The matter hereon captioned was conducted at Winston-Salem, Forsyth County, North Carolina, commencing at 2:06 o'clock p.m. on Friday, the 28th day of March, 1986.

APPEARANCES

Bryson A. Stuart  
City Manager  
City of Winston-Salem  
Winston-Salem, North Carolina 27102

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(Other appearances as indicated herein)

Cathy P. Greene, CVR  
Certified Verbatim Reporter
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*Copy* 3-28-86
Friday, March 28, 1986

(2:06 o'clock p.m.)

MR. STUART: This will be an administrative proceeding. I am Bill Stuart, City Manager.

Just a point concerning procedure, it is being recorded. As I understand it, we are going to proceed under the formal rules, which means that you all have the opportunity to call anyone you want, have them sworn, have them offer any information that you want entered into the record for this proceeding.

Normally what I would do would be to ask the department to present information, and then following the presentation of information by the department, then the employee would present their information.

What works best is that if the department is allowed to complete the presentation of their information, I may have a question or two, but what I find sometimes is that you all will hear something that you don't like or that you object to or you disagree with.

If you can save up your questions, then you would be given an opportunity to question the chief on any points that you have, and then after that you would present your information.

MR. CRUMPLER: In response, could I say this?
There are two possible forms of evidence that we may likely would like to produce, one of which is one or more SBI agents who also investigated this who are not available this afternoon for a hearing. If it should appear that they are essential witnesses, I may later request an opportunity to offer those. Even if we have to continue it, I would make that request.

Second, there is a letter or letters that we are advised written by the district attorney to the chief or to the police department. I believe it's in some of these records of investigation, and we would like that available. The chief may have a copy of this, but we would like it in the record.

Are you aware of a letter that the district attorney has written? And then I'm advised by him that he wrote a letter requesting that an officer be assigned to this case under his supervision. And as long as it's in the record or available to us, and I believe it is, at some point in time.

MR. STUART: I don't know if it's in the record. I guess the record is whatever gets established in this hearing.

MR. CRUMPLER: Uh-huh, uh-huh.

MR. STUART: But if I understand the letter you're talking about, that would certainly be
available.

MR. MASTEN: That should be a part of the report that you did in November of last year.

MR. CRUMPLER: All right, so long as we can have access to that and offer it into evidence if it becomes essential, and I wouldn't perceive any problem with our getting that even if we put it in at a later time so long as we know what was in the letter.

MR. STUART: Uh-huh, all right.

MR. CRUMPLER: Could we at this time make a statement in the record in proceeding?

MR. STUART: Uh-huh.

MR. CRUMPLER: We first -- myself, representing Mr. Daulton, had requested a formal hearing and at the time we requested -- we stated that we did not believe that the city manager would be in a position to be a disinterested hearing officer.

We cite as a reason for this is that at the direction of the board of aldermen, the city manager has conducted his own investigation into the very facts of this case and feel that that would within itself necessarily disqualify him as acting as a disinterested hearing officer.

We also would request that the hearing be public. We don't care to be heard further on either one of those
and simply put in the record those requests.

MR. STUART: Okay, we will proceed, then. I will go ahead and hear this.

Further, I would not elect to make it a public hearing. Therefore, at this time, Chief, if you are prepared would you go ahead and present your information.

MR. MASTEN: Okay.

In a disciplinary action taken by the police department on February the 24th, 1986, Officer J.I. Daulton was charged with a violation of Winston-Salem Police Department rules of conduct 1.2.1 titled unbecoming conduct, and rule 1.2.3 titled unsatisfactory performance.

Circumstances of the incident specifically were that Officer J.I. Daulton gave deceptive testimony on two occasions as recorded on pages 1,085 and 1,409 of a court transcript during the trial of Darryl Hunt.

MR. STUART: 1,085 and 1,409?

MR. MASTEN: 1,085 and 1,409 of the court transcript. Can you hear okay?

As the consequences of the ---

MR. STUART: --- Is this under 1.2.1?

In other words, you mentioned two separate ---

MR. MASTEN: --- Separate -- there are two separate rules of conduct that are charged, a violation of two separate rules of conduct, 1.2.1, which is titled
unbecoming conduct, and 1.2.3, which is titled unsatisfactory performance.

MR. STUART: I understand that. I was just wondering when you indicated as to deceptive testimony whether it was relating specifically to 1.2.1.

MR. MASTEN: I'll elaborate on that a little bit later.

MR. STUART: All right, go ahead then.

MR. MASTEN: Okay, as a consequence of the disciplinary action taken specifically was that effective March the 3rd, 1986, Officer J.I. Daulton was demoted from police officer, pay range 22, to public safety communications operator, pay range 20, and transferred to the communications section of the police department.

Now, in elaborating on that in more detail, I'll say these things, that Officer J.I. Daulton testified during a murder trial in June of 1985. Darryl Hunt was charged with the murder of Deborah Sykes. During this trial, Officer J.I. Daulton was cross-examined by defense attorney Mark Rabil. The following questions and answers are copied verbatim from the trial transcript.

A quote from Mr. Rabil, what was the reason for the long delay? A quote from Mr. Daulton, Mr. Weaver works a midnight shift and I work primarily a day shift and I stated to him as we got on up closer to the trial
date I would let him view an in-person line-up.

Another quote from Mr. Rabil, and that — was that is the only reason you didn't have him view an in-person line-up earlier than that? A quote from Mr. Daulton, yes, sir.

Comment from me, this answer was not accurate and Officer Daulton knew that it was not accurate when he answered. Witness Roger Weaver had asked Officer Daulton to allow him to see Darryl Hunt in person in September of 1984. Weaver was allowed to view — to view Hunt in a line-up in May of 1985. This was eight months later.

Concerning his contacts with Roger Weaver, Officer Daulton stated to Chief Masten during an interview on February the 7th, 1986, that, and I quote, we stayed in probably constant contact with him as far, and I say constant contact, we would probably be in touch with him at least once every other week.

We kept in touch with him and Holt both and the district attorney's staff, Mr. Reingold, and myself set up appointments to go up to the Hyatt House and talk with both of these individuals. Sergeant Mason and myself both set appointments to go talk with them.

And then on one occasion Mr. Tisdale and Mr. Lyle and Mr. Reingold and myself set up an appointment to go up there late one night and talk with them because both

* Copy *
individuals came in at 11 o'clock at night and worked till seven in the morning. And we went up there one night at 11 o'clock and talked with both of them prior to coming on work.

According to this statement, conflicting schedules were not a problem. Mr. Weaver, according to Officer Daulton, viewed a line-up and identified Darryl Hunt on a Monday during May of 1985. Mr. Weaver had been off work the weekend before that Monday. He had been off each weekend from September 1984 until May of 1985.

Officer Daulton indicated during the interview with Chief Masten that the line-up could have been conducted on any Monday between September 1984 and May of 1985.

There were reasons why the line-up was delayed from September 1984 until May of 1985. During the interview with Chief Masten on February the 7th of 1986, Officer Daulton stated, and I quote, the district attorney's staff wanted to talk with Mr. Holt further -- or not Mr. Holt, but Mr. Weaver, excuse me. They wanted to meet with Mr. Weaver and Mr. Holt.

They were under the assumption, and I've stated earlier, that even if Mr. Holt could identify Hunt that he wouldn't. And their basic concern was trying to keep, you know, Weaver and Holt together and that hopefully perhaps
the pressure, the fact that Weaver was going to identify Hunt, that might have some bearing on Holt maybe changing his mind. And if Holt could identify him, maybe he would but, you know, I don't really understand, you know.

But that was part of the thing, and the fact, too, that Mr. Lyle wanted to get with Mr. Holt and Weaver and see what they would say. And also Mr. Reingold did some research and we got with both of them and more or less see what they would testify (unquote).

And during the interview with Chief Masten on February the 7th, 1986, the following exchange occurred between Officer Daulton and Chief Masten.

"Chief Masten; and I quote, so the district attorney, everybody concerned, knew that as soon as the line-up was conducted that Weaver would -- would probably have some contact with the defense attorney, the representative (unquote). And a quote from Mr. Daulton, that is possible.

Masten (quote) there has been some other contacts -- there had been some other contacts with other witnesses, hadn't there? Daulton, there had been, yes, sir.

Masten, practically all of them that they knew about? Daulton, approximately all of our witnesses that were used by the State had been approached by other people.

Masten, now, wasn't that -- wasn't that the
basic reason why the -- that thing was postponed so long? Daulton, probably, yes, sir.

Masten, it really was, wasn't it? Daulton, it was part of the strategy. It was one of the reasons (unquote).

In reference to the district attorney's strategy during the trial as it related to the delay in allowing witness Weaver to view a line-up, the following exchange occurred between Officer Daulton and Chief Masten.

Masten, those were the reasons you didn't want to discuss in court -- didn't want brought out -- now the district attorney didn't want it brought out. Daulton, probably -- probably not, no, sir.

Masten, no, he didn't want it brought out. He didn't want the one-four brought out unless it had to come out. Daulton, yes, sir.

Masten, he didn't want anything detrimental to the prosecution's case to be made available to the jury or to the court, did he? Daulton, no, sir.

Masten, that was his strategy. Daulton, well, I wouldn't say detrimental as a word. I would say confusing (unquote).

Officer Daulton's statements during an interview with Sergeant -- Sergeant Haire on January the 22nd, 1986, indicated that he was aware of the district attorney's
strategy of keeping anything detrimental to the State from
the court.

Sergeant Haire is an investigator in the police
department's internal affairs division.

Haire (quote) okay, on this next question -- and
that was -- that is the -- and that was -- was that -- is
the only reason you didn't have him view an in-person
line-up earlier than that and your answer was yes, sir.
Is there any reason why that you didn't explain further or
in regards to that question (unquote)?

Daulton, well, no, I just felt that it wasn't
any need to go into any great detail as to the reasons
behind this and that the discussions that I had between
the district attorney and myself that we felt that these
did not need to be brought out in court, that all of these
discussions and preparations were part of the initial
prosecution set-up of the case (unquote).

Another example of the district attorney's strat-
ey of keeping detrimental testimony for the prosecution
from the court is contained in another exchange between
Officer Daulton and Chief Masten. On page 38 of the
interview transcript the exchange occurs.

Daulton, I talked with them about the piece of
paper and we discussed the matter, Richard Lyle, Bill
Reingold and Don Tisdale. We all discussed the matter.
And someone in that meeting stated -- and I'm thinking it was Tisdale, but I cannot be real sure -- stated that it would be confusing to the jury to bring that out, that he felt like it was confusing enough to us and therefore, if we didn't have to bring it out not to bring it out.

And he -- and he says, when I ask you from the stand, he said, just don't mention the piece of paper. And -- but he said if that question -- if they question you on cross-examination, then you'll have to. And that's what they did.

Masten, okay, do you remember what they told -- what you testified to? It would have been on direct examination when you were asked about the line-up when Hunt was identified by Gray. Daulton, yes, sir.

Masten, what was it? Daulton, it -- on direct examination, I think they asked me the instructions that I gave Mr. Gray. And I'm thinking I testified that we went up on the elevator and I told him to remember a number and that to let me know what the number was.

Masten, tell you what the number was? Daulton, yeah.

Masten, okay, at that point in time were you following Tisdale's instructions?

Daulton, the instructions that I had were not really instructions. They were more suggestions, that if
suggesting:

-- you know, if you could stay away from the matter of the piece of paper, you know, to try to do that. But if I was asked directly about the slip of paper -- you know, to testify to the fact that we had that piece of paper (unquote).

It is apparent that Officer Daulton was well aware of the district attorney's strategy of avoiding disclosing anything that -- that was detrimental to the prosecution's case. He admits to testifying consistent -- consistently with that strategy.

He did this while knowing that his role as a witness was to tell the truth and nothing but the truth.

Consistent with the district attorney's strategy, Officer Daulton purposely avoided -- avoided revealing on direct examination that he had instructed witness Johnny Gray to use a pencil that Daulton furnished him to write the number of the person in a line-up Gray was viewing. This was done because Gray had written two numbers with the pencil instead of one number as he had been instructed to do. Disclosure of the two numbers would have been detrimental to the prosecution's case.

While testifying on cross-examination concerning why a line-up viewing was delayed for eight months, consistent with the district attorney's strategy, Officer Daulton furnished a reason that was not a reason while
fully comprehending the real reasons for the delay. When asked by the defense attorney whether the reason he had given was the real reason, Officer Daulton answered, yes, sir. He answered yes when he knew that the accurate answer should have been no.

Officer J.I. Daulton's performance is evidence of violation of two rules of conduct of the Winston-Salem Police Department, rule of conduct 1.2.1, unbecoming conduct, and rule 1.2.3, unsatisfactory performance.

MR. STUART: All right. Now, are you going to provide me with a copy of that?

MR. MASTEN: Yes, sir.

MR. CRUMPLER: May I also have a copy of that?

MR. STUART: (Affirms)

MR. MASTEN: And this is a list of our rules of conduct. On page four you will find the two that -- I just furnished the city manager with the rules of conduct for the police department.

MR. STUART: Do you have an extra set?

MR. MASTEN: Uh-huh. I've made some marks on the back of this one.

MR. STUART: Okay, thank you. Okay, do you have any other comments?

MR. MASTEN: No, sir, I don't.
MR. STUART: Okay, at this point, Mr. Crumpler, you and your client are ---

MR. CRUMPLER: --- Thank you.

MR. STUART: --- Available to pursue your points.

EXAMINATION

BY MR. CRUMPLER:

Q. Chief, I note in the allegations and charges brought against Mr. Daulton that you use the word that he gave deceptive testimony on two occasions.

Now, my first question is, is that the reason and the only reason for the disciplinary action that was taken ---

A. The ---

Q. --- That you've shown on the disciplinary report.

A. No. The combination of testimony itself plus the -- literally becoming a member of the prosecution's team and -- and plan -- planning that kind of approach in testimony -- in testifying.

Q. So you say in addition to what you have here that what you've charged Mr. Daulton with that there were some other reasons which you didn't state and they were that he became part of the prosecution's team. Am I repeating this correctly?
A. Yes, sir, that's correct.

Q. Well, is there any reason why you shouldn't have put that on this to start with so he could -- in preparing his defense to this would have known that?

A. Umm, any reason why I shouldn't ---

Q. --- Why, if that's part of the reasons that you've used to demote him, don't you think you should have let him know -- have known that reason also?

A. I explained that to him during the disciplinary hearing I had with him on the 24th.

Q. I believe the district attorney wrote and asked that someone be assigned to his staff to investigate this case, did he not?

A. Yes, sir, he did.

Q. And that was a written letter, and I've asked to see that letter and I assume that you will make that available to me?

A. Yes, sir, I will.

Q. And in response to that written request, Officer Daulton was assigned to his office, wasn't he?

A. Yes, sir. He was assigned not to his office but to -- to assist the district attorney's office in following up on the investigation of the -- in the Sykes murder case. Yes, sir.

Q. Now, the district attorney is the judicial -- or
he is the officer of the State that is in charge of the whole prosecution, isn't he?

A. I understand that, yes, sir.

Q. And also he's in charge of the investigation, to give directions to the officers who investigate a case, by law?

A. No, not to my knowledge.

Q. You don't understand that?

A. No, sir.

Q. Well, you have yourself been involved as an investigative officer in capital cases, haven't you?

A. Yes, sir, I have.

Q. Isn't it routine and customary that the district attorney will tell the investigating officer what he needs to prove and assign individual tasks to various officers to investigate and produce evidence of that if they can find it?

A. Working in cooperation with the district attorney we do usually follow the direction that he recommends where follow-up is concerned. Yes, sir.

Q. And in this case, Officer Daulton was specifically told that he could not be involved in other cases of magnitude, that he had to be available within 30 minutes' request of the district attorney ---

A. --- Any ---
Q. --- Isn't that correct?

A. Any time that he was assigned to work in cooperation with the district attorney's office -- I'm not sure about the exact language that was used in our directive, but it was -- it was very close to that. Yes, sir.

Q. And he was told and understood that he was to await call and to investigate whatever they told him to investigate. That's correct, isn't it?

A. Yes, sir.

Q. And he really was the only officer that stayed involved in that case throughout the entire case, wasn't he?

A. Yes, sir, full time.

Q. Now, criticism has been brought, has it not, because there should have been more than this officer involved in a case that complex? Isn't that correct?

A. There were more officers involved than -- than just one during the investigation of the case.

Q. Well, was there any officer who was primarily assigned to that case throughout the case other than Officer Daulton, of your knowledge?

A. Well, that's our basic assignment policy. One officer is assigned primary responsibility for an investigation. But when it's deemed necessary, either because of a request made by the officer or at the direction of that
officer's supervisor, other officers will also be working on the case and might receive their directions from the supervisor -- the same supervisor that supervises the primary investigator.

Q. I notice you state that the officer gave deceptive testimony.

Now, is it your contention that his testimony was deceptive or untrue?

A. Untrue.

Q. Well, if it's untrue, it would be perjury, then, wouldn't it?

A. Not necessarily.

Q. If you testified under oath to something that was untrue, that would not be perjury?

A. I'm not really sure whether it would or not, Mr. Crumpler. I've -- I've thought about that and done some research on it but I'm not sure. There are certain elements that have to be proved to prove perjury.

Q. And would you tell us why you didn't then state in this disciplinary report that he testified untruthfully, not deceptively?

A. Well, because it was deceptive testimony, in my opinion.

Q. Was it true deceptive testimony or untrue deceptive ---
A. --- Untrue.

Q. Well, let's go back to the reason that he gave for not having a line-up at some sooner time than he had. First, do you know who really made the decision of when the line-up would be held?

A. As I understand it, the -- the primary decisions were made by the district attorney and his staff.

Q. And you don't know whether they ever even told him what were the bases of their decision, do you?

A. Umm, well, some of the reasons are cited here in the -- on these pages.

Q. Would you be surprised if the district attorney testified that most of the reasons of his decisions he didn't discuss with the officer, period?

A. I wouldn't be surprised at anything the district attorney testifies to.

Q. Well, now is it the district attorney that you're criticizing or is it Mr. Daulton?

A. No, sir, no, sir.

Q. Now, Mr. Daulton stated the reason he didn't have it earlier was because -- cited as a reason because there was a conflict between the night and day shift, didn't he?

A. That's right.

Q. Well, that is true, isn't it?
A. Day -- he was working primarily a day shift and the witness was working a night shift. Right.

Q. So that is a true reason, isn't it?

A. I don't think so. I don't believe so. He had no problem ---

Q. --- Well, that fact is true, isn't it?

A. But the man was off during the day every day, Mr. Crumpler. He was at -- he was at work at night and at home during the day.

Q. Well, whether he ---

MR. STUART: --- Excuse me.

MR. CRUMPLER: Excuse me.

MR. STUART: I think all he's asking is it a fact that they did work separate shifts.

THE WITNESS: They did, yes, sir.

MR. STUART: Different shifts.

Q. (Mr. Crumpler) And that testimony then would have been true, wouldn't it?

A. That they were working different shifts ---

Q. --- Different shifts.

A. --- Yeah.

Q. And if he assigned that as the reason that would have been a true reason, wouldn't it?

A. If that -- if that was his reason that would be a true reason.
Q. And if the district attorney had some other strategy, whether he knew or expressed that to Mr. Daulton, you are not aware of it at this time?

A. It's in -- in his statement -- in Mr. Daulton's statement that he did express those reasons.

Q. The district attorney did?

A. And his staff. Yes, sir.

Q. But you don't know whether he expressed those to him after he was investigated or whether he expressed them to them before he tried the case, do you?

A. It's my understanding that they were expressed to him during the time that -- that there was a delay in the -- the line-up.

Q. If ---

A. --- That would have been between September, I believe, of '84 and May of '85.

Q. Well, if that were not a correct fact, then, that would substantially change your position in this matter, wouldn't it?

A. Uh-huh, yes, sir.

Q. Now, let's go over to the testimony -- I believe this is on page 1,085 and I'm not reading from this -- but essentially what you took issue with him in that testimony was concerning a description of how an identification occurred. Isn't that correct?
A. (No response)

Q. Just basically the officer testified that he had told a witness as they rode on an elevator to observe some people who would be holding numbers and then when they got to the bottom of the elevator to tell him the numbers of any persons that he could identify.

Now, I'm not reading that verbatim, but is that essentially what you remember being on page 1,085? And if you would like to read it, I'll read it directly to you.

A. Do you have the transcript?

Q. Yes, sir, I have. Let me just read it to you.

And I'm asking you now -- my question is to identify this as the thing that you took issue with concerning his testimony.

Answer, I told him we would ride up on the elevator, that he would look at some people standing in a straight line, they would all be holding numbers.

If he saw someone that he recognized or saw someone he saw the morning of August --- to remember that number -- we'd go downstairs and tell me that number.

Now, is the fact not true of the problem that you had concerning that testimony was that it also involved writing this down on a sheet of paper and that this answer didn't state that it was to be written down on a sheet of paper?
A. The instruction he had given him was to write
the number on a piece of paper.

Q. And that one of the district attorneys had
stated that he wanted to tell the truth but to not mention
the paper unless somebody specifically asked him?

A. Yes, sir, uh-huh.

Q. Now, the fact was he was specifically asked on
cross-examination ---

A. --- Yes, sir.

Q. --- And gave a truthful answer, didn't he?

A. Yes, sir.

Q. Told it just exactly the way it's in your file?

A. (Witness moved head up and down)

Q. And the issue you take was that he didn't
volunteer it as a part of the district attorney's ques-
tions but answered truthfully when he was specifically
asked that question?

A. No. My issue is -- the issue that I have, Mr.
Crumpler, is that he was following the district attorney's
instructions.

Q. Chief, isn't that the case in every trial that
every lawyer as a matter of routine and approved practice
will limit their questions to that part of the evidence
they want to prove and leave the other to be brought out
on cross-examination by their opponent?
A. The prosecution or the defense -- they absolutely will -- will try to present the evidence in the best light for their side. Yes, sir.

Q. And that's the district attorney who is framing and determines how to limit or how far to go with his testimony or the defense lawyers or whomever are offering the witnesses, leaving under our judicial system the right of the other party to give answers to whatever they want to probe into?

A. Yes, sir.

Q. And your record and the transcript indicates that one of the defense lawyers specifically questioned Mr. Daulton if this wasn't written down and he answered it was. And his answer was truthful as was his answer truthful to the first question, wasn't it?

A. Yes, sir, uh-huh.

Q. Now, I'd like to go a little further now and start back earlier in this investigation.

This very matter has been investigated a number of times, hasn't it, this particular case, including the SBI making an investigation?

A. Now, by -- you're talking about the Sykes murder investigation?

Q. The Hunt case has been investigated by a number of agencies?
A. By the police department originally.

Q. Also the SBI investigated it, didn't it?

A. That's in process now. The report ---

Q. --- Well, I want to ask you if the SBI didn't tell you that Officer Daulton had done a very good job in the case and they saw nothing wrong with his performance in the case?

A. No, sir.

Q. Did you ever ask them this?

A. No, sir.

Q. Have they ever made any statement to you about whether or not they had any problems with his performance in the case?

A. No, sir.

Q. Have they ever expressed to you that they had any problems with his conduct in the case?

A. No, sir.

Q. And they have been investigating for how long?

A. Umm, a month and a half, two months.

Q. Your procedures manual requires, does it not, sir, that if he is going to be either demoted or suspended or a disciplinary action concerning his employment is going to follow that he first has to be notified and read a statement of charges, doesn't it?

A. (No response)
Q. Doesn't your procedures manual require that the officer be notified and read a statement of charges or any charges that are going to be brought against him concerning

A. --- If any disciplinary action is going to be taken, yes, sir.

Q. All right. Now, this was investigated first by Mr. Stuart's office, was it not? And I ask you were any charges brought against him at that time?

A. No, sir.

Q. Then you had an internal investigation, did you not, from the police department of this?

A. Yes, sir.

Q. And several officers including, Officer Haire and some others, questioned him extensively about his involvement?

A. Yes, sir, they did.

Q. And they at that time saw nothing wrong with what he had done, did they?

A. (No response)

Q. I'll ask you if they didn't report back to you that they saw nothing wrong with what he had done?

A. They -- they didn't reach conclusions. I -- I -- I did that.

Q. Well, were any charges brought against him then?
A. No, sir.

Q. Then later you sent them back to ask some further questions about what had happened?

A. Yes, sir.

Q. At this time they came back, and at that time did they ever say that they saw anything themselves wrong what he had done?

A. Again, they don't reach conclusions.

Q. Were any charges then brought against him?

A. No, sir.

Q. Were any written charges brought, of your knowledge, and was he read any statement of charges?

A. None before the 24th of February.

Q. And then he was asked to come to your office for your interview personally with him, wasn't he?

A. Yes, sir.

Q. Did you read a statement of charges against him at that time?

A. No, sir.

Q. And the first time, of your knowledge, he knew anything about this or had any statement of charges brought against him was when he received your report dismissing him or decertifying him as a police officer?

A. On the 24th of February.

Q. And none of your procedures were followed in his
case, were they?

A. All the procedures were followed.

Q. Will you tell us first, was he ever read a statement of charges?

A. Not until the 24th.

Q. Well, on the 24th ---

A. --- No ---

Q. --- Was he read a statement of charges?

A. Yes, sir, he was.

Q. Do you have a copy of that?

A. You have it. You have everything that -- that was made available to Mr. Daulton.

Q. Well, the only thing that I have, sir, is the order showing that he's dismissed. Was there anything other than that given before that time showing that he was decertified?

A. No, sir.

Q. That doesn't follow your procedures manual, does it?

A. Yes, sir, it does.

Q. Did you ever have an occasion to discuss this with the district attorneys who were prosecuting to find out what they in fact told the officer, or to evaluate his performance?

A. The district attorney and members of his staff
were interviewed by investigators in the internal affairs division, yes, sir.

Q. Do you know which officers investigated him?
A. Which?

Q. Yes, sir. Investigated the district attorney?
A. There were three sergeants who did the interviewing and I'm not sure, Mr. Crumpler, which ones interviewed which members of the district attorney's staff.

    That's Sergeant Harris, Sergeant Walker and --
    and Sergeant Branscome.

Q. For the record and for Mr. Stuart's information, Chief, tell us what this man's past record has been. How long has he been a policeman and what is his ---
A. --- It's approximately 20 years -- between 19 and 20. And he's been a very satisfactory employee during that period of time.

Q. And of your knowledge, he's been a good officer, hasn't he?
A. Yes, sir.

Q. Does his record indicate any sort of disciplinary actions of this kind previously?
A. I don't really have that information with me. I don't recall anything at all. If there have been, they're -- they've been sometime in the past.

Q. And if it had been anything serious, you would
have an independent memory of that---

A. --- Yes, sir, yes, sir.

Q. --- Because you've been a fellow officer with him during all that period of time, haven't you?

A. Yes, sir.

Q. And of your personal knowledge, he has never been involved in anything involving moral turpitude or any misconduct or unsatisfactory performance?

A. No, sir.

Q. How much training did he have as an investigator particularly in the field of homicide?

A. Whether he had any at all I'm not --- I don't recall right now whether he's ever had any specific training -- formal training other than experience.

Q. All right, and he was relatively short on experience in this field, wasn't he?

A. In a homicide investigation, yes, sir. But he had been assigned to the investigation bureau for several years.

MR. CRUMPLER: Excuse me just a moment.

(Brief recess)

MR. CRUMPLER: I have no further questions of the chief, Mr. Stuart.

MR. STUART: Okay.

MR. CRUMPLER: If you'd like, we can
offer evidence if he has no further evidence.

MR. STUART: Do you have any comments or other information you want to present?

MR. MASTEN: No, sir.

MR. STUART: Okay, and so what you've just concluded is your ---

MR. CRUMPLER: --- Cross-examination of the chief.

MR. STUART: Okay, this is an administrative hearing, and I'm not sure -- you call it cross-examination?

MR. CRUMPLER: Right.

MR. STUART: Okay, then at this point you can go ahead and proceed with your presentation.

MR. CRUMPLER: Have you been sworn, Mr. Daulton?

MR. DAULTON: Yes, I have.

EXAMINATION

BY MR. CRUMPLER:

Q. First, if you will, tell Mr. Stuart and for the record your full name and your ---

A. --- James I. Daulton.

Q. How long have you been a police officer, Mr. Daulton?

A. Prior to March the 3rd, approximately 19 and a
half years.

Q. Tell us what experience you've had as a police officer.

A. I worked in the patrol division for approximately 10 years. I was transferred to the traffic enforcement division, motorcycle squad, for approximately five years, and worked in -- in the investigative services bureau for approximately four years.

Q. What experience either ---

MR. STUART: --- Excuse me.

MR. CRUMPLER: Excuse me.

MR. STUART: Where were you between patrol and investigation?

THE WITNESS: In the motorcycle squad.

MR. STUART: Okay, and that was for how long?

THE WITNESS: About five years.

MR. STUART: All right, thank you.

Q. (Mr. Crumpler) Tell us what either experience or training you have in investigation and particularly investigation relating to homicide.

A. I had been in the investigative services bureau for approximately two and a half years and was transferred to the crimes against persons squads which handle homicide investigations.
Q. And how long ago was that?

A. I was transferred to that squad in approximately May or June of 1984. I received the Sykes case in August the 10th of 1984.

Q. Have you ever been in charge of a capital case of this magnitude prior to this time?

A. I have not.

Q. Now, when were you first assigned to this particular case?

A. On the day that it occurred, August the 10th, 1984.

Q. What time was the alleged murder and when did you first learn of it and when did you first become involved?

A. I received notification from Sergeant Mason to investigate a missing persons that had been phoned in to the chief's office by the editor or managing editor of the Winston-Salem Journal, Mr. Fred Flagler.

Q. Now, were you and some other officers initially involved in the case in conjunction with each other?

A. Yes.

Q. When were you first assigned the full responsibility of the case?

A. On the day that it occurred.

Q. And that ---
A. --- The -- the case was assigned to me and I was assisted for approximately two to three weeks by several other officers.

Q. What became of those officers?

A. They -- as the leads filtered out and at that point then myself and Sergeant Mason and then anybody that I could get to go with me to do certain tasks would -- would handle the investigation.

Q. Were you ever assigned specifically to the district attorney's office or assigned -- given some special assignment related to the district attorney's office in the case?

A. Yes, sir.

Q. Tell us when that occurred and what you understand your assignment to be.

A. In approximately February of 1985 I was notified by Sergeant Mason who had received either a memo or a copy of the letter that had been addressed to the police department by the district attorney. And I was notified at that time that I would be assigned technically to the district attorney's office, however, I would not report up there each day, that I still would report with the police department, that I had to respond within 30 minutes to any request that they should make of me or the police department.
I was assigned minor cases that could be handled over the telephone or cases that appeared at that time would be closed inactive -- just minor investigations, nothing that would involve an indepth investigation of any kind.

Q. Who told you what your assignment was to be?
A. Sergeant Mason.

Q. And was it your understanding the assignment that was coming down from the chief -- or if he were a major at that time -- through the chain of command to you?
A. That -- that was my information, yes, sir.

Q. Thereafter did you receive specific instructions and follow the direction of the district attorney in your investigation?
A. I did, yes, sir.

Q. Did you understand that this was what you were supposed to be doing?
A. Yes, sir.

Q. Did anybody ever correct you and state that that was not what you were supposed to be doing?
A. No, sir.

Q. At any time did the chief or any other person ask you to report to them about the progress of the case?
A. Sergeant Mason stated to me that he wanted to be advised of the developments of the case and that -- just
to keep him apprised of my activities with the district attorney's office.

Q. Did you in fact do that?
A. I did, yes, sir.

Q. Did he or any other person above him ever suggest that you should follow any different procedure than what you were doing?
A. Not to my knowledge.

Q. Do you think you did what they asked you to do properly?
A. Yes, sir, I do.

Q. Now, relating to the page 1,409 of the transcript.

MR. CRUMPLER: Do you have a copy of that, Mr. Stuart?

MR. STUART: No.

MR. CRUMPLER: I think I can remember it so I'll give you -- that's ---

MR. STUART: --- There's 1,084.

Q. (Mr. Crumpler) Now, could ---

MR. STUART: --- Excuse me, Mr. Crumpler. Could we suspend for one minute. I will be right back.

(Brief recess)

Q. (Mr. Crumpler) I'm referring you now to page 1,409 of the transcript of the trial and directing you to
that part of your testimony that the chief has referred to concerning a delay in a line-up of a witness whose name was Weaver.

Now, first, as I understand, you were asked your reason for the long delay in the line-up.

A. Yes, sir.

Q. And that you gave as an answer that you worked on the day shift and he worked on the night shift or vice versa. You did not work the same shifts.

A. Correct.

Q. Now, was that true?

A. Yes, it is.

Q. You were asked -- well, first, as to any reasons that you learned from the DA about any additional reasons he had, did he ever actually discuss the reasons for what he was doing or what he wasn't from time to time with you or did you later learn that when you began to prepare your case for this hearing?

A. We had talked about the -- the case strategy, so to speak, and that they wanted to contact Weaver and so forth. And, you know, the reasons I gave, the -- the shift difference and that the -- you know, I just wanted to wait. I wanted to talk to Tisdale. I just -- I just wanted to wait for the line-up.

Q. And is it your statement that that is a true
statement, what you testified to?

A. That is, yes, sir.

Q. Now, going to page 1,085 of the transcript, and that relates to the line-up of identification of a witness. Now, first, I believe one of the district attorneys discussed their questions generally to you and what your answers would be, did they not?

A. They discussed the questions with me and what information they wanted brought out, yes, sir.

Q. Now, you've had many times through the last 20 years to talk with prosecuting attorneys in cases they were going to try, have you not?

A. Yes, sir.

Q. Did you see any difference in the way they directed you in this case than you would in other cases when they were preparing for their trial?

A. No, sir, I did not.

Q. Were you told to answer that question truthfully?

A. Yes, I was.

Q. And did you in fact answer it truthfully?

A. I did.

Q. When you get to the mention of the writing down something on a piece of paper, did the district attorney tell you he probably would not ask you that specific question and not to volunteer it unless you were specifically
asked but if you were specifically asked to give a truthful answer?

A. That's correct.

Q. Did you follow those instructions?

A. I did.

Q. Did you think you were doing the right thing at that time?

A. Yes, sir, I did.

Q. Do you still think you were doing the right thing?

A. I do.

Q. Were the instructions you were given there different from what other district attorneys had given you when they were preparing cases?

A. No, sir.

Q. Now, I believe you gave an account of the witness riding up on the elevator -- of your instructions and that he was to identify the numbers and then tell you at the bottom of the elevator.

I think that's the account you gave in the transcript, was it not, when he asked you those questions?

A. To remember the number, yes, sir.

Q. Now, were you later specifically asked on cross-examination whether or not this had been written down on a piece of paper?
A. I was.

Q. Did you truthfully answer that that was what the instructions were?

A. I did.

Q. And was that true?

A. Yes, sir.

Q. Now, Mr. Daulton, after this all occurred were you first questioned by the State Bureau of Investigation concerning this case?

A. Not at first, no, sir.

Q. At some time later were you?

A. Yes, sir.

Q. Were you at any time either directly or indirectly criticized about your performance in the case?

A. No, sir.

Q. Were you complimented about your performance in the case?

A. The only statement they ever made to me was they didn't have a problem with me. If there was a problem anywhere it was with management.

Q. And what did they say the problem was with management?

A. They said that they didn't think that enough people had been assigned to the case.

Q. Later, I -- I believe Mr. Beaty with the city
manager's office questioned you about this, did he not?

A. He did, yes, sir.

Q. As a result of those questions were any charges brought against you?

A. No, sir.

Q. Were you ever accused of testifying falsely or deceptively during that investigation?

A. Not to my knowledge. There was some indications made but no formal facts or anything was ever brought out or formally said. There was innuendoes made.

Q. Well, did it relate to this particular testimony?

A. Not to this testimony, no, sir.

Q. Then after that time were you questioned by the internal affairs division concerning your involvement in this?

A. Yes, I was.

Q. Who questioned you?

A. Sergeants Haire, Walker and Branscome.

Q. What did they tell you when they finished questioning you?

A. They -- the last interview I had with them, they stated that they were going to send everything to the chief.

And then I asked them did they see that I had done anything wrong or had they uncovered anything that
bothered them.

They stated to me that they had not uncovered anything that bothered them and they didn't see that I had anything to worry about concerning this case.

Q. Later did they come back and ask you further questions?

A. Sergeant Haire did, yes, sir.

Q. And what did he tell you the reason was for him asking additional questions?

A. He came back and stated that the chief had some questions about certain points in the case and we re-discussed those points at that time.

Q. Were the points the two ---

A. --- Two of them were, yes, sir.

Q. What were you told? Did they ever state to you that they weren't sure what the chief's concern was?

A. Well, I asked them, you know, what the problem was and they said, we don't know. We don't know what the chief is looking for, but we're going to go over them again and resubmit them.

Q. Now, as a result of that were any specific charges brought against you concerning giving deceptive testimony?

A. As -- not -- no.

Q. Were you then later asked to go to the chief's
office for an interview with him?
   A. I was notified to go to internal affairs, that I
      would be interviewed by the chief.
   Q. How much notice were you given?
   A. I was notified that it was going to be one
      afternoon. I think I was notified on a Thursday that it
      was going to be Friday afternoon. Then I was notified
      Friday morning that it had been rescheduled for that morn-
      ing -- Friday morning.
   Q. How much time did you have to discover what it
      was you were going to be questioned about and what the
      purpose of this hearing was for?
   A. Well, I assumed I would be questioned about the
      items that we had talked about previously.
   Q. Now, are you familiar with your procedures
      manual and about what your rights are concerning any dis-
      ciplinary charges?
   A. Somewhat.
   Q. And what is your understanding of your rights in
      that respect? What notice are you entitled to and what
      are the procedures?
   A. Well, my understanding is -- and it's only my
      understanding -- is that if charges are brought against
      you that you have to be taken to internal affairs, read a
      statement of charges and then sign an admonition form.
Q. All right, did that ever occur?
A. I was never read a statement of charges but I did sign an admonition form.
Q. When did that occur?
A. During the interview with the chief.
Q. And during that interview did the chief ever make any statement of charges or did you specifically understand what it was that you were supposed to have done wrong, or what was going on?
A. He asked me about the items that we've covered today, the two items that I was written up for along with, I think, two other items.
Q. And of that meeting -- how long did you know of that meeting before you actually attended that meeting?
A. Probably a day.
Q. I'm asking you about this entire trial now. Was there any place in this trial that you testified either deceptively, of your knowledge, or falsely, of your knowledge?
A. No, sir.
Q. And are you willing to stand by that throughout the entire trial?
A. Yes, sir. During the entire trial I feel that I testified to the best of my knowledge and to the best of my recollection of the facts.
MR. CRUMPLER: I have no further questions.

MR. STUART: It will be assumed that you're through asking Mr. Daulton questions unless you have any questions or comments that you want to make at this time.

MR. MASTEN: Yeah, just one.

EXAMINATION

BY MR. MASTEN:

Q. Mr. Daulton, when you were interviewed by the people in internal affairs ---

A. --- Yes, sir.

Q. --- Sergeants Walker, Branscome and Haire?

A. Yes, sir.

Q. Before you were interviewed each time were you given any kind of -- did you go through any process, any ritual ---

A. --- Yes, sir.

Q. --- Giving you some warnings?

A. Yes, sir.

Q. What were they?

A. I was advised of my constitutional rights as they -- outlined in the Maranda decision.

Q. You were given the Maranda warnings?

A. Yes, sir.
Q. Told that you didn't have to answer any questions?
A. Yes, sir.
Q. Had the right to have an attorney present?
A. Yes, sir.
Q. And so forth. When I interviewed you on, I believe two occasions -- or one occasion?
A. Just one occasion.
Q. One occasion?
A. Yes, sir.
Q. What kind of warning were you given that time?
A. I was given an admonition form by Captain Koontz.
Q. Okay, what's the distinction between the two, an admonition vis-a-vis a Maranda warning?
A. What do you mean by distinction? I -- a Maranda warning would be given -- in my opinion, in a criminal investigation.
Q. And an admonition ---
A. --- And an admonition form would be given in an administrative investigation.
Q. Isn't that the procedure each time an employee is interviewed during an investigation? Either one or the other types of warnings are given?
A. To my knowledge, yes, sir.
Q. Yeah, either constitutional warnings, Maranda
decision warnings or ---

A. --- Or admonition, yes, sir.

Q. --- Admonition. So each time you were inter-
viewed including the time that I interviewed you, one or
the other was given to you?

A. Yes, sir.

MR. MASTEN: Okay, that's all.

MR. CRUMPLER: I have no further ques-
tions.

I'd like to call Mr. Tisdale now.

MR. STUART: Has he been sworn?

MR. CRUMPLER: No, he has not.

I assume you and Mr. Tisdale are acquainted.

WHEREUPON,

the witness, DONALD K. TISDALE, being first duly
sworn to state the truth, the whole truth, and nothing but
the truth, testified as follows:

(3:03 o'clock p.m.)

EXAMINATION

BY MR. CRUMPLER:

Q. Mr. Tisdale, will you state your full name for
the record, please.

A. Donald K. Tisdale.

Q. And you're the district attorney for which
judicial district?
A. The 21st Judicial District.

Q. And how long have you been the district attorney of the 21st Judicial District?

A. Since January 1, 1974. '75, excuse me.

Q. Did you serve in the capacity of a prosecutor at any time before that time?

A. I was an assistant district attorney from September 1968 till approximately two years later.

Q. So you've had approximately 14 years experience as an either assistant or a district attorney?

A. Yes, sir.

Q. And would you tell us through that years of experience what experience you have in prosecuting of capital cases and specifically homicide cases.

A. In that span of time, particularly in the last going on 12 years as chief prosecutor, I've tried probably -- or handled probably 100 cases which start out with the potential of being capital. That is, they're labeled that way but they don't end up that way. Many of them do. I think that I've tried six that have ended up in the death penalty.

Q. Now, I'm referring to the Hunt case specifically. Did you have an occasion to work -- or have Mr. Dculton work with you in some capacity during the prosecution of that case?
A. I did. It was my understanding and it was that he was the primary investigator in that case.

Q. Generally tell us what you recall his involvement being in the case and what his involvement was as the case proceeded through trial.

A. He was the chief investigator, and by that I mean I think he worked in the case himself.

I know there were other people involved in the crime scene and doing other minor details, but he was the officer that was responsible for the case and who did the -- even the leg work.

Q. What other assistance did he have during this period?

A. None, to my knowledge.

Q. Now, would you compare this with other cases that were comparably involved and complex as to the number of investigators you feel a case of that magnitude should have involved?

A. Of course, that is conjecture, but I'll draw an analogy of, you know, last year the Fritz Kleener case which happened in this county, and I worked with the county on that case and they had as many as 14 investigators working full time.

Now, going back over the years both dealing with the County and the City -- and I have made reference to
this at times -- that there were not enough investigators 
on major cases.

I point out that -- and I pointed out from Tom 
Surratt on -- that was the police chief when I took over 
-- that I understood it's not my function to assign man-
power or anything else.

But I did express opinions from time to time 
when it did affect, what I thought, the tryability of a 
case.

Q. Now, did you feel that there was adequate per-
sonnel to investigate the Hunt case?

A. No, I did not.

Q. Did you make this known to the chief or Major 
Surratt, whichever the case was at that time?

A. I did. There was a peculiar circumstance hap-
pening at the time, I believe. And I don't remember the 
exact date that Chief Powell left. But there was a situ-
ation where there were three assistant chiefs and they were 
in the process of changing at times.

I did voice concern and then I wrote -- I 
believe I wrote Major Masten a letter expressing those 
concerns. I felt that I was doing that as a last resort, 
that is, that I would put something like that in writing.

Q. Why did you feel it was necessary to go to that 
extreme measure?
A. I simply was not getting any response, that is, I saw this case as having undercurrents and overtones and sensitivities that I knew were going to come to fruition at some point in time, and the longer we went the more critical they got.

And I had -- I worked with Officer Daulton before, but my main contact with Officer Daulton had been in his capacity as a street officer, that is, as a uniform officer, traffic or otherwise.

And I just had grave concerns that -- that he may be over his head, that is, that he was doing what he could but I was becoming a little -- I was becoming more than a little antsy. I was -- I was starting to hit the panic button, that I thought that -- that there was -- there needed to be more experience there.

Q. In your letter of the date you've described did you make those facts known to Major Masten -- or who is now Chief Masten?

A. Yes. And -- and the peculiarity of it was -- was that I did go ahead and decide to write Major Masten even though I -- I remember that the date of then changing acting chiefs changed right -- right there. And I believe even Major Redd may have been the actual person who was the chief but I knew that I was going to see Major Masten in the next day or two over a victim assistance program
that had nothing to do with any of this. And -- and I did see him after that.

So I went ahead and wrote the letter to him because I knew it would be channeled through the -- to the right people.

Q. As a result of your letter, or shortly after your letter, was someone assigned to work under your supervision concerning this case?

A. After that time -- and I don't know the exact date -- I was contacted and did meet -- and I won't say all exactly who the parties were -- but from time to time the parties were Captain Cornatzer and Officer Sweat, who was a ranking officer, I believe, a major at the time. And so they did meet with me and in fact started setting up like each Wednesday that they would -- started out to be a set thing, that is, each Wednesday that we would meet together and if there was anything that needed to be done then we would talk about it and they would try to see that it was done.

Q. Was Officer Daulton at any time assigned under your supervision, of your knowledge, after that time?

A. I won't say he was assigned under my supervision and -- and I don't know what the police considered. But he was, to my impression, given full leeway, that is, that work on this case, don't let anything interfere, and if
the DA needs something, then ask for it. That was my understanding.

Now, I didn't consider him to be an acting employee of mine or anything. I -- I never considered that. I thought that would be very presumptuous. But I did consider that they had turned him loose full time with no other interruptions.

Q. During this period did he have any other person assigned to assist him from the police department, of your knowledge?

A. I'll say no and qualify that to the extent that it's possible that some point in time if -- if we had to get a line-up together or something that somebody maybe helped him round up a line-up. And I don't even know that to be true.

But to my knowledge, I didn't know of any other officer working the case and I didn't have any contact with them.

Q. Did you and members of your staff on an almost day-to-day basis give him instructions and did he attempt to follow your instructions, of your knowledge?

A. Yes. I -- I assumed the role at that time as far as my office went of assigning two of my assistants to do certain things in the case. We would each make our little shopping list for Officer Daulton and ask for some
accountability of what we asked for.

That is, it may be to go over what witnesses you've talked to, what they've said, whether we need to interview them or not, whether there should be a line-up or not, and umpteen other things.

Q. Now, during this was it customary that you would explain to him your reasons for wanting something or would you simply just ask for it and most often as not not give him a reason for your ---

A. --- No. There are many occasions I did not give it. There was too much at the time -- and -- and this is not pointing to Officer Daulton at all -- but there was too much in the newspaper about the case. I -- I thought it was important I know every little fact about the case because certain things were fitting together which I didn't want to read in the newspaper. And so consequently all I asked of him was that if I asked him to do a task that he would come back and tell me how it was coming along.

Q. Up to the point of trial, tell Mr. Stuart how you felt that he performed his duties, considering his background, experience and the other help that he had assisting him.

A. I felt like that he was doing an -- an exhaus-
tive attempt, that is, as to the number of people con-
tacted and interviewed, as to even the hours put in. I
felt like that they were exhaustive, that is, that I would
find that he would be up before daybreak with the Murphy
witness or the Hooper witness and be sitting and watching
to see every possible person who was even in that part of
town. I remember even at one time I sent him to Florida,
which the police department was kind enough to -- well,
they -- they did anything I asked as far as making those
efforts.

And so I've always found his paperwork to be of
a higher caliber than -- than most officers, that is, from
a literary fashion.

Q. Uh-huh.

A. And so the -- the volume of work was there, and
whatever I asked him to do was there.

Q. Now ---

A. -- Not that I got the results that I wanted
because I don't always get the results I want, but -- but
he did try to comply with whatever request I made.

Q. Now, Mr. Tisdale, for the record, and we're
speaking right now of -- what's today's date?

MR. STUART: Today is March 28th.

Q. (Mr. Crumpler) March 28th, 1986, is the capital
first-degree murder case of Hunt's a pending case?

A. Very much so.
Q. And it very well may have to be heard and retried, or that's a definite possibility ---

A. --- Well, every -- every attempt is being made to -- to see that it's retried or that it's dropped, one or the other.

Q. Are there any reasons why you would have limitations as to what sort of comments you could make about the testimony concerning the possibility of future trials?

A. Yes. I ethically and otherwise, you know -- and when I say otherwise, I'll explain that -- but ethically, with the possibility that it'd be retired, I couldn't comment on any facts which, one, would make me a witness or, two, pick up the newspaper and -- and see where I've expressed an opinion or stake myself out in making myself a witness or to effect the credibility of Daulton as a witness.

Now, I'll even go back to the letter I wrote the chief. That was a letter intended as a -- and labeled as such as a confidential, personal communication. And -- and yet, I find that, you know, I'm having to face that as a potential piece of evidence in a case. And so I don't even think I can rely on the confidentiality, that simply I -- there's certain facts about the case that I could not comment on.

Q. You have had a chance, have you not, at my
request to review the allegations that have been brought against Officer Daulton? That's correct, is it?

A. I've reviewed those two allegations as -- as they were explained to me.

Q. Well, and to refresh your memory, he is charged with conduct unbecoming to an officer and with unsatisfactory performance based on the allegation that on page 1,409 of the trial transcript and page 1,085 of the trial transcript that he gave deceptive testimony.

Now, is that ---

A. --- Yes, sir. I -- I -- I understood -- that was the way it was explained to me.

Q. Right. Now, you ---

MR. STUART: --- Mr. Crumpler, excuse me. There are two people in this room who are lawyers trained in the law and you all just had a conversation that I want to make sure that I understand the point of. And what you did was you asked the district attorney about is there anything about the present status of the case that might limit what he could say with regard to the matter.

Now, in listening to what the district attorney said, am I to conclude that there may be things you might think or feel with regard to this case that you might not be able to talk about? Is that the point of that? I ---
MR. CRUMPLER: --- The reason I ---

MR. STUART: --- Maybe you ought to
answer that.

MR. CRUMPLER: The reason I asked that
question is this. I would like to go through and dissect
piecemeal in the same manner that we've discussed prior to
him coming into this room various questions. He has told
me prior to this time that he has some concern about under
the law how much he can discuss about a pending case.

MR. STUART: Uh-huh.

MR. CRUMPLER: And in my opinion he's
correct as a matter of ethics and also a matter of law.
And I do this as a guideline to give you notice of the
fact that I'm limited as to how much of this I can go in.
I think I can get general answers.

MR. STUART: Okay.

MR. CRUMPLER: But he will have to call
the play as to how far he feels he ---

MR. STUART: --- You're somewhat
limited as to the questions you can ask and he's limited
as to his answers, perhaps?

MR. CRUMPLER: I can ask the questions
but I may not be able to get full answers. And I'm going
to try to be general, as I've said, as a guideline so you
can understand my limitations.
MR. STUART: All right.

Q. (Mr. Crumpler) Now, you have had a chance, have you not, Mr. Tisdale, to review the two pages of the transcript that I have made reference to, have you not?

A. I have.

Q. Now, I want to ask you at this time in reference to those two pages and in reference to all the transcript is there any place -- was there any testimony that this officer gave, in your opinion, which was either untrue or deceptive?

A. No, it was not.

Q. Now, he also had been advised as we went into the hearing that -- and I don't want to misquote the chief and I do stand to be corrected -- that part of the problem that the chief saw was that the officer allowed you to take charge of the case or -- if you will correct me and use your words, chief, I'll -- I'm not misquoting you but I'm not sure I can quote you as you said it -- well, I'll use the word take charge of the case.

Now, is it your understanding that the officer has charge of the way a case will be investigated and tried or does the district attorney?

A. There's no question. I'm going to be in charge of the case, period. That's -- it's never been in ques-

* Copy *
Now, as to how it's investigated, if it's not investigated in a correct manner or the right things are investigated, then it's my duty to see to it that that are.

I have two functions by statute, only two functions. One is to prosecute criminal cases when they're brought and two, to advise the police. And that is not a -- a casual obligation on my part as to the police, nor is it a casual obligation on their part to abide by what I ask for.

If an agency refused to carry out their duty, it's my duty to remove them from that agency, and the law provide for that. It's never been used.

By the same token, most of the time what you'd do is go to another agency, but you'd have to see that those things are investigated. I didn't look at myself and I -- I didn't handle this case any different than I handle any other case, whether it be a murder case or anything else. I sit as an advisory capacity, directing if certain things needed -- that were needed for a prosecution, and so I don't really look at this case as being unusual.

Q. As to the times when witnesses would be interviewed or as to times line-ups would occur or other pre-trial preparation, is it customary that you as a district
attorney in important cases have some control over how the case proceeds as to the timing?

A. Absolutely. In this particular case, it became crucial and it became more frequent simply because there were so many potential witnesses and there were so many potential defendants. That is, there were names thrown around both as defendants and witnesses and it was important that certain things be done, that is, such as line-ups and identification procedures.

Q. Now, in making decisions on timing, was it most likely that you would make those decisions and not even give to the officer the reasons for your decision?

A. Absolutely. You know, dealing with whichever officer you're dealing with, you may deal in a different manner. That is, if it's an officer that I've worked with through a murder case before and I already know there's a basis for understanding what I'm doing, then I may share that.

Dealing with other officers or other situations they're -- they're unique to themselves and I may not sit down and explain one, two, three, pointing again that in this particular case every morning I'd get up and read where something was released to the newspaper. Certain things were released by the police which -- not by Officer Daulton that I could ever say -- but they were released.
And so consequently I didn't consult him as to what order something would be done in nor the significance of it except, you know, I would share certain things with him, but not always.

Q. Now, also in timing as to whether there were any delays in line-ups or other procedures, were you also limited by the fact that you only had one officer in the case that you mentioned that a similar case had had 14 officers in? Were you limited as to how much ground you covered?

A. Oh, absolutely. I could have covered it in -- if I had had two officers, I'd have covered it in half the time and -- and proportionally out, that is, that if there were more people, it would have been done a heck of a lot quicker.

Q. Okay, is it customary and in your opinion in accordance with good ethics and good trial practice to limit your evidence that you are offering, leaving some open to cross-examination if it involves points you don't particularly care to bring out for your opponent?

A. Oh, very often you -- one, you're not going to bring out evidence which might either hurt you or confuse the jury, and very often you'll leave out evidence that you perhaps want brought out on cross-examination as a trial tactic -- call it a set-up -- that is, that defense
lawyers have a bad habit of asking too many questions.

Q. And you would deliberately set them up and leave out a question or some facts to give them a chance to answer it, knowing it's going to be favorable to you when they ask the question? Isn't that correct?

A. Absolutely.

Q. And that's both lawful and in keeping with good trial practice in any court of law, isn't it?

A. Absolutely. Unless you were going to do it by computer, it's just trial tactic.

Q. That's the reason you're taught in law school don't ask the question unless you first know the answer?

A. Unfortunately -- or fortunately, people never learn that, but that is true.

Q. Now, as to questions, part of what Officer Daulton is charged with involves not making a full disclosure of all the facts but waiting until a cross-examination occurred to give truthful answers.

Is that, in your opinion, both lawful and is that a decision for you and not the officer to make?

A. That's something that can very often be a trial tactic, but there were other factors that are in there as well.

One factor is that -- that Officer Daulton was not experienced under that fire, that is, that this was a
critical case and this was a situation in which he -- I
don't -- he had never -- he had never found himself in --
and then quite frankly, a lot of officers -- most officers
had never found themselves underneath that much pressure
in testifying.

And so, very often, they will either be tense in
testifying or they'll just answer the very question that's
-- that's asked and not explain. Witnesses do that all
the time. That is, you try to get them to go ahead and
explain their answers sometimes, but they'll give the
answer to the question that's asked.

Q. Now, in that respect are you expressing your
opinion first that that is the decision that rests solely
with the tryer's job -- either the attorney or the prose-
cutor who's trying the case?

A. You'd like it to be.

Q. It's supposed to be, isn't it?

A. Right. You'd -- you'd like it to be, but you
can't always get your witnesses to testify like you want
them to testify. And you want to say sometime, well, go
on, you know, or -- or explain that 'cause it looks bad
for us, and yet human nature is that they're under a lot
of pressure. In fact it's a lot different being here
answering questions than it is being there asking ques-
tions. And I've been on the witness stand before and it's
a lot different. And I understand that.

But, yes, you -- you go over somebody's testimony beforehand, you determine whether you think they're a good witness or a bad witness. And you may go about your private interview or you may go by that they've testified in a prior trial.

And so particularly if -- if they hadn't testified in a -- in an open, loose manner, giving a good impression, then you will attempt to find out what answers they give. You'll say, now, if they ask you this what do you say, and you say this. And you say, well, the better way to say it might be this and you're saying the same thing so, yes, it is a trial tactic.

Q. Mr. Tisdale, I need to ask these two specific questions. Now, you probably more than any other person know all the facts or most facts concerning this case than any other person probably alive.

A. That's true.

Q. On page 1,085 and page 1,409, was a word of testimony, of your knowledge, that was either untrue or deceptive?

A. No. I would not use that -- either term to reflect that testimony.

Q. All right.

A. And that -- I'll explain that. I don't want to
be — leave that out there. As to the testimony of
Officer Daulton as to why a line-up wasn't given, there
were some reasons that the line-up wasn't given that only
I knew — that were — he didn't enter into.

And so his answer to that question was the obvi-
oun to him, that is, why it wasn't done. I had other
reasons and other considerations why a line-up wasn't done
up to that — up until that time, and many of them were
based on the same information that he had.

Q. And he was sitting there at that time under fire
and under great pressure trying to give the best reason
that he could think of at the time. Now, and the fact was
the reason he gave was true, wasn't it?

A. Absolutely it was true.

Q. Now, let's go to page 1,085 and I'm referring to
testimony relating to the identification of a witness and
instructions that he gave the witness.

Will you tell us what knowledge you have of any
instructions he was given, and first, did he give truthful
testimony, to your knowledge?

A. Yes, he gave truthful testimony.

Q. And was he instructed to tell the truth by one
of your assistants?

A. He was. We were aware of the total procedure
that was done in the line-up. We were aware that Gray had
written one-four in some form or fashion, and we had ques-
tioned Gray as to that.

We felt like two things, one, either that that
would confuse the jury if it came out on direct, but if it
came out on cross, it was one of those things that you
could lay and you could explain, that is, that, yeah, he
said one-four and we're aware of it and we got it here.

We didn't -- if he's going to be deceptive about
it, one, he wouldn't have talked to me about it and to my
assistant about it and, two, you'd lie about it. And it'd
have been a lot easier to make it disappear if you wanted
to lie about it than to tell the truth.

And Daulton was instructed that if on cross-
examination he was asked as to that then to answer truth-
fully.

Q. And he was asked that, was he not, and he did
answer truthfully?

A. He did.

Q. And he truthfully disclosed it to you when he
could have very well concealed it if he had wanted to take
advantage ---

A. --- That's true.

Q. --- Of the opponent, couldn't he?

A. That's true.

Q. Now, after all of this, will you tell Mr. Stuart
-- or give him your opinion of the performance of this officer, considering his experience and his lack of assistance during this trial?

A. Well, I will couch that just in those -- with those qualifications, that is, that I was fully aware of what his experience was, I was fully aware of where he had served his duty -- partially aware, I'll say because I -- I knew certain places where he had carried out his duty as a uniform officer. I was fully aware that he was not a good witness.

You know, I don't mean to hurt anybody's feelings here or anything else, but -- I'm probably a poor witness, too -- but -- but considering the work product, his work product was above standard or above the norm for what we get, that is, that -- one, that it was exhaustive and I expected an exhaustive detailed report because it was a serious case and it seems like the more serious the case the more exhaustive and -- and the more paperwork you have.

But I even went to the extent one time, because I was marveled at how many people he had questioned, I got my administrative assistant to sit down and list and there was over 400 people that he interviewed.

As to the methods of, say, identifications, as to the line-ups, considering his experience, he did better
than, say, somebody who I might expect even had experience because I -- I found no flaws in the method of line-up.

In fact, some of them really helped because in giving the line-ups he went to the extent of letting the defendants' lawyers pick the people who would go in the line-ups, which I thought was -- it really helped at trial.

And so I felt like that he did a good job, considering everything.

Q. Now, when you say he was not a good witness, do you mean -- could I paraphrase and say that he was a thorough, competent, diligent man but not one with charisma? He didn't speak with eloquence and charisma that some people would naturally have had?

A. I don't even know it's charisma, and I -- I have other officers, in the same vein, that will give the impression that they're not being cooperative with you. And this is something we talked about prior to trial, about you instruct somebody, to say relax, don't be tense and answer every question they give, and give the impression that you are the nicest guy around and that you would help them if you could, and that these are all the facts. And certain people could not come across like that anyway.

And so we did work on it. That is, it wasn't to deceive -- give deceit -- deceitful testimony or to change testimony but to become a good witness that impresses the
jury.

Q. And on the opposite side of that, the defense attorney will have his witness get a haircut ---

A. --- Oh, absolutely.

Q. --- Tell him not to talk, dress him in a new suit, et cetera, and each side just -- that's part of the trial?

A. Absolutely.

Q. I believe the State Bureau of Investigation has investigated this case, have they not?

A. They investigated certain aspects that they were asked to.

Q. Is it your understanding that as to this officer's participation they found nothing whatever critical of his involvement?

A. His -- he was not under any direct investigation, but as a necessary part of that they had to review his work product. And they were impressed with the amount of his work product and as well that there was no even indication, I mean, you know, it didn't come into question that he was -- he didn't tell the truth.

Q. Were they in fact complimentary that one man could perform as well as he had, and if they had any criticism, it was because of lack of other officers to assist him?
A. They had questions as to the manpower manage-
ment, that is, as to -- and that -- that's something that
you will never get into with them because they're not
going to critique another law enforcement agency. But it
was a volume of work for one person to do and that's what
they were impressed with.

Q. And this last question, in comparing this offi-
cer's performance, his testimony and his participation as
a police officer in an investigation of a homicide case,
with all the others that you've worked with through the
last 14 years, how would you rate him?

A. Well, I felt like effort he'd get an A plus,
okay, because I can't find people who'll get up at sunrise
and work till sunset and -- and don't question what you
ask them to do. He -- he did not question at all what was
asked to be done.

Testimony-wise I didn't ever question -- never
have questioned his truthfulness because I knew that he
wasn't testifying to anything substantive.

An officer in a case doesn't testify to anything
substantive as a rule. They testify to corroborate things
that they have seen or heard or -- or somebody else has
already testified to. And so it never came into question
with me that it was truthful or not truthful, that is,
that I knew what he was saying was truthful because I had
verified it through everything else.

Somebody had already testified to something before him. There were other witnesses to everything else. An officer goes and just picks up the pieces of the case and comes and testifies. And so he has testified truthfully.

Now, as to the testimony as to how he testified, he was not a good witness, and that wasn't that he didn't want to be a good witness. It's that there's a lot of pressure involved, he answered truthfully, the jury didn't have a problem with his testimony, but I as a prosecutor would like everything perfect and you just don't have things that way.

But the quality of it -- of his work was good as for one man doing what he was asked to do and did do. It was good.

Q. Now, his testimony as well as all the other evidence in this case has probably been dissected, questioned as much as any case, I guess, you've been involved in, has it not?

A. It's -- for some strange reason it's -- it's centered on -- on Officer Daulton's testimony. And there again, I just say that -- that he was really a corroborative witness and not substantive witness.

Q. Now, you've heard the two instances that the
chief has had problems with and caused these charges. Has anybody else other than the chief, of your knowledge, brought these ---

A. --- Well, I really didn't know where those came from. I didn't know it was the chief or internal affairs or ---

Q. --- I'm telling you it was the chief doing it.
A. Okay, I ---

Q. --- Other than the chief, have you heard this expressed in any other form?
A. No. And I found that a peculiar area to be concerned about.

Q. Because usually the defense lawyers will be the first ones if there's any real reason to raise a question of truthfulness, isn't it?
A. Absolutely. They -- the case is on appeal. There's a motion for appropriate relief that is pending and answer has to be filed by April the 11th. And except as to these two allegations coming from whatever direction, that hasn't been raised.

I don't -- I would -- if -- I would raise other areas maybe, but not something that I consider that Officer Daulton had no control over, that I had control over.

Q. And you're telling Mr. Stuart that whatever the chief made complaint about was something you had control
over and he had absolutely no control over?

A. Oh, I can absolutely explain why a line-up wasn't held when it was and -- and Officer Dauton probably to this day doesn't know my explanation. And to be quite honest, it's none of his business, that is, that I have my reasons why that it wasn't held to a certain time.

And as to the one-four inquiry that -- that is explained before, that is, that was something that we had sit down and we had talked about and he didn't have any input as to -- he may have even disagreed with whether we did that or not, but that was something that Mr. Lyle and myself decided on and questioned Gray about.

MR. CRUMPLER: I have no further questions. Chief?

EXAMINATION

BY MR. MASTEN:

Q. Mr. Tisdale, you used the expression set-up of a case a while ago.

A. When I say set-up, you will bait a trap sometimes. You will give a defense lawyer -- if you give him enough rope he'll hang himself. And you might leave out a piece of good evidence, and if he goes into that trap he'll uncover it himself. And it has quite a beneficial effect in front of a jury.

Q. I hadn't heard that expression used before. Is
that common among attorneys?

   A. Well, it probably -- set-up ---
   Q. --- Do you ---
   A. --- Baiting a trap probably more is -- is a
   trail tactic. If you denominate it, it would be called
   throwing out the bait and seeing if you can get a bite on
   it.

   Q. So it's part of the strategy?
   A. Sure, yeah.

   Q. It's part of the strategy.
   A. It -- especially if it's something that -- that
   is very helpful to you.

   Q. Uh-huh. Since you've been the district attorney
   or while you were an assistant you've had some investiga-
   tors who worked for you, haven't you, independent of the
   police or the sheriff or other law enforcement agencies?
   A. I ---
   Q. --- Haven't you had some on your staff?
   A. No, I have not. I've -- I've never ---
   Q. --- Did your predecessor have one?
   A. Yes. I've never seen the necessity of having an
   -- an investigator on my staff, even though it's allocated
   by the statute, because I've always gotten full coopera-
   tion from every law enforcement agency.

   Any time I've ever needed anything from a simple
errand to a complicated task, I've asked for it and I -- I don't believe I've ever been turned down.

Q. Has there ever been another time in your experience as district attorney where you've had a law enforcement officer assigned to work full time on a case?

A. Absolutely. Very, very -- it's not unusual, but it's not assigning them to me. If he was, I didn't know about it and I would have been happy to accept that responsibility.

In fact, during the span of time after the case, I did ask that a particular officer be assigned to me and I would take full responsibility for him, and that was not done, that I felt like that I could clear this case then with that investigator. And so I made the request.

I have never asked for nor received, and I -- it'd take highly unusual circumstances for me to say, assign me Officer X and you forget about him. He's always the department's employee. I never make any mistake about that.

Q. So under the same circumstances that Officer Daulton worked with your office, you've never had any -- have you ever had another comparable relationship in your experience?

A. Sure.

Q. You have?
A. Oh, very often. I'll do it today. I mean, you know, I didn't consider Officer Daulton -- I'll go back and say the LaChat murder case, right off the top of my head -- I had the same conversation we're having today with Lou Powell, that I was concerned about them putting a -- what I considered a rookie investigator on a serious case, that I saw it was going to blow up, and I made a foolish request then.

I demanded that -- that they change officers, that I -- I felt like he was over his head, that I needed an experienced officer to make some headway.

Well, Lou reasoned with me, assured me that Paul was capable if given guidance, and told him and turned him over to me in the regard just like Daulton, like anything you want him to do he will do, we'll see to it that it's done.

I'll also see -- I believe, that Officer Mason will be with him any time as a supervisor. And so that's the first example that pops into my head.

I go back to the Shouse murder case. We came into a similar circumstance that I felt like that a charge had been made prematurely on solicitation to commit murder, whereas there was a murder case out there.

I wrote Tom Surratt -- which I have a copy of -- expressing the same concerns that I expressed in LaChat,
the same concerns I expressed in the Hunt case, that I would like an investigator assigned and relieved of all other duties so that he could solve the case. And the credit to the case was of no consequence. It -- it more or less that I felt like we were all out on a limb, that we're getting ready to lose a case.

And so -- you know, going back in history, I can get numerous cases which I made similar requests. But I never considered that that officer would be answerable to me in the regard that he would neglect his department. That is, I've always understood, and Tom Surratt set me straight as a young lawyer real quick. It's his job to allocate his manpower and it's my job to allocate mine, and we'll work together on it.

Q. Do you know whether other jurisdictions do have investigators assigned by law enforcement agencies to the district attorney ---

A. --- Each district will vary. There'd be 30 prosecutorial districts in North Carolina, Charlotte being the extreme, that is, that -- I believe, that the county commissioners and the board of aldermen and even the police department contribute manpower to the DA's staff and let them be in essence a permanent employee, financing it.

You'll find most other districts operate like I
do, that is, when you need help you ask for it. Otherwise there's no need for that.

Q. Some districts do have investigators assigned full time from the police department?
A. I believe Charlotte is the only one I know of, but Charlotte's a district all to itself.

Q. The others operate the same way you do?
A. Yes. There are -- there are several districts who have an investigator, that is, that the statute provides that a DA in especially the metropolitan areas can have an investigator on its staff, and which my predecessor did have. What I found was that the law enforcement officers themselves resented that person.

The districts that use them don't use them really to investigate and make a case. They use them to seek out a key witness that's lost or, say, like a Brenda Marino in this case or -- or to refine certain things. But they don't use them to intrude into the areas where law enforcement ought to be.

MR. MASTEN: That's all.

MR. CRUMPLER: I just have one final question I'd like to ask.

EXAMINATION

BY MR. CRUMPLER:

Q. The chief asked you about using the word set-up
or using your word bait as a practice of withholding some
evidence and giving your opponent the chance to bring it
out. I think I've done that to you and some of your
assistants in trials, have I not?

A. Oh, absolutely. I ---

Q. --- And the purpose of it is if your opponent
asks a question and gets an answer it's more effective
than you would -- it's more credible than it would be if
you brought the evidence out yourself.

A. That's true. And at times the ---

Q. --- It ---

A. --- Rules of procedure will not let you go into
a certain area, and if the other side opens the door, then
it's open.

Q. And if they ask a question in that field then it
allows you to go back and ask a question in an area that
you couldn't ordinarily question and it's governed simply
by some complex rules of evidence.

A. That's true. And there's certain evidence that
-- if you've got evidence that is harmful to you, you're
not going to bring it out.

Now, the law requires -- and this is something
that -- of no concern here that Brady is complied with,
that is, if thing's that is exculpatory for a defendant,
then I have myself a duty. I have a duty -- nobody else
-- I have the duty as the prosecutor to let the other side know.

In fact, in this case there were some things that I told the other side, for instance -- Terry Thomas -- that I didn't believe, but that I had a duty because I knew that that was potentially exculpatory.

But as to other things, such as Johnny Gray having another name or Johnny Gray having a criminal record, I had no duty to tell anybody that.

In fact, that was a prime -- that's a perfect example in this case, that Johnny Gray was a witness for us. He had another name of Johnny McConnell. I knew he had a criminal record and I had it in my hand. When he took the stand I did not ask him about his criminal record. I had no duty to tell them. I wasn't fixing to tell them. And they did not ask him. And so that's something not covered by Brady, and that's a perfect trial strategy, and they could have asked it.

It's the same thing as the one-four. They may not have asked the one-four, and I'm not fixing to bring it out. And if it were covered by Brady, somebody would have said so by now but it's not. I mean, it's not that kind of exculpatory thing.

So if -- if it were my duty to -- to do otherwise then I would just turn the police report over to
start with to the other side and -- and go that way, which
I don't -- that's unheard of.

Q. And the officer has nothing whatever to do with
your decision in that respect and is not even involved in
it. Is that correct?

A. No, he's not. He -- he can't be.

MR. CRUMPLER: I have no further ques-
tions.

MR. MASTEN: Nothing else.

MR. STUART: Let me ask one question.

It may be technical.

EXAMINATION

BY MR. STUART:

Q. Perhaps you have had experience with a perjury
charge sometime in your past.

Whether a charge like that were to be held,
would a judge in making a decision -- would any of his
deciding that have anything to do with whether or not the
testimony offered was substantive as opposed to corrobora-
tive?

A. Yes.

Q. Was that sort of a factor weighed?

A. People -- people don't understand perjury to
start with, and I'm -- and I'm -- was the first to plead
guilty to it. I had an assistant district attorney who
every time somebody lied wanted to go down and take out a perjury charge.

Q. Uh-huh.

A. Well, what I -- he brought the charge and what I found out that it wasn't perjury under the law. That is, what perjury is is one, it has to be a material fact that affects the outcome of the case, and otherwise every time somebody pled not guilty under oath, they'd be perjuring themselves.

You could perjure yourself on any kind of testimony if it's material, that is -- and when I say material, goes to the elements of the case.

Q. So it's not whether you're a corroborative witness or a substantive witness. It has to do with the type of fact you dealing with?

A. Right. It would have nothing to do -- that's the apples and oranges because there's just nothing -- you could lie as a corroborative witness.

Of course it takes an independent witness for perjury. Over and above proving somebody lied you got to have an independent witness. But beyond that, I found out that what we think is perjury is not perjury. There's very few instances you would ever say something is legally perjury.

MR. STUART: Thank you. Now that I did
that, does anybody have a question?

MR. CRUMPLER: I have just one or two more.

EXAMINATION

BY MR. CRUMPLER:

Q. Really basically that's just -- perjury would be a potential false misrepresentation of a material fact under oath.

A. That's true.

Q. Going short of perjury and getting to deceptive testimony now, was there anything in your opinion, either on page 1,409 or on page 1,085 that was deceptive and was testified by Officer Daulton in this case?

A. No. But as the why a line-up was not given, it got down to I knew that Daulton had had a hard time with the people at the Hyatt, that is, working midnight.

In fact, one of my assistants I assigned specifically to do nothing but go down there at midnight and try to round up these people. And he himself had a horrible time because we weren't talking about finding one witness to get him to do it. We were talking about four witnesses.

And what it came down to was this, that it became obvious to me that it was Daulton's impression as well as my assistant's impression that nobody by them-
selves could ID anybody, all right, and so there would be no reason for a line-up. Well, Daulton insisted at some point in time that I talk to Weaver and to even Hooper the same day. I talked to them separately.

I got Weaver in my office -- and this was early on, or midway -- and he left me with the impression that he could not. But what occurred to me that I did not share with Jim and I didn't feel like I should is that the four of them together, one could say that it was the night it was raining, the other could say it was the night somebody went in the bathroom, one could say that you all were standing there talking about it, but all four of them together, I felt like, could make a witness, not an eye witness in the sense that we're going to have a line-up, because my own personal belief was that Holt would be the one to identify them.

And yet we couldn't do a line-up on Holt because it became obvious to us that Holt was chicken, that Holt was laboring under the fear that these guys would walk in there at midnight and shoot him. And here he was a security guard carrying a gun. And so we couldn't get Holt to cooperate, and so we let it lay there and I didn't explain to Jim that -- that I felt like all of them together could do that.

Coming down to trial time, though, and I made an
allusion to it in the letters I wrote the police department, that we were going to have to do certain line-ups and -- no matter whether they were fruitless or not, that is, that the name Sammy Mitchell would come up, we were going to show Sammy Mitchell's picture or a line-up of him to everybody that we could get our hands on -- potential witness -- same thing with Too-Tall and Headden and Hunt and everybody else.

And so we called for a line-up at the time that it was given. It was given very soon after I called for it. And lo and behold, Weaver said he could identify him. I was shocked because everybody from day one including myself from a personal interview with Weaver was left with the impression, and it may have been a question that I didn't ask -- it may have been my fault -- but I was left with that impression, and he could identify him.

Q. Now, Mr. Tisdale, he, Jim Daulton, assigned as the reason for the delay that the witness worked one shift and he worked another. I believe I asked you if that was true and you said that was true.

A. That's true.

Q. What would you have thought if he had gone into that long explanation that you just told us ---

A. --- He wouldn't have known that explanation, for one.
Q. He wouldn't have known it, but ---

A. --- And two, he gave the only explanation that I knew he knew. And so to me, that's why it's a shock, is that that was the only answer I thought he could give.

Q. And there's no experienced officer who would give an account such as that of all the reasons and thoughts that you would have in answer to that question, would there?

A. No, not at all. Most of the time on the witness stand you're -- you're instructed to answer succinctly and truthfully.

MR. CRUMPLER: I have no further questions.

MR. MASTEN: Nothing.

THE WITNESS: May I be excused?

MR. CRUMPLER: Thank you. Off the record.

(Brief recess)

MR. CRUMPLER: It is stipulated for the purpose of the hearing that Officer Daulton has been employed by the Winston-Salem Police Department for the years that he has testified, that he has no record of misconduct or poor performance, of the chief's knowledge, through the entire period and the chief has worked with him during this period as also an officer, that he enjoys
a good reputation as a police office. I think that will do it.

MR. STUART: And I would simply ask the chief if he has any comment ---

MR. MASTEN: --- No.

MR. STUART: --- Objecting to any of the characterizations.

MR. MASTEN: No. I haven't checked recently. We did check at the time this investigation was going on and my recollection is that there were no marks on his record internally.

I have known him -- I believe I was a training sergeant or lieutenant when he was employed and I have known him the entire time.

MR. CRUMPLER: Chief, could I ask you this at this point? Was he performance good during the time that you were his training officer -- training sergeant?

MR. MASTEN: To the best of my recollection ---

MR. CRUMPLER: --- If you don't remember ---

MR. MASTEN: --- That was -- I don't really remember. That's 20 years ago.

MR. CRUMPLER: I have no further ques-
tions and that's the evidence for Mr. Daulton. And I would like in whichever order you designate to be heard at this time at the conclusion of all the evidence.

MR. STUART: All right. I guess what we ought to do then to ask people if they have summations. You have already presented your information.

Do you have any other comments that you would like to make at this time?

MR. MASTEN: No, sir.

MR. CRUMPLER: Mr. Stuart, I will try to keep this restricted to the issues that we're directly involved in.

As you know, this arose from a very controversial case. I have no interest whatever in the outcome of that case. I was not in any way involved in it. My sole duty is to represent Mr. Daulton, the police officer who was one of the investigating officers in the case.

The evidence before you is that he has been a good officer. He was involved very diligently in the case. He has withstood all the scrutiny that we know this case has been given. And each side has criticized the other and it has become a matter of public discussion and has been critiqued probably closer than any case I can recall in a long while.

He is charged with giving deceptive testimony on
the two occasions that you have heard.

Now, I'd like to go through each one of those
and I would like for you to consider the testimony he
gave, not in light of when we sit down and hear a 15-
minute dissertation of the reasons that would be in a
district attorney's mind even now after the fact.

But here is a police officer on the stand and
he's under more pressure than many because it's a very
highly publicized case, and it's a case that he doesn't
have a lot of experience in. It's a much more important
case than his background has trained him for.

He is asked a question why something hadn't been
done sooner. Well, now the first thing that's going to go
through his mind is to give a reason. The district attor-
ney gave a number of all these reasons. Some of them he
may have suspected, some of them he probably didn't know
of, others he didn't have any right to make the decision.
And primarily he had been directed -- as the district
attorney stated -- pretty much directed as to how to con-
duct his investigation.

Now, there is obviously an open point of dissent
between the district attorney and the chief of police, and
I'm not going to get involved in that either way. That's
their two problems.

But I see the officer's viewpoint is that he's
there and he went there because he believed that's where he was supposed to go, and he was supposed to be available within 30 minutes, and obviously he was supposed to do whatever they directed him to do.

So he thinks of his reasons, and one of the reasons -- as I recall that even the district attorney stated -- that the shift problem of getting everybody together at one time. In fact, the district attorney said it took them a long while to get everybody. They even sent somebody up there on the night shift.

But in any event, the reason he gave was that he worked one shift and the witness worked another. Now, that's a true fact and there is no question that that is a true fact.

I submit to you that is not deceptive, that if he could sit down -- and certainly when the district attorney was trying to make a full disclosure and gave all the reasons, you can imagine whether or not -- where you would be as a witness. If you went through that dissertation you'd be just picked apart on cross-examination.

Some of it you may say, well, the district attorney did so and so and you don't know whether he did or not. And before long you had opened Pandora's box. I submit not only did he give a truthful answer but he gave a very wise, intelligent, prudent answer.
Now, in watching Officer Daulton, I use the word charisma. Some people have it that speak eloquently and others don't. He happens to be a very thorough, prodding type person that really doesn't come across strong as a witness. But I submit he can't help that, but I submit he testified truthfully to that question and answer.

Now, the next goes to page 1,085, and on page 1,085, as I recall, the issue being questioned about involved the line-up procedure. The district attorney -- and I think this was Mr. Lyle from what I heard some of them say -- or I'm not sure who it was -- but in any event, he made a truthful disclosure that there was some written notation made by the witness. And if he wanted to be deceptive he didn't have to say anything about that. He could just say that he identified him and that was it.

But he truthfully disclosed this to the district attorney. They sat down and discussed it and advised him to limit his answers to the specific question they asked, and that was that he rode up the elevator, he gave directions to ride up the elevator, write the number down and tell him what the number was when they got to the end.

Now, the deception there was to be that he didn't say that he also told him to write that down in writing. The district attorney said that he told him not to volunteer that unless he was asked, but if he were
asked to answer truthfully.

Now, in this case there could have been no deception, Mr. Stuart, in my opinion, because the fact was he was asked and he testified, and everybody admits he testified truthfully, that he asked for the paper writing and he gave it, and he testified exactly in court as he did to the district attorney prior to going on the stand.

Now, everybody has a different duty in this and I know I'm sort of an adverse character in this also because, you know, it's gotten so controversial that every issue you take is adverse to someone else's. And I simply ask that this be considered by an officer whom I feel worked probably harder than most other officers would in a case.

As to whether or not there were the right number of people there, I don't find fault with the chief there. They both said how they assigned their manpower happens to be their business. I'm just simply saying this officer worked long and hard in a case that was very controversial.

Now, I've heard all of this discussed about what happened in the case. The unfortunate part the public doesn't know about this case was that if there's any fault to be found there's probably another guilty man that may not ever be tried or prosecuted. But that in no way exonerates the man who was convicted. The jury heard that and
the jury believed that and convicted him in a lawful trial.

And it's really a tragedy that the general
public has no concept of what I'm saying. But I have
nothing to gain on whether he's acquitted or convicted or
what happens to him. But from everything I've seen in the
case, the only sad thing is that probably there is another
person whom they will probably never be able to get enough
evidence to successfully try him. That would in no way
exonerate the man who was convicted.

And that's the background. And my heart goes
out to this man, because with 20 years that he has, his
life ambitions in one decision were ended.

And I simply ask -- I have objected to your
sitting because I felt you conducted the investigation and
that you would be, by that position -- not as a person but
by that position -- would have an interest in the outcome.

I simply ask and I ask that it be considered in
the light that I'm saying -- and I don't think it furthers
anyone's cause, in particular the cause of law enforcement
-- that what's happened to this man be approved. I don't
even believe that's a put-down against the chief. He has
his job to run and you're not necessarily required to
agree with him any more than the district attorney is
entitled to agree or any of you are entitled to agree with
each other. Minds differ.
You know, I speak someone else's cause and I'm not obligated to agree with anybody.

And I just ask that it be heard and that this man's record -- not only I ask that he not be demoted, but I ask that his record not be -- this not be left a part of his record in the future because in hearing this -- and I'm not sure you've ever heard the way this was presented because a lot of it involved things that I had not heard until I talked with the district attorney. And that concludes what I have to say.

MR. STUART: Not to go around you to your client, but I just want to make sure if your client has anything he would like to say.

MR. DAULTON: I'd just like to say -- and I don't know whether I should or not -- but I'd just like to say that I hate all of this came about and I do not feel that there is anything that I should be punished for. And I would very much like for you to hear this in a fair and impartial manner, and I would very much like to have my job back with the police department as a sworn officer. And that's all I would ask.

MR. STUART: Okay. We'll close this. Let me make one concluding statement.

What I am going to do is take under advisement everything that I have heard here today following which I
will attempt to make as fair a decision as I deem myself capable of making, considering all things. So I would let you all know at the appropriate time.

In the event that as I review this material I feel like I need additional information -- and I do not know that that will be the case -- but in the event that I do, I will make you aware of that.

MR. CRUMPLER: I have no objection to that. I may ask that if anything comes to our attention that we feel is relevant that should be heard that we would like an opportunity to notify the chief and also offer that into evidence. I don't anticipate and I don't know of anything at this moment that would cause that to be.

MR. STUART: All right, okay. Thank you.

WHEREUPON,

at 4:17 o'clock p.m. the matter was adjourned.
CERTIFICATION

I, Cathy P. Greene, CVR, Certified Verbatim Reporter and Notary Public in and for the County of Forsyth, State of North Carolina at Large, do hereby certify:

That the proceeding hereon captioned was conducted at the time and place herein aforementioned;

That the proceeding was taken by me and recorded by Stenomask, and thereafter reduced to typewriting under my direct supervision, and the foregoing (98) pages are a complete and accurate record of said proceeding;

That the undersigned, Cathy P. Greene, is not of kin, nor in anywise associated with any of the parties touched by the subject matter of said proceeding, nor any counsel thereto, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this the 2nd day of April, 1986.

s/ Cathy P. Greene

Cathy P. Greene, CVR
Certified Verbatim Reporter
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