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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
 PLAINTIFF : CRIMINAL
 :
 VS. : DOCKET
 :
 WALTER ORILEY POINDEXTER : WDQ-03-0213
 AND DEON LIONNEL SMITH :
 :
 DEFENDANT :

- - - - -

BALTIMORE, MARYLAND
DECEMBER 4TH, 2003

THE ABOVE ENTITLED MATTER CAME ON FOR
RE-ARRAIGNMENT IN THE UNITED STATES DISTRICT COURT BEFORE THE
HONORABLE WILLIAM D. QUARLES, BEGINNING AT 10:00 O'CLOCK
A.M..

APPEARANCES

FOR THE GOVERNMENT:

JAMES WARWICK, ESQUIRE
VIVIEN COCKBURN, ESQUIRE

FOR THE DEFENDANT POINDEXTER:

ARCANGELO TUMINELLI, ESQUIRE

(APPEARANCES CONTINUED ON NEXT PAGE)

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(APPEARANCES-CONTINUED)

FOR THE DEFENDANT SMITH:

KENNETH RAVENELL, ESQUIRE

REPORTED BY:-
E. EDWARD RICHARDSON
OFFICIAL COURT REPORTER
3012 UNITED STATES COURTHOUSE
101 WEST LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 539-0034

1 PROCEEDINGS

2 MR. WARWICK: YOUR HONOR, MAY I JUST HAVE 30
3 SECONDS TO SPEAK WITH ANDREW NORMAN SO I CAN HAVE SOMETHING
4 COVERED SO I CAN ASSIST COUNSEL HERE?

5 THE COURT: VERY GOOD.

6 MR. WARWICK: THANK YOU.

7 (PAUSE)

8 THE COURT: PLEASE CALL THE CASE.

9 MR. WARWICK: YOUR HONOR, THIS IS THE MATTER OF
10 UNITED STATES OF AMERICA VERSUS WALTER POINDEXTER AND DEON
11 SMITH. THE CRIMINAL NUMBER IS WDQ 03-0213. GOOD MORNING. I
12 AM JAMES WARWICK.

13 MS. COCKBURN: VIVIAN COCKBURN.

14 THE COURT: GOOD MORNING, COUNSEL.

15 MR. TUMINELLI: ARCANGELO TUMINELLI, ON BEHALF OF
16 WALTER POINDEXTER.

17 THE COURT: MR. TUMINELLI, AND MR. POINDEXTER, GOOD
18 MORNING.

19 MR. RAVENELL: GOOD MORNING, YOUR HONOR. FOR THE
20 RECORD, KEN RAVENELL ON BEHALF OF DEON SMITH WHO IS PRESENT
21 TO MY LEFT.

22 THE COURT: MR. RAVENELL, AND MR. SMITH, GOOD
23 MORNING.

24 MR. WARWICK: GOOD MORNING, YOUR HONOR. I DO
25 APOLOGIZE FOR, I GUESS, MY SUDDEN APPEARANCE BEFORE THE

1 COURT.

2 THE COURT: ALWAYS A PLEASURE TO SEE YOU, MR.
3 WARWICK.

4 MR. WARWICK: THANK YOU VERY MUCH, JUDGE.
5 YESTERDAY, I BECAME INVOLVED IN SOME DISCUSSIONS WITH MR.
6 TUMINELLI RELATIVE TO HIS CLIENT AND SO I HAVE OBTAINED AT
7 LEAST A LIMITED DEGREE OF KNOWLEDGE OF WHAT THE ISSUES ARE.

8 I BELIEVE THAT WE DO HAVE SOMETHING WORKED OUT WITH
9 MR. TUMINELLI. MR. LUNA WAS FINALIZING THE AGREEMENT.

10 I SPOKE WITH MR. LUNA LAST NIGHT. I DON'T KNOW
11 WHERE HE IS AT THE MOMENT.

12 WE ARE TRYING TO LOCATE HIM, AND TRYING TO LOCATE
13 THE FINAL AGREEMENT.

14 THE COURT: UH-HUH.

15 MR. WARWICK: MY UNDERSTANDING, FROM TALKING WITH
16 MR. RAVENELL, WE DO HAVE --

17 MR. RAVENELL: YOUR HONOR, MAY I JUST APPROACH HIM,
18 PLEASE?

19 THE COURT: YES.

20 (PAUSE)

21 MR. WARWICK: YOUR HONOR, WITH THE COURT'S
22 PERMISSION, MAY I APPROACH THE BENCH?

23 THE COURT: YES. COME UP, FOLKS.

24 PROCEEDINGS AT THE BENCH

25 THE COURT: WOULD YOU HAVE THE --

1 MR. WARWICK: JUDGE, I'M SORRY. I APOLOGIZE FOR
2 THE SUDDEN --

3 THE COURT: CAN YOU HEAR, MR. SMITH? MR. SMITH, CAN
4 YOU HEAR ME, MR. SMITH?

5 RON, THEY ARE NOT RECEIVING.

6 THE COURT: CAN YOU HEAR, MR. SMITH?

7 MR. SMITH: YES.

8 THE COURT: CAN YOU HEAR, MR. POINDEXTER?

9 MR. POINDEXTER: YES.

10 THE COURT: MR. POINDEXTER AND MR. SMITH HAVE
11 INDICATED THAT THEY CAN HEAR. WHAT ARE WE DOING, FOLKS?

12 MR. TUMINELLI: JUDGE, I THINK -- MR. WARWICK
13 OBVIOUSLY IS GOING TO HAVE TO SPEAK ON BEHALF OF THE
14 GOVERNMENT, --

15 THE COURT: UH-HUH.

16 MR. TUMINELLI: -- BUT I HAD A CONVERSATION LAST
17 NIGHT WITH MR. WARWICK, AND MR. LUNA, PRIMARILY WITH MR.
18 LUNA.

19 MR. WARWICK SAT IN AND GAVE SOME GUIDANCE, AND I
20 UNDERSTOOD THAT WE HAD A PLEA AGREEMENT.

21 THE COURT: SOMEONE TOLD ME THAT MARK COHEN HAD TO
22 BE CONSULTED.

23 MR. TUMINELLI: HE WAS CONSULTED.

24 MS. COCKBURN: HE WAS CONSULTED, YOUR HONOR, AND HE
25 HAS SPOKEN WITH THE VICTIM'S PARENTS, AND THEY ARE -- AS PART

1 OF THE PLEA AGREEMENT, THE STATE WILL NOT PROCEED IN ANY
2 MANNER --

3 THE COURT: ON THE MURDER, THE ALLEGED MURDER?

4 MR. TUMINELLI: WELL, ACTUALLY, THE MURDER OR ANY
5 CHARGES IN STATE COURT THAT RESULTED OUT OF THE CONDUCT THAT
6 WAS THE BASIS OF THIS INDICTMENT.

7 THE COURT: I THINK I KNOW WHAT IT IS. I THINK
8 SOMETHING ABOUT THOSE PHONES CAUSE -- OVERRIDE THE HUSHER. I
9 AM HEARING THE VOICES OF --

10 THE CLERK: NED HAS THIS LARGE MICROPHONE THAT HE
11 USES.

12 THE COURT: UH-HUH. OKAY. SOMETHING IS --

13 MR. TUMINELLI: IN ANY EVENT, JUDGE, WITH REGARD TO
14 MR. POINDEXTER, ---

15 THE COURT: BY THE WAY, GIVE MR. COHEN MY REGARDS,
16 IF YOU WOULD.

17 MS. COCKBURN: I WILL.

18 MR. TUMINELLI: WITH REGARD TO MR. POINDEXTER, I
19 BELIEVE THAT WE DID WORK OUT THE TERMS OF THE PLEA AGREEMENT.
20 I SPOKE WITH MR. LUNA AT 9:00 P.M. LAST NIGHT.

21 THE COURT: UH-HUH.

22 MR. TUMINELLI: HE CALLED ME AT HOME AND SAID, YOU
23 KNOW, I JUST WANT TO MAKE SURE WE GOT ALL THE DETAILS, HE
24 WENT OVER THE DETAILS AND I SAID THAT IS CORRECT.

25 HE SAID I LEFT THE OFFICE BUT I HAVE GOT TO GO BACK

1 AND COMPLETE THE AGREEMENT.

2 THE COURT: OKAY.

3 MR. TUMINELLI: AND HE WAS SUPPOSED TO FAX THE
4 AGREEMENT TO ME SOMETIME LAST NIGHT.

5 THE COURT: HAVE YOU SEEN THE PAPER YET?

6 MR. TUMINELLI: NO, BECAUSE HE WAS SUPPOSED TO FAX
7 IT DURING THE EVENING. IT WAS NOT FAXED.

8 THE COURT: GENERALLY, WHAT'S THE DEAL?

9 MR. TUMINELLI: GENERALLY, THE DEAL --

10 MR. WARWICK: I'M SORRY. THE DEAL, AS I UNDERSTAND
11 IT, IS THAT HE WILL PLEAD TO THE DRUG CHARGE. THE CONCERN
12 THAT MR. TUMINELLI HAD WAS THE RELATED CONDUCT ON THE
13 HOMICIDE, AND MY QUESTIONS TO BOTH MR. TUMINELLI AND TO MR.
14 LUNA WERE ESSENTIALLY IT'S RELATED CONDUCT IF WE CAN
15 ESTABLISH A FEDERAL NEXUS, SPECIFICALLY THAT WE CAN ESTABLISH
16 THAT THE MURDER WAS RELATED TO A DRUG CRIME OR A DRUG
17 TRANSACTION.

18 MR. LUNA REPRESENTED THAT HE DID NOT HAVE THAT
19 PROOF, AND I TOLD HIM, IN MY OPINION, WHICH I HAVE GONE
20 THROUGH MY -- OTHER PEOPLE IN THE OFFICE IS THAT IF WE CANNOT
21 ESTABLISH THE FEDERAL NEXUS, IT'S NOT RELATED CONDUCT UNDER
22 THE GUIDELINES.

23 THE COURT: O.K..

24 MR. WARWICK: AND ANY DEAL WITH REGARD TO MR.
25 TUMINELLI'S CLIENT'S STATE LIABILITY IS BETWEEN MR. COHEN AND

1 MR. TUMINELLI, AND THAT HAS BEEN RESOLVED.

2 THE COURT: O.K..

3 MR. WARWICK: BUT I FELT IT IMPORTANT TO BRING TO
4 THE COURT'S ATTENTION THAT DESPITE THE FACT THAT THE HOMICIDE
5 HAD BEEN REFERENCED IN EARLIER DISCUSSIONS, IT NEEDED TO BE
6 CLEAR THAT, ABSENT THE FEDERAL NEXUS, WHICH WE DID NOT HAVE,
7 IT'S OUT OF THE CASE FOR OUR PURPOSES.

8 THE COURT: O.K..

9 MR. TUMINELLI: MORE SPECIFICALLY, THE TERMS, IN
10 ADDITION TO WHAT MR. WARWICK JUST ADVISED THE COURT, MR.
11 POINDEXTER WOULD PLEAD TO THE THREE SUBSTANTIVE COUNTS.

12 THE COURT: O.K..

13 MR. TUMINELLI: THE CONSPIRACY COUNT WOULD BE
14 DISMISSED. THE GOVERNMENT WAS TO FILE A NOTICE TO WITHDRAW
15 ITS 841 ENHANCED PUNISHMENT NOTICE.

16 THE COURT: 851.

17 MR. TUMINELLI: 851. 851, I'M SORRY. AND SO IT'S
18 THREE COUNTS, DISMISS THE CONSPIRACY, WITHDRAW THE 851
19 NOTICE, THE DRUG QUANTITY WOULD BE -- FOR THE THREE DEALS
20 WOULD FALL WITHIN THE 40 TO 60 GRAM.

21 THE COURT: CRACK?

22 MR. TUMINELLI: NO, OF HEROIN, 40 TO 60 GRAMS OF
23 HEROIN, AND THERE WOULD BE TWO LEVELS FOR ACCEPTANCE OF
24 RESPONSIBILITY.

25 THERE WOULD BE A TWO LEVEL -- THERE WOULD BE A

1 5K1.1, SHOULD MR. POINDEXTER PROVIDE COOPERATION, AND HE
2 WOULD BE SUBJECT TO AN ADDITIONAL TWO LEVELS FOR COOPERATION
3 UNDER 5K1.1.

4 I THINK THAT THAT ENCOMPASSS ALL OF THE TERMS.

5 MR. WARWICK: BECAUSE IT DOES APPEAR THAT YOUR
6 CLIENT IS A CAREER OFFENDER, --

7 MR. TUMINELLI: RIGHT.

8 MR. WARWICK: -- EVEN THOUGH WE ARE NOT STIPULATING
9 TO THAT, IT DOES APPEAR THAT THAT WOULD BE THE CASE.

10 MR. TUMINELLI: IT DOES APPEAR.

11 THE COURT: THAT'S JUST WHERE IT'S CALCULATED.

12 MR. TUMINELLI: RIGHT, BUT HE WAS GOING TO INCLUDE
13 IN THE PLEA AGREEMENT, JUST TO SURE IN THE STIPULATIONS,
14 THAT, SHOULD MR. POINDEXTER BE A CAREER OFFENDER, HIS
15 GUIDELINE -- HIS OFFENSE LEVEL WOULD GO TO A 32, CRIMINAL
16 HISTORY CATEGORY 6.

17 THEN THE TWO LEVELS FOR ACCEPTANCE, AND, IF
18 COOPERATION, WOULD COME OFF OF THAT.

19 MR. WARWICK: WITH REGARD TO MR. RAVENELL, THE
20 WRITTEN AGREEMENT THAT MR. RAVENELL HAS NEEDS TWO MINOR
21 MODIFICATIONS, WHICH WE CAN DO ON THE RECORD.

22 MR. RAVENELL: THE OTHER WAS THE 851.

23 THE COURT: FIRST OF ALL, WHAT'S THE DEAL.

24 MR. RAVENELL: THE DEAL, YOUR HONOR, IS THAT MR.
25 SMITH WOULD PLEAD TO COUNTS FIVE AND SIX -- LET ME JUST GET

1 THE PLEA AGREEMENT.

2 THE COURT: OKAY.

3 MR. TUMINELLI: KEN, WOULD YOU MIND IF I ADDED ONE
4 POINT?

5 MR. RAVENELL: GO AHEAD.

6 MR. TUMINELLI: JUDGE, THERE WAS ONE ADDITIONAL
7 THING. THE CONVERSATION WITH MR. COHEN, I WAS PRESENT WHEN
8 MR. LUNA SPOKE TO MR. COHEN.

9 MR. COHEN ADVISED MR. LUNA THAT BALTIMORE CITY
10 WOULD NOT, AS WE HAVE TOLD YOU, DESCRIBED TO YOU, WOULD NOT
11 FILE CHARGES, BUT THAT WAS GOING TO BE A PROVISION IN THE
12 PLEA AGREEMENT.

13 AND JONATHAN AND I CONSTRUCTED THE LANGUAGE, AND I
14 THINK I COULD RECONSTRUCT IT, IT WAS SOMETHING TO THE EFFECT
15 THAT BALTIMORE CITY WOULD NOT PURSUE ANY CHARGES -- DO YOU
16 HAVE IT, -- WOULD NOT PURSUE ANY CHARGES AGAINST WALTER
17 POINDEXTER FOR CONDUCT THAT FORMED THE BASIS OF THIS
18 INDICTMENT, INCLUDING, BUT NOT LIMITED TO, THE JANUARY 22ND,
19 2001 SHOOTING INCIDENT.

20 MR. WARWICK: YOUR HONOR, AS FAR AS THE SIGNATORY
21 ON THAT ASPECT, WE HAVE COUNSEL, AND I BELIEVE I CAN DO THAT.
22 SO I DO APOLOGIZE FOR NOT BEING MORE VERSED IN THE FACTS. THE
23 ONLY --

24 THE COURT: MR. WARWICK, I APPRECIATE YOUR INFUSION
25 OF SANITY HERE ON THE GOVERNMENT'S SIDE. NO OFFENSE TO

1 DEFENSE ATTORNEYS.

2 MR. TUMINELLI: I THINK WE HAVE BEEN RELATIVELY
3 SANE.

4 MR. WARWICK: I HAVE A -- I HAD A 10:00 O'CLOCK IN
5 FRONT OF JUDGE MOTZ, WHICH ANDREW NORMAN HAS BEEN GOOD ENOUGH
6 TO TAKE FOR ME.

7 THE COURT: I THANK YOU FOR YOUR ROLE IN
8 FACILITATING THIS.

9 MR. WARWICK: MAY I ASK THE COURT FOR ITS
10 INDULGENCE IN GIVING ME 15 MINUTES --

11 THE COURT: SURE.

12 MR. WARWICK: -- TO FINALIZE ANY CHANGES WITH MR.
13 RAVENELL --

14 THE COURT: UH-HUH.

15 MR. WARWICK: -- AND TO FIND OUT WHERE THE HECK
16 THAT OTHER DOCUMENT IS.

17 THE COURT: VERY GOOD.

18 MR. WARWICK: THANK YOU VERY MUCH.

19 PROCEEDINGS IN OPEN COURT

20 THE COURT: WE ARE GOING TO TAKE A BRIEF RECESS.

21 THE CLERK: PLEASE RISE. THIS HONORABLE COURT
22 STANDS IN RECESS BRIEFLY.

23 (THEREUPON, A BRIEF RECESS WAS TAKEN)

24 AFTER RECESS - PROCEEDINGS

25 THE COURT: ANY PROGRESS?

1 MR. TUMINELLI: MR. WARWICK LEFT WITH MS. COCKBURN
2 AND TOLD ME TO ADVISE THE COURT, IF THE COURT NEEDED
3 INFORMATION, THAT HE WAS GOING UPSTAIRS, AND I THINK HE IS
4 TRYING TO PUT TOGETHER THESE DOCUMENTS, AND --

5 THE COURT: HAVE WE FOUND CHIEF TRIAL COUNSEL YET?

6 MR. RAVENELL: NO LUCK. MY UNDERSTANDING --

7 MR. TUMINELLI: NO.

8 THE COURT: HAS ANYONE CALLED HIS HOME?

9 MR. RAVENELL: MAY WE APPROACH WITH THE AGENTS?

10 THE COURT: YES. COME UP.

11 PROCEEDINGS AT THE BENCH

12 MR. TUMINELLI: APPARENTLY, JUDGE, NO ONE HEARD
13 FROM HIM SINCE 9:00 O'CLOCK LAST NIGHT.

14 AGENT SKINNER: YOUR HONOR, WE CALLED HIS HOUSE AND
15 WE DIDN'T GET AN ANSWER. WE CALLED HIS WIFE AT WORK AND LAST
16 SHE SAID THAT SHE SAW HIM LAST NIGHT AT MIDNIGHT AND HE LEFT
17 AGAIN.

18 MR. TUMINELLI SPOKE WITH HIM LAST NIGHT AND HE WAS
19 SUPPOSED TO FAX DOWN THE PLEA AGREEMENT. IT WAS STILL IN HIS
20 COMPUTER UP IN HIS OFFICE, AND WE HAVE HAVE PAGED HIM, AND
21 HIS CELL PHONE IS ON HIS DESK, HIS GLASSES ARE IN HIS OFFICE,
22 WE ARE PROBABLY GOING TO GO OVER TO THE PARKING GARAGE WHERE
23 HE -- WHERE WE PARK AND JUST LOOK FOR HIS CAR.

24 MR. RAVENELL: YOUR HONOR, I WAS GOING TO ASK THE
25 COURT JUST TO TAKE A RECESS UNTIL WE FIND OUT WHAT'S GOING

1 ON. YOU KNOW, AS MUCH AS WE'RE CONCERNED OBVIOUSLY ABOUT THE
2 JURY, AND ABOUT THE DEFENDANTS, I MEAN ALL OF US ARE
3 PERSONALLY CONCERNED ABOUT MR. LUNA.

4 I THINK THAT WE NEED TO TRY TO LET THE AGENTS FOCUS
5 ON TRYING TO FIND HIM.

6 THE COURT: WELL, WE WON'T NEED THE AGENTS FOR
7 THE --

8 MR. RAVENELL: NO, NO, MR. WARWICK IS STILL WORKING
9 ON THAT.

10 THE COURT: SO IF YOU GUYS WANT TO TAKE OFF AND LOOK
11 FOR HIM, PLEASE DO.

12 PROCEEDINGS IN OPEN COURT

13 MR. RAVENELL: AS SOON AS MR. WARWICK COMES, WE
14 WILL LET YOU KNOW.

15 THE COURT: WELL, I WILL SIT HERE.

16 (PAUSE)

17 MR. TUMINELLI: JUDGE, MAY I STEP OUT OF THE
18 COURTROOM?

19 THE COURT: YES.

20 MS. COCKBURN: MR. WARWICK HAS FINISHED ONE
21 AGREEMENT AND WOULD ASK THE COURT'S INDULGENCE, HE IS QUICKLY
22 DOING THE SECOND ONE, HE WANTS TO LOOK AT IT, AND THEN HE
23 WILL BE RIGHT DOWN.

24 THE COURT: THANK YOU.

25 MS. COCKBURN: MAY I BE EXCUSED FOR A MOMENT, YOUR

1 HONOR.

2 THE COURT: YES.

3 MR. RAVENELL: YOUR HONOR, IF I MAY, I WILL BE IN
4 THE HALLWAY VERY NEARBY.

5 THE COURT: YES.

6 MR. RAVENELL: YOUR HONOR, IF I LEAVE MY CELL PHONE
7 WITH THE CLERK, CAN I GO DOWN TO THE LAW LIBRARY.

8 THE COURT: SURE.

9 (PAUSE)

10 MR. WARWICK: I'M SORRY FOR THE DELAY, YOUR HONOR.
11 IF I MAY JUST HAVE TWO MINUTES WITH COUNSEL.

12 THE COURT: YES.

13 WOULD YOU CALL MR. RAVENELL, PLEASE, AND ASK HIM TO
14 RETURN.

15 (COUNSEL CONFERRING AT THE TRIAL TABLE)

16 THE CLERK: MR. SMITH, MR. RAVENELL IS ON HIS WAY.

17 MR. SMITH: OKAY. THANK YOU.

18 MR. WARWICK: YOUR HONOR, WHILE COUNSEL IS
19 FINALIZING THESE AGREEMENTS WITH THEIR CLIENTS, MAY I JUST
20 USE THE FACILITY?

21 THE COURT: SURE.

22 (PAUSE)

23 MR. WARWICK: YOUR HONOR, THESE ARE THE ORIGINAL
24 SIGNED AGREEMENTS.

25 THE COURT: ARE WE READY?

1 MR. WARWICK: YES, YOUR HONOR, IF I COULD PASS UP
2 DUPLICATE COPIES TO THE COURT OF THE AGREEMENTS. THOSE ARE
3 THE ORIGINALS.

4 THE COURT: THANK YOU.

5 MR. WARWICK: AND, AT THE CONCLUSION, I WILL JUST
6 ASK RON TO MAKE ME A COUPLE COPIES OF THE PLEA AGREEMENTS.

7 THE COURT: THANK YOU VERY MUCH. AND IF YOU
8 WOULD --

9 MR. WARWICK: RE-CALL THE CASE?

10 THE COURT: -- RE-CALL THE CASE. THANK YOU.

11 MR. WARWICK: YOUR HONOR, THIS IS THE MATTER OF THE
12 UNITED STATES OF AMERICA VERSUS WALTER POINDEXTER AND DEON
13 SMITH. THE CRIMINAL NUMBER IS WDQ-03-0213, RE-CALLING THE
14 CASE, YOUR HONOR.

15 I AM JAMES WARWICK, STANDING IN FOR JONATHAN LUNA.

16 MS. COCKBURN: VIVIAN COCKBURN.

17 THE COURT: GOOD MORNING, COUNSEL.

18 MR. TUMINELLI: ARCHANGELO TUMINELLI ON BEHALF OF
19 WALTER POINDEXTER. GOOD MORNING, YOUR HONOR.

20 THE COURT: MR. TUMINELLI, AND MR. POINDEXTER, GOOD
21 MORNING.

22 MR. RAVENELL: FOR THE RECORD, YOUR HONOR, KEN
23 RAVENELL ON BEHALF OF DEON SMITH, WHO IS TO MY IMMEDIATE
24 LEFT.

25 THE COURT: MR. RAVENELL, AND MR. SMITH, GOOD

1 MORNING AGAIN.

2 COUNSEL, I UNDERSTAND THERE ARE AGREEMENTS IN THE
3 CASE.

4 MR. WARWICK: YES, THERE ARE, YOUR HONOR.

5 THE COURT: AND MY UNDERSTANDING IS THAT, MR.
6 TUMINELLI AND MR. RAVENELL, IS THAT MR. POINDEXTER AND MR.
7 SMITH WISH TO CHANGE THEIR PLEAS.

8 MR. TUMINELLI: ON BEHALF OF MR. POINDEXTER, THAT
9 IS CORRECT.

10 THE COURT: WHAT WILL MR. POINDEXTER BE PLEADING
11 GUILTY TO?

12 MR. TUMINELLI: MR. POINDEXTER WILL BE PLEADING
13 GUILTY TO COUNTS TWO, THREE, AND FOUR OF THE SUPERSEDING
14 INDICTMENT. JUDGE, I NOTICED THAT THE -- LOOKING AT THE PLEA
15 AGREEMENT, IN PARAGRAPH ONE, IT SAYS TWO, THREE, AND FOUR OF
16 THE INDICTMENT. I THINK THAT SHOULD --

17 THE COURT: IT SHOULD BE SUPERSEDING INDICTMENT. IF
18 YOU WOULD INTERLINEATE, AND INITIAL.

19 MR. TUMINELLI: YES, AND IT'S OUR FURTHER
20 UNDERSTANDING MR. POINDEXTER IS ALSO CHARGED IN COUNT ONE,
21 AND THAT WILL BE DISMISSED IF THE PLEA IS ACCEPTED.

22 MR. WARWICK: THAT IS CORRECT. ALL COUNTS TO WHICH
23 MR. POINDEXTER PLEADS NOT GUILTY TO WILL BE DISMISSED AT THE
24 TIME OF SENTENCING.

25 THE COURT: THANK YOU. MR. RAVENELL, I UNDERSTAND

1 THAT MR. SMITH WISHES TO CHANGE HIS PLEA?

2 MR. RAVENELL: THAT IS CORRECT, YOUR HONOR.

3 THE COURT: WHAT WILL HE BE PLEADING TO?

4 MR. RAVENELL: MR. SMITH WILL PLEAD GUILTY TO
5 COUNTS FIVE AND COUNT SIX OF THE SUPERSEDING INDICTMENT, YOUR
6 HONOR.

7 I MAY ALSO ADD THAT I DON'T BELIEVE THAT THE
8 DEFENDANTS HAVE BEEN ARRAIGNED ON THE SUPERSEDING INDICTMENT
9 IN THIS CASE SO TECHNICALLY THEY HAVE BEEN ON TRIAL UNDER THE
10 OLD INDICTMENTS. THEY WILL PROBABLY HAVE TO BE ARRAIGNED
11 FIRST.

12 THE COURT: OKAY. WELL, WE WILL ARRAIGN THEM ON THE
13 COUNTS THAT THEY ARE -- MR. CLERK, IF YOU WOULD, PLEASE.

14 THE CLERK: DION LIONNEL SMITH AND WALTER ORILEY
15 POINDEXTER, WOULD YOU PLEASE STAND. RAISE YOUR RIGHT HANDS.

16 (DEFENDANTS SWORN)

17 THE CLERK: MR. POINDEXTER.

18 MR. POINDEXTER: YES.

19 THE CLERK: MR. SMITH.

20 MR. SMITH: YES.

21 THE CLERK: AS TO MR. WALTER POINDEXTER, SIR, WHAT
22 IS YOUR AGE?

23 MR. POINDEXTER: 28.

24 THE CLERK: 28. AND WHAT IS YOUR DATE OF BIRTH?

25 MR. POINDEXTER: 5/21/75.

1 THE CLERK: 5/21/75. HAVE YOU BEEN FURNISHED WITH
2 A COPY OF THE SUPERSEDING INDICTMENT BY THE UNITED STATES
3 ATTORNEY?

4 MR. POINDEXTER: YES.

5 THE CLERK: HAVE YOU READ OR HAS THE SUPERSEDING
6 INDICTMENT BEEN READ TO YOU?

7 MR. POINDEXTER: YES.

8 THE CLERK: DO YOU UNDERSTAND THE CHARGES THAT HAVE
9 BEEN PLACED AGAINST YOU?

10 MR. POINDEXTER: YES.

11 THE CLERK: MR. TUMINELLI, YOU HAVE BEEN RETAINED
12 TO REPRESENT THE DEFENDANT.

13 MR. TUMINELLI: YES.

14 THE CLERK: ARE YOU SATISFIED THAT HE UNDERSTANDS
15 THE CHARGES THAT HAVE BEEN PLACED AGAINST HIM?

16 MR. TUMINELLI: I AM.

17 THE CLERK: MR. POINDEXTER, HAVING READ OR HAVING
18 HAD THE SUPERSEDING INDICTMENT READ TO YOU, AND UNDERSTANDING
19 THE CHARGES PLACED AGAINST YOU, HOW DO YOU WISH TO PLEAD TO
20 COUNTS ONE THROUGH FOUR OF THE SUPERSEDING INDICTMENT?

21 MR. POINDEXTER: NOT GUILTY TO COUNT ONE AND GUILTY
22 TO COUNTS TWO, THREE, AND FOUR.

23 THE CLERK: NOT GUILTY AS TO COUNT ONE, AND GUILTY
24 AS TO COUNTS TWO, THREE, AND FOUR?.

25 THE COURT: NOT GUILTY, ONE, GUILTY, TWO, THREE,

1 FOUR.

2 THE CLERK: THANK YOU. AS TO MR. DEON LIONNEL
3 SMITH, SIR, WHAT IS YOUR AGE?

4 MR. SMITH: 32 YEARS OF AGE.

5 THE CLERK: 32. AND WHAT IS YOUR DATE OF BIRTH?

6 MR. SMITH: 2/28/71.

7 THE CLERK: 2/28/71. HAVE YOU BEEN FURNISHED WITH
8 A COPY OF THE SUPERSEDING INDICTMENT BY THE UNITED STATES
9 ATTORNEY?

10 MR. SMITH: YES, I HAVE.

11 THE CLERK: HAVE YOU READ OR HAS THE SUPERSEDING
12 INDICTMENT BEEN READ TO YOU?

13 MR. SMITH: YES, I HAVE.

14 THE CLERK: DO YOU UNDERSTAND THE CHARGES THAT HAVE
15 BEEN PLACED AGAINST YOU?

16 MR. SMITH: YES, I DO.

17 THE CLERK: MR. RAVENELL, YOU HAVE BEEN RETAINED TO
18 REPRESENT THE DEFENDANT.

19 MR. RAVENELL: THAT IS CORRECT.

20 THE CLERK: ARE YOU SATISFIED THAT HE UNDERSTANDS
21 THE CHARGES THAT HAVE BEEN PLACED AGAINST HIM?

22 MR. RAVENELL: YES, I AM.

23 THE CLERK: MR. SMITH, HAVING READ OR HAVING HAD
24 THE SUPERSEDING INDICTMENT READ TO YOU, AND UNDERSTANDING THE
25 CHARGES THAT HAVE BEEN PLACED AGAINST YOU, HOW DO YOU WISH TO

1 PLEAD TO COUNTS ONE, FIVE, SIX AND SEVEN OF THE SUPERSEDING
2 INDICTMENT.

3 THE COURT: IS THAT GUILTY TO FIVE AND SIX?

4 MR. RAVENELL: GUILTY TO FIVE AND SIX.

5 MR. SMITH: GUILTY TO FIVE AND SIX.

6 MR. RAVENELL: NOT GUILTY TO THE OTHER COUNTS.

7 MR. SMITH: NOT GUILTY TO THE OTHER COUNTS.

8 THE CLERK: GUILTY TO FIVE AND SIX, AND NOT GUILTY
9 AS TO THE REMAINING COUNTS, IS THAT CORRECT, SIR?

10 MR. SMITH: YES, SIR, ON THE SUPERSEDING
11 INDICTMENT.

12 THE CLERK: THANK YOU VERY MUCH.

13 THE COURT: THANK YOU. PLEASE REMAIN STANDING.

14 MR. POINDEXTER, IF YOU WILL STAND, SIR.

15 MR. RAVENELL: I'M SORRY. DID YOU MENTION COUNT
16 SEVEN?

17 THE COURT: YES, NOT GUILTY AS TO SEVEN.

18 MR. RAVENELL: ALL RIGHT.

19 THE COURT: MR. POINDEXTER, AND MR. SMITH, DO YOU
20 UNDERSTAND THAT YOU HAVE BEEN SWORN TO TELL THE TRUTH. THAT
21 MEANS THAT ANY STATEMENTS THAT YOU MAKE AND ANY ANSWERS THAT
22 YOU GIVE TO QUESTIONS TO ME HAVE TO BE THE TRUTH.

23 IF THEY ARE NOT TRUTHFUL, THEN THEY COULD BE USED
24 AGAINST YOU IN ANOTHER PROSECUTION FOR PERJURY OR OBSTRUCTION
25 OF JUSTICE, OR SOME SORT OF OFFENSE LIKE THAT, DO YOU

1 UNDERSTAND, MR. POINDEXTER?

2 MR. POINDEXTER: YES.

3 THE COURT: AND DO YOU UNDERSTAND, MR. SMITH?

4 MR. SMITH: YES, YOUR HONOR.

5 THE COURT: MR. POINDEXTER, YOU ARE PLEADING GUILTY
6 TO DISTRIBUTION OF HEROIN IN VIOLATION OF TITLE 21 OF THE
7 UNITED STATES CODE, SECTION 841.

8 THAT CARRIES A MAXIMUM SENTENCE OF UP TO 20 YEARS
9 ON EACH COUNT. DO YOU UNDERSTAND THAT, SIR?

10 MR. POINDEXTER: YES, SIR.

11 THE COURT: ALSO SUPERVISED RELEASE OF UP TO FIVE
12 YEARS, THE POSSIBILITY OF A ONE MILLION DOLLAR FINE, AND I AM
13 ALSO REQUIRED TO IMPOSE A ONE HUNDRED DOLLAR PER COUNT
14 SPECIAL ASSESSMENT, WHICH MEANS, IN THIS CASE, A THREE
15 HUNDRED DOLLAR SPECIAL ASSESSMENT; DO YOU UNDERSTAND THAT,
16 SIR?

17 MR. POINDEXTER: YES.

18 THE COURT: NOW, WHAT THAT MEANS IS THAT YOU
19 DISTRIBUTED HEROIN TO SOMEONE; YOU GAVE OR SOLD OR EXCHANGED
20 HEROIN, AND YOU DID THAT KNOWING THAT IT WAS, IN FACT,
21 HEROIN.

22 DO YOU UNDERSTAND WHAT YOU ARE PLEADING GUILTY TO,
23 WHAT THE PENALTIES ARE, AND WHAT THE ELEMENTS OF THE OFFENSE
24 ARE?

25 MR. POINDEXTER: YES.

1 THE COURT: MR. SMITH, YOU UNDERSTAND, AS I SAID,
2 THAT YOU ARE UNDER OATH, AND THAT YOU ARE SWORN TO TELL THE
3 TRUTH, AND THAT ANY FALSE STATEMENTS COULD BE THE BASIS OF
4 ANOTHER PROSECUTION AGAINST YOU.

5 YOU ARE PLEADING GUILTY TO DISTRIBUTION OF HEROIN,
6 AS IS MR. POINDEXTER, AND THAT, AS I TOLD HIM, IT MEANS THAT
7 YOU SOLD OR EXCHANGED OR GAVE IT AWAY TO SOMEONE KNOWING THAT
8 WHAT IT WAS WAS, IN FACT, HEROIN.

9 THAT ALSO CARRIES A PRISON SENTENCE OF UP TO TWENTY
10 YEARS; SUPERVISED RELEASE OF UP TO FIVE YEARS.

11 YOU ARE ALSO PLEADING GUILTY TO THE POSSESSION OF
12 THE USE OR CARRYING OF A FIREARM IN RELATION TO A DRUG
13 TRAFFICKING OFFENSE; THAT CARRIES A MINIMUM MANDATORY
14 SENTENCE OF FIVE YEARS, AND ALSO SUPERVISED RELEASE.

15 YOU CAN BE FINED UP TO ONE MILLION DOLLARS ON THE
16 DRUG OFFENSE, YOU CAN BE FINED UP TO \$250,000 ON THE GUN
17 CHARGE, AND I AM ALSO REQUIRED TO IMPOSE A SPECIAL ASSESSMENT
18 OF ONE HUNDRED DOLLARS PER CHARGE, WHICH MEANS A SPECIAL
19 ASSESSMENT OF TWO HUNDRED DOLLARS IN THIS CASE.

20 DO YOU UNDERSTAND WHAT YOU ARE PLEADING GUILTY TO,
21 WHAT THE ELEMENTS OF THE OFFENSES ARE, AND ALSO THE PENALTIES
22 THAT YOU FACE?

23 MR. SMITH: YES, I DO, YOUR HONOR.

24 THE COURT: O.K.. AGAIN, STAND, PLEASE, MR.
25 POINDEXTER. REMAIN STANDING, MR. SMITH.

1 MR. POINDEXTER, DO YOU UNDERSTAND THE CHARGES
2 AGAINST YOU AND THE PENALTIES?

3 MR. POINDEXTER: YES.

4 THE COURT: AND DO YOU, MR. SMITH?

5 MR. SMITH: YES, I DO, YOUR HONOR.

6 THE COURT: MR. POINDEXTER, ARE YOU UNDER THE
7 INFLUENCE OF ANY DRUGS OR ALCOHOL THIS MORNING?

8 MR. POINDEXTER: NO, I AM NOT.

9 THE COURT: MR. SMITH, ARE YOU UNDER THE INFLUENCE
10 OF ANY DRUGS OR ALCOHOL THIS MORNING?

11 MR. SMITH: NO, YOUR HONOR.

12 THE COURT: MR. POINDEXTER, I UNDERSTAND YOU ARE 28
13 YEARS OLD?

14 MR. POINDEXTER: YES.

15 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

16 MR. POINDEXTER: I HAVE A GED.

17 THE COURT: CAN YOU READ, WRITE AND UNDERSTAND THE
18 ENGLISH LANGUAGE?

19 MR. POINDEXTER: YES.

20 THE COURT: DO YOU UNDERSTAND IT AS I AM SPEAKING
21 TO YOU RIGHT NOW?

22 MR. POINDEXTER: YES.

23 THE COURT: HAVE YOU EVER BEEN A PATIENT IN A
24 MENTAL HOSPITAL OR UNDER THE CARE OF A PSYCHIATRIST OR A
25 PSYCHOLOGIST?

1 MR. POINDEXTER: NO.

2 THE COURT: AT THE TIME OF THIS CRIME, THESE CRIMES
3 THAT YOU ARE PLEADING GUILTY TO, WERE YOU ON PAROLE OR
4 PROBATION OR SUPERVISED RELEASE?

5 MR. POINDEXTER: YES, I WAS.

6 THE COURT: O.K.. UNDERSTAND THAT PLEADING GUILTY
7 THIS MORNING WOULD BE ADMITTING A VIOLATION OF ANY PAROLE OR
8 PROBATION OR SUPERVISED RELEASE THAT COULD ENTITLE YOU TO
9 ANOTHER PUNISHMENT THAT I WOULD HAVE NOTHING TO DO WITH; DO
10 YOU UNDERSTAND THAT, SIR?

11 MR. POINDEXTER: YES.

12 THE COURT: ARE YOU A CITIZEN OF THE UNITED STATES?

13 MR. POINDEXTER: YES.

14 THE COURT: UNDERSTAND THAT IF YOU ARE WRONG ABOUT
15 THAT, PLEADING GUILTY THIS MORNING COULD DESTROY YOUR
16 POSSIBILITIES OF BECOMING A CITIZEN.

17 HAVE YOU READ AND DISCUSSED THE CHARGING DOCUMENT
18 WITH YOUR ATTORNEY?

19 MR. POINDEXTER: YES.

20 THE COURT: AND HAVE YOU DISCUSSED WITH HIM
21 POSSIBLE DEFENSES TO THE CHARGES?

22 MR. POINDEXTER: YES.

23 THE COURT: AND, IN FACT, YOU WERE PREPARED AND
24 HAVE, IN FACT, GONE THROUGH SEVERAL DAYS OF TRIAL, IS THAT
25 CORRECT?

1 MR. POINDEXTER: YES.

2 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF
3 YOUR ATTORNEY?

4 MR. POINDEXTER: YES.

5 THE COURT: THANK YOU. MR. SMITH, I UNDERSTAND YOU
6 ARE 32 YEARS OF AGE?

7 MR. SMITH: YES, I AM, YOUR HONOR.

8 THE COURT: HOW FAR DID YOU GO IN SCHOOL, SIR?

9 MR. SMITH: 12TH GRADE.

10 THE COURT: CAN YOU READ, WRITE AND UNDERSTAND THE
11 ENGLISH LANGUAGE?

12 MR. SMITH: YES.

13 THE COURT: DO YOU UNDERSTAND IT AS I AM SPEAKING
14 IT TO YOU THIS MORNING?

15 MR. SMITH: YES, YOUR HONOR.

16 THE COURT: HAVE YOU EVER BEEN A PATIENT IN A
17 MENTAL HOSPITAL OR UNDER THE CARE OF A PSYCHIATRIST OR A
18 PSYCHOLOGIST?

19 MR. SMITH: NO, YOUR HONOR.

20 THE COURT: WERE YOU ON PAROLE OR PROBATION AT THE
21 TIME OF THESE OFFENSES THAT YOU ARE PLEADING GUILTY TO?

22 MR. SMITH: NO, I WAS NOT.

23 THE COURT: UNDERSTAND THAT IF ARE WRONG ABOUT
24 THAT, PLEADING GUILTY COULD BE AN ADMISSION OF A VIOLATION OF
25 PAROLE OR PROBATION, AND IT COULD SUBJECT YOU TO AN

1 ADDITIONAL PENALTY OTHER THAN WHAT WHAT ARE DISCUSSING THIS
2 MORNING; DO YOU UNDERSTAND?

3 MR. SMITH: YES, I DO.

4 THE COURT: ARE YOU A CITIZEN OF THE UNITED STATES?

5 MR. SMITH: YES, I AM.

6 THE COURT: UNDERSTAND THAT IF YOU ARE WRONG ABOUT
7 THAT, PLEADING GUILTY COULD ESSENTIALLY DESTROY ANY CHANCE
8 YOU WOULD EVER HAVE OF BECOMING A CITIZEN.

9 HAVE YOU READ AND DISCUSSED THE CHARGING DOCUMENT
10 WITH YOUR ATTORNEY?

11 MR. SMITH: YES, I HAVE.

12 THE COURT: HAS HE ANSWERED YOUR QUESTIONS?

13 MR. SMITH: YES, HE HAS.

14 THE COURT: HAS HE DISCUSSED POSSIBLE DEFENSES TO
15 THE CHARGES?

16 MR. SMITH: YES, HE HAS.

17 THE COURT: AND, IN FACT, YOU HAVE SAT THROUGH
18 SEVERAL DAYS OF TRIAL AND WERE ACTUALLY DEFENDING AGAINST THE
19 CASE.

20 ARE YOU SATISFIED WITH THE ATTORNEY -- WITH THE
21 SERVICES OF YOUR ATTORNEY?

22 MR. SMITH: YES, I AM.

23 THE COURT: MR. WARWICK, I UNDERSTAND THERE ARE
24 PLEA AGREEMENTS IN THESE CASES?

25 MR. WARWICK: YES, THERE ARE.

1 THE COURT: IF YOU WOULD SUMMARIZE THEM FOR ME.

2 MR. RAVENELL: MAY WE BE SEATED, YOUR HONOR.

3 THE COURT: YES, YOU MAY, DURING THIS PART.

4 MR. WARWICK: IF THE COURT PLEASES, I WILL
5 SUMMARIZE THE AGREEMENTS AND DEFERRING, WITH THE COURT'S
6 PERMISSION, UNTIL LATER ON IN THE ALLOCUTION THE FACTUAL
7 STIPULATIONS.

8 THE COURT: THANK YOU, SIR.

9 MR. WARWICK: WITH REGARD TO MR. TUMINELLI'S
10 CLIENT, MR. POINDEXTER, THE COURT HAS GONE OVER THE COUNTS OF
11 THE INDICTMENT TO WHICH YOU ARE PLEADING GUILTY,
12 SPECIFICALLY, COUNTS TWO, THREE, AND FOUR, AND HAS ADVISED
13 YOU OF THE MAXIMUM PENALTIES.

14 THE COURT HAS ALSO ADVISED YOU OF THE RIGHTS THAT
15 YOU ARE GIVING UP IN TERMS OF YOUR PLEAS OF GUILTY TO THOSE
16 THREE COUNTS.

17 PARAGRAPH THREE OF THE PLEA AGREEMENT INFORMS YOU
18 THAT THE SENTENCING GUIDELINES WILL GOVERN THE SENTENCE THAT
19 YOU WILL RECEIVE IN THIS CASE, AND THAT THE COURT WILL
20 DETERMINE WHAT THOSE GUIDELINES ARE, AND WILL SENTENCE YOU TO
21 A TERM OF IMPRISONMENT WITHIN THOSE GUIDELINES UNLESS FOR
22 SOME REASON THE GUIDELINE SENTENCING COMMISSION DID NOT
23 ADEQUATELY TAKE INTO CONSIDERATION SOME AGGRAVATING OR
24 MITIGATING CIRCUMSTANCE.

25 I WILL DEFER THE FACTUAL STIPULATION ON 7(A). 7(B)

1 IS ESSENTIALLY WHAT YOU ARE AGREEING TO IN TERMS OF THE
2 OFFENSE LEVEL AND THE RELATED CONDUCT.

3 YOU ALSO AGREE THAT THERE WILL BE A TWO LEVEL
4 DOWNWARD ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY. THAT
5 TWO LEVEL ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY WILL
6 APPLY TO WHATEVER GUIDELINE LEVEL IS APPLICABLE TO YOU.

7 IT MAY BE A HIGHER GUIDELINE LEVEL IF YOU ARE A
8 CAREER OFFENDER, OR A LOWER GUIDELINE LEVEL IF YOU ARE NOT.

9 JUDGE QUARLES IS NOT BOUND BY THE CONTENTS OF THIS
10 AGREEMENT, AND THE COURT WILL DETERMINE WHAT FACTS ARE
11 RELEVANT TO YOUR SENTENCING.

12 THE COURT WILL TAKE INTO CONSIDERATION THE
13 PRE-SENTENCE REPORT PREPARED BY THE PROBATION OFFICE. THE
14 COURT WILL ALSO TAKE INTO CONSIDERATION THE FACTUAL
15 STIPULATION THAT YOU HAVE AGREED TO WITH THE GOVERNMENT AS
16 PART OF THIS AGREEMENT.

17 IF THE COURT DECIDES THAT CERTAIN FACTORS EXIST
18 THAT WILL DETERMINE YOUR GUIDELINE RANGE, IF YOU DISAGREE
19 WITH THOSE FACTS, FOR THAT REASON ALONE, YOU CANNOT WITHDRAW
20 YOUR PLEA OF GUILTY.

21 PARAGRAPH I BELIEVE IT IS 6(D) IS A VERY IMPORTANT
22 PARAGRAPH. IT IS MY UNDERSTANDING THAT YOUR COUNSEL, MR.
23 TUMINELLI, HAS BEEN IN NEGOTIATIONS WITH THE BALTIMORE CITY
24 STATE'S ATTORNEY'S OFFICE, AND THAT, UNDER THIS PARAGRAPH,
25 THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE HAS AUTHORIZED

1 THE U.S. ATTORNEY'S OFFICE TO MAKE THE FOLLOWING
2 REPRESENTATION:

3 THAT THE CITY STATE'S ATTORNEY WILL NOT CHARGE MR.
4 POINDEXTER FOR ANY CONDUCT THAT FORMED THE BASIS OF THIS
5 FEDERAL PROSECUTION, INCLUDING A SHOOTING INCIDENT THAT TOOK
6 PLACE ON OR ABOUT JANUARY 22ND, 2001 IN BALTIMORE CITY.

7 CO-COUNSEL, MS. VIVIAN COCKBURN, IS ALSO A
8 SIGNATORY TO THIS AGREEMENT. THERE IS NO AGREEMENT AS TO
9 YOUR CRIMINAL HISTORY CATEGORY, BUT IT IS ANTICIPATED THAT
10 YOU MAY BE A CAREER OFFENDER.

11 YOU CAN'T OBSTRUCT JUSTICE IN CONNECTION WITH THIS
12 AGREEMENT. YOU MUST COOPERATE WITH THE PROBATION OFFICER AND
13 ACCEPT YOUR RESPONSIBILITY FOR THE OFFENSE CONDUCT TO WHICH
14 YOU ARE PLEADING GUILTY, AND YOU MAY NOT COMMIT ANY OTHER
15 VIOLATIONS OF FEDERAL, STATE OR LOCAL LAW.

16 IF YOU DO, YOU COULD LOSE CREDITS FOR ACCEPTANCE OF
17 RESPONSIBILITY, AND YOUR SENTENCE MAY EVEN BE ENHANCED BY
18 OBSTRUCTION OF JUSTICE ADJUSTMENTS.

19 THE U.S. ATTORNEY'S OFFICE, IN ADDITION TO MAKING
20 THE REPRESENTATIONS THAT I JUST REFERENCED CONCERNING THE
21 BALTIMORE CITY STATE'S ATTORNEY'S OFFICE AGREEMENT WITH YOU,
22 AT THE TIME OF SENTENCING THE GOVERNMENT WILL BRING TO THE
23 COURT'S ATTENTION ANY AND ALL RELEVANT INFORMATION CONCERNING
24 YOUR BACKGROUND.

25 AND WE WILL DISMISS THE REMAINING COUNTS OF THE

1 INDICTMENT TO WHICH YOU HAVE ENTERED PLEAS OF -- THE
2 SUPERSEDING INDICTMENT, TO WHICH YOU HAVE ENTERED PLEAS OF
3 NOT GUILTY TODAY.

4 THE COURT IS NOT BOUND BY THIS AGREEMENT, AND THE
5 COURT IS UNDER NO OBLIGATION TO FOLLOW THIS AGREEMENT. THE
6 COURT CAN IMPOSE A SENTENCE UP TO THE STATUTORY MAXIMUM.

7 YOUR HONOR, I AM JUST LOOKING FOR SOMETHING. MAY I
8 JUST CONSULT WITH MR. TUMINELLI?

9 YOUR HONOR, DUE TO THE HASTE IN WHICH I WAS
10 PREPARING AND EDITING THIS AGREEMENT, I HAVE NEGLECTED FOR
11 SOME REASON TO INCLUDE A WAIVER OF APPEAL PROVISIONS, AND,
12 WITH THE COURT'S PERMISSION, ---

13 THE COURT: IF THEY CAN BE INTERLINEATED ON THE
14 ORIGINAL.

15 MR. WARWICK: WHAT I CAN DO IS I WILL EXPLAIN TO
16 MR. POINDEXTER WHAT THAT IS, AND WE CAN INTERLINEATE BY JUST
17 MAKING A COPY OF ANOTHER PARAGRAPH, AND I WILL MEMORIALIZE
18 THAT WITH MR. TUMINELLI AFTER COURT TODAY.

19 THE COURT: VERY GOOD.

20 MR. WARWICK: MR. POINDEXTER, THERE WILL BE A
21 PROVISION IN YOUR AGREEMENT CONCERNING THE WAIVER OF AN
22 APPEAL, AND WHAT THAT MEANS IN THIS INSTANCE IS THAT BOTH YOU
23 AND THE UNITED STATES ARE GIVING UP ANY RIGHTS TO APPEAL
24 WHATEVER SENTENCE THAT JUDGE QUARLES IMPOSES, EXCEPT IF THERE
25 IS A DEPARTURE.

1 IF THE COURT IMPOSES A SENTENCE ABOVE THE
2 APPLICABLE GUIDELINE RANGE, YOU WOULD THEN BE ABLE TO APPEAL
3 THAT SENTENCE.

4 IF THE COURT WOULD DEPART DOWNWARD OVER THE
5 OBJECTION OF THE UNITED STATES, AND IMPOSE A SENTENCE BELOW
6 THE GUIDELINE RANGE, THE UNITED STATES IS RESERVING ITS RIGHT
7 TO APPEAL.

8 HOWEVER, THIS IS VERY IMPORTANT, IF THE COURT
9 IMPOSES A SENTENCE UP TO AND INCLUDING THE STATUTORY MAXIMUM,
10 WHICH IT CAN, THAT WOULD BE AN UPWARD DEPARTURE, AND YOU
11 WOULD BE ABLE TO APPEAL FROM THAT SENTENCE.

12 BUT IF THE COURT IMPOSES A SENTENCE WITHIN THE
13 GUIDELINE RANGE, WHETHER YOU ARE A CAREER OFFENDER OR NOT,
14 THAT SENTENCE IS FINAL, AND NEITHER YOU CAN APPEAL THAT NOR
15 CAN THE UNITED STATES.

16 THE COURT: DO YOU UNDERSTAND THAT, SIR?

17 MR. POINDEXTER: YES.

18 MR. TUMINELLI: JUDGE, WE CONTEMPLATED THAT
19 PROVISION BEING IN THE AGREEMENT. IT WOULD HAVE BEEN BUT FOR
20 THE HASTE OF PUTTING IT TOGETHER.

21 THE COURT: OKAY.

22 MR. TUMINELLI: MR. POINDEXTER AND I PREVIOUSLY
23 DISCUSSED, BECAUSE HE HAS ASKED ME SEVERAL TIMES ABOUT
24 WHETHER THERE WERE APPEAL RIGHTS, SO HE, IN FACT, UNDERSTOOD
25 WHAT MR. WARWICK JUST OUTLINED.

1 THE COURT: VERY GOOD.

2 MR. WARWICK: AND, AGAIN, I APOLOGIZE FOR THE
3 OVERSIGHT.

4 THE COURT: NOT AT ALL.

5 MR. WARWICK: THAT IS THE ESSENCE OF THE AGREEMENT
6 WITH MR. POINDEXTER.

7 THE COURT: MR. LAWSON, WOULD YOU PLACE IN FRONT OF
8 MR. POINDEXTER GOVERNMENT'S EXHIBIT NUMBER ONE, WHICH IS THE
9 ORIGINAL OF THE PLEA LETTER. MR. POINDEXTER, HAVE YOU SEEN
10 THIS DOCUMENT BEFORE?

11 MR. POINDEXTER: YES.

12 THE COURT: AND TURNING TO THE LAST PAGE, PAGE 6 OF
13 THE DOCUMENT, IS THAT YOUR SIGNATURE ON THE DOCUMENT?

14 MR. POINDEXTER: YES.

15 THE COURT: AND DOES THAT SIGNATURE INDICATE THAT
16 YOU UNDERSTAND THE AGREEMENT AND ARE BOUND BY IT?

17 MR. POINDEXTER: YES.

18 THE COURT: AND DO YOU ALSO UNDERSTAND THE WAIVER
19 OF APPEAL THAT, AS MR. WARWICK HAS JUST DISCUSSED, AND AGREE
20 TO BE BOUND BY THAT PROVISION AS WELL?

21 MR. POINDEXTER: YES, I DO.

22 THE COURT: AND YOU WILL, IN FACT, THROUGH YOUR
23 ATTORNEY, AND OR WITH YOUR ATTORNEY, INITIAL AN ADDENDUM TO
24 THE AGREEMENT WHICH WILL INDICATE THAT YOU DO, IN FACT,
25 UNDERSTAND THE WAIVER OF APPEAL, IS THAT CORRECT?

1 MR. POINDEXTER: YES.

2 THE COURT: THANK YOU. DO YOU UNDERSTAND I AM NOT
3 A PARTY TO THE AGREEMENT?

4 SIR, DO YOU UNDERSTAND THE AGREEMENT IS BETWEEN YOU
5 AND THE GOVERNMENT; NOT BETWEEN YOU AND ME?

6 MR. POINDEXTER: YES.

7 THE COURT: AND I AM NOT A PART OF THAT. DID
8 ANYBODY USE ANY THREAT OR FORCE OR VIOLENCE TO GET YOU TO
9 PLEAD GUILTY?

10 MR. POINDEXTER: NO, THEY DIDN'T.

11 THE COURT: OTHER THAN WHAT'S INSIDE THE PLEA
12 AGREEMENT ITSELF, HAS ANYONE MADE ANY PROMISE OR PREDICTION
13 ABOUT THE SENTENCE THAT I AM GOING TO IMPOSE IN THIS CASE?

14 MR. POINDEXTER: NO, SIR.

15 THE COURT: THANK YOU VERY MUCH. GOVERNMENT'S ONE
16 IS ADMITTED.

17 MR. TUMINELLI: JUDGE, THERE IS TWO MATTERS WITH
18 REGARD TO THIS AGREEMENT.

19 THE COURT: O.K..

20 MR. TUMINELLI: PARAGRAPH -- THIS IS IN RELATION TO
21 PARAGRAPH 6 CAPITAL B SMALL D, WHICH IS THE AGREEMENT WITH
22 THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE.

23 THE COURT: YES.

24 MR. TUMINELLI: MR. WARWICK ADVISED THE COURT THAT
25 I WAS IN NEGOTIATIONS WITH THE BALTIMORE CITY STATE'S

1 ATTORNEY'S OFFICE.

2 I WAS PRESENT WHEN MR. LUNA SPOKE TO MARK COHEN OF
3 THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE, AND AM AWARE
4 THAT MARK COHEN ADVISED MR. LUNA THAT WHAT'S CONTAINED IN
5 THAT PARAGRAPH IS BALTIMORE CITY'S POSITION.

6 I JUST WANTED TO MAKE IT CLEAR, MR. COHEN DID NOT
7 SAY THIS DIRECTLY TO ME. HE SAID IT TO MR. LUNA. AND MS.
8 COCKBURN, I BELIEVE, CAN CONFIRM THAT THAT'S HOW THE
9 NEGOTIATION TOOK PLACE.

10 THE COURT: IS THAT CORRECT, MS. COCKBURN?

11 MS. COCKBURN: YOUR HONOR, I WAS NOT PRESENT DURING
12 THE PHONE CALL. HOWEVER, MR. LUNA DID RELAY THAT
13 CONVERSATION TO ME IN FRONT OF MR. TUMINELLI.

14 THE COURT: THANK YOU VERY MUCH.

15 MR. WARWICK: AND I DO UNDERSTAND THAT MR. COHEN
16 WAS THE HEAD OF THE HOMICIDE BUREAU IN THE STATE'S ATTORNEY'S
17 OFFICE, AND DID CONFER WITH THE VICTIM'S FAMILY.

18 MS. COCKBURN: IT IS MY UNDERSTANDING.

19 MR. WARWICK: AND, BASED UPON THOSE CONVERSATIONS,
20 AND HIS EVALUATION OF THE SITUATION, HE MADE THOSE
21 REPRESENTATIONS, WHICH MS. COCKBURN HAS SIGNED ON TO IN THIS
22 AGREEMENT.

23 THE COURT: THANK YOU VERY MUCH.

24 MR. TUMINELLI: THAT IS CORRECT, YOUR HONOR.

25 NOW, THE OTHER POINT, YOUR HONOR, IS SOMETHING THAT

1 WAS ADDRESSED AT THE BENCH. IT'S NOT PART OF THE AGREEMENT
2 BECAUSE IT DOESN'T NEED TO BE PART OF THE FORMAL AGREEMENT,
3 BUT THE UNITED STATES HAS REPRESENTED TO MR. POINDEXTER THAT
4 THE SHOOTING, THE FATAL SHOOTING, ON JANUARY 22, 2001, WHICH
5 THIS COURT HAS PREVIOUSLY HEARD ABOUT, IS NOT, FOR PURPOSES
6 OF THIS FEDERAL PROCEEDING FOR FEDERAL SENTENCING, RELEVANT
7 CONDUCT IN THIS CASE.

8 AND THE GOVERNMENT'S POSITION IS, AS I -- AND I
9 WOULD ASK THAT MR. WARWICK CONFIRM THIS -- IT'S THE
10 GOVERNMENT'S POSITION THAT, BECAUSE IT IS NOT RELEVANT
11 CONDUCT, IT WILL NOT BE COMMUNICATED --

12 THE COURT: THE BASIS FOR --

13 MR. TUMINELLI: -- TO PROBATION --

14 THE COURT: OKAY.

15 MR. TUMINELLI: -- NOR WILL THE GOVERNMENT CONTEND
16 AT SENTENCING THAT IT IN ANY WAY IS RELATED OR IS RELEVANT
17 CONDUCT, OR IS IN ANY WAY RELEVANT TO THE SENTENCING THAT
18 THIS COURT WILL IMPOSE.

19 MR. WARWICK: THAT IS CORRECT, YOUR HONOR. AS I
20 EXPLAINED AT THE BENCH, IN MY DISCUSSIONS WITH MR. LUNA
21 YESTERDAY, AND MR. TUMINELLI, IT IS MY UNDERSTANDING THAT THE
22 EVIDENCE REGARDING THE FATAL SHOOTING INDICATES THAT IT WAS
23 NOT RELATED TO ANY NARCOTICS DISTRIBUTION ACTIVITY.

24 THEREFORE, THERE WAS NO FEDERAL JURISDICTIONAL
25 NEXUS BETWEEN THAT SHOOTING AND ANY OF THE CRIMES THAT ARE

1 CHARGED IN THIS INDICTMENT, SO THERE WOULD NOT BE ANY FEDERAL
2 JURISDICTION OVER THAT HOMICIDE.

3 THAT'S WHY MR. COHEN FROM THE STATE'S ATTORNEY'S
4 OFFICE WAS DISCUSSED -- WAS INVOLVED IN THE DISCUSSIONS. IN
5 THAT IT WAS NOT RELATED TO THE DRUG ACTIVITY, THERE IS NO
6 FEDERAL JURISDICTION, AND IT IS MY POSITION AND MY
7 UNDERSTANDING THAT IT SHOULD NOT BE PART OF THE SENTENCING
8 EQUATION IN TERMS OF THE PRE-SENTENCE INVESTIGATION.

9 THE COURT: OKAY. THAT'S THE AGREEMENT.

10 MR. TUMINELLI: WITH THAT, YOUR HONOR, I THINK THE
11 AGREEMENT, AS DESCRIBED BY MR. WARWICK, AND AS JUST DISCUSSED
12 IN TERMS OF THE ADDITIONS AND THE CORRECTIONS, THAT'S THE
13 TOTAL AGREEMENT.

14 THE COURT: THANK YOU VERY MUCH. MR. WARWICK, AS TO
15 MR. SMITH'S AGREEMENT.

16 MR. WARWICK: YES, YOUR HONOR. THANK YOU.

17 MR. SMITH, UNDER THIS AGREEMENT, YOU HAVE AGREED TO
18 ENTER PLEAS OF GUILTY TO COUNTS FIVE AND SIX OF THE
19 INDICTMENT. THE FIRST IS A DRUG DISTRIBUTION COUNT. THE
20 SECOND IS FIREARM COUNT.

21 AND, WITH REGARD TO THE MAXIMUM PENALTIES, 20 YEARS
22 ON THE DISTRIBUTION COUNT, AND THERE IS A MANDATORY MINIMUM
23 CONSECUTIVE SENTENCE OF FIVE YEARS ON THE FIREARM COUNT.

24 SO WHATEVER YOU WOULD RECEIVE ON COUNT FIVE MUST
25 RUN CONSECUTIVE IN ADDITION TO THE FIVE YEAR SENTENCE THAT

1 YOU MUST RECEIVE ON COUNT SIX.

2 YOU HAVE WAIVED YOUR RIGHTS, AND THE COURT HAS GONE
3 THROUGH THAT WITH YOU.

4 AS I SAID WITH MR. POINDEXTER, YOUR SENTENCING WILL
5 BE COVERED BY THE SENTENCING REFORM ACT OR THE GUIDELINES,
6 AND THE COURT WILL DETERMINE WHAT THOSE GUIDELINES ARE AND
7 WILL SENTENCE YOU WITHIN THOSE GUIDELINES, EXCEPT IF THERE IS
8 AN AGGRAVATING OR MITIGATING CIRCUMSTANCE NOT TAKEN INTO
9 CONSIDERATION BY THE SENTENCING COMMISSION.

10 AGAIN, WITH THE COURT'S PERMISSION, I WILL DEFER
11 THE FACTUAL STIPULATION UNTIL LATER ON.

12 THE COURT: THANK YOU.

13 MR. WARWICK: AS FAR AS THE GUIDELINE STIPULATION,
14 MR. SMITH, YOUR ATTORNEY AND THE UNITED STATES HAVE AGREED
15 THAT YOUR GUIDELINE LEVEL IS APPROXIMATELY LEVEL 20.

16 IT MAY BE ADJUSTED DOWNWARD SLIGHTLY AFTER THE
17 DRUGS IN QUESTION OR THE TRANSACTION TO WHICH YOU ARE
18 PLEADING GUILTY ARE RE-WEIGHED BY THE DEA LABORATORY, AND
19 THAT'S MY UNDERSTANDING, THAT MY OFFICE WILL REQUEST THAT THE
20 DRUGS BE RE-WEIGHED.

21 NOW, THERE IS AN AGREEMENT TO A TWO LEVEL DOWNWARD
22 ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY, AND THE LANGUAGE
23 HERE HAS A PROVISION THAT YOU MAY ARGUE FOR A THIRD
24 LANGUAGE -- A THIRD LEVEL.

25 HOWEVER, YOUR HONOR, AS I UNDERSTAND THE PROTECT

1 ACT, THE GOVERNMENT WOULD HAVE TO MOVE FOR THAT THIRD LEVEL
2 REDUCTION, AND, IF THE GOVERNMENT DOES NOT MOVE, I JUST WANT
3 TO BRING THAT TO COUNSEL'S ATTENTION, BECAUSE I JUST CAUGHT
4 IT AS I WAS GOING THROUGH THE LANGUAGE THAT WAS DRAFTED BY
5 MR. LUNA.

6 SO, ESSENTIALLY, YOU CAN YOU CAN ONLY EXPECT AT
7 THIS POINT A TWO LEVEL ADJUSTMENT FOR ACCEPTANCE OF
8 RESPONSIBILITY. DO YOU UNDERSTAND THAT?

9 MR. SMITH: YES.

10 MR. WARWICK: THE COURT, AS I MENTIONED WITH REGARD
11 TO MR. POINDEXTER, IS NOT BOUND BY THE FACTUAL STIPULATION IN
12 THIS AGREEMENT.

13 THE COURT WILL LOOK AT THAT STIPULATION, AND ALSO
14 LOOK AT THE PRE-SENTENCE REPORT THAT'S PREPARED, AND THE
15 COURT WILL DECIDE AND DETERMINE WHAT FACTS ARE RELEVANT TO
16 YOUR SENTENCING.

17 BASED ON THOSE FACTS, THE COURT WILL DETERMINE WHAT
18 GUIDELINE RANGE IS APPLICABLE TO YOU. IF YOU DISAGREE WITH
19 THOSE CALCULATIONS, THAT WOULD NOT BE A BASIS FOR YOU TO
20 WITHDRAW YOUR PLEA OF GUILTY.

21 WITH REGARD TO YOUR CRIMINAL HISTORY, I UNDERSTAND
22 THAT THERE IS A POSSIBILITY THAT YOU MAY BE A CAREER
23 OFFENDER. HOWEVER, MR. RAVENELL HAS RESERVED ON YOUR BEHALF
24 HIS RIGHT TO ARGUE FOR YOU THAT YOUR CRIMINAL HISTORY
25 CATEGORY IS OVERREPRESENTED.

1 AND IT WILL BE UP TO THE JUDGE AS TO WHETHER TO
2 ACCEPT OR REJECT THAT REQUEST MADE ON YOUR BEHALF. THE
3 GOVERNMENT IS FREE TO OPPOSE THAT ARGUMENT, AND EITHER MR.
4 LUNA OR MS. COCKBURN AND MYSELF WILL EVALUATE THAT SITUATION
5 AFTER WE HAVE SEEN THE PRE-SENTENCE INVESTIGATION.

6 THERE IS NO AGREEMENT AS TO YOUR CRIMINAL HISTORY
7 CATEGORY. THERE ARE CERTAIN IMPORTANT PROVISIONS IN
8 PARAGRAPH 6(F), AND THEY PERTAIN TO YOUR OBLIGATION TO BE
9 TRUTHFUL WITH THE PROBATION OFFICER, NOT TO OBSTRUCT JUSTICE
10 IN ANY WAY, AND NOT TO COMMIT ANY OTHER VIOLATION OF STATE OR
11 FEDERAL OR LOCAL LAW BETWEEN NOW AND THE TIME OF SENTENCE.

12 IF YOU DO, YOU COULD LOSE CREDIT FOR ACCEPTANCE OF
13 RESPONSIBILITY, AND YOU MAY ALSO RECEIVE AN ENHANCED SENTENCE
14 FOR OBSTRUCTION OF JUSTICE, IF THAT CONDUCT WOULD APPLY.

15 THE OBLIGATION OF THE U. S. ATTORNEY'S OFFICE IS TO
16 AT -- AT THE TIME OF SENTENCE WILL RECOMMEND A SENTENCE
17 WITHIN THE GUIDELINE RANGE, AND, AGAIN, THAT'S SUBJECT TO MR.
18 LUNA'S EVALUATION, MY EVALUATION, AND MS. COCKBURN'S
19 EVALUATION OF THE PRE-SENTENCE INVESTIGATION.

20 THE UNITED STATES WILL MOVE TO DISMISS ANY
21 REMAINING COUNTS OF THE INDICTMENT, OTHER THAN THE TWO
22 COUNTS, FIVE AND SIX, TO WHICH YOU ARE PLEADING GUILTY, AND
23 WE CAN BRING TO THE COURT'S ATTENTION ANY RELEVANT CONDUCT.

24 THE UNITED STATES WILL ALSO WITHDRAW ANY SENTENCING
25 ENHANCEMENT THAT HAS BEEN FILED PREVIOUSLY UNDER 21 U.S.C.

1 SECTION 851, AND THAT ALSO APPLIES TO MR. POINDEXTER, IF I
2 HAVE NOT ALREADY ADDRESSED THAT.

3 PARAGRAPH 8 OF YOUR AGREEMENT IS VERY IMPORTANT.
4 IT'S A WAIVER OF APPEAL, AND I WILL REITERATE WHAT I HAVE
5 TOLD TO MR. POINDEXTER, BECAUSE IT'S ALSO IMPORTANT THAT YOU
6 UNDERSTAND THIS WAIVER.

7 THE COURT IS GOING TO DETERMINE THE GUIDELINE RANGE
8 THAT IS APPLICABLE TO YOUR SENTENCING. WHATEVER THAT
9 GUIDELINE RANGE IS FINAL, IF THE COURT SENTENCES YOU WITHIN
10 THAT GUIDELINE RANGE. IF THE COURT DEPARTS UPWARD, YOU
11 RESERVE THE RIGHT TO APPEAL; IF THE COURT DEPARTS DOWNWARD,
12 THE UNITED STATES RESERVES THE RIGHT TO APPEAL. DO YOU
13 UNDERSTAND THAT?

14 MR. SMITH: YES, SIR.

15 MR. WARWICK: NOW, MR. RAVENELL AND I HAD
16 DISCUSSIONS SHORTLY BEFORE THIS PLEA ALLOCUTION IN WHICH HE
17 BROUGHT TO MY ATTENTION A REQUEST WHICH I WILL PLACE ON THE
18 RECORD.

19 IF THE COURT -- IN THE EVENT THAT THE PRE-SENTENCE
20 INVESTIGATION DETERMINES THAT YOU ARE A CAREER OFFENDER,
21 JUDGE QUARLES HAS TO MAKE A DETERMINATION AS TO WHETHER OR
22 NOT THOSE OFFENSES DO QUALIFY YOU AS A CAREER OFFENDER.

23 YOU ARE ALSO BEING PERMITTED THE VERY LIMITED RIGHT
24 TO APPEAL FROM A FACTUAL DETERMINATION AS TO WHETHER OR NOT
25 YOU ARE A CAREER OFFENDER, BUT, IF YOU ARE DETERMINED NOT TO

1 BE A CAREER OFFENDER, THEN YOU WILL NOT BE ABLE TO APPEAL IF
2 THE COURT IMPOSES A SENTENCE WITHIN THE GUIDELINE RANGE. DO
3 YOU UNDERSTAND THAT?

4 MR. SMITH: YES.

5 THE COURT: IS THAT A YES?

6 MR. SMITH YES.

7 THE COURT: THANK YOU.

8 MR. SMITH: I'M SORRY.

9 MR. WARWICK: SO IF THERE IS A SENTENCE IMPOSED
10 WITHIN THE GUIDELINE RANGE IT IS FINAL FOR BOTH YOU AND THE
11 UNITED STATES. DO YOU UNDERSTAND THAT?

12 MR. SMITH: YES, I DO.

13 MR. WARWICK: IF THE COURT IMPOSES A SENTENCE UP TO
14 AND INCLUDING THE STATUTORY MAXIMUM, THAT WOULD BE AN UPWARD
15 DEPARTURE, AND YOU WOULD BE ABLE TO APPEAL FROM THAT.

16 THE COURT IS NOT A PARTY TO THIS AGREEMENT, AS I
17 MENTIONED, AND, YOUR HONOR, THAT IS ESSENTIALLY THE TERMS AND
18 CONDITIONS OF THIS PLEA AGREEMENT WITH MR. SMITH.

19 THE COURT: THANK YOU. MR. SMITH, AGAIN, YOU
20 UNDERSTAND THAT THE AGREEMENT IS BETWEEN YOU AND THE
21 GOVERNMENT, NOT BETWEEN YOU AND ME, AND I AM NOT A PARTY TO
22 IT?

23 MR. SMITH: YES, YOUR HONOR.

24 THE COURT: DID ANYONE USE ANY THREAT OR FORCE OR
25 VIOLENCE TO GET YOU TO PLEAD GUILTY?

1 MR. SMITH: NO, YOUR HONOR.

2 THE COURT: OUTSIDE OF WHAT'S IN THE PLEA LETTER,
3 HAS ANYONE MADE ANY PROMISE OR PREDICTION ABOUT THE SENTENCE
4 THAT I AM GOING TO IMPOSE IN THIS CASE?

5 MR. SMITH: NO, THEY HAVEN'T, YOUR HONOR.

6 THE COURT: MR. LAWSON, WOULD YOU PLACE BEFORE MR.
7 SMITH THE ORIGINAL OF THE PLEA LETTER, WHICH WILL BE
8 GOVERNMENT'S EXHIBIT NUMBER TWO. MR. SMITH, IS THAT YOUR
9 SIGNATURE ON THE LETTER?

10 MR. SMITH: YES, IT IS, YOUR HONOR.

11 THE COURT: AND, BY SIGNING THAT, ARE YOU TELLING
12 ME AND EVERYONE ELSE THAT YOU UNDERSTAND WHAT THE LETTER
13 SAYS?

14 MR. SMITH: YES, I DO.

15 THE COURT: AND THAT YOU AGREE TO BE BOUND BY IT?

16 MR. SMITH: YES, I DO.

17 THE COURT: THANK YOU VERY MUCH. REMAIN STANDING,
18 PLEASE.

19 MR. POINDEXTER, PLEASE STAND.

20 MR. POINDEXTER, I HOPE YOU UNDERSTAND, AND YOU, MR.
21 SMITH, THAT YOU UNDERSTAND THAT YOU DON'T HAVE TO PLEAD
22 GUILTY.

23 WE HAVE A JURY IMPANELED. THE JURY IS IN THE OTHER
24 ROOM.

25 YOU HAVE THE RIGHT TO A SPEEDY AND PUBLIC TRIAL.

1 THAT IS, YOU HAVE THE RIGHT TO COMPLETE THE TRIAL THAT WE
2 HAVE STARTED.

3 AS YOU UNDERSTAND, AT THAT TRIAL, BECAUSE YOU HAVE
4 ALREADY DONE IT, YOU HAVE HAD THE RIGHT TO USE STRIKES WITH
5 YOUR ATTORNEY TO GET OFF OF THE POSSIBLE JURY PANEL PEOPLE
6 WHO MIGHT HAVE BEEN BIASED AGAINST YOU, SO YOU HAVE IMPANELED
7 A FAIR JURY, AND, BY YOUR FAILURE TO OBJECT TO THEM, YOU HAVE
8 ACKNOWLEDGED THAT THEY ARE INDEED A FAIR AND REPRESENTATIVE
9 JURY.

10 AT THE TRIAL THAT WE ARE -- THAT WE HAVE BEEN
11 HAVING, YOU, OF COURSE, ARE PRESUMED INNOCENT. YOU DON'T
12 HAVE THE BURDEN OF PROVING YOURSELF INNOCENT.

13 THE GOVERNMENT HAS TO PROVE YOU GUILTY AND PROVE
14 YOU GUILTY BEYOND A REASONABLE DOUBT.

15 AT THAT TRIAL, AS YOU HAVE SEEN, YOU HAVE HAD THE
16 RIGHT TO CONFRONT AND CROSS EXAMINE THE WITNESSES AGAINST
17 YOU, TO OBJECT TO EVIDENCE AGAINST YOU; YOU HAVE THE RIGHT TO
18 CALL WITNESSES ON YOUR OWN BEHALF AND PRESENT EVIDENCE ON
19 YOUR OWN BEHALF.

20 IF THOSE WITNESSES DID NOT COME IN VOLUNTARILY, I
21 WOULD ASK THE MARSHALS TO GO OUT AND BRING THEM IN, IN
22 HANDCUFFS, IF NECESSARY, TO GET THEM TO TESTIFY ON YOUR
23 BEHALF.

24 AT THIS TRIAL, YOU, OF COURSE, WOULD HAVE THE RIGHT
25 TO REMAIN SILENT OR TO TESTIFY. IF YOU CHOSE TO TESTIFY, YOU

1 WOULD BE SUBJECT TO CROSS EXAMINATION AND IMPEACHMENT, LIKE
2 ANY OTHER WITNESS.

3 IF YOU DECIDED TO REMAIN SILENT, I WOULD TELL THE
4 JURY THAT THEY COULD NOT USE THAT SILENCE AGAINST YOU. THERE
5 IS NOT GOING TO BE A CONTINUATION OF THIS TRIAL.

6 THE TRIAL ITSELF IS GOING TO STOP. ALL THAT'S
7 GOING TO HAPPEN IS THAT THE GOVERNMENT IS GOING TO READ A
8 FACT STATEMENT TO ME.

9 IF THOSE FACTS MAKE OUT CRIMES, THEN I'M GOING TO
10 CONVICT YOU ON THE BASIS OF THOSE FACTS ALONE, AND NOT ON THE
11 BASIS OF ANY FURTHER TRIAL. DO YOU UNDERSTAND THAT, MR.
12 POINDEXTER?

13 MR. POINDEXTER: YES, I DO.

14 THE COURT: AND DO YOU UNDERSTAND THAT, MR. SMITH?

15 MR. SMITH: YES, I DO, YOUR HONOR.

16 THE COURT: NOW, HAD YOU COMPLETED THIS TRIAL, AND
17 LOST, YOU COULD HAVE GONE TO THE FOURTH CIRCUIT COURT OF
18 APPEALS FOR ANY REASON AT ALL AND TELL THEM TO THROW OUT WHAT
19 HAPPENED HERE AT TRIAL, IF THERE HAD BEEN GUILTY VERDICTS.

20 BY ENTERING INTO THESE AGREEMENTS, YOU ARE SEVERELY
21 LIMITING YOUR RIGHT TO APPEAL. AS A MATTER OF FACT, SINCE I
22 AM NOT GOING TO GIVE YOU AN ILLEGAL SENTENCE, AND SINCE I AM
23 GOING TO SENTENCE YOU WITHIN THE GUIDELINES, BASICALLY YOU
24 ARE GOING TO GET STUCK WITH THE GUILTY PLEA TODAY.

25 DO YOU UNDERSTAND THAT, MR. POINDEXTER?

1 MR. POINDEXTER: YES, I DO.

2 THE COURT: AND DO YOU UNDERSTAND THAT, MR. SMITH?

3 MR. SMITH: YES, YOUR HONOR.

4 THE COURT: THESE ARE FELONIES THAT YOU ARE
5 PLEADING GUILTY TO, AND THAT MEANS THAT YOU ARE GOING TO LOSE
6 CERTAIN CIVIL RIGHTS. YOU ARE GOING TO LOSE THE RIGHT TO
7 VOTE, YOU ARE GOING TO LOSE THE RIGHT TO SERVE ON A JURY, YOU
8 ARE GOING TO LOSE THE RIGHT TO LEGAL GUN OWNERSHIP, IF YOU IN
9 FACT POSSESS THAT RIGHT. DO YOU UNDERSTAND THAT, MR.
10 POINDEXTER?

11 MR. POINDEXTER: YES, I DO.

12 THE COURT: AND DO YOU UNDERSTAND THAT, MR. SMITH?

13 MR. SMITH: YES, I DO.

14 THE COURT: MR. WARWICK, WHAT ARE THE FACTS THE
15 GOVERNMENT WOULD HAVE PROVED AGAINST MR. POINDEXTER AND MR.
16 SMITH, HAD THIS CASE CONTINUED TO VERDICT?

17 MR. WARWICK: WITH REGARD TO MR. POINDEXTER, AND AS
18 THEY RELATE TO COUNTS TWO, THREE AND FOUR OF THE INDICTMENT,
19 THE UNITED STATES WOULD CONTINUE TO CALL WITNESSES AND
20 PRESENT EVIDENCE THAT, IN SEPTEMBER OF 2002, MR. POINDEXTER
21 WAS INVOLVED IN THE DISTRIBUTION OF HEROIN, AND ON SEPTEMBER
22 TENTH, MR. POINDEXTER MET WITH AN FBI COOPERATING WITNESS.

23 MR. POINDEXTER RECEIVED ABOUT ELEVEN HUNDRED
24 DOLLARS IN CURRENCY WHICH HAD BEEN PROVIDED BY THE INFORMANT.
25 THE FOLLOWING DAY, MR. GRACE MET WITH -- WHO WAS THE

1 CONFIDENTIAL INFORMANT -- MET WITH MR. POINDEXTER. MR.
2 POINDEXTER GAVE MR. GRACE A QUANTITY OF HEROIN.

3 THE SAME PATTERN TOOK PLACE ON SEPTEMBER 23RD. THE
4 MONEY WAS GIVEN BY MR. GRACE TO MR. POINDEXTER. THE
5 FOLLOWING DAY, SEPTEMBER 24TH, MR. POINDEXTER PROVIDED MR.
6 GRACE WITH A QUANTITY OF HEROIN.

7 AND ON SEPTEMBER 27TH, THE THREE THOUSAND DOLLAR
8 SALE OF HEROIN WAS MADE BY MR. POINDEXTER TO MR. GRACE.

9 ON THE THREE OCCASIONS THAT I HAVE JUST DESCRIBED,
10 THE NARCOTICS IN QUESTION WERE TURNED OVER BY THE
11 CONFIDENTIAL INFORMANT TO HIS CONTROLLING AGENT WITH THE FBI.
12 THOSE DRUGS WERE ANALYZED BY THE DRUG ENFORCEMENT LABORATORY
13 IN WASHINGTON, D.C., AND DETERMINED TO CONTAIN HEROIN.

14 THE QUANTITY OF HEROIN INVOLVED IN THOSE THREE
15 TRANSACTIONS WAS MORE THAN 40 GRAMS BUT LESS THAN 60 GRAMS.

16 THE COURT: THANK YOU.

17 MR. WARWICK: THOSE ARE ESSENTIALLY THE ELEMENTS
18 AND THE FACTS THAT THE GOVERNMENT WOULD ESTABLISH TO PROVE
19 MR. POINDEXTER'S GUILT AS TO COUNTS TWO, THREE AND FOUR OF
20 THE INDICTMENT.

21 THE COURT: ANY DELETIONS, ADDITIONS OR CORRECTIONS,
22 MR. TUMINELLI?

23 MR. TUMINELLI: NO, YOUR HONOR.

24 THE COURT: MR. POINDEXTER, ARE YOU PLEADING GUILTY
25 OF YOUR OWN FREE WILL?

1 MR. POINDEXTER: YES, YOUR HONOR.

2 THE COURT: AND ARE YOU PLEADING GUILTY BECAUSE YOU
3 ARE, IN FACT, GUILTY OF THESE OFFENSES?

4 MR. POINDEXTER: YES, YOUR HONOR.

5 THE COURT: THEN I FIND THAT THERE IS A SUFFICIENT
6 FACTUAL BASIS FOR THE PLEA. THOSE FACTS ESTABLISH YOUR GUILT
7 BEYOND A REASONABLE DOUBT.

8 I ALSO FIND THAT YOU HAVE KNOWINGLY AND VOLUNTARILY
9 ENTERED THESE PLEAS. I ACCEPT THE GUILTY PLEAS AND ENTER
10 VERDICTS OF GUILTY.

11 AS TO MR. SMITH?

12 MR. WARWICK: AS TO MR. SMITH, YOUR HONOR, WITH
13 REGARD TO COUNTS FIVE AND SIX OF THE INDICTMENT, THE
14 GOVERNMENT WOULD PROVE THAT ON OCTOBER 13TH, OF 2002, MR.
15 SMITH ALSO MET WITH THE SAME FBI COOPERATING WITNESS, WARREN
16 GRACE.

17 DURING THE MEETING, MR. GRACE PROVIDED MR. SMITH
18 WITH FOUR THOUSAND DOLLARS IN EXCHANGE FOR A QUANTITY OF
19 HEROIN. DURING THIS MEETING, MR. SMITH WAS IN POSSESSION OF
20 A RUGER NINE MILLIMETER PISTOL.

21 THE PISTOL WAS LOADED. IT WAS OPERABLE, AND THE
22 UNITED STATES WOULD PROVE BY INFERENCE, AND THE FACT THAT IT
23 WAS PRESENT DURING A DRUG TRANSACTION, THAT MR. SMITH
24 POSSESSED THE FIREARM DURING THIS TRANSACTION IN AN ATTEMPT
25 TO FURTHER THE TRANSACTION.

1 THAT IS ESSENTIALLY THE FACTS THAT THE UNITED
2 STATES WOULD PROVE. OF COURSE, ESTABLISHING THROUGH A DEA
3 CHEMIST THAT THE HEROIN THAT MR. GRACE RECEIVED ON OCTOBER
4 13TH OF 2002 WAS TURNED OVER TO THE FBI AGENT WHO SUBMITTED
5 IT TO THE LAB, WHICH DETERMINED IT TO BE HEROIN, AND THAT
6 QUANTITY OF HEROIN IS GOING TO BE RE-WEIGHED BY THE
7 LABORATORY AT MR. RAVENELL'S REQUEST.

8 THE COURT: THANK YOU. MR. RAVENELL, ANY DELETIONS,
9 ADDITIONS, CORRECTIONS?

10 MR. RAVENELL: NONE, YOUR HONOR.

11 THE COURT: AND, MR. SMITH, ARE YOU PLEADING GUILTY
12 OF YOUR OWN FREE WILL?

13 MR. SMITH: YES, I AM, YOUR HONOR.

14 THE COURT: AND ARE YOU PLEADING GUILTY BECAUSE YOU
15 ARE, IN FACT, GUILTY?

16 MR. SMITH: YES.

17 THE COURT: O.K.. THEN I FIND THERE IS A SUFFICIENT
18 FACTUAL BASIS FOR THE PLEA. THOSE FACTS ESTABLISH YOUR GUILT
19 BEYOND A REASONABLE DOUBT.

20 I FIND THAT YOU HAVE KNOWINGLY AND VOLUNTARILY
21 ENTERED THE PLEA AS I ACCEPT THE PLEAS AND ENTER VERDICTS OF
22 GUILTY ON COUNTS FIVE AND SIX.

23 RON, DO WE HAVE SENTENCING DATES?

24 THE CLERK: I HAVE WEDNESDAY, MARCH THE 10TH, AT
25 9:30.

1 MR. TUMINELLI: JUDGE, I PROBABLY WILL STILL BE IN
2 MY CAPITAL CASE BEFORE JUDGE BLAKE ON THAT DATE. IT'S
3 INTENDED --

4 THE COURT: WHEN ARE YOU ENDING THE CASE?

5 MR. TUMINELLI: WELL, WE'RE -- IT'S STARTING ON
6 JANUARY FIFTH. IT'S CONTEMPLATED THAT IT WILL LAST THREE
7 MONTHS, SO I PROBABLY WILL NOT BE AVAILABLE UNTIL APRIL.
8 HOWEVER, JUDGE BLAKE IS NOT SITTING ON FRIDAYS.

9 THE COURT: O.K..

10 THE CLERK: FRIDAY MARCH THE 12TH, AT 9:30.

11 MR. TUMINELLI: I ASSUME THAT THAT WOULD AT THIS
12 POINT BE O.K..

13 THE COURT: FRIDAY, MARCH 12TH, AT 9:30. MR.
14 RAVENELL.

15 MR. RAVENELL: YOUR HONOR, I HAVE A TRIAL, OR IT'S
16 ACTUALLY A MOTIONS HEARING BEFORE JUDGE DAVIS AT NINE. IF WE
17 COULD DO IT IN THE AFTERNOON, I SHOULD BE --

18 THE COURT: 2:00 P.M.?

19 MR. RAVENELL: THAT'S FINE.

20 THE COURT: O.K.. MR. SMITH IS MARCH 12 AT 2:00
21 P.M.. MR. POINDEXTER IS MARCH 12 AT 9:30 A.M.. ANYTHING
22 ELSE, FOLKS?

23 MR. TUMINELLI: JUDGE, MAY WE JUST APPROACH ONE
24 SECOND.

25 THE COURT: SURE. COME UP.

1 PROCEEDINGS AT THE BENCH

2 MR. TUMINELLI: JUDGE, I JUST WANTED TO BRING TO
3 THE COURT'S ATTENTION WE PREVIOUSLY DISCUSSED THE PLEAS AT
4 THE BENCH. WE CONTEMPLATED A 5K COOPERATION PROVISION.

5 THE COURT: UH-HUH.

6 MR. TUMINELLI: THAT'S NOT IN THERE.

7 THE COURT: IT DOESN'T HAVE TO BE. IT'S DRIVEN BY
8 THEIR MOTION.

9 MR. TUMINELLI: RIGHT. AND MR. WARWICK HAS ADVISED
10 ME THAT HE, IN FACT, WILL PREPARE SUCH AN AGREEMENT, BUT HE
11 DIDN'T HAVE TIME TO DO IT, IF THAT'S ACCEPTABLE TO THE COURT.

12 THE COURT: THAT'S NOT A PROBLEM.

13 MR. WARWICK: IF IT'S AN ISSUE THAT MR. POINDEXTER
14 IS STILL WEIGHING, --

15 MR. TUMINELLI: YES.

16 MR. WARWICK: -- WHEN MR. TUMINELLI INFORMS ME AND
17 INFORMS MS. COCKBURN THAT HE WANTS TO GO FORWARD WITH
18 THAT, --

19 THE COURT: IT DOESN'T HAVE TO BE A MATTER OF
20 AGREEMENT AT THIS POINT.

21 MR. RAVENELL: LET ME JUST SAY FOR THE RECORD HE,
22 IN FACT, HAS ADVISED ME THAT HE DOES WANT THE OPPORTUNITY FOR
23 THE 5K, SO --

24 MR. WARWICK: OKAY. WE WILL WORK SOMETHING OUT.

25 THE COURT: O.K.. LET ME AGAIN EXPRESS MY

1 PLEASURE, I HAVE ALWAYS ENJOYED OUR TRIALS AND OTHER THINGS.
2 IT WAS -- THE WORD, I DON'T LIKE TO APPLY THIS HERE, BUT IT
3 WAS FUN. I ENJOYED IT. YOU ARE BOTH EXTRAORDINARY GOOD
4 LAWYERS.

5 MR. TUMINELLI: THANK YOU, JUDGE.

6 THE COURT: AND IT'S ALWAYS A PLEASURE TO HAVE YOU.
7 PLEASE TELL MARION THAT I DID SURRENDER YOU IN TIME FOR THE
8 TRIP TO HAWAII, SO I HOPE YOU ENJOY THE TIME IN HAWAII.

9 MR. TUMINELLI: THANK YOU.

10 MR. RAVENELL: THANK YOU, JUDGE.

11 THE COURT: MR. WARWICK, IT'S ALWAYS A PLEASURE.
12 MS. COCKBURN, I SEEM TO SEE YOU UNDER UNUSUAL CIRCUMSTANCES.

13 MS. COCKBURN: I WAS LOOKING FORWARD TO IT VERY
14 VERY MUCH.

15 THE COURT: IT'S ALWAYS A PLEASURE TO SEE YOU AND
16 PLEASE ADVISE ME, WHEN, AND I WILL BE OPTIMISTIC, WHEN MR.
17 LUNA SHOWS UP, COULD YOU TELL HIM I WOULD LIKE TO SEE HIM.

18 TELL HIM I'M NOT GOING TO YELL AT HIM OR CHEW HIM
19 OUT, BUT I DO HAVE PERHAPS SOME FATHERLY WORDS FOR HIM.

20 MR. WARWICK: I WILL TELL HIM THAT YOU HAVE SOME
21 CONCERN FOR HIS WELFARE, AND THAT YOU WOULD LIKE TO SEE HIM.

22 THE COURT: TELL HIM, YOU KNOW, NO YELLING, NO
23 PROBLEM, JUST SOME CONCERN. THANK YOU, GENTLEMEN.

24 MR. TUMINELLI: THANK YOU, YOUR HONOR.

25 MR. WARWICK: YOUR HONOR, WHAT I AM GOING TO DO IS

1 MAKING A PART OF MR. POINDEXTER'S AGREEMENT, I HAVE JUST
2 CANIBALIZED A PAGE WITH THE WAIVER OF APPEAL IN IT, WHICH HAS
3 BEEN INITIALED BY ALL PARTIES, AND, RON, I WILL JUST STAPLE
4 THAT ON TO THE END OF IT. IT'S PART OF THE POINDEXTER
5 AGREEMENT.

6 THE COURT: VERY GOOD. THANK YOU.

7 PROCEEDINGS IN OPEN COURT

8 THE COURT: MR. POINDEXTER, WE HAVE JUST BEEN
9 HANDED A WAIVER OF APPEAL SECTION THAT YOU HAVE INITIALED AND
10 SIGNED, IS THAT CORRECT, SIR?

11 MR. POINDEXTER: YES.

12 THE COURT: OKAY. AND, THEREFORE, THAT INDICATES
13 THAT YOU DO, IN FACT, UNDERSTAND THE LIMITING OF YOUR APPEAL
14 RIGHTS THAT WE DISCUSSED EARLIER, IS THAT CORRECT, SIR?

15 MR. POINDEXTER: YES.

16 THE COURT: GENTLEMEN, BOTH OF YOU, PLEASE HAVE
17 GOOD HOLIDAYS. I HOPE YOU ENJOY IT, AND TO YOUR FAMILIES AS
18 WELL.

19 GOOD DAY, FOLKS, WE ARE IN RECESS.

20 MR. WARWICK: WITH REGARD TO THE DISCHARGE OF THE
21 JURY, --

22 THE COURT: I AM GOING TO HAVE THEM OUT AND SAY A
23 FEW WORDS TO THEM.

24 (DISCUSSION OFF THE RECORD)

25 THE COURT: RON, WOULD YOU ASK THEM TO JOIN US.

1 THE CLERK: YES, SIR.

2 (THEREUPON, THE JURY ENTERED THE COURTROOM AT 11:17
3 O'CLOCK A.M.)

4 THE COURT: GOOD MORNING. GOOD MORNING. GOOD
5 MORNING.

6 FIRST OF ALL, I WOULD LIKE TO APOLOGIZE TO YOU FOR
7 THE TIME THAT YOU HAVE SPENT IN THE ROOM. I HAVE SERVED JURY
8 DUTY AND I KNOW THAT ONE OF THE LEAST FAVORITE PARTS OF IT IS
9 SITTING IN THE ROOM NOT KNOWING WHAT'S GOING ON, AND SO I'M
10 GOING TO GIVE YOU AT THIS POINT SOME GOOD NEWS AND SOME BAD
11 NEWS.

12 THE BAD NEWS IS THAT I WILL NO LONGER HAVE THE
13 PLEASURE OF YOUR COMPANY OVER THE NEXT WEEK, OR THE REMAINDER
14 OF THIS WEEK.

15 THE GOOD NEWS IS THAT YOU WON'T HAVE MY COMPANY
16 OVER THE NEXT FEW DAYS OF THIS WEEK. THE PARTIES HAVE
17 REACHED AN AGREEMENT IN THIS CASE.

18 THE DEFENDANTS HAVE PLED GUILTY TO CERTAIN CHARGES,
19 AND THAT HAPPENED BECAUSE YOU WERE HERE AND WILLING TO SERVE
20 ON THE JURY. THERE ARE MANY TIMES WHEN PARTIES ARE FAR APART
21 IN THEIR POSITIONS OR IN THEIR VIEWS OF THE EVIDENCE, AND
22 WHEN THERE IS A JURY IN THE BOX, AND THEY REALIZE THAT A
23 DECISION IS GOING TO BE MADE, AND THE DECISION IS INEVITABLE,
24 THEN THAT MAKES BOTH SIDES REEVALUATE THEIR OPINIONS AND
25 THEIR VIEW OF THE EVIDENCE AND MAKES BOTH SIDES REEVALUATE

1 WHAT IT IS THEY WANT TO ACCOMPLISH AS A RESULT OF THE
2 LITIGATION.

3 SO YOU WON'T BE RENDERING A VERDICT IN THIS CASE
4 BUT YOU WERE ABSOLUTELY NECESSARY FOR THE DECISION OF THIS
5 CASE, BECAUSE THE CASE WOULD NOT HAVE BEEN DECIDED EXCEPT FOR
6 YOUR WILLINGNESS TO SERVE, SO I AM REALLY APPRECIATIVE OF
7 THAT. I THANK YOU.

8 WE ARE GOING TO GIVE YOU A LITTLE SOUVENIR
9 CERTIFICATE WILL BE A MORE FORMAL WAY OF EXPRESSING OUR
10 APPRECIATION TO YOU, BUT, AS I SAID EARLIER IN THE JURY
11 SELECTION, JURY DUTY IS OBVIOUSLY -- IT'S A PAIN, IT'S
12 SOMETHING NO ONE LIKES TO DO, BUT IT ALSO IS A VERY IMPORTANT
13 PART OF BEING A CITIZEN IN A REAL DEMOCRACY, WHICH IS WHAT
14 THIS IS.

15 THERE ARE VERY FEW OTHER PLACES IN THE WORLD,
16 INCLUDING ENGLAND FROM WHICH WE GOT THE JURY SYSTEM, BUT VERY
17 FEW PLACES IN THE WORLD WHERE CITIZENS COME INTO COURTHOUSES
18 AND EXERCISE GOVERNMENTAL AUTHORITY TO DECIDE MATTERS BETWEEN
19 THE GOVERNMENT AND ITS CITIZENS, OR BETWEEN CORPORATIONS OR
20 OTHER CORPORATIONS, OR BETWEEN PRIVATE INDIVIDUALS.

21 IT'S A WONDERFUL USE OF GOVERNMENT AUTHORITY AND IT
22 IS RESERVED TO YOU, NOT TO ME.

23 I CAN'T INFLUENCE YOUR DECISION. I CAN'T TELL YOU
24 HOW TO DECIDE IN ANY PARTICULAR CASE. IT IS ONE OF THE
25 PUREST FORMS OF DEMOCRACY THAT WE HAVE IN THIS COUNTRY.

1 SO I KNOW IT IS A PAIN, I KNOW IT IS UNPLEASANT, I
2 KNOW IT REQUIRES SACRIFICES FROM YOU, BUT IT IS ABSOLUTELY
3 NECESSARY FOR THE CONTINUANCE OF OUR GOVERNMENT AS A
4 PARTICIPATORY DEMOCRACY.

5 SO I HOPE THIS EVENING, WHEN YOU ARE TALKING TO
6 YOUR FAMILY AND LOVED ONES ABOUT THIS CASE FOR THE FIRST
7 TIME, THAT YOU WILL TELL THEM, IN ADDITION TO ANY
8 INCONVENIENCE THAT YOU HAD, THAT YOU WILL EXPLAIN TO THEM THE
9 IMPORTANCE OF JURIES IN A DEMOCRACY, AND IT'S A LITTLE
10 PRESENT THAT WAS GIVEN TO US BY OUR FOUNDERS, AND IT'S ONE
11 THAT THROUGH YOUR SERVICE WE'LL BE ABLE TO PASS ON TO OUR
12 CHILDREN, AND I THINK THAT'S A PRETTY GOOD USE OF ANYBODY'S
13 TIME.

14 LADIES AND GENTLEMEN, THANK YOU VERY MUCH. YOU ARE
15 EXCUSED. WE ARE IN RECESS, FOLKS.

16 THE CLERK: PLEASE RISE. THIS HONORABLE COURT
17 STANDS IN RECESS.

18 (THEREUPON, COURT STOOD ADJOURNED IN THIS CASE)

19

20

21

22

23

REPORTER'S CERTIFICATE

24

25

I. E. EDWARD RICHARDSON, OFFICIAL COURT REPORTER

1 FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
 2 MARYLAND, APPOINTED PURSUANT TO THE PROVISIONS OF TITLE 18,
 3 UNITED STATES CODE, SECTION 753, DO HEREBY CERTIFY THAT THE
 4 AFOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE
 5 PROCEEDINGS IN THE AFOREMENTIONED AND NUMBERED CASE ON THE
 6 DATE HEREIN BEFORE SET FORTH, AND I DO FURTHER CERTIFY THAT
 7 THE FOREGOING TRANSCRIPT HAS BEEN PREPARED BY ME OR UNDER MY
 8 SUPERVISION.

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