

1 BY MR. KOTELLY:

2 Q I show you Government's Exhibit 32-A and -B for
3 identification and ask you if you can identify those docu-
4 ments?

5 A Yes.

6 Q How?

7 A By my initials.

8 Q What are they, briefly?

9 A 32-A is a customer copy of a Riggs money order pay-
10 able to David Ramage for \$300. On the right hand appears
11 the name Charles C. Diggs, Jr.

12 Q 32-B for identification?

13 A That's also a customer copy of a Riggs money order
14 payable to David Ramage, House Majority.

15 The amount is \$140.

16 Q I show you Government's Exhibit 32-C and 32-D
17 for identification, previously identified by Miss Stultz,
18 and ask you if you can identify those documents?

19 A Yes, I can.

20 Q How do you identify them?

21 A By my initials.

22 Q And what are they, briefly?

23 A 32-C is a bill from the Combustioneer Corporation
24 to Congressman Diggs, 322 Second Street, Southeast, Washing-
25 ton, D. C., and the amount of the bill is \$66.25.

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1 32-D is again a bill from Combustioneer Corporation
2 to the Congressman at the same address in the amount of
3 \$56.33.

4 Q Do your initials appear on both 32-C and 32-D?

5 A Yes, they do.

6 MR. KOTELLY: I ask 32-E be marked for identifica-
7 tion.

8 THE COURT: Very well.

9 THE CLERK: 32-E marked.

10 (Document marked Government's
11 Exhibit 32-E for identification)

12 BY MR. KOTELLY:

13 Q I show you 32-E for identification and ask you if
14 you can identify it?

15 A Yes, I can.

16 Q How do you identify it?

17 A By my initials.

18 Q What are those documents?

19 A 32-E is a customer copy of a Riggs money order pay-
20 able to the Combustioneer Corporation for \$122. In the lower
21 right hand appears the name Charles C. Diggs, Jr.

22 Q Mr. Reed, I show you 32-F through 32-L for identifi-
23 cation, all previously identified by Miss Stultz, and ask
24 you if you can identify those documents?

25 A Yes, I can.

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1 Q I'm asking you about the whole group. Have you
2 looked at all of them?

3 A Yes.

4 Q How do you identify them?

5 A By my initials.

6 Q Do your initials appear on each of those documents?

7 A Yes, on 32-I it doesn't appear, but it's connected
8 with 32-J, on which my initials do appear.

9 Q Would you please state very quickly and briefly
10 what each of those exhibits are?

11 A 32-F is a letter.

12 THE COURT: Mr. Kotelly, come to the bench, please.

13 (Thereupon, the witness stepped down from the
14 stand; counsel for both parties approached the bench
15 and conferred with the Court, as follows:)

16 THE COURT: Are you going to offer them?

17 MR. KOTELLY: Yes. Would you rather --

18 THE COURT: Won't they speak for themselves?

19 MR. KOTELLY: Yes, Your Honor.

20 THE COURT: That will save a little time.

21 MR. KOTELLY: I agree.

22 THE COURT: All right.

23 MR. POVICH: Your Honor, should we be heard now
24 on the admissibility of these?

25 THE COURT: I don't know what they are; do you

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1 have objection to them?

2 MR. POVICH: If the only way they are going to come
3 in is by his identifying them as coming in for the file, yes,
4 that's the basis for the putting them in.

5 THE COURT: These are Diggs' files.

6 MR. POVICH: They came from eight boxes delivered
7 by Randall Robinson. I don't think that establishes a
8 sufficient basis. They are business records; there is no
9 indication they are kept in the regular course of business.

10 He said the files were in a mess. They just packed
11 everything up and sent it over. I don't think there is
12 sufficient basis to admit them on that basis so far with
13 respect to the testimony that's been given in this case.

14 In fact, he couldn't recall whether he turned them
15 over to Mr. Reed, and not only that, he is talking about--
16 three or four boxes and this maybe is talking about

17 MR. KOTELLY: Your Honor, we submit the inconsis-
18 tency in recollection has nothing to do with this. This
19 witness has identified eight boxes as coming from Randall
20 Robinson at one time under circumstances identical to which
21 Randall Robinson testified about, and he's identifying each
22 of these records by his initials on them.

23 Randall Robinson said all the records turned over
24 came from the offices of Congressman Diggs, so we submit we
25 have more than amply showed the connection between these

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1 documents from the Congressman's office and being admitted
2 in evidence.

3 THE COURT: I'm inclined to agree with that.

4 MR. POVICH: Just to say they came from someone's
5 office doesn't make them admissible, Your Honor.

6 You have gone through this problem before. You
7 have to say how they are kept. You have someone say, "Yes,
8 I kept this document in this file. It was the regular course
9 of business to keep it this way."

10 There has to be some legitimacy to this matter.
11 They just have a bunch of papers that was delivered. There
12 is no way anybody could ever testify to sufficient indicia
13 of authenticity to permit these documents to come in as
14 business records of Congressman Diggs.

15 MR. KOTELLY: We are not asking they be admitted
16 as business records. They are physical documents that have
17 nothing to do with the shop book rule at all.

18 These are documents from the offices of Congressman
19 Diggs.

20 THE COURT: I just thought we could save a little
21 time.

22 Proceed to identify them individually.

23 (Thereupon, the proceedings had at the bench
24 were concluded; counsel returned to their seats at
25 counsel table; and the witness returned to the
witness stand and testified further, as follows:)

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1 DIRECT EXAMINATION (continued)

2 BY MR. KOTELLY:

3 Q Mr. Reed, I will not ask you any further questions
4 regarding identifying any individual documents.

5 MR. KOTELLY: Your Honor, I believe 33-B and -C
6 have not been marked for identification. I would ask they
7 be marked for identification now.

8 THE CLERK: Government's Exhibit 33-B and -C
9 marked for identification.

10 (Documents marked Government's
11 Exhibit 33-B and -C for
12 identification)

13 BY MR. KOTELLY:

14 Q I show you Government's Exhibits 33-A through
15 33-L for identification, 34-A for identification, and ask
16 you if you can identify those items?

17 A Yes, I can.

18 Q How do you identify them?

19 A My initials are on all of them.

20 MR. KOTELLY: Your Honor, I ask to have marked -
21 34-C for identification.

22 THE CLERK: It's already been marked, Mr. Kotelly,
23 34-C through 34-H have already been marked.

24 BY MR. KOTELLY:

25 Q I show you Government's Exhibits 34-B through

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1 34-H for identification, and ask you if you can identify
2 those documents?

3 A Yes, I can.

4 Q How do you identify them?

5 A My initials is on each one.

6 MR. KOTELI ask 35-A and -B be marked for identifi-
7 cation, Your Honor.

8 THE CLERK: Government's Exhibits 35-A and
9 35-B marked.

10 (Documents marked Government's
11 Exhibits 35-A and -B for
12 identification)

13 BY MR. KOTELLY:

14 Q I show you Government's Exhibits 35-A and -B for
15 identification and ask you if you can identify those documents?

16 A Yes, I can.

17 Q How do you identify them?

18 A My initials.

19 Q Next, I show you Government's Exhibits 36-A through
20 36-C, 37-A, -B and -C, 39 and 40 for identification, and ask
21 you if you can identify those documents?

22 THE CLERK: You meant 37-A didn't you?

23 MR. KOTELLY: No, 36-A, 37-A, -B, -C; I think I
24 may have missed 37, 37-A, -B, -C, 38-A, -B, -C, 39 and 40
25 for identification.

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1 I ask you if you can identify each of those docu-
2 ments?

3 A Yes, I can.

4 Q How do you identify each of those exhibits?

5 A My initials are on all of them I believe but
6 No. 39 -- excuse me. My initials are on the back.

7 Q So can you identify each of those exhibits, Mr.
8 Reed?

9 A Yes.

10 Q How do you identify them?

11 A By my initials.

12 Q I next show you Government's Exhibits 54, 55,
13 57-A, 58 and 59 for identification and ask you if you can
14 identify those?

15 A Yes, I can.

16 Q How do you identify them?

17 A By my initials on each of them.

18 Q I next show you Government's Exhibit 70 and ask
19 you if you can identify that document?

20 A Yes, I can.

21 Q How do you identify it?

22 A By my initials.

23 Q Finally I show you a group of documents which
24 includes 71-A and 71-E for identification, and ask you if
25 you can identify the group?

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1 A Yes, I can.

2 Q How do you identify that group of documents?

3 A This group was together and I have my initials on
4 one of the items in the group.

5 Q Does your initial specifically appear though on
6 71-A and 71-B?

7 A These don't have any numbers on them.

8 Q They don't have your initials on the actual exhibits
9 themselves; is that correct? Do you see which is 71-A and
10 71-B, Mr. Reed?

11 A There is no marking on these, no government exhibit
12 numbers.

13 Q I show you the back of this page and the back of
14 that page, Mr. Reed, and ask you now if you see government
15 exhibit numbers?

16 A No. My initials aren't specifically on these two.

17 Q Fine. Agent Reed, the document which you have
18 just identified and that are sitting before you, where did
19 you obtain each and every one of those exhibits?

20 A From the eight boxes of records that were turned
21 over by Randall Robinson on November the 1st, 1977.

22 Q Mr. Reed, did you also receive any documents from
23 a Felix Matlock?

24 A Yes, I did.

25 Q When did you receive documents from Felix Matlock?

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1 A June 13, 1977.

2 Q What type of documents did you receive from Mr.
3 Matlock?

4 A I received some of his cancelled personal checks,
5 customer copies of money orders and cashier's checks, some
6 receipts, a couple of his check registers.

7 He also had some rough notes for me to keep track
8 of his use of excess funds for a couple of months.

9 Q And did you mark the documents you received from
10 Mr. Matlock in any manner for purposes of identification?

11 A Yes. I initialed them.

12 MR. KOTELLY: Your Honor, at this time I would ask
13 these be marked Government's Exhibit 73-A, -B, -C and -D
14 for identification and 74-A and -B.

15 THE CLERK: Government's Exhibits 73-A through
16 73-D marked for identification.

17 (Document's marked Government's
18 Exhibits 73-A through 73-D
19 for identification)

20 MR. KOTELLY: And 74-A and -B.

21 THE CLERK: Government's Exhibits 74-A and 74-B
22 marked for identification.

23 (Document's marked Government's
24 Exhibits 74-A and 74-B for
25 identification)

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1 BY MR. KOTELLY:

2 Q Mr. Reed, I show you Government's Exhibit 73-A
3 through -D for identification and ask you if you can identify
4 those documents?

5 A Yes, I can.

6 Q How do you identify them?

7 A By my initials.

8 Q And could you state briefly for the record what
9 are Government's Exhibits 73-A through -D?

10 A Customer copies of cashier's checks, all of them.

11 Q From what institution?

12 A Bank of the Commonwealth, Detroit, Michigan.

13 Q From whom did you receive Government's Exhibit
14 73-A through -D?

15 A Felix Matlock.

16 Q I next show you Government's Exhibits 74-A and
17 74-B for identification, and ask you if you can identify
18 those documents?

19 A Yes, I can.

20 Q How do you identify them?

21 A By my initials.

22 Q And for the record, what are 74-A and -B for identi-
23 fication?

24 A 74-A is a customer copy of a cashier's check payable
25 to House Recording Studio for \$300.

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1 Q On what institution?

2 A It's drawn on the National Bank of Detroit.

3 Q And 74-B for identification, what is that?

4 A It's a customer copy of a National Bank of Detroit
5 money order for \$405, I believe and 84 cents, payable to
6 Jim Reel Leasing, Incorporated.

7 Q 74-B for identification, is that an actual customer
8 copy?

9 A No. this is not a customer copy, this is a Xerox
10 or photocopy of the customer copy.

11 Q As to Government Exhibit 74-A and -B for identifica-
12 tion, who did you receive those from?

13 A Felix Matlock.

14 Q In that form?

15 A Yes.

16 MR. KOTELLY: Your Honor, at this time I ask to
17 approach the bench.

18 THE COURT: All right.

19 (Thereupon, the witness stepped down from the
20 stand; counsel for both parties approached the bench
21 and conferred with the Court, as follows:)

22 MR. KOTELLY: Your Honor, at this time I wish to
23 start moving into evidence not only the evidence that has
24 been identified by Mr. Reed as having been received from Mr.
25 Robinson and Mr. Matlock, but also the other money orders,

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1 cashier's checks from the Riggs bank, National Bank of Detroit
2 and the Bank of the Commonwealth. It's going to require
3 some time to recite all of the correlating documents in order
4 to tie everything together, Your Honor.

5 I would ask maybe the jury be excused for a bit
6 so we can do it in open court. I think it would be less
7 cumbersome.

8 THE COURT: I am inclined to agree with that.

9 MR. WATKINS: I have no objection.

10 THE COURT: All right.

11 (Thereupon, the proceedings had at the bench
12 were concluded; counsel returned to their seats at
13 counsel table, and the proceedings were resumed,
14 as follows:)

15 THE COURT: Ladies and gentlemen, how do you feel
16 about lunch?

17 All right, I will excuse you for lunch at this time
18 about an hour and a half.

19 THE CLERK: 1:30, Your Honor?

20 THE COURT: Yes.

21 You may be excused.

22 (Whereupon, at 11:50 a.m., the jury left the
23 courtroom)

24 (Following proceedings in open court outside
25 the presence and hearing of the jury)

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1 THE COURT: You may proceed.

2 MR. KOTELLY: Thank you, Your Honor.

3 Your Honor, I would ask that first of all Govern-
4 ment's Exhibit 25-A through Government's Exhibit 40, inclusive,
5 be moved into evidence.

6 We would submit that we have laid the foundation
7 that all of these documents have come from the files of
8 Congressman Charles Diggs.

9 Excuse me one moment. I think there is one exhibit
10 in that group, there is a 36-B for identification which is
11 not part of that group, but other than 36-B, 25-A through
12 40 we would move into evidence.

13 Other than 36-B, then, Your Honor, we would move
14 the 25-A through 40 into evidence.

15 THE COURT: 25-A through 40?

16 MR. KOTELLY: Other than 36-B.

17 THE COURT: Do those documents contain anything
18 that identifies them from the Diggs file?

19 MR. KOTELLY: These were all identified as having
20 come from Randall Robinson through Mr. Reed, Your Honor.
21 Most of them have been identified by Jean Stultz as having
22 been documents that she prepared and would have had in her
23 files.

24 I can go through exactly which ones she identified,
25 which is the bulk of them, Your Honor, but we would submit

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1 that those that she did not identify because there is none
2 of her personal writing on them are still admissible as being
3 documents which come from the offices of Charles C. Diggs,
4 Jr.

5 THE COURT: Has Mr. Povich seen them?

6 MR. KOTELLY: Oh, yes, many times, Your Honor.

7 THE COURT: Do you have anything other than your
8 general objection?

9 MR. POVICH: I wish to reassert the objection I
10 said earlier, Your Honor, and I don't think -- let me say
11 that it's not clear that they came from Congressman Diggs'
12 files.

13 In addition, the testimony of this man was that
14 they were produced by Randall Robinson. That's all. This
15 man had gone and pursuant to the subpoena moved them from
16 the files.

17 There perhaps might be other -- he could indicate
18 what files they come from, where they came from, it would
19 be one thing, but just to say someone handed me eight boxes
20 of documents.

21 THE COURT: It wasn't someone, it was the Congress-
22 man's administrative assistant accompanied by two of the
23 Congressman's employees answering a subpoena duces tecum.

24 If you have no other objection, I will receive them.

25 THE CLERK: Government's Exhibits 25-A through

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1 40, excluding 36-B, received in evidence.

2 (Government's Exhibits 25-A

3 thru 40 [excluding 36-B] for

4 identification were received)

5 MR. KOTELLY: At this time I would also move into
6 evidence Government's Exhibit 36-B, which is a personal check
7 of Congressman Diggs, which is part of Stipulation No. 3,
8 that it was drawn on the account of Congressman Diggs.
9 Jean Stultz has also identified the writing on that document
10 as being her's on the body of the check and the Congressman's
11 signature.

12 THE COURT: It will be received.

13 THE CLERK: Government's Exhibit 36-B received in
14 evidence.

15 (Government's Exhibit 36-B for

16 identification received)

17 MR. POVICH: All over objection, Your Honor.

18 THE COURT: Congressman's check? Prior testimony,
19 you objected to it. It will be received.

20 MR. KOTELLY: Government's Exhibits 54, 55, 56,
21 57-A, 58, 59, 70, 71 and 72, we would submit have been identi-
22 fied by Mr. Reed as all having come from the records of
23 Congressman Diggs.

24 In addition, as to 54, 57-A, 58, they have also
25 been identified by Miss Stultz as having her writing on them
and having been the type of record she would have kept when

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1 she worked for the Congressman.

2 Also, 55 and 58 and 59 were identified by Mr.
3 Dukes as having been items that he prepared and had sent to
4 Miss Stultz when she was working for Congressman Diggs.

5 So we would ask that all of these items be identi-
6 fied, Your Honor.

7 In addition, I should state as to Government's 70
8 and 71-A and -B, they were also identified by Mr. Sheeran
9 of WJLB.

10 70 and 71 are receipts Mr. Sheeran actually wrote.

11 71-B, he testified, appeared to be the money owed
12 that related to the payment that he had a receipt for.

13 THE COURT: Mr. Povich, anything other than your
14 general objection?

15 MR. POVICH: Yes, sir. Any document which was
16 not identified by a witness I object to.

17 Specifically, in addition, Your Honor, I object
18 to WJLB because my recollection was at the time this was shown
19 to me that they were representing, they were only putting
20 in one page of these several pages.

21 MR. KOTELLY: Two pages, 71-A and 71-B, and we will
22 eliminate all of the other pages. We kept them together for
23 the purpose of Mr. Reed being able to identify them, Your
24 Honor.

25 THE COURT: All right, they will be received.

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1 MR. KOTELLY: We would ask the top packet, anything
2 not marked in that packet be removed.

3 THE COURT: Let's wait until Mr. Patterson catches up.

4 THE CLERK: Government's Exhibit 70 received in
5 evidence and Government's Exhibits 71-A and 71-B received in
6 evidence.

7 Government's Exhibit 54 received.

8 55 received in evidence.

9 57-A received in evidence.

10 58 received in evidence.

11 59 received in evidence.

12 That's all I have.

13 THE COURT: Received.

14 (Government's Exhibits 70,
15 71-A and -B, 54, 55, 57-A,
16 58 and 59 for identification
17 received)

18 MR. KOTELLY: Your Honor, at this time we also move
19 into evidence Government's Exhibits 73-A through 73-D,
20 74-A and 74-B, based on the testimony of Mr. Reed that he
21 received these from Mr. Matlock and Mr. Matlock's earlier
22 testimony that he did maintain copies of the money orders
23 purchased from his special account, and that he turned them
24 over to the FBI.

25 THE COURT: Do you wish to examine them, Mr. Povich?

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1 MR. POVICH: Your Honor, I object to these on the
2 ground that Mr. Matlock was not shown these items and did
3 not identify them, in addition to my previous basis.

4 THE COURT: They will be received.

5 THE CLERK: Government's Exhibits 73-A through
6 73-D received in evidence.

7 (Government's Exhibits 73-A
8 thru 73-D for identification
9 received)

10 MR. KOTELLY: Your Honor, at this time I would like
11 to move into the area of, first of all, the Riggs money orders
12 and cashier's checks which are the Exhibits 45 and 46.

13 I believe Mr. Patterson has most, if not all, of
14 those documents.

15 I have four in my custody, Your Honor, which I will
16 give to Mr. Patterson.

17 Your Honor, if we could go through these seriatim,
18 I will state the basis for the admissibility of each of these
19 documents:

20 Government's Exhibit 45-A is a Riggs money order
21 to the Detroit Edison Company.

22 Your Honor, if I could ask to do this in a slightly
23 different way, if I could go chronologically, I will be able
24 to explain this a little easier.

25 46-A is a cashier's check from Riggs, payable to

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1 J. Daniel Clipper.

2 We have Government's Exhibits 25-A and -B in evi-
3 dence, which are a letter of Jean Stultz, which in her hand
4 she has an identifying cashier check number as well as a
5 Xerox copy of the cashier's check. These correspond exactly,
6 Xerox copy corresponds exactly with the actual document we
7 received from the Riggs bank on 46-A.

8 In addition, there is a personal check to cash,
9 Government's Exhibit 24-A, which Jean Stultz identified as
10 having been a check that she made payable from the special
11 account to purchase cashier's checks and money orders, and
12 the total amount of that check is \$250, which we submit ties
13 in with Government's Exhibit 46-B, a cashier's check to
14 Michigan Bell Telephone Company in the amount of \$250.

15 Also, from the files and identified by Miss Stultz
16 are Government's Exhibit 26-A and -B, which is a letter to
17 Michigan Bell with a Xerox copy of the Michigan Bell cashier's
18 check.

19 We would submit those are identical; so based on
20 the records that we got from the files, plus the check to
21 cash which is in the exact amount on the same date as these
22 two cashier's checks, Government's Exhibit 46-A and -B, and
23 in the total amount identical, that those should be admitted
24 into evidence. It's Government's Exhibits 46-A and -B.

25 THE COURT: Anything further, Mr. Povich?

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1 MR. POVICH: Is that the cashed check?

2 MR. KOTELLY: Yes. 24-A is the check to cash for
3 \$1250.

4 MR. POVICH: Your Honor, I think there is a suffic-
5 ient connection where there is a cashier's check and money
6 order both in the same amount. I have no objection to that.

7 THE COURT: All right. Received.

8 THE CLERK: Government's Exhibits 46-A and 46-B
9 received in evidence.

10 (Government's Exhibits 46-A
11 and 46-B for identification
12 were received)

13 MR. KOTELLY: The next three exhibits, Your Honor,
14 will be 46-I, a cashier's check to Barnett Caterers; 45-AA,
15 a money order to Gandel Liquors; and 45-BB, a money order
16 to Call Carl.

17 The sum total of these three items is \$692.71.
18 They were all purchased on December 5th, 1973, based on the
19 printed date that appears on each of those documents.

20 From the files we received from Congressman Diggs,
21 27-A is a letter with a notation as to serial number relating
22 to the Barnett Caterers, cashier's check.

23 28 is a customer copy of the money owed for Gandel
24 Liquors, which was obtained from the file which Miss Stultz
25 identified her handwriting, as well as the actual Government's

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1 Exhibit 45-AA, she identified her handwriting.

2 There is Exhibit 27-B which is a letter which
3 relates to the Gandel payment in the amount which is the same
4 amount that appears on the money order.

5 As to the Call Carl exhibit, Miss Stultz identified
6 her writing on that actual document from Riggs Bank 45-BB.
7 It was in her handwriting.

8 On the same date as these documents were purchased,
9 December 5th, 1973, there is a check to cash dated the same
10 date, purchased from the same branch or cashed at the same
11 branch that the cashier's check and money order were purchased,
12 in the amount of \$692.76.

13 The difference between these, the total for the
14 cashier's check and money order and the total for the check
15 to cash is a difference of five cents.

16 Your Honor, we would submit that based on her testi-
17 mony that that check of her's, 24-B, was what she purchased
18 the money order and cashier's checks; that there is sufficient
19 tie-in to "I" to have admitted in evidence 46-I, 45-AA
20 and 45-BB.

21 MR. POVICH: No objection, Your Honor, because there
22 appears to be a relationship between the cashed check and
23 the cashier's checks and the money order.

24 THE COURT: Be received.

25 THE CLERK: Government's Exhibit 46-I, 45-AA and

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1 45-BB received in evidence.

2 (Government's Exhibits 46-I,
3 45-AA and 45-BB for identifi-
4 cation received)

5 MR. KOTELLY: The next document is a cashier's check
6 46-C purchased January 4th, 1974, based on what's written
7 on that cashier's check, made out to J. Daniel Clipper.

8 Government's Exhibit 29 in evidence is a Xerox copy
9 of that cashier's check, which was obtained from the files
10 of Congressman Diggs.

11 The amount of the cashier's check is \$1270. There
12 is a check to cash, Government's Exhibit 24-C, which is in
13 evidence, which was cashed on the same date at the same branch
14 that the cashier's check was purchased. The check to cash
15 is in the amount of \$1691. The cashier's check itself is
16 \$1270.

17 We have been unable to find any other money order
18 or cashier's checks on that date, Your Honor, but we would
19 submit, based on the fact that it's from the same branch,
20 the same date, and that a copy of that cashier's check was
21 found in the files turned over to us by Congressman Diggs,
22 that there is a sufficient link-up that it should be admitted
23 into evidence and be considered by the jury.

24 MR. POVICH: Your Honor, I object to that insofar
25 as it represents a cash--insofar as the Government is seeking

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1 to represent any cash going to Congressman Diggs.

2 I do not object to it insofar as it may represent
3 the payment of the \$1200 to Mr. Clipper pursuant to the
4 cashier's check and money order.

5 THE COURT: There was some testimony, I believe,
6 from Mrs. Stultz about paying Mr. Clipper for Congressman
7 Diggs.

8 MR. POVICH: Yes, sir; I'm saying I have no objection
9 insofar as that amount is concerned, but what I do object
10 to is just a cashier's check for any amount other than that
11 amount.

12 MR. KOTELLY: We have no cashier's check for anything
13 other than that amount.

14 46-C is the only cashier's check on that date we
15 are asking to be admitted.

16 24-C, the check to cash, is already in evidence.

17 MR. POVICH: The Clipper check I have no objection
18 to, Your Honor.

19 THE COURT: The Clipper check will be received.

20 What is the other check you were concerned with
21 or the other money order?

22 MR. KOTELLY: There are no others for that date,
23 Your Honor.

24 THE COURT: Does the Clipper check take care of
25 your request?

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1 MR. KOTELLY: Yes.

2 THE COURT: Received.

3 THE CLERK: Government's Exhibit 46-C received in
4 evidence.

5 (Government's Exhibit 46-C
6 for identification received)

7 MR. KOTELLY: 46-D is a check to the Sergeant at
8 Arms with a notation for the Charles C. Diggs account. It's
9 a cashier's check in the amount of \$734; date on the cashier's
10 check is February 7, 1974. On that same date, the same branch,
11 there was a check cashed by Miss Stultz, which is Government's
12 Exhibit 24-D in evidence in the amount of \$735, which is
13 \$1 more than the 734.

14 On the back of her check to cash is a notation she
15 identified in her own hand which has a cashier's check number
16 written on the back and that number corresponds identically
17 to the cashier's check to the Sergeant at Arms.

18 In addition, there is a stipulation that that
19 cashier's check was deposited in the account of Charles C.
20 Diggs, Jr.

21 MR. POVICH: No objection.

22 THE COURT: Received.

23 THE CLERK: 46-D received in evidence.

24 (Government's Exhibit 46-D for
25 identification received)

000840

1 MR. KOTELLY: Next are four documents, Your Honor,
2 two money orders, Government's Exhibits 45-A and 45-B; two
3 cashier's checks, 46-E and 46-F. I could go through those
4 seriatim.

5 45-A is a money order to the Detroit Edison Company.
6 From the files of Congressman Diggs we have 31-A and -B,
7 which has a bill, and the notation to the cashier's check
8 with the cashier's check number as well as having a copy of
9 that money order, customer copy of that money order, coming
10 from the files of Congressman Diggs.

11 45-B is a money order to One Stop Lock, which is
12 identical to a customer copy of the money order which is
13 31-C or -D. I don't remember which is which now, but either
14 -C or -D is a customer copy of that money order and the other
15 one is an invoice from One Stop Lock with a notation in the
16 hand of Jean Stultz which identifies this particular money
17 order.

18 46-E is a cashier's check to the House Majority
19 on Government's Exhibits 30-A and -B; there is an invoice
20 with a notation that's in the amount of \$900, and a copy of
21 the cashier's check is also attached. That's 30-B. That
22 comes from the files of Congressman Diggs.

23 Government's Exhibit 46-F, which was a payment made
24 to the House restaurant, it's a cashier's check; there is
25 nothing from the files of Congressman Diggs that relates to

000841

1 this particular item. However, the sum total of these four
2 documents, the two money orders and the two cashier's checks
3 is the amount of \$1430.59.

4 There's a check to cash that was cashed on the same
5 date at the same branch, personal check of Jean Stultz, it
6 was in the amount of \$1430.99. There is a difference of
7 \$1.40 between these two.

8 I should also state that the serial number of the
9 cashier's check to the House restaurant is the next digit
10 over from the serial number of the House Majority cashier's
11 check that that would reflect they were all purchased at the
12 same time by Jean Stultz with her check to cash.

13 THE COURT: Mr. Povich?

14 MR. POVICH: I have no objection to those checks
15 which she identified specifically as having been paid by her
16 from her funds.

17 THE COURT: Be received.

18 THE CLERK: Government's Exhibits 45-A, -B, -E and
19 -F received in evidence.

20 (Government's Exhibits 45-A and
21 -B, 46-E and -F for identification
22 were received)

23 MR. KOTELLY: The next group relate to August 16,
24 1974. It's 45-C, -D, -F, -G, -H.

25 There are six money orders on that date, Your Honor.

000842

1 They each run by the serial number chronologically
2 one right after another in sequence.

3 45-C is the money order to David Ramage. There
4 is an identical serial number for a customer copy, 32-A, which
5 came from the files of Congressman Diggs.

6 45-D is also a money order to David Ramage. There
7 is an identical customer copy, 32-B, from the files of Congress
8 man Diggs.

9 45-E is a money order to Combustioneer, which is
10 an air conditioning company, for the Congressman's home.
11 Government's Exhibits 32-C and -D are bills from Combustioneer
12 in the exact amount of the money order, as well as 32-E,
13 which is a customer copy of the Combustioneer money order.
14 They are identical as to amount and serial number.

15 45-F is a money order to the House stationery account
16 Jean Stultz identified a letter, 32-F, which was a letter
17 from the House stationery account with a notation as to the
18 fact there was a money order that was paid and the amount
19 on it. There is also a customer copy of the money order
20 which is identical in serial number and amount and person.

21 45-G is a money order to Rod Miller. It compares
22 exactly to a customer copy and a bill which has a notation
23 on it, which is 32-I and -J, which are in evidence.

24 45-H is a money order to the Public Printer and
25 we have from the files of Congressman Diggs, Government's

000843

1 Exhibits 32-K and -L, which are the bill and a customer copy
2 for that exact money order.

3 These six money orders are a total of \$898.58. On
4 the same date at the same branch, Jean Stultz cashed a check
5 in the identical amount, \$898.58

6 MR. POVICH: No objection for that reason, Your
7 Honor.

8 THE COURT: Received.

9 (Government's Exhibits 45-C,
10 -D, -E, -F, -G and -H for
11 identification received)

12 MR. KOTELLY: On September 12, 1974, there were
13 six money orders purchased, Your Honor. 45-CC, which was
14 introduced this morning.

15 THE COURT: Mr. Patterson, are you able to keep
16 up with this?

17 THE CLERK: I'm trying, Your Honor.

18 MR. KOTELLY: And 45-I, -J, -K, -L and -M.

19 Your Honor, these six money orders run numerically
20 in sequence, one right after the other.

21 45-CC, Continental Society money order, Jean Stultz
22 identified her handwriting on Government's Exhibit 33-A,
23 which is the customer copy of that money order and the purpose
24 was to give it to a constituent of the Congressman.

25 45-I is a money order to Anchor Finance from the
files of Congressman Diggs.

000844

1 We have the customer copy of that identical money
2 order.

3 45-J is a money order on the National Capital Bank.
4 I should say -J, -K and -L are all three money orders on the
5 National Capital Bank of Washington. Miss Stultz identified
6 her handwriting on the face of each document and also there
7 were customer copies obtained from Congressman Diggs' files,
8 33-B, -C, -D and -E.

9 45-M to Industrial Credit is the last one of this.
10 There was a mailgram of a customer copy in this money order
11 found in the files of Congressman Diggs.

12 On September 12, 1974, these six money orders were
13 all purchased from the same branch. They were totaled,
14 \$1,008.86.

15 On that same date at the same branch, Jean Stultz
16 cashed her check, 24-K, in the exact same amount, \$1,008.86.

17 THE COURT: Mr. Povich?

18 MR. POVICH: I have no objection for that reason,
19 Your Honor.

20 THE COURT: Received.

21 THE CLERK: Government's 45-I, -J, -K, -L and
22 -M received in evidence and 45-CC.

23 (Government's Exhibits 45-I,
24 -J, -K, -L and -M and 45-CC
25 for identification received)

000845

1 MR. KOTELLY: On September 30, 1974, a cashier's
2 check to Perpetual was purchased, which is Government's
3 Exhibit 46-G for identification. The amount of the cashier's
4 check is \$916.

5 On that same day at the same branch, Jean Stultz
6 cashed a check to cash, 24-J, in the exact same amount, \$916.
7 On the back of that check to cash is a notation of a cashier's
8 check number which is identical to the cashier's check number
9 of Perpetual.

10 We also have the stipulation that this cashier's
11 check was paid to the account of Charles Diggs at Perpetual
12 for a loan.

13 THE COURT: Mr. Povich?

14 MR. POVICH: No objection, Your Honor.

15 THE COURT: Received.

16 THE CLERK: Government's Exhibit 46-G received in
17 evidence.

18 (Government's Exhibit 46-G for
19 identification received)

20 MR. KOTELLY: Your Honor, the next nine money orders
21 are 45-N consecutively to 45-V. They were all purchased on
22 January the 2nd, 1975.

23 45-N is a money order to the Central United Methodist
24 Church.

25 45-O is a money order to Multitech, I think it is,

000846

1 Corporation.

2 From the files of Congressman Diggs, Government's
3 Exhibit 34-A, was a Xerox copy of those two money orders
4 with a notation identified by Miss Stultz, said "mail to
5 Quinn," and she identified that as being her handwriting
6 and that they were two money orders that she had sent to
7 Quinn who worked for the Congressman in connection with some
8 function that was at Detroit that she personally attended.

9 45-P is a money order to the Detroit Edison which
10 is from the files of Congressman Diggs. We found the exact
11 customer copy and the bill, which is 34-B and -C.

12 45-Q, -R and -S were three money orders that are
13 cancelled. Jean Stultz identified her signature on those
14 three documents.

15 45-T and -U are money orders to Barnett Caterers
16 and there is a letter from the files of Congressman Diggs,
17 that was identified by Miss Stultz, 34-D, which has the serial
18 numbers of the money order reflected on them. There were
19 also customer copies of these two money orders found in the
20 files of Congressman Diggs; that's 34-E and -F.

21 Last one is 45-V, which is to Lees Florist, and
22 from the files of Congressman Diggs we obtained Government's
23 Exhibits 34-G and -H, which was a letter to Lees Florist
24 from Miss Stultz, which she identified as well as a customer
25 copy of this particular money order.

000847

1 The total of these nine, if you eliminate the three
2 that are cancelled, Your Honor, the total of the six actual
3 money orders is \$763.91. There is a check to cash on the
4 same date at the same branch from Jean Stultz, which is in
5 the amount of \$763.91, the exact same amount as these six
6 money orders.

7 MR. POVICH: For that reason we have no objection.

8 THE COURT: Received.

9 THE CLERK: Government's Exhibits 45-N (like in
10 Nancy) through 45-V received in evidence.

11 (Government's Exhibits 45-N
12 through 45-V, inclusive, for
13 identification, received)

14 MR. KOTELLY: On October 1st, 1975, there were two
15 money orders and a cashier's check purchased, Your Honor.

16 Government's Exhibit 45-W is a cashier's check to
17 American Express from the files of Congressman Diggs. We
18 had a customer copy of that exact American Express money order.

19 45-X was a money order to Gefco Finance and in the
20 files of Congressman Diggs, 35-D, is a copy of that particular
21 money order.

22 THE COURT: Geico or Gefco?

23 MR. KOTELLY: Gefco, G-e-f-c-o.

24 46-H is a cashier's check to the National Bank of
25 Washington.

000848

1 On a ledger which was identified by Miss Stultz
2 as one maintained by her, Government's Exhibit 36-A, which
3 did come from the files of Congressman Diggs, there is a nota-
4 tion on this page dated 10/1/75.

5 It has a total amount and the indication "cashier's
6 check 442,441," which is the exact serial number on the
7 National Bank of Washington cashier's check, 46-H.

8 There is also a notation "CCD" which Miss Stultz
9 identified as the Congressman. "CCD check number 7-51."
10 That is the check, 36-B, which is in evidence, Your Honor.

11 The sum total of the cashier's check and the personal
12 check of the Congressman is identical to the number, to the
13 amount that she has listed here of \$483.98. So based on
14 these notations, we would submit that that National Bank of
15 Washington cashier's check has been identified.

16 The sum total of these three documents, the two
17 money orders and the cashier's check, is \$600. They were
18 purchased on October 1st, 1975. On that same date at that
19 same branch, Miss Stultz cashed a check to cash, 24-Q, in
20 the same amount, \$600.

21 MR. POVICH: No objection for that reason, Your
22 Honor.

23 THE COURT: Received.

24 THE CLERK: Government's Exhibits 45-W, 45-X and
25 46-H received in evidence.

000849

1 (Government's Exhibits 45-W,
2 45-X and 46-H for identifica-
3 tion were received)

4 MR. KOTELLY: The last two, Your Honor, are Govern-
5 ment's Exhibits 45-Y and -Z. They are money orders from the
6 Riggs bank to the House Recording Studio from the files of
7 Congressman Diggs. We obtained an invoice with Miss Stultz'
8 writing on it which indicated that money orders were paid
9 for the amount of \$312 plus they were attached, 37-B and
10 -C, customer copies of these two money orders.

11 The amount of these two money orders purchased on
12 March 16 was \$312. On the same date at the same branch, Jean
13 Stultz cashed a check to cash, 24-S, in the amount of \$312,
14 which was the exact same amount.

15 MR. POVICH: No objection for that reason.

16 THE COURT: Received.

17 THE CLERK: Government's 45-Y and 45-Z received
18 in evidence.

19 (Government's Exhibits 45-Y
20 and 45-Z for identification
21 were received)

22 MR. KOTELLY: Your Honor, I believe that takes care
23 of all of the 45 and 46 series, if Mr. Patterson could just
24 reassure me of that. I think I covered all of them.

25 So that would be 45-A through -Z, AA through ZZ;

000850

1 and 46-A through -I, I believe.

2 Do we have all of those?

3 THE CLERK: Yes.

4 MR. KOTELLY: We can move on to the money orders
5 and cashier's checks from the National Bank of Detroit.

6 Your Honor, 47-A through -J, which are money orders.

7 THE CLERK: 47-A through -E is already in.

8 MR. KOTELLY: Fine. So then -F through -J and
9 -M were all identified by Mr. Matlock as having his handwriting
10 on them.

11 We move those into evidence.

12 MR. POVICH: Anything he identified, Your Honor,
13 I have no objection to.

14 THE COURT: Would you identify them?

15 THE CLERK: 47-F through 47-J and -M, Your Honor.

16 MR. KOTELLY: Those are the ones Mr. Matlock identi-
17 fied as having his own personal handwriting on them.

18 THE COURT: Mr. Povich would like to have them
19 individually identified, so just show them to him.

20 MR. POVICH: I have no objection to that, Your Honor,
21 that representation is correct.

22 THE COURT: Thank you.

23 They will be received.

24 THE CLERK: I was wondering about -N.

25 MR. KOTELLY: We are going to -K and -L and -N,

000851

1 which I have not addressed yet, Your Honor. It's the only
2 way I know how to get them through.

3 THE CLERK: Government's Exhibits 47-F through
4 -J and -M received in evidence. 47-F through -J, including
5 -J, and then -M by itself.

6 MR. KOTELLY: Government's Exhibits 47-K and -L
7 were identified by --

8 THE COURT: Mr. Patterson, are you up to him?

9 THE CLERK: 47-F through 47-J and 47-M.

10 (Government's Exhibits 47-F,
11 -G, -H, -I, -J and 47-M for
12 identification were received)

13 MR. KOTELLY: Right. 47-K and 47-L were identified
14 by Mr. Sheeran of WJLB, who identified these as having come
15 from Mr. Matlock. He identified the writing on the face of
16 these documents as being his own.

17 There was also a receipt that's in evidence that
18 he furnished to Mr. Matlock as a result of these two money
19 orders being given to him.

20 MR. POVICH: No objection.

21 THE COURT: Received.

22 THE CLERK: 47-K and 47-L received in evidence.

23 (Government's Exhibits 47-K
24 and 47-L for identification
25 were received)

000852

1 MR. KOTELLY: 47-N, Your Honor, is a National Bank
2 of Detroit money order which is all typed from Jim Reel
3 Leasing Company. We have a Xerox copy which was admitted
4 in evidence from Mr. Matlock to Agent Reed, which is identical
5 in serial number and the amount. The Xerox copy is 74-B,
6 Your Honor, and that has already been admitted as having been
7 given by Mr. Matlock to Mr. Reed.

8 MR. POVICH: Identified by Mr. Matlock?

9 MR. KOTELLY: No, this was not identified because
10 it was typewritten; there is no personal identification
11 capable.

12 MR. POVICH: Was 74-B identified by Mr. Matlock?

13 MR. KOTELLY: 74-B was not identified. He turned
14 over documents he maintained to Mr. Reed and Mr. Reed marked
15 them for purposes of identification.

16 MR. POVICH: I object to that, Your Honor.

17 MR. KOTELLY: I think the objection is already
18 noted, Your Honor, as to 74-B.

19 THE COURT: All right. Be received.

20 THE CLERK: 74-B and 74-A, Your Honor?

21 THE COURT: Yes.

22 (Government's Exhibits 74-A
23 and -B for identification
24 were received)

25 MR. KOTELLY: I'm sorry, we are talking about

000853

1 47-N. I'm sorry; I confused everything. 74-B is already
2 in evidence. It was earlier moved into evidence.

3 47-N is the document we are now talking about.

4 47-N is the document we are asking to have admitted into evi-
5 dence, and it's based on 74-B.

6 THE COURT: Received.

7 THE CLERK: 47-N received in evidence.

8 (Government's Exhibit 47-N for
9 identification received)

10 THE COURT: How much more of this do you have?

11 MR. KOTELLY: We have a number more money orders
12 and cashier's checks, Your Honor.

13 THE COURT: We will resume at 1:30.

14 How much more evidence do you have of Mr. Reed?

15 MR. KOTELLY: After we have the evidence moved in,
16 which will probably take another 15, 20 minutes, we'll have
17 Mr. Reed testify about certain charts that he has prepared
18 based on the physical evidence. That should take no more than
19 20 minutes to present that evidence and this is our last wit-
20 ness, so whatever cross-examination there is after that.

21 THE COURT: All right.

22 Could you give the Court some indication as to the
23 balance of the afternoon?

24 MR. POVICH: Yes. We will give you our memorandum
25 on the motion at the end of the Government's case.

000854

1 We will outline for you briefly and answer any ques-
2 tions which you may have as a result of that. Mr. Carl will
3 argue that if it pleases the Court.

4 After that we will proceed with Mr. Under Secretary
5 Newsome in accordance with his request, although it's somewhat
6 out of turn, and we believe that that probably would take
7 us just about to the end of the day. There may be another.

8 THE COURT: He's going to be a very brief witness.

9 MR. POVICH: There are a couple other witnesses
10 we have prepared that are essentially brief.

11 MR. KOTELLY: May we inquire who the witnesses will
12 be this afternoon? Mr. Povich has refused to tell us who
13 he's calling even at this late date when we should know who
14 he is intending to call.

15 MR. POVICH: I think I know who I'm going to call,
16 but it's not the kind of witness I would like to disclose
17 to you.

18 THE COURT: Are you calling character witnesses
19 in addition to Mr. Newsome or any fact witnesses?

20 MR. POVICH: I'm going to call character witnesses
21 in addition, Your Honor.

22 The clerk who was here will be recalled briefly
23 for information with respect to one of the employees that
24 was in the file. He testified this morning.

25 There will be a fact witness, I believe,

000855

1 Bob Washington, who will appear as a result of the testimony
2 of Mrs. Stultz in rebuttal to what she had to say. I think
3 that would probably take care of it.

4 THE COURT: This would take us up to 5:00 o'clock?

5 MR. POVICH: I think so.

6 MR. KOTELLY: I must state I'm somewhat burdened
7 by the fact Mr. Povich has fact witnesses that he has kept
8 hidden from the Government to this late point in time.

9 MR. POVICH: Let's say, Mr. Kotelly, as a result
10 of Mrs. Stultz' testimony, we learned of a fact witness who
11 essentially volunteered to testify.

12 THE COURT: I think fact witnesses should be dis-
13 closed. The Government has disclosed its fact witnesses at
14 least a week ago -- longer than that.

15 MR. POVICH: I have given him the name of Robert
16 Washington. I think Mr. Victor Fisher may testify; we are
17 not certain of that.

18 MR. KOTELLY: Some of these witnesses have testified
19 before the grand jury, and in order to properly prepare the
20 cross-examination, Your Honor --

21 THE COURT: I think you are entitled to that informa-
22 tion.

23 MR. POVICH: I don't know of course who has appeared,
24 Your Honor, but I will try to give Mr. Kotelly the name of
25 any fact witness I wish to call.

000856

1 THE COURT: You gave the Court the names of certain
2 people that I understand were fact witnesses. Mr. Newsome
3 was one of them. Now we learn Mr. Newsome is a character
4 witness.

5 MR. POVICH: It was at that time I wanted to make
6 sure that the Government understood that it could come in
7 either by way of character or substantive evidence and not
8 be caught unaware, and that's why I gave you his name as a
9 fact witness.

10 THE COURT: Any of the other people whose names
11 you gave me as character witnesses?

12 MR. POVICH: No, sir; I don't believe so.

13 THE COURT: I assume that is your list of fact wit-
14 nesses.

15 MR. POVICH: At the moment, Your Honor, yes.

16 THE COURT: Because the Court is concerned about
17 identifying all fact witnesses to the jury, whether they knew
18 them.

19 MR. POVICH: There is one additional person, Mrs.
20 Roundtree, may testify in this case, and Mr. Ed Sylvester may
21 testify, both as fact witnesses as a result of Mrs. Stultz'
22 testimony.

23 THE COURT: All right. 5:00 o'clock today, gentlemen,
24 we'll go to 5:00 o'clock.

25 (Whereupon, at 12:32 p.m. a luncheon recess
was taken, to reconvene at 1:30 p.m. this same day.)

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AFTERNOON SESSION

1:30 p.m.

[Jury not present]

THE COURT:..All right.

MR. KOTELLY: Your Honor, I believe we were finished with 47, and we were beginning on 48, which are money orders from the National Bank of Detroit.

48-A through -D were all identified by Mr. Matlock as his personal handwriting.

We would move those into evidence.

THE COURT: Mr. Povich?

MR. POVICH: Those were all for the payment of office expenses, right? I have no objection, Your Honor.

THE COURT: Received.

THE CLERK: Government's Exhibits 48-A through -D received in evidence.

(Government's Exhibits 48-A
thru 48-D for identification
received)

MR. KOTELLY: The next four, Your Honor, were not identified by Mr. Matlock. Those are 48-E, -F, F(1), F(2). They are all money orders from the National Bank of Detroit.

If I might comment briefly on that at this time, Your Honor. Your Honor recalls the testimony of Mr. Matlock. He indicated that he gave Congressman Diggs three or four

000858

1 money orders in blank and that he related it at the time when
2 he purchased a money order for Maxine Young.

3 He also talked about that same time there was a
4 money order to Jim Reel Leasing.

5 Government's Exhibit 48-C is a money order to Maxine
6 Young. The serial number is 7871344.

7 The next sequence, number 1345, is a money order
8 to Jim Reel Leasing. Matlock identified his handwriting on
9 it.

10 The next number is in sequence after Jim Reel,
11 1346, 1347, 1348, 1349, which are Government's 48-E, -F,
12 -F(1), -F(2).

13 We would submit that based on the sequence of numbers
14 the fact that a number of witnesses have identified Mr. Diggs'
15 handwriting on these documents and the testimony of the
16 custodian from the National Bank of Detroit that all six of
17 these money orders was purchased on September 10th, 1976,
18 adequately identifies these four money orders, -E, -F, -F(1)
19 F(2) as being the money orders that Mr. Matlock must have
20 given to Congressman Diggs in blank, so we move for their
21 admission at this time.

22 MR. POVICH: Your Honor, I object for the reasons
23 stated that there is no indication that they were given by
24 Mr. Matlock to anybody else. Mr. Matlock couldn't identify
25 that, and so testified.

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1 THE COURT: I thought his testimony was he had given
2 them to Mr. Diggs.

3 MR. POVICH: Couldn't identify those money orders,
4 Your Honor.

5 THE COURT: He had given money orders to Mr. Diggs.

6 MR. POVICH: Yes, but the question is whether or
7 not he gave them those money orders and I object to that.

8 MR. KOTELLY: Your Honor, we submit with the
9 sequence numbers on the money orders, the fact they are the
10 two money orders directly after the ones from Maxine Young
11 and Jim Reel, which Mr. Matlock testified about, that circum-
12 stantially we have demonstrated these have to have been the
13 three or four money orders that were given in blank to Mr.
14 Diggs.

15 THE COURT: I will receive them.

16 THE CLERK: Government's Exhibits 48-E, 48-F,
17 48-F(1) and 48-F(2) received in evidence.

18 (Government's Exhibits 48-E,
19 48-F, 48-F(1) and 48-F(2) for
20 identification were received)

21 MR. KOTELLY: 48-G through -N were all identified
22 by Mr. Matlock as being in his handwriting, Your Honor.

THE COURT: Do you want to see them?

24 MR. POVICH: No objection, Your Honor.

25 THE COURT: Received.

000860

1 THE CLERK: Government's 48-G through 48-N
2 received in evidence.

3 (Government's Exhibits 48-G
4 thru 48-N for identification
5 were received)

6 MR. POVICH: No objection.

7 MR. KOTELLY: Your Honor, the next exhibit is
8 48-O, which was not identified by Mr. Matlock because none
9 of his writing appears on it. However, Mr. Matlock and Miss
10 Stultz identified the signature on the face of this document
11 as being Mr. Diggs'.

12 Starting with Government's Exhibit 48-J, which is
13 now in evidence, and going up through -N, the serial numbers
14 on these money orders are 7873085, which is 48-J, and then
15 it goes 86, 87, 88, 89, 89 being 48-N.

16 The next number in the sequence, which is 48-O,
17 is 7873090, which follows in sequence. These were all pur-
18 chased according to the custodian from the National Bank of
19 Detroit, all on November the 1st of 1976.

20 The first five of those numbers in sequence, Mr.
21 Matlock identified because they were his writing on them;
22 they were the type of money orders that he purchased out of
23 his salary for expenses for Congressman Diggs.

24 We would submit that even though Mr. Matlock could
25 not identify 48-O, that circumstantially, because they all

000861

1 follow in sequence order, they were all purchased on the
2 same day, that circumstantially reflects that this was addi-
3 tional money orders that were purchased by Mr. Matlock and
4 that in some manner it was signed by Congressman Diggs and
5 cashed by Lorraine McDaniels Westbrook.

6 MR. POVICH: I object, Your Honor.

7 THE COURT: I understand. Received.

8 THE CLERK: 48-O received in evidence.

9 (Government's Exhibit 48-O for
10 identification was received in
11 evidence.)

12 MR. KOTELLY: -P and -S are in Mr. Matlock's hand-
13 writing, Your Honor. I move their admission.

14 THE COURT: Received.

15 THE CLERK: Government's Exhibits 48-P and 48-S
16 received in evidence.

17 (Government's Exhibits 48-P and
18 48-S for identification were
19 received in evidence.)

20 MR. KOTELLY: Your Honor, Government's 49 is a
21 cashier's check from the National Bank of Detroit for the
22 House Recording Studio. It's all typewritten. On the face
23 of it, without -- Mr. Matlock did not identify this as one
24 he purchased, although he did identify it as the type of
25 document he would purchase.

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1 Mr. Matlock and Miss Stultz also identified the
2 signature on the back of this document.

3 THE COURT: Identified as who's?

4 MR. KOTELLY: Mr. Diggs', Your Honor.

5 Government's Exhibit 74-A, which is-already in evi-
6 dence, is a document that Mr. Reed identified as having been
7 given to him by Mr. Matlock.

8 Mr. Matlock testified that he kept customer's
9 copies of various documents and turned them over to the FBI.
10 This document, 74-A, is the customer's copy of Government's
11 Exhibit 49. It's identical in serial number, date, payee
12 and amount, so we would submit that circumstantially, we
13 have shown this is one of the cashier's checks that was pur-
14 chased by Mr. Matlock.

15 THE COURT: Received.

16 MR. POVICH: Was Mr. Matlock shown the customer's
17 copy?

18 MR. KOTELLY: He was not shown the customer's copy;
19 he was shown the original copy, Government's Exhibit 49,
20 which is the type of document he would have purchased.

21 MR. POVICH: He could not identify that document,
22 Your Honor, so for that reason I object.

23 THE COURT: He identified the signature.

24 MR. POVICH: He said Mr. Diggs' signature is on
25 it, but the question is going to be whether or not Mr. Matlock

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1 gave it to him, not whether Mr. Diggs signed it.

2 Mr. Diggs can get money orders from places other
3 than Mr. Matlock.

4 THE COURT: I have to agree with that.

5 THE CLERK: Government's Exhibit 49 received in
6 evidence.

7 (Government's Exhibit 49 for
8 identification received)

9 MR. KOTELLY: Government's Exhibits 50-A through
10 50-KK were all identified by Mr. Matlock as having his hand-
11 writing.

12 MR. POVICH: No objection, Your Honor.

13 THE COURT: Received.

14 THE CLERK: Government's Exhibits 50-A through
15 50-KK received in evidence.

16 (Government's Exhibits 50-A
17 thru 50-KK for identification
18 were received)

19 MR. KOTELLY: 50-LL is a money order from the Bank
20 of the Commonwealth -- I'm sorry. 50-LL is a money order
21 from the Bank of the Commonwealth, payable to the House
22 Recording Studio. It's all typewritten and Mr. Matlock could
23 identify it only as being the type of money order that he
24 would have purchased.

25 Government's Exhibit 50-LL comes in sequence

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1 immediately after Government's 50-KK as far as the serial
2 numbers on this money order.

3 50-KK, which was in Mr. Matlock's handwriting is
4 23210408 and -LL is 09. So we would submit, based on the
5 fact that it's the type of money order Mr. Matlock would have
6 purchased, that it follows by one in sequence to the one that
7 Mr. Matlock can positively identify as having been purchased
8 by him, that circumstantially we can show -LL was also pur-
9 chased by Mr. Matlock.

10 THE COURT: Does it have Mr. Diggs' signature on
11 it?

12 MR. KOTELLY: There is no signature on this, Your
13 Honor. This was credited to Mr. Diggs' account at the House
14 Recording Studio, according to the stipulation 13, and that
15 is undisputed.

16 MR. POVICH: Objection, Your Honor.

17 THE COURT: Sustained.

18 THE CLERK: 50-LL sustained.

19 MR. KOTELLY: Government's -MM through -QQ were
20 also identified by Mr. Matlock as having his personal writing
21 on them. Move those in evidence.

22 THE COURT: Received.

23 MR. POVICH: No objection.

24 THE CLERK: Government's 50-MM through 50-QQ
25 received in evidence.

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1 MR. KOTELLY: Your Honor, regarding Exhibits
2 51-A through 51-D, they are four cashier's checks from the
3 Bank of the Commonwealth. We have in evidence Government's
4 Exhibits 73-A through -D, which are the corresponding customer
5 copies of each one of these cashier's checks, which Agent
6 Reed testified he was given them by Mr. Matlock.

7 Mr. Matlock testified that these were the type,
8 you know, they were copies made and kept by him which were
9 turned over to the FBI, copies of money orders and cashier's
10 checks that he had purchased out of his salary.

11 Among these documents we have also had independently
12 identified 51-B by Jean Stultz as having been received by
13 her from Mr. Matlock.

14 51-C we had testimony that there was a signature
15 on the back of Congressman Charles Diggs, and this one by
16 stipulation was a cashier's check that was credited to the
17 Congressman's account at the House Recording Studio.

18 51-D was identified by Mr. Sheeran as having been
19 paid on the account of Congressman Diggs at WJLB.

20 So, based on the fact that Mr. Matlock gave customer
21 copies of these particular documents to Agent Reed and his
22 testimony that these were documents he kept of cashier's
23 checks that he had purchased out of his salary to pay for
24 expenses, that 51-A through -D should be admitted in evidence.

25 MR. POVICH: Your Honor, I don't believe he

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1 identified customer's

2 MR. KOTELLY: I can show them to Mr. Povich, if
3 he believes they differ in any respect.

4 MR. POVICH: I don't believe he was shown either
5 the original or customer's copy to identify whether he gave
6 those over.

7 THE COURT: They will be received.

8 THE CLERK: Government's Exhibits 51-A through
9 51-D received.

10 (Government's Exhibits 51-A thru
11 51-D for identification received)

12 MR. POVICH: I object.

13 MR. KOTELLY: Your Honor, I believe that is all
14 of the Government's exhibits that we intend to move into evi-
15 dence up through 71-B.

16 If we could have Mr. Patterson, I request Mr.
17 Patterson to read which exhibits he does not have admitted
18 so I can indicate whether those are being withdrawn or not.

19 THE COURT: Proceed, Mr. Patterson.

20 THE CLERK: 41-A through 44-B.

21 MR. KOTELLY: Withdrawn, Your Honor.

22 THE COURT: All right.

23 THE CLERK: 61-A, -B and -C withdrawn?

24 MR. KOTELLY: Yes, Your Honor, they were never
25 identified and were withdrawn.

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1 THE COURT: 61-A through -C -- all right.

2 THE CLERK: And Government's Exhibit 57-B.

3 MR. KOTELLY: That was never identified and we
4 would ask that be withdrawn.

5 THE COURT: All right.

6 THE CLERK: Government's Exhibits 62-A and 62-B.

7 MR. KOTELLY: Never identified and we ask it be
8 withdrawn.

9 THE COURT: All right.

10 MR. KOTELLY: I believe 65 was never given a number;
11 it was just missed inadvertently, Your Honor.

12 THE CLERK: Government's Exhibit 72; that was the
13 folder.

14 MR. KOTELLY: It has been marked but we would not
15 move the whole folder into evidence, Your Honor.

16 THE COURT: All right.

17 THE CLERK: And Government's Exhibit 72-C, the
18 receipt.

19 MR. KOTELLY: That also we would not move into
20 evidence, Your Honor.

21 THE COURT: All right.

22 THE CLERK: That completes the list, Your Honor.

23 THE COURT: All right, now, did you have something
24 you wanted the Agent Reed to testify about before we bring
25 in the jury?

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1 MR. KOTELLY: Your Honor, not before the jury is
2 brought in. The remaining testimony of Agent Reed is regarding
3 eight charts that he prepared based on the exhibits that are
4 now in evidence.

5 There's only one minor change that will have to
6 be made, Your Honor. That is, because the Court did not
7 admit Government's Exhibit 50-LL a money order to the House
8 Recording Studio in the amount of \$46.75, that that one par-
9 ticular item will have to be deleted from the summary of
10 money orders and cashier's checks purchased by Mr. Matlock,
11 which is going to be 79, and also that will decrease the
12 total for that year by the commensurate amount of \$46 and
13 some cents.

14 THE COURT: All right. Do you want him to do that
15 now?

16 MR. KOTELLY: If we could advise him, yes, Your
17 Honor, that would be helpful.

18 THE COURT: All right.

19 MR. KOTELLY: I was just thinking this is going
20 to cause a minor logistics problem. Your Honor, we had not
21 only prepared these charts in advance, but we have also
22 made copies so that when after these are admitted in evidence,
23 when Agent Reed explains what is on these charts, that we
24 have copies for the jury.

25 We would request, if at all possible, that we use

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1 the document as it is, even though it includes that entry;
2 the entry will be removed later. But there will not be any
3 reference to individual items and have it indicate that the
4 total indicated on that figure is incorrect and give the
5 correct figure, which will also be corrected.

6 THE COURT: I think you had better correct the docu-
7 ment before it is used.

8 MR. KOTELLY: Including the documents given to the
9 jury, Your Honor?

10 THE COURT: Yes.

11 MR. KOTELLY: It's just a question of logistically
12 removing that entry.

13 THE COURT: I understand. You just have to do it,
14 that's all. Just take your time and get it done.

15 MR. KOTELLY: Mr. Marcy is going to do that, Your
16 Honor, right now.

17 THE COURT: All right.

18 MR. KOTELLY: Your Honor, might I be allowed go
19 out and tell Mr. Reed that particular exhibit is not in evi-
20 dence and explain to him the charts will be altered?

21 THE COURT: Go ahead.

22 MR. KOTELLY: They are being Xeroxed now, Your Honor.
23 They should be down in a few minutes.

24 THE COURT: All right.

25 MR. KOTELLY: We are ready to proceed.

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1 THE COURT: Ready for the jury?

2 MR. KOTELLY: Yes, Your Honor.

3 THE COURT: All right.

4 MR. KOTELLY: Do I have permission to formally
5 read the exhibits now in evidence or do you wish I wouldn't?

6 THE COURT: That would be reading of a meaningless
7 number of symbols.

8 MR. KOTELLY: Might I make a broad statement of
9 moving remaining documents into evidence.

10 THE COURT: All right.

11 (Whereupon, at 2:10 p.m., the jury entered the
12 courtroom)

13 MR. KOTELLY: Your Honor, I would move in the remain-
14 ing Government's exhibits through Exhibit 74, which the Court
15 has indicated it would allow the Government to have them in
16 evidence.

17 THE COURT: They will be received in accordance
18 with the Court's prior rulings.

19 MR. KOTELLY: We ask Agent Reed be recalled, Your
20 Honor.

21 THE COURT: All right.

22 (Continued on the following page:)
23
24
25

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1 Whereupon,

2 JAMES MILTON REED

3 having been called as a witness by and on behalf of
4 the Government and having been previously duly sworn,
5 resumed the stand and testified further as follows:

6 DIRECT EXAMINATION (continued)

7 BY MR. KOTELLY:

8 Q Agent Reed, in connection with this case, did you
9 have occasion to prepare any charts?

10 A Yes, I did.

11 Q How many charts did you prepare?

12 A Eight.

13 Q What were these eight charts generally based upon?

14 A Based upon generally it would be the payroll
15 authorization forms, the payroll summaries furnished by the
16 House Finance Office, Treasury checks issued to various indi-
17 viduals, copies of money orders and cashier's checks furnished
18 by Riggs, which were placed in evidence, original money orders
19 and cashier's checks furnished by the Bank of the Commonwealth
20 in Detroit, which were placed in evidence as well as original
21 cashier's checks and some original and some microfilm copies
22 of money orders and cashier's checks furnished by the National
23 Bank of Detroit.

24 MR. KOTELLY: Your Honor, I ask this be marked
25 Government's Exhibits 75 through 82.

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1 THE CLERK: Government's Exhibits 75 through 82
2 marked for identification.

3 (Government's Exhibits 75 thru
4 82 marked for identification)

5 BY MR. KOTELLY:

6 Q Mr. Reed, I show you Government's Exhibits 75 through
7 82, and ask you if you can identify those charts?

8 A Yes, I can identify them.

9 Q How do you identify them?

10 A I recognize the format as that which I prepared
11 and I also have my initials on the originals.

12 Q Are these the eight charts which you prepared in
13 connection with this case?

14 A Yes.

15 Q Have you compared these charts with the Government's
16 exhibits that are in evidence, to compare it for purposes
17 of determining the accuracy of the charts?

18 A Yes, I am.

19 Q How do they compare?

20 A Accurately.

21 Q I ask you to look at Government's Exhibit 75 for
22 identification and ask you what is that chart?

23 A Government's Exhibit 75 is a payroll analysis for
24 Jean G. Stultz covering the period October 1972 through
25 August of 1976.

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1 Q What documents did you rely on in preparing Govern-
2 ment's Exhibit 75 for identification?

3 A The payroll -- I can't think -- the payroll certi-
4 fications and the --

5 Q Payroll authorization cards?

6 A Yes, payroll authorization forms, the salary checks
7 and the payroll certifications as furnished by the House
8 Finance Office.

9 Q And all of those documents are in evidence?

10 A Yes.

11 Q Government's Exhibit 76 for identification, could
12 you state what that chart is?

13 A Government's Exhibit 76 is a summary of checks from
14 the personal checking account of Jean G. Stultz.

15 Q What documents did you rely on in preparing Govern-
16 ment's Exhibit 76 for identification?

17 A That would be cancelled checks of Jean Stultz, which
18 I placed in evidence.

19 Q Government's Exhibit 77 for identification, would
20 you state what that chart is?

21 A Government's Exhibit 77 is a comparison of Jean
22 Stultz' checks to cash and Riggs Bank money orders and cashier'
23 checks.

24 Q What documents did you rely on in preparing this
25 chart?

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1 A The personal checks of Jean Stultz, the payroll
2 authorizations and the copies of cashier's checks and money
3 orders furnished by Riggs National Bank and placed in evidence.

4 Q I believe you mentioned payroll authorizations.
5 Did you use that in preparing Government's Exhibit 77?

6 A No. Just the checks and the information furnished
7 by Riggs.

8 Q Government's Exhibit 78 for identification, would
9 you state what that chart is?

10 A Exhibit 78 is the payroll analysis of Felix R.
11 Matlock from January 1975 through January of 1977.

12 Q What document did you rely on in preparing this
13 chart?

14 A Payroll authorization forms, the payroll furnished
15 by the House Finance Office, the Treasury checks issued to
16 Mr. Matlock; as well, and also there was an annual base change
17 confirmation form.

18 Q Government's Exhibit 79 for identification, what
19 is that document?

20 A Exhibit 79 is a summary of money orders and cashier's
21 checks purchased from the National Bank of Detroit and the
22 Bank of the Commonwealth.

23 Q What documents did you rely on to prepare this chart?

24 A The original cashier's checks and money orders
25 furnished by the Bank of the Commonwealth, and the original

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1 cashier's checks as well as some originals and some microfilm
2 money orders furnished by the National Bank of Detroit.

3 Q All of which are in evidence?

4 A Right.

5 Q Government's Exhibit 80 for identification, what
6 is that chart?

7 A That's a payroll analysis of Ofield Dukes for the
8 period April 1973 through February of 1976.

9 Q What documents did you rely upon to prepare this
10 chart?

11 A The payroll authorization forms, the payroll sum-
12 maries furnished by the House Finance Office, the Treasury
13 checks issued to Ofield Dukes.

14 Q Government's Exhibit 80, the documents you relied
15 on, are they all in evidence?

16 A Yes.

17 Q Government's Exhibit 81 for identification, what
18 is that?

19 A It's a payroll analysis of Jeralee G. Richmond from
20 July 1974 through July, 1976.

21 Q What documents did you rely on to prepare this chart?

22 A Payroll authorization forms, payroll summaries
23 furnished by the House Finance Office and the Treasury checks,
24 all of which are in evidence.

25 Q Government's Exhibit 82 for identification, what

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1 is that chart?

2 A It's a payroll analysis of George G. Johnson, July,
3 1973, through December of 1974.

4 Q What documents did you rely on in preparing that
5 chart?

6 A The payroll authorization forms, the payroll
7 summaries furnished by the House Finance Office, as well as
8 the Treasury checks issued to George Johnson, all of which
9 have been placed into evidence.

10 MR. KOTELLY: Your Honor, at this time the Government
11 would move to have admitted into evidence Government's Exhibits
12 75 through 82.

13 THE COURT: Do you wish to be heard on those, Mr.
14 Povich?

15 MR. POVICH: Yes, Your Honor.

16 THE COURT: Come to the bench.

17 (Thereupon, the witness stepped down from the
18 stand; counsel for both parties approached the bench
19 and conferred with the Court, as follows:)

20 MR. POVICH: Your Honor, the underlying facts are
21 in evidence and I have no objection to them. I do object
22 to the inflammatory and prejudicial manner in which these
23 charts have been prepared.

24 We talk in terms of every month of enormous
25 figures based upon gross annual salary, and yet the estimate

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1 happens to come up.

2 We talk about 11,000, 11,000 up front.

3 14, 14 gets down here to \$36,000.

4 They have spent more time, more numbers per month
5 talking about annual salary than they are talking about the
6 monthly salary.

7 THE COURT: I'm not going to have these charts
8 redrawn for that.

9 MR. POVICH: Your Honor, I'm not -- what I think,
10 if they are going to do it monthly, they should have had the
11 monthly amount and not had the annual amount. That's what
12 I'm saying. I'm specifically now referring to Government's
13 Exhibit 75.

14 THE COURT: It's perfectly clear which is which,
15 Mr. Povich.

16 MR. POVICH: Yes.

17 THE COURT: When we talk about an annual salary,
18 that's specified. When we talk about monthly salary, that's
19 specified.

20 Do you have some other objection?

21 MR. POVICH: On Government's Exhibit 76, with respect
22 to Jean Stultz, there are cash checks listed there for which
23 she did not testify that the money went for or on behalf of
24 Mr. Diggs.

25 She testified that it is her practice to cash checks,

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1 go to the bank, withdraw cashier's checks and money orders.
2 And the balance she said sometimes there might be a balance
3 where she would give Mr. Diggs.

4 That's not -- there are cashed checks in here for
5 which there are no cashier's checks or money orders.

6 This is not a situation which she described spec-
7 ifically, Your Honor, if you look on Exhibit 77, it will
8 indicate which checks are the next exhibit, Your Honor.

9 THE COURT: Do you have any objection to 76?

10 MR. POVICH: Yes, because it contains the checks.
11 You can identify the checks from the next exhibits.

12 For instance, on Exhibit 77, with respect to Jean
13 Stultz, they have a cashed check here on April 11 for \$420.
14 There is no cashier's check or money order drawn against
15 that and it should not have been included as one going to
16 Mr. Diggs.

17 Now, we think that \$420 check appears on the rest
18 back up here on the same date; it's misleading. There it
19 is right there. These are going to be used.

20 THE COURT: Where did that check come from?

21 MR. KOTELLY: Your Honor, Government's Exhibit 24
22 were a series of checks to cash that Jean Stultz identified
23 as checks that she used out of her special account to purchase
24 money orders and cashier's checks, or on one occasion she
25 thought she may have given cash back to Mr. Diggs.

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1 THE COURT: Yes.

2 MR. KOTELLY: But she did identify all of these
3 as being checks that were drawn for the purpose of buying
4 money orders and cashier's checks.

5 THE COURT: What was done with the money orders
6 and cashier's checks? What was done with the \$420 worth of
7 money orders and cashier's checks?

8 MR. KOTELLY: We have been unable to ascertain from
9 Riggs as to these money orders and cashier's checks. They
10 have made some search but they have never found any for that
11 particular date.

12 But they have great difficulty in finding these
13 unless we know the number of the money order or cashier's
14 checks, so we would submit even though they have not been
15 able to find the specific document, that you know the money
16 order or the cashier's checks, that her testimony is that
17 these checks went to purchase money orders or cashier's checks
18 or returned as cash to the Congressman, and that, therefore,
19 that they should be the checks cashed then.

20 THE COURT: With respect to this \$420 worth of
21 money orders and cashier's checks to which Mr. Povich
22 specifically objects, what testimony did she have?

23 MR. KOTELLY: She had no testimony as to whether,
24 no specific testimony as to which checks they cashed, which
25 money orders and cashier's checks were purchased.

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1 THE COURT: I don't think if you have got her testi-
2 mony as to that you can't put that down as an exhibit to submit
3 to the jury.

4 MR. KOTELLY: First of all, I submit that is what
5 her testimony is they were used for. Because we don't have
6 corroboration does not make the exhibits invalid.

7 THE COURT: I thought I understood you to say with
8 respect to this particular group of \$420 worth of cashier's
9 checks and money orders that there was no testimony from her.

10 MR. KOTELLY: There was testimony that the whole
11 group of checks were checks that she took out from her own,
12 her personal checks that she had had returned each month in
13 her monthly statement that she identified which ones she had
14 paid out of the special account and that's what she identified.

15 THE COURT: Has she identified this \$420?

16 MR. KOTELLY: That along with every other one I
17 asked her to identify each one, she went through them and
18 she said all of them were checks drawn to cash, she purchased
19 money orders or cashier's checks with, or on one occasion
20 she could remember she may have given cash back to the Congress
21 man out of it, so even though there is no corroboration as
22 far as --

23 THE COURT: We are not talking about corroboration,
24 but is there basic testimony to support this?

25 MR. KOTELLY: Yes, Your Honor.

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1 THE COURT: Tell me what is this?

2 MR. KOTELLY: The testimony was--I asked her about
3 her procedure.

4 This was her first day of testimony which was on
5 Thursday of last week. She testified that she did it one
6 of two ways, either she had checks to an individual payee,
7 which were Government's Exhibit 23, which she identified,
8 or they were checks to cash that she went out and purchased
9 money orders and cashier's checks.

10 My next question was that, you know, did you give
11 to the Government the checks that you've identified as having
12 been ones that you used to pay for the cashier's checks and
13 money orders.

14 THE COURT: Do you remember what series this was?

15 MR. KOTELLY: 24-A through -S, I believe.

16 THE COURT: We heard testimony on that. We had
17 sufficient testimony. I will receive it. I have it in my
18 notes.

19 MR. POVICH: My recollection was her testimony was
20 she would go to the bank, cash a check and against that check
21 she would purchase cashier's checks and money orders.

22 Occasionally, there was a balance due over that,
23 which she would give back in cash.

24 We don't have a situation comparable to this at
25 all, Your Honor. Here we have a check to cash with no cashier's

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1 check and no money order, no indication at all that this was
2 a check which she used to follow these procedures.

3 What she is saying here is her testimony now is
4 quite different.

5 Here she is saying she either did one of two things.
6 She either purchased cashier's checks or money orders with
7 this amount or she gave it to him and that's not what her
8 testimony is.

9 But that's what this chart represents. The Government
10 is saying we can't find the evidence of it, but there is a
11 cashed check there for \$420, \$438, \$200, \$320, and they wish
12 to introduce that, and there isn't sufficient nexus, Your
13 Honor.

14 If Your Honor will remember, if Your Honor wants
15 us to go through these matters, I have no objection to the
16 cashier's checks or money orders that are tied to the cashier's
17 checks of Jean Stultz, but just to say here is a cashed check
18 of Jean Stultz, and therefore it must have gone to the
19 Congressman, I think the nexus is totally insufficient,
20 especially to make this type of representation.

21 MR. KOTELLY: Might I be heard on the last? The
22 Government is not trying to argue these checks to cash repre-
23 sent money that went to Congressman Diggs, because we don't
24 know that that's the way it happened.

25 We know that it was one of three ways, either the

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1 money orders were purchased, cashier's checks were purchased,
2 or on one or two occasions money was returned to the Congress-
3 man. As to which, you know, particular checks was distributed
4 in any particular way, we don't know.

5 But the first chart, 76, represents all of the pay-
6 ments that came out of the special account and that's all
7 this chart represents, and we would submit the checks to cash
8 represent monies coming out of the special account for the
9 purpose of paying money on behalf of Congressman Diggs.

10 The second chart, 77, is merely to show the correla-
11 tion between the checks to cash and the money orders and
12 cashier's checks that are in evidence, to satisfy the jury
13 that in fact these money orders and these cashier's checks
14 were purchased out of the checks to cash by Jean Stultz.

15 MR. POVICH: Your Honor, if they are not a list
16 of checks which were shown to have been paid either to the
17 Congressman or for or on his behalf, then they are not relevant
18 and they shouldn't be included and that's my point.

19 MR. KOTELLY: Your Honor, may I address the Court
20 again?

21 THE COURT: Yes.

22 MR. KOTELLY: The testimony was the checks to cash
23 were out of the special account for the purpose of paying
24 expenses on behalf of the Congressman. The only thing we
25 can't pinpoint is what type of expenses.

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1 I would submit her testimony is that this is money
2 out of the special account from her inflated salary; therefore,
3 it is money on behalf of the Congressman even though we cannot
4 pinpoint the type of expense that it was, and that these charts
5 are not misrepresenting the facts as to what the testimony
6 is and the exhibits that are in evidence.

7 THE COURT: I am confident that the stenographer's
8 notes more clearly reflect this than mine do, but I note I
9 have practically a column of notes about the series 24 with
10 sufficient detail in my own style of writing to illustrate
11 the basis for the exhibit and I will let it in.

12 That is the 24 series which is the subject of your
13 objection.

14 MR. POVICH: Your Honor, can we have the representa-
15 tion of the Government now so that it is clear that they are
16 not, he is not making the representation these checks were
17 paid either for or on behalf of Congressman Diggs, that they
18 were simply taken out of --

19 THE COURT: The original testimony was they were
20 used for the expenses of the office, money orders to pay
21 expenses of the office.

22 MR. KOTELLY: That's correct.

23 MR. POVICH: That's not my recollection.

24 THE COURT: That's what my notes reflect.

25 MR. POVICH: Yes, sir.

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1 THE COURT: I have to go on that.

2 All right.

3 (Thereupon, the proceedings had at the bench
4 were concluded; counsel returned to their seats at
5 counsel table; and the witness returned to the wit-
6 ness stand and testified further, as follows:)

7 THE COURT: Received.

8 THE CLERK: Government's Exhibits 75 through 82
9 received in evidence.

10 (Government's Exhibits 75 thru
11 82 for identification received)

12 DIRECT EXAMINATION (continued)

13 BY MR. KOTELLY:

14 Q Mr. Reed, regarding Government's Exhibit 75 through
15 82, did you have copies made of those charts?

16 A I made them myself.

17 Q And what were they, Xerox copies?

18 A Yes.

19 MR. KOTELLY: Your Honor, at this time we would
20 ask these copies, which have been compared to make certain
21 they are exact copies, be distributed to the jury so that
22 they can follow Agent Reed in his recitation.

23 THE COURT: All right.

24 BY MR. KOTELLY:

25 Q Agent Reed, asking you first to turn to Government's

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1 Exhibit 75, the payroll analysis for Jean Stultz, could you
2 briefly state to the jury what this chart represents?

3 A Yes. This is the payroll analysis for Jean Stultz
4 and it covers her entire employment by the House District
5 Committee or the Congressman's staff.

6 Q Would you state what the columns are and what this
7 chart represents?

8 A First column is the date.

9 Second column is the gross annual staff salary
10 which is the annual salary that she was receiving from the
11 staff of the Congressman.

12 The next column is the gross annual committee salary,
13 that's going to show you the amount, the annual amount when
14 she was on the committee payroll.

15 Q Mr. Reed, those two columns, where did that informa-
16 tion come from specifically?

17 A From the payroll authorization forms.

18 Q The next column?

19 A The next column is the fourth column, is total
20 gross annual salary and that's the sum of columns two and
21 three.

22 Next column is the total gross monthly salary which
23 would be your fourth column divided by 12, and your final
24 column is your total net monthly salary, which would have
25 been obtained from her Treasury checks, as well as from the

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1 payroll summaries furnished by the House Finance Office.

2 Q Pages two and three of Government's Exhibit 75,
3 do they follow the same format?

4 A Yes.

5 Q Could you state briefly what the various columns
6 reflect as to the change of salary of Jean Stultz?

7 A Yes. She was first put on the Congressman's staff
8 in October of 1972. Her annual salary was \$11,000, and she
9 continues on strictly the staff salary up until March of '73,
10 when her salary is now at \$14,000.

11 In April of '73, she switched over to the House
12 District Committee at \$14,000, and she continues at that annual
13 rate up to October of 1973, when two things happen.

14 First of all, she gets a cost-of-living increase
15 on her committee salary from 14,000 up to \$14,667.80. At
16 the same time the same month, she goes on the Congressman's
17 staff salary, so she is drawing two checks, so her total
18 gross annual salary has jumped from 14,000 in September of
19 '73 to \$33,667.80 the next month in October.

20 She continues to draw the same salary from both
21 the committee and the staff up to May of '74, when there are
22 some changes made increased -- I'm sorry -- she is decreased
23 on the staff salary and increased on the committee salary,
24 and that result, there is a slight increase to \$33,710 per
25 annum. This continues until August of '74, when she is

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1 receiving one check and that's from the committee and it is
2 36,000 per annum.

3 The next month she switches back to the staff salary
4 at a rate of 36,000 per annum.

5 The next month, October of 1974, she is reduced
6 slightly to 35,574.36 per annum and she continues to receive
7 that amount until October of 1975, when her salary is increased
8 to \$37,355, and she receives that amount per annum until April
9 of 1976, when she drops from 37,355 down to 22,700.

10 She receives that amount for April, May and June,
11 and then in July she is again increased to \$37,355, and she
12 also received that amount in August of '76, after which she
13 is terminated.

14 Q On Government's Exhibit 75, the last column, on
15 each of these three pages, total net monthly salary, how would
16 that compare with the take-home pay?

17 A That would be the take-home pay.

18 Q I ask you next to turn to Government's Exhibit 76,
19 which is the summary of the checks from the personal checking
20 account of Jean Stultz. Could you explain the various columns
21 on Government's Exhibit 76?

22 A Yes. The first column is the date column, would
23 be the date that she listed on the check.

24 The next column is the payee. The payee she lists
25 and the amount is the amount of the check.

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1 Q And what is the total amount for all of the checks
2 that are in evidence from the personal account of Jean Stultz?

3 A Total amount is \$20,413.16.

4 Q I next ask you to turn to Government's Exhibit 77,
5 which is the comparison chart. I would ask you to explain
6 the various columns on Government's 77.

7 A The best way to look at this chart is to think of
8 it as a line between your first three columns and the second
9 three.

10 If you recall on the Exhibit 76, the one before
11 this, there were a number of checks that were written to cash.
12 There is also one check dated September 13, 1974, which is
13 written to Riggs National Bank, which is in effect a check
14 to cash, because it bears a House stamp.

15 I have taken all these checks, the one to cash,
16 plus this one from Riggs National Bank and put them on the
17 left-hand side of this column.

18 In other words, I just strictly have broken them
19 off from their last schedule.

20 First column is date of the check. Next column
21 is the payee on the personal check, and in all cases the one
22 who will be cashed.

23 After that, you see lettering in parentheses will
24 be either 16 or 18 and that's the branch designation where,
25 the Riggs branch number where the check was cashed. That

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1 appears on your telescan.

2 The next column is the amount on the check. Now,
3 going across the next date is going to be for the correspond-
4 ing money orders and cashier's checks.

5 The date is going to be the -- here you have either
6 cashier's checks or money orders and you see behind the payee
7 indication it's a cashier's check, the "M" will stand for
8 money order.

9 Here again you have either a letter "16" or "18."
10 If you look at your exhibit, it will always come across, it
11 will always be the same.

12 In other words, whenever she cashed a check, No.
13 16 branch, she always bought money orders and cashier's checks
14 on the same date, the same branch.

15 Your final column is the amount and for each specific
16 date I put a total so you can compare the total that the check
17 was written to with the total and cashier's checks and money
18 orders that had been purchased.

19 Take the first item on the first check she wrote
20 a check to cash on November the 2nd, 1973, for \$1,250. Look-
21 ing across you can see that on that date at the same branch
22 she also purchased two cashier's checks. The total amount
23 being \$1,250.

24 The next check was written on December 5th, 1973,
25 to cash, for \$692.76. Looking across, you can see that on

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1 that date at the same branch she purchased one cashier's
2 check and two money orders, which totaled \$692.71, which is
3 just five cents short of what the check was written for.

4 The next one is January the 4th, 1974, check to
5 cash for \$1,691. Looking across you will see that on that
6 date she purchased a cashier's check made payable to J. Daniel
7 Clipper for \$1,270.

8 That does not add up to the total amount of the
9 check and in a case like that, I would have attempted to
10 obtain from Riggs cashier's checks on either side that may
11 have made up the difference, but I was unable to find any
12 that applied.

13 In the case of a money order, if I didn't have a
14 reference point based on information in the files, I obtained
15 from the Congressman or any other way, I wouldn't have any
16 way to know what number to look for, so I wouldn't be able
17 to obtain them.

18 All I can specifically say is there were as far
19 as I know none purchased.

20 Next one is February the 7th of '74, a check written
21 to cash for \$735. Looking across, you can see on that date
22 she purchased cashier's check payable to the House Sergeant
23 at Arms account of Charles E. Diggs for \$734. \$1 short.

24 The next one is March the 6th, 1974, a check written
25 to cash for \$1,134.31. That compares with two cashier's

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1 checks and money orders totalling \$1,430.59, or \$1.40 short.

2 Now, the next one is, date of her check is April
3 11 of '74. That check was actually cashed on 4/10/74, as
4 evidenced by the teller's stamp and the bookkeeping stamp.

5 For that one, which was \$420 and for the next three,
6 one for \$438, another one for 200, another for 320, I have
7 not been able to locate any money orders or cashier's checks
8 purchased from these checks.

9 The next one is August 16 of '74, check written
10 to cash for \$898.58. On that date at the same branch she
11 purchased six money orders totalling exactly \$898.58.

12 Over to page two, the first thing I would like to
13 point out in comparison of the dates, the date on the check
14 is written by Jean is September 13, 1974, and you can see
15 the date on the money order is September 12 of '74.

16 That check, the check of Jean's was actually written
17 on the 12th as evidenced by the teller's stamp as well as
18 the bookkeeping stamp and she just made a mistake there.

19 The payee, this one is to Riggs National Bank, based
20 on the fact you have a teller's stamp, it was actually in
21 effect a check to cash.

22 She purchased six money orders on that date total-
23 ling the exact same amount, \$1,08.86.

24 Next one is September 30 of '74, \$916 check to cash
25 and that corresponds with the cashier's check purchased on

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1 the same day, the same branch to Perpetual Building Associa-
2 tion for \$916.

3 Now, looking down the rest of them, you either see
4 that they either match up perfectly or I was not able to find
5 any money orders or cashier's checks to match up with the
6 checks to cash.

7 Q Fine. Thank you.

8 Next, turning to Government's Exhibit 78 in evidence,
9 payroll analysis of Felix Matlock, could you indicate what
10 the various columns appearing on that chart are?

11 A First is your date column.

12 Next is your annual gross as taken from the payroll
13 authorization forms.

14 Next is monthly gross which is your annual gross
15 divided by 12.

16 Next is your monthly net which would be the amount
17 you receive by the Treasury check and also it is verified
18 from the payroll summaries furnished by the House Finance
19 Office.

20 Now, the next column is a gross excess, and that's
21 exactly what it is. It is a, I emphasize to the jury, that's
22 a gross amount and does not take into effect any benefits
23 or taxes.

24 That is determined by taking the last known non-
25 inflated check of Mr. Matlock, which was July, 1975, in the

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1 amount the monthly gross being \$1,208.33. You subtract that
2 amount from each succeeding monthly gross and take it across
3 and that is how that figure is determined.

4 Q I ask you next to turn to Government's Exhibit 79,
5 which is a summary of money orders and cashier's checks from
6 the National Bank of Detroit and Bank of the Commonwealth,
7 and I would ask you to relate to the jury what those columns
8 represent.

9 A First is your date, and the next is the bank. "NBD"
10 stands for National Bank of Detroit and "BC" stands for Bank
11 of the Commonwealth.

12 Next column is type of instrument and the "MO" is
13 your money order and this one "CC" is cashier's check.

14 Now the payee is the payee as it appears either
15 written in on the money order or typed in on the cashier's
16 check and the amount is the amount of the instrument.

17 On this schedule I have put subtotals for each year.
18 1975, the total was \$1,671.54.

19 Going over to Page 3, the total for 1976, was
20 \$8,574.98, and the total for 1977, is \$705.79.

21 Q I next ask you to look at Government's Exhibit 80,
22 which is the payroll analysis for Ofield Dukes and ask you
23 to relate to the jury what those columns reflect.

24 A First column is your date column.

25 The next is the annual gross as shown on the payroll

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1 authorization forms.

2 Next is monthly gross, which is annual gross
3 divided by 12.

4 Next column is the monthly net as would be reflected
5 in the Treasury checks issued to Mr. Dukes and from the payroll
6 summaries furnished by the House Finance Office.

7 — The final column is your excess, which is determined
8 in the same fashion as it was for Mr. Matlock. The actual
9 non-inflated salary is what he has already received is \$12,000
10 per annum for a monthly gross of \$1,000, so if you take \$1000
11 from any monthly gross over that and take it across, that's
12 your gross excess.

13 Again, I emphasize that's gross excess. That would
14 not be the amount for Mr. Dukes to be actually paying bills,
15 because from that you would have to have taxes and benefits
16 deducted.

17 Q The next chart, Government's Exhibit 81, relating
18 to payroll analysis of Jeralee Richmond, would you state what
19 the columns on that chart reflect?

20 A The first column is your date column.

21 Second column is your gross annual as reflected
22 on the payroll authorization forms.

23 Next column is gross monthly, which is gross annual
24 divided by 12.

25 Final column is net monthly which would be the

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1 amount he received in his Treasury checks, and also this is
2 verified by the payroll summaries furnished by the House
3 Finance Office.

4 On this schedule I have totaled the gross monthly,
5 which is 20,290.64, net 16,900.13.

6 Q Final chart, Government's Exhibit 82 in evidence,
7 would you relate what those various columns reflect?

8 A First column is the date column.

9 Q First of all, who does this apply to?

10 A This applies to George G. Johnson.

11 First column is your date column.

12 Second column is the gross annual as it appears
13 on the payroll authorization forms.

14 Next column is your gross monthly, which is your
15 gross annual divided by 12.

16 And the final column is net monthly, which was the
17 amount he received in Treasury checks and as verified by the
18 information furnished by the payroll information furnished
19 by the House Finance Office.

20 Q And the total?

21 A Total gross monthly is \$19,166.02.

22 Net monthly is \$15,615.04.

23 MR. KOTELLY: Will the Court indulge me?

24 I have no further questions, Your Honor.

25 THE COURT: Mr. Povich?

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CROSS-EXAMINATION

BY MR. POVICH:

Q Mr. Reed, who asked you to set up the charts in this fashion?

A These charts were set up at the request of Mr Kotelly and Mr. Marcy.

Q Did they tell you how they wanted them outlined?

A Basic format, we discussed that.

Q They gave you the format here for each of these charts; just take a look at Government's Exhibit 75.

A Yes. They told me the basic format they would want, what they want me to show, and I would work up the figures.

Q I see. When they said, for instance, on any one month on the date of October, 1972, they told you to put down the gross salary for the year opposite October of '72?

A Yes. This is the amount that would be reflected in the payroll authorizations. That's the way it is determined. They can change it every month.

Q Well, the payroll authorization was really a monthly authorization, wasn't it?

A Yes, but the payroll authorization shows the figure that is shown is actually the gross annual figure and then you figure the monthly from that.

Q But the payroll authorization was for a monthly payment, was it not?

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1 A Yes.

2 Q Wasn't intended to reflect each month the salary
3 for the year, was it?

4 A Well, I have to base my chart on the actual, what's
5 actually shown on the payroll authorization form. This is
6 what is shown, gross annual.

7 Q If you wanted to be really fair about it when you
8 got down to payroll analysis for the month of October, 1972,
9 you put the gross for October '72, the net for October of
10 '72, would you not, just the last two columns?

11 A Well, I have to show how I come to those figures,
12 how I derive them. I have to derive them with the information
13 that is in evidence, which includes your payroll authorization
14 forms.

15 Q I see. And on Exhibit 76, for instance, you have
16 listed there, have you not, payments to cash; is that correct?

17 A Yes.

18 Q But you have listed there payment to cash for which
19 you have no money orders or cashier's checks making payments
20 with respect to those cash withdrawals, don't you?

21 A Yes.

22 Q Did you think that that was an accurate representa-
23 tion of what the records reflected?

24 A Well, this is what the specific ones that Mr.
25 Stultz stated were used to purchase money orders or in some

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1 cases I think money was supposedly turned over to the
2 Congressman.

3 Q When she said she would turn over a balance of
4 whatever she said was left over, wasn't that her testimony?

5 A I don't know her testimony here.

6 Q But here you have cash checks listed for which she
7 has no cashier's checks or money orders opposite; is that
8 not true?

9 A Yes. I explained that to the jury.

10 Q Well, you explained, you list them on one Exhibit
11 No. 76, but you don't explain it until you get to 77; is that
12 correct?

13 A Yes.

14 Q But when you explain it on 77 and you show you have
15 no cashier's checks or money orders from which she made pay-
16 ments, you don't go back and take it off of 76, do you?

17 A Well, I didn't take it off this one either. I
18 have it listed and I explained that if I have no reference,
19 by going through the files I could find no letter or no cus-
20 tomer copy of the money order, I would have no reference point
21 to go to the bank and try to find specific money orders on
22 those dates.

23 Q So what that represents, then, really although
24 Mrs. Stultz testified that she withdrew that money for the
25 Congressman, there is no documentary evidence supporting that;

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1 is that true?

2 A Correct.

3 Q Now, there is no question, of course, that the
4 person who has a salary, a gross and net salary, received
5 the difference; is that not true?

6 A I'm sorry?

7 Q There is no question that where you have a gross
8 and net amount of salary for the person, say, for either Mr.
9 Matlock or Mr. Dukes, or anyone else, would that difference
10 between the gross and the net represent the total amount of
11 deductions; is that correct?

12 A Yes.

13 Q All of which would have gone to the employee, is
14 that not true, to the credit of the employee?

15 A Well, to pay taxes or whatever.

16 Q Or retirement or health benefits or life insurance?

17 A Whatever, correct.

18 Q Savings bonds, whatever they wanted?

19 A Correct.

20 Q When you have a figure that is really out of line,
21 did you seek to ascertain what the reason was for that figure?

22 For instance, if you refer to Jeralee Richmond --
23 that's Exhibit No. 81 -- you will note that with the exception
24 of the second month, August, 1974, her salary actually was
25 between 8500, her gross salary, and \$9400; is that correct?

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1 A I'm sorry, would you repeat that?

2 Q Do you have Jeralee Richmond in front of you?

3 A Yes, I just found it.

4 Q Except for the one month, second month, August,
5 1974, her salary was between 8500 and 9400 for the period
6 July '74 through July '76; is that correct?

7 A Correct.

8 Q You have on the second month, you have \$25,000 as
9 a gross salary.

10 A That's correct.

11 Q Did you have an explanation as to why that was?

12 A We may have. I can't recall at this time, but pre-
13 paring this schedule I was basically interested in the fact
14 that all these checks were obtained to her salary while she
15 was working for the House of Diggs Funeral Home.

16 Q But you don't know why all of a sudden it went to
17 \$25,000?

18 A For that one month I do not.

19 Q There is no indication she ever paid any money out
20 of her account for Mr. Diggs, was there?

21 A I can't recall any.

22 MR. POVICH: All right. I have no further questions.
23 Thank you.

24 THE COURT: Anything further?

25 MR. KOTELLY: Nothing further, Your Honor, no further

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1 questions of the witness.

2 THE COURT: May the witness be excused?

3 MR. KOTELLY: Yes, Your Honor.

4 THE COURT: You may be excused.

5 Thank you.

6 (Witness excused)

7 MR. KOTELLY: Your Honor, the Government rests at
8 this time.

9 THE COURT: All right.

10 Mr. Povich.

11 MR. POVICH: May we approach the bench, Your Honor?

12 THE COURT: Yes.

13 (Thereupon, counsel for both parties approached
14 the bench and conferred with the Court, as follows:)

15 MR. POVICH: Your Honor, I would like to move for
16 judgment of acquittal at the conclusion of the Government's
17 case. Mr. Carl is prepared to argue the motion if Your Honor
18 would indulge us.

19 Perhaps we could have the jury excused and he could
20 address you and also give you the memo on our points.

21 THE COURT: As I indicated to you, I think it was
22 last night, I'm not sure when I talked to you last about this
23 matter of your motion.

24 MR. POVICH: Yes, sir.

25 THE COURT: Since we have a sequestered jury and

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1 since you wish to put on this gentleman from the State
2 Department this afternoon, I think it would be well if we
3 would just outline the motion rather than having a full-
4 scale argument at this time, to which the Government would
5 be expected to reply.

6 I can excuse the jury and you can outline what
7 your points are or I will entertain any suggestion from you
8 as to how you think we should proceed under the circumstances.

9 MR. POVICH: I think Your Honor's suggestion is
10 fine. Mr. Carl can outline the matter briefly and then we
11 can proceed from there.

12 THE COURT: All right. Now, purely cooperative,
13 of course, I have got to look at the Government's case in
14 the light most favorable to the Government at this stage of
15 the proceeding.

16 MR. POVICH: I think some argument on the motion
17 might be informative, Your Honor. We are dealing here with
18 a little bit of a different problem. We are talking in terms
19 of two different branches of Government.

20 We feel that there are certain matters that
21 should be brought to the Court's attention at this time that
22 may be helpful.

23 THE COURT: Very well. We'll have a brief presenta-
24 tion.

25 MR. POVICH: Thank you.

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1 (Thereupon, the proceedings had at the bench
2 were concluded; counsel returned to their seats at
3 counsel table and the proceedings were resumed,
4 as follows:)

5 THE COURT: Ladies and gentlemen, you may step to
6 the jury room briefly.

7 (Whereupon, at 3:00 p.m., the jury left the
8 courtroom)

9 THE COURT: Do you gentlemen wish the jury to
10 surrender the exhibits?

11 MR. POVICH: Yes.

12 THE CLERK: I will get them, Your Honor.

13 [Open Court with the jury not present]

14 MR. CARL: Your Honor.

15 THE COURT: Mr. Carl?

16 MR. CARL: The Government has been provided with
17 a copy of our memorandum and we have provided a copy to the
18 Court for your review later.

19 At this point I would like to just briefly outline
20 our position. We believe the judgment of acquittal is proper
21 on all the counts in the indictment.

22 Turning first to the mail fraud count, an essential
23 element to that count is the use of the mail.

24 The Government's witness, Mr. Lawler, has testified
25 defendant had no control or even knowledge as to whether the

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1 mails were used to transmit the pay checks to the individuals
2 involved in those counts of the indictment.

3 Moreover, in United States v. Maze, the Supreme
4 Court indicated a nexus is required between the use of mails
5 and the scheme. In some sense the mails must be a necessary
6 element to the scheme itself.

7 THE COURT: Is that Congressman Mays' case that
8 you cited?

9 MR. CARL: No, sir, it involved the use of credit
10 cards and the mailing of charges to the actual owner of the
11 credit card and the delay in that mailing being essential
12 to the scheme.

13 THE COURT: It's in your briefs?

14 MR. CARL: It's cited and explained.

15 The Government in this case has charged essentially
16 the same scheme to defraud in the 1001 counts as it has in
17 several of the mail fraud counts. Several of the 1001 counts
18 do not involve mailing at all.

19 I strongly suggest that mailing was not a necessary
20 element to the scheme, but rather incidental element.

21 The Court has held clearly such incidental uses
22 of the mail are not adequate to establish the basic nexus
23 between the mail and the scheme to defraud required for a
24 conviction on that charge.

25 Turning briefly to the false statement charges,

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1 an element of the charge of false statement is a statement
2 that is erroneous, false or misleading statement be material
3 in some way.

4 Materiality has been defined in this context and
5 in other statutes as being information that would induce in
6 this case a government agency to act or not to act.

7 Now, the agency identified in this case by the
8 Government has been the Office of Finance of the House of
9 Representatives.

10 The writing is the payroll authorization form for
11 the employees.

12 The item allegedly false is the entry of a salary
13 amount.

14 The Government says that for Mr. Johnson and Miss
15 Richmond, the false statement was that the compensation was
16 not just for services to the Congressman per se.

17 For the other employees it indicates the false state-
18 ment is the compensation is not just for personal services.

19 The Government has had the testimony of the Chief
20 of the Office of Finance. He indicated that the only things
21 that that office considers on the payroll authorization form
22 in taking the action it is required to take is whether the
23 salary listed is within the minimum and maximum salary levels,
24 whether the payroll authorization form causes the Congressman
25 to exceed his aggregate dollar or allotted ceiling, and whether

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1 the Congressman has certified that he has not hired a relative
2 in violation of the nepotism laws.

3 None of the payroll authorization forms in these
4 cases have indicated any circumvention of those particular
5 requirements which are applied by the House Finance Office.

6 In fact, Mr. Lawler has testified that the purpose
7 for the salary paid, the duties for the employees or the terms
8 of his employment are not considered by the House Finance
9 Office. Those are matters totally within the discretion of
10 the Member.

11 Accordingly, the alleged misrepresentations are
12 not material as far as the decisions of the agency of Government
13 to which they were submitted.

14 That being true, there cannot be a conviction on
15 a charge of false statement.

16 On both the false statement and mail fraud charges
17 concerning Mr. Dukes and Mr. Matlock and those counts concern-
18 ing Mrs. Stultz, which involve the payment of official
19 expenses, the Government cannot assert that there has been
20 a scheme to defraud the United States unless the defendant
21 has somehow used clerk-hire funds in a way prohibited by law.

22 The testimony this morning by Mr. Lawler has indi-
23 cated there is no lawful restriction statutory or otherwise
24 put by this Court that indicates that clerk-hire cannot be
25 used to compensate employees for the expenses they incur in

000908

1 the Congressman's behalf to support him in the performance
2 of his official and representational duties.

3 If the Congressman has not diverted funds to a
4 purpose that is illegal or prohibited, he cannot be said to
5 have defrauded the Government of those monies.

6 Accordingly, judgments of acquittal should be
7 proper also on all those counts that relate to the use of
8 clerk-hire funds to meet congressionally-related expenses.

9 Moreover, I think the testimony so far has indicated
10 how vague the standards are on the appropriate uses of clerk-
11 hire funds. We submit that such vague standards do not provide
12 a clear enough demarcation of legal and illegal conduct on
13 which to base a criminal conviction.

14 Finally, on those false statement counts alone,
15 the Second Circuit, United States v. Diogo, has indicated
16 that a statement which is literally true cannot be a false
17 statement for purposes of that charge.

18 In this case all of the forms submitted by the
19 defendant to the House Office of Finance were literally true.
20 Every question which the House office requires to be answered
21 by a Member as appointing authority were answered and they
22 were answered in a manner which was in all factual respects
23 correct.

24 Each employee received a check for, as salary, the
25 amount listed on those forms. What the employee did with

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1 that salary was not of consequence to the House Office of
2 Finance.

3 Finally, Your Honor, this case presents a different
4 constitutional issue. The Government has indicated in its
5 Bill of Particulars that the basis for its charge is that
6 the Congressman has misused clerk-hire funds and its defini-
7 tion of that "misuse" is based in the Government's terms on
8 the rules of the House and common understanding of Members
9 of the House of Representatives.

10 We would submit that once an employee provides any
11 services to a congressman and that is what the appropriation
12 for clerk-hire requires, that the Court should inquire no
13 further into the terms of that individual's employment.
14 Further inquiry would embroil the Court in a political question

15 There are several tests for a political question.
16 First is a textual commitment to another branch of Government.
17 Here, Article 1, Section 5, Clause 2 of the Constitution
18 specifically commits to each Branch of the Legislature the
19 responsibility for developing its own internal rules of con-
20 duct and for sanctioning violations of those rules.

21 THE COURT: I believe that was the position that
22 was taken in the Bramblett case and Judge Bastian accepted it
23 and it went to the Supreme Court and it was reversed and
24 remanded for trial.

25 MR. CARL: Your Honor, the Bramblett case involved

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1 somewhat a different issue at the Supreme Court level. It
2 involved the issue of whether the Office of Finance of the
3 House of Representatives was an agency of the United States.
4 The Court held that it was an agency of the United States.

5 We would submit that, for example, had the
6 Congressman falsely certified as to the nepotism provision,
7 where there is specific requirement both by statute and as
8 a certification on the form to the House Office of Finance,
9 that might be a false statement.

10 However, that is not the case here. The employee
11 did not violate any statutory prohibition on the use of
12 clerk-hire funds. What he's alleged to have done is violated
13 the rules and common understanding of the House. That is
14 a different matter.

15 The Constitution says that the House shall apply
16 its own rules. In fact, the rules of the House of Repre-
17 sentatives, I believe it is Rule 10-E(1), indicates that
18 the body that has the responsibility to investigate violations
19 of laws, regulations or rules by Members of the House is to
20 convey to the appropriate law enforcement authority any viola-
21 tion of law that it determines.

22 It distinguishes violations of the rules and regula-
23 tions of the House. It does not permit those to be referred
24 to law enforcement authorities, but instructs the committee
25 to refer those to the House of Representatives for its action.

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1 The Constitution clearly seems to indicate that
2 the House and the congressmen's constituents are to be the
3 judges of his conformance with the House rules.

4 That's very different from his conformance with
5 specific statutes such as, for example, the nepotism statute.
6 Moreover, I believe in Bramblett; the problem involved a
7 fictitious employee and one could say a fictitious employee
8 was not providing services.

9 THE COURT: I think I have to agree with that.

10 MR. CARL: In this case you do have employees and
11 the uncontroverted testimony is every employee provided some
12 modicum of services to the Congressman in support of his
13 function.

14 I will not go into how much each employee provided,
15 but each of them did in fact serve that function.

16 What the Government alleges is there is some viola-
17 tion of what they term, as I said, the House rules against
18 as yet unidentified and common understanding which is rather
19 vague for imposition of a criminal sanction.

20 To go on with the Baker test briefly, we would submit
21 the other political question doctrine issues are also present.
22 There is not really a manageable standard for deciding in
23 this case whether clerk-hire funds were properly used or not.
24 The testimony in this case has already indicated how vague
25 and difficult to grasp the appropriate limitations on that

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1 use are.

2 Finally, the Government's argument about, or the
3 Government's position that the defendant's misconduct is based
4 on a failure to comply with the common understanding of the
5 appropriate uses of this appropriation brings the Court into
6 the process of inquiring into what the practices and the
7 understandings of Members of the House of Representatives
8 are. That is a very delicate inquiry which has the tremendous
9 danger of causing this Court to express a lack of respect
10 for another branch of government and for its ability to
11 discipline its own members.

12 We would submit, Your Honor, that once it is shown
13 that these employees are real individuals who have performed
14 services to the Congressman in support of his official and
15 representational duties, that they are not violating the
16 nepotism law, which are the only statutory provision on the
17 use of clerk-hire funds, the Court is no longer the proper
18 forum to inquire into the use of those funds.

19 The proper forum now, Your Honor, is the House
20 Committee on Standards of Official Conduct, which by the
21 House rules, which derive from the Constitution, have that
22 responsibility. And since the clerk-hire use is disclosed
23 regularly by the House, the ultimate decision must be the
24 Congressman's constituents, and that's what the Constitution
25 envisions.

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1 For that reason, we believe it would be appropriate
2 to grant the judgment of acquittal on all counts in this
3 indictment.

4 THE COURT: Thank you, Mr. Carl.

5 Mr. Kotelly?

6 MR. KOTELLY: Your Honor, I was just a few moments
7 ago just handed a copy of the defendant's arguments, but I
8 think I can respond to all of them that he has made.

9 Regarding the alleging that there was insufficient
10 causation of mailing to come within the mail fraud statutes,
11 we rely on the Supreme Court opinion in Pereira, which is
12 cited in the defense memorandum as well as a recent case from
13 the 9th Circuit, which is United States v. Outpost Development
14 Company, 552 F 2d 848, which was decided in 1977. In that
15 opinion the Court states:

16 "The only essential elements of mail fraud under
17 18 U.S. Code, Section 1341, are that the defendant
18 devised a scheme to defraud, and that for the purpose
19 of executing the scheme he used the mail to cause the
20 mails to be used.

21 "A person may cause the mails to be used even
22 though he did not know that the mails were to be used
23 or intended that the mails be used, provided that the
24 use of the mails was reasonably foreseeable."

25 Your Honor, we would submit that the three employees

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1 whose salary checks are part of the mail fraud charges being
2 Jeralee Richmond, George Johnson and Felix Matlock, since
3 all of these employees were living in Detroit during the time
4 that they were receiving their salary checks, they clearly,
5 it was foreseeable that the only way that the Office of Finance
6 could get those checks to those employees was through the
7 mails.

8 By submitting payroll authorization forms signed
9 by the defendant, the defendant has caused the subsequent
10 acts to occur, which means the mailing of those checks. It
11 is an intricate part of the scheme because the checks had
12 to be received by the employees.

13 Mr. Matlock, in order to pay for the expenses of
14 the Congressman, and Miss Richmond and Mr. Johnson, in order
15 to pay for the personal debts of the Congressman, regarding
16 Miss Richmond paying on the House of Diggs' salary, Mr.
17 George Johnson's pay as to the fact he did personal services
18 for the Congressman, and for the House of Diggs, so that
19 the mails themselves, we submit, are an integral part of the
20 scheme and, therefore, clearly the mailings were foreseeable
21 and it constitutes prima facie evidence of violating the
22 mail fraud statute.

23 Regarding the defense's second argument that the
24 payroll authorization forms where they reflect what the
25 salary is of the employee, is not material, we would submit

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1 that clearly it is material to the operating of the Office
2 of Finance.

3 In addition to the Office of Finance being concerned
4 with whether the Congressman has met his total salary payroll
5 commitment and maximum and minimum in number of salaries,
6 they also are guided by the regulations of the Committee on
7 Administration as to the fact that payroll clerk-hire allow-
8 ances for paying employees for the performance of their
9 official duties and to include figures on the payroll authori-
10 zation form as salary which reflect inflated monies that were
11 intended by the Congressman as kickbacks from Jean Stultz,
12 from Felix Matlock and from Ofield Dukes, we would submit,
13 is an omission of a material fact that was clearly relevant
14 to the Office of Finance.

15 As to George Johnson and Jeralee Richmond, we would
16 submit that his misrepresentation that these are salary, that
17 the salaries on the payroll authorization forms were for the
18 performance of official duties is a material misrepresentage
19 that the jury could find from the evidence that those salaries
20 were paid, not for the purpose of compensating Jeralee
21 Richmond and George Johnson for any legislative duties, but
22 for compensating them for their, for Jeralee Richmond's employ-
23 ment at the House of Diggs and for George Johnson's personal
24 accounting work.

25 So we would submit, based on proffer, that clearly

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1 we have established these were material omissions of fact
2 based on the payroll authorization forms that were submitted
3 by the Congressman.

4 THE COURT: Do you have anything to say about the
5 constitutional argument?

6 MR. KOTELLY: Your Honor, there have been cases
7 in this jurisdiction, a number of cases, in which this issue
8 has been raised, and which the Court has ruled that there
9 is a proper area for the courts to get involved in in criminal
10 prosecutions to be involved.

11 Your Honor cited the Bramblett case. There has been
12 the James Hastings case that was tried before Judge Green
13 two years ago.

14 There was Congressman Whalley who pled guilty to
15 identical charges about three or four years ago. There have
16 been several administrative assistants to congressmen, like
17 George Hagaman, by the name of McPherson, who have been
18 prosecuted for identically the same conduct that we have here.

19 The Government submits that individual congressmen
20 are required to abide by the laws and that is not to defraud
21 the United States by use of the mails or by submitting false
22 official statements, and that those criminal statutes apply
23 to congressmen as well as to any other person, and that we
24 would submit that clearly based on the law, that there is
25 no constitutional prohibition from prosecuting a congressman

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1 merely because he is a congressman.

2 THE COURT: All right.

3 MR. CARL: Your Honor, may I briefly respond?

4 THE COURT: Yes, briefly.

5 MR. CARL: I would just like to make three very
6 brief comments. On the mail fraud matter, there are two
7 elements to the mail fraud issue that the Court has identi-
8 fied.

9 In U.S. v. Maze, the Court differentiated the issue
10 of what amounts to a causing something to be mailed from the
11 question of the necessary nexus, which is really a jurisdic-
12 tional issue.

13 I don't believe the Government has dealt with the
14 question of the necessary nexus which most courts have defined
15 as the scheme itself being dependent in some way on the
16 mailing.

17 In this case there were alternative means that the
18 employees could have received their checks, including having
19 them delivered at the congressional office and having one
20 of the congressmen, or one of the employees in there bring
21 them to Detroit. There was no necessity of the mails being
22 used and the scheme did not depend on it.

23 On the question of materiality, I would note that
24 what the Government has done is brought before this court
25 exactly what I suggested, and that is an internal rule of

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1 the House of Representatives as the standard of conduct upon
2 which they intend to oppose a sanction.

3 This directly raises the constitutional issue.
4 The cases cited by the Government, I think Bramblett you
5 will find is distinguishable in terms of the issue decided
6 by the Supreme Court.

7 In the Hastings case, this issue was not raised
8 and there has not been any decision on it. The other cases
9 involving guilty employees obviously didn't raise the
10 constitutional issue about the appropriateness of criminal
11 sanction being imposed for violation of the House rule.

12 THE COURT: Mr. Haig was tried before me.
13 Mr. Wadden, a former associate and partner in the Williams
14 firm, was defense counsel. I am not clear on whether
15 Mr. Wadden raised it or not, but knowing Mr. Wadden, I'm
16 quite sure he raised every point, just as I'm sure you would.

17 However, he was convicted and I don't think he
18 appealed.

19 MR. CARL: I would like to not to Your Honor that
20 you, in fact, were sitting in a case called United States vs.
21 Israel Thompson and Pendergast.

22 THE COURT: Doesn't ring a bell right now but
23 that's all right.

24 MR. CARL: I would merely note in that case, which
25

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1 was dismissed by Your Honor, there was an allegation that
2 certain employees of the Sergeant of Arms of the House were
3 not performing services that were related in any way to their
4 pay and apparently in violation of the House rules.

5 The Clerk of the House of Representatives filed
6 a brief in that case. In the brief advised Your Honor, in
7 effect, that the proper rate of pay in development of job
8 descriptions for employees of the House of Representatives
9 is non-justiciable. It involves a political matter which is
10 entirely committed to the Legislative Branch.

11 The Judiciary should not involve itself in the
12 determination of the appropriate levels of pay for House
13 offices.

14 The Clerk of the House concluded that such an
15 inquiry would violate the political question doctrine and
16 Your Honor dismissed that suit, although there were other
17 issues involved.

18 THE COURT: Mr. Carl, it's always nice when you
19 can get rid of a difficult case by granting a motion like
20 that. However, I will resist that opportunity in this case
21 and I will deny your motion.

22 Of course, if there is an acquittal, that ends the
23 matter. If there is a conviction, why you can renew all
24 these points on motion for judgment non obstante; I will
25 go even further.

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1 Take a 5-minute recess.

2 (Whereupon, at 3:23 p.m. a short recess was
3 taken)

4 AFTER RECESS

5 THE COURT: Counsel, come to the bench, please.

6 (Thereupon, counsel for both parties approached
7 the bench and conferred with the Court, as follows:)

8 THE COURT: Is your first witness Mr. Newsome?

9 MR. POVICH: Yes, sir.

10 THE COURT: Do you remember my admonition about
11 him?

12 MR. POVICH: Yes. I will tell you it will go this
13 way, your name, your address, position, how long have you
14 known Mr. Diggs. Do you have an opinion as to his honesty
15 and integrity and whether he is a truthful person. Yes.

16 On what do you base your opinion? He says what
17 it is.

18 What is your opinion? Or I can say, what is your
19 opinion and what do you base it on would be more relevant.

20 THE COURT: All right.

21 MR. POVICH: And he will say, yes, I find him to
22 be a truthful person; he's exhibited those qualities and I
23 will say what do you base it on, and he will say, I base it
24 on my association with him and in particular an instance
25 such and such, and that's it.

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1 THE COURT: All right.

2 MR. POVICH: The only other question I might ask
3 him is whether or not he has the material, whether in the
4 memorandum he wrote, and he is going to say he does not have
5 it, but he caused a search of the file to be made and unfortu-
6 nately has been unable to turn it up.

7 Do you have any problem with that, Your Honor?

8 THE COURT: I take it you are not going to drag
9 out the cross.

10 MR. KOTELLY: Not unduly long, no. I think I can
11 conduct cross-examination of character witnesses; I don't
12 intend on making it better for the defendant than I should.

13 THE COURT: All right. All right.

14 (Thereupon, the proceedings had at the bench
15 were concluded; counsel returned to their seats at
16 counsel table, and the proceedings were resumed,
17 as follows:)

18 THE COURT: Bring in the jury.

19 (Whereupon, at 3:30 p.m., the jury entered
20 the courtroom)

21 THE COURT: You may proceed, Mr. Povich.

22 MR. POVICH: May we proceed with the defense case,
23 Your Honor?

24 THE COURT: Yes, sir.

25 MR. POVICH: I would like to call as our first

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1 witness Mr. Under Secretary David Newsome.

2 Your Honor, I must indicate we are taking him a
3 little out of turn. We normally would not put him in in this
4 order, but because of scheduling problems, we put him on at
5 this time.

6 THE COURT: I understand.

7 Whereupon,

8 DAVID DUNLOP NEWSOME

9 was called as a witness by and on behalf of the
10 defendant and, having first been duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. POVICH:

14 Q Would you state your full name and address, please?

15 A David Dunlop Newsome, 3230 Woodley Road, Northwest.

16 Q Your position of employment, Mr. Newsome?

17 A I am Under Secretary of State for Political Affairs.

18 Q Do you know the defendant in this case, Congressman
19 Charles C. Diggs, Jr.?

20 A I do.

21 Q How long have you known Mr. Diggs?

22 A I first met Mr. Diggs in 1962.

23 Q Mr. Under Secretary, would you tell me whether or
24 not you have an opinion as to the Congressman Charles C.
25 Diggs' honesty, integrity, and whether or not he is a truthful
person?

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1 A Well, in all of my dealings with him in a profes-
2 sional capacity relating to his work as Chairman of the
3 Subcommittee on Africa --

4 THE COURT: Mr. Under Secretary, do you have an
5 opinion?

6 THE WITNESS: My opinion is based on my experience
7 with him.

8 THE COURT: Just tell us, do you have an opinion.

9 THE WITNESS: Yes, I do.

10 THE COURT: What is your opinion?

11 THE WITNESS: My opinion is he is a man of integrity
12 and honesty.

13 THE COURT: All right.

14 BY MR. POVICH:

15 Q What do you base that opinion on, Mr. Under Secretary?

16 A I base that on my experience with him as in a
17 professional capacity as first Director of North African
18 Affairs and Assistant Secretary for Africa while he was Chair-
19 man of the Subcommittee on Africa for the House of Representa-
20 tives.

21 Q And any particular instance that you base your
22 opinion on?

23 A I recall one in particular when he received a letter
24 from an African chief of state in which he was offered, as
25 I recall, a stipend in order to further the interests of this

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1 particular African country in the Congress.

2 I was at that time Assistant Secretary for Africa.
3 He called me and asked me to come to his office. I did and
4 he gave me the letter indicating his indignation that he
5 should be approached in this fashion and asked me to take
6 the letter and file it with an appropriate notation, and
7 indicated that he would, as I recall, refer any further
8 approaches to the State Department.

9 Q Can you tell me approximately when that was?

10 A It was either in 1972 or '73. I don't recall the
11 exact date.

12 Q And can you tell me the amount that was offered
13 and whether or not it was on an annual basis?

14 A I don't recall the amount. My impression was that
15 it was in five figures and it was on an annual basis.

16 Q You say that he showed you a letter and asked you
17 to make appropriate memorandum or notation of it; is that
18 correct?

19 A That's correct.

20 Q And did you do that?

21 A I did that.

22 Q Have you been asked by subpoena to produce the
23 letter and memorandum which you have written?

24 A The Department was asked by subpoena to produce
25 the document. A search has been made. As far as I know,

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1 it has not been found.

2 Q What is your position, Mr. Under Secretary, with
3 respect to the Department of State? Where are you within
4 the hierarchy of that?

5 A I'm the No. 3 person in the Department of State.

6 Q Are you satisfied every effort has been made to
7 produce the documents that you have referred to?

8 A I am.

9 MR. POVICH: I have no further questions, Your Honor.

10 THE COURT: Mr. Kotelly?

11 CROSS-EXAMINATION

12 BY MR. KOTELLY:

13 Q Ambassador Newsome, Mr. Diggs actually gave you
14 this letter, I take it?

15 A That's correct, yes.

16 Q Was it on official appearing stationery?

17 A As I recall, it was on official stationery of the
18 government from which it was sent.

19 Q Did it have any kind of a seal on it?

20 A I don't recall that.

21 Q Did it have a printed letterhead as to the
22 official stationery of this country?

23 A All I recall is that we both accepted it as a
24 communication from an official of this country.

25 Q Was it signed?

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1 A It was signed.

2 Q Was it signed by the head of state?

3 A That, I don't recall.

4 Q Do you know how this letter was delivered to Mr.
5 Diggs?

6 A I do not.

7 Q So that you do not know as to whether it was secretly
8 passed to him or just delivered in an official manner?

9 A I do not remember.

10 Q Did Mr. Diggs refer any further matters to you
11 regarding this letter as to any further inquiries from this
12 African nation?

13 A To the best of my knowledge, there were no further
14 actions relating to that matter.

15 Q That's based on the fact that Mr. Diggs did not
16 tell you about any further contacts?

17 A That's true, yes.

18 Q So that you do not have any knowledge as to whether
19 Mr. Diggs had any later contact with this African nation or
20 not?

21 A I do not.

22 Q Did this letter that you read, did it state that
23 it wanted Mr. Diggs to do anything unlawful?

24 A I do not recall the wording of the letter. I do
25 recall that it was in effect asking him to assist positively

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1 in the congressional treatment of this particular country.

2 Q But you do not recall that it asked Mr. Diggs to
3 do anything unlawful?

4 A I do not.

5 Q And you have not been able to find that letter,
6 even though you have searched for it?

7 A The Department has not been able to find it.

8 Q And have you searched your own personal files?

9 A I have.

10 Q Your opinion as to Mr. Diggs' honesty, is it based
11 on this specific instance?

12 A It is based on -- this is the only instance in
13 which there is, in my relation with Mr. Diggs, in which any
14 financial matter has come up. In all other cases involving
15 discussions of African questions and so forth, I have found
16 him to be an honest man.

17 Q Ambassador Newsome, if you knew as a fact that
18 Congressman Diggs had increased the salary of his personal
19 employee for the purpose of paying for his personal expenses
20 during the period of 1973 to 1976, would that affect your
21 personal opinion as to honesty and integrity?

22 MR. POVICH: Objection, Your Honor. May we approach
23 the bench?

24 THE COURT: Yes.

25 (Thereupon, the witness stepped down from the

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1 stand; counsel for both parties approached the bench
2 and conferred with the Court, as follows:)

3 MR. POVICH: Your Honor, I object because that ques-
4 tion is improper. It specifically elevates to a matter of
5 fact a matter which is at trial in this issue. It overcomes
6 the presumption of innocence. It relates directly to the
7 very matter in issue. It is not a proper foundation for
8 impeaching a character witness.

9 THE COURT: I think the way it is phrased, Mr. Povich
10 is correct.

11 MR. KOTELLY: Your Honor, the Government is relying
12 on two cases, United States v. Senak, 527 F 2d 129, which
13 is a 7th Circuit opinion in 1975, as well as United States
14 v. Null, 415 F 2d 1178. It's a 4th Circuit opinion in 1969.

15 Both opinions clearly state that if a witness, a
16 character witness is asked about his present, the present
17 character traits of the defendant, that the Government is
18 allowed to question him as to whether if the facts of the
19 case are true, if they would affect his opinion as to the
20 reputation of that witness.

21 MR. POVICH: That's not my understanding of the
22 law, Your Honor. I am sorry, I haven't got the case I'm
23 relying on. Again, I did not expect him to ask the very,
24 to assume the very fact in issue in this case.

25 MR. KOTELLY: It's a way for the jury to test the

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1 basis of the opinion and the merit of the opinion. If this
2 man would testify that that would not affect his opinion at
3 all, then the jury can weigh that in determining how much
4 weight to give the character testimony.

5 If it would affect his opinion, the jury is entitled
6 to use that in evaluating whether his opinion is worthwhile
7 or not based on what they find from the facts of the case.

8 MR. POVICH: Your Honor, every question in this
9 area has to be based upon information. When that fact is
10 a fact, and that fact has not been established. That's the
11 very fact in issue. It assumes a very fact, it assumes some-
12 thing to be true which would constantly tell this jury there
13 is a presumption of untruth until it is established beyond
14 a reasonable doubt, and I think in that sense it violates
15 the rule allowing proper cross-examination of a character
16 witness throughout assumption --

17 THE COURT: Would it come up in the cases you cited?

18 MR. KOTELLY: Yes, Your Honor, in the opinions,
19 and I have extracts just in a written form of the opinions,
20 was that if the reputation testimony is in the present tense
21 as to what is his reputation, that that question can be
22 allowed.

23 If the character testimony is in the classic form
24 it is at the time of the offense, it is that the character
25 trait should be related to.

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1 Mr. Povich did not intend or attempt to only limit
2 the time period which this character testimony is elicited.

3 MR. POVICH: Your Honor, first of all, there is
4 a difference I think if you ask reputation. I don't concede
5 for a moment even under the concept of reputation because
6 a lot of that depends on whether or not he heard something
7 or didn't hear something or not.

8 That would be like asking him in this case what
9 are the facts of the indictment, whether all of the facts
10 in the indictment, if they were facts, would it change your
11 opinion of an individual.

12 Well, Your Honor, I suggest that that's a hard
13 question. If a man is, if a person is convicted of a crime,
14 if a person is convicted of a crime, would that change your
15 opinion with respect to honesty and integrity and I don't
16 see how anybody could ever say no, so I don't think it is
17 very probative when you are talking about the very facts
18 in issue.

19 THE COURT: I can't say I'm familiar with these
20 two cases, unfortunately, gentlemen. I would permit you
21 to ask him if he was familiar with the facts in this case.

22 MR. KOTELLY: At what period of time, Your Honor?

23 THE COURT: At this time. And if he isn't, then
24 you can argue that to the jury and he can argue it to the
25 jury.

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1 MR. KOTELLY: If he says he is familiar with the
2 facts in this case, do I have to stop at that point or am
3 I allowed to --

4 THE COURT: Well, you can ask him whether or not
5 he has taken that into consideration in his opinion.

6 MR. POVICH: Your Honor, did Your Honor mean to
7 say is he familiar with the facts in the case, or is he
8 familiar with the charges and the evidence which is presented
9 in this case?

10 THE COURT: Well, I think we have passed charges.
11 We have put on sworn testimony. There hasn't been a determi-
12 nation.

13 MR. POVICH: That's evidence.

14 THE COURT: If he's familiar with the evidence.
15 All right.

16 (Thereupon, the proceedings had at the bench
17 were concluded; counsel returned to their seats at
18 counsel table; and the witness returned to the wit-
19 ness stand and testified further, as follows:)

20 CROSS-EXAMINATION (continued)

21 BY MR. KOTELLY:

22 Q Ambassador Newsome, I withdraw that question, and
23 ask it a different way.

24 Are you familiar with the evidence that has been
25 presented in this case?

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1 A Only from reading occasional newspaper articles.

2 Q Have you taken that into consideration in giving
3 your present opinion today?

4 A My opinion was asked with respect to the association
5 I have had with Congressman Diggs.

6 Q Ambassador Newsome, are you familiar with Mr. Diggs'
7 financial condition during the period of 1973 through 1976?

8 A No, I am not.

9 Q Were you familiar with the payment made to employees
10 on the staff of Congressman Diggs?

11 A No, I am not.

12 Q Were you familiar with how Mr. Diggs paid for his
13 personal and for his House of Representative expenses during
14 that time?

15 A I had no knowledge.

16 MR. KOTELLY: I have no further questions, Your
17 Honor.

18 THE COURT: Mr. Povich.

19 REDIRECT EXAMINATION

20 BY MR. POVICH:

21 Q Mr. Under Secretary, did you have any question at
22 the time or do you today with the authenticity of the letter
23 with which you and Congressman Diggs concerned yourselves
24 about?

25 A No.

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1 Q Would it be illegal for a congressman to accept
2 a sum of money that you -- in your estimation would it be
3 illegal for a congressman to accept a sum of money which
4 was offered, referred to in that letter?

5 A I can't comment on the legality. It would be con-
6 sidered highly improper I think.

7 MR. POVICH: Thank you.

8 I have no further questions, Your Honor.

9 MR. KOTELLY: Nothing further, Your Honor.

10 THE COURT: Thank you, Mr. Ambassador.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 MR. WATKINS: Robert B. Washington.

14 MR. KOTELLY: May we approach the bench, Your Honor.

15 THE COURT: Yes.

16 (Thereupon, counsel for both parties approached
17 the bench and conferred with the Court, as follows:)

18 MR. KOTELLY: Your Honor, Government first learned
19 that Mr. Washington would testify in this case at the lunch
20 break when Mr. Povich announced.

21 We would ask for at least some type of proffer
22 as to relevancy of the testimony of Mr. Washington.

23 MR. WATKINS: Certainly. When Mrs. Stultz testified,
24 she indicated that she did nothing on the District Committee,
25 House District Committee, and that she knew nothing of what

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1 was going on in the House District Committee.

2 Mr. Washington was the general counsel of that
3 committee during the time Mr. Stultz was employed and his
4 testimony will be that she was very much an integral part
5 of that committee and knew what was going on and partici-
6 pated very deeply in the activities of that committee.

7 It goes to the question of credibility, Your Honor,
8 and it is clear. I had Mr. Washington call me after he heard
9 the testimony and said, "Well, that's just not correct."

10 THE COURT: All right.

11 (Thereupon, the proceedings had at the bench
12 were concluded; counsel returned to their seats at
13 counsel table; and the proceedings were resumed,
14 as follows:)

15 Whereupon,

16 ROBERT BENJAMIN WASHINGTON, JR.

17 was called as a witness by and on behalf of the
18 defendant and, having first been duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WATKINS:

22 Q Sir, would you state your name?

23 A My name is Robert Benjamin Washington, Jr.

24 Q What is your occupation, Mr. Washington?

25 A I'm an attorney.

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1 Q Here in the District of Columbia?

2 A Yes, admitted to the bar in the District of
3 Columbia.

4 Q Mr. Washington, I want to focus your attention on
5 the year 1973. Where were you employed?

6 A During the year 1973, I was staff director and chief
7 counsel of the U.S. House of Representatives Committee on
8 the District of Columbia.

9 Q Is that a committee that was headed by Mr. Charles
10 Diggs?

11 A Yes. The Honorable Charles Diggs was Chairman of
12 the committee.

13 Q Now, Mr. Washington, what were your duties as staff
14 director and general counsel of the House District Committee?

15 A I was principally responsible for the staff functions
16 of the committee, including the day-to-day operations of the
17 staff, drafting legislation, memoranda for members of the
18 committee, the committee chair, preparing for committee hear-
19 ings, committee business meetings, and for floor activities
20 on the House floor.

21 Q While you were in that position, Mr. Washington --
22 by the way, how long did you hold that position?

23 A Up through, I started in January 1973, and I
24 returned to the private sector in or around May or June of
25 1975.

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1 Q During the time you held that position of staff
2 director and general counsel, did you come to know a person
3 named Jean Stultz?

4 A Yes.

5 Q What was her position and who was she?

6 A I'm not sure I understand your question, Mr.
7 Watkins.

8 Q First, what was her position on your committee,
9 if she was on your committee?

10 A At some point she became a staff in a variety of
11 titles and as you know, titles on the Hill aren't terribly
12 descriptive. I think she was a staff assistant.

13 Q Did she hold any other position on the Hill that
14 you knew of?

15 A It's my understanding, as I reflect, that she was
16 also on the staff of the Chairman, and that is to say, at
17 the time she was on the committee staff she was also on the
18 staff, personal staff of the Chairman.

19 Q Is that an unusual circumstance to have a person
20 both on the Chairman's staff and the committee staff?

21 A That occurs in the Congress and if my recollection
22 is correct, there were several instances of this during
23 1973 through 1975, with respect to the District Committee.

24 Q Is it your understanding that is a proper procedure?

25 A I don't know if there are any regulations which

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1 would preclude that. My understanding was at that point in
2 1973 to 1975, you could not be a professional staff person
3 and be on any other committee. You could be a staff assistant
4 or a clerical or be on what they call an expense resolution
5 spot and also be on a Member's personal staff, so that was
6 not precluded.

7 To state it differently, it was permissible.

8 Q Was it permissible in the case of Mrs. Stultz?

9 A In her case it seems to me it was permissible
10 because she was serving and doing things in both capacities.
11 She was working as his personal secretary and she was liaison
12 to our committee from his office and was involved in District
13 Committee activities.

14 Q Now, Mr. Washington, would you tell us what functions
15 Mrs. Stultz performed for the House District Committee while
16 you were general counsel and staff director?

17 A She was involved first of all, she coordinated the
18 Chairman's calendar and the way the committee was set up,
19 appointments had to either go through the chief of staff,
20 Dorothy Corker, or through me with the Chairman. She coordi-
21 nated all the appointments.

22 She asked why was there a need for a meeting and
23 for whom and at what time. So she was the focal point in
24 his office, so that it was a person in the Chairman's office
25 who knew about the District Committee and that was her job.

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1 She was also involved as the D.C. liaison person
2 in his office in several of our staff meetings and she
3 attended. She indicated that the Chairman was -- had incurred
4 some negative comments in Detroit because of his participation
5 in D. C. matters, so it was important that those activities
6 were properly explained to his constituents and that was her
7 role.

8 Also, she was involved in matters of the District
9 of Columbia, and she has a personal interest, being a resident.
10 She use to speak to me from time to time about her interest
11 in D. C. matters.

12 Q Do you recall any specific events when you and she
13 worked together on matters relating to the District of
14 Columbia Committee?

15 A Yes, I do. I recall when the Chairman was injured
16 or was not feeling very well, and was in the hospital in
17 Bethesda Naval Hospital. Miss Stultz and I both went out
18 to his room at the hospital and spent an entire afternoon
19 talking about matters going over memoranda that we had pre-
20 pared that she knew something about.

21 She reviewed memoranda because of her own interest,
22 not from a policy point of view, but because of her own inter-
23 ests.

24 We had meetings in the cafeteria, the Longworth
25 Cafeteria. We had meetings in his office. As you know, her

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1 office was adjacent to his office in the Rayburn Building,
2 and my office was in the Longworth building, so because she
3 was a coordinator and facilitator of paper and documents,
4 she from time to time participated in these matters and in
5 these conferences.

6 Q Mr. Washington, at the time you were general counsel
7 and staff director of the House District Committee, were you
8 also on Congressman Diggs' payroll?

9 A No, I have never been on his personal payroll. I
10 have always been on the payroll of the committee.

11 MR. WATKINS: Thank you, Mr. Washington.

12 CROSS-EXAMINATION

13 BY MR. KOTELLY:

14 Q Mr. Washington, did Miss Stultz have any office
15 space in the District of Columbia Committee suite of offices?

16 A No.

17 Q Who would she report to at the District of Columbia
18 Committee?

19 A Miss Stultz would report, of course, she was the
20 assistant of the Chairman and her office was adjacent to
21 Chairman Diggs. She would report to him, but it is important
22 to stress that when we took over the committee in 1973, we
23 only had Suites 1307, 8, 9, 10 and 441 in the Cannon. We had
24 inadequate space to the point that all six subcommittee
25 chairmen had requested space so we had no space.

000940

1 Q I was asking about who she reported to. Is your
2 answer the Chairman?

3 A She inquired to me on matters, but she reported
4 to the Chairman. She was his personal assistant, staff
5 assistant.

6 Q Now, when you say that she had contacts with you,
7 did she actually report to you? Did you tell her what jobs
8 she should do and what she shouldn't do?

9 A No.

10 Q You were the director of the staff of the D. C.
11 Committee, correct?

12 A That is correct.

13 Q And did you on a day-to-day basis instruct the
14 persons that were working directly for that committee as to
15 what they should do each day?

16 A I had the primary responsibility, but the Chairman
17 also instructed them and other members of the committee.

18 Q Were there any persons who you did not instruct
19 on a daily basis but would go directly to the Chairman that
20 were employed on the staff of the D. C. Committee?

21 A Oh, absolutely. That was one of the problems I
22 had with the Chairman from time to time, that he went to people
23 without coming to me on some instances.

24 Q How many employees would do that?

A Well, it varied, Dorothy Corker for example. She

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1 reported directly to the Chairman.

2 Q Did she never take instructions on a day-to-day
3 basis from you?

4 A Never.

5 Q She was paid full time on the committee's salary?

6 A Full time.

7 Q And she had offices at the committee?

8 A Offices at the committee.

9 Q Not at the staff office for Congressman Diggs?
10 This would be after 1973, when she moved over there?

11 A That's correct.

12 Q Were there any other employees who you did not
13 direct on a day-to-day basis?

14 A Well, it varies at times, sir. There are times
15 people, I mean the psychology of the work on the Hill is to
16 have access to the Chairman -- and I was a staff employee --
17 and people wanted to have the feel and the touch of the
18 Chairman, so it is natural for people to want to fee' and
19 touch the Chairman.

20 I had primary responsibility, but I don't want to
21 suggest to you that people did not go directly to the Chairman
22 or did not have contacts with the Chairman.

23 Q Mr. Washington, I'm asking you though as to a full
24 time reporting directly from an employee on the staff of the
25 committee to the Chairman, bypassing you at all instances.

000942

1 Now you mentioned Miss Corker; was there anyone
2 else?

3 A No one did it in all instances, including Miss
4 Stultz. No one did it in all instances.

5 Q Did you direct Miss Stultz on some occasions, what
6 she should do on behalf of the committee?

7 A Absolutely.

8 Q What type of things would you have her do on behalf
9 of the committee?

10 A Of course, when a person coordinates the calendar
11 of the Chairman oftentimes they like to put their arms in
12 the sleeve of the Chairman and make decisions about when he
13 can see people and I, although I had a direct telephone to
14 the Chairman, I would never want to disturb him about his
15 calendar, and I went to her and Miss Stultz would try to make
16 decisions we ought to see this person today or that person
17 tomorrow, or the Chairman has committed himself to see this
18 person or that time has been allocated, and I would have to
19 instruct her, Miss Stultz, we are going to see this person,
20 that is the Chairman, and whatever staff person that is
21 requested, we are going to see that person today.

22 Q And would you tell the Chairman before you make
23 that type of decision?

24 A It varies, it varies.

25 Q You would make appointments for the Chairman, even

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1 though he did not know about them and expect for him to have
2 those meetings? .

3 A Absolutely.

4 Q Now, you have indicated that Miss Stultz handled
5 the appointment book for the Congressman; is that correct?

6 A That's correct.

7 Q And the Congressman not only was the Chairman of
8 the D. C. Committee, he had other committee assignment posi-
9 tions, correct?

10 A That's correct.

11 Q And he also had his own constituents' representation
12 for the 13th District in Michigan, correct?

13 A That's correct.

14 Q Did the Congress set aside certain portions of a
15 day solely for appointments dealing with the District of
16 Columbia Committee?

17 A You know as a conception, we talked about that and
18 we may have. I frankly don't recall that. At some point
19 in time in that time frame we may have set some time aside
20 to do D.C. matters, but I mean the Chairman allocated in
21 1973, because of the rush of home rule and the University
22 of the District of Columbia bills that he was involved in,
23 he spent a lot of time on D.C. matters.

24 So I can't say he allocated a specific amount of
25 time or specific portion of the day. We spent an enormous

000944

1 amount of time on D. C. matters.

2 Q As appointment secretary, Jean Stultz would not
3 only set aside times for meetings regarding D. C. matters,
4 but also other matters of interest to the Congressman; is
5 that correct?

6 A Yes, they sometimes clashed because we were fighting
7 for time.

8 Q I understand. Miss Stultz' function then was a
9 personal function for Congressman Diggs, to help him allocate
10 his time to the various committee assignments and constituent
11 responsibilities that he had?

12 A I'm not sure I understand your question.

13 Q In keeping the Congressman's appointment books,
14 she was not only keeping his appointments that he dealt with
15 in the District of Columbia Committee matters, but also his
16 other committee responsibilities and his constituent responsi-
17 bilities where he had to have meetings and set aside times
18 for that; is that correct?

19 A That is correct.

20 Q That was all part of her one single function; is
21 that correct?

22 A I don't know what other functions were -- it would
23 be inappropriate for me to respond to your question because
24 I don't know what her other functions were other than trying
25 to keep his calendar and I know there was a continual clash

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1 because when we had general meetings from the different
2 components of the Congressman, Detroit, Africa, subcommittee,
3 the District Committee were all vying for time and there is
4 a limited amount of time that, in a day.

5 Q I think you have answered the question if you say
6 you don't know what her other responsibilities were. You
7 do understand though that that was not her sole responsibility
8 of sitting down and only taking care of appointments for the
9 District of Columbia Committee matters that were of interest
10 to the Chairman.

11 A Clearly.

12 Q Now, who set the salaries for members of the staff
13 of the committee?

14 A Again, it would vary.

15 Q Were payroll authorizations prepared for each mem-
16 ber of the staff of the committee whenever there was a change
17 in salary or appointment or termination?

18 A That was generally the function of the office
19 administrator, but -- I mean you can't answer these questions
20 in a word yes or no.

21 But it depended on whether there was a recommenda-
22 tion, whether -- I mean when it comes to general employees,
23 we had the staff director and the chief counsel and others
24 meet with people. We interviewed them, we made recommenda-
25 tions for salaries. That's for people that the Chairman did

000946

1 not. But where in the instances where the Chairman knew a
2 person, the Chairman didn't necessarily ask our views about
3 a salary.

4 Q There was no consultation with you as far as those
5 particular employees; is that correct?

6 A It would vary.

7 Q You have indicated that Miss Stultz did appear at
8 staff meetings. Did she come to all the staff meetings?

9 A No, no. It was the exception rather than the rule.

10 Q In '73 and '74, how frequently would you consider
11 that she attended staff meetings for the committee?

12 A Infrequently.

13 Q Could you give us some idea in terms of numbers?
14 Are you talking about one or two, three or four?

15 A I'm afraid I can't answer that. I just don't have
16 that information available. Let me just make a point if I
17 might. We were so actively --

18 Q You have already indicated that, Mr. Washington.
19 Please just respond to my questions. You have indicated
20 there was one occasion when Congressman Diggs was at the
21 hospital that you and Miss Stultz went to see him; is that
22 correct?

23 A That's correct.

24 Q Was she there to take notes?

25 A No. As I stated earlier, our memoranda and other

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1 documents were transmitted to her for his attention and
2 review, and she was there with him and she provided, she had
3 them and he made certain decisions and so in a sense she did
4 prepare notes, but that was not the total function.

5 Q Do you know when that was that Miss Stultz and you
6 went to the hospital?

7 A I do not.

8 Q What year?

9 A I do not know. I do not recall.

10 Q Do you know for certain whether Miss Stultz at the
11 time you went to the hospital was or was not on the committee
12 staff?

13 A She was on the committee staff, if my recollection
14 is correct. She either came to the committee March, April,
15 May of '73, and she was, I think she got off the committee
16 in '74 or '75, but I'm not sure.

17 Q At any time that Miss Stultz was on the committee
18 staff at any time did Miss Stultz spend full time at the
19 committee?

20 A What do you mean at the committee?

21 A In other words, during the period of time that she
22 was on the staff, committee staff payroll, was there any period
23 of time that she would spend a 40-hour week at the committee
24 meeting itself working on committee matters?

25 A I'm not sure what you mean "at the committee itself."

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1 Q At the offices of the committee.

2 A We had offices all over the Hill.

3 Q Do you know of any period of time that Miss Stultz
4 would spend 40 hours or more a week on District of Columbia
5 Committee matters?

6 A No, I don't, but that's true of other employees.

7 Q Mr. Washington, did you have any connection with
8 determining the salary of Miss Stultz?

9 A I did not.

10 Q Were you aware that according to payroll authoriza-
11 tion forms in evidence that in August of 1974, that her annu-
12 alized salary on the committee was \$36,000?

13 Did you hear the question, sir?

14 A I got the question. I am sure I had to be aware
15 because I got a copy of the document transmitted to the House
16 administration that went to the House.

17 Q So you were aware at least as to the month of August
18 1974, that Mrs. Stultz:--

19 MR. WATKINS: I'm going to object to that, Your
20 Honor. May we approach the bench?

21 THE COURT: Yes.

22 (Thereupon, the witness stepped down from the
23 stand; counsel for both parties approached the bench
24 and conferred with the Court, as follows:)

25 MR. WATKINS: Your Honor, Mr. Kotelly is misleading

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1 the witness. He talks about \$36,000 annualized salary. She
2 was not receiving \$36,000 a year. What they do on the Hill
3 is they state a salary each month as 1/12 of what the yearly
4 salary is.

5 So to say to this witness, were you aware that she
6 has an annualized salary of \$36,000 a year, is not correct.

7 THE COURT: Paid at the rate is what you mean?

8 MR. WATKINS: That's right. For the month of
9 August she was not -- it's misleading if you said that she
10 was earning a gross salary of \$3,000 a month as the earnings
11 for that month, that's one thing, and that gives the true
12 picture. But to say she was earning an annualized salary
13 for the month of August of \$36,000.

14 THE COURT: See if it can be stated more clearly
15 on annualized salary paid a salary at the rate of so much
16 per year.

17 MR. KOTELLY: All right.

18 (Thereupon, the proceedings had at the bench
19 were concluded; counsel returned to their seats at
20 counsel table; and the witness returned to the wit-
21 ness stand and testified further, as follows:)

22 BY MR. KOTELLY:

23 Q Mr. Washington, in order not to confuse or mislead,
24 my question was as to August of 1974; are you aware that Miss
25 Stultz received on annual salary a gross monthly salary of

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1 \$3,000 which at an annual rate would have been \$36,000 per
2 year? Were you aware of that in August of 1974?

3 A I am sure that at some point I had to be aware of
4 that. Whether I knew it in August or knew it at the time
5 the document was prepared for the Chairman's signature, a
6 copy of which was given to me, I knew about it; the answer
7 there would be yes.

8 Q From your knowledge of employment on Capitol Hill
9 on committees during that period of time, would \$36,000 have
10 been close to the maximum amount in 1974?

11 A \$36,000 was the maximum for clerical and professional
12 staff in 1973-74.

13 Q You were on the professional staff; is that correct,
14 of the committee?

15 A That's correct.

16 Q I don't mean to embarrass you, but do you remember
17 what your salary was in August of 1974?

18 A I would be delighted to tell you. It was \$36,000.

19 Q The same as Miss Stultz, at least for that month?

20 A If she made that salary, it would have been similar.

21 Q And Miss Stultz was not on the professional staff
22 of the D. C. Committee; is that correct?

23 A But if I understand your question, there were 12
24 statutory, 12 positions, six clerical and six professional
25 both had a maximum of \$36,000, so a clerical person could

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1 make \$36,000 under the rules.

2 Q Could or could not, I'm sorry?

3 A Could.

4 Q My question was, did Miss Stultz when she was in
5 August of 1974, was she on the professional staff of the
6 D. C. Committee?

7 A If my recollection is correct, Miss Stultz was never
8 on the professional staff. But I'm not sure that I know
9 what --

10 Q That's merely all I asked you on that question.

11 MR. KOTELLY: No further questions, Your Honor.

12 THE COURT: Mr. Watkins?

13 REDIRECT EXAMINATION

14 BY MR. WATKINS:

15 Q Now, Mr. Washington, as staff director, you said
16 you had some problems with space at the House District Commit-
17 tee when you became staff director; is that correct?

18 A That's correct.

19 Q Tell us what problems you had with space, please.

20 A We even prior to taking over the committee in --
21 and I started consulting with the Chairman when I was teaching
22 at Howard Law School before becoming an official member of
23 the committee, we looked at the committee space, which was
24 suites 1307, 8, 9 and 10, four very small offices and a
25 committee hearing room, because the committee had been a very

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1 small committee under the previous chairman.

2 We were -- the intention was to have six subcommittee
3 additional staff and most importantly, in the interim, the
4 Congress at least the Democratic Caucus passed what they call
5 the Subcommittee Bill of Rights, which assured every subcom-
6 mittee chairman a professional staff person. So it became
7 imperative to have additional space.

8 Many of our staff persons were in offices that were
9 not committee offices, including their subcommittee chairman's
10 offices.

11 In fact, I recall vividly a letter from all six
12 subcommittee chairmen to the chairman saying, when you get
13 some additional space make sure you give that space on a
14 priority basis.

15 MR. KOTELLY: Objection, hearsay, Your Honor, as
16 to what the subcommittee chairmen said, Your Honor.

17 THE COURT: All right. I would have to sustain
18 the objection, but you can rephrase the question.

19 BY MR. WATKINS:

20 Q As a result of this problem with space, do you
21 recall the subcommittees having problems with getting space?

22 A Yes. We sent, that is the Chairman sent letters
23 to the Speaker of the House, a whole stream of letters to
24 the Speaker of the House, who was Chairman of the House
25 Building Committee, and I recall, and I use to meet with

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1 Mike Reed, his chief guide, about space for our committee,
2 we had no space.

3 Q Well, Mr. Washington, did the Chairman himself have
4 offices in the House District Committee at the time?

5 A No, he gave me his office.

6 Q So his secretary didn't have offices in the House
7 District Committee either, did she?

8 A No.

9 Q All right. Now, you tried to explain when Mr.
10 Kotelly was questioning you about how you had to fight for
11 the Chairman's time. Would you tell the ladies and gentlemen
12 of the jury what that meant and what that pertained to in 1973,
13 particularly, and later while you were at the committee?

14 MR. KOTELLY: Your Honor, I object unless this is
15 related to some matter in issue in this case.

16 MR. WATKINS: It wasn't raised on direct, Your Honor.
17 Mr. Kotelly raised it and cut the witness off, and I think
18 he has a right to explain.

19 THE COURT: It really isn't one of the points with
20 which we are concerned here, Mr. Watkins, but you may briefly
21 deal with it, but don't spend a lot of time on it.

22 We have got a lot of matters that are in issue here.
23 Let's get to them.

24 BY MR. WATKINS:

Q Mr. Washington, do you recall the question?

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1 A It was my view that an effective staff leader,
2 Mr. Watkins, ought to have staff reporting to him, all of
3 the staff reporting to him or to her, and the Chairman's
4 style, I guess, was to consult with people individually,
5 and it made it very difficult and inefficient to operate a
6 staff because people would get assignments from him and have
7 to report to him, and he would ask me what had happened to
8 the assignment and I didn't know anything about the assign-
9 ment.

10 So he would have -- I recall meetings on the steps
11 of the Capitol with staff persons without my knowledge about
12 matters, and we had set a priority for the agenda of the
13 committee, but on an ad hoc basis, if a Member of the Congress
14 saw the Chairman on the floor about a subject, he would then
15 assign a staff person, and people would use that as an
16 excuse for not accomplishing the goals set out by the commit-
17 tee.

18 So, there was always a constant fight that happens
19 on the Hill of the Congress for the Chairman's ear. That's
20 not unusual.

21 Q And in that context of persons trying to fight for
22 the Chairman's ear, Mrs. Stultz had a role, did she not?

23 A Absolutely.

24 Q And would you explain what that role was?

25 A You mean being the staff assistant, appointments --

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1 coordinating appointments, the liaison from his office on
2 D. C. matters. Those are the principal, if I recall,
3 principal responsibilities of Miss Stultz as they related
4 to the District Committee and D. C. matters generally.

5 Q And you indicated, I think, in your examination
6 that Mrs. Stultz was the liaison person?

7 A Yes. When we had a task force, I don't recall
8 whether it was '74, to reorganize the staff, to better allo-
9 cate and assign staff responsibilities and it was important
10 for us to have a person designated in his office, in his
11 personal office, to handle D. C. matters because we people
12 came from Detroit or else where they would want to know why
13 the Chairman was spending his time on D.C. matters; he wasn't
14 elected from the District.

15 Q Who was that person designated in the Chairman's
16 office to handle D.C. matters?

17 A Jean Stultz.

18 MR. KOTELLY: Thank you, Mr. Washington.

19 Nothing further, Your Honor.

20 THE COURT: All right, may the witness be excused?

21 MR. KOTELLY: Yes, Your Honor.

22 THE COURT: Thank you. You are excused.

3 (Witness excused)

4 MR. KOTELLY: Your Honor, may we approach the bench?

5 THE COURT: Yes.

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1 (Thereupon, counsel for both parties approached
2 the bench and conferred with the Court, as follows:)

3 MR. KOTELLY: Your Honor, this is another witness
4 I only learned about during lunchtime and I would ask again
5 for a proffer as to relevance.

6 MR. WATKINS: Mrs. Roundtree wasn't here when Mrs.
7 Stultz testified completely. After the question of immunity
8 was said, she left.

9 She recalls her testimony, she indicated that the
10 testimony was a result of a question by Mr. Kotelly about
11 immunity that she didn't have it or she had made no promise
12 had been made.

13 THE COURT: She had been writing.

14 MR. WATKINS: Mr. Povich asked her about that again
15 and she fought him and suggested that no promise had been
16 made for her testimony.

17 I know that's not the case and when I told Mrs.
18 Roundtree, she told me that was not the case. She had an
19 understanding of what was supposed to go on and in fact she
20 was, if you will, she felt she had been spun by the
21 prosecutors because she was required, she felt she was due
22 to get a letter before that lady took the stand and it was
23 only at the bench when Mr. Kotelly told her "I will give you
24 a letter after the trial is over."

25 That is an indication that is basically -- it shows

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1 the prosecution had potentially had a club over this person
2 by not giving her that prior to her testifying, and I think
3 I told that to Mrs. Roundtree. She said, "That is absolutely
4 right; that we have a right to."

5 THE COURT: You haven't raised a question about
6 admitting Mrs. Roundtree to testify about the relationship
7 with her client.

8 MR. WATKINS: Mrs. Roundtree had some questions
9 about that. I subpoenaed her, put her on subpoena and dis-
10 cussed the matter with her. She's not testifying to confi-
11 dential communications between herself and her client. There
12 was a third person present; that was the prosecutor. That
13 makes the matter not privileged. The presence of a third
14 person makes the matters no longer confidential and Mrs.
15 Roundtree was satisfied that that was the case, but out of
16 an abundance of caution she asked me, she said, "If I testify,
17 Mr. Watkins, you are going to have to put me under a
18 subpoena."

19 I told her, "Mrs. Roundtree, I will do that," and
20 I put her under subpoena.

21 MR. POVICH: It was --

22 MR. KOTELLY: Might I be heard on this matter?

THE COURT: You said Mrs. Roundtree was not present
in court, so what Mrs. Stultz testified to in court, we don't
know that concerned matters she discussed with her lawyer.

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1 Apparently, it didn't.

2 MR. WATKINS: The point I want to deal with, Your
3 Honor, is not the question what Mrs. Stultz might exclusively
4 -- what Mrs. Stultz testified to in court.

5 I guess it is both things: First, in a pretrial
6 negotiation with the prosecutor what she had been promised,
7 the fact that promise was not fulfilled, and the fact that
8 the promise came about.

9 THE COURT: The thing that kind of amazes me about
10 this line of interrogation is that normally where a witness
11 has received no promise at all, his testimony is received
12 with greater consideration by the prosecutor. At least in
13 those circumstances there is presumably more opportunity for
14 the person to tell the truth without reference to the promise
15 of the prosecutor.

16 I recall, for instance, in this Pollack case, which
17 lasted about six weeks and it was a fraud case and counsel
18 for Pollack, Mr. Warren McGee, who was a very astute lawyer,
19 he represented Congressman May, incidentally, which I thought
20 you were quoting.

21 He was very anxious to bring out that these witnesses
22 who were testifying for the Government had received promise
23 as a result of which they were testifying and most of them
24 had, but here this woman . . . they hadn't received any promise.

25 MR. POVICH: That's precisely the point, Your Honor.

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1 THE COURT: Hadn't received any promise until she
2 came to the bench, and at that time when counsel said, "No,
3 we are not going to prosecute her," Mrs. Roundtree said
4 "That's good enough for me" and I said "And I will enforce
5 that promise."

6 MR. WATKINS: That's correct, but the problem is,
7 Your Honor, Mrs. Roundtree and her client were told by the
8 prosecutor that he would have something in writing and it
9 was--that was the condition under which she intended to testify.

10 If you will recall the testimony after Mrs. Stultz
11 gave her name, she turned to you and said, "Your Honor, may
12 I address the Court?"

13 THE COURT: Yes, I remember that.

14 MR. WATKINS: And you said, "No, answer the question.
15 And I assume that Mrs. Roundtree had abandoned her feeling
16 that she should have a letter or some writing before her
17 client testified.

18 I turned around when I was at the bench and Mrs.
19 Roundtree was motioning to me. We went out into the corridor
20 and she said to me, "Mr. Watkins, she was trying to assert
21 her Fifth Amendment rights because we did not receive the
22 letter that we were entitled to or we were promised to her
23 testifying", and that's what brought this about.

24 It seems to me, Your Honor, it is important for
25 me to show that fact, that she was promised a letter prior

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1 to her testifying. She did not receive it. She tried to
2 assert her Fifth Amendment privilege and that letter --

3 THE COURT: But the point is she got the equivalent
4 of it before she gave any testimony other than her name.

5 MR. WATKINS: Your Honor, the problem is, you see,
6 it indicates that the prosecution was in a position to hold
7 this letter up until she waited, until she testified.

8 THE COURT: Not necessarily. I think you are making
9 a mountain out of a molehill on this Roundtree testimony
10 and I am definitely concerned about calling a lawyer to
11 testify about some understanding with a client.

12 MR. WATKINS: It was not an understanding with her
13 client I'm inquiring to, it's an understanding with the
14 prosecutor.

15 MR. POVICH: It was contrary to what her testimony
16 was on the stand, Your Honor. It was directly contrary to
17 her testimony on the stand. She said no promise had been
18 made.

19 I couldn't believe Mr. Kotelly got up and got that
20 answer and left it.

21 MR. KOTELLY: May I respond to that?

22 MR. POVICH: It is not the truth.

23 MR. KOTELLY: That was the truth. Mr. Povich
24 doesn't understand the facts of the matter.

25 MR. POVICH: That's why we should have Miss Roundtree

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1 MR. KOTELLY: Then we would have to bring on another
2 prosecutor to rebut Mrs. Roundtree, Your Honor.

3 THE COURT: I'm going to try to keep this case on
4 track as far as I can. That's my job. I don't think Mrs.
5 Roundtree has anything to add to this case that's material
6 right now.

7 A promise was made right at the bench and whether
8 that colored her testimony or not I don't know.

9 MR. WATKINS: Your Honor, I don't mean to argue
10 before you or after you rule, but it seems to me that matters
11 relating to immunity always affect the credibility of a wit-
12 ness.

13 What happened in this case was Mr. Kotelly asked
14 if there were any promises made.

15 MR. KOTELLY: At what point in time, Your Honor.

16 MR. WATKINS: Asked if any promises were made and
17 Mrs. Stultz said no, and that is clearly not the case, because
18 you remember right here at the bench Mr. Kotelly promised
19 he would give her a letter after she testified promising
20 she would not be prosecuted. Now, that is a matter that goes
21 to her credibility.

22 THE COURT: The essential thing is that we met at
23 the bench, Mr. Kotelly represented that she would not be
24 prosecuted and Mrs. Roundtree said "That's good enough for
me."

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1 MR. POVICH: Contrary to her testimony.

2 MR. WATKINS: It's contrary to Mrs. Stultz' testi-
3 mony. Mrs. Stultz said she received no promise and Mr.
4 Kotelly asked her that on direct examination and left it.

5 THE COURT: Wait a minute. Mrs. Roundtree said
6 she would like to speak to Mrs. Stultz in the witness room.
7 She did and she came back and Mrs. Stultz when asked about
8 immunity said she talked to Mrs. Roundtree and she had the
9 assurance from Mrs. Roundtree.

10 MR. WATKINS: I think, Your Honor, that's -- I hate
11 to disagree with Your Honor but I think that's not the way
12 the evidence came out. There would have been no need for
13 me --

14 THE COURT: Let's look at the record. Who took
15 the testimony of Mrs. Stultz?

16 Who took the testimony of Mrs. Stultz, Regis or
17 you?

18 THE REPORTER: Regis did.

19 THE COURT: Unfortunately, she is in the hospital
20 right now.

21 MR. POVICH: Your Honor, I hate to say it, if they
22 put me on the witness stand and they went into that testimony
23 as clearly and positively as anything. I was caught completely
24 unaware that had been testified to the best of my recollection,
25 but I understand the importance of it and Judge Pratt

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1 understood the importance of it and the people who had to
2 decide the credibility of one witness who I represented
3 understood the importance of it, and they went into it in
4 some detail and the record was made clear for everybody to
5 understand, not just us up here, and I would suggest that
6 particularly with respect to her answers on direct examination
7 by the Government as to whether any promises were made, that
8 the question was brought up by the Government. It was never
9 fully answered and it should now be brought out in our case.

10 THE COURT: We will take the testimony of Mrs.
11 Roundtree out of the presence of the jury and see what you
12 all have to say.

13 (Thereupon, the proceedings had at the bench
14 were concluded; counsel returned to their seats at
15 counsel table, and the proceedings were resumed,
16 as follows:)

17 THE COURT: Ladies and gentlemen, a problem has
18 come up at this time concerning a legal question. I am
19 going to excuse you all for the day, since I started at 8:30.

20 MR. WATKINS: Your Honor, I hate to ask this.

21 THE COURT: The Court has ruled, Mr. Watkins. I'm
22 going to excuse the jury right now and I will hear this other
stuff.

MR. WATKINS: It doesn't relate to this matter,
Your Honor; may I be heard?

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1 (At the bench)

2 MR. WATKINS: Your Honor, because I knew you were
3 concerned with moving this case along swiftly, I have a wit-
4 ness who came at 1:30 because, on the representation that
5 Mr. Kotelly was going to finish at 12:00 o'clock. He is
6 here in the witness room. He has waited patiently until now
7 on the promise that he would get on today.

8 THE COURT: How long is the witness?

9 MR. WATKINS: He is a character witness and will
10 take a very short time.

11 THE COURT: We will hear that witness before the
12 jury leaves.

13 MR. WATKINS: Thank you, Your Honor.

14 (Thereupon, the proceedings had at the bench
15 were concluded and the proceedings were resumed
16 in the presence and hearing of the jury)

17 THE COURT: Ladies and gentlemen, I am going back
18 on my promise about letting you go at this time. They have
19 a promise, they have a very short witness to call at this
20 time.

21 MR. WATKINS: Walter Fauntroy.

22 (Continued on the following page:)

23
24
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1 Whereupon,

2 WALTER E. FAUNTROY

3 was called as a witness by and on behalf of the
4 defendant and, having first been duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WATKINS:

8 Q Good afternoon, sir.

9 Would you tell us your name, please?

10 A My name is Walter Edward Fauntroy.

11 Q And where do you live?

12 A I live at 4105 17th Street, Northwest, Washington,
13 D. C.

14 Q What is your occupation, sir?

15 A I am Pastor of the New Bethel Baptist Church of
16 Washington, D. C., and I am the D. C. Delegate to the U. S.
17 Congress for the District of Columbia.

18 Q Do you know Mr. Charles C. Diggs?

19 A I do.

20 Q How long have you known him and in what capacity
have you known him?

A I have known Mr. Diggs personally since approximately
1960, when I was asked by Martin Luther King, Jr. to serve
as the Washington Bureau Director of the Southern Christian
Leadership Conference, and in that capacity it was my

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1 responsibility to relate to both the Congress of the United
2 States and the Executive Branch of our Government with
3 respect to our Civil Rights activities.

4 Q And have you known him in other capacities since
5 1960?

6 A I have known him both as a supporter of the efforts
7 in the South where I worked particularly with him in 1965,
8 when Dr. King asked me to contact him to assemble a group
9 of Members of the Congress to travel to Selma, Alabama, as
10 a moral witness for our Voting Rights effort.

11 Thereafter, my contacts with Mr. Diggs were a result
12 of my being elected to represent the people of the District
13 in the Congress. At that time I became a member of what is
14 known as the Congressional Black Caucus, which in that year
15 was founded by Mr. Diggs, and which relied not only on his
16 leadership but his knowledge as perhaps the most knowledgeable
17 person on Africa in the Congress.

18 THE COURT: Mr. Fauntroy, you know the Congressman?

19 THE WITNESS: Yes.

20 THE COURT: Do you have an opinion as to his truth,
21 his integrity and his honesty?

22 THE WITNESS: I do.

23 THE COURT: Would you say what that opinion is?

24 THE WITNESS: That opinion is that he is a man of
25 great integrity, dedication and one whom I have come to trust

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1 for his judgment.

2 Not only with respect to Caucus matters and Africa
3 but with respect to his role --

4 MR. KOTELLY: I object to regard to trust of judg-
5 ment.

6 THE COURT: This is character testimony only. You
7 can testify as to your opinion as to his truthfulness, his
8 honesty and his integrity.

9 BY MR. WATKINS:

10 Q Could you address each one of those separately?

11 THE COURT: He has done that. He regards him as
12 a man of truthfulness, integrity and so forth.

13 BY MR. WATKINS:

14 Q And honesty; is that correct?

15 THE COURT: Honesty.

16 THE WITNESS: And dedication.

17 MR. WATKINS: Fine. Thank you, Mr. Fauntroy.

18 THE COURT: Do you have any questions, Mr. Kotelly?

19 MR. KOTELLY: Just a few questions, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. KOTELLY:

22 Q Mr. Fauntroy, is Mr. Diggs a member of your church?

23 A He is not.

24 Q Do you see Mr. Diggs socially?

25 A No, not on a regular basis. When we have Caucus

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1 | affairs, of course, I see Mr. Diggs and let me say that with
2 | respect to my role in the church, he comes to church once
3 | in a while.

4 | Q But he's not a member of the church?

5 | A Not a member of New Bethel Baptist Church.

6 | Q Have you ever been to Mr. Diggs' home?

7 | A No, I have not.

8 | Q Has he ever come to your's?

9 | A Let me -- he came to my church I think it was when
10 | I lost my mother and it was the church, it was not the home.

11 | Q Your home is next door or close by to your church,
12 | correct?

13 | A No. At the time of my mother's passing it was the
14 | parsonage had been removed from the church building.

15 | Q So your testimony is that he has not been to your
16 | home then?

17 | A Yes.

18 | Q Reverend Fauntroy, are you aware of the facts and
19 | the evidence in this case?

20 | A No, I am not, quite frankly.

21 | Q So that has not entered into your opinion as to
22 | Mr. Diggs' honesty, integrity and truthfulness, any facts
23 | that may have been related in this case?

24 | A Let me say that I am generally aware, but I am not
25 | specifically aware, and my general knowledge does not in any

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1 way change my response to the Judge's question.

2 Q Let's see if I understand. Your general knowledge
3 of the facts and evidence in this case has not altered your
4 opinion of Mr. Diggs?

5 MR. WATKINS: Objection, Your Honor, he didn't
6 state he was aware of the facts and evidence in this case.
7 He said he was generally aware of the case.

8 MR. KOTELLY: Let me clarify that matter.

9 MR. WATKINS: Mr. Fauntroy wasn't here in the court-
10 room, he can't be aware of the facts in this case.

11 THE COURT: You may rephrase your question.

12 BY MR. KOTELLY:

13 Q Let me clarify, or I would ask you to clarify what
14 you mean by knowing the facts of this case. Do you know the
15 facts of this case?

16 A I respond directly, I do not know the facts with
17 respect to this case.

18 Q Have you read about the case?

19 A I have read portions of articles about the case.

20 Q Have you read those portions of articles during
21 the start of the trial in this case; in other words, since
22 last Wednesday?

23 A I have seen headlines and read maybe first paragraphs

24 Q Of the small portions of what you read, has that
in any way entered into your opinion testimony regarding

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1 Mr. Diggs' honesty, integrity and truthfulness?

2 A Not at all.

3 Q Reverend Fauntroy, are you familiar with what Mr.
4 Diggs' financial condition was during the period 1973 through
5 1976?

6 A No.

7 Q Do you have any knowledge as to how Mr. Diggs paid
8 for his financial obligations during that period of time?

9 A No.

10 Q Do you have any knowledge as to how Mr. Diggs paid
11 for his House of Representatives expenses during that period
12 of time?

13 A No.

14 Q Do you have any knowledge as to how Mr. Diggs paid
15 for some expenses of the House of Diggs Funeral Home in
16 Detroit, Michigan?

17 A No.

18 MR. KOTELLY: I have no further questions, Your
19 Honor.

20 THE COURT: Mr. Watkins?

21 REDIRECT EXAMINATION

22 BY MR. WATKINS:

23 Q Mr. Kotelly asked you if Congressman Diggs had
24 ever been to your home. Do you know him, do you socialize
25 with him on a regular basis?

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1 A Not on a regular basis.

2 Q Your associations as you listed them, I take it,
3 were because of your involvement with the Civil Rights
4 Movement.

5 A I was not allowed, or did not complete my statement
6 with respect as to how I know him.

7 MR. KOTELLY: Your Honor, I object to going back
8 over old territory that was done on direct. There is no
9 dispute that the Reverend Fauntroy knows Mr. Diggs.

10 THE COURT: Counsel, please come to the bench.

11 (Thereupon, the witness stepped down from the
12 stand; counsel for both parties approached the bench
13 and conferred with the Court, as follows:)

14 THE COURT: Gentlemen, I earlier read you slowly
15 and carefully about opinion testimony, and I think that this
16 witness has tresspassed a great deal on my ruling.

17 I am not sure that it was a result of anything you
18 asked, but I think we have been enough into the question of
19 his activities with Martin Luther King and Black Caucus and
20 Civil Rights and all that.

21 MR. WATKINS: Your Honor, Mr. Kotelly challenged
22 him knowing Mr. Diggs on the grounds that he hadn't been to
23 his home and I think I have the right to establish that he
24 has his relationships with him, they have been in a professional
25 relationship, they have been in the Congress, and he is the

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1 voting delegate of the District of Columbia and Mr. Diggs
2 is Chairman of the Subcommittee on the District of Columbia.

3 THE COURT: I understand that. He made that point
4 clear.

5 MR. WATKINS: I don't think he did, Your Honor.

6 MR. POVICH: Mr. Kotelly has suggested on cross-
7 examination that it is a very casual relationship and he did
8 not know him very well at all, and I think Mr. Watkins has
9 a right to bring out what the relationship is and the extent
10 they do know each other.

11 I think it would be highly improper to leave his
12 testimony he has never been to his home.

13 THE COURT: I don't think that's important. He
14 has stated that he has associated closely in the House of
15 Representatives, as a member of the Black Caucus, which was
16 organized by Mr. Diggs. He is a member of the District
17 Committee and he associates closely with him there.

18 I think that's a sufficient basis for the opinion
19 he expressed. I don't think we have to go over that ground
20 again. Let me read you what the basis on which I instructed
21 you earlier.

22 "Opinion testimony on direct in these situations
23 ought in general to correspond to reputation testimony
24 as now given and be confined to the nature and extent
25 of the observation and acquaintance upon which the

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1 opinion is based."

2 MR. POVICH: Acquaintance, Your Honor, that's the
3 point.

4 THE COURT: He's already testified to that. He
5 doesn't need to retestify to that.

6 MR. POVICH: It's not a question of retestifying,
7 it's a question of amplifying what he said. He said he --

8 THE COURT: He has already told about his associa-
9 tions in the House of Representatives. The only thing Mr.
10 Kotelly brought out was that they do not have a relationship
11 as a result of which he visits Mr. Diggs' home and Mr. Diggs
12 visits his home. He said once it may have happened. It's
13 perfectly clear.

14 MR. POVICH: Let me give you an example. Like you
15 are saying, what is your relationship with another judge.
16 Well, we are both judges on the same bench now, that doesn't
17 give any indication of when you meet, where you eat, what
18 do you discuss, how often do you speak with each other, what
19 matters are there.

20 That is much more probative than the fact you are
21 both judges on the bench.

22 THE COURT: Mr. Povich, he has testified to his
relationship in the community with Mr. Diggs. It's just he
23 doesn't visit his home and I don't think that is important.
24 It's argument.

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1 MR. WATKINS: Let me just say one thing; may I be
2 heard on one point?

3 I think Your Honor cut him off and probably properly
4 so at the point where he was talking about Martin Luther King.

5 The thing I wanted to bring to the jury's attention
6 is the fact Mr. Fauntroy and Mr. Diggs regularly associate
7 themselves and work together on District of Columbia matters.
8 That's the only thing that I want to get out.

9 I may have to do it in a leading form.

10 THE COURT: I don't object to your leading because
11 I think if you ask him that question, he will talk for 15
12 minutes.

13 MR. WATKINS: If I do it in a leading manner, I
14 think I can make the matter brief.

15 THE COURT: All right.

16 REDIRECT EXAMINATION (continued)

17 BY MR. WATKINS:

18 Q Mr. Fauntroy, is it fair to say in your position
19 as Delegate from the District of Columbia, you associate and
20 deal with Congressman Diggs regularly in his capacity as
21 Chairman of the House District Committee?

22 A That is true.

23 MR. WATKINS: Thank you, Mr. Fauntroy.

24 MR. KOTELLY: Nothing further, Your Honor.

25 THE COURT: Thank you, Mr. Fauntroy. You are

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1 excused.

2 (Witness excused)

3 THE COURT: Now, ladies and gentlemen, I will keep
4 my promise; you are excused for the day.

5 Don't discuss the case amongst yourselves and don't
6 let anybody talk to you about it and don't talk to anybody
7 about it.

8 All right, tomorrow morning, 9:30.

9 (Whereupon, at 4:45 p.m. the jury left the
10 courtroom)

11 THE COURT: All right, Mr. Povich.

12 MR. POVICH: Yes, Your Honor, I think Mr. Watkins
13 wanted to address you with respect to the witness.

14 MR. WATKINS: Mrs. Roundtree.

15 Whereupon,

16 DOVEY J. ROUNDTREE

17 was called as a witness by and on behalf of the
18 defendant and, having first been duly sworn, was
19 examined and testified as follows:

20 VOIR DIRE EXAMINATION (out of presence of the jury)

21 BY MR. WATKINS:

22 Q Would you state your name and occupation, please?

23 A Dovey J. Roundtree. I am an attorney at law.

24 Q Are you an attorney at law here in the District
25 of Columbia?

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1 A I am.

2 Q Mrs. Roundtree, are you testifying here under
3 subpoena?

4 A I am.

5 Q Now, Mrs. Roundtree, did you represent a witness
6 named Jean Stultz in the investigation and the trial of this
7 matter?

8 A I did.

9 Q Did there come a time when you had discussions on
10 behalf of your client, Mrs. Stultz, with the prosecutors,
11 that is Mr. Marcy and Mr. Kotelly?

12 A Yes.

13 Q And what were the results of that discussion?

14 A We reached an agreement regarding the matter.

15 Q Were you promised anything as a result of that?

16 A I was assured that she would be granted immunity
17 prior to her testimony, it was my understanding.

18 Q And were you, did they indicate or did you learn
19 what form that immunity would take?

20 A I understood that they were going to furnish me
21 with a memorandum which I personally requested.

22 Q And did you receive that memorandum prior to the
23 time Miss Stultz took the stand?

24 A No, I did not.

25 Q, As a result of your not receiving that memorandum,

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1 did there come a time when you had to come into this court
2 and have a bench conference?

3 A I did.

4 Q And what did you learn at that time, Mrs. Roundtree?

5 A I learned that Mr. Kotelly was going to give me
6 a statement at the conclusion of the testimony.

7 Q What else happened at that point?

8 A At that time after a discussion at the bench, Mr.
9 Kotelly agreed that he would give immunity to Mrs. Stultz
10 as I had wished before she testified.

11 MR. WATKINS: Thank you.

12 MR. KOTELLY: Your Honor, if I might ask some ques-
13 tions of Mrs. Roundtree?

14 THE COURT: Yes.

15 VOIR DIRE EXAMINATION (out of the presence of the jury)

16 BY MR. KOTELLY:

17 Q Mrs. Roundtree, did you represent Miss Stultz back
18 in late May and early June when she came to the Office of
19 the United States Attorney -- that's late May, early June
20 of this year, when she came to the Office of United States
21 Attorney, and around the time she testified before the grand
22 jury?

23 A I represented her since May 1978.

24 Q Do you recall the reasons that Miss Stultz came
25 to you initially in this matter relating to this case?

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1 MR. WATKINS: Your Honor, I think at this stage,
2 we are in the attorney/client privilege matter because this
3 concerns --

4 THE COURT: I think that's correct.

5 MR. KOTELLY: Although the witness testified.

6 THE COURT: It seems to me, Mr. Kotelly, it is
7 getting close to the end of the day. As you know, we started
8 this morning at 8:30. I am painfully aware of that right
9 now.

10 But it seems to me that Mrs. Roundtree's testimony
11 on direct has told the matter.

12 MR. KOTELLY: They started two weeks ago rather
13 than last May when this case started.

14 THE COURT: Mr. Kotelly, don't argue with the Court.

15 MR. KOTELLY: The representations have only come
16 from defense counsel.

17 THE COURT: Let's simply file these things rather
18 than confusing and compounding it. The question of whether
19 or not immunity was promised was dealt with at the bench to
20 Mrs. Roundtree's satisfaction.

21 MR. KOTELLY: Correct.

22 THE COURT: She said your representations at the
23 bench that her client would not be prosecuted was sufficient
24 for her and as you recall, the Court added these words, "And
25 I will enforce the representations of the United States
Attorney."

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1 MR. KOTELLY: Yes, I was aware of that.

2 THE COURT: And then Mrs. Roundtree stated she would
3 like to be excused briefly to go to the witness room with
4 her client so she could relate to her client what transpired
5 at the bench.

6 She was excused. She went out there and thereafter
7 her client said, "Yes, I got the assurance from Mrs.
8 Roundtree for immunity."

9 MR. KOTELLY: That's not in dispute, Your Honor.

10 THE COURT: That's all there is to the case.

11 MR. KOTELLY: Your Honor, what is in dispute is
12 to whether Miss Stultz misstated a fact during her testimony
13 as to whether promises had been made at the time that she
14 was notified and her bank records were subpoenaed, because
15 that's the question was asked, whether promises were made
16 when she first came in to talk to the prosecutors and went
17 before the grand jury.

18 Now, Mr. Povich and Mr. Watkins are making it sound
19 as if those promises she said were not made were relating
20 to two weeks ago when we are talking about totally different
21 time periods.

22 THE COURT: I don't know whether Mrs. Roundtree
23 knows anything about that and I'm very reluctant, Mr. Kotelly,
24 to allow an attorney to be questioned about a relationship
25 with a client.

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1 I have always felt very strongly about that and I
2 feel no less strongly this afternoon at 10 minutes of 5:00.

3 MR. KOTELLY: I'm aware of the time and I will only
4 ask a few questions very quickly, Your Honor.

5 THE COURT: I don't know about few questions, both
6 sides are very good at asking many, many questions. If the
7 lawyer forgets, then the witness comes forward with a speech,
8 so we have problems in this case.

9 Let's keep it as simple as we can.

10 MR. KOTELLY: Yes, Your Honor.

11 VOIR DIRE EXAMINATION (continued)

12 BY MR. KOTELLY:

13 Q Miss Roundtree, were you present in late May or
14 early June of this year at sessions with Mr. Beizer and Mr.
15 Marcy of the United States Attorney's office and your client?

16 A I recall having attended at least one such session.
17 There were others.

18 THE COURT: You had better get some advice from
19 your colleague.

20 MR. KOTELLY: I was wrong about the year; it was
21 May and June of '77.

22 THE COURT: We are not really concerned about the
23 year, we are concerned about the extensiveness of cross-exami-
24 nation right now.

25 MR. KOTELLY: Yes, Your Honor.

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