

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

MADAM CLERK: PLEASE STATE YOUR NAME FOR THE
COURT.

THE WITNESS: GREG HEMBREE.

DIRECT EXAMINATION

BY MR. CONDON:

Q GOOD MORNING, SOLICITOR HEMBREE, COULD YOU,
PLEASE, BRIEFLY TELL US WHAT YOU DO?

A I'M SOLICITOR FOR THE FIFTEENTH CIRCUIT.

Q AND HOW LONG HAVE YOU HAD THAT POSITION?

A I WAS ELECTED IN 1998, TOOK OFFICE JANUARY 13TH
OF '99.

Q IF YOU COULD, PLEASE, BRIEFLY GIVE US YOUR
PREVIOUS POSITIONS, EDUCATION, THAT SORT OF THING?

A I WAS, WENT TO UNDERGRADUATE SCHOOL AT

MEMPHIS STATE UNIVERSITY AND RECEIVED A DEGREE IN ECONOMICS, LAW DEGREE AT THE UNIVERSITY OF SOUTH CAROLINA, WORKED AS AN ASSISTANT SOLICITOR IN THE FIFTH CIRCUIT FOR ABOUT SEVEN YEARS, WORKED AS CITY ATTORNEY FOR THE CITY OF NORTH MYRTLE BEACH FOR ABOUT FOUR YEARS, SERVED IN PRIVATE PRACTICE FOR A COUPLE OF YEARS.

Q AND THEN WAS ELECTED SOLICITOR?

A AND WAS ELECTED SOLICITOR IN '98, CORRECT.

Q COULD YOU GIVE AN OVERVIEW OF THE PROCEDURE FOR THE USE OF SUBPOENAS IN THE FIFTEENTH JUDICIAL, FIFTEENTH CIRCUIT SOLICITOR'S OFFICE?

A WELL WE USE SUBPOENAS TO, TO BRING DEFENDANTS TO COURT, WITNESSES TO COURT, USE THEM FOR INVESTIGATORY PURPOSES. I'D SAY THAT PRETTY MUCH WHAT THEY'RE USED FOR IN THE FIFTEENTH CIRCUIT, USED THE SAME WAY HERE AS

WE USED THEM IN THE FIFTH CIRCUIT WHEN I WAS THERE.

Q SO THE PROCEDURE THAT'S USED HERE IS EXACTLY
THE SAME AS IN THE FIFTH CIRCUIT?

A I CAN'T SPEAK TO THAT TODAY. I KNOW THAT IT WAS
THE SAME PROCEDURE THAT WAS USED IN THE FIFTH CIRCUIT WHEN I
WAS THERE AND I LEFT THERE IN '95.

Q DID THE FIFTH CIRCUIT SOLICITORS HAVE A STAMP
FROM THE CLERK OF COURT'S OFFICE?

A I DON'T, I DON'T RECALL AT THE TIME IF THEY DID OR
NOT.

Q AND SO I UNDERSTAND THE PROCEDURE HERE THE,
WELL I CAN WITHDRAW THAT. HAS THE PROCEDURE CHANGED?

A HAS THE PROCEDURE CHANGED AS FAR AS WHAT WE
USE THEM FOR OR, OR, OR --

Q STAMPING?

A I'M INFORMED JUST RECENTLY THAT IT'S CHANGED JUST IN THE LAST COUPLE OF DAYS AS A RESULT OF YOU RAISING THE QUESTION ABOUT THE, THE PROCEDURE THAT THE CLERK OF COURT HAS CHANGED THE METHOD OF STAMPING THE SUBPOENAS BOTH IN THE, BOTH IN THE GEORGETOWN AND THE HORRY COUNTY CLERK OF COURT OFFICES.

Q IF I COULD HAND YOU WHAT'S MARKED DEFENSE EXHIBIT 1 THERE AND ASK YOU IF YOU'RE FAMILIAR WITH THAT RULE?

A I AM.

Q THE RULE TALKS ABOUT SUBPOENAS BEING, A SUBPOENA DUCES TECUM BEING ISSUED FOR MATTERS IN GENERAL SESSIONS COURT, DOES IT?

A CORRECT.

Q AND IS THAT THE PROCEDURE USED HERE IN HORRY COUNTY, WELL IN THIS, THIS MATTER?

A RIGHT.

Q THERE WERE SUBPOENAS ISSUED, WEREN'T ALL THE
SUBPOENAS THAT WERE ISSUED PRE-ARREST, PRE-INDICTMENT?

A I DON'T KNOW IF ALL OF THEM WERE, I KNOW THAT
MANY OF THEM WERE. I JUST DON'T, I CAN'T TELL YOU FROM, FROM MY
PERSONAL RECOLLECTION BUT I KNOW THAT THERE WERE SUBPOENAS
THAT WERE ISSUED PRE-ARREST.

Q ALL RIGHT, WELL THE ONES ISSUED PRE-ARREST
THAT YOU, YOU REMEMBER, FAMILIAR WITH WOULD THOSE BE PURSUANT
TO THAT RULE?

A ARE THEY PURSUANT TO THE RULE, ARE YOU ASKING
ME IF THEY'RE IN ACCORDANCE WITH THE RULE?

Q YES?

A IT, WELL AND I NEED TO EXPLAIN, THE, THE PRACTICE
OF ISSUING THEM FOR INVESTIGATIVE PURPOSES IS A PRACTICE THAT,

THAT EXISTED IN THE FIFTH CIRCUIT, IT WAS A PRACTICE I LEARNED I GUESS AS A, AS A YOUNG PROSECUTOR BACK IN 1987. I MEAN THAT WAS A, THAT WAS A METHOD OF INVESTIGATION. WHEN I MOVED TO THE, TO THE FIFTEENTH CIRCUIT IT WAS EXACTLY THE SAME PRACTICE. IT WAS, YOU KNOW, IT'S A COMMON PRACTICE THROUGHOUT THE STATE OF SOUTH CAROLINA. THERE'S NOT BEEN, THERE'S, THERE'S VERY LITTLE PRECEDENT REGARDING HOW YOU CAN USE SUBPOENAS FOR INVESTIGATIVE PURPOSES IN ADDITION TO THAT. SO, SO WHETHER OR NOT IT'S A MATTER IN THE GENERAL SESSIONS COURT WHEN YOU'RE INVESTIGATING A FELONY THAT YOU SUSPECT WILL BE IN THE GENERAL SESSIONS COURT QUALIFIES UNDER THIS RULE I GUESS IT'S CERTAINLY A MATTER OF INTERPRETATION FOR THE COURT. WHETHER OUR USE OF IT IS, IS, AS AN INVESTIGATIVE IS APPROPRIATE, IT'S A LEGITIMATE QUESTION, CERTAINLY ONE THAT YOU'RE ASKING, BUT I CAN TELL YOU THIS IT WAS A PRACTICE THAT WAS A LONG STANDING PRACTICE USED

BY MANY IF MOST OF THE CIRCUITS THROUGHOUT THE STATE FOR
MANY, MANY YEARS.

I HAVE IN 20 YEARS AS A PROSECUTOR UNTIL THIS CASE I
HAVE NEVER HAD ANYONE MAKE A MOTION BASED ON AN IMPROPER
SUBPOENA TO, TO, TO IN SOME WAY SET ASIDE THE EVIDENCE. I'VE
NEVER HAD A CASE APPEALED BASED ON THAT AND QUITE FRANKLY IT'S
JUST NOT BEEN, IT'S NOT BEEN AN ISSUE SO, MR. CONDON, I FEEL LIKE
IT'S SOME OF THOSE, ONE OF THOSE PRACTICES THAT WE HAVE
WHETHER IT MAY BE, YOU KNOW, BASED ON INTERPRETATION STRICTLY
WITHIN THE RULE OR NOT I DON'T KNOW AND THAT'S A QUESTION AGAIN
A QUESTION FOR THE COURT BUT IT WAS A PRACTICE THAT HAS BEEN
LONG STANDING. IT'S DEVELOPED AND NO ONE HAS CHALLENGED IT OR
QUESTIONED IT.

MUCH LIKE THE PRACTICE OF IN PRELIMINARY HEARINGS,
ACCORDING TO THE RULE ARE TO BE HELD, ARE TO BE HELD WITHIN 10

DAYS OF A NOTICE BEING SERVED. WELL THAT DOESN'T HAPPEN, I MEAN AS A MATTER OF PRACTICE IT JUST DOESN'T OCCUR. IS IT TECHNICALLY A VIOLATION, WELL IF IT'S NOT HELD WITHIN 10 DAYS I GUESS TECHNICALLY IT IS BUT AS A MATTER OF GETTING THE WORK DONE AND AS A MATTER OF PRACTICE, YOU KNOW, WE, WE, WE, GO, GO ABOUT OUR BUSINESS AND GET OUR WORK DONE REGARDLESS, SO WHETHER OR NOT IT, THE RULE COMPLY, OR THE PRACTICE COMPLIES WITH THIS RULE IT'S ARGUABLE BUT IT'S RATHER VAGUE AND THERE'S NOT MUCH PRECEDENCE ON IT.

Q SO YOU'RE NOT AWARE OF ANY OF THE COURT DECISIONS RELATIVE TO THE ISSUES, ISSUANCE OF SUBPOENAS DUCES TECUM IN SOUTH CAROLINA?

A I ONLY KNOW OF ONE CASE AND IT DOESN'T SPEND VERY MUCH TIME TALKING ABOUT IT, STATE V. WILLIAMS. IT'S A RATHER 20, 30-YEAR OLD CASE, 20-SOMETHING-YEAR OLD CASE, OTHER THAN

THAT I'M NOT AWARE OF ANY OTHER CASES.

Q YOU'RE NOT FAMILIAR WITH ANY OF THE OPINIONS
RELATIVE TO YOUR ETHICS RULES ON ISSUANCE OF SUBPOENAS THAT
HAVE COME DOWN?

A NOT, NO.

Q AND YOU SAY YOU'VE BEEN INVOLVED IN
PROSECUTION YOU'VE NEVER HAD THIS QUESTION COME UP?

A THAT'S CORRECT.

Q AND YOU'VE MENTIONED THE PRELIMINARY HEARING
MATTER, THERE HAVE BEEN COURT DECISIONS ON PRELIMINARY
HEARINGS NOT BEING HELD WITHIN 10 DAYS, HASN'T THERE?

A I'M SURE THERE HAS BUT I CAN'T RECITE, I CAN'T
RECITE YOU WHAT THOSE CAUSE I HAVEN'T DONE THE RESEARCH ON
THOSE LATELY SO I COULDN'T SPEAK TO THAT.

Q IT WOULDN'T SURPRISE YOU IF THE COURT'S RULED

THAT EVEN THOUGH THE HEARING HASN'T BEEN HELD WITHIN 10 DAYS
THERE'S NOT A, NOT A PENALTY FOR THAT, THE CASE DOESN'T GET
DISMISSED?

A RIGHT, WHICH IS MUCH LIKE THE WILLIAMS CASE.
THEY, THEY MADE, MADE A RULING BUT THEY SAID IT REALLY WASN'T A
PENALTY FOR, FOR OBTAINING THE EVIDENCE FOR THE SUBPOENA,
MAYBE SHOULD HAVE USED A DIFFERENT METHOD.

Q AND THAT CASE, OF COURSE, INVOLVED THE
EVIDENCE THAT WENT TO A GRAND JURY?

A CORRECT.

Q THE WILLIAMS CASE?

A RIGHT.

Q IT INVOLVED THE ISSUE OF SUPPRESSION OF
EVIDENCE?

A OH, YES, I THINK IT IS, I THINK IT WAS A QUESTION

OF THEY TRIED TO SUPPRESS THE, THE, OR QUASH THE, EITHER QUASH
THE INDICTMENT OR SUPPRESS THE EVIDENCE BASED ON ---

Q QUASH THE INDICTMENT AND PERHAPS SUPPRESS
THE EVIDENCE.

A YEAH.

Q NOW SO I CAN GET AN UNDERSTANDING OF THE
PROCEDURE WAS THERE ANY TRAINING, WAS THERE ANY TRAINING
GIVEN TO ANYONE IN YOUR OFFICE ABOUT THE ISSUANCE OF
SUBPOENAS?

A YOU KNOW NONE, NONE FROM ME. I THINK THAT
WHATEVER TRAINING THAT TOOK PLACE WAS, WAS LONG STANDING. IT
WAS IN PLACE WHEN I, WHEN I TOOK OVER AS SOLICITOR, IT WAS A
PRACTICE, LIKE I SAY IT WAS A PRACTICE THAT HAD BEEN IN PLACE FOR
A LONG TIME AND WE CONTINUED THAT PRACTICE.

Q AND THE, THE ISSUANCE, THE, THE, THE STAMPS,

THESE CLERK STAMPS WAS ANY TRACKING OF WHO HAD THOSE
STAMPS?

A WITHIN THE OFFICE, NO, SPECIFICALLY, NO.

Q DID YOU HAVE ANY IDEA HOW MANY NUMBERS OF
STAMPS THERE WERE?

A PERSONALLY I DIDN'T, I THINK I, I, YOU KNOW, WOULD
IMAGINE THE CLERK DID BUT I COULDN'T SPEAK
TO THAT.

Q WAS ANY RECORDS OF THE STAMPING THAT WENT ON?

A YOU MEAN WHO STAMPED HOW MANY ---

Q YES?

A --- SUBPOENAS AND SO FORTH?

A DID YOU KEEP ANY LOGS OR ANYTHING?

Q WELL COPIES WERE KEPT, OH, YES, I MEAN COPIES
OF SUBPOENAS WERE KEPT WITHIN THE FILES, ABSOLUTELY. SO BUT IF

YOU, IF YOU WERE TO SAY, YOU KNOW, COULD YOU SAY THAT THIS PARTICULAR PERSON STAMPED THIS PARTICULAR SUBPOENA AND THAT WOULD BE DIFFICULT BECAUSE I DON'T BELIEVE THERE WAS ANY NOTATION. YOU COULD LIKELY FIGURE OUT WHO IT WAS BASED ON WHOSE CASE IT WAS ASSIGNED TO BUT FROM THE STANDPOINT OF, YOU KNOW, COULD I SAY WITH CERTAINTY THAT, THAT THIS PARTICULAR LEGAL ASSISTANT STAMPED A PARTICULAR SUBPOENA THAT WOULD BE DIFFICULT TO DO ALTHOUGH WE DID KEEP COPIES OF SUBPOENAS IN FILES.

Q I SEE, SO YOU KEPT COPIES BUT THEY WEREN'T LOGS KEPT OF THE NUMBERS OF SUBPOENAS PER INVESTIGATOR PER PERSON?

A NO, I'M NOT AWARE OF ANY LOGS, NO.

Q AND DID, DID, WERE THESE STAMPING, WAS THIS STAMPING DONE STRICTLY BY INVESTIGATORS OR WOULD ASSISTANT

SOLICITORS GET INVOLVED OR DO YOU KNOW?

A I'M NOT AWARE OF ANY ASSISTANT SOLICITORS IN POSSESSION OF ANY STAMPS. THOSE WERE MAINTAINED BY THE, BY THE SUPPORT STAFF AND I DON'T BELIEVE ANY OF THE ASSISTANT SOLICITORS, I KNOW I DIDN'T HAVE ONE, I DON'T THINK ANY OF THE LAWYERS HAD ONE.

Q AND WERE YOU AWARE OF THESE, NOT TALKING ABOUT THIS CASE, BUT JUST CASES IN GENERAL OF, OF DOCUMENTS SUBPOENAS BEING STAMPED WITH MELANIE HUGGINS' NAME AND BEING SENT OUT OF STATE?

A YOU'RE ASKING ME HAS, HAS, IT IS POSSIBLE THAT THAT'S BEEN DONE?

Q YES?

A CERTAINLY IT'S POSSIBLE.

Q IS IT YOUR VIEW THAT THOSE SUBPOENAS ARE, ARE,

ARE PROPER, TOO?

A WELL THEY DON'T HAVE ANY AUTHORITY OUTSIDE OF THE STATE OF SOUTH CAROLINA SO I CAN'T, YOU KNOW, I DON'T KNOW THE, I DON'T KNOW THAT THEY HAVE ANY EFFICACY OUTSIDE THE STATE.

Q SO THEY WOULD HAVE NO EFFICACY?

A THAT WOULD BE MY VIEW OF IT, YES.

Q AND SO YOUR OFFICE WOULD SEND OUT, OUT OF STATE SUBPOENAS WITH NO EFFICACY?

A WELL, YOU KNOW, YOU'VE GOT A, IF YOU, TO GIVE YOU JUST A PRACTICAL EXAMPLE AND, AND I'M SURE YOU CAN APPRECIATE THIS HAVING SERVED AS SOLICITOR. IF YOU'RE LOOKING FOR DOCUMENTS AND PARTICULARLY IF, I THINK NOT THAT IT'S YOUR ISSUE BUT I THINK IT'S JUST A REAL, THE REALITY OF IT IS AS TIME HAS GONE BY WHERE YOU, YOU IN TIMES PAST YOU MIGHT BE ABLE TO

LOCATE THOSE TELEPHONE RECORDS IN THE, THE BELL SOUTH OFFICE
IN CHARLESTON, LET'S SAY. BUT AS TIMES GONE BY AND THE WAY THAT
AMERICAN HAS SORT OF RESTRUCTURED THE WAY THEY KEEP THE
RECORDS WE MAY HAVE TO GET THOSE RECORDS ATLANTA GEORGIA
NOW AND YOU CONTACT BELL SOUTH IN ATLANTA, GEORGIA AND YOU
SAY WE NEED THESE RECORDS. HOW DO WE GET THEM? SEND US A
SUBPOENA. OKAY, WE'LL SEND YOU A SUBPOENA, WE'LL SEND YOU
WHAT YOU'RE ASKING FOR. SO THAT WAS, THAT'S PART OF HOW THAT
PRACTICE DEVELOPED I THINK WAS THAT IT WAS, IT WAS DRIVEN
SOMEWHAT BY THE PERSON PROVIDING THE RECORDS AND I DON'T, YOU
KNOW, THIS IS NOT UNIQUE. I'M SORRY, I DIDN'T MEAN TO INTERRUPT
YOU BUT IT'S NOT UNIQUE, NOT THAT IT AGAIN IT'S NOT, I THINK IT'S
IMPORTANT TO NOTE THAT IT'S NOT UNIQUE TO SOMETHING THE
FIFTEENTH CIRCUIT, I'M AWARE OF OTHER CIRCUITS USE THE SAME
PRACTICE.

Q AND WHEN YOU SEND THESE OUT OF STATE ARE THE PEOPLE TOLD THAT THE SUBPOENAS ARE WITHOUT LEGAL AFFECT?

A I DON'T HAVE ANY IDEA, I DON'T, WE DON'T SEND A LETTER TO THAT EFFECT, NO. THEY SAY SEND A SUBPOENA WE WOULD SEND A SUBPOENA THAT WOULD BE OUR NORMAL, I MEAN THAT'S, THAT WOULD BE THE NORMAL PRACTICE.

Q BUT WOULD IT BE YOUR EXPECTATION WHEN THEY SAY WE NEED A SUBPOENA THAT THEY WOULD EXPECT A LAWFUL SUBPOENA?

A I DON'T KNOW WHAT ---

MR. GOINGS: OBJECTION AS TO SPECULATION AS TO WHAT THEY, THIRD PARTIES WOULD BE EXPECTING.

THE COURT: I'LL ALLOW THE WITNESS TO ANSWER IF HE CAN.

THE WITNESS: (CONTINUING)

A I DON'T HAVE ANY IDEA WHAT THE, WHAT THEIR EXPECTATION MIGHT BE. ALL I KNOW IS THIS IS WHAT THEY'RE ASKING FOR AND THIS IS WHAT WE WOULD SEND IN THOSE, IN THOSE CASES.

Q THE TESTIMONY RELATIVE TO, TO COMMON USAGE THROUGHOUT OTHER CIRCUITS, I DON'T WANT TO BELABOR THIS MUCH, BUT ARE YOU AWARE OF THIS BEING DONE FOR EXAMPLE IN THE NINTH CIRCUIT?

A I CAN'T, I CAN'T SPEAK TO THAT. I'VE HAD GENERAL CONVERSATIONS WITH MY ELECTED COLLEAGUES AT OUR SOLICITORS ASSOCIATION MEETINGS. I KNOW THAT IT'S A PRACTICE THAT IS COMMONLY USED FROM THOSE CONVERSATIONS BUT TO SAY, I'VE NOT ANY KIND OF A SURVEY TO SAY THAT NINTH CIRCUIT DOES IT, YOU KNOW, THE FOURTH CIRCUIT DOESN'T IT, WHAT IT MIGHT BE LIKE THAT.

I KNOW THAT THE NINTH CIRCUIT USED TO USE THE STAMP, THAT WAS, THAT WAS A PRACTICE THAT TOOK PLACE WHEN YOU WERE

THE SOLICITOR BUT AS FAR AS SIGNING THE SUBPOENAS BUT I DON'T KNOW ABOUT SENDING THEM OUT OF STATE.

Q AND WOULD YOU BE AWARE OF, OF HOW THESE OTHER SOLICITORS DO IT WHEN THERE'S NOT A MATTER IN GENERAL SESSIONS COURT?

A I THINK THAT, YES, I THINK, I MEAN I'M CONFIDENT IN SAYING THAT IT IS A COMMON PRACTICE TO, TO USE THE SUBPOENAS FOR INVESTIGATING PURPOSES FOR A MATTER THAT MAY BE COMING TO GENERAL SESSIONS COURT, FOR FELONY, FOR INVESTIGATING A FELONY OR, OR SERIOUS MISDEMEANOR CHARGE.

Q ARE THESE SUBPOENAS USED IN YOUR OFFICE TO COMMAND CITIZENS TO COME TO YOUR OFFICE?

A WE BRING DEFENDANTS TO COURT SO WE USE THEM FOR THAT PURPOSE. WE SOMETIMES USE THE SUBPOENAS, YOU KNOW IT DEPENDS ON THE PHRASEOLOGY THAT'S USED IN THE SUBPOENA

SOMETIMES TO GET DOCUMENTS BUT WE, WE USE THE PHRASE AS I HAVE. I HAVE SENT SUBPOENAS THAT WE HAVE ISSUED USED IN THE PHRASEOLOGY DIRECTED TOWARD A PERSON, A RECORDS CUSTODIAN IN, IN THE RECORDS, YOU KNOW, IN THE ALTERNATIVE PROVIDE THE RECORDS AND THEN OTHER OCCASIONS I KNOW I'VE SEEN SUBPOENAS THAT JUST MENTION THE RECORD SPECIFICALLY. SO THAT WOULD BE AN AREA WHERE WE MAY BE COMMANDING SOMEONE BUT WE DON'T REALLY EXPECT THEM TO COME, YOU KNOW, WE'RE REALLY INTERESTING IN THE RECORDS.

Q I SEE. ARE THERE EVER ANY SENT OUT THERE THAT COMMAND A PERSON ONLY TO COME TO THE OFFICE SAY FOR AN INTERVIEW?

A MR. CONDON, I WOULD HATE TO SAY THAT THAT HAS NEVER HAPPENED, I'M CERTAIN THAT IT HAS. I DON'T THINK IT IS A, IT IS A, I DON'T THINK IT IS A, IT IS A, AS FAR AS I KNOW IT'S NOT SOMETHING

THAT WE DO ON A ON A COMMON BASIS. I MEAN WE BRING WITNESSES
IN FOR, FOR COURT BUT YOU'RE JUST TALKING ABOUT, I ASSUME YOU'RE
TALKING ABOUT, LET ME CLARIFY YOUR QUESTION. YOU'RE TALKING
ABOUT JUST LIKE A PRETRIAL CONFERENCE WHERE I BRING THE
WITNESS IN FOR A PRETRIAL CONFERENCE AGAIN I WOULDN'T SAY THAT
WE HAD, I DON'T, I DON'T KNOW THAT I CAN SAY THAT WE'VE NEVER
DONE THAT BUT I DON'T, THAT'S NOT A COMMON PRACTICE THAT I KNOW
OF IN OUR OFFICE, NO.

Q HAVE YOU EVER HAD ANYONE USE THE DOCUMENT, I
MEAN THE HUGGINS STAMP IMPROPERLY UNRELATED, SAY FOR
PERSONAL MATTERS?

A NOT THAT I KNOW ABOUT, ABSOLUTELY NOT.

Q HAS ANYONE EVER BEEN DISCIPLINED OR
SANCTIONED FOR THE USE OF THESE STAMPS?

A IF THEY HAVE I JUST, I CAN'T RECALL, BUT I CAN'T

RECALL IF THEY WERE.

Q SO PERHAPS THEY MIGHT HAVE?

A I GUESS THAT'S POSSIBLE BUT IT'S, IT, IT, I JUST, I
JUST CAN'T, CAN'T TELL YOU FROM MY PERSONAL RECOLLECTION.

Q NOW YOU'RE AWARE, NOT TALKING ABOUT THIS CASE
BUT JUST GENERALLY SPEAKING WHEN, WHEN SUBPOENAS ARE, THIS
CASE IS A GEORGETOWN CASE FOR EXAMPLE?

A CORRECT.

Q IS THE EXPECTATIONS THAT THE SUBPOENAS ISSUED
IN YOUR OFFICE HAVE THE CAPTION OF THE COUNTY WHERE THE CASE
IS OR WHERE, WHERE THE, WHERE THE OR WHERE THE PERSON BEING
SUBPOENAED IS, IS LOCATED?

A WE TYPICALLY HAVE THE CAPTION OF THE COUNTY
WHERE THE CASE IS LOCATED.

Q SO THE EXPECTATION WOULD BE THAT ALL THE

SUBPOENAS IN THIS SHOULD BE CAPTIONED GEORGETOWN COUNTY?

A THAT WOULD BE, THAT WOULD BE MY EXPECTATION,
YES.

Q ARE YOU AWARE THAT PERHAPS THAT EXPECTATION
HAS NOT BEEN MET?

A I'M, I'VE HEARD THAT BUT I HAVE, I'VE HEARD THAT.

Q BUT JUST FOR THE, JUST VERY BRIEFLY IF I MIGHT
FOR THE PURPOSE OF THE RECORD IF I COULD GIVE YOU A COUPLE,
EXHIBIT 10, EXHIBIT 5, DEFENSE EXHIBIT?

A UH-HUH, RIGHT.

Q THOSE APPEAR TO BE CAPTIONED HARRY?

A THEY ARE.

Q AND THAT WOULD BE UNDER YOUR PROCEDURE NOT
MEETING EXPECTATIONS?

A THESE SHOULD BE, YES, AND THERE'S NO DOUBT

THAT THESE SHOULD HAVE BEEN CAPTIONED GEORGETOWN, YEAH.

Q AND IF I COULD SHOW YOU DEFENSE EXHIBIT
NUMBER 2 AND TAKE A LOOK AT THAT?

A ALL RIGHT.

Q IT'S PARTICULARLY RELATIVE, HAVE YOU SEEN THIS
DOCUMENT BEFORE?

A NO, I HAVEN'T, WELL, NO, I HAVEN'T.

Q THE STAMPING THERE HAS MELANIE HUGGINS AND
SHE WOULD BE THE CLERK OF COURT OF Horry?

A CLEARLY THE WRONG STAMP HAS BEEN USED TO
STAMP THAT SUBPOENA, THAT'S QUITE OBVIOUS.

Q THAT WOULD NOT BE MEETING EXPECTATIONS?

A CORRECT.

Q AND JUST SO WOULD IT BE YOUR EXPECTATION THAT
BEFORE SOMETHING LIKE THIS SENT OUT, WAS SENT OUT THAT THE

INVESTIGATOR WOULD READ IT?

A IS IT MY, YES, I MEAN CERTAINLY WE'D, WE'D HOPE THAT, I MEAN IN QUALITY YOU WANT HIGH QUALITY WORK TO GO OUT OF THE OFFICE CERTAINLY.

Q AND JUST TO CLARIFY I REALIZE I CAN'T TESTIFY BUT YOU EARLIER TESTIFIED IT WAS YOUR UNDERSTANDING THAT I USED THE SAME PROCESS OR SOMETHING LIKE THAT YOU'RE USING?

A THAT'S CORRECT.

Q AND WHERE DO YOU GET THAT UNDERSTANDING FROM?

A FROM ONE OF YOUR FORMER EMPLOYEES THAT WORKED IN BERKELEY COUNTY.

Q AND WHO WOULD THAT BE?

A FRAN HUMPHRIES.

Q OH, SO MR. HUMPHRIES HAS TOLD YOU THAT HE

USED THAT PROCESS?

A THAT IT WAS USED IN YOUR OFFICE IN BERKELEY COUNTY WHEN YOU WERE SOLICITOR.

Q I SEE, HE SAID THAT HE USED THAT PROCESS?

A HE TOLD ME IT WAS USED IN YOUR OFFICE, MR. CONDON, I DON'T, I DON'T KNOW THAT HE EVER STAMPED A SINGLE SUBPOENA. I WOULDN'T, LIKE I SAY IT UNUSUAL, IT'S VERY UNUSUAL FOR OUR LAWYERS TO, TO BE ENGAGED IN THAT PRACTICE, YOU KNOW, THAT PART OF THE PROCESS BUT HE WAS AWARE THAT THAT STAMPING TOOK PLACE WHEN YOU WERE SOLICITOR AND HE WORKED FOR YOU.

Q DID HE TELL YOU WHY HE LEFT MY OFFICE?

MR. GOINGS: OBJECTION.

THE COURT: GENTLEMEN, THAT'S NOT A PART OF THIS PARTICULAR PROCEEDING, THANK YA'LL.

MR. PRIDE: CREDIBILITY.

THE COURT: I'M NOT GOING TO ALLOW IT, THANK YOU.

MR. CONDON: (CONTINUING)

Q THE NEED, THE, THE AUTHORITY RELATIVE TO THE
ISSUANCE OF SUBPOENAS WOULD IT BE YOUR VIEW THAT THERE'S SOME
AUTHORITY OTHER THAN RULE 13?

A NOT THAT, NOT SPECIFICALLY, AND THERE MAY BE
SOME SORT OF, IT'S SUCH A GENERAL PRACTICE THAT'S USED BUT I
THINK IT JUST KIND OF TELLS US HOW TO DO IT BUT NOT, NO, I DON'T
KNOW OF, I DON'T OF ANY ADDITIONAL AUTHORITY.

Q THAT IS THE AUTHORITY, ISN'T IT, FOR THE CIRCUIT
SOLICITOR?

A AS FAR AS I KNOW, I MEAN IT'S THE, IT'S, YEAH.

Q THERE'S NOTHING ELSE, IS THERE?

A I DON'T BELIEVE SO, LIKE I SAY THERE'S NOT MUCH
ABOUT IT, THERE'S NOT MUCH ABOUT SUBPOENAS OUT THERE.

Q AND IF I COULD JUST ASK YOU TO TAKE A LOOK AT
RULE 13 AND READ THE, THE FIRST PARAGRAPH? IF YOU WOULD READ
OUT LOUD, PLEASE?

A UPON THE REQUEST OF ANY PARTY THE CLERK OF
COURT SHALL ISSUE SUBPOENAS OR SUBPOENAS DUCES TECUM FOR
ANY PERSON OR PERSONS TO ATTEND AS WITNESSES IN ANY CAUSE OR
MATTER IN THE GENERAL SESSIONS COURT.

THE SUBPOENA SHALL STATE THE NAME OF THE COURT,
THE TITLE OF THE ACTION, AND SHALL COMMAND EACH PERSON TO
WHOM IT IS DIRECTED TO ATTEND AND GIVE TESTIMONY OR OTHERWISE
PRODUCE DOCUMENTARY EVIDENCE AT TIME AND PLACE THEREIN
SPECIFIED.

THE SUBPOENA SHALL ALSO SET FORTH THE NAME OF THE
PARTY REQUESTING THE APPEARANCE OF SUCH WITNESS AND THE
NAME OF THE COUNSEL FOR THE PARTY, IF ANY.

Q WOULD IT BE YOUR VIEW THAT THE RULE IS CLEAR THAT THERE HAS TO BE A MATTER IN GENERAL SESSIONS COURT?

A IT HAS TO BE A MATTER THAT, THAT, IT'S A MATTER IN GENERAL SESSIONS COURT SO I THINK THERE'S SOME, YOU KNOW THE QUESTION OF WHAT CONSTITUTES A MATTER IN GENERAL SESSIONS COURT MAY BE THE, MAY BE THE ISSUE HERE. I MEAN THE KIND OF FOCUS OF WHAT WE'VE GOT HERE BUT CERTAINLY IT HAS TO BE SOMETHING TO DO WITH GENERAL SESSIONS COURT FOR THIS RULE TO APPLY.

Q WELL COULD THERE BE ANY MATTER IN GENERAL SESSIONS COURT PRE-ARREST?

A WELL I GUESS IT'S ANTICIPATED TO BE IN GENERAL SESSIONS COURT BUT, NO. I MEAN IT'S NOT TECHNICALLY IN GENERAL SESSIONS IF THAT'S, I MEAN I UNDERSTAND YOUR QUESTION AND IT'S NOT I GUESS IT IS NOT UNTIL A FORMAL CHARGE IS BROUGHT AND IS

ANTICIPATED THAT IT MIGHT BE IN GENERAL SESSIONS IT MAY BE A FELONY INVESTIGATION THAT IS IF, IF, IF, YOU KNOW, THE EVIDENCE IS SUFFICIENT IT WILL BE IN GENERAL SESSIONS COURT BUT IT WILL NOT CROSS THAT, YOU KNOW IF YOU WANT TO DRAW A BRIGHT LINE THAT WOULD BE THE BRIGHT LINE.

Q WELL WOULDN'T THAT BE A LINE YOU WOULD DRAW IT CAN'T BE IN GENERAL SESSIONS UNTIL A CHARGE IS MADE?

A I DON'T THINK I CAN ANSWER IT ANY BETTER THAN I HAVE.

Q AND AS A RULE IS A RULE IN YOUR VIEW AMBIGUOUS ABOUT THE CLERK OF COURT ISSUING SUBPOENAS TO APPEAR AT A SPECIFIC TIME?

A IT SAYS AT A PLACE THEREIN SPECIFIED, AT A TIME AND PLACE THEREIN SPECIFIED.

Q IT'S UNAMBIGUOUS, ISN'T IT?

A I WOULD SAY SO, YES.

Q THE, YOU'RE INVOLVED WITH THE CHIEF JUSTICE ON
THE CRIMINAL RULES OF REVISION TASK FORCE?

A YES.

Q AND YOU'VE HAD THE HONOR OF BEING APPOINTED
TO THAT BY HER?

A CORRECT.

Q AND THAT WOULD BE BECAUSE OF YOUR EXPERTISE
IN CRIMINAL RULES?

A NO, I DON'T THINK IT'S BASED ON MY EXPERTISE IN
CRIMINAL RULES. I THINK IT PROBABLY HAS MORE TO DO WITH, YOU
KNOW, THEY NEEDED SOME ASSISTANCE FROM THE, THEY APPOINTED
TWO SOLICITORS. I DON'T THINK I HAVE ANY PARTICULAR KNOWLEDGE
OR EXPERTISE OTHER THAN MAYBE SOME EXPERIENCE AS A
PROSECUTOR AND A VIEW POINT FROM A PROSECUTION STANDPOINT.

Q IS IT YOUR INTENTION TO CONTINUE THE SAME PRACTICE?

A NO, I DON'T INTEND TO CONTINUE THE SAME PRACTICE. I CAN TELL YOU THAT BECAUSE, YOU KNOW, IT'S, IT'S, IT'S, WELL THERE ARE TWO PRACTICES CERTAINLY AT PLAY HERE. ONE PRACTICE IS THE STAMPING OF SUBPOENAS. THE SECOND PRACTICE IS THE USE OF SUBPOENAS FOR INVESTIGATORY PURPOSES.

YOU KNOW ON THE FIRST ONE, THE FIRST ISSUE AND I THINK THAT'S SORT OF A MOOT POINT. IT'S TERRIBLY, IT'S KIND OF UNFORTUNATE BECAUSE THE, YOU KNOW, THAT'S KIND OF A GOOFY RULE, THERE'S NO REVIEW BY THE, BY THE CLERK OF COURT. THERE'S NO RECORD KEPT BY THE CLERK OF COURT. THEY MERELY, THEY LITERALLY GO THROUGH AND, YOU KNOW, BOOM, BOOM, BOOM, STAMP THEM JUST LIKE WE STAMP AND I THINK WHAT HAPPENS IS YOU DEVELOP THE PRACTICE THAT SAVE MONEY, TIME AND ENERGY AND IT

REALLY WASN'T NECESSARY FOR THE CLERK TO DO IT SO THE CLERK GAVE THE AUTHORITY, YOU KNOW, BY GIVING THESE STAMPS, YOU KNOW, SORT OF GAVE HER AUTHORITY TO OTHERS TO, TO ENGAGE IN THIS PRACTICE. SO, BUT, YOU KNOW, THAT'S ALREADY BEEN RESOLVED BY OUR LOCAL CLERKS OF COURT.

THE SECOND ISSUE, YOU KNOW, WHETHER OR NOT IT'S, IT'S THE BEST PRACTICE, YOU KNOW, IT MAY NOT BE THE BEST PRACTICE, BUT IT HAS BECOME AN ISSUE NOW AND YOU'VE RAISED IT. CERTAINLY OTHERS MIGHT RAISE IT IN THE FUTURE SO I DON'T HAVE, YOU KNOW, I'M NOT, I'M NOT THAT I GUESS THICK HEADED THAT IF I'M GOING TO BE FACING THIS ISSUE ON OTHER CASES IN THE FUTURE THAT I'M GOING TO CONTINUE TO LEAVE MY, LEAVE, WHETHER RIGHT OR WRONG LEAVE THAT ISSUE OUT THERE FOR DEBATE WILL, WILL, WILL DETERMINE EITHER ONE OR TWO THINGS. ONE WILL EITHER USE ANOTHER PRACTICE IN THE MEAN, OR USE ANOTHER PRACTICE AND MAYBE,

MAYBE AS PART OF THIS CRIMINAL RULES REVISION COMMITTEE WE CAN ADOPT A RULE REGARDING SUBPOENAS THAT'S A LITTLE MORE COMMON SENSE AND PRACTICAL MUCH LIKE THE PRACTICES THAT WE'VE USED AS OPPOSED TO A RULE THAT'S, THAT APPEARS TO BE KIND OF OUTDATED.

Q AND JUST SO I UNDERSTAND TO UNDERSTAND YOUR TESTIMONY IN THE INFORMATION YOU HAVE ABOUT THE NINTH CIRCUIT IS, YOU DON'T HAVE DIRECT KNOWLEDGE, THAT'S SOMETHING THAT'S BEEN TOLD TO YOU?

MR. GOINGS: OBJECTION.

THE COURT: GENTLEMEN, I APPRECIATE THE FACT THAT IT WAS INJECTED IN THESE PROCEEDINGS. IT HAS NOTHING TO DO WITH WHAT WE'RE HERE ABOUT TODAY. IT'S NOT GOING TO IMPACT MY RULING IN ANY SHAPE, MANNER OR FORM. CAN WE MOVE ON THAT, PLEASE?

MR. CONDON: I UNDERSTAND, YOUR HONOR. THANK YOU.

NOTHING FURTHER, THANK YOU, SOLICITOR.

MR. PRIDE: MAY IT PLEASE THE COURT?

CROSS EXAMINATION

BY MR. PRIDE:

A GOOD MORNING, MR. PRIDE.

Q GOOD MORNING, MR. HEMBREE, VERY BRIEFLY, AND I
SIMPLY WANT TO TALK TO YOU ABOUT THE FIFTEENTH JUDICIAL CIRCUIT
WHICH YOU ARE THE SOLICITOR. IN YOUR CIRCUIT YOU HAVE MADE IT A
PRACTICE TO USE THE SUBPOENAS AS, YOU JUST READ A STATUTE
WHICH IS RULE 13, YOU JUST, YOU, YOU MADE IT A PRACTICE IN YOUR
OFFICE BASED ON YOUR PRIOR EXPERIENCE OF USING RULE 13 FOR
PURPOSES OF INVESTIGATION; IS THAT NOT CORRECT?

A MR. PRIDE, WE HAVE, I, THAT HAS A PRACTICE THAT
HAS BEEN ONGOING THAT WAS HERE, THAT WAS A PRACTICE THAT WAS
ONGOING WHEN I WAS ELECTED, IT HAS CONTINUED. I DIDN'T CHANGE

THAT PRACTICE, HASN'T BEEN A PROBLEM AND, BUT, BUT BE THAT AS IT
MAY IT IS, IT IS A PRACTICE THAT I DIDN'T, I DIDN'T CHANGE AND, AND IT
WAS A PRACTICE THAT WAS, THAT WAS IN PLACE SOME PLACE ELSE I
LEARNED THE USE OF SUBPOENAS SO IT'S NOT, THERE WAS ANOTHER
REASON THAT I WOULD NOT HAVE CHANGED IT.

Q AND AS YOU TESTIFIED WHICH IS REALLY NOT
RELEVANT BUT YOU KNOW OF OTHER JURISDICTIONS WHERE THAT SAME
PRACTICE IS GOING ON TODAY OR HAS BEEN GOING ON; IS THAT NOT
CORRECT?

A THAT'S CORRECT.

Q AND THERE'S NO QUESTION ABOUT THE FACT THAT
THE PRACTICE THAT YOU IMPLEMENTED AS IT RELATES TO THE
INVESTIGATION OF THE WHITE'S AND FIVE RIVERS WAS THE PRACTICE OF
USING RULE, THE RULE 13 SUBPOENAS, IS THAT NOT CORRECT, FOR
INVESTIGATION?

A WE USED SUBPOENAS AS PART OF THE INVESTIGATION OF FIVE RIVERS, THAT'S CORRECT.

Q ALL RIGHT, AND THERE'S NO QUESTION ABOUT THE FACT YOUR OFFICE DID NOT A PROTOCOL OR DID NOT PROMULGATE A POLICY TO ADOPT A LOG TO KEEP TRACK OF THE SUBPOENAS, DID YOU?

A NO, WE DID NOT HAVE A LOG.

Q RIGHT, AND MATTER OF FACT AS IT RELATES TO THE EVIDENCE IN THE FIVE RIVERS CASE AND IN THE WHITE'S CASE WHICH WAS CONTAINED IN YOUR OFFICE YOU DID NOT HAVE AN EVIDENCE LOG IN THAT CASE EITHER, DID YOU? MAY I EXPLAIN TO YOU WHAT I HAD IN MIND WHEN I SAID THAT?

A YEAH, I'M NOT REALLY, I'M NOT ---

Q DO YOU KEEP EVIDENCE? YOU AGREE YOU'RE SUPPOSED TO KEEP IT SEGREGATED, RIGHT?

A RIGHT.

Q AND IF SOMEONE GOES IN AND OUT WHERE THE EVIDENCE IS ORDINARILY YOU WOULD HAVE A LOG TO SIGN IN, I WENT IN AT A CERTAIN, CERTAIN TIME AND LEFT OUT AT A CERTAIN, CERTAIN TIME, YOU DID NOT MAINTAIN THAT KIND OF LOG, DID YOU?

A NO, BUT, BUT THAT'S NOT, I GUESS I WOULD DRAW THE DISTINCTION IN THE TYPE OF EVIDENCE YOU'RE TALKING ABOUT. IF THERE COPIES OF DOCUMENTS THAT ARE JUST MERELY COPIES OF THINGS THAT WE'VE RECEIVED FROM THE PHONE COMPANY AND THEY'RE EASILY RETRIEVABLE FROM THE PHONE COMPANY AGAIN I, I, I WOULD NOT, IT WOULD NOT BE NORMAL PRACTICE. I'VE NEVER DONE THAT WHERE I WOULD REQUIRE PEOPLE TO LOG IN AND OUT ON WHAT THEY LOOKED AT AND WHAT THEY DIDN'T LOOK AT REGARD, AS, AS IT RELATES TO THOSE PHONE, THOSE PHONE RECORDS SO THAT WOULD NOT BE A NORMAL PRACTICE FOR US.

NOW IF WE WERE USING ORIGINAL EVIDENCE LIKE, YOU

KNOW, A BLOODY BOOT OR SOMETHING LIKE THAT TYPICALLY WE
WOULDN'T HAVE IT IN OUR POSSESSION, WE WOULD ALMOST NEVER
HAVE IT IN OUR POSSESSION THE ORIGINAL EVIDENCE. BUT IF IT WAS
SOMETHING LIKE THAT, WELL WE WOULDN'T HAVE, WE DON'T, WE DON'T
USE THE LOGS, WE DON'T KEEP THAT KIND OF EVIDENCE OTHER THAN
OCCASIONALLY WE, I HAVE HAD LOG-IN SHEETS WE'VE USED WHEN WE,
IT HAS BEEN VERY RARE, MR. PRIDE. WE'VE HAD A FEW LIKE MAJOR
CRIMES THAT WE BORROW THE EVIDENCE OVER TO OUR OFFICE AND
KEPT IT THERE FOR A FEW DAYS TO, AS IT WAS JUST THAT MUCH WE
NEEDED TO REVIEW AND JUST OUT OF A MATTER OF, OF CONVENIENCE
AND THIS IS, YOU PROBABLY COUNT ON ONE HAND THE TIMES THAT'S
HAPPENED AND WE'VE HAD THE LAW ENFORCEMENT GUYS HAVE HAD TO
SIGN A LOG IN SOME OF THOSE CASES, YOU KNOW, BECAUSE WE HAD
ACCESS TO IT BUT THAT'S, IT'S EXTREMELY RARE.

Q YOU WOULD NOT DISPUTE THE FACT THAT THE

DOCUMENTS THAT YOU HAD IN YOUR OFFICE PERTAINING TO THE WHITE'S AND FIVE RIVERS WAS EVIDENCE, YOU WOULDN'T DISPUTE THAT, WOULD YOU?

A OH, NO, IT'S EVIDENCE BUT, CORRECT, SURE, SURE, IT'S EVIDENCE.

Q AND YOU WOULD NOT DISPUTE THE FACT THAT YOU KEPT THIS EVIDENCE IN YOUR OFFICE FOR OVER A YEAR, WOULD YOU?

A OH, YES, WE, WE KEPT IT UNTIL WE TURNED THE CASE OVER TO THE ATTORNEY GENERAL ALTHOUGH PARTS OF THE EVIDENCE WAS IN STORAGE AND OTHER PLACES BUT, YES, PARTS OF IT WERE IN OUR OFFICE.

Q YOU DIDN'T MAINTAIN A LOG AT THE STORAGE EITHER, DID YOU?

A NO, WE DID NOT.

Q NOW JUST ONE OTHER QUESTION WHEN IT COMES

TO DISCOVERY DO YOU, ONCE YOU RECEIVE THE NOTICE OF THE
DISCOVERY INFORMATION FROM A DEFENSE LAWYER DO YOU TURN THE
DISCOVERY OVER WITHIN A 30 DAY PERIOD?

A IF, IT'S TRULY ALL OVER THE, ALL OVER THE BOARDS,
WE, WE ENDEAVOR TO. SOMETIMES OUR DISCOVERY IS PREPARED
BEFORE WE EVER GET THE REQUEST AND WE TURN IT OVER
IMMEDIATELY. I MEAN WE GET SERVED WITH THE, WITH THE NOTICE, WE
GIVE IT TO THEM RIGHT AWAY. OTHER CASES WE MEET THE 30 DAY
STANDARD; OTHER CASES IT TAKES LONGER. A CASE THAT IS SO
DOCUMENT INTENSIVE LIKE THIS I WOULD NOT EXPECT TO TURN IT ALL
OVER WITHIN 30 DAYS. WE, WE, AND WE'VE HAD DIFFERENT LAWYERS
INVOLVED IN THIS CASE AND THIS CASE IS A LITTLE DIFFERENT BUT AS,
SO, NO, IT DOESN'T HAPPEN IN EVERY CASE BUT WE AT LEAST TRY TO
COMMUNICATE WITH THE LAWYERS ON THE OTHER SIDE AND LET THEM
KNOW, YOU KNOW, OFTENTIMES GIVE THEM WHAT WE'VE GOT AND LET

THEM KNOW OTHER THINGS ARE COMING AND LET THEM KNOW WHY WE CAN'T PROVIDE IT IN A TIMELY MANNER.

Q YOU ARE AWARE OF THE FACT THAT THE LAW REQUIRES YOU TO TURN IT OVER WITHIN 30 DAYS?

A CORRECT, I MEAN THE RULE REQUIRES US TO DO IT IN 30 DAYS MUCH LIKE AS THE RULE REQUIRES THE DEFENSE THAT HAS CERTAIN OBLIGATIONS UNDER THAT RULE AND FREQUENTLY IT'S VIOLATED BUT WE WORK TOGETHER AND KIND OF WORK THROUGH THOSE THINGS.

MR. PRIDE: THANK YOU SO MUCH, NO FURTHER QUESTIONS.

THE COURT: MR. PAULING?

MR. PAULING: JUST BRIEFLY, YOUR HONOR.

THE COURT: YES, SIR.

CROSS EXAMINATION

BY MR. PAULING:

Q SOLICITOR HEMBREE, YOU TESTIFIED THE ISSUANCE OF THESE PRETRIAL SUBPOENAS HAS BEEN A LONG STANDING PRACTICE IN YOUR CIRCUIT?

A YES, SIR.

Q WHEN I SAY PRE-TRIAL THESE PRE-ARREST SUBPOENAS, SOLICITOR, I'M GOING TO HAND YOU THE SOUTH CAROLINA RULES OF COURT 2008 EDITION, IT'S THE LATEST ONE THAT WE HAVE, RULES OF CRIMINAL PROCEDURE, RULE 13 THAT MR. CONDON ASKED YOU ABOUT WHAT SECTION, WELL LET ME ASK YOU THIS GO BACK, RULES OF CRIMINAL PROCEDURE HOW MANY SECTIONS ARE THEY BROKEN INTO?

A FIVE, WELL FOUR AND THEN IN THE APPENDIX OF FORMS.

Q OKAY, WHAT ARE THOSE, WHAT ARE THOSE FOUR AREAS?

A PRE-TRIAL MATTERS, TRIAL, POST TRIAL MATTERS,
GENERAL PROVISIONS.

Q OKAY, I'M SORRY, THE FIRST SECTION IS?

A PRE-TRIAL MATTERS?

Q SECOND SECTION?

A TRIAL.

Q THIRD SECTION?

A POST TRIAL?

Q FOURTH SECTION?

A GENERAL PROVISIONS.

Q OKAY, NOW RULE 13 WHAT SECTION DOES THAT FALL
WITHIN?

A TRIAL.

Q OKAY, AND RULE 13 BEING THE ISSUANCE OF
SUBPOENAS?

A THAT'S CORRECT.

Q OKAY, WOULD THAT LEAD YOU TO BELIEVE THAT,
EXCUSE ME, THAT RULE 13 APPLIES TO WITNESS SUBPOENAS?

A WELL I GUESS IT, IT'S, QUITE HONESTLY I'VE NEVER
THOUGHT IT BECAUSE I HAVEN'T REALLY, YOU KNOW, CAN LOOK AT JUST
RULE 13 SO IF IT'S RULE 13, BUT, BUT IN THAT CONTEXT, YES, I MEAN IT
DOES, IT'S UNDER THE HEADING OF TRIAL SO AND IT DOES, DOES TALK
ABOUT PEOPLE A GOOD BIT IN THAT RULE.

Q NOW AS FAR AS THE FIRST SECTION AND AGAIN
WHAT'S THAT LISTED AS?

A PRE-TRIAL MATTERS.

Q OKAY, NOW AND UNDERNEATH THAT, WHAT IS THE
FIRST AREA IN PRE-TRIAL MATTERS THAT THAT SECTION SPEAKS OF?

A AND THE SHERIFF?

Q WHAT ABOUT THE SHERIFF?

A THE SHERIFF TO FILE AFFIDAVITS ON ARREST.

Q AND THAT'S, I MEAN THAT'S THE FIRST THING
REGARDING THE ARREST?

A CORRECT.

Q OKAY, SO AT THAT POINT AS FAR AS THE RULES ARE
CONCERNED WE'RE ALREADY AFTER ARREST?

A TRUE.

Q OKAY, NOW AS FAR AS PRE-ARREST ARE THE RULES
OF CRIMINAL PROCEDURE, WELL LET ME ASK YOU THIS ARE RULES
SILENT ON THE ISSUANCE OF SUBPOENAS PRE-ARREST?

A YES.

Q NOW IN THE RULES OF CRIMINAL PROCEDURE ARE
YOU AWARE OF ANY PROHIBITION REGARDING PRE-ARREST
INVESTIGATORY SUBPOENAS?

A I DON'T KNOW OF ANY, ANYTHING THAT PROHIBITS

THAT.

Q OKAY, ANY STATUTE?

A NO, SIR.

Q LET ME BACK UP, ANY SOUTH CAROLINA STATUTE
THAT YOU'RE AWARE OF?

A NO SOUTH CAROLINA STATUTE THAT I KNOW OF.

Q ANY OTHER COURT RULE THAT YOU'RE AWARE OF
THAT, THAT PROHIBITS ANY TYPE OF INVESTIGATORY PRE-ARREST
SUBPOENA?

A NOTHING THAT WOULD PROHIBIT IT, I DON'T KNOW OF
ANYTHING THAT PROHIBITS IT.

Q SO IT APPEARS THE COURT RULES ARE JUST SILENT
ON THIS MATTER; IS THAT CORRECT?

A WELL IT DOESN'T, AS YOU SAY, AS YOU POINTED OUT
HERE IT DOESN'T DEAL WITH ANYTHING PRE-ARREST SO IT IS SILENT ON

THAT.

Q AGAIN RULE 13 AND SPECIFICALLY IN THE SECTION
MARKED TRIAL?

A THAT'S CORRECT.

MR. PAULING: NO FURTHER QUESTIONS, YOUR HONOR,
THANK YOU, SOLICITOR.

A THANK YOU, MR. PAULING.

REDIRECT EXAMINATION

BY MR. CONDON:

Q SOLICITOR HEMBREE, WE'RE A COUNTRY OF LAWS
AND NOT MEN, CORRECT?

A SURE.

Q AND YOU'VE JUST TESTIFIED THERE'S NOTHING IN
THESE CRIMINAL RULES THAT PROHIBITS PRE-ARREST SUBPOENAS?

A THERE'S NOT, THE RULES ARE SILENT ON IT.

Q NOTHING PROHIBITS IT, CORRECT?

A RIGHT.

Q IS THERE ANYTHING IN THE STATE OF SOUTH

CAROLINA THE STATUTES OF SOUTH CAROLINA, THE COURT RULES OF SOUTH CAROLINA THAT AUTHORIZES PRE-ARREST SUBPOENAS FOR THE CIRCUIT SOLICITOR?

A NO.

MR. CONDON: NOTHING FURTHER.

THE COURT: MR. PRIDE?

MR. PRIDE: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT, AND JUST ONE QUESTION, SOLICITOR. I GUESS ARTICLE 1 SECTION 10 OF THE STATE CONSTITUTION COULD ALSO IMPACT THIS PARTICULAR AREA, CORRECT, NO PERSON SHALL BE -- IF YOU'D LIKE ME TO READ IT TO YOU I'LL READ IT TO YOU?