

1 recall a reference to the "orange socks" case  
2 Q In fact, on the tape the sheriff specifically  
3 says he's not going to talk about this case,  
4 doesn't he?

5 A I believe there is reference to that.

6 MR. WALSH: I'll pass the witness.

7 THE COURT: Mr. Higginbotham?

8 MR. HIGGINBOTHAM: No further  
9 questions.

10 THE COURT: You may step down, Mr.  
11 McCollough.

12  
13 (The witness, Parker McCollough, was  
14 excused.)

15  
16  
17 DON HIGGINBOTHAM

18 appeared as a witness on behalf of the Defense and,  
19 being first duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. PARKER:

23 Q State your name for the record.

24 A Don Higginbotham.

25 Q Mr. Higginbotham, are you one of the

1 court-appointed attorneys for Henry Lee Lucas in  
2 this cause?

3 A I am.

4 Q Are you familiar with an order entered by this  
5 Court? The order is dated the 14th day of  
6 November 1983, signed on the 21st day of  
7 November 1983, and filed on the 21st day of  
8 November 1983 by Judge Carter regarding  
9 questioning and interrogation of the Defendant,  
10 Henry Lee Lucas.

11 A Yes, I'm familiar with that order.

12 Q Are you familiar with portions of this order  
13 that state: "The Defendant may be interrogated  
14 or questioned by law enforcement officers only  
15 if he consents to said interrogation, and only  
16 after the Sheriff of Williamson County, Texas,  
17 has advised the attorneys for the Defendant  
18 herein that he is to be interrogated"?

19 A Yes, I am familiar with those portions.

20 Q You're also familiar with the -- another portion  
21 of the order that states: "It is further  
22 ordered that the Defendant is not to be  
23 interrogated by anyone concerning the offense  
24 for which he has been indicted herein."

25 A Yes, I'm familiar with that.

1 Q Specifically in February of 1983 -- I believe  
2 it's February 16th of 1984; excuse me -- the  
3 date that, I think it's State's Exhibit 101,  
4 this particular exhibit that has just been  
5 played here in the courtroom, were you notified  
6 on that date or on any date prior to that, that  
7 this particular -- that Henry Lee Lucas was  
8 going to be interrogated on February 16th, or  
9 the date this exhibit was made?

10 A No, I was not.

11 Q Were you notified in any manner that he was  
12 going to be questioned on this particular date?

13 A No, I was not.

14 Q Were you notified that any videotaped statement  
15 was going to be made on that particular date?

16 A No, I wasn't.

17 Q Were you notified by the sheriff or any other  
18 person involving law enforcement or any person  
19 from the District Attorney's Office about this  
20 particular interrogation with the videotaped  
21 session?

22 A No, I was not.

23 MR. PARKER: I'll pass the witness.  
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CROSS-EXAMINATION1  
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BY MR. WALSH:

Q Mr. Higginbotham, is it correct that at some point in time, the Sheriff and you and Mr. McCollough did reach some form of understanding that he didn't have to call you every time someone wanted to talk to Lucas?

A That's not quite accurate, if I may be allowed to explain.

Q Go ahead.

A Shortly after the November the 14th order that we're talking about, it came to my attention that the Sheriff of Williamson County and many other law enforcement officers were interrogating Henry Lee Lucas. The way that came to my attention was, very frankly, at least daily phone calls from the Sheriff of Williamson County. After approximately a week, it became obvious that there was no way to keep up with what was happening as to the interrogation of Henry Lucas.

At that point in time, I told the sheriff, or we agreed, that on cases that did not pertain to the particular case that we were talking to -- and I specifically remember

1           stating the particular case we're talking about.  
2           I even remember saying, "the orange sock case,"  
3           because that is what we have traditionally  
4           called this case. I said something to the  
5           effect that there is no reason for me to come to  
6           the jail.

7                         However, later on in the conduct of  
8           the defense of this case, I did mention to the  
9           sheriff and to others, particularly Sgt. Bob  
10          Prince of the task force, that we needed  
11          notification concerning interrogation schedules  
12          because, frankly, we were finding we could not  
13          get to our client when we needed to sometimes.

14         Q         Is that all?

15         A         That's all.

16         Q         I will ask you the same thing I asked Mr.  
17                     McCollough. Where on this tape is the orange  
18                     socks case discussed?

19         A         It is not, but it is here.

20                     MR. WALSH: Pass the witness.

21                     THE COURT: Mr. Parker.

22  
23                     REDIRECT EXAMINATION

24         BY MR. PARKER:

25         Q         Mr. Higginbotham, had you just completed a

1 pretrial in this case sometime right before this  
2 particular tape would have been made?

3 A We completed a pretrial, to the best of my  
4 recollection, on January, Friday the 13th.

5 Are you talking about when this tape  
6 was made? This tape was made in February, as I  
7 understand it. I don't know when it was made  
8 for sure, because I wasn't there.

9 MR. PARKER: Pass the witness.

10 THE COURT: Step down, please.

11  
12 (The witness, Don Higginbotham, was  
13 excused.)

14  
15 THE COURT: Anything further?

16 MR. HIGGINBOTHAM: We would renew our  
17 objections, Your Honor. We would object further.  
18 Our objections, we would object further on the  
19 grounds that taking this tape does, in truth and  
20 fact, constitute a discussion of this case. It  
21 is sought to be introduced into this case and,  
22 consequently, has an impact on this case; and  
23 that any sort of protestations at the front  
24 preambles to this tape stating that this does  
25 not pertain to any particular case is simply

1 self serving. And we would object upon the  
2 reasons that I stated, the fact we were not  
3 notified, and that this -- and we would urge  
4 that this tape does directly bear on this case  
5 or it would not be here. So, consequently, we  
6 object to the admission of this tape.

7 THE COURT: The objection is  
8 overruled.

9 MR. HIGGINBOTHAM: Would you note our  
10 exception, please.

11 THE COURT: Noted.

12 Anything else?

13 MR. WALSH: Your Honor, I have a  
14 note that my officer from Travis County has just  
15 gotten here, and I need to talk to him just a  
16 few minutes before I put him on. We could  
17 either take a break or else we can go ahead and  
18 present the evidence of the Abilene officer to  
19 the jury, and maybe I could talk to him during  
20 lunch.

21 THE COURT: It's 11:15. Why don't we  
22 try to get all this preliminary  
23 outside-the-presence-of-the-jury thing done  
24 before lunch and let the jury go on to lunch,  
25 and we'll start up after lunch with presenting