

1 learned during investigation done this week during the trial,
2 was the bartender who worked at By George's on Halloween
3 night, October 31st, and into the early morning of November
4 1st, 2001. And as soon as we were able to learn who he was
5 and talk to him, we disclosed that to the state this morning.

6 Melissa Griggs was mentioned in the testimony of
7 Charles Erickson as being a person that he had seen at By
8 George's that night. A person that he knew. We have been
9 able to track down Miss Griggs. Miss Griggs was mentioned in
10 I think one police report that we had been given by the state
11 some time ago.

12 When we located Miss Griggs and interviewed her, we
13 learned that Miss Griggs was interviewed sometime in 2004, I
14 believe. Some time ago. Let me put it that way. I'm not
15 clear. And I'm not the one who talked to her directly. Was
16 interviewed some time ago by agents of the prosecutor's
17 office. That she told those people that she was at By
18 George's on Halloween night, 2001; that she stayed there
19 until closing time; and that the bar closed at 1:30 p.m.

20 Our position, Your Honor, is --

21 THE COURT: P.m?

22 MR. ROGERS: A.m. I'm sorry. Thank you. I
23 misspoke. 1:30 a.m., in the morning, of November 1st.

24 She told us that she had conveyed that information
25 to investigators from the prosecution some time ago. We have

1 never been given that information. That information is, in
2 my view, clearly exculpatory of Mr. Ferguson and clearly
3 impeaching of Mr. Erickson. Therefore, even if no report was
4 ever prepared, we would be entitled to that information under
5 *Brady versus Maryland* and under *Giglio versus United States*.
6 And that wasn't disclosed to us. And I think it's a little
7 disingenuous for the government to claim surprise that we
8 have found a witness, a very significant witness, who they
9 have not disclosed, when they had a constitutional obligation
10 to disclose.

11 THE COURT: Do you know who interviewed her for the
12 state?

13 MR. ROGERS: I believe it was Mr. Hawes, Your Honor.
14 Is what we were told.

15 MR. CRANE: Hey, Bill. They're saying that an agent
16 of the prosecutor's office talked to her.

17 MR. HAWES: I don't recall talking to her.

18 MR. CRANE: Judge, I guess -- I know we're trying to
19 litigate this case, and Mr. Rogers is a professional, but to
20 throw down two names on a Thursday, when we started on a
21 Monday, and then turn around and call me disingenuous, is a
22 little bit beyond the pale.

23 The state -- I don't know -- the name doesn't ring a
24 bell to me. If Mr. -- maybe it was in a report. Maybe her
25 name was mentioned in a report. That's -- that's possible.

1 I'm not denying that. And if Mr. Erickson mentioned her as
2 one of the people he'd seen at George's in testimony, I'm not
3 going to dispute that. My -- the investigator, if it's from
4 the prosecutor's office, I think it would only be Bill or
5 Ben. And I don't -- I mean --

6 MR. HAWES: I don't recall talking to her.

7 MR. CRANE: He doesn't recall. And, you know, I
8 don't have a report. We -- I've certainly never talked to
9 her. Had we ample -- appropriate notice, and, you know --
10 and the defense had an opportunity -- was she mentioned in
11 the defense -- your deposition of Chuck Erickson?

12 MR. ROGERS: I don't know. She was mentioned at
13 discovery page 2277, which is the report of the proffer
14 session on October 1st, 2004.

15 MR. CRANE: Okay. And how long have you had that
16 report, sir?

17 MR. ROGERS: We have had that report since February,
18 I believe.

19 MR. CRANE: Since you got in the case?

20 MR. ROGERS: But she was just mentioned as somebody
21 who was there. She wasn't -- there was no indication in that
22 report that she had been questioned and had given information
23 about when By George's closed.

24 Anyway, those are who those witnesses are, Your
25 Honor. We would ask leave to endorse them.

1 MR. CRANE: Well, wait. I didn't get -- the other
2 one's the bartender?

3 MR. ROGERS: The other's the bartender.

4 MR. CRANE: I wanted to respond to that, if you're
5 done.

6 MR. ROGERS: Let me explain the bartender, why it
7 took us so long to get him. What we did, when Mr. Erickson
8 mentioned people that he claimed to have known at the --
9 being at By George's during his -- I don't know whether
10 direct or cross-examination now, during his examination,
11 during his testimony in this case, one of the people we were
12 able to locate, who didn't have a recollection of that night,
13 but who was able to give us to some -- lead us to somebody
14 who was able to lead us to the person who was the bartender
15 that night. And that's why we found out -- that's why we
16 learned the name of Mr. Canada and talked to him and
17 confirmed his memory.

18 MR. CRANE: Judge, I mean, I guess I've already made
19 my objection and the bases. I mean, the defense has had
20 ample opportunity to notice the state up of witnesses. I
21 realize Mr. Rogers has not been in the case during the entire
22 time of its pendency. However, I do -- I think this is
23 right, I'll stand corrected, that an investigator that worked
24 for the original attorney, Mr. McBride, has continued to be
25 retained by the defendant's current defense team. So he

1 would have had knowledge of the reports and had done
2 investigation on the case back when these reports were first
3 given to the defense, gosh, I guess there we'd be going back
4 to mid-2004.

5 So, Judge, it's not fair to be throwing these
6 witnesses down on me at this late juncture. The state
7 wouldn't be able to do that. And we object.

8 MR. ROGERS: If I may respond, Your Honor. The rule
9 requires us to disclose the identity of witnesses we intend
10 to call. And we have done that faithfully and as timely as
11 we could throughout. And as soon as we learned of the
12 significance of these witnesses and their testimony and
13 formed the intent to call them, we have disclosed it.

14 THE COURT: It would seem to me that if Melissa
15 Griggs was previously -- the microphone's not on.

16 If Melissa Griggs was previously mentioned in a
17 document disclosed to the defense, and the defense did not
18 pursue investigating this particular witness, and I'm
19 referring to Griggs right now, and then -- actually it's
20 almost a week into the trial since we began jury selection a
21 week ago tomorrow, I certainly wouldn't, and Mr. Crane is
22 right, I would not permit the state to suddenly come up and
23 find someone that would tell us that the bar was open 'til
24 3:00 on that morning. I think it is unfair at this point in
25 the trial, as to her and to Mr. Kennedy. Assuming that the

1 state did not know of Kennedy --

2 MR. CRANE: I think it's Canada, isn't it?

3 MR. ROGERS: Canada.

4 THE COURT: Canada? Did not know of Canada, I
5 mean -- and -- I mean, if the state knew that he worked as
6 the bartender, had that information, and interviewed him and
7 failed to provide his name or provide a report that -- of
8 that, I think you certainly would be entitled at this point.
9 But I don't see that there's a failure to disclose these
10 witnesses to you. And if the significance of their testimony
11 has become apparent because of further investigation that
12 took place during the trial, I think it's unfair to the state
13 to call these witnesses.

14 MR. ROGERS: Your Honor, with regard to Miss Griggs
15 especially, I want to make sure the Court understands our
16 position, which I don't think has been refuted by Mr. Hawes,
17 which is: That sometime after her name was, one of literally
18 hundreds of names listed in police reports, disclosed to us,
19 she will testify that she was interviewed by Mr. Hawes. That
20 she told Mr. Hawes explicitly that the bar closed at 1:30. I
21 will represent to the Court that that information is not in
22 any report whatsoever. And for the Court to permit the state
23 to hide that exculpatory information and preclude us from
24 calling a witness who could provide that significant
25 information, because the state was successful in hiding it

1 from us, would violate Mr. Ferguson's rights under the Fifth
2 and Fourteenth Amendments to the United States Constitution
3 and his right to a fair trial and his right to due process of
4 law and his right to effective assistance of counsel under
5 the Sixth Amendment. So that is our argument with regard to
6 Miss Griggs.

7 THE COURT: Well, I will reserve ruling on Griggs
8 until, out of the hearing of the jury, I can hear her and I
9 can hear Mr. Hawes, if the state chooses to call him. If
10 there is documents relating to her testimony that might be
11 exculpatory that is in the hands of the state and has been
12 and not been disclosed, I will take that issue up.

13 As to Kris Canada, I don't think that -- you're not
14 making that claim with respect to him. You just suddenly,
15 through your investigation, discovered his name. Is
16 that what you're telling me?

17 MR. ROGERS: Discovered who he was and that he was
18 the bartender.

19 THE COURT: Yes. The motion to endorse Kris Canada
20 is denied at this time. I'll reserve ruling on Miss Griggs
21 until I can hear from her. And if the state cares to present
22 information relating to an interview and a report that was
23 not disclosed to the defense, I would be more than happy to
24 consider that.

25 Now, the jury's been waiting 15 minutes or more.

1 THE WITNESS: Thank you.

2 THE COURT: We'll be in recess then.

3 Is there anything we need to take up?

4 MR. ROGERS: Yes, Your Honor.

5 THE COURT: All right. If the lawyers will remain
6 then.

7

8 The following proceedings were held out of the presence
9 of the jury:

10 THE COURT: Yes, sir.

11 MR. ROGERS: Your Honor, with regard to our motion
12 to endorse, we now have present both Mr. Canada and I believe
13 Miss Griggs, and we would like to make an offer of proof with
14 those witnesses, explaining the late endorsement and hoping
15 to get the Court to change its mind.

16 THE COURT: I have not ruled on the endorsement of
17 the female that you've endorsed. Miss Griggs. I've taken
18 that under advisement. Absent some -- I'm going to give both
19 sides an opportunity to be heard on whether or not the state
20 actually knew of her testimony and failed to disclose it to
21 the defense.

22 MR. ROGERS: With regard to Mr. Canada, Your Honor,
23 we would ask the Court to reconsider its earlier ruling. And
24 I conceptually blurred the two when I spoke earlier
25 obviously. We have, since the Court's ruling, learned from

1 Mr. Canada that he also asserts that he was contacted by
2 members of the prosecution staff in the past. And I will
3 advise the Court that we have no reports or disclosure of any
4 of that contact. So I think that he's in the same situation.
5 At least that's what I anticipate his testimony to be from
6 what I'm told.

7 THE COURT: I'll give you ten minutes to present
8 these witnesses. I'm going to have lunch, and the reporter
9 is going to have lunch too. So I -- you may call your
10 witness.

11 MR. ROGERS: Mr. Canada.

12 THE COURT: I assume these witnesses are outside
13 this courtroom.

14 MR. ROGERS: Mr. Canada came in -- and does
15 Mr. Singer need to leave while we do this?

16 THE COURT: Well, he -- he should.

17 MR. ROGERS: Yeah. You need to wait. And don't
18 listen to the media.

19 THE COURT: Would you raise your right hand, please.

20 - - -

21 KRISTOPHER CANADA,
22 being first duly sworn by the Court, testified as follows:

23 THE COURT: You may take the witness stand.

24 MR. ROGERS: Your Honor, while this witness
25 testifies, I'd request that Mr. White and Mr. Hawes be asked

1 to leave the courtroom.

2 MR. CRANE: What if -- I want to have him see if he
3 recognizes them. Can we just do that right now?

4 MR. ROGERS: They're both here and looking at him.
5 now.

6 MR. CRANE: Yeah.

7 MR. ROGERS: The record can --

8 THE COURT: I'll let them approach and see if they
9 recognize him. And I don't know if he always had facial hair
10 or not. So I'll let them -- they can come forward and take a
11 look at him, if they're not real farsighted.

12 MR. CRANE: Well, no, I was talking about him seeing
13 you.

14 MR. HAWES: Oh. Okay.

15 THE COURT: Okay. In other words, you want the
16 witness to take a look at your investigators.

17 MR. CRANE: Yeah. These two guys right here.

18 THE WITNESS: Yes, sir.

19 MR. CRANE: Do you recognize either one of them?

20 THE WITNESS: Yes.

21 THE COURT: Just a moment. They may step outside
22 the courtroom. I will allow defense counsel to inquire
23 first. If you want to call them back into the courtroom --

24 MR. CRANE: Okay.

25 THE COURT: -- and make those questions, you may on

1 cross-examination.

2 MR. CRANE: Okay. That's fine, Judge.

3

4 DIRECT EXAMINATION

5 BY MR. ROGERS:

6 Q. For the record, tell us your name.

7 A. Kristopher Canada.

8 Q. And Mr. Canada, what was your job back in October
9 and November of 2001?

10 A. I was a bartender at By George.

11 Q. And were you the bartender who worked Halloween
12 night?

13 A. I was one of many.

14 Q. One of many. Okay. And on Halloween night, what
15 time did By George's close?

16 A. Same time as always. We turn the lights on at 1:15.
17 Everybody was out by 1:30.

18 Q. And what happened at 1:30?

19 A. Doors were locked.

20 Q. Doors were locked?

21 A. Yes, sir.

22 Q. And has -- before this week, has anyone asked you
23 questions like that?

24 A. Yes, sir.

25 Q. And have you given them the same answers?

1 A. Yes, sir.

2 Q. And do you know who asked you those questions?

3 A. I believe the dark-headed investigator that was just
4 in here. I can't recall his name.

5 Q. Okay. And was that the man wearing the dark jacket
6 and the tie, standing behind the guy with the gray hair?

7 A. Yes, sir.

8 MR. ROGERS: May the record reflect the witness has
9 indicated Mr. White.

10 MR. CRANE: Yeah. It's one of the two guys
11 standing, the one with the dark hair. Yeah, I don't have --

12 Q. How long ago was that?

13 A. I really can't be that sure, but I would say
14 probably -- I want to say eight months to a year maybe. It's
15 been a while.

16 Q. And you've never been contacted by anybody else
17 about being a witness in this case, have you?

18 A. No, sir.

19 MR. ROGERS: I don't have any further questions for
20 this witness, Your Honor.

21 THE COURT: You may inquire, Mr. Crane.

22

23 CROSS-EXAMINATION

24 BY MR. CRANE:

25 Q. Where did he talk to you?

1 A. They came to my work at Boone Hospital Center.

2 Q. Okay. And you say "they"?

3 A. Him.

4 Q. Okay. Was -- the guy was by himself?

5 A. Yes. They -- I believe they tried to contact me at
6 work a couple times, and then eventually they got a hold of
7 someone in security and found out that I was working that
8 day, and I came down and talked to the investigator.

9 Q. Okay. And what did you talk about?

10 A. What time the bar closed, what my duties entailed at
11 the bar. That's about it.

12 Q. Okay. And you remembered specifically what time the
13 bar closed on Halloween of 2001?

14 A. Yes, sir.

15 Q. You had a memory -- you're talking about a
16 conversation you had eight months to a year ago today; right?

17 A. Yes, sir.

18 Q. And your testimony is you had a memory when you
19 talked to the guy with dark hair of the time you closed on
20 October 31st, 2001.

21 A. I don't know if I could remember that exact date,
22 but as -- you know, the law of the land is you close by 1:30.
23 And that's what time our boss always had us close.

24 Q. Right. That's what time the bar's supposed to be
25 closed.

1 A. Yes.

2 Q. Is it your testimony that you told the guy with the
3 dark hair, we'll just call him Ben, White, that on October
4 31st, 2001, you closed at 1:30, and you remembered that date
5 and that time as when the bar closed.

6 A. Yes, sir.

7 Q. And your testimony here is today that you don't
8 remember that date specifically. That that's when you always
9 close.

10 A. I didn't remember whenever I talked to the
11 investigator.

12 Q. So since you've talked to the investigator, have you
13 talked to somebody in Mr. Rogers' office or working for the
14 defense?

15 A. In the past day.

16 Q. Okay.

17 A. Yesterday.

18 Q. Just today.

19 A. Yesterday.

20 Q. And you hadn't talked to anyone before that.

21 A. No, sir.

22 Q. How is it that they indicated they'd located you?

23 A. I have no idea.

24 Q. And when you were talked to before -- at Boone
25 Hospital?

1 A. Yes, sir.

2 Q. -- how are you aware that it wasn't somebody from
3 the defense that was talking to you?

4 A. I don't know. They -- the people I talked to said
5 that this was an investigator who used to be a Columbia
6 Police Department -- or used to be a Columbia police officer.

7 Q. The people you talked to?

8 A. The security officer at Boone Hospital who, you
9 know, called me down from work and brought me down into their
10 office, and I had the interview there.

11 Q. Okay. And so you're not aware of how the defense
12 found out about you today --

13 MR. ROGERS: I'll object to that as irrelevant to
14 the subject of this hearing.

15 THE COURT: Well, how, Mr. -- Mr. Crane, how is that
16 relevant? How is it relevant how they --

17 MR. CRANE: That they -- they just found out about
18 him today?

19 MR. ROGERS: Yesterday.

20 THE COURT: He said yesterday.

21 MR. CRANE: Or yesterday. I mean, I'm trying to
22 explore whether or not they had made contact with him before
23 yesterday.

24 THE COURT: Well, you can ask that question.

25 MR. CRANE: Okay.

1 THE COURT: How is he supposed to know how they
2 found him?

3 MR. CRANE: Well, maybe they told him.

4 Q. Did they?

5 A. Excuse me?

6 Q. Would you -- were you aware of how they found out, I
7 mean, even who you were?

8 A. No, sir.

9 Q. Okay. And the first contact you had after the
10 occasion when the investigator, Mr. White, talked to you,
11 eight months, a year ago, was yesterday, on this case?

12 A. Yes, sir. Yesterday morning.

13 MR. CRANE: I don't have any further questions.

14

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15

REDIRECT EXAMINATION

16 BY MR. ROGERS:

17 Q. Sir, to clarify just one point, have you ever worked
18 as a bartender at By George's when they stayed open after
19 hours for a private party?

20 A. No, sir.

21 MR. ROGERS: Thank you.

22 MR. CRANE: Have -- I'm sorry. You're not done?

23 MR. ROGERS: Yeah, I'm done.

24

- - -

25

1 RE-CROSS-EXAMINATION

2 BY MR. CRANE:

3 Q. Have you talked to David Tye recently?

4 A. Yes. Last night.

5 Q. You talked to David Tye last night?

6 A. Yes.

7 Q. And is David Tye the former owner of By George's?

8 A. Yes, sir.

9 Q. And he's a potential witness in this case. Correct?

10 A. I guess.

11 Q. And had he -- did he indicate to you that he had
12 talked to the defense attorneys in this case?

13 A. No, sir.

14 Q. What did Mr. Tye tell you?

15 A. I asked him if he was having to come in tomorrow
16 and --

17 Q. You called him?

18 A. Yes.

19 Q. Okay. And that was after you'd been contacted by
20 the defense or before?

21 A. After.

22 Q. Had you talked to Mr. Tye about this case before
23 that?

24 A. No, sir.

25 MR. CRANE: No further questions.

1 MR. ROGERS: Thank you, sir.

2 THE COURT: You may step down. If you'd step
3 outside the courtroom, please.

4 THE WITNESS: Okay.

5 MR. ROGERS: Miss Griggs, please.

6 THE COURT: Literally, I'm going to recess in five
7 minutes. It's 20 minutes into the lunch hour. And --

8 MR. ROGERS: I'm trying to move as quickly as I can,
9 Your Honor. And that's one of my objections to the
10 cross-examination. But --

11 THE COURT: Well, if it's not relevant, you know how
12 to make an objection, I assume.

13 MR. ROGERS: That's correct.

14 THE COURT: Do you want to have those individuals
15 step into the courtroom? Your investigators?

16 MR. CRANE: Okay. Yeah.

17 THE COURT: Would you come forward and be sworn,
18 please. Raise your right hand.

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MELISSA RENEE GRIGGS,

being first duly sworn by the Court, testified as follows:

THE COURT: Take the witness stand, please.

And if we could just identify the witness, so that it would be on the record who it is that's saying this.

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DIRECT EXAMINATION

BY MR. ROGERS:

Q. State your name, please.

A. Melissa Griggs.

THE COURT: All right.

Q. Miss Griggs --

THE COURT: Would you come forward, please. Both --
Mr. White.

MR. HAWES: I recognize her now, Your Honor. I'm
the one that talked to her.

THE COURT: All right.

MR. ROGERS: Okay. Fair enough.

MR. CRANE: Did you do a report?

MR. HAWES: No.

Q. Now --

MR. ROGERS: That saved a lot of time.

Q. Do you remember talking to that guy?

A. I do. Yes.

Q. And did you tell him what time By George's closed on

1 Halloween night?

2 A. I did.

3 Q. 2001.

4 A. Yes.

5 Q. You were at By George's Halloween 2001?

6 A. Yes.

7 Q. Do you know Charles Erickson?

8 A. Yes.

9 Q. Did you see him there?

10 A. I did.

11 Q. Did you talk to him there?

12 A. Yes.

13 Q. And did you tell Mr. Hawes what time By George's
14 closed?

15 A. Yes.

16 Q. And what time did you tell him it closed?

17 A. 1:30.

18 Q. Thank you.

19 MR. ROGERS: That's all.

20

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21

CROSS-EXAMINATION

22 BY MR. CRANE:

23 Q. Who did you talk to?

24 A. Charles Erickson.

25 Q. Did you also tell that to Mr. Hawes?

1 A. No.

2 Q. So that's the first time you told anybody that?

3 A. Yes.

4 Q. Okay. And --

5 MR. CRANE: Well, Judge, I guess this is for -- the
6 rest of this is going to be an issue --

7 THE COURT: All right. Anything further?

8 MR. ROGERS: No, Your Honor. Thank you.

9 THE COURT: You may step down. Would ask you to be
10 excused from the courtroom, please.

11 MR. ROGERS: No further evidence on this point from
12 the defense at this juncture, Your Honor.

13 THE COURT: Does the state wish to present any
14 evidence on this issue?

15 MR. CRANE: Well -- Ben, do you remember talking to
16 Canada?

17 MR. WHITE: (Shaking head from side to side.)

18 MR. CRANE: Do you remember?

19 MR. WHITE: No.

20 MR. CRANE: You can't say you didn't?

21 MR. WHITE: I can't say I didn't.

22 MR. CRANE: He said -- we'll stipulate that
23 Detective -- or Investigator White says he can't say whether
24 or not he did talk to Canada. And we'll also agree that --

25 MR. WHITE: Was it prior to my employment here or

1 when I was a detective?

2 MR. CRANE: He said eight months to a year ago.

3 MR. WHITE: No, I don't.

4 THE COURT: Are you offering him as a witness?

5 MR. CRANE: No. We'll agree that he would testify
6 that he can't remember whether he talked to Mr. Canada or not
7 eight months to a year ago.

8 MR. ROGERS: I'll accept that, Judge.

9 THE COURT: All right.

10 MR. ROGERS: I think we've established that this was
11 information known to the state or its agents, or at least
12 with regard to -- I think with regard to both of these
13 witnesses. I think the exculpatory nature of the information
14 is obvious, in the context of the case. I think its
15 impeaching nature with regard to Mr. Erickson is obvious
16 within the context of the case. Whether or not a report is
17 generated, the state has an absolute constitutional
18 obligation to provide that information to the defense. That
19 obligation is rooted in the due process clause of the Fifth
20 Amendment to the United States Constitution, made applicable
21 to this prosecution by the Fourteenth Amendment. And I don't
22 think the state, which, by failing to memorialize and
23 disclose exculpatory information, has any standing to
24 complain of the late endorsement when we finally discover the
25 exculpatory information.

1 MR. CRANE: Well, first of all, Judge, the state has
2 tendered voluminous and complete discovery to the defense in
3 this case. I never heard about these people before. No
4 report was generated. And the issue is solely the one of
5 when these people think George's closed at 1:30.

6 And I want to start off by saying that the idea that
7 Mr. Rogers is trying to imply is that I'm crooked. And that
8 I have deliberately withheld evidence from the defense. And
9 that is simply not true. There have been no reports
10 generated on this. And further, with respect to Ms. Griggs,
11 a report that was duly tendered to the defense, in fact, at
12 discovery page 2277, discovery page number 2277, supplement
13 332, is the complete report of the proffer entered into by
14 Chuck Erickson on October 1, 2004. And in that, Mr. Erickson
15 is recorded as saying: "We asked Erickson if there were
16 other people at By George that had seen him and Ferguson
17 together that night, and he stated there was a girl who had
18 seen them before the crime was committed by the name of
19 Melissa Griggs." That's in the report.

20 Now, Judge, I don't know how the defense themselves
21 got onto Canada. And it's all well and good that they did.
22 They have been noticed up with respect to David Tye, who's
23 the owner of the -- who was the owner of By George's. And
24 would be someone -- we gave them the report on that. Now, if
25 my guy didn't write down what Canada said about the -- it

1 sounds to me like he's just saying he thinks the bar closed
2 at 1:30 because they always did. Okay. I'll take the blame
3 for that. But I certainly do not think it's appropriate to
4 be crucified as a -- some kind of obstructionist, subversive,
5 on this information.

6 THE COURT: There's not going to be any more
7 argument.

8 Mr. Crane, I don't believe the allegation is that
9 you personally withheld information that you knew existed.
10 However, as you're aware, whether your secretary or your
11 investigator knew of it, it is imputed in law that you knew
12 it. I'm not --

13 MR. CRANE: I recognize that.

14 THE COURT: And I don't think defense counsel is
15 saying that you did that. I'm going to sustain the motion to
16 endorse. However, I will permit you time to have someone,
17 co-counsel or some other attorney in the office, to talk to
18 those individuals before they're called as witnesses.

19 MR. CRANE: And that would be with respect to Griggs
20 as well?

21 THE COURT: Both witnesses.

22 We'll be in recess until 1:00.

23 (Recess taken.)

24

- - -

25 The following proceedings were held out of the presence