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IN THE  
SUPREME COURT OF VIRGINIA

---

RECORD NO. 830584

---

VIRGINIA DEPARTMENT OF CORRECTIONS, et al.

Appellants,

v.

JAMES T. CLARK, JR.,

Appellee.

---

On Appeal from the  
Circuit Court of Fairfax County

---

APPELLEE'S SUPPLEMENTAL APPENDIX

---

Robert T. Hall  
Jaclyn Leonhard  
HALL, SUROVELL, JACKSON & COLTEN, P.C.  
4010 University Drive  
Fairfax, Virginia 22030  
Counsel for Appellee

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TABLE OF CONTENTS

|   | <u>page</u> |
|---|-------------|
| Transcript of telephonic <u>de bene esse</u> deposition of<br>Mary Ellen Cox, April 19, 1982 . . . . .      | 1           |
| Letter from the Honorable Richard J. Jamborsky to<br>Jacqueline Epps, Esquire, September 13, 1982 . . . . . | 29          |
| Excerpt from transcript of oral argument, October 7,<br>1982 . . . . .                                      | 31          |



1 VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

2  
3 JAMES T. CLARK, JR., )

4 PETITIONER, )

5 VS. )

AT LAW NO. 50768

6 EDWARD MORRIS, ET AL., )

7 RESPONDENTS. )  
----- )

8  
9  
10 TELEPHONIC DEPOSITION OF MARY ELLEN COX

11  
12  
13 TAKEN BEFORE MARIANNE MARTINI HOLMES,  
14 REGISTERED PROFESSIONAL REPORTER AND NOTARY PUBLIC IN AND  
15 FOR THE STATE OF FLORIDA AT LARGE.  
16

17 - - -  
18  
19 MONDAY, APRIL 19, 1952  
1445 SCOTTSDALE ROAD EAST  
WEST PALM BEACH, FLORIDA  
20 1:20 - 1:52 O'CLOCK, P. M.  
21 - - -  
22  
23  
24  
25

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1 APPEARANCES:

2 ON BEHALF OF THE PETITIONER:

3 HALL, SUROVELL, JACKSON & COLTEN  
4 3930 UNIVERSITY DRIVE  
5 FAIRFAX, VIRGINIA 22030  
6 BY: ROBERT T. HALL, ESQ.

7 ON BEHALF OF THE RESPONDENTS:

8 ROBERT E. BRADENHAM, II, ESQUIRE  
9 ASSISTANT ATTORNEY GENERAL

10 - - -

11 I N D E X

12 - - -

13 WITNESS:

14 DIRECT CROSS REDIRECT RECROSS

15 MARY ELLEN COX

16 BY MR. HALL

17 3

25

18 BY MR. BRADENHAM

24

19 EXHIBITS:

20 IDENTIFIED

21 CERTIFIED QUESTION:

22 PAGE

23 LINE

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P R O C E E D I N G S

- - -

THEREUPON,

MARY ELLEN COX,

BEING BY THE UNDERSIGNED NOTARY PUBLIC FIRST DULY SWORN,  
WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

DIRECT EXAMINATION

BY MR. HALL:

Q. MRS. COX, MY NAME IS ROBERT HALL, AND I WILL  
BE ASKING QUESTIONS OF YOU ON BEHALF OF JAMES T. CLARK,  
THE PETITIONER IN A HABEAS CORPUS ACTION NOW PENDING IN  
THE CIRCUIT COURT OF FAIRFAX COUNTY.

MRS. COX, WILL YOU GIVE US YOUR FULL NAME,  
PLEASE?

A. MARY ELLEN COX.

Q. AND WHAT IS YOUR ADDRESS?

A. 1445 SCOTTSDALE ROAD EAST, WEST PALM BEACH,  
FLORIDA.

Q. AND WHAT IS YOUR AGE?

A. 49.

Q. AND ARE YOU RELATED TO THE PETITIONER, JIMMY  
CLARK?

A. YES, I AM. I'M HIS AUNT.

Q. ALL RIGHT. THAT IS, YOU ARE HIS FATHER'S

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1 SISTER?

2 A. RIGHT.

3 Q. HOW LONG HAVE YOU LIVED IN FLORIDA?

4 A. I MOVED DOWN THREE AND A HALF YEARS AGO.

5 Q. ALL RIGHT. WHERE DID YOU LIVE PRIOR TO THAT?

6 A. IN MARYLAND.

7 Q. AND IN WHAT PART OF MARYLAND?

8 A. CAMP SPRINGS AREA.

9 Q. ALL RIGHT. WAS THAT THE AREA WHERE THE CLARK  
10 FAMILY LIVED?

11 A. YES, IT IS.

12 Q. DO YOU PRESENTLY SUFFER FROM ANY PHYSICAL  
13 AILMENT THAT WOULD MAKE IT UNWISE FOR YOU TO ATTEND A  
14 HEARING IN FAIRFAX COUNTY, VIRGINIA?

15 A. YES, I DO, MR. HALL. I HAVE MULTIPLE  
16 SCLEROSIS AND ALSO A HEART CONDITION.

17 Q. HAVE YOU CONSULTED YOUR PHYSICIAN ABOUT  
18 TRAVELING TO FAIRFAX COUNTY FOR TESTIMONY?

19 A. YES, I HAVE LAST WEEK, AND HE ADVISED ME NOT  
20 TO TRAVEL.

21 Q. DID YOU KNOW JAMES T. CLARK'S MOTHER, THAT IS,  
22 TOM CLARK'S FIRST WIFE?

23 A. YES, I DID, VERY WELL.

24 Q. AND DO YOU RECALL APPROXIMATELY WHEN THEY GOT  
25 MARRIED?

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1 A. THEY WERE MARRIED ON MARCH 3, 1956.

2 Q. 1956?

3 A. YES.

4 Q. AND WHAT CAN YOU TELL ME ABOUT PATRICIA CLARK  
5 AT THAT TIME SO FAR AS THE BIRTH OF JIMMY, THE SON, GOES?

6 A. WELL, PAT WAS 15 AT THE TIME, AND SHE WAS  
7 PREGNANT WHEN SHE AND MY BROTHER WERE MARRIED. JIM WAS  
8 BORN ON SEPTEMBER 21, 1956.

9 Q. ALL RIGHT. DID YOU HAVE OCCASION TO VISIT  
10 THEM, THAT IS, TOM AND PAT AND THEIR NEW BABY JIMMY?

11 A. YES, I DID. I VISITED THEM QUITE OFTEN.

12 Q. DID YOU HAVE OCCASION TO OBSERVE THE MANNER IN  
13 WHICH PAT TOOK CARE OF HER BABY?

14 A. YES, I DID.

15 Q. ON THE OCCASIONS THAT YOU VISITED THEM OR  
16 OBSERVED THE BABY, DID YOU OBSERVE ANYTHING UNUSUAL ABOUT  
17 THE MANNER OR WAY SHE WOULD CARE FOR THE CHILD?

18 A. WELL, HIS CARE WAS NOT WHAT IT SHOULD HAVE  
19 BEEN. HE WAS WET MOST OF THE TIME.

20 Q. ALL RIGHT. DID YOU EVER HAVE OCCASION TO  
21 VISIT THE PREMISES WHEN PAT WAS NOT PRESENT AND TOM WAS  
22 NOT PRESENT?

23 A. YES. SEVERAL TIMES MY MOTHER AND I WOULD GO  
24 OVER TO THE APARTMENT TO SEE PAT AND WE WOULD FIND JIM  
25 ALONE IN THE APARTMENT. SHE HAD GONE OFF AND LEFT HIM

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1 ALONE.

2 Q. ALL RIGHT. WHAT AGE WAS HE THE OCCASION OR  
3 OCCASIONS THAT YOU OBSERVED THIS?

4 A. HE WAS AN INFANT AT THE TIME. AND AFTER JOHN  
5 WAS BORN, BOTH OF THEM WERE LEFT ALONE IN THE APARTMENT.

6 I CAN REMEMBER ON ONE OCCASION WE WENT OVER,  
7 JIM WAS ABOUT 14 MONTHS OLD AND JOHN WAS AN INFANT AT THE  
8 TIME, MAYBE A MONTH OLD. PAT HAD LEFT THEM IN THE  
9 APARTMENT. AND MY MOTHER AND I WENT OVER AND HAD TO GET  
10 THE APARTMENT MANAGER TO LET US IN SO WE COULD GET THE  
11 CHILDREN, BECAUSE JIM WAS STANDING AGAINST THE PLATE  
12 GLASS WINDOW IN THE LIVING ROOM CRYING. HE'D BEEN UP  
13 THERE FOR HOURS JUST CRYING AND SCREAMING. AND WE HAD TO  
14 GET THE MANAGER TO LET US IN TO GET THE TWO CHILDREN. WE  
15 TOOK THEM HOME WITH US.

16 Q. DID THERE COME A TIME WHEN TOM CLARK, THE  
17 FATHER, AND PAT CLARK, THE MOTHER, SEPARATED?

18 A. YES, THEY SEPARATED SEVERAL TIMES DURING THIS  
19 PERIOD. AND WHEN THEY WERE SEPARATED, MY MOTHER WAS THE  
20 ONE THAT USUALLY TOOK CARE OF THE TWO LITTLE ONES. I  
21 TOOK JOHN. I HAD A SMALL SON AT THE TIME, AND I WOULD  
22 TAKE JOHN HOME WITH ME AND MY MOTHER WOULD TAKE JIM WITH  
23 HER. AND PAT WOULD COME BACK AND SHE WOULD TAKE THEM,  
24 AND THEN THE SAME THING WOULD HAPPEN ALL OVER AGAIN.

25 Q. THAT IS, THE PARTIES WOULD SEPARATE AND THE

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1 CHILDREN THEN WOULD BE STAYING AT DIFFERENT HOUSEHOLDS?

2 A. YES. EITHER THAT OR PAT WOULD TAKE OFF  
3 SOMEWHERE AND LEAVE THEM IN THE APARTMENT ALONE AND MY  
4 BROTHER WAS WORKING AND WE WOULD TAKE THE CHILDREN HOME  
5 WITH US.

6 Q. WERE YOU FAMILIAR WITH PAT'S FAMILY?

7 A. NO, I DIDN'T KNOW THEM ALL THAT WELL. JUST  
8 FROM PAT MARRYING MY BROTHER. JUST CASUALLY. IT WASN'T  
9 A CLOSE RELATIONSHIP WITH HER FAMILY AT ALL.

10 Q. WHAT WAS TOM'S AGE WHEN HE MARRIED PAT?

11 A. TOM WAS 21 AT THE TIME.

12 Q. APPROXIMATELY -- STRIKE THAT.

13 DID THERE COME A TIME WHEN PAT LEFT TOM  
14 APPARENTLY FOR GOOD?

15 A. YES. I THINK THAT JIM WAS ABOUT TWO YEARS OLD  
16 AT THE TIME WHEN SHE LEFT. AT THIS POINT TOM AND MY  
17 MOTHER MOVED IN WITH ANOTHER ONE OF MY BROTHERS AND HIS  
18 WIFE AND THEY LIVED WITH THEM FOR APPROXIMATELY TWO YEARS.  
19 THIS WAS, OH, JIM WAS FROM ABOUT TWO TO FOUR.

20 Q. BECAUSE OF STATIC ON THE LINE, I WONDER IF YOU  
21 WOULD BE SO KIND TO REPEAT YOUR ANSWER TO THE LAST  
22 QUESTION.

23 A. ALL RIGHT. WHEN JIM WAS APPROXIMATELY TWO  
24 YEARS OLD, PAT LEFT AGAIN AND MY BROTHER TOM MOVED THE  
25 TWO CHILDREN TO MY BROTHER DON'S HOME AND MY MOTHER MOVED

1 THERE TO TAKE CARE OF THE TWO LITTLE BOYS AND THEY LIVED  
2 THERE FOR APPROXIMATELY TWO YEARS.

3 Q. ALL RIGHT. WHAT WAS YOUR MOTHER'S AGE AT THAT  
4 TIME, APPROXIMATELY?

5 A. LET'S SEE. SHE'S '76. SHE WAS ABOUT 56.  
6 MAYBE A LITTLE OLDER.

7 Q. NOW, DID THERE COME A TIME LATER WHEN TOM TOOK  
8 UP RESIDENCE FOR HIMSELF AND YOUR MOTHER AND TOOK THE  
9 CHILDREN TO LIVE WITH HIM?

10 A. YES. BUT BEFORE HE DID THAT, JIM AND JOHN  
11 LIVED FOR ALMOST A YEAR WITH A LADY IN VIRGINIA. THEY  
12 WERE ABOUT FOUR AND FIVE YEARS OLD AT THE TIME. THE  
13 WOMAN'S NAME WAS KATHLEEN QUINLAN. I DON'T KNOW HER  
14 ADDRESS. BUT THEY LIVED THERE APPROXIMATELY A YEAR. AND  
15 THEN TOM AND MY MOTHER MOVED INTO AN APARTMENT IN  
16 ANACOSTIA --

17 Q. ALL RIGHT.

18 A. -- FOR -- THEY LIVED THERE FOR ABOUT TWO  
19 YEARS, AND THEN THEY MOVED AGAIN TO SUITLAND, MARYLAND.

20 Q. AT THE TIME THE CHILDREN LIVED WITH KATHLEEN  
21 QUINLAN -- COULD THAT BE QUINTON?

22 A. IT MAY BE QUINTON. I'M NOT SURE.

23 Q. -- WOULD THE CHILDREN STAY WITH THE SITTER  
24 DURING THE WEEK?

25 A. DURING THE TIME THAT THEY LIVED WITH KATHLEEN

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1 QUINTON?

2 Q. YES. WOULD THEY GO HOME EVERY EVENING, OR  
3 WHAT WAS THE ARRANGEMENT?

4 A. SHE KEPT THEM MONDAY THROUGH FRIDAY AND MY  
5 BROTHER TOM AND MY MOTHER WOULD GO ON FRIDAY AND PICK  
6 THEM UP AND MY MOTHER WOULD TAKE CARE OF THEM ON THE  
7 WEEKEND.

8 Q. NOW, PRIOR TO KATHLEEN QUINLAN OR QUINTON  
9 TAKING CHARGE OF THEIR CARE DURING THE WEEK, WERE YOU  
10 AWARE OF ANY OTHER SITTERS THAT CARED FOR THEM?

11 A. WELL, THEY HAD BABY-SITTERS THAT WOULD COME IN  
12 IF MY MOTHER HAD TO DO SOMETHING ELSE OR IF -- YOU KNOW,  
13 MY SISTER-IN-LAW GINNY TOOK CARE OF THEM QUITE OFTEN ALSO,  
14 DON'S WIFE.

15 Q. DID YOUR MOTHER SUFFER FROM ANY PHYSICAL  
16 AILMENT IN THAT PERIOD OF TIME?

17 A. YES. MY MOTHER HAD A LUNG REMOVED. SHE HAD  
18 HAD LUNG CANCER AND SHE HAD A LUNG REMOVED DURING THIS  
19 PERIOD. AND I BELIEVE IT WAS AROUND THE TIME THAT  
20 KATHLEEN QUINTON TOOK JOHN AND JIM TO TAKE CARE OF THEM  
21 DURING THAT PERIOD. I WAS WORKING BY THAT TIME, AND SO I  
22 WAS UNABLE TO TAKE CARE OF THEM MYSELF.

23 Q. WAS TOM WORKING AT THAT TIME?

24 A. YES. TOM HAD ALWAYS HELD DOWN AT LEAST TWO  
25 JOBS. AND HE WAS, YOU KNOW, TRYING TO PAY THE BILLS AND

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1 WORK, AND IT JUST WASN'T POSSIBLE FOR HIM TO BE WITH THEM  
2 ALL THAT MUCH.

3 Q. NOW, DID YOU HAVE OCCASION TO SEE PAT CLARK IN  
4 THE PERIOD FOLLOWING THE SEPARATION?

5 A. NO -- WELL, MAYBE ONCE OR TWICE. UP UNTIL THE --  
6 THE PERIOD JIM WAS BURNED AND THEN I SAW HER AT THE  
7 HOSPITAL AFTER THAT.

8 Q. ALL RIGHT. AT THE TIME THE CHILDREN LIVED  
9 WITH YOUR -- WITH YOU AND YOUR MOTHER AND TOM, DID PAT  
10 COME TO VISIT?

11 A. SHE WOULD VISIT, JUST COME IN AND MAYBE BRING  
12 THEM A TOY OR SOMETHING, YOU KNOW, BUT NOT -- SHE DIDN'T  
13 TAKE THEM OR ANYTHING. MAYBE FOR A RIDE IN THE CAR.

14 Q. NOW, AT THE TIME THAT TOM ESTABLISHED A HOME  
15 FOR HIMSELF AND HIS BOYS AND YOUR MOTHER, DID YOU HAVE  
16 OCCASION TO VISIT IN THAT HOME?

17 A. IN MY BROTHER'S HOME?

18 Q. NO. WHEN TOM ESTABLISHED SEPARATE QUARTERS  
19 FOR HIMSELF AND THE BOYS.

20 A. WITH MY MOTHER.

21 Q. YES.

22 A. OH, YES.

23 Q. ALL RIGHT. TO YOUR KNOWLEDGE, DID PAT COME  
24 AND VISIT AT THAT OCCASION?

25 A. YES, SHE VISITED THEM WHEN THEY LIVED IN

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1 SUITLAND. TOM AND MY MOTHER HAD AN APARTMENT FOR ABOUT  
2 TWO YEARS IN SUITLAND, AND PAT CAME OVER AND VISITED WITH  
3 THEM, AND AT TIMES SHE TOOK THEM FOR THE WEEKEND.

4 Q. NOW, AFTER TOM LEFT YOUR HOUSE -- I UNDERSTAND  
5 TOM LIVED WITH YOU AND DONALD?

6 A. NO. TOM LIVED WITH MY BROTHER DON AND HIS  
7 WIFE.

8 Q. HIS BROTHER DON AND HIS WIFE.

9 A. YES.

10 Q. HE LEFT YOUR BROTHER'S PLACE. DID HE MOVE TO  
11 ANACOSTIA?

12 A. YES.

13 Q. AND STAYED THERE FOR APPROXIMATELY A YEAR?

14 A. YES. A YEAR AND A HALF, MAYBE TWO YEARS. I  
15 DON'T REMEMBER THE EXACT TIME THEY WERE THERE.

16 Q. THEN MOVED TO SUITLAND?

17 A. RIGHT.

18 Q. AND REMAINED THERE FOR SEVERAL YEARS?

19 A. A COUPLE OF YEARS, YES.

20 Q. THEN HE MOVED TO CLINTON, MARYLAND?

21 A. YES. TOM AND MARTHA WERE MARRIED ON AUGUST  
22 20, 1966. THEN THEY BOUGHT A HOME IN CLINTON, MARYLAND,  
23 AT THAT TIME AND THEY HAD THE TWO BOYS WITH THEM.

24 Q. NOW, DID TOM AND MARTHA HAVE CHILDREN OF THEIR  
25 OWN?

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1 A. THEY HAVE TWO LITTLE BOYS, YES.

2 Q. ALL RIGHT. THAT WAS SUBSEQUENT TO THEIR  
3 MARRIAGE.

4 A. YES.

5 Q. IS THAT CORRECT? THE CHILDREN -- FIRST CHILD  
6 WAS BORN AFTER THEIR MARRIAGE?

7 A. YES. I THINK RICHIE WAS BORN A YEAR AND A  
8 HALF AFTER THEY WERE BORN -- THEY WERE MARRIED.

9 Q. NOW, WHAT WAS MARTHA'S AGE WHEN SHE MARRIED  
10 TOM?

11 A. 16.

12 Q. AND HOW OLD WAS JIMMY?

13 A. JIM WAS 10 AND JOHN WAS 9.

14 Q. ALL RIGHT. NOW, THERE CAME A TIME WHEN JIM  
15 SUSTAINED SOME BURNS, DID THERE NOT?

16 A. YES, HE DID.

17 Q. AND WHERE WAS HE AND HOW DID THAT OCCUR?

18 A. IT HAPPENED IN THE BACKYARD AT THEIR HOME IN  
19 CLINTON, MARYLAND, ON AUGUST 28, 1966. IT WAS THE WEEK  
20 AFTER TOM AND MARTHA HAD MARRIED AND THEY HAD JUST COME  
21 BACK FROM THEIR WEDDING TRIP. AND JOHN AND JIM WERE IN  
22 THE BACKYARD PLAYING WITH ONE OF THE LITTLE AIRPLANES  
23 THAT HAS GASOLINE.

24 Q. YES.

25 A. AND THEY HAD RUN OUT OF FUEL, AND JIM DECIDED

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1 THAT HE WAS GOING TO EMPTY SOME OF THE FUEL FROM THE LAWN  
2 MOWER INTO THE AIRPLANE. AND WHEN HE DID THIS, A SPARK  
3 CAUSED THE THING TO EXPLODE IN HIS HAND SETTING HIM ON  
4 FIRE, AND HE WENT RACING THROUGH THE YARD AND JOHN THREW  
5 HIM IN THE SWIMMING POOL, AND HE RECEIVED THIRD-DEGREE  
6 BURNS ON THE WHOLE LEFT SIDE OF HIS BODY, FIRST-DEGREE ON  
7 HIS FACE AND OTHER PARTS OF HIS BODY.

8 Q. DID YOU HAVE OCCASION TO VISIT HIM IN THE  
9 HOSPITAL?

10 A. YES, I VISITED WITH HIM DAILY.

11 Q. NOW, THAT DATE OF INJURY WAS AUGUST 29TH OF  
12 1966.

13 WHAT HOSPITAL WAS HE TAKEN TO?

14 A. HE WAS TAKEN TO THE CLINTON COMMUNITY HOSPITAL  
15 IN CLINTON, MARYLAND.

16 Q. IS THAT NEAR HIS HOME?

17 A. YES, IT WAS. IT WAS ABOUT A HALF A MILE FROM  
18 THEIR HOME.

19 Q. AND HOW LONG DID HE REMAIN HOSPITALIZED THERE?

20 A. HE WAS THERE NINE MONTHS.

21 Q. AND WAS HE TRANSFERRED TO ANOTHER FACILITY  
22 AFTER THAT?

23 A. YES, HE WAS. THE CLINTON COMMUNITY HOSPITAL  
24 HAD GIVEN UP ANY HOPE OF REALLY HELPING HIM BECAUSE THEY  
25 HAD DONE SKIN GRAFTS AND THEY DIDN'T TAKE AND HE WAS

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1 TAKING ALL KINDS OF DRUGS FOR THE PAIN AND HE HAD MAGGOTS  
2 ON HIS BODY SEVERAL TIMES AND STAPH INFECTIONS, AND THEY  
3 HAD JUST GIVEN UP HELPING HIM BECAUSE THEY SAID THAT  
4 NOTHING WAS WORKING. SO AT THE TIME I HAD -- I WAS  
5 WRITING A MEDICAL COLUMN AT WORK AND I READ ABOUT SILVER  
6 NITRATE TREATMENT AND FOUND OUT THAT THE WASHINGTON  
7 SANITARIUM IN TACOMA PARK WOULD BE WILLING TO TRY THIS  
8 TREATMENT ON JIM'S BURNS. SO MY BROTHER MOVED HIM TO THE  
9 WASHINGTON SANITARIUM IN TACOMA PARK, MARYLAND.

10 Q. HOW LONG DID HE STAY THERE?

11 A. HE WAS THERE ALMOST TWO MONTHS, I BELIEVE.

12 Q. ON THE OCCASIONS THAT YOU VISITED JIM AT THE  
13 CLINTON HOSPITAL, YOU INDICATED THAT HE WAS IN PAIN.

14 CAN YOU DESCRIBE HOW HE EVIDENCED THAT PAIN?

15 A. YES. HE WOULD -- WELL, IT WAS EVIDENT HE WAS --  
16 OF COURSE, HE HAD TO HAVE DRUGS FOR THE PAIN. HE WOULD  
17 BE SCREAMING AT TIMES FROM THE PAIN. IT WAS JUST MORE  
18 THAN HE COULD BEAR AT TIMES.

19 Q. WAS THIS AT THE OUTSET OF THE INJURY OR DID IT  
20 CONTINUE FOR A PERIOD?

21 A. IT CONTINUED OVER THIS WHOLE PERIOD. IT WAS  
22 JUST A REALLY BAD TIME FOR HIM WITH THE -- I CAN REMEMBER  
23 ONE OF THE TIMES THAT THE MAGGOTS CRAWLED UP OUT OF HIS  
24 BANDAGES. THEY HAD TO TAKE THE BANDAGES OFF AND RE-WRAP  
25 HIS BODY EVERY TIME THEY USED THIS LOTION. THEY DIPPED

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1 HIM IN A LOTION TANK, AND THEY WOULD PUT THESE BANDAGES  
2 ON HIM. AND AT ONE TIME THE MAGGOTS WERE CRAWLING UP  
3 OVER THESE THINGS AND HE JUST -- JUST ALMOST HAD A FIT.  
4 HE WAS SCREAMING AND PULLING AT THE BANDAGES WHEN THESE  
5 MAGGOTS WERE FALLING OFF HIM.

6 Q. WAS THERE ANYTHING UNUSUAL ABOUT HIS ODOR?

7 A. YES. YOU COULD SMELL HIM WHEN YOU WENT IN THE  
8 FRONT DOOR OF THE HOSPITAL. IT WAS JUST ROTTING HUMAN  
9 FLESH.

10 Q. WHAT PORTION OF HIS BODY WAS BANDAGED?

11 A. WHOLE LEFT SIDE OF HIS BODY. THE -- HIS LEFT  
12 ARM IS VERY BADLY SCARRED. THE LEFT SIDE OF HIS CHEST IS  
13 BADLY SCARRED. AND, OF COURSE, HIS LEGS WHERE THEY TOOK  
14 THE SKIN GRAFTS FOR THE GRAFTS ON HIS LEFT SIDE, THEY HAD  
15 TO TAKE QUITE A LOT OF THOSE BECAUSE THEY DIDN'T TAKE.  
16 AND HIS HAND, HIS LEFT HAND WAS BURNED QUITE SEVERELY,  
17 TOO.

18 Q. DID YOU OBSERVE ANY CHANGES IN HIS DEemeanOR  
19 DURING THIS PERIOD OF TREATMENT?

20 A. WELL, HE WAS -- AS I SAY, HE WAS IN CONSTANT  
21 PAIN AND HE WOULD SCREAM FOR MORE PAIN-KILLERS, WHICH IS  
22 A NORMAL THING TO DO I SUPPOSE WHEN YOU'RE IN PAIN. BUT  
23 IT'S JUST SO MUCH THAT THEY CAN GIVE YOU FOR IT.

24 Q. AFTER HIS RELEASE, DID HE -- DID YOU OBSERVE  
25 ANY DIFFICULTIES HE WAS HAVING WITH HIS BURNS OR HIS

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1 SCARS?

2 A. YES. HE WAS VERY SELF-CONSCIOUS ABOUT THE  
3 SCARS, MR. HALL. HE WOULD NOT WEAR LONG-SLEEVED -- I  
4 MEAN, SHORT-SLEEVED SHIRTS AT ALL. HE WOULD -- WOULDN'T  
5 EVEN CONSIDER WEARING A SHORT-SLEEVED SHIRT. IT EITHER  
6 HAD TO HAVE LONG SLEEVES OR HE WOULDN'T WEAR IT. HE  
7 WOULDN'T WEAR SHORT PANTS. HE WAS VERY SELF-CONSCIOUS  
8 ABOUT HIS SCARS.

9 THE BURNS ON HIS FACE FORTUNATELY WERE  
10 SUPERFICIAL AND THEY DIDN'T -- HE DIDN'T HAVE TO HAVE  
11 SKIN GRAFTS ON THE FACE AT ALL.

12 Q. DID HIS MOTHER, THAT IS, HIS NATURAL MOTHER,  
13 COME TO VISIT HIM WHILE HE WAS HOSPITALIZED?

14 A. YES, SHE DID. SHE WAS AWAY AT THE TIME HE WAS  
15 BURNED, AND SHE CAME BACK AFTER SHE FOUND OUT THAT JIM  
16 WAS BURNED AND SHE VISITED HIM THERE IN THE HOSPITAL.

17 Q. ALL RIGHT. DID YOU HAVE OCCASION TO SEE HER  
18 ON OCCASIONS WHEN SHE WOULD COME DOWN TO VISIT?

19 A. YES, MANY TIMES BECAUSE, AS I SAY, I WAS THERE  
20 DAILY AND SHE WOULD COME DOWN AFTER WORK, AS I DID. AND,  
21 OF COURSE, ON WEEKENDS SHE WAS THERE.

22 Q. OKAY. DO YOU KNOW WHAT HER OCCUPATION WAS AT  
23 THAT TIME?

24 A. SHE WAS WORKING AS A PROSTITUTE, AS FAR AS I  
25 KNOW, MR. HALL.

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1 Q. DO YOU KNOW HOW LONG SHE'D BEEN ENGAGED IN  
2 THAT OCCUPATION?

3 A. A NUMBER OF YEARS.

4 Q. WHERE -- WHAT GEOGRAPHICAL AREA WAS SHE LIVING?

5 A. SHE WAS LIVING IN WASHINGTON AND MARYLAND AND  
6 VIRGINIA.

7 DURING THIS PERIOD I DIDN'T SEE PAT ALL THAT  
8 MUCH. YOU KNOW, IT WAS JUST -- I SAW THE CHILDREN ALL  
9 THE TIME BECAUSE THEY WERE WITH MY BROTHER AND WITH MY  
10 MOTHER AND WITH ME.

11 Q. YES.

12 A. BUT I DIDN'T SEE PAT ALL THAT MUCH.

13 Q. AND I GATHER YOU DID NOT SEE THE CHILDREN WITH  
14 HER WHEN SHE WOULD TAKE THEM ON TRIPS OR ON VISITATION.

15 A. NO. SHE WOULD COME DOWN AND PICK THEM UP AND  
16 TAKE THEM WITH HER. AND NO, I NEVER VISITED IN HER HOME.

17 Q. NOW, DID THERE COME A TIME WHEN THE BOYS WENT  
18 TO LIVE WITH PAT?

19 A. YES. I BELIEVE JIM AND JOHN WERE 12 AND 13  
20 WHEN THEY WENT TO LIVE WITH PAT IN BOWIE. IT WAS A  
21 COUPLE OF YEARS AFTER JIM HAD GOTTEN OUT OF THE HOSPITAL  
22 AFTER HIS BURNS.

23 Q. ALL RIGHT.

24 A. THEY WERE WITH HER APPROXIMATELY TWO YEARS,  
25 MAYBE TWO AND A HALF YEARS.

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1 Q. WHERE DID PAT LIVE AT THAT TIME?

2 A. SHE LIVED IN BOWIE, MARYLAND.

3 Q. YES. BUT DID SHE LIVE WITH ANYONE THERE  
4 BESIDES THE BOY?

5 A. SHE HAD A WOMAN LIVING WITH HER. I DON'T KNOW  
6 HER NAME. SANDY I BELIEVE WAS HER FIRST NAME. I'M NOT  
7 SURE.

8 Q. DO YOU KNOW WHAT THE WOMAN'S OCCUPATION WAS?

9 A. NO, I DON'T.

10 Q. NOW, DID THERE COME A TIME WHEN THE BOYS THEN  
11 MOVED BACK IN WITH TOM?

12 A. YES. SHE CAME BACK TO CLINTON WHEN -- LET'S  
13 SEE, JIM I BELIEVE WAS ABOUT 15 WHEN THEY MOVED BACK FOR  
14 GOOD. DURING THAT PERIOD THEY WERE WITH PAT, THEY DID  
15 COME BACK TO CLINTON TO VISIT TOM AND MARTHA ON WEEKENDS.  
16 THEY WOULD COME DOWN TO VISIT, SO THEY WENT BACK AND  
17 FORTH.

18 Q. ALL RIGHT. NOW, DO YOU KNOW WHEN TOM AND PAT'S  
19 DIVORCE WAS FINAL, APPROXIMATELY?

20 A. NO, I DON'T. I BELIEVE IT WAS EITHER THE SAME  
21 YEAR THAT HE AND MARTHA WERE MARRIED OR THE YEAR BEFORE.

22 Q. ALL RIGHT. DO YOU KNOW WHETHER OR NOT PAT  
23 EVER REMARRIED?

24 A. SHE SAID THAT SHE DID. I DON'T KNOW. I NEVER  
25 MET HER HUSBAND.

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1 Q. ALL RIGHT. WOULD YOU HAVE ANY KNOWLEDGE IF  
2 SHE HAD REMARRIED WHEN, WHAT POINT IN TIME SHE REMARRIED?

3 A. NO, I WOULDN'T.

4 Q. ALL RIGHT. NOW, IN YOUR OBSERVATIONS OF PAT,  
5 DID YOU -- WERE YOU AWARE OF ANY PROBLEMS SHE MIGHT HAVE  
6 HAD WITH THE INGESTION OF DRINK OR DRUG?

7 A. NOT -- AS I SAY, I DIDN'T VISIT IN PAT'S HOME.  
8 AND IT WAS JUST WHAT WE HEARD THROUGH THE FAMILY THAT PAT  
9 WAS INVOLVED IN DRUGS AND PROSTITUTION AND MASSAGE PARLOR  
10 BUSINESS, ALCOHOL, SEX, THE WHOLE BUSINESS.

11 Q. WHAT --

12 A. I NEVER SAW HER INVOLVED IN IT.

13 MR. BRADENHAM: I'LL OBJECT TO THAT AS BEING  
14 HEARSAY UNLESS SHE KNOWS.

15 BY MR. HALL:

16 Q. MRS. COX --

17 A. YES.

18 Q. -- WAS JIMMY IN ANY DIFFICULTY AT THE TIME  
19 THAT HE WAS LIVING WITH TOM AND MARTHA?

20 A. HE WAS TAKING DRUGS.

21 Q. DID HE GET IN ANY DIFFICULTY WITH THE LAW FROM,  
22 LET'S SAY, HIS -- THE TIME HE RECOVERED FROM THE BURNS  
23 UNTIL HIS ARREST BY THE MARYLAND POLICE FOR DISTRIBUTION  
24 OF PHENCYCLIDINES?

25 A. I BELIEVE AT ONE TIME HE WAS INVOLVED IN A

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1 MOTORCYCLE THEFT.

2 Q. OKAY.

3 A. I DON'T KNOW THE DATE.

4 Q. DO YOU KNOW IF THERE WAS ANY COURT DISPOSITION  
5 OF THAT?

6 A. NO, SIR, I DON'T.

7 Q. DID THERE COME A TIME WHEN HE TOOK EITHER TOM  
8 OR MARTHA'S CAR?

9 A. I DIDN'T HEAR THE QUESTION.

10 Q. DID THERE COME A TIME WHEN HE TOOK WITHOUT  
11 AUTHORIZATION, TOOK TOM OR MARTHA'S CAR?

12 A. YES, WHEN HE WAS VERY YOUNG. WENT FOR A JOY  
13 RIDE. HE AND JOHN SLIPPED OUT THEIR BEDROOM WINDOW ONE  
14 NIGHT AND WENT FOR A JOY RIDE THROUGH CLINTON. THEY WERE  
15 JUST LITTLE, MAYBE 11, 12 YEARS OLD.

16 Q. WHO WAS DRIVING THE CAR?

17 A. JIM WAS DRIVING. JOHN WAS SITTING UP I THINK  
18 ON HIS KNEES LOOKING OUT THE WINDOW WHEN THE POLICE SAW  
19 THEM SITTING AT THE LIGHT IN CLINTON -- SUITLAND, SORRY.

20 Q. DID YOU KNOW A GENTLEMAN THAT PAT LIVED WITH,  
21 A ROBERT RUGGIERI?

22 A. NO, I DID NOT.

23 MR. HALL: MISS COURT REPORTER, THAT IS  
24 R-U-G-G-I-E-R-I.

25 MR. HALL: IF YOU'LL INDULGE ME FOR A MOMENT.

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1 BY MR. HALL:

2 Q. OVER WHAT PERIOD OF TIME IN HIS  
3 HOSPITALIZATION FOR BURNS DID HE HAVE THIS ODOR ABOUT HIM?

4 A. DURING THE -- WELL, IT WAS ALMOST FROM THE  
5 BEGINNING. IT WAS AS -- HIS BURNS WERE VERY DIFFICULT TO  
6 HEAL. EVERYTHING THEY PUT ON HIM IT WOULDN'T WORK. AND  
7 SO THE SKIN AROUND THE BURNS WAS ROTTING THE WHOLE TIME  
8 AND THE BURNS WAS GETTING DEEPER, AND, OF COURSE, THIS  
9 CAUSES THE SKIN TO SMELL. SO IT WAS DURING THE WHOLE  
10 HOSPITALIZATION REALLY THAT HE SMELLED.

11 Q. ALL RIGHT. WAS THERE ANY WAY YOU CAN DESCRIBE  
12 THE SMELL?

13 A. NO. I KNOW JIM COMPLAINED ABOUT THE SMELL  
14 QUITE A BIT. IT BOTHERED HIM. IT WAS LIKE -- WELL, IT'S  
15 DYING FLESH. IT'S VERY DIFFICULT TO DESCRIBE THE SMELL.

16 Q. AFTER HIS RELEASE FROM THE HOSPITAL, WAS HE  
17 ANY PROBLEM AT HOME?

18 A. WELL, WHEN HE WAS FIRST RELEASED, OF COURSE,  
19 HE WAS AT HOME AND HE HAD TO HAVE A TUTOR. HE HAD MISSED  
20 A WHOLE YEAR OF SCHOOL. AND HE HAD DIFFICULTY  
21 CONCENTRATING WHEN HE HAD A TUTOR. IT JUST -- I DON'T  
22 KNOW. THE TRAUMA OF THE BURNS SEEMED TO BE TOO MUCH.  
23 AND I DON'T KNOW HOW LONG THE TUTOR LASTED.

24 Q. OVER THE PERIOD OF TIME FROM HIS BIRTH IN 1956  
25 TO THE TIME HE WENT OUT ON HIS OWN, THAT IS, TO LIVE

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1 ALONE FROM TOM AND MARTHA, APPROXIMATELY HOW MANY  
2 RESIDENCES DID HE HAVE?

3 A. TWELVE MAYBE, MAYBE MORE. MOVING BACK AND  
4 FORTH.

5 Q. HOW MANY DIFFERENT ELEMENTARY SCHOOLS DID HE  
6 ATTEND?

7 A. I BELIEVE ABOUT FIVE. I TRIED TO FIGURE IT  
8 OUT. I THINK IT'S ABOUT FIVE, FOUR OR FIVE.

9 Q. HAVE YOU HAD OCCASION TO TALK WITH HIM OR SEE  
10 HIM SINCE HIS IMPRISONMENT FOR THE MURDER OF GEORGE  
11 HAROLD SCARBOROUGH?

12 A. YES, I HAVE. I VISITED WITH JIM LAST JULY  
13 1931.

14 Q. WHERE WAS HE AT THAT TIME?

15 A. HE WAS IN MECKLENBURG PRISON. AND I ALSO  
16 VISITED HIM TWICE WHEN I WAS IN MARYLAND VISITING WITH MY  
17 FAMILY A COUPLE OF MONTHS AGO. I VISITED HIM TWICE WHEN  
18 HE WAS IN FAIRFAX.

19 Q. WHAT WAS HIS ATTITUDE OR DEMEANOR OR EMOTIONAL  
20 STATE AT THE TIME YOU SAW HIM?

21 A. WELL, HE SEEMED VERY HAPPY TO SEE ME AND  
22 SURPRISED TO SEE ME BECAUSE HE THOUGHT I WAS IN FLORIDA.  
23 HE DIDN'T REALIZE THAT I WAS THERE. HE SEEMED TO BE  
24 INTERESTED IN MY SON AND SEEING PICTURES OF EVERYONE.  
25 AND HE JUST SEEMED COMPLETELY DIFFERENT THAN HE DID WHEN

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1 HE WAS OUT AND ON DRUGS.

2 Q. WHAT WAS YOUR KNOWLEDGE OF HIS DRUG USE?

3 A. WELL, IT WAS QUITE EXTENSIVE, I BELIEVE.

4 Q. DO YOU KNOW WHAT KIND OF DRUGS HE WAS USING?

5 A. I DON'T KNOW THAT MUCH ABOUT DRUGS. I KNOW IT  
6 WAS PILLS AND MARIJUANA AND -- I DON'T KNOW WHAT KIND OF  
7 PILLS.

8 Q. NOW, WERE YOU AWARE OF WHETHER OR NOT HIS  
9 BROTHER JOHN WAS INVOLVED IN ANY DRUGS?

10 A. I DON'T KNOW. NO, I DON'T KNOW THAT.

11 Q. NOW, WHAT WAS JIM'S RELATIONSHIP WITH HIS  
12 BROTHER JOHN?

13 A. WELL, HE AND JOHN WERE VERY CLOSE. THEY WERE  
14 13 MONTHS APART. AND THEY WERE VERY CLOSE GROWING UP.  
15 AND JOHN WENT INTO THE ARMY WHEN HE WAS 17, AND AT THAT  
16 TIME JIM WENT TO LIVE WITH HIS MOTHER.

17 Q. HOW LONG DID JOHN STAY IN THE ARMY?

18 A. HE WAS JUST IN A SHORT TIME BEFORE HE WAS  
19 FOUND DEAD.

20 MR. BRADENHAM: WHAT WAS THAT LAST ANSWER? I  
21 DIDN'T HEAR THAT.

22 THE WITNESS: I SAID JOHN HAD ONLY BEEN IN THE  
23 ARMY A SHORT TIME WHEN HIS BODY WAS FOUND IN NORTHWEST  
24 MARYLAND. HE WAS FOUND FLOATING IN THE RIVER THERE.

25

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1 BY MR. HALL:

2 Q. UPON JOHN'S DEATH, DID JIM HAVE ANY REACTION  
3 TO THAT DEATH OTHER THAN GRIEF?

4 A. YES, HE DID. HE SEEMED DETERMINED TO FIND OUT  
5 WHO HAD KILLED JOHN. THEY NEVER HAVE FOUND OUT WHO SHOT  
6 HIM AND WHO THREW HIS BODY IN THE RIVER. AND JIM JUST  
7 HAD AN OBSESSION WITH FINDING OUT WHO HAD KILLED JOHN.  
8 AND AT JOHN'S FUNERAL HE STOOD OVER THE CASKET AND VOWED  
9 THAT HE WAS GOING TO FIND WHO HAD DONE IT.

10 MR. HALL: MRS. COX, THANK YOU VERY MUCH.

11 WOULD YOU ANSWER ANY QUESTIONS THAT  
12 MR. BRADENHAM MAY PUT TO YOU.

13 THE WITNESS: I WILL.

14 CROSS-EXAMINATION

15 BY MR. BRADENHAM:

16 Q. THANK YOU. MY NAME IS ROBERT E. BRADENHAM,  
17 B-R-A-D-E-N-H-A-M, II. I'M ASSISTANT ATTORNEY GENERAL  
18 FOR THE STATE OF VIRGINIA.

19 MRS. COX, WHERE WERE YOU LIVING AT THE TIME OF  
20 MR. CLARK'S TRIAL IN 1978?

21 A. IN 1978 I LIVED IN MARYLAND.

22 Q. IN MARYLAND.

23 A. YES.

24 Q. DID YOU ATTEND HIS TRIAL?

25 A. YES, I DID.

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1 Q. YOU WERE PRESENT IN THE COURTROOM.

2 A. YES, OR THE SENTENCING. I WAS THERE DURING  
3 THE SENTENCING, I BELIEVE.

4 Q. OKAY. DID YOU SPEAK TO EITHER ONE OF HIS  
5 ATTORNEYS?

6 A. NO, I DIDN'T.

7 Q. DID YOU SPEAK TO MR. CLARK?

8 A. YOU MEAN JIM?

9 Q. YES.

10 A. NO, SIR, I DIDN'T.

11 Q. NOW, YOUR BROTHER TOM, HE CARED FOR HIS SON,  
12 DIDN'T HE? HE TOOK CARE OF HIM AND LOVED HIM AND TOOK  
13 CARE OF HIM AS BEST HE COULD, DIDN'T HE?

14 A. YES, HE DID. HE DID THE BEST HE COULD.

15 Q. AND HE DID TRY TO TELL HIS SON RIGHT FROM  
16 WRONG AND GIVE HIM SOME GUIDANCE; IS THAT CORRECT?

17 A. YES.

18 MR. BRADENHAM: THAT'S ALL THE QUESTIONS I HAVE,  
19 MR. HALL.

20 MR. HALL: ALL RIGHT.

21 REDIRECT EXAMINATION

22 BY MR. HALL:

23 Q. MRS. COX, THIS IS MR. HALL EXAMINING AGAIN.

24 DID EITHER MR. DAVIS, WHO WAS ONE OF JIMMY'S  
25 ATTORNEYS, OR MR. RODWAY EVER CONTACT YOU BY MAIL OR

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1 TELEPHONE?

2 A. NO, SIR, THEY DID NOT.

3 Q. ALL RIGHT. SO YOU WERE NOT REQUESTED TO TELL  
4 THEM ANYTHING YOU KNEW OR TO TESTIFY AT ANY HEARING.

5 A. NO, SIR.

6 MR. HALL: THANK YOU, MRS. COX.

7 MRS. COX, YOU HAVE THE RIGHT TO READ THE  
8 TRANSCRIPT AFTER IT'S PREPARED AND SIGN IT, OR YOU MAY  
9 WAIVE YOUR SIGNATURE AND RELY UPON MR. BRADENHAM AND  
10 MYSELF TO CATCH ANY TYPOGRAPHICAL ERRORS IF ANY THERE BE.  
11 IT IS YOUR CHOICE.

12 IF I MIGHT BECAUSE OF THE TIME LIMIT IN WHICH  
13 THIS REPORTER HAS TO PREPARE THE TRANSCRIPT OF THIS  
14 DEPOSITION AND SUBMIT IT TO BOTH US AND TO THE COURT, IF  
15 YOU WOULD BE WILLING TO WAIVE YOUR SIGNATURE AND RELY  
16 UPON THE COURT REPORTER AND OURSELVES TO CATCH ANY ERRORS,  
17 THAT WOULD EXPEDITE IT, BUT THE CHOICE IS YOURS.

18 THE WITNESS: YES, MR. HALL, I'LL GO ALONG  
19 WITH THAT. THAT'S PERFECTLY ALL RIGHT WITH ME.

20 MR. HALL: THE COURT REPORTER MAY REFLECT THE  
21 WITNESS HAS WAIVED SIGNATURE.

22 THANK YOU.

23 (DISCUSSION HELD OFF THE RECORD.)

24 MR. BRADENHAM: THE ANSWER OF THE MOTHER'S  
25 OCCUPATION, I'D OBJECT TO IT AS BEING HEARSAY. THE

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1 REASON I DID NOT OBJECT, I DID NOT HEAR THE ANSWER. I  
2 DIDN'T WANT TO INTERRUPT MR. HALL SINCE WE DO -- I HAVE A  
3 BAD TIE-IN. I CAN HEAR MR. HALL AND I CAN HEAR YOU, BUT  
4 I CANNOT HEAR MRS. COX.

5  
6 (WITNESS EXCUSED.)

7 (THEREUPON, AT 1:52 O'CLOCK P.M.,  
8 THE DEPOSITION WAS CONCLUDED.)  
9  
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25

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C E R T I F I C A T E

THE STATE OF FLORIDA, )  
COUNTY OF PALM BEACH. )

I, MARIANNE MARTINI HOLMES, REGISTERED PROFESSIONAL REPORTER AND NOTARY PUBLIC, STATE OF FLORIDA AT LARGE, DO HEREBY CERTIFY THAT MARY ELLEN COX WAS BY ME FIRST DULY SWORN TO TESTIFY THE WHOLE TRUTH; THAT I WAS AUTHORIZED TO AND DID REPORT SAID DEPOSITION IN STENOGRAPHY; AND THAT THE FOREGOING PAGES, NUMBERED FROM 1 TO 27, INCLUSIVE, ARE A TRUE AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES OF SAID DEPOSITION.

I FURTHER CERTIFY THAT THE SAID DEPOSITION WAS TAKEN AT THE TIME AND PLACE HEREINABOVE SET FORTH, AND THAT THE TAKING OF SAID DEPOSITION WAS COMMENCED AND COMPLETED AS HEREINABOVE SET OUT.

I FURTHER CERTIFY THAT I AM NOT ATTORNEY OR COUNSEL OF ANY OF THE PARTIES, NOR AM I A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL OR PARTY CONNECTED WITH THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL THIS 19th DAY OF APRIL, 1982.

*Marianne Martini Holmes*

MARIANNE MARTINI HOLMES, RPR  
STATE OF FLORIDA AT LARGE.  
MY COMMISSION EXPIRES JULY 30, 1985.

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NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTY OF FAIRFAX

CITY OF FAIRFAX

CITY OF FALLS CHURCH

BARNARD F. JENNINGS  
WILLIAM G. PLUMMER  
LEWIS D. MORRIS  
BURCH MILLSAP  
THOMAS J. MIDDLETON  
RICHARD J. JAMBORSKY  
LEWIS HALL GRIFFITH  
F. BRUCE BACH  
BARBARA M. KEENAN  
QUINLAN H. HANCOCK  
JOHANNA L. FITZPATRICK  
JUDGES

JAMES KEITH  
RETIRED JUDGE

FAIRFAX COUNTY JUDICIAL CENTER  
4110 CHAIN BRIDGE ROAD  
FAIRFAX, VIRGINIA 22030

September 13, 1982

Hon. Jacqueline Epps  
Assistant Attorney General  
Office of the Attorney General  
Supreme Court Building  
101 North 8th Street  
Richmond, Virginia 23219

Re: Clark v. Morris and Mitchell, At Law No. 50768

Dear Miss Epps:

I am sorry I could not reach you Friday afternoon by phone. I wanted to personally apologize to you for any inconvenience you suffered because of the confusion over the courtroom in which Mr. Clark's case was to be heard. While it is no excuse, on Thursday afternoon we decided for security reasons that Mr. Clark's case should be heard in a courtroom with a holding cell for prisoners, 4E. My regular courtroom, 5A, has no such facility. The docket evidently listed both courtrooms.

When we opened court at 10 a.m., Mr. Clark was present, the court reporter was present, and Miss Leonhard, one of Mr. Clark's attorneys, was present. She indicated that perhaps you and Mr. Hall were in another courtroom. Someone left the courtroom to find you. When no one appeared by 10:10, I proceeded to announce that my decision in the Habeas Corpus proceeding had been put in writing and released the week before and that I would formally enter the Order later. Then, in accordance with my letter opinion, Mr. Clark was sentenced to life imprisonment. He declined his right of elocution.

SEP 15 1982

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Hon. Jacqueline Epps  
September 13, 1982  
Page 2

Motion days in our circuit are hectic. You will recall that I had 34 motions on my civil docket and I felt compelled to proceed promptly in fairness to the large number of attorneys and litigants waiting in my courtroom 5A.

I must say I was completely caught off guard by your remark in open court that counsel for Respondents never agreed that life imprisonment was the remedy if the Court ruled in Petitioner's favor. Such an agreement remains my recollection; however, I have not had a copy of the transcript to review. If Respondents' counsel did not affirmatively agree, then I can only conclude that by gesture or silence he left me with this impression during Mr. Hall's argument. Counsel never opposed the argument, orally or in writing. Since Petitioner was attacking only the sentencing process the remedy was an essential and integral part of the issue. This case was an extremely difficult one to decide; the issue required thought and research. The Court would welcome as much help as possible. Just as timely and competent evidence from the Respondents on the issue of range of competence would have been helpful to the Court so, too, would some argument and case authority on the remedy. If Respondents' counsel disagreed with Mr. Hall, it is difficult to understand why he went through the entire hearing without once expressing that disagreement. It was not until after the hearing on Friday morning that I received counsel's letter stating that he did not agree with Mr. Hall on the remedy. The matter was still not argued and no cases were submitted. Rather, counsel simply raised an objection which was never raised during the trial and comes after the written decision was released. This is not very helpful to the Court and the decision-making process.

I hope you understand my reasons for not granting a stay of my order pending your appeal: I can see no reason why you would be prejudiced by entry of the order and the normal running of the appeal time. If I am mistaken, let me know and I will reconsider.

My clerk, Mrs. Blackwell, indicated that you were concerned that your objections have not been made a part of the record. I believe that they have been made a part of the record, but if you would like to note your objections more specifically I will consider attaching them to the order.

With kindest personal regards, I am

Sincerely,

  
Richard J. Jamborsky

RJJ/mm

cc: Robert T. Hall, Esq. ✓

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1 on affidavit?

2 MS. EPPS: No, I think we can submit it on affidavit.

3 That seems to be the most convenient thing, and I don't think  
4 there's any need for us to come back to discuss whether the  
5 jurors are available.

6 THE COURT: Will counsel be submitting memorandum  
7 or not?

8 MS. EPPS: We can, sir, if the Court desires.

9 THE COURT: It's up to you if you want to. Would  
10 you like to or not?

11 MS. EPPS: Yes, sir, we'll submit memorandum.

12 ~~MR. HALL: I will respond.~~

13 THE COURT: Now that I've heard this argument, and  
14 you're going to submit memorandum, is there any argument  
15 whatsoever, any matter whatsoever, that you want to bring to  
16 my attention between now and November 5th when I decide this  
17 case? Is there any issue that you think needs to be  
18 ventilated that the Court has not ventilated?

19 MS. EPPS: No, sir, I think we've heard all the  
20 issues. We only have a few alternatives to remand a new jury  
21 or same jury, and I think we've sufficiently presented those  
22 to the Court.

23 THE COURT: Then this is my understanding of where

1 we stand now. There are no other issues to be raised in  
2 this case. No one has any other argument on any other issues  
3 to be raised.

4 MS. EPPS: No, sir.

5 THE COURT: I'm going to decide it on November 5th,  
6 1982, and I will write you a letter dated on that date.

7 ~~MS. EPPS: Would the Court -- the only question I~~  
8 ~~have would the Court consider, at that time, depending on~~  
9 ~~what his Order will be staying the execution of it's Order in~~  
10 ~~conjunction with the statutes I cited in my Motion.~~

11 THE COURT: Did you read those statutes? Did you  
12 want to respond?

13 MR. HALL: Yes, Your Honor, I did. Of course the  
14 intent of the stay pending appeal is to preserve the status  
15 quo to the degree that for the purpose that neither party be  
16 disadvantage, and in particular the person against whom the  
17 judgment was taken. In other words so that they don't have  
18 to perform the judgment or satisfy the judgment pending  
19 appeal so that they might be put in a position that could not  
20 be reversed, should the appeal be allowed, should they prevail.  
21 I have spent a good deal of time trying to figure out how the  
22 government's position would be jeopardized or prejudiced by  
23 failure to stay the proceeding, this judgment. I can't see --