16 MR. TATE: I certainly don't deal with
17 that, sir. I have no clue, Your Honor, on how that
18 could be done without introducing steel objects or
19 contraband or endangering other inmates. I simply
20 don't know.

21 THE COURT: Well, how about see if there's
22 a way of doing that, okay, so he can secure that?

23 MR. TATE: I'll check on it, Your Honor.

24 THE COURT: All right, they'll try to work
25 on it.

1 MR. STARNES: Is it all right if I speak
2 with Mr. Williams?

3 THE COURT: Sir?

4 MR. STARNES: Will I be able to talk with
5 Captain Williams? Will he talk to me?

6 THE COURT: Well, not right now,
7 obviously. We're in the courtroom.

8 MR. STARNES: No, sir.

9 THE COURT: But whenever he's willing to
10 talk to you, again, that's between you and him at
11 the jail. Certainly, if he's willing to talk to
12 you, I don't have a problem with that, okay.

13 MR. STARNES: And it's my understanding
14 that I can't subpoena Johnny Brewer and put nothing
15 on record as far as those things to preserve for
16 appellate review?

17 THE COURT: No, sir.

18 MR. STARNES: Your Honor won't allow me to
19 do that?

20 THE COURT: No, sir, you can't do that.

21 MR. STARNES: Please note my objection on
22 that, Your Honor.

23 THE COURT: Noted.

24 MR. STARNES: I really would appreciate
25 it.

1 THE COURT: Okay. Anything else?

2 MR. STARNES: No, sir, I believe that's
3 it.

4 THE COURT: Okay, thank you.

5 MR. STARNES: Thank you.

6 THE COURT: Good luck.

7 MR. RIDDLE: Thank you, Your Honor.

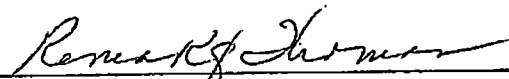
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON MARCH 11, 2004, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TWENTIETH DAY OF JANUARY, 2008.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

96-GS-32-3339

THE STATE OF SOUTH CAROLINA

-VS-

NORMAN STARNES

:
:
: TRANSCRIPT OF RECORD
:
:

SEPTEMBER 10, 2004
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

A P P E A R A N C E S:

S. RICK HUBBARD, III, ESQUIRE
ATTORNEY FOR THE STATE

NORMAN STARNES, PRO SE

ALSO PRESENT: JOHN TATE, ESQUIRE

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

1 THE COURT: THANK YOU. JUST HAVE A SEAT.

2 MR. HUBBARD: YOUR HONOR, I JUST GOT OFF THE PHONE
3 WITH HOPE. SHE'S COMING UP. APPARENTLY WE HAD A MISCUE ON
4 THE FILE. I DON'T KNOW IF YOU NEED THE FILE, BUT JUST IN
5 CASE---

6 THE COURT: WE PROBABLY -- WE DID WITHOUT IT LAST
7 WEEK, I THINK, DIDN'T WE?

8 MR. HUBBARD: YES, SIR.

9 THE COURT: WE CAN PROBABLY DO WITHOUT IT THIS WEEK.
10 ALL RIGHT. IN THE MATTER OF STATE VERSUS STARNES, MR.
11 HUBBARD IS PRESENT ON BEHALF OF THE STATE. MR. STARNES IS
12 PRESENT PRO SE. CAN Y'ALL...

13 OFFICER: YOU GOT YOUR KEY? YOUR HANDCUFF KEY?

14 THE COURT: OKAY. LET ME NOTE, BY THE WAY FOR THE
15 RECORD, COUNSEL, WE'VE BEEN -- WE'VE BEEN HAVING TO DO THIS
16 WITH OUR ROVING BAND OF COURT REPORTERS IN EVERY -- SEEMS
17 LIKE EVERY HEARING NOW WE'RE HAVING A DIFFERENT COURT
18 REPORTER. THIS IS DAPHNE D. HELMS, H-E-L-M-S, SO YOU CAN
19 NOTE THAT, MR. STARNES, THAT SHE'LL BE THE COURT REPORTER FOR
20 TODAY.

21 MR. STARNES: I ALREADY GOT IT.

22 THE COURT: ALL RIGHT. OKAY. WE WERE TO -- I THINK
23 WE WERE TO GATHER TODAY TO DETERMINE WHERE WE WERE ON
24 DISCOVERY REQUESTS. WAS THAT NOT CORRECT?

25 MR. HUBBARD: YES, SIR, YOUR HONOR.

1 THE COURT: OKAY. HOW DID WE DO ON THAT, MR.
2 HUBBARD?

3 MR. HUBBARD: YOUR HONOR, I'VE HAD MS. LINDLER WHO
4 IS HERE WITH ME GOING THROUGH THE DISCOVERY. WE FOUND -- AND
5 SHE MADE A COPY OF EVERYTHING FOR MR. STARNES HERE. THERE
6 ARE A NUMBER OF THINGS THAT ARE MISSING THAT WE HAVEN'T
7 LOCATED YET. WE'RE STILL LOOKING THROUGH IT. I'VE GOT --
8 MS. LINDLER MADE A COPY OF WHAT WE HAVE NOT FOUND YET, AND WE
9 WILL CONTINUE TO LOOK FOR THAT. THERE ARE THREE SPECIFIC
10 DATES THAT HE WAS LOOKING FOR STAMPED DISCOVERY ON -
11 MARCH 25TH OF '97, MARCH---

12 THE COURT: BEFORE YOU GO ON, WHAT YOU'VE GIVEN HIM
13 NOW, IS THAT -- DO YOU HAVE THAT MARKED SOMEHOW TO VERIFY
14 WHAT HE HAS?

15 MR. HUBBARD: YOUR HONOR, WE'VE CHECKED IT OFF ON
16 THIS LIST THAT HE GAVE US.

17 THE COURT: OH, OKAY. THAT'S FINE.

18 MR. HUBBARD: THAT'S HOW WE VERIFIED IT. BUT THERE
19 ARE THREE SPECIFIC DATES. ONE WAS MARCH 25TH OF '97,
20 MARCH 24TH OF '97, AND OCTOBER 23RD OF '96. WE'RE STILL
21 LOOKING FOR A NUMBER OF THINGS. MARCH 25TH - THERE'S FIVE
22 DOCUMENTS THAT WE HAVEN'T LOCATED YET. WE WILL FIND THEM.

23 WHAT HAPPENED, YOUR HONOR, IS THESE DOCUMENTS ARE
24 INTERSPERSED IN DIFFERENT NOTEBOOKS. SO WE'RE HAVING TO GO
25 THROUGH PAGE BY PAGE THROUGH EVERY SINGLE THING WE HAVE.

1 IT'S OCCUPIED MS. LINDLER'S ENTIRE WEEK JUST TO LOCATE THIS
2 STUFF. WHAT KIND OF -- KIND OF GALLS ME THOUGH, YOUR HONOR,
3 IS MARCH 24TH -- APPARENTLY A LOT OF THE STUFF HE'S SEEKING
4 LIKE OUR ENVELOPE COVERS WHERE HE DID LITTLE ARTWORK ON THE
5 COVERS, I DON'T KNOW HOW THAT INVOLVES HIS CASE, BUT WE'RE
6 WASTING OUR TIME FINDING STUFF LIKE THAT INSTEAD OF PREPARING
7 FOR COURT NEXT WEEK AND ANOTHER DEATH PENALTY CASE.

8 THE COURT: WHAT IS HE PARTICULARLY WANTING FROM THE
9 24TH?

10 MR. HUBBARD: YOUR HONOR, A LOT OF IT WERE LETTERS
11 THAT HE'S -- HE'S SENT OUT, BUT HE'S DONE THIS DECORATIVE
12 ARTWORK ON ENVELOPES AND THINGS.

13 THE COURT: RIGHT.

14 MR. HUBBARD: AND HE'S ASKING FOR ALL OF THAT STUFF
15 AGAIN.

16 THE COURT: LETTERS THAT HE SENT?

17 MR. HUBBARD: YES, SIR.

18 THE COURT: MR. STARNES, YOU DON'T HAVE THOSE
19 LETTERS YOURSELF?

20 MR. STARNES: NO, SIR, YOUR HONOR. AND THE
21 DECORATIVE -- THE ARTWORK HE'S TALKING ABOUT, I DIDN'T DO
22 THAT. THAT WAS ONE OF THE JAILHOUSE SNITCHES THAT THE STATE
23 CALLED. THESE LETTERS THAT -- THAT I'M REQUESTING, PART OF
24 THE LETTERS ON THE BACK -- IN OTHER WORDS, IT'S A PAGE OF A
25 LETTER, AND ON THE BACK PAGE IS A -- IS A -- IS A PHOTOCOPY

1 OF THE ENVELOPE.

2 THE COURT: OKAY.

3 MR. STARNES: I DON'T BELIEVE ALL OF THESE ARE
4 PHOTOCOPIES OF ENVELOPES BECAUSE LOOKING AT THE -- LOOKING AT
5 -- LOOKING AT THE DISCOVERY FROM THIS FILE, IT'S LETTERS.
6 AND WHAT THE STATE DID, I BELIEVE, IS WHEN THEY -- WHEN THEY
7 DATE-STAMPED THIS STUFF IS THEY -- THEY PUT THE LETTER ON THE
8 FRONT PAGE, AND ON THE BACK PAGE THEY PUT A PHOTOCOPY OF THE
9 ENVELOPE.

10 THE COURT: WHAT KIND OF LETTERS ARE THESE?

11 MR. HUBBARD: THESE ARE HANDWRITTEN LETTERS, YOUR
12 HONOR, FROM---

13 THE COURT: FROM MR. STARNES TO SOMEBODY ELSE?

14 MR. HUBBARD: THAT'S WHAT I UNDERSTOOD. YOUR HONOR,
15 BUT IT JUST -- A LOT OF THESE ARE THE ENVELOPES, AND I'M LIKE
16 I DON'T KNOW WHY HE SPECIFICALLY REQUESTED THAT PARTICULAR
17 PAGE FOR US TO GO COPY. AND THAT'S JUST ME COMPLAINING, YOUR
18 HONOR---

19 THE COURT: I UNDERSTAND.

20 MR. HUBBARD: ---ON A BUSY WEEK THAT, YOU KNOW,
21 WE'RE TRYING TO FIND STUFF FOR HIM AND WE'RE TRACKING DOWN
22 STUFF. I'M LIKE THIS STUFF IS NOT GOING TO BE USED IN COURT.
23 I DON'T KNOW WHAT THE EVIDENTIARY VALUE IS, BUT WE'RE HUNTING
24 IT DOWN. WE WILL GIVE HIM WHATEVER HE'S ASKED FOR.

25 AT SOME POINT WE'LL PROBABLY RECOPY THE ENTIRE FILE

1 AND GIVE IT TO HIM AGAIN JUST TO MAKE SURE HE'S GOT IT, BUT
2 I'M JUST -- IT'S BEEN A TOUGH WEEK BECAUSE WE'RE TRYING TO
3 PREPARE FOR COURT AND WE'VE GOT ANOTHER CREW WORKING ON A
4 DEATH PENALTY CASE AND, YOU KNOW, MS. LINDLER HAS HAD TO
5 ANSWER PHONES AND DO THIS IN HER SPARE TIME, AND IT'S JUST
6 KIND OF CRAZY WHEN YOU FIND OUT WHAT -- WHAT SHE'S ACTUALLY
7 HAVING TO COPY.

8 THE COURT: WELL, HAVE YOU NOT GOT -- HAVE YOU NOT
9 STARTED THOSE NEW POSITIONS THAT THE COUNTY GAVE YOU YET?

10 MR. HUBBARD: YOUR HONOR, WHAT I'VE BEEN DOING THIS
11 WEEK IS INTERVIEWING SOME PEOPLE---

12 THE COURT: RIGHT.

13 MR. HUBBARD: ---AND I'VE GOT SET ASIDE -- MOST OF
14 MY WEEK NEXT WEEK IS INTERVIEWING PEOPLE. I'VE GOT PROBABLY
15 40, 50 PEOPLE COMING IN OR AT LEAST THAT HAVE APPLIED AND
16 WE'VE TRIED TO SET THEM UP FOR INTERVIEWS. SO I'VE BEEN
17 TRYING TO SET THOSE UP THIS WEEK FOR NEXT WEEK AND I'VE DONE
18 SOME THIS WEEK. SO THAT'S WHY I'VE BEEN KIND OF RUNNING
19 DIFFERENT DIRECTIONS, TOO.

20 THE COURT: ALL RIGHT. TELL ME AGAIN: WHAT ARE THE
21 LETTERS THAT MR. STARNES IS TRYING TO GET? ARE THEY LETTERS
22 THAT MR. -- THAT, MR. STARNES, YOU SENT TO SOMEBODY ELSE OR
23 THAT SOMEBODY SENT TO YOU OR WHAT?

24 MR. STARNES: APPARENTLY THEY'RE LETTERS THAT --
25 THAT I HAD WRITTEN TO AN INMATE IN THE JAIL. NOW, I DON'T

1 KNOW BECAUSE I DON'T KNOW WHAT -- WHAT DOCUMENTS -- THESE
2 MISSING DOCUMENTS, I CAN'T TELL YOU WHAT'S ON THEM BECAUSE I
3 DON'T KNOW. THESE ARE -- THESE ARE DOCUMENTS THAT ARE
4 MISSING IN THAT FILE. THEY COULD BE LETTERS. THEY COULD BE
5 PHOTOCOPIES OF ENVELOPES. I CAN'T TELL YOU WHAT THESE
6 DOCUMENTS ARE, YOUR HONOR, BECAUSE I HAVEN'T SEEN THEM.

7 THE COURT: OKAY.

8 MR. STARNES: AND IT'S---

9 THE COURT: WELL, NOW, IF THE SOLICITOR CAN'T FIND
10 THEM, YOU KNOW, THEN THEY JUST CAN'T FIND THEM. OF COURSE,
11 THE OTHER SIDE OF IT IS: THEY'RE NOT GOING TO BE ABLE TO USE
12 THEM AT TRIAL EITHER. THEY WON'T BE ABLE TO CALL THESE
13 WITNESSES AT TRIAL.

14 MR. STARNES: YES, SIR.

15 THE COURT: SO, YOU KNOW, YOU WON'T BE HARMED BY
16 THAT---

17 MR. STARNES: YES, SIR.

18 THE COURT: ---OBVIOUSLY IF THEY DON'T -- IF THEY
19 CAN'T CALL THE WITNESSES.

20 MR. STARNES: YES, SIR. AND IF I COULD PUT ONE
21 THING ON THE RECORD, YOUR HONOR. THE DISCOVERY REQUEST FOR
22 THIS STUFF WAS FILED 1207 DAYS AGO. I KNOW THEY'VE GOT A
23 DEATH PENALTY CASE COMING UP, BUT THIS STUFF WAS -- WE ASKED
24 FOR THIS STUFF THREE YEARS AGO, YOUR HONOR.

25 MR. HUBBARD: BUT LET'S MAKE IT CLEAR, TOO: HE

1 ALREADY HAD THIS STUFF BACK IN 1997.

2 THE COURT: I UNDERSTAND. I THINK HIS PREVIOUS
3 LAWYERS LOST IT; RIGHT?

4 MR. HUBBARD: AND I JUST WANT THE RECORD TO MAKE IT
5 CLEAR: IT'S NOT THE STATE'S FAULT. I'M STILL THINKING IT
6 MIGHT AT SOME POINT NECESSARY TO HAVE THOSE LAWYERS COME IN
7 HERE AND EXPLAIN WHY HUNDREDS OF DOCUMENTS HAVE BEEN LOST.

8 THE COURT: I MAY DO THAT.

9 MR. HUBBARD: BECAUSE IT'S VERY UNUSUAL THAT JUST
10 SELECTIVE PAGES OUT OF, YOU KNOW, STACKS OF MATERIAL ARE JUST
11 GONE.

12 THE COURT: RIGHT. WELL, I THINK I FRANKLY AM
13 INCLINED TO GO AHEAD AND DO THAT---

14 MR. HUBBARD: YES, SIR.

15 THE COURT: ---AND JUST GET... IS MR. BANKS STILL
16 PRACTICING?

17 MR. HUBBARD: I'M NOT SURE, YOUR HONOR.

18 THE COURT: WASN'T HE SUSPENDED OR SOMETHING FOR A
19 WHILE?

20 MR. STARNES: HE'S SUSPENDED.

21 THE COURT: I KNOW MR. SALLEY IS, AND MR. NETTLES
22 WAS ON THE CASE FOR AWHILE.

23 MR. HUBBARD: RIGHT.

24 THE COURT: THEN SOMEBODY -- I THINK YOU HAD HALF
25 THE BAR REPRESENTING YOU LAST TIME, AS I RECALL, SOME GUY---

1 MR. STARNES: I HAD FOUR -- FOUR ATTORNEYS -- A
2 GENTLEMAN FROM ALASKA REPRESENTING ME.

3 THE COURT: SOME GUY FROM ALASKA. MR. MYERS NEVER
4 COULD GET HIS NAME RIGHT.

5 MR. STARNES: MIKE CARNIVOUS (PHONETIC).

6 THE COURT: OKAY. AND THERE WAS ANOTHER ONE, TOO.
7 WE MAY HAVE TO JUST HAUL EVERY ONE OF THEM IN AND FIND OUT
8 WHAT HAPPENED TO THOSE DOCUMENTS THEN AND MAYBE SEE IF THEY
9 CAN SUPPLY THEM TO YOU FIRST.

10 MR. STARNES: YES, SIR. I DIDN'T KNOW WE WERE
11 HAVING THIS HEARING THIS MORNING OR I'D HAVE BEEN A LITTLE
12 BIT MORE PREPARED. I WOULD HAVE BROUGHT THE AFFIDAVIT. MR.
13 NETTLES AND MR. DELGADO FILED AN AFFIDAVIT WITH THE COURT ON
14 MAY THE 21ST OF 2001, AND IN THE AFFIDAVIT THEY MADE AWARE TO
15 THE STATE AND THE COURT THAT THE -- THAT THE FILE WAS IN SUCH
16 A DISARRAY AND PART OF THE FILE WAS LOST, YOUR HONOR, AND
17 AGAIN WE DID THAT THREE YEARS AGO.

18 THE COURT: OKAY.

19 MR. STARNES: AND THE STATE KNEW ABOUT THAT AND I --
20 I MEAN, I CAN'T -- I DON'T FEEL LIKE I SHOULD BE HELD
21 ACCOUNTABLE FOR SOMETHING THAT THE ATTORNEYS DID. NOW, IF I
22 WOULD HAVE HAD IT IN MY POSSESSION AND LOST IT, I COULD SEE
23 THEIR ARGUMENT.

24 THE COURT: I UNDERSTAND.

25 MR. STARNES: BUT, YOU KNOW -- AND THIS IS A CAPITAL

1 CASE, YOUR HONOR.

2 THE COURT: WELL, I SEE THEIR ARGUMENT, TOO, THAT
3 THEY DIDN'T DO IT EITHER.

4 MR. STARNES: RIGHT. I UNDERSTAND.

5 THE COURT: AND IT MAY BE THAT THAT'S WHAT WE NEED
6 TO DO IS LET THESE ATTORNEYS ACCOUNT FOR THE DOCUMENTS AND
7 WHAT HAPPENED AND---

8 MR. HUBBARD: AND, YOUR HONOR, WE MAY HAVE TO GO
9 THROUGH AND RECOPY EVERYTHING AGAIN.

10 THE COURT: RIGHT.

11 MR. HUBBARD: I JUST -- WE'VE GOT LIKE TWO BANKERS
12 BOXES OF JUST STUFF. SOME OF IT'S JUST STUFF THAT WAS NEVER
13 USED AT TRIAL THAT YOU ACCUMULATE.

14 THE COURT: RIGHT.

15 MR. HUBBARD: AND I WASN'T INVOLVED IN THAT TRIAL,
16 SO -- AND MS. LINDLER WASN'T HERE AT THAT TIME, SO IT'S
17 PARTICULARLY DIFFICULT FOR US. MR. RIDDLE WAS OUT OF STATE
18 INTERVIEWING WITNESSES ON THE UPCOMING DEATH PENALTY CASE, SO
19 -- AND MR. MYERS WAS OUT A GOOD PORTION OF LAST WEEK AND THEN
20 PART OF THIS WEEK. SO I -- WE'VE BEEN KIND OF LEFT ON OUR
21 OWN DEVICES. I CERTAINLY DON'T MIND MAKING SURE EVERYTHING
22 IS GIVEN SO THAT WE'RE---

23 THE COURT: RIGHT.

24 MR. HUBBARD: ---WE'RE DOING OUR JOB, BUT I JUST --
25 I KIND OF JUST GOT THE FEELING - AND MAYBE I'M WRONG - BUT I

1 GOT THE FEELING THAT MAYBE HE'S PLAYING SOME GAMES WITH US.

2 THE COURT: WELL, I DON'T KNOW ABOUT THAT. WHAT
3 WE'LL DO IS FIND -- WE'LL JUST GET WITH THE OTHER ATTORNEYS
4 AND FIND OUT. IF THEY SAY THEY GAVE THEM TO HIM, THEN THAT'S
5 -- I GUESS THAT RESOLVES THAT. AND ASSUMING THAT THESE
6 ATTORNEYS HAD THEIR FILE ORGANIZED WHEN THEY GAVE IT TO MR.
7 STARNES---

8 MR. HUBBARD: RIGHT.

9 THE COURT: I DON'T KNOW. WHAT ELSE WERE WE GOING
10 TO DO TODAY? WAS THAT ALL WE NEEDED TO DO WAS TAKE UP THOSE
11 LETTERS TODAY?

12 MR. HUBBARD: THERE WERE THE LETTERS; THOSE WERE THE
13 MAIN THINGS. HE ASKED FOR SOME NOTES FROM LAW ENFORCEMENT.

14 THE COURT: THAT'S RIGHT.

15 MR. HUBBARD: MAJOR TATE IS HERE. I DID TALK WITH
16 LIEUTENANT DARREN AMICK OVER AT THE SHERIFF'S DEPARTMENT. HE
17 SAID HE IS STILL IN THE PROCESS OF TRACKING DOWN TO SEE WHAT,
18 IF ANY, NOTES ARE OUT THERE. SOME OF THE NOTES THAT WERE
19 REQUESTED WERE FOR PEOPLE THAT NO LONGER WORK WITH THE
20 SHERIFF'S DEPARTMENT. SOME OF THEM ARE PEOPLE THAT WE DON'T
21 EVEN HAVE CONTACT WITH APPARENTLY, ACCORDING TO MR. AMICK,
22 BUT HE'S TRYING TO TRACK THOSE DOWN. HE'S AGREED TO MEET
23 WITH ME NEXT WEEK, BRING OVER EVERYTHING HE'S GOT, AND JUST
24 SEE---

25 THE COURT: RIGHT.

1 MR. HUBBARD: AND, AGAIN, WE'LL COPY WHATEVER WE CAN
2 FIND. AND SOME STUFF, YOUR HONOR, WE MAY HAVE TO PRESENT TO
3 YOU TO SEE IF IT'S DISCOVERABLE.

4 THE COURT: ALL RIGHT. WHEN THEY LEAVE, THEY DON'T
5 LEAVE THEIR RECORDS AT THE SHERIFF'S DEPARTMENT?

6 MR. HUBBARD: GENERALLY THEY DO, YOUR HONOR, BUT YOU
7 KNOW, JUST TO BE SURE WE'RE -- TO MAKE SURE WE'RE COVERING
8 OUR BASES, WE'RE TRYING TO CONTACT THESE PEOPLE AS WELL AND
9 SAY, "DID YOU HAPPEN TO TAKE ANYTHING WITH YOU IN YOUR
10 PERSONAL STUFF? IS THERE STUFF THAT MIGHT BE IN ANOTHER
11 FILE?" WE'RE JUST TRYING TO COVER OUR BASES, YOUR HONOR, SO
12 THAT WE COMPLY.

13 THE COURT: RIGHT. RIGHT.

14 MR. HUBBARD: AND I KNOW MR. AMICK -- HE'S GOT A
15 VARIETY OF DUTIES, TOO, SO HE'S -- HE'S AGREED TO HE SET SOME
16 TIME ASIDE, BUT I HAVE NOT BEEN ABLE TO SIT DOWN WITH HIM YET
17 EITHER. AND HE DID CALL ME, AND I DON'T KNOW IF MAJOR TATE
18 KNOWS ANYTHING ELSE ABOUT THAT.

19 MR. TATE: THAT'S WHERE WE WERE, JUDGE.

20 THE COURT: OKAY.

21 MR. TATE: I ASKED MR. AMICK TO PLEASE WORK DIRECTLY
22 WITH THE SOLICITOR'S OFFICE.

23 MR. HUBBARD: THERE WERE QUITE A FEW NAMES THAT WERE
24 LISTED. I THINK HE'S -- IT'S KIND OF A SHOTGUN APPROACH:
25 WHAT, IF ANY, NOTES EXIST? I WANT THEM.

1 THE COURT: OKAY. WELL, LET'S DO THIS. WHAT I'M
2 GOING TO DO IS I AM GOING TO GO AHEAD AND SET SOMETHING UP
3 WITH THE OTHER ATTORNEYS AND MR. STARNES, AND WE MAY HAVE TO
4 DO IT EX PARTE---

5 MR. HUBBARD: YES, SIR, I UNDERSTAND.

6 THE COURT: ---WITHOUT THE SOLICITOR'S OFFICE BEING
7 ALLOWED IN SO THESE ATTORNEYS CAN GO THROUGH EVERYTHING IN
8 DETAIL. BUT I THINK THEY'RE GOING TO HAVE TO ACCOUNT FOR
9 THESE DOCUMENTS, FIRST OF ALL, AND FIND OUT WHY. IF THEY
10 DIDN'T PASS THEM ON TO MR. STARNES, WHY THEY DIDN'T PASS THEM
11 ON TO HIM.

12 MR. HUBBARD: RIGHT. AND TO MAKE THINGS EASIER FOR
13 MR. STARNES, WE TOOK HIS LIST THAT HE GAVE US, AND MS.
14 LINDLER CHECKED OFF ON THAT LIST EVERYTHING THAT YOU SHOULD
15 HAVE IN THAT FILE NOW. AND THEN EVERYTHING THAT WE COULDN'T
16 FIND SHE'S TYPED UP ON A SEPARATE LIST. YOU MIGHT WANT TO GO
17 THROUGH THAT AND MAKE SURE THAT THAT IS CORRECT. YOUR HONOR,
18 I'D ASK THAT MAYBE NEXT TIME WE MEET THAT HE CAN LET US KNOW
19 IF HE SEES ANY DISCREPANCIES. WE'VE GOT OUR OWN COPY AND
20 WE'RE GOING TO GO THROUGH AND MAKE SURE THAT WE GAVE HIM
21 EXACTLY WHAT WE SAID WE GAVE HIM---

22 THE COURT: RIGHT.

23 MR. HUBBARD: ---AGAIN JUST TO MAKE SURE.

24 THE COURT: OKAY. AND, MR. STARNES, AS FAR AS THOSE
25 LAW ENFORCEMENT NOTES, WE'LL ALSO DETERMINE IF YOUR FORMER

1 LAWYERS HAVE ANY OF THOSE NOTES. AND -- AND -- AND THE WHOLE
2 IDEA WILL BE THAT ONCE WE HAVE THAT PROCEEDING WITH THESE
3 ATTORNEYS, THEN WE'LL DETERMINE WHAT'S LEFT AND WHAT'S GOT TO
4 BE -- YOU KNOW, WHAT SOMETHING HAS GOT TO BE DONE WITH. IT
5 MAY BE AT THAT POINT, MR. HUBBARD, THAT YOU'LL STILL NEED TO
6 COME UP WITH SOME OTHER DOCUMENTS YET.

7 MR. HUBBARD: RIGHT.

8 THE COURT: WHAT I MAY DO IS GIVE YOU A LITTLE
9 LEEWAY 'TIL THE END OF YOUR OTHER TRIAL.

10 MR. HUBBARD: YES, SIR.

11 THE COURT: THAT TRIAL IS WHEN? WHEN DOES IT START?

12 MR. HUBBARD: IT'S OCTOBER 11TH, YOUR HONOR.

13 THE COURT: OKAY.

14 MR. HUBBARD: AND, YOUR HONOR, I DON'T -- I
15 CERTAINLY DON'T MIND TRYING TO WORK ON IT NOW. I'VE JUST GOT
16 -- YOU KNOW HOW WE END UP RUNNING FIVE DIFFERENT DIRECTIONS
17 IN THESE KIND OF CASES.

18 THE COURT: OH, I UNDERSTAND. I UNDERSTAND BUT---

19 MR. HUBBARD: AND WE'LL---

20 THE COURT: AND I WILL NOTE THIS AND I'M NOT PICKING
21 ON YOU NOW; OKAY?

22 MR. HUBBARD: YES, SIR.

23 THE COURT: Y'ALL GOT AT LEAST 20 LAWYERS UP THERE
24 NOW, I THINK.

25 MR. HUBBARD: YES, SIR.

1 THE COURT: THAT'S WITH THE ONES THAT HAVE BEEN
2 ADDED. AND I DO TAKE INTO ACCOUNT THOUGH SOME OF THEM ARE
3 NEW.

4 MR. HUBBARD: YES, SIR.

5 THE COURT: MAYBE NOT 20. IT'S CLOSE TO IT. BUT
6 SOME OF THEM ARE NEW AND THEY'RE JUST GETTING BROKEN IN, AND
7 ALSO YOU HAVEN'T -- I KNOW YOU'VE GOT THESE OTHER POSITIONS
8 COMING IN. SO HOPEFULLY WE'LL BE IN A POSITION BEFORE LONG
9 THAT THIS WON'T BE A -- JUST A DEATH PENALTY WON'T TIE UP THE
10 WHOLE SOLICITOR'S OFFICE.

11 MR. HUBBARD: RIGHT. YES, SIR.

12 THE COURT: BUT THAT'S THE KIND OF THE POINT THAT WE
13 NEED TO GET TO AT SOME POINT, AND I THINK WE'LL DO THAT. BUT
14 AS FAR AS THIS RIGHT NOW, I THINK WE JUST NEED TO GET WITH
15 THESE LAWYERS AND FIND OUT WHAT THEY'VE GOT OR HAVEN'T GOT.

16 MR. HUBBARD: YES, SIR.

17 THE COURT: AND THEN WORK FROM THERE.

18 MR. HUBBARD: YOUR HONOR, AGAIN ON THE NOTES, SOME
19 OF THESE NOTES WERE BASICALLY THE BASIS FOR REPORTS. WE MAY
20 REQUEST THAT YOUR HONOR REVIEW THESE NOTES TO SEE IF THEY
21 ARE, IN FACT, DISCOVERABLE NOTES. A LOT OF THE -- TYPICALLY,
22 AS YOUR HONOR KNOWS---

23 THE COURT: I UNDERSTAND. SURE.

24 MR. HUBBARD: ---WE DON'T GIVE NOTES, BUT I
25 UNDERSTAND WE DID GIVE SOME NOTES LAST TIME. I DON'T KNOW

1 WHAT, IF ANYTHING, IS STILL OUT THERE, BUT, YOUR HONOR, JUST
2 IN CASE IT'S LIKE NOTES IN PREPARATION FOR TRIAL OR SOMETHING
3 LIKE THAT THAT WOULD CLEARLY NOT BE DISCOVERABLE, I'D PREFER
4 YOUR HONOR TO REVIEW IT BEFORE WE JUST HAND IT OVER JUST IN
5 CASE IT'S SOMETHING THAT, YOU KNOW, IS MORE FOR OUR TRIAL
6 PURPOSES AS OPPOSED TO THE SUBSTANTIVE PURPOSES.

7 THE COURT: OKAY. ALL RIGHT. WHAT OTHER ISSUES DO
8 WE NEED TO TAKE UP? WERE THOSE THE ONLY TWO?

9 MR. HUBBARD: THOSE WERE THE ONLY ONES I RECALL.

10 MR. STARNES: YOUR HONOR, LAST WEEK WHEN WE WAS OVER
11 IN RICHLAND COUNTY THERE WAS SOME MOTIONS THAT YOU HEARD IN
12 REFERENCE TO THE COURT EXHIBITS, AND IF WE COULD TAKE THAT UP
13 AND I GOT TWO OTHER SMALL ONES.

14 THE COURT: RIGHT. I GOT YOUR MOTION ON WANTING TO
15 EXAMINE THE COURT EXHIBITS. MADAM CLERK, DO YOU -- DO Y'ALL
16 STILL HAVE THOSE EXHIBITS?

17 THE CLERK: YOUR HONOR, I HAVE ALL THE COURT'S
18 EXHIBITS. THE STATE'S EVIDENCE WAS RELEASED BACK TO THE
19 SHERIFF'S DEPARTMENT. I CAN GIVE YOU THE EXACT DATE IN JUST
20 A MINUTE. AND I HAVE THE DEFENSE EXHIBITS DOWN IN MY OFFICE.
21 LET ME SEE HERE. THE STATE'S EXHIBITS WERE RELEASED PURSUANT
22 TO A COURT ORDER BACK IN JUNE OF '03.

23 THE COURT: OKAY. OKAY.

24 THE CLERK: I HAVE KEPT THE CUSTODY OF THE COURT'S
25 EXHIBITS AND THE DEFENSE EXHIBITS SINCE THAT TIME. THE

1 SHERIFF'S DEPARTMENT---

2 THE COURT: OKAY.

3 THE CLERK: LINDA RAINES (PHONETIC) ALONG WITH JIM
4 HICKMAN PICKED UP AND ACKNOWLEDGED RECEIPT EXCEPT FOR CERTAIN
5 ONES THAT ARE STILL IN THE CUSTODY OF THE SUPREME COURT THAT
6 I'VE YET TO GET BACK.

7 THE COURT: OKAY. AS FAR AS THE DEFENSE EXHIBITS,
8 MR. STARNES, I ASSUME YOU WANT THE DEFENSE EXHIBITS. IS THAT
9 RIGHT?

10 MR. STARNES: YES, SIR. WHAT I WOULD LIKE TO DO,
11 YOUR HONOR, IF I COULD IS I WOULD LIKE TO SEE THE DEFENSE
12 EXHIBITS, THE EXHIBITS THAT WERE COURT EXHIBITS, AND THE
13 STATE EXHIBITS, AND I HAVE A LIST OF THEM.

14 THE COURT: WELL, WHY -- MADAM CLERK, DO YOU KNOW --
15 ALL THOSE DEFENSE EXHIBITS, ARE THERE ANY THAT COULD NOT BE
16 GIVEN TO MR. STARNES?

17 THE CLERK: I HAVE TWO, YOUR HONOR. WHEN I WAS
18 DIVIDING THE EVIDENCE, DEFENSE NUMBER 3 WHICH IT STATES IT'S
19 A PHOTO I HAVE LOOKED EVERYWHERE AND I CANNOT FIND THAT
20 PICTURE.

21 THE COURT: WHAT WAS IT A PHOTOCOPY OF?

22 THE CLERK: I DON'T KNOW, YOUR HONOR. ACCORDING TO
23 THE COURT REPORTERS, IT WAS A PHOTO. I HAVE EVERYTHING
24 INCLUDING DEFENSE 5 WHICH WAS MADE A COURT'S EXHIBIT NUMBER
25 15. THAT IS ALL THOSE PICTURES THAT WERE TAKEN OF THE

1 MOCK-UP OF THE COURTROOM---

2 THE COURT: RIGHT.

3 THE CLERK: ---WHERE THEY MADE IT---

4 THE COURT: RIGHT.

5 THE CLERK: ---LIKE THE ROOM. AND ALL OF THOSE WERE
6 TAKEN OUT OF DEFENSE STATUS AND PUT INTO THE COURT'S EXHIBIT.

7 THE COURT: OKAY. WELL, I DON'T MIND GIVING THOSE
8 TO HIM.

9 THE CLERK: BUT I DO HAVE EVERY -- EVERY OTHER PIECE
10 OF EVIDENCE FROM THE DEFENSE ALL THE WAY THROUGH NUMBER 42.
11 I HAVE EVERYTHING.

12 THE COURT: OKAY. AND HOW ABOUT MAYBE JUST -- IF
13 YOU CAN, CHECK THEM AND SEE IF YOU CAN DETERMINE WHETHER OR
14 NOT THEY'RE SOMETHING THAT CAN BE GIVEN BACK TO MR. STARNES.

15 THE CLERK: CAN I REVIEW THAT WITH MR. TATE AND THEM
16 TO SEE IF THE JAIL WILL ALLOW HIM TO HAVE IT? AND THE REASON
17 I'M ASKING, YOUR HONOR---

18 THE COURT: RIGHT.

19 THE CLERK: ---IS THE PICTURES -- THEY'RE POLAROIDS
20 AND ALL, BUT THEY SMELL LIKE BATTERY ACID. THEY HAVE A REAL
21 STRONG -- I'VE GOT THEM IN MY OFFICE.

22 THE COURT: YEAH.

23 THE CLERK: I'LL BE MORE THAN GLAD TO BRING THEM UP
24 AND LET YOU SEE THEM, YOUR HONOR, BUT THEY HAVE A REAL STRONG
25 ACID SMELL TO THEM, AND I DON'T KNOW IF THAT'S FROM THE

1 DEVELOPMENT ON THE FILM---

2 THE COURT: RIGHT.

3 THE CLERK: ---AND I DON'T KNOW IF THAT'S A TOXIC
4 MATERIAL THAT THE JAIL WILL ALLOW THEM TO HAVE BECAUSE I
5 DON'T KNOW.

6 THE COURT: RIGHT. WELL, THEN THEY'LL HAVE TO BE
7 KEPT SOMEWHERE ELSE. MR. TATE?

8 MR. TATE: I WILL BE MORE THAN HAPPY TO HAVE --
9 CAPTAIN WILLIAMS AND I CAN STOP BY THE CLERK'S OFFICE AND
10 THEN -- I'M NOT TOO UP ON JAIL SECURITY, BUT I COULD GET THE
11 CAPTAIN TO TAKE A LOOK AND SEE. YOU KNOW, IF THE STAPLES ARE
12 NOW AND THERE'S NO HARD PIECES AND NO PLASTIC... I SIMPLY
13 DON'T KNOW---

14 THE CLERK: THE ONLY THING I'M CONCERNED ABOUT ARE
15 THE POLAROIDS.

16 MR. TATE: I REMEMBER THE OLD PICTURES WHERE THE
17 STUFF CAME OUT.

18 THE COURT: YEAH. YEAH.

19 THE CLERK: AND IT'S REAL STRONG.

20 MR. TATE: AND I DON'T KNOW. I JUST SIMPLY DON'T
21 KNOW.

22 THE COURT: YOU MAY HAVE TO GET A PICTURE OF THE
23 POLAROIDS.

24 MR. STARNES: CAN WE SCAN THEM ON A COMPUTER AND
25 JUST PRINT THEM OUT ON PAPER?

1 THE COURT: THAT'S WHAT I WAS THINKING. WE CAN JUST
2 SCAN THEM.

3 MR. STARNES: IF YOU CAN SCAN THEM ON A COMPUTER AND
4 JUST PRINT THEM ON PAPER, THAT WOULD---

5 THE CLERK: WE'LL FIND SOMEWHERE TO GET THEM
6 SCANNED.

7 THE COURT: OKAY.

8 THE CLERK: BUT I DO NOT HAVE ANY IDEA WHAT DEFENSE
9 3 WAS. MOST OF THE---

10 THE COURT: WELL, COULD YOU---

11 THE CLERK: ---FIRST PHOTOS ENTERED WERE LITTLE
12 BITTY PICTURES.

13 THE COURT: WOULD -- WOULD THERE NOT BE SOMETHING IN
14 THE TRAN -- DOES ANYBODY HAVE THE TRANSCRIPT? DO Y'ALL STILL
15 HAVE THE TRANSCRIPT?

16 THE CLERK: DO YOU HAVE THE TRANSCRIPT?

17 MR. STARNES: YES, MA'AM, I'VE GOT IT AND I WILL
18 LOOK BACK THROUGH IT WHEN I GET BACK TONIGHT -- TODAY.

19 THE COURT: SEE WHAT THE TRANSCRIPT SAYS.

20 MR. STARNES: THE CALENDARS AND THE -- THERE WERE
21 CERTAIN MAPS AND CERTAIN CALENDARS THAT WERE OFFERED INTO
22 EVIDENCE, AND WHAT I WOULD LIKE TO DO, YOUR HONOR, IF I
23 COULD---

24 THE COURT: DEFENSE? DEFENSE EXHIBITS?

25 THE CLERK: HUH-UH.

1 MR. STARNES: STATE EXHIBITS.

2 THE COURT: OKAY.

3 MR. STARNES: WHAT I WOULD LIKE TO DO IS -- IS -- IS
4 PHOTOGRAPH THEM, TAKE PHOTOS OF THEM.

5 THE COURT: OKAY.

6 MR. HUBBARD: YOUR HONOR, I GUESS MY ONLY OBJECTION
7 TO THAT IS, FIRST OF ALL, IF IT'S STUFF MY OFFICE CREATED FOR
8 PURPOSES OF THE TRIAL, IT WENT THROUGH THAT PROCESS OF WHERE
9 WE MADE THE OFFER TO OFFER IT INTO EVIDENCE. WE HAD TO JUMP
10 THAT HURDLE TO GET IT INTO EVIDENCE. WHETHER WE USE THAT
11 SAME EXACT THING IN THE NEXT TRIAL, I DON'T KNOW, BUT IT'S
12 NOT SOMETHING THAT'S DISCOVERABLE. IT'S LIKE EVERY -- LIKE
13 EVERY OTHER DEFENDANT OR DEFENSE ATTORNEYS THAT -- IN A
14 TRIAL, WHEN IT'S PRESENTED AT TRIAL WE USUALLY SHOW THEM:
15 THIS IS WHAT WE INTEND TO DO, AND IF THEY HAVE AN OBJECTION
16 AND THEY CAN ARTICULATE A REASON TO KEEP IT OUT, IT DOESN'T
17 GO INTO EVIDENCE.

18 THE COURT: RIGHT.

19 MR. HUBBARD: I JUST HAVE A PROBLEM WITH THAT AND,
20 PLUS, I DON'T KNOW THAT WE'RE GOING TO BE USING THE SAME
21 EXHIBITS.

22 THE COURT: OKAY. WELL, AS YOU KNOW, I THINK YOU DO
23 HAVE TO PRODUCE SOME DIAGRAMS, EXHIBITS AND MAPS, ET CETERA,
24 UNDER THE DISCOVERY RULES FROM TIME TO TIME.

25 MR. HUBBARD: RIGHT, BUT THE STUFF THAT'S GENERATED

1 FOR PURPOSES OF ESTABLISHING OUR CASE I DON'T BELIEVE WE DO,
2 STUFF THAT'S MADE WITH THE PURPOSE OF TRYING THE CASE,
3 PURPOSES OF TRIAL.

4 THE COURT: RIGHT.

5 MR. HUBBARD: STUFF THAT WE'VE HAD A GUY IN OUR
6 OFFICE DRAW---

7 THE COURT: RIGHT.

8 MR. HUBBARD: ---FOR PURPOSES OF, YOU KNOW, HAVING A
9 WITNESS EXPLAIN WHERE SOMETHING TRANSPIRED, YOU KNOW, HE'S IN
10 THE SAME POSITION. HE CAN HAVE SOMEONE DO THAT FOR HIM. AND
11 WHETHER WE USE THOSE SAME DIAGRAMS OR NOT, I DON'T KNOW, YOUR
12 HONOR. WE'RE SO FAR OUT AT THIS POINT. I HAVEN'T TALKED TO
13 SOLICITOR MYERS TO SEE WHAT HIS IDEAS ARE ON THIS AT THIS
14 POINT.

15 THE COURT: ALL RIGHT.

16 MR. HUBBARD: I JUST KNOW IT'S TYPICALLY BEYOND THE
17 SCOPE OF DISCOVERY, BEYOND RULE 5, BEYOND BRADY. IT'S NOT
18 EXCULPABLE. IT'S SOMETHING SIMPLY THAT WE CREATED FOR
19 PURPOSES OF ESTABLISHING OUR POINT EITHER IN CLOSINGS OR IN
20 TESTIMONY.

21 THE COURT: ARE YOU TALKING ABOUT DEMONSTRATIVE
22 EVIDENCE?

23 MR. HUBBARD: STUFF THAT WAS USED FOR BOTH
24 DEMONSTRATIVE PURPOSES AND FOR STUFF THAT WE ACTUALLY, AFTER
25 A WITNESS TESTIFIES, THAT WE ENTER INTO EVIDENCE BUT STUFF

1 THAT WE CREATED FOR THAT WITNESS TO ENTER IN EVIDENCE.

2 THE COURT: RIGHT. OKAY.

3 MR. STARNES: YOUR HONOR, IT'S---

4 THE COURT: YES, SIR. GO AHEAD.

5 MR. STARNES: IT'S MY POSITION THAT IF IT -- IF IT
6 COME INTO EVIDENCE AT THE TRIAL, AT MY ORIGINAL TRIAL, IF THE
7 STATE OFFERED IT INTO EVIDENCE AND IT WAS MADE AN EXHIBIT, I
8 WOULD ASK FOR IT. I BELIEVE IT'S -- IT SHOULD BE PUBLIC
9 RECORD. I MEAN...

10 THE COURT: WELL, NOT -- IT MAY BUT NOT NECESSARILY
11 SO. DEPENDING. IT MAY BECOME AN ISSUE IF -- IF IT'S
12 SOMETHING THEY'RE GOING TO USE AGAIN, OBVIOUSLY IT MAY BE
13 DISCOVERABLE. IF IT'S IMPEACHMENT -- AND THAT MAY BE THE
14 THORNY ISSUE, MR. HUBBARD, IF YOU -- IF YOU DECIDE THAT TO
15 USE -- TO NOT USE SOMETHING WITH A WITNESS YOU USED BEFORE,
16 IT MAY BE SOMETHING THAT COULD BE USED TO IMPEACH THAT
17 PARTICULAR WITNESS.

18 MR. HUBBARD: YES, SIR.

19 THE COURT: I DON'T KNOW.

20 MR. HUBBARD: YES, SIR.

21 THE COURT: HE'D PROBABLY HAVE A RIGHT TO GET THAT
22 IF THAT OCCURRED.

23 MR. HUBBARD: AND IT MAY BE SOMETHING AGAIN THAT WE
24 NEED TO SIT DOWN WITH YOU, IF IT COMES DOWN TO THAT---

25 THE COURT: RIGHT.

1 MR. HUBBARD: ---SAYING, YOUR HONOR, HERE'S WHAT WE
2 GOT AGAIN, AND WE CERTAINLY DON'T MIND DOING THAT. AND I'M
3 NOT TRYING TO MAKE THINGS DIFFICULT BUT...

4 THE COURT: OH, I UNDERSTAND. WELL, THESE AREN'T
5 SUPPOSED TO BE EASY CASES ANYWAY.

6 MR. HUBBARD: RIGHT.

7 THE COURT: THEY'RE SUPPOSED TO BE DIFFICULT.

8 MR. HUBBARD: RIGHT.

9 THE COURT: DO YOU HAVE A LIST OF THE STATE'S
10 EXHIBITS, MR. STARNES?

11 MR. STARNES: YES, SIR. WHAT I HAVE, YOUR HONOR, IS
12 PAGES 14 THROUGH 18 OF THE -- OF THE TRIAL RECORD.

13 THE COURT: RIGHT.

14 MR. STARNES: SOME -- I REALIZE SOME OF THIS STUFF
15 -- THERE WAS A GUN THAT WAS INTRODUCED INTO EVIDENCE, AND I
16 WOULD LIKE TO -- I'M SURE I'M ENTITLED TO THAT, TO TAKE
17 PHOTOGRAPHS OF THAT -- THAT ITEM. ALSO, THERE'S SOME VIDEOS
18 THAT WAS -- THAT WAS INTRODUCED. WOULD YOUR HONOR LIKE A
19 COPY OF IT?

20 THE COURT: NO. NO. I'M JUST KIND OF -- Y'ALL KIND
21 OF LEAD ME RIGHT NOW, AND I DON'T MIND DOING THAT.

22 MR. HUBBARD: WE CAN MAKE COPIES OF STUFF LIKE THAT,
23 YOUR HONOR. THAT'S NOT A PROBLEM. AND IT WAS PROBABLY DONE
24 PRIOR AGAIN -- THIS IS THAT GRAY AREA WITH THE PRIOR
25 ATTORNEYS OR WHAT WAS MADE AVAILABLE TO THEM, WHETHER THEY

1 CHOSE NOT TO TAKE A COPY OR WHATEVER.

2 THE COURT: ALL RIGHT. WHAT I'LL DO IS LET YOU GO
3 THROUGH IT.

4 MR. HUBBARD: YES, SIR.

5 THE COURT: AND THEN BASICALLY JUST TELL ME WHAT YOU
6 OBJECT TO. TELL ME WHAT YOU AGREE WITH AND WHAT YOU OBJECT
7 TO, AND THEN WE'LL TAKE UP WHAT YOU OBJECT TO.

8 MR. HUBBARD: YES, SIR.

9 THE COURT: AND WHAT I'LL DO IS I'LL GIVE YOU SOME
10 TIME AGAIN UNTIL AFTER THE RADWELL TRIAL.

11 MR. HUBBARD: YES, SIR.

12 THE COURT: AND WE'LL SET A DATE. IN FACT, LET'S --
13 THE RADWELL STARTS WHEN NOW? THE 11TH?

14 MR. HUBBARD: YES, SIR.

15 THE COURT: THAT'S SUPPOSED TO BE, WHAT, TWO WEEKS?

16 THE CLERK: JUDGE KINARD SAID THREE BECAUSE HE HAD
17 ME RESERVE THE ROOMS ALL THE WAY UP THROUGH THE 5TH OF
18 NOVEMBER.

19 THE COURT: THAT MAKES IT ABOUT TWO OR THREE WEEKS
20 UNLESS HE JUST REALLY MOVES SLOWLY AND IT MAY BE. I DON'T
21 KNOW. ALL RIGHT. WE'LL PROBABLY LOOK TOWARDS SOMETHING LIKE
22 MID NOVEMBER THEN.

23 MR. HUBBARD: OKAY.

24 THE COURT: IF THAT TURNS OUT TO BE THE CASE.

25 MR. HUBBARD: YES, SIR.

1 THE COURT: YOU SAY JUDGE KINARD SAID THAT?

2 THE CLERK: YES, SIR. HE HAD ME SCHEDULE THE ROOM
3 RESERVATIONS FOR THAT FAR OUT.

4 THE COURT: OKAY.. MR. TATE?

5 MR. TATE: YOUR HONOR, VERY, VERY BRIEFLY. I THINK
6 IN COURT OVER IN RICHLAND COUNTY YOU HAD MENTIONED IF WE
7 COULD GET SOME OF THE POLICY STUFF UNDER SEAL TO THE CLERK IN
8 TEN DAYS... WE'D LIKE ANOTHER TEN DAYS. WE'RE DOING THE
9 SAME THING. WE'VE GOT VOLUMINOUS DISCOVERY THAT THE JAIL IS
10 HANDLING IN THE RADWELL MATTER, AND THERE'S SOME 400 OR 500
11 PAGES CAPTAIN WILLIAMS HAS TO READ INDIVIDUALLY. IF WE COULD
12 JUST HAVE ANOTHER TEN DAYS, I'LL BE GLAD TO RESPOND TO MR.
13 STARNES IN THAT TIME LIMIT.

14 MR. STARNES: I DON'T OBJECT TO THAT, YOUR HONOR.

15 THE COURT: OKAY.

16 MR. TATE: THANK YOU.

17 MR. STARNES: I DON'T OBJECT TO THAT. YOUR HONOR,
18 ON SOME OF THESE POLICIES THAT THEY REQUESTED OR I REQUESTED,
19 I BELIEVE MR. TATE MADE MENTION OF POSSIBLY MOVING ME
20 SOMEWHERE. I'VE BEEN LOOKING AT SOME VIDEOS AND SOME
21 DIFFERENT THINGS THAT WERE ATTORNEY WORK PRODUCT, AND AS I
22 MENTIONED BEFORE, AT SOME POINT IN THIS TRIAL PURSUANT TO
23 SIMMONS AND SKIPPER AND THOSE -- THOSE LINE OF CASES, MY
24 CONDUCT WHILE IN JAIL MIGHT BECOME AN ISSUE. IF THEY'LL JUST
25 KEEP THE STUFF UNDER SEAL PRIOR TO TRIAL -- THEY'VE BEEN

1 TAKING ME TO THE BOOKING AREA.

2 WHAT THEY DO IS THEY TAKE ME DOWN THERE. I LOOK AT
3 SOME OF THE -- SOME OF THE VIDEOS, LISTEN TO SOME OF THE
4 TAPES, AND THEN THEY TAKE ME TO A ROOM AND STRIP SEARCH ME TO
5 MAKE SURE THAT I DON'T HAVE ANY CONTRABAND OR TAKE ANY OF
6 THIS STUFF BACK TO MY JAIL CELL WITH ME. AND AT SOME POINT
7 WHEN I REVIEW THESE POLICIES IF WE COULD -- IF THEY COULD
8 JUST DO THAT -- DO THEY OBJECT TO THAT?

9 MR. TATE: YOUR HONOR, THE ONLY THING THAT CONCERNS
10 ME IS HAVING -- AND NOT KNOWING SPECIFICALLY WHAT POLICY
11 WE'RE GOING TO TALK ABOUT... FOR EXAMPLE, IF IT IS THE HIGH
12 SECURITY ESCAPE POLICIES, WE WOULD OBJECT TO HIM REMAINING
13 HOUSED IN OUR FACILITY ONCE HE'S HAD A CHANCE TO---

14 THE COURT: RIGHT. RIGHT.

15 MR. TATE: ---REVIEW THOSE THINGS. THAT JUST CAN'T
16 HAPPEN, YOUR HONOR.

17 THE COURT: I UNDERSTAND. WELL, MR. STARNES, AS I
18 UNDERSTAND, THEY'RE SAYING EVEN ON SOME OF THESE APPARENTLY
19 WHAT ARE CONSIDERED TOP SECURITY TYPE THINGS THEY'RE WILLING
20 TO LET YOU SEE THEM. THEY JUST -- AND, UNDERSTAND, THEY
21 DON'T WANT YOU GOING BACK INTO THE MAIN POPULATION---

22 MR. STARNES: I UNDERSTAND.

23 THE COURT: ---AFTER YOU'VE SEEN ALL THAT.

24 MR. STARNES: I UNDERSTAND. ACTUALLY IF WE GET INTO
25 A PENALTY PHASE, YOU KNOW, I WOULD NEED TO LOOK AT SOME OF

1 THAT STUFF BECAUSE, YOU KNOW, I DON'T KNOW -- I DON'T KNOW
2 WHAT THE STATE'S INTENTION IS, WHAT WITNESSES THEY'RE GOING
3 TO CALL, BUT, YOU KNOW, APPARENTLY IF THEY CALL SOME OF THE
4 -- SOME OF THE JAIL SECURITY OR SOME OF THE GUARDS FROM OUT
5 AT THE JAIL, THEN I BELIEVE SOME OF THAT INFORMATION THAT I'M
6 REQUESTING WOULD BE IMPEACHMENT AND I BELIEVE I WOULD BE
7 ENTITLED TO IT.

8 IF THEY WOULD JUST LET ME KNOW WHAT THEY'RE NOT
9 GOING TO PRODUCE AND MAKE SURE IT'S KEPT UNDER SEAL WITH THE
10 COURT -- AND IF THEY MOVE ME TO ANOTHER FACILITY, THEN WE'RE
11 IN A SITUATION WHERE THOSE GUARDS IN ANOTHER FACILITY,
12 WHETHER IT'S CALHOUN OR ORANGEBURG COUNTY OR WHATEVER JAIL
13 THAT I'M REQUESTING POLICIES FROM THEM -- AND HERE WE'VE GOT
14 A SITUATION HERE JUST IN ANOTHER COUNTY.

15 THE COURT: ALL RIGHT, SIR.

16 MR. STARNES: BUT I DON'T -- I DON'T BELIEVE -- I
17 DON'T BELIEVE I'LL NEED THE SECURITY POLICIES AND STUFF
18 UNLESS WE GET IN THE PENALTY PHASE. SOME OF THE OTHER STUFF
19 -- I BELIEVE THE POLICIES RELATING TO MEDICAL, TO THE KITCHEN
20 AND STUFF LIKE THAT, SOME OF THE OTHER POLICIES, I DON'T
21 BELIEVE THERE WOULD BE NO SECURITY PROBLEM. IF THEY WOULD
22 JUST LET ME KNOW WHAT THEY'RE NOT GOING TO HAVE, WHAT THEY'RE
23 NOT GOING TO MAKE AVAILABLE, AND IF YOU COULD MAKE A JUDICIAL
24 DETERMINATION AT SOME OTHER TIME LATER, YOUR HONOR.

25 THE COURT: OKAY.

1 MR. STARNES: AS FAR AS BEING HOUSED IN THE JAIL,
2 I'M IN AN AREA RIGHT NOW THAT IS VERY COMFORTABLE, AND IF
3 THEY WOULD JUST PLEASE NOT MOVE ME... I KNOW I HAD SPOKE TO
4 CAPTAIN WILLIAMS PROBABLY ABOUT A MONTH AGO, AND HE MENTIONED
5 THE POSSIBILITY OF THEM MOVING ME TO ANOTHER AREA OF THE JAIL
6 WHICH WOULD EITHER BE I'M ASSUMING EITHER BOOKING OR THE
7 SPECIAL MANAGEMENT HOUSING UNIT KNOWN AS THE FIRST FLOOR.
8 AND THAT AREA OF THE JAIL, YOUR HONOR, IS WHERE INMATES THAT
9 HAVE BAD CONDUCT THAT HAVE ASSAULTED OFFICERS -- AND IT'S
10 VERY LOUD DOWN THERE, AND IT'S JUST ALMOST IMPOSSIBLE REALLY
11 FOR ME TO PREPARE FOR THIS TRIAL BEING HOUSED DOWN THERE IN
12 AN ENVIRONMENT THAT IS---

13 THE COURT: ALL RIGHT.

14 MR. STARNES: ---THAT IS JUST REALLY -- THAT IS...

15 THE COURT: WELL, IF THAT HAPPENS AND IT BECOMES A
16 PROBLEM, JUST LET ME KNOW AND WE'LL TAKE IT UP, IF NECESSARY.

17 MR. STARNES: YES, SIR.

18 THE COURT: BECAUSE OBVIOUSLY I DON'T GET INTO JAIL
19 POLICY. I LET THEM HANDLE THE THINGS THE WAY THEY NEED TO DO
20 IT.

21 MR. STARNES: RIGHT.

22 THE COURT: THE ONLY WAY I WOULD GET INTO IT WOULD
23 BE IF IT WERE INTERFERING WITH YOUR ABILITY TO PREPARE FOR
24 TRIAL.

25 MR. STARNES: RIGHT. AND WHERE I'M AT RIGHT NOW,

1 YOUR HONOR, IT'S -- I CAN STUDY. THERE'S THREE OF US IN A
2 CELL, IN A TWO-MAN CELL, WHICH IT MAKES IT A LITTLE DIFFICULT
3 BECAUSE I HAVE TO SLEEP BY THE TOILET AND I HAVE TO DO MY
4 WORK ON THE FLOOR, BUT I'M MAKING DO WITH WHAT I'VE GOT RIGHT
5 NOW. AS LONG AS THEY'RE NOT GOING TO CALL MY CELL MATES OUT
6 TO TESTIFY AGAINST ME BECAUSE OF THE STUFF THAT I'VE GOT...
7 NOW, MR. GRAHAM BROUGHT UP THE POINT THAT I HAD SEVERAL
8 BANKER BOXES IN THERE. THERE'S A LOT OF STUFF IN THERE
9 THAT'S ATTORNEY/CLIENT WORK PRODUCT AND TRIAL PREPARATION
10 STUFF THAT I'M KIND OF CONCERNED, YOU KNOW, THAT---

11 THE COURT: DO YOUR CELL MATES HAVE ACCESS TO IT?

12 MR. STARNES: YES, SIR. THEY'RE IN THE SAME -- AS A
13 MATTER OF FACT, IT'S STORED UNDER THEIR BED BECAUSE I'M ON
14 THE FLOOR. NOW, ONE OF -- ONE OF MY CELL MATES, HE DOESN'T
15 SPEAK ENGLISH; HE CAN'T READ. THE OTHER ONE - HE HAS MENTAL
16 CONDITIONS, YOU KNOW. AS LONG AS THEY'RE NOT GOING TO CALL
17 THEM OUT OR THEM GUYS DON'T GO THROUGH MY STUFF -- AND I
18 HAVEN'T -- I HAVEN'T DETECTED A PROBLEM WITH THAT BECAUSE I
19 DO CERTAIN THINGS AND I PRETTY MUCH KNOW THE WAY MY FILES
20 ARE. YOU KNOW, AT THE POINT RIGHT NOW IT'S NOT A PROBLEM.

21 THE COURT: OKAY.

22 MR. STARNES: IF -- I KNOW YOU DON'T -- LIKE YOU
23 SAID, YOU DON'T GET INTO HOUSING MATTERS, BUT THERE'S --
24 THERE'S THREE OF US HOUSED IN THE CELL THAT'S GOT -- THAT'S
25 SET UP FOR TWO PEOPLE, AND I HAVE THESE FILES AND STUFF IN

1 THERE. IF THEY WOULD JUST TAKE INTO CONSIDERATION POSSIBLY
2 JUST MOVING ONE OUT, IT WOULD -- IT WOULD HELP ME
3 TREMENDOUSLY. FOR A YEAR AND A HALF I WAS ONLY HOUSED WITH
4 ONE OTHER INMATE AND THAT WAS MR. BURKE, AND THERE WAS JUST
5 TWO OF US IN THERE AND I STILL HAD A LOT -- YOU KNOW, A LOT
6 OF THE FILES AND STUFF AND STUFF THAT I HAD BROUGHT BACK FROM
7 WHEN I WAS ON DEATH ROW, MATERIAL AND STUFF FOR STUDYING FOR
8 RETRIAL.

9 IF MR. TATE OR MR. WILLIAMS COULD TAKE INTO
10 CONSIDERATION MOVING ONE OF THOSE INMATES OUT, IF THEY COULD
11 DO THAT, IT WOULD -- IT WOULD HELP ME TREMENDOUSLY BECAUSE
12 THERE'S -- LIKE I SAID, THERE'S THREE OF US IN THERE AND I'VE
13 GOT ALL THIS STUFF IN THERE, AND IT'S KIND OF CRAMPED. BUT
14 IF I'VE GOT TO STAY CRAMPED UP VERSUS GOING TO SPECIAL
15 MANAGEMENT UNIT WHERE IT'S AN AREA IN THE JAIL THAT I CAN'T
16 WORK THAT IS -- THAT THERE'S A LOT OF VIOLENCE AND STUFF,
17 I'LL JUST HAVE TO DEAL WITH WHAT I GOT AND JUST MAKE THE BEST
18 OF IT. BUT IF THEY WOULD TAKE INTO CONSIDERATION THAT, YOUR
19 HONOR, I WOULD VERY MUCH APPRECIATE IT.

20 THE COURT: I UNDERSTAND. WELL, FROM WHAT I GATHER,
21 THEY'RE NOT -- THEY'RE NOT PLANNING TO MOVE YOU. THAT WOULD
22 ONLY COME ABOUT, I GATHER, IF -- IF YOU HAD THOSE POLICIES OR
23 WHATEVER, THEY'D HAVE TO DO SOMETHING WITH THAT.

24 MR. TATE: YOUR HONOR, THE ONLY -- THE ONLY CONCERN
25 HAS BEEN IS THAT MR. STARNES I BELIEVE IN A PREVIOUS HEARING

1 HAD MENTIONED HIS MATERIAL IN THE BANKERS BOXES OR SOMEBODY
2 HAD... WE ARE PREPARED AND WE TOOK A LOOK EARLY ON TO SAY
3 WHAT CAN WE DO TO ACCOMMODATE MR. STARNES TO... HE CAN BE
4 SINGLE-CELLED IF HE'S WORRIED ABOUT OTHER INMATES, AND I
5 CERTAINLY CAN'T EVER WALK INTO COURT AND REPRESENT THAT SOME
6 INMATE MIGHT NOT PICK UP A TELEPHONE AND TRY TO IMPROVE HIS
7 OWN LIFE. I JUST CAN'T -- I HAVE NO CONTROL OVER THAT. IT'S
8 NOT ME; IT'S NOT MY CLIENT.

9 WE ARE PREPARED TO SINGLE-HOUSE MR. STARNES, BUT WE
10 JUST CAN'T DO IT IN A POD IN THOSE -- IN THOSE -- IN THOSE
11 UNITS. WE HAD GONE SO FAR AS GETTING A LOCKING FOUR-FOOT
12 CABINET WHERE MR. STARNES COULD HAVE A KEY IN HIS PERSONAL
13 POSSESSION TO MAINTAIN THE THINGS HE THOUGHT WERE
14 ATTORNEY/CLIENT PRIVILEGE SIMPLY BECAUSE WE UNDERSTAND FROM
15 THE LAST PRO SE DEATH PENALTY TRIAL THAT WE DID, YOU KNOW,
16 HOW IMPORTANT THOSE ISSUES BECOME AND, YOU KNOW, WHEN THINGS
17 ARE SEALED WITH EVIDENCE TAPE AND TO DO THOSE SORT OF THINGS.

18 HOWEVER, WE CAN'T ACCOMMODATE EVERY WISH TO HOUSE
19 HIM WHERE HE WANTS THE WAY HE WANTS. THERE HAS TO BE SOME
20 BALANCE HERE, AND WE ARE PREPARED -- IF HE WOULD LIKE TO LIVE
21 BY HIMSELF, LOCK HIS THINGS UP IN A CABINET WHICH I
22 UNDERSTAND HE WOULD MAINTAIN THE KEY TO KEEP IT FROM
23 ANYBODY'S PRYING EYES, THEN WE'RE PREPARED TO DO THAT.

24 THE COURT: OKAY. DO YOU WANT A CHANCE TO TRY TO
25 WORK THAT OUT WITH THEM, MR. STARNES?

1 MR. TATE: MR. STARNES IS CERTAINLY WELCOME TO TALK
2 TO CAPTAIN WILLIAMS, AND I'M SURE CAPTAIN WILLIAMS WOULD...

3 THE COURT: OKAY.

4 CAPTAIN WILLIAMS: IT'S IN THE SPECIAL MANAGEMENT
5 UNIT.

6 THE COURT: I'LL LET YOU...

7 CAPTAIN WILLIAMS: IT'S IN THE SPECIAL MANAGEMENT
8 UNIT AREA, SIR. I DON'T HAVE ANYTHING -- THE PODS -- WHEN
9 WE'RE AT A CROWDED RATE OF RIGHT NOW OVER 800 PEOPLE, YOU
10 CAN'T PULL DIFFERENT PEOPLE OUT. IF I PULLED THE THIRD MAN
11 OUT OF HIS CELL, WE'LL PUT FOUR MEN IN A CELL. SO IT'S THOSE
12 KIND OF -- THOSE KIND OF CROWDS THERE. A POD IS BUILT FOR 56
13 PEOPLE. WE'RE RUNNING 85 TO 100 PEOPLE IN A POD, SO THERE'S
14 NOT REALLY THAT KIND OF ROOM AVAILABLE. AND THOSE ARE THE
15 MORE DESIRABLE AREAS BECAUSE IT'S NEWER, IT'S BETTER LIT,
16 BETTER AIR CONDITIONING, ALL THE BETTER THINGS. SO THE PLACE
17 THAT I HAVE SPACE IS IN THE SPECIAL MANAGEMENT UNIT.

18 IN THE SPECIAL MANAGEMENT UNIT I CAN PUT HIM IN A
19 CELL BY HIMSELF. I CAN SECURE CABINETS ON A WALL, PUT A KEY
20 IN HIS HAND. HE CAN CONTROL HIS OWN DOCUMENTS. HE'S GOT
21 NOBODY ELSE IN THERE WITH HIM, NOBODY ELSE TO BOTHER HIM,
22 NOBODY TO LOOK AT HIS STUFF AND ALL THAT. OTHER THAN THAT,
23 THEN I'VE GOT TO MOVE HIM TO ANOTHER FACILITY TO GET HIM --
24 TO GET HIM SOMEWHERE ELSE, AND I CAN'T TELL YOU -- I KNOW OF
25 NO OTHER JAIL IN THIS STATE THAT HAS THE ABILITY TO SINGLE-

1 CELL AND HOUSE INMATES THE WAY HE'S WANTING TO BE HOUSED. SC
2 THAT'S WHY WE HAVEN'T MOVED HIM YET. WE'RE PREPARED BOTH
3 WAYS.

4 THE COURT: WHAT I'LL DO IS, MR. STARNES, I'LL GIVE
5 YOU A CHANCE TO TALK WITH CAPTAIN WILLIAMS IF YOU WANT TO AND
6 LET Y'ALL WORK THAT OUT.

7 MR. STARNES: CAN WE JUST REVISIT IT ON THE NEXT
8 HEARING? WOULD THAT BE OKAY?

9 THE COURT: YES, SIR.

10 MR. STARNES: WE CAN LEAVE THINGS LIKE IT IS RIGHT
11 NOW?

12 THE COURT: WELL, WE CAN, SURE, BUT HE'S SAYING HE'S
13 WILLING TO TALK TO YOU AND AT SOME POINT TRY TO WORK IT OUT
14 WITH YOU.

15 MR. STARNES: VERY QUICK, YOUR HONOR. THERE WAS AN
16 ISSUE ABOUT A LAW STUDENT. I UNDERSTAND YOU GRANTED THAT
17 MOTION TO HAVE ME A LAW STUDENT.

18 THE COURT: RIGHT.

19 MR. STARNES: THE FUNDING FOR THE STUDENT, HOW WOULD
20 WE HANDLE THAT? THE FUNDING FOR THE EX PARTE PAYMENTS, HOW
21 ARE WE GOING TO DO THAT? I GUESS LIKE EXPERTS OR
22 INVESTIGATORS OR WHOEVER I GET, IS IT YOUR POSITION THAT THEY
23 SHOULD JUST BILL MR. LEE'S OFFICE?

24 THE COURT: YES, SIR. AS YOU KNOW, THEY'RE PAID
25 THROUGH INDIGENT DEFENSE, AND I DON'T KNOW HOW WE DID THAT

1 BEFORE ON THE BREWER CASE BECAUSE WE HAD SOME FOLKS WORKING
2 FOR HIM. AND SOMEHOW THEY WORKED THAT OUT, AND I DON'T
3 REMEMBER HOW. I'LL TRY TO FIND OUT HOW THEY DID THAT.

4 MR. STARNES: I SPOKE TO MR. DELGADO ABOUT IT LAST
5 NIGHT, AND HE SAID THAT THEY -- USUALLY IN THESE TYPE OF
6 CASES THEY SET UP A BANK ACCOUNT AND WRITE CHECKS FOR FUNDING
7 TO -- AND SUBMIT VOUCHERS SOMETIME LATER TO MR. LEE'S OFFICE,
8 BUT I DON'T -- YOU KNOW, I CAN'T HAVE A CHECKING ACCOUNT IN
9 THE JAIL.

10 THE COURT: YEAH, IF WE COULD -- I DON'T REMEMBER
11 THEM DOING THAT. I DON'T THINK WE DID THAT. I THOUGHT
12 SOMEHOW THAT THE VOUCHER SIMPLY JUST WENT STRAIGHT TO MR. LEE
13 AND THAT WAS ALL. I'LL FIND OUT. I'LL GET IN TOUCH WITH
14 INDIGENT DEFENSE AND I'LL FIND OUT HOW THEY DO IT---

15 MR. STARNES: OKAY.

16 THE COURT: ---BUT WE NEED TO GO AHEAD AND GET
17 SOMEBODY STARTED WORKING WITH YOU.

18 MR. STARNES: THE LAW STUDENT HOW -- HOW ARE WE
19 GOING TO WORK THE PAYMENT ON THAT, YOUR HONOR?

20 THE COURT: WELL, PROBABLY THE SAME WAY. THAT'S --
21 I'M GOING TO TALK WITH MR. LEE AND FIND OUT HOW THEY WOULD DO
22 SOMETHING LIKE THAT.

23 MR. STARNES: I GOT ONE OTHER MOTION, YOUR HONOR, IF
24 I COULD BE VERY BRIEF.

25 THE COURT: YES, SIR.

1 MR. STARNES: THIS WAS DONE IN STATE VERSUS BREWER.
2 I BELIEVE YOUR HONOR WAS THE PRESIDING JUDGE, AND I'M NOT
3 MAKING THIS MOTION FOR -- FOR ANY FRIVOLOUS MOTION OR
4 ANYTHING LIKE THAT.

5 THE COURT: RIGHT.

6 MR. STARNES: I UNDERSTAND THAT HIS TRIAL IS COMING
7 UP ON THE 11TH. ANY SECURITY MEASURES THAT THE JAIL WOULD
8 NEED TO TAKE, IF THEY WANT TO PUT A TASER BELT ON ME OR
9 WHATEVER, IF YOUR HONOR WOULD CONSIDER ME ALLOWING ME TO SIT
10 THROUGH AT LEAST THE VOIR DIRE OR POSSIBLY THE VOIR DIRE AND
11 THE GUILT OR INNOCENCE OF THAT TRIAL... WE'VE BEEN THROUGH
12 THIS FOR NINE YEARS, YOUR HONOR. I'VE NOT GIVEN THE COURT
13 ANY PROBLEMS. I'VE NOT BEEN A PROBLEM WITH THE SECURITY OVER
14 AT THE JAIL. AND CAN WE GET THE STATE'S POSITION OR...

15 THE COURT: ALL RIGHT. WELL, I'LL JUST TELL YOU --
16 I'LL TELL YOU I DON'T HAVE A PROBLEM WITH IT, BUT I THINK
17 THAT'S REALLY JUDGE KINARD'S DECISION. HE'S THE PRESIDING
18 JUDGE, AND IT'S UP TO HIM WHETHER -- YOU KNOW, WHETHER HE'S
19 WILLING TO DO IT. IF HE'S WILLING TO, I DON'T HAVE A PROBLEM
20 WITH IT.

21 MR. STARNES: YES, SIR. I SPOKE TO MR. DELGADO
22 ABOUT THIS ON THE PHONE LAST NIGHT, AND I DIDN'T -- I ASKED
23 HIM WHO TO MAKE THE MOTION TO BECAUSE I DIDN'T KNOW
24 BECAUSE---

25 THE COURT: RIGHT.

1 MR. STARNES: ---IT'S MY UNDERSTANDING YOU'RE
2 ASSIGNED TO MY CASE, BUT IF HE'S COMING IN TO DO THE TRIAL
3 AND -- ACTUALLY I HAD STARTED A LETTER TO BOTH OF Y'ALL ON IT
4 TO SEE WHO WOULD MAKE THAT DECISION.

5 THE COURT: WELL, AS I SAID, I DON'T OBJECT TO IT.
6 IT'S NOT A PROBLEM WITH ME.

7 MR. STARNES: YES, SIR.

8 THE COURT: IT WOULD BE UP TO JUDGE KINARD.

9 MR. STARNES: YES, SIR. ALL RIGHT. THANK YOU VERY
10 MUCH, YOUR HONOR.

11 THE COURT: ALL RIGHT. ANYTHING ELSE, MR. HUBBARD?

12 MR. HUBBARD: NO, SIR, YOUR HONOR.

13 MR. TATE: NOTHING, YOUR HONOR.

14 MR. HUBBARD: YOUR HONOR, WE DID GET SERVED WITH --
15 I GUESS IT WAS REALLY A COPY OF A MOTION REQUESTING THAT YOU
16 RECUSE YOURSELF AGAIN.

17 THE COURT: I THINK HE'S ASKING FOR AN AFRICAN
18 AMERICAN JUDGE.

19 MR. HUBBARD: RIGHT. I THINK WE HANDLED THAT LAST
20 TIME, BUT WE JUST GOT SERVED WITH IT AGAIN LAST -- LAST WEEK.

21 THE COURT: I THINK HE WAS APPEALING IT.

22 MR. HUBBARD: OH, OKAY. IS THAT WHAT THAT IS?

23 MR. STARNES: THAT'S WHAT IT WAS. I WAS JUST -- I
24 HAD WROTE AN APPEAL TO THE COURT, TO THE SUPREME COURT, AND I
25 WASN'T -- ACCORDING TO THE RULE, I BELIEVE I WAS SUPPOSED TO

1 FILE IT IN THE LOWER COURT, BUT YOU'VE ALREADY MADE A RULING
2 ON THAT, YOUR HONOR, AND THAT'S BASICALLY WHAT I WAS DOING.
3 I WAS JUST NOTIFYING ALL PARTIES.

4 MR. HUBBARD: WE DON'T HAVE ANYTHING ELSE, YOUR
5 HONOR.

6 THE COURT: OKAY. ALL RIGHT. WE'LL GET SOMETHING
7 SET -- LOOKS LIKE PROBABLY MID NOVEMBER WE'LL GET SOMETHING
8 ELSE SET UP.

9 MR. HUBBARD: YES, SIR.

10 THE COURT: TO TAKE CARE OF ALL THESE OTHER MATTERS.

11 MR. STARNES: IF AT ALL POSSIBLE, COULD I JUST HAVE
12 SOME NOTICE? I UNDERSTAND THERE'S SECURITY. JUST IN OTHER
13 WORDS---

14 THE COURT: RIGHT.

15 MR. STARNES: ---THEY -- THIS MORNING THEY WOKE ME
16 UP AT 7:30 AND SAID, "YOU'RE GOING TO COURT," AND I SAID,
17 "THERE'S NO COURT." I DIDN'T -- BECAUSE IT'S MY
18 UNDERSTANDING YOU WERE IN MCCORMICK TODAY.

19 THE COURT: I THOUGHT WE TALKED ABOUT THIS LAST
20 FRIDAY.

21 MR. HUBBARD: YOU DID. YOU SAID LAST FRIDAY---

22 THE COURT: YEAH, YOU KNEW LAST FRIDAY.

23 MR. HUBBARD: ---WE WERE GOING TO HAVE IT THIS
24 MORNING.

25 MR. STARNES: I'M SORRY. I MISSED THAT.

1 THE COURT: WE DID. YEAH, WE TALKED ABOUT IT IN THE
2 COURTROOM LAST FRIDAY.

3 MR. STARNES: OKAY. I'M SORRY. I MISSED IT.

4 THE COURT: BECAUSE I GAVE MY LAW CLERK A HARD TIME
5 FOR NOT TELLING ME AND I HAD FORGOT HE WASN'T THERE LAST
6 FRIDAY. HE WAS IN A REQUIRED TRAINING, SO I COULDN'T BLAME
7 HIM. THE ONLY ONE I COULD BLAME WAS MYSELF, AND I HATE TO DO
8 THAT. SO DON'T FEEL BAD, MR. STARNES. YOU'RE NOT THE ONLY
9 ONE THAT FORGOT.

10 MR. STARNES: THANK YOU. THANK YOU FOR YOUR TIME.

11 THE COURT: ALL RIGHT. THANK YOU.

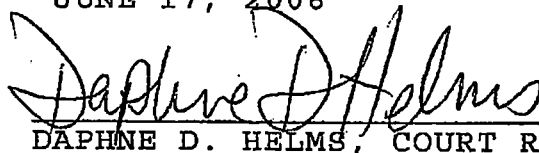
12 MR. TATE: THANK YOU, JUDGE.

13 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED. THERE
14 WERE NO EXHIBITS INTRODUCED.)
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I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 10TH DAY OF SEPTEMBER, 2004.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JUNE 17, 2006


DAPHNE D. HELMS, COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE CIRCUIT COURT
96-GS-32-3339

STATE OF SOUTH CAROLINA :
 :
 -vs- :
NORMAN STARNES :

TRANSCRIPT OF RECORD

MONDAY, DECEMBER 12, 2005
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE LEE S. ALFORD, JUDGE.

A P P E A R A N C E S:

THOMAS E. POPE, SOLICITOR
KEVIN S. BRACKETT, ASSISTANT SOLICITOR
ATTORNEYS FOR THE PLAINTIFF

NORMAN STARNES
PRO SE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

1

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3 CERTIFICATE OF COURT REPORTER 20

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E X H I B I T S

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16 (NO EXHIBITS WERE INTRODUCED DURING THE HEARING.)

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STATE V. STARNES

1 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR.

2 THE COURT: YES, SIR.

3 MR. POPE: WE'RE BEFORE THE COURT ON THE MATTER 96-GS-
4 32-3339, THIS IS A LEXINGTON COUNTY CASE OF MR. NORMAN
5 STARNES, THE STATE VERSUS NORMAN STARNES, INDICTMENT FOR
6 TWO COUNTS OF MURDER, DISPLAYING A FIREARM DURING THE
7 COMMISSION OF A VIOLENT CRIME.

8 YOUR HONOR, THERE ARE A NUMBER OF MOTIONS. AGAIN,
9 THIS IS A LEXINGTON COUNTY CASE, AND WE HAVE RECEIVED IT BY
10 WAY OF CONFLICT FROM THE ELEVENTH CIRCUIT SOLICITOR'S
11 OFFICE. WE HAVE MET IN CHAMBERS TODAY WITH YOUR HONOR AND
12 MR. STARNES. ACTUALLY, MR. STARNES IS REPRESENTING HIMSELF
13 PRO SE. IT IS MY UNDERSTANDING THAT HE HAS HAD SOME ELEVEN
14 HEARINGS BEFORE THE HONORABLE JUDGE WESTBROOK PRIOR TO
15 BEING HERE TODAY.

16 MR. STARNES HAS INDICATED THAT HE HAS TRANSCRIPTS
17 FORTHCOMING ON THOSE VARIOUS HEARINGS AND WILL PROVIDE THE
18 STATE A COPY OF THOSE AND THE COURT AS FAR AS FINDING SOME
19 HISTORY OF WHERE WE'RE AT. IT IS MY UNDERSTANDING HE WAS
20 FOUND COMPETENT TO REPRESENT HIMSELF IN THIS MATTER AND IS
21 PRESENT HERE TODAY.

22 PRIMARILY, YOUR HONOR, WE HAVE A NUMBER OF MOTIONS
23 THAT HAVE BEEN SERVED DIRECTLY ON US, PARTICULARLY ONE IS
24 THE ISSUE OF A SPEEDY TRIAL; TWO, IS DISCOVERY MATTERS.

25 I WILL NOTE FOR THE RECORD THAT WE HAVE BEEN IN

1 CHAMBERS SINCE YOU HAVE BEEN QUALIFYING THE JURY TRYING TO
2 ADDRESS A NUMBER OF THESE ISSUES. AND I'M GOING TO PUT A
3 NUMBER OF ISSUES OR ANSWERS TO THESE THINGS ON THE RECORD,
4 AND THEN ANYTHING FURTHER, MR. STARNES WOULD HAVE THE
5 OPPORTUNITY TO ADDRESS.

6 YOUR HONOR, AS FOR THE SPEEDY TRIAL, WE'VE RECENTLY
7 RECEIVED THIS CASE. AND AS THE COURT IS AWARE, SUBSEQUENT
8 TO THAT WITH JUDGE WESTBROOK'S PASSING, YOU HAVE JUST
9 RECENTLY RECEIVED THIS CASE. IT IS OUR INTENTION
10 NONETHELESS TO TRY TO HAVE THIS CASE EITHER TRIED OR
11 DOCKETED -- CERTAINLY IT WILL BE TRIED IN LEXINGTON COUNTY
12 BEFORE A LEXINGTON COUNTY JURY. BUT MY GOAL IS TO TRY IT
13 BEFORE THE END OF NEXT YEAR, IN OTHER WORDS, THE END OF
14 2006.

15 CERTAINLY, THE COURT KNOWS WE ATTEMPT TO MOVE CASES
16 FORWARD. IF POSSIBLE WE WILL TRY TO HAVE IT SOONER. AT
17 THE MINIMUM, WE SHOULD HAVE A DATE CERTAIN SCHEDULE BY THE
18 END OF 2006.

19 I CAN STOP ON THAT MATTER IF MR. STARNES HAS ANYTHING
20 HE WISHES TO ADD OR BE HEARD ON THAT MATTER BEFORE I GO IN
21 TO DISCUSS ---

22 THE COURT: THAT'S ON THE SPEEDY TRIAL ISSUE?

23 MR. POPE: YES, SIR.

24 THE COURT: ALL RIGHT. MR. STARNES, CAN HE GET HIS
25 HANDS FREE? I TOLD HIM I'D LET HIM GET HIS HANDS FREE SO

1 HE CAN GET TO HIS DOCUMENTS PLEASE.

2 OFFICER: COMPLETELY UNCUFFED, JUDGE?

3 THE COURT: YES, SIR, HIS HANDS.

4 (PAUSE.)

5 THE COURT: MR. STARNES.

6 MR. STARNES: MAY IT PLEASE THE COURT, YOUR HONOR.

7 THE COURT: YES, SIR, MR. STARNES.

8 MR. STARNES: YES, SIR, AS WE SPOKE EARLIER IN
9 CHAMBERS, WE ADDRESSED -- ONE OF THE THINGS WE TALKED ABOUT
10 WAS THE SPEEDY TRIAL MOTION.

11 IT'S MY UNDERSTANDING MR. POPE'S OFFICE RECEIVED THIS
12 CASE ON AUGUST 12TH OF THIS YEAR. AND IF ALL POSSIBLE --
13 AND IF WE COULD GET THIS DISCOVERY MATTER RESOLVED, IT'S MY
14 UNDERSTANDING THAT HE'S GOING -- HE'S GOING TO MEET WITH ME
15 SOME TIME IN JANUARY OF THIS YEAR TO GET THE DISCOVERY
16 MATTER RESOLVED.

17 IF WE COULD GET THAT DISCOVERY MATTER -- EXCUSE ME --
18 RESOLVED AT ALL POSSIBLE AND WE COULD SET A TRIAL DATE
19 WITHIN THE NEXT EIGHT MONTHS, WOULD THAT BE TOO MUCH TO ASK
20 FOR OF THE COURT?

21 PURSUANT TO ARTICLE 1 SECTION 9 OF THE SOUTH CAROLINA
22 CONSTITUTION AND THE SIXTH AMENDMENT TO THE FEDERAL
23 CONSTITUTION, YOUR HONOR, I BELIEVE DEFENDANTS HAVE A RIGHT
24 TO A FAIR, PUBLIC, SPEEDY TRIAL.

25 THIS CASE IS TEN YEARS OLD, AND I'VE BEEN

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1 INCARCERATED. I'VE BEEN HELD WITHOUT BOND. THE STATE
2 OBJECTS TO ME HAVING A BOND. AND I WOULD ASK THE STATE TO
3 TRY ME AT LEAST WITHIN 200 DAYS.

4 THE COURT: ALL RIGHT, SIR. LET ME SAY THIS, MR.
5 STARNES. AND WE TALKED IN CHAMBERS AS WELL AND WENT
6 THROUGH SOME OF THIS. AND, OF COURSE, IT IS A DEATH
7 PENALTY CASE, AND REQUIRES SOME ADDITIONAL PREPARATION FOR
8 TRIAL AND A NUMBER OF THINGS TO GO THROUGH. AND IT WOULD
9 TAKE LONGER, OBVIOUSLY, THAN THE NORMAL CASE.

10 AND AS YOU SAY, THE COURT IS WELL AWARE THAT YOU ARE,
11 I THINK, CONVICTED BACK IN '96 OR BEEN IN JAIL SINCE '96,
12 AND YOU WERE PREVIOUSLY CONVICTED AND THAT WAS OVERTURNED
13 AND HAS COME BACK. AND, I BELIEVE, MY UNDERSTANDING IS
14 IT'S BEEN REALLY SINCE 2000.

15 NOW, WHY IT'S TAKEN FROM 2000 ON, I'M NOT SURE. BUT
16 AS YOU'RE AWARE AND AS YOU'VE STATED, THE SOLICITOR ONLY
17 GOT IN THE CASE -- THEY ONLY GOT SOME INITIAL APPOINTMENT
18 IN THE CASE IN AUGUST OF THIS YEAR.

19 AND THE COURT WAS APPOINTED, I THINK, MAYBE SOME TIME
20 IN OCTOBER, MAYBE. THE COURT WAS APPOINTED, SOMETHING LIKE
21 THAT. ANYWAY, I HAVEN'T BEEN IN IT THAT LONG. I'VE BEEN
22 IN IT A LITTLE WHILE, AS YOU KNOW. I HAVEN'T BEEN IN IT
23 THAT LONG.

24 JUDGE WESTBROOK'S UNTIMELY DEATH, OBVIOUSLY,
25 COMPLICATES THINGS BECAUSE HE'S RULED ON A NUMBER OF THINGS

STATE V. STARNES

1 WHICH I'M NOT EVEN AWARE OF AT THIS TIME. AND THE
2 SOLICITOR DOES NOT HAVE THAT INFORMATION EITHER.

3 AND MY UNDERSTANDING IS -- AND OUR CONVERSATION IN
4 CHAMBERS THIS MORNING, HE HAS WHOLE BOXES OF STUFF THAT
5 HE'S GOT TO GO THROUGH, AND YOU ALL ARE IN THE PROCESS OF
6 KIND OF DOING THAT NOW.

7 BUT WE WILL -- CERTAINLY, I KNOW THAT YOU ARE IN JAIL
8 AND YOU'RE HELD WITHOUT BOND. I ALWAYS GIVE THOSE CASES
9 PRIORITY WHERE SOMEBODY IS HELD WITHOUT A BOND, WHATEVER
10 KIND OF CASE IT IS. I ASK THE SOLICITOR TO GIVE IT
11 PRIORITY IN PLANNING AND GETTING THEM DISPOSED OF.

12 AND AS I EXPLAINED TO YOU, OUR SCHEDULE, OF COURSE, IS
13 EXTREMELY BUSY AND HE'S GOING TO TRY TO WORK THIS OUT.

14 ONE OF THE THINGS WE'RE GOING TO HAVE TO TRY TO DO IS
15 PROBABLY GET 2 WEEKS OF COURT IN LEXINGTON SOME TIME. ALL
16 THAT WILL HAVE TO BE WORKED OUT ONCE WE DECIDE WHEN WE CAN
17 DO IT, BECAUSE ONCE WE SCHEDULE IT, WE'LL DO EVERYTHING WE
18 CAN NOT TO POSTPONE IT BECAUSE IT'S GOING TO BE A REAL
19 PROBLEM GETTING TWO WEEKS SCHEDULED AND THEN IF WE COULDN'T
20 GO FORWARD DURING THOSE TWO WEEKS, THEN HAVE TO SCHEDULE
21 ANOTHER TWO WEEKS; THAT WOULD BE DIFFICULT. SO WHAT WE
22 WANT TO DO IS BE SURE THAT ONCE WE SCHEDULE IT, WE'RE GOING
23 TO BE ABLE TO HAVE ALL THE DISCOVERY DONE, EVERYTHING DONE
24 THAT WE NEED TO BE DONE SO THAT WE CAN GO FORWARD WITH THE
25 TRIAL ON THE DATE SCHEDULED.

1 SO I WILL ASK THE SOLICITOR, OBVIOUSLY, TO GIVE YOUR
2 CASE PRIORITY AND DO EVERYTHING HE CAN TO GET IT READY FOR
3 TRIAL. I'M SURE HE'LL DO THAT.

4 AS WE GO ALONG, YOU'D HAVE THE OPPORTUNITY IF YOU FEEL
5 LIKE IT WASN'T MOVING ALONG, TO AGAIN SEEK, YOU KNOW, RENEW
6 YOUR MOTION FOR A SPEEDY TRIAL.

7 BUT I WOULD ASK YOU TO DO THEN IS WORK WITH THE
8 SOLICITOR'S OFFICE ON THE DISCOVERY ISSUES. LET'S TRY TO
9 GET THAT DONE AS QUICKLY AS WE CAN SO WE'LL BE IN A BETTER
10 POSITION TO DETERMINE WHEN THE CASE CAN BE TRIED, AND THEN
11 WE'LL WORK ON IT FROM THAT ANGLE.

12 AND THE SOLICITOR SAID HIS GOAL WOULD BE TO TRY TO GET
13 THE CASE ACTUALLY TRIED BEFORE THE END OF THE YEAR NEXT
14 YEAR. AND WE'LL WORK WITH THAT. AGAIN, I'LL ASK HIM TO
15 MOVE AS EXPEDITIOUSLY AS HE CAN GETTING THE CASE READY FOR
16 TRIAL, AND I'LL ASK YOU TO COOPERATE WITH THEM ON
17 DISCOVERY, ETCETERA, RECIPROCAL DISCOVERY ON THAT SO THAT
18 WE CAN GET THE CASE READY FOR TRIAL.

19 WE WILL CERTAINLY GIVE THAT CONSIDERATION, MOVE
20 FORWARD WITH IT.

21 NOW, NO ONE CAN HELP THE FACT THAT, YOU KNOW, THE
22 SOLICITOR IN LEXINGTON IS NO LONGER HANDLING THIS, IS
23 CONFLICTED OUT. THEY ARE APPOINTED HERE AT THIS LATE DATE.
24 AND THE COURT -- JUDGE WESTBROOK HAD INVOLVEMENT IN IT AND
25 NOW HE IS NOT ABLE TO DO IT, SO I'M GOING TO HAVE TO GO

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1 FROM HERE AND I'M GOING TO HAVE TO PICK UP FROM THERE. BUT
2 WE'LL DO EVERYTHING WE CAN TO MOVE THE CASE ALONG. AND
3 WE'RE CERTAINLY AWARE THAT YOU'RE IN JAIL WITHOUT BOND.

4 ALL RIGHT, SIR.

5 MR. POPE: YOUR HONOR, JUST TO CLEAR THE RECORD, IT IS
6 MY INTENTION TO HAVE IT TRIED BY THE END OF NEXT YEAR. IF
7 NOT, AT A MINIMUM TO HAVE A DATE CERTAIN WITH TWO WEEKS
8 SCHEDULED, COORDINATE WITH LEXINGTON BY THE END -- BUT,
9 HOPEFULLY, AS DISCOVERY MOVES AND THE DEFENDANT HAD
10 QUESTIONS, WE'VE BEEN WORKING ON IT, AND HOPEFULLY WE CAN
11 ADDRESS THEM BEFORE THEN.

12 THE COURT: ALL RIGHT. WELL, LET'S GIVE IT AS MUCH
13 PRIORITY ---

14 MR. POPE: YES, SIR.

15 THE COURT: --- AS YOU CAN WITH YOUR WORK SCHEDULE AND
16 LET'S SEE IF WE CAN GET IT SCHEDULED AS SOON AS WE CAN.

17 MR. POPE: ONE THING BEFORE I GET TO THE DISCOVERY
18 ISSUES, I ALSO WANT TO PUT ON THE RECORD IS -- YOU CAN
19 IMAGINE THAT WE DISCUSSED IN CHAMBERS IS THE LOGISTICS OF
20 MR. STARNES REPRESENTING HIMSELF AND BEING INCARCERATED IN
21 LEXINGTON, AND WE ARE COORDINATING WITH LEXINGTON
22 AUTHORITIES ON THE BEST WAY TO GIVE HIM THE ACCESS HE
23 NEEDS. I THINK THEY'VE BEEN DOING THAT FOR AN EXTENDED
24 PERIOD OF TIME.

25 WE MET TODAY WITH MR. STARNES AND HIS INVESTIGATOR ON

1 SOME LOGISTICS. BASICALLY, THE WAY WE INTEND TO
2 COMMUNICATE -- WE'VE DONE THIS IN SOME OTHER CASES, AS FAR
3 AS THE EMAIL COMPONENT OF IT IS THAT ANYTHING THAT WE DO,
4 WE WILL DO IN WRITING VIA EMAIL. WE WILL C.C. THE COURT A
5 COPY OF IT, AND WE WILL SEND IT TO THE ADDRESS MR. STARNES
6 HAS PRESENTED TO US.

7 HE DOES NOT HAVE THE MEANS OF RESPONDING BACK BY
8 EMAIL, SO HE WILL SEND A WRITTEN RESPONSE TO ANY ISSUES WE
9 HAVE. AND, AGAIN, WE'VE AGREED WITH EACH OTHER THAT WE
10 WILL HAVE CONVERSATIONS EITHER BY TELEPHONE OR WE MAY HAVE
11 CONVERSATIONS WITH THE COURT ABOUT THREE-WAY CALL, BUT WE
12 WILL PRIMARILY DEAL IN WRITING AS A MEANS OF CODIFYING BOTH
13 WHAT HE IS REQUESTING OR WHAT WE ARE RESPONDING TO. SO
14 THAT WAY IT WILL GIVE HIM CLEAR DOCUMENTATION IN THAT
15 REGARD.

16 THE MEANS, AGAIN, WILL BE WE WILL EMAIL, C.C. THE
17 COURT. AND THEN HE WILL HAVE A COPY PRINTED OUT AND
18 PRESENTED TO HIM IN SHORT ORDER. AND THEN HE WILL RESPOND
19 BACK TO US VIA MAIL. SO IT WILL BE A LITTLE SLOWER THAN
20 WHAT WE ARE ACCUSTOMED TO, BUT I THINK THAT WAY IT WILL
21 PROTECT HIS RIGHTS AND THE RIGHTS OF THE STATE IN THAT
22 REGARD; SO THAT'S OUR INTENTION.

23 ALSO, WE'RE COORDINATING DATES WITH LEXINGTON AND
24 TIMES, WE'RE WORKING THAT HE CAN HAVE PHONE ACCESS WHEN HE
25 WOULD NEED TO TALK TO US, AND WE DETERMINE IF APPROPRIATE

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1 THAT WE NEED A THREE-WAY CALL MUCH LIKE OUR IN-CHAMBERS
2 MEETING TODAY, WE WILL COORDINATE WITH THE COURT. THERE'S
3 A SPEAKER PHONE IN YOUR OFFICE, AND COORDINATE THOSE PHONE
4 CALLS IN THAT REGARD.

5 AND THAT'S HOW WE WILL COMMUNICATE IN THIS PARTICULAR
6 MATTER.

7 YOUR HONOR, THERE ARE A NUMBER OF THINGS -- AND,
8 AGAIN, MR. STARNES INDICATED HE WILL PROVIDE US TRANSCRIPTS
9 OF THINGS THAT HAVE HAPPENED IN THE PAST. I INDICATED
10 THAT.

11 WE ARE ALSO CATCHING UP ON HIS MOTIONS.

12 BUT WE'VE AGREED THAT OUR GOAL IS BY THE END OF
13 JANUARY -- THIS COMING JANUARY TO HAVE ALL THE DISCOVERY
14 THAT HE'S LACKING. HE'S GOT SOME AMOUNT THAT HE HAS --
15 I'LL PUT THIS ON THE RECORD FOR YOU TOO. THAT WE'RE GOING
16 TO TRY AND DETERMINE WHAT HE HAS, WHAT HE DOESN'T HAVE.
17 AND HE HAS DOCUMENTED IT FAIRLY WELL IN MANY OF HIS
18 REQUESTS AND HIS MOTIONS. WE'RE GOING TO TAKE THOSE
19 MOTIONS, COMPARE, AND TRY BY THE END OF JANUARY IS OUR GOAL
20 TO LET HIM HAVE ALL THE DOCUMENTATION THAT HE NEEDS.

21 OF COURSE, WE HAVE AN ONGOING OBLIGATION TO CONTINUE
22 TO PROVIDE ANYTHING IF SOMETHING NEW HAPPENS.

23 THERE MAY BE SOME THINGS WE CROSS OVER THAT WE MAY
24 DISPUTE. YOU KNOW, WE HAVE AN OPEN-FILE POLICY, BUT IT MAY
25 BE A DISCOVERY ISSUE LIKE ABOUT LEXINGTON COUNTY'S

1 PERSONNEL FILES OR SOME MATTERS. SO THERE MAY BE MATTERS
2 THAT NEED TO BE ADDRESSED WITH THE COURT. WE'VE DISCUSSED
3 THAT. AND IT'S OUR INDICATION TO NOT LET THOSE LOG JAM
4 EVERYTHING ELSE. WE CONTINUE TO PROVIDE WHAT WE CAN. AND
5 THEN IF THERE'S CERTAIN ISSUES THAT LEXINGTON COUNTY NEEDS
6 THEIR INTEREST PROTECTED ON PERSONNEL ISSUES OR SOMETHING
7 LIKE THAT, WE'LL EITHER SCHEDULE ANOTHER HEARING OR WE'LL
8 ADDRESS THAT.

9 BUT OUR GOAL IS TO EITHER HAVE IN HIS HANDS OR KNOW
10 WHERE WE'RE AT ON EVERYTHING BY THE END OF JANUARY. TO
11 THAT END, WE'RE GOING TO TRY TO COORDINATE HOPEFULLY THE
12 SECOND WEEK OF JANUARY -- BASED ON, WE'VE LOOKED AT OUR
13 SCHEDULE -- PHYSICALLY GO DOWN TO LEXINGTON TO HAVE AN
14 OPPORTUNITY FOR MR. STARNES AND HIS INVESTIGATORS IF NEED
15 BE TO HAVE PHYSICAL ACCESS TO THE EVIDENCE. HE SAID THAT
16 HE'D SEEN SOME BEFORE. WE'RE TRYING TO MAKE SURE
17 EVERYTHING IS IN ONE SPOT. WE, OBVIOUSLY, NEED TO DO THE
18 SAME. AND LEXINGTON COUNTY HAS GRACIOUSLY SAID THEY WILL
19 COORDINATE THAT; SO IT IS OUR GOAL THAT HE WOULD HAVE THAT
20 OPPORTUNITY TO VIEW ALL THAT AT THAT TIME ALSO, YOUR HONOR.

21 THE COURT: ALL RIGHT. LET ME SAY IN THAT REGARD, MR.
22 STARNES -- AND I WOULD ASK THAT THE PERSONS IN THE JAIL AND
23 AS FAR AS HIS RECORDS AND WHAT HE IS REQUIRED TO HAVE, THAT
24 HE'S ALLOWED TO HAVE THOSE AND HAVE THE OPPORTUNITY TO GO
25 THROUGH THOSE, BUT TO HAVE THOSE.

STATE V. STARNES

1 ONE CONCERN I HAVE AS WE PROCESS THROUGH THE CASE,
2 GETTING THE DISCOVERY DONE, THAT THINGS NOT DISAPPEAR OR
3 GET LOST OR THAT SORT OF THING SO THAT WE HAVE TO REPRODUCE
4 THINGS. SO YOU NEED TO TAKE, OBVIOUSLY, CARE OF WHAT YOU
5 HAVE AND KEEP THE BEST FILE SYSTEM YOU HAVE THERE WITH
6 WHATEVER YOU HAVE IN THE WAY OF DISCOVERY AND INFORMATION
7 THAT YOU NEED SO THAT WE DON'T GET BOGGED DOWN AT SOME
8 POINT IN TIME TRYING TO REPRODUCE SOMETHING THAT YOU
9 ALREADY HAVE. AND SO THAT WOULD BE A CONCERN I HAVE.

10 ANYTHING ELSE? DO YOU HAVE SOME CONCERNS ABOUT WHAT
11 THE SOLICITOR JUST SAID?

12 MR. STARNES: NO, SIR. THE JAIL'S BEEN GOOD ABOUT
13 HOUSING ME. THEY'VE BEEN PRETTY FLEXIBLE. THEY ONLY HOUSE
14 ME WITH ONE INMATE. THERE'S USUALLY THREE INMATES HOUSED
15 IN THE CELLS THERE BECAUSE THE JAIL IS VERY OVERCROWDED.
16 THEY'VE BEEN VERY GOOD ABOUT THAT, AND THEY'VE BEEN VERY
17 GOOD ABOUT LETTING ME KEEP MY DISCOVERY MATERIAL AND STUFF
18 IN MY CELL. AND I HAVE FILE BOXES THAT I KEEP THAT IN.
19 AND LOSING DOCUMENTS AND STUFF HAVEN'T BEEN A PROBLEM IN
20 THE PAST.

21 THE COURT: ALL RIGHT, SIR.

22 MR. STARNES: THE JAIL'S BEEN GOOD ABOUT THAT.

23 ALSO, THERE'S ONE OTHER THING I'D LIKE TO PUT ON THE
24 RECORD, YOUR HONOR, IS THAT I COMMUNICATED WITH MR. POPE
25 OFF THE RECORD EARLIER THAT ANY DISCOVERY MATERIAL THAT I

1 WOULD ASK THAT THE DISCOVERY MATERIAL BE SENT DIRECTLY TO
2 ME, NOT THROUGH THIRD PARTY, THROUGH THE INVESTIGATORS OR
3 THROUGH A PARALEGAL.

4 IT'S MY UNDERSTANDING THAT MR. WALKER, MY PARALEGAL
5 HAD HAD A CONVERSATION WITH YOUR HONOR OFF RECORD TO HAVE
6 ME POSSIBLY MOVED TO YORK COUNTY, TO HAVE ME HOUSED HERE AT
7 THE MOSS JUSTICE CENTER, AND THAT WAS DONE WITHOUT MY
8 KNOWLEDGE, AND I HAD NO KNOWLEDGE OF THAT.

9 BUT I WOULD ASK THAT ANY DISCOVERY MATERIAL, THEY
10 WOULD SEND DIRECTLY TO ME RATHER THAN GO THROUGH A THIRD
11 PARTY, THAT WAY THERE'S NO MIS-COMMUNICATION OR ANYTHING.
12 AND ANYTHING AS FAR AS MY HOUSING OR ANY -- ANY -- ANY
13 LEGAL REPRESENTATION -- BECAUSE I CONSIDER THAT LEGAL
14 REPRESENTATION, IF A PARALEGAL COMES TO YOUR HONOR OR TO
15 MR. POPE TO HAVE ME MOVED OR SOMETHING, I VEHEMENTLY OBJECT
16 TO THAT.

17 THE COURT: ALL RIGHT, SIR.

18 MR. STARNES: THOSE MATTERS I WOULD LIKE TO TAKE UP
19 MYSELF.

20 THE COURT: ALL RIGHT. UNDERSTOOD.

21 MR. POPE: YOUR HONOR, WE INTEND ONCE WE GET THE
22 TRANSCRIPTS AS FAR AS HOW THE PRO SE REPRESENTATION CAME
23 OUT, WE'LL PROBABLY PUT MORE ON THE RECORD ABOUT THAT.
24 BUT, YOU KNOW, AS WE DISCUSSED WITH MR. STARNES, WE ARE
25 GOING TO DEAL WITH HIM -- I RESPECT THAT HE'S A DEFENDANT.

STATE V. STARNES

1 WE'RE GOING TO DEAL WITH HIM AS AN ATTORNEY.

2 THE COURT: YES, SIR.

3 MR. POPE: OF COURSE, I ASSUME -- AND ONCE WE SEE THE
4 TRANSCRIPT, BUT I ASSUME HE'S BEEN APPRISED OF THE PERILS
5 OF THAT. AND SO WE INTEND TO DO THAT -- AGAIN, YOU KNOW,
6 WITH THE EXCEPTION I GUESS OF THE EMAIL WHICH REQUIRES HIS
7 MOTHER TO PRINT IT OUT AND DELIVER IT, HE INDICATED TO ME
8 HE WAS COMFORTABLE WITH THAT COMPONENT OF IT.

9 WE WILL MAIL EVERYTHING TO HIS ATTENTION AT THE
10 LEXINGTON COUNTY JAIL. LEXINGTON COUNTY IS REPRESENTED,
11 AND THEY WILL ACCOMMODATE THAT ALSO, YOUR HONOR. SO THAT
12 WOULD BE OUR INTENTION IN DEALING WITH THAT.

13 AGAIN, IF IT'S GOING TO -- YOU KNOW, QUITE OFTEN, I
14 RESPECT WHAT MR. STARNES IS SAYING. QUITE OFTEN MR.
15 SKIDMORE, FOR EXAMPLE, RECEIVES THE LION'S SHARE OF
16 DISCOVERY FOR ATTORNEYS. I CAN UNDERSTAND WHY IF MR.
17 STARNES WANTS THEM DIRECTLY, AND WE'LL ACCOMMODATE THAT.
18 SOME TIMES LOGICALLY THAT MAY SLOW IT DOWN SOME, IF NOTHING
19 ELSE JUST FROM A MAIL STANDPOINT. BUT IF THAT WORKS BETTER
20 FOR HIS COMFORT LEVEL, WE HAVE ABSOLUTELY NO PROBLEM DOING
21 IT.

22 I WILL INFORM MY STAFF AND ANYBODY WORKING WITH IT,
23 THAT ANY DECISIONS THAT ARE MADE IN THAT REGARD WILL COME
24 ONLY FROM MR. STARNES.

25 THE COURT: ALL RIGHT, SIR. NOW, I WANT TO BE SURE

1 TOO. YOU HAVE STANDBY COUNSEL; IS THAT CORRECT?

2 MR. STARNES: YES, SIR, YOUR HONOR.

3 THE COURT: AND YOU UNDERSTAND THOUGH -- IF WE HAVE
4 ANY KIND OF PROCEEDING, I THINK THESE ARE SOME PRELIMINARY
5 MOTION HEARINGS -- BUT ANY KIND OF -- ONCE WE ACTUALLY GET
6 DOWN TO TRIAL OR ANY SIGNIFICANT PARTS OF THIS, YOU KNOW,
7 THAT THEY WOULD AT LEAST BE AVAILABLE ON A STANDBY BASIS,
8 YOU HANDLING YOUR OWN CASE.

9 BUT YOU UNDERSTAND ALSO, OF COURSE, IF THEY'RE STANDBY
10 COUNSEL, THAT YOU CAN COMMUNICATE WITH THEM IF YOU HAVE A
11 PROBLEM OR IF YOU WANT THEM TO BE PRESENT FOR SOMETHING,
12 THEN YOU NEED TO LET THEM KNOW THAT.

13 MR. STARNES: YES, SIR.

14 THE COURT: LIKE TODAY'S HEARING, IF YOU WANT THEM
15 HERE FOR THESE MOTION HEARINGS, AND YOU'VE NOTIFIED THEM, I
16 ASSUME THEY WERE AVAILABLE, THEN WE, OF COURSE, WOULD
17 SCHEDULE IT WHEN THEY WERE AVAILABLE. YOU'RE GOING TO LET
18 THEM KNOW THAT.

19 WHEN WE GET TO THE ACTUAL TRIAL AND ANY OTHER PLACE
20 THAT YOU WANT THEM THERE FOR STANDBY COUNSEL TO ANSWER YOUR
21 QUESTIONS, THAT YOU WOULD LET THEM KNOW THAT. ALL RIGHT.
22 AND YOU UNDERSTAND THAT?

23 MR. STARNES: YES, SIR.

24 THE COURT: ALL RIGHT, SIR.

25 MR. STARNES: YOUR HONOR, ONE MORE THING. IS IT

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1 POSSIBLE THAT I COULD HAVE ABOUT 20 OR 30 MINUTES WITH MY
2 INVESTIGATOR IN A PRIVATE ROOM? IT WOULD SAVE HIM FROM
3 TRAVELING ALL THE WAY DOWN TO LEXINGTON TO MEET WITH ME IF
4 THE SECURITY COULD FACILITATE THAT. IF THEY WANT TO STRIP
5 SEARCH ME OR WHATEVER SECURITY MEASURES THEY WANT TO TAKE,
6 I JUST -- IF I COULD HAVE A PRIVATE MEETING WITH HIM.

7 MR. POPE: PERHAPS, YOUR HONOR, AGAIN, OF COURSE WE
8 HAVE TO COORDINATE THAT WITH SECURITY. BUT LEXINGTON
9 COUNTY SAID THAT THEY'RE NOT OPPOSED TO IT IF PERHAPS IN
10 THE HOLDING CELL AREA OR WHATEVER -- WHATEVER SECURITY
11 ISSUES THEY NEED, THE STATE DOES NOT HAVE AN OBJECTION NOR
12 DOES LEXINGTON COUNTY IN THAT REGARD IF SOMETHING COULD BE
13 WORKED OUT WITH THE SHERIFF'S OFFICE.

14 THE COURT: THE COURT DOESN'T HAVE ANY PROBLEM WITH
15 THAT. JUST FROM A SECURITY STANDPOINT AS LONG AS THEY CAN
16 WORK IT OUT WHEREVER YOU COULD DO IT WHERE THERE'S SOME
17 SECURITY, I HAVE NO PROBLEM WITH THAT, YOU MEETING WITH HIM
18 AND GOING THROUGH THINGS. MAYBE YOU COULD SAVE SOME TIME
19 DOING THAT.

20 MR. STARNES: YES, SIR.

21 MR. POPE: YES, YOUR HONOR. JUST TO TOUCH BASE ON THE
22 STANDBY COUNSEL ISSUE. WE DISCUSSED THIS WITH MR. STARNES
23 A LITTLE BIT. IT'S MY UNDERSTANDING THAT HE DOES HAVE
24 ACCESS TO THEM BY EMAIL. I BELIEVE IT'S MR. NETTLES AND
25 MR. DELGADO. HE DOES HAVE ACCESS TO THEM. THE WAY, AGAIN,

1 WE'VE KIND OF BROACHED THE SAME ISSUE YOU DID, IS THAT HE
2 UNDERSTANDS THEIR ROLE AND THAT HE IS REPRESENTING HIMSELF.
3 IF HE NEEDS THEM, HE KNOWS HOW TO GET IN TOUCH WITH THEM.

4 AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH, MR.
5 STARNES. I WANT TO MAKE SURE I UNDERSTAND THIS CORRECTLY.
6 THAT IF YOU HAVE NEED OF THEM, YOU KNOW HOW TO CONTACT
7 THEM. BUT OUR POSITION IS WE'RE GOING TO DEAL WITH MR.
8 STARNES DIRECTLY, SENDING EVERYTHING DIRECTLY TO MR.
9 STARNES AND DEAL WITH HIM AS HIS OWN ATTORNEY.

10 THE COURT: THAT'S HIS WISHES AS I UNDERSTAND.

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

12 THE COURT: ALL RIGHT, SIR.

13 MR. POPE: YOUR HONOR, WE DEALT WITH THE SPEEDY TRIAL,
14 ABOUT MOVING FORWARD ON DISCOVERY ISSUES. AS THE COURT
15 KNOWS, THIS IS A DEATH PENALTY CASE. BASED ON
16 CONVERSATIONS TODAY WITH MR. STARNES, IT APPEARS THAT THAT
17 CONTINUES TO BE THE DIRECTION THAT WE'RE HEADING.

18 IF THERE'S ANY NOTICE ISSUES, WHETHER WE DETERMINE --
19 OFTENTIMES WE DON'T RE-NOTICE. BUT IF WE RE-NOTICE, WE'LL
20 SEND YOU ANOTHER NOTICE OF INTENT TO SEEK THE DEATH
21 PENALTY. WE'LL COORDINATE THAT WITH LEXINGTON AND WITH MR.
22 STARNES. WE'LL JUST ADDRESS THOSE ISSUES.

23 AGAIN, THE DIFFICULTY WE HAVE IS, AS WE'VE DISCUSSED,
24 IS WE ARE NEW TO THIS CASE TOO, RELATIVELY SPEAKING, AND
25 JUST WANT TO MAKE SURE THAT HIS RIGHTS ARE PROTECTED AS

STATE V. STARNES

1 WELL AS THE RIGHTS OF THE STATE.

2 THE COURT: OKAY. ANYTHING ELSE YOU WANT TO RAISE
3 WHILE WE'RE ON THE RECORD?

4 MR. STARNES: NO, SIR. I BELIEVE THAT'S IT. I THANK
5 THE COURT FOR THEIR TIME TODAY AND ALLOWING ME TO BE HEARD.

6 THE COURT: ALL RIGHT. THANK YOU. HOPEFULLY WHEN YOU
7 PROGRESS SOME WITH YOUR DISCOVERY -- THAT'S THE BIG THING
8 RIGHT NOW, THEN WE CAN MOVE FROM THERE.

9 ALL RIGHT. THANK YOU.

10 --- END OF TRANSCRIPT OF RECORD ---

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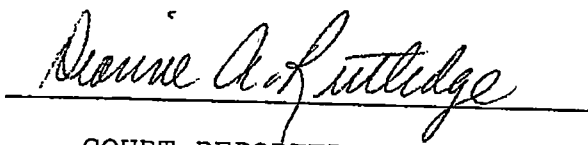
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25

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA ON THE 12TH DAY
8 OF DECEMBER 2005.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11
12 MARCH 8, 2007

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16 COURT REPORTER

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STATE V. STARNES

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LEXINGTON
4 96-GS-32-3339
5

6 STATE OF SOUTH CAROLINA
7 VS.
8 NORMAN STARNES
9

10
11 YORK, SOUTH CAROLINA.
12 MAY 1, 2006
13 BEFORE THE HONORABLE LEE S. ALFORD
14

15 APPEARANCES
16 FOR THE STATE: KEVIN BRACKETT
17 FOR THE DEFENDANT: NORMAN STARNES, PRO SE
18 REPORTED BY: MICHAEL C. WATKINS
19 OFFICIAL COURT REPORTER
20
21
22
23
24
25

1	MOTIONS:	3
2	JOSEPH QUIG:	37
3	MOTIONS:	75
4	CERTIFICATE:	123
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MOTION HEARING

1 MR. BRACKETT: Your Honor, this is in reference to
2 indictment 96-GS-32-3339, State of South Carolina versus
3 Norman Starnes, this is a capital case out of Lexington.
4 That the state attorney general's office asked the 16th
5 circuit to prosecute as a result of a conflict of interest
6 that arose. Mr. Starnes is present, he's pro se. He's
7 filed a motion in regards to this case, and I believe he
8 has a motion regarding his handcuffs prior to our starting.

9 THE COURT: Please take the handcuffs off, it will be
10 fine, so he can use his hands.

11 MR. BRACKETT: Your Honor, Mr. Starnes filed a motion
12 to quash the indictment. Essentially in addition it's a
13 several page handwritten motion appended to this motion is
14 a transcript from the first trial in 1996. There was a
15 motion made, and basically what he's attempting to do by
16 this motion is to preserve the issue that was raised in the
17 original trial. The gist of the motion is that the
18 indictment in 96-GS-32-3239 is defective insofar as the
19 foreperson of the grand jury that passed on this indictment
20 and every foreperson of the grand jury for the 30 years
21 preceding that date, that there was never a minority
22 foreperson and this indicates a pattern of racial bias on
23 the part of the selection of forepersons in Lexington
24 County and deprives him of his rights under a variety of US
25 Supreme Court cases, which he sites in his motion. Your

MOTION HEARING

1 Honor, this issue was abandoned on appeal, it was denied --
2 the original motion was denied by Judge Westbrook in the
3 first trial and subsequently abandoned it on appeal and we
4 don't concede that there's any merit to it at all.

5 However, in moving things along the State would be willing
6 to re-indict Mr. Starnes, it's a rather straight forward
7 proposition. It's my understanding -- I have been informed
8 by Lexington County officials that subsequent to this first
9 trial there has been a minority foreperson appointed for
10 the grand jury, I believe that would alleviate any concerns
11 that Mr. Starnes had. He indicated he wouldn't have any
12 problems assuming I re-indicted; that A, I re-indict him,
13 and B, there was a minority foreperson that has served as
14 foreperson in the grand jury since his original indictment;
15 is that correct, Mr. Starnes?

16 THE DEFENDANT: Yes, sir, that's correct, Your Honor.

17 THE COURT: So if they are willing to re-indict, you
18 are willing to withdraw that motion if they are willing to
19 re-indict you under the charge; is that correct?

20 THE DEFENDANT: Yes, sir, that is correct. With
21 The --G

22 THE COURT: With the stipulation that there has -- in
23 fact, they can show there has been a minority foreperson in
24 the interim since your trial.

25 THE DEFENDANT: Yes, sir, that is correct, Your Honor.

MOTION HEARING

1 There is a statute, Chapter 23 of Title 17 which -- what
2 I'm trying to avoid here -- this is why I raised this
3 motion in a timely manner -- is that we're looking at an
4 October 16th trial date and I believe the statute does
5 require them once I bring this matter before the Court that
6 they are compelled to re-indict me during the next term of
7 court and that's what I'm asking the solicitor's office to
8 do. Is that a problem with the State? I would ask the
9 Court --

10 MR. BRACKETT: Of course, 17-23-90 deals with
11 statutory terms of court which is -- all of the statutory
12 terms of court are suspended and special terms are assigned
13 which renders the effectiveness of 17-23-90 moot. However,
14 we will indict in a timely fashion. I believe the relief
15 under 17-23-90 would be to grant bail, however, these are
16 special terms of court, not statutory terms of court so
17 that is moot, there's no effect from that statute. But we
18 will indict in a timely fashion.

19 THE DEFENDANT: So what I'm understanding here is that
20 the fact that they acquiesce to this motion that they are
21 going to re-indict and this isn't going to trigger a
22 continuance in that case. Is that what I'm hearing?

23 THE COURT: The fact that they say they will timely
24 indict you so -- they do will it fairly quickly.

25 MR. BRACKETT: I don't know when the next term of

MOTION HEARING

1 grand jury in Lexington is, it's the beginning of May, I
2 don't know if I can get it together in time for the May
3 meeting. But it will be either May or June, well in time
4 for an October trial date.

5 THE COURT: We will not delay the trial. Anything
6 else?

7 THE DEFENDANT: As far as that motion? No, sir, I
8 believe that pretty much covers it.

9 THE COURT: Any other motions that --

10 THE DEFENDANT: Yes, sir. There is -- actually it's a
11 matter that I would draw to the Court's attention, Your
12 Honor. Beg the Court's indulgence just one minute, I
13 haven't had a chance to go through my files here.

14 THE COURT: Solicitor, while I'm thinking about it, if
15 you re-indict we need to arraign him so we will need to
16 make arrangements to do that.

17 THE DEFENDANT: Your Honor, I just have a few more
18 matters I would like to take up. The last team that we met
19 we met ex parte and the issue about the prior transcripts
20 on some of Judge Westbrook's rulings and if I obtained
21 those transcripts we agreed on the funding that I would
22 provide them to the State. Your Honor, today I have
23 received one copy of a transcript, it is the bond hearing
24 that was held on May 22nd of 2001 in Richland County. And
25 for the record, Your Honor, I'm providing that to

MOTION HEARING

1 Mr. Brackett today. That is the only transcript that I
2 have received relating to the prior proceedings that Judge
3 Westbrook presided over.

4 THE COURT: What others are you looking for?

5 THE DEFENDANT: There were some other matters relating
6 to some rulings, and I believe there were 13 hearings prior
7 to Your Honor being assigned to this case, different
8 motions and rulings that Judge Westbrook had ruled on. And
9 I believe we agreed -- matter of fact, I have Your Honor a
10 copy of this also and I agreed to provide that to the
11 State, also. Your Honor, since the new solicitor and Your
12 Honor is involved in this case I guess this was kind of an
13 initial question, there were some rulings that Judge
14 Westbrook had already made to some pretrial matters and
15 things of that nature. I guess what I am asking the Court
16 is since we have got a new solicitor and Your Honor has
17 gotten involved in this case, are we on a clean slate or
18 are the rulings that Judge Westbrook made, are they still
19 in effect or do we have to rehear those?

20 THE COURT: My offhand impression would be that if he
21 was already ruled on those issues he has ruled on those
22 issues. Unless -- I guess I would be willing to listen to
23 you on that or listen after whatever you want to raise on
24 that. In all likelihood, though, if he has already heard
25 those motions I don't know -- and has ruled on them I don't

MOTION HEARING

1 know of any reason, even though obviously he's not
2 continuing with the case because of his untimely death. I
3 see no reason to relitigate those if he has already ruled
4 on those. Those would be the rulings on the case. Do you
5 disagree with that?

6 MR. BRACKETT: No, sir. Anything can be proposed for
7 reconsideration, but we -- in order for us to not run afoul
8 of a prior ruling we need to be aware of it. And I know
9 you've ordered the transcripts, but if there's someone --

10 THE COURT: Any indication to when these are going to
11 be available?

12 THE DEFENDANT: Sir?

13 THE COURT: Any indication to you when these
14 transcripts are going to be available?

15 THE DEFENDANT: Your Honor, I expect them any time
16 now. It was kind of funding, the process of funding,
17 getting the funding challenged and get the court reporter
18 paid because they would not transcribe the records until
19 they received a payment in full.

20 THE COURT: Is there any problem with that now,
21 funding and getting the transcripts do you think?

22 THE DEFENDANT: I'm not sure, Your Honor. That's a
23 matter that I need to address -- one of the things I wanted
24 to take up ex parte without the solicitor here. There's a
25 funding matter that we need to discuss. I had issued a

MOTION HEARING

1 subpoena to a Mr. Patton Adams from the office of indigent
2 defense. I spoke to him prior to this and he agreed to be
3 here today and I'm not sure if he's in the courtroom.

4 THE COURT: He's here, Mr. Adams is here.

5 THE DEFENDANT: It's related to the funding in this
6 case, and I would like to take that matter up without the
7 solicitor being present. Your Honor, before we get to that
8 there's one matter I have that relates to the jail. I
9 received some discovery from the solicitor's office, I
10 received these copies from him. Prior to this Court
11 getting involved in the case there was numerous motions
12 that Judge Westbrook had ruled on, one of those were in
13 reference to some matters at the Lexington County Detention
14 Center being confidential matters relating the
15 accessibility of certain experts and the confidentiality
16 nature of. And there were two orders signed, Your Honor,
17 one was to seal those individual names from the
18 prosecutor's office, and one was a function that we've had
19 at the Lexington County Detention Center in which court
20 exhibit that we introduced into evidence at the original
21 trial, what it was, Your Honor, was a mock up that was
22 built up of the living room where the shooting happened at.
23 The detention center was nice enough for us to bring that
24 to the jail, to put -- to install this thing together and
25 allow me to have my experts come in and consult with them.

MOTION HEARING

1 The problem with this, Your Honor, is there's been a breach
2 of confidentiality. And Judge Westbrook's order was that
3 the detention center was not to divulge that information to
4 the solicitor's office. What has happened is when
5 witnesses come into the detention center and I interview
6 them or my experts come in to consult with me, they in turn
7 turn around and give this information to the solicitor's
8 office. I received a CD rom from Mr. Brackett's office
9 about a month ago and I had my mother go to a printing shop
10 and print this. What I discovered, Your Honor, was
11 detailed reports from the Lexington County Detention Center
12 that names my experts, witnesses, it has flight schedules
13 from a witness that I interviewed from Pittsburgh. I let
14 the detention center know this because of their security
15 measures of who is coming into the jail and why I needed to
16 interview these witnesses. Your Honor, I would like to go
17 into this into detail and put this matter on the record.
18 What I did is I issued a subpoena to the security manager,
19 Captain Quig and I would like to put his testimony on the
20 record to preserve the record and to bring to this Court's
21 attention to this matter in full detail. There's been a
22 breach in confidentiality and the detention center has
23 violated Judge Westbrook's order and I would like to go
24 into detail and put that matter on the record.

25 THE COURT: You don't have a copy of that order of

1 Judge Westbrook?

2 THE DEFENDANT: Yes, sir, I do have a copy of that
3 order. I have got all of these pages together because I
4 put them together in the argument, the following two pages
5 I have got right there, Your Honor, and the next one. Have
6 you got a copy of this order?

7 MR. BRACKETT: I believe so. Is it the one dated
8 March 24th?

9 THE DEFENDANT: No, it's dated April 29th. Your
10 Honor, there's two of them. The one dated April 29th is
11 the one that deals with the accessibility of experts and
12 the ones that are clocked copied March 24th is a list of
13 the experts in this case, some of them, not all of them
14 thank goodness.

15 MR. BRACKETT: 29 April, that's a single page
16 document?

17 THE COURT: Yes, sir.

18 MR. BRACKETT: I have that one. I have got the one
19 dated March 24th and April 29th.

20 THE DEFENDANT: Your Honor, if I may for the record,
21 Your Honor, these were also -- these motions were filed
22 under seal with the clerk of court's office and they were
23 not supposed to be given to the solicitor's office.

24 THE COURT: I understand that and that's what it says
25 in the order. But I don't know what prejudice it would be

MOTION HEARING

1 to you if they're aware that you're allowed to prepare your
2 defense and the accessibility of the experts to them. I
3 don't know how this could be enforced if the other side is
4 not aware that they're not entitled to that information.
5 How are they supposed to know that they can't have this
6 information, or this information shouldn't be given out to
7 the solicitor's office if they are not aware of the motion?
8 Do you see what I'm saying?

9 THE DEFENDANT: I understand.

10 THE COURT: So if this is a matter that the Court
11 issues you this order and it's put under seal in the
12 clerk's office and only you and the Court are aware of it,
13 how are they supposed to know that they can't do that?

14 THE DEFENDANT: Well, Your Honor, the issue is is that
15 the jail was provided this copy. They were provided this
16 copy in good faith because they had to know of these
17 individuals that was coming in to visit me as a matter of
18 security. And they are the ones that breached it, they're
19 the ones that give it to the solicitors, the clerk didn't.
20 I give this to the jail because I had to. They have to
21 know who is coming in to see me. In addition, Your Honor,
22 when experts come in to visit me, the defense team experts,
23 they take their driver's license and photocopy them, not
24 only -- and they give that information to the solicitor's
25 office. There's a confidentiality thing here dealing with

MOTION HEARING

1 defense experts, that's why a lot of these things are --
2 it's my understanding are done ex parte and the solicitor's
3 office isn't privileged to that information. I'm not
4 pointing the finger at the clerk of court's office or none
5 of them. The problem is is the jail is turned around.
6 It's my understanding that my incarceration is to assure my
7 appearance in court, that it is not a tool or a vehicle to
8 breach confidentiality or to let the solicitor's office
9 know certain defense matters. That's exactly what is
10 happening here, Your Honor.

11 MR. BRACKETT: Please the Court? This is the first
12 time I have seen it. I'm not disputing that we have it if
13 we provided it him on the CD rom, but there's thousands of
14 pages of documents that we have provided to him, 3,500
15 pages in the last CD that I gave you. In addition to that
16 there's thousands of pages of transcripts that we are
17 wading through and reading and police reports and all of
18 that sort of thing. I'm not disputing that we have it,
19 it's the first time that I have seen it. That's the first
20 objection. I told him formerly that the jail has never
21 seen it, that they are not aware of that order. So again,
22 we can't run afoul of something we don't know about as Your
23 Honor as observed, but I will have to let him know now that
24 I don't know what they have or haven't gotten, that was
25 what I was told informally. Finally I would observe under

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1 Rule Five the reciprocal discovery requirements would
2 require the defense to hand over any and all reports from
3 any of their experts. We would become aware from the
4 identify of the experts when they handed over the reports.
5 Some instances I know defense attorneys ask their experts
6 not to file reports at all, not to issue any reports
7 because they feel -- they don't want us -- it becomes a cat
8 and house situation and then we are ending up seeing this
9 expert for the first time when they testify hearing what
10 they have to say and then our time to prepare cross
11 examination is limited to the time it takes the judge to
12 say, your witness, counsel, and we have about ten seconds.
13 So it has become standard practice in our office to require
14 or as the Court to require the defense to issue reports and
15 have their experts issue reports. And I believe there's
16 some precedent for that in State versus Powers, although it
17 wasn't reported in the opinion, State versus Powers the
18 case has been reverted for other reasons now because the
19 defendant is under 18. Judge Ralph King Anderson directed
20 the defense to have their experts issue a report in enough
21 advance of a trial that the State could get them and
22 prepare to meet. Because that's the nature of experts is
23 such that it's unreasonable to expect an attorney to be
24 able to cross examine an engineer on a technical matter for
25 example without any preparation. I'm not an engineer, I

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1 need time to consult with an engineer and review the
2 report. It would have been our intention to require the
3 defendant to have his experts issue reports. We would have
4 found out not only the identity of the expert but actually
5 the substance of what their expertise would bring to bear
6 on the subject in the case. Of course, Your Honor hasn't
7 heard that motion to order him to do it if you, in fact,
8 will. But I just throw that out as in the event that you
9 would intend to order him to do that, that, of course,
10 would make this entire issue moot as well because we would
11 receive the benefit of knowledge of who the expert was in
12 advance. And, in fact, I don't have it written, but I
13 would make that motion now, I don't expect him to be
14 prepared to argue it, we can argue it at a later time. But
15 I would ask the Court to require to have him to have his
16 experts reduce their opinions to writing in the form of a
17 report like we have all of our experts do, especially on
18 SLED and so forth and provide that to us in reciprocal
19 discovery. So if the Court would be amenable to do that
20 this becomes a non-issue.

21 THE DEFENDANT: May I respond to that, Your Honor?

22 THE COURT: Yes, sir.

23 THE DEFENDANT: First of all, Your Honor, it's the
24 defense position just because the defendant consults with
25 an expert, that doesn't mean I have to compel that expert

1 to write an opinion and turn it over to the State.

2 Furthermore, Your Honor, Mr. Brackett --

3 THE COURT: Well, Mr. Starnes, be sure you understand
4 the solicitor on that point, what he's saying is obviously
5 you can consult with an expert. If you don't plan to use
6 that expert at trial obviously that expert is not subject
7 to discovery if you don't plan to use that expert at the
8 trial. So obviously you can consult with experts and you
9 might not necessarily use them, you might not like what
10 they say, they not might be of benefit to you at the trial,
11 so obviously you could do that. If you plan to call an
12 expert at trial he is saying if you plan to use that expert
13 at trial and he's going to testify in your case, through
14 reciprocal discovery you are entitled to discovery from
15 them, they're entitled to discovery from you and that you
16 have to provide that information to them and you can't just
17 call your witness on the day of trial and say here is my
18 witness if you are going to use an expert witness to
19 testify. And that's what he's saying that they would be
20 entitled to have your expert issue a report in advance of
21 the trial so they would have that and be able to consult
22 with their own expert about what your expert is going to
23 testify to, that's his position. I have not ruled on that
24 but I'm saying that's their position, they would be
25 entitled to that information and that your expert -- if you

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1 are actually going to use them, if you're not going to use
2 them at trial they don't have to issue a report and be
3 subject to discovery. I just want to be sure you
4 understand the difference.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Go ahead now, I will hear from you.

7 THE DEFENDANT: And I understand that if I am going to
8 submit a report or bring it in for an evidentiary issue
9 that I do have to give it to them in a timely manner, and
10 that's a rule of fairness in this and that works for both
11 sides and I do understand that. We did discuss a matter
12 about everything being in writing so there's no confusion
13 or he said she said or anything like that. I did file an
14 approximately 30 page discovery request with Mr. Brackett's
15 office, and he has quoted Rule Five reciprocal and things
16 of that nature, I have not been served with a reciprocal
17 motion from the solicitor's office. To this date I haven't
18 been served nothing. I don't have no problems complying
19 with the rules but in all fairness I have to file a motion
20 to start and things of that nature to start this process
21 and I feel they should also, Your Honor. Backing up to the
22 confidentiality matter we were talking about, the jail did
23 have this order and I have it in writing from the jail.
24 THE COURT: Can I see that if you have that? Do you
25 have that with you?

1 THE DEFENDANT: The solicitor's office numbered the
2 discovery pages on the top right-hand corner and I have
3 highlighted them.

4 THE COURT: Can you refer to a number then?

5 THE DEFENDANT: Yes, sir. Beg the Court's indulgence
6 just one minute. 3607, this is a letter dated June 2, 2005
7 to Captain Quig and I have highlighted the very first
8 paragraph in which I mentioned these two orders that we
9 were discussing today, and those two orders were attached
10 to --

11 THE COURT: Solicitor, do you want to look at these?
12 I don't know if you have got them.

13 MR. BRACKETT: I do. I'm looking at them for the
14 first time.

15 THE DEFENDANT: It is not only the list of experts and
16 stuff, the solicitor is coming in contact with these
17 reports and stuff. Because when someone comes in to visit
18 me, if I interview a witness or an expert comes in, like I
19 said, they photocopy their driver's license and they write
20 a detailed report on this individual that comes in and they
21 are turning all of this information over to the solicitor's
22 office. And I have to object to that, Your Honor, because
23 I feel, you know, I'm entitled to a fair defense and I
24 believe there's a right to privacy as far as -- if I was on
25 the street or home they wouldn't have access to my mailbox.

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1 They photocopy every piece of mail that comes in to me.

2 THE COURT: I understand your position. Let me hear
3 from the solicitor now, I understand.

4 MR. BRACKETT: I'm seeing this for the first time so I
5 am having Captain Quig -- I know what we've got, I know we
6 have a mass volume of information, I don't know every page
7 that is in there. Obviously if we had some nefarious
8 intention we never would have provided them to him. We
9 photocopy everything in capital cases and we provide the
10 entire file to him, that's been -- it's always been our
11 practice and will continue to be our practice.

12 THE COURT: Mr. Starnes, what he is saying is
13 obviously he provided you copies of everything they had so
14 he wasn't trying to hide anything. But Mr. Starnes'
15 position is that why with this order in place and the order
16 was given to Captain Quig -- apparently Captain Quig may --
17 I certainly would be glad to hear from him if he says he
18 didn't get it -- but this indicates this was directed to
19 him and that he got a copy of it at the time. Why is the
20 information being provided to the solicitor's office with
21 that should or should not have been provided pursuant to
22 this order?

23 MR. BRACKETT: I understand the issue that Mr. Starnes
24 is putting forward. And again, I would just say we might
25 need some time to look through all of these documents.

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1 This is the part of the problem, we've had an e-mail
2 exchange -- when you're first hit with a motion when you
3 walk through the door and there's a stack of papers this
4 thick given to you, it takes some time to get through and I
5 certainly wouldn't ask Mr. Captain Quig or Mr. Tate to try
6 to respond off the cuff.

7 THE COURT: This is part of the problem with not
8 getting a written motion filed, that's part of the problem
9 because they haven't had a chance now to look at it. And
10 you know, in his e-mail responses I'm getting your e-mails
11 and the solicitor's response to them, and in his e-mail
12 responses he's saying, well, wait a minute, you're saying
13 you got this and I can't respond to those motions or
14 prepare to respond to those motions when I don't know what
15 the motion is and that's where we are right now. This is
16 the first time they're looking at these things that you're
17 providing today.

18 THE DEFENDANT: Evidently he hadn't looked at all of
19 this stuff and didn't know if we were going to get into the
20 names of these experts and stuff like that and that's why I
21 didn't file a motion and bring it to you. I would rather
22 him not even know about it and that's why --

23 THE COURT: Anything you haven't provided to him at
24 this point you're not required to provide to him for
25 purpose of this hearing. What we need to do is determine

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1 if in fact this order -- if the jail officials are aware of
2 this order and violated this order by providing information
3 to the solicitor's office. Why don't we do this,
4 solicitor, I've got to go down and qualify the jury,
5 they've probably been waiting 15 or 20 minutes for them,
6 let me go down and qualify them. I will give you all a
7 chance to go through this and look at it and let's come
8 back up and we will take it up. And Mr. Starnes, don't be
9 alarmed -- I need to go down and qualify the jury, we will
10 take whatever time we need to address your motions. Let me
11 ask you one thing, though, and I will meet with you ex
12 parte if you need to meet with me, I will ask you to stay
13 here for just a little bit longer and see if that needs to
14 be taken up. Let me ask you, this is the next question I
15 am going to ask, you had requested Mr. Nettles to be here,
16 I don't know if you subpoenaed him otherwise or required
17 him to be here.

18 THE DEFENDANT: That's correct, Your Honor.

19 THE COURT: He called in, he was in Columbia on some
20 other matters and he could come on after that if he needed
21 to. I told him well go ahead if he was in Columbia and
22 come on now. He's on his way here. Do you need him here
23 or I can stop him -- do you need Mr. Nettles here?

24 THE DEFENDANT: I believe we could probably take it up
25 with Mr. Adams, myself and Mr. Adams and the court ex

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1 parte. There's an additional matter that I would bring to
2 the Court's attention relating to the funding and the
3 process and it's a timing matter and things. I just wanted
4 Mr. Nettles here for that but if he's tied up --

5 THE COURT: If you want him here I can get him here,
6 he's on his way but we can call him back on his cell phone
7 and stop him. If you need him here we can get him here.

8 THE DEFENDANT: Mr. Nettles can stay in Columbia. I
9 believe we can get through that without him.

10 THE COURT: I'm going to take a break now and you will
11 wait in here, we will come back.

12 THE DEFENDANT: Your Honor, while you're going down
13 there doing the jury matter, is it possible I can meet with
14 my investigator in the holding cell?

15 THE COURT: Whatever the jail requires as far as
16 security here then you need to comply with that. I think
17 he can meet with you in there.

18 (A break was taken.)

19 MR. BRACKETT: During the break we have had the
20 opportunity to review the material that Mr. Starnes has
21 provided to us. I think we have pieced together -- when we
22 got the case we discussed with Mr. Starnes last fall that
23 we were going to jump on the discovery issue and try to get
24 as much to him as possible. To that end we went up to
25 Lexington, I think it was in January of this year the first

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1 time that I met with Mr. Starnes at the Lexington County
2 Detention Center and I went with Mr. Pope, Ms. Collins,
3 Mr. Thompson and we met with the Lexington County Sheriff's
4 Office and the detention center. And basically our
5 position in this type of situation is to aggressively
6 getting as much documents as we can. It's our obligation
7 under Kyles versus Whitley to make sure anything that the
8 police have. The last thing we want -- and this has
9 actually happened in a death penalty case -- is to find out
10 on the eve of trial that here is another 200 pages of stuff
11 that we didn't know was out there, which could have changed
12 the complexion of the case entirely so we do pursue that.
13 And we did get this material, it is filed ex parte, we
14 should not have received it, there's no question about it.
15 I will say that it was inadvertent, obviously if there's
16 any kind of conspiracy to get this material and provide it
17 to us so that we would have some insight into his case, we
18 would have never turned it over to him. This is -- we are
19 talking about an agency that's also technically Captain
20 Quig, that deals with 750 inmates in that detention center.
21 All of them have their own needs and issues, and
22 particularly Mr. Starnes, I think has got a significant
23 amount of correspondence between him and Captain Quig.
24 There has been a lengthy relationship between the detention
25 center and himself and there has been accumulated a large

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1 file. They have made a number of accommodations to
2 Mr. Starnes during the course of his pro se representation
3 to allow for him to represent himself, including things
4 such as allowing him to a private room from 11:00 at night
5 until 6:00 in the morning, or 5:00 in the morning where he
6 can be in silence and in private by himself at a table.
7 Now, onto the remedy. I will say that out of the six or
8 eight or 10 witnesses that are on this list, which I gather
9 is the thrust of his complaint is that we now know who his
10 expert witnesses are -- with exception of one of the people
11 that are listed, all are either experts that testified in
12 the first trial and we had a transcript of them so we knew
13 that they were involved in the case prior to this case
14 because we had a transcript of their testimony, or they are
15 private investigators and there's a list of private
16 investigators. And it's not as if these people -- an
17 investigator can be engaged from any number of things, from
18 simple service of subpoenas or just knowing he has
19 investigators, I know he has them. The identity of them
20 doesn't assist me or give me any special insight into what
21 his defense is. So I don't think that that particular
22 issue is really damaging or prejudicial to Mr. Starnes.
23 The majority with the exceptions of one, Dr. Nichols, we
24 knew were involved in the case. Notwithstanding that I
25 realize it could be an appellate issue and Mr. Starnes may

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1 choose to say that he is being deprived of his right to due
2 process to a fair trial and prepare his case in private and
3 in peace and I understand that. The only true remedy that
4 can resolve the issue is if we weren't involved in the case
5 and you ordered us not to disclose to any third party what
6 we now know and appoint somebody completely different to
7 prosecute the case, which, of course, would put the case
8 back some time and I don't know whether Mr. Starnes wishes
9 to do that. But that is the only way if our knowing Dr.
10 Nichols is involved in this case, I don't know whether he
11 intends to testify. I don't know whether he was consulting
12 and if he did consult he's a pathologist. I have no
13 special insight but if that's an issue to him and he feels
14 that that's the only resolution then that would be on
15 Mr. Starnes. But that's essentially where we stand. I
16 don't know if there's any need to take any testimony
17 because we do in fact agree that this material was sealed
18 and it was inadvertently provided to us.

19 THE COURT: Mr. Starnes?

20 THE DEFENDANT: Thank you, Your Honor. Your Honor,
21 just for the record there was an order in place that
22 prohibited the solicitor from obtaining this information
23 and I believe they agreed to that. What's happened is the
24 jail violated that order by acting as a confidential
25 informant to the solicitor's offense. This is further than

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1 just Dr. Nichols. One of the investigators involved in
2 this case was a narcotics officer for the Rock Hill Police
3 Department, they know that, they've got that information.
4 There has been several witnesses that I've interviewed that
5 did not testify and was not made part of the record at the
6 original trial that would come into that jail that I
7 interviewed that I probably will call at trial. One of
8 those individuals was a close contact to one of the
9 individuals that was killed in this case. The State did
10 not call them for various reasons. I have interviewed this
11 individual, they have the report. This individual come
12 from out of state to visit me present with Mr. Skidmore and
13 Mr. Delgatto. I had a lengthy interview and possibly will
14 call that witness. This is far beyond just Dr. Nichols,
15 Your Honor. The case that I would rely on is State versus
16 Quarterbaum, 522 Southeast 2nd 105. That's a Lexington
17 County case that the supreme court ordered -- what happened
18 in Quarterbaum, the solicitor's office came into contact
19 with --

20 THE COURT: I think I'm familiar with it. Is this the
21 one they videotaped --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay.

24 THE DEFENDANT: I think it's far beyond than just Dr.
25 Nichols being on this list. There was an order in place,

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1 they agreed that they inadvertently got this information
2 and I believe it is a conflict for the solicitor -- this
3 solicitor's office to prosecute me, Your Honor, because
4 they know this information.

5 THE COURT: Tell me this: I understand and they've
6 agreed that the order was in place and that the order was
7 violated by providing this information to them, they agree
8 to that. Although I agree it's inadvertent, obviously they
9 did not do that surreptitiously, they wouldn't have sent it
10 to you as part of their discovery to you. But the issue
11 is -- and what we have done for the record is we have tried
12 to speed this whole process up. You had wanted to move on
13 and try to get it done as soon as possible and I assured
14 you when we had a hearing that I would get it scheduled as
15 soon as we could and we probably could get it -- we could
16 try to get you a trial scheduled within a year, do you
17 remember that?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: That you wanted to speed it up, the
20 solicitor's office agreed to go through this rhelms of
21 discovery they had and try to get that to you, or all of
22 the information that they had and all that. And we tried
23 to -- we contacted Lexington County, we were trying to
24 get -- which has a number of capital cases and we tried to
25 get you scheduled as quick as we can, scheduled in this

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1 year and the only times we could come up with were in
2 October, two weeks in October. So we did that and
3 everybody has been moving as fast as we could to try to get
4 ready for that trial date and determine if we could do it.
5 Now, having said that -- so everything -- and of course,
6 the solicitor got into this in the late stage of the game
7 and had to try to play a little catchup with this thing.
8 But anyway, having said that, there's no question but what
9 there was a violation of the order it was in and the
10 information has been provided to them that should not have
11 been provided to them. My question to you is then how were
12 you prejudiced by that? How are you prejudiced?

13 THE DEFENDANT: Your Honor, I am prejudiced by the
14 fact they know that Mr. Lubin, one of the investigators
15 that interviewed a witness in this case, will be
16 testifying. Without them knowing that information --
17 there's no doubt Mr. Lubin is going to testify in this
18 case, they would not have been privy to this information.
19 I don't have to turn over a witness list to them unless
20 Your Honor orders it and whatever the Court orders I will
21 go by that. That in itself, Your Honor, they know -- they
22 know that I'm going to call this individual, and the fact
23 that he worked for the Rock Hill Sheriff's -- Police
24 Department. Not only that, they know my experts, all of
25 this stuff was done ex parte, all of this stuff was done

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1 off the record to avoid the solicitor's office from getting
2 this information.

3 THE COURT: Well, let's say now their position is that
4 all of these experts that had the information sent to them
5 or visit you at the jail, all of them were expert witnesses
6 in the first trial and all of them -- their testimony, what
7 they're going to testify to is in the transcript at the
8 first trial so they know about these experts, so that's
9 something they could have learned by just reading the
10 transcript, except for one. I understand you say you also
11 got a potential witness in the case that you plan to call
12 that they would only learn about that from getting the
13 records from the jail that they were not supposed to get, I
14 understand that. But the other witness -- you had one
15 expert witness and they don't know, of course, the
16 substance of what that witness might testify to, they know
17 about that witness. But again, that question would be
18 whether that witness is going to be required to make a
19 report and provide it to them in a timely basis so they can
20 prepare for the expert witness. And so my question to you
21 is how are you prejudiced by that? Don't just say well,
22 now they know who the expert witnesses are, they already
23 knew all of them except for one. So I am just asking you
24 to tell me how you are prejudiced by that if they were to
25 prosecute you in the case?

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1 THE DEFENDANT: Because they know the defense matters.
2 Not only that, Your Honor, they have made photocopies for
3 me and that's the purpose I wanted Captain Quig's
4 testimony, I have sent them photocopies and requested
5 them -- I sent some photocopies that were going to a
6 defense expert and I really don't want to name this
7 individual -- well, they know it -- an individual that
8 wasn't even involved in this case, they made the
9 photocopies. I specifically asked them in the request if
10 there's any duplications made of this to please notify me.
11 Mr. Quig had his sargent made the copies, his sargent told
12 me there were no reproductions, you have the only copies.
13 I get the discovery from Mr. Brackett, they've made the
14 copies, they've turned it over to the State. This
15 expert -- I really -- they know the individual's name but I
16 don't want to tell his function in it, I will tell you ex
17 parte but I don't want to share that with the State. This
18 is an expert and the function that's going to be done in
19 the second trial wasn't done in the first trial.

20 THE COURT: Well, you don't have to go into that at
21 this point.

22 THE DEFENDANT: They know who certain experts are,
23 they have their names, they can call their individuals,
24 they have their driver's license, they can go interview
25 them and say well, now I know Mr. Starnes is going to, for

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1 instance, call this doctor or call this other expert, they
2 have all of that information, Your Honor. This is a
3 different situation because I'm pro se and there's no
4 attorney involved in that.

5 THE COURT: I can appreciate the difference, I
6 understand. I'm just asking you about the prejudice issue,
7 how you're prejudiced by it. I understand they've gotten
8 some information that they were not supposed to get, the
9 question is the prejudice to you. Because obviously if the
10 Court relieves them from prosecuting we're going to have to
11 get some other prosecutors in the case, this is absolutely
12 going to delay this trial, it will not be held this year I
13 can assure you of that. There's no way we're going to get
14 other prosecutors in this case who are going to be able to
15 go through the rhelm of discovery material and all of the
16 dates and that and be able to do it, there's just no way it
17 can be done in 2006, so you automatically are talking about
18 going to 2007. And so you're aware of that.

19 THE DEFENDANT: Yes, sir, I wouldn't object to that.
20 There's a remedy to this and the remedy to this is my
21 prayer to the court is to recuse this solicitor from
22 prosecuting this case and take that discovery file or that
23 disc or wherever this information has been printed from, I
24 would ask for a written order from the Court -- and I will
25 be glad to write the order -- that the next prosecutor that

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1 is involved in this case does not glean this information.

2 THE COURT: We would have to remedy it that way if we
3 went that route to make sure it doesn't reproduce itself to
4 somebody else or we're going to be in the same position, so
5 we would have to address that.

6 THE DEFENDANT: This was the very reason they reversed
7 Quarterbaum.

8 THE COURT: It's a little more complicated,
9 Mr. Starnes, believe me. That was a case where the
10 prosecutor -- they got this information surreptitiously and
11 used it when prosecuting the case and knew they were
12 receiving it, they used it to prosecute, it was an obvious
13 violation of ethics. We don't have that here and there's
14 no allegations of ethical violations by the solicitor's
15 office here because they told you they received all of this
16 information, didn't have it received until the day they
17 reproduced and sent all of this to you. Obviously if they
18 reproduced it and sent it to you and told you we got
19 information, if they would have known there was information
20 they weren't supposed to have and they were not aware of
21 this they wouldn't have sent it to you. We're not in an
22 ethical violation type situation as you had in Quarterbaum.
23 As you know the prosecutor was disciplined for ethical
24 violations in this case, that's not the situation, it
25 wasn't done -- nevertheless the issue is prejudice,

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1 prejudice, that's what we need to know is how you were
2 prejudiced by it, that's what I want to know. You're
3 telling me they gained information that they weren't
4 supposed to and you were prejudiced by that. Do you want
5 to be heard further, Solicitor?

6 MR. BRACKETT: I can only say I didn't read this
7 material until it was provided to me today. I haven't seen
8 any -- the only thing that I've known from reading this --
9 because I haven't seen it, where you have sent it to,
10 Mr. Starnes sent this to another expert, I'm not disputing
11 that it's in here but I didn't see that. I focused on the
12 expert issues. Because the order said that accessibility
13 to experts shall be kept under seal so I don't know about
14 any other -- I focused on the six names that were on that
15 one sheet and then the six names that he called to my
16 attention from the second sheet that were, in addition to
17 the first six names, reviewed those and determined they
18 were private investigators, had knowledge that he has a
19 private investigator that is working for him or that
20 they -- except for Dr. Nichols had him testify previously,
21 so that's what I have seen from this.

22 THE COURT: He's saying he was prejudiced by this
23 other witness that was not utilized in the first trial that
24 he had planned to talk to and will probably be a witness as
25 prejudiced.

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1 MR. BRACKETT: I would just point out for the record
2 that we received a massive amount of information. As Your
3 Honor is aware, or maybe not, all of the discovery in our
4 office is handled by digital imaging. We keep electronic
5 images in our files, that makes for portable discovery and
6 we are able to combine copies easily on CD rom to the
7 defense and if he loses it I told him I would provide him
8 five more copies, it's not like I have to go photocopy
9 another 4,000 more pages. So all of that stuff is handled
10 by Ms. Collins in our office who takes it and scans it
11 through. I think the only -- she has individual contact
12 with each page because she writes on it but I don't think
13 she reads all of this stuff. Then she scans it and
14 provides it to him, so we certainly didn't know that
15 information was in there. Again, I only know what was
16 handed to me by Mr. Starnes.

17 THE COURT: Well, I want to know why this was
18 provided, so let's put the officers on the stand that was
19 responsible that provided it to the solicitor's office, I
20 want to know they did it, I want to hear it from them.
21 Because this has cost a lot of time and money and problems
22 if I have to relieve the solicitor's office, I'm still
23 going to think about that. You can't take any risks in
24 these cases if there's a possibility this could be an
25 issue. This information has got in -- if there's an order

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1 in place saying you can't be provide that, then you can't
2 turn around and provide it to the solicitor's office,
3 that's the purpose of the order. As you can see we have
4 been through quite a bit of water under the dam in this
5 case already and here maybe we have to start all over
6 again.

7 MR. POPE: Sure. As an officer the of court I can
8 relate I was there, we just went and asked them for
9 everything, they pulled out boxes and we toted it all up
10 here and I don't think anybody went through and reviewed --

11 THE COURT: Where did you get it. Did you get it from
12 the clerk's office?

13 MR. POPE: No, sir. We got it from the detention
14 center and from the sheriff's office. We just went and
15 made sure we got everything and I think Ms. Collins can
16 speak, we got some from the solicitor's office as well,
17 their copies. The only things that we haven't turned over
18 were Solicitor Myer's handwritten notes from the first
19 trial and that trial has been reversed and that stuff is
20 moot anyway and it's nothing we intended to rely on.
21 Everything else we copied. We basically went in there and
22 said give us everything you've got on this case, we need to
23 have everything, we can't have a mistake later on by
24 getting some thing at the last minute.

25 THE COURT: I understand. Here you've got an order in

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1 place that says this information shall not be accessible,
2 that's what it says and it's to the jail and the jail had a
3 copy of the order. And yet they turn around and provide
4 all of this information to the solicitor office in direct
5 violation of the order and my question is why and I would
6 like to hear from them about that because I've got to make
7 sure this doesn't happen again.

8 MR. POPE: Yes, sir. I'm not exactly sure where we
9 got the specific documents, whether it came from which --

10 THE COURT: Lets put the Officer Quig on the stand and
11 let's ask him about it, I want to know what's going on.

12 The witness, JOSEPH QUIG, first sworn and testified
13 as follows, on:

14 THE WITNESS: Sir my name is Joseph E. Quig, III. I
15 work for the Lexington County Sheriff's Department, I'm the
16 operations officer for the jail.

17 THE COURT: Thank you. Please be seated. Officer
18 Quig, the information -- I think you've heard what's gone
19 on thus far in this hearing and that is that just Judge
20 Westbrook in this case, Judge Marc Westbrook, issued an
21 order in this case in State versus Norman Starnes, in which
22 he required that the information concerning experts in
23 Mr. Starnes' cases be not accessible to anyone else that
24 that information not be available. And do you have a copy
25 of that?

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1 THE WITNESS: I do, sir. Would you look me to get it?

2 THE COURT: No, sir. You did receive a copy of it?

3 THE WITNESS: The first time I received a copy of it
4 was in written correspondence with Inmate Starnes when he
5 attached it to a four or five page request when he was
6 going to have them come in and set up a mock up of the area
7 where the charges were done or where the alleged crime took
8 place.

9 THE COURT: All right. Can you tell me why
10 information concerning person's who might be called as
11 witnesses in Mr. Starnes case, including expert --
12 potential expert witnesses, why all of that information was
13 made available to the solicitor's office or sent to the
14 solicitor's office in this case?

15 THE WITNESS: Sir, the way correspondence with inmates
16 comes in through is functioned through with an exception on
17 inmates whether it's a problems with an assault or what
18 have you, most of the correspondence is filed in inmate
19 other. Of course, Inmate Starnes communicates with the
20 administrative staff in the jail at least four, five or six
21 times a month and there's a file to handle his
22 correspondence with his correspondence going in and out to
23 his mother, his witnesses, people coming in at his request.
24 So he has a file folder that is separate with probably
25 four, five or 600 pages in it and as his correspondence

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1 comes in and there are things that have to do with him is
2 filed in that box. When the York County solicitor's came
3 down and were getting ready for this file they asked for
4 all of the correspondence that had come in on Mr. Starnes
5 from the detention center from Major Tate who is the
6 department counsel and what have you, and all of that
7 correspondence was delivered to Major Tate's office and
8 that's why it was submitted, Your Honor.

9 THE COURT: Do you all not segregate from that
10 information that was not supposed to be divulged and
11 sent -- the order says find that the order is accessibility
12 of experts to the defendant will be sealed from the
13 solicitor prosecutor's office. The Court also find it is
14 necessary in order to preserve the confidential nature of
15 the defendant's preparation of the defense. And you all
16 turned around and sent that information to the solicitor's
17 office and didn't have a way to keep that separate from any
18 other information?

19 THE WITNESS: The only thing I can say, sir, is that
20 Inmate Starnes is marked Inmate Starnes file and it was
21 filed inside there and delivered to the staff attorney and
22 subsequently was taken back up here.

23 THE COURT: Mr. Starnes, you wanted to ask him some
24 questions while he's up on the stand?

25 THE DEFENDANT: Your Honor, I provided you a copy of

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1 it, if I could the copy that you got it, I could give it to
2 Captain Quig if I could walk him through the copy that
3 you've got, sir?

4 THE COURT: Okay.

5 DIRECT EXAMINATION

6 BY THE DEFENDANT:

7 Q. How are you doing today, Captain Quig?

8 A. I am doing find.

9 Q. Before you worked in the detention center you worked
10 in the Lexington County Sheriff's Office in the major
11 crimes unit; is that correct?

12 A. That's not correct. I was the region commander of
13 region two before I came into the jail.

14 Q. And that was with the Lexington County Sheriff's
15 Department.

16 A. Yes.

17 Q. Were you directly involved with the investigation of
18 this case with the charges for what I am here today for?

19 A. No, I was not.

20 Q. You was not? The very front page has got a page of
21 evidence in there. Are you familiar with that tape,
22 Captain Quig?

23 A. I'm not familiar with that specific type of tape, but
24 I'm familiar with what evidence is for, yes.

25 Q. We've used that tape quite a bit because there is a

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1 box at the sheriff's office that contains information --
2 confidential information and in that box we use this tape
3 to seal it, isn't that true, Captain Quig?

4 A. That's a correct statement.

5 Q. When we seal that tape you have me sign across that so
6 my signature is reflected on that tape, isn't that true,
7 Captain Quig?

8 A. That's correct.

9 Q. And the purpose of that is that if anybody breaks that
10 seal or retapes that box I would know that that box has
11 been tampered with.

12 A. That's correct.

13 Q. At anytime has any of your officers opened that box
14 without my presence and broke that seal?

15 A. Not to my knowledge.

16 Q. To your knowledge. Captain Quig, would you please
17 turn to the third page at the top, is document 3661. Do
18 you recognize at that report, Captain Quig?

19 A. 3614?

20 Q. No, sir, it's the third page, 3661. The numbers is at
21 the top of right corner and I believe I have highlighted
22 that for you. Is that a report from Sargent Scott
23 Mcdermott?

24 A. It is.

25 Q. Captain Quig, if you would like down --

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1 MR. BRACKETT: I'm not sure I have a copy of that
2 document. If I could make sure we are reading off the same
3 page, sir, looking through the stack you gave me.

4 Q. That's a incident report from Sargent Mcdermott, is
5 that correct, Captain Quig?

6 A. It is.

7 Q. And on that report at the bottom there's a signature
8 reflected down there at the very bottom. For the Court,
9 would you tell him whose signature that is?

10 A. That's mine.

11 Q. And in that report Captain Quig, would you please read
12 the first line that I have highlighted there. It starts
13 off at approximately 12:13 hours, would you please read
14 that to the Court?

15 A. Approximately 12:13 hours I broke the seal to the top
16 of the evidence box and placed the three VHS tapes in the
17 evidence box.

18 Q. And then later on down it says that approximately
19 13:17 hours, would you read that for the Court, please?

20 A. At approximately 13:17 hours I arrived an Alfa pod and
21 escorted Inmate Starnes to the roll call for Inmate Starnes
22 to reopen the box so he could verify that all contents were
23 still present.

24 Q. So in this report then that you signed off on, Sargent
25 Mcdermott went to that evidence box without me being

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1 present and broke that seal and entered that box, isn't
2 that true, Captain Quig?

3 A. It appears that way.

4 Q. And that is the same report that you signed off on.

5 A. I did sign off on it, it appears that way.

6 Q. If you would back up one page, Captain Quig, it's
7 3620. This is the incident report from Sargent Allen in
8 which she retrieved this box from your office and
9 inadvertently popped the seal on it accidentally. That's
10 another incident report there in which that seal was
11 broken, isn't that true, Captain Quig?

12 A. That's what it says. It was reported to Captain
13 Harold, picking the box up and transporting it.

14 Q. Well, the purpose of that box that has this evidence
15 in it is to protect the confidentiality of the defendant;
16 isn't that true?

17 A. That's true.

18 Q. You and I have had conversations about the
19 constitution and you even stated that you believed in the
20 constitution and due process, is that correct, Captain
21 Quig?

22 THE COURT: I don't know where you're going with that,
23 Mr. Starnes. I think you are going a little far field.
24 He's not an expert on the constitution. Ask him any
25 questions you want to ask him about this evidence.

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1 THE DEFENDANT: Sure. Okay.

2 Q. Captain Quig, if you would go to page 3614, it's
3 inmate request that's dated May 30, 2005?

4 A. Uh-huh.

5 Q. I have highlighted something in there. This is a five
6 page request that is addressed to you; is that true?

7 A. That's true.

8 Q. And this request is relating to the mock up exhibit
9 that we did at the detention center that you made Judge
10 Alford aware of just a minute ago; is that correct?

11 A. That's correct.

12 Q. And the date of that request is May 30, 2005, is that
13 correct, Captain Quig?

14 A. That's correct.

15 Q. And your signature is reflected on that; is that true?

16 A. Yes.

17 Q. Would you please go to the next page, page 3615?

18 A. Okay.

19 Q. This is another request that was sent to you in
20 reference to us doing this mock up at the jail where I had
21 access to certain experts, investigators, stand-by counsel
22 to consult in this exhibit that we did at the jail. For
23 the record, Captain Quig, would you be kind enough to read
24 to the Court the highlighted information that I have in
25 that letter starting at Dear Sir?

1 A. Are you on 205 of 3615?

2 Q. Yes, sir, 3615 205, at the top there I have
3 highlighted the first five lines there, it starts off, dear
4 sir.

5 A. "Dear sir, during my hearing of April 29, 2005 before
6 Judge Westbrook I addressed having a court exhibit
7 temporarily installed here at the jail for about four
8 hours. Mr. Tate was present and he agreed."

9 Q. Mr. Tate is -- what capacity does he have to the
10 detention center and the sheriff's office?

11 A. He's the counsel of record for the department.

12 Q. And in this letter I acknowledge to let you know that
13 he was present during that hearing; isn't that correct?

14 A. Correct.

15 Q. And the date of that later is also May 30, 2005?

16 A. Correct.

17 Q. Would you flip three more pages to page 3601?

18 A. Okay.

19 Q. Do you recognize that document, Captain Quig?

20 A. This is a letter from John Tate, general counsel for
21 the department.

22 Q. This letter is dated what, Captain Quig?

23 A. June 1st.

24 Q. June 1st of 2005. And that letter is addressed to the
25 Honorable Marc H. Westbrook; is that correct?

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1 A. Yes.

2 Q. Did you receive a copy of this letter?

3 A. I believe I did receive a copy of it.

4 Q. And I have highlighted that on the second page copied
5 to Captain Joe Quig.

6 A. That doesn't mean I received it, but I did believe I
7 received it if I have it in my records.

8 Q. The letter starts off pursuant to the agreement
9 reached between Mr. Starnes and the Lexington County
10 Detention Center and made part of the record in the hearing
11 on April 29, 2005, do you see that part, Captain Quig?

12 A. I do.

13 Q. And then it goes on and states, "So the defendant may
14 view and consult with experts and investigators and such
15 arrangements for June 4th beginning at 9:00 hours." Do you
16 see that, Captain Quig?

17 A. Correct.

18 Q. And this function that took place in the Lexington
19 County Detention Center took place on June 4th.

20 A. It did.

21 Q. Prior to this function taking place, this letter of
22 June 1, 2005 was addressed to you, or addressed to Judge
23 Westbrook and you were supposed to receive a copy; is that
24 true?

25 A. That's true.

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1 Q. And in addition before that on May 30th I sent you a
2 request with a motion and order that was attached to it and
3 you received that before June 4, 2005.

4 A. I don't see it.

5 Q. I guess what I'm asking you, Captain --

6 A. I don't see that document.

7 Q. The one we just talked about prior to that, the five
8 page request in reference to the exhibit, the one you just
9 passed --

10 A. The 3615 you requested to set up an exhibit that's
11 12-foot by eight inches by 11 by five.

12 Q. And that was on May 30th; is that correct?

13 A. That's correct.

14 Q. And then in this letter Mr. Tate was done on June 1st,
15 this was done prior to June 4th when this demonstration was
16 done at the detention center; is that correct?

17 A. Right.

18 Q. On the second paragraph of Mr. Tate's letter it says
19 further the detention center's management agrees and
20 understands. Do you see that part, Captain Quig?

21 A. I do.

22 Q. And you are the detention center manager, is that
23 correct, for the security?

24 A. I'm the operations officer.

25 Q. So you are more or less a security captain but you are

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1 the detention manager, would that be a fair statement?

2 A. I'm the operations captain, that would be the fair
3 statement. I'm not the guy in charge at the detention
4 center, but I'm the operations captain.

5 Q. In then the last highlighted portion I have there it
6 says, Further he may not share information, techniques
7 demonstrations or the like, that he may inadvertently learn
8 while performing his or her duties. Should anyone so
9 assigned commit such infraction he or she may be punished
10 by the Court for such utterance. Did you receive a copy of
11 this letter or is this the first time you have seen this,
12 Captain Quig?

13 A. I believe I have seen a copy of this letter from
14 June 1st, 2005.

15 Q. Prior to the exhibit being set up at the detention
16 center, did you consult with Major Tate about what went on
17 in the courtroom and the instructions from Judge Westbrook?

18 A. I don't think I consulted any more other than what is
19 in this letter right here. I don't recall consulting
20 anything in addition to this in your correspondence on
21 Saturday's functions dated June 2nd.

22 Q. But do you understand the letter to read that there's
23 not to be -- the understanding of the letter?

24 A. Yes, I understand the letter.

25 Q. Could you flip to page 3607?

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1 A. I'm there.

2 Q. This was the request that was sent to you I believe
3 that Judge Alford just talked about, and this is a
4 request -- and in this request did you receive from me two
5 orders signed by Judge Westbrook, one clocked copy on
6 April 29th, 2005, and the second one was clock copied
7 March 24th, 2005. Did you receive both of those orders in
8 this request?

9 A. Yes.

10 Q. And the date of this request is June 2, 2005.

11 A. I received it on June 3rd.

12 Q. Prior to receiving this you already had Major Tate's
13 letter, and then after all of this --

14 A. I don't know that to be a fact, but --

15 Q. But you did receive this -- you stamped this in your
16 office on the 3rd. So I guess what I'm asking you, Captain
17 Quig, is you had these orders prior to this function taking
18 place at the detention center.

19 A. I did.

20 Q. This function that took place at the detention center
21 when these experts entered the facility, the individual who
22 let them into the facility, isn't it true that they took
23 their driver's license and photocopied them?

24 A. It is true.

25 Q. And isn't it true that that information was later

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1 shared with the solicitor's office?

2 A. In a way of explanation they came in -- anybody that
3 comes into the detention center that has not been cleared
4 on the visitor's log with a background check, they're
5 identification is photographed, that's a true statement.
6 And as a result of them coming in a report was written that
7 explained -- this was a big operation to bring this into
8 the detention center with command and control and security
9 issues involved in it and all of the people that came in.
10 So to say that this happened in a simple manner, it didn't
11 happen in a simple manner, it was manned with security and
12 had to be done. Yes. Those copies were made and a report
13 was written that supported the execution of your request.

14 Q. And that report identifies certain individuals -- all
15 of the individuals that come and consulted with me that
16 day; isn't that true?

17 A. As does your letter, yes, sir.

18 Q. The same letter that had the two orders sealing that
19 information from the solicitor's office; isn't that
20 correct?

21 A. That's a correct statement.

22 Q. And this report was given to Major Tate also; is that
23 correct?

24 A. I don't know that this report was given to Major Tate.

25 Q. There was copies for Major Tate 6/6/05, so that was

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1 not given to Major Tate.

2 A. The written report, not your request. If you're
3 speaking of the written report at 3586 copy first to Major
4 Tate at 6/6/05, that's a true statement.

5 Q. If you would flip to page 3555.

6 A. 3555?

7 Q. Yes, sir. It's about three more pages.

8 A. Okay.

9 Q. When an individual comes into the detention center, a
10 potential witness in this case, I have to notify you; isn't
11 that true?

12 A. Yes.

13 Q. And the purpose of that I have notify you is for
14 security.

15 A. The purpose that you have to let me know is because
16 that the procedure that is used is you have to have a clear
17 visitation list and it's usually done in a week so a
18 background can be done and your people come in at different
19 rates so we need to know that in advance so we don't turn
20 them away at the door.

21 Q. And on September 13, 2005, I sent you a request to
22 interview an individual with a flight schedule that was
23 attached to it. Do you remember receiving that?

24 A. I do.

25 Q. Was a report written on this individual that came in

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1 that I interviewed? Was a later report later written that
2 you know of?

3 A. I don't have any way of knowing that right offhand
4 because they write reports on it. I have in my writing on
5 your request that, yes, you may do this and I furnished a
6 copy to Sargent Hargrove for execution as requested to
7 allow your visitor to come in.

8 Q. Captain Quig, just two more quick matters here. Could
9 you turn to page 3539?

10 A. Okay.

11 Q. Do you recognize that document?

12 A. It's an inmate request for where you made a request.

13 Q. It's an inmate request and it's dated 12-1-2005; is
14 that correct?

15 A. Yes, it is.

16 Q. And what was this request for, Captain Quig?

17 A. It says, Please make the following copies with the
18 paper I have provided in this folder. If the copier is
19 leaving lines across the paper that should not be there
20 then please do not make reproductions. I appreciate your
21 time. This material is confidential. If additional copies
22 are reproduced other than what was requested I want to be
23 notified in writing.

24 Q. So in that request I asked you if any of that
25 confidential material was reproduced I wanted to be

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1 notified in writing, isn't that true, Captain Quig?

2 A. That's true.

3 Q. And could you tell me if that request where you
4 notified me in writing that this confidential material was
5 reproduced?

6 A. Did I notify you in writing?

7 Q. Yes, sir.

8 A. No, I didn't notify you in writing, sure, the shift
9 Sargent will take care of this, Captain Quig, 12/1/05. And
10 I forwarded it to a shift sargent for execution to help you
11 with your pro se case.

12 Q. Is there a reason why you did not provide me writing
13 that there was reproduction made? In other words, what I
14 am asking is in the request do you understand that I asked
15 you to notify me in writing if any reproduction is done?
16 For the Court, would you tell me why you didn't notify me
17 of that?

18 A. No. I can't tell you why I didn't notify you of that.

19 Q. But you do understand that was confidential material
20 and I made that aware to you that it was confidential and I
21 asked to be notified if there were any reproduction.

22 A. I do understand that. I understand it that we
23 acquiesced when you requested to help you make the copies
24 for your case, yes, sir.

25 Q. And do you understand that the solicitor's office

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1 obtained this information Captain Quig?

2 A. I understand that inadvertently this was in the file
3 and this was sent to -- or York County picked it up when
4 they picked the whole file up.

5 Q. Material that I identified as being confidential got
6 into the solicitor's hands; isn't that correct, Captain
7 Quig?

8 A. That's correct that you identified it.

9 Q. Yes, sir. This material being on page 3541 and 3542.
10 Would you please turn to page 3542, Captain Quig? Right by
11 the number I have highlighted something in there that's
12 written. Do you recognize that document? It looks like a
13 diagram of a house.

14 A. I understand what it is, I don't recognize the
15 document.

16 Q. For the record, would you just tell me what that says
17 in the highlighted part right there in the top right-hand
18 corner?

19 A. It says, "Attorney/client work product only."

20 Q. Attorney/client work product only. And that work
21 product ended up in the solicitor's office's hands. Could
22 you turn to page 3538, third to the last page? We are just
23 about done. Could you identify that document for the
24 Court, please, sir?

25 A. It's a standard incident report done in the jail

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1 signed by sargent.

2 Q. Who was that Sargent?

3 A. Scott Mcdermott.

4 Q. And was Sargent Scott Mcdermott the individual that
5 made these confidential copies?

6 A. It says, "I was given a request for Inmate Starnes.
7 Norman requested to make ten photocopies, two of a
8 hand-drawn diagram, four of four photos. I informed
9 Captain Quig of this request." I instructed him to go
10 ahead and make the photocopies.

11 Q. So you instructed him to make the photocopies of this
12 confidential material; is that correct?

13 A. No. I acquiesce to your request to make photocopies.
14 I didn't instruct him to make anything. You asked for it
15 and I said okay we will do that to aide you in your pro se
16 case.

17 Q. Okay. But it says I informed Captain Quig of this
18 request and was instructed to go ahead and make the
19 photocopies. Is that an incorrect statement?

20 A. That's an incorrect statement.

21 Q. So then Sargent Mcdermott wrote a false report.

22 THE COURT: Let me ask you for clarification on the
23 record. Didn't you say in your request that you wanted him
24 to make copies of these, photocopies?

25 THE DEFENDANT: Confidential, yes, sir.

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1 THE COURT: I understand confidential, but
2 photocopies.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So if his response was he told me to go
5 ahead and make the photocopies, that doesn't mean he was
6 making extra copies to make something else. I'm just
7 clarifying that for the record. When you say make
8 photocopies, that doesn't indicate in and of itself he
9 gave them to someone else, he just okayed the photocopies
10 to be made. It doesn't say anything about extra copies.

11 THE DEFENDANT: No, sir, I asked for that. I
12 requested if they made any extra copies to notify me.

13 THE COURT: I understand. But if he okayed it for him
14 to go ahead and make the photocopies, you requested more
15 than one copy in your request, so when you say photocopies,
16 that wouldn't necessarily mean any extra copies that he
17 made, only that he was making what -- he okayed what you
18 requested, which was photocopies.

19 THE DEFENDANT: Somebody had to make extra copies.

20 THE COURT: He's not okaying making extra copies, for
21 the record I'm just clarifying that.

22 Q. I understand. Captain Quig, if you could, turn to
23 page 3549. Can you identify that document for the report?

24 A. This is a reporting officer, it's your basic jail
25 incident report written by C. O. Caine.

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1 Q. This was in relation to me receiving some mail on some
2 material that I had subpoenaed; is that correct?

3 A. I have no idea what information it is.

4 Q. Okay. Could you turn to the next page? This is the
5 last page.

6 A. Well, let's go back to 3549. It says, I was directed
7 by Captain Quig to deliver a package to Inmate Norman
8 Starnes and to check for contraband in the package. You
9 had a package to come in, we delivered it to you and
10 checked it for contraband and gave it to.

11 Q. Is it normal when mail comes in you write reports --
12 your officers write reports when all inmates get mail.

13 A. No, it's not. But it's not normal to have a pro se
14 inmate who at a later time may say that we're not
15 supporting him in his efforts to present a case. So in
16 order to verify that we've been overly demonstrative and
17 cooperative with you, that's why we have kept a file and
18 tracked you independently from inmate other files.

19 Q. Yes, sir. How many inmates did you say were in the
20 detention center, 750?

21 A. Well, it has been 912 the high this year, I think we
22 are 752 this morning.

23 Q. How many inmates are facing the death penalty and
24 representing themselves in that jail?

25 A. I believe that there is one.

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1 Q. And that one inmate is standing before you today; is
2 that correct?

3 A. Well, that's a correct statement.

4 THE COURT: Well, you know, Mr. Starnes, that is
5 neither here nor there. It just highlights the problem for
6 them in trying to deal with something they don't normally
7 deal with.

8 THE DEFENDANT: There's only one other thing I wanted
9 to put on the record.

10 THE COURT: All right, sir, briefly.

11 Q. When mail comes in to the detention center, every
12 piece of mail that comes into an inmate is photocopied; is
13 that correct?

14 A. Negative. Every envelope is photocopied.

15 Q. Correct. And is there a reason you all do that? Is
16 that for security?

17 A. Actually it's a tracking system to back track
18 contraband that comes in and what have you, and I'm not
19 sure what the table for destruction is. But the stuff is
20 filed, it's a security issue.

21 Q. Is it a normal practice when that mail comes in and
22 those envelopes are photocopied, is that a normal process
23 for that information to go to the solicitor's office? Just
24 say the solicitor's office in Lexington or another
25 solicitor's office, is that a normal practice?

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1 A. Only on request.

2 Q. So in other words the solicitor's office requested it
3 and you all would provide that information.

4 A. I have worked cases where they've asked to see
5 correspondence that comes in and out of the jail, yes.

6 Q. Does the solicitor's office have any anything to do
7 with jail security?

8 A. No.

9 Q. That is strictly the detention centers --

10 A. It's under the purview of the sheriff and further
11 under the purview of South Carolina Minimum Standards and
12 ACA Standards.

13 THE DEFENDANT: Your Honor, if I may, I have one more
14 document.

15 THE COURT: All right, sir.

16 Q. Captain Quig, do you recognize this letter?

17 A. Only for the fact that I have written on it. It's
18 correspondence from you to me again on July 12, I received
19 that correspondence on July 13th. A witness interview, I
20 wrote back to you, Inmate Starnes, your request is
21 approved. Have Mr. Skidmore coordinate with me or Captain
22 Harrell if I am not here.

23 Q. This was in relation to a witness interview; is that
24 correct?

25 A. That's correct.

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1 Q. The next page -- we're finishing up, Captain -- the
2 next page is a detailed incident report that was written on
3 7/21/05; is that correct?

4 A. That's what it says.

5 Q. And in this detailed report that you -- or excuse me,
6 Sargent Clausen had wrote -- this is in relation to an
7 individual coming into the jail that I was interviewing, a
8 potential witnesses for my defense.

9 A. Correct statement.

10 Q. And in that report the individual that I interviewed
11 is mentioned in that report; isn't that correct?

12 A. That's correct.

13 Q. And that interview came in with Mr. Skidmore from
14 Skidmore and Associates; isn't that correct?

15 A. It says the above date and time, I, Sargent Clausen,
16 was notified by Cierra Lewis who runs visitation and
17 Investigator Pete Skidmore and another person were here for
18 official visits with Inmate Starnes, Norman. I Sargent
19 Clausen proceeded with visitation and spoke to
20 Mr. Skidmore, Mr. Skidmore informed me that he had brought
21 Ms. Donna Benson to be interviewed by Inmate Starnes. And
22 the reason for the report is obviously that you made a
23 request and supported it, middle management officers had
24 written a report showing how they complied with the order
25 to acquiesce to your request.

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1 Q. I am glad you brought that up. In that request that
2 you have there that I sent you requesting to interview this
3 witness, at anywhere in that request do you see where I
4 identified the name of that witness?

5 A. No, not at all.

6 Q. The phones at the Lexington County Detention Center,
7 are they monitored and recorded?

8 A. No, they're not.

9 Q. Are you sure of that?

10 A. Yes, I am.

11 Q. So there's no way that a telecommunications officer
12 working for the sheriff's office could go into that
13 telecommunication room and tap on to that equipment and
14 monitor my phone calls interviewing witnesses with
15 Mr. Skidmore or any of my defense experts. That is
16 impossible, is that what you are telling the Court?

17 A. As far as I know that is impossible.

18 Q. Who provides service to the jail, is it Evercom?

19 A. I believe it is.

20 Q. And that recording those phone calls is just something
21 that you all do not do?

22 A. It is something that we do not do. In fact, as of --
23 that was reaffirmed within the last month or something that
24 that is the continuing policy at the detention center.

25 Q. You and I had a conversation probably a year ago in

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1 reference to communication and we discussed the
2 communication issue of me having a cellphone or private
3 land line to avoid calls being monitored and recorded. Do
4 you remember that conversation?

5 A. No, I don't.

6 Q. You don't remember that conversation.

7 A. You are one of 750, Inmate Starnes.

8 Q. One inmate pro se; is that right?

9 A. One of 750, sir.

10 THE DEFENDANT: That's all I have, Your Honor.

11 THE COURT: We're going to need to make copies of
12 those made available -- I would like to make a copy for the
13 record now and we can do that confidential. We can make
14 them court exhibits and seal them, but I think we're going
15 to need to make them part of the record because you
16 referred to them so extensively. If it's all right with
17 you, I will take this copy and if you need another copy of
18 it you can make another copy of it. Anything else we will
19 receive?

20 THE DEFENDANT: That's it. Your Honor's ruling on
21 this matter, are you going to wait and rule on it later?

22 THE COURT: I'm going to allow the solicitor a chance
23 to clarify anything on the record.

24 MR. BRACKETT: General counsel for the Lexington
25 County Sheriff's Office. I will let Mr. Tate go first and

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1 I may have some follow-up questions.

2 MR. TATE: Thank you, Your Honor. I will hand a
3 business card to the court reporter so he has all of my
4 information. Can I see the documents, please, that were
5 marked initially? I am laying them out on the stand here.

6 THE COURT: Let me ask you before -- I might be able
7 to save some time in this, I will certainly allow you to
8 ask him some questions if you want to ask it. It appears
9 to me that -- just the way it appears to me elicited to the
10 conversation in the documents, questions and answers, that
11 the Lexington Detention Center was simply documenting
12 everything they could because of a pro se defendant who is
13 accused of a capital offense, they were documenting
14 everything and tried to keep records of everything. Some
15 how inadvertently that all of these records -- when the
16 solicitor's office requested records then that all of these
17 were thrown in and given when they should not have been
18 given and that's the way it appears to me, you know, I
19 don't know. But nevertheless if they've been made
20 available and it should not have been made available and
21 it's prejudicial to the defendant, of course, certainly I
22 have to consider that in whether to recuse the -- or excuse
23 the solicitor's office and have others appointed to
24 prosecute the case, I'm saying that with that in mind, you
25 may proceed. There's nothing to indicate that it was

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1 intentionally done, but nevertheless if it was
2 intentionally done or not we still are faced with the
3 possibility of prejudice here. But go ahead.

4 MR. TATE: Thank you, Your Honor. I will be brief.

5 CROSS EXAMINATION

6 BY MR. TATE:

7 Q. Captain, as to the inmate telephone system, I
8 understand it's just not -- there are no recording machines
9 in the Lexington County Jail.

10 A. That's a correct statement, sir.

11 Q. Which record any inmate telephone call for any reason,
12 correct?

13 A. That's a correct statement.

14 Q. As to the photocopied mail in the package, I believe
15 you testified to a moment ago, what is the normal procedure
16 at the detention center when an inmate receives a package?

17 A. All mail in the detention center service is opened and
18 processed through and opened in front of the inmate. There
19 are strict regulations on the side of the packages that
20 come in and if they exceed that size of that package we
21 send them back.

22 Q. You mean you return them in the mail?

23 A. We return them in the mail. Certainly any packages
24 that come in for Inmate Starnes we don't do that because of
25 his special circumstances.

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1 Q. Regardless of size?

2 A. Regardless of size.

3 Q. And are those packages to the best of your knowledge
4 kept and opened in front of Inmate Starnes?

5 A. Absolutely.

6 Q. And do you have any knowledge of any officer in your
7 facility ever reading this material?

8 A. Negative.

9 Q. Okay.

10 A. If I may further add lib on that, the documentation on
11 that is that with a pro se inmate we don't want to find
12 ourselves in a position where we have not been as
13 cooperative as we can be with him with regards to command
14 and control issues that we have to do for the safety and
15 security of the detention center itself.

16 Q. Thank you. As to Sargent Mcdermott, if you recall I
17 believe Mr. Starnes asked you about placing some videotapes
18 into a box. The best of your knowledge did anybody view
19 these videotapes, anybody look through the box?

20 A. No, sir. To the best of my knowledge nobody would
21 have viewed them. And that's another case where he
22 received videotapes either from an investigator or that
23 were brought in. Obviously because of the makeup of a
24 videotape that's not something that we allow inmates to
25 have without command and control of it because there's

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1 plastic, there's metal in there, there's things that are
2 considered to be contraband in the detention center. So
3 they were given to the sargent and I would bet that if we
4 went a week or so up that there's a request from Inmate
5 Starnes to in fact have us setup a TV, VHS, tape recorder
6 and a DVD player, which we did.

7 Q. And you've routinely done this in the past with him.

8 A. Very often, routinely we do that so he can go in off
9 by himself, look at his DVD's and his VHS tapes and work on
10 his case file.

11 Q. As to the demonstration that we have referred to as a
12 reconstruction I believe or something that occurred in one
13 of the empty pods, do you have any personal knowledge of
14 what was talked about?

15 A. I have no knowledge. In fact, we disconnected all of
16 the cameras in that pod so that they would not work when
17 this went on. A very terse briefing was given to the
18 correctional officers that were involved in the escorting
19 down there and the importance of confidentiality involved
20 in that and so that he was allowed to do the mock up.

21 Q. To the best of your knowledge has any officer present
22 in that pod divulged any information that anybody said?

23 A. No, sir.

24 Q. You've got quite a background in criminal
25 investigation, Captain. I believe this is page 3544 that

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1 Mr. Starnes has already showed you. Please tell the Court
2 what that indicates that the photographic marking in the
3 bottom left-hand corner of that photograph, please.

4 A. This is a photo marker that some police agencies use
5 to put on the bottom of the pictures to substantiate the
6 date and time and the agency that did it.

7 Q. Who took the picture?

8 A. This is the state law enforcement division, SLED --

9 Q. Okay. Thank you.

10 A. -- put their marker on it.

11 Q. This is a SLED photograph.

12 A. Affirmative.

13 MR. TATE: I don't have any further questions. If you
14 would, please answer any questions Mr. Brackett may have.

15 CROSS EXAMINATION

16 BY MR. BRACKETT:

17 Q. Captain Quig, the only document that directs you not
18 to do anything in regard to relaying information, is it
19 this one here, this one paragraph one dated April 29th; is
20 that the only document?

21 A. As far as I know this is the only document, sir, that
22 speaks to that.

23 Q. Okay. And then the other documents, Norman Starnes'
24 requests that you not do things, but this one in
25 particular, this is the only thing that's got a Judge's

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1 signature on it.

2 A. That's the only official document.

3 Q. Have you or any of your officers to your knowledge
4 ever discussed with our office or any solicitor's office or
5 any law enforcement agency the subject matter that was
6 discussed by Mr. Starnes when you met with his expertise in
7 this mock demonstration that they set up?

8 A. Sir, I have had no discussions on his mock setup or
9 his witnesses or the people that have come in with anybody
10 or than correctional officers to insure that availability
11 of time and space was afforded Norman Starnes so that he
12 could work on his pro se case. I sit here now and question
13 whether overdocumentation of the lengths that we have went
14 to regarding Inmate Starnes to substantiate orders to
15 insure that he had his rights met was the right thing to do
16 quite frankly. But we have done that because orders were
17 issued to subordinates and if the captain is not there when
18 he has visiting people coming through or doing these
19 things, but sargents and corporals and correctional
20 officers in order to substantiate exactly that they are
21 carrying out what they're supposed to do would cause them
22 write substantiating information reports that has been
23 referred to on all of these case numbers by Inmate Starnes.
24 Q. Did Mr. Starnes on the July issue that we raised, did
25 he say that we had an inmate or person coming in to be

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1 interviewed in July?

2 A. Yes, sir.

3 Q. I couldn't find that document.

4 A. I think it's in that there, it may have been the extra
5 document that --

6 Q. It indicates -- this is document 3581, "On Monday,
7 April 25, 2005, I interviewed a potential witness in the
8 case with my investigator, Peter Skidmore." Is there
9 anything in there -- I want to be sure if this was
10 approved. "May I have Mr. Skidmore contact you to arrange
11 this? Mr. Skidmore will be present during the entire
12 interview. The interview I wanted to interview lives out
13 of state, therefore I wanted to be sure it's approved
14 before that person makes the trip to Lexington. As always,
15 Captain, I appreciate the time and attention. Kind
16 regards, Norman Starnes." At the time you received that,
17 did you know that the person who was coming was an expert?
18 Is there anything from that document --

19 A. No, sir. What I directed up here is, "Inmate Starnes,
20 your request is approved. Have Mr. Skidmore coordinate
21 with me or Captain Harold if I am not here."

22 Q. You didn't know that the person he was having to come
23 in was an expert.

24 A. I had no idea.

25 Q. And this order here says experts. "Accessibility upon

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1 motion of the defendant, Norman Starnes, appearing pro se,
2 I find that the orders of accessibility of experts the
3 defendant should be sealed from the solicitor's/prosecutors
4 office. The court also finds it is necessary in order to
5 provide the confidential nature of the defendant's
6 preparation of his defense." Did he indicate to you that
7 the person coming from Pennsylvania was an expert?

8 A. No, sir. The person was only identified in the report
9 in that you can't come in the detention center unless we
10 knew who you are.

11 Q. So you got a name?

12 A. Yeah. But I had no idea who Ms. Donna Benson is.
13 Donna Benson is just Donna Benson.

14 Q. Is it an unusual circumstance for you to have a pro se
15 capital defendant in -- does it cause special problems in
16 the administration of a jail?

17 A. It causes huge special problems.

18 Q. Have you done everything in your power to accommodate
19 those?

20 A. I think we have been exceedingly accommodating in this
21 whole process quite frankly.

22 Q. In no way was this disclosure of the materials that we
23 have gotten -- it was unfortunate, but in no way was it
24 intentional; is that correct?

25 A. Absolutely not.

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1 MR. BRACKETT: I have no further questions.

2 THE COURT: Follow-up briefly, Mr. Starnes. We have
3 got to move on.

4 THE DEFENDANT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY THE DEFENDANT:

7 Q. Captain Quig, Major Tate asked you about phone calls
8 at the detention center and he said the calls aren't
9 monitored and recorded. When those calls are made there's
10 a disclaimer that comes over that telecommunication line
11 that says this call is subject to being monitored --

12 MR. BRACKETT: This exceeds the scope of the redirect
13 and I don't even know how it's relevant to the issue that
14 we have before us.

15 THE COURT: Well, I am going to allow him to ask him
16 about that, if there's a disclaimer that comes on there.
17 Go ahead.

18 Q. There is a disclaimer that comes on that says the call
19 is monitored and recorded; isn't that true?

20 A. I think it says words to that affect. I don't know
21 exactly what it says to be honest with you.

22 Q. But it does give a disclaimer that the calls are
23 subject monitor and recording in some form or fashion.

24 A. That's a correct statement.

25 Q. And the mail that's photocopied that's come in the

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1 jail, the envelopes are photocopied, if a potential
2 witness, an expert or anyone writes me in that detention
3 center it's photocopied and if the solicitor's asked for it
4 they get that information; isn't that true?

5 A. They could get that information.

6 Q. If they ask for it they could get; is that true?

7 A. If they requested the information we could give that
8 to them. They have not asked for it, but if they did we
9 would give it to them.

10 Q. Can you tell me how they got it?

11 A. I have no idea. Do you have an example?

12 Q. Newberry Pathology, the very last page, that's just an
13 example of one parcel of mail. But isn't it true that all
14 of my --

15 A. This was a package. This was a package that came in
16 and because it was handled special because you get special
17 treatment a report was written to substantiate what it was.
18 And the officer to show when it came through made a copy of
19 why he made this exception to the mail policy.

20 Q. Okay. But a regular normal envelope also gets
21 photocopied too; isn't that true?

22 A. Every piece of mail that comes in, they're photocopied
23 by the person that handles our mail. They're not done by
24 CO's, there's a civilian lady that makes copies of them
25 when they come in and they go into a big box and they're

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1 batched by dates and if somebody requested them we would
2 have to go through and hand pull them. But specificity for
3 you they're copied just like all inmates.

4 Q. So can you tell me how the solicitor's office is
5 getting photocopies of my mail that is incoming to the
6 detention center, can you answer that question?

7 A. I have no idea other than what would be accompanied
8 with a report that was in your file. I have no idea.

9 Q. Two more quick questions. Mr. Tate asked you about
10 the court exhibit that was brought and that we did at the
11 detention center and you mentioned the confidentiality. So
12 prior to us doing that, do you acknowledge the fact that
13 you had both orders from Judge Westbrook sealing
14 accessibility to the experts, that that information was
15 confidential and was not supposed to be divulged to the
16 solicitor's office.

17 A. I had those attached to your five page request I think
18 is the first time I had seen them and you attached those on
19 there. And part of briefing our people and what have you
20 that I spoke with Major Tate is exactly that it was
21 confidential and that they would be down there and we undid
22 the cameras and so on and so forth. The report of that
23 went in the file.

24 Q. Okay. Did Mr. Tate tell you the rulings that Judge
25 Westbrook went over on April 29th before we did that? Did

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1 Mr. Tate tell you that we discussed in court about
2 witnesses coming in and out of the detention center to
3 visit me on record, we discussed that. Did he tell you
4 about that?

5 A. I don't think that Major Tate ever told me anything.
6 I think all I saw was whatever might have been written in
7 that letter.

8 Q. So Major Tate never told you that Judge Westbrook on
9 record previously in this case told the jail attorney,
10 "Stay away from that. He's got a right to confidential
11 things, stay away from that. Don't record his phone calls
12 and don't disclose the witnesses and the experts to the
13 solicitor's office." You had no idea that took place?

14 A. I didn't go to those court hearings, I'm the
15 operations for the jail. What I know is what I have read
16 out of the papers either submitted by you or the mock up
17 letter that I believe that Major Tate read.

18 Q. In all of these hearings that have been held prior in
19 this case since I have been pro se, isn't it true that
20 Major Tate has been in each and every one of those
21 hearings? Isn't that true, Captain Quig?

22 A. I have no knowledge of that.

23 THE DEFENDANT: That's all I have, Your Honor.

24 MR. BRACKETT: Just one question to clear something up
25 for the record.

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1 RECROSS EXAMINATION

2 BY MR. BRACKETT:

3 Q. When the envelopes are photocopied, it's the exterior
4 of the envelope; is that correct?

5 A. Yes, sir.

6 Q. They open it up and photocopy his actual letter?

7 A. No. They come in in a big box, a mailbox, and there's
8 a civilian working with Swanson, our canteen company, they
9 are hired to handle that. They make copies of it, they go
10 into a bankers box.

11 Q. That show the addressee and the person from?

12 A. Yes. And there's a couple of reasons for that. We
13 don't take mail in that doesn't have a return address, we
14 don't send it out with it because you couldn't track any
15 contraband that comes in that way. When people send
16 marijuana into the jail it would never go to the second
17 phase if it didn't have a return address on it. So it
18 comes in albeit a lot of times it's bogus, it's a tracking
19 mode very much like this phone may be monitored for surety
20 purposes when you call your insurance company.

21 Q. You're just not doing it now.

22 A. I will tell you that the sheriff's order and the
23 department policy is that we don't record phone calls,
24 period.

25 Q. Now, the main thing I wanted to clear up and make

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1 sure, nobody has violated his mail, opened it up and read
2 it to you. You don't have a copy of his correspondence
3 between him and his stand-by counsel and that sort of
4 thing.

5 A. Absolutely not.

6 MR. BRACKETT: Thanks you, sir.

7 THE COURT: You may stand down. Let me ask you,
8 Mr. Starnes, again because we are talking about the
9 possibility of extending your trial another several months
10 in this case, tell me how in your opinion you would be
11 prejudiced by the fact that the solicitor's office has
12 received what they've received, how you are prejudiced by
13 that? That's what I want to know.

14 THE DEFENDANT: First of all, Your Honor, the fact
15 that they know witnesses I have interviewed that they
16 normally wouldn't go to and interview, they wouldn't be
17 privy to that information.

18 THE COURT: Which witnesses? I don't want you to give
19 me witnesses, how many witnesses? I don't know that you
20 would give me witnesses.

21 THE DEFENDANT: I don't know because I don't know what
22 all photocopies of mail and stuff they got. I tried to do
23 as much of this stuff in the mail.

24 THE COURT: Let me ask the solicitor's office, did you
25 receive anything from the detention center in Lexington

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1 that you have not provided Mr. Starnes?

2 MR. BRACKETT: I believe we have given him everything.

3 THE COURT: They're saying whatever they would have
4 been sent from the detention center they've made copies.

5 MR. BRACKETT: Now, there was one box of material that
6 it was either sent by Mr. Starnes to them or them to
7 Mr. Starnes, he has a copy of it. It was nothing related
8 to the case, nothing I intended to use.

9 THE COURT: It has nothing to do with any potential
10 witnesses he may have?

11 MR. BRACKETT: I didn't look at it that close. I gave
12 it back to Mr. Tate because it was not investigative or
13 material related to the murders, stuff that I would use in
14 the preparation of my case. God knows there's enough to
15 read with out me bringing in additional boxes.

16 THE COURT: The question I'm trying to get from you is
17 how are you prejudiced by this and the need to -- if
18 there's some way to cure this problem without any real
19 prejudice to you and make sure it doesn't happen again, if
20 we could proceed on with the solicitor's office handling
21 it.

22 THE DEFENDANT: Your Honor, first of all there was a
23 court order in place to prevent this from happening.

24 THE COURT: Are you saying it's more than one or just
25 the one that you've made --

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1 THE DEFENDANT: The one sealed accessibility.

2 THE COURT: Of experts witnesses.

3 THE DEFENDANT: That's correct. And, Your Honor, I
4 can't give you the transcripts because I haven't gotten
5 them. But Judge Westbrook myself and Mr. Tate has
6 extensively went over this on the record in prior hearings
7 and the fact that there would be individuals coming to the
8 detention center to interview, he specifically told them
9 "Stay away from that. He is allowed to present a defense
10 and to stay away from those matters."

11 THE COURT: I don't know what that means stay away
12 from those matters. It's one thing to make sure you don't
13 listen to any conversations or repeat anything that's said
14 with regard to those witnesses or try to overhear those
15 conversations, that means -- that's what staying away means
16 to me. It's another thing to send a copy of an envelope
17 that came in to you -- to them from somebody or a name of
18 somebody that came to see you in the jail, a potential
19 witness. Staying away doesn't necessarily mean that you
20 wouldn't have a -- necessarily mean you wouldn't have a
21 list.

22 THE DEFENDANT: I believe he said, "Don't share it
23 with the solicitor's office." I don't have the record at
24 this time but when I get it I will turn it over to the
25 Court and you can mention -- I would give Mr. Brackett's

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1 office the prior proceedings that we had, I just haven't
2 received -- the funding has been slow.

3 THE COURT: My question is -- you understand I'm
4 trying to refine this, I'm trying to get down to the meat
5 of how you would be prejudiced by it. And not just to say
6 well they were revealed names that they shouldn't have
7 gotten revealed names. How are you prejudiced by that?
8 That's what I need to know.

9 THE DEFENDANT: If he goes and interviews these
10 witnesses then -- normally he wouldn't do that. And what
11 I'm saying I guess is not only am I prejudiced by the
12 violation of the court order but what could happen down the
13 road. They admit that they got this information
14 inadvertently and the remedy to this situation, Your Honor,
15 is to recuse the solicitor from prosecuting me. They have
16 this information and to take the information that they've
17 got --

18 THE COURT: What if they were prohibited from
19 contacting any of these witnesses in any way.

20 THE DEFENDANT: I would object to that. I move this
21 Court to recuse this solicitor's office.

22 THE COURT: I understand that and I think you're
23 getting some help in that regard just then. My question
24 though is I understand that you and maybe someone else
25 doesn't want them to prosecute this case, that's not my

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1 concern, that's not the concern of the Court. The concern
2 of the Court is to show me -- because you're talking about
3 months that we have gone through in preparation in the
4 trial days and it all has to be changed and all of that, I
5 have got to have a good reason to do that. You've got to
6 show some actual prejudice to you and that's what I am
7 wanting to hear from you, not that you or someone else
8 thinks someone else should prosecute this case. What I
9 need to know is what prejudice is it to you that we can't
10 remedy today, that's what I need to hear from you,
11 Mr. Starnes.

12 THE DEFENDANT: Your Honor, I guess the remedy if
13 you're not going to recuse them from doing this, would be
14 to not allow them to interview any of the witnesses on the
15 information that they've got. Now, I can't say what
16 they're going to be down the road, I don't know and I don't
17 know what they've done. They've got work product, I don't
18 know, they may have contacted these witnesses, I don't
19 know. I can't show prejudice to something that I am not
20 privy to. I don't know what they have done and how far
21 they have done it. Ms. Collins has had this information,
22 she's the investigator for the solicitor's office. I don't
23 know, she may have contacted these witnesses. I can't show
24 prejudice to something -- I don't know how far they went
25 with this.

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1 THE COURT: I think they've pretty much told you that
2 but I will be glad to have the solicitor respond to that or
3 do so under oath if you need to do that.

4 MR. BRACKETT: I can tell you as an officer of the
5 court that this is the first time I have seen this stuff.
6 If I had seen an ex parte order coming through in reviewing
7 this case file and saw that it was supposed to be filed
8 under a seal, I know what that means and I would have
9 brought it to your attention immediately and said, "I'm in
10 possession of something that I probably shouldn't be."
11 Today is the first day I have heard of it and I can't
12 benefit from something --

13 THE COURT: Have you or anyone else in your office
14 become aware of any witnesses that you were not aware of or
15 have you made any contact with any or attempted to contact
16 any witnesses?

17 MR. BRACKETT: To my knowledge we have not attempted
18 to. I have just confirmed that with a head shake from Ms.
19 Collins, she has not. I have become aware that these
20 investigators are working on this case, of course, I knew
21 Mr. Skidmore was working on a case from previous hearings
22 and Mr. Starnes has even told me. I knew that Tim Walker
23 was his paralegal, he told me that Tim Walker was his
24 paralegal and Mr. Walker has called me and told me he was.
25 I knew that -- I did not know that Mr. Nichols was engaged

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1 in the case, I learned that from reviewing this material
2 today. The Benson fellow or person from Pennsylvania from
3 July, I was not aware of that. I believe that is it. The
4 other people I think were all previous witnesses before, I
5 didn't know whether or not -- I couldn't say for certain
6 whether he intended to use those people again. So to that
7 extent --

8 THE COURT: Why don't we do this, I just don't see any
9 real prejudice that's established. I think -- and I'm
10 basing that on the fact that the solicitor received a ton
11 of information and we've been working on this, we've been
12 conversing to some extent about this. They have received a
13 ton of information that they've been trying to go through,
14 just rhelms of information and we've been trying to speed
15 this process up because I promised you -- November or
16 December we had a hearing and I promised you we would get
17 this done. You're tired of being in jail, I understand
18 that and we were trying to get it scheduled and we worked
19 hard on getting it scheduled. And Lexington County has
20 some other capital cases and we had to work with them, they
21 can't hold one every two weeks. And so we had come up with
22 tentative dates in October in two weeks are the only weeks
23 available in this year. But these were the only two weeks
24 that were available, so we got it scheduled. And they have
25 been speeding up the whole process trying to get everything

MOTIONS

1 done and so that's part of the problem. They have provided
2 all of this information to you. If we found out this
3 information had been provided them and they had seen it and
4 you didn't know about it, then that causes me a lot of
5 problems or concerns. But the fact that they got all of
6 this information, simply photocopied it, their paralegal or
7 investigator copied it all and sent it all to you, you are
8 aware of what they got. Obviously they weren't trying to
9 hide it. I think the Lexington County officers have gone
10 to some substantial length to try to accommodate you on a
11 pro se information. This information shouldn't have been
12 sent, I agree with that. But you've got to show some
13 prejudice to us to reach the point where I have to excuse
14 these solicitors to prosecute this case and try to get
15 somebody else involved at this point and delay this whole
16 thing for several months more. You need to show some
17 prejudice to me and I haven't seen any prejudice. What I
18 would do is I think we need to put a protective order in
19 place to make sure there's no prejudice to you and I think
20 the way to do that would be to require them not to have any
21 contact with any of the these potential witnesses at all
22 that are not available already through the transcript. If
23 you've got people who testified at the last trial and
24 they've already got their testimony I don't think they
25 should be prohibited from contacting those people. If

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1 there's somebody whose name that was sent to them
2 inadvertently that you are considering in your case, then I
3 don't think -- and if they got that information simply
4 because the Lexington Detention Center just boxed it up and
5 sent them a whole bunch of stuff up there and they got that
6 information, then they ought to be prohibited from
7 contacting any of these people and interviewing them in any
8 way. That should eliminate any prejudice to you as a
9 result of that and they wouldn't have any idea then what
10 they're going to testify to and wouldn't be able to find
11 out in advance what you talked to them about or anything
12 else. Now, having said that, if it's determined that you
13 are going to have an expert who didn't testify at the
14 previous trial and it is in that transcript and they made a
15 motion to require that expert who is going to testify at
16 your trial to issue a written report so they would be able
17 to get their own expert to get that information, then
18 that's something the Court would consider later. But
19 insofar -- but they otherwise would not contact any person
20 of any other information that they have gotten. What I
21 would ask you to do is to absolutely freeze anything you
22 have gotten from the -- if it can be segregated out, any
23 information that's gotten from the detention center that
24 that be separated and brought to the Court and that he
25 would -- that you not look at any of that information.

MOTIONS

1 MR. BRACKETT: Is it my understanding that Mr. Starnes
2 has gathered together and identified all of the information
3 that deals with this.

4 THE COURT: What I'm trying to do is go ahead and
5 render all of that information not available to you, let
6 him identify everything in there that he says should not
7 have been made available. Mr. Starnes, in the mean time if
8 we could segregate that information out and let the Court
9 hold those records.

10 MR. BRACKETT: I'm not asking you what is all
11 involved, she can access pretty quickly, we can remove bates
12 stamped 3517 through 3991. We can remove those from our
13 hard drive and remove them from our files and then hand up
14 the -- we'll put them on a disc and restore them later if
15 Your Honor determines there's nothing in there that we
16 can't look at. But I would just ask if you have some
17 problems that he would bring that to your attention and
18 explain why he thinks it's in violation and Your Honor can
19 make a decision and we will remove those pages, we won't
20 copy them back over. We can sit back with the clerk and
21 restore the pages that we are allowed to have back and you
22 can keep the one back. We're not going to look at them, we
23 don't know -- there's 400 of them, we will go -- I think --
24 I do think he needs to make a showing. I'm sure that the
25 vast majority of those are pages that we would normally be

MOTIONS

1 entitled to and he may very well have gone through and
2 found those items for the purposes of this hearing that
3 he's concerned about, that may be -- I don't know, there
4 may be others.

5 THE DEFENDANT: They provided me a disc originally, I
6 went through all of this paperwork, I was under the
7 impression they were going to -- they provided all of this
8 information to me on a disc. I don't have access to a
9 computer and I don't think Captain Quig is going to give me
10 access to a lap top which that would be very nice. So what
11 I had to do is release the disc to my mother, I was on the
12 phone with her, I was having her peruse through these new
13 documents, read to me and stuff and that just didn't look
14 right so I had her print some of this stuff at a print
15 shop. I can't tell you what all is in there because
16 there's 3,993 pages, I'm not sure what all is in there.

17 MR. BRACKETT: I don't expect a lot of them would have
18 been exchanged. So we carried them down to Lexington, so
19 we gave him any documents that I wasn't sure about and I
20 expected that it would be a small amount of documents.
21 Because again, this has been tried once and I thought he
22 had everything there was to have, but rather than photocopy
23 a thousand plus pages we said if it's that much stuff
24 that's why we burnt it on the disc, then as we are scanning
25 in the additional information we had to put that to another

MOTIONS

1 disc and give him a second disc.

2 THE DEFENDANT: I understand. I think you need it but
3 it shouldn't be -- and some stuff for Westlaw, copies of
4 Westlaw, that's the only way I can read it. I can't look
5 at it from my computer, I just need to be allowed to have
6 that in my cell.

7 MR. BRACKETT: He has got a check-in and check-out
8 system with the bankers boxes, that was some of the
9 testimony you heard where there was a seal broken on a box,
10 per chance -- I hope I'm not speaking out of turn for
11 Mr. Starnes, if to either house him in this facility and we
12 can get him in this facility, we can get him completely out
13 of Lexington County and moot the question and even avoid
14 the appearance of impropriety of this occurrence.

15 THE COURT: Well, with all due respect, sir, I would
16 hate to replace -- we have got enough problems with him up
17 here dealing with some other issues besides that, I don't
18 think anyone is going to want to pay for the --

19 MR. BRACKETT: Facilities trade each other around?

20 THE COURT: For a short period of time I don't see
21 that as a problem. But have Mr. Starnes transferred up
22 here for months, I see that as a problem with the expense
23 of that and the sheriff's department.

24 THE DEFENDANT: Your Honor, one of the things I
25 proposed -- we had a hearing before Judge Westbrook and

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1 myself on the housing situation, it's bad enough being in
2 jail but they proposed a situation in housing me in the
3 special management housing unit is where inmates were in
4 there for lockup for assaulting officers, fighting, mental
5 health inmates and inmates on protective custody. Thinking
6 that we are going to trial here on October 16th I sent in a
7 request to the facility requesting to go ahead and be moved
8 down there. They told me they could move me down there and
9 house me alone, that would give me plenty of work time. I
10 wouldn't have a cell mate that would be there to have this
11 privacy, to have this information to have access to it.
12 Then they told me due to the over crowding in the detention
13 center they wouldn't move me, they wanted to keep me in the
14 housing unit. I need to be housed in a room by myself
15 where I can work. This a capital case, this is two trials,
16 in one -- if we get into a penalty phase I just need
17 somewhere where I can have a quite room, an effective room
18 of communication to be able to use the phone. One of the
19 things I asked them to do was put a phone in my jail cell.
20 In a prior capital case they did this, in another case in
21 State vs. Brewer. What they did in Brewer, they allowed
22 Brewer to install a land line so he could have confidential
23 communication of his experts and investigators. I could
24 interview witnesses and prepare for a defense, that worked
25 fine. Mr. Brewer didn't get the death penalty. I asked

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1 them to do it for me, they said no, they couldn't do it.
2 They don't want to do it and that's their -- I need a desk
3 to perform work and prepare and I can't have -- where I can
4 communicate with my experts, I need a table where I can sit
5 to work and do that and I don't think that's too much to
6 ask for. They don't want to do that and house me. They
7 did it in another capital case, they don't want to do that
8 in this case.

9 MR. TATE: That room doesn't exist anymore. That part
10 of the jail has been turned into closets and storage with
11 the building of the new jail. Mr. Starnes had asked for
12 the same things, the accommodations are reasonable. He is
13 allowed to use the room from 11:00 p.m. to 5:30 a.m. and
14 Captain Quig has handed me this -- and so he has that room
15 to use for six or seven hours. There are probably 70 or 80
16 other people that need to live in that pod too, but giving
17 him the multipurpose room after those hours during the
18 daytime, it can be used for other folks coming in; classes,
19 AA meetings. I don't know what they do in the multipurpose
20 room, that's what they were built for anyway.

21 THE COURT: There's none of that?

22 MR. TATE: It's for Mr. Starnes between 11:00 at night
23 until the early mornings. He had use of the telephones,
24 that phone has been made available to him. I think we have
25 also worked in the past to get him some extra phone times

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1 but with other inmates -- when one person gets the extra
2 hour of phone time the other 75 want it. We still -- we
3 have to run a facility, Your Honor.

4 THE COURT: I understand. All right. Well, let's
5 stick for the moment with how he gets access to this
6 information so he can go through it and see if there's
7 information, how he's going to have this stuff copied.

8 THE DEFENDANT: It's not that expensive and have my
9 mother can go by a copy shop and pick it up. This copy
10 shop was going to copy that, I wanted to have a copy,
11 that's probably going to come into trial for impeachment.
12 I have got to have 3,789 pages of this prior transcript
13 copied. What was I was going to ask, the detention center
14 allowed me to have plastic file boxes, I have folders so I
15 have an index system and have all of this stuff together.
16 If they would just allow me to get two boxes, one with the
17 3,991 pages of this additional discovery and the second box
18 would have the additional transcripts in it, that's all I
19 would need.

20 MR. TATE: Understand we are fighting primarily fire
21 code. I understand from talking with Captain Quig he has
22 about ten plastic boxes now. If we can swap them out with
23 Mr. Brewer, the previous case with a pro se inmate, he
24 simply would say, I want box seven and somebody brings him
25 box seven. It may take a half day to get them to him but

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1 when you get a box you have to give box two back for the
2 fire code. And another person has to live in there as
3 well, a lot of those cells are three people.

4 THE COURT: What about that, Mr. Starnes, if we -- you
5 can keep --

6 THE DEFENDANT: I don't have ten boxes. If they give
7 me two more boxes it will all fit in my bed.

8 MR. TATE: Your Honor, I don't have a problem with
9 that, he can do that.

10 THE COURT: I will authorize the copies to be made of
11 these. Find out -- you can go through there and see if
12 there's anything else that you think should not be
13 available to the solicitor's office, that they shouldn't
14 have, if its work product for the witnesses, information,
15 any inadvertent names, if you can separate and segregate
16 the information that came from the detention center,
17 separate that out, leave it with the Court until
18 Mr. Starnes has an opportunity to go through those and see
19 if there's anything else that should be withheld. Does
20 that cause a problem?

21 MR. BRACKETT: If it does not need to be withheld we
22 can return it.

23 THE COURT: That's the reason I'm making these copies
24 available to me.

25 MR. BRACKETT: If these are the only things that he is

MOTIONS

1 concerned about then that's --

2 THE COURT: If there's more then we can look at that,
3 we can talk about it, if y'all don't agree then let the
4 Court decide it. But in the meantime let me hold onto to
5 that information, he will be given a reasonable time to go
6 through the copies and let you know and the Court know if
7 there are any other information in there he feels should
8 not have been made available. Okay?

9 MR. BRACKETT: Certainly. Then once we determine what
10 he says should not have been made available, everything
11 else would be returned back to him.

12 THE COURT: That would be my solution to it. And I.
13 have your word as an officer of the court that you all
14 haven't looked at any of these witnesses, contacted any of
15 the witnesses including the expert witness one or two
16 extras that have come out and that are in there or any
17 other witness that he might list as not -- also a witness
18 in the prior trial that's listed in the transcript, I have
19 y'all's word y'all haven't contacted them or looked at
20 these and that you will not do so.

21 MR. BRACKETT: We didn't contact the witnesses we did
22 know about.

23 THE COURT: And provide that to the Court. If you
24 could segregate the records out, the Court will hold onto
25 those until I hear from Mr. Starnes.

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1 THE DEFENDANT: Your Honor, does that also apply to
2 the sheriff's office? The sheriff's office and the
3 detention center is all together, the investigate officer,
4 he can come in that detention center and go into my inmate
5 file, he can go into visitation, he's free to roam that
6 detention center and look at this information. So it's my
7 understanding that --

8 THE COURT: This is more or less like a gag order from
9 them using this stuff.

10 THE DEFENDANT: Yeah. Does this apply to the
11 sheriff's office also?

12 THE COURT: It applies to everyone who might have
13 access to it.

14 THE DEFENDANT: No jail records come in except through
15 this Court?

16 THE COURT: Certainly. The only way -- the detention
17 center and sheriff's department will not provide any
18 information to the solicitor's office or anyone on their
19 behalf of his records down there without permission and so
20 that if they want them they need to come through the Court
21 and get them. But otherwise they will be frozen. These
22 shouldn't have been sent to start with, they were
23 inadvertently sent, it's caused us some problems but I
24 don't see any problems with him -- particularly the
25 solicitor's office has not looked at these witnesses, have

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1 not contacted them, would not have been aware of them
2 individually except for Mr. Starnes bringing it to their
3 attention. But what I want to make sure is then they don't
4 contact these witnesses, have any contact with them, any
5 information that's sent by the detention center be
6 segregated out until Mr. Starnes makes a decision or asks
7 the Court to freeze any other records or take them out.
8 And then once he decides what might be prejudicial -- in
9 the meantime no other information pertaining to Mr. Starnes
10 there at the detention center would be made available to
11 the solicitor's office or anyone on their behalf except by
12 court order by the Court's approval and make sure this
13 doesn't happen again.

14 MR. BRACKETT: I will, sir.

15 THE DEFENDANT: Mr. Tate back -- there was a matter
16 about the subpoenas that I served on the jail to obtain
17 records, stuff, policies and stuff and things of that
18 nature. Mr. Pope's position was that anything that I
19 subpoenaed from the sheriff's office is handled through
20 discovery, that in other words when I send a subpoena to
21 Mr. Tate for records, he in turn sends that to Mr. Pope's
22 office, then I have to get those records from him, and it's
23 my understanding that that is not the way it's handled. I
24 have talked with several criminal defense lawyers, they
25 just don't handle things that way.

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1 THE COURT: Let me hear from the solicitor that way.

2 MR. BRACKETT: The subpoena duces tecum and bring it

3 with them, certain documents. A subpoena is not a certain

4 warrant, it's not a demand for delivery, maybe there's a

5 civil procedure by which I'm not as familiar with the rules

6 and subpoenas in that regard. But a subpoena mandates your

7 appearance in court at a certain time. There's a box on

8 there that says you shall appear at this location at this

9 time on this date in this courtroom and bring with you the

10 following documents. I don't think that just because you

11 have criminal charges pending against you you could send

12 subpoenas out there for washing the material. The material

13 may be privileged, there may be, but if you don't -- if the

14 Court intervenes and if you don't bring those documents to

15 court and bring it before a judge, then how would we ever

16 know what he's getting? Because you can get subpoenas

17 issued in blank, he could just be sending stuff all over

18 the place and people do use them like that. But I think

19 it's improper to subpoena them to a hearing, file a motion,

20 compel their attendance here. You need to see the

21 documents for some reason, then have the issue -- a judge

22 decide is this material disclosable, should they be

23 required to turn it over, is it relevant to your defense or

24 not? But not just here, here is a fistful of subpoenas, go

25 get whatever documents and nobody knows about it. That's

MOTIONS

1 just not the way the system works. That's what essentially
2 I told him in a private meeting, I told him we do object to
3 people using subpoenas like that. If you have some need
4 for somebody you want to bring to the court and have an
5 issue thrashed out by subpoenaing documents relating to the
6 policies and procedures that have to do with security and
7 detention managing, I think I have seen a subpoena or
8 request for these types of information before A, that has
9 no relevance in this case that we're aware of; and B,
10 that's it's prejudicial to have that information out in the
11 public.

12 THE COURT: I will agree with that. I think you have
13 asked some questions already today while you had Captain
14 Quig on the stand, you have asked a number of questions,
15 some of which is a little outside of what we are about
16 today but I allowed you to go there. But I think if you
17 are going to request some information, you can't just send
18 out a blanket subpoena that's -- if you've got a reason for
19 it the Court can determine whether it's appropriate based
20 on what your reasoning for wanting them are, but I don't
21 think you are entitled to get information without specifics
22 for reasons for wanting it. The Court is entitled to know
23 that. What I would ask you -- suggest you do is file a
24 motion that those be provided to you based on who the
25 custodians are.

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1 THE DEFENDANT: I kind of agreed with Mr. Brackett
2 with his comment but he didn't respond to my question. The
3 question was that the subpoena is not a discovery vehicle.
4 In other words, when I issue a subpoena it may come before
5 this Court and we argue that motion but that material is
6 not supposed to come to him, then he give me what he feels
7 I should have. If he requests something about operation
8 policy or some kind of management policy, if he requests
9 that then it should not have to be apprised by the
10 solicitor's office before he received it, that's what he's
11 saying.

12 MR. BRACKETT: Sure, there are times when he would be
13 able to subpoena things that aren't in our possession. If
14 he wanted some bank records, for example, the bank isn't
15 going to send them to me and say it is kosher to you.

16 THE COURT: I think he's talking about jail stuff, is
17 that what he's taking about?

18 THE DEFENDANT: It's impeachment records dealing with
19 employer records and some of the investigating officers
20 such as letters of police conduct, things of that nature.
21 In other words, if an investigating officer testifies,
22 letters of misconduct and certain materials --

23 THE COURT: Well, I think we have this come up in
24 court from time to time, they are not going to give you
25 personnel records, I think whatever you want you need to.

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1 make a motion for and come to court. They are not going to
2 give you confidential personnel records without a court
3 record. I think you might as well file your motions and
4 ask the Court to require them to produce them.

5 THE DEFENDANT: The reason I raise this issue is we
6 had discussed about this before, is that information coming
7 from the jail and going through the solicitor's office --

8 THE COURT: I think you've got to serve them with a
9 copy of the motion. If you are moving to put some --

10 THE DEFENDANT: It was just --

11 THE COURT: I don't think you can do that on an ex
12 parte basis. I think if you are requesting information to
13 that affect I think you are going to have to move to file a
14 motion to the Court. If they'll voluntarily give you this
15 information obviously you don't need to come to court for
16 it. If they don't voluntarily give it to you then you are
17 going to have to move the Court to require them to produce
18 it to you, and in that event I think you would have to
19 notify the other side.

20 MR. BRACKETT: Your Honor, if Mr. Starnes would serve
21 us with a copy of his motion when he files it with the
22 clerk's office, if it's something we can save the trouble
23 of coming to the Court on I will certainly respond directly
24 to him.

25 THE COURT: There's certain records they're not going

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1 to release without a court record, confidential records,
2 personnel records and that kind of thing. You may be
3 entitled to it but you need to file your motion and
4 let's -- if they produce it for you on motion that's fine,
5 if they won't do it then you could even subpoena them if
6 you want to. But if they decline to produce it to, you
7 then object to it. You are not the solicitor's office and
8 the solicitor's office is not you. I think there is a
9 reason why sometimes he can't get what he wants for
10 confidentiality reasons and sometimes he may be entitled
11 to, there's some you may not be able to give without a
12 court order and the Court is going to have to order it
13 because they are confidential records. So you just -- you
14 can subpoena whatever you want to try to subpoena, if you
15 don't agree with that then you are going to wind up in
16 court and the Court is going to have to decide whether you
17 are entitled to them or not.

18 THE DEFENDANT: Okay.

19 MR. BRACKETT: One more issue. At the very beginning
20 of this hearing I have mentioned a mock or reciprocal
21 discovery and the other -- all of the states rights under
22 Rule 5. Mr. Starnes indicated he had not been served with
23 that, he was served but this has been ten years ago, the
24 original trial. He was served with the notice of request
25 for discovery under Rule 5. I just told Mr. Starnes a

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1 recipricol discovery request is forthcoming.

2 THE COURT: I would suggest you do that again.

3 MR. BRACKETT: Okay.

4 THE COURT: So there won't be any question about that.
5 Ten years ago -- and you would consider them ongoing, but I
6 think we are dealing with new solicitors.

7 THE DEFENDANT: I'm trying to decide whether we need
8 to reduce this to a written order.

9 THE COURT: About what records you have?

10 THE DEFENDANT: Yes, sir. And about the detention
11 center, sheriff's department not being able to provide any
12 information in the future.

13 THE COURT: No jail records.

14 MR. BRACKETT: The investigator who worked that case
15 in chief is still free, he's otherwise found outside of the
16 four walls of the facility as chief investigating officer
17 who is assisting us in preparing a case in trial, he's
18 going out rounding up witnesses and assisting us in the
19 preparation of the case. He works for the sheriff's office
20 and in the course of doing that --

21 THE COURT: He can do that but it's nothing connected
22 with Mr. Starnes and the detention center and information
23 that comes from him, that's my concern.

24 MR. BRACKETT: Yes, sir.

25 THE COURT: None of that goes. And if you have got

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1 individuals or persons and that kind of stuff, that's a
2 whole another thing. I'm talking about information that
3 comes through Mr. Starnes as a result of his preparation
4 for trial in this case, none of that information including
5 witnesses or persons that meet with him there.

6 MR. BRACKETT: Jail generated records?

7 THE COURT: Right. Or mail records that come to him
8 and that kind of thing, not be made available to any of it.

9 MR. BRACKETT: Yes, sir. I understand the parameters
10 of your order. And even if something were to come to me I
11 would push it away and call it to your attention.

12 THE COURT: And you are going to segregate these
13 records with what came from the jail and not Mr. Starnes.

14 MR. BRACKETT: Yes, sir. It's pages that we have had
15 actual physical copies of those with Ms. Collins'
16 handwriting on the top right-hand corner, those physical
17 documents will be turned over to Your Honor. In addition
18 we have those scanned and imaged on our computer system, we
19 will burn a copy of those pages to a disc and provide that
20 to the Court and delete it off our file.

21 THE COURT: Delete it from yours. Then I'm going to
22 authorize funding for Mr. Starnes to be able to photocopy
23 those records and go through them and see if there's
24 anything -- I'm going to hold on to those records until I
25 hear from you with regard to anything else you say they.

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1 should not have, then we can delete those as well. You are
2 to have no contact whatsoever with these witnesses, we have
3 gone over that. Anything else?

4 THE DEFENDANT: Yes, sir. I would just renew my
5 objection to have the solicitor's office recused.

6 THE COURT: I will review that case and just hold off
7 on that. But I'll review that case and see -- obviously
8 there was prejudice to the defendant in that case and the
9 facts are different, it was obviously not only that but it
10 was deliberate. In any event I will review that case. I
11 can't say -- at this point you haven't shown me -- at this
12 point you haven't taken these steps and you haven't shown
13 my any prejudice that would cause me to recuse them. If
14 you can show that to me even as an afterthought or review
15 Quarterbaum and give it some more thought, if you could
16 show me where there's anymore prejudice to you -- I want to
17 make sure that you get a fair trial and it's not
18 prejudiced, I want to make sure, but at the same time I
19 don't want to recuse these solicitors yet and have to get
20 another solicitor in and delay if there's no prejudice to
21 you. And if you can show me prejudice I certainly will
22 consider that and consider recusing these solicitors, but
23 I'm not going to do that if you can't show me any prejudice
24 to you, any real prejudice to you, that's my concern. If
25 you show me some I will certainly excuse them and get some

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1 others.

2 THE DEFENDANT: When I get the rest of this discovery
3 and go through it if need be this matter needs to be
4 reheard, the Court will entertain that?

5 THE COURT: Yes, sir.

6 THE DEFENDANT: Thank you, sir. Your Honor, I believe
7 that's it except the funding matter with Mr. Adams. If the
8 solicitor's office is going to go through there and do
9 this -- prosecute this case with, are we going forward in
10 October?

11 THE COURT: I would like to go forward in October. If
12 there are going to be problems, though, we need to rethink
13 it. October will be here before you know it, it won't be
14 here before you know it for you I'm sure, but it will be
15 here before we know it as far as preparation time is
16 concerned, all the work that has to be done to get ready.
17 So we need to decide if there's a real stick date. That's
18 the reason I haven't actually gotten court administration
19 to assign those dates and make the changes and that will be
20 necessary in court schedules. You want to be sure we are
21 going to be able to go forward before we start changing
22 court schedules, do you see what I am saying?

23 THE DEFENDANT: Yes, sir. The defense's position is
24 we are ready to go in October.

25 THE COURT: Certainly October dates are the earliest

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1 dates we could get to accommodate you, Mr. Starnes, and any
2 previous ones, we are going to do that. But in the
3 meantime if there's something -- if you can show the Court
4 any prejudice to you or any disadvantage you've got now
5 other than just these names being given, if you can show me
6 any other prejudice to you that hadn't been remedied by the
7 Court's actions today I will consider it. But you need to
8 do that as soon as possible.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Anything else we need to take
11 up today?

12 THE DEFENDANT: The funding matter, Your Honor.

13 THE COURT: Do you want to meet with me?

14 THE DEFENDANT: If we can take that up on the record,
15 there's some matters I would like to put on the record if
16 we could. We could put this ex parte and the solicitors
17 office could be recused from hearing this also, Your Honor.
18 I would ask that the courtroom security -- I understand
19 these officers have to stay with me, I certainly don't
20 object with that and instruct them not to repeat anything
21 that's said in the room today on the record.

22 THE COURT: Ask everybody else if they will to vacate
23 the courtroom, please.

24 (The courtroom was cleared.)

25 THE DEFENDANT: On March 15th Judge Westbrook -- I

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1 proceeded pro se on June 3rd of 2004, I filed a motion with
2 the clerk of court's office in Lexington County and a
3 hearing was held. There at that motion, Your Honor, I
4 requested stand-by counsel to handle the funding in this
5 case. On September 3, 2004 Judge Westbrook heard that
6 motion over in Richland County, he was over there presiding
7 and they took me over there and heard that motion. At that
8 time I think Judge Westbrook's ruling was that I was going
9 to have to handle all of the funding in this case, that
10 stand-by counsel was not going to do that. Then later on,
11 September 23, 2004 I sent a letter to Mr. Tyree D. Lee, who
12 is the director of the office of indigent defense, and
13 explained to Mr. Lee in my letter Judge Westbrook's
14 position on the funding matter. Mr. Lee responded on
15 September 30, 2004. In Mr. Lee's response he sent a copy
16 to Mr. Nettles and Mr. Delgatto and Judge Westbrook with
17 Mr. Delgatto and Mr. Nettles being appointed stand-by
18 counsel in this case. The office of indigent defense,
19 their position was this, was that the funding had to be
20 handled through a defense attorney as this was the practice
21 and the rules of the supreme court. On January 28, 2005 a
22 hearing was held over in Lexington, among other things the
23 funding matter was addressed. Mr. Nettles stated he did
24 not want to handle the funding in this case and
25 Mr. Delgatto joined Mr. Nettles, he said there was a new

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1 director on the way to OID and some things may change.
2 Judge Westbrook's order was that to pay experts and
3 investigators what he proposed for me to do was whenever I
4 received a bill from them to attach it to an order and in a
5 written order send it to OID and the language in that was
6 that the office of indigent defense was to pay the
7 investigator or expert directly. On March 16th of 2005 I
8 attached a billing statement. Investigator Skidmore -- at
9 this point, Your Honor, he had been working a whole year
10 and hadn't been paid. I sent Judge Westbrook's written
11 order over to OID to affect this paid. The ladies at OID
12 said they do not do that, they gave my mother back the
13 order, she was the one that took it over there. Another
14 hearing was held on March 23rd of 2005. At that time
15 Mr. Nettles agreed he would handle the funding in the case,
16 that's the way things were done. In the orders that Judge
17 Westbrook signed -- these were done because of
18 extraordinary circumstances in this case and me being pro
19 se, what they did was Judge Westbrook approved for this
20 funding to be done and advanced. There were various orders
21 that Judge Westbrook had signed for various experts and
22 things of that nature, and the language and all had to be
23 changed in those orders. So Mr. Nettles took the orders
24 and submitted another order to OID so it would be done in
25 advanced funding. In other words, what they do is propose

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1 an order to the court and then the Court signs it, rejects
2 it or redacts it or whatever, then I take that order to
3 Mr. Nettles, he attaches a voucher to it. He sends that
4 voucher to the office of indigent defense, then they
5 in-turn secure those funds from the comptroller general's
6 office, then what they did was they took the funding and
7 advanced it to the attorney, Mr. Nettles, so he would have
8 that money in a trust account. So what I would do is
9 whenever I would receive a billing statement from an expert
10 or so forth I would send it to Mr. Nettles' office, he in
11 turn -- he would have the money on hand -- he would turn
12 around and send the check out to that investigator, I would
13 have to attach a sworn affidavit saying that the service
14 had been rendered. On February 22, 2006 I had contacted
15 Mr. Nettles' office in reference to a bill that was four
16 months old, this bill being payable to Newberry Pathology
17 and Associates, they were the ones who did the autopsies on
18 the individuals in this case. At that time Mr. Nettles'
19 paralegal advised me that there was a change in OID, that
20 they no longer have the advance funding. What they did is
21 she returned all of the money back to the office of
22 indigent defense and the new method would be that I would
23 submit the bill to them, they would in-turn send it to OID,
24 OID would in-turn secure the money from the comptroller
25 general's office and the comptroller general in-turn sent

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1 it to OID, OID would then send it to Mr. Nettles. Once the
2 funds were secured Mr. Nettles would send the payment to
3 the investigator. The problems this has caused, this is
4 expediting payments to the investigators and so forth of
5 the original plan and Judge Westbrook's orders was to do
6 this advance funding and now there's been a change.
7 Additionally, Your Honor, with this new method that
8 Mr. Nettles is telling me that his paralegal is telling me
9 that we have to go by, I have to keep up with all of this
10 funding, I have to keep up with the funding and accounting
11 and what the accounting is at OID. It's my position this a
12 bad practice, Your Honor. In this case if we was to set a
13 precedence and do this, that criminal defendants were
14 compelled to handle funding. Attorneys are regulated
15 through ethics guidelines, that's why they are supposed to
16 handle the funding. In this case what my proposal to the
17 Court is if we could go back and do the original plan.
18 There was one order that Your Honor signed I believe it was
19 on November 9 of last year and in that order, Your Honor,
20 there was language they are to do this advanced funding
21 just like we've always done before. I contacted Mr. Patton
22 Adams over at OID, I explained to him the situation and
23 dilemma this has caused, the problem it's causing, problems
24 with my experts not being paid on time. They had --
25 Mr. Nettles had funds in a trust account, sat on a bill for

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1 four months and didn't pay it. Now that this new method is
2 in place if he was to do that instead of taking four months
3 it would take six months to get the bill paid. So my
4 proposal to the Court is that we go back to the original
5 plan to do the funding in this case as it was originally
6 ordered by Judge Westbrook and your orders of November 9th
7 of 2005, Your Honor. And I have Mr. Patton Adams here for
8 the office of indigent defense. I explained to him pretty
9 much what I have explained to you today, Mr. Adams'
10 position is that -- he can go on record -- is that however
11 the Court wants this funding managed that his office will
12 go by. But they will not go by allowing to direct payment,
13 they do not pay experts and investigators directly because
14 that's not the policy of the supreme court. What I am
15 asking the Court to do is if we could go back to that
16 original plan so what I could do is when I send a bill to
17 Mr. Nettles, he has got that funding in a trust account
18 already and he can pay the experts and investigators and so
19 forth. If not, this is going to create a dilemma and delay
20 and there's no way I can be ready on October 16th, it's
21 impossible.

22 THE COURT: I think I understand what you are saying.
23 Mr. Adams, what is the position of OID?

24 MR. ADAMS: Please the Court, Your Honor? I don't
25 think the issue is so much advancing the money as it is the

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1 prompted submission of vouchers to us. I think in the case
2 where the money was advanced the vouchers were not promptly
3 submitted. The turn around time with the comptroller
4 general's office is about three to five days. The
5 procedure we use is when the voucher comes in, assuming
6 everything is in order, it doesn't go to the comptroller
7 general until everything is in order. When it goes there
8 our people actually walk it over every morning, they walk
9 vouchers over, they get checks back in our office and they
10 actually that day send the check out. We have a tremendous
11 problem of accounting for money that's advanced. We have
12 got \$1.4 out right now in private attorney trust accounts
13 that is very hard to account for. Where the court order
14 may authorize or order us to advance \$5,000 for a
15 particular type of witness, that amount of money may not be
16 used for that witness. There's money left over that
17 somehow never -- or is slow to find its way back to us. So
18 right now what I am trying to do is to get better control
19 over the money that's out. In the meanwhile what we are
20 interested in doing is not advance funds on the front end
21 for retaining officers or whatever you want to call them
22 but where the Court -- but encourage the Court to authorize
23 the money to be paid or authorize a certain amount of
24 dollars for a particular type of witness to be paid when
25 the voucher is submitted with some evidence that the work

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1 has been done. We have no way of knowing whether the work
2 ever gets done with the money that we advance and so it
3 really becomes very much a cost control issue with us
4 trying to keep up with the money that's out and how to
5 handle it. I have got no problem with as far as a pro se
6 case, I really think that that's not so much the issue as
7 it is that whoever the stand-by attorney is that the money
8 is going through would timely send the vouchers to us. If
9 that would happen we could timely make the payments out and
10 the witnesses it is for should not have any problem getting
11 paid if the Court authorizes those funds for that
12 individual.

13 THE COURT: Let me ask you this: For instance if the
14 Court authorizes extending up to \$5,000 for a private
15 investigator and up to that amount, upon an affidavit of
16 what type services were rendered and an attorney if they
17 have it in this case were authorized funds for a private
18 investigator and an investigator then does so much work,
19 they submit an affidavit of what they have done and that
20 they're entitled to this money so much an hour or whatever
21 and come up with a certain amount, then Mr. Nettles in this
22 case -- going through Mr. Nettles, the attorney, has to be
23 processed through an attorney I'm sure for ethical reasons,
24 a large part of that because he's under those ethics, then
25 once some money can be approved in advance up to a certain

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1 amount, but then it's automatically paid once the attorney
2 sends the voucher over and with documentation; is that
3 correct? So you all can get it paid pretty quick but the
4 attorney, whoever is handing this case, Mr. Nettles, he has
5 got to get it to you.

6 MR. ADAMS: If he would get it to us in a timely way
7 we will pay it in a timely way. But it doesn't come to us
8 at the time.

9 THE COURT: So what we need to do is --

10 MR. ADAMS: Let me add, this is a common practice,
11 this is -- we get orders everyday where the funds are
12 authorized and the voucher comes in supporting the time is
13 spent with the private investigator, we will immediately
14 pay it, that's the common practice.

15 THE COURT: Are there money outstanding now and
16 vouchers that haven't been paid, is that what you are
17 saying?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: That's why you wanted Mr. Nettles here?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Then we agreed he wouldn't have to come.
22 Let me do this then, let me contact Mr. Nettles and see
23 about the proper documentation, and if he has that why he
24 hasn't paid them, or submitted the vouchers, whatever.

25 THE DEFENDANT: So if I submit a bill to Mr. Nettles

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1 and if he turns around and sends it to OID, they are
2 talking three to five days with the comptroller general's
3 office and then OID send the money to Mr. Nettles?

4 THE COURT: They've got to send it to Mr. Nettles,
5 then it is up to him to pay it back out of the trust fund.
6 So Mr. Nettles -- the key is here for the documentation to
7 be gotten to him for him to process it immediately over to
8 OID as quick as possible. Because we're talking about
9 three to five days, you can't guarantee that in every
10 single case, but generally that's --

11 MR. ADAMS: Generally that's what it is.

12 THE COURT: What we need to do is the conduit --
13 because if there's crink in the conduit the water doesn't
14 run. What we need to do is make sure that Mr. Nettles the
15 conduit -- I will contact him.

16 THE DEFENDANT: Let me ask the Court this: I don't
17 know that this is going to work, I don't know, would it
18 stress the office of indigent defense and Mr. Patton's
19 office in this case if they did it the original way? I
20 can't spend that money -- and at the conclusion of the case
21 Mr. Nettles' office keeps up a detailed accounting
22 statement which now he's telling me I've got to do that.

23 THE COURT: Are you talking about them going ahead and
24 submitting a certain amount of money to Mr. Nettles' trust?

25 THE DEFENDANT: Yes, sir, that was the original plan.

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1 In other words, some of these investigators and certain
2 experts that are working right now and that are going to be
3 working very, very soon, could that money be implemented
4 the way the original plan was? In other words, this is --

5 THE COURT: You mean having money -- them go ahead and
6 pay the money to the attorney to be held in trust? Is that
7 a policy y'all don't do anymore?

8 MR. ADAMS: We've tried to avoid doing that. The
9 supreme court has issued some statements about that that no
10 funds should be advanced, that it should all be based on a
11 voucher system with us paying on a voucher. It has been a
12 real problem trying to keep up with the --

13 THE COURT: I can understand the problem. Because we
14 have authorized some funds to be sent to an attorney and
15 then they are supposed to pay out as they get the vouchers
16 in, they pay it out up to a certain amount and they pay it
17 out when they get it. I can see why sometimes maybe it
18 would not be a good accounting for that or money that one
19 used, I can understand the problem. I haven't thought
20 about it but I can understand why it is. Because we do
21 have in the past authorized money to be paid in trust and
22 what you do with the unused funds is given back to OID.

23 MR. ADAMS: Somehow people don't remember that monies
24 go back and we have to then follow-up with it. We only
25 have eight people in the office to do the administration

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1 part and keeping up with all of this, it would require
2 another employee just to keep up with it and that's what I
3 am trying to avoid.

4 THE COURT: What I would do is ask that if you could,
5 Mr. Adams, make sure these are promptly processed, we are
6 dealing with a trial date and these people are not going to
7 work on guaranteed payment.

8 MR. ADAMS: If Your Honor's order authorizes the funds
9 to the specific folks, I think that's some comfort level
10 for them.

11 THE DEFENDANT: Mr. Starnes can say we are going to
12 pay up to this amount of money upon submitting an affidavit
13 and voucher for work performed and we are going to
14 guarantee -- essentially guarantee payment to them to the
15 extent the money is available.

16 MR. ADAMS: Mr. Starnes could be assured as far as our
17 office is concerned that we will stay on top of it. We
18 will need the cooperation of Mr. Nettles and his staff to
19 promptly get the stuff to us and that it is paid out and we
20 promptly get it back to him.

21 THE COURT: I don't think I'm in a position to change
22 their policy, telling them that they can't do it that way
23 particularly if the Chief Justice is involved in that. I
24 understand the problems. What I would do is -- what I
25 would ask, Mr. Adams, make sure they're paid promptly, make

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1 sure they're going to be paid to the extent they are paid
2 and then I will contact Mr. Nettles and ask him to promptly
3 process these things.

4 MR. ADAMS: Yes, sir.

5 THE DEFENDANT: A situation like I have got where we
6 are going to make these copies and stuff like that, this is
7 just one example, I can't give that CD to a copy shop and
8 they make those --

9 THE COURT: Yeah, that's another thing. He's got to
10 make several hundred dollars worth of copies.

11 MR. ADAMS: I think Your Honor's order could go ahead
12 and authorize that expenditure running through Mr. Nettles'
13 office, if it's 10 cents a page for 4,000 pages, whatever
14 it is, I don't know what the --

15 THE COURT: Why don't you do this, give me an estimate
16 of the number of pages, go ahead, submit me on order
17 authorizing immediately for copies to be made and we can do
18 that.

19 MR. ADAMS: That will give him the cash to make the
20 copies.

21 THE COURT: We can go ahead and process that right
22 away.

23 MR. ADAMS: I think if we go -- and the order would be
24 for us to advance the funds to Mr. Nettles' account to pay
25 for the copies, then he would have the cash to -- maybe his

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1 office would actually make the copies or cause them to be
2 made and take a check to the print shop or whatever.

3 THE DEFENDANT: One other thing, Your Honor.
4 Mr. Nettles -- some of the language had to be changed from
5 them, could I get the order from the Court to continue to
6 have him doing these funding orders? I've never written
7 funding orders, I guess I could learn to do it, but I was
8 told in the beginning, don't worry about any of that, you
9 don't have to research that or worry about that.

10 THE COURT: We will ask him to do that to be
11 reimbursed for his expenses as well. We will ask him to do
12 that. We will be in touch with Mr. Nettles today and ask
13 him to process these -- process these as expeditiously and
14 get them over and that should speed everything up and go
15 ahead and get those made and tell him what we are going to
16 do and ask them to do the funding order. Anything else?

17 THE DEFENDANT: Two things real quick. So the
18 defendant will get a written order from the Court as far
19 as -- if there's no problems with discovery and that works,
20 will I get a written order for the October trial date?

21 THE COURT: You won't get a written order. What you
22 will get is if we think we can go forward with it today --
23 I'm not going to be releasing the solicitors, they're going
24 to stay in the case, we are going to proceed on with it
25 then the October 16th date should work. I simply would

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1 contact court administration and ask them to make the
2 changes in the court schedule and assigned me to Lexington
3 County for those two weeks. We have already -- the clerk
4 has already agreed to hold those two weeks for us. If we
5 run over two weeks we can still do that, but we will get
6 that done. We will start moving on it pretty soon and I
7 will be issuing some orders in that regard.

8 THE DEFENDANT: Your Honor, my mother brought a
9 videotape up here and it's from an expert, I didn't want to
10 have it mailed into the jail until we resolved this
11 situation. I've got one other funding matter I need to
12 take up with you, it's in reference to this videotape.
13 Judge Westbrook approved for me to have funding to do a
14 video animation. At the original trial we put a mock up of
15 the original life size living room where this shooting
16 unfolded. The individual who did this video animation, he
17 thought it was going to be a simple just shooting scene.
18 What I did was I sent him Court Exhibits 9 and 13 which was
19 my direct testimony of when I went through -- walked
20 through and how this shooting happened. I give him that CD
21 and asked him to duplicate that on video animation and he
22 did that but it run over the \$3,500 that Judge Westbrook
23 had approved, and the additional funding on it was \$1,556.

24 THE COURT: You know something? Let me caution you
25 here, Mr. Starnes, just because you're pro se you don't get

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1 carte blanche. You don't get to spend a million dollars on
2 this case because you can just come out here and come up
3 with things that you want to present, that's not how it
4 works. I don't know that that video would be admissible in
5 the court, I don't know that it would be. There are going
6 to be objections to it and I don't know that I as the trial
7 judge would allow that in. Do you understand?

8 THE DEFENDANT: Yes, sir. I believe there's a legal
9 argument to it --

10 THE COURT: Well, there is, there's legal arguments
11 both ways but it's only up to the Court, the trial judge
12 makes that decision. And if I think it's prejudicial to
13 the other side just because you make something that looks
14 good for you that you dream up, it looks good for you to
15 put in an animation and present it to the jury doesn't mean
16 it's not going to be prejudicial to the State. Do you
17 understand what I'm saying?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So that's not the way it works. And just
20 because you want to spend \$5,000 to do a tape that may not
21 be admissible into evidence doesn't mean you get to spend
22 \$5,000 of the taxpayers money to do that when it may not be
23 admissible into Court. You don't get carte blanche just
24 because Norman Starnes is pro se, he's the star, that's not
25 the way it works. You don't get anymore in the way of

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1 funding than the attorneys who would be in this case that
2 the Court might allow. You need to start having a --
3 thinking at a different level here. I've tried to go along
4 with you on some of these funding issues but you don't have
5 carte blanche. Just because you are pro se doesn't make
6 you special.

7 THE DEFENDANT: I understand that.

8 THE COURT: Do you understand?

9 THE DEFENDANT: Yes, sir. Judge Westbrook was made
10 aware of this, Your Honor.

11 THE COURT: Well, I understand that and he authorized
12 it obviously trying to go along with it. I don't know that
13 he knew what he was authorizing. But I'm saying to you he
14 authorized up to \$3,500, now you're telling me well it ran
15 over, we're going to have to have \$1,500, that concerns me,
16 that's \$1,500 of taxpayers money and you are acting like it
17 is just, snap it off judge, here it is. That's not the way
18 it works. I have to decide what's reasonable and not
19 reasonable of this. You don't have carte blanche, you
20 don't get to do anything you want to.

21 THE DEFENDANT: I understand. I understand. Judge
22 Westbrook and I went through this explaining the whole
23 situation and he says that the video animation is used in
24 criminal and civil trials, he did not hesitate to give me
25 the funding to do this.

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1 THE COURT: Depends on what it is and how it's
2 presented and how it's made up, you know, whether it
3 actually reflects testimony of the of facts, it's
4 complicated. But I'm saying to you that -- obviously I'm
5 not ruling on it at this point, I would have to be able to
6 see it to start with, but I don't know what you have done.
7 Do you see what I'm saying?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You are asking me for funding and that's
10 not my concern what you're doing except for the funding of
11 it and I have got to be concerned about that for everything
12 including whoever you're paying to help you with the case.
13 This is taxpayers money that we are spending and it needs
14 to be done on a reasonable needed basis and I want you to
15 understand that.

16 THE DEFENDANT: Attorneys aren't going to get paid,
17 wouldn't I be saving the state a lot of money?

18 THE COURT: They will get paid something. You might
19 be saving some but you might be costing a lot more. There
20 are already problems here that we're dealing with based on
21 the fact that you are pro se from the scale and that kind
22 of thing. What I am trying to impress upon you is you
23 can't just spend what you want to, it has to be a necessary
24 expense. Since this has been done I will authorize it.

25 THE DEFENDANT: I have tried to save the state some

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1 money. We had a conversation on the phone about getting a
2 paralegal that was local to save the state some money from
3 my paralegal having to travel here to Rock Hill. I'm not
4 just trying to waste the taxpayers money. I have shopped.
5 The initial guy wanted \$7,500 to do the same animation. I
6 shopped four places.

7 THE COURT: I'm going to authorize it. You draw me an
8 order for -- or get Mr. Nettles to draw me an order for it
9 and I will authorize it.

10 THE DEFENDANT: Yes, sir. I have got an invoice for
11 the copies but I don't have it with me. I will just send
12 it attached to Mr. Nettles and ask him in a timely manner
13 to propose the order to you.

14 THE COURT: Anything else?

15 THE DEFENDANT: I believe that will do it, Your Honor.
16 When I submit these bills to Mr. Nettles' office he
17 requires a notarized statement saying that the work has
18 been done, he knows my signature and I don't have access to
19 a notary. The only notaries that I have access to are
20 guards that are in the jail and to have them notarize this
21 stuff, they will come in contact with confidential
22 information.

23 THE COURT: Can't you just put your hand over it and
24 let them sign in?

25 THE DEFENDANT: I have to do what the officers say do.

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1 THE COURT: If you are going to sign it there and Mr.
2 Nettles is comfortable with your signature and he's
3 comfortable with that and you tell him you signed it, that
4 will be up to him, I don't know if he's comfortable with
5 that, if he's not get somebody from the jail to do it.
6 They don't have to see what they are signing. They are
7 just certifying that they saw you sign it.

8 THE DEFENDANT: I have some information that my mother
9 brought up here to me, I haven't had a chance to look at
10 it. Any objection if I take it back there with me?

11 THE COURT: I can't get between you and the jail, it
12 would have to be jail policy.

13 MR. FARR: I can't promise what will happen to it when
14 we get back to the jail.

15 THE COURT: Give us your name because we're on the
16 record.

17 MR. FARR: Deputy Corey Farr.

18 THE COURT: I can't authorize them to give you
19 something today and they violate their policies, I can't do
20 that. Just have them deliver it to you down there. I
21 can't get between you and the jail on safety issues, that's
22 not my -- I'm not allowed to do that. All right.

23 (END OF THE HEARING.)

24

25

1 I, the undersigned Michael C. Watkins, Official Court
2 Reporter for the Sixteenth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Lexington County, South Carolina, on
8 the 1st day of May, 2006.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

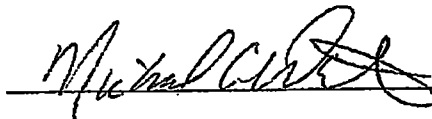
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December 8, 2007.

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A handwritten signature in cursive script, appearing to read "Michael C. Watkins", is written over a horizontal line.

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Court Reporter

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IN THE
COURT OF GENERAL SESSIONS
CASE NO.: 96-GS-32-3339

TRANSCRIPT OF RECORD

10:15 A.M.
NOVEMBER 3, 2006
YORK, SOUTH CAROLINA

HONORABLE LEE S. ALFORD, JUDGE.

COPY

MR. DONNIE WILLINGHAM
MR. ROBERT P. COLER
ASSISTANT SOLICITORS, SEVENTH CIRCUIT
SPARTANBURG, SOUTH CAROLINA

SHANNON MCGILBERRY
COURT REPORTER

1 THE COURT: ALL RIGHT. MR. STARNES, WHAT WE WANT TO
2 DO, AS I UNDERSTAND, YOU MAY HAVE SOME MORE MOTIONS TO MAKE,
3 BUT THE MAIN THING I WANT TO DO FIRST BEFORE WE GET INTO
4 MOTIONS, ALTHOUGH THOSE MOTIONS MAY HAVE SOMETHING TO DO
5 WITH WHAT WE'RE DOING, BUT WE NEED TO DECIDE EXACTLY WHAT IT
6 IS THAT YOU SAY THE SOLICITOR'S OFFICE HERE IN THE SIXTEENTH
7 CIRCUIT RECEIVED THAT WAS PRIVILEGED THAT THEY SHOULD NOT
8 HAVE RECEIVED. WE NEED TO KNOW EXACTLY WHAT THAT IS, IF YOU
9 CAN TELL US.

10 MR. STARNES: YOUR HONOR, I'VE WENT THROUGH THE
11 DOCUMENTS THAT WAS ON THE DISK THAT THEY PROVIDED TO ME. IT
12 APPEARS THE MAJORITY WAS JAIL RECORDS, MATERIAL THAT WAS
13 PROTECTED UNDER A COURT ORDER BY JUDGE WESTBROOK. IT
14 APPEARS MOST OF THAT IS AT THE END. IT APPEARS --

15 MR. BRACKETT: PLEASE THE COURT. I'M SORRY TO
16 INTERRUPT, BUT PRESENT IN THE COURTROOM ARE TWO ATTORNEYS
17 FROM THE SEVENTH CIRCUIT SOLICITOR'S OFFICE. BEFORE WE
18 LAUNCH INTO ANY DISCUSSION OF WHAT MATERIALS ARE WHAT,
19 PERHAPS THEY SHOULD BE EXCUSED, 'CAUSE THE WHOLE POINT OF
20 THE CONFLICT IN THE CASE IS --

21 THE COURT: THAT'S A GOOD POINT. WELL, I -- OKAY. AND
22 IT REALLY WASN'T SHOWING THEM ANYTHING, JUST TALKING ABOUT
23 WHAT HE IDENTIFIED, BUT NEVERTHELESS, THESE ARE TWO
24 ASSISTANT SOLICITORS FROM THE SEVENTH CIRCUIT AND THE
25 SOLICITOR AND DEPUTY SOLICITOR ARE NOT HERE, BUT THESE ARE

1 TWO SOLICITORS FROM THAT OFFICE, BUT WHY DON'T YOU JUST GO
2 AHEAD AND STEP OUT AND WE'LL BRING YOU BACK OUT IN JUST A
3 MINUTE JUST IN CASE.

4 MR. BRACKETT: I DIDN'T WANT MR. STARNES TO
5 INADVERTENTLY SAY SOMETHING THAT WOULD DISCLOSE -- TO CAUSE
6 ANY PROBLEMS THAT WE'RE TRYING TO AVOID.

7 THE COURT: OKAY. GO AHEAD, SIR.

8 MR. STARNES: OKAY. IT APPEARS, YOUR HONOR, THAT MOST
9 OF THIS MATERIAL IS MATERIAL THAT WAS TURNED OVER BY -- FROM
10 THE JAIL TO THE SOLICITOR'S OFFICE THAT WAS PROTECTED BY
11 COURT ORDER.

12 THE COURT: RIGHT.

13 MR. STARNES: AFTER A REVIEW OF ALL THE MATERIAL THAT
14 WAS ON THIS DISK, IT APPEARS THAT PRIOR TO MR. BRACKETT'S
15 OFFICE RECEIVING THE FILE, THERE WERE NUMEROUS DISCOVERY
16 REQUESTS THAT I MADE PRIOR ON RECORD REQUESTING SOME
17 INFORMATION THAT I THOUGHT THAT THE LEXINGTON SOLICITOR'S
18 OFFICE HAD AND I JUST --

19 THE COURT: SEE, I DON'T WANT TO GET INTO ALL THAT
20 RIGHT NOW. WHAT I WANT TO DO IS -- WE'LL GET INTO THAT
21 AFTER THIS, BUT WE NEED TO DO THAT -- MR. BRACKETT'S GOT TO
22 GO SOMEWHERE IN A FEW MINUTES AND HE'LL BE BACK AFTER THAT,
23 BUT WHAT I WANT TO KNOW RIGHT NOW IS WHAT IT IS YOU SAY THAT
24 THEY HAVE THAT THEY SHOULDN'T HAVE RECEIVED, BECAUSE WE'VE
25 GOT TO -- IF WE AGREE, WHATEVER WE CAN -- THE COURT DECIDES

1 THAT THE SEVENTH CIRCUIT SOLICITOR'S OFFICE SHOULD NOT HAVE,
2 WE NEED TO SEPARATE THAT OUT BEFORE WE GIVE THEM OTHER
3 DISCOVERY MATERIALS AND GIVE THAT BACK TO YOU. SO THAT'S
4 WHAT I NEED TO KNOW.

5 MR. STARNES: YES, SIR. I'M SORRY. I WAS JUST GIVING
6 YOU HISTORY OF IT.

7 THE COURT: YEAH. I DON'T WANT TO GET INTO YOUR NEW
8 DISCOVERY MOTIONS. IF YOU'VE GOT SOME NEW DISCOVERY
9 MOTIONS, I'LL BE GLAD TO HEAR THOSE, BUT I WANT TO DEAL WITH
10 THIS OTHER ONE FIRST. OKAY?

11 MR. STARNES: OKAY. IT APPEARS IT'S PAGES 3517 THROUGH
12 3987 AND WHAT I DID, YOUR HONOR, IS I HAD ALL THIS MATERIAL
13 PRINTED ON A DISK AND I WROTE UP AN INDEX OF THE MATERIAL
14 THAT THEY SHOULDN'T HAVE HAD AND IT APPEARS THE SOLICITOR'S
15 OFFICE IN LEXINGTON, WHEN THEY GIVE THEM THIS FILE, THAT
16 THEY HAD INFORMATION THAT THEY SHOULD NOT HAVE -- MR.
17 BRACKETT'S OFFICE SHOULD HAVE NEVER RECEIVED, 'CAUSE I DON'T
18 BELIEVE THE SOLICITOR'S OFFICE IN LEXINGTON SHOULD HAVE EVER
19 RECEIVED IT AND THAT'S WHAT I WAS GETTING AT AND THIS IS --

20 THE COURT: ALL RIGHT. GIVE ME THE PAGES NOW. IS THIS
21 -- ARE THESE ON THE DISK?

22 MR. STARNES: YES, SIR, IT IS.

23 THE COURT: THEY'RE PAGES 3517 THROUGH WHAT?

24 MR. STARNES: 3987. YOUR HONOR, I'VE GOT AN INDEX
25 HERE---

1 THE COURT: OKAY.

2 MR. STARNES: ---I CAN PROVIDE TO THE COURT.

3 THE COURT: ALL RIGHT. WHAT I'M GOING TO DO --- ARE
4 THERE ANY OTHERS NOW? ARE THERE ANY OTHERS OTHER THAN
5 THESE?

6 MR. STARNES: NO, SIR, AND I'VE GOT ALL THIS MATERIAL
7 IN THIS BOX RIGHT HERE. I'VE ALREADY SEPARATED IT.

8 THE COURT: ALL RIGHT. WHAT I'M GOING TO GET YOU DO
9 THEN IS, MR. BRACKETT, YOU AGREE THE THING TO DO WOULD BE
10 MAYBE TAKE THE --- IF YOU-ALL CAN IDENTIFY THE MATERIALS THAT
11 HE'S TALKING ABOUT, MAYBE YOU OR MAYBE MS. COLLINS CAN SEE
12 THOSE SINCE SHE PUT ALL THIS TOGETHER AND LOOK AT THOSE AND
13 SEE IF WE CAN AGREE ON THAT THAT THIS --- THESE WOULD BE
14 PRIVILEGED MATERIALS.

15 MR. BRACKETT: WE'LL BE GLAD TO SEGREGATE THOSE AND
16 PERHAPS IT WOULD BE A GOOD IDEA FOR MR. STARNES AND MS.
17 COLLINS TO GO THROUGH THE BOXES. THERE ARE SEVERAL BOXES
18 THAT CONTAIN ATTORNEY WORK PRODUCT FROM THE STATE'S SIDE,
19 SOLICITOR MYERS'S NOTES, FILES THAT HE PREPARED.

20 THE COURT: OF COURSE, HE'S NOT ENTITLED TO THAT.

21 MR. BRACKETT: YES, SIR. WE SEGREGATED THAT MATERIAL.
22 THE BULK OF THE MATERIAL IS SITTING ON A TABLE IN A LOCKED
23 ROOM BEHIND HERE, THE JURY ROOM. IF MR. STARNES AND MS.
24 COLLINS CAN GO THROUGH THAT MATERIAL AND ASCERTAIN THAT
25 THERE IS NOTHING THAT HE COMPLAINS OF BEING PRIVILEGED IN

1 THAT MATERIAL, THEN WE CAN — AND IF THERE IS SOMETHING,
2 PULL THAT MATERIAL OUT, SEGREGATE IT. I WILL REVIEW IT AT
3 THE END OF THAT AND SEE IF I HAVE AN ARGUMENT THAT PERHAPS
4 THE MATERIAL SHOULD BE TURNED OVER TO THE SEVENTH CIRCUIT,
5 IN WHICH CASE WE CAN ARGUE THAT OUT, DETERMINE THE MATERIAL
6 YOU SAY THEY SHOULD GET, EXCLUDE THE MATERIAL YOU SAY THEY
7 SHOULD NOT GET AND THEN GIVE THE WHOLE BOX —

8 THE COURT: WELL, WHY DON'T WE DO THAT TO BEGIN WITH
9 THEN. MR. STARNES, YOU GO BACK WITH MS. COLLINS TO THE JURY
10 ROOM. OF COURSE, THE OFFICERS CAN GO BACK THERE AND JUST
11 HAVE A SEAT BACK THERE, BUT — AND THE — AND Y'ALL CAN GO
12 THROUGH THE MATERIALS. SEE, WE — ONCE I ISSUED MY ORDER IN
13 THIS CASE RELIEVING THEM, I TOOK POSSESSION OF ALL THE BOXES
14 AND THEY'VE BEEN IN MY POSSESSION, IN MY OFFICE EVER SINCE,
15 BUT THE BOXES — WE MOVED THEM THIS MORNING INTO THE JURY
16 ROOM, SO THAT OFFICE CAN KEEP FUNCTIONING AND YOU AND MS.
17 COLLINS, FOR THE PRESENT TIME, CAN GO IN THERE AND GO
18 THROUGH THOSE AND LET'S SEE IF WE CAN AGREE ON MATERIALS YOU
19 SAY THE SEVENTH CIRCUIT SOLICITOR'S OFFICE SHOULD NOT GET.

20 MR. STARNES: YOUR HONOR, I COULD PROBABLY SAVE THEM
21 SOME TIME, IF YOU WOULD JUST LET ME SPEAK ON THAT.

22 THE COURT: ALL RIGHT.

23 MR. STARNES: I'VE GOT EVERY BIT OF THAT MATERIAL.
24 THERE'S 3,991 PAGES THAT WAS PRINTED. I'VE GOT EVERY BIT OF
25 THAT MATERIAL IN THIS BOX HERE AND I'VE ALREADY SEPARATED IT

1 ACCORDING TO WHAT'S ON THIS LIST. I'VE GOT ALL THE
2 MATERIALS IN A SEPARATE FILE THAT I FEEL THAT THEY SHOULD
3 NOT HAVE.

4 NOW, UNLESS THE SOLICITOR'S OFFICE, THE NEW SOLICITOR
5 THAT'S GOING TO GET THIS CASE, IS GOING TO WANT THIS WORK
6 PRODUCT INFORMATION, WHAT I WOULD PROPOSE, IF THEY WOULD
7 AGREE TO DOING THAT, IS JUST TAKING THE MATERIAL HERE THAT
8 HAS JUST BEEN PRINTED OFF THIS DISK WITH THIS INDEX AND THAT
9 WOULD SAVE US FROM GOING BACK THERE, GOING THROUGH ALL THESE
10 BOXES. IF THEY WOULD AGREE THAT THEY DO NOT RECEIVE THE
11 INFORMATION THAT'S IN THESE BOXES, AND I WOULD ASK THE COURT
12 --

13 THE COURT: YEAH, THEY'RE GOING TO HAVE TO LOOK AT
14 THOSE AND REVIEW THEM, THOUGH, TO SEE IF THEY AGREE OR DON'T
15 AGREE; CORRECT? BUT HE'S NOT ASKING FOR ANY OTHERS OTHER
16 THAN THOSE THAT ARE THERE, SO IF YOU CAN SEGREGATE THOSE OUT
17 AND THEN IT'S JUST A QUESTION OF MAKING A DETERMINATION
18 WHETHER THEY SHOULD BE TURNED OVER OR NOT TURNED OVER. DO
19 YOU SEE WHAT I'M SAYING? HE'S NOT QUESTIONING ANYTHING ELSE
20 EXCEPT --

21 MR. BRACKETT: ASK MS. COLLINS TO GO THROUGH AND FIND
22 THOSE DOCUMENTS THAT YOU REFERENCED AND PULL THOSE FROM THE
23 BOX AND THEN YOU'LL BE SATISFIED?

24 MR. STARNES: WELL, I DON'T -- SEE, THE PROBLEM IS IS I
25 DON'T KNOW WHAT ALL -- HOW MANY BOXES THEY'VE GOT AND WHAT

1 ALL'S IN THERE AND I UNDERSTAND INTERNAL PROSECUTION
2 DOCUMENTS AND WORK PRODUCT, I'M NOT ENTITLED TO THAT AND I'M
3 NOT ENTITLED TO SEE THAT AND I DON'T KNOW WHAT -- IF THERE'S
4 ANY MATERIAL IN THOSE FILES THAT THEY SHOULDN'T HAVE AND I
5 DON'T THINK THEY'RE JUST GOING TO LET ME HAVE THOSE FILES TO
6 LOOK THROUGH THEM AND I CAN UNDERSTAND THAT. SO WHAT I'M
7 SAYING, YOUR HONOR, IS UNLESS THE NEW SOLICITOR IS GOING TO
8 WANT ALL OF THE OLD WORK PRODUCT INFORMATION, THEN WHAT I
9 WOULD PROPOSE TO DO IS I HAVE ALREADY WENT THROUGH ALL 3,991
10 PAGES AND EVERY BIT OF IT'S IN HERE IN ORDER AND I HAVE A
11 SEPARATE FILE FOR THE PAGES THAT I HAVE TAKEN OUT THAT I
12 BELIEVE THEY ARE NOT ENTITLED TO HAVE AND THIS IS ALL IN A
13 FILE RIGHT HERE WITH ME. I'VE ALREADY WENT THROUGH EVERY --
14 THE COURT: WELL, YOU CAN TAKE -- YOU CAN TAKE YOUR
15 FILE BACK THERE AND LET'S PULL THOSE FILES. MS. COLLINS
16 WILL PROBABLY BE ABLE TO LOCATE THEM SINCE SHE PUT ALL OF
17 THAT TOGETHER. SHE DID ALL THIS. SOLICITOR'S OFFICE -- SHE
18 WORKS FOR THE SOLICITOR'S OFFICE, BUT SHE'S NOT A SOLICITOR
19 AND SHE DID ALL OF THIS FOR THEM ADMINISTRATIVELY, SO REALLY
20 THEY WEREN'T EVEN -- REALLY DIDN'T HAVE -- ESSENTIALLY, THEY
21 DIDN'T HAVE ACCESS TO IT, BECAUSE THEY WEREN'T INVOLVED IN
22 IT. SHE DID ALL THAT. SO, NEVERTHELESS, SINCE THEY'RE NO
23 LONGER INVOLVED IN IT, SHE WILL GO BACK THERE WITH YOU AND
24 PULL THOSE DOCUMENTS OUT, Y'ALL MATCH THOSE UP AND THEN IF
25 THERE'S ANY OTHER THING THAT YOU SAY THAT THEY'RE NOT

1 ENTITLED TO, THEN YOU NEED TO LET US KNOW THAT. OTHER THAN
2 THAT WE'LL TURN THE BALANCE OF IT OVER TO THE SOLICITOR —
3 SEVENTH CIRCUIT SOLICITOR. BUT WE'LL TAKE THOSE OUT, IF
4 THEY AGREE. IF THEY DON'T AGREE, THE COURT WILL MAKE A
5 FINAL DECISION, OKAY, BUT IF YOU'LL GO BACK WITH MS. COLLINS
6 TO THE JURY ROOM. I'LL ASK THE OFFICERS TO GO BACK THERE
7 AND JUST HAVE A SEAT. THERE'S PLENTY OF SEATS IN THERE.
8 THERE'S A BATHROOM AND ALL OF THAT IN THERE, SO IT WON'T —
9 AND SO — IF YOU WOULD JUST DO THAT. DO YOU AGREE WITH
10 THAT, MR. BRACKETT?

11 MR. BRACKETT: YES, SIR. I THINK THAT WOULD BE THE
12 MOST — I CAN'T IMAGINE THAT THE SEVENTH CIRCUIT WOULDN'T
13 WANT TO AVAIL THEMSELVES OF SOLICITOR MYERS'S MATERIAL, HIS
14 TRIAL NOTEBOOKS AND THINGS THAT HE PREPARED.

15 THE COURT: WELL, I THINK THEY'RE ENTITLED TO THAT. I
16 JUST — IT'S HIS WORK PRODUCT AND THINGS THAT ARE PRIVILEGED
17 FOR HIM—

18 MR. BRACKETT: YES, SIR.

19 THE COURT: —THAT THEY'RE NOT ENTITLED TO HAVE. THEN
20 IT COMES DOWN TO A QUESTION OF WHAT HAS TO BE PROVIDED TO
21 HIM BY WAY OF DISCOVERY AND WHETHER HE'S GOT IT ALL OR NOT
22 AND WE'LL DEAL WITH THAT SECONDARILY, BUT I WANT TO GET THIS
23 FIRST ONE OUT OF THE WAY SO WE CAN GET THE SIXTEENTH CIRCUIT
24 SOLICITOR'S OFFICE OUT OF IT. THEN WE CAN DEAL WITH THE
25 SEVENTH CIRCUIT SOLICITOR'S OFFICE. OKAY?

1 MR. BRACKETT: YES, SIR.

2 THE COURT: SO LET'S DO THAT. NOW, MR. BRACKETT, YOU
3 GOT SOMEWHERE TO GO IN ROCK HILL---

4 MR. BRACKETT: YES, SIR.

5 THE COURT: ---AND YOU GO ON AND WHEN YOU COME BACK ---
6 HE WON'T BE GONE THAT LONG. WHEN HE GETS BACK, IF THERE'S
7 ANYTHING TO BE DECIDED, WE CAN ARGUE THAT AT THAT TIME.

8 MR. BRACKETT: AND YOU CAN GO THROUGH ALL THE BOXES
9 THAT ARE BACK THERE, EXCEPT THE STUFF THAT'S PRIVILEGED WORK
10 PRODUCT, SOLICITOR MYERS'S STUFF ---

11 THE COURT: YOU'VE SEPARATED THAT OUT?

12 MR. BRACKETT: YES, SIR.

13 THE COURT: SO HE'LL LET YOU GO THROUGH THE OTHER BOXES
14 IF YOU WANT TO, BUT HE SAYS ESSENTIALLY HE'S ALREADY DONE
15 THAT WITH THE DISK.

16 MR. BRACKETT: YES, SIR.

17 THE COURT: OKAY.

18 MR. BRACKETT: AND THAT'S FINE IF HE DOESN'T --- I MEAN,
19 IT'S ACCESSIBLE TO HIM IF HE WANTS TO LOOK THROUGH THEM. IF
20 HE DOESN'T ---

21 THE COURT: YEAH; WE'LL GIVE YOU THE OPPORTUNITY.
22 OKAY.

23 MR. STARNES: MAY MY INVESTIGATOR BE WITH ME?

24 THE COURT: YES, SIR; YES, SIR. WE'LL LET HIM GO BACK.

25 MR. STARNES: THANK YOU.

1 MR. BRACKETT: GIVE US JUST A MOMENT TO GET THIS
2 ORGANIZED AND WE'LL LET YOU KNOW WHEN WE'RE READY.

3 (WHEREUPON, THE PARTIES EXITED THE COURTROOM TO REVIEW
4 THE REFERENCED DOCUMENTS, AS INSTRUCTED.)

5 (BACK ON THE RECORD AT 1:30 P.M.)

6 MR. BRACKETT: PLEASE THE COURT?

7 THE COURT: ANY TIME YOU'RE READY.

8 MR. BRACKETT: YES, SIR. THANK YOU FOR INDULGING US.
9 WE'VE BEEN ABLE TO WORK THROUGH A CONSIDERABLE AMOUNT OF
10 THIS STUFF. THERE'S ONLY A LITTLE BIT TO ARGUE OVER AND
11 THEY FALL INTO A COUPLE OF BROAD CATEGORIES, BUT BEFORE WE
12 DO THAT, WE'LL GET TO THE — THERE'S BEEN A NUMBER OF ITEMS
13 THAT WE'VE AGREED THAT SHOULD NOT BE TURNED OVER AND FOR THE
14 RECORD, BECAUSE NOT ALL OF THIS WILL BE — I GUESS WE COULD
15 PUT IT INTO — WE COULD MAKE IT A COURT'S EXHIBIT AND JUST
16 FILE IT UNDER SEAL SO THAT NOBODY COULD ACCESS IT. BUT
17 THERE'S A FOLDER MARKED 3517 THROUGH 3991. THOSE NUMBERS
18 REPRESENT NUMBERS THAT ARE HANDWRITTEN BY MS. COLLINS OF OUR
19 OFFICE IN THE UPPER RIGHT-HAND CORNER AND THEY'RE ALL
20 WRITTEN IN PURPLE INK IN THE UPPER RIGHT-HAND CORNER AND WE
21 DO THAT SO THAT WE CAN KEEP TRACK OF WHAT DOCUMENTS HE'S
22 GOT. WE JUST NUMBER EACH DOCUMENT SEQUENTIALLY.

23 3517 THROUGH 3991 CONTAIN A NUMBER OF ITEMS FROM THE
24 DETENTION CENTER IN LEXINGTON COUNTY THAT WERE GENERATED
25 DURING THE COURSE OF MR. STARNES'S STAY, SOME OF WHICH HAVE

1 SOME BEARING ON HIS PREPARATION OF HIS DEFENSE, MANY OF
2 WHICH ARE JUST SIMPLE REQUESTS TO HAVE ACCESS TO A T.V. OR
3 WHATEVER, BUT FOR WHATEVER REASON THESE ITEMS EITHER SHOULD
4 NOT BE TURNED OVER TO THE SEVENTH CIRCUIT OR WOULD BE OF NO
5 INTEREST TO THEM REGARDLESS, SO WE CONCEDE THAT THESE ITEMS
6 SHOULD BE KEPT OUT OF DISCOVERY.

7 IN ADDITION, --

8 THE COURT: WELL, WHAT -- LET ME ASK YOU WITH REGARD TO
9 HANDLING THOSE, MR. STARNES, THEN PUT ON THAT. DO YOU HAVE
10 THOSE RECORDS YOURSELF ALREADY?

11 MR. STARNES: YES, YOUR HONOR, I DO.

12 THE COURT: SO DO YOU HAVE ANY NEED FOR THESE OR ARE
13 THEY JUST GOING TO BE SURPLUSAGE?

14 MR. STARNES: NO, SIR. I DON'T BELIEVE I HAVE A NEED
15 FOR THEM.

16 THE COURT: ALL RIGHT. WHY DON'T WE -- I GUESS WE CAN
17 JUST MAKE THOSE A COURT EXHIBIT THEN AND SEAL THEM AND LET
18 ME KEEP THEM OR WE CAN DESTROY THEM. I CAN TURN THEM BACK
19 OVER TO YOU REALLY, MR. STARNES, EXCEPT THAT THAT'S JUST
20 GOING TO BE EXTRA STUFF FOR YOU--ALL TO STORE DOWN THERE IF
21 YOU ALREADY HAVE THEM, BUT I CAN TURN THEM BACK OVER TO YOU
22 IF THAT'S WHAT YOU WANT.

23 MR. STARNES: YES, SIR, THAT WILL BE FINE. I'VE GOT --
24 MY MOTHER'S GOT A STORAGE PLACE WHERE SHE STORES ADDITIONAL
25 RECORDS AND STUFF.

1 THE COURT: WHY DON'T WE JUST TURN THEM BACK IN TO HIM.
2 THEY'RE HIS ANYWAY.

3 MR. BRACKETT: VERY GOOD, SIR.

4 THE COURT: AND SO WE'LL JUST TURN THOSE BACK OVER TO
5 YOU, MR. STARNES.

6 MR. BRACKETT: THERE'S — IN ADDITION TO THAT, WE WENT
7 THROUGH A BOX OF DOCUMENTS THAT HAD OTHER ITEMS THAT I
8 PICKED OUT INDIVIDUALLY THAT I'VE AGREED TO EXCLUDE. THEY
9 ARE NUMBERED 2380, 2381, 2382, 2375, 2376, 2369, 2370, 2364,
10 2365, 2356, 57, 58, 2354, 2355, 2353, 2352, 2351, 2350,
11 2346, 2343, 2342, 2336, 2335, 2325, 2326, 2322, 2321, AND
12 2383. I'M PUTTING ALL THOSE ITEMS INTO THE SAME MANILLA
13 FOLDER——

14 THE COURT: THOSE CAN BE TURNED BACK OVER TO HIM AS
15 WELL?

16 MR. BRACKETT: ——AND DELIVER THESE TO MR. STARNES.

17 MR. STARNES: THANK YOU.

18 MR. BRACKETT: THERE ARE A NUMBER OF ITEMS WHICH WE'VE
19 AGREED SHOULD GO. ORIGINALLY MR. STARNES HAD SOME CONCERNS
20 REGARDING THESE, BUT WE WERE DISCUSSING THE MATTER BACK IN
21 THE JURY ROOM AND WE HAVE AGREED THAT THEY SHOULD GO AND I
22 CAN PUT THOSE ON THE RECORD IF YOU'D LIKE.

23 THE COURT: PLEASE DO.

24 MR. BRACKETT: OKAY.

25 THE COURT: LISTEN, MR. STARNES, TO THOSE AND SEE IF

1 YOU AGREE.

2 MR. BRACKETT: IT IS NUMBER — ITEM 22 IS BASICALLY A
3 REPORT OF A FINDING OF MENTAL CAPACITY FROM BLAIR AND
4 MONTGOMERY, M.D., DATED MARCH 28TH, 1997, FINDING MR.
5 STARNES WAS COMPETENT TO STAND TRIAL. THAT'S PAGE — YOUR
6 PAGE NUMBER 22, MS. COLLINS. PAGES 23 AND 24, WHICH IS A
7 PSYCHOSOCIAL EVALUATION DONE BY TEANNE OEHLER, A LICENSED
8 SOCIAL WORKER. IT APPEARS TO BE A REPORT THAT WAS PREPARED
9 DURING THE — PRIOR TO THE FIRST TRIAL THAT APPEARS TO HAVE
10 BEEN SENT TO THE STATE. I KNOW SHE TESTIFIED IN THE FIRST
11 TRIAL, SO ANY REPORTS THAT SHE HAD PREPARED WOULD HAVE BEEN
12 REQUIRED TO BE TURNED OVER PURSUANT TO RECIPROCAL DISCOVERY.
13 2266, WHICH IS A RECEIPT FOR PERSONAL PROPERTY; 2267, A
14 RELEASE FORM; 2268, 69, 70, 71, 72, 73, 74, 75, ALL OF WHICH
15 ARE RELEASE FORMS, EXCEPT FOR 75, WHICH IS A INMATE REQUEST
16 FORM. 2289, 94, BOTH RELEASE FORMS; 95, INMATE REQUEST
17 FORM; 2296 AND 97, BOTH INMATE RELEASE FORMS; 2298, AN
18 INMATE REQUEST FORM; 2300, AN INMATE REQUEST FORM; 2301, AN
19 INMATE REQUEST FORM — OR RELEASE FORM, RATHER; 2302, A
20 LETTER TO SERGEANT J. HAIRE FROM NORMAN STARNES, DATED MARCH
21 10TH, 2004; 2303, A RELEASE FORM; 2308, A RELEASE FORM;
22 2309, A RELEASE FORM; 2310, 19, 20, 23, RELEASE FORMS; 2327,
23 A LETTER TO MR. STARNES FROM MR. JOHN TATE, GENERAL COUNSEL
24 FOR THE SHERIFF'S DEPARTMENT IN LEXINGTON; 2328, AN INMATE
25 REQUEST FORM; 2329, A LETTER FROM — TO MR. JOHN TATE FROM

1 NORMAL STARNES, DATED FEBRUARY 21ST, 2001; 2331, A LETTER TO
2 MR. STARNES FROM JOHN TATE, DATED FEBRUARY 16TH, 2001; 2332,
3 WHICH IS A INMATE REQUEST FORM; 2333, A LETTER TO MR. TATE
4 REGARDING CANTEEN PRIVILEGES OR SOMETHING, DATED FEBRUARY
5 5TH, 2001; 2334, AN INMATE REQUEST FORM; 2345, 59, 60, 62,
6 63, 66, 67, 68, THESE ARE ALL INMATE RELEASE FORMS; 2373,
7 INMATE REQUEST FORM; 2374, 77, 78 AND 79, 85, ALL INMATE
8 RELEASE FORMS; 2406, A LETTER TO — OR NO, RATHER, A MEMO
9 REGARDING INMATE STARNES, INMATE NORMAN STARNES. IT IS
10 MARKED 2406 AND DATED MARCH 10TH OF 1997. 2407, A LETTER TO
11 THE DETENTION CENTER FROM MR. BILL NETTLES, ATTORNEY AT LAW;
12 2540, A LETTER TO MR. STARNES FROM JOHN TATE, DATED MARCH
13 3RD, 2005 AND THAT LETTER'S THREE PAGES. IT'S 2540, 41 AND
14 42. 2543, A LETTER TO MS. BETH CARRIGG, THE CLERK OF COURT
15 FOR LEXINGTON COUNTY, DATED MARCH 27TH, 2005, A LETTER TO
16 MR. SHAWN GRAHAM, ASSISTANT SOLICITOR, DATED MARCH 22ND,
17 2005. THAT'S MARKED NUMBER 2544. A ARTICLE FROM THE STATE
18 NEWS PAPER, ITEM NUMBER 3584; 3988, AN ENVELOPE ADDRESSED TO
19 MS. LISA ENGDAHL, STAMPED 27, SEPTEMBER, 2004 AND POSTMARKED
20 THAT DATE. IT'S 3988, 3989, 3990, AND 3991. BOTH SIDES OF
21 THE ENVELOPE AND THE LETTER THAT WERE CONTAINED INSIDE.

22 THESE ITEMS MR. STARNES AND I HAVE REVIEWED AND HE
23 AGREES THAT THE STATE — THE SEVENTH CIRCUIT SOLICITOR'S
24 OFFICE SHOULD RECEIVE THEM. NOW, WE'LL PLACE THOSE BACK IN
25 DISCOVERY AND TURN THEM OVER AT THE APPROPRIATE TIME.

1 NOW, THERE IS A BULK OF DOCUMENTS HERE AND PERHAPS IT
2 MIGHT BE EASIER IF I WALK OVER AND STAND NEXT TO MR.
3 STARNES, SO HE CAN REFERENCE THEM AT THE SAME TIME I DO. HE
4 HAS AN OBJECTION TO THESE BEING TURNED OVER AND HE'S BRIEFLY
5 SHARED HIS OBJECTION WITH ME, SO THERE MAY BE SOME ON HERE
6 THAT I CANNOT FULLY RESPOND TO TODAY. I MAY HAVE TO LOOK
7 INTO THE MATTER, BUT WE'LL JUST TAKE IT AS IT GOES.

8 ITEM 531, IT'S A LIST OF VISITORS FOR MR. STARNES. IT
9 APPEARS TO BE AN OLD LIST OF VISITORS FROM BACK IN THE '90'S
10 PRIOR TO THE FIRST TRIAL. I DON'T KNOW WHAT WOULD PREVENT
11 -- I DON'T KNOW HOW THIS WOULD BE PRIVILEGED AND I'LL LET
12 MR. STARNES STATE HIS OBJECTION AND THEN I CAN RESPOND.

13 MR. STARNES: YOUR HONOR, I THINK MR. TATE MADE THIS
14 ARGUMENT FOR ME BACK WHEN JUDGE WESTBROOK WAS HEARING THIS
15 CASE. THERE IS CERTAIN PRIVILEGED INFORMATION -- WHAT HAD
16 HAPPENED, I HAD REQUESTED SOME INMATE FILES THERE AT THE
17 DETENTION CENTER AND MR. TATE AND THEM DID NOT WANT TO TURN
18 CERTAIN INMATE FILES OVER TO ME FOR THESE INMATES THAT
19 TESTIFIED AGAINST ME, BECAUSE IT CONTAINED INFORMATION THAT
20 MR. TATE SAID WAS PRIVILEGED, SUCH AS, LIST OF PEOPLE WHO
21 VISIT, MEDICAL RECORDS AND SO FORTH AND THIS IS ONE OF THOSE
22 DOCUMENTS.

23 NORMALLY THEY WOULDN'T BE PRIVILEGED TO THIS
24 INFORMATION, BECAUSE IF I WASN'T INCARCERATED THEY WOULDN'T
25 KNOW WHO WAS COMING TO THE HOUSE TO VISIT ME. IT'S MY

1 UNDERSTANDING MY INCARCERATION AND BEING HELD WITHOUT BAIL
2 IS TO ASSURE MY APPEARANCE IN TRIAL. IT IS NOT TO INFRINGE
3 ON INFORMATION OR ALLOW THEM TO GET INFORMATION THAT THEY
4 NORMALLY OTHERWISE WOULDN'T GET IF I WAS -- HAD -- ON BOND
5 AND OUT ON THE STREET AND THIS IS ONE OF THOSE THINGS.
6 ALSO, THEY PHOTOCOPIED MY MAIL, ALL THE MAIL THAT COMES INTO
7 THE DETENTION CENTER. EVERYBODY THAT WRITES ME, THEY
8 PHOTOCOPY THAT WHEN NORMALLY THEY COULDN'T GO INTO MY
9 MAILBOX AND TAKE MY MAIL OUT AND PHOTOCOPY IT AND I WOULD
10 REGISTER MY OBJECTION TO THAT. I DON'T BELIEVE THEY SHOULD
11 HAVE THAT.

12 MR. BRACKETT: THERE'S A -- THERE IS A LARGE SECTION OF
13 THIS MATERIAL THAT DOES -- IT'S NOT THE ACTUAL LETTERS, THE
14 INTERIOR. IT'S THE EXTERIOR OF THE ENVELOPE SHOWING WHO THE
15 PERSON IS THAT WROTE OR WHO THE ADDRESSEE IS AND THIS
16 DOCUMENT HERE, I DON'T KNOW HOW THE ELEVENTH CIRCUIT
17 SOLICITOR'S OFFICE CAME INTO CONTACT WITH IT, BUT IF MR.
18 STARNES WERE OUT OF INCARCERATION, THERE WOULD BE NOTHING TO
19 STOP ANYBODY FROM WATCHING TO SEE WHO SHOWED UP AT HIS HOUSE
20 AND QUESTIONING THEM AFTERWARDS TO SEE WHO WAS COMING AND
21 GOING. SO I DON'T KNOW, NECESSARILY, THAT HIS ARGUMENT
22 HOLDS WATER. AN INVESTIGATION COULD BE DONE OF WHO HE'S
23 SOCIALIZING WITH. HE COULD BE FOLLOWED. THERE'S NOTHING
24 WRONG WITH FINDING OUT WHO HE'S ASSOCIATING WITH AND
25 APPROACHING THOSE PEOPLE AND ASKING THEM WHAT THEY KNOW. SO

1 I'M NOT ENTIRELY SURE THAT THAT HOLDS WATER.

2 AS FAR AS THE INFORMATION REGARDING THE LETTERS, I AM
3 NOT AWARE OF ANY PRIVILEGE THAT WOULD PROTECT MR. STARNES
4 FROM HAVING THE CONTENTS — NOT THE CONTENTS OF THE LETTERS,
5 BUT THE EXTERIOR OF THE ENVELOPE, I DON'T KNOW WHAT
6 PRIVILEGE HE CAN POINT TO THAT WOULD PREVENT THAT
7 INFORMATION FROM BEING SUBPOENAED AND INVESTIGATED.

8 THE COURT: WHAT PERIOD OF TIME ARE WE TALKING ABOUT ON
9 THESE?

10 MR. BRACKETT: THIS APPEARS TO BE FROM PRIOR TO HIS
11 FIRST TRIAL. THIS IS JUST A LIST OF VISITORS THAT — YOU
12 HAVE TO LIST YOUR VISITORS AND SAY THESE ARE THE PEOPLE THAT
13 I WANT, WILL ACCEPT TO COME SEE ME AND YOU CAN ONLY HAVE SO
14 MANY. THE PEOPLE THAT ARE INVOLVED IN THE LETTERS — LET'S
15 SEE IF I CAN SEE. THAT'S MORE RECENT. 24 JANUARY, 2005, —

16 THE COURT: LET ME JUST ASK HIM, WHY WOULD THAT BE
17 PRIVILEGED, MR. STARNES? NOT — I MEAN, SOMETHING THAT'S
18 COMING TO THE JAIL, WHO MIGHT BE WRITING YOU THERE, WHAT
19 COMES THROUGH THE — WHY WOULD THAT BE PRIVILEGED, I MEAN?
20 I MEAN, I DON'T UNDERSTAND. WHY WOULD THAT BE PRIVILEGED?

21 MR. STARNES: WELL, YOUR HONOR, I CAN'T QUOTE THE
22 FEDERAL LAW OR ANYTHING ON IT, 'CAUSE I DON'T HAVE MY LEGAL
23 RESEARCH TURNED ON. I HAVEN'T HAD IT IN FIFTEEN MONTHS. I
24 THINK FEDERAL LAW DOES NOT ALLOW THEM TO DO THIS.
25 FURTHERMORE, IF I WAS ON THE STREET THEY COULDN'T GO INTO MY

1 MAILBOX AND PHOTOCOPY — NOBODY CAN COME IN YOUR HOUSE AND
2 PHOTOCOPY THE MAIL, PEOPLE THAT'S WRITING YOU, TO SEE THE
3 OUTSIDE OF THE CONTENTS. I DON'T BELIEVE THAT — THIS
4 CERTAINLY ISN'T PUBLIC RECORD. IT DOESN'T FALL UNDER THE
5 RECORDS ACT IN TITLE NINETEEN AND I DON'T THINK THEY SHOULD
6 HAVE THIS INFORMATION, BECAUSE WHAT THEY CAN DO IS ALL THE
7 INDIVIDUALS THAT WRITE ME AND CORRESPOND WITH ME, THEY CAN
8 GO INTERVIEW ALL THESE PEOPLE, WHICH NORMALLY, SURE, THEY
9 COULD DO SURVEILLANCE IF THEY WAS ON THE STREET AND STUFF,
10 BUT IT GOES FURTHER THAN THIS. THE LEAD INVESTIGATOR ON
11 THIS CASE TOOK THIS VISITATION LIST AND OBTAINED BACKGROUND
12 INFORMATION AND GOT OTHER PERSONAL INFORMATION FROM ALL
13 THESE VISITORS THAT COME IN HERE TO VISIT ME. THIS ISN'T
14 PUBLIC RECORD. I COULDN'T SUBMIT A FREEDOM OF INFORMATION
15 REQUEST TO THE JAIL TO GET THIS FROM ANOTHER INMATE.

16 NOW, WHEN I ASKED FOR THIS INFORMATION, WHEN I ASKED
17 FOR OTHER INMATE FILES, THEY ARGUED AGAINST IT AND DIDN'T
18 WANT TO TURN IT OVER TO ME. JUDGE WESTBROOK SAID IT'S
19 PROTECTED BY FEDERAL LAW, THAT THEY — THAT I COULDN'T HAVE
20 THAT INFORMATION. SO I DON'T SEE HOW IF I COULDN'T HAVE IT,
21 HOW THEY COULD HAVE IT, HOW THEY COULD GET IT FROM, YOU
22 KNOW, TO USE AGAINST ME WHEN I CAN'T GET IT TO USE TO
23 PREPARE FOR MY DEFENSE.

24 MR. BRACKETT: MR. TATE, THE GENERAL COUNSEL FOR THE
25 LEXINGTON COUNTY SHERIFF'S DEPARTMENT, WHICH ALSO OVERSEES

1 THE DETENTION FACILITY THERE HAS SOME OBSERVATIONS AND
2 INSIGHTS THAT —

3 THE COURT: WELL, OKAY. AND I'LL HEAR FROM YOU, BUT
4 IT'S A DIFFERENT ISSUE AS TO WHETHER THEY HAVE A RIGHT TO DO
5 IT OR NOT, TO KNOW WHO'S DOING THAT, AND WHETHER THAT SHOULD
6 BE TURNED OVER TO THE SOLICITOR PROSECUTING OR NOT. THAT'S
7 TWO DIFFERENT ISSUES, BUT I'LL BE GLAD TO HEAR FROM YOU, MR.
8 TATE.

9 MR. TATE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
10 COURT.

11 THE COURT: YES, SIR.

12 MR. TATE: AS TO THE OTHER INMATE FILES, THE LARGEST
13 CONCERN AT THAT HEARING WAS THAT MR. STARNES IN THE FACILITY
14 — OF COURSE, IF THIS WERE MR. DELGADO AND MR. NETTLES, WE'D
15 COPY AND SEND THEM, BUT HAVING THIS PERSONAL INFORMATION ON
16 OTHER PEOPLE HE'S LIVING IN A PRISON WITH, BEING THE BIGGEST
17 CONCERN FOR SECURITY INTEREST AND ALSO THE OTHER INMATES'
18 MEDICAL INFORMATION WAS A LARGE CONCERN OR PRIVACY ISSUES OF
19 INMATES SENDING A MEDICAL REQUEST TO SEE THE DOCTOR FOR, YOU
20 KNOW, WHATEVER REASON, BUT ALSO THE THINGS THAT OTHER
21 INMATES AND OTHER PEOPLE IN THESE HOUSING UNITS ASK FOR.

22 SPECIFICALLY, AS TO THE ENVELOPES, IT IS STANDARD
23 PRACTICE AND I DON'T EVEN KNOW IF IT'S BEEN CHALLENGED IN
24 THE FOURTH CIRCUIT, MOST ALL FACILITIES XEROX INCOMING AND
25 OUTGOING MAIL, JUST THE FACE AND THE REAR OF THE ENVELOPE.

1 THEY ALSO STAMP THE ENVELOPE, SO THE RECEIVER KNOWS IT'S
2 BEEN RECEIVED. I THINK IT'S A LONG STRETCH TO SAY THERE'S A
3 REASONABLE EXPECTATION OF PRIVACY IN SOMETHING YOU WRITE ON
4 THE EXTERIOR OF AN ENVELOPE AND THROW IT IN THE MAIL.

5 FROM YOUR HONOR'S LAST HEARING, I SPECIFICALLY
6 INSTRUCTED AND USED THE WORDS I BELIEVE YOU USED FROM THE
7 BENCH, THE DETENTION CENTER, THAT NO INFORMATION FROM THE
8 DETENTION CENTER IS TO BE TRANSMITTED TO AN INVESTIGATING
9 OFFICER OR TO ANY SOLICITOR'S OFFICE WITHOUT FIRST COMING
10 THROUGH THIS COURT. SO I THINK WE SOLVED THE PROBLEM
11 FORWARD FROM THE LAST DATE OF HEARING, BECAUSE THERE WILL BE
12 NO JAIL RECORDS TRANSMITTED FROM LEXINGTON COUNTY SHERIFF'S
13 DEPARTMENT EXCEPT TO THIS COURT.

14 NOW, WHEN MR. WILLINGHAM IS PREPARED TO GET THOSE
15 RECORDS FOR WHATEVER HE NEEDS, HE CAN ASK THE COURT, I CAN
16 PROVIDE THOSE TO THE COURT, COPIES FOR MR. STARNES AND WE
17 CAN DISCUSS, YOU KNOW, WHAT THEY SHOULD OR SHOULDN'T HAVE
18 OUT OF THAT.

19 THE COURT: WELL, ALL RIGHT. AS I SAY, I CERTAINLY
20 THINK YOU-ALL HAVE A RIGHT TO COPY THOSE AND KEEP UP WITH
21 THAT. I DON'T THINK THERE'S ANY QUESTION ABOUT THAT. THE
22 QUESTION IS WHAT -- WHETHER THE PROSECUTOR'S ENTITLED TO
23 THAT OR NOT.

24 MR. STARNES: FOR SECURITY I DON'T OBJECT TO THEM DOING
25 IT. I UNDERSTAND IT'S PROTECTING SECURITY. I DON'T HAVE AN

1 OBJECTION TO THAT.

2 THE COURT: WELL, I'M JUST TRYING TO THINK, THOUGH,
3 NOW. MR. STARNES, IT'S ONE THING FOR INSIDE OF A LETTER,
4 WHAT'S CONTAINED INSIDE A LETTER TO BE PRIVATE, BUT WHAT'S
5 ON THE OUTSIDE OF AN ENVELOPE AS FAR AS WHO YOU'RE SENDING
6 SOMETHING TO, I DON'T KNOW WHY THAT WOULD BE CONFIDENTIAL.
7 ANYBODY IN THE POST OFFICE CERTAINLY CAN SEE IT. ANYBODY
8 ELSE WHO HANDLES THE MAIL CAN CERTAINLY SEE IT. IF SOMEBODY
9 WANTS TO LOOK IN YOUR MAILBOX, I GUESS THEY COULD DO THAT.
10 I DON'T THINK YOU — THERE WOULD BE A LAW AGAINST STEALING
11 ANYTHING OUT OF YOUR MAILBOX, BUT I DON'T THINK SOMEBODY
12 COULDN'T WATCH WHAT YOU PUT — WHAT SOMEBODY PUTS IN THERE.
13 I'M JUST — SEE, I'M TRYING TO FIGURE OUT WHETHER THERE'S
14 ANY RIGHT TO PRIVACY TO WHO MIGHT BE SENDING YOU MAIL THERE
15 OR WHAT MIGHT BE ON THE ENVELOPE, ON THE OUTSIDE OF AN
16 ENVELOPE.

17 MR. STARNES: MY OBJECTION IS, YOUR HONOR, TO THEM
18 USING IT AS AN INVESTIGATIVE TOOL TO GO INTERVIEW PEOPLE
19 THAT I WRITE WHEN NORMALLY AN INVESTIGATOR FOR THE STATE
20 COULDN'T COME TO MY HOUSE, OPEN MY MAILBOX UP AND RUN IT
21 ACROSS A PHOTOCOPY MACHINE AND THEN TURN AROUND AND USE THAT
22 AS AN INVESTIGATIVE TACTIC.

23 THE COURT: WHY WOULD THE SOLICITOR'S OFFICE BE
24 ENTITLED TO GET THOSE NAMES TO INVESTIGATE THOSE PERSONS?

25 MR. BRACKETT: IF HE WAS NOT IN PRISON, IF HE WAS NOT

1 IN PRE-TRIAL DETENTION?

2 THE COURT: OR EVEN IF HE WAS, EVEN IF HE IS.

3 MR. BRACKETT: I GUESS IT COMES DOWN TO AN EXPECTATION
4 OF PRIVACY. IF IT'S GOING THROUGH THE MAIL AND IT'S
5 ARRIVING AT THE DETENTION CENTER AND VARIOUS PEOPLE AT THE
6 DETENTION CENTER ARE HANDLING IT AND SEEING IT, THE MAILMAN
7 DELIVERS IT TO HIS HOUSE. IS THERE — WOULD THERE BE
8 ANYTHING IMPROPER IF THE MAILMAN SAID HE JUST GOT A LETTER
9 FROM GEORGE BUSH?

10 THE COURT: CERTAINLY. I DON'T KNOW OF ANY REASON WHY
11 THE JAIL COULDN'T TELL ANYBODY WHO YOU GOT MAIL FROM.
12 THERE'S NO PRIVACY IN THAT, WHETHER THEY MAKE A COPY OF THE
13 ENVELOPE AND GIVE IT TO SOMEBODY OR THEY TELL SOMEBODY HE
14 GOT MAIL FROM JOHN SMITH, WHO — YOU KNOW, WHO LIVES AT 15
15 GREEN STREET IN LEXINGTON. I DON'T KNOW WHY THEY COULDN'T
16 DO THAT. THERE'S NO EXPECTATION OF PRIVACY IN THE OUTSIDE
17 OF AN ENVELOPE THAT ANYBODY'S GOING TO SEE. IT'S GOING TO
18 BE HANDLED BY A NUMBER OF PEOPLE AND CAN BE SEEN BY A NUMBER
19 OF PEOPLE. I DON'T KNOW WHY THERE WOULD BE AN EXPECTATION
20 OF PRIVACY IN THAT.

21 MR. STARNES: BUT NORMALLY THAT MAIL WOULDN'T BE
22 HANDLED BY A SOLICITOR PROSECUTING ME.

23 THE COURT: WELL, WHAT'S THE DIFFERENCE BETWEEN THEM
24 SAYING IT'S NOT THE ENVELOPE ITSELF THAT YOU'RE TALKING
25 ABOUT, IT'S THE PERSON'S NAME WHO'S ON THERE AND WHAT WOULD

1 STOP THEM FROM — SOMEBODY WHO HANDLED THAT MAIL FROM
2 TELLING THEM HE GOT MAIL FROM SO AND SO? WHAT'S THE
3 DIFFERENCE BETWEEN GIVING THEM AN ENVELOPE, COPY OF AN
4 ENVELOPE, THAT'S GOT THAT ON THERE AND SOMEBODY TELLING THEM
5 THAT YOU GOT MAIL FROM SOMEBODY? WHAT'S THE DIFFERENCE? I
6 MEAN, I DON'T UNDERSTAND.

7 MR. STARNES: I BELIEVE THERE'S A PRIVACY RIGHT THERE,
8 YOUR HONOR. I MEAN, I CAN'T —

9 THE COURT: THEY HAVE NO RIGHT FOR THEM NOT TO TELL THE
10 SOLICITOR WHO YOU GOT MAIL FROM?

11 MR. STARNES: NORMALLY THEY COULDN'T DO THAT, BECAUSE
12 I'M INCARCERATED.

13 MR. BRACKETT: I HAVE A SUGGESTION, YOUR HONOR.

14 THE COURT: YES, SIR.

15 MR. BRACKETT: WHY DON'T WE DO THIS: WE'LL PUT THIS
16 ASIDE AND SEAL IT UP AND ALLOW ME TO TELL THE SEVENTH
17 CIRCUIT THAT THERE WERE A NUMBER OF ITEMS THAT INVOLVE THE
18 EXTERIOR OF ENVELOPES SHOWING WHO'S BEEN WRITING TO MR.
19 STARNES, WITHOUT TELLING THEM WHO THEY ARE, WITHOUT
20 IDENTIFYING ANY OF THESE PEOPLE, AND IF THEY WISH TO PURSUE
21 THAT, —

22 THE COURT: YES, SIR.

23 MR. BRACKETT: —THEN THEY CAN DO THE RESEARCH ON IT.

24 THE COURT: RIGHT. AND YOU CAN JUST LEAVE THOSE WITH
25 THE COURT AND WE'LL JUST —

1 MR. BRACKETT: YES, SIR. AND THEN THEY MAY GO I DON'T
2 EVEN CARE AND I'M NOT EVEN GOING TO LOOK INTO THAT ASPECT OF
3 THIS CASE, IN WHICH CASE WE'RE ARGUING ABOUT SOMETHING THAT
4 DOESN'T EVEN NEED TO BE --

5 THE COURT: WELL, WE'LL DEAL WITH THAT WITH THEM AND
6 LET THEM MAKE WHATEVER MOTION FOR THEM THEY WANT THEM, BUT
7 MEANWHILE WE'LL LEAVE THEM TO THE COURT AND THEY'LL BE IN
8 THE COURT'S POSSESSION UNTIL SOME DECISION'S MADE. THEY
9 WON'T BE TURNED OVER UNTIL A DECISION IS MADE TO TURN THEM
10 OVER. ALL RIGHT. WHAT ELSE?

11 MR. STARNES: THEY CONTAIN CERTAIN WITNESSES AND
12 DEFENSE EXPERTS AND STUFF LIKE THAT ALSO. ALL THE MAIL THAT
13 COMES IN HAS GOT MY EXPERT WITNESSES AND STUFF LIKE THAT.
14 THAT INFORMATION'S ON THERE. I MEAN, IF I GET SOMETHING
15 FROM THE PATHOLOGIST, YOU KNOW, THEY'RE GOING TO KNOW IT.

16 THE COURT: WELL, I DON'T KNOW WHY YOU'RE ENTITLED TO
17 ANY PRIVACY ABOUT THAT. IF YOU'RE GOING TO CALL THEM AS A
18 WITNESS IN YOUR CASE, CERTAINLY YOU GOT TO LET THE STATE
19 KNOW THAT YOU'RE CALLING THEM AS A WITNESS AND WHAT THEY'RE
20 GOING TO TESTIFY TO UNDER RECIPROCAL DISCOVERY; DO YOU NOT?

21 MR. STARNES: YES, SIR, BUT WHAT IF I DON'T CALL THEM
22 AS WITNESSES?

23 THE COURT: WELL, --

24 MR. STARNES: I DON'T -- I'M NOT PREPARED TO ARGUE
25 THAT, BUT I DON'T THINK I HAVE TO TURN OVER A WITNESS LIST

1 TO THEM AND TELL THEM WHO I'M GOING TO CALL AND I DON'T
2 BELIEVE THEY HAVE TO ME, EITHER.

3 THE COURT: WELL, I THINK YOU DO IF YOU'RE GOING TO
4 CALL EXPERT WITNESSES. I THINK YOU HAVE TO TELL THEM IF THE
5 REQUEST IT BY RECIPROCAL DISCOVERY, I DO BELIEVE YOU HAVE TO
6 GIVE THEM THAT INFORMATION.

7 MR. STARNES: YES, AND REPORTS AND THINGS LIKE THAT
8 THAT THE EXPERT'S GOING TO TESTIFY. I UNDERSTAND THAT.

9 THE COURT: ALL RIGHT. LET'S DO THAT. WE'LL JUST SEAL
10 THEM ALL UP.

11 MR. BRACKETT: ALL RIGHT.

12 THE COURT: AND YOU CAN LET THE SEVENTH CIRCUIT KNOW
13 I'VE GOT THEM. IF THEY THINK THEY NEED THEM, THEN THEY CAN
14 FILE SOMETHING WITH ME. OF COURSE, THEY'LL SEND THAT TO MR.
15 STARNES, WHATEVER THEY SEND ME, AND LET ME KNOW WHY THEY
16 THINK THEY NEED THEM, WHY THEY'RE ENTITLED TO IT AND WE'LL
17 LET THEM ARGUE THAT.

18 MR. BRACKETT: AND THIS IS A SNAPSHOT. THIS IS JUST
19 WITHIN ABOUT A TWO-MONTH PERIOD HERE WORTH OF LETTERS, SO
20 I'M SURE THERE'S A LOT MORE THAT — YOU KNOW, THEN IF THEY
21 CHOOSE TO GO THAT ROUTE AND INVESTIGATE THAT ISSUE, THEN
22 THEY CAN DO IT. IF NOT, THEN IT WOULD BE —

23 THE COURT: DO WE NEED TO PULL OUT ANY MORE RECORDS
24 THEN BEFORE WE TURN THEM OVER TO THEM, THE ONES THAT ARE
25 BACK HERE?

1 MR. BRACKETT: NO. THESE ARE THE ONLY ONES THAT
2 PERTAIN TO THAT, TO THIS ISSUE.

3 MR. STARNES: YES, SIR.

4 MR. BRACKETT: IS THAT — WAS YOUR QUESTION?

5 THE COURT: YES, SIR.

6 MR. STARNES: YES, SIR.

7 MR. BRACKETT: AND THAT THEY'RE MARKED — THEY'RE
8 NUMBERED —

9 THE COURT: THERE'S NOTHING IN THERE THAT WE'RE GOING
10 TO TURN OVER TO THEM THAT CONSTITUTES THAT?

11 MR. BRACKETT: NO, SIR.

12 THE COURT: OKAY.

13 MR. BRACKETT: WE HAVE SEGREGATED ALL THIS —

14 THE COURT: JUST LEAVE THOSE WITH THE COURT THEN AND
15 I'LL HOLD ONTO THEM UNTIL SOME DECISION IS MADE ABOUT
16 WHETHER THEY SHOULD BE TURNED OVER.

17 MR. BRACKETT: AND THEY HAVE BEEN MARKED. THESE ARE
18 ALL NUMBERED AS WELL, YOUR HONOR, USING THE STANDARDIZED
19 COLLINS INDEX SYSTEM, —

20 THE COURT: OKAY.

21 MR. BRACKETT: —WHICH IS NUMBERS 2473 THROUGH 2539
22 AND I'LL JUST HAND THESE UP TO THE COURT REPORTER AND THEY
23 CAN BE KEPT UNDER SEAL.

24 THE NEXT, I GUESS, FOR LACK OF A BETTER WORD, GROUPING
25 OF INFORMATION, WHICH MAY BE ALL THAT REMAINS, IS THE

1 MEDICAL STUFF AND THERE'S SOME SCHOOL RECORDS. THESE WERE
2 ALL OBTAINED BY THE SOLICITOR'S OFFICE IN LEXINGTON PRIOR TO
3 THE FIRST TRIAL.

4 THERE ARE MEDICAL RECORDS FROM RICHLAND MEMORIAL
5 HOSPITAL ON THE DEFENDANT, A NUMBER OF MENTAL HEALTH RECORDS
6 FROM WILLIAM S. HALL, MEDICAL RECORDS FROM THE DETENTION
7 CENTER PERTAINING TO HIS MENTAL HEALTH STATUS. THEY'RE
8 CAPTIONED INMATE MENTAL HEALTH STATUS, LEXINGTON COUNTY JAIL
9 MENTAL HEALTH FOLLOW-UP CONTACT SHEETS. IT'S JUST A VARIETY
10 OF MEDICAL RECORDS, PLUS THERE ARE -- THERE IS A BULK OF
11 RECORDS FROM -- THAT WERE OBTAINED FROM MR. STARNES'S
12 SCHOOL, HIS YEARS IN ELEMENTARY, MIDDLE AND HIGH SCHOOL.
13 I'M NOT EVEN SURE -- I HAVEN'T EVEN REVIEWED THEM TO THAT
14 GREAT OF AN EXTENT. MR. STARNES OBJECTS TO THESE BEING
15 TURNED OVER TO THE SEVENTH CIRCUIT.

16 THE COURT: NO QUESTION BUT WHAT THE SCHOOL RECORDS CAN
17 BE TURNED OVER. I MEAN, IF YOU GET TO A -- IF YOU GET TO A
18 PENALTY PHASE IN YOUR TRIAL, IF YOU GET TO THAT POINT,--

19 MR. BRACKETT: RIGHT.

20 THE COURT: --THEN CERTAINLY THEY'D BE ENTITLED TO
21 HAVE THAT INFORMATION FOR WHATEVER PURPOSE AND BE ABLE TO
22 SHOW TO AN EXPERT, IF THEY WERE GOING TO CALL AN EXPERT. I
23 THINK THEY'RE ENTITLED TO THE SCHOOL RECORDS AND THOSE ARE
24 PUBLIC RECORDS. CERTAINLY THEY'RE ENTITLED TO GET THOSE.

25 AS FAR AS THE MEDICAL RECORDS, WHY WOULD THE

1 SOLICITOR'S OFFICE NEED THOSE NOW?

2 MR. BRACKETT: THAT WOULD BE TO PREPARE FOR THE PENALTY
3 PHASE AS WELL. IN ORDER TO -- I MEAN, THERE'S A GREAT
4 VOLUME OF INFORMATION. IN THE PREVIOUS TRIAL HE CALLED A
5 SOCIAL WORKER WHO TESTIFIED ABOUT HIS PSYCHOSOCIAL HISTORY.
6 TYPICALLY THAT IS ALWAYS INVOLVED IN EVERY CAPITAL CASE,
7 PLUS THERE MAY BE INFORMATION IN THERE THAT GOES TO HIS
8 CHARACTER. THERE MAY BE INFORMATION IN THERE THAT GOES TO
9 UNDERSTANDING WHY HE DID WHAT HE DID OR IS ACCUSED OF DOING.
10 THIS IS ALL PENALTY PHASE STUFF AND IT IS STANDARD OPERATING
11 PROCEDURE TO OBTAIN AS MUCH OF THIS INFORMATION AS POSSIBLE
12 THAT WE ARE AWARE OF WHEN PREPARING FOR ANY CAPITAL
13 PROSECUTION. YOU WANT AS CLEAR A PICTURE OF THE INDIVIDUAL
14 YOU ARE PROSECUTING AS YOU CAN, NOT JUST FOR THE PURPOSE OF
15 PROSECUTION, BUT ALSO FOR THE PURPOSE OF UNDERSTANDING,
16 WELL, MAYBE A CAPITAL CASE ISN'T THE WAY TO GO. YOU NEED TO
17 KNOW WHERE THIS PERSON CAME FROM IN ORDER TO UNDERSTAND
18 THAT. SO WE ACCUMULATE AS MUCH OF THIS INFORMATION AS
19 POSSIBLE IN ORDER TO UNDERSTAND THE BACKGROUND OF THE
20 INDIVIDUAL AS WELL AS WE POSSIBLY CAN, BECAUSE THAT IS THE
21 CENTRAL ISSUE OF THE CAPITAL MURDER PENALTY PHASE AND THAT
22 IS THE CENTRAL ISSUE OF THE DEFENSE IN ANY PENALTY PHASE TO
23 ELICIT, YOU KNOW, THE UNIQUENESS OF THIS PERSON AS AN
24 INDIVIDUAL, THE PROBLEMS HE SUFFERED AS A CHILD, WHERE HE
25 CAME -- AND ALL OF THIS MATERIAL IS RELEVANT FOR THAT

1 PURPOSE. IT'S ALL RELEVANT FOR PREPARING —

2 THE COURT: MR. STARNES, WHY WOULDN'T THAT BE AVAILABLE
3 TO THEM, BE RELEVANT ON THE ISSUE WHEN YOU GET TO THE
4 PENALTY PHASE OF THE TRIAL, IF YOU GET THERE?

5 MR. STARNES: MR. BRACKETT SAID THE KEY WORD, THE
6 PENALTY PHASE. THIS CASE MIGHT NOT ENTER THE PENALTY PHASE.
7 THE JURY COULD VERY WELL FIND ME GUILTY OF A LESSER OFFENSE
8 OR ACQUIT ME. I KNOW THAT MIGHT SEEM LIKE A LONG SHOT.
9 THAT INFORMATION AT THIS POINT SHOULDN'T BE AVAILABLE TO
10 THEM AND HIS WHOLE ARGUMENT WAS PENALTY PHASE AND WE'RE NOT
11 IN THE PENALTY PHASE.

12 THE RECORDS FROM HALL INSTITUTE, AS I POINTED OUT TO
13 MR. BRACKETT EARLIER, JUDGE WESTBROOK HAD THOSE RECORDS
14 SEALED, BECAUSE WHAT HAPPENED IS MY ORIGINAL DEFENSE
15 ATTORNEY HAD FILED A MOTION TO HAVE ME EVALUATED AND THE
16 EVALUATION — THE PURPOSE OF THE EVALUATION WAS FOR
17 COMPETENCY. NOW, THEY WANTED TO DO THE MCNAUGHTON TEST ON
18 ME AND MY LAWYERS ADVISED ME NOT TO DISCUSS ANYTHING THAT
19 HAPPENED DURING THIS SHOOTING. SO WE HAD AN ARGUMENT BACK
20 IN MARCH THE 3RD OF 1997, I BELIEVE IT WAS, BEFORE THEY TOOK
21 ME OVER THERE AND JUDGE WESTBROOK SAID I'M GOING TO LET THEM
22 TAKE HIM OVER THERE, BUT HE DOESN'T HAVE TO TALK TO HIM OR
23 SAY ANYTHING AND AT THAT TIME, YOUR HONOR, IN THE PREVIOUS
24 RECORD JUDGE WESTBROOK ASKED THAT THOSE RECORDS BE SEALED
25 AND NOT TURNED OVER TO THE STATE. NOW, HOW THEY GOT IT, I

1 DON'T KNOW, BUT I CAN GO BACK THROUGH THE RECORD AND PROVIDE
2 TO THE COURT WHERE JUDGE WESTBROOK'S ORDERS WAS THAT THAT
3 INFORMATION BE SEALED AND IT HAS NOT BEEN UNSEALED TO MY
4 KNOWLEDGE.

5 AS TO THE PSYCHO- — THE TEANNE OEHLER, THE LADY WHO
6 TESTIFIED, WE'VE ALREADY GOT THROUGH THAT AND I AGREED TO
7 LET THEM HAVE THAT REPORT, 'CAUSE SHE WAS AN EXPERT. NOW,
8 THIS IS DEALING WITH A TOTALLY SEPARATE MATTER. I HAD TO GO
9 OVER THERE 'CAUSE THERE WAS A COURT ORDER. THEY WANTED ME
10 EVALUATED FOR THE PURPOSE OF COMPETENCY AND I'VE GIVE THEM
11 THE COMPETENCY REPORT. I DIDN'T OBJECT TO THAT. I AGREED
12 TO LET THEM HAVE THIS. THIS IS A WHOLE 'NOTHER CAN OF WORMS
13 AND WE'RE NOT IN PENALTY PHASE. NOW, I KNOW MEDICAL —

14 THE COURT: WHEN DOES NORMALLY THE STATE GET ENTITLED
15 TO PENALTY PHASE INFORMATION —

16 MR. BRACKETT: WELL, WE OBVIOUSLY DON'T USE IT IN THE
17 GUILT PHASE. IT HAS NO RELEVANCE IN THE GUILT PHASE,
18 BECAUSE —

19 THE COURT: I KNOW. SO WHEN DO YOU NORMALLY — WOULD
20 BE ENTITLED TO IT INSOFAR AS DISCOVERY IS CONCERNED?

21 MR. BRACKETT: WE USUALLY HAVE IT WELL BEFORE THE TRIAL
22 SO THAT WE CAN PREPARE FOR A PENALTY PHASE IN THE EVENT THAT
23 WE GO TO A PENALTY PHASE, OTHERWISE, THE PRACTICAL REALITY
24 OF THE SITUATION WOULD BE WE GO THROUGH THE GUILT PHASE,
25 THEN WE'D HAVE TO ADJOURN COURT FOR SOME SIGNIFICANT PERIOD

1 OF TIME WHILE WE CONDUCT THE INVESTIGATION, GATHER THIS
2 MATERIAL, CONSUME THE INFORMATION AND PREPARE TO GO FORWARD
3 AND WE — DO WE THEN RELEASE THAT JURY, DO WE STRIKE A
4 SECOND JURY ONCE WE'RE PREPARED? I MEAN, IT COULD TAKE
5 WEEKS AND MONTHS.

6 THE COURT: I UNDERSTAND. MR. STARNES, THEY'RE SAYING
7 THEY CAN'T PREPARE FOR THAT ON A MOMENT'S NOTICE, BE ABLE TO
8 GET ALL THIS INFORMATION TOGETHER AND BE ABLE TO BE PREPARED
9 FOR THE PENALTY PHASE, IF YOU GET TO THAT PHASE. THEY'RE
10 ENTITLED TO DO IT. NOW, IT WOULDN'T BE RELEVANT TO A TRIAL
11 ON GUILT OR INNOCENCE. IT WOULDN'T BE — THEY WOULDN'T BE
12 ENTITLED TO USE ANY OF THAT INFORMATION IN THAT TRIAL IF
13 IT'S NOT OTHERWISE RELEVANT. SO WHY WOULDN'T THEY BE ABLE
14 TO ACCUMULATE THAT INFORMATION?

15 MR. STARNES: YOUR HONOR, I THINK — I THINK THE
16 SUPREME COURT'S RULING IN STATE VERSUS ATKINS, I BELIEVE,
17 DISCUSSES THIS. BEG THE COURT'S INDULGENCE; I CAN GIVE YOU
18 THAT CITE. I BELIEVE IT'S AT 299 SOUTHEAST 2d. I DON'T
19 HAVE THE PAGE NUMBER.

20 THE COURT: ALL RIGHT. WE CAN FIND IT. WE'LL LOOK AT
21 IT.

22 MR. STARNES: WHAT I WOULD PROPOSE TO DO AND — IS
23 COULD WE JUST TAKE THIS ISSUE UP WITH THE MAIL WITH THE
24 SEVENTH CIRCUIT, 'CAUSE THEY MAY HAVE A DIFFERENT POSITION
25 ON IT?

1 THE COURT: ALL RIGHT, SIR.

2 MR. STARNES: IF WE COULD JUST —

3 THE COURT: LET'S JUST — LET'S HOLD THAT OUT SEPARATE,
4 TOO, AND I'LL LET YOU ADDRESS IT AND I'LL LET THEM ADDRESS
5 IT WITHOUT THEM ACTUALLY SEEING IT, BUT UNDERSTANDING WHAT
6 IT CONSISTS OF.

7 MR. BRACKETT: I CAN GIVE THEM A GENERAL OUTLINE AND
8 EXPLAIN TO THEM THAT THERE ARE A NUMBER OF MENTAL HEALTH
9 RECORDS THAT WE HAD THAT YOU ARE NOW HOLDING PENDING THEIR
10 MOTION TO RECEIVE THOSE.

11 THE COURT: ALL RIGHT, SIR.

12 MR. BRACKETT: OUR POSITION WAS THAT THEY SHOULD GET IT
13 AND HIS POSITION WAS THEY SHOULDN'T. AND I — IT MAY
14 REQUIRE SOME CHECKING WITH LEXINGTON AS WELL, BECAUSE IF,
15 FOR EXAMPLE, TEANNE OEHLER RELIED ON ANY OF THESE RECORDS IN
16 FORMING HER OPINION, THEN THEY WOULD HAVE BEEN AVAILABLE TO
17 THE STATE IN THE COURSE OF CROSS-EXAMINATION OF TEANNE
18 OEHLER. IN OTHER WORDS, IF SHE FORMS HER OPINION BASED ON
19 THESE RECORDS, HOW CAN I CROSS-EXAMINE —

20 THE COURT: WELL, YOU WOULD BE ENTITLED TO THEM AT THAT
21 POINT. WHATEVER SHE — WHATEVER AN EXPERT USES AS THE BASIS
22 FOR THEIR OPINION, YOU'RE ENTITLED TO, BOTH WAYS. THAT GOES
23 BOTH WAYS.

24 MR. BRACKETT: SO LEXINGTON MAY HAVE COME INTO
25 POSSESSION OF THEM THAT WAY. I WOULD HAVE TO EXPLORE HOW

1 THEY GOT THESE IN ORDER TO BE ABLE TO FULLY RESPOND AND I
2 WILL BE GLAD TO STAY INVOLVED IN THE CASE TO THE EXTENT
3 NECESSARY TO ARGUE ABOUT THIS ISSUE IF YOU WANT ME TALKING
4 TO LEXINGTON RATHER THAN THE SEVENTH CIRCUIT TALKING TO
5 LEXINGTON.

6 THE COURT: ALL RIGHT. WHY DON'T YOU DO THAT---

7 MR. BRACKETT: ALL RIGHT.

8 THE COURT: ---AND SEE THE SOURCE OF THOSE AND THEN ---
9 AND THAT'S PART OF THE PROBLEM WE'VE GOT IN THIS CASE.
10 WE'VE GOT TO GO BACK AND TRY TO RECONSTRUCT EVERYTHING.
11 IT'S HARD TO DO---

12 MR. BRACKETT: YES, SIR.

13 THE COURT: ---AND WE DON'T KNOW WHY SOMETHING WAS
14 PROVIDED OR WAS NOT, YOU KNOW, AND WHEN IT --- WHY IT WAS
15 AVAILABLE OR FOR WHAT PURPOSES IT WAS USED AT THE PREVIOUS
16 TRIAL, SO LET'S DO THAT. THAT'S GOING TO BE DIFFICULT, BUT
17 LET'S DO THAT AND I'LL TRY TO --- WE'LL TRY TO ADDRESS THAT.
18 JUST LEAVE THEM WITH THE COURT. I MAY NEED TO GO THROUGH
19 THEM MYSELF AND SEE, YOU KNOW, I GOT TO SEE WHAT IT IS IF
20 THERE'S SOME DISPUTE ABOUT WHAT IT IS AND ---

21 MR. BRACKETT: AND I HAVEN'T EVEN REVIEWED THEM MYSELF,
22 AS YOUR HONOR IS WELL AWARE, SO IF YOU SEAL THEM CAN IT BE
23 SUBJECT TO MY BEING ABLE TO VIEW THEM AS WELL?

24 THE COURT: YEAH. WELL, I'LL JUST HOLD ONTO THEM.
25 I'LL LET YOU LOOK AT THEM AS LONG AS YOU --- YOU'RE UNDER

1 YOUR FIDUCIARY RESPONSIBILITY AS —

2 MR. BRACKETT: YES, SIR.

3 THE COURT: — AS A COURT OFFICIAL NOT TO REVEAL ANY OF
4 THAT INFORMATION TO THE SEVENTH CIRCUIT SOLICITOR'S OFFICE.

5 MR. BRACKETT: YES, SIR. AND I HAVE REMOVED FROM THIS
6 STACK PAGES THAT MS. COLLINS MARKED 1486 THROUGH 1504.
7 THESE ARE THE SCHOOL RECORDS.

8 THE COURT: ALL RIGHT, SIR. THOSE WOULD BE AVAILABLE.
9 I DON'T THINK THERE'S ANY QUESTION ABOUT THAT, SO —

10 MR. BRACKETT: AND DID WE RESOLVE THE VISITORS FOR THIS
11 ISSUE OF THE LIST OF PEOPLE ALLOWED TO VISIT MR. STARNES?

12 THE COURT: NO, WE HAVEN'T RESOLVED THAT. IT NEEDS TO
13 BE RESOLVED---

14 MR. BRACKETT: THAT WAS MARKED PAGE FIVE.

15 THE COURT: ---ALONG WITH THE MAIL.

16 MR. BRACKETT: I'LL STICK THAT OVER HERE WITH THE MAIL
17 ISSUE.

18 THE COURT: WE'LL NEED TO GET -- WE'LL PROBABLY HAVE TO
19 GET FILE FOLDERS AND PUT THOSE IN SEPARATELY AND PUT A
20 RUBBER BAND AROUND THEM. I DON'T WANT TO GET THEM MIXED UP.
21 OKAY.

22 MR. BRACKETT: MS. COLLINS RAISES A GOOD POINT. SOME
23 OF THE MENTAL HEALTH RECORDS MAY BE, BECAUSE THEY'RE OLD,
24 MAY BE IN THE TRIAL NOTEBOOKS THAT MR. MYERS AND MR. RIDDLE
25 USED IN THE PROSECUTION OF THIS CASE BACK IN '97 IN

1 LEXINGTON. SO I WOULD HAVE TO DOUBLE-CHECK THOSE FILES
2 BEFORE WE COULD TURN THEM OVER. I WOULD HAVE TO DOUBLE-
3 CHECK THEM TO MAKE SURE THAT MATERIAL WASN'T IN THERE, SO WE
4 AREN'T TURNING OVER SOMETHING THAT YOU MAY LATER DECIDE THEY
5 ARE NOT ENTITLED TO RECEIVE.

6 THE COURT: OKAY.

7 MR. BRACKETT: OTHER THAN THAT, I BELIEVE --

8 THE COURT: INSOFAR AS THE RECORDS THAT WERE TURNED
9 OVER BY THE SIXTEENTH CIRCUIT SOLICITOR'S OFFICE TO THE
10 COURT AND THE COURT HAS HAD IN ITS POSSESSION AND YOU-ALL
11 HAVE HAD A CHANCE TO RAISE YOUR ISSUES ABOUT THAT, IS THERE
12 ANYTHING ELSE WITH REGARD TO THOSE RECORDS? NOW, YOU MAY
13 HAVE SOMETHING ELSE YOU WANT TO GO INTO, BUT IS THERE
14 ANYTHING ELSE ON THOSE?

15 MR. STARNES: JUST TWO OTHER THINGS, YOUR HONOR. JUST
16 THAT THE FACT, THE RECORDS THAT WE WENT OVER, I WENT THROUGH
17 AND LOOKED AT WHAT APPEARED TO BE COPIES OF THE ORIGINAL
18 THAT MS. COLLINS HAD AND I HAVE INITIALED THE BACK OF THEM.
19 IF THE SOLICITOR'S OFFICE WOULD JUST AFFIRM ON THE RECORD
20 THAT THOSE COPIES HAVE NOT BEEN REGENERATED AND THAT THAT
21 INFORMATION THAT IS ON THE HARD DRIVE ON THEIR COMPUTER HAS
22 BEEN DELETED, 'CAUSE IT'S MY UNDERSTANDING THAT THEY HAVE
23 THAT ON A DISK AND THAT THAT INFORMATION IS NOT GOING TO GO
24 TO THE SEVENTH CIRCUIT.

25 THE COURT: OKAY. SOLICITOR?

1 MR. STARNES: AND THAT IT HASN'T BEEN TRANSMITTED
2 ELECTRONICALLY OR -- TO ANYONE.

3 MR. BRACKETT: WE HAVE NOT SENT ANYTHING THAT WE HAVE
4 EITHER, A, AGREED AND PUT INTO MR. STARNES'S HANDS TODAY IN
5 THE FORM OF THAT BIG MANILLA FOLDER. WE HAVE NOT SENT THAT
6 TO THE SEVENTH CIRCUIT SOLICITORS, NOR DISCUSSED THE
7 CONTENTS OF THAT INFORMATION AND ANY OTHER MATERIAL -- WE'VE
8 HAD NO DISCUSSIONS WITH THE SEVENTH CIRCUIT REGARDING THIS
9 CASE, I MEAN, THE FACTS OF THE CASE, JUST VERY GENERALLY
10 HERE'S WHAT HAPPENED, BUT NO SPECIFICS THAT WOULD CONCERN
11 MR. STARNES REGARDING ANY OF THE INFORMATION THAT HE ASSERTS
12 IS PRIVILEGE; NONE OF THAT.

13 THE COURT: HAVE YOU--ALL RETAINED ANYTHING
14 ELECTRONICALLY THAT'S NOT BEEN TURNED OVER?

15 MR. BRACKETT: IT'S BEEN DELETED FROM OUR HARD DRIVE.
16 WE HAVE A COPY OF THE IMAGED FILES THAT MS. COLLINS LABORED
17 MIGHTILY TO IMAGE. I INTEND TO TAKE THE DOCUMENTS THAT
18 WE'VE REDACTED, WE'VE REMOVED, I CAN REMOVE THEM FROM THIS
19 AND FORWARD THIS TO THE SEVENTH CIRCUIT SOLICITOR'S OFFICE
20 ABSENT THE DOCUMENTS THAT WE'VE ALL AGREED HERE SHOULD NOT
21 GO TO THEM OR THAT ARE PENDING A DECISION BY THE COURT. I
22 CAN REMOVE THOSE FROM THIS. THEY ARE IN THE SAME ORDER IN
23 HERE THAT THEY ARE THERE.

24 MR. STARNES: AS LONG AS HE'LL PROVIDE ME A COPY OF
25 THAT, I DON'T HAVE NO OBJECTION TO IT, OR LET ME REVIEW WHAT

1 THEY'RE SENDING TO THEM.

2 THE COURT: CAN YOU PROVIDE HIM A COPY OF THE REDACTED
3 COPY OF THAT?

4 MR. BRACKETT: SURE. I INTEND TO ASK THE SEVENTH
5 CIRCUIT WHETHER THIS WOULD BE OF ANY USE TO THEM BEFORE I GO
6 TO ALL THE TROUBLE OF REMOVING ALL THOSE, 'CAUSE IF THEY
7 TELL ME THEY'RE JUST GOING TO USE THE PAPER ANYWAY, THEN I
8 WON'T EVEN DO THAT MUCH, IN WHICH CASE WE WILL SHRED THIS
9 AND THERE WILL BE NOTHING.

10 THE COURT: OKAY. WELL, WHATEVER — WHAT I WOULD ASK
11 YOU, THEN, WHATEVER YOU'RE GOING TO PROVIDE TO THEM, IF YOU
12 CAN MAKE A COPY. CAN YOU DO THAT ONCE YOU'VE REDACTED IT?

13 MR. BRACKETT: YES, SIR. WHATEVER WE PROVIDE
14 ELECTRONICALLY, THE PAPER THAT WE ARE GOING TO PROVIDE IS IN
15 THAT ROOM THAT YOU REVIEWED TODAY.

16 THE COURT: RIGHT.

17 MR. BRACKETT: THE BOXES OF DOCUMENTS, THAT WILL BE
18 TURNED OVER TODAY AFTER WE CONFIRM THAT THERE'S NONE OF THIS
19 MATERIAL, THE MENTAL HEALTH RECORDS OR THESE LETTERS OR
20 VISITOR LOGS. AFTER WE MAKE SURE THAT THERE'S NONE OF THAT
21 IN THERE, ALL THAT STUFF WILL BE TURNED OVER TO THE SEVENTH
22 CIRCUIT—

23 THE COURT: ALL RIGHT.

24 MR. BRACKETT: —AS SOON AS POSSIBLE.

25 THE COURT: AND — OKAY. SO ELECTRONICALLY WHETHER YOU

1 TURN THAT OVER OR NOT IS WHETHER THEY SAY THAT IT COULD BE
2 IMPORTANT TO THEM, AND IF IT IS, THEN YOU CAN REDACT WHAT'S
3 NEEDED TO BE TAKEN OFF THOSE PAGES.

4 MR. BRACKETT: YES, SIR.

5 THE COURT: THEN MAKE — CAN YOU MAKE A COPY OF THAT
6 THEN TO SEND ON TO HIM? I MEAN, THAT'S POSSIBLE?

7 MR. BRACKETT: YES, SIR; YES, SIR.

8 THE COURT: OKAY.

9 MR. BRACKETT: MAKE YOU A COPY AS WELL.

10 THE COURT: THAT'S FINE. WHY DON'T YOU DO THAT IN CASE
11 THERE'S SOME QUESTION COMES UP LATER. ALL RIGHT. LET'S DO
12 THAT. THAT TAKE CARE OF THAT THEN?

13 MR. STARNES: YES, SIR. AND THERE'S NONE — NONE OF
14 THOSE COPIES ARE IN THIS WORK PRODUCT STUFF? THAT'S WHAT
15 I'M HEARING. THAT'S WHAT I UNDERSTAND. NONE OF THE COPIES
16 OF THE STUFF THAT WE WENT OVER THAT'S PRIVILEGED THAT THEY
17 SHOULDN'T HAVE GOT THAT'S IN THOSE FILES WITH THE WORK
18 PRODUCT BEING TURNED OVER?

19 MR. BRACKETT: YOU MEAN BEING TURNED OVER TO THE
20 SEVENTH CIRCUIT?

21 MR. STARNES: RIGHT.

22 MR. BRACKETT: THAT IS CORRECT.

23 MR. STARNES: OKAY.

24 THE COURT: ALL RIGHT. THAT TAKE CARE OF YOUR
25 QUESTIONS ON THAT?

1 MR. STARNES: YES, SIR.

2 THE COURT: ALL RIGHT. ANYTHING ELSE WITH REGARD TO
3 THOSE RECORDS? I WANT TO BE SURE WE'RE THROUGH WITH THAT
4 BEFORE WE DO ANYTHING ELSE?

5 MR. STARNES: NO, SIR. I BELIEVE THAT IT IS.

6 THE COURT: ALL RIGHT, SIR. GOOD. THEN THE RECORD
7 WILL SHOW THAT WE WILL — AFTER THE SOLICITOR'S OFFICE FOR
8 THE SIXTEENTH CIRCUIT HAS GONE THROUGH THOSE, BACK THROUGH
9 THOSE RECORDS AND MAKE SURE THESE ARE NOT IN THERE, NO MORE
10 COPIES OF THESE ARE IN THERE, THEN WE'LL TURN THOSE OVER TO
11 THE SEVENTH CIRCUIT SOLICITOR'S OFFICE TODAY AND THEY CAN
12 TAKE THOSE BACK WITH THEM. THE DISK, ONCE YOU'VE GONE
13 THROUGH THAT AND IF YOU — IF THEY DECIDE THEY NEED THAT AND
14 YOU CAN REDACT WHAT DOESN'T GO TO THEM AND SEND A COPY TO
15 MR. STARNES AND TO ME AND THEY'LL GET THAT. THESE OTHERS
16 WILL BE HELD BY THE COURT AND THEN THEY'LL BE RESOLVED LATER
17 IF THE SEVENTH CIRCUIT SOLICITOR DECIDES THEY NEED IT, THAT
18 OFFICE NEEDS IT. WE'LL RESOLVE THAT AT A SUBSEQUENT
19 HEARING. AND OTHER WORK PRODUCT BY THE SOLICITOR'S OFFICE
20 IS HELD SEPARATELY AND WILL ALSO BE TURNED OVER TO THE
21 SOLICITOR'S OFFICE THERE. ALL RIGHT. ANYTHING ELSE? THAT
22 ADDRESSES IT ALL, I BELIEVE; CORRECT?

23 MR. BRACKETT: YES, SIR.

24 MR. STARNES: YES, SIR.

25 THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT. MR.

1 BRACKETT, THANK YOU.

2 MR. BRACKETT: THANK YOU. I APPRECIATE YOUR
3 INDULGENCE.

4 THE COURT: AND YOU'LL FOLLOW UP ON THESE OTHER MENTAL
5 HEALTH RECORDS AND THE SOURCE OF THOSE AND HOW THEY —

6 MR. BRACKETT: YES, SIR.

7 THE COURT: AND LET US KNOW ABOUT THAT AND YOU CAN LET
8 US BOTH KNOW AT THE SAME TIME.

9 MR. BRACKETT: OKAY.

10 THE COURT: ALL RIGHT, SIR. THANK YOU. NOW, ANY OTHER
11 MOTIONS WE'LL NEED TO TAKE UP WITH THE SEVENTH CIRCUIT SINCE
12 THEY ARE GOING TO BE HANDLING THE CASE FOR THE ATTORNEY
13 GENERAL'S OFFICE, SO ANY OTHER MOTIONS WE'LL NEED TO ADDRESS
14 WITH THEM, I THINK.

15 MR. BRACKETT: VERY GOOD.

16 THE COURT: ALL RIGHT. THANK YOU.

17 MR. BRACKETT: THANK YOU, YOUR HONOR.

18 THE COURT: HOW LONG DO YOU THINK THIS IS GOING TO
19 TAKE?

20 MR. STARNES: TEN MINUTES, MAY TWELVE AT TOPS.

21 THE COURT: ALL RIGHT.

22 MR. STARNES: I JUST NEED TO SERVE THEM THREE MOTIONS
23 ON RECORD—

24 THE COURT: ALL RIGHT.

25 MR. STARNES: —AND COVER A JAIL MATTER WITH MR. TATE

1 THAT WILL TAKE TEN MINUTES MAYBE.

2 THE COURT: OKAY. LET'S DO THAT. I'VE GOT SOME OTHER
3 HEARINGS. THAT'S THE REASON I'M ASKING. THEY'VE BEEN
4 BROUGHT UP FROM COLUMBIA AS WELL, SO WE NEED TO GET RID OF
5 THOSE AS SOON AS WE CAN, TOO. ALL RIGHT. LET'S SEE IF WE
6 CAN GET THE SEVENTH CIRCUIT FOLKS IN. IF Y'ALL WANT TO STAY
7 FOR THIS, I DON'T KNOW IF THERE'S ANY HELP YOU CAN GIVE THEM
8 WHEN THEY COME IN OR NOT. APPARENTLY NOT. HE'S JUST GOING
9 TO SERVE A MOTION FOR DISCOVERY ON THEM AND TAKE UP WHATEVER
10 HE'S GOING TO TAKE UP WITH MR. TATE. IF YOU WANT TO STAY
11 YOU'RE WELCOME TO, BUT I DON'T THINK YOU NEED TO, SO — YOU
12 THINK YOU NEED THEM, MR. TATE, YOU DON'T KNOW?

13 MR. TATE: DON'T KNOW WHAT'S COMING.

14 THE COURT: ALL RIGHT. COUNSEL, COME ON DOWN.
15 SOLICITOR, HAVE YOU MET MR. STARNES?

16 MR. WILLINGHAM: NO, I HAVE NOT.

17 THE COURT: PLEASE INTRODUCE YOURSELVES.

18 MR. COLER: BOB COLER.

19 THE COURT: AND THIS IS NORMAN STARNES. WE HAVE
20 RESOLVED THE ISSUES WITH REGARD TO THE RECORDS AND WE KNOW
21 WHAT'S TO BE TURNED OVER. THERE ARE A COUPLE OF ISSUES THAT
22 MAY NEED TO BE RESOLVED IN THE FUTURE. I MAY LET MR.
23 BRACKETT EXPLAIN THAT TO YOU. HE MIGHT BE ABLE TO DO THAT
24 BETTER THAN I, QUICKER THAN I. SOME RECORDS WE ARE HOLDING
25 HERE, THE COURT'S GOING TO HOLD AND IF YOU-ALL DETERMINE YOU

1 HAVE NEED OF THOSE RECORDS, YOU THINK YOU'RE ENTITLED TO
2 THEM, THEN WE'LL HAVE TO DO THAT BY SEPARATE HEARING. WE'RE
3 NOT GOING TO RESOLVE THAT TODAY, BUT I'M GOING TO HOLD ONTO
4 THOSE UNTIL WE MAKE THAT DECISION. ALL OF THE RECORDS,
5 OTHER RECORDS, WILL BE TURNED OVER TO YOU TODAY AND YOU CAN
6 TAKE THOSE WITH YOU, EXCEPT MAYBE A DISK THAT THE SOLICITOR
7 WILL LOOK AT AND DECIDE IF Y'ALL — AND TALK TO YOU ABOUT IT
8 AND SEE IF YOU NEED IT. IF HE DOES, HE'S GOING TO REDACT A
9 FEW PAGES OVER THERE BEFORE HE TURNS THEM OVER YOU, BUT I'LL
10 LET HIM TALK TO YOU ABOUT THAT.

11 MR. STARNES HAS — HE SAYS HE HAS TWO OR THREE
12 DISCOVERY MOTIONS HE WANTS TO PUT ON THE RECORD TODAY FOR
13 YOU-ALL AND THIS WOULD BE FOR YOU-ALL TO CONSIDER AND SO
14 THAT'S THE REASON WE'RE BRINGING YOU IN NOW. WE'LL DO THAT
15 AT THIS TIME. GO AHEAD, MR. STARNES.

16 MR. STARNES: YOUR HONOR, THE FIRST MOTION, THIS IS A
17 MOTION THAT WAS FILED ON THE 24TH OF MARCH IN 2004. IT'S A
18 TWENTY-FIVE PAGE DISCOVERY REQUEST AND JUST TO PROTECT THE
19 RECORD, YOUR HONOR, AT THIS TIME I'M GOING TO SERVE THE
20 SOLICITOR WITH THAT. I UNDERSTAND THE DISCOVERY RULE IS A
21 CONTINUING ONE, BUT TO PROTECT MYSELF, I FEEL COMPELLED TO
22 SERVE THEM THAT. ALSO, YOUR HONOR, IS A MOTION ENTITLED
23 SUPPLEMENTAL DISCOVERY REQUEST. THIS MOTION WAS CLOCK-FILED
24 AT THE CLERK OF COURT IN LEXINGTON COUNTY ON THE 29TH OF
25 APRIL OF 2005. AT THIS TIME I'M GOING TO ADDITIONALLY SERVE

1 THE SOLICITOR'S OFFICE WITH THAT.

2 YOUR HONOR, THE THIRD MOTION IS DATED APRIL THE 3RD,
3 2006. THIS IS A MOTION TO QUASH THE INDICTMENT. THERE'S
4 NEVER BEEN AN AFRICAN-AMERICAN APPOINTED AS A FOREMAN ON THE
5 GRAND JURY IN LEXINGTON COUNTY. BEFORE WE HAD THIS PRIOR
6 CONFLICT HEARING, MR. BRACKETT AGREED TO THIS MOTION AND RE-
7 INDICT ME. I DON'T KNOW THE NEW SOLICITOR'S POSITION ON
8 THAT. AT THAT TIME -- AT THIS TIME, YOUR HONOR, I'M HAND-
9 DELIVERING TO THEM THESE THREE MOTIONS.

10 THE COURT: I THINK YOU-ALL DID SAY THAT YOU DIDN'T SEE
11 IT AS A MERITORIOUS MOTION, BUT YOU WERE WILLING TO RE-
12 INDICT HIM FOR THE CURRENT JURY.

13 MR. BRACKETT: YES, SIR. AT THE TIME OF THE ORIGINAL
14 INDICTMENT I DON'T BELIEVE THERE WAS A GRAND JURY FOREMAN,
15 ALTHOUGH THERE WAS A VICE-FOREMAN WHO HAD SERVED AS THE
16 FOREMAN WHO WAS AN AFRICAN-AMERICAN, BUT PRIOR TO THAT THERE
17 WAS NEVER ANT FOREMAN THAT WE WERE ABLE TO DISCERN WHO WAS
18 PURSUANT TO THAT INVESTIGATION, BUT SINCE THEN THERE HAS
19 BEEN, SO I THINK IT WOULD OBLVIATE THE --

20 THE COURT: SO YOU-ALL ARE WILLING TO RE-INDICT, BUT
21 YOU HAVEN'T DONE THAT YET; IS THAT CORRECT?

22 MR. BRACKETT: YES, SIR. WE NOT DONE THAT. THAT WAS
23 -- IT ALL OCCURRED RIGHT AROUND THE SAME TIME WE WERE
24 ARGUING AND THE CONFLICT ISSUE CAME UP, SO --

25 THE COURT: RIGHT. YEAH, AND THAT ALL HAPPENED ON

1 ABOUT THE SAME DAY.

2 MR. BRACKETT: YES, SIR.

3 THE COURT: ALL RIGHT. YOU SAY YOU UNDERSTAND THAT
4 POSITION AND THAT'S A DECISION FOR YOU--ALL TO MAKE ON WHAT
5 YOU'RE GOING TO DO ON THAT. ALL RIGHT. WHAT ELSE, MR.
6 STARNES?

7 MR. STARNES: THE OTHER MOTION, YOUR HONOR, IS
8 SOMETHING THAT I HAVEN'T REDACTED INTO WRITING. THIS CASE
9 WAS REVERSED IN MAY 8TH OF 2000. AT THIS TIME, YOUR HONOR,
10 I WOULD SERVE TO THE NEW SOLICITOR'S OFFICE THAT PURSUANT TO
11 THE STATE AND FEDERAL CONSTITUTION, I WOULD REQUEST A FAST
12 AND SPEEDY TRIAL. I UNDERSTAND WE'RE NOT GOING TO DO THIS
13 WITHIN THE NEXT COUPLE OF MONTHS. I WOULD ASK THEIR
14 POSITION WITHIN THE NEXT TEN TO TWELVE MONTHS COULD THEY
15 CALL THIS CASE TO TRIAL?

16 THE COURT: WELL, HE CAN ANSWER THAT AND I CAN ANSWER
17 IT, TOO. WHAT'S THE SOLICITOR'S POSITION?

18 MR. WILLINGHAM: JUDGE, AS QUICK AS WE CAN GET READY,
19 WE'LL TRY THIS CASE. I CAN'T IMAGINE THAT WE WOULD NOT BE
20 READY WITHIN TWELVE MONTH'S TIME PERIOD.

21 THE COURT: ALL RIGHT. THEN WHAT'S GOING TO HAPPEN,
22 MR. STARNES, AND YOUR MOTION IS, OF COURSE, NOTED FOR THE
23 RECORD AND I WOULD POINT OUT, OF COURSE, THAT FIRST OF ALL,
24 THIS THING'S BEEN GREATLY -- THIS CASE HAS BEEN GREATLY
25 DELAYED AND WOULD HAVE ALREADY BEEN TRIED. IT WAS GREATLY

1 DELAYED, ONE, BY MOTION BY MR. STARNES TO HAVE THE SOLICITOR
2 IN THE LEXINGTON CIRCUIT, WHAT IS THAT ELEVENTH — IS IT
3 ELEVENTH CIRCUIT?

4 MR. WILLINGHAM: YES, SIR.

5 THE COURT: HAVE HIM RECUSED AND THAT WAS DONE AND SO
6 THAT SOLICITOR WAS OUT OF IT. JUDGE WESTBROOK WAS THE JUDGE
7 TO HEAR IT. HE WAS KILLED IN AN AUTOMOBILE ACCIDENT LAST
8 YEAR AND, OF COURSE, HE CAN'T HEAR IT AND SO THEN THE
9 SIXTEENTH CIRCUIT SOLICITOR'S OFFICE WAS ASKED BY THE
10 ATTORNEY GENERAL'S OFFICE TO HANDLE IT, TO PROSECUTE THE
11 CASE, WHICH THEY AGREED TO DO AND THE CHIEF JUSTICE
12 APPOINTED MYSELF AS THE JUDGE TO HEAR IT AND SO ALL OF THAT
13 WAS DONE AND THEN, OF COURSE, THE SOLICITOR HAD DONE A LOT
14 OF WORK. THEY REDUCED ALL THESE RECORDS TO DISK AND
15 EVERYTHING ELSE, PROVIDED THAT INFORMATION TO MR. STARNES IN
16 DISCOVERY AND IN RECEIVING IT HE REALIZED THAT HE WAS
17 GETTING STUFF BACK THAT SHOULD HAVE BEEN WORK PRODUCT ON HIS
18 PART, BECAUSE THE SOLICITOR'S OFFICE REALLY HADN'T DONE
19 ANYTHING WITH IT OR REALLY LOOKED AT IT, BUT THEIR — MS.
20 COLLINS, WHO IS EXTREMELY EFFICIENT IN THEIR OFFICE HAD PUT
21 ALL THIS TOGETHER ON A DISK AND ALL THAT. THAT WAS PROVIDED
22 TO HIM BY MEANS OF DISCOVERY AND THEY WERE MOVING WITH POST-
23 HASTE TO GET THE CASE READY FOR TRIAL. AND LEXINGTON COUNTY
24 HAS A NUMBER OF DEATH PENALTY CASES STILL PENDING AND THEY
25 DID LAST YEAR AS WELL AND I CALLED AND TALKED WITH THE

1 ADMINISTRATIVE JUDGE DOWN THERE AND THE CLERK AND WE'D
2 GOTTEN THE ONLY POSSIBLE TIME WE COULD GET, WHICH WAS IN
3 OCTOBER OF THIS YEAR AND, OF COURSE, MR. STARNES MADE A
4 MOTION TO HAVE THE SOLICITOR'S OFFICE, SIXTEENTH CIRCUIT,
5 RECUSED BECAUSE -- FROM THE CASE OR EXCUSED FROM THE CASE
6 BECAUSE THEY HAD RECEIVED SOME INFORMATION FROM LEXINGTON
7 DETENTION CENTER THAT HE SAYS WAS WORK PRODUCT. BASED ON
8 THAT I RELIEVED THE SOLICITOR'S OFFICE, BUT I TOLD HIM AT
9 THE SAME TIME AND I PUT IN THE ORDER THIS IS GOING TO DELAY
10 THE TRIAL WHILE WE GET NEW SOLICITORS IN AND LET THEM
11 PREPARE FOR TRIAL AND LET'S GET ON THE COURT CALENDAR FOR
12 NEXT YEAR. SO WE'VE GOT TO GET IN LINE WITH THE OTHER DEATH
13 PENALTY CASES. THIS IS AN OLD CASE. IT SHOULD MOVE AS SOON
14 AS WE CAN GET IT READY AND GET IT SCHEDULED.

15 I WILL GET WITH THE SOLICITOR'S OFFICE SHORTLY. ONCE
16 YOU-ALL HAVE ALL THIS INFORMATION AND HAVE A -- YOU KNOW, A
17 PERIOD OF, YOU KNOW, THREE OR FOUR WEEKS MAYBE TO TRY TO GO
18 THROUGH THIS AND LET'S GET SOME KIND OF IDEA OF HOW MUCH
19 TIME YOU-ALL ARE GOING TO NEED TO PREPARE AND I WILL CONTACT
20 THE ADMINISTRATIVE JUDGE DOWN THERE, SEE WHAT'S AVAILABLE
21 AND WE'LL GET THE EARLIEST POSSIBLE TIME BASED ON WHEN YOU-
22 ALL CAN BE PREPARED FOR TRIAL, BUT WE TAKE SERIOUSLY GETTING
23 THIS CASE TRIED. I WANT IT TRIED AND DISPOSED OF AS SOON AS
24 POSSIBLE. MR. STARNES HAS A RIGHT TO DO THAT. THE STATE
25 NEEDS TO DO THAT AS WELL AND SO WE WILL MOVE EXPEDITIOUSLY,

1 THE COURT WILL, AND I'LL BE IN TOUCH WITH THEM DOWN THERE TO
2 SEE WHAT MIGHT BE AVAILABLE AND WE'LL TRY TO PICK THE
3 EARLIEST DATE THAT'S AVAILABLE AND TRY TO WORK TOWARDS THAT
4 DATE, BUT I REALIZE WHAT YOU-ALL ARE IN. THERE'S A LOT OF
5 DISCOVERY TO BE DONE AND PREPARATION AND I UNDERSTAND THAT,
6 TOO.

7 MR. STARNES HAS HAD THE ADVANTAGE OF HAVING BEEN WORKED
8 ON HIS OWN CASE FOR SOME PERIOD OF TIME, BUT YOU-ALL WILL BE
9 ABSOLUTELY COLD ON THIS AND YOU'RE ONLY NOW ARE GOING TO GET
10 THESE DISCOVERY MATERIALS AND SO -- AND I WOULD POINT OUT,
11 TOO, THAT I TRIED TO SCHEDULE THIS LITTLE MEETING, OR
12 HEARING, BEFORE TODAY, BUT MR. STARNES REQUESTED BEFORE WE
13 ACTUALLY HAD THIS THAT HE BE ABLE TO GET HIS PRINTED
14 MATERIAL OR WHATEVER HE NEEDED TO GET THAT AND SO I WAITED
15 'TIL HE WAS READY, TOO, TO BE ABLE TO SCHEDULE THIS. SO ALL
16 THIS -- THEY'RE DELAYS, BUT IT'S SOMETHING THAT REALLY JUST
17 COULDN'T BE AVOIDED AT THIS POINT. SO WE WILL GET IT
18 SCHEDULED AS SOON AS WE CAN GET IT SCHEDULED AND YOU-ALL
19 TAKE THE MATERIALS, IF YOU WILL, AND WORK ON IT, TRY TO GIVE
20 ME SOME IDEA OF HOW MUCH TIME YOU'RE GOING TO NEED AND I'M
21 GOING TO AHEAD AND CONTACT ADMINISTRATIVE JUDGE AND SEE
22 WHAT'S AVAILABLE DOWN THERE TIMEWISE TO TRY THIS CASE AND
23 WE'LL TRY TO RESERVE A TIME AND GET IT -- AND WE'LL SCHEDULE
24 IT AND TRY TO GET READY FOR THAT DATE. OKAY?

25 MR. WILLINGHAM: THANK YOU.

1 THE COURT: MR. STARNES?

2 MR. STARNES: YOUR HONOR, THERE'S TWO DOCUMENTS THAT,
3 IF POSSIBLE, I DON'T KNOW IF THEY'RE ON FILE WITH THE CLERK
4 OF COURT'S OFFICE. I HAD CALLED THE ATTORNEY GENERAL'S
5 OFFICE AND GOT CONFLICTING ACCOUNTS. I SENT THE — MR.
6 GOWDY AND MR. BARNETTE AN EMAIL EARLIER THIS WEEK AND ASKED
7 THEM COULD I HAVE A COPY OF THE LETTER THAT THE ATTORNEY
8 GENERAL HAD WROTE AND APPOINTED HIM, BECAUSE THE INFORMATION
9 THAT I GOT WAS THAT THEY DIDN'T — THEY DIDN'T HAVE ANYTHING
10 TO DO WITH IT. I SPOKE TO A MS. LONETTA BRAWLEY IN THE
11 ATTORNEY GENERAL'S OFFICE AND SHE SAID THAT THEY DIDN'T DO
12 IT AND I WAS JUST — I KNOW THE STATUTE REQUIRES THE
13 ATTORNEY GENERAL'S OFFICE TO APPOINT THE SOLICITOR IN A
14 CONFLICT CASE AND I WOULD JUST LIKE A COPY OF THAT LETTER.

15 THE COURT: DO Y'ALL HAVE THAT?

16 MR. COLER: JUDGE, WE'VE GOT A COPY AND PROVIDE THAT TO
17 MR. STARNES RIGHT NOW.

18 THE COURT: ALL RIGHT, SIR. LET THE RECORD SO REFLECT.

19 MR. STARNES: ONE MORE MOTION AND THEN I JUST HAVE A
20 FEW MATTERS I NEED TO TAKE UP WITH THE JAIL, YOUR HONOR.
21 THE CASE THAT I WOULD CITE ON THIS IS 27 SOUTHEAST 933.
22 IT'S A CASE FROM 1897 AND I DID THE RESEARCH ON IT AND I
23 BELIEVE THE LAW IS STILL GOOD ON IT AND I'M NOT TRYING TO
24 CAUSE ANYBODY NO HARD TIME OR ANYTHING. THE JURISDICTION IN
25 THIS CASE IS IN THE ELEVENTH CIRCUIT AND IN LEXINGTON COUNTY

1 AND I HAVEN'T ASKED FOR A CHANGE OF VENUE AND I DON'T
2 ACQUIESCE WITH THE STATE ON CHANGING VENUE TO YORK COUNTY OR
3 SPARTANBURG AND --

4 THE COURT: WELL, I DON'T THINK THERE'S ANY PLAN TO DO
5 THAT, MR. STARNES.

6 MR. STARNES: NO, SIR. IS IT POSSIBLE THAT WE COULD
7 HAVE THE HEARINGS -- I BELIEVE THIS CASE CONTROLS -- ALL
8 FURTHER HEARINGS IN LEXINGTON COUNTY. I WOULD ASK --
9 THERE'S SEVERAL FAMILY MEMBERS AND STUFF THAT WOULD, YOU
10 KNOW, WOULD LIKE TO ATTEND THESE AND, IN ADDITION, THE
11 JURISDICTION'S IN LEXINGTON AND I WOULD -- I WOULD MOTION
12 THE COURT FROM THIS DAY FORWARD TO HAVE ALL HEARINGS IN
13 LEXINGTON COUNTY IN THE LEXINGTON COUNTY COURTROOM.

14 THE COURT: WELL, I DON'T KNOW THAT YOU'RE ENTITLED TO
15 THAT WITH REGARD TO VENUE. JURISDICTION WILL LIE THERE.
16 VENUE WOULD BE FOR THE TRIAL. I'LL LOOK AT IT AND SEE.
17 I'LL LOOK AT THIS CASE AND BE GLAD TO HEAR FROM THE
18 SOLICITOR'S OFFICE ON IT AS WELL.

19 I'M GOING TO TELL YOU NOW, MR. STARNES, THAT IF WE DO
20 THAT, THAT MAY FURTHER DELAY EVERYTHING, BECAUSE I'M IN
21 COURT ALMOST EVERY SINGLE WEEK AND IF I'M GOING TO BE ABLE
22 TO -- IF I'M GOING TO CANCEL COURT TO COME TO LEXINGTON TO
23 DO MOTIONS DOWN THERE AND THEY'RE GOING TO HAVE TO CANCEL
24 SOME COURT TO COME DOWN TO LEXINGTON TO DO THIS, IT'S
25 CERTAINLY GOING TO MAKE IT MORE ONEROUS FOR US TO BE ABLE TO

1 DO IT JUST SIMPLY SO YOU CAN HAVE YOUR FAMILY SITTING IN THE
2 COURTROOM WHILE WE DO THESE. I MEAN, THEY ARE NOT RELEVANT
3 TO THE PROCEEDING AND THEY ARE NOT NECESSARY INsofar AS
4 PREPARATION FOR TRIAL AND GETTING THE MOTIONS HEARD. YOUR
5 SOLE DESIRE JUST TO HAVE FAMILY MEMBERS PRESENT FOR A MOTION
6 HEARINGS IS — DOESN'T CONSTITUTE A NECESSITY IT APPEARS TO
7 ME. IF YOU WANTED — YOU KNOW, IT MAY RESULT IN — IF WE
8 HAD TO DO THAT, IT MAY RESULT IN A DELAY IN GETTING THE CASE
9 HEARD FOR TRIAL NOW.

10 FOR THEM TO BE INVOLVED WITH YOUR TRIAL, THAT'S A
11 DIFFERENT MATTER. FOR THE TRIAL WILL TAKE PLACE DOWN THERE,
12 OBVIOUSLY, IS A DIFFERENT MATTER, BUT FOR PRE-TRIAL MOTIONS
13 TO BE HEARD, IT'S NOT UNUSUAL AT ALL FOR PRE-TRIAL MOTIONS
14 TO BE HEARD EITHER IN THE CIRCUIT WHERE THE PROSECUTORS ARE
15 LOCATED OR IN THE HOME CIRCUIT OF THE TRIAL JUDGE, THE TRIAL
16 JUDGE WHO'S GOING TO HEAR IT.

17 JUDGE HAYES, FOR INSTANCE, HAD A CASE OVER IN
18 SPARTANBURG OR GREENVILLE OR SOMEWHERE HE JUST HAD AND HE
19 HAD A LOT OF MOTIONS WERE HEARD RIGHT HERE IN YORK COUNTY IN
20 THAT CASE OVER THERE AND SO I — YOU KNOW, WE CAN CERTAINLY
21 — I WILL LOOK AT THIS AND I'LL SEE WHAT IT SAYS INsofar AS
22 MOTIONS HEARINGS ARE CONCERNED, BUT IF YOU ARE ENTITLED TO
23 HAVE IT DONE AND YOU WANT IT DONE DOWN THERE, IT MAY WIND UP
24 DELAYING THE WHOLE THING, 'CAUSE I CAN'T REARRANGE MY WHOLE
25 SCHEDULE AND CANCEL COURT TERMS TO ACCOMMODATE YOU TO COME

1 TO LEXINGTON JUST WHENEVER YOU WANT TO HAVE A MOTION HEARD.
2 IT'S GOING TO HAVE TO BE DONE — TAKE A LOOK AT MY WHOLE
3 SCHEDULE.

4 I'VE BEEN IN HERE IN TRIAL ALL WEEK. I'VE GOT OTHER
5 MATTERS SITTING OUT HERE WAITING TO BE HEARD RIGHT NOW WHEN
6 WE FINISH THIS ONE, BECAUSE THEY WERE SCHEDULED A LITTLE
7 EARLIER. I'VE BEEN IN TRIAL ALL WEEK. I'M GOING TO BE IN
8 POST-CONVICTION RELIEF HEARINGS ALL NEXT WEEK. WE'LL BE IN
9 SPARTANBURG THE NEXT WEEK DOING GENERAL SESSIONS COURT.

10 IT'S NOT LIKE I'M SITTING AROUND WITH NOTHING TO DO
11 WITH YOUR CASE, I MEAN, YOU KNOW, SO THIS IS SOMETHING YOU
12 NEED TO UNDERSTAND WHEN YOU'RE TALKING ABOUT YOU'D RATHER
13 HAVE IT DOWN THERE SO YOUR FAMILY MEMBERS CAN SIT IN ON A
14 HEARING. I MEAN, YOU'VE GOT TO DECIDE WHAT'S IMPORTANT AND
15 WHERE THE PRIORITIES ARE IF YOU WANT YOUR CASE TRIED AS SOON
16 AS POSSIBLE. I WOULD SAY THAT TO YOU. WE'LL TRY TO —
17 CERTAINLY WE'LL TRY TO ACCOMMODATE YOU AND I'LL LOOK AT THIS
18 CASE AND I'LL SEE IF YOU'RE ENTITLED TO HAVE EVERYTHING
19 HEARD DOWN THERE. IF YOU ARE, IT'S PROBABLY GOING TO DELAY
20 THE WHOLE THING. I CAN TELL YOU THAT.

21 MR. STARNES: YES, SIR. THAT'S — THE REASON FOR MY
22 FAMILY BEING THERE IS NOT THE SOLE REASON. YOUR HONOR, I
23 WOULD CITE — ADDITIONALLY CITE ARTICLE FIVE, SECTION TEN,
24 ARTICLE FIVE, SIXTEEN AND ARTICLE FIVE, NINE AS TO THIS
25 MOTION. IT IS CITED —

1 THE COURT: ARTICLE FIVE? WHAT ARE YOU TALKING ABOUT?
2 ARE YOU TALKING ABOUT THE CONSTITUTION?

3 MR. STARNES: YES, SIR.

4 THE COURT: ALL RIGHT, SIR.

5 MR. STARNES: ARTICLE FIVE, SECTION NINE, SECTION TEN
6 AND SECTION SIXTEEN DECIDED IN THE SMITH CASE. THIS IS A
7 1897 CASE THAT I BELIEVE IS STILL GOOD LAW TODAY.

8 THE COURT: ALL RIGHT. WE'LL LOOK AT IT. I DON'T KNOW
9 IF THERE'S BEEN ANY CHANGE OF RULES, COURT RULES, OR VENUE
10 STATUTES WITH REGARD TO — SINCE THE 1800'S. THERE MAY VERY
11 WELL HAVE BEEN. SO WE'LL LOOK AT THAT. SOLICITOR, Y'ALL
12 HAVE THAT TO LOOK AT AS WELL AND LET ME HAVE YOUR RESPONSE
13 TO THAT WHEN YOU'VE HAD A CHANCE TO LOOK AT IT.

14 MR. WILLINGHAM: YES, SIR; YES, SIR.

15 THE COURT: SEND A COPY OF WHATEVER YOU SEND ME TO MR.
16 STARNES.

17 MR. WILLINGHAM: I WILL, YOUR HONOR.

18 THE COURT: ALL RIGHT, SIR. ANYTHING ELSE?

19 MR. STARNES: YOUR HONOR, THE LAST THING IS JUST A
20 MATTER WITH THE JAIL. BEFORE THE SOLICITOR THAT WAS
21 INVOLVED IN THIS CASE, WHEN I REQUESTED MATERIAL FROM THE
22 JAIL, SOME THINGS WERE PUBLIC RECORD AND SOME THINGS THAT I
23 BELIEVE I HAD TO GO THROUGH SUBPOENA, WHAT THEY DID IS
24 INSTEAD OF PROVIDED IT TO ME, THEY PROVIDED THE DIRECTIONS
25 TO THE SOLICITOR'S OFFICE AS MR. TATE HAS CITED RULE FIVE.

1 I BRING TO THE COURT'S ATTENTION, YOUR HONOR, STATE
2 VERSUS PENLAND, 273 SOUTHEAST 2d. 765. IT'S A 1981 CASE.

3 THE COURT: GIVE ME THAT CITE AGAIN, PLEASE.

4 MR. STARNES: STATE VERSUS PENLAND, 273 SOUTHEAST 2d.
5 765.

6 THE COURT: OKAY.

7 MR. STARNES: THAT'S THE SUPREME COURT, 1981. AND THAT
8 CASE CITES ANDERSON VERSUS LEAKE, 248 SOUTHEAST 2d. 120.
9 THAT'S A 1978 DECISION. AND A CAPITAL CASE THAT WAS TRIED
10 HERE IN YORK COUNTY, STATE VERSUS MAURICE HUGHES. AND, YOUR
11 HONOR, THESE CASES DEAL WITH DISCOVERY RULE.

12 IN THE PENLAND CASE THE APPELLANT ALLEGED THAT THERE
13 WAS A DISCOVERY VIOLATION BECAUSE THERE WAS PART OF A SLED
14 REPORT THAT — FROM A FIREARM EXPERT THAT WASN'T TURNED OVER
15 TO THE DEFENSE. THE SUPREME COURT AFFIRMED, SAYING THAT
16 BECAUSE THE MATERIAL WAS EQUALLY AVAILABLE TO THE DEFENDANT,
17 THAT THERE WAS NO PREJUDICE SHOWN IN THAT CASE. THE STATE
18 VERSUS MAURICE HUGHES, THE SUPREME COURT RULED THAT THE
19 STATE DID NOT VIOLATE DISCOVERY BY FAILING TO DISCLOSE AN
20 INMATE WITNESS STATEMENT WHEN THE DEFENSE KNEW OF THE
21 STATEMENT'S EXISTENCE.

22 IN OTHER WORDS, WHAT THE SUPREME COURT, FROM MY READING
23 OF THESE CASES SAY, IS THAT I KNOW THAT THERE'S INFORMATION
24 THAT'S OUT THERE. IT'S NOT ALL HIS DUTY TO GIVE IT TO ME,
25 THE SOLICITOR, THAT I HAVE ANOTHER RECOURSE TO GET THIS

1 INFORMATION. SO WHEN I REQUEST THIS INFORMATION FROM THE
2 JAIL, THEY SIMPLY PUT IT OFF ON THE SOLICITOR SAYING I HAVE
3 TO GET THE INFORMATION FROM THE SOLICITOR AND MY READING OF
4 THE PENLAND AND THE HUGHES CASE, THAT'S NOT THE CIRCUMSTANCE
5 AND I WOULD LIKE TO TAKE THAT ISSUE UP WITH THE JAIL.

6 THE COURT: MR. TATE?

7 MR. TATE: THANK YOU, YOUR HONOR. WHICH — IT WOULD
8 HELP ME TREMENDOUSLY TO KNOW WHAT WE'RE TALKING ABOUT, WHAT
9 SORT OF INFORMATION.

10 MR. STARNES: THE INFORMATION THAT I'VE SUBPOENAED,
11 CERTAIN RECORDS FOR DISCIPLINARY RECORDS OF INMATES THAT
12 HAVE TESTIFIED AGAINST ME, CERTAIN RECORDS THAT I HAVE
13 REQUESTED IN REFERENCE TO OFFICERS, INVESTIGATORS AND
14 CORRECTIONAL OFFICERS IN THE JAIL. I BELIEVE THAT COULD BE
15 USED FOR IMPEACHMENT PURPOSES. THEY'RE GOING TO — I'M SURE
16 GOING TO CALL INVESTIGATORS FROM THE DETENTION — FROM THE
17 SHERIFF'S OFFICE THAT'S GOING TO TESTIFY. IF THERE'S
18 LETTERS OF SUSPENSIONS, LETTERS OF MISCONDUCT AND THINGS OF
19 THAT NATURE, I BELIEVE I'M ENTITLED TO THAT AND IF I KNOW
20 THAT INFORMATION IS OUT THERE OR I REQUEST IT, I BELIEVE THE
21 SHERIFF'S OFFICE HAS TO DIRECTLY TURN THAT OVER TO ME.

22 MR. TATE: MAY IT PLEASE THE COURT, YOUR HONOR. AND
23 I'D ENCOURAGE MR. STARNES TO TAKE ADVANTAGE OF DISCOVERY
24 THROUGH THE SOLICITOR'S OFFICE AS TO THE CASE IN CHIEF AND I
25 CERTAINLY THINK THE RULE FIVE AND BRADY'S THE PROPER WAY.

1 OF COURSE, PERSONNEL RECORDS WOULD BE BRADY MATERIAL IF AND
2 ONLY IF THERE IS SPECIFIC INFORMATION IN THAT FILE THAT GOES
3 TO THE VORACITY OF SOMEONE WHO WOULD TESTIFY, THEIR ABILITY
4 TO TELL THE TRUTH, OTHER WORDS, IF THERE'S ANYTHING IN THAT
5 FILE THAT'S LYING, CHEATING, STEALING.

6 I DON'T KNOW YOUR HONOR HAS HANDLED THESE IN THE PAST.
7 JUDGE WESTBROOK WOULD GENERALLY TAKE A FILE HIMSELF IF MR.
8 STARNES SAID THAT DEPUTY SMITH, AS A HYPOTHETICAL, WAS ON
9 THE WITNESS LIST AND THERE WAS — AND ISSUE THE SOLICITOR'S
10 OFFICE HAS AN AFFIRMATIVE DUTY UNDER BRADY AND BRADY'S
11 PROGENY TO MAKE A SEARCH FOR THAT AND TO TURN IT OVER. SO
12 THAT IS CLEARLY BRADY MATERIAL.

13 IF MR. STARNES WERE TO MAKE A MOTION AND COULD SHOW
14 THAT FOR SOME REASON HE HAD INDEPENDENT INFORMATION THAT
15 THAT EXISTED AND HADN'T BEEN TURNED OVER, WE WON'T HAVE ANY
16 PROBLEMS SUBMITTED A PERSONNEL FILE TO THE COURT, YOU KNOW,
17 FOR REVIEW TO SEE IF THERE IS RELEVANT INFORMATION.

18 RELEVANT INFORMATION TO A POLICE OFFICER'S PERSONNEL
19 FILE IS SIMPLY HAS HE EVER BEEN CAUGHT LYING, CHEATING,
20 STEALING. IT CERTAINLY DOESN'T GIVE MR. STARNES THE RIGHT
21 TO TAKE A POLICE OFFICER'S PERSONNEL FILE INTO A
22 CORRECTIONAL SETTING OR EVEN THE CORRECTIONAL FACILITY TO
23 TURN OVER THAT PERSONNEL FILE TO AN ATTORNEY WHO'S WORKING
24 IN AN OFFICE ON MAIN STREET. WHEN THE COURT REVIEWS THAT,
25 THERE'S OTHER THINGS IN THAT FILE THAT ARE PERSONAL TO THAT

1 OFFICER CAN, OF COURSE, BE MAINTAINED, THE COURT CAN MAKE
2 AVAILABLE TO BOTH THE SOLICITOR AND MR. STARNES, ANYTHING
3 THAT MAY BE RELEVANT BASED ON THE VORACITY TEST OF THE
4 OFFICER THAT TESTIFIES.

5 THAT SAID, WE, AGAIN, RUN INTO THE ISSUE OF RECORDS
6 THAT -- AND IF IT INVOLVED ANOTHER INMATE. WE -- THE
7 FACILITY HAS A REAL PRIVACY CONCERN AND AN ORDER AND
8 SECURITY CONCERN OF TAKING DISCIPLINARY RECORDS OF ONE
9 INMATE AND GIVING THEM TO ANOTHER INMATE. OBVIOUSLY MR.
10 STARNES MAY BE ENTITLED TO THIS INFORMATION. IF THIS WAS
11 MR. NETTLES SUBPOENAING FROM HIS OFFICE, I'D HAVE NO TROUBLE
12 -- I WOULD HAVE NO PROBLEM COMPLYING WITH A SUBPOENA AND
13 MAYBE THERE IS SOME WAY THAT -- OR SOME ROLE OF STANDBY
14 COUNSEL THAT COULD TAKE TO HOLD THIS MATERIAL AND I DON'T
15 KNOW THE ANSWER TO THAT.

16 OUR BIGGEST CONCERN ON THE OFFICER'S PERSONNEL FILES IS
17 THAT THAT INFORMATION IS PRIVATE TO THE OFFICER, IT IS NOT
18 RELEVANT TO THIS PROSECUTION UNLESS THAT OFFICER TESTIFIES
19 AND THE DISCIPLINARY MATERIAL IS SHOWS LYING, CHEATING,
20 STEALING, GOES TO THE OFFICER'S VORACITY, AND MAYBE ON THE
21 OTHER MATERIAL FOR OTHER INMATES WE COULD WORK OUT SOMETHING
22 WITH MR. DELGADO AND MR. NETTLES. THEY'RE NOT PRESENT
23 TODAY, BUT WHERE THEY COULD MAYBE TAKE A LOOK AT THIS, SAY,
24 RECORDS OF OTHER INMATES, OTHER RECORDS WE WOULD NOT
25 OTHERWISE OBJECT TO BEING IN THE FACILITY.

1 MR. STARNES: I WOULD AGREE TO THAT. IF HE WANTED TO
2 GIVE THOSE RECORDS TO THE STANDBY COUNSEL OR TO MY
3 INVESTIGATOR, I WOULD AGREE TO THAT AND THAT IT WOULD NOT
4 CIRCUMVENT OR CIRCULATE BACK TO THE DETENTION CENTER. I
5 WOULD AGREE TO THAT, THAT --

6 MR. TATE: I WOULD, OF COURSE, PROVIDE --

7 MR. STARNES: I'M SORRY.

8 THE COURT: TO AN ATTORNEY WHO'S GOT A DUTY AS AN
9 OFFICER OF THE COURT. ALL RIGHT. WHY DON'T WE DO THAT,
10 THEN. WE CAN GO WITH STANDBY COUNSEL, TO PROVIDE THAT
11 INFORMATION TO STANDBY COUNSEL. THIS -- AND THIS WOULD ONLY
12 BE AS TO SOMEBODY THAT EITHER HAS TESTIFIED OR WOULD
13 ANTICIPATE TO TESTIFY IN THE CASE.

14 MR. TATE: THAT WOULD BE FOR INMATE RECORDS?

15 THE COURT: YES, SIR. FOR SOMEBODY THAT'S GOING TO
16 TESTIFY IN THE CASE. NOW, IF IT'S NOT SOMEBODY THAT'S
17 INVOLVED IN THIS CASE, YOU HAVE ABSOLUTELY NO RIGHT TO
18 ANYTHING ABOUT ANY INMATE UNLESS IT'S SOMEBODY THAT'S GOING
19 TO BE A WITNESS IN THIS CASE OR GOING TO PROVIDE INFORMATION
20 TO THE SOLICITOR OR TESTIFY IN THE CASE, OTHERWISE YOU HAVE
21 NO RIGHTS TO ANY OF THAT INFORMATION AND A SUBPOENA DOES NOT
22 HAVE TO BE HONORED JUST FOR YOU TO GAIN INFORMATION, BUT IF
23 IT'S SOMEBODY THAT'S GOING TO BE A WITNESS IN THE CASE, THEN
24 FINE, THEY -- MR. TATE CAN PROVIDE THAT TO STANDBY COUNSEL
25 AND LET THEM KEEP IT IN THEIR FILE AND LET YOU KNOW WHAT'S

1 THERE AND DO IT THAT WAY.

2 MR. TATE: BUT NOT PERSONNEL FILES. PERSONNEL FILES —

3 THE COURT: PERSONNEL FILES — PERSONNEL FILES ARE
4 DIFFERENT. WHAT I'VE ALWAYS DONE WITH PERSONNEL FILES IS IF
5 IT'S SOMEBODY WHO'S GOING TO BE A WITNESS IN THIS CASE OR
6 WHO WAS INVOLVED IN THIS CASE, YOUR CASE, MR. STARNES,
7 SOMEHOW, IT'S AN OFFICER INVOLVED IN THE INVESTIGATION AND
8 PROVIDING INFORMATION TO THE SOLICITOR'S OFFICE, GOING TO
9 TESTIFY IN THE SOLICITOR'S — IN THE TRIAL ON BEHALF OF THE
10 SOLICITOR, THEN IF YOU'RE SAYING YOU HAVE INFORMATION THAT
11 THERE'S BEEN ANY KIND OF DISCIPLINARY PROCEEDING AGAINST
12 THEM WITH REGARD TO TRUTHFULNESS, HONESTY, ET CETERA, THEN
13 I'LL BE GLAD TO TAKE A LOOK, IF YOU MAKE THAT MOTION, THEN
14 I'LL BE GLAD TO TAKE A LOOK AT THEM MYSELF, WHICH IS WHAT
15 I'VE DONE IN THE PAST IS TO GO THROUGH IT AND SEE IF THERE'S
16 ANYTHING IN THERE PURSUANT TO WHAT YOU'RE ALLEGING AND
17 DECIDE WHETHER THAT SHOULD BE TURNED OVER TO YOU OR NOT
18 RATHER THAN TURNING OVER THE OTHER PRIVATE, CONFIDENTIAL
19 INFORMATION IN A PERSONNEL FILE.

20 IF IT'S SOMETHING RELEVANT ON THE PERSON'S CREDIBILITY
21 ISSUES, THEN CERTAINLY — THEN THE COURT WILL BE WILLING TO
22 TAKE THOSE FILES FOR THOSE PARTICULAR OFFICERS AND LOOK AT
23 IT AND SEE IF THERE'S ANYTHING THAT WOULD AFFECT
24 CREDIBILITY, ET CETERA, AND PROVIDE THAT, REQUIRE THEM TO
25 PROVIDE IT TO YOU.

1 MR. STARNES: OKAY. HOW ABOUT INFORMATION THAT IS OPEN
2 TO THE FREEDOM OF INFORMATION ACT AS THE FINDING IN BURTON
3 VERSUS SHERIFF BRUCE BRYANT, OPINION NUMBER 3771 IN THE
4 COURT OF APPEALS, WHERE THE COURT STATED THE MANNER IN WHICH
5 THE EMPLOYEES OF THE SHERIFF'S DEPARTMENT PROSECUTE THEIR
6 DUTIES TO BE A LARGE AND VITAL PUBLIC INTEREST THAT
7 OUTWEIGHED THEIR DESIRE TO REMAIN OUT OF THE PUBLIC EYE.

8 THE COURT: WELL, IT DEPENDS ON WHAT INFORMATION THAT
9 THEY ARE TALKING ABOUT THERE AND SO I'M NOT SURE -- I
10 CERTAINLY RECALL THE CASE, BUT DON'T RECALL WHAT WAS
11 INVOLVED IN IT OR WHAT WAS REQUIRED TO BE TURNED OVER. SO

12 --
13 MR. TATE: YOUR HONOR, IF MEMORY SERVES, I THINK I CAN
14 HELP THE COURT, IT INVOLVED INTERNAL AFFAIRS FILES OF ON-
15 DUTY SEXUAL MISCONDUCT OF EMPLOYEES AND THE COURT DID RULE
16 THAT WAS PUBLIC INFORMATION.

17 THE COURT: ALL RIGHT. WELL, YOU KNOW, CERTAINLY IF
18 THAT'S WHAT THE SUPREME COURT SAID, TO THE EXTENT THAT THEY
19 SAID THAT WAS PUBLIC INFORMATION, THEN IT WOULD BE -- HAVE
20 TO BE TURNED OVER, IF IT GOES TO THAT VEIN. NOW, YOU'VE GOT
21 -- IT'S RESTRICTED TO THAT, THOUGH, BUT IT'S NOT EVERYBODY'S
22 PERSONNEL FILE. YOU CAN'T GET THEIR SOCIAL SECURITY NUMBER,
23 WHO ALL THEY'VE BEEN MARRIED TO, HOW MANY CHILDREN THEY GOT,
24 WHERE THEY LIVE. YOU DON'T GET THAT INFORMATION. IT'S GOT
25 TO BE SOMETHING RELEVANT TO THE CASE.

1 MR. STARNES: NOTICE OF SUSPENSIONS, MISCONDUCT?

2 THE COURT: DEPENDS ON WHAT IT IS. I MEAN, IF IT'S
3 SOME MINOR THING, YOU KNOW. I DON'T KNOW WHAT THAT CASE
4 SAID. I'LL BE GLAD TO LOOK AT IT, BUT THAT INVOLVED SOME
5 ALLEGATIONS OF SEXUAL MISCONDUCT ON BEHALF OF THE OFFICERS
6 AND THAT, SO, YOU KNOW, MAKE YOUR MOTION IF YOU HAVE SOME
7 INFORMATION. IF YOU WANT TO GO ON A SHOPPING EXPEDITION,
8 YOU DON'T GET TO DO THAT. IF YOU HAVE INFORMATION, YOU
9 KNOW, YOU CERTAINLY CAN ASK FOR IT.

10 MR. STARNES: YES.

11 MR. TATE: YOUR HONOR, I CAN SIMPLIFY THIS. IF MR.
12 STARNES WILL PROVIDE ME A LIST OF WHATEVER OFFICERS, AS AN
13 OFFICER OF THE COURT, I WILL GO LOOK AT THE FILES. I WILL
14 SHARE THE WITNESS LIST I'M SURE WITH MR. WILLINGHAM AND IF
15 THERE'S ANYTHING IN THE FILES WHEN YOUR HONOR GETS READY TO
16 HEAR IT, I'LL BRING IT TO YOU.

17 THE COURT: OKAY.

18 MR. WILLINGHAM: THAT SOUNDS FAIR, YOUR HONOR.

19 THE COURT: BUT YOU NOTIFY HIM AS TO WHAT YOU WANT,
20 WHAT OFFICERS' FILES YOU'RE INTERESTED IN AND WHAT — AND
21 WHATEVER OTHER INFORMATION YOU HAVE.

22 MR. STARNES: THE LAST THING, YOUR HONOR, IS DEALING
23 WITH THE JAIL. THEIR COMPUTERS — THEY'RE KIND OF IN THE
24 SAME STRUCTURE AS WE ARE HERE AT THE MOSS JUSTICE CENTER.
25 THE INDIVIDUALS WHO ARE MY EXPERTS AND THINGS LIKE THAT THAT

1 COME IN AND VISIT ME, THE INVESTIGATOR ON THIS CASE CAN GO
2 TO A COMPUTER INSIDE THE BUILDING AND LOOK AT THIS
3 INFORMATION. WHAT I WOULD ASK THE COURT IF WE COULD — IF
4 THEY WOULD BE AMENABLE TO SOME PROTECTIVE ORDERS SO THEY
5 COULD NOT SEE THIS INFORMATION.

6 THE COURT: YOU TALKING ABOUT THE PEOPLE WHO VISIT YOU
7 THERE?

8 MR. STARNES: NO, SIR. RIGHT. THE EXPERTS AND STUFF
9 LIKE THAT, WITNESS INTERVIEWS, CERTAIN INDIVIDUALS THAT I
10 MAY CALL AS A WITNESS. I KNOW THE INVESTIGATORS OVER AT THE
11 SHERIFF'S DEPARTMENT CAN GO ON THE COMPUTERS AND — 'CAUSE
12 THEY'RE ALL TIED IN AND THEY CAN READ THESE REPORTS, 'CAUSE
13 IF ANYBODY COMES IN TO VISIT ME THEY TAKE THEIR DRIVER'S
14 LICENSE, MAKE A COPY OF IT AND THEY WRITE A REPORT OF IT.
15 IF AN EXPERT COMES IN AND HAS TO COME INTO THE JAIL TO SEE
16 ME, THERE'S A RECORD OF THAT AND IT'S GENERATED INTO THE
17 COMPUTER AND THE LEAD INVESTIGATOR CAN GET THIS STUFF AND
18 THE OTHER INVESTIGATORS IN THE SHERIFF'S OFFICE.

19 ANOTHER THING I'M CONCERNED WITH, IF THE COURT WOULD BE
20 AMENABLE TO AN ORDER, THE PHONES THAT I USE I TRY TO MAKE

21 —

22 THE COURT: LET'S DEAL WITH THEM ONE AT A TIME.

23 MR. STARNES: I'M SORRY.

24 THE COURT: HOW ABOUT THAT? HE'S SAYING THEY'RE NOT
25 ENTITLED TO KNOW WHO HE'S TALKING TO UNLESS — INsofar AS

1 EXPERT WITNESSES, OR POTENTIAL WITNESSES, UNLESS HE ACTUALLY
2 CALLS THEM FOR TRIAL AND HE'S SAYING THAT THERE IS A
3 COMPUTER-GENERATED LIST THERE THAT ANYBODY CAN PULL UP.

4 MR. TATE: I KNOW THERE IS A BOOKING SHEET I CAN GET ON
5 MY DESK. I DIDN'T REALIZE I COULD GET JAIL VISITOR RECORDS,
6 BUT IF MR. STARNES WOULD LIKE, I HAVE ANOTHER — WE HAVE
7 ANOTHER CAPITAL CASE. WE'RE HOUSING AN INMATE FOR ANOTHER
8 JURISDICTION AND WE'VE ACTUALLY MADE HIS VISITATION RECORDS
9 PHYSICALLY SEPARATE. IT'S FAIRLY SIMPLE AND SEEMS TO SOLVE
10 THE PROBLEM.

11 THE COURT: WELL, OKAY. THE QUESTION IS CAN YOU DO
12 THAT WITH REGARD TO MR. STARNES AND AGREE NOT TO RELEASE
13 THAT TO ANYONE OTHER THAN AS YOU-ALL NEED IT FOR YOUR
14 ADMINISTRATOR, NOT TURN IT OVER TO ANYBODY ELSE?

15 MR. TATE: TO SECURE THE JAIL AND THEN AS YOUR HONOR
16 INSTRUCTED THE LAST TIME WE WERE HERE IN YORK, THAT NO JAIL
17 RECORDS WERE TO BE RELEASED EXCEPT THROUGH THE COURT AND I
18 WILL REITERATE THAT TO THE INVESTIGATORS AND I'LL FIND OUT
19 ABOUT THIS COMPUTER — I KNOW SOCIAL VISITORS, I THINK,
20 MAYBE ON THERE, YOUR MOTHER, YOUR FATHER, BUT — AND I HAVE
21 WORKED WITH MR. STARNES SEVERAL TIMES TO GET PROFESSIONAL
22 VISITORS SPECIAL VISITS. I BELIEVE WE'VE SET IT UP WHERE
23 HIS MOTHER'S CALLED ME OR, YOU KNOW, HIS MOTHER'S EMAILED ME
24 AND NONE OF THOSE ARE — THAT I KNOW OF, ARE ANY RECORDS, MY
25 FILE AND, OF COURSE, IN THE JAIL VISITOR LOG.

1 THE COURT: WELL, IF YOU DON'T MIND CHECKING ON THAT.
2 HIS CONCERN IS THAT A LIST OF THESE EXPERT WITNESSES OR
3 POTENTIAL WITNESSES THAT HE MAY NOT CALL TO TRIAL, BUT MAY
4 CALL, HE DOESN'T WANT THOSE MADE AVAILABLE AND SO IF THERE'S
5 A WAY TO KEEP THOSE FROM BEING GENERAL INFORMATION OR
6 SOMEBODY TO BE ABLE TO ACCESS THROUGH THE COMPUTERS.

7 MR. TATE: I'LL CHECK WITH THE JAIL ADMINISTRATOR, BUT
8 IN ONE OF THE OTHER CASES WE'VE DONE SOMETHING SIMILAR AND I
9 DON'T SEE WHY WE COULDN'T DO THAT.

10 THE COURT: OKAY.

11 MR. TATE: NOW, SOCIAL VISITORS, OF COURSE, WOULD STILL
12 STAY WHEREVER THEY WERE.

13 MR. STARNES: YES, SIR. ONE LAST THING. THE PREVIOUS
14 RECORDS IN THIS CASE — THERE'S BEEN VARIOUS COURT REPORTERS
15 INVOLVED IN IT AND ANY TIME I DO EX PARTE MATTERS AND STUFF
16 LIKE THAT ALL THAT'S IN THE RECORD AND IF I DRAFT AN ORDER,
17 WOULD YOUR HONOR SIGN IT TO SEAL THAT 'CAUSE I DON'T WANT
18 ANYBODY TO GET THAT INFORMATION, 'CAUSE IT PERTAINS TO
19 DEFENSE MATTERS, FUNDING AND STUFF LIKE THAT.

20 THE COURT: I DON'T HAVE A PROBLEM WITH THAT.

21 MR. STARNES: OTHER THAN THAT, YOUR HONOR, I BELIEVE
22 THAT'S IT. THE JAIL HAS BEEN — THEY HAVE BEEN — I HAVE TO
23 SAY THIS, NOW, THEY HAVE BEEN VERY NICE ABOUT LETTING ME USE
24 THE PHONE AND GIVING ME ADEQUATE ACCESS TO USE THE PHONE.
25 THEY HAVE ARRANGED FOR SPECIAL HOUSING WITH ME. THE JAIL'S

1 OVERCROWDED. THERE'S NORMALLY THREE INMATES TO A CELL,
2 WHICH IT'S ONLY SET UP FOR TWO AND THEY'VE ONLY HOUSED ME
3 WITH ONE OTHER INMATE AND THEY'VE BEEN VERY KIND ABOUT
4 LETTING EXPERTS AND SO FORTH COME IN AND SEE ME, SO I DON'T
5 WANT TO GIVE THE COURT THE IMPRESSION THAT THEY'RE
6 MISTREATING ME OR THAT THEY'RE HAMPERING MY DEFENSE. I'M
7 JUST CONCERNED. I DON'T WANT ANY OF THIS PRIVILEGED AND
8 CONFIDENTIAL INFORMATION TO FALL IN THE HANDS OF THE NEW
9 SOLICITOR AND THEN WE'RE IN ANOTHER CONFLICT SITUATION.

10 THE COURT: WELL, I THINK YOU MAY BE A BIT -- A LITTLE
11 BIT PARANOID, MR. STARNES, ABOUT PEOPLE FINDING OUT WHO
12 YOU'RE TALKING TO AND THAT. I THINK YOU'RE MAKING A LOT OF
13 NOISE ABOUT THINGS THAT REALLY AREN'T THAT IMPORTANT, TO BE
14 HONEST WITH YOU. EVENTUALLY, YOU KNOW, IF YOU'RE GOING TO
15 HAVE WITNESSES, THEY'RE GOING TO KNOW WHO THEY ARE AND
16 THEY'RE GOING TO KNOW WHAT THEY'LL TESTIFY TO. YOU CAN'T
17 CALL AN EXPERT WITNESS WITHOUT LETTING THEM KNOW IN ADVANCE
18 AND THAT, SO I MEAN, I THINK YOU'RE GOING A LITTLE OVERBOARD
19 ON THAT, BUT I -- CERTAINLY IF YOU'VE GOT SOMEBODY YOU
20 TALKED TO THAT YOU DON'T PLAN -- YOU DECIDE AFTER YOU TALK
21 TO THEM YOU DON'T WANT TO CALL THEM, I THINK YOU HAVE A
22 RIGHT TO DO THAT AND JUST 'CAUSE YOU'RE IN JAIL AND THERE'S
23 A RECORD MADE OF THAT PERSON COMING TO SEE YOU, THAT MAY
24 PERHAPS SHOULD NOT BE MADE AVAILABLE TO THEM IF YOU DON'T
25 PLAN TO CALL THEM AS A WITNESS, THAT THEY WOULDN'T KNOW WHO

1 THAT PERSON IS SO THEY COULD CONTACT THEM AND MAYBE USE THEM
2 THEMSELVES. SO I THINK YOU MAY BE QUITE RIGHT, BUT I THINK
3 YOU MAY BE A LITTLE TOO CONCERNED ABOUT THAT, BUT BE THAT AS
4 IT MAY, WE'LL TRY TO ACCOMMODATE THAT AND ALLOW YOU TO
5 PREPARE YOUR CASE FOR TRIAL. ANYTHING ELSE?

6 MR. STARNES: NO, SIR. THE MATERIAL THAT WE SEALED OR
7 THAT WE WENT OVER, THE MEDICAL RECORDS AND STUFF LIKE THAT,
8 ARE WE GOING TO TAKE CARE OF THAT AT ANOTHER TIME WITH THEIR
9 POSITION ON THAT?

10 THE COURT: YEAH. MR. BRACKETT WILL TALK WITH THEM
11 ABOUT WHAT'S AVAILABLE THERE, CAN'T GET SPECIFIC
12 INFORMATION, BUT GENERALLY WHAT INFORMATION'S AVAILABLE.
13 YOU HAVE TO DECIDE WHETHER YOU REALLY NEED IT OR WANT IT OR
14 NOT AND WE STILL — MR. BRACKETT'S GOING TO TRY TO FIND OUT
15 HOW IT WAS GENERATED OR WHY — WHAT WAS THE PURPOSE OF IT IN
16 THE FIRST PLACE FOR THE SOLICITOR TO HAVE IT. WAS IT PART
17 OF AN EXPERT WHO TESTIFIED, SOMETHING THEY RELIED ON IN
18 THEIR TESTIMONY OR NOT. THOSE ARE THE KIND OF ISSUES WE
19 NEED AND WE DON'T KNOW THE SOURCE OF THEM, FOR WHAT PURPOSE
20 THEY WERE UTILIZED AT THE PREVIOUS TRIAL AND THEN YOU HAVE
21 TO DECIDE IF YOU WANT THAT INFORMATION. IF YOU DO, WE'LL
22 HAVE TO HAVE A SEPARATE HEARING AND THE COURT MAKE A
23 DETERMINATION WHETHER THAT CAN BE RELEASED TO YOU. THESE
24 ARE DOCUMENTS THE COURT'S GOING TO HOLD IN ITS POSSESSION.
25 THEY'RE SITTING UP HERE RIGHT NOW, BUT I'M GOING TO HOLD

1 THOSE AND THEY WILL BE HELD BY THE COURT AND NOT OPEN TO
2 ANYBODY UNTIL THAT ISSUE IS MADE. AND THE SOLICITOR'S
3 OFFICE HAS TO DECIDE OF YOU WANT THAT INFORMATION, NEED THAT
4 INFORMATION, WANT THAT INFORMATION. IF SO, THEN YOU MOVE TO
5 HAVE IT RELEASED TO YOU AND WE'LL HAVE ANOTHER HEARING ON
6 THAT WITH MR. STARNES. ALL RIGHT. ANYTHING ELSE?

7 MR. STARNES: I BELIEVE THAT'S IT, YOUR HONOR. IF I
8 CAN GET THE COURT REPORTER'S CARD. I JUST NEED TO KEEP A
9 RECORD OF WHO THIS LADY IS THAT'S KEEPING THE RECORDS.

10 MR. TATE: I'VE GOT TO GIVE HER ONE OF MINE, JUDGE.
11 I'LL BE GLAD TO HANDLE IT WHILE I'M UP.

12 MR. STARNES: AND I THANK THE COURT FOR GIVING ME THE
13 OPPORTUNITY TO BE HEARD TODAY.

14 THE COURT: ALL RIGHT. WE'LL MOVE AS QUICKLY AS WE
15 CAN, MR. STARNES, AND GET YOUR CASE SET UP.

16 YOU MIGHT WANT TO RETHINK THIS ISSUE ABOUT TRYING TO
17 HAVE ALL THE MOTIONS HEARD. I'M NOT SURE IF YOU'RE ENTITLED
18 TO HAVE THEM HEARD DOWN IN LEXINGTON OR NOT. I THINK YOU'RE
19 ENTITLED TO HAVE THE TRIAL, BUT WHETHER YOU'RE ENTITLED TO
20 HAVE MOTIONS HEARD DOWN THERE, YOU MIGHT WANT — I DON'T
21 KNOW IF YOU ARE OR NOT. I'LL TAKE A LOOK AT THAT, BUT YOU
22 MIGHT WANT TO RETHINK THAT ISSUE IF IT'S GOING TO WIND UP
23 DELAYING THE TRIAL OR REQUIRES LONGER TO DO THAT, 'CAUSE I'M
24 — YOU KNOW, I HAVE A BUSY SCHEDULE. I CAN'T JUST DROP
25 EVERYTHING AND COME TO LEXINGTON EVERY TIME THERE'S A MOTION

1 TO BE HEARD, SPEND THE WHOLE DAY DOING THAT. DO YOU
2 UNDERSTAND?

3 MR. STARNES: YES, SIR.

4 THE COURT: AND THEN THEY GOT TO GO. IF WE CAN GET ALL
5 IN ONE CENTRAL POINT, YOU KNOW, AND COME WHERE WE CAN DO IT,
6 LIKE WHAT WE'RE DOING TODAY, AND SCHEDULE IT, THAT'S ONE
7 THING. TO BE ABLE TO SCHEDULE A WHOLE DAY TO COME — DRIVE
8 ALL THE WAY TO LEXINGTON TO HAVE A MOTION HEARING IS
9 CERTAINLY GOING TO TAKE A LOT MORE TIME AND REQUIRE SOME
10 ADDITIONAL SCHEDULING, SO YOU MIGHT WANT TO RETHINK THAT,
11 BUT I'LL TAKE A LOOK AT IT IF THAT'S WHAT YOU WANT, BUT IF
12 YOU CHANGE YOUR MIND LET ME KNOW.

13 MR. STARNES: YES, SIR.

14 THE COURT: THANK YOU. ANYTHING ELSE?

15 MR. WILLINGHAM: NO, SIR. THANK YOU, JUDGE.

16 THE COURT: THANK YOU.

17 MR. TATE: THANK YOU, YOUR HONOR.

18 (HEARING CONCLUDED AT 2:50 P.M.)

19 (END OF REQUESTED TRANSCRIPT)

20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF YORK

)
) C E R T I F I C A T E
)

I, THE UNDERSIGNED SHANNON E. MCGILBERRY, OFFICIAL COURT REPORTER FOR THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 3RD DAY OF NOVEMBER, 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 26TH DAY OF JANUARY, 2007.



SHANNON E. MCGILBERRY

MY COMMISSION EXPIRES:

MAY 7, 2007

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,)
)
PLAINTIFF,) MOTIONS HEARING
) 96-GS-32-3339
-VS-)
)
Norman Edward Starnes,)
)
DEFENDANT.)
_____)

BEFORE THE HONORABLE LEE S. ALFORD, JUDGE

MARCH 27, 2007

LEXINGTON, SOUTH CAROLINA

A P P E A R A N C E S:

James D. Willingham II, Esq.
Robert P. Coler, Esq.
For the State

Norman Edward Starnes, Pro Se
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

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Court Reporter's Certification	145

EXHIBITS

THERE WERE NO EXHIBITS MARKED AT THIS HEARING.

1 (The defendant,
2 representing himself pro se, was personally present
3 in the courtroom.)

4 THE COURT: Thank you. Please be seated.
5 Good morning, Mr. Starnes, counsel. Now, we need to
6 hear as many motions as we can today. We'll try to
7 resolve all outstanding motions today, if we can,
8 and spend as much time as we can.

9 We need to decide on what order we
10 wish to proceed. My suggestion would be -- Mr.
11 Watkins is here, the previous Court Reporter. And
12 there's some question about the transcript, and they
13 are asking to see the transcript. So I would
14 propose we go ahead and deal with that issue first
15 so that he can be released and not be kept here.

16 Mr. Starnes?

17 MR. STARNES: Yes, Your Honor, good
18 morning. May it please the Court?

19 THE COURT: Yes, sir.

20 MR. STARNES: The motions that I have
21 today are approximately five, maybe six, motions.
22 They'll be very brief. I don't think it's going to
23 take no longer than probably 30 minutes to argue
24 these.

25 The issue with the Court Reporter,

1 Your Honor, I've got a copy of a transcript.
2 Actually, I brought a copy of the original for the
3 Court, Your Honor.

4 In addition, I have a redacted copy
5 of the transcript that I would be glad to provide
6 Mr. Willingham. In this transcript, Your Honor, it
7 deals with matters that were taken up ex parte,
8 which the Court may recall this was when Captain
9 Quigg testified. Also, Mr. Adams from the Office of
10 Appellate Defense was present, and there were
11 matters that we went into with funding.

12 And I made an ex parte funding
13 question of the Court. I've redacted those pages
14 out of that. If the Court wants to take that matter
15 up --

16 THE COURT: Yes. Has Mr. Watkins seen
17 what you're proposing?

18 MR. STARNES: I believe he may already
19 have a copy of the transcript, because he typed it.
20 I'm not sure.

21 THE COURT: Well, I'm sure the original
22 transcript, but your redacted copy. You say you
23 redacted. That means you made some changes in it?

24 MR. STARNES: No, sir, I didn't make any
25 changes. What I did is I blacked out the portions

1 that I felt the State wasn't entitled to have.

2 THE COURT: Oh, I've got you, okay. So
3 those parts, the part of it that you were entitled
4 to proceed with some confidentiality or the State
5 being excluded from those ex parte matters, you've
6 blocked those out?

7 MR. STARNES: Yes, sir, that is correct,
8 Your Honor.

9 THE COURT: Okay, all right. Well, let me
10 ask you, because I tried to get information from
11 you, and I think Mr. Watkins is trying to get
12 information from you, as to exactly what you're
13 contesting about the accuracy of the transcript.
14 Does this have to do with the ex parte matters or
15 other matters?

16 MR. STARNES: No, sir, it really doesn't
17 have anything to do with the ex parte matters. When
18 I received the transcript and I read it, Your Honor,
19 there was an argument between myself and Mr.
20 Brackett on record in relation to a reciprocal
21 discovery request.

22 And I made a note that Mr. Brackett
23 even mentioned that a reciprocal discovery motion
24 would be made, and it would be forthcoming. That is
25 not into the record. Also, Your Honor, we went into

1 a matter --

2 THE COURT: Well, let me make a couple of
3 notes on that now. You're saying that there was
4 mention made of a reciprocal discovery request
5 coming that hadn't been made yet. And you say
6 that's not in the transcript?

7 MR. STARNES: It is in the transcript,
8 part of it is, but the part -- Mr. Brackett
9 responded that the request was forthcoming. That
10 wasn't in there, and that caught my attention. In
11 addition, Your Honor, Captain Quigg --

12 THE COURT: That's for reciprocal
13 discovery, from you to the State, correct?

14 MR. STARNES: That's correct.

15 THE COURT: All right.

16 MR. STARNES: I believe Mr. Brackett
17 stated on record that the request was forthcoming.
18 I made a note of that when we were in court then,
19 but it didn't appear in the record. In addition,
20 Your Honor --

21 THE COURT: All right, let me -- okay.
22 And if that's the case, we can put that in. I think
23 he did make some mention about that.

24 There are particularly matters with
25 regard to mental evaluations which the State is

1 entitled to know at some point before the trial. So
2 they have to be given notice of that so they have an
3 opportunity to get their own experts to look into
4 the matter.

5 And they have to be put on notice of
6 those or get some discovery about that. And I think
7 that's generally what he was talking about, if I
8 recall. But I don't have the transcript in front of
9 me, so you may know better than I about that.

10 But it seems like to me that that's
11 what he was talking about. Let me ask -- of course,
12 Mr. Brackett is not here -- whether current counsel
13 for the State would have any objection to making
14 that amendment to the transcript.

15 MR. WILLINGHAM: No, sir. I haven't seen
16 the transcript, but if Mr. Brackett indicated
17 pursuant to Rule 5 it was coming, I assume that to
18 be true. And if one has not been done -- I don't
19 have a copy. If one has not been done, then
20 certainly we will receive one.

21 THE COURT: I think there's no objection
22 to that. I think we can amend the transcript to
23 that extent and have Mr. Watkins do that.

24 MR. STARNES: Okay. There was one other
25 thing in the transcript, Your Honor, that I noticed.

1 There was an issue that arised that ultimately
2 conflicted the Sixteenth Circuit Solicitor's Office
3 staff.

4 And there was some testimony taken,
5 and the Court I believe questioned Capt. Quigg from
6 the detention center on the stand. There was an
7 issue relating to some photocopies that the
8 detention center made, and the photocopies that they
9 made for me were photocopies that was going to a
10 defense expert.

11 There was a report written by one of
12 the sergeants that worked there, Sgt. Scott
13 McDermott. At the point in the hearing that we had
14 when I was cross-examining Capt. Quigg, I directly
15 asked Capt. Quigg was the report that Sgt. Scott
16 McDermott was writing, was that a false report.

17 In my notes, I put on there, yes, he
18 previously said that he didn't tell him to write the
19 -- or to do the extra photocopies, because what
20 happened is I submitted these copies to Sgt.
21 McDermott in a request and asked him that me make
22 any additional reproductions other than what I had
23 requested, but I would want to be notified.

24 He didn't do that. And in the report
25 that he wrote when he did these photocopies for me,

1 he wrote in there that Capt. Quigg had him do the
2 copies. And the additional copies become a matter
3 later on because it appeared in the discovery. And
4 that's what triggered this whole thing conflicting
5 the Sixteenth Circuit Solicitor's Office out.

6 I have a portion of that transcript,
7 and I'll be glad to let Capt. Quigg look at it. If
8 you'll stipulate on record that that was a false
9 report, we don't have to go into the transcript
10 matter. But when I -- the point about the -- Capt.
11 Quigg's testimony and the comment from Mr. Brackett,
12 Your Honor, it probably questioned the validity of
13 the entire transcript.

14 And I can't remember everything, but
15 we had a long hearing up there in Rock Hill. And I
16 can't remember exactly everything that was said page
17 for page, line for line. But it was -- the validity
18 of the entire transcript. If Capt. Quigg will be --
19 if he'll go on record and state that that was a
20 false report, that will resolve this matter.

21 MR. WILLINGHAM: Your Honor, I haven't
22 seen the transcript. I was not aware of this matter
23 until I walked in the courtroom this afternoon. If
24 Mr. Starnes can provide what he's talking about,
25 I'll be glad to discuss it with him and Quigg while

1 y'all are taking up something else --

2 THE COURT: All right.

3 MR. WILLINGHAM: -- in response.

4 THE COURT: Are there still other
5 questions about the transcript?

6 MR. STARNES: No, sir, Your Honor. If
7 they'll stipulate on record that that was a false
8 report. I believe Capt. Quigg did in a roundabout
9 way did state that on record, but I tried to narrow
10 it down for him to admit that this was a false
11 report that Sgt. Scott McDermott had written.

12 And in my notes, I put in there that
13 he did specify that. But it wasn't picked up in the
14 record, Your Honor. I have a copy of the
15 transcript. I'll be glad to give it to Mr. Tate.

16 This is a redacted copy. I have the
17 original, if the Court would like that. I have the
18 original copy. I'll be glad to provide it to the
19 Court. But if they'll stipulate that on record,
20 Your Honor, that will take care of the transcript.

21 THE COURT: All right. How about letting
22 them see what you have and let them look over and
23 see if they agree or if they do not agree with that.

24 MR. WILLINGHAM: Your Honor, I'll be more
25 than happy when y'all take up some ex parte matters

1 or something to use that time.

2 THE COURT: Okay. What I'd like to do
3 while Mr. Watkins is here is if we need to have him
4 play anything back or any questions about it, is go
5 ahead and deal with it before he leaves.

6 MR. STARNES: Your Honor, if I could just
7 put on the record, the redacted copy that I just
8 handed Mr. Tate, the pages that I redacted, it was
9 minimal redaction, page eight, page twenty-two, page
10 twenty-three, page twenty-four, page twenty-six,
11 page thirty-one, fifty-seven, sixty-seven, seventy-
12 eight, and seventy-nine.

13 Those pages were minimally redacted.
14 I redacted just certain names out of those. Those
15 entire pages were not redacted. Page 101 through
16 121, Your Honor, was the matter ex parte that Your
17 Honor took up with myself and Mr. Adams on record.

18 Those entire pages I removed from the
19 redacted version. But other than those pages that I
20 just put on record, Your Honor, they have a copy of
21 this transcript.

22 THE COURT: All right. Let me be sure I
23 understand, Mr. Starnes. One oh one through one
24 twenty-one are redacted because those are matters we
25 took up pro se, correct?

1 MR. STARNES: Yes, sir, those entire pages
2 are.

3 THE COURT: Entire pages. The others,
4 what do they have to do with that you've redacted?

5 MR. STARNES: We went into names of
6 certain witnesses. That was redacted. We went into
7 a name of a certain expert. I redacted that. We
8 went into a --

9 THE COURT: These are people whose names
10 appeared either through correspondence or on
11 visitation list at the jail, is that correct?

12 MR. STARNES: Yes, sir, that's correct,
13 Your Honor.

14 THE COURT: Okay, all right.

15 MR. STARNES: And, again, Your Honor, I
16 have the original certified copy from Mr. Watkins,
17 and I'll be glad to provide that to the Court. I'm
18 not trying to hide anything from the State.

19 MR. WILLINGHAM: Your Honor, perhaps if
20 Mr. Starnes could hand me -- and I will hand him his
21 copy back -- precisely the pages dealing with Capt.
22 Quigg's testimony that is in question here. That
23 way I don't even see the rest of this.

24 MR. STARNES: He can keep that. I've got
25 a copy that I can go by, unless he just wants me to

1 do it from that copy.

2 MR. WILLINGHAM: Mr. Starnes didn't show
3 me that page, though.

4 MR. STARNES: Beg the Court's indulgence
5 one moment.

6 THE COURT: All right.

7 MR. WILLINGHAM: So this is the only page
8 I need?

9 MR. STARNES: Not if you want his entire
10 testimony. It's in there.

11 MR. WILLINGHAM: Okay.

12 THE COURT: You may need his whole
13 testimony. I'm not sure if he's saying he directly
14 said that or you could draw that inference from his
15 testimony. So that's why I --

16 MR. WILLINGHAM: I've read it, Your Honor.
17 I simply can't recall.

18 THE COURT: That's why you might need all
19 of his testimony.

20 Does that take care of the transcript
21 issues?

22 MR. STARNES: Yes, Your Honor. If they
23 will just stipulate that on record, we can take that
24 up in just a little while, and we can go through
25 these motions I believe pretty quickly.

1 THE COURT: Well, the State has agreed
2 that it can be added to the transcript, and I'll get
3 Mr. Watkins to do that, that Mr. Brackett indicated
4 on the record that they would be making a request
5 for reciprocal discovery in the future.

6 And I think he did say that. I think
7 basically there was conversation about experts and
8 that. But, be that as it may, we can add that to
9 it. They do not object to that, and we can make
10 that change.

11 MR. STARNES: Your Honor, I believe
12 actually the word he said, I believe it was
13 "forthcoming."

14 THE COURT: All right. Well, forthcoming,
15 that's fine.

16 MR. STARNES: Your Honor, if Ms. Thomas is
17 picking all this up on record, I really don't see
18 burdening Mr. Watkins with having to retype this
19 transcript. As long as it's in this record, I mean,
20 I don't see why we really need to get him to retype
21 the transcript or create any additional work on Mr.
22 Watkins, if it's stipulated into the record. Of
23 course, whatever the -- however the Court wants to
24 handle this, I have no problem with that.

25 THE COURT: Does the State wish to be

1 heard on that?

2 MR. WILLINGHAM: Judge, I hate to burden
3 Mr. Watkins, but I'm going to ask him to. If we're
4 going to amend the transcript, I think that
5 transcript needs to be amended.

6 THE COURT: Well, I would agree, because
7 what you're asking to do is not get some stipulation
8 today but to add that to the transcript and to make
9 it accurate. And so for that reason, then, it can
10 be amended. All he's got to do is add that to at
11 that particular time in the transcript and amend it.
12 Of course, it's on this record as well.

13 MR. STARNES: Yes, sir.

14 THE COURT: But it would be added. I
15 think the transcript ought to be amended to reflect
16 that.

17 MR. STARNES: Yes, sir.

18 THE COURT: All right.

19 MR. STARNES: Your Honor, do you want to
20 go through with the other motions now at this time?

21 THE COURT: Yes, sir. Let me be sure now.
22 This is all about the transcript?

23 MR. STARNES: No, sir. Actually, there
24 were three motions -- two motions and a letter
25 actually that was filed on March 5, 2007. I served

1 the Solicitor's Office, and I believe I sent Your
2 Honor a copy of this as well.

3 THE COURT: What's the date on those, now?

4 MR. STARNES: March 5, 2007. One was a
5 request for a hearing. The second one was a motion
6 for video statements and recordings.

7 THE COURT: All right. There are a couple
8 of others we need to get to before we get to those.
9 That's one that -- are you talking about one -- I've
10 got a copy that you sent to Mr. Willingham and sent
11 me a copy that's dated March 2, 2007 --

12 MR. STARNES: No, sir.

13 THE COURT: -- at the top?

14 MR. STARNES: It's dated March 5, 2007.
15 It was clock copied March 5, 2007, here at the
16 Clerk's Office in Lexington.

17 THE COURT: Okay, I've got that one.

18 MR. STARNES: It's a request for hearing.
19 And the second one was a motion for video statement
20 and recordings. The third one --

21 THE COURT: Well, let's don't get to that
22 just yet. I want to be sure that we've taken care
23 of all the questions concerning the previous
24 transcript that Mr. Watkins prepared -- took and
25 prepared -- to be sure we're in accord on that.

1 MR. STARNES: Yes, sir.

2 THE COURT: There's nothing else at issue
3 you'd raise about the accuracy of that transcript,
4 is that right?

5 MR. STARNES: No, sir.

6 THE COURT: Okay.

7 MR. STARNES: No, sir, that's it, Your
8 Honor.

9 THE COURT: So we'll take care of that.
10 So what instructions I need, Mr. Watkins, who's
11 present, at the time --

12 Where do you say that statement was
13 made? Have you earmarked that on the transcript?

14 MR. STARNES: Capt. Quigg's statement?

15 THE COURT: No, no, Mr. Brackett's
16 statement about the reciprocal discovery.

17 MR. STARNES: No, sir, I did not mark it
18 on the transcript because I'm not sure exactly when
19 it was made. It was made sometime during that
20 argument about the reciprocal discovery, when we
21 went through discussing discovery and so forth.

22 I made a comment to Mr. Brackett that
23 I didn't have a problem providing reciprocal
24 discovery, but they had not served me with one. And
25 then I believe he said, "It's forthcoming," Your

1 Honor.

2 THE COURT: All right. Well, why don't we
3 add it after the statement in the transcript that
4 you made saying that you would be glad to comply
5 with reciprocal discovery, but you hadn't been
6 served with any. And then Mr. Brackett stated on
7 the transcript that reciprocal discovery -- "I
8 request that reciprocal discovery would be
9 forthcoming"?

10 MR. STARNES: Yes, sir.

11 THE COURT: Okay. And we'll just add that
12 in there, and that will take care of that part.
13 Now, the other part, I'll let them deal with, and
14 we'll go on with a couple of other things.

15 If you all want to go outside, we can
16 concentrate on what's being said. And then if you
17 have an issue, take it up with the Solicitor before
18 you come --

19 MR. WILLINGHAM: Thank you, Your Honor.

20 THE COURT: -- back in, all right. If we
21 need you, we'll send down for you.

22 MR. WILLINGHAM: Thank you.

23 THE COURT: If you all want to go where
24 you've got a little quiet.

25 All right, what's your next motion,

1 then, Mr. Starnes?

2 MR. STARNES: Your Honor, before we get to
3 these motions, I just kind of -- I need the State's
4 position on something, Your Honor. Just by history
5 of this case, there's been -- Mr. Willingham's
6 office is the third Solicitor that's been involved
7 in this.

8 And I would need their position on
9 the prior motions that were filed in this case and
10 heard. Some of these motions, Your Honor, were
11 heard and ruled on by Judge Westbrook. And,
12 unfortunately, at his death, Your Honor was assigned
13 to this case.

14 Rule 4(b) of the South Carolina Rules
15 of Criminal Procedure, Your Honor, states that "If
16 any motion be made to any Judge and be denied in
17 whole or in part or be granted conditionally, no
18 subsequent motion upon the same set of facts shall
19 be made to any other Judge in that action. If upon
20 such subsequent motion any order be made, it shall
21 be void."

22 I would have to get the State's
23 position, Your Honor, on the previous rulings and
24 the previous motions that's been had in this case.
25 I do have the previous transcripts. I don't think

1 it would be fair to Mr. Willingham to compel him to
2 be held to these motions and these rulings when he
3 doesn't have the record.

4 I can't speak for Mr. Willingham. I
5 don't know that he will accept what another
6 Solicitor has argued and their position on these
7 matters. So, Your Honor, if I could get the State's
8 position on that. If they want to reargue these or
9 how they want to handle it, if they would give me
10 some idea of that, it would kind of make it easier.

11 THE COURT: Are you talking about only
12 those that Judge Westbrook ruled on, or are you
13 talking about all of them through the case?

14 MR. STARNES: No, sir, the ones that Judge
15 Westbrook ruled on when the Eleventh Circuit
16 Solicitor's Office was involved in it.
17 Additionally, there was a motion that Your Honor
18 heard -- I believe it was on November 3, 2006 --
19 relating to the motion to quash the indictment.

20 I had filed a motion to quash the
21 indictment on a race discrimination issue, and Mr.
22 Brackett consented to it. Actually, I didn't even
23 have to argue the motion. Prior to the hearing, Mr.
24 Brackett stated that they would consent to quashing
25 the indictment and that he would reindict me.

1 And I don't know Mr. Willingham's
2 position on that. I'm prepared to make that
3 argument today, Your Honor, if the Court would like
4 to hear it.

5 THE COURT: Well, I think that is the
6 position they took at the time. And, of course, I
7 recused them from the case shortly after that on
8 your motion. So I think there was a discussion
9 concerning that, and I believe Solicitor Brackett
10 did state -- I haven't got the transcript right here
11 in front of me, but I believe he did state that they
12 would nol pros it and reindict.

13 I believe he stated that, but I'd
14 need to look at the transcript to be sure. And I
15 haven't seen that. Have you got a copy of the
16 transcript?

17 MR. STARNES: No, sir, I haven't received
18 that yet. I believe Ms. McGill-Berry was the Court
19 Reporter at that time, and I received an extension
20 from Court Administration.

21 Your Honor, she did receive a 30-day
22 extension to provide those transcripts to me, and I
23 have not received them yet. I believe that
24 extension will expire, I believe, on the fourth of
25 April, Your Honor.

1 But when I do receive those
2 transcripts, I will be glad to copy them, provide
3 them to the Court, and I'll be glad to provide Mr.
4 Willingham with a copy, if they want it. But I just
5 don't know what their position is. I don't think it
6 would be fair to them that they would assume a
7 position from another Solicitor's Office. I don't
8 know.

9 THE COURT: Mr. Willingham?

10 MR. WILLINGHAM: Judge, I'll address that
11 as best I can. I'm not sure what other motions
12 other than I've got the trial transcript from Judge
13 Westbrook, and I've read that.

14 And I know what was dealt with there.
15 I know that motion to quash the indictment was dealt
16 with there, and Judge Westbrook denied the motion.
17 What subsequent motions have been made from the
18 transcript to the time that we got involved in the
19 case I am not aware of.

20 I was not aware that Solicitor
21 Brackett had agreed to reindict. That is the
22 easiest way, I believe, to solve the issue, if the
23 Court finds that that issue has merit. But I was
24 not aware that Solicitor Brackett had agreed to do
25 that. So I'm really at a loss here to concede that,

1 because, again, as Mr. Starnes says, he doesn't have
2 a transcript, I don't have a transcript.

3 THE COURT: Well, I don't think I ruled on
4 it. But I think Solicitor Brackett did state that
5 they would be willing to --

6 MR. WILLINGHAM: And that's the easiest --

7 THE COURT: -- nol pros it and reindict.

8 MR. WILLINGHAM: And that's the easiest
9 way around it. I think the argument --

10 THE COURT: I believe, if I recall -- I
11 have to recall it all, and it's starting to come
12 back to me. I think we'd have to go back to the
13 jury that was selected way back at the original
14 trial. Is that what you're talking about?

15 MR. STARNES: Yes, sir, it's the Grand
16 Jury.

17 THE COURT: You're talking about the Grand
18 Jury?

19 MR. STARNES: Yes, sir, it's the Grand
20 Jury.

21 THE COURT: And the indictment, okay. So
22 the question is about the Grand Jury.

23 MR. WILLINGHAM: The question was, Judge,
24 I believe that the motion made back at trial -- and
25 maybe it has been made since then, from reading the

1 motion -- was that no black foreman had ever been
2 appointed.

3 THE COURT: You're right. That's exactly
4 the issue.

5 MR. WILLINGHAM: And I believe Mr. Starnes
6 will concede, or at least his paperwork indicates,
7 that there are other black members that have served
8 on the Grand Jury. But, as the Court knows, the
9 Chief Administrative Judge appoints whoever the
10 foreman is for that term of the Grand Jury, and that
11 up until 1995-96, no black member had ever been
12 appointed foreman. And that was the reason to quash
13 the indictment --

14 THE COURT: And I think there have been
15 since that happened.

16 MR. WILLINGHAM: That's correct. And
17 that's why I think that's the easiest way to go.
18 But, Judge, I would still argue to the Court that
19 the foreman has no more say or no more powerful vote
20 than any other member of the Grand Jury. And just
21 because there had not been a black foreman does not
22 mean that that Grand Jury was discriminatorily
23 picked.

24 And, therefore, I don't know there's
25 to quash the indictment. But if the Court tells me

1 that that's what we need to do, that's what we'll
2 do. I don't know that that is really necessary.

3 Just because the foreman has not been
4 black, there are other members that have the same
5 authority and the same vote as the foreman who bound
6 this indictment and previous indictments in
7 Lexington County. And I don't know that there's a
8 need for it to be quashed.

9 And Mr. Starnes was good enough to
10 attach to his motion a copy of the transcript from
11 the original trial. I think there was a law
12 student, a fellow by the name last of Pough, who had
13 gone through and done some research on prior foremen
14 of the Grand Jury and found that none of them were
15 black.

16 However, it was pointed out by
17 Solicitor Myers at the time black members had served
18 there was the acting foremen and that there were
19 other black individuals on the jury.

20 That's attached to his motion to
21 quash from the original transcript, pages 287 to
22 310. And I don't know if the Court has a copy. I
23 can provide my copy.

24 THE COURT: I don't think I have it. I
25 don't see it. It may be in this bigger folder I've

1 got here, because I didn't think that -- no, that's
2 not it either. It would have to be in here.

3 I didn't think we were going to deal
4 with that today. I thought that would have been
5 dealt with by previous motion and hearing.

6 MR. STARNES: It may be, Judge. Again, I
7 wasn't aware Solicitor Brackett had agreed to
8 reindict. But if that's the Court's understanding,
9 then that's certainly what we'll do.

10 THE COURT: Well, that's what they had
11 indicated as being the easiest way to deal with it.
12 I guess you have a right to proceed on and take your
13 position otherwise. But I think the idea at the
14 time was we had plenty of time to have it presented
15 to a new Grand Jury, in front of a Grand Jury, and
16 have the Grand Jury act on it, because since the
17 indictments were rendered, it's been some period of
18 time now, but have been, as I understand it, by
19 forepersons of the Grand Jury. And so that would
20 eliminate that issue.

21 MR. WILLINGHAM: And if I could have the
22 assurance of Mr. Starnes, that would take care of
23 any motions to quash the indictments that we
24 submitted to the Grand Jury. And certainly I'll be
25 glad to do that. However, I would not nol pros the

1 current indictments until a new indictment is true
2 billed.

3 MR. STARNES: My understanding -- I'm kind
4 of arguing this out of order, because that was
5 actually my fourth motion that I was going to argue,
6 Your Honor. But if they're going to consent to
7 quash the indictment, then that would alleviate a
8 problem if they're going to do that. If not, Your
9 Honor --

10 THE COURT: Well, he's saying they would
11 reindict. They would present it for indictment
12 before a new Grand Jury and then nol pros upon the
13 indictment before a new Grand Jury, is what they're
14 saying they would be willing to do.

15 MR. WILLINGHAM: Following his arraignment
16 on a new true billed indictment, yes.

17 THE COURT: And after you're arraigned on
18 the new one.

19 MR. STARNES: Right. Your Honor, if
20 they'll reindict me, that will alleviate that. But
21 if I could just -- and I'm not trying to -- well,
22 but if that is the Court's ruling that this
23 indictment is quashed and that they're going to
24 reindict me.

25 THE COURT: I'm not ruling that it's

1 quashed. I probably would not rule that it's
2 quashed. I think Judge Westbrook has already ruled
3 on it, and I think probably he was correct. Just
4 because you don't have a black foreperson does not
5 invalidate receiving it for the Grand Jury to hear.

6 It might be a separate issue if there
7 were no blacks ever on a Grand Jury. That might be
8 a whole different issue. That's not the issue. And
9 so just because the Administrative Judge chose not
10 to appoint a black foreperson -- there might be a
11 lot of reasons for that, education, management
12 experience, this kind of stuff that Judges normally
13 look to when appointing a foreperson.

14 And also normally you try to appoint
15 -- there are six carryovers on the Grand Jury, and
16 the Judge who's presiding would normally want to
17 appoint someone who has already served, has a year's
18 sentence, out of the six carryovers. So there are a
19 lot of reasons for that.

20 And so if Judge Westbrook has already
21 ruled on it -- and I think Mr. Willingham is
22 probably correct -- then I probably would not quash
23 it. But if they can reindict or go ahead and get a
24 new indictment, and arraign on that indictment, and
25 if that goes through, at that point they would be

1 willing to quash the old indictment, not because the
2 Court orders them to do but because they just agree
3 to as the best way to resolve the issue, understood?

4 MR. STARNES: Yes, sir. But, Your Honor,
5 just to protect the record and I don't know what's
6 going to happen down the road. I need to put it all
7 on the record relating to this, because the motion
8 is directly a motion to quash this indictment. And
9 if the Court's not willing to do that, I understand
10 --

11 THE COURT: I'm not going to have to deal
12 with it at this point. And I would say to you, you
13 can raise that issue again later if they fail to get
14 a new indictment and arraign you on the new
15 indictment and agree to quash it, then you would
16 have a right to argue it at that point.

17 MR. STARNES: Yes, sir. The only thing
18 that I'm -- I don't want this to trigger a
19 continuance. In other words, if we get a month
20 before trial and they haven't --

21 THE COURT: Well, they --

22 MR. STARNES: -- they haven't reindicted
23 me, then --

24 THE COURT: Your point is well taken. I
25 think if you're going to reindict, if you're going

1 to indict him again and arraign him, then we need to
2 do that as quickly as we can, because we don't want
3 to delay this trial again. It's scheduled
4 tentatively for November.

5 We want to use those days, and I
6 don't want to have to continue it again unless
7 something just unforeseeable comes up that we can't
8 avoid. I want to do everything we can to go forward
9 with the trial on those days that we have it
10 scheduled for.

11 MR. WILLINGHAM: And we're hoping to as
12 well, Judge. I made a note to myself as I sat down.
13 My to-do list is to check when the next time the
14 Grand Jury is here in Lexington County.

15 THE COURT: All right. We'll proceed on
16 that, but you're protected on the record if that's
17 not done, then you can make your argument on the
18 record. I've already told you it probably wouldn't
19 be granted, but I would hear you on it.

20 I'm not going to say absolutely. I'd
21 certainly give you a chance to hear it. I've always
22 got an open mind and want to make sure my ruling is
23 correct. So I would hear from you at the
24 appropriate time. But I don't know that we need to
25 do that today.

1 MR. STARNES: Yes, sir.

2 THE COURT: But you're protected on the
3 record, and you certainly would be able to make that
4 argument if they fail to and for whatever reason
5 didn't go forward with getting a new indictment.

6 MR. STARNES: Thank you, Your Honor. Your
7 Honor, the next issue I'd like to take up, I had
8 filed a motion for -- or actually it was a motion
9 for a request for this hearing. Our last meeting --
10 actually, it was my first meeting with Mr.
11 Willingham -- I hand-delivered Mr. Willingham on
12 record while we were in court three motions. One
13 was the Rule 5 and motion pursuant to Brady versus
14 Maryland.

15 The second was a supplemental
16 discovery request, and the third was, of course, the
17 motion to quash the indictment. I had hand-
18 delivered those on November 3rd while we were up in
19 York County.

20 I communicated on two occasions with
21 Mr. Willingham by e-mail regarding these motions.
22 The first communication I made to Mr. Willingham's
23 office was on December 2, 2006. I never heard back
24 from him by e-mail, so I e-mailed him again and
25 asked could I call his office to discuss these

1 motions.

2 Mr. Willingham e-mailed me back and
3 said that he would prefer everything be done in
4 writing. So I then e-mailed Mr. Willingham back on
5 December 20, 2006, and I never heard back from him.
6 There's been, of course we know, several Solicitors
7 involved in this case.

8 And one of the problems I had with
9 the Lexington Solicitor -- and I'm not trying to
10 bring up bad memories, to speak -- but Mr. Myers'
11 office wouldn't communicate with me, period. They
12 wouldn't answer my letters. They refused to accept
13 any e-mails from me, wouldn't take any calls.

14 Mr. Brackett got the case. I had
15 actually communicated with him. I could call Mr.
16 Brackett's office. He would take my calls. I could
17 communicate with Mr. Collins, which was the
18 investigator in their office.

19 If Mr. Willingham would be kind
20 enough to give me his position on how he wants to
21 communicate regarding this. I can't save I've got a
22 constitutional right to compel him to answer my
23 letters or my e-mails, Your Honor.

24 And if he doesn't want to do that,
25 that's fine. But the down-side to that is we're

1 going to spend more time in the courtroom going over
2 all these issues. So if we could work to an accord
3 on some of these issues without having to come into
4 court and argue all these things, it would -- the
5 communication issue between him and I, I think it
6 would make things smoother.

7 THE COURT: All right. Let me take that
8 up with him at this point. Mr. Brackett had gone
9 really the last mile, I think, to try to establish
10 some communication with Mr. Starnes, because we were
11 up there, and he was down here.

12 And to try to facilitate as much as
13 possible, we agreed to go e-mail. And I got copies
14 of e-mails I needed to get and what have you. He
15 made it a point to have frequent communication. He
16 communicated to Mr. Collins and that sort of thing.

17 And so he was trying to expedite
18 things through as fast as he could with
19 communications, realizing he was in jail here. I
20 think a lot has been done with communication. The
21 Lexington Jail has been all too good to do things
22 they don't really have to do, in my opinion, but to
23 try to facilitate communications, to try to
24 accommodate Mr. Starnes in this case. And so all
25 that's been worked out. Tell me how you prefer to

1 do it.

2 MR. WILLINGHAM: Judge, it's just a
3 personal thing for me. I don't like having
4 telephone conversations with defendants, whether
5 they're represented, unrepresented, representing
6 themselves. That's just a practice that I don't
7 feel comfortable with.

8 THE COURT: Well --

9 MR. WILLINGHAM: Whenever Mr. Starnes --
10 you indicated by e-mail. Would I take a phone call
11 from him? That just -- I don't want to do that.

12 THE COURT: All right, let me explain --

13 MR. WILLINGHAM: I would --

14 THE COURT: Let me explain to him at this
15 point why you feel that way. The problem with
16 telephone conversations is there can be two sides to
17 that and no way to verify.

18 And so you could say, for instance,
19 "He told me something, and I relied on it," and he
20 could say, "I never told him that, and he had no
21 right to rely on that." And so there comes the
22 problem.

23 Or you could say he said something,
24 and he said, "I never said that." So therein lies
25 the problem. And so if he feels that way, I would

1 say that maybe as an intermediary measure, maybe
2 there would be somebody that you could relay
3 something to him, and he could get back to you on
4 maybe.

5 Or you could write him, or you could
6 e-mail him. You have the ability now, as I
7 understand it, to e-mail him, correct?

8 MR. STARNES: Limited ability, yes, sir.

9 THE COURT: Limited. And so maybe you
10 could e-mail him, and he could e-mail back to you.
11 And what I've done is all the e-mails I've got, I've
12 printed all those off before I take them off my
13 computer. Before I delete them, I print them all
14 off so I'll have a record of them.

15 And that's probably a better
16 practice, because I can't depend on getting them
17 back up on the computer. And so that's what I do.
18 And that's what you could do, obviously.

19 MR. WILLINGHAM: Judge, that's what I --
20 I'll tell the Court and Mr. Starnes that's what I'll
21 agree to do. I don't mind e-mailing. That way
22 there is a paper trail. That way everybody has a
23 copy of it and knows what has been said.

24 The reason I didn't respond back to
25 Mr. Starnes' earlier e-mails back in December is

1 that we got the file here in November, got the file
2 late November, got more stuff.

3 THE COURT: Well, I delivered I think
4 about seven boxes to you in Spartanburg --

5 MR. WILLINGHAM: Right.

6 THE COURT: -- when I was holding court,
7 what, in December or January?

8 MR. WILLINGHAM: Maybe January. But what
9 my concern was, in December when he's e-mailing me
10 wanting to know my position on his motions, I was
11 still trying to get through the transcript. And I
12 didn't have a position to be able to tell what my
13 position was.

14 And it deals with the discovery. My
15 position is and will continue throughout the trial,
16 is to provide to him exactly what the rules say we
17 have. Anything pursuant to Rule 5 that I plan to
18 use in my case in chief will be given to him. Any
19 statements made by him will be given to him.

20 Any reports of experts will be given
21 to him. Anything pursuant to Brady that's
22 exculpatory will be provided to the defendant. I'll
23 be honest with you, Judge, I have gone through a
24 number of boxes which I believe Mr. Starnes has
25 copies of already, based on what he signed off with

1 Solicitor Brackett.

2 I have not gotten into any material
3 yet that he does not have. I understand that he's
4 listed a number of things in his supplemental Brady
5 request that I don't have, that Kyle versus Whitley
6 says maybe the law enforcement has that I'll have to
7 go get if it's exculpatory or if I intend to use it
8 in my case in chief.

9 But I want to assure the Court and
10 assure Mr. Starnes, as an officer of the Court, that
11 if there's any Rule 5 material, I will turn it over
12 to him. If there's any Brady material, exculpatory
13 material, I will turn it over to him.

14 I think he will find as we get
15 further into this case that I'm a lot more
16 accommodating than Solicitor Myers here in Lexington
17 as far as what I'm going to turn over. I read the
18 transcript, and I saw that witnesses' statements
19 were never turned over to him until the witness was
20 finished with direct examination.

21 That's what the rule requires. And
22 at a minimum, I will be doing that. But I will tell
23 the Court that I don't like trial by inquiries, and
24 I don't like hiding things. Pretty much -- I'm not
25 going to say I have an open file policy, because I

1 do protect work product. But what I do have that
2 relates to statements and possible impeachment and
3 culpability of witnesses will be given to the
4 defendant.

5 MR. STARNES: Yes, sir.

6 THE COURT: Well, let's talk about the
7 communication issue just a minute.

8 MR. STARNES: Yes, sir.

9 THE COURT: If you can e-mail him or write
10 him, what we're trying to do is facilitate the
11 communication time-wise to try to move the thing
12 along, to make sure we can get everything done. And
13 so are there any other concerns you've got about
14 that? He has said he would prefer not to talk with
15 you by phone where there's no way to verify anything
16 that's said one way or the other.

17 MR. STARNES: Yes, sir. Your Honor, I
18 complete understand Mr. Willingham's position on
19 that. But the reason I raise this is because he's
20 busy reading transcripts or can't answer an e-mail
21 within two weeks or a month, if he would just be
22 kind enough to e-mail me and say, "I'm busy. I'm
23 not ignoring."

24 I was just concerned because I just
25 felt like I was sending e-mails to his office, and

1 they were being ignored. If he would be kind enough
2 to do that.

3 THE COURT: Well, I think if you could do
4 that or have someone respond for you that "I need to
5 do this before I can respond," or "I'll respond as
6 quickly as I can." This communication is kind of
7 important.

8 Mr. Starnes is sitting there with not
9 a lot else to do except work on his case. We're out
10 there holding court. Seven out of eight weeks,
11 we're in court trying other cases and have got other
12 things under appeal and everything else that we're
13 trying to do, too. So we've got a lot of other
14 stuff to do other than this one case.

15 And I know you all do, because I'm in
16 court in Spartanburg some, and I see what you do
17 there. And I'm court. For me to come down here,
18 I've got to take my chambers time when I'm supposed
19 to be working on something else to come down here
20 and do this, because this is the only time we can do
21 it.

22 You request that I come down here and
23 hold all your motion hearings, and I'm going to try
24 to accommodate you there. But at the same time,
25 that's going to slow some things down, because I've

1 been in court six out of the last seven weeks.

2 And I've got a bunch of stuff under
3 advisement. I've got a case -- it's another death
4 penalty case I've got on PCR -- that I've got two
5 thousand pages to read and stuff to work on, that I
6 need to be working on this week.

7 But your case is important. It's
8 important to us, too. It's important to me. I
9 don't want you to get the wrong idea. I'm just
10 trying to tell you that time-wise there's only so
11 much you can do. And we're going to take care of
12 your case and make sure that it's prepared for
13 trial.

14 And I'm going to do everything I can
15 to make sure that's done, that you get what you need
16 within reason to be able to present your case. And
17 I try respond to you as quickly as I can. I don't
18 read my e-mails every single day, to be honest with
19 you, because sometimes I'm working in other
20 circuits.

21 But I'll be back in the week, and
22 I'll respond within the week usually at the most.
23 Usually, I'll respond the same day or two, but I do
24 respond. And I would just ask that the Solicitor go
25 ahead and respond. And if there's a problem getting

1 the information that you want, that you let him know
2 why, and then we can move along.

3 MR. WILLINGHAM: Yes, sir.

4 MR. STARNES: One other thing on the
5 communication, Your Honor. There are various
6 defense team members that I have, and I believe I've
7 got a record of that under the statute.

8 I have an investigator and a court-
9 appointed paralegal to conduct some legal research
10 and do some footwork that is just impossible for me
11 to do in the jail. I would ask Mr. Willingham, if
12 he would, to directly communicate with me regarding
13 any motions or anything dealing with this case.

14 In other words, I would just ask him
15 don't give it to an investigator, or a paralegal, or
16 even to stand-by counsel to relay to me. I haven't
17 seen Mr. Nettles in two years. I don't call them, I
18 don't bother them, don't talk to me.

19 They've made it clear to me that
20 they're going to come in here and sit in the
21 courtroom, and that's it. They don't want me
22 calling their office asking for books or anything.

23 Mr. Nettles has been kind enough to
24 handle the funding. He did an excellent job on
25 that. But I would just ask the Solicitor if they

1 would communicate directly with me. And, again, if
2 they would do it by e-mail, it really would work out
3 best for me, because my most important paralegal is
4 the lady standing right behind me, my mama.

5 And she keeps all this stuff in a
6 computer file, and she is the one that actually does
7 these e-mails for me. The detention center has been
8 very kind to give me some additional phone time so I
9 can communicate these e-mails to the Court and the
10 State.

11 And I would just ask Mr. Willingham
12 if he would please be kind enough to directly
13 communicate with me. That way, there's no
14 confusion.

15 THE COURT: Okay. What he's saying is he
16 does have a paralegal and an investigator. He does
17 not want you to give any discovery, any information,
18 to them. He has stand-by counsel, who basically the
19 only way they're assisting at this point is somebody
20 has to request the funding.

21 It has to go through an attorney's
22 office. The attorney has got to be accountable for
23 those funds, and to request those funds, they go
24 through the attorney's office. So that's been done.

25 Other than that, they would be stand-

1 by counsel for trial, is what he's saying. And
2 they're really not involved in the preparation for
3 trial or anything. He prefers you not to send
4 anything to them, wants you to send it directly to
5 him because he's his own counsel in this case.

6 Now, I think they understand that.
7 At the same time, let me say to you that you have
8 sent me e-mails, and I cannot tell from the request
9 you're making in the e-mail whether it's something
10 that the Solicitor's Office who is prosecuting for
11 the State is entitled to have any information on.

12 I cannot discuss this case. I may
13 see them five or six times between now and the time
14 I see you again, but I cannot discuss this case with
15 them. I'm prohibited from doing that. You
16 understand?

17 MR. STARNES: Yes, sir.

18 THE COURT: Likewise, I'm prohibited from
19 discussing it with you without them being present.
20 I can't discuss the case with them, except for
21 scheduling. I can discuss scheduling with them and
22 with you without the other side being present.

23 That's it. I can't discuss anything
24 else. And so please don't send me anything -- and I
25 admonish you of this -- don't send me anything that

1 they're entitled to get a copy of without sending a
2 copy of it to them.

3 They can't send me anything that
4 you're not entitled to a copy of unless you get a
5 copy of it. That's the way it is. Okay, the same
6 way if you had a lawyer here. One lawyer can't
7 contact me or send information to me without sending
8 it to the other side, and you're in the same boat.

9 So just remember that. Now, if it's
10 an ex parte matter with regard to funding or
11 something like that, then you can do that without
12 sending anything to them. But if it's anything
13 other than that connected with the case, then
14 they're entitled to receive notice of that. And
15 it's against the rules of ethics or judicial ethics
16 for me to engage in any ex parte conversations
17 except those in which you are expressly denied to do
18 so.

19 MR. STARNES: Yes, sir.

20 THE COURT: That would be funding issues.

21 MR. STARNES: I believe what you're
22 getting to, Your Honor, is the communications that I
23 sent to you in reference to Mr. Watkins. And I do
24 understand that rule, because I have to copy any
25 communications to the Court.

1 THE COURT: Well, see, we don't know what
2 on the record you're contesting, because you
3 wouldn't tell me that. As I understand, Mr. Watkins
4 indicated he wasn't sure what your objection was.

5 MR. STARNES: Yes, sir.

6 THE COURT: So not knowing whether it's an
7 ex parte hearing that you're talking about or
8 whether it's something that the Solicitor was
9 involved in -- Mr. Brackett's office or these
10 Solicitors -- without knowing that, there's no way I
11 could know whether they were entitled to receive
12 notice of your complaint or not.

13 And so if you don't communicate with
14 me directly and not to the Solicitor's Office, then
15 you have to tell me it's about an ex parte matter,
16 and it has to be ex parte.

17 MR. STARNES: Yes, sir.

18 THE COURT: If it's something else, then,
19 of course, they're entitled to notice of it. Even
20 if they don't get involved in it, they're entitled
21 to know what's going on, okay?

22 MR. STARNES: I understand, Your Honor.

23 THE COURT: All right.

24 MR. STARNES: Your Honor, the next motion
25 I have is relating -- it's a motion for video .

1 statements and recordings. The caption on it was
2 filed with the Clerk of Court on March 5, 2007.

3 Your Honor, I believe I copied the
4 Court with a copy, sent a copy to Your Honor's
5 office. I provided a copy to Mr. Willingham. Your
6 Honor, if I could give you a little bit of facts of
7 why I'm making this motion, that on or about
8 September 5, 1997, while conducting a court-ordered
9 federal investigation relating to an illegal
10 videotaping of an attorney and his client, capital
11 defendant Robert Joseph Cordovan, in the Lexington
12 County Sheriff's Office, the FBI seized a large
13 volume of videotapes from the Sheriff's Department
14 through the course of this investigation.

15 Apparently, there were numerous
16 criminal investigations that took place at the
17 Lexington County Sheriff's Office. And as a result,
18 there were videotapes that were created in a
19 polygraph room. One of these videotapes become a
20 landmark case in South Carolina, and I'm sure all of
21 us are aware of that.

22 But what happened, Your Honor, this
23 FBI came in the Sheriff's Office, and they obtained
24 all the videotapes that were made of the polygraph
25 room. The problem is, is they obtained some

1 information that is pertinent to this case. I have
2 appended to this motion a seven-page index list of
3 some individuals that are involved in this case,
4 Your Honor, and I'll be glad to go over that with
5 the Court.

6 The problem that I have, I've
7 contacted the FBI in relation to receiving these
8 videotapes. These are videotapes of potential
9 witnesses. Some of these videotapes are of
10 witnesses that have previously testified in this
11 trial, Your Honor.

12 Two of the tapes are dealing with
13 investigators from the Lexington County Sheriff's
14 Department that were directly involved in this case.
15 The problem I have is I can't get this from the FBI.
16 The FBI did send me a letter, and they cite a case
17 Tuoey versus Reagan.

18 It's cited at 340-US-462. They also
19 cite Title 28 of the Federal Rule and 5-USC-Section
20 301. The FBI's position on this, Your Honor, is
21 that they will provide this information to the
22 Solicitor's Office. They will not provide this
23 information directly to a criminal defendant, but
24 they will provide it to Mr. Willingham.

25 And through the course of discovery,

1 Mr. Willingham can provide this information to me.
2 Mr. Willingham has cited Kyle versus Whitley, which
3 is cited at 514-US-419, which places on the
4 prosecutor a duty to learn the case of exculpatory
5 material.

6 Some of this information is very
7 pertinent to my case. There are six individuals,
8 Your Honor, that are listed on this index, six
9 videotapes that I believe exist. One of them is a
10 lady by the name of Donna Vincent.

11 She was a business partner to one of
12 the individuals that I shot. The second individual
13 is a Karen Pratt. She was a common-law girlfriend
14 to the second individual that I shot on January
15 1996. She testified as to this individual, Mr.
16 Chapman, who was her common-law boyfriend.

17 She testified as to his activity
18 leading up to this shooting, and she was a material
19 witness for the State. Jim Kyzer and Roger Crook
20 are or were investigators for the Lexington County
21 Sheriff's Department, and I believe they
22 investigated this case. And those videotapes are
23 pertinent to this defense.

24 There are matters that I really don't
25 want to go into why I need this information. But if

1 the Court requires it, I'll go into that. The fifth
2 one is an individual by the name of Jody Fogle. Mr.
3 Fogle was present when this shooting occurred in the
4 Pelion area of Lexington County, and he observed
5 these videotapes in the polygraph room. And the FBI
6 has that tape.

7 The sixth individual, Your Honor, is
8 an individual by the name of Leroy Jones. Mr. Jones
9 was a federal inmate who I was housed with at the
10 Lexington County Detention Center prior to trial.
11 And Mr. Myers' office flew him back from El Reno,
12 Oklahoma, to testify against me. And he was one of
13 the jailhouse snitches that the State called.

14 Your Honor, I would ask the
15 Solicitor's Office to obtain this information from
16 the Federal Government and provide it to me through
17 the course of discovery. And I would like to hear
18 their position on that, Your Honor.

19 MR. WILLINGHAM: Judge, this may be one of
20 those examples where dealing with our office may be
21 easier because of past experience dealing with the
22 Solicitor's Office. Upon receiving this motion from
23 Mr. Starnes, we did contact the FBI to find out
24 where these tapes were and to see if they had
25 possession of them.

1 We were instructed that they no
2 longer were in possession of those videotapes, that
3 they had been returned to Lexington County. Major
4 Tate told me this morning that he believes that
5 Lexington is in possession of those videotapes. I
6 will be reviewing those.

7 I understand Mr. Starnes' position,
8 and I don't have a problem turning over the
9 videotapes of the witnesses. I don't know that he
10 would be entitled to them -- to discovery pursuant
11 to Rule 5 or Brady. But I don't have a problem with
12 turning those videotapes over, especially -- Jody
13 Fogle and Leroy Jones. I think it's Jones.

14 THE COURT: That's correct.

15 MR. WILLINGHAM: Leroy Jones. There are
16 two -- and, again, I say that not having even looked
17 at them, because, I mean, there's conflicting
18 testimony from the testimony at trial, from other
19 statements. That then makes it exculpatory. If
20 there are threats or other types of pressure,
21 intimidation placed on witnesses, that's product for
22 impeachment and therefore would be exculpatory.

23 There are two -- he indicated the
24 investigators, Kyzer and Crook. Without looking at
25 the videos, I can't sit here today and say I can

1 turn that over. That looks from the video log to be
2 internal operations.

3 I don't know that that would be
4 exculpatory, again, not looked at it. But as far
5 the other witnesses, I can tell you when we have
6 possession of those -- and we are working to get
7 that; I talked to Major Tate again this morning
8 about that
9 -- when we have possession of that, I'll be glad to
10 turn it over.

11 THE COURT: All right. And as to Mr.
12 Kyzer and Mr. Crook, as to those --

13 MR. WILLINGHAM: I'll have to look at
14 them.

15 THE COURT: -- look at them and --

16 MR. WILLINGHAM: If they're related to the
17 case and they're Brady or Rule 5, then, yes, I'll be
18 turning them over. If it's work product where
19 they're doing something with the polygraph to make
20 sure the polygraph machine lights, some internal
21 thing that they're doing that he may not be entitled
22 to, I can't agree, without looking at it, to go
23 ahead and say I'll turn those over.

24 THE COURT: All right, let's do this,
25 then. Let me ask you with regard to those four.

1 You say once you've got those, you'll make those
2 available --

3 MR. WILLINGHAM: Yes, sir.

4 THE COURT: -- through discovery.

5 MR. WILLINGHAM: Yes, sir.

6 THE COURT: As to the other two, if you
7 could look at those, take a position, let Mr.
8 Starnes and the Court know. And then, if necessary,
9 the Court may have to review them in camera, if the
10 Court would want to look at them, and decide whether
11 they come in or not, or whether they are just plain
12 work product, or whether they're discoverable or not
13 under the rule.

14 And they would give me the reasons,
15 though, and give you the reasons why they say they
16 don't come in. And you would have a chance to argue
17 against that. But the only way I would know what's
18 actually on the tapes is to see them.

19 And if they're saying you're not
20 entitled to those through discovery, then I would
21 have to look at them and see if I read a deposition
22 and agree that they are discoverable. In any event,
23 at some point in time they'd be made part of the
24 record for any appeal.

25 MR. STARNES: Yes, sir.

1 THE COURT: But anyway, we will have to
2 take that up at a later time is what I'm saying.
3 But what I would ask the Solicitor to do is to do it
4 as soon as possible, realizing that we want to stay
5 on track to get this case ready for trial in
6 November, make sure everything has been done, and
7 Mr. Starnes has that right to prepare as well.

8 MR. WILLINGHAM: I hope to do that this
9 afternoon, Judge.

10 THE COURT: Okay.

11 MR. WILLINGHAM: That is my plan.

12 THE COURT: All right.

13 MR. STARNES: Your Honor, the next motion
14 was actually just a letter that's dated March 2,
15 2007. It was clock-copied on March 5, 2007. I
16 don't really see I need to really go into this in
17 detail.

18 It relates to a former Court exhibit
19 that was Court Exhibit Number Four. What this Court
20 exhibit is, Your Honor, is on May 27, 1996, a
21 common-law girlfriend or wife comes to the Sheriff's
22 Office and made a video statement to one of the
23 investigators.

24 When we got in the middle of the
25 trial, my defense counsel made an agreement with the

1 Solicitor's Office, and they were going to redact
2 portions of that videotape. There are portions of
3 that videotape that certainly wouldn't come into
4 trial, doesn't have anything to do with res gestae,
5 and it deals with 404 material.

6 There is a portion on the videotape
7 where this witness is discussing this case with an
8 investigator, and her mother is there. Her mother
9 is there at the beginning of it. And then as the
10 investigator leaves the room, she comes back into
11 the video -- the mother does -- and obviously says
12 bad things about me. It has nothing to do with this
13 case and isn't pertinent to it, and I would just ask
14 that --

15 THE COURT: I wouldn't have any problem
16 redacting anything that wasn't relevant, just pure
17 bad statements about him.

18 MR. WILLINGHAM: During the guilt phase,
19 yes. And I agree, because if I want to do anything
20 in the penalty phase, that wouldn't have to come,
21 that video. So, yes, sir, I agree --

22 THE COURT: Would she have to come in and
23 testify?

24 MR. WILLINGHAM: Yes, sir.

25 THE COURT: Okay. He would agree that

1 that would be redacted. Whatever was redacted
2 before I'm sure will be redacted in a new trial.,

3 MR. STARNES: Yes, sir, okay. I'm just
4 letting him know that at this point I'm not saying
5 it's -- I understand these rules is subject to
6 change during developments of trial. But at this
7 time, I don't plan to present my character in the
8 guilt or innocence phase of this trial.

9 So that would kind of give him a
10 little bit of understanding. But I will communicate
11 this to Mr. Willingham, and I believe he should have
12 a copy of the transcript actually that we redacted.
13 But I'll -- actually, I provided it to Mr. Brackett,
14 and it should be in his file. But I'll be glad to
15 send him another copy.

16 And if they'll just communicate with
17 me and work with me on this. What I don't want to
18 happen, Your Honor, is I don't want to get in the
19 middle of a trial, we've got a jury out here, and
20 then I'm stuck having to redact something -- because
21 the way it was done in the first trial, it was very
22 poor, and it shouldn't have been done that way.

23 THE COURT: Well, we can take that in
24 advance of trial.

25 MR. WILLINGHAM: And if Mr. Starnes does

1 have a redacted version he wants me to look at, I'd
2 like to get that from you or either from Mr.
3 Brackett.

4 MR. STARNES: I'll be glad to send that to
5 them, Your Honor.

6 THE COURT: Why don't you do that? He may
7 have it in those seven boxes I transported over to
8 Spartanburg, but if they haven't come across it, you
9 might send it for easier reference, and it'll be
10 easier for them to reference.

11 MR. WILLINGHAM: And just so I know for
12 Court's Exhibit Number Four -- State's Exhibit
13 Number Four -- which witness was that video of?

14 MR. STARNES: It was of Gwen Ott.

15 MR. WILLINGHAM: Thank you.

16 THE COURT: All right, sir.

17 MR. STARNES: Your Honor, I think we're
18 probably getting towards the end here. The last one
19 was a supplemental discovery request, and there are
20 numerous things that I've asked for in this request,
21 Your Honor. And some of this they may not be in
22 possession of.

23 Some of it I would ask for them to
24 check with the investigators for the Lexington
25 County Sheriff's Office and see if they have. The

1 most important thing dealing with this request is
2 Section E -- or Paragraph E, I should say -- all of
3 Detective Amick's handwritten or typed notes and
4 reports for dates between January 16, 1996, and May
5 27, 1996.

6 Your Honor, this shooting happened on
7 January 8, 1996. The case was a missing persons
8 case until May the 27th of that same year, when Ms.
9 Ott came to the Sheriff's Office and later I was
10 arrested that day.

11 The investigative reports that I have
12 from Mr. Amick, they all end at January the 16th. I
13 do have typed versions, and I have part of his
14 written version of these reports, and there are some
15 notes in there. But the material that I'm
16 requesting, Your Honor, is the material from January
17 16th to May 27th.

18 And I had my mother make some
19 additional copies so the State could look at this,
20 and I have a copy for the Court, if Your Honor would
21 like to take a look at it. I do understand that
22 work product information and internal prosecution
23 documents are not discoverable under the rule, and I
24 completely understand that.

25 However, Your Honor, I do have some

1 case law, if Your Honor would like to hear it, that
2 say I'm entitled to this stuff. This is not work
3 product information, because this information that
4 I'm seeking, Your Honor, is before my arrest.

5 There was no prosecution initiated.
6 It was before any warrants were even served on me.
7 So this is material that Detective Amick has that is
8 throughout this investigation prior to my arrest.
9 And in some of his handwritten notes, Your Honor, he
10 makes notes in there of -- refer to typed reports
11 and refer to different documents that does not
12 appear in discovery. Could I get the State's
13 position on that, Your Honor?

14 MR. WILLINGHAM: I have not met with
15 Detective Amick yet. We were tracking down
16 witnesses. If there's anything, again, that is
17 Brady exculpatory material, I will turn it over to
18 him. If there's anything pursuant to Rule 5, I will
19 turn it over to him.

20 Any written report, official report
21 of law enforcement, I will turn over to him. Mental
22 impressions, work product of that officer, I cannot
23 agree to turn over to him and would not agree to
24 turn over to him.

25 If there are other statements of

1 witnesses that are contradictory to their written
2 statements or statements that they testified to at
3 court, again, that was exculpatory, I'd have to turn
4 it over to him. But mental impressions and work
5 product of the officer, Judge, I just can't agree to
6 turn over.

7 THE COURT: And the Court would agree to
8 that. I think what you're entitled to is if in
9 their investigation there are some reports which
10 would be exculpatory or help to impeach witnesses
11 that they do present, then I think you'd be entitled
12 to get that through Brady.

13 I think they would be required to
14 give you that. Their mental impressions or personal
15 notes that they made that really are not exculpatory
16 or that would be beneficial to you in your case as
17 far as impeachment purposes or exculpatory materials
18 and that kind of stuff, then you're not entitled to
19 it.

20 I would agree with the Solicitor on
21 that. You're not entitled to every single thing
22 they've got. Now, he said he would give you any
23 official reports. For instance, if they made an
24 incident report, you're entitled to that.

25 If they made a witness statement or

1 an official report in there, they would give you
2 that. But if these are just their -- even though
3 these are part of the investigation, if these are
4 mental notes by the officer, mental impressions or
5 that sort of thing he's saying that they use for
6 preparation for trial and that, then you're not
7 entitled to it.

8 If it's exculpatory or inconsistent
9 with their own case or impeachment material for
10 witnesses -- in other words, if a witness came in
11 and testified under oath and presumably would come
12 in and do so again to one thing and they had
13 information that was contrary to that, you would be
14 entitled to know that, because it would be
15 potentially exculpatory because it would be
16 impeachment of that witness, reflect on their
17 credibility, whether they're telling the truth or
18 not.

19 But other than that, you're not
20 entitled to their mental impressions and that kind
21 of thing. You're not entitled to that under
22 discovery. That's what the Solicitor is saying.

23 They'll provide to any official
24 statements and any incident report, that kind of
25 stuff that contains those materials, and you'd be

1 entitled to them, and any exculpatory material, any
2 inconsistencies of witnesses. In other words, if
3 they told one thing and then came and testified as
4 to another, you'd be entitled to that.

5
6 MR. STARNES: Yes, sir. The information
7 in this that I was specifically requesting, Your
8 Honor, was handwritten notes from Detective Amick.
9 I understand that these notes do exist from my
10 experience with the Lexington County Solicitor that
11 was involved in this case.

12 And the information that I'm
13 requesting, Your Honor, falls under the meaning of
14 State versus Heyward Bryan, and it's cited at 415-
15 SE2-806, and State versus Hamilton, which is cited
16 at 276-SE2-784.

17 In State versus Bryan, Your Honor,
18 this was a distribution of crack cocaine case that
19 took place in Florence County, South Carolina. This
20 was a SLED investigation relating to drug
21 distribution near a school zone.

22 The SLED agent who investigated this
23 case testified and indicated that she had made
24 handwritten notes after the purchase, which were
25 later typed. The typed version was given to the

1 Solicitor's Office, and the handwritten notes
2 remained in the SLED file in Columbia.

3 The Solicitor gave the defense
4 counsel only the typewritten notes. This case was
5 reversed because there was material that was -- some
6 of the material that were in the handwritten notes
7 were not in the typed notes, and vice versa. And
8 the South Carolina Supreme Court reversed Bryan on
9 that issue.

10 THE COURT: Was it because they were
11 exculpatory or because they were inconsistent, could
12 be used for impeachment purposes? Do you know? I'm
13 not looking at the cases right now.

14 MR. STARNES: Yes, sir, it was exculpatory
15 for impeachment purposes. And the South Carolina
16 Supreme Court relied on Pennsylvania versus Richey,
17 which is cited at 480-US-39 --

18 THE COURT: Don't just cite your cases
19 right now. Just tell me, was the basis of the
20 reversal the fact that there was exculpatory
21 materials in those statements?

22 MR. STARNES: Yes, sir, that was the basis
23 of the material -- of the reversal.

24 THE COURT: He's saying he's going to turn
25 that over to you, anything that's exculpatory or

1 inconsistent with regard to -- that you would be
2 entitled to. If there are inconsistent statements
3 that would be used for impeachment purposes or any
4 exculpatory materials, anything that was said in the
5 written notes that perhaps are not in the typed
6 incident report or official report, then you would
7 be entitled to it.

8 As I understand what the Solicitor is
9 saying, he would turn that over to you. But just
10 mental impressions or thoughts that you can't use
11 for impeachment purposes or would be exculpatory to
12 you, then they would not turn that over as being
13 work product preparation.

14 MR. STARNES: I understand their position,
15 Your Honor. If there is material that's
16 questionable --

17 THE COURT: If it's questionable, they
18 ought to present it to the Court and let the Court
19 make the decision in camera --

20 MR. WILLINGHAM: I'll do that, Judge.

21 THE COURT: -- and to protect the record,
22 we could always make a copy of it and make it a
23 Court exhibit for any appellate purposes.

24 MR. STARNES: Yes, sir.

25 THE COURT: We could do it once the Court

1 resolved it. Of course, if the Court ruled that
2 you're entitled to it, that would be the end of the
3 matter.

4 MR. STARNES: Your Honor, I believe that's
5 it. I've got one more matter that I would like to
6 take up with the detention center -- excuse me, I do
7 have one more matter with Mr. Willingham, and I
8 haven't served him a request on this or anything.

9 Your Honor, there is some information
10 that is in possession at the South Carolina Law
11 Enforcement Division. There were various
12 departments within that agency -- toxicology,
13 serology, ID, fingerprint, and firearms.

14 Your Honor, what I would propose to
15 do is I understand pursuant to State versus Jones
16 that I have a right to their protocol and their
17 quality control procedures on how they do
18 toxicology, for example. And I would ask the State,
19 if they have this information, to turn it over to
20 me, or I could equally get it from SLED myself, if
21 they take the position that --

22 MR. WILLINGHAM: I don't have it, Judge.
23 If he can get it from them, it would probably be
24 easier. You said we're going in November.

25 THE COURT: I think if you request it from

1 SLED, they would provide that to you, what their
2 protocol is and the methods they use to safeguard,
3 and quality control to make sure that the methods
4 they use in carrying out their tasks in that are
5 secure against problems which might contaminate
6 those, or their whole protocol about the way they do
7 it.

8 I'm sure they would provide that to
9 you. Again, I'm just thinking ahead of time, if
10 there was any question about that, maybe the State
11 could facilitate that, if they decline to turn it
12 over to a defendant.

13 MR. WILLINGHAM: If they decline to turn
14 it over to Mr. Starnes, they could certainly turn it
15 over to us.

16 THE COURT: And you can turn it over to
17 him. Certainly, he would need that information so
18 that if, obviously, he wanted to get someone to
19 review their procedures, etc., he would be entitled
20 to do that in plenty of time for the trial. That's
21 the main thing.

22 MR. STARNES: Yes, sir. I've got one more
23 matter, Your Honor, and this is a matter I would
24 like to take up with the detention center. Mr.
25 Willingham may have a position in it. I'm not sure.

1 Just by history, Your Honor, the
2 Lexington County Detention Center has facilitated
3 numerous requests from me, and they've been very
4 good about it. I've been able to receive documents
5 through my mother.

6 She prints it. I have stuff on a CD,
7 a disk, that Mr. Brackett provided to me. She
8 provides these documents to me. I tell her what
9 page number I need. I have a subscription to WESLAW
10 Researching, which I'm able to conduct legal
11 research.

12 I actually do this with my mother on
13 the phone, because she doesn't understand these
14 cites and the bodies of these opinions and things of
15 that nature. She doesn't understand the legal
16 aspect of it.

17 WESLAW has been kind enough to
18 provide me with 24-hour research assistance.
19 They've given me an 800 number so I can call their
20 reference attorney 24 hours a day, and they help me
21 do research.

22 I do have a paralegal, Mr. Walker, a
23 court-appointed paralegal, and he conducts certain
24 legal research for me. I have run into problems
25 with Mr. Walker upon certain different things, Your

1 Honor.

2 I guess this request is kind of made
3 to benefit me. I don't know the jail's position. I
4 can understand that there are certain things that
5 they don't want to do. I'm certain that there's
6 certain requests that I make that they don't want to
7 open these doors for another inmate that may come
8 behind me, and --

9 THE COURT: And it's not just one. It may
10 be numbers of them.

11 MR. STARNES: I understand.

12 THE COURT: And they have limited ability.
13 But go ahead.

14 MR. STARNES: Yes, sir. But getting back
15 to the circumstances of this case, Your Honor, and
16 the history of it, there are numerous prosecutors
17 that's been involved. And looking at this request
18 from a standpoint of judicial economy and saving
19 money, I'm sure the Court's aware of the funding
20 that's been involved with Mr. Walker, and doing
21 legal research, and doing the footwork for me on the
22 outside.

23 But it would save the State a lot of
24 money by paying him to do legal research if I could
25 conduct it on my own. The detention center has

1 allowed my mother to bring me a foot locker. And
2 inside that foot locker, Your Honor, I have a
3 cassette player that I listen to cassette tapes.

4 Judge Westbrook was kind enough to
5 write an order and allow me to have the previous
6 trial on audio tape. So I can go and listen to
7 these audio tapes, take notes. Some of this
8 information that the State has provided me has been
9 on VHS. I've converted some of that over to DVD, so
10 they let me have a DVD and a VHS player.

11 They take me to a place in Booking,
12 and they secure me in that place to where they can
13 observe me. And the detention center has numerous
14 video cameras throughout the detention center.
15 They've been kind enough to let me use a room at
16 night to, when other inmates are locked down, I can
17 go into this room from 11:00 at night and study till
18 6:00 in the morning.

19 So it's got surveillance, it's got a
20 video camera in it. In addition, Your Honor, I'm at
21 the distance between you and I to an officer that
22 observes me while I'm in there reading and studying.
23 I understand the detention center's position on some
24 of these requests, and maybe this is overboard.

25 But I figured since I'm asking the

1 State for funding doing legal research, I feel it
2 would be the right thing to make this request, Your
3 Honor. As I stated before, they've given me
4 numerous -- they've allowed me to have numerous
5 things stored in this foot locker, take me to
6 Booking, lock me in, and tape, and give me access to
7 a TV and stuff.

8 I can conduct this legal research,
9 and I can eliminate this paralegal account to where
10 I would not have to ask the Court for any additional
11 funding for Mr. Walker to do legal research for me.
12 If the Court or if Mr. Tate would consent to the
13 order, or maybe if we could get some help from the
14 Court, I can eliminate this paralegal account.

15 If not, the down-side to it, Your
16 Honor, is I'm going to have to ask for additional
17 funding to do paralegal research. What this request
18 is about, Your Honor, is would the detention center
19 consider allowing me to have a laptop computer.

20 It's a small notebook. The imaging
21 system in the courtroom here that we have, attorneys
22 in civil trials -- and I'm sure Mr. Willingham may
23 do it -- he can hook up to this equipment here with
24 a laptop computer. Microsoft has something called
25 Power Point presentation.

1 It's a very effective tool. It's a
2 very effective tool in the criminal field. It's a
3 very effective tool in the civil field. I'm not
4 really computer literate, and I would need some time
5 to understand this. I can't come to trial and hook
6 up a laptop notebook up here to do a Power Point
7 presentation or to use these projection screens and
8 stuff.

9 And if they would be kind enough, I
10 believe they can do this in a secure manner, Your
11 Honor. They can lock me into a room, as they do
12 now. I have access to the TV. They can lock me in
13 there.

14 They've got surveillance with a video
15 camera. They've got officers that can surveille me,
16 and they can give me access to this laptop that
17 would allow me to do computer research. This would
18 -- as I stated before, this would eliminate me
19 asking the Court for any additional funding for Mr.
20 Walker's services.

21 In addition, Your Honor, one of the
22 things -- one of the problems that I'm having in
23 conducting legal research right now is I'm trying
24 not to do it with Mr. Walker, because of the money
25 involved in it, with his travel coming down and

1 providing me these legal opinions and stuff.

2 The method that I'm using right now,
3 I do it with my mother on the phone. The detention
4 center has been really good about giving me extra
5 phone time to do this. I do have a little problem
6 with telephones at the jail because I'm restricted
7 to the time limits of when I can do this, because I
8 have to redial.

9 And especially when I call WESLAW, if
10 I have to redial, I get a different reference
11 attorney. And it would alleviate a burden on my
12 mother, because when we get closer to trial, these
13 things speed up. And I'm sure Your Honor -- the
14 nature of these cases, the research it involves in
15 things, these things -- the waters can get pretty
16 muddy closer to trial.

17 So, Your Honor, this request that
18 I've made, I would ask the jail's position, if they
19 would be kind enough to allow me to purchase -- not
20 asking for State funding to purchase, but if they
21 would me to purchase a laptop notebook so I can
22 review the digital discovery Mr. Brackett has
23 provided. And in addition, I could conduct my own
24 legal research.

25 There's a case, Bounds versus Smith

1 and Casey versus Lewis. It doesn't directly say
2 that the detention center has any certain way that
3 they have to provide access to the courts. There is
4 some language in there, Your Honor, that does state
5 that you can use local experimentation.

6 It would behoove me tremendously if
7 the detention center would consider this request,
8 Your Honor. I could do this research myself. Most
9 of all, I could eliminate the paralegal account.

10 And I understand their position in
11 the security involved in this, that they don't want
12 to open up a can of worms for the next pro se inmate
13 that's going to come and say, "Well, Norman Starnes
14 had it, and I want it."

15 But given the nature of this case,
16 Your Honor, and the fact that we've had multiple
17 Solicitors in here, given the fact that I've been in
18 the detention center now going on eight years
19 waiting for this retrial when the case is 11 years
20 old, maybe there would be enough in there that would
21 allow me to pass through that door to grant this
22 request and close it so that no other inmate could
23 go through it, given the facts, circumstances, and
24 the history of this case.

25 In addition, as I pointed out before,

1 the funding involved in it. But whatever the Court
2 orders me to do, Your Honor, I'll do it. This is
3 just something that it would behoove me better if I
4 could do, to conduct the legal research myself from
5 the satellite notebook.

6 I understand the jail's position in
7 it, and I'll certainly allow them to respond -- I'm
8 sure that would be fair -- if they would give me
9 their position on it, Your Honor.

10 MR. TATE: May it please the Court, Judge?

11 THE COURT: Yes, sir, Mr. Tate.

12 MR. TATE: Your Honor, I took the liberty
13 of making an additional copy of Lewis versus Casey.
14 And if I may approach, I'll hand that up.

15 THE COURT: Yes, sir.

16 MR. TATE: Lewis versus Casey is a United
17 States Supreme Court case --

18 THE COURT: Does Mr. Starnes have this?

19 MR. TATE: He cited it in his --

20 THE COURT: Okay.

21 MR. TATE: -- motion, so I'm assuming he
22 does, Your Honor.

23 THE COURT: Okay.

24 MR. TATE: The United States Supreme Court
25 took the opportunity to tell the Ninth Circuit they

1 were flat wrong. Again, the holding in Lewis versus
2 Casey may not be applicable for pretrial inmates,
3 and there are only several circuits which have even
4 addressed that, and it does seem to be on a case-by-
5 case basis.

6 They have never addressed the Lewis
7 versus Casey argument. Nonetheless, the holding is
8 fairly simple, is that in citing bounds that the
9 inmate must have access to the Court. Now, of
10 course, in Lewis versus Casey was trying to certify
11 the class as well.

12 Bounds did not create an abstract,
13 freestanding right to a law library or legal
14 assistant. Further, Bounds acknowledges the right
15 of access to the courts. I could not make any
16 better argument than Mr. Starnes has in the last ten
17 minutes that he's had wonderful access to the
18 courts.

19 And where I can certainly appreciate
20 the funding of indigent in the state of South
21 Carolina, I also have to consider the funding and
22 the constraints on the detention center, which
23 currently has 941 inmates.

24 Given that and given all the things
25 in the bankers' boxes and the foot lockers Mr.

1 Starnes has, access to televisions and DVDs, his
2 being allowed to set up almost a private room in his
3 housing unit, excluding other inmates from that,
4 additional telephone time, extra time of his
5 paralegals, including an entire Saturday with part
6 of his defense team with use an empty pod, countless
7 meetings with investigators and law clerks, and
8 access to the Court, Your Honor, we're standing here
9 on Mr. Starnes' motions today.

10 He has incredible legal access. That
11 said and after looking at Lewis Casey, the facility
12 feels it would be a grave security risk to give Mr.
13 Starnes unlimited access to research of the Internet
14 and the communication of the Internet.

15 However, if Mr. Starnes would like to
16 provide some sort of laptop that can be examined by
17 our IT person -- of course, not for content but just
18 to make sure it's what it purports to be -- and that
19 he can do these things by CDs or DVDs or something
20 that his mother, or the Solicitor's Office, or
21 somebody else provides without on-line, we have no
22 objection to that.

23 As to his concerns with the telephone
24 system, we contacted the contractual telephone
25 provider for the detention facility, and they have

1 specifically said there's no way they can adapt the
2 system for a single inmate without changing the
3 system -- with all the inmates for unlimited time,
4 it could be a housing nightmare if we have 60 people
5 trying to use four telephones in the period of the
6 hours they have.

7 That said, sir, we're certainly
8 willing to allow Mr. Starnes to have a laptop or a
9 notebook, so long as the media he uses are CDs or
10 something his mother can bring in to load on a
11 laptop.

12 THE COURT: You're saying as long as
13 there's no Internet access?

14 MR. TATE: But we cannot permit Internet
15 access. And I believe under Lewis versus Casey,
16 that specifically holds that those type decisions
17 should remain with the folks that are over on page
18 three and again on page 11 of Lewis versus Casey.
19 From the WESLAW printing, those decisions are proper
20 with the folks that run the jail. And they'd simply
21 ask please not to permit that.

22 THE COURT: They're saying they would let
23 you have a notebook, provided you didn't have
24 Internet access, which means that if you wanted to
25 prepare a Power Point presentation, I think you

1 could do that if you have a TV and what have you.
2 But they do not want to establish a precedent for
3 Internet access even for legal research.

4 MR. STARNES: I understand, Your Honor.
5 The contract that I'm in with WESLAW is Internet. I
6 mean, they do provide it on CD-ROM, and I could
7 probably get that. But I'll have to ask --

8 THE COURT: How do you get your WESLAW
9 research done now? How is that done?

10 MR. STARNES: Right now, they -- what the
11 detention center does is they allow me to -- the
12 inmates are locked down at 4:00 in the evening. On
13 the weekends and sometimes during the weeknights,
14 I'm allowed to use the phone when other inmates are.

15 But they are kind enough to let me
16 have telephone access from 4:00 to 6:00 on the
17 weekends when the other inmates are locked down.
18 What I do, Your Honor, is I call my mother on the
19 phone. I read these cases, and I see other cases
20 cited in them.

21 I give her the cites, and she can
22 print them if I find them by citation. But to do
23 key cite research and to look up a legal point, my
24 mother doesn't understand it. Some of the things, I
25 will call a reference attorney.

1 They have a 1-800 number that they
2 provide to me, and I call a reference attorney. I
3 do that by three-way calling. I have my mother on
4 the phone. She's on the computer at home. I've got
5 a reference attorney in Aitkin, Minnesota, from
6 WESLAW helping me conduct legal research.

7 Sometimes it takes five minutes to
8 get one of those attorneys on the phone. And when I
9 do get them on the phone, I'm restricted because the
10 time runs out on the phone. And I may be not even a
11 third way into what I'm trying to explain to the
12 reference attorney what I'm trying to do.

13 So then I have to call back. I have
14 to call my mother back. She in turn has to initiate
15 a three-way call to WESLAW, which then in turn
16 assigns it to a different reference attorney because
17 it's not a direct line. It assigns -- when I call
18 WESLAW or my mother three-ways WESLAW, I may get --
19 there's 124 attorneys that work in that office.

20 And I may get a different attorney
21 that isn't familiar, and I have to start the process
22 all over. Like I said, the contract that I'm in
23 right now, it's a one-year contract that the sales
24 rep actually cut the price in half for me than the
25 contract that Mr. Walker had. I have the same

1 contract. It's a South Carolina plan.

2 I explained to him my situation. He
3 cut the price in half and let me have it for half
4 price, provided nobody else had access to that data
5 base but me. The WESLAW data base can only be
6 accessed through the Internet.

7 Now, my sales rep did explain to me
8 that they do provide CD-ROM products. But in order
9 to do that, I have to sign another contract, and
10 it's actually starting the process all over.
11 There's just no way I can do it by CD-ROM. There's
12 just -- I can't do it, unless the Court will provide
13 me funding for that. Then I can extend this
14 contract, and WESLAW can directly mail me the CD-ROM
15 products.

16 THE COURT: What kind of money are we
17 talking about here?

18 MR. STARNES: I would have to --

19 THE COURT: Can you ballpark it?

20 MR. STARNES: The WESLAW plan I've got
21 right now, Your Honor, is \$1,882, and that is for
22 one year. I'm restricted to only a South Carolina
23 data base and the Federal Fourth Circuit.

24 And I can't go in and print a brief.
25 I cannot print an American Law Review or something.

1 Secondary sources I can't get, because it's not
2 included in that plan, because the price he give me
3 doesn't allow that.

4 The CD-ROM products, I'm not sure,
5 Your Honor. I would have to call my sales rep to
6 find out. I'm sure maybe since this contract
7 doesn't expire till the 3rd of January, I believe,
8 and he may apply some of that if I ask for CD-ROM.

9 I'll certainly contact Mr. Marshall
10 at WESLAW and see if I can redo this contract so I
11 can get it on CD-ROM. But it would be a tremendous
12 help to me. In addition, I wouldn't have to call
13 Your Honor and ask for additional money for Mr.
14 Walker.

15 I like Mr. Walker. He's a good
16 person. I have problems with some of the things
17 that he's done. He's lost videotapes, he's lost
18 motions, and I think he's made some
19 misrepresentations, not only to me but to the
20 investigator on the case.

21 I'm trying to part ways with him, but
22 I don't want to at this point, because I don't want
23 to shoot myself in the foot, because his hourly wage
24 is \$15 an hour. And I cannot get another legal
25 assistant for that price. So I'm kind of between a

1 rock and a hard place.

2 But I will contact WESLAW and see if
3 they will -- see what kind of agreement I can get.
4 I will communicate to the Court that I believe there
5 is around \$421 left in that WESLAW account. Mr.
6 Walker brought a funding order to Your Honor that
7 you signed that allowed me some funding for WESLAW.
8 Originally --

9 THE COURT: Check into it and see, and let
10 me know what we're talking about in the way of a
11 proposal, and I'll see what I can see about signing
12 an order allowing you to get that. But I don't know
13 much money you're talking about. But, again, we can
14 just look into that. And if that solves the
15 problem, the CD-ROM would solve the problem.

16 MR. STARNES: I believe that would do it,
17 and I very, very much appreciate Mr. Tate's
18 position. I'm not saying that they're not
19 facilitating my requests, because they have really
20 bent over backwards and --

21 THE COURT: I think they have, too.

22 MR. STARNES: They have.

23 THE COURT: I'm considering the fact that
24 there are no attorneys involved in doing the
25 research and that there are paralegals doing the

1 research. And I would consider it if you want to
2 make a request for funding for CD-ROM. Depending on
3 what we're talking about, how reasonable it is, I
4 would consider that as opposed to requiring them to
5 do something that they're afraid to set a precedent
6 on because there are so many other people out there,
7 so many other prisoners that are out there.

8 And once you open the door, it's kind
9 of hard to explain why you let one do it and you
10 can't let the others do it, even if you've got a
11 good basis for it. That is, he's pro se. It's a
12 death penalty case that's been around for a while.
13 If you give them all that, they still don't
14 understand that.

15 MR. STARNES: I understand.

16 THE COURT: You understand -- "We're being
17 treated differently. He was given special
18 treatment. We're entitled to the same thing." So
19 let's see if we can work around that. If you will
20 submit me a proposal, let's see what we can do.

21 MR. STARNES: Yes, sir. Your Honor, just
22 two more very quick --

23 MR. TATE: Your Honor, we'd like to be
24 heard very briefly on the previous point. Not even
25 our correctional officers in the pod center have

1 access on their computers. Also, it's not just a
2 flood gate argument for other inmates.

3 There's also severe care/custody of
4 giving anybody Internet access that would provide
5 them access to weapons information, improvised
6 explosion devices, pornography, and all the other
7 stuff you can find on the Internet. At the same
8 time, I do not ever want to get in a position of
9 wanting to know or screen what Mr. Starnes looks at
10 in any medium.

11 THE COURT: Well, I think your position is
12 well taken. And let's look for this alternative
13 means. Maybe we can do it that way.

14 MR. STARNES: Yes, sir. One other --
15 excuse me, two other very quick things, and we'll be
16 done here, Your Honor. If the detention center
17 would be kind enough to allow me to come up here to
18 understand how this technology in the courtroom
19 works.

20 I spoke to one of the officers
21 earlier, and I believe he spoke to Ms. Frick. They
22 have an individual here at the Clerk of Court's
23 Office that handles this. This is a matter I did
24 take up with Judge Westbrook before, and I believe
25 Mr. Tate's position was they didn't have a problem

1 doing it, but they would do it when they had the
2 security to do it.

3 And I'm not saying ask them if
4 they've got to do it next week or make another
5 demand, Your Honor. But if they would be kind
6 enough in advance to bring me up here so I can
7 understand how this stuff works and how to hook it
8 up.

9 THE COURT: I think that's a reasonable
10 request. At some point in time -- and I guess you
11 want to do that in the fairly near future, is that
12 correct?

13 MR. STARNES: Yes, sir.

14 THE COURT: We're a long way from trial
15 yet. But would you prefer to wait till you get
16 closer to trial for that?

17 MR. STARNES: If we could do this, if I
18 could see about the CD-ROM, to make sure that we're
19 going to go through with the laptop. Once we do
20 that, if that goes through and I can get the CD-ROM,
21 I'll make a request to Mr. Tate or the captain at
22 the detention center, and they can bring me up here
23 whenever they want, whenever it's convenient for
24 them, if they could do it within a timely manner. I
25 just don't want to get close to trial and be

1 fumbling on this stuff. I just want to kind of have
2 a --

3 THE COURT: Maybe that could be done when
4 whoever knows how to operate the equipment is up
5 here, that you would be able to use during the trial
6 for a presentation. If that can be done like on a
7 week like this, a chambers week, when maybe all the
8 courtrooms aren't being used or this courtroom is
9 not being used, whichever, so he could get some
10 instruction and make some notes on how to use it,
11 that would be fine.

12 MR. STARNES: Yes, sir. One last thing,
13 Your Honor, and then we'll be through. We took up -
14 - actually, it was a request I made to Judge
15 Westbrook and simultaneously made it to Judge
16 Kinard.

17 And what this relates to, Your Honor,
18 I've been through one capital case, and that was the
19 original trial that was held back in 1996, 1997.
20 I've barely gotten familiar with how courtroom decor
21 works, how to address the Court, the Solicitor, what
22 to do, what not to do.

23 I've never give security any
24 problems. My inmate jacket is excellent. And I'm
25 sure if the detention center had 941 other inmates

1 like Norman Starnes, their special management unit
2 and the lockup unit wouldn't exist, because there
3 would be no inmates there.

4 I had made a previous request to
5 Judge Westbrook, and actually it wasn't done on
6 record. It was kind of -- well, it may have been
7 done on record. I'm not sure. But what I'd like to
8 do, Your Honor, is we're pretty far away off from
9 trial, I believe.

10 We're looking maybe at a November 5th
11 trial date, is my understanding. If possible,
12 security could facilitate it, if they would be kind
13 enough during a capital case to transport me over
14 here so I could observe at least the voir dire part
15 of the death penalty case.

16 I proposed this issue to Judge
17 Westbrook, and he didn't have a problem with it.
18 There was a case that was supposed to start over
19 here titled State versus Taylor Radwell, which Judge
20 Kinard was assigned to hear that case. I wrote
21 Judge Kinard, and they were going to let me over
22 here and watch the Radwell case.

23 The case got conflicted, and there
24 was a plea in the case. So I never got to observe
25 the trial. And I don't make this for no frivolous

1 request to give the security officers no problem or
2 anything. It would just maybe behoove us all.

3 I would have a better understanding
4 of how everything is done in the courtroom. I would
5 like Mr. Tate's position on that. If they want to
6 put a Tazr belt on me -- they've got a Tazr belt on
7 me -- if they want to put one of those shock belts
8 on me, a Tazr belt on me, chain me to a chair or
9 chain me to Mr. Anderson -- he's a pretty big guy --
10 I have no objections to any security procedures that
11 the detention center would take. But I would make
12 that request, Your Honor, if they would consider
13 that.

14 MR. TATE: Your Honor, I will have to go
15 back and talk with the sheriff and the jail
16 administrator. But this has come up once before,
17 and the big issue became it's truly the defendant
18 who is on trial at that time's courtroom or that
19 person's day.

20 It's extremely burdensome on the
21 Sheriff's Office to have a second inmate that has
22 been noticed of the death penalty present in the
23 courtroom. And I don't know how even the next Trial
24 Judge may feel about that. But there are a huge
25 number of care, custody, control manpower concerns.

1 Plus it's the other defendant's and the other
2 Judge's courtroom at that time.

3 And I don't know how they would feel
4 about any security that may have to be provided for
5 that and any impact it may have on their client --to
6 have another inmate and even more police officers in
7 the courtroom. I'm just going to have to explore
8 that with the sheriff, and the court security folks,
9 and the jail security.

10 THE COURT: Well, you can look into that.
11 I can see certainly it would have to be -- that's
12 the problem -- cleared with the Trial Judge over
13 that particular case. And it would need to be
14 cleared, I think, to make sure that defense counsel
15 in that particular case are not going to have any
16 problems with your being present, because you've got
17 to consider the fair trial issues with the other
18 persons as well.

19 Of course, I have not had this
20 request before, and I don't think I can make that
21 decision, because I think the Trial Judge who
22 presides over another death penalty case has final
23 the say-so on what's going to be allowed in the
24 courtroom and not allowed in the courtroom.

25 And so I can't make that decision for

1 them. I would say that that could be discussed with
2 whoever the Judge is and also with defense counsel
3 in that particular case. If they have no objection
4 and security can be provided adequately, this Court
5 would obviously have no problems with it.

6 But I really won't control this
7 issue. I can see why you'd want to do it, but I
8 can't -- and it probably would be helpful at the
9 time of trial if you had an opportunity to observe
10 so you'll know how to conduct yourself and to
11 conduct your trial.

12 So I obviously don't have any
13 problems with it, but I can't make that final
14 decision. I certainly think it would be helpful to
15 you, and it might be helpful to the Court at the
16 time of trial, if you knew what to expect, and the
17 format, and the procedures.

18 But you can look at that. Maybe it
19 won't be a problem. Maybe he can sit in the back of
20 the courtroom with an officer or something, or maybe
21 he can put on civilian clothes with stuff underneath
22 civilian clothes so wouldn't be intrusive and let
23 somebody sit back there with him, if it wouldn't be
24 a big problem.

25 Certainly, it's going to be helpful

1 to the Court if he knows what to expect and how to
2 proceed when we get to the trial. He doesn't have a
3 right to that, in my opinion. So I'll leave it up
4 to all.

5 If it can be done and if the Judge
6 and the defense attorneys in the other case are
7 agreeable to it, and you feel that you can provide
8 adequate security, I don't have a problem with it.
9 But ultimately it will be up to the Trial Judge who
10 hears that particular case.

11 MR. STARNES: Yes, sir. And that was
12 Judge Westbrook's position in it, too, is for me to
13 contact Judge Kinard, because he was the one that
14 was actually assigned to the Radwell case. But
15 since you're assigned to my case and Mr. Tate's
16 here, that's why I felt it would be appropriate to -
17 -

18 THE COURT: I don't have any problems with
19 you exploring that possibility. And, obviously, I
20 do not have any objection to it. But I would not be
21 the one to make the decision.

22 MR. STARNES: Yes, sir. Your Honor, are
23 we -- I guess get the State's position or maybe the
24 Court's position. I did receive an e-mail from Your
25 Honor that stated that we were tentatively scheduled

1 for November 5th. Is that --

2 THE COURT: That's pretty firm. What we
3 have to do is get in line. Of course, everybody has
4 to have an opportunity to get ready for trial.

5 And we have new Solicitors who are
6 prosecuting the case, and they have boxes of
7 material to go through. Hopefully, we're moving
8 right along. They thought they could probably be
9 ready in early November and favored the early
10 November date.

11 And I checked with the Clerk also and
12 also the Administrative Judge here about scheduling
13 to see what was available, because they have a
14 number of other death penalty cases, along with all
15 the other court that's scheduled on the very same
16 week. And there will be other court scheduled.

17 But they have agreed that we could
18 try this case, that we'd be available to try it the
19 weeks -- two weeks, we set aside two weeks --
20 beginning November the 5th. And we're going to do
21 our very best to try the case those two weeks. So
22 you can plan accordingly.

23 So keep that in mind with your time
24 schedule, I ask the Solicitor to keep it in mind,
25 because it's hard to get times here. I've got to

1 switch out with Judges and get them to go hold my
2 court and let me come down here. We already have a
3 schedule for the rest of the year.

4 I'm scheduled to be holding court
5 elsewhere those two weeks. So I have to get Judges
6 who are scheduled down here to take my weeks there
7 and let me come down here and try this case. But
8 we're working all that out.

9 So we're going to try to work with
10 those two weeks and do our very best. You can never
11 say that nothing can go wrong with that, because
12 something could happen. But if nothing happens, my
13 plan is to try it beginning the week of November the
14 5th.

15 MR. STARNES: Yes, sir. One last thing,
16 and we'll be through, Your Honor. I believe from
17 hearing Mr. Willingham today that I feel confident
18 he'll give me a fair trial and comply with discovery
19 rules. And that's what I ask for, Your Honor.

20 I did make a previous motion to the
21 Court when we were up in Rock Hill to have these
22 hearings here in Lexington, because jurisdiction
23 remains here in Lexington. Hopefully, we're not
24 going to have many more pretrial motions.

25 But looking at the funding aspect of

1 this thing, Your Honor's time, and I know you do
2 work every -- just about every week up in Rock Hill.

3 THE COURT: Not just in Rock Hill. I'm
4 supposed to be in Chesterfield next week, and I was
5 in Spartanburg two weeks ago holding court over
6 there. We go wherever they send us. But we already
7 have the schedule for the balance of this year.

8 MR. STARNES: Yes, sir.

9 THE COURT: And all except four or five
10 weeks this year, we're in court every single week.

11 MR. STARNES: Yes, sir.

12 THE COURT: That's what makes it
13 difficult.

14 MR. STARNES: I understand that. To get
15 to my point, Your Honor, and I know you do travel.
16 I have your schedule from the Court Administration's
17 site for the rest of the year.

18 I don't think it would be
19 unreasonable for me -- I did make a request to the
20 Court to have these hearings down here, looking at
21 this thing from judicial economy, Your Honor
22 traveling, Mr. Willingham traveling from
23 Spartanburg. And you are in Spartanburg quite often
24 hearing cases.

25 THE COURT: About one week a month, I

1 think, but, yes.

2 MR. STARNES: Yes, sir. If it would
3 benefit the Court to have hearings up in Rock Hill,
4 if it would make it easier on Your Honor --

5 THE COURT: It would probably be even
6 easier to hear it in Spartanburg while I'm over
7 there.

8 MR. STARNES: I don't know.

9 THE COURT: It's six of one, half of a
10 dozen of another.

11 MR. STARNES: Yes, sir.

12 THE COURT: But if I'm already over there,
13 and they're there, and we have you brought there,
14 it's probably easier to hold it in Spartanburg while
15 I'm there. Otherwise, you've got to come to Rock
16 Hill, and they've got to come to Rock Hill, and
17 we've got to work with their schedules. But if we
18 can do that, it would be easier to hold it in Rock
19 Hill than it is down here --

20 MR. STARNES: Yes, sir.

21 THE COURT: -- as far as hearings. But
22 even better would be Spartanburg, since I'm already
23 assigned there about one week a month. If we could
24 schedule it during a time when I'm there and when
25 they're available, that would probably be even

1 better.

2 MR. STARNES: I don't have a problem with
3 that. I did make a motion to have the rest of these
4 hearings here in Lexington. I do want the trial
5 here in Lexington.

6 THE COURT: We absolutely will try the
7 case here. You're right, jurisdiction is here.
8 Venue is probably here, although, obviously, the
9 hearings can be held anywhere. But you're entitled
10 to have the trial here, no question about it.

11 MR. STARNES: Yes, sir.

12 THE COURT: And the trial will be here.

13 MR. STARNES: If it would be in your own
14 court, Your Honor, I wouldn't object to being
15 transported there if you want to hold these in
16 Spartanburg while Your Honor is hearing cases in
17 Spartanburg or in the future if you want to hear the
18 rest of it in Rock Hill, whatever is easier for the
19 Court, Your Honor.

20 THE COURT: Well, I appreciate that. And
21 we'll communicate and decide, depending on what
22 motions, how many we've got, when they need to be
23 heard. We'll work it out then for the schedule.
24 But we'll all try to agree on the time, and we can
25 do that through e-mail communication, I think.

1 MR. STARNES: Yes, sir.

2 THE COURT: And we'll do that. If we've
3 all got to come to Lexington to do this, we won't be
4 coming that often. So we'll have to try to do them
5 when we can come down here and try to do all of them
6 we can while we're here.

7 But I would appreciate that. I think
8 it would maybe facilitate getting motions heard a
9 little quicker sometimes if we have that option --

10 MR. STARNES: Yes, sir.

11 THE COURT: -- to come either to
12 Spartanburg or Rock Hill to do them. We're already
13 there, so we won't all have to work our schedules to
14 get down here, so that would be good. I appreciate
15 that.

16 There were two other things that I
17 had taken under advisement and haven't ruled on, if
18 you recall that, one of the last hearing, and one
19 had to do with -- you remember you went over this
20 with Mr. Brackett up there when you were going
21 through all these files and boxes of stuff and
22 materials up there?

23 MR. STARNES: Yes, sir.

24 THE COURT: And there were two things that
25 you all didn't agree on, and I said I would take a

1 look at and rule on later, after I had a chance to
2 look at it. Do you recall that? You want to come
3 up and look at them --

4 MR. STARNES: Yes, sir.

5 THE COURT: -- if you'd like to refresh
6 your memory?

7 MR. STARNES: Yes, I remember what this
8 is.

9 THE COURT: And the other one is medical
10 records --

11 MR. STARNES: That's correct.

12 THE COURT: -- in this file right here,
13 okay. And so let me go back and revisit that issue
14 now.

15 Mr. Willingham, you all were not
16 involved in that up there. Mr. Brackett and his
17 investigator went with Mr. Starnes and I think maybe
18 his investigator. Anyway, they went through all
19 these records privately to decide if they can agree
20 on what could be turned over and not turned over,
21 and that that couldn't be turned over, I guess were
22 maybe returned back to me.

23 In any event, that was done. Now,
24 there were two things that they really didn't agree
25 on and kind of left it up to the Court. And one of

1 them, it looks like they're jail photocopied mail,
2 the envelope from mail coming in that they did for
3 security reasons.

4 So the question was -- I guess I
5 could maybe hear you further on that. I couldn't
6 see the relevance to the State of these. It looks
7 like most of these, there is mail to Mr. Starnes on
8 just about every page. And then there's other
9 inmates I guess they just photocopied on a ledger or
10 something. And it looks like most of them probably
11 came from his mother, isn't that correct?

12 MR. STARNES: Possibly.

13 THE COURT: Is Ms. Evans your mother?

14 MR. STARNES: That's correct, Your Honor,
15 yes, sir.

16 THE COURT: Most of them came from her to
17 him. I can't remember -- maybe there was one other
18 person in here. So I guess the question is why
19 would the State need that information.

20 MR. WILLINGHAM: It's hard for me to
21 answer without seeing it, Judge. I don't know.
22 Whatever Mr. Brackett's argument, I guess I'll have
23 to rely on that.

24 THE COURT: He really didn't make an
25 argument. He just didn't think that --

1 MR. STARNES: Your Honor, I didn't know
2 that we were going to address this today. I have
3 done some legal research on this. If possible, if
4 Mr. Willingham's position is that he wants
5 photocopies of all my correspondences coming into
6 the detention center, I have a legal issue with
7 that.

8 I'm not prepared to address the Court
9 on that day, because I didn't know that we were
10 actually going to take that up. I have conducted
11 some legal research on it. I can't cite the cases
12 off the top of my head, because I've read thousands
13 of cases.

14 I think Mr. Tate even made the
15 argument that the Fourth Circuit Court of Appeals
16 has not ruled on this issue. The case that does
17 come to mind is Procunier versus Martinez. That is
18 a U.S. Supreme Court case, Your Honor, dealing with
19 inmate mail censorship.

20 THE COURT: Now, this is not censorship.
21 So let's don't get into that. What we've got here
22 is, if I recall the previous hearings, the
23 corrections center, their policy was that they
24 photocopy all of these envelopes that come in.

25 They have a record of all the mail

1 that comes in. It has nothing to do with
2 censorship. And all this is, is a photocopy of the
3 envelope. It doesn't have any of the letters in
4 here, only a photocopy of the envelope.

5 So whoever has a return address on
6 here, there might be a date on here. It looks like
7 most of these are in 2005 I think and two in 2006
8 maybe. They have a person's name in their return
9 address on here, and of course Mr. Starnes' name and
10 his jail address, and that's it.

11 It looks like to me at least 90
12 percent of these, or 95 percent of them, are from
13 his mother. So I don't really see the point in it.

14 MR. WILLINGHAM: And, again, my gut
15 reaction is if he didn't want me to have it, then
16 there must a reason that I'd want it or need it.

17 THE COURT: Why wouldn't you want him to
18 have it?

19 MR. STARNES: Two reasons, Your Honor.
20 One is the documents that you've got does reflect
21 the return address of my mother. Interviewing
22 potential defense witnesses, I try to do as much as
23 I can to communicate in writing.

24 Some things I don't feel comfortable
25 about talking about on those phones at the detention

1 center. Another one, let's just say, for example,
2 I've got Dr. So-and-So that is an expert in this
3 case that I may not want to reveal to them because
4 I'm consulting with Dr. So-and-So.

5 They get that information. Then they
6 can go talk with this individual. "How do you know
7 Norman Starnes?" "Well, I consult with him."

8 THE COURT: Well, I think we've agreed as
9 far as visitors to the jail. I think as I recall it
10 that would not be made available. The jail would be
11 able to obtain it, but it would not be made
12 available to the Solicitor's Office or to any
13 investigators, so that you would have that
14 confidentiality.

15 MR. STARNES: Yes, sir. Some of these
16 witnesses are from out of town. They're not
17 entitled to the visitors list, but yet they're
18 entitled to a photocopy of someone who may visit me
19 from out of town by this individual's name.

20 It's the same thing, and my opinion,
21 Your Honor, is that their name's on the visitation
22 roster where their name appears on the photocopy of
23 that letter. Now, they don't look inside that
24 letter. The officers don't read that letter. But
25 they know exactly who I'm communicating with.

1 If the Solicitor's position is -- and
2 I'm not really prepared to make this legal argument
3 now, and I would ask that we could probably handle
4 this at the next hearing. But if the Solicitor
5 wants that information, then I want a copy of all
6 their mail coming in their mailbox.

7 I think it's an equal playing field.
8 Certainly, the detention center, the Sheriff's
9 Office, or any investigator of Mr. Willingham's
10 office, if I were under a bond and at home, they
11 would not have a right to open my mailbox, photocopy
12 my mail, put my mail back in the mailbox or hand-
13 deliver it to me, and keep the photocopy.

14 I think that's against federal law.
15 And it is strictly against the policy of the U.S.
16 Post Office. But if they want to see who's
17 communicating with me by mail, I want to see who's
18 communicating with them by mail.

19 That way, if an employee that worked
20 for me seven years ago decides to write the
21 Solicitor's Office -- of course, I won't know what's
22 in that letter, but I'll know that person has
23 communicated with Mr. Willingham. It's an even
24 playing field, equal protection, Your Honor.

25 And, again, I'm not prepared to make

1 this legal argument. But I have done some legal
2 research, or I have printed some opinions, had my
3 mother print some opinions from the Fourth Circuit
4 Court of Appeals. And I believe the case of State
5 versus Elvison.

6 I do not have the cite, Your Honor.
7 But in Elvison, they discuss this type of activity
8 in a pretrial setting. They do talk about once a
9 defendant is convicted, he does lose certain
10 constitutional rights.

11 In the Department of Corrections, I
12 can't seal an envelope and mail it out. They have
13 to look at it for contraband. Likewise, if someone
14 writes me in the Department of Corrections, they
15 open it, open the letter up just to read it and look
16 for contraband.

17 In a pretrial setting, they don't do
18 that. But what they are doing is photocopying those
19 envelopes, and I object to it. And I'm not
20 prepared, like I said, to make a legal argument.
21 But I think, Your Honor, that I've got case law that
22 I can back.

23 I don't know why Mr. Willingham would
24 want this information to begin with. It's personal
25 and confidential. I have a First Amendment right to

1 communicate with people. I would ask the Court to
2 inquire why he would even want photocopies of my
3 mail.

4 THE COURT: I'm not sure if he knows why
5 he would want it.

6 MR. STARNES: And if he doesn't want it,
7 then the issue is moot. The detention center
8 doesn't give it to him, and we end there. If not, I
9 need to make a legal argument and do some legal
10 research.

11 THE COURT: Let me ask you why you would
12 be entitled to it, Mr. Willingham.

13 MR. WILLINGHAM: I don't know, Judge. And
14 if we follow the logic concerning the visitation
15 logs, that I can't find out other than placing an
16 investigator outside his house who he visits with on
17 a daily basis, that applies to the visitation logs
18 as well.

19 By the same token, he's not saying
20 why I would go get the postmaster copy all his mail
21 as well. The only thing that I can think of
22 possibly is if there is a witness in this case
23 that's a State's witness that is communicating
24 behind our back with the defendant, I'd like to know
25 that.

1 I wouldn't know how to find that out
2 otherwise. That's the only thing that immediately
3 comes to mind that I would have any need for that
4 type of information.

5 MR. STARNES: Likewise, Your Honor, if
6 there's a defense witness communicating with the
7 Solicitor's Office, I would like to know that
8 information. But I'm not prepared to really make
9 this legal argument right now.

10 If you'll keep this information under
11 seal, I'm sure we're going to have another hearing
12 before trial, and we can take this issue up at the
13 next hearing, because I don't --

14 THE COURT: I don't think it's going to be
15 a legal issue. It's going to be a question of
16 discovery, what they're entitled to know.

17 MR. STARNES: I have not been served a
18 reciprocal discovery request, period. And I know
19 all this couldn't be sent out from me, because I
20 can't provide it to him, because they don't provide
21 me --

22 THE COURT: Well, these are records that
23 they keep in their regular course of operation
24 there. Of course, they have their reasons for it.
25 So it's something that they keep in their ordinary

1 course of business, which those records are normally
2 available to anybody upon request.

3 MR. STARNES: I understand Mr. Tate's and
4 Mr. Quigg's position on institutional security.
5 Your Honor, I don't object to that. That is the
6 purpose why they photocopy this mail.

7 Now, if they have other purposes or
8 other intents, I would certainly like to hear from
9 Mr. Tate on that. But, again, Your Honor, I'm not
10 in a position to make a legal argument to preserve
11 this record on this matter, because if the
12 Solicitor's Office does get this information and we
13 end up in a court later on down the road, I promise
14 this will be an issue before that Court, and they
15 can decide.

16 And the Appellate Courts look at
17 these cases pretty hard, and I bring to the Court's
18 attention the Elvison case, Your Honor, if Your
19 Honor would be kind enough to look at that. But I'm
20 not prepared to make a legal argument right now,
21 Your Honor, because I didn't know we were going to
22 address this.

23 THE COURT: All right, I'll tell you what
24 I'm going to do with this. I just can't see the
25 relevance to the State. I think the fact that Mr.

1 Starnes is incarcerated and the envelopes, they have
2 to photocopy those as they come in so they'll have a
3 record of that does not entitle the State really to
4 see who's writing him.

5 You may want to know that, but I
6 don't know that you have a right to do that, any
7 more than if he was out of jail and at home. If
8 he's getting mail there, there's no way you could
9 get that information. And so, because of that, I
10 don't think you're entitled to it.

11 Now, one thing I would do is I'd be
12 willing to hold onto this information. And if it
13 becomes an issue during the trial on discovery, if
14 he fails to provide reciprocal discovery to the
15 State, then if that becomes an issue, then the Court
16 would keep these records and revisit it at that
17 point, and look and see if he's failed to provide
18 reciprocal discovery to the State, if there's
19 information in here that would establish that.

20 But, other than that, the Court will
21 just simply retain these and not make them available
22 to the State. That's on the copies of envelopes
23 made. And I would say that it looks like the ones
24 I've got here -- I don't know if this is supposed to
25 be all of them or just a representative group --

1 these look like they're mostly 2005, it looks like
2 to me. There might be some a little later than
3 that, but basically it looks like it's 2005.

4 MR. STARNES: Your Honor, one thing about
5 the mail. It's my understanding at this time that
6 the State can't receive that information. Your
7 Honor, I would ask for an order. It doesn't have to
8 be in writing.

9 I think that Mr. Tate, even on record
10 before, even stated on record that no inmate
11 records, period, be released to the Solicitor's
12 Office without an order of the Court. And, Your
13 Honor, I would ask the Court to directly --

14 THE COURT: We didn't do that, did we?

15 MR. TATE: When I received Your Honor's
16 two orders and your order from the bench preceding
17 that, that was the discussions I had with the
18 detention center, simply in an abundance of caution.

19 Any records that go to the
20 Solicitor's Office involving Mr. Starnes come
21 through me and I submit to the Court. I thought
22 that was just I was overly cautious, if you will --

23 THE COURT: Okay.

24 MR. TATE: -- just to avoid any sort of
25 confusion. And we can treat the envelopes with the

1 mail. We photocopy the envelopes. I'm still
2 deciding myself whether there's any reasonable
3 expectation of privacy when something is put in the
4 U.S. Mail.

5 And I want to make sure the record is
6 clear on the procedure. The envelopes are
7 photocopied when they come in. They're delivered to
8 the inmate in the housing unit. They're opened in
9 front of the inmate.

10 I understand they actually open all
11 the mail in front of the inmate, checking for
12 contraband. And that is in accordance with South
13 Carolina minimum standards for detention centers and
14 constitutional law in both the U.S. Supreme Court,
15 the Fourth Circuit, and probably the Ninth Circuit.

16 THE COURT: I think you all have a right
17 to your procedures for protection in that. The
18 question is what's to be turned over to the State --
19 in a pretrial mode, what's to be turned over to
20 them. That's the issue. It's not whether you have
21 a right to do that and make your copies of persons
22 who are providing mail and that comes in and they
23 have some contraband in it or some issue like that.

24 That's not the issue, though, really
25 here. The issue is what should be turned over to

1 the State and what Mr. Starnes should be able to
2 keep confidential, essentially as work product, away
3 from the State. So that's the issue. If you just
4 didn't turn it over to them, you can keep your own
5 records, as long as you don't turn it over to them
6 or any investigator.

7 As I recall it, no investigator with
8 the Sheriff's Department likewise would have this
9 information. It's just kept as part of the records,
10 and that protects Mr. Starnes. All right, I think
11 we're clear on that.

12 Now, the other thing there was no
13 agreement on was medical records, Mr. Starnes'
14 medical records while he's in jail. And I'm looking
15 through those, and I really don't think -- there
16 also is a list of people visiting him.

17 Again, I think the thing to do there,
18 I guess, would be his visitors there, a list of his
19 visitors and their addresses, is that the Court
20 would hold onto that as well. And if he fails to
21 provide in reciprocal discovery the information, if
22 these persons happen to be witnesses in the case for
23 him or if he uses them in any way in the
24 presentation of his case, then the Court would have
25 this and keep it in case that issue comes up later,

1 to see if he's complied with discovery or not.

2 And we can do that at the time of
3 trial. If he calls witnesses at that, the Court
4 could then just have this retained by the Court and
5 not to be revealed to the State, unless some issue
6 comes up about whether he's provided reciprocal
7 discovery or not. Then it might be relevant on that
8 issue.

9 But, otherwise, I don't see it as
10 relevant to the case. So it wouldn't be provided.
11 Mr. Starnes, you understand that?

12 MR. STARNES: Yes, sir, Your Honor, I do.

13 THE COURT: Okay. And you're familiar
14 with the list I'm talking about?

15 MR. STARNES: Yes, sir -- the visitation
16 list?

17 THE COURT: Yes, sir.

18 MR. STARNES: Yes, sir. And, again, I
19 have no way, unless I request it from Mr. Tate, they
20 maintain these records, Your Honor. I don't.

21 THE COURT: Well, I understand. But if
22 you need a copy of this, you can have a copy of it,
23 if you don't have this.

24 MR. STARNES: No, sir. I have a copy of
25 that.

1 THE COURT: Okay.

2 MR. STARNES: That's on a CD-ROM. In the
3 future, if they don't provide this information -- I
4 was actually provided that information from Mr.
5 Brackett. It was on that CD that he gave me, or I
6 would have never gotten it.

7 THE COURT: But you know who's visiting
8 you, and you know that the persons visiting you
9 ultimately are going to be used at trial. If that's
10 a matter that needs to be provided to the State with
11 reciprocal discovery, then it's your obligation to
12 do that.

13 Again, if there are people on that
14 list who visited you there at the jail, then the
15 State's not entitled to know that at this point.
16 But if it's somebody that you choose to use in your
17 trial and you've met with them, and it's a matter
18 that should have been provided by the State, this
19 could be used to challenge you on that issue.

20 MR. STARNES: Yes, sir.

21 THE COURT: So that's the only thing I
22 would say to you, is whoever visits you, if it's
23 somebody that you plan to use at trial in any way in
24 presentation of your case at trial, or even for
25 impeachment purposes, whatever, then if the State is

1 entitled to that information by the sake of
2 discovery, then you're required to provide it to
3 them.

4 That would be the only reason I would
5 see that they would be entitled to that information,
6 if there was somebody that you said you hadn't met
7 with and you in fact had.

8 MR. STARNES: Yes, sir.

9 THE COURT: Okay.

10 MR. STARNES: Under Rule 5, I'll just put
11 on the record that insanity is not going to be a
12 defense in this case. I think that's mentioned in
13 the rule.

14 In addition, Your Honor, there's been
15 funding for various experts. I have not consulted
16 with only but two. There have been no reports
17 generated that I'm aware of. I will contact these
18 individuals and see if there's any reports that are
19 generated.

20 Of course, any scientific testing or
21 anything of that nature, I understand I have an
22 obligation to turn that over to Mr. Willingham, and
23 I'll do that in a timely manner.

24 THE COURT: Okay. At this point, you
25 don't have to say who you're going to use and all

1 that. So you have plenty of time for that, to see
2 if you may, as long as you comply with the discovery
3 on a timely basis, as you're required to do.

4 And so we don't need to go there.
5 Now, the other thing is I've got a whole big stack
6 of records, and if mental illness is not going to be
7 used as a defense in any way in the guilt phase of
8 the trial, then I don't see how these records would
9 be relevant to the State.

10 However, they could be relevant on
11 the issue if we got to the sentencing phase of the
12 trial. Of course, obviously, at the guilt phase, if
13 there's a not guilty verdict in the guilt phase,
14 we'd never get to that. But if there was a guilty
15 verdict in the guilt phase and we got to the
16 sentencing phase of it, then mitigation becomes an
17 issue.

18 And also the State is entitled to
19 enter certain information, including adaptability to
20 prison life and that sort of stuff, or in mitigation
21 you would have a right to present that. These
22 mental health records may be relevant at that point.

23 I don't think they would be in the
24 guilt phase if you're not going to get into any
25 mental health issues there.

1 What are your thoughts about
2 that, Solicitor?

3 MR. WILLINGHAM: Judge, if they're going
4 to be relevant in the penalty phase, I'd like to go
5 ahead and have it. There's that 24-hour waiting
6 period to work on it and consult with my experts on
7 refuting any type of diminished capacity or other
8 mental illness type of argument. But I'll defer to
9 the Court's judgment there.

10 THE COURT: I --

11 MR. STARNES: May I respond to that, Your
12 Honor?

13 THE COURT: Yes, sir.

14 MR. STARNES: Again, I wasn't prepared to
15 take up this issue. I didn't know we were going to
16 take it up today, and I apologize for that. I have
17 done a little bit of legal research on it, and I
18 agree that if we do get to the penalty phase that
19 they would be entitled to that information. But
20 there's that key word "if," if we get there.

21 THE COURT: Well, here's the thing. Let
22 me anticipate you just a minute. They're saying,
23 "Well, we don't want to have it 24 hours before
24 we're going into the penalty phase. If we're going
25 to have to prepare for a penalty phase, we're

1 entitled to have it before then so we can prepare
2 and use this perhaps to consult with any experts"
3 that they might plan to call in the penalty phase,
4 etc.

5 They're entitled to have that
6 information. And I don't disagree with that. I
7 think the only way you can be prejudiced by them
8 having these records would be if there was something
9 in them they could use against you in the guilt
10 phase of it.

11 If you're not going to use any type
12 of mental health defense or mental illness defense,
13 then I don't think it's really relevant. But, on
14 the other hand, it could be relevant in a penalty
15 phase.

16 And I think that it becomes relevant
17 then on that issue, and I think the State is
18 entitled to it, because these are records that are
19 made. These are records kept in the regular course
20 of the detention center's business and what have
21 you. And so I think they would be entitled to them
22 at that point.

23 MR. STARNES: Yes, sir. If we could --
24 I'm sure we'll have a pretrial hearing several
25 months before this trial starts -- could we revisit

1 that issue at that point so I can present a legal
2 argument?

3 THE COURT: I'll be glad to, but I don't
4 think it's going to come down to a question of a
5 legal argument. I don't think you're going to find
6 a specific case on point on this. I think it comes
7 down to common sense of relevancy or nonrelevancy.

8 MR. STARNES: Yes, sir.

9 THE COURT: If it's relevant to them --
10 and these are public records -- I think they're
11 entitled to them. And so it's just like let's say
12 you've got somebody who is not in jail for two years
13 before trial. And they went and got treatment for
14 mental health problems or complaints they were
15 having at that time or some problems like that,
16 acting-out problems and that sort of thing, when
17 they went to a hospital or something like that or
18 went to a doctor and got treated.

19 I think the State could get those
20 records for the penalty phase if they were relevant
21 on the issue of whether somebody's adaptable to
22 prison life or not adaptable, etc. So I think it
23 becomes relevant on that issue and any other issue
24 perhaps that the defense is going to raise in the
25 penalty phase in the way of mitigation.

1 I think they would be entitled to
2 respond to those if there's something in here that's
3 helpful to them at that point. The question is when
4 are they relevant and when are they entitled to
5 them. And as long as they can't use it against you
6 in any way in the guilt phase, I don't think it
7 makes any difference when they get them --

8 MR. STARNES: Yes, sir.

9 THE COURT: -- if they're entitled to them
10 in the penalty phase. So I'll hold up on this and
11 not make a ruling on it, but I'm telling you what my
12 thoughts are.

13 MR. STARNES: Yes, sir.

14 THE COURT: But if you come up with
15 something by the time we meet again on the next
16 hearing, we can take it up again if you've got
17 something you want to present at that point.

18 MR. STARNES: The only case that comes to
19 mind is State versus Morris Hughes, and that was a
20 case, Your Honor, that was tried by I believe Judge
21 Hayes in your circuit.

22 THE COURT: Right.

23 MR. STARNES: And they talk about the
24 Supreme Court talks about the confidentiality of
25 medical records, and the medical records in Hughes

1 was an issue. However, mental illness in that case
2 was an issue also on PCR.

3 As I stated before, insanity and
4 mental illness is not going to be a defense. But if
5 Your Honor would be kind enough to hang onto these
6 records and let me do some additional research.

7 THE COURT: Right.

8 MR. STARNES: I would have to agree with
9 the Court that if they had these records and they
10 didn't use them against me in the guilt phase, then
11 certainly I couldn't be prejudiced by it. I
12 understand there's a right to medical privacy, but I
13 do understand that's limited by orders of the Court.
14 And I certainly don't have any problem --

15 THE COURT: Well, it's limited by what's
16 relevant for trial and needed for trial.

17 MR. STARNES: Yes, sir.

18 THE COURT: It's limited to that extent.
19 So, in any event, I'll keep the matter under
20 advisement. I've told you what my information is,
21 and I will not turn these over to the State. I'll
22 keep them in my possession and control until we make
23 a final ruling on it.

24 If you want to present something to
25 me at the next hearing or if you want to send

1 something in advance, you can do that. But just
2 make sure whatever you send to me, make sure you
3 send the Solicitor.

4 As I told you before, anything they
5 send me, they should send a copy of it to you.
6 Anything you send to me, you should copy them,
7 unless it's something that you're entitled to
8 present to me on an ex parte basis, such as funding
9 and those kind of issues only.

10 MR. STARNES: Yes, sir. One more quick
11 thing, Your Honor, and then we'll be through. There
12 were materials that Your Honor took when we were up
13 in Rock Hill and we had this conflict hearing with
14 Mr. Brackett. Just for ID purposes, those
15 documents, were they made a Court exhibit?

16 THE COURT: Not yet, because I was still
17 looking at them. That's the things I'm talking
18 about.

19 MR. STARNES: Yes, sir.

20 THE COURT: These are the things that I
21 took, the two things I've gone into. Now, that's
22 the only ones I received. Are you saying there are
23 some others?

24 MR. STARNES: I was under the impression
25 that when Capt. Quigg testified that Your Honor took

1 -- you took some confidential documents that went
2 into -- that had defense experts, witnesses, and
3 things of that nature when Capt. Quigg testified
4 about it, Your Honor, a copy of it. And I don't
5 know, was it made a Court exhibit? I just need to
6 know --

7 THE COURT: Did I make a ruling on it?

8 MR. STARNES: Yes, sir. You conflicted
9 the Sixteenth Circuit.

10 THE COURT: Right. But I thought that was
11 something that -- no, I don't think I took
12 possession of those. I think those should have been
13 in the seven boxes of documents and what have you
14 that you went through with Solicitor Brackett in
15 deciding what should be turned over to the Seventh
16 Circuit Solicitor's Office.

17 MR. STARNES: Okay.

18 THE COURT: I don't think I kept -- what I
19 kept I think are just these two things. These are
20 the two things that you and Mr. Brackett were not
21 able to agree on, the ones I've just gone through.
22 And they were turned over to me to let me look at
23 them, and we would resolve it at a later hearing,
24 which this is. I don't think. Let me look to be
25 sure, now.

1 MR. STARNES: The record --

2 THE COURT: Let's see what else I've got.

3 MR. STARNES: The record reflects, Your
4 Honor -- because I just read the transcript last
5 night -- you requested the copies to be kept because
6 I referred extensively to the document numbers. And
7 Your Honor requested a copy of them because I
8 referred to a lot of the documents by number. And
9 as a
10 result --

11 THE COURT: All right, wait a minute, and
12 let's see. I'm looking back through the whole file
13 here. Hold on just a moment. Let me get the
14 officer to hand these to Mr. Starnes and see if this
15 is what you were talking about.

16 MR. STARNES: Yes, sir, that is correct.
17 That is what I'm talking about.

18 THE COURT: All right, I still have those.
19 They've been sealed, that's correct.

20 MR. STARNES: Yes, sir.

21 THE COURT: They're still part of my file.
22 I haven't turned them over.

23 MR. STARNES: Yes, sir. Do you need these
24 back now?

25 THE COURT: Yes, sir. I can't remember

1 the reason I just sealed them and didn't turn them
2 back in to you. But you have a copy of these,
3 right?

4 MR. STARNES: Yes, sir.

5 THE COURT: Okay. I can't remember what
6 position the State took on these. Did they say they
7 should be included, or not?

8 MR. STARNES: No, sir. Mr. Brackett's
9 position was that they shouldn't have received that
10 material.

11 THE COURT: All right, then --

12 MR. STARNES: Those were the documents
13 that --

14 THE COURT: Let me just keep these sealed,
15 then. I don't see a problem with that. They have
16 not been turned over to the Seventh Circuit
17 Solicitor's Office, and they will not be turned over
18 to them. But let me keep them, because I can't
19 remember exactly what was in it. If we need to, we
20 can make them a Court exhibit. I don't think we'll
21 need to do that, unless some issue comes up about
22 it.

23 MR. STARNES: Yes, sir. My concern was I
24 didn't know from my records did I need an ID number
25 or something on those -- in other words, Court

1 Exhibit Number One, Two, or Three, or whatever. But
2 if Your Honor, if you --

3 THE COURT: Well, there would be no need
4 to make them a Court exhibit --

5 MR. STARNES: Yes.

6 THE COURT: -- if the State doesn't get
7 them.

8 MR. STARNES: I guess that was my
9 question, Your Honor.

10 THE COURT: That doesn't become an issue
11 in the case, so they haven't gotten them. So they
12 can't be an issue in the case. For whatever reason,
13 I sealed them at the time and said they would not be
14 made available, and I've done that.

15 I really don't know why I did it, why
16 they shouldn't be turned back to you, since we
17 agreed that these were sent by the detention center,
18 really by inadvertency, to the Solicitor's Office.
19 And they provided them back to you in discovery, as
20 I understand, isn't that correct?

21 MR. STARNES: Yes, sir, that's right.

22 THE COURT: But we agreed that they
23 weren't entitled to this. I have no problems with
24 turning it back in to you. But let me just hold on
25 it for now, because I want to refresh my memory on

1 the transcript. But, rest assured, I don't see a
2 need to make it a Court exhibit.

3 We can make it a Court exhibit, but
4 it's not relevant at this point, because this
5 Circuit Solicitor's Office has not had it. It's
6 been in my possession ever since that hearing as
7 part of my records, and I will keep it there.

8 MR. STARNES: Your Honor, do you need a
9 copy of the transcript of that hearing?

10 THE COURT: Probably so, because I don't
11 think I have it. And so if you've got a copy of
12 that, that'll be fine.

13 MR. STARNES: Your Honor, would you like
14 the original or just a copy?

15 THE COURT: A copy will be fine. These
16 have not been turned over to the Solicitor's Office
17 and will not be turned over.

18 MR. STARNES: Yes, sir.

19 THE COURT: All right, that brings us down
20 to the last issue, the first one we took up with
21 regard to the transcript.

22 MR. TATE: Thank you, Your Honor. The
23 detention center is not willing to stipulate that
24 the report is false. That is not contained in the
25 record. I'm not willing to pit the recollections

1 and the handwritten notes of the defendant here
2 against a certified copy of the Court. For the
3 record, Your Honor, we're largely talking about page
4 49 through 53 where Mr. Starnes --

5 THE COURT: I don't have that transcript
6 either. Is that this same one?

7 MR. TATE: It's the one that was just
8 handed up, Your Honor.

9 THE COURT: Okay, all right. What page,
10 now?

11 MR. TATE: Beginning on page 49, Your
12 Honor, and ending with page 53. Specifically the
13 transcript at page 52 on line two is the specific
14 question. There are several pages of questions or
15 discussion back and forth between Mr. Starnes and
16 Capt. Quigg, who was on the stand under oath and
17 subject to cross-examination about the report and
18 what it does or does not say.

19 Mr. Starnes at line 21 specifically
20 asked, as reflected in the certified transcript, "So
21 then Sgt. McDermott wrote a false report?" At that
22 point, the Court requires clarification, and a
23 colloquy occurs between the Court and Mr. Starnes.

24 Nowhere in this transcript is there
25 an admission from a witness that any report was

1 falsified, and I am not willing to stipulate to that
2 at this time. Secondly, Your Honor, with Mr.
3 Brackett's folks being out, this document being
4 under seal, these fine folks coming down here from
5 Spartanburg to prosecute this thing, I cannot
6 imagine where Mr. McDermott's veracity in the
7 preparation of report is in any way relevant, unless
8 he takes the stand to testify in some phase of this
9 trial.

10 And I don't anticipate him doing
11 that, and I don't think Mr. Willingham does. I
12 think it's not even an issue, but we will not
13 stipulate to there's a false report. And the
14 argument seemed to come out whether -- the
15 discussion seemed to be headed, "Is this false, or
16 is it incomplete?" And that conclusion was never
17 reached in the record.

18 THE COURT: Tell me, Mr. Starnes, how you
19 say that the transcript is wrong? How do you say
20 it's inaccurate?

21 MR. STARNES: Your Honor, raising the
22 Court's attention to page 52 of the transcript, this
23 was a -- this was when Capt. Quigg was testifying.
24 The issue in here, because it doesn't pick up the
25 page number -- the issue was there were some

1 photocopies made that Sgt. Scott McDermott made at
2 the detention center.

3 As a result of making these
4 photocopies, which was work product, Sgt. McDermott
5 wrote an incident report about it. I asked Capt.
6 Quigg on the stand about this, "So" -- and I'm
7 referring to page 52, line 11.

8 THE COURT: Okay.

9 MR. STARNES: "So you had instructed him
10 to make the photocopies of this confidential
11 material, is that correct?" Capt. Quigg's response
12 on line 13, "No, I acquiesced to your request to
13 make photocopies. I didn't instruct him to do
14 anything. You asked for it, and I said, 'Okay, we
15 will do that to aid in your pro se case.'"

16 My question, "Okay. But it says" --
17 and I'm referring to "it" being the incident report
18 that Scott McDermott wrote. "But it says, 'I
19 informed Capt. Quigg of this request and was
20 instructed to go ahead and make the photocopies.'
21 Is that an incorrect statement?"

22 Capt. Quigg's answer, "That's an
23 incorrect statement," and that is at line 20, Your
24 Honor. My next follow-up question then was, "So
25 then Scott McDermott wrote a false report?" I

1 believe the audio tape reflects that he, Capt.

2 Quigg, answered that in the affirmative.

3 The way to resolve this, Your Honor,
4 I made a request to the Court, I believe it's Rule
5 607(i) of the South Carolina Appellate Court Rules,
6 that I would like to hear the audio tape of this
7 recording to in fact see if what I believe is true
8 or not.

9 And that will tell us what happened,
10 because I believe that audio tape will tell the
11 truth. At line 20, Capt. Quigg says, "That's an
12 incorrect statement." Now, if they're challenging
13 and saying that's not what Capt. Quigg said, because
14 my follow-up question was, at line 21, "So then
15 Scott McDermott wrote a false report?"

16 THE COURT: And your position is that he
17 answered yes to that?

18 MR. STARNES: It's my position, Your
19 Honor, he answered in the affirmative.

20 THE COURT: All right. Then, Mr. Watkins,
21 can you identify that on the tape and let us see if
22 we can replay that?

23 MR. WATKINS: Yes, I think I can. I've
24 got the tapes with me.

25 THE COURT: All right.

1 MR. WATKINS: I've just got to find the
2 spot he's talking about.

3 THE COURT: All right, why don't we do
4 this? We'll take a break. We've been at it quit a
5 while. We'll go ahead and take a break and allow
6 you to see if you can find that on the tape to that
7 particular point. And if you need to look at the
8 transcript here, I'll show you the transcript so you
9 can easily identify it.

10 MR. WATKINS: I've got my laptop.

11 THE COURT: Yes.

12 MR. WATKINS: And if it's okay, I'll bring
13 it up on my laptop. And that way I can do a search
14 to find certain words.

15 THE COURT: Okay. All right, I've got
16 you. I just thought maybe if it helped you to have
17 the -- he says following the sentence, "So then Sgt.
18 McDermott wrote a false report?" And he says that
19 it should reflect a statement that "That's correct"
20 or something of that nature.

21 MR. STARNES: Your Honor, if possible,
22 since I made this formal report, could I be a part
23 of listening to this audio tape? I think I'm
24 entitled to do that, because I have made a formal
25 challenge to --

1 THE COURT: We're going to all listen to
2 it.

3 MR. STARNES: Okay.

4 THE COURT: What I'm saying is I have to
5 give him a couple of minutes to find it on the tape
6 and get it to that point so we can listen to the
7 tape from that statement on. A lot of times, Court
8 Reporters don't come up with it just like that.
9 They've got to find it on the tape.

10 So I'm saying let's all use a
11 refreshment break for about ten or fifteen minutes
12 and come back. And then, hopefully, Mr. Watkins had
13 a chance to pull it up.

14 Yes, sir?

15 MR. WATKINS: Could I get access to a tape
16 player?

17 THE COURT: Madam Clerk, does anybody have
18 a tape recorder that you can access, please?

19 MR. TATE: This looks like a recorder
20 right down here.

21 COURT REPORTER: This one?

22 CLERK OF COURT: Rema's got one.

23 THE COURT: Do you have one, or is there
24 one down there that you have access to?

25 COURT REPORTER: I do, sitting right in

1 front of you.

2 THE COURT: May Mr. Watkins borrow that
3 for a minute, if that's all right?

4 COURT REPORTER: He won't be able to move
5 it, but he's certainly welcome to come up here and
6 work it.

7 THE COURT: You can come up here and do
8 it. We'll all take a break and give you the
9 opportunity to pull that up on your tape. When you
10 get to that point, then we can come back and listen
11 to it. We'll take about fifteen minutes.

12 MR. TATE: Thank you, Your Honor.

13 (Court in brief recess.)

14 THE COURT: Thank you. We're ready to
15 play it.

16 (Whereupon, testimony from
17 a previous hearing was presented to the Court by
18 audio tape.)

19 THE COURT: I couldn't understand what he
20 said. He was trying to say something, and I
21 interrupted him. But I couldn't understand what he
22 said.

23 MR. STARNES: It sounded like -- to me, it
24 sounded like he said, "All right," Your Honor. The
25 report's in there. Previously to that comment, Your

1 Honor -- beg the Court's indulgence just one second.
2 I don't have the page with me.

3 But previously, before he answered
4 the question, I asked him was it a false report, and
5 he clarified it on the record also. I think that
6 will be good enough.

7 THE COURT: Well --

8 MR. STARNES: Out of abundance of caution,
9 can we return back to the table? Would that be
10 okay?

11 THE COURT: Yes, sir, sure. Let me read
12 on. I'm reading on page 53 of the transcript. I
13 think the Court, in order to try to clarify the
14 record, line 22 on page 52 of the transcript, I
15 think when the question was asked by Mr. Starnes,
16 "So then Sgt. McDermott wrote a false report?" I
17 think the Court interjected at that point.

18 I really can't tell. It sounds like
19 he uttered something, but I cannot decipher what he
20 said or if he actually made a statement. He made
21 some sound, but I couldn't tell, and I guess the
22 Court Reporter wasn't able to decipher anything that
23 he said.

24 I couldn't tell in listening to the
25 tape. We listened to it several times, and I could

1 not definitively say he said anything. I could hear
2 a sound, but I couldn't tell what, if anything, he
3 said. And I think the reason for that is because I
4 intervened at that point and was asking for
5 clarification to try to understand Mr. Quigg's
6 involvement in the photocopies being made.

7 So if you look at line 22, I said,
8 "Let me ask you for clarification on the record.
9 Didn't you say in your request that you wanted him
10 to make copies of these photographs?" And, Mr.
11 Starnes, you responded, "Confidentially, yes, sir."

12 And then at the top of 53, then, I
13 said, "I understand confidential, but photocopies?"
14 And you said, "Yes, sir." And I said, "So if his
15 response was 'He told me to go ahead and make the
16 photocopies,' that doesn't mean he was making extra
17 copies to make someone else.

18 "In other words, he wasn't
19 authorizing extra copies. He was okaying him to
20 make photocopies, which there were several documents
21 to be copied, so there would be several
22 photocopies." The clarification I was trying to
23 make was he was not okaying making a duplicate set
24 or more copies of one thing.

25 "Photocopies of seven or eight

1 documents is photocopies of seven or eight
2 documents. But he was not authorizing him to make a
3 duplicate copy or extra copies of the same thing to
4 give anybody else." That was the clarification I
5 was making. You understand that?

6 MR. STARNES: Yes, sir.

7 THE COURT: All right. And then I go on
8 to say, "When you say make photocopies, that doesn't
9 indicate in and of itself he gave them to someone
10 else. He just okayed the photocopies be made. He
11 doesn't say anything about extra copies." See,
12 that's what I'm saying. --

13 And you answered, "No, sir, I asked
14 for that. I requested if they made extra copies to
15 notify me." And I said, "I understand. But if you
16 okayed it for him to go ahead and make the
17 photocopies, you requested more than one copy in
18 your request.

19 "So when you say 'photocopies,' that
20 wouldn't necessarily mean any extra copies that he
21 made, only that he was making what he okayed what
22 you requested, which was photocopies."

23 And you said, "Somebody had to make
24 extra copies." And the Court -- I said -- "He's not
25 okaying making extra copies. For the record, I'm

1 just clarifying that." And then you went on with a
2 question to Capt. Quigg.

3 So I think that the whole point of
4 that clarification was to show that Capt. Quigg
5 okayed making photocopies, but he did not authorize
6 Mr. McDermott to make duplicate photocopies or to
7 give them to anybody else. That's the clarification
8 I was trying to make.

9 But you said, "So Mr. McDermott" --
10 let me go back now to page 52 and start with eleven,
11 where you started. "So you instructed him to make
12 the photocopies of this confidential material, is
13 that correct?" That was your question.

14 His answer, "I acquiesced to your
15 request to make photocopies. I didn't instruct him
16 to make anything. You asked for it, and I said,
17 'Okay. We will do that to aid you in your pro se
18 case.'"

19 Your next question, "Okay. But it
20 says I informed Capt. Quigg of this request, was
21 instructed to go ahead and make the photocopies. Is
22 that an incorrect statement?" And his answer was,
23 "That's an incorrect statement."

24 "So then Sgt. McDermott wrote a false
25 report?" And that's where, between line 21 and 22,

1 is that Capt. Quigg, he made some sound, and I
2 couldn't understand what the sound was. And I think
3 reading this, I interrupted to ask for clarification
4 of what you were asking and what he actually did.

5 But I think the record, without
6 making any change to it, because it's inaudible to
7 me, what, if anything, Capt. Quigg said in response
8 to your question, "So then Sgt. McDermott wrote a
9 false report?" It's inaudible to me, whatever he
10 might have said.

11 In any event, I think that the
12 transcript itself is accurate as to what was said
13 and stated. And I think that it gets the point
14 across, that, number one, the point you were trying
15 to make at that time was these photocopies were to
16 be made confidentially and kept and not turned over
17 to anybody else.

18 No extra copies made or turned over
19 to anybody else. And if extra copies were made, you
20 were to be notified per your instructions to them.

21 MR. STARNES: Yes, sir.

22 THE COURT: All that's clear on the record
23 and on this record. Nevertheless, somehow a copy of
24 them wound up in the Sixteenth Circuit Solicitor's
25 hands, who were prosecuting the case at that time.

1 And all that's agreed, and I think everybody
2 understands that happened.

3 MR. STARNES: Yes, sir.

4 THE COURT: How it happened was not clear,
5 but I understand that did happen. And, of course,
6 that is the primary reason that the Sixteenth
7 Circuit Solicitor's Office was recused by the Court.

8 MR. STARNES: Yes, sir.

9 THE COURT: And now the Seventh Circuit
10 Solicitor's Office is handling this case. So I
11 think the record is pretty clear about it. I think
12 the message is clear. We can't amend it with
13 something we can't understand.

14 And you may think you know what his
15 answer was, but I can't understand it after
16 listening to it five or six times. If he made an
17 intelligible response, I couldn't decipher whatever
18 it was. But it doesn't matter. Your point was
19 made, and it's clear. Based on that, there was a
20 recusal. So what difference does it make?

21 MR. STARNES: Your Honor, the difference
22 of this is I can't tell who he's going to call. If
23 Sgt. Scott McDermott and Capt. Quigg comes in this
24 courtroom, and takes that witness stand, and
25 testifies against me, this transcript is very

1 important on cross-examination.

2 Did he write a false report? Did he
3 put something that was incorrect in that report?
4 Capt. Quigg has already said that. That's an
5 incorrect statement.

6 THE COURT: But we're talking about a play
7 on words. And I don't think there is an indication
8 that he made a false report. I guess maybe you
9 could go back into that if we get to it. But I
10 don't see that this establishes that he made a false
11 report. You're talking about now Scott McDermott
12 making a false report?

13 MR. STARNES: Yes, sir.

14 THE COURT: Okay. And so I guess you
15 could ask him -- Scott McDermott about that, if he
16 were to testify. Or you could call him as a
17 witness, for that matter, I guess, if it was a
18 relevant issue.

19 But if you're only doing it, if they
20 present him as a witness, in an attempt to impeach
21 him with it, I guess that's something you can ask
22 him about, depending on the relevancy at the time,
23 and let the Court make that determination at the
24 time.

25 But the fact of the matter is when it

1 comes down to the photocopies, authorizing him to
2 make the photocopies, and what I was trying to clear
3 up on the record is you asked him to make
4 photocopies of several things, correct?

5 MR. STARNES: Yes, sir.

6 THE COURT: And the testimony is that
7 Scott McDermott asked Capt. Quigg -- his superior, I
8 suppose, that you had made that request -- was it
9 all right to make those photocopies. And Capt.
10 Quigg's testimony was yes, he told him to go ahead
11 and make the photocopies.

12 Now, when you say "photocopies," does
13 that mean that you make one photocopy of each thing,
14 which amounts to photocopies -- that's plural -- or
15 do you mean make extra copies of each thing, which
16 is also photocopies? So it comes down to a play on
17 words.

18 Photocopies can mean a photocopy of
19 eight different things, which would amount to eight
20 photocopies, or you could have eight things that are
21 being photocopied and make a duplicate of each one,
22 which would amount to 16 photocopies. But the word
23 "photocopies" is what he said he authorized, not
24 duplicates or that any extra copies be made and
25 provided to anybody.

1 So he's saying he didn't authorize
2 him to make extra copies. He only authorized him to
3 make photocopies which you had requested. That was
4 his testimony, okay?

5 And you're saying that Sgt. Scott
6 McDermott said that he filed a report saying that
7 the request was made and that Capt. Quigg had
8 authorized him. And he's saying, "I only authorized
9 him to make the photocopies you requested."

10 MR. STARNES: That's correct.

11 THE COURT: Okay. So it looks like to me
12 it's a question of interpretation or wordplay as to
13 what are photocopies. There's no question that
14 extra copies were made. There had to be in order
15 for that to be provided to the Solicitor's Office,
16 who then turned around and supplied it back to you.

17 So it's not like anybody was trying
18 to hide it from you. When they provide it to you in
19 discovery, it's not as if they were trying to secret
20 it away from you and you wouldn't be told about it.
21 Because, obviously, once you got it, you knew that
22 an extra copy had been made and provided to them.

23 MR. STARNES: Yes, sir.

24 THE COURT: All of that's well taken. I
25 don't think you have clarified, though, that

1 somebody made a deliberate false report on this.
2 It's somebody we may have to deal with when we get
3 to the trial if you try to impeach him for false
4 statement or some false report.

5 But I think that's open to
6 interpretation. Certainly, I don't think you can
7 impeach Capt. Quigg with that. Whether you can
8 impeach Officer McDermott with it is questionable
9 also. So I don't think it becomes relevant.
10 Certainly, if Capt. Quigg says, "I authorized him to
11 make the photocopies you requested," I don't see how
12 you can impeach him with that.

13 If McDermott, if he gets on the
14 stand, it's still not a false report, it appears to
15 me, if he said that "Capt. Quigg authorized me to
16 make photocopies, and I made the photocopies." I
17 don't see how that's a false report.

18 The fact that he made extra copies
19 and provided them, I don't think that the report is
20 false, because it didn't say that no extra copies
21 were made. It doesn't say. If it said, "I made
22 photocopies authorized by Capt. Quigg" -- "that were
23 requested by Mr. Starnes and authorized by Capt.
24 Quigg," I don't think that establishes a false
25 report.

1 MR. STARNES: The issue, Your Honor, is
2 Sgt. McDermott says he was instructed by Capt. Quigg
3 to make these copies. Capt. Quigg says, "I didn't
4 instruct him in any manner."

5 THE COURT: He authorized him. He didn't
6 instruct him. He says, "I authorized him to make
7 the copies you requested," which means, "I didn't
8 instruct him to make extra copies."

9 MR. STARNES: I understand. Your Honor,
10 one request on this matter, and I don't think it's
11 nothing unreasonable. Just for the record, Your
12 Honor, to protect the record, I would ask the Court
13 to make that audio tape a part of this record under
14 seal of the case.

15 If it does become an issue later down
16 the road, I'm not an audio technician or something,
17 but this is a matter that's going to be revisited
18 down the road. To protect the record, Your Honor, I
19 don't think it's an unreasonable request. I would
20 ask that that audio tape be kept in the Court's
21 possession.

22 THE COURT: What's the policy on that, Mr.
23 Watkins?

24 MR. WATKINS: Your Honor, I can tell you
25 as an officer of the Court, this being a capital

1 case, I'm not going to do anything with this tape.
2 I'm not going to record over them. I'm not going to
3 erase them. But if he feels more comfortable with
4 you keeping them, I --

5 THE COURT: Why don't we do that. We'll
6 hold onto them and essentially make them a Court
7 exhibit.

8 MR. WATKINS: Okay.

9 THE COURT: If we need for transcription
10 or something, they can be made available for
11 transcription. But in the meantime, the Court will
12 just keep them in the Court's possession. And we'll
13 hold it, and it can be made a Court exhibit, if
14 necessary, later if this goes up on appeal.

15 MR. STARNES: Yes, sir.

16 THE COURT: But I would say to you that
17 the whole question comes down to whether you would
18 be allowed to try to impeach whenever the time
19 comes. And we'd have to look at it and see, because
20 it depends on the context and how it comes in.

21 If Scott McDermott testifies, whether
22 you can impeach him with that or not, the Court
23 would just have to look at it at the time. I'm not
24 going to say you can or you can't. If that's what
25 you seek to do at that time, then the Court would

1 just rule on it at that time, depending on where you
2 are and the context.

3 MR. TATE: Your Honor, just for the
4 record, I'm going to return each and every page Mr.
5 Starnes handed me earlier of his transcript. I have
6 made no copies of this. Capt. Quigg and I discussed
7 them over in the Solicitor's Office. They weren't
8 copied. He now has back everything I had.

9 THE COURT: Right. And I have this copy.
10 You need these back, don't you?

11 MR. STARNES: Your Honor, you said you
12 might need the transcript to look at.

13 THE COURT: Essentially, I might at some
14 point in time probably need it, yes.

15 MR. STARNES: Your Honor, I've got
16 additional copies of that. If Your Honor would like
17 to keep a record of it, I would just ask that you
18 seal it, if you would, Your Honor, because it does
19 contain ex parte matters.

20 THE COURT: It will not be made available

21 --

22 MR. STARNES: Thank you.

23 THE COURT: -- to anyone else. Now, does
24 that take care of the transcript issues?

25 MR. STARNES: Yes, sir, Your Honor.

1 THE COURT: Okay. All right, anything
2 else we need to address while we're all together?

3 MR. STARNES: No, sir, not at this time,
4 unless the State has any issues that they would like
5 to address.

6 MR. WILLINGHAM: Nothing from the State,
7 Judge.

8 THE COURT: All right, let's do this,
9 then. I understand that if you make some additional
10 requests, if requests for hearings are made by Mr.
11 Starnes or by the State, upon those requests then we
12 can try to figure out a time when we can
13 conveniently schedule those.

14 It will be helpful to be able to
15 schedule them, if we can get us all together. If
16 we're already together someplace, it would be easier
17 to schedule that way. But we will try to
18 accommodate everybody upon their request.

19 Obviously, if it's something that
20 you're entitled to have heard ex parte with regard
21 to funding kind of issues and that kind of thing,
22 then we can deal with that. But anything else, any
23 other request, each side is required to notify the
24 other and the basis for it. Whatever you send the
25 Court, in other words, send to the other side,

1 except for an ex parte funding kind of thing.

2 MR. STARNES: Yes, sir.

3 THE COURT: Okay. That's very important.
4 The Court is bound by those ethics, so I ask you to
5 help you out on those ethics by notifying the other
6 side.

7 MR. STARNES: Will do, Your Honor.

8 THE COURT: All right, I'll wait to hear
9 from you, then. And we'll move forward. I would
10 ask the Solicitor to move forward. We've got
11 actually plenty of time to get ready, but we don't
12 want to do anything at the last minute. But if
13 there's anything else that comes up, make your
14 request, and we'll try to schedule another hearing
15 to go over it.

16 Thank you for being here,
17 Solicitor.

18 MR. WILLINGHAM: Thank you, Judge,
19 appreciate it.

20 MR. TATE: Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Tate.

22 COURT REPORTER: Your Honor, I understand
23 the tape is not going to be a Court's exhibit, but
24 you're going to sign for it to just be held in the
25 file?

1 THE COURT: Yes. It may wind up being a
2 Court's exhibit before it's over with.

3 MR. WATKINS: Do you want the tape of the
4 whole hearing or just that one?

5 THE COURT: Just that one, sir. That's
6 all I need.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON AUGUST 21, 2007, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TWENTY-NINTH DAY OF MARCH, 2008.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
 2 COUNTY OF LEXINGTON

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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1 (The following proceedings were held on July
2 13, 2007.)

3 **THE COURT:** All right. We have this hearing
4 pursuant to the letter I received from Norman
5 Starnes wanting to be present during the trial of
6 State versus Finklea that is scheduled to take place
7 beginning August 27th. Mr. Starnes is here.

8 You're Mr. Starnes?

9 **MR. STARNES:** Yes, sir, Your Honor.

10 **THE COURT:** How are you today?

11 **MR. STARNES:** Fine, Your Honor. Thank you.

12 **THE COURT:** Who's here on behalf of the State
13 on that issue?

14 **MR. HUBBARD:** Your Honor, I am, Mr. Hubbard and
15 Mr. Graham are here.

16 **THE COURT:** And, Mr. Starnes, tell me what is
17 it that you want.

18 **MR. STARNES:** Your Honor, first of all, I
19 apologize, I wasn't totally ready for this today. I
20 had no idea I was coming over here, but I do thank
21 the Court for the time and attention to hear me
22 today.

23 Your Honor, briefly, by history, I was arrested
24 in May of 1996 and charged with two counts of
25 murder. A trial was held in this matter for about

1 April of 1997 and it ended in two counts of --
2 getting two counts of the death sentence.

3 In September 1999, the South Carolina Supreme
4 Court heard oral arguments in this case. And on May
5 8th, 2000, the case was reversed and remanded and
6 sent back to Lexington County. And it was reported
7 at 531 S.E.2d 907.

8 On June the 23rd of 2000, I was transported
9 from death row back to the Lexington County
10 Detention Center to await a capital retrial. In
11 March of 2004, I, pursuant to Faretta versus
12 California, decided that I wanted to move and
13 proceed pro se with my capital retrial. There is a
14 tentative trial date scheduled for November 5th of
15 this year.

16 The case was conflicted on June the 9th of
17 2005. The Solicitor's office here in Lexington
18 County consented to a motion that I had made and Mr.
19 Myers, appearing for the Solicitor's office in
20 Lexington, conflicted and the case was transferred
21 to York County. Thereafter, Your Honor, the case
22 was conflicted by the 16th Circuit Solicitor's
23 Office and the case is now assigned to the Seventh
24 Circuit Solicitor's Office up in Spartanburg.

25 There was a hearing previously on this matter.

1 The State was represented by Mr. Donny Willingham of
2 the Seventh Circuit Solicitor's Office and this
3 hearing was held before Judge Alford. He's aware of
4 this. I had made a motion to be allowed to observe
5 the Finklea trial, if at all possible.

6 I understand, Your Honor, that I do not have a
7 constitutional right and can compel anybody to bring
8 me over here to see this; however, given the facts
9 and circumstances of this case, I've sat through one
10 death penalty case and that was mine back in 1997, I
11 addressed this matter with Judge Alford and the
12 Solicitor's office with the Seventh Circuit, me
13 being allowed to observe this trial for courtroom
14 decorum and to give me a better understanding of how
15 the courtroom operates, Judge Alford even agreed
16 that it would probably behoove the State and the
17 defense as well if I would be allowed to do that.

18 Your Honor, while I was in the South Carolina
19 Department of Corrections, I had a flawless
20 disciplinary record. I appeared in 1999 before the
21 South Carolina Supreme Court. While I've been
22 housed in the Lexington County Detention Center, I
23 have not given any of the officers any problems. I
24 have a flawless disciplinary record over there and I
25 maintain that to this day.

1 In the event Your Honor would grant this
2 request, there's two requests that I would like to
3 make if the Court would allow me to come over here
4 and observe this trial. One request, Your Honor, is
5 that I would request the Court to allow me to wear
6 street apparel as opposed to a prison outfit because
7 I would not want my appearance here in the court to
8 have any fact or bearing on Mr. Finklea's trial.

9 In addition, Your Honor, I have a lap top
10 computer at the Lexington County Detention Center
11 that I use for conducting legal research. I have a
12 subscription to West Law that allows me to enter
13 various data bases outside of South Carolina that I
14 cannot get on my South Carolina plan on CD-ROM.

15 And that's basically it, Your Honor. I don't
16 know the State's position on this. Again, I
17 apologize for not being a little bit more prepared,
18 but I had no idea I was coming over here today.

19 If this Court would grant this request, Your
20 Honor, I can assure you that I certainly would not
21 give the Court any problems. I would not give
22 security any problems. One thing I've learned being
23 an inmate at the detention center and being an
24 inmate on death row, following instructions is very
25 easy to do and doing what you're told to do is

1 something that I've never had a problem with.

2 There's one thing that the Solicitor's office
3 in Lexington County may have a problem with me being
4 here and that is that there was a conflict for Mr.
5 Myers' office to hear this case. And I don't feel
6 we really need to address that.

7 In addition, Your Honor, there was a gag order
8 placed on everybody that was in the courtroom at the
9 time when I made this motion and why I made it. And
10 unless the Court wants to entertain that, I would
11 really prefer not to go into it out of respect of
12 Judge Westbrook's order.

13 In any event, I certainly wouldn't give the
14 Solicitor's office any problem or hamper them in any
15 way of trying Mr. Finklea's case. And I would do
16 whatever the Court required, Your Honor. Thank you.

17 **THE COURT:** And on behalf of the State,
18 Mr. Hubbard.

19 **MR. HUBBARD:** Your Honor, I think, speaking for
20 both my office and for the security detail that will
21 be handling this case, we're very much opposed to
22 this. I believe we probably agree with the defense
23 as well if -- I may be speaking out of turn and Your
24 Honor can certainly ask them, I think we're probably
25 in agreement that it would certainly be best for

1 both parties in this case to not have the
2 distraction of Mr. Starnes' presence. We agree with
3 him, he doesn't have a constitutional right, but
4 that's where our agreement ends.

5 Your Honor, you've listened to him, he's a very
6 articulate man, a very bright man. He's been
7 through this process before. He knows what's
8 coming. He knows the stages of trial. This is not
9 something new to him. And so many people that are
10 in this courtroom facing the death penalty have
11 never been in this courtroom before or facing this
12 -- with this situation, Mr. Finklea is one of them.
13 Mr. Starnes' situation is very different. He can
14 handle himself quite well.

15 To bring him here, Your Honor, brings up a lot
16 of security issues. I was talking with Sila
17 Anderson, the sergeant who would be in charge of the
18 detail here, she said she would need to double her
19 security staff to have any sense of confidence that
20 she could secure not one but two inmates who are
21 looking at the death penalty.

22 Your Honor, in addition to that, you would have
23 potentially his family coming here. There's no --
24 they're spectators. They can come watch the Finklea
25 trial if they want. And if they know their loved

1 one's here, there's nothing to keep them from coming
2 here. The public has free access to come watch
3 these trials. Mr. Starnes' situation is different
4 because he's not a free citizen right now.

5 Your Honor, logistically, I think we'd have
6 some issues. Where are we going to put him? We're
7 going to have the defendant on the traditional side
8 that we resolved earlier today and I suspect the
9 defendant's family, maybe some witnesses behind
10 them. Behind us, we plan to have our victims and
11 other family members and maybe some witnesses,
12 depending on if witnesses are sequestered or not.

13 Where do we put Mr. Starnes that he's not a
14 distraction? When the jury looks out, who are they
15 going to be seeing? He says he would like to be in
16 street clothes, but, Your Honor, he still has to be
17 shackled. There's obviously going to be an inmate
18 sitting out there for, what, two weeks as we go
19 through this process, as we qualify each individual
20 juror.

21 Your Honor, I think it's just asking way too
22 much. I understand it would be a great idea for him
23 to sit down and watch what happens, but he's done it
24 before. I think the security risk is just too
25 great.

1 This courthouse is not really designed -- just
2 for security in the case that we're going into right
3 now, I'm sure Sergeant Anderson would say this is
4 not the ideal design for a courthouse, but to have
5 two inmates of this caliber faced with these type of
6 charges is just putting too much pressure on her.
7 She's got to focus on Mr. Starnes, but also on the
8 man on trial. I think we're asking a lot, asking a
9 lot of her.

10 There's also a distraction with my office as
11 we're coming in, who are these people. And, Your
12 Honor, there has been some problems and obviously
13 that's why we're not trying this case against
14 Mr. Starnes.

15 I'd hate to see down the line, too, that
16 Mr. Finklea has an issue that the jury was
17 distracted by another inmate sitting out in the
18 jury -- out in the witness pews.

19 I think, Your Honor, with these factors in
20 mind, it just -- it just doesn't make sense to let
21 him do this. I know he wants to, but the risks and
22 the problems it creates, I think it's just
23 unreasonable.

24 **THE COURT:** Ms. Kimbrough or Mr. Soltis.

25 **MR. SOLTIS:** We just haven't discussed as to

1 who was going to discuss this.

2 Judge, I'm not personally opposed to allowing
3 him in this courtroom. However, however, my concern
4 is where do we put him? He wants to sit behind the
5 Solicitor's office, I have no fundamental problem
6 with that, but my client does not like the
7 distraction of having somebody else in here.

8 Mr. Starnes had contacted my office some months
9 ago and asked me what I had -- if I had a problem
10 with it. And I said, Well, you know, it's really up
11 to the Judge. I don't have a problem.

12 I think he's a very intelligent, very
13 articulate and very well-mannered person, but I
14 think, and I hate to agree with the Solicitor's
15 office on almost any topic, but I hate to say that I
16 agree with the Solicitors on this case that it may
17 become a distraction in this case. You may have a
18 security issue. At some time in this trial, you may
19 even have a co-defendant who's also facing the death
20 penalty come and testify and now we have three
21 potential defendants in the courtroom.

22 I don't want Mr. Starnes, as pleasant as he may
23 be, associated with our case in any way, shape or
24 form. And I don't know how you can control that in
25 this courtroom by allowing him in here.

1 I think there is going to be a distraction. I
2 think he is going to be sitting back there for two
3 weeks, hopefully on the Solicitor's side, but he's
4 going to be somebody that the jury is going to be
5 looking at, why is this person sitting out here?
6 And I think they're going to have questions about it
7 and they may even talk to themselves about who this
8 person is, is he a potential witness, what's going
9 on with him? And discussing that with my client, he
10 feels uncomfortable allowing Mr. Starnes present at
11 the hearing.

12 **MR. HUBBARD:** Your Honor, I --

13 **THE COURT:** Let me go back to Mr. Starnes and
14 then come back.

15 **MR. STARNES:** May I respond, Your Honor?

16 **THE COURT:** Yes, sir.

17 **MR. STARNES:** Your Honor, first of all, this
18 matter was before Major John Tate at the detention
19 center. When we had this hearing, Major Tate was
20 representing the detention center and he was here
21 and he was fully aware of that.

22 As far as the security matters, Your Honor, I
23 don't -- as far as them putting a taser belt on me,
24 they've done that before; however, they didn't do it
25 recently because I don't give them a problem. They

1 do have methods that they could put a taser belt on
2 me underneath street clothes.

3 This matter has been before Judge Westbrook.
4 He even agreed and said that I could observe the
5 case of State versus Caleb Bradley (ph); however,
6 that case ended in a guilty plea. I believe Johnny
7 Brewer, a gentleman that represented his self here
8 in Lexington County, he was allowed to observe part
9 of a capital case and it served him very well.

10 As far as me being in the back, I don't see and
11 I just can't agree with the State's position that it
12 would draw any inference as to who I am, or actually
13 I wouldn't think that a jury would even be looking
14 into the audience and at the same time paying
15 attention to evidence and what's going on with the
16 Court and Your Honor's instructions and so forth.

17 As far as security, I wouldn't give the staff
18 here no problem. I never have. I can wear street
19 apparel, and that was Judge Alford's suggestion when
20 I brought this matter before him.

21 That's basically it, Your Honor., I mean, I
22 certainly wouldn't give the Court any problems. I
23 certainly wouldn't give Mr. Finklea or the defense
24 any problems. And I certainly wouldn't give the
25 State any problems, Your Honor. I have more respect

1 for the judicial system than that. Thank you.

2 **THE COURT:** All right. Mr. Hubbard.

3 **MR. HUBBARD:** Your Honor, I wish I could take
4 his word at that, but, you know, if we did, maybe we
5 wouldn't be having him tried.

6 Your Honor, I've got another issue. I imagine
7 he's going to want to watch the voir dire process.
8 We're going to have 12 jurors eventually sitting
9 over here with some alternates. Are they going to
10 recognize this man? Who are they going to attribute
11 his presence to, us or to the defense? He's not
12 part of the case, so I don't think we can
13 legitimately ask jurors, do you know who this guy
14 is? We'd just draw attention to him.

15 But, Your Honor, he's been through here before.
16 He's a local fellow and it's not at all speculative
17 to assume there might be somebody out there who
18 knows him. Your Honor, it is a distraction. Even
19 if there's not a noticeable distraction, we've got
20 to wonder what's in the minds of the jury, do they
21 know him? What are they asking themselves about
22 him?

23 We certainly don't want him on our side. We've
24 had our dealings with him and I think that would be
25 horribly unfair to place him on our side because

1 we're going to have victims right behind us. And I
2 think the defense, even though they're very
3 understanding of Mr. Starnes' position, I think they
4 realize that their first duty is to their client and
5 that at the end of the day, it's got to be a
6 distraction. And, you know, although I'd like to
7 think Mr. Starnes would not cause any trouble, even
8 if he doesn't, he's a distraction.

9 And the final, probably most serious thing is
10 that regardless of whether he causes a problem, it's
11 a security issue. Security will have to provide it
12 whether he shows out or not. And Sergeant Anderson
13 tells me she's going to have to double her staff to
14 secure those two people.

15 And, again, as Mr. Soltice said, I don't know
16 what witnesses are going to testify, what inmates
17 may be brought in to testify, whether the
18 co-defendant will testify or not, that's just an
19 additional burden on our security system. It just
20 doesn't make sense. I understand what he wants to
21 do, that in itself is reasonable, but there's just
22 not a reasonable way to comply with what he wants.

23 **THE COURT:** Mr. Soltis.

24 **MR. SOLTIS:** Nothing further, Judge. Thank
25 you.

1 **THE COURT:** Mr. Starnes, anything further?

2 **MR. STARNES:** No, sir, nothing further, Your
3 Honor. I thank the Court for the time for allowing
4 me to be heard today.

5 **THE COURT:** And, Mr. Starnes, what is it that
6 you want to gain by being present and when do you
7 want to be present?

8 **MR. STARNES:** Your Honor, actually, I would
9 like to be present during the voir dire process.
10 When I went through this trial back in 1997, it was
11 very emotional for me. I didn't have an
12 understanding of the legal proceedings and things.
13 I had four attorneys that did that. I'm doing this
14 now on my own.

15 The voir dire process is one of the things that
16 I'm really interested in doing because I've never
17 voir dired a jury, in addition, just the guilt or
18 innocence part or maybe just a few days of it so I
19 could get an understanding of evidentiary issues,
20 how evidence is brought in, courtroom decorum and
21 things of that nature, Your Honor. If they're
22 concerned that me being here for two weeks, three
23 weeks or however long it will take Mr. Finklea's
24 trial, I believe I can work with a compromise that
25 if we get into a penalty phase or if Mr. Finklea

1 gets near that or the cooling off period, that I
2 could stay at the detention center. Voir dire
3 mainly and just a few days to understand the
4 courtroom thing.

5 I understand when a case of this nature gets
6 into a penalty phase, emotions run high, families
7 get upset and the victims. And given -- given the
8 history of capital cases in Lexington County, Your
9 Honor, I don't know that I would really even want to
10 be here during the penalty phase. However, if the
11 Court would allow me to do that, certainly I would
12 like to gain every bit of upper hand as I can and,
13 you know, learn this procedure a little bit better.

14 As far as the victim's family or as far as
15 Mr. Finklea's family, I don't know this gentleman.
16 The first time I've ever seen Mr. Finklea is when
17 he'd come into the detention center. We're housed
18 in the same housing unit together. Him and I do not
19 mingle together. We're housed in the same housing
20 area, but we don't know each other that good. I do
21 not know anybody in the victim's family. I really
22 don't know a whole lot about Mr. Finklea's case
23 other than what I read in the newspaper.

24 However, Your Honor, if this Court would grant
25 this request and it did become a problem, it would