IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
JAN 30 1989
CLERK, SUPREME COURT
By
Deputy Clerk

THEODORE ROBERT BUNDY,

Appellant,

v.

CASE NO. 73,585

STATE OF FLORIDA,

Appellee.

_____/

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

GARY L. PRINTY
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 363014

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR APPELLEE

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IN THE SUPREME COURT OF FLORIDA

THEODORE ROBERT BUNDY,

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PRELIMINARY STATEMENT

This case comes before the Court on order of Circuit Judge John Peach, Third Judicial Circuit, in and for Columbia County, Florida, granting the State's motion to dismiss Bundy's second 3.850 motion. The circuit court also denied Bundy's application for stay and motion for an evidentiary hearing. Relevant portions of the Rule 3.850 record have been attached as the Appellee's Appendix.

STATEMENT OF THE CASE

Theodore Robert Bundy was convicted and sentenced to death before Florida Circuit Court Judge Wallace Jopling of the Third Judicial Circuit, in and for Columbia County, Florida, in February, 1980. The Florida Supreme Court affirmed the conviction and sentence. Bundy v. State, 471 So.2d 9 (Fla. 1985), cert. denied, 479 U.S. 894 (1986). The Governor of Florida signed a death warrant scheduling Bundy's execution for November 18, 1986. On November 17, 1986, Bundy was unsuccessful in state post conviction and habeas corpus proceedings. Bundy v. State, 497 So.2d 1209 (Fla. 1986).

Bundy next filed an application for stay of execution, and petition for writ of habeas corpus and an application for certificate of probable cause with United States District Court for the Middle District of Florida. On November 17, 1986 the District Court, having reviewed the record in advance, dismissed the petition without a hearing and denied the application for stay of execution and for a certificate of probable cause. Bundy v. Wainwright, Case No. 86-968-Civ-ORL-18 (M.D. Fla. Nov. 17, 1986). The Eleventh Circuit Court of Appeals subsequently granted a certificate of probable cause and a stay of execution pending appeal. Bundy v. Wainwright, 805 F.2d 948 (11th Cir. 1986). The State's motion to vacate the order granting a stay was denied by the United States Supreme Court.

Wainwright v. Bundy, 107 S.Ct. 483 (1986). The Eleventh Circuit then remanded the case to the District Court for the limited purpose of conducting an evidentiary hearing into Bundy's competence to stand trial in the Lake City murder case. Bundy v. Dugger, 816 F.2d 564 (11th Cir. 1987). Federal District Court Judge G. Kendall Sharp conducted an evidentiary hearing and concluded that Bundy was competent to stand trial. Bundy v. Dugger, 675 F.Supp. 622 (M.D. Fla. 1987). The Eleventh Circuit affirmed the District Court's order denying Bundy's habeas petition. Bundy v. Dugger, 850 F.2d 1402 (11th Cir. 1988). On January 17, 1989 the United States Supreme Court denied certiorari. Bundy v. Wainwright, Case No. 88-5881.

On January 19, 1989 Bundy filed his second motion for post-conviction relief in the Circuit Court of the Third Judicial Circuit in and for Columbia County, Florida, along with an application for stay of execution and a separate motion to disqualify the now retired Circuit Judge Wallace M. Jopling, sitting by assignment per order of the Chief Justice of the Supreme Court of Florida. On January 19, 1989 at 9:00 a.m. Judge Wallace M. Jopling granted Bundy's motion for disqualification and the case was reassigned to John W. Peach, Chief Judge of the Third Judicial Circuit, in and for Columbia County, Florida, and a hearing was set for 10:30 a.m. on Bundy's motion for post-conviction relief and application for stay. After argument of counsel and consideration of the pleadings the state trial judge granted

the State's motion for summary dismissal, denied the application for stay and the motion for an evidentiary hearing. Bundy filed a notice of appeal. United States District Court Judge William J. Zloch has entered an order continuing the previously scheduled evidentiary hearing in light of its possible mootness due to the scheduled execution set for January 24, 1989. The order also emphasizes "that the hearing scheduled before this Court should in no way be interpreted as an acknowledgement by this Court that the Petitioner's competency claim is meritorious." A copy of the order has been attached hereto as Appellee's Appendix C. This Court has scheduled oral argument for 9:00 a.m., Friday, January 20, 1989.

SUMMARY OF ARGUMENT

Bundy's second successive motion for post-conviction relief to reevaluate his competency to stand trial claim was properly dismissed as a successive motion and abuse of post-conviction process.

Bundy's second claim involving an attack on the validity of prior convictions involving violence which were used as an aggravating factor in this case is procedurally barred. Bundy previously attempted to make this same argument in a prior habeas petition involving an allegation of ineffective assistance of appellate counsel. Moreover, pending collateral litigation on an otherwise valid state conviction and sentence of death is no basis for compelling a stay in this case.

Finally, Bundy's allegation that the trial judge was involved in an ex parte communication with the prosecution involves facts which were known prior to the running of the two year time limitation and could have been previously filed. Likewise, pending federal collateral litigation does not relieve a capital inmate of the burden of filing his claims within the two year time limit set forth in Rule 3.850.

ARGUMENT

ISSUE

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING BUNDY'S SECOND MOTION FOR POST-CONVICTION RELIEF AND APPLICATION FOR STAY.

Mr. Bundy has filed a second successive petition for post-conviction relief under Fla.R.Crim.P. 3.850. The filing of a successive petition is not permitted except under special circumstances set forth in the rule not met by Mr. Bundy.

Mr. Bundy's petition is also untimely and thus barred under the two year time limit created by this rule. See Johnson v. State, ___ So.2d ____ (Fla. 1988), Case No. 72,238; Fla.R.Crim.P. 3.850. As noted in Johnson, the fact that federal collateral litigation is (or was) pending does not excuse any failure to file a timely Rule 3.850 petition. See Foster v. State, 518 So.2d 901 (Fla. 1987).

As a capital inmate seeking to overcome the time bar and the successive petition restraints, Bundy must show the existence of a claim which could not have been known within the time period of a change of law affecting fundamental constitutional rights that has been held to apply retroactively. Bundy fails on both counts.

Bundy's motion raised the following three claims which will be addressed in order: (A) Mental incompetence at the time of the aborted plea hearing; (B) Entitlement to relief

under Johnson v. Mississippi, 486 U.S. ____, 100 L.Ed.2d 575 (1988) due to pending litigation in the so called "Chi Omega" case; (C) A claimed violation of Gardner v. Florida, 430 U.S. 349 (1977) due to the alleged ex parte communication between the prosecution and the trial judge.

(A) COMPETENCE DURING ABORTED PLEA HEARING

Theodore Bundy's 1986 motion for post-conviction relief alleged that Bundy was incompetent throughout the so-called "Lake City" trial, specifically including therein the aborted change of plea hearing. (See petition, par. 57, 58 and 62) Although no state evidentiary hearing was held, a subsequent federal hearing was conducted in which Bundy's plea hearing conduct was considered. Bundy was found competent. Bundy v. Dugger, 675 F.Supp. 622 (M.D. Fla. 1987), affirmed, Bundy v. Dugger, 850 F.2d 1402 (11th Cir. 1988), cert. denied, Bundy v. Dugger, ____ U.S. ____ (January 17, 1989).

The claim that Bundy was incompetent during the plea hearing and therefore entitled to an additional hearing is nothing more than an attempt to obtain further piecemeal review in a successive Rule 3.850 proceeding. Bundy cannot prevail for two reasons.

(1) Since Bundy included these allegations in his first 3.850 petition he cannot refile them in a successive petition. Straight v. State, 488 So.2d 530 (Fla. 1986);

Booker v. State, 503 So.2d 888 (Fla. 1987); White v. Dugger, 511 So.2d 554 (Fla. 1987). Such piecemeal litigation has been universally condemned. Sanders v. United States, 373 U.S. 1 (1963). Even in federal court, the "shading" and refiling of the same factual claims under new theories of relief is not allowed, In re: Shriner, 735 F.2d 1236 (11th Cir. 1984) nor is the advancement of claims "one at a time" in successive petitions permitted. Fulford v. Smith, 432 F.2d 1225 (5th Cir. 1970). Therefore, to the extent Bundy is simply rearguing the claim raised in his last petition, his petition is subject to dismissal.

(2) If it can be said that Bundy did not raise this precise issue in his first petition, it is clear that he could and should have done so. Booker v. State, supra; White v. Dugger, supra; Daugherty v. State, 533 So.2d 287, 289 (Fla. 1988) and Darden v. State, 496 So.2d 136 (Fla. 1986). Bundy's first petition alleges all of the requisite facts and law cited in the second petition, thus proving that Bundy was aware of this issue in 1986 but has withheld it until now. Issues known but not raised in a prior Rule 3.850 proceeding cannot be raised, piecemeal, in a successive petition. Straight v. State, 488 So.2d 530 (Fla. 1986). This would not be permitted in the federal system. Sanders v. United States, 373 U.S. 1 (1963), cited in Johnson v. State, ____ So.2d ____ (Fla. 1988), Case No. 72,238; even when the issue is the defendant's sanity. Funchess v. Wainwright, 772 F.2d 683 (11th Cir. 1985); Goode

v. Wainwright, 731 F.2d 1482 (11th Cir. 1984); In re: Shriner, 735 F.2d 1236 (11th Cir. 1984).

Under either approach Bundy's first claim constitutes an abuse of procedure and is subject to dismissal pursuant to Rule 3.850. Bundy v. State, 497 So.2d 1209, 1210 (Fla. 1986); Alvord v. State, 396 So.2d 184 (Fla. 1981) and Witt v. State, 387 So.2d 922 (Fla. 1980).

(B) **JOHNSON V. MISSISSIPPI** CLAIM

Bundy's second claim is procedurally barred. Straight v. State, supra; Booker v. State, supra, and White v. Dugger, supra.

Mr. Bundy's attorney, Mr. Corin, alleged at the time of Bundy's trial that Bundy's Utah convictions could not be used to support any aggravating factors because they were not proven. (SR 21-25, 44-45) Furthermore, in Bundy's first Rule 3.850 petition, Bundy challenged the competence of his trial attorney for failing to challenge the constitutionality of both his Utah and Florida convictions, thus eliminating potential aggravating factors. Citing United States v. Tucker, 404 U.S. 443 (1972), Bundy argued that the sentencer's reliance upon these prior convictions meant that his death sentence was predicated upon "misinformation of constitutional magnitude." (Petition, par. 101-109, pp. 36-39).

Thus, Bundy was fully aware, in 1986, that he could challenge his death sentence by challenging the validity of his prior convictions even though Johnson v. Mississippi, ____ U.S. ____, 108 S.Ct. 1981, 100 L.Ed.2d 575 (1988) was not available. See Daugherty, supra; Darden v. State, supra.

Bundy's Utah convictions are valid and not currently being contested. There is no legal presumption that they are invalid. Similarly, the Chi Omega convictions are valid until declared otherwise. To date, they have not been invalidated.

Bundy's second complaint merely requests a stay of a valid state court judgment and sentence while a federal trial court reviews the Chi Omega case. The pendency of this collateral litigation does not compel a stay in this case. Here, all of Bundy's prior convictions stand intact. Thus, this case is unlike Johnson v. Mississippi, supra, in which Johnson's (New York) convictions had actually been reversed by the time he appealed his Mississippi death sentence.[1]

Thus, Bundy's de novo attack upon his prior convictions is time barred under the two year rule since it has been known to Bundy since the time of his trial and since the

[1] Unlike Florida, Mississippi's procedural default rule is not recognized by the United States Supreme Court and thus was not honored in Johnson. Florida's procedural bar is respected by the Court.

filing of his 1986 petition for 3.850 relief. The claim is also procedurally barred as one which has been offered, in piecemeal fashion, in a successive Rule 3.850 petition.

Therefore, Bundy's request for a "stay" pending resolution of the Chi Omega hearings should be dismissed as untimely and an abuse of the writ.

(C) JUDICIAL MISCONDUCT
(Ex-Parte Communications)

The trial transcripts show (App. "A") that defense counsel, not the state, put the Chi Omega records (including psychological evaluations by Dr. Tanay) before the court for its consideration. (App. "A", 169) The state's only argument (App. "A", 169) was made on the record, in the presence of counsel. Judge Jopling announced (App. "A", 192) that the Chi Omega materials were served upon him at 1:30 p.m. "today," "at the time set for this sentencing." (App. "A", 192)

Eight years later, and without the benefit of this trial transcript, Judge Jopling stood for cross examination in federal court. (App. "B", 465) Bundy's counsel confirmed that Judge Jopling was aware of the Chi Omega competency proceedings when he sentenced Bundy. Cross examination revealed:

(1) Judge Jopling did not recall when he saw the Chi Omega proceedings though it was after he had heard reports of the outcome. (App. "B", 466)

(2) Judge Jopling stated he "probably" heard the details from the state. (App. "B", 467)

(3) It was unknown when he heard the details. (App. "B", 466) Possibly Mr. Blair or Mr. Dekle told him. (App. "B", 468)

(4) He did not recall any meeting, just that he saw the reports late in the trial. (App. "B", 468)

(5) Judge Jopling recalled that Mr. Africano himself provided (Tanay's) letter to him. (App. "B", 468) But it was possible that the defense didn't know he had the material. (App. "B", 468)

(6) Judge Jopling had no specific recall of many details of the Chi Omega case. (App. "B", 469)

Clearly, Judge Jopling's unrefreshed memory in December of 1987 was cloudy, unspecific and, based upon cross examination, purely speculative. The actual trial record reflects when, where, how, by and before whom Judge Jopling received any Chi Omega materials.

The Chi Omega materials had been a matter of public record for approximately seven months prior to this case.

Although the state could question whether pure speculation can constitute "newly discovered evidence" it is not necessary to consider the merits of Bundy's claim because it is procedurally barred under Rule 3.850's two year time bar.

Bundy "discovered" this issue in December of 1987. Pursuant to Rule 3.850, Bundy had over ten months, until October of 1988, to file this claim in a timely manner.

Instead, Bundy tactically decided to sit on this claim until a new warrant issued. Bundy allowed the time period for filing to lapse, and thus forfeited review.

While it is true that Bundy was engaged, at times, in federal litigation, the pendency of federal claims under §2254 does not suspend the two year time bar provided by Florida's rules, Johnson v. State, ____ So.2d ____ (Fla. 1988), Case No. 72,238; Demps v. State, 513 So.2d 1050 (Fla. 1987); White v. State, supra, nor does it excuse any failure to file a timely motion. Foster v. State, 518 So.2d 901 (Fla. 1987).

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

GARY L. PRINTY
ASSISTANT ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Mr. James E. Coleman, Jr., c/o Office of the Capital Collateral Representative, 1533 South Monroe Street, Tallahassee, Florida 32301, this 20th day of January, 1989.

GARY L. PRINTY
ASSISTANT ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI
ASSISTANT ATTORNEY GENERAL

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

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THEODORE ROBERT BUNDY,

Defendant.

_____/

APPENDIX A

no mitigating circumstances, no mitigating factors, to weigh against that.

THE COURT: Mr. Corin?

MR. CORIN: Your Honor, just briefly in reply, we don't know from the jury's verdict of guilt on the first count of murder whether they travelled under a premeditated theory or a felony murder theory. We do know that they have found Mr. Bundy guilty under the second count, which was kidnapping. I think any speculation as to how they arrived at their verdicts must be construed in the light most favorable to the accused in this situation and that that dount and the benefit thereof be accorded my client.

THE COURT: Mr. Africano?

MR. AFRICANO: Yes, sir. Your Honor, when the jury brought back its verdict, we requested a continuance in order to prepare an adequate and appropriate presentation of the mitigating circumstances of why the death penalty should not be imposed. We knew that parading a dozen witnesses before the jury to say that Ted Bundy had once been a Boy Scout, that he had family and friends, would have had little or no impact. We knew that the only valid and mitigating circumstances which could intelligently be presented, assuming that the verdict of the jury was correct, or the, that the

defendant was under the influence of extreme mental or emotional disturbance and that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

Of course, in the time we had, it would have been impossible to have made such a presentation in any logical, adequate and competent fashion.

Where, we feel that the nature of the crimes that Ted Bundy has been convicted of by two separate juries demands that such an inquiry be made.

Your Honor had the opportunity to observe Ted Bundy for over a year and a half. He has been before you on numerous occasions, arguing points of law, and he has conducted himself in such a fashion that makes it inconceivable that he could have been the person who committed such terrible acts. The person you appointed me to represent and the person I have come to know in the last nine months could not have done what he has been convicted of, but, if these two juries are correct, then the only logical and rational answer is that we are dealing with two or more personalities inside of one body.

The very nature of the crimes of which he has been convicted is clear and convincing evidence that they were committed by a person with a diminished capacity to

appreciate the criminality of such acts.

Your Honor is bound both legally and morally to fully explore this strong possibility. By imposing sentence now could only satisfy those who seek revenge and retribution. Certainly the death penalty is not going to be a deterrent to one who might be deranged enough to commit such similar acts. Your Honor has the authority to defer sentencing in order that the necessary psychiatric evaluations be made so that you can be fully informed of all the facets of Ted Bundy's personality, not just informed of the acts of which he has been convicted.

Perhaps, if what I am suggesting proves true, then maybe we can learn something that will ultimately benefit society. Would it not benefit all of us to learn how and why a human being from an ordinary, average background, one who's intelligent, articulate and normal from all outward appearances, could develop such a second personality to commit such acts? I cannot help but believe that the families of the victims would not be willing to give up their desire for retribution and society could benefit through the study of personalities which Ted Bundy must have, if these juries are correct. To sentence Ted Bundy to death today might preclude any opportunity to gain any insight which may

help some tortured soul in the future and prevent the senseless loss of life. I respectfully request, Your Honor, that you defer sentencing at this time until those studies can be run. I have presented to Your Honor several reports which support this argument I have just advanced.

THE COURT: Does the State wish to reply to the argument of Mr. Africano?

MR. DEKLE: First off, the lateness of these reports that the defense had and submitted to the Court, was received by them on September the 10th of 1979. Okay. September, October, November and December, and January, February. It's now February the 12th. This is six months and two days since they received this report. The time for them to have raised this, if they had any intention of making an honest, good faith representation to the Court that this defendant had some mental imbalance or mental incapacity, would have been September 11th of 1979. These reports by Dr. Tenay and these other two reports were considered by Judge Cowart in Tallahassee in the Tallahassee case and, at that time, he found the defendant competent, based upon the testimony of Dr. Tenay and on the testimony of Dr. Herbie Cleckey And at that time, I urged the defense that, if they were going to make such a

Finding: This Court has observed the conduct and demeanor of the defendant throughout this entire trial and for months prior thereto and hearings before him, and his assistance in his presentation of his defense and his conduct throughout the trial, except for two minor incidents, appeared entirely rational and reflected intelligence of a high degree. I therefore find no mitigation in either E or F.

And in that connection, the Court also was handed today at 1:30 P.M., the time set for this sentencing proceeding to begin, three psychiatric reports rendered by a Dr. Emmanuel Tenay, T-e-n-a-y, of Detroit, Michigan, dated respectively April 27, 1979, May 21, 1979, and September 7, 1979. The Court has considered the contents of said reports in connection with whether there has been any mitigating circumstances established under E or F. The Court finds that the reports indicate an anti-social personality on the part of the defendant, but finds no mitigation established of either the enumerated mitigating circumstances E or F shown by said reports.

G, the age of the defendant at the time of the crime.

Although the Court does not recollect any specific testimony as to the age of the defendant, he

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_____/

APPENDIX B

WHEREUPON:

WALLACE M. JOPLING,

CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN FIRST DULY SWORN ACCORDING TO LAW, TESTIFIED AS FOLLOWS:

BUNDY APPEAR BEFORE YOU?

A. I WOULD SAY AT LEAST SIXTEEN OR EIGHTEEN TIMES.

Q. HOW LONG DID THE TRIAL LAST?

A. FIVE WEEKS.

Q. APPROXIMATELY HOW LONG WAS THE JURY SELECTION?

A. TWO WEEKS.

Q. DID YOU HAVE AN OCCASION PRIOR TO TRIAL TO CONVENE FOR THE PURPOSES OF A PLEA, ACCEPTING A PLEA OF GUILTY ON MR. BUNDY'S BEHALF?

A. YES, I DID, TOGETHER WITH JUDGE COWART OF THE ELEVENTH JUDICIAL CIRCUIT WHO WAS ASSIGNED TO THE CHI OMEGA CASE.

Q. WOULD YOU PLEASE EXPLAIN TO THE COURT YOUR UNDERSTANDING OF THE BASICS OF THAT PLEA BARGAIN?

A. MY UNDERSTANDING WAS THAT MR. BUNDY WOULD ACCEPT AND ENTER A PLEA OF GUILTY TO THREE CHARGES OF FIRST DEGREE MURDER, KIMBERLY LEACH MURDER AND THE TWO CHI OMEGA MURDERS, IN RETURN FOR THE STATE NOT SEEKING THE DEATH PENALTY AND HE WOULD BE RECEIVE THREE LIFE SENTENCES.

Q. AND WOULD HE HAVE A POSSIBILITY OF PAROLE UNDER THAT AGREEMENT?

A. NO.

Q. OKAY. WHAT HAPPENED DURING THAT HEARING?

A. I AND JUDGE COWART MET IN TALLAHASSEE, WE CONVENED COURT JOINTLY. MR. BUNDY CAME IN AND WE WERE IN EXPECTATION OF THE PLEA BEING ENTERED AND THE USUAL DIALOGUE BE ENGAGED

IN BETWEEN THE COURT AND MR. BUNDY, BUT HE AT THE MOMENT WHEN THAT WAS STARTING, HE AROSE AND BEGAN TO READ FROM A PAPER ATTACKING MR. MINERVA, HIS COUNSEL, AND CLAIMING THAT MR. MINERVA WAS NOT CONVINCED OF HIS INNOCENCE AND WAS NOT STRONGLY ENOUGH CONTESTING IT FOR HIM.

WHEN THAT WAS DONE, THEN THE STATE ATTORNEY FOR THE THIRD JUDICIAL CIRCUIT, I UNDERSTAND, I DID NOT HEAR THIS, BUT WITHDREW THE OFFER OF A PLEA AND THE HEARING WAS VERY SUMMARILY TERMINATED.

Q. JUDGE JOPLING, YOU MENTIONED THE PLEA COLLOQUY. COULD YOU JUST BRIEFLY DESCRIBE THE ELEMENTS OF THE PLEA COLLOQUY UNDER FLORIDA LAW?

MR. COLEMAN: OBJECTION, IRRELEVANT.

MR. DORAN: YOUR HONOR, THIS WAS BROUGHT OUT IN MR. MINERVA'S TESTIMONY REGARDING THE SIMILARITY BETWEEN CRITERIA FOR ENTERING A PLEA AND A CRITERIA FOR DETERMINATION OF COMPETENCY TO STAND TRIAL AND I'D LIKE TO GET THE JUDGE'S KNOWLEDGE OF IT.

THE COURT: OVERRULED.

A. NORMALLY THE DEFENDANT WHO IS ENTERING THE PLEA, IN MY COURT AT LEAST, THE PLEA IS IN WRITING, I REQUIRE AT ALL TIMES THAT IT BE IN WRITING, I THINK THAT'S CUSTOMARY, WHICH SETS OUT THE TERMS OF THE PLEA. THE JUDGE SWEARS THE DEFENDANT, QUESTIONS HIM IN REGARD TO HIS AGE, HIS EDUCATION, HIS BACKGROUND, WHAT EMPLOYMENT HE'S HAD, WHETHER

HE HAS HAD ANY NERVOUS OR MENTAL DISORDER OF ANY KIND, IF HE'S HAD ANY DRUGS WITHIN THE LAST TWENTY FOUR HOURS, ADVISES HIM OF THE RIGHTS THAT HE HAS, INQUIRES AS TO WHETHER THE AGREEMENT WAS ENTERED INTO FREELY AND VOLUNTARILY OR ANY PRESSURE WAS PLACED UPON HIM, INQUIRES AS TO WHETHER HE WAS PROMISED ANYTHING TO ENTER INTO THE AGREEMENT, AND INQUIRES AS TO, IF HE'S REPRESENTED BY AN ATTORNEY, IF HE'S SATISFIED WITH HIS LAWYER, THE WAY HE'S REPRESENTED HIM UP TO THAT POINT, AND DOES HE ADMIT THE CHARGES. ALWAYS HAVE THE STATE RECITE BRIEFLY WHAT THEY ARE PREPARED TO PROVE IN CONNECTION WITH THE PLEA. AND THEN HE'S OFFERED THE CHANCE -- THEN HE'S ASKED DOES HE ADMIT TO THE FACTS AS STATED.

Q. DO THESE INQUIRIES THAT YOU MAKE FALL UNDER A PARTICULAR RULE OF CRIMINAL PROCEDURE?

A. YES, THEY DO, BUT I CAN'T GIVE YOU THE RULE RIGHT OFF THE TOP OF MY HEAD.

Q. AFTER THE STATE CALLED OFF THE PLEA BARGAIN, DID YOU HAVE FURTHER OCCASION TO HAVE MR. BUNDY APPEAR IN FRONT OF YOU IN COURT?

A. OH, YES.

Q. PRIOR TO TRIAL?

A. YES, ON SEVERAL OTHER OCCASIONS.

Q. AND COULD YOU DESCRIBE WHAT SOME OF THOSE OCCASIONS WERE?

A. WELL, ON ONE OCCASION I REMEMBER IT WAS, I'M NOT SURE WHETHER THIS WAS BEFORE OR AFTER THAT HEARING. I THINK IT WAS AFTERWARDS. WE HAD A THREE DAY HEARING ON WHETHER HE WOULD BE ALLOWED, WHETHER MR. MILLARD FARMER OF GEORGIA WOULD BE ALLOWED TO APPEAR PRO HOC VICE AS HIS COUNSEL IN THIS MATTER, AND THAT WAS A VERY LENGTHY HEARING.

WE HAD SEVERAL HEARINGS ON SUPPRESSION OF EVIDENCE, ON FINANCES AND NUMEROUS OTHER MATTERS.

Q. YOU DENIED THE MOTION TO ADMIT MR. MILLARD FARMER, DID YOU NOT?

A. I DID.

Q. AT THAT POINT DID MR. BUNDY REPRESENT HIMSELF?

A. THERE WAS A LAWYER FROM MIAMI WHO APPEARED AND WAS, I THINK WAS REPRESENTING MR. FARMER REALLY RATHER THAN MR. BUNDY. MR. BUNDY APPEARED AND DID STRONGLY CONTEST FOR MR. FARMER BEING ALLOWED TO APPEAR ON HIS BEHALF, BUT THERE WAS ALSO ANOTHER COUNSEL THAT WAS REPRESENTING MR. FARMER IN THAT MATTER.

Q. AFTER YOU DENIED THAT HEARING, OR I THOUGHT MOTION. WHO REPRESENTED MR. BUNDY?

A. VIC AFRICANO.

Q. HOW DID MR. AFRICANO COME TO REPRESENT MR. BUNDY?

A. I APPOINTED HIM.

Q. I WANT YOU TO TURN YOUR ATTENTION TO THE JURY SELECTION PHASE OF THE TRIAL.

THERE HAS BEEN TESTIMONY IN THIS COURT THAT TOWARDS THE END OF THAT SELECTION THERE WAS AN OUTBURST BY MR. BUNDY REGARDING CHALLENGE TO A JUROR? DO YOU RECALL THAT EVENT?

A. YES I DO.

Q. WOULD YOU PLEASE GIVE YOUR RECOLLECTION OF THAT EVENT TO THE COURT?

A. I HAD ALLOWED EACH SIDE TWICE THE NUMBER OF PEREMPTORYS THAT ARE REQUIRED BY STATUTE BECAUSE OF THE WIDE PUBLICITY OF MR. BUNDY AND HIS PROBLEMS.

WHEN THE STATE, WHEN THE DEFENSE HAD EXHAUSTED THEIR 20TH PEREMPTORY CHALLENGE, AND I DENIED THEIR CHALLENGE OF CAUSE FOR A JUROR WHICH WOULD HAVE BEEN THE 12TH JUROR CONSTITUTING THE JURY, COUNSEL FOR THE DEFENDANT AND MR. BUNDY CAME TO THE BENCH AND ARGUED VOCIFERIOUSLY WITH ME FOR A FEW MOMENTS AND THEN I MAINTAINED THE DENIAL OF THEIR REQUEST, USE OF THIS JUROR FOR CAUSE. THEN MR. BUNDY WENT BACK AND TOOK OFF HIS COAT AND SAID I AM LEAVING

THE COURTROOM AND STARTED TOWARD THE TOWARD DOOR. HE WAS INTERRUPTED BY BAILIFFS THERE, AND THE WHOLE EPISODE LASTED LESS THEN FIVE MINUTES. HE TOOK HIS SEAT. MR. AFRICANO EXPLAINED TO HIM, AND CALMED HIM DOWN, AND HE TOOK HIS SEAT.

Q. NOW THAT WAS THE END OF THAT OUTBURST?

A. THAT'S RIGHT. I WOULD LIKE TO SAY THAT I NEVER AT ANY TIME HEARD ANY SLURRED LANGUAGE OR ANYTHING ON MR. BUNDY'S PART THAT APPEARED HE WAS ANYWAY BUT A NORMAL PERSON. HE WAS AGITATED ABOUT THE TURN OF EVENTS, BUT HE HAD NO SLURRED SPEECH OR ANY OTHER INDICATIONS THAT HE WAS NOT IN FULL POSSESSION OF HIS FACULTIES.

Q. LET ME ASK YOU TURNING TO THAT AREA.

HAVE YOU HAD OCCASION TO SEE INDIVIDULES WHO WERE UNDER THE INFLUANCE OF ALCHOLOL OR DRUGS?

A. YES, I HAVE.

Q. HAVE YOU HAD OCCASION THE SEE SUCH INDIVIDUALS APPEAR BEFORE YOU IN COURT?

A. YES, I HAVE.

Q. INTOXICATED IN COURT?

A. EVEN A LAWYER ONE TIME.

Q. WHAT WOULD BE THE TYPES OF THINGS THAT WOULD, YOU WOULD LOOK FOR TO DETERMINE IF A PERSON WAS INTOXICATED?

MR. COLEMAN: WE CONCEDE, WE WILL CONCEDE HE HAS EXPERTISE TO EXPRESS AN OPINION.

THE COURT: I WILL ACCEPT THAT.

THE WITNESS: I TAKE IT-- I DON'T KNOW HOW TO TAKE THAT QUALIFICATION. I DON'T KNOW WHETHER TO TAKE THAT QUALIFICATION.

BY MR. DORAN:

Q. YOUR HONOR, AT ANY TIME IN THE MANY HEARINGS, PRE-TRIAL, DURING THE TRIAL, POST TRIAL, DID YOU EVER NOTICE OR HAVE ANY INDICATION THEODORE ROBERT BUNDY WAS UNDER THE INFLUENCE OF ALCHOLOL?

A. NEVER DID I SEE HIM EXHIBIT ANY EVIDENCES OF ANY CONSUMPTION OF ALCHOLOL, DRUGS, OR ANYTHING ELSE. IT WAS ALL NORMAL BEHAVIOR.

Q. IF YOU HAD SEEN SUCH BEHAVIOR WOULD DO YOU THINK YOU WOULD HAVE DONE?

A. WELL, I WOULD HAVE IMMEDIATELY BEFORE THE JURY. OF COURSE EXCUSED THE JURY, AND WOULD HAVE CONDUCTED A HEARING AS TO WHAT IS HIS CONDITION WAS. AND HEARD HIM, AND COUNSEL AND GONE INTO IT, INVESTIGATED WHAT HIS CONDITION WAS.

Q. I BELIEVE YOU TESTIFIED THE TRIAL LASTED APPROXIMATELY THREE WEEKS, IS THAT CORRECT?

A. ALTOGETHER FIVE WEEKS INCLUDING THE JURY SELECTION.

Q. HOW ABOUT THE TRIAL PHASE ITSELF?

A. THAT WAS THREE WEEKS.

Q. WAS MR. BUNDY PRESENT EVERY DAY IN COURT?

A. EVERY DAY.

Q. WHAT ROLE DID MR. BUNDY PLAY IN HIS OWN DEFENSE DURING THE TRIAL?

A. MADE VERY ACTIVE ROLE, CONSTANTLY CONFERRING WITH HIS COUNSEL DURING PROCEEDINGS WHEN THEY WERE CONDUCTING THINGS, AND HE AT VARIOUS TIMES TOOK PART VERY COGENTLY AND LOGICALLY AND COHERENTLY IN ARGUMENTS BEFORE ME.

Q. WHEN YOU SAY BEFORE YOU, WAS THE JURY PRESENT?

A. HE DID APPEAR IN SOME MATTERS BEFORE THE JURY, I CAN THINK OF SEVERAL INSTANCES WHERE IN CHAMBERS HE MADE VERY COGENT ARGUMENTS, FOR EXAMPLE, ON THE APPLICATION WILLIAMS RULE, STATE WAS INDEVERING TO INTRODUCE SOME SIMILIAR FACT EVIDENCE AND HE DID LOGICALLY CITE THE WILLIAMS RULE, AND STATE VERSUS WILLIAM WHICH EXCLUDES, WHICH ALLOWS SIMILIAR FACT EVIDENCE UNDER CERTAIN CIRCUMSTANCES TO SHOW IDENTITY AND MODUS OPERANDI AND HE WAS FAMILIAR WITH WILLIAMS, HE COULD STATE THE FACTS OF THAT, COMPARE THEM WITH THE FACTS THE STATE WAS TRYING TO INTRODUCE, AND DID SO LOGICALLY THAT I RULED WITH HIM.

Q. DID MR. BUNDY EVER ENGAGE IN ANY INAPPROPRIATE BEHAVIOR OF ANY OUTBURST DURING THE TRIAL COURSE OF THE PHASE?

A. OTHER THAN THAT ONE INDENT HE ATTEMPTED TO LEAVE THE COURTROOM, I SAW NOTHING THAT WOULD INDICATE HE WAS INAPPROPRIATELY BEHAVING.

Q. TURN OUR ATTENTION TO THE SENTENCING PHASE OFTHE

TRIAL.

WHAT ROLE DID MR. BUNDY PLAY DURING THE SENTENCING PHASE, FIRST IN FRONT OF THE JURY AND THEN IN FRONT OF YOU?

A. WELL, HE PLAYED A VERY IMPORTANT ROLE IN BOTH INSTANCES. HE OF COURSE CALLED MISS CAROL BOON AS A WITNESS ON HIS BEHALF IN THE PENALTY PHASE, AND QUESTIONED HER, AND HAD HER TESTIMONY CONCERNING HIS CHARACTER AND REPUTATION AS SHE KNEW IT. TYPE OF PERSON HE WAS. HE VERY ADROITLY OBJECTED TO A QUESTIONS ON, THAT ARE PROPOUNDED BY THE STATE ON GROUNDS THEY WERE NOT PROPERLY CROSS EXAMINATION, WHICH WAS VERY WELL MADE AND I UPHELD, HE MADE A STATEMENT HIMSELF ON THINGS THAT, OF COURSE THEN CONDUCTED THE MARRIAGE CEREMONY.

Q. LET'S TALK FOR AN ABOUT MINUTE ABOUT THE MARRIAGE.

WERE YOU AWARE THAT THEY WERE GOING TO ATTEMPT THAT DURING THE SENTENCING PHASE?

A. NOT AT ALL. I KNEW THAT HE HAD ASKED FOR IT, AND I HAD GIVEN HIM PERMISSION TO GET A BLOOD TEST. I WAS LEAD TO BELIEVE SOME TIME IN THE FUTURE AFTER HE WAS LEFT THE TRIAL, AND WENT BACK TO WHEREVER HE WAS GOING, THEY MIGHT ENGAGE IN SUCH A CEREMONY.

Q. DID HE APPEAR TO SINCERELY WISH TO BE MARRIED?

A. WHAT IS THAT?

Q. DID HE APPEAR TO SINCERELY WISH TO BE MARRIED?

A. I COULD ONLY BASE THAT ON WHAT WENT ON IN OPEN COURT,

AND I DON'T KNOW WHETHER I CAN ANSWER THAT OR NOT.

Q. MR. BUNDY STATED HE PRESENTED ARGUMENT TO YOU DURING THE PENALTY PHASE AFTER THE JURY RETURNED A RECOMENDATION?

A. YES.

Q. WHAT TYPE OF ARGUMENT DID HE PRESENT TO YOU?

A. IT WAS MUCH SAME AS HE PRESENTED TO THE JURY, THAT TESTIMONY WAS NOT SUFFICIENT TO JUSTIFY THE VERDICT IN THE FIRST INSTANCE, AND THAT HE WAS BEING PERSECUTED, THAT SORT OF THING.

Q. JUST TO CLARIFY THIS. THE ARGUMENT HE MADE TO YOU WAS THE SAME ARGUMENT HE MADE TO THE JURY?

A. NOT IDENTICAL, BUT INCLUDED MANY OF THE SAME POINTS AND IDEAS THAT HE PRESENTED TO THE JURY.

Q. JUDGE JOPLING, DID YOU EVER CONDUCT A FORMAL COMPETANCY HEARING REGARDING MR. BUNDYS ABILITY TO ASSIST HIS COUNSEL OR TO ASSIST HIMSELF IN HIS TRIAL?

A. NO, I DIDN'T.

Q. COULD YOU EXPLAIN FOR THE COURT WHY YOU DID NOT?

A. THREE MAIN REASONS. FIRST THERE HAD BEEN A COMPETENCY HEARING CONDUCTED BEFORE JUDGE COWART, EMINENT JURIST IN THE CHI OMEGA CASE IN DETERMINING OF THAT CASE ONLY SIX MONTHS BEFORE THE CASE I WAS PRESIDING OVER. AND HE HAD BEEN FOUND COMPETENT IN THAT.

SECONDLY, THAT THE ISSUE OF COMPETENCY WAS NEVER RAISED BEFORE ME BY HIM OR BY HIS COUNSEL.

AND THIRD AND PROBABLY MOST IMPORTANTLY WAS BECAUSE I WAS CONVINCED FROM THE WORD GO THAT HE WAS EMINENTLY COMPETENT AND CAPABLE OF RATIONAL UNDERSTANDING AND CONFERRING WITH HIS LAWYER. KNEW FULLY WELL THE CONSEQUENCES OF THE PROCEEDINGS.

Q. IF YOU HAD SEEN ANY INDICATION OF INAPPROPRIATE BEHAVIOR, YOU WOULD YOU HAVE RAISED THE ISSUE ON YOUR OWN MOTION?

A. MOST CERTAINLY I WOULD HAVE.

Q. IF MR. DEKLE HAD RAISED A MOTION, WOULD YOU HAVE INVESTIGATED THE ISSUE?

A. CERTAINLY WOULD HAVE.

Q. OVERALL CONCERNING ALL PHASES OF THIS TRIAL, PRE-TRIAL, DURING THE TRIAL, MATTERS DURING SENTENCING PROCEEDINGS, AND ANY OTHER POST TRIAL MATTERS, DO YOU HAVE AN OPINION AS TO THEODORE ROBERT BUNDY'S COMPETENCY TO STAND TRIAL?

MR. COLEMAN: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: I DO HAVE SUCH AN OPINION.

BY MR. DORAN:

Q. WOULD YOU STATE FOR THE COURT THAT OPINION?

A. I WOULD SAY CONSIDERING MR. BUNDY WAS ONE OF THE MOST INTELLIGENT, ARTICULATE, COHERENT DEFENDANTS I EVER SEEN.

Q. DO YOU FEEL THAT MR. BUNDY HAD AN APPRECIATION OF THE

CHARGES HE WAS FACING AND PENALTY HE WAS FACING?

A. MOST DEFINITELY.

Q. COULD YOU GIVE A FACTUAL EXAMPLE FOR YOUR REASON?

A. WELL, I DIDN'T SEE THE VIDEO THAT WAS SHOWN. I UNDERSTAND IT WAS SHOWN YESTERDAY, BUT HIS STATEMENTS IN THE PENALTY PHASE TO THE JURY SURELY, THE WAY HE CITED THE CRUCIFIX OF CHRIST, AND OTHER THINGS CERTAINLY APPLY IN THE DEATH PENALTY TO HIMSELF, AND REALIZING THAT HE WAS FACING THAT, CERTAINLY INDICATED TO ME THAT HE UNDERSTOOD ALL ALONG.

Q. DID YOU HAD YOU SEE SEE ANY EVIDENCE MR. BUNDY'S UNDERSTOOD THE ADVISARIAL NATURE OF THE PROCEEDINGS AGAINST HIM?

A. MOST ASSUREDLY HE AND MR. DEKLE TANGLED SEVERAL TIMES IN THERE ARGUMENTS ON VARIOUS MATTERS. BESIDES HAD INCIDENTS WHERE HE SO APPROPRIATELY AND INTELLIGENTLY ARGUED THE WILLIAMS RULE APPLICATION.

ANOTHER RATHER SOPHISTICATED POINT THAT HE AREGUED UNSUCCESSFULLY WAS ON THE EVIDENCE OF FLIGHT INTRODUCTION INTO EVIDENCE OF FLIGHT AS ADMISSABLE ON, AS TOWARD GUILT.

AND HE ARGUED THAT VERY WELL, CITING CASES, AND HE IN HIS CROSS EXAMINATION OF WITNESSES, AND HE ALSO OFFERED AT ONE TIME TO MAKE A PROFFER OF EVIDENCE, ALL INDICATING HE WAS THOROUGHLY UNDERSTANDING OF THE PROCEDURE IN CRIMINAL CASES.

Q. IN YOUR VIEW HOW DID THE DEFENDANT RELATE TO MR. AFRICANO AND MR. THOMPSON, HIS ATTORNEYS?
A. IN MY JUDGMENT OF THEIR RELATIONSHIP WAS THAT IT WAS COOPERATIVE AND WAS MUTUALLY RESPECTFUL. HE CONFERED FREQUENTLY AT THE TABLE WITH THEM. ONE TIME SENT A NOTE TO ONE OF THEM WHO WAS QUESTIONING A WITNESS, AND MR. AFRICANO HIMSELF TOLD ME THAT THEIR RELATIONSHIP WAS A GOOD RELATIONSHIP, AND WAS COOPERATIVE, AND HE THOUGHT MUCH MORE COOPERATIVE THEN IT WAS MR. BUNDYS-- WITH HIS PREVIOUS ATTORNEYS IN THE OTHER TRIAL.
Q. MR. BUNDY EVER SPEAK DIRECTLY TO YOU REGARDING HIS FEELINGS AS MR. AFRICANO'S REPRESENTATION?
A. YES, HE DID. AT THE CONCLUSION OF THE GUILT PHASE OF THE TRIAL I BROUGHT HIM AND COUNSEL INTO THE CHAMBERS WITH ME, AND I INQUIRED SPECIFICALLY OF HIM IF HE HAD ANY COMPLAINT ABOUT THE MANNER IN WHICH HE HAD BEEN REPRESENTED UP TO THAT POINT IN THE TRIAL. HE STARTED OUT BY SAYING HE WASN'T FAMILIAR WITH EVERYTHING THAT HAD BEEN DONE OUT OF HIS PRESENCE, BUT THAT HE DID FEEL THAT HE HAD BEEN VERY ADEQUATELY AND FAIRLY REPRESENTED AND COMPETENTLY REPRESENTED.
Q. IN YOUR VIEW WHAT WAS THE THEORY THAT THE DEFENSE PRESENTED TO THE JURY?
A. WELL, IT SEEMED TO ME IT WAS DIRECTED TO DISCREDITING THE MAIN STATES WITNESS, C.L. ANDERSON, I BELIEVE HIS NAME

WAS, WHO WAS THE NEAREST THING TO AN EYE WITNESS THAT THE STATE HAD, WHO PURPORTEDLY SAW A MAN RESEMBLING MR. BUNDY IN A WHITE VAN PICK UP OR LITTLE GIRL AT THE JUNIOR HIGH SCHOOL IN LAKE CITY AND DRIVE OFF WITH HER, ATTACKING HIS CREDABILITY.

ATTACKING THE RELIABILITY AND CREDIBILITY OF THE SCIENTIFIC EVIDENCE THAT WAS INTRODUCED.

AND THIRDLY, EXPLOITING THE MEDIA PUBLICITY THAT HAD BEEN GIVEN TO CHI OMEGA TRIAL AND THIS TRIAL, THAT SEEMED TO BE THEIR THEORY.

Q. IN YOUR EXPERIENCE AS A CIRCUIT COURT JUDGE HANDLING CRIMINAL CASES, HAVE YOU HAD OTHER OCCASIONS WITH THESE TYPES OF THEORIES OF DEFENSE HAVE BEEN PRESENTED?

A. NO. I CAN'T SAY THAT I HAVE, NOT TO THE EXTENT IN THIS CASE.

Q. AND WHAT IS IT ABOUT THIS CASE THAT MAKES IT DIFFERENT IN YOUR VIEW?

A. WELL, OF COURSE, ALL I AM GETTING AT, THERE WAS A TREMENDOUS AMOUNT OF PUBLICITY REGARDING MR. BUNDY IN THE STATE OF FLORIDA. AND THAT MADE IT DIFFERENT. AND THEN FACT THERE WAS A PRIOR TRIAL JUST BEFORE THIS ONE, IN WHICH HE WAS CHARGED WITH MURDER, THESE FACTORS MADE IT DIFFERENT.

Q. DID MR. BUNDY HIMSELF EVER PRESENT ARGUMENT TO YOU REGARDING PUBLICITY IN THE NEED TO, FOR EXAMPLE, CHANGE

VENUE?

A. OH YES, CHANGED VENUE TWICE, WELL, WE LET HIM ELECT VENUE IN THE FIRST INSTANCE IN LIVE OAKS RATHER THEN COLUMBIA, BECAUSE HE WAS CHARGED WITH THAT CRIME, WAS COMMITTED IN BOTH COUNTIES, AND HE HAD THAT ELECTION, HE MADE THAT ELECTION INITIALLY.

WE TRIED TO START THE TRIAL IN SWANEE COUNTY AND LIFE OAK, AND ON DEFENSE MOTION FOR CHANGE OF VENUE WE DID MOVE IT THEN TO ORLANDO.

Q. I WANT TO CHANGE PACES A LITTLE BIT, YOUR HONOR.

DID YOU EVER, OBSERVING MR. BUNDY, NOTICE ANY DRASTIC UNUSUAL MOOD SWINGS ON HIS BEHALF?

A. NOT AT ALL. OF COURSE AS I RECITED THAT ONE INSTANCE HE WAS VERY UPSET AT THE JURY SELECTION PROCESS, AND WAY IT WAS PROCEEDING, BUT OTHER THAN THAT I DIDN'T. I SAW HIM WHEN HE LOOKED FATIGUED, BUT I AM SURE IF I LOOKED IN THE MIRROR I SAW THE SAME THING AND IN ALL THE LAWYERS.

Q. DID HE EVER APPEAR HYPERACTIVE, UNABLE TO REMAIN AT ONE PLACE PLACE AT COUNSEL TABLE?

A. IN NEVER ANY OF THE FIVE WEEKS OR THE OTHER OCCASIONS I SAW HIM HE APPEARED TO BE NERVOUS OR AGITATED OTHER THAN THAT INSTANCE.

Q. DID MR. BUNDY'S SPEECH EVER APPEAR TO BE EXTREMELY RAPID?

A. NOT THAT I RECOLLECT.

Q. MR. BUNDY EVER MAKE UP WORDS?
A. I DON'T REMEMBER ANY INSTANCE OF THAT.
Q. DID HE EVER GO INTO LENGTHY RHYMING OF WORDS OR SENTENCES?
A. NOT THAT WAS BROUGHT TO MY ATTENTION, I HAVE NO RECOLLECTION OF THAT EITHER.
Q. DID HE EVER APPEAR UNUSUALLY ELATED OR GRANDIOS IN HIS APPEARANCES BEFORE YOU?
A. NO. I NEVER WITNESSED ANY EVIDENCE OF THAT.
Q. WOULD YOU CHARACTERISE MR. BUNDY'S SELF ASSURANCE?
A. I WOULD CONSIDER HIM TO BE, TO HAVE BEEN A VERY SELF ASSURED PERSON. I THINK IT WAS BASED ON LARGLY HIS KNOWLEDGE OF THE LAW, WHICH HE DEMONSTRATED FROM TIME TO TIME, AND I THINK THAT GAVE HIMSELF ASSURANCE WHICH SHOWED.
Q. MR. BUNDY'S DID NOT TAKE THE STAND AND TESTIFY DURING THE TRIAL, DID HE?
A. NO. HE DID NOT.
Q. HE DID HOWEVER APPEAR BEFORE THE JURY AS AN ATTORNEY AND MADE ARGUMENTS?
A. YES.
Q. YOU FEEL THAT MR. BUNDY WAS MOTIVATED TO HELP HIMSELF DURING THIS TRIAL?
A. DEFINITELY.
Q. COULD YOU GIVE ME AN EXAMPLE OF THAT?
A. WELL, BY THE PARTICIPATION HE MADE IN THE ARGUMENTS,

AND THEORIES AND IDEAS THAT HE PRESENTED IN SEVERAL OF THESE ARGUMENTS. HE WAS WELL AQUAINTED WITH THE LEGAL PROCEDURE. I REMEMBER ONE INSTANCE WHEN THE CASE EVIDENCE HAS BEEN CLOSED, AND HE MADE THE ARGUMENT FOR ENTRY OF JUDGMENT OF ACQUITTAL, AND HE DID A VERY GOOD JOB OF THAT, RAMBLED A BIT, BUT I HEARD LAWYERS RAMBLE A LOT MORE AND HE DID A GOOD JOB.

AND ANOTHER, ALSO I REMEMBER WHEN WE DECIDED TO HAVE THE JURY DELIBERATE IN THE COURTROOM, AND BECAUSE OF THE NUMBER OF EXHIBITS, BECAUSE SOME OF THE WOMAN WERE ALLERGIC TO SMOKE, SO WE DECIDED TO SEAL OFF THE COURTROOM AND LET THE JURY DELIBERATE IN THE COURTROOM ITSELF. AND AFTER THAT WAS ANNOUNCED I ASKED WAS THERE ANY OBJECTION TO IT. HE SAID HE HAD NO OBJECTION, BUT HE MADE I THOUGHT A LOGICAL SUGGESTION THAT I HAD NOT THOUGHT, TO BE SURE THE PHONE IS DISCONNECTED, WE HAVE A BAILIFF FOR EVERY DOOR, AND SO HE WAS CONSTANTLY AWARE OF AND THINKING OF HIS WELEFARE AND PROTECTING IT HIMSELF.

Q. TOWARD THE END OF THE TRIAL, DID THE DEFENSE RAISE A MOTION FOR MISTRIAL?

A. THEY MAY HAVE, BUT I DON'T REMEMBER THAT OR CIRCUMSTANCES OF IT. I DON'T REMEMBER.