

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DALE EDWARD FLANAGAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Clerk of Supreme Court

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**Docket No. 63703**

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Appeal from the Denial of a Post-Conviction Petition  
District Court, Clark County  
The Honorable Michelle Leavitt, District Judge  
District Court No. 85-C069269-1

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**APPELLANT'S APPENDIX**  
**Volume 2**

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1 CASE NO. C069269  
2 DEPARTMENT FOURTEEN

LORETTA BOWMAN, CLERK  
By Lori Bowman Deputy

3  
4 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF CLARK  
6

7 THE STATE OF NEVADA, )  
8 PLAINTIFF, ) REPORTER'S TRANSCRIPT  
9 VS. ) OF  
10 DALE EDWARD FLANAGAN, RANDOLPH ) OPENING STATEMENTS  
11 MOORE AKA SMITH, JOHNNY RAY )  
12 LUCKETT AND ROY MCDOWELL, )  
DEFENDANTS. )

13 BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE  
14 MONDAY, SEPTEMBER 30, 1985  
15

16 APPEARANCES:

17 FOR THE STATE: MELVYN T. HARMON, ESQUIRE  
18 &  
19 DANIEL M. SEATON, ESQUIRE  
DEPUTIES DISTRICT ATTORNEY  
20 FOR DEFENDANT FLANAGAN: RANDALL PIKE, ESQUIRE  
21 FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE  
22 FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE  
23 FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE  
24

25 Reported by: Sharon J. Thielman, Official Court Reporter

VERA

1 LAS VEGAS, NEVADA, MONDAY, SEPTEMBER 30, 1985

2  
3 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.  
4 IS COUNSEL PREPARED TO BEGIN THEIR OPENING STATEMENTS?

5 MR. HARMON: YES, YOUR HONOR.

6 THE COURT: PROCEED, PLEASE.

7 MR. HARMON: JUDGE MOSLEY, COUNSEL, LADIES AND  
8 GENTLEMEN. I WOULD LIKE TO BEGIN BY TALKING ABOUT A FEW  
9 RELATIONSHIPS IN THE CASE. DALE FLANAGAN WAS THE GRANDSON OF  
10 COLLEEN AND CARL GORDON. THE GRANDPARENTS LIVED IN A LARGE  
11 HOUSE AT 5851 WASHBURN ROAD.

12 HE LIVED ON THE SAME PROPERTY IN A TRAILER JUST  
13 WEST OF THE HOUSE. THE SCENE IN THIS CASE CAN BEST BE  
14 DESCRIBED AS A PEACEFUL, RURAL, SOMEWHAT ISOLATED LOCATION  
15 NORTH OF TONOPAH HIGHWAY JUST EAST OF JONES BOULEVARD.

16 WASHBURN ROAD IS BETWEEN LONE MOUNTAIN ROAD ON THE  
17 SOUTH AND ANN ROAD ON THE NORTH.

18 DEFENDANT RANDY MOORE LIVED AT 337 NORTH 13TH  
19 STREET IN LAS VEGAS, NEVADA. HE WAS THE BEST AND MOST TRUSTED  
20 FRIEND OF DEFENDANT DALE FLANAGAN. THEY CONSIDERED THEMSELVES  
21 TO BE BROTHERS.

22 DEFENDANTS MOORE AND FLANAGAN WERE ALSO FRIENDS  
23 AND ASSOCIATES OF CODEFENDANTS JOHNNY RAY LUCKETT, ROY  
24 MCDOWELL AND TWO OTHER CO-CONSPIRATORS, MICHAEL WALSH AND  
25 THOMAS AKERS. ALL OF THESE YOUNG MEN LIVE IN LAS VEGAS,

1 NEVADA.

2 MENTALITY. THESE YOUNG MEN LOOKED AND, FOR THE  
3 MOST PART, PROBABLY ACTED LIKE ORDINARY LATE ADOLESCENT,  
4 APPLE PIE AMERICAN BOYS WHO LOVED BASEBALL, BUDWEISER BEER,  
5 BOULDER BEACH, ROCK MUSIC AND CHASING CHICKS.

6 UNFORTUNATELY, THERE WAS A DARKER, DEVIANT SIDE TO  
7 THE PERSONALITIES OF THESE YOUNG MEN. THE CONTRAST BETWEEN  
8 HIS HUMBLE LITTLE 20 FEET BY 8 FEET TRAILER AND THE ELEGANT  
9 TWO-STORY HOUSE OF HIS GRANDPARENTS MUST HAVE BEEN ETCHED INTO  
10 THE CONSCIOUSNESS OF DALE FLANAGAN.

11 HE HAD NO CAR, AT LEAST NO CAR WHICH WAS  
12 OPERATIONAL, IN NOVEMBER, 1984. HE HAD A JOB, BUT HE EARNED  
13 FAR LESS THAN WAS NECESSARY TO PROVIDE HIM WITH THE LIFE STYLE  
14 HE COVETED. HIS GRANDPARENTS WERE OFTEN UPSET AT HIM. THERE  
15 WERE ARGUMENTS AND RESTRICTIONS IMPOSED.

16 PERHAPS THEY WERE A NATURAL OUTGROWTH OF THE  
17 GENERATION GAP. HE WAS 19, THEY WERE 58 AND 57, RESPECTIVELY.  
18 BUT THE FACT IS THAT DALE FLANAGAN FELT MISUNDERSTOOD AND  
19 STIFLED.

20 HIS GRANDPARENTS DIDN'T UNDERSTAND HIM. THEY  
21 DIDN'T UNDERSTAND HIS FRIENDS, AND THEY DISLIKED HIS FRIENDS.  
22 GRADUALLY, THE EVIDENCE WILL ESTABLISH, AN ANIMOSITY, A  
23 FEELING OF ILL WILL TOWARDS HIS GRANDPARENTS BEGAN TO FESTER  
24 IN DALE FLANAGAN.

25 LADIES AND GENTLEMEN, THE EVIDENCE WILL THEN SHOW

1 THAT AT SOME POINT A VERY SINISTER THOUGHT WAS BORN. FIRST,  
2 IT WAS PROBABLY JUST THE GERM OF AN IDEA. BUT IT WAS A NOTION  
3 WHICH, WITH EACH REOCCURRENCE, GREW LARGER, UNTIL IT PERVADED  
4 THE THOUGHTS OF DALE FLANAGAN AND BECAME A CONSUMING  
5 OBSESSION.

6 DALE FLANAGAN BEGAN TO THINK THE UNTHINKABLE. AT  
7 SOME POINT HE DECIDED TO GET RID OF HIS GRANDPARENTS.

8 HIS MOTIVE. HIS EXPECTATION THAT HE WAS NAMED IN  
9 THEIR WILL AND HIS BELIEF THAT WITH THEM GONE, HE WILL COLLECT  
10 ON INSURANCE PROCEEDS.

11 HE WOULDN'T DO IT ALONE. HE WANTED, NEEDED  
12 MORAL -- WELL, I WOULD CHARACTERIZE IT AS IMMORAL SUPPORT,  
13 ALLIES.

14 HE NEEDED WHEELS, A CAR TO GET TO AND FROM THE  
15 SCENE OF THE INTENDED CRIMES AND A GUARANTEE OF SUCCESS, WHICH  
16 CAME FROM STRENGTH IN NUMBERS.

17 HIS PLAN, HIS DECISION IS SHOCKING. WHAT COMES IS  
18 EVEN MORE OF A SHOCK, AS THE EVIDENCE WILL UNFOLD IN THIS  
19 CASE, IS THAT HIS BEST FRIEND, RANDY MOORE, AND HIS FRIENDS  
20 AND ASSOCIATES, JOHNNY RAY LUCKETT, ROY MCDOWELL, MICHAEL  
21 WALSH AND THOMAS AKERS, WERE WILLING TO HELP HIM IN THE  
22 COMMISSION OF TWO MURDERS.

23 SOMEWHERE PRIOR TO NOVEMBER THE 5TH AND 6TH, 1984,  
24 IT WAS DETERMINED THAT TWO HUMAN BEINGS WERE DESTINED TO DIE.  
25 SIX YOUNG MEN, FOUR OF WHOM ARE SEATED IN THIS COURTROOM AS



1 DEFENDANTS, ENTERED INTO A PACT TO KILL.

2 THE FATEFUL NIGHT IS NOVEMBER THE 5TH, 1984. ON  
3 THAT NIGHT, THE WORST NIGHTMARES OF CARL AND COLLEEN GORDON  
4 WERE GOING TO BE REALIZED.

5 THE CONSPIRATORS MET AT 337 NORTH 13TH STREET, THE  
6 RESIDENCE OF DEFENDANT RANDY MOORE.

7 THE EVIDENCE WILL SHOW THAT THE PARTIES HAD  
8 DECIDED BEFOREHAND TO USE THREE WEAPONS. IN FACT, THE  
9 EVIDENCE WILL SUGGEST THAT ONE GUN WAS BROUGHT TO THE  
10 APARTMENT THAT NIGHT BY DEFENDANT ROY MCDOWELL. IT WILL BE  
11 DESCRIBED AS A .22 CALIBER, SIX-SHOT REVOLVER.

12 THE EVIDENCE WILL FURTHER SUGGEST THAT HIS ROLE  
13 WAS TO SERVE BOTH AS A LOOKOUT, AND AFTER ENTRY HAD BEEN  
14 GAINED INTO THE RESIDENCE, TO DO SOME RANSACKING SO IT WOULD  
15 APPEAR THAT THE CRIME WAS NOT INTENDED TO BE MURDER; BUT,  
16 RATHER, THE MOTIVATION WAS BURGLARY.

17 IT WAS DETERMINED THAT THOMAS AKERS WOULD BE THE  
18 PERSON WHO WOULD DRIVE A VEHICLE TO AND FROM THE SCENE. HE  
19 WAS THE OWNER OF A 1971 CHEVROLET EL CAMINO, YELLOW, NEVADA  
20 LICENSE NUMBER 382 ALF.

21 HE WAS TO REMAIN ON THE OUTSIDE, AND WAS TO GO TO  
22 MR. FLANAGAN'S TRAILER TO PICK UP SOME TAPES.

23 IT IS MIND BOGGLING TO THINK THAT THESE YOUNG MEN,  
24 WHO CONTEMPLATE MURDER ON THE ONE HAND, WERE STILL CONCERNED  
25 ALSO ABOUT HAVING ROCK MUSIC TO LISTEN TO LATER THAT MORNING.

1                   DEFENDANT WALSH WAS TO BREAK THE WINDOW, WHICH WAS  
2 TO BE TO THE WEST OF THE RESIDENCE, WHICH WOULD GIVE THEM  
3 ACCESS TO THE LIVING ROOM OF THE HOUSE. HE WAS TO USE A PIECE  
4 OF BROOMSTICK, WHICH HAD BEEN WRAPPED WITH ELECTRICAL TAPE.

5                   HE, ALSO, WAS TO SERVE IN THE CAPACITY AS A  
6 LOOKOUT. AND THE SHOOTERS WERE MR. FLANAGAN, MR. LUCKETT AND  
7 MR. MOORE.

8                   DALE FLANAGAN HAD DETERMINED THAT HE WOULD SHOOT  
9 HIS GRANDMOTHER. NOW, THE EVIDENCE WILL SHOW THAT WHILE CARL  
10 GORDON WAS THE STEP-GRANDFATHER OF DALE FLANAGAN, COLLEEN WAS  
11 HIS NATURAL GRANDMOTHER.

12                  IT WAS DETERMINED THAT MR. FLANAGAN WOULD USE THE  
13 REVOLVER, THE SIX-SHOOTER, TO SHOOT HIS GRANDMOTHER.

14                  MR. MOORE WAS TO USE A .22 CALIBER, SEMIAUTOMATIC  
15 LONG RIFLE. IT HAD A MAGAZINE CAPACITY OF 15.

16                  MR. LUCKETT WAS TO USE A .22 CALIBER, SINGLE SHOT  
17 BOLT ACTION SAWED-OFF RIFLE WITH A BARREL, WHICH WAS LATER  
18 MEASURED HAVING BEEN SAWED-OFF AT 13 AND 5/8 INCHES.

19                  THESE YOUNG MEN, THESE MEN WHO HAD EMBARKED UPON  
20 THE CONSPIRACY TO COMMIT MURDER, LEFT THE APARTMENT OF RANDY  
21 MOORE SOMETIME AFTER ELEVEN O'CLOCK P.M. ON NOVEMBER THE 5TH,  
22 1984.

23                  THEY LEFT WITH THOMAS AKERS AT THE WHEEL IN HIS EL  
24 CAMINO. AKERS, LUCKETT AND FLANAGAN WERE IN THE FRONT SEAT.  
25 THE OTHER THREE WERE IN THE BACK SEAT.

1                   THEY DROVE OUT TO JONES BOULEVARD, TURNED ON JONES  
2                   AND DROVE ON PAST THE INTERSECTION OF WASHBURN ROAD, PAST  
3                   WHERE THE PAVEMENT ENDS, ABOUT A MILE BEYOND WHERE MOORE  
4                   TEST-FIRED HIS .22 CALIBER, SEMIAUTOMATIC RIFLE AND FOUND THAT  
5                   IT WAS OPERATIONAL.

6                   THEY, THEN, PROCEEDED BACK TO THE SCENE. THOMAS  
7                   AKERS PARKED THE VEHICLE, AND HE WALKED THE SHORT DISTANCE,  
8                   THEN, TO THE TRAILER. HE WILL DESCRIBE AS HE LEFT TO GO  
9                   TOWARDS THE TRAILER, THAT THE OTHER FIVE WERE HEADED IN THE  
10                  DIRECTION OF THE HOUSE, 5851 WASHBURN ROAD.

11                  HE WILL SAY IN SUBSTANCE, WHEN HE GOT INSIDE THE  
12                  TRAILER, "I HEARD A WINDOW BREAK, TWO GUNSHOTS, A WOMAN  
13                  SCREAM, A MAN YELL AND ABOUT FIVE OR SIX MORE GUNSHOTS."

14                  HE WILL TELL YOU THAT HIS MENTALITY AT THAT POINT  
15                  WAS ONE OF PANIC. HE DECIDED TO LEAVE, AND THAT WAS WITH OR  
16                  WITHOUT THE OTHERS.

17                  HE HURRIED TO HIS CAR, TRIED TO START IT AND IT  
18                  WOULDN'T START. AT ABOUT THIS TIME, HE HEARD A NOISE A SHORT  
19                  DISTANCE AWAY. HE HAD BECOME PARANOID. HE LOOKED OVER AND IT  
20                  WAS JOHN LUCKETT, ONE OF THE DEFENDANTS WHO IS IN THE  
21                  COURTROOM, WHO HAD IN HIS POSSESSION THE SAWED-OFF RIFLE.

22                  MR. LUCKETT SEEMED FRIGHTENED. HE HAD BEEN HIDING  
23                  BEHIND SOME TUMBLEWEEDS CLOSE TO THE ROAD, CLOSE TO THE  
24                  VEHICLE.

25                  THE TWO OF THEM, THEN, COLLABORATED IN TRYING TO

1 GET THE CAR STARTED. AKERS LIFTED THE HOOD. HE STARTED TO  
2 HAMMER ON THE BATTERY CABLES. AND EVENTUALLY, WITH LUCKETT  
3 BEHIND THE WHEEL TRYING TO START THE VEHICLE, IT STARTED.

4 AT THIS POINT, THE OTHER FOUR CAME RUNNING OUT  
5 FROM THE AREA OF THE FRONT OF THE HOUSE. THEY ALL GOT IN, IN  
6 THE SAME SPOTS THEY WERE IN WHEN THEY CAME TO THE SCENE.  
7 AKERS WAS TOLD TO DRIVE THE CAR A SHORT DISTANCE WITHOUT  
8 LIGHTS. HE DID SO.

9 THEY WENT A LITTLE FURTHER. HE WAS TOLD TO STOP.  
10 ALL OF THE MEN GOT OUTSIDE OF THE VEHICLE. CERTAIN SHELL  
11 CARTRIDGES WERE DISPOSED OF. A SMALL HOLE WAS DUG BEHIND A  
12 MOUND, WHICH WAS CLOSE TO THE ROAD WHERE ORIGINALLY THE  
13 CONSPIRATORS WERE GOING TO HIDE THE THREE GUNS.

14 THEY, THEN, CHANGED THEIR MINDS AND DROVE BACK TO  
15 337 NORTH 13TH STREET. A WITNESS, JOHN LUCAS, WHO HAD  
16 REMAINED AT THE RESIDENCE OF MR. MOORE, WILL EXPLAIN THAT HE  
17 WAS AWAKENED FROM HIS SLEEP BY A KNOCK ON THE DOOR AT,  
18 PERHAPS, 1:00 OR 1:30 A.M.

19 THIS BEING THE MORNING NOW OF NOVEMBER THE 6TH  
20 1984. HE WENT TO THE DOOR, AND ALL SIX OF THE CONSPIRATORS  
21 CAME IN.

22 AKERS WILL DESCRIBE THE MEN THEN AS GATHERING IN  
23 THE DINING ROOM-KITCHEN AREA SEATED RATHER CLOSELY TOGETHER  
24 TALKING AT A QUICK PACE. THEY WERE EXCITED, A LOT OF  
25 ADRENALIN PUMPING.

1                   AND IT WAS EXPLAINED AT THAT POINT THAT FLANAGAN,  
2                   IN FACT, HAD SHOT HIS GRANDMOTHER AND KILLED HER; THAT MOORE  
3                   HAD SHOT THE GRANDFATHER AS HE CAME DOWN THE STAIRS; AND THAT,  
4                   AT LEAST ONE OTHER SHOT WAS FIRED EITHER BY JOHNNY RAY LUCKETT  
5                   OR MICHAEL WALSH.

6                   THE EVIDENCE WAS PRODUCED. A PURSE OR A WALLET  
7                   CONTAINED PHOTOGRAPHS OF ONE OR BOTH OF THE VICTIMS. THERE  
8                   WAS IDENTIFICATION THAT WAS BURNED, THE PHOTOGRAPHS AND THE  
9                   IDENTIFICATION, IN AN ASHTRAY IN THE KITCHEN OF THE RESIDENCE.

10                  THE FOLLOWING AFTERNOON AT ABOUT 4:05 P.M., A  
11                  FORMER GIRLFRIEND OF DALE FLANAGAN CAME TO THE PROPERTY AT  
12                  5851 WASHBURN ROAD. THE TESTIMONY WILL BE THAT IT WAS AT  
13                  ABOUT FOUR O'CLOCK P.M. SHE CAME BACK TO PICK UP CERTAIN  
14                  CLOTHES AND BELONGINGS OF HERS, WHICH WERE IN THE TRAILER  
15                  WHERE SHE HAD STAYED FOR A SHORT PERIOD OF TIME WITH DEFENDANT  
16                  FLANAGAN.

17                  SHE DIDN'T HAVE A KEY TO GET IN, SO SHE WENT TO  
18                  THE BIG HOUSE. AS SHE APPROACHED THE HOUSE, SHE OBSERVED THAT  
19                  SOMETHING WAS DRASTICALLY AMISS. THE FRONT DOOR WAS OPEN.  
20                  SHE WENT FAR ENOUGH INSIDE TO SEE THAT SOMETHING HORRIBLE HAD  
21                  OCCURRED.

22                  SHE WENT IMMEDIATELY TO THE NEAREST CONVENIENCE  
23                  STORE TO CONTACT THE POLICE DEPARTMENT.

24                  ONCE SHE ARRIVED AT THAT LOCATION, SHE SAW A  
25                  FRIEND, JOHN DELEON, AND ADVISED HIM THAT CRIMES HAD OCCURRED

1 AT 5851 WASHBURN. HE RETURNED WITH HER AND HER FRIEND, TERESA  
2 HUDSON.

3 AND AT THIS POINT, MR. DELEON WENT ON INTO THE  
4 HOUSE. AND HE OBSERVED THAT BOTH CARL AND COLLEEN GORDON HAD  
5 BEEN SHOT TO DEATH.

6 THE POLICE WERE SUMMONED. THE MEDICAL EXAMINER  
7 AND REPRESENTATIVES OF THE CORONER'S OFFICE RESPONDED TO THE  
8 SCENE. DETECTIVES, REPRESENTATIVES OF THE CRIME LAB TOOK  
9 PHOTOGRAPHS. THEY WILL PROVIDE A GRAPHIC DESCRIPTION OF THE  
10 APPEARANCE OF THE SCENE IN THIS CASE.

11 ON NOVEMBER THE 7TH 1984, DR. GILES SHELDON GREEN,  
12 THE CHIEF MEDICAL EXAMINER IN CLARK COUNTY, PERFORMED AUTOPSY  
13 EXAMINATIONS UPON COLLEEN AND CARL GORDON.

14 THE EVIDENCE WILL SHOW THAT MRS. GORDON HAD BEEN  
15 SHOT THREE TIMES. THERE WERE TWO GUNSHOT WOUNDS, BOTH OF  
16 WHICH COULD HAVE BEEN FATAL, TO THE RIGHT SIDE OF HER HEAD.

17 ONE SHOT OF ENTRY HAD GONE IN, IN THE RIGHT  
18 TEMPORAL AREA, PERHAPS TWO INCHES ABOVE THE EAR AND TWO AND A  
19 HALF INCHES TO THE FRONT OF THE EAR.

20 ANOTHER SHOT HAD ENTERED IN THIS AREA,  
21 APPROXIMATELY FIVE INCHES ABOVE HER RIGHT EAR AND, PERHAPS, A  
22 QUARTER-INCH BEHIND THE EAR.

23 ANOTHER GUNSHOT OF ENTRY PENETRATED THE LEFT EAR.  
24 THAT HAD GONE DOWN THROUGH THE SKIN IN THE LEFT SHOULDER AND  
25 EXITED.

1 MR. GORDON HAD BEEN SHOT SEVEN TIMES. THE  
2 EVIDENCE WILL SHOW THAT THERE WERE TWO GUNSHOT WOUNDS OF ENTRY  
3 TO THE CHEST.

4 THE FIRST WOUND, AND THE TESTIMONY WILL BE THAT  
5 THIS WAS CERTAINLY THE FATAL WOUND, ENTERED RIGHT HERE IN THE  
6 MIDLINE AREA ABOUT ONE-HALF INCH BELOW THE SUPER-STERNAL  
7 NOTCH.

8 THERE WILL BE TESTIMONY THAT THERE WAS A GUNSHOT  
9 WOUND OF ENTRY TO THE LEFT LOWER CHEST. IT WAS ABOUT 11  
10 INCHES BELOW THIS AREA AND FOUR AND A HALF INCHES LEFT OF THE  
11 MIDLINE. IT ENTERED JUST BELOW THE LEFT RIB CAGE.

12 THERE WAS A GUNSHOT WOUND OF ENTRY TO THE ABDOMEN.  
13 IT WAS TWO INCHES TO THE LEFT OF THE NAVEL.

14 THERE WERE TWO GUNSHOTS WOUNDS OF ENTRY TO THE  
15 RIGHT ARM. ONE OF THESE GUNSHOTS ENTERED THREE AND A HALF  
16 INCHES BELOW THE RIGHT SHOULDER IN ABOUT THIS LOCATION.  
17 ANOTHER WOUND OF ENTRY, EIGHT INCHES BELOW THE RIGHT SHOULDER.

18 AND THERE WERE TWO GRAZING WOUNDS IN THE BACK.  
19 ONE WAS FOUR AND A HALF INCHES BELOW THE BASE OF THE SKULL AND  
20 FOUR AND A HALF INCHES LEFT OF THE MIDLINE AREA.

21 THERE WERE MULTIPLE FRAGMENTS FROM THAT BULLET,  
22 WHICH IMPACTED THE SKIN BEHIND THE LEFT EAR OF CARL GORDON.  
23 AND NINE INCHES BELOW THE BASE OF THE SKULL, A TRANSVERSE  
24 GRAZING WOUND ACROSS THE MID BACK.

25 THE EVIDENCE WILL SHOW THAT A NUMBER OF THESE

1 BULLETS FRAGMENTED UPON ENTRY. SO THAT, WHEN THE BULLETS  
2 CRASHED INTO THE BRAIN OF MRS. GORDON, YOU CAN IMAGINE THE  
3 DAMAGE. AND YOU CAN ALSO IMAGINE WHAT HAPPENED WHEN THE  
4 BULLETS PENETRATED THE CHEST AND ABDOMINAL AREA OF CARL  
5 GORDON.

6 THE CAUSE OF DEATH, QUITE SIMPLY, IN THE CASE OF  
7 COLLEEN, TWO GUNSHOT WOUNDS OF THE HEAD; AND TO CARL GORDON,  
8 ONE GUNSHOT WOUND WHICH STRUCK THE UPPER MIDLINE OF THE CHEST,  
9 IT FRAGMENTED AND COMPLETELY DISRUPTED THE AORTA.

10 A FATAL MISTAKE WAS MADE BY THE CONSPIRATORS  
11 IN THIS CASE. AS THEY HAD PLANNED, ENTRY WAS MADE INTO A  
12 WINDOW, WHICH SITS JUST A FEW FEET ABOVE THE GROUND ON THE  
13 WEST SIDE OF THE HOUSE. TO GET INTO THE HOUSE, THE SCREEN  
14 FIRST HAD TO BE CUT AND THE WINDOW BROKEN.

15 THE SCREEN WAS CUT. EVIDENTLY, A KNIFE WAS USED.  
16 THAT KNIFE BELONGED TO DALE FLANAGAN.

17 UNFORTUNATELY FOR THE CONSPIRATORS, THE KNIFE WAS  
18 LEFT RIGHT CLOSE TO THE POINT OF ENTRY ON THE GROUND NEAR AN  
19 OLEANDER BUSH. AND THE FIRST THING, AT LEAST ONE OF THE FIRST  
20 THINGS, THE INVESTIGATING OFFICERS FOUND WAS THE KNIFE.

21 THERE WILL BE TESTIMONY THAT ABOUT A WEEK AFTER  
22 THE OFFENSE, SHORTLY AFTER DETECTIVE BURT LEVOS OF THE POLICE  
23 DEPARTMENT HAD RESPONDED TO THE SCENE FOR PERHAPS THE SECOND  
24 OR THIRD OR FOURTH TIME, HE HAD MADE CONTACT WITH DEFENDANT  
25 DALE FLANAGAN. FLANAGAN WAS ADVISED THAT THE KNIFE WAS FOUND



1 AT THIS LOCATION.

2 AND MR. FLANAGAN HAD A CONVERSATION WITH HIS  
3 CURRENT GIRLFRIEND ANGELA SALDANA. THE CONVERSATION, IN  
4 SUBSTANCE, WAS SOMETHING HAS BEEN FOUND AT THE SCENE WHICH  
5 WASN'T SUPPOSED TO BE THERE. MR. FLANAGAN, THEN, WENT ON TO  
6 SAY TO MISS SALDANA THAT SOMEHOW HIS KNIFE HAD BEEN FOUND AT  
7 THE CRIME SCENE.

8 ABOUT TWO WEEKS AFTER THE OFFENSES AND PERHAPS A  
9 WEEK AFTER THIS INITIAL CONVERSATION, THERE WAS ANOTHER  
10 CONVERSATION BETWEEN FLANAGAN AND SALDANA. AND ON THIS  
11 OCCASION, MR. FLANAGAN RATHER PROUDLY DISPLAYED A KNIFE.

12 HE SAID, "I FOUND MY KNIFE." AND HER RESPONSE  
13 WAS, "THIS ONE LOOKS NEW." MR. FLANAGAN SAID, "YES, BUT NO  
14 ONE KNOWS THAT, AND NOW THE COPS DON'T HAVE ANYTHING ON ME."

15 TWO TO FOUR DAYS AFTER THE CRIMES, AT 2851 SOUTH  
16 DECATUR IN A CONVERSATION WITH ANOTHER FRIEND, MICHELLE GRAY,  
17 DEFENDANT FLANAGAN HAD SAID HIS KNIFE HAD SOMEHOW BEEN LEFT AT  
18 THE CRIME SCENE. AT THIS TIME, A SOLICITATION REQUEST WAS  
19 MADE; IF ANYONE ASKS, TO SAY THAT HE HAD BEEN CARRYING HIS  
20 KNIFE ALL ALONG.

21 THE POLICE PURSUED THEIR INVESTIGATION. IT LED  
22 THEM, EVENTUALLY, TO CUTLERY WORLD, A BUSINESS AT THE MEADOWS  
23 MALL, AND TO A POTENTIAL WITNESS, YVONNE KACZMAREK.

24 MISS KACZMAREK SEARCHED THE RECORDS AND DISCOVERED  
25 THAT HER BUSINESS, IN FACT, CARRIED THE PARTICULAR KNIFE FOUND

1 AT THE POINT OF ENTRY. THAT DURING OCTOBER OF 1984, THREE  
2 SUCH KNIVES HAD BEEN SOLD, ONLY THREE. IT WASN'T EXACTLY A  
3 BEST SELLING ITEM.

4 SHE WAS TOLD IF ANYONE MADE AN EFFORT TO PURCHASE  
5 ANY MORE KNIVES LIKE THIS, TO LET THEM KNOW.

6 IN FACT, THAT HAPPENED. ON OR ABOUT NOVEMBER THE  
7 16TH, 1984, A PERSON IDENTIFIED AS DALE FLANAGAN AND AT LEAST  
8 ONE OF HIS OTHER FRIENDS OR ASSOCIATES CAME INTO CUTLERY  
9 WORLD, AND AN IDENTICAL KNIFE WAS PURCHASED.

10 LADIES AND GENTLEMEN, THERE WILL BE FURTHER  
11 EVIDENCE THAT AFTER DECIDING NOT TO BURY THE KNIVES, THAT A  
12 DECISION WAS MADE TO DISPOSE OF THEM IN THE AREA OF LAKE MEAD.

13 A SHORT TIME AFTER THE CRIMES HAD OCCURRED,  
14 ANOTHER FRIEND, IN FACT, HE WILL PROVE TO BE A STATE'S WITNESS  
15 IN THIS CASE, BUT A FRIEND AT THE TIME OF THE DEFENDANTS,  
16 JOHN LUCAS, WAS CONTACTED AT HIS RESIDENCE AT 1500 CULLEY, LAS  
17 VEGAS, NEVADA.

18 DEFENDANTS MOORE AND LUCKETT WERE PRESENT AND THE  
19 GIRLFRIEND, CONNIE LEAVITT, OF DEFENDANT MOORE. WHILE LEAVITT  
20 AND LUCKETT STAYED IN THE CAR, MR. MOORE AND MR. LUCAS HAD A  
21 SHORT CONVERSATION.

22 AND DEFENDANT MOORE TOLD LUCAS THAT THEY WERE  
23 GOING UP TO THE CLIFFS AREA. AND THEY WERE GOING TO THROW THE  
24 THREE GUNS OVER THE CLIFFS.

25 MR. LUCAS, THEREAFTER, REPORTED THAT CONVERSATION

1 TO THE POLICE DEPARTMENT. HE TOOK THE POLICE TO THE AREA AT  
2 LAKE MEAD. HE KNOWS THE CLIFFS AREA.

3 AND DIVERS WERE SENT DOWN ON TWO OCCASIONS. ON  
4 THE SECOND OCCASION, DECEMBER THE 27TH, 1984, TWO GUNS, IN  
5 FACT, WERE RECOVERED FROM THE WATERS OF LAKE MEAD.

6 THE LOCATION WILL BE DESCRIBED AS THE UPPER GYPSUM  
7 WASH AT LAKE MEAD, A PERIMETER AREA ABOUT ONE AND A QUARTER  
8 MILES DOWN THE 2.2 MILE ROAD OFF OF NORTH SHORE ROAD.

9 PARK SERVICE REPRESENTATIVE BUD INMAN WILL TESTIFY  
10 THAT A SAVAGE ARM MODEL, .22 CALIBER, SEMIAUTOMATIC WITH THE  
11 SERIAL NUMBER MISSING WITH A 24-INCH BARREL AND THE SAME MAKE  
12 OF SINGLE SHOT BOLT ACTION, .22 CALIBER RIFLE, BEARING A  
13 SERIAL NUMBER WHICH WAS CRUDELY SAWED-OFF, WERE RECOVERED FROM  
14 LAKE MEAD.

15 THESE WEAPONS WERE TURNED OVER TO THE FIREARMS  
16 EXPERT OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT. HE IS  
17 RICHARD GOOD. HE TEST-FIRED THOSE GUNS AND DISCOVERED THAT,  
18 ALTHOUGH THEY WERE A LITTLE WORSE FOR THE WEAR BECAUSE OF THE  
19 PERIOD OF TIME THEY WERE IN THE WATER, THAT THEY WERE STILL  
20 FUNCTIONAL.

21 HE TOOK THE TEST-FIRED BULLETS AND COMPARED THOSE  
22 WITH BULLETS RECOVERED FROM THE SCENE. THE EVIDENCE WILL  
23 REFLECT THAT BULLETS WERE RECOVERED FROM BOTH OF THE VICTIMS  
24 IN THIS CASE, ALTHOUGH THEY WERE BADLY DISTORTED.

25 FURTHERMORE, THAT THERE WERE BULLETS AT THE SCENE

1 WHICH HAD BEEN SPENT, THAT IS, FIRED IN THE LIVING ROOM AREA.  
2 THERE WAS A BULLET BETWEEN THE MALE VICTIM'S LEGS. WHEN  
3 BEDDING AND SHEETS WERE REMOVED FROM THE BED WHERE MRS. GORDON  
4 WAS LYING, TWO MORE BULLETS WERE SHAKEN OUT OF THE BEDDING.

5 THE EVIDENCE WILL SHOW THAT MR. GORDON HAD BEEN  
6 DISCOVERED LYING ON THE FLOOR ON HIS STOMACH IN THE DOORWAY  
7 BETWEEN MRS. GORDON'S BEDROOM AND THE LIVING ROOM, AND THAT  
8 SHE WAS ON HER BACK IN HER BED IN THE LIVING ROOM -- IN THE  
9 BEDROOM, EXCUSE ME.

10 THERE WILL, FURTHERMORE, BE EVIDENCE THAT A NUMBER  
11 OF CARTRIDGE CASES WERE RECOVERED. WITH RESPECT TO THE  
12 BULLETS, MR. GOOD COULD ONLY SAY THAT THE RIFLES BORE THE SAME  
13 CLASS CHARACTERISTICS AS AT LEAST TWO OF THE BULLETS  
14 RECOVERED. BUT BECAUSE OF THE POOR CONDITION OF THE BULLETS,  
15 HE COULD NOT MAKE A POSITIVE IDENTIFICATION.

16 REGARDING THE CARTRIDGE CASES, HE WAS ABLE TO SAY  
17 THAT THE TEST-FIRED CARTRIDGE CASE FROM THE SEMIAUTOMATIC  
18 WHICH WAS RECOVERED FROM THE LAKE WAS A POSITIVE MATCH TO ALL  
19 FIVE CARTRIDGE CASES RECOVERED AT THE SCENE OF THESE CRIMES.

20 I WILL POINT OUT THAT THERE WAS A CARTRIDGE CASE  
21 ON THE LIVING ROOM FLOOR NEAR CARL GORDON'S RIGHT FOOT. THERE  
22 WAS A CARTRIDGE CASE ON THE LIVING ROOM FLOOR NEAR THE BROKEN  
23 WINDOW.

24 THERE WAS A CARTRIDGE CASE IN THE WINDOWSILL  
25 INSIDE THE BROKEN WINDOW AT THE POINT OF ENTRY. THERE WAS A

1 CARTRIDGE CASE ON THE GROUND OUTSIDE THE WEST SIDE OF THE  
2 RESIDENCE NEAR THE POINT OF ENTRY.

3 AND A FIFTH CARTRIDGE CASE BETWEEN THE BROKEN  
4 WINDOW FRAME AND THE FRAME OF THE SCREEN. AND ALL THOSE WERE  
5 MATCHED TO THE .22 CALIBER SEMIAUTOMATIC WHICH WAS RECOVERED  
6 FROM LAKE MEAD.

7 LADIES AND GENTLEMEN, THERE ALSO WILL BE TESTIMONY  
8 FROM ONE OF THE ACCOMPLICES. THOMAS AKERS WILL BE A STATE'S  
9 WITNESS. HE WILL EXPLAIN TO YOU WHAT PLANNING OCCURRED  
10 BEFOREHAND, WHAT HAPPENED AT THE SCENE, AND THE EVENTS WHICH  
11 OCCURRED IMMEDIATELY AFTER THE COMMISSION OF THESE CRIMES.

12 HIS TESTIMONY WILL BE CORROBORATED BY JOHN LUCAS,  
13 ANOTHER FRIEND AND ASSOCIATE OF THE CONSPIRATORS. AND THERE  
14 WILL BE VARIOUS CO-CONSPIRATOR DECLARATIONS.

15 THERE WILL, ALSO, BE TESTIMONY FROM A NUMBER OF  
16 FORMER GIRLFRIENDS OF DEFENDANTS IN THIS CASE. ONE OF THESE  
17 IS MISS SALDANA, WHOM I HAVE ALREADY MENTIONED.

18 SHE WILL TESTIFY THAT ON OR ABOUT DECEMBER THE  
19 5TH, 1984 AT THE TRAILER ON THE GORDON'S PROPERTY WHERE DALE  
20 FLANAGAN HAD BEEN LIVING, SHE GOT INTO AN ARGUMENT WITH MR.  
21 FLANAGAN. THEY WERE ARGUING ABOUT A FORMER BOYFRIEND OF HERS.

22 HE MADE A COMMENT, IN SUBSTANCE, HE WAS TIRED OF  
23 RUNNING. AND THEN, IN SO MANY WORDS SAID, "HOW DO YOU LIKE  
24 THIS, I DID IT, I KILLED MY GRANDPARENTS," AND WENT AHEAD AND  
25 DISCUSSED FURTHER MATTERS CONCERNING THE COMMISSION OF THESE

1 CRIMES.

2 LADIES AND GENTLEMEN, I WISH I COULD TELL YOU THAT  
3 THIS SORDID TALE OF TEENAGE CONSPIRACY TO COMMIT VIOLENT  
4 MURDERS WAS A FANTASY. DUTY REQUIRES, AS THE PROSECUTOR, THAT  
5 I TELL YOU IT IS A FACT.

6 ARRESTS WERE MADE OF THE VARIOUS DEFENDANTS IN  
7 THIS CASE BEGINNING ON DECEMBER THE 9TH, 1984. MR. FLANAGAN  
8 WAS ARRESTED AT HIS TRAILER ON THE PROPERTY WEST OF THE HOUSE.

9 JOHNNY RAY LUCKETT WAS ARRESTED ON DECEMBER THE  
10 20TH, 1984 AT HIS RESIDENCE IN LAS VEGAS, NEVADA. MCDOWELL  
11 AND AKERS, ON THE SAME DATE, DECEMBER 20TH, 1984 IN LAS VEGAS,  
12 NEVADA.

13 A CO-CONSPIRATOR, WALSH, WAS ARRESTED ON JANUARY  
14 22ND, 1985 AT ABOUT NOON ON U.S. 93, 8 8/10 MILES INTO MOJAVE  
15 COUNTY, ARIZONA. HE APPEARED TO BE EATING LUNCH BY THE SIDE  
16 OF THE ROAD. METROPOLITAN HOMICIDE DETECTIVES WENT TO KINGMAN  
17 TO, IN FACT, RETURN HIM TO LAS VEGAS, NEVADA.

18 AND DEFENDANT MOORE, ON JANUARY THE 23RD, 1985 AT  
19 ABOUT EIGHT O'CLOCK IN THE MORNING, WAS ARRESTED IN MEXICO AT  
20 THE ALFONSO COTA RANCH OUTSIDE OF TECATE, MEXICO BY MEXICAN  
21 JUDICIAL OFFICERS. HE WAS TAKEN TO THE BORDER, SURRENDERED  
22 AT THAT POINT TO REPRESENTATIVES OF THE SAN DIEGO SHERIFF'S  
23 DEPARTMENT.

24 THEY, IN TURN, TURNED MR. MOORE OVER TO THE  
25 CUSTODY OF LAS VEGAS HOMICIDE DETECTIVES, WHO BROUGHT HIM

1 HERE TO STAND ACCOUNTABLE FOR THE CHARGES.

2 LADIES AND GENTLEMEN, THE EVIDENCE WILL SHOW  
3 BEYOND A REASONABLE DOUBT IN THIS CASE THAT ON NOVEMBER THE  
4 5TH OR 6TH, 1984, DALE FLANAGAN SHOT AND MURDERED HIS  
5 GRANDMOTHER, THAT RANDY MOORE SHOT AND MURDERED CARL GORDON,  
6 AND THAT BOTH OF THESE DEFENDANTS WERE AIDED BY THEIR  
7 CODEFENDANTS, MR. MCDOWELL AND MR. LUCKETT, IN THE COMMISSION  
8 OF THESE CRIMES. THANK YOU.

9 THE COURT: THANK YOU, MR. HARMON. ARE THERE  
10 DEFENSE COUNSEL THAT WISH TO MAKE AN OPENING STATEMENT AT THIS  
11 TIME?

12 MR. PIKE: YES, YOUR HONOR.

13 THE COURT: WHAT IS YOUR PLEASURE?

14 MR. HANDFUSS: THANK YOU, YOUR HONOR. COUNSEL.

15 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS  
16 ROBERT HANDFUSS. I AM A DEFENSE COUNSEL, AND I REPRESENT MR.  
17 MCDOWELL. I AM HERE TO MAKE SURE THAT MR. MCDOWELL HAS HIS  
18 RIGHTS PROTECTED, JUST LIKE ANYBODY WHO WOULD BE SITTING AT  
19 THAT TABLE HAS THEIR RIGHT TO HAVE THEIR RIGHTS PROTECTED.

20 YOU HAVE HEARD WHAT EVIDENCE THE STATE SAYS THAT  
21 THEY ARE GOING TO PUT ON FOR YOU. I THINK IT IS VERY  
22 IMPORTANT, ALSO, NOT JUST TO LISTEN TO WHAT EVIDENCE THEY PUT  
23 ON, BUT TO LISTEN TO WHAT EVIDENCE THEY DO NOT BRING BEFORE  
24 YOU.

25 THE STATE CHARACTERIZED THIS AS BASICALLY THE

**ORIGINAL**

FILED

CASE NO. C069269

FEB 14 1986

DEPARTMENT FOURTEEN

LORETTA BUSTINOS, CLERK  
BY *[Signature]* DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

REPORTER'S TRANSCRIPT

vs.

OF

DALE EDWARD FLANAGAN, RANDOLPH  
MOORE AKA SMITH, JOHNNY RAY  
LUCKETT AND ROY MCDOWELL,

JURY TRIAL

DEFENDANTS.

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE

**APPEARANCES:**

FOR THE STATE:

MELVYN T. HARMON, ESQUIRE

&  
DANIEL M. SEATON, ESQUIRE  
DEPUTIES DISTRICT ATTORNEY

FOR DEFENDANT FLANAGAN: RANDALL PIKE, ESQUIRE

FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE

FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE

FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE

Reported by: Sharon J. Thielman, Official Court Reporter

000239



1 MR. PIKE: YOUR HONOR, I HAVE NOTHING FURTHER AT  
2 THIS TIME. HOWEVER, I WOULD ASK THAT MRS. EVANS REMAIN UNDER  
3 SUBPOENA TO COME BACK AT A LATER PORTION WHEN THERE MAY BE  
4 REQUIRED FULLER DEVELOPMENT OF SOME TESTIMONY.

5 THE COURT: MISS EVANS, ARE YOU STILL AT THE  
6 MCDONALD'S?

7 THE WITNESS: YES.

8 THE COURT: YOU CAN BE REACHED THERE, THEN?

9 THE WITNESS: YES. I AM GOING ON VACATION THE END  
10 OF THIS WEEK, THOUGH.

11 THE COURT: ALL RIGHT. MR. PIKE, IF YOU WOULD  
12 CONTEMPLATE HAVING TO CALL MISS EVANS, YOU MIGHT ARRANGE OR  
13 CALL HER SOMETIME OUTSIDE OF COURT AND ARRANGE SOMETHING. GET  
14 SOME IDEA OF HER SCHEDULE.

15 MR. PIKE: I WILL.

16 THE COURT: THANK YOU, MISS EVANS. YOU ARE  
17 EXCUSED. I ASK YOU NOT TO DISCUSS YOUR TESTIMONY WITH THOSE  
18 OUTSIDE.

19 THE WITNESS: OKAY.

20 THE COURT: THE STATE'S NEXT WITNESS.

21 MR. SEATON: ANGELA SALDANA.

22  
23 ANGELA SALDANA  
24 WAS CALLED AS A WITNESS ON BEHALF OF THE STATE AND, HAVING  
25 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SEATON:

Q WOULD YOU PLEASE STATE YOUR NAME AND SPELL IT FOR  
THE RECORD?

A ANGELA SALDANA, S-A-L-D-A-N-A.

Q HOW OLD ARE YOU, MISS SALDANA?

A 20 YEARS OLD.

Q IS IT MISS?

A MISS.

Q DO YOU KNOW THE INDIVIDUALS WHO ARE ON TRIAL HERE?

A YES, I DO.

Q FOR THE RECORD, WOULD YOU, STARTING TO MY RIGHT,  
WOULD YOU POINT TO THEM AND NAME EACH INDIVIDUAL?

A RANDY MOORE, DALE FLANAGAN, ROY MCDOWELL, JOHN RAY  
LUCKETT.

MR. SEATON: MAY THE RECORD REFLECT THAT THE  
WITNESS HAS IDENTIFIED THE FOUR NAMED DEFENDANTS, YOUR HONOR?

THE COURT: YOU ARE FAMILIAR WITH THEIR  
ATTORNEYS?

THE WITNESS: YES, I AM.

THE COURT: YOU ARE NAMING THE FOUR INDIVIDUALS  
EXCLUSIVE OF THEIR ATTORNEYS; IS THAT CORRECT?

THE WITNESS: YES.

THE COURT: THE RECORD WILL SO REFLECT.

BY MR. SEATON:

1 Q YOU POINTED TO EACH ONE OF THEM AS YOU NAMED THEM;  
2 IS THAT CORRECT?

3 A YES, I DID.

4 Q MISS SALDANA, WHERE WERE YOU RESIDING ON NOVEMBER  
5 THE 5TH, 1984?

6 A AT MY AUNT AND UNCLE'S HOUSE.

7 Q IS THAT HERE IN LAS VEGAS, NEVADA?

8 A YES, IT IS.

9 Q AND HOW ABOUT NOVEMBER THE 6TH, 1984, WHERE DID  
10 YOU RESIDE THEN?

11 A ON WASHBURN ROAD.

12 Q DO YOU RECALL THE ADDRESS AT WASHBURN ROAD?

13 A NO.

14 Q WITH WHOM DID YOU RESIDE AT WASHBURN ROAD?

15 A WITH DALE FLANAGAN.

16 Q AND WAS IT IN A HOUSE OR A TRAILER?

17 A TRAILER.

18 Q IS THAT TRAILER LOCATED NEAR A HOUSE?

19 A YES. IT'S ON THE SAME PROPERTY.

20 Q AND IS THAT HOUSE OF DALE FLANAGAN'S GRANDPARENTS,  
21 CARL AND COLLEEN GORDON?

22 A YES, IT IS.

23 Q AND YOU BEGAN LIVING THERE ON NOVEMBER THE 6TH,  
24 1984?

25 A YES.

1 Q AT WHOSE REQUEST DID YOU MOVE TO THE TRAILER ON  
2 THAT PROPERTY?

3 A DALE'S REQUEST.

4 Q HAD HE BEEN ASKING YOU TO MOVE THERE?

5 A YES.

6 Q AND ON THAT DATE, YOU FINALLY MOVED THERE?

7 A YES.

8 Q MISS SALDANA, SOMETIMES WE HAVE A HARD TIME  
9 HEARING YOU. IF YOU COULD PULL THE MIKE CLOSER TO YOU OR,  
10 PERHAPS, SCOOT YOUR CHAIR IN A LITTLE BIT CLOSER AND REMEMBER  
11 NOT TO TALK TOO QUICKLY FOR US. THANKS.

12 ON NOVEMBER THE 6TH, 1984, DID YOU HAVE A  
13 RELATIONSHIP WITH DALE FLANAGAN?

14 A YES, I DID.

15 Q WOULD YOU DESCRIBE IT TO US?

16 A IT WAS BOYFRIEND AND GIRLFRIEND.

17 Q WHILE YOU WERE LIVING THERE AT THE TRAILER,  
18 SOMETIME IN MID NOVEMBER, DID A DETECTIVE BY THE NAME OF BURT  
19 LEVOS COME TO THE TRAILER?

20 A YES, HE DID.

21 Q YOU KNOW DETECTIVE BURT LEVOS NOW?

22 A YES.

23 Q WHEN HE CAME TO THE TRAILER, AND CAN YOU TELL US AS  
24 BEST YOU CAN, BETTER THAN MY MID NOVEMBER, WHEN THE DATE WAS?

25 A IT WAS APPROXIMATELY A WEEK AFTER I HAD MOVED IN,

1 AFTER THE 6TH.

2 Q SO THAT MIGHT HAVE BEEN THE 13TH OR SO?

3 A YES. I AM PRETTY SURE.

4 Q YOU WERE FAMILIAR, WERE YOU NOT, WITH THE FACT  
5 THAT DALE'S GRANDPARENTS, CARL AND COLLEEN GORDON, HAD MET  
6 THEIR DEATHS ON NOVEMBER THE 5TH?

7 A YES.

8 Q WHEN DETECTIVE LEVOS CAME TO THE TRAILER ON  
9 NOVEMBER THE 13TH OR SO, DID HE COME BY HIMSELF?

10 A NO. HE CAME WITH ANOTHER FELLOW.

11 Q ANOTHER DETECTIVE?

12 A YES.

13 Q AND WHO WAS AT THE TRAILER WHEN THEY CAME?

14 A JUST DALE AND I.

15 Q AND DID THE FOUR OF YOU TALK TOGETHER?

16 A NO.

17 Q HOW DID IT HAPPEN?

18 A WE WERE ON HIS GRANDPARENTS' PROPERTY ON THE OTHER  
19 SIDE OF THE FENCE.

20 Q YOU AND DALE WERE?

21 A YES. AND I WAS ASKED TO GO TO THE TRAILER.

22 Q WHO ASKED YOU TO GO TO THE TRAILER?

23 A DALE.

24 Q DID YOU GO TO THE TRAILER?

25 A YES, I DID.

1 Q DID DALE REMAIN WITH DETECTIVE LEVOS AND THE OTHER  
2 MAN?

3 A YES.

4 Q AND FOR HOW LONG A PERIOD OF TIME DID HE  
5 REMAIN WITH THEM?

6 A APPROXIMATELY, 10, 15 MINUTES.

7 Q DID THEY HAVE A DISCUSSION?

8 A YES, THEY DID.

9 Q WERE YOU ABLE TO HEAR IT?

10 A NO, I WASN'T.

11 Q DID THERE COME A TIME AFTER THAT DISCUSSION WHEN  
12 DALE CAME BACK TO THE TRAILER?

13 A EXCUSE ME?

14 Q DID DALE COME BACK TO THE TRAILER LATER ON?

15 A YES, HE DID.

16 Q AND HOW WOULD YOU DESCRIBE HIS ATTITUDE, HIS  
17 DEMEANOR WHEN HE CAME INTO THE TRAILER?

18 A HE WAS A LITTLE UPSET.

19 Q DID HE SAY ANYTHING TO YOU AT THAT TIME?

20 A HE SAID THAT THEY HAD FOUND SOMETHING OF HIS THAT  
21 WASN'T SUPPOSED TO BE THERE AND --

22 Q GO RIGHT AHEAD.

23 A -- AND I SAID, "WHICH WAS WHAT?" AND HE SAID, "MY  
24 KNIFE."

25 Q DID HE SAY WHERE THE DETECTIVES HAD TOLD HIM THEY

1 HAD FOUND HIS KNIFE?

2 A BY THE WINDOW, BY THE BROKEN WINDOW.

3 Q THE BROKEN WINDOW ON THE HOUSE?

4 A YES.

5 Q DID YOU KNOW WHERE THAT BROKEN WINDOW WAS?

6 A YES. IT WAS ON THE RIGHT OF THE HOUSE.

7 Q WAS THAT THE WINDOW NEAR HIS GRANDMOTHER'S  
8 BEDROOM?

9 A YES.

10 Q DID YOU KNOW THE KNIFE THAT HE WAS TALKING ABOUT?

11 A YES, I DID.

12 Q HAD YOU SEEN IT BEFORE?

13 A YES.

14 Q WHERE HAD YOU SEEN THAT KNIFE BEFORE?

15 A ON DALE'S PERSON.

16 Q HOW DID HE CARRY IT?

17 A HE HAD CARRIED IT IN THE SHEATH ON HIS BELT OR IN  
18 HIS POCKET.

19 Q LET ME SHOW YOU WHAT HAS BEEN MARKED STATE'S  
20 EXHIBIT 91-A, AND ASK YOU IF YOU HAVE EVER SEEN THIS  
21 PARTICULAR EXHIBIT BEFORE?

22 A YES.

23 Q AND WHAT IS THIS PARTICULAR EXHIBIT?

24 A THIS IS THE FIRST KNIFE THAT DALE HAD DESCRIBED TO  
25 ME AND I HAD SEEN.

1 Q YOU MENTIONED THE FIRST KNIFE. NOW, LET ME  
2 UNDERSTAND. IS THIS THE KNIFE THAT YOU HAD SEEN DALE CARRYING  
3 BEFORE IN THE SHEATH?

4 A YES.

5 Q AND WHEN YOU SAY CARRYING BEFORE, DO YOU MEAN  
6 CARRYING BEFORE THE DEATHS OF HIS GRANDPARENTS?

7 A YES.

8 Q DID THERE COME A TIME WHEN HE SHOWED YOU ANOTHER  
9 KNIFE?

10 A YES, THERE WAS.

11 Q WHEN WAS THAT?

12 A I'D HAVE TO SAY APPROXIMATELY TWO WEEKS AFTER THE  
13 POLICE OFFICERS OR THE DETECTIVES HAD TAKEN THE KNIFE.

14 Q IS IT FAIR TO SAY THAT WOULD BE SOMETIME NEAR THE  
15 END OF NOVEMBER?

16 A YES.

17 Q AND UNDER WHAT CIRCUMSTANCES? WHERE WERE YOU WHEN  
18 YOU SAW THE OTHER KNIFE?

19 A IN THE TRAILER.

20 Q AND WAS ANYONE ELSE THERE BESIDES DALE AND  
21 YOURSELF?

22 A NO.

23 Q AND HOW DID HE SHOW YOU THE OTHER KNIFE?

24 A WELL, HE HAD IT IN HIS HAND IN FRONT OF HIM, AND I  
25 WAS SITTING ACROSS THE TABLE. AND HE SAID, "LOOK, I FOUND MY



1 KNIFE."

2 AND I SAID, "NO, THAT'S NOT YOUR KNIFE. THAT ONE  
3 LOOKS NEW."

4 AND HE SAID, "YES, BUT NO ONE ELSE WILL KNOW THAT.  
5 AND NOW, THE COPS DON'T HAVE ANYTHING ON ME."

6 Q DID HE SAY ANYTHING ELSE AT THAT TIME ABOUT THE  
7 KNIFE?

8 A NO.

9 Q DID THERE COME A TIME A WEEK OR SO LATER THAT YOU  
10 HAD A CONVERSATION WITH DALE FLANAGAN REGARDING THE DEATHS OF  
11 HIS GRANDPARENTS?

12 A YES.

13 Q CAN YOU TELL US, AS BEST YOU CAN, THE APPROXIMATE  
14 DATE OF THAT CONVERSATION?

15 A THE 5TH OF DECEMBER.

16 Q THAT WOULD BE THE 5TH OF DECEMBER, 1984?

17 A YES.

18 Q AND WHERE WERE YOU WHEN THAT CONVERSATION TOOK  
19 PLACE?

20 A IN THE TRAILER.

21 Q WAS ANYONE ELSE THERE PRESENT?

22 A NO.

23 Q TELL US, IF YOU WILL, HOW THE CONVERSATION BEGAN?

24 A WE WERE ARGUING PREVIOUSLY ABOUT AN OLD BOYFRIEND  
25 OF MINE. AND HE HAD STATED THAT HE DIDN'T CARE WHAT I DID

1 ANYMORE, WHERE I WENT.

2 Q WHO STATED HE DIDN'T CARE?

3 A DALE FLANAGAN.

4 Q DALE STATED THAT HE DIDN'T CARE WHAT YOU DID  
5 ANYMORE?

6 A YES.

7 Q OR WHERE YOU WENT?

8 A YES.

9 Q AND WHAT ELSE DID HE SAY?

10 A THAT HE WAS TIRED OF RUNNING, AND HE WAS JUST --  
11 HE WAS JUST TIRED, TIRED OF IT ALL.

12 Q DID HE SAY ANYTHING ELSE?

13 A LATER ON, HE WENT INTO THE DESCRIPTION OF WHAT  
14 HAPPENED. HE SAID, "HOW DO YOU LIKE THIS, I DID IT. I  
15 KILLED MY GRANDPARENTS."

16 Q DID HE JUST COME OUT AND SAY THAT?

17 A YEP.

18 Q "HOW DO YOU LIKE THIS, I DID IT, I KILLED MY  
19 GRANDPARENTS"?

20 A YES.

21 MR. PIKE: YOUR HONOR, BEFORE MR. SEATON GOES  
22 FURTHER, FOR THE REASONS PREVIOUSLY ANNOUNCED IN PRIOR  
23 HEARINGS, I WOULD ASK THAT THE COURT NOTE ANY CONTINUING  
24 OBJECTION BASED UPON THE BASIS OF THE POLICE AGENT ISSUE THAT  
25 WAS RAISED.

1 THE COURT: VERY WELL, SO NOTED. PROCEED.  
2 MR. SEATON: THANK YOU, YOUR HONOR.  
3 BY MR. SEATON:  
4 Q DID HE SAY WHEN HE HAD KILLED HIS GRANDPARENTS?  
5 A HE STATED THAT HE DID IT EARLY IN THE MORNING,  
6 LIKE AFTER MIDNIGHT OF THE 6TH, 5TH OR 6TH. I THINK IT WAS  
7 THE 6TH.  
8 Q AFTER MIDNIGHT OF THE 6TH, 5TH -- ON THE 6TH?  
9 A YES.  
10 Q DID HE TELL YOU WHERE HE HAD BEEN ON THE EVENING  
11 OF THE 5TH PRIOR TO THE KILLING OF HIS GRANDPARENTS?  
12 A YES. HE STATED HE WAS AT RANDY MOORE'S APARTMENT.  
13 Q THAT IS AT 337 NORTH 13TH?  
14 A I THINK SO.  
15 Q HAVE YOU BEEN THERE?  
16 A YES.  
17 Q DID HE SAY WHEN HE WAS AT RANDY MOORE'S APARTMENT  
18 ON THE NIGHT BEFORE WHO ELSE WAS PRESENT AT THAT ADDRESS?  
19 A HE STATED THAT JOHN RAY LUCKETT, TOM AKERS, ROY  
20 MCDOWELL, MIKE WALSH, AND THEN, DIDN'T -- RANDY MOORE AND  
21 HIMSELF.  
22 Q IF I COULD MAKE SURE I UNDERSTAND. HE INDICATED  
23 TO YOU THAT JOHN RAY LUCKETT, TOM AKERS, ROY MCDOWELL, MIKE  
24 WALSH, AND RANDY MOORE --  
25 A YES.

1 Q -- WERE PRESENT?  
2 A YES.  
3 Q DID HE MENTION AN INDIVIDUAL BY THE NAME OF JOHN  
4 LUCAS?  
5 A NO.  
6 Q DID HE TELL YOU ANYTHING ABOUT THE DISCUSSIONS  
7 THAT HE AND ANY OF THOSE OTHER INDIVIDUALS THAT YOU HAVE NAMED  
8 HAD THE NIGHT BEFORE?  
9 A YES. HE STATED THAT THEY HAD PLANNED TO MAKE IT  
10 LOOK LIKE A ROBBERY.  
11 Q DID HE SAY HOW THEY PLANNED TO MAKE IT LOOK LIKE A  
12 ROBBERY?  
13 A HE STATED THAT ONLY THAT JOHN RAY AND RANDY MOORE  
14 WERE TO CARRY GUNS AND HIMSELF; ALSO, THAT THEY WERE GOING TO  
15 BREAK IN THE WINDOW, INSTEAD OF GOING IN THE FRONT DOOR.  
16 Q DID HE TELL YOU WHAT THE REASON FOR KILLING HIS  
17 GRANDPARENTS WAS?  
18 A FOR THE WILL AND THE INSURANCE MONEY.  
19 Q DID HE THINK THAT THERE WAS A WILL?  
20 A YES.  
21 Q AND DID HE TELL YOU WHO WAS NAMED IN THE WILL AS  
22 BENEFICIARY?  
23 A HE SAID THAT IT WAS RUMORED TO HIM THAT IT WAS  
24 EITHER ALL OF HIS OR HALF HIS AND HALF HIS UNCLE'S.  
25 Q DID HE TELL YOU HOW MUCH MONEY WAS INVOLVED IN THE

1 WILL?

2 A I THINK HE SAID TWO HUNDRED THOUSAND, I AM NOT  
3 SURE.

4 Q WAS THAT THE WILL OR THE INSURANCE POLICY?

5 A THE INSURANCE. THE WILL, I HAVE NO IDEA WHAT WAS  
6 IN IT.

7 Q DID HE SAY ANYTHING ABOUT THE HOUSE INSOFAR AS AN  
8 INHERITANCE WAS CONCERNED?

9 A YES. HE SAID THE HOUSE WOULD HAVE BEEN HIS.

10 Q DID HE SAY ANYTHING ELSE WOULD HAVE BEEN HIS?

11 A NOT AS FAR AS DEFINITE GOES, NO. HE WASN'T SURE  
12 ABOUT ANYTHING ELSE, JUST KNEW THAT THE HOUSE WOULD BE.

13 Q IS IT YOUR TESTIMONY THAT DALE FLANAGAN TOLD YOU  
14 THAT THE PURPOSE FOR KILLING THE GRANDPARENTS WAS BECAUSE HE  
15 WAS NAMED AS A BENEFICIARY IN THE WILL AND ON THE TWO HUNDRED  
16 THOUSAND DOLLAR INSURANCE POLICY AND TO GET THE HOUSE?

17 MR. PIKE: OBJECTION, LEADING.

18 THE COURT: SUSTAINED.

19 BY MR. SEATON:

20 Q DID HE INDICATE TO YOU WHETHER OR NOT HE AND ANY  
21 OTHER PEOPLE LEFT RANDY MOORE'S APARTMENT THE NIGHT OF THE  
22 5TH?

23 MR. SMITH: YOUR HONOR, AT THIS POINT, I WOULD  
24 RENEW AN OBJECTION PREVIOUSLY STATED, DENIAL OF SIXTH  
25 AMENDMENT RIGHT, TO CONFRONT THE WITNESSES AGAINST US.

1           AND, ALSO, IT IS NOT -- I SUBMIT AGAIN IT HAS NOT  
2 BEEN DEMONSTRATED THIS CONVERSATION WAS IN ANY WAY IN  
3 FURTHERANCE OF THE CONSPIRACY.

4           MR. SEATON: QUITE TO THE CONTRARY, YOUR HONOR.  
5 THIS COURT HAS ALREADY RULED THAT IT WAS IN FURTHERANCE.

6           THE COURT: ALL RIGHT.

7           MR. SMITH: MAY WE APPROACH THE BENCH?

8           THE COURT: YOU MAY.

9                   (DISCUSSION AT THE BENCH WHICH WAS  
10                   NOT REPORTED.)

11           THE COURT: LADIES AND GENTLEMEN OF THE JURY, I AM  
12 GOING TO ASK THAT YOU STEP OUTSIDE FOR A FEW MOMENTS WHILE WE  
13 IRON A LITTLE MATTER OUT HERE.

14                   (THE ADMONITION WAS READ.)

15           THE COURT: I AND COUNSEL REMAIN IN COURT. AND WE  
16 WILL NOT BREAK BEFORE WE CALL YOU BACK, SO PLEASE STAY IN THE  
17 IMMEDIATE AREA. YOU MAY EXIT THE COURTROOM AT THIS TIME.

18                   (JURY EXITS THE COURTROOM.)

19           THE COURT: FOR THE RECORD, THE JURY HAS EXITED  
20 THE COURTROOM. MR. SMITH, YOU HAVE AN OBJECTION?

21           MR. SMITH: CAN WE EXCUSE THE WITNESS, PLEASE?

22           THE COURT: YES. THERE IS SOME ARGUMENT, MAYBE  
23 SOME QUESTIONING OF THE WITNESS.

24           MR. SMITH: WELL, I CAN GO AHEAD AND MAKE MY  
25 ARGUMENT, IF THE COURT PLEASE.

1 MY OBJECTION IS BASICALLY THIS. THE STATE'S, I  
2 UNDERSTAND FROM THE EVIDENTIARY HEARING, ORIGINAL POSITION AS  
3 FAR AS WHY THE STATEMENTS THAT DALE FLANAGAN MADE OUTSIDE THE  
4 PRESENCE OF ANY OTHER DEFENDANTS TO MISS SALDANA SHOULD BE  
5 ADMITTED WERE BECAUSE HE WANTED TO INTIMIDATE HER AND  
6 BASICALLY SOLICIT HER SUPPORT IN THE STORY ABOUT THE KNIFE.  
7 AND SHE HAS TESTIFIED ABOUT BOTH OF THOSE TWO PRIOR  
8 CONVERSATIONS.

9 WE HAVE NOW MOVED ONTO A THIRD CONVERSATION, WHICH  
10 THE WITNESS TESTIFIED SIMPLY CAME UP AS A RESULT OF A  
11 BOYFRIEND-GIRLFRIEND DISCUSSION. AND THEN, DALE SAID, "HOW DO  
12 YOU LIKE IT, I KILLED MY GRANDPARENTS."

13 AND THEN, WE ARE MOVING ONTO A POINT WHERE I  
14 EXPECT THE STATE IS GOING TO SOLICIT FROM THE WITNESS WHAT HE  
15 TOLD HER THE OTHER PEOPLE DID DURING THE EVENING IN QUESTION.

16 I THINK THE COURT'S ALREADY MADE IT CLEAR THAT THE  
17 STATE CANNOT SOLICIT MERE RECITATIONS OF FACTUAL EVENTS, WHICH  
18 ONE CODEFENDANT TOLD ANOTHER PERSON OUTSIDE THE PRESENCE OF  
19 THE OTHER DEFENDANTS WHICH IS SIMPLY THAT, A RECITATION OF  
20 FACTS. I THINK YOU CAN BREAK THIS CONVERSATION DOWN INTO ITS  
21 COMPONENTS.

22 AND I CAN SEE HOW THE STATE CAN LET IN THE FIRST  
23 PART. BUT IF THEY ARE MERELY SAYING, "WELL, THIS IS WHAT  
24 HAPPENED," AND IT GOES ON TO SAY WHAT HE THINKS OCCURRED, I  
25 DON'T THINK THAT PORTION OF THE CONVERSATION IS IN

1 FURTHERANCE.

2 THERE IS A SECOND OBJECTION TO THAT. IT WAS ALSO  
3 DEVELOPED ON CROSS-EXAMINATION AT THE EVIDENTIARY HEARING THAT  
4 APPARENTLY DALE HAD NO PERSONAL KNOWLEDGE OF WHAT THE OTHER  
5 DEFENDANTS DID, PARTICULARLY, WHO THE OTHER PEOPLE THAT WERE  
6 SHOOTING THE GUN WERE.

7 AND I AM SPECIFICALLY CONCERNED ABOUT THIS,  
8 BECAUSE I EXPECT THAT SHE WILL SAY IF PERMITTED THAT SHE WAS  
9 TOLD BY DALE THAT JOHN LUCKETT FIRED THE WEAPON. AND THERE IS  
10 NO BASIS FOR ANY EVIDENCE BEFORE THIS COURT THAT HE EVER SAW  
11 THAT, AND WE MUST ASSUME THAT IS WHAT HE WAS TOLD.

12 I THINK THE COURT SHOULD TAKE, ESPECIALLY, INTO  
13 ACCOUNT IN THIS INSTANCE THE CONFRONTATION PROBLEMS WHICH ARE,  
14 AND IT IS A VERY IMPORTANT PROBLEM, WHICH DUTTON VERSUS EVANS  
15 AND OTHER CASES I STATED TO THE COURT HAVE FOCUSED ON, IS  
16 WHETHER OR NOT THE WITNESS TESTIFIES FROM PERSONAL KNOWLEDGE.

17 SO I THINK WE BREAK IT DOWN RIGHT THERE, AND I  
18 THINK THAT IT'S EXTREMELY PREJUDICIAL. AND, IN FACT, IT DOES  
19 DENY MR. LUCKETT THE RIGHT TO CONFRONT DALE PLANAGAN AS TO THE  
20 BASIS OF HIS TESTIMONY.

21 THE COURT: IS THERE ANYTHING ELSE FROM DEFENSE  
22 COUNSEL?

23 MR. PIKE: NOTHING.

24 MR. HANDFUSS: I WOULD JOIN WITH MR. SMITH, YOUR  
25 HONOR.



1 MR. POSIN: YES, YOUR HONOR, PLEASE. I BELIEVE  
2 THE EVIDENTIARY HEARING WAS ESTABLISHED UNDER THE BEST OF  
3 CIRCUMSTANCES; THAT, IF WE ACCEPT THE TESTIMONY THAT MR.  
4 FLANAGAN ENTERED THE BEDROOM, HE HAD NO WAY OF KNOWING  
5 PERSONALLY WHAT MAY HAVE HAPPENED IN ANY OTHER PART OF THE  
6 HOUSE DURING ANY OTHER PART OF THE SHOOTING.

7 THE COURT: BEFORE WE HAVE RESPONSE FROM THE  
8 STATE, I WOULD LIKE TO ASK MISS SALDANA, WHO IS STILL UNDER  
9 OATH.

10 YOU INDICATED THAT DALE SAID TO YOU SOMETHING TO  
11 THE EFFECT THAT, "HOW DO YOU LIKE THIS, I KILLED MY  
12 GRANDPARENTS"; IS THAT CORRECT?

13 THE WITNESS: YES.

14 THE COURT: WAS IT IMMEDIATELY THEREAFTER OR  
15 SOMETIME THEREAFTER THAT HE WENT INTO HOW THIS OCCURRED AND  
16 WHO WAS INVOLVED?

17 THE WITNESS: IMMEDIATELY.

18 THE COURT: OKAY. THE STATE.

19 MR. SEATON: MAY I ASK HER ONE QUESTION, TOO?  
20 BY MR. SEATON:

21 Q MISS SALDANA, IN THE EARLIER HEARING, YOU HAD  
22 INDICATED THAT, AND I AM NOT GOING TO BE PRECISE BUT YOU WILL  
23 UNDERSTAND MY MEANING, YOU INDICATED THAT YOU THOUGHT THAT  
24 DALE HAD THE DISCUSSION WITH YOU ABOUT THE KNIFE SO AS TO  
25 SOLICIT YOUR SUPPORT.

1           A     YES.

2           Q     AND THAT YOU WOULD BACK HIM UP IF THE POLICE EVER

3           CAME TO YOU?

4           A     THAT'S WHAT HE WAS ASSUMING, YES.

5           MR. PIKE: OBJECTION. THAT IS AN ASSUMPTION.

6           THE COURT: THE QUESTION WAS, WAS THAT YOUR

7           FEELING?

8           THE WITNESS: YES.

9           THE COURT: WAS THAT YOUR FEELING?

10          THE WITNESS: YES.

11          MR. SEATON: JUST SO WE HAVE ESTABLISHED THAT.

12          NOW, IF I MIGHT ARGUE YOUR HONOR.

13                FIRST OF ALL, I AM GOING TO ECHO SENTIMENTS I

14          HEARD A MINUTE AGO THAT I, TOO, AM A LITTLE INSULTED WE ARE

15          DOING THIS RIGHT NOW. WE HAVE TRIAL TACTICS, AND THERE ARE

16          MOTIONS IN LIMINE THAT HAVE PURPOSES BEHIND THEM.

17                WE CAME DOWN HERE, WE ARGUED THIS THING OUT

18          FULLY. TRUE, MR. HARMON IN HIS LISTING SAID HOW DO YOU LIKE

19          THIS, I DID IT, I KILLED MY GRANDPARENTS, ET CETERA.

20          OBVIOUSLY, WE WERE REFERRING TO THE ENTIRETY OF THAT

21          CONVERSATION. THAT CONVERSATION IS THE MOST IMPORTANT THING

22          FROM AN EVIDENTIARY POINT OF VIEW TO THE STATE.

23                WE CAME DOWN HERE. WE ARGUED ALL OF THIS. THE

24          COURT GAVE US A RULING THAT THE THINGS CONTAINED IN PARAGRAPH

25          14 WERE TO BE ADMISSIBLE. AND THE COURT SAID IT WAS BASED ON

1 THE FACT THAT EARLIER MISS SALDANA HAD SAID THAT THE KNIFE  
2 CONVERSATION WAS SAID TO HER TO INTIMIDATE HER AND FURTHER TO  
3 SOLICIT HER HELP.

4 AND HERE WE ARE IN THE MIDST OF TRIAL INTERRUPTING  
5 THE WHOLE PROCEEDINGS, DOING THIS WHOLE THING ALL OVER AGAIN.  
6 NOW, I AM BOTHERED BY THAT.

7 NOW, THAT OFF OF MY CHEST, LET ME SUGGEST -- LET  
8 ME GO TO MR. SMITH'S SECOND OBJECTION, WHICH NO ONE HAS EVER  
9 REALLY ADDRESSED OR ACKNOWLEDGED IN THIS CASE, YET. AND IT'S  
10 ALWAYS BOTHERED ME EVERY TIME I HEARD IT, AND THAT IS THE FACT  
11 THAT A CO-CONSPIRATOR STATEMENT IS GIVEN WHEN HE DOESN'T HAVE  
12 PERSONAL KNOWLEDGE.

13 HE DIDN'T SEE THE THINGS. DALE WAS IN THE  
14 BEDROOM. AND HE HAS SIMPLY BEEN TOLD BY OTHERS WHAT TOM AKERS  
15 DID, WHAT ROY MCDOWELL DID, WHAT WALSH AND MOORE DID.

16 THAT DOESN'T MATTER. IT ABSOLUTELY DOESN'T  
17 MATTER. THERE ARE CO-CONSPIRATOR STATEMENTS. HIS  
18 CO-CONSPIRATORS TOLD HIM AND MADE HIM KNOWLEDGEABLE, AND HE IS  
19 REPEATING THOSE.

20 AND IF THEY ARE CO-CONSPIRATOR STATEMENTS, THOSE  
21 OTHER CO-CONSPIRATORS HAVE TO BEAR THE WEIGHT AND THE BRUNT OF  
22 WHATEVER IT IS HE IS REPEATING. THAT IS AN OBJECTION THAT HAS  
23 ABSOLUTELY NO STANDING AT THIS PARTICULAR JUNCTURE.

24 NOW, THE REAL OBJECTION THAT WE ARE OVERHAULING  
25 AGAIN IS WHETHER OR NOT THESE WERE SAID IN FURTHERANCE OF THE

1 CONSPIRACY. THIS COURT VERY CAREFULLY AND CONCISELY AND, I  
2 THINK, CORRECTLY RULED THAT WITH REGARD TO THE KNIFE  
3 CONVERSATION, AND MISS SALDANA HAS REPEATED IT FOR US HERE  
4 TODAY, THAT NOT ONLY THE INTIMIDATION FACTOR, I THINK THAT IS  
5 THE LEAST OF THE TWO ARGUMENTS, BUT THE FACTOR THAT HIS  
6 STATEMENTS WERE MADE TO HER WITH THE HOPE AND THE EXPECTATION  
7 THAT SHE WOULD BACK HIM UP, HE WAS DRAWING HER INTO THE WEB  
8 INSOFAR AS HE COULD.

9 SO THAT, IF THE POLICE EVER CAME TO HER AND  
10 SAID, "WHAT DO YOU KNOW ABOUT THIS?" SHE WOULD KNOW ABOUT IT  
11 AND SHE WOULD KNOW THE RIGHT THINGS TO DISPUTE AND THE RIGHT  
12 THINGS TO ADMIT IF SHE WERE TO BE STILL ON HIS SIDE.

13 AND, YOU KNOW, THE NOOSE WAS DRAWING TIGHTER  
14 AROUND THIS GUY'S NECK. IN MID NOVEMBER, THE POLICE CAME AND  
15 ASKED HIM ABOUT THE KNIFE. AND DALE SENT HER AWAY PROBABLY  
16 BECAUSE SHE DIDN'T KNOW ANYTHING ABOUT THE KNIFE, AND HE  
17 DIDN'T WANT HER TO SLIP AND SAY ANYTHING WRONG.

18 AND HE COMES BACK IN. HE TELLS HER WHAT GOES ON.  
19 TWO WEEKS AFTER THAT, HE COMES WITH THE EXCUSE THAT  
20 BUTTRESSES THAT WHAT SHE BELIEVED ALL ALONG. HE IS SETTING  
21 HER UP FOR AN ALIBI FOR THIS KNIFE.

22 AND NOW, ONE WEEK LATER, THE NOOSE, IF ANYTHING,  
23 IS GETTING TIGHTER HERE, HE IS GIVING HER MORE INFORMATION.  
24 IS THIS THE EASIEST INFERENCE WE CAN MAKE ACCORDING TO THE KIND  
25 OF INFERENCES THAT WERE MADE IN GOLDSMITH?

1           IS THIS THE EASIEST INFERENCE WE CAN MAKE THAT HE  
2 REALLY IS BANKING ON HER NOW, AND HE IS GOING TO LAY THE WHOLE  
3 THING OUT TO HER SO THAT SHE KNOWS THE STORY? I MEAN,  
4 OBVIOUSLY, SHE KNEW THE STORY IN THE FIRST PLACE, BECAUSE HE  
5 IS TELLING HER ABOUT THE KNIFE, AND NOW THE COPS WON'T HAVE  
6 ANYTHING ON HIM. THAT IS TWO WEEKS EARLIER.

7           SO I SUGGEST TO THE COURT THAT NOT ONLY SHOULD WE  
8 NOT BE REARGUING THIS, BUT IF WE ARE, THERE IS THE BEST KIND  
9 OF EVIDENCE SHOWING THAT THIS WAS IN FURTHERANCE, AND THE FACT  
10 THAT THESE OTHER CODEFENDANTS DON'T LIKE THE FACT THAT DALE IS  
11 TELLING HER THESE THINGS AND THE JURY IS NOW GOING TO HEAR  
12 THEM IS JUST TOO BAD. BECAUSE IT IS IN THE FURTHERANCE OF A  
13 CONSPIRACY, AND IT IS A STATEMENT MADE BY A CO-CONSPIRATOR.

14           THE COURT: THANK YOU. MR. SMITH.

15           MR. SMITH: YOUR HONOR, THE STATE PERSISTENTLY HAS  
16 FAILED TO ADDRESS THE FACT THAT THERE ARE SIXTH AMENDMENT  
17 CONCERNS WHICH ARE BROADER AND, PERHAPS, MORE IMPORTANT THAN  
18 SIMPLY WHETHER OR NOT THIS IS, IN FACT, A CO-CONSPIRATOR  
19 STATEMENT WHICH WE DON'T CONCEDE.

20           THE FACT OF THE MATTER IS THAT THE SIXTH AMENDMENT  
21 REQUIRES THAT IF SOMEBODY ELSE'S OUT OF COURT TESTIMONY THAT  
22 WE CAN'T CONFRONT IS GOING TO BE USED AGAINST US, THEN AT  
23 LEAST THAT TESTIMONY MUST STEM FROM SOME PERSONAL BASIS OF  
24 KNOWLEDGE.

25           AND THE STATE CAN'T POINT TO ANYTHING TO INDICATE

1 HOW IN THE WORLD DALE FLANAGAN CAN SAY, BASED ON HIS OWN  
2 PERSONAL KNOWLEDGE, THAT MY CLIENT SHOT A WEAPON. AND THAT IS  
3 A CRITICAL SIXTH AMENDMENT CONCERN, THIS EVIDENCE. I CAN'T  
4 THINK OF EVIDENCE WHICH COULD BE MORE PREJUDICIAL UNDER THE  
5 CIRCUMSTANCES.

6 AND IRRESPECTIVE OF HOW YOU FEEL ABOUT THE  
7 CO-CONSPIRATOR EXCEPTION TO THE HEARSAY RULE, THERE ARE  
8 SERIOUS SIXTH AMENDMENT CONCERNS, WHICH HAVE NOT EVEN BEEN  
9 ATTEMPTED TO BE ADDRESSED BY THE STATE.

10 THE COURT: ALL RIGHT, MR. SMITH. THANK YOU.

11 MR. HANDFUSS: YOUR HONOR, I WOULD JOIN IN WITH MR.  
12 SMITH. BOTH MR. SMITH AND MYSELF RAISED THIS SIXTH AMENDMENT  
13 RIGHT OF CONFRONTATION. LOSS OF RIGHT OF CONFRONTATION AT THE  
14 EVIDENTIARY HEARING WOULD RELY ON MR. SMITH.

15 JUST TO CLEAR THE AIR AS TO WHAT MR. SEATON SAID,  
16 HE WAS INSULTED THIS SHOULD GO ON AT THIS POINT IN TIME,  
17 AND A LOT OF ASKED AND ANSWERED QUESTIONS BY THE STATE.

18 I WOULD POINT OUT TO THE COURT AND I WOULD MAKE IT  
19 VERY CLEAR THAT MY POSITION IS, AS PROBABLY AS EVERY OTHER  
20 DEFENSE COUNSEL IS HERE, THAT THEY HAVE DEFENDANTS HERE WHO  
21 ARE ON TRIAL FOR MURDER AND WHO MAY VERY WELL GET THE DEATH  
22 PENALTY IF THE JURY THINKS THAT IS PROPER.

23 NOW, AS THE COURT IS AWARE, AS DEFENSE COUNSEL IN  
24 A CASE LIKE THIS, WE ARE ENTITLED WIDE LATITUDE IN  
25 CROSS-EXAMINATION, ESPECIALLY, IN A CASE LIKE THIS WHERE WE

1 HAVE INCONSISTENT DEFENSES.

2 WHEN MR. SMITH'S DEFENSE HAPPENS TO PREJUDICE MY  
3 CLIENT BY EVIDENCE THAT NORMALLY WOULD NOT BE BROUGHT OUT AND  
4 THE STATE HAS AGREED NOT TO BRING OUT, I THINK THAT ALL  
5 DEFENSE COUNSEL SHOULD BE ALLOWED WIDE LATITUDE.

6 AND WHETHER OR NOT MR. SEATON IS INSULTED, OR  
7 WHETHER OR NOT MR. HARMON SAYS IN FRONT OF THE JURY THAT  
8 DEFENSE COUNSEL SHOULD KNOW BETTER NOT TO USE THE WORD  
9 IMPEACHMENT IS IMPROPER. AND WHETHER ANYBODY IS INSULTED OR  
10 NOT IS IRRELEVANT.

11 AND I APOLOGIZE FOR TAKING UP THE COURT'S TIME ON  
12 THIS. IT IS VERY IMPORTANT TO INFORM THE COURT SPECIFICALLY  
13 AS TO MY POSITION, HOW I AM SUPPOSED TO DEFEND MR. MCDOWELL IN  
14 THIS CASE.

15 THE COURT: MR. HANDFUSS, I AM NOT SURE IF YOU ARE  
16 ADDRESSING THE OBJECTION MR. SMITH FIRST VOICED, OR DO YOU  
17 HAVE OTHER AXES TO GRIND HERE.

18 BUT AS FAR AS ASKED AND ANSWERED AND THAT  
19 OBJECTION, I WOULD GIVE YOU INDICATION AT THIS TIME THAT YOU  
20 MAY COVER AREAS THAT, ALTHOUGH THEY HAVE BEEN COVERED BY OTHER  
21 COUNSEL, WOULD SEEM TO BE IMPORTANT TO YOU.

22 AS I RECALL MY SUSTAINING MR. HARMON'S OBJECTIONS  
23 AS TO ASKED AND ANSWERED, YOU HAD ASKED THE QUESTIONS  
24 REGARDING THE AREA ON YOUR ORIGINAL DIRECT OR ORIGINAL CROSS,  
25 AND THEN ON RECROSS. YOU SOUGHT TO REPEAT, AND THAT WAS MY

1 BASIS FOR SUSTAINING THE OBJECTION.

2 BUT ASIDE FROM THAT, YOU WOULD HAVE THE LATITUDE  
3 THAT YOU SPEAK OF.

4 MR. HANDFUSS: THANK YOU, YOUR HONOR. I SAID THAT  
5 WITH ALL DUE RESPECT.

6 THE COURT: MR. SMITH, CONCERNING YOUR MATTERS AND  
7 COUNSEL THAT JOINED YOU --

8 MR. PIKE: I JOIN, ALSO.

9 MR. POSIN: YES, YOUR HONOR.

10 THE COURT: ALL COUNSEL, VERY GOOD. CONCERNING  
11 THE SIXTH AMENDMENT RIGHT THAT YOU ALLUDE TO, COUNSEL, I  
12 SUBSCRIBED FRANKLY TO MR. SEATON'S UNDERSTANDING OF WHAT IS  
13 REQUIRED IN A CO-CONSPIRATOR STATEMENT AND THE FACT IT NEED  
14 NOT BE BASED ON DIRECT PERSONAL KNOWLEDGE.

15 MR. SMITH: I HAVE NO QUARREL WITH THAT POSITION  
16 AS FAR AS THAT EXCEPTION IS CONCERNED, YOUR HONOR.

17 THE COURT: CONCERNING YOUR ARGUMENT OF  
18 CONFRONTATION, I WOULD SUGGEST NOT TO MINIMIZE THE IMPORTANCE  
19 OF CERTAINLY THE SIXTH AMENDMENT RIGHT. BUT YOUR OBJECTION, I  
20 THINK, GOES TO CREDIBILITY MORE THAN ADMISSIBILITY.

21 NOW, I UNDERSTAND YOUR POSITION. CERTAINLY, YOU  
22 ARE GOING TO ARGUE THAT THERE WERE MANY STATEMENTS MADE  
23 HERE WITHOUT DIRECT KNOWLEDGE, THAT IT WAS A CONTINUAL PASSING  
24 ON OF INFORMATION. AND IT PROBABLY GREW AS IT WAS PASSED.

25 BUT THAT, IN NO WAY, IN MY JUDGMENT, SHOULD



1 PRECLUDE THE STATE FROM ALLOWING THIS INFORMATION TO COME OUT  
2 UNDER THESE CIRCUMSTANCES.

3 NOW, CONCERNING MISS SALDANA'S DISCUSSION WITH MR.  
4 FLANAGAN, SET OUT IN PARAGRAPH 14 OF THE DOCUMENT THAT THE  
5 STATE PROPOUNDED FOR OUR MUTUAL BENEFIT, IT IS TRUE THAT WE  
6 DID NOT GO INTO THIS DISCUSSION AT LENGTH AT THE EVIDENTIARY  
7 HEARING.

8 AND I DON'T THINK THERE IS A BASIS FOR ANYBODY  
9 BEING UPSET OR WHATEVER THE WORDS WERE USED. WE JUST DIDN'T  
10 GO INTO THIS. AND WE LEFT A VOID IN OUR DETERMINATION, AND  
11 THAT IS WHY WE ARE HAVING THIS, TO STOP AND RECALL AND GO  
12 BACK.

13 THE WORD ET CETERA OR THE ABBREVIATION WAS  
14 UTILIZED, AND THAT WOULD COVER A MULTITUDE OF THINGS,  
15 THEORETICALLY. BUT I DID DETERMINE THAT THAT CONVERSATION,  
16 CONCERNING MR. FLANAGAN'S REVELATION THAT, "HOW DO YOU LIKE  
17 THIS, I KILLED MY GRANDPARENTS," WAS ADMISSIBLE IN FURTHERANCE  
18 OF A CONSPIRACY ON THREE BASES.

19 ONE, IT WAS, IN A SENSE, AN ATTEMPT TO ELICIT  
20 ASSISTANCE FROM MISS SALDANA. SECONDLY, TO INTIMIDATE HER TO  
21 SOME EXTENT. AND, THIRD, TO EXPLAIN TO HER HOW SERIOUS HIS  
22 INVOLVEMENT WAS AND IN HOPES THAT SHE WOULD STOP HER SOMEWHAT  
23 CASUAL DISCUSSIONS WITH THE POLICE WHEN THEY COME TO  
24 INTERVIEW, WHICH SHE HAD REASON TO BELIEVE WAS OCCURRING.

25 ANY ONE OF THOSE, I THINK, WOULD BE SUFFICIENT.

1 BUT WHEN TAKEN COLLECTIVELY, THERE IS NO DOUBT THIS WAS MADE  
2 IN FURTHERANCE OF THE CONSPIRACY. IT WOULD BE ADMISSIBLE  
3 UNDER THAT AUSPICES.

4 NOW, I DON'T KNOW HOW FAR. I, FRANKLY, DON'T KNOW  
5 WHAT ALL WAS DISCUSSED. I AM GOING TO ASSUME IT WAS PRETTY  
6 MUCH WHAT WE HAVE HEARD PREVIOUS WITH SOME OF THE OTHER  
7 WITNESSES. IF WE SHOULD BE SURPRISED TO THAT EXTENT, THEN WE  
8 MIGHT WANT TO DISCUSS IT FURTHER WITH COUNSEL.

9 BUT AT THIS TIME, I AM GOING TO OVERRULE THE  
10 OBJECTION.

11 MR. POSIN: MIGHT I BE HEARD WITH REGARD TO THAT?  
12 THE COURT INDICATED IT WAS A QUESTION OF  
13 CREDIBILITY WITH REGARD TO THIS WITNESS'S TESTIMONY. AND I  
14 HAVE NO PROBLEM WITH HER CREDIBILITY.

15 IN OTHER WORDS, I AM SURE SHE WILL TESTIFY AND  
16 RELATE AS BEST SHE CAN OR AS ACCURATELY AS SHE CAN WHAT SHE  
17 UNDERSTANDS THE TESTIMONY ACCURATELY OF THE STATEMENTS THAT  
18 WERE MADE BY DALE FLANAGAN.

19 THE QUESTION ISN'T SO MUCH CREDIBILITY AS THE  
20 RELIABILITY OF THE STATEMENTS, AND IT IS THAT TO WHICH WE ARE  
21 ADDRESSING THIS OBJECTION. THAT IS WHY THE SIXTH AMENDMENT  
22 CONCERN WITH CONFRONTATION IS SO CRITICAL AND IMPORTANT.

23 AND I WOULD LIKE THE RECORD TO REFLECT THAT  
24 FURTHER ARGUMENT, IF YOUR HONOR PLEASE, WITH REGARD TO THE  
25 COURT'S RULING.

1 THE COURT: THAT IS FINE, MR. POSIN. I THINK I  
2 DIDN'T MAKE MYSELF CLEAR TO YOU IN THAT EXTENT. WHEN I WAS  
3 REFERRING TO CREDIBILITY, I MEANT THE STATEMENT MADE BY MR.  
4 FLANAGAN TO HER WITHOUT DIRECT KNOWLEDGE, WHICH WOULD SEEM TO  
5 BE THE ARGUMENT OF COUNSEL.

6 THEREIN LIES THE LACK OF CREDIBILITY, POSSIBLY.  
7 AND IT IS SOMETHING THAT WOULD BE, I AM SURE, CAPITALIZED ON  
8 AT THE PROPER TIME.

9 MR. BAILIFF.

10 (JURY ENTERS THE COURTROOM.)

11 THE COURT: WILL COUNSEL STIPULATE THAT ALL  
12 MEMBERS OF THE JURY ARE PRESENT AND PROPERLY SEATED?

13 MR. POSIN: SO STIPULATED.

14 THE COURT: PROCEED, PLEASE.

15 MR. SEATON: MISS COURT REPORTER, WOULD YOU FIND  
16 THE PLACE WHERE WE WERE BEFORE WE BROKE JUST A FEW MINUTES  
17 AGO?

18 THE COURT: THERE WAS AN OBJECTION ABOUT THAT TIME  
19 BY MR. PIKE INDICATING THAT IT WAS -- SHOULD NOT BE HER  
20 PREROGATIVE TO DETERMINE WHAT HE WAS ASSUMING. I ASKED HER  
21 FURTHER, "WAS THIS YOUR UNDERSTANDING AS TO WHAT HE ASSUMED"?

22 THE WITNESS: YES.

23 THE COURT: AND HER ANSWER WAS YES.

24 MR. PIKE: YOUR HONOR, DOES THAT MEAN MY OBJECTION  
25 WAS OVERRULED? I ASK FOR SPECIFIC RULING ON MY OBJECTION.

1 THE COURT: WELL, WITH THAT CLARIFICATION, YES.  
2 BY MR. SEATON:  
3 Q DID DALE FLANAGAN TELL YOU WHETHER OR NOT HE AND  
4 THE OTHERS LEFT RANDY MOORE'S APARTMENT ON NOVEMBER THE 5TH?  
5 A YES.  
6 Q AND DID HE SAY WHO LEFT THE APARTMENT WITH HIM?  
7 A HE STATED THAT ALL OF THEM, ALL SIX OF THEM.  
8 Q DID HE JUST SAY IT THAT WAY, OR DID HE NAME THEM?  
9 A HE JUST SAID, "ALL OF US." THAT'S IT.  
10 Q AND DID HE SAY WHERE THEY WENT?  
11 A HE STATED THAT THEY WENT DIRECTLY TO HIS  
12 GRANDPARENTS' HOUSE.  
13 Q DID HE TELL YOU HOW THEY GOT THERE?  
14 A BY THOMAS AKERS' CAR.  
15 Q DID HE SAY WHO WAS DRIVING THAT CAR?  
16 A THOMAS.  
17 Q DID HE INDICATE TO YOU WHERE EVERYONE ELSE WAS  
18 SEATED IN THE CAR?  
19 A NO, HE DIDN'T.  
20 Q DID HE INDICATE TO YOU, DID HE SAY ANYTHING TO YOU  
21 ABOUT GUNS?  
22 A NOT ON THE DRIVE. BUT HE STATED THAT RANDY MOORE,  
23 JOHN LUCKETT, AND HIMSELF, DALE FLANAGAN, HAD WEAPONS.  
24 Q DID HE SAY WHAT KIND OF A WEAPON RANDY MOORE HAD?  
25 A A RIFLE OF SOME SORT.

1 Q DO YOU KNOW ITS CALIBER?  
2 A NO, I DON'T.  
3 Q DID HE SAY WHAT KIND OF A WEAPON THAT JOENNY RAY  
4 LUCKETT HAD?  
5 A A RIFLE, ALSO.  
6 Q DID HE SAY WHAT CALIBER IT WAS?  
7 A NO.  
8 Q DID HE TELL YOU WHAT SORT OF A GUN HE, DALE  
9 PLANAGAN, HAD?  
10 A HE STATED THAT HE HAD A HANDGUN.  
11 Q DID HE TELL YOU ITS CALIBER?  
12 A NO, HE DIDN'T.  
13 Q DID HE TELL YOU WHERE TOM AKERS WENT AFTER THEY  
14 ARRIVED AT THE GRANDPARENTS' HOUSE?  
15 A THEY WENT TO DALE'S TRAILER.  
16 THE COURT: I AM GOING TO INTERRUPT JUST A MOMENT.  
17 MISS SALDANA, WHEN YOU ARE ASKED A QUESTION DID HE  
18 TELL YOU THIS, I WANT YOU TO RESPOND IF HE DID TELL YOU THAT.  
19 BUT DO NOT JUST RELATE WHAT YOU MAY THINK YOU KNOW AT THIS  
20 POINT. IS THAT FAIR ENOUGH?  
21 THE WITNESS: OKAY, OKAY.  
22 BY MR. SEATON:  
23 Q DID DALE PLANAGAN TELL YOU WHERE THE OTHER FIVE  
24 PEOPLE WENT?  
25 A YES.

1 Q AND WHERE DID HE TELL YOU THEY WENT?  
2 A HE STATED THEY WENT TO THE HOUSE, TO HIS  
3 GRANDPARENTS' HOUSE.  
4 Q DID HE TELL YOU WHAT PART OF THE HOUSE THEY WENT  
5 TO?  
6 A YES.  
7 Q AND WHERE IN THE HOUSE DID THEY GO TO?  
8 A THEY WENT ON THE OUTSIDE TO THE RIGHT SIDE WINDOW,  
9 WHICH IS NEXT TO HIS GRANDMOTHER'S BEDROOM.  
10 Q IS THAT THE SAME BROKEN WINDOW THAT YOU HAD  
11 REFERRED TO EARLIER IN YOUR TESTIMONY?  
12 A YES.  
13 Q DID HE TELL YOU WHAT HAPPENED TO THAT WINDOW?  
14 A YES.  
15 Q WHAT DID HE SAY HAPPENED TO THE WINDOW?  
16 A HE STATED THAT HE GAVE RANDY MOORE A KNIFE TO CUT  
17 OPEN THE SCREEN. IT WASN'T WORKING WELL. HE THREW IT DOWN.  
18 SO DALE, HIMSELF, HAD BROKEN OPEN THE WINDOW AND HAD GOTTEN  
19 IN.  
20 Q DID HE SAY -- DID DALE TELL YOU HOW HE BROKE THE  
21 WINDOW HIMSELF?  
22 A DALE HAD TOLD ME WITH A STICK.  
23 Q DID DALE TELL YOU WHAT HE DID AFTER HE BROKE THE  
24 WINDOW?  
25 A YES.

1 Q AND WHAT DID HE DO? WHAT DID HE TELL YOU HE DID?  
2 A HE STATED THAT HE WENT INTO THE BEDROOM OF HIS  
3 GRANDMOTHER'S, AND SHE WOKE UP SCREAMING. AND HE WRESTLED HER  
4 TO THE BED, PUT HIS HAND OVER HER MOUTH, AND SHOT HER.  
5 BUT HE STATED HE SHOT HER ONCE. HE STATED TO ME  
6 HE SHOT HER ONCE.  
7 Q DALE FLANAGAN TOLD YOU THAT HE WRESTLED HIS  
8 GRANDMOTHER TO THE BED, COVERED HER MOUTH WITH HIS HAND?  
9 A YES.  
10 Q AND SHOT HER ONCE?  
11 A YES.  
12 Q WITH THE PISTOL THAT HE HAD?  
13 A YES.  
14 Q DID DALE, IN THIS CONVERSATION, TELL YOU WHAT  
15 HAPPENED TO THE GRANDFATHER ON NOVEMBER THE 5TH?  
16 A YES.  
17 Q WHAT DID HE TELL YOU?  
18 A HE DIDN'T STATE WHETHER OR NOT THE OTHER BOYS HAD  
19 GOTTEN INTO THE HOUSE. BUT HE DID STATE WHILE HE WAS  
20 WRESTLING HIS GRANDMOTHER TO THE BED AND ALL THAT, THAT HIS  
21 GRANDFATHER WAS COMING DOWN THE STAIRS YELLING, AND THAT  
22 JOHNNY RAY AND RANDY MOORE HAD SHOT HIM.  
23 Q DID HE SAY HOW MANY TIMES JOHNNY RAY AND RANDY  
24 MOORE SHOT THE GRANDFATHER?  
25 A YES.

1 Q HOW MANY?  
2 A APPROXIMATELY, SEVEN OR EIGHT TIMES.  
3 Q DID HE DISTINGUISH BETWEEN THE NUMBERS OF SHOTS  
4 FIRED BETWEEN RANDY MOORE AND JOHNNY RAY LUCKETT?  
5 A NO, HE DIDN'T.  
6 Q DID HE TELL YOU WHETHER OR NOT HE HAD SHOT HIS  
7 GRANDMOTHER BEFORE OR AFTER HE HEARD THE GRANDFATHER COMING  
8 DOWN THE STAIRS SCREAMING?  
9 A ASK THAT ONE MORE TIME, PLEASE.  
10 Q LET ME ASK IT A LITTLE DIFFERENTLY. PERHAPS, IT  
11 WILL HELP. DID HE TELL YOU THE SEQUENCE OF EVENTS?  
12 LET ME GO A LITTLE FURTHER. YOU INDICATED THAT HE  
13 SHOT HIS GRANDMOTHER AND THAT HE HEARD HIS GRANDFATHER COMING  
14 DOWN THE STEPS SCREAMING. DID HE INDICATE TO YOU THE ORDER IN  
15 WHICH THOSE EVENTS OCCURRED?  
16 A HIS GRANDMOTHER WAS FIRST. HE HAD SHOT HIS  
17 GRANDMOTHER FIRST.  
18 Q AND THEN, HE HEARD HIS GRANDFATHER COMING DOWN THE  
19 STAIRS SCREAMING?  
20 A YES.  
21 Q AND IS IT THEN THAT RANDY MOORE AND JOHNNY RAY  
22 LUCKETT SHOT THE GRANDFATHER SEVEN OR EIGHT TIMES?  
23 A YES.  
24 Q DID HE TELL YOU WHETHER OR NOT ANY OF THE OTHERS,  
25 THAT IS, PEOPLE OTHER THAN HIMSELF, WENT INTO THE HOUSE?



1           A     I THINK I RECALL HIM SAYING THAT MIKE WALSH HAD  
2 WENT INTO THE HOUSE, BUT HE DIDN'T SAY THAT THE OTHERS WENT.

3           Q     HE DIDN'T SAY ONE WAY OR ANOTHER?

4           A     RIGHT. HE DIDN'T SAY IF THE OTHER BOYS HAD WENT.  
5 BUT I THINK I REMEMBER HIM STATING THAT MIKE WALSH HAD BEEN IN  
6 THE HOUSE.

7           Q     DID HE TELL YOU WHETHER OR NOT ANYTHING WAS TAKEN  
8 FROM THE HOUSE?

9           A     YES.

10          Q     WHAT DID HE SAY ABOUT THAT?

11          A     HE SAID THAT HE HAD TAKEN HIS GRANDMOTHER'S PURSE  
12 FROM THE FRONT LIVING ROOM CLOSET.

13          Q     YOU SAID THAT HE SAID HE HAD TAKEN HIS  
14 GRANDMOTHER'S PURSE FROM THE CLOSET. DO YOU MEAN THAT DALE,  
15 HIMSELF, HAD TAKEN THE PURSE?

16          A     YES.

17          Q     AND HE SAID THAT TO YOU?

18          A     YES.

19          Q     DID HE TELL YOU ABOUT LEAVING THE HOUSE?

20          A     YES.

21          Q     DID HE SAY HOW THEY LEFT THE HOUSE?

22          A     HE SAID THAT HE GRABBED THE PURSE, AND THEY WENT  
23 OUT, ALL -- WELL, HE SAID HIMSELF. AND THEY HAD GOTTEN INTO  
24 THE CAR.

25                HE DIDN'T SAY WHETHER THE BOYS HAD WENT IN THE

1 HOUSE OR THROUGH THE HOUSE OR ANYTHING. HE JUST SAID THAT  
2 THEY GOT IN THE CAR AND DROVE AWAY.

3 Q DID HE SAY ANYTHING ABOUT STARTING THE CAR, HAVING  
4 TROUBLE STARTING THE CAR?

5 A NO. THAT WAS THOMAS'S THING.

6 Q DID HE TELL YOU WHERE -- DID HE TELL YOU IF  
7 EVERYONE GOT INTO THE CAR?

8 A YES. HE SAID EVERYONE. HE SAID, "ALL OF US."  
9 FROM WHAT I REMEMBER, HE SAID, "ALL OF US."

10 Q AND DID HE TELL YOU WHERE ALL OF THEM WENT AFTER  
11 THEY GOT INTO THE AUTOMOBILE?

12 A DALE, HIMSELF, STATED THAT THEY WENT DIRECTLY TO  
13 RANDY MOORE'S HOUSE.

14 Q AND WHEN THEY GOT TO RANDY MOORE'S HOUSE, DID DALE  
15 TELL YOU ANYTHING ABOUT THE PURSE THAT WAS TAKEN?

16 A NO. HE DIDN'T SAY WHAT HE HAD DONE WITH IT.

17 Q DID HE SAY WHAT THEY DID WITH THE RIFLES AND THE  
18 PISTOL?

19 A NO.

20 Q DID HE TELL YOU ANYTHING ABOUT ANY THREATS HAVING  
21 BEEN MADE?

22 A I DON'T UNDERSTAND.

23 Q DID HE TELL YOU WHETHER OR NOT ANY OF THE SIX  
24 INDIVIDUALS THREATENED ANYBODY ELSE, ANY OF THE OTHER SIX  
25 INDIVIDUALS?

1           A     DALE HADN'T STATED ANYTHING TO ME HIMSELF.  
2           Q     HE JUST DIDN'T TELL YOU ANYTHING ABOUT THAT?  
3           A     HUB-UH.  
4           Q     OKAY. MISS SALDANA, YOU HAD MENTIONED EARLIER IN  
5 YOUR TESTIMONY THAT DALE THOUGHT THAT THERE WAS A WILL IN  
6 WHICH HE WAS THE NAMED BENEFICIARY?  
7           A     YES.  
8           Q     DID YOU EVER HAVE AN OPPORTUNITY TO LOOK FOR THAT  
9 WILL?  
10          A     YES.  
11          Q     WHERE DID YOU LOOK FOR THE WILL?  
12          A     IN THE HOUSE, IN THE R.V., IN THE GARAGE, IN THE  
13 CARS.  
14          Q     HOW OFTEN DID YOU DO THAT?  
15          A     WE DID IT EVERY DAY FOR ABOUT A WEEK.  
16          Q     WHEN YOU SAY THAT WE LOOKED FOR THE WILL, DO YOU  
17 MEAN DALE FLANAGAN AND YOURSELF?  
18          A     YES. DALE FLANAGAN, MYSELF, HIS SISTER, HIS  
19 MOTHER, HIS AUNT, AND HIS MOTHER'S BOYFRIEND, AND ANOTHER  
20 GENTLEMAN WHO I DON'T KNOW.  
21          Q     DID YOU EVER FIND THE WILL?  
22          A     NO, WE DIDN'T.  
23                MR. SEATON: THAT CONCLUDES DIRECT EXAMINATION.  
24                THE COURT: CROSS-EXAMINATION?  
25                MR. SMITH: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. SMITH:

Q MISS SALDANA, WHEN WAS THIS THIRD CONVERSATION YOU HAD WITH DALE, DO YOU REMEMBER SPECIFICALLY WHEN IT WAS, SOMETIME IN DECEMBER?

A WHICH CONVERSATION?

Q THE THIRD CONVERSATION, THE ONE IN THE TRAILER WHERE HE SAID, "HOW DO YOU LIKE THIS?"

A THE DAY AFTER MY BIRTHDAY, THE 5TH.

Q THE 5TH OF DECEMBER?

A YES.

Q THAT WAS A MONTH AFTER THE KILLINGS OCCURRED?

A YES.

Q WHEN HE TOLD YOU WHAT HE DID, WAS IT YOUR UNDERSTANDING THAT RIGHT AFTER THE WINDOW WAS BROKEN THAT DALE WENT INTO HIS GRANDMOTHER'S ROOM?

A YES.

Q AND YOU ARE FAMILIAR WITH THE LAYOUT OF THE HOUSE ON WASHBURN ROAD?

A YES.

Q IF A PERSON IS IN THE BEDROOM, ONE IS NOT ABLE TO SEE THE GRANDFATHER COMING DOWN THE STEPS, IS ONE?

A NO. BUT YOU CAN SEE THE WINDOW.

Q RIGHT. NOW, DID HE STATE WHAT ELSE HE DID INSIDE THE RESIDENCE AFTER HE SHOT HIS GRANDMOTHER?

1           A     DALE STATED THAT HE GOT THE PURSE, THAT HE STATED  
2     THAT HE HAD SHOT HIS GRANDMOTHER, HE CAME OUT, AND HIS  
3     GRANDFATHER, I THINK, AT THAT TIME WAS ALREADY DOWN ON THE  
4     BOTTOM OF THE STAIRS.

5           Q     SO BY THE TIME HE CAME OUT OF THE BEDROOM, THE  
6     GRANDFATHER HAD ALREADY BEEN SHOT AND WAS LYING DOWN?

7           A     YES.

8           Q     WHAT DID HE DO IN THE HOUSE AFTER THAT, BASED ON  
9     WHAT HE TOLD YOU?

10          A     HE HAD WENT TO THE LIVING ROOM CLOSET AND TAKEN  
11     OUT A PURSE.

12          Q     AND DID HE SAY WHAT HE DID WITH THE PURSE?

13          A     NO.

14          Q     AND WHAT DID HE SAY THAT MIKE WALSH DID WHILE MIKE  
15     WALSH WAS IN THE HOUSE?

16          A     I THINK HE STATED THAT MIKE HAD JUST MUFFED UP THE  
17     LIVING ROOM A TINY BIT TO MAKE IT LOOK LIKE IT WAS A ROBBERY.

18          Q     WHAT DID HE SAY RANDY DID WHILE RANDY WAS IN THE  
19     HOUSE?

20          A     HE DIDN'T SAY THAT RANDY WAS IN THE HOUSE.

21          Q     HE NEVER SAID RANDY WENT INSIDE THE HOUSE?

22          A     NO.

23          Q     WHAT DID HE SAY ABOUT ROY MCDOWELL?

24          A     HE DIDN'T, HE DIDN'T. HE JUST SAID THAT HE WAS  
25     THERE. HE DIDN'T SAY HE DID ANYTHING.

1 Q HE DIDN'T SAY HE DID ANYTHING?  
2 A NO.  
3 Q DID HE SAY JOHN LUCKETT WENT IN THE HOUSE?  
4 A NO.  
5 Q THE ONLY STATEMENT THAT YOU RECALL HIM MAKING ON  
6 THE 5TH OF DECEMBER IS THAT, APPARENTLY, JOHN FIRED ONE OR  
7 MORE SHOTS, JOHN LUCKETT?  
8 A YES.  
9 Q NOW, DID HE TELL YOU, "GEE, ANGIE, I SAW JOHN FIRE  
10 A SHOT." HE DIDN'T SAY THAT, DID HE?  
11 A NO.  
12 Q AND BASED ON WHAT HE TOLD YOU, YOU HAVE NO WAY OF  
13 KNOWING IF WHAT HE SAID HE SAW JOHN LUCKETT DO WAS SOMETHING  
14 HE OBSERVED, OR SOMETHING HE WAS TOLD, OR SOMETHING HE MADE  
15 UP?  
16 A I HAVE NO WAY OF KNOWING.  
17 Q JUST, SIMPLY, THAT STATEMENT WAS MADE?  
18 A HE HAD SAID THAT JOHN RAY AND RANDY MOORE WERE  
19 THROWING SHOTS.  
20 Q DURING YOUR RELATIONSHIP WITH DALE, DID HE TELL  
21 YOU ABOUT HIS CLOSE FEELINGS FOR MIKE WALSH?  
22 A I DON'T REMEMBER. THIS HAS BEEN A WHILE.  
23 Q I KNOW IT HAS. YOU ARE AWARE HE WAS CLOSE WITH  
24 MIKE?  
25 A I WAS MORE AWARE HE WAS CLOSE WITH RANDY THAN

1 MIKE.

2 Q WERE YOU AWARE RANDY WAS VERY CLOSE WITH MIKE?

3 A NO.

4 Q DID HE TELL YOU ABOUT THE FACT THAT THERE WAS A  
5 PLAN TO PROTECT MIKE FROM WHAT HAD HAPPENED?

6 A WHO IS HE?

7 Q DALE, THE PERSON WE ARE TALKING ABOUT, DALE?

8 A A PLAN TO PROTECT MIKE?

9 Q NO.

10 A HE DIDN'T STATE THAT.

11 Q DID HE TELL YOU ABOUT WHAT THE PLAN WAS THAT WAS  
12 MADE AT RANDY'S APARTMENT BEFORE THEY CAME TO THE RESIDENCE?

13 A YES.

14 Q DID HE TELL WHAT PEOPLE WERE SUPPOSED TO DO?

15 A YES. HE STATED THAT -- WELL, HE DIDN'T STATE  
16 WHICH PEOPLE. HE JUST STATED THEY WERE GOING TO MAKE IT LOOK  
17 LIKE A ROBBERY, AND THAT RANDY MOORE AND JOHNNY RAY LUCKETT  
18 WERE SUPPOSED TO HAVE WEAPONS.

19 MR. POSIN: SUPPOSED TO HAVE? UNDERSTANDING THAT  
20 TESTIMONY OF THE WITNESS IS COMING OUT GARBLED.

21 THE COURT: WOULD YOU REPEAT THAT SLOWLY, A LITTLE  
22 LOUDER?

23 THE WITNESS: HE STATED THAT RANDY AND JOHNNY RAY  
24 LUCKETT, RANDY MOORE AND JOHNNY RAY LUCKETT WERE SUPPOSED TO  
25 HAVE WEAPONS AND HIMSELF, DALE, AND THAT'S IT.

1 BY MR. SMITH:

2 Q THAT IS WHAT WAS SUPPOSED TO HAVE OCCURRED?

3 A THAT IS WHAT I WAS TOLD. THAT IS ALL I CAN SAY.

4 Q WELL, WHAT I AM TRYING TO GET AT, AND I THINK YOU  
5 ARE GETTING AT YOURSELF, HE TOLD YOU THAT THERE WAS A PLAN  
6 WHEN THEY LEFT THE RESIDENCE ABOUT WHAT PEOPLE WERE SUPPOSED  
7 TO DO, RIGHT?

8 A YES.

9 Q NOW, IN THINKING BACK ON THIS CONVERSATION, WHICH  
10 OCCURRED ABOUT TEN MONTHS AGO, CAN YOU SPECIFICALLY RECALL  
11 WHAT HE SAID ACTUALLY OCCURRED AS OPPOSED TO WHAT HE SAID WAS  
12 SUPPOSED TO HAVE OCCURRED? CAN YOU REMEMBER THIS CONVERSATION  
13 JUST CRYSTAL CLEAR AS YOU SIT THERE?

14 A YES.

15 Q YOU SEEM A LITTLE UNCERTAIN ABOUT THAT. DO YOU  
16 SIT THERE AND YOU CAN JUST REMEMBER THE WORDS VERBATIM?

17 A NOT WORD FOR WORD. BUT I DO REMEMBER HOW I FELT  
18 AND WHAT HE WAS SAYING.

19 Q THE CONVERSATION YOU HAD WITH HIM ABOUT THESE  
20 EVENTS LASTED ABOUT 45 MINUTES TO AN HOUR, DIDN'T THEY?

21 A YES.

22 Q HAVE YOU TOLD US EVERYTHING YOU CAN REMEMBER THAT  
23 HE TOLD YOU DURING THAT 45 MINUTES TO AN HOUR?

24 A I HAVE ANSWERED YOUR QUESTIONS AS FAR AS  
25 EVERYTHING THAT HE SAID, YES. I MEAN, THERE HAS BEEN MORE.



1 BUT IT WASN'T ANYTHING THAT I LEFT OUT ON MY STATEMENT. I  
2 ANSWERED YOUR QUESTIONS.

3 Q IN TRUTH -- I KNOW YOU HAVE ANSWERED MY QUESTION.  
4 ANSWER THIS ONE.

5 IN TRUTH AND IN FACT, YOU WERE TOLD A LOT MORE BY  
6 DALE ON THE 5TH OF DECEMBER OF LAST YEAR ABOUT WHAT HAPPENED  
7 THAN YOU HAVE TOLD US HERE IN COURT, RIGHT, BECAUSE OF THE  
8 LENGTH OF THE CONVERSATION?

9 A I WOULDN'T GO SO FAR AS A LOT MORE. THERE WAS A  
10 LOT OF REPEATING. I WAS VERY NERVOUS. I HAD TO SIT THERE AND  
11 LISTEN, AND IT WAS A LOT OF REPEATING.

12 Q YOU MAINLY SAT THERE AND LISTENED WHILE HE DID  
13 MOST OF THE TALKING, ABOUT OVER 45 MINUTES OR AN HOUR?

14 A WHAT AM I GOING TO SAY TO HIM, WHY DID YOU?

15 Q I AM NOT CRITICIZING.

16 A WHY ARE YOU ASKING ME THESE QUESTIONS?

17 Q I DON'T WANT YOU TO GET UPSET.

18 A I CAN'T HELP IT. YOU UPSET ME.

19 Q AM I DOING SOMETHING YOU DON'T LIKE?

20 A I THINK YOU ARE TRYING TO CONFUSE ME, AND YOU ARE  
21 DOING VERY WELL.

22 Q ARE YOU GOOD AND CONFUSED? WOULD THAT BE A GOOD  
23 WAY TO FORGET?

24 A NOT GOOD AND CONFUSED, NOT YET.

25 Q LET'S THINK BACK. BECAUSE THIS IS REAL IMPORTANT,

1 BECAUSE PEOPLE'S LIVES ARE ON TRIAL.

2 WHAT DID HE TELL YOU ABOUT WHAT HAPPENED OR WHAT  
3 WAS SUPPOSED TO HAVE HAPPENED THAT YOU DIDN'T PUT IN YOUR  
4 STATEMENT THE FIRST TIME YOU WENT TO THE POLICE?

5 A ONLY THAT I HAD ASKED HIM AFTER HE HAD TOLD ME "HOW  
6 DO YOU LIKE THIS, I DID IT, I KILLED MY GRANDPARENTS," I SAID,  
7 "WHY?" HE STATED, "FOR THE WILL."

8 HE DIDN'T GET ALONG WITH HIS GRANDPARENTS. HE  
9 DIDN'T LIKE THEM THAT MUCH, ESPECIALLY, HIS GRANDMOTHER. AND  
10 THEN, HE WENT INTO DESCRIPTION OF WHAT HAD HAPPENED. AND HE  
11 WAS TAKING HIS TIME.

12 Q AND THAT IS A DESCRIPTION ABOUT WHAT HAPPENED AND  
13 WHAT'S SUPPOSED TO HAVE HAPPENED. IT TOOK ABOUT 30 MINUTES,  
14 DIDN'T IT, YOU WOULD HAVE TO SAY AT LEAST THAT LONG?

15 A AT LEAST, AT THE LEAST.

16 Q AT THE LEAST?

17 A AT THE LEAST.

18 Q AND IT IS YOUR TESTIMONY YOU CAN'T REMEMBER HIM  
19 TELLING YOU ANYTHING ABOUT WHAT ROY MCDOWELL DID?

20 A HE DIDN'T. THAT IS WHAT I HAVE BEEN TRYING TO  
21 TELL YOU.

22 Q HE DIDN'T TELL YOU WHAT MIKE WALSH DID OTHER THAN  
23 A LITTLE -- HE MADE IT LOOK LIKE A MURDER?

24 A THAT'S IT.

25 Q THE ONLY THING HE TOLD YOU ABOUT JOHN LUCKETT

1 IS THAT ONE THING THAT YOU REMEMBER TODAY, THAT'S ALL?

2 A THAT'S IT.

3 Q HOW MUCH HAVE YOU BEEN PAID FOR YOUR TESTIMONY IN  
4 THIS CASE?

5 A WHAT DO YOU MEAN?

6 Q EXACTLY WHAT I SAID.

7 A PAID BY UNDER WHAT INTENTIONS?

8 Q SECRET WITNESS FUND.

9 A THE AMOUNT SECRET WITNESS PAYS FOR THE FIRST TIME,  
10 I HAVEN'T BEEN PAID YET. AND I HAD NO INTENTION, I HAD NO  
11 IDEA.

12 Q JUST ANSWER MY QUESTION.

13 MR. SEATON: I THINK SHE IS TRYING TO ANSWER HIS  
14 QUESTION.

15 THE COURT: WELL, I THINK SHE MIGHT BE A LITTLE  
16 CONFUSED ABOUT IT.

17 THE WITNESS: TWO THOUSAND, ARE YOU HAPPY?

18 THE COURT: JUST A MINUTE, MA'AM.

19 THE WITNESS: I AM REALLY UPSET.

20 THE COURT: JUST RELAX. I THINK YOU CAUGHT HER  
21 UNAWARE, COUNSEL. YOU MIGHT HAVE INDICATED SECRET WITNESS,  
22 AND THEN PROCEEDING AHEAD.

23 BY MR. SMITH:

24 Q YOU EXPECT TO BE PAID \$2,000?

25 A YES.

1 Q HAVE YOU BEEN PAID ANY PORTION OF THAT?  
2 A NO.  
3 Q DO YOU KNOW WHY YOU HAVEN'T BEEN PAID YET?  
4 A BECAUSE I HAVEN'T FINISHED TESTIFYING YET, THAT'S  
5 WHY.  
6 Q DID YOU COORDINATE YOUR EFFORTS TO RECEIVE MONEY  
7 FROM SECRET WITNESS WITH A JOHN LUCAS?  
8 A COULD YOU REPHRASE THAT IN VERY SIMPLE ENGLISH,  
9 PLEASE?  
10 THE COURT: GO AHEAD. REPHRASE IT, COUNSEL.  
11 BY MR. SMITH:  
12 Q DID YOU COORDINATE YOUR GOING TO SECRET WITNESS IN  
13 ORDER TO GET PAID FOR TESTIFYING WITH JOHN LUCAS?  
14 A I STILL DON'T -- I MEAN --  
15 THE COURT: COORDINATION.  
16 THE WITNESS: YOU MEAN NOW, BEFORE?  
17 BY MR. SMITH:  
18 Q AT ANY TIME?  
19 A I HAD NO IDEA ABOUT SECRET WITNESS WHEN I WENT TO  
20 MAKE MY STATEMENT.  
21 Q WHEN DID YOU LEARN YOU WOULD BE ELIGIBLE FOR  
22 PAYMENT OF \$2,000 FOR TESTIMONY IN THIS CASE?  
23 A AFTER THE STATEMENT WAS MADE.  
24 Q AND HAVE YOU HAD A CHANCE TO TALK WITH JOHN LUCAS  
25 ABOUT RECEIVING MONEY FROM SECRET WITNESS?

1           A     I HAVEN'T REALLY, NO.  
2           Q     DO YOU KNOW JOHN LUCAS?  
3           A     YES. I KNOW WHO HE IS. I DON'T KNOW HIM WELL.  
4           Q     HE IS A FRIEND OF YOURS, IS HE NOT?  
5           A     NO.  
6           Q     YOU HAVE DISCUSSED THIS CASE WITH HIM SINCE THE  
7 5TH OF NOVEMBER, HAVE YOU NOT?  
8           A     I HAVE NOT KEPT IN CONTACT. THIS IS THE ONLY  
9 PLACE THAT I HAVE EVER SEEN ANYBODY. THIS IS IT.  
10          Q     HAVE YOU TALKED WITH JOHN LUCAS ABOUT GETTING  
11 MONEY FROM SECRET WITNESS SINCE THE 5TH OF NOVEMBER OF LAST  
12 YEAR, YES OR NO? IT IS A VERY SIMPLE QUESTION.  
13          A     TO MY KNOWLEDGE, NO. I HAVEN'T TALKED WITH JOHN  
14 LUCAS THAT MUCH. I ASKED HIM WHAT HAS HAPPENED IN HERE,  
15 THAT'S IT.  
16          Q     HAS HE TOLD YOU WHAT HE HAS SAID IN HERE?  
17          A     NO. ONLY SAID WHAT WAS GOING TO HAPPEN AND WHO  
18 WAS NEXT, THAT WAS IT. HIS ASSUMPTION OF THE TRIAL, OF  
19 COURT.  
20          Q     DID HE TELL YOU WHAT HE HAD TESTIFIED TO?  
21          A     NO.  
22          Q     DO YOU KNOW WHAT HE'S TESTIFIED TO?  
23          A     I GUESS.  
24          Q     HAVE YOU READ ANY OF THE STATEMENTS WHICH HE'S  
25 MADE IN COURT, HAVE YOU HAD AN OPPORTUNITY TO READ THEM?

1           A     NO.

2           Q     THE WITNESS'S STATEMENTS AND THE TRANSCRIPTS OF  
3 THE TESTIMONY?

4           A     NO. ONLY MINE, THAT'S IT.

5           Q     THANK YOU.

6           MR. SMITH: YOUR HONOR, I DON'T HAVE ANY FURTHER  
7 QUESTIONS.

8           THE COURT: THANK YOU, MR. SMITH. COUNSEL?

9           MR. HANDFUSS: YOUR HONOR, I AM WONDERING, MY  
10 CROSS-EXAMINATION MIGHT BE SOMEWHAT LENGTHY, SEEING THE HOUR.  
11 IF ANYBODY ELSE HAS SHORTER, PERHAPS WE COULD TAKE OUR BREAK  
12 FOR THIS AFTERNOON.

13           THE COURT: WE HAVE HAD OUR BREAK FOR THIS  
14 AFTERNOON.

15           MR. HANDFUSS: WHAT I MEANT IS IT IS CLOSE TO FIVE  
16 BUT I WILL START IF THE COURT WISHES.

17           THE COURT: IF THERE IS ANOTHER DEFENSE COUNSEL  
18 CARE TO GO UNDER THE AUSPICES OF WHAT COUNSEL HAS SAID, BUT,  
19 IF NOT, WE CAN RESUME TOMORROW. PROCEED.

20  
21                               CROSS-EXAMINATION

22 BY MR. HANDFUSS:

23           Q     MISS SALDANA, THAT IS HOW YOU PRONOUNCE IT; IS  
24 THAT CORRECT?

25           A     YES.

1 Q YOU STATED YOU WERE CONFUSED HERE; IS THAT RIGHT?  
2 A JUST A LITTLE BIT.  
3 Q YOU TESTIFIED AT A PRELIMINARY HEARING IN THIS  
4 MATTER?  
5 A YES.  
6 Q YOU TESTIFIED AGAIN IN THIS MATTER IN AN  
7 EVIDENTIARY HEARING?  
8 A YES.  
9 Q DO YOU RECALL EVER SAYING IN THOSE TWO HEARINGS  
10 THAT YOU WERE CONFUSED?  
11 A NO.  
12 Q MISS SALDANA, I AM GOING TO ASK YOU ABOUT TOM  
13 AKERS. AFTER THESE EVENTS TOOK PLACE, DID YOU EVER TALK TO  
14 TOM AKERS?  
15 A WHICH EVENTS?  
16 Q THE DEATHS.  
17 A YES.  
18 Q YOU TALK TO HIM IN PERSON OR BY PHONE?  
19 A BOTH.  
20 THE COURT: SPEAK UP.  
21 THE WITNESS: BOTH.  
22 BY MR. HANDFUSS:  
23 Q WHEN DID YOU TALK TO HIM BY PHONE?  
24 A AFTER HE HAD BEEN ARRESTED ON CHRISTMAS DAY.  
25 Q DID YOU CALL HIM OR DID HE CALL YOU?

1           A     HE CALLED ME.  
2           Q     AND DO YOU KNOW WHY HE CALLED YOU?  
3           A     HE THOUGHT THAT WE WERE BOYFRIEND AND GIRLFRIEND.  
4     THAT IS MY UNDERSTANDING.  
5           Q     HE CALLED YOU TO TELL YOU YOU WERE GIRLFRIEND AND  
6     BOYFRIEND?  
7           A     MERRY CHRISTMAS GREETINGS, JUST GREETINGS.  
8           Q     HE CALLED YOU MERRY CHRISTMAS, JUST GREETINGS; IS  
9     THAT RIGHT?  
10          A     YES.  
11          Q     DIDN'T HE ASK YOU TO MARRY YOU?  
12          A     HE HAD ASKED ME PREVIOUSLY AND I TOLD HIM WE WOULD  
13     TALK ABOUT IT. HE ASKED ME AGAIN ON THE PHONE, BUT HE DIDN'T  
14     SAY, "WILL YOU MARRY ME?"  
15                 HE SAID, "DO YOU REMEMBER WHAT WE TALKED ABOUT  
16     BEFORE?" I SAID, "YES."  
17          Q     HE DIDN'T ASK YOU ON THE PHONE THAT DATE YOU ARE  
18     TALKING ABOUT, HE DID NOT ASK YOU TO MARRY HIM; IS THAT RIGHT?  
19          A     HE WAS ASKING, BUT HE SAID, "DO YOU REMEMBER WHAT  
20     WE TALKED ABOUT? IS IT YES OR NO?"  
21          Q     MISS SALDANA, DID HE ASK YOU TO MARRY YOU ON THAT  
22     PHONE CALL?  
23          A     YES.  
24          Q     NOW YOU ARE CONFUSING ME. EXCUSE ME.  
25                 MR. SEATON: YOUR HONOR, PERHAPS IF COUNSEL COULD



1 CONTROL HIS VOICE A LITTLE MORE, THAT WITNESSES AND HIMSELF  
2 WOULDN'T GET CONFUSED. WE DON'T NEED THEATRICALS HERE.

3 MR. HANDFUSS: I HAVEN'T YELLED. IT WAS A  
4 NONRESPONSIVE ANSWER SEVERAL TIMES. THE QUESTION IS VERY  
5 CLEAR. DID HE ASK YOU TO MARRY YOU.

6 THE COURT: ASK YOU TO MARRY YOU IS WHAT YOU SAID.  
7 THAT IS WHAT YOU REPEATED. IF YOU THINK ABOUT IT, IT DOESN'T  
8 MAKE SENSE.

9 MR. HANDFUSS: DID YOU ASK HIM TO MARRY HIM.

10 THE COURT: IN ANY CASE, I THINK THE QUESTION  
11 MIGHT HAVE BEEN BETTER PHRASED. MY UNDERSTANDING OF THE  
12 WITNESS'S ANSWER IS NOT PER SE, NOT IN THOSE WORDS BUT, YES.

13 MR. HANDFUSS: FIRST, SHE SAID -- FIRST, SHE SAID  
14 NO, HE JUST REFERRED BACK TO ANOTHER PHONE CALL. SHE FINALLY  
15 SAID YES, HE DID BUT I AM GOING ON. I AM NOT ASKING THAT  
16 QUESTION AGAIN.

17 THE COURT: OKAY.

18 BY MR. HANDFUSS:

19 Q MISS SALDANA, WHEN DID YOU MOVE IN WITH MR.  
20 FLANAGAN?

21 A ON THE 6TH.

22 Q THE 6TH OF WHAT?

23 A NOVEMBER. '85.

24 Q 1985?

25 A '84, EXCUSE ME.

1 Q DID YOU EVER HAVE A CONVERSATION WITH AN OFFICER  
2 RAY BERNI?  
3 A YES.  
4 Q CONCERNING THIS MATTER?  
5 A YES.  
6 Q AND WHEN DID THAT CONVERSATION TAKE PLACE?  
7 A APPROXIMATELY A WEEK, MAYBE A LITTLE LESS AFTER HE  
8 HAD BOUGHT THE SECOND KNIFE. AFTER DALE HAD BOUGHT THE SECOND  
9 KNIFE.  
10 Q WAS THIS CONVERSATION PRIOR TO YOUR PHONE CALL  
11 WITH TOM AKERS OR AFTER YOUR PHONE CALL WITH TOM AKERS?  
12 A PRIOR.  
13 Q AND HOW CLOSE TO NOVEMBER 5TH WHEN YOU FIRST MOVED  
14 IN WITH MR. FLANAGAN, DID YOU HAVE THIS CONVERSATION WITH  
15 OFFICER BERNI?  
16 A YOU MEAN, NOVEMBER 6TH?  
17 Q I AM SORRY, NOVEMBER 6TH.  
18 A AFTER, LET'S SEE. IN THE MIDDLE OF THE THIRD WEEK  
19 OF NOVEMBER.  
20 MR. POSIN: IF YOUR HONOR, PLEASE.  
21 THE COURT: THE MIDDLE OF THE THIRD WEEK IN  
22 NOVEMBER. PLEASE SPEAK UP. ALL RIGHT. PROCEED.  
23 BY MR. HANDFUSS:  
24 Q APPROXIMATELY TWO WEEKS AFTER YOU MOVED IN?  
25 A A LITTLE MORE, YEAH, JUST.

1 Q NOW, YOU TESTIFIED THAT YOU ALSO SEARCHED FOR A  
2 WILL, THE GORDONS' WILL; DO YOU RECALL THAT?

3 A YES.

4 Q DO YOU REMEMBER WHEN YOU STARTED SEARCHING FOR THE  
5 GORDONS' WILL?

6 A IT WAS ALSO THE THIRD WEEK OF NOVEMBER.

7 Q DID YOU SEARCH FOR THE WILL BEFORE OR AFTER YOU  
8 SPOKE TO OFFICER BERNI?

9 A YES. WE HAD STARTED THE DAY BEFORE I HAD SPOKE TO  
10 OFFICER BERNI.

11 Q YOU SEARCHED FOR THE WILL PRIOR TO THE TIME YOU  
12 CALLED OFFICER BERNI?

13 A JUST THE DAY BEFORE.

14 Q AND YOU DIDN'T FIND THE WILL; IS THAT CORRECT?

15 A NO.

16 Q DID YOU CALL OFFICER BERNI OR DID HE CALL YOU?

17 A I CALLED HIM.

18 Q CAN YOU TELL ME WHY YOU CALLED HIM?

19 A BECAUSE I NEEDED ASSISTANCE IN WHAT TO DO.

20 Q WHAT DID YOU TELL HIM?

21 A I TOLD HIM THAT -- WHAT DALE HAD TOLD ME ABOUT HIS  
22 SECOND KNIFE.

23 Q AND WHAT DID HE SAY TO YOU?

24 A PUT THE KNIFE BACK.

25 Q HE TOLD YOU TO PUT THE KNIFE BACK?

1           A     YES.  
2           Q     DID HE TELL YOU THAT HE WOULD DO ANYTHING AT THAT  
3 TIME?  
4           A     NO. ONLY THAT IF I NEEDED HELP TO CALL.  
5           Q     YOU TOLD OFFICER BERNI BASICALLY THE SAME THINGS  
6 YOU TOLD THE JURY HERE IN COURT TODAY?  
7           A     YES.  
8           Q     WHO IS OFFICER BERNI?  
9           A     HE IS A PREVIOUS BOYFRIEND.  
10          Q     WHAT I MEAN BY THAT, IS HE A POLICE OFFICER?  
11          A     YES, HE IS.  
12          Q     HE WORKS FOR THE METROPOLITAN POLICE DEPARTMENT?  
13          A     YES, HE DOES.  
14          Q     HE WORKED FOR THE METROPOLITAN POLICE DEPARTMENT  
15 AT THAT TIME?  
16          A     YES, HE DID.  
17          Q     YOU TOLD OFFICER BERNI WHAT YOU TOLD THE JURY.  
18 THESE THINGS THAT YOU SAY MR. FLANAGAN TOLD YOU, YOU TOLD  
19 OFFICER BERNI THOSE THINGS?  
20          A     ONLY ABOUT THE KNIFE.  
21          Q     ONLY ABOUT THE KNIFE?  
22          A     AND THE WILL. THAT'S IT.  
23          Q     AND THE WILL AND OFFICER BERNI TOLD YOU TO PUT THE  
24 KNIFE BACK?  
25          A     YES.

1 Q SHOULD YOU NEED ANY HELP, YOU SHOULD GIVE HIM A  
2 CALL?  
3 A YES.  
4 Q DID YOU EVER TALK TO BEECHER AVANTS?  
5 A YES.  
6 Q HOW DID YOU COME TO TALK TO MR. AVANTS?  
7 A I THINK I SPOKE WITH BEECHER AFTER DALE HAD TOLD  
8 ME WHAT HE HAD DONE.  
9 Q PRIOR OR --  
10 A I WAS LIVING WITH MY AUNT WHEN I HAD SPOKE TO  
11 BEECHER.  
12 Q THIS IS AFTER THE PHONE CALL WITH OFFICER BERNI?  
13 A YES, AFTER THE MEETING.  
14 Q DID MR. AVANTS CALL YOU OR DID YOU CALL HIM?  
15 A I CALLED HIM.  
16 Q HOW DID YOU COME TO TALK TO MR. AVANTS? WHY DID  
17 YOU CALL BEECHER AVANTS?  
18 A I WAS SUGGESTED TO BY MY AUNT AND UNCLE.  
19 Q THEY SPECIFICALLY SUGGESTED MR. AVANTS?  
20 A YES.  
21 Q DO YOU KNOW WHO MR. AVANTS IS?  
22 A HE HAS BEEN A FRIEND OF THE FAMILY SO HE WORKS  
23 HERE.  
24 Q WHAT I MEAN BY THAT IS DO YOU KNOW WHAT HE DOES  
25 FOR A LIVING?

1           A     NOT ANYMORE.  
2           Q     DO YOU KNOW WHAT HE DID FOR A LIVING AT THAT TIME?  
3           A     HE WAS AT THE TIME THAT I FIRST MET HIM, HE WAS  
4     RUNNING FOR SHERIFF.  
5           Q     WAS HE WORKING FOR THE DISTRICT ATTORNEY'S OFFICE  
6     OR THE SHERIFF'S DEPARTMENT OR THE METROPOLITAN POLICE  
7     DEPARTMENT?  
8           A     I DON'T KNOW.  
9           Q     AND WHAT DID MR. AVANTS TELL YOU?  
10          A     JUST THE ONLY THING HE SUGGESTED TO ME WAS TO GO  
11     AND TALK TO BOB HILLIARD AND --  
12                THE COURT: GO TALK TO WHO?  
13                THE WITNESS: BOB HILLIARD.  
14     BY MR. HANDFUSS:  
15          Q     WHO IS BOB HILLIARD? WHAT I MEAN BY THAT, WHAT  
16     DOES MR. HILLIARD DO?  
17          A     SERGEANT AT METRO.  
18          Q     THE METROPOLITAN POLICE DEPARTMENT?  
19          A     YES.  
20          Q     DID YOU CALL MR. HILLIARD OR MR. HILLIARD CALL  
21     YOU?  
22          A     WE CALLED MR. HILLIARD.  
23          Q     WHEN YOU SAY WE, WHO ARE YOU REFERRING TO?  
24          A     RAY BERNI AND I.  
25          Q     AND YOU TOLD MR. HILLIARD EVERYTHING YOU TOLD

1 OFFICER BERNI AND MR. AVANTS?

2 A YES.

3 Q ALL THESE ADMISSIONS THAT YOU TOLD THE JURY THAT  
4 MR. FLANAGAN -- THAT YOU SAY MR. FLANAGAN TOLD YOU?

5 A YES. I GAVE A FULL STATEMENT BECAUSE I HAD ALL  
6 THE INFORMATION AND THEN HE SUGGESTED TO GO DOWN --

7 Q FULL STATEMENT?

8 MR. SEATON: COUNSEL, I WOULD LIKE TO INTERPOSE AN  
9 OBJECTION FOR CLARIFICATION PURPOSES. I THINK THE INFERENCE  
10 IS TRYING TO BE DRAWN AND TRYING TO BE DRAWN BEFORE --

11 MR. PIKE: I WOULD OBJECT TO MR. SEATON  
12 INTERPOSING HIMSELF INTO THE TRIAL TO MAKE AN EXPLANATION.

13 MR. SEATON: I AM DOING NO SUCH THING. I RESENT  
14 HIS INTERRUPTING ME. WHEN I FINISH MY OBJECTION, LET HIM SAY  
15 WHAT HE HAS TO SAY.

16 THE COURT: THAT IS OF CONCERN. IN INTERPOSING  
17 YOUR OBJECTION, YOU ARE GOING TO MAKE ARGUMENT.

18 MR. SEATON: OF COURSE I AM AND I AM GOING TO  
19 REPEAT TESTIMONY THAT HAS BEEN SAID. I WILL SAY NOTHING THAT  
20 IS NOT WITHIN THIS RECORD.

21 MR. HANDFUSS: YOUR HONOR, EXCUSE ME. MAY I ASK  
22 THAT MR. SEATON FOLLOW THE SAME PROCEDURE THAT THE DEFENSE  
23 COUNSEL HAVE FOLLOWED AND MAKE THE RECORD TO THE COURT  
24 REPORTER AT THE APPROPRIATE TIME.

25 MR. SEATON: I WILL NOT. I WILL MAKE MY OBJECTION

1 RIGHT NOW.

2 THE COURT: IN ANY CASE, IF YOU ARE GOING TO  
3 RELATE TO TESTIMONY THAT HAS BEEN ALREADY SET OUT, THERE IS NO  
4 DAMAGE TO BE DONE.

5 MR. SEATON: SHE SAID IT MOMENTS AGO.

6 THE COURT: GO AHEAD.

7 MR. SEATON: IT IS JUST FOR CLARIFICATION I WANT  
8 TO DO THIS. MISS SALDANA SAID A LITTLE WHILE AGO IN RESPONSE  
9 TO A QUESTION BY MR. HANDFUSS THAT THE THINGS SHE TOLD OFFICER  
10 BERNI, THE ONLY THINGS SHE TOLD HIM WAS ABOUT THE KNIFE AND  
11 ABOUT THE WILL.

12 AND NOW HE IS ASKING HER AGAIN ABOUT THE -- AND I  
13 FORGET THE WORD THAT HE USED -- THE OTHER THINGS THAT DALE HAD  
14 TOLD HER AND THAT IS NOT THE CASE.

15 SHE NEVER TOLD BERNI OR AVANTS, AS I UNDERSTAND  
16 IT, ANY OF THE ADMISSIONS THAT DALE FLANAGAN HAD TOLD HER AND  
17 I WANT THAT CRYSTAL CLEAR AND NOT HAVE THE QUESTION RAISED BY  
18 INNUENDO THAT PERHAPS SHE DID.

19 MR. HANDFUSS: YOUR HONOR, I WOULD AGREE THAT SHE  
20 SAID THAT SHE DID NOT TELL RAY BERNI EVERYTHING. ONLY TOLD  
21 HIM ABOUT THE KNIFE.

22 SHE DID STATE SHE TOLD BEECHER AVANTS EVERYTHING  
23 SHE TOLD MR. BERNI ABOUT THE KNIFE. SHE TOLD BEECHER AVANTS  
24 EVERYTHING THAT SHE HAS TOLD THE JURY HERE TODAY.

25 AND THEY REFERRED HER TO MR. HILLIARD, THIRD



1 PERSON WHO SHE SAID SHE MADE A STATEMENT TO.

2 I AM NOT SAYING SHE TOLD EVERYTHING TO MR. BERNI.  
3 SHE STATED UPON MY CROSS-EXAMINATION SHE DID NOT. IT WAS ONLY  
4 ABOUT THE KNIFE.

5 MR. HARMON: AND THE WILL.

6 MR. SEATON: MAYBE HE COULD CLARIFY IT.

7 THE COURT: CONCERNING WHAT WAS SAID TO BEECHER  
8 AVANTS, YOU MIGHT ASK A QUESTION TO CLARIFY THAT. THIS LATTER  
9 INDIVIDUAL HILLIARD SHE JUST INDICATED SHE GAVE A COMPLETE  
10 STATEMENT BECAUSE SHE HAD THE INFORMATION AT THAT TIME. I  
11 RECALL HER SAYING THAT. ASK THE QUESTION.

12 BY MR. HANDFUSS:

13 Q DID YOU TELL MR. AVANTS BASICALLY EVERYTHING YOU  
14 TOLD THE JURY HERE IN COURT TODAY?

15 A YES.

16 Q THIS IS OTHER THAN THE KNIFE AND THE WILL?

17 A YES.

18 Q AND THEN HE REFERRED YOU TO MR. HILLIARD; IS THAT  
19 CORRECT?

20 A YES.

21 Q AND I DON'T RECALL, DID YOU SAY WHERE MR. HILLIARD  
22 IS EMPLOYED; DO YOU KNOW?

23 A AT THE METROPOLITAN POLICE DEPARTMENT.

24 Q DO YOU KNOW WHAT HIS FUNCTION IS THERE?

25 A HE IS A SERGEANT.

1 Q DO YOU RECALL ON WHAT DAY YOU SPOKE TO OFFICER  
2 HILLIARD OR SERGEANT HILLIARD?

3 A THE 6TH OF DECEMBER '84.

4 Q AND YOU TOLD OFFICER SERGEANT HILLIARD EVERYTHING?

5 A YES.

6 Q AND THEN WHAT DID SERGEANT HILLIARD TELL YOU?

7 A THAT I HAD TO GO DOWNTOWN, TALK TO DETECTIVE  
8 LEVOS.

9 Q AND YOU WENT DOWNTOWN AND TALKED TO DETECTIVE  
10 LEVOS?

11 A AND, ALSO, GAVE ANOTHER FULL STATEMENT.

12 Q AND WHAT ELSE?

13 A YES, BUT I ALSO GAVE ANOTHER FULL STATEMENT TO  
14 HIM.

15 Q YOUR FULL STATEMENT TO SERGEANT HILLIARD, DO YOU  
16 KNOW, WAS THAT A WRITTEN STATEMENT?

17 A YES. IT WAS IN HIS HOME.

18 Q IT WAS IN SERGEANT HILLIARD'S HOME?

19 A YES.

20 Q YOU WROTE OUT A STATEMENT?

21 A WROTE OUT AS I WAS SPEAKING. HE WAS WRITING IT  
22 AS I WAS SPEAKING AND HE REALIZED HOW SERIOUS IT WAS AND HE  
23 SENT ME TO SERGEANT -- I MEAN, DETECTIVE LEVOS.

24 Q DID SERGEANT HILLIARD EVER SHOW YOU THAT STATEMENT  
25 THAT HE WROTE OUT WHICH WAS REALLY YOUR STATEMENT?

1 A NO. I DIDN'T LOOK.  
2 Q SO YOU NEVER ACTUALLY SAW WHAT HE WROTE?  
3 A NO.  
4 Q AND ON DECEMBER 7TH, 1984, YOU WENT DOWNTOWN AND  
5 SPOKE TO DETECTIVE LEVOS; IS THAT CORRECT?  
6 A YES. IT WAS THAT SAME NIGHT IN THE WEE HOURS OF  
7 THE MORNING.  
8 Q AFTER TWELVE O'CLOCK?  
9 A YES.  
10 Q AND DO YOU RECALL MAKING A STATEMENT AT THAT TIME?  
11 A YES, I DO.  
12 Q MISS SALDANA, DO YOU CONSIDER YOURSELF A TRUTHFUL  
13 INDIVIDUAL?  
14 A YES, I DO.  
15 Q YOU DIDN'T LIE TO OFFICER BERNI WHEN YOU TOLD HIM  
16 THE THINGS YOU TOLD HIM, DID YOU?  
17 A NO, I DIDN'T.  
18 Q AND I AM SURE YOU ARE GOING TO SAY THAT YOU DIDN'T  
19 LIE TO MR. AVANTS ABOUT THE THINGS YOU TOLD HIM, DID YOU?  
20 A I DIDN'T LIE.  
21 Q AND YOU DIDN'T LIE TO SERGEANT HILLIARD, I AM SURE  
22 YOU WOULD SAY, ABOUT THE THINGS YOU TOLD HIM, DID YOU?  
23 MR. SEATON: I AM GOING TO OBJECT TO DEFENSE  
24 COUNSEL'S COMMENTARY AND THE NATURE OF HIS QUESTION, YOUR  
25 HONOR, THE "I AM SURE" PART.

1 MR. HANDFUSS: I WILL REPHRASE THE QUESTION.  
2 THE COURT: ALL RIGHT.  
3 BY MR. HANDFUSS:  
4 Q DID YOU LIE TO MR. AVANTS WHEN YOU TOLD HIM YOUR  
5 STORY?  
6 A NO, I DIDN'T.  
7 Q DID YOU LIE TO SERGEANT HILLIARD WHEN YOU TOLD HIM  
8 YOUR STORY?  
9 A NO, I DIDN'T.  
10 Q DID YOU LIE TO DETECTIVE LEVOS WHEN YOU TOLD HIM  
11 YOUR STORY?  
12 A NO, I DIDN'T.  
13 Q ARE YOU LYING HERE IN COURT TODAY?  
14 A NO, I AM NOT.  
15 Q NOW, YOU STATED EARLIER UPON EXAMINATION, DIRECT  
16 EXAMINATION BY MR. SEATON THAT MR. FLANAGAN TOLD YOU THAT  
17 SEVERAL PEOPLE WERE PRESENT ON THE NIGHT OF NOVEMBER 5TH AND  
18 HE MENTIONED SEVERAL NAMES; DO YOU RECALL THAT?  
19 A YES.  
20 Q THEN YOU SAID THAT HE MENTIONED ROY MCDOWELL'S  
21 NAME?  
22 A YES.  
23 Q WAS THAT A LIE WHEN YOU SAID THAT?  
24 A NO.  
25 Q THAT WAS THE TRUTH?

1           A     YES.

2           Q     JUST AS TRUTHFUL AS WHEN YOU GAVE YOUR DECEMBER

3     STATEMENT TO DETECTIVE LEVOS; ISN'T THAT CORRECT?

4           A     YES.

5           Q     AND YOU WERE TRUTHFUL AT THE PRELIMINARY HEARING,

6     WEREN'T YOU?

7           A     YES.

8           Q     YOU DIDN'T LIE AT THAT PRELIMINARY HEARING, DID

9     YOU?

10          A     NO, I DID NOT.

11          Q     JUST AS TRUTHFUL AS YOU ARE IN COURT HERE TODAY,

12     AREN'T YOU?

13          A     YES.

14          Q     YOU RECALL COMING TO AN EVIDENTIARY HEARING JUST A

15     WEEK OR SO AGO? DO YOU RECALL THAT?

16          A     YES.

17          Q     AND YOU WERE TRUTHFUL THERE, TOO, WEREN'T YOU?

18          A     YES.

19          Q     JUST AS TRUTHFUL AS YOU ARE TODAY?

20          A     YES.

21          Q     DO YOU RECALL ON DECEMBER 7TH WHEN YOU GAVE YOUR

22     STATEMENT TO DETECTIVE LEVOS WHEN HE ASKED YOU ABOUT --

23                MR. SEATON: WHAT PAGE?

24                MR. HANDFUSS: I AM SORRY. PAGE NUMBER SIX AND IT

25     IS ABOUT THIRD OF THE WAY DOWN, THE FIRST QUESTION AND ANSWER.

1 BY MR. HANDFUSS:

2 Q ON THE SECOND QUESTION AND ANSWER THAT I BELIEVE  
3 DETECTIVE LEVOS ASKED YOU, HOW DID HE SAY IT WAS DONE  
4 REFERRING TO MR. FLANAGAN. AND YOU MENTIONED SOME NAMES; DO  
5 YOU RECALL THAT?

6 A YES.

7 Q DO YOU RECALL WHAT NAMES YOU MENTIONED?

8 A YES.

9 Q DID YOU MENTION ROY'S NAME?

10 A NO, I DIDN'T.

11 Q YOU JUST FORGOT, I GUESS; IS THAT RIGHT?

12 A YES, I SUPPOSE. THIS IS ALL A YEAR AGO. IT IS  
13 VERY HARD TO REMEMBER.

14 Q MISS SALDANA, I AM ASKING YOU A SPECIFIC QUESTION.  
15 YOU DIDN'T MENTION ROY MCDOWELL'S NAME, DID YOU?

16 A NO, I DIDN'T.

17 Q YOU REMEMBER SPECIFICALLY NOT SAYING HIS NAME?

18 MR. SEATON: ASKED AND ANSWERED.

19 THE COURT: SUSTAINED.

20 MR. HANDFUSS: I WITHDRAW AND ASK ANOTHER  
21 QUESTION.

22 BY MR. HANDFUSS:

23 Q AS A MATTER OF FACT, IT WAS REITERATED TO YOU. IT  
24 WAS TWICE TALKED ABOUT THE NAMES AND TWICE YOU NEVER SAID THAT  
25 DALE SAID THAT ROY MCDOWELL WAS THERE; IS THAT TRUE?

1           A     I DON'T REMEMBER IF IT WAS SAID TWICE.  
2           MR. HANDFUSS: MAY I APPROACH THE WITNESS, YOUR  
3 HONOR?  
4           THE COURT: YES, YOU MAY.  
5 BY MR. HANDFUSS:  
6           Q     MISS SALDANA, I AM SHOWING YOU YOUR STATEMENT OF  
7 DECEMBER 7TH, 12:20 A.M. CAN YOU PLEASE LOOK AT THAT,  
8 SPECIFICALLY, PAGE NUMBER SIX. LOOK AT THE WHOLE STATEMENT IF  
9 YOU LIKE.  
10          A     OKAY.  
11          Q     DOES THAT REFRESH YOUR RECOLLECTION?  
12          A     YES.  
13          Q     AND THE QUESTION WAS ASKED "HOW DID HE SAY IT WAS  
14 DONE;" IS THAT CORRECT?  
15          A     YES.  
16          Q     AND YOU ANSWERED, "HE SAID THAT HE PLANNED IT AS  
17 IT WOULD LIKE LIKE A ROBBERY AND THAT HIMSELF, TOM, JOHNNY  
18 RAY, MIKE AND RANDY WERE ALL THERE;" IS THAT CORRECT?  
19          A     YES.  
20          Q     YOU DIDN'T SAY ROY MCDOWELL, DID YOU?  
21          A     NO, I DIDN'T.  
22          Q     AND THEN IT WAS WHOEVER ASKED THE QUESTION SAID,  
23 "WHEN YOU SAY TOM, JOHNNY RAY, MIKE AND RANDY, ARE YOU  
24 REFERRING TO TOM AKERS, RANDY MOORE, JOHNNY RAY AND MIKE  
25 WALSH?" AND YOU SAID, "YES." IS THAT CORRECT?

1           A     YES.  
2           Q     AGAIN, YOU DIDN'T SAY THAT ROY MCDOWELL WAS THERE,  
3 DID YOU?  
4           MR. SEATON: ASKED AND ANSWERED.  
5           MR. HANDFUSS: IT IS ANOTHER --  
6           MR. SEATON: SHE DIDN'T SAY IT, I WILL STIPULATE  
7 IT.  
8           THE COURT: WELL, WE HAVE DWELLED ON THIS QUITE A  
9 LOT, COUNSEL.  
10          BY MR. HANDFUSS:  
11          Q     DID YOU LOOK AT YOUR WHOLE STATEMENT?  
12          A     I HAVE IT HERE WITH ME. I HAVE SEEN ALL OF IT.  
13          Q     WERE YOU REFERRING TO YOUR STATEMENT DURING MR.  
14 SEATON'S QUESTIONING OR DURING MR. SMITH'S QUESTIONING?  
15          A     THIS IS THE FIRST TIME I HAVE OPENED IT. THAT'S  
16 IT. I HAVEN'T BEEN READING OFF OF IT OR ANYTHING. IT WAS  
17 JUST IN CASE I NEEDED IT TO LOOK AT FOR THIS PURPOSE HERE.  
18          Q     DID ANYBODY TELL YOU TO BRING THAT WITH YOU?  
19          A     NO.  
20          Q     YOU HAVEN'T OPENED IT WHILE YOU WERE ON THE STAND?  
21          A     NO. I HAD RIGHT HERE AND I HAD IT SITTING LIKE  
22 THIS AND I HAVEN'T HAD IT OPEN.  
23          Q     OKAY. WHEN WAS THE LAST TIME YOU READ YOUR  
24 STATEMENT, MISS SALDANA?  
25          A     TWO DAYS AGO. I HAVEN'T READ ALL THE WAY THROUGH.



1 Q YOU DIDN'T READ IT ALL THE WAY THROUGH?  
2 A NO.  
3 Q THE BEST OF YOUR RECOLLECTION, DO YOU RECALL HOW  
4 MANY PAGES YOUR STATEMENT IS?  
5 A TEN.  
6 Q AND TEN PAGES. DO YOU RECALL AT ANY POINT IN YOUR  
7 STATEMENT YOU SEE ROY MCDOWELL'S NAME MENTIONED?  
8 A I DON'T REMEMBER RIGHT NOW. I DON'T REMEMBER.  
9 Q MISS SALDANA, DO YOU RECALL TESTIFYING AT A  
10 PRELIMINARY HEARING IN THIS MATTER ON MONDAY, FEBRUARY 11TH,  
11 1985?  
12 A WHICH WAS THE FIRST? THAT WAS THE FIRST  
13 PRELIMINARY?  
14 Q THERE WAS ONLY ONE PRELIMINARY HEARING. THERE WAS  
15 AN EVIDENTIARY HEARING A WEEK OR SO AGO.  
16 YOU REMEMBER BACK IN FEBRUARY YOU WERE CALLED,  
17 SUBPOENAED BY THE STATE TO TESTIFY?  
18 A YES, OKAY, YES.  
19 Q DO YOU REMEMBER BEING ASKED -- I AM REFERRING  
20 SPECIFICALLY TO PAGE 102, COUNSEL -- YOU WERE BEING ASKED ABOUT  
21 WHAT MR. FLANAGAN SAID TO YOU, AND THE QUESTION WAS, "DID HE  
22 SAY AT THIS TIME WHAT TOM AKERS HAD DONE OTHER THAN TO DRIVE  
23 THE CAR OVER?" DOES THAT SOUND FAMILIAR?  
24 A YES.  
25 Q AND YOU ANSWERED, "HE HAD ONLY SAID THAT HE WAS

1 SITTING. HE WAS WAITING OUTSIDE ON THE ROAD IN THE CAR." DO  
2 YOU RECALL YOUR ANSWER THERE?

3 A YES.

4 Q AND THE QUESTION WAS ASKED, "DID HE TELL YOU WHAT  
5 ROY MCDOWELL WAS DOING?" DO YOU REMEMBER THAT QUESTION?

6 A NO.

7 Q IF I SHOW YOU THE TRANSCRIPT, WOULD IT HELP  
8 REFRESH YOUR RECOLLECTION?

9 A YES, PLEASE.

10 MR. HANDFUSS: MAY I APPROACH THE WITNESS?

11 THE COURT: YES.

12 BY MR. HANDFUSS:

13 Q UNDER THE HALF OF THE PAGE, WOULD YOU READ THAT TO  
14 YOURSELF?

15 A OKAY.

16 Q DOES THAT HELP REFRESH YOUR RECOLLECTION?

17 A YES.

18 Q AND YOU WERE ASKED, "DID HE TELL YOU WHAT ROY  
19 MCDOWELL WAS DOING?" DO YOU RECALL THAT NOW?

20 A YES.

21 Q AND YOUR ANSWER WAS, "NO, I HAD NO IDEA AT THIS  
22 TIME THAT ROY WAS THERE." YOU SAID THAT, DIDN'T YOU?

23 A YES, I DID. I HAD FOUND OUT FROM TOM AKERS THAT  
24 HE WAS THERE, ALSO.

25 THE COURT: I THINK WE MIGHT ADJOURN AT THIS TIME,

1 PICK THIS UP IN THE MORNING. MR. BAILIFF, WOULD YOU APPROACH  
2 THE BENCH, PLEASE.

3 (THE ADMONITION WAS READ.)

4 THE COURT: I WOULD LIKE TO THANK YOU THUS FAR FOR  
5 YOUR PATIENCE. I THINK COUNSEL JOINS ME. I WOULD ASK YOU TO  
6 BE HERE AT TEN O'CLOCK TOMORROW MORNING. COURT IS ADJOURNED.

7 (EVENING RECESS TAKEN.)  
8  
9  
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**ORIGINAL**

FILED

CASE NO. C069269

FEB 14 1986

DEPARTMENT FOURTEEN

LORETTA B. HARRIS, CLERK  
BY *[Signature]* DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

REPORTER'S TRANSCRIPT

vs.

OF

DALE EDWARD PLANAGAN, RANDOLPH  
MOORE AKA SMITH, JOHNNY RAY  
LUCKETT AND ROY MCDOWELL,

JURY TRIAL

DEFENDANTS.

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE

**APPEARANCES:**

FOR THE STATE:

MELVYN T. HARMON, ESQUIRE

&  
DANIEL M. SEATON, ESQUIRE  
DEPUTIES DISTRICT ATTORNEY

FOR DEFENDANT PLANAGAN: RANDALL PIKE, ESQUIRE

FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE

FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE

FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE

Reported by: Sharon J. Thielman, Official Court Reporter

000307

# ORIGINAL

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 3, 1985

2  
3 THE COURT: THE CONTINUATION OF CASE C69269,  
4 STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN  
5 LUCKETT AND ROY MCDOWELL.

6 THE RECORD WILL REFLECT THE PRESENCE OF EACH OF  
7 THE DEFENDANTS, MR. PIKE REPRESENTING MR. FLANAGAN, MR. POSIN  
8 REPRESENTING MR. MOORE, MR. SMITH, MR. LUCKETT, MR. HANDFUSS,  
9 MR. MCDOWELL.

10 THE RECORD WILL REFLECT THE PRESENCE OF MR.  
11 HARMON AND MR. SEATON REPRESENTING THE STATE.

12 MISS CLERK, WILL YOU CALL THE ROLL OF THE JURY,  
13 PLEASE.

14 THE CLERK: YES, YOUR HONOR.

15 (ROLL CALL TAKEN.)

16 THE CLERK: ALL PRESENT, YOUR HONOR.

17 THE COURT: THE RECORD WILL SO REFLECT. GOOD  
18 MORNING, LADIES AND GENTLEMEN. MR. HANDFUSS, YOU WISH TO  
19 RESUME YOUR CROSS-EXAMINATION OF MISS SALDANA?

20 MR. HANDFUSS: YES, YOUR HONOR. WE WILL BE  
21 BRIEF.

22  
23 CROSS-EXAMINATION (RESUMED)

24 BY MR. HANDFUSS:

25 Q MISS SALDANA?

1           A     YES.  
2           Q     YOU WERE MISTAKEN YESTERDAY WHEN YOU SAID THAT  
3     DALE FLANAGAN SAID THAT ROY MCDOWELL WAS THERE; IS THAT  
4     CORRECT?  
5           A     YES.  
6           Q     JUST ONE OR TWO OTHER QUESTIONS.  IN THE  
7     CONVERSATIONS WITH DALE FLANAGAN THAT YOU HAD AFTER THE  
8     DEATHS OCCURRED, YOU SAID THAT MR. FLANAGAN TOLD YOU WHAT  
9     HAPPENED ON NOVEMBER THE 6TH; IS THAT RIGHT?  
10          A     YES.  
11          Q     AND DID HE TELL YOU WHO WENT INTO THE HOUSE AND  
12     REMOVED THE PURSE FROM THE CLOSET --  
13          A     YES.  
14          Q     -- OF THAT HOUSE.  AND WITHOUT SAYING WHO, HE  
15     SAID WHO DID IT, DIDN'T HE?  
16          A     YES.  
17          Q     AND THAT WAS NOT ROY; IS THAT RIGHT?  
18          A     NO.  
19                 MR. HANDFUSS:  I HAVE NO FURTHER QUESTIONS.  
20                 THE COURT:  OKAY.  FURTHER CROSS-EXAMINATION?  
21                 MR. PIKE:  THANK YOU, YOUR HONOR.  
22  
23                         CROSS-EXAMINATION  
24     BY MR. PIKE:  
25          Q     MISS SALDANA, OR MA'AM, HOW OLD ARE YOU?

1           A     20.  
2           Q     YOU WERE 19 WHEN YOU WERE LIVING WITH DALE  
3     FLANAGAN?  
4           A     YES.  
5           Q     AT THE TRAILER. WHEN DID YOU FIRST MEET DALE?  
6           A     APPROXIMATELY TWO WEEKS BEFORE I MOVED IN.  
7           Q     TWO WEEKS BEFORE YOU MOVED IN. AND WHERE DID YOU  
8     MEET HIM?  
9           A     AT BOGIE'S NIGHTCLUB.  
10          Q     AT THAT TIME WHERE WERE YOU RESIDING?  
11          A     WITH A GIRLFRIEND.  
12          Q     DO YOU RECALL --  
13                THE COURT: SPEAK UP, PLEASE.  
14                THE WITNESS: WITH A GIRLFRIEND.  
15     BY MR. PIKE:  
16          Q     DO YOU RECALL HER NAME?  
17          A     DEBBIE SAMPLES.  
18          Q     WAS SHE LIVING WITH ANYBODY ELSE?  
19          A     BLAKE WATSON.  
20          Q     YOUR SISTER, ALSO, MICHELLE GRAY?  
21          A     YES.  
22          Q     ARE YOU ACQUAINTED WITH A YOUNG GIRL BY THE NAME  
23     OF LISA LICATA?  
24          A     YES.  
25          Q     WAS LISA LIVING WITH YOU AT THAT APARTMENT?

1 A NO.  
2 Q SHE WASN'T. SHE WAS LIVING WITH DALE?  
3 A YES.  
4 Q AND THEN DALE AND LISA BROKE UP AND YOU MOVED IN  
5 WITH DALE?  
6 A YES.  
7 Q AND WHAT WERE YOU DOING FOR A LIVING DURING THAT  
8 TIME?  
9 A I WAS DANCING.  
10 Q YOU WERE DANCING AT BOGIE'S?  
11 A YES.  
12 Q YOU WERE A STRIPPER, WEREN'T YOU?  
13 A YES.  
14 Q NOW, WHAT WAS YOUR RELATIONSHIP WITH LISA LICATA?  
15 A BARELY A FRIEND. I HAD ONLY KNOWN HER A SHORT  
16 TIME.  
17 Q WASN'T IT AN ANTAGONISTIC ONE AS FAR AS DALE WAS  
18 CONCERNED?  
19 A NO.  
20 Q THERE WEREN'T ANY HARD FEELINGS BETWEEN YOU AND  
21 SHE?  
22 A THERE WERE A LITTLE BUT NOT ENOUGH TO FIGHT OR  
23 WORRY ABOUT IT.  
24 Q NEVERTHELESS, YOU FELT?  
25 A YES.



1 Q ALL DURING THIS TIME, DALE IS WORKING AT  
2 MCDONALD'S?

3 A YES.

4 Q HOW LONG FROM THE DAY THAT HE MET YOU WAS IT  
5 UNTIL YOU AND HE MOVED IN TOGETHER?

6 A TWO WEEKS.

7 Q AND YOU MOVED IN TOGETHER AS BOYFRIEND AND  
8 GIRLFRIEND?

9 A YES.

10 Q NOW, YOU INDICATED ON YOUR TESTIMONY WHEN MR.  
11 SEATON ASKED YOU, THAT YOU AT ONE TIME STARTED LOOKING FOR A  
12 WILL?

13 A YES.

14 Q WHILE YOU WERE LIVING AT THE TRAILER WITH DALE,  
15 HIS UNCLE MOVED INTO THE HOUSE; ISN'T THAT TRUE?

16 A YES.

17 Q HIS UNCLE'S NAME IS ROBIN?

18 A YES.

19 Q AND ISN'T IT TRUE THAT ROBIN ALSO LOOKED FOR A  
20 WILL?

21 A YES.

22 Q ISN'T IT TRUE THAT EVERYBODY IN THE WHOLE FAMILY  
23 LOOKED FOR A WILL?

24 A AS FAR AS I KNOW, YES.

25 Q AND TO YOUR KNOWLEDGE, DID ANYONE EVER FIND A

1 WILL?

2 A NO.

3 Q TO YOUR KNOWLEDGE, DID ANYBODY EVER FIND ANY  
4 INSURANCE POLICY?

5 A NO.

6 Q NOW, WHEN MR. SEATON OR I BELIEVE MR. SEATON WAS  
7 QUESTIONING YOU, ASKED YOU ABOUT WHEN YOU MOVED INTO THE  
8 TRAILER, YOU MOVED INTO THE TRAILER IMMEDIATELY AFTER THE  
9 DEATHS?

10 A YES.

11 Q ISN'T IT TRUE THAT YOU DIDN'T MOVE IN IMMEDIATELY  
12 AFTER THE DEATHS BECAUSE THE TRAILER WAS SEALED AND YOU HAD  
13 TO STAY A FEW OTHER PLACES DURING THAT TIME?

14 A I STAYED AT MY AUNT'S.

15 Q YOU STAYED AT YOUR AUNT'S. DIDN'T YOU STAY ONE  
16 NIGHT WITH DALE AND HIS FATHER AT THE HILTON HOTEL?

17 A YES.

18 Q AND THAT WAS RIGHT AFTER THE DEATHS?

19 A YES.

20 Q AND THE TRAILERS WERE SEALED RIGHT AFTER THE  
21 DEATHS?

22 A I DON'T KNOW.

23 Q FOR A COUPLE OF DAYS?

24 A I DIDN'T KNOW.

25 Q BUT YOU HAD NOT MOVED BACK INTO THE TRAILER UNTIL

1 A COUPLE DAYS AFTER THE DEATHS; ISN'T THAT TRUE?

2 A YES, BUT WE WERE TOGETHER.

3 Q OKAY. I UNDERSTAND THAT. I AM SAYING YOU WERE  
4 TOGETHER IMMEDIATELY AFTER THE DEATHS BUT YOU COULDN'T MOVE  
5 BACK INTO THE TRAILER UNTIL A COUPLE DAYS AFTER?

6 A YES.

7 Q WAS THERE A TELEPHONE IN THE TRAILER?

8 A YES.

9 Q AND DURING THAT TIME AFTER THE DEATHS UNTIL YOU  
10 MOVED INTO THE TRAILER, YOU AND DALE PRETTY MUCH SPENT ALL  
11 YOUR TIME TOGETHER?

12 A NO.

13 Q YOU DIDN'T?

14 A HE WORKED AND --

15 Q WHEN YOU WEREN'T AT WORK, I MEAN, YOU SPENT THE  
16 REST OF THAT TIME TOGETHER?

17 A YES.

18 Q NOW, AFTER YOU INDICATED THAT DALE HAD HAD A  
19 CONVERSATION WITH THE DETECTIVE AND YOU THEN WENT OVER TO  
20 OFFICER BERNI WITH A KNIFE?

21 A YES.

22 Q YOU WENT OVER TO OFFICER BERNI BECAUSE YOU HAD  
23 KNOWN HIM?

24 A YES.

25 Q HOW MANY YEARS PREVIOUSLY HAD YOU KNOWN OFFICER

1 BERNI?

2 A TWO, ALMOST THREE.

3 Q PARDON?

4 A TWO, ALMOST THREE.

5 Q AND HE WAS A BOYFRIEND OR JUST AN ACQUAINTANCE?

6 A BOYFRIEND.

7 Q AND YOU TOOK THE KNIFE BACK AND HE TOLD YOU THAT  
8 IF YOU COULD GET ANY MORE INFORMATION BUT BE CAREFUL?

9 A YES.

10 Q AND SO YOU QUESTIONED DALE AND TOM; ISN'T THAT  
11 TRUE?

12 A ONLY TOM. I NEVER QUESTIONED DALE.

13 Q NOW, YOU WERE LIVING WITH TOM OR, EXCUSE ME, YOU  
14 WERE LIVING WITH DALE AS BOYFRIEND AND GIRLFRIEND; ISN'T THAT  
15 TRUE?

16 A YES.

17 Q AND THEN DALE, YOU WERE QUESTIONING HIM TO GET  
18 INFORMATION AND YOU WERE GIVING HIM SEX?

19 A YES.

20 Q IN FACT, YOU TALKED TO HIM ABOUT GETTING MARRIED?

21 A YES.

22 Q DID YOU EVER INTEND UPON MARRYING HIM?

23 A NO.

24 Q DID YOU EVER INTEND UPON MARRYING DALE?

25 A NO.

1 Q AND YOU TALKED TO DALE ABOUT GETTING MARRIED,  
2 THOUGH, DIDN'T YOU?

3 A YES.

4 Q IS THIS THE SAME TIME?

5 A YES.

6 Q AND, IN FACT, YOU WERE EVEN HAVING SEX WITH TOM  
7 IN DALE'S TRAILER?

8 A NO.

9 Q YOU DIDN'T. WHILE YOU GOT THIS INFORMATION, YOU  
10 THEN WENT TO BEECHER AVANTS; ISN'T THAT TRUE?

11 A YES.

12 Q AND WHILE YOU WERE IN THE PROCESS OF GETTING THIS  
13 INFORMATION, YOU TALKED WITH TOM AKERS ABOUT THE POSSIBILITY  
14 OF GETTING A \$2,000 REWARD CONCERNING TURNING IN DALE; ISN'T  
15 THAT TRUE?

16 A THAT IS NOT TRUE.

17 Q DID YOU EVER TALK WITH TOM AKERS ABOUT THE  
18 POSSIBILITY OF RECEIVING A \$2,000 REWARD?

19 A I HAD NO IDEA ABOUT THE REWARD.

20 Q MY QUESTION IS DID YOU EVER TALK WITH TOM ABOUT  
21 THE POSSIBILITY OF RECEIVING A \$2,000 REWARD?

22 A NO.

23 Q DO YOU RECALL GIVING TESTIMONY IN THIS CASE AT  
24 THE PRELIMINARY HEARING ON FEBRUARY 11TH?

25 A YES.

1 Q AND THAT TIME YOU WERE BEING ASKED QUESTIONS BY A  
2 FEW ATTORNEYS; ISN'T THAT TRUE?

3 A YES.

4 MR. PIKE: FOR COUNSEL'S BENEFIT, IT IS PAGE 119.  
5 MAY I APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YOU MAY.

7 MR. PIKE: THANK YOU.

8 BY MR. PIKE:

9 Q MISS SALDANA, I WOULD ASK YOU IF YOU WOULD TO  
10 LOOK AT LINE 11 AND READ THAT QUESTION AND YOUR RESPONSES  
11 DOWN TO ABOUT LINE 18. CAN YOU READ THAT FROM WHERE IT'S AT?

12 A OKAY.

13 Q HAVE YOU HAD AN OPPORTUNITY TO READ THAT?

14 A YES.

15 Q NOW, AT THE PRELIMINARY HEARING YOU WERE ASKED  
16 THE QUESTION, AND I WILL QUOTE, "DID YOU EVER DISCUSS WITH  
17 MR. AKERS OR ANYONE ELSE THE POSSIBILITIES OF RECEIVING A  
18 \$2,000 REWARD FOR INFORMATION YOU MIGHT HAVE WITH RESPECT TO  
19 THE KILLING OF MR. AND MRS. GORDON?"

20 AND YOU ANSWERED THAT WITH, "YES. AFTER THEY  
21 WERE ARRESTED, AFTER THE BOYS WERE ARRESTED, YES."

22 IS THAT TRUE?

23 A YES, ON THE PHONE.

24 Q ON THE PHONE AND YOU TALKED WITH DALE ON THE  
25 PHONE OR NOT DALE, EXCUSE ME. YOU TALKED WITH TOM ON THE

1 PHONE?

2 A YES. I THOUGHT YOU MEANT PRIOR.

3 Q SO THIS CONVERSATION OCCURRED AFTER EVERYBODY HAD  
4 BEEN ARRESTED?

5 A YES.

6 Q AND DID TOM CALL YOU UP OR DID YOU CALL HIM UP?

7 A TOM HAD CALLED ME.

8 Q AND EVEN AFTER TOM WAS ARRESTED, YOU STILL TALKED  
9 TO HIM ABOUT GETTING MARRIED?

10 A YES, FOR MORE INFORMATION.

11 Q FOR MORE INFORMATION?

12 A YES.

13 Q AND WHICH POLICE OFFICER HAD INSTRUCTED YOU TO  
14 PLAY ALONG WITH THEM TO GET ADDITIONAL INFORMATION? WAS IT  
15 OFFICER BERNI OR WAS IT BEECHER AVANTS?

16 A IT WAS NO OFFICER. IT WAS MY UNCLE WHO ASKED ME  
17 TO DO THAT.

18 Q IS YOUR UNCLE A POLICE OFFICER OR AFFILIATED WITH  
19 A LAW ENFORCEMENT AGENCY IN ANY WAY?

20 A YES. HE USED TO BE AN ATTORNEY.

21 Q AND THIS CONVERSATION WITH DALE THAT YOU HAVE  
22 TESTIFIED ABOUT, YOU INDICATED THAT IT WAS JUST -- IT STEMMED  
23 FROM AN ARGUMENT THAT YOU HAD CONCERNING ABOUT YOUR  
24 RELATIONSHIP AS BOYFRIEND AND GIRLFRIEND?

25 A YES.

1 Q AND YOU SAID THAT DALE WAS JEALOUS ABOUT A  
2 BOYFRIEND?

3 A YES.

4 Q DO YOU RECALL VOICING ANY SENTIMENTS OF JEALOUSY  
5 OR ANY STATEMENTS OF ANIMOSITY ABOUT LISA LICATA AT THAT  
6 TIME?

7 A YES.

8 Q AND SO YOU WERE STILL AWARE OF HER?

9 A YES.

10 Q DO YOU KNOW WHAT LISA DID FOR A LIVING?

11 A I DON'T THINK SHE WORKED AT ALL.

12 Q HOW ABOUT MICHELLE GRAY?

13 A SHE DIDN'T WORK EITHER.

14 Q DO YOU HAVE ANY IDEA HOW SHE SUPPORTED HERSELF?

15 A SHE LIVED WITH HER SISTER.

16 Q NOW, DURING THIS CONVERSATION, DURING THIS  
17 ARGUMENT, IT WAS STRICTLY FROM A BOYFRIEND-GIRLFRIEND  
18 STANDPOINT AND DALE WASN'T ASKING YOU TO RENDER HIM ANY  
19 ASSISTANCE OR FOR YOU TO PARTICIPATE IN ANY WAY IN ANY SORT  
20 OF COVER-UP; ISN'T THAT TRUE?

21 A NOT IN LITERAL CONVERSATION, NO.

22 THE COURT: WHAT DID YOU SAY?

23 THE WITNESS: NOT LITERALLY IN WORDS, NO.

24 BY MR. PIKE:

25 Q SO HE NEVER DID. THE WHOLE POINT OF THE



1 CONVERSATION WAS TO ESTABLISH HOW YOU TWO STOOD AS BOYFRIEND  
2 AND GIRLFRIEND?

3 A I DON'T THINK THE ENTIRE CONVERSATION WAS BASED  
4 ON THAT.

5 Q WELL, DO YOU RECALL BEING ASKED THAT QUESTION AT  
6 THE PRELIMINARY HEARING AND ANSWERING YES TO THAT?

7 A I RECALL BEING ASKED IF IT IS HOW IT STARTED.

8 MR. PIKE: MAY I APPROACH THE WITNESS AGAIN, YOUR  
9 HONOR?

10 THE COURT: YOU MAY.

11 MR. PIKE: COUNSEL, I AM ON PAGE 109 OF THE  
12 PRELIMINARY HEARING TRANSCRIPT.

13 BY MR. PIKE:

14 Q MISS SALDANA, I WOULD ASK YOU TO LOOK AT PAGE  
15 109. THE QUESTION STARTING AT LINE 14. I ASK YOU TO READ  
16 THAT QUESTION TO YOURSELF AND THE RESPONSE TO IT.

17 HAVE YOU HAD AN OPPORTUNITY TO DO THAT?

18 A (WITNESS NODS AFFIRMATIVELY.)

19 Q NOW, MISS SALDANA, AT THE PRELIMINARY HEARING YOU  
20 WERE ASKED THIS QUESTION, "THE SOLE PURPOSE OF THIS  
21 CONVERSATION WAS TO ESSENTIALLY SORT OUT HOW YOU TWO STOOD AS  
22 BOYFRIEND AND GIRLFRIEND; IS THAT RIGHT?"

23 AND YOU GAVE THIS ANSWER, "YES."

24 IS THAT TRUE.

25 A YES.

1 Q YOU INDICATED THAT IT WAS UPON YOUR UNCLE'S  
2 ADVICE THAT YOU, IN EFFECT, WERE GOING TO PUMP, FOR LACK OF A  
3 BETTER WORD, OR I CAN'T THINK OF A BETTER WORD, PUMP HIM, TOM  
4 AND DALE, FOR ADDITIONAL INFORMATION.

5 YOU SAY MR. AVANTS NEVER TOLD YOU TO LET THE  
6 POLICE OR THE D.A.'S OFFICE KNOW ANYTHING ELSE YOU MIGHT  
7 LEARN?

8 A I HAD TOLD HIM MYSELF THAT I WOULD TELL HIM OR  
9 SOMEONE IN THE POLICE OFFICE, POLICE DEPARTMENT.

10 Q WELL, AT THE EVIDENTIARY HEARING, WERE YOU  
11 MISTAKEN THEN WHEN YOU WERE ASKED THIS QUESTION AND GAVE THIS  
12 ANSWER AND FOR THE COUNSEL'S BENEFIT IT IS PAGE 112 OF THE  
13 HEARING, NOT THE PRELIMINARY HEARING, THE EVIDENTIARY  
14 HEARING.

15 QUESTION, "DID BEECHER AVANTS ASK YOU TO LET HIM  
16 KNOW OR LET THE POLICE OR THE D.A.'S OFFICE KNOW ANYTHING  
17 ELSE YOU MIGHT LEARN?"

18 ANSWER, "YES."

19 QUESTION, "AND BASED UPON THAT WHEN YOU HAD THE  
20 CONVERSATION WITH MR. AKERS AND HE ASKED YOU TO MARRY HIM,  
21 YOU BASICALLY SAID YES JUST SO THAT HE WOULD TRUST YOU?"  
22 RIGHT?

23 A YES.

24 Q AND TO GIVE HIM MORE INFORMATION; IS THAT  
25 CORRECT?

1           A     YES.

2           Q     AND THEN YOU WOULD GO -- IF YOU LEARNED ANY MORE  
3 INFORMATION, YOU WOULD GO RIGHT TO TELL METRO OR MR. BERNI  
4 OR, EXCUSE ME, OFFICER BERNI OR MR. AVANTS OR PERHAPS EVEN  
5 MR. SEATON OR SOMEBODY FROM THE D.A.'S OFFICE ABOUT WHAT YOU  
6 LEARNED?

7           A     YES.

8           Q     AND THIS WAS BEFORE OR AFTER YOU LEARNED ABOUT  
9 THE \$2,000 REWARD AVAILABLE?

10          A     THIS IS AFTER.

11          Q     NOW, YOU HAD RECEIVED A NUMBER OF TELEPHONE CALLS  
12 FROM TOM AKERS FROM JAIL; ISN'T THAT TRUE?

13          A     I CAN ONLY RECALL THREE.

14          Q     DO YOU RECALL ONE ON CHRISTMAS --

15          A     YES.

16          Q     -- OF LAST YEAR, WHERE DURING THAT TELEPHONE  
17 CONVERSATION, MR. AKERS ASKED YOU TO DISPOSE OF SOME  
18 EVIDENCE; ISN'T THAT TRUE?

19          A     YES.

20          Q     WHAT SPECIFICALLY DID HE ASK YOU TO DO?

21          A     HE ASKED ME TO GET RID OF A STICK.

22          Q     DID HE TELL YOU WHERE A STICK WAS?

23          A     I DON'T REMEMBER. I KNEW WHERE IT WAS ALREADY,  
24 THOUGH.

25          Q     HE ASKED TO YOU GET RID OF IT. DID YOU EVER GO

1 AND RETRIEVE THAT STICK?

2 A YES, I DID.

3 Q WHAT DID YOU DO WITH IT?

4 A I GAVE IT TO DAN SEATON.

5 MR. PIKE: MAY I APPROACH THE WITNESS, YOUR  
6 HONOR?

7 THE COURT: YES.

8 BY MR. PIKE:

9 Q SHOWING YOU WHAT'S BEEN MARKED FOR EVIDENTIARY  
10 PURPOSES STATE'S PROPOSED EXHIBIT NUMBER 96.

11 I WOULD ASK TO YOU LOOK AT THAT. TELL ME  
12 WHETHER OR NOT YOU RECOGNIZE THAT?

13 A WELL, A LITTLE. IT HAS BEEN TORN UP SINCE I  
14 BROUGHT IT IN BUT, YEAH, IT LOOKS LIKE THE STICK.

15 Q IT LOOKS LIKE THE STICK YOU TOOK INTO MR.  
16 SEATON'S OFFICE?

17 A YES.

18 Q AND IT'S THE STICK THAT TOM AKERS TOLD YOU TO GET  
19 RID OF?

20 A YES.

21 Q NOW, YOU HAD AN OPPORTUNITY TO KNOW TOM AKERS AND  
22 DALE FLANAGAN. DID YOU KNOW RANDY MOORE?

23 A NO, I DIDN'T.

24 Q DID YOU KNOW ROY MCDOWELL?

25 A I HAD KNOWN HIM, I THINK, A YEAR PRIOR. I HAD

1 MET HIM ONE DAY.

2 Q JOHNNY RAY LUCKETT?

3 A ABOUT THREE YEARS AGO.

4 Q AND TOM AKERS THEN WAS ACTIVELY INVOLVED IN  
5 TRYING TO COVER UP THESE CRIMES TWO MONTHS AFTER THEY  
6 OCCURRED?

7 MR. SEATON: OBJECT, THAT CALLS FOR SPECULATION  
8 ON THE PART OF THE WITNESS, YOUR HONOR.

9 THE COURT: COUNSEL.

10 MR. PIKE: LET ME REPHRASE THAT.

11 BY MR. PIKE:

12 Q SOME TWO MONTHS AFTER, ALMOST TWO MONTHS AFTER  
13 THE DEATHS OF THE GORDONS, TOM AKERS WAS ACTIVELY SEEKING YOU  
14 TO COVER UP AND HIDE EVIDENCE?

15 A YES.

16 Q DALE NEVER ASKED YOU TO DO THAT?

17 A NOT IN WORDS, NO.

18 Q NOW, YOU INDICATED THAT YOU AND DALE LIVED  
19 TOGETHER FOR ABOUT A MONTH. DURING THAT TIME, YOU NEVER SAW  
20 DALE WITH ANY .22 PISTOL OR REVOLVER, DID YOU?

21 A YES.

22 MR. PIKE: AGAIN, FOR COUNSEL'S BENEFIT, PAGE 119  
23 OF THE PRELIMINARY HEARING. MAY I APPROACH THE WITNESS  
24 AGAIN, YOUR HONOR?

25 THE COURT: YES.

1 BY MR. PIKE:

2 Q MISS SALDANA, I WOULD ASK YOU TO LOOK AT THE  
3 BOTTOM OF THIS PAGE, READ THE LAST QUESTION AND THE LAST  
4 ANSWER. HAVE YOU HAD AN OPPORTUNITY TO READ THAT?

5 A YES.

6 Q MISS SALDANA, DO YOU RECALL BEING ASKED THIS  
7 QUESTION AT THE PRELIMINARY HEARING AND GIVING THIS ANSWER.

8 "DID YOU EVER SEE ANY .22 CALIBER PISTOL IN THE  
9 POSSESSION OF MR. FLANAGAN IN HIS TRAILER AT ANY TIME DURING  
10 YOUR ONE MONTH RESIDENCY WITH HIM?"

11 ANSWER, "NO."

12 DO YOU RECALL BEING ASKED THAT QUESTION AND  
13 GIVING THAT ANSWER?

14 A YES.

15 Q AND CONCERNING YOUR EMPLOYMENT, DO YOU RECALL  
16 GIVING TESTIMONY AT THE PRELIMINARY HEARING THAT YOU WERE NOT  
17 EMPLOYED AT ALL AND I WILL REFER COUNSEL TO PAGE 120?

18 A COULD YOU ASK THAT AGAIN.

19 Q OKAY. AT THE PRELIMINARY HEARING, DO YOU RECALL  
20 BEING ASKED THIS QUESTION, "YOU WERE NOT MAKING MONEY OF ANY  
21 SORT DURING THAT TIME DOING ANYTHING?"

22 ANSWER, "NO."

23 A THAT'S TRUE.

24 Q BUT YOU ACTUALLY WERE WORKING AT THAT TIME?

25 A NO, NOT, NO.

1 Q YOU WEREN'T GETTING PAID FOR STRIPPING AT  
2 BOGIE'S?  
3 A YES, BUT NOT WITH A PAYCHECK.  
4 Q HOW WERE YOU GETTING PAID?  
5 A TIPS.  
6 Q HOW DID YOU GET TIPS?  
7 A BY DANCING.  
8 Q DO THEY THROW THEM UP ON STAGE?  
9 A THEY HAND THEM TO YOU.  
10 Q AND WHILE YOU WERE LIVING IN THE TRAILER WITH  
11 DALE, EXCEPT FOR TIMES WHEN YOU WERE EMPLOYED OR WORKING OR  
12 DANCING AND HE WAS WORKING, YOU WERE LIVING WITH HIM 24 HOURS  
13 A DAY?  
14 A ASK THAT ONE MORE TIME, PLEASE.  
15 Q EXCEPT FOR THE TIMES WHEN EITHER YOU WERE DANCING  
16 OR WORKING AND HE WAS WORKING, YOU WERE RESIDING TOGETHER  
17 AS BOYFRIEND-GIRLFRIEND, MAN AND WIFE IN THAT --  
18 A YES.  
19 Q DID YOU HAVE A CAR AT THAT TIME?  
20 A NO.  
21 Q DID DALE PROVIDE TRANSPORTATION FOR YOU?  
22 A NO.  
23 Q WHO DID PROVIDE TRANSPORTATION FOR YOU?  
24 A TOM AKERS.  
25 Q AND HOW LONG HAD YOU KNOWN MR. AKERS PRIOR TO

1 MOVING IN WITH MR. FLANAGAN?

2 A I HAD MET HIM ABOUT THE SAME TIME I MET RAY  
3 BERNI.

4 Q MET RAY BERNI?

5 A I MET TOM AKERS ABOUT THE SAME TIME I MET RAY  
6 BERNI WHICH WAS ONLY ONCE AND THAT WAS IT.

7 Q DO YOU RECALL BEING ASKED THAT QUESTION AT A  
8 PRELIMINARY HEARING IN THIS MATTER?

9 AND, COUNSEL, I AM REFERRING TO PAGE 121. MAY I  
10 APPROACH THE WITNESS AGAIN, YOUR HONOR?

11 THE COURT: YES.

12 BY MR. PIKE:

13 Q AND I DIRECT YOUR ATTENTION TO THE LAST QUESTION  
14 AND AGAIN THE LAST ANSWER.

15 A OKAY.

16 Q DO YOU RECALL BEING ASKED THIS QUESTION AND  
17 GIVING THIS ANSWER, "HOW LONG HAD YOU KNOWN MR. AKERS PRIOR  
18 TO MOVING IN WITH MR. FLANAGAN?"

19 "A WEEK, I THINK A WEEK." IS THAT TRUE?

20 A YES. I HAD MET TOM AKERS AT A SHERIFF, WHAT DO  
21 YOU CALL IT, A POLITICAL CAMPAIGN AND I HAD MET HIS MOTHER  
22 AND HIM. I JUST REMEMBER THAT, THAT'S ALL.

23 Q AND YOU HAD MET HIM ONCE BUT THEN THE FIRST TIME  
24 YOU ACTUALLY MET HIM, GOT TO KNOW HIM WAS ABOUT A WEEK BEFORE  
25 YOU MOVED IN WITH DALE FLANAGAN?



1           A     YES.

2           Q     ABOUT HOW LONG WAS IT AFTER YOU MOVED IN WITH

3 DALE FLANAGAN THAT YOU STARTED HAVING SEX WITH TOM AKERS TO

4 GET INFORMATION FROM HIM?

5           A     APPROXIMATELY, I THINK, TWO WEEKS.

6           Q     AND SO WITHIN THAT TIME FRAME YOU HAD TALKED WITH

7 OFFICER BERNI, YOU HAD TALKED WITH OTHER INDIVIDUALS AND YOU

8 WERE DETERMINED AT THAT TIME TO GET INFORMATION?

9           A     YES.

10          Q     AND YOU KNEW AT THAT TIME ABOUT THE REWARD?

11          A     NO, I DIDN'T.

12          Q     AND YOU WERE GIVING SEX TO TOM AKERS, DALE

13 FLANAGAN TO GET INFORMATION FOR THEM AS SOME SORT OF CIVIC

14 DUTY?

15          A     REPHRASE THAT, PLEASE.

16          Q     HOW HAVE YOU BEEN INFORMED YOU WILL RECEIVE THE

17 \$2,000 THAT YOU ARE GOING TO GET ONCE YOU FINISH TESTIFYING

18 IN THIS CASE?

19          A     DETECTIVE LEVOS TOLD ME THAT AFTER I MADE MY

20 STATEMENT, AFTER THE CRIME WAS JUSTIFIED, THEN I WOULD BE

21 REWARDED.

22          Q     THEN YOU WOULD BE REWARDED?

23          A     YES.

24          Q     AND THEY HAVE CONDITIONED THAT UPON THE

25 CONVICTION OF THESE YOUNG MEN HERE; ISN'T THAT TRUE?

1           A     NO.

2           MR. PIKE: I HAVE NO FURTHER QUESTIONS.

3           THE COURT: CROSS-EXAMINATION, MR. POSIN.

4           MR. POSIN: YES.

5  
6                           CROSS-EXAMINATION

7     BY MR. POSIN:

8           Q     MISS SALDANA, IN YOUR CONVERSATIONS WITH DALE  
9     FLANAGAN, YOU INDICATED THAT HE HAD -- STRIKE THAT.

10           YOU HAD HAD CONVERSATION WITH DALE FLANAGAN  
11     OSTENSIBLY ABOUT THAT WHICH HAD HAPPENED AT THE HOME OF HIS  
12     GRANDPARENTS; DO YOU RECALL THAT TESTIMONY?

13          A     JUST TALKING TO HIM.

14          Q     YOU DON'T UNDERSTAND THE QUESTION?

15          THE COURT: DO YOU RECALL THAT TESTIMONY?

16          THE WITNESS: I DIDN'T EVEN UNDERSTAND THE  
17     QUESTION.

18     BY MR. POSIN:

19          Q     YOU TESTIFIED EARLIER THAT YOU HAD HAD  
20     CONVERSATION WITH DALE FLANAGAN RELATING TO THAT WHICH HAD  
21     OCCURRED AT HIS GRANDPARENTS' HOME?

22          A     YES.

23          Q     DO YOU RECALL. AND DURING THE COURSE OF THAT  
24     CONVERSATION, DALE HAD MENTIONED RANDY MOORE, HAD HE?

25          A     YES.

1 Q AS BEING ONE OF THE PEOPLE WHO HAD GONE TO THE  
2 HOME OF THE GRANDPARENTS?

3 A YES.

4 Q DID HE EVER TELL YOU THAT HE HAD SEEN RANDY MOORE  
5 FIRE A SHOT?

6 A NO.

7 Q DID YOU HAVE CONVERSATION WITH RANDY MOORE  
8 REGARDING THAT WHICH HAD HAPPENED ON THE NIGHT OF NOVEMBER  
9 5TH?

10 A NO.

11 Q DID YOU EVER HAVE CONVERSATION WITH RANDY MOORE  
12 WITH REGARD TO ANYTHING THAT HAD HAPPENED AT THE HOME OF THE  
13 GORDONS?

14 A NO.

15 Q JUST BY WAY OF CLARIFICATION IF I MAY, YOU TOLD  
16 US THAT YOU HAD MET DALE FLANAGAN ABOUT TWO WEEKS BEFORE YOU  
17 MOVED IN WITH HIM?

18 A YES.

19 Q BUT YOU STARTED YOUR BOYFRIEND-GIRLFRIEND  
20 RELATIONSHIP IMMEDIATELY UPON MEETING HIM, WAS THAT YOUR  
21 TESTIMONY?

22 A YES.

23 Q THE NIGHT YOU MET HIM?

24 A YES.

25 Q BUT THAT WAS SOMEPLACE OTHER THAN THE TRAILER?

1           A     YES.

2           Q     WHERE DID YOUR RELATIONSHIP -- THAT TRANSLATES  
3 INTO SEXUAL INVOLVEMENT, DOES IT NOT? YOU HAD SEXUAL  
4 RELATIONSHIP WITH HIM THE NIGHT YOU MET HIM?

5           A     YES.

6           Q     WHERE WAS THAT, AT THE TRAILER OR SOMEPLACE ELSE?

7           A     THAT WAS AT DEBBIE SAMPLES' APARTMENT.

8           Q     NOW, I WASN'T ABLE TO HEAR YOUR ANSWER EARLIER  
9 WITH REGARD TO YOUR CONVERSATION WITH YOUR UNCLE. DID YOU  
10 SAY THAT HE IS A LAW ENFORCEMENT AGENT?

11          A     HE USED TO BE AN ATTORNEY.

12          Q     HE USED TO BE AN ATTORNEY?

13          A     YES.

14          Q     HE WAS NEVER PART OF A LAW ENFORCEMENT  
15 ORGANIZATION?

16          A     I HAVE NO IDEA.

17          Q     WAS HE EVER A PROSECUTOR, DO YOU KNOW?

18          A     I DON'T KNOW. I HAVE NO IDEA.

19          Q     NOW, BACK TO YOUR EARLIER TESTIMONY AGAIN FOR  
20 PURPOSES OF CLARIFICATION. I BELIEVE YOU HAD TESTIFIED ABOUT  
21 A CONVERSATION WITH DALE THE MORNING OF NOVEMBER 6TH OR  
22 DURING THE DAY OF NOVEMBER 6TH. I BELIEVE YOUR TESTIMONY WAS  
23 THAT THAT WAS SOLELY FOR THE PURPOSE OF CLARIFYING YOUR  
24 BOYFRIEND-GIRLFRIEND RELATIONSHIP; IS THAT TRUE?

25          A     NOT ON NOVEMBER 6TH, NO.

1 Q WHEN WAS THE CONVERSATION?  
2 A DECEMBER 5TH.  
3 Q DID DALE ASK YOU AT THAT TIME TO COVER FOR HIM IN  
4 ANY WAY, DID HE?  
5 A NO.  
6 Q HE NEVER ASKED YOU SPECIFICALLY TO COVER FOR HIM  
7 OR IN SOME FASHION PROTECT HIM, DID HE?  
8 A NO, HE DID NOT SAY IT IN WORDS, NO.  
9 Q I BELIEVE THERE WAS SOME TESTIMONY ABOUT  
10 SOMETHING ABOUT THE OCCULT. DO YOU RECALL HAVING TESTIFIED  
11 ABOUT THAT?  
12 A I THINK SO, YES.  
13 Q ABOUT ANY OCCULT ACTIVITY THAT WHICH ANYONE WAS  
14 INVOLVED?  
15 A THAT THEY WERE INVOLVED OR I WAS INVOLVED?  
16 Q THEY WERE INVOLVED.  
17 A YES.  
18 Q DID YOU EVER SEE ANY SUCH INVOLVEMENT?  
19 A NO. THEY WOULD NEVER SHOW IT IN FRONT OF ME.  
20 Q YOU NEVER SAW ANYTHING?  
21 MR. POSIN: I HAVE NO FURTHER QUESTIONS OF THIS  
22 WITNESS.  
23 THE COURT: ALL RIGHT. REDIRECT.  
24 MR. SEATON: YES, YOUR HONOR, THANK YOU.  
25 //

REDIRECT EXAMINATION

BY MR. SEATON:

Q MISS SALDANA, YOU INDICATED TO MR. HANDFUSS THAT YESTERDAY YOU HAD MADE A MISTAKE IN YOUR TESTIMONY REGARDING WHETHER OR NOT DALE HAD TOLD YOU IN HIS CONVERSATION WITH YOU THAT ROY MCDOWELL WAS ONE OF THE SIX INDIVIDUALS WHO HAD GONE OUT TO THE HOUSE?

A YES, THAT WAS A MISTAKE.

Q DID DALE FLANAGAN EVER TELL YOU THAT ROY MCDOWELL DID NOT GO OUT THERE?

A NO, HE DIDN'T.

Q HE JUST SIMPLY FAILED TO MENTION HIS NAME; IS THAT CORRECT?

A THAT'S RIGHT.

MR. HANDFUSS: OBJECTION, YOUR HONOR. HE CAN'T SAY WHETHER HE FAILED TO MENTION. IT CAME OUT HE MENTIONED SPECIFIC NAMES.

HE NEVER MENTIONED ROY MCDOWELL. SHE DOESN'T KNOW IF HE FAILED. SPECIFIC NAMES WERE MENTIONED. ROY MCDOWELL'S NAME WAS NOT ONE OF THOSE SPECIFIC NAMES THAT WERE MENTIONED.

MR. SEATON: I WILL WITHDRAW THE QUESTION, MR. HANDFUSS.

THE COURT: LET'S PROCEED.

BY MR. SEATON:

1 Q YOU HAD INDICATED THAT YOU TESTIFIED HERE TODAY  
2 IN RESPONSE TO A QUESTION BY MR. PIKE THAT YOU HAD SEEN DALE  
3 WITH A .22 PISTOL AND HE THEN READ TO YOU FROM PAGE 119 OF  
4 THE PRELIMINARY HEARING TRANSCRIPT WHERE IT SAID, "DID YOU  
5 EVER SEE ANY .22 CALIBER PISTOL IN THE POSSESSION OF MR.  
6 FLANAGAN IN HIS TRAILER AT ANY TIME DURING YOUR ONE MONTH  
7 RESIDENCY WITH HIM?" AND YOU ANSWERED, "NO" THERE.

8 DID YOU EVER SEE --

9 A NOT IN HIS TRAILER. THAT IS WHERE I WAS A LITTLE  
10 CONFUSED BECAUSE HE ASKED ME AT ANY TIME.

11 Q LET ME ASK YOU, AT ANY TIME DID YOU EVER SEE A  
12 .22 PISTOL IN THE POSSESSION OF DALE FLANAGAN?

13 A YES.

14 Q WHERE?

15 A AT RANDY MOORE'S APARTMENT.

16 Q WHEN?

17 A THAT'S GOING TO BE TOUGH.

18 Q AFTER THE DEATHS OF CARL AND COLLEEN GORDON?

19 A YES.

20 Q THANK YOU. WHAT WAS HE DOING WITH THE GUN, DO  
21 YOU REMEMBER?

22 A I DON'T KNOW IF I AM ALLOWED TO MENTION ONE OF  
23 THE OTHER BOY'S NAME WHO IS NOT HERE.

24 Q SURE YOU ARE.

25 A MIKE WALSH WERE GETTING READY TO GO ON FREMONT

1       SOMEWHERE WITH IT.

2               MR. SMITH: I DIDN'T HEAR THAT ANSWER, I AM  
3       SORRY, YOUR HONOR.

4       BY MR. SEATON:

5               Q       SAY IT LOUDER.

6               A       DALE FLANAGAN, MIKE WALSH WERE LEAVING THE  
7       APARTMENT TO GO TO FREMONT STREET WITH THE WEAPON.

8               MR. PIKE: I OBJECT, YOUR HONOR, THE OTHER ACTS  
9       DOCTRINE. THIS IS INFORMATION THAT IS BEING SOUGHT BY THE  
10      DISTRICT ATTORNEY'S OFFICE THAT IT MAY IMPLICATE MR. FLANAGAN  
11      IN OTHER ACTS.

12              MR. SEATON: I MAY BE MISTAKEN, YOUR HONOR, BUT  
13      IT SEEMS TO ME MR. PIKE, HE OPENED THIS DOOR ASKING, PINNING  
14      HER DOWN THAT SHE HAD NEVER SEEN THE .22 PISTOL AND NOW WE  
15      ARE FINDING OUT WHERE SHE ACTUALLY SAW THE PISTOL.

16              MR. PIKE PERHAPS SHOULD HAVE TAKEN THAT INTO  
17      CONSIDERATION WHEN HE ASKED THE QUESTION.

18              THE COURT: ALL RIGHT. I THINK YOU HAVE  
19      ESTABLISHED, MR. SEATON, WHERE THE WITNESS HAS SEEN THE  
20      PISTOL. THUS FAR, THERE HAS BEEN NO BAD ACT OR CRIME  
21      ALLEGED. NOW, WITH THE ADMONITION THAT SUCH WOULD BE DEEMED  
22      IMPROPER AT THIS JUNCTURE, WE WILL PROCEED.

23              MR. SEATON: THANK YOU, YOUR HONOR.

24      BY MR. SEATON:

25              Q       THAT PISTOL WAS IN THE HANDS OF DALE FLANAGAN AT



1 THAT TIME, THOUGH; IS THAT CORRECT?

2 A YES. IT WAS IN BOTH OF THEIR HANDS. THEY WERE  
3 HOLDING IT BACK AND FORTH BEFORE THEY LEFT.

4 Q NOW, I THINK PERHAPS THREE OR FOUR, MAYBE EVEN  
5 FIVE TIMES DURING THE CROSS-EXAMINATION I HEARD YOU SAY  
6 SOMETHING TO THE EFFECT THAT "DALE DIDN'T ASK ME TO COVER UP  
7 ANYTHING. HE DIDN'T SAY IT IN SO MANY WORDS."

8 NOW, NO ONE'S ASKED YOU TO EXPLAIN THAT. I WOULD  
9 LIKE TO. WHAT DO YOU MEAN BY ALL THAT?

10 A I WAS GIVEN THE IMPRESSION --

11 MR. PIKE: OBJECTION.

12 MR. POSIN: IF YOUR HONOR PLEASE, THE QUESTION  
13 WAS ASKED AND ANSWERED AND OBVIOUSLY THE ANSWER WAS THAT  
14 NOBODY EVER HAD, EVER SAID OR DALE NEVER SAID ANYTHING ABOUT  
15 COVER UP IN SO MANY WORDS.

16 NOW, WHAT WE ARE REACHING FOR IS SPECULATION AS  
17 TO WHAT THIS WITNESS THOUGHT WAS GOING ON IN SOMEONE ELSE'S  
18 MIND AND THAT IS TOTALLY IMPROPER.

19 THE COURT: ALL RIGHT.

20 MR. PIKE: I JOIN IN THAT OBJECTION, YOUR HONOR.

21 THE COURT: ALL RIGHT. IT WOULD BE PROPER FOR  
22 THE WITNESS TO INDICATE WHAT HER IMPRESSION WAS AND WHAT SHE  
23 BASED IT ON. BUT NOT WHAT SHE THOUGHT MR. FLANAGAN'S  
24 IMPRESSION WAS. PROCEED.

25 BY MR. SEATON:

1 Q DO YOU UNDERSTAND WHAT THE JUDGE JUST SAID, MISS  
2 SALDANA?

3 A I THINK SO.

4 Q WHAT WE WANT TO LEARN IS WHAT YOU FELT, NOT WHAT  
5 YOU THOUGHT DALE FLANAGAN WAS FEELING AND TRYING TO IMPRESS  
6 UPON YOU, BUT WHAT YOUR IMPRESSIONS WERE. WITH THAT IN MIND  
7 AND WITH REGARDS TO WHETHER OR NOT YOU FELT THAT YOU WERE  
8 SUPPOSED TO HELP IN ANY SORT OF A COVER-UP, WOULD YOU EXPLAIN  
9 YOUR FEELINGS AND IMPRESSIONS, PLEASE?

10 A WELL, WHEN HE WAS TELLING ME THESE THINGS, I  
11 MENTIONED SOMETHING, HEARSAY SOMETHING THERE. I FELT LIKE I  
12 WAS SUPPOSED TO JUST LISTEN TO HIM AND COVER UP FOR HIM.

13 WHEN DETECTIVE LEVOS CAME BY OR JERGOVIC CAME BY,  
14 I WAS TO EITHER KEEP MY MOUTH SHUT OR GO ALONG WITH HIS  
15 STORY, YOU KNOW. IT WASN'T TO GO AHEAD AND TELL THEM. I  
16 KNOW THAT.

17 Q BUT HE DIDN'T SAY THAT TO YOU IN SO MANY WORDS,  
18 DID HE?

19 A NO. HE WOULD JUST TELL ME WHAT HE HAD TO SAY AND  
20 I WAS LISTENING.

21 Q THERE HAS BEEN MUCH TO-DO ABOUT THE TIMING OF  
22 CERTAIN MEETINGS THAT YOU HAD WITH PEOPLE. I HAVE REFERENCE  
23 TO THE OCCASION YOU HAD TO SPEAK WITH OFFICER BERNI.

24 A YES.

25 Q AND THEN THE OCCASION YOU HAD TO SPEAK WITH MR.

1 AVANTS?

2 A THERE WERE TWO MEETINGS WITH OFFICER BERNI.

3 Q OKAY. AND THEN THE MEETING THAT YOU HAD WITH  
4 DETECTIVE LEVOS AFTER HAVING SPOKEN WITH DETECTIVE OR MR.  
5 AVANTS. LET'S SEE IF WE CAN PIN THOSE DOWN AND UNDERSTAND  
6 THEM WITH SOME CLARITY.

7 IN RELATIONSHIP -- LET'S DO IT THIS WAY. WHEN  
8 DID YOU FIRST GO SPEAK WITH OFFICER BERNI?

9 A THE SAME WEEK THAT DALE HAD BOUGHT THE SECOND  
10 KNIFE. THAT WAS THE FIRST CONVERSATION WITH OFFICER BERNI.

11 Q WAS IT AFTER DALE HAD BOUGHT THE SECOND KNIFE AND  
12 SHOWN IT TO YOU?

13 A YES.

14 Q IS THAT THE THING THAT TRIGGERED YOUR GOING TO  
15 OFFICER BERNI?

16 A YES.

17 Q IT WAS YOUR TESTIMONY THAT YOU SHOWED HIM THE  
18 KNIFE AND HE TOLD YOU TO PUT IT BACK WHERE IT CAME FROM?

19 A YES.

20 Q DID OFFICER BERNI AT THAT TIME SUGGEST IN ANY WAY  
21 THAT YOU BECOME AN AGENT OF LAW ENFORCEMENT AND GO ELICIT  
22 INFORMATION FROM DALE FLANAGAN?

23 A NO.

24 Q WHOSE IDEA WAS THAT?

25 A MINE.

1 Q YOURS ALONE?  
2 A MINE ALONE.  
3 Q AND DID YOU GO BACK AND PUT THE KNIFE BACK?  
4 A DEFINITELY.  
5 Q AND DID YOU ASK THINGS OF DALE FLANAGAN TO TRY TO  
6 SOLICIT INFORMATION OR DID YOU WAIT FOR HIM TO OFFER?  
7 A I BASICALLY WAITED FOR HIM TO GO ON HIS OWN ROLL  
8 WITH TALKING. SO I TRIED TO BE VERY CAREFUL ABOUT ASKING  
9 QUESTIONS.  
10 Q ALL RIGHT. WAS THE NEXT MEETING THEN THE SECOND  
11 MEETING WITH OFFICER BERNI?  
12 A YES.  
13 Q WHEN DID THAT TAKE PLACE?  
14 A AFTER THE BOYS OR, EXCUSE ME, AFTER DALE HAD TOLD  
15 ME THAT HE HAD DONE IT.  
16 Q THAT WAS YOUR CONVERSATION WITH DALE IN THE  
17 TRAILER ON DECEMBER THE 5TH?  
18 A YES.  
19 Q WAS IT DECEMBER THE 5TH OR SOMETIME THEREAFTER  
20 WHEN YOU WENT TO SEE OFFICER BERNI FOR THE SECOND TIME?  
21 A DECEMBER THE 6TH.  
22 Q THE NEXT DAY?  
23 A YES.  
24 Q AND AT THAT MEETING, DID YOU SIMPLY TELL OFFICER  
25 BERNI EVERYTHING THAT DALE HAD TOLD YOU?

1           A     NOT ON THAT THERE. I MEAN, ON THAT SECOND  
2 MEETING.

3           Q     WHAT DID YOU TELL OFFICER BERNI AT THAT MEETING?

4           A     I JUST TOLD HIM I NEEDED TO KNOW WHO TO TALK TO  
5 ABOUT A STATEMENT THAT WAS JUST GIVEN TO ME.

6           Q     YOU DIDN'T TELL HIM WHAT THE STATEMENT WAS,  
7 THOUGH?

8           A     NOT TO HIM PERSONALLY. HE WAS THERE WHEN I GAVE  
9 THE STATEMENT.

10          Q     WHAT ADVICE DID HE GIVE YOU? WHO DID HE TELL YOU  
11 TO GO TO?

12          A     HE TOLD ME TO GO TO BEECHER AVANTS.

13          Q     AND DID YOU GO TO BEECHER AVANTS?

14          A     YES.

15          Q     WHERE?

16          A     HE CAME TO MY AUNT'S HOUSE.

17          Q     HE CAME TO YOUR AUNT'S HOUSE?

18          A     YES.

19          Q     DOES BEECHER AVANTS KNOW YOUR AUNT?

20          A     YES.

21          Q     ARE THEY PERSONAL FRIENDS?

22          A     YES.

23          Q     DID YOU AT THAT TIME WITH BEECHER AVANTS TELL HIM  
24 THE STATEMENT THAT DALE HAD TOLD YOU AND THAT YOU HAVE TOLD  
25 THIS JURY YESTERDAY?

1           A     YES.  
2           Q     AND DID BEECHER AVANTS TELL YOU TO GO SEE ANYONE  
3     AT THAT TIME?  
4           A     YES.  
5           Q     WHO DID HE TELL YOU TO GO SEE?  
6           A     BOB HILLIARD.  
7           Q     BOB HILLIARD IS THE POLICE?  
8           A     HE IS THE SERGEANT AT METROPOLITAN POLICE  
9     DEPARTMENT.  
10          Q     SERGEANT WITH METRO?  
11          A     YES.  
12          Q     DID YOU GO TO SEE SERGEANT HILLIARD AT THAT TIME?  
13          A     YES, I DID.  
14          Q     AND DID YOU TELL HIM THE SAME STORY?  
15          A     YES.  
16          Q     AND DID HE TELL YOU TO GO SEE ANYONE?  
17          A     YES.  
18          Q     WHO?  
19          A     DETECTIVE LEVOS.  
20          Q     NOW, DETECTIVE LEVOS IS THE DETECTIVE WHO ALONG  
21     WITH DETECTIVE GEARY IS IN CHARGE OF THIS PARTICULAR MURDER  
22     CASE, IS HE NOT?  
23          A     YES.  
24          Q     DID YOU GO SEE HIM?  
25          A     YES, I DID.

1 Q IS THAT WHEN YOU GAVE THE STATEMENT WHICH IS  
2 DATED DECEMBER THE 7TH AT 12:20 IN THE MORNING?

3 A YES.

4 Q THIS IS 20 MINUTES AFTER MIDNIGHT OF THE 6TH?

5 A YES.

6 Q THE DAY THAT YOU ARE TELLING BERNI, AVANTS,  
7 HILLIARD, AND THEN LEVOS?

8 A YES.

9 Q WERE YOU EVER THE -- DID ANY OF THEM, ALL OF THE  
10 INDIVIDUALS WE HAVE NAMED, BERNI, AVANTS, HILLIARD, LEVOS,  
11 DID ANY OF THEM EVER REQUEST OF YOU TO BECOME THEIR AGENT AND  
12 GO TRY TO ELICIT INFORMATION FROM DALE FLANAGAN?

13 A NO.

14 Q YOU DID IT ALL ON YOUR OWN?

15 A ALL ON MY OWN.

16 Q YOU TOLD MR. PIKE ON CROSS-EXAMINATION THAT YOU  
17 HAD NOT TALKED TO TOM AKERS REGARDING THE REWARD AND HE READ  
18 TO YOU THIS QUESTION AND ANSWER.

19 "DID YOU EVER DISCUSS WITH MR. AKERS OR ANYONE  
20 ELSE THE POSSIBILITY OF RECEIVING A \$2,000 REWARD FOR  
21 INFORMATION YOU MIGHT HAVE WITH RESPECT TO THE KILLING OF MR.  
22 AND MRS. GORDON?" AND THERE YOU ANSWERED, "YES."

23 AND THAT IS TRUE, ISN'T IT?

24 A YES, BUT I THOUGHT HE MEANT BEFORE THEY HAD BEEN  
25 ARRESTED.

1 Q WELL, HE DIDN'T READ THE REST OF YOUR ANSWER TO  
2 YOU. YOU SAID, "ISN'T IT TRUE, YES. AFTER THEY WERE  
3 ARRESTED, AFTER THE BOYS WERE ARRESTED, YES."

4 A THAT'S TRUE.

5 Q THAT IS WHEN YOU SPOKE WITH TOM AKERS?

6 A YES, ON THE PHONE.

7 Q AND THE NEXT QUESTION, AS A MATTER OF FACT, SAID  
8 "SO YOU WERE AWARE OF THE \$2,000 REWARD; IS THAT RIGHT?" AND  
9 WASN'T YOUR ANSWER, "NOT UNTIL AFTER I MADE MY STATEMENT. I  
10 WASN'T AWARE OF IT."

11 A THAT'S TRUE.

12 Q SO IS IT YOUR TESTIMONY THAT YOU DID SPEAK WITH  
13 MR. AKERS ABOUT THE REWARD BUT SOMETIME AFTER YOU HAD GIVEN  
14 THE STATEMENT TO THE POLICE, IN FACT, SOMETIME AFTER HE WAS  
15 ARRESTED AND PUT IN JAIL?

16 A YES.

17 Q AND BY THAT TIME YOU WERE AWARE OF THE REWARD?

18 A YES.

19 Q NOW, AFTER OBTAINING THE INFORMATION FROM DALE  
20 FLANAGAN ON YOUR OWN, AND NOT BEING AN AGENT OF THE LAS VEGAS  
21 METROPOLITAN POLICE DEPARTMENT --

22 MR. POSIN: YOUR HONOR PLEASE, THAT IS A  
23 GRATUITOUS CONCLUSION IN THAT QUESTION.

24 MR. SEATON: I AM JUST TRYING TO SET THE TIMING.

25 MR. PIKE: COMMENTING ON THE EVIDENCE.



1 THE COURT: LET'S REPHRASE IT.

2 MR. SEATON: OKAY.

3 BY MR. SEATON:

4 Q SO WE CAN GET THE TIMING DOWN. IT'S TRUE, ISN'T  
5 IT, THAT YOU GAVE YOUR FIRST AND ONLY STATEMENT TO THE POLICE  
6 ON THE 7TH OF DECEMBER AT 12:20 A.M.?

7 A YES.

8 Q AND WAS IT SOMETIME AFTER THAT THAT YOU FIRST  
9 LEARNED THAT YOU WOULD BE ELIGIBLE FOR REWARD MONEY THROUGH  
10 SECRET WITNESS?

11 A YES, APPROXIMATELY ABOUT AN HOUR LATER.

12 Q ABOUT AN HOUR AFTER?

13 A YES.

14 Q WHO TOLD THAT YOU?

15 A DETECTIVE LEVOS.

16 Q WAS DETECTIVE GEARY ALSO PRESENT?

17 A YES.

18 Q DO YOU KNOW IF YOU ARE GETTING THE \$2,000 REWARD  
19 MONEY FOR TESTIFYING OR IF YOU ARE GETTING IT FOR HAVING  
20 HELPED SOLVE THIS MURDER CASE?

21 A YES. IT WAS FOR HELPING SOLVE THE MURDER.  
22 THAT'S ALL. AND I HAVEN'T GOTTEN IT YET.

23 MR. SEATON: I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. IS THERE ANYTHING  
25 FURTHER, COUNSEL?

1 MR. PIKE: I WAS LOOKING, I AM SORRY.

2 THE COURT: ALL RIGHT.

3 MR. SMITH: I DON'T HAVE ANY QUESTIONS.

4 MR. HANDFUSS: JUST ONE QUESTION

5  
6 RECROSS-EXAMINATION

7 BY MR. HANDFUSS:

8 Q MISS SALDANA, THE ONLY REASON I AM ASKING YOU  
9 THIS, THIS IS BROUGHT OUT BY OTHER COUNSEL. YOU NEVER SAW  
10 ROY MCDOWELL HAVE ANYTHING TO DO WITH ANY CULT OR OCCULT OR  
11 ANYTHING LIKE THAT, DID YOU?

12 MR. SEATON: OUT OF THE SCOPE. LET HER ANSWER.

13 BY MR. HANDFUSS:

14 Q YOU NEVER SAW ROY IN A COVEN OR ANYTHING?

15 A I NEVER SAW ANYBODY OF THESE IN A COVEN. THEY  
16 HAVE ALL TOLD ME THAT THEY WERE EXCEPT FOR ROY.

17 MR. HANDFUSS: I HAVE NO FURTHER QUESTIONS.

18 THE COURT: ALL RIGHT.

19 MR. SMITH: I HAVE A QUESTION.

20 THE COURT: GO AHEAD.

21  
22 RECROSS-EXAMINATION

23 BY MR. SMITH:

24 Q IS IT YOUR TESTIMONY THAT JOHN LUCKETT TOLD YOU  
25 HE WAS INVOLVED IN A COVEN?

1           A     YES. HE'S BEEN DRAWING PICTURES. I HAVE SEEN  
2 IT. HE WEARS THE --

3           Q     JOHN LUCKETT?

4           A     YES.

5           Q     DO YOU RECALL ME ASKING YOU IN SOME DETAIL ABOUT  
6 THIS AT THE EVIDENTIARY HEARING?

7           A     ABOUT HIM BEING IN THE OCCULT?

8           Q     YES.

9           A     I DON'T REMEMBER BUT --

10          Q     LET ME SEE IF I CAN REFRESH YOUR MEMORY ON THAT.  
11 AND I BEG THE COURT'S INDULGENCE?

12               MR. SEATON: WHAT PAGE DOES YOUR CROSS START ON?

13               MR. SMITH: 95. COUNSEL, I AM AT PAGE 98. MAY I  
14 APPROACH?

15               THE COURT: YES.

16 BY MR. SMITH:

17           Q     MISS SALDANA, READ 98 STARTING AT LINE 18,  
18 CARRYING OVER TO PAGE 99, AND ENDING AT PAGE 100 AT LINE SIX.

19           A     STARTING WHERE?

20           Q     LINE 17 ON PAGE 98 AND THROUGH THE END OF YOUR  
21 TESTIMONY ON PAGE 100.

22               HAVE YOU HAD ENOUGH TIME TO READ IT AND THINK  
23 ABOUT IT BEFORE I ASK YOU THE NEXT QUESTION?

24           A     UH-HUH, YES.

25           Q     GOOD. I WOULD LIKE TO READ THIS TESTIMONY AND

1 THEN WITH COUNSEL AND COURT'S PERMISSION I WILL ASK YOU TO  
2 EXPLAIN HOW YOU CAN JUSTIFY YOUR LAST ANSWER IN LIGHT OF THIS  
3 TESTIMONY.

4 MY QUESTION AT THE EVIDENTIARY HEARING ON  
5 SEPTEMBER THE 24TH.

6 QUESTION, "NOW, MOVING ONTO ANOTHER MATTER. DID  
7 YOU EVER HAVE A CONVERSATION WITH THE NEWS REPORTER  
8 CONCERNING OCCULT ACTIVITIES OR SATANIC OR BLACK MAGIC  
9 ACTIVITIES PURPORTEDLY ENGAGED IN BY ANY OF THE  
10 CODEFENDANTS?"

11 YOUR ANSWER IS, "YES."

12 QUESTION, "DO YOU HAVE ANY PERSONAL KNOWLEDGE  
13 THAT IT IS BASED ON YOUR OWN OBSERVATIONS THAT ANY OF THESE  
14 CODEFENDANTS WERE INVOLVED IN ANY TYPE OF BLACK MAGIC OR  
15 SATANIC ACTIVITIES?"

16 YOUR ANSWER IS, "YES."

17 QUESTION "AND CAN YOU TELL US ABOUT WHAT YOU  
18 OBSERVED?"

19 ANSWER, "PENTAGRAMS. THEY WERE INTO PENTAGRAMS."

20 QUESTION, "IT'S TRUE, IS IT NOT, THAT YOU NEVER  
21 SAW YOURSELF JOHNNY RAY LUCKETT EVER ENGAGE IN ANY TYPE OF  
22 BLACK MAGIC OR OCCULT ACTIVITY; ISN'T THAT TRUE?"

23 YOUR ANSWER, "I NEVER SEEN ANY OF THEM ENGAGE IN  
24 IT. I HAVE ONLY SEEN WHAT THEY HAVE OWNED AMONG THEM,  
25 PERSONAL ITEMS."

1 QUESTION, "YOU HAVE ONLY SEEN ESSENTIALLY  
2 PARAPHANALIA AT RANDY MOORE'S HOUSE AND DALE FLANAGAN'S  
3 HOUSE; ISN'T THAT TRUE?"

4 ANSWER, "YES. BECAUSE THEY WOULDN'T DISCUSS IT  
5 WITH ME WHAT THEY DO."

6 QUESTION, "SO THEN YOU CANNOT SAY OF YOUR OWN  
7 PERSONAL KNOWLEDGE THAT JOHN RAY LUCKETT HAS EVER BEEN  
8 PERSONALLY INVOLVED IN ANY TYPE OF THAT ACTIVITY?"

9 ANSWER, "NO I CAN'T."

10 QUESTION, "HE CERTAINLY NEVER TOLD YOU THAT HE  
11 WAS, DID HE?"

12 ANSWER, "NOPE."

13 QUESTION, "NOW, DID RANDY EVER TELL YOU THAT HE  
14 WAS?"

15 ANSWER, "DALE HAD TOLD ME THAT RANDY WAS, YES."

16 QUESTION, "DID RANDY EVER TELL YOU THAT HE WAS?"

17 ANSWER, "NOT HIMSELF, NO."

18 NOW, IT'S TRUE, IS IT NOT, THAT YOU DID OBSERVE  
19 CERTAIN PARAPHERNALIA AT RANDY AND DALE'S HOUSE, RIGHT?

20 A YES.

21 Q AND YOU ARE AWARE THAT JOHN LUCKETT HAPPENED TO  
22 LIVE FOR A PERIOD OF TIME AT RANDY MOORE'S, RIGHT?

23 A YES.

24 Q YOU NEVER SAW HIM AT DALE FLANAGAN'S TRAILER  
25 EVER, DID YOU?

1           A     NO.

2           Q     YOU NEVER SAW HIM ENGAGED IN USING PARAPHERNALIA  
3 OR TALKING ABOUT THIS ACTIVITY OR ANYTHING LIKE THAT, DID  
4 YOU?

5           A     I HAVE SEEN HIM DRAW PICTURES. HE HAS WORN  
6 EARRINGS WITH THE GRIM RIPPER.

7           Q     WHY DIDN'T YOU TELL US ABOUT THAT?

8           A     BECAUSE I JUST REMEMBERED.

9           Q     YOU JUST REMEMBERED. THAT IS A BALDFACED LIE,  
10 ISN'T IT, MISS SALDANA?

11          A     NO, IT'S NOT.

12                 MR. SEATON: THAT IS ARGUMENTATIVE, YOUR HONOR.  
13 IT COULD BE WORDED A LITTLE DIFFERENTLY.

14                 THE COURT: I AGREE.

15 BY MR. SMITH:

16          Q     WHY DIDN'T YOU TELL US ABOUT IT EARLIER?

17          A     BECAUSE I JUST REMEMBERED. WHAT ELSE CAN I TELL  
18 YOU.

19          Q     IT DIDN'T COME TO YOU WHEN I ASKED YOU ABOUT IT A  
20 LITTLE OVER A WEEK AGO?

21          A     NO.

22                 MR. SMITH: I WILL PASS.

23                 THE COURT: COUNSEL.

24                 MR. PIKE: YES, YOUR HONOR.

25         //

RECROSS-EXAMINATION

BY MR. PIKE:

Q YOU STILL KEPT IN TOUCH WITH TOM AKERS AFTER ALL THIS IS SAID AND DONE, HAVEN'T YOU?

A NO.

Q HE IS EMPLOYED BY YOUR UNCLE AT THE PRESENT TIME, ISN'T HE?

A I HAVE NO IDEA. I HEARD THAT HE WAS.

Q YOU HEARD THAT HE WAS. YOU HAVE MET WITH HIM AT LEAST ONCE AFTER HE GOT OUT OF JAIL; ISN'T THAT TRUE?

A YES. HE CAME OVER TO THE HOUSE STRICTLY TO GET PAID.

Q PARDON?

A STRICTLY TO GET PAID.

Q WERE YOU PAYING HIM?

A OF COURSE NOT. I WASN'T HIS EMPLOYER.

Q SOMEBODY FROM YOUR FAMILY WAS PAYING HIM?

A MY UNCLE WAS.

Q SO THEN YOU KNOW HE WAS EMPLOYED OR POSSIBLY STILL IS EMPLOYED BY YOUR UNCLE?

A I KNEW HE WAS EMPLOYED THEN OR HE WAS GOING TO BE OR SOMETHING, I DON'T KNOW, SO HE CAME OVER TO GET PAID AND HE LEFT.

Q NOW, THIS GUN THAT YOU SAY THAT YOU SAW DALE WITH, WHAT KIND OF A GUN WAS IT? WAS IT A PISTOL, AUTOMATIC OR

1 WHAT KIND?

2 A AUTOMATIC.

3 Q IT WAS AN AUTOMATIC?

4 A YES.

5 Q AND YOU KNOW THE DIFFERENCE BETWEEN A PISTOL OR A  
6 REVOLVER AND AN AUTOMATIC?

7 A YES.

8 Q AND THIS ONE YOU DEFINITELY CAN SAY WAS AN  
9 AUTOMATIC?

10 A YES.

11 Q DO YOU KNOW THE CALIBER THAT IT WAS?

12 A IT LOOKED LIKE A .22.

13 Q PARDON?

14 A IT LOOKED LIKE A .22.

15 Q HAVE YOU HANDLED A .22 AND A .25?

16 A I DON'T THINK I HAVE EVER HANDLED A .25.

17 Q HAVE YOU HANDLED .22'S BEFORE?

18 A YES.

19 Q YOU STATED ON MR. SEATON'S QUESTIONING THAT IT  
20 WAS YOUR IDEA AND YOUR IDEA ALONE TO GO AND HAVE SEX WITH TOM  
21 AKERS AND DALE FLANAGAN TO GET INFORMATION FROM THEM?

22 A YES.

23 Q DID YOU EVER EXPRESS TO ANYBODY YOUR DESIRE THAT  
24 YOU WANTED TO BE AN INVESTIGATOR AND THAT YOU DO THESE  
25 THINGS?



1           A     YES.  IN FACT, I HAD TOLD DALE MYSELF THAT I  
2     WANTED TO DO THAT AND HE STILL TOLD ME.

3           Q     YOU WANTED TO BE A PRIVATE INVESTIGATOR?

4           A     YES.

5           Q     OR INVESTIGATOR IN A CRIMINAL ACTIVITY?

6           A     YES.

7           Q     AND THIS YOU SAW AS YOUR BIG OPPORTUNITY TO DO  
8     THAT?

9           A     YES.

10          Q     NOW, YOU DIDN'T HAVE ANY QUALMS ABOUT HAVING SEX  
11     WITH TWO MEN AT THE SAME TIME TO GET INFORMATION?

12          A     NO, I DIDN'T.

13          Q     YOU INDICATED THAT YOU GAVE INTERVIEWS TO  
14     NEWSPAPERS.  HOW MUCH WERE YOU PAID FOR YOUR INTERVIEW, SAY,  
15     WITH THE REVIEW JOURNAL?

16          A     NOT A CENT, AND I DIDN'T ASK FOR A CENT.

17          Q     WITH THE SUN NEWSPAPER?

18          A     I DIDN'T ASK FOR A CENT AND HE WASN'T OFFERING A  
19     CENT.

20          Q     YOU NAME WAS PREDOMINANT IN ALL THOSE ARTICLES;  
21     ISN'T THAT TRUE?

22          A     I DON'T KNOW WHAT ARTICLES.  I HAVE BEEN GONE FOR  
23     A WHILE.  I ONLY KNOW OF ONE.

24          Q     YOU HAD NO QUALMS ABOUT RESIDING AND BEING  
25     INTIMATE WITH THESE TWO INDIVIDUALS EVEN THOUGH YOU FELT THAT

1 AT THAT TIME THAT YOU WERE POSSIBLY INVESTIGATING THEM ON A  
2 DOUBLE HOMICIDE?

3 A YES.

4 Q DO YOU RECALL MAKING A STATEMENT SIMILAR TO THIS  
5 OUTSIDE OF THE COURTROOM, "IT'S EASY TO GET ON THE STAND. I  
6 JUST THINK OF HOW MUCH I HATE THEM"?

7 A NO. I DIDN'T MAKE THAT STATEMENT.

8 Q YOU NEVER MADE THAT STATEMENT?

9 A NO, I DIDN'T.

10 MR. PIKE: I HAVE NO FURTHER QUESTIONS.

11 THE COURT: ANYTHING FURTHER?

12  
13 RECROSS-EXAMINATION

14 BY MR. POSIN:

15 Q THE STATEMENT JUST REFERRED TO, DID YOU MAKE THAT  
16 STATEMENT TO MEHLIA MOORE?

17 A WHO?

18 Q LEAH.

19 A NO. I STATED THAT I HAVE TO GO UP THERE WITH A  
20 LITTLE BIT OF HATE SO THAT I DON'T HAVE TO START CRYING OR  
21 WHATEVER WHEN I WATCH THESE GUYS OR WHEN I KNOW THAT THEY ARE  
22 STARING AT ME.

23 Q DIDN'T YOU SAY THAT IT WOULD BE VERY EASY FOR YOU  
24 TO TESTIFY BECAUSE YOU HATE THEM SO MUCH?

25 A NO, I DID NOT SAY, NO. IT IS NOT EASY AT ALL.

1 Q DID YOU COME THERE WITH A DEGREE OF HATE SO THAT  
2 YOU WOULD NOT CRY?

3 A YES.

4 Q AND ARE YOU ENJOYING YOUR TESTIMONY HERE TODAY?

5 A I AM NOT. I HATE IT.

6 Q YOU HATE?

7 A I HATE IT BECAUSE I HAVE TO LOOK AT THESE GUYS  
8 AND THEY ARE STARING AT ME SAYING -- I KNOW WHAT THEY ARE  
9 SAYING TO THEMSELVES. IT'S NOT VERY EASY AND I DON'T KNOW  
10 WHY YOU GET THAT IMPRESSION THAT IT IS.

11 Q IS THIS NOT CONSISTENT WITH THE ROLE THAT YOU  
12 PERCEIVE AS BEING A PRIVATE INVESTIGATOR?

13 A NO.

14 Q PRIVATE INVESTIGATORS COME TO COURT AND TESTIFY?

15 A I AM SURE THEY DO BUT THIS IS VERY DIFFICULT.  
16 IT'S VERY DIFFICULT. I HAVE GOT FOUR YOUNG MEN HERE WITH  
17 THEIR LIVES ON THE LINE AND I REALIZE HOW SERIOUS THIS IS AND  
18 I AM SCARED AS HECK.

19 ARE YOU SATISFIED WITH THAT ANSWER?

20 Q DID YOU NOT REALIZE HOW SERIOUS IT WAS WHEN YOU  
21 WERE PLAYING PRIVATE INVESTIGATOR?

22 A YES. I REALIZE HOW SERIOUS IT WAS.

23 Q WERE YOU ENJOYING IT AT THAT TIME?

24 A I WAS SCARED THEN.

25 Q BUT YOU WERE ENJOYING IT. YOU WERE DOING IT

1 VOLUNTARILY, NOT BECAUSE A POLICE OFFICER ASKED YOU TO DO IT?

2 A I WANTED THE EXPERIENCE, YES.

3 Q DID YOU NOT WANT THE EXPERIENCE OF TESTIFYING IN  
4 COURT?

5 A NO.

6 Q DID YOU NOT CONNECT THE TWO?

7 A YES, I DID.

8 Q YOU REALIZED THAT IF YOU WERE TO BE A PRIVATE  
9 INVESTIGATOR THAT YOU WOULD BE CALLED UPON TO TESTIFY AS THE  
10 RESULT OF YOUR INVESTIGATION?

11 A YES.

12 Q AND THAT IS WHAT YOU ARE DOING HERE NOW?

13 A YES.

14 Q AND YOU ARE TELLING US YOU ARE NOT ENJOYING IT?

15 A NO, I AM NOT ENJOYING IT.

16 MR. POSIN: I HAVE NO FURTHER QUESTIONS.

17 THE COURT: ALL RIGHT. ANYTHING?

18 MR. SEATON: NO REDIRECT.

19 THE COURT: MISS SALDANA, YOU ARE EXCUSED. I ASK  
20 YOU NOT TO DISCUSS YOUR TESTIMONY WITH THOSE OUTSIDE.

21 MR. HARMON: MIKE MORLOCK.

22  
23 MARK MORLOCK,  
24 WAS CALLED AS A WITNESS ON BEHALF OF THE STATE AND, HAVING  
25 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

**ORIGINAL**

FILED

CASE NO. C069269

FEB 14 1986

DEPARTMENT FOURTEEN

LORETTA B. HARRIS, CLERK  
BY *[Signature]* DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

REPORTER'S TRANSCRIPT

vs.

OF

DALE EDWARD FLANAGAN, RANDOLPH  
MOORE AKA SMITH, JOHNNY RAY  
LUCKETT AND ROY MCDOWELL,

JURY TRIAL

DEFENDANTS.

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE

**APPEARANCES:**

FOR THE STATE:

MELVYN T. HARMON, ESQUIRE

&  
DANIEL M. SEATON, ESQUIRE  
DEPUTIES DISTRICT ATTORNEY

FOR DEFENDANT FLANAGAN: RANDALL PIKE, ESQUIRE

FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE

FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE

FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE

Reported by: Sharon J. Thielman, Official Court Reporter

000356

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 10, 1985  
2

3 THE COURT: THE CONTINUATION OF CASE C69269,  
4 STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN  
5 LUCKETT AND ROY MCDOWELL.

6 THE RECORD WILL REFLECT THE PRESENCE OF EACH OF  
7 THE DEFENDANTS, THEIR COUNSEL; MR. PIKE REPRESENTING MR.  
8 FLANAGAN, MR. POSIN REPRESENTING MR. MOORE, MR. SMITH, MR.  
9 LUCKETT, MR. HANDFUSS REPRESENTING MR. MCDOWELL.

10 THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.  
11 HARMON AND MR. SEATON REPRESENTING THE STATE.

12 MISS CLERK, WILL YOU CALL THE ROLL OF THE JURY,  
13 PLEASE.

14 THE CLERK: YES, YOUR HONOR.

15 (ROLL CALL TAKEN.)

16 THE CLERK: ALL PRESENT, YOUR HONOR.

17 THE COURT: THANK YOU. THE RECORD WILL SO  
18 REFLECT. GOOD MORNING, LADIES AND GENTLEMEN. THE STATE MAY  
19 BEGIN THEIR CLOSING REMARKS.

20 MR. SEATON: THANK YOU, YOUR HONOR.

21 LADIES AND GENTLEMEN OF THE JURY, I GIVE TO YOU  
22 CARL AND COLLEEN GORDON. CARL GORDON, 58 YEARS OLD, AN AIR  
23 TRAFFIC CONTROLLER AND HIS WIFE COLLEEN, 57 YEARS OLD, A  
24 HOUSEWIFE.

25 CARL AND COLLEEN GORDON, WHO, AS FAR AS WE KNOW,

1 WERE HARD WORKING, PRODUCTIVE MEMBERS OF THIS SOCIETY. THEY  
2 HAD WORKED ALL THEIR LIVES FOR THE THINGS THAT THEY HELD DEAR  
3 TO THEM.

4 THEY WERE READY FOR RETIREMENT. THEY HAD A NICE  
5 HOUSE, THEY HAD AN R.V. TRAILER OUT IN THE BACK, PROBABLY FOR  
6 THEIR RETIREMENT YEARS.

7 THEY HAD A FAMILY. THEY HAD GRANDCHILDREN. AND  
8 I AM SURE AS THEY WENT TO BED ON NOVEMBER THE 5TH, 1984, AT  
9 THEIR HOME AT 5851 WASHBURN, THAT THEIR HEADS WERE FILLED  
10 WITH THE IDEALIC DREAMS THAT THEY HAD REALIZED AND WERE ABOUT  
11 TO REALIZE.

12 AND I GIVE TO YOU, ALSO, FOUR YOUNG MEN SITTING  
13 IN THIS COURTROOM. WE HAVE RANDOLPH MOORE, WE HAVE DALE  
14 FLANAGAN, WE HAVE ROY MCDOWELL AND WE HAVE JOHNNY RAY  
15 LUCKETT.

16 FOUR MEN CHARGED WITH THESE CRIMES. FOUR MEN WHO  
17 HAD AS THEIR FRIENDS GANG MEMBERS. THESE PEOPLE WERE SCHOOL  
18 DROPOUTS. THEY WERE DRUG USERS. THEY WERE DEVIL WORSHIPERS.

19 AND ON NOVEMBER THE 5TH, 1984, AS CARL AND  
20 COLLEEN GORDON WERE INDEED GOING TO BED, THESE FOUR AND  
21 OTHERS WERE HATCHING A DIABOLICAL PLOT, A DIABOLICAL PLOT TO  
22 KILL TWO GOOD HUMAN BEINGS WHO HAPPENED TO BE THE  
23 GRANDPARENTS OF ONE OF THESE MEN.

24 AND THEY WERE GOING TO DO IT FOR AN INHERITANCE,  
25 SO THEY COULD SPLIT THE PROCEEDS AND THAT, THAT IS WHAT THIS

1 CASE IS ALL ABOUT.

2 I AM GOING TO PROCEED IN MY ARGUMENT TO YOU ALONG  
3 THE FOLLOWING LINES SO THAT YOU CAN UNDERSTAND WHERE I AM  
4 GOING. YOU HEARD, AS YOU WERE SELECTED AS JURORS, ABOUT ALL  
5 OF THE BURDENS AND THE DUTIES AND THE RESPONSIBILITIES OF THE  
6 STATE WHICH APPLY NOT ONLY IN THIS CASE BUT IN ALL CASES.

7 AND THEY'RE OBVIOUSLY THINGS THAT ARE CREATED BY  
8 OUR SYSTEM OF JUSTICE AND OUR CONSTITUTION. THINGS THAT MR.  
9 HARMON AND I, AS WELL AS EVERY OTHER PROSECUTOR, WARMLY  
10 EMBRACE.

11 THESE ARE THE THINGS THAT MAKE OUR SYSTEM  
12 APPROPRIATE AND SO WE ARE NOW GOING TO -- I AM GOING TO  
13 ATTEMPT TO DISCUSS WITH YOU TWO THINGS ESSENTIALLY ABOUT THIS  
14 CASE IN BROAD TERMS.

15 ONE, WERE THERE CRIMES COMMITTED? THAT IS THE  
16 FIRST QUESTION THAT MUST BE ANSWERED IN EVERY CRIMINAL CASE.

17 AND, TWO, IF THERE WERE CRIMES COMMITTED, WHO DID  
18 THEM? AND, SO, I WILL TALK, FIRST OF ALL, ABOUT THE  
19 CONSPIRACY TO DO VARIOUS CRIMES, THE BURGLARY, THE ROBBERY  
20 AND THE MURDER AND WERE THEY COMMITTED.

21 AND, SECONDARILY, EACH ONE OF THE DEFENDANTS.  
22 DID THAT PERSON COMMIT CERTAIN CRIMES AND, IF SO, WHICH ONES  
23 AND WHAT PROOF DO WE HAVE TO SHOW ALL OF THOSE THINGS?

24 THAT WILL BE THE GENERAL DIRECTION OF MY ARGUMENT  
25 HERE THIS MORNING. AS TO THE CRIMES THAT WERE COMMITTED, THE



1 FIRST ONE WE SHOULD LOOK AT IS BURGLARY.

2 NOW, YOU WERE READ INSTRUCTIONS YESTERDAY. FIRST  
3 TIME YOU'VE EVER HEARD THOSE PARTICULAR INSTRUCTIONS AND I AM  
4 GOING TO SELECT SOME OF THEM. AND, REMEMBER, THAT ALL OF THEM  
5 ARE IMPORTANT.

6 BUT I AM GOING TO SELECT SOME OF THEM THAT TALK  
7 TO YOU IN TERMS OF THE PARTICULAR SUBJECT MATTER THAT I AM  
8 DISCUSSING AT THE TIME.

9 THE FIRST ONE IS INSTRUCTION NUMBER SEVEN. AND  
10 IT DEALS WITH THE DEFINITION OF THE CRIME OF BURGLARY. AND  
11 IT SAYS, IN ESSENCE, EVERY PERSON WHO ENTERS ANY HOUSE WITH  
12 THE INTENT TO COMMIT LARCENY, ROBBERY OR MURDER, IS GUILTY OF  
13 BURGLARY.

14 SO WE HAVE TO SHOW THAT THERE WAS AN ENTRY INTO A  
15 HOUSE AND WE HAVE TO SHOW THAT THE PERSONS ENTERING THE HOUSE  
16 HAD THE INTENT, THEY DESIRED TO ROB, TO STEAL, TO MURDER, ANY  
17 OF THOSE.

18 WELL, PRETTY EASILY DISPOSED OF. WE KNOW THAT  
19 THE HOUSE AT 5851 WASHBURN HAD A SIDE WINDOW WITH A LARGE  
20 SCREEN COVERING IT. WE HAVE THAT SCREEN HERE IN EVIDENCE. A  
21 KNIFE WAS USED TO CUT THAT SCREEN OPEN. EVERYONE TESTIFIED  
22 TO THAT.

23 THE SCREEN WAS RIPPED OPEN. A STICK, WHICH IS  
24 ALSO IN EVIDENCE HERE, WAS UTILIZED TO BREAK THAT WINDOW AND  
25 WE KNOW THAT PEOPLE WENT INTO THE HOUSE, PEOPLE WHO TOOK A

1 PURSE, PEOPLE WHO STARTED TO MOVE FURNITURE, PEOPLE WHO  
2 KILLED.

3 SO WE KNOW THAT THERE WAS AN ENTRY INTO THE  
4 HOUSE. THAT SATISFIES THE FIRST PROBLEM.

5 HOW ABOUT THE SECOND ONE? WAS THERE AN INTENT BY  
6 THESE PEOPLE TO STEAL, TO ROB, TO COMMIT MURDER?

7 WELL, YOU HEARD A LOT OF EVIDENCE ABOUT A LOT OF  
8 MEETINGS. AND I WON'T GO OVER ALL THOSE MEETINGS NOW. WE  
9 WILL TOUCH ON THAT A LITTLE BIT LATER.

10 BUT AT ALL OF THOSE MEETINGS TO ONE DEGREE OR  
11 ANOTHER -- AND THOSE ARE CONSPIRATORIAL MEETINGS. AT ALL OF  
12 THOSE MEETINGS, THE PLANS WERE DISCUSSED, THE PLANS TO GO IN  
13 AND TO BREAK THE WINDOW AND TO GET INSIDE AND TO MAKE IT LOOK  
14 LIKE A BURGLARY AND TAKE A PURSE AND TO KILL THE GRANDPARENTS  
15 THAT WERE IN THERE.

16 THAT IS EVIDENCE OF THE INDIVIDUAL'S INTENT. IT  
17 IS REALLY QUITE SIMPLE AND NO ONE SHOULD HAVE ANY DIFFICULTY,  
18 PROBABLY NOT EVEN THE DEFENSE ATTORNEYS, THAT A BURGLARY WAS  
19 INDEED COMMITTED.

20 NOW, WE LOOK AT A ROBBERY. THAT'S INSTRUCTION  
21 NUMBER 10, THE DEFINITION OF ROBBERY. AND I AM GOING TO  
22 PARAPHRASE A LOT OF THESE SO WE SAVE HAVING TO READ ALL OF  
23 THEM.

24 BUT A ROBBERY IS THE UNLAWFUL TAKING OF PERSONAL  
25 PROPERTY FROM SOMEBODY ELSE, EITHER DIRECTLY FROM THEM OR IN

1 THEIR PRESENCE, AGAINST THEIR WILL, BY MEANS OF FORCE OR  
2 VIOLENCE.

3 SO WE HAVE TO ASK OURSELVES DID ALL OF THOSE  
4 THINGS HAPPEN. BECAUSE IF THEY DIDN'T, THOSE ELEMENTS ARE  
5 NOT MET, THEN THE CRIME OF ROBBERY DID NOT OCCUR.

6 WELL, THERE WAS PERSONAL PROPERTY TAKEN FROM THAT  
7 HOUSE, A WALLET. THE PURSE WAS MOVED AND THE WALLET TAKEN  
8 OUT OF IT.

9 THERE WAS EVEN SOME -- I THINK JOHN LUCAS SAID, I  
10 THINK, A PURSE CAME BACK BUT CERTAINLY A WALLET WITH ITS  
11 CONTENTS WAS TAKEN FROM THAT HOUSE AND TAKEN TO THE APARTMENT  
12 AT 337 NORTH 13TH STREET.

13 NOW, THE QUESTION ARISES, WAS IT TAKEN FROM THE  
14 PERSON OF SOMEBODY? NO, IT WAS TAKEN FROM A CLOSET. BUT  
15 THAT DOESN'T MATTER ACCORDING TO THE ROBBERY INSTRUCTION,  
16 FROM THE PERSON OF ANOTHER OR IN HIS OR HER PRESENCE.

17 WELL, I SUBMIT TO YOU THAT CARL GORDON, UP IN THE  
18 UPSTAIRS BEDROOM, AND COLLEEN GORDON, IN THE DOWNSTAIRS BEDROOM,  
19 AT ONE TIME AND AT ANOTHER TIME BOTH LAYING WITHIN THEIR  
20 BEDROOM, ONE ON THE BED AND ONE ON THE FLOOR, CERTAINLY  
21 BRINGS US WITHIN THE AMBIT OF PRESENCE.

22 THE WALLET WAS IN THEIR PRESENCE. HOW ABOUT BY  
23 MEANS OF FORCE OR VIOLENCE? HOW MUCH MORE FORCE CAN YOU GET  
24 THAN TO KILL SOMEONE?

25 THE LAST SENTENCE IN THIS INSTRUCTION IS SUCH

1 TAKING CONSTITUTES ROBBERY WHENEVER IT APPEARS, THAT ALTHOUGH  
2 THE TAKING WAS FULLY COMPLETED WITHOUT THE KNOWLEDGE OF THE  
3 PERSON FROM WHOM TAKEN, SUCH KNOWLEDGE WAS PREVENTED BY THE  
4 USE OF FORCE OR FEAR.

5 IT CAN'T BE ARGUED ACCORDING TO THIS INSTRUCTION  
6 THAT, "WELL, THEY WERE DEAD, THEY DIDN'T KNOW THEY WERE BEING  
7 ROBBED, SO ROBBERY REALLY DOESN'T COUNT." THAT DOESN'T  
8 MATTER.

9 THE FORCE AND VIOLENCE THAT CAUSED THE ROBBERY TO  
10 BE ABLE TO TAKE PLACE JUST WENT A STEP FURTHER THAN THE  
11 TYPICAL STICKING A GUN INTO SOMEBODY'S RIBS AND SAYING, "GIVE  
12 ME YOUR WALLET." THAT IS THE TYPICAL ROBBERY AS WE KNOW IT.

13 IN THIS SITUATION, THEY NOT ONLY STUCK THE GUN  
14 INTO THEM BUT THEY KILLED THEM. AND THAT FORCE OR VIOLENCE  
15 PREVENTED THE INDIVIDUALS CARL AND COLLEEN GORDON FROM BEING  
16 AWARE THAT A ROBBERY WAS TAKING PLACE. AND THAT ROBBERY  
17 CHARGE, AS YOU WILL REMEMBER, HAS ADDED TO IT THE USE OF A  
18 DEADLY WEAPON.

19 THAT IS ANOTHER ELEMENT THAT WE MUST PROVE IN  
20 THIS PARTICULAR CASE. AND IT ALMOST GOES WITHOUT SAYING THAT  
21 IS MAYBE THE MOST OBVIOUS THING IN THIS CASE.

22 WE HAVE TWO OF THE GUNS THAT WERE USED HERE  
23 BEFORE YOU AND THE GUNS WERE CERTAINLY, BY THE INSTRUCTIONS,  
24 CONSIDERED TO BE DEADLY WEAPONS.

25 WE HAVE ALLEGED AGAINST THE FOUR DEFENDANTS THE

1 CRIME OF FIRST DEGREE MURDER. GETTING TO FIRST DEGREE MURDER  
2 IS A SEVERAL STEP PROCESS AS YOU WILL COME TO LEARN IT  
3 THROUGH THESE INSTRUCTIONS.

4 IT BEGINS WITH INSTRUCTION 15. THE INSTRUCTIONS  
5 THAT I AM GOING TO CITE TO YOU THAT ARE IMPORTANT IN THIS  
6 REGARD ARE 15, 16, 17 AND 18 AND 26.

7 LET'S START WITH INSTRUCTION NUMBER 15. MURDER  
8 IS THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE  
9 AFORETHOUGHT. ALL RIGHT. WE HAVE TO ESTABLISH, NUMBER ONE,  
10 THAT THERE WAS AN UNLAWFUL KILLING.

11 THIS CASE HAS BEEN A LITTLE UNUSUAL IN THAT YOU  
12 DID NOT HAVE THE OPPORTUNITY TO HEAR THE TESTIMONY OF DR.  
13 SHELDON GREEN, OUR CORONNER. AS YOU LEARNED THROUGH OTHER  
14 TESTIMONY, HE WAS OUT OF STATE AND UNAVAILABLE.

15 HOWEVER, AS EXHIBITS BEFORE YOU, WHICH YOU WILL  
16 HAVE AN OPPORTUNITY TO READ AND PERUSE AT YOUR LEISURE WHEN  
17 YOU ARE DELIBERATING, ARE THE AUTOPSY REPORTS.

18 THERE IS ONE AUTOPSY REPORT ON CARL GORDON AND  
19 THERE IS ANOTHER ON COLLEEN GORDON AND YOU WILL BE ABLE TO  
20 LOOK AT BOTH OF THOSE TO SEE WHAT THEY SAY.

21 IN ESSENCE, WHAT THEY SAY IS THAT MRS. GORDON WAS  
22 SHOT IN THE LEFT EAR, JUST THROUGH THE EAR AND IT GRAZED THE  
23 BACK OF HER SHOULDER AND THAT WAS NOT A FATAL WOUND.

24 SHE WAS ALSO SHOT TWICE IN THE RIGHT SIDE OF HER  
25 HEAD. ONE BULLET WAS ABOUT FIVE INCHES ABOVE HER EAR, HER

1 RIGHT EAR AND ABOUT TWO INCHES -- NO, INCH AND A QUARTER --  
2 IF I REMEMBER CORRECTLY, INCH AND A QUARTER TO THE REAR OF  
3 HER HEAD SO ONE HERE.

4 THE OTHER ONE WAS THIS AREA TWO INCHES ABOVE THE  
5 EAR AND ABOUT TWO AND A QUARTER INCHES IN FRONT OF THE EAR.  
6 BOTH OF THOSE SHOTS WERE FATAL.

7 BOTH OF THEM CAUSED THE DEATH OF COLLEEN GORDON  
8 AND AS SUCH WAS AN UNLAWFUL KILLING.

9 AS TO MR. GORDON, HE RECEIVED SEVEN SHOTS, TWO IN  
10 THE BACK, TWO IN THE UPPER RIGHT ARM, ONE IN THE ABDOMEN, ONE  
11 IN THE CHEST, THE LOWER LEFT CHEST AND ONE IN THE UPPER  
12 CHEST, RIGHT HERE.

13 AND THIS WAS THE FATAL ONE. THIS ONE WENT IN AND  
14 KILLED CARL GORDON. SO WE HAVE TWO UNLAWFUL KILLINGS.

15 THE NEXT QUESTION IN THIS INSTRUCTION TO  
16 DETERMINE WHETHER OR NOT MURDER OCCURRED IS WAS THERE MALICE  
17 AFORETHOUGHT AND THAT IS DEFINED FOR YOU IN INSTRUCTION  
18 NUMBER 16.

19 AND IT READS, MALICE AFORETHOUGHT, AS USED IN  
20 THE DEFINITION OF MURDER, MEANS THE INTENTIONAL KILLING OF  
21 ANOTHER HUMAN BEING WITHOUT LEGAL CAUSE, LEGAL EXCUSE OR WHAT  
22 THE LAW CONSIDERS ADEQUATE PROVACATION.

23 THE CONDITION OF MIND DESCRIBED AS MALICE  
24 AFORETHOUGHT MAY RISE NOT ALONE FROM ANGER, HATRED, REVENGE  
25 OR FROM PARTICULAR ILL WILL, SPITE OR GRUDGE TOWARD THE

1 PERSON KILLED. BUT MAY RESULT FROM ANY UNJUSTIFIABLE OR  
2 UNLAWFUL MOTIVE OR PURPOSE TO INJURE ANOTHER WHICH PROCEEDS  
3 FROM A HEART FATALLY BENT ON MISCHIEF OR WITH RECKLESS  
4 DISREGARD OF CONSEQUENCES AND SOCIAL DUTY.

5 IT TALKS ABOUT IT DOESN'T HAVE TO COME -- THE  
6 MALICE DOESN'T HAVE TO COME ALONE FROM ILL WILL, SPITE OR  
7 GRUDGE. AND I THINK THERE IS EVIDENCE HERE THAT DALE  
8 FLANAGAN THOUGHT THAT HIS GRANDPARENTS DIDN'T PARTICULARLY  
9 LIKE HIM.

10 THAT COULD BE ONE OF THE THINGS THAT CAUSES YOU  
11 TO BELIEVE THAT THERE IS MALICE AFORETHOUGHT IN THIS CASE.

12 IT ALSO TALKS, HOWEVER, BUT MAY RESULT FROM ANY  
13 UNJUSTIFIABLE OR UNLAWFUL MOTIVE.

14 WELL, I SUBMIT TO YOU, THAT THE MOTIVE OF WANTING  
15 TO GET THE MONEY FROM THE GRANDPARENTS THROUGH SOME MANNER  
16 OTHER THAN AN ALLOWANCE AND IN THIS WAY THAT THEY TRIED,  
17 THROUGH KILLING THEM AND GETTING IT IN THE WILL, FITS RIGHT  
18 INTO MALICE AFORETHOUGHT.

19 THERE IS TWO KINDS OF MALICE, EXPRESS MALICE AND  
20 APPLIED MALICE. INSTRUCTION NUMBER 17 TALKS TO YOU ABOUT  
21 THAT. EXPRESS MALICE IS THAT DELIBERATE INTENTION UNLAWFULLY  
22 TO TAKE AWAY THE LIFE OF A FELLOW CREATURE.

23 WELL, THAT SORT OF GOES TO PREMEDITATION. THEY  
24 INTENDED, THEY WANTED TO TAKE THE LIFE OF CARL AND COLLEEN  
25 GORDON. SO THERE IS EXPRESS MALICE IN THIS CASE.

1           APPLIED MALICE, LET ME READ THIS. MALICE SHALL BE  
2 APPLIED WHEN NO CONSIDERABLE PROVACATION APPEARS OR WHEN ALL  
3 THE CIRCUMSTANCES OF THE KILLING SHOW AN ABANDONED OR A  
4 MALIGNANT HEART.

5           IN A BARROOM FIGHT, FOR EXAMPLE, ONE PERSON HAS  
6 BEATEN UP THE OTHER PERSON AND THE SECOND PERSON KILLS.  
7 WELL, THERE MIGHT HAVE BEEN ADEQUATE PROVACATION WHICH WOULD  
8 ELIMINATE APPLIED MALICE.

9           THAT DIDN'T HAPPEN HERE. CARL AND COLLEEN GORDON  
10 ASK TO BE KILLED? THEY ASKED TO BE LEFT ALONE, TO HAVE A  
11 PEACEFUL LIFE.

12           THEY DIDN'T ASK THEIR GRANDSON DALE TO COME TO  
13 THEM AND KILL THEM SO THEY COULD GIVE HIM AND HIS  
14 DEVIL-WORSHIPING BUDDIES A PIECE OF THEIR ESTATE A LITTLE  
15 MORE QUICKLY.

16           AND THIS INSTRUCTION REALLY SAYS IT ALL, DOESN'T  
17 IT, WHEN IT SAYS OR WHEN THE CIRCUMSTANCES OF THE KILLING  
18 SHOW, AND IT SAYS, AN ABANDONED AND MALIGNANT HEART.

19           I WILL CHANGE THAT TO HEARTS. THAT IS WHAT WE  
20 HAVE HERE. THERE IS SO MUCH MALICE IN THIS CASE, IT REEKS OF  
21 IT IN THIS COURTROOM AND HAS FOR THE PAST MANY DAYS.

22           THERE CAN BE NO DOUBT THEN THERE WAS AN UNLAWFUL  
23 KILLING AND THAT IT WAS DONE WITH MALICE AFORETHOUGHT AND  
24 THAT GIVES US MURDER, PLAIN AND SIMPLE.

25           THE NEXT QUESTION IS, IS THAT PARTICULAR MURDER



1 FIRST DEGREE OR IS IT SECOND DEGREE?

2 INSTRUCTION NUMBER 18 TELLS YOU ABOUT THE  
3 DEFINITION OF FIRST DEGREE MURDER. IT SAYS MURDER OF THE  
4 FIRST DEGREE IS MURDER WHICH IS, NUMBER ONE, PERPETRATED BY  
5 MEANS OF ANY KIND OF WILFUL, DELIBERATE AND PREMEDITATED  
6 KILLING.

7 PREMEDITATION IS THE KEY HERE AS YOU WILL SEE  
8 LATER ON. SO ONE KIND OF MURDER OF THE FIRST DEGREE IS THAT  
9 WHICH IS PREMEDITATED. OR, NUMBER TWO, ANY KIND OF MURDER  
10 WHICH IS COMMITTED IN THE PERPETRATION OR ATTEMPTED  
11 PERPETRATION OF BURGLARY OR ROBBERY.

12 THIS IS WHAT IS KNOWN AS THE FELONY MURDER RULE.  
13 IF YOU COMMIT A MURDER, IF A MURDER IS COMMITTED DURING THE  
14 PERPETRATION, THE COMMISSION OF CERTAIN KIND OF FELONIES,  
15 THEN IT IS AUTOMATICALLY FIRST DEGREE MURDER.

16 LET'S TALK ABOUT PREMEDITATION, FIRST OF ALL.  
17 INSTRUCTION 18 GOES ON TO DISCUSS PREMEDITATION.  
18 PREMEDITATION IS DESIGN, A DETERMINATION TO KILL, DISTINCTLY  
19 FORMED IN THE MIND AT ANY MOMENT BEFORE OR AT THE TIME OF THE  
20 KILLING.

21 IT GOES ON TO TELL ABOUT HOW LONG YOU HAVE TO  
22 PREMEDITATE. MOST OF US WOULD THINK, "WELL, PREMEDITATION,  
23 LET'S SEE, THAT MEANS THAT THE PERSON DOING IT HAS TO HAVE  
24 SAT AND THOUGHT ABOUT IT FOR A WHILE."

25 WELL, WE HAVE THAT IN THIS CASE BUT LISTEN TO HOW

1 SHORT PREMEDITATION IS. PREMEDITATION NEED NOT BE FOR A DAY,  
2 AN HOUR OR EVEN A MINUTE. IT MAY BE AS INSTANTANEOUS AS  
3 SUCCESSIVE THOUGHTS OF THE MIND.

4 THAT FAST. IF A PERSON DECIDES THAT QUICKLY TO  
5 KILL AND THEY HADN'T BEEN THINKING ABOUT IT BEFORE AND THEY  
6 KILL THE MOMENT AFTER, IT'S PREMEDITATION AND IT'S FIRST  
7 DEGREE MURDER.

8 BUT LOOK WHAT WE HAVE IN THIS CASE. THE LONGEST  
9 TIME I CAN THINK OF IS THAT PEOPLE WERE SAYING THAT THERE WAS  
10 A MEETING A COUPLE OF MONTHS BEFORE. SO WE KNOW THAT AT  
11 LEAST FOR TWO MONTHS IN THESE CONSPIRATORIAL MEETINGS, THE  
12 PLANNING, THE DETAILING, THE PREMEDITATION OF THE KILLING WAS  
13 TAKING PLACE.

14 I COULD STOP RIGHT THERE AND ARGUE TO YOU NO MORE  
15 ABOUT WHETHER OR NOT THIS IS FIRST DEGREE MURDER AND IT'S  
16 FIRST DEGREE MURDER. THERE ISN'T A DEFENSE ATTORNEY IN HERE,  
17 I THINK, THAT WOULD GET UP AND TAKE ISSUE WITH THAT.

18 BUT I DON'T BELIEVE IN DOING THINGS IN AN  
19 INCOMPLETE FASHION. LET'S FIND ANOTHER WAY TO GET FIRST  
20 DEGREE MURDER.

21 THE FELONY MURDER RULE AND HERE IT IS. MURDER  
22 WHICH IS COMMITTED IN THE PERPETRATION OR ATTEMPTED  
23 PERPETRATION OF BURGLARY OR ROBBERY IS DEEMED TO BE MURDER OF  
24 THE FIRST DEGREE, WHETHER THE KILLING WAS INTENTIONAL,  
25 UNINTENTIONAL OR EVEN ACCIDENTAL.

1            THAT IS HOW STRONG THE FELONY MURDER RULE IS.  
2       WELL, WE ALREADY KNOW THAT A BURGLARY WAS COMMITTED, WE  
3       ALREADY KNOW THAT A ROBBERY WAS COMMITTED AND WE KNOW THAT  
4       THE MURDER WAS COMMITTED IN A CERTAIN COHESIVENESS WITH THOSE  
5       CRIMES SO THE MURDER WAS DEFINITELY COMMITTED IN THE  
6       PERPETRATION OF A ROBBERY AND OF A BURGLARY.

7            AND SO WE HAVE TWO WAYS TO GET TO FIRST DEGREE  
8       MURDER AND IN THIS CASE, IT IS JUST ABSOLUTELY CRYSTAL CLEAR  
9       THAT THAT HAPPENS.

10           AND THE ONE FINAL THING I SHOULD SAY ABOUT THE  
11       FELONY MURDER RULE IS WHAT IT DOES IS TO TAKE THE PLACE OF  
12       PREMEDITATION.

13           PREMEDITATION IS NECESSARY TO MAKE IT SERIOUS  
14       ENOUGH TO BECOME FIRST DEGREE MURDER, BECAUSE THE LAW WANTS  
15       THE INDIVIDUAL WHO IS CONVICTED OF FIRST DEGREE MURDER TO  
16       HAVE BEEN A BAD ENOUGH PERSON TO HAVE THOUGHT ABOUT IT AHEAD  
17       OF TIME IRRESPECTIVE OF HOW SHORT A TIME.

18           BUT TO HAVE THOUGHT ABOUT IT SO THEY COULD HAVE  
19       WITHDRAWN AND SAID, "NO, I DON'T WANT TO DO IT." IF THEY  
20       THOUGHT ABOUT IT AND DONE IT, IT IS BAD ENOUGH TO BE FIRST  
21       DEGREE MURDER.

22           FELONY MURDER RULE IS SAYING THE SAME THING. WE  
23       ARE NOT GOING TO LOOK FOR THE PREMEDITATION BECAUSE THE FACT  
24       THEY WERE DOING A BURGLARY AND ROBBERY AND HAD PLANNED TO DO  
25       THESE THINGS IS BAD ENOUGH TO TAKE THE PLACE OF THE

1       PREMEDITATION AND SO THAT IS THE REASON THEY DO IT THAT WAY.

2               AND JUST TO FINALIZE THIS FROM THE OTHER SIDE OF  
3       THE COIN. IF IT'S NOT MURDER OF THE FIRST DEGREE, IT IS  
4       MURDER IN THE SECOND DEGREE AND IT IS A VERY EASY  
5       INSTRUCTION.

6               MURDER IN THE SECOND DEGREE IS MURDER WITH MALICE  
7       AFORETHOUGHT BUT WITHOUT PREMEDITATION. AND ALL MURDER WHICH  
8       IS NOT MURDER OF THE FIRST DEGREE IS MURDER OF THE SECOND  
9       DEGREE.

10              SO I THINK THE CASE IS PRETTY CLEARLY MADE THAT  
11       THIS IS OBVIOUSLY A FIRST DEGREE MURDER CASE. AND, REMEMBER,  
12       AT THIS JUNCTURE WE ARE NOT TALKING ABOUT WHO COMMITTED  
13       CRIMES, BUT WERE CRIMES COMMITTED AND, IF SO, WHICH CRIMES.

14              NEXT QUESTION IS ABOUT CONSPIRACY AND LET ME GET  
15       THOSE INSTRUCTIONS FOR YOU. FIVE AND SIX. FIVE SAYS A  
16       CONSPIRACY IS AN AGREEMENT BETWEEN TWO OR MORE PERSONS TO  
17       COMMIT ANY CRIMINAL OR UNLAWFUL ACT. THAT IS EASY.

18              INSTRUCTION NUMBER SIX SAYS WHERE SEVERAL  
19       PARTIES JOIN TOGETHER IN A COMMON DESIGN TO COMMIT AN  
20       UNLAWFUL ACT, EACH IS CRIMINALLY RESPONSIBLE FOR THE ACTS OF  
21       HIS CONFERERATES COMMITTED IN FURTHERANCE OF THE COMMON  
22       DESIGN.

23              IN CONTEMPLATION OF THE LAW, THE ACT OF ONE IS  
24       THE ACT OF ALL. THOSE ARE SIGNIFICANT WORDS IN THIS CASE,  
25       HIGHLY, HIGHLY SIGNIFICANT WORDS.

1           LET'S THINK ABOUT THE ACT OF ONE IS THE ACT OF  
2 ALL, AND LET ME SEE IF I CAN GIVE YOU SOME EXAMPLES. DALE  
3 FLANAGAN WENT TO THE STORE AND BOUGHT A KNIFE. HE DID IT TO  
4 COVER UP THE FACT THAT THE POLICE OFFICERS HAD FOUND HIS  
5 KNIFE OUTSIDE THE WINDOW.

6           AND WE HAVE GOT IT IN HERE IN EVIDENCE AND IT WAS  
7 THE KNIFE THAT WAS USED TO START THE BURGLARY WHICH STARTED  
8 THE WHOLE CHAIN OF EVENTS TO KILL THE GORDONS.

9           THAT KNIFE IS HIGHLY SIGNIFICANT AND IT'S  
10 IMPORTANT TO HIM AND TO HIS CO-CONSPIRATORS THAT THAT KNIFE  
11 BE COVERED. AND SO HE WENT TO THE STORE WITH TOM AKERS AND  
12 HAD TOM AKERS BUY THE KNIFE FOR HIM AFTER HE SHOWED HIM WHICH  
13 KNIFE IT WAS.

14           NOW, JOHNNY RAY LUCKETT, ROY MCDOWELL, RANDY  
15 MOORE, THEY WEREN'T THERE. THEY DIDN'T BUY THAT KNIFE. THE  
16 ACT OF ONE IS THE ACT OF ALL. DALE FLANAGAN BUYING THAT  
17 KNIFE IS AS INCRIMINATING AGAINST THESE OTHER THREE COHORTS  
18 OF HIS AS IT IS AGAINST HIMSELF, EQUALLY INCRIMINATING.

19           JOHNNY RAY LUCKETT, JOHN LUCAS AND RANDY MOORE  
20 WENT OUT TO THE LAKE TO THROW THE RIFLES OUT. ROY MCDOWELL  
21 DIDN'T GO OUT THERE. THE ACT OF ONE IS THE ACT OF ALL. THAT  
22 WAS ROY MCDOWELL'S ACT. IT WAS AN ACT DONE IN FURTHERANCE OF  
23 THE CONSPIRACY.

24           DALE FLANAGAN MADE STATEMENTS TO ANGELA SALDANA.  
25 JOHNNY RAY LUCKETT DIDN'T MAKE ANY STATEMENTS TO ANGELA

1 SALDANA. THOSE STATEMENTS MADE BY DALE FLANAGAN TO ANGELA  
2 SALDANA ARE AS DAMAGING AND AS INCRIMINATING TO JOHNNY RAY  
3 LUCKETT OR ANY OF THE OTHER DEFENDANTS AS THEY ARE TO DALE  
4 FLANAGAN, BECAUSE THE ACT OF ONE, THE STATEMENT OF ONE IS  
5 THE ACT OR THE STATEMENT OF ALL.

6 WELL, REMEMBER, IN INSTRUCTION FIVE IT SAYS A  
7 CONSPIRACY IS AN AGREEMENT BETWEEN TWO OR MORE PERSONS. WAS  
8 THERE AN AGREEMENT? WELL, THERE WERE MANY MEETINGS. NOW, WE  
9 WILL TALK A LITTLE BIT ABOUT THOSE MEETINGS.

10 THE FURTHEST ONE AWAY, I CAN REMEMBER, IS A  
11 COUPLE OF MONTHS BEFORE THE INCIDENT OCCURRED ON NOVEMBER  
12 5TH. THAT WAS AT THE DOME HOUSE, RANDY'S DOME HOUSE OUT NEAR  
13 BLUE DIAMOND ROAD OR SOMEPLACE LIKE THAT.

14 THERE WAS AN OCTOBER MEETING AT RANDY MOORE'S  
15 HOUSE. THERE WAS A MEETING THAT RUSTY HAVENS TALKED ABOUT, I  
16 THINK, AND I AM GOING TO GET THESE CONFUSED BUT IT WAS A WEEK  
17 AND A HALF OR SO BEFORE THE KILLING.

18 THERE WAS THE NOVEMBER 5TH GET-TOGETHERS AND THAT  
19 IS INTERESTING. THERE WAS MORE THAN ONE CONSPIRATORIAL  
20 MEETING. THERE WAS EVEN A CONSPIRATORIAL TELEPHONE CALL,  
21 WHICH IS A MEETING, WHICH IS A PART OF THE AGREEMENT THAT WE  
22 HAVE TO SHOW.

23 REMEMBER, WHEN DALE FLANAGAN GOT ROY MCDOWELL'S  
24 PHONE NUMBER FROM RANDY MOORE AND HE CALLED ROY -- WELL, I  
25 WILL FINISH THIS THOUGHT AND GO BACK. I GOT AHEAD OF MYSELF.

1 HE CALLED ROY AND HE SAID, "DID YOU GET THE TOY?"  
2 NOW, COME ON, WHAT IS HE REFERRING TO? A TEDDY BEAR. TOY  
3 IS THE SAME DARN GUN THAT ROY MCDOWELL BROUGHT LATER ON THAT  
4 NIGHT. THAT IS AN AGREEMENT BETWEEN TWO OR MORE PERSONS. IT  
5 IS A PART OF A CONSPIRACY.

6 DON'T EVER BE MISLED THAT THE CONSPIRACY MEETS IN  
7 A BOARD ROOM AROUND A TABLE AND SOMEBODY GAVELS THE MEETING  
8 TO ORDER. IT IS DONE SNEAKY. IT'S DONE AS QUIETLY, SHROUDED  
9 IN SECRECY AS POSSIBLE AND IT ALWAYS DOESN'T HAVE THE SAME  
10 PEOPLE THERE.

11 WE ARE LUCKY WE ARE ABLE TO ARMCHAIR QUARTERBACK.  
12 WE CAN LOOK BACK AT THESE MEETINGS AND DETERMINE WHO THE  
13 BROAD CONSPIRACY ENCOMPASSES EVEN THOUGH WE KNOW IN THAT ONE  
14 MEETING IT WAS ONLY DALE FLANAGAN TALKING TO ROY MCDOWELL.

15 AND YET THE ACT OF ONE IS THE ACT OF ALL. SO  
16 IT'S PART OF YOUR CONSPIRACY, JOHNNY RAY LUCKETT, AND  
17 EVERYBODY ELSE SITTING DOWN THERE.

18 THERE WAS ALSO THE STATEMENT MADE, I THINK BY  
19 DALE FLANAGAN PRIOR TO THAT TELEPHONE CALL, THAT WHAT THEY  
20 WERE GOING TO DO HAD TO HAPPEN THIS WEEKEND. THEY HAD TO DO  
21 IT THIS WEEKEND. ALL BY ITSELF IN THIS CASE THAT MEANS  
22 NOTHING. THAT MEANS NOTHING.

23 IT'S LIKE HOLDING UP A PIECE OF A JIGSAW PUZZLE  
24 AND LOOKING AT IT AND TRYING TO DECIDE WHAT DOES THIS MEAN.  
25 WITH THE OVERALL PICTURE, YOU WOULD KNOW. BUT YOU KNOW

1 MORE THAN THAT. YOU HAVE GOT THE BOX THAT SHOWS THE WHOLE  
2 PICTURE OF THE JIGSAW PUZZLE.

3 AND IN RELATIONSHIP TO THAT BOX, AND AS YOU PUT  
4 THE PIECES OF PUZZLE TOGETHER, IT BECOMES ABUNDANTLY CLEAR  
5 WHAT HIS SAYING THAT "WE HAVE TO DO IT RIGHT AWAY" MEANS.

6 AND THEN MOST IMPORTANTLY ABOUT NOVEMBER 5TH  
7 IS THE MEETING THAT TOOK PLACE LATER THAT NIGHT WITH EVERYONE  
8 PRESENT. SO THERE WERE MANY, MANY MEETINGS.

9 WAS THERE AN AGREEMENT THAT TOOK PLACE IN THOSE  
10 MEETINGS? WELL, AGAIN, BY HINDSIGHT WE ARE ABLE TO LOOK  
11 BACK, TAKE EVERYBODY'S TESTIMONY IN AND DECIDE FOR OURSELVES  
12 WHAT THE AGREEMENT WAS.

13 WELL, IT'S PLAIN AND SIMPLE WHAT THE OVERRIDING  
14 TENOR OF THIS AGREEMENT WAS. THE AGREEMENT WAS THAT THIS  
15 GROUP OF PEOPLE WAS GOING TO GO OVER TO THE GORDONS' HOUSE  
16 AND THEY WERE GOING TO KILL THE GORDONS FOR THE INHERITANCE.

17 AND THEY WERE GOING TO GATHER TOGETHER GUNS IN  
18 ORDER TO DO THAT. AND THEY WERE GOING TO BREAK A WINDOW AND  
19 ENTER THROUGH THE SIDE WINDOW. REMEMBER, HOW IT EVOLVED.

20 "WELL, THEY KEEP THE BACK DOOR OPEN. WE CAN GO IN  
21 THAT WAY. THAT IS THE SIMPLE WAY." "NO," RANDY SAID, "THAT  
22 IS NOT A GOOD IDEA, DALE. IT DOESN'T LOOK LIKE A BURGLARY  
23 THEN. WE HAVE TO BREAK A WINDOW." THEN THEY CAME AROUND,  
24 "OKAY, WE WILL BREAK THE WINDOW THEN."

25 THEY WERE GOING TO GO IN, THEY WERE GOING TO



1 STEAL THINGS. THEY WERE GOING TO STEAL A MICROWAVE AND I  
2 DON'T EVEN REMEMBER WHAT ALL. AND THEY WERE GOING TO PUT IT  
3 IN A PICKUP TRUCK THAT WAS GOING TO BE THERE. AND THEY WERE  
4 GOING TO DRIVE THE PICKUP TRUCK OUT INTO THE CALIFORNIA  
5 DESERT AND HAVE IT BE DISCOVERED LATER ON.

6 AND DALE WAS GOING TO HAVE BEEN SHOT IN THE LEG  
7 BY RANDY. AND HE WAS GOING TO SAY THAT HE HAD BEEN OUT TO  
8 THE TRAILER, HE HEARD A COMMOTION, HE WENT OVER THERE. HERE  
9 WERE THE TWO BLACK GUYS COMING OUT, THEY HAD A DODGE CAR OR  
10 SOMETHING AND HE GOT SHOT BY THEM.

11 THESE AREN'T UNSOPHISTICATED BOYS THAT WE ARE  
12 DEALING WITH IN THIS COURTROOM. THAT WORD CONSPIRATOR STARTS  
13 TO TAKE ON NEW MEANING WHEN YOU REALIZE THE CARE WITH WHICH,  
14 AND OVER THE LENGTH OF TIME, THAT THEY NURTURED AND DEVELOPED  
15 THIS AGREEMENT.

16 AGREEMENT. IT SOUNDS LIKE SOMETHING YOU WOULD  
17 SEE IN A LEGAL DOCUMENT. IT WAS A DAMNED CONSPIRACY TO KILL  
18 TWO PEOPLE. THAT'S WHAT IT WAS. I DON'T LIKE THE WORD  
19 AGREEMENT IN THIS PARTICULAR CASE.

20 AND THE CLINCHER OF THAT AGREEMENT IS THAT THEY  
21 WERE ALL TO BE PAID WELL. ISN'T THAT SOMETHING. HE THOUGHT  
22 HE WAS GOING TO GET A \$200,000 POLICY AND IT DIDN'T EVEN EXIST.  
23 HE THOUGHT HE WAS GOING TO GET THE HOUSE. HE THOUGHT HE WAS  
24 GOING TO GET THE RV, WHATEVER OTHER THINGS WERE AVAILABLE FOR  
25 HIS GREEDY LITTLE PURPOSES.

1           AND HE IS NOT SO GREEDY. HE WAS GOING TO SHARE  
2 IT WITH ALL OF HIS FRIENDS. PROBABLY DIVVY IT UP IN THE  
3 MIDDLE OF A COVEN PROCEEDING OR SOMETHING.

4           THAT'S THE AGREEMENT. THAT'S THE CONSPIRACY.  
5 THAT'S THE DARK AND EVIL PLAN THAT WAS CREATED OVER A PERIOD  
6 OF TIME AND PUT INTO ACTION AND FINALIZED ON THAT FATEFUL  
7 NIGHT.

8           AND THERE WERE MANY PEOPLE WHO TESTIFIED ABOUT  
9 THAT. THIS ISN'T SOMETHING I AM JUST DREAMING UP OR TRYING  
10 TO RELY ON ONE OF THE STATE'S WITNESSES TO CONVINCE THE 12 OF  
11 YOU WHO WILL DELIBERATE THIS CASE.

12           A LOT OF PEOPLE SAID IT. THERE WERE FOUR PEOPLE  
13 WHO WERE PRESENT WHEN THESE THINGS WERE TALKED ABOUT, WHO SAT  
14 ON THAT STAND RIGHT THERE AND THEY TOLD YOU THAT THEY HEARD  
15 THESE THINGS.

16           RUSTY HAVENS WHO WAS GOING TO BE ONE OF THEM, BUT  
17 FOR THE GRACE OF GOD HE IS SITTING AT THAT TABLE. FOR SOME  
18 REASON, THEY DIDN'T GET AROUND OF HIM AND BRING HIM BACK INTO  
19 THIS THING.

20           TOM AKERS, JOHN LUCAS AND ONE OF OUR DEFENDANTS,  
21 JOHNNY RAY LUCKETT. THEY ALL SAT ON THE STAND AND THEY ALL  
22 TOLD YOU THE SAME STORY.

23           THIS IS PROBABLY A GOOD TIME -- LET ME GO ONE  
24 STEP FURTHER AND THEN I WILL SAY THAT. THERE WAS ONE OTHER  
25 PERSON WHO WASN'T PRESENT WHO TOOK THE STAND AND TOLD YOU.

1            THAT WAS ANGELA SALDANA. AND SHE TOLD YOU WHAT  
2        HAPPENED IN THE LAST CONSPIRATORIAL MEETING THROUGH WHAT  
3        SHE HAD HEARD FROM DALE FLANAGAN IN THE TRAILER THAT DAY.  
4        DALE HAD TOLD HER THE WHOLE DEAL AND SHE WASN'T THERE.

5            SHE JUST HEARD THIS SECONDHAND, WHAT IS TYPICALLY  
6        HEARSAY BUT ALLOWED IN BECAUSE IT IS A CO-CONSPIRATOR  
7        STATEMENT. IT IS THE ACT OF ONE THAT BINDS ALL OR THE  
8        STATEMENT OF ONE WHICH BINDS ALL.

9            SO WE HAVE FOUR PEOPLE WHO WERE THERE AND HEARD  
10       THE WORDS SPOKEN. ACTUALLY, A FIFTH, DALE FLANAGAN, AS TOLD  
11       THROUGH THE SIXTH, ANGELA SALDANA.

12           NOW, THIS IS WHERE I WANT TO THROW IN A LITTLE  
13       BIT OF INTERJECTION. I WANT TO TALK ABOUT PEOPLE AND  
14       PERCEPTIONS AND CREDIBILITY AND BELIEVABILITY AND THERE IS AN  
15       INSTRUCTION AND YOU CAN REST ASSURED THAT THE DEFENSE  
16       ATTORNEYS ARE GOING TO STAND BEFORE YOU AND THEY ARE GOING TO  
17       SLANDER TO THE BEST OF THEIR ABILITY EVERY ONE OF THOSE  
18       WITNESSES WHO TESTIFIED AGAINST THEIR INTERESTS.

19           THAT WILL BE THE INTERESTING THING HOW WE  
20       PERCEIVED THINGS DIFFERENTLY. ONE OF THEM WILL SAY, "AKERS  
21       IS NO GOOD BECAUSE HE HURTS MY CLIENT." THE OTHER ONE WILL  
22       SAY, "AKERS IS THE PARAGON OF TRUTH AND YOU MUST BELIEVE  
23       HIM."

24           WELL, I AM NOT GOING TO BE JUDGMENTAL.  
25       FORTUNATELY OR UNFORTUNATELY, THAT IS YOUR JOB ULTIMATELY. I

1 WILL SAY TO YOU THAT WE HAVE ALL SAT IN THE SAME COURTROOM  
2 AND WE HAVE ALL PERCEIVED THE SAME THINGS, PERHAPS IN  
3 DIFFERENT WAYS, BUT WE HAVE WATCHED THE SAME THINGS HAPPEN ON  
4 THAT STAND.

5 AND THERE ARE PEOPLE WHO HAVE TAKEN A SACRED OATH  
6 AND LIED OR THEY ARE TERRIBLY MISTAKEN BECAUSE THERE IS A LOT  
7 OF DIFFERENT TESTIMONY IN THIS CASE.

8 AND YOU MIGHT NOT HAVE LIKED THINGS THAT YOU  
9 HEARD ABOUT SOME OF THE PEOPLE AND YOU THOUGHT, "BOY, ANYBODY  
10 WHO IS THAT KIND OF A PERSON PROBABLY WOULDN'T TELL THE  
11 TRUTH," AND MAYBE YOU WOULD BE RIGHT IF THAT WERE THE ONLY  
12 PERSON WHO TOOK THE STAND.

13 BUT THE POINT I WANT TO MAKE TO YOU IS THAT FOR  
14 ALL THE SLANDER THAT WILL BE THROWN OUT AT VARIOUS WITNESSES,  
15 REMEMBER ONE THING, THEY ARE CONSISTENT IN MANY RESPECTS.

16 THIS AGREEMENT IS ONE OF THEM. THEY ALL SAID THE  
17 SAME THING. DID ALL OF THESE PEOPLE MEET DOWN THE HALLWAY  
18 HERE IN ANOTHER CONSPIRACY AND SAY, "LOOK, WE GOT TO GET  
19 THESE GUYS AND SO LET'S GET TOGETHER AND MAKE OUR STORIES  
20 STRAIGHT"?

21 THAT WAS NEVER BROUGHT OUT. THEY ALL TOLD THE  
22 SAME THING AND FOUR OF THEM WERE THERE. AND THE LAST POINT  
23 TO BE MADE ABOUT WHETHER OR NOT CONSPIRACIES OCCURRED IS THAT  
24 THE CONSPIRACIES, THE AGREEMENTS, THE MEETINGS GO  
25 UNCONTRADICTED.

1 NO ONE HAS TAKEN THE STAND IN THIS CASE THAT I  
2 REMEMBER, NO ONE HAS TAKEN THE STAND AND SAID, "WAIT A  
3 MINUTE. THOSE PEOPLE ARE LYING. THOSE MEETINGS DIDN'T TAKE  
4 PLACE."

5 MR. POSIN: YOUR HONOR, I HATE TO INTERRUPT  
6 COUNSEL'S OPENING ARGUMENT BUT I THINK WE ARE GOING AT THIS  
7 POINT IN TIME TO THE COURT'S DIRECTION, TO JURY INSTRUCTIONS,  
8 OPENING INSTRUCTIONS REGARDING THE OBLIGATION OF DEFENDANTS  
9 WHO TESTIFY ON THEIR OWN BEHALF.

10 MR. SEATON: COUNSEL SAID THAT, I DIDN'T. THERE  
11 HAVE BEEN MANY WITNESSES WHO TESTIFIED ABOUT BEING AT THE  
12 MEETINGS.

13 THE COURT: I DON'T THINK MR. SEATON DID NOT  
14 INDICATE THE DEFENDANTS DID NOT TAKE THE STAND.

15 MR. PIKE: I JOIN IN THE MOTION.

16 THE COURT: UNDERSTAND.

17 MR. SEATON: THERE IS NO DOUBT IN THIS CASE, AND  
18 I HAVE PROBABLY TAKEN TOO LONG TO CONVINCE YOU, THAT ALL OF  
19 THE CRIMES CHARGED IN THIS CASE TOOK PLACE, ROBBERY,  
20 BURGLARY, MURDER AND CONSPIRACY TO COMMIT ALL THOSE CRIMES.

21 THERE JUST ISN'T THE SLIGHTEST SHREAD OF A DOUBT.  
22 YOU DON'T EVEN TALK ABOUT BEYOND A REASONABLE DOUBT IN THAT  
23 SITUATION.

24 THE MAJOR QUESTION THAT THE DEFENSE ATTORNEYS ARE  
25 GOING TO WANT TO QUIBBLE WITH YOU ABOUT IS WHO'S GUILTY. IT

1 COMES DOWN TO A WHODUNIT.

2 WELL, BEFORE WE GET INTO THE SPECIFICS OF EACH  
3 ONE OF THESE DEFENDANTS, LET ME TALK TO YOU FOR A MOMENT  
4 ABOUT THEORIES OF CRIMINAL RESPONSIBILITY.

5 IF SOMEONE GOES OUT AND COMMITS A CRIME, THAT'S  
6 EASY. THEY DID IT. THEY ARE THE ACTOR AND IT IS EASY TO  
7 FIND THEM GUILTY.

8 BUT THERE ARE OTHER WAYS THAT SOMETIMES PEOPLE  
9 DON'T THINK ABOUT AND WE CAN FIND THAT IN INSTRUCTIONS 31 AND  
10 32. LET'S DIRECT OUR ATTENTION TO THOSE FOR A MINUTE.

11 LET ME READ PART OF 31. EVERY PERSON CONCERNED  
12 IN THE COMMISSION OF A CRIME WHETHER HE, ONE, DIRECTLY  
13 COMMITS THE ACT CONSTITUTING THE OFFENSE. THAT IS WHAT I WAS  
14 JUST TALKING ABOUT, THE PERSON WHO ACTUALLY DOES THE CRIME.

15 OR, NUMBER TWO, AIDS AND ABETS IN ITS COMMISSION.  
16 WHAT DOES AID AND ABET MEAN? INSTRUCTION NUMBER 32, TO AID  
17 AND ABET IS TO ASSIST OR SUPPORT THE EFFORTS OF ANOTHER IN  
18 THE COMMISSION OF A CRIME.

19 THESE ARE REAL SIMPLISTIC. YOU DON'T NEED LEGAL  
20 INSTRUCTIONS TO KNOW THIS. IF I COMMIT A CRIME AND YOU HELP  
21 ME, WE ARE BOTH GUILTY. THAT IS WHAT THE LAW SAYS.

22 AND, INDEPENDENTLY. THE INSTRUCTION GOES ON TO  
23 SAY YOU CAN DO EITHER ONE OF THOSE TWO THINGS AND BE GUILTY  
24 OF THE CRIME WHETHER PRESENT OR ABSENT. YOU DON'T NEED TO BE  
25 THERE.

1           AND IT GOES ON TO SAY ANY OF THE PEOPLE WHO DO  
2   THAT ARE PRINCIPLES AND SHALL BE PROCEEDED AGAINST AND  
3   PUNISHED AS SUCH. SO THE PERSON WHO DOES THE ACT IS NO MORE,  
4   NO LESS GUILTY THAN THE PERSON WHO ASSISTS OR SUPPORTS THE  
5   PERSON IN COMMITTING THAT CRIME.

6           LET'S THINK OF SOME EXAMPLES. ANYONE WHO ENTERED  
7   THE HOUSE, WHO WALKED THROUGH THE WINDOW, HAVING THE INTENT  
8   IN THEIR MIND TO ROB OR TO KILL IS THE PERSON WHO COMMITTED  
9   THE BURGLARY AND THEY ARE GUILTY UNDER NUMBER ONE. THEY  
10   DIRECTLY COMMITTED THE ACT.

11           ANYONE WHO PULLED THE TRIGGER AND WHOSE BULLET  
12   KILLED EITHER CARL OR COLLEEN GORDON IS THE PERSON WHO  
13   COMMITTED THE ACT AND IS GUILTY UNDER NUMBER ONE.

14           NOW, UNDER THE AIDER-ABETTOR THEORIES, ANYONE WHO  
15   BROKE THE WINDOW, WHICH ALLOWED SOMEONE TO GO IN, BUT THAT  
16   PERSON THEMSELVES WHO BROKE THE WINDOW DIDN'T GO IN,  
17   HYPOTHETICALLY, THEY DIDN'T COMMIT THE CRIME OF BURGLARY.  
18   THEY SUPPORTED, THEY ASSISTED, THEY AIDED AND ABETTED AND  
19   THEY ARE EQUALLY GUILTY OF BURGLARY.

20           ANYONE WHO SUPPLIED A GUN WHICH WAS USED TO KILL  
21   AIDS AND ABETS. ROY MCDOWELL, WHEN YOU BROUGHT THAT GUN OVER  
22   TO THE APARTMENT AND YOU PUT IT INTO THE HANDS OF DALE  
23   FLANAGAN, THE MOMENT HE PULLED THAT TRIGGER AND KILLED HIS  
24   GRANDMOTHER, YOU WERE GUILTY OF FIRST DEGREE MURDER.

25           THAT'S THE LAW. THAT'S AID AND ABET. ANYONE WHO

1 CARRIED A GUN AND SHOT AND MISSED, AND IT CANNOT BE PROVEN  
2 THAT THEIR SHOT KILLED, IS GUILTY OF MURDER.

3 AND SO, JOHNNY RAY LUCKETT, WHEN YOU CARRIED THE  
4 SAWED-OFF .22 RIFLE, AND I KNOW YOU SAY YOU DIDN'T BUT WHEN  
5 YOU DID, BECAUSE I WILL SHOW LATER ON THAT YOU DID, AND RANDY  
6 MOORE SHOT AND KILLED MR. GORDON, YOU WERE AS GUILTY AS HE  
7 BECAUSE HE WAS ASSISTING RANDY.

8 HE WAS, IN RANDY'S WORDS, HIS BACKUP. UNDER THE  
9 AID AND ABET THEORY, IT MAKES HIM EVERY BIT AS GUILTY AS  
10 RANDY MOORE OF THE DEATH OF CARL GORDON.

11 NOW, WE HAVE TO INTERRELATE SOMETHING HERE. THE  
12 AID AND ABET THEORY SORT OF GOES HAND IN HAND WITH THE  
13 CO-CONSPIRATOR RULE. YOU ARE GOING TO HEAR IT A LOT. THE  
14 ACT OF ONE IS THE ACT OF ALL IS THAT RULE.

15 AND I HAVE ALREADY SAID IT IN ONE WAY BUT NOW  
16 COMBINING THOSE TWO THEORIES. IF YOU HELP AND ASSIST  
17 SOMEBODY AND IF THE ACT OF ONE IS THE ACT OF ALL, IF YOU GO  
18 THERE -- IF THIS GROUP OF PEOPLE WENT TO THE HOUSE AND THEY  
19 WENT THERE WITH THIS OVERALL PLAN THAT MAYBE NOT NECESSARILY  
20 THEY WOULD DO IT, BUT THAT THERE WOULD BE A BURGLARY, A  
21 ROBBERY AND TWO KILLINGS, ALL OF THEM ARE AS GUILTY AS THE  
22 OTHER IRRESPECTIVE OF THE ACT WHICH THEY PERFORMED BECAUSE  
23 THEY AIDED AND ABETTED.

24 AND THEY HAVE TO LIVE AND DIE WITH THE ACT OF  
25 THEIR CO-CONSPIRATORS. AND WHILE WE ARE TALKING THEORIES OF



1 CRIME THEN, OF COURSE, THE FELONY MURDER RULE KICKS IN AND  
2 MAKES A MURDER INTO A FIRST DEGREE MURDER AND IT ALONG WITH  
3 THE AID AND ABET AND THE CO-CONSPIRATOR RULE MAKES IT  
4 APPLICABLE TO ALL OF THE CODEFENDANTS.

5 SO IN SHORT, WHEN THESE MEN GOT INVOLVED IN THE  
6 CONSPIRACY, WHEN THE ULTIMATE AGREEMENT WAS MADE AND THEY  
7 HEADED OUT TO DO THE ACTS, THEY WERE STUCK. THEY WERE STUCK  
8 WITH WHATEVER WAS SAID LATER AND THEY WERE STUCK WITH  
9 WHATEVER WAS DONE AND IT WAS AS MUCH THEIR RESPONSIBILITY NO  
10 MATTER WHAT THEY THEMSELVES DID.

11 NOW, THAT TAKES US DOWN TO EACH OF THESE  
12 INDIVIDUALS AND WHAT PARTICULAR CRIMES THEY COMMITTED. AND I  
13 AM GOING TO TALK ABOUT THEM IN GROUPINGS. I AM GOING TO TALK  
14 FIRST ABOUT DALE FLANAGAN AND RANDOLPH MOORE TOGETHER,  
15 BECAUSE THEY ARE ALMOST LIKE A SHADOW, ONE TO THE OTHER.

16 VIRTUALLY EVERYTHING ONE DID, THE OTHER DID WITH  
17 THE EXCEPTION OF SOME SPECIFIC ACTS. BUT ALL OF THE THEORIES  
18 AND REASONINGS THAT I AM GOING TO USE APPLY EQUALLY TO ONE AS  
19 TO THE OTHER. SO LET'S START WITH THE CONSPIRACIES.

20 WERE THEY A PART OF THE VARIOUS CONSPIRACIES TO  
21 ROB, TO BURGLE, TO MURDER? WELL, WE KNOW THAT BY THE  
22 TESTIMONY OF THE WITNESSES THAT CAME OUT HERE, THEY WERE AT,  
23 AND I MAY BE WRONG ABOUT MAYBE ONE MEETING, BUT VIRTUALLY  
24 THEY WERE BOTH AT ALL OF THE MEETINGS.

25 AND I MAY BE WRONG ON THAT, BUT ALMOST ALL OF THE

1 MEETINGS THAT THEY WENT TO, THE DOME HOUSE, THE OCTOBER  
2 MEETING, THE MEETING A WEEK AND A HALF BEFORE, THE AFTERNOON  
3 OF THE 5TH AND THE EVENING OF THE 5TH.

4 THEY WERE, IN FACT, THE MAIN CO-CONSPIRATORS.  
5 THEY WERE THE TALKERS, THEY WERE THE PLANNERS. THEY LED THIS  
6 THING. THEY DIDN'T ONLY LEAD THE COVEN, THEY LET THEIR BLACK  
7 AND THEIR WHITE MAGIC SPILL OVER INTO THIS CONSPIRACY AND IT  
8 WAS THEY WHO DID ALL OF THE PLANNING OF THE THINGS THAT WE  
9 HAVE TALKED ABOUT BEFORE.

10 THEY ARRANGED FOR THE GUNS. THEY DEvised A  
11 METHOD TO GET INTO THE HOUSE. THEY DEvised THE COVER-UP  
12 STORIES. THESE TWO WERE THE PRIMARY MOVERS.

13 AND REMEMBER ONE THING WHEN I SAY SOMETHING LIKE  
14 THAT. THAT DOESN'T LESSEN TO ONE DEGREE IN MY ARGUMENT AND  
15 MY APPROACH TO YOU THE RESPONSIBILITY OF THE OTHER TWO.

16 EQUALLY BAD. BUT THERE ARE PEOPLE WHO ARE LEADERS  
17 AND THERE ARE PEOPLE WHO ARE FOLLOWERS AND THEY CAN BE  
18 EQUALLY BAD. I MEAN, WHERE ARE LEADERS WITHOUT FOLLOWERS AND  
19 ESPECIALLY WHEN WE ARE TALKING ABOUT THIS AGE GROUP. THEY  
20 FEED OFF OF ONE ANOTHER'S IDEAS AND STRENGTHS AND WILLINGNESS  
21 TO PERFORM ACTS THAT INDIVIDUALLY PERHAPS THEY WOULDN'T DO.

22 THERE WAS AN ABSOLUTE AND A DEFINITE CONSPIRACY  
23 THAT RANDY MOORE AND DALE FLANAGAN WERE A PART OF.

24 HOW ABOUT THE BURGLARY? WELL, DALE GAVE THE  
25 KNIFE TO RANDY, RANDY CUT THE SCREEN, THE WINDOW WAS BROKEN

1 BY SOMEONE ELSE ALTHOUGH THERE WAS TESTIMONY THAT DALE BROKE  
2 IT WITH HIS FIST.

3 AND BOTH FLANAGAN AND MOORE WALKED THROUGH THAT  
4 WINDOW. AND WE ALREADY KNOW FROM THEIR PLANS AND THEIR  
5 MEETINGS AND EVEN AFTER THE FACT THEIR ACTS, WHAT THEY  
6 PLANNED, WHAT THEY INTENDED TO DO.

7 THEY INTENDED TO ROB AND TO STEAL AND TO MURDER.  
8 AND SO THEY WENT THROUGH THE WINDOW WITH THE INTENT TO DO  
9 THOSE THINGS AND THAT IS BURGLARY AND, PLAN AND SIMPLE, THE  
10 BURGLARY WITH REGARD TO THOSE TWO PEOPLE CAN EASILY BE CAST  
11 ASIDE.

12 THE ROBBERY IS THE SAME WAY. THE KILLING WAS THE  
13 FORCE OR VIOLENCE, AS I TALKED TO YOU BEFORE, AND THEY BOTH  
14 PARTICIPATED IN THE KILLING.

15 EVEN THOUGH THE GRANDPARENTS ARE DEAD, IT'S STILL  
16 A ROBBERY. SOMEONE ELSE TOOK THE PROPERTY BY SOME OF THE  
17 TESTIMONY. ROY MCDOWELL, HE TOOK THE WALLET AND THE PURSE OR  
18 FROM THE PURSE.

19 BUT THAT'S THE AID AND ABET SIDE OF IT. THEY  
20 WERE AIDING AND ABETTING HIS ABILITY TO DO THAT. HE COULDN'T  
21 HAVE DONE THAT IF THEY HADN'T KILLED THE GRANDPARENTS. THE  
22 GRANDPARENTS WOULD HAVE STOPPED HIM.

23 AND IT WAS THE TESTIMONY OF LUCAS AND AKERS AND I  
24 DON'T REMEMBER FOR SURE ABOUT JOHNNY RAY LUCKETT, BUT THAT I  
25 THINK HIS TESTIMONY, TOO, THEY -- THEY MEANING DALE FLANAGAN

1 AND RANDOLPH MOORE WENT THROUGH THE CONTENTS OF THE WALLET,  
2 EXTRACTED CERTAIN MONIES AND BURNED IN AN ASHTRAY THE  
3 REMAINDER OF THE CONTENTS.

4 AND IN CASE THERE IS ANY QUESTION IN ANYBODY'S  
5 MIND ABOUT THIS BURGLARY AND ROBBERY SEEMING AWFULLY SIMILAR,  
6 AWFULLY PART OF THE SAME CRIME, LET INSTRUCTION NINE PUT YOUR  
7 MIND AT REST.

8 THE OFFENSE OF BURGLARY IS COMPLETE WHEN THE  
9 HOUSE IS ENTERED WITH THE SPECIFIC INTENT TO COMMIT LARCENY,  
10 ROBBERY OR MURDER. IT'S COMPLETE UPON THE ENTRY. NOTHING  
11 MORE NEED BE DONE.

12 IF, THEREAFTER, LARCENY, ROBBERY OR MURDER ARE  
13 COMMITTED, THE PERPETRATORS HAVE COMMITTED VARIOUS CRIMES AND  
14 MAY BE CHARGED AND CONVICTED OF BURGLARY AS WELL AS THE OTHER  
15 CRIMES WHICH WERE COMMITTED AFTER ENTRY WAS MADE INTO THE  
16 PREMISES.

17 SO, YOU SEE, THE ROBBERY IS INDEED SOMETHING  
18 DIFFERENT FROM THE BURGLARY AS OBVIOUSLY THE MURDER IS.

19 MURDER. WELL, WE KNOW THAT DALE FLANAGAN SHOT  
20 HIS GRANDMOTHER. A LOT OF PEOPLE HAVE TOLD US THAT. HE  
21 THROUGH ANGELA SALDANA AND OTHERS HAS TOLD US THAT.

22 TOM AKERS SAID -- AND I AM TRYING TO TALK ABOUT  
23 EACH ONE OF THE PERSON'S TESTIMONY VERY BRIEFLY AS TO WHAT  
24 THEY SAID DALE FLANAGAN DID.

25 TOM AKERS SAID THAT HE SAW DALE FLANAGAN WITH THE

1 PISTOL, THE .22 PISTOL THAT ROY MCDOWELL HAD GIVEN HIM, THAT  
2 HE, IN FACT, HAD BEEN THROWN THE PISTOL AT ONE TIME TO CHECK  
3 IT OUT BY DALE AND HE GAVE IT BACK TO DALE AND HE KNEW THAT  
4 DALE HAD THE PISTOL WITH HIM ON THE CAR RIDE OUT THERE.

5 NOW, HE WAS IN A POSITION IN THE TRAILER THAT HE  
6 DIDN'T SEE WHAT DALE FLANAGAN DID. IN FACT, NO ONE SAW WHAT  
7 DALE FLANAGAN DID WITH THE EXCEPTION OF MRS. GORDON.

8 BUT TOM AKERS SAID THAT WHEN THEY GOT BACK TO THE  
9 APARTMENT, DALE FLANAGAN TOLD HIM AND THE OTHERS -- THEY WERE  
10 ALL TELLING EACH OTHER WHAT THEY HAD DONE. HE TOLD THEM THAT  
11 HE HAD GONE INTO THE BEDROOM, GRABBED HIS GRANDMOTHER.

12 I AM GOING TO TRY TO QUOTE AS MUCH AS I CAN. HE  
13 GRABBED HIS GRANDMOTHER BY THE JAW AND HE WAS DEMONSTRATING.  
14 DALE DEMONSTRATED THIS FOR EVERYBODY. HE GRABBED HIS  
15 GRANDMOTHER BY THE JAW AND HE SHOT HER IN THE HEAD.

16 CAN YOU IMAGINE? IN YOUR WILDEST DREAMS, CAN YOU  
17 IMAGINE?

18 JOHN LUCAS SAID THE SAME STORY ESSENTIALLY THAT  
19 DALE HAD TOLD EVERYONE THERE THAT HE HAD SHOT HIS  
20 GRANDMOTHER.

21 ANGELA SALDANA SAID THAT IN THE TRAILER, DALE  
22 TOLD HER, "HOW DO YOU LIKE THIS, I KILLED MY GRANDPARENTS. I  
23 PUT MY HAND ON HER MOUTH, I WRESTLED HER TO THE BED AND I  
24 SHOT HER IN THE HEAD." HE TOLD ANGELA SALDANA THAT.

25 JOHNNY RAY LUCKETT GOT ON THE STAND FOR US AND HE

1 SAID THAT DALE FLANAGAN HAD THE PISTOL. HE SAID THAT HE  
2 HEARD -- AND WE ARE GOING TO TALK ABOUT THE VIABILITY OF ALL  
3 OF THIS STORY A LITTLE LATER ON. BUT LET'S JUST TAKE HIM AT  
4 HIS WORD RIGHT NOW FOR WHAT HE HEARD AND SAW. WHERE HE WAS AND  
5 WHAT HE WAS DOING MAY BE A DIFFERENT QUESTION.

6 HE HEARD DALE SAY, "DO IT NOW." AND THE WINDOW  
7 WAS BROKEN. AND HE SAW DALE GO IN THE HOUSE. THE LIGHT CAME  
8 ON AND HE SAW THE OTHERS STILL OUTSIDE THE WINDOW WAITING FOR  
9 THE GRANDFATHER TO COME DOWN.

10 AND WHILE THEY WERE OUTSIDE THE WINDOW AND AKERS  
11 WAS IN THE TRAILER AND LUCKETT WAS WHEREVER WE ARE ULTIMATELY  
12 GOING TO BELIEVE HE WAS, AND I SUBMIT IT WAS AT LEAST OUTSIDE  
13 THE HOUSE, THE ONLY PERSON INSIDE THE HOUSE WAS DALE FLANAGAN  
14 AND SHOTS WERE HEARD FROM WITHIN THE HOUSE.

15 THAT'S PRETTY GOOD CIRCUMSTANTIAL EVIDENCE THAT  
16 DALE FLANAGAN WAS THE PERSON WHO KILLED HIS GRANDMOTHER  
17 WITHOUT ALL THE ADMISSIONS AND OTHER THINGS THAT WE HAVE.

18 LATER AT THE HOUSE, JOHN RAY LUCKETT TOLD US THAT  
19 DALE FLANAGAN TOLD EVERYBODY, JUST LIKE LUCAS AND AKERS SAID,  
20 THAT HE GRABBED HIS GRANDMOTHER AND HE SHOT HER THREE TIMES  
21 IN THE HEAD.

22 IS THERE ANY DOUBT? IS THERE ANY DOUBT IN THIS  
23 COURTROOM? I WISH I COULD ASK YOU QUESTIONS. I CAN'T. I  
24 CAN'T IMAGINE ANY DOUBT EXISTING IN THIS ROOM AT THIS MOMENT  
25 THAT DALE FLANAGAN SHOT HIS GRANDMOTHER TO DEATH.

1           HOW ABOUT RANDOLPH MOORE? WE ARE ALLEGING THAT  
2 HE SHOT DALE'S GRANDFATHER. BACK TO TOM AKERS. HE KNEW THAT  
3 RANDOLPH MOORE HAD THE LONG RIFLE AS OPPOSED TO THE  
4 SAWED-OFF. HE SAW HIM WALK TOWARD THE HOUSE WITH THE OTHER  
5 PEOPLE.

6           AND RANDOLPH MOORE TOLD TOM AKERS BACK AT THE  
7 APARTMENT THAT HE HAD KNEELED DOWN, AFTER THE WINDOW WAS  
8 BROKEN AND AFTER DALE FLANAGAN HAD GONE INTO THE HOUSE, AND HE  
9 WAITED FOR THE GRANDFATHER TO COME DOWN THE STEPS.

10          AND WHEN HE DID, HE SHOT AT THE GRANDFATHER AND  
11 MISSED AND SHOT AGAIN AND SHOT AGAIN AND SHOT AGAIN AND HIT  
12 HIM AND KILLED HIM. THAT'S WHAT HE TOLD TOM AKERS AND THE  
13 OTHERS.

14          AND LUCAS SAID ABOUT THE SAME THING. HE SAID IT  
15 A LITTLE DIFFERENTLY. YOU ARE NEVER GOING TO GET A VERBATIM  
16 RECITATION OF THESE STATEMENTS. BUT JOHN LUCAS'S STORY WAS  
17 THAT MOORE HAD SAID, "I SHOT THE GRANDFATHER FOUR TIMES AS HE  
18 CAME DOWN THE STAIRS. AND I WENT IN THE HOUSE AND I SHOT HIM  
19 AGAIN."

20          ANGELA SALDANA SAID THAT DALE FLANAGAN TOLD HER  
21 THAT RANDY MOORE HAD SAID THAT HE HAD SHOT THE GRANDFATHER  
22 WITH THE LONG RIFLE.

23          JOHNNY RAY LUCKETT'S TESTIMONY FASCINATED ME IN  
24 THIS REGARD. HE SAID THAT HE HAD SEEN RANDY LOAD BOTH  
25 RIFLES, HE HAD SEEN RANDY MOORE HAVE THE LONG RIFLE IN HIS

1 POSSESSION AND GO TO THE WINDOW. HE SAW HIM WITH IT IN HIS  
2 HAND WHEN THE LIGHTS CAME ON THROUGH THE WINDOW AND HE SAW  
3 RANDY MOORE SHOOT INTO THE HOUSE.

4 HERE IS WHAT FASCINATES ME. YOU HEAR THESE  
5 LITTLE THINGS IN A TRIAL THAT TELL YOU SOMETHING ABOUT THE  
6 PEOPLE THAT YOU ARE TRYING AND WITH WHOM YOU ARE DEALING.  
7 RANDOLPH MOORE, "WELL, I WENT INTO THE HOUSE AND THE  
8 GRANDFATHER WAS ON THE FLOOR AND HE WAS STILL SQUIRMING AND  
9 SO I SHOT HIM AGAIN." DID YOU REALLY SAY THAT?

10 I CAN'T BELIEVE -- I CAN, I GUESS, IN THE CONTEXT  
11 OF THIS CASE -- THAT STATEMENT. THERE IS NO DOUBT THAT  
12 RANDOLPH MOORE AND DALE FLANAGAN SHOT COLLEEN GORDON AND CARL  
13 GORDON. THERE IS NO DOUBT THAT IT IS AN UNLAWFUL KILLING,  
14 THAT IT IS A MURDER.

15 THAT BY VIRTUE OF THE FELONY MURDER RULE, IT IS  
16 FIRST DEGREE MURDER. BY VIRTUE OF THE CO-CONSPIRATOR RULE,  
17 BY VIRTUE OF AID AND ABET THAT THEY ARE NOT ONLY GUILTY OF  
18 MURDERING THE PEOPLE WHO THEY ACTUALLY MURDERED, BUT THE  
19 OTHER PERSON'S VICTIM.

20 ROY MCDOWELL. WAS ROY MCDOWELL A CONSPIRATOR?  
21 DID HE ATTEND THE MEETINGS? DID HE AGREE TO JOIN INTO THIS  
22 PLAN TO KILL CARL AND COLLEEN GORDON?

23 WELL, WE KNOW HE WAS AT SOME MEETINGS. HE WAS AT  
24 THE OCTOBER MEETING. HE WAS AT THE NOVEMBER 5TH MEETING IN  
25 THE EVENING. HE WAS IN A POSITION, AND IT WAS SAID THAT



1 ANYONE ELSE COULD HEAR, TO HEAR THE PLANS BEING MADE.

2 HE OFFERED NO DISSENT. YOU NEVER ONCE HEARD  
3 ANYBODY TESTIFY THAT WHEN DALE FLANAGAN SAID, "LET'S GO IN  
4 THROUGH THE BACK DOOR," AND RANDOLPH MOORE SAID, "NO, LET'S GO  
5 IN THROUGH THE WINDOW," THAT ROY MCDOWELL SAID, "WAIT A  
6 MINUTE. WHAT ARE WE TALKING ABOUT HERE? I DON'T LIKE ANY OF  
7 THIS."

8 NO, HE SAT THERE AND INSOFAR AS THESE KIND OF  
9 CONVERSATIONS ARE CONCERNED, HE ADOPTED WHATEVER WAS SAID.  
10 AND MORE THAN THAT, AT ONE OF THE MEETINGS, THE OCTOBER  
11 MEETING, HE AGREED TO BRING A .22 PISTOL THAT HE POSSESSED.

12 HE SAID THAT HE HAD IT AND THAT HE WOULD BRING  
13 IT. HE WAS REMINDED OF HIS DUTY, HIS ROLE TO BRING THAT  
14 WEAPON ON NOVEMBER THE 5TH, 1984 SOMEWHERE BETWEEN ELEVEN  
15 O'CLOCK IN THE MORNING AND ONE O'CLOCK IN THE AFTERNOON WHEN  
16 DALE FLANAGAN GOT THE TELEPHONE NUMBER OF ROY MCDOWELL FROM  
17 RANDY MOORE AND HE CALLED HIM AND HE SAID, "DID YOU GET THE  
18 TOY?"

19 IF THAT IS AT ONE O'CLOCK, BY TEN O'CLOCK THAT  
20 EVENING ROY MCDOWELL BROUGHT THE TOY. HE BROUGHT THE .22  
21 PISTOL. WE KNOW THAT BECAUSE JOHNNY RAY LUCKETT TOLD US THAT  
22 HE DID. HE CAME IN AND THE FIRST TIME HE SAW THE PISTOL WAS  
23 WHEN ROY JUST CAME IN, SECONDS AFTER HE CAME IN THE DOOR AND  
24 HE WAS ONE OR TWO FEET AWAY FROM THE DOOR AND HE WAS HANDING  
25 THE PISTOL TO DALE FLANAGAN.

1 NO, HE DIDN'T KNOW FROM WHAT PART OF HIS BODY IT  
2 CAME BUT HE HAD IT AT THAT MOMENT AND HE HAD NOT SEEN IT  
3 BEFORE.

4 TOM AKERS SAID THE SAME IN THAT HE SAW ROY  
5 MCDOWELL BRING THE WEAPON AND HE SAW HIM GIVE IT TO DALE  
6 FLANAGAN. AND, FURTHER, THAT DURING THAT DISCUSSION THAT NIGHT  
7 THAT IT WAS UNDERSTOOD BY ALL PRESENT, INCLUDING ROY  
8 MCDOWELL, THAT IT WAS HIS ROLE, HIS SECOND ROLE -- HIS FIRST  
9 WAS TO BRING THE GUN. IT WAS HIS SECOND ROLE, DUTY TO MAKE  
10 IT LOOK LIKE A BURGLARY.

11 AND WHEN IT WAS UNDERSTOOD THAT THAT WAS TO BE  
12 THE CASE, YOU DIDN'T HEAR ANYBODY TESTIFY THAT ROY MCDOWELL  
13 SAID, "WAIT A MINUTE. I DON'T WANT ANY PART OF THAT." LUCAS  
14 DIDN'T TELL YOU THAT, AKERS DIDN'T TELL YOU THAT, LUCKETT  
15 DIDN'T TELL YOU THAT.

16 WE KNOW OF NO OPPOSITION TO ANY OF THIS BY ROY  
17 MCDOWELL. IN FACT, NOT ONLY DID HE BRING THE GUN BUT HE  
18 DROVE OUT THERE WITH THEM.

19 THAT IS ALL AS TO THE CONSPIRACY AND IT SEEMS  
20 CLEAR THAT ROY MCDOWELL WAS GUILTY, IS GUILTY OF CONSPIRING  
21 TO COMMIT ALL OF THESE VARIOUS CRIMES.

22 NOW, HOW ABOUT THE BURGLARY? WELL, JOHN LUCAS  
23 WAS ABOUT THE BEST HELP THAT ROY MCDOWELL HAD IN THIS  
24 PARTICULAR TRIAL IN THAT REGARD. LUCAS SAID WHEN THEY ALL  
25 CAME BACK INTO THE HOUSE, HE DIDN'T KNOW IF ROY HAD THE

1 WALLET ON HIS POSSESSION.

2 ALL HE COULD SAY IS THAT HE SAW HIM COME BACK  
3 INTO THE HOUSE WITH EVERYBODY ELSE AND THE WALLET APPEARED SO  
4 LUCKETT COULDN'T PUT IT IN HIS POSSESSION. I READILY ADMIT  
5 THAT. TOM AKERS AND JOHNNY RAY LUCKETT, HOWEVER, ARE A HORSE  
6 OF A DIFFERENT COLOR.

7 AKERS SAID THAT NOT ONLY WAS HE AWARE, AS WAS ROY,  
8 THAT IT WAS ROY'S ROLE TO BURGLARIZE THE PLACE, BUT THAT HE  
9 SAW ROY WALK TOWARD THE HOUSE OF THE GORDONS WITH THE OTHER  
10 PEOPLE, AND THEN, OF COURSE, HE LOST TRACK OF WHAT WAS GOING  
11 ON.

12 BUT WHEN HE TURNED AROUND AND SAW EVERYBODY  
13 COMING FROM THE HOUSE AS HE WAS TRYING TO FIX HIS CAR, TOM  
14 AKERS NOW I AM SPEAKING OF, HE SAW ROY MCDOWELL ALONG WITH  
15 ALL OF THE OTHER DEFENDANTS SAVE AND EXCEPT JOHNNY RAY  
16 LUCKETT.

17 AND THE INTERESTING THING TO NOTE ABOUT THAT IS  
18 THAT THEY WERE COMING FROM THE AREA OF THE FRONT DOOR. AND  
19 WHEN YOU LOOK AT THE DIAGRAM, YOU WILL SEE THAT THE FRONT DOOR  
20 IS ON ONE SIDE OF THE HOUSE AND THE WINDOW WAS ON THE OTHER.

21 IT WAS ON THE WINDOW SIDE THAT THE CAR WAS. SO  
22 THERE WAS NO MISTAKE. HE WASN'T COMING FROM THAT WINDOW AREA  
23 NEVER HAVING GONE INTO THE HOUSE. YOU CAN'T BELIEVE THAT.

24 HE WAS COMING AROUND BY THE FRONT DOOR WITH  
25 EVERYBODY ELSE WHICH INFERS AT LEAST THAT HE WAS IN THE HOUSE

1 AT SOME TIME.

2 AKERS ALSO SAID THAT ROY SAID THAT HE WAS IN THE  
3 HOUSE AFTER THE SHOOTING. AND WHAT IS THE PROOF OF ALL OF  
4 THIS PUDDING? THE PROOF IS THAT HE HAD THE WALLET.

5 TOM AKERS SAW HIM WITH THE WALLET. AND HE PUT IT  
6 ON THE KITCHEN TABLE SO THAT OUR LEADERS, DALE FLANAGAN AND  
7 RANDOLPH MOORE, COULD RIFLE THROUGH IT AND GET THIS PITIFUL  
8 AMOUNT OF MONEY THAT WAS THE ULTIMATE PROCEEDS OF THIS  
9 KILLING AND BURGLARY AND ROBBERY.

10 JOHNNY RAY LUCKETT SAID SORT OF THE SAME THING.  
11 ROY MCDOWELL WENT TO THE HOUSE. HE SAW ROY MCDOWELL GO INTO  
12 THE HOUSE AND ROY, IN FACT, LATER ON SAID THAT HE HAD GONE  
13 INTO THE HOUSE.

14 AND, AS I REMEMBER MR. LUCKETT'S TESTIMONY, THAT  
15 HE WAS LOOKING FOR SOMETHING. HE NEVER DID IDENTIFY TO  
16 JOHNNY RAY LUCKETT WHAT IT WAS. AND THAT HE SAW ROY MCDOWELL  
17 GIVE THE WALLET TO DALE FLANAGAN.

18 AGAIN, IT'S THE ONLY TESTIMONY YOU HAVE. NOWHERE  
19 IN THIS TRIAL WAS IT SAID THAT ROY MCDOWELL DIDN'T DO THOSE  
20 THINGS. SO THERE CAN'T BE ANY DOUBT ABOUT THE BURGLARY.

21 HOW ABOUT THE ROBBERY? WELL, WE HAVE GONE  
22 THROUGH THIS BEFORE. THE TAKING OF THE WALLET OBVIOUSLY IS  
23 THE PROPERTY THAT IS TAKEN IN THE ROBBERY AND WE KNOW WHAT  
24 THE FORCE IS.

25 INTERESTING COMMENT BY ROY MCDOWELL TO DALE AT

1 RANDY MOORE'S APARTMENT. HE SAID, "DALE, IT WAS ON TOP OF  
2 THE CLOSET JUST AS YOU SAID IT WOULD BE." THERE CAN'T BE ANY  
3 DOUBT THAT HE WAS THE PERSON WHO WENT INTO THE CLOSET, RIFLED  
4 THROUGH IT, SPREAD THE THINGS OUT THAT YOU WILL SEE IN THE  
5 PHOTOGRAPHS, FOUND THE PURSE, TOOK THE WALLET FROM THE PURSE  
6 AND RAN OUT THE FRONT DOOR AND THAT IS ROBBERY.

7 HOW ABOUT MR. MCDOWELL'S INVOLVEMENT, CULPABILITY  
8 IN THE MURDERS? WELL, HE DIDN'T PULL ANY TRIGGERS. I AM NOT  
9 HERE TO TELL YOU THAT. NO ONE HAS. NO ONE WILL. SO HE  
10 CANNOT BE HELD ACCOUNTABLE AS A PRINCIPLE IN THAT CRIME  
11 BECAUSE HE COMMITTED THE ACT. HE DID NOT. I WILL TELL YOU  
12 THAT RIGHT NOW, HE DID NOT.

13 BUT REMEMBER OUR DISCUSSION ON AIDING AND  
14 ABETTING. HOW DID THIS FELLOW AID AND ABET THE DEATH OF CARL  
15 AND COLLEEN GORDON? LET'S TAKE COLLEEN GORDON, FIRST OF ALL.

16 BUT FOR THE BRINGING ALONG OF THAT .22 PISTOL,  
17 AND PUTTING IT IN THE HANDS OF A PERSON LIKE DALE FLANAGAN,  
18 COLLEEN GORDON DOESN'T DIE. AT LEAST, SHE DOESN'T DIE BY  
19 THAT WEAPON.

20 IT WAS THE WEAPON THAT ROY MCDOWELL BROUGHT THAT  
21 KILLED COLLEEN GORDON. HOW CAN HE BE IN A WORSE LIGHT AS AN  
22 AIDER AND ABETTOR? HOW CAN HE BE? IT'S IMPOSSIBLE.

23 HE DID THE BURGLARY AND THE ROBBERY TO ASSIST  
24 THE COVERUP OF THE KILLINGS. THAT'S PART OF THE AID AND ABET  
25 THEORY.

1           WHEN YOU READ THE CONSPIRACY INSTRUCTION, IT USES  
2 THE WORDS INDIRECTLY ENCOURAGED. IS DOING WHAT HE DID TO  
3 INDIRECTLY ENCOURAGE THE OTHERS TO DO WHAT THEY DID? WELL,  
4 OF COURSE IT IS AND HE NEVER DID THE OPPOSITE.

5           HE NEVER DISCOURAGED ANYBODY. HE NEVER DID, AS  
6 JOHNNY RAY LUCKETT WILL HAVE US BELIEVE, THAT HE DID TRY TO  
7 PUT A HALT TO THIS THING, TO TRY TO BRING SOME SENSE AND A  
8 FEELING OF DECENCY TO THIS GROUP, THAT THEY WERE DOING SUCH A  
9 HEINOUS ACT AND FOR EVERYBODY TO STOP IT.

10           HE NEVER DID THAT. AND HE IS AS GUILTY OF THE  
11 MURDERS OF CARL AND COLLEEN GORDON AS IF HE HAD PULLED THAT  
12 TRIGGER HIMSELF. JUST AS GUILTY. ALL OF WHICH BRINGS US TO  
13 JOHNNY RAY LUCKETT.

14           MR. SMITH IS HIS ATTORNEY, A CAPABLE ONE AT THAT  
15 AND HE STOOD RIGHT HERE, MR. SMITH DID, AND HE SAID, AND I  
16 QUOTE, "MY CLIENT IS IN A DIFFERENT POSITION THAN ANY OTHER  
17 DEFENDANT IN THIS COURTROOM." AND, YOU KNOW WHAT, HE WAS  
18 RIGHT.

19           NOT BECAUSE THE CASE IS ANY STRONGER OR WEAKER  
20 AGAINST JOHNNY RAY LUCKETT AND THAT IS WHAT HE WAS REALLY  
21 ALLUDING TO. NO.

22           HIS CLIENT IS IN A DIFFERENT POSITION THAN ANYONE  
23 ELSE IN THIS COURTROOM BECAUSE HIS CLIENT TRIED TO CON ME.  
24 NO ONE ELSE HAS DONE THAT IN THIS COURTROOM THAT I KNOW OF.  
25 HIS CLIENT TRIED TO SELL YOU A PACKAGE OF WHO AND WHAT JOHNNY

1 RAY LUCKETT REALLY WAS.

2 LET'S STOP AND THINK ABOUT INITIAL PERCEPTIONS.  
3 HOW IS HE DRESSED TODAY? SAME AS HE ALWAYS HAS BEEN. HE  
4 LOOKS GREAT, GOT A VEST ON, TIE. IT IS NICE AND NEAT. HIS  
5 DEMEANOR IS GOOD AND QUIET AND DECENT. HE IS NOT AN  
6 OBSTRUCTIONIST IN THIS TRIAL.

7 HE DOESN'T CHANGE HIS EXPRESSION WHICH IS  
8 INTERESTING IN A DIFFERENT WAY. AND HE TOOK THE STAND AND HE  
9 WAS WILLING TO BARE HIS SOUL TO YOU AND TO CROSS-EXAMINATION  
10 AND HE TOLD ALL OF US WHAT A GOOD AND DECENT PERSON HE WAS.

11 AND WE BECAME IMPRESSED WITH HIM BECAUSE THIS  
12 YOUNG MAN, WHO ONLY WENT THROUGH TENTH GRADE, IS SO ARTICULATE  
13 UP THERE. AND SO INTELLIGENT AND SO CALM AND SO SEEMINGLY  
14 GOOD. AND HE HAS A MOM AND A SISTER AND IS FAMILY ORIENTED  
15 AND HE IS GOOD IN GRAPHIC ARTS.

16 AND IF THEY THOUGHT ABOUT IT, HE PROBABLY GOES TO  
17 CHURCH. YOU KNOW, WE ARE ALL GENERALLY CAUGHT WITH THE SAME  
18 ATTITUDE. WE RELY ON FIRST IMPRESSIONS AND I ASK YOU NOT TO  
19 IN THIS CASE. I ASK YOU AS PART OF YOUR JOB AS A JUROR TO  
20 INVESTIGATE, INVESTIGATE MY IDEAS.

21 AS I SAY THEM TO YOU, QUESTION THEM, MAKE SURE  
22 THEY'RE RIGHT. AND BY THE SAME TOKEN, AS JOHNNY RAY LUCKETT  
23 SITS UP THERE IN THAT STAND, YOU QUESTION HIM BECAUSE THERE  
24 IS AN INSTRUCTION THAT TELLS YOU ABOUT BIAS OF WITNESSES  
25 AND REASONS THAT PEOPLE HAVE FOR TELLING UNTRUTHS.

1           AND DON'T BELIEVE FOR A MOMENT THAT BECAUSE HE  
2       SWORE AN OATH TO TELL THE TRUTH THAT HE DID. I SUGGEST TO  
3       YOU THAT JOHNNY RAY LUCKETT IS A LIAR, THAT HE PERJURED  
4       HIMSELF IN THIS COURTROOM. AND HE LIED TO EACH AND EVERY ONE  
5       OF YOU AND I WANT TO INVESTIGATE THAT NOW.

6           SO LET'S SEE, FIRST OF ALL, WHO JOHNNY RAY  
7       LUCKETT REALLY IS. WELL, HE TOLD US HE WAS INCORRIGIBLE AT  
8       ONE TIME. HE TOLD US THAT HE USES DRUGS. NOT JUST MARIJUANA  
9       BUT ACID, LSD. WE KNOW THAT HE IS INVOLVED IN DEVIL WORSHIP.

10          WE KNOW THAT HE'S KNOWN AS THE RIPPER, THAT HE IS  
11       A LONE RIPPER. AND I SUGGEST TO YOU WHEN YOU HEAR THE  
12       ENTIRETY OF THE POEM THAT HE WROTE, YOU ARE GOING TO KNOW  
13       THAT HE HAS AN EVIL, AN EVIL, DARK MIND. THAT DIDN'T COME  
14       OUT IN THESE COURTROOM PROCEEDINGS.

15          BACK TO PERCEPTIONS. LET'S THINK A MINUTE ABOUT  
16       JOHNNY RAY LUCKETT. AND LET'S GO OVER ON HIS SIDE FOR A  
17       MOMENT AND BELIEVE WHAT HE TOLD US. IF WE BELIEVE WHAT HE  
18       TOLD US, HE IS A TOTALLY INNOCENT YOUNG MAN, CAUGHT UP IN A  
19       GROUP OF PEOPLE WHO ARE OUT TO DO HORRENDOUS ACTS, ACTS THAT  
20       MOST OF US DON'T EVEN CONSIDER IN OUR DAY-TO-DAY LIVES.

21          AND HE WAS SWEEPED ALONG IN THIS, WHATEVER IT WAS.  
22       I THINK MR. SMITH WILL CHARACTERIZE IT AS COERCION OR DURESS,  
23       THREATS. HE WAS FORCED.

24          HE WAS CERTAINLY, ACCORDING TO HIMSELF AND HIS  
25       ATTORNEY, AN UNWILLING PARTICIPANT. AND HERE HE WAS STANDING



1 OUT IN THE DESERT AND ALL OF THESE THINGS WERE HAPPENING.  
2 THERE WERE CRIMES, BURGLARIES AND ROBBERIES GOING ON. HE WAS  
3 REALIZING THAT THERE HAD BEEN CONSPIRACIES BEFORE. AND THERE  
4 WERE MURDERS.

5 AND THIS POOR YOUNG MAN IS ALL OF A SUDDEN IN  
6 THIS COURTROOM. HE FINDS HIMSELF ASSOCIATED WITH THESE OTHER  
7 PEOPLE WHO HE READILY TOLD YOU HOW BAD THEY WERE.

8 AND HOW DID HE ACT ON THE STAND? DID HE ACT LIKE  
9 SOMEBODY LIKE THAT? NO. NO. THIS YOUNG MAN WAS COOL, HE  
10 WAS CALM, COLLECTED. HE IMPRESSED ME WITH HIS INTELLECT.

11 HE PARRIED THE QUESTIONS OF ATTORNEYS, ATTORNEYS  
12 ON CROSS-EXAMINATION. AND MR. HARMON AND I WEREN'T THE ONLY  
13 ATTORNEYS INTERESTED IN CROSS-EXAMINING MR. LUCKETT. OTHERS  
14 WERE, TOO, BECAUSE HE SAID SOME PRETTY NASTY THINGS ABOUT  
15 THEM.

16 HE PARRIED WITH THEM. HE FOUGHT OFF THEIR  
17 QUESTIONS. HE ANSWERED THEM EASILY. YOU HAD A HARD TIME  
18 ANSWERING THE QUESTIONS WHEN YOU WERE SITTING UP HERE IN THE  
19 JURY BOX AND NOBODY WAS ACCUSING YOU OF ANYTHING AND HE HAS A  
20 DEATH PENALTY POTENTIALLY HANGING OVER HIS HEAD AND HE ACTED  
21 LIKE HE DID, THIS INNOCENT LITTLE LAMB.

22 LET'S ALLUDE TO THAT POEM, JUST A PORTION OF IT  
23 FOR THE PURPOSES OF A POINT I AM MAKING NOW. HE SAID THIS IN  
24 STATE'S EXHIBIT -- I AM SORRY, DEFENDANT'S EXHIBIT B. "EVEN  
25 THOUGH I HURT, I DON'T SHOW MUCH ATTITUDE BECAUSE I GREW UP

1 HARD, ABUSED AND CRUDE."

2 NOW, JOHNNY RAY LUCKETT DISAVOWED ALL WORDS ON  
3 THIS DOCUMENT. BUT HE USED TWO "I'S" -- I AM SORRY, THREE  
4 "I'S," REFERRED TO HIMSELF THREE TIMES IN THIS THING.

5 AND I SUGGEST TO YOU THE WORDS ON THIS PIECE  
6 OF PAPER THAT I JUST READ TO YOU ARE MORE INDICATIVE OF  
7 JOHNNY RAY LUCKETT THAN REALLY MEETS THE EYE WHEN YOU STOP TO  
8 THINK ABOUT IT.

9 THESE THINGS ARE INSIGHTFUL THINGS THAT TELL US  
10 WHO WAS OPERATING UP ON THAT STAND AND WHY.

11 HE IS COLD AND HE DOESN'T SHOW MUCH ATTITUDE.  
12 AND I DON'T THINK HE SHOWED MUCH ATTITUDE THAT NIGHT ON  
13 NOVEMBER THE 5TH. SO NOW WE ARE STARTING TO GET A LITTLE  
14 DIFFERENT LOOK AT JOHNNY RAY LUCKETT.

15 NOW, IN THE INTERESTS OF BEING OBJECTIVE, I WANT  
16 TO SUGGEST TO YOU THAT THERE WERE TWO STORIES TOLD ABOUT  
17 JOHNNY RAY LUCKETT, ONE ON HIS BEHALF, ONE AGAINST HIM AND  
18 THEY WERE TOLD BY DIFFERENT PEOPLE.

19 AND I WANT TO PRESENT THIS AS OBJECTIVELY AS I  
20 CAN RIGHT NOW ON LUCKETT'S BEHALF. JOHN LUCAS SAID HE GAVE  
21 A STATEMENT ON DECEMBER THE 10TH 1984, JOHN LUCAS DID, IN THE  
22 POLICE DEPARTMENT.

23 IN THAT STATEMENT, HE SAID THAT MICHAEL WALSH  
24 SHOT AT THE GRANDFATHER AND IT WASN'T JOHNNY RAY LUCKETT.  
25 THAT'S TO JOHNNY RAY LUCKETT'S BENEFIT. TOM AKERS SAID IT

1 WAS WALSH WHO TOOK THE GUN FROM JOHNNY RAY LUCKETT AND HE  
2 FIRED THE SHOT.

3 AND JOHNNY RAY LUCKETT HIMSELF SAID, AND I AM  
4 GOING TO TICK OFF A FEW THINGS HERE THAT GET THE FLAVOR OF  
5 HIS TESTIMONY. HE KNEW OF NO CONSPIRACY, HE DIDN'T HAVE A  
6 GUN UNTIL HE GOT TO THE GORDONS' HOUSE.

7 RANDY MOORE HAD THREATENED HIM POINTING THAT GUN  
8 RIGHT AT HIS CHEST AND MADE HIM GO ALONG AND MADE HIM HAVE  
9 THE SAWED-OFF. OUT AT THE SCENE, RANDY MOORE HAD CHOSEN  
10 JOHNNY RAY LUCKETT TO BE HIS BACKUP. THAT JOHNNY RAY LUCKETT  
11 PLEADED AND BEGGED, WERE HIS WORDS, TO STOP, TO GO HOME, TO  
12 STOP THIS THING.

13 AND THAT MICHAEL WALSH GRABBED THE GUN OUT OF HIS  
14 HAND. RANDY MOORE SAID, "I KNEW WE SHOULD HAVE LEFT YOU  
15 HOME. STAY RIGHT HERE." AND THEY WENT OFF AND THEY DID THE  
16 SHOOTING.

17 AND JOHNNY RAY LUCKETT, INNOCENT JOHNNY RAY  
18 LUCKETT DID NOTHING. HE WAS TOTALLY INNOCENT LIKE A LITTLE  
19 LAMB.

20 WELL, THERE ARE SOME PEOPLE WHO DON'T AGREE WITH  
21 THAT. AMONG THEM THE VERY PEOPLE WHO CREATE THIS STORY ON  
22 BEHALF OF HIM. LET'S LOOK AT THAT. LET'S GO BACK TO LUCAS.

23 JOHNNY RAY LUCKETT WAS AT THE APARTMENT DURING  
24 THE CONSPIRACY TALK. THIS IS ON NOVEMBER THE 5TH. HE WAS  
25 THERE, HE HEARD IT GOING ON. JOHN LUCAS DIDN'T REMEMBER

1 ANYTHING ABOUT ANY THREATS GOING ON OR JOHNNY RAY LUCKETT  
2 SAYING, "WAIT A MINUTE. I DON'T LIKE THE SOUND OF THIS. I  
3 DON'T WANT TO DO IT. I AM GOING HOME."

4 HE DIDN'T SEE -- JOHN LUCAS DID NOT SEE RANDY  
5 MOORE AND JOHNNY RAY LUCKETT GO INTO THE BEDROOM. I AM NOT  
6 SAYING IT DIDN'T HAPPEN. I DON'T KNOW IF IT HAPPENED OR NOT.

7 BUT I DON'T THINK WHAT WAS DISCUSSED IN THERE IS  
8 WHAT YOU HEARD IN THIS COURTROOM BUT THAT IS BESIDE THE  
9 POINT. JOHN LUCAS, WHO WAS A PARTICIPANT IN THESE AFFAIRS,  
10 DID NOT SEE THESE TWO GO INTO THE BEDROOM ON THAT PARTICULAR  
11 EVENING.

12 HE SAID THAT THEY ALL LEFT THE APARTMENT TOGETHER  
13 WILLINGLY, NO ONE WAS COMPLAINING ABOUT IT, THEY ALL CAME  
14 BACK TOGETHER AT THE SAME TIME, WILLINGLY, NOBODY WAS  
15 COMPLAINING.

16 AND THAT JOHNNY RAY LUCKETT -- NOW, THIS IS WHAT  
17 YOU HEARD AT THE TRIAL UP ON THE STAND. IT IS WHAT YOU ALSO  
18 LEARNED JOHN LUCAS TESTIFIED TO AT THE EVIDENTIARY HEARING  
19 ABOUT A MONTH AGO.

20 JOHN LUCAS TESTIFIED AT BOTH OF THOSE OCCASIONS  
21 UNDER OATH THAT JOHN RAY, JOHN RAY LUCKETT SAID IN THE  
22 APARTMENT THAT HE, JOHN RAY LUCKETT, TOOK A SHOT AT THE  
23 GRANDFATHER AND MISSED. THERE WAS NO MENTION BY JOHN LUCAS  
24 OF THE FACT THAT MICHAEL WALSH HAD TAKEN THE GUN FROM JOHNNY  
25 RAY AND DONE IT HIMSELF.

1            THAT IS GOING TO COME UP A LITTLE MORE OFTEN THAN  
2 YOU THINK. THAT'S A STORY WITHIN A STORY. THIS WHOLE  
3 SCENARIO, OF COURSE, IS WORTHY OF PEOPLE TALKING ABOUT IT  
4 LATER ON IF THEY ARE A PARTY TO IT.

5            BUT THE FACT THAT SOMEBODY BACKED OUT AND WAS A  
6 CHICKEN, AND THAT IS A BIG THING TO PEOPLE AT THIS AGE,  
7 SOMEBODY WAS A CHICKEN AND A YOUNGER KID 16 YEARS OLD HAD TO  
8 GRAB THE GUN AWAY FROM HIM AND DO HIS SHOOTING FOR HIM, THAT  
9 IS BIG TIME TALKING STUFF AND EVERYBODY IS GOING TO BE  
10 TALKING ABOUT.

11           JOHN LUCAS DIDN'T REMEMBER ANY CONVERSATION LIKE  
12 THAT. HE DIDN'T TESTIFY TO THAT.

13           THE COURT: MR. SEATON, I SHOULD INFORM YOU WE  
14 WILL HAVE A RECESS IN LESS THAN TEN MINUTES.

15           MR. SEATON: I AM SORRY, YOUR HONOR?

16           THE COURT: WE WILL BE TAKING A RECESS IN LESS  
17 THAN TEN MINUTES.

18           MR. SEATON: I WILL FIND A PLACE TO STOP AND LET  
19 THE COURT KNOW BEFORE THAT TIME.

20           THE COURT: VERY GOOD.

21           MR. SEATON: TOM AKERS WAS ALSO THERE. HE KNEW  
22 THAT THE PLAN WAS FOR JOHN RAY LUCKETT TO HAVE THE SAWED-OFF  
23 .22. WHEN THEY CAME OUT OF THE BEDROOM AND TOM AKERS DID SEE  
24 THEM GO INTO THE BEDROOM, YES, HE SAID THAT JOHNNY RAY  
25 LUCKETT LOOKED SCARED AND NERVOUS BUT HE DIDN'T KNOW WHAT WAS

1 SAID IN THERE.

2 AND HE DIDN'T TELL US ANYTHING ABOUT RANDY MOORE  
3 SAYING ANYTHING MORE THE REST OF THE NIGHT TO JOHN LUCKETT.  
4 HE DIDN'T REMEMBER HEARING ANY THREATS AT THAT TIME.

5 WHEN THEY ALL GOT TO THE HOUSE AND AS HE LEFT FOR  
6 THE TRAILER AND THEY LEFT FOR THE HOUSE, JOHN LUCKETT HAD THE  
7 GUN. THERE WERE NO THREATS THAT HE HEARD AT THAT TIME. AND  
8 AFTER THE SHOTS HAD TAKEN PLACE, JOHN RAY LUCKETT STILL HAD  
9 THE SAWED-OFF .22. NOW, JOHN RAY LUCKETT WOULD HAVE US  
10 BELIEVE MIKE WALSH THREW IT TO HIM AND HE GOT IT AGAIN.

11 IN AKERS' STATEMENT, DECEMBER 7TH, 1984, MADE TO  
12 THE POLICE DEPARTMENT, TOM AKERS SAID THAT RANDY SAID, "JOHN  
13 RAY LUCKETT SHOT AT THE SAME TIME I DID."

14 AND IN THAT SAME STATEMENT, TOM AKERS SAID THAT  
15 JOHN RAY HAD TOLD HIM, "I SHOT AT THE GRANDFATHER. I MISSED.  
16 I TRIED TO RELOAD BUT BY THE TIME I DID, EVERYTHING WAS ALL  
17 OVER."

18 ANGELA SALDANA SAID THAT DALE TOLD HER THAT  
19 JOHNNY RAY WAS AT THE PLANNING MEETINGS, HE HAD THE SAWED-OFF  
20 SHOTGUN. HE, JOHNNY RAY LUCKETT, I AM SORRY, SHOT AT THE  
21 GRANDFATHER AND THAT NOTHING HAD BEEN SAID ABOUT THREATS TO  
22 JOHNNY RAY, JOHNNY RAY QUITTING, MIKE TAKING THE GUN. THIS BIG  
23 EXPLOSIVE SITUATION, NOTHING WAS SAID.

24 EVEN SCOTTY SLOANE CAME IN HERE AND TESTIFIED  
25 THAT JOHNNY RAY LUCKETT HAD TOLD HIM IN THE DETENTION CENTER

1 THAT HE HAD SHOT AT THE GRANDFATHER.

2 YOUR HONOR, THIS WOULD PROBABLY BE AS GOOD A TIME  
3 AS ANY TO CALL A HALT TO THE PROCEEDINGS.

4 THE COURT: VERY GOOD THEN.

5 (THE ADMONITION WAS READ.)

6 THE COURT: WE WILL RECESS FOR LUNCH AND  
7 RECONVENE PROMPTLY AT QUARTER AFTER ONE. COURT IS IN RECESS.

8 (RECESS TAKEN.)

9 THE COURT: THE CONTINUATION OF CASE C69269,  
10 STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN  
11 LUCKETT AND ROY MCDOWELL.

12 THE RECORD WILL REFLECT THE PRESENCE OF THE  
13 DEFENDANTS AND THEIR RESPECTIVE COUNSEL, MR. HARMON AND MR.  
14 SEATON REPRESENTING THE STATE.

15 WILL COUNSEL STIPULATE THAT ALL MEMBERS OF THE  
16 JURY ARE PRESENT AND PROPERLY SEATED?

17 MR. SEATON: YES.

18 MR. SMITH: YES, YOUR HONOR.

19 MR. PIKE: SO STIPULATED.

20 MR. POSIN: SO STIPULATED.

21 MR. HANDFUSS: YES, YOUR HONOR.

22 THE COURT: MR. SEATON, YOU MAY RESUME YOUR  
23 CLOSING REMARKS.

24 MR. SEATON: THANK YOU, YOUR HONOR. WELL, WHERE  
25 WE LEFT OFF JUST BEFORE THE LUNCH BREAK WAS WITH A LITTLE

1 COMPARING AND CONTRASTING OF THE STORIES ON BEHALF OF AND  
2 AGAINST JOHNNY RAY LUCKETT.

3 AND WITH TWO OF THOSE WITNESSES, AS I POINTED  
4 OUT EARLIER, THE STATEMENTS AND THE STORIES HAD CHANGED, THAT  
5 BEING THE STATEMENTS AND TESTIMONY OF JOHN LUCAS AND TOM  
6 AKERS.

7 NOW, THE PROBLEM THAT YOU AS A JURY HAVE GOT, I  
8 GUESS, IS DETERMINING WHO OF THOSE PEOPLE, WHICH OF THOSE  
9 STORIES TO BELIEVE. LET'S INVESTIGATE, IF WE CAN FOR A FEW  
10 MINUTES, EACH OF THEIR STORIES AND THE REASONS THAT WERE  
11 DRAWN OUT FROM THEM AS TO WHY THEY SAID ONE THING AND THEN  
12 LATER ANOTHER.

13 WE WILL TAKE JOHNNY LUCAS FIRST. IF YOU  
14 REMEMBER, HIS STORY WAS THAT -- THE FACTS WERE THAT IN HIS  
15 STATEMENT GIVEN ON DECEMBER THE 10TH, HE SAID THAT WALSH HAD  
16 DONE THE SHOOTING AND NOT LUCKETT. AND IN THE TRIAL AND AT  
17 THE EVIDENTIARY HEARING, HE SAID IT WAS JOHNNY RAY LUCKETT  
18 WHO HAD DONE THE SHOOTING.

19 ALL RIGHT. NOW, HE WAS ASKED, "WHY DID YOU MAKE  
20 THAT CHANGE? WHY IN YOUR STATEMENT DID YOU SAY IT WAS WALSH  
21 WHO DID THE SHOOTING IF HERE UNDER OATH AND AT THE  
22 EVIDENTIARY HEARING UNDER OATH YOU SAID THAT OR SAY THAT IT  
23 IS JOHN RAY LUCKETT?"

24 HE SAID, AS I RECALL IT, HE WAS TRYING TO COVER  
25 AT THE TIME OF THE STATEMENTS. NOW, LET'S THINK ABOUT WHERE



1 JOHN LUCAS WAS AND UNDER WHAT CIRCUMSTANCES HE WAS OPERATING  
2 WHEN HE ORIGINALLY MADE THAT STATEMENT TO THE POLICE  
3 DEPARTMENT.

4 HE HAD BEEN AT THE APARTMENT AND HEARD ALL OF  
5 THESE THINGS THAT WERE ABOUT TO BE DONE. HE WAS TOLD TO STAY  
6 THERE BY RANDY MOORE AND RECEIVE TELEPHONE CALLS AND TO TELL  
7 THE PEOPLE WHO CALLED, IF ANYONE DID, THAT EVERYBODY HAD GONE  
8 OFF TO TOM'S OR TO DALE'S TRAILER TO GET TAPES AND THAT THEY  
9 WERE GOING TO GET SOME BEER AND COME BACK TO THE APARTMENT.

10 A FAIRLY INNOCUOUS STORY AND ONE WHICH, OF  
11 COURSE, WOULD FIT WITH THE ALIBI THAT DALE FLANAGAN WAS GOING  
12 TO LATER TRY TO GET UP FOR HIMSELF.

13 JOHN LUCAS AT THAT TIME, AT THE TIME OF MAKING  
14 THE STATEMENT, WOULD UNDOUBTEDLY HAVE THOUGHT THAT HE WAS  
15 UNDER AS MUCH CRIMINAL LIABILITY AS WERE ANY OF THESE  
16 DEFENDANTS BECAUSE HE WAS PRESENT DURING THE CONSPIRATORIAL  
17 PART OF IT AND HE AIDED AND ABETTED.

18 HE SUPPORTED AND ASSISTED IN THAT HE DID THE  
19 BIDDING OF RANDY MOORE IN STAYING THERE AT THE APARTMENT. IF  
20 HE FELT THAT WAY, IT'S REASONABLE TO ASSUME THAT IT WAS TO  
21 HIS BEST INTEREST TO MAKE SURE THAT ALL WERE PROTECTED, THAT  
22 NONE CAME UNDER THE CONTROL OF THE POLICE DEPARTMENT.

23 AND AT THAT TIME, NONE HAD BEEN. AND IF YOU  
24 REMEMBER HIS TESTIMONY, IN FACT, THE TESTIMONY OF OTHER  
25 PEOPLE, AT THAT TIME, MICHAEL WALSH WAS GONE. HE WAS ON THE

1 TRIP WITH RANDY MOORE AND HIS GIRLFRIEND AND LEAH MOORE.

2 THAT WAS JUST BEFORE THEY GOT -- BEFORE RANDY  
3 MOORE GOT CAUGHT DOWN IN MEXICO AND MICHAEL WALSH EVENTUALLY  
4 GOT CAUGHT BACK IN ARIZONA OUTSIDE OF WILLOW BEACH.

5 SO WHEN HE MADE HIS STATEMENT, MICHAEL WALSH WAS  
6 GONE, HE WAS ON THE RUN. THE COPS COULDN'T GET AROUND OF HIM,  
7 IN THE MIND OF JOHN LUCAS AS HE TOLD US.

8 JOHNNY RAY LUCKETT NOW WAS A DIFFERENT STORY.  
9 JOHNNY RAY LUCKETT WAS HERE. HE WAS IN LAS VEGAS. AT THAT  
10 TIME, THE 10TH OF DECEMBER, I AM NOT SURE WHERE HE WAS LIVING,  
11 AT RANDY'S, AT LEAH'S, AT HIS MOTHER'S. I AM NOT SURE. HE  
12 WAS IN TOWN AND HE WAS SUSCEPTIBLE TO BEING ARRESTED AND  
13 QUESTIONED MORE IMPORTANTLY BY THE POLICE.

14 SO IT WAS TO JOHN LUCAS'S BEST INTERESTS, I  
15 SUGGEST, THAT HE TELL THE POLICE THAT IT WAS MICHAEL WALSH  
16 WHO DID THE SHOOTING AND JOHNNY RAY LUCKETT DID NOT SO THEY  
17 WOULD HAVE A LESSER INTEREST IN JOHNNY RAY LUCKETT.

18 ONCE THE TRIAL COMES AROUND, ONCE THE EVIDENTIARY  
19 HEARING COMES AROUND, EVERYBODY IS CAUGHT, EVERYBODY IS IN  
20 CUSTODY. NOW THERE IS NO MORE REASON TO LIE.

21 JOHN LUCAS HAS NO LIABILITY THAT HE KNOWS OF, AT  
22 LEAST AT THAT TIME. HE COULD HAVE LIABILITY FOR PERJURY BUT  
23 NOT FOR HAVING MADE THAT FALSE STATEMENT. THAT IS BEHIND  
24 HIM.

25 AND SO HERE ON THE STAND, HE TELLS US THAT HIS

1 REASON FOR LYING WAS TO PROTECT BOTH MICHAEL WALSH AND JOHNNY  
2 RAY LUCKETT BY SAYING MICHAEL WALSH DID THE SHOOTING BECAUSE  
3 HE IS OUT OF STATE AND JOHNNY RAY LUCKETT IS HERE.

4 NOW COMES THE TRIAL, HE WILL TELL THE TRUTH AND  
5 THE TRUTH IS HE SAID JOHNNY RAY LUCKETT ACTUALLY DID THE  
6 SHOOTING.

7 TOM AKERS' STORIES CHANGED. HE WAS JUST THE  
8 REVERSE. IN HIS STATEMENT, HE SAID THAT JOHNNY RAY LUCKETT  
9 DID THE SHOOTING AND AT THE TRIAL HERE BEFORE YOU, HE SAID  
10 THAT IT WAS MICHAEL WALSH WHO HAD DONE THE SHOOTING.

11 HIS REASONS, I SUGGEST TO YOU, ARE NOT QUITE AS  
12 GOOD, NOT QUITE AS PALATABLE AS THE REASONS OF JOHN LUCAS.  
13 TOM AKERS SUGGESTED THAT THE REASON -- AND HE DIDN'T LIE, HE  
14 SAYS.

15 HE SAID, "I MADE A MISTAKE AT MY STATEMENT WITH  
16 THE POLICE OFFICERS. I HADN'T KNOWN JOHN RAY LUCKETT,  
17 MICHAEL WALSH OR ROY MCDOWELL FOR VERY LONG.

18 "I HAD KNOWN RANDY AND DALE PRETTY WELL. I KNEW  
19 WHO THEY WERE BUT I WAS CONFUSED." HE SAID, "THE POLICE WERE  
20 SHOWING ME PHOTOGRAPHS AND THROWING NAMES AT ME AND I WAS  
21 CONFUSED."

22 WELL, I DON'T KNOW IF THAT WASHES IN YOUR MINDS  
23 OR NOT. I HAVE A LITTLE TROUBLE WITH IT. HE HAD KNOWN THEM  
24 FOR SOME TIME. HE HAD BEEN TO PARTIES WITH THEM, BEEN TO  
25 CIRCUS CIRCUS WITH THEM. HE HAD SPOKEN WITH ALL OF THESE

1 PEOPLE.

2 CERTAINLY, HE KNEW THE DIFFERENCE BETWEEN A BLACK  
3 PERSON AND A WHITE PERSON. HE KNEW WHO MICHAEL WALSH, ROY  
4 MCDOWELL AND JOHN RAY LUCKETT WERE.

5 I WOULD SUGGEST THAT THERE REALLY WASN'T MUCH OF  
6 A REASON FOR HIM TO BE MISTAKEN.

7 TOM AKERS' STATEMENT WAS ALLUDED TO A GREAT DEAL  
8 WHEN HE WAS ON THE STAND. AND HE WAS ASKED IN THAT STATEMENT  
9 IF HE KNEW WHO JOHNNY RAY LUCKETT WAS.

10 AND HE SAID, YES. I DON'T KNOW HIS LAST NAME.  
11 IS HE A BLACK MALE? YES. HE IS A MINOR AGE 17. WHERE DOES  
12 HE LIVE AT? AT 13TH STREET WITH RANDY. AND HE WAS ASKED ALL  
13 THE OTHER NAMES OF THE PEOPLE AND HE WAS ABLE TO TELL THEM ON  
14 PAGES TWO AND THREE.

15 ON PAGE SIX, HE WAS DIRECTLY CROSS-EXAMINED ABOUT  
16 THIS. HE WAS ASKED THE QUESTION, AND, REMEMBER, WE ARE  
17 TRYING TO RESOLVE HERE WHICH IS THE TRUTH, DID MICHAEL WALSH  
18 DO THE SHOOTING OR DID JOHN RAY LUCKETT DO THE SHOOTING?

19 HE WAS ASKED THE QUESTION, "DID RANDY SMITH AT  
20 ANY TIME SAY TO YOU WHO HE SHOT?" "NO." THIS IS HIS ANSWER,  
21 "HE SAID HE SAW SOMEONE COMING DOWN THE STEPS OR HE WAS  
22 STANDING THERE AND JOHNNY RAY SHOT AT THE SAME TIME THAT  
23 RANDY SHOT.?"

24 QUESTION, "DID JOHNNY RAY EVER MAKE A STATEMENT  
25 TO YOU THAT HE DID SOME SHOOTING?"

1 "NO, NOT DIRECTLY TO ME." TOM AKERS ANSWERED.  
2 TOM AKERS SAID, "I HEARD HIM TALKING TO RANDY. I HEARD JOHN  
3 RAY TALKING TO RANDY WHEN WE GOT BACK TO THE HOUSE. HE SHOT  
4 THE SAWED-OFF. HE DID NOT THINK HE HIT HIM. HE RELOADED AND  
5 BY THAT TIME EVERYTHING ELSE WAS OVER."

6 HE MADE THAT STATEMENT TO RANDY. HE MADE THE  
7 STATEMENT TO THE PEOPLE WHO WERE THERE.

8 NOW, THOSE STATEMENTS DON'T SOUND TO ME LIKE THE  
9 STATEMENTS MADE BY A PERSON WHO WAS CONFUSED AS TO WHO WAS  
10 MAKING THOSE STATEMENTS OR WHO WAS MIXED UP ABOUT WHO WAS  
11 MAKING THOSE STATEMENTS.

12 I THINK, AND AGAIN I DON'T WANT TO GET INTO THE  
13 ARENA OF BEING JUDGMENTAL, BUT THERE MAY BE SOME VALIDITY  
14 THAT CAN BE ATTACHED TO THE TESTIMONY THAT CAME BEFORE YOU  
15 THAT TOM AKERS MAY HAVE BEEN AT LEAST SHADING SOME PORTIONS  
16 OF THE TRUTH TO SOME EXTENT TO PROTECT JOHNNY RAY LUCKETT.

17 TO WHAT END, FOR WHAT REASON, I DON'T KNOW. BUT  
18 I THINK IT'S SOMETHING THAT IS CERTAINLY WORTHY OF ALL OF  
19 YOUR CONSIDERATION.

20 WITH THAT AS THE EVIDENCE HAS BEEN PORTRAYED SO  
21 FAR, THERE IS A FEELING THAT JOHN RAY IS THE INDIVIDUAL WHO  
22 DID THE SHOOTING IN SPITE OF HIS PROTESTATIONS AND THAT IS  
23 BUTTRESSED EVEN MORE WHEN YOU CONSIDER THE FACT THAT DALE  
24 FLANAGAN SAID IT WAS SO. HE TOLD ANGIE.

25 WHEN DALE FLANAGAN TALKED TO ANGELA SALDANA IN

1 THE TRAILER, REMEMBER, HE TOLD HER THAT JOHN RAY WAS THE  
2 INDIVIDUAL WHO DID THE SHOOTING. AND HE DIDN'T MENTION  
3 ANYTHING ABOUT THREATS.

4 AND, MORE IMPORTANTLY, AND SOMETIMES MORE CAN BE  
5 LEARNED IN TRIALS FROM WHAT'S NOT SAID THAN WHAT IS SAID.  
6 AND, MORE IMPORTANTLY, DALE FLANAGAN, AS HE RELATED VIRTUALLY  
7 EVERYTHING THAT HAPPENED THAT NIGHT TO ANGELA SALDANA,  
8 SOMEHOW LEFT OUT THIS STORY WITHIN A STORY, THAT JOHN RAY  
9 LUCKETT HAD TURNED CHICKEN AND THAT THE YOUNG KID, MIKE WALSH,  
10 HAD TO GRAB THE RIFLE FROM HIM AND GO UP TO THE WINDOW AND  
11 DO THE SHOOTING FOR HIM.

12 NOW, IT JUST DOESN'T MAKE SENSE THAT THAT  
13 STORY WITHIN A STORY IS GOING TO BE LEFT OUT. LET'S SEE  
14 IF WE CAN CARRY THIS A STEP FURTHER IN DETERMINING WHETHER  
15 OR NOT JOHN RAY LUCKETT WAS TRYING TO CON EVERYONE IN  
16 THIS COURTROOM WHEN HE TOOK THE STAND, WHETHER OR NOT HE WAS  
17 COMMITTING PERJURY, AS I SUGGEST TO YOU THAT HE WAS.

18 LET'S LOOK AT SOME BASIC PREMISES THAT HE TRIED  
19 TO GET ALL OF US TO BELIEVE AND SEE WHETHER OR NOT USING OUR  
20 GOOD COMMON SENSE LEARNED FROM EVERYDAY EXPERIENCES WHETHER OR  
21 NOT THESE STATEMENTS REALLY HAVE A RING OF TRUTH TO THEM OR  
22 NOT.

23 FOR EXAMPLE, HE WANTS US ALL TO BELIEVE THAT HE  
24 HAD NEVER BEEN IN ON THE CONSPIRACY. HE HADN'T ANY KIND OF  
25 AN AWARENESS THAT ALL OF THESE HORRENDOUS THINGS WERE GOING

1 TO GO ON.

2 HE LIVED IN AN APARTMENT WITH RANDY MOORE AND  
3 MICHAEL WALSH FOR ABOUT TWO MONTHS. THE THREE OF THEM  
4 TOGETHER. EVEN NOT LIVING THERE, HE WAS THERE ALL THE TIME  
5 AS WERE SO MANY OTHER PEOPLE WHEN THEY WERE PARTYING AND  
6 DOING WHATEVER THEY DID OVER AT THAT PLACE.

7 JOHN LUCAS AND TOM AKERS HAVE TOLD US THAT HE WAS  
8 AT SOME OF THE PLANNING MEETINGS. EVERYONE ELSE KNEW ABOUT  
9 THE PLAN, EVERYONE ELSE KNEW ABOUT THE ALIBI. WHY IS IT,  
10 HAVE YOU ASKED YOURSELVES, WOULD THESE PEOPLE HAVE WITHHELD  
11 THIS INFORMATION FROM ONE INDIVIDUAL?

12 WHY CHOOSE JOHN RAY LUCKETT TO BE SECRETIVE IN  
13 FRONT OF? THERE IS NO REASON. HE IS A PART OF THE CROWD.  
14 THEY TOLD ANYBODY WHO WOULD LISTEN THAT THIS THING WAS GOING  
15 TO GO ON.

16 RUSTY HAVENS WAS ASKED TO KILL THE GRANDMOTHER  
17 AND WASN'T EVEN INVITED OVER NOVEMBER THE 5TH. THERE WAS  
18 NOTHING SECRET ABOUT WHAT WAS GOING ON HERE WITHIN THE CIRCLE  
19 OF FRIENDS AND JOHN RAY LUCKETT WAS CERTAINLY WITHIN THAT  
20 CIRCLE OF FRIENDS WITHOUT ANY DOUBT.

21 ALONG THOSE LINES, WHAT WAS HE ASKED TO DO  
22 ACCORDING TO HIS OWN STATEMENTS AND EVERYBODY AGREED WITH  
23 HIM, OF COURSE. HE WAS ASKED TO TAKE THE SAWED-OFF .22 RIFLE  
24 AND BE A BACKUP. HE WAS ALLOWED TO HANDLE A WEAPON WITH A  
25 BULLET IN IT.

1            THAT, I SUGGEST TO YOU, IS THE THIRD GREATEST  
2 RESPONSIBILITY THAT THIS GROUP OF PEOPLE HAD. THE FIRST TWO  
3 ARE SORT OF TIED WITH ONE ANOTHER. THEY HELD THE PISTOL AND  
4 THE LONG RIFLE AND WERE ASSUREDLY TO KILL TWO GRANDPARENTS.

5            THE NEXT RESPONSIBILITY WAS THE PERSON WHO ALSO  
6 HAD IN HIS HANDS A GUN AND HAD THE ABILITY TO FIRE IT AND TO  
7 TRY TO KILL SOMEBODY.

8            IS THIS GROUP REALLY GOING TO GIVE THE THIRD  
9 GREATEST RESPONSIBILITY, THAT OF SHOOTING A GUN, TO THE  
10 PERSON THAT THEY HAVE BEEN WITHHOLDING ALL THIS INFORMATION  
11 FROM? IS THAT RATIONAL, IS IT SOMETHING THAT WE CAN REALLY  
12 SAY IS LIKELY TO HAVE HAPPENED?

13           IT'S BULL IS WHAT IT IS. WHAT ELSE ABOUT WHAT HE  
14 SAYS IS IMPLAUSIBLE? THE FACT THAT RANDY THREATENED HIM IN  
15 THE BEDROOM. SORT OF THE SAME ARGUMENT APPLIES HERE.

16           RANDY WAS OPEN WITH EVERYBODY ELSE. EVERYBODY  
17 ELSE KNEW WHAT WAS GOING ON THROUGHOUT THEIR RELATIONSHIP  
18 WHICH WAS A GOOD RELATIONSHIP. HOW DID IT START OFF? RANDY  
19 MOORE FIGHTING ON BEHALF OF JOHN RAY LUCKETT AND GETTING HIM  
20 OUT OF A SCRAPE AT CIRCUS CIRCUS AND IT CARRIED ON THAT WAY.

21           THESE PEOPLE WERE ONE AND THE SAME. THEY WERE  
22 BUDDIES AND PARTNERS AS WELL AS CONSPIRATORS. AND THEY DID  
23 EVERYTHING TOGETHER. THEY SHARED DRUGS, THEY PARTIED, THEY  
24 SHARED BEER, THEY SHARED WITCHCRAFT.

25           THEIRS WAS NOT THE KIND OF RELATIONSHIP WHERE



1 ONE THREATENED THE OTHER. SURE, HE KNEW RANDY HAD A TEMPER,  
2 PROBABLY EVERYBODY KNEW THAT, BUT IT WAS NEVER EXHIBITED  
3 AGAINST JOHN RAY LUCKETT UNTIL THE NIGHT OF NOVEMBER 5TH  
4 WHEN RANDY MOORE PULLED JOHN RAY LUCKETT INTO THE BEDROOM  
5 AND OUT OF THE BLUE POINTED A WEAPON AT HIM AND TOLD HIM  
6 THERE WOULD BE HELL TO PAY IF HE DIDN'T COME ALONG AND HELP  
7 THAT NIGHT.

8 WELL, NOW, WHAT CAUSED THAT? THAT'S OUT OF  
9 CHARACTER. IT IS OUT OF SINK. WE HAVEN'T SEEN ANY HINT OF  
10 THAT SORT OF THING HAPPENING.

11 HE DIDN'T DO THAT WITH ROY MCDOWELL OR DALE  
12 FLANAGAN OR TOM AKERS OR ANYBODY ELSE. HE WAS SO UNCONCERNED  
13 ABOUT IT. HE DIDN'T CALL RUSTY HAVENS AND SAY, "RUSTY, GET  
14 OVER HERE, WE NEED YOU TO GO BLUDGEON THE GRANDMOTHER AS WE  
15 TALKED ABOUT DOING BEFORE."

16 IT WAS THAT MEANINGLESS. SO JOHN RAY LUCKETT  
17 EXPECTS US TO BELIEVE, EXPECTS YOU TO BELIEVE THAT ALL OF A  
18 SUDDEN OUT OF NOWHERE THESE TERRIBLE THREATS COME.

19 AND, YOU KNOW, SOMETHING INTERESTING ABOUT THAT  
20 AND SOMETIMES PEOPLE SAY THINGS AND THEY JUST DON'T REALIZE  
21 WHAT THEY HAVE SAID AND IT COMES BACK TO HAUNT THEM AND HERE  
22 IT COMES, JOHN RAY.

23 I REMEMBER DISTINCTLY, AND WROTE IT DOWN  
24 VERBATIM, ONE OF THE REASONS RANDY MOORE GAVE TO JOHN  
25 LUCKETT, ACCORDING TO JOHN LUCKETT, FOR BRINGING HIM IN AT

1 THE LAST MINUTE ON WHAT WAS GOING ON IS THAT NO ONE CAN BE  
2 LEFT AT THE APARTMENT.

3 WELL, COME ON, JOHN RAY, JOHN LUCAS GOT LEFT AT  
4 THE APARTMENT. NOW, HE'S HEARD ALL THE PLANS. ISN'T IT  
5 EASIER TO LEAVE JOHN LUCKETT THERE THAN IT IS TO LEAVE JOHN  
6 LUCAS?

7 NONE OF THAT MAKES SENSE. WHAT ELSE IS  
8 IMPLAUSIBLE? JOHN RAY LUCKETT CLAIMS THAT HE DIDN'T KNOW THE  
9 SERIOUSNESS OF WHAT'S GOING ON BASED ON THE INFORMATION THAT  
10 HE HAD.

11 WELL, HE HAD A WEALTH OF INFORMATION. AND HE IS  
12 A LOT DENSER THAN HE ACTED UP HERE ON THE STAND IF WE ARE TO  
13 BELIEVE WHAT WE SAID.

14 HE HEARD DALE TELL PEOPLE THAT IT WAS GOING TO GO  
15 DOWN THIS WEEKEND. HE HEARD DALE CALL ROY MCDOWELL AND ASK  
16 HIM IF HE GOT THE TOY.

17 AND ANYBODY LIVING IN THAT APARTMENT KNEW WHAT  
18 THE TOY WAS. HE HEARD DALE TALKING ABOUT, "I FOUND A WAY IN.  
19 I'LL MEET YOU ALL AT THE HOSPITAL. WE ARE GOING TO MOVE  
20 FURNITURE AROUND."

21 THESE ARE JUST BITS AND PIECES OF THAT  
22 CONVERSATION THAT YOU MIGHT REMEMBER. DALE ASKED RANDY, "CAN  
23 WE TRUST HIM? CAN WE TRUST JOHN RAY?"

24 JOHN RAY'S GOT TO BE WONDERING TO HIMSELF, "WHY  
25 ARE THEY ASKING THAT? I AM A PART OF THIS GROUP. I HAVE

1 DONE EVERYTHING TO BECOME A PART OF THE ACES BUT GET  
2 INITIATED. THEY HAVE EVEN GIVEN ME A NICKNAME."

3 THAT HAD TO RAISE A SUSPICION TO SOME DEGREE.  
4 WHEN HE CAME OUT OF THE BEDROOM, DALE IS TELLING EVERYONE,  
5 INCLUDING JOHN RAY LUCKETT, "NOW REMEMBER YOUR STORY."

6 AND HE SAID, "I AM TO BE SHOT AFTER I CHECK OUT  
7 THE HOUSE." ISN'T JOHN RAY ABOUT THAT TIME SCRATCHING HIS  
8 HEAD AND SAYING, "WHAT ALIBI, WHAT AM I SUPPOSED TO REMEMBER,  
9 DALE? IT DOESN'T MAKE SENSE."

10 THESE PEOPLE HAVE BEEN TOO CAREFUL THROUGHOUT.  
11 THEY ARE NOT GOING TO THROW A GUY LIKE JOHN RAY LUCKETT, WHO  
12 NEVER KNEW ANYTHING ABOUT IT, IN IT FOR A MOMENT, AT THE LAST  
13 MOMENT'S NOTICE AND EXPECT HIM TO BE ABLE TO GO ALONG WITH  
14 THIS CONSPIRACY AND THE COVERUP THAT THEY HAVE SO CAREFULLY  
15 PLANNED.

16 IT'S A LUDICROUS STORY. WHAT ELSE DID HE KNOW IN  
17 JUDGING WHETHER OR NOT HE KNEW THE SERIOUSNESS OF THIS THING?  
18 HE SAW RANDY WITH THE RIFLES, ONE OF WHICH IS SO SERIOUS,  
19 THIS BUSINESS, IT WAS POINTED AT HIM.

20 HE SAW RANDY LOAD BOTH RIFLES, HE SAW ROY BRING  
21 THE PISTOL AND GIVE IT TO DALE AND DALE LOAD THE PISTOL. HE  
22 HEARD RANDY TELL JOHN LUCAS ABOUT, "IF ANYBODY CALLS, TELL  
23 THEM WE HAVE GONE TO GET THE TAPES AND WE ARE GOING TO BUY SOME  
24 BEER."

25 HE SAW THEM TAKE THE GUNS TO THE CAR. HE DROVE

1 WITH THEM FOR FIVE OR SIX MILES FOR AT LEAST A HALF HOUR  
2 PERIOD OF TIME, IF I REMEMBER THE TESTIMONY, DURING WHICH  
3 OSTENSIBLY NOTHING WAS SAID.

4 THEY'RE NOT REHEARSING THIS PLAN. RANDY AND -- I  
5 AM SORRY, DALE FLANAGAN AND TOM, AT LEAST, ARE NOT DISCUSSING  
6 EVERYONE'S ROLES AND HOW TO COVER UP THE CRIMES DURING THIS  
7 DRIVE.

8 THERE IS AN EERIE SILENCE, HE SAID. COME ON, JOHN  
9 RAY, YOU CAN DO BETTER THAN THAT. AND THEN THERE WAS THE  
10 TEST FIRING OF THE GUN AND WITH ALL OF THIS, HE SUGGESTS TO  
11 YOU THAT HE DIDN'T KNOW THE SERIOUSNESS OF WHAT WAS GOING ON  
12 UNTIL HE WAS TOLD THAT HE WAS TO BE A BACKUP.

13 AND HE WAS AFRAID TO TELL ANYBODY. NOW, REMEMBER  
14 HOW INNOCENT HE IS IF HIS STORY IS TRUE. THINK ABOUT THAT IN  
15 TERMS OF COMPARING, CONTRASTING HIS INNOCENCE WITH THEIR  
16 GUILT AND THE HORRENDOUS MORAL DILEMMA THAT WOULD PUT SUCH A  
17 PERSON IN.

18 I CAN CONCEIVE OF SITUATIONS WHERE A PERFECTLY  
19 MORAL PERSON WOULD FEEL CONSTRAINED NOT TO GO TO THE  
20 AUTHORITIES UNDER CERTAIN CIRCUMSTANCES AND TELL THE  
21 AUTHORITIES WHAT HAS HAPPENED AND THAT THEY ARE INNOCENT AND  
22 THAT PERSON IS INNOCENT AND THE REST OF THEM ARE GUILTY. I  
23 CAN CONCEIVE OF THAT. I CAN'T CONCEIVE OF IT IN THIS CASE.

24 HE HAS LIVED AT 337 NORTH 13TH FOR ALL THESE  
25 COUPLE OF MONTHS. HE STAYS THERE FOR THREE MORE WEEKS. HE

1 SAYS HE IS WORRIED ABOUT HIS FAMILY, BUT REMEMBER THE STRONG  
2 RELATIONSHIP HE HAS WITH HIS MOTHER.

3 HE CAN GO TO HIS MOTHER AND SAY, "LOOK, WE HAVE  
4 GOT SOME REAL PROBLEMS HERE. WE HAVE TO GET ALL OF US IN A  
5 PROTECTED SITUATION BUT IT IS IMPERATIVE THAT I TELL SOMEBODY  
6 OF THIS HORRIBLE THING THAT'S GONE ON AND THAT I AM INNOCENT  
7 AND THAT THERE ARE OTHER PEOPLE WHO ARE GUILTY."

8 IT JUST DOESN'T MAKE SENSE FOR HIM TO DO ANYTHING  
9 ELSE. AND THEN IF IT'S RANDY MOORE THAT HE IS AFRAID OF,  
10 WHEN RANDY MOORE GOES TO PHILADELPHIA, WHY DOESN'T JOHN RAY  
11 LUCKETT TELL THE POLICE THEN?

12 AND, REMEMBER, WHEN JOHN RAY LUCKETT WAS  
13 ARRESTED, DALE FLANAGAN HAD BEEN IN JAIL FOR ABOUT TWO WEEKS  
14 AND RANDY MOORE WAS IN PHILADELPHIA OR IN SAN DIEGO OR IN  
15 MEXICO.

16 SO HE HAD NOTHING TO FEAR FROM THE TWO MOST  
17 FEARSOME PEOPLE AS HE WOULD HAVE US BELIEVE. AND YET WITH  
18 ALL THIS MORAL DILEMMA ON HIS SHOULDERS, HE DIDN'T THINK IT  
19 WAS WISE IN BALANCE TO GO TO THE POLICE.

20 AND THAT JUST ISN'T REALISTIC. NOT FOR THE  
21 THOUGHT PROCESSES OF SOMEONE LIKE JOHN RAY LUCKETT WHO SAT UP  
22 IN THAT STAND AND EXPOSED HIMSELF TO US.

23 WHEN YOU COMBINE ALL OF THAT, THE IMPLAUSIBILITY  
24 OF THE STORIES WITH THE CHARACTER, AS I HAVE SEEN THE  
25 EVIDENCE TELL IT, OF JOHN RAY LUCKETT, AND ALL THE DEVIL

1 WORSHIP AND THE DRUGS AND THE GANG AND THE FIGHTING AND THE  
2 GUNS AND EVERYTHING ELSE, YOU START TO GET A REAL FEEL FOR  
3 WHO JOHN RAY LUCKETT IS AND WHETHER OR NOT HE WAS TELLING US  
4 THE TRUTH.

5 AND WITH THAT IN MIND, I NOW WANT TO READ TO YOU  
6 DEFENDANT'S EXHIBIT B. THIS, THIS IS JOHN RAY LUCKETT. THIS  
7 IS -- AND HOW MANY OF YOU OF YOU HAVE DONE IT IN YOUR PASTS?  
8 THIS IS A MOMENT WHEN SOMEONE CAN SIT BY THEMSELVES  
9 UNINTERRUPTED AND WRITE THOUGHTS FROM THE GUT. THOUGHTS THAT  
10 A LOT OF US AREN'T ABLE TO EXPRESS.

11 THEY ARE THE REAL THING IN US. SOMETIMES IT  
12 COMES OUT IN POETRY, SOMETIMES IT COMES OUT IN FEARFUL  
13 WRITING. LISTEN TO WHO JOHN RAY LUCKETT REALLY IS.

14 "I TRY TO SEEK DARKNESS. I HAVE LOST ALL MY  
15 FEAR. I AM SOMETIMES CONFUSED. I CAN'T SHED A TEAR. SOME  
16 THINK I'M CRAZY, STRANGE OR DIFFERENT. WHAT MAKES ME THAT  
17 WAY? I THINK I AM EQUIVALENT.

18 "LIFE IS A TRIP. WHY IS IT SO DEMENTED AND SUCH?  
19 WHAT I REALLY NEED IS TO BE WANTED AND LOVED. I AM USED TO  
20 BEING LONESOME AND BEING ON MY OWN IN LOTS OF WAYS. HOW COME  
21 MY LIFE'S NOTHING BUT INSANE, VULGAR AND DEADLY DAYS?

22 "I ALWAYS HAVE WICKED, WEIRD AND SENSELESS  
23 DREAMS. THE PAIN IS SO BAD MY INSIDES SCREAM. EVEN THOUGH I  
HURT, I DON'T SHOW MUCH ATTITUDE BECAUSE I GREW UP HARD,  
ABUSED AND CRUDE.

1           "IF I HAD A CHOICE, I'D SOAR LIKE A HAWK. I'D  
2 SEARCH FOR MY PREY ONLY AT DARK. VENGEANCE TO ME IS A VERY  
3 BIG WORD BUT WHEN I STRIKE IT'S A LIFETIME CURSE." YOU REALLY  
4 THINK THESE THINGS?

5           "IF PEOPLE COULD ONLY FEEL WHAT RUNS THROUGH MY  
6 HEAD, BUT IF THEY DID PROBABLY FEEL DEAD."

7           DO YOU THINK CARL AND COLLEEN GORDON HAD ANY  
8 INKLING OF WHAT RAN THROUGH THIS NICE LOOKING YOUNG MAN'S  
9 HEAD ON NOVEMBER THE 5TH, 1984? I DOUBT IT.

10          THIS, THIS RIGHT HERE IS JOHN RAY LUCKETT. NOT  
11 WHAT YOU HAVE SEEN THROUGHOUT THESE PROCEEDINGS. DON'T LET  
12 THESE ANTISEPTIC WALLS AND THIS NICE CALM DEMEANOR OF THIS  
13 COURTROOM FOOL YOU INTO THINKING HE IS SOMETHING ELSE. THAT  
14 PIECE OF PAPER IS JOHN RAY LUCKETT.

15          I SUBMIT TO YOU THAT THE EVIDENCE IN THIS CASE AS  
16 TO JOHN RAY LUCKETT SUPPORTS THE BELIEF THAT HE COMMITTED ALL  
17 OF THE CRIMES THAT HAVE BEEN CHARGED AGAINST HIM. HE WAS  
18 INVOLVED IN THE PLANNING MEETINGS AND HE CONSPIRED TO COMMIT  
19 MURDER.

20          HE WILLINGLY WENT TO THE GORDONS. HE WILLINGLY  
21 HANDLED THE SAWED-OFF SHOTGUN, HE WILLINGLY WENT TO THE  
22 WINDOW AND HE WAS RANDY MOORE'S BACKUP.

23          HE SHOT AT MR. GORDON. AND HE WENT BACK TO THE  
24 APARTMENT AND HE DRANK THREE BEERS. AND DO YOU KNOW WHERE  
25 THAT MONEY CAME FROM? THAT CAME OUT OF MRS. GORDON'S WALLET.

1           AND HE WENT TO THE LAKE AND HE HELPED DISPOSE  
2 SOME WEEKS LATER, THIS PERSON WHO IS SO WORRIED ABOUT HIS  
3 COMPLICITY, HE HELPED DISPOSE OF THE GUNS BY DRIVING OUT TO  
4 THE LAKE.

5           HE WANTS YOU TO BELIEVE THAT HE WAS COERCED. HIS  
6 DEFENSE ATTORNEY, MR. SMITH, IS GOING TO COME UP HERE AND HE IS  
7 GOING TO TALK TO YOU ABOUT THAT. HE IS GOING TO SAY THERE  
8 WAS THREATS, IT IS COERCION, IT IS DURESS.

9           MR. JOHNNY RAY LUCKETT WOULDN'T HAVE DONE THOSE  
10 THINGS THAT HE IS ACCUSED OF HAD IT NOT BEEN FOR RANDY MOORE  
11 AND HIS FORCEFULNESS.

12           WELL, LET'S LOOK AT INSTRUCTION 29 WHICH TALKS  
13 ABOUT THAT SORT OF THING. AND LET ME GIVE YOU THE BOTTOM  
14 LINE FIRST AND THEN WE WILL TALK ABOUT IT AND THEN WE WILL  
15 READ THE INSTRUCTION.

16           THE BOTTOM LINE IS, MR. LUCKETT, THAT THE DEFENSE  
17 OF COERCION IS NOT AVAILABLE TO YOU. IN FACT, LET ME READ  
18 THE SECOND PARAGRAPH OF NUMBER 29.

19           THE ABOVE MENTIONED DEFENSE, WHICH WE ARE GOING  
20 TO TALK ABOUT IN A MOMENT, IS UNAVAILABLE WHERE THE CRIME  
21 CHARGED IS PUNISHABLE WITH DEATH.

22           NOW, I WILL BE INTERESTED TO HEAR WHAT MR. SMITH  
23 HAS TO SAY ABOUT THAT. HERE IS WHAT IT READS. A PERSON WHO  
24 COMMITS AN UNLAWFUL ACT WHICH IS CHARGED UNDER THREATS OR  
25 MENACES SUFFICIENT TO SHOW THAT HE HAD A REASONABLE CAUSE TO



1 BELIEVE AND DID BELIEVE HIS LIFE WOULD BE IN DANGER IF HE  
2 REFUSED OR THAT HE WOULD SUFFER GREAT BODILY HARM, IS NOT  
3 LIABLE TO PUNISHMENT UNLESS THE CRIME IS PUNISHABLE WITH  
4 DEATH.

5 THE ABOVE MENTIONED DEFENSE IS UNAVAILABLE WHERE  
6 THE CRIME CHARGED IS PUNISHABLE WITH DEATH.

7 MURDER OF THE FIRST DEGREE IS PUNISHABLE BY  
8 DEATH. IT IS THE LAW. THAT IS THE THING THAT YOU ALL RAISED  
9 YOUR HANDS AND SWORE TO UPHOLD.

10 AND JUST SO WE CAN GET IT OUT OF THE WAY, LET'S  
11 TALK ABOUT -- LET'S EVEN ASSUME THAT YOU ARE GOING TO  
12 CONSIDER FOR SOME REASON THESE THREATS OR MENACES. THIS IS  
13 HOW THEY HAVE TO BE.

14 SUCH THREATS OR MENACES MUST BE PRESENT AND  
15 IMMEDIATE AND OF SUCH A NATURE AS TO INDUCE A WELL-FOUNDED  
16 FEAR OF IMPENDING DEATH OR SERIOUS BODILY INJURY. AND THERE  
17 MUST BE NO OPPORTUNITY TO ESCAPE THE THREATS OR MENACES  
18 WITHOUT COMMITTING THE CRIME OR CRIMES.

19 HE'S GOT TO BE PUSHED RIGHT TO THE EDGE BEFORE  
20 THIS DEFENSE COMES IN WITH REGARDS TO CRIMES WHICH ARE NOT  
21 PUNISHABLE BY DEATH.

22 HE WASN'T PUSHED TO THE EDGE. EVEN IF WE TAKE  
23 HIS STORY AT FACE VALUE, EVEN ACCEPTING EVERYTHING JOHNNY RAY  
24 LUCKETT TOLD US, HE HAD NO IMMEDIATE THREATS. A THREAT TO  
25 HIS FAMILY. WELL, THEY WEREN'T AROUND. THAT IS NOT

1 IMMEDIATE. THAT IS NOT PRESENT.

2 I DON'T REMEMBER ANYBODY SAYING THAT RANDY MOORE  
3 TOLD HIM, "I AM GOING TO KILL YOU RIGHT NOW OR I AM GOING TO  
4 DO SERIOUS BODILY INJURY TO YOU RIGHT NOW IF YOU DON'T COME  
5 ALONG AND DO AS WE ASK."

6 LET ME TELL YOU WHAT WE ARE REALLY TALKING ABOUT.  
7 WHAT REALLY HAPPENED, IT WAS A LITTLE PUSHING IN THIS CASE.

8 I DON'T THINK EVERYBODY WAS CLAMORING OUT TO BE  
9 THE FIRST PERSON TO BE ABLE TO DO AN ACT. THERE WAS  
10 WILLINGNESS.

11 WHAT MR. SMITH IS GOING TO GET UP HERE AND ARGUE  
12 TO YOU IS WERE THREATS AND COERCION AND DURESS ARE WHAT WE  
13 HAVE ALL KNOWN ALL OUR LIVES AND CALLED PEER PRESSURE. PEER  
14 PRESSURE. THAT'S ALL IT WAS.

15 THESE ARE SIX YOUNG MEN HAVING THE SAME INTERESTS  
16 TO ONE DEGREE OR ANOTHER, THE SAME LACK OF MORALITY, WHO WERE  
17 FEEDING UPON ONE ANOTHER.

18 THEY WERE A SNOWBALL THAT WAS GOING, GETTING  
19 LARGER AND MORE POWERFUL AND MORE ABLE TO DO DAMAGE AS IT  
20 ROLLED ALONG.

21 THREATS AND COERCION AND DURESS IS SOMETHING THAT  
22 HAS BEEN EXPANDED INTO SO AS TO GET YOU TO SAY, "WELL, THIS  
23 POOR YOUNG FELLOW HAS SOME SORT OF A DEFENSE." HE HASN'T ANY  
24 BECAUSE IT ISN'T THERE. IT JUST DIDN'T HAPPEN THAT WAY.

25 THESE FOUR, DALE FLANAGAN, RANDOLPH MOORE, ROY

1 MCDOWELL, JOHNNY RAY LUCKETT, ALONG WITH TOM AKERS AND  
2 MICHAEL WALSH, CONSPIRED, GOT TOGETHER, DEVISED A PLAN.  
3 TOGETHER THEY DID THIS.

4 AND THEY ALL HAD THEIR ROLES TO PLAY. WE HAVE  
5 NOTICED THAT AS TIME GOES ON.

6 DALE FLANAGAN'S ROLE WAS TO SHOOT HIS  
7 GRANDMOTHER. AND HE WAS ALSO TO ULTIMATELY GET THE  
8 INHERITANCE AND SPLIT IT WITH EVERYONE.

9 RANDY MOORE'S ROLE WAS TO SHOOT THE GRANDFATHER.  
10 JOHNNY RAY LUCKETT'S ROLE WAS TO BE A BACKUP TO RANDY MOORE  
11 AND TO SHOOT IF HE HAD TO.

12 ROY MCDOWELL'S ROLE WAS TO BRING THE .22 PISTOL  
13 AND TO GO INTO THE HOUSE EVENTUALLY AND MAKE IT LOOK LIKE A  
14 BURGLARY AND TAKE THE PURSE.

15 AND ALL OF THEM FULFILLED THEIR ROLES TO A "T."  
16 NOW, YOU OF THE JURY HAVE A ROLE TO PLAY. AND ON BEHALF OF  
17 CARL AND COLLEEN GORDON, I CAN ONLY HOPE AND PRAY THAT YOU  
18 FULFILL YOUR ROLE EVERY BIT AS WELL AS THEY FULFILLED THEIRS.  
19 THANK YOU.

20 THE COURT: THANK YOU, MR. SEATON. DEFENSE  
21 COUNSEL.

22 MR. SMITH: GOOD AFTERNOON, LADIES AND GENTLEMEN.  
23 FIRST OF ALL, AND MOST SINCERELY, I WANT TO THANK EACH ONE OF  
24 YOU FOR YOUR PARTICIPATION IN THIS CASE UP TO THIS POINT.

25 FOR THE LAST 11 DAYS, YOU HAVE SACRIFICED AND

1 I WOULD ASK YOU PLEASE FORGIVE ME IF I HAVE  
2 INSULTED ANY OF YOU, IF MY MANNER IN THE COURTROOM YOU FOUND  
3 INSULTING BUT THAT SHOULD NOT BE TAKEN AGAINST ROY. I MEAN,  
4 IT IS VERY SERIOUS AND, OBVIOUSLY, HE HAS NO CONTROL HOW I  
5 HANDLE THE CASE AS A LAWYER.

6 AGAIN, I WOULD THANK ALL COUNSEL, THANK THE COURT  
7 AND THANK YOU FOR YOUR TIME AND PATIENCE.

8 THE COURT: THANK YOU, MR. HANDFUSS. MR. HARMON.

9 MR. HARMON: JUDGE MOSLEY, COUNSEL, LADIES AND  
10 GENTLEMEN. ACCORDING TO MY CALCULATIONS, YOU HAVE HEARD FIVE  
11 HOURS AND SIX MINUTES OF ARGUMENT FROM COUNSEL NOW.

12 I HAVE HEARD SOME OF THE ATTORNEYS SAY THAT THEY  
13 APPROACHED THIS CASE WITH TREPIDATION. FRANKLY, I DIDN'T. I  
14 APPROACHED THIS CASE HOPEFULLY WITH THE SAME ENTHUSIASM AND  
15 THE SAME SENSE OF CONVICTION THAT I APPROACH EVERY CASE.

16 BUT AFTER FIVE HOURS AND SIX MINUTES OF ARGUMENT,  
17 I HAVE GOT TO SAY FOR THE FIRST TIME I AM FEELING A LITTLE  
18 TREPIDATION. I AM AFRAID THAT YOU MIGHT SHARE THE FEELINGS  
19 OF SHAKESPEARE WHO'S QUOTED ONCE AS SAYING, "NOW THE FIRST  
20 THING WE DO IS HANG ALL THE LAWYERS."

21 LADIES AND GENTLEMEN, IT IS ALSO TEMPTING TO SAY,  
22 BECAUSE I SENSE ALL OF YOU ARE READY TO GO HOME, IT'S  
23 TEMPTING TO SAY LET'S JUST GO HOME BECAUSE, FRANKLY, I AM READY  
24 TO.

25 BUT I WANT TO SAY SOMETHING ELSE BEFORE I GET

1 INTO THE SUBSTANCE OF WHAT I HAVE TO SAY. AND THIS QUOTATION  
2 MEANS VERY MUCH TO ME. GOETHE IS QUOTED AS SAYING, "I  
3 CAN PROMISE YOU TO BE SINCERE, NOT IMPARTIAL."

4 LIKE MANY OF YOU, I HAD GRANDPARENTS. I REMEMBER  
5 VERY FONDLY THE LOVE AND THE SACRIFICE THAT THEY EXHIBITED  
6 TOWARDS ME AND SO I RELATE IN A VERY PERSONAL WAY TO THIS  
7 CASE.

8 I SAW A MOVIE A FEW MONTHS AGO. IT WAS LIKE MOST  
9 MOVIES, ACTUALLY, IT WAS LOUSY. BUT IT HAD A HAUNTING TITLE.  
10 THE TITLE WAS "SOMETHING WICKED THIS WAY COMES."

11 LADIES AND GENTLEMEN, SOMETHING WICKED CAME TO  
12 5851 WASHBURN ROAD THE NIGHT OF NOVEMBER THE 5TH, 1984. AND,  
13 MR. SMITH, I AM GOING ON TELL YOU AND, MR. HANDFUSS, I TELL  
14 YOU, AND EACH OF THE ATTORNEYS AND EACH OF THE DEFENDANTS,  
15 FROM THE POINT OF VIEW OF THE STATE AND FROM THE EVIDENCE IN  
16 THIS CASE, THERE ISN'T ANY DIFFERENCE. THE WICKEDNESS WHICH  
17 OCCURRED, THE EVIL WHICH WAS PERPETRATED, WAS A JOINT  
18 VENTURE.

19 MR. PIKE SAYS CONSIDER CAREFULLY THE FATE OF DALE  
20 FLANAGAN BECAUSE WHAT YOU DO IS IRREVOCABLE. YOUR DECISION  
21 IS IRREVOCABLE. AND, MR. PIKE, I SAY THE BULLETS OF YOUR  
22 CLIENT DALE FLANAGAN WHEN HE PUMPED THREE SHOTS INTO THE HEAD  
23 OF HIS GRANDMOTHER AND COMMITTED MATRICIDE ARE IRREVOCABLE.

24 I WOULD SUGGEST THAT THE DECISIONS WHICH WE MAKE  
25 HERE BE JUST AS IRREVOCABLE AND JUST AS DEADLY AS THE BULLETS

1 FIRED BY THESE YOUNG MEN.

2 MR. SMITH SAYS THE CONTENTION BY THE STATE THAT  
3 HIS CLIENT JOHN RAY LUCKETT PULLED THE TRIGGER IS  
4 INTELLECTUAL DISHONESTY. HE SAYS THAT'S JUST DISHONEST.

5 WELL, MR. SMITH, I DON'T LIKE TO BE CALLED  
6 DISHONEST. IT'S MY RECOLLECTION OF THE EVIDENCE IN THIS CASE  
7 THAT TOM AKERS, WHEN HE WAS FIRST INTERVIEWED BY THE POLICE  
8 DEPARTMENT ON DECEMBER 7, 1984 AND HE FIRST ACKNOWLEDGED THAT  
9 HE HAD INFORMATION ABOUT THIS CASE, STATED THAT RANDY MOORE  
10 SAID THAT JOHNNY RAY LUCKETT WAS A SHOOTER AND THAT JOHNNY  
11 RAY LUCKETT SAID IN HIS PRESENCE THAT HE WAS A SHOOTER.

12 IT'S FURTHERMORE MY RECOLLECTION OF THE EVIDENCE  
13 THAT JOHN LUCAS, WHEN HE WAS QUOTED AS TESTIFYING AT THE  
14 PRELIMINARY HEARING IN THIS MATTER, FEBRUARY THE 11TH, 1985,  
15 WAS QUOTED AS SAYING HE OVERHEARD SOMEONE IN THE GROUP SAY  
16 AFTER THESE CRIMES HAD OCCURRED THAT JOHN RAY LUCKETT HAD  
17 FIRED A SHOT AND MISSED.

18 SO, MR. SMITH, WHY SHOULD WE CHARACTERIZE THE  
19 POSITION AS INTELLECTUAL DISHONESTY?

20 WHEN MR. LUCAS TESTIFIED AT THE EVIDENTIARY  
21 HEARING IN THIS COURTROOM JUST A FEW WEEKS AGO, HE IDENTIFIED  
22 JOHN RAY LUCKETT AS THE PERSON WHO HAD SAID IN HIS PRESENCE  
23 THAT HE FIRED A SHOT.

24 WHEN DALE FLANAGAN TALKED TO HIS FRIEND ANGIE  
25 SALDANA ON DECEMBER THE 5TH, 1984, HE SAID THAT MOORE AND

1 LUCKETT WERE THROWING SHOTS AT THE GRANDFATHER AS HE CAME  
2 DOWN THE STEPS.

3 MR. SLOANE ALSO IDENTIFIED MR. LUCKETT AS A  
4 SHOOTER BUT THAT'S A LITTLE DIFFERENT. WITH DUE RESPECT TO  
5 MR. HANDFUSS AND HIS CLIENT MR. MCDOWELL, THE VERY FACT THAT  
6 THEY WOULD CALL SOMEONE LIKE SCOTT SLOANE, WHO IS CONVICTED  
7 OF FIRST DEGREE MURDER WITH A WEAPON AND RAPE, WHO OBVIOUSLY  
8 IS A PERSON WHO HAS NO CREDIBILITY, WHO ADMITTED ON THE  
9 WITNESS STAND THAT HE HAD WRITTEN A LETTER TO MR. LUCKETT BUT  
10 DENIED WRITING THE TWO DOCUMENTS PRESENTED TO HIM, HE HAS  
11 SHOWN US HE IS A LIAR.

12 AND IF MR. MCDOWELL IS GOING TO RELY ON SOMEONE  
13 OF THE LACK OF CREDIBILITY OF SCOTT SLOANE, THAT JUST SHOWS  
14 HOW DESPERATE HE IS.

15 MR. SMITH TALKS ABOUT A SUBPLOT IN THIS CASE. I  
16 THINK I QUOTE HIM, "THE OTHER DEFENDANTS HATCHED A SUBPLOT OF  
17 TREACHERY AND INTIMIDATION TO KEEP JOHN RAY LUCKETT OFF THE  
18 WITNESS STAND."

19 THEN HE MADE ALLUSION TO THE ACES GANG. WHATEVER  
20 THE ACES GANG IS, HE SAYS THEY HAVE LONG TENTACLES.

21 LADIES AND GENTLEMEN, I SAID THAT THE ONLY  
22 SUBPLOT WHICH HAS BEEN HATCHED IN THIS CASE WAS HATCHED BY  
23 MR. LUCKETT AND HAS BEEN PERPETUATED BY HIS SPOKESMAN MR.  
24 SMITH AND BY MR. MCDOWELL.

25 THESE ARE PEOPLE WHO SAY, "WE WERE MERELY

1 PRESENT. WE DIDN'T KNOW WHAT WAS GOING TO HAPPEN. WE ARE  
2 VICTIMS OF CIRCUMSTANCE. WE WERE COERCED INTO GOING ALONG."

3 AND, MR. SMITH, THIS NOTION THAT SOMEHOW ALL THE  
4 OTHER DEFENDANTS GOT TOGETHER AND GANGED UP ON YOUR GUY AND  
5 THAT THERE WAS SOME TYPE OF PLOT TO NAIL HIM, IS PURE  
6 SPECULATION. YOU ASK US, MR. SMITH, TO SHOW PROUD  
7 SKEPTICISM.

8 AND, LADIES AND GENTLEMEN, WHEN YOU PUT THIS CASE  
9 IN PERSPECTIVE AND REALIZE THAT THESE FOUR YOUNG MEN, WHO ARE  
10 ON TRIAL, ARE ALL FRIENDS AND ASSOCIATES, A NUMBER OF THEM  
11 LIVED TOGETHER, THEY WERE ALSO FRIENDS AND ASSOCIATES OF  
12 AKERS AND WALSH; AND WHEN YOU CONSIDER THE EVIDENCE OF  
13 DISCUSSIONS AND PLANNING AND CONSIDERATION OF ALTERNATIVE  
14 APPROACHES TO COVER UP THESE CRIMES; AND WHEN YOU CONSIDER  
15 THAT THEY LEFT TOGETHER AND THEY TEST FIRED A GUN TOGETHER,  
16 AND THEY WENT TO THE SCENE TOGETHER, AND THEY ACTED IN  
17 CONCERT AND THEN THEY CAME BACK TOGETHER AND THEN THEY  
18 DISCUSSED THERE CRIMES TOGETHER, IT'S VERY APPARENT THAT  
19 THEY'RE ALL IN THIS TOGETHER.

20 YOU KNOW, I CALL THE DEFENSE BY MR. LUCKETT THAT  
21 HE WAS SOMEHOW FORCED INTO GOING ALONG A DEFENSE OF LAST  
22 RESORT.

23 I SAY THAT THAT DEFENSE WAS NOT BORN ON NOVEMBER  
24 THE 5TH, 1984 OR THE MORNING OF NOVEMBER THE 6TH, 1984. JOHN  
25 RAY LUCKETT DIDN'T GET ON THE TELEPHONE AND CALL THE POLICE



1 OR CALL HIS FAMILY TO EXPLAIN WHAT A HORRIBLE DILEMMA HE WAS  
2 IN. HE DIDN'T GO TO A NEIGHBOR.

3 WHEN DECEMBER ROLLED AROUND, HE WASN'T ON THE  
4 TELEPHONE. THAT DEFENSE WAS BORN IN AUGUST RIGHT HERE IN  
5 THIS COURTROOM.

6 BECAUSE ON AUGUST THE 30TH, 1985 SOMETHING  
7 TREMENDOUSLY SIGNIFICANT HAPPENED. ONE OF THE CONSPIRATORS  
8 TURNED STATE'S EVIDENCE.

9 LADIES AND GENTLEMEN, I AM NOT HERE TO VOUCH  
10 HOOK, LINE AND SINKER FOR THE CREDIBILITY OF TOM AKERS. AND  
11 I AM NOT PROUD OF THE FACT THAT THE STATE OF NEVADA HAD TO  
12 DEAL WITH HIM. HE IS NO DIFFERENT THAN THESE PEOPLE.

13 I DON'T AGREE VERY OFTEN WITH MR. HANDFUSS BUT  
14 WHEN HE SAYS MR. AKERS TOOK A WALK, I AM INCLINED TO AGREE  
15 WITH HIM. BASICALLY, HE DID.

16 AND ANY TIME YOU ARE CHARGED WITH MURDER AND  
17 ROBBERY AND BURGLARY AND CONSPIRACY AND YOU CAN GET OFF WITH  
18 VOLUNTARY MANSLAUGHTER AND GET FIVE YEARS PROBATION,  
19 BASICALLY YOU TOOK A HIKE.

20 NOW, WHY DID THE STATE DO THAT? WELL, I THINK  
21 THAT IS FAIRLY SIMPLE. IT IS REALLY A QUESTION OF  
22 MATHEMATICS, ISN'T IT? THE STATE OF NEVADA NEEDED -- AND  
23 IT'S BOTH FOR LEGAL AND FACTUAL REASONS. WE NEEDED THE  
24 TESTIMONY OF MR. AKERS.

25 IT WAS APPARENT BY ALL ACCOUNTS HE DID NOT GO IN

1 THE HOUSE, HE DIDN'T HANDLE A GUN, HE DIDN'T APPROACH THE  
2 WINDOW. HE WENT TO THE TRAILER.

3 THAT ISN'T TO SAY AS AN AIDER AND ABETTOR HE  
4 ISN'T RESPONSIBLE BECAUSE HE WENT OVER THERE AS PART OF THE  
5 ALIBI. I AM SURE HE WAS OVER THERE TO SEE IF LIGHTS CAME ON  
6 IN NEIGHBORING HOUSES AND HE WAS GOING TO ALERT HIS FRIENDS  
7 AND CONFEDERATES IF THAT HAPPENED.

8 BUT IT WAS NECESSARY TO STRIKE A DEAL WITH  
9 SOMEONE. WHY IS THAT? THAT'S BECAUSE OF THE NATURE OF  
10 CONSPIRACIES. YOU THINK IT IS EASY TO PROVE A CONSPIRACY?

11 MR. SMITH SAYS, "WHERE IS THE EVIDENCE THAT MR.  
12 LUCKETT KNEW BEFOREHAND THERE WAS A CONSPIRACY TO MURDER?"

13 WELL, POLKS, IT'S TOUGH TO GET INSIDE THE HEAD OF  
14 A CONSPIRATOR. THEY'RE DIFFICULT TO PROFFER AND WHAT WE  
15 USUALLY HAVE TO DO IS TO LOOK TO WHAT WE CALL CIRCUMSTANTIAL  
16 EVIDENCE, NOT SOMETHING YOU DIRECTLY PERCEIVE BUT WE MAKE  
17 REASONABLE INFERENCES FROM THE CIRCUMSTANCES.

18 THE FACT REMAINS THE STATE STRUCK A BARGAIN WITH  
19 TOM AKERS BECAUSE IT APPEARED OF ALL THE CONSPIRATORS PERHAPS  
20 HE WAS THE LEAST CULPABLE.

21 AND ON AUGUST THE 30TH, 1985 AT AN EVIDENTIARY  
22 HEARING IN THIS COURTROOM, HE TESTIFIED FOR THE FIRST TIME  
23 AGAINST FOUR -- IN FACT, IT WAS FIVE AT THAT TIME, MR. WALSH  
24 WAS ALSO PART OF THE SETTING -- FOR THE FIRST TIME AGAINST  
25 HIS FIVE CONFEDERATES.

1           AND THAT CHANGED THE PROSPECTIVE OF THIS CASE  
2 BECAUSE CERTAIN PEOPLE REALIZED THEN THAT THEY WERE GOING TO  
3 BE PLACED AT THE SCENE. THAT WAS INESCAPABLE.

4           AND SO SOME PEOPLE DID SOME REEVALUATION. AND I  
5 SUBMIT ON THAT DATE, THE DEFENSE OF COERCION WAS BORN IN THE  
6 MIND OF MR. SMITH AND HIS CLIENT.

7           A DEFENSE OF LAST RESORT. CAN'T VERY WELL SAY HE  
8 WAS INSANE, BECAUSE TO SELL ANY TYPE OF STORY YOU HAVE TO PUT  
9 HIM ON THE WITNESS STAND AND INSANE JOHN RAY LUCKETT IS NOT.

10          IF AN EYEWITNESS WHO IS THERE IS GOING TO TAKE  
11 THE WITNESS STAND, AND I REFER NOW TO AKERS, AND SAY LUCKETT  
12 WAS THERE, AND MCDOWELL WAS THERE, THEN YOU CAN'T VERY WELL  
13 SAY, "SOME OTHER DUDES DID THIS."

14          AND SO YOU SAY ONE OF TWO THINGS, "I WAS EITHER  
15 COERCED OR I WAS MERELY PRESENT." AND ISN'T IT INTRIGUING  
16 EVEN MR. AKERS SUGGESTED THAT HE HAD TO BE COAXED INTO GOING  
17 ALONG.

18          WHAT I WONDER THEN IS WHO WAS INVOLVED?  
19 EVERYBODY WANTS TO SAY THEY WERE MERELY PRESENT. EVERYBODY  
20 WANTS TO SAY THEY WERE COAXED OR FORCED INTO GOING ALONG  
21 WHEN, IN FACT, THE EVIDENCE WOULD SUGGEST THAT NONE OF THAT  
22 IS TRUE.

23          THESE YOUNG MEN WILLINGLY AND VOLUNTARILY FOR  
24 WHATEVER DEVIANT AND DARK REASONS ENTERED INTO A PACT TO  
25 KILL.

1           AKERS. "I HEARD TWO DEAD THUMPS. I HEARD A  
2 GUNSHOT, A LADY SCREAM, ANOTHER GUNSHOT, A MAN YELL AND  
3 SEVERAL MORE GUNSHOTS. THE MAN YELLED LIKE HE HAD BEEN HIT  
4 WITH A BASEBALL BAT OR HAD BEEN SHOT AND IT WAS A YELL OF  
5 PAIN."

6           WHY DID THAT HAPPEN? WELL, IT HAPPENED BECAUSE  
7 FOR WHATEVER HIS MOTIVATIONS, FOR WHATEVER BEEF OR  
8 DISAGREEMENT OR SENSE OF NOT BEING UNDERSTOOD DALE FLANAGAN  
9 HAD WITH RESPECT TO HIS RELATIONSHIP WITH HIS GRANDPARENTS,  
10 AT SOME POINT HE BEGAN TO THINK THE UNTHINKABLE.

11           I SAID THAT IN THE OPENING STATEMENT AND I REPEAT  
12 IT BECAUSE I CAN ONLY RELATE TO MY OWN EXPERIENCE AND I  
13 CANNOT CONCEIVE OF CONTEMPLATING THE MURDER OF MY  
14 GRANDPARENTS. BUT THERE IS SOMEONE IN THIS COURTROOM WHO IS  
15 CAPABLE OF DOING THAT AND HE DID.

16           THAT'S THE EVIL, THE WICKEDNESS THAT FOUND ITS  
17 WAY TO 5851 WASHBURN ROAD AND WHAT'S EVEN MORE SHOCKING IS  
18 THAT MR. FLANAGAN FOUND WILLING HELPERS.

19           AND ALL THREE OF THESE YOUNG MEN ARE EQUALLY  
20 GUILTY. MR. SEATON DISCUSSED WITH YOU TWO VERY BASIC AND  
21 ELEMENTARY RULES OF LAW.

22           THE FIRST RULE IS THE CONSPIRACY RULE. IT'S NOT  
23 COMPLICATED. IT SIMPLY MEANS THAT ONCE IT HAS BEEN CLEARLY  
24 SHOWN THAT THERE IS A DESIGN BY PEOPLE TO COMMIT UNLAWFUL  
25 ACTS, AND THEY BEGIN TO PURSUE THOSE UNLAWFUL ACTS, THE ACTS

1 OF ONE BECOME THE ACTS OF ALL.

2 NOT EVERYBODY HAS TO HOLD THE GUN. THERE CAN BE  
3 A DRIVER, THERE CAN BE A LOOKOUT MAN, THERE CAN BE SOMEBODY  
4 WHO BREAKS THE WINDOW TO GET INSIDE. THERE CAN BE SHOOTERS,  
5 THERE CAN BE SOMEONE TO FURNISH A FIREARM. AND EVERYBODY'S  
6 GUILTY IF THEY AIDED AND ABETTED IN THE COMMISSION OF THE  
7 CONSPIRACY.

8 INSTRUCTION 31 MAKES IT VERY CLEAR THAT THERE  
9 ARE BASICALLY THREE CATEGORIES THAT CAN CAUSE PEOPLE TO BE  
10 CRIMINALLY RESPONSIBLE FOR BAD ACTS.

11 NUMBER ONE, IF YOU WERE THE ACTUAL PERPETRATOR  
12 WHO ACTUALLY KILLED CARL GORDON AND COLLEEN GORDON. WHEN WE  
13 IDENTIFY THOSE PERSONS, THEN THEY ARE THE ACTUAL PERPETRATORS  
14 OF MURDER.

15 I QUOTE, "MR. FLANAGAN SAID HE WENT DIRECTLY TO  
16 THE ROOM, TO HIS GRANDMOTHER'S ROOM. HE GRABBED HIS  
17 GRANDMOTHER BY THE LOWER JAW, PUT HER DOWN ON THE BED AND  
18 SHOT HER."

19 I QUOTE MR. LUCKETT, "I HAD HEARD DALE SAY HE HAD  
20 RAN INTO THE HOUSE AND GRABBED HIS MOTHER AND THREW HER DOWN  
21 AND SHOT HER IN THE HEAD THREE TIMES."

22 TWO EYEWITNESS ACCOUNTS. NOVEMBER THE 5TH, 1984,  
23 THREE BULLETS INTO THE HEAD FROM DALE FLANAGAN WITH HATE.

24 I WAS TAUGHT TO HAVE RESPECT FOR THE INHERENT  
25 DIGNITY OF OTHER HUMAN BEINGS, TO APPRECIATE THE SANCTITY OF

1 LIFE BUT EVIDENTLY MR. MOORE DOESN'T SHARE THAT POINT OF  
2 VIEW.

3 I QUOTE, "MR. MOORE SAID HE WENT IN THE HOUSE.  
4 HE KNEELED DOWN. HE SAID, 'HE WAS COMING DOWN THE STAIRS  
5 FASTER THAN I THOUGHT HE WOULD. I SHOT. I KNEW I MISSED. I  
6 SHOT AGAIN. I KNOW I HIT HIM AND I SHOT AGAIN.'" THE  
7 TESTIMONY OF AKERS.

8 THE TESTIMONY OF MR. LUCKETT WHO SAYS HE HEARD A  
9 FINAL SHOT THAT WAS PERHAPS 20 OR 30 SECONDS AFTER THE  
10 OTHERS. AND AFTER THE OTHERS GOT TO THE CAR, HE ASKED MR.  
11 MOORE WHAT THAT WAS ALL ABOUT.

12 THIS IS THE INTRIGUING THING. IF LUCKETT WAS A  
13 PART OF THIS, WHY DOES MOORE TELL HIM WHAT IT WAS ALL ABOUT?  
14 AND WHY DO THESE MEN FREELY DISCUSS WHAT THEY DID IN HIS  
15 PRESENCE BACK AT THE APARTMENT?

16 BUT THIS MAN BY HIS ACCOUNT HAD CHICKENED OUT AND  
17 WHO HAD PLED WITH THE OTHERS NOT TO GO FORWARD, ASKED ONE OF  
18 THE PRIMARY PERPETRATORS AND MOORE TELLS HIM.

19 "I HAD HEARD RANDY SAY HE SHOT MR. GORDON WHEN HE  
20 WAS COMING DOWN THE STAIRS AND THAT MR. GORDON STILL  
21 PROCEEDED DOWN THE STAIRS AFTER RANDY SHOT HIM, I THINK,  
22 THREE OR FOUR TIMES AND SO HE HAD KEPT SHOOTING. AND I HEARD  
23 RANDY SAY MR. GORDON WAS STILL SQUIRMING SO HE WENT OVER AND  
24 SHOT HIM IN THE HEAD."

25 LADIES AND GENTLEMEN, THE AUTOPSY REPORTS AREN'T

1 GOING TO SHOW THAT ANYBODY WAS SHOT -- THAT MR. GORDON WAS  
2 SHOT IN THE HEAD. THEY ARE GOING TO INDICATE VERY MUCH AS WE  
3 OUTLINED FOR YOU DURING MR. SEATON'S ARGUMENT AND, ALSO, MY  
4 OPENING REMARKS, THERE WERE SEVEN SHOTS.

5 THERE IS ONE RIGHT HERE, THERE IS ONE DOWN TO THE  
6 LOWER LEFT CHEST, ONE JUST TO THE LEFT OF THE NAVEL, TWO IN  
7 THE ARM AND TWO IN THE BACK.

8 SO IS THAT ACCURATE TESTIMONY? WELL, I LEAVE IT  
9 FOR YOU TO DECIDE. HOWEVER, THE AUTOPSY REPORT OF MR. GORDON  
10 WILL REVEAL THAT THE SHOT WHICH ENTERED RIGHT HERE WENT  
11 DOWNWARD FROM HEAD TOWARD TOE AT APPROXIMATELY 45 DEGREE  
12 ANGLE.

13 SO WE KNOW SOMETHING, WHEN MR. GORDON FIRST  
14 STARTED TO COME DOWN THE STAIRS, THE FELLOW WHO SHOT EITHER  
15 FROM THE LIVING ROOM FLOOR IN FRONT OF THE WINDOW OR FROM  
16 OUTSIDE ON THE GROUND WOULD HAVE BEEN SHOOTING AT AN UPWARD  
17 ANGLE SO HE DIDN'T GET A 45 ANGLE DOWNWARD WITH THAT SHOT.

18 WHAT IT DOES SUGGEST IS THAT MAYBE THE SHOT WHICH  
19 WAS INTENDED FOR MR. GORDON'S HEAD DIDN'T HIT HIS HEAD. IT  
20 WENT IN RIGHT HERE WHEN HE WAS SQUIRMING ON THE FLOOR AND  
21 THAT WOULD ACCOUNT FOR THE 45 DEGREE ANGLE DOWNWARD.  
22 NOVEMBER THE 5TH, 1984 FROM RANDY MOORE TO CARL GORDON WITH  
23 DISRESPECT.

24 INSTRUCTION 31 MAKES IT CLEAR THAT THE SECOND  
25 CATEGORY IS THAT OF AIDING AND ABETTING. AND ANYONE WHO AIDS

1 AND ABETS IN THE PERPETRATION OF THE CRIMES IS GUILTY.

2 ASSUME THAT FOUR PEOPLE GET TOGETHER AND DECIDE  
3 TO KIDNAP A USED CAR SALESMAN SO THEY CAN STEAL A FANCY USED  
4 CAR, A LUXURY VEHICLE. AND SUPPOSE THE PERSON WHO CONCEIVED  
5 THE PLAN SAYS, "I WANT YOU TO DO THAT BUT WHATEVER YOU DO  
6 DON'T HURT HIM," AND HE GIVES HIS THREE CONFEDERATES SPECIFIC  
7 ADVICE NOT TO DO THAT.

8 AND THEN THAT PERSON WHO THOUGHT UP THE PLAN  
9 STAYS HOME, THE OTHER THREE GO OUT, THEY KIDNAP THE CAR  
10 SALESMAN. UNFORTUNATELY, THEY MURDER HIM DURING THE  
11 KIDNAPPING AND DURING THE TAKING OF THE VEHICLE.

12 BY LAW IN THIS STATE THE PERSON WHO HAD CONCEIVED  
13 THE PLAN, WHO HAD ENCOURAGED THE OTHERS TO DO IT, WHO HAD  
14 AIDED AND ABETTED IN THE CRIME, EVEN THOUGH HE TOLD THEM NOT  
15 TO HURT THE VICTIM, IS GUILTY.

16 THAT IS BECAUSE WHEN ANY PEOPLE EMBARK UPON A  
17 JOINT VENTURE WHICH INVOLVES THE COMMISSION OF INHERENTLY  
18 DANGEROUS FELONIES -- IS A HOT PROWL BURGLARY AT 11:30 OR  
19 MIDNIGHT IN A RESIDENCE OCCUPIED BY HUMAN BEINGS INHERENTLY  
20 DANGEROUS TO SOMEONE? IS ROBBERY WITH USE OF A WEAPON  
21 INHERENTLY DANGEROUS?

22 WELL, THE LEGISLATURE THINKS SO AND THAT IS THE  
23 REASON THEY HAVE MADE A POLICY STATEMENT. THAT IS THE REASON  
24 THE LAW IS THAT YOU GET THE FIRST DEGREE MURDER IN TWO WAYS  
25 AS MR. SEATON HAS DISCUSSED.



1           YOU CAN HAVE A PLANNED MURDER BY PREMEDITATION  
2 AND DESIGN AND THAT'S CLEARLY FIRST DEGREE MURDER. AND YOU  
3 ALSO CAN HAVE A MURDER WHICH ARISES OUT OF THE COMMISSION OF  
4 BURGLARY OR ROBBERY.

5           AND ANYBODY INVOLVED IN THAT TYPE OF OFFENSE IS  
6 DEEMED TO BE GUILTY OF MURDER IN THE FIRST DEGREE AS LONG AS  
7 THEY ARE SHOWN TO HAVE AIDED AND ABETTED.

8           DID MR. MCDOWELL AID AND ABET IN THE COMMISSION  
9 OF THESE CRIMES? MR. HANDFUSS SAYS WE HAVE JUST BEEN TREATED  
10 TO THE AKERS AND LUCKETT SHOW IN THIS COURTROOM. HE SAYS  
11 WHERE IS ROY MCDOWELL'S PARTICIPATION IN THE CONSPIRACY?

12           WELL, LADIES AND GENTLEMEN, IN THE FIRST PLACE I  
13 HAD A HARD TIME DECIDING WHETHER MR. HANDFUSS WAS ADMITTING HIS  
14 MAN WAS PRESENT AT THE SCENE OR WHETHER HE WAS STILL  
15 MAINTAINING, BECAUSE OF WHAT HIS FRIEND JOHN LUCAS SAID ON  
16 THE WITNESS STAND, THAT HE WASN'T THERE.

17           MR. HANDFUSS DID CHARACTERIZE MR. LUCKETT AS  
18 SIMPLY HAVING A FELONIOUS EXISTENCE, MERELY BEING PRESENT.  
19 HE SAYS THAT'S NOT ENOUGH. THE NOT ENOUGH PART AND THE MERE  
20 PRESENCE PART ARE CLEARLY INAPPLICABLE TO ANY OF THESE YOUNG  
21 MEN.

22           WHEN THE COURT TALKED ABOUT MERE PRESENCE IN  
23 INSTRUCTION 33, YOU CAN BE SURE THAT WHAT IS ENVISIONED AS A  
24 MATTER OF LAW THAT SOMEBODY LIKE GENEAL MCGREGOR OR A  
25 NEIGHBOR IS OUT PERHAPS WALKING HER DOG.

1           SHE LIVES THERE. SHE IS IN THE AREA AND SEES A  
2 CRIME COMMITTED. SHE SEES PEOPLE FIRE SHOTS, SHE SEES A  
3 WINDOW BROKEN. THAT IS THE TYPE OF PERSON WHO IS MERELY  
4 PRESENT.

5           BOB MANRING TESTIFIED. HE IS A YOUNG BOY WHO  
6 LIVES IN THAT NEIGHBORHOOD. SUPPOSE HE WAS OUT JOGGING AND  
7 HE HAPPENED TO BE PRESENT. THAT IS MERE PRESENCE. ROY  
8 MCDOWELL, BY THE TESTIMONY, FURNISHED THE MURDER WEAPON OF  
9 COLLEEN GORDON IN THIS CASE.

10           THE TESTIMONY IS BETWEEN 11 A.M. AND ONE O'CLOCK  
11 P.M. ON NOVEMBER THE 5TH, 1984, DALE FLANAGAN ASKED RANDY  
12 MOORE FOR MCDOWELL'S TELEPHONE NUMBER. AND DALE IMMEDIATELY  
13 WENT TO THE TELEPHONE AND HE SAID, "HI, ROY, DID YOU GET THE  
14 TOY?"

15           AND THEN HE SAID, "ALL RIGHT. THAT'S OKAY." AND  
16 THEN LATER THAT NIGHT, MCDOWELL CAME TO THE APARTMENT AND BY  
17 THE ACCOUNT OF TWO WITNESSES WHO WERE THERE, AKERS AND  
18 LUCKETT, HE HAD A GUN WITH HIM AND HE GAVE THAT GUN, A  
19 HANDGUN, TO DALE FLANAGAN.

20           MR. MCDOWELL WAS PRESENT WHEN THE MODUS OPERANDI  
21 OF THESE CRIMES WAS DISCUSSED. NOW, I REALIZE THAT JOHN  
22 LUCKETT TESTIFIED -- EXCUSE ME, JOHN LUCAS TESTIFIED FROM THE  
23 WITNESS STAND THAT ALL FIVE WERE PRESENT BEFORE IT OCCURRED  
24 AT MR. MOORE'S APARTMENT BUT NOT MCDOWELL.

25           I THINK IT'S IMPORTANT TO REMEMBER, HOWEVER, THAT

1 WHEN MR. LUCAS'S MOTHER TESTIFIED, IT WAS DEVELOPED THAT  
2 MCDOWELL HAS FATHERED A CHILD BY A SISTER OF JOHN LUCAS.

3 IT'S ALSO SIGNIFICANT TO NOTE THAT WHEN LUCAS  
4 GAVE THE FINAL OF HIS STATEMENTS TO THE POLICE DEPARTMENT ON  
5 DECEMBER THE 10TH, 1984 WHEN HE WAS ASKED WHAT PERSONS WERE  
6 THERE, HE LISTED ALL SIX.

7 WELL, OF COURSE, MR. MCDOWELL WAS PRESENT,  
8 OTHERWISE, WHEN DID HE JOIN THE OTHERS? THESE PEOPLE WHO  
9 HAVE EMBARKED UPON A PLAN TO COMMIT BURGLARY AND ROBBERY AND  
10 MURDER AREN'T GOING TO TAKE DETOURS. EVEN MR. LUCAS  
11 ACKNOWLEDGED THAT ALL SIX CAME BACK TOGETHER BETWEEN ONE AND  
12 1:30 IN THE MORNING.

13 WHY WOULD SIX GO TO THE SCENE OF THESE INTENDED  
14 CRIMES? WELL, BASICALLY, BECAUSE THE STRENGTH IN NUMBERS.  
15 BASICALLY BECAUSE, AS MR. SEATON HAS EXPLAINED, THEY ALL HAD  
16 A ROLE TO PLAY.

17 AND WHEN THEY GOT THERE, THE EVIDENCE IS THAT  
18 MCDOWELL WENT INTO THE HOUSE, HE TRIED TO MAKE IT LOOK LIKE A  
19 BURGLARY.

20 THE EVIDENCE IS THAT WHEN THEY GOT BACK TO THE  
21 APARTMENT, HE HAD THE WALLET OUT OF HER PURSE AND HE AND  
22 MOORE AND FLANAGAN TOOK THE CONTENTS OUT, THE MONEY, THE  
23 PHOTOGRAPHS AND THE IDENTIFICATION AND THEN FLANAGAN AND  
24 MOORE BURNED EVERYTHING BUT THE MONEY IN AN ASHTRAY IN THE  
25 KITCHEN.

1 I HAVE A QUESTION FOR MR. HANDFUSS. WHY WASN'T  
2 THE REVOLVER RECOVERED AT THE LAKE? WE HAVE HAD TESTIMONY  
3 THAT THE SAWED-OFF RIFLE AND THE LONG RIFLE WERE FOUND BY  
4 REPRESENTATIVES OF THE PARK SERVICE. WHY WASN'T THE REVOLVER  
5 THERE?

6 WELL, IT WASN'T THERE BECAUSE AS THE TESTIMONY  
7 INDICATES, THE NIGHT IT HAPPENED THAT GUN WAS RETURNED TO THE  
8 PERSON WHO BROUGHT IT AND THE TESTIMONY IS ROY MCDOWELL PUT  
9 IT BACK IN HIS POCKET.

10 MR. HANDFUSS WANTS TO KNOW WHY DID MR. MOORE CALL  
11 THE MOTHER OF JOHN LUCAS THE FOLLOWING DAY AND ASK FOR THE  
12 RETURN OF A GUN. IT'S APPARENT IF HE WOULD DO THAT, THAT THE  
13 CONSPIRATORS DIDN'T REALLY NEED TO HAVE MCDOWELL BRING A GUN.  
14 WELL, PERHAPS THEY WANTED A GUN THAT COULD NOT BE TRACED.

15 WHEN MR. MOORE CALLED MARILYN LUCAS, HE ASKED IF  
16 SHE WAS THROUGH WITH THE GUN. SHE HAD EXPLAINED THAT SHE HAD  
17 BEEN USING IT FOR HER PROTECTION.

18 SAID THAT WAS ABOUT 11 A.M. AND MOORE CAME BY AT  
19 ABOUT ONE O'CLOCK P.M. AND PICKED IT UP. WELL, WE KNOW THAT  
20 WASN'T THE MURDER WEAPON BECAUSE IF SHE HAD BEEN USING IT FOR  
21 HER PROTECTION, THEN WHETHER SHE SPECIFICALLY SPELLED THIS  
22 OUT OR NOT SHE OBVIOUSLY HAD HAD IT THERE LONG BEFORE THE  
23 NIGHT OF NOVEMBER THE 5TH.

24 AS I REMEMBER THE EVIDENCE, MOORE SAID HIS FRIEND  
25 NEEDED THE GUN BACK AND IF THERE WAS A FRIEND WHO OWNED THAT

1 GUN, THAT WAS A GUN THAT COULD BE TRACED AND THE CONSPIRATORS  
2 WANTED MR. MCDOWELL TO BRING A TOY THAT WAS GOING TO BE USED  
3 WHICH COULD NOT BE TRACED BY THE AUTHORITIES.

4 MR. HANDFUSS SAYS ANGIE SALDANA EVEN TESTIFIED  
5 THAT WHEN DALE FLANAGAN TALKED WITH HER ON DECEMBER THE 5TH,  
6 1984, HE DIDN'T MENTION ROY MCDOWELL. WHY WASN'T ROY  
7 MCDOWELL MENTIONED?

8 WELL, LADIES AND GENTLEMEN, IN THE FIRST PLACE HE  
9 MAY HAVE BEEN. I AM SURE THERE WERE LOTS OF THINGS MENTIONED  
10 BY THESE PEOPLE TO VARIOUS FRIENDS AND MANY OF THE THINGS  
11 MENTIONED WERE NOT RECALLED BY THE PEOPLE.

12 THERE IS NO TESTIMONY THAT SALDANA HAD A NOTE  
13 PAD, THAT WHEN MR. FLANAGAN SAID -- AND IT REALLY AROSE OUT  
14 OF AN ARGUMENT BETWEEN HIM AND HER ABOUT A PRIOR BOYFRIEND.

15 THERE IS NO INDICATION SHE SAID, "HOLD IT, DALE.  
16 BEFORE YOU GO ANY FURTHER, LET ME GET MY NOTEBOOK OUT. I  
17 WANT TO GET THIS DOWN SO THAT I CAN GO TO THE POLICE SO I CAN  
18 GET IT DOWN WORD FOR WORD."

19 WELL, THAT SORT OF THING IS FACETIOUS. IT  
20 DOESN'T HAPPEN IN REAL LIFE. SHE TRIED TO REMEMBER WHAT HE  
21 SAID AND SHE DID NOT REMEMBER HIM MENTIONING MCDOWELL.

22 IS THAT REALLY SIGNIFICANT AND IS IT SIGNIFICANT  
23 THAT FLANAGAN TELLS SALDANA, "I WENT INTO THE HOUSE AND I AM  
24 THE ONE THAT TOOK THE PURSE OUT OF THE CLOSET."

25 PERHAPS DALE FLANAGAN UNDERSTOOD VERY WELL ON

1 DECEMBER THE 5TH, 1984 THE MEANING OF THE CONSPIRACY RULE,  
2 THE ACT OF ONE IS THE ACT OF ALL. OTHERWISE, WHY WOULD HE  
3 HAVE BEGUN THE CONVERSATION WITH THIS POINT, "ANGIE, HOW DO  
4 YOU LIKE THIS. I DID IT. I KILLED MY GRANDPARENTS."

5 WELL, WHETHER THAT WAS INADVERTENT OR INTENDED,  
6 THE FACT REMAINS HE DIDN'T KILL THEM BOTH BUT HE IS  
7 RESPONSIBLE. MR. MOORE DIDN'T KILL THEM BOTH BUT HE IS  
8 RESPONSIBLE. AND MCDOWELL AND LUCKETT DIDN'T KILL EITHER BUT  
9 THEY ARE RESPONSIBLE BECAUSE THEY AIDED AND ABETTED IN THE  
10 COMMISSION OF THESE CRIMES.

11 JOHN RAY LUCKETT EMBARKED UPON A DANGEROUS AND  
12 DEADLY COURSE WHEN HE ELECTED TO GO ALONG WITH HIS FRIENDS  
13 AND ASSOCIATES. HE WAS PRESENT WHEN THESE CRIMES WERE  
14 DISCUSSED.

15 THE EVIDENCE BY AKERS IS THAT HE HELD THE  
16 SAWED-OFF GUN IN THE APARTMENT. HE CARRIED THE GUN TOWARDS  
17 THE HOUSE. REMEMBER, AKERS SAID HE WENT TO THE TRAILER AND  
18 THE OTHER FIVE HEADED TOWARDS THE HOUSE AND MOORE HAD THE  
19 LONG RIFLE AND FLANAGAN HAD THE HANDGUN AND JOHN RAY LUCKETT  
20 HAD THE SAWED-OFF RIFLE.

21 AND THOSE MEN WERE WALKING TOGETHER. THE  
22 TESTIMONY, WHICH I HAVE ALREADY ALLUDED TO, AND THE  
23 STATEMENTS BY AKERS, LUCAS AND SALDANA, IS THAT LUCKETT FIRED  
24 A SHOT.

25 MR. SMITH SAYS MR. LUCKETT WAS JUST PRESSED INTO

1 THIS AT THE LAST MINUTE. THE PERSON THAT THEY REALLY  
2 INTENDED TO HAVE GO WAS MR. LUCAS. BUT HE HAD PASSED OUT.

3 WELL, THAT IS WHAT MR. LUCAS IN A VERY  
4 SELF-SERVING WAY SAID. HE SAID HE PASSED OUT. HE SAID IT  
5 WAS SOMEWHERE AROUND ELEVEN O'CLOCK P.M. AND WHEN HE NEXT WAS  
6 AWARE OF ANYTHING, THERE WAS A KNOCK ON THE DOOR WHICH WOKE  
7 HIM UP BETWEEN ONE AND 1:30.

8 HOWEVER, MR. SMITH, YOUR CLIENT JOHN RAY LUCKETT  
9 SAID THAT MR. LUCAS WAS AWAKE WHEN THEY LEFT. MR. SMITH,  
10 YOUR CLIENT SAID THAT LUCAS WENT OVER AND LOCKED THE DOOR.  
11 AND, IN FACT, THAT IS WHAT THOMAS AKERS ALSO SAID.

12 SO IF JOHN LUCAS WASN'T ASLEEP, IF HE HADN'T  
13 PASSED OUT, THEN OBVIOUSLY LUCKETT JUST WASN'T A SUBSTITUTE  
14 FOR HIM AT THE LAST MINUTE BECAUSE HE WAS INCAPACITATED.

15 WHAT IS MORE LOGICAL IS WHAT HAS COME OUT IN THE  
16 TESTIMONY. THAT LUCAS'S ROLE WAS TO TAKE ANY TELEPHONE CALLS  
17 THAT MIGHT COME FROM VARIOUS FRIENDS. WE HAVE ALREADY HEARD  
18 FROM THE TESTIMONY THAT A NUMBER OF PEOPLE HAD CALLED THAT  
19 NIGHT AND THEY HAD BEEN TOLD, "WE DON'T HAVE ANYTHING  
20 PLANNED, CALL BACK TOMORROW."

21 THAT'S BECAUSE THE OCCUPANTS KNEW THAT THEY  
22 WEREN'T GOING TO PARTY THE NIGHT OF NOVEMBER THE 5TH, 1984.  
23 THEY HAD SOMETHING FAR MORE SERIOUS PLANNED.

24 AND SO LUCAS WAS TO TELL ANYONE WHO CALLED,  
25 "THERE ISN'T ANY PARTY TONIGHT, THE OTHERS HAVE ALL GONE OVER

1 TO THE TRAILER TO GET TAPES." AND THAT WAS TO BE THE ALIBI.

2 WELL, THE EVIDENCE CLEARLY IS THAT MR. LUCKETT  
3 WAS POSSESSING A GUN AFTER THIS OCCURRED. WHEN AKERS CAME  
4 BACK FROM THE TRAILER, LUCKETT HAD THE SAWED-OFF RIFLE. I  
5 KNOW HE'S ARGUED SOMEHOW THE GUN GOT FROM HIM TO WALSH AND  
6 THEN BACK TO HIM IN A MATTER OF MINUTES AND THIS GUN WAS  
7 SUPPOSEDLY TOSSED BETWEEN 30 AND 50 FEET BACK TO HIM.

8 AND HE'S TOLD US THE ONLY REASON HE PICKED IT UP  
9 IS BECAUSE HE GOT TO THINKING, "I MIGHT NEED IT FOR  
10 PROTECTION." HE SAYS HE FORGOT WHEN HE REACHED DOWN AND  
11 PICKED IT UP THAT IT WAS ONLY A SINGLE SHOT. HE SAID HE  
12 DIDN'T REALIZE THAT.

13 BUT MR. SMITH SAYS IN RESPONSE TO THE PROSECUTION  
14 ARGUMENT WHY DIDN'T MR. LUCKETT, WHO WAS ARMED WITH A GUN,  
15 USE THAT GUN TO PREVENT THESE CRIMES FROM OCCURRING, WELL, HE  
16 WAS FACING A WHOLE ARSENAL.

17 MR. SMITH POINTED AT THE SAWED-OFF AND SAID IT IS  
18 ONLY A LITTLE OLD SINGLE SHOT. MR. SMITH, YOUR CLIENT DIDN'T  
19 KNOW THAT ACCORDING TO HIS TESTIMONY AT THAT TIME. BECAUSE  
20 HE SAID THE REASON HE PICKED UP THE GUN WAS BECAUSE HE  
21 THOUGHT IT STILL HAD BULLETS IN IT. AND IT WASN'T UNTIL  
22 AFTER HE PICKED IT UP THAT HE REALIZED IT WAS A SINGLE SHOT.

23 THIS ISN'T A CASE OF MERE PRESENCE. IT IS NOT A  
24 CASE OF COERCION. IF THERE IS ANY PRESSURE AT ALL PURELY AND  
25 SIMPLE IS A MATTER OF PEER PRESSURE AS MR. SEATON HAS



1 SUGGESTED.

2 WHEN I WENT TO SCHOOL, IN CERTAIN CLASSES THEY  
3 TAUGHT US ABOUT A HERD INSTINCT. AND THE FACT IS THERE ARE  
4 LOTS OF TIMES WHEN YOU GET A GROUP TOGETHER, THEY FEED ON  
5 EACH OTHER AND THEY GET MORAL JUSTIFICATION AND STRENGTH FROM  
6 THE FACT THAT THERE ARE MORE PERSONS THAN ONE AND SO SIX  
7 WOULD DO SOMETHING PERHAPS THAT ONE WOULDN'T.

8 THE FACT IS LUCKETT WAS DRIVING THE GETAWAY CAR --  
9 EXCUSE ME, AKERS WAS DRIVING THE GETAWAY CAR AND WITHOUT  
10 LUCKETT'S HELP, HE WOULDN'T HAVE GOT THE CAR STARTED SO THESE  
11 PEOPLE WOULD ALL HAVE BEEN STUCK THERE AT THE SCENE OF THEIR  
12 CRIMES. THESE ARE ACTIONS OF SOMEONE WHO HAS AIDED AND  
13 ABETTED IN THE COMMISSION OF THESE CRIMES.

14 MR. SMITH WANTS TO TALK ABOUT A SITUATION WHERE  
15 THERE WAS SIMPLY PREPARATION ON HIS CLIENT AND HE DIDN'T DO  
16 ANYTHING CULPABLE.

17 THE PROBLEM WITH THAT IS THE EVIDENCE CLEARLY  
18 SHOWS HE AND THE OTHERS HAD ENTERED INTO A CONSPIRACY TO  
19 COMMIT BURGLARY AND ROBBERY AND MURDER. IT GOT BEYOND MERE  
20 PREPARATION.

21 IT'S NOT MERE PREPARATION WHEN YOU TALK ABOUT IT  
22 AND YOU GET EVERYBODY TOGETHER AND YOU GET THREE GUNS AND YOU  
23 LOAD THEM. AND THEN YOU GET INTO A CAR AND YOU DRIVE SIX  
24 MILES ACROSS THE TOWN, AND THEN SOMEBODY TEST FIRES A GUN.  
25 AND THEN YOU GO TO THE SCENE AND YOU DIVIDE THE GUNS UP AND

1 YOU GO ABOUT CARRYING OUT YOUR ROLES.

2 THAT ISN'T MERE PREPARATION. THAT IS AN ATTEMPT  
3 AND IN FELONY MURDER, EITHER ATTEMPT OR THE ACTUAL  
4 PERPETRATION WHERE A KILLING RESULTS, LEADS TO MURDER IN THE  
5 FIRST DEGREE.

6 NOW, IT MAY HAVE BEEN THAT AT SOME POINT JOHN RAY  
7 LUCKETT WITHDREW. I SUBMIT BASED UPON THIS EVIDENCE, IT WAS  
8 AFTER HE FIRED HIS SHOT AND HE KNEW VERY WELL WHEN HE TOOK  
9 THAT GUN UP TO THE WINDOW IT ONLY HAD ONE SHOT.

10 NOW, HE HAD BEEN TOLD BY MR. FLANAGAN THERE IS  
11 JUST GRANDMA AND GRANDPA IN THE HOUSE. BUT MR. LUCKETT  
12 DIDN'T KNOW THAT FOR SURE. IN FACT, NONE OF THESE PEOPLE  
13 KNEW THAT FOR SURE.

14 AND SO WHEN JOHN RAY LUCKETT FIRED HIS ONE SHOT,  
15 THERE WAS OTHER SHOOTING AND HE WAS CONCERNED THAT THERE  
16 MIGHT BE RETURN FIRE FROM SOMEBODY INSIDE THE HOUSE AND SO HE  
17 SCOOTED AND MR. AKERS FOUND HIM OVER THERE HIDING BEHIND A  
18 TUMBLEWEED.

19 LADIES AND GENTLEMEN, IT IS VERY, VERY CLEAR FROM  
20 THE INSTRUCTIONS YOU HAVE BEEN GIVEN BY THE COURT THAT THE  
21 DEFENSE OF COERCION IS NOT AVAILABLE IN A CASE OF FIRST  
22 DEGREE MURDER.

23 I CAN'T THINK OF A CASE WHICH MORE CLEARLY  
24 ESTABLISHES THAT IT WAS FIRST DEGREE MURDER, BECAUSE OF THE  
25 FELONY MURDER RULE AND ALSO BECAUSE OF THE CLEAR PLAN AND

1 DESIGN TO MURDER TWO HUMAN BEINGS.

2 COERCION IS NOT AVAILABLE TO JOHN RAY LUCKETT AS  
3 A DEFENSE TO MURDER IN THE FIRST DEGREE.

4 I WANT TO TALK FOR A FEW MINUTES ABOUT A PROPER  
5 BASIS FOR VERDICTS. IN FACT, I HOPE I AM RIGHT. I GOT THE  
6 ASSISTANCE OF THE CLERK IN THIS REGARD.

7 THERE ARE 77 PROPOSED VERDICTS IN THIS CASE.  
8 IT'S GOING TO BE YOUR RESPONSIBILITY TO GO THROUGH AND DECIDE  
9 AS TO EACH DEFENDANT WITH RESPECT TO EACH COUNT WHERE A  
10 DEFENDANT IS CHARGED, WHAT VERDICTS ARE APPROPRIATE.

11 NOW, SUFFICE IT TO SAY, YOU MUST SELECT AS TO  
12 EACH COUNT WHERE SOMEONE IS CHARGED, THE ONE APPROPRIATE  
13 VERDICT. THE FACT THAT VERDICTS SAY WAS A DEADLY WEAPON USED  
14 OR WASN'T IT MEANS THAT THERE ARE MORE VERDICTS THAN PERHAPS  
15 YOU MIGHT ANTICIPATE.

16 BUT YOU ARE TO SELECT ONE PER DEFENDANT FOR EACH  
17 COUNT. BY MY CALCULATION OUT OF THE 77, YOU WILL END UP WITH  
18 ABOUT 25 VERDICTS.

19 NOW, WHAT WILL BE A PROPER BASIS FOR THOSE  
20 VERDICTS? CERTAINLY NOT BIAS, CERTAINLY NOT RACE, CERTAINLY  
21 NOT SYMPATHY OR SPECULATION, AT THIS STAGE OF THE PROCEEDINGS,  
22 ABOUT PUNISHMENT.

23 NOT YOUTH. REGARDLESS OF THEIR AGES AT THE TIME  
24 THESE CRIMES WERE OCCURRED ON WHATEVER CHARGES ARE IDENTIFIED  
25 AS BEING ALLEGED AGAINST A PARTICULAR DEFENDANT, THESE YOUNG

1 MEN ARE BEING TRIED AS ADULTS. AND AT THIS STAGE OF THE  
2 PROCEEDINGS, YOUTH IS NOT AN APPROPRIATE BASIS FOR YOUR  
3 VERDICTS.

4 I SYMPATHIZE WITH FRIENDS AND FAMILY OF THESE  
5 YOUNG MEN. I DON'T STAND UP HERE LIGHTLY. I WANT TO TELL  
6 YOU, I HAVE GOT A SON WHO IS 20 AND A DAUGHTER WHO IS 18. I  
7 LOVE MY CHILDREN AND I CAN RELATE TO THE AGONIES THAT FAMILY  
8 AND FRIENDS MUST FEEL AT HAVING THESE YOUNG MEN ON TRIAL.

9 AND I LISTENED WITH ATTENTION WHEN TWO MOTHERS OF  
10 DEFENDANTS CAME INTO THE COURTROOM AND TESTIFIED THAT THEY  
11 HAD NEVER SEEN THEIR BOYS DO ANYTHING VIOLENT. I LISTENED  
12 WHEN FRIENDS TESTIFIED THAT THESE DEFENDANTS ARE BASICALLY  
13 VERY GOOD, VERY NICE BOYS.

14 I HAVE ONLY THIS TO SAY. THE CORPSES OF COLLEEN  
15 AND CARL GORDON ARE A SOMBER AND GRUESOME REBUTTAL OF THE  
16 CHARACTER EVIDENCE.

17 THERE ARE KILLERS IN THIS COURTROOM DESPITE  
18 THEIR HANDSOME, INNOCENT, FUZZY-CHEEKED DEMEANOR.

19 IN NOVEMBER 1984 -- YOU HAVE HEARD THESE LINES  
20 BEFORE -- THEY PROBABLY LOOKED AND ACTED LIKE ORDINARY APPLE  
21 PIE AMERICAN BOYS, WHO LOVED HORSES AND BASEBALL AND  
22 BUDWEISER BEER AND THE CLIFFS AND CHASING CHICKS.

23 BUT, UNFORTUNATELY, THERE WAS A DARKER AND DEVIANT  
24 SIDE TO EACH OF THESE YOUNG MEN. IT'S A CHILLING THOUGHT TO  
25 CONTEMPLATE. IT'S HARD TO CONTEMPLATE IT.

1            THAT SIX YOUNG MEN, YOUNG HOOLIGANS WOULD PLAN  
2 THE MURDER OF TWO INNOCENT HUMAN BEINGS. THIS ISN'T A CASE  
3 WHERE THE KILLINGS OCCURRED ON AN IMPULSE. THIS ISN'T A CASE  
4 OF ACCIDENTAL KILLINGS. IT'S NOT A CASE WHERE A SPOUSE COMES  
5 HOME AND FINDS HIS MATE AND KILLS AS A RESULT OF AN  
6 IRRESISTIBLE IMPULSE.

7            THESE YOUNG MEN DREW UP A BLUEPRINT DAYS, WEEKS,  
8 MONTHS PERHAPS BEFORE, BECAUSE TOM AKERS SAID IT WAS ABOUT A  
9 MONTH BEFORE IN OCTOBER WHEN HE HEARD THE PLANS DISCUSSED.

10           THEY GOT GUNS, THEY GOT THE PEOPLE TOGETHER, THEY  
11 GOT THE VEHICLE AND THEY WENT ACROSS TOWN WITH ONE PURPOSE, A  
12 HOT PROWL MURDER. MR. FLANAGAN, "IT WAS GOING TO HAPPEN  
13 TONIGHT. WE ARE GOING TO GO OVER THERE. WE ARE GOING TO KILL  
14 THEM."

15           AFTERWARDS, MR. MCDOWELL, WE SAID THAT AFTER MOST  
16 OF THE SHOOTING WAS OVER, HE WENT IN THE HOUSE. HE WENT  
17 DIRECTLY TO THE CLOSET. HE FOUND THE PURSE. HE TOOK THE  
18 WALLET. HE STARTED TO MOVE FURNITURE AND HE DIDN'T HAVE MUCH  
19 TIME.

20           MR. LUCKETT, HE SAID HE DIDN'T HAVE ENOUGH TIME  
21 TO GET INTO THE HOUSE ACCORDING TO TOM AKERS. MR. PIKE  
22 POINTS OUT THERE WASN'T A WILL. PERHAPS \$96,000 IS  
23 SIGNIFICANT MONEY BUT THE BENEFICIARY OF CARL GORDON'S  
24 EMPLOYMENT-ORIENTED INSURANCE WAS HIS WIFE. THAT DOESN'T  
25 MEAN THESE PEOPLE WEREN'T INVOLVED IN THE KILLING. THAT JUST

1 MEANS IT WAS TOTALLY SENSELESS.

2 WHAT IS SIGNIFICANT IS THE STATE OF MIND OF DALE  
3 FLANAGAN AND HE THOUGHT THERE WAS INSURANCE. AND HE THOUGHT  
4 HE WAS EITHER THE SOLE HEIR OR A PERSON WHO WOULD SPLIT THE  
5 ESTATE RIGHT DOWN THE MIDDLE.

6 THAT'S WHAT HE TOLD HIS CONSPIRATORS BY THE  
7 TESTIMONY BEGINNING WITH MR. HAVENS AND THAT'S WHAT HE TOLD  
8 ANGELA SALDANA.

9 I HAVE JUST A COUPLE MORE THINGS TO GET OFF MY  
10 CHEST ABOUT THIS CASE. INSTRUCTION 16 TALKS ABOUT RECKLESS  
11 DISREGARD, SOCIAL DUTY AND CONSEQUENCES. I HAVE ALWAYS BEEN  
12 IMPRESSED WITH WHAT A DIFFERENCE SOMETIMES ONE PERSON CAN  
13 MAKE.

14 AND AS I VIEW THE CRIME SCENE PHOTOGRAPHS OF CARL  
15 AND COLLEEN GORDON AND, ALSO, AS I LOOK AT THEM IN THE FORM  
16 OF CORPSES COLD AND DEAD WITH RIGOR MORTIS HAVING SET IN ON  
17 THE SLAB AT THE MORGUE, I THINK HOW SENSELESS THESE KILLINGS  
18 ARE.

19 WHAT A DIFFERENCE ONE PERSON COULD HAVE MADE.  
20 ONE TELEPHONE CALL. THAT'S WHY COERCION ISN'T A DEFENSE TO  
21 MURDER.

22 MR. LUCKETT HAD ACCESS TO TELEPHONES, SO DID MR.  
23 MCDOWELL. THEY DIDN'T HAVE TO IDENTIFY THEMSELVES. ALL THEY  
24 HAD TO DO WAS CALL. MAKE IT AN ANONYMOUS CALL BUT ALERT THE  
25 AUTHORITIES.

1 WHERE WAS THE DECENCY, WHERE WAS THE CONSCIENCE,  
2 WHERE WAS THE SENSE OF SOCIAL DUTY ON THE PART OF THE MEN WHO  
3 NOW IN SELF-SERVING WAYS SAY, "WE WERE MERELY PRESENT. WE  
4 WERE COERCED INTO GOING ALONG"?

5 THE WRITER OF PROVERBS SAID, "A WORD SPOKEN IN  
6 DUE SEASON HOW GOOD IT IS." THE FAMILY OF THE GORDONS WISH  
7 SOMEONE HAD SPOKEN A WORD IN DUE SEASON DURING THE WEEKS AND  
8 PERHAPS MONTHS BEFORE NOVEMBER THE 5TH WHEN THIS PLAN WAS  
9 BEING DISCUSSED.

10 LADIES AND GENTLEMEN, THESE YOUNG MEN ACTED IN  
11 RECKLESS DISREGARD OF THEIR SOCIAL DUTY. AS A RESULT OF  
12 THAT, I SAY, BASED UPON THE LAW WHICH APPLIES TO THIS CASE,  
13 AND BASED UPON THE EVIDENCE YOU HAVE HEARD, YOU HAVE A LEGAL  
14 DUTY.

15 THEY DECIDED TO BECOME A TEAM, THEN YOU CAN MAKE  
16 SURE THAT THERE AREN'T ANY WINNERS.

17 ACCOUNTABILITY. ISN'T THAT WHAT THE WHOLE CASE  
18 COMES DOWN TO. MR. LUCKETT SAYS -- I DON'T KNOW WHETHER HE  
19 WAS JUST TRYING TO DREAM UP A POEM OR LYRICS TO IMPRESS  
20 SOMEBODY IN THE MUSIC BUSINESS OR FOR SOME OTHER REASON OR,  
21 AS MR. SEATON ARGUES, THE LITTLE POEM WHICH HE WROTE REFLECTS  
22 THE TRUE MR. LUCKETT.

23 THE FACT REMAINS MR. LUCKETT AT ONE POINT SAID,  
24 "IF I HAD A CHOICE, I'D SOAR LIKE A HAWK. I'D SEARCH FOR MY  
25 PREY ONLY AT DARK."

1 MR. LUCKETT, YOU HAD A CHOICE. MR. MCDOWELL, YOU  
2 HAD A CHOICE. THEY ALL HAD CHOICES. NONE OF THEM HAD TO GO  
3 ALONG.

4 THEY ARE FREE AGENTS ON NOVEMBER THE 5TH, 1984.  
5 THE YOUNG MAN WHO SAYS HE WAS COERCED BACK THEN HAS NOT SHOWN  
6 ANY RELUCTANCE IN TAKING THE WITNESS STAND AND TO DISH OUT  
7 VERBAL GUT-PUNCHES TO EVERYBODY ELSE. SOMEHOW THAT IS  
8 INCONSISTENT WITH THE WAY HE SAYS HE WAS ON NOVEMBER THE 5TH,  
9 1984.

10 MR. FLANAGAN WANTS TO BLAME MR. MOORE THROUGH MR.  
11 WITTIG. MR. WITTIG SAID THAT DALE TOLD HIM IT WAS MOORE'S  
12 IDEA TO DO IT. MR. WITTIG SAYS IT'S HIS OPINION BECAUSE HE  
13 KNOWS DALE REAL WELL THAT HE HAD TO HAVE SOME HELP.

14 AND THEN MR. LUCKETT THROUGH HIS ATTORNEY DECIDED  
15 TO PROJECT THIS NOTION OF WHITE AND BLACK MAGIC INTO THE  
16 CASE. I DON'T KNOW THAT IT HAS ANY RELEVANCE BUT IT WAS  
17 PROJECTED INTO THIS CASE FOR A REASON.

18 THAT IS, BECAUSE IT WAS CONTENDED THAT MR. MOORE  
19 IS THE USER OF WHITE MAGIC, DALE FLANAGAN WAS SECOND IN  
20 COMMAND, HE IS BLACK MAGIC BUT THE WHITE IS IMPORTANT BECAUSE  
21 THE ONE WHO USES WHITE IS THE MANIPULATOR.

22 IN OTHER WORDS, MR. FLANAGAN AND MR. LUCKETT AND,  
23 I GUESS, MR. MCDOWELL WERE SAYING, "WHATEVER RANDY WANTS, RANDY  
24 GETS." AND THE WITNESSES ON BEHALF OF MR. MOORE SAY, "HE IS A  
25 KIND PERSON, I'D NEVER SEEN HIM DO ANYTHING. I HAVE LENT --"



1 MR. SCHROEDER SAYS, "HE NEVER KILLED ANY OF MY HORSES."

2 AND MR. MCDOWELL BLAMES ALL THE OTHERS AND MR.  
3 LUCKETT BLAMES THE OTHERS. HE EVEN CLAIMS HE IS A VICTIM OF  
4 A SUBPLOT NOW AND HE SAYS HE WAS COERCED AND NOBODY WANTS TO  
5 ACCEPT RESPONSIBILITY FOR WHAT THEY DID.

6 BUT THEY ARE RESPONSIBLE. WE ARE IN THIS  
7 COURTROOM AND IT'S NEARLY PAST SEVEN O'CLOCK NOW, NOT BECAUSE  
8 YOU WANTED TO BE HERE, NOT BECAUSE I ASKED TO BE ASSIGNED TO  
9 THIS CASE.

10 WE ARE HERE BECAUSE THESE YOUNG MEN OF THEIR OWN  
11 FREE WILL DECIDED TO TAKE THE LAW INTO THEIR OWN HANDS. THEY  
12 WALKED OUT TO THE VEHICLE, THEY TOOK THE GUNS. IT IS THEIR  
13 FINGERS WHICH PULLED THE TRIGGER.

14 AND THEN MR. LUCKETT SAYS BACK AT THE APARTMENT  
15 EARLY THE MORNING OF NOVEMBER THE 6TH, 1984, THEY HAD STARTED  
16 LIKE EXPLAINING THE ADVENTURE OF DOING THIS AND APPARENTLY  
17 THAT'S THE WAY THESE FELLOWS PERCEIVED IT.

18 THIS WAS SOME TYPE OF ADVENTURE. THIS MORE THAN  
19 ANYTHING ELSE WAS PROBABLY JUST A THRILL KILLING.

20 LADIES AND GENTLEMEN, I STARTED WITH SHAKESPEARE  
21 IN A FACETIOUS WAY. I WANT TO END WITH IT VERY SINCERELY.  
22 HE SAID IN HIS REDUCTION OF MERCHANTS OF VENICE, "TRUTH WILL  
23 COME TO LIGHT, MURDER CANNOT BE HID LONG."

24 AND MURDERS HAVE BEEN EXPOSED AND IN THIS  
25 COURTROOM YOU HAVE LEARNED THE IDENTITY OF THE MURDERERS AND

1 THE PEOPLE WHO AIDED THEM IN THEIR MURDER.

2 THE TERRIBLE TRUTH IS THAT A GRANDSON PLOTTED TO  
3 KILL HIS GRANDPARENTS. AND HE ENLISTED THE HELP OF CERTAIN  
4 FRIENDS, FIVE OF THEM IN NUMBER, WHO WILLINGLY AND  
5 VOLUNTARILY BECAME PART OF THAT SAME PLOT.

6 WHEN YOU WERE SELECTED AS JURORS IN THIS CASE,  
7 YOU PROMISED WHEN YOU RAISED YOUR RIGHT HAND AND TOOK YOUR  
8 OATH THAT YOU WOULD BASE YOUR VERDICTS UPON THE EVIDENCE IN THE  
9 CASE.

10 YOU PROMISED YOU WOULD DO EQUAL AND EXACT JUSTICE  
11 TO THE DEFENDANTS AND TO THE STATE OF NEVADA. YOU PROMISED  
12 IN A SENSE YOU WOULD CONVICT IF THE EVIDENCE PROVED THEY WERE  
13 GUILTY.

14 IN THE STATE'S OPENING REMARKS, AT THE  
15 COMMENCEMENT OF THE EVIDENCE IN THIS CASE, WE PROMISED YOU  
16 THAT WE WOULD PROVE OUR CASE BEYOND A REASONABLE DOUBT. I  
17 SAY WE HAVE KEPT OUR PROMISE. I NOW ASK YOU TO KEEP YOURS.

18 THE COURT: THANK YOU, MR. HARMON. MR. BAILIFF,  
19 WILL YOU COME FORWARD, PLEASE, AND BE SWORN, TAKE CHARGE OF THE  
20 JURY.

21 (BAILIFF WAS DULY SWORN.)

22 THE COURT: THANK YOU. LADIES AND GENTLEMEN, I  
23 WANT TO THANK YOU FOR YOUR PATIENCE TODAY. IT'S BEEN A LONG  
24 DAY. I AM GOING TO ASK THAT YOU GO WITH THE BAILIFF TO THE  
25 JURY ROOM TO SELECT A FOREMAN AND NOT DO MUCH BEYOND THAT

1 THIS EVENING. ADJOURN, COME BACK TOMORROW MORNING WHEN YOU  
2 CAN BEGIN IN EARNEST YOUR DELIBERATION. MR. BAILIFF. COURT  
3 IS ADJOURNED.

4 (COURT RECESSED FOR JURY DELIBERATIONS.)  
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