

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

3 -----
4 COMMONWEALTH OF VIRGINIA

5 V.

6 JENS SOERING
7 -----

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12 THE HONORABLE WILLIAM W. SWEENEY, JR., PRESIDING

13 Bedford County, Virginia
14 March 1, 1990

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21 Court Reporter
22 1221 Twin Springs Court
23 Forest, Virginia 24551

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25

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1 (Court convened at 9:30 a.m. and in the presence
2 of the defendant and counsel, the following ensued.)
3

4 THE COURT: It's my understanding that the
5 hearing today is a hearing on motion to suppress certain
6 statements. According to the Virginia Code section on
7 cameras in the Courtroom, motions for suppressions of
8 statements are not to be covered, so there can be no
9 television covering of this hearing, no radio coverage and
10 no photographs in the Courtroom, nor can there be any tape
11 recorders in the Courtroom.

12 I think we're now ready. Let the record show
13 that this is a hearing in the Commonwealth of Virginia v.
14 Jens Soering case, a motion to suppress defendant's
15 statements. I have a copy of the motion, which I have
16 read.

17 I have previously stated that because of a
18 expressed prohibition in the Virginia statute dealing with
19 cameras in the Courtroom that no part of this hearing may
20 be televised or otherwise reported by the media in the
21 Courtroom. That's a matter over which I have no control.

22 All right. Maybe we should talk a little bit
23 about where we will go, gentlemen, if we don't finish this
24 afternoon. Are the witnesses from the United Kingdom
25 going to be here tomorrow?

1 MR. UPDIKE: Yes, sir, Your Honor, and they are
2 prepared to stay for the length of the hearing, whatever
3 that takes.

4 THE COURT: I have some thought that perhaps we
5 will not finish by 5:00 today. I am prepared to stay a
6 little later than that, but if we don't finish today I
7 would like to come back at 9:30 tomorrow morning and I've
8 cleared the morning for this in case it's needed. Does
9 that suit you gentlemen?

10 MR. CLEVELAND: Yes, sir, it does.

11 THE COURT: All right. Fine. I'm prepared to
12 proceed unless there are any motions for exclusion of
13 witnesses or any matters of that kind. Does anyone have
14 that?

15 MR. NEATON: We do, Judge. We have a motion to
16 exclude and separate all witnesses in this case.

17 THE COURT: Yes, I think that's appropriate.
18 All right. Would you call your witnesses first, Mr.
19 Updike?

20 MR. UPDIKE: Certainly, Your Honor.
21 Investigator Gardner and Detective Inspector Beever and
22 Constable Wright.

23 THE COURT: All right. You all will have to go
24 outside until called to testify.

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(Inspector Gardner and Inspector Beever and
Detective Constable Wright leave the Courtroom.)

THE COURT: All right. Did the defense have any
witnesses it would present today?

MR. NEATON: Not other than the defendant.

THE COURT: Of course, the defendant may stay in
Court and the law is, as we all know, that any testimony
which he might give in this type of hearing is not
admissible against him in the trial on the merits,
correct?

MR. NEATON: That's the way I understand it.

THE COURT: That's the way I understand it.
Who proceeds first? Who wants to go first?

MR. NEATON: Your Honor, I'll go first.

THE COURT: That'll be fine.

MR. NEATON: We call Ricky Gardner first, sir.

THE COURT: All right, sir.

The witness, RICKY GARDNER, having first been
duly sworn, testifies as follows:

THE COURT: Now before the witnesses begin to
testify, I might add that it's my practice to allow
witnesses to take any applicable notes to the witness

1 stand with them in case either side have those. All
2 right. Proceed, sir.

3 MR. NEATON: May I lead the witness, Judge?

4 THE COURT: Yes. On preliminary matters, yes.

5 MR. NEATON: Thank you.
6

7 DIRECT EXAMINATION
8

9 BY MR. NEATON:

10 Q Your name is Ricky Gardner, is that right?

11 A Yes, sir.

12 Q And where are you employed?

13 A The Bedford County Sheriff's Department.

14 Q Did you have that job back in June of 1986?

15 A Yes, I did.

16 Q What was your position or rank with the
17 Sheriff's Department in June of '86?

18 A I was an investigator.

19 Q And you are still an investigator now?

20 A Yes, sir.

21 Q And you were in charge or an investigator
22 assigned to the Derek and Nancy Haysom case?

23 A I was assigned to it, yes, sir.

24 Q In June of 1986 did you have occasion to
25 travel to London, England?

1 A Yes, sir, I did.

2 Q And that was in connection with your duties
3 as an investigator in this case?

4 A Yes, sir.

5 Q Did anyone go with you on that trip?

6 A Yes, sir.

7 Q Was that Mr. Updike, the Commonwealth's
8 Attorney, that went with you?

9 A Yes, sir.

10 Q When did you all arrive in London?

11 A When did we arrive in London?

12 Q Yes.

13 A It was a Tuesday, which I believe was June
14 3rd.

15 Q Can you tell me where you were staying in
16 London at that time?

17 A Yeah. We were staying at the Hotel Ibis.

18 Q And what borough or section of London was
19 that in?

20 A That was real close to Heathrow Airport and
21 I understand it was fairly close to Richmond.

22 Q It was somewhat of a drive, though, from
23 Heathrow to Richmond, is that right? Twenty-five or
24 thirty minutes in London traffic?

25 A Yes, sir, possibly.

1 Q Now on June 5, 1986, did you have occasion
2 to be at the Richmond Police Station?

3 A Yes, sir, I was.

4 Q Was Mr. Updike there with you?

5 A Yes, sir, he was.

6 Q What time did you arrive at the Richmond
7 Station that day?

8 A What time I actually arrived?

9 Q Yes.

10 A I can't be certain.

11 Q Did you attend the hearing that Jens
12 Soering and Elizabeth Haysom were a part of in the
13 Magistrate's Court earlier that morning?

14 A Yes, sir, I did.

15 Q You were in attendance at that hearing?

16 A Yes, sir.

17 Q And at that time both Miss Haysom and Mr.
18 Soering were represented by counsel?

19 A Yes, sir.

20 Q And that counsel's name was Keith Barker?

21 A Yes, sir, I believe so.

22 Q And he was a British solicitor?

23 A Yes, sir.

24 Q And the purpose of that hearing in the
25 Magistrate's Court was to obtain a Court order to detain

1 Miss Haysom and Mr. Soering for questioning on the Haysom
2 case?

3 A Yes, sir.

4 Q And that was pursuant to, as far as you
5 understood, the extradition treaty between the United
6 States and the United Kingdom, if you know?

7 A I don't know.

8 Q In any event, were you there when the
9 Magistrate ordered that Miss Haysom and Mr. Soering be
10 detained in the Richmond Police Station?

11 A Yes, sir, I was.

12 Q Do you know where they were being held
13 before they were sent to the Richmond Police Station?

14 A They were at separate facilities, but I do
15 not know the name of the facilities right offhand.

16 Q In any event, they were not at the Richmond
17 Police Station until after the Magistrate ordered them
18 detained, is that right?

19 A That's correct.

20 Q Did they object to the detention, a request
21 by the government of the United Kingdom at that time, at
22 the Magistrate's hearing?

23 A I'm trying to think.

24 Q Do you remember?

25 A I don't remember if they did or they

1 didn't, because I'm not a lawyer and I wasn't familiar
2 with how the system works in England.

3 Q Well, do you recall either one of them
4 getting up in Court and saying, "I agree to be detained in
5 the Richmond Police Station."?

6 A I do not recall that, no, sir.

7 Q Do you recall their solicitor getting up in
8 the Magistrate's Court and saying, "My clients agree to be
9 detained in the Richmond Police Station."?

10 A No, sir. I do not recall that.

11 Q In any event, the Magistrate entered an
12 order for their detention in the Richmond Police Station,
13 is that right?

14 A I assume so, yes, sir.

15 Q As far as you understood?

16 A Yes, sir.

17 Q I understand that you're not a lawyer, but
18 as far as you understood, there was some sort of Court
19 order that transferred both of them to the Richmond Police
20 Station, is that right?

21 A Yes, sir.

22 Q And that was for the purpose so that you
23 could interrogate them, is that right?

24 MR. UPDIKE: Your Honor, I understood the
25 Court's ruling that counsel could lead his own

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witnesses in preliminary matters and the Commonwealth would object and state that he's far exceeding that.

THE COURT: Any reply?

MR. NEATON: Well, I would indicate first the whole hearing is a preliminary matter, at least on the admissibility of the confession. And secondly, I would indicate that this is a police officer who's representing, in effect, is an adverse witness. That's why I asked the Court's permission to lead the witness.

MR. UPDIKE: I think the Court ruled, Your Honor, as to preliminary matters as to the questioning of this witness, not that this entire procedure is preliminary. As far as the witness being adverse, the witness has in no way established that he is adverse or proven to be so, and unless and until that occurs, we would respectfully submit counsel cannot lead his own witness.

THE COURT: All right. That's enough. Thank you, gentlemen. The objection is sustained. You have gone beyond the preliminary questions. You must now not lead.

1 BY MR. NEATON:

2 Q What was the purpose for Mr. Soering being
3 detained in the Richmond Police Station?

4 A So that I could interview him in reference
5 to the crimes.

6 Q And did you, in fact, interview him in
7 reference to the crimes?

8 A Yes, sir, I did.

9 Q Do you know what time that Mr. Soering
10 arrived at the Richmond Police Station?

11 A Approximately 1:00, 1:30.

12 Q Do you know what happened to Mr. Soering
13 when he arrived at the Richmond Police Station? Did you
14 see what happened to him?

15 A No, sir.

16 Q Do you recall at what time the Court may
17 have ended that day?

18 A No, sir, I do not.

19 Q Was Mr. Updike with you at the Court
20 hearing?

21 A Yes, sir, he was.

22 Q Was Mr. Beever of the London Metropolitan
23 Police with you at the Court hearing?

24 A I think he was there. I don't know whether
25 he was with us or not, but I believe he was there.

1 Q Did you see him there in the Courtroom?
2 A I don't recall.
3 Q Did you see Detective Wright there?
4 A I believe Detective Wright was there, yes,
5 sir.
6 Q You're more certain of that?
7 A It just seems that my recollection is that
8 I remember seeing Detective Wright there.
9 Q In the Courtroom?
10 A Yes, sir.
11 Q After the Magistrate's hearing and after
12 Jens Soering was transferred to the Richmond Police
13 Station, did you and Mr. Beever and Mr. Wright talk about
14 the upcoming interrogation?
15 A Yes, sir, we did.
16 Q At that time did you authorize Mr. Beever
17 and Mr. Wright to participate in that interrogation?
18 A Well, it was understood that Mr. Beever and
19 Mr. Wright would sit in on the interviews that I conducted
20 with Mr. Soering.
21 Q Did they have your authorization to
22 participate in those interviews, as well? In other words,
23 did you consent to them participating in those interviews?
24 A Yes, sir.
25 Q And so did they have your permission to ask

1 questions?

2 A Yes, sir.

3 Q To Mr. Soering?

4 A Yes, sir.

5 Q About the Haysom case?

6 A Yes, sir.

7 Q Now there came a time, did there not, on
8 June 5th that Jens Soering was brought to the interview
9 room at the Richmond Police Station?

10 A Yes, sir.

11 Q Do you know what time that was?

12 A I would say it was approximately 3:30 p.m.

13 Q You don't remember the exact time?

14 A I believe it was 3:35 to be exact, to the
15 best of my knowledge right now.

16 Q Did you make notes of this interview?

17 A Not at the time, no, sir.

18 Q When did you make those notes of the
19 interview?

20 A The notes of those particular interviews
21 were several days later.

22 MR. NEATON: Would you mark these, please?
23 Exhibits -- whatever defense exhibits, however
24 they are numbered. Pardon me? Number them
25 however you all number them. One is fine, yeah.

1 MR. UPDIKE: Your Honor, I don't know that
2 the numbering matters a whole lot, but I'm a
3 creature of habit. Isn't our usual procedure
4 here, and I know it varies in different places,
5 and I think that this is probably the most
6 correct way of doing it, the way Mr. Neaton is
7 doing it, but here, don't we usually only mark
8 them if they're received into evidence?

9 THE COURT: Well, they may be marked for
10 identification.

11 MR. UPDIKE: I'm aware of that, Your Honor.
12 That's fine. And whatever suits the Court
13 and Mr. Neaton. I was just asking that they
14 be numbered as they usually are, numbers for the
15 Commonwealth and letters for the defense. If
16 there's any problem with that, it doesn't
17 matter.

18 MR. NEATON: It's no problem. Thank you.

19 (Defendant's Proposed Exhibits A, B, C and D were
20 marked for identification only.)
21

22 BY MR. NEATON:

23 Q Mr. Gardner, I'm going to show you what's
24 been marked as Defendant's Proposed Exhibit A. I'd ask
25 you to look at this and tell me if that is a copy of your

1 notes of the first interview with Jens Soering in the
2 Richmond Police Station on June 5th of 1986?

3 A Yes, sir, they are.

4 Q Did you type those?

5 A No, sir, I did not.

6 Q How did you prepare the notes to be typed,
7 handwrite them out?

8 A Well, at the time, at the 3:25 interview,
9 Mr. Soering requested that there be no notes taken.

10 Q I'm asking you not what Mr. Soering may
11 have said or may not have said at the hearing, I'm asking
12 you how did you transfer the notes from your mind to this
13 piece of paper?

14 A How did I do that?

15 Q Yeah. Did you dictate them or did you
16 write them down?

17 A I wrote them down, yes, sir.

18 Q When did you write them down?

19 A On the 9th of June.

20 Q And were you still in London when you wrote
21 them down?

22 A Yes, sir, I was.

23 Q And these notes are accurate to the best of
24 your recollection?

25 A Yes, sir, they are.

1 Q I'm showing you again the exhibit, which is
2 Proposed Exhibit Number A. Does that refresh your memory
3 as to, and just read it to yourself, and tell me if that
4 refreshes your memory as to when the interview began?

5 A Yes, sir.

6 Q When did the interview begin?

7 A I advised him of the Miranda at 3:35 p.m.

8 Q Did the interview begin before 3:35 p.m.?

9 A There was no questions asked before
10 3:35 p.m.

11 Q In your notes you indicate that the date of
12 the interview as June 5, 1986, at 3:25 p.m., is that
13 correct?

14 A Yes, sir. It is.

15 Q What happened for those ten minutes between
16 3:25 and 3:35? What did ya'll talk about?

17 A I'm not sure if I understand what you're
18 saying.

19 Q You told me that you read Miranda warnings
20 to Mr. Soering at 3:35 p.m.?

21 A Yes, sir.

22 Q Right?

23 A Yes, sir.

24 Q Okay. That's definite?

25 A Can I see that again, please?

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Q Sure.

MR. NEATON: In fact, why don't we have one other item marked. Maybe that'll --

BY MR. NEATON:

Q Mr. Gardner, I'm going to show you what's been marked as Defendant's Proposed Exhibit C. Is that a Miranda form, standard Bedford County issue, that you filled out in London on June 5, 1986?

A Yes, sir.

Q And was that the Miranda form that you filled out at 3:35 p.m. on June 5th?

A Yes, sir.

Q By the way, Jens Soering did not sign that Miranda form, did he?

A No, he did not.

Q Thank you. Now what I'm getting at is, you read the Miranda rights to Mr. Soering at 3:35 p.m., is that right?

A Yes, sir, I did.

Q And Mr. Soering and you and Mr. Beever and Mr. Wright were in the interview room at 3:25 p.m., is that right?

A At 3:25? I believe that's the time he was brought up from downstairs.

1 Q So then this notation on your notes, on
2 Exhibit A, is inaccurate that the interview began at
3 3:25 p.m.?

4 A Well, it says here that at 3:25 p.m. that
5 day Detective Kenneth Beever checked Jens Soering out and
6 brought him to Detective Chief Inspector Michael Paton's
7 office. Yes, sir.

8 Q Did it take them ten minutes to get him
9 from the bottom floor to Detective Paton's office?

10 A I wouldn't think so, no, sir.

11 Q Took them about what, thirty seconds or a
12 minute, if you know?

13 A I don't know.

14 Q Well, when did he get into the room?

15 A I don't know.

16 Q Sometime before 3:35 and sometime after
17 3:25?

18 A Obviously, he came in the room before 3:35.
19 yes, sir.

20 Q Were you in the room when Beever, Wright
21 and my client walked in?

22 A Yes, sir.

23 Q Anybody say anything for eight or nine or
24 ten minutes?

25 A Yes, sir.

1 Q What did you say?

2 A I introduced myself -- Well, reintroduced
3 myself to Jens. I told him why we were there and that we
4 wanted to talk to him about Elizabeth Haysom and her
5 parents' relationship and asked was he willing to talk to
6 us and he said he was.

7 Q And you concluded that interview at 5:28?

8 A Yes, sir. He was taken back downstairs at
9 5:28.

10 THE COURT: Is that :28 or :48?

11 MR. NEATON: :28 was what I asked.

12
13 BY MR. NEATON:

14 Q So you talked to him for two hours?

15 A What's --

16 Q It's a question. Did you talk to my client
17 for two hours, from about 3:35 p.m. until about 5:28 p.m.
18 on the 5th of June?

19 A Yes, sir.

20 Q And this one and a half pages of notes is
21 your summary of the two-hour interview?

22 A Yes, sir.

23 Q I understand that you then talked to Mr.
24 Soering a second time on June 5th, is that right?

25 A Yes, sir.

1 Q Was that at 6:00?

2 A Approximately 6:00, yes, sir.

3 Q And that interview lasted until about 6:45?

4 A Yes, sir.

5 Q Excuse me. Getting back to the 3:25

6 interview, at any time during that interview did my client

7 talk to his solicitor?

8 A No, sir. Not during the interview, no.

9 sir.

10 Q Well, at any time between 3:25 and 5:28 in

11 the afternoon of the 5th of June, did my client talk to

12 his solicitor?

13 A No, sir.

14 Q Did you see Mr. Beaver talk to my client's

15 solicitor at that time?

16 A No, sir.

17 Q Was Mr. Beaver always in the room with you

18 between 3:25 and 5:28 p.m.?

19 A Yes, sir. I believe he was.

20 Q He never left the room, to the best of your

21 memory?

22 A Not to my knowledge, he didn't.

23 Q Now at 6:00 you talked to my client again.

24 It lasted about forty-five minutes, right?

25 A Yes, sir.

1 Q And during that interview Mr. Soering
2 expressed a desire to consult with an attorney, did he
3 not?

4 A No, sir.

5 THE COURT: Did you say yes or no?

6 THE WITNESS: No, sir.

7
8 BY MR. NEATON:

9 Q During that interview Mr. Soering declined
10 to answer certain questions, is that not true?

11 A That's true.

12 Q And he told you that he would only discuss
13 these questions with you after he had a chance to talk to
14 an attorney, is that right?

15 A Yes, sir.

16 Q And because of that, he terminated the
17 interview at 6:45, right?

18 A Could you ask me that question again,
19 please? I'm not --

20 Q And because of that, you ended the
21 interview at 6:45, is that right?

22 A That's right.

23 Q Because he had said that he would not
24 answer your questions until he had a chance to talk to a
25 lawyer, right?

1 A What he said was that he would answer some
2 questions and some questions he wouldn't without first
3 consulting with an attorney.

4 Q Did he tell you that he wanted to talk to
5 an American attorney about the case in the U.S.A. and then
6 talk to the police?

7 A Before he answered certain questions.

8 Q And those questions that he was referring
9 to were questions that had to do with whether or not he
10 was or was not present at the Haysom house on the weekend
11 of the 29th through the 31st of March. Is that not true?

12 A I think the exact question was, he said he
13 knew something about his involvement or non-involvement in
14 this case and he would only discuss it with me after
15 talking to an attorney. I asked him was he requesting an
16 attorney and he said no.

17 Q You asked him if he was requesting an
18 attorney at that time, right?

19 A At that time, yes, sir.

20 Q And that's when he told you, no. He wanted
21 to wait until he could talk to an American attorney in the
22 U.S.A., right?

23 A No, sir. That's not what he said.

24 Q In any event, you ended the interview
25 because of the request for counsel, right?

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A No, sir.

Q You ended the interview because he wouldn't answer your questions until he had a chance to talk to a lawyer, right?

A I ended the interview because I was exercising caution.

Q And the caution you were exercising was that there was a request for counsel?

MR. UPDIKE: Your Honor, isn't this leading again? We object.

THE COURT: It is, and it's sustained.

MR. NEATON: I think, Your Honor, this will demonstrate the adverse of interest between this witness and the defendant in this case. He's the police officer who's taking the statement. He's the proponent of the statement, and I would respectfully ask the Court's permission to lead the witness.

MR. UPDIKE: Your Honor, we think that the Friend's Book on Evidence is clear. Simply calling someone to the stand and knowing who he is and what his position is and not necessarily giving you the answers that you wish, are not the basis for declaring the witness an adverse witness. The witness has been completely

1 cooperative and is answering the best that he
2 knows how. He has in no way proved to be
3 hostile. He has in no way proved to surprise
4 counsel, because counsel has the notes. There's
5 no reason that this witness be declared an
6 adverse witness.

7 THE COURT: Denied.

8 MR. NEATON: Pardon me, Judge?

9 THE COURT: Denied, sir. Your request to
10 have the Court declare the officer an adverse
11 witness under the statute is denied.

12 MR. NEATON: All right, I understand.

13
14 BY MR. NEATON:

15 Q Were you exercising caution at 6:45 p.m.
16 that day?

17 A Yes, sir.

18 Q And were you exercising caution because of
19 the request for counsel?

20 A No, sir. Could you ask me that question
21 again, please?

22 Q Were you exercising caution because of the
23 defendant's request for counsel at some point in the
24 future?

25 A Yes, sir.

1 Q Were you then concerned that if you
2 continued the interview at that point that you might
3 violate his constitutional rights?

4 A I was concerned, yes, sir.

5 Q Was my client then returned to his cell in
6 the Richmond Police Station at approximately 6:45?

7 A As far as I know, yes, sir.

8 Q What did you do after you ended the
9 interview at 6:45?

10 A I don't recall.

11 Q Did you go have dinner?

12 A Possibly.

13 Q Did you stay in the police station?

14 A I don't remember.

15 Q Did you go talk to Mr. Updike about what
16 had happened?

17 A Possibly. I don't remember.

18 Q You have no idea what you did after the
19 interview ended?

20 A No, sir.

21 Q Do you remember ever leaving the police
22 station between 6:45 p.m. and 8:00 p.m. on the evening of
23 June 5th, leaving the Richmond Police Station?

24 A Yes, sir. Do I remember leaving the police
25 station?

1 Q Yes.

2 A No, sir. I do not remember leaving the
3 Police station.

4 Q Do you remember staying in the police
5 station or remaining in the police station during this
6 time period?

7 A Well, I don't remember leaving so,
8 apparently, I stayed there.

9 Q Let me ask you this. Do you remember
10 talking to Mr. Beever between 6:45 and 8:00 p.m. on the
11 5th of June?

12 A I don't remember, but I'm sure we did talk.

13 Q Do you have any memory of talking to Mr.
14 Updike during that time period?

15 A Well, he was there, so I probably did talk
16 to Mr. Updike. Yes, sir.

17 Q Did you probably talk to him about the
18 case?

19 A Yes, sir.

20 Q Did you probably talk to him about the
21 interview at 6:00?

22 MR. UPDIKE: Judge, he's leading again.

23 MR. NEATON: I don't believe that's a
24 leading question.

25 MR. UPDIKE: "Didn't you talk to him about

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the case?" Isn't that suggesting an answer,
Your Honor?

THE COURT: Well, that's a borderline
question as to whether it's leading. I
overrule the Commonwealth.

MR. UPDIKE: All right, sir.

BY MR. NEATON:

Q Did you talk to Mr. Updike about the case
during that time?

A Yes, sir, I'm sure I did.

Q Did you talk to him about what had happened
at the 6:00 interview?

A Yes, sir.

Q Did Mr. Beever talk to Mr. Updike about
what happened at the 6:00 interview, if you saw it or
heard it?

A I don't know.

Q Did Mr. Wright talk to Mr. Updike, if you
know?

A Did he talk to him?

Q Between 6:45 and 8:00 p.m. that night, if
you know?

A I don't know, sir. I do not know.

Q When you talked to Mr. Updike about the

1 6:00 interview, did you voice to him your concerns about
2 my client's refusal to answer certain questions and the
3 request for counsel that he had made?

4 A Yes, sir.

5 Q And did you ask Mr. Updike for legal
6 assistance in determining what your next move might be in
7 your interrogation of my client?

8 A Yes, sir.

9 Q And did Mr. Updike provide you with that
10 legal assistance?

11 A Yes, sir.

12 Q Did there come a time later on the evening
13 of June 5th of 1986 that you again interviewed Mr.
14 Soering?

15 A Yes, sir.

16 Q And where did that interview take place?

17 A In Detective Chief Inspector Michael
18 Paton's office.

19 Q And who was there with you in the office at
20 that interview?

21 A Mr. Soering, Mr. Beever, Mr. Wright and
22 myself.

23 Q You don't know where Mr. Updike was at that
24 time?

25 A No, sir. I do not know where he was.

1 Q Did you see how my client was brought into
2 the interview room for the 8:00 interview?

3 A No, sir.

4 Q Did you see him brought into the room?

5 A Well, I was already in the room.

6 Q Well, did you see him brought into the
7 room?

8 A The times that I saw him he came up the
9 front stairs.

10 Q Was Mr. Beever accompanying my client into
11 the interview room at 8:00 p.m. on the 5th of June?

12 A I don't recall.

13 Q Did Mr. Wright accompany my client into the
14 interview room at 8:00 p.m. on the 5th of June?

15 A It was either Mr. Wright or Mr. Beever.

16 Q Could it have been both of them?

17 A Very possibly, yes, sir.

18 Q You don't know then?

19 A I don't know.

20 Q Now do you know the time at which that
21 interview began?

22 A I believe I advised Mr. Soering of the
23 Miranda warning at 8:05 p.m.

24 Q And by advising him of the Miranda warning,
25 does that mean that you read from a form, the Bedford

1 County Miranda rights' form, to Mr. Soering?

2 A Yes, sir, I did.

3 Q And so you filled out the form at
4 8:05 p.m.?

5 A The way I do it is, I date it and put the
6 time at the top and work down.

7 MR. NEATON: This is Exhibit D, if you
8 please. Thank you.

9
10 BY MR. NEATON:

11 Q I'm going to show you what's been marked
12 for identification purposes as Defendant's Exhibit Number
13 D, the letter D, and ask you, is that a copy of the
14 Miranda rights' form that you began filling out at
15 8:05 p.m. on the June 5th, 1986?

16 A Yes, sir.

17 Q Thank you.

18 THE COURT: Did you say June 6th?

19 MR. NEATON: June 5th, 1986.

20 MR. UPDIKE: Judge, I hate to interrupt,
21 but could I ask for a little guidance as to
22 these proposed items being introduced. Are
23 they going to be introduced? Is he just
24 proposing them and marking them? I know that
25 we're following the technical way of doing

1 It, but I also thought when that approach was
2 followed, after the foundation was laid, then
3 there was a motion to introduce it or something.
4 And we just keep getting all these proposed
5 exhibits.

6 THE COURT: Well, my understanding is
7 that counsel for the defense is introducing
8 these exhibits for purposes of this particular
9 hearing --

10 MR. UPDIKE: Yes, sir.

11 THE COURT: -- and having them marked for
12 identification, but I do not understand that
13 he necessarily is now introducing them for
14 purposes of the trial before the jury. Maybe
15 I'm wrong.

16 MR. NEATON: That's correct, Judge.
17 They're for purposes of this hearing only and
18 at this point I have not even moved their
19 admission into evidence at this hearing.

20 THE COURT: Correct. And so I have not
21 even signed them as such. They're just being
22 marked for identification.

23 MR. UPDIKE: That's all I'm interested
24 in. There's not even a request that they be
25 received into evidence, is there?

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THE COURT: Not as such.

MR. UPDIKE: And I understand, of course, Your Honor, that if they're received into evidence during this proceeding does not mean that they're admissible at trial.

THE COURT: Right. Well, I think he has the right to do that.

MR. UPDIKE: Yes, sir, Your Honor, but the reason I'm asking, if I was to introduce some of these same things, am I going to have to get them marked and introduced? I just wanted to know whether they are formally exhibits or not.

THE COURT: You may do the same thing he's doing.

MR. UPDIKE: All right, sir. Thank you.

BY MR. NEATON:

Q Mr. Gardner, this form contains a number of lines at the top. Is that correct, meaning Proposed Exhibit Number D?

A Yes, sir.

MR. UPDIKE: Can I see Proposed Exhibit Number D, even though it's just proposed? Can I see this?

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MR. NEATON: Sure.

MR. UPDIKE: Okay. Thank you, sir.

BY MR. NEATON:

Q Can you tell me how long it took you to fill out the top of the form?

A The top? The date, the time --

Q The place, name, date of birth, sex, height, weight, hair color, Social Security Number, marital status, education, physical condition?

A No, sir. I don't know how long it took me.

Q Would it be fair to say that although you began at 8:05 p.m. you didn't finish filling out the form until sometime after 8:05 p.m.?

A Repeat the question again, please.

Q Would it be fair to say that although you began to fill the form out at 8:05 p.m. that it took you longer than the time 8:05 to fill the form out and read it to the defendant?

A I couldn't say that, no, sir.

Q So you could have filled the form out and read all of his Miranda rights in the space of one minute to my client? Is that what your testimony is today?

A No, sir.

Q Then how long did it take you to fill the

1 form out and read the Miranda rights to my client?

2 A I don't know.

3 Q Now, did the interview end at 11:14 p.m.

4 A That interview ended at approximately

5 11:14 p.m.

6 Q Give or take a minute or two either side?

7 A Yes, sir.

8 Q Now were there any breaks taken in that

9 interview?

10 A I recall -- Yes, sir, there was.

11 Q How many breaks were taken in that

12 interview? Do you know? Do you remember?

13 A I think actually there were three breaks.

14 Q How long did the first break last?

15 A I don't know.

16 Q Can you give an estimate on how long it

17 lasted? Five minutes? Ten minutes?

18 A No, sir, I can't.

19 Q Five hours? You have no idea?

20 A Certainly not five hours.

21 Q How long did the second break last?

22 A The second break on that tape, I believe,

23 was probably a short break.

24 Q What do you mean by a fairly short break?

25 A Not long in time.

1 Q Can you give me an estimate?
2 A No, sir.
3 Q Would you say that it would be less than
4 five minutes?
5 A No, sir.
6 Q Would you say that it would be less than
7 ten minutes?
8 A No, sir.
9 Q Would you say that it would be greater than
10 five minutes?
11 A No, sir.
12 Q Let me show you page eight of this
13 document. I'd ask you to read to yourself the first eight
14 or ten lines, to yourself, and then tell me if that helps
15 you remember how long the first break lasted.
16 MR. UPDIKE: Please, for my
17 identification, what is the document shown to
18 the witness, please?
19 MR. NEATON: What purports to be a
20 transcript of that interview.
21 MR. UPDIKE: And the page that you referred
22 him to?
23 MR. NEATON: Page eight.
24 MR. UPDIKE: Thank you, sir.
25 THE WITNESS: Yes, sir.

1 BY MR. NEATON:
2 Q That helped you remember how long the break
3 lasted?
4 A No, sir.
5 Q Let me show you page fourteen of the same
6 document. You can read to yourself the first ten lines or
7 so. In fact, just read the line where I've made a
8 notation next to it to yourself.
9 A Yes, sir.
10 Q Mr. Gardner, does that help you remember
11 how long that little short break took?
12 A No, sir, it doesn't.
13 Q Would you say that the little short break
14 could be no greater than fifteen minutes?
15 A No, sir.
16 Q You have no idea?
17 A No, sir.
18 Q But we know it didn't last three hours,
19 right?
20 A The break?
21 Q The break.
22 A The break didn't last three hours.
23 Q Now was this interview taped recorded?
24 A Not the whole thing, no, sir.
25 Q So there was part of the interview was not

1 tape recorded at 8:05?

2 A That's correct.

3 Q When was the tape turned on?

4 A When was the tape turned on?

5 Q Yes.

6 A I don't know.

7 Q Did you ever make a note of when the tape
8 was turned on?

9 A I may have, but I don't have any --

10 Q Don't you think it would have been
11 important to make a note of when the tape was turned on?

12 A Did I think it was important to make a
13 note? I'm sorry.

14 Q I'll repeat the question. Did you think it
15 was important to make a note of the time that you turned
16 on the tape for the first time in that interview?

17 A Well, I may have.

18 Q But you don't even remember if you made a
19 note?

20 A No, sir.

21 Q Let me show you the purported transcript of
22 that interview. I'd like you to look at the first page.
23 Does that help you remember when you turned the tape on?
24 You've read the entire first page?

25 A No, sir.

1 Q Have you read at the top?
2 A Yes, sir.
3 Q Does that help you remember when you turned
4 the tape on?
5 A Well, it was after I had advised him of his
6 rights.
7 Q My question is, how long after you advised
8 him of his rights did you turn the tape on?
9 A I would say right after I advised him of
10 his rights and he signed it and it was witnessed. And
11 then I -- He said it was okay to use the tape and we used
12 the tape.
13 Q But you made no note of that?
14 A No, sir.
15 Q Did you make a note of when my client
16 actually signed the Miranda form?
17 A No, sir.
18 Q I mean, obviously, he did not sign the
19 Miranda form at 8:05 p.m., did he?
20 A No, sir.
21 Q So there was a delay between the time that
22 you started filling out the Miranda form and the time that
23 he signed it?
24 A Well, I had to ask the questions and I had
25 to advise him of his rights and then asked him did he

1 understand them and if he did so, sign the form.

2 Q My question is, how long did that take?

3 A I don't know.

4 Q Did you talk to him about anything else
5 before he signed the Miranda form?

6 A No, sir.

7 Q Do you know how long -- Have you ever timed
8 the length of the tape for this statement?

9 A No, sir. Not per se. No, sir.

10 Q Is the actual length of the tape slightly
11 less than two hours, if you know?

12 A I don't know.

13 Q How long did the third break take?

14 A Well, it wasn't a third break, per se.
15 that's a play on words. At the conclusion of that
16 interview the tape expired.

17 Q So the tape ran out?

18 A Yes, sir, it did.

19 Q And then you just ended the interview?

20 A Well, that was my intentions, yes, sir.

21 But at the time, Mr. Soering, we were sitting there
22 talking and he was talking in that particular interview
23 about calling the West German Embassy and the German
24 Embassy.

25 MR. NEATON: I'd ask that that be stricken

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as unresponsive to my question.

MR. UPDIKE: We have no objection to him striking, if he wants to.

THE COURT: So ordered.

BY MR. NEATON:

Q Were you in charge of this interview?

A Was I in charge?

Q Yes.

A I assume. I was assigned to work the case and I guess -- I don't know if I'd use the word "charge," "I was in charge," but I was responsible for it.

Q At the time of this interview, did you know that Mr. Soering was represented by Mr. Barker in England?

A On the fraud charges. Well, you see, I'm not accustomed to the British laws so I, you know, I'm not certain.

Q However, you were in Court earlier that day?

A Yes, sir.

Q And that wasn't on the fraud charge?

A Sir?

Q The Court appearance earlier that day did not concern the fraud charge, did it?

A No, sir.

1 Q It concerned this charge, right?
2 A Yes, sir.
3 Q And Mr. Barker was representing Mr. Soering
4 In Court on this charge, right?
5 A Here again, I'm not --
6 MR. UPDIKE: Your Honor --
7 MR. NEATON: I'll withdraw the question,
8 Your Honor.
9 THE COURT: May I ask a question just for
10 my own information?
11 MR. NEATON: Sure.
12 THE COURT: My general understanding was
13 that in the United Kingdom that barristers try
14 cases and solicitors are basically office
15 attorneys, yet you refer to this attorney in
16 Court as a solicitor. I'm a little confused.
17 Explain that to me.
18 MR. NEATON: Well, this was a Magistrate's
19 Court and the requirement of a barrister acting
20 for a client was not present at this time.
21 THE COURT: I see. Thank you. By the
22 way, when we get to a good place for a break,
23 we've been going at it for about an hour, let me
24 know and we'll stop a little while.
25 MR. NEATON: Sure.

1 BY MR. NEATON:

2 Q In any event, my client was returned to his
3 cell at about 11:14?

4 A I believe that's right, yes, sir. I'm not
5 certain.

6 Q Did you interview him again on the 5th of
7 June?

8 A No, sir.

9 Q After the tape ran out, how long did you
10 stay at the police station on the 5th of June?

11 A I don't have any idea.

12 Q Did you stick around and talk to Mr. Updike
13 after the interview ended?

14 A Possibly.

15 Q Did you and Mr. Beever and Mr. Wright talk
16 a little bit after the interview ended?

17 A I'm sure we did, yes, sir.

18 Q Do you recall being in the Richmond Police
19 Station at about midnight when the 5th of June would turn
20 into the 6th of June?

21 A I don't remember.

22 Q Did you ever meet Mr. Barker in the
23 Richmond Police Station at about midnight on, it would be
24 a little bit after midnight in the early morning of June
25 6th?

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A I don't recall.

Q Getting back to the 6:00 interview, did you ever tell my client that you would get him an attorney at that interview, at the 6:00 interview?

A Did I tell him that?

Q Yes.

A No, sir.

Q Did Mr. Beever tell him that?

A No one told him that, because he wasn't requesting an attorney.

Q On June 5th, did you know how many days you were authorized to interrogate my client under the order of the British Magistrate?

A Did I know how many days? No, sir, I did not.

Q Did you know that you had a limited time to interrogate him under British law?

A Yes, sir.

Q Did you know that the Magistrate had only given you four days in which to complete your interrogation?

A I don't recall the number of days.

Q Did you know that you had until the following Monday to conclude your interrogation?

A I don't remember the number of days, Mr.

1 Neaton. I'm sorry.

2 Q Do you remember the last day on which you

3 knew you were authorized to interrogate my client?

4 A No, sir.

5 Q You don't remember that now, is that what

6 you're saying?

7 A Yes, sir.

8 Q Did you know it then?

9 A It's possible, yes, sir.

10 Q It's likely, isn't it?

11 A Yes, sir.

12 Q It's likely you knew that you only had

13 until the following Monday to interrogate Mr. Soering,

14 isn't that right?

15 A I believe it was Monday, yes, sir.

16 Q Thank you. On the 6th of June, did you

17 interview Mr. Soering?

18 A Yes, sir.

19 Q And at that interview, do you know when

20 that began?

21 A No, sir, not exactly.

22 Q Let me show you the Miranda form for that

23 interview. Does that refresh your memory?

24 A I advised him of his Miranda at 11:40 a.m.

25 Q Does that mean that he was brought into the

1 Interview room at 11:40 a.m.?

2 A No, sir, not necessarily.

3 Q Do you know when he was brought into the

4 Interview room on the 6th of June?

5 A No, sir, I do not.

6 Q Were you seated in the interview room when

7 he was brought into that room on the 6th of June?

8 A On the 6th of June? No, sir, I wasn't.

9 Q Where were you?

10 A I was in, I believe the guy's name is Chief

11 Inspector O'Conner's office. I was in another office

12 there in the police station.

13 Q Were you talking about this case?

14 A No, sir.

15 Q How did you know to come to the interview

16 room at about 11:40 a.m.?

17 A I believe either Detective Sergeant Beaver

18 or Detective Constable Wright, I believe they told me that

19 Jens had made a request to talk to us again.

20 Q So you weren't present when that request

21 was made?

22 A No, sir, I wasn't.

23 Q That request was not put to you in writing,

24 was it?

25 A Not to me, personally, no, sir.

1 Q You simply relied on what was told to you
2 by the British officers?

3 A Yes, sir.

4 Q Did you know at that time how long the
5 British officers had been talking to my client?

6 A I don't remember that they were even
7 talking to him. But to answer your question, no, sir.

8 Q So you do not know what was happening
9 between my client and Mr. Beever and Mr. Wright prior to
10 11:40 a.m. on the 6th of June, is that right?

11 A No, sir.

12 Q That's not right?

13 A Say it again, sir.

14 Q Do you know what was happening between Mr.
15 Beever and Mr. Wright and my client on the 6th of June
16 before 11:40 a.m.?

17 A Not right now, I don't, no, sir.

18 Q You weren't there witnessing what was
19 happening?

20 A No, sir.

21 Q Thank you.

22 MR. NEATON: Judge, do you think this is
23 a good time to take a break?

24 THE COURT: Yes, I do. Thank you. Step
25 down. There'll be a ten minute break.

1 (A short recess was taken, after which the following
2 ensued in the presence of the defendant and counsel.)

3
4 THE COURT: I suggest we go to 6:00 today
5 and then stop and come back at 9:30 tomorrow.
6 And then, we will just have to stay here
7 tomorrow or tomorrow evening or tomorrow night,
8 if necessary, until we finish. I think that we
9 would like to finish up before the weekend.
10 That's my schedule. If anyone has any problems
11 with it, I'd be glad to hear you. All right,
12 Mr. Gardner.

13 MR. UPDIKE: As Investigator Gardner is
14 coming to the stand, in that regard if I could
15 just state to the Court for counsel's behalf,
16 if at all possible, I would like to do that,
17 because if I could advise the Court, on Monday
18 at 2:00 I have a preliminary hearing in another
19 murder trial that I really need to be there for
20 that.

21 I'm not suggesting that this would go into
22 Monday, but if possible I'd like to avoid that.

23 THE COURT: All right. Mr. Neaton.
24
25

1 BY MR. NEATON:

2 Q Mr. Gardner, did Jens ask to talk to you at
3 3:25 p.m. on the 5th of June? The first time you talked
4 to him, did Jens ask to talk to you?

5 A No, sir.

6 Q The second time you talked to him, did Jens
7 ask to talk to you? That's the 6:00 p.m. conversation.

8 A No, sir.

9 Q I show you Proposed Exhibit B. Are those
10 the notes of the 6:00 p.m. interview on the 5th of June?

11 A Yes, sir.

12 Q When did you make those notes?

13 A I recollect that, to the best of my
14 knowledge right now, I made them on the 9th of June.

15 Q Of '86?

16 A Yes, sir.

17 Q In London?

18 A Yes, sir.

19 Q On the 6th of June of '86, when did you go
20 to the police station that day? Do you recall what time
21 you arrived?

22 A On the 6th?

23 Q Yes.

24 A No, sir, I don't recall.

25 Q Did you arrive at the police station

1 sometime before 11:00 a.m. that day?

2 A I don't recall right off.

3 Q Let me see if I can jog your memory a
4 little. Did you arrive at the police station a little bit
5 before 11:40 a.m. on the 6th of June?

6 A Yes, sir.

7 Q And you were talking to another Detective
8 Inspector prior to 11:40 a.m.?

9 A Yes, sir.

10 Q How long were you talking to that person?

11 A I don't recall.

12 Q Were you talking to him a long time?

13 A No, sir. I wouldn't say a long time, no,
14 sir.

15 Q It would be a short time?

16 A I don't remember, Mr. Neaton.

17 Q Do you remember what you were talking
18 about?

19 A I think we were just talking about England,
20 in general.

21 Q Warm beer? No ice?

22 A Not necessarily, no, sir.

23 Q Was Mr. Updike was in part of this
24 conversation?

25 A I believe he was there, yes, sir.

1 Q You and Mr. Updike went to the station at
2 the same time?

3 A Yes, sir.

4 Q Together?

5 A Yes, sir.

6 Q By taxi?

7 A No, sir.

8 Q By tube?

9 A No, sir.

10 Q Why did you go to the station that day?

11 A To work.

12 Q On what?

13 A On this case.

14 Q Were you hoping that there'd be another
15 interview with either Miss Haysom or Mr. Soering that day?

16 I should say another interview with Mr. Soering that day?

17 A Was I hoping --

18 Q Yes.

19 A -- that there would be another interview?

20 Q Yes.

21 A Yes, sir.

22 Q Did you know there'd be another interview
23 with them that day?

24 A No, sir.

25 Q During the June 6th interview, did Mr.

1 Soering ever request to talk to a lawyer?
2 A No, sir.
3 Q You know that for sure?
4 A That's my recollection at this time, yes,
5 sir.
6 Q At no time during that interview did he ask
7 to talk to a lawyer?
8 A Without the benefit of the transcript, I am
9 unable to answer that question.
10 Q So to the best of your memory today, that's
11 what your testimony is, that Jens Soering did not ask to
12 talk to a lawyer on June 6th?
13 A Yes, sir.
14 Q Would you bound by what was said on the
15 tape if the tape were different?
16 A Yes, sir.
17 Q Were there any breaks taken in the June 6th
18 interview?
19 A Yes, sir, I believe there was.
20 Q When did that interview end?
21 A Here again, without the benefit of the
22 transcript, I'm not certain. I think it was 1:21 p.m.
23 Q How about if I show you the last page of
24 the transcript? You can read it to yourself and you can
25 tell me if that helps you remember.

1 A I've got in the transcript 1:21 p.m.
2 Q So does that help you remember?
3 A Yes, sir.
4 Q And would your testimony now be that the
5 interview ended at 1:21 p.m., on the 6th of June, of
6 course?
7 A Yes, sir, that's my recollection. Yes,
8 sir.
9 Q Do you have any idea how long the breaks
10 totaled in that interview?
11 A No, sir.
12 Q Do you have any idea how many breaks there
13 were?
14 A No, sir, I do not.
15 Q Do you have any idea what was talked about
16 during any of the breaks on the June 6th interview?
17 A Yes, sir, I do.
18 Q During any of those breaks, did Mr. Soering
19 ask to speak to a solicitor?
20 A No, sir.
21 Q Did you interview Mr. Soering again on June
22 the 7th?
23 A Yes, sir, I did.
24 Q Were you sitting in the interview room when
25 Mr. Soering was brought in?

1 A I don't remember.

2 Q Did you have to come from another room of
3 the station into the interview room to meet Mr. Soering in
4 that interview room?

5 A Yes, sir, I did.

6 Q But you can't remember who got to the
7 interview room first, you or my client, is that right?

8 A I don't remember, no, sir.

9 Q Do you recall if Mr. Beever or Mr. Wright
10 was present at that interview?

11 A On the 7th?

12 Q On the 7th, yes.

13 A Yes, sir, they were present.

14 Q Did you see Mr. Beever bring Jens into the
15 interview room?

16 A I don't remember.

17 Q Were there any breaks taken in that
18 statement?

19 A June the 7th?

20 Q June the 7th, yes.

21 A I don't recall.

22 Q At that time, did you tell Mr. Soering that
23 under Miranda he could not have an attorney until he
24 returned to Virginia? During that interview?

25 A I don't remember saying that, no, sir.

1 Q Let me show you page fourteen of what
2 purports to be a transcript of that tape. I'll ask you to
3 read the first two-thirds of that transcript to yourself.

4 A (Witness reads part of transcript.)

5 Q Thank you.

6 A Yes, sir.

7 Q Mr. Gardner, do you have any reason to
8 dispute the accuracy of what's on that tape?

9 A That's not what I said.

10 Q So you did not say to Jens Soering. "And
11 you have the right, of course, that meaning consultation,
12 being counseled by an attorney, being informed by the
13 attorney of the laws of Virginia, which I assume would be
14 a very competent attorney in Virginia of Virginia law."
15 Did you say that to Jens Soering?

16 A Yes, sir, I did.

17 Q And did you say right before that, "First
18 of all, as the Miranda advises, you have the right to the
19 presence of an attorney"?

20 A Yes, sir, I did.

21 Q And did Jens Soering then ask you, "May I
22 ask a question about that?"

23 A Yes, sir.

24 Q And did you say, "Yes, sir"? Do you
25 remember?

1 A I assume I said, "Yes, sir." If he asked
2 me if he could ask a question, I was more than happy to
3 try to answer his question, yes, sir.

4 Q Did he then ask you, "Will I have a choice
5 of which attorney?"

6 A Yes, sir.

7 Q Did you then say, "Well, yes, you can hire
8 an attorney and as the Miranda also advises, if you cannot
9 afford an attorney"? Did you say that?

10 A Yes, sir.

11 Q That's accurate? Yes?

12 A Yes, sir.

13 Q And then Jens Soering said, "One will be
14 appointed?" Is that accurate?

15 A Yes, sir.

16 Q And then you said, "One will be appointed
17 by the Court. Now if the Court appoints you an attorney I
18 think you have the duty to accept that attorney." Did you
19 tell him that?

20 A Yes, sir.

21 Q And this was all in the context of Miranda?
22 In other words, you were advising him of his Miranda
23 rights at this time, right?

24 A That's part of it, yes, sir.

25 Q And then Jens Soering asked you, "I was

1 just remembering that in Britain the officers come to you
2 with a list of attorneys from whom you can then pick an
3 attorney. You have, in fact, a choice of attorneys. And
4 I was wondering whether that is how it worked in America?"
5 Did he ask you that?

6 A Yes, he did.

7 Q That's accurate?

8 A Yes, sir.

9 Q And then you told him, "The Court does.
10 The Court has a list of attorneys." Is that accurate?

11 A Yes, sir.

12 Q And Jens Soering asks, "But it's not one
13 that they will show me?" Is that accurate?

14 A Yes, sir.

15 Q And then you said, "No. Because the way we
16 do it in Virginia -- and this is beside the point probably
17 but I will continue on with it, because I think you're
18 interested in it. I assume that you are by asking these
19 questions -- the Court has a list of attorneys on his
20 bench and he goes down the line. Okay?" Was that
21 accurate?

22 A Yes, sir.

23 Q What as inaccurate on this page? What
24 didn't you say on this page?

25 A Will you ask me your question again, the

1 Initial question?

2 Q I asked you a few minutes ago to look at
3 the page and I asked you if you had any reason to dispute
4 the accuracy of what was on that page?

5 A Yes, sir.

6 Q And you said, "Yes. I didn't say
7 everything that was on that page," or words to that
8 effect.

9 A No, sir. I said I didn't say what you
10 asked me, what the initial question was.

11 Q So the page was accurate?

12 A Yes, sir.

13 Q And so at that time you never explained to
14 him that you weren't talking about Miranda at that time,
15 did you?

16 A I don't understand the question. I'm
17 sorry.

18 Q Let me go back. Were you explaining
19 Miranda rights to him at that time?

20 A No, sir.

21 Q You were explaining to him the Court
22 appointment system back here in Bedford County, right?

23 A I was explaining -- It's out of context.
24 He was asking me some questions and I was answering his
25 questions. I had previously advised him of Miranda before

1 we got to that part. And he was asking me questions.
2 Q But he was asking you questions about the
3 right to counsel under Miranda, right? He was, wasn't he?
4 A Yes, sir.
5 Q Do you have any independent memory of when
6 this statement ended? In other words, do you remember
7 right now, without looking at the transcript, when the
8 June the 7th statement ended? Would you like to see the
9 last page of the transcript? Would that help you remember
10 when the statement ended?
11 A I remember it was at -- I think I turned
12 the tape off and we ended the interview at 4:17 p.m.
13 Q 4:17, you remember that exactly?
14 A Yes, sir.
15 Q But you don't remember how long the little
16 break took in the 8:05 statement on June 5th?
17 A No, sir.
18 Q Okay. Now you talked to my client, I don't
19 know, the fifth, sixth or seventh time. You talked to him
20 on the 8th of June, right?
21 A Yes, sir.
22 Q Do you know exactly when you filled out the
23 Miranda form?
24 A Yes, sir.
25 Q When was that?

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A When I filled out the Miranda form?

Q Yes.

A Approximately 4:45.

Q So it was exactly approximately 4:45?

A I have on there approximately 4:45, yes, sir.

Q When did you sign the Miranda form?

A After I advised him of his rights.

Q What time was that? Exactly at approximately what time was that?

A I can explain that.

Q You really don't remember when you signed the Miranda form on the 8th of June, do you?

A It was shortly after 4:45. Approximately 4:45 p.m., yes, sir.

Q What is shortly after 4:45 p.m.?

A In that particular case, it was after I had advised him of the Miranda and he understood that and said he was willing to talk to me and he signed the form. So however long that took.

Q In relation to the short break that occurred on June 5th, how long was it comparably? In other words, did this take about as long as the short breaks took on June 5th for Jens to sign the Miranda form on the 8th of June?

1 A I have no idea.
2 Q Now you took a break in this interview,
3 didn't you?
4 A On the 8th?
5 Q Yeah. I'm sorry. The 8th of June
6 interview?
7 A Yes, sir.
8 Q You took a break to go to the bathroom?
9 A Yes, sir.
10 Q Did you make a note of when you took a
11 break to go to the bathroom on that day?
12 A Yes, sir.
13 Q Do you know exactly or approximately what
14 time you went to the bathroom in the middle of that
15 interview?
16 A Not at this time, no, sir.
17 Q Did you dictate notes of that interview at
18 a subsequent time?
19 A Yes, sir.
20 Q When did you dictate the notes of that
21 interview?
22 A At the conclusion of the interview.
23 Q And after Jens signed --
24 A At the conclusion of the second interview.
25 Q So there are two interviews on the 8th of

1 June? Let me ask you. Is there the pre-bathroom interview
2 and the post-bathroom interview?

3 A Yes, sir.

4 Q When did the post-bathroom interview begin?

5 A I remember that I advised -- On the Miranda
6 I believe it reads 7:18 p.m.

7 Q You remember that exactly?

8 A Yes, sir.

9 Q Let me show you page five of your notes of
10 the June 8th statements.

11 A Yes, sir.

12 Q And ask you to read the last paragraph on
13 page five to yourself.

14 A (Witness reads last paragraph on page
15 five.) Yes, sir.

16 Q Does that help you remember when you ended
17 the first interview on June 8th?

18 A Yes, sir.

19 Q And what time was that?

20 A 6:45 p.m.

21 Q Now how would you characterize the break
22 between 6:45 p.m. and 7:18 p.m. Was that a long break or
23 a short break, a medium break?

24 A It seems to me it would be about thirty
25 minutes.

1 Q If you were to describe that without
2 minutes, would you describe that as long or short?

3 A No, sir.

4 Q You wouldn't want to describe it?

5 A No, sir.

6 Q Well, think back to that break and compare
7 it to the first break on June 5th. And can you tell me if
8 this break on June 8th was longer or shorter than the
9 first break in the tape on June 5th?

10 A The first break on June 8th in relation
11 to --

12 Q Well, there was only one break on June 8th,
13 correct?

14 A Okay.

15 Q From 6:45 to 7:18. Now you know that
16 that's thirty-three minutes, right?

17 A Yes, sir.

18 Q Now was that break longer than the break,
19 the first break that you took during the 8:05 statement on
20 June 5th?

21 A I don't recall.

22 Q You have no basis to compare those two?

23 A No, sir, I do not.

24 Q How about the short break on June 5th? How
25 did you June 8th break compare to your June 5th break?

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A I don't recall.

Q So there's absolutely no way that you can assist us in learning or understanding how long the tape recorder was off on June 5th during the 8:05 statement?

MR. UPDIKE: Objection. Your Honor. That question has been asked, I don't know how many times, but numerous times and the witness has stated he does not know.

THE COURT: I believe the answer was "I don't know" to that question. But if you want to ask it again, let him answer it.

MR. NEATON: Thank you, Judge.

BY MR. NEATON:

Q Was your answer, "I don't know"?

A I don't know.

MR. NEATON: Your witness, Mr. Updike.

CROSS EXAMINATION

BY MR. UPDIKE:

Q Investigator Gardner, first of all, concerning the trip to Richmond, England in June of 1986, had Jens Soering, the defendant seated over here, been charged with any criminal offenses in Bedford County,

1 Virginia?

2 A No, sir.

3 Q The record reflects that on June 13, 1986
4 an indictment was returned by a Grand Jury of this Court
5 charging the defendant with two counts of murder. Did you
6 appear before the Grand Jury at that time?

7 A Yes, sir, I did.

8 Q And as to these offenses presently before
9 the Court, is that the time at which charges were placed
10 against Jens Soering, June 13, 1986?

11 A Yes, sir.

12 Q Now concerning the purpose of the trip to
13 England to begin with, isn't it true that British officers
14 called you and informed you that Jens Soering and
15 Elizabeth Haysom were in custody in England, that would
16 have been the last of May 1986?

17 A Yes, sir.

18 Q And at that time in May of '86, was that
19 the first that you had learned of their arrest in England?

20 A Yes, sir.

21 Q At the same time that you learned of their
22 arrest in England, did you also learn that British
23 officers, during the investigation of charges there in
24 England, had found written documentation pertaining to the
25 offenses here?

1 A Yes, sir.

2 Q Letters and things of that nature?

3 A Yes, sir.

4 Q Before they had found such documentation,
5 you had not informed them of anything concerning these
6 charges and, in fact, didn't even know Mr. Soering and
7 Miss Haysom were over there, is that correct?

8 A That's correct.

9 Q And at the time of your arrival in England
10 in June of '86, Jens Soering was incarcerated on British
11 charges at that point, is that correct?

12 A Yes, sir.

13 Q And there were no charges pending here at
14 that time?

15 A No, sir.

16 Q Now you attended, as you've indicated, what
17 the British call the remand hearing on the morning of
18 June 5, 1986, the Thursday morning, is that correct?

19 A Yes, sir, I did.

20 Q Now do you recall who testified in support
21 of the request for the remand to the Richmond Police
22 Station? Was it Peter Shepardson?

23 A Yes, sir.

24 Q Now isn't it true that during his
25 application before the Magistrate's Court, the application

1 was made not only concerning the suspicion of murder, as
2 they call it here in Bedford County, but also drugs and
3 distribution thereof in England that the British officers
4 wished to pursue those investigations?

5 A Yes, sir.

6 Q And isn't it true that during those days of
7 remand to the Richmond Police Station from that Thursday,
8 June 5, until both defendants were returned to Court on
9 the morning of June 9, 1986, that Jens Soering was
10 interviewed by the British officers solely concerning
11 possible drug distribution in England, is that correct?

12 MR. NEATON: Objection. He hasn't laid a
13 foundation that the witness had any knowledge
14 of that, any personal knowledge of that type of
15 interview.

16 MR. UPDIKE: Your Honor, I'm asking on
17 cross examination whether that happened and I
18 don't think that I have to lay a foundation on
19 cross examination. If the witness doesn't know,
20 he doesn't know. Or if he doesn't remember, I'm
21 prepared to show him documents to see if that
22 jogs his memory.

23 MR. NEATON: He still has to show a
24 foundation that the witness had the ability and
25 the opportunity to observe and is not simply

1 relating hearsay statements of other people.

2 MR. UPDIKE: I'll show him the statements.
3 Your Honor.

4 MR. NEATON: The point is, no matter whether
5 or not there's other interviews, Judge, and
6 whether or not he can show him other interviews,
7 the point is whether this witness is competent
8 to testify to the fact that there were other
9 interviews and what the subject of those other
10 interviews were. And he hasn't established that
11 the witness is competent to testify to that.

12 MR. UPDIKE: Your Honor, the purpose --
13 This is cross examination. The purpose is, in
14 response to questions asked by defense counsel,
15 that Investigator Gardner was in charge of these
16 British officers somehow, they acting
17 exclusively as his agents, that the detention at
18 Richmond was solely for the purpose of
19 suspicion of murder. Those questions were asked
20 by defense counsel. Now if Investigator Gardner
21 is so knowledgeable about that, he certainly is
22 in a position to know whether or not the
23 investigation was centering upon, or I should
24 say concerned matters other than the suspicion
25 of murder in and of itself.

1 After all, Mr. Neaton's laid the foundation
2 for me very well that Investigator Gardner knows
3 what was going on in Richmond, knows the
4 purposes of the investigation, and according to
5 him Investigator Gardner directed it all. And
6 we think that under those circumstances the
7 witness can certainly answer the question if he
8 knows and if he doesn't know, he can say so.

9 THE COURT: Anything else and then I'll
10 rule.

11 MR. NEATON: He's mischaracterizing the
12 points. We show that the officer was present at
13 a Court hearing and he can testify as to what he
14 observed at the Court hearing. He's already
15 been asked what he observed at the Court
16 hearing. Now he's being asked about statements
17 at which time there's been no showing that this
18 witness was present to witness those statements.

19 And I'm saying that there is an inadequate
20 foundation and whether it's cross examination or
21 direct examination, the questioner still has to
22 show a foundation or lay a foundation to ask a
23 question.

24 THE COURT: All right. Based upon evidence
25 given on direct examination in this suppression

1 hearing. the Court overrules the objection and
2 feels that it is a proper question to ask the
3 witness.

4
5 BY MR. UPDIKE:

6 Q To repeat the question, Investigator
7 Gardner, during that period at the remand, as we're
8 calling it, was Jens Soering interviewed about matters
9 other than the suspicion of murder here in Bedford,
10 Virginia?

11 A Yes, sir.

12 Q And what was he interviewed to other than
13 that?

14 MR. NEATON: Objection. The witness now
15 can testify -- You've allowed the witness to
16 testify that he was interviewed on other
17 matters. Now the Commonwealth has asked the
18 witness what was the subject of those
19 interviews. The Commonwealth has not laid a
20 foundation that the witness is competent to
21 testify as to what the subject of the interviews
22 are. And it's one thing to ask if he knows that
23 there were interviews on other subjects, but
24 he's asking the witness now to tell us what the
25 subject of the interviews were without

1 establishing first that the witness was there
2 present at the interview to be competent to
3 testify as to what the subject of the interview
4 was.

5 MR. UPDIKE: Your Honor, I --

6 MR. NEATON: And it's hearsay unless he can
7 establish a foundation.

8 MR. UPDIKE: If I might, Your Honor, if I
9 might now respond. I was going to try to
10 withdraw the question. I'll ask the British
11 officers. I think that would be more
12 expeditious.

13 THE COURT: Question withdrawn.

14
15 BY MR. UPDIKE:

16 Q Investigator Gardner, I'd like to ask you
17 about the specific interviews at this point. First of
18 all, the very first interview on June 5, 1986. There is a
19 Miranda form pertaining to that interview, is that
20 correct?

21 A Yes, sir, it is.

22 Q Would this be a copy of that Miranda form?

23 A Yes, sir, it is.

24 Q And the original Miranda form, should there
25 be any need to, they're in this form book here, is that

1 correct?

2 A Yes, sir.

3 MR. UPDIKE: Your Honor, since we have had
4 a lot of things proffered, we would like to
5 introduce this as Commonwealth's Exhibit. Any
6 objections?

7 MR. NEATON: No objection.

8 THE COURT: All right. For purposes of
9 identification, mark it please.

10 MR. UPDIKE: Thank you, sir.

11
12 (Commonwealth's Exhibit Number One was marked
13 for identification only.)

14
15 BY MR. UPDIKE:

16 Q And I'd like to show you that. Investigator
17 Gardner, because I would like for you to have some of
18 these documents when you're questioned. Thank you, sir.
19 And here is Commonwealth's Exhibit Number One now. Now at
20 what time did you advise Jens Soering of the Miranda
21 warnings as to that first interview?

22 A 3:35 p.m.

23 Q Now that Miranda form is not signed, is
24 that correct?

25 A Yes, sir.

1 Q It's not signed by the defendant and it's
2 not signed by any witnesses, is that correct?

3 A That's correct.

4 Q Was Jens Soering asked to sign that form?

5 A No, sir.

6 Q So he did not refuse to sign the Miranda
7 during the interview, but rather he was not even asked to,
8 is that correct?

9 A That's correct.

10 Q Please explain the procedure that you
11 followed as to advising Jens Soering of the Miranda
12 warnings at that interview then, please.

13 A At 3:35 I commenced filling out the
14 standard Miranda form. I got down and I advised him, of
15 course, that he knew we were police officers. And I
16 advised him of his rights one by one, asking him did he
17 understand each one right after I finished reading that
18 particular sentence.

19 Q I think it's important for this record for
20 you to state specifically what you said to him regarding
21 the Miranda rights, please.

22 A I advised him, before we asked him any
23 questions, "It's my duty to advise you of your rights.
24 You have the right to remain silent. Anything you say
25 will be used against you in a Court of law. You have the

1 right to the presence of an attorney before making a
2 statement. If you cannot afford an attorney, one will be
3 appointed to represent you by the Court at no cost to you.
4 And you have the right to stop answering questions anytime
5 during the questioning."

6 Q Now you advised the defendant of his rights
7 Just as you read them there?

8 A Yes, sir.

9 Q And, in fact, did you read those rights on
10 June 5, 1986 at 3:35 from that very form, which is the
11 original of that copy?

12 A Yes, sir, I did.

13 Q What did the defendant say in response to
14 you reading him these rights?

15 A He said that he understood his rights. He
16 said that he had seen them on Cagney & Lacey and Kojak and
17 Hill Street Blues, et cetera and he'd watched American TV
18 detective shows and he knew that he had a right to remain
19 silent and he knew his rights.

20 Q He knew all of his rights?

21 A Yes, sir.

22 Q Now when you did this, regardless of
23 whether it was a minute after Jens Soering came in the
24 room, five minutes, ten minutes or whenever it was, did
25 you advise him of the Miranda rights, as you've described,

1 before any questions were asked of Jens Soering concerning
2 the suspicion of murder?

3 A I did.

4 Q You did advise him first?

5 A Yes, sir, I did.

6 Q And, in fact, the form states, doesn't it,
7 "Before we ask you any questions it is my duty to advise
8 you of your rights?"

9 A Yes, sir.

10 Q Now after that was done, you advised him of
11 the Miranda rights in that fashion. Are you familiar with
12 what the British caution is?

13 A Somewhat, yes, sir.

14 Q You do not know it verbatim, is that
15 correct?

16 A No, sir.

17 Q Are you aware that the British caution at
18 that time was the British correspondent of the Miranda
19 warnings?

20 A Yes, sir.

21 Q Basically the rights which British officers
22 advise defendants of during their investigative
23 procedures?

24 A Yes, sir.

25 Q And I'll ask the British officers to give

1 that to us. But after you advised Jens Soering under the
2 Miranda warnings, at that time was Jens Soering also
3 advised of the British caution?

4 A Yes, sir, he was.

5 Q Who advised him of that?

6 A Sergeant Beever.

7 Q Did Jens Soering indicate that he
8 understood the British right, the British caution, as
9 well?

10 A Yes, sir.

11 Q Now concerning that interview, if I could
12 show you two pages, would these be copies of the same two
13 pages of notes of your interview of June 5, 1986, that
14 which were just shown to you by defense counsel or
15 proffered as exhibits?

16 A Yes, sir.

17 MR. UPDIKE: We'd like to introduce these,
18 please.

19 MR. NEATON: I object as to hearsay.

20 MR. UPDIKE: The basis for that objection,
21 we'd ask, Your Honor.

22 MR. NEATON: It's an out-of-Court statement
23 made by the declarant, used to prove the truth
24 of the matter asserted in the statement, in the
25 writing. That's the definition of hearsay.

1 MR. UPDIKE: It also comes within two
2 exceptions of the hearsay rule. First,
3 declaration against interest; secondly,
4 party admission. And a party admission, as
5 Friend points out, in either a criminal or a
6 civil matter doesn't even have to be against
7 interest. And the reason is that the objection
8 to hearsay is that a party cannot cross examine
9 the extra judicial statement. And as Friend
10 states, a defendant should not be allowed to
11 state or argue that he can't cross examine
12 himself or a party to any proceeding. So,
13 therefore, it's most certainly, it comes within
14 two exceptions of the hearsay rule.

15 MR. NEATON: He's moving the admission of a
16 document that contains things that are written
17 by a typist, typed by a typist, based on notes
18 that were made four days after this interview.
19 Judge. The witness can testify from his own
20 memory and refreshed recollection as to what the
21 supposed statements against interest that my
22 client may have made or may not have made and
23 it's for you to determine whether the statements
24 that my client makes, the oral statements, are
25 admissible.

1 We haven't objected to this witness
2 relating to you certain oral statements made
3 during that interview so long as, up to this
4 point, we feel that they're relevant to this
5 suppression hearing. But what the Commonwealth
6 is introducing is a document and the document
7 itself is hearsay, because the document is not
8 the statements of my client. My client did not
9 sign this document and adopt the statements in
10 this document. They are simply notes made four
11 days after an interview and the document, which
12 is what's being offered, is hearsay.

13 It's hearsay at two different levels. It's
14 hearsay on the level that it's the notes of Mr.
15 Gardner and the document itself is hearsay.
16 And, therefore, that's the basis of the
17 objection. Not that this witness can't testify
18 from memory as to certain statements that my
19 client may or may not have made, but the
20 document itself is hearsay and is inadmissible.

21 THE COURT: It's not being admitted for the
22 purposes of evidence, as I understand it.

23 MR. UPDIKE: Your Honor, isn't this cross
24 examination? Hasn't he opened the door by
25 proffering it? Where are the proffered

1 documents? Did you keep those?

2 MR. NEATON: I have marked exhibits for
3 identification purposes so that the record is
4 clear what documents I was showing the witness
5 in order to refresh the witness' recollection
6 as to certain events. I have not offered into
7 evidence those proposed exhibits and the reason
8 that I have not are the reason that I find those
9 documents to be objectionable and not
10 admissible. Just because it's cross examination
11 doesn't mean the rules of evidence are thrown
12 out the window.

13 And what he has to do is gain from the
14 witness admissible testimony. And he doesn't
15 get an easier ride because he gets to cross
16 examine his own detective in this particular
17 hearing. And all I'm saying, Judge, is he's
18 offered the document. I'm saying the document
19 is inadmissible. The witness may testify from
20 his memory of the events of June 5th as to what
21 my client may or may not have said. I would
22 agree to that, which may be relevant to the
23 issue of admissibility of the statement. But
24 the document is inadmissible. It's hearsay.
25 It's Horne book hearsay.

1 MR. UPDIKE: Your Honor, we'd like to
2 clarify first of all now. He proffered this.
3 He got it marked by the Court. It's now a
4 portion of the record. True, it may not be an
5 exhibit in a case that could go to the Jury,
6 but those things now are a part of the record.
7 Otherwise, what good would it be, as he says,
8 we wanted them marked for identification and
9 the records reflect an item A offered for
10 identification and then he's got item A in his
11 file and nobody knows what it is but him.

12 Once he's submitted those things for
13 identification, they are not exhibits, but they
14 should go to the Clerk of this Court and we
15 would ask that they go.

16 MR. NEATON: That's not true, Judge. I
17 have to offer them into evidence and I haven't
18 offered them into evidence. He's now trying
19 to offer one of the documents into evidence.
20 I'm objecting that it be admitted into evidence.
21 A document can be used for identification
22 purposes. It's common, at least as long as I've
23 been practicing law. And just because a party
24 marks an exhibit and has it given a letter or a
25 number doesn't mean that the exhibit

1 automatically becomes admissible. It has to be
2 admissible under the rules of evidence. And I'm
3 saying it's not admissible under the rules of
4 evidence anymore so than if the prosecutor had
5 been the first one to mark the document and I
6 had objected at that point, it doesn't mean that
7 because the prosecutor proffered it it
8 automatically becomes evidence.

9 THE COURT: Well, didn't you ask the
10 witness to read from some of these statements?

11 MR. NEATON: No. I asked the witness to
12 read the statement to himself and then asked him
13 if that refreshed his recollection as to the
14 events that occurred four years ago. That's the
15 way that you refresh a witness's recollection.
16 You can use anything to refresh a witness's
17 recollection and that doesn't mean that whatever
18 you use -- I could show him this water glass to
19 refresh his recollection. It doesn't mean the
20 water glass becomes introduced as evidence.

21 MR. UPDIKE: You wouldn't mark it as an
22 exhibit.

23 MR. NEATON: I might just do it.

24 MR. UPDIKE: I wouldn't be surprised.

25 THE COURT: I'm not really sure that you

1 can mark something for identification and then
2 keep it in your file. True, it is not a part,
3 necessarily, of the evidence. It is not
4 necessarily admissible, but my understanding was
5 that it's a part of the record in this
6 suppression hearing and should stay with the
7 Clerk's file. That's my understanding in
8 Virginia.

9 Stop and think about it. If on appeal a
10 Justice of an Appellate Court said, "Mr. Neaton,
11 you referred to something as Exhibit B during
12 the suppression hearing. I want to take a look
13 at it." And you say, "Well, Judge, it never got
14 in the file. I don't even have it here today."
15 I don't think that that's the way it works.

16 But we've gotten pretty sophisticated here
17 on some of our discussions, more sophisticated
18 that I've ever gotten in a suppression hearing
19 and maybe you're both getting over my head.

20 MR. NEATON: Well, if what the Commonwealth
21 is saying is that they want the document placed
22 in the Court's file, but it's not part of the
23 record, it's not evidence in this suppression
24 hearing, then I guess it's part of the Court
25 file but not evidence in the suppression

1 hearing, I would ask that perhaps that the
2 statements themselves that are not in evidence
3 or the notes that are not in evidence be sealed
4 and not made public.

5 MR. UPDIKE: Your Honor, that's an entirely
6 separate issue and it may be it -- I don't know
7 about that. But all I'm asking at this point,
8 we think the truth, anything proffered in that
9 fashion, becomes a part of the file. It is not
10 an exhibit. It's the difference between
11 something proffered and --.

12 MR. NEATON: Okay. Then I've misunderstood
13 what Mr. Updike has been saying and he's not
14 offering it into evidence, then that's fine.

15 THE COURT: That's right.

16 MR. NEATON: But I want to make it clear
17 that I'm not agreeing that these notes be made
18 part of the public record so that it can be
19 disseminated to the public.

20 THE COURT: I agree with you on that, Mr.
21 Neaton. We have somewhat recently had an
22 Attorney General's Opinion as to when certain
23 exhibits become subject to public inspection,
24 because it concerned us. I think maybe it had
25 to do with this case or a case we tried prior to

1 this case, the Elizabeth Haysom case. And,
2 basically, the ruling came back that unless and
3 until an exhibit was made an exhibit as such, as
4 evidence in the case, it was not a public
5 document.

6 It is my understanding that marking these
7 exhibits on each side does not make them
8 exhibits in the sense that they are public
9 documents.

10 MR. NEATON: Okay. Then I understand
11 and --

12 THE COURT: All right. Proceed.

13 MR. NEATON: -- that's no problem if that's
14 all you do.

15 MR. UPDIKE: Then hand them to the Clerk.
16 please, sir.

17 THE COURT: Whatever you've got, the Clerk
18 will have to have them, if you have them.

19 MR. NEATON: Pardon me? We just need to
20 make copies because they are copies.

21 MR. UPDIKE: I'm sure Mrs. Black can
22 accommodate you. Or if not, my machine
23 can be used.

24 MR. NEATON: Thank you.

25 THE COURT: All right. Proceed.

1 MR. UPDIKE: Thank you, Your Honor.

2
3 BY MR. UPDIKE:

4 Q We left off, I think, at the portion -- I
5 would like to show you this same document. Those are
6 notes then of your interview, is that correct, typed
7 copies of the interview?

8 A Yes, sir.

9 Q They were typed from your actual written
10 notes, is that correct?

11 A Yes, sir.

12 Q Would I be correct though that the heading
13 at the top of this, you did not write that out on your
14 notes, but rather we had that typed out for purposes of
15 identification when we gave this to Mr. Neaton during
16 discovery?

17 A Yes, sir.

18 Q The actual body of the text is a typed form
19 of your notes themselves?

20 A Yes, sir.

21 Q Now concerning the interview itself, where
22 did it occur?

23 A In Detective Chief Inspector Michael
24 Paton's office.

25 THE COURT: Are we now talking about the

1 first interview on June 5th?

2 MR. UPDIKE: Yes, sir. The Miranda was
3 given at 3:25, the very first interview.

4 THE COURT: All right.

5
6 BY MR. UPDIKE:

7 Q That was conducted in Chief Inspector --

8 A Michael Paton's office.

9 Q Michael Paton's office?

10 A At the Richmond Police Station. Yes, sir.

11 Q Excuse me. It's DCI. It's Detective Chief
12 Inspector Michael Paton, isn't it?

13 A Yes, sir.

14 Q DCI Paton. Now isn't it true that as
15 Detective Chief Inspector he is the highest ranking
16 detective in the police station?

17 A Yes, sir, it is.

18 Q So the interviews were conducted in his
19 office, not some interrogation room --

20 A Yes, sir.

21 Q -- but in his office. Now at the time that
22 you advised Jens Soering of these Miranda warnings, did
23 you observe anything to indicate that he was under the
24 influence of drugs?

25 A No, sir.

1 Q Did you observe anything to indicate that
2 he was under the influence of alcohol?

3 A No, sir.

4 Q Did you observe any health disabilities at
5 that time?

6 A No, sir.

7 Q Now you had previously talked to Jens
8 Soering before the trip to England, isn't that correct,
9 back in October of 1985?

10 A Yes, sir.

11 Q And at that time you learned some things
12 concerning Jens Soering's background and his education, is
13 that correct?

14 A Yes, sir.

15 Q And you learned these things from what he
16 told you himself?

17 A Yes, sir.

18 Q Now at the time that you were interviewing
19 him in June of '86, what would his educational background
20 have been?

21 A He was a high school graduate and he was
22 attending the University of Virginia.

23 Q And as of June of '86 he would have
24 completed two years of college at the University of
25 Virginia, is that right?

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A Yes, sir.

Q And in October of '85 did he explain to you that he was a Jefferson Scholar at the University of Virginia?

A Yes, sir, he did.

Q Did he also explain to you that that was a full four-year scholarship that he had won?

A Yes, sir.

Q Did he explain to you that he'd won that as the result of academic achievement as the result of a competition that was awarded to him, I think, through the Atlanta Chapter of the University of Virginia?

A Yes, sir.

Q Were you armed at that time with a firearm?

A No, sir, I wasn't.

Q And as a matter of fact, didn't even take one to England, is that correct?

A No, sir, I didn't.

Q And the other police officers present, none of them had any firearms on them, did they?

A They don't carry weapons.

Q Right. Were you dressed as you are now in a coat and jacket? Probably the same jacket, isn't it, or have you gotten a new one?

A Yes, sir.

1 Q Now did you have as a result of all that,
2 In answers that Jens Soering gave at that time in addition
3 to those answers he'd stated yes. he'd seen all of this on
4 Kojak, was there any question in your mind that this man
5 understood the Miranda warnings?

6 A No, sir.

7 Q Any question that he also understood the
8 British caution?

9 A No, sir.

10 Q Did he at any time during the course of
11 that interview, this being the one, the very first one on
12 June 5th commencing at 3:25, did he ever request an
13 attorney during the course of that interview? And,
14 please, here are the notes if you'd like to see them.

15 A No, sir, he didn't.

16 Q Did he ever indicate that he wished to stop
17 answering questions?

18 A No, sir.

19 Q Proceeding then to the second interview,
20 this being the one that began at 6:00 on June 5th. Now at
21 that time was the defendant advised of the Miranda
22 warnings?

23 A Yes, sir.

24 Q Tell us how you did that.

25 A Off of the same form that I used at 3:35

1 p.m.

2 Q He was orderly advised of the Miranda
3 warnings?

4 A Yes, sir, he was.

5 Q Did you, yourself, personally do that?

6 A I did.

7 Q Did you advise him of the Miranda warnings
8 in the same fashion as you did at the earlier interview
9 before any questions were asked of him?

10 A Yes, sir, I did.

11 Q Did he indicate then at 6:00 p.m. on that
12 date that he understood the Miranda warnings then?

13 A Yes, sir.

14 Q Was he asked to sign any Miranda form at
15 that time?

16 A No, sir.

17 Q Was this then in an oral advisement?

18 A Yes, sir.

19 Q He never refused to sign any form?

20 A No, sir.

21 Q Was there any change in his circumstances
22 at that second interview, as far as being under the
23 influence of anything or having any health problem?

24 A No, sir.

25 Q Isn't it true that he had been incarcerated

1 for a period of time before you ever started interviewing
2 him on June 5?

3 A Yes, sir.

4 Q Now as far as the times when the defendant
5 was brought up from -- Well, first of all, let me rephrase
6 that and ask, where was the defendant at the time when he
7 was not in DCI Paton's office? I mean, did you, yourself,
8 ever go to his place of incarceration?

9 A No, sir.

10 Q Did you, yourself, bring him up from the
11 place of incarceration?

12 A No, sir, I didn't.

13 Q Now since then, are you familiar with the
14 custody sheets pertaining to his incarceration there at
15 Richmond during that period of time?

16 A Yes, sir.

17 Q And other than referring to them, are you
18 familiar with the times when he was brought out and taken
19 back into the cell?

20 A Yes, sir.

21 Q You are by virtue of that?

22 A Right.

23 Q But not from your own individual
24 independent recollection?

25 A Not from my own recollection, no, sir.

1 Q Now as to that interview, if I could show
2 you the same three pages that were shown to you earlier by
3 defense counsel.

4 THE COURT: Is this the third interview
5 now?

6 MR. UPDIKE: No, this would be the second
7 one, Your Honor.

8 THE COURT: Still on the second one?

9 MR. UPDIKE: Yes, sir, at 6:00.

10
11 BY MR. UPDIKE:

12 Q Are those the same typed notes of your
13 interview as of June 6, 1986, the 6:00 interview, the
14 second interview that day?

15 A Yes, sir.

16 Q What types of questions were asked of the
17 defendant during the course of that interview?

18 A The 6:00 p.m. one?

19 Q Yes.

20 A We had in our possession a bundle or some
21 several letters and correspondence and excerpts or
22 portions of the letters were read to Jens Soering by
23 Detective Sergeant Beaver to get his response to those
24 questions.

25 Q Now are you aware from the custody sheet

1 that Soering was returned to his cell at 6:45 p.m.?

2 A Yes, sir.

3 Q Now, sir, near the end of that interview
4 Mr. Neaton was asking you something about a lawyer. Was a
5 lawyer mentioned by Mr. Soering at that particular point?

6 A Yes, sir.

7 Q All right. If you would, just relate to
8 the Court what the discussions were at that point and what
9 you were talking about -- what you said, what Soering
10 said, what the questions were and what the answers
11 were -- those discussions at the end of the interview as
12 to an attorney.

13 A He then went on to say that he knew --

14 MR. NEATON: We'll object if he reads the
15 report verbatim, Judge. I don't mind if he
16 summarizes what happened, but I object to his
17 reading the report.

18 THE COURT: Sustained. Read it and then
19 summarize it.

20 THE WITNESS: Okay. We were talking
21 about -- Mr. Soering said that he knew, made
22 the statement that he knew something about his
23 involvement or non-involvement in the case and
24 would only discuss it, that particular thing,
25 after talking to a lawyer.

1 BY MR. UPDIKE:

2 Q Would only discuss that particular thing
3 after discussing it with an attorney?

4 A Yes, sir.

5 Q So after the defendant said that, what did
6 you say?

7 A I asked him was he requesting that an
8 attorney be present.

9 Q When?

10 A At the moment. Right then.

11 Q What did Jens Soering say in response to
12 that?

13 A No.

14 Q He said, "No"? Then what happened?

15 A We went on talking further and he said that
16 he wanted to talk, he would talk further about the case
17 after talking -- Let me make sure I get this straight.
18 All right. I asked him was he requesting an attorney and
19 he said, "No, not at the moment." So then we went on
20 talking and he said something about an American attorney
21 being present and he would answer certain questions.

22 Sergeant Beever asked him was he requesting
23 an American attorney be present right then and Jens
24 stated, "No." He said, "No, he wasn't requesting an
25 attorney."

1 Q So you asked Jens Soering if he was asking
2 for an attorney and he said, "No," and Detective Sergeant
3 Beaver asked Jens Soering if he was requesting an attorney
4 and Jens Soering again said, "No"?

5 A That is correct.

6 Q At that point did you, nevertheless,
7 terminate the interview?

8 A I did.

9 Q Without further questions?

10 A No further questions.

11 Q And why?

12 A Because I had decided to myself that I was
13 going to exercise caution before proceeding any further.

14 Q So you terminated?

15 A I terminated.

16 Q And he was sent back downstairs?

17 A Yes, sir.

18 Q All right. Now, this proceeding to the
19 third interview. Let me give you some documentation
20 before I ask you the questions. Let me show you a copy
21 of the document, and the original being in the file here.
22 Can you identify this, please?

23 A Yes, sir.

24 Q And what is it?

25 A It's a Miranda form that was executed on

1 June 5, 1986 at 8:05 p.m. at the Richmond, England Police
2 Station.

3 Q Please tell us did you -- Please continue.

4 A This is a copy of the Miranda form that I
5 read to Jens Soering on the 5th of June at 8:05 p.m.

6 Q Okay.

7 MR. UPDIKE: If we could introduce this,
8 please. Any objection?

9 MR. NEATON: No.

10 MR. UPDIKE: Okay, sir.

11
12 (Commonwealth's Exhibit Number Two was marked
13 for identification only.)

14
15 BY MR. UPDIKE:

16 Q I'm showing you Commonwealth's Exhibit
17 Number Two. The information that you have on there
18 concerning the defendant's date of birth, August 1, 1966,
19 did you get that from the defendant?

20 A Yes, sir, I did.

21 Q Where it states his education, finished
22 second year of college, did you get that information from
23 the defendant?

24 A Yes, sir.

25 Q Now the form itself shows that beside each

1 right, it's checked. How did that come about, please?

2 A On this form when I went down through on
3 the form, when I got to each thing such as "You have the
4 right to remain silent," he would answer yes or no, which
5 he obviously said yes, a check. And then I would go to
6 the next thing to make sure that he understood that and I
7 would check it as I went along. And I did that to each
8 part of the Miranda.

9 Q And as to each of the rights stated there,
10 one, two, three, four, five, the form speaks for itself,
11 but you explained each of those rights and asked him
12 individually if he understood each one of them?

13 A Yes, sir, I did.

14 Q And after he indicated that he did
15 understand each one of them, you put a check beside the
16 respective right?

17 A Yes, sir.

18 Q Also, did he sign this form indicating that
19 he understood the Miranda rights?

20 A He did.

21 Q And that being the defendant seated over
22 there who signed this?

23 A Yes, sir.

24 Q Was the form, as it shows, witnessed by
25 Detective Sergeant Kenneth Beever?

1 A Yes, sir, that's right.
2 Q Was Detective Constable Wright also
3 present?
4 A Yes, sir, he was.
5 Q After the defendant was advised of the
6 Miranda form in this fashion, was the defendant also
7 advised of the British caution in your presence?
8 A Yes, sir.
9 Q Did the defendant state that he understood
10 that, as well?
11 A He did.
12 Q Was this interview with the defendant tape
13 recorded?
14 A Yes, sir, it was.
15 Q Was the defendant interviewed in anyway or
16 questioned in anyway concerning the suspicion of murder
17 here in Bedford County before he was advised of the
18 Miranda warnings?
19 A No, sir.
20 Q So regardless of how many minutes lapsed
21 here or how many minutes lapsed there, did you advise him
22 of the Miranda before beginning the interview process?
23 A I did.
24 Q Now during that interview, you were asked
25 by Mr. Neaton if there were breaks in this interview and I

1 believe you stated that there were three. Is that
2 correct?

3 A Yes, sir, but that's a matter for
4 interpretation.

5 Q All right. And you are, of course,
6 familiar with the transcript of that interview, aren't
7 you?

8 A Yes, sir.

9 Q And you are the one who tape recorded it
10 and have you compared the transcript with the tape
11 recording?

12 A Yes, sir, I have.

13 Q And if you need that to refer to, just as
14 Mr. Neaton showed it to you, I'd like to refer you to the
15 first indication of a break in that interview and that
16 being page eight. Have you found the portion where the
17 tape was turned off?

18 A Yes, sir, I have.

19 Q After you've reviewed it, I'd like to ask
20 you if that refreshes your memory and if you can state at
21 whose request was the tape turned off at that portion?

22 A Jens Soering's.

23 Q He asked that you turn it off?

24 A Yes, sir.

25 Q And you complied with his request?

1 A Yes, sir.

2 Q Did you, yourself, want the tape off?

3 A No, sir, I didn't.

4 Q Would you have preferred that that entire
5 recording be taped, or I should say the entire statement
6 be taped?

7 A Yes, sir.

8 Q You turned it off because he asked you to?

9 A Yes, sir.

10 Q Now referring you to page thirteen of the
11 transcript. Was the tape turned off at that portion, as
12 well?

13 A Page fourteen.

14 Q Excuse me, fourteen, yes. Why was the tape
15 recorder turned off then?

16 A Because Jens Soering asked us to turn the
17 tape off, or asked me to turn the tape off.

18 Q He asked you to turn it off?

19 A Yes, sir.

20 Q And it was turned off at that point?

21 A Yes, sir.

22 Q And is it correct that at that point that
23 once the tape is turned back on that the statement is
24 made, "Okay. We took a little short break there," and you
25 make that statement?

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A Yes, sir.

Q Now are the times indicated during this interview when the tape was turned on and turned off?

A I'm sorry.

Q Are the times indicated on the transcript and during the tape recording, the time when the tape is turned off and when it's turned back on?

A No, sir.

Q Now later when Mr. Neaton asked you about at a certain time, that being the break between the two portions of the interview, the last interview, June 8, 1986, that you went to the bathroom?

A Yes, sir.

Q Now that time is notated. Was that particularly notated just because you were going to the bathroom or had you learned during the course of this it would be wise to make a note as to any breaks in the interview?

A Yes, sir. I started to document time on, time off on the tape.

Q And you had started that even before that portion that Mr. Neaton asked you about in the June 8th interview?

A Yes, sir.

Q And the tape recordings indicate that, is

1 that correct?

2 A Yes, sir.

3 Q Now you also said, regarding that
4 interview, that there was a third break, so to speak.
5 What do you mean by that?

6 A Well, at the end of the taped statement, on
7 page, the last page, there was talk of stopping for the
8 night and picking back up the next morning. The tape
9 expired, I believe, matter of fact, I think it was my idea
10 that we stop for the night and come back the next morning.
11 The tape ends with Jens making a statement about wanting
12 to contact somebody, possibly his father, and then it goes
13 on and he's talking about contacting the Embassy, the West
14 German Embassy, and phoning them. So we were just talking
15 about phoning the Embassy, one thing, you know, this, that
16 and the other.

17 Q But when we talk about a break, the tape
18 expired at that point?

19 A Yeah, I meant -- Yeah.

20 Q And is it true at the top of page
21 twenty-one that you, yourself, did ask the question,
22 "Would you like to stop for the night, stop for the night
23 and we'll pick it up again in the morning?"

24 A Yes, sir.

25 Q Those are your words because of the hour of

1 the day. Now the next day of June 6, 1986. Regarding an
2 interview on that date, I'd like to show you another
3 document and ask you if you would identify that, please?

4 A Okay. This is a Miranda warning form that
5 I executed on 6-6-86 at 11:40 a.m. at the Richmond,
6 England Police Station. I advised Jens Soering of the
7 Miranda and I followed the same procedure as I did before,
8 checking each line as I went through it.

9 Q Did Jens Soering indicate that he
10 understood all of the rights listed on that form and sign
11 the form himself to that effect?

12 A Yes, sir.

13 Q And does the form show Detective Constable
14 Wright as a witness when this occurred?

15 A Yes, sir.

16 MR. UPDIKE: I'd like to introduce this.

17 MR. NEATON: Be my guest.

18 MR. UPDIKE: Okay.

19 THE CLERK: Number Three.

20
21 (Commonwealth's Exhibit Number Three was marked
22 for identification only.)

23
24 BY MR. UPDIKE:

25 Q And as that form shows, you commenced the

1 Miranda advisement procedure at 11:40 a.m., that's what it
2 says, is that correct?

3 A Yes, sir.

4 Q As to that interview, was that interview
5 tape recorded?

6 A Yes, sir, it was.

7 Q And did Jens Soering agree to the interview
8 being recorded?

9 A Yes, sir, he did.

10 Q It was not done surreptitiously. You
11 obtained his permission to do that?

12 A Yes, sir, I did.

13 Q Sir, would this be a transcript of the tape
14 recorded interview that occurred at that time on June 6th?

15 A Yes, sir.

16 Q I'm just showing you that for you to refer
17 to, if you would, please. As to that interview, was the
18 defendant questioned in anyway concerning the suspicion of
19 murder here in Bedford County before he was advised of
20 Miranda?

21 A No, sir.

22 Q Concerning the tape recording, I'd like to
23 direct your attention to page two of the transcript. Was
24 the tape turned off at that time?

25 A Yes, sir.

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Q Why was it turned off?

A He asked me to turn the tape off.

Q Jens Soering asked you to turn it off?

A Yes, sir.

Q Did you, yourself, have any desire to turn the tape recording off?

A No, sir.

Q You were the one operating it?

A Yes, sir.

Q Would you have preferred that the tape recorder keep running and record every word?

A Yes, sir.

Q But he asked that it be turned off. Continuing to page twelve of that transcript, was the tape recording turned off at that time?

A Yes, sir, it was.

Q Why?

A Because he requested that it be turned off.

Q Okay, sir. I'd like to direct your attention then to page eighteen of the transcript and ask you if the tape recording was turned off at that time? About the middle way down the page.

A Yes, sir.

Q Is there an indication of time there that Sergeant Beaver is stating as to the time that you're

1 dealing with?

2 A Yes, sir, it is.

3 Q What is the time there?

4 A The time is, "Make the time 1:38. I beg
5 your pardon, 12:38 a.m."

6 Q And if you come down the page to the middle
7 of the page, is there an indication Mr. Wright had just
8 come back in the room at 12:39 approximately?

9 A Yes, sir.

10 Q And then the tape recording is turned off
11 and I again ask why was it turned off at that time, 12:39?

12 A Yes, sir.

13 Q Why?

14 A Because he requested it be turned off.

15 Q As you look, if you'd look a little more
16 carefully --

17 A I'm sorry. I'm sorry. Excuse me.

18 Q At that same point, 12:39?

19 A Yes, sir.

20 Q Was a phone call put through --

21 A There was a phone call to the German
22 Embassy.

23 Q The German Embassy?

24 A Yes, sir.

25 Q And is it true that it states there that

1 Sergeant Beever and D/C Wright request that the call from
2 the German Embassy for Jens Soering be transferred to DCI
3 Paton's office?

4 A Yes, sir, it is.

5 Q Is that where this interview is occurring,
6 as well?

7 A Yes, sir.

8 Q And to make sure, is that where all of the
9 interviews occurred, D/C Paton's office?

10 A Yes, sir.

11 Q So the call is transferred and Jens Soering
12 is allowed to talk to the Germany Embassy, is that
13 correct?

14 A Yes, sir.

15 Q Did you listen to the conversation?

16 A I was there.

17 Q Was the conversation conducted in German?

18 A Yes, sir, it was.

19 Q You don't speak German, is that right?

20 A No, sir.

21 Q At the conclusion of the phone call the
22 tape recorder is then turned back on? Later on, it shows
23 on that same page, right there at the bottom. "Tape is
24 off for awhile O.P.N.," page eighteen, "Jens just
25 concluded talking to the West German Embassy."

1 A Yes, sir.

2 Q That was the purpose of it being turned off
3 then? During that interview, did the defendant ever say
4 that he refused to or he wished to stop answering
5 questions until an attorney was made available to him?

6 A No, sir.

7 Q Did he indicate that there were certain
8 questions that he would decline answering until he had an
9 attorney, but that there were other questions that he
10 would answer?

11 A That's true. That s correct.

12 Q Isn't it true during the course of the
13 interview that he made the decision which questions he
14 would answer and which questions he would not?

15 A That's correct.

16 Q And just while I've got the page turned
17 down, on page eighteen, do you request there at the top of
18 the page whether he would like to go to the rest room?

19 A Yes, sir, I do.

20 Q And as we go through these interviews, do
21 you make requests of him whether he'd like something to
22 drink, something to eat, go to the rest room --

23 A Yes, sir, I do.

24 Q -- at different times. Is he denied any
25 physical needs along those lines through any of the

1 Interviews?

2 A No, sir.

3 Q Now we're still at page eight (sic). The
4 German Embassy call is put through and we proceed to the
5 next page of page nineteen. Do you at that time, before
6 beginning the interview again, remind Jens Soering that
7 his rights still apply, the Miranda rights, that he still
8 has those?

9 A Yes, sir.

10 Q At that same time does Detective Constable
11 Wright remind Jens Soering that the British caution still
12 applies?

13 A Yes, sir, he does.

14 Q So after the break in the tape, he's again
15 reminded of his rights under English and American law?

16 A Yes, sir.

17 Q The next day, June 7th, 1986. I'd like to
18 show you another copy of another Miranda form and ask you
19 if you can identify that, please?

20 A Yes, sir.

21 Q Please identify it for the record.

22 A June 7th. This is another Miranda warning
23 form that's dated June 7th, 6-7-86, and the time is
24 1:21 p.m., place, Richmond, England Police Station, and
25 Jens Soering, and it gives the date of birth, and the

1 Miranda form down here where I advised Jens of his Miranda
2 and stopping at the end of each one and checking them.

3 Q So, again, did Jens Soering indicate he
4 understood all the Miranda warnings and execute this form
5 to that effect?

6 A Yes, sir.

7 Q And it was witnessed by Detective Constable
8 Wright, or signed as witnessed by Detective Constable
9 Wright and Kenneth Beaver?

10 A Yes, sir.

11 MR. UPDIKE: We'd like to introduce that,
12 acceptable.

13 MR. NEATON: No objection.

14 THE CLERK: Number Four.

15
16 (Commonwealth's Exhibit Number Four was marked
17 for identification only.)

18
19 BY MR. UPDIKE:

20 Q Now this June 7th, that would have been the
21 Saturday interview, is that correct?

22 A Yes, sir.

23 Q Do you recall during the course of that
24 interview if the defendant was served a meal at some point
25 there in the interview room?

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A Yes, he was.

Q I'd like to ask you about that specific portion that Mr. Neaton was asking you about and concerning the attorney in Virginia. You had previously advised him of Miranda, is that correct?

A Yes, sir. I had.

Q This being on page fourteen of the transcript of that interview. Let me give you a copy of that to review, if you'd like, and I'll take this one back. He asked you about page fourteen. That's fourteen pages into the interview. You had previously advised him of that?

A Yes, sir. I had.

Q Now even before we get to page fourteen, on page one, do you ask Jens Soering, "I understand that you made a request to speak to me today?" And does he confirm, "I just wanted to ask you some questions about what's going to be happening to me now?"

A Yes, sir.

Q So he confirms that he has requested to talk to you?

A Yes, sir.

Q And as the pages continue up to page fourteen, isn't it true that he asked you questions about a number of things? He's asking you questions at that

1 point?

2 A Yes, sir.

3 Q And doesn't he also ask you some
4 hypothetical questions at different times?

5 A Yes, sir, he does.

6 Q Now as to that particular page fourteen,
7 aren't you explaining to him, at his request, the attorney
8 advisement here in Virginia, the procedure when you come
9 to Court?

10 A Yes, sir, I am.

11 Q Did you ever indicate to him that he could
12 not have counsel before questioning?

13 A No, sir.

14 Q That was an explanation of the procedure
15 that you've seen followed in the General District Court
16 here in Bedford, is that right?

17 A Yes, sir.

18 Q About the list of lawyers and how that's
19 selected and you give him that information because he
20 asked you, is that correct?

21 A Yes, sir.

22 Q Did he state that he wanted an attorney
23 present at this point in the transcript, page fourteen,
24 had he stated that he wanted an attorney present before
25 questioning continued?

1 A No, he didn't. No, he hadn't.

2 Q And isn't it true that rather, as we're
3 going through the transcript to this point, he's the one
4 asking you questions and you're providing him information?

5 A Yes, sir.

6 Q And on that same point as to who requested
7 that this interview occur, at the end of the transcript on
8 page forty-eight, the middle of the page, does Jens
9 Soering confirm again that in response to your question,
10 "You requested to have a chat with us?" His response,
11 "Yes." Is that correct?

12 A Yes, sir.

13 Q I'd like to ask you, does he also ask you
14 about plea bargaining procedures that he's heard on Cagney
15 & Lacey and so forth?

16 A Yes, sir, he does.

17 Q Did you indicate to him that you can't
18 enter into that, police officers can't make any deals?
19 I'm referring you to page ten if you need to look at that.
20 Excuse me, does Jens Soering, in the middle of the page,
21 indicate that he's aware that officers can't make any
22 deals?

23 A Yes, sir.

24 Q I'd like to refer you to page thirty-one of
25 that transcript, in the middle of the page. Does he state

1 to you, "Well, what I was saying was that like I said
2 before was that I'd like to speak with either Officers
3 Gardner or Reid in America, in the presence of an American
4 attorney, to explain my role more fully than I have at
5 this time because there are certain questions during these
6 interviews which I have refused to answer, which I would
7 answer under advice of an American attorney and an
8 American attorney is not going to be provided for me here
9 for obvious reasons." He says that?

10 A Yes, sir.

11 Q And does he indicate there and at other
12 times that he realizes that an American attorney cannot be
13 provided for him there at the Richmond, England Police
14 Station?

15 A Yes, sir.

16 Q And to your knowledge, there was no
17 American attorney there, other than me as prosecutor, is
18 that right?

19 A Yes, sir.

20 Q But did he continuously state there in that
21 interview that he knew that an attorney couldn't be
22 provided for him at that time, but he had the right not to
23 answer certain questions until he got that attorney?

24 A That is true.

25 Q And those questions that he did not want to

1 answer until he got that attorney he declined to answer
2 and didn't answer?

3 A That's correct.

4 THE COURT: I was just looking at the
5 clock. Let's go ahead and try to finish up with
6 this witness.

7 MR. UPDIKE: I'll continue --

8 THE COURT: I'm not rushing anybody, but I
9 had said 6:00, but I'm quite willing to stay and
10 finish with this witness today, if possible.

11 Q And on that same page thirty-one. I just
12 read you the quote a moment ago, where he ends his
13 statement here "for obvious reasons." Do you then
14 immediately ask the question, "Do you object to us or have
15 you objected to talking to us without an American attorney
16 so far?" And his response, "No."

17 A No.

18 Q I'd like to refer you to the top of
19 page thirty-four, that first paragraph. Does Jens
20 indicate in that paragraph that he does not know at that
21 point where he will be tried for murder?

22 A Yes, sir.

23 Q And does he state there that he might be
24 tried in England, he might be tried in the United States,
25 he might be tried in Germany?

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A Yes, sir.

Q And doesn't he state that these points which he has not discussed with you, that he doesn't want an American attorney unless the case is tried in America, is that correct?

A Yes, sir.

Q If he were tried in Germany, he would want a German attorney? He discussed those specific points?

A Yes, sir.

Q If he were tried in England, he would want an English attorney?

A Yes, sir.

MR. NEATON: Objection. It's calling for speculation. He can relate what the defendant said, but not embellish it with his own thoughts.

MR. UPDIKE: I'm not embellishing it. He said it.

THE COURT: You're correct about that unless the witness is responding to that which the defendant told him, in which case you're overruled. It's just a matter of fact from the record. Which is it?

MR. NEATON: Where does it say something about a German attorney?

1 MR. UPDIKE: Well, in the previous page
2 he's talking about he's talked to the German
3 Embassy and it's not certain where he will be
4 tried. That was the context in which I was
5 asking that. But I'll be happy to read
6 verbatim.

7 THE COURT: Well, I sustain that objection.
8 I understand the objection. There's nothing
9 specifically there in the record where the
10 defendant told him that if it were a German
11 trial he would want a German lawyer. That would
12 be --

13 MR. UPDIKE: Not at that point, but I was
14 trying to paraphrase. I'd like to read you then
15 if he said that. I was trying to paraphrase.
16 Jens Soering, "All right, fair enough. Well,
17 if there are not going to be any proceedings
18 against me I will consider at that time that
19 becomes certain how much further
20 information I should be passing on to Officer
21 Gardner. If proceedings are brought against me
22 for some reason here in Britain, I would not be
23 needing the presence of an American attorney. I
24 would be needing the presence of a British
25 attorney. I would then be speaking to Officer

1 Wright and Beever or Officer Wright, Beever and
2 Gardner. All right. What I'm trying to
3 say is that depending on where charges, if
4 charges are going to be filed, I would like an
5 attorney in the country where the charges
6 are going to be filed to be present when the
7 next, not the next, but when I can discuss my
8 specific involvement in this case."

9
10 BY MR. UPDIKE:

11 Q All right. That's the question which I did
12 not earlier ask you. Did he say that?

13 A Yes, sir, he did.

14 Q And thereafter in the transcript, after
15 page thirty-four, did the defendant answer certain
16 questions and decline to answer other questions until he
17 had an attorney in the country where he was to be tried?

18 A Yes, sir, he did.

19 Q But he did not state that he wanted an
20 attorney then? He was not going to answer certain
21 questions until he went where he was going and discussed
22 those specific questions with an attorney?

23 A That's right.

24 Q Did he ever in this interview say, "I wish
25 to stop answering questions, period?"

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A No, sir.

Q Did he ever state, "I do not wish to answer any questions until I have an attorney solicitor"?

A No, sir.

Q Let me ask you about, moving on pretty quickly, I'm trying to rather -- The next day, did you advise Jens Soering of the Miranda warnings on June 8, 1986?

A Yes, sir, I did.

Q Would this be a copy of that Miranda form?

A Yes, sir.

MR. UPDIKE: I'd like to introduce this, please.

(Commonwealth's Exhibit Number Five was marked for identification only.)

BY MR. UPDIKE:

Q While that's being done, I'll ask you, was that interview recorded?

A No, sir.

Q Why was it not recorded?

A Because Mr. Soering requested that it not be recorded.

Q Did you go through this process of advising

1 him of the Miranda warnings before any questioning
2 occurred as to the suspicion of murder here in Virginia?

3 A I did.

4 Q And he indicated that he understood all the
5 rights and signed that form to that effect?

6 A Yes, sir.

7 Q And at 6:45 that night did you, yourself,
8 ask for a break in the interview, is that correct? That's
9 about the bathroom?

10 A Yes, sir.

11 Q Did you also ask the defendant if he wished
12 to go to the bathroom or have a cup of tea or anything
13 like that?

14 A Yes, sir, I did.

15 Q As your notes reflect, did the defendant
16 indicate if he wished to proceed?

17 A He did.

18 Q Was there another reason, however, for also
19 stopping the interview at that point?

20 A Yes, sir.

21 Q What was that?

22 A To see if Jens would allow Sergeant Beever
23 and Detective Constable Wright into the room to be witness
24 to what he was saying, telling me.

25 Q Did you ask Jens Soering if these two

1 British officers could come in and hear the interview?

2 A I did.

3 Q Up to that point, from the time that you
4 advised him of the Miranda at 4:45 approximately to 6:45,
5 you were the only person in the room with the defendant?

6 A That is correct.

7 Q After this break at this time, he agreed
8 for them to come into the interview. Detective Constable
9 Wright and Sergeant Beaver?

10 A He did.

11 Q And did he qualify that in any way?

12 A He said that they could come in, but I was
13 to do the questioning.

14 Q Only you were to do the questioning.

15 A Yes.

16 Q And were they allowed to take notes.
17 Detective Constable Wright?

18 A Yes, sir.

19 Q Did you, because of the stop, again advise
20 Jens Soering of the Miranda warnings in writing at
21 7:18 p.m. on June 8, 1986?

22 A Yes, sir. I did.

23 Q Did he again indicate that he understood
24 all the rights and signed this form to that effect?

25 A He did.

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MR. UPDIKE: We d like to introduce
that. That is Number Five (sic). I believe.

(Commonwealth's Exhibit Number Six was marked
for identification only.)

BY MR. UPDIKE:

Q Now as to that time at 7:18. did you fully
go through that Miranda process before re-commencing the
interview process and ask him any questions concerning the
suspicion of murder here in Bedford?

A Yes, sir. I did.

Q During that interview did the defendant
ever request the questioning be stopped?

A No, sir.

Q Did he ever request that no questions be
asked until an attorney was made available for him?

A No, sir.

Q Throughout all of these interviews that
I've asked you about on any of these occasions, did you
ever threaten Jens Soering?

A No, sir. I did not.

Q Did you ever hear any British officer or
anyone else threaten Jens Soering in your presence?

A No, sir.

1 A No. I did not.

2 Q Is it true, as you pointed out a minute
3 ago, he acknowledged that you could not make promises to
4 him?

5 A That's true.

6 Q And throughout all the interviews, was
7 there any indication that he was ever suffering from being
8 under the influence of drugs, alcohol or physical or
9 mental disability of any sort?

10 A No, sir.

11 MR. UPDIKE: Your Honor, we have no further
12 questions at this point.

13 MR. NEATON: I've got some redirect.

14 THE COURT: Sure.

15

16 REDIRECT EXAMINATION

17

18 BY MR. NEATON:

19 Q Sir, Jens Soering was in police custody all
20 through these interviews, wasn't he?

21 A Yes, sir, he was.

22 Q Do you read Miranda warnings to unindicted
23 suspects who are in police custody in Bedford, Virginia,
24 when you interrogate them about their possible
25 participation in a crime?

1 A (No response.)

2 Q Do you want me to rephrase that?

3 A Yeah, if you would, please.

4 Q If you have a suspect in a crime in
5 Bedford, Virginia and you haven't indicted him yet, but
6 you suspect he's the guy who did it, do you read him the
7 Miranda warnings before you interview him, if he's in
8 custody?

9 A Yes, sir.

10 Q And it wouldn't matter if he was in the
11 custody of the Franklin County Sheriff or the Campbell
12 County Sheriff?

13 A No, sir.

14 Q Would it matter if he was in the custody of
15 the City of Baltimore, Maryland Police Department?

16 A No, sir.

17 Q You would still read him the Miranda
18 warnings, wouldn't you?

19 A Yes, sir.

20 Q You said that during the 8:05 interview on
21 June 5th that you had no conversations with Jens Soering
22 that were not on the tape recording, is that right?

23 A (No response.)

24 Q You had no conversations about this case
25 that were not tape recorded at the 8:05 statement?

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MR. UPDIKE: He didn't say that.

MR. NEATON: I'm asking if that's what he
said.

THE WITNESS: I can't answer. I don't
understand the question.

BY MR. NEATON:

Q I'll rephrase it.

A Okay.

Q Did you have any conversations with Jens
Soering at 8:05 p.m. on June 5, 1986, that were not on the
tape recording?

A Yes, sir.

Q As far as you can remember, you read the
Miranda warnings to him at 8:05, he signed the form, you
turned the recorder on right away and then the interview
began, is that right?

A That's the way I remember it, yes, sir.

Q Did you have any conversations with Jens
Soering prior to turning the tape recorder on in which you
or Detective Beaver or Detective Wright discussed with
Jens Soering feelings of remorse, that he should admit his
involvement to salve a guilty conscience, that he should
tell the details?

A This is prior to 8:05?

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Q This is at 8:05. Before you turned the tape recorder on for the 8:05 statement?

THE COURT: That's the third interview, right?

MR. NEATON: The third interview, Judge.

THE COURT: I've got all those notes here.

BY MR. NEATON:

Q Do you want the question read back to you?

A Please.

MR. NEATON: Would you read the question to the witness, please?

THE REPORTER: "Did you have any conversations with Jens Soering prior to turning the tape recorder on in which you or Detective Beever or Detective Wright discussed with Jens Soering feelings of remorse, that he should admit his involvement to salve a guilty conscience, that he should tell the details?" And then you asked the question. "This is prior to 8:05?"

THE WITNESS: I don't recall that. It may have been the 6:00 interview.

1 BY MR. NEATON:

2 Q Well, you have your notes from the 6:00
3 interview up there, don't you? Are you looking at the
4 notes from your 6:00 interview?

5 A Yes, I am.

6 Q Okay. Is there any reference in your notes
7 of the 6:00 interview about conversations concerning
8 remorse, guilty conscience or anything like that?

9 A No, sir, there isn't.

10 Q Would you look at your notes from the
11 3:25 p.m. conversation on June 5th?

12 A I don't have them.

13 Q I'll show you my copy.

14 A (Witness looks at notes.)

15 Q I'll put the question to you while you are
16 reading. Now is there anything in those notes that refers
17 to questions about Jens feeling remorse or having a guilty
18 conscience or anything like that?

19 A No, sir, I don't see it.

20 Q So those subjects were not discussed at the
21 3:25 p.m. interview or at the 6:00 p.m. interview? Your
22 answer is yes, correct?

23 A Well, the 3:25 interview Mr. Soering
24 requested that we not take any notes, so there was no
25 official note taking. That's why he wouldn't allow us to

1 take notes and that s how come I don't have notes as to
2 recall that.

3 Q Are you saying that the notes for the 3:25
4 interview may be inaccurate?

5 A No, sir.

6 Q They are accurate?

7 A As to what I recall when I made the notes.

8 Q Four days after the interview?

9 A Yes, sir.

10 Q The 6:00 interview, remorse, guilty
11 conscience, and that was not discussed then, was it?

12 A No, sir.

13 Q In the 3:25 interview, you weren't trying
14 to implicate him in the crime at that point, you were
15 trying to get background information?

16 A That's correct.

17 Q You didn't discuss remorse, guilty
18 conscience and things like that at 3:25, right?

19 A No, sir.

20 Q Isn't it true that at the beginning of the
21 tape of the alleged statement -- let me rephrase that --
22 that statement that allegedly begins at 8:05 p.m. on the
23 5th of June, that Jens Soering asked you, "What would you
24 like for me to discuss on the tape? Are you talking about
25 the feelings of remorse that we were discussing earlier or

1 would you like to discuss specific points in question as
2 to what happened or --" and you cut him off and said,
3 "What I'd like for you to do is let's start with Friday,
4 which is March 29th," is that right? Is that a copy of
5 that statement there?

6 A No, sir, I don't think so.

7 Q You can look at page one, halfway down the
8 page.

9 A Yes, sir.

10 Q Jens Soering made that statement to you?

11 A Yes, sir, he did.

12 Q Do you have any reason to doubt the
13 accuracy of that transcript as to that statement?

14 A No, sir, I don't.

15 Q Do you specifically remember that being
16 said?

17 A Yes, sir, I do.

18 Q What was Jens Soering talking about? What
19 conversation about remorse was he talking about at that
20 time?

21 A I don't know.

22 Q Did you have a conversation with him about
23 remorse, a guilty conscience, get it off your chest and
24 admit it, confess?

25 A No, sir, I did not.

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Q And you don't know who did?

A No, sir.

Q But apparently somebody did, right?

A (No response.)

Q Right?

A Possibly. I'm not exactly sure what context that was or how it came up.

Q Well, here's the --

A I understand that, yes, sir.

Q Do you want me to play the tape for you so you can understand it?

A No, sir. I understand it.

Q I mean, that was right after you told him, "Just to speak to us in general and go ahead and tell us what happened."

A Yes, sir.

Q Right?

A Yes, sir.

Q So somebody talked to him about remorse. right?

MR. UPDIKE: Doesn't that call for speculation on the part of the witness? He's answered your question, what it says, and we object to that.

MR. NEATON: I withdraw it.

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THE COURT: Withdrawn.

BY MR. NEATON:

Q When did you turn the tape recorder on at the 8:05 conversation, Investigator Gardner? You turned it on about 8:45, right?

A No, sir.

Q You said that during that interview that, when you were shown page eight of that interview, you testified on cross examination after being led by your prosecutor --

MR. UPDIKE: Objection, Your Honor.

THE COURT: That's not necessary.

MR. NEATON: I withdraw it, Judge.

BY MR. NEATON:

Q You said that on page eight of the transcript that Jens Soering asked that the tape recorder be turned off, is that right?

A Yes, sir.

Q Could you tell me where Jens Soering, on page eight of that transcript, says that?

A I asked --

Q He doesn't say it, does he?

A He doesn't say it, no, sir.

1 Q So you'd like to correct your earlier
2 testimony on cross examination. Is that right?

3 A Yes, sir. Well, the testimony was the tape
4 was turned off, but he doesn't say that, no, sir.

5 Q In fact, all he says is, "I think I need to
6 sit back and relax for just a second," right?

7 MR. UPDIKE: That is not what he says.
8 Your Honor, we've asked him to --

9 MR. NEATON: Do you have a different
10 transcript?

11 MR. UPDIKE: "Do you want to stop here?"
12 Jens Soering: "Yes, could we?" That's your
13 transcript.

14
15 BY MR. NEATON:

16 Q And he says, "I think I need to sit back
17 and relax for just a second," right?

18 MR. UPDIKE: You've been asking this
19 witness --

20 THE COURT: Wait a minute.

21 MR. UPDIKE: -- with that in your hand,
22 Your Honor, but Jens Soering never said that.

23 THE COURT: Well, I'm surprised, too. I
24 thought from your questions that there was
25 nothing on there about it. Did you overlook

1 that, Mr. Neaton?

2 MR. NEATON: No. I didn't. Judge.

3 THE COURT: All right.

4

5 BY MR. NEATON:

6 Q On page fourteen of the transcript, you
7 said that Jens Soering asked to turn the tape recorder off
8 at that point, was that true?

9 A Yes, sir. Can I see it, please?

10 Q Could you tell me on page fourteen of the
11 transcript where Jens Soering asked that the tape be
12 turned off?

13 A On page thirteen it states it.

14 Q But you were shown page fourteen by the
15 Commonwealth's Attorney when he asked. He just asked to
16 take a break, right?

17 A I said, "Okay. We'll turn the tape off and
18 let you have a little break."

19 Q Okay. The point is, he was simply asking
20 to stop the interview for a short time, right?

21 A Without the transcript, I'm not sure what
22 was the context -- On page thirteen you're talking about?

23 Q I'm talking about on page fourteen.

24 A Okay.

25 Q Did you want to read that again?

1 A Could I, please?

2 Q Sure.

3 A (Witness reads page fourteen.)

4 Q The point is that Jens Soering is asking
5 simply to take a break at these instances. He's not
6 asking to turn the tape off, right?

7 A Not that time, yes, sir.

8 Q And on page seven and eight of the
9 transcript, again, he's simply asking to take a break, not
10 to turn the tape off, right? Do you want to read it
11 again?

12 A To get a drink of water?

13 Q Right.

14 A (Witness reads pages seven and eight.)

15 Q Was my question correct, the facts that
16 I --

17 A He's not asking for the tape to be turned
18 off, right.

19 Q Who told Jens Soering that it would be
20 virtually impossible to get an American lawyer over in
21 London to be with him during these interviews?

22 A I don't know if anybody did. I don't
23 recall that. I remember him saying that for obvious
24 reasons it would be virtually impossible for him to have
25 an American attorney.

1 MR. UPDIKE: Your Honor, could I interpose
2 a moment and then I'll sit down. But, Your
3 Honor, I would like to state to the Court that
4 these tape-recorded interviews, the Commonwealth
5 is going to ask of the Court that the Court hear
6 them because we feel that the tone of what was
7 said and the manner in which the questioning was
8 conducted is extremely important for the Court
9 to hear.

10 And during our case we're going to want the
11 Court to have a transcript when doing that. I
12 just wanted to state that to the Court, that
13 we're going to ask that and if counsel is aware
14 of that I really wonder how productive it is
15 in asking the witness was such and such said
16 when he doesn't have the transcript in front of
17 him. Can't the Court just hear the tape and
18 review the transcript and decide, because we
19 think that's going to be important to resolve
20 all of this?

21 MR. NEATON: Well, that's fine except that
22 cross examination was virtually the same thing,
23 showing the witness the transcript. And also,
24 there may be things that occurred off of the
25 tape recorded statements that I think it is

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reasonable for me to inquire into.

Now as to his request that you listen to the tape recording. I have no problem if you listen to those portions of the tape recordings that have to do with the issue of the admissibility of the statements. And I would have no problem if you follow along in a transcript. However, I would note that when I have followed along in the transcripts there are differences, sometimes important differences, between the words in the transcript and what is said on the tape.

So I think that perhaps Mr. Updike and I can sit down and work out what portions of the tape recordings would be relevant. Either that or you're going to have to listen to about a day's worth of tape recordings.

MR. UPDIKE: No, it's not a day's worth. We are going to ask you -- There are three tapes, Your Honor, and I do think it's about five hours, though I haven't timed them. So there are three tapes, but we do think that the Court should hear them because of, this will become more relevant, we think, later, but we think the manner in which the interviews are

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being conducted -- There's no threats, no kind of coercion, but extremely polite throughout.

THE COURT: I really do feel that I should hear the tapes. You can tell a lot by inflection in voices that you can't tell from written statements. And I agree with both counsel that probably I should hear the tapes or so much thereof as is pertinent to the motion before me.

I also now feel that we are looking at Saturday, but that's all right.

MR. NEATON: May I continue, Judge?

THE COURT: Yes, sir.

MR. NEATON: Thank you.

BY MR. NEATON:

Q Moving on to something else. Mr. Gardner, who told you that you'd better learn to start noting the times when the breaks started and when they ended?

A Who told me that?

Q Yeah.

A I think it was a discussion between Mr. Beever, Detective Wright and myself.

Q And do you recall when that was discussed?

1 A No, sir. I don't. No, sir.

2 Q Now Mr. Gardner, during the 6:00 p.m.
3 statement on June 5th, do you agree that Jens Soering said
4 to you that he would not answer the questions put to him
5 at that time during that statement before he had the
6 opportunity to consult with an attorney, is that correct?

7 A Yes, sir.

8 Q And he said to you that although he didn't
9 need to consult with an attorney at that time, that he
10 would wait until he had time to consult with an attorney
11 before answering those questions, right?

12 A The question that had been put to him.

13 Q The point is, at the end of the interview
14 you knew that my client did not want to answer the
15 questions put to him in that interview until he could talk
16 to an American attorney, right?

17 A But he had answered some questions.

18 Q I don't care what he had said up to that
19 point.

20 MR. UPDIKE: Objection. Your Honor.

21 MR. NEATON: I'll rephrase it. I'm sorry.
22 I was impolite.

23 MR. UPDIKE: And he is your witness at
24 this point, we would point out, Your Honor.

25 THE COURT: Correct.

1 MR. NEATON: Well, sometimes I even get
2 cross with my partner, Mr. Cleaveland, Judge.

3 MR. CLEVELAND: That's true.

4 THE COURT: You say that's true, Mr.
5 Cleaveland?

6 MR. CLEVELAND: Yes, sir.

7
8 BY MR. NEATON:

9 Q Mr. Gardner, at the end of the interview,
10 after you had put questions to him about his involvement
11 or non-involvement in the offense, you knew that he did
12 not want to answer those questions about his involvement
13 or non-involvement in the offense until he could talk to a
14 U. S. attorney in the U.S., right?

15 A That question.

16 Q Do your notes specifically reflect -- I
17 understand that they were made four days after the fact --
18 but do your notes specifically reflect that Jens Soering
19 limited that request to only those questions that you had
20 put to him earlier? I'd ask you to look at page three?

21 A Yes, sir. (Witness looks at page three.)

22 Q The answer is no, isn't it?

23 A What's the question again?

24 Q The question is that your notes do not
25 reflect that Jens Soering was limiting his desire to talk

1 to an attorney to just those questions that you had put to
2 him earlier, right?

3 A Right.

4 Q He said that he wanted to talk about the
5 case, right?

6 A He --

7 Q He wanted to talk to his attorney about the
8 case, right?

9 A Yes, sir.

10 Q Do you recall Mr. Beever telling Jens
11 Soering during the June 6th interview that it would be a
12 fairly impossible task to get an American attorney -- Do
13 you want me to start over?

14 A I'm listening. Excuse me. I'm sorry.

15 Q Do you recall Sergeant Beever telling Jens
16 Soering on June 6th of 1986, "It would be a fairly
17 impossible task to get an American attorney over in
18 London"?

19 A The June 6th statement? Yes, sir.

20 Q And during that statement, that was in
21 response to Jens Soering again requesting counsel, right?

22 A I don't know.

23 Q You don't know?

24 MR. NEATON: I'll just leave it to the
25 Court to listen to the tape, Your Honor.

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THE COURT: All right, sir.

BY MR. NEATON:

Q Do you recall Mr. Beever, during the June 6th interview, telling Jens Soering that he, meaning Mr. Beever, would go down and get him his British attorney to discuss the case with him?

MR. UPDIKE: Objection, Your Honor. He's referring him again to a portion of the transcript. Your Honor, first of all we'd like to point out for the record that the witness does not have in his hand the transcript. And secondly, as we've discussed, he's asking about something that somebody else said that is on the tape, that is on the transcript, and we repeat our point that the Court's going to hear this. And, secondly, we don't think that it's fair to be asking the witness about a transcript when he's not even allowed to have it.

THE COURT: Well, that doesn't make the question inadmissible, though, Mr. Updike.

MR. UPDIKE: Yes, sir.

THE COURT: I overrule.

MR. UPDIKE: Yes, sir.

1 BY MR. NEATON:

2 Q I'm just asking, do you remember that?

3 A No, sir.

4 Q You don't remember. Do you remember Jens
5 Soering telling you that he would not want to give blood
6 samples to you until he had a chance to talk to an
7 American attorney?

8 A I remember that.

9 Q And that was on June 6th, is that not
10 correct?

11 A He said it, yes, sir. But I assume if you
12 say it was on the 6th, it was on the 6th.

13 Q But you don't know?

14 A I don't know when he said it, but he said
15 it on tape.

16 MR. NEATON: Thank you. I have no further
17 questions.

18 MR. UPDIKE: I have no further questions.
19 Your Honor.

20 THE COURT: Thank you. Step down. We will
21 recess until 9:30 tomorrow morning.

22
23 (The Court was recessed at 6:50 p.m.
24 until 9:30 a.m. Friday, March 2, 1990.)
25

1 I, VIVIAN P. NEAL, Court Reporter, do hereby certify that
2 the foregoing is a true and accurate transcript of the
3 proceedings in the aforementioned case, taken on March 1,
4 1990, to the best of my ability.

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Court Reporter

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

COMMONWEALTH OF VIRGINIA

V.

JENS SOERING

THE HONORABLE WILLIAM W. SWEENEY, JR., PRESIDING

Bedford County, Virginia
March 2, 1990

* * * * *

VIVIAN P. NEAL
Court Reporter
1221 Twin Springs Court
Forest, Virginia 24551

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1 (Court convened at 9:30 a.m. and in the presence of
2 the defendant and counsel, the following ensued.)
3

4 THE COURT: All right, continuing in the
5 hearing. Mr. Neaton, who is your next witness?

6 MR. NEATON: Jens Soering.

7 THE COURT: All right.
8

9 The witness, JENS SOERING, having first been
10 duly sworn, testifies as follows:
11

12 DIRECT EXAMINATION
13

14 BY MR. NEATON:

15 Q Your name is Jens Soering, is that right?

16 A Yes, it is.

17 Q When were you born?

18 A August 1, 1966.

19 Q And where were you born?

20 A Bangkok, Thailand.

21 Q And how far did you go in school?

22 A I went to the University of Virginia for a
23 year and a half.

24 Q I'd like to direct your attention to the
25 date of June 5th of 1986. Do you remember that day?

1 A Yes, I do.

2 Q Where were you on that day?

3 A I began in a remand prison and I was then
4 taken to Richmond Magistrate's Court and that's where I
5 met Mr. Barker.

6 Q Do you remember the remand prison that you
7 were in?

8 A Yes, sir. The Ashford Remand Center.

9 Q Do you remember what court you went to that
10 morning?

11 A Richmond Magistrate's Court.

12 Q You met your solicitor at the Richmond
13 Magistrate's Court that morning?

14 A Yes.

15 Q And what is his name?

16 A Keith Barker.

17 Q Was he provided by legal aid in the United
18 Kingdom to represent you at that hearing?

19 A Yes. He had been representing me for the
20 last month.

21 Q Were you present in the Magistrate's
22 courtroom at that hearing?

23 A Yes, I was.

24 Q What was the purpose of that hearing, if
25 you recall?

1 A It was to remand me back into police
2 custody for questioning.

3 Q Were you in police custody at the Ashford
4 Remand Center?

5 A No. That was a prison service.

6 Q Were you told what you were going to be
7 questioned about at the Magistrate's hearing on the 5th of
8 June?

9 A Yes, sir. Homicide.

10 Q And did you object or did your solicitor
11 object on your behalf to the remand petition?

12 A Yes.

13 Q Did the Court or the Magistrate order you
14 remanded for interrogation on the homicide?

15 A Yes.

16 Q After the Court ordered you remanded, what
17 did you do?

18 A I was brought back down to the cells and
19 searched by Mr. Beever and Mr. Wright and taken to the
20 police station.

21 Q Did you see Mr. Beever and Mr. Wright in
22 the Magistrate's courtroom on the 5th of June?

23 A I don't recall.

24 Q In any event, after the Magistrate's
25 decision you were taken into custody by Mr. Beever and

1 Wright, is that correct?

2 A Yes. Immediately afterward.

3 Q And after you were taken into their
4 custody, where did you go, if anywhere?

5 A Well, we went to the Richmond Police
6 Station.

7 Q And when you arrived at the Richmond Police
8 Station, did you know what time it was?

9 A Early afternoon, about one o'clock-ish.

10 Q Did you have any way of telling the time at
11 any time you were in the Richmond Police Station?

12 A No. I didn't have a watch and there were
13 no clocks in the cell tract where they kept me.

14 Q Now, you said you were taken to a cell
15 tract, is that right?

16 A Yes.

17 Q Could you describe what that looked like?

18 A The men's tract was a floorway with about
19 six single cells. They were tiled walls, green in color,
20 metal doors, a cot bed and a toilet in each cell. They
21 had a wicket in it, which is a small window in the door of
22 the cells.

23 Q And you refer to that window in the cell
24 door as a wicket?

25 A I think that's what they're called, yes.

1 Q Was that wicket covered with anything?

2 A No. There was a flap on it, but that was
3 open to the outside.

4 Q There was no screen?

5 A No.

6 Q No glass?

7 A No.

8 Q Was anyone else in your cell with you at
9 that time?

10 A No. They were all single cells.

11 Q Were there any windows in the cells?

12 A Some glass bricks, but they weren't windows
13 you could open.

14 Q Where was the cell located within the
15 police station?

16 A I guess on the ground level.

17 Q Now, when you got to the cell and you were
18 placed in the cell, did you remain there for some length
19 of time?

20 A About two hours.

21 Q Do you have any way of knowing what the
22 exact length of time was that you remained in the cell?

23 A No.

24 Q What happened that caused you to be taken
25 from the cell?

1 A The police came and took me upstairs to the
2 interview room.

3 Q Do you remember the identity of the police
4 who came and took you to the interview room?

5 A I believe it was Mr. Beever and a custody
6 sergeant who took me out of the cell. It was Mr. Beever
7 who took me up to the interview room.

8 Q Do you recall where that interview room was
9 located?

10 A On the first floor, up the stairway.

11 Q And when you got to the interview room, was
12 there anyone else in the interview room at that time?

13 A Yes. The two policemen, other two
14 policemen, Mr. Wright and Mr. Gardner.

15 Q When you entered the interview room, did
16 any of the policemen say anything to you as you first
17 entered the room?

18 A No. I started the conversation.

19 Q What did you say?

20 A This is the Cagney & Lacey business. I
21 said, "I've seen Cagney & Lacey, Kojak, Hill Street Blues.
22 I've got a right to a lawyer. I'd like my lawyer now,
23 please," or "I'd like my lawyer."

24 Q And did any of the police respond to that?

25 A Yes. They all sort of got very ruffled and

1 they said, "No, this is not an interview. This is just
2 preliminary information. It's not even questioning, it's
3 just background."

4 Q And did they proceed to ask you any
5 questions?

6 A Well, they asked me questions about, the
7 same questions you asked, date of birth, place of birth,
8 things like that. Just background information.

9 Q Do you recall which one of the officers was
10 asking you those questions?

11 A I don't recall specifically. I mean, all
12 three of them were asking questions.

13 Q Did anyone read you Miranda warnings at
14 that time?

15 A No. I think if anybody was reading Miranda
16 warnings, I was. I was telling them that I wanted a
17 lawyer, you know, that I had a right to a lawyer and I
18 wanted a lawyer.

19 Q Do you recall if Mr. Gardner read you
20 Miranda warnings?

21 A No, he did not.

22 Q Did the police continue to ask you
23 background questions at that point?

24 A Yes.

25 Q What were some the questions that they

1 asked you about?

2 A About voodoo and whether I believed in
3 voodoo. And I explained to them that the first time I had
4 seen this voodoo business come up was in the newspaper
5 earlier that morning, that Mr. Barker had shown me. and
6 that I had no contact whatsoever with voodoo.

7 Q Do you recall any other background
8 questions that they asked you at that time?

9 A Well, the business about the voodoo and
10 what I believed in. which was, I guess, Zen Buddhism, if
11 anything, at that point in my life. You know, we
12 discussed the differences between those things. And then
13 they tried to bring the conversation around to, you know,
14 other things and started talking about the relationship
15 between Elizabeth and her parents. And at that point I
16 said, "I don't want to talk any more. I want my lawyer."

17 Q And what happened then?

18 A Well, the same sort of response, you know,
19 "Well, it's not necessary, this is just background
20 information." And, you know, "It's important you tell the
21 truth and start talking." Things like that. They did not
22 respond.

23 Q Did there come a time when that interview
24 ended?

25 A Yes. This conversation about whether or

1 not I should have a lawyer went on for a long time, back
2 and forth, back and forth, me asking and them refusing.
3 And then the conversation ended and they put me back down
4 in the cells.

5 Q Did anyone tell you at that time that you
6 could have a lawyer?

7 A No.

8 Q Did anyone tell you at that time that you
9 could not have a lawyer?

10 A That was the impression I got from all
11 three policemen.

12 Q At that point in time, did any of the three
13 people in the room ask you if they could tape your
14 statement?

15 A No. It wasn't even an issue. It was just
16 background questioning, they said.

17 Q Did you ever state to the police at that
18 time that they couldn't tape this conversation?

19 A No. It wasn't an issue.

20 Q You got back to the cell. Do you have any
21 idea what time it was when you got back to your cell?

22 A A couple of hours later. Late afternoon, I
23 suppose.

24 Q How long did you remain in your cell after
25 that conversation?

1 A Not long. Perhaps a half an hour.

2 Q And then what happened?

3 A I was taken upstairs again, same procedure.

4 Fetched and brought upstairs to the interview room.

5 Q Who fetched you the second time?

6 A I believe it was Mr. Beever again with a

7 custody sergeant, initially, out of the cell tract and

8 then Mr. Beever took me up to the interview room.

9 Q When you walked into the interview room,

10 was anyone else in the room?

11 A Just the policemen.

12 Q The same --

13 A Yes.

14 Q -- policemen as before? Mr. Gardner, was

15 he there?

16 A And Mr. Wright and Mr. Beever.

17 Q What happened when you entered the room

18 this time?

19 A Really the same thing that happened the

20 first time. I said, "I'd like a lawyer. I don't want to

21 talk about the case, I want my lawyer."

22 Q Did Mr. Gardner say anything to you at that

23 time?

24 A Well, the three policemen said the same

25 things that they had said the last time around, that it

1 wasn't really necessary, more background, things of that
2 nature.

3 Q Did anyone read you Miranda warnings at
4 that --

5 A No, they didn't, because I started talking
6 about the lawyer.

7 Q During that interview, did Mr. Beever put
8 any questions to you about the homicides?

9 A Not that I recall. We just talked about
10 access to a lawyer.

11 Q Did you indicate to them what kind of
12 lawyer you wanted?

13 A Well, we talked about different kinds of
14 lawyers, but I made very clear that any lawyer
15 representing me would have been fine with me.

16 Q I'd like to return to the 3:25 interview or
17 the first interview. At any time during that interview,
18 did you talk with your solicitor, Mr. Barker?

19 A No. I only saw Mr. Barker once that day
20 and that was before I went into the Magistrate's court,
21 early in the morning for about five minutes. That's when
22 he told me that I should not speak about the case unless
23 he was there and that he would come.

24 Q Now, getting back to the second interview
25 at 6:00, did that interview end?

1 A Yes. That ended fairly quickly.

2 Q And what happened after that interview

3 ended?

4 A Well, the told me they would put me back in

5 the cells and get me a lawyer.

6 Q Who told you that?

7 A Mr. Gardner said that, "We're going to stop

8 now and put you in the cells and get you a lawyer." And

9 the other two policemen agreed. It was completely clear,

10 that's why I was being put back down.

11 Q And then you were returned to your cell

12 again?

13 A Yes.

14 Q What happened when you got to your cell?

15 A I laid back on my bunk and waited for my

16 lawyer.

17 Q And did anybody come to your cell after you

18 laid down in the cell and waited for your lawyer?

19 A I think I got a meal at some time.

20 Q And do you recall if you ate the meal?

21 A No, I don't. I didn't eat a lot that

22 weekend.

23 Q How were you served the meal?

24 A They just passed it through the wicket,

25 through the little window in the door.

1 Q Did you have to get up off the cot, go to
2 the wicket, and get the meal?

3 A Yes, I did.

4 Q And then you got the meal, set the meal
5 down, and went back to the cot?

6 A Yes.

7 Q Did you lay back down?

8 A Yes, I did.

9 Q Did anybody else come to your cell while
10 you were there after the second interview?

11 A Yes, they did. It was a while later.

12 Q Can you describe how that occurred?

13 A Well, there is a door which leads to the
14 cell tract from the custody sergeant's room, the reception
15 room, and I heard that open and close again and I heard
16 steps. It was easy to hear because all of the walls are
17 tiled. And they stopped outside my door, so I turned
18 around and I saw Mr. Beever's face at the wicket.

19 Q Did he say anything to you at that time?

20 A No, he didn't.

21 Q Did you do anything after you saw Mr.
22 Beever at your wicket?

23 A Yes. I got up and walked to the door to
24 talk to him.

25 Q And when you walked to the door, who was

1 the first person to say anything?

2 A I was.

3 Q And what did you say?

4 A I asked him, "How's Elizabeth." I was
5 worried about her.

6 Q Had you seen Elizabeth all that day?

7 A I had not seen Elizabeth since about two
8 weeks earlier and we hadn't been able to write.

9 Q Did you know where Elizabeth was at that
10 time?

11 A Well, I assumed she was in the police
12 station, too, but I didn't know for sure.

13 Q Any by Elizabeth, you mean Elizabeth
14 Haysom?

15 A Yes.

16 Q After you asked Mr. Beever how Elizabeth
17 Haysom was, did he say anything to you?

18 A Yes, he did.

19 Q What did he say to you?

20 A He said, "She's fine. She's fine." He was
21 not looking at me, he was standing sort of at a right
22 angle to the wicket so I saw his right profile. You see
23 what I'm saying? I saw this (indicating).

24 Q Did Mr. Beever say anything else to you at
25 that time?

1 A Well, he paused.

2 Q When he paused, did you say anything to
3 him?

4 A No. It was not a very long pause.

5 Q And after he paused, what did he say to
6 you?

7 A He said, "Very pretty girl, all alone in
8 that cell block. It would be an awful shame if she fell
9 down and hurt herself." And at that point he turned to me
10 and raised his eyebrows like this, and looked me in the
11 eye like that. He didn't have glasses on.

12 Q Did you say anything to him after he said
13 that?

14 A No. I was just shocked, sort of
15 open-mouthed. It was like a bad movie or TV thing. I
16 just looked at him, shocked.

17 Q Did he say anything more to you?

18 A Well, he paused again while he sort of
19 looked me in the eyes like that. Then he said, "I think
20 you should talk to us, lad."

21 THE COURT: I'm sorry, I didn't get that.
22 I think you should talk with us, or she?

23 THE WITNESS: "I think you should talk to
24 us, lad, and you don't really need that lawyer,
25 do you?" Then he paused again and he went like

1 this (indicating) to the wicket. "Think about
2 it." Then he walked away. And I mean, I didn't
3 say anything. I just sort of stood there
4 open-mouthed.
5

6 BY MR. NEATON:

7 Q And what did he do after that?

8 A Well, I became very agitated, I guess is
9 the word, very worried. You know, I loved Elizabeth very
10 much at that point in my life.

11 Q And what did you do, if anything, after Mr.
12 Beever told you that?

13 A I did things like pace up and down the
14 cell. I was just very worried. And then very shortly
15 afterwards I rang the bell to get the custody sergeant,
16 because I thought of one of my famous clever ideas.

17 Q Why did you ring the bell for the custody
18 sergeant?

19 A Well, when the custody sergeant came, I
20 asked him to give me the telephone call to the German
21 Embassy because I was a foreign national and I should be
22 able to telephone my embassy.

23 Q Why did you want to telephone the embassy?

24 A Well, at that point it was early evening
25 and Mr. Barker had -- I guess, I didn't know -- but I

1 guessed Mr. Barker had left his office and was either at
2 home or stuck in rush hour traffic, so I couldn't
3 telephone him. And my idea was I would phone the German
4 Embassy because they were the only other people in London
5 I knew and that they would then try to contact Mr. Barker
6 for me to get him to come to the police station.

7 Q And were you allowed to call the German
8 Embassy?

9 A Yes.

10 Q And did you, in fact, talk to anyone at the
11 German Embassy that night?

12 A Yes, I did.

13 Q Who did you talk to?

14 A Well, the only person who was there was the
15 night watchman or janitor. Usually, at like a consulate
16 or an embassy they're supposed to have a duty officer
17 there who is supposed to deal with emergencies, but the
18 only person I talked to was the night watchman.

19 Q Did he tell you if anyone else was on duty
20 that night at the embassy?

21 A He just said he couldn't do anything for
22 me, you know, he was just the night watchman, and I had to
23 call back in the morning.

24 Q And what happened after that phone call
25 ended?

1 A Well, the custody sergeant took me back to
2 the cell and locked me back up again.

3 Q And you're back in your cell. Did you ever
4 see Mr. Beever, Mr. Wright or Mr. Gardner again that
5 night?

6 A Yes. Mr. Beever came back very shortly
7 afterwards, about five minutes afterwards, so that would
8 be about ten minutes after he made the threat, all things
9 considered. And he came with the custody sergeant.

10 Q Did you ask for Mr. Beever to come back to
11 the cell at this time?

12 A No, I did not.

13 Q Did you ring the custody sergeant for Mr.
14 Beever to come back to the cell at that time?

15 A No. The last people I wanted to see were
16 Mr. Beever and the other policemen. I was worried,
17 scared.

18 Q They came back to the cell. What happened
19 when they came back to the cell?

20 A Well, Mr. Beever seemed sort of abrupt,
21 unhappy.

22 Q Why do you say that? Why do you form that
23 conclusion?

24 A Just even by the sound of him walking down
25 the hallway, very fast. He, you know, pulled me out of

1 the cell.

2 Q What do you mean he pulled you out of the
3 cell?

4 A He just -- I mean, it wasn't anything bad.
5 He just took my arm and pulled me out by the arm.

6 Q What happened then?

7 A Which, I mean, that's like the only time
8 anybody did that to me. And he looked angry. And then
9 they took me out of the cell tract to the custody
10 officer's desk. And that was the first time I was
11 actually at the custody officer's desk.

12 Q And when you got to the custody officer's
13 desk, did anything happen?

14 A Yeah.

15 Q What happened?

16 A They told me to sign the custody log.

17 Q And did you sign the custody log?

18 A Yes, I did.

19 Q And after you signed the custody log, what
20 happened?

21 A They took me up to the interview room.

22 Q And when you got to the interview room, who
23 was in that room at that time?

24 A All three policemen. Mr. Gardner, Mr.
25 Wright and Mr. Beever.

1 Q When you got to the interview room, did Mr.
2 Gardner immediately read you Miranda warnings?

3 A No, he didn't.

4 Q When you got to the interview room, did any
5 one of the three policemen talk to you?

6 A Yes.

7 Q Who talked to you first, if you recall?

8 A I can't recall who talked to me first, but
9 all three policemen did talk to me during this
10 conversation which was, I mean, it was at least twenty
11 minutes that we talked.

12 Q What did you talk about?

13 A Well, they told me again that this wasn't
14 questioning, this was just introduction, they weren't
15 questioning me and it was not an interview yet, and that I
16 should tell the truth. And, you know, they told me I had
17 supposedly killed these two people and I should clear my
18 conscious and tell the truth and I must be feeling guilty
19 and I should tell them about it, and I should just start
20 with, you know, just start with the trip to Lynchburg they
21 said and, you know, talk about it, "You've got to talk
22 now."

23 Q And this lasted at least twenty minutes?

24 A Yeah, because I didn't want to do it.

25 Q And what did you say to them at that time.

1 If anything?

2 A I told them I didn't want to talk to them
3 without a lawyer and I asked for a lawyer.

4 Q And do you recall what any of the policemen
5 said to you at that time?

6 A Well, they told me the same things, you
7 know, it was late at night now and they couldn't get me a
8 lawyer and I didn't really need a lawyer, this was just
9 background. And then at some stage, after I kept on
10 insisting, Mr. Beever went like this, he raised his
11 eyebrows again, looked me in the eyes, and went like this
12 (indicating).

13 Q What did you take that to mean?

14 A Well, he was pointing, as far as I was
15 concerned, he was pointing at Elizabeth in the cell
16 downstairs and, you know, he was trying to remind me,
17 which he did, of the conversation at the wicket and that,
18 you know, if I kept this up, you know, she would fall over
19 and hurt herself.

20 Q Now after Mr. Beever made that gesture to
21 you -- and the record should reflect that the witness
22 pointed with his right index finger in a downward motion,
23 so that the transcript gives an idea of what happened --
24 what happened after Mr. Beever made that gesture to you?

25 A Well, you know, I just said okay. They

1 then took out the Miranda form and went through the
2 procedure and turned on the tape recorder.

3 Q Do you have any idea of when the tape
4 recorded was turned on?

5 A No specific memory, no. I didn't have a
6 watch, I didn't have a clock, but I was in the room by
7 that time for at least twenty minutes. I mean, it went
8 back and forth a lot.

9 Q During that interview, do you recall any
10 breaks being taken?

11 A Just a couple of short refreshers. I mean,
12 I was getting tired, it had been a very long day.

13 Q And did you ask to take the breaks?

14 A Yes, I asked to take the breaks.

15 Q Did you ask to turn the tape recorder off
16 during the breaks?

17 A No, I didn't.

18 Q Do you have any idea how long each break
19 took?

20 A Well, they were very short. I mean, the
21 idea was for me to have a break, so we just sat there in
22 silence. I mean, you can't really sit in silence for more
23 than about five minutes. So both breaks were short.

24 Q Are you saying that to the best of your
25 memory neither break was over five minutes and that's your

1 best estimate at this point?

2 A Yes, that's for sure. That's for certain.

3 Q Do you recall any other stoppages in the
4 taped interview other than the two breaks that are
5 approximately five minutes in length?

6 A Just when we ran out of tape at the end.
7 But that wasn't stoppage, it was just running out of tape.

8 Q And the interview ended at that time?

9 A We talked some more, but then I was put
10 down in the cells.

11 Q Okay, you were put down in the cell. Do
12 you have any idea of the time you were returned to your
13 cell?

14 A It was late at night or it felt like late
15 at night.

16 Q Did you fall immediately asleep at that
17 time, if you remember?

18 A I don't recall, but I really doubt it. I
19 was very worried.

20 Q Were you ever informed that Mr. Barker was
21 in the police station at about midnight on June 6th?

22 A No. No.

23 Q You never saw Mr. Barker after the third
24 interview?

25 A I didn't see Mr. Barker between the morning

1 of June 5th in court and like the next week in the
2 Candlewell Green Police Station where I was in a holding
3 cell because the prisons were overflowed.

4 Q Now, on June 6th, which would be a Friday,
5 is that correct?

6 A Yes.

7 Q Of '86?

8 A Yes.

9 Q Were you again interviewed by the police?

10 A Yes.

11 Q Can you tell Judge Sweeney how that
12 interview came about?

13 A Well, it was the same procedure. I was
14 taken up to the interview room. I didn't ring them to
15 fetch me, I was just taken up. And they did what they did
16 before every interview, they sat me down and talked to me,
17 you know, to prepare me for the interview. They told me
18 this wasn't questioning, this was just introduction,
19 background, it wasn't questioning.

20 Q Do you know how long this went on?

21 A The same as every interview, twenty
22 minutes, approximately. There would be sessions before
23 every interview.

24 Q Was this session tape recorded?

25 A No, it wasn't.

1 Q Who was present during that session?

2 A All three policemen.

3 Q And then you were read Miranda warnings?

4 A Yes.

5 Q Was a tape recorder turned on again?

6 A Yes. It was.

7 Q Now, I'd like to call your attention to
8 that interview. Do you remember being asked during that
9 interview whether any threats had been made against you?

10 A Yes, I do.

11 Q And do you recall if it was Mr. Gardner who
12 put that question to you?

13 A I believe it was.

14 Q And do you recall if Mr. Beever said
15 anything after Mr. Gardner asked that question?

16 A As I recall, I didn't answer that question
17 and Mr. Beever then said, "Tell us the truth. I think you
18 should be honest about that," something to that effect. I
19 mean, I haven't seen the transcript since 1987, so I don't
20 know.

21 Q And so what did you say in response to that
22 question?

23 A Well, I guess I answered very
24 sarcastically, "No, I personally haven't been threatened."
25 It was a sarcastic response like that. I used to be a

1 very sarcastic person.

2 Q And at that point in time, did Mr. Gardner
3 say anything to you after you said that?

4 A Um --

5 Q Do you recall?

6 A I don't recall specifically.

7 Q Did you go on to say something else?

8 A I tried to say something after that and
9 I --

10 Q What were you trying to say after that?

11 A I wanted to say, " But Elizabeth was
12 threatened," but I never got that far.

13 Q Why did you never get that far?

14 A I was looking at Mr. Beever, because as I
15 recall Mr. Beever was the last person to say anything to
16 me. And Mr. Beever again did, I mean, this became a sort
17 of signal between us really, he raised his eyebrows and
18 went like that. And the raised eyebrows, you know, I knew
19 what that meant. It didn't mean anything to the other
20 policemen, but, you know, I knew what he was talking
21 about.

22 Q And he pointed again with his finger
23 downward?

24 A Down to the cell where Elizabeth was.

25 Q And when he did that, what did you say?

1 A I just said, "Forget it. It's hopeless
2 anyway," something like that. Because I knew that, you
3 know, I realized that the sort of official record,
4 anything like that, you know, had to be kept clear if I
5 wanted Elizabeth safe.

6 Q During that interview, were you asked any
7 about providing blood samples to Mr. Gardner?

8 A Yes, I was.

9 Q And when you were asked to provide blood
10 samples to Mr. Gardner, what did you say in response to
11 his request?

12 A Well, I made another sarcastic comment. I
13 think I said something like, "I'll give you mine if you
14 give me yours," something like that.

15 Q And after you said that to him, did you say
16 anything else to him about the blood samples?

17 A Well, I said I would give him blood samples
18 if I had a lawyer.

19 Q And what did he say, if you recall, at that
20 time?

21 A He said -- You know, when I said, "I'll
22 give you mine if you give me yours," he said no.

23 Q Do you recall what he said after you then
24 got a little less sarcastic and a little more serious and
25 said, "I'll give you blood samples after I consult with a

1 lawyer," or words to that effect? Do you recall if he
2 said anything to you?

3 A I think this was a stage where Mr. Beever
4 jumped in and there was another conversation about lawyers
5 and that we couldn't get one.

6 Q Now, were you asked specifically by Mr.
7 Beever at that time, if you remember, whether you wanted
8 an American lawyer at that time?

9 A That's something Mr. Beever said. I just
10 wanted a lawyer. I mean, that's what I wanted all along.
11 It's the first thing I said to the policemen on June 5th.

12 Q Did you ever get a chance to answer Mr.
13 Beever's question on the 6th of June?

14 A No. He went on for a long time, you know,
15 listing all sorts of reasons why it couldn't be done and
16 just kept talking. But, I mean, you know, I just wanted a
17 lawyer.

18 Q Did Mr. Beever ever tell you it was fairly
19 impossible to get an American lawyer in London on the 6th
20 of June?

21 A Yes, he did.

22 Q And would you stand by what's in the tape
23 of that conversation as being an accurate reflection of
24 the conversation between you and Mr. Beever at that time?

25 A Yes.

1 Q During that part of the interview, did Mr.
2 Beever ever accuse you of calling him a liar?

3 A It may have been that interview, yes.

4 Q At the end of that interview, did Mr.
5 Beever tell you that he would go and get you your
6 solicitor? I'm talking about the June 6th interview.

7 A Yes. He said the same thing that Mr.
8 Gardner had said at the second interview on Thursday,
9 which was, you know, "We're going to put you back down in
10 the cells and get you a lawyer." It was the same thing
11 they said on both occasions.

12 Q And again, would you stand by what's on the
13 tape recording of that interview?

14 A Yes.

15 Q Were you ever again interviewed on June 6th
16 by the police, that Friday?

17 A Not that I recall.

18 Q Do you have any idea when the interview on
19 June 6th ended?

20 A Early afternoon.

21 Q But again you had no ability to reference
22 time, is that right?

23 A I had no watch and I don't think there was
24 a clock in the room that I could see.

25 Q You only knew if it was day or night?

1 A Right, and by meal times, approximately.

2 Q Were you ever aware that Mr. Barker was in
3 the Richmond Police Station at about 4:30 in the afternoon
4 on June 6th?

5 A No.

6 Q Were you ever given an opportunity to meet
7 with Mr. Barker on June 6th?

8 A No.

9 Q Were you ever aware of the fact that Mr.
10 Barker was representing Elizabeth Haysom during an
11 interview conducted on the afternoon of June 6th in the
12 Richmond Police Station?

13 A No.

14 Q On June 7th, Saturday, were you interviewed
15 by the police?

16 A Yes.

17 Q Did you request that interview?

18 A No. I at no time requested to see any
19 policeman, ever. I mean, that started in court, at the
20 Richmond Magistrate's Court, where my lawyer told them
21 that I didn't want to talk to them and I never, ever asked
22 anybody.

23 Q Now, on June 7th of 1986, were you again
24 led to the same interview room?

25 A Yes.

1 Q On June 6th -- let's go back again to June
2 6th -- did Mr. Beever or Mr. Wright ever come to your cell
3 on June 6th?

4 A Well, throughout that weekend both of the
5 British officers came to my cell repeatedly. I mean,
6 there was a custody sergeant who came at regular
7 intervals, but they would also come and talk to me at the
8 wicket door.

9 Q What would you talk about?

10 A Well, Mr. Beever, for example, would say
11 things like, "Elizabeth's fine," which I took to be a
12 reference to our earlier conversation. They just asked me
13 did I want to talk, things like that. They just showed
14 their faces, really. These weren't conversations, they
15 just came by to remind me they were there. That was my
16 interpretation. I just saw them.

17 Q Okay. Returning to June 7th then, you are
18 brought from your cell?

19 A Yes.

20 Q To the interview room?

21 A Yes, I was.

22 Q Not at your request?

23 A Correct.

24 Q Were you asked to sign anything, sign the
25 custody record on June 7th?

1 A I don't recall. But, I mean, I always
2 signed what they gave me to sign, because that was, as far
3 as I knew, the only way to protect Elizabeth.

4 Q Now, on June 7th, do you recall a
5 conversation with Mr. Gardner about how a lawyer would be
6 appointed for you under Miranda rights?

7 A Yes.

8 Q How did you understand a lawyer would be
9 appointed for you under Miranda rights?

10 A Well, what I understood what he said was
11 that I could only get a lawyer, an American lawyer, once I
12 was in America. You know, I had to actually be in
13 Virginia to get a lawyer, an American lawyer.

14 Q Did you take what he said at that time to
15 apply to even a request under the Miranda decision?

16 A Yes. I had no other way of knowing.

17 Q Did you understand Mr. Gardner to have been
18 talking about the attorney advisement process here in
19 Bedford County at that time?

20 A Well, I don't know what the attorney
21 advisement process is. What I understood him to say is
22 that I could only have an American lawyer once I was in
23 Virginia.

24 Q Now, during this interview, did you ask the
25 police officers various questions about what might happen

1 to you?

2 A Yes.

3 Q And that interview ended at some point in
4 time?

5 A Yes.

6 Q After that interview ended, were you taken
7 back to your cell?

8 A Yes.

9 Q And did there ever come a time after you
10 were taken back to your cell that any of the officers came
11 to your cell on Saturday, June 7th?

12 A Yes.

13 Q Which officer came to your cell on
14 Saturday, June 7th?

15 A Well, both officers did. I mean, at
16 separate times.

17 Q By both officers do you mean both British
18 officers?

19 A Yes. Mr. Gardner never came to the cell
20 tract.

21 Q Now, when did Mr. Beever come to your cell
22 after the June 7th interview?

23 A This is the Saturday interview?

24 Q Yes.

25 A He came, I think, fairly shortly afterwards

1 and took that piece of paper away.

2 Q Took a piece of paper away from you?

3 A Yes. A sketch I had made during the
4 interview.

5 Q Did Mr. Wright come to you cell that day?

6 A Yes, he did.

7 Q Do you recall when it was that Mr. Wright
8 came to your cell?

9 A I think it was some time afterwards.

10 Q When Mr. Wright came to your cell, how long
11 did he stay at your cell?

12 A Well, Mr. Wright was actually locked into
13 my cell with me. This was nighttime. It was dark
14 outside. I don't know when the sun set. And he was in my
15 cell for at least an hour.

16 Q What did you talk about?

17 A Well, he told me basically the story of his
18 life kind of thing.

19 Q What did he tell you?

20 A He told me how he had worked as a
21 bricklayer in Hamburg in Germany and, you know, how he
22 traveled around, different places he visited in Germany.
23 And he told me how he came back to England to join the
24 police force out of idealistic reasons, serving the
25 community, things like that, and about the problems with

1 drugs in young people and things like that. And he told
2 me that just a short time ago he had come back on the
3 service after being off-duty in a hospital because during
4 some sort of arrest somebody had stabbed him in the
5 kidneys repeatedly and we talked about that. And he asked
6 me questions about the drawing.

7 Q Were you ever given Miranda warnings before
8 that interview?

9 A No.

10 Q Were you ever given the British caution
11 before that interview?

12 A No. He tried to make it very friendly.

13 Q He was the good guy, huh?

14 A Well, yeah, throughout.

15 Q Did Mr. Wright ever give you a summary of
16 that interview to sign?

17 A No. I don't think I ever got anything, any
18 summary of any interview to sign.

19 Q Then Mr. Wright left your cell?

20 A Yes.

21 Q Did you understand Mr. Wright to be able to
22 speak German?

23 A Yes, yes. We spoke some German.

24 Q Was Mr. Wright present in the interview
25 room earlier that day or earlier on whatever day it was

1 that you spoke to the German Embassy from the interview
2 room?

3 A Yes, he was. I mean, I knew Mr. Wright
4 spoke German from a month earlier when he first arrested
5 me for the fraud, because when he saw my German passport,
6 you know, he said, "I speak German."

7 Q Now, on Sunday, June the 8th of '86, were
8 you interviewed by Mr. Gardner on that day?

9 A Yes, I was.

10 Q Did you ask to be interviewed by Mr.
11 Gardner on that day?

12 A No.

13 Q Prior to the interview, did Mr. Beever or
14 Mr. Wright ever visit you at your cell door?

15 A Yes.

16 Q On June 8th?

17 A Yes, on Sunday. They visited, especially
18 Mr. Beever, every day.

19 Q Do you recall what, if anything, Mr. Beever
20 said to you at his last cell door visit to you before the
21 June 8th interview?

22 A The same sort of things he said all along,
23 that I had to talk and that I should tell them what I'd
24 done, things like that.

25 Q And would it be fair to say then that he

1 spent --

2 MR. UPDIKE: I don't like to object a whole
3 lot on leading, but I haven't raised any
4 objections. I would ask counsel to restrain a
5 little bit on leading.

6 MR. NEATON: I'll rephrase the question,
7 Judge.

8
9 BY MR. NEATON:

10 Q Do you have any idea of how long Mr. Beever
11 spent at your cell wicket talking to you that afternoon?

12 A No. It was like always, very short.

13 Q Does very short to you mean a couple of
14 minutes?

15 A Five minutes or less.

16 MR. UPDIKE: Your Honor, I just made an
17 objection.

18 THE COURT: Sustained.

19 THE WITNESS: Five minutes or less.

20 MR. NEATON: I'll rephrase it.

21 MR. UPDIKE: I don't think there is any
22 need to now. I'm just asking as to future
23 questions, Your Honor.

24

25

1 BY MR. NEATON:

2 Q After this through the wicket conversation
3 with Mr. Beever, were you taken again to the interview
4 room?

5 A Yes.

6 Q And whom did you see in the interview room
7 at that time?

8 A Well, I recall all three policemen.

9 Q At that point in time, did you ever ask the
10 police not to tape record this interview?

11 A No, that was their decision.

12 Q And were you read Miranda warnings at that
13 interview?

14 A I think so, yes.

15 Q Did you sign a Miranda form at that
16 interview?

17 A Yes, I think so. I signed all these forms.

18 Q Why did you sign all these forms?

19 A Because I believed that was the only way to
20 keep Elizabeth safe.

21 Q Now, at this time, were there any
22 conversations between you and the police concerning the
23 subject of how much time they had to talk to you?

24 A Well, Ricky Gardner said something about
25 this being the last day. But we all realized that the

1 Judge, the Magistrate, had said four days back in Court on
2 Monday and he made some reference about running out of
3 time.

4 Q Do you recall exactly what he said?

5 A No, I don't.

6 Q After that interview was over, were you
7 taken back to your cell?

8 A Yes.

9 Q Did you willingly give that interview on
10 June 8th?

11 A No. I didn't give any interview willingly.

12 MR. NEATON: Thank you. Your witness.

13 THE COURT: We'll take a short break at
14 this time. Step down and take a break,
15 Mr. Soering.

16
17 (A short break was taken, after which the following
18 ensued in the presence of the defendant and counsel.)
19

20 CROSS EXAMINATION

21
22 BY MR. UPDIKE:

23 Q Mr. Soering, if I might ask you some
24 questions, please, sir, at this time. I'd like to first
25 of all just get a general idea. Are you saying that

1 throughout this entire procedure that you wanted a lawyer
2 of any type, from the beginning to the very end?

3 A A lawyer to represent me, yes.

4 Q Whether it be an American attorney, British
5 attorney, a solicitor, Mr. Barker? You just wanted legal
6 counsel?

7 A Yes. But I progressively gave up hope as
8 time went on.

9 Q Did you wish that then from the very
10 beginning, there at the Richmond Police Station upon your
11 arrival there?

12 A Well, yes. But, I mean, even before that
13 at the Magistrate's Court, you know, my lawyer said that
14 he would be coming and I should ask for him and I would,
15 you know, be represented or have advice.

16 Q Then would you have been happy with all of
17 the conversations, these interviews with the police
18 officers, for them to have been recorded in their
19 entirety?

20 A Well, as I recall, there was one time that
21 I specifically asked for the tape recorder to be turned
22 off, but in general, depending on what my lawyer told me,
23 I wouldn't have had any objections. But I didn't have any
24 legal advice, so I didn't know what to do. I mean, you
25 know, I didn't know.

1 Q Yes, sir. But I'm just asking about what
2 you felt. You say that there was one time that you did
3 ask the tape recorder be turned off?

4 A Yes. The one that I can recall right now,
5 one occasion. But, I mean, there were other occasions
6 where they turned them off and I didn't ask for it.

7 Q When those occasions occurred, isn't it
8 true that you asked to take a break at those times?

9 A This is on the June 5th interview?

10 Q I can be specific in a moment with you if
11 you'd like. I was just asking in general, and if you'd
12 rather for me to ask --

13 A It wouldn't have made any difference to me.
14 The point was that, I mean, the tape recorded interview
15 that you're talking about where I asked for a break, I
16 mean, that was already after I had sort of been hit by the
17 realization that I would have to do all this without a
18 lawyer and, you know, I was very, very scared at that
19 point.

20 Q Very scared. Have you ever been convicted
21 of a crime involving moral turpitude, lying, stealing,
22 cheating?

23 A Yes.

24 Q Before --

25 A But not at the time the interviews took

1 place.

2 Q But at this time?

3 A Yes.

4 Q In June of '86 when these interviews
5 occurred, you knew, as you've already indicated, Detective
6 Constable Wright and Detective Sergeant Beever?

7 A Yes.

8 Q And you knew them by virtue of the
9 investigation that had occurred earlier as to British
10 offenses, correct?

11 A Yes.

12 Q During that investigation, beginning on
13 April 30th and May 1st, you were advised, at least on two
14 occasions, of the British caution by those two officers,
15 is that right?

16 A That's right.

17 Q And you understood those warnings at that
18 time?

19 A That's right.

20 Q And as far as your educational background,
21 as of June of '86 you had completed two years at the
22 University of Virginia, is that correct?

23 A Yes, technically, yes.

24 Q And at the University of Virginia you were
25 a Jefferson scholar, is that right?

1 A Yes.

2 Q And what exactly is a Jefferson scholar?

3 A It's a full scholarship for academic
4 excellence.

5 Q Full scholarship?

6 A Yes.

7 Q That, of course, means a full four year
8 scholarship?

9 A Yes.

10 Q Towards a bachelor's degree? And the
11 amount of money provided you, I think you indicated in one
12 interview about how much would it be a semester?

13 A I think the total value of the scholarship
14 over four years would be something like thirty-two
15 thousand dollars or something like that.

16 Q Thirty-two thousand dollars?

17 A I think so.

18 Q How did it come to be that you were a
19 Jefferson scholar?

20 A I was recommended by my school and I did
21 the interviews and got the scholarship.

22 Q But it's a very competitive endeavor, isn't
23 it, to obtain the Jefferson scholarship? There are very
24 few of them, aren't there?

25 A Yes.

1 Q And it was quite an academic achievement
2 when you received the scholarship?

3 A Right.

4 Q Are you aware of what your I.Q. is?

5 A No.

6 Q Is it your understanding that it is a high
7 I.Q.?

8 A Yes.

9 Q And before going to the University of
10 Virginia, I think that you went to some school in Atlanta,
11 is that correct?

12 A Yes.

13 Q And briefly, sir, where was that?

14 A That was the Lovett School, L-o-v-e-t-t.

15 Q And would that, again, be a school of high
16 academic standard?

17 A Yes.

18 Q So as far as the British caution, with your
19 intelligence level and your educational background, you
20 most certainly had no difficulty in understanding those
21 warnings, is that correct?

22 A Right. I have no objection to the April
23 30th and May 1st interviews.

24 Q I see, but I'm just trying to understand
25 some background, if I might. Did those cautions,

1 according to British law, involve informing you that you
2 did not have to say anything during the interviews, and if
3 you did, anything that you did say would be used against
4 you in court?

5 A Yes.

6 Q I'd also like to ask, you've testified as
7 to the days of the remand, June 5, 6, 7, and 8 in great
8 detail, haven't you here today?

9 A I wouldn't say so.

10 Q You wouldn't say so?

11 A I mean, if you want to say that, yes, sir.

12 Q I'm curious that at the time -- Now, you
13 heard Investigator Gardner as to the interview on June 5,
14 the first interview on June 5, that he testified he didn't
15 take any notes at that time because you did not allow him
16 to. However, four days later on June 9th he did at that
17 time reduce his recollections to writing. You heard him
18 say that, is that correct?

19 A Yes, I did.

20 Q Well, during this period of time, whether
21 it was contemporaneously or four days later, did you ever
22 reduce your recollections to writing?

23 A No, I didn't, not on that weekend.

24 Q Well, at any time?

25 A I talked about it with my lawyers

1 afterwards when I had access to them. This was Mr. Barker
2 in Candlewell Green Police Station.

3 Q All right, sir. But --

4 A And we've talked about it lots and lots
5 since.

6 Q Sir, my question to you is that we are
7 talking now almost four years ago --

8 A Yes.

9 Q -- and in your testimony you've described
10 for the Court at one point, I think, Detective Sergeant
11 Beever coming to the cell and which side of his face was
12 shown to you and using his glasses --

13 A No, he didn't have glasses. He just looked
14 me in the eyes.

15 Q Oh, excuse me. You're quite right. He
16 raised his eyebrows, I think?

17 A Right. Yes.

18 Q And the raising of the eyebrows you took as
19 intimidation?

20 A Yes.

21 Q Could you demonstrate that intimidating
22 gesture for us?

23 A Well, he just glanced in my eyes or he
24 looked in my eyes deeply and raised his eyebrows like that
25 (indicating.)

1 Q Looked into your eyes deeply and raised his
2 eyebrows?

3 A Right.

4 Q And that scared you?

5 A Well, that and the context of what he said
6 beforehand and the other things that happened, yes.

7 Q But you wanted a lawyer from the very
8 beginning?

9 A Well, it took me two and a half hours -- I
10 mean, from what Mr. Barker said at the Richmond
11 Magistrate's Court, he said, "Ask for a lawyer and I'll
12 come and be there. You've got a right to a lawyer. Don't
13 say anything without a lawyer being present," words to
14 that effect. Then when I got to the police station it
15 took me two and a half hours to finally convince the
16 police that they were going to go get me a lawyer. I was
17 not having an easy time.

18 Q Sir, let me show you a form, if I might
19 that's headed, "Metropolitan Police - Notice to Detain
20 Persons," and ask you if you've ever seen that form
21 before.

22 A It's possible.

23 Q It's possible, sir?

24 A I can't answer yes or no. I don't know
25 specifically.

1 Q Not that specific form, a form exactly like
2 that, that's my question. Do you know?

3 A I don't know for sure, no.

4 Q You don't know for sure?

5 A That's right.

6 Q Have you ever had it read to you?

7 A Yes, I've had things like that read to me.

8 Q And isn't it true that on April 30, 1986
9 you were read that form?

10 A I'm sure that's right.

11 Q And you were given that form in accordance
12 with British police procedures, weren't you?

13 A Possibly.

14 Q Possibly?

15 A I know that I was read things like that
16 over that weekend, that fraud interview weekend of April
17 30th.

18 Q Am I correct that the form says,
19 "Metropolitan Police - Notice to Detain Persons. This
20 side to be read to the detained person by the custody
21 officer before giving the notice to the detained person.
22 You have a right to have someone informed of your arrest.
23 2) Consult a solicitor. 3) Consult a copy of the Codes of
24 Practice."?

25 A Yes.

1 Q That was read to you on April 30 before you
2 were handed the form, correct?

3 A Sure.

4 Q Well now, why didn't you recognize it a few
5 minutes ago?

6 MR. UPDIKE: We would like to introduce the
7 form, please, if there is no objection.

8 THE WITNESS: I don't recall the specific
9 form.

10 MR. NEATON: May I see it?

11 MR. UPDIKE: I was bringing it to you, sir.
12 You just sat there. Would you like to see it?

13 MR. NEATON: Yes, I would.

14 MR. UPDIKE: All right. Thank you.

15 THE WITNESS: I don't recognize --

16 THE COURT: Wait. Just a moment. Let's
17 get this out of the way first.

18 MR. NEATON: I have no objection, Judge.

19 THE COURT: It's offered as other exhibits
20 for identification in this proceeding?

21 MR. UPDIKE: Yes, sir.

22 THE COURT: So mark it.

23 THE CLERK: Number Seven.

24 (Commonwealth's Exhibit Number Seven was marked for
25 identification only.)

1 THE COURT: Wait just a minute. I think
2 Mr. Soering wanted to say something. Perhaps he
3 had not finished an answer. Go ahead,
4 Mr. Soering.

5 THE WITNESS: I just wanted to say, the
6 rights and all that, that was read to me over
7 that weekend, but I don't specifically remember
8 seeing a form like that.

9
10 BY MR. UPDIKE:

11 Q Let me show you -- As I said, this is
12 Commonwealth's Exhibit Number Seven, it says that this
13 side is to be read to the detained person by the custody
14 officer before giving the notice to the detained person.
15 This notice is on the reverse side. Let me ask you, and
16 I'm showing you a copy of a custody sheet of the
17 Metropolitan Police Department, the initial name on it of
18 the arrest person is Christopher Platt Noe, are you
19 familiar with that name?

20 A Yes.

21 Q Is that the name that you were using at the
22 time of your arrest on April 30, 1986?

23 A Yes.

24 Q Later it's scratched through and the name
25 Soering is inserted?

1 A Yes.

2 Q Now, as of the date April 30, 1986, it
3 says, "A notice setting out my rights has been read to me
4 and I have been provided with a copy. Signature of Person
5 Detained, C. P. Noe." Did you sign that?

6 A Yes, I did.

7 Q You signed that in acknowledgement that
8 this form, Commonwealth's Exhibit Number Seven, had been
9 read to you and that you had been given a copy of it, is
10 that correct?

11 A Okay.

12 Q Okay, sir? I'm asking you is that true,
13 did you do that?

14 A I signed that form, yes.

15 Q So you were read this form on April 30,
16 1986 and you were given a copy of it?

17 A I don't understand. I signed the form, the
18 rights were read to me. Whether I actually got the piece
19 of paper and got to keep it, I don't remember. I mean,
20 I'm not disputing that I was read my rights.

21 Q But the signature is under this form and
22 you've said earlier that you had no --

23 A When you're in a police station and you've
24 got three policemen standing around you and you're by
25 yourself and they tell you to sign something, you sign it.

1 Q I see. But this, nevertheless, states that
2 the rights have been read to you and that you have been
3 provided with a copy and you signed it?

4 A Yes.

5 Q Now, sir, a person with your educational
6 background and with your intelligence, and being
7 investigated as to any criminal offense, you're saying
8 that you just signed anything stuck in front of you? It
9 might be a complete admission of guilt.

10 A Well, I could see when I signed that that
11 it wasn't an admission of guilt. That was not an
12 admission of guilt that I signed. I just signed that I
13 understood my rights.

14 Q All right, sir. That's the point that I'm
15 getting to. You read it then to know it wasn't an
16 admission of guilt, you read it, you signed it, and you
17 acknowledged that you had been advised of your rights,
18 specifically a right to a solicitor?

19 A Yes.

20 Q And then after that was done, this
21 continuing on this form of April 30, 1986, the officer at
22 that time continued by asking you, as a result of your
23 right to a solicitor, whether you wanted a solicitor as
24 soon as practicable or whether, "I do not want a solicitor
25 at this time." You indicated that you did not want a

1 solicitor on April 30, 1986, correct? And please, if
2 you'd like to examine it more closely.

3 A Yes, that's what it says and it's got
4 underlined, "at this time."

5 Q And in response to your answer, I should
6 say, that you didn't want a solicitor at that time, the
7 custody officer struck through the part saying that you
8 did want one, leaving the part, "I do not want a
9 solicitor," and you signed C. P. Neau under it, didn't
10 you?

11 A Yes, at this time, yes.

12 MR. UPDIKE: Can we introduce this? It's
13 the custody sheets that we've provided you.
14 Would you like to see it?

15 MR. NEATON: Yes. Judge, we have no
16 objection to the first page of that document,
17 but we would reserve any objections to the
18 entire document that Mr. Updike has supplied
19 us, at least right now on the grounds of
20 materiality and relevance.

21 THE COURT: All right. That's in the
22 record.

23 MR. UPDIKE: Could we have it marked as an
24 exhibit at this time?

25 MR. NEATON: You can have the first page

1 marked as an exhibit, if that's what you want.
2 I mean, I'm not objecting to the first page,
3 which if all you've shown to the witness. I
4 would reserve objection to and would object to
5 the subsequent pages on the grounds of hearsay
6 and on grounds of relevance and materiality.
7 Thank you, Mr. Updike.

8 MR. UPDIKE: At this time, I ask just that
9 the first page be received into evidence.

10 THE CLERK: Number Eight.

11
12 (Commonwealth's Exhibit Number Eight was marked for
13 identification only.)
14

15 BY MR. UPDIKE:

16 Q Now, sir, proceeding quickly to the morning
17 or the afternoon, I should say, of June 5, 1986, after the
18 remand hearing.

19 A Yes.

20 Q At the remand hearing you, of course, had
21 counsel, didn't you?

22 A Yes, I did.

23 Q When you were brought to Richmond Police
24 Station, this exact same procedure was followed through
25 with you again, wasn't it, at 12:50 p.m. June 5, 1986?

1 A Yes.

2 Q And at that time -- and for purposes of the
3 record later, I'm sure that, well, you know this better
4 than I do, the Europeans in writing their dates reverse
5 the date and month from what we do, is that correct?

6 A Right.

7 Q So when it says 5, little 6, '86, that's
8 our way of saying June 5, '86, correct?

9 A Yes.

10 Q Now, at that time, you again were read the
11 front of Commonwealth's Exhibit Number Seven advising you
12 of your right to have someone informed of your arrest, to
13 consult a solicitor, and to consult a copy of the Codes of
14 Practice?

15 A Yes.

16 Q And at that time you again signed this
17 custody sheet acknowledging that this form had been read
18 to you and that you had been provided with a copy, is that
19 correct?

20 A That's right.

21 Q And then again following the same procedure
22 after that was done, you were asked whether you wanted a
23 solicitor as soon as practicable or whether you wanted a
24 solicitor at this time, weren't you?

25 A Yes. I signed where it says, "I do not

1 want a solicitor at this time."

2 Q You did?

3 A Yes.

4 Q And you signed this indicating you did not
5 want a solicitor at this time, right?

6 A At 12:50, yes.

7 Q At 12:50. All right.

8 MR. UPDIKE: Maybe at this point we can
9 introduce the first sheet of this then?

10 MR. NEATON: No objection.

11 THE CLERK: Number Nine.

12

13 (Commonwealth's Exhibit Number Nine was marked for
14 identification only.)

15

16 BY MR. UPDIKE:

17 Q Now, Mr. Soering, you have talked about how
18 much you wanted a lawyer of any type, British lawyer,
19 American lawyer, any kind of lawyer. If you wanted a
20 lawyer, this is at this particular point in time, when you
21 are first brought to Richmond Police Station, and you are
22 advised of your right to a solicitor --

23 A Right.

24 Q -- If you wanted one, why in the world did
25 you sign that form at 12:50 p.m. indicating that you did

1 not want one?

2 A I had a solicitor and he was on his way to
3 the police station.

4 Q You had a solicitor, but, sir, you signed
5 that saying that you did not want one. And you also, it
6 was also crossed out that you did not want one at this
7 time.

8 A I signed where it says, "I do not want one
9 at this time," but at the Richmond Magistrate's Court Mr.
10 Barker said I had a right to a lawyer, I shouldn't say
11 anything until he was there and he would come to the
12 police station. And I signed that and I expected that I
13 would have a lawyer when I was interviewed.

14 Q Yes, sir. But when you signed this, you
15 were indicating you didn't want a solicitor. Now, if you
16 wanted --

17 A I had Mr. Barker.

18 MR. NEATON: Is that a question? I think
19 Mr. Updike is arguing with the witness.

20 MR. UPDIKE: I was preparing to make it a
21 question before I was interrupted by the
22 witness, if I might, please.

23 MR. NEATON: Fine.
24
25

1 BY MR. UPDIKE:

2 Q Isn't it true, sir, that you were explained
3 your right to a solicitor at that point and you signed
4 this form as a waiver, "I do not want a solicitor at this
5 time"? Isn't that what happened?

6 MR. NEATON: Objection. Asked and
7 answered.

8 THE COURT: Overruled. It's cross
9 examination.

10 THE WITNESS: That's correct. This was
11 because I had a solicitor and my solicitor told
12 me he was coming.

13
14 BY MR. UPDIKE:

15 Q Then, sir, wouldn't you agree the logical,
16 and the appropriate, and the correct thing for you to have
17 done, if that is what you had meant, was just to simply
18 sign it, "I want a solicitor as soon as practicable,"
19 because you wanted to talk to Keith Barker as soon as
20 practicable, didn't you?

21 A But he said he was coming.

22 Q Yes, sir, but that doesn't change the fact
23 that you would have a written document of the fact that
24 you wanted that to occur?

25 MR. NEATON: Objection. He's arguing with

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the witness now. The witness has testified as to what he did and why he did it. He's arguing with him.

THE COURT: I disagree. Overruled.

BY MR. UPDIKE:

Q Now, at that particular point in time though you knew that you were to be interviewed by investigators from Bedford, Virginia concerning the murder of Mr. and Mrs. Haysom, didn't you, at the time that you signed this form, Commonwealth's Exhibit Number Nine?

A I don't recall knowing that there were investigators from Virginia there, but I knew I'd be interviewed about the murders.

Q Didn't you know that there were investigators from Virginia or from the United States, investigators involved in the case?

A Yeah, but I don't recall anybody telling me that they were there. I mean, I hadn't seen anybody. See, when they took me from the court, they handcuffed me and put me in this van. And then when we arrived at the police station they put this blanket over my head, because there were photographers in the trees outside the police station, and they took me across the courtyard into the police station and took the blanket off my head, uncuffed

1 me, gave me a form to sign, I signed it, and went to my
2 cell. I mean, that's just normal procedure.

3 Q But during the remand hearing, didn't your
4 lawyer argue and didn't the other lawyer argue concerning
5 your remand to the police station for the purpose of you
6 being interviewed by police investigators from Virginia
7 concerning these murder charges? Did you hear that?

8 A I don't recall hearing that. Sorry.

9 Q Did your attorney and you talk about that?

10 A No. I wasn't allowed to see my attorney
11 after that. They let me see Mr. Barker for about five
12 minutes before the hearing and then during the hearing I
13 couldn't talk to him because in an English courtroom you
14 are separated from your lawyers, and then afterwards I was
15 taken downstairs and wasn't allowed to see him again.

16 Q Is it your testimony then that when you
17 went from the Richmond Magistrate's Court to the Richmond
18 Police Station, and upon your arrival there you did know
19 that you were going to be interviewed concerning the
20 murder charges?

21 A Yes.

22 Q You did not have a solicitor on the murder
23 charges, did you?

24 A Mr. Barker. He was in court for me arguing
25 about that, that I didn't want to be interviewed.

1 Q Are you saying then that you did not know
2 that a Virginia investigator, a Virginia police officer,
3 would be there?

4 A Right.

5 Q And you're saying that that was never
6 mentioned during the remand hearing?

7 A It's possible. I just don't remember it.

8 Q But, sir, you described a few minutes ago
9 that even before the hearing Mr. Barker showed you this
10 Dally Mall newspaper.

11 A Um --

12 Q You know what I'm getting ready to do,
13 don't you?

14 A No, I don't. It's a question about the
15 Dally Mall.

16 Q Huh? Don't you?

17 A You showed me the headline of a newspaper?

18 Q And you read it, too, didn't you?

19 A Yes.

20 Q And that Dally Mall newspaper, of course,
21 had in it that American investigators were there to
22 interview you.

23 A He showed me the newspaper. I didn't read
24 the article. He was only there for five minutes.

25 Q You didn't read it?

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A No, I didn't. I read the headline.

MR. NEATON: Your Honor, I object to the question that was before this as well as he's assuming a fact not in evidence that he was shown this particular London newspaper.

MR. UPDIKE: I'm going to ask him if this is it.

THE COURT: Objection overruled. He's got a right to ask him. This is cross examination, gentlemen, and I'm going to allow full cross examination.

THE WITNESS: I think that looks like the paper I saw.

BY MR. UPDIKE:

Q Yeah. It's very distinctive, isn't it? You said Dally Mall, the date, June 5, 1986, that's the date, the morning of the hearing before the Richmond Court. The headline there was, "Daughter of High Society Couple Held Voodoo Killing. Two Quizzed."

A All I'm saying is that I don't specifically remember that I knew that there was going to be an American investigator there.

Q Who did you think that the two quizzed was going to include?

1 A Me and Elizabeth.
2 Q You and Elizabeth?
3 A Yeah. That's what my lawyer told me.
4 Q You read quite a lot, don't you? Is that
5 correct?
6 A Yes.
7 Q And you say that you did not read all of
8 the article?
9 A No. When he walked into the cell, the
10 newspaper was like that (indicating), and he threw it down
11 on the thing and said, "You're in a lot of trouble."
12 Q Weren't you curious?
13 A Huh?
14 Q Well, let me ask you this. The first
15 sentence of the --
16 A All I'm saying is that I don't specifically
17 remember it.
18 Q The first sentence here says, "Two U. S.
19 detectives flew to Britain yesterday to interview
20 Elizabeth Roxanne Haysom and her East German boyfriend,
21 Jens Soering, twenty-six, about a double killing which
22 shocked America."
23 A All I'm saying is that I don't specifically
24 remember knowing that.
25 Q You don't specifically remember?

1 A I mean, I didn't read the newspaper
2 article. Somebody may have told me, I may have heard it
3 in Court, but I don't remember it now.

4 Q Now, sir, you have a great memory, now
5 don't you, being a Jefferson scholar and having the
6 educational background that you do?

7 A I used to have a good memory when I was in
8 school, yes.

9 Q Yeah.

10 A I've been in prison for four years.

11 Q Yes, sir. And, sir, you read quite a bit,
12 as you've admitted. You were at the Magistrate's Court
13 that morning?

14 A Right.

15 Q You're told that you're in a lot of trouble
16 and you are shown this sensational headline and you're
17 saying that you did not even read the first line, "Two U.
18 S. detectives flew to Britain"?

19 A I didn't. I'm sorry.

20 Q You weren't curious? Didn't know why,
21 "Well, what's all this fuss about us? What's going on?
22 What's this hearing about?"

23 A I expected it and Mr. Barker told me what
24 would happen next and that was it.

25 Q And he told you that there were American

1 people there in England for this very purpose, correct?

2 A I don't recall that.

3 Q And it was mentioned during the remand
4 hearing as well. In fact, that was a great portion of it,
5 the fact that there was an American officer there to
6 interview you, now wasn't it?

7 A It's quite possible. All I'm saying is
8 that I don't remember it now.

9 Q And at the time that you come to the police
10 station, you do admit that you signed this form,
11 Commonwealth's Exhibit Number Nine?

12 A Yes.

13 Q To the effect that you did not want a
14 solicitor at this time.

15 MR. UPDIKE: We would like to introduce
16 this newspaper, please.

17 MR. NEATON: Go right ahead.

18 MR. UPDIKE: Thank you.

19

20 (Commonwealth's Exhibit Number Ten was marked for
21 identification only.)

22

23 BY MR. UPDIKE:

24 Q Mr. Soering, is there any particular reason
25 that your memory is not as good as to the details of the

1 remand, the details of who was coming to interview you,
2 and yet your memory is, as you've described it, concerning
3 the activities of Detective Sergeant Beever and
4 Investigator Gardner and Detective Constable Wright?

5 A Well, I remember, for example, what Mr.
6 Beever said at the cell door because it was a particularly
7 shocking experience. I remember the particular phrase he
8 used because, you know, it struck me.

9 Q Raising his eyebrows?

10 A Yes. I mean, it's a picture you remember.

11 Q Now, you were interviewed, you admit, for
12 the first time around 3:00 that day?

13 A I guess so.

14 Q Mid-afternoon?

15 A Yes.

16 Q You did not have a watch, you say?

17 A Right.

18 Q Did not see any clocks and no idea of the
19 times or anything?

20 A It's just a guess.

21 Q Investigator Gardner has testified that
22 when you were brought to DCI Paton's office that he
23 introduced himself to you and he advised you of the
24 Miranda warnings and that Detective Sergeant Beever
25 advised you of the British caution?

1 A That's what he said, yes.

2 Q Do you dispute that testimony that he has
3 made under oath?

4 A Yes.

5 Q Are you stating that when you came through
6 the door -- Do I recall your testimony correctly that
7 during that first interview, as you came through the door
8 and saw the police officers, that your first comment was
9 that, "I want a lawyer"?

10 A I may have said hello to Ricky first, but
11 the first thing I said when I sat down in the chair was,
12 "I know what my rights are. I want a lawyer." I've seen
13 these television shows. I know what my rights are.

14 Q And you do know what your rights are, don't
15 you?

16 A Yes.

17 Q Well, let's first of all discuss that
18 issue. As far as the Miranda forms -- If I could just
19 have one of them. It doesn't matter which one.

20 Commonwealth's Exhibit Number One, this have the five
21 rights on it, "Before we ask you any questions, it's my
22 duty to advise you of your rights." Did you understand
23 that at that time of June 5 through June 8th, 1986?

24 A I understood my rights, but I was the one
25 who brought the issue up.

1 Q Okay, sir. But my question to you just
2 now, at this point, is you understood that, is that
3 correct?

4 A I understood those rights, yes.

5 Q "You have the right to remain silent.
6 Anything you say will be used against you in a Court of
7 law. You have the right to the presence of an attorney
8 before making a statement. If you cannot afford an
9 attorney, one will be appointed to represent you by the
10 Court at no cost to you. You have the right to stop
11 answering at any time during the questioning."

12 A Right.

13 Q From the very first time in Richmond,
14 England on June 5, 1986 that you were advised of these
15 rights, you completely understood them, didn't you?

16 A I was the one that brought the issue up.

17 Q That's not my question to you, sir.

18 A Yes, I did. Yes, I understood that I had a
19 right to a lawyer.

20 Q You completely understood them?

21 A I understood I had a right to a lawyer.

22 Q My next question to you, sir, is because of
23 your intellect, because of your education, there was
24 certainly no problem with you understanding that and you
25 also had the additional fact of having seen this all on

1 television? Completely understood it?

2 A (No response.)

3 Q The officers testified that during this
4 interview, excuse me, Investigator Gardner testified that
5 during this interview you were just interviewed concerning
6 background information as to Elizabeth Haysom?

7 A That's what he said after I said I wanted a
8 lawyer.

9 Q And it is your testimony that a majority of
10 that interview concerned your discussions that you wanted
11 an attorney?

12 A A large section of them, yes.

13 Q A large section?

14 A What happened was that I walked into the
15 room and I saw Ricky Gardner sitting there and my reaction
16 was, "Uh-oh, I want a lawyer," and that's what I said.
17 You know, "I've seen the television shows. I want a
18 lawyer." And then he said, "This is just background.
19 This is not questioning, this is not an interview, we just
20 want background." And then he asked me, you know, the
21 things that are on that form, date of birth and things
22 like that.

23 Q So you're saying he did go over the form
24 with you?

25 A No. I'm saying he discussed that sort of

1 information, background information. And then we started
2 talking about whether I believed in voodoo.

3 Q Started discussing what, voodoo?

4 A Yeah. He wanted to know about that.

5 Q I'm curious. A minute ago when you were
6 talking about Investigator Gardner, you did say, didn't
7 you, "I may have said hello to Ricky"?

8 A It's quite possible.

9 Q You said that just a few minutes ago,
10 didn't you?

11 A Yeah. I did say that, yeah.

12 Q And at times Investigator Gardner, would
13 you agree, in his testimony yesterday referred to you as
14 Jens?

15 A Yes.

16 Q And despite all these circumstances, even
17 during the investigative and interviewing process, you
18 referred to each other by first names, didn't you?

19 A Well, that's the way things are done in
20 America.

21 Q But it was a friendly situation? You
22 weren't afraid of Ricky, were you?

23 A I was not afraid of Ricky after that first
24 interview, at the very beginning, but, I mean, everybody
25 calls each other by their first names. When I talk to you

1 about my lawyers, I call you Jim.

2 Q Thank you, sir.

3 A That's all right.

4 Q I won't ask you what else you say, Mr.

5 Soering, but we'll continue on. At any rate, Investigator
6 Gardner testified that during that hearing you never asked
7 for a lawyer?

8 A Yes.

9 Q Do you dispute Ricky's testimony?

10 A Yes. That was the whole reason the Cagney
11 & Lacy, Kojak and Hill Street Blues thing was even brought
12 up.

13 Q I'm just curious then, at 6:00, beginning
14 at 6:00 approximately, you were interviewed in DCI Paton's
15 office once again, is that right?

16 A The same office, yes.

17 Q And were there Miranda warnings read to you
18 again?

19 A No, they weren't.

20 Q Were they read to you at all during that
21 interview?

22 A It was the same thing. See, they had put
23 me down in the cells and they brought me back upstairs.
24 The first thing I said was, "Is my lawyer here? I want a
25 lawyer."

1 Q So you're saying there once again it was
2 the first thing that you said?

3 A But this time around I wasn't surprised by
4 Ricky being there.

5 Q I'm surprised. Why didn't you say, "Where
6 is Keith Barker, he's supposed to be here by now"?

7 A I did. I was expecting my lawyer to be
8 there and he wasn't there and I said, "Where is my lawyer?
9 I want my lawyer."

10 Q Now, this is 6:00. Could I ask you, sir,
11 during that period of time when you were in the cell, did
12 you ever ask of the custody officer to contact Keith
13 Barker?

14 A You're not allowed telephone calls in
15 British police stations. It's not like America. Like in
16 our holding cell, in the jail here, we've got a telephone,
17 but it's not like that over there.

18 Q What do you mean you're not allowed to make
19 a telephone call?

20 A Well, you don't have a telephone in the
21 cell where you can just drop a coin in and call.

22 Q But you can be provided access to one?

23 A That's right.

24 Q And as a matter of fact, a little bit later
25 that evening, specifically at 7:45 on June 5, 1986, you

1 called the German Embassy, didn't you?

2 A That's right. That's because I wanted them
3 to contact Ricky Gardner -- I mean, what am I saying,
4 Keith Barker. Sorry.

5 Q You called the German Embassy to contact
6 your lawyer for you?

7 A If you look at the time, it was 7:45, I
8 didn't know Keith Barker's home phone number, so I had no
9 way of reaching him. All right? So what I thought was
10 the best way to do it was to call the embassy and get them
11 to call Keith Barker for me, because they would have a way
12 of finding out where he was now.

13 Q Yes, sir.

14 A But there wasn't anybody at the embassy
15 there except the night watchman.

16 Q Yes, sir. But if you hadn't called Keith
17 Barker's office at that time, you didn't know whether he
18 was in his office or not, did you?

19 A Well, it was 7:45.

20 Q Yes, sir. But do you think that
21 ambassadors work longer hours than lawyers perhaps?

22 A No. But see, at an embassy or a consulate,
23 they're supposed to have a duty person who is supposed to
24 deal with emergencies, all right? And if you call a law
25 office after business hours, nobody will pick

1 up the phone, that's what I assumed anyway, whereas a duty
2 person was supposed to be there.

3 Q Let me ask you then before 7:45, and let me
4 show you your custody sheet, if you'd like to refer to it
5 for that period of time, and I'd like to refer you to the
6 entry at 5:28 p.m. June 5, 1986. You're returned to your
7 cell at that point, aren't you?

8 A Uh-huh. Yeah.

9 Q There is no entry that you requested to see
10 an attorney, is there?

11 A No, not on here.

12 Q There is no entry there that you requested
13 an attorney be called for you, is there?

14 A Not to the custody officer. But, you see,
15 that's what I had just spent the last two hours talking to
16 the other two policemen about, the other three policemen.

17 Q Yes, sir. But my question is, once you got
18 back downstairs -- if it happened the way you indicate --
19 once you got back downstairs, why didn't you say to that
20 custody officer, "I want to call Keith Barker or I want
21 you to call Keith Barker. I want somebody to get Keith
22 Barker here"? Did you ever say that to anyone?

23 A No, I didn't.

24 Q No, you didn't?

25 A But I'd been saying that for the last two

1 hours and they had been stone-walling me, so what was the
2 point. I had just spent two hours talking to them about
3 that point.

4 Q Isn't it true, sir, as you go through these
5 custody sheets there are different custody officers who
6 checked on you at times every hour and at times even more
7 frequently than that? Is that correct, sir?

8 A Yes.

9 Q Even at night they come around and check on
10 you?

11 A Yes.

12 Q And they ask you if you have any requests
13 or any complaints, don't they?

14 A That's right.

15 Q That's their job?

16 A Yes.

17 Q And these are custody officers, independent
18 of the investigative officers, correct?

19 A Well, when you're locked in a cell, you
20 know, all policemen are one group.

21 Q All policemen are one group?

22 A I mean --

23 Q So did you suspect the entire Metropolitan
24 Police Department there at Richmond of colluding or
25 entering into some kind of agreement to deny you access to

1 counsel?

2 A I did not suspect the entire Metropolitan
3 Police force, no. All I knew was there were three police
4 officers in that room who I had been asking to let me see
5 a lawyer for two hours and they wouldn't do it.

6 Q My question to you, sir, and I'd like you,
7 if you would, if you don't want to, fine, but I invite you
8 to look through that custody sheet, the number of entries,
9 the number of different custody officers during those
10 several days that came around and checked on you
11 twenty-four hours a day, and there are numerous entries
12 there, aren't there?

13 A Right.

14 Q No requests, no complaints?

15 A At 7:40 Mr. Beever made the threats against
16 Elizabeth. After that, I made one attempt to call the
17 German Embassy, couldn't reach them, all right? Was
18 placed back in the cell. After that point I thought it
19 would be dangerous if I did things like that.

20 Q It would be dangerous for you?

21 A No, for Elizabeth.

22 Q Because Ken Beever had raised his eyebrows
23 at you?

24 A Could I explain that, please? All right?

25 THE COURT: Excuse me. I thought you said

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may I stand up. I'm sorry. You said may I explain?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

THE WITNESS: I mean, Jefferson scholarships and things like that notwithstanding, I had just spent a month in jail, in prison. It was the first contact I had had with sort of, I guess it would be called the rough side of life. I mean, I had never seen anything like that before. Now, because the prisons were overcrowded, all right, they remanded me --

BY MR. UPDIKE:

Q Sir, I didn't ask for a long recitation. I just asked you a question.

A I know. I want to explain why I was so worried about Elizabeth, okay? I spent, I guess, about two weeks in the same Candlewell Green Police Station holding cell which they were using for overflow prisoners that they didn't have places for. And down there, all right, I saw this Maltese youth, okay, he was around eighteen or twenty-one. And this guy --

MR. UPDIKE: Mr. Soering, I want to give

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you a chance to answer, but really this is far exceeding, Your Honor, what I was asking.

THE WITNESS: This explains why I was worried about Elizabeth.

MR. UPDIKE: If I might interrupt, Your Honor. I just asked him if he was fearful of Ken Beever raising his eyebrows and now he's going into --

THE COURT: Well, let's do it this way. We have to go by the rules.

MR. UPDIKE: Yes, sir.

THE COURT: The answer is not responsive to the question, but I'm not going to deny you the right to give this explanation. I think it could more properly be given on redirect examination from your attorney. Save it until then.

THE WITNESS: Okay.

BY MR. UPDIKE:

Q My question, though, at that point is during any of that, was there any custody officer, during your entire stay, that you felt that you could ask of him, "Get me Keith Barker here. I haven't seen him, I'd like

1 to see him"?

2 A No.

3 Q None of them?

4 A No. They were working in the same police
5 station as the other officers and I had just spent two
6 hours talking to these guys about it.

7 Q And I'm still a little bit confused why you
8 felt that if you wanted your lawyer that the German
9 Embassy could reach him more easily than you could.

10 A Look, I was lucky or I considered myself
11 lucky that the custody sergeant let me make one phone call
12 to the German Embassy. All right? If I tried to call
13 Keith Barker, all right, I expected not to get through to
14 him because it was late in the evening or it appeared to
15 be late in the evening. So there was no way for me to
16 know whether I could actually reach this guy or that I'd
17 reach an answering phone. The only sort of living person
18 that I could reach on the phone who would actually go out
19 and do something, that I could think of, was at the German
20 Embassy, because they are supposed to have a duty officer
21 that's supposed to deal with emergencies.

22 Q Nobody was there but the night watchman?

23 A That's right. That's what I said.

24 Q Did you make any further attempt after
25 talking to the night watchman to contact Keith Barker that

1 night?

2 A Me personally?

3 Q Yes.

4 A Well, I asked again for a lawyer.

5 Q I mean at that point after the phone call?

6 A No. There was nobody else I could phone.

7 Q And you did not ask the police officers to
8 reach him for you, either at home or elsewhere?

9 A I'd just spent two and a half hours asking
10 police officers to get me Mr. Barker and they said they
11 would, and they didn't.

12 Q Isn't it true that this very phone call
13 that you made to the German Embassy was placed for you by
14 one of these police officers that you say that you had
15 been with for the past two hours, Terry Wright? Now,
16 didn't that happen?

17 A Terry Wright was present during the second
18 phone call to the embassy.

19 Q Excuse me?

20 A That was the next day. They phoned the
21 embassy for me.

22 Q Who did?

23 A The police officers. It's on the tape.

24 Q Which one?

25 A And we talked about it. I think it was the

1 6th. It was on the tape.

2 Q Yes, sir. The point on the tape during
3 June 6th, though, is when the German Embassy calls you
4 back and the call is transferred, and these British
5 officers that you're talking about stopped the interview
6 to let you talk to the German Embassy, right?

7 A That's right.

8 Q Perhaps if you would, just look at that
9 concerning the calls. Maybe I could refresh your memory.
10 Is it correct then the entry June 5, 7:45 p.m., there is
11 an entry there that you phoned the German Embassy at
12 235-5033, the phone call, number, or excuse me, the
13 telephone number is entered there?

14 A Yes.

15 Q And if I could direct your attention please
16 to the next day of June 6th. Isn't there any entry at
17 10:05 a.m. the very next morning that, "Soering rang the
18 German Embassy at 235-5033. Soering was unable to speak
19 to person he wanted and Soering was told to ring back at
20 11:00 a.m. Call was completed at 10:11 a.m."?

21 MR. NEATON: I object to the form of the
22 question because it does not accurately state
23 what the entry is.

24 THE COURT: Sustained.
25

1 BY MR. UPDIKE:

2 Q Read the entry.

3 A "10:05 a.m., rang Embassy. 235-5033.

4 Unable to speak to person he wanted. Told to ring back at
5 about 11:00 a.m. Call concluded 10:11." I don't know
6 what the next bit says. I can't read that.

7 Q Well, so far is what I read so much
8 different from what you read? Is it basically the same?

9 A Pardon?

10 Q Can you read the next part then, sir?

11 A It says, "Back in cell," and I guess, "No
12 incidents."

13 Q No incidents?

14 A Right. The thing is. I mean --

15 Q You've answered my question. Thank you,
16 sir.

17 A All right.

18 Q And that is at 10:05 a.m. And the
19 information is there for you to ring back at 11:00 a.m.
20 If you could proceed to the 11:00 a.m. meeting, you call
21 the German Embassy again, don't you?

22 A Yeah.

23 Q Could you read that entry, please, June 6,
24 1986, the 11:00 entry?

25 A "Called up his embassy, 235-5033, as

1 requested. Call concluded 10:11 a.m."

2 Q 11:11, isn't it?

3 A Sorry, 11:11 a.m. I don't know what the
4 next word is. Something then, "person who knows about
5 this case was not there and would not be there until 3:00
6 p.m. Requested to speak to D/S Beever," and it's signed.

7 Q So that's an entry you again called at
8 11:00 a.m. That would be the third call that you'd been
9 allowed to make to the German Embassy, correct?

10 A Yes.

11 Q And that is before the interview on June
12 6th. the second day, even begins, because you're taken out
13 of the cell for the interview at 11:19 a.m., the next
14 entry?

15 A Right.

16 Q And you're taken out of the cell by D/S
17 Beever and D/S Wright. Read that entry for me. If you
18 would please. 11:19 a.m.

19 A "Out of cell," something, "Interview with
20 D/S Beever and D/C Wright as requested by prisoner. Pace
21 explained to" --

22 Q Is that escort?

23 A I don't know what that means. that next
24 word. Sorry. Pace is the -- which is the form you gave
25 me.

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Q Exactly.

A Right.

Q And you are aware of it?

A Well, that's what it says on the piece of paper.

Q Right. Then if we could go back to our question, and at that point, on the night of June 5th --

A Right.

Q -- you're calling the German Embassy. The next morning at 10:05 a.m. you're calling the German Embassy.

A With Mr. Wright there.

Q The next time at 11:00 a.m. you again called the German Embassy?

A With Mr. Wright there as well. I think he was, wasn't he? I mean, I don't know.

Q That's my question to you?

A Mr. Wright, as far as I can remember, was present at those telephone calls to the German Embassy.

Q He was present?

A On June 6th, yes.

Q During all of it?

A As far as I recall.

Q As far as you recall?

A The point was --

1 Q Sir, my question to you then is, if Terry
2 Wright is present during some of these phone calls at
3 least and allowing you to ring the German Embassy, why in
4 the world did you suspect that he wouldn't allow you to
5 ring your solicitor, Mr. Barker?

6 A What, on Friday?

7 Q On any of those three times I've asked you
8 about?

9 A Because at that point Mr. Beever had
10 already made the threat against Elizabeth and told me
11 that, you know, I should not get a lawyer. Not in so many
12 words, but he said, "You don't need a lawyer, do you?" So
13 I could hardly ask his colleague to make a telephone call
14 to my lawyer because Mr. Wright would say -- Mr. Wright
15 spoke German. So it wasn't like I could just say on the
16 telephone to the embassy in German, "Go call my lawyer,"
17 because he'd understand.

18 Q Isn't it true that Mr. Wright only knows
19 very few words of German?

20 A I mean, I didn't know that at that stage,
21 but on the next day he said to me that he lived there and
22 worked as a bricklayer in Germany. We chatted in German.
23 Not in detail, but enough for him to understand.

24 Q But you will at least agree that you were
25 allowed, on those three occasions we've just gone through,

1 to contact the German Embassy at your request, correct?

2 A As far as I recall, I was taken out of the
3 cell, not at my request. Really quite to my surprise.

4 Q I didn't ask you about being taken out of
5 the cell, sir. I asked you about making the phone calls
6 to the German Embassy at your request.

7 A Right.

8 Q You did do those three?

9 A No. The first phone call was at my
10 request. As I remember, the second -- well, the third was
11 a phone call when they called back -- but as I recall, on
12 the second day, on Friday, I was just taken out, took to
13 the custody sergeant's desk and given the phone. As I
14 recall, that wasn't at my request.

15 Q But you did speak to them?

16 A That's right, yes.

17 Q Okay.

18 A Not to anybody who could help me.

19 Q We've got one call on June 5th to the
20 German Embassy at night. We've got two calls the morning
21 of June 6th to the German Embassy. And then when the next
22 interview occurs, during that interview, the German
23 Embassy rings back and these three police officers stop
24 the interview and let you talk to the German Embassy?

25 A That's right.

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Q Correct?

A Yes.

Q And you speak to the German Embassy in German?

A I suppose so, yes.

Q You suppose so? Your memory's not good on that point?

A It would make sense to speak to them in German, yes.

Q So what interests me then, if these British officers had been threatening you or threatening Elizabeth Haysom and doing the things that you have indicated, why in the world would these same police officers allow you to talk to the German Embassy and allow you to report to them about their activities in German, and perhaps even cause some kind of international incident?

A Well, as far as I was concerned --

MR. NEATON: I'm going to object to the question, Judge. It calls for speculation and he can call the officers and let them explain.

MR. UPDIKE: I'll rephrase the question.

THE COURT: The question is too broad. Sustained.

1 BY MR. UPDIKE:

2 Q Sir, you stated -- let me rephrase my
3 question -- that the police officers did threaten you, or
4 threatened Elizabeth?

5 A Just Mr. Beever.

6 Q Mr. Beever threatened?

7 A Right.

8 Q Detective Sergeant Beever?

9 A That's the one.

10 Q Did he threaten you, now, let's get that
11 straight first?

12 A No. I said what he did. It was at my cell
13 door.

14 Q Did he threaten you or did he threaten
15 Elizabeth, according to you?

16 A He threatened Elizabeth. That was that
17 whole conversation on the tape, that's what that was about
18 when I said, "No, I personally have not been threatened."

19 Q Okay. So you were never threatened? Let's
20 get that straight.

21 A I personally was never threatened, that's
22 correct.

23 Q You were never threatened?

24 A Right.

25 Q You are saying that there were threats

1 directed at Elizabeth?

2 A That's right.

3 Q Okay. We've got that straight. Now, you
4 are also saying that those police officers threatened
5 Elizabeth, or Kenneth Beever did, and that all of the
6 police officers denied you right to counsel, is that
7 correct?

8 A Yes. They kept making --

9 Q And that you then were allowed to place
10 these calls to the German Embassy?

11 A That's right.

12 Q Speak to them in German?

13 A Yes.

14 Q And that occurred?

15 A In Mr. Wright's presence we spoke German.

16 Q And at that time, sir, you could have
17 reported to the German Embassy the denial of the right to
18 counsel, correct?

19 A Mr. Wright was standing right there.

20 Q All right, sir. My question to you is,
21 couldn't you have told the German Embassy that British
22 police officers had denied you your right to counsel?

23 A Yes. I could have said that, and Elizabeth
24 would have fallen over and hurt herself.

25 Q Did you say that to them though? You

1 could've said it. Did you say to your embassy, "They're
2 denying me my right to counsel."?

3 A If I had said that, Elizabeth would have
4 gotten hurt.

5 Q Did you say it to them, sir?

6 A No, for that reason. If I had said it,
7 Elizabeth would've gotten hurt.

8 Q You did not ask the German Embassy either
9 to contact Keith Barker for you, did you?

10 A Of course not.

11 Q You didn't do that either?

12 A That's right. If I had done that, the same
13 thing, Mr. Beever said I shouldn't do it. Not in so many
14 words, but that's what he indicated.

15 Q But Mr. Soering, isn't it true that you've
16 said that you made none of these requests to any of the
17 police officers there at the Richmond Police Station
18 because they were all police officers, but here you had
19 every opportunity to make your complaints known to a
20 foreign embassy and, in fact, the German Embassy, didn't
21 you, and you didn't do it?

22 A Only by endangering Elizabeth could I have
23 said that.

24 Q Mr. Soering, isn't it true that in your
25 discussions with the German Embassy you were not concerned

1 about talking about an attorney, but rather you were
2 trying to find out information concerning whether you
3 could be extradited back to Bedford County, Virginia?

4 A That's right.

5 Q That's right?

6 A Yes.

7 Q And sir, isn't it true that what you were
8 doing was throughout this, because of your intelligence
9 and because of your background, you were assessing this
10 situation on your own, whether or not you would be
11 extradited or not? You wanted the information?

12 A Yes. But I'd just like to say that no
13 amount of intelligence can replace legal advice. I didn't
14 know whether I could be extradited because I'm not a
15 lawyer, and I asked the embassy because I didn't have a
16 lawyer. There was nobody else to tell me.

17 Q You still haven't got a lawyer at that
18 point. All right. Now, I'd like to ask you, if I could,
19 about some several points in the tapes. And I'd like to
20 ask you about the June 5 interview to begin with, the one
21 that is recorded, which would actually be the third
22 recording. Do I understand that despite the testimony
23 that you've given here today, you have not seen a copy of
24 one of these since 1987, is that what you said?

25 A That's about my recollection, yes.

1 Q And you remembered what you testified to
2 without having seen any transcripts since 1987?

3 A I also listened to all of Ricky Gardner's
4 testimony yesterday.

5 Q Okay, sir. Sir, I have the same transcript
6 that we used yesterday, that I'll place there if you'd
7 like to refer to it, because I would like to ask you about
8 certain portions.

9 THE COURT: Which interview is this?

10 MR. UPDIKE: This is the interview on
11 June 5, 1986 beginning at 8:05 p.m., which is
12 actually the third interview that day.

13
14 BY MR. UPDIKE:

15 Q Now, this question, sir, of the tape being
16 turned off --

17 A Page eight?

18 Q Page eight, yes, sir. You do have
19 familiarity with the transcript, don't you, because I
20 couldn't remember?

21 A Because you had a big argument about it
22 yesterday with my lawyer.

23 Q Yes, sir. But the point is, I was here and
24 I've been reading these things since '87 and I couldn't
25 find it and you snapped to it like that, didn't you?

1 A That's right. You had a big argument over
2 it.

3 Q It's obvious you're much brighter than I am
4 and nobody will dispute that or argue that, would they?

5 MR. NEATON: Is that a question?

6 MR. UPDIKE: Yes, it is.

7 MR. NEATON: Then I object to it. It's
8 argumentative.

9 THE COURT: I sustain.

10
11 BY MR. UPDIKE:

12 Q I would like to ask you, Mr. Soering,
13 though, if I could, as I have trouble finding these other
14 pages, if you can assist me, I would appreciate it.

15 A Every time I try to be helpful, you're
16 going to make a comment about it.

17 Q The point is, on that page eight, you asked
18 that if you could take a break, am I correct?

19 A Yes.

20 Q Now, of course when you asked to take a
21 break the tape was turned off, right?

22 A That's what Mr. Gardner said, yes.

23 Q Well, sir, didn't you say a few minutes ago
24 that during the breaks you just more or less sat there in
25 silence because the purpose of the breaks was to give you

1 time to regroup?

2 A Yes.

3 Q Did you expect the tape to continue running
4 during that period of silence?

5 A I didn't have any expectations about it one
6 way or the other.

7 Q Did you want the tape to continue running?

8 A I had no opinion either way, because I
9 didn't know what the implications would be.

10 Q And you did not ask that it be turned off
11 or turned on, but it was turned off in your presence?

12 A That's right, yes.

13 Q And as far as your expectations, did it
14 surprise you when you stopped talking that the tape was
15 turned off?

16 A I didn't think about it. He just said he'd
17 turn it off and he'd turn it off.

18 Q It was rather natural, wasn't it? The next
19 page, on page nine, doesn't Investigator Gardner ask you,
20 at the top of the page, "Are you ready to proceed with
21 what we were talking about or what's your feeling"? Is
22 that the question?

23 A Yes.

24 Q So isn't it true that at this point Ricky
25 Gardner is asking you, "Are you ready to proceed"?

1 A Yes.

2 Q He's being polite with you, isn't he?

3 A Yes.

4 Q He's not using rough language with you, is

5 he?

6 A No. Ricky Gardner never did that.

7 Q Never did that?

8 A No.

9 Q And, in fact, he'd been cordial with you

10 throughout all these interviews?

11 A That's right.

12 Q And in response to that question, don't you

13 say, "I'd like to chat a bit about Elizabeth's

14 involvement"?

15 A Yes. Well, that's what the transcript

16 says. That must be right.

17 Q Must be right? Well now, when Mr. Neaton

18 asked you a few minutes ago about certain things and asked

19 you whether you would accept what the tape said on that,

20 you said yes you would?

21 A I'm just confirming it. I mean, the

22 transcript must be right.

23 Q And if the tape has this on it, you would

24 accept that, of course?

25 A Yes. I'm just confirming it.

1 Q And you're being interviewed about these
2 murders, right?

3 A That's right.

4 Q And all this concern that you have about
5 your girlfriend Elizabeth, you want to talk about her
6 involvement in these murders?

7 A Yeah.

8 MR. NEATON: Objection.

9 THE COURT: Why?

10 MR. NEATON: Why? Because he's now getting
11 into -- First, he's taking it out of context --

12 MR. UPDIKE: I'm allowed to ask that
13 question.

14 MR. NEATON: He's not allowed to take it
15 out of context.

16 MR. UPDIKE: I'm allowed to ask him whether
17 he said, "I'd like to chat about Elizabeth's
18 involvement."

19 MR. NEATON: Go ahead. I withdraw the
20 objection.

21
22 BY MR. UPDIKE:

23 Q If I could ask you, Mr. Soering -- We just
24 went through that. That's what the transcript says that
25 your response was, correct?

1 A That's right.

2 Q I'm now asking you about your response.

3 A Yes.

4 Q Is it correct, sir, that you've alleged all
5 of this concern about Elizabeth and harm coming to her,
6 and this is only page nine of the first recorded
7 interview, of all of these, and you bring up that you
8 would like to talk about Elizabeth's involvement in these
9 murders?

10 A That's correct, yes. And if you'd like an
11 explanation, I continued -- I started then, or I may have
12 started earlier -- I don't know what's on the first nine
13 pages -- but I started then telling lies about Elizabeth's
14 involvement to clear her name and keep her out as far as I
15 possibly could.

16 Q Trying to keep her out of it?

17 A Yes, as far as I possibly could.

18 Q Sir, just drop down a half a dozen lines on
19 that same page. You admit on there, don't you, that there
20 were discussions between you and Elizabeth as far as
21 establishing an alibi in Washington?

22 MR. NEATON: Judge, I'm going to object to
23 getting into the contents of the statement at
24 this point because the contents of any
25 statements made is irrelevant to whether the

1 statement is admissible or not. I've allowed
2 Mr. Updike to proceed up until this point
3 without objecting, but I think that at this
4 point it's irrelevant and immaterial what the
5 substance of the conversations are. And it's
6 not relevant to whether what he was saying is
7 admissible or not at the time. And I think that
8 in this respect, if you want to listen -- I mean
9 the tapes are tapes that concern, particularly
10 this tape, concern a lot of substantive things
11 concerning the case in chief and I would object
12 on the grounds that they are irrelevant and
13 immaterial.

14 THE COURT: Reply?

15 MR. UPDIKE: Your Honor, if I might quickly
16 respond, Your Honor. First of all, Mr. Neaton's
17 gone through the transcript rather extensively,
18 we would emphasize, but even more so than that,
19 our point is that the defendant is up here
20 stating that his explanation for having signed
21 waiver forms and for having given the statements
22 is his concern for Elizabeth Haysom. Now, I
23 wish to ask him about this particular portion,
24 why he is saying this if he's concerned about
25 her involvement. It goes to cross examination

1 of the witness' theory of why he made this
2 statements. The defendant, therefore, Your
3 Honor, is protected at trial by virtue of the
4 fact that he has not waived anything by
5 testifying in this hearing, I cannot use this
6 in my case in chief. The Supreme Court of the
7 United States has protected defendants
8 completely as to suppression hearings. But it
9 is a matter that comes within the realm of
10 cross examination and we'd ask to be allowed to
11 proceed with it. Otherwise, we're bound to
12 accept what he said.

13 MR. NEATON: Except, Your Honor, that what
14 Mr. Updike is trying to do in order to get
15 contents of the statement in is to set up a
16 situation where taken out of context or taken
17 out of the preceding conversation that occurs,
18 he takes one word, "involvement," and says
19 somehow by that that my client therefore is
20 going to somehow implicate Miss Haysom in the
21 actual homicide and, therefore, use that in
22 order to get into the contents of the
23 conversation which followed. My point is,
24 what he said about that is irrelevant to whether
25 he's saying it voluntarily or not, and what goes

1 on about the breaks in the tape was what this
2 line of cross examination began as, asking him,
3 "Well, Ricky Gardner was polite. He took a
4 break here, you take a break there." Now, he's
5 asking him to get into the substance of what
6 he's saying, and I'm saying you have to draw the
7 line at this point because it's a preliminary
8 hearing, a suppression hearing, and I
9 respectfully ask you to do so.

10 THE COURT: Well, let me say something.
11 It's my understanding that suppression hearings
12 on admissibility of confessions are hearings in
13 which the content of the confessions normally
14 would come up. I have not conducted a hearing
15 such as this where the substantive part of the
16 confessions or any part thereof have been
17 withheld. And I don't know any law in Virginia
18 that states that that should be done.

19 Now, that is really not the question
20 here. The question is whether or not the
21 Commonwealth may go into specific portions of
22 the statement which the defendant made for
23 purposes which he has stated. The matter of his
24 concern about Elizabeth was raised by
25 Mr. Soering in this hearing. I rule that the

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Commonwealth, therefore, has a right to question this defendant based on these statements as to that specific point. I therefore overrule the defense on this point.

From now on, I'm going to keep my comments to a very minimum, for reasons which I think are obvious. I felt that I had to explain my ruling on this particular point more than on others, but from now on I will try to simply rule and not comment. All right, Mr. Updike.

Well, I'll tell you what let's do. You know, we need breaks, too. The Court stenographer needs breaks from time to time. I think we as lawyers and Judges tend to forget that. Let's take a short break now and perhaps Mr. Soering would like a break, too. All right, we'll take a short recess.

(A short break was taken, after which the following ensued in the presence of the defendant and counsel.)

THE COURT: Have a seat, Mr. Soering. Before we start back, a few logistical matters. Court will recess for lunch from 1:00 to 2:00. I had two or three little shirt-tail type

1 matters set, not connected with this case, today
2 which I think I can probably take care of
3 shortly after 2:00. There might be a ten minute
4 delay in starting while I take care of that, but
5 basically there should be no problem. And I'm
6 prepared to go as long as counsel wish to go
7 today.

8 All right. Let's proceed, Mr. Updike.

9 MR. UPDIKE: Thank you, Your Honor.

10
11 BY MR. UPDIKE:

12 Q Sir, I was asking you about page nine.

13 A Yes, sir.

14 Q And isn't it correct -- and you can review
15 it if you wish -- isn't it correct that you admit on that
16 page, just down from your statement, "I'd like to chat a
17 bit about Elizabeth's involvement," you discuss, on down
18 halfway of that page, or rather I should say you admit
19 there was an agreement between you and Elizabeth that she
20 buy two tickets at the cinema and that an alibi was
21 discussed between the two of you, is that correct?

22 A Could I read this, please?

23 THE COURT: Yes, go ahead.

24 THE WITNESS: Thank you. Do you want me
25 to answer the question now?

1 BY MR. UPDIKE:

2 Q Well, sir, maybe I'll just read this to you
3 and ask you whether you said it. At the middle of the
4 page, Sergeant Beever: "What agreement had taken place
5 between you then, of her to go and buy those two tickets
6 at each cinema?" Soering: "Um --" Sergeant Beever: "It
7 would be fair to say, wouldn't it, that you used the alibi
8 earlier on before the tape was on?" Soering: "Uh-huh,
9 yes." Beever: "What was she preparing an alibi for?"
10 Soering: "I think it will be fair to say that, ah, as you
11 have pointed out in the letter, ah, the issue of murder
12 had obviously come up." Beever: "Between you and --"
13 Soering: "Between her, right." Did Sergeant Beever say
14 that and did you say that?

15 A Yes.

16 Q Sir, wouldn't you agree that after you
17 initiated and you stated that you wanted to talk about
18 Elizabeth's involvement, just a few moments later, you're
19 admitting the agreement between the two of you for her to
20 plan and arrange the alibi by purchasing the two tickets?

21 A No.

22 Q You did not?

23 A No. If you read what it says, okay, there
24 is a specific question about that and I answer it "um."
25 And the only question I answer in the affirmative is that

1 the word alibi was used by me in a conversation before the
2 tape recorder was on. I never actually say, "Yes, she got
3 an alibi," anywhere on that page.

4 Q Doesn't it continue by, in response to the
5 question, "What was she preparing an alibi for?" Your
6 response there, "I would think it would be fair to say
7 that, as you have pointed out in the letter, the issue of
8 murder had obviously come up"?

9 A That's true, but that the facts. I
10 couldn't deny that. The letters were there and there is
11 nothing about alibi there.

12 Q And the tape speaks for itself. Would you
13 accept what the tape has there?

14 A Well, the tape confirms that I did not say
15 Elizabeth was getting me an alibi.

16 Q My question is, would you accept what the
17 tape has to say in this regard?

18 A Yes, I do.

19 Q And would you accept then that in response
20 to the question, "What was she preparing an alibi for?",
21 I've correctly read what the transcript says as to your
22 response, "Murder had previously come up"?

23 A In the letters. It was a fact I couldn't
24 deny. There was no way for me to do anything to help
25 Elizabeth there. But when you asked me specifically, did

1 she get an alibi, I said, "Um." I'd also like to point
2 out --

3 Q Sir, if you would, I'm sure that your
4 counsel will provide you ample opportunity to answer
5 questions. If you'd just answer mine, please.

6 A I mean, this is strictly to your question.

7 Q If I could ask you about, in the same
8 interview, proceeding to page thirteen and fourteen, this
9 goes back to this question about the breaks. On halfway
10 down page thirteen, do you agree that you stated, "Do you
11 mind if I take another break? I know it's being
12 obnoxious, I know it"? Did you say that?

13 A Yes.

14 Q In response Sergeant Beever says, "We can,
15 we can keep on taking breaks all night," right? Was that
16 said?

17 A Yes.

18 Q And then on the next page, of fourteen, at
19 the top, about a quarter of the way down, you request a
20 break again and the tape is turned off in response to your
21 request for a break?

22 A Yes. I found it, yes.

23 Q And you did not request that the tape
24 remain on during the break, you had no feelings about it
25 one way or the other?

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A That's correct.

Q Thank you. Now, I have a notation here on page fifteen where, at the top of the page, about a quarter of the way down, you deny any involvement in drugs, is that correct?

MR. NEATON: I'm going to object on the grounds of relevancy.

THE COURT: Yes. There has to be a reason for the question.

MR. UPDIKE: Yes, sir.

THE COURT: Now, if you tell me what the reason is, I'll rule on the objection.

MR. UPDIKE: Yes, sir, I certainly will. The reason is I want to ask the defendant whether he was under the influence of any drugs at the time of these waivers.

MR. NEATON: Then ask him that question and not what's in the tapes, because the tape does not refer to whether he was under the influence of drugs at that time.

MR. UPDIKE: Fine.

BY MR. UPDIKE:

Q At the time of all of these waivers, and the times when all these statements were given between

1 June 5 and June 8, 1986, were you at any time under the
2 influence of alcohol or drugs?

3 A No.

4 Q Were you at any time denied food?

5 A No.

6 Q And, in fact, as the custody sheet shows,
7 you were regularly fed, weren't you?

8 A Yes.

9 Q Were you at times during the interview
10 asked if you'd like to go to the bathroom?

11 A Yes.

12 Q Were you asked at times whether you would
13 like a cup of coffee or a cup of tea, at times?

14 A Yes.

15 Q You were not denied any physical needs in
16 that regard at any time?

17 A Yes.

18 Q Thank you. Now, proceeding on, if I might.
19 Wouldn't you agree, sir, that through this interview you
20 are deciding which questions you will answer and which
21 questions you will not?

22 A No.

23 Q The whole --

24 A This whole interview was against my will.
25 When I would try to sort of avoid answering a question, it

1 was the only thing I knew how to do. I didn't want to be
2 there at all. I wanted my lawyer.

3 Q I see. Now, I've already asked you about
4 the portion about the tickets, but proceeding over to page
5 eighteen of this same interview, at that point -- Well,
6 take the one question that Ricky asked you about a quarter
7 of the way down. Doesn't he just come right out and ask
8 you, "I'm going to ask you, at some point did you stab
9 Derek Haysom with a knife? Did you cut him with a knife,
10 yes or no?" And your response, "I really don't want to
11 answer that," is that correct?

12 A Yes.

13 Q Sir, isn't it true, therefore, that that
14 was a question that you did not wish to answer and you did
15 not answer it at that time?

16 A That's right.

17 Q Other questions you did choose to answer
18 and you did answer them, is that correct?

19 A That's right. Well, considering the fact I
20 was in the room against my will, yes.

21 Q Well, sir, if you were making statements
22 against your will that you did not want to make, why did
23 you not answer this specific question of, "Did you stab
24 Derek Haysom"?

25 A Because I was not willing to sacrifice

1 myself completely at this time. I tried to resist as much
2 as I could, whenever I could. At some points I was able
3 to do so, I felt able to do so, at other times, I wasn't.
4 I mean, I had to be there and I had to answer questions,
5 but I wasn't willing to, you know, personally put the
6 noose around my neck and hang myself in that way, if I
7 could possibly avoid it.

8 Q At that time?

9 A At that time. But I had to sit there and
10 answer them.

11 Q Your concern about Elizabeth would cause
12 you to answer certain questions, but not answer other
13 questions?

14 A My concern for Elizabeth caused me to waive
15 my right to silence and sit there without a lawyer talking
16 to these people. And they asked me lots of questions, and
17 I tried to avoid doing too much damage to myself as best I
18 could, considering I didn't have legal advice. But I
19 wasn't successful at it.

20 Q You were deciding which questions you
21 wanted to answer and which ones you would not then?

22 A Whenever I could, yes.

23 Q And you declined to answer this one?

24 A There were others as well.

25 Q There are others through here that you

1 decline to answer, don't you?

2 A Yes.

3 Q Now, as to that very question, I'm looking
4 for a portion here that Detective Wright asked you.
5 Actually, it's just a couple of lines down from where you
6 say, "I really don't want to answer that." One, two,
7 three, four lines down. Detective Wright: "If you find
8 it difficult at this stage to talk about that particular
9 part of the evening --" Your response: "Right."
10 Detective Wright: "You've already talked about this, what
11 happened from the Friday night, really, right up from the
12 time you were in the drawing room," that's stated, right?

13 A Dining room, yes.

14 MR. NEATON: Dining room.

15 MR. UPDIKE: Excuse me. I mispronounced
16 that. I apologize.

17
18 BY MR. UPDIKE:

19 Q Your response: "Uh-huh." Detective
20 Wright: "You saw Mr. and Mrs. Haysom?" Response:
21 "Arguing, yes." "If you find it difficult at this point,
22 then let's skip a little." And you say, "Uh-huh." What
23 I'd like to ask you is that once you indicated that you
24 didn't want to answer the question whether or not you had
25 stabbed Derek Haysom, Terry Wright indicated to you,

1 "Well, if you have difficulty discussing that, let's skip
2 over that," didn't he?

3 A Yes, he said that.

4 Q And rather than pressuring you or coercing
5 you if you didn't want to talk about it, as he stated,
6 "Skip over that. We won't discuss it."

7 A Yes, he said that. But this is all in the
8 context of me being in a room I don't want to be in --

9 Q I understand that.

10 A -- without a lawyer.

11 Q And he honored your request as to not
12 discussing that question?

13 A It was his suggestion. I just stopped
14 talking. I just kept making noises instead of answering
15 questions.

16 Q At the end of the transcript, on page
17 twenty-one, doesn't Ricky Gardner ask you if you'd like to
18 stop for the night because of the hour, essentially, is
19 what he's asking? I can read it exactly.

20 A Yes.

21 Q So these three police officers weren't
22 trying to push you into the late hours as far as
23 interrogation is concerned? Doesn't Ricky suggest or ask
24 you whether you'd like to stop for the night?

25 A Yes, he asked me that, yes.

1 Q So you would agree that they showed you
2 concern in that regard?

3 A We all had a long day, but, yes, he asked
4 me whether I wanted to stop.

5 Q Now, as the tape runs out here, is it true
6 that as you continue talking, that you talk about wanting
7 to call the German Embassy? Remember, this is Friday
8 night. You had placed a call to the German Embassy before
9 this interview --

10 A I'm sorry, I'm lost.

11 Q Thursday night. You placed the call
12 earlier to the German Embassy and the next day, Friday,
13 June 6th, as we went through the custody sheets, you made
14 two other calls and finally received a call from them?

15 A Yes.

16 Q And you were discussing, as the tape ran
17 out, would you agree, that you would like to call the
18 German Embassy? It's where the tape runs out. I'm just
19 asking you from your recollection.

20 A It says, "I'd like to speak to someone in
21 the morning," and I talked with my father.

22 Q I'm aware of that. I'm asking you about
23 your recollection of what continued thereafter. Did you
24 continue on talking about that you'd like to telephone the
25 German Embassy?

1 A I have no specific recollection of that,
2 no, but it's possible.

3 Q Before we leave this interview, I'd like to
4 ask you, before the interview began --

5 A Right.

6 Q -- this interview that we've just been
7 discussing, is it correct that you signed this custody
8 sheet, June 5, 1986 at 7:59 p.m. It stated, "I now wish
9 to speak to D/S Beever, D/C Wright, without my solicitor
10 being present. Signature: Jens Soering"?

11 A Yes, I signed that. That was ten minutes
12 after Mr. Beever made that threat.

13 Q He raised his eyebrows and said the comment
14 about Elizabeth?

15 A Yes. If I didn't agree to have interviews
16 without a solicitor, she would fall over and hurt herself.

17 Q But you do admit that's your signature and
18 you did sign that?

19 A Yes, under coercion.

20 Q Now, the entry at 7:50, does that say,
21 "Placed back in cell. Whilst being taken to cell, he
22 requested that he speak to D/S Beever and D/C Wright as
23 soon as possible."?

24 MR. NEATON: I'm going to object to any
25 further readings of the custody sheet unless he

1 can establish that it's my client's statement
2 that is contained in the custody sheet. The
3 first entry that he just read to my client, my
4 client admitted signing that and, therefore,
5 adopting that as his statement. This statement
6 that he's reading to the client, I suggest to
7 the Court, is not my client's statement and is,
8 therefore, hearsay. And whether the entry in
9 the record says what it says, he'd improperly
10 confronting my client with a statement that is
11 not my client's, for purposes of impeachment.

12 MR. UPDIKE: I'm wishing to show him the
13 document, Your Honor, to see whether or not he
14 made the request and asking him whether he did.

15 MR. NEATON: Then he can ask the question
16 whether my client made the request.

17 MR. UPDIKE: Your Honor, could I clarify
18 this, please, by asking that a copy of the
19 entire custody sheet that we're talking about
20 be proffered and marked, just as he did
21 yesterday. And I would like to ask the
22 defendant these questions, and then when I have
23 the opportunity to bring the officers to the
24 stand with the original custody sheets
25 authenticated, move at that time for

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Introduction of the custody sheets. That's what they did yesterday.

THE COURT: You may put that in as an exhibit.

MR. NEATON: For identification purpose only.

THE COURT: For purposes of identification. And you may cross examine him on the basis of that statement, but you must preface your questions with whether or not he said the matters involved.

MR. UPDIKE: Yes, sir.

(Commonwealth's Exhibit Number Eleven was marked for identification only.)

BY MR. UPDIKE:

Q I show you the entry in the proposed Exhibit Number Eleven at 7:50 p.m. and ask you to read it if you would, sir.

A To myself or on the record?

Q Well, I think your attorney wants you to read it to yourself.

A Yes, I've read that.

Q Okay, sir. My question to you, sir, having

1 read that particular entry in the custody sheet, did you
2 yourself request to speak to Detective Sergeant Beever and
3 Detective Constable Wright?

4 A No, I didn't.

5 Q Did not?

6 A No.

7 Q And if it is established that that is such
8 an entry in the custody sheets of the Richmond Police
9 Department, you would dispute that as being accurate?

10 A That's right. If you look at the
11 handwriting, it looks as if that was written at the same
12 time as the later entries. I mean, that's what it looks
13 like to me.

14 Q It looks like it was written by the same
15 person?

16 A At the same time. You see, the previous
17 handwriting is slanted and then it all goes straight for
18 the next three paragraphs, all at the same time. But
19 that's just my judgment. You see, this is all slanted and
20 then that goes all straight.

21 Q But, sir, the entries there, 7:45, 7:50,
22 7:55, 7:59, 8:02, all of those entries there are within a
23 relatively few minutes of time, correct?

24 A Yes.

25 Q It would not surprise you that the same

1 custody officer during that short period of time wrote all
2 these entries, would it?

3 A Well, I mean, it's not really important.
4 That's not what I'm saying. I'm saying the 7:45, the
5 telephone call entry is written in slanted handwriting and
6 the next three entries aren't, and all four are written by
7 the same custody officer. I just thought, it looks to me
8 as if it was written all at the same time, the last three
9 entries.

10 Q And concerning that same interview, if I
11 could see the Commonwealth's Exhibits, please, with the
12 Miranda forms. Thank you. This being Commonwealth's
13 Exhibit Number Two with the date at the top, 6-5-86, 8:05
14 p.m. At the bottom, the signature, Jens Soering. Did you
15 sign this Miranda form?

16 A Yes.

17 Q At the time that you signed it, did you
18 understand all the rights stated on it?

19 A Yes.

20 Q Thank you. The next Miranda form,
21 Commonwealth's Exhibit Number Three, dated at the top June
22 6, 1986, showing the time 11:40 a.m. This would be the
23 Friday. There is a signature, Jens Soering, on that. Is
24 that your signature?

25 A Yes.

1 Q At the time that you signed this, did you
2 understand all the rights stated thereon?

3 A I did.

4 Q And do I understand, you're not making any
5 claim that you did not understand your rights?

6 A That's right. I signed everything that I'm
7 supposed to have signed and I understood my rights, but I
8 did not waive them voluntarily.

9 Q I see. Now, before that interview, I'd
10 like to show you the same custody sheet proposed as a
11 Commonwealth's Exhibit. Excuse me, Mr. Soering, I did
12 miss something. I wanted to talk to you about Friday, June
13 6th, but I forgot to ask you, when Detective Sergeant
14 Beever took you back down to the cell Thursday night after
15 11:14 p.m., did you make any incriminating statements to
16 him at that time?

17 A To Mr. Beever?

18 Q Yes.

19 A No.

20 Q Did you make any admissions about the
21 murders here in Bedford County?

22 A No. If you're talking about the walk from
23 the interview room to the cell block, no.

24 Q I'm showing you the proposed exhibit Number
25 Eleven, the custody sheet. And I'm not going to ask you

1 In any detail about the calls to the embassy, we've
2 discussed that. I just want to refer you to them for
3 purposes of asking you something else. At 10:05 a.m. on
4 June 6, 1986, there is the entry about you ringing the
5 German Embassy, correct?

6 A Yes.

7 Q You did make that call, correct, as we
8 discussed?

9 A Yes.

10 Q Then the entry at 10:13 a.m. There is an
11 entry there that I would like you to read to yourself.

12 A Yes. Well, what are the first two words?

13 Q Excuse me?

14 A What are the first two words?

15 Q Maybe I can help you with that and ask you
16 whether it says something and then you decided for
17 yourself whether it says that. The prisoner?

18 A Oh. Is that what it says? I'm amazed that
19 he wrote that down.

20 Q Can you read the rest of it?

21 A Yes, yes.

22 Q And sir, did you at 10:13 a.m., having seen
23 that, this is after you've made the call to the German
24 Embassy and not been able to speak to the person who know
25 about your case, did you at 10:13 make a request of the

1 custody officer that you not speak to police officers
2 until you have spoken to the embassy?

3 A Yeah, that's what it says here.

4 Q And you did do that?

5 A I have no specific recollection of that,
6 but I'm willing to go along with that.

7 Q You're willing to go along with that?

8 A Yes.

9 Q All right. And then the next entry there,
10 11:00 a.m., as we've already discussed, you phoned up the
11 embassy again, correct?

12 A Right.

13 Q Now, reading that particular entry -- if
14 you need to read it again to yourself, that's at 11:00
15 a.m. -- I'd like to ask you, after the phone call
16 concluded at 11:11 a.m., did you request to speak to
17 Detective Sergeant Beever?

18 A No.

19 Q You did not?

20 A Right.

21 Q And if it is established that these custody
22 sheets are to be received into evidence and this is an
23 entry on such sheets, would you dispute it as being
24 accurate?

25 A That's right.

1 Q As to its accuracy?

2 A I never requested to speak to any police
3 officer from the word go.

4 Q Now, the next entry is at 1:20, no, excuse
5 me, 1:19 a.m. Would you agree -- I know that you didn't
6 have a watch -- would you agree that on this particular
7 date, June 6th, the Friday, that you were taken out of the
8 cell at about that time of morning? It says 11:19 a.m.

9 A If that's what it says, yes.

10 Q In your recollection, that would be late
11 morning, would you agree with that?

12 A Yes.

13 Q And the next entry is that you're brought
14 back to your cell at 1:20 p.m. According to your
15 recollection, would you argue with that or dispute it?

16 A No. I have no basis.

17 Q And I'd like to ask you -- and, sir, I
18 appreciate your patience -- I'll very much try to move
19 this along quickly. I'd like to ask you just a few points
20 about that interview. Would you like to see a copy of the
21 transcript of the June 6th interview?

22 A Yes, please.

23 Q Excuse me?

24 A Yes, please. Do you mind if I hold on to
25 this for a second?

1 Q Oh, please, please. Okay, sir, certainly.
2 Now, sir, before we actually go to the tape so that I
3 won't get too much mixed up or try not to, I'd like to
4 jump over into the middle of it and ask you a question,
5 this being on page sixteen. The bottom of page sixteen
6 where Investigator Gardner, the long paragraph that's
7 there.

8 A "Okay, going" --

9 Q Yes, starting there, please. And then
10 continuing on maybe to halfway down the following page
11 seventeen. Just reading it to yourself.

12 A Right.

13 Q And my question, after you've read it, is
14 that -- this again is Friday, June 6th -- don't you
15 confirm in that that you were interviewed three times on
16 Thursday, the day before?

17 A Yes.

18 Q And before the third interview you
19 requested to speak to Detective Sergeant Beever?

20 A That's what it says on the record, yes, on
21 the tape.

22 Q And you confirmed there that you signed the
23 custody sheet, which you admit today that you signed?

24 A Yes, I signed the custody sheet.

25 Q But, sir, today you dispute that you

1 requested to speak to Detective Sergeant Beever?

2 A That's right, yes.

3 Q Would you, as to this particular point,
4 accept what the tape recording shows when it is playing?

5 A Well, it shows what I said. But the reason
6 I said it was because Mr. Beever wanted me to say it.

7 Q He wanted you to say it?

8 A It was important that all these things stay
9 straight, right?

10 Q But, sir, it goes back to, did you say
11 everything that Detective Sergeant Beever wanted you to?

12 A That's on the record, where he feeds me
13 information, and I would repeat what he said. You've got
14 that on tape.

15 Q But, sir, my question is, there are other
16 questions you don't say what he or the other officers want
17 you to say. And I'm still having difficulty understanding
18 if you're just saying what they want you to say, why you
19 declined to answer so many questions during the earlier
20 interviews?

21 A Pardon? I'm sorry. Why did I answer some
22 questions and not others?

23 Q Yes, if you're saying during the early
24 interviews that you are being coerced and you're just
25 saying what they want you to say?

1 A Right. I did the best I could under the
2 circumstances. If you look at what happened in the
3 earlier interviews, it's obvious what happened. I mean,
4 if you look at page one of the Thursday interview, the
5 taped one, right?

6 Q Yes, sir.

7 A It's right there. Let me find it.

8 Q The Thursday interview?

9 A Yes. The taped Thursday interview.

10 Q Okay, sir. I'm with you now.

11 A I mean, I got specific instructions on what
12 they wanted me to say, okay? Investigator Gardener:
13 "Well, you just talk to us and I will ask you to speak up,
14 if you would, please." And I say, "Right." And he says,
15 "And just speak to us in general and go ahead." And I
16 say, "Okay. What would you like for me to discuss on the
17 tape? Are you talking about the feeling of remorse that
18 we were discussing earlier or would you like to discuss
19 specific pointed questions as to what happened, or --,"
20 and then I stopped, he interrupts me. This is the
21 discussion we had beforehand. I'm just feeding him what
22 he wants to hear.

23 And the same thing happens later on page
24 eight as well.

25 Q But that's when --

1 A And on page eight he got me to talk about
2 the alibi.

3 Q We're both talking at once.

4 A Sorry.

5 Q All I'm asking is, to try to move this
6 along, if I could just ask some questions and you answer
7 them, and then if your counsel wishes to elaborate, if we
8 can handle it that way --

9 A I'm sorry.

10 Q -- perhaps it would go faster.

11 A I'm just trying to answer your questions
12 completely.

13 Q I understand. And I just want to make this
14 point quickly, on page two -- and we're talking about the
15 Friday interview, June 6th -- at the top of the page, you
16 specifically request to turn the tape off for just a
17 second, don't you?

18 A Yes.

19 Q And in response, they turn it off, correct?

20 A That's right.

21 Q So you will admit at that time you asked
22 for it to be turned off?

23 A Yes, that's right. But they never kept a
24 record of what I said there and it was quite important.

25 Q On that same point, flip over right quickly

1 to page twelve. There at the bottom of the page you're
2 asked a question and don't you state, "Could I answer off
3 the tape?" And Sergeant Beever says, "That's for Mr.
4 Gardner to decide." And Investigator Gardner says, "Are
5 you requesting we turn it off?"

6 A Yes.

7 Q And you say, "Yes"?

8 A Yes. This was another strategy I tried to
9 apply for not answering questions as best I could.

10 Q I'm just asking though, in response to
11 what's come up, in this interview on June 6th we've
12 pointed out two times you asked that the tape be turned
13 off?

14 A Yes, on those two occasions, yes.

15 Q And in this interview, are you saying that
16 you wanted an attorney present?

17 A We talked about that before we turned on
18 the tape. And he said he would get me one, but he never
19 did.

20 Q This is the next day, now, on page four.

21 A Sorry. Are we talking about the 6th?

22 Q Yes, sir.

23 A Okay, sorry. Page four, yes.

24 Q I just want to ask you about page four.
25 Sir, this goes to whether you want a lawyer. I'd like to

1 read this with you. This is on this particular point, and
2 ask you whether you said it. You start out by saying,
3 "All right. Is there other points that you want me to
4 bring up, that you want me to clarify or correct from the
5 previous interviews?"

6 A I'm sorry. I'm --

7 Q We're not at the same point?

8 A Page four on the 6th.

9 Q Yes, sir.

10 A I'm sorry. Who's saying this?

11 MR. NEATON: At the very top of the page?
12 Is that what you're referring to?

13 MR. UPDIKE: Yes.

14 THE WITNESS: Mine says, "UVA and taking
15 courses in all these subjects."

16
17 BY MR. UPDIKE:

18 Q Yes, it is at the top of the page. I meant
19 to say lower down in that paragraph.

20 A I'm sorry.

21 Q I didn't direct you specifically. Are you
22 with me now? It would be, I guess, the second sentence --

23 A Yes.

24 Q -- beginning with the "All right" question,
25 okay?

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

COMMONWEALTH OF VIRGINIA

V.

JENS SOERING

THE HONORABLE WILLIAM W. SWEENEY, JR., PRESIDING

Bedford County, Virginia
March 2, 1990

* * * * *

VIVIAN P. NEAL
Court Reporter
1221 Twin Springs Court
Forest, Virginia 24551

(804) 385-8341

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1 (Court convened at 9:30 a.m. and in the presence of
2 the defendant and counsel. the following ensued.)
3

4 THE COURT: All right. continuing in the
5 hearing. Mr. Neaton. who is your next witness?

6 MR. NEATON: Jens Soering.

7 THE COURT: All right.
8

9 The witness, JENS SOERING, having first been
10 duly sworn, testifies as follows:
11

12 DIRECT EXAMINATION
13

14 BY MR. NEATON:

15 Q Your name is Jens Soering, is that right?

16 A Yes, it is.

17 Q When were you born?

18 A August 1, 1966.

19 Q And where were you born?

20 A Bangkok, Thailand.

21 Q And how far did you go in school?

22 A I went to the University of Virginia for a
23 year and a half.

24 Q I'd like to direct your attention to the
25 date of June 5th of 1986. Do you remember that day?

1 A Yes, I do.

2 Q Where were you on that day?

3 A I began in a remand prison and I was then
4 taken to Richmond Magistrate's Court and that's where I
5 met Mr. Barker.

6 Q Do you remember the remand prison that you
7 were in?

8 A Yes, sir. The Ashford Remand Center.

9 Q Do you remember what court you went to that
10 morning?

11 A Richmond Magistrate's Court.

12 Q You met your solicitor at the Richmond
13 Magistrate's Court that morning?

14 A Yes.

15 Q And what is his name?

16 A Keith Barker.

17 Q Was he provided by legal aid in the United
18 Kingdom to represent you at that hearing?

19 A Yes. He had been representing me for the
20 last month.

21 Q Were you present in the Magistrate's
22 courtroom at that hearing?

23 A Yes, I was.

24 Q What was the purpose of that hearing, if
25 you recall?

1 A It was to remand me back into police
2 custody for questioning.

3 Q Were you in police custody at the Ashford
4 Remand Center?

5 A No. That was a prison service.

6 Q Were you told what you were going to be
7 questioned about at the Magistrate's hearing on the 5th of
8 June?

9 A Yes, sir. Homicide.

10 Q And did you object or did your solicitor
11 object on your behalf to the remand petition?

12 A Yes.

13 Q Did the Court or the Magistrate order you
14 remanded for interrogation on the homicide?

15 A Yes.

16 Q After the Court ordered you remanded, what
17 did you do?

18 A I was brought back down to the cells and
19 searched by Mr. Beever and Mr. Wright and taken to the
20 police station.

21 Q Did you see Mr. Beever and Mr. Wright in
22 the Magistrate's courtroom on the 5th of June?

23 A I don't recall.

24 Q In any event, after the Magistrate's
25 decision you were taken into custody by Mr. Beever and

1 Wright, is that correct?

2 A Yes, immediately afterward.

3 Q And after you were taken into their
4 custody, where did you go. If anywhere?

5 A Well, we went to the Richmond Police
6 Station.

7 Q And when you arrived at the Richmond Police
8 Station, did you know what time it was?

9 A Early afternoon, about one o'clock-ish.

10 Q Did you have any way of telling the time at
11 any time you were in the Richmond Police Station?

12 A No. I didn't have a watch and there were
13 no clocks in the cell tract where they kept me.

14 Q Now, you said you were taken to a cell
15 tract, is that right?

16 A Yes.

17 Q Could you describe what that looked like?

18 A The men's tract was a floorway with about
19 six single cells. They were tiled walls, green in color,
20 metal doors, a cot bed and a toilet in each cell. They
21 had a wicket in it, which is a small window in the door of
22 the cells.

23 Q And you refer to that window in the cell
24 door as a wicket?

25 A I think that's what they're called, yes.

1 Q Was that wicket covered with anything?
2 A No. There was a flap on it, but that was
3 open to the outside.
4 Q There was no screen?
5 A No.
6 Q No glass?
7 A No.
8 Q Was anyone else in your cell with you at
9 that time?
10 A No. They were all single cells.
11 Q Were there any windows in the cells?
12 A Some glass bricks, but they weren't windows
13 you could open.
14 Q Where was the cell located within the
15 police station?
16 A I guess on the ground level.
17 Q Now, when you got to the cell and you were
18 placed in the cell, did you remain there for some length
19 of time?
20 A About two hours.
21 Q Do you have any way of knowing what the
22 exact length of time was that you remained in the cell?
23 A No.
24 Q What happened that caused you to be taken
25 from the cell?

1 A The police came and took me upstairs to the
2 interview room.

3 Q Do you remember the identity of the police
4 who came and took you to the interview room?

5 A I believe it was Mr. Beever and a custody
6 sergeant who took me out of the cell. It was Mr. Beever
7 who took me up to the interview room.

8 Q Do you recall where that interview room was
9 located?

10 A On the first floor, up the stairway.

11 Q And when you got to the interview room, was
12 there anyone else in the interview room at that time?

13 A Yes. The two policemen, other two
14 policemen, Mr. Wright and Mr. Gardner.

15 Q When you entered the interview room, did
16 any of the policemen say anything to you as you first
17 entered the room?

18 A No. I started the conversation.

19 Q What did you say?

20 A This is the Cagney & Lacey business. I
21 said, "I've seen Cagney & Lacey, Kojak, Hill Street Blues.
22 I've got a right to a lawyer. I'd like my lawyer now,
23 please," or "I'd like my lawyer."

24 Q And did any of the police respond to that?

25 A Yes. They all sort of got very ruffled and

1 they said, "No, this is not an interview. This is just
2 preliminary information. It's not even questioning, it's
3 just background."

4 Q And did they proceed to ask you any
5 questions?

6 A Well, they asked me questions about, the
7 same questions you asked, date of birth, place of birth,
8 things like that. Just background information.

9 Q Do you recall which one of the officers was
10 asking you those questions?

11 A I don't recall specifically. I mean, all
12 three of them were asking questions.

13 Q Did anyone read you Miranda warnings at
14 that time?

15 A No. I think if anybody was reading Miranda
16 warnings, I was. I was telling them that I wanted a
17 lawyer, you know, that I had a right to a lawyer and I
18 wanted a lawyer.

19 Q Do you recall if Mr. Gardner read you
20 Miranda warnings?

21 A No, he did not.

22 Q Did the police continue to ask you
23 background questions at that point?

24 A Yes.

25 Q What were some the questions that they

1 asked you about?

2 A About voodoo and whether I believed in
3 voodoo. And I explained to them that the first time I had
4 seen this voodoo business come up was in the newspaper
5 earlier that morning, that Mr. Barker had shown me, and
6 that I had no contact whatsoever with voodoo.

7 Q Do you recall any other background
8 questions that they asked you at that time?

9 A Well, the business about the voodoo and
10 what I believed in, which was, I guess, Zen Buddhism, if
11 anything, at that point in my life. You know, we
12 discussed the differences between those things. And then
13 they tried to bring the conversation around to, you know,
14 other things and started talking about the relationship
15 between Elizabeth and her parents. And at that point I
16 said, "I don't want to talk any more. I want my lawyer."

17 Q And what happened then?

18 A Well, the same sort of response, you know,
19 "Well, it's not necessary, this is just background
20 information." And, you know, "It's important you tell the
21 truth and start talking." Things like that. They did not
22 respond.

23 Q Did there come a time when that interview
24 ended?

25 A Yes. This conversation about whether or

1 not I should have a lawyer went on for a long time, back
2 and forth, back and forth, me asking and them refusing.
3 And then the conversation ended and they put me back down
4 in the cells.

5 Q Did anyone tell you at that time that you
6 could have a lawyer?

7 A No.

8 Q Did anyone tell you at that time that you
9 could not have a lawyer?

10 A That was the impression I got from all
11 three policemen.

12 Q At that point in time, did any of the three
13 people in the room ask you if they could tape your
14 statement?

15 A No. It wasn't even an issue. It was just
16 background questioning, they said.

17 Q Did you ever state to the police at that
18 time that they couldn't tape this conversation?

19 A No. It wasn't an issue.

20 Q You got back to the cell. Do you have any
21 idea what time it was when you got back to your cell?

22 A A couple of hours later. Late afternoon, I
23 suppose.

24 Q How long did you remain in your cell after
25 that conversation?

1 A Not long. Perhaps a half an hour.
2 Q And then what happened?
3 A I was taken upstairs again, same procedure.
4 Fetched and brought upstairs to the interview room.
5 Q Who fetched you the second time?
6 A I believe it was Mr. Beever again with a
7 custody sergeant, initially, out of the cell tract and
8 then Mr. Beever took me up to the interview room.
9 Q When you walked into the interview room,
10 was anyone else in the room?
11 A Just the policemen.
12 Q The same --
13 A Yes.
14 Q -- policemen as before? Mr. Gardner, was
15 he there?
16 A And Mr. Wright and Mr. Beever.
17 Q What happened when you entered the room
18 this time?
19 A Really the same thing that happened the
20 first time. I said, "I'd like a lawyer. I don't want to
21 talk about the case, I want my lawyer."
22 Q Did Mr. Gardner say anything to you at that
23 time?
24 A Well, the three policemen said the same
25 things that they had said the last time around, that it

1 wasn't really necessary, more background, things of that
2 nature.

3 Q Did anyone read you Miranda warnings at
4 that --

5 A No, they didn't, because I started talking
6 about the lawyer.

7 Q During that interview, did Mr. Beever put
8 any questions to you about the homicides?

9 A Not that I recall. We just talked about
10 access to a lawyer.

11 Q Did you indicate to them what kind of
12 lawyer you wanted?

13 A Well, we talked about different kinds of
14 lawyers, but I made very clear that any lawyer
15 representing me would have been fine with me.

16 Q I'd like to return to the 3:25 interview or
17 the first interview. At any time during that interview,
18 did you talk with your solicitor, Mr. Barker?

19 A No. I only saw Mr. Barker once that day
20 and that was before I went into the Magistrate's court,
21 early in the morning for about five minutes. That's when
22 he told me that I should not speak about the case unless
23 he was there and that he would come.

24 Q Now, getting back to the second interview
25 at 6:00, did that interview end?

1 A Yes. That ended fairly quickly.

2 Q And what happened after that interview

3 ended?

4 A Well, the told me they would put me back in

5 the cells and get me a lawyer.

6 Q Who told you that?

7 A Mr. Gardner said that, "We're going to stop

8 now and put you in the cells and get you a lawyer." And

9 the other two policemen agreed. It was completely clear,

10 that's why I was being put back down.

11 Q And then you were returned to your cell

12 again?

13 A Yes.

14 Q What happened when you got to your cell?

15 A I laid back on my bunk and waited for my

16 lawyer.

17 Q And did anybody come to your cell after you

18 laid down in the cell and waited for your lawyer?

19 A I think I got a meal at some time.

20 Q And do you recall if you ate the meal?

21 A No, I don't. I didn't eat a lot that

22 weekend.

23 Q How were you served the meal?

24 A They just passed it through the wicket,

25 through the little window in the door.

1 Q Did you have to get up off the cot, go to
2 the wicket, and get the meal?

3 A Yes, I did.

4 Q And then you got the meal, set the meal
5 down, and went back to the cot?

6 A Yes.

7 Q Did you lay back down?

8 A Yes, I did.

9 Q Did anybody else come to your cell while
10 you were there after the second interview?

11 A Yes, they did. It was a while later.

12 Q Can you describe how that occurred?

13 A Well, there is a door which leads to the
14 cell tract from the custody sergeant's room, the reception
15 room, and I heard that open and close again and I heard
16 steps. It was easy to hear because all of the walls are
17 tiled. And they stopped outside my door, so I turned
18 around and I saw Mr. Beever's face at the wicket.

19 Q Did he say anything to you at that time?

20 A No, he didn't.

21 Q Did you do anything after you saw Mr.
22 Beever at your wicket?

23 A Yes. I got up and walked to the door to
24 talk to him.

25 Q And when you walked to the door, who was

1 the first person to say anything?

2 A I was.

3 Q And what did you say?

4 A I asked him, "How's Elizabeth." I was
5 worried about her.

6 Q Had you seen Elizabeth all that day?

7 A I had not seen Elizabeth since about two
8 weeks earlier and we hadn't been able to write.

9 Q Did you know where Elizabeth was at that
10 time?

11 A Well, I assumed she was in the police
12 station, too, but I didn't know for sure.

13 Q Any by Elizabeth, you mean Elizabeth
14 Haysom?

15 A Yes.

16 Q After you asked Mr. Beever how Elizabeth
17 Haysom was, did he say anything to you?

18 A Yes, he did.

19 Q What did he say to you?

20 A He said, "She's fine. She's fine." He was
21 not looking at me, he was standing sort of at a right
22 angle to the wicket so I saw his right profile. You see
23 what I'm saying? I saw this (indicating).

24 Q Did Mr. Beever say anything else to you at
25 that time?

1 A Well, he paused.

2 Q When he paused, did you say anything to
3 him?

4 A No. It was not a very long pause.

5 Q And after he paused, what did he say to
6 you?

7 A He said, "Very pretty girl, all alone in
8 that cell block. It would be an awful shame if she fell
9 down and hurt herself." And at that point he turned to me
10 and raised his eyebrows like this, and looked me in the
11 eye like that. He didn't have glasses on.

12 Q Did you say anything to him after he said
13 that?

14 A No. I was just shocked, sort of
15 open-mouthed. It was like a bad movie or TV thing. I
16 just looked at him, shocked.

17 Q Did he say anything more to you?

18 A Well, he paused again while he sort of
19 looked me in the eyes like that. Then he said, "I think
20 you should talk to us, lad."

21 THE COURT: I'm sorry, I didn't get that.
22 I think you should talk with us, or she?

23 THE WITNESS: "I think you should talk to
24 us, lad, and you don't really need that lawyer,
25 do you?" Then he paused again and he went like

1 this (indicating) to the wicket. "Think about
2 it." Then he walked away. And I mean, I didn't
3 say anything. I just sort of stood there
4 open-mouthed.

5
6 BY MR. NEATON:

7 Q And what did he do after that?

8 A Well, I became very agitated, I guess is
9 the word, very worried. You know, I loved Elizabeth very
10 much at that point in my life.

11 Q And what did you do, if anything, after Mr.
12 Beever told you that?

13 A I did things like pace up and down the
14 cell. I was just very worried. And then very shortly
15 afterwards I rang the bell to get the custody sergeant,
16 because I thought of one of my famous clever ideas.

17 Q Why did you ring the bell for the custody
18 sergeant?

19 A Well, when the custody sergeant came, I
20 asked him to give me the telephone call to the German
21 Embassy because I was a foreign national and I should be
22 able to telephone my embassy.

23 Q Why did you want to telephone the embassy?

24 A Well, at that point it was early evening
25 and Mr. Barker had -- I guess, I didn't know -- but I

1 guessed Mr. Barker had left his office and was either at
2 home or stuck in rush hour traffic, so I couldn't
3 telephone him. And my idea was I would phone the German
4 Embassy because they were the only other people in London
5 I knew and that they would then try to contact Mr. Barker
6 for me to get him to come to the police station.

7 Q And were you allowed to call the German
8 Embassy?

9 A Yes.

10 Q And did you, in fact, talk to anyone at the
11 German Embassy that night?

12 A Yes, I did.

13 Q Who did you talk to?

14 A Well, the only person who was there was the
15 night watchman or janitor. Usually, at like a consulate
16 or an embassy they're supposed to have a duty officer
17 there who is supposed to deal with emergencies, but the
18 only person I talked to was the night watchman.

19 Q Did he tell you if anyone else was on duty
20 that night at the embassy?

21 A He just said he couldn't do anything for
22 me, you know, he was just the night watchman, and I had to
23 call back in the morning.

24 Q And what happened after that phone call
25 ended?

1 A Well, the custody sergeant took me back to
2 the cell and locked me back up again.

3 Q And you're back in your cell. Did you ever
4 see Mr. Beever, Mr. Wright or Mr. Gardner again that
5 night?

6 A Yes. Mr. Beever came back very shortly
7 afterwards, about five minutes afterwards, so that would
8 be about ten minutes after he made the threat, all things
9 considered. And he came with the custody sergeant.

10 Q Did you ask for Mr. Beever to come back to
11 the cell at this time?

12 A No, I did not.

13 Q Did you ring the custody sergeant for Mr.
14 Beever to come back to the cell at that time?

15 A No. The last people I wanted to see were
16 Mr. Beever and the other policemen. I was worried,
17 scared.

18 Q They came back to the cell. What happened
19 when they came back to the cell?

20 A Well, Mr. Beever seemed sort of abrupt,
21 unhappy.

22 Q Why do you say that? Why do you form that
23 conclusion?

24 A Just even by the sound of him walking down
25 the hallway, very fast. He, you know, pulled me out of

1 the cell.

2 Q What do you mean he pulled you out of the
3 cell?

4 A He just -- I mean, it wasn't anything bad.
5 He just took my arm and pulled me out by the arm.

6 Q What happened then?

7 A Which, I mean, that's like the only time
8 anybody did that to me. And he looked angry. And then
9 they took me out of the cell tract to the custody
10 officer's desk. And that was the first time I was
11 actually at the custody officer's desk.

12 Q And when you got to the custody officer's
13 desk, did anything happen?

14 A Yeah.

15 Q What happened?

16 A They told me to sign the custody log.

17 Q And did you sign the custody log?

18 A Yes, I did.

19 Q And after you signed the custody log, what
20 happened?

21 A They took me up to the interview room.

22 Q And when you got to the interview room, who
23 was in that room at that time?

24 A All three policemen. Mr. Gardner, Mr.
25 Wright and Mr. Beever.

1 Q When you got to the interview room, did Mr.
2 Gardner immediately read you Miranda warnings?

3 A No, he didn't.

4 Q When you got to the interview room, did any
5 one of the three policemen talk to you?

6 A Yes.

7 Q Who talked to you first, if you recall?

8 A I can't recall who talked to me first, but
9 all three policemen did talk to me during this
10 conversation which was, I mean, it was at least twenty
11 minutes that we talked.

12 Q What did you talk about?

13 A Well, they told me again that this wasn't
14 questioning, this was just introduction, they weren't
15 questioning me and it was not an interview yet, and that I
16 should tell the truth. And, you know, they told me I had
17 supposedly killed these two people and I should clear my
18 conscious and tell the truth and I must be feeling guilty
19 and I should tell them about it, and I should just start
20 with, you know, just start with the trip to Lynchburg they
21 said and, you know, talk about it, "You've got to talk
22 now."

23 Q And this lasted at least twenty minutes?

24 A Yeah, because I didn't want to do it.

25 Q And what did you say to them at that time.

1 If anything?

2 A I told them I didn't want to talk to them
3 without a lawyer and I asked for a lawyer.

4 Q And do you recall what any of the policemen
5 said to you at that time?

6 A Well, they told me the same things, you
7 know, it was late at night now and they couldn't get me a
8 lawyer and I didn't really need a lawyer, this was just
9 background. And then at some stage, after I kept on
10 insisting, Mr. Beever went like this, he raised his
11 eyebrows again, looked me in the eyes, and went like this
12 (indicating).

13 Q What did you take that to mean?

14 A Well, he was pointing, as far as I was
15 concerned, he was pointing at Elizabeth in the cell
16 downstairs and, you know, he was trying to remind me,
17 which he did, of the conversation at the wicket and that,
18 you know, if I kept this up, you know, she would fall over
19 and hurt herself.

20 Q Now after Mr. Beever made that gesture to
21 you -- and the record should reflect that the witness
22 pointed with his right index finger in a downward motion,
23 so that the transcript gives an idea of what happened --
24 what happened after Mr. Beever made that gesture to you?

25 A Well, you know, I just said okay. They

1 then took out the Miranda form and went through the
2 procedure and turned on the tape recorder.

3 Q Do you have any idea of when the tape
4 recorded was turned on?

5 A No specific memory, no. I didn't have a
6 watch, I didn't have a clock, but I was in the room by
7 that time for at least twenty minutes. I mean, it went
8 back and forth a lot.

9 Q During that interview, do you recall any
10 breaks being taken?

11 A Just a couple of short refreshers. I mean,
12 I was getting tired, it had been a very long day.

13 Q And did you ask to take the breaks?

14 A Yes, I asked to take the breaks.

15 Q Did you ask to turn the tape recorder off
16 during the breaks?

17 A No, I didn't.

18 Q Do you have any idea how long each break
19 took?

20 A Well, they were very short. I mean, the
21 idea was for me to have a break, so we just sat there in
22 silence. I mean, you can't really sit in silence for more
23 than about five minutes. So both breaks were short.

24 Q Are you saying that to the best of your
25 memory neither break was over five minutes and that's your

1 best estimate at this point?

2 A Yes, that's for sure. That's for certain.

3 Q Do you recall any other stoppages in the
4 taped interview other than the two breaks that are
5 approximately five minutes in length?

6 A Just when we ran out of tape at the end.
7 But that wasn't stoppage, it was just running out of tape.

8 Q And the interview ended at that time?

9 A We talked some more, but then I was put
10 down in the cells.

11 Q Okay, you were put down in the cell. Do
12 you have any idea of the time you were returned to your
13 cell?

14 A It was late at night or it felt like late
15 at night.

16 Q Did you fall immediately asleep at that
17 time, if you remember?

18 A I don't recall, but I really doubt it. I
19 was very worried.

20 Q Were you ever informed that Mr. Barker was
21 in the police station at about midnight on June 6th?

22 A No. No.

23 Q You never saw Mr. Barker after the third
24 interview?

25 A I didn't see Mr. Barker between the morning

1 of June 5th in court and like the next week in the
2 Candlewell Green Police Station where I was in a holding
3 cell because the prisons were overflowed.

4 Q Now, on June 6th, which would be a Friday,
5 is that correct?

6 A Yes.

7 Q Of '86?

8 A Yes.

9 Q Were you again interviewed by the police?

10 A Yes.

11 Q Can you tell Judge Sweeney how that
12 interview came about?

13 A Well, it was the same procedure. I was
14 taken up to the interview room. I didn't ring them to
15 fetch me. I was just taken up. And they did what they did
16 before every interview, they sat me down and talked to me,
17 you know, to prepare me for the interview. They told me
18 this wasn't questioning, this was just introduction,
19 background, it wasn't questioning.

20 Q Do you know how long this went on?

21 A The same as every interview, twenty
22 minutes, approximately. There would be sessions before
23 every interview.

24 Q Was this session tape recorded?

25 A No, it wasn't.

1 Q Who was present during that session?

2 A All three policemen.

3 Q And then you were read Miranda warnings?

4 A Yes.

5 Q Was a tape recorder turned on again?

6 A Yes. It was.

7 Q Now, I'd like to call your attention to
8 that interview. Do you remember being asked during that
9 interview whether any threats had been made against you?

10 A Yes, I do.

11 Q And do you recall if it was Mr. Gardner who
12 put that question to you?

13 A I believe it was.

14 Q And do you recall if Mr. Beever said
15 anything after Mr. Gardner asked that question?

16 A As I recall, I didn't answer that question
17 and Mr. Beever then said, "Tell us the truth. I think you
18 should be honest about that," something to that effect. I
19 mean, I haven't seen the transcript since 1987, so I don't
20 know.

21 Q And so what did you say in response to that
22 question?

23 A Well, I guess I answered very
24 sarcastically, "No, I personally haven't been threatened."
25 It was a sarcastic response like that. I used to be a

1 very sarcastic person.

2 Q And at that point in time, did Mr. Gardner
3 say anything to you after you said that?

4 A Um --

5 Q Do you recall?

6 A I don't recall specifically.

7 Q Did you go on to say something else?

8 A I tried to say something after that and
9 I --

10 Q What were you trying to say after that?

11 A I wanted to say, " But Elizabeth was
12 threatened," but I never got that far.

13 Q Why did you never get that far?

14 A I was looking at Mr. Beever, because as I
15 recall Mr. Beever was the last person to say anything to
16 me. And Mr. Beever again did. I mean, this became a sort
17 of signal between us really, he raised his eyebrows and
18 went like that. And the raised eyebrows, you know, I knew
19 what that meant. It didn't mean anything to the other
20 policemen, but, you know, I knew what he was talking
21 about.

22 Q And he pointed again with his finger
23 downward?

24 A Down to the cell where Elizabeth was.

25 Q And when he did that, what did you say?

1 A I just said, "Forget it. It's hopeless
2 anyway," something like that. Because I knew that, you
3 know, I realized that the sort of official record,
4 anything like that, you know, had to be kept clear if I
5 wanted Elizabeth safe.

6 Q During that interview, were you asked any
7 about providing blood samples to Mr. Gardner?

8 A Yes, I was.

9 Q And when you were asked to provide blood
10 samples to Mr. Gardner, what did you say in response to
11 his request?

12 A Well, I made another sarcastic comment. I
13 think I said something like, "I'll give you mine if you
14 give me yours," something like that.

15 Q And after you said that to him, did you say
16 anything else to him about the blood samples?

17 A Well, I said I would give him blood samples
18 if I had a lawyer.

19 Q And what did he say, if you recall, at that
20 time?

21 A He said -- You know, when I said, "I'll
22 give you mine if you give me yours," he said no.

23 Q Do you recall what he said after you then
24 got a little less sarcastic and a little more serious and
25 said, "I'll give you blood samples after I consult with a

1 lawyer," or words to that effect? Do you recall if he
2 said anything to you?

3 A I think this was a stage where Mr. Beever
4 jumped in and there was another conversation about lawyers
5 and that we couldn't get one.

6 Q Now, were you asked specifically by Mr.
7 Beever at that time, if you remember, whether you wanted
8 an American lawyer at that time?

9 A That's something Mr. Beever said. I just
10 wanted a lawyer. I mean, that's what I wanted all along.
11 It's the first thing I said to the policemen on June 5th.

12 Q Did you ever get a chance to answer Mr.
13 Beever's question on the 6th of June?

14 A No. He went on for a long time, you know,
15 listing all sorts of reasons why it couldn't be done and
16 just kept talking. But, I mean, you know, I just wanted a
17 lawyer.

18 Q Did Mr. Beever ever tell you it was fairly
19 impossible to get an American lawyer in London on the 6th
20 of June?

21 A Yes, he did.

22 Q And would you stand by what's in the tape
23 of that conversation as being an accurate reflection of
24 the conversation between you and Mr. Beever at that time?

25 A Yes.

1 Q During that part of the interview, did Mr.
2 Beever ever accuse you of calling him a liar?

3 A It may have been that interview, yes.

4 Q At the end of that interview, did Mr.
5 Beever tell you that he would go and get you your
6 solicitor? I'm talking about the June 6th interview.

7 A Yes. He said the same thing that Mr.
8 Gardner had said at the second interview on Thursday,
9 which was, you know, "We're going to put you back down in
10 the cells and get you a lawyer." It was the same thing
11 they said on both occasions.

12 Q And again, would you stand by what's on the
13 tape recording of that interview?

14 A Yes.

15 Q Were you ever again interviewed on June 6th
16 by the police, that Friday?

17 A Not that I recall.

18 Q Do you have any idea when the interview on
19 June 6th ended?

20 A Early afternoon.

21 Q But again you had no ability to reference
22 time, is that right?

23 A I had no watch and I don't think there was
24 a clock in the room that I could see.

25 Q You only knew if it was day or night?

1 A Right, and by meal times, approximately.

2 Q Were you ever aware that Mr. Barker was in
3 the Richmond Police Station at about 4:30 in the afternoon
4 on June 6th?

5 A No.

6 Q Were you ever given an opportunity to meet
7 with Mr. Barker on June 6th?

8 A No.

9 Q Were you ever aware of the fact that Mr.
10 Barker was representing Elizabeth Haysom during an
11 interview conducted on the afternoon of June 6th in the
12 Richmond Police Station?

13 A No.

14 Q On June 7th, Saturday, were you interviewed
15 by the police?

16 A Yes.

17 Q Did you request that interview?

18 A No. I at no time requested to see any
19 policeman, ever. I mean, that started in court, at the
20 Richmond Magistrate's Court, where my lawyer told them
21 that I didn't want to talk to them and I never, ever asked
22 anybody.

23 Q Now, on June 7th of 1986, were you again
24 led to the same interview room?

25 A Yes.

1 Q On June 6th -- let's go back again to June
2 6th -- did Mr. Beever or Mr. Wright ever come to your cell
3 on June 6th?

4 A Well, throughout that weekend both of the
5 British officers came to my cell repeatedly. I mean,
6 there was a custody sergeant who came at regular
7 intervals, but they would also come and talk to me at the
8 wicket door.

9 Q What would you talk about?

10 A Well, Mr. Beever, for example, would say
11 things like, "Elizabeth's fine," which I took to be a
12 reference to our earlier conversation. They just asked me
13 did I want to talk, things like that. They just showed
14 their faces, really. These weren't conversations, they
15 just came by to remind me they were there. That was my
16 interpretation. I just saw them.

17 Q Okay. Returning to June 7th then, you are
18 brought from your cell?

19 A Yes.

20 Q To the interview room?

21 A Yes, I was.

22 Q Not at your request?

23 A Correct.

24 Q Were you asked to sign anything, sign the
25 custody record on June 7th?

1 A I don't recall. But, I mean, I always
2 signed what they gave me to sign, because that was, as far
3 as I knew, the only way to protect Elizabeth.

4 Q Now, on June 7th, do you recall a
5 conversation with Mr. Gardner about how a lawyer would be
6 appointed for you under Miranda rights?

7 A Yes.

8 Q How did you understand a lawyer would be
9 appointed for you under Miranda rights?

10 A Well, what I understood what he said was
11 that I could only get a lawyer, an American lawyer, once I
12 was in America. You know, I had to actually be in
13 Virginia to get a lawyer, an American lawyer.

14 Q Did you take what he said at that time to
15 apply to even a request under the Miranda decision?

16 A Yes. I had no other way of knowing.

17 Q Did you understand Mr. Gardner to have been
18 talking about the attorney advisement process here in
19 Bedford County at that time?

20 A Well, I don't know what the attorney
21 advisement process is. What I understood him to say is
22 that I could only have an American lawyer once I was in
23 Virginia.

24 Q Now, during this interview, did you ask the
25 police officers various questions about what might happen

1 to you?

2 A Yes.

3 Q And that interview ended at some point in
4 time?

5 A Yes.

6 Q After that interview ended, were you taken
7 back to your cell?

8 A Yes.

9 Q And did there ever come a time after you
10 were taken back to your cell that any of the officers came
11 to your cell on Saturday, June 7th?

12 A Yes.

13 Q Which officer came to your cell on
14 Saturday, June 7th?

15 A Well, both officers did. I mean, at
16 separate times.

17 Q By both officers do you mean both British
18 officers?

19 A Yes. Mr. Gardner never came to the cell
20 tract.

21 Q Now, when did Mr. Beever come to your cell
22 after the June 7th interview?

23 A This is the Saturday interview?

24 Q Yes.

25 A He came, I think, fairly shortly afterwards

1 and took that piece of paper away.

2 Q Took a piece of paper away from you?

3 A Yes. A sketch I had made during the
4 interview.

5 Q Did Mr. Wright come to you cell that day?

6 A Yes, he did.

7 Q Do you recall when it was that Mr. Wright
8 came to your cell?

9 A I think it was some time afterwards.

10 Q When Mr. Wright came to your cell, how long
11 did he stay at your cell?

12 A Well, Mr. Wright was actually locked into
13 my cell with me. This was nighttime. It was dark
14 outside. I don't know when the sun set. And he was in my
15 cell for at least an hour.

16 Q What did you talk about?

17 A Well, he told me basically the story of his
18 life kind of thing.

19 Q What did he tell you?

20 A He told me how he had worked as a
21 bricklayer in Hamburg in Germany and, you know, how he
22 traveled around, different places he visited in Germany.
23 And he told me how he came back to England to join the
24 police force out of idealistic reasons, serving the
25 community, things like that, and about the problems with

1 drugs in young people and things like that. And he told
2 me that just a short time ago he had come back on the
3 service after being off-duty in a hospital because during
4 some sort of arrest somebody had stabbed him in the
5 kidneys repeatedly and we talked about that. And he asked
6 me questions about the drawing.

7 Q Were you ever given Miranda warnings before
8 that interview?

9 A No.

10 Q Were you ever given the British caution
11 before that interview?

12 A No. He tried to make it very friendly.

13 Q He was the good guy, huh?

14 A Well, yeah, throughout.

15 Q Did Mr. Wright ever give you a summary of
16 that interview to sign?

17 A No. I don't think I ever got anything, any
18 summary of any interview to sign.

19 Q Then Mr. Wright left your cell?

20 A Yes.

21 Q Did you understand Mr. Wright to be able to
22 speak German?

23 A Yes, yes. We spoke some German.

24 Q Was Mr. Wright present in the interview
25 room earlier that day or earlier on whatever day it was

1 that you spoke to the German Embassy from the interview
2 room?

3 A Yes, he was. I mean, I knew Mr. Wright
4 spoke German from a month earlier when he first arrested
5 me for the fraud, because when he saw my German passport,
6 you know, he said, "I speak German."

7 Q Now, on Sunday, June the 8th of '86, were
8 you interviewed by Mr. Gardner on that day?

9 A Yes, I was.

10 Q Did you ask to be interviewed by Mr.
11 Gardner on that day?

12 A No.

13 Q Prior to the interview, did Mr. Beever or
14 Mr. Wright ever visit you at your cell door?

15 A Yes.

16 Q On June 8th?

17 A Yes, on Sunday. They visited, especially
18 Mr. Beever, every day.

19 Q Do you recall what, if anything, Mr. Beever
20 said to you at his last cell door visit to you before the
21 June 8th interview?

22 A The same sort of things he said all along,
23 that I had to talk and that I should tell them what I'd
24 done, things like that.

25 Q And would it be fair to say then that he

1 spent --

2 MR. UPDIKE: I don't like to object a whole
3 lot on leading, but I haven't raised any
4 objections. I would ask counsel to restrain a
5 little bit on leading.

6 MR. NEATON: I'll rephrase the question,
7 Judge.

8
9 BY MR. NEATON:

10 Q Do you have any idea of how long Mr. Beever
11 spent at your cell wicket talking to you that afternoon?

12 A No. It was like always, very short.

13 Q Does very short to you mean a couple of
14 minutes?

15 A Five minutes or less.

16 MR. UPDIKE: Your Honor, I just made an
17 objection.

18 THE COURT: Sustained.

19 THE WITNESS: Five minutes or less.

20 MR. NEATON: I'll rephrase it.

21 MR. UPDIKE: I don't think there is any
22 need to now. I'm just asking as to future
23 questions, Your Honor.

24
25

1 BY MR. NEATON:

2 Q After this through the wicket conversation
3 with Mr. Beever, were you taken again to the interview
4 room?

5 A Yes.

6 Q And whom did you see in the interview room
7 at that time?

8 A Well, I recall all three policemen.

9 Q At that point in time, did you ever ask the
10 police not to tape record this interview?

11 A No, that was their decision.

12 Q And were you read Miranda warnings at that
13 interview?

14 A I think so, yes.

15 Q Did you sign a Miranda form at that
16 interview?

17 A Yes, I think so. I signed all these forms.

18 Q Why did you sign all these forms?

19 A Because I believed that was the only way to
20 keep Elizabeth safe.

21 Q Now, at this time, were there any
22 conversations between you and the police concerning the
23 subject of how much time they had to talk to you?

24 A Well, Ricky Gardner said something about
25 this being the last day. But we all realized that the

1 Judge, the Magistrate, had said four days back in Court on
2 Monday and he made some reference about running out of
3 time.

4 Q Do you recall exactly what he said?

5 A No, I don't.

6 Q After that interview was over, were you
7 taken back to your cell?

8 A Yes.

9 Q Did you willingly give that interview on
10 June 8th?

11 A No. I didn't give any interview willingly.

12 MR. NEATON: Thank you. Your witness.

13 THE COURT: We'll take a short break at
14 this time. Step down and take a break,
15 Mr. Soering.

16
17 (A short break was taken, after which the following
18 ensued in the presence of the defendant and counsel.)
19

20 CROSS EXAMINATION
21

22 BY MR. UPDIKE:

23 Q Mr. Soering, if I might ask you some
24 questions, please, sir, at this time. I'd like to first
25 of all just get a general idea. Are you saying that

1 throughout this entire procedure that you wanted a lawyer
2 of any type, from the beginning to the very end?

3 A A lawyer to represent me, yes.

4 Q Whether it be an American attorney, British
5 attorney, a solicitor, Mr. Barker? You just wanted legal
6 counsel?

7 A Yes. But I progressively gave up hope as
8 time went on.

9 Q Did you wish that then from the very
10 beginning, there at the Richmond Police Station upon your
11 arrival there?

12 A Well, yes. But, I mean, even before that
13 at the Magistrate's Court, you know, my lawyer said that
14 he would be coming and I should ask for him and I would,
15 you know, be represented or have advice.

16 Q Then would you have been happy with all of
17 the conversations, these interviews with the police
18 officers, for them to have been recorded in their
19 entirety?

20 A Well, as I recall, there was one time that
21 I specifically asked for the tape recorder to be turned
22 off, but in general, depending on what my lawyer told me,
23 I wouldn't have had any objections. But I didn't have any
24 legal advice, so I didn't know what to do. I mean, you
25 know, I didn't know.

1 Q Yes, sir. But I'm just asking about what
2 you felt. You say that there was one time that you did
3 ask the tape recorder be turned off?

4 A Yes. The one that I can recall right now,
5 one occasion. But, I mean, there were other occasions
6 where they turned them off and I didn't ask for it.

7 Q When those occasions occurred. Isn't it
8 true that you asked to take a break at those times?

9 A This is on the June 5th interview?

10 Q I can be specific in a moment with you if
11 you'd like. I was just asking in general, and if you'd
12 rather for me to ask --

13 A It wouldn't have made any difference to me.
14 The point was that, I mean, the tape recorded interview
15 that you're talking about where I asked for a break, I
16 mean, that was already after I had sort of been hit by the
17 realization that I would have to do all this without a
18 lawyer and, you know, I was very, very scared at that
19 point.

20 Q Very scared. Have you ever been convicted
21 of a crime involving moral turpitude, lying, stealing,
22 cheating?

23 A Yes.

24 Q Before --

25 A But not at the time the interviews took

1 place.

2 Q But at this time?

3 A Yes.

4 Q In June of '86 when these interviews
5 occurred, you knew, as you've already indicated, Detective
6 Constable Wright and Detective Sergeant Beever?

7 A Yes.

8 Q And you knew them by virtue of the
9 investigation that had occurred earlier as to British
10 offenses, correct?

11 A Yes.

12 Q During that investigation, beginning on
13 April 30th and May 1st, you were advised, at least on two
14 occasions, of the British caution by those two officers,
15 is that right?

16 A That's right.

17 Q And you understood those warnings at that
18 time?

19 A That's right.

20 Q And as far as your educational background,
21 as of June of '86 you had completed two years at the
22 University of Virginia, is that correct?

23 A Yes, technically, yes.

24 Q And at the University of Virginia you were
25 a Jefferson scholar, is that right?

1 A Yes.

2 Q And what exactly is a Jefferson scholar?

3 A It's a full scholarship for academic
4 excellence.

5 Q Full scholarship?

6 A Yes.

7 Q That, of course, means a full four year
8 scholarship?

9 A Yes.

10 Q Towards a bachelor's degree? And the
11 amount of money provided you, I think you indicated in one
12 interview about how much would it be a semester?

13 A I think the total value of the scholarship
14 over four years would be something like thirty-two
15 thousand dollars or something like that.

16 Q Thirty-two thousand dollars?

17 A I think so.

18 Q How did it come to be that you were a
19 Jefferson scholar?

20 A I was recommended by my school and I did
21 the interviews and got the scholarship.

22 Q But it's a very competitive endeavor, isn't
23 it, to obtain the Jefferson scholarship? There are very
24 few of them, aren't there?

25 A Yes.

1 Q And it was quite an academic achievement
2 when you received the scholarship?

3 A Right.

4 Q Are you aware of what your I.Q. is?

5 A No.

6 Q Is it your understanding that it is a high
7 I.Q.?

8 A Yes.

9 Q And before going to the University of
10 Virginia, I think that you went to some school in Atlanta,
11 is that correct?

12 A Yes.

13 Q And briefly, sir, where was that?

14 A That was the Lovett School, L-o-v-e-t-t.

15 Q And would that, again, be a school of high
16 academic standard?

17 A Yes.

18 Q So as far as the British caution, with your
19 intelligence level and your educational background, you
20 most certainly had no difficulty in understanding those
21 warnings, is that correct?

22 A Right. I have no objection to the April
23 30th and May 1st interviews.

24 Q I see, but I'm just trying to understand
25 some background, if I might. Did those cautions,

1 according to British law, involve informing you that you
2 did not have to say anything during the interviews. and if
3 you did, anything that you did say would be used against
4 you in court?

5 A Yes.

6 Q I'd also like to ask, you've testified as
7 to the days of the remand, June 5, 6, 7, and 8 in great
8 detail, haven't you here today?

9 A I wouldn't say so.

10 Q You wouldn't say so?

11 A I mean, if you want to say that, yes, sir.

12 Q I'm curious that at the time -- Now, you
13 heard Investigator Gardner as to the interview on June 5,
14 the first interview on June 5, that he testified he didn't
15 take any notes at that time because you did not allow him
16 to. However, four days later on June 9th he did at that
17 time reduce his recollections to writing. You heard him
18 say that, is that correct?

19 A Yes, I did.

20 Q Well, during this period of time, whether
21 it was contemporaneously or four days later, did you ever
22 reduce your recollections to writing?

23 A No, I didn't, not on that weekend.

24 Q Well, at any time?

25 A I talked about it with my lawyers

1 afterwards when I had access to them. This was Mr. Barker
2 In Candlewell Green Police Station.

3 Q All right, sir. But --

4 A And we've talked about it lots and lots
5 since.

6 Q Sir, my question to you is that we are
7 talking now almost four years ago --

8 A Yes.

9 Q -- and in your testimony you've described
10 for the Court at one point, I think, Detective Sergeant
11 Beever coming to the cell and which side of his face was
12 shown to you and using his glasses --

13 A No, he didn't have glasses. He just looked
14 me in the eyes.

15 Q Oh, excuse me. You're quite right. He
16 raised his eyebrows, I think?

17 A Right. Yes.

18 Q And the raising of the eyebrows you took as
19 intimidation?

20 A Yes.

21 Q Could you demonstrate that intimidating
22 gesture for us?

23 A Well, he just glanced in my eyes or he
24 looked in my eyes deeply and raised his eyebrows like that
25 (indicating.)

1 Q Looked into your eyes deeply and raised his
2 eyebrows?

3 A Right.

4 Q And that scared you?

5 A Well, that and the context of what he said
6 beforehand and the other things that happened, yes.

7 Q But you wanted a lawyer from the very
8 beginning?

9 A Well, it took me two and a half hours -- I
10 mean, from what Mr. Barker said at the Richmond
11 Magistrate's Court, he said, "Ask for a lawyer and I'll
12 come and be there. You've got a right to a lawyer. Don't
13 say anything without a lawyer being present," words to
14 that effect. Then when I got to the police station it
15 took me two and a half hours to finally convince the
16 police that they were going to go get me a lawyer. I was
17 not having an easy time.

18 Q Sir, let me show you a form, if I might
19 that's headed, "Metropolitan Police - Notice to Detain
20 Persons," and ask you if you've ever seen that form
21 before.

22 A It's possible.

23 Q It's possible, sir?

24 A I can't answer yes or no. I don't know
25 specifically.

1 Q Not that specific form, a form exactly like
2 that, that's my question. Do you know?

3 A I don't know for sure, no.

4 Q You don't know for sure?

5 A That's right.

6 Q Have you ever had it read to you?

7 A Yes, I've had things like that read to me.

8 Q And isn't it true that on April 30, 1986
9 you were read that form?

10 A I'm sure that's right.

11 Q And you were given that form in accordance
12 with British police procedures, weren't you?

13 A Possibly.

14 Q Possibly?

15 A I know that I was read things like that
16 over that weekend, that fraud interview weekend of April
17 30th.

18 Q Am I correct that the form says,
19 "Metropolitan Police - Notice to Detain Persons. This
20 side to be read to the detained person by the custody
21 officer before giving the notice to the detained person.
22 You have a right to have someone informed of your arrest.
23 2) Consult a solicitor. 3) Consult a copy of the Codes of
24 Practice."?

25 A Yes.

1 Q That was read to you on April 30 before you
2 were handed the form, correct?

3 A Sure.

4 Q Well now, why didn't you recognize it a few
5 minutes ago?

6 MR. UPDIKE: We would like to introduce the
7 form, please, if there is no objection.

8 THE WITNESS: I don't recall the specific
9 form.

10 MR. NEATON: May I see it?

11 MR. UPDIKE: I was bringing it to you, sir.
12 You just sat there. Would you like to see it?

13 MR. NEATON: Yes, I would.

14 MR. UPDIKE: All right. Thank you.

15 THE WITNESS: I don't recognize --

16 THE COURT: Wait. Just a moment. Let's
17 get this out of the way first.

18 MR. NEATON: I have no objection, Judge.

19 THE COURT: It's offered as other exhibits
20 for identification in this proceeding?

21 MR. UPDIKE: Yes, sir.

22 THE COURT: So mark it.

23 THE CLERK: Number Seven.

24 (Commonwealth's Exhibit Number Seven was marked for
25 identification only.)

1 THE COURT: Wait just a minute. I think
2 Mr. Soering wanted to say something. Perhaps he
3 had not finished an answer. Go ahead,
4 Mr. Soering.

5 THE WITNESS: I just wanted to say, the
6 rights and all that, that was read to me over
7 that weekend, but I don't specifically remember
8 seeing a form like that.

9
10 BY MR. UPDIKE:

11 Q Let me show you -- As I said, this is
12 Commonwealth's Exhibit Number Seven, it says that this
13 side is to be read to the detained person by the custody
14 officer before giving the notice to the detained person.
15 This notice is on the reverse side. Let me ask you, and
16 I'm showing you a copy of a custody sheet of the
17 Metropolitan Police Department, the initial name on it of
18 the arrest person is Christopher Platt Noe, are you
19 familiar with that name?

20 A Yes.

21 Q Is that the name that you were using at the
22 time of your arrest on April 30, 1986?

23 A Yes.

24 Q Later it's scratched through and the name
25 Soering is inserted?

1 A Yes.

2 Q Now, as of the date April 30, 1986, it
3 says, "A notice setting out my rights has been read to me
4 and I have been provided with a copy. Signature of Person
5 Detained, C. P. Noe." Did you sign that?

6 A Yes, I did.

7 Q You signed that in acknowledgement that
8 this form, Commonwealth's Exhibit Number Seven, had been
9 read to you and that you had been given a copy of it, is
10 that correct?

11 A Okay.

12 Q Okay, sir? I'm asking you is that true,
13 did you do that?

14 A I signed that form, yes.

15 Q So you were read this form on April 30,
16 1986 and you were given a copy of it?

17 A I don't understand. I signed the form, the
18 rights were read to me. Whether I actually got the piece
19 of paper and got to keep it, I don't remember. I mean,
20 I'm not disputing that I was read my rights.

21 Q But the signature is under this form and
22 you've said earlier that you had no --

23 A When you're in a police station and you've
24 got three policemen standing around you and you're by
25 yourself and they tell you to sign something, you sign it.

1 Q I see. But this, nevertheless, states that
2 the rights have been read to you and that you have been
3 provided with a copy and you signed it?

4 A Yes.

5 Q Now, sir, a person with your educational
6 background and with your intelligence, and being
7 investigated as to any criminal offense, you're saying
8 that you just signed anything stuck in front of you? It
9 might be a complete admission of guilt.

10 A Well, I could see when I signed that that
11 it wasn't an admission of guilt. That was not an
12 admission of guilt that I signed. I just signed that I
13 understood my rights.

14 Q All right, sir. That's the point that I'm
15 getting to. You read it then to know it wasn't an
16 admission of guilt, you read it, you signed it, and you
17 acknowledged that you had been advised of your rights,
18 specifically a right to a solicitor?

19 A Yes.

20 Q And then after that was done, this
21 continuing on this form of April 30, 1986, the officer at
22 that time continued by asking you, as a result of your
23 right to a solicitor, whether you wanted a solicitor as
24 soon as practicable or whether, "I do not want a solicitor
25 at this time." You indicated that you did not want a

1 solicitor on April 30, 1986, correct? And please, if
2 you'd like to examine it more closely.

3 A Yes, that's what it says and it's got
4 underlined, "at this time."

5 Q And in response to your answer, I should
6 say, that you didn't want a solicitor at that time, the
7 custody officer struck through the part saying that you
8 did want one, leaving the part, "I do not want a
9 solicitor," and you signed C. P. Neau under it, didn't
10 you?

11 A Yes, at this time, yes.

12 MR. UPDIKE: Can we introduce this? It's
13 the custody sheets that we've provided you.
14 Would you like to see it?

15 MR. NEATON: Yes. Judge, we have no
16 objection to the first page of that document,
17 but we would reserve any objections to the
18 entire document that Mr. Updike has supplied
19 us, at least right now on the grounds of
20 materiality and relevance.

21 THE COURT: All right. That's in the
22 record.

23 MR. UPDIKE: Could we have it marked as an
24 exhibit at this time?

25 MR. NEATON: You can have the first page

1 marked as an exhibit, if that's what you want.
2 I mean, I'm not objecting to the first page,
3 which if all you've shown to the witness. I
4 would reserve objection to and would object to
5 the subsequent pages on the grounds of hearsay
6 and on grounds of relevance and materiality.
7 Thank you, Mr. Updike.

8 MR. UPDIKE: At this time, I ask just that
9 the first page be received into evidence.

10 THE CLERK: Number Eight.

11
12 (Commonwealth's Exhibit Number Eight was marked for
13 identification only.)
14

15 BY MR. UPDIKE:

16 Q Now, sir, proceeding quickly to the morning
17 or the afternoon, I should say, of June 5, 1986, after the
18 remand hearing.

19 A Yes.

20 Q At the remand hearing you, of course, had
21 counsel, didn't you?

22 A Yes, I did.

23 Q When you were brought to Richmond Police
24 Station, this exact same procedure was followed through
25 with you again, wasn't it, at 12:50 p.m. June 5, 1986?

1 A Yes.

2 Q And at that time -- and for purposes of the
3 record later, I'm sure that, well, you know this better
4 than I do, the Europeans in writing their dates reverse
5 the date and month from what we do, is that correct?

6 A Right.

7 Q So when it says 5, little 6, '86, that's
8 our way of saying June 5, '86, correct?

9 A Yes.

10 Q Now, at that time, you again were read the
11 front of Commonwealth's Exhibit Number Seven advising you
12 of your right to have someone informed of your arrest, to
13 consult a solicitor, and to consult a copy of the Codes of
14 Practice?

15 A Yes.

16 Q And at that time you again signed this
17 custody sheet acknowledging that this form had been read
18 to you and that you had been provided with a copy, is that
19 correct?

20 A That's right.

21 Q And then again following the same procedure
22 after that was done, you were asked whether you wanted a
23 solicitor as soon as practicable or whether you wanted a
24 solicitor at this time, weren't you?

25 A Yes. I signed where it says, "I do not

1 want a solicitor at this time."

2 Q You did?

3 A Yes.

4 Q And you signed this indicating you did not
5 want a solicitor at this time, right?

6 A At 12:50, yes.

7 Q At 12:50. All right.

8 MR. UPDIKE: Maybe at this point we can
9 introduce the first sheet of this then?

10 MR. NEATON: No objection.

11 THE CLERK: Number Nine.

12
13 (Commonwealth's Exhibit Number Nine was marked for
14 identification only.)

15
16 BY MR. UPDIKE:

17 Q Now, Mr. Soering, you have talked about how
18 much you wanted a lawyer of any type, British lawyer,
19 American lawyer, any kind of lawyer. If you wanted a
20 lawyer, this is at this particular point in time, when you
21 are first brought to Richmond Police Station, and you are
22 advised of your right to a solicitor --

23 A Right.

24 Q -- If you wanted one, why in the world did
25 you sign that form at 12:50 p.m. indicating that you did

1 not want one?

2 A I had a solicitor and he was on his way to
3 the police station.

4 Q You had a solicitor, but, sir, you signed
5 that saying that you did not want one. And you also, it
6 was also crossed out that you did not want one at this
7 time.

8 A I signed where it says, "I do not want one
9 at this time," but at the Richmond Magistrate's Court Mr.
10 Barker said I had a right to a lawyer, I shouldn't say
11 anything until he was there and he would come to the
12 police station. And I signed that and I expected that I
13 would have a lawyer when I was interviewed.

14 Q Yes, sir. But when you signed this, you
15 were indicating you didn't want a solicitor. Now, if you
16 wanted --

17 A I had Mr. Barker.

18 MR. NEATON: Is that a question? I think
19 Mr. Updike is arguing with the witness.

20 MR. UPDIKE: I was preparing to make it a
21 question before I was interrupted by the
22 witness, if I might, please.

23 MR. NEATON: Fine.

24

25

1 BY MR. UPDIKE:

2 Q Isn't it true, sir, that you were explained
3 your right to a solicitor at that point and you signed
4 this form as a waiver, "I do not want a solicitor at this
5 time"? Isn't that what happened?

6 MR. NEATON: Objection. Asked and
7 answered.

8 THE COURT: Overruled. It's cross
9 examination.

10 THE WITNESS: That's correct. This was
11 because I had a solicitor and my solicitor told
12 me he was coming.

13
14 BY MR. UPDIKE:

15 Q Then, sir, wouldn't you agree the logical,
16 and the appropriate, and the correct thing for you to have
17 done, if that is what you had meant, was just to simply
18 sign it, "I want a solicitor as soon as practicable,"
19 because you wanted to talk to Keith Barker as soon as
20 practicable, didn't you?

21 A But he said he was coming.

22 Q Yes, sir, but that doesn't change the fact
23 that you would have a written document of the fact that
24 you wanted that to occur?

25 MR. NEATON: Objection. He's arguing with

1 the witness now. The witness has testified as
2 to what he did and why he did it. He's arguing
3 with him.

4 THE COURT: I disagree. Overruled.

5
6 BY MR. UPDIKE:

7 Q Now, at that particular point in time
8 though you knew that you were to be interviewed by
9 investigators from Bedford, Virginia concerning the murder
10 of Mr. and Mrs. Haysom, didn't you, at the time that you
11 signed this form, Commonwealth's Exhibit Number Nine?

12 A I don't recall knowing that there were
13 investigators from Virginia there, but I knew I'd be
14 interviewed about the murders.

15 Q Didn't you know that there were
16 investigators from Virginia or from the United States.
17 investigators involved in the case?

18 A Yeah, but I don't recall anybody telling me
19 that they were there. I mean, I hadn't seen anybody.
20 See, when they took me from the court, they handcuffed me
21 and put me in this van. And then when we arrived at the
22 police station they put this blanket over my head, because
23 there were photographers in the trees outside the police
24 station, and they took me across the courtyard into the
25 police station and took the blanket off my head, uncuffed

1 me, gave me a form to sign, I signed it, and went to my
2 cell. I mean, that's just normal procedure.

3 Q But during the remand hearing, didn't your
4 lawyer argue and didn't the other lawyer argue concerning
5 your remand to the police station for the purpose of you
6 being interviewed by police investigators from Virginia
7 concerning these murder charges? Did you hear that?

8 A I don't recall hearing that. Sorry.

9 Q Did your attorney and you talk about that?

10 A No. I wasn't allowed to see my attorney
11 after that. They let me see Mr. Barker for about five
12 minutes before the hearing and then during the hearing I
13 couldn't talk to him because in an English courtroom you
14 are separated from your lawyers, and then afterwards I was
15 taken downstairs and wasn't allowed to see him again.

16 Q Is it your testimony then that when you
17 went from the Richmond Magistrate's Court to the Richmond
18 Police Station, and upon your arrival there you did know
19 that you were going to be interviewed concerning the
20 murder charges?

21 A Yes.

22 Q You did not have a solicitor on the murder
23 charges, did you?

24 A Mr. Barker. He was in court for me arguing
25 about that, that I didn't want to be interviewed.

1 Q Are you saying then that you did not know
2 that a Virginia investigator, a Virginia police officer,
3 would be there?

4 A Right.

5 Q And you're saying that that was never
6 mentioned during the remand hearing?

7 A It's possible. I just don't remember it.

8 Q But, sir, you described a few minutes ago
9 that even before the hearing Mr. Barker showed you this
10 Dally Mall newspaper.

11 A Um --

12 Q You know what I'm getting ready to do,
13 don't you?

14 A No, I don't. It's a question about the
15 Dally Mall.

16 Q Huh? Don't you?

17 A You showed me the headline of a newspaper?

18 Q And you read it, too, didn't you?

19 A Yes.

20 Q And that Dally Mall newspaper, of course,
21 had in it that American investigators were there to
22 interview you.

23 A He showed me the newspaper. I didn't read
24 the article. He was only there for five minutes.

25 Q You didn't read it?

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A No, I didn't. I read the headline.

MR. NEATON: Your Honor, I object to the question that was before this as well as he s assuming a fact not in evidence that he was shown this particular London newspaper.

MR. UPDIKE: I'm going to ask him if this is it.

THE COURT: Objection overruled. He's got a right to ask him. This is cross examination, gentlemen, and I'm going to allow full cross examination.

THE WITNESS: I think that looks like the paper I saw.

BY MR. UPDIKE:

Q Yeah. It's very distinctive, isn't it? You said Daily Mail, the date, June 5, 1986, that's the date, the morning of the hearing before the Richmond Court. The headline there was, "Daughter of High Society Couple Held Voodoo Killing. Two Quizzed."

A All I'm saying is that I don't specifically remember that I knew that there was going to be an American investigator there.

Q Who did you think that the two quizzed was going to include?

1 A Me and Elizabeth.

2 Q You and Elizabeth?

3 A Yeah. That's what my lawyer told me.

4 Q You read quite a lot, don't you? Is that

5 correct?

6 A Yes.

7 Q And you say that you did not read all of

8 the article?

9 A No. When he walked into the cell, the

10 newspaper was like that (indicating), and he threw it down

11 on the thing and said, "You're in a lot of trouble."

12 Q Weren't you curious?

13 A Huh?

14 Q Well, let me ask you this. The first

15 sentence of the --

16 A All I'm saying is that I don't specifically

17 remember it.

18 Q The first sentence here says, "Two U. S.

19 detectives flew to Britain yesterday to interview

20 Elizabeth Roxanne Haysom and her East German boyfriend,

21 Jens Soering, twenty-six, about a double killing which

22 shocked America."

23 A All I'm saying is that I don't specifically

24 remember knowing that.

25 Q You don't specifically remember?

1 A I mean, I didn't read the newspaper
2 article. Somebody may have told me, I may have heard it
3 in Court, but I don't remember it now.

4 Q Now, sir, you have a great memory, now
5 don't you, being a Jefferson scholar and having the
6 educational background that you do?

7 A I used to have a good memory when I was in
8 school, yes.

9 Q Yeah.

10 A I've been in prison for four years.

11 Q Yes, sir. And, sir, you read quite a bit,
12 as you've admitted. You were at the Magistrate's Court
13 that morning?

14 A Right.

15 Q You're told that you're in a lot of trouble
16 and you are shown this sensational headline and you're
17 saying that you did not even read the first line, "Two U.
18 S. detectives flew to Britain"?

19 A I didn't. I'm sorry.

20 Q You weren't curious? Didn't know why,
21 "Well, what's all this fuss about us? What's going on?
22 What's this hearing about?"

23 A I expected it and Mr. Barker told me what
24 would happen next and that was it.

25 Q And he told you that there were American

1 people there in England for this very purpose, correct?

2 A I don't recall that.

3 Q And it was mentioned during the remand
4 hearing as well. In fact, that was a great portion of it,
5 the fact that there was an American officer there to
6 interview you, now wasn't it?

7 A It's quite possible. All I'm saying is
8 that I don't remember it now.

9 Q And at the time that you come to the police
10 station, you do admit that you signed this form,
11 Commonwealth's Exhibit Number Nine?

12 A Yes.

13 Q To the effect that you did not want a
14 solicitor at this time.

15 MR. UPDIKE: We would like to introduce
16 this newspaper, please.

17 MR. NEATON: Go right ahead.

18 MR. UPDIKE: Thank you.

19

20 (Commonwealth's Exhibit Number Ten was marked for
21 identification only.)

22

23 BY MR. UPDIKE:

24 Q Mr. Soering, is there any particular reason
25 that your memory is not as good as to the details of the

1 remand, the details of who was coming to interview you,
2 and yet your memory is, as you've described it, concerning
3 the activities of Detective Sergeant Beever and
4 Investigator Gardner and Detective Constable Wright?

5 A Well, I remember, for example, what Mr.
6 Beever said at the cell door because it was a particularly
7 shocking experience. I remember the particular phrase he
8 used because, you know, it struck me.

9 Q Raising his eyebrows?

10 A Yes. I mean, it's a picture you remember.

11 Q Now, you were interviewed, you admit, for
12 the first time around 3:00 that day?

13 A I guess so.

14 Q Mid-afternoon?

15 A Yes.

16 Q You did not have a watch, you say?

17 A Right.

18 Q Did not see any clocks and no idea of the
19 times or anything?

20 A It's just a guess.

21 Q Investigator Gardner has testified that
22 when you were brought to DCI Paton's office that he
23 introduced himself to you and he advised you of the
24 Miranda warnings and that Detective Sergeant Beever
25 advised you of the British caution?

1 A That's what he said, yes.

2 Q Do you dispute that testimony that he has
3 made under oath?

4 A Yes.

5 Q Are you stating that when you came through
6 the door -- Do I recall your testimony correctly that
7 during that first interview, as you came through the door
8 and saw the police officers, that your first comment was
9 that, "I want a lawyer"?

10 A I may have said hello to Ricky first, but
11 the first thing I said when I sat down in the chair was,
12 "I know what my rights are. I want a lawyer." I've seen
13 these television shows. I know what my rights are.

14 Q And you do know what your rights are, don't
15 you?

16 A Yes.

17 Q Well, let's first of all discuss that
18 issue. As far as the Miranda forms -- if I could just
19 have one of them. It doesn't matter which one.
20 Commonwealth's Exhibit Number One, this have the five
21 rights on it, "Before we ask you any questions, it's my
22 duty to advise you of your rights." Did you understand
23 that at that time of June 5 through June 8th, 1986?

24 A I understood my rights, but I was the one
25 who brought the issue up.

1 Q Okay, sir. But my question to you just
2 now, at this point, is you understood that, is that
3 correct?

4 A I understood those rights, yes.

5 Q "You have the right to remain silent.
6 Anything you say will be used against you in a Court of
7 law. You have the right to the presence of an attorney
8 before making a statement. If you cannot afford an
9 attorney, one will be appointed to represent you by the
10 Court at no cost to you. You have the right to stop
11 answering at any time during the questioning."

12 A Right.

13 Q From the very first time in Richmond,
14 England on June 5, 1986 that you were advised of these
15 rights, you completely understood them, didn't you?

16 A I was the one that brought the issue up.

17 Q That's not my question to you, sir.

18 A Yes, I did. Yes, I understood that I had a
19 right to a lawyer.

20 Q You completely understood them?

21 A I understood I had a right to a lawyer.

22 Q My next question to you, sir, is because of
23 your intellect, because of your education, there was
24 certainly no problem with you understanding that and you
25 also had the additional fact of having seen this all on

1 television? Completely understood it?

2 A (No response.)

3 Q The officers testified that during this
4 interview, excuse me, Investigator Gardner testified that
5 during this interview you were just interviewed concerning
6 background information as to Elizabeth Haysom?

7 A That's what he said after I said I wanted a
8 lawyer.

9 Q And it is your testimony that a majority of
10 that interview concerned your discussions that you wanted
11 an attorney?

12 A A large section of them, yes.

13 Q A large section?

14 A What happened was that I walked into the
15 room and I saw Ricky Gardner sitting there and my reaction
16 was, "Uh-oh, I want a lawyer," and that's what I said.
17 You know, "I've seen the television shows. I want a
18 lawyer." And then he said, "This is just background.
19 This is not questioning, this is not an interview, we just
20 want background." And then he asked me, you know, the
21 things that are on that form, date of birth and things
22 like that.

23 Q So you're saying he did go over the form
24 with you?

25 A No. I'm saying he discussed that sort of

1 information, background information. And then we started
2 talking about whether I believed in voodoo.

3 Q Started discussing what, voodoo?

4 A Yeah. He wanted to know about that.

5 Q I'm curious. A minute ago when you were
6 talking about Investigator Gardner, you did say, didn't
7 you, "I may have said hello to Ricky"?

8 A It's quite possible.

9 Q You said that just a few minutes ago,
10 didn't you?

11 A Yeah. I did say that, yeah.

12 Q And at times Investigator Gardner, would
13 you agree, in his testimony yesterday referred to you as
14 Jens?

15 A Yes.

16 Q And despite all these circumstances, even
17 during the investigative and interviewing process, you
18 referred to each other by first names, didn't you?

19 A Well, that's the way things are done in
20 America.

21 Q But it was a friendly situation? You
22 weren't afraid of Ricky, were you?

23 A I was not afraid of Ricky after that first
24 interview, at the very beginning. but, I mean, everybody
25 calls each other by their first names. When I talk to you

1 about my lawyers, I call you Jim.

2 Q Thank you, sir.

3 A That's all right.

4 Q I won't ask you what else you say, Mr.

5 Soering, but we'll continue on. At any rate, Investigator
6 Gardner testified that during that hearing you never asked
7 for a lawyer?

8 A Yes.

9 Q Do you dispute Ricky's testimony?

10 A Yes. That was the whole reason the Cagney
11 & Lacy, Kojak and Hill Street Blues thing was even brought
12 up.

13 Q I'm just curious then, at 6:00, beginning
14 at 6:00 approximately, you were interviewed in DCI Paton's
15 office once again. Is that right?

16 A The same office, yes.

17 Q And were there Miranda warnings read to you
18 again?

19 A No, they weren't.

20 Q Were they read to you at all during that
21 interview?

22 A It was the same thing. See, they had put
23 me down in the cells and they brought me back upstairs.
24 The first thing I said was, "Is my lawyer here? I want a
25 lawyer."

1 Q So you're saying there once again it was
2 the first thing that you said?

3 A But this time around I wasn't surprised by
4 Ricky being there.

5 Q I'm surprised. Why didn't you say, "Where
6 is Keith Barker, he's supposed to be here by now"?

7 A I did. I was expecting my lawyer to be
8 there and he wasn't there and I said, "Where is my lawyer?
9 I want my lawyer."

10 Q Now, this is 6:00. Could I ask you, sir,
11 during that period of time when you were in the cell, did
12 you ever ask of the custody officer to contact Keith
13 Barker?

14 A You're not allowed telephone calls in
15 British police stations. It's not like America. Like in
16 our holding cell, in the jail here, we've got a telephone,
17 but it's not like that over there.

18 Q What do you mean you're not allowed to make
19 a telephone call?

20 A Well, you don't have a telephone in the
21 cell where you can just drop a coin in and call.

22 Q But you can be provided access to one?

23 A That's right.

24 Q And as a matter of fact, a little bit later
25 that evening, specifically at 7:45 on June 5, 1986, you

1 called the German Embassy, didn't you?

2 A That's right. That's because I wanted them
3 to contact Ricky Gardner -- I mean, what am I saying,
4 Keith Barker. Sorry.

5 Q You called the German Embassy to contact
6 your lawyer for you?

7 A If you look at the time, it was 7:45, I
8 didn't know Keith Barker's home phone number, so I had no
9 way of reaching him. All right? So what I thought was
10 the best way to do it was to call the embassy and get them
11 to call Keith Barker for me, because they would have a way
12 of finding out where he was now.

13 Q Yes, sir.

14 A But there wasn't anybody at the embassy
15 there except the night watchman.

16 Q Yes, sir. But if you hadn't called Keith
17 Barker's office at that time, you didn't know whether he
18 was in his office or not, did you?

19 A Well, it was 7:45.

20 Q Yes, sir. But do you think that
21 ambassadors work longer hours than lawyers perhaps?

22 A No. But see, at an embassy or a consulate,
23 they're supposed to have a duty person who is supposed to
24 deal with emergencies, all right? And if you call a law
25 office after business hours, nobody will pick

1 up the phone. that's what I assumed anyway, whereas a duty
2 person was supposed to be there.

3 Q Let me ask you then before 7:45, and let me
4 show you your custody sheet, if you'd like to refer to it
5 for that period of time, and I'd like to refer you to the
6 entry at 5:28 p.m. June 5, 1986. You're returned to your
7 cell at that point, aren't you?

8 A Uh-huh. Yeah.

9 Q There is no entry that you requested to see
10 an attorney, is there?

11 A No, not on here.

12 Q There is no entry there that you requested
13 an attorney be called for you, is there?

14 A Not to the custody officer. But, you see,
15 that's what I had just spent the last two hours talking to
16 the other two policemen about, the other three policemen.

17 Q Yes, sir. But my question is, once you got
18 back downstairs -- if it happened the way you indicate --
19 once you got back downstairs, why didn't you say to that
20 custody officer, "I want to call Keith Barker or I want
21 you to call Keith Barker. I want somebody to get Keith
22 Barker here"? Did you ever say that to anyone?

23 A No, I didn't.

24 Q No, you didn't?

25 A But I'd been saying that for the last two

1 hours and they had been stone-walling me, so what was the
2 point. I had just spent two hours talking to them about
3 that point.

4 Q Isn't it true, sir, as you go through these
5 custody sheets there are different custody officers who
6 checked on you at times every hour and at times even more
7 frequently than that? Is that correct, sir?

8 A Yes.

9 Q Even at night they come around and check on
10 you?

11 A Yes.

12 Q And they ask you if you have any requests
13 or any complaints, don't they?

14 A That's right.

15 Q That's their job?

16 A Yes.

17 Q And these are custody officers, independent
18 of the investigative officers, correct?

19 A Well, when you're locked in a cell, you
20 know, all policemen are one group.

21 Q All policemen are one group?

22 A I mean --

23 Q So did you suspect the entire Metropolitan
24 Police Department there at Richmond of colluding or
25 entering into some kind of agreement to deny you access to

1 counsel?

2 A I did not suspect the entire Metropolitan
3 Police force, no. All I knew was there were three police
4 officers in that room who I had been asking to let me see
5 a lawyer for two hours and they wouldn't do it.

6 Q My question to you, sir, and I'd like you,
7 if you would, if you don't want to, fine, but I invite you
8 to look through that custody sheet, the number of entries,
9 the number of different custody officers during those
10 several days that came around and checked on you
11 twenty-four hours a day, and there are numerous entries
12 there, aren't there?

13 A Right.

14 Q No requests, no complaints?

15 A At 7:40 Mr. Beever made the threats against
16 Elizabeth. After that, I made one attempt to call the
17 German Embassy, couldn't reach them, all right? Was
18 placed back in the cell. After that point I thought it
19 would be dangerous if I did things like that.

20 Q It would be dangerous for you?

21 A No, for Elizabeth.

22 Q Because Ken Beever had raised his eyebrows
23 at you?

24 A Could I explain that, please? All right?

25 THE COURT: Excuse me. I thought you said

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may I stand up. I'm sorry. You said may I explain?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

THE WITNESS: I mean, Jefferson scholarships and things like that notwithstanding, I had just spent a month in jail, in prison. It was the first contact I had had with sort of, I guess it would be called the rough side of life. I mean, I had never seen anything like that before. Now, because the prisons were overcrowded, all right, they remanded me --

BY MR. UPDIKE:

Q Sir, I didn't ask for a long recitation. I just asked you a question.

A I know. I want to explain why I was so worried about Elizabeth, okay? I spent, I guess, about two weeks in the same Candlewell Green Police Station holding cell which they were using for overflow prisoners that they didn't have places for. And down there, all right, I saw this Maltese youth, okay, he was around eighteen or twenty-one. And this guy --

MR. UPDIKE: Mr. Soering, I want to give

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you a chance to answer, but really this is far exceeding, Your Honor, what I was asking.

THE WITNESS: This explains why I was worried about Elizabeth.

MR. UPDIKE: If I might interrupt, Your Honor. I just asked him if he was fearful of Ken Beever raising his eyebrows and now he's going into --

THE COURT: Well, let's do it this way. We have to go by the rules.

MR. UPDIKE: Yes, sir.

THE COURT: The answer is not responsive to the question, but I'm not going to deny you the right to give this explanation. I think it could more properly be given on redirect examination from your attorney. Save it until then.

THE WITNESS: Okay.

BY MR. UPDIKE:

Q My question, though, at that point is during any of that, was there any custody officer, during your entire stay, that you felt that you could ask of him, "Get me Keith Barker here. I haven't seen him, I'd like

1 to see him"?

2 A No.

3 Q None of them?

4 A No. They were working in the same police
5 station as the other officers and I had just spent two
6 hours talking to these guys about it.

7 Q And I'm still a little bit confused why you
8 felt that if you wanted your lawyer that the German
9 Embassy could reach him more easily than you could.

10 A Look, I was lucky or I considered myself
11 lucky that the custody sergeant let me make one phone call
12 to the German Embassy. All right? If I tried to call
13 Keith Barker, all right, I expected not to get through to
14 him because it was late in the evening or it appeared to
15 be late in the evening. So there was no way for me to
16 know whether I could actually reach this guy or that I'd
17 reach an answering phone. The only sort of living person
18 that I could reach on the phone who would actually go out
19 and do something, that I could think of, was at the German
20 Embassy, because they are supposed to have a duty officer
21 that's supposed to deal with emergencies.

22 Q Nobody was there but the night watchman?

23 A That's right. That's what I said.

24 Q Did you make any further attempt after
25 talking to the night watchman to contact Keith Barker that

1 night?

2 A Me personally?

3 Q Yes.

4 A Well, I asked again for a lawyer.

5 Q I mean at that point after the phone call?

6 A No. There was nobody else I could phone.

7 Q And you did not ask the police officers to
8 reach him for you, either at home or elsewhere?

9 A I'd just spent two and a half hours asking
10 police officers to get me Mr. Barker and they said they
11 would, and they didn't.

12 Q Isn't it true that this very phone call
13 that you made to the German Embassy was placed for you by
14 one of these police officers that you say that you had
15 been with for the past two hours, Terry Wright? Now,
16 didn't that happen?

17 A Terry Wright was present during the second
18 phone call to the embassy.

19 Q Excuse me?

20 A That was the next day. They phoned the
21 embassy for me.

22 Q Who did?

23 A The police officers. It's on the tape.

24 Q Which one?

25 A And we talked about it. I think it was the

1 6th. It was on the tape.

2 Q Yes, sir. The point on the tape during
3 June 6th, though, is when the German Embassy calls you
4 back and the call is transferred, and these British
5 officers that you're talking about stopped the interview
6 to let you talk to the German Embassy, right?

7 A That's right.

8 Q Perhaps if you would, just look at that
9 concerning the calls. Maybe I could refresh your memory.
10 Is it correct then the entry June 5, 7:45 p.m., there is
11 an entry there that you phoned the German Embassy at
12 235-5033, the phone call, number, or excuse me, the
13 telephone number is entered there?

14 A Yes.

15 Q And if I could direct your attention please
16 to the next day of June 6th. Isn't there any entry at
17 10:05 a.m. the very next morning that, "Soering rang the
18 German Embassy at 235-5033. Soering was unable to speak
19 to person he wanted and Soering was told to ring back at
20 11:00 a.m. Call was completed at 10:11 a.m."?

21 MR. NEATON: I object to the form of the
22 question because it does not accurately state
23 what the entry is.

24 THE COURT: Sustained.
25

1 BY MR. UPDIKE:

2 Q Read the entry.

3 A "10:05 a.m., rang Embassy. 235-5033.

4 Unable to speak to person he wanted. Told to ring back at
5 about 11:00 a.m. Call concluded 10:11." I don't know
6 what the next bit says. I can't read that.

7 Q Well, so far is what I read so much
8 different from what you read? Is it basically the same?

9 A Pardon?

10 Q Can you read the next part then, sir?

11 A It says, "Back in cell," and I guess, "No
12 incidents."

13 Q No incidents?

14 A Right. The thing is, I mean --

15 Q You've answered my question. Thank you,
16 sir.

17 A All right.

18 Q And that is at 10:05 a.m. And the
19 information is there for you to ring back at 11:00 a.m.
20 If you could proceed to the 11:00 a.m. meeting, you call
21 the German Embassy again, don't you?

22 A Yeah.

23 Q Could you read that entry, please, June 6,
24 1986, the 11:00 entry?

25 A "Called up his embassy. 235-5033, as

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requested. Call concluded 10:11 a.m."

Q 11:11, isn't it?

A Sorry, 11:11 a.m. I don't know what the next word is. Something then, "person who knows about this case was not there and would not be there until 3:00 p.m. Requested to speak to D/S Beever," and it's signed.

Q So that's an entry you again called at 11:00 a.m. That would be the third call that you'd been allowed to make to the German Embassy, correct?

A Yes.

Q And that is before the interview on June 6th, the second day, even begins, because you're taken out of the cell for the interview at 11:19 a.m., the next entry?

A Right.

Q And you're taken out of the cell by D/S Beever and D/S Wright. Read that entry for me. If you would please. 11:19 a.m.

A "Out of cell," something, "Interview with D/S Beever and D/C Wright as requested by prisoner. Pace explained to" --

Q Is that escort?

A I don't know what that means. that next word. Sorry. Pace is the -- which is the form you gave me.

1 Q Exactly.

2 A Right.

3 Q And you are aware of it?

4 A Well, that's what it says on the piece of
5 paper.

6 Q Right. Then if we could go back to our
7 question, and at that point, on the night of June 5th --

8 A Right.

9 Q -- you're calling the German Embassy. The
10 next morning at 10:05 a.m. you're calling the German
11 Embassy.

12 A With Mr. Wright there.

13 Q The next time at 11:00 a.m. you again
14 called the German Embassy?

15 A With Mr. Wright there as well. I think he
16 was, wasn't he? I mean, I don't know.

17 Q That's my question to you?

18 A Mr. Wright, as far as I can remember, was
19 present at those telephone calls to the German Embassy.

20 Q He was present?

21 A On June 6th, yes.

22 Q During all of it?

23 A As far as I recall.

24 Q As far as you recall?

25 A The point was --

1 Q Sir, my question to you then is, if Terry
2 Wright is present during some of these phone calls at
3 least and allowing you to ring the German Embassy, why in
4 the world did you suspect that he wouldn't allow you to
5 ring your solicitor, Mr. Barker?

6 A What, on Friday?

7 Q On any of those three times I've asked you
8 about?

9 A Because at that point Mr. Beever had
10 already made the threat against Elizabeth and told me
11 that, you know, I should not get a lawyer. Not in so many
12 words, but he said, "You don't need a lawyer, do you?" So
13 I could hardly ask his colleague to make a telephone call
14 to my lawyer because Mr. Wright would say -- Mr. Wright
15 spoke German. So it wasn't like I could just say on the
16 telephone to the embassy in German, "Go call my lawyer,"
17 because he'd understand.

18 Q Isn't it true that Mr. Wright only knows
19 very few words of German?

20 A I mean, I didn't know that at that stage,
21 but on the next day he said to me that he lived there and
22 worked as a bricklayer in Germany. We chatted in German.
23 Not in detail, but enough for him to understand.

24 Q But you will at least agree that you were
25 allowed, on those three occasions we've just gone through,

1 to contact the German Embassy at your request, correct?

2 A As far as I recall, I was taken out of the
3 cell, not at my request. Really quite to my surprise.

4 Q I didn't ask you about being taken out of
5 the cell, sir. I asked you about making the phone calls
6 to the German Embassy at your request.

7 A Right.

8 Q You did do those three?

9 A No. The first phone call was at my
10 request. As I remember, the second -- well, the third was
11 a phone call when they called back -- but as I recall, on
12 the second day, on Friday, I was just taken out, took to
13 the custody sergeant's desk and given the phone. As I
14 recall, that wasn't at my request.

15 Q But you did speak to them?

16 A That's right, yes.

17 Q Okay.

18 A Not to anybody who could help me.

19 Q We've got one call on June 5th to the
20 German Embassy at night. We've got two calls the morning
21 of June 6th to the German Embassy. And then when the next
22 interview occurs, during that interview, the German
23 Embassy rings back and these three police officers stop
24 the interview and let you talk to the German Embassy?

25 A That's right.

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Q Correct?

A Yes.

Q And you speak to the German Embassy in German?

A I suppose so, yes.

Q You suppose so? Your memory's not good on that point?

A It would make sense to speak to them in German, yes.

Q So what interests me then, if these British officers had been threatening you or threatening Elizabeth Haysom and doing the things that you have indicated, why in the world would these same police officers allow you to talk to the German Embassy and allow you to report to them about their activities in German, and perhaps even cause some kind of international incident?

A Well, as far as I was concerned --

MR. NEATON: I'm going to object to the question, Judge. It calls for speculation and he can call the officers and let them explain.

MR. UPDIKE: I'll rephrase the question.

THE COURT: The question is too broad. Sustained.

1 BY MR. UPDIKE:

2 Q Sir, you stated -- let me rephrase my
3 question -- that the police officers did threaten you, or
4 threatened Elizabeth?

5 A Just Mr. Beever.

6 Q Mr. Beever threatened?

7 A Right.

8 Q Detective Sergeant Beever?

9 A That's the one.

10 Q Did he threaten you, now, let's get that
11 straight first?

12 A No. I said what he did. It was at my cell
13 door.

14 Q Did he threaten you or did he threaten
15 Elizabeth, according to you?

16 A He threatened Elizabeth. That was that
17 whole conversation on the tape, that's what that was about
18 when I said, "No. I personally have not been threatened."

19 Q Okay. So you were never threatened? Let's
20 get that straight.

21 A I personally was never threatened, that's
22 correct.

23 Q You were never threatened?

24 A Right.

25 Q You are saying that there were threats

1 directed at Elizabeth?

2 A That's right.

3 Q Okay. We've got that straight. Now, you
4 are also saying that those police officers threatened
5 Elizabeth, or Kenneth Beever did, and that all of the
6 police officers denied you right to counsel, is that
7 correct?

8 A Yes. They kept making --

9 Q And that you then were allowed to place
10 these calls to the German Embassy?

11 A That's right.

12 Q Speak to them in German?

13 A Yes.

14 Q And that occurred?

15 A In Mr. Wright's presence we spoke German.

16 Q And at that time, sir, you could have
17 reported to the German Embassy the denial of the right to
18 counsel, correct?

19 A Mr. Wright was standing right there.

20 Q All right, sir. My question to you is,
21 couldn't you have told the German Embassy that British
22 police officers had denied you your right to counsel?

23 A Yes. I could have said that, and Elizabeth
24 would have fallen over and hurt herself.

25 Q Did you say that to them though? You

1 could've said it. Did you say to your embassy, "They're
2 denying me my right to counsel."?

3 A If I had said that, Elizabeth would have
4 gotten hurt.

5 Q Did you say it to them, sir?

6 A No, for that reason. If I had said it,
7 Elizabeth would've gotten hurt.

8 Q You did not ask the German Embassy either
9 to contact Keith Barker for you, did you?

10 A Of course not.

11 Q You didn't do that either?

12 A That's right. If I had done that, the same
13 thing, Mr. Beever said I shouldn't do it. Not in so many
14 words, but that's what he indicated.

15 Q But Mr. Soering, isn't it true that you've
16 said that you made none of these requests to any of the
17 police officers there at the Richmond Police Station
18 because they were all police officers, but here you had
19 every opportunity to make your complaints known to a
20 foreign embassy and, in fact, the German Embassy, didn't
21 you, and you didn't do it?

22 A Only by endangering Elizabeth could I have
23 said that.

24 Q Mr. Soering, isn't it true that in your
25 discussions with the German Embassy you were not concerned

1 about talking about an attorney, but rather you were
2 trying to find out information concerning whether you
3 could be extradited back to Bedford County, Virginia?

4 A That's right.

5 Q That's right?

6 A Yes.

7 Q And sir, isn't it true that what you were
8 doing was throughout this, because of your intelligence
9 and because of your background, you were assessing this
10 situation on your own, whether or not you would be
11 extradited or not? You wanted the information?

12 A Yes. But I'd just like to say that no
13 amount of intelligence can replace legal advice. I didn't
14 know whether I could be extradited because I'm not a
15 lawyer, and I asked the embassy because I didn't have a
16 lawyer. There was nobody else to tell me.

17 Q You still haven't got a lawyer at that
18 point. All right. Now, I'd like to ask you, if I could,
19 about some several points in the tapes. And I'd like to
20 ask you about the June 5 interview to begin with, the one
21 that is recorded, which would actually be the third
22 recording. Do I understand that despite the testimony
23 that you've given here today, you have not seen a copy of
24 one of these since 1987, is that what you said?

25 A That's about my recollection, yes.

1 Q And you remembered what you testified to
2 without having seen any transcripts since 1987?

3 A I also listened to all of Ricky Gardner's
4 testimony yesterday.

5 Q Okay, sir. Sir, I have the same transcript
6 that we used yesterday, that I'll place there if you'd
7 like to refer to it, because I would like to ask you about
8 certain portions.

9 THE COURT: Which interview is this?

10 MR. UPDIKE: This is the interview on
11 June 5, 1986 beginning at 8:05 p.m., which is
12 actually the third interview that day.

13
14 BY MR. UPDIKE:

15 Q Now, this question, sir, of the tape being
16 turned off --

17 A Page eight?

18 Q Page eight, yes, sir. You do have
19 familiarity with the transcript, don't you, because I
20 couldn't remember?

21 A Because you had a big argument about it
22 yesterday with my lawyer.

23 Q Yes, sir. But the point is, I was here and
24 I've been reading these things since '87 and I couldn't
25 find it and you snapped to it like that, didn't you?

1 A That's right. You had a big argument over
2 it.

3 Q It's obvious you're much brighter than I am
4 and nobody will dispute that or argue that, would they?

5 MR. NEATON: Is that a question?

6 MR. UPDIKE: Yes, it is.

7 MR. NEATON: Then I object to it. It's
8 argumentative.

9 THE COURT: I sustain.

10
11 BY MR. UPDIKE:

12 Q I would like to ask you, Mr. Soering,
13 though, if I could, as I have trouble finding these other
14 pages, if you can assist me, I would appreciate it.

15 A Every time I try to be helpful, you're
16 going to make a comment about it.

17 Q The point is, on that page eight, you asked
18 that if you could take a break, am I correct?

19 A Yes.

20 Q Now, of course when you asked to take a
21 break the tape was turned off, right?

22 A That's what Mr. Gardner said, yes.

23 Q Well, sir, didn't you say a few minutes ago
24 that during the breaks you just more or less sat there in
25 silence because the purpose of the breaks was to give you

1 time to regroup?

2 A Yes.

3 Q Did you expect the tape to continue running
4 during that period of silence?

5 A I didn't have any expectations about it one
6 way or the other.

7 Q Did you want the tape to continue running?

8 A I had no opinion either way, because I
9 didn't know what the implications would be.

10 Q And you did not ask that it be turned off
11 or turned on, but it was turned off in your presence?

12 A That's right, yes.

13 Q And as far as your expectations, did it
14 surprise you when you stopped talking that the tape was
15 turned off?

16 A I didn't think about it. He just said he'd
17 turn it off and he'd turn it off.

18 Q It was rather natural, wasn't it? The next
19 page, on page nine, doesn't Investigator Gardner ask you,
20 at the top of the page, "Are you ready to proceed with
21 what we were talking about or what's your feeling"? Is
22 that the question?

23 A Yes.

24 Q So isn't it true that at this point Ricky
25 Gardner is asking you, "Are you ready to proceed"?

1 A Yes.

2 Q He's being polite with you, isn't he?

3 A Yes.

4 Q He's not using rough language with you, is
5 he?

6 A No. Ricky Gardner never did that.

7 Q Never did that?

8 A No.

9 Q And, in fact, he'd been cordial with you
10 throughout all these interviews?

11 A That's right.

12 Q And in response to that question, don't you
13 say, "I'd like to chat a bit about Elizabeth's
14 involvement"?

15 A Yes. Well, that's what the transcript
16 says. That must be right.

17 Q Must be right? Well now, when Mr. Neaton
18 asked you a few minutes ago about certain things and asked
19 you whether you would accept what the tape said on that,
20 you said yes you would?

21 A I'm just confirming it. I mean, the
22 transcript must be right.

23 Q And if the tape has this on it, you would
24 accept that, of course?

25 A Yes. I'm just confirming it.

1 Q And you're being interviewed about these
2 murders, right?

3 A That's right.

4 Q And all this concern that you have about
5 your girlfriend Elizabeth, you want to talk about her
6 involvement in these murders?

7 A Yeah.

8 MR. NEATON: Objection.

9 THE COURT: Why?

10 MR. NEATON: Why? Because he's now getting
11 into -- First, he's taking it out of context --

12 MR. UPDIKE: I'm allowed to ask that
13 question.

14 MR. NEATON: He's not allowed to take it
15 out of context.

16 MR. UPDIKE: I'm allowed to ask him whether
17 he said, "I'd like to chat about Elizabeth's
18 involvement."

19 MR. NEATON: Go ahead. I withdraw the
20 objection.

21
22 BY MR. UPDIKE:

23 Q If I could ask you, Mr. Soering -- We just
24 went through that. That's what the transcript says that
25 your response was, correct?

1 A That's right.

2 Q I'm now asking you about your response.

3 A Yes.

4 Q Is it correct, sir, that you've alleged all
5 of this concern about Elizabeth and harm coming to her,
6 and this is only page nine of the first recorded
7 interview, of all of these, and you bring up that you
8 would like to talk about Elizabeth's involvement in these
9 murders?

10 A That's correct, yes. And if you'd like an
11 explanation, I continued -- I started then, or I may have
12 started earlier -- I don't know what's on the first nine
13 pages -- but I started then telling lies about Elizabeth's
14 involvement to clear her name and keep her out as far as I
15 possibly could.

16 Q Trying to keep her out of it?

17 A Yes, as far as I possibly could.

18 Q Sir, just drop down a half a dozen lines on
19 that same page. You admit on there, don't you, that there
20 were discussions between you and Elizabeth as far as
21 establishing an alibi in Washington?

22 MR. NEATON: Judge, I'm going to object to
23 getting into the contents of the statement at
24 this point because the contents of any
25 statements made is irrelevant to whether the

1 statement is admissible or not. I've allowed
2 Mr. Updike to proceed up until this point
3 without objecting, but I think that at this
4 point it's irrelevant and immaterial what the
5 substance of the conversations are. And it's
6 not relevant to whether what he was saying is
7 admissible or not at the time. And I think that
8 in this respect, if you want to listen -- I mean
9 the tapes are tapes that concern, particularly
10 this tape, concern a lot of substantive things
11 concerning the case in chief and I would object
12 on the grounds that they are irrelevant and
13 immaterial.

14 THE COURT: Reply?

15 MR. UPDIKE: Your Honor, if I might quickly
16 respond, Your Honor. First of all, Mr. Neaton's
17 gone through the transcript rather extensively,
18 we would emphasize, but even more so than that,
19 our point is that the defendant is up here
20 stating that his explanation for having signed
21 waiver forms and for having given the statements
22 is his concern for Elizabeth Haysom. Now, I
23 wish to ask him about this particular portion,
24 why he is saying this if he's concerned about
25 her involvement. It goes to cross examination

1 of the witness' theory of why he made this
2 statements. The defendant, therefore, Your
3 Honor, is protected at trial by virtue of the
4 fact that he has not waived anything by
5 testifying in this hearing, I cannot use this
6 in my case in chief. The Supreme Court of the
7 United States has protected defendants
8 completely as to suppression hearings. But it
9 is a matter that comes within the realm of
10 cross examination and we'd ask to be allowed to
11 proceed with it. Otherwise, we're bound to
12 accept what he said.

13 MR. NEATON: Except, Your Honor, that what
14 Mr. Updike is trying to do in order to get
15 contents of the statement in is to set up a
16 situation where taken out of context or taken
17 out of the preceding conversation that occurs,
18 he takes one word, "involvement," and says
19 somehow by that that my client therefore is
20 going to somehow implicate Miss Haysom in the
21 actual homicide and, therefore, use that in
22 order to get into the contents of the
23 conversation which followed. My point is,
24 what he said about that is irrelevant to whether
25 he's saying it voluntarily or not, and what goes

1 on about the breaks in the tape was what this
2 line of cross examination began as, asking him,
3 "Well, Ricky Gardner was polite. He took a
4 break here, you take a break there." Now, he's
5 asking him to get into the substance of what
6 he's saying, and I'm saying you have to draw the
7 line at this point because it's a preliminary
8 hearing, a suppression hearing, and I
9 respectfully ask you to do so.

10 THE COURT: Well, let me say something.
11 It's my understanding that suppression hearings
12 on admissibility of confessions are hearings in
13 which the content of the confessions normally
14 would come up. I have not conducted a hearing
15 such as this where the substantive part of the
16 confessions or any part thereof have been
17 withheld. And I don't know any law in Virginia
18 that states that that should be done.

19 Now, that is really not the question
20 here. The question is whether or not the
21 Commonwealth may go into specific portions of
22 the statement which the defendant made for
23 purposes which he has stated. The matter of his
24 concern about Elizabeth was raised by
25 Mr. Soering in this hearing. I rule that the

1 Commonwealth, therefore, has a right to question
2 this defendant based on these statements as to
3 that specific point. I therefore overrule the
4 defense on this point.

5 From now on, I'm going to keep my
6 comments to a very minimum, for reasons which I
7 think are obvious. I felt that I had to explain
8 my ruling on this particular point more than on
9 others, but from now on I will try to simply
10 rule and not comment. All right, Mr. Updike.

11 Well, I'll tell you what let's do.
12 You know, we need breaks, too. The Court
13 stenographer needs breaks from time to time. I
14 think we as lawyers and Judges tend to forget
15 that. Let's take a short break now and perhaps
16 Mr. Soering would like a break, too. All right,
17 we'll take a short recess.

18
19 (A short break was taken, after which the following
20 ensued in the presence of the defendant and counsel.)

21
22 THE COURT: Have a seat, Mr. Soering.
23 Before we start back, a few logistical matters.
24 Court will recess for lunch from 1:00 to 2:00.
25 I had two or three little shirt-tail type

1 matters set, not connected with this case, today
2 which I think I can probably take care of
3 shortly after 2:00. There might be a ten minute
4 delay in starting while I take care of that, but
5 basically there should be no problem. And I'm
6 prepared to go as long as counsel wish to go
7 today.

8 All right. Let's proceed, Mr. Updike.

9 MR. UPDIKE: Thank you, Your Honor.

10
11 BY MR. UPDIKE:

12 Q Sir, I was asking you about page nine.

13 A Yes, sir.

14 Q And isn't it correct -- and you can review
15 it if you wish -- isn't it correct that you admit on that
16 page, just down from your statement, "I'd like to chat a
17 bit about Elizabeth's involvement," you discuss, on down
18 halfway of that page, or rather I should say you admit
19 there was an agreement between you and Elizabeth that she
20 buy two tickets at the cinema and that an alibi was
21 discussed between the two of you, is that correct?

22 A Could I read this, please?

23 THE COURT: Yes, go ahead.

24 THE WITNESS: Thank you. Do you want me
25 to answer the question now?

1 BY MR. UPDIKE:

2 Q Well, sir, maybe I'll just read this to you
3 and ask you whether you said it. At the middle of the
4 page, Sergeant Beever: "What agreement had taken place
5 between you then, of her to go and buy those two tickets
6 at each cinema?" Soering: "Um --" Sergeant Beever: "It
7 would be fair to say, wouldn't it, that you used the alibi
8 earlier on before the tape was on?" Soering: "Uh-huh,
9 yes." Beever: "What was she preparing an alibi for?"
10 Soering: "I think it will be fair to say that, ah, as you
11 have pointed out in the letter, ah, the issue of murder
12 had obviously come up." Beever: "Between you and --"
13 Soering: "Between her, right." Did Sergeant Beever say
14 that and did you say that?

15 A Yes.

16 Q Sir, wouldn't you agree that after you
17 initiated and you stated that you wanted to talk about
18 Elizabeth's involvement, just a few moments later, you're
19 admitting the agreement between the two of you for her to
20 plan and arrange the alibi by purchasing the two tickets?

21 A No.

22 Q You did not?

23 A No. If you read what it says, okay, there
24 is a specific question about that and I answer it "um."
25 And the only question I answer in the affirmative is that

1 the word alibi was used by me in a conversation before the
2 tape recorder was on. I never actually say, "Yes, she got
3 an alibi," anywhere on that page.

4 Q Doesn't it continue by, in response to the
5 question, "What was she preparing an alibi for?" Your
6 response there, "I would think it would be fair to say
7 that, as you have pointed out in the letter, the issue of
8 murder had obviously come up"?

9 A That's true, but that the facts. I
10 couldn't deny that. The letters were there and there is
11 nothing about alibi there.

12 Q And the tape speaks for itself. Would you
13 accept what the tape has there?

14 A Well, the tape confirms that I did not say
15 Elizabeth was getting me an alibi.

16 Q My question is, would you accept what the
17 tape has to say in this regard?

18 A Yes. I do.

19 Q And would you accept then that in response
20 to the question, "What was she preparing an alibi for?",
21 I've correctly read what the transcript says as to your
22 response, "Murder had previously come up"?

23 A In the letters. It was a fact I couldn't
24 deny. There was no way for me to do anything to help
25 Elizabeth there. But when you asked me specifically, did

1 she get an alibi, I said, "Um." I'd also like to point
2 out --

3 Q Sir, if you would, I'm sure that your
4 counsel will provide you ample opportunity to answer
5 questions. If you'd just answer mine, please.

6 A I mean, this is strictly to your question.

7 Q If I could ask you about, in the same
8 interview, proceeding to page thirteen and fourteen, this
9 goes back to this question about the breaks. On halfway
10 down page thirteen, do you agree that you stated, "Do you
11 mind if I take another break? I know it's being
12 obnoxious, I know it"? Did you say that?

13 A Yes.

14 Q In response Sergeant Beaver says, "We can,
15 we can keep on taking breaks all night," right? Was that
16 said?

17 A Yes.

18 Q And then on the next page, of fourteen, at
19 the top, about a quarter of the way down, you request a
20 break again and the tape is turned off in response to your
21 request for a break?

22 A Yes. I found it, yes.

23 Q And you did not request that the tape
24 remain on during the break, you had no feelings about it
25 one way or the other?

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A That's correct.

Q Thank you. Now, I have a notation here on page fifteen where, at the top of the page, about a quarter of the way down, you deny any involvement in drugs, is that correct?

MR. NEATON: I'm going to object on the grounds of relevancy.

THE COURT: Yes. There has to be a reason for the question.

MR. UPDIKE: Yes, sir.

THE COURT: Now, if you tell me what the reason is, I'll rule on the objection.

MR. UPDIKE: Yes, sir, I certainly will. The reason is I want to ask the defendant whether he was under the influence of any drugs at the time of these waivers.

MR. NEATON: Then ask him that question and not what's in the tapes, because the tape does not refer to whether he was under the influence of drugs at that time.

MR. UPDIKE: Fine.

BY MR. UPDIKE:

Q At the time of all of these waivers, and the times when all these statements were given between

1 June 5 and June 8, 1986, were you at any time under the
2 influence of alcohol or drugs?

3 A No.

4 Q Were you at any time denied food?

5 A No.

6 Q And, in fact, as the custody sheet shows,
7 you were regularly fed, weren't you?

8 A Yes.

9 Q Were you at times during the interview
10 asked if you'd like to go to the bathroom?

11 A Yes.

12 Q Were you asked at times whether you would
13 like a cup of coffee or a cup of tea, at times?

14 A Yes.

15 Q You were not denied any physical needs in
16 that regard at any time?

17 A Yes.

18 Q Thank you. Now, proceeding on, if I might.
19 Wouldn't you agree, sir, that through this interview you
20 are deciding which questions you will answer and which
21 questions you will not?

22 A No.

23 Q The whole --

24 A This whole interview was against my will.
25 When I would try to sort of avoid answering a question, it

1 was the only thing I knew how to do. I didn't want to be
2 there at all. I wanted my lawyer.

3 Q I see. Now, I've already asked you about
4 the portion about the tickets, but proceeding over to page
5 eighteen of this same interview, at that point -- Well,
6 take the one question that Ricky asked you about a quarter
7 of the way down. Doesn't he just come right out and ask
8 you, "I'm going to ask you, at some point did you stab
9 Derek Haysom with a knife? Did you cut him with a knife.
10 yes or no?" And your response, "I really don't want to
11 answer that," is that correct?

12 A Yes.

13 Q Sir, isn't it true, therefore, that that
14 was a question that you did not wish to answer and you did
15 not answer it at that time?

16 A That's right.

17 Q Other questions you did choose to answer
18 and you did answer them, is that correct?

19 A That's right. Well, considering the fact I
20 was in the room against my will, yes.

21 Q Well, sir, if you were making statements
22 against your will that you did not want to make. why did
23 you not answer this specific question of, "Did you stab
24 Derek Haysom"?

25 A Because I was not willing to sacrifice

1 myself completely at this time. I tried to resist as much
2 as I could, whenever I could. At some points I was able
3 to do so, I felt able to do so, at other times, I wasn't.
4 I mean, I had to be there and I had to answer questions,
5 but I wasn't willing to, you know, personally put the
6 noose around my neck and hang myself in that way, if I
7 could possibly avoid it.

8 Q At that time?

9 A At that time. But I had to sit there and
10 answer them.

11 Q Your concern about Elizabeth would cause
12 you to answer certain questions, but not answer other
13 questions?

14 A My concern for Elizabeth caused me to waive
15 my right to silence and sit there without a lawyer talking
16 to these people. And they asked me lots of questions, and
17 I tried to avoid doing too much damage to myself as best I
18 could, considering I didn't have legal advice. But I
19 wasn't successful at it.

20 Q You were deciding which questions you
21 wanted to answer and which ones you would not then?

22 A Whenever I could, yes.

23 Q And you declined to answer this one?

24 A There were others as well.

25 Q There are others through here that you

1 decline to answer, don't you?

2 A Yes.

3 Q Now, as to that very question, I'm looking
4 for a portion here that Detective Wright asked you.

5 Actually, it's just a couple of lines down from where you
6 say, "I really don't want to answer that." One, two,

7 three, four lines down. Detective Wright: "If you find
8 it difficult at this stage to talk about that particular
9 part of the evening --" Your response: "Right."

10 Detective Wright: "You've already talked about this, what
11 happened from the Friday night, really, right up from the
12 time you were in the drawing room," that's stated, right?

13 A Dining room, yes.

14 MR. NEATON: Dining room.

15 MR. UPDIKE: Excuse me. I mispronounced
16 that. I apologize.

17
18 BY MR. UPDIKE:

19 Q Your response: "Uh-huh." Detective
20 Wright: "You saw Mr. and Mrs. Haysom?" Response:
21 "Arguing, yes." "If you find it difficult at this point,
22 then let's skip a little." And you say, "Uh-huh." What
23 I'd like to ask you is that once you indicated that you
24 didn't want to answer the question whether or not you had
25 stabbed Derek Haysom, Terry Wright indicated to you,

1 "Well, if you have difficulty discussing that, let's skip
2 over that," didn't he?

3 A Yes, he said that.

4 Q And rather than pressuring you or coercing
5 you if you didn't want to talk about it, as he stated,
6 "Skip over that. We won't discuss it."

7 A Yes, he said that. But this is all in the
8 context of me being in a room I don't want to be in --

9 Q I understand that.

10 A -- without a lawyer.

11 Q And he honored your request as to not
12 discussing that question?

13 A It was his suggestion. I just stopped
14 talking. I just kept making noises instead of answering
15 questions.

16 Q At the end of the transcript, on page
17 twenty-one, doesn't Ricky Gardner ask you if you'd like to
18 stop for the night because of the hour, essentially, is
19 what he's asking? I can read it exactly.

20 A Yes.

21 Q So these three police officers weren't
22 trying to push you into the late hours as far as
23 interrogation is concerned? Doesn't Ricky suggest or ask
24 you whether you'd like to stop for the night?

25 A Yes, he asked me that, yes.

1 Q So you would agree that they showed you
2 concern in that regard?

3 A We all had a long day, but, yes, he asked
4 me whether I wanted to stop.

5 Q Now, as the tape runs out here, is it true
6 that as you continue talking, that you talk about wanting
7 to call the German Embassy? Remember, this is Friday
8 night. You had placed a call to the German Embassy before
9 this interview --

10 A I'm sorry, I'm lost.

11 Q Thursday night. You placed the call
12 earlier to the German Embassy and the next day, Friday,
13 June 6th, as we went through the custody sheets, you made
14 two other calls and finally received a call from them?

15 A Yes.

16 Q And you were discussing, as the tape ran
17 out, would you agree, that you would like to call the
18 German Embassy? It's where the tape runs out. I'm just
19 asking you from your recollection.

20 A It says, "I'd like to speak to someone in
21 the morning," and I talked with my father.

22 Q I'm aware of that. I'm asking you about
23 your recollection of what continued thereafter. Did you
24 continue on talking about that you'd like to telephone the
25 German Embassy?

1 A I have no specific recollection of that,
2 no, but it's possible.

3 Q Before we leave this interview, I'd like to
4 ask you, before the interview began --

5 A Right.

6 Q -- this interview that we've just been
7 discussing, is it correct that you signed this custody
8 sheet, June 5, 1986 at 7:59 p.m. It stated, "I now wish
9 to speak to D/S Beever, D/C Wright, without my solicitor
10 being present. Signature: Jens Soering"?

11 A Yes, I signed that. That was ten minutes
12 after Mr. Beever made that threat.

13 Q He raised his eyebrows and said the comment
14 about Elizabeth?

15 A Yes. If I didn't agree to have interviews
16 without a solicitor, she would fall over and hurt herself.

17 Q But you do admit that's your signature and
18 you did sign that?

19 A Yes, under coercion.

20 Q Now, the entry at 7:50, does that say,
21 "Placed back in cell. Whilst being taken to cell, he
22 requested that he speak to D/S Beever and D/C Wright as
23 soon as possible."?

24 MR. NEATON: I'm going to object to any
25 further readings of the custody sheet unless he

1 can establish that it's my client's statement
2 that is contained in the custody sheet. The
3 first entry that he just read to my client, my
4 client admitted signing that and, therefore,
5 adopting that as his statement. This statement
6 that he's reading to the client, I suggest to
7 the Court, is not my client's statement and is,
8 therefore, hearsay. And whether the entry in
9 the record says what it says, he'd improperly
10 confronting my client with a statement that is
11 not my client's, for purposes of impeachment.

12 MR. UPDIKE: I'm wishing to show him the
13 document, Your Honor, to see whether or not he
14 made the request and asking him whether he did.

15 MR. NEATON: Then he can ask the question
16 whether my client made the request.

17 MR. UPDIKE: Your Honor, could I clarify
18 this, please, by asking that a copy of the
19 entire custody sheet that we're talking about
20 be proffered and marked, just as he did
21 yesterday. And I would like to ask the
22 defendant these questions, and then when I have
23 the opportunity to bring the officers to the
24 stand with the original custody sheets
25 authenticated, move at that time for

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introduction of the custody sheets. That's what they did yesterday.

THE COURT: You may put that in as an exhibit.

MR. NEATON: For identification purpose only.

THE COURT: For purposes of identification. And you may cross examine him on the basis of that statement, but you must preface your questions with whether or not he said the matters involved.

MR. UPDIKE: Yes, sir.

(Commonwealth's Exhibit Number Eleven was marked for identification only.)

BY MR. UPDIKE:

Q I show you the entry in the proposed Exhibit Number Eleven at 7:50 p.m. and ask you to read it if you would, sir.

A To myself or on the record?

Q Well, I think your attorney wants you to read it to yourself.

A Yes, I've read that.

Q Okay, sir. My question to you, sir, having

1 read that particular entry in the custody sheet, did you
2 yourself request to speak to Detective Sergeant Beever and
3 Detective Constable Wright?

4 A No. I didn't.

5 Q Did not?

6 A No.

7 Q And if it is established that that is such
8 an entry in the custody sheets of the Richmond Police
9 Department, you would dispute that as being accurate?

10 A That's right. If you look at the
11 handwriting, it looks as if that was written at the same
12 time as the later entries. I mean, that's what it looks
13 like to me.

14 Q It looks like it was written by the same
15 person?

16 A At the same time. You see, the previous
17 handwriting is slanted and then it all goes straight for
18 the next three paragraphs, all at the same time. But
19 that's just my judgment. You see, this is all slanted and
20 then that goes all straight.

21 Q But, sir, the entries there, 7:45, 7:50,
22 7:55, 7:59, 8:02, all of those entries there are within a
23 relatively few minutes of time, correct?

24 A Yes.

25 Q It would not surprise you that the same

1 custody officer during that short period of time wrote all
2 these entries, would it?

3 A Well, I mean, it's not really important.
4 That's not what I'm saying. I'm saying the 7:45. the
5 telephone call entry is written in slanted handwriting and
6 the next three entries aren't, and all four are written by
7 the same custody officer. I just thought, it looks to me
8 as if it was written all at the same time, the last three
9 entries.

10 Q And concerning that same interview, if I
11 could see the Commonwealth's Exhibits, please, with the
12 Miranda forms. Thank you. This being Commonwealth's
13 Exhibit Number Two with the date at the top, 6-5-86, 8:05
14 p.m. At the bottom, the signature, Jens Soering. Did you
15 sign this Miranda form?

16 A Yes.

17 Q At the time that you signed it, did you
18 understand all the rights stated on it?

19 A Yes.

20 Q Thank you. The next Miranda form,
21 Commonwealth's Exhibit Number Three, dated at the top June
22 6, 1986, showing the time 11:40 a.m. This would be the
23 Friday. There is a signature, Jens Soering, on that. Is
24 that your signature?

25 A Yes.

1 Q At the time that you signed this, did you
2 understand all the rights stated thereon?

3 A I did.

4 Q And do I understand, you're not making any
5 claim that you did not understand your rights?

6 A That's right. I signed everything that I'm
7 supposed to have signed and I understood my rights, but I
8 did not waive them voluntarily.

9 Q I see. Now, before that interview, I'd
10 like to show you the same custody sheet proposed as a
11 Commonwealth's Exhibit. Excuse me, Mr. Soering, I did
12 miss something. I wanted to talk to you about Friday, June
13 6th, but I forgot to ask you, when Detective Sergeant
14 Beever took you back down to the cell Thursday night after
15 11:14 p.m., did you make any incriminating statements to
16 him at that time?

17 A To Mr. Beever?

18 Q Yes.

19 A No.

20 Q Did you make any admissions about the
21 murders here in Bedford County?

22 A No. If you're talking about the walk from
23 the interview room to the cell block, no.

24 Q I'm showing you the proposed exhibit Number
25 Eleven, the custody sheet. And I'm not going to ask you

1 In any detail about the calls to the embassy, we've
2 discussed that. I just want to refer you to them for
3 purposes of asking you something else. At 10:05 a.m. on
4 June 6, 1986, there is the entry about you ringing the
5 German Embassy, correct?

6 A Yes.

7 Q You did make that call, correct, as we
8 discussed?

9 A Yes.

10 Q Then the entry at 10:13 a.m. There is an
11 entry there that I would like you to read to yourself.

12 A Yes. Well, what are the first two words?

13 Q Excuse me?

14 A What are the first two words?

15 Q Maybe I can help you with that and ask you
16 whether it says something and then you decided for
17 yourself whether it says that. The prisoner?

18 A Oh. Is that what it says? I'm amazed that
19 he wrote that down.

20 Q Can you read the rest of it?

21 A Yes, yes.

22 Q And sir, did you at 10:13 a.m., having seen
23 that, this is after you've made the call to the German
24 Embassy and not been able to speak to the person who know
25 about your case, did you at 10:13 make a request of the

1 custody officer that you not speak to police officers
2 until you have spoken to the embassy?

3 A Yeah, that's what it says here.

4 Q And you did do that?

5 A I have no specific recollection of that,
6 but I'm willing to go along with that.

7 Q You're willing to go along with that?

8 A Yes.

9 Q All right. And then the next entry there,
10 11:00 a.m., as we've already discussed, you phoned up the
11 embassy again, correct?

12 A Right.

13 Q Now, reading that particular entry -- if
14 you need to read it again to yourself, that's at 11:00
15 a.m. -- I'd like to ask you, after the phone call
16 concluded at 11:11 a.m., did you request to speak to
17 Detective Sergeant Beever?

18 A No.

19 Q You did not?

20 A Right.

21 Q And if it is established that these custody
22 sheets are to be received into evidence and this is an
23 entry on such sheets, would you dispute it as being
24 accurate?

25 A That's right.

1 Q As to its accuracy?

2 A I never requested to speak to any police
3 officer from the word go.

4 Q Now, the next entry is at 1:20, no, excuse
5 me, 1:19 a.m. Would you agree -- I know that you didn't
6 have a watch -- would you agree that on this particular
7 date, June 6th, the Friday, that you were taken out of the
8 cell at about that time of morning? It says 11:19 a.m.

9 A If that's what it says, yes.

10 Q In your recollection, that would be late
11 morning, would you agree with that?

12 A Yes.

13 Q And the next entry is that you're brought
14 back to your cell at 1:20 p.m. According to your
15 recollection, would you argue with that or dispute it?

16 A No. I have no basis.

17 Q And I'd like to ask you -- and, sir, I
18 appreciate your patience -- I'll very much try to move
19 this along quickly. I'd like to ask you just a few points
20 about that interview. Would you like to see a copy of the
21 transcript of the June 6th interview?

22 A Yes, please.

23 Q Excuse me?

24 A Yes, please. Do you mind if I hold on to
25 this for a second?

1 Q Oh, please, please. Okay, sir, certainly.
2 Now, sir, before we actually go to the tape so that I
3 won't get too much mixed up or try not to, I'd like to
4 jump over into the middle of it and ask you a question,
5 this being on page sixteen. The bottom of page sixteen
6 where Investigator Gardner, the long paragraph that's
7 there.

8 A "Okay, going" --

9 Q Yes, starting there, please. And then
10 continuing on maybe to halfway down the following page
11 seventeen. Just reading it to yourself.

12 A Right.

13 Q And my question, after you've read it, is
14 that -- this again is Friday, June 6th -- don't you
15 confirm in that that you were interviewed three times on
16 Thursday, the day before?

17 A Yes.

18 Q And before the third interview you
19 requested to speak to Detective Sergeant Beever?

20 A That's what it says on the record, yes, on
21 the tape.

22 Q And you confirmed there that you signed the
23 custody sheet, which you admit today that you signed?

24 A Yes, I signed the custody sheet.

25 Q But, sir, today you dispute that you

1 requested to speak to Detective Sergeant Beever?

2 A That's right, yes.

3 Q Would you, as to this particular point,
4 accept what the tape recording shows when it is playing?

5 A Well, it shows what I said. But the reason
6 I said it was because Mr. Beever wanted me to say it.

7 Q He wanted you to say it?

8 A It was important that all these things stay
9 straight, right?

10 Q But, sir, it goes back to, did you say
11 everything that Detective Sergeant Beever wanted you to?

12 A That's on the record, where he feeds me
13 information, and I would repeat what he said. You've got
14 that on tape.

15 Q But, sir, my question is, there are other
16 questions you don't say what he or the other officers want
17 you to say. And I'm still having difficulty understanding
18 if you're just saying what they want you to say, why you
19 declined to answer so many questions during the earlier
20 interviews?

21 A Pardon? I'm sorry. Why did I answer some
22 questions and not others?

23 Q Yes, if you're saying during the early
24 interviews that you are being coerced and you're just
25 saying what they want you to say?

1 A Right. I did the best I could under the
2 circumstances. If you look at what happened in the
3 earlier interviews, it's obvious what happened. I mean,
4 if you look at page one of the Thursday interview, the
5 taped one, right?

6 Q Yes, sir.

7 A It's right there. Let me find it.

8 Q The Thursday interview?

9 A Yes. The taped Thursday interview.

10 Q Okay, sir. I'm with you now.

11 A I mean, I got specific instructions on what
12 they wanted me to say, okay? Investigator Gardener:
13 "Well, you just talk to us and I will ask you to speak up,
14 if you would, please." And I say, "Right." And he says,
15 "And just speak to us in general and go ahead." And I
16 say, "Okay. What would you like for me to discuss on the
17 tape? Are you talking about the feeling of remorse that
18 we were discussing earlier or would you like to discuss
19 specific pointed questions as to what happened, or --,"
20 and then I stopped, he interrupts me. This is the
21 discussion we had beforehand. I'm just feeding him what
22 he wants to hear.

23 And the same thing happens later on page
24 eight as well.

25 Q But that's when --

1 A And on page eight he got me to talk about
2 the alibi.

3 Q We're both talking at once.

4 A Sorry.

5 Q All I'm asking is, to try to move this
6 along, if I could just ask some questions and you answer
7 them, and then if your counsel wishes to elaborate, if we
8 can handle it that way --

9 A I'm sorry.

10 Q -- perhaps it would go faster.

11 A I'm just trying to answer your questions
12 completely.

13 Q I understand. And I just want to make this
14 point quickly, on page two -- and we're talking about the
15 Friday interview, June 6th -- at the top of the page, you
16 specifically request to turn the tape off for just a
17 second, don't you?

18 A Yes.

19 Q And in response, they turn it off, correct?

20 A That's right.

21 Q So you will admit at that time you asked
22 for it to be turned off?

23 A Yes, that's right. But they never kept a
24 record of what I said there and it was quite important.

25 Q On that same point, flip over right quickly

1 to page twelve. There at the bottom of the page you're
2 asked a question and don't you state, "Could I answer off
3 the tape?" And Sergeant Beaver says, "That's for Mr.
4 Gardner to decide." And Investigator Gardner says, "Are
5 you requesting we turn it off?"

6 A Yes.

7 Q And you say, "Yes"?

8 A Yes. This was another strategy I tried to
9 apply for not answering questions as best I could.

10 Q I'm just asking though, in response to
11 what's come up, in this interview on June 6th we've
12 pointed out two times you asked that the tape be turned
13 off?

14 A Yes, on those two occasions, yes.

15 Q And in this interview, are you saying that
16 you wanted an attorney present?

17 A We talked about that before we turned on
18 the tape. And he said he would get me one, but he never
19 did.

20 Q This is the next day, now, on page four.

21 A Sorry. Are we talking about the 6th?

22 Q Yes, sir.

23 A Okay, sorry. Page four, yes.

24 Q I just want to ask you about page four.
25 Sir, this goes to whether you want a lawyer. I'd like to

1 read this with you. This is on this particular point, and
2 ask you whether you said it. You start out by saying,
3 "All right. Is there other points that you want me to
4 bring up, that you want me to clarify or correct from the
5 previous interviews?"

6 A I'm sorry. I'm --

7 Q We're not at the same point?

8 A Page four on the 6th.

9 Q Yes, sir.

10 A I'm sorry. Who's saying this?

11 MR. NEATON: At the very top of the page?
12 Is that what you're referring to?

13 MR. UPDIKE: Yes.

14 THE WITNESS: Mine says, "UVA and taking
15 courses in all these subjects."

16
17 BY MR. UPDIKE:

18 Q Yes, it is at the top of the page. I meant
19 to say lower down in that paragraph.

20 A I'm sorry.

21 Q I didn't direct you specifically. Are you
22 with me now? It would be, I guess, the second sentence --

23 A Yes.

24 Q -- beginning with the "All right" question,
25 okay?

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A Yes.

Q "All right. Is there other points that you want me to bring up that you want me to clarify or correct from the previous interviews?" Gardner: "Please."

Beever: "Before we go any further, he did mention to us, he said he might want to clarify on points that he's missed out in the past in the presence of any attorney at a later date. Near enough. Those were the words you used?" Soering: "Yes." Beever: "Yes, I understand that. So let's take it at this stage of the proceedings, during this interview, you are quite happy for this interview to take place without that attorney, but you are requesting for your attorney to come to you later on today, is that correct?"

A That's right.

Q Soering: "I don't think I can. Depending on how this interview goes, I don't see that any need for an attorney for right now, okay, today. We'll have to see how this interview goes and what happens during this interview. I can't tell right now." Gardner: "Okay. I want you to remember that on the questions I asked you, it says you have the right to stop answering questions any time during the questions." Soering: "Okay. I'm aware of that right now." Gardner: "You know that?" Soering: "Right." Gardner: "So just as yesterday, if we ask you a

1 question and you prefer not to answer that question, just
2 say, 'I'm not going to answer that question.'" Soering:
3 "All right. All right."

4 Correct? Would you agree that those
5 questions were asked of you and you said this?

6 A Yes. That happened on many occasions
7 throughout all the taped interviews.

8 Q My first question, sir --

9 A Yes.

10 Q Did you say that?

11 A Yes. It happened often.

12 Q And you stated there that you saw no need
13 for an attorney there at the present?

14 A That's what I said to Sergeant Beever, yes.

15 Q And you also said that you wanted to see
16 how this interview goes?

17 A That's right.

18 Q And, sir, wouldn't you agree that what
19 you're doing here is that you're deciding for yourself
20 what questions you'll answer and what questions you won't?

21 A That's not the way I look at it, no.

22 Q That's not the way that you look at it?

23 A No. If you read what it says, okay,
24 Sergeant Beever starts --

25 Q You've answered my question. I asked you

1 and you said, "No. That's not how I look at it."

2 MR. NEATON: Well, he's entitled to
3 explain, Judge. He's entitled to answer the
4 question completely.

5 THE COURT: I'll let him explain. Go
6 ahead.

7 THE WITNESS: Mr. Beever refers to the
8 conversation we had before the tape was turned
9 on. All right, he says, "He," meaning me, "did
10 mention to us he said he might want to clarify
11 on points that he's missed out in the past in
12 the presence of an attorney at a later date."
13 Now, that's not on the tape, but it was a
14 conversation we had right before the tape was
15 turned on. Okay? That was the conversation
16 where I would have said I wanted a lawyer and
17 they said I couldn't have one, and they said,
18 "Okay, give Miranda. Let's turn the tape on."

19 And he's referring to that
20 conversation. And what's he doing here, he's
21 trying to get on the record for me to say that
22 I don't want a lawyer. That's all he's doing.
23 And that's what I said, because that's what he
24 wanted me to say, because if I didn't say it,
25 Elizabeth would get hurt.

1 BY MR. UPDIKE:

2 Q But you admit that you did say at that
3 point, "I don't see any need for an attorney right now"?

4 A I would have said practically anything to
5 avoid Elizabeth getting hurt, so that's what I did.

6 Q That's fine, you admit that. Now, if I
7 could ask you, don't you continue after that by answering
8 certain questions and denying certain questions through
9 the interview?

10 A I tried to avoid answering what I could,
11 but I wasn't very good at it.

12 Q And who decided what you could get away
13 with answering and what you couldn't get away with
14 answering? Who made that decision?

15 A Well, after they kept asking about it, and
16 it just depended.

17 Q Isn't it true, sir, that when you indicated
18 you didn't want to talk about certain things, or you
19 didn't want to answer a certain question, I should say,
20 that they honored your request?

21 A Yes. But sometimes they'd switch the
22 subject straight-away and sometimes they kept asking
23 questions and I would stutter and hem and haw, and stuff
24 like that, and then they would eventually stop asking
25 those questions because they weren't getting anywhere. It

1 Just depended on what the subject was. I mean, there was
2 a section we were talking about previously --

3 Q Now, on page seven. I'd like to -- On page
4 seven, D/C Wright asks you a question at the very top of
5 the page, and I can read the entire question, but he's
6 directing you to the rental car in Washington, and in the
7 last sentence he says, "Would you care at this stage to
8 enlarge on those discussions that probably took place
9 before that date?"

10 MR. NEATON: Judge, just so the record is
11 clear, the transcript indicates that there is a
12 word or words between "place" and "before"
13 that's indicated by a question mark in brackets
14 that we don't know what that word is, and it may
15 change the entire context of the question.

16
17 BY MR. UPDIKE:

18 Q That's not the point of my question. My
19 point is -- I don't even need to get to that point. My
20 real point is, didn't he ask you, "Would you care at this
21 stage to enlarge," and we'll stop at that point?

22 A That's right.

23 Q Isn't that how he asked you the question?

24 A Okay, that's true. But if you look what
25 happens, it's Sergeant Beaver who starts taking over and

1 he's making the decision on what to ask and what not.

2 Q All right, sir. I understand that you're
3 saying that, but what I want to understand, if it's true
4 or not, you're saying that you're being coerced and one of
5 the police officers that's questioning, he's using, "Well,
6 would you care to enlarge upon this?" I mean, it's very
7 polite and courteous, isn't it?

8 A It's phrased that way, yes.

9 Q Yeah.

10 A But that's, of course, what they have to
11 do.

12 Q And in response to the question, "Would you
13 care to enlarge," and you say, as you said, Sergeant
14 Beever says, "Go ahead." Or I should say -- "Let's just
15 keep it all in context." It has Jens Soering, "That's
16 --," and it indicates that you're stammering. Then
17 Sergeant Beever says, "No, go ahead."

18 A That's where he takes over from Detective
19 Wright.

20 Q And then your response, "I'm wondering how
21 wise it would be for me to do that at this point. I think
22 the best thing for me to do at this point is to leave it
23 at that statement, not add anything and not subtract
24 anything," right?

25 A Right.

1 Q Well, I'm wondering, if Sergeant Beever is
2 coercing you into saying what he wants, if that's true,
3 why you didn't just go ahead and say what he wanted.
4 Instead, you declined to answer him.

5 A Could I just have a couple seconds --

6 Q Is that true or not?

7 A Yes. I'm trying to look at something here.
8 Because what he does, I say that I don't want to say
9 anything anymore and then on one, two, three, four, five
10 occasions he keeps talking about the same subject. see? I
11 said I don't want to talk about it and he keeps talking
12 about it on, and on, and on, the rest of the page and over
13 on the next page.

14 Q Now, doesn't he just ask you though whether
15 you want to retract a statement, or if you want to add to
16 it, or whether you want to leave it the same?

17 A Right. I mean, I agree with the record.
18 I'm just saying that he took over from Detective Wright
19 and he kept on on this particular point and I did the best
20 I could not to answer the questions, keeping in my that I
21 had to cooperate to some degree if I didn't want Elizabeth
22 hurt.

23 Q And then Sergeant Beever says, "Okay. I
24 take your point entirely," correct?

25 A But he keeps talking about it on the next

1 page. You know, we keep talking about it here. And then
2 Mr. Gardner takes over.

3 Q But you still don't answer, do you?

4 A That's right. I did the best I could under
5 the circumstances, considering that I had to say something
6 or Elizabeth would fall over and get hurt. I couldn't
7 just say, "No. Put me in my cell. I want my lawyer,"
8 because if I had said that, he said to me earlier, not in
9 so many words, but he had implied strongly that if I said
10 things like that Elizabeth would get hurt, so I had to
11 stay there and say something.

12 Q But at the bottom of page eight he's asking
13 you about -- Well, let's just have what Sergeant Beever
14 says. He says, "Well, none of us are doctors or
15 scientists, are we? Let's skip the last question because
16 it's neither here nor there, because we can't change that.
17 What we can discuss that we haven't discussed before, and
18 if you choose to answer the question, were there any
19 discussions between you and Elizabeth between December and
20 that weekend in Washington, D.C.?" That's another
21 entirely separate question, right?

22 A No. It's the same one from page seven.

23 Q No, sir. On page seven you're talking
24 about that weekend. This is from December to Washington.

25 A I'm sorry, I misunderstood.

1 Q From December to the trip to Washington.

2 A I'm reading on page seven when Detective
3 Constable Wright is asking me, "And you also said or
4 recorded on tape that you discussed murder." And then
5 down here on the bottom of page eight it says whether or
6 not we discussed it before, Elizabeth and I. I mean,
7 sorry. I'm just trying to read -- See, at the top of
8 page seven, Detective Wright is talking about discussions
9 of murder and at the bottom of page eight Sergeant Beever
10 is still talking about discussions of murder.

11 Q Mr. Soering, please. I won't argue with
12 you. But on top of page seven, isn't he talking about
13 discussions just as to the weekend, the trip at the end of
14 March to Washington, and then he asked you not about the
15 weekend, but he just asked you if you choose to answer it.
16 He says that. "Were there any discussions between
17 December and the end of March, the trip to Washington?"

18 A Right.

19 Q And as he says, that's an entirely
20 different question.

21 A Yes. But Mr. Wright said, "Would you care
22 at this stage to enlarge on those discussions that
23 probably took place before that date of the murders?"
24 That's exactly what --

25 Q If you follow along, you decline to answer

1 It, don't you?

2 A And Mr. Beever is still talking about it at
3 the bottom of page eight.

4 Q On page twelve, eleven or twelve or any of
5 those pages in there that you'd like to read, you state
6 that you did not go to the Haysom house and commit acts of
7 voodoo. And then Sergeant Beever asked you -- and I'm
8 summarizing, I know. Please read it if you need to. On
9 page twelve he asked you to divide that question up. And
10 you come back and congratulate him and say that he's very
11 clever.

12 A Yes. That's what it says here, yes. So I
13 must have said it.

14 Q Yeah. Wasn't this becoming sort of an
15 intellectual game between you and the police officers?

16 A Well, not by my choice. I didn't want to
17 be there.

18 Q Yes, sir. But then once Detective Sergeant
19 Beever has picked up on this, then you say, "You are a
20 very smart man. Congratulations"?

21 A Right.

22 Q That's a point that he scored there, wasn't
23 it?

24 A Pardon. A point that Mr. Beever scored?

25 Q I'm just asking why you congratulated him,

1 let me put it that way, this man who's threatened your
2 girlfriend.

3 A Let me read it. It's just me being
4 sarcastic again.

5 Q Now, skipping a few things to page 18, just
6 want to acknowledge here, if you wish to skim the page,
7 but my question to you is that that page indicates --
8 Well, we're beginning at 12:39 p.m., Sergeant Beever,
9 there in the middle of the page. Sergeant Beever says,
10 "Can I put you on now. It is fairly important. Mr.
11 Wright has just come back in the room at 12:39,
12 approximately, and we've been told that the embassy are
13 returning their call to Jens here. It's important that he
14 speaks to --" And then D/C Wright says, "I can get that
15 transferred to here and put it on the custody record. The
16 custody officer can transfer it up here." Beever says,
17 "Let him make this. Yes, put the phone call through to
18 this interview room then, please," is that correct?

19 A Right.

20 Q So there you have both police officers at
21 that point involved in making sure that this call from the
22 German Embassy, which has come in downstairs, is
23 transferred to you so that you could take the call?

24 A Yes.

25 Q The two British officers, Wright and

1 Beever, did not indicate, did they, "Well, you tell the
2 German Embassy we're talking to this man"? Instead they
3 said, "Put the call through to him, let him speak to
4 them"?

5 A Right.

6 Q And you had the opportunity there at that
7 point in time to express to the German Embassy, in German,
8 any complaints that you had as to your treatment at the
9 Richmond Police Station, didn't you?

10 A No.

11 Q Did you have the opportunity?

12 A No.

13 Q Why not?

14 A Because Mr. Wright was sitting right there
15 and he understood German.

16 Q And he speaks German?

17 A Right. Well, understood it, anyway.

18 Q Let me ask you this though, let's suppose
19 the conversation had been conducted in English? What
20 difference would it have made whether the police officers
21 understood you or not, you would be communicating a
22 situation to the German Embassy and the German Embassy
23 would then know about it, and the British officers would
24 know that the German Embassy knew about it, and if action
25 needed to be taken, the German Embassy would have been in

1 a position to do it, wouldn't they?

2 A The German Embassy can't do anything. They
3 have no influence at all with the local police.

4 Q But they can lodge complaints with the
5 British Embassy, or excuse me, not the British Embassy, it
6 would be the --

7 A Home Office.

8 Q Home Office, yes.

9 A Well --

10 Q And you know that, don't you?

11 A Yes, I know that. Ultimately the Home
12 Office deals with those complaints.

13 Q And on this point, your father is a -- What
14 is your father?

15 A He's a Vice-Consul.

16 Q For the German government?

17 A That's right.

18 Q So having grown up in that family, you are
19 not unaware of the proceedings of diplomacy and the
20 functions of any embassy, are you?

21 A That's right.

22 Q You're quite aware of them?

23 A That's right. I know exactly how powerless
24 they are in most cases like this, because once a foreign
25 national is in the custody of police, it's their baby and

1 the embassy can't do anything.

2 Q Uh-huh.

3 A Unless it's, you know, in Africa some
4 place.

5 Q One more quick question on that point, if I
6 might. You think that Terry Wright speaks German so well
7 that it prevented you from expressing your concern?

8 A We spoke German with one another when I
9 first met him.

10 Q Then if you knew, as you say, that he was
11 going to understand what you said, why in the world just
12 not talk in English and everybody understand?

13 A I was speaking with the German Embassy. I
14 spoke to them in German.

15 Q Do they speak English?

16 A Yes, they speak English as well, but German
17 is my first language, so I just spoke German.

18 Q Okay. Now --

19 A I mean, I asked them whether they wanted me
20 to tell them what I said, afterwards, so I didn't have any
21 secrets.

22 Q Right. And you state what they said,
23 didn't you? You tell them? Isn't it correct that right
24 after the phone call you state to the police officers, "Do
25 you want to know what he said?"

1 A Right, right.

2 Q And Investigator Gardner says, "It's up to
3 you whether you tell us or not"?

4 A Yeah.

5 Q And the phone call concerned or
6 concentrated, or revolved around, I should say, this
7 matter of extradition, whether you could be deported from
8 England to Germany or extradited to the United States?

9 A Yes.

10 Q And that's shown in the middle of page
11 nineteen?

12 A It's the kind of questions I would have
13 preferred to be asking my lawyer.

14 Q I understand that you're saying that, sir,
15 but isn't it correct that at that point in time you were
16 making the decisions and you were finding out the
17 information?

18 A I was allowed to take the telephone call.

19 Q You felt that you were smart enough to
20 handle it yourself, didn't you?

21 A No, I certainly didn't.

22 Q And right after you said that you would
23 tell them, the police officers that is, about the content
24 of the German call, the police officers interrupt you and
25 say, "Well, before you do that, we need to remind you of

1 the British caution and the Miranda rights," at the top of
2 page nineteen, right?

3 A Right.

4 Q And knowing that, then you tell them
5 voluntarily about the phone call?

6 A Yes.

7 Q Understanding your rights. Now, this is
8 after the German call, on page twenty. Doesn't
9 Investigator Gardner say there, on the first entry for
10 him, that it's obvious that you're not going to, talking
11 about you, it's obvious you're not going to answer any
12 questions that you feel could put yourself in jeopardy or
13 jeopardize yourself, correct? Is that said? And you can
14 read the whole thing, if you like.

15 A Yes. That's what it says, yes.

16 Q And it goes on, "jeopardize yourself, not,
17 so you said, until you speak with a counselor, excuse me,
18 a solicitor or an attorney in the United States. Is that
19 what you're saying?" And then you say, "Well, I will not
20 discuss the points you just mentioned and I won't give
21 physical evidence until I'm interviewed by you with an
22 attorney of the country in which the trial will be held.
23 Apparently at this point, it's still in question to some
24 extent." Mr. Gardner says, "Yes, yes." Then you say, "At
25 least I hope so," right?

1 A Yes.

2 Q I'd like to ask you, Investigator Gardner
3 there is asking you, "Well, it appears that you're not
4 going to answer any questions that will put you in
5 jeopardy," and you come back and you qualify that, don't
6 you, and you say, "Well, I will not discuss the points you
7 just mentioned and I won't give physical evidence"?

8 A Yes, that's what I said.

9 Q You qualify that to indicate, "No. I'm not
10 saying I won't answer any questions. There are certain
11 questions I'll answer and certain questions I won't,"
12 right?

13 A Yes.

14 Q And as this shows, you're not asking for an
15 attorney there at that moment, are you, as to any
16 question?

17 A That's correct. I wasn't able to do that.

18 Q And you are saying not that you want an
19 attorney there at that moment before questioning continues
20 by those three police officers, but rather there are
21 certain questions that you will only answer in the country
22 in which you are tried, right?

23 A That's right. That was the best I could do
24 under the circumstances.

25 Q And as you indicate there, you are well

1 aware that the question of where you will be tried is
2 still in question at that point?

3 A Right.

4 Q And, in fact, you even further emphasize
5 that you hope it's still in question?

6 A Yes. The thing is, that was the only thing
7 I could say at that point which was safe. And for the
8 rest of the interview, Sergeant Beever is giving me the
9 third degree and he promises to get me a lawyer and he
10 doesn't do it.

11 Q So you say at the end of this interview
12 Sergeant Beever is giving you the third degree, promises
13 to give you a lawyer, and you don't get it, right?

14 A "I think that I should go downstairs and
15 we'll get you that attorney," Sergeant Beever.

16 Q Okay. And that's the end of the interview
17 there on Friday, June 6th.

18 A Yes.

19 Q Well, the next day, June 7th, you ask to
20 talk to the officers, don't you?

21 A No, I didn't.

22 Q You don't?

23 A That's right.

24 Q Let me refer you to the custody sheet as to
25 June 7th. I'd like to ask you about an entry there and

1 ask you to read it. The entry at 12:25 on June 7th, '86.

2 A Yes.

3 Q Can you read it?

4 A Yes.

5 Q You can read it? All right. And once
6 you've read that, I'd like to ask you a question about it.

7 A Yes.

8 Q This entry at the bottom bears your
9 signature, doesn't it?

10 A That's right.

11 Q You signed it yourself?

12 A Yes.

13 Q And doesn't that entry say, "Return to
14 charge room and request made by Soering to speak with Mr.
15 Gardner (Virginia Investigator)" -- I'm having trouble
16 reading that next --

17 A I signed something to the effect that I was
18 willing to speak to them without a solicitor.

19 Q And then the signature there is Terry
20 Wright. I think that word that I can't make out is a
21 signature. I'll check that. Then the signature of Terry
22 Wright and then it's printed, "I wish to speak to --"

23 A Investigator Gardner?

24 Q "-- to Mr. Gardner and I am willing for
25 this to take place without a solicitor or an attorney.

1 Signed Jens Soering."

2 A Yes.

3 Q You did sign that entry at 12:25 p.m.?

4 A Like all the others, under duress.

5 Q Forced you to sign this, too?

6 A Yes. Like all the others. I hadn't seen my
7 lawyer since the morning of the 5th and I was alone in a
8 police station with policemen all around me, and they gave
9 me this piece of paper and they said sign it, so I signed
10 it.

11 Q At any point -- if you'd like to look
12 through the custody sheet -- at any point in any of those
13 entries, are there any indications or any entries that you
14 complained about being forced to sign all this stuff?

15 A Of course not.

16 Q Did you ever indicate that you wanted to
17 call the German Embassy again and tell them, "Look,
18 they're making me sign all kinds of stuff over here"?

19 A They only let me do that, like the previous
20 time, in the presence of somebody who spoke German, so it
21 was pointless. And by that time I already realized they
22 were not going to give me my lawyer and they're not going
23 to do anything. I mean, it was clear by that point. I
24 had given up hope by, I guess -- Well, I gave up hope
25 Thursday, but I really gave up hope over the weekend.

1 because you can't reach anybody then.

2 Q And as far as you asking to speak to the
3 police officers before that interview, in showing you the
4 transcript of the June 7th interview, and I'd like to ask
5 you on the very first page, Investigator Gardner asked
6 you, "I understand that you asked to speak to me." I'm
7 asking you the question as I get this ready for you.
8 There is a copy of that transcript.

9 A Right.

10 Q On page one?

11 A Yes.

12 Q Now, doesn't Gardner say, this is on tape,
13 "Okay. You do? Okay, now. I'll get you to sign that."
14 -- Well, this is after the Miranda form process, but I'm
15 asking you about halfway down --

16 A Yes, I see it.

17 Q And he asked you, "Do you understand all
18 these?" You say, "Yes." He says, "You do? Okay. Now,
19 I'll get you to sign that, and while you're signing that,
20 to speed things up a bit considering that I'm in no hurry
21 and these gentlemen are in no hurry, I understand that you
22 made a request to speak to me today."

23 A Yes.

24 Q You come back and you say, "Um. I just
25 wanted to ask you some questions about what's going to be

1 happening with me now," right?

2 A This could quite possibly be another
3 instance of my sarcasm. I don't know. It's possible
4 anyway. But, I mean, the thing is, there's plenty of
5 instances like this and I'm always agreeing that I asked
6 to see them, because that's what they wanted to hear. And
7 I agree with that. I said those things.

8 Q Wait a minute, sir. What I'd like to ask
9 you on that point though is, you're being interviewed in
10 the course of a murder investigation. According to you,
11 you're being forced to sign things and being denied
12 counsel, and you're saying that you're just being
13 sarcastic? Did you feel that was an appropriate time for
14 sarcasm?

15 A It was a hopeless situation. I didn't know
16 what else to do. I was scared.

17 Q Hopeless? Now, being a diplomat's son, if
18 you're in a hopeless situation in a foreign country, you
19 contact your embassy, don't you?

20 A That's right.

21 Q And you'd made a number of calls to your
22 embassy, hadn't you?

23 A Uh-huh.

24 Q Isn't it true that this hopeless situation
25 that you've described here today was nothing like what you

1 are describing here today?

2 A Well, on two occasions the policemen
3 specifically promised to get me lawyers and they didn't do
4 it. I had given up hope, because on two occasions they
5 said, "You're going to get a lawyer now," and they didn't
6 do it.

7 Q Okay.

8 A And after that I just said, "Well, you
9 know, if they're willing to lie, what can I do?"

10 Q Quickly showing you Commonwealth's Exhibit
11 Number Four, the Miranda form as to that interview, June
12 7, 1986, dated 1:21 p.m., did you sign that and understand
13 all the rights that were upon it?

14 A Yes, I did.

15 Q You say that this entry on page one, as far
16 as you asking to talk to them, is sarcasm, but if I could
17 direct you to the end --

18 A It's possible.

19 Q It's possible? Well, why do you say
20 possible, don't you know?

21 A Because I don't know from this transcript.

22 Q Well, let me show you another reference to
23 the end of the transcript, where the same question is
24 asked of you again.

25 A This is the 7th?

1 Q Yes. Page forty-eight. Investigator
2 Gardner: "Okay. I just want to tell you before I turn
3 the tape off and go over what I said, and just like I told
4 you before, you know, the Miranda warning, before we
5 started talking today at 1:21 p.m., first of all, you
6 wanted to talk to us?" Your response, "Uh-huh." Gardner:
7 "I mean, I'm not putting words in your mouth. I want you
8 to tell me you requested to have a chat with us." You say
9 yes, right?

10 A He says yes first, doesn't he?

11 Q Well, I'm asking you.

12 A I agree with you that I --

13 Q Did you say at that point in time. "Yes, I
14 asked to talk to you"?

15 A Yes, I did say that. At this time and many
16 other times, and it was always under duress.

17 Q That was under duress as well?

18 A In each case.

19 Q And the duress, again, is you were afraid
20 something would happen to Elizabeth, not something would
21 happen to you?

22 A Well, that's right, but it was a cumulative
23 effect here. And part of that cumulative effect was that
24 on two occasions they promised me to get me lawyers and
25 didn't do it, they made me sign things I didn't want to

1 sign, they put words in my mouth, they told me what to
2 say, which is quite clear from the first interview, the
3 taped one. I mean, I was having a tough time here.

4 Q Let me ask you about page five of that
5 interview, about halfway down. Don't you say there that
6 you read that article from the Daily Mail, the newspaper
7 article that we've already introduced?

8 A I remember seeing the headline. Where does
9 it say that here?

10 Q Page five, top of the page.

11 A I'm sorry, I can't find it. This is the
12 Daily Mail? The newspaper, right. Yeah. Right. Okay,
13 that's what the newspaper is called. Yes. I see that.

14 Q I'm just asking you to read that and asking
15 you, don't you confirm that --

16 A Sure.

17 Q -- that you've read the Daily Mail
18 newspaper article that we've introduced?

19 A Well, the headline said the word "voodoo"
20 and that's what I'm confirming there. I mean, you know,
21 they're asking about the voodoo and I say, "Yes. I saw
22 the word. Yes, that's what the newspapers call it."

23 Q And we've already covered this, but if you
24 need to check on page twenty-seven, they served you lunch
25 there in the DCI's office, right? Stopped the tape so

1 that you can eat lunch?

2 A Right.

3 Q On page thirty-one, don't you say the same
4 kind of thing that you said in the day before, at the
5 middle of the page, where it starts, "Well, what I was
6 saying was that --"? You can read it yourself, if you'd
7 like. Let me read it and see if you agree with it.

8 Jens Soering: "Well, what I was saying was
9 that, like I said before, was that I'd like to speak with
10 either Officers Gardner or Reed in America in the presence
11 of an American attorney to explain my role more fully than
12 I have at this time, because there are certain questions
13 during these interviews which I've refused to answer,
14 which I would answer under advice of an American attorney,
15 and an American attorney is not going to be provided for
16 me here for obvious reasons." Gardner: "Do you object to
17 us or have you objected to talking with us without an
18 attorney so far?" Your answer, "No."

19 A I said those things. I said things like
20 that many times throughout the interviews.

21 Q Were you so intimidated and coerced that in
22 response to Ricky's question, "Have you objected to
23 talking to us without an attorney thus far," that you
24 couldn't even say yes?

25 A What was the point? What was the point?

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Q I'm asking you, sir.

A There was no point.

Q You're saying that this answer of "no" was not accurate, but you were coerced as to that?

A These guys had intimidated me by threatening my girlfriend. They denied me access to a lawyer on at least two occasions, at Thursday at 6:00 and Friday in the afternoon. It was a hopeless situation. They were not going to do anything for me. I mean, this information here on not having American attorneys, but Ricky Gardner told me earlier in that interview that I would only get an American attorney once I was in Virginia.

Q Mr. Soering, didn't you understand what the entire situation was there, what was being said? I mean, with your intelligence, if Ricky and I can understand it, you certainly could, couldn't you?

A Yes, I understood I was being railroaded.

Q Wasn't it said to you by Detective Sergeant Beever, "Obviously, on this day at 1:00 in the afternoon, we can't give you an American attorney here at the moment," right? That's what he was saying to you?

A That's what he said, yes.

Q But didn't you understand -- You've already indicated that you understood your Miranda rights?

1 A That's right.

2 Q And don't these Miranda rights tell you
3 that you have the right to the presence of an attorney
4 before making a statement?

5 A That's right.

6 Q So regardless of when you get the American
7 attorney or the German attorney or the British attorney,
8 regardless of when that is, you have the right to stop
9 answering questions until you get it?

10 A Yes, if I want my girlfriend hurt.

11 Q And you understood that, right?

12 A That's right.

13 Q So this business about, well, Ricky Gardner
14 misled you with the business about, "Well, I couldn't get
15 an attorney until I got to America," and all that, you
16 understood all of that. You're just saying that you were
17 afraid Elizabeth would get hurt?

18 A What I'm saying was that I had a right to
19 an attorney and after they explained that right to me, or
20 I explained to them initially, when I said I wanted an
21 attorney I was informed of my rights. Then they turn
22 around and tell me, "You can't have an American attorney,
23 because we can't find one for you." And if I try to leave
24 the room, Elizabeth is going to, quote, fall over and get
25 hurt, unquote. What were my options? I had no options.

1 Q Sir, as you pointed out a few minutes ago,
2 we are talking about two issues. First of all, whether
3 you understood the rights. Secondly, whether you
4 voluntarily waived the rights. I'm asking you about
5 understanding them. You understood --

6 A Yes, sir.

7 Q -- regardless of when an attorney was
8 provided for you, whether it was that day, five minutes
9 later, five weeks later, five years later, you had the
10 right to stop answering any questions until you got that
11 lawyer. You understood, right?

12 A Yes.

13 Q Okay.

14 A That's what the law book says, but that
15 wasn't the situation on the scene.

16 THE COURT: All right, now, we are at ten
17 after 1:00. If you think you can finish in a
18 few more minutes with direct, I'll let you do
19 it. Otherwise, I think probably we should
20 consider lunch.

21 MR. UPDIKE: Your Honor, I apologize to the
22 Court. I am nearing an end, but I'm not quite
23 finished. If the Court would consider a lunch
24 break at this point I'd appreciate it.

25 THE COURT: All right. We'll recess for

1 lunch until 2:15.

2
3 (The Court recessed for lunch at 1:15 p.m. and reconvened
4 at 2:15 p.m. and in the presence of the defendant and
5 counsel, the following ensued.)

6
7 THE COURT: We've got everybody here now,
8 haven't we?

9 MR. UPDIKE: We're all set.

10 THE COURT: All right. We're ready to go.

11 MR. UPDIKE: Thank you, Your Honor.

12
13 BY MR. UPDIKE:

14 Q Mr. Soering, I just have a few more
15 questions and then we'll wind this up. I thank you for
16 your patience. This is a point that I've asked you
17 previously, but directing your attention to page forty, do
18 you still have the transcript? If not, that might be the
19 one that you still have over here. If you'd like another
20 copy, I have another one.

21 A Is this the Sunday one?

22 Q The June 7th interview.

23 A On Saturday?

24 MR. NEATON: I think I've put that back on
25 your desk.

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MR. UPDIKE: Okay.

THE COURT: June 7th would have been Saturday, I believe, wouldn't it?

MR. UPDIKE: Yes, sir, Your Honor.

THE COURT: June 8th would have been Sunday.

BY MR. UPDIKE:

Q On page forty, just about the tape again, and I'm just asking you to look at the bottom of the page, the last quarter of the page on page forty. I'm not asking you about the content of what proceeds or anything like that. I would just like to ask you, there at 3:50 P.M. if the tape recorder was turned off at your request?

A Yes.

Q Thank you. Along those same lines, at the end of this transcript, page forty-nine, if you would examine that page, and my question would be, do you at that point request to speak to Investigator Gardner privately, off of the tape, not recorded?

A Mr. Wright says that I wanted to do a drawing and that's why they turned off the tape and I did the drawing, and then they turned the tape back on.

Q Let me refer you -- I think it's on the

1 previous page, that your statement first of all, near the
2 top of page forty-nine, you do state then in response to
3 Detective Constable Wright's question, "May I interrupt?
4 There's one other thing in that the matter of something
5 Jens says that he would like to do. You've heard him."

6 A The --

7 Q Excuse me? And then you say, "The drawing,
8 that's right. Hmmm -- Okay. I think I would like to do
9 that privately with Officer Gardner."

10 A Forty-eight?

11 Q Forty-nine. Excuse me. The top of page
12 forty-nine.

13 A Right. Yes, that's right.

14 Q You do request it privately with Officer
15 Gardner. My next question of you is, did you request that
16 to be done off of the record, not recorded? And I'll tell
17 you, I don't know that it's specifically indicated there
18 in the transcript. I'm just asking you, if it's not
19 there, if you recall?

20 A I don't recall. We talked about making a
21 drawing and then I made the drawing, you know.

22 Q The drawing was done earlier, though,
23 because this is on Saturday, would you agree with that?

24 A I think that --

25 Q And that you're requesting to make

1 alterations to the drawing?

2 A I'm sorry. I thought -- I got the
3 impression that this is when I do the drawing. No, you're
4 right. You're right. You're right. Yes, this must be
5 that I did the drawing earlier and here I'm making minor
6 alterations to it. That's right.

7 Q If you would like to see this, the custody
8 sheet would show you on June 6th is when Detective
9 Sergeant Beaver got it from your pocket and this is the
10 next day, June 7th. Would you like to see that or do you
11 recall that as being correct?

12 A I thought everything about the drawing
13 happened on Saturday, but if the custody record says that
14 it was Friday, I agree with that. I should say that,
15 what I referred to earlier, that when Mr. Wright spent an
16 hour locked in my cell with me, talking about his
17 bricklaying in Germany and all that, that must have
18 happened on Friday, Friday night, not Saturday night then.
19 Because it happened on the same evening as the drawing was
20 made, I think. Yes, Friday night. I was wrong about
21 that.

22 Q I would like to ask you concerning what you
23 just said there. Isn't it true, Mr. Soering, that
24 Detective Constable Wright did not spend an hour locked up
25 in a cell with you, but there was a time in which he

1 escorted you to the shower and then he just engaged in
2 general conversation then?

3 A Yes. He took me to the shower. That was
4 on two occasions. But one night he spent an hour locked
5 in my cell talking to me.

6 Q And it was not during an occasion when he
7 took you to the shower?

8 A That's right.

9 Q It was another occasion?

10 A This was later.

11 Q Sir, I'd like to ask you then about the
12 next interview, this being the last one on Sunday, June
13 8th. Preceding that interview, there are entries in the
14 custody sheet that I would like to ask you about.

15 It's the entry of 4:30 P.M. that I'd like
16 to direct your attention to and ask if you'd like to read
17 that?

18 A (Witness reads entry.) Yes.

19 Q Now that you've read that, I would like to
20 ask you, there at 4:30 P.M. on June 8, 1986, did you
21 request to speak to Detective Sergeant Beever?

22 A No.

23 Q This entry to the effect that Detective
24 Sergeant Beever spoke to you through the wicket, I think
25 it's called, from 4:32 P.M. to 4:35 P.M. Do you agree

1 with that or deny it?

2 A Yes. He often came to speak to the wicket,
3 through the wicket, throughout those four days.

4 Q Do you deny that that occurred at your
5 request?

6 A That's right. He was back there all the
7 time. He made many visits.

8 Q And continuing with that same entry of 4:30
9 where it says, "No incidents, but prisoner requests to
10 speak to Investigator Gardner from the U.S." There's a
11 signature there of some David Walsom, but also the
12 signature of Kenneth Beever, D/S, his signature on that
13 entry.

14 A Yes.

15 Q And I would ask you, did you request to
16 speak to Investigator Gardner from the United States?

17 A No, I didn't.

18 Q If this is established to be an accurate
19 entry, you would dispute that fact?

20 A That's right. I never asked to speak to
21 any policeman. And I knew at that stage that, you know, I
22 had to be in Court the next day, so it was nearly over
23 with. I wouldn't want to speak to one.

24 Q The next entry at 4:45 P.M., if you'd like
25 to look at it, is "The prisoner is removed in order to

1 speak to Officer Gardner in DCI Office. D. S. Beever
2 escorted and reminded of the codes of practice," and his
3 signature there again. You would not dispute that you
4 were taken to DCI's Office at that point --

5 A That is an accurate record.

6 Q Excuse me?

7 A That is an accurate record.

8 Q That is an accurate record. Okay. And
9 quickly, concerning that interview, the same question that
10 I've asked previously concerning the Miranda warning,
11 which would be -- Actually, there are two. The first one,
12 however, Commonwealth's Exhibit Number Five, with the date
13 June 8, 1986, approximately 4:45 P.M. Did you sign that
14 waiver form?

15 A Yes.

16 Q At the time that you signed it, did you
17 understand all the rights stated on the form?

18 A Yes.

19 Q When Investigator Gardner testified, and
20 I've been looking for it, it's my memory that it's 6:45
21 P.M., yes, that he asked you if you wished to go to the
22 bathroom or have refreshments, things of that nature, and
23 he also indicated that he wanted to go to the bathroom.
24 Do you dispute any of that, that there was a break at some
25 point through the interview?

1 A Well, I mean, I can't say I specifically
2 recall it, but throughout the interviews they always let
3 me do things like go to the bathroom, and it's perfectly
4 possible. I had objection.

5 Q Okay, sir. But my question is, he
6 indicated in his testimony that at that point he also
7 asked of you if it was all right if Wright and Beaver came
8 in the room for the purpose of assisting in note taking.
9 Did that occur, according to you?

10 A My memory of that Sunday interview is that
11 all three police officers were there throughout the
12 interview, but admittedly by that time things were getting
13 to be very hazy and I, you know, I can't be sure. I
14 remember all three police officers being there. Maybe they
15 weren't at the beginning.

16 Q So if -- Well, when Investigator Gardner
17 testified he was there by himself during the first part
18 and then all three during the second part, you don't
19 recall and don't dispute it, but you --

20 A I really -- I just don't recall it. See,
21 what I recall happening is that Investigator Gardner said
22 something about, you know, "It's Sunday. We're running
23 out of time." What I recall is the other two policemen
24 agreeing with him, which is why I thought they were there
25 from the beginning. I mean, perhaps they said that later

1 on in the afternoon.

2 Q And finally, Commonwealth's Exhibit Number
3 Six, the final Miranda form with the date June 8, 1986,
4 this time being at 7:18 p.m. Is that your signature?

5 A Yes.

6 Q And did you sign it, or I should say, at
7 the time that you signed it, did you understand the rights
8 stated on it?

9 A Yes.

10 Q Now, Investigator Gardner testified that
11 through this interview of June 8, 1986, both portions of
12 it, that you never made a request for an attorney. Do you
13 dispute that?

14 A I always requested an attorney before the
15 interview started, before they started the taping.

16 Q Well, let me ask you specifically about
17 this interview, the first portion of it. Maybe we should
18 address it in that fashion. The first one has the date on
19 the Miranda form of approximately 4:45 p.m. Did you
20 request a lawyer during that first portion?

21 A Yes.

22 Q Do you specifically recall, though, or are
23 you just assuming that you did or do you have specific
24 recollection?

25 A I can only say that I recall on each and

1 every occasion asking for a lawyer, so I must have asked
2 for a lawyer, because I always asked for a lawyer. But it
3 was always before they turned on the tape recorder.

4 Q Well, this --

5 A I know it wasn't tape recorded.

6 Q This one wasn't recorded according to
7 Investigator Gardner. I must ask you specifically that
8 same question as to the second portion of the interview
9 with the Miranda dated 7:18 p.m. As far as that second
10 portion, beginning at that point on, do you have any
11 specific recollection of requesting an attorney?

12 A As far as I recall, that was just like, you
13 know, going to be one interview, so I don't specifically
14 recall.

15 Q And sir, it may very well was, but the
16 officers did give you two Miranda forms to that, one dated
17 4:45 and one 7:18?

18 A Yes.

19 Q And my question is, after, say, at 7:18
20 p.m., do you have any specific recollection of requesting
21 an attorney from that point to the end of the interview?

22 A No. I can only remember that at the very
23 beginning I did ask for a lawyer. See, to me that was one
24 big long interview and I asked for a lawyer at the
25 beginning. But, I mean, by that time I had completely

1 given up hope, so it was really pro forma.

2 Q If I could ask you this, whether you know
3 or don't, whatever your answer is, do you have any
4 knowledge of Elizabeth Haysom having requested an attorney
5 and having, in fact, in response to that request, having
6 seen Keith Barker? Do you have any knowledge --

7 A Not during the weekend. I do now, but not
8 during the weekend.

9 Q Excuse me? I'm sorry, I didn't understand.

10 A While I was at the police station, I didn't
11 know. But afterwards, obviously, Keith Barker told me.

12 Q But while this was occurring during that
13 period of time, you did not know?

14 A Right.

15 Q But you've found out since then that Keith
16 Barker did see Elizabeth Haysom during that period?

17 A I realize, you know, that it's hearsay and
18 all that, but you know, at Candlewell Green Police Station
19 Keith Barker told me that he had seen Elizabeth and he
20 tried to see me and they wouldn't let him.

21 Q Now, if I could ask you, the custody sheet
22 or the entry on the custody sheet that we were just
23 talking about refers to a diagram being taken from you?

24 A Yes.

25 Q By Detective Sergeant Beever on June 6,

1 1986. I think it was around 1:30. I don't have it in
2 front of me, but if you'd like the specific reference, I
3 can give it to you.

4 A On Friday at 1:30?

5 Q Right. Exactly.

6 A I thought it was dark outside when he came
7 and got it, but if you say it's then, I have no objection.

8 Q 1:39 p.m. on June 6th.

9 A Right.

10 Q Would this be the diagram that you actually
11 drew and was taken from your pocket at that time?

12 A It looks like it, yes.

13 Q And going back to the end of the June 7th
14 interview.

15 A That's this one?

16 Q Yes, when you had the private conversation
17 with Investigator Gardner. Would this have been the same
18 diagram shown to you at that point and you made the
19 alterations on it?

20 A Okay. I'm agreeing with you that that's
21 the diagram, but this particular passage here says that I
22 made statements about inaccuracies in the drawings, but I
23 didn't actually sort of start redrawing it or anything.
24 What this says, you know, I just made statements about the
25 accuracies but didn't draw them.

1 Q Could I ask you about your own
2 recollection, however? Do you have recollections
3 independently of the transcript as to what happened and
4 whether this is, you made alterations on it?

5 A That, to me, looks like the diagram I drew,
6 you know. It's just like the diagram I drew.

7 MR. UPDIKE: Could we proffer this for --
8 Well, we'd like to introduce it. Are there any
9 objections? What this is is a Xerox copy of
10 the front and back of this.

11 MR. NEATON: Are you offering it for
12 identification purposes?

13 MR. UPDIKE: Identification purposes at
14 this point, yes.

15 MR. NEATON: I have no objection for that
16 limited purpose.

17 MR. UPDIKE: Thank you.

18 THE CLERK: Number Twelve.

19
20 (Commonwealth's Exhibit Number Twelve was marked
21 for identification only.)
22

23 MR. UPDIKE: Thank you, Mr. Soering. I
24 have no further questions.

25 THE COURT: All right. Mr. Neaton?

REDIRECT EXAMINATION

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2
3 BY MR. NEATON:

4 Q Jens, on April 30th and May 1st of 1986 in
5 your interviews with Mr. Beever and Mr. Wright, did they
6 threaten at that time?

7 A No.

8 Q Did they threaten Elizabeth in the fraud
9 interviews?

10 A No.

11 Q At 12:50 p.m. on the 5th of June, 1986, you
12 did not want a solicitor?

13 A That's what I signed on the custody record.

14 Q At 3:35 on the 5th of June, 1986, did you
15 want a solicitor or a lawyer?

16 A Is 3:35 the time I went into the room?

17 Q At the time that the first interview began
18 with the three police officers, did you want a solicitor
19 at that time?

20 A What happened was that I was taken from my
21 cell to the room. I walked in, I saw Ricky Gardner, and I
22 thought, "Uh-oh," and then I said, "I've seen Hill Street
23 Blues. I want a solicitor." Because, I mean, you know, I
24 really was surprised to see Ricky Gardner.

25 Q Now, I'd like to show you some of the

1 entries in the British custody record referred to by the
2 Commonwealth's Attorney. Specifically, I would call your
3 attention to the entry noted in the record for 7:45 p.m.
4 on the 5th of June. Do you see that?

5 A Yes.

6 Q Did you write that entry into the record?

7 A No.

8 Q Did you sign that entry?

9 A Not this one, no.

10 Q The entry for 7:50 p.m., right beneath
11 that, did you write that entry?

12 A No.

13 Q Did you sign it?

14 A No.

15 Q Did you see who wrote it or signed it?

16 A No.

17 Q The entry at 7:55 p.m., did you write that
18 entry?

19 A No.

20 Q Did you sign that entry?

21 A No.

22 Q The entry at 8:02 p.m., did you write that
23 entry?

24 A No.

25 Q Did you sign that entry?

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A No.

Q The following day, for the 6th of June, the 10:05 a.m. entry, did you write that entry?

A No.

Q Did you sign it?

A No.

Q The 10:13 a.m. entry, did you write that entry?

A No.

Q Did you sign it?

A No.

Q The 11:00 a.m. entry for the same day, did you write out that entry?

A No.

Q Did you sign it?

A No.

Q Did you see anybody write those entries on the custody record?

A No.

Q The 11:19 a.m. entry, did you write that out?

A No.

Q Did you sign it?

A No.

Q Did you see anybody write that out or sign

1 It?

2 A No. I don't think so.

3 Q Going back to the 7:59 p.m. entry on the
4 5th of June, did you write out the words in that entry?

5 A No.

6 Q Going to the 7th of June, the 12:25 p.m.
7 entry, did you write out the words in that entry?

8 A No.

9 Q So those are not your words?

10 A No.

11 Q Going to the 4:45 p.m. entry on the 8th of
12 June, did you write that entry into the custody record?

13 A No.

14 Q Did you sign it?

15 A No.

16 Q The entry above that, timed at 4:30, did
17 you write that entry out?

18 A No.

19 Q Did you sign it?

20 A No.

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1 Q Did you see who wrote that entry out or see
2 who signed it?

3 A No.

4 Q I'd like to refer your attention to the
5 statement dated June 6th. I refer you to page two of
6 that statement.

7 A I don't have that.

8 Q Okay. I'll show you my copy of it.

9 MR. NEATON: Is that all right?

10 THE COURT: Sure.

11 MR. UPDIKE: Sure.

12 THE WITNESS: Yes?

13

14 BY MR. NEATON:

15 Q Now that's the time that Mr. Updike asked
16 you about when you asked that the tape be turned off?

17 A Yes.

18 Q Why did you ask that the tape be turned off
19 at that time?

20 A I wanted to talk to the police about things
21 that I didn't want to be on tape.

22 Q What things didn't you want to be on tape
23 at that time?

24 A Things about the substance of the case
25 which I didn't want to discuss, that I thought I shouldn't

1 be talking about on the tape.

2 MR. NEATON: Thank you. I have no further
3 questions.

4 MR. UPDIKE: No further questions.

5 THE COURT: Thank you. Step down. That's
6 all, Mr. Soering. Step down. All right. Does
7 the --

8 MR. NEATON: The defense has no further
9 witnesses, Your Honor.

10 THE COURT: Thank you, sir. Let's proceed
11 with what witnesses the prosecution has.

12 MR. UPDIKE: Yes, sir, Your Honor. If we
13 could call Detective Constable Wright, please.

14
15 The witness, DETECTIVE CONSTABLE TERRY WRIGHT,
16 having first been duly sworn, testifies as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. UPDIKE:

21 Q State your name, please.

22 A I'm Terry Wright, Detective Constable,
23 attached to the Police Station from the Metropolitan
24 Police, London, England.

25 Q How long have you been employed by the

1 Metropolitan Police Department?

2 A Since April 1982.

3 Q And then the rank of Detective Constable,
4 how long would that be?

5 A I've been doing detective duty since 1984.

6 Q 1984. And, of course, that would mean in
7 this period of 1986 that I wish to ask you about, you were
8 doing detective duties at that time, is that correct?

9 A That is correct, yes.

10 Q And at that time stationed at the Richmond
11 Police Station in Richmond, England?

12 A That is correct, yes.

13 Q I'd like to ask you, first of all,
14 concerning the copy which has been labeled "Proffered
15 Commonwealth's Exhibit Number Eleven." Again, this is the
16 copy. And if I could ask you if you could identify that,
17 please?

18 A This is a copy of a document which we refer
19 to as a custody record and it refers to Jens Soering, and
20 it's dated the 5th of June, 1986.

21 Q And it's for the period of June 5, 1986
22 through, it concludes at what time or what date, I should
23 say, the last day?

24 A The 9th of June, 1986.

25 Q Could you describe for us, please, a little

1 blt what a custody sheet is, how it comes about that the
2 entries are made in it and the procedures of the
3 department followed there in Richmond, England?

4 A Whenever a subject, an individual, is in
5 custody in the police station, the manner in which he's
6 treated is governed by the Police and Criminal Evidence
7 Act of 1984, which is an act of Parliament.

8 Q What was that again?

9 A It's the Police and Criminal Evidence Act.

10 Q The Police and Criminal Evidence Act. And
11 could I ask you, is that what sometimes is referred to as
12 PACE because of the initials?

13 A Yes. The initials are PACE.

14 Q Now please continue. I'm sorry.

15 A Okay. The document that you have just
16 handed me a copy of is a record of an individual's stay at
17 the police station and the Act of Parliament says that
18 whenever a person is in custody, details of that person's
19 custody, whether or not, the length of time he's there,
20 the reason he's there and any aspects of -- Well,
21 generally the way he's treated is recorded on the custody
22 record and this is done by somebody that's independent of
23 the investigation.

24 Q A person independent of the investigation?

25 A Yes, sir. The person that's responsible

1 for this particular form, or any custody record, would be
2 a uniform Sergeant who's reviewed by a uniform Inspector,
3 and both of those must be independent to the
4 investigation, other than the initial booking in of the
5 subject and any possible queries on identity.

6 Q Now looking at that particular custody
7 sheet, there are numerous entries that are made
8 periodically. Could you tell us something about the
9 procedures of how often the prisoners are checked and the
10 purpose of doing that and what types of entries are made?

11 A Well, if I deal with the purpose first, the
12 purpose is to monitor the length of time. We have
13 limitations as to how long a person can remain in custody
14 without being charged. And the first thing that happens
15 is that when a person is brought to the station, the
16 Sergeant opens this record and reviews whether or not it's
17 necessary to keep him in detention at that time. And
18 he'll make an entry of the time and date it, saying that
19 he gives authority to detain the person.

20 From then on, if he's supplied a meal or
21 taken out for an interview or taken out to search and
22 address or for any other reason, and then those matters
23 are recorded on that custody record.

24 Q Now suppose the prisoner is ill or has a
25 medical problem of some sort, would that type of situation

1 be entered?

2 A Yes, sir, that would be recorded. And as
3 soon as a record like that was made, the Custody Officer,
4 regardless of whatever the Investigating officer said,
5 would automatically call a doctor. And if a doctor was
6 called, the record of that, when he arrived and saw the
7 prisoner, that would be on the custody record.

8 Q If a prisoner has any complaints about the
9 manner in which he has been treated, would a complaint of
10 that nature be entered on the custody record?

11 A Yes. It most certainly would, sir. In
12 fact, I mentioned earlier about a uniformed Inspector. He
13 is called the Review Officer and he will actually speak to
14 the prisoner and ask him if he has any complaints. If he's
15 fit and well, and if not, obviously, he would treat that
16 as a complaint against the police and the process would
17 begin to deal with that complaint.

18 Q Now as we go through this particular
19 custody sheet I see numerous times that there are entries
20 of "Fit and well, no incidents." or "Fit and well, no
21 request." Those types of entries are they indicative of
22 just what it sounds like, the prisoner made no complaints
23 or --

24 A Yes, sir. Other than times when a person
25 is out for interviews or any other reason away from the,

1 when he's not actually in the control of the Custody
2 Officer, the prisoner is checked every hour.

3 Q Every hour?

4 A In certain circumstances, less than that.
5 For drunken prisoners, it would be less, but generally
6 it's an hour or thereabouts, depending on the Custody
7 Officer's other commitments at the time --

8 Q And would that --

9 A -- and those are recorded.

10 Q That's what I was going to ask. Each hour
11 that there is a check, the Custody Officer would make an
12 entry on the custody sheet of each prisoner.

13 A That's right. And you must understand,
14 sir, that the Custody Officer and the Review Officer may
15 not be the same person from the time that the record is
16 opened, because they obviously work for eight-hour shifts
17 and another Custody Officer, although it be a different
18 officer, he then becomes a Custody officer. So these
19 entries over three or four days are made by several
20 different people.

21 Q And they are made over a twenty-four hour
22 period, a continuous twenty-four hour period, is that
23 correct?

24 A It is a continuous thing right up until the
25 time when the need for detention ceases.

1 Q If a prisoner requests to see a solicitor
2 or to see counsel, what, if anything would be done with
3 such a request as far as the custody sheet is concerned?

4 A Then a record would be made of that.

5 Q And that would be indicated in that
6 fashion?

7 A Yes, sir.

8 Q As far as that particular copy is
9 concerned, are you aware of where the original of that
10 record is?

11 A I have the original record actually in my
12 possession, sir.

13 Q At this moment?

14 A Yes, sir.

15 Q And if you would, tell us how that came
16 about?

17 MR. UPDIKE: And I might add, the reason
18 I'm going through this, he has the original.
19 I'm going through this to request that the copy
20 be received into evidence. If there's any
21 objection as to the custody sheet, that's why
22 I'm doing it. If there's no objection, we can
23 just introduce it and move on.

24 MR. NEATON: I have no objection if a copy
25 is ultimately received by the Court. I do have

1 objections to the custody record that are based
2 on grounds other than Mr. Updike would offer a
3 Xerox copy.

4 MR. UPDIKE: I'm not sure that I
5 understood, Judge. Well, first of all, maybe I
6 should proceed, but I'd like to be able to
7 address your specific objection so as not to
8 waste time. You're just objecting to the copy?

9 MR. NEATON: No. I said the mere fact that
10 what you want to offer is a Xerox copy, that
11 would not form the basis of any objection that I
12 would have to the entry of the custody record.
13 The objection I would have to the entry of the
14 custody record would be based upon hearsay and
15 would be based upon the fact that it has not
16 been shown to be the foundation that meets the
17 business record or whatever other exception
18 you're trying to enter this under the
19 Hearsay Rule. The record itself is hearsay and
20 I'd like to know what exception you would offer
21 it under.

22 MR. UPDIKE: Your Honor, we are -- I
23 suspected this. I've got the thing in the book
24 marked, page 601. The Shop Book Rule in
25 Friend's Book of Evidence, at which point he

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discusses this and lists, I guess, ten different considerations. And that's the reason I asked, because we have read this and we are prepared to go through and establish accuracy, what they are, all that type of thing, if there's an objection on those grounds.

I would state, Your Honor, such things as are proffered if they make any difference that, for example, on this June 9th day of 1986, the Monday, Detective Sergeant Beever at that time took the custody sheets, read them onto a tape recording just as they were at that time. We still have the tape recording. He did it for two reasons, for purposes of authentication and purposes of us being able to read the things.

Yesterday he listened to the tape recording, compared it to the original, and it's just the same as it was. The custodian of the records at this time is sitting before Your Honor, which we can establish through the procedures of the Metropolitan Police Department. He has custody of them. He's responsible. I'm just wondering if that makes any difference. If it doesn't, then we'll have to go through this with Detective Constable

1 Wright and call Detective Sergeant Beever to the
2 stand for authentication. We are prepared
3 to do it. I just --

4 MR. NEATON: Two things. Judge. First, as
5 to whether the piece of paper itself comes in as
6 a business record or is a business record, I
7 would indicate that the mere fact that this
8 witness has custody of the record right now does
9 not mean that he is a custodian for purposes of
10 the Business Record Exception or the Shop Book
11 Exception.

12 Secondly, there's a second level of
13 hearsay involved in the record itself and that
14 is the entries in the record are made by people
15 other than this witness or Mr. Beever. And the
16 reliability of some of those entries is at
17 issue in this particular hearing. And,
18 therefore, what I'm saying is that at level one
19 of my objection, perhaps, just for the sake of
20 argument, say, perhaps he can establish a
21 foundation that the piece of paper itself is
22 kept in the ordinary course of business.

23 But he has to go one step further, and
24 say, you have a second level of statements
25 contained within the piece of paper which are

1 made by individuals and they were made out of
2 Court and not under oath and apparently all of
3 these witnesses are not here and are not subject
4 to cross examination.

5 And that's all -- So if you understand
6 the two bases of my objection.

7 MR. UPDIKE: If I could quickly respond,
8 Your Honor. By consideration of Number 5 on
9 603, the record must be authenticated by some
10 witness. And we will be able to do that both
11 through Detective Sergeant Beever and Detective
12 Constable Wright as to their knowledge of the
13 events and plus there being entries which they
14 themselves documented.

15 The second one, Your Honor. Is to
16 consideration Number 7 on page 604
17 and that goes into personal knowledge of the
18 entrant and Friend discusses that as long as the
19 person who writes down the entry does so during
20 the regular course of business that that assures
21 the trustworthiness of the entry and that that
22 is sufficient. And he continues in that
23 particular category discussing the fact that the
24 entrant, if that's the correct pronunciation,
25 the person who enters the writing does not have

1 to necessarily have personal knowledge of what
2 is being entered. But as long as the person who
3 enters it does so within the regular course of
4 business and the person who has the actual
5 knowledge of it is acting during the ordinary
6 course of business, that's sufficient. But
7 under these circumstances, Your Honor, we can
8 establish the Custodian Officer went around and
9 obtained this information from the defendant
10 and that the person who actually has the
11 knowledge would be the person who actually made
12 the entry so we don't have to worry about that,
13 but for me to go through it --

14 THE COURT: All right. Since we have an
15 objection to the evidence, I don't want to rule
16 until such time as the Commonwealth has had a
17 chance to lay the proper foundation.

18 MR. UPDIKE: Yes, sir.

19 THE COURT: And once that's done, I'll
20 rule, if it's done.

21
22 BY MR. UPDIKE:

23 Q First of all, do you have the original
24 here, as you've indicated?

25 A Yes, sir.

1 Q Could I see that, please?

2 A (The witness hands original to Mr. Updike.)

3 Q First of all, let me ask you, how did the
4 actual custody sheet, the original, that is, come into
5 your possession?

6 A The custody records are retained for a
7 period of six years. They are stored in binders which
8 contain a hundred records in each binder. During the time
9 that they are in storage, when the record is complete,
10 which is at the time the detention ceases, any further
11 entries on that would only be regarding property or
12 whatever, because it may be possible that the person's
13 property recorded is actually restored to some other
14 person. However, once it is complete, it's restored to
15 him and it is available for use in any trial or for any
16 other legal proceedings or in complaints or whatever.

17 And, basically, I am required, or the
18 person that removes it from the binder, is required to
19 leave a copy in its place bearing the name of the officer
20 that's removed it and the reason. And the only other
21 stipulation is that it is returned to the binder as soon
22 as possible after the proceedings are finished.

23 Q And to elaborate a little bit on those
24 points, this particular record, where was it actually
25 stored or where has it been stored?

1 A At Richmond Police Station.

2 Q And the place of the storage that you've
3 described, is that the place designated within the regular
4 procedures, established procedures of the Metropolitan
5 Police Department?

6 A Yes, sir. It's in a locked cabinet in a
7 locked room in the basement of the Richmond Police
8 Station.

9 Q And, as you say, this particular record
10 goes from June 5, 1986 to the morning of June 9, 1986?

11 A Yes.

12 Q And at that point it would be closed, is
13 that correct?

14 A That is correct, other than possible
15 entries on the reverse for property that's been restored.

16 Q That's what I wanted to ask you about.
17 There are property, a list of property on the sheet itself
18 and the only change or addition to them would be if these
19 items of property were returned to the owner and an
20 appropriate designation would be made there?

21 A That is correct.

22 Q Now you, yourself, were involved in the
23 investigation concerning this matter at Richmond Police
24 Station during this period that we're talking about of
25 June 5th to June 9th, '86, is that correct?

1 A Yes, sir, I was.

2 Q With Detective Sergeant Beever and
3 Investigator Wright?

4 A Investigator Gardner, yes.

5 Q Excuse me. It is late. And as a result of
6 that, are you familiar with the various events that
7 occurred during the course of that period of time, as to
8 the investigation?

9 A Yes, sir, I am.

10 Q Have you had the occasion, with the
11 knowledge in that regard, to compare that knowledge with
12 the actual custody sheets to see whether you could see any
13 inaccuracies in what occurred?

14 A The inside pages of the custody record,
15 which I refer to as the log, have not been added to at
16 all. May I?

17 Q Please. I'm sorry. (Mr. Updike hands
18 witness back original custody sheet.)

19 A They have not been added to at all, other
20 than one occasion where a result has been inserted on that
21 form of a trial, well, a hearing that took place at
22 Kingston Crown Court.

23 Q When was that and what was that entry,
24 please? Just so that we'll know what the change is.

25 A Yes, sir. If you can just bear with me a

moment, because --

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Q Please take your time.

A The entry that I refer to states, basically lists four counts or four charges that were put to Jens Soering at Kingston Crown Court. One and two being pecuniary advantage. Number three being going equipped to cheat. And Number four, again, pecuniary advantage. And underneath that, it says, "One to three - twelve months and concurrent." And then it goes on to list compensation orders that were awarded to various banks.

Q But other than that, the custody sheet indicates no additions since the period that we've described?

A That is correct. And I can state that the last entry on the 9th of June, 1986, at 9:30, when he's released from police custody, I believe I was present at that time.

Q As far as examining the entries themselves, as you look through them, do you see any apparent indications of different handwritings or scratchings through words or anything that might indicate any changes in them?

A This is the original custody record and it has not been altered or amended in any way, other than the further entry that I just discussed.

1 Q Are there certain entries in the custody
2 records which bear your signature?

3 A Yes, sir.

4 Q I might, if I could, look quickly -- You
5 might be able to find your signature yourself. Let's see
6 if I can --

7 A Yes, sir. My signature appears on the
8 front underneath the list of property, because I was
9 present when that property was listed.

10 Q Okay.

11 A It appears just below the signature of Jens
12 Soering.

13 Q And as to other entries?

14 A Yes. It further appears in the log of the
15 custody record on page two, which is actually the back
16 page. That's a point that was marked 11:19. It again
17 appeared -- Do you want me to go through, sir?

18 Q Yes, if you don't mind. I know that it
19 might take a moment, but perhaps we should.

20 A It again appears at a time 12:25 p.m. on
21 the 7th of June. And I believe those are the only times
22 I'm within the log of the record, sir.

23 Q Where your actual signature --

24 A That is my signature, yes.

25 Q And where your signature occurs at those

1 times, would you have personally observed what is
2 described in the entry itself? You would have been
3 involved in that?

4 A Yes, sir.

5 Q I might ask you about several other entries
6 to see that -- Perhaps you did not sign the entries, but
7 whether you might have been present at those times. Some
8 of these -- Perhaps I'll just read them to you. You may
9 or may not have been present. June 5, 1986, the entry at
10 3:25 p.m., referring to the defendant being taken to DCI's
11 Office?

12 A I believe I was there, although I can't be
13 certain.

14 Q Okay, sir. The 6:00 entry on June 5th.
15 This is where he was taken to that interview. I think it
16 states by D/S Beever though.

17 A Yes, sir, I believe I was.

18 Q The 7:45 entry on June 5th, which refers to
19 a phone call to the German Embassy. Do you recall whether
20 you were present during any of that?

21 A Yes, sir. I actually dialed the telephone
22 number.

23 Q You dialed the telephone number that's
24 indicated there?

25 A Yes, sir.

1 Q So the 235-5033 telephone number to the
2 German Embassy, you dialed yourself?

3 A Yes, sir.

4 Q There's an indication there as to what Mr.
5 Soering said or did during the telephone conversation or
6 what occurred. Did you, yourself, hear any of that or
7 have any personal knowledge of the accuracy of that
8 particular entry?

9 A Yes, sir. What I did, I obtained the
10 telephone number for the German Embassy. I dialed it. I
11 introduced myself as a detective from the Richmond Police
12 Station and I ascertained who I was speaking to and I,
13 over the telephone, learned that it was Mr. Banes, who
14 said he was the night security.

15 Q And I believe that's actually the
16 information that's stated there then?

17 A Yes, sir, it is.

18 Q While we're on that, did you hear the
19 conversation that Jens Soering made at that point once he
20 was given the telephone?

21 A Yes, sir. I stood beside him, but I
22 couldn't understand it, because it was in German.

23 Q It was in German?

24 A Yes, sir.

25 Q Well, do you speak German?

1 A No, sir.

2 Q Have you worked in Germany?

3 A I worked in Germany for three months. In
4 fact, it was a three-month contract. I was there for
5 eight weeks.

6 Q Eight weeks?

7 A Yes, sir. And I had no prior knowledge of
8 learning German before that.

9 Q And didn't learn a lot during that brief
10 period?

11 A No, sir.

12 Q The 7:50 entry on June 5th, which refers to
13 Soering being placed back in his cell?

14 A I believe on that occasion, sir, I was not
15 actually present when he was put back. I think, as soon
16 as the phone call was finished, because the telephone call
17 was made from right beside the desk where the Custody
18 Officer sits, he made his phone call, and I then left.

19 Q But it continues, that particular entry,
20 with something about D/C Wright and D/S Beever being
21 contacted and then the next entry, 7:55, I believe, refers
22 to D/C Wright, you, is that correct?

23 A That is correct, yes.

24 Q Exactly what is that entry pertaining to,
25 the 7:55?

1 A Yes. sir. As I said, I'd by this time gone
2 back upstairs to the CID Office where I was contacted by
3 the Custody Officer, who informed me that Jens Soering
4 wished to speak to me again.

5 Q So at 7:55 would you have been down in the
6 Custody Officer's area?

7 A No. sir.

8 Q No, you would not have been there because
9 you were contacted. I guess what I'm getting at, the next
10 entry at 7:59, did you go down there in response to the
11 call?

12 A Yes, together with Detective Sergeant
13 Beaver.

14 Q Now am I correct the 7:59 entry is the one
15 where it is written, "I now wish to speak to D/S Beaver
16 and D/C Wright without my solicitor being present." and
17 the signature of Jens Soering is signed there. Am I
18 correct --

19 A Yes, I was present when he made that
20 signature.

21 Q You were present when the defendant signed
22 that?

23 A Yes, sir.

24 Q The entry at 8:02 pertaining to Soering
25 being taken to the DCI's Office for the interview, "Beaver

1 being reminded of the Codes of Practice." Were you
2 present at that time?

3 A Yes, sir.

4 Q Would that entry be accurate?

5 A It is accurate, yes, sir.

6 Q Correct me if I'm wrong, the entry at 11:14
7 pertaining to Soering being returned to his cell. I don't
8 think -- Well, you answer. Were you involved in that
9 yourself when they were taking him back down?

10 A I may have been, sir. I can't say
11 specifically whether I -- I can't say with certainty, but
12 on most occasions I escorted Mr. Soering back downstairs.
13 Maybe not on every one.

14 Q The June 6th entry at 10:05 a.m. the next
15 day. There's an entry there pertaining to Soering ringing
16 the German Embassy, the number again 235-5033. He was
17 unable to speak to the person that he wanted and informed
18 to call back at 11:00. Were you present during that
19 entry?

20 A No, sir.

21 Q While I'm thinking about it, that phone
22 number 235-5033, stated there in the record, have you had
23 the occasion to dial that number recently?

24 A Yes, sir. I dialed that number yesterday.

25 Q Who did you get?

1 A Well, I actually dialed the international
2 code for London and then that number and I spoke to
3 someone at the Germany Embassy.

4 Q The German Embassy? So that number did
5 give you the German Embassy?

6 A The German Embassy in London.

7 Q That 11:00 entry as to the phone call,
8 where it states that, another reference to the Embassy. I
9 don't believe that you were present during that, or were
10 you?

11 A No, sir. Those entries were made by
12 whoever was Custody Officer at the time.

13 Q The 11:19 entry where Soering is taken out
14 of the cell at that point for the interview, were you
15 involved in that or any personal observation?

16 A Yes, I was there, sir, when we were
17 contacted and asked to go downstairs because Soering
18 wanted to speak to us. I went to the charge room with D/S
19 Beever and I've actually signed, what I actually do there
20 is I'm accepting responsibility for the prisoner.

21 Q So that entry is one of them you listed as
22 bearing your signature and so it would be accurate from
23 your personal involvement?

24 A Yes, sir.

25 Q I don't believe on that day as far as

1 returning him to the cell or those later events, you were
2 not involved in any of those, I don't think. Were you?
3 If so, please correct me.

4 A I don't believe so. No, sir.

5 Q The next day, June 7th, rather than me
6 reading them to you, maybe starting not specifically at
7 10:00 a.m., but in that area, if you could just begin
8 looking down that page and pick out any entries that you
9 were actually involved in. That may be faster than me
10 reading it to you.

11 A Yes, sir, there's an entry at 12:25 p.m.

12 Q Tell us about that, please.

13 A Basically, it's returning Soering to the
14 charge room and at that point Soering requested to speak
15 to Mr. Gardner, the Virginia Investigator, and I caused
16 that to be entered onto the custody record and I've signed
17 it.

18 Q You've signed it? So you asked that that
19 entry be made?

20 A Yes, sir.

21 Q Does that entry continue with a statement,
22 "I wish to speak to Mr. Gardner and I'm willing for this
23 to take place without a solicitor or attorney"?

24 A It does, sir, and it was signed by Jens
25 Soering.

1 Q And did the defendant over here signed
2 that, is that correct?

3 A Yes, sir.

4 Q Were you present when that signature was
5 placed on that entry?

6 A I believe I was, yes, sir.

7 Q And continuing to the next entries, the
8 12:30, the 1:00? There's something there about going to
9 the shower, but if you see another entry there that you
10 were involved in?

11 A Yes, sir. At 1:00 p.m. I went together
12 with Detective Sergeant Beever, I took Jens Soering
13 upstairs and then I continued on with him to escort him to
14 his shower. And then from there we took him to an
15 interview room, sir.

16 Q There is an entry there -- and I may have
17 missed one -- but June 7th at 1:39 p.m., is there an entry
18 there about the defendant being served a meal in the DCI's
19 office? June 7, 1:39?

20 A Yes, sir.

21 Q And were you up there at that time and are
22 you aware during that Saturday, June 7th, interview
23 whether the defendant was served a meal in the DCI's
24 office?

25 A Yes, he was served a meal. It was actually

1 during the interview and it sat on the table in front of
2 him for some time because he chose not to eat it. But
3 yes, I was there, sir.

4 Q I think those are the questions probably
5 I'd ask along those lines. If I could ask you some
6 questions using this book as a reference as far as the
7 consideration of business records, these, as you've
8 stated, are the records of the Richmond Police station of
9 the Metropolitan Police Department, is that correct?

10 A They are records that we are required to
11 keep by law.

12 Q And they are kept -- I think you've already
13 described this, but if I could run through it quickly --
14 they are made during the regular course of the operation
15 of the Metropolitan Police Department pertaining to the
16 custody of people detained at that police station, is that
17 right?

18 A Yes, sir. Every person that is brought
19 into the station, whether they be arrested or even if they
20 be a child brought to the station as a place of safety, a
21 custody record will be opened.

22 Q On every prisoner?

23 A Every prisoner, every person that's brought
24 to the station.

25 Q Or every person. Excuse me, yes. And as

1 far as the regular course and regular procedures of how
2 often they are checked, at least an hour or every hour?

3 A Yes, sir. The custody officer is
4 responsible to check a prisoner every hour. The review
5 officer has set time periods within which he must review
6 the prisoners.

7 Q And when he checks those prisoners, who
8 makes the entry into the custody record as to what the
9 person in custody says?

10 A The custody officer makes the normal
11 entries for regular checks. The review officer, he
12 actually makes the entry himself as the uniformed
13 inspector.

14 Q Now, as far as this consideration here,
15 Number Three, that the entry must have been made at or
16 near the time of the transaction. When are those entries
17 entered into the custody sheet record with relationship to
18 when the custody officer sees the event?

19 A Either at the time or immediately
20 afterwards.

21 Q Now, the person who makes the entries,
22 again, this is as to consideration for, would be the
23 custody officer or the super --

24 A Or the review officer.

25 Q The review officer. And within the

1 procedures and rules and regulations of the Metropolitan
2 Police Department, those individuals would be authorized
3 to make the entries into the custody sheet, is that
4 correct?

5 A That is correct, yes, sir.

6 Q And as far as your having them now, Number
7 Five, you are, you indicated, Detective Constable of the
8 Metropolitan Police Department and your having them now,
9 you followed the procedures of the Metropolitan Police
10 Department in checking them out and bringing them here?

11 A Yes. I am authorized to remove the custody
12 records from the binders and I have complied with the
13 requirements upon removal.

14 Q Of leaving a copy and signed for it?

15 A I have, sir, yes.

16 Q So if someone, let's say, at this moment in
17 Richmond, England wished to go to that particular file,
18 would there be information there indicating where the file
19 is and who has it?

20 A There would be a copy, sir, as the one you
21 have there.

22 Q As far as the person who makes the entry,
23 is there any type of signature or anything of that nature
24 indicating who is writing the particular entry on the
25 sheet?

1 A Yes. The person that makes the entry does
2 sign that entry.

3 Q During the time that these records have
4 been in your possession to bring to Bedford County,
5 Virginia, have they been altered, modified, changed in any
6 way?

7 A No, sir.

8 Q In August of 1987, regarding the trial of
9 Elizabeth Haysom, did you have the occasion to obtain
10 those same custody records?

11 A I did, sir, yes.

12 Q Did you bring them to Bedford, Virginia at
13 that time?

14 A Yes, sir.

15 Q And, of course, returned them to the
16 Richmond Police Station?

17 A Yes, sir.

18 Q Now, from the time that you had them then,
19 until now, do you see any changes in them or have you seen
20 any alterations that you can detect since the time that
21 they were made?

22 A No, sir.

23 MR. UPDIKE: Your Honor, we would have no
24 further questions on that particular point, but
25 wish to call Detective Sergeant Beever for

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further authentication.

THE COURT: Would you like to voir dire on the point at issue?

MR. NEATON: Yes.

THE COURT: Proceed.

VOIR DIRE

BY MR. NEATON:

Q Mr. Wright, these records are kept as part of your legal duty or as part of the police's legal duty under the PACE Act?

A That is correct, yes, sir.

Q And you're required by law to keep these records?

A Yes, sir.

Q Calling your attention to the entry at 12:25 p.m. on the 7th of June.

A Yes, sir.

Q Did you actually write that entry out?

A Only my signature, sir.

Q It was written out by the review officer?

A It's written out by Sergeant Luke was at that time the custody officer.

Q And you told that sergeant what to write?

1 A I told him what Mr. Soering had requested
2 and he chose the form in which to write it.

3 Q So the statement allegedly made by Mr.
4 Soering at that time was not made in the presence of the
5 custody officer, it was made in another area, you went to
6 the custody desk and told the custody officer about the
7 statement and asked him to write that in the custody
8 record, is that right?

9 A The statement was made as I returned Jens
10 Soering to the custody of the custody officer. He
11 requested of me to speak to Mr. Gardner.

12 Q He didn't request of the custody officer to
13 do that?

14 A Well, he's repeated his request to the
15 custody officer.

16 Q The entries on the 5th of June, the 3:25
17 p.m. entry on the 5th of June, is that in your writing?

18 A No, sir.

19 Q Did you make that entry?

20 A No, sir.

21 Q The 5:28 entry, is that in your writing?

22 A The only time my writing appears on this
23 custody record, as far as I'm aware, sir, is my
24 signatures.

25 Q Okay. Then every entry made in the custody

1 record for the 5th of June, the actual entries I'm talking
2 about, are not in your writing, is that correct?

3 A That's correct, yes, sir.

4 Q The 7:45 entry on the custody record for
5 the 5th of June, did you inform the custody officer of the
6 substance of your conversation with the German Embassy and
7 ask him to enter that in the record?

8 A Yes, sir.

9 Q The 7:50 entry in the custody record you
10 did not make, is that right?

11 A That's correct. I was not there at that
12 time, sir.

13 Q The 7:55 entry you were not there, is that
14 right?

15 A I was not there, sir. I was contacted from
16 upstairs by phone.

17 Q The 7:59 entry, you were not there when
18 that was placed in the custody record, is that correct?
19 You were only there when Mr. Soering signed that?

20 A Well, when he signed them, sir, would have
21 been when the record was made.

22 Q I'm asking you did you see that?

23 A I may have.

24 Q Did you see the custody officer write that
25 entry into the record?

1 A I may have done so.

2 Q But you're not sure?

3 A Correct.

4 Q Did you see the custody officer make the

5 8:02 entry into the record?

6 A I may have, sir.

7 Q But you are not sure?

8 A Correct.

9 Q All entries on the 6th of June made in the

10 custody record, up until 1:39 p.m., did you see the actual

11 entry of those statements into the custody record?

12 A On the 6th of June until what time, sir?

13 Q Up until, let's say, 11:19 a.m.

14 A No, sir.

15 Q And so the 11:19 a.m. entry that you

16 signed, you signed after it was put in the custody record,

17 is that correct?

18 A Well, sir, it would have to be afterwards,

19 otherwise my signature would appear first.

20 Q My question then to you is, how long after

21 11:19 a.m. did you sign the custody record?

22 A It was written in my presence, sir, and

23 then I signed it.

24 Q So the 11:19 a.m. entry you did see

25 entered, is that right?

1 A Yes. It would have been written down in my
2 presence.

3 Q Does that mean that you actually saw it
4 entered?

5 A Yes, sir.

6 Q And on the 7th of June, again, the 12:25
7 p.m. entry, the custody officer wrote what you instructed
8 him to write, is that correct?

9 A Not exactly, sir. I informed him of the
10 request and he chose the form in which to write it down,
11 which I signed.

12 Q The 12: -- Is that 12:39, the next entry?
13 Whatever time the next entry is. It's hard to read on my
14 copy.

15 A Yes, sir. I believe it's 12:30.

16 Q You did not make that entry, correct?

17 A Correct, sir.

18 Q You weren't present when that entry was
19 made?

20 A I may have been, sir.

21 Q But you're not certain?

22 A Correct.

23 Q Did you escort Mr. Soering back to his cell
24 at 12:30 p.m.?

25 A I may, but I can't be exactly sure, sir.

1 During the period of the three or four days, I escorted
2 him back to the cell several times, but not every time.

3 Q In other words, you could have been on your
4 way back to the cell when this entry was made at 12:30,
5 correct?

6 A I might not have even been there, sir.

7 Q Would the same apply for the 1:00 p.m.
8 entry, you may not have even been there when that was
9 made?

10 A No, sir. I was there, because my name
11 appears on the entry.

12 Q But you did not sign the entry, is that
13 right?

14 A That is correct, sir.

15 Q For the rest of the custody record, are any
16 of the entries made in your writing? I mean the actual
17 entries, other than the final one that I believe you
18 testified to about the release of the prisoner on the 9th
19 of June?

20 A No they are not, sir. The final one, that
21 is not in my handwriting either, but I was present.

22 MR. NEATON: Thank you. I have no further
23 voir dire questions.

24 MR. UPDIKE: If I could just ask a little
25 clarification.

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REDIRECT EXAMINATION

BY MR. UPDIKE:

Q The procedures of the Metropolitan Police Department for you as a Detective Constable, if you're escorting a prisoner out of the cell or away from the cell area, and he makes some sort of request, what are the procedures and what are you supposed to do concerning that request, if anything, as to the custody sheet?

A I would inform the custody officer and he would record the request.

Q He would record it. So the procedure is not for you to record it, but rather report it to the custody officer and he would record it?

A It would be possible for me to record the entry myself, but the usual procedure is to inform the custody officer and he records it.

MR. UPDIKE: And he records it. I have no further questions at this time as to this point. We would like to call Detective Sergeant Beaver or Detective Inspector Beaver to basically do the same thing as to the record. If the objection is continuing.

MR. NEATON: It's continuing.

THE COURT: All right. Step down.

1 The witness, DETECTIVE INSPECTOR KENNETH BEEVER,
2 having first been duly sworn, testified as follows:

3

4

DIRECT EXAMINATION

5

6

BY MR. UPDIKE:

7

Q State your name, please.

8

A It's Detective Inspector Kenneth Beever.

9

Q And you're employed by whom?

10

A I'm employed at New Scotland Yard for the

11

Metropolitan Police.

12

Q And how long have you been employed by the

13

Metropolitan Police Department?

14

A Almost twenty-six years.

15

Q Twenty-six years?

16

A Yes.

17

Q And your rank, as you stated, is Detective

18

Inspector?

19

A Yes, sir.

20

Q And in June of '86 when the events of this

21

investigation occurred in Richmond, England you would have

22

been Detective Sergeant at that time?

23

A Yes, I was, sir.

24

Q And you received a promotion, as I

25

understand it?

1 A Yes, I did.

2 Q Detective Inspector Beever, I have some
3 limited questions at this point to ask of you, focusing
4 really on the custody sheet itself. I'd like to show you,
5 first of all, Commonwealth's Exhibit, proffered exhibit,
6 Number Eleven, which is a copy of the original custody
7 sheet also setting there in front of you. Are you
8 familiar with those items?

9 A Yes, I am, sir, yes.

10 Q Again, during the period of June 5 to June
11 9, 1986, you were involved in the investigation there in
12 Richmond, along with Investigator Gardner and Detective
13 Constable Wright?

14 A Yes, I was, sir.

15 Q And as a result of that, would I be correct
16 in stating that you are very well familiar with the events
17 that occurred during the course of the investigation of
18 that period?

19 A Yes, I am, sir, yes.

20 Q And in addition to that, I'd like to ask
21 and direct your attention to June 9, 1986, and ask if you
22 had the occasion to do anything in particular with the
23 custody sheet as far as assisting us in the investigation?

24 A On June 9th, sir?

25 Q June 9th.

1 A Could I make reference to the sheet, sir?

2 Q Please, uh-huh.

3 A No, sir.

4 Q As far as any entries are concerned? And I
5 don't think that I asked the question of you very well.
6 My mind is not working well at this point. But did you
7 have the occasion to read that custody sheet for us on a
8 tape recording?

9 A Yes, I did, sir.

10 Q And am I correct in stating that that was
11 Monday, June 9th?

12 A Yes, it was, sir, yes.

13 Q And at the time that you read the custody
14 sheet on June 9, 1986 on the tape recorder, as a result of
15 your knowledge of the events that occurred during that
16 period of time, was the custody sheet accurate in all
17 respects as to the best of your knowledge and
18 understanding?

19 A Yes, it was, sir, yes.

20 Q And since then, since your arrival back
21 here in Bedford -- I think you got over here Monday, is
22 that correct?

23 A I did, sir, yes.

24 Q Since then, at my request, have you had the
25 occasion to compare your reading on the tape recording of

1 the custody sheet and follow along with the actual,
2 original custody sheet?

3 A Yes. Right from the point of Mr. Soering's
4 arrival at the station, the short stay, the three or four
5 day stay at the police station, and right the way through
6 to his return to court on the Monday morning, which was on
7 the 9th.

8 Q And your findings as far as following along
9 with the custody sheet and listening to your own voice
10 read it from several years earlier, were there any
11 alterations, changes?

12 A None at all, sir, no.

13 Q I hate to do this to you, Inspector Beever,
14 but I need to ask you about certain entries just to see
15 whether you have personal knowledge of these.

16 A Yes, sir.

17 Q And if you'd please understand, as I go
18 down them I might miss some or ask you about certain ones
19 that you had nothing to do with. But on the day of
20 June 5 --

21 A Yes, sir.

22 Q -- I'm interested in asking you -- Perhaps
23 if you could just help me. If you'd look down that sheet
24 and notice any entries as to which you would have personal
25 knowledge. I notice your signature at times, but in

1 addition as to those and any others that you may have
2 actually observed the events which led to the entries
3 being entered.

4 A Yes, sir. The entry at 3:25 that
5 afternoon.

6 Q Okay. And that entry is what, please?

7 A The entry reads. "Taken to DCI office,"
8 that means Detective Chief Inspector, "for investigation.
9 Reminded of Code of Conduct," and it's got dash D/S
10 Beever, which means that I was reminded of the Code of
11 Conduct, and then I've signed the entry, sir.

12 Q That's your signature?

13 A Accepting -- Basically, I'm accepting the
14 prison from the custody of the custody officer. He's now
15 my responsibility.

16 MR. NEATON: Judge, at this point, since
17 the record itself is yet to be accepted into
18 evidence, the substance, to have the witness go
19 over the substance of the entries, I don't think
20 is relevant to laying the foundation of whether
21 the entry is reliable or not. He's offering it
22 as a business record, as a Business Record
23 Exception or a Shop Book Rule exception, and
24 I would object to further testimony about what
25 the substance of the entries are until the

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document itself is either admitted or excluded.

MR. UPDIKE: Your Honor, isn't the whole purpose of this to establish the accuracy of the record? And how can we establish the accuracy of the record without discussing the substance of the record? And through the other procedures that we have followed, these are additional circumstances in which we are asking the officers about events to which they have personal knowledge. And if they can say they are accurate, with everything else it's just another circumstance to show accuracy.

THE COURT: The objection is overruled.

BY MR. UPDIKE:

Q And that entry then is accurate as you observed it and participated in it?

A Yes, sir.

Q Before I move on, quickly, there is a reference of "reminded of the Codes of Conduct." Could we stop at this point and you just tell us what that means and what that involves, please?

A It's just a general rule to a police officer. Once I've accepted a prisoner, Mr. Soering being the prisoner, as my responsibility, I'm reminded by the

1 station officer that all the provisions of the Police and
2 Criminal Evidence Act of 1984 apply to me whilst I've got
3 that prisoner in my custody. So any requests that the
4 prisoner makes. I have to accede to. Such things as if he
5 asks for note paper or if he asks to contact anybody, I've
6 got to stop my investigation and allow him those
7 facilities, sir.

8 Q Now, my looking through here, this
9 reference that you are just describing, I've seen that
10 frequently. Could you describe when that is made as an
11 entry in the custody sheets, please?

12 A Yes, sir. I don't leave the charge room
13 complex until that entry is made and I sign for the
14 acceptance of the prisoner and sign for the acceptance of
15 acknowledging the Codes of Practice.

16 Q And when you say that, is that in
17 accordance with the regular established procedures of the
18 Metropolitan Police Department?

19 A Yes, sir.

20 Q And thank you for that, sir. If I could
21 ask your assistance again. Starting with that 3:25 entry,
22 if you wouldn't mind just coming down the page, reading to
23 yourself, and if you could see any further entries as to
24 which you were personally involved.

25 A Yes, sir. In fact, I was -- Although my

1 name doesn't appear, and there is no need for it to
2 appear, I was involved in the 5:28 entry, sir.

3 Q And that entry is what, please?

4 A Yes, that reads, "5:28 - Returned to charge
5 room. No untoward incident took place whilst at the
6 interview. Spoke to Keith Barker at 4:30 p.m.,
7 solicitor."

8 Q And you were involved in that, you say?

9 A Yes, I was. I was involved in that entry
10 being made and it was me that caused the entry because
11 nobody else would have known about the entry regarding Mr.
12 Barker at 4:30. I brought that to the notice of the
13 custody officer to act as an aid memoir to me on this day
14 today.

15 Q Okay, sir. And that is accurate and
16 entered, again, in accordance with the procedures of the
17 police department?

18 A Yes, sir.

19 Q And if you wouldn't mind continuing, as you
20 come down, do you see any further entries?

21 A Yes. Very shortly after that, sir, at 6:00
22 p.m., the entry reads, "Taken for interview by D/S Beever.
23 Officer reminded Rules of Conduct." It's abbreviated in
24 that case, sir, R of C, and I've signed for the prisoner.
25 Mr. Soering. again, sir, Kenneth Beever, D/S meaning

1 Detective Sergeant.

2 At 6:45 p.m., sir, the next entry,
3 "Returned to cell," and I reported no untoward incident.
4 Of course, that entry to be made, again, with the station
5 officer.

6 Going on, sir --

7 Q Please.

8 A My next true involvement, although my name
9 appears before, is at 7:59. And I've been contacted, I've
10 attended the charge room, and the entry reads, "I now wish
11 to speak to D/S Beever, D/C Wright," and it's hard to
12 decipher, but it does say, "D/C Gardner without my
13 solicitor being present." Although Mr. Gardner's name
14 appears there, he wasn't in the charge room, sir. I
15 caused that entry to be made. Most certainly, I believe
16 Mr. Wright was there. He was there. Mr. Wright was there
17 and Mr. Gardner wasn't there. We caused that entry to be
18 made and, in fact, that entry is signed by Mr. Soering.
19 That first signature appears J. Soering.

20 Q Was that signature placed there by the
21 defendant in your presence?

22 A Yes, it was, sir.

23 Q And please continue, if you would. Any
24 further entries on that page?

25 A Yes. Once I've caused that entry to be

1 made at 7:59, the next entry reads, "8:02 - Taken to DCI
2 office by D/S Beever. Reminded Codes of Practice." which
3 means exactly the same thing, practice, conduct, sir.

4 Q Uh-huh.

5 A And it's signed by me, Kenneth Beever, D/S,
6 and counter-signed by the station officer in my presence.

7 Q And if you wouldn't mind just continuing.

8 A Yes.

9 Q I appreciate this.

10 A Yes. Although my name doesn't appear, sir,
11 I returned him, alone, to the -- At 11:14 p.m., sir,
12 "Returned to cell, no incidents." I was present when that
13 entry was made. There is no need for my name to appear on
14 the return, sir, because I'm not being reminded about
15 anything.

16 Q I see. But you were the one who returned
17 him at that time?

18 A I was, sir, yes.

19 Q Okay.

20 A Then going on the following day, sir.

21 Q Before we do this, if I could ask you
22 something up to this point, and it really applies to the
23 entire custody sheet, but if Jens Soering had asked at
24 that point for counsel --

25 A Yes, sir.

1 Q -- for a solicitor, what would your
2 responsibility have been as far as the request is
3 concerned and, specifically, as far as the custody sheet
4 would be concerned?

5 A It would have been my responsibility to
6 arrange for a counsel, solicitor, for him and in doing so
7 I most certainly would have caused an entry to be made by
8 the custody officer on this record. Because basically
9 you've seen reported so far "no incidents."

10 Q What does that mean, please, or in what
11 context?

12 A It means there has been -- I think we
13 should really use the word, although this reads "no
14 incidents," it's no unusual incidents. I mean, if I may
15 go back to the beginning of the sheet, sir, I did mention
16 to you we made contact with Mr. Barker at 4:30. That's an
17 incident that occurred.

18 THE COURT: May I stop just a moment? It's
19 becoming difficult for me to see where we draw
20 the line here as between evidence produced on
21 the question of admissibility of this exhibit
22 and the question of the substantive value of the
23 information therein. It seems to me we may be
24 stepping over the line. It is not my intent
25 that he simply be allowed to give all the

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contents of this now. I have not made a ruling yet on whether I am going to sustain or overrule Mr. Neaton's objection to this exhibit --

MR. UPDIKE: Okay, sir.

THE COURT: -- on the Shop Book Rule exception.

BY MR. UPDIKE:

Q If I might then proceed in the fashion of just asking Detective Inspector Beever, if you would start at 11:14 p.m. on June 5 --

A Yes, sir.

Q -- and just ask you, reading to yourself, to go down the list and find those entries that you were personally involved in and indicate to us which entries they were, and whether you were involved in them and if they are accurate, and I won't ask you to read the substance of them.

A The next entry that I was personally involved in reads 11:19, sir.

Q And according to your personal involvement, is that entry accurate?

A Yes, it is, sir.

Q And just continuing?

A The next entry reads on the 6th of the 6th,

1 I was personally involved in entry timed at 1:39, sir.

2 Q And were you involved in causing that to be
3 entered as an entry in the custody record?

4 A Yes, I was, sir.

5 Q And continuing from that point of 1:39?

6 A Yes, sir. I was next involved in an entry
7 on the 7th of June, sir, 1986 at 10:50 p.m.

8 Q And is that entry accurate as to your
9 personal involvement?

10 A Yes, sir.

11 Q And please continue.

12 A My next involvement was an entry the same
13 day at 1:00, sir, 1:00 p.m.

14 Q And would that be accurate?

15 A Yes, it would, sir.

16 Q And you're just looking at --

17 A I'm looking at another entry and quite
18 honestly, sir, I can't, my name doesn't appear and I can't
19 remember whether I was involved in that particular entry,
20 sir. I was just thinking about that. I wasn't mentioned
21 in that, no, sir.

22 Q Okay.

23 A The next entry that personally involves me
24 is at 4:30 p.m. on the 8th of June, sir. And the next
25 entry that personally involves me is at 4:45 the same day,

1 sir.

2 Q And if I could ask, do both of those
3 entries bear your personal signature?

4 A They do, sir.

5 Q And both would be accurate as to your
6 involvement?

7 A Yes, sir.

8 Q And please continue from that point.

9 A From my personal recollections, I can't
10 think of any others, sir.

11 MR. UPDIKE: Thank you very much.

12 Go ahead. I'm sorry. That'll be fine. I have
13 no further questions on that particular point.

14 THE COURT: You may voir dire.

15 MR. NEATON: All right, sir. Thank you.

16

17

VOIR DIRE

18

19 BY MR. NEATON:

20 Q Mr. Beever?

21 A Yes, sir.

22 Q You're required by the Police and Criminal
23 Evidence Act of 1984 to keep the custody record to which
24 you've referred?

25 A I was obliged to, but a custody sergeant

1 is, sir, it's his responsibility, sir.

2 Q So the police are required, the Richmond
3 Police Station was required to keep that record by law, is
4 that right?

5 A Yes, sir.

6 Q It wasn't just a particular procedure that
7 that Richmond station followed for its own reasons?

8 A No, sir. This is a universal procedure.
9 When I say "universal," perhaps that's a little bit too
10 grand, sir. It's amongst the whole Metropolitan Police,
11 sir.

12 Q And the Police and Criminal Evidence Act,
13 in fact, applies throughout the United Kingdom, correct?

14 A Yes, it does, sir, yes. I'm sorry, sir.
15 No, excluding Scotland, sir.

16 Q Excluding Scotland?

17 A Yes.

18 Q And that is the law that requires the
19 London Metropolitan Police to keep this custody record?

20 A Not so much the record, sir, but most
21 certainly the codes of conduct attached to the record,
22 sir.

23 Q Well, the Police and Criminal Evidence Act
24 requires you to make certain entries as certain things
25 occur, does it not?

1 A Yes, it does, sir.

2 Q You said that you caused the 7:59 p.m.
3 entry on the 5th of June to be made. Is that right?

4 A Yes, I did, sir.

5 Q But you yourself did not make the entry?

6 A No, no. The entries are responsibility of
7 the custody officer, but I can --

8 Q You can tell him what to write down?

9 A I can tell him, "Would you please write
10 that down," so that entry's been made at my instigation,
11 sir, in company with Detective Constable Wright.

12 Q So you instigated that entry at 7:59?

13 A Yes, I did, sir.

14 Q You instigated the entry at 11:19 a.m. on
15 the 6th of June?

16 A Sorry, sir. Just a moment.

17 Q Sure, take your time.

18 A Thank you. My exact recollection, sir, I
19 can't remember instigating that myself. Most certainly I
20 was present there. It could have been my instruction or
21 Detective Constable Wright's instruction, so casting my
22 mind back all that time, I don't know whether it was mine
23 or Mr. Wright's, sir.

24 Q In any event, Mr. Beever, you yourself did
25 not write out that entry?

1 A No, I did not, sir.

2 Q You instigated the 1:39 p.m. entry on June
3 6th?

4 A Yes, sir, I did.

5 Q And again, you yourself did not write that
6 out?

7 A No, I did not, sir.

8 Q You told the custody officer what to write?

9 A I most probably -- No, sir. In fact, on
10 that occasion, if I may explain to you, sir, the man in
11 overall control of the relief that's on duty that day is
12 an Inspector. And in order for me to do what I was going
13 to do that day, I chose to take an Inspector with me on
14 that occasion and the Inspector made that entry, sir.

15 Q Is that the Inspector's handwriting? Is
16 that what you're saying?

17 A Yes, it is, sir.

18 Q On the 7th of June of '86, you mentioned an
19 entry at 10:50 p.m., did you say, or was that a.m.?

20 A Let me just check, sir. Yes, sir. I,
21 again, instigated the entry. It's not my writing, it is
22 my signature, sir.

23 Q Is that an entry at 10:50 p.m or at some
24 other time? I was a little --

25 A Yes, I see what you mean, sir. It's most

1 certainly a.m., and if you look at the writing, you could
2 decipher that as p.m.

3 Q Are you saying that the entry could
4 possibly be for something that occurred at 10:50 p.m.?

5 A I'm not, sir, because I'm looking at the
6 other entries each side of it, and I know if it does read
7 p.m., it's a genuine mistake by the station officer. It
8 could be one of the two really, looking at it, sir.

9 Q So it could be inaccurate is what you're
10 saying?

11 A No, I'm not, sir. I'm saying --

12 Q The time could be inaccurate?

13 A Most certain --

14 Q Could be read as being inaccurate?

15 A No, sir. You could read it as being
16 inaccurate, of course you could, but I'm saying, sir, that
17 the entry prior to that is at 10:25 a.m. and if you look
18 at the writing after it, that could also, that should read
19 p.m., in fact, because that's after 12:00 at midday.

20 Q You mentioned a 1:00 p.m. entry on the 7th
21 of June of '86. Can you look at that?

22 A Yes, sir.

23 Q You instigated that to be written in the
24 custody record?

25 A From recollection, sir, I couldn't answer

1 your question, but most certainly my answer there applies
2 as my answers before, either myself or Detective Constable
3 Wright would have --

4 Q Instigated the entry?

5 A -- instigated the entry, sir.

6 Q And it's not in your writing?

7 A Most certainly not, sir, no.

8 Q Now, calling your attention to the two
9 entries on the 8th of June, the entry at 4:30 p.m on the
10 8th of June?

11 A Yes, sir.

12 Q That is not in your writing?

13 A No, sir.

14 Q You instigated that entry into the record?

15 A I don't think I did, sir, no.

16 Q Then Detective Constable Wright instigated
17 entry of that?

18 A No, sir, I don't think he did either on
19 that occasion.

20 Q It was an un-instigated entry, is that
21 right?

22 A Yes. In fact, to an extent, I can say that
23 entry was instigated by Mr. Soering and caused the custody
24 officer to write that in, sir.

25 Q Well, for purposes of this particular voir

1 dire, you did not write it?

2 A No, I did not, sir.

3 Q Mr. Soering didn't write it?

4 A No, he did not, sir.

5 Q And Detective Constable Wright didn't write
6 it?

7 A No, he did not, sir.

8 Q The 4:45 p.m. entry --

9 A Yes, sir.

10 Q -- did you instigate its entry into the
11 record?

12 A Yes, sir.

13 Q You did not write it?

14 A No, I did not, sir.

15 Q In other words, again you told whoever
16 wrote that entry what to write?

17 A Yes, sir, and I also acknowledged that by
18 signing it, sir, yes.

19 MR. NEATON: Thank you. That's all.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Anything further on this point?

22 MR. UPDIKE: No, sir, Your Honor.

23 THE COURT: All right. I'm ready to rule on the
24 matter if that's all you're going to say.

25 MR. NEATON: I have additional argument. I'd

1 ask that the witness be excused.

2 THE COURT: Certainly.

3 MR. NEATON: Judge, the Commonwealth has offered
4 the custody record under the Shop Book Rule Exception to
5 the Hearsay Rule, or another way of saying the business
6 record exception to the Hearsay Rule. It's my contention
7 that it doesn't qualify as a business record or a shop
8 book. What we have is what really is an official written
9 statement made under a legal requirement and, therefore,
10 subject to a different standard of proof or different
11 standard of foundation in order for it to be entered.

12 And I refer you to page 643 in Friend, as I
13 am quickly becoming familiar with this book, and on that
14 page in Section 248 it indicates that an official written
15 statement, or that records and reports prepared by public
16 officials pursuant to the duty imposed by statute are
17 admissible under certain circumstances. And what I'm
18 objecting to is that there is a requirement under the
19 official written statement exception that the person who
20 is making the entry on the official document must have
21 personal knowledge of the facts that he is writing onto
22 the document. And this is a stricter requirement than the
23 business record or shop book rule exception.

24 And whether the Commonwealth offers this
25 evidence as a business record or a shop book doesn't mean

1 that it is a business record. What I am saying is, where
2 you have a record that must be kept pursuant to a legal
3 duty under the Police and Criminal Evidence Act in
4 England, then the requirement of personal knowledge
5 applies and, therefore, the custody record must be
6 excluded.

7 THE COURT: All right, Mr. Updike? Any further
8 statements?

9 MR. UPDIKE: Your Honor, we'd like just a moment
10 to review since he is referring to a different section
11 than we were describing.

12 THE COURT: He's referring to Section 248 in
13 Friend.

14 MR. UPDIKE: Yes, sir. Your Honor,
15 respectfully, I don't mean to take any more of the Court's
16 time on this, but this particular provision does not
17 pertain to this type of document. This talks about birth
18 certificates and vital records and death certificates and
19 things of that nature, and that's not what we're dealing
20 with at all here.

21 Even at that, Your Honor, we have
22 established, even if you were going to argue this, you're
23 going to say that the police officers or public officials
24 find that they had been acting within their line of duty,
25 they have done that. We have established through the

1 testimony here that the authenticity of the information
2 stated thereof, and on the document sheet itself, as to
3 the custody officers making rounds and personally
4 observing and personally making requests of the prisoner.

5 As to any further documentation concerning
6 Detective Sergeant Beever or Detective Constable Wright
7 removing Jens Soering from the cell, they are here and
8 were personally involved in that procedure and signed the
9 document to that effect. And if the Court wishes to look
10 at the document, that is what it consists of, the custody
11 officer going around and personally observing and asking
12 Jens Soering, when he's in the cell, whether awake or
13 asleep, that officer would have personal knowledge of what
14 he entered there. And as to any removal from the cell or
15 taking him from the cell, and the time of it, you would
16 certainly think that the custody officer standing there,
17 having the responsibility of Jens Soering, should and, I
18 expect, would have knowledge of him leaving the cell area
19 and going to the interview room.

20 So we're just saying, first of all, Your
21 Honor, that we have established the admissibility of this
22 document by much more weight of the evidence than required
23 to under either exception of the Hearsay Rule.

24 THE COURT: All right. Well, first, this
25 official written statement section, Mr. Neaton, does not

1 apply, categorically does not apply. Now, what is the
2 section that applies to the Shop Book Exception under the
3 Hearsay Rule?

4 MR. UPDIKE: It begins on page 601, Your Honor.

5 THE COURT: All right, let's look at that,
6 because that's what we're talking about, as I understand
7 it. Is that page 601?

8 MR. UPDIKE: Yes, sir, Your Honor.

9 THE COURT: All right. Let me look at that.
10 I'll tell you what. Let's take a break and let me take
11 this back and study it during the break rather than study
12 it here, and I'll try to rule when I come back. About ten
13 minutes.

14
15 (A short recess was taken, after which the following
16 ensued in the presence of the defendant and counsel.)

17
18 THE COURT: All right. I talked with the
19 attorneys about where we go from here. We have gotten
20 bogged down as far as time on evidentiary matters, but
21 those are important matters, too, and they sometimes take
22 some time. We have decided that we will go until 6:00
23 this evening. We will stop at 6:00 and we will come back
24 tomorrow morning at 10:00, Saturday. We will try to
25 finish everything tomorrow. That's the present plan,

1 which both sides have agreed to.

2 Gentlemen, do you have anything further to
3 say about this evidentiary point before the Court rules.

4 MR. NEATON: Yes, Judge, I do. Looking at some
5 of the cases cited in Friend on the issue of business
6 records versus official records, you indicated your belief
7 that and dismissed the idea that the custody record kept
8 pursuant to the law of the United Kingdom is not an
9 official record. I've looked at the cases cited in Friend
10 and first, I can say that I cannot find a case cited in
11 Friend that says that a police-type record kept by a
12 police agency qualifies as a business record or a shop
13 book exception to the Hearsay Rule.

14 Friend cites to the case of Boone versus
15 Commonwealth at 213 Va. 695 and in that case what
16 everybody was arguing over was not police records, but
17 medical records. Boone cites to and Boone imposes a
18 requirement even in a Shop Book Exception of the maker of
19 the record must have personal knowledge of the facts
20 entered into the record.

21 Now in the same volume, while Boone in
22 citing that authority cites to Williams versus
23 Commonwealth, which is in the same volume at page 45 for
24 the requirement of personal knowledge, but Williams versus
25 Commonwealth is actually an official records

1 exception case. And the facts in Williams were that the
2 Commonwealth was attempting to prove the age of the
3 defendant by a police report and that police report was
4 deemed to be an official record as opposed to any other
5 exception to the Hearsay Rule.

6 Now I've looked at the cases of Simpson
7 versus Commonwealth. 227 Va. 557, and this was a case
8 again cited under the business records exception and it
9 was a case in which records of a taxi cab were offered in
10 a prosecution, which are clearly business records as
11 opposed to police records.

12 And in the case of Ashley versus
13 Commonwealth, business records or shopkeeper records kept
14 in the regular course of business about an inventory were
15 offered in the criminal prosecution. So what I'm saying
16 is that in researching the cases that Friend cites under
17 the shopkeeper's exception, or shop book exception, I find
18 that what's being admitted as business records in criminal
19 prosecutions are, in fact, business records or medical
20 records. And in the only criminal prosecution that I can
21 find in my research in which a police-type record is
22 offered and litigated, it's litigated under whether it's
23 an official record.

24 And Mr. Updike in his argument as to
25 whether the custody record kept pursuant to law in England

1 is an official record versus a business record said,
2 "Well, official records have to do with death certificates
3 and vital records and reports of medical examiners and
4 things like that." Well, that is true, because I don't
5 think the Commonwealth of Virginia, in devising a rule as
6 to what is an official record, really took into account
7 the Police and Criminal Evidence Act in England as a
8 common law in this Commonwealth developed.

9 But as I read what the general rule that
10 defines what an official record is, Friend says that there
11 are two requirements on what constitutes an official
12 record. And the first requirement is that the statement
13 be made by a public official, a police officer, the
14 custody officer in this case, and two, that the statement
15 be made in the line of duty. That is, the custody
16 officer's duty to take care of the prisoner or Mr. Beever
17 and Mr. Wright's duties, if any, as investigators.

18 And so, while I'm saying that the history
19 of the cases in the Commonwealth probably didn't take into
20 account that we'd ever get a case like this to decide the
21 admission of certain records, I simply point to the
22 Court's attention to the precedent that seems to indicate
23 that business records are business records and police
24 records are official records, and I guess that's the point
25 I was trying to make earlier.

1 And I have not heard cited to me a case
2 that says a police record like the one offered by the
3 Commonwealth is a business record. And I think the
4 distinction you have to look at is the fact that in
5 England they have a legal duty to keep these records, as
6 opposed to a business in Virginia that may not have a
7 legal duty to keep an inventory, and that's the point I
8 want to make.

9 And I'd ask the Court to reconsider its
10 earlier ruling that just summarily dismissed my argument
11 that what we have is an official record here. I see no
12 case authority for that claim and the only case authority
13 I see seems to point that a police record is an official
14 record, Your Honor.

15 THE COURT: Well, I think you've made a
16 persuasive argument for your position. It seemed to me in
17 reading the section from Friend that we were more properly
18 under the business records exception than an official
19 record, which I think of as being birth certificates and
20 matters of that kind. But you have addressed the issue
21 very well. Let's see what you say.

22 MR. UPDIKE: Your Honor, could I just respond
23 quickly? Mr. Neaton did cite and discuss nearly all the
24 cases in the annotations to that section of Friend. He
25 did, however, miss one and I don't criticize him for that.

1 He didn't have his own library here, of course, as I have
2 a little bit of one anyway. But the one that he missed is
3 Frye versus Commonwealth 231 VA. 370, 1986 case. That's
4 the case involving an individual who was convicted of
5 shooting a trooper some years ago, Trooper Biggs, I think
6 it was. But at any rate, yes, James Leroy Biggs.

7 And in that case this issue came up
8 concerning DMV reports and NCIC reports which, of course,
9 we're all familiar with as being criminal records of
10 individuals, and those records are compiled, basically,
11 from police investigations, police submitting authorities,
12 clerks submitting information, clerks submitting
13 information, DMV reports are based upon a police officer
14 submitting such information, Courts submitting
15 information. And in that case it was ruled that both DMV
16 reports and NCIC reports come within the shop book or shop
17 exception to the Hearsay Rule. And the Boone versus
18 Commonwealth case cited by counsel is cited in this case
19 as to the personal knowledge and so forth.

20 However, the Court goes on to state that,
21 "In certain cases where verification of reported facts is
22 not possible through the personal knowledge of the record
23 keeper, practical necessity nevertheless requires
24 admission of reported evidence which has a circumstantial
25 guarantee of trustworthiness. The guarantee is provided

1 where evidence shows the regularity of the preparation of
2 the records and reliance on them by their preparers or
3 those for whom they are prepared." That is at page 387 of
4 the decision.

5 And here, Your Honor, we have the
6 circumstantial evidence, not only from the officers who
7 have testified of their personal involvement in the
8 investigation, their personal signatures on certain
9 entries, but we also have at this point in the case
10 further authentication provided by the defendant himself
11 as to the signatures which he placed on the records. We
12 have further circumstantial authentication through the
13 Miranda forms, which are now in evidence themselves, which
14 we can compare the times on those with the records and so
15 forth.

16 Basically, on all of that, Your Honor, we
17 have established circumstantial authentication of the
18 trustworthiness of these documents and reliance upon them,
19 both by those who prepared them and those for whom they
20 are prepared. So we would ask that the records be
21 admitted and we see no difference between these kinds of
22 police records and the ones we have here in this country,
23 DMV reports and NCIC reports.

24 THE COURT: Well, it's a good question. What
25 was the section that you cited me to originally, Mr.

1 Neaton, on official records? In Friend, what did --

2 MR. NEATON: That was 248, Judge.

3 THE COURT: 248?

4 MR. NEATON: Yes.

5 THE COURT: Let me take another look at that.

6 Mr. Neaton, your main point is that under the official
7 written statement exception to the Hearsay Rule, assuming
8 that these custody reports fall within that category, that
9 in some instances in these reports there has been a
10 failure to show that the person who actually recorded the
11 event had firsthand personal knowledge of the event. That
12 is your point, is it not?

13 MR. NEATON: Yes, sir.

14 THE COURT: Specifically?

15 MR. NEATON: Yes, Judge.

16 THE COURT: Well, let's speak to that specific
17 point, Mr. Updike, because obviously I'm having some
18 trouble with this ruling. It's a very difficult ruling.

19 MR. UPDIKE: Yes, sir.

20 THE COURT: To what extent is there a failure in
21 these records on the point of the person who made the
22 entry not having firsthand knowledge of what was put in
23 the record? I'm interested only in that point.

24 MR. UPDIKE: Yes, sir. I'm looking down the
25 report itself, the custody sheet itself, beginning at June

1 5th, the 1:45 entry that would have been done by the
2 custody officer. And I won't go through each and every
3 entry, but as we come down from 1:45 to 3:25, at that
4 point the defendant is taken to the DCI's office and the
5 custody officer would certainly know when a prisoner is
6 leaving his custody.

7 THE COURT: Mr. Updike, it's not necessary to go
8 through all these.

9 MR. UPDIKE: Yes, Your Honor, but my point is,
10 such as those entries, when he's down there, all of the
11 entries pertain to, as described by the officers,
12 observations either by the custody officer or his
13 Detective Inspector, I think it was, and their personal
14 observations of that. Everything occurring in that jail
15 cell that they observe, they enter themselves. I don't
16 know of anything else, any other entries here, Your Honor

17 --

18 THE COURT: All right.

19 MR. UPDIKE: -- such as the one that Kenneth
20 Beever caused to be entered.

21 THE COURT: Well, thank you. I'm ready to --

22 MR. UPDIKE: Okay, sir.

23 THE COURT: I'm ready to rule. I found Mr.
24 Neaton's argument to be very persuasive and I'm not now
25 sure. To be perfectly candid with you, I'm not now sure

1 whether this exception comes under the official written
2 statement, exception to the Hearsay Rule under Section 248
3 of Friends or whether it comes under the business records
4 exception. I'm not clear on that. And there are some
5 differences.

6 But for purposes of my ruling, I'm going to
7 adopt the defendant's position that perhaps this would
8 qualify as an official written statement and that,
9 therefore, the rules pertaining to those statements and
10 the admissibility thereof apply. I rule that so much of
11 the custody statements as pertains to matters which the
12 person who entered the information cannot verify is
13 sustained, that the objection is sustained to so much of
14 that. As to other information in the custody reports from
15 which it is clear that the person who made the entry had
16 firsthand knowledge of the event, I overrule.

17 Now that means that I have sustained the
18 objection as to certain entries in the record and
19 overruled it as to others. And that's not unusual. As a
20 matter of fact, some of these cases that we read
21 pertaining to admissibility of death certificates have
22 gone the same way. The Courts have ruled that if part of
23 the death certificate is admissible to show fact of death,
24 but that the opinion of the doctor as to why the person
25 died is not admissible, and they have cut that part out of

1 it. It is along that line that I rule.

2 I'm sorry that this is a somewhat confusing
3 ruling, but it seems to me that from my point of view it's
4 probably the best I can do. For purposes of the record,
5 I'm going to allow Mr. Updike to enter these custody
6 reports by identification only. I will reserve rulings as
7 to the admissibility of these custody reports at the trial
8 for substantive evidentiary reasons. And I sustain the
9 defense's objection as to so much of said reports as fails
10 to meet the firsthand knowledge requirement of the
11 entrant.

12 All right. That's my ruling.

13 MR. NEATON: I'm just wondering if we have
14 agreement as to what is in and what is out.

15 THE COURT: I think that may be the problem of
16 the attorneys, but it seems to me that's the way it's got
17 to be here. Some of it is admissible. Some of it is not,
18 perhaps. You have to decide what is and what is not, and
19 you're guided by whether or not it appears that the person
20 who made the entry in the record had firsthand knowledge
21 of that which he put in or whether it was obviously
22 something that he learned from somebody else.

23 All right. Let's go ahead and I'm going to
24 allow you to mark this exhibit for purposes of
25 identification only.

1 MR. UPDIKE: Yes, sir. I think that it has been
2 done. and that is Number Eleven.

3 MR. NEATON: Sure. I have no problem with that.

4 THE COURT: Let it go in. And, Mr. Neaton, for
5 purposes of Virginia procedure. under Virginia law it's no
6 longer necessary for purposes of an appeal to except to
7 the ruling of the Court. So long as you state your
8 objection clearly and the grounds for the objection your
9 objection is protected on appeal.

10 MR. NEATON: Thank you, Judge.

11 THE COURT: All right. Let's move along as best
12 we can. Who do you want now, Officer Wright?

13 MR. UPDIKE: Please, Your Honor.

14 THE COURT: All right. Let's have him back.
15 All right, sir. Have a seat.

16
17 The witness, DETECTIVE CONSTABLE TERRY WRIGHT,
18 having previously been sworn, and being recalled,
19 testifies as follows:

20

21 DIRECT EXAMINATION

22

23 BY MR. UPDIKE:

24 Q Detective Constable Wright, you understand.
25 of course, you're still under oath, is that correct, sir?

1 A Yes, sir.

2 Q If you wouldn't mind for me, the original
3 custody sheets are still there before you, I believe,
4 aren't they?

5 A Yes, sir.

6 Q If you would reorganize those for us and
7 return them to the file that you have for safekeeping, you
8 can retain custody of them.

9 A (Witness gathers original custody sheets
10 and puts them in his file.)

11 Q Sir, if I could, first of all, show you
12 Commonwealth's Exhibit Number Seven and ask you if you
13 could identify that, please, and if so, tell us what it
14 is.

15 A Yes, sir. It's a Metropolitan Police
16 document, which we refer to as a Notice to Detain Persons,
17 Form Number 3053. And it's a form which is served upon
18 every prisoner that's brought into the police station and
19 this form is read by the custody officer to that prisoner
20 when the custody record is opened. He then hands this to
21 the prisoner for his retention and the prisoner signs on
22 the custody record saying he received this.

23 Q And the portion of it which the officer
24 reads to the individual at that point, would you read that
25 for the record, please?

1 A Yes, sir. It states, "Notice to Detain
2 Persons. This side is to be read to the detained person
3 by the custody officer before giving the Notice to the
4 detained person." It states, "You have the right (1) to
5 have someone informed of your arrest; (2) consult a
6 solicitor; and (3) consult a copy of the Codes of
7 Practice." It further states that, "You may do any of
8 these things now, but if you do not, you may still do so
9 later." An explanation of these rights and other rights
10 is set out on overleaf.

11 Q And that means, as I understand it on the
12 back, the notice itself, is that correct?

13 A Yes, sir.

14 Q I'm showing you, first of all,
15 Commonwealth's Exhibit Number Nine, which is just the
16 cover sheet to the custody records. I'd like to show you
17 that and ask you to identify it, please.

18 A Yes, sir. This is a copy of custody record
19 1106, which refers to Jens Soering and it's dated the 5th
20 of June, 1986.

21 Q On that custody sheet are there any
22 references to the form which we have here, Commonwealth's
23 Exhibit Number Seven, Notice to Detain Persons, which you
24 just read?

25 A Yes, sir. It would not be that particular

1 form, but it would be a form identical and there's a
2 reference on the left-hand side that says, "The notice
3 setting out my right has been read to me and I have been
4 provided with a copy." And there is a space for the
5 signature of the person detained and it is signed by Jens
6 Soering at 12:50 p.m. on the 5th of June, 1986.

7 Q Now can I ask you, first of all, were you
8 present when that was done?

9 A Yes, sir.

10 Q And the form, I believe, shows you as the
11 officer, is that correct?

12 A Ah --

13 Q Excuse me. My question really is, were you
14 present when it was signed?

15 A Yes, sir, I was present.

16 Q And the defendant seated over here is the
17 individual who signed that?

18 A That is correct, yes.

19 Q And to specify, he signed this form
20 acknowledging that these rights on Commonwealth's Exhibit
21 Number Seven had been read to him and that he'd received a
22 copy of this form?

23 A Yes, sir. He signed in two places, but one
24 signature refers to that form there.

25 Q Tell us about the second place where there

1 is this signature, please.

2 A Yes, sir. Below the space provided for the
3 signature related to that form, printed on the front of
4 the custody record are the words, "I want a solicitor as
5 soon as practicable," or "I do not want a solicitor as
6 soon as practicable at this time," sir. and there's space
7 for the signature of the person detained.

8 Q What was done during this process as to
9 those two options?

10 A Yes, sir. If I may explain.

11 Q Yes.

12 A When the custody record is opened, the
13 custody officer will ask the person if he wants a
14 solicitor to attend at that time or if he wants to speak
15 to one. Depending on his answer, he will delete one of
16 those two lines. On this particular record, "I want a
17 solicitor as soon as practicable" has been deleted, and
18 which leaves, "I do not want a solicitor at this time,"
19 and that is signed by Jens Soering, again at 12:50.

20 Q You were present at the remand hearing on
21 that date of June 5, 1986, is that correct, at the
22 Richmond Magistrate's Court?

23 A Yes, sir, I was.

24 Q And were you the officer who transported
25 Jens Soering from the Magistrate's Court to the Richmond

1 Police Station?

2 A Yes, sir.

3 Q And that document that you have in your
4 hand, that indicates the time of arrival and the
5 advisement procedures that you described, and that
6 occurred in your presence?

7 A Yes, sir. We arrived back at Richmond
8 Police Station at 12:15. We stayed outside for a short
9 while, because one other person was being booked into the
10 station at that time. And we then entered and this form
11 was filled out. It was signed by Jens Soering at 12:50.

12 Q During that procedure, from the time that
13 Jens Soering was in your custody at the Richmond Police
14 Station until the time that you left him in the custody of
15 the station officer, would it be?

16 A Yes, sir.

17 Q Did you ever hear Jens Soering request
18 counsel, a solicitor or an attorney or a barrister, any
19 form of legal counsel?

20 A No, sir.

21 Q Did you ever refuse him legal counsel?

22 A No, sir.

23 Q During that particular period of time, did
24 you ever threaten Jens Soering in any fashion?

25 A Definitely not, sir.

1 Q Did you ever, in Jens Soering's presence,
2 threaten Elizabeth Haysom?

3 A I've never threatened any prisoner, sir.

4 Q I'd like to go through some of the
5 interviews, if I might. Starting with June 5, 1986, which
6 we've been discussing as the first interview, and I'm
7 showing you Commonwealth's Exhibit -- this is a defense
8 exhibit -- Number One, which is dated June 5, 1986,
9 3:35 p.m. Were you present at the time that that
10 advisement was made to the defendant, Jens Soering, by
11 Investigator Gardner?

12 A Yes, sir.

13 Q Was it an oral advisement at that time?

14 A Yes, sir.

15 Q Would you relate what you recall concerning
16 the circumstances of the defendant being brought to the
17 DCI's office and the circumstances occurring upon the
18 defendant's arrival and what he said leading up to the --
19 When was the Miranda form given to him, really, is what
20 I'm saying. What's your recollection of what occurred as
21 the defendant came --

22 A I remember that myself, Detective Sergeant
23 Beever and Investigator Gardner were all present in the
24 Detective Chief Inspector's office, which is on the first
25 floor in Richmond Police Station. And at the beginning of

1 the interview. I remember that, although this particular
2 form of Caution was not familiar to me until that time, I
3 do remember that Investigator Gardner read over what he
4 referred to as a Miranda to Mr. Soering. And the details
5 on that form, as I recall, were filled in by Investigator
6 Gardner. He timed it at 3:35 p.m.

7 Q Was that done before any questioning, after
8 questioning? When was it done in relationship to the
9 interview of the suspicion of murder here in Bedford?

10 A It was done at the commencement of the
11 interview.

12 Q At that time, when Investigator Gardner
13 advised the defendant in that fashion, do you recall his
14 response to the advisement?

15 A He was quite happy to be interviewed
16 without consulting a solicitor or counsel or anybody.

17 Q When he was so advised of Miranda, did he
18 make any requests, upon arriving there at the DCI's
19 office, for counsel?

20 A Definitely not, sir, no.

21 Q In addition to the Miranda advisement, was
22 there any other advisement given to him at the
23 commencement of this interview at 3:35?

24 A Yes, sir. He was also Cautioned according
25 to British law.

1 Q And the Caution, according to British law,
2 briefly, would be what, please?

3 A We don't have to stick to specific words --

4 Q Uh-huh.

5 A -- although we do usually say, "You do not
6 have to say anything unless you wish to do so, but
7 anything you say may be given in evidence."

8 Q That custody sheet, which we have here, the
9 copy now, Commonwealth's Exhibit Number Eleven, that I
10 place in front of you for you to use to refresh your
11 memory, should you need to do so. But were you present
12 throughout the interview to the point where the defendant
13 was returned to his cell?

14 A I was, sir.

15 Q Was he returned to his cell at 4:44 p.m.?
16 Oh, excuse me, I've got the wrong --

17 A I believe it was 5:28.

18 Q Yes, sir. I've got the wrong form here.
19 You're exactly right, 5:20 -- 3:35 p.m.

20 A No, sir. He was taken from his cell at
21 3:25 on the 5th of June.

22 Q You are exactly right. If I could just
23 have a moment here, Detective Constable Wright, I'll try
24 to get the mind working here again, although I'm not sure
25 I'll be successful.

1 A Yes, sir. If I can assist you, it's on the
2 second page.

3 Q Okay, sir. I'm looking at the notes I so
4 cleverly prepared and I can't read them now. But at any
5 rate, when did the interview conclude? Just let me ask
6 you that. Maybe we can proceed.

7 A Shortly before his return to the cell, sir.

8 Q And returned to at 5:28?

9 A Yes. that's right.

10 Q Really, what I was trying to get to, during
11 that period of time, during the entire interview, did Jens
12 Soering ever request counsel to be present?

13 A As I recall, throughout the three days, the
14 four days that he was there, he never requested that he
15 wanted to speak to a solicitor or counsel.

16 Q Did you ever threaten him yourself during
17 that interview?

18 A Definitely not, sir.

19 Q Specifically, before this interview, this
20 being the first interview, during the interview itself or
21 after the interview, did you ever hear Detective Sergeant
22 Beever say to the defendant, in your presence, any threat
23 concerning Elizabeth Haysom?

24 A No, sir. No threats were made by me or by
25 anybody else in that police station towards Jens Soering

1 or any other person as far as -- Well, I know that they
2 weren't made in my presence, if any were made.

3 Q Did you ever hear, specifically, now --
4 You've answered my question -- Did you ever hear during
5 this entire remand at the Richmond Police Station
6 Detective Sergeant Beever say to the defendant words to
7 the effect that Elizabeth Haysom was a very pretty girl,
8 she's all alone in the cell block, a shame if she fell
9 down?

10 A No, sir. That's ridiculous.

11 Q In connection with such an alleged
12 statement, did you ever hear Detective Sergeant Beever say
13 to the defendant, "I think you should talk to us, lad.
14 You really don't need that lawyer"?

15 A No, sir.

16 Q Concerning the second interview on June
17 5th, and if I could show you the Miranda form -- Well,
18 there was not an actual Miranda form executed as to that,
19 but if I could ask you, were you present during that
20 interview which began at approximately 6:00 p.m.?

21 A Yes, sir.

22 Q Could you relate for us what you recall
23 concerning that particular interview, first of all
24 beginning with the Miranda advisement proceeding, please?

25 A Yes, sir. We removed him from his cell and

1 took him again to the DCI's office. As I recall,
2 Investigator Gardner again gave the Miranda. I can't
3 remember whether he used his notes or whatever. I can't
4 remember.

5 Q Yes, sir.

6 A I'm sure that he gave him the Miranda and
7 we began to question Mr. Soering.

8 Q Without going through the entire substance
9 of the interview, could you generally state what the
10 context of the interview was at that time?

11 A Yes, sir. It was in relation to certain
12 letters that had been written between Elizabeth Haysom and
13 Jens Soering and also with reference to an earlier
14 interview regarding the background of Elizabeth Haysom's
15 family.

16 Q Now do you recall during that interview the
17 defendant saying anything concerning a lawyer? I'm not
18 asking whether he requested a lawyer, but, specifically,
19 or I should say, generally, anything about an attorney?

20 A He did on several occasions during those
21 three days state that he would not answer certain
22 questions until after he'd spoken to an attorney or a
23 lawyer once he returned to the United States, should he
24 return here.

25 Q And I have here some notes as to this

1 interview, which were proffered as Defendant's Exhibit B,
2 should you need to refer to them for refreshing your
3 memory, and only if you need to. But do you recall
4 whether there was anything at the end of the interview
5 concerning an attorney? And if you need to refer to
6 these, then we would have them here.

7 A If I might, sir.

8 Q Please.

9 A Yes, sir. It's as I just stated, that's
10 one of the occasions that he mentioned that he would like
11 to talk to an American attorney on his return to the
12 United States, should he come back here.

13 Q Detective Constable Wright, we're going to
14 be playing the tapes at a later portion so I'm not going
15 to go in with you to any great detail the substance of
16 those interviews which were recorded. They'll speak for
17 themselves.

18 But I would like to proceed to the next
19 interview and for purposes of reference showing you
20 Commonwealth's Exhibit Number Two, which is dated
21 June 5th, 8:05 p.m. on that date. Were you present during
22 that interview?

23 A Yes, sir, I was.

24 Q And I'd like to ask, during that interview
25 was the advisement procedure, that is to say, reading to

1 the defendant the Miranda warnings, was that done at the
2 commencement of the interview before the questioning as to
3 the suspicion of the murder here in Bedford began?

4 A Yes, it was.

5 Q And as the form indicates, did the
6 defendant indicate that he understood those rights?

7 A Yes, he did.

8 Q During that interview or during any of
9 these interviews that I'm asking about, did you see
10 Detective Sergeant Beever make any gestures such as
11 looking at the defendant in the eye and raising his
12 eyebrows and making some type of downward motion, pointing
13 motion, with his hand?

14 A Definitely not, sir. The atmosphere in
15 that interview room, considering the circumstances, was
16 quite relaxed.

17 Q The next interview, with reference to that,
18 I'd like to show you Commonwealth's Exhibit Number Three,
19 which has the date June 6, 1986, 11:40 p.m. (sic). You
20 were present during that interview, as well, is that
21 correct??

22 A Yes, sir, at 11:40 a.m.

23 Q And again, was there any questioning, was
24 there a situation there where the defendant was brought to
25 the interview room, and all three of you officers were

1 present, and he was interviewed for a period of time,
2 approximately twenty minutes or something of that nature,
3 before Miranda was ever given?

4 A There was some conversation, but I wouldn't
5 refer to it as an interview. And he was brought upstairs
6 from his cell and I remember that he was brought from his
7 cell at 11:19, but I think that we sat there for some time
8 before the other officers were ready for the actual
9 interview. But once all three officers were in the room,
10 Jens Soering decided that he wanted to talk about another
11 matter and he was actually questioning us at that stage.

12 Q But did you or the other officers ask him
13 anything about the suspicion of murder here in Bedford
14 County, Virginia?

15 A No, sir.

16 Q When that began, had the defendant been
17 read Miranda and advised of it and had he indicated that
18 he understood those warnings?

19 A Yes, sir. He indicated that the Miranda
20 was signed, timed at 11:40, and I can see that Jens
21 Soering signed it. I do remember him signing it and I
22 also witnessed it.

23 Q I'd like to ask you about the next day, and
24 I'm just handing you these Miranda forms as a point of
25 reference really, and it may be already there in front of

1 you. The next Miranda of June 7th, and it should be here.
2 No, they've fallen down back over here. No, they're the
3 ones on A. While I'm looking for this, the interview on
4 June 7, 1986 and the defendant was advised the Miranda at
5 1:21 p.m., as to that, were you present during that
6 interview?

7 A Yes, sir.

8 Q And during that interview, again, was the
9 defendant advised of Miranda and he indicated he
10 understood it before questioning began as to the subject
11 matter of the murder here in Bedford County?

12 A Yes, sir.

13 Q Now I'd like to ask you, up to this point
14 and at any time during the course of the defendant's
15 incarceration during this remand, was there ever a time
16 when you, yourself, were locked up with the defendant in
17 his cell for a period of an hour and discussed with him
18 such matters as his representation, whether he should have
19 it, or any circumstances such as that?

20 A No, sir.

21 Q Was there the one occasion on June 7, 1986
22 at 1:00 p.m. approximately, when you escorted him to the
23 shower so he could take a shower?

24 A Yes, sir, I did.

25 Q Did you engage in any conversation with him

1 at that time?

2 A I escorted him upstairs. He took a shower
3 and I just stood by. After the shower I took him back
4 down to the DCI's office to await an interview and there
5 was a conversation that took place there.

6 Q The interview on June 8, 1986, beginning at
7 4:45 p.m., you were not present during the initial portion
8 of that, is that correct?

9 A It may be possible that I escorted Jens
10 Soering to the room, but I was not present during the
11 first part of the actual interview.

12 Q The actual interview. And as to the last
13 interview, showing you the last Miranda form,
14 Commonwealth's Exhibit Number Six, dated June 6, 1986,
15 with the date 7:18 p.m., were you present during that
16 interview, the last portion of the interview?

17 A Yes, sir, I was.

18 Q During that interview, the one beginning at
19 7:18 p.m., did you take notes during the interview?

20 A I did, sir, yes.

21 Q Were you allowed to do so by the defendant?

22 A Well, he could see me doing it, sir, and
23 didn't object at all.

24 Q During that interview, did the defendant
25 ever request counsel to be present?

1 A No, sir.

2 Q Did he ever request that questioning cease
3 until counsel could be provided to him?

4 A No, sir. He seemed fully aware of what he
5 should answer and what he shouldn't answer and was making
6 decisions on individual questions. He didn't request to
7 speak to counsel.

8 MR. UPDIKE: Please answer any questions
9 counsel may have.

10

11 CROSS EXAMINATION

12

13 BY MR. NEATON:

14 Q Mr. Wright, you said that on the custody
15 record, the first page of the custody record, that my
16 client said that he did not want a solicitor at that time,
17 is that right?

18 A That is correct, yes.

19 Q And the time that he signed that statement
20 was 12:50 p.m.?

21 A Yes, sir.

22 Q Of course, that would not prevent him from
23 asking for a solicitor at a later date, correct?

24 A That is correct, sir.

25 Q And it would not prevent a solicitor from

1 seeing him at a later time if the defendant asked for a
2 solicitor, correct?

3 A That is also correct.

4 Q And it would not authorize an officer in
5 the Richmond Police Station to inform the solicitor that
6 he could not see the defendant if the defendant had
7 requested a solicitor, correct?

8 A That's not really a direct question that I
9 can answer yes or no. Can you explain --

10 Q Is that because you really don't have
11 knowledge of that procedure?

12 A Well, I'm not quite sure what you're asking
13 me.

14 Q If the defendant's solicitor came to the
15 police station and asked to see his client at some time
16 after 12:50 p.m. on the 5th of June, could he see his
17 client at that time?

18 A If the client wanted to see him, yes. But
19 if he didn't request him --

20 Q Would the presence of the solicitor --
21 Should the presence of the solicitor have been conveyed to
22 the client back in the cell by one of the officers at the
23 custody desk?

24 A I think that the prisoner or the client
25 would be informed that the solicitor had made those

1 Inquiries.

2 Q And then the client could decide whether he
3 wanted to see the solicitor?

4 A Yes.

5 Q And that would be the normal procedure at
6 the Richmond Station in June of 1986, correct?

7 A Yes.

8 Q You said that after you arrested Mr.
9 Soering after the remand hearing that "We arrived and
10 stayed outside." By "we," do you mean yourself and Mr.
11 Soering or were there more than one --

12 A There was -- Sorry, sir.

13 Q Do you mean by "we," do you mean yourself
14 and Mr. Soering?

15 A There were some uniformed officers present,
16 as well.

17 Q How many uniformed officers?

18 A Either one or two, because they drove the
19 van that brought us from the Court to the station.

20 Q When you said that you stayed outside the
21 station or stayed outside, do you mean actually outside
22 the station in the van?

23 A We stayed in the Police Station yard inside
24 the van because there were some photographers nearby.

25 Q And the photographers were there.

1 presumably, about this case, to the best of your
2 knowledge?

3 A I presume so, yes.

4 Q Where are the cells in the Richmond Police
5 Station?

6 A On the ground floor, sir.

7 Q Is it a tiled area?

8 A Parts of it are tiled.

9 Q And part of it is brick or cement block?

10 A Parts are. On the inside, parts are tiled
11 and parts are bare plaster.

12 Q And are there glass block windows in the
13 cells?

14 A That could well be, sir, yes.

15 Q You really don't know?

16 A I would think there are, but I can't
17 recall.

18 Q Your memory about the first interview on
19 the 5th of June, before you testified here today, during
20 the time that you've been here in Bedford, have you
21 reviewed the notes of that interview?

22 A Yes, sir.

23 Q And is your memory of the events of the
24 first interview of the 5th of June based upon your review
25 of the notes of that interview?

1 A Well, it's based upon my memory, as well,
2 sir.

3 Q Specifically, your memory of the events of
4 the first interview, the Miranda warnings, are they based
5 upon what you read in the notes?

6 A No. They're based upon something that I
7 wrote down, sir, and also my memory.

8 Q So you made your own independent notes?

9 A I began to write some notes, but I was
10 requested not to by Jens Soering and I ceased to write
11 them after about a couple of minutes.

12 Q Did you ask Mr. Soering to sign the notes
13 of that interview, the summary of that interview that you
14 had prepared?

15 A No, sir.

16 Q Did you ever prepare a subsequent summary
17 of those notes at some time after the interview?

18 A It would be very difficult to summarize
19 those notes, sir. They are only about three lines long.

20 Q Under the Police and Criminal Evidence Act
21 in England, are you not required to show your summary of
22 an interview to the accused and ask the accused to sign
23 it?

24 A At that time the Police and Criminal
25 Evidence Act was quite new. There is within the Codes of

1 Conduct a paragraph which can be interpreted in that way,
2 but --

3 Q But, because of the newness of the Act you
4 may have forgotten to comply with that in this instance?

5 A I wouldn't say I forgot to comply, sir.
6 The notes are not -- There's no statement made based on
7 those notes at that time. They are only the start of an
8 interview, which is on a Metropolitan Police form which
9 was about three lines long and then stopped. However, the
10 other consideration, of course, was that these notes were
11 not for proceedings that were likely to take place within
12 the United Kingdom.

13 Q But you say that Jens Soering was cautioned
14 pursuant to the Caution that's given in the United
15 Kingdom, is that right?

16 A That's correct.

17 Q And so you were contemplating the
18 possibility that there may be further proceedings against
19 him in the United Kingdom, correct?

20 A Not correct, sir.

21 Q You just gave it out of the goodness of
22 your heart?

23 A Correct.

24 Q You said that throughout the three to four
25 days that Mr. Soering never requested to speak to an

1 attorney?

2 A No, sir. He mentioned American attorneys
3 on several occasions, but it was always of the opinion
4 that he didn't need one right there and then.

5 Q And that's your memory of what took place
6 during those interviews?

7 A That is what took place.

8 Q That is your memory of what took place
9 during those interviews?

10 A Yes, sir. That is what took place.

11 Q During the second interview on the 5th of
12 June, 1986, you heard Mr. Soering ask for an attorney, did
13 you not?

14 A No, sir.

15 Q You did not?

16 A No, sir.

17 Q He never asked for an attorney during that
18 interview on the 5th of June?

19 A No, sir. He discussed an attorney.

20 Q Pardon me?

21 A He discussed an attorney, the word
22 "attorney." He said that he wanted to not answer some
23 questions until after he spoke to an attorney once he'd
24 returned to the United States.

25 Q He said that at 6:00?

1 A He said that later, but during that
2 interview.

3 Q Did you make any notes of that?

4 A I did make some notes during that
5 interview, sir, and I think I did, yes.

6 Q Did you give those notes to Mr. Soering to
7 sign pursuant to the Police and Criminal Evidence Act in
8 England at the time?

9 A I did not, sir.

10 Q Have you reviewed those notes prior to
11 testifying here today?

12 A I have looked at them, yes, sir.

13 Q You've also looked at the notes that Ricky
14 Gardner prepared?

15 A Yes, sir.

16 Q And those two documents have helped to
17 refresh your memory as to what happened at the 6:00
18 interview on the 5th of June?

19 A Yes, sir.

20 Q Mr. Soering asked to talk to an attorney
21 about the case in America, right?

22 A Exactly what do you mean by those --

23 Q Did Mr. Soering ask to talk to an attorney
24 about the case in America during the 6:00 interview on the
25 5th of June?

1 A No, sir. He requested to speak to an
2 attorney about the American case when he returned to
3 America.

4 Q And that was right after he indicated that
5 he didn't want to answer any further questions about the
6 case, is that right?

7 A There were occasions where he decided not
8 to answer individual questions.

9 Q At the 6:00 interview on the 5th of June?

10 A I think you'll find that throughout the
11 four days that --

12 Q I specifically --

13 MR. UPDIKE: Objection, Your Honor. He's
14 firing questions. Especially at this time of
15 the day, the witness really needs the
16 opportunity to answer once a question has
17 been asked.

18 THE COURT: Moving a little too fast.
19 Slow it down.

20 MR. NEATON: Well, maybe I'm hoping to get
21 done, that's all.

22
23 BY MR. NEATON:

24 Q Mr. Soering indicated that he did not want
25 to answer any questions put to him by Mr. Beever about the

1 homicide in Bedford County, isn't that correct, at the
2 6:00 interview on the 5th of June?

3 A Without referring to any notes, sir, I
4 would say no.

5 MR. NEATON: Judge, I might request since I have
6 not been aware of the fact that this witness made notes by
7 himself or notes that concern these interviews, that
8 perhaps this would be a good time to break for the night
9 in that perhaps I can be furnished copies of the notes
10 that he's referring to. I would say I was furnished
11 copies of Mr. Gardner's notes, but I don't believe that I
12 was furnished copies of this witness' notes and because
13 the witness has used them to refresh his memory, I'm
14 entitled to review them.

15 MR. UPDIKE: I understand that to be the law,
16 Your Honor, and I haven't seen Detective Constable Wright
17 look at any notes of his. Now the discovery order and the
18 rule pertaining to discovery requires the Commonwealth to
19 divulge to the defendant the substance of any oral
20 statements made. I've done that. If you want to look at
21 the Rule 3A:11 of the Rules of The Supreme Court of
22 Virginia, it specifically states that the defendant is not
23 entitled to notes.

24 Now if during questioning a witness
25 looks at notes, then opposing counsel can see what in the

1 world the witness has been looking at. But I haven't seen
2 this gentleman look at anything yet, as far as his own
3 notes, and until that occurs counsel is not entitled to
4 see them.

5 MR. NEATON: Judge, I understand the rule on
6 refreshing the witness' memory to mean that if prior to
7 the testimony, not just during the testimony, if he's
8 referred to notes in order to refresh his memory, then the
9 opposing party is entitled to review the notes that the
10 witness has used to refresh his memory. It's not that I'm
11 asking for the notes on the basis of the Commonwealth's,
12 or on the basis of Rule 3811, I'm asking to review the
13 notes on the basis of the law concerning refreshing
14 recollection, and I think I'm entitled to do that.

15 THE COURT: Well, let's take that up tomorrow.
16 It's late in the day. That's a good note to end on. I
17 will make no ruling at this time on that. However, if
18 there are any notes you should at least have them
19 available so that if I do, or that they be produced, that
20 they are here tomorrow.

21 MR. UPDIKE: They are immediately available,
22 Your Honor.

23 THE COURT: All right. We will recess until
24 10:00 a.m. tomorrow morning.

25 (The Court was recessed at 5:50 p.m. until 10:00 a.m.
Saturday, March 3, 1990.)

1 I, VIVIAN P. NEAL, Court Reporter, do hereby certify that
2 the foregoing is a true and accurate transcript of the
3 proceedings in the aforementioned case, taken on March 2,
4 1990, to the best of my ability.

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7 Court Reporter
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1 A Yes.

2 Q "All right. Is there other points that you
3 want me to bring up that you want me to clarify or correct
4 from the previous interviews?" Gardner: "Please."

5 Beever: "Before we go any further, he did mention to us,
6 he said he might want to clarify on points that he's
7 missed out in the past in the presence of any attorney at
8 a later date. Near enough. Those were the words you
9 used?" Soering: "Yes." Beever: "Yes, I understand
10 that. So let's take it at this stage of the proceedings,
11 during this interview, you are quite happy for this
12 interview to take place without that attorney, but you are
13 requesting for your attorney to come to you later on
14 today, is that correct?"

15 A That's right.

16 Q Soering: "I don't think I can. Depending
17 on how this interview goes, I don't see that any need for
18 an attorney for right now, okay, today. We'll have to see
19 how this interview goes and what happens during this
20 interview. I can't tell right now." Gardner: "Okay. I
21 want you to remember that on the questions I asked you, it
22 says you have the right to stop answering questions any
23 time during the questions." Soering: "Okay. I'm aware
24 of that right now." Gardner: "You know that?" Soering:
25 "Right." Gardner: "So just as yesterday, if we ask you a

1 question and you prefer not to answer that question, just
2 say, 'I'm not going to answer that question.'" Soering:
3 "All right. All right."

4 Correct? Would you agree that those
5 questions were asked of you and you said this?

6 A Yes. That happened on many occasions
7 throughout all the taped interviews.

8 Q My first question, sir --

9 A Yes.

10 Q Did you say that?

11 A Yes. It happened often.

12 Q And you stated there that you saw no need
13 for an attorney there at the present?

14 A That's what I said to Sergeant Beever, yes.

15 Q And you also said that you wanted to see
16 how this interview goes?

17 A That's right.

18 Q And, sir, wouldn't you agree that what
19 you're doing here is that you're deciding for yourself
20 what questions you'll answer and what questions you won't?

21 A That's not the way I look at it, no.

22 Q That's not the way that you look at it?

23 A No. If you read what it says, okay,
24 Sergeant Beever starts --

25 Q You've answered my question. I asked you

1 and you said, "No. That's not how I look at it."

2 MR. NEATON: Well, he's entitled to
3 explain, Judge. He's entitled to answer the
4 question completely.

5 THE COURT: I'll let him explain. Go
6 ahead.

7 THE WITNESS: Mr. Beever refers to the
8 conversation we had before the tape was turned
9 on. All right, he says, "He," meaning me, "did
10 mention to us he said he might want to clarify
11 on points that he's missed out in the past in
12 the presence of an attorney at a later date."
13 Now, that's not on the tape, but it was a
14 conversation we had right before the tape was
15 turned on. Okay? That was the conversation
16 where I would have said I wanted a lawyer and
17 they said I couldn't have one, and they said,
18 "Okay, give Miranda. Let's turn the tape on."

19 And he's referring to that
20 conversation. And what's he doing here, he's
21 trying to get on the record for me to say that
22 I don't want a lawyer. That's all he's doing.
23 And that's what I said, because that's what he
24 wanted me to say, because if I didn't say it,
25 Elizabeth would get hurt.

1 BY MR. UPDIKE:

2 Q But you admit that you did say at that
3 point, "I don't see any need for an attorney right now"?

4 A I would have said practically anything to
5 avoid Elizabeth getting hurt, so that's what I did.

6 Q That's fine, you admit that. Now, if I
7 could ask you, don't you continue after that by answering
8 certain questions and denying certain questions through
9 the interview?

10 A I tried to avoid answering what I could,
11 but I wasn't very good at it.

12 Q And who decided what you could get away
13 with answering and what you couldn't get away with
14 answering? Who made that decision?

15 A Well, after they kept asking about it, and
16 it just depended.

17 Q Isn't it true, sir, that when you indicated
18 you didn't want to talk about certain things, or you
19 didn't want to answer a certain question, I should say,
20 that they honored your request?

21 A Yes. But sometimes they'd switch the
22 subject straight-away and sometimes they kept asking
23 questions and I would stutter and hem and haw, and stuff
24 like that, and then they would eventually stop asking
25 those questions because they weren't getting anywhere. It

1 Just depended on what the subject was. I mean, there was
2 a section we were talking about previously --

3 Q Now, on page seven. I'd like to -- On page
4 seven, D/C Wright asks you a question at the very top of
5 the page, and I can read the entire question, but he's
6 directing you to the rental car in Washington, and in the
7 last sentence he says, "Would you care at this stage to
8 enlarge on those discussions that probably took place
9 before that date?"

10 MR. NEATON: Judge, just so the record is
11 clear, the transcript indicates that there is a
12 word or words between "place" and "before"
13 that's indicated by a question mark in brackets
14 that we don't know what that word is, and it may
15 change the entire context of the question.

16
17 BY MR. UPDIKE:

18 Q That's not the point of my question. My
19 point is -- I don't even need to get to that point. My
20 real point is, didn't he ask you, "Would you care at this
21 stage to enlarge," and we'll stop at that point?

22 A That's right.

23 Q Isn't that how he asked you the question?

24 A Okay, that's true. But if you look what
25 happens, it's Sergeant Beaver who starts taking over and

1 he's making the decision on what to ask and what not.

2 Q All right, sir. I understand that you're
3 saying that, but what I want to understand, if it's true
4 or not, you're saying that you're being coerced and one of
5 the police officers that's questioning, he's using, "Well,
6 would you care to enlarge upon this?" I mean, it's very
7 polite and courteous, isn't it?

8 A It's phrased that way, yes.

9 Q Yeah.

10 A But that's, of course, what they have to
11 do.

12 Q And in response to the question, "Would you
13 care to enlarge," and you say, as you said, Sergeant
14 Beever says, "Go ahead." Or I should say -- "Let's just
15 keep it all in context." It has Jens Soering, "That's
16 --," and it indicates that you're stammering. Then
17 Sergeant Beever says, "No, go ahead."

18 A That's where he takes over from Detective
19 Wright.

20 Q And then your response, "I'm wondering how
21 wise it would be for me to do that at this point. I think
22 the best thing for me to do at this point is to leave it
23 at that statement, not add anything and not subtract
24 anything," right?

25 A Right.

1 Q Well, I'm wondering, if Sergeant Beever is
2 coercing you into saying what he wants, if that's true,
3 why you didn't just go ahead and say what he wanted.
4 Instead, you declined to answer him.

5 A Could I just have a couple seconds --

6 Q Is that true or not?

7 A Yes. I'm trying to look at something here.
8 Because what he does, I say that I don't want to say
9 anything anymore and then on one, two, three, four, five
10 occasions he keeps talking about the same subject, see? I
11 said I don't want to talk about it and he keeps talking
12 about it on, and on, and on, the rest of the page and over
13 on the next page.

14 Q Now, doesn't he just ask you though whether
15 you want to retract a statement, or if you want to add to
16 it, or whether you want to leave it the same?

17 A Right. I mean, I agree with the record.
18 I'm just saying that he took over from Detective Wright
19 and he kept on on this particular point and I did the best
20 I could not to answer the questions, keeping in my that I
21 had to cooperate to some degree if I didn't want Elizabeth
22 hurt.

23 Q And then Sergeant Beever says, "Okay. I
24 take your point entirely," correct?

25 A But he keeps talking about it on the next

1 page. You know, we keep talking about it here. And then
2 Mr. Gardner takes over.

3 Q But you still don't answer, do you?

4 A That's right. I did the best I could under
5 the circumstances, considering that I had to say something
6 or Elizabeth would fall over and get hurt. I couldn't
7 Just say, "No. Put me in my cell. I want my lawyer,"
8 because if I had said that, he said to me earlier, not in
9 so many words, but he had implied strongly that if I said
10 things like that Elizabeth would get hurt, so I had to
11 stay there and say something.

12 Q But at the bottom of page eight he's asking
13 you about -- Well, let's just have what Sergeant Beaver
14 says. He says, "Well, none of us are doctors or
15 scientists, are we? Let's skip the last question because
16 it's neither here nor there, because we can't change that.
17 What we can discuss that we haven't discussed before, and
18 if you choose to answer the question, were there any
19 discussions between you and Elizabeth between December and
20 that weekend in Washington, D.C.?" That's another
21 entirely separate question, right?

22 A No. It's the same one from page seven.

23 Q No, sir. On page seven you're talking
24 about that weekend. This is from December to Washington.

25 A I'm sorry, I misunderstood.

1 Q From December to the trip to Washington.

2 A I'm reading on page seven when Detective
3 Constable Wright is asking me, "And you also said or
4 recorded on tape that you discussed murder." And then
5 down here on the bottom of page eight it says whether or
6 not we discussed it before, Elizabeth and I. I mean,
7 sorry. I'm just trying to read -- See, at the top of
8 page seven, Detective Wright is talking about discussions
9 of murder and at the bottom of page eight Sergeant Beever
10 is still talking about discussions of murder.

11 Q Mr. Soering, please. I won't argue with
12 you. But on top of page seven, isn't he talking about
13 discussions just as to the weekend, the trip at the end of
14 March to Washington, and then he asked you not about the
15 weekend, but he just asked you if you choose to answer it.
16 He says that. "Were there any discussions between
17 December and the end of March, the trip to Washington?"

18 A Right.

19 Q And as he says, that's an entirely
20 different question.

21 A Yes. But Mr. Wright said, "Would you care
22 at this stage to enlarge on those discussions that
23 probably took place before that date of the murders?"
24 That's exactly what --

25 Q If you follow along, you decline to answer

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It, don't you?

A And Mr. Beever is still talking about it at the bottom of page eight.

Q On page twelve, eleven or twelve or any of those pages in there that you'd like to read, you state that you did not go to the Haysom house and commit acts of voodoo. And then Sergeant Beever asked you -- and I'm summarizing, I know. Please read it if you need to. On page twelve he asked you to divide that question up. And you come back and congratulate him and say that he's very clever.

A Yes. That's what it says here, yes. So I must have said it.

Q Yeah. Wasn't this becoming sort of an intellectual game between you and the police officers?

A Well, not by my choice. I didn't want to be there.

Q Yes, sir. But then once Detective Sergeant Beever has picked up on this, then you say, "You are a very smart man. Congratulations"?

A Right.

Q That's a point that he scored there, wasn't it?

A Pardon. A point that Mr. Beever scored?

Q I'm just asking why you congratulated him,

1 let me put it that way, this man who's threatened your
2 girlfriend.

3 A Let me read it. It's just me being
4 sarcastic again.

5 Q Now, skipping a few things to page 18, just
6 want to acknowledge here, if you wish to skim the page,
7 but my question to you is that that page indicates --
8 Well, we're beginning at 12:39 p.m., Sergeant Beever,
9 there in the middle of the page. Sergeant Beever says,
10 "Can I put you on now. It is fairly important. Mr.
11 Wright has just come back in the room at 12:39,
12 approximately, and we've been told that the embassy are
13 returning their call to Jens here. It's important that he
14 speaks to --" And then D/C Wright says, "I can get that
15 transferred to here and put it on the custody record. The
16 custody officer can transfer it up here." Beever says,
17 "Let him make this. Yes, put the phone call through to
18 this interview room then, please," is that correct?

19 A Right.

20 Q So there you have both police officers at
21 that point involved in making sure that this call from the
22 German Embassy, which has come in downstairs, is
23 transferred to you so that you could take the call?

24 A Yes.

25 Q The two British officers, Wright and

1 Beever, did not indicate, did they, "Well, you tell the
2 German Embassy we're talking to this man"? Instead they
3 said, "Put the call through to him, let him speak to
4 them"?

5 A Right.

6 Q And you had the opportunity there at that
7 point in time to express to the German Embassy, in German,
8 any complaints that you had as to your treatment at the
9 Richmond Police Station, didn't you?

10 A No.

11 Q Did you have the opportunity?

12 A No.

13 Q Why not?

14 A Because Mr. Wright was sitting right there
15 and he understood German.

16 Q And he speaks German?

17 A Right. Well, understood it, anyway.

18 Q Let me ask you this though, let's suppose
19 the conversation had been conducted in English? What
20 difference would it have made whether the police officers
21 understood you or not, you would be communicating a
22 situation to the German Embassy and the German Embassy
23 would then know about it, and the British officers would
24 know that the German Embassy knew about it, and if action
25 needed to be taken, the German Embassy would have been in

1 a position to do it, wouldn't they?

2 A The German Embassy can't do anything. They
3 have no influence at all with the local police.

4 Q But they can lodge complaints with the
5 British Embassy, or excuse me, not the British Embassy, it
6 would be the --

7 A Home Office.

8 Q Home Office, yes.

9 A Well --

10 Q And you know that, don't you?

11 A Yes, I know that. Ultimately the Home
12 Office deals with those complaints.

13 Q And on this point, your father is a -- What
14 is your father?

15 A He's a Vice-Consul.

16 Q For the German government?

17 A That's right.

18 Q So having grown up in that family, you are
19 not unaware of the proceedings of diplomacy and the
20 functions of any embassy, are you?

21 A That's right.

22 Q You're quite aware of them?

23 A That's right. I know exactly how powerless
24 they are in most cases like this, because once a foreign
25 national is in the custody of police, it's their baby and

1 the embassy can't do anything.

2 Q Uh-huh.

3 A Unless it's, you know, in Africa some
4 place.

5 Q One more quick question on that point, if I
6 might. You think that Terry Wright speaks German so well
7 that it prevented you from expressing your concern?

8 A We spoke German with one another when I
9 first met him.

10 Q Then if you knew, as you say, that he was
11 going to understand what you said, why in the world just
12 not talk in English and everybody understand?

13 A I was speaking with the German Embassy. I
14 spoke to them in German.

15 Q Do they speak English?

16 A Yes, they speak English as well, but German
17 is my first language, so I just spoke German.

18 Q Okay. Now --

19 A I mean, I asked them whether they wanted me
20 to tell them what I said, afterwards, so I didn't have any
21 secrets.

22 Q Right. And you state what they said,
23 didn't you? You tell them? Isn't it correct that right
24 after the phone call you state to the police officers, "Do
25 you want to know what he said?"

1 A Right, right.

2 Q And Investigator Gardner says, "It's up to
3 you whether you tell us or not"?

4 A Yeah.

5 Q And the phone call concerned or
6 concentrated, or revolved around, I should say, this
7 matter of extradition, whether you could be deported from
8 England to Germany or extradited to the United States?

9 A Yes.

10 Q And that's shown in the middle of page
11 nineteen?

12 A It's the kind of questions I would have
13 preferred to be asking my lawyer.

14 Q I understand that you're saying that, sir,
15 but isn't it correct that at that point in time you were
16 making the decisions and you were finding out the
17 information?

18 A I was allowed to take the telephone call.

19 Q You felt that you were smart enough to
20 handle it yourself, didn't you?

21 A No, I certainly didn't.

22 Q And right after you said that you would
23 tell them, the police officers that is, about the content
24 of the German call, the police officers interrupt you and
25 say, "Well, before you do that, we need to remind you of

1 the British caution and the Miranda rights," at the top of
2 page nineteen, right?

3 A Right.

4 Q And knowing that, then you tell them
5 voluntarily about the phone call?

6 A Yes.

7 Q Understanding your rights. Now, this is
8 after the German call, on page twenty. Doesn't
9 Investigator Gardner say there, on the first entry for
10 him, that it's obvious that you're not going to, talking
11 about you, it's obvious you're not going to answer any
12 questions that you feel could put yourself in jeopardy or
13 jeopardize yourself, correct? Is that said? And you can
14 read the whole thing, if you like.

15 A Yes. That's what it says, yes.

16 Q And it goes on, "jeopardize yourself, not,
17 so you said, until you speak with a counselor, excuse me,
18 a solicitor or an attorney in the United States. Is that
19 what you're saying?" And then you say, "Well, I will not
20 discuss the points you just mentioned and I won't give
21 physical evidence until I'm interviewed by you with an
22 attorney of the country in which the trial will be held.
23 Apparently at this point, it's still in question to some
24 extent." Mr. Gardner says, "Yes, yes." Then you say, "At
25 least I hope so," right?

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A Yes.

Q I'd like to ask you, Investigator Gardner there is asking you, "Well, it appears that you're not going to answer any questions that will put you in jeopardy," and you come back and you qualify that, don't you, and you say, "Well, I will not discuss the points you just mentioned and I won't give physical evidence"?

A Yes, that's what I said.

Q You qualify that to indicate, "No. I'm not saying I won't answer any questions. There are certain questions I'll answer and certain questions I won't," right?

A Yes.

Q And as this shows, you're not asking for an attorney there at that moment, are you, as to any question?

A That's correct. I wasn't able to do that.

Q And you are saying not that you want an attorney there at that moment before questioning continues by those three police officers, but rather there are certain questions that you will only answer in the country in which you are tried, right?

A That's right. That was the best I could do under the circumstances.

Q And as you indicate there, you are well

1 aware that the question of where you will be tried is
2 still in question at that point?

3 A Right.

4 Q And, in fact, you even further emphasize
5 that you hope it's still in question?

6 A Yes. The thing is, that was the only thing
7 I could say at that point which was safe. And for the
8 rest of the interview, Sergeant Beever is giving me the
9 third degree and he promises to get me a lawyer and he
10 doesn't do it.

11 Q So you say at the end of this interview
12 Sergeant Beever is giving you the third degree, promises
13 to give you a lawyer, and you don't get it, right?

14 A "I think that I should go downstairs and
15 we'll get you that attorney," Sergeant Beever.

16 Q Okay. And that's the end of the interview
17 there on Friday, June 6th.

18 A Yes.

19 Q Well, the next day, June 7th, you ask to
20 talk to the officers, don't you?

21 A No, I didn't.

22 Q You don't?

23 A That's right.

24 Q Let me refer you to the custody sheet as to
25 June 7th. I'd like to ask you about an entry there and

1 ask you to read it. The entry at 12:25 on June 7th, '86.

2 A Yes.

3 Q Can you read it?

4 A Yes.

5 Q You can read it? All right. And once
6 you've read that, I'd like to ask you a question about it.

7 A Yes.

8 Q This entry at the bottom bears your
9 signature, doesn't it?

10 A That's right.

11 Q You signed it yourself?

12 A Yes.

13 Q And doesn't that entry say, "Return to
14 charge room and request made by Soering to speak with Mr.
15 Gardner (Virginia Investigator)" -- I'm having trouble
16 reading that next --

17 A I signed something to the effect that I was
18 willing to speak to them without a solicitor.

19 Q And then the signature there is Terry
20 Wright. I think that word that I can't make out is a
21 signature. I'll check that. Then the signature of Terry
22 Wright and then it's printed, "I wish to speak to --"

23 A Investigator Gardner?

24 Q "-- to Mr. Gardner and I am willing for
25 this to take place without a solicitor or an attorney.

1 Signed Jens Soering."

2 A Yes.

3 Q You did sign that entry at 12:25 p.m.?

4 A Like all the others, under duress.

5 Q Forced you to sign this, too?

6 A Yes. Like all the others. I hadn't seen my
7 lawyer since the morning of the 5th and I was alone in a
8 police station with policemen all around me, and they gave
9 me this piece of paper and they said sign it, so I signed
10 it.

11 Q At any point -- if you'd like to look
12 through the custody sheet -- at any point in any of those
13 entries, are there any indications or any entries that you
14 complained about being forced to sign all this stuff?

15 A Of course not.

16 Q Did you ever indicate that you wanted to
17 call the German Embassy again and tell them, "Look,
18 they're making me sign all kinds of stuff over here"?

19 A They only let me do that, like the previous
20 time, in the presence of somebody who spoke German, so it
21 was pointless. And by that time I already realized they
22 were not going to give me my lawyer and they're not going
23 to do anything. I mean, it was clear by that point. I
24 had given up hope by, I guess -- Well, I gave up hope
25 Thursday, but I really gave up hope over the weekend,

1 because you can't reach anybody then.

2 Q And as far as you asking to speak to the
3 police officers before that interview, in showing you the
4 transcript of the June 7th interview, and I'd like to ask
5 you on the very first page, Investigator Gardner asked
6 you, "I understand that you asked to speak to me." I'm
7 asking you the question as I get this ready for you.
8 There is a copy of that transcript.

9 A Right.

10 Q On page one?

11 A Yes.

12 Q Now, doesn't Gardner say, this is on tape,
13 "Okay. You do? Okay, now. I'll get you to sign that."
14 -- Well, this is after the Miranda form process, but I'm
15 asking you about halfway down --

16 A Yes, I see it.

17 Q And he asked you, "Do you understand all
18 these?" You say, "Yes." He says, "You do? Okay. Now,
19 I'll get you to sign that, and while you're signing that,
20 to speed things up a bit considering that I'm in no hurry
21 and these gentlemen are in no hurry, I understand that you
22 made a request to speak to me today."

23 A Yes.

24 Q You come back and you say, "Um. I just
25 wanted to ask you some questions about what's going to be

1 happening with me now," right?

2 A This could quite possibly be another
3 instance of my sarcasm. I don't know. It's possible
4 anyway. But, I mean, the thing is, there's plenty of
5 instances like this and I'm always agreeing that I asked
6 to see them, because that's what they wanted to hear. And
7 I agree with that. I said those things.

8 Q Wait a minute, sir. What I'd like to ask
9 you on that point though is, you're being interviewed in
10 the course of a murder investigation. According to you,
11 you're being forced to sign things and being denied
12 counsel, and you're saying that you're just being
13 sarcastic? Did you feel that was an appropriate time for
14 sarcasm?

15 A It was a hopeless situation. I didn't know
16 what else to do. I was scared.

17 Q Hopeless? Now, being a diplomat's son, if
18 you're in a hopeless situation in a foreign country, you
19 contact your embassy, don't you?

20 A That's right.

21 Q And you'd made a number of calls to your
22 embassy, hadn't you?

23 A Uh-huh.

24 Q Isn't it true that this hopeless situation
25 that you've described here today was nothing like what you

1 are describing here today?

2 A Well, on two occasions the policemen
3 specifically promised to get me lawyers and they didn't do
4 it. I had given up hope, because on two occasions they
5 said, "You're going to get a lawyer now," and they didn't
6 do it.

7 Q Okay.

8 A And after that I just said, "Well, you
9 know, if they're willing to lie, what can I do?"

10 Q Quickly showing you Commonwealth's Exhibit
11 Number Four, the Miranda form as to that interview, June
12 7, 1986, dated 1:21 p.m., did you sign that and understand
13 all the rights that were upon it?

14 A Yes, I did.

15 Q You say that this entry on page one, as far
16 as you asking to talk to them, is sarcasm, but if I could
17 direct you to the end --

18 A It's possible.

19 Q It's possible? Well, why do you say
20 possible, don't you know?

21 A Because I don't know from this transcript.

22 Q Well, let me show you another reference to
23 the end of the transcript, where the same question is
24 asked of you again.

25 A This is the 7th?

1 Q Yes. Page forty-eight. Investigator
2 Gardner: "Okay. I just want to tell you before I turn
3 the tape off and go over what I said, and just like I told
4 you before, you know, the Miranda warning, before we
5 started talking today at 1:21 p.m., first of all, you
6 wanted to talk to us?" Your response, "Uh-huh." Gardner:
7 "I mean, I'm not putting words in your mouth. I want you
8 to tell me you requested to have a chat with us." You say
9 yes, right?

10 A He says yes first, doesn't he?

11 Q Well, I'm asking you.

12 A I agree with you that I --

13 Q Did you say at that point in time, "Yes, I
14 asked to talk to you"?

15 A Yes, I did say that. At this time and many
16 other times, and it was always under duress.

17 Q That was under duress as well?

18 A In each case.

19 Q And the duress, again, is you were afraid
20 something would happen to Elizabeth, not something would
21 happen to you?

22 A Well, that's right, but it was a cumulative
23 effect here. And part of that cumulative effect was that
24 on two occasions they promised me to get me lawyers and
25 didn't do it, they made me sign things I didn't want to

1 sign, they put words in my mouth, they told me what to
2 say, which is quite clear from the first interview, the
3 taped one. I mean, I was having a tough time here.

4 Q Let me ask you about page five of that
5 interview, about halfway down. Don't you say there that
6 you read that article from the Daily Mail, the newspaper
7 article that we've already introduced?

8 A I remember seeing the headline. Where does
9 it say that here?

10 Q Page five, top of the page.

11 A I'm sorry, I can't find it. This is the
12 Daily Mail? The newspaper, right. Yeah. Right. Okay,
13 that's what the newspaper is called. Yes. I see that.

14 Q I'm just asking you to read that and asking
15 you, don't you confirm that --

16 A Sure.

17 Q -- that you've read the Daily Mail
18 newspaper article that we've introduced?

19 A Well, the headline said the word "voodoo"
20 and that's what I'm confirming there. I mean, you know,
21 they're asking about the voodoo and I say, "Yes. I saw
22 the word. Yes, that's what the newspapers call it."

23 Q And we've already covered this, but if you
24 need to check on page twenty-seven, they served you lunch
25 there in the DCI's office, right? Stopped the tape so

1 that you can eat lunch?

2 A Right.

3 Q On page thirty-one, don't you say the same
4 kind of thing that you said in the day before, at the
5 middle of the page, where it starts, "Well, what I was
6 saying was that --"? You can read it yourself, if you'd
7 like. Let me read it and see if you agree with it.

8 Jens Soering: "Well, what I was saying was
9 that, like I said before, was that I'd like to speak with
10 either Officers Gardner or Reed in America in the presence
11 of an American attorney to explain my role more fully than
12 I have at this time, because there are certain questions
13 during these interviews which I've refused to answer,
14 which I would answer under advice of an American attorney,
15 and an American attorney is not going to be provided for
16 me here for obvious reasons." Gardner: "Do you object to
17 us or have you objected to talking with us without an
18 attorney so far?" Your answer, "No."

19 A I said those things. I said things like
20 that many times throughout the interviews.

21 Q Were you so intimidated and coerced that in
22 response to Ricky's question, "Have you objected to
23 talking to us without an attorney thus far," that you
24 couldn't even say yes?

25 A What was the point? What was the point?

1 Q I'm asking you, sir.

2 A There was no point.

3 Q You're saying that this answer of "no" was
4 not accurate, but you were coerced as to that?

5 A These guys had intimidated me by
6 threatening my girlfriend. They denied me access to a
7 lawyer on at least two occasions, at Thursday at 6:00 and
8 Friday in the afternoon. It was a hopeless situation.
9 They were not going to do anything for me. I mean, this
10 information here on not having American attorneys, but
11 Ricky Gardner told me earlier in that interview that I
12 would only get an American attorney once I was in
13 Virginia.

14 Q Mr. Soering, didn't you understand what the
15 entire situation was there, what was being said? I mean,
16 with your intelligence, if Ricky and I can understand it,
17 you certainly could, couldn't you?

18 A Yes, I understood I was being railroaded.

19 Q Wasn't it said to you by Detective Sergeant
20 Beever, "Obviously, on this day at 1:00 in the afternoon,
21 we can't give you an American attorney here at the
22 moment," right? That's what he was saying to you?

23 A That's what he said, yes.

24 Q But didn't you understand -- You've already
25 indicated that you understood your Miranda rights?

1 A That's right.

2 Q And don't these Miranda rights tell you
3 that you have the right to the presence of an attorney
4 before making a statement?

5 A That's right.

6 Q So regardless of when you get the American
7 attorney or the German attorney or the British attorney,
8 regardless of when that is, you have the right to stop
9 answering questions until you get it?

10 A Yes, if I want my girlfriend hurt.

11 Q And you understood that, right?

12 A That's right.

13 Q So this business about, well, Ricky Gardner
14 misled you with the business about, "Well, I couldn't get
15 an attorney until I got to America," and all that, you
16 understood all of that. You're just saying that you were
17 afraid Elizabeth would get hurt?

18 A What I'm saying was that I had a right to
19 an attorney and after they explained that right to me, or
20 I explained to them initially, when I said I wanted an
21 attorney I was informed of my rights. Then they turn
22 around and tell me. "You can't have an American attorney,
23 because we can't find one for you." And if I try to leave
24 the room, Elizabeth is going to, quote, fall over and get
25 hurt, unquote. What were my options? I had no options.

1 Q Sir, as you pointed out a few minutes ago,
2 we are talking about two issues. First of all, whether
3 you understood the rights. Secondly, whether you
4 voluntarily waived the rights. I'm asking you about
5 understanding them. You understood --

6 A Yes, sir.

7 Q -- regardless of when an attorney was
8 provided for you, whether it was that day, five minutes
9 later, five weeks later, five years later, you had the
10 right to stop answering any questions until you got that
11 lawyer. You understood, right?

12 A Yes.

13 Q Okay.

14 A That's what the law book says, but that
15 wasn't the situation on the scene.

16 THE COURT: All right, now, we are at ten
17 after 1:00. If you think you can finish in a
18 few more minutes with direct, I'll let you do
19 it. Otherwise, I think probably we should
20 consider lunch.

21 MR. UPDIKE: Your Honor, I apologize to the
22 Court. I am nearing an end, but I'm not quite
23 finished. If the Court would consider a lunch
24 break at this point I'd appreciate it.

25 THE COURT: All right. We'll recess for

1 lunch until 2:15.

2
3 (The Court recessed for lunch at 1:15 p.m. and reconvened
4 at 2:15 p.m. and in the presence of the defendant and
5 counsel, the following ensued.)

6
7 THE COURT: We've got everybody here now,
8 haven't we?

9 MR. UPDIKE: We're all set.

10 THE COURT: All right. We're ready to go.

11 MR. UPDIKE: Thank you, Your Honor.

12
13 BY MR. UPDIKE:

14 Q Mr. Soering, I just have a few more
15 questions and then we'll wind this up. I thank you for
16 your patience. This is a point that I've asked you
17 previously, but directing your attention to page forty, do
18 you still have the transcript? If not, that might be the
19 one that you still have over here. If you'd like another
20 copy, I have another one.

21 A Is this the Sunday one?

22 Q The June 7th interview.

23 A On Saturday?

24 MR. NEATON: I think I've put that back on
25 your desk.

1 MR. UPDIKE: Okay.

2 THE COURT: June 7th would have been
3 Saturday, I believe, wouldn't it?

4 MR. UPDIKE: Yes, sir, Your Honor.

5 THE COURT: June 8th would have been
6 Sunday.

7
8 BY MR. UPDIKE:

9 Q On page forty, just about the tape again,
10 and I'm just asking you to look at the bottom of the page,
11 the last quarter of the page on page forty. I'm not
12 asking you about the content of what proceeds or anything
13 like that. I would just like to ask you, there at
14 3:50 P.M. If the tape recorder was turned off at your
15 request?

16 A Yes.

17 Q Thank you. Along those same lines, at the
18 end of this transcript, page forty-nine, if you would
19 examine that page, and my question would be, do you at
20 that point request to speak to Investigator Gardner
21 privately, off of the tape, not recorded?

22 A Mr. Wright says that I wanted to do a
23 drawing and that's why they turned off the tape and I did
24 the drawing, and then they turned the tape back on.

25 Q Let me refer you -- I think it's on the

1 previous page, that your statement first of all, near the
2 top of page forty-nine, you do state then in response to
3 Detective Constable Wright's question, "May I interrupt?
4 There's one other thing in that the matter of something
5 Jens says that he would like to do. You've heard him."

6 A The --

7 Q Excuse me? And then you say, "The drawing,
8 that's right. Hmmm -- Okay. I think I would like to do
9 that privately with Officer Gardner."

10 A Forty-eight?

11 Q Forty-nine. Excuse me. The top of page
12 forty-nine.

13 A Right. Yes, that's right.

14 Q You do request it privately with Officer
15 Gardner. My next question of you is, did you request that
16 to be done off of the record, not recorded? And I'll tell
17 you, I don't know that it's specifically indicated there
18 in the transcript. I'm just asking you, if it's not
19 there, if you recall?

20 A I don't recall. We talked about making a
21 drawing and then I made the drawing, you know.

22 Q The drawing was done earlier, though,
23 because this is on Saturday, would you agree with that?

24 A I think that --

25 Q And that you're requesting to make

1 alterations to the drawing?

2 A I'm sorry. I thought -- I got the
3 impression that this is when I do the drawing. No, you're
4 right. You're right. You're right. Yes, this must be
5 that I did the drawing earlier and here I'm making minor
6 alterations to it. That's right.

7 Q If you would like to see this, the custody
8 sheet would show you on June 6th is when Detective
9 Sergeant Beaver got it from your pocket and this is the
10 next day, June 7th. Would you like to see that or do you
11 recall that as being correct?

12 A I thought everything about the drawing
13 happened on Saturday, but if the custody record says that
14 it was Friday, I agree with that. I should say that,
15 what I referred to earlier, that when Mr. Wright spent an
16 hour locked in my cell with me, talking about his
17 bricklaying in Germany and all that, that must have
18 happened on Friday, Friday night, not Saturday night then.
19 Because it happened on the same evening as the drawing was
20 made, I think. Yes, Friday night. I was wrong about
21 that.

22 Q I would like to ask you concerning what you
23 just said there. Isn't it true, Mr. Soering, that
24 Detective Constable Wright did not spend an hour locked up
25 in a cell with you, but there was a time in which he

1 escorted you to the shower and then he just engaged in
2 general conversation then?

3 A Yes. He took me to the shower. That was
4 on two occasions. But one night he spent an hour locked
5 in my cell talking to me.

6 Q And it was not during an occasion when he
7 took you to the shower?

8 A That's right.

9 Q It was another occasion?

10 A This was later.

11 Q Sir, I'd like to ask you then about the
12 next interview, this being the last one on Sunday, June
13 8th. Preceding that interview, there are entries in the
14 custody sheet that I would like to ask you about.

15 It's the entry of 4:30 P.M. that I'd like
16 to direct your attention to and ask if you'd like to read
17 that?

18 A (Witness reads entry.) Yes.

19 Q Now that you've read that, I would like to
20 ask you, there at 4:30 P.M. on June 8, 1986, did you
21 request to speak to Detective Sergeant Beever?

22 A No.

23 Q This entry to the effect that Detective
24 Sergeant Beever spoke to you through the wicket, I think
25 it's called, from 4:32 P.M. to 4:35 P.M. Do you agree

1 with that or deny it?

2 A Yes. He often came to speak to the wicket,
3 through the wicket, throughout those four days.

4 Q Do you deny that that occurred at your
5 request?

6 A That's right. He was back there all the
7 time. He made many visits.

8 Q And continuing with that same entry of 4:30
9 where it says, "No incidents, but prisoner requests to
10 speak to Investigator Gardner from the U.S." There's a
11 signature there of some David Walsom, but also the
12 signature of Kenneth Beaver, D/S, his signature on that
13 entry.

14 A Yes.

15 Q And I would ask you, did you request to
16 speak to Investigator Gardner from the United States?

17 A No, I didn't.

18 Q If this is established to be an accurate
19 entry, you would dispute that fact?

20 A That's right. I never asked to speak to
21 any policeman. And I knew at that stage that, you know, I
22 had to be in Court the next day, so it was nearly over
23 with. I wouldn't want to speak to one.

24 Q The next entry at 4:45 P.M., if you'd like
25 to look at it, is "The prisoner is removed in order to

1 speak to Officer Gardner in DCI Office. D. S. Beever
2 escorted and reminded of the codes of practice," and his
3 signature there again. You would not dispute that you
4 were taken to DCI's Office at that point --

5 A That is an accurate record.

6 Q Excuse me?

7 A That is an accurate record.

8 Q That is an accurate record. Okay. And
9 quickly, concerning that interview, the same question that
10 I've asked previously concerning the Miranda warning,
11 which would be -- Actually, there are two. The first one,
12 however, Commonwealth's Exhibit Number Five, with the date
13 June 8, 1986, approximately 4:45 P.M. Did you sign that
14 waiver form?

15 A Yes.

16 Q At the time that you signed it, did you
17 understand all the rights stated on the form?

18 A Yes.

19 Q When Investigator Gardner testified, and
20 I've been looking for it, it's my memory that it's 6:45
21 P.M., yes, that he asked you if you wished to go to the
22 bathroom or have refreshments, things of that nature, and
23 he also indicated that he wanted to go to the bathroom.
24 Do you dispute any of that, that there was a break at some
25 point through the interview?

1 A Well, I mean, I can't say I specifically
2 recall it, but throughout the interviews they always let
3 me do things like go to the bathroom, and it's perfectly
4 possible. I had objection.

5 Q Okay, sir. But my question is, he
6 indicated in his testimony that at that point he also
7 asked of you if it was all right if Wright and Beaver came
8 in the room for the purpose of assisting in note taking.
9 Did that occur, according to you?

10 A My memory of that Sunday interview is that
11 all three police officers were there throughout the
12 interview, but admittedly by that time things were getting
13 to be very hazy and I, you know, I can't be sure. I
14 remember all three police officers being there. Maybe they
15 weren't at the beginning.

16 Q So if -- Well, when Investigator Gardner
17 testified he was there by himself during the first part
18 and then all three during the second part, you don't
19 recall and don't dispute it, but you --

20 A I really -- I just don't recall it. See,
21 what I recall happening is that Investigator Gardner said
22 something about, you know, "It's Sunday. We're running
23 out of time." What I recall is the other two policemen
24 agreeing with him, which is why I thought they were there
25 from the beginning. I mean, perhaps they said that later

1 on in the afternoon.

2 Q And finally, Commonwealth's Exhibit Number
3 Six, the final Miranda form with the date June 8, 1986,
4 this time being at 7:18 p.m. Is that your signature?

5 A Yes.

6 Q And did you sign it, or I should say, at
7 the time that you signed it, did you understand the rights
8 stated on it?

9 A Yes.

10 Q Now, Investigator Gardner testified that
11 through this interview of June 8, 1986, both portions of
12 it, that you never made a request for an attorney. Do you
13 dispute that?

14 A I always requested an attorney before the
15 interview started, before they started the taping.

16 Q Well, let me ask you specifically about
17 this interview, the first portion of it. Maybe we should
18 address it in that fashion. The first one has the date on
19 the Miranda form of approximately 4:45 p.m. Did you
20 request a lawyer during that first portion?

21 A Yes.

22 Q Do you specifically recall, though, or are
23 you just assuming that you did or do you have specific
24 recollection?

25 A I can only say that I recall on each and

1 every occasion asking for a lawyer, so I must have asked
2 for a lawyer, because I always asked for a lawyer. But it
3 was always before they turned on the tape recorder.

4 Q Well, this --

5 A I know it wasn't tape recorded.

6 Q This one wasn't recorded according to
7 Investigator Gardner. I must ask you specifically that
8 same question as to the second portion of the interview
9 with the Miranda dated 7:18 p.m. As far as that second
10 portion, beginning at that point on, do you have any
11 specific recollection of requesting an attorney?

12 A As far as I recall, that was just like, you
13 know, going to be one interview, so I don't specifically
14 recall.

15 Q And sir, it may very well was, but the
16 officers did give you two Miranda forms to that, one dated
17 4:45 and one 7:18?

18 A Yes.

19 Q And my question is, after, say, at 7:18
20 p.m., do you have any specific recollection of requesting
21 an attorney from that point to the end of the interview?

22 A No. I can only remember that at the very
23 beginning I did ask for a lawyer. See, to me that was one
24 big long interview and I asked for a lawyer at the
25 beginning. But, I mean, by that time I had completely

1 given up hope, so it was really pro forma.

2 Q If I could ask you this, whether you know
3 or don't, whatever your answer is, do you have any
4 knowledge of Elizabeth Haysom having requested an attorney
5 and having, in fact, in response to that request, having
6 seen Keith Barker? Do you have any knowledge --

7 A Not during the weekend. I do now, but not
8 during the weekend.

9 Q Excuse me? I'm sorry, I didn't understand.

10 A While I was at the police station, I didn't
11 know. But afterwards, obviously, Keith Barker told me.

12 Q But while this was occurring during that
13 period of time, you did not know?

14 A Right.

15 Q But you've found out since then that Keith
16 Barker did see Elizabeth Haysom during that period?

17 A I realize, you know, that it's hearsay and
18 all that, but you know, at Candlewell Green Police Station
19 Keith Barker told me that he had seen Elizabeth and he
20 tried to see me and they wouldn't let him.

21 Q Now, if I could ask you, the custody sheet
22 or the entry on the custody sheet that we were just
23 talking about refers to a diagram being taken from you?

24 A Yes.

25 Q By Detective Sergeant Beever on June 6,

1 1986. I think it was around 1:30. I don't have it in
2 front of me, but if you'd like the specific reference, I
3 can give it to you.

4 A On Friday at 1:30?

5 Q Right. Exactly.

6 A I thought it was dark outside when he came
7 and got it, but if you say it's then, I have no objection.

8 Q 1:39 p.m. on June 6th.

9 A Right.

10 Q Would this be the diagram that you actually
11 drew and was taken from your pocket at that time?

12 A It looks like it, yes.

13 Q And going back to the end of the June 7th
14 interview.

15 A That's this one?

16 Q Yes, when you had the private conversation
17 with Investigator Gardner. Would this have been the same
18 diagram shown to you at that point and you made the
19 alterations on it?

20 A Okay. I'm agreeing with you that that's
21 the diagram, but this particular passage here says that I
22 made statements about inaccuracies in the drawings, but I
23 didn't actually sort of start redrawing it or anything.
24 What this says, you know, I just made statements about the
25 accuracies but didn't draw them.

1 Q Could I ask you about your own
2 recollection, however? Do you have recollections
3 independently of the transcript as to what happened and
4 whether this is, you made alterations on it?

5 A That, to me, looks like the diagram I drew,
6 you know. It's just like the diagram I drew.

7 MR. UPDIKE: Could we proffer this for --
8 Well, we'd like to introduce it. Are there any
9 objections? What this is is a Xerox copy of
10 the front and back of this.

11 MR. NEATON: Are you offering it for
12 identification purposes?

13 MR. UPDIKE: Identification purposes at
14 this point, yes.

15 MR. NEATON: I have no objection for that
16 limited purpose.

17 MR. UPDIKE: Thank you.

18 THE CLERK: Number Twelve.

19
20 (Commonwealth's Exhibit Number Twelve was marked
21 for identification only.)
22

23 MR. UPDIKE: Thank you, Mr. Soering. I
24 have no further questions.

25 THE COURT: All right. Mr. Neaton?

REDIRECT EXAMINATION

1
2
3 BY MR. NEATON:

4 Q Jens, on April 30th and May 1st of 1986 in
5 your interviews with Mr. Beaver and Mr. Wright, did they
6 threaten at that time?

7 A No.

8 Q Did they threaten Elizabeth in the fraud
9 interviews?

10 A No.

11 Q At 12:50 p.m. on the 5th of June, 1986, you
12 did not want a solicitor?

13 A That's what I signed on the custody record.

14 Q At 3:35 on the 5th of June, 1986, did you
15 want a solicitor or a lawyer?

16 A Is 3:35 the time I went into the room?

17 Q At the time that the first interview began
18 with the three police officers, did you want a solicitor
19 at that time?

20 A What happened was that I was taken from my
21 cell to the room. I walked in, I saw Ricky Gardner, and I
22 thought, "Uh-oh," and then I said, "I've seen Hill Street
23 Blues. I want a solicitor." Because, I mean, you know, I
24 really was surprised to see Ricky Gardner.

25 Q Now, I'd like to show you some of the

1 entries in the British custody record referred to by the
2 Commonwealth's Attorney. Specifically, I would call your
3 attention to the entry noted in the record for 7:45 p.m.
4 on the 5th of June. Do you see that?

5 A Yes.

6 Q Did you write that entry into the record?

7 A No.

8 Q Did you sign that entry?

9 A Not this one, no.

10 Q The entry for 7:50 p.m., right beneath
11 that, did you write that entry?

12 A No.

13 Q Did you sign it?

14 A No.

15 Q Did you see who wrote it or signed it?

16 A No.

17 Q The entry at 7:55 p.m., did you write that
18 entry?

19 A No.

20 Q Did you sign that entry?

21 A No.

22 Q The entry at 8:02 p.m., did you write that
23 entry?

24 A No.

25 Q Did you sign that entry?

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A No.

Q The following day, for the 6th of June, the 10:05 a.m. entry, did you write that entry?

A No.

Q Did you sign it?

A No.

Q The 10:13 a.m. entry, did you write that entry?

A No.

Q Did you sign it?

A No.

Q The 11:00 a.m. entry for the same day, did you write out that entry?

A No.

Q Did you sign it?

A No.

Q Did you see anybody write those entries on the custody record?

A No.

Q The 11:19 a.m. entry, did you write that out?

A No.

Q Did you sign it?

A No.

Q Did you see anybody write that out or sign

1 It?

2 A No. I don't think so.

3 Q Going back to the 7:59 p.m. entry on the
4 5th of June, did you write out the words in that entry?

5 A No.

6 Q Going to the 7th of June, the 12:25 p.m.
7 entry, did you write out the words in that entry?

8 A No.

9 Q So those are not your words?

10 A No.

11 Q Going to the 4:45 p.m. entry on the 8th of
12 June, did you write that entry into the custody record?

13 A No.

14 Q Did you sign it?

15 A No.

16 Q The entry above that, timed at 4:30, did
17 you write that entry out?

18 A No.

19 Q Did you sign it?

20 A No.

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1 Q Did you see who wrote that entry out or see
2 who signed it?

3 A No.

4 Q I'd like to refer your attention to the
5 statement dated June 6th. I refer you to page two of
6 that statement.

7 A I don't have that.

8 Q Okay. I'll show you my copy of it.

9 MR. NEATON: Is that all right?

10 THE COURT: Sure.

11 MR. UPDIKE: Sure.

12 THE WITNESS: Yes?

13

14 BY MR. NEATON:

15 Q Now that's the time that Mr. Updike asked
16 you about when you asked that the tape be turned off?

17 A Yes.

18 Q Why did you ask that the tape be turned off
19 at that time?

20 A I wanted to talk to the police about things
21 that I didn't want to be on tape.

22 Q What things didn't you want to be on tape
23 at that time?

24 A Things about the substance of the case
25 which I didn't want to discuss, that I thought I shouldn't

1 be talking about on the tape.

2 MR. NEATON: Thank you. I have no further
3 questions.

4 MR. UPDIKE: No further questions.

5 THE COURT: Thank you. Step down. That's
6 all, Mr. Soering. Step down. All right. Does
7 the --

8 MR. NEATON: The defense has no further
9 witnesses, Your Honor.

10 THE COURT: Thank you, sir. Let's proceed
11 with what witnesses the prosecution has.

12 MR. UPDIKE: Yes, sir, Your Honor. If we
13 could call Detective Constable Wright, please.

14
15 The witness, DETECTIVE CONSTABLE TERRY WRIGHT,
16 having first been duly sworn, testifies as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. UPDIKE:

21 Q State your name, please.

22 A I'm Terry Wright, Detective Constable,
23 attached to the Police Station from the Metropolitan
24 Police, London, England.

25 Q How long have you been employed by the

1 Metropolitan Police Department?

2 A Since April 1982.

3 Q And then the rank of Detective Constable,
4 how long would that be?

5 A I've been doing detective duty since 1984.

6 Q 1984. And, of course, that would mean in
7 this period of 1986 that I wish to ask you about, you were
8 doing detective duties at that time, is that correct?

9 A That is correct, yes.

10 Q And at that time stationed at the Richmond
11 Police Station in Richmond, England?

12 A That is correct, yes.

13 Q I'd like to ask you, first of all,
14 concerning the copy which has been labeled "Proffered
15 Commonwealth's Exhibit Number Eleven." Again, this is the
16 copy. And if I could ask you if you could identify that,
17 please?

18 A This is a copy of a document which we refer
19 to as a custody record and it refers to Jens Soering, and
20 it's dated the 5th of June, 1986.

21 Q And it's for the period of June 5, 1986
22 through, it concludes at what time or what date. I should
23 say, the last day?

24 A The 9th of June, 1986.

25 Q Could you describe for us, please, a little

1 bit what a custody sheet is, how it comes about that the
2 entries are made in it and the procedures of the
3 department followed there in Richmond, England?

4 A Whenever a subject, an individual, is in
5 custody in the police station, the manner in which he's
6 treated is governed by the Police and Criminal Evidence
7 Act of 1984, which is an act of Parliament.

8 Q What was that again?

9 A It's the Police and Criminal Evidence Act.

10 Q The Police and Criminal Evidence Act. And
11 could I ask you, is that what sometimes is referred to as
12 PACE because of the initials?

13 A Yes. The initials are PACE.

14 Q Now please continue. I'm sorry.

15 A Okay. The document that you have just
16 handed me a copy of is a record of an individual's stay at
17 the police station and the Act of Parliament says that
18 whenever a person is in custody, details of that person's
19 custody, whether or not, the length of time he's there,
20 the reason he's there and any aspects of -- Well,
21 generally the way he's treated is recorded on the custody
22 record and this is done by somebody that's independent of
23 the investigation.

24 Q A person independent of the investigation?

25 A Yes, sir. The person that's responsible

1 for this particular form, or any custody record, would be
2 a uniform Sergeant who's reviewed by a uniform Inspector,
3 and both of those must be independent to the
4 investigation, other than the initial booking in of the
5 subject and any possible queries on identity.

6 Q Now looking at that particular custody
7 sheet, there are numerous entries that are made
8 periodically. Could you tell us something about the
9 procedures of how often the prisoners are checked and the
10 purpose of doing that and what types of entries are made?

11 A Well, if I deal with the purpose first, the
12 purpose is to monitor the length of time. We have
13 limitations as to how long a person can remain in custody
14 without being charged. And the first thing that happens
15 is that when a person is brought to the station, the
16 Sergeant opens this record and reviews whether or not it's
17 necessary to keep him in detention at that time. And
18 he'll make an entry of the time and date it, saying that
19 he gives authority to detain the person.

20 From then on, if he's supplied a meal or
21 taken out for an interview or taken out to search and
22 address or for any other reason, and then those matters
23 are recorded on that custody record.

24 Q Now suppose the prisoner is ill or has a
25 medical problem of some sort, would that type of situation

1 be entered?

2 A Yes, sir, that would be recorded. And as
3 soon as a record like that was made, the Custody Officer,
4 regardless of whatever the Investigating officer said,
5 would automatically call a doctor. And if a doctor was
6 called, the record of that, when he arrived and saw the
7 prisoner, that would be on the custody record.

8 Q If a prisoner has any complaints about the
9 manner in which he has been treated, would a complaint of
10 that nature be entered on the custody record?

11 A Yes. It most certainly would, sir. In
12 fact, I mentioned earlier about a uniformed Inspector. He
13 is called the Review Officer and he will actually speak to
14 the prisoner and ask him if he has any complaints, if he's
15 fit and well, and if not, obviously, he would treat that
16 as a complaint against the police and the process would
17 begin to deal with that complaint.

18 Q Now as we go through this particular
19 custody sheet I see numerous times that there are entries
20 of "Fit and well, no incidents." or "Fit and well, no
21 request." Those types of entries are they indicative of
22 just what it sounds like, the prisoner made no complaints
23 or --

24 A Yes, sir. Other than times when a person
25 is out for interviews or any other reason away from the.

1 when he's not actually in the control of the Custody
2 Officer, the prisoner is checked every hour.

3 Q Every hour?

4 A In certain circumstances, less than that.
5 For drunken prisoners, it would be less, but generally
6 it's an hour or thereabouts, depending on the Custody
7 Officer's other commitments at the time --

8 Q And would that --

9 A -- and those are recorded.

10 Q That's what I was going to ask. Each hour
11 that there is a check, the Custody Officer would make an
12 entry on the custody sheet of each prisoner.

13 A That's right. And you must understand,
14 sir, that the Custody Officer and the Review Officer may
15 not be the same person from the time that the record is
16 opened, because they obviously work for eight-hour shifts
17 and another Custody Officer, although it be a different
18 officer, he then becomes a Custody officer. So these
19 entries over three or four days are made by several
20 different people.

21 Q And they are made over a twenty-four hour
22 period, a continuous twenty-four hour period. Is that
23 correct?

24 A It is a continuous thing right up until the
25 time when the need for detention ceases.

1 Q If a prisoner requests to see a solicitor
2 or to see counsel, what, if anything would be done with
3 such a request as far as the custody sheet is concerned?

4 A Then a record would be made of that.

5 Q And that would be indicated in that
6 fashion?

7 A Yes, sir.

8 Q As far as that particular copy is
9 concerned, are you aware of where the original of that
10 record is?

11 A I have the original record actually in my
12 possession, sir.

13 Q At this moment?

14 A Yes, sir.

15 Q And if you would, tell us how that came
16 about?

17 MR. UPDIKE: And I might add, the reason
18 I'm going through this, he has the original.
19 I'm going through this to request that the copy
20 be received into evidence. If there's any
21 objection as to the custody sheet, that's why
22 I'm doing it. If there's no objection, we can
23 just introduce it and move on.

24 MR. NEATON: I have no objection if a copy
25 is ultimately received by the Court. I do have

1 objections to the custody record that are based
2 on grounds other than Mr. Updike would offer a
3 Xerox copy.

4 MR. UPDIKE: I'm not sure that I
5 understood, Judge. Well, first of all, maybe I
6 should proceed, but I'd like to be able to
7 address your specific objection so as not to
8 waste time. You're just objecting to the copy?

9 MR. NEATON: No. I said the mere fact that
10 what you want to offer is a Xerox copy, that
11 would not form the basis of any objection that I
12 would have to the entry of the custody record.
13 The objection I would have to the entry of the
14 custody record would be based upon hearsay and
15 would be based upon the fact that it has not
16 been shown to be the foundation that meets the
17 business record or whatever other exception
18 you're trying to enter this under the
19 Hearsay Rule. The record itself is hearsay and
20 I'd like to know what exception you would offer
21 it under.

22 MR. UPDIKE: Your Honor, we are -- I
23 suspected this. I've got the thing in the book
24 marked, page 601. The Shop Book Rule in
25 Friend's Book of Evidence, at which point he

1 discusses this and lists, I guess, ten different
2 considerations. And that's the reason I asked,
3 because we have read this and we are prepared
4 to go through and establish accuracy, what they
5 are, all that type of thing, if there's an
6 objection on those grounds.

7 I would state, Your Honor, such things
8 as are proffered if they make any difference
9 that, for example, on this June 9th day of 1986,
10 the Monday, Detective Sergeant Beever at that
11 time took the custody sheets, read them onto a
12 tape recording just as they were at that time.
13 We still have the tape recording. He did it for
14 two reasons, for purposes of authentication and
15 purposes of us being able to read the things.

16 Yesterday he listened to the tape
17 recording, compared it to the original, and it's
18 just the same as it was. The custodian of the
19 records at this time is sitting before Your
20 Honor, which we can establish through the
21 procedures of the Metropolitan Police
22 Department. He has custody of them. He's
23 responsible. I'm just wondering if that makes
24 any difference. If it doesn't, then we'll have
25 to go through this with Detective Constable

1 Wright and call Detective Sergeant Beever to the
2 stand for authentication. We are prepared
3 to do it. I just --

4 MR. NEATON: Two things. Judge. First, as
5 to whether the piece of paper itself comes in as
6 a business record or is a business record, I
7 would indicate that the mere fact that this
8 witness has custody of the record right now does
9 not mean that he is a custodian for purposes of
10 the Business Record Exception or the Shop Book
11 Exception.

12 Secondly, there's a second level of
13 hearsay involved in the record itself and that
14 is the entries in the record are made by people
15 other than this witness or Mr. Beever. And the
16 reliability of some of those entries is at
17 issue in this particular hearing. And,
18 therefore, what I'm saying is that at level one
19 of my objection, perhaps, just for the sake of
20 argument, say, perhaps he can establish a
21 foundation that the piece of paper itself is
22 kept in the ordinary course of business.

23 But he has to go one step further, and
24 say, you have a second level of statements
25 contained within the piece of paper which are

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made by individuals and they were made out of Court and not under oath and apparently all of these witnesses are not here and are not subject to cross examination.

And that's all -- So if you understand the two bases of my objection.

MR. UPDIKE: If I could quickly respond, Your Honor. By consideration of Number 5 on 603, the record must be authenticated by some witness. And we will be able to do that both through Detective Sergeant Beever and Detective Constable Wright as to their knowledge of the events and plus there being entries which they themselves documented.

The second one, Your Honor. Is to consideration Number 7 on page 604 and that goes into personal knowledge of the entrant and Friend discusses that as long as the person who writes down the entry does so during the regular course of business that that assures the trustworthiness of the entry and that that is sufficient. And he continues in that particular category discussing the fact that the entrant, if that's the correct pronunciation, the person who enters the writing does not have

1 to necessarily have personal knowledge of what
2 is being entered. But as long as the person who
3 enters it does so within the regular course of
4 business and the person who has the actual
5 knowledge of it is acting during the ordinary
6 course of business, that's sufficient. But
7 under these circumstances, Your Honor, we can
8 establish the Custodian Officer went around and
9 obtained this information from the defendant
10 and that the person who actually has the
11 knowledge would be the person who actually made
12 the entry so we don't have to worry about that,
13 but for me to go through it --

14 THE COURT: All right. Since we have an
15 objection to the evidence, I don't want to rule
16 until such time as the Commonwealth has had a
17 chance to lay the proper foundation.

18 MR. UPDIKE: Yes, sir.

19 THE COURT: And once that's done, I'll
20 rule, if it's done.

21
22 BY MR. UPDIKE:

23 Q First of all, do you have the original
24 here, as you've indicated?

25 A Yes, sir.

1 Q Could I see that, please?

2 A (The witness hands original to Mr. Updike.)

3 Q First of all, let me ask you, how did the
4 actual custody sheet, the original, that is, come into
5 your possession?

6 A The custody records are retained for a
7 period of six years. They are stored in binders which
8 contain a hundred records in each binder. During the time
9 that they are in storage, when the record is complete,
10 which is at the time the detention ceases, any further
11 entries on that would only be regarding property or
12 whatever, because it may be possible that the person's
13 property recorded is actually restored to some other
14 person. However, once it is complete, it's restored to
15 him and it is available for use in any trial or for any
16 other legal proceedings or in complaints or whatever.

17 And, basically, I am required, or the
18 person that removes it from the binder, is required to
19 leave a copy in its place bearing the name of the officer
20 that's removed it and the reason. And the only other
21 stipulation is that it is returned to the binder as soon
22 as possible after the proceedings are finished.

23 Q And to elaborate a little bit on those
24 points, this particular record, where was it actually
25 stored or where has it been stored?

1 A At Richmond Police Station.

2 Q And the place of the storage that you've
3 described, is that the place designated within the regular
4 procedures, established procedures of the Metropolitan
5 Police Department?

6 A Yes, sir. It's in a locked cabinet in a
7 locked room in the basement of the Richmond Police
8 Station.

9 Q And, as you say, this particular record
10 goes from June 5, 1986 to the morning of June 9, 1986?

11 A Yes.

12 Q And at that point it would be closed, is
13 that correct?

14 A That is correct, other than possible
15 entries on the reverse for property that's been restored.

16 Q That's what I wanted to ask you about.
17 There are property, a list of property on the sheet itself
18 and the only change or addition to them would be if these
19 items of property were returned to the owner and an
20 appropriate designation would be made there?

21 A That is correct.

22 Q Now you, yourself, were involved in the
23 investigation concerning this matter at Richmond Police
24 Station during this period that we're talking about of
25 June 5th to June 9th, '86, is that correct?

1 A Yes, sir, I was.

2 Q With Detective Sergeant Beever and
3 Investigator Wright?

4 A Investigator Gardner, yes.

5 Q Excuse me. It is late. And as a result of
6 that, are you familiar with the various events that
7 occurred during the course of that period of time, as to
8 the investigation?

9 A Yes, sir, I am.

10 Q Have you had the occasion, with the
11 knowledge in that regard, to compare that knowledge with
12 the actual custody sheets to see whether you could see any
13 inaccuracies in what occurred?

14 A The inside pages of the custody record,
15 which I refer to as the log, have not been added to at
16 all. May I?

17 Q Please. I'm sorry. (Mr. Updike hands
18 witness back original custody sheet.)

19 A They have not been added to at all, other
20 than one occasion where a result has been inserted on that
21 form of a trial, well, a hearing that took place at
22 Kingston Crown Court.

23 Q When was that and what was that entry,
24 please? Just so that we'll know what the change is.

25 A Yes, sir. If you can just bear with me a

moment, because --

1 Q Please take your time.

2 A The entry that I refer to states, basically
3 lists four counts or four charges that were put to Jens
4 Soering at Kingston Crown Court. One and two being
5 pecuniary advantage. Number three being going equipped to
6 cheat. And Number four, again, pecuniary advantage. And
7 underneath that, it says, "One to three - twelve months
8 and concurrent." And then it goes on to list compensation
9 orders that were awarded to various banks.

10 Q But other than that, the custody sheet
11 indicates no additions since the period that we've
12 described?

13 A That is correct. And I can state that the
14 last entry on the 9th of June, 1986, at 9:30, when he's
15 released from police custody, I believe I was present at
16 that time.

17 Q As far as examining the entries themselves,
18 as you look through them, do you see any apparent
19 indications of different handwritings or scratchings
20 through words or anything that might indicate any changes
21 in them?

22 A This is the original custody record and it
23 has not been altered or amended in any way, other than the
24 further entry that I just discussed.

25

1 Q Are there certain entries in the custody
2 records which bear your signature?

3 A Yes, sir.

4 Q I might, if I could, look quickly -- You
5 might be able to find your signature yourself. Let's see
6 if I can --

7 A Yes, sir. My signature appears on the
8 front underneath the list of property, because I was
9 present when that property was listed.

10 Q Okay.

11 A It appears just below the signature of Jens
12 Soering.

13 Q And as to other entries?

14 A Yes. It further appears in the log of the
15 custody record on page two, which is actually the back
16 page. That's a point that was marked 11:19. It again
17 appeared -- Do you want me to go through, sir?

18 Q Yes, if you don't mind. I know that it
19 might take a moment, but perhaps we should.

20 A It again appears at a time 12:25 p.m. on
21 the 7th of June. And I believe those are the only times
22 I'm within the log of the record, sir.

23 Q Where your actual signature --

24 A That is my signature, yes.

25 Q And where your signature occurs at those

1 times, would you have personally observed what is
2 described in the entry itself? You would have been
3 involved in that?

4 A Yes, sir.

5 Q I might ask you about several other entries
6 to see that -- Perhaps you did not sign the entries, but
7 whether you might have been present at those times. Some
8 of these -- Perhaps I'll just read them to you. You may
9 or may not have been present. June 5, 1986, the entry at
10 3:25 p.m., referring to the defendant being taken to DCI's
11 Office?

12 A I believe I was there, although I can't be
13 certain.

14 Q Okay, sir. The 6:00 entry on June 5th.
15 This is where he was taken to that interview. I think it
16 states by D/S Beever though.

17 A Yes, sir, I believe I was.

18 Q The 7:45 entry on June 5th, which refers to
19 a phone call to the German Embassy. Do you recall whether
20 you were present during any of that?

21 A Yes, sir. I actually dialed the telephone
22 number.

23 Q You dialed the telephone number that's
24 indicated there?

25 A Yes, sir.

1 Q So the 235-5033 telephone number to the
2 German Embassy, you dialed yourself?

3 A Yes, sir.

4 Q There's an indication there as to what Mr.
5 Soering said or did during the telephone conversation or
6 what occurred. Did you, yourself, hear any of that or
7 have any personal knowledge of the accuracy of that
8 particular entry?

9 A Yes, sir. What I did, I obtained the
10 telephone number for the German Embassy. I dialed it. I
11 introduced myself as a detective from the Richmond Police
12 Station and I ascertained who I was speaking to and I,
13 over the telephone, learned that it was Mr. Banes, who
14 said he was the night security.

15 Q And I believe that's actually the
16 information that's stated there then?

17 A Yes, sir, it is.

18 Q While we're on that, did you hear the
19 conversation that Jens Soering made at that point once he
20 was given the telephone?

21 A Yes, sir. I stood beside him, but I
22 couldn't understand it, because it was in German.

23 Q It was in German?

24 A Yes, sir.

25 Q Well, do you speak German?

1 A No, sir.

2 Q Have you worked in Germany?

3 A I worked in Germany for three months. In
4 fact, it was a three-month contract. I was there for
5 eight weeks.

6 Q Eight weeks?

7 A Yes, sir. And I had no prior knowledge of
8 learning German before that.

9 Q And didn't learn a lot during that brief
10 period?

11 A No, sir.

12 Q The 7:50 entry on June 5th, which refers to
13 Soering being placed back in his cell?

14 A I believe on that occasion, sir, I was not
15 actually present when he was put back. I think, as soon
16 as the phone call was finished, because the telephone call
17 was made from right beside the desk where the Custody
18 Officer sits, he made his phone call, and I then left.

19 Q But it continues, that particular entry,
20 with something about D/C Wright and D/S Beever being
21 contacted and then the next entry, 7:55, I believe, refers
22 to D/C Wright, you, is that correct?

23 A That is correct, yes.

24 Q Exactly what is that entry pertaining to,
25 the 7:55?

1 A Yes. sir. As I said, I'd by this time gone
2 back upstairs to the CID Office where I was contacted by
3 the Custody Officer, who informed me that Jens Soering
4 wished to speak to me again.

5 Q So at 7:55 would you have been down in the
6 Custody Officer's area?

7 A No. sir.

8 Q No, you would not have been there because
9 you were contacted. I guess what I'm getting at, the next
10 entry at 7:59, did you go down there in response to the
11 call?

12 A Yes, together with Detective Sergeant
13 Beaver.

14 Q Now am I correct the 7:59 entry is the one
15 where it is written, "I now wish to speak to D/S Beaver
16 and D/C Wright without my solicitor being present." and
17 the signature of Jens Soering is signed there. Am I
18 correct --

19 A Yes, I was present when he made that
20 signature.

21 Q You were present when the defendant signed
22 that?

23 A Yes, sir.

24 Q The entry at 8:02 pertaining to Soering
25 being taken to the DCI's Office for the interview, "Beaver

1 being reminded of the Codes of Practice." Were you
2 present at that time?

3 A Yes, sir.

4 Q Would that entry be accurate?

5 A It is accurate, yes, sir.

6 Q Correct me if I'm wrong, the entry at 11:14
7 pertaining to Soering being returned to his cell. I don't
8 think -- Well, you answer. Were you involved in that
9 yourself when they were taking him back down?

10 A I may have been, sir. I can't say
11 specifically whether I -- I can't say with certainty, but
12 on most occasions I escorted Mr. Soering back downstairs.
13 Maybe not on every one.

14 Q The June 6th entry at 10:05 a.m. the next
15 day. There's an entry there pertaining to Soering ringing
16 the German Embassy, the number again 235-5033. He was
17 unable to speak to the person that he wanted and informed
18 to call back at 11:00. Were you present during that
19 entry?

20 A No, sir.

21 Q While I'm thinking about it, that phone
22 number 235-5033, stated there in the record, have you had
23 the occasion to dial that number recently?

24 A Yes, sir. I dialed that number yesterday.

25 Q Who did you get?

1 A Well, I actually dialed the international
2 code for London and then that number and I spoke to
3 someone at the Germany Embassy.

4 Q The German Embassy? So that number did
5 give you the German Embassy?

6 A The German Embassy in London.

7 Q That 11:00 entry as to the phone call,
8 where it states that, another reference to the Embassy. I
9 don't believe that you were present during that, or were
10 you?

11 A No, sir. Those entries were made by
12 whoever was Custody Officer at the time.

13 Q The 11:19 entry where Soering is taken out
14 of the cell at that point for the interview, were you
15 involved in that or any personal observation?

16 A Yes, I was there, sir, when we were
17 contacted and asked to go downstairs because Soering
18 wanted to speak to us. I went to the charge room with D/S
19 Beever and I've actually signed, what I actually do there
20 is I'm accepting responsibility for the prisoner.

21 Q So that entry is one of them you listed as
22 bearing your signature and so it would be accurate from
23 your personal involvement?

24 A Yes, sir.

25 Q I don't believe on that day as far as

1 returning him to the cell or those later events, you were
2 not involved in any of those. I don't think. Were you?
3 If so, please correct me.

4 A I don't believe so. No, sir.

5 Q The next day, June 7th, rather than me
6 reading them to you, maybe starting not specifically at
7 10:00 a.m., but in that area, if you could just begin
8 looking down that page and pick out any entries that you
9 were actually involved in. That may be faster than me
10 reading it to you.

11 A Yes, sir, there's an entry at 12:25 p.m.

12 Q Tell us about that, please.

13 A Basically, it's returning Soering to the
14 charge room and at that point Soering requested to speak
15 to Mr. Gardner, the Virginia Investigator, and I caused
16 that to be entered onto the custody record and I've signed
17 it.

18 Q You've signed it? So you asked that that
19 entry be made?

20 A Yes, sir.

21 Q Does that entry continue with a statement,
22 "I wish to speak to Mr. Gardner and I'm willing for this
23 to take place without a solicitor or attorney"?

24 A It does, sir, and it was signed by Jens
25 Soering.

1 Q And did the defendant over here signed
2 that, is that correct?

3 A Yes, sir.

4 Q Were you present when that signature was
5 placed on that entry?

6 A I believe I was, yes, sir.

7 Q And continuing to the next entries, the
8 12:30, the 1:00? There's something there about going to
9 the shower, but if you see another entry there that you
10 were involved in?

11 A Yes, sir. At 1:00 p.m. I went together
12 with Detective Sergeant Beever, I took Jens Soering
13 upstairs and then I continued on with him to escort him to
14 his shower. And then from there we took him to an
15 interview room, sir.

16 Q There is an entry there -- and I may have
17 missed one -- but June 7th at 1:39 p.m., is there an entry
18 there about the defendant being served a meal in the DCI's
19 office? June 7, 1:39?

20 A Yes, sir.

21 Q And were you up there at that time and are
22 you aware during that Saturday, June 7th, interview
23 whether the defendant was served a meal in the DCI's
24 office?

25 A Yes, he was served a meal. It was actually

1 during the interview and it sat on the table in front of
2 him for some time because he chose not to eat it. But
3 yes, I was there, sir.

4 Q I think those are the questions probably
5 I'd ask along those lines. If I could ask you some
6 questions using this book as a reference as far as the
7 consideration of business records, these, as you've
8 stated, are the records of the Richmond Police station of
9 the Metropolitan Police Department, is that correct?

10 A They are records that we are required to
11 keep by law.

12 Q And they are kept -- I think you've already
13 described this, but if I could run through it quickly --
14 they are made during the regular course of the operation
15 of the Metropolitan Police Department pertaining to the
16 custody of people detained at that police station, is that
17 right?

18 A Yes, sir. Every person that is brought
19 into the station, whether they be arrested or even if they
20 be a child brought to the station as a place of safety, a
21 custody record will be opened.

22 Q On every prisoner?

23 A Every prisoner, every person that's brought
24 to the station.

25 Q Or every person. Excuse me, yes. And as

1 far as the regular course and regular procedures of how
2 often they are checked, at least an hour or every hour?

3 A Yes, sir. The custody officer is
4 responsible to check a prisoner every hour. The review
5 officer has set time periods within which he must review
6 the prisoners.

7 Q And when he checks those prisoners, who
8 makes the entry into the custody record as to what the
9 person in custody says?

10 A The custody officer makes the normal
11 entries for regular checks. The review officer, he
12 actually makes the entry himself as the uniformed
13 inspector.

14 Q Now, as far as this consideration here,
15 Number Three, that the entry must have been made at or
16 near the time of the transaction. When are those entries
17 entered into the custody sheet record with relationship to
18 when the custody officer sees the event?

19 A Either at the time or immediately
20 afterwards.

21 Q Now, the person who makes the entries,
22 again, this is as to consideration for, would be the
23 custody officer or the super --

24 A Or the review officer.

25 Q The review officer. And within the

1 procedures and rules and regulations of the Metropolitan
2 Police Department, those individuals would be authorized
3 to make the entries into the custody sheet, is that
4 correct?

5 A That is correct, yes, sir.

6 Q And as far as your having them now, Number
7 Five, you are, you indicated, Detective Constable of the
8 Metropolitan Police Department and your having them now,
9 you followed the procedures of the Metropolitan Police
10 Department in checking them out and bringing them here?

11 A Yes. I am authorized to remove the custody
12 records from the binders and I have complied with the
13 requirements upon removal.

14 Q Of leaving a copy and signed for it?

15 A I have, sir, yes.

16 Q So if someone, let's say, at this moment in
17 Richmond, England wished to go to that particular file,
18 would there be information there indicating where the file
19 is and who has it?

20 A There would be a copy, sir, as the one you
21 have there.

22 Q As far as the person who makes the entry,
23 is there any type of signature or anything of that nature
24 indicating who is writing the particular entry on the
25 sheet?

1 A Yes. The person that makes the entry does
2 sign that entry.

3 Q During the time that these records have
4 been in your possession to bring to Bedford County,
5 Virginia, have they been altered, modified, changed in any
6 way?

7 A No, sir.

8 Q In August of 1987, regarding the trial of
9 Elizabeth Haysom, did you have the occasion to obtain
10 those same custody records?

11 A I did, sir, yes.

12 Q Did you bring them to Bedford, Virginia at
13 that time?

14 A Yes, sir.

15 Q And, of course, returned them to the
16 Richmond Police Station?

17 A Yes, sir.

18 Q Now, from the time that you had them then,
19 until now, do you see any changes in them or have you seen
20 any alterations that you can detect since the time that
21 they were made?

22 A No, sir.

23 MR. UPDIKE: Your Honor, we would have no
24 further questions on that particular point, but
25 wish to call Detective Sergeant Beever for

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further authentication.

THE COURT: Would you like to voir dire on the point at issue?

MR. NEATON: Yes.

THE COURT: Proceed.

VOIR DIRE

BY MR. NEATON:

Q Mr. Wright, these records are kept as part of your legal duty or as part of the police's legal duty under the PACE Act?

A That is correct, yes, sir.

Q And you're required by law to keep these records?

A Yes, sir.

Q Calling your attention to the entry at 12:25 p.m. on the 7th of June.

A Yes, sir.

Q Did you actually write that entry out?

A Only my signature, sir.

Q It was written out by the review officer?

A It's written out by Sergeant Luke was at that time the custody officer.

Q And you told that sergeant what to write?

1 A I told him what Mr. Soering had requested
2 and he chose the form in which to write it.

3 Q So the statement allegedly made by Mr.
4 Soering at that time was not made in the presence of the
5 custody officer, it was made in another area, you went to
6 the custody desk and told the custody officer about the
7 statement and asked him to write that in the custody
8 record, is that right?

9 A The statement was made as I returned Jens
10 Soering to the custody of the custody officer. He
11 requested of me to speak to Mr. Gardner.

12 Q He didn't request of the custody officer to
13 do that?

14 A Well, he's repeated his request to the
15 custody officer.

16 Q The entries on the 5th of June, the 3:25
17 p.m. entry on the 5th of June, is that in your writing?

18 A No, sir.

19 Q Did you make that entry?

20 A No, sir.

21 Q The 5:28 entry, is that in your writing?

22 A The only time my writing appears on this
23 custody record, as far as I'm aware, sir, is my
24 signatures.

25 Q Okay. Then every entry made in the custody

1 record for the 5th of June, the actual entries I'm talking
2 about, are not in your writing, is that correct?

3 A That's correct, yes, sir.

4 Q The 7:45 entry on the custody record for
5 the 5th of June, did you inform the custody officer of the
6 substance of your conversation with the German Embassy and
7 ask him to enter that in the record?

8 A Yes, sir.

9 Q The 7:50 entry in the custody record you
10 did not make, is that right?

11 A That's correct. I was not there at that
12 time, sir.

13 Q The 7:55 entry you were not there, is that
14 right?

15 A I was not there, sir. I was contacted from
16 upstairs by phone.

17 Q The 7:59 entry, you were not there when
18 that was placed in the custody record, is that correct?
19 You were only there when Mr. Soering signed that?

20 A Well, when he signed them, sir, would have
21 been when the record was made.

22 Q I'm asking you did you see that?

23 A I may have.

24 Q Did you see the custody officer write that
25 entry into the record?

1 A I may have done so.

2 Q But you're not sure?

3 A Correct.

4 Q Did you see the custody officer make the
5 8:02 entry into the record?

6 A I may have, sir.

7 Q But you are not sure?

8 A Correct.

9 Q All entries on the 6th of June made in the
10 custody record, up until 1:39 p.m., did you see the actual
11 entry of those statements into the custody record?

12 A On the 6th of June until what time, sir?

13 Q Up until, let's say, 11:19 a.m.

14 A No, sir.

15 Q And so the 11:19 a.m. entry that you
16 signed, you signed after it was put in the custody record,
17 is that correct?

18 A Well, sir, it would have to be afterwards,
19 otherwise my signature would appear first.

20 Q My question then to you is, how long after
21 11:19 a.m. did you sign the custody record?

22 A It was written in my presence, sir, and
23 then I signed it.

24 Q So the 11:19 a.m. entry you did see
25 entered, is that right?

1 A Yes. It would have been written down in my
2 presence.

3 Q Does that mean that you actually saw it
4 entered?

5 A Yes, sir.

6 Q And on the 7th of June, again, the 12:25
7 p.m. entry, the custody officer wrote what you instructed
8 him to write, is that correct?

9 A Not exactly, sir. I informed him of the
10 request and he chose the form in which to write it down,
11 which I signed.

12 Q The 12: -- Is that 12:39, the next entry?
13 Whatever time the next entry is. It's hard to read on my
14 copy.

15 A Yes, sir. I believe it's 12:30.

16 Q You did not make that entry, correct?

17 A Correct, sir.

18 Q You weren't present when that entry was
19 made?

20 A I may have been, sir.

21 Q But you're not certain?

22 A Correct.

23 Q Did you escort Mr. Soering back to his cell
24 at 12:30 p.m.?

25 A I may, but I can't be exactly sure, sir.

1 During the period of the three or four days, I escorted
2 him back to the cell several times, but not every time.

3 Q In other words, you could have been on your
4 way back to the cell when this entry was made at 12:30,
5 correct?

6 A I might not have even been there, sir.

7 Q Would the same apply for the 1:00 p.m.
8 entry, you may not have even been there when that was
9 made?

10 A No, sir. I was there, because my name
11 appears on the entry.

12 Q But you did not sign the entry, is that
13 right?

14 A That is correct, sir.

15 Q For the rest of the custody record, are any
16 of the entries made in your writing? I mean the actual
17 entries, other than the final one that I believe you
18 testified to about the release of the prisoner on the 9th
19 of June?

20 A No they are not, sir. The final one, that
21 is not in my handwriting either, but I was present.

22 MR. NEATON: Thank you. I have no further
23 voir dire questions.

24 MR. UPDIKE: If I could just ask a little
25 clarification.

1 REDIRECT EXAMINATION

2
3 BY MR. UPDIKE:

4 Q The procedures of the Metropolitan Police
5 Department for you as a Detective Constable, if you're
6 escorting a prisoner out of the cell or away from the cell
7 area, and he makes some sort of request, what are the
8 procedures and what are you supposed to do concerning that
9 request, if anything, as to the custody sheet?

10 A I would inform the custody officer and he
11 would record the request.

12 Q He would record it. So the procedure is
13 not for you to record it, but rather report it to the
14 custody officer and he would record it?

15 A It would be possible for me to record the
16 entry myself, but the usual procedure is to inform the
17 custody officer and he records it.

18 MR. UPDIKE: And he records it. I have no
19 further questions at this time as to this point.
20 We would like to call Detective Sergeant Beever
21 or Detective Inspector Beever to basically do
22 the same thing as to the record, if the
23 objection is continuing.

24 MR. NEATON: It's continuing.

25 THE COURT: All right. Step down.

1 A Yes, I did.

2 Q Detective Inspector Beever, I have some
3 limited questions at this point to ask of you, focusing
4 really on the custody sheet itself. I'd like to show you,
5 first of all, Commonwealth's Exhibit, proffered exhibit,
6 Number Eleven, which is a copy of the original custody
7 sheet also setting there in front of you. Are you
8 familiar with those items?

9 A Yes, I am, sir, yes.

10 Q Again, during the period of June 5 to June
11 9, 1986, you were involved in the investigation there in
12 Richmond, along with Investigator Gardner and Detective
13 Constable Wright?

14 A Yes, I was, sir.

15 Q And as a result of that, would I be correct
16 in stating that you are very well familiar with the events
17 that occurred during the course of the investigation of
18 that period?

19 A Yes, I am, sir, yes.

20 Q And in addition to that, I'd like to ask
21 and direct your attention to June 9, 1986, and ask if you
22 had the occasion to do anything in particular with the
23 custody sheet as far as assisting us in the investigation?

24 A On June 9th, sir?

25 Q June 9th.

1 A Could I make reference to the sheet, sir?

2 Q Please, uh-huh.

3 A No, sir.

4 Q As far as any entries are concerned? And I
5 don't think that I asked the question of you very well.
6 My mind is not working well at this point. But did you
7 have the occasion to read that custody sheet for us on a
8 tape recording?

9 A Yes, I did, sir.

10 Q And am I correct in stating that that was
11 Monday, June 9th?

12 A Yes, it was, sir, yes.

13 Q And at the time that you read the custody
14 sheet on June 9, 1986 on the tape recorder, as a result of
15 your knowledge of the events that occurred during that
16 period of time, was the custody sheet accurate in all
17 respects as to the best of your knowledge and
18 understanding?

19 A Yes, it was, sir, yes.

20 Q And since then, since your arrival back
21 here in Bedford -- I think you got over here Monday, is
22 that correct?

23 A I did, sir, yes.

24 Q Since then, at my request, have you had the
25 occasion to compare your reading on the tape recording of

1 the custody sheet and follow along with the actual,
2 original custody sheet?

3 A Yes. Right from the point of Mr. Soering's
4 arrival at the station, the short stay, the three or four
5 day stay at the police station, and right the way through
6 to his return to court on the Monday morning, which was on
7 the 9th.

8 Q And your findings as far as following along
9 with the custody sheet and listening to your own voice
10 read it from several years earlier, were there any
11 alterations, changes?

12 A None at all, sir, no.

13 Q I hate to do this to you, Inspector Beever,
14 but I need to ask you about certain entries just to see
15 whether you have personal knowledge of these.

16 A Yes, sir.

17 Q And if you'd please understand, as I go
18 down them I might miss some or ask you about certain ones
19 that you had nothing to do with. But on the day of
20 June 5 --

21 A Yes, sir.

22 Q -- I'm interested in asking you -- Perhaps
23 if you could just help me. If you'd look down that sheet
24 and notice any entries as to which you would have personal
25 knowledge. I notice your signature at times, but in

1 addition as to those and any others that you may have
2 actually observed the events which led to the entries
3 being entered.

4 A Yes, sir. The entry at 3:25 that
5 afternoon.

6 Q Okay. And that entry is what, please?

7 A The entry reads. "Taken to DCI office,"
8 that means Detective Chief Inspector, "for investigation.
9 Reminded of Code of Conduct," and it's got dash D/S
10 Beaver, which means that I was reminded of the Code of
11 Conduct, and then I've signed the entry, sir.

12 Q That's your signature?

13 A Accepting -- Basically, I'm accepting the
14 prison from the custody of the custody officer. He's now
15 my responsibility.

16 MR. NEATON: Judge, at this point, since
17 the record itself is yet to be accepted into
18 evidence, the substance, to have the witness go
19 over the substance of the entries, I don't think
20 is relevant to laying the foundation of whether
21 the entry is reliable or not. He's offering it
22 as a business record, as a Business Record
23 Exception or a Shop Book Rule exception, and
24 I would object to further testimony about what
25 the substance of the entries are until the

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document itself is either admitted or excluded.

MR. UPDIKE: Your Honor, isn't the whole purpose of this to establish the accuracy of the record? And how can we establish the accuracy of the record without discussing the substance of the record? And through the other procedures that we have followed, these are additional circumstances in which we are asking the officers about events to which they have personal knowledge. And if they can say they are accurate, with everything else it's just another circumstance to show accuracy.

THE COURT: The objection is overruled.

BY MR. UPDIKE:

Q And that entry then is accurate as you observed it and participated in it?

A Yes, sir.

Q Before I move on, quickly, there is a reference of "reminded of the Codes of Conduct." Could we stop at this point and you just tell us what that means and what that involves, please?

A It's just a general rule to a police officer. Once I've accepted a prisoner, Mr. Soering being the prisoner, as my responsibility, I'm reminded by the

1 station officer that all the provisions of the Police and
2 Criminal Evidence Act of 1984 apply to me whilst I've got
3 that prisoner in my custody. So any requests that the
4 prisoner makes, I have to accede to. Such things as if he
5 asks for note paper or if he asks to contact anybody, I've
6 got to stop my investigation and allow him those
7 facilities, sir.

8 Q Now, my looking through here, this
9 reference that you are just describing, I've seen that
10 frequently. Could you describe when that is made as an
11 entry in the custody sheets, please?

12 A Yes, sir. I don't leave the charge room
13 complex until that entry is made and I sign for the
14 acceptance of the prisoner and sign for the acceptance of
15 acknowledging the Codes of Practice.

16 Q And when you say that, is that in
17 accordance with the regular established procedures of the
18 Metropolitan Police Department?

19 A Yes, sir.

20 Q And thank you for that, sir. If I could
21 ask your assistance again. Starting with that 3:25 entry,
22 if you wouldn't mind just coming down the page, reading to
23 yourself, and if you could see any further entries as to
24 which you were personally involved.

25 A Yes, sir. In fact, I was -- Although my

1 name doesn't appear, and there is no need for it to
2 appear, I was involved in the 5:28 entry, sir.

3 Q And that entry is what, please?

4 A Yes, that reads, "5:28 - Returned to charge
5 room. No untoward incident took place whilst at the
6 interview. Spoke to Keith Barker at 4:30 p.m.,
7 solicitor."

8 Q And you were involved in that, you say?

9 A Yes, I was. I was involved in that entry
10 being made and it was me that caused the entry because
11 nobody else would have known about the entry regarding Mr.
12 Barker at 4:30. I brought that to the notice of the
13 custody officer to act as an aid memoir to me on this day
14 today.

15 Q Okay, sir. And that is accurate and
16 entered, again, in accordance with the procedures of the
17 police department?

18 A Yes, sir.

19 Q And if you wouldn't mind continuing, as you
20 come down, do you see any further entries?

21 A Yes. Very shortly after that, sir, at 6:00
22 p.m., the entry reads, "Taken for interview by D/S Beever.
23 Officer reminded Rules of Conduct." It's abbreviated in
24 that case, sir, R of C, and I've signed for the prisoner,
25 Mr. Soering. again, sir, Kenneth Beever, D/S meaning

1 Detective Sergeant.

2 At 6:45 p.m., sir, the next entry,
3 "Returned to cell," and I reported no untoward incident.
4 Of course, that entry to be made, again, with the station
5 officer.

6 Going on, sir --

7 Q Please.

8 A My next true involvement, although my name
9 appears before, is at 7:59. And I've been contacted, I've
10 attended the charge room, and the entry reads, "I now wish
11 to speak to D/S Beever, D/C Wright," and it's hard to
12 decipher, but it does say, "D/C Gardner without my
13 solicitor being present." Although Mr. Gardner's name
14 appears there, he wasn't in the charge room, sir. I
15 caused that entry to be made. Most certainly, I believe
16 Mr. Wright was there. He was there. Mr. Wright was there
17 and Mr. Gardner wasn't there. We caused that entry to be
18 made and, in fact, that entry is signed by Mr. Soering.
19 That first signature appears J. Soering.

20 Q Was that signature placed there by the
21 defendant in your presence?

22 A Yes, it was, sir.

23 Q And please continue, if you would. Any
24 further entries on that page?

25 A Yes. Once I've caused that entry to be

1 made at 7:59, the next entry reads, "8:02 - Taken to DCI
2 office by D/S Beever. Reminded Codes of Practice," which
3 means exactly the same thing, practice, conduct, sir.

4 Q Uh-huh.

5 A And it's signed by me, Kenneth Beever, D/S,
6 and counter-signed by the station officer in my presence.

7 Q And if you wouldn't mind just continuing.

8 A Yes.

9 Q I appreciate this.

10 A Yes. Although my name doesn't appear, sir,
11 I returned him, alone, to the -- At 11:14 p.m., sir,
12 "Returned to cell, no incidents." I was present when that
13 entry was made. There is no need for my name to appear on
14 the return, sir, because I'm not being reminded about
15 anything.

16 Q I see. But you were the one who returned
17 him at that time?

18 A I was, sir, yes.

19 Q Okay.

20 A Then going on the following day, sir.

21 Q Before we do this, if I could ask you
22 something up to this point, and it really applies to the
23 entire custody sheet, but if Jens Soering had asked at
24 that point for counsel --

25 A Yes, sir.

1 Q -- for a solicitor, what would your
2 responsibility have been as far as the request is
3 concerned and, specifically, as far as the custody sheet
4 would be concerned?

5 A It would have been my responsibility to
6 arrange for a counsel, solicitor, for him and in doing so
7 I most certainly would have caused an entry to be made by
8 the custody officer on this record. Because basically
9 you've seen reported so far "no incidents."

10 Q What does that mean, please, or in what
11 context?

12 A It means there has been -- I think we
13 should really use the word, although this reads "no
14 incidents," it's no unusual incidents. I mean, if I may
15 go back to the beginning of the sheet, sir, I did mention
16 to you we made contact with Mr. Barker at 4:30. That's an
17 incident that occurred.

18 THE COURT: May I stop just a moment? It's
19 becoming difficult for me to see where we draw
20 the line here as between evidence produced on
21 the question of admissibility of this exhibit
22 and the question of the substantive value of the
23 information therein. It seems to me we may be
24 stepping over the line. It is not my intent
25 that he simply be allowed to give all the

1 contents of this now. I have not made a ruling
2 yet on whether I am going to sustain or overrule
3 Mr. Neaton's objection to this exhibit --

4 MR. UPDIKE: Okay, sir.

5 THE COURT: -- on the Shop Book Rule
6 exception.

7
8 BY MR. UPDIKE:

9 Q If I might then proceed in the fashion of
10 Just asking Detective Inspector Beever, if you would start
11 at 11:14 p.m. on June 5 --

12 A Yes, sir.

13 Q -- and just ask you, reading to yourself,
14 to go down the list and find those entries that you were
15 personally involved in and indicate to us which entries
16 they were, and whether you were involved in them and if
17 they are accurate, and I won't ask you to read the
18 substance of them.

19 A The next entry that I was personally
20 involved in reads 11:19, sir.

21 Q And according to your personal involvement,
22 is that entry accurate?

23 A Yes. It is, sir.

24 Q And just continuing?

25 A The next entry reads on the 6th of the 6th,

1 I was personally involved in entry timed at 1:39, sir.

2 Q And were you involved in causing that to be
3 entered as an entry in the custody record?

4 A Yes, I was, sir.

5 Q And continuing from that point of 1:39?

6 A Yes, sir. I was next involved in an entry
7 on the 7th of June, sir, 1986 at 10:50 p.m.

8 Q And is that entry accurate as to your
9 personal involvement?

10 A Yes, sir.

11 Q And please continue.

12 A My next involvement was an entry the same
13 day at 1:00, sir, 1:00 p.m.

14 Q And would that be accurate?

15 A Yes, it would, sir.

16 Q And you're just looking at --

17 A I'm looking at another entry and quite
18 honestly, sir, I can't, my name doesn't appear and I can't
19 remember whether I was involved in that particular entry,
20 sir. I was just thinking about that. I wasn't mentioned
21 in that, no, sir.

22 Q Okay.

23 A The next entry that personally involves me
24 is at 4:30 p.m. on the 8th of June, sir. And the next
25 entry that personally involves me is at 4:45 the same day,

1 sir.

2 Q And if I could ask, do both of those
3 entries bear your personal signature?

4 A They do, sir.

5 Q And both would be accurate as to your
6 involvement?

7 A Yes, sir.

8 Q And please continue from that point.

9 A From my personal recollections, I can't
10 think of any others, sir.

11 MR. UPDIKE: Thank you very much.

12 Go ahead. I'm sorry. That'll be fine. I have
13 no further questions on that particular point.

14 THE COURT: You may voir dire.

15 MR. NEATON: All right, sir. Thank you.

16

17 VOIR DIRE

18

19 BY MR. NEATON:

20 Q Mr. Beever?

21 A Yes, sir.

22 Q You're required by the Police and Criminal
23 Evidence Act of 1984 to keep the custody record to which
24 you've referred?

25 A I was obliged to, but a custody sergeant

1 is, sir, it's his responsibility, sir.

2 Q So the police are required, the Richmond
3 Police Station was required to keep that record by law, is
4 that right?

5 A Yes, sir.

6 Q It wasn't just a particular procedure that
7 that Richmond station followed for its own reasons?

8 A No, sir. This is a universal procedure.
9 When I say "universal," perhaps that's a little bit too
10 grand, sir. It's amongst the whole Metropolitan Police,
11 sir.

12 Q And the Police and Criminal Evidence Act,
13 in fact, applies throughout the United Kingdom, correct?

14 A Yes, it does, sir, yes. I'm sorry, sir.
15 No, excluding Scotland, sir.

16 Q Excluding Scotland?

17 A Yes.

18 Q And that is the law that requires the
19 London Metropolitan Police to keep this custody record?

20 A Not so much the record, sir, but most
21 certainly the codes of conduct attached to the record,
22 sir.

23 Q Well, the Police and Criminal Evidence Act
24 requires you to make certain entries as certain things
25 occur, does it not?

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A Yes, it does, sir.

Q You said that you caused the 7:59 p.m. entry on the 5th of June to be made. Is that right?

A Yes, I did, sir.

Q But you yourself did not make the entry?

A No, no. The entries are responsibility of the custody officer, but I can --

Q You can tell him what to write down?

A I can tell him, "Would you please write that down," so that entry's been made at my instigation, sir, in company with Detective Constable Wright.

Q So you instigated that entry at 7:59?

A Yes, I did, sir.

Q You instigated the entry at 11:19 a.m. on the 6th of June?

A Sorry, sir. Just a moment.

Q Sure, take your time.

A Thank you. My exact recollection, sir, I can't remember instigating that myself. Most certainly I was present there. It could have been my instruction or Detective Constable Wright's instruction, so casting my mind back all that time, I don't know whether it was mine or Mr. Wright's, sir.

Q In any event, Mr. Beever, you yourself did not write out that entry?

1 A No, I did not, sir.

2 Q You instigated the 1:39 p.m. entry on June
3 6th?

4 A Yes, sir, I did.

5 Q And again, you yourself did not write that
6 out?

7 A No, I did not, sir.

8 Q You told the custody officer what to write?

9 A I most probably -- No, sir. In fact, on
10 that occasion, if I may explain to you, sir, the man in
11 overall control of the relief that's on duty that day is
12 an Inspector. And in order for me to do what I was going
13 to do that day, I chose to take an Inspector with me on
14 that occasion and the Inspector made that entry, sir.

15 Q Is that the Inspector's handwriting? Is
16 that what you're saying?

17 A Yes, it is, sir.

18 Q On the 7th of June of '86, you mentioned an
19 entry at 10:50 p.m., did you say, or was that a.m.?

20 A Let me just check, sir. Yes, sir. I,
21 again, instigated the entry. It's not my writing, it is
22 my signature, sir.

23 Q Is that an entry at 10:50 p.m or at some
24 other time? I was a little --

25 A Yes, I see what you mean, sir. It's most

1 certainly a.m., and if you look at the writing, you could
2 decipher that as p.m.

3 Q Are you saying that the entry could
4 possibly be for something that occurred at 10:50 p.m.?

5 A I'm not, sir, because I'm looking at the
6 other entries each side of it, and I know if it does read
7 p.m., it's a genuine mistake by the station officer. It
8 could be one of the two really, looking at it, sir.

9 Q So it could be inaccurate is what you're
10 saying?

11 A No, I'm not, sir. I'm saying --

12 Q The time could be inaccurate?

13 A Most certain --

14 Q Could be read as being inaccurate?

15 A No, sir. You could read it as being
16 inaccurate, of course you could. but I'm saying, sir, that
17 the entry prior to that is at 10:25 a.m. and if you look
18 at the writing after it, that could also, that should read
19 p.m., in fact, because that's after 12:00 at midday.

20 Q You mentioned a 1:00 p.m. entry on the 7th
21 of June of '86. Can you look at that?

22 A Yes, sir.

23 Q You instigated that to be written in the
24 custody record?

25 A From recollection, sir, I couldn't answer

1 your question, but most certainly my answer there applies
2 as my answers before, either myself or Detective Constable
3 Wright would have --

4 Q Instigated the entry?

5 A -- instigated the entry, sir.

6 Q And it's not in your writing?

7 A Most certainly not, sir, no.

8 Q Now, calling your attention to the two
9 entries on the 8th of June, the entry at 4:30 p.m on the
10 8th of June?

11 A Yes, sir.

12 Q That is not in your writing?

13 A No, sir.

14 Q You instigated that entry into the record?

15 A I don't think I did, sir, no.

16 Q Then Detective Constable Wright instigated
17 entry of that?

18 A No, sir, I don't think he did either on
19 that occasion.

20 Q It was an un-instigated entry, is that
21 right?

22 A Yes. In fact, to an extent, I can say that
23 entry was instigated by Mr. Soering and caused the custody
24 officer to write that in, sir.

25 Q Well, for purposes of this particular voir

1 dire, you did not write it?

2 A No, I did not, sir.

3 Q Mr. Soering didn't write it?

4 A No, he did not, sir.

5 Q And Detective Constable Wright didn't write
6 it?

7 A No, he did not, sir.

8 Q The 4:45 p.m. entry --

9 A Yes, sir.

10 Q -- did you instigate its entry into the
11 record?

12 A Yes, sir.

13 Q You did not write it?

14 A No, I did not, sir.

15 Q In other words, again you told whoever
16 wrote that entry what to write?

17 A Yes, sir, and I also acknowledged that by
18 signing it, sir, yes.

19 MR. NEATON: Thank you. That's all.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Anything further on this point?

22 MR. UPDIKE: No, sir, Your Honor.

23 THE COURT: All right. I'm ready to rule on the
24 matter if that's all you're going to say.

25 MR. NEATON: I have additional argument. I'd

1 ask that the witness be excused.

2 THE COURT: Certainly.

3 MR. NEATON: Judge, the Commonwealth has offered
4 the custody record under the Shop Book Rule Exception to
5 the Hearsay Rule, or another way of saying the business
6 record exception to the Hearsay Rule. It's my contention
7 that it doesn't qualify as a business record or a shop
8 book. What we have is what really is an official written
9 statement made under a legal requirement and, therefore,
10 subject to a different standard of proof or different
11 standard of foundation in order for it to be entered.

12 And I refer you to page 643 in Friend, as I
13 am quickly becoming familiar with this book, and on that
14 page in Section 248 it indicates that an official written
15 statement, or that records and reports prepared by public
16 officials pursuant to the duty imposed by statute are
17 admissible under certain circumstances. And what I'm
18 objecting to is that there is a requirement under the
19 official written statement exception that the person who
20 is making the entry on the official document must have
21 personal knowledge of the facts that he is writing onto
22 the document. And this is a stricter requirement than the
23 business record or shop book rule exception.

24 And whether the Commonwealth offers this
25 evidence as a business record or a shop book doesn't mean

1 that it is a business record. What I am saying is, where
2 you have a record that must be kept pursuant to a legal
3 duty under the Police and Criminal Evidence Act in
4 England, then the requirement of personal knowledge
5 applies and, therefore, the custody record must be
6 excluded.

7 THE COURT: All right, Mr. Updike? Any further
8 statements?

9 MR. UPDIKE: Your Honor, we'd like just a moment
10 to review since he is referring to a different section
11 than we were describing.

12 THE COURT: He's referring to Section 248 in
13 Friend.

14 MR. UPDIKE: Yes, sir. Your Honor,
15 respectfully, I don't mean to take any more of the Court's
16 time on this, but this particular provision does not
17 pertain to this type of document. This talks about birth
18 certificates and vital records and death certificates and
19 things of that nature, and that's not what we're dealing
20 with at all here.

21 Even at that, Your Honor, we have
22 established, even if you were going to argue this, you're
23 going to say that the police officers or public officials
24 find that they had been acting within their line of duty,
25 they have done that. We have established through the

1 testimony here that the authenticity of the information
2 stated thereof, and on the document sheet itself, as to
3 the custody officers making rounds and personally
4 observing and personally making requests of the prisoner.

5 As to any further documentation concerning
6 Detective Sergeant Beever or Detective Constable Wright
7 removing Jens Soering from the cell, they are here and
8 were personally involved in that procedure and signed the
9 document to that effect. And if the Court wishes to look
10 at the document, that is what it consists of, the custody
11 officer going around and personally observing and asking
12 Jens Soering, when he's in the cell, whether awake or
13 asleep, that officer would have personal knowledge of what
14 he entered there. And as to any removal from the cell or
15 taking him from the cell, and the time of it, you would
16 certainly think that the custody officer standing there,
17 having the responsibility of Jens Soering, should and, I
18 expect, would have knowledge of him leaving the cell area
19 and going to the interview room.

20 So we're just saying, first of all, Your
21 Honor, that we have established the admissibility of this
22 document by much more weight of the evidence than required
23 to under either exception of the Hearsay Rule.

24 THE COURT: All right. Well, first, this
25 official written statement section, Mr. Neaton, does not

1 apply, categorically does not apply. Now, what is the
2 section that applies to the Shop Book Exception under the
3 Hearsay Rule?

4 MR. UPDIKE: It begins on page 601, Your Honor.

5 THE COURT: All right, let's look at that,
6 because that's what we're talking about, as I understand
7 it. Is that page 601?

8 MR. UPDIKE: Yes, sir, Your Honor.

9 THE COURT: All right. Let me look at that.
10 I'll tell you what. Let's take a break and let me take
11 this back and study it during the break rather than study
12 it here, and I'll try to rule when I come back. About ten
13 minutes.

14
15 (A short recess was taken, after which the following
16 ensued in the presence of the defendant and counsel.)

17
18 THE COURT: All right. I talked with the
19 attorneys about where we go from here. We have gotten
20 bogged down as far as time on evidentiary matters, but
21 those are important matters, too, and they sometimes take
22 some time. We have decided that we will go until 6:00
23 this evening. We will stop at 6:00 and we will come back
24 tomorrow morning at 10:00, Saturday. We will try to
25 finish everything tomorrow. That's the present plan,

1 which both sides have agreed to.

2 Gentlemen, do you have anything further to
3 say about this evidentiary point before the Court rules.

4 MR. NEATON: Yes. Judge, I do. Looking at some
5 of the cases cited in Friend on the issue of business
6 records versus official records, you indicated your belief
7 that and dismissed the idea that the custody record kept
8 pursuant to the law of the United Kingdom is not an
9 official record. I've looked at the cases cited in Friend
10 and first, I can say that I cannot find a case cited in
11 Friend that says that a police-type record kept by a
12 police agency qualifies as a business record or a shop
13 book exception to the Hearsay Rule.

14 Friend cites to the case of Boone versus
15 Commonwealth at 213 Va. 695 and in that case what
16 everybody was arguing over was not police records, but
17 medical records. Boone cites to and Boone imposes a
18 requirement even in a Shop Book Exception of the maker of
19 the record must have personal knowledge of the facts
20 entered into the record.

21 Now in the same volume, while Boone in
22 citing that authority cites to Williams versus
23 Commonwealth, which is in the same volume at page 45 for
24 the requirement of personal knowledge, but Williams versus
25 Commonwealth is actually an official records

1 exception case. And the facts in Williams were that the
2 Commonwealth was attempting to prove the age of the
3 defendant by a police report and that police report was
4 deemed to be an official record as opposed to any other
5 exception to the Hearsay Rule.

6 Now I've looked at the cases of Simson
7 versus Commonwealth. 227 Va. 557, and this was a case
8 again cited under the business records exception and it
9 was a case in which records of a taxi cab were offered in
10 a prosecution, which are clearly business records as
11 opposed to police records.

12 And in the case of Ashley versus
13 Commonwealth, business records or shopkeeper records kept
14 in the regular course of business about an inventory were
15 offered in the criminal prosecution. So what I'm saying
16 is that in researching the cases that Friend cites under
17 the shopkeeper's exception, or shop book exception, I find
18 that what's being admitted as business records in criminal
19 prosecutions are, in fact, business records or medical
20 records. And in the only criminal prosecution that I can
21 find in my research in which a police-type record is
22 offered and litigated, it's litigated under whether it's
23 an official record.

24 And Mr. Updike in his argument as to
25 whether the custody record kept pursuant to law in England

1 is an official record versus a business record said,
2 "Well, official records have to do with death certificates
3 and vital records and reports of medical examiners and
4 things like that." Well, that is true, because I don't
5 think the Commonwealth of Virginia, in devising a rule as
6 to what is an official record, really took into account
7 the Police and Criminal Evidence Act in England as a
8 common law in this Commonwealth developed.

9 But as I read what the general rule that
10 defines what an official record is, Friend says that there
11 are two requirements on what constitutes an official
12 record. And the first requirement is that the statement
13 be made by a public official, a police officer, the
14 custody officer in this case, and two, that the statement
15 be made in the line of duty. That is, the custody
16 officer's duty to take care of the prisoner or Mr. Beever
17 and Mr. Wright's duties, if any, as investigators.

18 And so, while I'm saying that the history
19 of the cases in the Commonwealth probably didn't take into
20 account that we'd ever get a case like this to decide the
21 admission of certain records, I simply point to the
22 Court's attention to the precedent that seems to indicate
23 that business records are business records and police
24 records are official records, and I guess that's the point
25 I was trying to make earlier.

1 And I have not heard cited to me a case
2 that says a police record like the one offered by the
3 Commonwealth is a business record. And I think the
4 distinction you have to look at is the fact that in
5 England they have a legal duty to keep these records, as
6 opposed to a business in Virginia that may not have a
7 legal duty to keep an inventory, and that's the point I
8 want to make.

9 And I'd ask the Court to reconsider its
10 earlier ruling that just summarily dismissed my argument
11 that what we have is an official record here. I see no
12 case authority for that claim and the only case authority
13 I see seems to point that a police record is an official
14 record, Your Honor.

15 THE COURT: Well, I think you've made a
16 persuasive argument for your position. It seemed to me in
17 reading the section from Friend that we were more properly
18 under the business records exception than an official
19 record, which I think of as being birth certificates and
20 matters of that kind. But you have addressed the issue
21 very well. Let's see what you say.

22 MR. UPDIKE: Your Honor, could I just respond
23 quickly? Mr. Neaton did cite and discuss nearly all the
24 cases in the annotations to that section of Friend. He
25 did, however, miss one and I don't criticize him for that.

1 He didn't have his own library here, of course, as I have
2 a little bit of one anyway. But the one that he missed is
3 Frye versus Commonwealth 231 VA. 370, 1986 case. That's
4 the case involving an individual who was convicted of
5 shooting a trooper some years ago, Trooper Biggs, I think
6 it was. But at any rate, yes, James Leroy Biggs.

7 And in that case this issue came up
8 concerning DMV reports and NCIC reports which, of course,
9 we're all familiar with as being criminal records of
10 individuals, and those records are compiled, basically,
11 from police investigations, police submitting authorities,
12 clerks submitting information, clerks submitting
13 information, DMV reports are based upon a police officer
14 submitting such information, Courts submitting
15 information. And in that case it was ruled that both DMV
16 reports and NCIC reports come within the shop book or shop
17 exception to the Hearsay Rule. And the Boone versus
18 Commonwealth case cited by counsel is cited in this case
19 as to the personal knowledge and so forth.

20 However, the Court goes on to state that,
21 "In certain cases where verification of reported facts is
22 not possible through the personal knowledge of the record
23 keeper, practical necessity nevertheless requires
24 admission of reported evidence which has a circumstantial
25 guarantee of trustworthiness. The guarantee is provided

1 where evidence shows the regularity of the preparation of
2 the records and reliance on them by their preparers or
3 those for whom they are prepared." That is at page 387 of
4 the decision.

5 And here, Your Honor, we have the
6 circumstantial evidence, not only from the officers who
7 have testified of their personal involvement in the
8 investigation, their personal signatures on certain
9 entries, but we also have at this point in the case
10 further authentication provided by the defendant himself
11 as to the signatures which he placed on the records. We
12 have further circumstantial authentication through the
13 Miranda forms, which are now in evidence themselves, which
14 we can compare the times on those with the records and so
15 forth.

16 Basically, on all of that, Your Honor, we
17 have established circumstantial authentication of the
18 trustworthiness of these documents and reliance upon them,
19 both by those who prepared them and those for whom they
20 are prepared. So we would ask that the records be
21 admitted and we see no difference between these kinds of
22 police records and the ones we have here in this country,
23 DMV reports and NCIC reports.

24 THE COURT: Well, it's a good question. What
25 was the section that you cited me to originally, Mr.

1 Neaton, on official records? In Friend, what did --

2 MR. NEATON: That was 248, Judge.

3 THE COURT: 248?

4 MR. NEATON: Yes.

5 THE COURT: Let me take another look at that.

6 Mr. Neaton, your main point is that under the official
7 written statement exception to the Hearsay Rule, assuming
8 that these custody reports fall within that category, that
9 in some instances in these reports there has been a
10 failure to show that the person who actually recorded the
11 event had firsthand personal knowledge of the event. That
12 is your point, is it not?

13 MR. NEATON: Yes, sir.

14 THE COURT: Specifically?

15 MR. NEATON: Yes, Judge.

16 THE COURT: Well, let's speak to that specific
17 point, Mr. Updike, because obviously I'm having some
18 trouble with this ruling. It's a very difficult ruling.

19 MR. UPDIKE: Yes, sir.

20 THE COURT: To what extent is there a failure in
21 these records on the point of the person who made the
22 entry not having firsthand knowledge of what was put in
23 the record? I'm interested only in that point.

24 MR. UPDIKE: Yes, sir. I'm looking down the
25 report itself, the custody sheet itself, beginning at June

1 5th, the 1:45 entry that would have been done by the
2 custody officer. And I won't go through each and every
3 entry, but as we come down from 1:45 to 3:25, at that
4 point the defendant is taken to the DCI's office and the
5 custody officer would certainly know when a prisoner is
6 leaving his custody.

7 THE COURT: Mr. Updike, it's not necessary to go
8 through all these.

9 MR. UPDIKE: Yes, Your Honor, but my point is,
10 such as those entries, when he's down there, all of the
11 entries pertain to, as described by the officers,
12 observations either by the custody officer or his
13 Detective Inspector, I think it was, and their personal
14 observations of that. Everything occurring in that jail
15 cell that they observe, they enter themselves. I don't
16 know of anything else, any other entries here, Your Honor

17 --

18 THE COURT: All right.

19 MR. UPDIKE: -- such as the one that Kenneth
20 Beever caused to be entered.

21 THE COURT: Well, thank you. I'm ready to --

22 MR. UPDIKE: Okay, sir.

23 THE COURT: I'm ready to rule. I found Mr.
24 Neaton's argument to be very persuasive and I'm not now
25 sure. To be perfectly candid with you, I'm not now sure

1 whether this exception comes under the official written
2 statement, exception to the Hearsay Rule under Section 248
3 of Friends or whether it comes under the business records
4 exception. I'm not clear on that. And there are some
5 differences.

6 But for purposes of my ruling, I'm going to
7 adopt the defendant's position that perhaps this would
8 qualify as an official written statement and that,
9 therefore, the rules pertaining to those statements and
10 the admissibility thereof apply. I rule that so much of
11 the custody statements as pertains to matters which the
12 person who entered the information cannot verify is
13 sustained, that the objection is sustained to so much of
14 that. As to other information in the custody reports from
15 which it is clear that the person who made the entry had
16 firsthand knowledge of the event, I overrule.

17 Now that means that I have sustained the
18 objection as to certain entries in the record and
19 overruled it as to others. And that's not unusual. As a
20 matter of fact, some of these cases that we read
21 pertaining to admissibility of death certificates have
22 gone the same way. The Courts have ruled that if part of
23 the death certificate is admissible to show fact of death,
24 but that the opinion of the doctor as to why the person
25 died is not admissible, and they have cut that part out of

1 it. It is along that line that I rule.

2 I'm sorry that this is a somewhat confusing
3 ruling, but it seems to me that from my point of view it's
4 probably the best I can do. For purposes of the record,
5 I'm going to allow Mr. Updike to enter these custody
6 reports by identification only. I will reserve rulings as
7 to the admissibility of these custody reports at the trial
8 for substantive evidentiary reasons. And I sustain the
9 defense's objection as to so much of said reports as fails
10 to meet the firsthand knowledge requirement of the
11 entrant.

12 All right. That's my ruling.

13 MR. NEATON: I'm just wondering if we have
14 agreement as to what is in and what is out.

15 THE COURT: I think that may be the problem of
16 the attorneys, but it seems to me that's the way it's got
17 to be here. Some of it is admissible. Some of it is not,
18 perhaps. You have to decide what is and what is not, and
19 you're guided by whether or not it appears that the person
20 who made the entry in the record had firsthand knowledge
21 of that which he put in or whether it was obviously
22 something that he learned from somebody else.

23 All right. Let's go ahead and I'm going to
24 allow you to mark this exhibit for purposes of
25 identification only.

1 MR. UPDIKE: Yes, sir. I think that it has been
2 done. and that is Number Eleven.

3 MR. NEATON: Sure. I have no problem with that.

4 THE COURT: Let it go in. And, Mr. Neaton, for
5 purposes of Virginia procedure. under Virginia law it's no
6 longer necessary for purposes of an appeal to except to
7 the ruling of the Court. So long as you state your
8 objection clearly and the grounds for the objection your
9 objection is protected on appeal.

10 MR. NEATON: Thank you, Judge.

11 THE COURT: All right. Let's move along as best
12 we can. Who do you want now, Officer Wright?

13 MR. UPDIKE: Please, Your Honor.

14 THE COURT: All right. Let's have him back.
15 All right, sir. Have a seat.

16
17 The witness, DETECTIVE CONSTABLE TERRY WRIGHT,
18 having previously been sworn, and being recalled,
19 testifies as follows:

20

21 DIRECT EXAMINATION

22

23 BY MR. UPDIKE:

24 Q Detective Constable Wright, you understand.
25 of course, you're still under oath, is that correct, sir?

1 A Yes, sir.

2 Q If you wouldn't mind for me, the original
3 custody sheets are still there before you, I believe,
4 aren't they?

5 A Yes, sir.

6 Q If you would reorganize those for us and
7 return them to the file that you have for safekeeping, you
8 can retain custody of them.

9 A (Witness gathers original custody sheets
10 and puts them in his file.)

11 Q Sir, if I could, first of all, show you
12 Commonwealth's Exhibit Number Seven and ask you if you
13 could identify that, please, and if so, tell us what it
14 is.

15 A Yes, sir. It's a Metropolitan Police
16 document, which we refer to as a Notice to Detain Persons,
17 Form Number 3053. And it's a form which is served upon
18 every prisoner that's brought into the police station and
19 this form is read by the custody officer to that prisoner
20 when the custody record is opened. He then hands this to
21 the prisoner for his retention and the prisoner signs on
22 the custody record saying he received this.

23 Q And the portion of it which the officer
24 reads to the individual at that point, would you read that
25 for the record, please?

1 A Yes, sir. It states, "Notice to Detain
2 Persons. This side is to be read to the detained person
3 by the custody officer before giving the Notice to the
4 detained person." It states, "You have the right (1) to
5 have someone informed of your arrest; (2) consult a
6 solicitor; and (3) consult a copy of the Codes of
7 Practice." It further states that, "You may do any of
8 these things now, but if you do not, you may still do so
9 later." An explanation of these rights and other rights
10 is set out on overleaf.

11 Q And that means, as I understand it on the
12 back, the notice itself, is that correct?

13 A Yes, sir.

14 Q I'm showing you, first of all,
15 Commonwealth's Exhibit Number Nine, which is just the
16 cover sheet to the custody records. I'd like to show you
17 that and ask you to identify it, please.

18 A Yes, sir. This is a copy of custody record
19 1106, which refers to Jens Soering and it's dated the 5th
20 of June, 1986.

21 Q On that custody sheet are there any
22 references to the form which we have here, Commonwealth's
23 Exhibit Number Seven, Notice to Detain Persons, which you
24 just read?

25 A Yes, sir. It would not be that particular

1 form, but it would be a form identical and there's a
2 reference on the left-hand side that says, "The notice
3 setting out my right has been read to me and I have been
4 provided with a copy." And there is a space for the
5 signature of the person detained and it is signed by Jens
6 Soering at 12:50 p.m. on the 5th of June, 1986.

7 Q Now can I ask you, first of all, were you
8 present when that was done?

9 A Yes, sir.

10 Q And the form, I believe, shows you as the
11 officer, is that correct?

12 A Ah --

13 Q Excuse me. My question really is, were you
14 present when it was signed?

15 A Yes, sir, I was present.

16 Q And the defendant seated over here is the
17 individual who signed that?

18 A That is correct, yes.

19 Q And to specify, he signed this form
20 acknowledging that these rights on Commonwealth's Exhibit
21 Number Seven had been read to him and that he'd received a
22 copy of this form?

23 A Yes, sir. He signed in two places, but one
24 signature refers to that form there.

25 Q Tell us about the second place where there

1 is this signature, please.

2 A Yes, sir. Below the space provided for the
3 signature related to that form, printed on the front of
4 the custody record are the words, "I want a solicitor as
5 soon as practicable," or "I do not want a solicitor as
6 soon as practicable at this time," sir. and there's space
7 for the signature of the person detained.

8 Q What was done during this process as to
9 those two options?

10 A Yes, sir. If I may explain.

11 Q Yes.

12 A When the custody record is opened, the
13 custody officer will ask the person if he wants a
14 solicitor to attend at that time or if he wants to speak
15 to one. Depending on his answer, he will delete one of
16 those two lines. On this particular record, "I want a
17 solicitor as soon as practicable" has been deleted, and
18 which leaves, "I do not want a solicitor at this time,"
19 and that is signed by Jens Soering, again at 12:50.

20 Q You were present at the remand hearing on
21 that date of June 5, 1986, is that correct, at the
22 Richmond Magistrate's Court?

23 A Yes, sir, I was.

24 Q And were you the officer who transported
25 Jens Soering from the Magistrate's Court to the Richmond

1 Police Station?

2 A Yes, sir.

3 Q And that document that you have in your
4 hand, that indicates the time of arrival and the
5 advisement procedures that you described, and that
6 occurred in your presence?

7 A Yes, sir. We arrived back at Richmond
8 Police Station at 12:15. We stayed outside for a short
9 while, because one other person was being booked into the
10 station at that time. And we then entered and this form
11 was filled out. It was signed by Jens Soering at 12:50.

12 Q During that procedure, from the time that
13 Jens Soering was in your custody at the Richmond Police
14 Station until the time that you left him in the custody of
15 the station officer, would it be?

16 A Yes, sir.

17 Q Did you ever hear Jens Soering request
18 counsel, a solicitor or an attorney or a barrister, any
19 form of legal counsel?

20 A No, sir.

21 Q Did you ever refuse him legal counsel?

22 A No, sir.

23 Q During that particular period of time, did
24 you ever threaten Jens Soering in any fashion?

25 A Definitely not, sir.

1 Q Did you ever, in Jens Soering's presence,
2 threaten Elizabeth Haysom?

3 A I've never threatened any prisoner, sir.

4 Q I'd like to go through some of the
5 interviews, if I might. Starting with June 5, 1986, which
6 we've been discussing as the first interview, and I'm
7 showing you Commonwealth's Exhibit -- this is a defense
8 exhibit -- Number One, which is dated June 5, 1986,
9 3:35 p.m. Were you present at the time that that
10 advisement was made to the defendant, Jens Soering, by
11 Investigator Gardner?

12 A Yes, sir.

13 Q Was it an oral advisement at that time?

14 A Yes, sir.

15 Q Would you relate what you recall concerning
16 the circumstances of the defendant being brought to the
17 DCI's office and the circumstances occurring upon the
18 defendant's arrival and what he said leading up to the --
19 When was the Miranda form given to him, really, is what
20 I'm saying. What's your recollection of what occurred as
21 the defendant came --

22 A I remember that myself, Detective Sergeant
23 Beever and Investigator Gardner were all present in the
24 Detective Chief Inspector's office, which is on the first
25 floor in Richmond Police Station. And at the beginning of

1 the interview. I remember that, although this particular
2 form of Caution was not familiar to me until that time, I
3 do remember that Investigator Gardner read over what he
4 referred to as a Miranda to Mr. Soering. And the details
5 on that form, as I recall, were filled in by Investigator
6 Gardner. He timed it at 3:35 p.m.

7 Q Was that done before any questioning, after
8 questioning? When was it done in relationship to the
9 interview of the suspicion of murder here in Bedford?

10 A It was done at the commencement of the
11 interview.

12 Q At that time, when Investigator Gardner
13 advised the defendant in that fashion, do you recall his
14 response to the advisement?

15 A He was quite happy to be interviewed
16 without consulting a solicitor or counsel or anybody.

17 Q When he was so advised of Miranda, did he
18 make any requests, upon arriving there at the DCI's
19 office, for counsel?

20 A Definitely not, sir, no.

21 Q In addition to the Miranda advisement, was
22 there any other advisement given to him at the
23 commencement of this interview at 3:35?

24 A Yes, sir. He was also Cautioned according
25 to British law.

1 Q And the Caution, according to British law,
2 briefly, would be what, please?

3 A We don't have to stick to specific words --

4 Q Uh-huh.

5 A -- although we do usually say, "You do not
6 have to say anything unless you wish to do so, but
7 anything you say may be given in evidence."

8 Q That custody sheet, which we have here, the
9 copy now, Commonwealth's Exhibit Number Eleven, that I
10 place in front of you for you to use to refresh your
11 memory, should you need to do so. But were you present
12 throughout the interview to the point where the defendant
13 was returned to his cell?

14 A I was, sir.

15 Q Was he returned to his cell at 4:44 p.m.?
16 Oh, excuse me, I've got the wrong --

17 A I believe it was 5:28.

18 Q Yes, sir. I've got the wrong form here.
19 You're exactly right, 5:20 -- 3:35 p.m.

20 A No, sir. He was taken from his cell at
21 3:25 on the 5th of June.

22 Q You are exactly right. If I could just
23 have a moment here, Detective Constable Wright, I'll try
24 to get the mind working here again, although I'm not sure
25 I'll be successful.

1 A Yes, sir. If I can assist you, it's on the
2 second page.

3 Q Okay, sir. I'm looking at the notes I so
4 cleverly prepared and I can't read them now. But at any
5 rate, when did the interview conclude? Just let me ask
6 you that. Maybe we can proceed.

7 A Shortly before his return to the cell, sir.

8 Q And returned to at 5:28?

9 A Yes, that's right.

10 Q Really, what I was trying to get to, during
11 that period of time, during the entire interview, did Jens
12 Soering ever request counsel to be present?

13 A As I recall, throughout the three days, the
14 four days that he was there, he never requested that he
15 wanted to speak to a solicitor or counsel.

16 Q Did you ever threaten him yourself during
17 that interview?

18 A Definitely not, sir.

19 Q Specifically, before this interview, this
20 being the first interview, during the interview itself or
21 after the interview, did you ever hear Detective Sergeant
22 Beever say to the defendant, in your presence, any threat
23 concerning Elizabeth Haysom?

24 A No, sir. No threats were made by me or by
25 anybody else in that police station towards Jens Soering

1 or any other person as far as -- Well, I know that they
2 weren't made in my presence, if any were made.

3 Q Did you ever hear, specifically, now --
4 You've answered my question -- Did you ever hear during
5 this entire remand at the Richmond Police Station
6 Detective Sergeant Beever say to the defendant words to
7 the effect that Elizabeth Haysom was a very pretty girl,
8 she's all alone in the cell block, a shame if she fell
9 down?

10 A No, sir. That's ridiculous.

11 Q In connection with such an alleged
12 statement, did you ever hear Detective Sergeant Beever say
13 to the defendant, "I think you should talk to us, lad.
14 You really don't need that lawyer"?

15 A No, sir.

16 Q Concerning the second interview on June
17 5th, and if I could show you the Miranda form -- Well,
18 there was not an actual Miranda form executed as to that,
19 but if I could ask you, were you present during that
20 interview which began at approximately 6:00 p.m.?

21 A Yes, sir.

22 Q Could you relate for us what you recall
23 concerning that particular interview, first of all
24 beginning with the Miranda advisement proceeding, please?

25 A Yes, sir. We removed him from his cell and

1 took him again to the DCI's office. As I recall,
2 Investigator Gardner again gave the Miranda. I can't
3 remember whether he used his notes or whatever. I can't
4 remember.

5 Q Yes, sir.

6 A I'm sure that he gave him the Miranda and
7 we began to question Mr. Soering.

8 Q Without going through the entire substance
9 of the interview, could you generally state what the
10 context of the interview was at that time?

11 A Yes, sir. It was in relation to certain
12 letters that had been written between Elizabeth Haysom and
13 Jens Soering and also with reference to an earlier
14 interview regarding the background of Elizabeth Haysom's
15 family.

16 Q Now do you recall during that interview the
17 defendant saying anything concerning a lawyer? I'm not
18 asking whether he requested a lawyer, but, specifically,
19 or I should say, generally, anything about an attorney?

20 A He did on several occasions during those
21 three days state that he would not answer certain
22 questions until after he'd spoken to an attorney or a
23 lawyer once he returned to the United States, should he
24 return here.

25 Q And I have here some notes as to this

1 interview, which were proffered as Defendant's Exhibit B,
2 should you need to refer to them for refreshing your
3 memory, and only if you need to. But do you recall
4 whether there was anything at the end of the interview
5 concerning an attorney? And if you need to refer to
6 these, then we would have them here.

7 A If I might, sir.

8 Q Please.

9 A Yes, sir. It's as I just stated, that's
10 one of the occasions that he mentioned that he would like
11 to talk to an American attorney on his return to the
12 United States, should he come back here.

13 Q Detective Constable Wright, we're going to
14 be playing the tapes at a later portion so I'm not going
15 to go in with you to any great detail the substance of
16 those interviews which were recorded. They'll speak for
17 themselves.

18 But I would like to proceed to the next
19 interview and for purposes of reference showing you
20 Commonwealth's Exhibit Number Two, which is dated
21 June 5th, 8:05 p.m. on that date. Were you present during
22 that interview?

23 A Yes, sir, I was.

24 Q And I'd like to ask, during that interview
25 was the advisement procedure, that is to say, reading to

1 the defendant the Miranda warnings, was that done at the
2 commencement of the interview before the questioning as to
3 the suspicion of the murder here in Bedford began?

4 A Yes, it was.

5 Q And as the form indicates, did the
6 defendant indicate that he understood those rights?

7 A Yes, he did.

8 Q During that interview or during any of
9 these interviews that I'm asking about, did you see
10 Detective Sergeant Beever make any gestures such as
11 looking at the defendant in the eye and raising his
12 eyebrows and making some type of downward motion, pointing
13 motion, with his hand?

14 A Definitely not, sir. The atmosphere in
15 that interview room, considering the circumstances, was
16 quite relaxed.

17 Q The next interview, with reference to that,
18 I'd like to show you Commonwealth's Exhibit Number Three,
19 which has the date June 6, 1986, 11:40 p.m. (sic). You
20 were present during that interview, as well, is that
21 correct??

22 A Yes, sir, at 11:40 a.m.

23 Q And again, was there any questioning, was
24 there a situation there where the defendant was brought to
25 the interview room, and all three of you officers were

1 present, and he was interviewed for a period of time,
2 approximately twenty minutes or something of that nature,
3 before Miranda was ever given?

4 A There was some conversation, but I wouldn't
5 refer to it as an interview. And he was brought upstairs
6 from his cell and I remember that he was brought from his
7 cell at 11:19, but I think that we sat there for some time
8 before the other officers were ready for the actual
9 interview. But once all three officers were in the room,
10 Jens Soering decided that he wanted to talk about another
11 matter and he was actually questioning us at that stage.

12 Q But did you or the other officers ask him
13 anything about the suspicion of murder here in Bedford
14 County, Virginia?

15 A No, sir.

16 Q When that began, had the defendant been
17 read Miranda and advised of it and had he indicated that
18 he understood those warnings?

19 A Yes, sir. He indicated that the Miranda
20 was signed, timed at 11:40, and I can see that Jens
21 Soering signed it. I do remember him signing it and I
22 also witnessed it.

23 Q I'd like to ask you about the next day, and
24 I'm just handing you these Miranda forms as a point of
25 reference really, and it may be already there in front of

1 you. The next Miranda of June 7th, and it should be here.
2 No, they've fallen down back over here. No, they're the
3 ones on A. While I'm looking for this, the interview on
4 June 7, 1986 and the defendant was advised the Miranda at
5 1:21 p.m., as to that, were you present during that
6 interview?

7 A Yes, sir.

8 Q And during that interview, again, was the
9 defendant advised of Miranda and he indicated he
10 understood it before questioning began as to the subject
11 matter of the murder here in Bedford County?

12 A Yes, sir.

13 Q Now I'd like to ask you, up to this point
14 and at any time during the course of the defendant's
15 incarceration during this remand, was there ever a time
16 when you, yourself, were locked up with the defendant in
17 his cell for a period of an hour and discussed with him
18 such matters as his representation, whether he should have
19 it, or any circumstances such as that?

20 A No, sir.

21 Q Was there the one occasion on June 7, 1986
22 at 1:00 p.m. approximately, when you escorted him to the
23 shower so he could take a shower?

24 A Yes, sir, I did.

25 Q Did you engage in any conversation with him

1 at that time?

2 A I escorted him upstairs. He took a shower
3 and I just stood by. After the shower I took him back
4 down to the DCI's office to await an interview and there
5 was a conversation that took place there.

6 Q The interview on June 8, 1986, beginning at
7 4:45 p.m., you were not present during the initial portion
8 of that, is that correct?

9 A It may be possible that I escorted Jens
10 Soering to the room, but I was not present during the
11 first part of the actual interview.

12 Q The actual interview. And as to the last
13 interview, showing you the last Miranda form,
14 Commonwealth's Exhibit Number Six, dated June 6, 1986,
15 with the date 7:18 p.m., were you present during that
16 interview, the last portion of the interview?

17 A Yes, sir, I was.

18 Q During that interview, the one beginning at
19 7:18 p.m., did you take notes during the interview?

20 A I did, sir, yes.

21 Q Were you allowed to do so by the defendant?

22 A Well, he could see me doing it, sir, and
23 didn't object at all.

24 Q During that interview, did the defendant
25 ever request counsel to be present?

1 A No, sir.

2 Q Did he ever request that questioning cease
3 until counsel could be provided to him?

4 A No, sir. He seemed fully aware of what he
5 should answer and what he shouldn't answer and was making
6 decisions on individual questions. He didn't request to
7 speak to counsel.

8 MR. UPDIKE: Please answer any questions
9 counsel may have.

10

11 CROSS EXAMINATION

12

13 BY MR. NEATON:

14 Q Mr. Wright, you said that on the custody
15 record, the first page of the custody record, that my
16 client said that he did not want a solicitor at that time,
17 is that right?

18 A That is correct, yes.

19 Q And the time that he signed that statement
20 was 12:50 p.m.?

21 A Yes, sir.

22 Q Of course, that would not prevent him from
23 asking for a solicitor at a later date, correct?

24 A That is correct, sir.

25 Q And it would not prevent a solicitor from

1 seeing him at a later time if the defendant asked for a
2 solicitor, correct?

3 A That is also correct.

4 Q And it would not authorize an officer in
5 the Richmond Police Station to inform the solicitor that
6 he could not see the defendant if the defendant had
7 requested a solicitor, correct?

8 A That's not really a direct question that I
9 can answer yes or no. Can you explain --

10 Q Is that because you really don't have
11 knowledge of that procedure?

12 A Well, I'm not quite sure what you're asking
13 me.

14 Q If the defendant's solicitor came to the
15 police station and asked to see his client at some time
16 after 12:50 p.m. on the 5th of June, could he see his
17 client at that time?

18 A If the client wanted to see him, yes. But
19 if he didn't request him --

20 Q Would the presence of the solicitor --
21 Should the presence of the solicitor have been conveyed to
22 the client back in the cell by one of the officers at the
23 custody desk?

24 A I think that the prisoner or the client
25 would be informed that the solicitor had made those

1 Inquiries.

2 Q And then the client could decide whether he
3 wanted to see the solicitor?

4 A Yes.

5 Q And that would be the normal procedure at
6 the Richmond Station in June of 1986, correct?

7 A Yes.

8 Q You said that after you arrested Mr.
9 Soering after the remand hearing that "We arrived and
10 stayed outside." By "we," do you mean yourself and Mr.
11 Soering or were there more than one --

12 A There was -- Sorry, sir.

13 Q Do you mean by "we," do you mean yourself
14 and Mr. Soering?

15 A There were some uniformed officers present,
16 as well.

17 Q How many uniformed officers?

18 A Either one or two, because they drove the
19 van that brought us from the Court to the station.

20 Q When you said that you stayed outside the
21 station or stayed outside, do you mean actually outside
22 the station in the van?

23 A We stayed in the Police Station yard inside
24 the van because there were some photographers nearby.

25 Q And the photographers were there,

1 presumably, about this case, to the best of your
2 knowledge?

3 A I presume so, yes.

4 Q Where are the cells in the Richmond Police
5 Station?

6 A On the ground floor, sir.

7 Q Is it a tiled area?

8 A Parts of it are tiled.

9 Q And part of it is brick or cement block?

10 A Parts are. On the inside, parts are tiled
11 and parts are bare plaster.

12 Q And are there glass block windows in the
13 cells?

14 A That could well be, sir. yes.

15 Q You really don't know?

16 A I would think there are, but I can't
17 recall.

18 Q Your memory about the first interview on
19 the 5th of June, before you testified here today, during
20 the time that you've been here in Bedford, have you
21 reviewed the notes of that interview?

22 A Yes, sir.

23 Q And is your memory of the events of the
24 first interview of the 5th of June based upon your review
25 of the notes of that interview?

1 A Well, it's based upon my memory, as well,
2 sir.

3 Q Specifically, your memory of the events of
4 the first interview, the Miranda warnings, are they based
5 upon what you read in the notes?

6 A No. They're based upon something that I
7 wrote down, sir, and also my memory.

8 Q So you made your own independent notes?

9 A I began to write some notes, but I was
10 requested not to by Jens Soering and I ceased to write
11 them after about a couple of minutes.

12 Q Did you ask Mr. Soering to sign the notes
13 of that interview, the summary of that interview that you
14 had prepared?

15 A No, sir.

16 Q Did you ever prepare a subsequent summary
17 of those notes at some time after the interview?

18 A It would be very difficult to summarize
19 those notes, sir. They are only about three lines long.

20 Q Under the Police and Criminal Evidence Act
21 in England, are you not required to show your summary of
22 an interview to the accused and ask the accused to sign
23 it?

24 A At that time the Police and Criminal
25 Evidence Act was quite new. There is within the Codes of

1 Conduct a paragraph which can be interpreted in that way,
2 but --

3 Q But, because of the newness of the Act you
4 may have forgotten to comply with that in this instance?

5 A I wouldn't say I forgot to comply, sir.
6 The notes are not -- There's no statement made based on
7 those notes at that time. They are only the start of an
8 interview, which is on a Metropolitan Police form which
9 was about three lines long and then stopped. However, the
10 other consideration, of course, was that these notes were
11 not for proceedings that were likely to take place within
12 the United Kingdom.

13 Q But you say that Jens Soering was cautioned
14 pursuant to the Caution that's given in the United
15 Kingdom, is that right?

16 A That's correct.

17 Q And so you were contemplating the
18 possibility that there may be further proceedings against
19 him in the United Kingdom, correct?

20 A Not correct, sir.

21 Q You just gave it out of the goodness of
22 your heart?

23 A Correct.

24 Q You said that throughout the three to four
25 days that Mr. Soering never requested to speak to an

1 attorney?

2 A No, sir. He mentioned American attorneys
3 on several occasions, but it was always of the opinion
4 that he didn't need one right there and then.

5 Q And that's your memory of what took place
6 during those interviews?

7 A That is what took place.

8 Q That is your memory of what took place
9 during those interviews?

10 A Yes, sir. That is what took place.

11 Q During the second interview on the 5th of
12 June, 1986, you heard Mr. Soering ask for an attorney, did
13 you not?

14 A No, sir.

15 Q You did not?

16 A No, sir.

17 Q He never asked for an attorney during that
18 interview on the 5th of June?

19 A No, sir. He discussed an attorney.

20 Q Pardon me?

21 A He discussed an attorney, the word
22 "attorney." He said that he wanted to not answer some
23 questions until after he spoke to an attorney once he'd
24 returned to the United States.

25 Q He said that at 6:00?

1 A He said that later, but during that
2 interview.

3 Q Did you make any notes of that?

4 A I did make some notes during that
5 interview, sir, and I think I did, yes.

6 Q Did you give those notes to Mr. Soering to
7 sign pursuant to the Police and Criminal Evidence Act in
8 England at the time?

9 A I did not, sir.

10 Q Have you reviewed those notes prior to
11 testifying here today?

12 A I have looked at them, yes, sir.

13 Q You've also looked at the notes that Ricky
14 Gardner prepared?

15 A Yes, sir.

16 Q And those two documents have helped to
17 refresh your memory as to what happened at the 6:00
18 interview on the 5th of June?

19 A Yes, sir.

20 Q Mr. Soering asked to talk to an attorney
21 about the case in America, right?

22 A Exactly what do you mean by those --

23 Q Did Mr. Soering ask to talk to an attorney
24 about the case in America during the 6:00 interview on the
25 5th of June?

1 A No, sir. He requested to speak to an
2 attorney about the American case when he returned to
3 America.

4 Q And that was right after he indicated that
5 he didn't want to answer any further questions about the
6 case, is that right?

7 A There were occasions where he decided not
8 to answer individual questions.

9 Q At the 6:00 interview on the 5th of June?

10 A I think you'll find that throughout the
11 four days that --

12 Q I specifically --

13 MR. UPDIKE: Objection, Your Honor. He's
14 firing questions. Especially at this time of
15 the day, the witness really needs the
16 opportunity to answer once a question has
17 been asked.

18 THE COURT: Moving a little too fast.
19 Slow it down.

20 MR. NEATON: Well, maybe I'm hoping to get
21 done, that's all.

22

23 BY MR. NEATON:

24 Q Mr. Soering indicated that he did not want
25 to answer any questions put to him by Mr. Beever about the

1 homicide in Bedford County, isn't that correct, at the
2 6:00 interview on the 5th of June?

3 A Without referring to any notes, sir, I
4 would say no.

5 MR. NEATON: Judge, I might request since I have
6 not been aware of the fact that this witness made notes by
7 himself or notes that concern these interviews, that
8 perhaps this would be a good time to break for the night
9 in that perhaps I can be furnished copies of the notes
10 that he's referring to. I would say I was furnished
11 copies of Mr. Gardner's notes, but I don't believe that I
12 was furnished copies of this witness' notes and because
13 the witness has used them to refresh his memory, I'm
14 entitled to review them.

15 MR. UPDIKE: I understand that to be the law,
16 Your Honor, and I haven't seen Detective Constable Wright
17 look at any notes of his. Now the discovery order and the
18 rule pertaining to discovery requires the Commonwealth to
19 divulge to the defendant the substance of any oral
20 statements made. I've done that. If you want to look at
21 the Rule 3A:11 of the Rules of The Supreme Court of
22 Virginia, it specifically states that the defendant is not
23 entitled to notes.

24 Now if during questioning a witness
25 looks at notes, then opposing counsel can see what in the

1 world the witness has been looking at. But I haven't seen
2 this gentleman look at anything yet, as far as his own
3 notes, and until that occurs counsel is not entitled to
4 see them.

5 MR. NEATON: Judge, I understand the rule on
6 refreshing the witness' memory to mean that if prior to
7 the testimony, not just during the testimony, if he's
8 referred to notes in order to refresh his memory, then the
9 opposing party is entitled to review the notes that the
10 witness has used to refresh his memory. It's not that I'm
11 asking for the notes on the basis of the Commonwealth's,
12 or on the basis of Rule 3811, I'm asking to review the
13 notes on the basis of the law concerning refreshing
14 recollection, and I think I'm entitled to do that.

15 THE COURT: Well, let's take that up tomorrow.
16 It's late in the day. That's a good note to end on. I
17 will make no ruling at this time on that. However, if
18 there are any notes you should at least have them
19 available so that if I do, or that they be produced, that
20 they are here tomorrow.

21 MR. UPDIKE: They are immediately available,
22 Your Honor.

23 THE COURT: All right. We will recess until
24 10:00 a.m. tomorrow morning.

25 (The Court was recessed at 5:50 p.m. until 10:00 a.m.
Saturday, March 3, 1990.)

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I, VIVIAN P. NEAL, Court Reporter, do hereby certify that
the foregoing is a true and accurate transcript of the
proceedings in the aforementioned case, taken on March 2,
1990, to the best of my ability.

Court Reporter

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

COMMONWEALTH OF VIRGINIA

V.

JENS SOERING

THE HONORABLE WILLIAM W. SWEENEY, JR., PRESIDING

Bedford County, Virginia
March 3, 1990

* * * * *

VIVIAN P. NEAL
Court Reporter
1221 Twin Springs Court
Forest, Virginia 24551

(804) 385-8341

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1 (Court convened at 10:00 a.m. and in the presence of
2 the defendant and counsel, the following ensued.)

3
4 THE COURT: All right, gentlemen.

5 MR. NEATON: Before we talk about the issue of
6 whether the defense is entitled to inspect the notes of
7 Mr. Wright, we have another issue we want to bring to your
8 attention and that is, last night I understand that an
9 interview of one of the sequestered witnesses was shown on
10 Channel 10 out of Roanoke. The witness is Mr. Beever.
11 The interview occurred right after Court was adjourned and
12 it occurred in the hallway, as I believe, near the front
13 door of the Courthouse.

14 I want the record to be clear that, in no
15 way am I implying somehow that the Commonwealth's Attorney
16 has somehow caused this situation to occur. In no way am
17 I implying that somehow the order of the Court of January
18 16th about attorneys and Court personnel not talking to
19 the media has been violated, but the way I am coming at
20 this is that that witness was a sequestered witness. That
21 witness was supposed to be excluded and not supposed to
22 talk to anyone about the case.

23 He was interviewed and the interview was
24 broadcast and I'd like to make a separate record, at this
25 point in time, to call Mr. Beever and ask him what he

1 said. so that issue is preserved. Then after he does
2 that. I would request the Court for issuances of a
3 subpoena ducus tecum for the tape of that interview so
4 that it is preserved for appeal.

5 THE COURT: I have no knowledge of this. It is
6 the first I have heard about it. Mr. Updike?

7 MR. UPDIKE: Your Honor. I did not see the
8 program. I was not present. I don't know the substance
9 of it. My handling of the situation -- and I'll just tell
10 the Court what I have done. and if I'm wrong. I'm wrong --
11 once the British officers and. in fact. some other
12 witnesses. other than the British officers who have been
13 subpoenaed for the case. have been contacted by members of
14 the media. the ones who have asked me about it. and once
15 we got the officers back to Bedford here and I had the
16 opportunity to speak to them about that. what I have told
17 all the witnesses who have brought this to my attention.
18 is that there is an order pertaining to the attorneys
19 prohibiting the attorneys in the case. me included. from
20 providing any information to the media. I said I do not
21 know whether that pertains to the witnesses. but I said.
22 because of that. because of the spirit of it. it would
23 certainly seem to me to be wise not to discuss the subject
24 matter of the case with the media.

25 It's my understanding after this occurred

1 -- and I had no prior knowledge -- that the case itself
2 was not discussed, but rather matters concerning the
3 British Courts, a matter of interest, which I would
4 suspect that Detective Inspector Beever can express
5 himself far better than I can, that it was a matter of
6 relations for the Metropolitan Police Department and that
7 he did not discuss the subject matter of this hearing or
8 anything concerning this case.

9 Again, I state that without having
10 discussed it with Detective Inspector Beever and without
11 having seen the interview itself. That is what I would
12 suspect and believe did occur. That s about all I can say
13 on that.

14 THE COURT: All right. I will grant the defense
15 motion to have Officer Beever come back to the Courtroom
16 and allow you, Mr. Neaton, to examine him as to what he
17 did.

18 MR. NEATON: Thank you, Judge.

19 THE COURT: Will you call the officer, Detective
20 Sergeant Beever. You remain under oath Detective
21 Sergeant Beever. If you would come up here.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Mr. Neaton, you may
24 inquire.

25

1 the questions I answered. sir.

2 Q What were the questions that you answered?

3 A I was asked to make a comparison between
4 the English Courts and this Court, sir.

5 Q What was the next question you were asked
6 to answer?

7 A I was asked about the extradition hearings,
8 sir.

9 Q In this case?

10 A Yes. sir.

11 Q What was the next question you chose to
12 answer?

13 A I think they were the -- No, there were two
14 questions I chose to answer. Most certainly the
15 comparisons between the two courts, the differences, what
16 struck me about this court and the way we operated over
17 there. I talked about the Crime Prosecution Service in
18 England, which is our prosecuting body.

19 Q What did you say about that on television?

20 A I didn't say anything about that, sir.
21 Well, I did say something about that, but it didn't go out
22 on television at all.

23 Q What went out on television was about the
24 Strasbourg hearings in this case?

25 A Yes. I said I discussed the extradition

1 hearings, yes, sir.

2 Q What did you say about the extradition
3 hearings?

4 A I told them what my personal feelings were
5 at the time.

6 Q What were your personal -- What did you
7 tell him, that was --

8 A I said there was a time during the
9 extradition period, at Strasbourg, when I didn't think Mr.
10 Soering would come back to this country.

11 Q What else did you tell them, if anything,
12 about the extradition proceedings?

13 A Nothing, sir, I don't think. I don't think
14 I did, anyway.

15 Q What questions did you choose not to
16 answer?

17 A In fact, before the gentleman asked me
18 whether I would talk to him, I said, "I'm under
19 instructions via Mr. Updike, under the Judge, not to talk
20 about the case." And I said, "So please don't ask me any
21 questions in that direction." and, in fact, one of the
22 gentleman's questions was, "Of course, you're not allowed
23 to talk about the case, so I won't ask you any questions
24 about it." So I made it perfectly clear when the
25 gentlemen approached me that I wasn't going to discuss the

1 case with him.

2 Q Okay. You thought that your comments on
3 the extradition process in Strasbourg were not comments
4 about the case?

5 A I honestly thought that, sir, yes.

6 MR. NEATON: Thank you. I have no other
7 questions.

8 THE COURT: Sergeant Beever, for the
9 remainder of the case I specifically instruct
10 you not to discuss anything publicly with the
11 news media until this case is concluded.

12 THE WITNESS: I apologize, sir.

13 THE COURT: All right. That's all.

14 THE WITNESS: Thank you, sir.

15

16 MR. NEATON: Judge, will you grant my request
17 for a subpoena ducus tecum for the tape?

18 THE COURT: I will, unless the Commonwealth
19 knows of some good objection.

20 MR. UPDIKE: I really need to know the
21 materiality and the reason for that.

22 MR. NEATON: Preservation of the evidence for
23 possible appeal issues.

24 MR. UPDIKE: As to what, though, Your Honor,
25 that's my real argument. Isn't the purpose and the policy

1 of the exclusionary rule or the separation rule. I should
2 say, the real purpose of it is so that a witness will
3 testify on the stand without having been influenced as to
4 the testimony from other witnesses. Now what Your Honor
5 has heard from the witness stand, how does that in anyway
6 indicate that there's any influence upon this witness'
7 testimony by any comment concerning the extradition
8 proceedings, which concluded some time ago.

9 This has no bearing upon the issue
10 of suppression of the evidence at this point. So, my real
11 question is, regardless of what was said, what is the
12 materiality of the tapes themselves?

13 MR. NEATON: Well, (A) I would ask then, so the
14 record is clear, that Mr. Beever be prohibited from
15 testifying in this hearing, because he's violated the
16 Court's sequestration and exclusion order and, (B) the
17 relevance of the tape would be that it would be, by
18 subpoenaing the tape, it would be preserving the evidence
19 in case we chose to appeal on that issue.

20 THE COURT: All right. Anything else, sir.

21 MR. NEATON: No, that's all.

22 THE COURT: All right. "A" is denied. "B" is
23 granted and the reason "B" is granted is because of this
24 reasoning. Number one, I cannot see any possible
25 prejudicial error that's been committed. But regardless

1 of that, counsel for the defendant has the right to
2 proffer this evidence for purposes of any appeal. That's
3 his right. He has asked for it and I will grant it. So
4 the subpoena ducus tecum will issue to the station to
5 produce a copy of yesterday's interview with Sergeant
6 Beever, which interview I have not seen. Incidentally,
7 All right. I think that's all.

8 MR. UPDIKE: The only other request, Your Honor,
9 may the Commonwealth have access to that, because I have
10 not seen it as well?

11 THE COURT: Yes, sir. All right. Now let's
12 proceed.

13 MR. NEATON: Before I continue with my cross
14 examination of Mr. Wright, I would renew my request for an
15 opportunity to review the notes of the interviews of my
16 client that Mr. Wright made, at least as to the first and
17 second interviews on the 5th of June, because the witness
18 testified yesterday that he had used those notes, prior to
19 his testimony, in order to refresh his memory about the
20 events that occurred back in 1986.

21 I believe that under the rules of evidence
22 that apply to refreshing a witness' recollection, that the
23 opposing party is entitled to inspect those documents and
24 not necessarily proffered into evidence or offered as
25 exhibits, but we are entitled to inspect those documents

1 In order to see what, in fact, the witness did use to
2 refresh his memory. I just cite the Court to Section 18
3 in Friend, the cases cited thereunder which indicate that
4 that is the proper procedure, once a witness has used a
5 document or something to refresh his memory, that's all.

6 I just want to see what he used to refresh
7 his memory. Again, I want to make clear that I am not
8 saying that this evidence somehow was, that the
9 Commonwealth was obligated to disclose this evidence to
10 the defense under the discovery order. In no way am I
11 implying that the Commonwealth has somehow violated the
12 discovery order. What I'm saying is under the rules of
13 evidence and the cases that interpret that, we are
14 entitled to inspect anything, whether it be a document or
15 a thing that a witness used to refresh his memory.

16 THE COURT: Would you give me a citation, either
17 from Friend, or specifically from a case that states that
18 you are entitled to this information, if it concerns
19 private notes of this witness which were not brought to
20 Court and which were reviewed prior to the hearing?

21 MR. NEATON: Yes, Judge. Just a minute. On
22 page 53 of Friend, actually beginning on page 52, it says,
23 "Any material which actually stimulates or revives the
24 witness' memory may be used, meaning to refresh the
25 witness' memory. It is not limited to writings, it may

1 consists of anything which. In fact, stimulates memory.

2 It makes no difference whether the material
3 was prepared by the witness or by some other person. It
4 may be an original, a copy or an abstract. There is no
5 requirement that the material itself be admitted into
6 evidence or even that it be admissible. However, the
7 adverse party has the right to examine the material, to
8 use it in cross examining the witness and show it the
9 Jury".

10 THE COURT: All right. Thank you. All right,
11 Mr. Updike.

12 MR. UPDIKE: Yes, sir. Your Honor. Your Honor.
13 If I could, first of all, state that I appreciate the
14 comments of Mr. Neaton in this case. It's going to be a
15 hard fought case and vigorously pursued. I think, on both
16 sides and I think any effort on both of our parts to
17 restrict any animosity between us is a good thing and I'll
18 just state I'll try to reciprocate and I appreciate those
19 comments.

20 But as for the motion, Your Honor, if I
21 could just state that I claim not to be any expert on
22 this. As I read this I just wonder, Your Honor, when it
23 talks about the witness refreshing his memory, does that
24 not mean a witness on the witness stand as he's refreshing
25 his memory and is handed a document which, of course, at

1 that point the opposing counsel is entitled to see it. I
2 would state, Your Honor, that we have the notes. We
3 really have nothing to hide.

4 If the Court feels that counsel is entitled
5 to it, then I don't want any problems arising from this
6 point since we don't have anything to conceal. But I
7 still really wonder whether this section, from my reading
8 of it, pertains to anything that the witness has looked at
9 prior to getting on the witness stand.

10 THE COURT: Well, again, it's a difficult
11 question. It would seem to me logical that any witness
12 who has made notes would certainly refer to those notes at
13 some point before they come to Court to testify. Now
14 following that logic, under your theory, Mr. Neaton, there
15 would never be a case where the notes of a witness would
16 not be subject to defendant's review.

17 It does seem to me that that flies in the
18 face of the discovery rule that states that certain
19 private documents of witnesses and parties shall not be
20 disclosed. Now that gives me a lot of problem. But on
21 the other hand, the language which you have read in
22 Friend, certainly does not make it clear that notes
23 reviewed by a witness prior to a hearing and relied on by
24 the witness at the hearing are not subject to your
25 inspection and that's where we are.

1 MR. NEATON: Judge. I would indicate that under
2 the Commonwealth's theory, all the witness would have to
3 do to skirt the requirement in Friend would be to review
4 the notes one minute before testifying and then not review
5 them on the stand and at that point prohibit the adverse
6 party, the opposing party, from seeing what the notes were
7 that he used to refresh his memory.

8 I would further indicate that in this case
9 the foundation has been laid that the witness used these
10 notes to refresh his memory. And, therefore, it would be
11 distinguishable from a case where a witness testified
12 after reviewing notes but no foundation was laid in the
13 trial that the witness actually reviewed any notes or
14 actually refreshed his memory by reviewing notes.

15 And therefore, I think that while privately
16 most people, particularly those testifying about events
17 that are four years old, would have to review notes to
18 refresh their memory. If the foundation isn't laid that
19 they have reviewed the notes, then the opposing party is
20 not entitled to inspect them under this rule because there
21 is no foundation.

22 But in a case like this where the witness
23 specifically testifies that he has reviewed the notes
24 prior to testimony and the notes form part of the basis of
25 his memory and, therefore, are part of the underlying

1 basis for the facts that he testifies to under oath at
2 this hearing, then the defense should be entitled to
3 review the notes. pursuant to the rule stated in Friend.
4 And I don't think by ruling in favor of the defense in
5 this case you are creating a broad rule that would apply
6 in every case. I think what you are saying is under the
7 facts of this case with the foundation laid as to this
8 witness, the adverse party. In this case being the
9 defense. is entitled to review those notes.

10 MR. UPDIKE: Your Honor, we really think that
11 the law is that the defendant is not entitled to see these
12 notes under these circumstances. Otherwise, there would
13 be no reason for the provision in the discovery rule.
14 However, we see no great reason for debate here. We would
15 just ask that counsel look at these notes and we won't
16 have to worry about it.

17 THE COURT: Go ahead.

18 MR. NEATON: Thank you, Mr. Updike.

19 MR. UPDIKE: Sure.

20 MR. NEATON: (Reviews notes.)

21
22 (A short break was taken, after which the following
23 ensued in the presence of the defendant and counsel.)
24
25

1 THE COURT: All right, gentlemen. Do we want
2 Detective Wright on the stand now?

3 MR. NEATON: Yes, sir.

4 THE COURT: That's what I thought. Bring in
5 Detective Wright. Come up. Detective Constable Wright.
6 You remain under oath.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right, Mr. Neaton.

9
10 The witness, DETECTIVE CONSTABLE TERRY WRIGHT, having
11 previously been sworn and being recalled, testified as
12 follows:

13
14 CROSS EXAMINATION (Cont.)

15
16 BY MR. NEATON:

17 Q Mr. Wright, I would like you to call your
18 attention to the second interview on the fifth of June of
19 1986. You recall that interview, correct?

20 A Yes, sir.

21 Q You were present during that interview?

22 A Yes, I was.

23 Q You were taking notes during that
24 interview?

25 A I did write some notes, yes, sir.

1 Q You wrote those notes on Metropolitan
2 Police Form 990. Record of Interview?

3 A I had a folder which contained various
4 forms, some of which were 990's and some were 990-A's.
5 which are Metropolitan Police Forms that we would use had
6 a full contemporaneous interview taken place.

7 Q This is a contemporaneous interview form
8 that you would use under the Police and Criminal Evidence
9 Act in the U.K. at that time?

10 A They are a form and which the purpose of
11 them is to record questions and answers during an
12 interview. They were actually in use before the Police
13 and Criminal Evidence Act ever came into being.

14 Q And they were in use after the Police and
15 Criminal Evidence Act became effective?

16 A Yes, sir. The point I'm making, sir, is
17 that they were the nearest piece of --

18 Q Piece of paper that you had?

19 A Exactly.

20 MR. NEATON: I would like these marked.

21 THE COURT: For identification?

22 MR. NEATON: Yes.

23 THE CLERK: E.

24 (Defendant's Exhibit E was marked for identification
25 purposes only.)

1 BY MR. NEATON:

2 Q Mr. Wright, I'm going to show you what has
3 been marked for identification purposes as Defendant's
4 Exhibit E. Is that a copy of your notes taken during the
5 first and second interviews on the 5th of June 1985 (sic)
6 and subsequent interviews afterwards?

7 A That is part of the notes, some of the
8 notes I wrote, yes.

9 Q You were taking these notes in a question
10 and answer form, is that right, during the second
11 interview?

12 A No, sir. I wrote down some notes, because
13 there were several. Put it this way. The conversation
14 was quite a lengthy one and on occasions I wrote down some
15 of the things that were said.

16 Q The 6:00 interview on the 5th of June was a
17 rather lengthy interview. Is that what you're saying?

18 A I'm saying it was in the region of
19 forty-five minutes and those notes do not represent
20 forty-five minutes worth of conversation.

21 Q In any event, you referred to these notes
22 in order to refresh your memory and at least part of these
23 notes -- and I'm showing you what's Page D of your notes
24 -- are questions and answers, aren't they?

25 A They are some of the questions and answers

1 but they are not necessarily, there may have been other
2 questions in between those. They are not in order.

3 Q How did you determine what questions to
4 write down and what ones not to write down?

5 A Well, some of the questions that I wrote
6 down and another question and answer may have been given
7 before I finished writing, so I just wrote down some of
8 them. I can't remember exactly how I decided now, but if
9 they seemed important at the time I wrote them now. They
10 may not be important. They may be.

11 Q You said yesterday when you testified that
12 at that second interview that Jens Soering asked only to
13 speak to a U.S. attorney in the U.S., is that right?

14 A That is not exactly what I said, sir, no.

15 Q What exactly was it that you said?

16 A Well, what I meant was or what I said was
17 that the word "attorney" did come up and that he was quite
18 happy to carry on talking to us, but there were some
19 questions he would not answer until he had spoken to an
20 attorney and he was referring to when he returned to the
21 United States.

22 Q In those notes that have been marked as
23 Defendant's Exhibit E, did you record any instance during
24 the June 5th 6:00 interview, where Mr. Soering only said
25 that he would to the U.S. or only answer questions after

1 he returned to the U.S. and talked to a U.S. attorney?

2 Take all the time you want to look at them.

3 A That's no problem, sir. I've already
4 looked. I can read what I've written if you like, sir.

5 Q The question was, Mr. Wright, is there an
6 entry in your notes for the 6:00 interview on June 5th
7 that says that Mr. Soering only wanted to answer some
8 questions after talking to a U.S. attorney in the U.S.?

9 A No, there is not.

10 Q By the way, where is page B to these notes?

11 A I haven't got them, sir. I don't know.

12 Can I just answer that question a little bit more fully?

13 Q Well, the notes are labeled pages A through
14 whatever, and there's a page B missing, isn't there?

15 MR. UPDIKE: I didn't give them all the
16 notes, Judge. I thought I would just give him
17 the ones pertaining to that. There is one here
18 labeled B. I don't know that that's quite fair.
19 The one that I just have here is labeled B.

20 MR. NEATON: But that's for Elizabeth
21 Haysom's interview on the 6th of June.

22 MR. UPDIKE: Nevertheless --

23 THE COURT: Well, he's examining.
24
25

1 BY MR. NEATON:

2 Q Did you make a page A for June 5th and then
3 make a page B for June 6th and go back and make a page C
4 for June 5th?

5 A No, sir. You've shown me copies of the
6 notes. Can I see the originals?

7 Q Sure, if Mr. Updike will let me present
8 them to you. Where's page B?

9 A As I said, sir. I don't know. But I
10 would --

11 Q What's on page B? Jens Soering asked for
12 an attorney, right?

13 A No, sir. There may not be a page B. These
14 letters A, C and D are in pencil and were undergone later.
15 As you can see, you've shown me photocopies where they
16 appeared in black ink and they appear to be the same as
17 the writing. I deliberately put those in pencil, because
18 I wanted you to read them and the purpose of putting them
19 in pencil is so that you or anybody else can see that I
20 have not altered the notes. They are different to the ink
21 that I've used at the time.

22 Q When did you letter the pages in those
23 notes?

24 A At some stage later in the inquiry, sir.

25 Q When was that?

1 A I don't know, sir. Maybe three or four
2 days later, maybe six weeks later.

3 Q I mean B does come after A in the alphabet,
4 doesn't it?

5 A It does, sir. But not necessarily
6 referring to notes. B might be any other document or note
7 that was made at some stage.

8 Q What is the alphabet as it pertains to
9 police notes in London, England? I mean, does B come
10 after G in London for police notes?

11 A The alphabet doesn't apply to any police
12 notes. I mean, what sort of question are you asking me?

13 Q I'm asking you where is page B and what's
14 on it?

15 A I think I've answered that question, sir.
16 I don't know.

17 Q It's disappeared?

18 A No, sir. You're suggesting that there is a
19 page B for that interview and I'm saying that is not the
20 case.

21 Q When you were lettering the pages, you
22 forgot that there's a letter B?

23 A No, sir. May I look at the notes again?

24 Q Sure.

25 MR. UPDIKE: Your Honor, I would ask that

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he have all the notes, because there's one here with the letter B in pencil on it.

THE COURT: Well, let him have them all.

MR. NEATON: And that is the notes of Elizabeth Haysom's interview for the 6th of June and beginning at 4:52 p.m. That's not the same notes.

THE WITNESS: That's what I'm saying, sir.

MR. UPDIKE: He's questioning the witness. I'm not getting into that. I'm just saying that these are the notes and I put this on here, this staple. I'm asking that he have all of his notes pertaining to that period and that is still not all the notes. There's some pertaining to the later interviews.

MR. NEATON: When can we see the rest of them?

MR. UPDIKE: I'm not quite sure yet, Mr. Neaton.

MR. NEATON: Okay.

THE WITNESS: Sir, there is the page B that you have requested to see.

1 BY MR. NEATON:

2 Q So page B in Jens Soering interview
3 sheets --

4 A Was not written at the time, sir. The
5 letters A, B, C and D and so on were written on, added on.
6 In pencil, by me at a later date in order that I could put
7 these pages in some form of order.

8 Q So the order that you chose to put these
9 notes in is page A, being a page of Jens Soering's notes.
10 and page A is a page of Jens Soering's first interview on
11 the 5th of June, right? You can look at that.

12 A Yes, sir. Thank you.

13 Q Page B, in the great sequential order that
14 it's in, is Elizabeth Haysom's interview of June 6th. Is
15 that what you're telling the Judge?

16 A I never said it was the Elizabeth Haysom
17 interview. This, I said, is page B. There's nothing to
18 hide about that. You can see it. Anybody else can see
19 it. That is a note made afterwards, by me, at some stage
20 during the investigation and it says "6:02 p.m.. reminded
21 of Miranda and Caution 6:03 p.m." I don't ever recall
22 doing an interview with Elizabeth Haysom at 6:00 p.m., but
23 I do recall that on June 5th, one of the interviews of
24 Jens Soering was 6:00 p.m. to 6:45 or thereabouts.

25 Q On the 6th of June, 1986, you did interview

1 or were present when Elizabeth Haysom was interviewed in
2 the Richmond, England Police Station by Investigator
3 Gardner. Mr. Beever and yourself, isn't that true?

4 A I was there when she was interviewed. I
5 don't recall the time. If you say that, sir, I will
6 accept that.

7 Q Thank you.

8 A This note, obviously, refers to Jens
9 Soering, in my opinion. It refers to "reminded of Miranda
10 and Caution 6:03 p.m. Shown copy of the diary. Shown
11 copy of letter. 1 - Yes, it's my writing." And that is
12 Jens Soering agreeing that the letters were in his
13 handwriting, I think.

14 Q You think?

15 A Yes, because I --

16 Q How did that get attached to your notes of
17 Elizabeth Haysom's interview?

18 A You tell me, sir. I don't know.

19 Q I wasn't in London. Well, tell me.

20 A Because I --

21 Q In fact, you tell the Judge.

22 A Well, sir, those notes were made by me.
23 There's nothing to hide. When Investigator Gardner came
24 back from London he brought those original notes with him
25 and I can't say how they got attached to what. He

1 probably wasn't aware of it himself.

2 Q Of course, what color ink are all the notes
3 in Exhibit E written in? I'm showing you the original.
4 They're in black ink, correct?

5 A That's correct.

6 Q Okay.

7 A No, that isn't correct. Some in black and
8 some in blue.

9 Q Okay.

10 MR. UPDIKE: Could I object at this point?
11 I'm getting a little concerned. I've allowed
12 counsel to look at these originals, but they are
13 the originals and if Mr. Neaton walks around
14 with things like that, things get mixed up. I
15 want to just make sure that I get all the
16 originals back. How many of them are there?
17 For the record, how many pages?

18 MR. NEATON: Six.

19 THE WITNESS: You will notice that two of
20 them are marked "C."

21 MR. NEATON: That's right.

22 MR. UPDIKE: Okay. Now we're right. That
23 makes it seven then, right?

24 MR. NEATON: Right.

25 MR. UPDIKE: Seven pages. Okay. Thank

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you. No, there's eight. Eight.

MR. NEATON: Eight pages.

BY MR. NEATON:

Q Mr. Wright, I'm showing you the original notes, as I received them from Mr. Updike, that include the blue-inked page two, also known as page B, and a blue-inked page one?

A Yes, sir.

Q Those are your notes?

A They are.

Q They were stapled together?

A No. Well, these are staple marks, sir, so they've been stapled at some stage.

Q Now the color of ink on the original of Defendant's Exhibit E, and I'm keeping those at the witness' box so you can refer to those, Mr. Wright.

A What is Defendant's Exhibit E, sir, first?

Q Those original documents.

A The whole bundle?

Q Yes, the whole --

A Including those?

Q No, not including those.

A Okay.

Q Do you want to compare them first?

1 A No. I just wanted to know what Exhibit E
2 was.
3 Q Okay. Now you know. What's the color of
4 ink on page A?
5 A The color of the ink is black.
6 Q Is there any blue ink on page A?
7 A No, sir.
8 Q What's the color of ink on page C?
9 A Which page C, sir?
10 Q The first page C.
11 A Which is your first page C, sir?
12 Q I think it's the one --
13 A That one?
14 Q Yep, that one.
15 A It's black, sir.
16 Q Now that page C, that you just referred to,
17 consists of notes made during the 6:00 interview on June
18 5th, is that true?
19 A Yes, sir, I believe so.
20 Q Okay. The next page is page D, correct?
21 A Yes, sir.
22 Q We are in agreement on the page?
23 A Yes, sir.
24 Q And that's all in black ink, correct?
25 A Yes, sir.

1 Q And that consists of notes made during the
2 6:00 interview on the 5th of June, correct?

3 A I believe so, yes, sir.

4 Q Now go to page E and I'll show you page E
5 of my exhibit.

6 A Okay.

7 Q It's the same page, right?

8 A Yes.

9 Q And that's all in black ink, right?

10 A Yes, sir.

11 Q And that is another page of your notes made
12 during the 6:00 interview on the 5th of June, correct?

13 A Yes, sir.

14 Q Now the next page is an unlettered page, is
15 that correct?

16 A That's right, yes, sir.

17 Q And the top half of that page consists of
18 your notes made during the second interview on the first
19 day of questioning, is that right?

20 A I believe so, yes, sir.

21 Q Well, doesn't it say at the top "Record of
22 interview of notes made during interview two, day one"?

23 A In print it says "Record of Interview" on
24 all the pages. I added on in pencil at a stage after the
25 interview "Notes made during interview two, day one."

1 Q But that's true to the best of your memory.
2 right?

3 A Yes.

4 Q At what later stage in the inquiry, did you
5 make that addition to those notes?

6 A I have answered that question already, sir.
7 At some stage after the inquiry.

8 Q Well, the inquiry's been going on for four
9 years.

10 A Exactly, sir, yes. You got confused over
11 these pages in five minutes, sir. I've had two and a half
12 years to get confused.

13 Q Now I call your attention to page E of your
14 notes. Did you not write on those notes on the 5th of
15 June, 1986, sometime between 6:00 and 6:45 p.m. the
16 following sentence or entry, "I know something about my
17 involvement or non-involvement in this case that I have
18 not told Mr. Gardner and I will only discuss it first with
19 my attorney and then if my attorney suggests, with the
20 police"?

21 A That is correct, sir, yes.

22 Q And that is the statement that Jens Soering
23 made during that interview?

24 A Yes, sir. He did state that and,
25 obviously, the point that he was referring to, he never

1 did discuss.

2 Q Your next entry on the next page is a
3 question or a statement made by somebody. "Give me
4 something to make me consider what I am to do with you and
5 your attorney," correct?

6 A Yes, sir.

7 Q Who said that during that interview?

8 A I believe it was Mr. Gardner.

9 Q Then there's another sentence right under
10 that that says, "Does your involvement or non-involvement
11 or help or assistance, will it help Mr. Gardner greatly."
12 Is that correct?

13 A That's correct, sir, yes.

14 Q Who said that?

15 A I believe that was Mr. Beaver.

16 Q Now you're not indicating on these notes
17 with any symbols or names who are making these statements.
18 right?

19 A That's correct, sir. I didn't have time.

20 Q Right under that is written. "I can't
21 answer that."

22 A Yes, sir.

23 Q Mr. Soering said that, right?

24 A That's correct, sir, yes.

25 Q Right under that is written. "It must be

1 the case that you do not wish to answer these questions
2 because the answers would incriminate yourself to some
3 extent?"

4 A Yes, sir.

5 Q Who said that?

6 A Either Mr. Beever or Mr. Gardner, sir.

7 Q Do you know?

8 A I don't recall. It was one of those two.

9 Q It wasn't you?

10 A Not me, no, sir.

11 Q And Mr. Soering said, "Yes, that's right,"
12 correct?

13 A That's correct. Yes.

14 Q And that's the end of your notes for the
15 interview which began at 6:00 p.m. on the 5th of June,
16 1986, right?

17 A I don't recall any further notes for that
18 interview, sir.

19 Q And so as far as you're concerned, the
20 interview ended with Mr. Soering saying that he wanted an
21 attorney, that he would not answer questions because he
22 thought that they may incriminate himself, correct?

23 A Well, I wouldn't say, and I haven't said,
24 that that was the end of the interview, but it was
25 certainly towards the end at some stage. There were other

1 statements made in addition to those I've written down and
2 I do recall, because I realize the point you are trying to
3 make, that --

4 Q I'm glad of that.

5 A I realize that, or I remember that he at no
6 stage requested an attorney or a lawyer or a solicitor
7 during any of the interviews.

8 Q Well, what was he saying that you wrote
9 down in your notes there?

10 A He was saying --

11 Q He's saying I don't want to answer
12 questions until --

13 MR. UPDIKE: Objection, Your Honor.

14 THE COURT: Sustained. Let him answer the
15 question.

16 MR. NEATON: I withdraw the first question.

17
18 BY MR. NEATON:

19 Q He was saying in the interview that he
20 doesn't want to answer questions until he talks to an
21 attorney, right?

22 A In which case it shows that he didn't need
23 one, sir. He was fully aware, or he had an idea, which
24 questions he thought he could answer and which questions
25 he thought he would not answer, and he exercised that

1 right.

2 Q But that's not in your notes, is it?

3 A But I remember it and I'm telling you now,
4 sir. That's what I remember.

5 Q You remember it after looking at Ricky
6 Gardner's notes at subsequent interviews, right?

7 A I remember it because I remember it, sir.

8 Q The interview ended right after Mr. Soering
9 requested an attorney, right? Mr. Gardner terminated the
10 interview, right?

11 A It ended shortly after. I would say, I
12 can't say what precise time those statements were made.
13 As I've already indicated, they were made towards the end
14 of the interview.

15 Q Did you ever give those notes to Mr.
16 Soering to sign or review?

17 A When I wrote those notes down I never
18 thought for one minute that they would be admissible or
19 not. I just wrote them, because the points seemed
20 important to me so I wrote them down.

21 Q So all the other points seemed unimportant
22 to you?

23 A No, sir. All the other points. I didn't
24 have time to write them down.

25 Q They weren't as important?

1 A No, sir. I didn't have time to write them
2 down. I would have liked to have written every word down.
3 In fact, I would have preferred that they be recorded
4 because there's nothing to hide, as far as I'm concerned.

5 Q Was there ever a record made by you of the
6 interview with Mr. Soering, other than those notes?

7 A To what are you referring, sir?

8 Q I'm saying, is there any other written
9 record that you made of the interview with Mr. Soering at
10 6:00 p.m. on the 5th of June, other than those notes?

11 A Not that I'm aware of.

12 Q Doesn't the Police and Criminal Evidence
13 Act in England in effect in 1986 require you to show that
14 written interview record to Mr. Soering for him to sign
15 and affirm after you have made those notes?

16 A These notes are not the proper formal notes
17 that we would normally take, simply because at that stage
18 there was no indication that there would ever be a trial
19 in our country, by starting with the very first interview
20 to record them formally, as we would normally.

21 Q Okay.

22 A And I was stopped by Jens Soering who said,
23 "I prefer you not to take the notes," or words to that
24 effect. I never took formal notes from then on.

25 Q Uh-huh.

1 A However --

2 Q Okay, that's fine. Did you ever hand your
3 notes to Ricky Gardner on the 9th of June to look at so he
4 could write his notes?

5 A Well, I handed these notes to Ricky Gardner
6 at some stage and I believe it was the 9th of June and he
7 brought them back to America. So, obviously, he would
8 have looked at them. In fact, I believe that Sergeant
9 Beever and myself --

10 Q That's fine. You answered my question.
11 You would agree, would you not, that Mr. Soering was in a
12 position to see you taking the notes?

13 A He was sitting some three or four feet away
14 from me, sir.

15 Q When you were taking the notes at the 6:00
16 interview on the 5th of June?

17 A Whenever I wrote things down during the
18 interviews, he could see that I was doing that.

19 Q Aren't you then required under the rules of
20 your own country to show those notes to the suspect and
21 get his signature on the notes?

22 A If I had some formal notes, such as the
23 interview that myself and Sergeant Beever did, where we
24 recorded on Forms 990 and 990-B some fourteen pages of
25 questions and answers, they were given to him and he did

1 Initial each answer and sign each page.

2 Q Then why weren't these notes reduced to the
3 right form?

4 A As I've told you, sir, I began to write
5 them formally, as on this page, which I've written on the
6 letter A, and then an identical form to a later interview,
7 which was given to him. But he requested that I do not
8 write notes.

9 Q That was at the first interview that you
10 contend that happened, right?

11 A What I'm saying, sir, is it did happen that
12 way. And as I've just said, I began to write my questions
13 and answers and he requested that I not make notes and I
14 didn't take any further notes. Did not contain any notes
15 in any way incriminating, as I can see, and he was never
16 given the opportunity to sign.

17 Q Wait a second. At the first interview you
18 wrote in your notes, "Jens asked if I would not make
19 anymore notes," right?

20 A Yes, sir.

21 Q In the second interview, you didn't write
22 in your notes that Jens didn't ask me to make anymore
23 notes, right? He was letting you take notes?

24 A Yes, sir. Well, he didn't request I stop.
25 He didn't make any comment, sir.

1 Q And that being the case, you didn't reduce
2 them to a formal statement and have him sign it, correct?

3 A For purposes of what, for the trial in
4 England or --

5 Q For any purpose?

6 A No, sir. I've never been requested to make
7 a statement regarding that.

8 Q And you reviewed Ricky Gardner's notes of
9 the 5th of June, 6:00 interview, as well, before you
10 testified here today, right?

11 A May I see them, sir?

12 Q Sure. This is a Xerox copy of Defense
13 Exhibit B, which has been marked for identification only.

14 A Yes, sir.

15 Q And your memory concerning what happened
16 during the 6:00 interview was refreshed by looking at
17 Ricky Gardner's notes, as well as looking at your own
18 notes, prior to testimony today and yesterday, correct?

19 A Over the last two years, sir, I've read
20 most of the documents more than once.

21 Q Including the last document I showed you?

22 A Yes, sir.

23 Q And that's helped you remember the facts
24 that you've testified to so far today?

25 A Yes, sir.

1 Q You never heard Mr. Beever tell Mr. Soering
2 at any time during those four days that he would get a
3 solicitor?

4 A I recall on occasion, one occasion, or I
5 recall an occasion where during one of the interviews
6 which I believe is on tape -- again, there's nothing to
7 hide -- is there recorded, that Sergeant Beever suggested
8 that Jens Soering seek legal advice, although he didn't
9 wish to take up that offer.

10 Q In any event, whatever's on the tape is
11 accurate, right?

12 A Well, it's recorded, sir, and like I said,
13 I can't add anything to it or take anything from it.

14 Q So if Sergeant Beever said on the tape, "I
15 think that I should go downstairs and we'll get that
16 attorney" --

17 A Yes. That's a suggestion from Mr. Beever.

18 Q Okay. You characterize it as a suggestion.
19 In any event, you wouldn't disagree that that comment was
20 said to Jens Soering by Sergeant Beever?

21 A If you're asking me to comment on the exact
22 words, sir, I would like to say that I believe that
23 particular bit was recorded. And I'm sure if I was to
24 hear the recording I would remember it.

25 Q You said that you worked in Germany for

1 some time, eight weeks?

2 A Yes, approximately eight weeks?

3 Q Was that in Hamberg?

4 A Near to it.

5 Q As a bricklayer?

6 A That's right.

7 Q Shortly before April 30th of 1986, had you
8 just come back on duty after suffering an injury?

9 A Well, what sort of time span are you
10 talking about? I mean, what do you call shortly?

11 Q Well, had you been off on medical leave due
12 to a stab wound to your kidneys sometime prior to the 30th
13 of April of '86?

14 A I was stabbed three times on December 21,
15 1984. I was off work three months. I believe, sir.

16 Q So within the year prior to you
17 interviewing Mr. Soering you had been stabbed, or a little
18 over a year?

19 A Yes, sir.

20 Q And you told that to Mr. Soering during
21 your interview at some point?

22 A I don't recall telling him that, sir. I do
23 recall that it was general knowledge with policemen and
24 people that policemen associate with in the Richmond area.

25 Q Well, Jens Soering was not a policeman in

1 the Richmond area, was he?

2 A No, sir. Well, what I have in mind, I
3 don't know whether it's proper for me to suggest as to --

4 Q I'm asking, do you -- Let me put the
5 question to you more specifically. Did you tell Jens
6 Soering that you had been stabbed in the kidneys within a
7 year or so before you interviewed him?

8 A No, sir. I say that because the stab wound
9 didn't injure my kidneys. It injured my spleen.

10 Q So you told Jens Soering that you were
11 stabbed in the spleen?

12 A No. I don't recall telling him, sir.

13 Q Okay. You don't remember one way or the
14 other?

15 A Well, you've asked me, first, if I told him
16 that I was stabbed in the kidneys. I know that I wouldn't
17 have told him that because I wasn't stabbed there.

18 Q Okay.

19 A Now if you're asking if I told him I was
20 stabbed in the spleen. I very much doubt if I told him
21 that. I don't usually make that mistake, sir.

22 Q Now did you tell him that you were stabbed?

23 A Quite possibly. I don't know. It's no
24 secret.

25 Q And it wasn't a secret you were going to

1 keep from Mr. Soering either. Let me ask you this. You
2 went to Mr. Soering's cell during the weekend of the 5th
3 through the 8th of June and you had a conversation with
4 him in the cell, didn't you?

5 A At what time are you referring to, sir?
6 When I went to take him down for interview or -- I went
7 down there several times to get him out of his cell to
8 take him upstairs.

9 Q I'm talking at a time that would not be
10 involved in taking him out for an interview.

11 A A conversation in his cell?

12 Q Yeah.

13 A Not that I recall.

14 Q You don't remember?

15 A No, sir.

16 Q I take it during all of the interviews that
17 you were present at, along with Mr. Beever and Mr. Gardner
18 and Mr. Soering, that you were always looking at Mr.
19 Beever during those interviews?

20 A He was within my view, sir.

21 Q My question was, though, whether or not you
22 were always looking at Mr. Beever during those interviews?

23 A When you asked me that question, sir,
24 you're looking over there.

25 Q I know.

1 A So I may well have been, sir.

2 Q It proves a point, doesn't it?

3 A Exactly. He was within my view. I
4 wouldn't have looked at him every second of an interview
5 and it would be foolish of me to say that I did.

6 Q So the point is that you don't know
7 everything that Mr. Beever was doing during those
8 interviews?

9 A Of course no, sir, no.

10 Q You didn't keep watch on Mr. Beever at all
11 times during this weekend to know everything that he did
12 in the station during that weekend, right?

13 A If you ask me any question, sir, about what
14 Mr. Beever did, if I can answer that, I will. If you -- I
15 wasn't with him every minute of the day. Does that answer
16 your question?

17 Q I think it does. After the 6:00 interview
18 on the 5th of June ended, you and Ricky Gardner and Mr.
19 Beever left the interview room and went and talked to Mr.
20 Updike, didn't you?

21 A I think that's possible, yes, sir.

22 Q And you talked to Mr. Updike about the
23 request for counsel that caused Mr. Gardner to terminate
24 the 6:00 interview at 6:45, right?

25 A I don't recall, sir.

1 Q Okay. Fine. You remember Mr. Updike
2 saying, during this time, that unless Mr. Soering
3 initiated any further conversations with the police that
4 you couldn't talk to them anymore, right?

5 A I don't recall, sir. At that stage, I knew
6 nothing about American law at all.

7 Q But whether you knew about American law or
8 not, do you remember that statement being made?

9 A I don't recall, sir. I don't specifically
10 remember that, no.

11 Q So you can't confirm it or deny it is what
12 you're saying?

13 A That's right. Yes.

14 Q It could have been made, correct?

15 A That's what I'm saying.

16 Q Yesterday you said it was ridiculous to
17 assume that Mr. Beever could have ever made a threat
18 against Elizabeth Haysom in the presence of Mr. Soering.
19 Is that right?

20 A No, sir. You said the question and I
21 answered, "That's ridiculous."

22 Q Okay. So you said, "That's ridiculous"?

23 A Yes, sir.

24 Q And that's based upon the fact that Mr.
25 Beever was a colleague of yours?

1 A It's based on the fact that I've known him
2 for, at that time approximately a year, and I've never
3 known him or me to ever make threats to a prisoner.
4 That's what that answer was based on.

5 Q Do you know Sir Peter Imbert, the Chief
6 Constable of the Metropolitan London Police?

7 A Not personally.

8 Q Do you know of him?

9 A Well, he's my boss, sir.

10 Q Then you know that he was in charge of the
11 Gullford Four Investigations?

12 MR. UPDIKE: Objection, Your Honor. I
13 certainly don't know what this Gullford Four
14 is and I don't know whether I pronounced it
15 correctly. I don't know what in the world it
16 is, but it certainly has no relevancy to this
17 particular proceeding. The question here
18 centers upon the actions of the defendant and
19 the police officers involved during the course
20 of their investigation. Any kind of study or
21 anything of that nature is irrelevant.

22 MR. NEATON: Judge, it is relevant. It's
23 cross examination. The witness testified in
24 response to a question that I put yesterday,
25 "That's ridiculous." to assume that Mr. Beaver

1 could ever make a threat or somehow cook the
2 evidence up in this case. The Gullford Four
3 were a group of four individuals who were
4 released after fifteen years in prison because
5 of confessions that were either fabricated or
6 extracted out of them during an investigation
7 and the leader of that investigation is Sir
8 Peter Imbert.

9 MR. UPDIKE: Doesn't he have to show
10 relevance before he puts it into evidence. Your
11 Honor? I don't think -- I think he has to
12 show some type or relevancy and foundation.
13 I've objected to the admission of this. That
14 does not give him the grounds to --

15 THE COURT: I know --

16 MR. NEATON: I'm proffering what the
17 testimony would be.

18 THE COURT: Well, in any event, you would
19 first have to show that this witness has
20 knowledge of those facts as a foundation
21 threshold question. Certainly, it's not
22 admissible unless he has knowledge of those
23 facts and those facts have some bearing on his
24 opinion as to certain character qualities of
25 Sergeant Beever.

1 MR. UPDIKE: Your Honor, we would further
2 object that if an investigation were conducted
3 in the United States and Officer Smith
4 threatened a prisoner in one investigation, that
5 has nothing to do with whether or not an Officer
6 Jones in an entirely different and unrelated
7 investigation threatened a prisoner in that
8 case. And that seems to be what they're trying
9 to do here.

10 MR. NEATON: No, it's not, Judge. We're
11 testing the believability of his statement that
12 "It's ridiculous" to assume that Mr. Beaver
13 could make a threat against Miss Haysom in front
14 of Mr. Soering. Because in using other
15 instances, I think, through questioning, I can
16 bring this out. And if you would allow me to
17 continue, I think that I can show --

18 THE COURT: I'm not sure it's admissible.
19 but I'll allow you to ask some foundation
20 questions.

21
22 BY MR. NEATON:

23 Q Mr. Wright, you know what the term
24 "Gullford Four" refers to, don't you?

25 A It's a term used by the newspapers, I

1 believe, sir.

2 Q And what does it refer to?

3 A It refers to four people, whose names I
4 couldn't even tell you at the moment, that are alleged IRA
5 sympathizers.

6 Q What happened to the Gullford Four within
7 the past year?

8 A Shall I answer your first question before
9 interruption?

10 THE COURT: Yes.

11 THE WITNESS: You asked me --

12 MR. NEATON: Yes.

13 THE WITNESS: You asked me whether I was
14 aware that Mr. Imbert was investigating that
15 matter? Well, no, I wasn't.

16

17 BY MR. NEATON:

18 Q You would have thought it ridiculous that
19 Mr. Imbert would have been charged with fabricating
20 confessions or beating confessions out of the Gullford
21 Four, wouldn't you?

22 A Well, I don't know Mr. Imbert so I wouldn't
23 have made the comment. I do know --

24 Q He's your boss, isn't he?

25 A He's the boss of twenty-eight thousand

1 Metropolitan Police officers. sir.

2 THE COURT: This question is not relevant.
3 It's not proper and you haven't laid the
4 foundation. I sustain the objection.

5 MR. NEATON: Okay.

6 THE COURT: We're going too far afield.

7 MR. NEATON: I have no further questions.

8 THE COURT: Perhaps we should take a
9 break now. Ten minutes. You can step down,
10 please.

11 THE WITNESS: Thank you, sir.

12

13 (A short break was taken, after which the following
14 ensued in the presence of the defendant and counsel.)

15

16 THE COURT: You will have further questions of
17 the witness?

18 MR. UPDIKE: Yes, I do, Your Honor.

19 THE COURT: All right. Mr. Wright, please. You
20 may examine, Mr. Updike.

21

22 REDIRECT EXAMINATION

23

24 BY MR. UPDIKE:

25 Q Detective Constable Wright, several

1 questions that I would like to ask you about as to
2 clarification. First of all the matter of the notes?

3 A Yes, sir.

4 Q I'm going to hand you the originals and let
5 you keep them and see if I can work from copies, if I can.
6 First of all, the note, which I think it's labeled A,
7 pertaining to the 3:30 p.m. interview on June 5th?

8 A Yes, sir.

9 Q That particular note begins with a
10 question, is that correct?

11 A Yes, sir. I marked it with a Q.

12 Q That question is what, please?

13 A I've written down "Cautioned by D/S Beever,
14 Miranda by Mr. Gardner, do you understand the Miranda?"

15 Q The answer?

16 A "Yes. I've seen it and heard it on almost
17 every episode of Cagney and Lacy. Hill Street Blues and
18 all those other programs."

19 Q Then there's another question?

20 A I written a Q and then I crossed it out
21 because it wasn't -- I've written a Q in anticipation of a
22 question. I then crossed it out because Mr. Soering said
23 that he didn't want any further notes to be made and I've
24 written, "Jens asked if I would not make any more notes".

25 Q You began this procedure at the very

1 beginning with the Miranda, of a question and answering,
2 writing the question and then writing the answer?

3 A Yes, sir. Because had this interview going
4 to be used in an English Court and that would have been
5 the way that we would have done the, recorded the
6 interview.

7 Q You stopped that procedure, why?

8 A Well, because this investigation was a
9 matter for Mr. Gardner, really, and when we were requested
10 not to make notes then Mr. Gardner, I can't actually
11 remember this, but I'm sure I looked across and he said
12 something like, and I just stopped. There's no actual
13 words, I just complied with what Mr. Soering wanted.

14 Q A few moments ago you made reference to an
15 interview with Jens Soering during which the procedure
16 outlined in your codes of practice was followed, is that
17 correct?

18 A Yes, sir.

19 Q I'd like to show you this for purposes of
20 reference, a transcript, and ask if you would identify
21 this, please, if you can?

22 A Yes, sir. This is a photocopy of a typed
23 copy of a similar interview recorded on these forms.

24 Q That interview was conducted by whom, with
25 whom and when?

1 A It was an interview of Jens Soering on the
2 7th of June, 1986 at 10:53 a.m., concluding at 12:20 p.m.
3 and the interview was by D/S Beever and D/C Wright. In
4 other words, Mr. Beever and myself.

5 Q Who was asking the questions and how was
6 this interview recorded?

7 A Mr. Beever asked the questions and I
8 recorded the questions and answers.

9 Q How did you do that, recordedly?

10 A I've written exactly the same as I started
11 to do on that one. I put a Q on the left hand side for
12 questions and I've written an A on the left hand side that
13 relates to the answers.

14 Q That particular interview then with Jens
15 Soering that you have there in front of you, Investigator
16 Gardner was not present during that interview, is that
17 correct?

18 A No, sir. He was not present because this
19 interview related to something that may have been used in
20 English Courts.

21 Q As to possible English offenses then, is
22 that correct?

23 A Yes, sir.

24 Q Was that interview then tape recorded?

25 A No, sir.

1 Q The investigations that you were conducting
2 at that time, not just as to Jens Soering, but as to
3 prisoners in general at the Richmond Police Station, were
4 such interviews tape recorded?

5 A No, sir. There are no, and still are not
6 any tape recording facilities there.

7 Q When interviewing all prisoners, or all
8 persons, I should say, at the Richmond Police Station,
9 this procedure which you have there before you would be
10 the procedure followed?

11 A This is the normal procedure, sir, yes. On
12 occasions -- Had Mr. Soering said, on that occasion, "I
13 don't wish there to be any further notes made", then we
14 may well have complied with that as well, but we would
15 have made a record afterwards. That is the normal
16 procedure.

17 Q Okay. So as to that interview, Detective
18 Sergeant Beever would ask the question, you would write
19 down the question, then there would be an answer, you
20 would write down the answer, and it would proceed in that
21 fashion?

22 A Yes, sir. It's a very slow method of doing
23 it, but that's the way we do it, yes, sir.

24 Q I wanted to ask then, you writing it down,
25 how do you keep up with the answers that are being

1 propounded and the answers given in response?

2 A Well, the questions and the answers have to
3 be spoken very slowly and I just record them as they are
4 said.

5 Q As far as the speed of the interview, how
6 is that controlled, or who controls the actual speed with
7 which the interview continues?

8 A Well, both the interviewer and the
9 interviewee is controlled by -- Well, in fact, it's really
10 controlled by the speed that I can write.

11 Q The speed that you can write?

12 A Yes, sir.

13 Q I see. For example, if a question were
14 asked and you hadn't completed writing the question down
15 before the answer were given, what would you do?

16 A Well, I do remember this particular
17 interview anyway, but most people, even though they're
18 being interviewed as suspects are quite prepared to sit
19 and wait until you've actually finished writing, which
20 most people do and Mr. Soering did.

21 Q I see. Once you have completed writing the
22 question, then you proceed to, are prepared to proceed
23 with the answer?

24 A That's right.

25 Q So then, in that particular interview, as

1 to the manner in which it was conducted and the speed with
2 which it proceeded. you and Detective Sergeant Beever were
3 in control of that by virtue of him asking the questions
4 and you recording it?

5 A Yes, sir.

6 Q During the interviews being conducted by
7 Investigator Gardner regarding the suspicion of murder
8 here in Bedford County, were you and Detective Sergeant
9 Beever in control of those?

10 A No, not really, sir, no.

11 Q After that particular interview, the one on
12 June 7th which began, when again 10:50 --

13 A 10:53 a.m.

14 Q 10:53 a.m. At the conclusion of you having
15 recorded this interview in that fashion, was it presented
16 to the defendant to sign?

17 A Yes, sir. He initialed every answer and
18 signed at the foot of each page.

19 Q As far as admissibility in British Courts,
20 how is that done with such an interview as that?

21 A That typed copy would be used as case
22 papers and the original would be submitted as an exhibit.

23 Q I see. As a matter of fact, I have an
24 affidavit which you executed, if you'd like to see it to
25 refresh your memory. But am I correct that that

1 particular interview was submitted as an exhibit on the
2 British charges? I refer you to the last page of that
3 affidavit. First of all, do you recognize that affidavit
4 and if so, identify it?

5 A Yes, sir. This is a statement made by me
6 on the 11th of July, 1986. It's signed by myself.

7 Q The purpose of the statement was what?

8 A It's to be submitted in the case of charges
9 against Jens Soering and Elizabeth Haysom.

10 Q In England?

11 A In England.

12 Q As to English charges, of course?

13 A Regarding fraud charges.

14 Q And again, referring you to the last page
15 of the interview, is there a reference there to the --

16 A Yes, sir. There's a paragraph which reads.
17 "On the 7th of June, 1986, I was present as D/S Beaver
18 conducted a further interview of Jens Soering commencing
19 at 10:53 a.m. and terminating at 12:20 p.m." I recorded
20 the interview contemporaneously and produced these notes
21 as Exhibit TW-8.

22 Q So it was attached as an exhibit. Is that
23 correct?

24 A That is correct, yes, sir.

25 MR. UPDIKE: We would like to offer these

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into evidence, please.

MR. NEATON: Judge, we would have no objection if they're introduced for the limited purpose of showing an interview technique in the United Kingdom at that time. We would have an objection for any other purposes.

THE COURT: It will be introduced.

THE CLERK: Is it two exhibits?

MR. UPDIKE: Please, if you don't mind.

THE CLERK: Thirteen and Fourteen.

(Commonwealth's Exhibit Numbers Thirteen and Fourteen were marked for identification.)

BY MR. UPDIKE:

Q Now those notes which we have just introduced as to that interview on June 7, 1986, would those notes be described as full contemporaneous notes?

A Yes, sir.

Q These notes which you have there in front of you, first of all, the one regarding the interview on June 5th at 3:30 that just has the three lines, would those notes be full contemporaneous notes?

A No, sir.

Q The notes as to which you were questioned

1 by Mr. Neaton pertaining to the second interview on
2 Thursday, June 5, 1986, would they be full contemporaneous
3 notes?

4 A No, sir.

5 Q The notes speak for themselves, but do I
6 understand you that you wrote down what you could in the
7 time that you had?

8 A Yes, sir.

9 Q Is it also true that basically what you
10 have here would be the responses rather than the
11 questions, for the most part?

12 A Yes, sir.

13 Q As to the notes themselves, the letters
14 that you were asked about in pencil, you wrote those
15 letters on those notes yourself, is that correct?

16 A Yes, sir.

17 Q Now when those notes were forwarded to or
18 brought to, I should say, Bedford, Virginia, were they
19 stapled in any fashion or put together in any fashion?

20 A I don't recall.

21 Q Okay. I would like to ask you about the
22 question of Jens Soering initiating contact with the
23 police officers since Mr. Neaton asked you about that, if
24 I might. And in doing so, if I could show you for
25 referral purposes, should you feel the need to do so, the

1 Commonwealth's Exhibit Eleven and would like to refer you
2 to a reference, or I should say an entry in that
3 particular custody sheet on June 5, 1986, beginning around
4 the period, well, first of all, the period of 7:45 p.m.?

5 A Yes, sir.

6 Q I believe that I asked you about this
7 earlier, but during the phone call that is listed there,
8 you placed that call, is that correct?

9 A Yes, that's correct.

10 Q I would like, if you would, to read to
11 yourself the entry as to 7:50 p.m. beginning "Placed
12 back"?

13 A Yes, sir.

14 Q Now, that begins with "Placed back in
15 cell" --

16 MR. NEATON: I'm going to object on the
17 grounds that to read that entry into the record.
18 I think that entry is subject to the Court's
19 ruling yesterday. He has asked the witness to
20 look at the entry to himself and refresh his
21 memory as to what that entry says. The witness
22 has done so. The witness is now in a position
23 to testify from refreshed recollection to any
24 question Mr. Updike wants to ask. But to read
25 that entry into the record as part of the

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question, I think would place into evidence an entry that I think your ruling yesterday excludes. In addition, it's a leading question and. In addition, it's outside the scope of cross examination.

MR. UPDIKE: I'll try to respond to all of those, Your Honor, very quickly and in order. First of all, the purpose of my question is not to read the entry but just to ask about a portion of it and the purpose of that question is to establish. In accordance with Your Honor's order, who it was who entered this particular entry and who it was that would have had personal knowledge of the entry.

And as I understood the Court's order, if the individual who had personal knowledge of the entry entered it, then this portion of the custody sheets are admissible as evidence. Secondly, Your Honor, as far as it exceeding the scope of the cross examination, as I indicated, this focuses directly upon the period of Jens Soering reinitiating contact with the police officers and Mr. Neaton raised that in his questions about, "Well, didn't you go back and talk to Mr. Updike about we've got to reinitiate

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contact or that has to occur before there can be further questions."

As a result of him raising that untoward conduct, this is an area which he himself raised and I should be allowed to clarify.

MR. NEATON: In response I would say, to the first entry, if he's trying to establish, lay a foundation for entry of that portion, then the question has been asked and answered yesterday. And secondly, it's outside the scope of cross examination of the witness. On the issue of whether my questions about what Mr. Updike said therefore allows Mr. Updike to bring up the issue of what happened again between 7:50 and 8:02 p.m. on the night of the 5th, I say it doesn't because the cross examination was specifically limited to whether this witness remembered Mr. Updike saying anything to him and nothing any further. I did not ask the witness about the events between 7:45 and 8:02 p.m. and, therefore, when Mr. Updike wants to get into that area, that's outside the scope of cross examination.

THE COURT: All right, I'm ready to rule.

1 The objection is overruled, and the three
2 reasons stated for the objection, I will give my
3 reason for each three. Number one. the question
4 asked was a threshold question within the scope
5 of the ruling which I made yesterday dealing
6 with these records. Number two, scope of
7 examination deals not with words but with
8 subject matter. Certainly the subject matter
9 under consideration was raised by defense
10 counsel. And number three, I do not find the
11 question asked to be leading. All right,
12 proceed.

13
14 BY MR. UPDIKE:

15 Q My question again, without reading the
16 whole portion, in fact, not even reading it, the reference
17 in the entry to Jens Soering going back into his cell, my
18 question is, who would have done that, who would have been
19 involved in that and who would have made the entry in this
20 particular line at 7:50 p.m., if you understand what I'm
21 saying?

22 A Yes, sir. The custody officer that was on
23 duty at that time.

24 Q He would have placed Jens Soering back in
25 his cell at that time?

1 A Yes, sir.

2 Q Would that same person be the person who
3 made this entry here?

4 A Yes, sir.

5 Q And it is signed?

6 A Yes, sir.

7 Q Now, not reading at this point the
8 reference itself or the entry, I should say, that
9 particular entry continues with a request. To whom would
10 that request have been made and by whom would it have been
11 recorded?

12 A That would have been made to the custody
13 officer, sir, and recorded by him.

14 MR. UPDIKE: Therefore, Your Honor, we
15 think that that particular entry therefore is a
16 part of the evidence and we're asking that it be
17 read into the record.

18 THE COURT: Proceed.

19

20 BY MR. UPDIKE:

21 Q And we would ask, if you would sir, read
22 this 7:50 p.m. entry.

23 A "7:50 p.m. Placed back in cell, whilst
24 being taken to cell, he requested he that he speak to D/S
25 Beever and D/C Wright as soon as possible as he felt it

1 was the right time to talk."

2 Q I would like to ask you similar questions,
3 if I might, about the next entry -- and I'm not going
4 through all of them. Please don't get worried. Just
5 certain little portions -- But the next entry of 7:55, if
6 you would read that to yourself first of all, please?

7 A Yes, sir.

8 Q That entry refers to "I" in the first
9 person making a contact. Who would have made that contact
10 and who would have made the entry?

11 MR. NEATON: Objection. It calls for
12 speculation.

13 MR. UPDIKE: He's familiar with the
14 procedures that were established yesterday, Your
15 Honor.

16 THE COURT: We have to determine from the
17 witness whether it's speculation. If it's based
18 on speculation, do not answer. If it's based on
19 personal knowledge, answer.

20 THE WITNESS: It's not based on personal
21 knowledge, Your Honor, it's based on the fact
22 that I can see the signature after the entry.

23 THE COURT: What do you mean by that?

24 THE WITNESS: There is an entry on the
25 custody record which has been signed and whoever

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made that signature would have made the entry.
It is based on procedure as opposed to personal
knowledge.

MR. NEATON: May I ask the witness a voir
dire question then?

THE COURT: Yes.

MR. NEATON: Is that the same basis for
your answer for the entry at 7:50?

THE WITNESS: Yes, it would be, sir, yes.

MR. NEATON: Then I'd ask that that be
stricken from the record.

MR. UPDIKE: Your Honor, what counsel is
saying, and if you follow that to it's logical
conclusion, records are inadmissible in their
entirety and completeness because what Mr.
Neaton is trying to say is, the only record
which can be introduced is one which is verified
by the person who actually saw it. We are
establishing who is was who made the entry, the
procedures of the Metropolitan Police
Department, it's signed who made the entry, he
knows the manner in which contact is made with
the prisoner and we're establishing in that
fashion who made it.

MR. NEATON: But he doesn't know it of his

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personal knowledge.

MR. UPDIKE: Then if he knew that Your Honor, we wouldn't need the records.

THE COURT: Well, Mr. Updike, in my ruling yesterday I mentioned the fact that the requirement of personal knowledge of the person who made the entry would be required.

MR. UPDIKE: Yes, sir.

THE COURT: I know we had some discussion as to whether or not this particular matter comes under the business records exception to the hearsay rule or whether it comes under the official documents exception to the hearsay rule, and I think it's fair to say that none of us really know, because it's somewhat confusing. But if this exception comes solely under the official document exception to the hearsay rule, then I think Mr. Neaton is correct that one of the essential elements of admitting such evidence is that there be proof that the person who made the entry had firsthand knowledge. Now, as I have heard, he cannot say that.

MR. UPDIKE: But he did not make the entry, Your Honor.

THE COURT: I know he didn't.

1 MR. UPDIKE: But see my point is, if what
2 they are saying should be required is the person
3 who made each of these entries appear in Court
4 and say, "I made this entry," that is the whole
5 purpose of the exception to the hearsay rule,
6 because if you had to bring each person to
7 testify and say well, "I did this at such and
8 such time, I did that at such" --

9 THE COURT: Yes.

10 MR. UPDIKE: -- you don't need the record.
11 There would be no exceptions.

12 THE COURT: I see what you're saying. Let
13 me go back to this section on Friend on evidence
14 and revisit that section that we were discussing
15 yesterday, and let's see which section that was.
16 Does anybody remember? Oh, here it is, the shop
17 book rule is Section 235 and the one dealing
18 with official documents is a little farther
19 away. Lets see, it's Section 248. Let me look
20 at that again. I think Mr. Updike is correct
21 here because even under the more restrictive
22 exception of official written statements, all he
23 would have to do is show that the person who
24 made the entry made it based on firsthand
25 information and not on the basis of information

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supplied to that official by another person and
it's pretty clear that it was made by the person
based on that person's knowledge.

MR. NEATON: The problem with that
analysis, Judge, is that this witness is not
competent to testify as to whether or not the
person making this entry did have personal
knowledge, because he wasn't there.

THE COURT: I'm not sure that he's not. He
certainly knows more about it than any of us.

MR. NEATON: That doesn't make him
competent to --

THE COURT: I know it doesn't, but I think
we've got to ask him some more questions on
that. Mr. Updike, before I make a ruling, I
give you the right to inquire into that issue.

MR. UPDIKE: I certainly will.

BY MR. UPDIKE:

Q Detective Constable Wright, I think that
you may understand what I wish to ask, but it is, do you
have knowledge concerning how these entries are made and
by whom they are made? And if so, please tell us the
basis and extent of your knowledge in that regard?

A Yes, sir. Metropolitan Police Officers. In

1 fact, all police officers within the United Kingdom, keep
2 a log of facts that appertain to a persons' detention. As
3 I've stated yesterday or the day before, whenever a meal
4 is supplied, or a solicitor is asked for, or any matter
5 that does appertain to that detention, the custody officer
6 is required to make a record of it. He does so within the
7 log of the custody record. He times and dates that entry
8 and he signs it.

9 Q Okay. And is that procedure followed here,
10 from your looking at the document?

11 A Yes, sir.

12 Q So, a request is made of the custody
13 officer by a prisoner, then that custody officer writes it
14 down and signs it, is that correct?

15 A Yes, sir.

16 MR. UPDIKE: I have no further questions.

17 THE COURT: Well, let's see if there's any
18 voir dire on that.

19
20 RE CROSS EXAMINATION

21
22 BY MR. NEATON:

23 Q Sir, you weren't at the custody desk when
24 the custody officer made the entry, were you?

25 A I was there when he made the 7:45 entry. I
believe.

1 Q I'm talking about the 7:50 entry?

2 A No, sir.

3 Q Did you take Mr. Soering back to his cell
4 at 7:50 p.m. that night?

5 A No, sir. Had I taken --

6 Q Pardon me.

7 A Had I taken him back to the cell he
8 wouldn't need to contact me, I'd be beside him. No, sir,
9 I wasn't there.

10 Q So you didn't witness any of the events set
11 forth at the 7:50 entry?

12 A The 7:50 entry, I was not there when the
13 entry was made, sir, no.

14 MR. NEATON: One moment. No further
15 questions.

16 THE COURT: Before we proceed, go back and
17 read the 7:45 entry. That, I rule, is clearly
18 admissible under the evidence and I've forgotten
19 exactly what it said. Would you read that,
20 please?

21 THE WITNESS: Certainly, yes. "7:45 p.m.
22 Requested a phone call to German Embassy, this
23 was allowed and he phoned 235-5033 and spoke to
24 Mr. Balnes, the night security. Being
25 unable to speak to anyone, he stated he would

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ring back tomorrow."

THE COURT: Did you want to say anything else, Mr. Updike?

MR. UPDIKE: Your Honor, I would have only two more points that I haven't clarified. My real point in the argument, Your Honor, is that if a witness actually sees something from his own observations, he can testify to it. That is not hearsay. This exception is an exception to hearsay applying to a hearsay situation. They're asking that we produce firsthand observations and if you have that, you don't have hearsay and you don't need an exception. This is a hearsay situation coming within an exception.

THE COURT: Well, Mr. Updike. I realize that. But I also realize that possibly one of the requirements for this type evidence being admitted as an exception to the hearsay rule, under the official document exception in Friend, has not been met. Now, I see a difference there.

MR. UPDIKE: I don't see, Your Honor -- Because I would like to meet it, I'm not sure what the requirement is?

1 THE COURT: Yes. Let's read it. Let's go
2 back here and look at it again. If you can
3 convince me that you've met it, I will allow it,
4 otherwise, I can't. Let's see. Let's all be
5 looking at the same section. All right, I'm
6 dealing now with Section 248 on page 643 on The
7 Law of Evidence in Virginia, 3rd Edition,
8 Charles E. Friend. Now, the point that's giving
9 me some trouble is this, on page 644. Friend
10 says this: "Thus the exception," talking about
11 this exception, "is limited to statements as to
12 matters actually observed by the official making
13 the statement. If an official makes an entry
14 based upon information relayed to the official
15 by another person, it is apparently not
16 admissible under this exception." That's what's
17 giving me trouble, Mr. Updike, and if either one
18 of you gentlemen can help me with that, perhaps
19 I could see the point more clearly.

20 MR. NEATON: Well, I think that that really
21 makes a point as it applies to this entry,
22 because not only are you talking about the mere
23 fact that Mr. Soering is placed back in his cell
24 at 7:50, but there is information relayed,
25 allegedly relayed by Mr. Soering at that time to

1 the person who entered this record. Therefore,
2 since Mr. Soering has not adopted that statement
3 as his own, it is inadmissible as hearsay,
4 because the statement that Mr. Updike proffers
5 attempts to relay information that was given to
6 the recorder by Mr. Soering, who is another
7 person, and this witness does not have personal
8 knowledge of that.

9 MR. UPDIKE: First of all, we respectfully
10 disagree, Your Honor, that this is not like the
11 death certificate. We do not feel that this is
12 the exception. We feel it's the same thing as
13 DMV reports and NCI.

14 THE COURT: Well, I realize your position
15 and originally I thought you were clearly right
16 but I'm not so sure now.

17 MR. UPDIKE: Yes, sir. The only other
18 question I can respectfully ask, Your Honor, is
19 that if this does not establish it, how in the
20 world could the Commonwealth in this case, or
21 any other case, establish any admissibility of
22 these records except by bringing each and every
23 individual who made the entry on the custody
24 sheet and having him personally testify. "I
25 heard Soering say this. I heard Soering say

1 that." Now, if we're required to do that, then
2 perhaps we can do that. But, my point is, if we
3 did that then I would not need the custody
4 records and I would not need an exception to the
5 hearsay rule and we wouldn't even be making this
6 argument. What I'm saying is, if you require
7 the person who had the firsthand
8 observation to testify and that's the only means
9 by which you can establish the hearsay
10 exception, then you're saying, in effect, there
11 is no such thing in Virginia as this hearsay
12 exception because you're requiring firsthand
13 knowledge, which is not hearsay. I don't know
14 how else to put it.

15 THE COURT: I'm really not saying that.
16 I'm saying that if this witness on the stand can
17 testify that the person who made the entry had
18 firsthand knowledge, then I will allow it. But
19 if he is unable to say that, it seems to me that
20 we are falling within one of the prohibitions of
21 Section 248.

22 MR. UPDIKE: Then my question, Your Honor,
23 would be, how could this witness or any witness
24 establish that except through two means? The
25 first would be, "Well, I saw this occur." And

1 If the witness can say that, it's not hearsay
2 and he doesn't have to testify from the records.
3 We don't have to introduce those. The only
4 second means by which to do it would be, "Well,
5 I know that John Doe made this entry because
6 John Doe told me." Now, you most certainly
7 should not be able to establish a hearsay
8 exception through use of a hearsay. And my
9 point is, if he's got to see it, it's not
10 hearsay and there's no other way to establish it
11 except by the actual entry telling him and that
12 would be saying you're required to establish an
13 exception of the hearsay rule by use of this.

14 THE COURT: All right, before we go
15 further, I want to know specifically which other
16 entries, if any, you want to ask him about. Now,
17 the 7:45 entry I have ruled that clearly
18 admissible.

19 MR. UPDIKE: Yes, sir, Your Honor.

20 THE COURT: The 7:50 entry is under
21 consideration.

22 MR. UPDIKE: Okay.

23 THE COURT: Are there any other specific
24 entries that you wanted to ask about?

25 MR. UPDIKE: Yes, sir. I wanted to ask

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about entry 7:55, 7:59 -- which I might add,
Your Honor, I believe that the witness will have
been present for that, if not he, then Detective
Sergeant Beever.

THE COURT: Well, let's ask him about that.
Were you present when the 7:59 entry was made?

THE WITNESS: Yes, sir.

THE COURT: All right, you may testify as
to that. That's clear.

THE WITNESS: Sir, maybe if I can assist
you at with 7:55 entry. I have some personal
knowledge of that. I was on the other end of
the telephone.

THE COURT: You were?

THE WITNESS: Well, he contacted me by
telephone and I was upstairs.

THE COURT: What is that, the 7:55 entry?

THE WITNESS: Yes, sir.

THE COURT: All right. And the 7:59 entry
you were present?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. UPDIKE: Well, the 8:02 Just refers
to taking -- that's not essential.

THE COURT: All right.

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MR. UPDIKE: The next day, Your Honor, June 6th, I would like to ask him about the 10:13 a.m.

THE COURT: All right. Now tell me whether or not you have any personal knowledge of that one?

THE WITNESS: No, sir, I was not present.

THE COURT: All right, any others?

MR. UPDIKE: At the 11:00 a.m. on June 6th?

THE WITNESS: No, sir, I was not present.

THE COURT: Or had any personal knowledge of it?

THE WITNESS: No, sir.

THE COURT: All right.

THE WITNESS: I would just like to state, sir --

THE COURT: Go ahead.

THE WITNESS: I would just like state that I saw it on the custody record, but that is the only personal knowledge.

THE COURT: The fact that you saw it on the custody record?

THE WITNESS: I didn't see that entry made.

THE COURT: All right.

1 REDIRECT EXAMINATION

2
3 BY MR. UPDIKE:

4 Q Could I just ask, when would you have first
5 seen that entry, the 11:00 entry?

6 A At 11:19, I was there.

7 Q So, the 11:19, which I want to ask you
8 about, you were present for that, is that correct and, in
9 fact, that bears your signature, right?

10 A Yes, sir.

11 Q The 11:19 entry would be the one right
12 after the 11:00?

13 A Yes, sir.

14 Q So you would have seen that entry at 11:19?

15 A Yes, sir.

16 Q My question is, as far as the 11:00 entry,
17 does not that refer to speaking to you and that was the
18 basis for you coming to the cell at 11:19?

19 MR. NEATON: I object to the question.

20 It's leading.

21 MR. UPDIKE: Well, I can rephrase it.

22 THE COURT: Rephrase it.

23
24 BY MR. UPDIKE:

25 Q Let me ask you, why did you go to the cell

1 at 11:19 a.m.?

2 A Well, I cannot say that I was contacted,
3 but I can say that either myself or D/S Beever was
4 contacted.

5 Q Okay. In response to the contact to one or
6 the other, you both went or you went?

7 A Yes, sir.

8 Q If I can ask quickly about a couple of more
9 entries, this being on June 7th at 12:25 p.m. You were
10 present for that, is that correct and that your signature
11 is there?

12 A Yes, sir.

13 Q The 1:00 p.m., were you present for that?

14 A Yes, sir.

15 Q If I could ask about June 8th at 4:30 p.m.,
16 were you present for that?

17 A No, sir.

18 Q But, for later reference with the next
19 witness, it would appear that Detective Sergeant Beever
20 was present for that one, is that correct?

21 A It would appear so, yes, sir.

22 MR. UPDIKE: Those are the entries, Your
23 Honor, I --

24 THE COURT: All right, thank you,
25 gentlemen. I don't want to hear anymore

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argument on this point. I'm ready to rule.
All right, the Court will allow this witness to
testify as to the following entries. I think
this. we'd start off on June 5th, I think. The
7:55 entry that we've spoken of, he may testify
as to that. The 7:59 entry on that day, he may
testify as to that. On June 6th, he may testify
as to the 11:19 entry. And you've got to go
back to that 11:00 entry and tell me
again, wasn't that the one you said you were
called? It was an entry something to do with
your being called to see him at 11:19?

THE WITNESS: That's the one, sir, but I'm
not sure whether it was myself or Sergeant
Beever that was called.

THE COURT: Well, I rule that you may
testify as to that. I think that is a part and
parcel of what went on at 11:19. I rule that on
June 7th, you may testify from that document as
to the 12:25 p.m. entry. Also, as to the 1:00
p.m. entry and that's all. None on June 8th.
All right, proceed.

*apparently ruled 7:50 entry
inadmissible*

1 BY MR. UPDIKE:

2 Q I'd like to ask you about the 11:00 a.m.
3 entry. Wait a minute, let me get straight here. I'm on
4 the wrong page. I'm sorry. Starting on June 5th, the
5 7:55 p.m. entry, what is that entry, please?

6 A "7:55 p.m. I contacted D/C Wright who then
7 attended the charge room with D/S Beever."

8 Q The 7:59 p.m. entry, what is that, please,
9 on June 5, 1986?

10 A "7:59 p.m. I now wish to speak to D/S
11 Beever and D/C Wright, D/C Gardner without my solicitor
12 being present," and it's signed by Jens Soering.

13 Q Did you see Jens Soering, the defendant,
14 sign this statement, "I now wish to speak to Detective
15 Sergeant Beever and Detective Constable Wright without my
16 solicitor being present"?

17 A Yes, sir.

18 Q Before the defendant signed this, did you
19 intimidate him, threaten him or coerce him, in any way to
20 sign this entry?

21 A No, sir.

22 Q Did Detective Sergeant Beever or anyone
23 else threaten the defendant in any way, coerce him or
24 intimidate him in any way to get him to sign this?

25 A No, sir.

1 Q Did you promise him anything to get him to
2 sign this?

3 A No, sir.

4 Q Did you see anything that would indicate
5 that he signed this other than by his own free will and
6 because he wanted to?

7 A No, sir.

8 Q Were you there at the charge room at 7:59
9 p.m. because you were requested to be there, as shown in
10 the 7:55 entry?

11 A Yes, sir.

12 Q If I could ask you then about the next day,
13 June 6, 1986? I just want to make sure --

14 THE COURT: What are we on, June 6th?

15 MR. UPDIKE: Yes, sir, Your Honor.

16 THE COURT: The 11:00 and the 11:19 entries
17 I've ruled admissible.

18 MR. UPDIKE: Yes, sir. Thank you, Your
19 Honor.

20
21 BY MR. UPDIKE:

22 Q The 11:00 a.m. entry, please? If you would
23 read that, please? I'm sorry.

24 A "11:00 a.m. Phoned up his embassy,
25 235-5033, as requested. Call concluded 11:11 a.m. Stated

1 person who knows about his case was not there and would
2 not be there until 3:00 p.m. Requested to speak to D/S
3 Beever."

4 Q Using, please, the 11:19 a.m. entry,
5 please?

6 A "11:19 a.m. Out of cell to CID interview
7 with D/S Beever and D/C Wright as requested by prisoner.
8 PACE explained to escort," and it's signed by me.

9 Q You signed it?

10 A Yes, sir.

11 Q So you, of course, were present with
12 Detective Sergeant Beever?

13 A I'm not sure whether he was present at that
14 time, but he may well have been.

15 Q At the time that you were there at 11:19
16 a.m., why did you go to the charge room at 11:19 a.m.?

17 A We had received contact that Jens Soering
18 wanted to speak to us.

19 Q So you did go at that time?

20 A Yes, sir.

21 Q Now, at 11:19, as this entry indicates, did
22 the defendant confirm, in your presence, that he wished to
23 speak to you and Detective Sergeant Beever?

24 A Yes, sir.

25 Q When he made that request, did you threaten

1 Jens Soering in any way or intimidate him in any way to
2 make this request?

3 A No, sir. I wasn't present when the request
4 was made.

5 Q Yes. But it was confirmed in your
6 presence, is that correct?

7 A Yes, sir.

8 Q Did you see Detective Sergeant Beaver
9 intimidate the defendant, threaten or coerce him in any
10 way to make the request to talk to you?

11 A No, sir.

12 Q Or anybody else --

13 A No, sir.

14 Q -- to make him make this request. All
15 right, proceeding, if I could quickly to the next day,
16 June 7, 1986, asking you about the 12:25 p.m. entry. If
17 you would read that, please?

18 A "12:25 p.m. Returned to charge room and
19 request made by Soering to speak to Mr. Gardner, Virginia
20 Investigator." That's signed by the custody officer and
21 by me. The custody officer has written, "I wish to speak
22 to Mr. Gardner. I am willing for this to take place
23 without a solicitor or attorney," and that is signed by
24 Jens Soering.

25 Q Did the defendant, seated over here, sign

1 this request in your presence?

2 A Yes, sir.

3 Q And confirmed in your presence that he
4 wished to speak to Mr. Gardner?

5 A Yes, he did.

6 Q Did you or Detective Sergeant Beever or
7 anyone else in your presence, threaten the defendant,
8 intimidate him, coerce him in any way to make this request
9 or make this entry on the custody sheet?

10 A No, sir.

11 Q The 1:00 p.m. entry deals with taking him
12 to the showers, is that correct?

13 A Yes, sir.

14 Q That entry, if you would read it, please?

15 A "1:00 p.m. To shower in custody of D/S
16 Beever and D/C Wright and then to DCI office to speak to
17 Mr. Gardner. Prisoner's rights explained."

18 MR. UPDIKE: Thank you. Your Honor, we
19 would have no further questions of Detective
20 Constable Wright at this time.

21 THE COURT: All right. As soon as we
22 finish with Detective Constable Wright, we're
23 going to take a lunch break. Sir, do you have
24 any more questions of this witness?

25 MR. NEATON: Yes, sir.

RECROSS EXAMINATION

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BY MR. NEATON:

Q Sir, you said that at 7:59 p.m. there were no threats made by you or Detective Beever to Mr. Soering. Is that right?

A There were no threats made at any stage, sir.

Q I asked you at 7:59 were there any threats and that would apply at 7:59, is that right?

A Yes, sir.

Q You weren't present back in the cell block twenty-four hours a day to see what was going on back there, were you?

A No, sir.

Q The following day, the 11:00 a.m. entry, you did not witness Mr. Soering make a phone call, did you?

A No, I did not.

Q You did not see Mr. Soering request a phone call, did you?

A No, I did not.

Q You did not see Mr. Soering conclude a phone call, did you?

A No.

1 Q You did not hear Mr. Soering say that the
2 person who knows about his case was not in until 3:00
3 p.m., did you?

4 A No, sir.

5 Q You did not hear Mr. Soering request to
6 speak to Detective Sergeant Beever at 11:00 a.m., did you?

7 A No, sir.

8 Q You did not sign the entry for 11:00 a.m.,
9 did you?

10 A I did not.

11 Q You don't see Detective Sergeant Beever's
12 signature on that entry, do you?

13 A No, I don't.

14 Q Jens Soering was in the interview room at
15 11:19 a.m., was he not, on the 6th of June?

16 A He was out of his cell at 11:19 and taken
17 to the cell, or Detective Chief Inspector's office.

18 Q So it would be about 11:20 that he would
19 have been in the room, is that right?

20 A Quite possibly, yes, sir.

21 Q One or two minutes after?

22 A It was only a matter of walking down a
23 corridor and up a flight of stairs.

24 Q Would it be fair to say that about twenty
25 or twenty-one past eleven, Mr. Soering was in the

1 interview room --

2 A Yes, sir.

3 Q -- with you and Detective Beever, right?

4 A In the Detective Chief's Inspector's
5 Office?

6 Q Yes.

7 A Yes, sir. It is referred to as the
8 interview room, sir.

9 Q Right. There's a note PACE explained to
10 whom?

11 A Where are we looking at, sir?

12 Q At 11:19 a.m.

13 A Pace explained to escort.

14 Q Does that refer to you?

15 A Yes, sir.

16 Q I believe you testified yesterday that for
17 the 12:25 p.m. entry on the 7th of June, that you had told
18 the custody officer what to write in that entry?

19 A No, I didn't say that, sir. I said he
20 chose the words to write. I told him of the request.

21 Q Okay. But, you told the custody officer
22 what had happened, correct?

23 A Yes, sir.

24 Q So the custody officer then wrote down what
25 you told him had happened, is that right?

1 A Yes, sir.

2 Q Now at 1:00 p.m., Mr. Soering was in your
3 custody again?

4 A Yes, sir.

5 Q And in the custody of Detective Sergeant
6 Beever?

7 A Yes, sir.

8 Q And was taken to the shower?

9 A Yes, sir, by me.

10 Q By you, and then from the shower to what we
11 refer to as the interview room, is that right?

12 A Yes, sir.

13 Q Did you not think it important to note when
14 he left the shower?

15 A Well, when the interview started, sir, I
16 believe the Miranda was read and the time was recorded at
17 that stage.

18 Q So he was drying himself off when the
19 Miranda read?

20 A No, I never said that, sir. I didn't
21 record the time that he had his shower, the time he
22 finished his shower, the time we walked down the stairs,
23 the time we sat down and so on. The time was recorded
24 when he left the custody office and the time was recorded
25 when the interview started.

1 Q Mr. Wright, you were helping Investigator
2 Gardner in the interviewing of my client, is that right?

3 A I've assisted Mr. Gardner throughout those
4 three or four days whenever I could, sir, yes.

5 Q So that he could conduct interviews on the
6 suspicion of murder charge here, right?

7 A Yes, sir.

8 Q Detective Sergeant Beever was also
9 providing at least as much, if not more, assistance to Mr.
10 Gardner, is that right?

11 A Yes, sir. He did also assist.

12 Q Part of that assistance was transporting
13 the prisoner, is that right?

14 A Yes, sir.

15 Q Part of the assistance was asking questions
16 of the prisoner during the interviews, is that right?

17 A Well, Mr. Gardner never made any
18 objections. In fact, I believe that he did state that all
19 four of us in the room, including Mr. Soering, were free
20 to speak at any time.

21 Q What I'm getting at is, you did speak and
22 you did assist Mr. Gardner?

23 A Yes, sir.

24 Q You did ask some questions?

25 A Yes, sir.

1 Q Apparently, you didn't stay upstairs in
2 conference all the time after the 6:00 interview concluded
3 on the 5th of June, correct?

4 A I'm not quite sure what you mean, sir.

5 Q Well, you were at the custody desk at 7:45
6 when my client made a phone call to the German Embassy,
7 right?

8 A Yes, sir.

9 Q Just happened to be there, right, at that
10 time?

11 A No. I never just happen to be there, sir.
12 I was on duty.

13 Q But your duty at that time was to assist
14 Mr. Gardner, right?

15 A Yes, sir.

16 Q Mr. Gardner was upstairs at that time,
17 right?

18 A Yes, sir.

19 Q The assistance you were going to render Mr.
20 Gardner was to be down and assisting Mr. Gardner in
21 obtaining a waiver of Mr. Soering's Miranda rights, right?

22 A The matter of the American Miranda was a
23 matter entirely for Mr. Gardner because, I didn't even
24 understand it at the time.

25 Q It isn't all that different from the

1 British system, is it?

2 A It contains the same elements, basically.
3 It informs somebody that they don't have to answer
4 questions unless they wish to do so.

5 Q It informs them that you can have a
6 solicitor present if you so require or demand, right?

7 A Well, he was aware of that all the way
8 through the proceedings, sir.

9 Q Because he stated that to you, right?

10 A Well, he'd already been through the
11 procedure once already, sir.

12 Q He stated it to you, didn't he, that he was
13 aware that he could have a lawyer, right?

14 A He may well have done so, yes.

15 Q And he stated that he wanted a lawyer,
16 didn't he?

17 A He didn't state that at all. He never
18 stated that.

19 Q It's in your notes, isn't it, for the 6:00
20 interview?

21 MR. UPDIKE: Your Honor, this is going back
22 into what -- I didn't go into that on
23 redirect. He certainly can't go into it on
24 whatever it becomes at that point, sir, rebuttal
25 or whatever.

1 MR. NEATON: He's gone into it on redirect.

2 THE COURT: Sustained. We're plowing old
3 ground here now.

4 MR. NEATON: Okay.

5
6 BY MR. NEATON:

7 Q What's a duty solicitor?

8 MR. UPDIKE: I haven't asked anything about
9 a duty solicitor, Judge.

10 MR. NEATON: The witness has stated, in
11 volunteered statements about him not
12 understanding the Miranda and I've asked him
13 about similarities between the U.S. and British
14 systems. And I want to ask him about one other
15 similarity -- or it might be a difference --
16 between the U.S. and British system and I want
17 to see if this witness is aware of it.

18 THE COURT: Well, the relevancy of some of
19 these questions is escaping me, but go ahead and
20 ask the question.

21 MR. NEATON: I'll make the relevance clear
22 on the record, Judge. You have allowed into
23 evidence certain extracts from the custody
24 record, which contain waivers of my client's
25 Miranda rights or his Fifth Amendment rights and

1 they were put in during redirect. And we have
2 disputed whether those waivers (a) were actually
3 made, or (b) were voluntary and (c) we've talked
4 about right to counsel. He brought it up in
5 recross. And what I want to get into is what a
6 duty solicitor does and what his role in this
7 interrogation may have been at the time.

8 THE COURT: Go ahead. I'll let you do it.

9 MR. NEATON: Thank you.

10
11 BY MR. NEATON:

12 Q What is a duty solicitor, if you know?

13 A Some stations, within the Metropolitan
14 Police District, operate a scheme whereby many prisoners
15 come into police custody do not have or do not know the
16 name of a specific solicitor. And should they request a
17 solicitor, when asked when they first come to the station
18 or at any stage during investigation, if they request that
19 they would like to speak to a solicitor, then they can be
20 provided with a list of several solicitors that are
21 available to be called out that might represent them. Not
22 all stations operate under this scheme.

23 Q Did the Richmond Station operate under that
24 scheme in June 1986?

25 A Yes, I believe it did.

1 MR. NEATON: Thank you. That's all.

2
3 REDIRECT EXAMINATION

4
5 BY MR. UPDIKE:

6 Q Just a couple quick questions about the
7 12:25 entry on June 7th which Mr. Neaton asked you about
8 as far as you informing the officer of the request by Jens
9 Soering?

10 A Yes, sir.

11 Q Jens Soering made the request to speak to
12 the police officers in your presence and you communicated
13 that to the duty officer?

14 A Yes, sir, to Mr. Gardner.

15 Q He wished to speak to Mr. Gardner?

16 A Yes.

17 Q And you communicated that request that Jens
18 Soering made to the duty officer and he wrote that down on
19 the entry?

20 A Yes.

21 Q Then Jens Soering signed it?

22 A Yes, sir.

23 Q Concerning that particular entry, I'm not
24 going to ask you to read any of the entries above that out
25 loud, but by just quickly referring to them and the

1 transcript which I have over here, can you state what had
2 just transpired during the period not long before this
3 particular entry?

4 A Yes, sir. We had just conducted a
5 contemporaneous interview.

6 Q The one I asked you about earlier and which
7 we've introduced?

8 A Yes, sir.

9 MR. UPDIKE: Thank you, sir. No further
10 questions.

11 THE COURT: All right. You may step down.
12 Now we're going to cut the recess a little bit
13 short today, because we've got a lot to do and I
14 certainly hope that we can finish this hearing
15 today. So it will be a forty-five minute
16 recess.

17

18 (Court was recessed at 12:50 p.m. for lunch and reconvened
19 at 1:45 p.m., after which the following ensued in the
20 presence of the defendant and counsel.)

21

22 THE COURT: All right. Call your next
23 witness, Mr. Neaton:

24 MR. UPDIKE: Detective Inspector Beever,
25 please.

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THE COURT: Excuse me, Mr. Updike. I'm
sorry.

MR. UPDIKE: Yes, Your Honor.

THE COURT: You remain under oath,
Detective Sergeant.

THE WITNESS: Right. Thank you.

The witness, DETECTIVE INSPECTOR KENNETH BEEVER,
having previous been sworn and being recalled, testified
as follows:

DIRECT EXAMINATION

BY MR. UPDIKE:

Q Detective Inspector Beever, I have a few
questions I'd like to ask you at this time. First of all,
I'd like to begin and if I might check here there, are
some items -- No those are yours, aren't they?

A Yes, sir.

Q Let's see what exhibits that we have. Well
I'll get those in a few minutes. My first question, you
were present at the remand hearing concerning Elizabeth
Haysom and Jens Soering on June 5, 1986 at the Richmond
Magistrates Court in England, is that correct?

A Yes, sir.

1 Q The request for the remand of Jens Soering
2 was to remand him from where to where, please? Maybe you
3 can explain that a little bit for the purpose of the --

4 A Yes. The Court is just a place of
5 procedure. He was in custody in an English prison
6 awaiting a trial on fraud charges. And in law we applied
7 to having him remanded to police custody in order that he
8 may be questioned and an investigation may take place into
9 events that took place in this country, events in Europe
10 and other events in England, sir.

11 Q So the remand to the custody of the police
12 department in Richmond was for all of those purposes?

13 A Yes, it was sir, yes.

14 Q I'd like to show you the document that --
15 I don't know. If I might, Your Honor, just a moment,
16 please. I'd like to show you a portion of Commonwealth's
17 Exhibit Number Eleven and would you identify that, please?

18 A Yes, I recognize that, sir, as the commit
19 warrant from Richmond Magistrate's Court, a copy of it,
20 sir.

21 Q Yes. Remanding Jens Soering to the custody
22 of the Richmond Police Department on that date of June 5,
23 1986, is that correct?

24 A Correct, sir.

25 Q The original document is actually here with

1 an attestation from the clerk, I believe?

2 A Yes, sir.

3 MR. UPDIKE: We would like, Your Honor, to
4 have the warrant which came with the original
5 papers separated and entered as a separate
6 exhibit, sir. As I stated, the original is here
7 if you'd like to see it.

8 THE COURT: All right.

9 MR. NEATON: No objection.

10 THE COURT: All right.

11 MR. UPDIKE: If I could do that and have
12 that marked just to separate this.

13 THE COURT: Just hold it until she gets
14 back and then you can show her and tell her
15 that's a Commonwealth exhibit for
16 identification.

17

18 BY MR. UPDIKE:

19 Q You were involved in the investigation that
20 occurred, both as to Jens Soering and Elizabeth Haysom, as
21 to all of the purposes of the investigation, is that
22 correct?

23 A That's correct, sir.

24 Q Showing you Commonwealth's Exhibit Number
25 Fourteen, which has previously been identified as a record

1 of the interview with Jens Soering conducted on June 7,
2 1986, with reference to what, please? You can explain it
3 better than me. I'm sure.

4 A Yes, sir. I was -- At the time in
5 England, I was carrying out a fraud inquiry and at that
6 time Mr. Soering and Miss Haysom, at that stage, were
7 charged with conspiracy to defraud the clearing banks in
8 Great Britain. During our investigations, I read certain
9 extracts, along with Mr. Wright, from diaries and there
10 was words that I picked up in those diaries that I wanted
11 to question them both about. Also, there was some
12 reference to a fraud concerning traveler's checks on the
13 continent in Europe that I wanted to talk about, also.
14 So, basically, on this Saturday I spoke about drugs and
15 frauds.

16 Q Okay. Was a similar interview, and I can
17 show a copy of it if you need to look at it but just for
18 purposes of my question, did you conduct a similar
19 interview with Elizabeth Haysom as to those same matters
20 the next day, June 8, 1986?

21 A I did, sir.

22 Q And Detective Constable Wright was present
23 during --

24 A May I correct that? I said I did, sir. I
25 think -- She was interviewed, but I don't think I was

1 involved in that one without making reference to the -- I
2 was involved in a lot of interviews. I would like to make
3 reference before I answer.

4 Q Certainly. Very quickly I'll hand that to
5 you. We're not going to ask that this be introduced, but
6 just show it to you for purposes of refreshing your
7 memory?

8 A That's correct. I was involved in that
9 one. I was thinking of another interview of Miss Haysom
10 concerning the frauds that two other officers did.

11 Q Would that have been in the period of April
12 30 and May 1, 1986?

13 A That's correct, sir.

14 Q Now as to your participation in the
15 investigation of the suspicion of murder here in Virginia,
16 did you have any particular interest or motivation
17 concerning pursuing the investigation as to one individual
18 more than the other? Jens Soering more than Elizabeth
19 Haysom or vice versa? What were your feelings in that
20 regard?

21 A I had equal interest in both parties, sir.

22 Q I would like to show you, in that regard, a
23 copy of the custody sheet of Elizabeth Haysom and I'm just
24 asking you to make reference to the cover sheet of that.
25 Do you recognize that?

1 A Yes, I do, sir.

2 Q As far as the procedures outlined on the
3 custody sheet cover there, were you present during any of
4 those proceedings?

5 A I was, sir.

6 Q In particular, I'd like to ask, in your
7 presence, whether Elizabeth Haysom was provided a copy of
8 Commonwealth's Exhibit Number Seven?

9 A Not only was she provided, I was present
10 when it was read to her as well, sir.

11 Q Okay. Just briefly, I think we understand
12 that the procedure, but what is that procedure, if you
13 wouldn't mind?

14 A The procedure, when a person comes into
15 police custody in England, is they arrive at the police
16 station and, apart from all the searching formalities and
17 taking their names, addresses and booking them into the
18 station, they are served with this form, which I refer to
19 as a Form 3053. They are told "You have the right to have
20 someone informed of your arrest. You have the right to
21 consult a solicitor and you have the right to consult a
22 copy of the Codes of Practice. You may do any of these
23 things now, but if you do not, you may still do so later."
24 Then they're told that they hold on to this form and an
25 explanation of what they've been told, which isn't read to

1 them, is contained on the back, sir.

2 Q Did Elizabeth Haysom sign anything on the
3 front of that custody sheet acknowledging this form,
4 Commonwealth's Exhibit Number Seven, had been read to her
5 and she had received a copy?

6 A Yes.

7 MR. NEATON: Objection. Relevance.

8 MR. UPDIKE: Your Honor, what we intend to
9 -- The purpose of this offer, is circumstantial
10 evidence. As we've laid the foundation, this
11 officer, there have been allegations concerning
12 coercion and things of that nature, as to
13 counsel. The purpose of this is to establish
14 that there was no more interest in one or the
15 other and that Elizabeth Haysom requested
16 counsel and was provided it. Now, if there was
17 any more interest in that case, why give
18 Elizabeth Haysom counsel and not Jens Soering?

19 MR. NEATON: Whatever happened regarding
20 Elizabeth Haysom is irrelevant to the issue as
21 to what happened concerning Jens Soering.

22 MR. NEATON: Objection overruled.

23

24 BY MR. UPDIKE:

25 Q Please, if I could repeat my question,

1 please? Is there a signature on there as to Elizabeth
2 Haysom in that regard?

3 A Yes, sir.

4 Q After she signed that acknowledgement as to
5 understanding and receiving this form, Commonwealth's
6 Exhibit Number Seven, is there a further signature of hers
7 in some additional regard? If so, explain that, please?

8 A Yes, sir. In the column underneath, there
9 are two lines which read, "I want a solicitor as soon as
10 practicable," and the second one reads, "I do not want a
11 solicitor at this time." On this occasion, at Miss
12 Haysom's say so, the second was deleted, leaving the fact
13 that she wanted a solicitor as soon as practicable. She
14 signed that and it's been timed and dated, sir.

15 Q Okay. Now I'd like to ask you, concerning
16 the interview with Elizabeth Haysom, the first one which
17 was conducted, am I correct, the next day, June 6th? And
18 to refresh your memory a little bit in that regard, I'd
19 like to just show you a copy of the statement, that I'm
20 not going to ask to be introduced. I'm just offering this
21 to you to look at, which has a cover of the Miranda form.
22 A copy of this has previously been provided to counsel.

23 A Thank you, sir.

24 Q Do you recognize that cover sheet document?

25 A Yes, I do, sir.

1 Q It is what, please?

2 A It's a copy of the constitutional rights
3 under the Miranda decision and it contains Miss Haysom's
4 full name and date of birth and other details and the
5 Miranda warning is contained in five points underneath.

6 Q If I could ask, is there a signature of a
7 witness at the bottom?

8 A Yes, mine, sir.

9 Q You witnessed that?

10 A And Mr. Wright's. Mr. Wright's name
11 appears. I can't say whether it was signed, but most
12 certainly that is my signature as having witnessed it.

13 Q My next question, I'm not going to ask what
14 was said during the course of the interview.

15 A No, sir.

16 Q My question is, you were present during the
17 interview that followed that advisement procedure. Is that
18 correct?

19 A Yes, sir.

20 Q If you need to refer to the first page
21 there after that, fine, but my question is, who was
22 present during the interview?

23 A Everybody concerned?

24 Q Yes.

25 A Apart from myself, most certainly, Mr.

1 Gardner. Most certainly, Miss Haysom. She was
2 represented by Mr. Keith Barker and there was an assistant
3 to Mr. Barker, called Miss Sophl Knebone.

4 Q All of those persons were present including
5 Miss Knebone and Mr. Barker?

6 A Yes.

7 Q Why were they present?

8 A Mr. Barker is a practicing solicitor in
9 England and Miss Knebone is his assistant and she was
10 taking notes of what was taking place on behalf of Mr.
11 Barker.

12 Q At whose request were they present?

13 A Yes, it was Miss Haysom's request. She
14 didn't know such people when she arrived in London, but
15 when she made the request for a solicitor --

16 MR. NEATON: I'm going to object that it's
17 hearsay.

18 MR. UPDIKE: I'm not asking what was said.
19 I was just asking at whose request.

20 THE COURT: Don't tell us what was said.

21 THE WITNESS: Sorry, sir.

22 THE COURT: I don't think you did. I think
23 the question was the request.
24
25

1 BY MR. UPDIKE:

2 Q Was it at her request that Mr. Barker and
3 Miss Knebone were present?

4 A I'm trying to say, sir, she didn't ask for
5 those persons, but they were supplied at her instigation.

6 Q I'd like to refer you back to the custody
7 sheet, should you need to, pertaining to Elizabeth Haysom,
8 to refresh your memory, but my question is, first of all,
9 was this interview which began with the Miranda form at
10 4:55 p.m., June 6, 1986, the first interview with
11 Elizabeth Haysom during this remand?

12 A I don't need to refresh back. It was, sir.

13 Q It was?

14 A Yes.

15 Q Was she allowed to consult with Mr. Barker
16 before this interview, in addition to him being present?

17 A Yes, sir. I have a note of one visit, in
18 fact, shortly after midnight on the first day. So she
19 stayed at the police station for one day, shortly after
20 midnight on the 6th.

21 Q And before that, before the interview
22 beginning at 4:45, had she also?

23 A Yes, sir. I'll turn over, sir. At 3:57
24 p.m. Mr. Barker and Miss Knebone were given access to Miss
25 Haysom.

1 Q Do you recall whether there were any
2 instructions as to contacting Miss Knebone and Mr. Barker
3 before the interview process and the custody sheet there,
4 the entries before that?

5 A I'll check, sir. "We have caused a message
6 to be left at 2:05 at Mr. Barker's office," and there's a
7 telephone number here, sir. "We've intended to interview.
8 We've caused the message to be left for Mr. Barker to
9 attend the station regarding the interview with Miss
10 Haysom."

11 Q I'd like to also ask if Mr. Barker was
12 given access to Miss Haysom on June 7, 1986, at 3:45 p.m.?

13 A Yes. For twenty minutes, sir.

14 Q Thank you, sir. So that you won't get too
15 many things piled up up here, maybe I'll take this back.
16 My next question would be, sir, did you have any reason to
17 prevent Jens Soering from seeing Mr. Barker and yet
18 allowing Elizabeth Haysom to see Mr. Barker?

19 A The reason that prevented me, sir, it was
20 that Mr. Soering came to the station approximately within
21 the same time that Miss Haysom arrived. They were checked
22 in separately. The same formalities were gone through
23 with Mr. Soering and he struck out the first line of the
24 first page, saying that he did not want a solicitor at
25 that stage.

1 Q Thank you. Now to proceed to another
2 point, if I might.

3 MR. UPDIKE: Your Honor, my next question
4 to Inspector Beever would concern -- I would
5 like to ask him about some custody sheet
6 entries, those being the ones which were allowed
7 by the Court as to Detective Constable Wright,
8 with the one exception which was not allowed
9 because Detective Constable Wright was not
10 present, but that I would like to ask that
11 Detective Sergeant Beever was present, this
12 being the one on June 8th at 4:30 p.m.

13 THE COURT: All right. Ask him and let's
14 see if he was present at that time.

15 MR. UPDIKE: Yes, sir.

16
17 BY MR. UPDIKE:

18 Q This is Commonwealth's Exhibit Number
19 Eleven.

20 A Thank you, sir.

21 Q Again, referring you to the entry of June
22 8, 1986, at 4:30 p.m. and if I could ask that you just
23 read that to yourself at this point to determine whether
24 you were present during that entry and the 4:45 p.m.
25 entry?

1 A I was present to both, sir.

2 Q Does this entry of 4:30 p.m. bear your
3 signature, and in fact, do both of those entries bear your
4 personal signature?

5 A They both do, sir.

6 Q Were you present when the events occurred
7 that are described here occurred?

8 A Apart from the first couple of words of the
9 4:30 entry, because the entry is a compilation of what
10 happened over a short period of time, most certainly I
11 wasn't there when the direct request to speak to me was
12 made by the prisoner.

13 Q Did you respond to that request?

14 A I did, sir.

15 Q The rest of the events described here
16 occurred in your --

17 A It all occurred in my presence, yes, sir.

18 MR. UPDIKE: Your Honor, we're asking just
19 of those two at this point.

20 THE COURT: The ruling is the same as it
21 was on the previous matter.

22 MR. UPDIKE: Thank you, Your Honor.

23 MR. NEATON: So the record is clear, Judge,
24 I know we have a continuing objection, but we
25 would have an additional objection to that

1 portion of the 4:30 entry that concerns the
2 prisoner's request since the witness has
3 testified that he was not present when that was
4 made.

5 MR. UPDIKE: But, Your Honor, when the
6 initial request was made, he was not present,
7 but he did go to the room in response to the
8 request and that the witness then heard the
9 request confirmed in his presence.

10 THE COURT: I will allow it.

11 MR. UPDIKE: Yes, sir.

12
13 BY MR. UPDIKE:

14 Q If you would read that entry, please?

15 A The entry reads -- The top of the page
16 shows the date, the 8th of the 6th, 1986, time 4:30 p.m.,
17 "prisoner requested to speak to D/S Beever. D/S Beever
18 contacted and spoke through wicket from 4:32 p.m. to 4:35
19 p.m. No incidents, but prisoner requests to speak to
20 Investigator Gardner from U.S.A." and the entry is
21 counter-signed by the station officer and myself, sir.

22 Q The next entry of 4:45 p.m.?

23 A The next entry, 4:45, "Prisoner removed in
24 order to speak to Officer Gardner in DCI office. D/S
25 Beever --

1 Q Is that "escorted" possibly?

2 A That is escorted. I was having difficulty,
3 there, sir. "Reminded Codes of Practice" and I
4 acknowledged that again with a signature, sir.

5 Q Now, as it states, you responded to the
6 request and spoke through the wicket from 4:32 to 4:35
7 p.m. with the defendant?

8 A I did, sir.

9 Q Could you tell us about that conversation
10 with Jens Soering?

11 A Yes, sir. I don't have an exact
12 recollection of the conversation, sir. But, most
13 certainly, he made a request of me that he wanted to speak
14 to Investigator Gardner and --

15 Q Now as to that request, when he made that
16 request, had you threatened or coerced him in any way to
17 make that request?

18 A No. I had not, sir.

19 Q Had you made any threats to him or made any
20 threats in his presence concerning Elizabeth Haysom?

21 A No. I did not, sir.

22 Q Did anyone make any such threats concerning
23 Jens Soering or Elizabeth Haysom in his presence during
24 any of this period of the remand from June 5 to the
25 morning of June 9, 1986?

1 A No. sir.

2 Q In response to that request, you personally
3 heard the defendant seated over here make that?

4 A Yes, he did, yes.

5 Q In response to that, as the next entry
6 shows, he was taken to the DCI's office and another
7 interview occurred?

8 A Yes, sir.

9 Q The entry of 4:45 p.m. as to Jens Soering
10 being taken out of the cell area. I'd like to show you
11 Commonwealth's Exhibit Number Five. Is this the Miranda
12 form for the first interview with the date there, which is
13 actually 4:45 p.m., the same time as he's taken out but it
14 states "approximately"?

15 A Yes, sir.

16 Q Were you present when this was advised of
17 the defendant?

18 A I can't remember, sir.

19 Q Detective Inspector Beever, I would like to
20 read you a statement that I tried to write down, that I
21 think is pretty close. It may not be an exact quote, but
22 my question pertains to what I'm saying to you or anything
23 similar to what I'm saying here. It would be as to the
24 day of June 5, 1986, the first day of the remand. Did you
25 say to Jens Soering the following: "Very pretty girl."

1 with reference to Elizabeth Haysom. "Very pretty girl, all
2 alone in the cell block. Shame if she fell down. I think
3 you should talk to us, lad. You really don't need that
4 lawyer"?

5 A I didn't say that, no, sir.

6 Q Did you on any occasion through this remand
7 say that to Jens Soering?

8 A No, sir, I didn't.

9 Q Did you, at any time during the remand,
10 make any threat concerning Elizabeth Haysom in Jens
11 Soering's presence?

12 A No, I did not, sir.

13 Q Did you ever threaten Jens Soering
14 personally?

15 A No, sir.

16 Q As to those comments concerning Jens
17 Soering and Elizabeth Haysom, did you ever hear anyone
18 else threaten either one of them or make threats
19 concerning either one of them in Jens Soering's presence?

20 A No, sir.

21 Q Did you, on June 5th, or at any time during
22 the remand, make gestures, and I'm generally describing
23 what I understand the allegation to be, but my question
24 pertains to anything like this, did you look into Jens
25 Soering's eyes, raise your eyebrows and start pointing

1 down with reference to where Elizabeth Haysom was
2 incarcerated in the cell?

3 A No, sir, I didn't.

4 Q During any of the interviews?

5 A No, sir.

6 Q Did you, at any point during the
7 interviews, intentionally raise your eyebrows at Jens
8 Soering?

9 A Most certainly not intentionally. If I
10 raised them, it's something I do, sir. I didn't do
11 anything intentionally in that direction, no, sir.

12 Q You did not do that with any intentional
13 intent to do that and not with any intent to intimidate or
14 coerce?

15 A No intention at all. If I did raise them,
16 sir, it was with no intentions at all, sir, no.

17 Q Thank you, sir.

18 MR. UPDIKE: If you'll answer any questions
19 counsel may have.

20 THE WITNESS: Yes, sir.

21

22

CROSS EXAMINATION

23

24 BY MR. NEATON:

25 Q When were you promoted to Detective

1 Inspector?

2 A May -- No, sir. May of '87.

3 Q You said that there were many reasons for
4 Jens Soering's arrest, the charges in the U.S.A. and
5 concern over fraud charges in England and other possible
6 charges in Europe, is that right?

7 A It's most certainly they were the reasons
8 for the commit warrant from the Richmond Court, yes, sir.

9 Q Do you have the custody sheet in front of
10 you for Jens Soering?

11 A For that period, sir?

12 Q Yes.

13 A Yes, I have.

14 Q Could you look at the front of the custody
15 sheet?

16 A Yes, sir.

17 Q The front of the custody sheet says the
18 reason for arrest "suspicion of murder," right?

19 A Yes, sir.

20 Q Do you have the commitment warrant in front
21 of you?

22 A Yes, sir. No, sir.

23 Q For the record, I'm showing the witness
24 Commonwealth's Exhibit Fifteen.

25 A Thank you, sir.

1 Q The commitment warrant says alleged
2 offense, "conspiracy"?

3 A Yes, sir.

4 Q You said you were equally interested in
5 both Mr. Soering and Elizabeth Haysom, is that right?

6 A Yes, sir.

7 Q That was as to the offenses in the U.S.A.
8 as well as any other possible offenses that they were
9 remanded for?

10 A Yes, sir.

11 Q You referred to the interview of Elizabeth
12 Haysom on June 6th at 4:55 p.m., is that right?

13 A Yes, sir, I did.

14 Q And present at that interview was the
15 solicitor, Mr. Barker?

16 A Yes, sir.

17 Q That was the same Mr. Barker who
18 represented Mr. Soering at the remand hearing on the 5th
19 of June?

20 A Yes, sir.

21 Q Sir, under the Police and Criminal Evidence
22 Act of England of 1984, you are required to provide a
23 solicitor to a suspect when the person requests a
24 solicitor, is that right?

25 A Yes, sir.

1 Q In fact, the Police and Criminal Evidence
2 Act sets a time limit, an outward time limit within which
3 the solicitor can be provided, isn't that correct?

4 A I don't really understand your question
5 there, sir.

6 Q Well, do you have a time limit to get a
7 solicitor to a person once that person requests a
8 solicitor?

9 A No, there is no time limit. I would say as
10 soon as practicable, sir. There's no specific time, sir.

11 Q Doesn't the Police and Criminal Evidence
12 Act say in any case he must be permitted to consult a
13 solicitor within thirty-six hours from the relevant time,
14 as defined in Section 41 (2), above?

15 A I think you've read that out of context,
16 sir. I can explain that, if you want me to.

17 Q Does the Police and Criminal Evidence Act
18 say this? Would you like to look at it?

19 A Sir, if you link both questions -- I would
20 like to look at it, sir. But if you link both questions
21 together, you asked me firstly about a prisoner requesting
22 a solicitor. The answer to that question is, I try to get
23 that solicitor as soon as practicable. Once a person has
24 been incarcerated for thirty-six hours and there's going
25 to be further incarceration, under separate circumstances

1 to these, he must be provided with a solicitor.

2 Q All right. So you go by the book, is that
3 right?

4 A I try to go by the book, yes, sir.

5 Q So you go by the book which says, "A person
6 arrested and held in custody in a police station or other
7 premises shall be entitled, if he so requests, to consult
8 a solicitor privately at anytime?"

9 A Yes, sir.

10 Q Subject to an exception, a request made by
11 a person arrested and held in custody at a police station
12 must be recorded in the custody record and the time at
13 which that request was made, is that right?

14 A Yes, sir.

15 Q I call your attention to the June 6th
16 interview of Mr. Soering at the Richmond Police Station.
17 Were you present during that interview?

18 A Yes, sir.

19 Q And did you not ask Mr. Soering questions
20 at that interview?

21 A Yes, I did, sir.

22 Q And did not Mr. Soering request the
23 presence of a solicitor during that interview?

24 A References were made in a lot of interviews
25 regarding solicitors and attorneys sir. Without having

1 the access to my records, but most certainly I can say
2 that there was no request for a solicitor. I would say
3 that reference was made to solicitors.

4 Q Near the end of that interview did Jens
5 Soering state, "I was wondering whether you had finished
6 all the questions you had as to my previous interviews
7 with you," right? Do you know if he said that?

8 A Sir, I would accept your word, sir. I'd
9 like to make reference to the record.

10 Q Let me show you a transcript.

11 A Thank you.

12 Q I call you attention to --

13 A Thank you very much.

14 Q -- page 20. You're very welcome.

15 MR. UPDIKE: Excuse me, Mr. Neaton. You
16 did state it. I'm sorry. But what was it?

17 MR. NEATON: Page 20.

18 MR. UPDIKE: Page 20 of the --

19 MR. NEATON: June 6th. Thank you.

20 THE WITNESS: Yes, sir. I read that, sir.

21
22 BY MR. NEATON:

23 Q Okay. Thank you. Can I have that?

24 A (Witness hands record back to Mr. Neaton.)

25 Q During that interview did Jens Soering next

1 state. "Well, I will not discuss the points you have just
2 mentioned and I won't give physical evidence until I am
3 interviewed by you with an attorney of the country in
4 which the trial will be held? Apparently, at this point
5 it is still in question to some extent"?

6 A Yes, I have read that as well, sir.

7 Q And didn't, after he said that to you, you
8 told him that there was a ninety percent chance that since
9 the crime was committed in the United States that the
10 authorities in the United States would go for extradition?
11 Would you like to refer again to --

12 A Yes, please.

13 Q (Hands the witness the record.)

14 A Yes, sir.

15 Q Didn't you tell him that there was an
16 American D.A. there?

17 A I did tell him that, yes, sir.

18 Q And didn't he tell you at that point that
19 he didn't know that the D.A. was there?

20 A That's right, sir, yes.

21 Q And didn't you then tell him that there is
22 a D.A. here available who we can speak to and seek
23 guidance as regards to the investigation and as regards to
24 the law?

25 A I didn't put the inflection on the word

1 "we." sir, but I did say that.

2 Q So you were offering Mr. Updike as attorney
3 for Jens Soering at that time?

4 A That wasn't my intention, sir. I was
5 trying to be helpful, not by offering an attorney, by
6 saying, "Well, we'll seek advice."

7 Q That you and Mr. Soering could seek advice
8 from Mr. Updike as to the extradition, is that right?

9 A No, I wanted to seek advice, sir. And
10 that's what Mr. Updike was there for, for me to seek
11 advice from, sir.

12 Q Did you next say to Mr. Soering, "If that
13 is the case, let's get down to brass tacks now. The
14 strong likelihood is that we're going to seek, or the
15 people from the United States are going to seek
16 extradition to the U.S.A. You've got to face facts,
17 haven't you, and say that is the strong likelihood. Does
18 that assist you in considering your position in this
19 office today?"

20 A Yes, because that was said in response to
21 earlier questions from Mr. Soering.

22 Q And didn't Jens Soering respond at that
23 time, "Not really, because if I work from the assumption
24 that I will probably be extradited to the United States,
25 then I would only be answering the questions in the

1 Presence of my American attorney, whoever he may be, and
2 you know he's not here now, so you know --* and you cut
3 him off and said, "Are you at this stage again? Let's get
4 this absolutely clear so we can comply with Miranda."
5 Parenthetically, you knew about Miranda?

6 A I'd learned about it over a very short
7 period of time, yes, sir.

8 Q "Are you asking for an attorney at this
9 precise moment?" Is that right? Did you say that?

10 A Yes, sir.

11 Q And after a long pause Jens Soering said,
12 "I, ah," and you cut him off?

13 MR. UPDIKE: I'm going to object in one
14 regard at this point. I think that the statute
15 requires that when someone's being asked about
16 a previous statement that they have a copy of
17 it and that's not being done with Detective
18 Sergeant Beaver?

19 MR. NEATON: I'd be happy to -- If there's
20 an extra copy --

21 MR. UPDIKE: I'd be happy to give him
22 one. It's which one again, June 20th?

23 MR. NEATON: 6th.

24 MR. UPDIKE: June 6th.

25 THE WITNESS: May I ask the page, sir?

1 BY MR. NEATON:

2 Q Page 21.

3 A Thank you.

4 Q Have you found it?

5 A Yes. I have, sir.

6 Q Have you had a chance to review it?

7 A I'll just read over it, if I may, sir?

8 Q Sure.

9 A Yes, sir.

10 Q And so the statements that I put to you in
11 the previous question you adopt as having been made?

12 A Yes. I did make them, yes, sir.

13 Q And you also adopt what I put to you in the
14 previous question, that you cut Jens Soering off before he
15 could answer your question, "Are you asking for an
16 attorney at this precise moment," right?

17 A No, sir. I don't think I cut him off. I
18 think if you read the words, there is a long pause there.
19 I don't think Mr. Soering answered my question. I mean,
20 it's very difficult to cut off somebody saying the word
21 yes or no, so he was not answering me so I went on to talk
22 to him further. You've got to read it that way, sir.

23 Q He said, "I, ah," right?

24 MR. UPDIKE: It does say, "A long pause"
25 there.

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MR. NEATON: That's before the "I."

MR. UPDIKE: I understand that, but yesterday you were correcting me, so please read it in its entirety.

BY MR. NEATON:

Q There was a long pause before Jens Soering says the word "I." right?

A Yes, there's a long pause before that and then --

Q And then he says, "I, ah," right?

A Yes, and the "ah" is an hesitation --

Q And then you break in?

A Well, I don't know that, sir. I don't know that, sir, three years later, today, sir. I will only know that if I hear the tape.

Q Well, what's the next word after "ah?"

A No word, sir. It's my speech after that. sir.

Q That's right. So he never answered your question. Mr. Beever?

A No, he didn't answer my question, no, sir.

Q Okay. And that's when you say, "Let me be more fair with you. If you ask me now in London at quarter past one nearly in the afternoon and you're asking

1 me for an American attorney, or asking Mr. Gardner for an
2 American attorney, that's a fairly impossible task. Isn't
3 it?" Did you say that to him?

4 A Yes.

5 Q And that's before he could answer your
6 question whether he wanted an American attorney at this
7 time?

8 A Well, I won't agree with that at this
9 stage, sir, because he hasn't answered my question, not
10 I haven't interrupted before he can answer. He hasn't
11 answered.

12 Q You weren't going to give him time to think
13 over his answer?

14 A That wasn't in my mind, sir. If I'd have
15 asked him the question, what's the point of interrupting
16 the answer?

17 Q To find out whether he wanted an attorney
18 at that time? That's important under Miranda, even as you
19 understood it at that time, right?

20 A Yes. My question was, so what's the point
21 of me interrupting him? I haven't interrupted.

22 Q He never answered the question.

23 A He hasn't answered the question, no, sir.

24 Q And then before he could even answer the
25 question or while he was considering his answer to your

1 question, you told him it was a fairly impossible task to
2 get an American attorney in London at quarter after one in
3 the afternoon on June 6th, right?

4 A I did say that, sir.

5 Q You'd agree that that might affect a
6 decision that somebody might make to exercise his
7 Constitutional rights or not, wouldn't you?

8 A No, sir.

9 Q It wouldn't, huh?

10 A Well, not because what I -- I answered
11 that. If that had been the lone sentence, I would have
12 agreed with you, sir, but I was being fair with Mr.
13 Soering and you must read on, sir.

14 Q That's right. You were being real fair
15 with Mr. Soering.

16 MR. UPDIKE: Objection.

17 MR. NEATON: So you asked him -- It's
18 cross examination, Judge.

19 THE COURT: I have to rule when there's
20 an objection. Sustained. An unnecessary side
21 remark.

22
23 BY MR. NEATON:

24 Q "Are you asking for the attorney who
25 represented you in Court yesterday? Do you want somebody

1 here to talk to and to represent you? There's one of two
2 things I want to remind you of before you go downstairs,
3 because I think this is the wisest move now. Number One,
4 I want you to remember that you discussed sentences in
5 various countries with us and we know, and don't beat
6 around the bush" -- and then you talked about his fear of
7 the death penalty, right?

8 A Yes, I did, sir.

9 Q Would you turn to the last page of the
10 interview sheet?

11 A Yes, sir.

12 Q On the transcript? That's page 24.

13 A (Witness turns to page 24.)

14 Q Was the last thing that you said on that
15 page to Mr. Soering, "I think that I should go downstairs
16 and we'll get that attorney"?

17 A Yes, sir.

18 Q You said in direct examination that you
19 never told Jens Soering to look you in the eyes at any
20 time?

21 A No, sir. I know when I said, "Look me in
22 the eyes." You asked me that in another context, sir. I
23 asked him during an interview to look me in the eyes and
24 answer a question, sir, at a later stage, maybe, but I
25 answered your other question fairly, sir, because there

1 was other words attached to it.

2 Q So in another context then you told Mr.
3 Soering to look at your eyes?

4 A I did, sir.

5 Q You said that Mr. Barker is a solicitor in
6 the United Kingdom?

7 A Yes, he is, sir.

8 Q And that he was also representing Elizabeth
9 Haysom at the remand hearing?

10 A Yes, sir.

11 Q So after you told Mr. Soering that you
12 would go downstairs and "We'll get you that attorney," you
13 never recorded that in the custody records, did you?

14 A No, sir.

15 Q And that was in violation of the Police and
16 Criminal Evidence Act, wasn't it?

17 A No, sir.

18 Q The Police and Criminal Evidence Act
19 required you to record in the custody record any requests
20 made by a suspect to have a solicitor or an attorney
21 present, right?

22 A Yes, sir.

23 Q And you didn't do that, did you?

24 A I didn't do that, sir, because he didn't
25 ask for one.

1 Q Then why did you tell him that "We'll go
2 downstairs and get you that attorney" if he didn't ask for
3 one?

4 A Because I was asking him whether he wanted
5 one. He never answered my question on two occasions. The
6 first one when you make the reference to the word, "I" and
7 "ah." The second time when I put the question to him
8 again when I said, "Let's be fair with you." We went on
9 with our questioning. I got to the end and I thought it
10 would be the wisest move to try and get him an attorney at
11 that stage.

12 Q Where's the question mark in this
13 transcript after that statement?

14 A How do you mean, sir?

15 Q The statement that you said to Mr. Soering,
16 "I think it's best that I go or that we go" or "We'll go
17 and get you that attorney." Where's the question mark?

18 MR. UPDIKE: Is it fair to ask him about a
19 question mark? Unless counsel is willing to
20 stipulate that all of our transcripts are
21 absolutely grammatically correct and absolutely
22 accurate, at which point I'd accept that and be
23 happy with that. But asking someone why the
24 typist didn't put a question mark, I'm not sure
25 it's quite fair. Is it? He can answer if it's

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a question.

THE COURT: We're cutting it pretty fine here. I don't know. I haven't seen it. If there's something there that he can answer, let him answer it.

MR. NEATON: I withdraw the question. Judge, you listen to the tape.

THE COURT: I'm going to listen to them.

BY MR. NEATON:

Q Mr. Beever, you said that Mr. Soering never asked for an attorney?

A Over that period of time we're talking about, yes, sir.

Q But did he not say, "Well, I will not discuss the points you have just mentioned and I won't give physical evidence until I am interviewed by you with an attorney of the country in which the trial will be held"?

A He did say that, sir.

Q And that was not a request for an attorney?

A Not at that stage, sir, no.

Q What would he have had to say to request an attorney?

A Mr. Soering made a lot of references, sir.

1 to solicitors and attorneys during those days at the
2 police station and what he strongly indicated on several
3 occasions was that he wanted to go back to America, speak
4 to an attorney first there, and then talk to Investigator
5 Gardner in the presence of that attorney.

6 Q And he -- I'm sorry. I didn't mean to
7 interrupt you.

8 A I'm sorry, sir. And there was no requests
9 for an attorney at that stage, at any stage.

10 Q He was telling you, sir, that he was not
11 going to answer any more questions about this case until
12 he could go back to America and talk to an attorney over
13 in America and then talk to Investigator Gardner, is that
14 correct?

15 A No.

16 Q That is not correct?

17 A No.

18 Q Well, Mr. Beever, you were going to
19 volunteer anyway then to get Mr. Soering a solicitor,
20 right?

21 A Yes, sir.

22 Q When Mr. Barker was in the station at 3:57
23 with Ms. Knebone --

24 A Yes, sir.

25 Q -- you didn't inform Mr. Barker that Mr.

1 Soering wanted to consult a solicitor, did you?

2 A No, sir.

3 Q You didn't inform Mr. Soering that Mr.

4 Barker was in the station, did you?

5 A No, sir.

6 Q And that if Mr. Soering wanted to talk to

7 Mr. Barker, he was there, right?

8 A Later that day, sir.

9 Q When did the 11:40 interview end? You can
10 look at the last page of the transcript.

11 A At 1:21, sir.

12 Q And at 3:57 Mr. Soering's solicitor was in
13 the police station, wasn't he?

14 A Yes, he was, sir. No. Mr. Barker was in
15 the police station.

16 MR. UPDIKE: Doesn't that call

17 for use of these custody sheets that he keeps
18 telling me are inaccurate? Now I think, Your
19 Honor, and I'm just saying this because they've
20 objected so much to the use of these custody
21 sheets. I feel that they should all go in, at
22 which time he can question as he wishes, but for
23 him to keep objecting to "Well, this entry's not
24 here and that one's not there." If he wishes
25 the custody sheets be used, we should withdraw

1 the objections and just enter them. Otherwise,
2 we'd ask, are you stipulating the accuracy of
3 that entry?

4 MR. NEATON: No. I'm simply asking the
5 witness at that 3:57 p.m. on the 6th of June, if
6 Mr. Barker was in the police station?

7 MR. UPDIKE: Did you get that from the
8 custody sheet by any chance?

9 MR. NEATON: It doesn't matter where I got
10 it.

11 MR. UPDIKE: It doesn't matter? I see.
12 You would like --

13 THE COURT: Well, it's hardly the kind of
14 thing that a witness would remember exactly as
15 to what happened at 3:57 p.m.

16 MR. NEATON: He remembered.

17 THE COURT: Let's be reasonable about it.
18 Apparently he took it from the custody sheet.
19 You have crossed over the line. You're going
20 into things that you objected to, but I'm not
21 particularly concerned about that. I'm not
22 making any particular ruling.

23 THE WITNESS: I agree with you, sir,
24 Mr. Barker was at the police station later on
25 that day and the interview terminated at 1:21

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and I agree that I didn't bring that conversation to the notice of Mr. Barker.

BY MR. NEATON:

Q Or to the notice of Mr. Soering that Mr. Barker was in the station?

A No, I did not, sir.

Q Did you yourself call Mr. Barker's office in the afternoon concerning Elizabeth Haysom's request for counsel?

A I can't remember, sir.

Q Let me show you a document which, by the way, is a copy of Elizabeth Haysom's custody record, and I'd ask you to look at the first entry with the red check by it?

A Yes, sir.

Q Read it to yourself and then tell me if it refreshes your memory.

A Sir, it doesn't refresh my memory as to whether I called or caused Mr. Barker to be called.

Q Is your signature on that line, by the way, squished over on the right side?

A No, sir. I don't think so. (Witness returns Elizabeth Haysom's custody record to Mr. Neaton.)

Q Thank you.

1 A I can't help you. It doesn't jog my
2 memory, sir, but I would say there's a strong chance that
3 I caused that to be made, yes.

4 Q When you caused that call to be made, did
5 you inform the person making that call to inform Mr.
6 Barker that it might also be nice if he saw Jens Soering?

7 A No, I did not, sir.

8 Q And you knew that Mr. Barker had
9 represented Jens Soering earlier that day or earlier the
10 prior day?

11 A Yes, sir, I did.

12 Q I'd like to call your attention to the 5th
13 of June of '86.

14 A Yes, sir.

15 Q On the 5th of June of '86 did you
16 participate in any interviews with Jens Soering on that
17 day?

18 A Yes, sir, I did.

19 Q Did you participate in three interviews
20 with Jens Soering on that day?

21 A Yes, sir, I did.

22 Q Isn't it true that during the second of
23 those interviews that Jens Soering requested to speak to
24 an attorney about the case?

25 A No, sir.

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Q You have a distinct memory of that?

A In the last few days, sir, I have refreshed my memory from notes and to an extent, sir, I have memorized what was said towards the end of that interview.

Q You've memorized the notes, right?

A I've refreshed my memory from the notes, so I won't give you an exact verbatim account of what took place, but I can give you a rough idea of what was said, sir.

Q Were the notes that you used to refresh your memory the notes of Detective Constable Wright?

A No. I'm refreshing my memory from notes jointly compiled between Mr. Gardner, Mr. Wright and myself on Monday, the 9th.

Q I'm showing you a document, a copy of which has been marked for identification as Defendant's Exhibit B. Is that what you used to refresh your memory within the last few days?

A Yes, sir.

Q And only that?

A Yes, sir. (Witness returns Exhibit B to Mr. Neaton.)

Q Thank you. Did you make any contemporaneous notes of the 6:00 interview of the 5th of June?

1 A No. sir.

2 Q When you and Mr. Gardner and Mr. Wright sat
3 down and put together what's been marked as Defense
4 Exhibit B, did you refer to the notes of Detective
5 Constable Wright made during the 6:00 interview?

6 A I think we did, yes, sir.

7 Q And you would have no reason to doubt the
8 accuracy of Detective Constable Wright's notes. Is that
9 right?

10 A No doubt in my mind, sir.

11 Q Sir, you said that on the 8th of June you
12 were at the wicket at Jens Soering's cell. Is that right?

13 A Yes, sir.

14 Q And the wicket refers to the window in the
15 cell door?

16 A Yes, sir.

17 Q And you had a three-minute conversation
18 with Mr. Soering at that time?

19 A Yes, sir.

20 Q That wasn't the only time that you were at
21 the wicket of Mr. Soering's cell door, is it?

22 A I fetched Mr. Soering from his cell on
23 several occasions for interviews, sir, so I would have
24 been at the wicket.

25 Q And you were down at the wicket fetching

1 him by yourself on several occasions, right?

2 A Yes, sir.

3 Q Where it's you and Mr. Soering, right?

4 A Yes, sir.

5 Q During some of those times you and Mr.
6 Soering would talk, isn't that right?

7 A Yes, sir.

8 Q Some of those conversations concerned the
9 investigation of the murder case here in Bedford, right?

10 A Yes, sir.

11 Q You were part of the team of investigators
12 that was interviewing Mr. Soering about this case, right?

13 A Yes, sir.

14 Q And, in fact, it would be fair to say that
15 you took a pretty active interest in the actual
16 interrogation of Mr. Soering, is that right?

17 A At times, yes, sir.

18 Q In fact, at times you were speaking much
19 more in these interviews than Ricky Gardner was, isn't
20 that right?

21 A It appeared from the interviews that Ricky
22 Gardner seemed to start them off. It seemed to take this
23 format and I did come in towards the end and say my piece,
24 sir, yes.

25 Q Was that a pre-arranged format that you and

1 he had discussed?

2 A No, sir. It was out of pure courtesy to
3 the American Investigator. It was his inquiry. I'd sit
4 and listen and think I could make a contribution, which I
5 was allowed to do and I was told I could do, and it just
6 so happened that it appeared that they came in at the end,
7 my contribution.

8 Q Your objective was, in fact, to get Jens
9 Soering to admit his involvement in this homicide, was it
10 not?

11 A Yes, sir.

12 Q And so everything that you were doing from,
13 say 3:25 on on the 5th of June until the end of the 8th of
14 June or until the release of Mr. Soering, was to get him
15 to admit his involvement in the Bedford homicides, right?

16 A Or non-involvement, sir.

17 Q Or non-involvement?

18 A Yes.

19 Q But you told him as early as 6:00 or
20 shortly thereafter on the 5th of June that you thought he
21 was involved, right?

22 A Yes.

23 Q So you had made up your mind pretty early,
24 hadn't you?

25 A That's part of the questioning procedure.

1 sir. On Thursday when he first came into our custody, I
2 was open-minded. By very, very late on that Thursday
3 evening I thought he was involved, sir.

4 Q But my question was that during the 6:00
5 interview you said to him you thought he was involved,
6 right?

7 A And I answered that question, sir. It's
8 part of my questioning procedure.

9 Q And part of that procedure is to put
10 pressure on the suspect and put stress upon the suspect to
11 give up his right to silence and to talk, right? That's
12 what you're there to do, right?

13 A No, sir. Not in those terms, sir.

14 Q Well, you want the suspect to talk, don't
15 you, about the crime?

16 A I want the suspect, if I'm an investigator,
17 it makes my job a lot easier if the suspect answers my
18 questions, yes.

19 Q And answer the questions the way you want
20 them answered, right?

21 A I beg your pardon, sir?

22 Q And you want the suspect to answer the
23 questions the way you want them answered, right?

24 A I want the suspect to tell me the truth,
25 sir.

1 Q And the truth, as you had come to believe
2 It shortly after 6:00 on the 5th of June, was that Jens
3 Soering was involved --

4 A I'm sorry, sir. I'd like to put that time
5 back a little later than that, sir.

6 Q How about 7:30 on the 5th of June? That's
7 back a little later. Isn't it?

8 A No. I'd like to go back a bit further than
9 that, sir, if you would.

10 Q Did you cause the entry in the custody
11 record of Jens Soering, time 7:59 on the 5th of June, to
12 be made?

13 A May I look, sir?

14 Q Yes, feel free to look.

15 A (Witness looks at custody record.) Yes,
16 sir, I did.

17 Q And in other words, you told the custody
18 officer what to write and he wrote it down, right?

19 A It's not exactly in those terms. The
20 custody officers are normally as experienced as I am, but
21 on that occasion I thought it was important to enter the
22 fact that Mr. Soering was willing to be interviewed
23 without a solicitor being present. If I just took him
24 from the cell complex, sir, the station officer would
25 generally write something more brief than that, sir. I

1 did cause that to be made. yes. sir.

2 Q And, in fact, what you caused to be made
3 was "I now want to be interviewed without the presence of
4 a solicitor," right?

5 A It reads: "I now wish to speak to D/S
6 Beever."

7 Q "Without the presence of a solicitor"?

8 A Yes.

9 Q And that's because up until or before that
10 time Mr. Soering didn't want to speak to D/S Beever
11 without the presence of a solicitor, right?

12 A No. At that time an interview had been
13 stopped. terminated at 6:45 by Investigator Gardner.

14 Q Because Investigator Gardner was concerned
15 that Mr. Soering had made a request for an attorney,
16 right?

17 A I can't speak for Mr. Gardner. I know how
18 I was thinking at the time.

19 Q You were thinking that Mr. Soering had made
20 a request to speak to an attorney and that ought to be
21 cleared up, right?

22 A No, sir. With all due respect to Mr.
23 Gardner, I thought he stopped the interview unnecessarily.

24 Q Of course, you didn't really know Miranda
25 by then, did you?

1 A I knew that wasn't a request for a
2 solicitor, sir.

3 Q You said you thought it was important to
4 note the entry that Mr. Soering had now agreed to speak
5 without a solicitor being present?

6 A Yes.

7 Q You didn't think it was important to note
8 the following day that you were going to get Mr. Soering a
9 solicitor, right?

10 A I didn't note that, sir.

11 Q Because you didn't think that was
12 important?

13 A No, I didn't note that, sir, because when I
14 returned to the cell with Mr. Soering, having the
15 suggestion coming from me that I should get him an
16 attorney, Mr. Soering, on his return to the cell -- but
17 you haven't asked me that question, sir -- told me that he
18 didn't need a solicitor.

19 Q Is that right?

20 A That is correct, sir.

21 Q And you didn't note that in the custody
22 record either, did you?

23 A Because there was no need, sir.

24 Q Because there was no need. It was
25 important on the 5th of June to note that he didn't need a

1 solicitor, but it wasn't important on the 6th of June to
2 note that he didn't need a solicitor, is that what you're
3 saying?

4 A I noted it on the booking out from the cell
5 complex that he didn't need a solicitor, so I didn't -- In
6 fact, sir, if you see, on his return to the cell after the
7 6:45 interview when he was returned to the cell, no note
8 was made then when he needed a solicitor, because I didn't
9 think so.

10 Q No, because you didn't want it on the
11 record, right?

12 A That wasn't the case, sir. If you read
13 what was said at the time, at the end of the 6:45
14 interview, I maintain this day there was no request for a
15 solicitor. Mr. Gardner erred on the side of safety and he
16 stopped the interview.

17 Q Mr. Beever, you said earlier you had no
18 reason to doubt the accuracy of Detective Constable
19 Wright's contemporaneous notes made during the 6:00
20 interview, did you?

21 A I think your original question said notes
22 and they are not contemporaneous notes. I understand the
23 word "contemporaneous" to read questions and answers as
24 they're said.

25 Q Well, let me put it another way to you.

1 A Yes, sir.

2 Q Detective Constable Wright was taking notes
3 during the 6:00 interview, correct?

4 A Yes, sir, he was.

5 Q And you said earlier that you had no reason
6 to doubt the accuracy of those notes that he was taking
7 during the 6:00 interview, right?

8 A Yes, sir. I said that, as well.

9 Q Let me show you what's labeled as page E of
10 Defendant's Exhibit E and I'd ask you to read to yourself
11 the last six lines of that page. I can show you where
12 that begins. Right there.

13 A Yes, sir.

14 Q And Detective Constable Wright wrote, "I
15 know something about my involvement or non-involvement in
16 this case that I have not told Mr. Gardner and I will only
17 discuss it first with my attorney and then, if my attorney
18 suggests, with the police."

19 A Yes.

20 Q And that's accurate?

21 A That is accurate, yes, sir.

22 Q You collaborated with Mr. Gardner and
23 Detective Constable Wright in preparing a summary of the
24 6:00 interview on June 9th of '86, correct?

25 A Yes.

1 Q And you've already identified this document
2 as a copy of that summary. Is that correct?

3 A Yes, sir.

4 Q Tell me where in that document the words
5 contained in Detective Constable Wright's notes are?

6 A They don't appear, sir.

7 Q They're not in that summary?

8 A No, sir. Sorry, sir. Not the exact words,
9 but on the fourth line up on page 2, then he went on to
10 say he knew something about his involvement or
11 non-involvement in this case that he had not told
12 Investigator Gardner. So it's the same.

13 Q Except it leaves out the bit about the
14 attorney, doesn't it?

15 A The attorney comes at the end, sir, of that
16 interview, of that note.

17 Q But it's not in the same words that was in
18 Detective Constable Wright's accurate notes. Is it?

19 A No, it is not, because that set of notes --

20 Q It's not there, right?

21 A I'm sorry, sir.

22 MR. UPDIKE: Objection, Your Honor.

23 MR. NEATON: He can explain on redirect.

24 MR. UPDIKE: He can explain when you ask
25 the questions, sir, and we would ask the witness

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be allowed to do so.

THE COURT: You may explain now.

THE WITNESS: Your Honor, that was a resume of what took place during those interviews, compiled from recollections by Mr. Wright, Mr. Gardner and myself.

BY MR. NEATON:

Q Four days after the event?

A Yes, yes, indeed, sir.

Q And then you all sat down to figure out how to cook the interview sheet, right?

A No, sir.

Q You wouldn't do something like that, would you?

A I wouldn't, no, sir.

Q It wouldn't cross your mind?

A No, sir.

Q Let me show you another part of Detective Constable Wright's accurate notes and read to yourself the first three lines, or two lines, on that page.

A (Witness reads first two lines.) Yes, sir.

Q In Detective Constable Wright's notes there is the sentence, "Give me something to make me consider what I'm to do with you and your attorney."

1 MR. UPDIKE: Your Honor, we object. Is
2 this proper use of the notes? Now I didn't have
3 to give him those notes to begin with, but I
4 did. Now we understand the notes may be -- The
5 witness who wrote them is using them. He can
6 look at them for that purpose. You can use
7 prior inconsistent statements. You can refresh
8 a witness' memory, things of that nature.
9 Instead, he's just reading the notes into the
10 record, which is fine, as long as he says
11 "accurate" with the word "not complete"
12 because of the circumstances, but we don't think
13 this is proper use of the notes, someone else's
14 notes.

15 MR. NEATON: Your Honor, it's relevant to
16 whether the accuracy of the summary which this
17 man collaborated on four days later, testing the
18 believability of this witness statements in
19 this hearing.

20 THE COURT: I overrule. Go ahead.

21 MR. NEATON: Thank you.

22
23 BY MR. NEATON:

24 Q Please look at the copy of Defendant's
25 Exhibit B and tell me where the phrase, "Give me something

1 to make me consider what I'm to do with you and your
2 attorney" appears in your collaborative summary done four
3 days later?

4 A No, sir. It doesn't appear.

5 Q It's not there, right?

6 A No, sir, it's not there. (Witness hands
7 copy of Defendant's Exhibit B back to Mr. Neaton.)

8 Q Thank you. I'll show you again the
9 accurate notes and I'd ask you to read these four lines to
10 yourself.

11 MR. NEATON: It's on the same page, Mr.
12 Updike.

13 MR. UPDIKE: Thank you.

14 THE WITNESS: Yes, sir.

15
16 BY MR. NEATON:

17 Q In the accurate notes it says, "It must be
18 the case that you do not wish to answer these questions
19 because the answers would incriminate yourself to some
20 extent," and Mr. Soering answered, "Yes, that's right."

21 A Yes.

22 Q Where is that in Defense Exhibit B?

23 A No, sir, it doesn't appear.

24 Q It's not there?

25 A No, sir.

1 Q It disappeared in four days, right?

2 A No it hasn't, sir.

3 Q And you didn't threaten Jens Soering with
4 harm to Elizabeth Haysom in his cell block?

5 A No, sir, I didn't.

6 MR. NEATON: That's all.

7 THE COURT: Let me ask you. Are you going
8 to have a few questions or do you think you'll
9 have quite a few? The question is the break.
10 I'm just wondering.

11 MR. UPDIKE: Yes, sir, Your Honor.

12 THE COURT: Had you rather take the break
13 now?

14 MR. UPDIKE: I would state, Your Honor, I
15 think it would be a few questions, but if the
16 Court would allow the break now, I'd appreciate
17 that.

18 THE COURT: Let's go ahead and take the
19 break now. Step down, please. Take a break.

20
21 (A short recess was taken, after which the following
22 ensued in the presence of the defendant and counsel.)

23
24 THE COURT: You may redirect.

25 MR. NEATON: Judge, Mr. Updike has been

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courteous enough to agree that I could ask some additional questions.

THE COURT: That's all right.

BY MR. NEATON:

Q Mr. Beever, I call your attention to the custody sheet of Jens Soering. Do you have that in front of you?

A Yes, sir, I do.

Q Would you turn to page 2 of the custody sheet?

A Yes, sir.

Q I call your attention to the entry at 5:28 p.m.

A Yes.

Q Did you cause that entry to be made?

A Yes, I did, sir.

Q Did you speak to Keith Barker at 4:30 p.m.?

A Yes, sir, I did.

Q On the 5th of June?

A Yes, sir, I did.

Q During the middle of Mr. Soering's interview?

A Yes, sir, I did.

Q Did you tell Mr. Barker at that time that

1 Mr. Soering had not waived his Miranda warnings, had not
2 waived his right to an attorney?

3 A No, sir, I didn't say that. I didn't
4 discuss that with Mr. Barker at all.

5 Q Did you discuss Mr. Soering's presence in
6 the station with Mr. Barker at that time?

7 A Yes, in loose terms, yes, sir, yes.

8 Q And Mr. Barker asked to speak to his
9 client, didn't he?

10 A No, sir.

11 Q He didn't?

12 A No, sir. You mean at that precise moment?

13 Q Yes.

14 A No. Mr. Barker was on the telephone, sir.

15 Q Yes, and he asked on the telephone if he
16 could speak with his client.

17 A No, sir.

18 MR. NEATON: Thank you. That's all.

19 THE COURT: All right. You may redirect.

20

21 REDIRECT EXAMINATION

22

23 BY MR. UPDIKE:

24 Q Did Mr. Barker make any requests concerning
25 Jens Soering?

1 A He mentioned his interest in Mr. Soering's
2 and Miss Haysom's interest, sir, and I noted that
3 interest, sir. And that's why I made that note there.
4 sir.

5 Q Now I have several questions that I might
6 like to ask you concerning the June 5th -- Well, even
7 before we get to that, there's another question I'd like
8 to ask about the notes that were prepared on the 9th of
9 June that you've described as being prepared by the three
10 officers?

11 A Yes, sir.

12 Q Could you tell us a little something about
13 the procedures that you followed concerning those. In the
14 preparation of those?

15 A Yes, sir. What you've got to remember from
16 the notes on June 9th is that it is a joint recollection.
17 So we adjourned to a private office at Richmond Police
18 Station, the three of us, and from making reference to
19 records and to, well, the notes that Mr. Wright had made,
20 from what we could remember inside our own heads, we would
21 try and recollect what took place over those first two
22 interviews on that first day, the 5th of June.

23 What I want to say, sir, is that I think it
24 was Mr. Gardner that was handwriting the notes. It was a
25 joint recollection. If one of the three couldn't remember

1 that taking place, we wouldn't commit it to paper, sir.

2 Q So my question concerning entries in
3 Detective Constable Wright's notes --

4 A Yes.

5 Q -- as I understand it, you deem them
6 accurate and don't dispute the accuracy of those?

7 A But they are not the -- What I am saying,
8 sir, is that they are not the whole content of the
9 interview.

10 Q Right.

11 A It was quick jottings made by Mr. Wright
12 throughout and I did see those jottings being made, but I
13 didn't direct him what to jot down so that's a question
14 for Mr. Wright, I'm afraid.

15 Q Yes.

16 A But mainly he wrote answers.

17 Q Now as to preparing the notes, the three of
18 you, if there were an entry that Detective Constable
19 Wright recalled and the other three (sic) of you just
20 didn't remember that, would a notation such as that been
21 included in the joint recollection?

22 A No, sir.

23 Q The only way that was included would be if
24 all three remembered?

25 A Yes, sir.

1 Q As to the June 5th interview, the second
2 one --

3 A Yes, sir.

4 Q -- which began around 6:00 and ended around
5 6:45, speaking from memory?

6 A Yes, sir.

7 Q What would be your memory of the conclusion
8 of that interview and any discussions or mentions of an
9 attorney?

10 A Yes, sir. At one stage, towards the end of
11 the interview, something caused Mr. Gardner to say, "Do
12 you want an attorney?" And Mr. Soering answered, "No, not
13 at the moment or not at this stage," words to that effect.
14 I wanted to make it perfectly clear and I asked the
15 question again, "Do you want an attorney?" And he said,
16 "No," and then, for the reasons I've described, it was
17 very, very shortly after that Mr. Gardner stopped the
18 interview.

19 Q But then, again, with due respect to
20 Investigator Gardner, the result of the answers that you
21 got or the answer that you got to your question, your
22 approach would have been what at that time?

23 A I would have continued the interview at
24 that stage, sir.

25 Q You were asked about some time periods on

1 that particular day and you were stating that you put the
2 time back a little bit later on that day --

3 A Yes.

4 Q -- concerning some opinions that you
5 formulated or something in that regard?

6 A I did, sir, yes.

7 Q I don't think you were allowed to state the
8 time. If you could, please do that or --

9 A Can I make reference, sir?

10 Q Please.

11 A Between 8:05 p.m. and most certainly at
12 11:14 p.m. I was then convinced that Mr. Soering had an
13 involvement in the killings of Mr. and Mrs. Haysom.

14 Q After 11:14 p.m., the end of the last
15 interview on that day, did you hear the defendant make a
16 statement in your presence on the way to the cell?

17 A Yes, I did, sir. Yes, sir.

18 Q And, sir, rather than at this point asking
19 you the content of that statement. If I could just ask,
20 was that statement that Jens Soering made of an
21 incriminating nature concerning the murders here in
22 Bedford County?

23 A Yes, sir.

24 Q Would that be the time period that you were
25 referring to or that you referred to earlier in response

1 to the questions asked by Mr. Neaton?

2 A That's correct, sir, yes.

3 Q If you need to look at the custody sheets
4 in this regard, fine, but the question concerns calls to
5 the German Embassy by the defendant.

6 A Yes, sir.

7 Q And I believe from looking at those, that
8 there was one made around 7:45 p.m. on the 5th of June, is
9 that correct?

10 A Yes, it was, sir.

11 Q And the next morning there were two calls
12 placed by the defendant to the German Embassy, 10:05 a.m.
13 and 11:00 a.m., is that correct?

14 A Yes, sir.

15 Q Do you have in front of you the transcript
16 of the June 6th interview?

17 A I don't, sir.

18 Q Okay. Let me find me page here and then
19 I'll provide you with a copy of it.

20 MR. UPDIKE: Have you all got the copy
21 that I -- You don't have that, do you?

22 THE WITNESS: No, I don't have the 11:14.
23 sir. Is that the one?

24 MR. UPDIKE: Yes.

25 THE WITNESS: I beg your pardon, sir.

1 BY MR. UPDIKE:

2 Q And directing your attention to page 18 of
3 that interview.

4 A I have it, sir.

5 Q Near the bottom, well, about a quarter way
6 up from the bottom there is a statement by you, did you
7 state in response to some earlier, well, an earlier
8 statement that you made just above that concerning the
9 German Embassy call. I won't read it all, but don't you
10 say to put the call through to the interview room, saying
11 that the German Embassy is calling for Jens Soering, put
12 the call through and allow him to speak to the German
13 Embassy?

14 A Yes, I did, sir, yes.

15 Q Concerning that particular call and the
16 three previous calls which Jens Soering made to the German
17 Embassy, did you do anything to prevent Jens Soering from
18 contacting the Embassy or telephoning them?

19 A Nothing at all, no, sir.

20 Q Did you do anything to prevent Jens
21 Soering, if he had so desired, to communicate to the
22 German Embassy complaints concerning your conduct or the
23 conduct of any police officer at the Metropolitan Police
24 Department?

25 A I didn't prevent him, and during those

1 conversations he could have said anything, sir, because I
2 don't speak German.

3 Q He did then have the opportunity to express
4 to the German Embassy any desire or complaint that he
5 wished to express to them?

6 A Yes, he did, sir.

7 Q And again on page 18, you are the one
8 that's the Detective Sergeant at that time giving the
9 directive to put the call through to him?

10 A I did, sir.

11 Q While you have that transcript in your
12 hand, I'd like to ask you just about a page or two,
13 because I don't want to go through this transcript. The
14 Court is going to hear that. For example, page 4, if
15 you'd like to look at that.

16 A Yes, sir.

17 Q If I might, rather than reading that whole
18 page, if I might be allowed to paraphrase, aren't you
19 saying there and asking whether Jens Soering is requesting
20 an attorney today and then he responds in the middle of
21 the page that he doesn't see the need for an attorney
22 right now, today, that he'll just have to see how the
23 interview goes?

24 A Yes, sir. That's exactly what was said.

25 Q And isn't he then, in response to that,

1 again reminded by Investigator Gardner that he has the
2 right to stop answering questions at any time?

3 A Yes, sir, he did.

4 Q And doesn't Investigator Gardner tell him
5 immediately thereafter, again, that if Jens Soering
6 prefers not to answer any questions he may simply indicate
7 that he doesn't want to answer their questions?

8 A Yes, sir.

9 Q And as to the conversations which Mr.
10 Neaton has asked you about at the end of this June 6th
11 interview, is it correct, looking at the custody sheet for
12 the next day, June 7th, that Jens Soering, referring you
13 to the 12:25 p.m., requests to speak to Mr. Gardner?

14 A Yes, sir.

15 Q And that he is willing to take this, he's
16 willing for this to take place without a solicitor or an
17 attorney, with his signature?

18 A Yes, sir.

19 Q Did you do anything to force or coerce Jens
20 Soering into making this entry or making this request?

21 A No, sir.

22 Q And I'd like to confirm along those same
23 lines, that's June 7th, at the time that that interview
24 commences, regarding that entry -- I'm showing you, if I
25 could quickly, the transcript of the June 7th interview.

1 I know that I'm getting a lot of things up here for you to
2 look at. But I'd like to refer you, as I said, to. I
3 think the middle of the page on page 1 is the interview.
4 Without me reading it, if you would look at it and I would
5 ask you, doesn't Jens Soering confirm on the tape that he
6 has requested that this interview take place?

7 A Yes.

8 Q And page 48, this being at the end of the
9 interview.

10 A I have it, sir.

11 Q In the middle of the page there, does he
12 confirm again that he's asked for this interview to occur,
13 or in response to Investigator Gardner's question, "You've
14 requested to have a chat with us?"

15 A And the answer to that was, "Yes," by Mr.
16 Soering, sir, yes.

17 Q And as to that same point -- I know that
18 I'm jumping you back and forth -- but going back to the
19 June 6th interview, this being the Friday interview, and
20 referring you to page 16.

21 A Yes, I have it, sir.

22 Q On that page, doesn't Jens Soering confirm,
23 with reference to the last interview, that is, the night
24 before, Thursday, that he requested that that interview
25 occur? He's talking on Friday, referring to the 8:00

1 interview Thursday night.

2 MR. NEATON: Objection. The question is
3 leading.

4 MR. UPDIKE: It certainly is, Your Honor.
5 I'm trying to expedite.

6 THE COURT: Sustained.

7 THE WITNESS: Is it the bottom page 16,
8 sir, did you say?

9
10 BY MR. UPDIKE:

11 Q Let me check my reference very quickly
12 here.

13 A Yes.

14 Q It begins on the bottom of page 16, but I'm
15 afraid what I'm actually asking you about would be
16 continuing over to the top of page 17. I'm sorry.

17 A Correct, sir.

18 Q You were asked about the death penalty and
19 some references to that and some statements that you made.
20 Did the possibility of the death penalty in this case have
21 any bearing on your investigation or your participation in
22 this investigation?

23 A Yes, to an extent it did, sir. I've been a
24 police officer for almost twenty-six years, sir, and in
25 all my service I have been involved in murder

1 Investigations, but I've never been involved in one where,
2 In the event of a conviction, the defendant could be
3 executed, sir. We haven't had the death penalty now in
4 England since 1957 so this is my first involvement, sir,
5 with anything like this. And may I say, sir, that all I
6 wanted to do in this investigation was to get to the
7 truth. That's all I wanted to do, sir. I didn't want to
8 coerce, threaten or put words in people's mouths at all.
9 sir.

10 MR. UPDIKE: Thank you very much, Detective
11 Inspector. No further questions. Your Honor,
12 I don't wish to put counsel off, but --

13 THE COURT: Well, we can't ping pong back
14 and forth too much, but if you have one or two
15 questions, fine, but --

16 MR. NEATON: I'd make it more like five or
17 six.

18 THE COURT: Well, five or six I'll settle
19 for.

20
21 RE CROSS EXAMINATION

22
23 BY MR. NEATON:

24 Q You said all you wanted to do was get at
25 the truth, right?

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A Yes.

Q But you didn't have to be truthful with Mr. Soering to get at the truth, did you?

A I didn't have to be truthful if I didn't want to, no, sir.

Q So you would lie to Mr. Soering during the 6:00 interview and tell him that you thought he was involved in the case when, in fact, you didn't think he was involved in the case at that time, right?

A My options were open and I had a shrewd idea he could have been involved, sir.

Q And so to get at the truth, you would lie?

MR. UPDIKE: Your Honor, I think we're re-plowing the same ground.

THE COURT: I think we've been over that.

BY MR. NEATON:

Q You said there was an interview on the evening of Thursday, beginning at 8:05 and ending at 11:14, is that right?

A I don't know exactly, most certainly it started around 8:05. It might have terminated slightly before 11:14, the actual interview.

Q You have no idea of how long before 11:14 it terminated?

1 A If I could make reference -- No, I wouldn't
2 sir. I don't think it's contained in the records. No,
3 sir.

4 MR. NEATON: That's all.

5 THE COURT: All right. Step down. That's
6 all.

7 MR. NEATON: Judge, at this time, since the
8 witness is done, I would offer Defendant's
9 Exhibit E. for the limited purpose of this
10 hearing to show that the defendant requested an
11 attorney during the 6:00 interview.

12 MR. UPDIKE: What is E? I'm sorry.

13 MR. NEATON: Mr. Wright's notes.

14 MR. UPDIKE: Your Honor, I would just state
15 that we do not believe that that is what is
16 said here. We had no objections to the notes
17 going in and the Court deciding, of course,
18 but --

19 MR. NEATON: Sure.

20 MR. UPDIKE: Thank you.

21 THE COURT: All right, gentlemen, are we at
22 the tape stage?

23 MR. UPDIKE: Yes, sir, Your Honor, we are,
24 from the Commonwealth's standpoint. And, Your
25 Honor, we would ask whether it would be

1 appropriate to discuss the manner in which to do
2 this. We really have no testimony to offer in
3 that regard concerning the tapes, other than
4 Investigator Gardner to identify them. I would
5 like for him to play them simply because from
6 the time they were made until now he has handled
7 them. But as far as the manner in which to do
8 it, and I would ask of the Court if it is
9 possible for an in-camera hearing to occur as to
10 the playing of those tapes. The Commonwealth
11 is very interested, as I know the defense is, in
12 this case being decided at the appropriate time
13 during the trial based on the law and evidence
14 presented at that time.

15 THE COURT: I'll hear both sides on that
16 and then I'll rule.

17 MR. UPDIKE: Yes, sir.

18 MR. NEATON: We do not object to the
19 Commonwealth's request for the tapes to be
20 played in-camera.

21 THE COURT: Gentlemen, I have a problem
22 with that. I think I disagree with both counsel
23 and I want to state my reasons. The fact that I
24 prohibited cameras in the Courtroom on this
25 hearing does not lessen the fact that this

1 remains a public trial. Now suppression
2 hearings, the ones I've conducted, unless there
3 is a good reason not to do so, have been
4 conducted in public hearings in open Court and
5 on the record. There is no right of privacy in
6 a murder trial that I know of. And I personally
7 feel that the danger of out of the presence of
8 the public hearings in this matter might well
9 outweigh the dangers of a public trial,
10 particularly since I have already made the
11 decision to move the entire trial from this
12 jurisdiction or bring in a jury from a distant
13 location.

14 I frankly feel that your request does
15 not comply with the law as I understand it, and
16 the First Amendment Constitutional rights, which
17 the public would have. I would be glad to hear
18 either counsel, but that's my concern and those
19 are my feelings at this time. I feel they
20 should be played in open Court.

21 MR. NEATON: Judge, I have no objection to
22 relevant portions of the tapes being played in
23 open Court. I guess my objection is -- My
24 objection is that certain aspects of the tape
25 are not relevant or material to the decision on

1 whether or not to grant the defense Motion to
2 Suppress or to deny the defense Motion to
3 Suppress.

4 At issue in this hearing is not what
5 the content of the statements were that my
6 client made concerning his involvement or non-
7 involvement in the offenses for which he's
8 charged. What's at issue in this hearing is
9 whether he did so voluntarily, whether he had
10 requested an attorney at various times during
11 the interviews, whether the request was denied,
12 whether my client then initiated further
13 conversations with the police subsequent to
14 request for counsel. And I would agree that
15 portions of the tapes, that if the Court is
16 saying that the tapes have to be played
17 publicly, that's fine, but the Court does not
18 have to play immaterial and irrelevant portions
19 of the tapes publicly in order to reach a
20 decision.

21 Now I know that that creates a problem
22 in, you know, cueing tapes and playing portion A
23 and portion B and that. But if the Court feels
24 that the right to a public trial outweighs the
25 danger of adverse pretrial publicity, albeit,

1 there's still a second reason for my objection
2 and that is the irrelevant portions of the tapes
3 do not have to be made public at this time. And
4 the Court is free to admit parts of the tapes
5 and exclude parts of the tapes at this time on
6 grounds of relevance and materiality, just like
7 the Court was free to admit parts of the custody
8 record and exclude other parts of the custody
9 record on the grounds that there was
10 insufficient foundation. That doesn't mean that
11 the right to a public trial is denied because
12 the entire custody record is not made public.

13 And so, that's simply my concern at
14 this point, as well, and, therefore, I would
15 object to the entire tapes being played in
16 public on the grounds of relevance and
17 materiality.

18 MR. UPDIKE: Your Honor, if I could respond
19 to that. We think that the defense's request in
20 that regard is really impossible. I don't know
21 how Your Honor could decide what's material and
22 not without hearing the tapes. Secondly, Your
23 Honor, I don't see any way that counsel and I
24 can agree on whether it's material. We also
25 feel, in addition to that, that both counsel for

1 both sides have gone through the tapes
2 extensively. Now quoting parts which they wish
3 to emphasize, making the entire tapes, the
4 entire conversations relevant in terms of
5 placing particular comments in context and
6 there's just no way of selecting what is
7 relevant and not. And we would respectfully
8 indicate, Your Honor, that the tapes have to be
9 played in their entirety so as to serve the
10 purpose that they're being played to begin with.

11 THE COURT: You want to say anything else?

12 MR. NEATON: Yes, I would then ask for a --
13 I think that if we had a continuance of a week
14 that we could decide what's relevant and what is
15 irrelevant, put them on another tape and play
16 those portions of the tapes in public. But,
17 again, I renew my objection that all of the
18 contents are not relevant and material to your
19 decision that you have to make in this hearing.

20 THE COURT: All right. Thank you,
21 gentlemen. The objection's overruled. If the
22 tapes are going to be of any help to me, I've
23 got to hear all of the tapes. I've already
24 heard excerpts from most of the tapes. The
25 tapes will be heard in their entirety. They

1 will be heard today as far as we can go and they
2 will be heard in the Courtroom. I'm going to
3 take a break to allow you all to set it up. Set
4 it up any way satisfactorily that they can be
5 played in the Courtroom in their entirety.

6 MR. UPDIKE: Yes, sir, we'll do that.

7
8 (A short recess was taken, after which the following
9 ensued in the presence of the defendant and counsel.)

10
11 THE COURT: All right. I prefer that the
12 Court Reporter not have to put all this down. I
13 see no real reason for it unless the defense
14 sees some reason for it.

15 MR. NEATON: I don't see any reason.

16 THE COURT: Fine.

17 MR. UPDIKE: Judge, if I could ask, the way
18 that I would like to present it is for the
19 investigator to play the original tape and to
20 make a part of the record a copy of the tape,
21 which he has made, and also then retain the
22 original for the time being. And we would ask,
23 in addition to that, we have copies of the
24 transcript which we would like for the Court to
25 have just to follow along as an aid. We

1 realize the evidence is what the Court hears.
2 We wonder if somehow this needs to be made a
3 part of the record, whether the stenographer
4 could also have the copy to make it a part of
5 the record somehow, instead of setting here and
6 typing it. Are there any objections to that?

7 And I might state that as to this
8 interview, you can read the one which we gave
9 you, the transcript, that is, or Investigator
10 Gardner since then has gone through and listened
11 to the tape trying to make some corrections. I
12 mean, I'll give you, regardless, a copy of the
13 corrected copy, but we did not change it. He
14 just wrote in the corrections. Any
15 objections to the Court having a copy of the
16 corrected copy?

17 MR. NEATON: There is no objection. No
18 objection.

19 MR. UPDIKE: Okay. If I might.

20 THE COURT: That procedure is satisfactory
21 with me, along as counsel agrees.

22 MR. NEATON: Well, is the transcript going
23 to be an exhibit or is it just for purposes of
24 convenience of the Court to follow along?

25 THE COURT: Let's find out. You mean this

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transcript?

MR. NEATON: Yes.

MR. UPDIKE: Your Honor --

THE COURT: What do you all want to do?

MR. UPDIKE: Your Honor, the reason that I'm interested in having some printed transcript of the tapes in the record is in the event of an appeal and should either side wish to make reference to certain portions of a statement, then that enables that. Whereas, if we just introduce the tape and should there be an appeal and in our briefs we wish to say in an interview such and such was said and cite a transcript page, we can't do it.

THE COURT: Well, couldn't you make this part of the record by identification and not make it an exhibit as such in the trial of the case at this point?

MR. UPDIKE: That would be fine, if in the event of appeal we could refer to the transcript as an exhibit.

THE COURT: Well, this will be filed with the papers as marked for identification and I think would be a part of the appeal process if relevant. That's just my approach to it. If

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anyone has a better suggestion?

MR. NEATON: No. That'll be fine. Just mark it for identification only. It can become, at least at this point for the Court, a demonstrative aid to aid the Court in understanding what's being said. But I want the record to be clear that I'm not agreeing or stipulating that the corrected copy submitted by the Commonwealth is an accurate corrected copy.

THE COURT: I understand that.

MR. UPDIKE: And in that regard. Your Honor, as counsel listens to it. If they have any suggested changes, we'd be happy to make those.

THE COURT: There usually are changes, gentlemen. I've been through a lot of these and I've never seen one yet that there weren't some changes, some slight differences, and sometimes material differences between the transcript and the original tape. But I think if I listen to the original tape and have a copy of the transcript in my hand, then I think that's probably the best we can do.

All right, could we go ahead?

MR. UPDIKE: Sure.

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THE COURT: Now I would like to be told which interview we're dealing with as we approach this.

MR. UPDIKE: Okay, sir. Investigator Gardner?

THE COURT: And my understanding is that we're going to play these pretty much all the way through, at least from interview to interview, and if anyone has any kind of objections that rather than raise them right in the middle of the tape, if you could wait, I will not penalize you by saying you made a late objection.

MR. UPDIKE: Yes, sir, Your Honor.

The witness, INVESTIGATOR RICKY GARDNER, having previously been sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY MR. UPDIKE:

Q You, of course, are Investigator Gardner and you've testified earlier in this matter, is this correct?

1 A Yes, sir.

2 Q And just for purposes of identification,
3 I'd like to show you Commonwealth's Exhibit Number Two,
4 which is the Miranda form bearing the date June 5, 1986,
5 8:05 p.m. This would be the third interview on that date,
6 but the first actual recorded interview, is that correct?

7 A Yes, sir.

8 Q And you have here the original tape
9 recording?

10 A Yes, sir.

11 Q Would you place that in the machine, and
12 while you're doing that, I would ask that the Jens Soering
13 identified and who speaks in this tape recording would be
14 the defendant seated over here, is that correct?

15 A Yes, sir. It is.

16 Q All right. You can start the tape then.

17
18 <Tape recorded interview of Jens Soering on June 5, 1986
19 at 8:05 p.m. was played for the Court and is hereby
20 omitted from this transcript.>

21
22 THE COURT: How many tapes are there, to get an
23 idea of what we have and the length of time involved.

24 MR. UPDIKE: Yes, sir. Your Honor. Your Honor,
25 as far as time, the Investigator can tell you better than

1 I can. The next tape or the next transcript is
2 twenty-four pages, which I would guess to be about the
3 same length as this one. How long is the next one, Ricky?

4 MR. GARDNER: I think it starts at -- The time
5 is on there, I think.

6 MR. UPDIKE: But I mean as far as --

7 MR. GARDNER: It's just one tape, so it should
8 be an hour.

9 THE COURT: About an hour? That's all right. I
10 just wanted some approximate idea to adjust my schedule.
11 And then there's one after that?

12 MR. UPDIKE: Yes, sir. Your Honor, that appears
13 to be longer. That one is forty-nine pages, so I would
14 guess it would be about two hours.

15 THE COURT: About two hours?

16 MR. UPDIKE: Yes, sir.

17 THE COURT: Would that be all of the tapes?

18 MR. UPDIKE: Those are all the tape recordings,
19 yes, sir.

20 THE COURT: Well, would you all like to take a
21 short break and then come back and hear the second tape
22 and then go to dinner and come back and hear the last
23 tape, or would you like to just hear the next tape, stop
24 for the day, come back early Monday morning?

25 MR. NEATON: That sounds better, Judge.

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THE COURT: Whatever counsel would prefer. Why don't we do that?

MR. NEATON: Let's do it all tonight.

THE COURT: You want to do it all?

MR. NEATON: Yes, sir.

THE COURT: That's fine. Then I think what we'll do is take a break, come back and hear the next tape which is about one hour, then break for dinner and come back and finish it tonight. That will be fine. It's so ordered.

(A break was taken, after which the following ensued in the presence of the defendant and counsel.)

THE COURT: Do you want to put the last transcript in for identification purposes only?

MR. NEATON: On the 6th?

MR. UPDIKE: This is the 5th, the one we just heard..

MR. NEATON: Oh, okay.

THE CLERK: That's Number Sixteen.

(Commonwealth's Exhibit Number Sixteen was marked for identification.)

1 MR. UPDIKE: And we'd also like to introduce a
2 copy of the tape that we just heard.

3 THE CLERK: Seventeen.
4

5 (Commonwealth's Exhibit Number Seventeen was marked
6 for identification.)
7

8 MR. UPDIKE: Your Honor, I would wondering if I
9 could ask, state to the Court that as far as the
10 Commonwealth's case is concerned, we're going to conclude
11 our evidentiary portion of it with the playing of these
12 tapes and in my way of thinking, that would be the end of
13 the evidence. I'm not sure if the defense is entitled to
14 rebuttal. But the reason that I'm asking, I wanted to get
15 that squared away because I would like to release the two
16 British officers and allow them to come into the
17 courtroom.

18 THE COURT: My thought is that the lawyers and I
19 will discuss that when we finish all of the tapes tonight.

20 MR. UPDIKE: Okay. Then I'll just wait.

21 THE COURT: And the other thing we need to
22 discuss is whether or not you gentlemen wish to make any
23 oral closing argument on the motion or whether you would
24 prefer to make an argument in a brief stating any case
25 citations you might have. I could do either. I'm not

1 sure we would have time tonight to do a full closing
2 argument, but I'm going to leave that up to counsel.

3 MR. UPDIKE: Judge, I would state that I want to
4 present to the Court some authority that we found in
5 whatever fashion. I would state that I think it's going
6 to be too late, from my prospective, to do it tonight and
7 would ask what defense counsel's preference is as far as
8 orally, in writing, or how he would like to do it.

9 MR. NEATON: I would prefer to do it orally.

10 THE COURT: All right.

11 MR. NEATON: And I would prefer to do it at some
12 other time than this evening.

13 THE COURT: Well, again, we can get those two
14 matters straight. It seems to me we have two matters to
15 take up after the tapes are concluded tonight. Number
16 one; whether this ends all the testimony on this hearing,
17 and number two; the matter of closing argument and if
18 necessary time limits on filing any authorities. My
19 thinking now is that we probably would not have any oral
20 closing tonight. It may well be that we could come back
21 Monday morning early just for that, but let's discuss it
22 later.

23 One other thing I wanted to say. I know
24 those benches are very hard out there and I see no reason
25 why if anybody, press or spectators, would like to sit up

1 here on these cushioned chairs, and that applies to my
2 spectators, too. It's perfectly all right if you want to
3 sit here. Maybe the press shouldn't take all the seats.
4 Would any of you people like to come up and sit up here
5 and try it for a while? We have newly upholstered chairs.
6 As a matter of fact, they've just been upholstered in the
7 last couple of weeks. They feel a lot better, don't they?
8 The lawyers have upholstered chairs, we just got those
9 last week.

10 MR. NEATON: I will say I'm much obliged.

11 THE COURT: It sure does help. All right. Now,
12 if you'll give me an introduction on this next tape.

13
14 BY MR. UPDIKE:

15 Q Investigator Gardner, if I could show you
16 Commonwealth's Exhibit Number Three, the Miranda form
17 that's dated June 6, 1986, 11:40 a.m. This would be the
18 Miranda form that was administered at the beginning of the
19 recording that we are about to hear. Is that correct?

20 A Yes, sir.

21 MR. UPDIKE: Your Honor, we have a
22 transcript that we would like to present to the
23 Court of this interview.

24 THE COURT: All right. Now, the last
25 hearing was the third interview, but the first

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recorded taped hearing and this one is what
date. June 6th?

MR. UPDIKE: Yes, sir.

THE COURT: And which --

MR. UPDIKE: It would be the fourth
interview, second recorded one, am I correct?

MR. GARDNER: Yes, sir.

THE COURT: That's good. And at some point
I think we're going to need to go over these
tapes. I have noted some corrections that
should be made, I m sure you have too, and we
could probably do that tonight. All right, I'm
ready.

(Tape recorded interview of Jens Soering on June 6, 1989
at 11:40 p.m. was played for the Court and is hereby
omitted from this transcript.)

THE COURT: All right. Let's recess one
hour for dinner.

(Court was recessed for dinner at 6:30 p.m. and reconvened
at 7:40 p.m., the following ensued in the presence of the
defendant and counsel.)

1 THE COURT: Let's go ahead with the last
2 tape.

3 MR. UPDIKE: We'd like to introduce
4 the tape recorded transcript of the June 6th
5 tape that we just heard and also introduce a
6 copy of that June 6th tape.

7 THE COURT: All right. For identification.

8
9 (Commonwealth's Exhibit Numbers Eighteen and Nineteen
10 were marked for identification.)

11
12 MR. UPDIKE: Now, if we could also present
13 to the Court a copy of the June 7th transcript
14 which is the one we are about to hear.

15 THE COURT: All right, sir.

16
17 BY MR. UPDIKE:

18 Q Investigator Gardner, if I could show you
19 Commonwealth's Exhibit Number Four, dated June 7, 1986
20 with the time 1:21 p.m. with the name Jens Soering, would
21 that be the Miranda form administered to the defendant
22 just before this tape was recorded that we are about to
23 hear?

24 A Yes, sir, it is.

25 Q And the defendant, again, seated over there

1 Would be the person identified and who is speaking on the
2 tape, is the Jens Soering on this tape and on the one we
3 Just heard of June 6, 1986?

4 A Yes, sir, he is.

5 MR. UPDIKE: Okay. if you would play the
6 tape for us?

7
8 (Tape recorded interview of Jens Soering on June 7, 1986
9 at 1:21 p.m. was played for the Court and is hereby
10 omitted from this transcript.)

11
12 MR. NEATON: Objection.

13 THE COURT: Well, I'll hear you, but I think
14 that's the end of the tape.

15 MR. NEATON: Well, there were some random
16 thoughts --

17 THE COURT: Well, I know, but I thought that's
18 what you were objecting to. I'm rather assuming you're
19 objecting to that because it's not a part of the tape.

20 MR. NEATON: Yes.

21 THE COURT: And I'm sustaining your objection at
22 this time, because it's not a part of the tape.

23 MR. NEATON: Okay.

24 THE COURT: I anticipated your objection on that
25 and I think you're correct. Does that conclude the

1 evidence on the suppression hearing?

2 MR. UPDIKE: We would like to introduce the
3 transcript, Your Honor, and a copy of that tape recording.

4 THE COURT: Yes.

5 MR. NEATON: With the understanding, again, that
6 the transcript is for identification --

7 MR. UPDIKE: I'm introducing it the same way as
8 we did before.

9 MR. NEATON: Whatever we did before. And the
10 tape is in evidence.

11
12 (Commonwealth's Exhibit Numbers Twenty and Twenty-one
13 were marked for identification.)

14
15 THE COURT: Now, my next question is, does
16 anyone else have any evidence on the suppression hearing?

17 MR. UPDIKE: No, sir, Your Honor.

18 THE COURT: How about you, Mr. Neaton?

19 MR. NEATON: We have no other evidence.

20 THE COURT: Thank you, sir. Let the record show
21 that both sides have rested their case on the suppression
22 hearing so far as the evidentiary stage is concerned.
23 Now, gentlemen, the next question is, what would you like
24 to do about any closing statements on this matter?

25 MR. NEATON: I'd be prepared to make a closing

1 statement on Monday morning, Your Honor.

2 THE COURT: I certainly won't force anybody to
3 do it at ten minutes to ten on Saturday night. I think
4 that makes sense, but because of my schedule and other
5 schedules, I think now we should decide on the time
6 involved, because I need to adjust my own schedule Monday.

7 Let me start with a suggestion that perhaps
8 thirty minutes per side would be sufficient? Do you need
9 more?

10 MR. NEATON: It's hard to make judgments like
11 this at this time. I would say I'd be willing to limit
12 myself to thirty minutes.

13 THE COURT: Thank you, sir. What about you, Mr.
14 Updike?

15 MR. UPDIKE: I would certainly go along with it,
16 Your Honor. Your Honor, we have some cases -- I don't
17 know whether counsel does -- that we would like to refer
18 to the Court. We can do it just in the forms of
19 citations. I was also wondering whether I should -- which
20 I have not done as yet -- Xerox copies of cases.

21 THE COURT: I would rather not have them
22 tonight.

23 MR. UPDIKE: No, no. What I was asking about
24 was whether I need to get that done tomorrow.

25 THE COURT: Why? Why would you need to do it

1 tomorrow?

2 MR. UPDIKE: To present them on Monday or
3 whether I could present them --

4 THE COURT: No, sir, you don't have to have them
5 done tomorrow. Let me make a suggestion that we come in
6 here, that we start at the regular time, 9:30, Monday,
7 that we go right into the oral closing statements on the
8 suppression hearing, which will put us through that by
9 10:30, that if either counsel have any citations which
10 they wish to sent to the Court thereafter, that I will
11 give you that opportunity and put a time limit on it. And
12 then it would be in my hands for a decision. Are we all
13 together on that?

14 MR. UPDIKE: Yes, sir.

15 MR. NEATON: Yes, sir.

16 THE COURT: I think that's the best we can do.
17 Thank you, gentlemen, it's been a long day. Let's recess
18 Court until Monday at 9:30.

19
20 (Court was recessed until Monday morning, March 5, 1990
21 at 9:30 a.m.)
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I, VIVIAN P. NEAL, Court Reporter, do hereby certify that
the foregoing is a true and accurate transcript of the
proceedings in the aforementioned case, taken on March 3,
1990, to the best of my ability.

Court Reporter

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

COMMONWEALTH OF VIRGINIA

v.

JENS SOERING

THE HONORABLE WILLIAM W. SWEENEY, JR., PRESIDING

Bedford County, Virginia
March 5, 1990

* * * * *

VIVIAN P. NEAL
Court Reporter
1221 Twin Springs Court
Forest, Virginia 24551

(804) 385-8341

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APPEARANCES:

JAMES W. UPDIKE, ESQUIRE
Commonwealth's Attorney
County of Bedford
Counsel the Plaintiff

RICHARD A. NEATON, ESQUIRE
Neaton & Fenner
1 Kennedy Square, Suite 2026
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Out-of-State Counsel for Defendant

WILLIAM H. CLEVELAND, ESQUIRE
Southwest VA Savings & Loan Bldg.
Roanoke, Virginia
Local Counsel for Defendant

1 THE COURT: All right, we are here for closing
2 oral argument on the motion to suppress. Where is the
3 defendant?

4 THE BAILIFF: He's on his way.

5 THE COURT: We'll wait until he gets here. Let
6 the record show that no proceedings will start until the
7 defendant is present.

8 All right. The defendant and his counsel
9 and the Commonwealth Attorney are now present. I have
10 allowed thirty minutes per side for any closing argument.
11 Mr. Neaton?

12 MR. NEATON: Thank you. Judge, first I'd
13 request to reserve ten minutes of my arguments for
14 rebuttal.

15 THE COURT: Certainly.

16 MR. UPDIKE: Judge, I think that needs to be
17 addressed, however.

18 THE COURT: Well, I say certainly, unless there
19 is some objection.

20 MR. UPDIKE: Well, I mean in terms of is the
21 defense entitled to rebuttal here if the Commonwealth has
22 the burden of proof by a preponderance of the evidence as
23 to the issue of voluntariness. Now, I realize they
24 brought the motion, but I've always assessed a situation
25 such as this as, they have the burden of going forward

1 with the evidence, then the burden of persuasion remains
2 with the Commonwealth.

3 And I think it's fairly good law that the
4 side with the burden of proof has the right of rebuttal,
5 and we don't think that they are entitled to it. And we
6 don't wish to speak twice. We think that they should go
7 first and speak their half hour, and then I speak mine and
8 that's it. But if they want the burden of proof they can
9 certainly have rebuttal, but as long as I've got that, we
10 don't think they should be entitled to rebuttal.

11 THE COURT: Your reply?

12 MR. NEATON: It's our motion. I think we went
13 first with the proofs. I think we're entitled to
14 rebuttal.

15 THE COURT: The Commonwealth's objection is
16 overruled. The Court will allow you ten minutes rebuttal.

17 MR. NEATON: Thank you, Judge. I might say as I
18 start this argument, I've never really been involved in a
19 case that has created so many law school examination
20 questions even before we get to trial as this case has.
21 And I believe that this particular issue creates possibly
22 a nice single question examination question in criminal
23 procedure maybe up at UVA.

24 This is an important motion because if the
25 defense prevails on this motion it substantially affects

1 the Commonwealth's case. It's a motion that we bring to
2 this Court based upon the right of the defendant to
3 challenge the voluntariness of his statements. It's a
4 motion based upon Edwards versus Arizona, which is cited
5 in our motion, which holds, and held, and has been the law
6 for quite some time that when an accused has invoked his
7 right to have counsel present during custodial
8 interrogation, a valid waiver of that right cannot be
9 established by showing that he responded to further police
10 initiated custodial interrogation, even if he has been
11 advised of his rights.

12 Subsequent to that, there have been other
13 cases interpreting Edwards. Edwards really is just an
14 extension of the Bright Line Rule in Miranda that says
15 that once an accused requests counsel, all interrogation
16 must stop, and once an accused declines to answer
17 questions, all interrogation must stop. In Michigan
18 versus Jackson and Michigan versus Blaydell, which were
19 decided in 1986 -- and I'll submit the cites in writing to
20 the Court after this argument -- the U. S. Supreme Court
21 extended Edwards to a situation where the accused has
22 either requested or has counsel at a pre-trial arraignment
23 proceeding and said that the police cannot initiate
24 interrogation in that situation, where in Michigan, in a
25 procedure that I'm familiar with where we begin cases by

1 information as opposed to indictment and you have an
2 arraignment on the complaint warrant and the accused
3 requests appointed counsel for purposes of trial, Michigan
4 v. Jackson says that the police can't come back and ask
5 questions on the offense after that point in time.

6 I think, Judge, that what we have here is a
7 situation that for the first two untaped statements is a
8 Michigan v. Jackson situation, because Mr. Soering had
9 counsel at his remand hearing in England, that counsel was
10 Mr. Barker, and that the police initiated interrogation at
11 3:25 p.m. on the 5th of June and again at 6:00 p.m. on the
12 5th of June, and they could not have done that without
13 counsel being present. The very fact that they initiated
14 counsel makes the procedure improper and we contend makes
15 the entire interrogation procedure improper,
16 notwithstanding that at subsequent times my client may
17 have signed Miranda forms.

18 Now I want to get to the 6:00 interrogation
19 because at 6:00 my client, I believe, clearly and
20 unequivocally makes a clear request for an attorney before
21 he will answer any questions about the offense. I think
22 that a) his testimony clearly establishes that and you
23 should believe his testimony on that point, b) I think
24 that the record establishes that because there is no
25 signed Miranda form that indicates that he has waived his

1 right to an attorney for that interrogation, and that's
2 circumstantial evidence that you can use to form your
3 opinion, c) the police notes of Terry Wright clearly show,
4 which are in evidence in this hearing, clearly show that
5 my client made a request for counsel, and it wasn't an
6 equivocal request in any stretch of the imagination. If
7 you read his notes, it was, "I do not want to answer any
8 questions until I have a chance to talk to my attorney,"
9 or words to that effect. Read it. It's there in writing.

10 Those are the only contemporaneous notes
11 made during that interrogation and I think you have to
12 give great weight to what the content of those notes said.
13 And you have to also give great weight to the fact that
14 despite whether Mr. Gardner was sure or not in his own
15 mind whether my client had requested counsel, he stopped
16 the interrogation at about 6:45 because he says he was
17 cautious. I say he knew my client had made a request for
18 counsel and he knew he had to stop at that point.

19 But in either event what I say is, the
20 Commonwealth is estopped from claiming that my client did
21 not request counsel at 6:00 because their agent, police
22 officer, Mr. Gardner, terminated the interview after the
23 request for counsel was made, in whatever form this Court
24 chooses to find that the request was made. And so in that
25 aspect of the situation, I think that you have to find as

1 a matter to fact that during the untaped 6:00 interview
2 there was a clear request for counsel made and that that
3 caused the interview to be stopped.

4 I think also you have to be aware of the
5 case of Smith versus Illinois which is a U. S. Supreme
6 Court case which interprets Edwards and says that once a
7 request is made for counsel, the Court cannot use
8 post-request answers by the defendant to "clarify any
9 questions put to the defendant by the police in order to
10 clarify what that request was." In Smith versus Illinois
11 the Supreme Court held that you have to look the request
12 that was made. And in a lot of other cases throughout the
13 country, Judge, in the Eastern District of New York, a
14 statement by an attorney or a statement by a counsel that,
15 "I think I might need an attorney," was held to be enough
16 to constitute a request under Miranda and to justify the
17 ending of interrogation.

18 In Colorado, in People versus Fish, "I
19 guess I might need an attorney," was enough to stop
20 interrogation. And I think you have to distinguish that
21 from the Pointer case in Virginia where in Pointer in
22 Virginia a question put by the accused to the police
23 officers, "Do you think I need an attorney now," and the
24 police officers say, "No. Of course, we'll protect your
25 rights. You don't need an attorney." And the Supreme

1 Court of Virginia held that was not a request under
2 Miranda.

3 But you don't have a question like that
4 being put by Mr. Soering at any time during any interview
5 in this case. He wants an attorney and he wants one bad,
6 and that's why the interrogation ceases at 6:45 and that's
7 why he's returned to his cell at 6:45.

8 Now, as Mr. Updike has tried to point out
9 during cross examination of my client, he's a Jefferson
10 scholar, he knew his rights, he understood his rights, and
11 he went to his cell, as Mr. Soering testified, thinking
12 that he was going to see his attorney and he did not have
13 to answer anymore questions until he had the consultation
14 and the benefit of legal advice.

15 Now, something has to happen to my client
16 between 6:45 and 7:45 in that jail cell. And I'll tell
17 you what happens to my client, and that is that Mr. Beever
18 comes to his cell. Mr. Beever knowing now, as sitting in
19 on the consultations between Mr. Updike and Mr. Gardner on
20 what American law is and that, in fact, you cannot
21 initiate any further interrogations of somebody who has
22 requested counsel. And so now the police are faced with
23 the fact that they are going to have to spend four days in
24 London not being able to talk to my guy anymore.

25 And so what does Mr. Beever do? He gets

1 the bright idea that, "If I can get Jens Soering to
2 initiate police conversation or if I can make the
3 Americans think that Jens Soering has initiated police
4 conversation here, or initiated a new interview, then I
5 can get Jens Soering interviewed and maybe I can get my
6 promotion to New Scotland Yard." And so what Mr. Beever
7 does is he goes to the cell at some time after my client
8 is served his meal and he has the through-the-wicket
9 conversation with my client about Elizabeth being a pretty
10 girl and wouldn't it be a shame if she fell and hurt
11 herself and, "Lad, you don't need that attorney now."

12 And why would Mr. Beever say that? He has
13 to say that, somebody has to say that, because somebody
14 has to put the fear of God in my client, the intelligent
15 Jefferson scholar who knows his rights and who is laying
16 on his cot thinking that the next thing he's going to see
17 is his solicitor. Or why would he go and make a phone
18 call to the German Embassy at 7:45 p.m. on the evening of
19 the 5th of June? And I say to you the reason why he did
20 that was that all of a sudden his world is turned upside
21 down because Beever comes to the wicket and makes the
22 threat.

23 And it's a crucial issue, I admit that, and
24 you're going to have to make a credibility call on this,
25 Judge, as to who you believe, my client or Mr. Beever.

1 And I say you have to believe my client in this case. And
2 I say you have to believe him for a number of reasons.
3 First, my client relates to you, I think, a fairly
4 accurate account of what happened that weekend and he
5 relates to you details, for example, of conversations with
6 Mr. Wright that he can only know from having spoken to Mr.
7 Wright, about having been stabbed a short time before.
8 And I apologize if my client got the kidneys mixed up with
9 the spleen, Judge, but he knew that Mr. Wright had been
10 stabbed and he could only have known that if he had talked
11 to Mr. Wright.

12 We have the admission by Mr. Beever, for
13 example, that he had many conversations with my client in
14 the cell passage and through the wicket. And why aren't
15 these recorded in the custody record of the British police
16 at that station? It's because Beever doesn't want them
17 recorded back there.

18 There are numerous opportunities for Beever
19 to talk to my client. And what you have to assess, Judge,
20 is you have to assess the fact that why not only is there
21 this sudden fear of God put into my client that he has to
22 try to get ahold of somebody at his Embassy, but also, why
23 does Mr. Wright just happen to be by the phone outside the
24 custody desk when my client comes out, unless this is
25 preplanned?

1 And why then does Mr. Wright contradict
2 himself in his testimony on the stand between the entry in
3 the custody record at 7:50 that says that the custody
4 officer took him back and the entry in the transcript of
5 the June 6th tape that says that Mr. Wright took him back,
6 which is on pages 16 and 17 of that transcript, where Mr.
7 Wright tells my client, "You remember, don't you, last
8 night when I took you back to the jail cell and you told
9 me that you wanted to talk?"

10 And I think that's important because if the
11 British want to make the custody record cover this
12 situation and make it look like my client initiates
13 conversation, then they have to make it look like somebody
14 other than them didn't tell the custody sergeant what to
15 write in the custody record. And this is the most, you
16 know, a crucial entry in the custody record here and we
17 don't have the witness to tell us. I can't cross examine
18 the custody record, I can't cross examine a signature, and
19 we don't have that witness here to say that that's what my
20 client said. And I tell you why, because the custody
21 sergeant didn't hear it, he just wrote down what Wright
22 told him to write down. As Beaver and Wright say, they
23 instigated the entry in the custody record.

24 And so I think you have to call this
25 factual dispute in favor of the defendant, because it

1 doesn't make sense why a person who goes to his cell
2 thinking he's going to have an attorney all of a sudden
3 panics and has to call the German Embassy.

4 The next thing I want to talk about is the
5 June 5th 8:05 tape. And my client says that he was shown
6 a custody record, he signed a custody record, that Beaver
7 told him to sign it. He was brought upstairs and for some
8 time, he says at least twenty minutes before they turned
9 on the tape, he asked for an attorney and he was told,
10 "Don't you feel remorse? We know you did it. Don't you
11 feel sorry for the Haysoms? Confess, confess, confess."
12 All this pressure is put on him and he's asked for an
13 attorney again. This is all off tape.

14 And I want to call your attention to a
15 couple of facts which I think make the defendant's
16 testimony believable here. You have an interrogation,
17 Judge, that begins at 8:05 -- or at least Ricky Gardner
18 writes 8:05 on the Miranda form when he starts to fill it
19 out -- and it ends at 11:14 when my client is returned to
20 his cell, and that is in the records. You have a tape
21 that's an hour long for a three hour interview. Now, what
22 is going on for the other two hours of that interview,
23 Judge? And I'll tell you what's going on, and that is a
24 lengthy conversation untaped before my client makes the
25 taped statement, because that's why my client says on page

1 1 of the transcript, "Okay, what would you like for me to
2 discuss on the tape? Are you talking about the feelings
3 of remorse that we were discussing earlier or would you
4 like to discuss specific pointed questions as to what
5 happened?"

6 My client, on tape, is referring to an
7 earlier conversation that he had with the officers before
8 the tape was turned on and I say the tape wasn't turned on
9 until at least twenty minutes after five after 8:00, and
10 more than likely it wasn't turned on until after 9:00.
11 That was the reason I was asking Mr. Gardner, "How long
12 were the breaks that you took in that tape? Tell us how
13 long those two breaks were on page 8 and Page 14." And
14 all Mr. Gardner can say, "Well, one was a little short
15 break and one was a longer break." He cannot prove how
16 long those breaks were. And if you work backwards from a
17 three hour interrogation period with a one hour tape and
18 you try to say how long were the breaks, you might be able
19 to find out how long the conversation was between 8:05 and
20 between the time my client signed the Miranda form.

21 And I think that's an important fact
22 because with the Commonwealth having the burden of proof
23 in this case as to a voluntary confession, it's their
24 burden of proof when my client signed the Miranda form,
25 what conversations occurred off the tape, and whether or

1 not my client did not request an attorney at that time.
2 And all you have are the officer's words against my
3 client's words. And everywhere on the tape, on every tape
4 you hear in this case on the 6th and 7th of June, plus the
5 notes of the 6:00 conversation, my client's requesting a
6 lawyer from any country in the world, "Just get me a
7 lawyer here so I can talk to a lawyer and so I can find
8 out what I should do in this case."

9 And then we get to the 6th of June
10 conversation and my client says that before that
11 conversation officers again put pressure on him, that he
12 was taken unwillingly from his cell to talk in this
13 conversation, to make this statement.

14 THE COURT: Now which one are you talking about?

15 MR. NEATON: The 6th of June, Judge.

16 THE COURT: All right.

17 MR. NEATON: Friday.

18 THE COURT: All right.

19 MR. NEATON: And I say to you, Judge, that the
20 custody records in this case prove that at least Beaver
21 and Wright had access to my client alone before a Miranda
22 form in B.C.I. Peyton's office from 11:19 to 11:40. And
23 my client says that during that time more pressure is put
24 on him to confess. Because up to that point, he hasn't
25 actually admitted doing the actual stabbing up to that

1 point and they want to get him to do that. And so what
2 happens is, they start getting him to go back through the
3 night before. And what happens is my client retracts his
4 statement from the night before, denies that he went to
5 the Haysom house, denies that he stabbed them, and denies
6 that he committed voodoo, and then when you get to the end
7 of the interview he asks for an attorney again.

8 And his request for an attorney is so clear
9 to Investigator Gardner that on page 20 of the transcript
10 he says, "It's obvious that you're not going to answer any
11 questions at this point, and it just hit me what I wanted
12 to say while you were on the phone," referring to his call
13 to the German Embassy, "It's obvious that you're not going
14 to answer any questions that you feel could put yourself
15 in jeopardy or jeopardize yourself until you speak with a
16 counselor, excuse me, a solicitor, or an attorney in the
17 United States. Is that what you're saying?"

18 Now, I'm saying under Smith versus
19 Illinois, that question is improper to begin with because
20 my client has already made his request for counsel on the
21 previous page. But my client makes it even clearer when
22 he says, "I will not discuss the points you have just
23 mentioned and I won't give physical evidence until I am
24 interviewed by you with an attorney of the country in
25 which the trial will be held." And that's it. Game, set,

1 and match. No more questions after that point, but it
2 goes on for three more or four more pages, where Beever is
3 telling him to, "Look in my eyes," or "Look at me, call me
4 a liar," although Beever denied on the stand that he never
5 said that, and, "Tell me the truth. Look me in the face,
6 please. Are you going to call me a liar?"

7 And Jens says, "I'm not going to call you a
8 liar because I'm not going to answer that question." And
9 Beever says, "Why not?" And Jens says, "Because I have
10 the right not to." And it's at the end of this interview
11 that Beever says, "I think that I should go downstairs and
12 we'll get that attorney," and he never gets him. And then
13 Beever perjures himself on the stand and says, "Well, on
14 the way back to the cell, Jens told me that he really
15 didn't want the attorney." None of this is in the custody
16 record, none of this is in anybody's notes. It's Beever
17 making it up on the stand to get himself out of a bind.

18 And, Judge, if you listen to the tapes and
19 the progression, you can see what they are doing to this
20 kid. This is a nineteen year old kid, he's never been in
21 trouble in this country. He's spent one month in a
22 British prison, he has a British solicitor, he's never
23 faced this type of in-custody interrogation in this
24 country. He had one prior interview the preceding October
25 which was in the Bedford police station in which he was

1 not under custody.

2 THE COURT: All right. Excuse me. You have ten
3 minutes left, sir.

4 MR. NEATON: And I would just say that the
5 totality of the facts and circumstances in this case
6 clearly indicate that my client involuntarily gave these
7 statements. And I'll just reduce my rebuttal just by a
8 few minutes.

9 THE COURT: All right. Thank you, sir. Mr.
10 Updike?

11 MR. UPDIKE: Yes, Your Honor. Your Honor, I
12 will be speaking quickly because I need to cover a lot of
13 ground in a short period of time, obviously, and I will
14 just hit some points quickly and try to cover everything.
15 But at any rate, to get started.

16 We think first of all, Your Honor, the
17 Court has to address the threshold situation. First of
18 all, that being whether or not the Fifth and Sixth
19 Amendments to the United States Constitution even apply in
20 this situation and whether or not the exclusionary rule
21 requested to be applied here by defense has any
22 applicability. And the reason that I say that to begin
23 with and that that threshold situation must be addressed,
24 would be the decision the United States Supreme Court
25 rendered last week, the decision of Verdugo -- and I may

1 not be pronouncing this correctly -- V-e-r-d-u-g-o -
2 U-r-q-u-i-d-e-z, a United States Supreme Court case, as I
3 said, decided last week, Record Number 88-1353. And my
4 office should, through the Criminal Reporter, be receiving
5 that case this week.

6 But the Court, as I'm sure you're familiar
7 with it, in that case indicated that the Fourth Amendment
8 and the exclusionary rule there did not apply to
9 activities of United States agents outside the United
10 States borders. This would be a similar situation, we
11 would submit.

12 Secondly, Your Honor, we are submitting
13 that this is a very clear situation of one issue, one
14 issue and one issue only, and that being the issue of
15 voluntariness of the waiver of the defendant's right to
16 counsel and his right to silence, to remain silent, his
17 right against self-incrimination. As to that particular
18 issue, Your Honor, if we could emphasize that the
19 Commonwealth does have to prove the issue of voluntariness
20 by a preponderance of the evidence, and that's the extent
21 of the burden, not beyond a reasonable doubt. In support
22 of that, we cite -- and we'll give the specific cites
23 later as well -- Rogers v. Commonwealth, a 1984 case, and
24 Colorado versus Connelly, a decision of the United States
25 Supreme Court rendered in 1986.

1 In addition to that, the Supreme Court of
2 Virginia said in Rogers, on page 609 of the decision, that
3 the Court has to make a factual determination on the issue
4 of voluntariness in accordance with the standard of proof.
5 And once the Court has done that, the Court's
6 determination on appeal is entitled to the same weight as
7 a determination by a Jury and should not be reversed on
8 appeal unless it is clearly wrong or without evidence to
9 support it.

10 Continuing on, Your Honor, we think that
11 the defendant here and defense counsel have tried to do
12 what the Courts recognized in many of these decisions
13 which we have in front of us, and that is confuse the
14 Sixth Amendment situation with the Fifth Amendment
15 situation. We have clearly a Fifth Amendment situation in
16 which the issue of voluntariness must be determined, that
17 and that alone. First of all, as the Court knows from the
18 evidence, the defendant was incarcerated in England on
19 English charges and by no stretch of the imagination did
20 the defendant, therefore, have the right under the Sixth
21 Amendment to the United States Constitution as to British
22 charges in England.

23 Secondly, Your Honor, even if we were to,
24 for the purposes of argument, move that case from England
25 to the United States, the Sixth Amendment would have no

1 applicability. The defendant cites, as defendants in
2 these cases often cite, Michigan v. Jackson in a Fifth
3 Amendment situation. Michigan v. Jackson is a clear Sixth
4 Amendment case. And it did come from Michigan, obviously,
5 but what happened there, if you read the case, at 475 U.
6 S. 825, a 1986 decision, in that decision a defendant was
7 arraigned and appeared before an arraignment officer and
8 requested counsel, and the United States Supreme Court
9 said that under those circumstances the Sixth Amendment
10 had attached.

11 Then the officers, after the request for
12 counsel, before an arraigning officer, came back and
13 reinterviewed Jackson as to the same offense. Under those
14 circumstances, because the Sixth Amendment had attached as
15 to that particular offense, Charge A we can call it, then
16 that prohibited further contact to be initiated by a
17 police officer. We do not have that here. In this case,
18 the indictment was not returned until June 13, 1986, a
19 week after all the interviews in England had concluded.
20 There is no Sixth Amendment right, therefore.

21 Furthermore, even if there were a Sixth
22 Amendment right -- to very quickly cite some cases, Your
23 Honor, in support of this proposition -- and the
24 proposition is, even if we had a Sixth Amendment right in
25 the United States and everything had occurred in the

1 United States, the cases clearly show that if someone is
2 incarcerated on Charge A and he has a Sixth Amendment
3 right as to that, and during the interviewing process he
4 never requests presence of counsel, other than appearing
5 before an arraignment officer, that causes the Sixth
6 Amendment to be invoked, it does not cause the Fifth
7 Amendment to be invoked.

8 If you have a situation where a defendant
9 initially says, "I don't wish to answer any questions,"
10 then that blocks all further questionings of all sort,
11 because that invokes the Sixth Amendment and the Fifth
12 Amendment and that's a situation, of course, in Roberson
13 versus Arizona, 486 U. S., a 1988 decision. But if you've
14 got a case in which you do have a Sixth Amendment invoked
15 by virtue of an individual appearing before an arraignment
16 officer and then he's interviewed as to Crime B, as to
17 Crime B where there is no Sixth Amendment, and purely a
18 Fifth Amendment right, then all that is required is a
19 voluntary waiver.

20 And if I could quickly read cases in
21 support of that just for the purpose of the record, all
22 new cases. Commonwealth of Pennsylvania versus Davis,
23 decided October 1989. The People, a Michigan case, versus
24 Crusoe, decided December 7, 1989. The State of Washington
25 versus Stewart, an excellent discussion of

1 this, that was decided October 19, 1989. The State of
2 Arizona versus Hitch, decided May 23, 1989. And we'll
3 provide the copies of those cases, but those cases clearly
4 establish that, and to move on, we are dealing with a
5 Fifth Amendment situation and the Sixth Amendment has no
6 applicability.

7 As to the Fifth Amendment, Your Honor, the
8 defendant himself must invoke his right to remain silent
9 and his right to counsel. That right cannot be
10 vicariously asserted by counsel. The case that the Court
11 is well aware of on that point, Moran versus Burbine, 475
12 U. S. 412, a 1986 decision. In that case there was a
13 Fifth Amendment situation on Charge B, the public defender
14 represented Moran on Charge A, and calls the police
15 department, the police officers lied to the public
16 defender and say, "Mr. Moran will not be interviewed
17 tonight." A few minutes later, they interview him anyway.

18 However, Fifth Amendment situation, Mr.
19 Moran voluntarily waives his right to counsel, the
20 statement on Charge B is held to be admissible. That goes
21 to the point as to all the discussions of Mr. Barker, was
22 he told this, was he told that. Moran versus Burbine
23 clearly provides it doesn't make any different what Mr.
24 Barker thought or what he did, the defendant over here in
25 the Fifth Amendment context has to invoke his right and

1 the issue, again, is one of voluntariness.

2 Continuing on, the issue that was raised
3 during the cross examination as to counsel not being able
4 to be provided until he gets back to the United States,
5 the case of the United States Supreme Court which is
6 exactly on point here is Duckworth versus Eagan, 492 U.
7 S., just decided June 26, 1989. In that case Justice
8 Renquist wrote -- Chief Justice Renquist, I should say --
9 wrote that as a result of the Miranda in that case -- And
10 in that case, Judge, the Miranda form itself said, "You
11 will be provided counsel if and when you go to Court."
12 And the defense came along and said, "Oh, no, no, no.
13 That's making him think he can't have counsel at the time
14 that the interview occurs."

15 What the case clearly states is that the
16 Fifth Amendment and Miranda do not require that the Jails
17 and the police stations keep an attorney present there at
18 all times. What Miranda requires is not that a defendant,
19 a suspect, receive counsel immediately upon his request,
20 but rather that a suspect understands that he has the
21 right to remain silent, that he has the right to counsel
22 before further police-initiated interviewing occurs. Now,
23 if he invokes that right, if he understands that, that he
24 has the right to silence, that he has a right to the
25 presence of counsel before further police-initiated

1 interrogation, whether he gets that lawyer five seconds
2 later, five minutes later, five weeks later, or five
3 months later, he has the right not to answer any more
4 police-initiated interrogation until he gets that lawyer.

5 The government is not required to provide
6 him one just like that (snaps finger), only provide it
7 before they initiate further contact. However, as Edwards
8 provides, and cited by the defendant, it clearly provides
9 two things, that once there is an unequivocal request
10 for counsel, the bright red line comes down and the police
11 cannot reinitiate further contact unless one of two things
12 occurs; that the defendant receives counsel, first of all,
13 or secondly, the defendant reinitiates contact himself.
14 So if you have the situation where the defendant clearly
15 and unequivocally requests counsel and interrogation
16 stops, thereafter if he reinitiates the contact with the
17 police officers and does so voluntarily -- there again we
18 have this issue of voluntariness -- then police
19 interrogation may continue, and that's what we've got in
20 this case time and time again.

21 And as to that point of the lawyer not
22 being provided until he gets to the country where he's
23 going to be tried, we would emphasize, Your Honor, that we
24 have to show understanding the rights of voluntary waiver.
25 The defendant, on the stand, admitted that he understood

1 that. There was no problem as to understanding it, he
2 said, "They forced me," so we're coming back to this issue
3 of voluntariness.

4 As to the request, as counsel calls it, for
5 a lawyer, which the Commonwealth and its witnesses never
6 heard, we would emphasize a recent decision in the United
7 States Supreme Court, Connecticut versus Barrett, 479 U.
8 S. 523, a 1987 decision. In that case, the defendant
9 said, "I will not make a written statement unless I've got
10 a lawyer, but I will talk to you orally without one." And
11 the United States Supreme Court goes through the analysis
12 of Edwards, and Edwards, as it states there and it's been
13 emphasized in every case citing Edwards, the principle
14 behind Edwards is for a defendant to say, "I feel that I
15 am incapable of dealing with the police without counsel."
16 And once the defendant has indicated that, questioning
17 must cease.

18 But the defendant in this case of
19 Connecticut versus Barrett, the defendant in this case did
20 not say, "I feel incapable of dealing with the police
21 except through counsel," but rather he felt himself
22 competent and able to deal with the police and he was
23 going to decide which questions he would answer, which
24 questions he would not answer. And in that regard, Your
25 Honor, he called the German Embassy, he found out about

1 the principles pertaining to extradition, the principles
2 pertaining to deportation, whether he could be deported to
3 the United States or Germany, whether he could be tried in
4 Britain, whether he could be tried in the United States,
5 whether he could be tried in England. He was a diplomat's
6 son, he understood all these principles.

7 He goes through with Investigator Gardner
8 what is murder, what is second-degree murder, what is
9 manslaughter. He states time and time again, "I will not
10 lie to you. It is not to my advantage to lie. I will
11 decide which questions I will answer and which questions I
12 will not answer." He is deciding for himself, he is
13 extremely intelligent. And the reason that he did this
14 was he felt he was competent enough to deal with the
15 police, and that didn't turn out to be the case.

16 THE COURT: Is Connecticut versus Barrett a
17 U. S. Supreme Court case?

18 MR. UPDIKE: Yes, sir, it is, decided at 479 U.
19 S. 523. And in that case, Your Honor, the United States
20 Supreme Court case cites with approval a decision of the
21 Circuit Court of Appeals for the Fifth Circuit, this being
22 United States versus Jardina, at 747 F 2nd, 945, a 1984
23 case, and the United States Supreme Court case denied
24 cert. on this case at 470 U. S. 1058, 1985. And as I
25 said, this Jardina case is cited with approval in

1 Connecticut versus Barrett.

2 And very quickly, Your Honor, and I know
3 that I'm running out of time, we'd like to emphasize that
4 Jardina is exactly what we've got here because Mr. Jardina
5 came in and he told the police officers he was going to
6 answer certain questions and certain questions he was not
7 going to answer. And he also said the ones he did not
8 answer, he wanted his attorney to work out a plea
9 agreement. Now there again, the defense tried to say,
10 "Well, the mention of lawyer, that was mentioned, and
11 therefore everything must decrease," but in analyzing this
12 the Court said, "No, that's not what happened. This man
13 did not say he was incompetent or incapable of dealing
14 with the police. He made the decision he was going to do
15 it himself."

16 And the Court said, with reference to this
17 word "lawyer," it stated on page 949 of the decision,
18 "Jardina stated without the slightest ambiguity that he
19 would then and there answer some questions but not others.
20 The word attorney has no callismatic qualities. A
21 defendant does not invoke his right to counsel anytime the
22 word falls from his lips." And that seems to be what
23 counsel, or the defendant, I should say, are trying to do
24 in this case.

25 Continuing quickly on with several other

1 points before we address the main issue of voluntariness
2 -- and I want to make sure that I have time to do that,
3 Your Honor. As to the reinitiation requirement, there are
4 cases precisely on point here. We emphasize that the
5 defendant in this case reinitiated contact and signed the
6 custody sheet to that effect at 7:59 on June 5, signed it
7 and said he wished to speak without a solicitor. The
8 defendant admitted that he signed that, said that he was
9 forced. Again, the issue of voluntariness.

10 The next taped conversation, June 6th, he
11 initiated contact there. Terry Wright testified to that,
12 the custody sheet shows it. The next taped interview,
13 December (sic) 7th, 12:25 p.m., the defendant signs and
14 says he's specifically requesting to speak with the police
15 officers without a solicitor or an attorney being present.
16 As to the last interview, June 8th at 4:30 p.m., again the
17 defendant signs the custody sheet, or excuse me, he
18 indicates in Detective Sergeant Beever's presence that he
19 wishes to speak with the police officers. Again, the
20 issue becomes voluntariness. He says he was forced to do
21 that.

22 As to the issue of reinitiating contact, if
23 we could respectfully refer the Court to the major case on
24 that, that being Oregon versus Bradshaw, 462 United States
25 Supreme Court 1039, a 1983 decision. Then there is

1 an excellent discussion of all of these principles of
2 Bradshaw in a decision rendered by the Circuit Court of
3 Appeals, the United States versus Velasquez, 885 F 2nd,
4 Page 1076, this just decided September 1, 1989. And in
5 that, the Court stated that the plurality decision, I
6 should say in Oregon versus Bradshaw, was that a
7 generalized, the defendant voluntarily indicates a
8 generalized intent to generally discuss the investigation,
9 even descending opinions express that that may be done,
10 though they feel that you must have a more specific
11 request as to the specific matter of the investigation.
12 But all Justices in the case indicated that if you have a
13 reinstitution of contact with the police officers, then
14 interrogation may continue.

15 Another case that the Court is well aware
16 of, if we could quickly point out, Your Honor, the case
17 where there is an unwarned, inadmissible statement and,
18 thereafter, Miranda, voluntary waiver. The first one is
19 inadmissible, the second one is admissible. There you
20 have the situation, of course, in going through
21 statements, if one is found inadmissible and you come
22 along and you have a voluntary waiver, not in the Sixth
23 Amendment situation but in the Fifth Amendment situation.
24 And that case, of course, is Oregon versus Elstad. 470 U.
25 S. 298, a 1985 decision of the United States Supreme

1 Court.

2 As to not signing the waiver, in North
3 Carolina versus Butler, 441 United States Supreme Court
4 decision, at page 369, a 1979 decision, in that case Mr.
5 Butler came in before the police officers and he said, "I
6 will talk to you but I ain't signing nothing." The
7 defendant came back on appeal and said that as a result of
8 there not being an explicit waiver, written or oral, that
9 therefore the statement was inadmissible. The United
10 States Supreme Court said, "No. As long as the defendant
11 understood his rights, and as the result of all the
12 circumstances a determination can be made that there was a
13 voluntary, knowing waiver, it doesn't make any difference
14 whether he signed any form or even asked to." We
15 emphasize, in Butler, the defendant refused to sign the
16 form. In this case the defendant did not refuse to sign
17 the form, but rather was not asked to, it was an oral
18 waiver situation.

19 As a consequence, Your Honor, we have
20 narrowed this down, we respectfully submit, quickly and I
21 admit in not very good fashion. We're trying to address
22 that what we've got here is simply the issue of
23 voluntariness. And as to that issue, what does the Court
24 have before it? It has the testimony of three police
25 officers versus one defendant seated over here, who is an

1 admitted and has been convicted of crimes involving moral
2 turpitude. And when we accept his statement as to
3 threats, what exactly is that? Now, we remind the Court
4 respectfully that the police officers denied that this
5 threat was made. But analyze what the threat is, if the
6 Court would, please.

7 The defendant says that this police
8 officer, Kenneth Beever, used his eyebrows almost as if in
9 some fashion that the man ought to have a weapons permit
10 for them, raising his eyebrows. The very suggestion is
11 ridiculous, Your Honor. If the detective raised his
12 eyebrows during the course of his testimony here, I don't
13 recall anybody running for cover or anything of that
14 fashion. The suggestion is ludicrous. In addition, he
15 said he pointed down to the floor at different times.
16 Well, what does that mean? The officers denied it. None
17 of the other officers saw it. What is required, Your
18 Honor, as the United States Supreme Court said in the
19 major decision beginning on this issue of voluntariness,
20 and that is the decision of Schneckloth versus Bustamonte
21 -- and I know I mispronounced that -- at 412 U. S. 218, a
22 1973 decision.

23 And in that case, the United States Supreme
24 Court set forth the principle by which the issue of
25 voluntariness must be determined. And in that case, the

1 Supreme Court stated that, "The notion of voluntariness,"
2 as written by Mr. Justice Frankfurter, "is itself an
3 amphibian. It cannot be taken literally to mean a knowing
4 choice. Except where a person is unconscious or drugged
5 or otherwise past capacity for conscious choice, all
6 incriminating statements, even those made under brutal
7 treatment, are voluntary in the sense of representing a
8 choice of alternatives. On the other hand, if
9 voluntariness incorporates notions of but for a cause, the
10 question should be whether the statement would have been
11 made even absent inquiry or other official action. Under
12 such a test, virtually no statement would be voluntary
13 because very few people give incriminating statements in
14 the absence of official action of some kind."

15 As it is stated, "very few statements would
16 be given without some act of intimidation. The question
17 is not whether there was intimidation but rather whether
18 there was intimidation, coercion, deception or anything of
19 that nature so that the confession" -- the test, rather, I
20 should say -- "is the confession the product of an
21 essentially free and unconstrained choice by its maker.
22 If it is, if he is willed to confess, it may be used
23 against him. If it is not, if his will has been overborne
24 and his capacity for self-determination critically
25 impaired, the use of his confession offends due process."

1 And that's at page 226 of the decision.

2 And that language of "his will being
3 overborne" and whether "his capacity for
4 self-determination is critically impaired," that language
5 used first back in 1973 is used in every case since then.
6 So there we have this language or this allegation of the
7 police officer raising his eyebrows. We had the
8 allegation that the statement is made that the girlfriend
9 was threatened in some fashion. We wish to emphasize the
10 defendant never said that he was threatened in any
11 fashion. What he is saying is the statement was made,
12 "Pretty girl, she may fall down," and he says that that
13 allegation in and of itself was enough to overcome his
14 will to the point that he lost his capability to
15 self-determination.

16 Well, Your Honor, his actions afterward, if
17 we look at them quickly, what did he do in this regard?
18 First of all, when he first came into the police office at
19 Richmond, he knew he was going to be interviewed on this
20 case because he had been told by Barker. He read the
21 newspapers. And the first thing he does is he signs the
22 custody sheet saying he doesn't want a lawyer.

23 In addition, once he has done that, he
24 signs five other Miranda forms, Your Honor. And on those
25 Miranda forms, at the bottom of them -- I won't take the

1 time to read it -- but at the bottom of it, it
2 specifically says, "I am giving this statement voluntarily
3 and without intimidation." How can he sign these forms
4 time and time again, as educated as he is, and knowing
5 them, understanding them, and then coming in and trying to
6 say that he did not? Secondly, he's saying this business
7 about his girlfriend was so overpowering. Well, Your
8 Honor, he had the opportunity to call the German Embassy
9 and he did on the very first night. He called twice the
10 next morning and then finally when the German Embassy
11 returned his call, the police officers put the call
12 through.

13 Now, if these police officers, Your Honor,
14 were about such untoward conduct, offensive conduct, would
15 it make sense that they would say, "Here, speak to your
16 Embassy. We'll let you put the call through."? That
17 would make no sense. And secondly, if the defendant
18 really believed what he's alleging before Your Honor,
19 would not that have been the perfect time to have said to
20 the German Embassy, "Get over here. Help me," It's someone
21 on the outside, his very embassy, "I need your help. They
22 are making me sign all kinds of stuff, they're threatening
23 my girlfriend. I don't know what's going to happen."
24 Whether the police officers could have understood it or
25 not, the German Embassy would have been aware of it and an

1 Investigation would have been underway.

2 Instead he admits he never told them
3 anything of that nature. He also admits on the stand he
4 never said to the German Embassy, "Get me a lawyer. These
5 guys here won't get me a lawyer." He never said that, and
6 yet he initially says the reason that he did not call
7 Barker at home that night was he didn't know his home
8 phone number, he wanted the German Embassy to call Barker
9 for him, and yet he says he never asked for the German
10 Embassy to call Barker for him. None of that makes any
11 sense.

12 Secondly, Your Honor, if he really felt
13 that Elizabeth Haysom was in danger, would not that have
14 been the perfect time to communicate to the Embassy, "I
15 not only need help, but Elizabeth Haysom does."? He
16 didn't do that. Also, if he's saying, "I loved Elizabeth
17 so much. I was so concerned about her. I feared for
18 her," does it make sense that at the first opportunity
19 that he gets on the tapes, on page 9, I should say, he
20 says, "I wish to chat about Elizabeth's involvement," and
21 immediately implicates her as setting up an alibi to two
22 counts of murder.

23 Now, it doesn't make sense that somebody is
24 saying, "I love this woman and I wish to protect her," and
25 then turn around almost immediately and implicate her on

1 two counts of first-degree murder. That would be the kind
2 of love and protection, it would seem, that Miss Haysom
3 could have done without. It just makes no sense.

4 He also confirms on the tape that he has
5 never been threatened, coerced, that the statements have
6 not been forced out of him. We would remind the Court
7 respectfully of the tone of the conversations. They are
8 very polite, he is not coerced during the course of them.
9 We would also remind the Court that each time there was
10 any mention of a lawyer, the police officers stopped, as
11 Smith requires, Smith versus Illinois, and that is to
12 clear up that ambiguity, "Are you saying that you want a
13 lawyer now?" He says no. That allows them to proceed
14 because any ambiguity has been clarified.

15 Also, Your Honor, these police officers,
16 when Elizabeth Haysom came in, she made the request on the
17 custody sheet for a solicitor. She was not interviewed
18 that first day. The second day, when she was interviewed,
19 her solicitor was contacted, he was allowed to interview
20 her before the interview and he was allowed, with his
21 assistants, to be present during the course of the entire
22 interview with Miss Haysom. Now, as the officers
23 testified, they had no more interest in gathering
24 information against this defendant than they did Elizabeth
25 Haysom. And if they had some motivation for denying him

1 counsel, why in the world did they provide it to her so
2 readily? There is only one explanation and that is she
3 requested counsel and he did not, just as he indicated on
4 that form.

5 Finally, Your Honor -- Do I have much more
6 time, Your Honor?

7 THE COURT: You've got about three or four
8 minutes.

9 MR. UPDIKE: Three or four minutes and I'll wind
10 up. As the defendant indicated on the stand, and as the
11 custody sheets reflect, the defendant admitted this, he
12 never communicated to any of all those custody officers as
13 they went about, never made any requests to them for
14 counsel. And he's alleging that not only Ken Beever, but
15 the entire police department, I guess, was in on this
16 conspiracy to deny him counsel, but yet readily provide it
17 for Elizabeth Haysom and so readily provide him with
18 access to the German Embassy through means of telephone.

19 Finally, Your Honor, we've had some cases
20 that I'd like to quickly emphasize, and we'll provide the
21 Court with copies of these cases, as to this issue of
22 voluntariness. And these cases, in each of these cases,
23 the Court felt that the will of the individual had not
24 been overborne. First of all, Witt versus Commonwealth.
25 215 Virginia 670, a 1975 case. In that case the defendant

1 alleged that the police officer said -- and the police
2 officers admitted some conversation to this effect -- if
3 the defendant didn't cooperate, his eight month pregnant
4 wife would be locked up, so he confesses.

5 But there we emphasize, Your Honor, even in
6 that case you've got a situation where a man confesses to
7 try to keep his wife or his girlfriend out of trouble.
8 This man, when he got the opportunity, he puts his
9 girlfriend in as a principal or accessory before the fact.
10 Clark versus Commonwealth, 228 VA 201, 1979. There the
11 defendant claimed that he was told if he didn't cooperate
12 he would go the electric chair and his girlfriend would be
13 arrested. In that case, the Supreme Court set forth the
14 specific statement that there is no per se rule in this
15 Commonwealth that if an individual gives a statement with
16 the intent of benefiting a friend or relative, that that
17 in and of itself makes a statement inadmissible. And we
18 emphasize, Your Honor, there is no per se rule, there
19 would have to be an evaluation of the totality of the
20 circumstances.

21 Rogers versus Commonwealth, 227 VA 605, a
22 1984 decision. In that case the defendant alleged he had
23 been exposed to religious entreaties, that he had been
24 shown a photograph of the victim, that they had promised
25 him things, that they had threatened him. He tried to

1 argue an accumulative effect of all of this and the
2 Supreme Court, when applying it to the totality of the
3 circumstances said he voluntarily made a waiver.

4 Three more cases. Collazo versus Estelle,
5 884 F 2nd 1168, a 9th Circuit decision rendered just in
6 1989. In that case the defendant requested counsel and
7 police officers told him, "If you request counsel, things
8 might get worse for you." He later reinitiated contact,
9 he later waived his Miranda warnings, the statement was
10 admissible. There again, he was told things might get
11 worse and nothing like that happened here.

12 United States versus Velasquez, a decision
13 of the Third Circuit Court of Appeals, which was rendered
14 in 1989 as well. In that case the defendant was lied to.
15 The defendant first requested counsel, when the
16 interrogation ended the police officers later came in and
17 told the defendant that, "Well, the co-defendant has
18 implicated you and we set him free." It was an absolute
19 lie. She asked, "Well, what's going to happen to me?"
20 That was deemed to be reinitiating a contact. She gave a
21 statement at that point, that was found to be admissible.

22 United States versus Pelton, a decision of
23 the Fourth Circuit Court of Appeals rendered in 1987. An
24 espionage case in which the FBI agents told the
25

1 defendant, "If you ask for a lawyer, your options are
2 going to be reduced because we can't discuss national
3 security matters in his presence." They went on to
4 suggest to him that the case might not be prosecuted, as
5 the Walker case. They went on to state many of the cases
6 weren't prosecuted and they made promises and allegation
7 of that sort. There again, in Pelton, the Court applied
8 the totality of the circumstances and ruled that the
9 defendant's will had not been overborne and that the proof
10 by a preponderance of the evidence was there.

11 THE COURT: All right. Now, your time is about
12 up now. I'll just let you conclude. And by the way,
13 gentlemen, I won't hold this time against either of you.
14 I realize that both of you are a little bit rushed.
15 Perhaps we should have allowed a little more time, but I'm
16 going to give each side the chance to submit further
17 argument if you desire and written authorities somewhat at
18 your leisure. So I think that will make up for the fact
19 that you have both, all, been a little bit rushed this
20 morning. Go ahead.

21 MR. UPDIKE: In concluding, Your Honor, the
22 whole purpose of my argument is, as it was, such as it
23 was, is to emphasize we don't have a Sixth Amendment
24 situation, we simply have an issue of voluntariness in the
25 Fifth Amendment situation. We've got to have

1 understanding, we've got that, the defendant admits it.
2 It's got to be voluntarily waived. Here he says there was
3 not a voluntary waiver because of this alleged threat
4 against his girlfriend. And that allegation, that threat,
5 has been disputed by three police officers. And our
6 point, Your Honor, is even if it were absolutely true that
7 that statement was made and the eyebrows were raised and
8 the floor was pointed at, whatever, that is nothing of the
9 sort to rise to the level of overcoming his independent
10 will.

11 We have established voluntariness by a
12 preponderance of the evidence and would ask that all
13 statements be admitted.

14 THE COURT: All right. Thank you, sir. You
15 have ten minutes, Mr. Neaton.

16 MR. NEATON: Thank you. Your Honor, the
17 President of the United States uses the phrase, "Read my
18 lips." Read the lips of Jens Soering. "Well, I will not
19 discuss the points that you just mentioned and I won't
20 give physical evidence until I'm interviewed by you with
21 an attorney of the country in which the trial will be
22 held." That's on June 6th. Read the lips of Jens Soering
23 on June 7th. "I would like an attorney in the country in
24 which the charges are going to be filed to be present when
25 I can discuss my specific involvement in the case."

1 Read his lips at 6:00 p.m. on the 5th of
2 June. "I would like an attorney before I discuss the
3 questions that you've put to me regarding my involvement
4 in this case." What more can be clear, Judge, that Jens
5 Soering throughout this interrogation which began at about
6 3:30 on the 5th of June, throughout this interrogation,
7 requested an attorney, requested it clearly, saying that,
8 "If the charges are going to be filed against me in
9 America, then I don't want to talk to you until I get to
10 America and I have an attorney there and then we can sit
11 down and answer questions that my attorney tells me I
12 should."

13 Read the writing of Terry Wright in his
14 notes where he says, in Exhibit E, where he writes those
15 words in his own writing. And compare that against the
16 cooked up summary made on the 9th of June, four days
17 later, when the three officers sit down together and try
18 to remember what happened four days earlier. And don't
19 put in the parts of Wright's notes which help the
20 defendant's claim to counsel and confuse the issue on
21 whether or not my client asked for counsel or not.

22 But my point on that is that once Gardner
23 terminated the interview, that estoppes the Commonwealth
24 from claiming that there was no claim. He cites the
25 Verdugo case. It's not applicable here for two reasons.

1 First, it's a Fourth Amendment case and the U. S. Supreme
2 Court says that the Fourth Amendment is less important
3 than the Fifth Amendment and applies a stricter standard
4 in the Fifth Amendment, in Fifth Amendment cases, because
5 there is a Bright Line Rule here when Miranda is involved
6 and in the Fourth Amendment cases they look to the
7 totality of the circumstances.

8 Moreover, it's not applicable here because
9 regardless of whether the Commonwealth did not have to
10 give Miranda warnings, they did give Miranda warnings and
11 so they are estopped from saying that Verdugo would apply
12 to this case. He said that the defendant must invoke the
13 right to counsel, and he did. He said that Barker is
14 irrelevant; he's not irrelevant in this whole scheme of
15 things because Barker with his counsel of record at a
16 proceeding, the sole purpose of which was to allow my
17 client to be interrogated by Mr. Gardner, and Mr. Beaver,
18 and Mr. Wright on the murder here.

19 He said that the Fifth Amendment doesn't
20 require an attorney in jails and cites the Duckworth case.
21 My client asked for an attorney. And the point is, he
22 said he didn't care when he got the attorney, he'd just
23 keep his mouth shut until he got back to the U. S., if
24 that's where he was going, and talk to Reed and Gardner
25 back here in the presence of an attorney.

1 He cites Connecticut versus Barrett and he
2 says that somehow that applies. But again, it doesn't
3 apply to this case because my client didn't say when he
4 requested counsel that, "I will give you an oral
5 statement, but not give you --" or, "I will give you, not
6 put a statement on tape." He said, "I will not answer any
7 further questions." He cites Schneckoth versus Bustamonte
8 which is a Fourth Amendment case on consent searches. And
9 if you read the Edwards case, Arizona tried that ten years
10 ago and lost in the Supreme Court to the Reagan court when
11 they rejected that argument.

12 He says that the U. K. custody sheet
13 somehow applies in this case, but the problem is that the
14 U. K. custody sheet shows that he just didn't want counsel
15 at 12:50 p.m. Why? Because he had counsel. He didn't
16 need counsel until the interrogation started. He says he
17 signed some Miranda forms. Let me quote to you from the
18 Arizona versus Roberson case, which Mr. Updike cites. It
19 says, "Further to a suspect who has indicated his
20 inability to cope with the pressures of custodial
21 interrogation by requesting counsel, any further
22 interrogation without counsel having been provided will
23 surely exacerbate whatever compulsion to speak the subject
24 may be feeling. Thus, we also disagree with petitioners
25 contention that fresh sets of Miranda warnings will

1 reassure a suspect who has been denied the counsel he has
2 clearly requested, that his rights have remained
3 untrammelled. Especially in a case such as this, in which
4 a period of three days elapsed between the unsatisfied
5 request for counsel and the interrogation on a second
6 offense, there is a serious risk that the mere repetition
7 of Miranda warnings would not overcome the presumption of
8 coercion that is created by a prolonged police custody."
9 That's the Supreme Court of the United States speaking,
10 even with the new Justices Scalia and Kennedy on that
11 Court.

12 The Commonwealth misapplies Smith versus
13 Illinois. He cites it for one reason. If you read Smith
14 versus Illinois, it says once the accused requests
15 counsel, you can't ask him any more questions to clarify a
16 request, like Beever was doing and says, "Well, are you
17 saying you want counsel right now?" And Beever cut him
18 off before he could even answer that question. You heard
19 the tape, Judge. He says why doesn't he ask the Embassy
20 to call Barker on Thursday night. Because he only got the
21 janitor and night watchman, you know. How the heck is
22 this guy going to know what to do?

23 And then he argues that he wishes to chat
24 with Elizabeth Haysom regarding her involvement, and
25 somehow this shows that instead of trying to protect

1 Elizabeth Haysom, he's going to implicate her. If you
2 look at the tape closely, he never says that Elizabeth
3 Haysom set up an alibi. What the tape says is, "Didn't we
4 talk about an alibi off the record?" And then he goes,
5 "Ah -- Yes," and that's the extent of that conversation.
6 Secondly, let me answer that motivation. If he knows that
7 Elizabeth Haysom committed the murder and would face the
8 electric chair and he wants to save her from the electric
9 chair, then his motive to give her an alibi and make her
10 an accessory before the fact would save her from the
11 electric chair, and that would be his motivation to
12 involve her, if he does at all.

13 Why did the U. K. supply Elizabeth Haysom
14 with a solicitor and not Jens Soering? It's because
15 Elizabeth Haysom signed the front form that she wanted a
16 solicitor. Jens Soering says that he didn't need a
17 solicitor at that time, but Wright says, and the police
18 and criminal evidence act in England say, that you can
19 request a solicitor at any time. And it doesn't matter if
20 you signed the front of the custody sheet three hours
21 before saying that, "When I'm booked, I don't need a
22 solicitor," it matters in this case that he wanted a
23 solicitor at 3:30 and he wasn't given one, and at 6:00
24 when he wasn't given one.

25 And why, at 4:30, doesn't Beever tell my

1 client that he has talked to Barker, that Barker has
2 indicated an interest in speaking to Soering, when Wright
3 says that that's the procedure at the Richmond station,
4 that in fact at these times that when a client's attorney
5 contacts the police it's their procedure at Richmond to
6 inform the client that the solicitor is there. Why isn't
7 that done? I say it's not done because they don't want my
8 client to see the solicitor. They view him as the more
9 vulnerable of the two and they are going to go get a
10 confession from him.

11 He argues, "Well, Mr. Neaton, your client's
12 position means that the entire London police department
13 was in on a conspiracy," and I say no, because the custody
14 sheets are filled out in a manner that Beever and Wright
15 tell the custody officer to fill the sheet out. They
16 admit that all of the important entries in this custody
17 sheet are instigated by Beever or by Wright. And the 7:50
18 p.m. entry on the 5th of June, you can't believe Wright's
19 testimony that he didn't instigate it when he's on tape
20 telling Soering that he was there and Soering asked
21 Wright, not the custody officer, if he could speak.

22 I would say, in conclusion, Your Honor, if
23 you read these cases, this to me is an abuse of police
24 officer's discretion. It's one of the worst I've seen in
25 thirteen years of both prosecuting and defending cases. I

1 think that if the Fifth Amendment doesn't apply to this
2 case, if this client can be asked over and over again,
3 after he says, "I don't want to answer. I want a lawyer,"
4 and if he can be threatened and intimidated by Beever,
5 "What do you mean by that? Are you saying you want a
6 lawyer right now? Well, let me tell you, you can't get a
7 lawyer right now," if that isn't a violation of the Fifth
8 Amendment, then nothing will.

9 At the end, when Court is intoned in this
10 Courtroom, Judge, your court officer says, "God save the
11 Commonwealth and this Court." God save the people of this
12 Commonwealth if these confessions are allowed in and this
13 type of police conduct is allowed.

14 THE COURT: All right. Gentlemen, thank you for
15 very high level argument on both sides. The preparation
16 of the law was evident. I will give both sides two weeks
17 from today to reinforce your respective arguments, both as
18 to written authority and argument, if you desire.
19 However, I will not allow any further rebuttal. I think
20 we have to stop at some point. I will rule in writing as
21 soon as I can and will prior to the June 1st trial date.
22 I do want the Court stenographer to type for me the
23 closing arguments which I have heard today so that I will
24 have those arguments in writing before me as well as the
25 notes which I have taken and the record of this case

1 before I rule.

2 As I say, my ruling will be in writing, it
3 will be in the nature of findings of facts and conclusions
4 of law, but it will not be necessary for counsel to come
5 back to Court on this particular issue. Are there any
6 questions, gentlemen, on either side?

7 MR. UPDIKE: The Commonwealth has none.

8 THE COURT: Question, sir?

9 MR. NEATON: Could we submit proposed findings
10 of fact, too?

11 THE COURT: I have no objection to that. That
12 is not normally done, but if you desire to do it, I
13 certainly have no problems with that on either side.

14 MR. NEATON: Thank you.

15 THE COURT: All right. We'll recess until 9:30
16 tomorrow morning.

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18 (Whereupon the proceedings were concluded.)

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I, VIVIAN P. NEAL, Court Reporter, do hereby certify that
the foregoing is a true and accurate transcript of the
proceedings in the aforementioned case, taken on March 5,
1990, to the best of my ability.

Court Reporter