

6-3-2008

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1 EXAMINATION BY COMMISSIONER HERNANDEZ:

2 Q. Good morning. What is your name, sir?

3 A. Mark Washington.

4 Q. Mr. Washington, my name is Commissioner  
5 Hernandez. Also conducting your hearing today is  
6 Commissioner Grant and Commissioner Greenan.

7 COMMISSIONER GRANT: Hello.

8 COMMISSIONER GREENAN: Hello,  
9 Mr. Washington.

10 Q. Mr. Washington, I know you've never seen  
11 me before. Actually, this is a brand new panel.  
12 You've never seen any of us here. You were seen back  
13 in 2006 as an initial. You were held for 24 months;  
14 is that correct?

15 A. That's correct.

16 Q. You came before the board when? When was  
17 the last time you were here, a few months ago?

18 A. Yes.

19 Q. They postponed you because they needed you  
20 to get a mental health review, right?

21 A. That's correct.

22 Q. And you have done that?

23 A. Yes.

24 Q. That's in accordance with the 1960 law  
25 because of the charges you were convicted of.

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1 A. Yes.

2 Q. It says here you were found guilty in 1980  
3 of murder second, two counts, arson second and  
4 burglary first, and you were also found guilty in  
5 1989 of assault second, three counts; is that  
6 correct?

7 A. That's correct.

8 Q. How old are you, sir?

9 A. I'm 49.

10 Q. How long have you been incarcerated?

11 A. 29 years.

12 Q. It says here that back in 1975 that you  
13 along with two other codefendants went into a 71 year  
14 old female victim's apartment. That female ended up  
15 being brutalized, sexually abused and strangled to  
16 death, and she was found with a table leg inserted in  
17 her vagina, and her apartment was burglarized. Also  
18 I guess a fire was set to try to cover up the crime.

19 Then it says in 1989 while you were an  
20 inmate at Attica, you had some kind of altercation  
21 with correction officers, and three people sustained  
22 injuries. Is that correct?

23 A. It actually happened in 1987, but that's  
24 correct.

25 Q. There's a typo here with the information

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1 that I have. Yes, you're correct. It is 1987. I  
2 will make that correction.

3 Did you commit that crime back in 1975?

4 A. No, I did not.

5 Q. How did you get implicated in that?

6 A. I was 16 years old. I was on my way to  
7 school that morning, and there was a lot of people  
8 standing on the corner, and I saw somebody that I  
9 knew. I walked over to the guy, and I asked him what  
10 was going on. They had a lot of fire trucks, police,  
11 everybody out there, many people from the  
12 neighborhood. I was inquisitive, so I asked what was  
13 going on.

14 The guy that I talked to named Alvin  
15 Boykins, he simply told me somebody was murdered and  
16 they were strangled and this table leg was stuck  
17 inside the lady. That was it. I in turn went to the  
18 cleaners, picked up a friend of mine. We got the  
19 train and went on to school.

20 I told my friend on the train. My friend  
21 sometime later on was questioned by the officers in  
22 the neighborhood. Officers questioned a lot of kids  
23 in the neighborhood at that time. That statement  
24 that I told to him is what I'm in prison for today.

25 Q. What did you tell him?

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1           A.     I told him exactly what Alvin Boykins told  
2 me.

3           Q.     Did you know the victim at all?

4           A.     No, I did not. I lived in the  
5 neighborhood too. I didn't know them.

6           Q.     We have your sentencing minutes. You  
7 appeared before the Honorable Philip Cheta?

8           A.     That's correct.

9           Q.     Is there anything in your sentencing  
10 minutes that you would like us to refer to?

11          A.     I never even seen a copy of my sentencing  
12 minutes.

13          Q.     This crime happened in '75. How come it  
14 took so long for it to come to trial?

15          A.     That's the point. I wasn't arrested until  
16 years after. There was no warrant for me. What had  
17 happened was that I was told at trial that the case  
18 was marked inactive for lack of evidence or  
19 anything. It was in the newspapers again prior to my  
20 arrest. People was complaining that the case was  
21 unsolved. Next thing you know, they had a warrant  
22 out for my arrest.

23                 Police came to my family's home. I was  
24 working at the time doing part-time work at the  
25 school. My mother told me that the detectives was

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1 looking for me. She, me and my father and my sister,  
2 we went to the police department, and I haven't been  
3 in the streets since.

4 Q. I do have in your sentencing minutes you  
5 do say that you did not commit the crime.

6 A. Yes.

7 Q. That is in your sentencing minutes.

8 A. Yes.

9 Q. Your criminal history, even though you  
10 were so young, you had some things in your  
11 background.

12 A. That's correct.

13 Q. You had an attempted criminal possession  
14 of stolen property in '78, menacing in '77. That's  
15 about it for you.

16 What happened back in Attica in '87? Why  
17 don't you tell us about that.

18 A. Attica is a unique prison, and I'm not  
19 trying to make no excuses to demean anything, but the  
20 officers there are different than most other places.  
21 They are very aggressive.

22 This one particular day coming back from  
23 program; Officer Callahan, he's about six-nine, 260,  
24 something like that, he pushed me going up the steps,  
25 and I turned around to say what are you doing. Next

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1 thing you know we both were entangled, and we was on  
2 the ground. I got beat up, sent to the box and was  
3 charged 11 months later.

4 Q. That was a long time ago as well. I want  
5 to point out for the record we have received letters  
6 on your behalf from corrections staff. There's a  
7 letter here from M. Titus. I guess that person is a  
8 correction officer; is that correct?

9 A. Yes, that's correct. He's changed  
10 position now.

11 Q. He says he met you in his capacity as a  
12 correction officer, that you were a hard worker, that  
13 in his capacity as an inmate grievance program  
14 supervisor he's worked with you. He has a very  
15 positive letter here on your behalf.

16 A. Thank you.

17 Q. There's also a letter here from R. Semky.  
18 Is that a lieutenant?

19 A. Yes.

20 Q. That person is a security supervisor for  
21 the past 20 years as a Department of Corrections  
22 employee of 27 and a half years and a corrections  
23 counselor for five. This person is the inmate  
24 liaison staff adviser and has regular contact with  
25 you.

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1 A. That's correct.

2 Q. Is it a he or she?

3 A. It's a he.

4 Q. He says that he acknowledges that you've  
5 made many positive changes in your life.

6 There's also a letter from Centurion  
7 Ministries, a Mr. Jim McClosky.

8 A. That's correct.

9 Q. Offering support.

10 There's also a letter from a Betty Story,  
11 US Navy retired.

12 A. That's my sister.

13 Q. She's written a letter on your behalf.

14 Is your mom still alive?

15 A. Yes, she is.

16 Q. There's a letter here from Ann Krauser.

17 Who is that, sir?

18 A. She's a civilian staff person at Elmira.

19 Q. She's written a letter on your behalf.

20 Then back in 2002 it looks like you also  
21 had some letters written on your behalf. Correction

22 Officer Scott Ackerman wrote on your behalf,

23 B. Charles, other people from the facility wrote

24 letters on your behalf.

25 Sir, what have you been doing with your

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1 time since your last parole hearing?

2 A. I maintain the status quo if you want to  
3 say. I have kept the same programs that I've had for  
4 the last five years.

5 Q. What are those?

6 A. Painter, porter. I participated in the  
7 inmate liaison committee as a chairperson. I have  
8 been active with the veterans organizations.

9 Q. Are you a veteran?

10 A. No, I'm not.

11 Q. You couldn't be. You were 16 when you  
12 came in. Go ahead.

13 A. Basically those were the programs I  
14 maintained since the last parole board.

15 Q. Do you have a GED or any higher education?

16 A. I got 67 credits, and I graduated from  
17 high school before I came to prison.

18 Q. You've completed ART, right?

19 A. Yes, I have.

20 Q. AVP?

21 A. Yes.

22 Q. You got a ticket in 1999, and then you  
23 didn't have any tickets between then, and then you  
24 got one last fall for direct order. What was that  
25 about?



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1           A.     It was a new officer on the company, and  
2 he didn't know that I had an IOC pass to be out for a  
3 certain time, and there was a misunderstanding with  
4 that there. I got locked up for it. We spoke after  
5 it and that was it. I didn't do any keep lock time  
6 on it, but I still got it.

7           Q.     It says one month keep lock, but I thought  
8 it was odd because it says Tier III, which normally  
9 that's pretty serious.

10          A.     I didn't do any keep lock time though.

11          Q.     What are your plans for your future?  
12 You've been in for a very long time. You've grown up  
13 in prison. It's a horrible crime. Unfortunately  
14 because you were found guilty, I mean, you're saying  
15 you didn't do it. What are your plans? What are you  
16 going to do?

17          A.     I have many people out there willing to  
18 support me. I have a couple of offers of some jobs.  
19 My family, friends are looking to support me when I  
20 first get out until I get me a job. I plan to move  
21 down south if the parole board will allow that.  
22 That's where my family is.

23          Q.     What are your skills, sir? What do you  
24 think you can do out there for work?

25          A.     I got plumbing skills. I'm an upholster.

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1 I can take any kind of chair, furniture, rebuild it,  
2 build it from nothing to something. I have a few  
3 skills.

4 Q. You would have to get permission to move  
5 to another state. Prior to that where are you going  
6 to live?

7 A. Rego Park, Queens with my sister Betty.

8 Q. How old is your sister?

9 A. She's in her 60s.

10 Q. It does say here in your disciplinary that  
11 it was a suspended sentence of one month keep lock.  
12 It does say that.

13 A. Thank you.

14 Q. I don't have any other questions.  
15 Commissioner Grant?

16 COMMISSIONER GRANT: Mr. Washington, I  
17 read the submission that was provided to us that I  
18 guess Jim McClosky wrote from Centurion. We're  
19 pretty family with the Centurion Ministries. They  
20 don't just take every case. They have a pretty high  
21 standard of what they review, so we take what they  
22 say seriously, and Jim McClosky was very thorough in  
23 his write-up.

24 I make the note that Mr. Simms was  
25 released I think it was from Green Haven or Great

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1 Meadow.

2 A. Yes. It was Green Haven.

3 COMMISSIONER GRANT: In 2006?

4 A. Yes.

5 COMMISSIONER GRANT: Mr. McClosky in his  
6 submission mentions other potential suspects that he  
7 feels were more likely than either you or Mr. Simms.  
8 You've read that. Did you know any of these other  
9 people?

10 A. The guy Alvin Boykins that I had mentioned  
11 to the commissioner, that was the guy I spoke to that  
12 day. I think McClosky is closing into him right now.

13 COMMISSIONER GRANT: He mentions another  
14 person, a Mr. Boston. Did you read that? Did you  
15 know him?

16 A. That's a relative of Boykins, a  
17 brother-in-law.

18 COMMISSIONER GRANT: Did you know him at  
19 all?

20 A. I just knew him from the neighborhood. I  
21 knew his sister, but I didn't really know him as  
22 much.

23 COMMISSIONER GRANT: Let me come back  
24 with your contact with Mr. Boykins, the conversation  
25 you had with him when you were on your way to

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1 school. Can you just go over that again for me so I  
2 can understand it?

3 A. The morning in question, I was on my way  
4 to school, so I go through this here alleyway. Right  
5 on the corner of Greenpoint Road and Mott Avenue  
6 there were a lot of people standing on the corner.  
7 There were fire trucks outside, police in and  
8 outside. I'm inquisitive. I see a crowd of people,  
9 so I look to see if I knew anybody, and I seen  
10 Alvin. I walked up to Alvin and said what's going  
11 on. Why is all the police out here. He described to  
12 me that a lady was killed, and he described the  
13 details.

14 COMMISSIONER GRANT: He described that  
15 to you?

16 A. Yes, he did. I didn't think nothing of  
17 it.

18 COMMISSIONER GRANT: Can I interrupt you  
19 again. Did he say how long ago the lady had been  
20 killed when he described it to you?

21 A. No, he didn't.

22 COMMISSIONER GRANT: Go ahead. I'm  
23 sorry.

24 A. I didn't think much of that there. I was  
25 on my way to school. I stood there a few moments

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1 later. Then I went to the cleaners and picked up  
2 Herbert Simms. We go to school together on the  
3 train. That's when I told Herbert what Alvin had  
4 told me. We went on to school. We didn't hear  
5 nothing about this here no more for some months.

6 Then Herbert Simms were questioned by the  
7 police along with some other kids from the  
8 neighborhood. Herbert reiterated to them what I had  
9 told him going to school that morning. That's how I  
10 got involved in the case. Then the police came and  
11 questioned me. I told them exactly what Alvin told  
12 me, who Alvin was. I even took them to Alvin's  
13 house. I pointed out, said there goes Alvin right  
14 there. I didn't have anything to hide. I'm a kid.  
15 I told them Alvin was a grown man.

16 From that point the police asked me will  
17 you come in for further questioning. I said sure. I  
18 went in. They asked me if I would take a polygraph  
19 test. I said yes. Because I was underage they had  
20 to get permission from my parents to which they went  
21 and did. I passed the polygraph test, and I didn't  
22 hear anything no more for maybe three and a half  
23 years. Three and a half years had passed by, and I  
24 didn't hear anything about the case. Then all of a  
25 sudden they say they have a warrant for my arrest.

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1 COMMISSIONER GRANT: You took the  
2 polygraph I think in April of '76? Is that your  
3 recollection?

4 A. That's correct.

5 COMMISSIONER GRANT: At that point the  
6 indication was from the police that you were telling  
7 the truth, that you didn't kill Miss Gallivan,  
8 correct?

9 A. Yes.

10 COMMISSIONER GRANT: That's your  
11 understanding?

12 A. Yes.

13 COMMISSIONER GRANT: Go right ahead.

14 A. After the polygraph test, three and a half  
15 years had passed by. I didn't hear anything more  
16 about the case. I kind of moved on with my life.  
17 All of a sudden the police come to my house looking  
18 for me saying they want to question me about  
19 something.

20 There was a lady by the name of Erma  
21 Crook. Erma Crook was a lady that I knew. I used to  
22 go with her daughter, in fact. She had contacted my  
23 parents and told my parents that there was a warrant  
24 out for my arrest for this here homicide, and she  
25 suggested to my parents that I leave. I sat down

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1 with my mother and father, and they said what's going  
2 on. What are you going to do. I said mom, I didn't  
3 do anything. I said let's go to the precinct and  
4 we'll clear it up.

5 We go to the precinct that following day.  
6 They arrested me. I find out about nine months later  
7 when I'm incarcerated from my lawyer that Erma Crook,  
8 two of her daughters went to the grand jury and  
9 testified against me and Herbert Simms. That's what  
10 got the indictment against us.

11 Now, later on during the course of trial,  
12 we find out from the district attorney that Erma  
13 Crook and her two daughters refused to now testify at  
14 trial against us because they said they was  
15 threatened to go to the grand jury. They never even  
16 came to trial to testify against us.

17 COMMISSIONER GRANT: Mr. Boykins is dead  
18 now, is that your understanding?

19 A. That's my understanding, yes.

20 COMMISSIONER GRANT: Obviously you took  
21 it to trial, correct?

22 A. That's correct.

23 COMMISSIONER GRANT: Do you recall being  
24 offered a plea bargain at any point in this  
25 proceeding?

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1 A. Never. If I was, I wouldn't have took it.

2 COMMISSIONER GRANT: At some point they  
3 focused on you and Mr. Simms pretty much exclusively  
4 it looks like?

5 A. Yes, and Mr. Simms is only in here as a  
6 result of me giving him the statement, and that's  
7 what I'm in here for, for that statement.

8 COMMISSIONER GRANT: You're maintaining  
9 the only reason you're part of this process is  
10 because Mr. Boykins had told you what he had heard  
11 happened?

12 A. Exactly.

13 COMMISSIONER GRANT: This is an unfair  
14 question. You don't have to answer it, and I won't  
15 think anything of it if you don't answer it, but I  
16 will ask it anyway.

17 You're maintaining your innocence after  
18 all these years. Who do you think did this?

19 A. From everything that I went to trial with,  
20 I'm asking myself how did Alvin Boykins know that  
21 information early in the morning and why didn't the  
22 officers and them key in on him more earlier instead  
23 of keying in on me.

24 COMMISSIONER GRANT: That's what Jim  
25 McClosky says too. Why do you think? What do you



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1 think happened?

2 A. I don't know. I can only say that because  
3 of the nature of the crime and because it had went  
4 unsolved for so long, pressure came down to the cops  
5 and them of having to solve the case. I think it was  
6 more easy to pick a little young kid.

7 COMMISSIONER GRANT: Other people would  
8 argue that the police thought they had a pretty good  
9 case against you and Mr. Simms and they proceeded  
10 with it.

11 A. Some people will probably say that.

12 COMMISSIONER GRANT: I think I don't  
13 need any more questions at this point.

14 Q. Commissioner Greenan?

15 COMMISSIONER GREENAN: I have no  
16 questions. Thank you.

17 Q. I notice you didn't take the sex offender  
18 program while you were in prison; is that correct?

19 A. That's correct.

20 Q. If that was a condition of parole, would  
21 that be something you would be willing to do?

22 A. I can't because you would be asking me to  
23 give up the only thing I have. I'm innocent. I have  
24 maintained that because I'm truly innocent. If I  
25 have to take that sex offender program, then they

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1 will tell me that they will kick me out of the  
2 program if I don't admit to it.

3 Q. I'm saying on the outside, would you be  
4 willing to do it?

5 A. It would be the same thing. It would be  
6 the same thing, ma'am. Can I say this, please?

7 Q. Sure.

8 A. I'm sorry that a woman lost her life.  
9 It's a tragedy any time that someone lose their life,  
10 and I understand that you're not here to retry me or  
11 anything, but the truth is I am totally innocent.  
12 You can't believe it because I have been found  
13 guilty, I understand that, but don't take the only  
14 thing I have left in me, the knowledge and the fact  
15 that I'm innocent. Don't take that from me by you  
16 forcing me to go to a program where the program would  
17 tell me in order for me to stay in the program, then  
18 I would have to admit to something that I didn't do.  
19 That would go against everything that I'm still  
20 fighting for. If there was some DNA in the case, I  
21 wouldn't even be here now.

22 COMMISSIONER GRANT: You mentioned at  
23 some point, if I recall correctly, in one of your  
24 conversations I think with the police, you mentioned  
25 that there was some guys in the neighborhood known

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1 for robbing older people. Do you recall that?

2 A. Yes.

3 COMMISSIONER GRANT: Who specifically  
4 were you talking about at that point, if you can say?

5 A. There was a guy, I don't recall his first  
6 name, but I know that the officers and them did get  
7 his name. I knew him by City. They called him City,  
8 and I gave them that information at that particular  
9 time. I didn't have anything to hide.

10 COMMISSIONER GRANT: That person wasn't  
11 either Mr. Boykins or Mr. Boston?

12 A. No.

13 COMMISSIONER GRANT: You had never at  
14 any point tried to implicate Mr. Boykins or  
15 Mr. Boston throughout this process?

16 A. No, I didn't. I didn't know that Boykins  
17 was involved until just here recently after Jim  
18 McClosky did their investigation. Apparently how  
19 they found that out was that they went around to  
20 canvass the neighborhood, and they ran into a family  
21 member of Boykins. The family member is the one that  
22 told Jim McClosky and them that the guys that's  
23 incarcerated didn't do it because my brother admitted  
24 it. He said him and my brother-in-law is the one  
25 that did it. That's where this information comes

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1 from.

2 COMMISSIONER GRANT: How did Centurion  
3 get involved with this to begin with?

4 A. I was writing any and everybody to try to  
5 get some help to prove my innocence throughout the  
6 years. I wrote to that there organization for  
7 probably 19 years before they decided to take my  
8 case. I just kept writing them for about 19 straight  
9 years. I got letters like this now. I was just very  
10 persistent. I couldn't give up.

11 COMMISSIONER GRANT: As I say, I'm  
12 familiar with Centurion. It's a great organization,  
13 and they don't just take every case. They have a  
14 pretty selective screening process they utilize.  
15 They are generally very, very thorough. You  
16 indicated you thought something might be breaking in  
17 this at some point?

18 A. Yes, from the last information that he  
19 shared with me and my family.

20 COMMISSIONER GRANT: How long ago was  
21 that?

22 A. This was two months ago. He had said that  
23 he needed to get some more information from someone  
24 out there in the neighborhood, and until he can get  
25 that information, it wasn't really a lot that he was

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1 able to tell me at this point, but it looked very  
2 favorable.

3 COMMISSIONER GRANT: Thanks again. I  
4 appreciate your answering the questions. It helps us  
5 a great deal in coming up with a decision. You're  
6 absolutely correct that we can't retry the case, but  
7 one of the points of asking questions like this is if  
8 we do release you, we have to supervise you, and we  
9 want to know this type of information to get a kind  
10 of sense of how best we can supervise you.

11 A. I understand that.

12 COMMISSIONER GRANT: Thank you.

13 A. Thank you.

14 Q. Mr. Washington, you've given a very good  
15 interview. We have a lot to consider here. You have  
16 been incarcerated for a lengthy period of time. Do  
17 you think you're going to have any problems on  
18 parole?

19 A. No, I won't. I did pretty well here so  
20 no, I don't think that I will.

21 COMMISSIONER GRANT: Mr. Washington, I  
22 don't know what we're going to do here. I don't know  
23 what I'm going to do here. I'm still trying to sort  
24 it all out. If you're granted release, I would say  
25 you're going to have problems out there. Each one of

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1 us have problems in our daily lives. If you get  
2 released and you have problems, the stakes are so  
3 much higher for you.

4 The only advice I would give you, and  
5 again I don't know what we're going to do here, if  
6 you find yourself running into difficulties on the  
7 outside, let your parole officer know early what's  
8 going on when we have a lot of options that we can  
9 work with you on as opposed to us having to find out  
10 at some event subsequent to this where we have to  
11 take action that limits our options. Does that make  
12 sense?

13 A. Yes.

14 COMMISSIONER GRANT: Another question,  
15 you're familiar with the Fortune Society, correct?

16 A. Yes, I am.

17 COMMISSIONER GRANT: You're familiar  
18 with the program they have, I don't know if you are  
19 or not, the Fortune Academy on 140th and Riverside?

20 A. Yes. In fact, that's where Herbert Simms  
21 is at right now.

22 COMMISSIONER GRANT: That's correct.  
23 They have a very good track record with people who  
24 have been incarcerated for a long period of time.  
25 Would you be amenable if you were to get released at

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1 this juncture of going to the Fortune Academy or the  
2 Castle as they call it?

3 A. I would love to go there, yes.

4 COMMISSIONER GRANT: That's not a  
5 situation where it's an easy time in the community.  
6 They are pretty tough, and they don't put up with any  
7 nonsense at all. You certainly would be amenable to  
8 using that as a possible transition?

9 A. Yes, I would.

10 COMMISSIONER GRANT: Thank you very  
11 much. Again, I appreciate your responding to our  
12 questions.

13 Q. Have a good day. You will shear from us  
14 in a few days. Good luck.

15 A. Thank you.

16 (Room cleared.)

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