

1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
2 MCLEAN COUNTY, ILLINOIS

3 PEOPLE OF THE)
4 STATE OF ILLINOIS)

5 Plaintiff,)

6 vs.)

7 JAMES SNOW,)

8 Defendant.)

NO. 99 CF 1016

9 HEARING ON MOTION TO DISCHARGE ATTORNEYS

10 AND MOTION TO WITHDRAW

11 REPORT OF PROCEEDINGS of the hearing before the
12 Honorable DONALD D. BERNARDI on the 5th day of April, 2001.

13 APPEARANCES:

14 MR. CHARLES REYNARD,
State's Attorney for McLean County,
15 MS. TEENA GRIFFIN,
First Assistant State's Attorney,
16 for the People of the State of Illinois;

17 MR. G. PATRICK RILEY,
MR. FRANK PICL,
18 Attorneys at Law,
for the Defendant;

19 Defendant also present.
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1 THE COURT: We will go on the record in
2 99 CF 1016, People versus James Snow. The People appear by
3 Mr. Reynard and Miss Griffin, the defendant, Mr. Picl and
4 Mr. Riley. And this is set today for hearing on the
5 defendant's request to have counsel discharged prior to
6 post-trial motions and sentencing, to address a number of
7 issues. And I've tendered copies of Mr. Snow's documents to
8 everyone, and the typed document that's identified
9 defendant's response to defense counsel's motion to withdraw
10 seems to me to be the most appropriate place to start. And
11 it seems also to me that the best I can tell the Jackson
12 case that I think Miss Griffin provided for me last time,
13 131 Illinois Appellate Third 128, discussed the role of
14 defense counsel.

15 It states on the last page of that decision that
16 this is not to say that defense counsel should be able to
17 undertake lengthy legal argument pertaining to the fact that
18 his representation as performed conformed to limits of
19 proper advocacy as delineated by case law. Rather, counsel
20 may simply answer questions and explain the facts and
21 circumstances surrounding matters which are alleged by his
22 client to demonstrate that he was not adequately represented
23 at trial.

24 So I guess that's the procedure I'd like to

1 follow. But I think I also need either clarification from
2 Mr. Snow periodically or a response from the State. You
3 don't have to respond to everything, but if I'm going to go
4 back and forth, so that the State can respond if there is
5 anything they want to bring to the court's attention. But
6 what I would propose to do then is begin with the
7 typewritten material because the materials contained in the
8 initial documents Mr. Snow tendered to the court are general
9 in scope and then the specifics begin with the typed
10 document.

11 And the first one was the question over the amount
12 of time represented to the court in preparation last time
13 when we had the motion to continue. And Mr. Snow is
14 indicating that it was about -- well slightly less than 23
15 hours, as opposed to the estimate of 80, which was given to
16 me prior to the commencement of trial when the motion to
17 continue was made. And attached here somewhere also is a
18 visitors log from March 20 of 2000 through December 5 of
19 2000, actually it's not a log. It's a tally of the dates
20 and the in and out times. So why don't we go first to that.

21 Mr. Riley, do you have any response to those?

22 MR. RILEY: Yeah, I'm assuming that the document
23 presented is the computer printout of the jail log.

24 THE COURT: Well, you know, I don't know that to

1 be honest.

2 MR. RILEY: I don't know it either, but I'm
3 assuming that.

4 THE COURT: How did you -- let me ask Mr. Snow.
5 How did you get the printout?

6 THE DEFENDANT: The inmate services went back and
7 looked in the book. It's not from the computer. It's from
8 the actual book that sits on the desk down there.

9 THE COURT: So you asked for it and they brought
10 this to you?

11 THE DEFENDANT: I asked for it, and they tallied
12 it up.

13 THE COURT: You asked for all your visits with
14 either Mr. Riley or Mr. Picl?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay.

17 THE DEFENDANT: From the book, the log book that
18 they sign in and sign out of.

19 THE COURT: Well, what would be the difference
20 between that and the computer though?

21 THE DEFENDANT: Well, I don't know if they -- if
22 they enter all the times that they're here into the
23 computer.

24 THE COURT: Okay. All right. So that's

the -- that's the reason. But go ahead.

MR. RILEY: I have no reason to argue with that. You know, I signed in myself at times that I came in, the times that I left. The time I originally gave was an approximation. It also included the meetings with Jamie up here, which wouldn't get it up to 20 hours, I concede that.

THE COURT: You mean the meetings in court or after court or something?

MR. RILEY: Yeah. I don't think any further meetings with Mr. Snow would have been productive or would have added anything. Quite frankly, towards the time we were coming closer to trial the meetings were being more nonproductive than they were productive.

THE COURT: Okay. And, Mr. Picl, have you had a chance to look at these ins and out times and everything?

MR. PICL: I've looked at them. In fact, I had them before this document was put together, and I can report to the court because I called -- what's her name, Melinda?

THE COURT: Melinda.

MR. PICL: She checked the computer and the computer does not accurately reflect what the log reflects, and I think the log book is accurate. I visited with Mr. Snow in the jail 15 separate times for a total of about 16 hours. And when the court asked me on the day that we

1 commenced trial to estimate my time because I didn't have
2 time records with me, I said, well, 30 hours maybe.
3 Certainly no more than 50 hours. And quite honestly, that's
4 more time, 15 meetings with Mr. Snow, that's more time
5 than -- more meetings than I've ever had with any other
6 client in my career I think. And when you add to each of
7 those meetings a couple of hours of drive time from where
8 I'm located in Peoria, you know, I wasn't intentionally
9 misrepresenting what I'd done. What I felt that I had -- I
10 agree with Mr. Riley. I had gotten to the point where my
11 meetings with Mr. Snow weren't yielding anything except
12 complaints about the case, complaints about co-counsel,
13 complaints about Sorenson. And it seemed to me I was doing
14 an awful lot of handholding.

15 I was spending more time answering questions from
16 my client about whether I believed him or not and repeated
17 inquiries as to what I thought his chances were. That's a
18 waste of time.

19 Now, I would advise the court, and I think
20 Mr. Riley will back this up, we were in possession of a
21 detailed outline by Mr. Snow of everything that he thought
22 about this case, and I was in possession of that and working
23 from it for the last several months that I prepared for this
24 trial. I mean quite honestly I had -- I felt I had

2 everything in the way of contact with him that I needed to
3 prepare for this trial. And I -- I agree with Mr. Riley. I
4 don't -- spending additional time with Mr. Snow in
5 retrospect I don't think would have served any purpose. I
6 mean he and I, the meetings, I asked him for the witnesses.
7 We went over witness lists. We talked about the witnesses,
8 what we thought they would say, and that was kind of the
9 purpose of meetings.

10 I mean I'm not -- I didn't view my meetings with
11 Mr. Snow simply to develop a friendship or a bond. That
12 wasn't my job here. And I met with him 15 times. And like
13 I say, that's -- that's I think significantly more meetings
14 than I've probably had ever before with a client in any type
15 of case.

16 I combined -- I don't -- I don't sit around and
17 it's not my practice generally to sit around and just chew
18 the fat. I mean when there was something to talk about, we
19 talked about it. And then I'd work from the written
20 materials and the discovery in the case.

21 THE COURT: Do you have any idea how long that
22 information description was that Mr. Snow provided to you
23 about the case?

24 MR. RILEY: He provided that to us early on,
Judge, at my request, I think probably before Mr. Picl was

1 even involved in the case.

2 MR. PICL: Well, that's right. I received it from
3 or a copy of it from Mr. Riley.

4 MR. RILEY: Again, you're asking me to estimate.
5 I'm reluctant to do that given the prior performance. I
6 think it's 12 or 15 pages.

7 THE COURT: Okay.

8 MR. PICL: I think it's longer than that. The one
9 I ended up with was like 50 or 60 pages of handwritten notes
10 by Jamie.

11 MR. RILEY: I'm referring just to the list of
12 potential witnesses that Mr. Snow gave me. I also provided
13 Frank with numerous pages of communication between myself
14 and Jamie that I've not included when I say that 12 or 15
15 pages.

16 THE COURT: Okay. Anything that the People have
17 on that issue, the time issue?

18 MS. GRIFFIN: In terms of eliciting any more
19 information?

20 THE COURT: I mean, is there anything you want to
21 say about that? I'm not requiring you to comment on all
22 these. If there is something -- on some of these witnesses
23 I think you're going to want to comment. On the time thing,
24 I think you don't have to if you don't want to.

1 MS. GRIFFIN: Well, I think our position is just
2 that that's not an issue for an ineffective assistance of
3 counsel claim. Just because there is a disparity and that's
4 really what the allegation here is, is there is a disparity
5 between what counsel estimated and what the records actually
6 show they did. This isn't a claim of ineffective. You've
7 got to show then what's the harm that was done, what's the
8 impact there. And there has been no supporting evidence or
9 documentation about that at all.

10 THE COURT: Okay, yeah, and I -- we can argue the
11 merits of these I guess maybe later, but I guess Mr. Snow
12 ought to understand that this particular issue is in a very,
13 very peculiar context if you think about it. This was not a
14 case where you and your lawyers disagreed. It's one where
15 your lawyers agreed with you to move to continue. So the
16 notion that they would embellish or intentionally inflate
17 the number of hours that they met with you is contrary to
18 what they're seeking, a motion to continue. So it is kind
19 of odd in that sense. I mean --

20 THE DEFENDANT: Can I respond to that?

21 THE COURT: Yeah, sure.

22 THE DEFENDANT: They only agreed to the
23 continuance after I had brought it to their attention or
24 brought it to your attention. The reason, you know, when

Frank says that he came up there and he talked to me for, you know, 15 times and we went over witnesses and this and that, I find that to be false. I mean the reason --

THE COURT: Well, what did you talk about then for 20 hours?

THE DEFENDANT: Well, if you'll notice, you know, some of those visits are 20 minutes, 30 minutes.

THE COURT: My question to you is what did you talk about.

THE DEFENDANT: A lot of the times they were talking about Susan's trial, what was going on with her trial, what was going on with the motion in limine. The first time Pat ever asked me one thing about witnesses for this case was on December 5th.

THE COURT: Why would he need to ask you if you gave him 12 to 15 pages of witnesses?

THE DEFENDANT: I don't know. I'd like to see them. I'd like to know what -- what witnesses Pat and Frank came up with through their reading of the discovery and the listening of the tapes that they were going to call and implement in my defense. I'd really like to know what ones they came up with because I don't think, you know, I -- in -- in my mind they didn't come up with any. They never came -- and that's why I wrote you the letter and

tried to bring it to your attention because I had no clue as of December 5th what they were going to do. I didn't know who they had talked to. I didn't know who they were going to call, and that's why I wrote you the letter and if -- if you check the record, you know, Frank didn't say, well, maybe 30 hours, but no more than 50. He said a flat out 50.

THE COURT: Well he's now said he's wrong.

THE DEFENDANT: That was at your asking him how long have you spent with Mr. Snow. He said 50 hours.

THE COURT: Let's cut to the chase, Mr. Snow. What do you want me to take from the fact that you have now identified an error in the hours?

THE DEFENDANT: Obviously when you asked that question they didn't feel that to tell you the truth, well, Pat's been my attorney for ten months and he spent five hours with me.

THE COURT: They were moving to continue on the basis they weren't prepared and then they raised the number of hours in order to get me to grant the motion to continue. That doesn't make sense.

THE DEFENDANT: No, I think that they -- I think that they raised the amount of hours to make sure that it didn't look like they had done anything wrong. That's what I believe.

1 THE COURT: Okay.

2 THE DEFENDANT: Yeah, they agreed to the
3 continuance.

4 THE COURT: You and I are not going to resolve
5 that today, what was in the minds of Mr. Riley and Mr. Picl,
6 because they've just testified, represented to me contrary
7 to that. So we're not going to be able to resolve that
8 today. All right. Let's -- we need to -- we're going to
9 leave that or we're not going to get through these. So...

10 MS. GRIFFIN: Your Honor, if I could just clarify
11 something that came to mind when he's saying that about a
12 dispute even in the facts that he just represented.

13 THE COURT: On the number of hours?

14 MS. GRIFFIN: No, he just talked about how
15 witnesses and not until December 5th did he even have the
16 first question of what witnesses to call, and I would just
17 point out as the record shows that back in November when we
18 were, I believe it was the 28th, we were set for trial and
19 it got continued until the next date, there was a whole list
20 of witnesses that were added that day at that time and
21 disclosed to the court. So obviously there was a discussion
22 about witnesses before December 5th because they were all
23 brought up to the court's attention and put on a list of
24 witnesses to give the jurors that day.

1 THE COURT: Okay. Well, I'm not -- if -- I'm not
2 worried about matters that are of record I guess, you know.

3 MS. GRIFFIN: All right.

4 THE COURT: I think that what we need to resolve
5 are the matters raised by Mr. Snow that are not more or
6 less.

7 Counselors' negligence is general again, and it
8 seems you get more specific when we get into the next
9 section. I'm going to skip that because there is not a
10 specific issue to address there. And, the first part of
11 counselors' lack of preparation at trial is general as well
12 until we get down to the -- your listing now of the
13 testimony that was not heard. And the very first one is the
14 rebuttal of Mr. Martinez. You indicate Hendricks, Foster,
15 Boyd and Sorenson as potential witnesses that were not heard
16 in order to rebut Martinez. And are you referring in that
17 to the ID, identification?

18 THE DEFENDANT: Yeah, yes, sir.

19 THE COURT: Okay. And Mr. Riley or Mr. Picl,
20 either one, do you want to respond to those particular
21 witnesses?

22 MR. RILEY: I'll respond briefly, Judge. I think
23 with regard to Billy Hendricks, there was a failure to lay a
24 specific foundation for one rebuttal statement that could

1 have been made, but what it actually was I don't remember.
2 With regard to Mark Foster, Jason Boyd, any rebuttal that
3 they might have been able to provide was purely cumulative.
4 I believe that Danny Martinez was --

5 THE COURT: Now who was? Boyd would have been
6 cumulative you think?

7 MR. RILEY: I think so. Danny Martinez's story
8 was adequately presented to the jury, including the fact
9 that he viewed a lineup in which the defendant was a
10 participant and could not identify him. It was clear after
11 his testimony that he did not profess to be able to identify
12 Jamie until he met with Assistant State's Attorney Teena
13 Griffin in preparation for his testimony in Susan Claycomb's
14 trial. I think the jury was well aware of that. I think
15 anything that these other people could have added would
16 simply have been cumulative and I believe counterproductive.

17 THE COURT: Were both Hendricks and Boyd
18 impeachable? Do you remember?

19 MR. REYNARD: Yes.

20 THE COURT: All right. Well, I'll go to the State
21 on that later.

22 Mr. Picl, on Hendricks, Foster, Boyd and Sorenson?

23 MR. RILEY: I don't specifically recall
24 actually -- well, let me just generally refresh or state

1 what I recall of Mr. Martinez. It seems to me that he was
2 pretty badly damaged by the time we were done with his
3 cross-examination, and quite honestly, I don't -- calling
4 Billy Hendricks, with whom I think we called, and I'm not
5 sure he added much to our case in some other respect. I'm
6 not certain that these gentlemen would have done much for
7 us.

8 I mean Martinez, I mean it's been my practice
9 developed over many years when you've done damage to a
10 witness, if you keep pounding away at it, sometimes you end
11 up pounding yourself in the thumb. I mean, how many
12 different ways do you need to damage a witness? I thought
13 Martinez was very badly damaged when he finally left off the
14 stand. This was the guy who couldn't pick Mr. Snow out of a
15 lineup a month and a half after he supposedly stared him
16 right in the face. And then ten years later all of a sudden
17 he is shown a photo of the same lineup and says oh, yeah,
18 that's the guy. I don't -- I quite honestly don't think
19 that they would have added anything. I mean that's kind of
20 my feeling on it.

21 THE COURT: Well, what about Sorenson and the
22 photos?

23 MR. RILEY: Judge, I'm not sure I understand this.
24 The only photographs that Mr. Sorenson took were of the room

1 in which the lineup took place. I -- those photos were
2 taken at the request of Steve Skelton in Susan Claycomb's
3 trial. Mr. Skelton and I both looked at them. We decided
4 we didn't need them based upon the -- he decided that he
5 didn't need them, and I likewise decided that based upon the
6 description that was given of the room in his trial and that
7 same description was given in Jamie's trial.

8 As a matter of fact, I don't think we ever
9 tendered those photographs to the State in discovery, did
10 we?

11 MS. GRIFFIN: (Shakes head.)

12 THE COURT: What about the two referenced in the
13 report?


14 MR. RILEY: I believe those are the two pictures
15 that Mr. Martinez was shown in a photo lineup and said it's
16 one of these two guys, neither of which was Jamie Snow. I
17 believe that from my recollection of numbers. I could be
18 mistaken about the exhibit.

19 THE COURT: And then Gutierrez saw 6345, which is
20 the same one as one of the ones Martinez saw?

21 MR. RILEY: No. ~~✗~~

22 THE DEFENDANT: Yes, that's right.

23 THE COURT: According to the report. What about
24 Foster?

1  MR. RILEY: Again, my impression, Mr. Foster could
2 testify on two occasions that Martinez had told him he
3 couldn't identify him and on a second occasion prior to, or
4 excuse me, prior to the time that Mr. Martinez made the
5 identification that Jamie Snow wasn't the person. I thought
6 that that was brought out clearly by other witnesses, and
7 Mr. Martinez didn't identify him until his meeting with
8 Miss Griffin.

9 THE COURT: And what -- I'm going to ask,
10 Mr. Snow -- is it that Hendricks would have provided in
11 rebuttal to Martinez?

12 THE DEFENDANT: Billy Hendricks used to work with
13 Danny Martinez, and his testimony would have been that and
14 which it was in Susan's trial. I mean Pat sat there and
15 watched during Susan's trial I'm believing, Billy Hendricks
16 testified. I mean Steve Skelton felt that it was important
17 enough to call him. And his testimony would have been that
18 when they worked together that Martinez had told him that I
19 wasn't the person that he'd saw. And for them to come in
20 here now and say, well, I felt that we had damaged him
21 enough, I mean that's -- that's -- easy for them to say.
22 They didn't lay the foundation for them --

23 THE COURT: Let's get into the argument on it.
24 You've identified him as a witness for whom Martinez would

1 have said that you were not the guy.

2 THE DEFENDANT: Right.

3 THE COURT: Okay.

4 THE DEFENDANT: And the same thing with Mark
5 Foster. I mean he told Mark Foster --

6 THE COURT: I've got Foster figured out. I just
7 want to make sure the record reflects your concern about
8 Hendricks.

9 All right. Let's go over to the State. Anything
10 on these?

11 MS. GRIFFIN: Your Honor, as has just been
12 mentioned and counsel was aware, any question about what
13 Billy Hendricks would have said, there is a transcript from
14 his testimony in the Claycomb trial, and I guess I'd ask to
15 mark that and submit that because that is exactly what was
16 out there and what was aware. And the point that I would
17 make is the fact that he was impeached repeatedly during
18 that testimony on both the issue of having that crucial
19 information and his prior convictions.

20 THE COURT: Why don't you make it A so we separate
21 it from those at trial. I think we used all numbers.

22 (State's Exhibit A was marked for

23 identification by the court reporter.)

24 THE COURT: Do you want to go ahead and -- well,

1 are you satisfied if this is made a part of the record that
2 it establishes impeachment and that's what you're offering
3 it for?

4 MS. GRIFFIN: I believe that's sufficient cause I
5 don't think there is any dispute that that's an accurate
6 transcript from the reporter that took it as to that was
7 what was said.

8 THE DEFENDANT: Your Honor, can I respond to that?

9 THE COURT: Whether or not he's impeached,
10 Mr. Snow, I don't want to get into. I don't want to --

11 THE DEFENDANT: That's what I was going to say.
12 For her to assume that the jury would have felt he was
13 impeached is total assumption. She doesn't know what the
14 jury would think as far as his testimony goes whether I was
15 impeached or not.

16 THE COURT: What is your presumption -- hold it.
17 My question is what is your presumption -- hold it, I'm
18 asking you a question -- that they would take positive to
19 you the testimony of Hendricks that it impeached Martinez?
20 I mean you can't stand there and tell me that the opposite
21 is true. You can't criticize Miss Griffin for not being
22 able to figure out what the jury would think in the
23 cross-examination and impeachment of him and then argue to
24 me that, Judge, they would have found the reverse of that.

1 THE DEFENDANT: I'm not saying either way, Your
2 Honor. I'm saying they should have heard it.

3 THE COURT: That's why I'm not listening to those
4 arguments right now is that's the problem with it is trying
5 to speculate what the jury would take from your proposition
6 that it impeaches Martinez and their proposition that the
7 witness would be neutralized because of the impeachment. So
8 we can't resolve that today.

9 THE DEFENDANT: Well, the -- the bottom line is
10 they could have never been called anyway because they didn't
11 lay the foundation to -- the basics to call him if they
12 would have wanted to call him if they wanted to call him.

13 THE COURT: Bottom line, if it would not have
14 affected the verdict, it doesn't make any difference.
15 That's what the law says.

16 THE DEFENDANT: I believe it would have affected
17 the verdict.

18 THE COURT: What I decide will determine whether
19 or not it did for today. I realize you believe that. I
20 don't believe you're doing this just to spend some extra
21 time in the courtroom today. I understand you're serious
22 about this. I've read all this, all right. But I don't
23 want to get into the arguments about -- that's a step beyond
24 what I want to get through today. I want to get through

1 identifying all the errors and getting everybody's response
2 on file. That's why I'm cutting you off.

3 Okay. Bridget Logsdon.

4 MS. GRIFFIN: If I could go back to the same
5 issue, I also have a copy of Mr. Foster's transcript of his
6 testimony of the Claycomb trial of his issues with Danny
7 Martinez. I'd mark that as B.

8 THE COURT: All right. Are you going to make that

9 B?

10 MS. GRIFFIN: Yes.

11 THE COURT: Okay. Is that it then, Miss Griffin?

12 MS. GRIFFIN: Yes.

13 THE COURT: All right. Then let's move to
14 Logsdon, Bridget Logsdon, potential rebuttal by either Kim
15 Morris or Julie Knight.

16 Mr. Riley, first, I guess, anything on that?

17 MR. RILEY: I think the cross exam -- the
18 cross-examination impeached her own testimony and anything
19 else would have been cumulative.

20 THE COURT: Mr. Picl?

21 MR. PICL: I have nothing to add to that. I agree
22 with that.

23 THE COURT: So you're both aware of Kim Morris and
24 Julie Knight? I mean, you know what they would have

1 testified to? I don't want to put words in your mouth. But
2 I mean you're telling me it was purely trial strategy that
3 you didn't call them?

4 MR. RILEY: I'd have to be honest, Judge, I don't
5 recall what Julie Knight would have said. We didn't see any
6 need to any additional cumulative to impeach the witness.

7 THE COURT: Julie Knight testified in Claycomb. I
8 really don't remember if Morris did.

9 MS. GRIFFIN: Julie Knight didn't testify about
10 the issue -- I'm assuming about the issue he's talking
11 about, which is the conversation. Bridget Logsdon testified
12 about the conversation.

13 THE COURT: That's right.

14 MR. PICL: Is this the one in the tavern
15 overhearing the wife?

16 THE COURT: That's right. Now I remember which
17 one you're talking about. Okay. So both Mr. Snow, Morris
18 and Knight were parties who may have overheard that and
19 should have been called to rebut Logsdon?

20 THE DEFENDANT: Of course.

21 THE COURT: Anything further on that from either
22 counsel?

23 MR. PICL: I'm trying to recall, did we -- I don't
24 think we were allowed to call Tammy Snow in surrebuttal. Is

1 that correct?


2 THE COURT: You were not.

3 MR. PICL: I think she was going to -- I mean we
4 were going to offer her testimony to contradict Bridget
5 Logsdon. Logsdon's testimony, as I recall, was overhearing
6 Tammy Snow, Mr. Snow's wife, saying that she thought that
7 Jamie did it. And I mean that's why we were going to offer
8 Tammy Snow. We weren't allowed too.

9 THE COURT: And the other two were present at the
10 time.

11 THE COURT: Okay. Go ahead.

12 MS. GRIFFIN: Just to clarify on that, the reason
13 they didn't call -- get to call her in surrebuttal because
14 she already addressed that and did testify about that
15 because I asked her on cross-examination did you ever make
16 the statement in the presence of Kim -- excuse me -- Bridget
17 Logsdon that Jamie Snow did it, and she denied making that
18 statement. So that was already out there as evidence. So
19 she was allowed to testify about they already presented in
20 evidence then by way of that cross-examination that
21 contradiction to Bridget Logsdon.

22 THE COURT: Mr. Snow's point is this was 
23 potentially two other people that would say the same thing?

24 MS. GRIFFIN: Right.

1 THE COURT: Okay.

2 THE DEFENDANT: I believe they -- Don Sorenson or,
3 yeah, Don Sorenson did talk to Kim Morris, and Kim Morris
4 said no, the conversation never took place. So to not call
5 them, I don't understand where that trial strategy is. I
6 can't figure that out.

7 THE COURT: Okay. Well hold on. We're not going
8 to get into that at this moment.

9 Then rebuttal of Dawn Roberts is next, and
10 that's Dewey Claycomb, William Morris and Tina Hendricks.
11 So, Mr. Picl?

12 MR. RILEY: I don't recall Dawn Roberts, Judge.

13 THE COURT: What would Claycomb, Morris and
14 Hendricks would have offered with respect to Dawn?

15 THE DEFENDANT: Well Dewey Claycomb, Dewey
16 Claycomb's testimony would have been that during 93 and 94 I
17 lived with him and his wife and, you know, that there
18 were -- there weren't any parties going on at his house, and
19 my friends weren't even allowed in his house at the time.
20 So for Dawn Roberts to testify that all these parties were
21 going on over there and McCown and I was toasting to Bill
22 Little, that's -- and that there was composite drawings on
23 Dewey's kitchen table is false, and he would have testified
24 to that.

1 Frank, Don or Pat, none of them even talked to
2 Dewey. I mean how do they know what he's going to testify
3 to if they don't even talk to the man.

4 THE COURT: Okay. So Dewey Claycomb would say
5 that on a particular date in 1993 he knew you were not at a
6 party where Dawn Roberts overheard this.

7 THE DEFENDANT: He would have testified when I
8 lived in Southgate Estates I lived with him and his wife and
9 that there were no parties at his house.

10 THE COURT: How would he know if he wasn't there?

11 THE DEFENDANT: Because he lived there.

12 THE COURT: So, a person who lives at a house has
13 to be present at the house 24 hours a day every day. You're
14 talking about proving a negative. You're talking about by
15 calling Dewey Claycomb that you never had a party there. He
16 can't possibly then on cross acknowledge he was present at
17 his home 24 hours a day every day in the year. So how do
18 you avoid the implication or possibility that the party took
19 place in his absence? I'm just trying to ask that question.

20 THE DEFENDANT: Well, I would have to -- I would
21 have to -- to say that when I lived with him I worked
22 full-time. He worked full-time.

23 THE COURT: Okay. All right. I understand what
24 you're saying. How about Morris and Hendricks, though?

1 THE DEFENDANT: Well, Billy Morris's testimony
2 would have been, you know, if they had a read and studied
3 the discovery they would have found, you know, all through
4 the discovery she was saying that, you know, Billy Morris
5 was there when -- when I was telling people to get the
6 composite drawings, and Billy Morris would have testified he
7 didn't even know Dawn Roberts.

8 THE COURT: This wouldn't necessarily go to the
9 toasts statements. You're talking about the composites.

10 THE DEFENDANT: I'm not sure. I would have to
11 look back through the discovery. I'm not even -- I think
12 she would say he was there then. I'm not sure.

13 THE COURT: What about Tina Hendricks?

14 THE DEFENDANT: Tina Hendricks, in her grand jury
15 testimony, she was, Tina Hendricks was the one that told her
16 that we were toasting to Bill little. She said who is Bill
17 Little, who are they toasting to. She said it's the kid
18 that got killed at the Clark gas station. That's not true,
19 and Tina testified to that.

20 MR. PICL: Judge, it seems to me we presented
21 other witnesses who said they didn't occur. Tammy Snow
22 denied that they occurred. Mark McCown denied that they
23 occurred. We covered those basis with some of our
24 witnesses.

1 THE COURT: Okay. Miss Griffin, anything on that
2 then, on Dawn Roberts?

3 MS. GRIFFIN: I'm really not sure how much you
4 want or what to say at this point except I don't think what
5 he's representing is accurate, and I think the record would
6 show more in terms of what her testimony was because I don't
7 believe she ever testified that Billy Morris was present
8 during these conversations when these occurrences occurred
9 so he couldn't have then been called to testify since she
10 never acknowledged that he was there.

11 THE COURT: Well, what about Hendricks, though?

12 MS. GRIFFIN: There was a side-bar about this
13 issue because there was a dispute about whether she said it
14 was Tina Hendricks that told her or Tammy Snow that told
15 her, and quite honestly I don't remember now which one is
16 actually correct that she testified to at trial. But I
17 think counsel is correct in that they did have other people,
18 including Tammy Snow and Mr. McCown, testifying about these
19 same incidents and denying that these circumstances existed.

20 THE COURT: Was Hendricks, do you remember if
21 Hendricks or Morris or Claycomb were at all impeachable with
22 prior criminal offenses or anything like that? Doesn't ring
23 a bell?

24 MS. GRIFFIN: Well, I know Billy Morris has got

1 priors. I don't remember off the top of my head if they're
2 impeachables.

3 THE COURT: Let me go to Jody Winkler, and that's
4 Mary Oyer, Michael Guerry and Mary Burns. Mr. Snow, maybe
5 you could briefly recite what those people would have
6 offered to rebut Jody Winkler.

7 THE DEFENDANT: I'm really not sure what Mary
8 Burns would have said. I mean that's why I put her on the
9 list. She told me that -- that Jody had told her that he
10 didn't know anything about my case, and some other things
11 that he had said to her. But Pat and Frank or Don never
12 contacted her until the State's Attorney did. Michael
13 Guerry and Mary Oyer were my roommates that lived with me in
14 Florida that, you know, would have testified to, you know,
15 the lack of any conversations that Jody was saying was
16 taking place down there.

17 THE COURT: And are you --

18 THE DEFENDANT: And they never even contacted --

19 THE COURT: Let me ask you this. Are you
20 confident that these are persons who are named by other
21 witnesses as being present during the conversations?

22 THE DEFENDANT: Am I confident -- I don't
23 understand what you're saying.

24 THE COURT: Well, you know, you're talking about

1 now people offering testimony in the negative again, which
2 is really of no value to anyone. And by that I mean Oyer
3 and Guerry saying we never saw these group of people
4 together having a conversation. That's not very helpful
5 testimony. Are you saying that other witnesses have put
6 Oyer and Guerry present when these conversations took place
7 with Jody?

8 THE DEFENDANT: I'm not sure.

9 THE COURT: You're not sure about that?

10 THE DEFENDANT: All I know is that their testimony
11 would have been that they were there when I found out about
12 the grand jury meeting and, you know, my actions and the
13 things that, you know, Jody was testifying was taking place
14 and, you know, their testimony would have been contrary to
15 what he was saying.

16 MR. PICL: Judge, again, I think I'd like to point
17 out the fact that I think we established through perhaps
18 even his own testimony that Mr. Winkler had a bad drug habit
19 throughout this entire period of time, and I think it -- I
20 must recall we had one very what I considered to be a very
21 powerful witness against all of these people, and it was the
22 defendant himself who testified for almost six hours. Quite
23 honestly, how many times do you need to -- to hit a nail on
24 the head to make the point. I don't -- Winkler, as I

1 recall, we had some -- we had witnesses who testified that
2 the guy was half out of his mind on dope most of the
3 time -- I'm kind of paraphrasing -- during the time that he
4 allegedly witnessed whatever he witnessed.

5 And Mary Burns, I wouldn't call Mary Burns, I mean
6 she was a disastrous witness for us. She wasn't our
7 witness. The State called her after Mr. Snow identified her
8 to us and neglected to tell us what her damaging testimony
9 was going to be. I relied upon what he told me when we put
10 her on the witness list upon what her testimony would be.
11 And it dealt with a contradicting in some fashion Ronnie
12 Wright and his testimony. And as the court will recall,
13 Miss Burns testified about the defendant making statements
14 to her about a dream and things coming to him during the
15 Claycomb trial and talk about going backwards two steps. I
16 wouldn't put Mary Burns on the stand for any purpose
17 whatsoever not after having heard what I did.

18 THE COURT: So, in other words, whether she had
19 beneficial information on Jody Winkler, the negatives were
20 not going to outweigh that.

21 MR. PICL: Exactly.

22 THE DEFENDANT: Your Honor, I gave Mary Burns
23 their -- her name to them months before my trial. You know,
24 that's their job to investigate and talk to the witness.

1 They never even talked to her. They had no clue what she
2 could or could not give.

3 THE COURT: They didn't call her.

4 THE DEFENDANT: She was on my list.

5 THE COURT: No, I'm saying they didn't call her.

6 THE DEFENDANT: I understand that. I would have
7 never put her on the list if -- had they of talked to her
8 and she said I'm going to testify to this and that. They
9 had her name months before.

10 THE COURT: You know, Mr. Snow, you have got to
11 take some responsibility for what you do. If you're going
12 to give them a name, you are telling them this is a
13 potential witness in my trial. You can't then turn around
14 today and complain that they didn't get all the bad stuff
15 out and that, therefore, they're incompetent.

16 THE DEFENDANT: They never even talked to her.

17 THE COURT: You have presented to them a witness.
18 Now there has to be some integrity to this process. You
19 can't stand here and tell me on the one hand it's okay for
20 you to give them a witness that you say is a witness to help
21 you in your trial. They put the person on the list. That
22 witness ends up getting called by the State, who damages
23 you, and then you complain of your lawyer to whom you gave
24 the witness that it's their fault because they didn't

1 interview and find out --

2 THE DEFENDANT: They didn't even ask her the
3 questions --

4 THE COURT: It doesn't make any difference. They
5 didn't call the witness. The State did.

6 THE DEFENDANT: I understand that.

7 THE COURT: You, by your actions, alerted the
8 State to her presence.

9 THE DEFENDANT: Is there a reason why they didn't
10 ask her the questions that I put her on the list originally
11 for?

12 THE COURT: It was gone, out of the bag. As soon
13 as you listed them, the State had them. They went ahead and
14 talked to her, got the damaging information.

15 THE DEFENDANT: I understand. I want to know the
16 reason why they didn't ask her the questions.

17 THE COURT: I'm just telling you there is not much
18 you could have done about that once you gave it to Mr. Picl.

19 THE DEFENDANT: I understand that.

20 THE COURT: All right.

21 THE DEFENDANT: Why didn't they ask her the
22 questions? I would have found out to begin with.

23 THE COURT: Then they would have asked the
24 damaging material.

1 THE DEFENDANT: I'm talking about when she was on
2 the stand, why didn't they ask her the questions for which
3 she was put on the list.

4 THE COURT: I remember this.

5 MR. PICL: After her testimony I wouldn't have
6 asked her if that's an American flag.

7 THE COURT: I remember this, and she did not help
8 Mr. Snow. Okay. Let's move on -- I'm sorry, Miss Griffin,
9 did you have anything on this? I didn't go to you on
10 Winkler or --

11 MS. GRIFFIN: Except I think that what you alluded
12 to in your questions to the defendant and that is I don't
13 believe that Jody Winkler ever testified in trial that Mary
14 Oyer or Mike Guerry were present during any of the
15 conversations he was testifying about so, therefore, they
16 could not have been called to impeach on any of those.

17 THE COURT: Okay. Well that was the question I
18 asked, all right.

19 Then Dan Tanasz would have been impeached,
20 Mr. Snow, by McCown, Williams and others that Williams had
21 said were present during the conversation. So is this a
22 Florida conversation?

23 THE DEFENDANT: No, the other two people that Dan
24 Tanasz said was there when this conversation took place.

1 THE COURT: Oh, all right. You just don't
2 remember their names?

3 THE DEFENDANT: Yeah, I remember their names.

4 THE COURT: Who are they?

5 THE DEFENDANT: Jason St. Pierre and Jason
6 Rambeejis (phonetic).

7 THE COURT: Okay. And these people, all of them,
8 would rebut Tanasz's testimony.

9 THE DEFENDANT: He said all four of them was
10 there, and I believe all four of them would have said the
11 conversation never took place.

12 THE COURT: Okay. Mr. Riley or Mr. Picl -- this
13 is a Florida conversation now with Tanasz?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay.

16 MR. RILEY: The last two that Mr. Snow suggests we
17 never talked to to the best of my knowledge. We did hire an
18 investigator in Florida to talk with people, and I don't
19 recall that he ever talked with them. It's my recollection
20 that Mr. McCown did rebut Mr. Tanasz testimony.

21 THE COURT: What about Williams, do you know?

22 MR. RILEY: I don't recall, Judge.

23 THE COURT: Mr. Picl?

24 MR. PICL: The defendant also rebutted this

1 testimony. Tanasz was not a -- as I recall we had testimony
2 from at least a couple of witnesses, including the
3 defendant, saying that this -- this conversations, you know,
4 either didn't happen or, you know, Dan Tanasz did not
5 escape, in my recollection, I haven't poured over my trial
6 notes, but he didn't escape unscathed at all. I don't think
7 any witness in this trial that the State presented did.

8 Again, I, you know, I'm just not as a matter of
9 philosophy, when I feel someone has been damaged and you got
10 an argument to make, that's -- you move on.

11 THE COURT: Okay. Miss Griffin, anything on those
12 witnesses?

13 MS. GRIFFIN: Your Honor, I believe there was
14 testimony from defense witnesses, and my recollection is it
15 was Kevin Schaal specifically, and I'm not sure about Dave
16 Arison, going to contradict these conversations, and, in
17 fact, they did call him and testify about those
18 conversations. And I would point out that Jason St. Pierre
19 was talked to by our investigators, and that information was
20 disclosed in discovery; and contrary to what the defendant
21 says, he did, in fact, verify there were some bits and
22 pieces of some of the same kinds of information Mr. Tanasz
23 provided in terms of comments by this defendant. So, I
24 don't believe he would say what the defendant is

1 representing he would say.

2 THE COURT: So, did he end up being somewhat of
3 assistance to Mr. Snow and damaging as well? Is that what
4 you're saying?

5 MS. GRIFFIN: I'm not sure the full extent. He
6 didn't give the same full extent of conversation, but he did
7 give parts of that, you know, if we had thought it was worth
8 flying him back from Florida we would have put him on to
9 testify. But it wasn't worth flying him back from Florida
10 to testify. As I recall...

11 THE COURT: All right. We'll go into Ronnie
12 Wright, and that's Tony Reynolds and Michael Guerri and Mary
13 Oyer. And, Mr. Snow, they would testify to what with
14 respect to Wright's testimony?

15 THE DEFENDANT: I believe Tony Reynolds would have
16 testified that the conversation that he was having with
17 Ronnie in the county jail as to why he made the statements
18 against me. Mary and Mike would have testified that, you
19 know, they lived with me for a year prior to the grand jury
20 even meeting, and Ronnie Wright had never been to my house
21 and that when Ronnie testified that I had told him that the
22 grand jury was meeting but I wasn't worried about it because
23 I was going to Ohio to be with my girlfriend because her dad
24 lived in Ohio and she was already up there, you know, Mary

1 would have testified that that was false. We went to Ohio
2 together. And, you know, it's not know big huge, you know,
3 none of these witnesses would have been some, you know,
4 great huge witness to just completely, just totally, you
5 know, damage the State's -- the State's case.

6 For Pat and Frank to come in here and say well we
7 felt this and we felt that, I mean, their job isn't to
8 guess. Their job is to put on a defense and call the
9 witnesses. You know, how do they know what the jury is
10 thinking. There is no way they can.

11 MR. PICL: Judge, may I at this time now that he's
12 mentioned that make a point that I think might provide a
13 context, at least it does for me, in examining all of these
14 bits and pieces?

15 THE COURT: Well, I was going to you next, so go
16 ahead.

17 MR. PICL: The defense in this case was an alibi
18 defense. We had two alibi witnesses, Mr. Snow and his wife.
19 We presented both of them. There were no other alibi
20 witnesses out there. We did not have any eyewitnesses to
21 the crime who testified that they saw the crime committed,
22 and it was committed by somebody other than Mr. Snow. Those
23 would have been the cornerstone witnesses of a basic defense
24 here. We presented those.

1 Almost all of these witnesses that we decided not
2 to call for whatever reason simply would go to rebuttal and
3 to contradict and to impeach. All of which, I believe, was
4 done, if not once, then more than once with respect to all
5 of these witnesses. Indeed, a lot of them contradicted each
6 other. And, you know, I -- quite honestly you reach a
7 point of diminishing returns, it's been my experience, in
8 putting on minor players in a -- in a defense. You end up
9 blowing your toes off. You know, I -- I'm -- you detract
10 from the jury's ability to focus on the State's case and the
11 shortcomings with its case.

12 I felt we put on a strong defense here. We didn't
13 miss an alibi witness. And we didn't miss any eyewitnesses
14 to the crime, and that quite honestly some -- Mary Oyer, I
15 wouldn't have called her for any purpose. She was the
16 defendant's girlfriend for crying out loud. He lived with
17 her. What's a jury going to make of that testimony?

18 Married man with kids in the courtroom and here is his
19 girlfriend of many years with whom he's living out of state
20 testifying for him. What's the point of that? We flare the
21 good parts of our defense when we put on evidence that's not
22 very persuasive and has a negative connotation to it.

23 That's been my experience in the 24 years I do this -- I've
24 done it.

1 THE COURT: So Oyer was an --

2 MR. PICL: I wouldn't have put Oyer on for any
3 reason whatsoever.

4 THE COURT: All right. Mr. Riley, anything other
5 on the witnesses on Ronnie Wright?

6 MR. RILEY: Other than to say he was otherwise
7 impeached without them.

8 THE COURT: Miss Griffin.

9 MS. GRIFFIN: That's correct. In fact, Kevin
10 Schaal was specifically called to impeach Ronnie Wright on
11 some of those same issues.

12 THE COURT: Okay. And, Karen Strong would be Paul
13 Hunter and Mark Huffington. Mr. Snow, how would they have
14 rebutted her?

15 THE DEFENDANT: She told both of them that she
16 didn't know anything about the case except for the rumors
17 that she'd heard. Once again, they never even attempted to
18 contact Paul Hunter. Mark Huffington wasn't on the list.
19 He -- he came to me only after he found out that Karen had
20 testified during my trial is when he came forward with his
21 testimony. But Paul Hunter would have testified, I believe,
22 that he had talked to Karen and that Karen had told him that
23 she had just came back from the grand jury and that she
24 didn't know anything about the case other than the rumors

1 that she had heard. And she didn't understand why that they
2 were bugging her or whatever. I'm not sure exactly what he
3 would have said. But it would have been along them lines.

4 THE COURT: Okay. And, Mr. Riley or Mr. Picl, on
5 that?

6 MR. PICL: Karen Strong didn't testify under that
7 name. What was her -- what was her name?

8 MS. GRIFFIN: Well, it's Ballenger Strong.

9 MR. PICL: Just refreshing my recollection, she
10 was McCown's former girlfriend?

11 MR. REYNARD: (Nods.)

12 MR. PICL: Again, I think we impeached her with
13 McCown.

14 THE COURT: Anything --

15 MR. PICL: I mean, like I say, I haven't gone back
16 through my trial notes, but Paul Hunter, I don't remember
17 being on -- I mean I don't remember Paul Hunter. And Mark
18 Huffington, how were we supposed to use him if he pops up
19 after she testifies in the trial?

20 THE COURT: All right. Miss Griffin, anything on
21 those two?

22 MS. GRIFFIN: No, I think the point has been made
23 on Huffington. That's an after the fact witness and
24 there -- I don't think you want me to make the arguments

1 here. I mean what he says Paul Hunter said is not
2 impeachment of what she said. And, in fact, Mark McCown did
3 testify, and I specifically asked him about the
4 conversations that she said she had with him, and he denied
5 having those conversations so that was brought out.

6 THE COURT: Well, okay. I do recall that. All
7 right. Steven Scheel, Mr. Snow, would be Steve Powell. And
8 what would Steve have presented, Steve Powell?

9 THE DEFENDANT: Steve Powell would have testified
10 I've never been to a party with him, ever. That's contrary
11 to what Steven Scheel said.

12 THE COURT: Powell would say that you've never
13 been to a party.

14 THE DEFENDANT: Never been to a party with him.

15 THE COURT: With Powell?

16 THE DEFENDANT: With Powell.

17 THE COURT: Okay. Mr. Riley or Mr. Picl, on that?

18 MR. RILEY: I don't have anything to add.

19 MR. PICL: Scheel was the child molester, wasn't
20 he, convicted child molester, wasn't he?

21 THE COURT: I think he had that conviction. I
22 don't remember if it was a sex assault or sex abuse.

23 MR. PICL: Right. And I quite honestly, if this
24 was the party business, I remember, I don't -- I'm sorry, I

1 don't think that any of that testimony was all that critical
2 to tell you the truth. I don't remember -- I remember
3 Scheel -- I remember arguing that he was completely
4 untrustworthy, but I have to check my notes. I don't think
5 Scheel got away undamaged.

6 And Steve Powell, if I'm not mistaken, isn't he
7 related to Susan?

8 MS. GRIFFIN: Brother.

9 THE DEFENDANT: It was a brother.

10 THE COURT: Brother. Okay. Miss Griffin?

11 MS. GRIFFIN: Your Honor, first of all, Steve
12 Powell has got conviction after conviction to be impeached
13 with and, in fact, is in the Department of Corrections
14 currently and was in the Department of Corrections at the
15 time of this trial. So he would have been brought back from
16 DOC and would have been testifying as a convicted felon and
17 currently sentenced to the Department of Corrections to just
18 say that he had never been at a party with Steve Scheel,
19 which we had another witness who also said this same
20 incident occurred. So I'm not sure if that was all that
21 critical or crucial to be brought out.

22 THE COURT: Somewhere else in here, Mr. Snow, you
23 elaborate more on Palumbo. If you can remember those
24 persons who could rebut him, you can go ahead and just tell

1 me. I know that it's in here because I read it. Who are
2 the persons you wanted to impeach Edward Palumbo?

3 THE DEFENDANT: I don't remember what I put down.

4 THE COURT: All right. Well, you didn't put any
5 on the typewritten, but I know you've got Palumbo
6 referenced --

7 MR. RILEY: It's in the page right next to the
8 description of what a stroke is, Judge.

9 THE COURT: The page next to what now?

10 MR. RILEY: The page right before the medical
11 definition of a stroke, the printed page.

12 Actually, it doesn't identify in there, Mr. Snow,
13 names other than impeachment, and if you were referring to
14 Palumbo's prior statements, do you think or were you --

15 THE DEFENDANT: Probably.

16 THE COURT: I think that's the gist of what I read
17 in -- in your notes and, Mr. Picl or Mr. Riley, do you have
18 anything with respect to Palumbo?

19 MR. PICL: I think Palumbo was impeached not only
20 by his convictions but also by I think it was Tammy and
21 Susan. This was the encounter in the car and the boom,
22 boom, gun goes off, boy dead, the showing of the newspaper
23 and all this stuff. I think we -- I think we impeached him.
24 We certainly -- well, we certainly rebutted what he

1 testified to. We impeached him with his priors.

2 THE COURT: Mr. or Miss Griffin, unless,
3 Mr. Riley, you've got something to add to Palumbo?

4 MR. RILEY: Nothing further than that.

5 THE COURT: Miss Griffin, anything?

6 MS. GRIFFIN: No, I mean I don't think that's
7 specific enough allegation without some specifics there,
8 Judge.

9 THE COURT: All right. Let me go to Hammond.
10 Hammond, I'm reading now from the handwritten portion of
11 Mr. Snow, all of Ed's statements should have been used to
12 impeach him. I asked Pat and Frank to get the security
13 officer to testify about Centralia. So what are you talking
14 about with that, Mr. Snow?

15 THE DEFENDANT: It's not just the security officer
16 from Centralia. I mean the only reason I put Herb Lambert's
17 name on the list was because he was the only guard that I
18 could remember that worked at Centralia. I tried to get him
19 to get the security officer. I mean he's -- the security
20 officer is the one that would testify to the movement of
21 inmates and, you know, the security procedures around
22 keeping one inmate off the record from another inmate. What
23 I was trying to get from him was the fact that, you know,
24 the -- the housing units were run at staggered times to

1 avoid other inmates from one yard going to the other yard.
2 They would -- they would call the south houses five or ten
3 minutes before they would -- they would call the north and
4 the east houses. And so that the south yard would already
5 be out there and the north yard would already be out, and
6 then they would call them in staggered to avoid because they
7 don't let two thousand inmates out and at the same time just
8 to go to whatever yard they want to go.

9 There were precautions and security measures in
10 place that kept inmates from one housing unit from going to
11 the other housing unit. And to have the B F I officer come
12 up and testify, I mean, you know, he testified and the only
13 reason I put him on the list was because he was the only one
14 I could remember. And I would like to say that, you know,
15 during all these supposed visits with my attorneys, I mean,
16 you know, they never once even attempted to get a hold of
17 anybody in Centralia.

18 THE COURT: Okay. For the purpose of showing you
19 couldn't have had contact with Hammond?

20 THE DEFENDANT: Well, not just that, but I mean,
21 you know, Eddie Hammond made the statements in a statement
22 that, you know, me and him and Ed Palumbo were all together
23 here in 91 in the county jail. And I asked them a half a
24 dozen times. That's why Ken Pacha and Jamie Kessinger and

1 Tom Phares, I put them on the list because, you know,
2 they're the only ones I could think of that could testify of
3 the records here in the county jail. We were never
4 together.

5 THE COURT: What would you have offered that for?

6 THE DEFENDANT: Well if they would have asked
7 Eddie Hammond when was it you say here you and Ed Palumbo
8 and Jamie and you were together here in the county jail and
9 you were talking about the murder of Bill Little, where were
10 you at, when he said we were here, there or whatever, then
11 he could have had Tom Phares and someone else come in and
12 testify that we were never together.

13 THE COURT: You've lost me. I don't remember any
14 testimony from Ed Hammond.

15 THE DEFENDANT: That's because they never asked
16 the questions.

17 THE COURT: Hold it. You got to stop the
18 questions and let me finish. You just answered a question
19 didn't answer. I don't remember any testimony that you and
20 Ed Palumbo were in the county jail.

21 THE DEFENDANT: It was in his statement.

22 THE COURT: Regarding your committing the murder?

23 THE DEFENDANT: Yeah.

24 THE COURT: Then why didn't the State offer it?

1 THE DEFENDANT: Well I would imagine they probably
2 checked the records and found out that me and Ed Palumbo and
3 Ed Hammond were never together in the county jail.

4 THE COURT: Let's presume this conversation took
5 place, the State did do that, what did you want the defense
6 to do about that? You didn't want them to call Eddie
7 Hammond to testify that you confessed to a murder to him in
8 county jail so you could then impeach him.

9 THE DEFENDANT: I wanted them to ask him, you say
10 in your statement here that you and Jamie and Ed Palumbo
11 were all together here in the county jail. When was that.
12 And when he says oh, back in 91 we were all together in the
13 rec room, you know.

14 THE COURT: But he didn't -- they didn't offer it.
15 You can't impeach someone unless they've offered it.

16 THE DEFENDANT: Unless they've offered it.

17 THE COURT: Unless somebody has offered.

18 THE DEFENDANT: Exactly.

19 THE COURT: Apparently nobody has offered the
20 testimony. Why do you want the testimony that you
21 supposedly confessed to a murder presented to Ed Palumbo?
22 That's what --

23 THE DEFENDANT: That's not the whole -- that's not
24 how I wanted it presented, Your Honor. He says that we were

1 together in the county jail. They think it's funny. But he
2 says that we were all together in the county jail, and it
3 never happened.

4 THE COURT: Oh, you wanted -- all right. Maybe --

5 THE DEFENDANT: I just wanted him to be able to
6 say to the jury look, he just lied to you.

7 THE COURT: There isn't a judge on the planet who
8 would let you present evidence that in a pretrial statement
9 a witness says he was with you at a particular point in time
10 and you can prove that that's not true, there isn't a judge
11 on the planet who would let you offer that in evidence
12 unless that conversation had some connection to the case,
13 and this conversation did not. You're saying --

14 THE DEFENDANT: It did have it. It did have it.

15 THE COURT: How did it have a connection to the
16 case.

17 THE DEFENDANT: Because Eddie Hammond said in his
18 statements to the detectives that when we were all in the
19 county jail together that Ed Palumbo was telling him about
20 the murder at the Clark gas station. He went on to say that
21 he thought that Ed Palumbo was involved in it. And that
22 I -- I told him to be quiet. I put the kabosh to it or
23 whatever Detective Katz calls it, and I wanted it presented
24 to the jury that there was -- we have never been together in

1 the county jail. It was impossible.

2 THE COURT: They didn't know -- they didn't know
3 that this conversation took place is my point.

4 THE DEFENDANT: Who didn't?

5 THE COURT: The jury. If they didn't know the
6 conversation took place, why do you want to rebut it? You
7 see. They do not know that conversation took place. Nobody
8 presented it.

9 THE DEFENDANT: Exactly.

10 THE COURT: You surely would not want to present
11 that, which would indicate that you were trying to keep
12 Palumbo from talking about a murder that you're charged with
13 committing just to show that that conversation couldn't have
14 taken place.

15 THE DEFENDANT: No, I just wanted to show that he
16 was lying.

17 THE COURT: Okay. That's why you can not present
18 witnesses for that purpose. I guess that's what I was
19 getting to you. The law doesn't permit it. That's why I
20 said no one would allow that.

21 THE DEFENDANT: Along those same lines of what the
22 State presented about the visiting list for Carroll Whitmer,
23 you know, they, it was along -- I may not be stating it
24 exactly the way it should have been.

1 THE COURT: I think you are, but you just don't
2 understand that the rules wouldn't permit that. I mean I
3 think you know what you're talking about. You think that
4 you should be able to present any evidence that would
5 indicate that in a prior statement some witness lied if you
6 can do that. And I'm telling you that that's not what the
7 law permits.

8 THE DEFENDANT: I would also like to point out as
9 far as Eddie Hammond goes, I mean Pat and Frank must have
10 felt that Eddie Hammond was a hugely damaging witness to me.
11 I mean they stopped the trial, the closing arguments, I mean
12 they'd already rested their case, and then decided to put
13 Carroll Landres on as one last witness. So they must have
14 felt that Carroll Landres or Eddie Hammond was, you know,
15 just a hugely, more damaging to my case than Danny Martinez.

16 I mean they must have felt that Carroll Landres
17 was more of a help to my defense in rebutting Eddie Hammond
18 than Mark Foster, Billy Hendricks, Jason Boyd or Don
19 Sorenson with the eyewitness, and I don't understand that.

20 THE COURT: Let's go --

21 MR. PICL: May I make an observation?

22 THE COURT: Sure.

23 MR. PICL: I think what we've just heard from
24 Mr. Snow is in part what, as a practice, I try to avoid in

1 every trial, trying to fine tune the testimony, trying to
2 fine tune the evidence through the hoped for testimony of a
3 jail bird, for crying out loud. I can't control people like
4 Eddie Hammond when I put them on the stand. He wasn't our
5 witness. And to go fishing in the hopes that we can add one
6 more little tap on the nailhead of credibility for a guy who
7 we impeached -- good Lord, he's a career criminal, and I'm
8 sorry, he damaged himself. This is what Mr. Snow throughout
9 this trial and leading up to this trial seemed to be more
10 concerned about these little details that turn into land
11 mind's when you go fishing. They blow up on you. I mean
12 for crying out loud, you can't -- you can't do that.
13 That -- that is not the way to present, in my opinion, based
14 upon 24 years of doing this, a coherent solid defense in a
15 case like this.

16 THE COURT: Well, if you would have called
17 Mr. Hammond to testify to the conversation Mr. Snow just
18 described to me, this motion would have had some merit.
19 That's all I can say.

20 MR. RILEY: Judge, I think also, the provision of
21 Herb Lambert's name shows again the same thing. We listed
22 him as a potential witness, and the State immediately called
23 him to testify that what Mr. Snow was --

24 MR. PICL: Hoping for.

1
2 MR. RILEY: -- hoping to have him testify to was
3 absolutely not true.

4 THE COURT: All right. I guess his point is he
5 you should have kept digging 'til you found somebody.

6 Miss Griffin?

7 MS. GRIFFIN: Well, the point has already been
8 brought out. He's the one that provided the name, and, in
9 fact, that testimony contradicted what he said a DOC person
10 would say. And, in fact, this is a man who is an
11 experienced and is very familiar with Centralia and
12 testified to the opposite of what defendant wanted him to
13 say. So I don't know how you can claim there is any error
14 on that issue.

15 THE COURT: Let me skip the sentencing mention in
16 here because we're not there yet. But what about either
17 Mr. Picl, well, I guess Mr. Picl, any response to the
18 allegation of under the influence at a proceeding?

19 MR. RILEY: Judge, I'm sure Mr. Picl does have a
20 response, but I'd like to speak to it first.

21 THE COURT: Go ahead.

22 MR. RILEY: I was with Picl every day of trial,
23 including lunch, from the beginning day of trial to the end
24 of the trial. I never saw him consume any alcohol. It's
impossible.

1 MR. PICL: And I will say this, I'm rather amused.
2 This is the one that gets tossed up in almost every
3 situation like this, not just to me but anybody. When this
4 trial was over, and this case went to the jury, Mr. Riley
5 and I had dinner, and I had about three or four bottles of
6 beer, no more than that, and I was exhausted. For a place
7 to stay, we went over to Jumer's and rented a room, and when
8 the call came from I don't know whether it was Vince or Bob
9 concerning a question from the jury, which question turned
10 out to be I would like to see the distance of two hundred
11 feet measured to determine how easy it is to identify
12 someone, I said, Pat, why don't you go. We didn't know what
13 the question was. But you go. I've had several beers. I'm
14 tired. I don't want to go back to that courthouse.

15 This was a -- this trial focus wise for me was an
16 ordeal like all trials. This was a long trial. I don't go
17 into courthouses when I've been drinking. I certainly don't
18 go into court. Now the fact of the matter is this. The
19 next day during lunch with Maureen Kevin I had a couple
20 bottles of beer with a pizza as I recall, and that's the
21 extent of the drinking I did during this trial.

22 So quite honestly, I think that I'd be very much
23 interested in knowing who these witnesses are going to be.
24 At no point have I been in this courtroom during this

1 proceeding for any purpose whatsoever having been drinking.
2 And if, in fact, they're talking about my not coming back to
3 receive this question from the jury, which was answered, as
4 I recall, exactly the way it would have been answered if I'd
5 been here, no, you can't go out and pace off two hundred
6 feet or you can't have a tape measure, the trial was over
7 for crying out loud. Quite honestly I don't understand what
8 this is going to.

9 THE COURT: All right. Mr. Snow, is it other than
10 what Mr. Picl just stated? In other words, was this after
11 the trial that you're referring to where he didn't show up?

12 THE DEFENDANT: I believe so.

13 THE COURT: Okay.

14 MR. PICL: And I was right across town. If that
15 had been a big deal, I could have gotten in my car,
16 certainly wasn't intoxicated, and I could have driven across
17 town here.

18 THE COURT: Then, there is no one else, Mr. Snow,
19 we would need to hear from with respect to that. You would
20 acknowledge those are the incidence.

21 THE DEFENDANT: I won't acknowledge that, Your
22 Honor. I'm not really sure, Your Honor.

23 THE COURT: Hold on. Not sure about what?

24 THE DEFENDANT: I'm not sure how much drinking he

1 did.

2 THE COURT: When?

3 THE DEFENDANT: During the trial.

4 MR. PICL: I just told you how much.

5 THE DEFENDANT: I'm sure. It's not like you're
6 going to admit it, I mean, you know.

7 THE COURT: He just did admit it.

8 THE DEFENDANT: It's not like he's going to admit
9 he was drinking during the trial.

10 MR. PICL: Isn't that what we're concerned with?

11 THE COURT: We are. Let him speak. If you're
12 telling me that there are other occasions, you need to tell
13 me now. This is not a hide the ball. You got to tell me
14 now. And tell me when it was.

15 THE DEFENDANT: I don't know for sure.

16 THE COURT: Well, what do you mean you don't know
17 for sure? What does not know for sure mean? He was either
18 impaired or not, and that's the question that you're raising
19 today. You know, I'm telling you right now, I don't
20 remember anyone -- any of the attorneys in this case acting
21 oddly on any particular date. I didn't see Mr. Picl that
22 day because Mr. Riley showed up. He's now acknowledged that
23 occasion. But if you're -- you can't tell me on the one
24 hand that incompetence is based upon consuming alcohol but

1 on the other hand you're not sure. If those are the only
2 occasions, that's fine, then the record will reflect that;
3 and we can make a decision based on it. But if there are
4 others, you need to tell me.

5 THE DEFENDANT: Well, I would have to say I guess
6 those are the only ones that I can --

7 THE COURT: All right.

8 THE DEFENDANT: -- I can say to you right now for
9 sure.

10 THE COURT: And the witnesses that he's -- that
11 you were referencing are the ones that would be able to
12 establish what Mr. Picl just told you, is that fair to say?
13 I mean, they're the same people from the lunch?

14 THE DEFENDANT: I believe so.

15 THE COURT: Okay.

16 MR. PICL: I would like the record to reflect that
17 after that lunch during the second day of deliberations, I
18 was not called upon to do anything except listen to the
19 verdict when it was read, which I think I was able to do
20 several hours after having two bottles of beer.

21 THE COURT: Right, other than coming back, and
22 Mr. Riley came for you for the jury question.

23 MR. PICL: That was the night before.

24 THE COURT: Okay.

1 MR. PICL: I was here the entire second day.

2 THE COURT: All right. If you just hold on a
3 minute, I want to make sure that the written matters don't
4 include anything that we haven't gone over yet.

5 I guess there is the allegation, Mr. Riley, that
6 you actually raised inadvertently about having suffered a
7 stroke and that that has affected your ability. So I'm
8 not --

9 MR. RILEY: I'll be glad to address that.

10 THE COURT: I don't know how Mr. Snow could, but
11 if you would, go I ahead.

12 MR. RILEY: I did suffer a stroke on the early
13 morning hours of January the 1st, 2000. It has affected me
14 to this date in several respects. The only two of which
15 could have had any influence on this trial are, one, that my
16 voice now plays tricks on me from time to time, and,
17 secondly, my handwriting is nowhere near as neat as it used
18 to be. As a matter of fact, I'm probably the only one that
19 could read it now where I used to be able to write rather
20 well.

21 As a matter of fact, the impairment of my voice
22 was one of the reasons that we chose to have Mr. Picl do all
23 the cross-examination, although I would have to say that the
24 primary reason for that was that I had seen Mr. Picl work

1 before. I knew this was a case that demanded strong
2 cross-examination. I quite frankly think he's better at it
3 than I am. So I told Frank, you're going to do it all.
4 There is no other respect in which I am impaired by the
5 stroke which I suffered. It couldn't have influenced this
6 trial in any way.

7 MR. PICL: I dealt with him a long time in the
8 context of this case, and I've known him for years; and I've
9 noticed, I don't think he bowls as well as he used to, but I
10 don't -- I at no point during trial did I notice any sort of
11 impairment.

12 THE COURT: Well, this is a tough one, Mr. Snow,
13 unless you've got anything to add.

14 THE DEFENDANT: Like what? I mean I don't
15 understand what you're saying.

16 THE COURT: This is a tough one because I knew
17 about the stroke when I appointed him. I did what anyone
18 would do I think. I called a couple judges and asked of
19 people I trusted and asked if Pat is okay. I was told he
20 was. That's why I just asked you a moment ago if you have
21 anything else to add to it.

22 THE DEFENDANT: I don't really have anything else
23 to add. I'm kind of curious as to what Pat's role before
24 and during the trial --

1 THE COURT: The hearing today is not whether
2 they're going to get paid X number of dollars and who gets
3 paid what.

4 THE DEFENDANT: I understand that.

5 THE COURT: I'm not trying to be flippant. I'm
6 just pointing out to you we're not today deciding whether it
7 was a good idea for me to appoint Pat or whether it was a
8 good idea for Mr. Picl to do cross.

9 THE DEFENDANT: What I'm saying is, is I can't
10 respond to that unless, you know, I have some idea of what
11 his role was. I mean I'm -- I have no clue as to what his
12 role was before or after the trial.

13 THE COURT: I think you're wrong about that. I
14 don't think you need to know his role in order to resolve
15 that issue. The question that you've raised with respect to
16 the stroke is one that --

17 THE DEFENDANT: Well, I believe it is an
18 injury -- it is a brain injury, and I don't believe that
19 anyone but a doctor can honestly say for sure. I mean you
20 can call a hundred different people, and they said, well,
21 yeah, he's fine, but, you know, you're talking about calling
22 judges and people that you trust. I mean if they were
23 doctors, I would take that as -- as being, you know,
24 accurate. But I mean, I don't believe that anyone but a

1 doctor can make that decision as to whether or not it has
2 impaired him.

3 MR. PICL: When did Mr. Snow first find out about
4 this?

5 THE DEFENDANT: After he'd been appointed.

6 MR. PICL: You mean back in March of 2000.

7 THE DEFENDANT: No, I think it was later than that
8 that I found out.

9 THE COURT: All right. My question was whether or
10 not the stroke demonstrated incompetence to Mr. Snow other
11 than what he has represented. That's I think what my
12 question is. And I -- and I realize your answer is I don't
13 know because you're not a doctor. But that's -- that's the
14 situation we're all in. Mr. Riley didn't lose his right to
15 practice law that day that happened. He gets to practice as
16 long as what he does in the courtroom is deemed by his
17 clients and the judges he practices with to be competent.
18 And that's the way law is done. And we decide that by what
19 we're doing today, by hearings and trials and things so...

20 All right. I do not -- I've waded through now the
21 rest of this, Mr. Snow, and it seems to me unless you can
22 think of an additional issue, your typewritten materials and
23 the other matters we've just raised, at least discussed all
24 the of the issues that you had in mind. Is that not

1 correct?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Wait a minute. Let me make
4 sure.

5  THE DEFENDANT: I believe so.

6 THE COURT: I may have found one more. Just one
7 second. Okay. There is one more. There is a reference,
8 and it's in your handwritten materials, the top of which
9 says rebuttal of Kevin Schaal to rebuttal William Moffitt.
10 We really haven't discussed him, and it indicates your
11 requests of counsel to contact a guard from Joliet to rebut
12 the testimony about the use of phones and mail rules.

13 THE DEFENDANT: Yeah, that's right.

14 THE COURT: Okay. And the three free write outs
15 you mention as well and a request for a mail log.

16 Okay. Why don't you -- anything on that,
17 Mr. Riley or Mr. Picl?

18 MR. RILEY: Other than I think with regard to
19 material about Joliet, the defendant himself testified as to
20 what the procedure was there. I'm not sure if there was
21 anything else or not.

22 THE COURT: I guess I do remember that. Anything
23 else on that, Mr. Picl?

24 MR. PICL: Well, and as I recall we had lined up I

1 think through Sorenson's, a fellow -- his son, we'd actually
2 contacted Joliet and during the trial we were attempting to
3 procure a 1994 or a set of guidelines for the place, and I
4 don't recall exactly what happened; but I think it was
5 determined ultimately that there wasn't anybody who could
6 come down who was an official who could testify about these
7 things. And Pat's right, the defendant, Mr. Snow himself,
8 testified and I thought quite ably as to what the procedures
9 were.

10 And I'll point out something else. Mr. Moffitt,
11 as I recall, Mr. Moffitt was the guy who claims to have been
12 bunked with Mr. Snow one night in which period of -- short
13 period of time Mr. Snow spilled all of his guts about having
14 committed this crime, and Mr. Moffitt I think again crossed
15 paths with him somewhere else, didn't tell anybody about any
16 of this for a long time. And I think he was impeached in a
17 number of different ways, certainly impeached by his
18 convictions.

19 THE COURT: He had several as I recall.

20 Miss Griffin, anything else on Moffitt?

21 MS. GRIFFIN: Your Honor, in addition to the
22 defendant himself testifying about the procedures at Joliet.
23 They had Mark McCown testify about the procedures.

24 MR. PICL: That's what I thought.

1 MS. GRIFFIN: And had, in fact, they attempted to
2 put on a official to testify about that, I would have -- the
3 State would have objected as being a collateral issue that
4 is not subject to having extrinsic evidence brought up about
5 that specific issue especially when the point to be made,
6 the whole reason that came in, was because defense counsel
7 was trying to say why didn't you -- you didn't report this
8 right away after these conversations happened and he
9 acknowledged he didn't report it right away. And it wasn't
10 'til a couple years later, I mean so that was all
11 acknowledged.

12 THE COURT: He kind of said he didn't have any
13 ability to report it. I think that's what this goes to,
14 didn't he?


15 MS. GRIFFIN: That's when defense counsel said
16 didn't you have access to the phone, didn't you have ability
17 to write.


18 MR. PICL: Talked to guards as I recall.

19 MS. GRIFFIN: I mean so the point to be made was
20 he didn't report it, and that was already made.

21 THE COURT: I think that arguably falls into the
22 definition of collateral. And I understand, Mr. Snow
23 doesn't understand that nor would he probably agree with
24 that. But that is likely where that would head. But at

1 least I understand the point he is making with Moffitt and
2 why he wanted the Joliet people.

3  There is also, Mr. Snow, a couple of others here,
4 rebuttal impeachment or both Russell Thomas and Mike
5 Bernardini with grand jury testimony of Thomas. Now what
6 were you referring to there?

7  THE DEFENDANT: Rusty Thomas testified in April of
8 91 that the conversations that I had with him were in April
9 of -- April 23rd or I believe it was the 23rd when they were
10 bringing me back or when he was interviewing me with Mike
11 Bernardini that -- that I had made the conversation or the
12 admissions of that I needed -- I needed him to give me some
13 assurances and that I wasn't the one who actually had the
14 gun and all that. He testified to the grand jury in 91 that
15 I made those comments about the Freedom robbery. And
16 I'm -- you know, he came in here ten years later and said
17 that I also made the same admissions about the Clark. So
18 he's -- you know, he was testifying in 91 that I made the
19 same exact admissions. If you were to read his grand jury
20 testimony, you would understand what I'm talking about.

21 THE COURT: Okay. But this is the conversation
22 after you're back from Missouri.

23 THE DEFENDANT: Right, and in the interview that
24 they're saying that I was talking about the Clark.

1 THE COURT: Okay.

2 THE DEFENDANT: He testified shortly after that to
3 the grand jury, well did Jamie say anything to you. Well he
4 didn't deny it. He said he wanted some assurances that he
5 wasn't that -- the one that had the gun. And he didn't
6 understand how he could be charged with the crime because he
7 wasn't the one who actually had the gun.

8 THE COURT: So let me understand it. We had both
9 Thomas and Bernardini testify to this statement. What
10 you're saying is that Bernardini got it right but Thomas
11 testified before the grand jury that it was the same
12 statements were made regarding Freedom not Clark?

13 THE DEFENDANT: Right.

14 THE COURT: Okay.

15 THE DEFENDANT: That's what I believe.

16 THE COURT: All right. Mr. Picl, Mr. Riley?

17 MR. PICL: Judge, as I recall the evidence on that
18 point, it almost seemed to me as if we were getting to a
19 point where I felt like I was standing on a shrinking piece
20 of ice in the middle of the ocean. I got those guys to
21 admit that they left out of this very short, as I recall it
22 was a half page report, really any significant mention of
23 these testified to admissions and observations of demeanor
24 by the defendant, et cetera, et cetera, during this

1 interview and this trip back. That armed me with what I
2 really wanted here. And I wasn't going to get
3 anywhere -- anywhere further I felt with questioning these
4 professional police officers about something they weren't
5 going to admit to. And I -- you know, the last thing I
6 wanted to do was get -- develop some sort of extended
7 colloquy about well the defendant asking about or admitting
8 involvement in other armed robberies. What -- I mean
9 that -- that doesn't serve any purpose.

10 I mean, it's a counterbalance; whatever benefit
11 could have been obtained, it was my opinion it was
12 counterbalanced by the damage that we were doing to
13 ourselves by continuing to allow them to talk about Freedom
14 Oil, which we were trying to stay away from at all costs.

15 THE COURT: I don't think that was mentioned.

16 MR. PICL: Or other robberies.

17 THE COURT: Another matter or something.

18 THE DEFENDANT: The other crime.

19 THE COURT: Other crime or something, all right.

20 Anything to add to that, Mr. Riley?

21 MR. RILEY: No.

22 THE COURT: Miss Griffin?

23 MS. GRIFFIN: Your Honor, I would just point out
24 and I think this supports what Mr. Picl just said is that,

1 in fact, this is a situation, as I recall it, where they
2 did, in fact, subpoena Mister -- Officer Thomas back for
3 that purpose. He did, in fact, come back here and show up
4 at the appointed time they told him to to offer potential
5 evidence. They had a conversation with him outside the
6 courtroom. And then decided not to use him, and he was
7 released from the subpoena at that time. So I think that
8 supports what Mr. Picl is saying, and, in fact, after
9 talking with him and already having the benefit of knowing
10 how that would add to what his cross-examination was, he
11 made a tactical decision not to call him. But I -- I just
12 think it's important to point out it's not like they just
13 left him out there and didn't do it. They, in fact, had
14 subpoenaed him in advance of trial for that issue and, in
15 fact, spoke with him outside the courtroom and then released
16 him from that subpoena.

17 THE COURT: How do you get around the fact that to
18 do what Mr. Snow suggests, though, you would have had to
19 identify Freedom robbery? I mean you couldn't have even
20 just said another robbery, could you? Because I mean then
21 how do you show the confusion? You have to name Freedom and
22 establish that Thomas mistakenly testified to the grand jury
23 or intentionally or whatever you want to call it, lied to
24 the grand jury, about Mr. Snow's statements on the Freedom

1 Oil robbery, which actually then implicates him in Freedom
2 in order to show that he's not believable about the
3 statements that you say implicate him on Clark. P

4 Again, I mean, if the defense would have pulled
5 that, I'd start to worry also. I mean that's almost
6 unimaginable to me that the defense would ever have tried
7 that. And you did talk to Thomas. Is that right, Mr. Picl?

8 MR. PICL: He showed up. He was very pleasant.
9 He was in uniform, as I recall, and we sent him away after
10 talking to him. I mean there comes a point after making a
11 decision about what is the value of what might happen if
12 everything goes right against the downside of well, this is
13 basically a State witness. Who knows what's going to come
14 out? And at that point in trial it just wasn't going to add
15 anything to our presentation.

16 THE COURT: All right. Well at least I understand
17 what Mr. Snow is raising.

18 Mr. Snow, there is also another reference here to
19 impeaching Mary Burns by Chris Salmon, although I can't tell
20 from your comments what Chris Salmon would say. Is it
21 Salmon?

22 THE DEFENDANT: Salmon.

23 THE COURT: What would Chris Salmon say?

24 THE DEFENDANT: Well, according to him I talked to

1 him less than a week ago, and his testimony would have been
2 that Mary Burns never told him that. If she would have told
3 him that I had made that admission to her, her testimony was
4 that she told Chris about this conversation; and his
5 testimony would have been had that conversation taken place,
6 had she have told him that, he would have written a report,
7 which he didn't write.

8 THE COURT: What is his position?

9 THE DEFENDANT: He's a correctional officer here
10 in the county jail. And according to him, I mean I talked
11 to him within the last week, and he said he was surprised
12 that he wasn't called.

13 THE COURT: Okay. Anything on that?

14 THE DEFENDANT: He said had the conversation taken
15 place between him and her, his exact words to me within the
16 last week was I would have had to have wrote a report.

17 THE COURT: All right. Anything on that,
18 Mr. Picl, Mr. Riley?

19 MR. PICL: No, I recall that coming up right at
20 the end of the trial I think when the State presented her,
21 and I don't remember right now off the top of my head what
22 we made of it. I didn't contact Officer Salmon.

23 THE COURT: Why would one -- Mary Burns didn't do
24 a report, did she?

1 THE DEFENDANT: No.

2 THE COURT: Miss Griffin is shaking her head no.
3 So we've got -- we've got one officer mentioning this
4 conversation to another officer. Mary Burns was impeached
5 for not having made a report. And you're saying this other
6 officer would say that if she would have told me this, he
7 would have made a report.

8 THE DEFENDANT: Right.

9 THE COURT: To which I would respond why would one
10 officer make a report of what another officer said?
11 Wouldn't that be the obligation of the officer that heard it
12 from you?

13 THE DEFENDANT: Not necessarily, I don't think so.

14 THE COURT: Well, I do. I'm just telling you I
15 do.

16 THE DEFENDANT: I'm positive that that's not the
17 way it's always done.

18 THE COURT: It would be really a strange policy
19 within any jail that jailers would make reports based upon
20 what other officers tell them someone said when it's the
21 officer initially who heard that that is obligated to make
22 that report.

23 THE DEFENDANT: I agree.

24 THE COURT: And Burns was impeached with that

1 because I recall she had no report.

2 THE DEFENDANT: I agree with you, but she did make
3 the statement.

4 THE COURT: And I understand now why --

5 THE DEFENDANT: She told somebody else.

6 THE COURT: I got you. And I understand why you
7 would have wanted Salmon for that purpose.

8 MR. PICL: Again, I would note that Mr. Snow
9 himself during his lengthy testimony and detailed testimony,
10 which I led him through, by the way, I'd like the record to
11 again reflect, I think he directly addressed that and simply
12 denied making the statement to her.

13 THE DEFENDANT: I'd also like to point out, Your
14 Honor, that Officer Salmon could have testified to
15 the -- her reputation for truthfulness and honesty. I mean
16 that was one tactic that Frank used with every one of his or
17 not every one of them but quite a few of them, what is their
18 reputation for truthfulness and honesty; and I think they
19 would have been surprised had they have asked him those
20 questions.

21 MR. PICL: At that point in the trial I wasn't
22 going to go fishing. I mean we'd done enough -- we were
23 armed with what I thought was good ammunition for closing
24 argument.

1 THE COURT: Mary Burns was right at the end, was
2 she not?

3 MS. GRIFFIN: Of the State.

4 THE COURT: Yeah, of the State.

5 Impeachment of Bruce Roland is the last witness I
6 can find here, Mr. Snow.

7 THE DEFENDANT: Well, the impeachment of Bruce
8 Roland was simply that when he made his statement he
9 originally said that he was transferred to Logan in April,
10 which is right. I mean his memory was good about him being
11 transferred to Logan in April, and that it was a couple
12 months later that he seen me come through Logan. Well,
13 that's not true. I wasn't even in the Department of
14 Corrections and eight months later wasn't even in the
15 Department of Corrections. It wasn't until December. And
16 by the time he testified in Susan's trial, now all of a
17 sudden he miraculously knew that it was December. And I
18 believe he should have been impeached, and I think it should
19 have been asked of him who told him that it was December.

20 Obviously it wasn't him. He didn't know that
21 himself. I mean, yeah, I was in Logan for one week in
22 December. But his -- his original statement was that he
23 had -- he was transferred there in April and then it was
24 just a couple months later that he seen me come through

1 there. No, it wasn't a couple months later. It was almost
2 nine months later, and he just miraculously from the time
3 that he gave his original statement to the detectives
4 remembered that it was December, the exact month.

5 And I thought it was, you know, it should have
6 been attempted to find out who was telling him that. I mean
7 cause it's obvious if you study the discovery and the
8 different statements that people make that, you know, they
9 were being supplied information. And who was supplying it?

10 THE COURT: Mr. Picl, Mr. Riley?

11 MR. PICL: Mr. Roland I think was impeached by his
12 multiple priors and also contradicted by the and rebutted by
13 the defendant's testimony.

14 THE COURT: Miss Griffin?

15 MS. GRIFFIN: It's such a minor point, he
16 was -- it would have been duplicative to or cumulative to go
17 on and hammer on this point, and I guess I'm not seeing,
18 especially when he didn't testify -- I guess --

19 THE COURT: Well, I want to make sure I understand
20 it, Mr. Snow, but you're saying Bruce Roland testified he
21 was in April for a few months in his -- in an original
22 statement and then he testified at trial it was December.
23 And you want him impeached by the fact that he had
24 previously said it was April only a few months, when

1 everybody, including yourself, and I presume the records at
2 that penitentiary would establish it was December?

3 THE DEFENDANT: Yeah.

4 THE COURT: I don't even think that's impeaching,
5 because it establishes no intent to deceive on the part of
6 the witness unless you believe, which is, as you've just
7 stated a moment ago, that someone else put him up to the
8 December date, and that sadly today is pure speculation.

9 THE DEFENDANT: True.

10 THE COURT: Okay. All right. I think that's it
11 with witnesses and if you'll just give me a minute.

12 Okay. Is there anything further? I'm telling
13 you, Mr. Snow, I think I've got through all of the witnesses
14 and the allegations separated from argument, of course, that
15 you've presented. Do you have anything further?

16 THE DEFENDANT: No, I don't think so. I mean
17 I -- I think it's real easy for Pat and Frank to come in
18 here after trial and say well I believed that impeached them
19 and I believe that they were this and that. I don't believe
20 that's their job. Their job is to put on a defense. It's
21 not to say, well, I think, I thought. I mean their job, I
22 mean they put the people on the list. I have mean that's
23 the biggest --

24 THE COURT: You're drifting into argument. But

1 you need to understand and I hope you can understand
2 that -- this. That it is not their job to call every
3 witness you tell them to call, otherwise we don't need
4 lawyers. And it's not their job to present every theory,
5 even one they know is not recognized in the law. You're
6 going to have to just live with that understanding.

7 Now I'm going to have argument here in a moment
8 and try to sort out on the standards that I understand to be
9 exist whether or not the only issue today is whether you get
10 another lawyer with respect to the post-trial motion, okay?
11 That's really all we're doing yet today. And I think what I
12 would like, can we take just five minutes and then just do
13 argument?

14 THE COURT REPORTER: Sure.

15 THE COURT: Let's take a five minute recess. We
16 haven't stopped since we started. I think what we've got to
17 do is argument. I think I'll tell you frankly I think
18 Mr. Snow has to explain in a little more detail anything
19 else he wants to tell me regarding his arguments. You don't
20 need to repeat everything you've got in here because I've
21 read it. But I'll then hear from defense counsel and the
22 State on the narrow issue of whether or not new counsel is
23 appointed, and I probably will then sadly have to read
24 through these and give you an order tomorrow, which I will

1 FAX to everybody and get hand delivered to Mr. Snow. I'm
2 sorry about that, but I do want to read this before I make a
3 decision. And I want to have the benefit of your argument
4 before I do that.

5 So let's just take five minutes, and I'll do it.

6 (Recess.)

7 THE COURT: We'll go back on the record in
8 99 CF 1016, parties appear same as before. I think this is
9 the procedure I'd like to follow. I'd like to hear any
10 comments from Mr. Picl or Mr. Riley, Miss Griffin, and I'm
11 going to let Mr. Snow add anything or rebut anything at the
12 end because I don't think it makes -- we're going to be
13 arguing law pretty much I think now, Mr. Snow. I think it
14 makes more sense for the attorneys to go first, and I don't,
15 as I indicated, don't want to go over all of your arguments
16 in written form. But I want you to have the opportunity to
17 comment on what they may say. So I will consider the
18 written arguments as well.

19 So Mr. Picl, Mr. Riley, anything you want to say
20 with respect to the law that relates to the issue Mr. Snow
21 has raised now that we've been through all the witnesses.

22 MR. PICL: Judge, we've agreed I think that
23 Mr. Riley will speak.

24 THE COURT: All right. Mr. Riley?

1 MR. RILEY: Judge, I think the law is as in the
2 cases that were previously supplied to the court by the
3 State at the last hearing when we were here. I want to
4 address the factual basis just a little bit.

5 With regard to the misrepresentation of time to
6 the court, you know, I'm quite embarrassed about that by
7 myself. That was an honest representation when it was made,
8 and when you consider the fact that it -- well is driving
9 time to come see him and there were other times that we saw
10 him, I think that that's understandable.

11 Notwithstanding that fact, I don't think any more
12 time with Mr. Snow would have been particularly beneficial,
13 and he hasn't even alleged what could have been gained by
14 more time with him.

15 So far as the rebuttal complaints he makes, I
16 think those have all been covered individually.

17 I do want to make one comment, Judge. We've been
18 here today on Mr. Snow's motion to have us substituted. The
19 court will please remember that Mr. Picl and I also filed a
20 similar motion to withdraw as counsel. Regardless of how
21 this court rules with regard to our effectiveness, I would
22 be happy to argue the post-trial motion, but I think there
23 has to be some sort of rapport and team work to present an
24 adequate sentencing hearing, particularly on a case as

1 serious as this. And I would urge the court to appoint
2 counsel to represent him so far as sentencing is concerned
3 regardless of the outcome of this case.

4 THE COURT: Okay. Miss Griffin?

5 MS. GRIFFIN: Your Honor, the standard that this
6 court has to follow based on the cases I previously provided
7 to the court, which included the Nitz case, the Jackson
8 case, the Pope case and several others, is that if this
9 court, after conducting the inquiry that we've just been
10 through here, finds that the claims and allegations lack
11 merit or pertain to matters of trial strategy, then no new
12 counsel need be appointed. And it's only if the allegations
13 show a possible neglect should new counsel be appointed.
14 And I submit that our position is that these allegations
15 that the defendant has put forth in this case do not show
16 any possible neglect on the part of defense counsel.

17 THE COURT: Well, what does neglect mean do you
18 think?

19 MS. GRIFFIN: I think you have to read those two
20 statements in conjunction with each other. I think then the
21 court has to find there is some kind of merit. I read that
22 whole sentence together. If you find that the claim lacks
23 merit or pertains to matters and trial strategy then new
24 counsel will be appointed -- need not be appointed. So I

1 think that there has to be, in fact, some merit to the
2 allegations which would suggest then that there has been
3 neglect.

4 THE COURT: Okay. Now, that's why I ask the
5 question. I'm reading these cases a little differently than
6 you are. What is neglect? Does he get a new lawyer because
7 they neglected to interview one of these witnesses we talked
8 about earlier, for example? That's neglect. I mean I don't
9 think that's the standard. I see it differently here.
10 That's why I'm asking you this question. I mean neglect is
11 a legal term that goes back to cases 40, 50 years ago that
12 has a completely different meaning than not calling a
13 witness, would you not agree?

14 MS. GRIFFIN: I would agree.

15 THE COURT: Go ahead. I cut you off, go ahead.

16 MS. GRIFFIN: That's okay.

17 My position is that his claims essentially boil
18 down to two things, one of which I suggest the primary thing
19 it boils down to is one of trial tactics and strategies. I
20 think that's abundantly clear from the allegations and then
21 the responses and the information that's come forward today
22 is that he disagrees with his defense attorneys' trial
23 tactics and strategies in this case. And the case law is
24 very clear that if we're dealing with whether or not counsel

1 failed to call witnesses or didn't cross-examine to the
2 extent that they wanted or didn't impeach the way -- fully
3 as could have been done, the cases all indicate that those
4 are matters of trial strategy and defense tactics and are
5 generally not subject to requiring new attorneys or the
6 ineffective assistance until you get into the whole issue of
7 the Strickland test.

8 But the second thing is the -- the other thing
9 that his allegations boil down to are inadmissible evidence.
10 He has, as we've just pointed out, thinks they should have
11 brought in people or should have done things that, in fact,
12 the legal system says you can't do. So despite the fact
13 that he would like to present this evidence, legally you
14 couldn't have done it even if you wanted to on many of these
15 same issues. So, therefore, you can't be ineffective for
16 not doing something that the law says you can't do.

17 Just going through some examples of that with all
18 the ones that the court just went through, the issue on the
19 amount of time the defendant spent with defense counsel,
20 spent with the defendant, I'm not aware of any standard that
21 is out there that says, you know, 20 hours isn't enough
22 between two counsel to have spent time with this defendant.
23 In fact, one of these cases I read had an issue where the
24 defendant was claiming ineffective assistance of counsel and

1 actually claimed his counsel had only come to see him one
2 time prior to trial, one time. And the court still didn't
3 find that that, there wasn't any per se finding then that
4 that was sufficient lack of time to presume lack of
5 preparedness and, therefore, ineffective assistance of
6 counsel.

7 There just isn't a standard like that that says
8 you got to have a certain amount of time, certain number of
9 hours that you spend. I mean the fact that they are
10 estimates that they made in court without benefit of looking
11 at their records was different from what the reality is. I
12 say so what, so what. That does not go to ineffective
13 assistance of counsel, especially when he didn't submit any
14 allegations to say what would have been gained, what would
15 have been different if they'd spent more time.

16 THE COURT: Do you think we get to that issue,
17 though? That's why I interrupted you earlier? I mean, do
18 we get to Strickland in an analysis at this stage? We
19 haven't heard post-trial motions.

20 MS. GRIFFIN: That's why it's hard to argue here
21 because I'm trying to argue in alternatives because on the
22 one hand I say it's not even sufficient to raise any merit
23 to the allegations, but it's hard not to go to Strickland to
24 look in the long run.

THE COURT: Do you think it's improper to look at the Strickland standards at this stage?

MS. GRIFFIN: I'm not sure. Actually there was a recent 2000 decision by the Illinois Supreme Court. It was in November of 2000. I forgot what case it is. I think it's the Chapman case. And that was one of the arguments the defendant was making because the court did do this inquiry on a pro se motion for ineffective assistance and made reference to Strickland. One of the things that the defendant argued on appeal was that they were using improper standard. And the court, the Supreme Court, didn't really say whether that was proper or not except in a comment where they said despite the fact that the court looked or made reference to the Strickland test that really isn't important here because there wasn't any merit to this claim. So I'm not sure whether by that comment --

THE COURT: Doesn't it seem completely illogical that there would be two standards? Why would we have a lower standard to discharge counsel, appoint new counsel to determine whether or not counsel was ineffective when the only purpose for that would be to eventually apply Strickland, would it not? I mean we surely do not have a lower standard of incompetence prior to sentencing than we do after; and after sentencing we've got Strickland, which

1 is admittedly a tough standard for the defendant to get
2 over. But I mean that's what you found curious to these
3 cases. They seem to look at the neglectful language,
4 whatever that's supposed to mean, prior to trial; and then,
5 of course, ineffective assistance at trial is Strickland,
6 and all the cases interpreting that.

7 MS. GRIFFIN: In actuality when you look at the
8 fact of what they do to find out whether there is merit to
9 the claim they're really doing the Strickland test.

10 THE COURT: It's really Strickland, isn't it? Do
11 either of you disagree that's where you end up at,
12 Strickland? I can't imagine that the law contemplates it's
13 easier to discharge you or anyone else prior to sentencing
14 than after. That just seems to make no sense to me. It
15 seems to me the neglect refers to a conduct which is so
16 deficient that it needs to be remedied in the trial court
17 immediately as opposed to these Strickland standards. But,
18 you know, I may be reading it wrong so, all right.

19 Go ahead, Miss Griffin.

20 MS. GRIFFIN: Well, I guess the bottom line
21 of -- line of what I've gathered from these cases is there
22 seems to be a need to appoint counsel or that when there
23 seems to be some merit and then the purpose of having
24 appointed new counsel is so you can have a hearing to flush

all these issues out. And I guess one of my arguments is in the circumstances we're in now, despite the fact there is no merit, but even if we went to the hearing, what would be the purpose of having that hearing, what would be the purpose of having a new attorney appointed at this point when we just went through the allegation -- what the allegations are and there really is no real dispute about the facts?

Assuming it's true, many of what these witnesses would have said, you know, about not having been there when Jody Winkler made statements, okay, let's assume that's true. But as we pointed out, there wasn't any testimony from Jody Winkler about that. Or assuming that, in fact, they didn't lay a foundation for Martinez, that's been conceded here. That wasn't and then explanations for that.

So what are we going to do at a hearing if you did appoint a counsel that hasn't been accomplished here? So the bottom line is you end up where you just said, back to Strickland.

THE COURT: The difference is you would have a lawyer whose job it is to make Mister -- to persuade me that Mr. Picl and Mr. Riley are incompetent for the reasons, he would pick some, if not all of the reasons Mr. Snow has stated. That would be the only difference. There would be an actual person advocating for this theory of incompetence

1 other than in this peculiar situation Mr. Snow himself. But
2 you're right, when it comes down to the actual analysis, I
3 don't know that there is much more we can do. I mean I
4 guess you can contemplate a really bizarre hearing where
5 that witness [sic] then starts calling Mr. Picl and
6 questioning him about all the things we just went through,
7 but, you know, I don't see that as being contemplated.

8 But I agree with you that if the new lawyer is
9 appointed, we would fall back to the same analysis about
10 incompetence that Strickland has embodied in it, which is I
11 think what you're saying.

12 MS. GRIFFIN: Right.

13 THE COURT: So you're agreeing with Strickland as
14 the way that we have to look at this.

15 MS. GRIFFIN: (Nods.)

16 THE COURT: Okay. All right. Anything else on
17 that?

18 MS. GRIFFIN: Not on that.

19 THE COURT: Okay. Go ahead.

20 MS. GRIFFIN: I would if I remember where I'm at.

21 THE COURT: I'd like to have Chapman before you
22 forget. I'd like to see that.

23 MS. GRIFFIN: I think I was just talking about in
24 terms of the time, and I was talking about how there is a

1 disparity in the actual amounts of time done and what was
2 said, and my question was so what; and that led to that
3 discussion. *STATE Admits Their own witness*
WAS Impeached

4 *[initials]* Just going down some of the other points, which I
5 am arguing are all trial strategy and tactics, like I
6 indicated, there was no disputing the fact that a foundation
7 wasn't laid to impeach Martinez, but, again, the explanation
8 being that, in fact, he was already fully impeached. We
9 presented the testimony from Foster and what Hendricks would
10 be and it -- my argument would be that they were so
11 impeached, as was done in the Claycomb case, that you can't
12 say that that would have had any impact on this jury that
13 would have resulted in a -- being a strong probability that
14 the outcome would have been different if that had been
15 presented.

16 And you can just go on down the line with all
17 these witnesses, Logsdon, Dawn Roberts, the impeachment
18 witnesses that he says should have been called, all of that
19 is trial strategy, and all of this, in fact, was
20 accomplished. What he's attempting to accomplish was
21 accomplished by other methods of impeachment, and those
22 people were impeached. *[initials]*

23 So I just don't think there is any merit to his
24 claims and would ask the court to find that they lack merit

1 and pertain to matters of trial strategy and would ask the
2 court deny the motion.

3 THE COURT: Well, what about the one issue upon
4 which they acknowledge that they failed to lay a foundation
5 for Hendricks' statement, Martinez statement to Hendricks so
6 that they couldn't present the rebuttal?

7 MS. GRIFFIN: As I indicated, and if the court has
8 a chance to read the transcript, that's not --

9 THE COURT: That's -- I got to read --

10 MS. GRIFFIN: That's not significant at all.

11 THE COURT: I have got to read the transcript.

12 I'm sorry, okay, fine.

13 Okay. Mr. Snow, anything that you want to say
14 regarding what you've heard in this particular issue, which
15 I realize you've not read maybe all these cases, but...

16 THE DEFENDANT: Well, I would like to say that,
17 you know, for them to say that as far as the hours go, I
18 would ask that you read the letter that I wrote you and look
19 at the transcripts of what you asked them and what they said
20 that day. You know, you asked them how much time have you
21 spent --

22 THE COURT: Okay. Toward what end, let's cut to
23 the chase. We all agree the hours were wrong. What do you
24 want me to find from that?

1 THE DEFENDANT: Well, when you look at the fact
2 that there was 50 witnesses that I tendered to them, I think
3 that had they had spent more time, there would have been no
4 doubt that I mean there is a clear pattern of the foundation
5 and the witnesses not being called. All the rebuttal
6 witnesses against Danny Martinez, it wasn't -- it wasn't
7 because -- well, they can say now it was trial strategy.
8 They couldn't have called them if they wanted to call them.
9 They didn't lay the foundation for Foster, Hendricks, Jason
10 Boyd or Don Sorenson. And if the State says that because
11 Mark Foster didn't take notes while he was talking to Danny
12 Martinez is impeachment of him, I don't -- I don't think
13 that's fair.

14 THE COURT: I disagree.

15 THE DEFENDANT: I believe that's what she is
16 talking about.

17 THE COURT: I think that is impeachment.

18 THE DEFENDANT: Well, I believe that's something
19 the jury should have heard.

20 THE COURT: I'm not disagreeing with you. I will
21 tell you right now since that trial is over, I think
22 Mr. Foster did not look good on the witness stand having to
23 say that.

24 THE DEFENDANT: Well, you know...

1 THE COURT: Look at. You and I are not going to
2 agree on that. Your point is the jury ought to hear that.
3 I'm just telling you that I believe that he was very
4 effectively impeached with that. I don't think that goes to
5 the heart of the issue today. But go ahead.

6 THE DEFENDANT: I feel that, you know, more
7 time -- I can't figure, I mean five hours compared to 30. I
8 mean that's a heck of a difference in estimate. I mean they
9 say well I was estimating. That's a pretty big estimate.
10 Had I been estimating that I was on the stand testifying
11 that I was somewhere for 30 hours and the State was able to
12 find out I was there for five --

13 THE COURT: Let me stop you one second and make
14 sure you understand. First of all, the number of hours that
15 we now agree and you've established that they've spent on
16 the case before that date was with you, that's not the
17 number of hours I paid them for.

18 THE DEFENDANT: I know that. I know that.

19 THE COURT: You're talking like it's 22 hours
20 period in preparation for a murder trial. Nothing could be
21 further from the truth, and the payment records will
22 establish that. So, and the question is neglect today of
23 the case.

24 THE DEFENDANT: I believe it was neglectful not to

1 call the rebuttal witnesses against Danny Martinez. I think
2 it was neglectful to not call the rebuttal witnesses against
3 Karen Ballenger, Ronnie Wright. I mean when he argued to
4 the jury, his final argument of Ronnie Wright to the jury
5 was, well, he's lying because he beat him with a stick
6 instead of he had a grudge against him, he's lying; and he
7 told these other inmates and these other people and he's
8 lying. By presenting that witness it wouldn't have just
9 been well he's lying because he beat him with a stick. I
10 mean it's easy for them to come in here now and say well
11 that was our trial strategy, Your Honor.

12 I don't see how that could ever be considered to
13 be trial strategy, I mean not to put the rebuttal witnesses
14 on. I mean that's what the whole case was about, was words.
15 Jamie said this. I mean they don't want to beat the nail.
16 That's what the State did. The State paraded, you know, 15
17 people up there to say Jamie told me he did it. Jamie told
18 me he did it.

19 THE COURT: You need to understand that's not
20 cumulative. Now let me just get one thing out of you. You
21 would agree that if the law doesn't permit them to put a
22 witness on, that they can not be incompetent for not putting
23 the witness on? You would agree with that principle, would
24 you not?

THE DEFENDANT: I have the exact -- well, yeah, I guess I would have to.

THE COURT: You would have to agree with that, I hope so. Because it has nothing to do with what that witness says if the law doesn't permit that witness to offer that testimony.

THE DEFENDANT: But I would ask what witness exactly are you talking about.

THE COURT: There are numerous ones which have some legal bar to presenting it. And I'm just trying to get from you an acknowledgment that you would agree that if there is some legal bar, they can't be incompetent for not doing it.

Then we've got these other people who are the, quote unquote, trial strategy people, and those are the ones you disagree on. But you did argue to me today that some witnesses should be presented to just flat out it would either be malpractice to present or who under the law would

not be able to be presented. That's because you haven't

** Acknowledges not versed in law - need an attorney:*
been to law school. That doesn't -- and I'm not being

critical of you with respect to those. You need to

understand that there is all of these matters at play.

And if it's trial strategy, it can be fairly

considered trial strategy, whether you like it or not, this

1 motion is denied. If it's not trial strategy and there is
2 some concern raised by not calling people, then it's another
3 lawyer to look at. That's all that's going to happen.

4 THE DEFENDANT: Well, I would ask that you also
5 take into consideration the fact that before when you take
6 into consideration the witnesses about against Danny
7 Martinez, I would ask that you look at the fact that before
8 trial they were arguing that they wanted an eyewitness
9 expert to testify about Danny Martinez, to rebut Danny
10 Martinez. I would imagine that that's who they wanted him
11 to testify to. And, you know, afterwards, that's the first
12 point in their post-trial motion is the fact that you didn't
13 let the eyewitness expert come in. So obviously they
14 believed before trial that that witness needed to be
15 rebutted. And they believe after that that witness needed
16 to be rebutted, and I would like to know where is the trial
17 strategy in not presenting the two coworkers and the private
18 investigators, regardless of how you felt they looked in
19 Susan Claycomb's trial. I mean, where is the strategy on
20 not putting them on the stand?

21 THE COURT: We could be having the same discussion
22 had they put them on. The only difference would be your
23 criticism of them for putting on Foster, who looked like a
24 fool in front of the jury, an investigator with ten years

1 experience who never wrote anything down about his
2 statements, supposed statements, is what you would have
3 said, and so he looked like a fool. He lost his
4 credibility, and your effective impeachment of Martinez went
5 down the drain.

6 THE DEFENDANT: I would have also --



7 THE COURT: You need to understand that the
8 adverse result in this trial places everything into
9 question. And you also need to understand that presenting
10 every blessed witness on the list, provided they would have
11 had some legal basis to testify, and I could have kept some
12 people out for legal reasons, isn't necessarily the best
13 strategy either. And, you know, the other people in this
14 courtroom other than you are the ones who have been through
15 hundreds of trials. And you need to understand that that's
16 what we're judging this against a little bit. So when we
17 talk about a lot of these things, you're sitting there not
18 knowing what they -- what are they talking about. And I
19 just want you to understand that. Because it's not easy for
20 you in a nutshell today to follow all this.

21 THE DEFENDANT: I do understand that.

22 THE COURT: But there is a notion of cumulative in
23 the courts. You don't get to call eight people on the same
24 proposition.

1 THE DEFENDANT: No, you don't. I understand that.

2 THE COURT: It's not the same as the State calling
3 ten people who said you made ten statements about this
4 murder. It's not the same. ?

5 THE DEFENDANT: I understand. As far as him not
6 taking the notes, I believe that the State never took notes
7 when Danny Martinez had this miraculous identification of
8 them either.

9 THE COURT: And that came out that there was no
10 report made of that.

11 THE DEFENDANT: Not during my trial it didn't. If
12 it did, it would have -- it would have helped it --

13 THE COURT: It came out -- NO

14 THE DEFENDANT: -- shore up the credibility of
15 Mark Foster.

16 THE COURT: Okay.

17 THE DEFENDANT: I mean they didn't take notes
18 either.

19 THE COURT: I'm going to tell you I don't have a
20 perfect recollection of distinguishing both of these, but I
21 remember that Katz was identified as one of the parties
22 there, who is a detective, and I can't tell you for certain
23 that --

24 THE DEFENDANT: When they had him on the stand

they didn't even ask him about whether he took notes.

THE COURT: You may be right about that, all

right.

THE DEFENDANT: And I believe in that case, you know, that his -- his -- Mark Foster's credibility could have been, you know, challenged also by the fact that the lead investigator on the case didn't take no notes either when this eyewitness now all of a sudden has this miraculous identification after ten years in their presence a week after he told Foster it wasn't me.

THE COURT: I'll explain this once more to you, and then we're going off the record. My only point to you is simply this. That for each witness you want the defense to call there would indeed be impeachment. I think that's pretty much what I'm hearing today, impeachment of that witness. And, therefore, you would have been permitted to legitimately argue, had they called every one of these blessed witnesses, if there was an adverse verdict, that he shouldn't have, because they didn't add enough to be worth the impeachment. And so for the reasons you need to understand for the reasons Mr. Picl has stated, that's often why witnesses are not called in the matter.

Now, some of them don't fall into that category that you've identified. And I'm not talking about every

1 witness. I'm just trying to point out to you that matters
2 of trial strategy do cut both ways in that sense and you
3 could be just as disenchanted with them for having called a
4 lot of the people you wanted because of what the State had
5 did to them on cross. You can not always presume the
6 evidence is only going to come in and be viewed by the jury
7 in the way you want it to be viewed. And that's what
8 Mr. Picl said a number of times about and I'm not going to
9 take a chance with the State witness to get this little bit
10 of good stuff out when I don't know what's coming on
11 redirect or cross and I guess want you to appreciate that as
12 opposed to have to agree with me right now about it.

13 We're going to go off the record. I'll read these
14 and by I'm going to guess this afternoon and I hope over the
15 noon hour or even in the morning I'll have some time to
16 dictate a resolution because I'll leave this on unless the
17 order vacates it for next week. Are we not on?

18 MR. RILEY: Yes, Judge.

SEE ORDER
BY JUDGE

19 MS. GRIFFIN: Yes.

20 THE COURT: I'm sorry.

21 MS. GRIFFIN: Yes, the 12th.

22 THE COURT: We have another date, correct, for
23 sentencing?

24 MR. REYNARD: Yes, next week.

1 THE COURT: Go ahead, Mr. Riley.

2 MR. RILEY: Let me indicate Mr. Snow's allegations
3 with regard to preparation for sentencing are absolutely
4 correct. Within days of the passing of the verdict he began
5 to be interviewed by W J B C and the Pantagraph and all
6 other kinds of people; and I haven't seen him since then.

7 THE COURT: Why not?

8 MR. RILEY: Because I feel we had a definite -- I
9 feel we still have a conflict. Certainly we had one at that
10 point in time.

11 MR. PICL: If we're left on the case, I think
12 we'll need more time to prepare for the sentencing hearing.

13 THE COURT: This is what I attempted to avoid last
14 time.

15 MR. RILEY: The reason for setting it so close,
16 Judge, was so that the victim's mother could be present for
17 both hearings. The victim's mother is not present today,
18 and there will be no prejudice to her by continuing it since
19 she didn't come up for it.

20 THE COURT: So are you moving to continue the
21 sentence hearing provided this motion is denied? Obviously
22 we don't have to deal with it if it's not denied.

23 MR. RILEY: You've got our motion to withdraw as
24 well, Judge. In the event that both of those are denied,

1 we're moving to continue the sentencing.

2 THE COURT: Well, let's see if we can get that
3 resolved first, and I don't mean intentionally to have
4 neglected that. But do you have any -- anything further you
5 want to say on the motion to withdraw? We ought to hear
6 that and let me resolve that when I do this.

7 MS. GRIFFIN: Well, I think what started my cases
8 and in presenting this was when we started on the motion to
9 withdraw I pointed out it is not a conflict of interest and
10 I think I cited the cases and some of them I think are even
11 some of these. Just because the defendant makes a claim of
12 ineffective assistance of counsel is not a conflict of
13 interest.

14 THE COURT: I agree. But I don't think they're
15 saying that.

16 MS. GRIFFIN: That's what they're alleging in the
17 motion to withdraw.

18 THE COURT: All right. I haven't read that today.
19 Okay. They are. They are saying that.

20 MS. GRIFFIN: They're saying he's gone on the air
21 and made these claims against them, and they're saying
22 they're not able to communicate very well because of all
23 this bad blood. Again, there is cases that just cause you
24 don't have a good rapport does not mean that is a conflict,

1 and you're entitled to get off. I cited cases then, and I
2 think they're still some within the same batch.

3 THE COURT: I think that's the law.

4 MS. GRIFFIN: That's why we went to this stage
5 because...

6 THE COURT: Okay. Do you have anything additional
7 on the motion to withdraw?

8 MR. RILEY: Other than to say that I believe Jamie
9 Snow is entitled to lawyers at sentencing that will provide
10 him with the representation that he believes he deserves,
11 and, quite frankly, I don't think I'm able to give that
12 right now.

13 THE COURT: Well, are you able to give it if he
14 communicates with you? I mean that's the question.

15 MR. RILEY: I suppose so.

16 THE COURT: Well, look at -- as the one person in
17 the room who has been through the Anthony Hall case who
18 slugged his Judge and lawyer and raised this whole issue,
19 the defendant himself can not create this so, if he chooses
20 not to communicate with you, and I alluded to this last
21 time, it's going to be held against him.

22 MR. RILEY: All right.

23 THE COURT: But you two have got to get together,
24 you three.

1 MR. RILEY: I agree with that.

2 THE COURT: You can't neglect him. You've got to
3 meet with him. But if he's just mad at you and decides,
4 well, I'm not going to give you my mitigation witnesses,
5 that's not going to fly because I think Miss Griffin
6 accurately stated the law. And -- and it's a source of
7 frustration that this occurs, but lawyers are not required
8 to like their clients; but they are required to cooperate
9 sufficiently to represent them. But that's two ways. And
10 that means Mr. Snow has to provide information as well to
11 counsel as much as he may dislike it. And like and dislike
12 is not the issue today.

13 If I resolve the motion to withdraw in this and
14 determine new counsel is appointed, we're not going next
15 week. If I determine new counsel is not appointed, we've
16 got to deal with next week.

17 What's the State's position on that? Do you want
18 another hearing on that like Monday if I can squeeze it in
19 on the calendar or what's your pleasure on that?

20 MR. REYNARD: I'll speak to that, Your Honor. And
21 I think a case might be made for the need for a delay. But
22 we haven't gotten to that point yet. We don't know what the
23 dimensions of the sentencing proceeding actually are.

24 Perhaps that is traceable to the absence of communication

1 between counsel and their client. But I think it's
2 incumbent upon them to demonstrate a need for a continuance
3 before we automatically concede to continuance.

4 I concede that it's conceivable that it might be
5 needed under the circumstances, and we want a durable
6 sentence in this case.

7 THE COURT: All right. Then maybe this is what we
8 ought to do. Rather than let this slide to the time that
9 we've got scheduled next week, can you all be here 1:30 on
10 Monday? We just -- I won't start my jury trial 'til after
11 we have a hearing on the sentencing issue. That will
12 either -- that will serve multiple purposes.

13 If we need a new lawyer, whether you want to call
14 up your motion to withdraw being allowed or you being
15 discharged, that will happen and I've got to appoint a new
16 lawyer, get that done that day. Then we are setting
17 sentencing and post-trial over. If not, then we need to
18 hear from you on the issues Mr. Reynard just raised. Can
19 both of you do that at that time?

20 MR. PICL: I can be here, 1:30, Monday.

21 THE COURT: Mr. Riley?

22 MR. RILEY: Yes.

23 THE COURT: Can all of you?

24 MS. GRIFFIN: Yes.

1 MR. REYNARD: I'll be gone.

2 THE COURT: You'll be gone.

3 MR. REYNARD: That's okay.

4 THE COURT: Miss Reynard -- Miss Griffin will
5 cover, and I will then at least resolve the motion to
6 withdraw and the issue relating to discharge of Mr. Picl,
7 Mr. Riley; and we will either be dealing with new counsel
8 and new dates or just new dates on your motion, and we'll
9 hear that then.

10 All right. We'll set it over 'til then.

11 Is there any reason -- let me ask all of you this
12 then. Is there any reason that you need to have my order
13 before Monday then?

14 MR. PICL: No.

15 MR. RILEY: No.

16 THE COURT: Probably not, right? All right. That
17 just gives me more time to review this.

18 All right. Monday at 1:30. Thank you.

19 (Which were all the proceedings had in the
20 hearing of the above cause on said date.)
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