

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO.: 3:75-CR-26-3
NO.: 5:06-CV-24-F

UNITED STATES OF AMERICA .
 .
 v. .
 . September 21, 2012
 JEFFREY R. MACDONALD, . Wilmington, NC
 Defendant/Movant .

***** CORRECTED TRANSCRIPT *****

EVIDENTIARY HEARING
BEFORE THE HONORABLE JAMES C. FOX
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY
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Proceedings recorded by stenomask, transcript produced from dictation.

1 Q. WAS THERE ANY DEPICTION OF THE PROSECUTION INTERVIEW OF
2 HELENA STOECKLEY IN THE *FATAL VISION* MOVIE?

3 A. NO, BECAUSE IT WAS BASED ON MY BOOK AND MY BOOK DIDN'T
4 INCLUDE ANYTHING ABOUT THAT.

5 Q. AND YOU DIDN'T HAVE ANY INFORMATION ABOUT THE
6 PROSECUTION?

7 A. I DID NOT. I KNEW THAT THEY HAD INTERVIEWED HER, I KNEW
8 WHAT MR. BLACKBURN HAD SAID IN OPEN COURT, BUT THAT WAS THE
9 EXTENT OF MY KNOWLEDGE OF THAT.

10 MR. BRUCE: NO FURTHER QUESTIONS ON DIRECT, YOUR
11 HONOR.

12 THE COURT: CROSS.

13 MR. WILLIAMS: YES, SIR. THANK YOU, YOUR HONOR.

14 C R O S S - E X A M I N A T I O N 12:11 P.M.

15 BY MR. WILLIAMS:

16 Q. SIR, I'M GOING TO BEGIN BY ASKING YOU A QUESTION ABOUT
17 YOUR EXPERIENCE AS AN AUTHOR. I THINK WE CAN AGREE THAT WHEN
18 AN AUTHOR WANTS TO PROMOTE A BOOK, ONE WAY TO ACCOMPLISH THAT
19 IS BY DOING PUBLICITY, WOULD YOU AGREE WITH THAT?

20 A. ABSOLUTELY.

21 Q. I'M GOING TO DIRECT YOUR ATTENTION TO THE SCREEN. MR.
22 MCGINNISS, YOU HAVE A TWITTER ACCOUNT UNDER WHICH YOU SEND OUT
23 TWITTER MESSAGES TO PEOPLE WHO FOLLOW YOU?

24 MADAM CLERK: IS THERE AN EXHIBIT NUMBER FOR THAT,
25 SIR?

1 MR. WILLIAMS: NO, I'M JUST SHOWING IT TO HIM.

2 THE WITNESS: YEAH, FROM TIME TO TIME.

3 BY MR. WILLIAMS:

4 Q. AND YOU'LL SEE HERE ON THE SCREEN, IF YOU LOOK AT THE
5 BOTTOM, AUGUST 29TH, 2012, WHICH WAS ROUGHLY THREE WEEKS AGO.

6 IS IT FAIR TO SAY YOU SENT OUT A TWITTER MESSAGE
7 THAT SAID THE FIRST E-BOOK EDITION OF *FATAL VISION* ON SALE
8 TODAY AT AMAZON, NEW PRINT EDITION DUE NEXT WEEK?

9 A. YES, I SENT THAT.

10 Q. THAT WAS THE SAME PRINT EDITION YOU MENTIONED EARLIER,
11 THE ONE THAT'S GOING TO BE 900 AND SOME PAGES?

12 A. OH, IT IS 951.

13 Q. EARLIER THIS WEEK ON MONDAY, YOU ALSO TWITTERED OUT, YOU
14 SAID SEQUESTERED IN WITNESS ROOM UNTIL I TESTIFY, INSTRUCTED
15 NOT TO LEARN ANYTHING ABOUT HEARING, BUT I TAPED INTERVIEW
16 WITH *INSIDE EDITION*. DID YOU SEND THAT OUT AS SHOWN ON
17 MONDAY, SEPTEMBER 17TH?

18 A. DID I TWITTER THAT? YES, I DID.

19 Q. GOING TO TUESDAY. JOE MCGINNISS, SPEAKING OF YOURSELF IN
20 THE THIRD PERSON, WILL PROBABLY TESTIFY THURSDAY IN *FATAL*
21 *VISION* JEFFREY MACDONALD HEARING. LOOKS LIKE *TODAY SHOW*
22 INTERVIEW THURSDAY OR FRIDAY. DID YOU SEND THAT OUT AS WELL?

23 A. YES, I DID.

24 Q. AND THEN ON WEDNESDAY, SEPTEMBER 19TH, YOU SEE THE DATE
25 AT THE BOTTOM, *FATAL VISION* OR *FV*, AN E-BOOK FOR THE FIRST

1 TIME, ALSO NEW BIGGER PRINT EDITION. YOU SENT THAT MESSAGE
2 OUT AS WELL?

3 A. YES, I DID.

4 Q. NOW, THERE'S BEEN SOME TESTIMONY ABOUT THE BOOK AND THE
5 QUOTES AND WHAT HAD BEEN WRITTEN. AND I WANT TO DIRECT YOUR
6 ATTENTION TO THE SCREEN AND I'LL ATTEMPT TO ENLARGE THIS FOR
7 YOU SO THAT WE CAN ALL LOOK AT IT HERE TOGETHER.

8 AND I BELIEVE YOU'RE FAMILIAR WITH THE BOOK ENOUGH
9 TO LOOK ON THE LEFT-HAND SIDE OF THE SCREEN TOWARD THE BOTTOM
10 AND YOU'LL SEE A YELLOW HIGHLIGHT.

11 A. YES, SIR.

12 Q. AND THIS IS THE SECTION, OR AT LEAST PART OF IT, THAT YOU
13 WERE READING FOR THE PROSECUTION?

14 A. YES, THAT'S RIGHT.

15 Q. AND COULD YOU PLEASE READ FOR ME THE YELLOW HIGHLIGHTED
16 PORTION?

17 A. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO
18 NOT REMEMBER, BUT IT IS POSSIBLE.

19 Q. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO
20 NOT REMEMBER, BUT IT IS POSSIBLE. ARE THERE ANY ELLIPSES, ANY
21 DOTS IN THERE, THAT WOULD INDICATE ANYTHING WAS LEFT OUT?

22 A. THERE'S NO ELLIPSES, NO.

23 Q. AND I BELIEVE YOU SAID THAT THIS WAS A WORK OF NON-
24 FICTION, CORRECT?

25 A. ABSOLUTELY.

1 Q. AND SO IT WOULD BE YOUR INTENTION TO QUOTE THINGS
2 ACCURATELY?

3 A. ACCURATELY, BUT NOT NECESSARILY IN FULL.

4 Q. AND IF YOU LEFT SOMETHING OUT, YOU WOULD PUT ELLIPSIS?

5 A. YEAH, MOST LIKELY.

6 Q. ESPECIALLY SOMETHING IMPORTANT?

7 A. WELL, WHAT'S IMPORTANT TO ONE PERSON MIGHT NOT BE
8 IMPORTANT TO ANOTHER.

9 Q. WELL, WHY DON'T YOU LET ME PUT BACK ON THE SCREEN THE
10 ACTUAL NOTES AND IF YOU WOULD, PLEASE, READ THE PORTION THAT
11 IS SHOWN IN RED WHICH WOULD BE WHERE YOU HAD SOMEWHAT QUOTED.
12 READ THAT PORTION, IF YOU WOULD.

13 A. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO
14 NOT REMEMBER AND DO NOT THINK I HAD ONE, BUT IT IS POSSIBLE.

15 Q. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO
16 NOT REMEMBER AND DO NOT THINK I HAD ONE, BUT IT IS POSSIBLE.

17 WOULD YOU LIKE ME TO PUT YOUR BOOK BACK ON THE
18 SCREEN SO THAT WE CAN SEE WHETHER YOU INCLUDED THE PHRASE AND
19 DO NOT THINK I HAD ONE? WOULD YOU LIKE ME TO PUT THAT BACK ON
20 THE SCREEN OR DO YOU REMEMBER?

21 A. WELL, YOU CAN IF YOU WANT.

22 Q. WELL, DO YOU REMEMBER?

23 A. I DON'T THINK I REPEATED IT IS POSSIBLE TWICE, BUT I DO
24 NOT THINK --

25 Q. WELL, LET'S FOCUS ON THAT PHRASE AND DO NOT THINK I HAD

1 ONE.

2 A. YEAH.

3 Q. READ FOR ME AGAIN THE PORTION IN YELLOW. THIS IS FROM
4 YOUR ACTUAL BOOK.

5 A. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO
6 NOT REMEMBER, BUT IT IS POSSIBLE.

7 Q. SO, YOU LEFT OUT THE PHRASE AND DO NOT THINK I HAD ONE?

8 A. THAT'S CORRECT.

9 Q. WE'RE GOING TO MOVE NEXT TO TESTIMONY THAT YOU GAVE
10 BEFORE IN A RELATED CASE, AND I'M GOING TO ASK YOU SOME
11 QUESTIONS ABOUT YOUR TESTIMONY IN A CIVIL CASE THAT INVOLVED
12 YOU AND DR. MACDONALD. AND I'M SPEAKING HERE OF THE CIVIL
13 CASE THAT WAS FILED IN FEDERAL COURT IN LOS ANGELES IN THE
14 1980S. DO YOU REMEMBER THAT CASE?

15 A. YES, I DO.

16 Q. AND DO YOU REMEMBER THAT YOU TESTIFIED IN THAT CASE?

17 A. YES, SIR.

18 Q. ALL RIGHT. DIRECTING YOUR ATTENTION THEN TO THE SCREEN,
19 YOU'LL SEE WHAT I REPRESENT TO YOU IS A PAGE FROM THE
20 TRANSCRIPT. AND I WILL TELL YOU THAT I'M GOING TO SHOW YOU
21 PAGES FROM THE TRANSCRIPT. IF, AT ANY TIME, YOU'D LIKE TO SEE
22 THE ACTUAL TRANSCRIPT, I HAVE ALL OF THOSE BACK HERE. I CAN
23 HAND UP A WHOLE VOLUME. I THOUGHT THIS MIGHT HELP US GO A
24 LITTLE FASTER.

25 A. YEAH. SURE.

1 Q. YOU SEE AT THE TOP IT SAYS LOS ANGELES, CALIFORNIA,
2 THURSDAY, JULY 16TH, 1987?

3 A. 9:30 A.M.

4 Q. AND YOU WERE IN FEDERAL COURT AND IT WAS A CASE IN WHICH
5 DR. MACDONALD HAD SUED YOU?

6 A. THAT'S CORRECT.

7 Q. AND IF YOU LOOK DOWN ON THE PAGE, YOU'LL SEE JOSEPH R.
8 MCGINNISS, PLAINTIFF'S WITNESS, SWORN. THAT MEANS THAT YOU
9 WERE SWORN IN TO TESTIFY, CORRECT?

10 A. THAT'S CORRECT.

11 Q. SWORN TO TELL THE TRUTH?

12 A. THAT'S RIGHT.

13 Q. YOU UNDERSTOOD YOUR DUTY TO TELL THE TRUTH?

14 A. YES, SIR.

15 Q. YOU MADE EVERY EFFORT TO TELL THE TRUTH WHEN YOU
16 TESTIFIED IN THAT CASE?

17 A. AS WELL AS I CAN RECALL.

18 Q. YOU KNEW YOUR TESTIMONY WAS PART OF THE EVIDENCE IN THE
19 CASE?

20 A. WELL, SURE.

21 Q. AND YOU WANTED TO PROVIDE RELIABLE INFORMATION TO THE
22 COURT, DIDN'T YOU?

23 A. YEAH, I WANTED TO HONESTLY ANSWER WHATEVER QUESTIONS I
24 WAS ASKED.

25 Q. ALL RIGHT. I DIRECT YOUR ATTENTION AGAIN TO THE SCREEN.

1 YOU WERE ASKED THE QUESTION IN 1987, ARE YOU CONVINCED TODAY
2 THAT HE KILLED HIS WIFE, THAT IS DR. MACDONALD, THAT HE KILLED
3 HIS WIFE AND CHILDREN? AND WHAT WAS YOUR ANSWER?

4 A. YES, I AM.

5 Q. YOU WERE ALSO ASKED AND WHEN DID YOU BECOME SO CONVINCED?
6 AND WHAT WAS YOUR ANSWER?

7 A. I WOULD SAY THAT BASED ON THE EVIDENCE PRESENTED IN
8 COURT, I HAD FORMED THAT OPINION BY THE END OF THE TRIAL IN
9 1979. HOWEVER, THERE WAS FOR A CONSIDERABLE TIME THEREAFTER A
10 GREAT DEGREE OF VARIATION -- THAT'S THE END OF THE PAGE.

11 Q. IT'S OKAY. I --

12 MR. BRUCE: EXCUSE ME. EXCUSE ME, YOUR HONOR.

13 COULD WE GET AN EXHIBIT NUMBER? WE'RE NOT FINDING THIS AT OUR
14 TABLE.

15 THE COURT: YES.

16 MR. WILLIAMS: YOUR HONOR, I'M USING THIS TO REFRESH
17 RECOLLECTION. I'M NOT INTENDING TO ADMIT IT AT THIS TIME.

18 MR. BRUCE: WELL, WE WOULD REQUEST A COPY.

19 THE COURT: ALL RIGHT, SIR.

20 MR. WILLIAMS: AND I CAN PROVIDE IT IF YOU'D LIKE TO
21 HAVE THE WRITTEN DOCUMENTS.

22 (PAUSE.)

23 BY MR. WILLIAMS:

24 Q. ALL RIGHT. GETTING BACK TO THE SCREEN THEN. YOU WERE
25 ASKED WHEN DID YOU BECOME SO CONVINCED AND YOU SAID I WOULD

1 SAY THAT BASED ON THE EVIDENCE PRESENTED IN COURT, I HAD
2 FORMED THAT OPINION BY THE END OF TRIAL IN 1979. AND THAT WAS
3 AUGUST 1979, CORRECT?

4 A. CORRECT. THAT PARAGRAPH CONTINUES, HOWEVER --

5 Q. AND I'LL MOVE THAT BACK UP SO YOU CAN CONTINUE READING.

6 A. HOWEVER, THERE WAS, FOR A CONSIDERABLE TIME THEREAFTER, A
7 GREAT DEGREE OF VARIATION IN THE INTENSITY WITH WHICH I HELD
8 THAT OPINION. I WAS CONFRONTED ON A DAILY BASIS WITH THIS
9 HORRIBLE CONFLICT BETWEEN WHAT THE EVIDENCE HAD DEMONSTRATED
10 AND THE MAN I THOUGHT I KNEW.

11 Q. SO, YOU HELD THAT OPINION CONSISTENTLY FROM AUGUST '79
12 FORWARD, BUT YOU'RE SAYING SOME DAYS YOU REALLY HELD IT AND
13 OTHER DAYS YOU SORT OF HELD IT?

14 A. I KEPT TRYING TO FIND ANY REASON I COULD TO BELIEVE THAT
15 HE WASN'T GUILTY.

16 Q. BUT YOU NEVER CHANGED YOUR OPINION?

17 A. I NEVER DID, BUT IT WAS -- IT TOOK A LONG TIME BEFORE IT
18 SOLIDIFIED.

19 Q. IF YOU'D TAKE A LOOK THERE. YOU WERE ASKED THE QUESTION
20 DID YOU EVER COMMUNICATE TO DR. MACDONALD THE FACT THAT YOU
21 HAD FORMED THAT OPINION BY THE END OF THE TRIAL? WHAT WAS
22 YOUR ANSWER?

23 A. NO, I DIDN'T.

24 Q. NOW, I WANT TO TAKE YOU TO TESTIMONY IN THAT CASE ABOUT A
25 HANDWRITTEN LETTER FROM SEPTEMBER 11TH, 1979. DO YOU SEE

1 WHERE YOU ACKNOWLEDGED THAT YOU WERE SHOWN A LETTER WITH THAT
2 DATE AND YOU SAID THAT IT WAS YOUR HANDWRITING. DO YOU SEE
3 THAT?

4 A. YEP, I DO. YEP.

5 Q. AND YOU WERE ASKED ABOUT THAT LETTER AND THERE WAS A
6 QUOTE YOU HAD THERE AND IT WAS QUOTED AS THIS; TOTAL STRANGERS
7 CAN RECOGNIZE WITHIN FIVE MINUTES THAT YOU DID NOT RECEIVE A
8 FAIR TRIAL. WAS THAT PART OF THAT LETTER THAT YOU SENT TO DR.
9 MACDONALD?

10 A. YES.

11 Q. GOING ON TO THE NEXT PAGE, YOU'LL SEE AGAIN THERE'S A
12 QUOTE, YOU WERE ASKED ABOUT THE LETTER AND I BELIEVE YOU WERE
13 READING FROM IT IN THE TESTIMONY. IF YOU WOULD, PLEASE READ
14 THE PART THAT'S IN THE YELLOW?

15 A. JEFF, IT'S ALL SO FUCKING AWFUL. I CAN'T BELIEVE IT YET.
16 THE SIGHT OF THE JURY COMING IN, OF THE JURY POLLING, OF YOU
17 STANDING SAYING THOSE FEW WORDS, BEING LED OUT, AND THEN
18 SEEING YOU IN A FUCKING PRISON IS A HELL OF A THING. SPEND
19 THE SUMMER MAKING A NEW FRIEND AND THEN THE BASTARDS COME
20 ALONG AND LOCK HIM UP. BUT NOT FOR LONG, JEFFREY, NOT FOR
21 LONG.

22 Q. AND THIS IS ROUGHLY SEPTEMBER 11TH, '79. SO, THREE WEEKS
23 OR SO AFTER THE TRIAL?

24 A. YES. I THINK IT WAS -- THIS WAS IN RESPONSE TO A LETTER
25 I HAD GOTTEN FROM HIM.

1 Q. AND THEN WE ALSO HAVE A LETTER DATED SEPTEMBER 28TH, '79,
2 WHICH I BELIEVE YOU TYPED OUT. AND I'LL LET YOU TAKE A LOOK
3 AT THAT TO SEE IF YOU RECOGNIZE IT.

4 A. YEAH. YES. YES.

5 Q. ALL RIGHT. AND LOOKING TO PAGE FOUR OF THE LETTER IF YOU
6 WOULD, PLEASE, READ THE YELLOW PORTIONS FOR US.

7 A. GODDAMN, JEFF, ONE OF THE WORST THINGS ABOUT ALL OF THIS
8 IS HOW SUDDENLY AND TOTALLY ALL OF YOUR FRIENDS, SELF
9 INCLUDED, HAVE BEEN DEPRIVED OF THE PLEASURE OF YOUR COMPANY.
10 WHAT THE FUCK WERE THOSE PEOPLE THINKING OF? HOW COULD 12
11 PEOPLE NOT ONLY AGREE TO BELIEVE SUCH A HORRENDOUS
12 PROPOSITION, BUT AGREE, WITH A MAN'S LIFE AT STAKE, THAT THEY
13 BELIEVED IT BEYOND A REASONABLE DOUBT IN SIX AND A HALF HOURS?
14 THE QUESTIONS WHICH KEEP YOU AWAKE NIGHT AFTER NIGHT, NO
15 DOUBT, DID THE SAME TO MYSELF AND TO WADE EVEN AT 8,000 FEET.

16 Q. YOU HAVE ANOTHER LETTER THAT YOU WROTE TO HIM DATED
17 DECEMBER 18TH, 1979, AND I'VE PUT THAT ON THE SCREEN. I
18 BELIEVE YOU WERE RETURNING TO HIM AT THAT TIME HIS ARTICLE 32
19 TESTIMONY AND SOME NOTES AND A DIARY. DO YOU SEE THAT?

20 A. YEP. YES, I DO.

21 Q. ALL RIGHT. AND AS WE LOOK AHEAD TO PAGE THREE OF THE
22 LETTER, I BELIEVE WHAT WE SEE IS THAT YOU MENTION THAT YOU HAD
23 BEEN SPENDING A LOT OF TIME GOING THROUGH THE ARTICLE 32
24 MATERIAL?

25 A. YES, I READ THE ENTIRE TRANSCRIPT.

1 Q. THE ARTICLE 32 PROCEEDING WAS THE MILITARY PROCEEDING,
2 CORRECT, THAT WAS HEADED BY COLONEL WARREN ROCK IN 1970?

3 A. THAT'S RIGHT.

4 Q. AND IT INCLUDED A RECOMMENDATION, YOU MAY BE FAMILIAR
5 WITH IT AND TELL ME IF YOU ARE, ALL CHARGES AND SPECIFICATIONS
6 AGAINST CAPTAIN JEFFREY R. MACDONALD BE DISMISSED BECAUSE THE
7 MATTERS SET FORTH IN ALL CHARGES AND SPECIFICATIONS ARE NOT
8 TRUE. DO YOU REMEMBER THAT RECOMMENDATION?

9 A. I DON'T RECALL THAT LANGUAGE, BUT I KNOW THAT THE OUTCOME
10 WAS THAT THEY DID NOT PROCEED TO A COURT MARTIAL.

11 Q. ALL RIGHT. AND DIRECTING YOUR ATTENTION AGAIN TO THE
12 SCREEN, IF YOU COULD PLEASE READ THE SECOND HIGHLIGHTED QUOTE
13 FROM YOUR LETTER?

14 A. ONE CERTAINLY GETS THE IMPRESSION THAT COLONEL ROCK WAS A
15 MORE IMPARTIAL AND INTELLIGENT HEARING OFFICER THAN JUDGE
16 DUPREE.

17 Q. MOVING FORWARD TO A LETTER THAT I BELIEVE YOU SENT TO DR.
18 MACDONALD ON FEBRUARY 4TH, 1980. AND HERE WE'RE LOOKING AT
19 YOUR TRIAL TESTIMONY FROM THE CALIFORNIA CASE. YOU'LL SEE
20 THERE'S A REFERENCE TO A FOUR PAGE LETTER DATED FEBRUARY 4TH,
21 1980, AND YOU SAID THAT YOU'RE SURE THAT YOU WROTE THAT. DO
22 YOU SEE THAT THERE?

23 A. YES, I SEE THAT.

24 Q. AND LOOKING AT THE NEXT PAGE WHERE THAT LETTER WAS
25 DISCUSSED, IF YOU WOULD, PLEASE, READ THE BOTTOM THREE LINES

1 AND THEN I'LL GO OVER TO THE NEXT PAGE SO YOU CAN FINISH THE
2 QUOTE. AND THIS, FROM THE TRIAL TESTIMONY, WAS FROM YOUR
3 LETTER OF FEBRUARY 4TH, 1980, TO DR. MACDONALD.

4 A. AMONG THE TRIAL ISSUES, THE REBUTTAL BRIEF ARGUES SO
5 STRONGLY AND LUCIDLY IN REGARD TO HELENA STOECKLEY THAT I
6 CANNOT SEE HOW THE GOVERNMENT CAN HOPE TO MAKE THE VERDICT
7 STICK. THAT'S --

8 Q. MOVING ON AGAIN -- I'M SORRY, DID YOU WANT TO SAY
9 SOMETHING ELSE?

10 A. NO, I THOUGHT YOU WANTED ME TO READ MORE.

11 Q. THAT'S FINE. THANK YOU. MOVING ON AGAIN YOU WROTE A
12 LETTER NOVEMBER 3RD, 1981, TO A PERSON BY THE NAME OF MORGAN.
13 AND IF I'M UNDERSTANDING CORRECTLY, THAT'S MORGAN ENTRAKAN,
14 SOMEONE CONNECTED WITH YOUR PUBLISHER?

15 A. MORGAN ENTRAKAN, YEAH.

16 Q. AND YOU SEE THE DATE THERE AT THE TOP, NOVEMBER 3RD,
17 1981?

18 A. YES.

19 Q. AND YOU CAN SEE THAT WE'VE HIGHLIGHTED JUST A PORTION AND
20 YOU DON'T HAVE TO READ IT, BUT JUST FOR YOUR REFERENCE TO SHOW
21 YOU THAT I BELIEVE THIS LETTER HAS TO DO WITH TALKING ABOUT
22 THE DIVISION AND STRUCTURE OF THE BOOK?

23 A. RIGHT. MORGAN WAS MY EDITOR AT THAT TIME.

24 Q. LOOKING AHEAD TO PAGE THREE OF THIS LETTER, YOU MENTION A
25 CONVERSATION THAT YOU HAD LAST NIGHT, WHICH WOULD HAVE BEEN

1 NOVEMBER 2ND, 1981, SPOKE TO HIM, SPOKE TO JEFFREY MACDONALD.
2 IF YOU COULD READ THAT FOR US THERE, PLEASE.

3 A. I SPOKE TO HIM LAST NIGHT AND HE KEPT REFERRING TO,
4 QUOTE, OUR BOOK AND WAS ASTOUNDED THAT TAYLOR DASH WIGUTOW
5 COULD HAVE GIVEN A STORY TO THE *HOLLYWOOD REPORTER* TO THE
6 EFFECT THAT THEY WERE PLANNING A FILM ON DR. JEFFREY MACDONALD
7 QUOTE CONVICTED OF HAVING MURDERED HIS WIFE AND CHILDREN WHEN
8 THE WHOLE POINT OF THE FILM AND BOOK OBVIOUSLY WAS THAT HE WAS
9 FALSELY CONVICTED AS HE HAD BEEN FALSELY SUSPECTED FOR TEN
10 YEARS, ET CETERA, ET CETERA. HE'S LETTING THIS ONE PASS,
11 WRITING IT OFF TO SLOPPINESS IN A TRADE PAPER, BUT THE ICE IS
12 GETTING THINNER AND I'M STILL A LONG WAY FROM SHORE.

13 Q. SO, AS I UNDERSTAND THIS WRITING HERE, YOU HAD A
14 CONVERSATION WITH DR. MACDONALD THE NIGHT BEFORE AND YOU HAD
15 SHARED WITH HIM THAT THERE WAS A STORY IN THE *HOLLYWOOD*
16 *REPORTER*. THE STORY SAID THAT THERE WAS A FILM PLANNED ABOUT
17 HOW HE SUPPOSEDLY HAD BEEN CONVICTED OR HOW HE SUPPOSEDLY HAD
18 MURDERED HIS WIFE AND CHILDREN AND THAT ASTOUNDED HIM BECAUSE
19 HE THOUGHT THE WHOLE POINT OF THE FILM AND BOOK WAS OBVIOUSLY
20 THAT HE WAS FALSELY CONVICTED. DO YOU SEE THAT?

21 A. THAT'S WHAT HE KEPT HOPING.

22 Q. AND YOU SHARED WITH MORGAN THAT HE WAS LETTING THIS ONE
23 PASS, HE WROTE IT OFF TO SOME SLOPPINESS IN A TRADE PAPER.
24 BUT YOU SAID THIS, BUT THE ICE IS GETTING THINNER AND I'M
25 STILL A LONG WAY FROM SHORE?

1 A. THAT'S RIGHT.

2 Q. AND YOU WERE ASKED ABOUT THAT IN THE TRIAL IN CALIFORNIA.
3 DO YOU SEE THERE AT THE TOP? WHAT DID YOU MEAN WHEN YOU WROTE
4 MORGAN ENTRAKAN IN NOVEMBER OF 1981, THAT THE ICE WAS GETTING
5 THINNER AND YOU WERE STILL A LONG WAY FROM SHORE? AND IF YOU
6 WOULD, PLEASE READ YOUR ANSWER THERE.

7 A. WELL, I MEANT THAT MACDONALD'S GRADUALLY GROWING
8 AWARENESS OF THE FACT THAT THIS BOOK WASN'T NECESSARILY GOING
9 TO COME OUT THE WAY HE WANTED TO WAS SOMETHING THAT COULD
10 POTENTIALLY TURN INTO A PROBLEM.

11 AND THEN YOU WANT ME TO READ. YOU KNOW, THE MAN HAD
12 KILLED BEFORE. I DIDN'T KNOW WHAT HE WAS GOING TO DO TO MY
13 WIFE OR MY KID. HE WASN'T IN PRISON AT THAT TIME.

14 Q. THAT'S FINE. THERE YOU'RE REFERENCING IF SOMEONE ASKED
15 YOU IF YOU WERE CONCERNED ABOUT ANY THREATS TO YOURSELF AND I
16 BELIEVE THE CONTEXT WAS, WELL, YOU HADN'T RECEIVED ANY, BUT
17 YOU HAD A GENERAL CONCERN BASED ON WHAT YOU KNEW HE WAS
18 CONVICTED OF?

19 A. THAT'S RIGHT.

20 Q. WELL, GETTING BACK TO THE ANSWER ABOVE, YOU KNEW THAT
21 MACDONALD WAS GRADUALLY GROWING AWARE OF THE FACT THAT THE
22 BOOK WASN'T NECESSARILY GOING TO BE HIS WAY AND THAT YOU
23 WANTED TO AVOID THAT, THAT THAT COULD BE A PROBLEM FOR YOU?

24 A. YES. YOU KNOW, HE'D BEEN TRYING TO CON ME FROM THE FIRST
25 DAY AND IT HAD TAKEN ME A LONG TIME TO REALIZE THAT. I DIDN'T

1 UNDERSTAND ABOUT HIM BEING A PSYCHOPATH UNTIL PROBABLY 19 --
2 THE FALL OF '80 OR 1981, WHEN I HAD A CONVERSATION WITH JOE
3 WAMBAUGH.

4 AND THEN THE THING IS, YOU KNOW, HERE'S A GUY WHO'S
5 KILLED HIS WIFE AND KIDS AND HE'S LYING TO ME CONSISTENTLY AND
6 MY GOAL THEN IS TO TRY TO KEEP HIM TALKING TO LEARN AS MUCH AS
7 I POSSIBLY CAN ABOUT THIS PERSONALITY TYPE AND WHAT KIND OF,
8 YOU KNOW, WHAT KIND OF PSYCHOPATH HE REALLY IS.

9 SO, I WANTED TO STAY IN TOUCH WITH HIM AS LONG AS I
10 COULD AND I KNEW THAT HE WOULD BREAK OFF CONTACT THE MINUTE HE
11 FOUND OUT THAT THE BOOK WASN'T GOING TO BE WHAT HE HAD HOPED
12 FOR.

13 Q. SO, IN REGARD TO THAT CORRESPONDENCE -- LET ME DIRECT YOU
14 AGAIN TO THE SCREEN AND THE CORRESPONDENCE THAT YOU HAD OR
15 DESCRIBING WHAT YOU HAD WITH HIM.

16 I BELIEVE YOU TESTIFIED IN THAT TRIAL THAT DR.
17 MACDONALD BEGAN TO WRITE TO YOU WITHIN HOURS OF YOUR (SIC)
18 CONVICTION?

19 A. YEAH, I THINK I GOT A LETTER THAT HE WROTE FROM BUTNER,
20 WHICH WAS WHERE HE WAS TAKEN RIGHT FROM THE COURTROOM THAT
21 NIGHT BEGGING ME FOR MY SUPPORT AND, YOU KNOW, SAYING HOW
22 TERRIBLE HE FELT. AND, YOU KNOW, AT THAT POINT I STILL -- THE
23 GUY WAS WONDERFULLY CHARMING. YOU KNOW, HE DID A GREAT JOB.
24 PSYCHOPATHS ARE VERY CHARMING PEOPLE. I FELT GENUINE
25 AFFECTION FOR HIM AT THAT TIME. I WAS INTELLECTUALLY

1 CONVINCED BY THE PROSECUTION'S CASE THAT HE WAS GUILTY AS
2 CHARGED, BUT, GOD, IT WAS A TOUGH FIGHT BETWEEN MY HEAD AND MY
3 HEART FOR A LONG TIME.

4 Q. IT'S HARD WHEN YOU FEEL AFFECTION FOR A PSYCHOPATH, I CAN
5 ONLY IMAGINE.

6 A. IT IS, BUT THAT'S BECAUSE -- THAT'S BEFORE I FOUND OUT HE
7 WAS A PSYCHOPATH. YOU KNOW, I STILL THOUGHT HE WAS A
8 GENUINELY TROUBLED GUY.

9 Q. YOU ALSO SAID HE WAS YOUR SUBJECT?

10 A. ABSOLUTELY.

11 Q. HE WAS MY -- STILL MY SUBJECT -- DID YOU SAY THIS, HE WAS
12 STILL MY SUBJECT AND I WAS STILL THE AUTHOR AND I FELT I HAD A
13 PROFESSIONAL DUTY TO MAINTAIN AS CLOSE A RELATIONSHIP WITH HIM
14 AS I COULD? DID YOU SAY THAT?

15 A. ABSOLUTELY. YEP.

16 Q. ALL RIGHT. NOW, I WANT TO TAKE YOU BACK TO THE
17 HANDWRITTEN LETTER THAT YOU MENTIONED IN THIS TRIAL TRANSCRIPT
18 AS HAVING WRITTEN IT ON SEPTEMBER 11TH OF 1979. AND I BELIEVE
19 THERE WAS CONVERSATION IN THERE -- WELL, I'LL JUST PUT IT THIS
20 WAY; YOU WERE ASKED ABOUT BOB KEELER, WHO WAS A REPORTER. YOU
21 SAID THAT HE WAS A REPORTER FROM THE LONG ISLAND NEWSPAPER AND
22 YOU'VE MENTIONED HIM IN THIS LETTER.

23 AND YOU WERE ASKED THIS QUESTION, YOU WERE WORRIED
24 ABOUT SOMEBODY ELSE PUTTING OUT A BOOK ABOUT THIS SUBJECT THAT
25 MIGHT CUT INTO YOUR POSSIBLE FAME AND PROFIT, WEREN'T YOU?

1 A. OH, SURE. YOU NEVER --

2 Q. WHAT WAS YOUR ANSWER?

3 A. YOU NEVER WANT ANOTHER BOOK ON THE SAME SUBJECT THAT
4 YOU'RE WRITING ABOUT TO COME OUT ESPECIALLY AT THE SAME TIME
5 AS YOURS. YOU KNOW, THAT DOESN'T HELP ANYBODY.

6 Q. AND YOU ALSO TESTIFIED THAT YOU WANTED DR. MACDONALD, AS
7 YOU CAN SEE HERE IN THE HIGHLIGHTED PORTIONS, TO KEEP IN MIND
8 THE FACT THAT WE HAD AN EXCLUSIVE ARRANGEMENT. DO YOU
9 REMEMBER THAT?

10 A. THAT'S RIGHT.

11 Q. YOU ALSO HAD A CONCERN THAT HE NOT GET IN THE WAY OF YOUR
12 PROJECT. AND IF YOU WOULD, IF YOU COULD READ THE HIGHLIGHTED
13 PORTION AGAIN FROM THE CALIFORNIA TRANSCRIPT?

14 A. I JUST DIDN'T WANT TO GET HIM ALL AGITATED AND DOING THE
15 KINDS OF THINGS THAT WOULD PREVENT ME FROM MOVING FORWARD WITH
16 THE BOOK THAT I FELT HE WAS CAPABLE OF DOING.

17 Q. AND SO YOU WERE ASKED LATER ABOUT A LETTER THAT SAID THAT
18 YOU HOPED THAT FUTURE BRIEFINGS WITH HIM COULD BE MADE BY
19 TELEPHONE, TO HIS HOME TELEPHONE NUMBER. AND YOU WERE ASKED
20 THIS, YOU WERE TRYING TO TELL HIM THAT YOU HOPED THAT HE WOULD
21 BE OUT OF JAIL SO THAT YOU COULD CALL HIM AT HOME. AND WHAT
22 WAS YOUR ANSWER THERE, LINE NINE THROUGH 11?

23 A. I WAS SURE NOT TRYING TO TELL HIM WHAT MY TRUE FEELINGS
24 WERE IN 1982, BECAUSE I DIDN'T WANT HIM TO TAKE STEPS TO TRY
25 TO PREVENT ME FROM FINISHING MY BOOK.

1 Q. AND THEN YOU WERE ASKED, MR. MCGINNISS, YOU TOLD YOUR
2 WIFE YOU WERE GLAD HE WAS BACK IN JAIL. TWO WEEKS LATER IN
3 THIS LETTER YOU'RE TELLING HIM THAT YOU HOPED YOU WOULD BE
4 ABLE TO CALL HIM AT HOME, WHY? AND WHAT WAS YOUR ANSWER?

5 A. AS I'VE ALREADY TESTIFIED, I BELIEVE, BECAUSE I WAS
6 ENCOURAGING HIM TO NOT DISCOURAGE ME FROM FINISHING THE BOOK
7 THAT I HAD PUT SO MUCH OF MY LIFE INTO AT THAT POINT. MY
8 COMMITMENT WAS TO THE BOOK AND TO THE TRUTH.

9 Q. AND IT WAS OKAY TO TELL HIM SOMETHING THAT YOU REALLY
10 DIDN'T BELIEVE IN IN THE SERVICE OF THIS TRUTH?

11 A. I WAS JUST SAYING THAT FALLS INTO MR. WAMBAUGH'S CATEGORY
12 OF UNTRUTH. I COULD EXPLAIN THAT BECAUSE IT MIGHT NOT BE
13 CLEAR OUT OF CONTEXT.

14 Q. THAT'S ALL RIGHT. I DIRECT YOUR ATTENTION NEXT TO THE
15 SCREEN WHERE YOU MENTION THAT THERE WAS SOME CONVERSATION,
16 EITHER IN PERSON OR BY CORRESPONDENCE, I'M NOT SURE WHICH,
17 WHERE APPARENTLY THERE WAS A CONCERN THAT IF DR. MACDONALD
18 RECEIVED A NEW TRIAL, WHAT EVIDENCE OR WHAT ROLE WOULD YOU
19 PLAY IN THAT. AND IN THIS LETTER YOU SPOKE TO THAT. AND IF
20 YOU COULD, PLEASE READ THE HIGHLIGHTED PORTIONS FOR US?

21 A. I'M SORRY, COULD YOU JUST CLARIFY WHEN THIS LETTER WAS
22 WRITTEN OR WHEN I WROTE IT OR SENT IT?

23 Q. YES, I CAN.

24 MR. WILLIAMS: IF I CAN HAVE JUST A MOMENT.

25 (PAUSE.)

1 MR. BRUCE: YOUR HONOR, MAY I SAY, NONE OF THESE
2 DOCUMENTS THAT ARE BEING USED ARE IN THE PRETRIAL ORDER AND
3 I'M NOT OBJECTING ON THAT BASIS, BUT IT JUST SEEMS LIKE TO ME
4 IT'S GOING TO BE HARD TO REVIEW THE RECORD WHEN YOU DON'T HAVE
5 EXHIBIT NUMBERS.

6 MR. WILLIAMS: YOUR HONOR, I'VE NOT ASKED THE COURT
7 TO ADMIT THIS INTO THE RECORD. I'M USING IT FOR PURPOSES OF
8 REFRESHING HIS RECOLLECTION. I CERTAINLY DON'T EXPECT HIM TO
9 REMEMBER EVERYTHING FROM BACK IN THE DAY AND I'M TRYING TO
10 HELP US MOVE A LITTLE FASTER.

11 I'D BE GLAD TO WALK BACK AND FORTH BETWEEN HERE AND
12 THE STAND TO SHOW HIM INDIVIDUAL PAGES, BUT I SUSPECT THAT
13 THIS MIGHT HELP US GO FORWARD A LITTLE FASTER AND I CERTAINLY
14 HAVE NO OBJECTION TO THE GOVERNMENT SEEING THESE SOURCE
15 DOCUMENTS.

16 THE COURT: MR. BRUCE.

17 MR. BRUCE: I DON'T OBJECT TO USING THE SCREEN.

18 THE COURT: I'M SORRY?

19 MR. BRUCE: I DON'T OBJECT TO HIM USING THE SCREEN
20 OR THE DOCUMENTS. I JUST THINK THERE NEEDS TO BE SOME METHOD
21 OF IDENTIFICATION OF WHAT DOCUMENTS THE WITNESS IS BEING ASKED
22 ABOUT.

23 THE COURT: WELL, I THINK HE'S PROBABLY CORRECT
24 ABOUT THAT. I THINK FOR GOING FORWARD IN THE FUTURE IF YOU
25 WANT TO FIND OUT WHAT HE'S REFERRING THEN IT SHOULD BE

1 NUMBERED.

2 MR. WILLIAMS: YES, SIR. YES, SIR.

3 BY MR. WILLIAMS:

4 Q. ALL RIGHT. TAKING YOU BACK TO YOUR QUESTION, I BELIEVE
5 YOU SAID YOU WOULD LIKE TO SEE SOME CONTEXT FOR THAT.

6 A. NO, I JUST WONDERED WHAT THE DATE WAS.

7 Q. SURE. WE HAVE HERE A REFERENCE IN THE TRANSCRIPT FROM
8 THE CALIFORNIA CASE, IT SAYS EXHIBIT 234 BEFORE THE WITNESS,
9 AND IT SAYS DO YOU SEE PAGE ONE IS DATED APPROXIMATELY TWO
10 WEEKS AFTER THAT TELEPHONE CONVERSATION. AND IT SAYS, DEAR,
11 JEFF, I HAD NOT THOUGHT THAT I WOULD BE WRITING TO YOU AGAIN
12 AT THIS ADDRESS AND THEN YOU SAY THAT YOU BELIEVED YOU WERE
13 WRITING TO HIM AT TERMINAL ISLAND. THAT'S THE CONTEXT THAT I
14 HAVE FOR THIS IN THE TRANSCRIPT.

15 A. SO, THIS WOULD HAVE BEEN AFTER HE WAS RE-ARRESTED?

16 Q. COULD HAVE BEEN, YES, WHEN HE WAS CONSIDERING THE
17 POSSIBILITY OF WHAT WOULD HAPPEN IF THERE WAS A NEW TRIAL.

18 AND IF YOU COULD, PLEASE, READ FOR US BEGINNING FROM
19 LINE SIX DOWN THROUGH LINE 18.

20 MR. WILLIAMS: YOUR HONOR, FOR THE RECORD WE WILL
21 IDENTIFY THIS AS -- THE PORTION HE'S GOING TO READ AS EXHIBIT
22 5112, DEFENSE 5112.

23 THE WITNESS: IF I AM SUBPOENAED BY THE PROSECUTION
24 IN THE EVENT OF A NEW TRIAL, I WOULD RESIST ON FIRST AMENDMENT
25 GROUNDS. I DON'T KNOW FOR WHAT THEY WOULD WANT ME, BUT I

1 WOULD CERTAINLY REFUSE TO ALLOW THEM ANY ACCESS WHATSOEVER TO
2 ANY TAPES, LETTERS, FILES, SO FORTH, MADE AVAILABLE TO ME FOR
3 PURPOSES OF THE BOOK, AND I COULD MAKE A HELL OF A FREEDOM OF
4 SPEECH, AUTHOR-CLIENT RELATIONSHIP, CASE OUT OF IT.

5 THIS HAS HAPPENED BEFORE. WRITERS HAVE REFUSED.
6 THEY'VE BEEN HELD IN CONTEMPT OF COURT. HAVE ACTUALLY GONE TO
7 JAIL.

8 AS AN OLD PARATROOPER FRIEND OF MINE, NOW,
9 COINCIDENTALLY, A MOVIE PRODUCER, OFTEN SAYS IF YOU NEVER HAVE
10 JUMPED OUT OF AN AIRPLANE, DON'T SAY YOU WOULD.

11 (DEFENSE EXHIBIT NUMBER 5112
12 WAS IDENTIFIED FOR THE RECORD.)

13 BY MR. WILLIAMS:

14 Q. ALL RIGHT. NOW, SIR, I'D LIKE TO ASK YOU SOME QUESTIONS
15 ABOUT YOUR TESTIMONY ON DIRECT AND IN PARTICULAR I WANT TO
16 DIRECT YOUR ATTENTION TO YOUR TESTIMONY ABOUT YOUR INTERACTION
17 WITH THE DEFENSE ON THURSDAY, AUGUST 16TH, 1979.

18 YOU TESTIFIED, IF I RECALL CORRECTLY, THAT YOU WERE
19 PRESENT IN THE ROOM WHEN ATTORNEY BERNIE SEGAL INTERVIEWED
20 HELENA STOECKLEY?

21 A. THAT'S CORRECT.

22 Q. AND AT THE SAME TIME YOU WERE PRESENT WADE SMITH WAS ALSO
23 IN THE ROOM?

24 A. YES, THERE WERE FOUR OF US.

25 Q. AND THERE WAS NO ONE ELSE IN THE ROOM?

1 A. NO ONE ELSE.

2 Q. AND YOU WERE SHOWN A TRANSCRIPT FROM THAT DAY WHEN, AT
3 ROUGHLY 1:00 P.M. OR SHORTLY THEREAFTER, THAT COURT RESUMES
4 AND THE REPORT WAS MADE THAT SOME ADDITIONAL TIME WAS NEEDED
5 AND SO COURT WAS RECESSED FOR THE DAY AND MR. SEGAL SAID I
6 NEED HER TILL ROUGHLY 2:00. DO YOU REMEMBER THAT TESTIMONY?

7 A. YES, I THINK -- YES, GENERALLY.

8 Q. NOW, IT'S BEEN A LONG TIME, BUT LET ME ASK YOU THIS,
9 WHEN YOU LEFT THAT COURTROOM THAT DAY, WHERE DID YOU GO?

10 A. I WENT BACK TO -- I BELIEVE I WENT BACK TO THE WITNESS
11 ROOM. STOECKLEY -- NO, I STAYED IN THE COURTROOM, OR I WOULD
12 HAVE, I'M JUST PROJECTING WHAT MY PROCEDURE WOULD HAVE BEEN,
13 UNTIL THE COURT WAS IN RECESS. AND AT THAT TIME, I WOULD JUST
14 HAVE GONE WITH, AS I DID AT THE END OF COURT JUST ABOUT EVERY
15 DAY, GO WITH BERNIE SEGAL AND WITH MACDONALD AND, YOU KNOW,
16 EVENTUALLY GO BACK TO THE FRATERNITY HOUSE. IF STOECKLEY WAS
17 STILL IN THAT ROOM, WE COULD HAVE COME BACK AND HAD SOME
18 DISPOSITION.

19 HER WHEREABOUTS FOR THE WEEKEND WERE UNDER SOME
20 DISCUSSION BECAUSE SHE WASN'T GOING TO BE HELD IN -- SHE
21 WASN'T GOING TO BE LOCKED UP, BUT THEY DIDN'T WANT HER TO
22 LEAVE. SO, SOMEBODY GOT HER A MOTEL ROOM AND IT WAS ALL THOSE
23 KIND OF ARRANGEMENTS GOING ON.

24 Q. RIGHT. AND I UNDERSTAND IT'S BEEN A LONG TIME. I'M NOT
25 TRYING TO PUT YOU ON THE SPOT OTHER THAN YOU'VE TALKED ABOUT

1 IT EARLIER TODAY SO I NEED TO FOLLOW UP WITH YOU ABOUT IT.

2 A. SURE.

3 Q. IS IT FAIR TO SAY THAT YOU DON'T SPECIFICALLY RECALL
4 EVERY MINUTE OF WHERE YOU WERE FROM WHEN COURT ENDED THROUGH
5 THE REST OF THE DAY AUGUST 16TH, 1979?

6 A. I DON'T THINK I SPECIFICALLY RECALL EVERY MINUTE OF EVERY
7 DAY AFTER COURT FOR ANY DAY DURING THE SIX WEEK TRIAL, YOU
8 KNOW. I KNOW WHAT THE NORMAL PRACTICE WAS AND DEVIATIONS FROM
9 THAT WOULD STICK OUT IN MY MIND, BUT --

10 Q. AND BECAUSE OF HIS EGO, YOU FEEL LIKE BERNIE SEGAL WOULD
11 DEFINITELY HAVE HAD YOU THERE IF HE HAD TALKED TO HELENA
12 STOECKLEY?

13 A. I AM CONVINCED OF THAT. HE MADE A BIG POINT OF WANTING
14 ME THERE. AND HE AND WADE HAD SOME DISCUSSIONS ABOUT THAT
15 WHICH WADE -- I WAS ACTUALLY PRIVY TO -- WADE WAS OBJECTING.
16 HE SAID, BERNIE, THAT'S NOT HOW -- YOU KNOW, WE DON'T DO IT
17 THAT WAY DOWN HERE. I DON'T THINK THIS IS A GOOD IDEA. YOU
18 KNOW, WE SHOULDN'T HAVE HIM PRESENT WHEN YOU'RE TALKING TO A
19 WITNESS. AND BERNIE SAID, NO, NO, I WANT HIM THERE. SO,
20 THAT'S HOW THAT WENT.

21 Q. BUT YOU COULD AGREE WITH ME, I THINK, THAT IT'S AT LEAST
22 POSSIBLE THAT BERNIE COULD HAVE SPOKEN TO MS. STOECKLEY AGAIN
23 THAT DAY WITHOUT YOU KNOWING ABOUT IT?

24 A. I WOULD HAVE KNOWN ABOUT IT AND I CERTAINLY WOULD HAVE
25 KNOWN ABOUT IT IF SHE HAD SAID ANYTHING HELPFUL TO THE DEFENSE

1 BECAUSE BERNIE WOULD HAVE BEEN ON TOP OF THE WORLD. AND,
2 BELIEVE ME, HE WAS NOT.

3 Q. BUT YOU DON'T REMEMBER WHERE YOU WERE EVERY MINUTE FOR
4 THE REST OF THAT DAY?

5 A. THAT'S CORRECT.

6 Q. AND SO IT IS POSSIBLE THAT BERNIE COULD HAVE BEEN
7 SOMEWHERE THAT YOU DON'T REMEMBER DOING SOMETHING THAT YOU
8 DIDN'T KNOW ABOUT?

9 A. NO, WHEN BERNIE WENT TO THE BATHROOM, I DIDN'T FOLLOW
10 HIM. HE COULD HAVE BEEN -- YOU KNOW, IT IS POSSIBLE, YES,
11 SIR.

12 Q. ALL RIGHT. LET'S MOVE NEXT AND TALK ABOUT YOUR ESKATROL
13 THEORY. AND I WANT TO START BY TALKING ABOUT THE ORIGIN OF
14 THAT AND WHERE ALL THAT CAME FROM.

15 AND IF YOU LOOK AT THE SCREEN -- MY UNDERSTANDING
16 WAS THAT YOU FOUND THESE NOTES AND THAT YOU TALKED TO JEFFREY
17 MACDONALD ABOUT THESE NOTES AND THAT HE TOLD YOU THAT HE HAD
18 BEEN REQUESTED TO WRITE A DETAILED ACCOUNT. AND IN
19 PARTICULAR, THE TESTIMONY FROM THE CASE IN CALIFORNIA
20 INDICATED THAT THE POINT WAS THAT MACDONALD SAID HE FOUND IT
21 VERY DIFFICULT TO TALK ABOUT THE EVENTS OF THAT NIGHT AND IT
22 SORT OF MIGHT BE EASIER FOR HIM TO JUST WRITE OUT AN ACCOUNT.
23 DO YOU REMEMBER THAT?

24 A. YES, HE HAD -- YEAH. YES. AT SOME POINT HE SAID THAT
25 THE REASON HE WROTE THIS OUT RATHER THAN JUST TALKING TO HIS

1 LAWYERS ABOUT IT WAS HE FOUND IT HARD TO TALK ABOUT IT AND IT
2 MIGHT BE EASIER IF HE JUST PUT IT IN WRITING.

3 Q. SURE.

4 MR. WILLIAMS: IF I COULD HAVE JUST A MOMENT, YOUR
5 HONOR, TO --

6 THE COURT: YES.

7 (PAUSE.)

8 BY MR. WILLIAMS:

9 Q. AND SO YOU MENTIONED THE FACT THAT YOU WERE THERE IN
10 CALIFORNIA. AND I THINK IT'S AGAIN MY UNDERSTANDING, CORRECT
11 ME IF I'M WRONG, THAT DR. MACDONALD STILL HAD A CONDOMINIUM IN
12 CALIFORNIA AT THE TIME?

13 A. YES, HE DID.

14 Q. AND YOU WERE THERE IN CALIFORNIA BECAUSE YOU WERE GOING
15 TO TAKE A LOOK AT HIS NOTES, BUT I BELIEVE THERE WAS TESTIMONY
16 ALSO THAT YOU WERE THERE BECAUSE YOU HAD A PUBLICITY TOUR FOR
17 AN UPCOMING BOOK?

18 A. NO, THAT WAS NOT THE SAME TIME. MY BOOK ON ALASKA WASN'T
19 PUBLISHED UNTIL THE FALL OF 1980, AND THIS WAS THE FALL OF
20 '79. SO, I WAS THERE ONLY TO SEE MACDONALD AT TERMINAL ISLAND
21 AND TO GATHER UP ALL THE MATERIALS THAT HE HADN'T BROUGHT TO
22 RALEIGH FOR THE TRIAL.

23 Q. SO, THERE WAS A PUBLICITY TOUR, BUT IT WASN'T AT THAT
24 TIME?

25 A. IT WAS 1980. IT WAS A YEAR LATER.

1 Q. AND YOU WERE THERE JUST IN THE CONDO OR JUST FOR THIS
2 PURPOSE, I UNDERSTAND. LET ME DIRECT YOUR ATTENTION TO THE
3 SCREEN AND YOU MENTIONED THAT YOU LOOKED AT THE DOCUMENTS AND
4 I THINK YOU USED THE SAME LANGUAGE TODAY, YOU WENT THROUGH
5 BOXES AND BOXES OF DOCUMENTS, THERE WAS A TON OF BOXES.

6 A. YES, I SEE WHERE I SAID THAT. YEP.

7 Q. AND YOU ALSO SAID THAT YOU WENT THROUGH EVERYTHING THAT
8 WAS IN THE AREA OF THE CONDO WHERE THE MATERIAL RELATED TO THE
9 CASE WAS KEPT. DO YOU SEE THAT?

10 A. YES, I DO.

11 Q. AND YOU WERE ASKED, DR. MACDONALD TOLD YOU YOU COULD DO
12 THAT, RIGHT? AND WHAT WAS YOUR ANSWER?

13 A. HE SURE DID.

14 Q. YOU WERE ALSO ASKED, AND HE TOLD YOU YOU COULD TAKE SOME
15 DOCUMENTS, IS THAT RIGHT? AND WHAT WAS YOUR ANSWER?

16 A. YEAH, HE TOLD ME I COULD TAKE BACK ANYTHING I WANTED.

17 Q. AND IT WAS DURING THIS TIME THAT YOU FOUND THESE NOTES
18 CONCERNING THE ESKATROL, IS THAT A RIGHT UNDERSTANDING?

19 A. YES, IT WAS THE FALL -- NOVEMBER OF '79.

20 Q. NOW, LOOKING AT THIS PAGE HERE FROM YOUR BOOK IN *FATAL*
21 *VISION*, I'VE HIGHLIGHTED THE PART THAT YOU'VE ALREADY READ AND
22 THESE QUOTING THE NOTES I BELIEVE CORRECTLY THIS TIME; I HAD
23 LOST 12 TO 15 POUNDS IN THE PRIOR THREE TO FOUR WEEKS IN THE
24 PROCESS USING THREE TO FIVE CAPSULES OF ESKATROL SPANSULE. DO
25 YOU SEE THAT?

1 A. YES, I DO.

2 Q. AND I BELIEVE WE'VE ALREADY HAD SOME DISCUSSION, THE
3 NOTES DID NOT SAY IF THAT WAS THREE TO FIVE CAPSULES PER DAY
4 EVERY DAY FOR THREE TO FOUR WEEKS OR WHETHER THAT WAS A TOTAL
5 OF THREE TO FIVE CAPSULES OVER THE ENTIRE THREE TO FOUR WEEKS.
6 THE NOTES ARE JUST SILENT ON THAT PARTICULAR POINT.

7 A. THEY ARE, BUT THE LOGICAL INFERENCE WOULD BE IT WASN'T
8 JUST ONE PILL A WEEK.

9 Q. AND YOU WERE ASKED ABOUT THIS IN THE TRIAL IN CALIFORNIA
10 AND YOU WERE ASKED IN PARTICULAR IF THERE WAS ANY EVIDENCE OF
11 A DAILY USE. AND IF YOU COULD PLEASE READ YOUR ANSWER IN THE
12 HIGHLIGHTED PORTIONS?

13 A. THERE WAS NO EVIDENCE PRESENTED IN COURT AND FOUND TO BE
14 TRUE BY A JURY AND UPHELD BY APPELLATE COURTS THAT SAID HE
15 TOOK THREE TO FIVE PER DAY.

16 Q. YOU ALSO WERE ASKED ABOUT THAT AGAIN. SOMEONE ASKED YOU
17 -- THE ATTORNEY I BELIEVE ASKED YOU, DR. MACDONALD CONSUMING
18 THE DRUG IS THAT JUST MORE THAN SURMISAL? AND WHAT WAS YOUR
19 ANSWER THERE?

20 A. BASED ON THE NOTES, WHICH WERE MADE AVAILABLE TO ME BY
21 HIM, I DON'T THINK THERE'S MUCH QUESTION ABOUT WHETHER OR NOT
22 HE WAS CONSUMING THE DRUG. THE QUESTION MAY BE HOW MUCH AND
23 WHEN.

24 Q. AND IN YOUR BOOK YOU ADDRESS THAT WITH THE QUOTED PART
25 THERE WHICH SAYS HOW MUCH HE MIGHT HAVE BEEN CONSUMING WILL

1 FOREVER BE, TO EMPLOY A PHRASE USED BY FREDDY KASSAB BEFORE
2 THE GRAND JURY, QUOTE, A DARK AREA. IS THAT RIGHT?

3 A. I SEE THAT. YES, SIR.

4 Q. NOW, IN ADDITION TO WRITING ABOUT THE DRUG, YOU ALSO
5 WROTE ABOUT THE DRUG TESTING THAT WAS DONE ON DR. MACDONALD
6 SHORTLY AFTER THE MURDERS OCCURRED. DO YOU REMEMBER THAT?

7 A. YES, I DO.

8 Q. AND IN YELLOW THERE YOU WROTE THAT THE CHEMIST HAD NEVER
9 BEEN INSTRUCTED TO TEST FOR THE PRESENCE OF AMPHETAMINES AND,
10 IN FACT, THE EQUIPMENT AVAILABLE AT THE CID LABORATORY AT THE
11 TIME WOULD NOT HAVE ENABLED HIM TO DO SO. DO YOU SEE THAT?

12 A. YES, I DO.

13 Q. AND SO YOU'RE TELLING THE READER THAT THE BLOOD AND URINE
14 CAME IN FOR TESTING, BUT THE EQUIPMENT AT THE CID LAB WAS
15 SIMPLY NOT AVAILABLE TO TEST FOR AMPHETAMINES?

16 A. YES, THAT'S RIGHT, AND THAT WAS CONFIRMED IN 1987 BY THE
17 ARMY CHEMIST, MR. BARBATO, WHO TESTIFIED AT THE CIVIL TRIAL.

18 Q. SURE. WELL, LET'S TAKE A LOOK AT THAT. FIRST YOU WERE
19 ASKED ABOUT THE SOURCE FOR THAT INFORMATION THAT YOU WROTE
20 THERE AND WHAT WAS YOUR ANSWER AS SHOWN IN YELLOW?

21 A. WELL, AS I SAY EARLIER IN THE PARAGRAPH, I MADE A FREEDOM
22 OF INFORMATION REQUEST FOR THE LABORATORY NOTES AND THAT, IN
23 CONJUNCTION WITH A CONVERSATION I HAD WITH MR. MURTAGH,
24 PERSUADED ME THAT THAT PARAGRAPH WAS SUBSTANTIALLY ACCURATE.

25 Q. AND THAT WOULD BE MR. MURTAGH WHO ALSO SITS AT COUNSEL

1 TODAY, IS THAT RIGHT, FOR THE GOVERNMENT, THE PROSECUTOR MR.
2 MURTAGH?

3 A. THAT'S CORRECT.

4 Q. YOU SPOKE ON THAT A LITTLE FURTHER IN THE TRIAL, AND IF
5 YOU COULD READ THE PORTIONS THAT ARE HIGHLIGHTED AGAIN THERE
6 IN YELLOW.

7 A. AND THERE WERE, AS I RECALL, A COUPLE OF PAGES OF
8 TYPEWRITTEN NOTES AND MAYBE EVEN SOME GRAPH TYPE PAPER SHOWING
9 TESTING THAT WAS OR WASN'T DONE.

10 AND DID THESE NOTES SAY THAT TESTING WAS NOT DONE
11 FOR AMPHETAMINES?

12 MY RECOLLECTION IS THAT IT WAS MR. MURTAGH WHOSE
13 INTERPRETATION OF THOSE NOTES I RELIED UPON.

14 Q. SO, YOU RELIED UPON MR. MURTAGH'S INTERPRETATION FOR THAT
15 SECTION?

16 A. THAT'S WHAT IT SAYS HERE, WHICH WAS CLOSER TO THE TIME
17 THAN TODAY IS.

18 Q. AND YOU WERE UNDER OATH?

19 A. OH, YES.

20 Q. AND INTENDED TO TELL THE TRUTH THEN?

21 A. ABSOLUTELY.

22 Q. LET'S TAKE A LOOK THEN AT MR. BARBATO, I THINK YOU SAID,
23 WHO TESTIFIED. HE WAS THE MAN WHO PERFORMED THE ACTUAL
24 TESTING ON THE BLOOD AND THE URINE.

25 WE'RE LOOKING HERE AT PAGE 92 AND I DIRECT YOUR

1 ATTENTION TO -- WELL, I'LL JUST ASK IT. THERE WAS A QUESTION
2 THERE, THE QUESTION WAS WHETHER IN HIS REPORT DID HE SAY THAT
3 THERE WAS NO EVIDENCE OF NARCOTICS OR DANGEROUS DRUGS?

4 AND THEN HE ANSWERED, I THINK THE REPORT BASICALLY
5 SAYS THE EXAM DID NOT REVEAL THE PRESENCE, WHICH MEANS IT DID
6 NOT REVEAL THE PRESENCE BASED ON THE TEST THAT I CONDUCTED.
7 AND FURTHER DOWN HE SAYS I DID NOT DETECT THE DRUGS.

8 NOW, WE'RE GOING TO GO -- WALK THROUGH THAT AND I'LL
9 BE SURE THAT WE COVER YOUR POINT AS WELL, BUT, FIRST, JUST SO
10 WE UNDERSTAND OUR TERMINOLOGY, THERE WAS TESTIMONY THERE ABOUT
11 WHAT WERE CONSIDERED DANGEROUS DRUGS BY THE ARMY.

12 AND IF YOU COULD READ THE ANSWER THAT MR. BARBATO
13 GAVE, LINES 15 TO 17.

14 A. OKAY. MR. BARBATO SAID I BELIEVE THAT THAT WAS A
15 GENERAL TERM THAT WAS USED TO APPLY TO DRUGS THAT WERE IN SOME
16 WAY CONTROLLED BY FEDERAL LAWS OR MILITARY LAWS, CODE OF
17 CONDUCT RULES.

18 Q. AND THEN IF YOU COULD READ THE YELLOW PORTION THERE AT
19 LINES 21 THROUGH 25.

20 A. I THINK IT WAS GENERALLY A CATCH ALL PHRASE TO TRY TO
21 INDICATE CONTROLLED SUBSTANCES THAT WERE CONTROLLED BY FEDERAL
22 STATUTE.

23 AND WERE AMPHETAMINES, AT THAT TIME, CONTROLLED BY
24 FEDERAL STATUTE?

25 Q. AND HIS ANSWER?

1 A. I BELIEVE THEY WERE.

2 SO, THEY WERE DANGEROUS DRUGS?

3 YES.

4 SO, THE STATEMENT ON PAGE 612 OF THAT SAME BOOK
5 WHICH SAYS THAT AMPHETAMINES WERE NOT CONSIDERED A DANGEROUS
6 DRUG BY MILITARY AUTHORITIES IS NOT CORRECT?

7 I GUESS YOU'RE CORRECT ON THAT.

8 Q. ALL RIGHT. NOW, AS YOU'VE NOTED, THERE WAS CONVERSATION
9 ABOUT WHETHER THE TESTING THAT HE DID WOULD BE ABLE TO DETECT
10 ANYTHING. AND WE'RE LOOKING HERE AT -- LOOKING HERE AT
11 ANOTHER SECTION OF THE TRIAL TESTIMONY. I BELIEVE YOUR
12 ATTORNEY, MR. KORNSTEIN, ASKED MR. BARBATO FOR AMPHETAMINES,
13 CAN YOU TELL US THE MINIMUM AMOUNT THAT YOUR EQUIPMENT WOULD
14 HAVE IDENTIFIED AT THAT TIME. AND DROPPING DOWN, YOU CAN SEE
15 YOUR ATTORNEY ALSO SAYS DOES IT MEAN THAT YOUR EQUIPMENT COULD
16 NOT AT THAT TIME DETECT LESS THAN THAT LETHAL DOSE OF
17 AMPHETAMINE?

18 AND HE ANSWERED, WELL, IT MEANS THAT -- IT MEANS THE
19 EQUIPMENT WOULD NOT BE THE EQUIPMENT OF CHOICE TO DO THAT TYPE
20 OF ANALYSIS. DO YOU SEE THAT THERE?

21 A. YES, I DO.

22 Q. SO, MR. BARBATO IS SAYING THE EQUIPMENT THAT HE USED IN
23 THE LAB WOULD NOT HAVE BEEN ABLE TO DETECT AMPHETAMINES AT
24 LESS THAN A LETHAL DOSE?

25 A. THAT'S MY RECOLLECTION OF WHAT HE'S TESTIFIED TO.

1 Q. NOW, HE WENT ON TO TALK ABOUT OTHER EQUIPMENT IN THE LAB.
2 AND IF YOU COULD READ THE HIGHLIGHTED PORTION AT LINES EIGHT
3 TO NINE?

4 A. WELL, THERE WAS A GAS CHROMATOGRAPH THAT WAS AVAILABLE IN
5 THE LABORATORY, WHICH I WAS NOT AT THAT POINT QUALIFIED TO
6 USE. AND, IN FACT, IN THE YEAR AND A HALF THAT I WAS ASSIGNED
7 TO THAT LAB I NEVER USED THAT PIECE OF EQUIPMENT.

8 Q. SO, IN HIS LAB WHERE HE DID THE TESTING THERE WAS A
9 SEPARATE INSTRUMENT CALLED A GAS CHROMATOGRAPH THAT WAS
10 AVAILABLE, BUT HE JUST WASN'T QUALIFIED TO USE IT?

11 A. THAT'S WHAT HE SAYS.

12 Q. AND THEN DROPPING DOWN TO LINES 15 THROUGH 19, DO YOU SEE
13 ALSO THAT HE SAID THAT IN RETROSPECT THAT WOULD HAVE BEEN AN
14 INSTRUMENT THAT WOULD HAVE BEEN ORDERS OF MAGNITUDE MORE
15 SENSITIVE TO USE THAN THE INSTRUMENT THAT I DID USE, BUT,
16 UNFORTUNATELY, I WAS UNQUALIFIED TO USE IT SO, THEREFORE, IT
17 WAS BASICALLY UNAVAILABLE TO ME. DO YOU SEE THAT?

18 A. I DO.

19 Q. IT WAS AVAILABLE IN THE LAB, BUT NOT AVAILABLE TO HIM
20 BECAUSE OF HIS LACK OF TRAINING?

21 A. THAT'S WHAT HE'S SAYING, YEP.

22 Q. AND IN PARTICULAR HE WAS ASKED THE GAS CHROMATOGRAPH THAT
23 YOU SAID WOULD BE SIGNIFICANTLY MORE SENSITIVE WOULD HAVE BEEN
24 ABLE TO DETECT LESS THAN LETHAL DOSES OF AMPHETAMINES, TO YOUR
25 KNOWLEDGE, ISN'T THAT RIGHT? AND WHAT DID HE SAY?

1 A. HE SAID, YES, I BELIEVE THAT IS CORRECT.

2 Q. I'D LIKE TO TAKE YOU BACK TO THE INFORMATION THAT YOU
3 SAID OR THE INTERPRETATION YOU SAID THAT YOU GOT FROM MR.
4 MURTAGH, AND I SHOW YOU AGAIN JUST TO REFRESH YOU, THAT YOU
5 SAID THAT THESE NOTES WERE INTERPRETED BY MR. MURTAGH. AND
6 YOU SAID MY RECOLLECTION IS THAT IT WAS MR. MURTAGH WHOSE
7 INTERPRETATION OF THOSE NOTES I RELIED UPON.

8 MR. MURTAGH, THE PROSECUTOR, RIGHT?

9 YES, SIR.

10 DO YOU SEE THAT THERE?

11 A. I DO.

12 Q. WHEN DID YOU START USING THE PROSECUTOR, MR. MURTAGH, TO
13 INTERPRET THE SOURCE MATERIAL FOR YOUR BOOK?

14 A. I DON'T THINK I STARTED TALKING TO THE PROSECUTION UNTIL
15 -- I CAN'T EVEN REMEMBER THE FIRST TIME, BUT IT WAS -- IT
16 WASN'T RIGHT AWAY BECAUSE THEY WOULDN'T TALK TO ME.

17 Q. WELL, WHEN DID YOU STOP USING THE PROSECUTOR, MR.
18 MURTAGH, TO INTERPRET SOURCE MATERIAL FOR YOUR BOOK?

19 A. I WOULD SAY -- WELL, THE BOOK WAS PUBLISHED IN 1983. I
20 DON'T KNOW IF THERE WAS A DAY WHEN -- A DAY WOULD COME WHEN I
21 WOULDN'T ASK ANYBODY FOR ANY INTERPRETATIONS BECAUSE IT WAS
22 BEYOND THAT POINT.

23 Q. SO, IS YOUR ANSWER YOU DON'T REMEMBER WHEN YOU STOPPED
24 USING MR. MURTAGH TO INTERPRET THE SOURCE MATERIAL?

25 A. I CAN'T GIVE YOU A DATE.

1 Q. HOW MANY TIMES DID YOU CONSULT WITH MR. MURTAGH ABOUT
2 WHAT SHOULD GO IN YOUR BOOK?

3 A. I WENT DOWN TO WASHINGTON AND SPENT SOME TIME WITH HIM IN
4 HIS OFFICE. I THINK JUST ONE DAY. AND WE WOULD TALK ON THE
5 PHONE FROM TIME TO TIME. I WOULD HAVE QUESTIONS ABOUT THEIR
6 TACTICS DURING THE TRIAL AND, YOU KNOW, OTHER THINGS WOULD
7 COME UP. AND IF I NEEDED TO CHECK SOMETHING THAT I KNEW HE
8 HAD BEEN INVOLVED IN AND HE COULD ANSWER A QUESTION, I WOULD
9 ASK HIM.

10 Q. DID YOU GIVE A COPY OF THE BOOK TO MR. MURTAGH BEFORE IT
11 WAS PUBLISHED?

12 A. NO, I DID NOT.

13 Q. HAVE YOU EVER CHANGED OR REVISED ANYTHING IN THE BOOK
14 BASED ON FURTHER INFORMATION RECEIVED FROM MR. MURTAGH?

15 A. NO, THE BOOK -- THE BASIC TEXT OF THE BOOK IS WHAT WAS
16 PUBLISHED IN 1983. I HAVE WRITTEN A COUPLE OF EPILOGUES
17 AFTERWARDS, BUT HAVEN'T GONE BACK AND CHANGED ANYTHING IN THE
18 BODY OF THE TEXT.

19 Q. AND DIRECTING YOUR ATTENTION AGAIN TO THE SCREEN. AGAIN,
20 ON YOUR TWITTER ACCOUNT, THIS WAS WEDNESDAY, YOU SAID IT LOOKS
21 LIKE BACK TO THE FUTURE, BUT GOOD TO RECONNECT WITH OLD PALS.
22 IS MR. MURTAGH ONE OF YOUR OLD PALS?

23 A. I'D SAY I CONSIDER HIM A FRIEND NOW, YEAH. AND WITH MR.
24 SMITH TOO. IT WAS GREAT TO SEE WADE AGAIN. AND JIM
25 BLACKBURN, IT WAS GREAT TO SEE HIM TOO.

1 Q. LET'S GO BACK TO YOUR BOOK, SIR, AND I'VE GOT IT ON THE
2 SCREEN FOR YOU, *FATAL VISION* PAGE 613. AND I'LL SUMMARIZE
3 THIS BECAUSE I'D LIKE TO MOVE ALONG.

4 MR. WILLIAMS: AND, YOUR HONOR, IF I COULD, I WOULD
5 JUST COMMUNICATE TO THE COURT I BELIEVE IF I COULD HAVE UNTIL
6 1:15, I THINK WE COULD FINISH THIS AND ALLOW THE WITNESS TO
7 TRAVEL HOME IF THAT'S ACCEPTABLE TO THE GOVERNMENT AND THE
8 COURT.

9 MR. BRUCE: NO OBJECTION.

10 THE COURT: SURELY. THANK YOU.

11 BY MR. WILLIAMS:

12 Q. YOU SAID IN THE BOOK THAT USE OF THREE TO FIVE ESKATROL
13 SPANSULES PER DAY COULD HAVE HAD A MARKED EFFECT ON A PERSON
14 AND YOU WENT THROUGH THE *PHYSICIANS' DESK REFERENCE* AND YOU
15 NOTED THE SYMPTOMS; MARKED INSOMNIA, TENSENESS, IRRITABILITY,
16 HYPERACTIVITY. I WON'T REPEAT ALL OF THEM, BUT I'M REFERRING
17 TO THAT SAME LIST THAT YOU READ EARLIER. DO YOU SEE THAT
18 THERE?

19 A. YES, I DO.

20 Q. YOU WERE ASKED ABOUT THIS AT THE CIVIL TRIAL AND IN
21 PARTICULAR I BELIEVE THE QUESTION THAT WAS ASKED WAS THIS,
22 THE QUESTION WAS HOW MANY PEOPLE -- WHO DID YOU TALK TO THAT
23 SHOWED -- THAT TOLD YOU THAT DR. MACDONALD MANIFESTED SYMPTOMS
24 OF OVERUSE OF ESKATROL IN THE WEEKS BEFORE FEBRUARY 19 -- OR
25 FEBRUARY 17TH, 1970? DO YOU SEE THAT QUESTION?

1 A. YES, I DO.

2 Q. HOW MANY PEOPLE DID YOU TALK TO, IT SAYS, TO SEE IF DR.
3 MACDONALD MANIFESTED THESE SYMPTOMS. AND WHAT WAS YOUR
4 ANSWER?

5 A. I SAID NO ONE. I NEVER ASKED ANYONE THAT QUESTION.

6 Q. YOU ALSO SAY IN YOUR BOOK AND, AGAIN, I'M HIGHLIGHTING
7 PORTIONS YOU'VE ALREADY QUOTED, THAT A PERSON CAN HAVE A RAGE
8 REACTION, ESPECIALLY WHEN THEY HAVE SOME PRE-EXISTING OR OTHER
9 PSYCHOLOGICAL CONDITION. AND YOU CAN SEE THERE THAT IT
10 REFERENCES OUTSIDE STRESSES. IT REFERENCES SLEEP DEPRIVATION.
11 IT ALSO TALKS ABOUT A PERSON SUFFERING FROM A NARCISSISTIC
12 PERSONALITY DISORDER.

13 AND I BELIEVE IN YOUR BOOK, AT LEAST AS I UNDERSTAND
14 IT, YOU MENTION THAT YOU FELT LIKE SLEEP DEPRIVATION COULD BE
15 AN ISSUE AND THE WAY THAT YOU SPECULATED HE INTERACTED WITH
16 WOMEN, PERHAPS, A NARCISSISTIC PERSONALITY DISORDER COULD BE
17 AN ISSUE.

18 A. BASED ON THE READING I'VE DONE ABOUT THE NARCISSISTIC
19 PERSONALITY DISORDER, THERE WERE ELEMENTS IN HIS CHARACTER AND
20 PERSONALITY THAT WOULD SEEM TO PUT HIM IN THAT CATEGORY.

21 I BELIEVE DR. STONE CAME OUT AS AN EXPERT WITNESS
22 AND TESTIFIED, A PSYCHIATRIST FROM NEW YORK, TESTIFIED AT THE
23 CIVIL SUIT IN 1987 ABOUT THIS ASPECT OF IT.

24 Q. HE DID. DR. STONE, WHO NEVER EXAMINED DR. MACDONALD, IS
25 THAT CORRECT?

1 A. NO, I DON'T THINK HE EVER DID.

2 Q. RIGHT. SO, HE MADE AN OPINION WITHOUT SEEING THE
3 PATIENT. BUT IF I COULD TAKE YOU BACK TO THIS TRANSCRIPT, I
4 WANT TO ASK YOU ABOUT THE SLEEP DEPRIVATION BECAUSE IN YOUR
5 BOOK YOU MENTION THAT DR. MACDONALD, A PHYSICIAN WITH THE
6 ARMY, ALSO DID SOME MOONLIGHTING. IN OTHER WORDS, WORKED PART
7 TIME AT OTHER AREA HOSPITALS. AND THERE WAS SOME SPECULATION
8 ABOUT SLEEP DEPRIVATION FROM THAT.

9 AND SO THE QUESTION WAS ASKED OF YOU IN THE PREVIOUS
10 TRIAL; ALSO BY JANUARY, OF COURSE, HE WAS MOONLIGHTING AT CAPE
11 FEAR VALLEY -- AND THEN THE PARTICULAR QUESTION IS PUT ON THE
12 NEXT PAGE, IT'S THIS; MY QUESTION TO YOU NOW IS DID YOU TALK
13 TO ANYONE AT, LET US SAY, CAPE FEAR WHO KNEW OF THE
14 MOONLIGHTING THAT DR. MACDONALD HAD BEEN DOING? AND WHAT WAS
15 YOUR ANSWER?

16 A. NO, SIR.

17 Q. ANOTHER HOSPITAL. DID YOU EVER TALK TO ANYONE AT HAMLET
18 HOSPITAL, ANOTHER PLACE THAT YOU SAID THAT HE WAS
19 MOONLIGHTING? AND WHAT WAS YOUR ANSWER?

20 A. NO, SIR. AND THEN I SAY, IF I COULD?

21 Q. SURE.

22 A. THANK YOU. I SAID I KNEW THAT HE HAD WORKED A 24 HOUR
23 SHIFT AT HAMLET HOSPITAL IN THE TIME PERIOD IMMEDIATELY
24 PRECEDING THE MURDERS AND THEN HAD BEEN UP ALL DAY AND WAS
25 STILL UP AT -- I KNEW THAT HE WAS EXHAUSTED, SO EXHAUSTED THAT

1 HE WAS LYING DOWN FALLING ASLEEP NEXT TO HIS DAUGHTER
2 KIMBERLEY ON THE RUG AT SEVEN O'CLOCK THAT NIGHT AND THEN AT
3 TWO O'CLOCK IN THE MORNING HE'S UP WASHING DISHES.

4 Q. AND, OF COURSE, WHETHER HE WAS EXHAUSTED HE WOULD KNOW
5 THAT. AND SO YOU WERE ASKED THE QUESTION DID YOU EVER ASK DR.
6 MACDONALD HOW MUCH SLEEP HE HAD THE NIGHT BEFORE THE ASSAULT?
7 AND WHAT WAS YOUR ANSWER?

8 A. NOT THAT I RECALL. BECAUSE THERE CAME A POINT IN TIME
9 WHEN I RECOGNIZED THAT HE WAS BEING UNTRUTHFUL IN ALL OF HIS
10 ANSWERS TO ME. SO, THERE WAS NO POINT IN ASKING HIM A
11 QUESTION IF I JUST KNEW HE WAS GOING TO LIE.

12 Q. IF YOU KNEW HE WOULD DO THINGS LIKE QUOTE SOURCE MATERIAL
13 INACCURATELY?

14 A. WHAT I SAID WAS LIE.

15 Q. LET ME ASK YOU NEXT ABOUT THE NARCISSISTIC -- OR THE
16 NARCISSISM, IF YOU WILL. YOU WERE ASKED THE QUESTION DID YOU
17 TALK TO ANYONE THAT YOU CAN RECALL THAT YOU WOULD SAY WERE
18 FRIENDS, RELATIVES, CO-WORKERS OR COLLEAGUES TO ASK WHETHER
19 THEY HAD OBSERVED ANY BEHAVIOR THAT COULD BE TERMED
20 PATHOLOGICAL NARCISSISM? AND WHAT WAS YOUR ANSWER?

21 A. NO, I DID NOT.

22 Q. YOU WERE THEN ASKED SOME LARGER QUESTIONS, SIR, ABOUT
23 WHETHER OR, I'M SORRY, WHEN. DO YOU SEE AT THE BOTTOM OF THE
24 PAGE? WHEN DID YOU COME TO THE CONCLUSION THAT DR. MACDONALD
25 MAY HAVE BEEN TAKING THREE TO FIVE ESKATROL SPANSULES A DAY?

1 AND WHAT WAS YOUR ANSWER?

2 A. I DON'T KNOW THAT I EVER CAME TO THAT CONCLUSION. I
3 THINK IT'S MORE SUGGESTED ALONG THE LINES OF A POSSIBILITY
4 BASED ON AMBIGUITY IN HIS OWN NOTES AND BASED ON THE EVENTS OF
5 THAT NIGHT.

6 Q. YOU WERE ALSO ASKED ARE YOU SAYING THAT THAT'S NOT A
7 SURMISAL, THAT PART OF THE MOTIVATION FOR THE CRIMES WAS THE
8 EFFECT OF THE AMPHETAMINES? AND WHAT WAS YOUR RESPONSE?

9 A. I'M CERTAINLY SAYING THAT I PRESENT IT AS A POSSIBILITY
10 AND TWO PARAGRAPHS LATER, AS I ASKED, MIGHT IT BE TOO MUCH TO
11 SURMISE? MY OWN ANSWER TO THE READER IS PERHAPS, WE JUST
12 DON'T KNOW THAT. WE DO KNOW WHAT HAPPENED.

13 Q. RIGHT. NOW, LET ME TAKE YOU BACK -- AND WE'RE GETTING
14 TOWARD THE END. LET ME TAKE YOU BACK AGAIN TO YOUR BOOK WHERE
15 YOU QUOTE THIS PART ACCURATELY ABOUT THE WEIGHT LOSS PROGRAM.
16 DR. MACDONALD WROTE I HAD LOST 12 TO 15 POUNDS IN THE PRIOR
17 THREE TO FOUR WEEKS. DO YOU SEE THAT?

18 A. YES, I DO.

19 Q. I WANT TO DIRECT YOUR ATTENTION TO A LETTER THAT YOU
20 WROTE TO DR. MACDONALD DATED JANUARY 16TH, 1980. IT SAYS,
21 DEAR, JEFF -- YOU CAN SEE -- GOT THE FIRST TWO TAPES
22 YESTERDAY. USEFUL AND KEEP THEM COMING. DO YOU SEE THAT?

23 A. YES. YES, I DO.

24 Q. AND THAT'S REFERENCING, I BELIEVE, THE TAPES THAT YOU
25 DISCUSSED EARLIER WHERE DR. MACDONALD WAS GIVING YOU

1 ADDITIONAL INFORMATION?

2 A. YEAH, HE WOULD MAKE THE RECORDINGS AND SMUGGLE THEM --
3 HAVE SOMEBODY TO SMUGGLE THEM OUT OF THE PRISON.

4 Q. AND AT THAT POINT YOU, YOURSELF, WERE GOING THROUGH A
5 WEIGHT LOSS PLAN. AND IF YOU WOULD, PLEASE READ THE SECOND
6 YELLOW PORTION IN HIGHLIGHTS THERE THAT DESCRIBE IT FOR US AS
7 YOU DESCRIBED IT IN YOUR LETTER.

8 A. I'M FINALLY BACK TO RUNNING AN HOUR A DAY, THREE DAYS A
9 WEEK FOR A WHILE, BUT, MAN, ON ONLY 1,000 TO 1,200 CALORIES
10 PER DAY I SURE DO RUN SLOW AND FEEL WEAK, BUT FIVE POUNDS ARE
11 OFF AFTER ONLY TEN DAYS OF DIET AND TWO DAYS OF RUNNING.

12 SO, BY THE TIME I'M BACK OUT THERE AT THE END OF
13 FEBRUARY OR BEGINNING OF MARCH, I OUGHT TO BE DOWN RIGHT
14 SVELTE. PALE AND TREMBLING, BUT SVELTE.

15 Q. WOULD YOU AGREE WITH ME THAT IF A PERSON LOST FIVE POUNDS
16 IN TEN DAYS AND THEN CONTINUED TO LOSE WEIGHT AT THAT SAME
17 RATE THAT IT WOULD BE TEN POUNDS IN 20 DAYS AND 15 POUNDS IN
18 30 DAYS? WOULD YOU AGREE WITH THAT?

19 A. I GUESS THAT'S THE ARITHMETIC, YEAH. BUT ALTHOUGH, YOU
20 KNOW, THE FIRST FIVE POUNDS COME OFF A LOT EASIER THAN THE
21 ONES THAT ARE AFTER THAT.

22 Q. WELL, NOW, I'LL ASK YOU AGAIN, IF THE PERSON LOST IT AT
23 THE SAME RATE, FIVE POUNDS IN TEN DAYS, IF THEY CONTINUED THAT
24 FOR A TOTAL OF 30 DAYS, IT WOULD BE TEN POUNDS IN 20 DAYS AND
25 THEN 15 POUNDS IN 30 DAYS, CORRECT?

1 A. THAT'S CORRECT.

2 Q. AND THAT WOULD BE THE SAME LEVEL OF WEIGHT LOSS THAT DR.
3 MACDONALD DESCRIBED IN HIS NOTES?

4 A. THAT'S RIGHT.

5 Q. BIGGER PICTURE, SIR. TALKING ABOUT YOUR BOOKS, YOU FIRST
6 PUBLISHED *FATAL VISION*, THE HARD COVER, IN 1983, RIGHT?

7 A. THAT'S CORRECT.

8 Q. IT LATER CAME OUT IN PAPERWORK?

9 A. YES. ACTUALLY, THE FOLLOWING YEAR.

10 Q. IT LATER CAME OUT IN AN AUDIO VERSION?

11 A. THE AUDIO PROBABLY WAS THE SAME TIME AS THE HARD COVER.

12 Q. AN E-BOOK EDITION HAS COME OUT AUGUST 29TH?

13 A. JUST THIS YEAR, THAT'S RIGHT.

14 Q. AND A NEW AND BIGGER PRINT EDITION IS ON THE WAY?

15 A. IT'S ACTUALLY HERE.

16 Q. ONE FINAL QUESTION FOR YOU, SIR. WOULD YOU AGREE THAT
17 THERE IS NO ONE WHO HAS PROFITED FINANCIALLY MORE OFF OF THIS
18 STORY THAN YOU?

19 A. I CAN'T THINK OF ANYONE WHO WOULD BECAUSE NO ONE'S DONE
20 THE WORK I'VE DONE.

21 MR. WILLIAMS: THANK YOU, YOUR HONOR.

22 THE COURT: MR. BRUCE, LET'S STOP FOR THE WEEKEND.

23 MR. BRUCE: THAT'S FINE, YOUR HONOR.

24 THE COURT: WE'RE GOING TO TAKE A RECESS TILL MONDAY
25 AT 9:00 A.M.

1 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 1:03 P.M.,
2 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 24, 2012.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT OF SAID PROCEEDINGS.

/s/ STACY SCHWINN, CCR, CVR-M
STACY SCHWINN, CCR, CVR-M

11/19/12
DATE