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UNITED STATES OF AMERICA,

Case No. 04-80200

-vs-

RICHARD R. MORRIS,

Tuesday, November 23, 2004

2:39 p.m.

- - -

MS. GILLOOLY: Good afternoon, Your Honor. Susan Gillooly, appearing on behalf of the United States.

MR. BUTLER: May it please the Court, Jeffrey Butler, representing Richard Morris.

THE COURT: Okay. And this is a continuation of a hearing that we had a week or two ago.

MR. BUTLER: Yes, Your Honor.

THE COURT: And do you have anymore witnesses?

MR. BUTLER: We do, Your Honor. Yvette Barrett was the attorney appointed to represent Mr. Morris in state court.

THE COURT: Okay. Would you call her, please.

MR. BUTLER: Yvette Barrett.

THE COURT: Raise your right hand, please.

YVETTE BARRETT, DEFENDANT'S WITNESS, SWORN.

THE COURT: You may be seated.

Please adjust the microphone about six to eight

1 inches. The chair spins, but doesn't move. So, the
2 microphone does.

3 You may begin.

4 DIRECT-EXAMINATION

5 BY MR. BUTLER:

6 Q. Ms. Barrett, are you an attorney, a member of the State
7 Bar of Michigan?

8 A. Yes, I am.

9 Q. Do you handle criminal cases in Wayne County, in
10 particular, court-appointed cases?

11 A. Yes.

12 Q. I want to direct your attention to February or March of
13 2004, specifically, a case entitled the people of the State
14 of Michigan against Richard Morris, and ask if at some point
15 you were appointed counsel for Richard Morris?

16 A. Yes.

17 Q. Okay. Do you recognize him in court, the gentleman
18 seated at the Defense table?

19 A. Yes.

20 Q. Does your file indicate when you were appointed to this
21 case?

22 A. No, it doesn't.

23 Q. Do you have any independent recollection of when that
24 was?

25 A. Yeah. It was sometime in March of this year I was

1 appointed.

2 Q. Okay. When would the first action you took with respect
3 to this case have been?

4 A. Uhm . . .

5 Q. By "action," I mean either meeting the Defendant, going
6 to court and talking with the prosecutor or getting police
7 reports.

8 A. It would have been the day that we had the pre-exam.

9 Q. When was that?

10 A. I believe it was in March.

11 THE COURT: Would it help you if you looked at the
12 docket entries to refresh your memory?

13 A. Yes.

14 BY MR. BUTLER:

15 Q. Did you have an opportunity to look at the hearing on
16 Wednesday, March 3rd?

17 A. Yes.

18 THE COURT: Now, stop. Help me out. What is the
19 hearing on Wednesday, March 3rd? Is that the pre-exam?

20 MR. BUTLER: It is, Your Honor.

21 THE COURT: Okay.

22 MR. BUTLER: It's the only hearing for which we have
23 a transcript.

24 MS. GILLOOLY: Your Honor, I believe we moved for
25 the admission of it as an exhibit. I am not sure whether we

1 actually admitted it at that time or not, but we would move
2 at this time, for the record.

3 THE COURT: Is there any objection?

4 MR. BUTLER: No, Your Honor. We all assumed it was
5 part of the record, and we certainly wanted it to be.

6 THE COURT: Okay.

7 (Proposed Government Exhibit 1 admitted into
8 evidence.)

9 BY MR. BUTLER:

10 Q. Ms. Barrett, I'm going to give you a copy of that at this
11 point for reference.

12 Is the transcript of that hearing the only means you
13 have of recollecting the date of any event in this case?

14 A. Yes.

15 Q. In particular, do you now in your file -- did you bring
16 your file of this case with you?

17 A. Yes.

18 Q. Are there copies of the police reports, the incident
19 reports of the underlying case?

20 A. Yes.

21 Q. Do you know when you would have received them?

22 A. March 3rd.

23 Q. Okay. Not before that?

24 A. No.

25 Q. Okay. Do you recall when you would have talked with the

1 prosecutor about the case for the first time?

2 A. He -- well, it would have either been that day or it
3 could have been a day prior. I'm not sure.

4 Q. You have had an opportunity to review the hearing
5 transcript of March 3rd, have you not?

6 A. Yes.

7 Q. And, in particular, I'm going to direct your attention to
8 the top of page six, in which the state law prosecutor, Abed
9 Hammoud, states that he informed you or gave you an estimate
10 of federal guidelines, he said he believed it was Monday,
11 which would have been March 1st.

12 A. Okay.

13 Q. Could that have been the case?

14 A. Yes.

15 Q. Okay. And your file just doesn't tell you whether you
16 would have met or talked with him either by phone or in
17 court --

18 A. No, it doesn't.

19 Q. -- at some proceeding on that day?

20 A. No, it doesn't.

21 Q. Prior to court convening this afternoon, did you have a
22 chance to review an affidavit of Abed Hammoud?

23 A. Yes, I did.

24 Q. And did you see in that affidavit where he indicated that
25 he advised you on Friday, February 27th -- it doesn't say

1 whether it's face-to-face or by telephone, but he advised you
2 of the plea offer and of the estimated federal guideline
3 range?

4 A. Yes.

5 Q. Okay. Do you have any recollection of whether you had a
6 conversation like that with Mr. Hammoud on Friday, February
7 27?

8 A. I would say that I probably did talk to him.

9 Q. Why would you say so?

10 A. I mean, because if he would have called me, I would have
11 called him back, and he would have told me that, and I would
12 have accepted that information.

13 Q. Okay. If that had happened, would you have made any kind
14 of notation in your file?

15 A. I may not have had a file at that time. That -- to make
16 a notation in, because I may not have had the appointment.

17 Q. All right. How do you get an appointment to a state law
18 criminal case in Wayne County?

19 A. The assignment office on the ninth floor, they contact my
20 office and they notify me -- they notify my office that there
21 is an appointment on the ninth floor for me to pick up and
22 the day of the pre-exam or the preliminary examination.

23 And there is -- I mean, I could get notified a day,
24 two days. There is no set time in which they have to notify
25 me.

1 Q. Does that telephone call, is it in the form of
2 information or of a request of whether you can accept it that
3 date, or do they assume you can accept it unless you say
4 differently?

5 A. Right. They assume that I can accept it unless I call
6 them back or I go and say I can't accept it.

7 Q. Is it then your responsibility to go by the ninth floor
8 and pick up the paperwork?

9 A. Yes.

10 Q. Does your file indicate when any of those things happened
11 in this case?

12 A. No, it doesn't.

13 THE COURT: What's the date of the assignment? Do
14 you have the assignment or the docket entry about the
15 assignment?

16 A. The assignment was turned -- I have to turn that copy in
17 to -- with the voucher form that I turn in in order to get
18 paid.

19 THE COURT: But wouldn't that show up as a docket
20 entry when that went out?

21 A. No, it doesn't.

22 MR. BUTLER: It's not my experience in similar
23 matters, and it's not in the docket entry of this case.

24 THE COURT: But it would be available if you just
25 contacted the Wayne County Treasurer's office or the

1 Recorders Court clerk's office.

2 MR. BUTLER: Right.

3 THE COURT: At least that date would be available.
4 Am I right?

5 MR. BUTLER: Possibly.

6 THE COURT: Okay. I mean, it's a public record.
7 It's not confidential or anything like that.

8 MR. BUTLER: I believe there's no question of that.

9 THE COURT: Okay.

10 MR. BUTLER: That it's not protected in any way. I
11 think there is a legitimate question of whether there would
12 be a paper trail or a record.

13 THE COURT: Is Julia Penn still the clerk or did she
14 retire?

15 MR. BUTLER: I can't answer that.

16 THE COURT: Do you know?

17 A. She still works there, but I don't know in exactly what
18 capacity. I mean what the appointment would say -- if you
19 want me to tell you?

20 THE COURT: Yes.

21 A. The appointment would say the date that they left the
22 notice at my office. But we don't sign anything -- the
23 appearance that we slip into the box, it doesn't have a date
24 on the time -- the date or the time in which we pick it up.
25 It shows the date in which the Wayne County Circuit Court

1 Judge assigns it, but that doesn't necessarily mean that --

2 THE COURT: That would tell us the longest it could
3 have possibly been?

4 A. Not necessarily.

5 THE COURT: Well, it couldn't have been before
6 that.

7 A. Well, yeah, that's true.

8 THE COURT: Okay. So, it tells us the longest. It
9 doesn't tell us when you actually got it; is what you're
10 saying?

11 A. Exactly.

12 THE COURT: Okay. I do need that information. And,
13 Mr. Butler, I trust you will find it.

14 MR. BUTLER: I will.

15 THE COURT: And I would suggest you start with Ms.
16 Penn. She's almost as old as I am, and she's been there.

17 MR. BUTLER: And what's the young lady's first name,
18 Your Honor?

19 THE COURT: Julia Penn. And she will be most happy
20 that you referred to her as young lady.

21 MR. BUTLER: Okay.

22 BY MR. BUTLER:

23 Q. I believe you answered my question about the police
24 report. You indicated they are in the file now?

25 A. Yes.

1 Q. When did you receive them?

2 A. The day of the pre-exam.

3 Q. March 3rd, Wednesday, March 3rd?

4 A. Yes.

5 Q. Did you prepare a copy and give it to Mr. Morris?

6 A. When they give us the discovery that day, the
7 prosecutor's office, I don't have an extra copy, and there's
8 no way for me to make a copy and -- there's no way for me to
9 make a copy at that point. So, what I do is I will go over
10 it with my client at that time.

11 Q. Do you recall going over the police reports with him?

12 A. Yes.

13 Q. Did he respond to the contents of it?

14 A. He said that it wasn't true.

15 Q. On that date March 3rd would have been the only time to
16 discuss the contents of the police report with him?

17 A. Yes.

18 Q. Okay. What did you tell him about the offer that was
19 made by the Wayne County prosecutor?

20 A. I told him that -- you know, that if he pled guilty, what
21 he would be facing in state court and --

22 Q. What specifically did you tell him about this case, what
23 the offer was?

24 Would you have made a note in your file of what the
25 offer was, offered such and such, and accepted and refused or

1 demanded exam?

2 A. I

3 Q. I mean, what -- I don't know how you keep your notes, but
4 however you do it. Please consult your file to let us know.

5 A. The prosecutor would have -- I would have had the
6 prosecutor -- I would have had the offer and I would have
7 told him exactly what it was that day.

8 Q. Everything would have been verbal though -- I mean, oral
9 and no notation necessarily? You wouldn't have written down
10 what it was?

11 A. Not on -- I would have had -- yeah, I would have had
12 something to write it down on, so I would have communicate
13 indicated that to him, yes.

14 Q. Is that in your file?

15 A. No, it's not.

16 Q. What's your recollection of what the offer was?

17 A. I would have to -- I would have to look at what the offer
18 actually was, and that's what I told him. I know that would
19 have been what I would have told him.

20 Q. Okay. You've reviewed the preliminary exam -- I'm sorry
21 -- the pre-exam transcript in which the prosecutor indicated
22 what the offer was. And I'm specifically directing you to
23 the top of page six, the top -- or half of it, in which the
24 prosecutor indicates that it was plead guilty to possession
25 and delivery of marijuana, plus felony firearm; dismiss the

1 rest; a sentence agreement of one to four, plus two.

2 A. And that's what I would have told him.

3 Q. Do you have a recollection of this particular case and of
4 that offer or are you just going by what it says there?

5 I mean, you were present in court. So, I'm not
6 taking issue with that.

7 Do you have any recollection or does your file
8 indicate that that is in fact an accurate statement of what
9 the offer was as communicated?

10 A. That's -- I mean, that's what I would have told him. If
11 that's what the offer was, I would have told him that.

12 Q. Okay. What would you have told him about the
13 consequences of refusing the offer?

14 A. That if he wanted to have his preliminary examination,
15 that I would -- that since the prosecutor told me that they
16 were going to refer this over for federal jurisdiction, that
17 this case would not be prosecuted in the state system; that
18 it would go to the federal court; that I was a state
19 court-appointed attorney and I would not be representing him
20 in federal court.

21 Q. Okay.

22 A. That he -- and that he would have the right to have a
23 trial, but it wouldn't be in state court.

24 Q. It wouldn't be in state court and it wouldn't be with you
25 as the attorney?

1 A. Exactly.

2 Q. What about the amount of time he would be facing?

3 A. Well, I always advise my clients that, when it's a
4 situation where it's going to be a federal referral, that the
5 time is going to be much more. And in this case, I would
6 have told him that it wouldn't -- it wouldn't be the amount
7 of time here. It would have been the 62 to 68 months. I
8 would have told him that because that's very important.

9 Q. How did you know 62 to 68 months?

10 A. That was what the prosecutor communicated to me were his
11 federal guidelines.

12 Q. Okay. Did you make any attempt to judge the federal
13 guidelines yourself?

14 A. I don't do any federal cases.

15 Q. Are you familiar with the consequences of committing
16 certain felonies with a firearm under federal law?

17 A. Uhm...

18 Q. Do you know the time that it carries? Do you have a
19 sense of what that is?

20 A. Yeah, I have a sense of what it is.

21 Q. What is your sense of what that is?

22 A. About five years.

23 Q. So, are you saying that the federal counterpart to
24 Michigan's two-year felony firearm law is a five-year felony
25 firearm law? Is that your estimate of how federal law

1 compares to Michigan law?

2 A. Yes.

3 Q. Okay. How many cases like this have you had in which an
4 offer is made concerning a felony and a firearm with the
5 statement being made to you that if that offer is not taken
6 it's going to be referred for federal prosecution? Does it
7 happen often or is it rare?

8 A. I'm trying to figure out how to quantify it, because this
9 wasn't the first time that this had happened where I had
10 spoken with the prosecutor and they said they were going to
11 refer it for federal jurisdiction. It wasn't the second
12 time. I mean, I don't have cases like this like every week.

13 Q. All right.

14 A. Probably not even once a month. But it all depends,
15 because the way they appoint cases, I -- I've had several of
16 these cases.

17 Q. All right. And you have had some since this case, since
18 March of 2004?

19 A. (No response.)

20 Q. It's been approximately seven or eight months since
21 then.

22 A. I would say that I probably have.

23 Q. And what kind of information do you give your client
24 about federal sentencing consequences?

25 A. Well, I mean the deals are always different for each

1 client because it -- I would -- I know that generally I would
2 tell them that the consequences are always much higher in
3 federal court than they are in state court as far as years
4 and times. I know I would always tell them that.

5 Q. Okay.

6 A. And that this doesn't mean if they don't take this offer,
7 that they won't be able to have a trial, but the consequences
8 will be much greater in federal court and I wouldn't be
9 representing them.

10 Q. Is the only source of how much worse the sentencing might
11 be what the prosecutor tells you? In other words, does the
12 prosecutor always give you an estimate of what the federal
13 sentence would be?

14 A. No, they don't always do that.

15 Q. Do they sometimes not say anything?

16 A. Sometimes they just say, well, we're going to refer it
17 for federal jurisdiction; he has a prior record and he's the
18 type of candidate we are looking to refer for federal
19 jurisdiction. They'll tell me that.

20 Q. Meaning they don't even give you an option of pleading in
21 state court, or they do give you that option?

22 A. Oh, they always give us the option. But you have to take
23 it at the pre-exam.

24 Q. Okay. Do you have any attorney that you know and trust
25 who is knowledgeable about federal sentencing that you ever

1 consult with to try and figure out what somebody's federal
2 guidelines are, just to advise them here's what you are
3 facing if you don't take this state court deal? Do you do
4 that?

5 A. I have other attorneys that I know that do federal
6 cases. Yeah, I know.

7 Q. And do you use them, any of them to help determine what
8 somebody's federal guidelines are as a way of helping them
9 make a decision whether to accept a state offer or risk
10 federal prosecution?

11 A. No, not that I would -- I know of. I mean, it's beyond
12 my -- it's beyond my scope. Like I said, I have a general
13 idea, but I don't do any federal cases.

14 Q. All right.

15 MR. BUTLER: I have no further questions at this
16 time.

17 THE COURT: Ms. Gillooly.

18 CROSS-EXAMINATION

19 BY MS. GILLOOLY:

20 Q. Ms. Barrett, what year were you licensed to practice law?

21 A. 1998.

22 Q. And can you please describe your type of practice you
23 have?

24 A. I do criminal defense work in Oakland, Wayne, and Macomb
25 County. I do some family law cases and divorces, some child

1 support. I do some juvenile, neglect, and I do a very little
2 bit of probate work.

3 Q. Approximately what percentage of your practice is
4 criminal defense work?

5 A. I would say about 80 percent.

6 Q. And since when or how long have you been accepting
7 appointments from, say, for instance, the Wayne County Court?

8 A. Since 1998.

9 Q. And is there special training that you have to go to in
10 order to be on the appointment list?

11 A. Yes. I go to the CAP seminars.

12 Q. And is that a continuing education thing that you have to
13 go to every year?

14 A. Yes.

15 Q. And did you go to that this year in 2004?

16 A. Yes.

17 Q. And you have attended every year then since 1999?

18 A. Yes. But I had to review the tapes in 1998.

19 Q. Okay. Now, we indicated that -- Mr. Abed has indicated
20 that he talked to you on February 27th and talked to you
21 regarding the guidelines or what the federal guidelines will
22 be.

23 And I believe you indicated that you didn't
24 specifically recall the conversation, but it could have been
25 that he called you on that date. Is that right?

1 A. That's correct.

2 Q. On that Friday.

3 And Mr. Abed, when he called you, he would have told
4 you what the state plea offer was and he would have also told
5 you what the anticipated federal guidelines would be?

6 A. Yes.

7 Q. And based upon that information, you probably took a
8 note, put it in your file or took a note and put it on a pad
9 somewhere?

10 A. Right.

11 Q. And when you went to meet with the Defendant then you
12 took that with you; is that correct?

13 A. Right.

14 Q. And you did that so you would make sure and accurately
15 relate to the Defendant what the proposed offers were that
16 were being made to him; is that correct?

17 A. That's correct.

18 Q. And so you met with the Defendant then on February 3rd,
19 which is a Wednesday, is that correct, the date of the
20 preliminary exam?

21 MR. BUTLER: I think the counsel misspoke.
22 February.

23 MS. GILLOOLY: I'm sorry.

24 BY MS. GILLOOLY:

25 Q. March 3rd?

1 A. Yes.

2 Q. And that was the date the pre-exam was scheduled; is that
3 correct?

4 A. That's correct.

5 Q. Do you recall approximately what time you met with the
6 Defendant?

7 A. It would have been in the morning. Pre-exams are held in
8 the morning. Exactly what time I'm not sure.

9 Q. Sometime prior to the pre-exam being held; is that
10 correct?

11 A. Oh, yes.

12 Q. Do you recall approximately how long you spent talking
13 with Defendant?

14 A. No. I would have spoke with him as long as it took to go
15 over the police report and tell him what the offer was.

16 Q. Did you have a particular time limit that was imposed
17 upon you when meeting with the Defendant, or was it just as
18 long as it took?

19 A. It was just as long as it took.

20 Q. And did you review the police reports with him at the
21 time?

22 A. Yes.

23 Q. And did you explain to him what the charges were that
24 were against him?

25 A. Yes.

1 Q. And you explained to him what the state offer was; is
2 that correct?

3 A. Yes, I did.

4 Q. And you also told him what the potential federal
5 guidelines of 62 to 68 months would be?

6 A. Yes.

7 Q. Okay. And did the Defendant have any questions
8 concerning the police reports or the plea offers?

9 A. Well, he maintained his innocence and said he wanted to
10 have a trial.

11 Q. So, he said he wasn't going to take the state plea offer?

12 A. That's correct.

13 Q. And he wasn't going to take no darned 62 to 68 months in
14 the federal system?

15 A. Well, I don't know if he said that. But he said he
16 wasn't going to take any type of plea offer.

17 Q. Because he was innocent of the charges?

18 A. That's correct.

19 Q. Did he ask you -- at any time did you refuse to answer
20 any of his questions concerning the police reports or the
21 plea offers?

22 A. No.

23 Q. And you indicated very clearly to him that the case would
24 be referred to the federal system if he did not accept the
25 state plea offer?

1 A. Yes.

2 Q. And he indicated that he wished to go on and conduct the
3 preliminary exam; is that correct?

4 A. That's correct. And I explained to him that I wouldn't
5 be there at the preliminary examination; wouldn't have a
6 preliminary examination; that the federal government would be
7 there to pick him up.

8 Q. At the conclusion of your conversation with the
9 Defendant, were you satisfied that he understood the state
10 plea offer that was made to him?

11 A. Yes, I was satisfied. And Judge Wade McCree, he also
12 went over the offer again with him on the record, and he
13 didn't seem as though he had a problem understanding
14 anything. And if he did, I mean that judge, he would have
15 went over it again with him.

16 I mean, I went over -- I mean, I don't have a
17 problem doing that. I do it all the time. If somebody asks
18 questions, I answer them. That is my job.

19 Q. At any time did the Defendant express he needed more time
20 or that he felt he was being pressured into making a
21 decision?

22 A. No.

23 Q. If he had indicated that he needed more time, would you
24 have felt able to request more time from the prosecutor or
25 Mr. Abed Hammoud?

1 A. Yes.

2 Q. Have you ever had an occasion to request an extension of
3 time in these matters?

4 A. I have had pre-exams adjourned before or maybe one
5 pre-exam adjourned if the circumstances -- yes, I have had
6 them adjourned before.

7 Q. So, it wouldn't have been a question before in this
8 case. If he had needed additional time, you would have felt
9 all right in asking for an extension of time?

10 A. Yes.

11 Q. And the Defendant in this case signed a paper indicating
12 that he wished to proceed with this preliminary exam; is that
13 correct?

14 A. That's correct.

15 Q. Is that a standard paper that is used by the Wayne
16 County?

17 A. Yes, it is.

18 Q. And does it include any kind of waiver on there or does
19 it just indicate that he wishes to invoke his right to a
20 preliminary examination?

21 A. It just states that they are demanding to have their
22 preliminary examination, and then I sign it, he signs it.
23 And it says the date on which it's going to be set.

24 Q. Okay. And just if we can backtrack one minute. The copy
25 of the voucher that you submitted to Wayne County for payment

1 in this case, did you keep a copy of that for your file?

2 A. No.

3 MS. GILLOOLY: Okay. Nothing further, Your Honor.

4 THE COURT: Further exam.

5 MR. BUTLER: Just very briefly.

6 REDIRECT-EXAMINATION

7 BY MR. BUTLER:

8 Q. Ms. Barrett, what is your recollection of what you told
9 Mr. Simmons about your recollection of the consequences? Do
10 you remember you said five years or 62 to 68 months or just
11 what you told me?

12 A. You said Mr. Simmons.

13 Q. Yes. I'm sorry. Mr. Morris. I misspoke.

14 Is your only recollection of what the federal
15 sentencing consequences were, does it come from reviewing the
16 transcript of March 3rd and the affidavit of Mr. Hammoud?

17 A. Yes, it comes from that. It also comes from the fact
18 that I wrote it down in my file what the federal guidelines
19 were.

20 Q. What did you write down in your file?

21 A. 62 to 68.

22 Q. And on what date was that; March 3rd or a date before
23 that?

24 A. I'm not sure.

25 Q. Your notes wouldn't have included the date they were

1 made?

2 A. I believe it would have been March the 3rd because it's
3 on the discovery pack.

4 MR. BUTLER: Thank you. Nothing further.

5 THE COURT: Ms. Gillooly?

6 MS. GILLOOLY: I have nothing further of this
7 witness, Your Honor.

8 THE COURT: I have a few questions.

9 You indicated at one point you had a request for an
10 extension of time and they granted it.

11 What was the reason for that request?

12 A. Well, most recently here, someone wanted to have retained
13 counsel, and I told them that they have absolutely every
14 right to have retained counsel. If they can pay for an
15 attorney, they can -- you know, if they needed a day or two,
16 that I could request that. And we filled out the adjournment
17 form and that person retained counsel.

18 THE COURT: Do you have any other experience with
19 the adjournment form, any other cases?

20 A. Well, that's the most recent thing, but I -- I guess it
21 just all depends on the situation.

22 THE COURT: No. I'm asking what your experience has
23 been, if you have had others; and if so, what reasons were
24 the extensions granted?

25 A. For the adjournment of pre-exam?

1 THE COURT: Yes.

2 A. Sometimes they need to be adjourned because the
3 prosecutor doesn't have their file, there's no offer.
4 Sometimes they've been adjourned because there may be two
5 different types of cases that are coming through and another
6 one is going to come through on pre-exam and they -- it is
7 better if they are handled on the same day. But there may be
8 other reasons why a pre-exam -- it may be a situation --
9 it -- it may be a situation where the person, you know, needs
10 time to think about the plea offer, and the judge will give
11 him more time in order to think about it before the offer is
12 rejected by the prosecutor.

13 THE COURT: You lost me. If the offer is rejected
14 by the prosecutor or the Defendant?

15 A. Well ...

16 THE COURT: I mean, the Defendant doesn't make a
17 plea offer, I don't think.

18 A. No, the Defendant doesn't make a plea offer. But the way
19 the system is set up in Wayne County for the pre-exams is
20 that the prosecutors, they make their offer on that day, and
21 they don't notify us like five or six days or any time
22 before, and they tell us that day in court. And if a person
23 wants to -- if a Defendant wants to take that plea offer,
24 then they can take it that day. But if they want to have
25 their preliminary examination, then the offer is withdrawn by

1 the prosecutor's office.

2 THE COURT: And then they bring it over here?

3 A. Well, in these cases, yes.

4 THE COURT: Okay.

5 A. In the federal ...

6 THE COURT: All right.

7 A. But, Your Honor, there are other situations where a
8 Defendant could also hold their offer open too.

9 THE COURT: Before pre-exam?

10 A. Right. If you decided to waive your preliminary
11 examination, it gets bound over to the Wayne County Circuit
12 Court Criminal Division. Then it gets held over. The offer
13 is held.

14 So, there's several ways in which you could hold
15 that offer open. And sometimes when -- like this was a case
16 where there was a CoDefendant. And sometimes there's
17 situations where the CoDefendant may want to -- one
18 CoDefendant wants to hold their preliminary examination, and
19 then another CoDefendant doesn't want to. Then sometimes the
20 prosecutor will say, okay, well, we know this guy, he wanted
21 to waive his preliminary examination, but the other
22 CoDefendant didn't, and we'll keep the offer open. And they
23 will put that on the record.

24 THE COURT: But what happened in this case? What
25 happened with the CoDefendant, if you know?

1 A. I'm not sure.

2 THE COURT: Do you know, Mr. Butler? Does it show
3 on the ...

4 MR. BUTLER: I'm looking for this. Well,
5 ultimately, his case was set for bench trial and was
6 dismissed.

7 THE COURT: He was a CoDefendant?

8 MR. BUTLER: CoDefendant, right.

9 THE COURT: Okay.

10 MR. BUTLER: Was also the CoDefendant on the exam
11 transcript, Corey Fenderson. He was set for bench trial June
12 1st.

13 THE COURT: In front of who?

14 MR. BUTLER: Judge Edwards.

15 THE COURT: Ms. Gillooly, do you know why that case
16 wasn't brought over here when he decided that he was not
17 going to plead guilty?

18 MS. GILLOOLY: I don't know, Your Honor. I have no
19 information concerning that case.

20 THE COURT: That's something I want to know, Mr.
21 Butler. You can brief that. Assuming you can find out and
22 get a stipulation from Ms. Gillooly. Otherwise, we'll have a
23 further hearing.

24 I want to go back and ask you, how many cases since
25 1998 have you had as assigned counsel in Wayne County Court

1 approximately both before and after this case? I'm not
2 asking you to try and ...

3 A. I mean, if I went back and I counted my files and counted
4 the appointments -- you know, if I counted the vouchers that
5 I have submitted, I would be able to tell you. But I --

6 THE COURT: Well, you can approximate, can't you?

7 A. I think that if I guessed, it would be -- it would either
8 be really low or really high at this point.

9 THE COURT: Well, give me a range then, from the
10 high to the low.

11 A. Can I give you an example like today?

12 THE COURT: Sure.

13 A. Okay. Today I was at the Juvenile Court. I was pretrial
14 house counsel. I think I talked to about five or -- four or
15 five parents on a case. Three of the cases were dismissed.
16 Two of them were adjourned.

17 THE COURT: Okay. I'm asking you for -- is juvenile
18 part of Circuit Court now under the new system?

19 A. Yes, it is.

20 THE COURT: Okay. I'm old enough to remember when
21 there was Recorders Court. I remember that 25 percent of the
22 adult assignments went to the Defender Office theoretically
23 by administrative order. The rest were assigned on a
24 rotating basis by judges either for two weeks or two weeks at
25 a time or a month at a time.

1 Is that still the system where the judges do the
2 assignments?

3 A. The judges do the assignments. They are on assignments
4 for two weeks at a time. This past -- like this past week,
5 Judge Jones, she was on assignments -- she's still on
6 assignments. I received two pre-exams. One of them had
7 retained counsel and one of them waived their preliminary
8 examination. So, I had, you know, two cases out of this two
9 weeks.

10 THE COURT: Okay.

11 A. The judges can only assign eight per -- to an attorney
12 per that period. And I never get eight.

13 THE COURT: I hope not. Eight for a two-week
14 period?

15 A. Yes.

16 THE COURT: Felonies?

17 A. Yes.

18 THE COURT: And what percentage of your income is
19 dependent on Wayne County assignments approximately?

20 A. I would say about 80 percent.

21 THE COURT: Okay.

22 A. Most of my income.

23 THE COURT: All right. And is it still the rule
24 that you get paid the same whether you -- that's not correct
25 -- there's a \$50 differential between waiving an exam and

1 holding an exam? It used to be 100 and \$150.

2 A. Well, I think there's a slight difference, but now that
3 they have created the pre-exam system -- and so I believe
4 that if a person wants -- if you just go to the pre-exam
5 stage, you might get \$40 for that.

6 THE COURT: Okay.

7 A. And then it also depends --

8 THE COURT: Hang on a second. That \$40, does that
9 depend on whether or not you have done any investigation?

10 A. That would include investigation, preparation --

11 THE COURT: Is it possible to do investigation by
12 the time of the pre-exam if you are assigned a couple of days
13 before and you don't get the police reports until the day of
14 the pre-exam?

15 A. (No response.)

16 THE COURT: Let me ask it this way. In this case
17 did you see your client before the pre-exam date?

18 A. I don't think that I did, but if I did go see him in
19 jail, I would have had to turn that in to the -- in order to
20 be paid on the case. But I don't have any anything in the
21 file that shows that, well, I went over to the jail, I didn't
22 see his name on the list or he wasn't there. I don't have
23 any notation of that.

24 THE COURT: Okay. And if you had gone over there,
25 what would you have talked about if you didn't have the

1 police report?

2 A. Well, I'll ask my -- well, if I would have gone over
3 there, I would have told him the nature of a pre-exam and
4 what we decided at pre-exam -- and at the pre-exam we decide
5 whether or not we want to hold your preliminary examination,
6 if you want to waive your preliminary examination. That's
7 what I would describe to him. Ask them what their
8 recollection of the facts are; if they know what they are
9 being charged with. If I have that on the appointment form,
10 I would tell them what they're facing, but I mean they
11 don't -- I mean, the appointments that we get, there's very
12 little information. Sometimes I can't even read the names.

13 THE COURT: Okay. Let me ask you this. You've done
14 a number of cases over the last six years.

15 A. Yes.

16 THE COURT: Is it unusual for a Defendant to say
17 that he's innocent at the first meeting?

18 A. No. I wouldn't say it's unusual, no.

19 THE COURT: Okay. Is it unusual for -- after
20 reading the police report and your doing investigation or
21 hiring someone to do investigation, for holding a preliminary
22 examination, where the Defendant sees the quality and
23 quantity of the testimony against him or her, for them to
24 change their mind and say get me the best deal?

25 A. No, that's not unusual at all.

1 THE COURT: That happens a number of times?

2 A. Yes.

3 THE COURT: Okay. What in fact are the federal
4 guidelines here, Mr. Butler, Ms. Gillooly?

5 MR. BUTLER: I'm sorry, Your Honor?

6 THE COURT: What are the federal guidelines if he
7 were to plea or if he were to go to trial?

8 MR. BUTLER: I have them. They are in the pleading
9 I did.

10 THE COURT: Just take a minute and look.

11 MR. BUTLER: I'll look at that.

12 MS. GILLOOLY: Your Honor, I believe the plea
13 agreement was sent out to him for 90 to 97 months on a guilty
14 plea. It would be 101 to 111 if he did not plead.

15 MR. BUTLER: That sounds exactly correct.

16 THE COURT: Okay. Do you have any idea where the
17 numbers 62 to 68 -- the numbers 62 to 68 came from as a
18 guesstimate as to the consequences of a plea here or a
19 conviction here? Did it come from Assistant U.S. Attorney
20 O'Brien, which is what the transcript -- and the transcript
21 seems to say, but I'm not sure that that's what it says. I
22 haven't read it today.

23 A. I would have received them from the prosecutor that I
24 spoke with, but --

25 THE COURT: When you say "prosecutor," you are

1 talking about the state prosecutor?

2 A. The state prosecutor.

3 THE COURT: Okay. You never spoke to an Assistant
4 U.S. Attorney, or do you remember?

5 A. I mean, I spoke with Ms. Gillooly in regards to this
6 case, but the federal prosecutor, they never contact me when
7 I'm appointed on these cases. They've never -- I have never
8 had that happen.

9 THE COURT: Okay. Let me ask you as an aside. And
10 it has nothing to do with this case. You mentioned the CAP
11 talks?

12 A. Yes.

13 THE COURT: Is Professor Weitbraith (ph.) coming in
14 in the next couple weeks?

15 A. I believe so, for the Supreme Court on December the 3rd.

16 THE COURT: Okay. That's where I get my information
17 on the Supreme Court developments, at least the gossip part.
18 I come over there and listen.

19 I also learned how to hitch my pants. If you have
20 seen him, you know that he has set the record for the most
21 pulling up of pants during a talk. You'll notice that from
22 now on.

23 All right. So, the information I need, Mr. Butler,
24 is when the assignment was made.

25 MR. BUTLER: I have that.

1 THE COURT: When -- I want to know the fee
2 schedules.

3 If you are talking about eight assignments being the
4 maximum for two weeks, do you know what the National Legal
5 Aid and Defender guidelines are for that, or the DBA
6 standards are for the number of open files you should have as
7 a criminal trial attorney?

8 A. No.

9 THE COURT: Mr. Butler, if you will find that out,
10 please?

11 MR. BUTLER: I will.

12 THE COURT: And I think, Mr. Butler, I'm going to
13 suggest to you that you may want to invite either the
14 Defender Office what used to be called the Recorders Court
15 Bar Association -- what is that called now?

16 Is there a criminal bar association for Wayne
17 County?

18 A. It's called the Recorders Court Bar Association.

19 THE COURT: Okay. Sort of a blast of the past,
20 Recorders Court.

21 And I think this might be the appropriate case for
22 me to look into institutionally whether these cases -- and
23 when I say "these cases," I'm talking about the operation
24 Safe Neighborhood cases -- are relying on an adequate system
25 of counsel in the state courts.

1 And I'm not talking about you personally. I'm
2 talking about the institution. Because no attorney -- it may
3 be that no attorney can provide adequate representation when
4 you don't have time to do any investigation; you don't have
5 time to advise and counsel your client as to what's in his
6 best interest, because all you have is his version and the
7 police report, and both are received within anywhere from
8 minutes or days before, but not longer than days.

9 And you might want to invite the National Legal Aid
10 and Defenders Association or the Detroit or Wolverine Bar
11 Associations to get involved in this. Because it's --

12 Let me ask you this. You get \$40 for the pre-exam.
13 How long does that take?

14 A. Well, I mean --

15 THE COURT: From the time you enter the courthouse
16 until the time you advise your client and complete the
17 paperwork, do whatever, or court proceedings?

18 A. Well, it -- I mean, it all depends. I mean, first of
19 all, I said \$40 because that's just a number that sounded
20 about right.

21 THE COURT: Uh-hmm.

22 A. But we get paid based on the -- we get paid based -- I
23 mean like a capital offense would never go to a pre-exam.
24 And so --

25 THE COURT: Okay. Do you do capital cases?

1 A. No, I don't do capital cases.

2 THE COURT: Okay. Go on.

3 And this certainly is not a capital case.

4 A. We get paid based on the maximum penalty of the case.

5 And it's my understanding that the fee schedule that exists
6 right now, it hasn't been changed in I think like 20 years or
7 so.

8 THE COURT: 30.

9 A. 30, okay. I'm off ten years.

10 And most court-appointed attorneys don't get eight
11 assignments in a two-week period of time.

12 THE COURT: How many do you have open at any given
13 time? Forget the juvenile ones.

14 A. You know, it ...

15 THE COURT: Approximately. I mean, more than five,
16 more than ten, less than ten?

17 A. I would say -- and I don't really want to give you a
18 number because --

19 THE COURT: Okay. You know what. Don't. Don't.
20 We will come back. Those are the kinds of questions I'd like
21 you to have and not --

22 Well, I'll let Mr. Butler decide what kind of
23 information, if any, he needs from you, because I'm not
24 interested in you in terms of anything more than being a
25 sample or an example. And we can get that without you having

1 to go through your records. And we can get that from the
2 clerk's office and the prosecutor's office. And somebody who
3 hopefully will be co-counsel.

4 A couple more questions I think. There was no copy
5 of the police report that you could give to the Defendant,
6 correct?

7 A. No.

8 THE COURT: Have you -- since 1998 has it been the
9 practice in Recorders Court to provide you with a copy for
10 yourself, if you remember?

11 Because that was a major, major achievement of the
12 Defense Bar, to get that to be available. I don't remember
13 when it started.

14 A. Well, it just started, I would say, in the last two or
15 three years that the prosecutor's office has put in a system
16 where you can get the discovery generally for the pre-exam,
17 so the discovery packets are there. So, if you do want to
18 have a preliminary examination, you would have it, and you
19 would be able to make a copy of it to give to your client.

20 THE COURT: Have you ever had to go to the police
21 station or the precinct to get a discovery packet?

22 A. Yes.

23 THE COURT: Still or not?

24 A. No.

25 THE COURT: Did you get paid for that extra trip

1 out?

2 A. No. No.

3 THE COURT: I've heard enough. Thank you very
4 much. You've been very helpful.

5 And I want to make it clear that what I want to have
6 a hearing on is not your performance, but the institutional
7 arrangement that allowed the case to come over here, with the
8 Defendant having to make an enormous decision without
9 institutionally having the legal advice necessary.

10 You have been very helpful. And thank you.

11 A. You're welcome.

12 THE COURT: Do you have any questions or any
13 thoughts?

14 A. Well, I mean, doing work out of other counties, I mean
15 generally they let you know way before the actual date, and
16 you know at least where the person is.

17 But I mean the appointments that I get, I mean the
18 information, sometimes you can't find the people in jail
19 because they use aliases. I mean, it's a lot of -- there are
20 a lot of issues as far as the system being flawed.

21 THE COURT: You are talking about the Wayne County?

22 A. Yes.

23 THE COURT: And the fee system --

24 And, Mr. Butler, I hope you are taking notes of all
25 these things. These are the things I'm interested in in

1 terms of a continuation of the hearing.

2 MR. BUTLER: I'm taking notes.

3 THE COURT: I should have asked you about that. And
4 I'm glad you brought it up.

5 So, in Oakland County do they have this pre-exam
6 procedure?

7 A. Uhm ...

8 MR. BUTLER: Is the Court directing this to me or to
9 Ms. Barrett?

10 THE COURT: Ms. Barrett.

11 A. Some of the District Courts have pre-exams. They don't
12 have a pre-exam system where you go to Circuit Court, to my
13 knowledge.

14 THE COURT: Okay.

15 A. But the way in which you receive appointments as far as
16 having at least a week or two notice that this person's, you
17 know, preliminary hearing is going to exist -- I mean, and I
18 have had assignments that I wasn't even able to do because I
19 got notice of it too late.

20 THE COURT: In Wayne County?

21 A. Yes. And that --

22 THE COURT: Do you get the discovery packet in
23 Oakland County before you go out there?

24 A. No. But I know in Macomb County when you are appointed
25 to a case, the prosecutor's office -- like if you are

1 appointed -- like say, for instance, I was appointed to a
2 case on November 22nd. Then the prosecutor's office, they
3 automatically fax the discovery of that case either the day
4 or the next day of the appointment. And you're not going to
5 go and -- you know, you are not going to go for your
6 preliminary examination for at least a week or two. At least
7 a week or two.

8 But the system is not -- and then in the case where
9 like say, for instance, sometimes I haven't been notified of
10 the preliminary examination or the pre-examination, then who
11 gets it is a person who is so-called house counsel. So,
12 there's a person at the pre-exam who they assign quarterly
13 and attorneys sign up. And so they would get that case at
14 that time.

15 THE COURT: And they get paid per day for being
16 house counsel?

17 A. Well, no. They get paid per case. So, if you don't get
18 any cases, you don't get any money.

19 THE COURT: Okay. So, you sit there all day, and if
20 you get a case and it actually goes to preliminary exam, you
21 get paid the ordinary fee, but you don't get anything for
22 being on standby?

23 A. No.

24 THE COURT: Okay. Do you know what that system used
25 to be called?

1 A. What?

2 THE COURT: Queen For a Day. But it was called that
3 before there were very many women attorneys. So, it was not
4 a positive thing necessarily.

5 A. Well, and that's the reason why I -- I don't want to give
6 you any misnumbers on like the cases that I handle because
7 there's so many X factors in the system, that it's not just
8 the assignments from the judges. And then you can get
9 retained out. You don't find out that you get retained
10 out -- I just went down to Taylor last week. Got up nice and
11 early in the morning, only to find out that I was retained
12 out on my case. So, I mean --

13 THE COURT: Did you get close enough to see Zug
14 Island?

15 A. Pardon me?

16 THE COURT: Did you get close enough to see Zug
17 Island or any of the downriver sites?

18 A. No, I didn't get close enough to do any sight-seeing.
19 So ...

20 THE COURT: Okay. I understand what you are
21 saying. And I want to say -- and I learned this from trial
22 lawyers, to say things three times. I am not really all that
23 interested in your cases and your practice other than to
24 bring me up-to-date generally. And Mr. Butler and whoever
25 his co-counsel is --

1 I know the State Bar did this lawsuit within the
2 last five years about the Wayne County fees. You might want
3 to find out who the attorneys were in that case.

4 And it is extraordinarily relevant to the question
5 of whether Mr. Morris had adequate counsel when he decided
6 not to take the plea. And the focus is going to be on
7 whether it's institutionally possible to get it set up in
8 Wayne.

9 All right. We're in recess.

10 And, Mr. Butler, I want you to tell -- well, first
11 of all, I assume --

12 Oh, I'm sorry. Ms. Gillooly.

13 MS. GILLOOLY: Your Honor, we have one thing; that
14 we would like to move for admission into evidence the
15 affidavit of Abed Hammoud that I believe was referred to in
16 the testimony.

17 THE COURT: Any objection?

18 MR. BUTLER: No, I don't object. I would like to
19 reserve the right maybe to impeach him or maybe call Mr. --

20 THE COURT: Well, I don't think you are going to
21 start impeaching affidavits. You are more than welcome to
22 call him.

23 MR. BUTLER: I understand.

24 THE COURT: What does the affidavit -- read the
25 affidavit into the record, would be the easiest thing.

1 How long is it?

2 MS. GILLOOLY: It is very short, Your Honor.

3 THE COURT: Okay.

4 MS. GILLOOLY: "I, Abed Hammoud" --

5 (Court reporter interjection.)

6 THE COURT: Why don't you come up to the microphone,
7 and slow down a little bit.

8 (Court reporter asks for spelling.)

9 MS. GILLOOLY: Yes, okay. A B E D, H A M M O U D.

10 THE COURT: Ms. Gillooly, Ms. Mosby and I have
11 synchronized our hearing abilities. So, if she can't hear
12 you, if you are speaking too fast or too low, I can't hear
13 you. So, I appreciate your coming to the microphone.

14 MS. GILLOOLY: "I, Abed Hammoud, duly sworn do
15 state the following:

16 "1. Commencing in January of 2004 until
17 the present, I have acted as Project
18 Coordinator for the Project Safe Neighborhoods
19 initiative on behalf of the Wayne County
20 Prosecutor's Office.

21 "2. On or about February 25, 2004, I
22 became involved with a matter entitled People
23 versus Richard Morris, Wayne County Case No.
24 04-57054.

25 "3. On February 26, 2004, I spoke with

1 Assistant United States Attorney John O'Brien
2 and discussed the possible federal sentencing
3 guidelines the Defendant would face if his case
4 was transferred for federal prosecution.

5 "4. AUSA O'Brien advised that in the
6 event Defendant's case was transferred to the
7 federal government under the Project Safe
8 Neighborhoods program, Defendant could face
9 federal guidelines of approximately 62 to 68
10 months imprisonment.

11 "5. On February 27, 2004, I advised
12 Defendant's attorney, Yvette M. Barrett of the
13 state plea offer made to Defendant and the
14 federal guideline range applicable to
15 Defendant's case should it be referred for
16 federal prosecution.

17 "6. On March 3, 2004, a pre-examination
18 was held before the Honorable Wade Harper
19 McCree, Wayne County Circuit Court. Defendant
20 was represented at the hearing by attorney
21 Yvette M. Barrett. I appeared on behalf of the
22 Wayne County Prosecutor's Office.

23 "7. Defendant was advised on the record
24 of the state plea offer, which was a guilty
25 plea to possession and delivery of marijuana,

1 plus felony firearm, dismissal of the remainder
2 of the charges, with a sentence agreement of
3 one to four, plus two, and a potential federal
4 guidelines.

5 "Judge McCree questioned Defendant
6 concerning his understanding of the state and
7 federal sanctions. Defendant elected to
8 proceed with the preliminary examination and
9 rejected the state plea offer.

10 "8. On March 5, 2004, given the
11 Defendant's indication that he would not accept
12 the proposed plea offer or plead to anything,
13 Defendant's case was referred to federal
14 prosecution pursuant to the Project Safe
15 Neighborhoods initiative.

16 "9. At no time during my involvement in
17 this matter did Defendant or his counsel
18 request an extension of time to consider the
19 state plea offer or the consequences of a
20 federal referral.

21 "10. An extension of time would have
22 been granted, if sought by Defendant or his
23 counsel, to allow Defendant additional time to
24 consider the plea offer to the state charges
25 and avoid the case being referred for federal

1 prosecution.

2 "11. The decision to prosecute and the
3 proposed plea offer for the Defendant were made
4 solely by the Wayne County Prosecutor's
5 Office. There is no agreement between the
6 Wayne County Prosecutor's Office and the
7 federal government which requires that cases be
8 transferred or referred for federal
9 prosecution.

10 "Signed by Abed Hammoud, Wayne County
11 Prosecutor, Coordinator PSN Program, of the
12 Wayne County Prosecutor's Office, on November
13 16, 2004."

14 THE COURT: Thank you.

15 Mr. Butler, I should have done this before. And --
16 Mr. Morris, I assume, has waived his attorney-client
17 privilege as to Ms. Barrett's testimony?

18 MR. BUTLER: Yes, that's correct.

19 THE COURT: Is that true?

20 MR. MORRIS: Yes.

21 THE COURT: Okay, Mr. Morris. Thank you.

22 One thing I think that you might want to pursue, Mr.
23 Butler, is the practice concerning these cases in light of
24 what the assistant prosecutor has said; about there's no
25 agreement between the Wayne County Prosecutor's Office and

1 the federal government which requires that cases be
2 transferred. I would like to know what the practice is and
3 how many are not transferred where somebody asks for a
4 preliminary examination.

5 Do you understand the question?

6 MR. BUTLER: I do. I do, Your Honor.

7 THE COURT: Okay. I don't want you to speak to it.
8 I just want you to do some research and see if that is
9 correct or not correct.

10 There may not be an agreement, but there may be a
11 practice. If there's no practice, that's fine. If there's
12 no agreement, that's fine.

13 The other thing I want you to look into is what
14 impact, if any, is telling the man both on the record and
15 informally that if he goes to federal court, he's facing 62
16 to 68 months, which seems to be a number that is not close to
17 what I've just been informed today was the number. Okay?

18 MR. BUTLER: I'm sorry. What's the Court's specific
19 question about that? I mean, other than the obvious
20 disparity --

21 THE COURT: I want to know if it's a valid waiver of
22 his right to, if you will -- of his --

23 What he has done effectively here is he has waived
24 whatever right he had to a state trial, preliminary
25 examination, and he has waived that based on a -- the advice

1 given by the Wayne County prosecutor to Ms. Barrett, which
2 was apparently based on what the Assistant United States
3 Attorney may have said; that he was going to be facing 62 to
4 68 months. And the numbers I just heard a minute ago were 50
5 percent more than that.

6 MR. BUTLER: Correct.

7 THE COURT: So . . .

8 MS. GILLOOLY: Your Honor, I don't think that's
9 correct. I think the amounts he was told at the pre-exam was
10 62 to 68 months.

11 THE COURT: Okay.

12 MS. GILLOOLY: And that calculation was based upon
13 the amount of the marijuana, plus the 924(c), which would be
14 the 60 months.

15 THE COURT: Okay.

16 MS. GILLOOLY: He was actually given in the Rule 11
17 a 90 to 97 with the plea. So, it is not 50 percent. It is
18 less than 30 months difference between the minimum guideline
19 range.

20 THE COURT: Ms. Gillooly -- wait, wait, wait. Let's
21 clear this up. It is slightly less than 50 percent. If you
22 go 30 over 62, it is probably about 48 percent higher.

23 MS. GILLOOLY: If you --

24 THE COURT: The 90 months is the -- if he pleads
25 now, is what he's facing as a minimum. Correct?

1 MS. GILLOOLY: 90 months, Your Honor.

2 THE COURT: If it had been 60 months.

3 MS. GILLOOLY: 62.

4 THE COURT: I know. If it had been 60, we have 30
5 over 60, which would be 50 percent more. So, if I had my
6 little calculator up here or my kid who knows math better
7 than I do, the fraction is 30 over 58. And so it's 47
8 percent.

9 I mean, just so that you understand; that I might be
10 challenging some things, but my math is slow but good.

11 MR. BUTLER: Is the Court using the guideline
12 numbers that would contemplate a federal plea --

13 THE COURT: Yes.

14 MR. BUTLER: Or without -- without a plea it's 101
15 to 111.

16 THE COURT: Which would be even more than 50 percent
17 more.

18 Mr. Butler, this may end up being your career case.

19 MR. BUTLER: It's showing signs of that. It's a
20 very interesting issue.

21 THE COURT: And it's a very important case primarily
22 for your client, who is facing a lot of time if he's
23 convicted.

24 And, Mr. Morris, I have to -- I think I have to
25 advise you that there is no speedy trial time running while

1 this motion is going on. And this motion is not going to be
2 decided tomorrow. And it -- if we set up a hearing directly,
3 we are looking at January, and we are looking at possibly a
4 couple days of hearing, depending on what Mr. Butler's
5 research and whoever his co-counsel may be.

6 And, by the way, are you assigned or retained?

7 MR. BUTLER: I'm assigned.

8 THE COURT: Then you should be talking primarily --
9 not primarily, but, first of all, to attorney Miriam Seifer
10 who will link you to these other groups.

11 MR. BUTLER: Yes.

12 THE COURT: All right?

13 MR. BUTLER: Understood.

14 THE COURT: Thank you very much for your help.

15 A. Okay. You're welcome.

16 THE COURT: Do you have anything else -- I'm sure
17 this isn't the high point of your day or your life to come in
18 here. And I appreciate your doing that.

19 A. Oh, I'm interested about -- I mean the fact that you said
20 this might be a landmark case in his career, I'm definitely
21 interested in helping out as far as how assigned counsel is
22 treated and how indigent clients are treated, because I
23 definitely think that the system needs an overhaul.

24 THE COURT: Well, I can't overhaul the system. But
25 I can in this case determine whether or not Mr. Morris has

1 been provided adequate counsel in the state court and the
2 impact, if he has not, on him being over here.

3 A. Okay.

4 THE COURT: Thank you.

5 Anything else, Ms. Gillooly?

6 MS. GILLOOLY: Nothing for the Government, Your
7 Honor.

8 THE COURT: And, Ms. Gillooly, this might be your
9 career case also.

10 MS. GILLOOLY: I promise you, it won't, Your Honor.

11 THE COURT: And given your background with the
12 Attorney Grievance folks, it's something that I'm sure you
13 are very sensitive to.

14 MS. GILLOOLY: Yes, Your Honor.

15 (Off the record.)

16 THE COURT: What was that? I'm sorry.

17 MR. BUTLER: I wasn't aware of that background.

18 THE COURT: What's the background? Did I miss
19 something?

20 MR. BUTLER: Her background with the Attorney
21 Grievance.

22 THE COURT: Well, that's because you've never asked
23 for an investigation.

24 Thank you.

25 MS. GILLOOLY: Thank you, Your Honor.

1 MR. BUTLER: Thank you, Your Honor. We'll get a new
2 date with the Court's staff.

3 THE COURT: Right. You will get a new date with the
4 Court after you've done some fact research. And I would want
5 a prehearing brief from both sides just so I know where it's
6 going and where we've been.

7 (Proceedings adjourned at 3:46 p.m.)

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