

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2012-212107

JONATHAN KYLE BINNEY, SK 6009 Petitioner/Respondent,

v.

STATE OF SOUTH CAROLINA Respondent/Petitioner,

APPENDIX
VOLUME X OF XII

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1 Q. AND AT THE TIME OF THE TRIAL HE COULD NOT FIND THE .22?

2 A. I DON'T REMEMBER THAT. BUT I -- I DON'T DISPUTE THAT.

3 I MEAN, WE WERE GOING FOR WHATEVER WE COULD.

4 Q. NOW ONE OF THE OTHER POSSIBILITIES THAT YOU CONSIDERED
5 IN ALL THIS, IS IT NOT, THAT REGARDLESS OF WHETHER YOU WERE
6 CONSIDERING RAISING THIS, WHETHER OR NOT MR. BINNEY SHOT OR
7 SHOT AT OR SHOT AND INJURED MS. SOUTHERN THAT THERE WAS THE
8 POSSIBILITY THAT MR. SOUTHERN DID LESS THAN HIS BEST TO GET
9 HER TO THE EMERGENCY ROOM AS QUICKLY AS POSSIBLE?

10 A. CORRECT.

11 Q. IS THAT CORRECT?

12 A. YES.

13 Q. AND THAT WAS ANOTHER POSSIBLE ALTERNATIVE YOU WERE AT
14 LEAST PUTTING OUT THERE, A CONCLUSION THAT A JURY MIGHT DRAW
15 FROM THE EVIDENCE?

16 A. CORRECT.

17 Q. NOW I WANT TO TALK WITH YOU A LITTLE BIT ABOUT MR.
18 BINNEY'S STATEMENTS. YOU MENTIONED THOSE IN YOUR DIRECT
19 EXAMINATION. AND AS YOU SAID, HE MADE A NUMBER OF DIFFERENT
20 STATEMENTS OR SEVERAL DIFFERENT STATEMENTS TO LAW
21 ENFORCEMENT, CORRECT?

22 A. YES, SIR.

23 Q. AND SOME OF THESE STATEMENTS WERE MADE TO SPIKE McCRAW?

24 A. YES, SIR.

25 Q. SLED AGENT, SPIKE McCRAW?

1 A. CORRECT.

2 Q. AND I BELIEVE ANOTHER ONE WAS MADE TO SPIKE McCRAW AND
3 PROFILER PRODAN?

4 A. CORRECT.

5 Q. NOW IS IT ALSO FAIR TO SAY THAT IN ADDITION TO
6 CHALLENGING THE LEGAL ADMISSIBILITY OF THESE STATEMENTS, AND
7 YOU DID DO THAT, THAT YOU ALSO CHALLENGED IN PART AND
8 BELIEVED THAT THERE WERE PROBLEMS POTENTIALLY WITH THE
9 RELIABILITY OR THE ACCURACY OF WHAT MR. BINNEY SAID?

10 A. WHAT WE -- WHAT WE WERE TRYING TO SHOW WAS THAT THERE
11 WAS SOME POSSIBILITY THAT IN WRITING THIS -- THE TWO
12 STATEMENTS THAT WENT -- THAT WERE TAKEN BY AGENT McCRAW,
13 TAKEN BY SPIKE, THE ONE BY HIMSELF AND THEN THE ONE WITH --
14 THE ONE WITH HIM AND FOLKS AND THEN THE ONE WITH PRODAN WAS
15 THAT AT CERTAIN POINTS THEY PUT WORDS IN HIS MOUTH TO
16 CHARACTERIZE IT AS CRUDELY AS POSSIBLE. I MEAN, IT WAS A
17 LITTLE MORE THAN THAT. THEY DIDN'T ACTUALLY -- WE WEREN'T
18 CLAIMING THEY ACTUALLY TOLD HIM, BUT THEY SUGGESTED THINGS
19 THAT HE SHOULD WRITE.

20 Q. WELL, WASN'T THERE TESTIMONY IN THE JACKSON/DENNO
21 HEARING WHICH YOU PRESENTED, YOU AND MR. PRUETT PRESENTED
22 THAT THESE STATEMENTS WERE TAKEN AT A TIME WHEN MR. BINNEY
23 WAS SUICIDAL AND INTERESTED IN OBTAINING THE DEATH PENALTY?

24 A. CORRECT.

25 Q. AND AGENT McCRAW WAS INTERESTED IN HELPING MR. BINNEY

1 OBTAIN THE DEATH PENALTY?

2 A. RIGHT.

3 Q. AND THAT, IN FACT, DURING THIS INTERROGATION ---

4 MR. MABRY: I'M GOING TO OBJECT TO THAT LAST QUESTION
5 AND THE ANSWER BECAUSE THERE WAS NO TESTIMONY THAT AGENT
6 McCRAW WAS TRYING TO HELP HIM GET THE DEATH PENALTY.

7 THE COURT: COUNSEL, COURT NOTES YOUR OBJECTION. AND
8 I'LL SUSTAIN THAT, BUT THERE'S NO NEED TO GO BACK. WE HAVE
9 THE QUESTION AND THE ANSWER. THE COURT IS THE TRIER OF FACT
10 AND IS AWARE OF YOUR OBJECTION. AND YOU MAY PROCEED TO YOUR
11 NEXT QUESTION.

12 Q. THERE WAS TESTIMONY, WAS THERE NOT, THAT, IN FACT,
13 THERE WAS DISPUTED TESTIMONY, THERE WAS TESTIMONY THAT AGENT
14 McCRAW, IN FACT, GOT OUT THE STATUTE BOOK FOR THE DEATH
15 PENALTY CODE, THE BLUE BOOK AS DESCRIBED BY MR. BINNEY, AND
16 THEN USED THAT IN THE COURSE OF DEVELOPING HIS STATEMENT?
17 THAT WAS PART OF YOUR BASIS IN THE CHALLENGE OF THE
18 STATEMENT?

19 A. IT WAS PART OF MY CHALLENGE. MY RECOLLECTION OF THE
20 TESTIMONY, AND I APOLOGIZE THAT I CAN'T REMEMBER IT
21 SPECIFICALLY, BUT I THINK SPIKE DENIED GETTING OUT THE CODE
22 BOOK. NOW IF -- IT MAY BE THAT PRODAN OR FOLKS, I CAN'T
23 REMEMBER, MIGHT HAVE SAID SOMETHING DIFFERENT.

24 BUT JONATHAN -- WELL, I HAD GOOD REASON TO THINK THAT
25 HE HAD GOTTEN OUT THE CODE SECTION. IT WAS DESCRIBED TO ME.

1 AND SO I CROSS EXAMINED SPIKE ABOUT THAT THINKING THAT WAS A
2 GOOD WAY TO SHOW THAT HE'S GOING THROUGH THE BOOK TRYING TO
3 SUGGEST THINGS FOR JONATHAN TO SAY. MY RECOLLECTION IS THAT
4 AGENT McCRAW DENIED GETTING OUT THE CODE BOOK.

5 Q. HE DIDN'T. BUT MR. BINNEY TESTIFIED AT THE
6 JACKSON/DENNO HEARING TOO.

7 A. OKAY.

8 Q. CORRECT?

9 A. YES.

10 Q. AND HE TESTIFIED TO THIS.

11 A. OKAY. I'M SORRY. I STAND CORRECTED.

12 Q. AND AS YOU SAID, ONE OF THE REASONS YOU THOUGHT THIS
13 LINE OF QUESTIONING MIGHT BE PERSUASIVE EITHER TO A JUDGE OR
14 TO SOMEONE ELSE IS BECAUSE HOW ELSE WOULD MR. BINNEY HAD
15 KNOWN IT WAS A BLUE BOOK?

16 A. RIGHT.

17 Q. THAT WAS THE LOGIC OF YOUR EXAMINATION?

18 A. THAT WAS PART OF THE LOGIC OF IT. SOME OF THE WORDING
19 ALSO, BUT, YEAH, THAT'S -- THAT'S IT.

20 Q. AND SO THE WORDING, IT SEEMED FAIRLY PRECISE FOR AN
21 AVERAGE CRIMINAL DEFENDANT?

22 A. YES, SIR.

23 Q. AND I THINK IS IT TRUE THE SAME WAS TRUE THE POINT YOU
24 MADE ABOUT HIS -- SUPPOSEDLY HIS INITIAL REQUEST TO SPEAK
25 WITH AGENT McCRAW?

- 1 A. I'M NOT FOLLOWING YOU. WHAT WAS ---
- 2 Q. WELL, THERE WAS A HANDWRITTEN NOTE. YOU REMEMBER ---
- 3 A. RIGHT.
- 4 Q. --- WAS A HANDWRITTEN NOTE SUPPOSEDLY WRITTEN BY MR.
- 5 BINNEY?
- 6 A. CORRECT.
- 7 Q. BUT THAT NOTE WAS VERY PRECISE. IN OTHER WORDS, IT WAS
- 8 -- HE WANTED TO INITIATE A CONVERSATION?
- 9 A. RIGHT.
- 10 Q. AND ONE OF YOUR ATTACKS ON THAT WAS, WELL LOOK, YOUR
- 11 AVERAGE CRIMINAL DEFENDANT ACTING ALONE WOULDN'T KNOW TO USE
- 12 THE WORD, YOU KNOW, IT SEEMED DESIGNED TO FIT INTO THE CASE
- 13 LAW ON WHEN YOU CAN TALK TO A REPRESENTED DEFENDANT?
- 14 A. YES.
- 15 Q. NOW DURING THE PENALTY PHASE, AS I UNDERSTAND FROM YOUR
- 16 TESTIMONY, THAT YOUR PRIMARY STRATEGIES WERE TO LIMIT AS
- 17 MUCH OF EVIDENCE ABOUT THE CSC AS POSSIBLE?
- 18 A. YOU MEAN THE GUILT PHASE.
- 19 Q. WELL, EVEN AT -- WELL, AT THE SENTENCING PHASE AS WELL,
- 20 TO LIMIT HOW MUCH EVIDENCE THE STATE ---
- 21 A. OH, YES. I'M SORRY. I MISUNDERSTOOD YOUR QUESTION.
- 22 YEAH, WE THOUGHT THAT THAT SHOULD STAY OUT.
- 23 Q. STAY OUT IN WHOLE AND YOU DID WHAT YOU COULD TO
- 24 MINIMIZE HOW MUCH OF IT WAS GOING TO COME IN ABOUT IT?
- 25 A. YES, SIR.

- 1 Q. AND WHAT PHOTOGRAPHS WERE GOING TO BE PUT IN?
- 2 A. YES, SIR.
- 3 Q. AND ALSO TO PRESENT SOME MITIGATING EVIDENCE THROUGH
- 4 DR. SCHWARTZ-WATTS?
- 5 A. RIGHT.
- 6 Q. AND TO CONTINUE TO PURSUE THE SUICIDE DEAL, THAT HE WAS
- 7 IN THE HOUSE TO COMMIT SUICIDE?
- 8 A. RIGHT.
- 9 Q. OKAY. LET'S BACK UP A LITTLE BIT NOW AND GO TO THE
- 10 QUESTION OF JURY SELECTION. DID YOU AND MR. PRUETT DISCUSS
- 11 THE NEED FOR A JURY SELECTION EXPERT?
- 12 A. WE TALKED ABOUT HAVING SOMEONE -- WE TALKED ABOUT
- 13 RETAINING SOMEBODY TO HELP US WITH THAT.
- 14 Q. AND DID YOU REQUEST FUNDS FOR IT?
- 15 A. MY RECOLLECTION IS THAT -- IS THAT TRENT HAD A
- 16 DISCUSSION WITH JUDGE COLE ABOUT IT AND JUDGE COLE WAS NOT
- 17 VERY FAVORABLY INCLINED. AT SOME POINT WE DECIDED NOT TO
- 18 TRY TO GET ONE. SO I DON'T REMEMBER WHAT -- WHAT DISCUSSION
- 19 HE HAD WITH JUDGE COLE ABOUT IT. BUT MY RECOLLECTION IS HE
- 20 HAD A DISCUSSION WITH JUDGE COLE ABOUT IT.
- 21 Q. WELL, I DON'T WANT TO WASTE YOUR TIME WITH THIS IF WHAT
- 22 YOU'RE TELLING ME IS THAT MR. PRUETT'S THE BEST PERSON TO
- 23 ASK ABOUT THIS.
- 24 A. YES. I THINK THAT'S -- MY RECOLLECTION IS -- I DIDN'T
- 25 HAVE A DISCUSSION WITH JUDGE COLE ABOUT IT AND I THINK HE

1 DID.

2 Q. BUT YOU DO RECALL THAT YOU HAD SEVERAL SELECTIONS ABOUT
3 THE NEED FOR A JURY SELECTION EXPERT IN THE CASE?

4 A. YES.

5 Q. AND IT WAS YOUR BELIEF, IN FACT, THAT ONE WOULD BE
6 BENEFICIAL TO THE DEFENSE IF YOU COULD OBTAIN ONE?

7 A. I WANTED TO EXPLORE THAT IN THE BEGINNING. AND I
8 THOUGHT THAT THAT MIGHT BE SOMEBODY WE WANTED TO LOOK AT AND
9 HIRE.

10 Q. NOW -- AND THIS CASE, THIS WAS THE FIRST TIME YOU'D
11 PICKED A CAPITAL JURY?

12 A. YES, SIR.

13 Q. IN A CASE, CORRECT?

14 A. YES, SIR.

15 Q. AND IN GENERAL YOU DON'T GET A LOT OF INDIVIDUAL VOIR
16 DIRE IN THIS STATE IN NON-CAPITAL CASES?

17 A. NONE THAT I'M AWARE OF.

18 Q. SO THIS WOULD HAVE BEEN THE FIRST TIME YOU'D EVER DONE
19 INDIVIDUAL SEQUESTER OF VOIR DIRE?

20 A. YES, SIR.

21 Q. NOW ---

22 A. WELL, LET ME BACK UP A STEP. I HAD DONE THAT AS A
23 PROSECUTOR. I DIDN'T TAKE THAT TO BE YOUR QUESTION.

24 Q. RIGHT.

25 A. OKAY. YES, THAT'S THE FIRST TIME AS A DEFENSE LAWYER I

1 HAD DONE THAT -- THAT I HAD DONE VOIR DIRE.

2 Q. AND THEN 'AS A PROSECUTOR, AS I UNDERSTAND, YOU MIGHT
3 HAVE DONE IT ON ONE OTHER OCCASION?

4 A. WELL, I DID SOME OF IT IN BOTH JESSIE KEITH BROWN, THE
5 FIRST GO AROUND AND THE SECOND GO AROUND.

6 Q. OKAY. NOW IN GENERAL WHAT'S YOUR UNDERSTANDING OF THE
7 LAW RELATIVE TO CAPITAL JURY SELECTION?

8 A. I'M NOT SURE WHAT YOU MEAN.

9 Q. WELL, WHO'S QUALIFIED TO SERVE?

10 A. PEOPLE WHO TELL THE JUDGE THEY CAN FOLLOW THE LAW.
11 PEOPLE WHO TELL THE JUDGE THEY CAN CONSIDER SENTENCING THE
12 DEFENDANT TO LIFE, CAN CONSIDER SENTENCING THEM TO DEATH.

13 Q. AND ARE YOU AWARE OF WHAT AN AUTOMATIC DEATH PENALTY
14 JUROR IS?

15 A. I'M NOT SURE WHAT THAT TERM MEANS.

16 Q. YOU'VE NEVER HEARD THAT TERM IN PARTICULAR?

17 A. AN AUTOMATIC DEATH PENALTY JUROR?

18 Q. YEAH, OR ADP JUROR?

19 A. NO.

20 Q. WELL, ARE YOU FAMILIAR WITH THE UNITED STATES SUPREME
21 COURT'S DECISION IN MORGAN VERSUS ILLINOIS?

22 A. I MAY BE. I DON'T KNOW THAT CASE NAME, THAT CAPTION.

23 Q. AND IN THIS PARTICULAR CASE, DO YOU RECALL, DID YOU
24 HIRE A PRIVATE INVESTIGATOR?

25 A. NO, WE DIDN'T.

1 Q. HAVE YOU HAD OTHER CASES IN WHICH YOU DID USE A PRIVATE
2 INVESTIGATOR?

3 A. I MAY HAVE. I DON'T RECALL ANY OFF HAND. I'M ASSUMING
4 YOU'RE TALKING ABOUT AS A -- AS A DEFENSE LAWYER.

5 Q. YES, IN THIS QUESTION.

6 A. OFF THE TOP OF MY HEAD, NO, I DON'T RECALL IT.

7 Q. BUT YOU DID KNOW, I ASSUME, THAT IN A CAPITAL CASE
8 FUNDS WERE AVAILABLE TO HIRE A PRIVATE INVESTIGATOR?

9 A. YES.

10 Q. NOW ---

11 A. THERE WERE -- EXCUSE ME. I APOLOGIZE. I INTERRUPTED
12 YOU.

13 Q. WELL, YOU ---

14 A. WE INTERVIEWED SOMEBODY. I DON'T REMEMBER WHO IT WAS.
15 BUT, YES, I DID KNOW THAT FUNDS WERE AVAILABLE.

16 Q. AND WHEN YOU WERE A PROSECUTOR, I ASSUME, YOU USED
17 INVESTIGATORS TO HELP YOU WITH YOUR CASES, POLICE
18 INVESTIGATORS?

19 A. WELL, YES. I GUESS YOU COULD CALL IT THAT. WHAT WE
20 FREQUENTLY FOUND WAS THAT THEY DID DO VERY GOOD JOBS. AND
21 WHEN WE WERE PREPARING CASES WE HAD TO GO BACK AND DO A GOOD
22 BIT OF THE INVESTIGATION OURSELVES. BUT, YEAH, THERE WERE
23 -- THERE WERE PEOPLE NOT ONLY ON THE POLICE, VARIOUS LAW
24 ENFORCEMENT AGENCIES, BUT THERE WERE ALSO FOLKS IN OUR
25 OFFICE WHO HAD THE TITLE OF INVESTIGATOR.

1 Q. BUT IN THIS CASE, AS I UNDERSTAND YOUR TESTIMONY, YOU
2 INTERVIEWED, YOU HAVE A RECOLLECTION OF INTERVIEWING A
3 PRIVATE INVESTIGATOR, BUT NOT HAVING HIRED HIM?

4 A. THAT'S CORRECT. YES.

5 Q. NOW IN THIS CASE DO YOU RECALL THE TESTIMONY OF A
6 JAILHOUSE INFORMANT BY THE NAME OF DANNY EDWARDS?

7 A. YES.

8 Q. AND DO YOU RECALL CROSS EXAMINING HIM?

9 A. YES.

10 Q. AND WERE YOU AWARE OF THE FACT THAT AT THE TIME HE
11 TESTIFIED THAT HE HAD PREVIOUSLY COOPERATED WITH DIFFERENT
12 LAW ENFORCEMENT AGENCIES ON OTHER OCCASIONS?

13 A. NO.

14 Q. IF YOU HAD KNOWN THAT FACT IS IT SOMETHING YOU WOULD
15 HAVE RAISED TO TRY AND IMPEACH HIS CREDIBILITY?

16 A. YES. IF I'M NOT MISTAKEN I ASKED HIM THAT QUESTION ON
17 -- I DON'T KNOW IF I -- I DON'T KNOW IF I PUT IT IN THE
18 TERMS YOU PUT IT, BUT I THINK IT WOULD HAVE BEEN UNDERSTOOD
19 TO BE ASKING HIM SOMETHING ALONG THOSE LINES.

20 Q. WHICH YOU DID, AND HE DENIED IT?

21 A. YES.

22 Q. BUT IF YOU HAD HAD INFORMATION THAT THAT STATEMENT WAS
23 NOT IN FACT TRUE, THEN I BELIEVE YOUR ANSWER IS YOU WOULD
24 HAVE USED THAT TO TRY AND FURTHER IMPEACH HIS CREDIBILITY?

25 A. YES, SIR.

- 1 Q. NOW DO YOU RECALL YOU TESTIFIED ON YOUR DIRECT
2 EXAMINATION ABOUT THE PATHOLOGIST, DR. ROSS? DO YOU RECALL
3 THAT?
4 A. YES, SIR.
5 Q. AND I BELIEVE IT'S ACTUALLY MS. ROSS AS I ---
6 A. YOU'RE RIGHT. IT'S A FEMALE.
7 Q. WE'LL CALL HER DR. ROSS. HOW ABOUT THAT?
8 A. OKAY.
9 Q. DR. ROSS, YOU HAD TALKED TO HER PRIOR TO HER TESTIMONY
10 AT TRIAL?
11 A. YES, SIR.
12 Q. AND DURING YOUR DISCUSSIONS WITH HER SHE INDICATED, AND
13 I BELIEVE THIS IS ALSO IN THE AUTOPSY REPORT, THAT THIS WAS
14 A CONTACT WOUND FROM A SMALL CALIBER PISTOL?
15 A. EXACTLY. YES.
16 Q. AND, AGAIN, THE SMALL CALIBER PISTOL PART WAS OF
17 SPECIAL INTEREST TO YOU AS MR. BINNEY'S ATTORNEY?
18 A. THAT'S CORRECT.
19 Q. AND THAT'S BECAUSE THAT WOULD BE INCONSISTENT WITH THE
20 9 MILLIMETER WHICH THE STATE ALLEGED WAS THE MURDER WEAPON?
21 A. YES, SIR.
22 Q. AND ALSO OF SOME INTEREST BECAUSE BASED ON THE
23 INFORMATION YOU HAD BEEN PROVIDED, MR. SOUTHERN, IN FACT,
24 HAD A .22?
25 A. YES, SIR.

1 Q. AND ALSO DO YOU RECALL LISTENING TO THE 911 TAPE?

2 A. YES.

3 Q. AND IN THE 911 TAPE WHEN ASKED BY THIS -- FROM THE
4 PEOPLE, MR. SOUTHERN INFORMS HIM IN HIS OPINION IT LOOKS
5 LIKE A SMALL CALIBER WOUND?

6 A. YES, SIR.

7 Q. AND SO -- BUT THAT WAS PART OF THE REASON THAT
8 TESTIMONY, THE FACT THAT HE HAD THIS WEAPON, IS, OH, WELL,
9 HOW WOULD YOU KNOW IT'S A SMALL CALIBER WOUND INJURY WAS THE
10 REASON YOU WERE INTERESTED IN PURSUING THAT TESTIMONY? THAT
11 WAS OF INTEREST TO YOU ---

12 A. THAT WAS SOME OF THE REASON. THAT'S CORRECT.

13 Q. BUT SOME TIME BETWEEN THE TIME THAT YOU INTERVIEWED DR.
14 ROSS AND THE TIME OF THE TRIAL, UNBEKNOWNST TO YOU, SHE
15 CHANGED HER OPINION?

16 A. YES.

17 Q. AND SO WHEN SHE TESTIFIED AT TRIAL, IN FACT, SHE SAID
18 THIS WAS NOT A CONTACT WOUND, BUT WAS A DISTANT WOUND?

19 A. RIGHT.

20 Q. AND WAS NOT A SMALL CALIBER INJURY, BUT A MEDIUM TO
21 LARGER CALIBER?

22 A. RIGHT. AND DEFINED MEDIUM CALIBER TO INCLUDE 9
23 MILLIMETER.

24 Q. TO INCLUDE A 9 MILLIMETER?

25 A. THAT'S RIGHT.

1 Q. AND SO THE CHANGE IN THE TESTIMONY, YOU WOULD AGREE
2 WITH ME, WOULD YOU NOT, SUBSTANTIALLY BENEFITTED THE
3 PROSECUTION?

4 (PAUSE)

5 A. YES.

6 Q. I'M NOT SUGGESTING YOU DID NOT TRY AND IMPEACH IT. YOU
7 DID.

8 A. WELL, THE REASON FOR MY HESITATION WAS THAT ULTIMATELY,
9 I THINK, TO A CERTAIN EXTENT IT FIT IN WITH THE IDEA THAT
10 NOT ONLY WERE THEY HAVING TO GET OUT BOOKS, I MEAN, NOT ONLY
11 WERE THEY HAVING TO FIT OTHER TESTIMONY TO THEIR NEEDS TO
12 FIT THEIR THEORIES, BUT THEY WERE HAVING TO ACTUALLY CHANGE
13 SOME EVIDENCE. I MEAN, THERE WAS A REPORT THAT SAID THOSE
14 THINGS THAT SHE INITIALLY SAID. SO I THOUGHT THAT THE
15 CHANGE IN HER TESTIMONY WAS FAIRLY CLEAR.

16 I MEAN, YOU KNOW, SOMETIMES ON CROSS EXAMINATION YOU
17 CAN'T GET THAT DISTINCTION. I JUST THOUGHT THAT THERE WAS A
18 PRETTY GOOD DISTINCTION THAT ULTIMATELY WORKED FAIRLY WELL
19 WITH THE THEME -- ONE OF THE THEMES WE ALREADY HAD. BUT,
20 YEAH, IT WAS CLEARLY CHANGED TO BENEFIT THE STATE IN
21 SOMETHING THAT THEY FORESAW A PROBLEM WITH, WHICH WAS ALLAN
22 SOUTHERN PLAYING A BIG ROLE IN THIS.

23 Q. AND HAD SHE ADHERED TO HER TESTIMONY THAT THIS WAS A
24 .22, THAT WOULD, OF COURSE, BEEN A SIGNIFICANT PROBLEM?

25 A. I THINK IT WOULD.

1 Q. A SMALL CALIBER WEAPON?

2 A. I THINK A SMALL CALIBER WEAPON COMING FROM SOMEBODY
3 WITH HER AUTHORITY WOULD HAVE BEEN A PROBLEM.

4 Q. NOW IN THIS CASE, DO YOU RECALL, DID YOU YOURSELF OR
5 THE DEFENSE, DID THE DEFENSE RETAIN YOUR OWN PATHOLOGIST IN
6 THIS MATTER?

7 A. NO.

8 Q. NOW YOU SAID ANOTHER ONE OF YOUR THEORIES OR STRATEGIES
9 AT THE GUILT OR INNOCENCE PHASE WAS TO PURSUE THE IDEA OF --
10 THAT MR. BINNEY ENTERED THE HOUSE TO COMMIT SUICIDE?

11 A. YES, SIR.

12 Q. AND THAT WAS BECAUSE BASED ON YOUR RESEARCH, WHICH
13 ULTIMATELY RESULTED IN A CHARGE, NOT EXACTLY WHAT YOU
14 WANTED, BUT A CHARGE, SUICIDE'S NOT A CRIME IN SOUTH
15 CAROLINA, CORRECT?

16 A. YES, SIR.

17 Q. SO IF HE ENTERED WITH THE INTENT TO COMMIT SUICIDE,
18 THEN HE DIDN'T ENTER WITH THE INTENT TO COMMIT A CRIME?

19 A. YES, SIR.

20 Q. NOW DID YOU -- HAVE YOU EVER, I MEAN, ARE YOU FAMILIAR
21 WITH THE TERM SUICIDEOLOGIST?

22 A. NO, SIR.

23 Q. ARE YOU FAMILIAR WITH THE FACT THAT THERE ARE PEOPLE
24 THAT ARE EXPERTS WHO ACTUALLY STUDY AND SPECIALIZE THE
25 INTENT OF WHETHER SOMEONE IS ACTUALLY CREDIBLY MAKING AN

1. ATTEMPT OR AN ATTEMPT TO COMMIT SUICIDE?

2. A. WELL, I HAD NEVER HEARD THE TERM SUICIDEOLOGIST UNTIL I
3. READ THE ALLEGATIONS IN THE APPLICATION. BUT I CERTAINLY
4. KNEW THAT THERE WERE PSYCHOLOGISTS, PSYCHIATRISTS AND OTHER
5. ACADEMICS WHO STUDIED SUICIDE.

6. Q. AND DID YOU RETAIN SOMEONE WITH THAT PARTICULAR AREA OF
7. EXPERTISE TO CONSULT WITH YOU AND MR. PRUETT IN THIS CASE?

8. A. WELL, WE THOUGHT THAT DR. SCHWARTZ-WATTS COULD TALK
9. ABOUT IT, COULD EXPLAIN HIS THINKING. AND I THINK SHE
10. TESTIFIED ABOUT THAT.

11. Q. BUT OTHER THAN DR. SCHWARTZ-WATTS YOU DID NOT RETAIN
12. ANYONE WHOSE SPECIAL AREA OF EXPERTISE WAS SUICIDE?

13. A. NO, THAT'S CORRECT.

14. Q. NOW THE TESTIMONY THAT DR. SCHWARTZ-WATTS DID PROVIDE
15. ON THE QUESTION OF SUICIDE, THAT CAME AT THE SENTENCING
16. PHASE OF THE TRIAL, CORRECT?

17. A. THAT'S CORRECT. YES.

18. Q. THAT WAS AFTER MR. BINNEY HAD BEEN FOUND GUILTY FOR ---

19. A. THAT'S CORRECT.

20. Q. WAS -- DO YOU RECALL, WAS THERE CONSIDERATION GIVEN TO
21. USING SOME OR PART OF THAT TESTIMONY AT THE GUILT OR
22. INNOCENCE PHASE TO HELP ESTABLISH THAT MR. BINNEY WAS, IN
23. FACT, IN THE HOUSE TO COMMIT SUICIDE AND NOT SOME OTHER
24. CRIME?

25. A. WELL, WE -- WE TALKED ABOUT HOW TO PRESENT A SUICIDE

1 EVIDENCE IN THE GUILT PHASE. OUR CONCERN WAS -- WELL, LET
2 ME BACK UP A STEP. ONE OF THE FIRST DECISIONS THAT WE MADE
3 WAS THAT IN THE PENALTY PHASE THAT WE THOUGHT IT WOULD BE A
4 MISTAKE TO GET INTO THE CSC.

5 AND WE THOUGHT THAT -- WE DIDN'T WANT TO GET INTO ANY
6 DISCUSSION OF JONATHAN'S CHARACTER OR JONATHAN'S -- SOME OF
7 THE TRAITS THAT DR. SCHWARTZ-WATTS HAD FOUND THAT COULD BE
8 STRESSORS FOR SUICIDE. AND WE JUST DIDN'T THINK THAT WE
9 COULD -- WE THOUGHT IT WAS TOO BIG OF RISK OF OPENING THE
10 DOOR TO THINGS THAT WOULD LEAD TO EITHER THE CSC OR SOME OF
11 THE NEGATIVE CHARACTERISTICS THAT SHE FOUND.

12 Q. BASED ON HER RECORDS?

13 A. CORRECT. WELL, MORE GENERAL THAN THAT. I MEAN, WE
14 THOUGHT THAT YOU WOULD ESSENTIALLY BE GETTING INTO HIS
15 CHARACTER.

16 Q. THEY WOULD BE GETTING IN HIS CHARACTER TO PRESENT
17 EVIDENCE FROM A QUALIFIED PROFESSIONAL IF HE WAS IN THE
18 HOUSE TO COMMIT SUICIDE?

19 A. WELL, WHEN YOU TALK ABOUT THAT YOU INEVITABLY GOING TO
20 GET INTO WHAT'S STRESSING HIM, WHAT'S CAUSING HIM -- WHAT
21 ARE THE MENTAL FORCES WORKING ON HIM TO PUT HIM IN THAT
22 MIND-FRAME.

23 Q. WELL, IS THAT, I MEAN, DID YOU RECALL CONSULTING --
24 WELL, IF YOU DIDN'T CONSULT -- NEVER MIND. IT'S NOT -- IF
25 YOU DIDN'T DO IT, YOU DIDN'T DO IT. SO THERE'S NO POINT IN

1 ASKING A QUESTION ABOUT THAT. SO YOU KNEW HIS MOTHER HAD
2 COMMITTED SUICIDE?

3 A. YES.

4 Q. DO YOU RECALL, DID YOU GET THE CORONER'S RECORDS, THE
5 MEDICAL RECORDS THAT ESTABLISHED THAT SHE COMMITTED SUICIDE
6 OR DO YOU RECALL?

7 A. WELL, TRENT DEALT WITH GETTING HIS BIRTH MOTHER'S
8 INFORMATION. THAT WAS PART OF THE FETAL ALCOHOL RESEARCH.
9 AND I DIDN'T -- HE GOT SOME RECORDS. AND I DON'T RECALL
10 WHAT THEY WERE.

11 Q. I'LL BE TALKING TO HIM ABOUT THIS. OKAY. NOW AT THE
12 PENALTY PHASE OF THE TRIAL YOU SAID THAT YOU WANTED THE JURY
13 TO BELIEVE THAT LIFE IN PRISON, IF SENTENCED TO LIFE IN
14 PRISON, FOR MR. BINNEY WOULD BE HARD.

15 A. WELL, THAT IT WOULD BE -- WE WANTED THEM -- WE WANTED
16 THEM TO THINK THAT IT WOULD BE A FAIR AND COMPLETE
17 PUNISHMENT FOR SEXUALLY ASSAULTING HIS DAUGHTER. THAT'S
18 WHAT THIS CASE WAS ABOUT.

19 Q. WELL, I UNDERSTOOD THAT YOU SAID, AND YOU CAN CORRECT
20 ME IF I'M WRONG, THAT ONE OF THE REASONS YOU INDICATED YOU
21 MIGHT WANT HIM -- YOU WANT HIM TO LOOK SMALL AND TO BE THERE
22 IN A PRISON JUMPSUIT SO THE JURY COULD ENVISION THAT IT
23 MIGHT BE ROUGH FOR SOMEBODY IN PRISON WHO WAS CONVICTED
24 DOING WHAT MR. BINNEY WAS DOING?

25 A. RIGHT. WHEN THEY'RE LOOKING AT HIM I WAS HOPING THAT

1 THAT'S ONE OF THE THOUGHTS THAT THEY HAVE ABOUT -- HAVE
2 ABOUT HIM. THAT'S CORRECT.

3 Q. DO YOU RECALL, DID YOU RETAIN OR CONSULT WITH ANYONE
4 WHOSE EXPERTISE WAS ADAPTABILITY TO CONFINEMENT?

5 A. NO.

6 Q. BUT YOU DID KNOW, I ASSUME, THAT THAT WAS ADMISSIBLE
7 MITIGATING EVIDENCE IN SOUTH CAROLINA?

8 A. ADAPTABILITY TO?

9 Q. CONFINEMENT TO PRISON.

10 A. YES.

11 Q. AND YOU ALSO KNEW THAT MR. BINNEY HAD BEEN PREVIOUSLY
12 INCARCERATED?

13 A. YES.

14 Q. AND YOU KNEW THAT HE WAS IN THE SOUTH CAROLINA
15 DEPARTMENT OF CORRECTIONS PRIOR TO TRIAL, IN FACT, THE TIME
16 YOU WERE REPRESENTING HIM?

17 A. THAT'S WHERE WE WENT TO SEE HIM THE FIRST TIME.

18 Q. AND HE WAS THERE -- THAT WAS -- HE HAD BEEN SERVING A
19 SENTENCE AT THAT TIME FOR THE OFFENSE ---

20 A. CSC.

21 Q. --- INVOLVING HIS DAUGHTER?

22 A. YES.

23 Q. AND I ASSUME YOU KNEW THAT HE HAD NOT HAD ANY MAJOR
24 DISCIPLINARY PROBLEMS IN JAIL?

25 A. THAT'S CORRECT.

1 Q. AND THAT HE DIDN'T ---

2 A. NO, I'M NOT SURE I KNEW THAT. BUT NOT ANY MAJOR
3 DISCIPLINARY PROBLEMS, THAT'S CORRECT.

4 Q. HAD NO HISTORY FIGHTING WITH GUARDS?

5 A. THAT'S CORRECT.

6 Q. THROWING URINE, FECES, THAT YOU KNEW OF?

7 A. THAT I KNEW OF, YEAH.

8 Q. NOW DO YOU RECALL THAT DR. SCHWARTZ-WATTS RECOMMENDED
9 TO YOU THAT YOU HIRE JAMES AIKEN?

10 A. NO.

11 Q. YOU DON'T RECALL THAT?

12 A. NO. I DON'T -- I DON'T THINK I EVER TALKED WITH DR.
13 SCHWARTZ-WATTS.

14 Q. WELL, DO YOU RECALL ...

15 MR. BLUME: ONE SECOND, YOUR HONOR.

16 THE COURT: YES, SIR.

17 Q. NOW SO I DON'T WASTE ANYBODY'S TIME, I JUST WANT TO
18 MAKE SURE I UNDERSTAND, ON THE QUESTION OF FETAL ALCOHOL
19 SYNDROME AND THE INVESTIGATION AND THE DEVELOPMENT OF THAT
20 EVIDENCE, THAT WAS MR. PRUETT'S JOB?

21 A. YES, SIR. I MEAN, OBVIOUSLY, HE AND I TALKED ABOUT IT
22 SOME. BUT TALKING ABOUT IT WITH DR. SCHWARTZ-WATTS WAS
23 SOMETHING I NEVER DID. I NEVER TALKED WITH THE GUY WHO DID
24 THE IMAGING. I MEAN, TRENT AND I DISCUSSED FETAL ALCOHOL
25 SYNDROME. BUT TALKING WITH THE FOLKS WHO DEVELOPED THAT

1 INFORMATION FOR US OR THAT EVIDENCE FOR US WAS NOT SOMETHING

2 I DID. DOES THAT ANSWER YOUR QUESTION?

3 Q. RIGHT. I MEAN, I JUST DON'T WANT TO SORT OF, YOU KNOW,

4 WASTE ---

5 A. RIGHT.

6 Q. --- EVERYBODY'S TIME REALLY, YOU KNOW, EXAMINING YOU

7 ABOUT THIS IF THIS WAS PRIMARILY MR. PRUETT'S JOB. THAT'S

8 ALL I'M TRYING ---

9 A. THAT WAS AN ISSUE THAT HE HANDLED. WE DISCUSSED ALL

10 THE ISSUES IN THE CASE, BUT THAT WAS ONE HE DEVELOPED.

11 Q. NOW I BELIEVE THAT YOU ALSO TESTIFIED THAT YOU DID NOT

12 RETAIN A SOCIAL WORKER OR SOMEONE WHOSE JOB IT WAS TO

13 ESSENTIALLY PLAY THAT ROLE?

14 A. CORRECT.

15 Q. AND BUT YOU DID KNOW, I -- DID YOU NOT, THAT THERE WERE

16 A NUMBER OF DIFFERENT DYNAMICS IN MR. BINNEY'S LIFE AT THE

17 TIME OR AROUND THE TIME HE COMMITTED THIS OFFENSE?

18 A. YEAH. I KNEW THERE WERE A LOT OF DIFFERENT DYNAMICS.

19 I DON'T KNOW WHICH ONES YOU HAVE IN MIND, BUT ---

20 Q. WELL, I MEAN, HE WAS ESSENTIALLY, YOU KNOW, HOMELESS AT

21 THE TIME. HE DIDN'T REALLY HAVE A PLACE TO LIVE AFTER THE

22 CSC OF HIS DAUGHTER.

23 A. THAT'S CORRECT.

24 Q. AND THAT HE SPENT SOME TIME ---

25 A. AT THE VILLAGER MOTEL.

- 1 Q. RIGHT.
- 2 A. SOME TIME IN THE BASEMENT OF HIS AND MELANIE'S HOUSE.
- 3 YES, I KNEW THAT.
- 4 Q. AND YOU KNEW THAT HE HAD BEEN DEPRESSED THROUGHOUT THIS
- 5 PERIOD?
- 6 A. YES, SIR.
- 7 Q. AND HE HAD BEEN -- HE TRIED TO COMMIT SUICIDE? THERE
- 8 WAS A SUICIDE ATTEMPT DURING THIS TIME PERIOD?
- 9 A. THAT'S CORRECT.
- 10 Q. AND, YOU KNOW, NOT TO TRY TO UNFAIRLY CHARACTERIZE IT,
- 11 BUT HIS LIFE APPEARED TO BE ON SOMEWHAT OF A DOWNWARD
- 12 SPIRAL?
- 13 A. THAT'S CORRECT.
- 14 Q. NOW DO YOU RECALL HOW MUCH TIME YOU SPENT WITH MR.
- 15 BINNEY?
- 16 A. NO, SIR.
- 17 Q. DO YOU RECALL THE FIRST TIME THAT YOU EVER SAW HIM?
- 18 A. YES, SIR.
- 19 Q. DO YOU REMEMBER THE DATE OF THAT?
- 20 A. NO, SIR.
- 21 Q. WOULD IT REFRESH YOUR RECOLLECTION TO REVIEW YOUR TIME
- 22 SHEETS?
- 23 A. I'M SURE IT WOULD.
- 24 Q. FIRST OF ALL, THOSE ARE YOUR TIME SHEETS?
- 25 A. YES.

1 Q. DO THOSE TIME SHEETS INDICATE THAT THE FIRST TIME THAT
2 YOU MET MR. BINNEY WAS ON THE 17TH OF DECEMBER, 2001?

3 A. YES, SIR.

4 Q. AND THAT WOULD HAVE BEEN APPROXIMATELY THREE MONTHS
5 AFTER YOU WERE APPOINTED IN THIS MATTER?

6 A. I DON'T REMEMBER WHEN I WAS APPOINTED. I WAS THINKING
7 IT WAS SOMETIME IN OCTOBER. SO TWO OR THREE MONTHS.

8 Q. TWO AND A HALF, SOMETHING LIKE THAT. OKAY. DO YOU
9 RECALL THAT YOU NEXT MET WITH MR. BINNEY ON MARCH THE 25TH
10 OF 2002 PRIOR TO A COURT HEARING?

11 A. WELL, ACCORDING TO MY TIME SHEET I MET WITH HIM OR HAD
12 A COURT HEARING AND AN INTERVIEW WITH THE PARENTS, ---

13 Q. OKAY.

14 A. --- IS WHAT'S ON MY TIME SHEET.

15 Q. OKAY. WELL, DO YOU SEE ANY OTHER TIME ON THERE WHEN
16 YOU MET WITH MR. BINNEY BETWEEN DECEMBER AND MARCH 25TH?

17 A. NO, SIR.

18 Q. AND THEN FROM THERE UP UNTIL -- CAN YOU RECALL THE NEXT
19 TIME THAT YOU MET WITH MR. BINNEY BASED ON THESE TIME
20 SHEETS?

21 A. ARE YOU ASKING ME TO LOOK THROUGH?

22 Q. YES, IF YOU DON'T MIND.

23 (PAUSE)

24 A. MY TIME SHEETS, I DON'T THINK, HAVE ANYMORE NOTES THAT
25 I MET WITH HIM.

1 Q. THANK YOU. DO YOU RECALL, MR. SLADE, DID YOU MEET WITH
2 HIS PARENTS?

3 A. YES.

4 Q. AND WHERE DID -- DID YOU MEET WITH HIS PARENTS AT YOUR
5 OFFICE OR MR. PRUETT'S OFFICE?

6 A. WELL, I MET WITH THEM AT MY OFFICE AT LEAST ONCE.
7 THERE'S SOME NOTATIONS ON THE TIME SHEET ABOUT MEETING WITH
8 THEM. AND I'M NOT -- I'M NOT -- I CAN'T RECALL RIGHT OFF
9 THE TOP OF MY HEAD WHERE I DID MEET WITH THEM. BUT, YES, I
10 MET WITH THEM AT MY OFFICE. I ALSO MET WITH THEM AT TRENT'S
11 OFFICE.

12 Q. DID YOU EVER MEET WITH THEM AT THEIR HOME OR AT THEIR
13 RESIDENCE? DO ---

14 A. NO.

15 Q. --- YOU RECALL? DO YOU RECALL ---

16 A. I DO RECALL. I DO RECALL. AND, NO, I DIDN'T.

17 Q. I'M SORRY. I DIDN'T MEAN TO CUT -- DID YOU -- HOW MANY
18 TIMES DID YOU MEET WITH HIS WIFE? DO YOU RECALL?

19 A. I TALKED TO HER A NUMBER OF TIMES. I DON'T KNOW.
20 SOMEWHERE BETWEEN HALF A DOZEN OR TEN.

21 Q. AND WERE THOSE EITHER -- WERE THOSE ALL IN PERSON OR
22 SOME OF THOSE WERE ON THE PHONE?

23 A. SOME OF THOSE WERE ON THE PHONE. AND SOME OF THOSE
24 WERE IN PERSON.

25 Q. OKAY. AND WHEN YOU MET WITH HER IN PERSON WHERE DID

- 1 YOU MEET WITH HER?
- 2 A. I DON'T REMEMBER.
- 3 Q. DO YOU RECALL EVER GOING TO HER HOME?
- 4 A. NO. I DON'T THINK I DID.
- 5 Q. NOW DID YOU, DO YOU RECALL, DID YOU EVER SPEAK WITH MR.
- 6 BINNEY'S GRANDPARENTS?
- 7 A. NO.
- 8 Q. DID YOU EVER SPEAK WITH ANY OF MR. BINNEY'S AUNTS OR
- 9 UNCLES OR OTHER RELATIVES?
- 10 A. NO.
- 11 Q. COUSINS? DO YOU RECALL, DID YOU EVER SPEAK WITH --
- 12 WELL, MR. BINNEY HAD LIVED IN A NUMBER OF DIFFERENT PLACES.
- 13 DID YOU OR TO YOUR KNOWLEDGE YOU OR MR. PRUETT EVER GO TO
- 14 ANY OF THESE OTHER PLACES WHERE MR. BINNEY HAD LIVED?
- 15 A. NO.
- 16 Q. DID YOU EVER INTERVIEW ANY OF HIS FORMER SCHOOL
- 17 TEACHERS?
- 18 A. I DON'T REMEMBER. I'M THINKING THAT THE BINNEYS,
- 19 MEANING REVEREND AND MS. BINNEY, TOLD ME ABOUT A TEACHER,
- 20 BUT I DON'T REMEMBER IF I TALKED TO HER. I THINK I GOT HER
- 21 TELEPHONE NUMBER. I DON'T REMEMBER IF I TALKED TO HER OR
- 22 NOT.
- 23 Q. DO YOU REMEMBER, DID YOU EVER TALK TO ANY PEOPLE OR
- 24 CHILDHOOD FRIENDS OF MR. BINNEY'S?
- 25 A. NOT CHILDHOOD FRIENDS, NO.

1 Q. OR PEOPLE THAT HAD KNOWN HIM AS A CHILD, KNOWN THE
2 FAMILY GROWING UP IN THAT REGARD?

3 A. NO.

4 Q. NOW DO YOU RECALL, DID YOU -- DID YOU HAVE SOMEONE, A
5 MITIGATION SPECIALIST, SOMEBODY LIKE THAT WHOSE JOB IT WAS
6 TO DO THAT?

7 A. NO, SIR.

8 Q. DO YOU RECALL WHETHER YOU WERE -- WELL, YOU DIDN'T
9 SPEAK TO DR. SCHWARTZ-WATTS, AS I UNDERSTAND IT?

10 A. I DON'T RECALL EVER TALKING TO HER. I MAY HAVE, BUT I
11 JUST DON'T THINK I DID.

12 Q. AND SO YOU DON'T -- WOULDN'T KNOW WHETHER SHE
13 RECOMMENDED TO YOU THAT YOU HIRE A MITIGATION SPECIALIST,
14 THAT SHE RECOMMENDED TO MR. PRUETT, THAT WOULDN'T BE
15 SOMETHING YOU WOULD BE AWARE OF?

16 A. WELL, I THINK I'D BE AWARE OF IT, BUT I DON'T RECALL
17 THAT SUGGESTION BEING MADE. I MEAN, AND THE REASON I
18 QUALIFY THAT IS TRENT AND I TALKED ABOUT THE ISSUES IN THE
19 CASE. AND I DON'T REMEMBER HIM SAYING DR. SCHWARTZ-WATTS
20 MADE THAT SUGGESTION.

21 Q. AND YOU DON'T RECALL WHETHER ANYONE ELSE SUGGESTED THAT
22 HE DO THAT?

23 A. NO.

24 Q. NOW DO YOU RECALL MAKING AN EFFORT TO GET LIFE HISTORY
25 BACKGROUND RECORDS ON MR. BINNEY?

- 1 A. WELL, TRENT GOT SOME RECORDS ON HIS BIRTH MOTHER. IS
2 THAT WHAT YOU'RE REFERRING TO?
- 3 Q. WELL, LET ME TRY -- AND I DON'T WANT TO -- DO YOU
4 RECALL WHETHER OR NOT YOU GOT HIS RECORDS FROM THE ALBANY
5 COUNTY JAIL, FOR EXAMPLE?
- 6 A. I'M SORRY, I DON'T RECALL.
- 7 Q. OKAY. AND DO YOU RECALL WHETHER YOU GOT HIS RECORDS
8 FROM THE CORNER STONE CHRISTIAN ACADEMY?
- 9 A. NO. I DON'T RECALL.
- 10 Q. OR HIS RECORDS FROM THE DUBLIN CHRISTIAN ACADEMY?
- 11 A. NO.
- 12 Q. OR THE FREEDOM ACADEMY?
- 13 A. NO.
- 14 Q. OR DO YOU RECALL WHETHER YOU GOT ANY OF HIS PEDIATRIC
15 RECORDS FROM MEDICAL CARE WHEN HE WAS A CHILD?
- 16 A. I DON'T THINK SO.
- 17 Q. DO YOU RECALL WHETHER YOU GOT THE RECORDS FROM THE ROSS
18 PARK BAPTIST ACADEMY?
- 19 A. I DON'T THINK SO.
- 20 Q. OR THE VICTORY HOME FOR BOYS?
- 21 A. I DON'T THINK SO.
- 22 Q. OR THE ZANESVILLE CHRISTIAN SCHOOL?
- 23 A. NO. I DON'T THINK WE GOT ANY RECORDS FROM THERE.
- 24 Q. WOULD IT BE ACCURATE TO SAY THAT RECORDS THAT YOU
25 OBTAINED IN THAT REGARD WOULD BE PART OF YOUR FILE IF YOU

1 HAD IT?

2 A. YES, MORE LIKELY IT WOULD BE PART OF TRENT'S FILE THAN
3 MINE. BUT, YES, I FEEL CERTAIN HAD WE OBTAINED RECORDS THEY
4 WOULD BE IN EITHER HIS FILE OR MINE.

5 THE COURT: COUNSEL, JUST A MOMENT. LET ME STOP AND
6 ASK A QUESTION RIGHT THERE. DO YOU HAVE A SEPARATE FILE
7 THAT YOU'VE MAINTAINED FROM THE CO-COUNSEL?

8 A. YES, SIR.

9 THE COURT: AND HAVE YOU EVER COMBINED THE FILES TO
10 MAKE SURE THAT EACH OF YOU HAVE THE SAME DOCUMENTS OR ARE
11 THERE DIFFERENT DOCUMENTS IN THE TWO SEPARATE FILES?

12 A. THEY'RE -- THEY'RE DIFFERENT DOCUMENTS IN THE TWO
13 SEPARATE FILES.

14 THE COURT: ALL RIGHT.

15 A. WHAT HE DID WAS HE KEPT ONE SEPARATE FILE OF ALL THE
16 THINGS, ALL THE STUFF THAT CAME IN FROM THE SOLICITOR'S
17 OFFICE. HE WANTED TO ORGANIZE IT CHRONOLOGICALLY SO THAT
18 THERE WOULDN'T BE ANY DISPUTE DOWN THE LINE OVER WHAT THEY
19 GAVE US, WHAT WE WERE SUPPOSED TO HAVE, ET CETERA.

20 AND WHAT WOULD HAPPEN THEN IS HE WOULD -- IF IT WAS
21 SOMETHING WE WERE BOTH WORKING ON, HE'D SEND ME WHAT WE GOT
22 FROM THE SOLICITOR'S OFFICE.

23 THE COURT: ALL RIGHT.

24 A. MY POINT IS, I GUESS, THERE ARE THINGS THAT ARE GOING
25 TO BE -- THERE ARE SOME THINGS IN OUR -- THAT ARE IN BOTH OF

1 OUR FILES, DISCOVERY FROM THE SOLICITOR'S OFFICE. THERE ARE
2 THINGS, FOR INSTANCE, WE'VE BEEN TALKING ABOUT DR. SCHWARTZ-
3 WATTS' TESTIMONY, I'M SURE THERE'S STUFF ON SCHWARTZ-WATTS'
4 TESTIMONY THAT'S IN HIS FILE AND NOT IN MINE.

5 THE COURT: ALL RIGHT.

6 A. AND VICE VERSA, THERE'S STUFF ON, SAY, SOME OF THE
7 SUPPRESSION MOTIONS THAT I WOULD HAVE STUFF ON THAT HE
8 DOESN'T HAVE.

9 THE COURT: AND HAVE YOU EVER PROVIDED A COPY OF YOUR
10 FILE TO EITHER APPLICANT'S COUNSEL OR THE STATE'S COUNSEL IN
11 THIS CASE?

12 A. I'VE NEVER PROVIDED IT TO THE AG'S OFFICE.

13 THE COURT: ALL RIGHT.

14 A. I GAVE MY FILE TO SOMEBODY FROM MR. BLUME'S OFFICE.

15 THE COURT: VERY GOOD. AND EXCUSE ME FOR THAT
16 INTERRUPTION, COUNSEL, BUT WHILE THAT ISSUE CAME UP I WANTED
17 TO MAKE OUR RECORD CLEAR ABOUT THE EXISTENCE OF THAT
18 SEPARATE FILE.

19 A. YES, SIR.

20 THE COURT: THANK YOU. GO AHEAD, MR. BLUME.

21 MR. BLUME: THANK YOU.

22 CROSS EXAMINATION BY MR. BLUME CONTINUED:

23 Q. NOW YOU'VE TESTIFIED ABOUT THE DECISION NOT TO CALL
24 MELANIE BINNEY, ---

25 A. YES, SIR.

1 Q. --- CORRECT? YOU REMEMBER THAT?

2 A. I TESTIFIED TO THAT. YES, SIR.

3 Q. AND ---

4 THE COURT: PLEASE SPEAK UP IF YOU WILL, SIR.

5 A. I APOLOGIZE.

6 THE COURT: WOULD YOU GIVE US THAT ANSWER AGAIN, MR.

7 SLADE?

8 A. YES, SIR.

9 Q. AND AS I UNDERSTAND IT WHAT YOU SAID IS THAT YOU WERE
10 AFRAID AT THE END THAT MS. BINNEY MIGHT BE ASKED QUESTIONS
11 ABOUT STATEMENTS MADE BY JONATHAN BINNEY ABOUT THEIR MARITAL
12 SEX LIFE?

13 MR. MABRY: OBJECTION TO THE CHARACTERIZATION OF HIS
14 TESTIMONY. THAT'S NOT WHAT HE SAID.

15 THE COURT: ALL RIGHT. I'M GOING TO OVERRULE THE
16 OBJECTION. THE COURT IS THE TRIER OF FACT. AND I HEARD THE
17 QUESTION PREVIOUSLY, AND I'M AWARE OF THE VARIOUS NUANCES OF
18 IT. YOU MAY PROCEED.

19 Q. I MEAN, I'LL BE HAPPY TO PUT IT TO HIM DIRECTLY, BUT

20 ---

21 THE COURT: THAT'S FINE. GO AHEAD.

22 A. I THINK THE WAY I WAS THINKING ABOUT IT IS THAT WAS THE
23 FINAL STRAW. THERE WAS -- THERE WAS -- THERE WAS A GOOD BIT
24 OF DOWNSIDE RISK TO PUTTING HER ON THE STAND WITH THE
25 TESTIMONY ABOUT HER ALLEGED STATEMENT TO WHOEVER IT WAS AT

1 THE HOSPITAL THAT HER REQUEST, HER APPARENT ATTEMPT TO COVER
2 UP THE RAPE OF HER CHILD.

3 BUT, YOU KNOW, I WAS -- I THINK I WAS INCLINED TO TAKE
4 THAT RISK UNTIL I HEARD THAT INFORMATION ABOUT THEIR SEX
5 LIFE. AND I JUST THOUGHT THAT WHEN YOU COMBINE THOSE RISKS
6 THAT THAT WAS ---

7 Q. WELL, ---

8 A. --- TOO MUCH.

9 Q. I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU. DID YOU
10 ASK MS. BINNEY IF IT WAS TRUE?

11 A. I DON'T RECALL WHETHER I DID OR NOT. THE POINT IS OR
12 THE PROBLEM IS THAT WHEN THEY HAVE A GOOD FAITH BASIS FOR
13 ASKING THE QUESTION THAT'S A PRETTY BIG PROBLEM IN ITSELF.
14 AND MY THINKING IS BECAUSE THERE'S EVIDENCE ALREADY IN THE
15 RECORD THAT WE'RE NOT GOING TO BE ABLE TO GET AWAY FROM OF
16 SOME SEXUAL PERVERSION, JUST TO PUT A LABEL ON IT, IS THERE
17 WAS A DILDO IN MR. -- A SEX DEVICE IN MR. SOUTHERN'S HOUSE
18 THAT HAD -- THAT WAS ARGUABLY USED BY JONATHAN OR AT LEAST
19 IT WAS TAKEN OUT. YOU CERTAINLY HAD THE EVIDENCE OF HIS OWN
20 SEXUAL PERVERSION IN THE CSC CASE.

21 AND I JUST -- I JUST THOUGHT THAT WAS -- SOME THINGS,
22 WHEN YOU ASK A QUESTION, RING TRUE. AND THAT'S THE WHOLE
23 POINT, MY JUDGMENT OF WHY THERE ARE RULES IN EVIDENCE ABOUT
24 ASKING QUESTIONS AND HAVING A GOOD FAITH BASIS FOR THEM.
25 THAT CONCERNED ME AS MUCH AS I WAS ASSUMING SHE WOULD DENY

1 THAT. BUT THE QUESTION IS, HOW EFFECTIVE IS THE DENIAL
2 GIVEN THE BACKGROUND WE'RE WORKING AGAINST?

3 Q. WELL, LET ME ASK YOU THIS. DID YOU READ DR. SCHWARTZ-
4 WATTS' REPORT?

5 A. I DON'T KNOW THAT I DID.

6 Q. OKAY. WELL, THEN SO YOU'RE NOT AWARE OF THE FACT THERE
7 IS NO MENTION IN HER REPORT OF ANY URINATION ON EACH OTHER
8 OR HIM REPORTING THAT DURING THEIR SEX PRACTICE?

9 A. NO, I THINK I DID KNOW THAT.

10 Q. THAT IT'S NOT IN HER REPORT?

11 A. THAT'S CORRECT.

12 Q. AND YOU ALSO WERE PRESENTLY ---

13 A. I ---

14 MR. MABRY: OBJECT. HE'S TRYING TO FINISH AN ANSWER.
15 LET HIM FINISH.

16 MR. BLUME: I'M SORRY. I DIDN'T MEAN TO INTERRUPT.

17 THE COURT: GO AHEAD, MR. SLADE.

18 A. AND I APOLOGIZE. SHE TOLD TRENT THAT.

19 Q. SHE TOLD TRENT THAT, BUT IT'S NOT IN HER REPORT?

20 A. THAT'S TRUE.

21 Q. AND SHE TESTIFIED IN THE SENTENCING PHASE OF THE TRIAL?

22 A. RIGHT.

23 Q. AND SHE DIDN'T -- DIDN'T MENTION IT DURING HER
24 TESTIMONY?

25 A. THAT'S TRUE.

1 Q. SO I GUESS WHAT I'M HAVING TROUBLE UNDERSTANDING IS IF
2 THERE WASN'T ANY TESTIMONY ABOUT IT WHAT WOULD HAVE BEEN THE
3 BASIS FOR A QUESTION TO MS. BINNEY ON THE WITNESS STAND, DID
4 YOU AND YOUR HUSBAND URINATE ON EACH OTHER DURING YOUR
5 MARITAL SEX PRACTICE?

6 A. WELL, THEY CERTAINLY HAD A GOOD FAITH BASIS TO ASK HER
7 ABOUT THEIR SEX PRACTICES. I MEAN, THE CSC IS ALL OVER THE
8 CASE.

9 Q. YES, BUT WHAT -- WHAT DOES THE CSC HAVE TO DO -- HAVE
10 YOU EVER KNOWN OTHER CASES WHEN A CAPITAL DEFENDANT'S WIFE
11 TESTIFIES AND A PROSECUTOR HAS ASKED THEM ABOUT THEIR SEX
12 PRACTICES?

13 A. WELL, I THINK THE QUESTION IS MORE ABOUT HIS
14 PERVERSION. AND THAT'S CERTAINLY, I MEAN, AS I SAID, THE
15 CSC, SOME OF THE ACTIVITIES AT THE SOUTHERN HOME. THEY
16 CLEARLY HAD -- THERE WAS A PICTURE OF A SEXUAL DEVICE FROM
17 THE CSC CASE. THERE WAS -- THAT WAS IN -- THAT WAS
18 TESTIFIED TO IN THE PENALTY PHASE. I DON'T REMEMBER IF IT
19 WAS -- I DON'T -- THERE WAS A PICTURE OF IT. I DON'T
20 REMEMBER IF IT WAS -- I DON'T REMEMBER IF IT WAS ENTERED
21 INTO EVIDENCE OR NOT. I THINK IT WAS. BUT THAT'S CERTAINLY
22 LEEWAY TO BEGIN ASKING ABOUT HIS PERVERSION.

23 Q. AND AS PART OF THAT PERVERSION AND YOU BELIEVED THAT
24 SOMEHOW THEY WERE GOING TO ASK THE SPECIFIC QUESTION ABOUT
25 URINATION?

1 A. WELL, I DIDN'T KNOW THAT. I JUST -- I THOUGHT THE
2 DANGER OF, I MEAN, WE CERTAINLY KNEW THAT WAS AN ISSUE. AND
3 I JUST THOUGHT THERE WAS TOO MUCH DOWNSIDE RISK OF PUTTING
4 HER UP TO GETTING -- TO IT GETTING TO THAT POINT AND ASKING
5 QUESTIONS ABOUT THOSE KIND OF ACTIVITIES.

6 Q. JUST FOR PURPOSES OF CLARITY, ONE OF THE SEXUAL DEVICES
7 YOU MENTIONED THAT WAS FOUND INSIDE THE SOUTHERN RESIDENCE,
8 THAT WASN'T SOMETHING THAT MR. BINNEY TOOK?

9 A. NO, YOU'RE CORRECT.

10 Q. PARDON ME?

11 A. YOU'RE CORRECT, IT WASN'T SOMETHING HE TOOK THERE.

12 Q. NOW HAVE YOU -- ARE YOU AWARE OF ANY OTHER CAPITAL
13 CASES IN WHICH A DEFENDANT STOOD TRIAL IN JAIL CLOTHES?

14 A. NO.

15 Q. DO YOU RECALL AFTER HE WAS CONVICTED, AT THE SENTENCING
16 PHASE OF THE TRIAL, DO YOU RECALL WHETHER OR NOT IF AFTER
17 THAT FOR THE REMAINDER OF THE TRIAL HE STOOD -- HE HAD ON
18 LEG IRONS OR NOT OR SHACKLES OF SOME KIND?

19 A. NO, I DON'T.

20 Q. YOU DON'T ---

21 A. I DON'T RECALL.

22 Q. NOW LET ME NOW TURN -- AND I'M ALMOST DONE. I KNOW
23 YOU'VE BEEN UP THERE A LONG TIME. SO JUST LETTING YOU KNOW
24 THAT I'M WRAPPING UP HERE. I WANTED TO GO TO THE ONE SORT
25 OF FINAL GENERAL AREA. NOW YOU SAID THAT A LARGE PART OF

1 YOUR GUILT PHASE STRATEGY HAD TO DO WITH THE BURGLARY,
2 ATTACKING THE BURGLARY?

3 A. YES.

4 Q. AND ARE YOU FAMILIAR WITH, I ASSUME YOU ARE, ARE YOU
5 FAMILIAR WITH THE APPRENDI LINE OF CASES?

6 A. YES.

7 Q. AND ACCORDING TO THOSE CASES THE ELEMENTS OF A CRIME
8 HAVE TO BE PROVEN BEYOND A REASONABLE DOUBT BY THE
9 PROSECUTION? ANYTHING THAT'S ---

10 A. RIGHT. YES.

11 Q. AND INTENT, ENTERING WITH INTENT TO COMMIT A CRIME IS
12 AN ELEMENT OF BURGLARY IN SOUTH CAROLINA, CORRECT?

13 A. YES.

14 Q. NOW DID YOU CONSIDER ASKING FOR A JURY-INSTRUCTION
15 ALONG THE LINES THAT THE JURY HAD TO AGREE ON WHICH CRIME OR
16 WHAT THE CRIME WAS THE DEFENDANT ENTERED THE HOUSE TO
17 COMMIT? DO YOU GET THE GIST OF ...

18 A. WELL, THE LAW -- LET ME TRY TO ANSWER YOUR QUESTION
19 THIS WAY. THE LAW IS THAT THE JURY CAN DECIDE -- THE JURY
20 CAN USE EVIDENCE OF WHAT THE DEFENDANT DID ONCE HE GOT IN
21 THE HOUSE TO PROVE THE INTENT. AND THEY CERTAINLY ARE TOLD
22 THEY HAVE TO AGREE ON, UNANIMOUSLY, ON THE FACT THAT THE
23 ELEMENTS OF THE CRIME ARE THERE.

24 BUT YOU'RE ASKING ME -- ARE YOU -- LET ME ASK YOU THIS
25 WAY. ARE YOU ASKING ME DID I EVER CONSIDER ASKING THE JUDGE

1 TO TELL THEM THEY HAD TO FIND THAT HE WENT INTO THE HOUSE TO
2 COMMIT MURDER?

3 Q. NO, OR THEY HAD TO AGREE ON WHAT CRIME HE WENT INTO THE
4 HOUSE TO COMMIT. IN OTHER WORDS, LET ME PUT IT -- IMAGINE A
5 SITUATION SIMILAR TO THIS CASE ---

6 A. RIGHT.

7 Q. --- IN WHICH THE PROSECUTION HAD SORT OF MULTIPLE
8 THEORIES, MAYBE HE WENT IN TO STEAL, MAYBE HE WENT IN TO
9 COMMIT MURDER, MAYBE HE WENT IN TO RAPE, MAYBE HE JUST WENT
10 IN, AND THAT THE JURY IS BACK IN DELIBERATIONS. FOUR PEOPLE
11 THINK HE WENT IN TO STEAL, THREE PEOPLE THINK HE WENT ---

12 A. I SEE YOUR POINT.

13 Q. --- IN TO RAPE.

14 MR. MABRY: I'M GOING TO OBJECT TO THIS AS -- IT'S A
15 HYPOTHETICAL QUESTION BEING ASKED OF SOMEONE WHO IS NOT AN
16 EXPERT.

17 THE COURT: ALL RIGHT. I'M GOING TO ALLOW THE
18 QUESTION. OVERRULED.

19 Q. AND I'M JUST ASKING IS YOU SEE THE GIST OF IT AS
20 WHETHER YOU CONSIDERED ASKING FOR AN INSTRUCTION SORT OF
21 AFTER APPRENDI THAT THE JURORS HAD TO AGREE ON WHAT CRIME
22 DID THE DEFENDANT ENTER THE HOUSE TO COMMIT?

23 A. NO. I DON'T THINK THAT'S THE LAW. I THINK WHAT THE
24 LAW IS IS THAT THEY HAVE TO FIND, OF COURSE, UNANIMOUSLY
25 THAT HE INTENDED TO COMMIT A CRIME. I DON'T THINK THEY HAVE

1 TO -- HE COULD HAVE HAD -- HE COULD HAVE HAD SEVERAL
2 DIFFERENT CRIMES IN MIND TO COMMIT WHEN HE WENT IN. I DON'T
3 THINK THE LAW IS IS THAT THEY HAVE TO AGREE THAT HE WAS
4 GOING IN TO COMMIT ONE PARTICULAR CRIME.

5 I MEAN, YOUR -- AND I APOLOGIZE IF I'M NOT FOLLOWING
6 YOUR QUESTION, BUT YOUR QUESTION IS ESSENTIALLY IS THAT HALF
7 THE JURY THINKS HE WENT IN TO COMMIT MURDER AND HALF THE
8 JURY THINKS HE WENT IN TO COMMIT RAPE DO THEY HAVE TO DECIDE
9 WHICH ONE IT WAS TO REACH A VERDICT?

10 Q. OR AT LEAST DID YOU CONSIDER WHETHER IN THE POST
11 APPRENDI WORLD THERE WAS A VIABLE ARGUMENT THAT YOU WERE
12 ENTITLED SUCH AN INSTRUCTION?

13 A. I'M SURE I CONSIDERED SOME OF THAT LINE OF THINKING. I
14 DON'T KNOW HOW FAR I FOLLOWED IT JUST BECAUSE OF WHAT I TOLD
15 YOU, I JUST DON'T THINK THAT'S THE LAW. I DON'T THINK I CAN
16 -- I DON'T THINK YOU CAN PUT THEM IN A POSITION OF HAVING TO
17 CHOOSE, IF THERE WERE TWO CHOICES, WHICH ONE IT WAS, WHAT'S
18 HE THINKING.

19 Q. BUT THEY DO HAVE TO, EVEN ASSUMING YOU'RE RIGHT ABOUT
20 THAT, ---

21 A. OKAY. YES, SIR.

22 Q. --- THEY ALSO HAVE TO FIND THAT HE WENT IN TO COMMIT A
23 CRIME?

24 A. THEY HAVE TO FIND -- THEY DEFINITELY HAVE TO FIND THAT
25 HE WENT IN TO COMMIT A CRIME.

1 Q. AND SOME THINGS, RIGHT, PEOPLE THINK ARE CRIMINAL MIGHT
2 NOT BE?

3 A. I AGREE WITH THAT.

4 Q. I MEAN, ENTERING A HOUSE AND GOING THROUGH SOMEBODY'S
5 CLOTHES?

6 A. IS -- THERE ARE SITUATIONS WHERE THAT WOULDN'T
7 POSSIBLY, I GUESS, BE ---

8 Q. SO ---

9 A. THE PROBLEM YOU HAVE IN THAT IS, YOU KNOW, IS HE
10 TRESPASSING, IS HE NOT? I MEAN, WE'VE ---

11 Q. WELL, BUT HOW DOES THE JURY ---

12 A. --- I THOUGHT THROUGH THAT. I MEAN, THAT'S PART OF
13 WHAT WE HAD TO TRY TO FIGURE OUT.

14 Q. WELL THEN, BUT WITHOUT KNOWING DID YOU CONSIDER ASKING
15 FOR AN INSTRUCTION ON WHAT A CRIME IS?

16 A. YOU MEAN JUST A DEFINITION OF -- ASKING FOR THE
17 DEFINITION OF A CRIME?

18 Q. YES.

19 A. NO.

20 Q. IN OTHER WORDS, ---

21 A. WE ASKED FOR DEFINITIONS OF SPECIFIC CRIMES. I MEAN,
22 THE CRIME OF BURGLARY IS DEFINED BY THE JUDGE IN GIVING A
23 CHARGE ON THE ELEMENTS. I MEAN, CRIME IN GENERAL, JUST WHAT
24 A CRIME IS, I DIDN'T THINK OF THAT, NO.

25 Q. BUT IF JURORS DON'T KNOW WHAT A CRIME IS HOW DO THEY

1 KNOW SOMEONE ENTERED THE HOUSE WITH THE INTENT TO COMMIT A
2 CRIME?

3 MR. MABRY: I'M GOING TO OBJECT TO THAT QUESTION. HE'S
4 ASKING FOR WHAT JURORS THINK OR KNOW.

5 THE COURT: I'LL SUSTAIN IT AT THIS POINT. PLEASE MOVE
6 TO YOUR NEXT QUESTION.

7 Q. MR. SLADE, PLEASE, DO YOU RECALL WHETHER OR NOT YOU
8 OBJECTED TO ANYTHING DURING THE CLOSING ARGUMENT ON BEHALF
9 OF THE PROSECUTION?

10 A. I CAN'T RECALL OBJECTING TO ANYTHING. I DON'T THINK I
11 DID.

12 Q. WOULD IT HAVE BEEN YOUR PRACTICE TO OBJECT IF YOU
13 BELIEVED -- IF YOU HEARD SOMETHING THAT YOU BELIEVED WAS
14 OBJECTIONABLE?

15 A. YES.

16 Q. I MEAN, YOU DIDN'T MAKE IT TO YOUR -- TO YOUR
17 RECOLLECTION IN THIS CASE YOU DO NOT RECALL MAKING A
18 STRATEGIC DECISION NOT TO OBJECT TO ANY PARTICULAR THING
19 WHICH WAS SAID BY MR. GOWDY?

20 A. THAT'S CORRECT.

21 Q. AND WOULD THE SAME BE TRUE TO THE JURY INSTRUCTIONS
22 WHICH WERE GIVEN BY JUDGE COLE IN THIS CASE AT THE
23 SENTENCING PHASE OF THE TRIAL?

24 A. ARE YOU ASKING ME DID I MAKE A STRATEGIC DECISION WHEN
25 I HEARD SOMETHING I THOUGHT WAS OBJECTIONABLE NOT TO OBJECT?

1 Q. RIGHT. IN OTHER WORDS, IF YOU HAD HEARD THE JUDGE MAKE
2 SOMETHING WHICH IN YOUR MIND WAS AN IMPROPER STATEMENT OF
3 LAW OR AN ERRONEOUS INSTRUCTION YOU DIDN'T MAKE A DECISION
4 NOT TO RAISE THAT? YOU RAISED WHAT YOU THOUGHT ---

5 A. THAT'S CORRECT.

6 MR. BLUME: ONE SECOND.

7 THE COURT: ALL RIGHT. IS THERE REDIRECT?

8 MR. MABRY: YES, SIR.

9 THE COURT: GO AHEAD.

10 **REDIRECT EXAMINATION BY MR. MABRY:**

11 Q. MR. SLADE, YOU WERE ASKED IN CROSS EXAMINATION ABOUT
12 THERE NOT BEING A 911 CALL. ARE YOU SAYING THERE'S NOT A
13 911 CALL AT ALL OR THAT WASN'T ONE FROM MR. SOUTHERN?

14 A. I'M TRYING TO REMEMBER MR. BLUME'S QUESTION. I THINK
15 WHAT I WAS -- I THINK WHAT WE WERE TALKING ABOUT WAS HIS
16 QUESTIONS ABOUT US LAYING SOME GROUNDWORK TO KEEP THE DOOR
17 OPEN ON ANY CULPABILITY OF MR. SOUTHERN.

18 Q. CORRECT.

19 A. AND MR. SOUTHERN DIDN'T MAKE A 911 CALL.

20 Q. OKAY.

21 A. THAT WAS MY UNDERSTANDING OF THE QUESTION HE WAS
22 ASKING.

23 Q. YOU WEREN'T SAYING THAT THERE WAS NO 911 CALL AT ALL?

24 A. NO.

25 Q. ALL RIGHT. AND YOU WERE ASKED ABOUT THE PHONE LINES

1 BEING CUT YET A TELEPHONE CALL CAME IN THROUGH AN ANSWERING
2 MACHINE. DO YOU REMEMBER IN THE TRIAL IF THERE WAS
3 TESTIMONY REGARDING THE PHONE LINES BEING CUT, SOME OF THEM?

4 A. WELL, I DON'T REMEMBER ABOUT PHONE LINES BEING CUT.
5 THAT TESTIMONY GOES ALONG WITH HIDING THE KNIVES AND ALL
6 THAT SORT OF ISSUE. THERE WAS TESTIMONY ABOUT SOME KNIVES
7 BEING FOUND IN A DIFFERENT LOCATION THAN WHERE THEY WERE
8 NORMALLY STORED SEVERAL DAYS AFTER THE VICTIM WAS SHOT. I
9 DON'T REMEMBER TESTIMONY SPECIFICALLY ABOUT PHONE LINES
10 BEING CUT. THERE PROBABLY WAS, I JUST DON'T -- I APOLOGIZE.
11 I DON'T REMEMBER.

12 Q. OKAY. WELL, MY QUESTION IS IF SOME OF THE PHONE LINES
13 AT THE HOUSE HAD BEEN CUT, BUT NOT ALL OF THEM, COULD A CALL
14 HAVE COME INTO THE HOUSE TO YOUR KNOWLEDGE?

15 A. A CALL DID COME INTO THE HOUSE.

16 Q. OKAY. THAT'S ALL ---

17 A. SOME -- I DON'T REMEMBER WHO IT WAS RIGHT NOW, BUT
18 SOMEBODY LEFT A MESSAGE ON THE ANSWERING MACHINE AT THE
19 HOUSE IN AN EFFORT DURING ALL THIS TO TRY TO GET IN TOUCH
20 WITH SOMEBODY. I DON'T REMEMBER. BUT, YEAH, CALLS CAME IN
21 DURING THE TIME THAT SPIKE WAS TRYING TO CLAIM OR THE
22 PROSECUTION WAS TRYING TO CLAIM THAT THE LINES WERE CUT.

23 Q. ALL RIGHT. BUT MY QUESTION WAS IF SOME OF THE PHONE
24 LINES IN THE HOUSE HAD BEEN CUT, BUT NOT ALL OF THEM, COULD
25 CALLS STILL COME INTO THE HOUSE AS FAR AS YOU KNOW?

1 MR. BLUME: THAT'S -- I OBJECT 'CAUSE THAT'S -- HE
2 DOESN'T REALLY KNOW THAT. THAT'S A MATTER OF IMPLICATION
3 AND ARGUMENT WHETHER THE PHONE LINES WERE, IN FACT, CUT.

4 THE COURT: ALL RIGHT. I'M GOING TO SUSTAIN IT ON THE
5 BASIS THAT IT REALLY WAS PREVIOUSLY ASKED AND IT'S BEEN
6 ANSWERED. GO AHEAD, COUNSEL.

7 Q. YOU WERE ASKED SOME QUESTIONS ABOUT MR. BINNEY'S
8 STATEMENTS AND SUGGESTIBILITY AND ---

9 A. RIGHT. YES.

10 Q. DID -- WHAT WAS YOUR KNOWLEDGE ABOUT MR. BINNEY'S
11 EDUCATION? HAD HE HAD ANY COLLEGE EDUCATION TO YOUR
12 KNOWLEDGE?

13 A. I MEAN, WE KNEW WHAT HIS EDUCATIONAL BACKGROUND WAS AT
14 THE TIME WE TRIED THE CASE. I REMEMBER NOW -- WHAT I CAN
15 RECALL NOW IS HE HAD A GED. HE HAD -- HE HAD DROPPED OUT
16 AND HE HAD GONE BACK AND GOTTEN A GED. HE HAD -- I THINK HE
17 HAD SOME FURTHER EDUCATION. I APOLOGIZE. I CAN'T RECALL
18 RIGHT NOW WHAT IT WAS.

19 Q. ALL RIGHT. AND WHAT DID HE WORK WITH? DID HE EXCEL AT
20 ANY KIND OF WORK?

21 A. YES.

22 Q. WHAT WAS THAT?

23 A. HE DID A GOOD JOB WORKING WITH COMPUTERS.

24 Q. OKAY. YOU WERE ASKED ABOUT USING A DEATH PENALTY
25 EXPERT. AND YOU SAID THERE WAS A DECISION NOT TO ---

- 1 A. I DON'T ---
- 2 Q. --- FOR SOME REASON.
- 3 A. I DON'T RECALL MR. BLUME USING THAT TERM.
- 4 Q. I'M SORRY, A JURY SELECTION EXPERT.
- 5 A. THAT'S CORRECT. YES. I RECALL HIM ASKING ME ABOUT
- 6 THAT.
- 7 Q. OKAY. WHO -- DO YOU REMEMBER WHAT EXPERT YOU WERE
- 8 THINKING ABOUT USING?
- 9 A. YEAH. A GUY IN DURHAM, I THINK. HIS NAME IS DAVID
- 10 BALL.
- 11 Q. ALL RIGHT. DO YOU REMEMBER THINKING ABOUT USING AN
- 12 EXPERT THAT KEITH KELLY HAD USED IN ANOTHER CASE?
- 13 A. WELL, I GOT SOME INFORMATION FROM KEITH ABOUT SOME
- 14 QUESTIONS, VOIR DIRE QUESTIONS, JURY QUESTIONNAIRES, THOSE
- 15 KIND OF THINGS FROM MR. KELLY, WHO IS A CRIMINAL DEFENSE
- 16 LAWYER IN SPARTANBURG WHO HAD TRIED A DEATH PENALTY CASE
- 17 BEFORE OURS. AND I GOT QUESTIONNAIRES, VOIR DIRE QUESTIONS,
- 18 SOME OTHER LITERATURE FROM HIS EXPERT.
- 19 Q. AND YOU ---
- 20 A. THROUGH HIM. I DIDN'T EVER TALK TO HER.
- 21 Q. OKAY. YOU REVIEWED THOSE MATERIALS?
- 22 A. YES.
- 23 Q. DID YOU CONSIDER USING THAT EXPERT THAT HE HAD USED?
- 24 A. NO. NO. I'M SORRY. I ---
- 25 MR. BLUME: THAT IS ABOUT FOUR LEADING QUESTIONS IN A

1 ROW.

2 THE COURT: ALL RIGHT.

3 MR. MABRY: I'M SORRY. I DIDN'T ---

4 THE COURT: SUSTAINED.

5 Q. YOU WERE ASKED ABOUT AUTOMATIC DEATH JURORS, AUTOMATIC
6 LIFE JURORS. WHAT'S YOUR UNDERSTANDING ABOUT A JUROR THAT
7 TESTIFIES THAT HE WOULD ALWAYS GIVE THE DEATH PENALTY? IN
8 INDIVIDUAL VOIR DIRE IF HE TESTIFIES HE WOULD ALWAYS VOTE
9 FOR DEATH WHAT HAPPENS TO THAT JUROR?

10 A. I THINK WHAT MR. BLUME ASKED ME ABOUT WAS ADP JURORS.
11 TO ANSWER YOUR QUESTION, ANYBODY WHO CAN'T CONSIDER EITHER
12 ONE OF THE OPTIONS IS NOT QUALIFIED.

13 Q. ALL RIGHT. YOU TALKED ABOUT -- YOU WERE ASKED ABOUT A
14 PRIVATE INVESTIGATOR BEING USED FOR THIS CASE. DO YOU
15 REMEMBER WHAT Y'ALL WERE -- Y'ALL INTERVIEWED A PRIVATE
16 INVESTIGATOR. WHAT WERE YOU GOING TO USE HIM FOR?

17 A. WELL, I DON'T KNOW THAT WE HAD ANYTHING IN MIND AT THE
18 TIME. WE WERE JUST CONSIDERING IT. I THINK AT ONE POINT WE
19 CONSIDERED -- I THINK TRENT TALKED WITH ERIC WRIGHT BECAUSE
20 HE HAD, I THINK, AT THAT POINT LEFT THE SOLICITOR'S OFFICE.
21 BUT WE INTERVIEWED A GUY WHOSE NAME I CAN'T RECALL RIGHT NOW
22 IN TRENT'S OFFICE AT SOME POINT DURING THE -- DURING OUR
23 PREPARATION OF THE CASE.

24 Q. YOU DON'T REMEMBER WHAT YOU WERE THINKING ABOUT USING
25 HIM FOR AT THIS TIME?

1 A. NO, I APOLOGIZE. MY POINT WAS I DON'T KNOW THAT WE HAD
2 ANYTHING IN MIND AT THE TIME. WE WERE JUST -- DIDN'T KNOW
3 IF WE MIGHT NEED ONE. AND I THINK WE TALKED TO THAT -- I
4 DON'T KNOW THAT WE HAD A SPECIFIC TASK IN MIND FOR HIM TO DO
5 AT THE TIME, BUT WE JUST TALKED TO HIM.

6 Q. ALL RIGHT. AND YOU WERE ASKED ABOUT DANNY EDWARDS. DO
7 YOU BELIEVE AS TRIAL COUNSEL YOU WERE ABLE TO IMPEACH MR.
8 EDWARDS' TESTIMONY AND CREDIBILITY?

9 A. WELL, IT'S HARD TO JUDGE YOUR OWN CROSS EXAMINATION. I
10 MEAN, SOME YOU THINK ARE GREAT ARE TERRIBLE AND SOME YOU
11 THINK ARE TERRIBLE WORK. I JUST -- I USED THE MATERIAL I
12 HAD TO TRY TO, I MEAN, THERE WASN'T ANY WAY TO GET HIM OFF
13 OF THE AUTHENTICITY IN THAT NOTE.

14 Q. BECAUSE OF WHY?

15 A. IT WAS GOING TO BE AUTHENTICATED ON BOTH ENDS.

16 Q. BY?

17 A. WELL, SLED'S EXPERT, AND I HAD REASON TO THINK IT MAY
18 BE AUTHENTIC. ALL RIGHT. NOW MY POINT ---

19 Q. LET ME STOP YOU RIGHT THERE. YOU HAD REASON TO BELIEVE
20 IT WAS AUTHENTIC, WHY?

21 A. WELL, I HAD CONVERSATIONS WITH MY CLIENT.

22 Q. ALL RIGHT. ABOUT THE MAP AND THE NOTE?

23 A. WELL, ---

24 Q. IS THAT CORRECT?

25 A. MY RECOLLECTION OF ALL THAT STUFF FROM THOSE SNITCHES

1 WAS THAT THERE WAS -- I DON'T REMEMBER THE MAP, ALTHOUGH I
2 SAW IT IN THE MATERIAL. I JUST -- I DON'T REMEMBER THE MAP.
3 THERE WAS A NOTE THAT ONE OF THOSE TWO GOT HIM TO WRITE
4 OR ALLEGEDLY GOT HIM TO WRITE. AND ATTACKING THE
5 AUTHENTICITY OF THE NOTE WAS GOING TO BE TOUGH. BUT, YOU
6 KNOW, WHAT YOU DO AT THAT POINT IS JUST TRY TO CROSS EXAMINE
7 HIM TO -- IF YOU CAN DISTRACT FROM SOME OF THE BADNESS OF
8 THE NOTE TO THE SLEAZINESS OF THE CHARACTERS THAT ARE
9 PRODUCING IT. SO, YEAH, I COULD HAVE USED INFORMATION,
10 FURTHER INFORMATION ABOUT HOW SLEAZY HE IS OR WAS.

11 Q. BUT YOU ALREADY HAD INFORMATION ABOUT HOW SLEAZY HE
12 WAS, CORRECT?

13 A. SOME OF IT.

14 Q. OKAY. AND WHAT WAS THAT? DO YOU REMEMBER WHAT THAT
15 INFORMATION WAS?

16 A. WELL, HE HAD A RECORD.

17 Q. HOW LONG OF A RECORD DID HE HAVE?

18 A. I MEAN, I HEARD THE SOLICITOR'S TESTIMONY THIS MORNING.
19 I ASSUME HE HAD A FAIRLY SUBSTANTIAL RECORD.

20 Q. DO YOU REMEMBER DRAGGING HIS RECORD AROUND THE
21 COURTROOM?

22 A. YEAH.

23 Q. IT WAS THAT LONG?

24 A. WELL, HE HAD A -- HE HAD A RECORD. I MEAN, HE HAD A
25 FAIRLY EXTENSIVE RECORD.

1 Q. YOU WERE ASKED ABOUT DR. ROSS AND THE TESTIMONY SHE
2 MADE ABOUT THE TWO SHOTS. WERE YOU HERE EARLIER THIS WEEK
3 WHEN A ---

4 MR. BLUME: YOUR HONOR, I OBJECT. THIS IS NOT NEW
5 MATTER. THIS WAS RAISED DURING HIS DIRECT EXAMINATION. I
6 CROSS EXAMINED HIM ABOUT IT. THIS IS -- I BELIEVE THIS IS
7 OUTSIDE THE SCOPE ---

8 THE COURT: ONLY NEW MATTERS, COUNSEL. WHAT'S NEW WITH
9 REGARD TO ...

10 MR. MABRY: WELL, AS I UNDERSTAND, YOUR HONOR, I'M ON
11 REDIRECT EXAMINATION. AND WHEN HE FINISHES CROSS AND I'M
12 ENTITLED TO ASK HIM ABOUT ANYTHING THAT HE DEVELOPED ON
13 CROSS EXAMINATION.

14 THE COURT: WELL, NO, SIR. THE WAY THAT THIS COURT
15 ADMINISTERS IT IS WHEN YOU HAVE HIM ON DIRECT, YOU'VE GOT
16 FULL ACCESS, YOU CAN ASK EVERYTHING ABOUT EVERYTHING THAT
17 YOU WISH. YOU CLOSE AND YOU'RE DONE. WE GO TO CROSS. AND
18 YOU COME BACK ON REDIRECT ON ANY NEW MATTERS BROUGHT UP
19 DURING CROSS. SO IT WOULD HAVE TO BE SOMETHING NEW ---

20 MR. MABRY: OKAY.

21 THE COURT: --- BEFORE THIS COURT WOULD ALLOW REDIRECT.

22 MR. MABRY: WELL, IT IS MY POSITION, YOUR HONOR, THAT
23 THIS IS NEW MATTER BECAUSE HE WAS ASKED IF THE PATHOLOGIST
24 HAD STUCK BY HER TESTIMONY, THAT THIS WAS A SMALL CALIBER
25 GUN, WOULD THAT HAVE BEEN A PROBLEM FOR THE STATE, WHICH HE

1 ANSWERED, YES.

2 THE COURT: THAT'S RIGHT.

3 MR. MABRY: AND I INTEND TO GO INTO WHAT -- ASK HIM
4 ABOUT THE TESTIMONY EARLIER THIS WEEK BY THEIR PATHOLOGIST
5 AND WHAT HE SAID AND WOULD THAT HAVE CAUSED A PROBLEM WITH
6 THE STATE.

7 THE COURT: YOU MAY DO SO.

8 MR. MABRY: OKAY.

9 Q. MR. SLADE, WERE YOU HERE EARLIER THIS WEEK WHEN, I
10 BELIEVE, THERE WAS A PATHOLOGIST, I DON'T REMEMBER HIS NAME,
11 ---

12 A. WELL, YOU DON'T HAVE TO TRY TO PRONOUNCE IT. I -- THIS
13 IS MY -- THIS IS MY FIRST TIME IN THE COURTROOM OTHER THAN
14 TO BRING MY FILES OVER HERE MONDAY.

15 Q. ALL RIGHT. HE TESTIFIED EARLIER THIS WEEK THAT BASED
16 ON THE FACT THAT MS. SOUTHERN, THE AGE SHE WAS AND SHE'D HAD
17 A CHILD AND HER SKIN ELASTICITY THAT YOU COULD NOT TELL THE
18 CALIBER OF THE BULLET THAT WENT THROUGH HER BODY OTHER THAN
19 TO SAY IT WAS A MEDIUM OR SMALL CALIBER BULLET. DO YOU
20 UNDERSTAND WHAT HE TESTIFIED TO?

21 A. YES, I ---

22 Q. HE COULD NOT TELL THE CALIBER OTHER THAN A MEDIUM TO A
23 SMALL CALIBER.

24 A. RIGHT. OKAY.

25 Q. IF THAT TESTIMONY HAD BEEN PRESENTED AT THE TRIAL WOULD

1 THAT HAVE BEEN A PROBLEM FOR THE STATE?

2 A. WELL, MEDIUM TO SMALL CALIBER INCLUDES THE WEAPON THAT
3 WAS ALLEGEDLY USED AND THE SMALL CALIBER WEAPON THAT MR.
4 SOUTHERN HAD. YOU KNOW, I DON'T KNOW IF -- I DON'T KNOW IF
5 THAT MAKES A DIFFERENCE. I MEAN, WHAT HELPS IS, AGAIN, ONE
6 MORE -- ONE MORE EFFORT AT RAISING SOME KIND OF REASONABLE
7 DOUBT AND KEEPING THE DOOR OPEN WITH MR. SOUTHERN ---

8 Q. ALL RIGHT.

9 A. --- WITH A SMALL CALIBER WEAPON.

10 Q. RIGHT. BUT IF THAT WITNESS, MR. LEDBETTER, OR WHATEVER
11 HIS NAME WAS, THE PATHOLOGIST TESTIFIED IT COULD HAVE BEEN A
12 MEDIUM CALIBER GUN, THAT WAS CONSISTENT WITH THE ---

13 MR. BLUME: I OBJECT. IT'S A LEADING QUESTION.

14 THE COURT: COUNSEL, THAT IS LEADING. SUSTAINED.

15 Q. WOULD A MEDIUM CALIBER WOUND -- WOULD IT OR WOULD IT
16 NOT BE CONSISTENT WITH THE STATE'S THEORY?

17 MR. BLUME: THIS IS A LEADING QUESTION IN PARTIAL
18 DISGUISED.

19 THE COURT: WELL, THE COURT WILL ALLOW IT IN THAT FORM.

20 A. A MEDIUM CALIBER WOUND WAS CONSISTENT WITH THE STATE'S
21 CASE.

22 Q. DID -- ON THE ISSUE OF PRISON ADAPTABILITY WAS THAT AN
23 ISSUE THAT YOU WERE INVOLVED IN OR WOULD THAT HAVE BEEN
24 SOMETHING MR. PRUETT WOULD HAVE BEEN INVOLVED IN?

25 A. I DON'T -- I THINK BOTH OF US PROBABLY WERE EQUALLY

1 INVOLVED IN THAT ISSUE.

2 Q. DO YOU REMEMBER WHY YOU CHOSE NOT TO CALL A PRISON
3 ADAPTABILITY ...

4 A. WELL, MY THINKING IS THAT GENERALLY PRISON ADAPTABILITY
5 WITNESSES ARE PEOPLE WHO TESTIFY ABOUT SOMEONE'S ADAPTATION
6 TO A PRISON ENVIRONMENT. AND I THINK THAT GENERALLY IS
7 SOMETHING YOU USE WHEN YOU HAVE A DEFENDANT WHO'S
8 INTIMIDATING, SCARY, THREATENING. THIS -- WE HAD A GUY, WHO
9 I DON'T -- I JUST DON'T THINK THAT'S AN ISSUE. THE ISSUE IN
10 THIS CASE IS WHAT'S THE APPROPRIATE PUNISHMENT FOR SOMEBODY
11 WHO'S RAPED A BABY.

12 Q. DID THE FACT THAT HE HAD BEEN DIAGNOSED AS A SEXUAL
13 SADIST PLAY A ROLE IN CHOOSING NOT TO CALL SOMEONE ON PRISON
14 ADAPTABILITY?

15 A. I DON'T ---

16 THE COURT: COUNSEL, ---

17 MR. BLUME: THAT'S LEADING.

18 THE COURT: EVEN AS YOU STAND, THAT'S A LEADING
19 QUESTION. WE'RE IN A SERIES OF LEADING QUESTIONS. DO YOU
20 HAVE ANYTHING FURTHER FOR THE WITNESS?

21 MR. MABRY: YES, SIR, JUDGE.

22 THE COURT: TELL ME WHAT AREAS YOU WANT TO GO INTO.

23 MR. MABRY: I WANT TO GO INTO A MATTER THAT WAS RAISED
24 BY MR. BLUME REGARDING THIS CONCERN ABOUT -- WELL, IT GOES
25 INTO -- IT GOES INTO PRISON ADAPTABILITY AS WELL, WHICH I

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1 DID NOT DISCUSS IN MY DIRECT EXAMINATION.

2 THE COURT: ALL RIGHT. COUNSEL, HOW MUCH LONGER DO YOU
3 BELIEVE YOUR CROSS WILL BE, I MEAN, YOUR REDIRECT WILL BE?

4 MR. MABRY: MAYBE TWO OR THREE MORE MINUTES, JUDGE.

5 THE COURT: ALL RIGHT. GO AHEAD. I'M GOING TO ASK YOU
6 TO MOVE FORWARD TO THE OTHER AREA THAT YOU JUST ---

7 MR. MABRY: YES, SIR.

8 THE COURT: --- REFERRED TO. THANK YOU.

9 Q. MR. SLADE, IN THAT REGARDS TO THE PRISON ADAPTABILITY
10 DO YOU REMEMBER SOMETHING OCCURRING BEFORE THE TRIAL IN
11 WHICH THE STATE WAS ABLE TO OBTAIN DR. SCHWARTZ-WATTS'
12 REPORT?

13 A. NO, I DON'T.

14 Q. ALL RIGHT. DO YOU REMEMBER THE STATE MOVING TO OBTAIN
15 DR. SCHWARTZ-WATTS' REPORT AND HAVING ---

16 A. YES.

17 Q. --- THEIR OWN PSYCHOLOGICAL ANALYSIS DONE?

18 A. YES, THEY DID.

19 Q. ALL RIGHT. WAS THERE AN INTERVIEW OR DID THE COURT
20 ALLOW ---

21 A. YES.

22 Q. --- THE STATE'S ---

23 A. YEAH, THEY -- JUDGE COLE ALLOWED THEM TO HAVE SOMEONE
24 INTERVIEW HIM IS MY RECOLLECTION.

25 Q. A PSYCHOLOGIST? PSYCHIATRIST SOMEBODY?

1 A. DR. CRAWFORD, I BELIEVE, WAS HER NAME.

2 Q. DO YOU REMEMBER THAT THERE WAS AN INTERVIEW WITH THE
3 DEFENDANT AND DR. CRAWFORD IN WHICH A LOT OF THINGS WERE
4 DISCUSSED WITH MR. BINNEY?

5 A. I DON'T -- I DON'T RECALL WHAT WAS DISCUSSED. THEY
6 WANTED TO GET A REPORT. THEY WANTED TO MAKE US PRODUCE OUR
7 EXPERT, PRODUCE OUR EXPERT'S -- PRODUCE REPORTS ON MENTAL
8 HEALTH ISSUES. THEY KEPT PRESSING US ON WHETHER OR NOT WE
9 WERE GOING TO -- WHETHER OR NOT WE WERE GOING TO PRESENT AN
10 INSANITY DEFENSE. AND AS A PART OF ALL OF THAT -- ALL THAT
11 -- RESOLVING THAT ISSUE THEY EVENTUALLY WERE ABLE TO HAVE
12 JONATHAN INTERVIEWED BY THEIR OWN EXPERT. AND I THINK WE
13 HAD TO PRODUCE REPORTS TO THEM.

14 Q. ALL RIGHT.

15 A. AGAIN, THAT'S SOMETHING THAT I DIDN'T DEAL WITH AS MUCH
16 AS I DEALT WITH THE OTHER THINGS. I MEAN, TRENT AND I,
17 AGAIN, DISCUSSED ALL THIS, BUT THAT WAS SOMETHING -- MENTAL
18 HEALTH ISSUES WAS SOMETHING THAT TRENT DEALT WITH.

19 Q. OKAY. WELL, ON THE ISSUE OF PRISON ADAPTABILITY, DID
20 MR. PRUETT EVER COMMUNICATE TO YOU THAT MR. BINNEY HAD
21 ADMITTED TO CERTAIN MISCONDUCT WHILE HE WAS ---

22 A. YES.

23 Q. --- IN PRISON? AND WHAT WAS THAT MISCONDUCT?

24 A. I DON'T -- I DON'T REMEMBER.

25 Q. YOU WERE ASKED BY DEFENSE COUNSEL ABOUT THIS BEING A

1 DOWNWARD SPIRAL OF MR. BINNEY'S LIFE ---

2 A. RIGHT.

3 Q. --- AT THIS POINT.

4 A. RIGHT.

5 Q. DO YOU REMEMBER WHETHER OR NOT THERE WAS TESTIMONY TO
6 THAT EFFECT IN THE PENALTY PHASE OF THE TRIAL?

7 MR. BLUME: THE RECORD DOES REFLECT THIS, YOUR HONOR.

8 THE COURT: OBJECTION IS OVERRULED.

9 A. I DON'T REMEMBER IN THOSE TERMS. I DON'T REMEMBER IT
10 BEING DESCRIBED IN THOSE TERMS.

11 Q. WELL, LET ME ASK YOU THIS. WAS THERE TESTIMONY THAT HE
12 WAS WITHOUT A JOB?

13 MR. BLUME: THIS IS A LEADING QUESTION.

14 THE COURT: COUNSEL, THAT IS GRIEVOUSLY LEADING.

15 MR. MABRY: YES, SIR.

16 THE COURT: GRIEVOUSLY. PLEASE GO TO YOUR NEXT AREA OF
17 QUESTIONING.

18 MR. MABRY: YES, SIR.

19 Q. DID YOU EVER ASK THE BINNEYS TO BRING FORWARD WITNESSES
20 TO TESTIFY ON BEHALF OF THEIR SON IN MITIGATION?

21 A. WE DISCUSSED PEOPLE WHO HE -- WE DISCUSSED -- WE HAD
22 SOME DISCUSSION OF PEOPLE HE -- WHO WOULD HAVE BEEN
23 SIGNIFICANT PEOPLE IN HIS LIFE. I DON'T REMEMBER
24 SPECIFICALLY, TEACHERS, OTHER PEOPLE LIKE THAT. AND WE --
25 THEY TOLD US OF SOME.

1 I DON'T REMEMBER IF THEY TOLD US ABOUT SOME OF THEM OR
2 JONATHAN TOLD US ABOUT SOME. BUT THERE WAS A GUY NAMED
3 CAREY BOLT, WHO JONATHAN HAD WORKED FOR WHEN HE FIRST CAME
4 TO SOUTH CAROLINA ---

5 Q. ALL RIGHT.

6 A. --- WHO WAS A CONTACT THAT, I BELIEVE, MR. BINNEY OR
7 REVEREND BINNEY HAD. WE DISCUSSED SOME PEOPLE LIKE THAT. I
8 DON'T REMEMBER ALL OF THEIR NAMES.

9 Q. DO YOU KNOW WHY -- DO YOU REMEMBER WHY YOU DIDN'T CALL
10 ANY OF THESE PEOPLE IN THE PENALTY PHASE?

11 A. WELL, I REMEMBER CONTACTING MR. -- I HAD SOME
12 DISCUSSION WITH MR. BOLT. I THINK I TRIED TO CONTACT OR
13 CONTACTED SOME OF THE OTHERS. I DON'T REMEMBER WHAT THE
14 ISSUE WAS WITH MR. BOLT, BUT I WAS -- I JUST DIDN'T THINK
15 THERE WAS -- MY RECOLLECTION RIGHT NOW IS THERE WAS
16 SOMETHING NEGATIVE HE HAD TO SAY THAT WASN'T GOING TO HELP
17 US.

18 Q. DO YOU REMEMBER ---

19 A. LIKE ---

20 Q. DO YOU REMEMBER ANYTHING ABOUT THE POLICE CAR?

21 (WHEREUPON MR. BLUME STOOD UP)

22 THE COURT: THERE YOU GO.

23 MR. MABRY: I'M SORRY, YOUR HONOR.

24 THE COURT: WE'RE GOING TO END -- DO YOU HAVE ANY

25 FURTHER QUESTIONS OF THE WITNESS, COUNSEL, 'CAUSE WE HAVE

1 GONE ---

2 MR. MABRY: YES, SIR, I HAVE ONE MORE QUESTION.

3 THE COURT: --- INTO LEADING. ALL RIGHT. YOUR FINAL
4 QUESTION IS?

5 MR. MABRY: YES, SIR.

6 Q. WAS MR. BINNEY QUESTIONED BY JUDGE COLE ABOUT WHETHER
7 HE CHOSE TO WEAR PRISON CLOTHES OR A SUIT?

8 A. I DON'T REMEMBER. I APOLOGIZE.

9 Q. THAT'D BE REFLECTED IN THE RECORD IF IT OCCURRED?

10 A. (NO RESPONSE).

11 MR. MABRY: NO FURTHER QUESTIONS.

12 A. I THINK SO.

13 THE COURT: ALL RIGHT. ANY OBJECTION NOW TO THE
14 RELEASE OF THE WITNESS FROM EITHER SIDE?

15 MR. BLUME: NO, SIR.

16 THE COURT: ALL RIGHT. YOU'RE NOT REQUIRED TO LEAVE,
17 MR. SLADE, BUT YOU'RE FREE TO LEAVE AT THIS TIME, IF YOU
18 WISH.

19 MR. SLADE: THANK YOU. YOUR HONOR, I JUST WANTED TO
20 DOUBLE CHECK. I KNOW Y'ALL OUGHT TO BE THROUGH TODAY. I'VE
21 GOT A PRELIMINARY HEARING I'M SUPPOSED TO BE AT IN RICHLAND
22 TOMORROW.

23 THE COURT: YES, SIR.

24 MR. SLADE: I ASSUME RELEASED MEANS I ---

25 THE COURT: YOU'RE DONE. YOU'RE FREE TO GO.

1 MR. SLADE: --- I DON'T HAVE TO COME BACK.

2 THE COURT: YOU DO NOT.

3 MR. SLADE: JUST WANTED TO MAKE SURE.

4 THE COURT: ALL RIGHT.

5 MR. SLADE: DIDN'T WANT TO MAKE ANYMORE PEOPLE MAD.

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
7 GOING TO TAKE OUR AFTERNOON BREAK AT THIS TIME. COURT WILL
8 BE IN RECESS APPROXIMATELY TEN MINUTES.

9 (WHEREUPON COURT WAS IN RECESS AT 3:34 PM)

10 THE COURT: THANK YOU. PLEASE BE SEATED, LADIES AND
11 GENTLEMEN. ALL RIGHT. PLEASE CALL YOUR NEXT WITNESS.

12 MR. SALTER: THANK YOU, YOUR HONOR. WE'D CALL MR.
13 PRUETT.

14 THE COURT: PLEASE COME FORWARD AND TAKE THE OATH OF A
15 WITNESS.

16 TRENT PRUETT, BEING DULY
17 SWORN TESTIFIED AS FOLLOWS:

18 THE COURT: AND PLEASE BEGIN BY STATING YOUR FULL NAME
19 AND SPELLING YOUR LAST FOR US.

20 MR. PRUETT: TRENT NEWELL PRUETT. LAST NAME,
21 P-R-U-E-T-T.

22 THE COURT: THANK YOU. COUNSEL.

23 MR. SALTER: THANK YOU, YOUR HONOR.

24 DIRECT EXAMINATION BY MR. SALTER:

25 Q. MR. PRUETT, WHERE ARE YOU CURRENTLY EMPLOYED?

TRENT PRUETT - DIRECT EXAMINATION BY MR. SALTER

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- 1 A. I AM SELF-EMPLOYED AT PRUETT LAW FIRM HERE IN GAFFNEY.
- 2 Q. ALL RIGHT. HOW LONG HAVE YOU -- HAVE YOU HAD THAT
- 3 PRACTICE?
- 4 A. ELEVEN YEARS.
- 5 Q. ELEVEN YEARS?
- 6 A. (AFFIRMATIVE NOD).
- 7 Q. YOU OBVIOUSLY WERE APPOINTED IN THIS CASE AS LEAD
- 8 COUNSEL.
- 9 A. THAT'S CORRECT.
- 10 Q. DO YOU RECALL WHEN YOU WERE FIRST APPOINTED?
- 11 A. OCTOBER OF 2001.
- 12 Q. COULD YOU GIVE THE COURT THE BENEFIT OF YOUR
- 13 PROFESSIONAL HISTORY BEFORE THAT APPOINTMENT?
- 14 A. I COMPLETED LAW SCHOOL AND WAS ADMITTED TO THE BAR IN
- 15 1983. THEREAFTER FOR APPROXIMATELY FOUR YEARS I WORKED WITH
- 16 THE LEGAL SERVICES CORPORATION. AND THEN FROM 1987 TO 1996
- 17 I WAS EMPLOYED BY THE SEVENTH CIRCUIT SOLICITOR'S OFFICE.
- 18 Q. ALL RIGHT. AND AFTER YOU LEFT THE SOLICITOR'S OFFICE
- 19 THAT'S WHEN YOU BEGAN ---
- 20 A. THAT'S CORRECT.
- 21 Q. --- YOUR PRACTICE?
- 22 A. FEBRUARY OF '96 UNTIL THE PRESENT.
- 23 Q. CAN YOU STATE WHETHER OR NOT YOUR PRACTICE, PRIVATE
- 24 PRACTICE HAS ALWAYS BEEN HERE IN CHEROKEE COUNTY?
- 25 A. YES, IT HAS.

1 Q. OKAY. PRIOR TO YOUR APPOINTMENT HAD YOU TRIED ANY
2 DEATH PENALTY CASES AS A DEFENSE ATTORNEY?

3 A. NO.

4 Q. DO YOU RECALL WHETHER OR NOT YOU WERE DEATH PENALTY
5 CERTIFIED AT ANY POINT DURING YOUR REPRESENTATION OR PRIOR
6 TO IT?

7 A. SUBSEQUENT TO MY APPOINTMENT BY JUDGE COLE I SUBMITTED
8 MY APPLICATION FOR CERTIFICATION, AND I WAS APPROVED.

9 Q. ALL RIGHT. NOW HAD YOU PARTICIPATED IN THE TRIAL, THE
10 PROSECUTION IN ANY DEATH PENALTY CASES WHILE YOU WERE WITH
11 THE SEVENTH CIRCUIT SOLICITOR'S OFFICE?

12 A. YES, APPROXIMATELY A DOZEN.

13 Q. APPROXIMATELY A DOZEN?

14 A. YES, SIR.

15 Q. WOULD YOU NAME JUST A COUPLE OF THOSE, IF YOU WOULD?

16 A. BEGINNING IN 1991 WE TRIED FIVE IN THAT ONE YEAR.

17 STATE VERSUS RAY, STATE VERSUS ROCHEVILLE, STATE VERSUS
18 LONGWORTH, STATE VERSUS RIDDLE AND STATE VERSUS McCLURE.

19 AND THEN AFTER THAT YEAR, STATE VERSUS -- THESE WERE
20 SOMETIMES DEATH PENALTY CASES NOT RESULTING IN THE DEATH
21 PENALTY. STATE VERSUS IRVIN MYERS, STATE VERSUS RICHARD
22 ANTHONY TUCKER.

23 AND THEN THERE WERE SOME CASES THAT I DIDN'T ACTUALLY
24 SERVE DURING THE TRIAL AS PRINCIPAL CO-COUNSEL. I'M DRAWING
25 A BLANK. STATE VERSUS ROSEBORO. THERE ARE A FEW MORE. I

- 1 JUST -- I CAN'T RECALL.
- 2 Q. ALL RIGHT.
- 3 A. IT'LL COME TO ME IN A MINUTE, BUT I CAN'T RECALL.
- 4 Q. WHILE YOU WERE IN THE SOLICITOR'S OFFICE DID YOU HAVE
- 5 OCCASION TO TRY ANY NON-CAPITAL MURDER CASES?
- 6 A. OH, YES.
- 7 Q. APPROXIMATELY HOW MANY?
- 8 A. I'D SAY ABOUT FIFTY OR MORE.
- 9 Q. HAD YOU TRIED ANY OTHER MAJOR FELONY CASES?
- 10 A. WELL, THAT'S ESSENTIALLY ALL I DID DURING THE TIME I
- 11 WAS THERE.
- 12 Q. ALL RIGHT. HAVE YOU -- HAD YOU, BEFORE YOUR
- 13 APPOINTMENT IN THIS CASE, TRIED ANY NON-CAPITAL MURDER CASES
- 14 AS A DEFENSE ATTORNEY?
- 15 A. YES, APPROXIMATELY SIX OR SEVEN.
- 16 Q. OKAY. AND HAD YOU TRIED ANY OTHER MAJOR FELONIES AS A
- 17 DEFENSE ATTORNEY?
- 18 A. YES.
- 19 Q. OKAY. DO YOU RECALL APPROXIMATELY HOW MANY?
- 20 A. I'M GOING TO SAY APPROXIMATELY ABOUT TEN OR TWELVE A
- 21 YEAR, MAYBE ONCE A MONTH.
- 22 Q. NOW FOLLOWING YOUR APPOINTMENT THE RECORD ALSO REFLECTS
- 23 THAT MR. SLADE WAS APPOINTED AS CO-COUNSEL?
- 24 A. CORRECT.
- 25 Q. AND HOW DID HIS APPOINTMENT COME ABOUT?

1 A. MR. SLADE'S?

2 Q. YES.

3 A. I'D WORKED WITH MITCH IN THE SOLICITOR'S OFFICE. WHEN
4 I WAS HIRED MITCH WAS MY IMMEDIATE SUPERVISOR. HE WAS THE
5 DEPUTY SOLICITOR. I HAD KNOWN MITCH IN LAW SCHOOL A LITTLE
6 BIT, NOT THAT WELL.

7 BUT WHEN I WORKED -- WENT TO WORK IN THE SOLICITOR'S
8 OFFICE HE WAS THE PERSON I REPORTED IMMEDIATELY TO. SO I
9 KNEW HIM FROM THAT. I KNEW HE'S -- HE WAS A GOOD LAWYER, IS
10 A GOOD LAWYER. SO I ASKED HIM AS A, REALLY AS A FAVOR TO ME
11 TO SERVE WITH ME AS CO-COUNSEL.

12 Q. OKAY. DO YOU RECALL WHEN YOU AND MR. SLADE MAY HAVE
13 FIRST MET TO DISCUSS THE CASE?

14 A. OCTOBER OF 2001.

15 Q. ALL RIGHT. HOW DID Y'ALL THEREAFTER DIVVY UP THE
16 RESPONSIBILITIES?

17 A. HOW DID WE DIVIDE RESPONSIBILITIES IN THE CASE?

18 Q. YES, SIR.

19 A. WELL, INITIALLY IT WAS KIND OF A REVIEWING THE FILE
20 PROCESS. I OBTAINED THE FILE FROM DON THOMPSON, COPIED IT,
21 GAVE MITCH A COPY OF IT. AND WE WENT AND MET WITH MR.
22 BINNEY AT THE END OF DECEMBER OF 2001.

23 AND I CAN'T TELL YOU AT WHAT POINT IN TIME WE BEGAN TO
24 DIVIDE UP CERTAIN ISSUES THAT WOULD HAVE BEEN RAISED DURING
25 THE TRIAL. THAT JUST KIND OF GRADUALLY CAME ABOUT WITH

1 MITCH PRIMARILY TAKING RESPONSIBILITY OVER THE ISSUES
2 SURROUNDING THE CONFESSION OR STATEMENTS OF MR. BINNEY.

3 I THINK I PRIMARILY ADDRESSED SOME OF THE FACTUAL
4 ISSUES IN THE GUILT PHASE AND THE SENTENCING PHASE. AND IN
5 THE SENTENCING PART OF THE TRIAL, I ACCEPTED RESPONSIBILITY
6 FOR THE MENTAL HEALTH ISSUES. AND THAT WAS TRUE TO THE
7 GUILT PHASE ALSO.

8 Q. ALL RIGHT. NOW YOU'VE MENTIONED YOUR FIRST MEETING
9 WITH YOUR CLIENT. YOU SAID THAT WAS THE END OF DECEMBER?

10 A. CORRECT. IT WAS AFTER CHRISTMAS.

11 Q. DO YOU RECALL WHETHER OR NOT YOU MADE SOME EXPLANATION
12 TO HIM AS TO HOW MUCH TIME YOU WOULD SPEND WITH HIM THE NEXT
13 SEVERAL MONTHS?

14 A. I DON'T EVEN KNOW IF THAT'S IN MY NOTES, IF I DID OR
15 NOT. HE WAS BEING HOUSED AT LIEBER CORRECTIONAL AT THAT
16 POINT SERVING A THIRTY YEAR SENTENCE FOR THE CRIMINAL SEXUAL
17 CONDUCT CONVICTION.

18 SO WHAT I TOLD HIM WOULD BE THAT MITCH AND I WOULD JUST
19 HAVE TO COMMUNICATE FOR THE MOST PART BY MAIL. AS IT GOT
20 CLOSER TO THE TRIAL HE WOULD BE TRANSPORTED BACK TO CHEROKEE
21 COUNTY WHERE WE COULD COMMUNICATE WITH HIM ON A MORE REGULAR
22 BASIS FACE TO FACE.

23 Q. ALL RIGHT. AND DURING THAT FIRST MEETING WITH YOUR
24 CLIENT DO YOU RECALL WHETHER OR NOT YOU MADE ANY INQUIRY AS
25 TO WHETHER HE KNEW EITHER ALLAN SOUTHERN OR JUDY SOUTHERN?

1 A. I DON'T KNOW WITHOUT LOOKING AT MY NOTES IF WE
2 SPECIFICALLY ASKED THAT QUESTION. WE MAY HAVE.

3 Q. ALL RIGHT.

4 A. WHAT I DID WAS KIND OF OUTLINED THE FACTS THAT WERE SET
5 OUT IN THE FILE GIVEN TO ME BY THE PROSECUTION AS TO WHAT
6 THE CASE WAS AGAINST HIM BASED UPON WHAT WAS PRESENTED TO
7 ME.

8 Q. ALL RIGHT. YOU MENTIONED YOUR NOTES. WOULD THOSE
9 NOTES HAVE BEEN NOTES YOU TOOK CONTEMPORANEOUSLY WITH THE
10 DATES ASSOCIATED THEREWITH?

11 A. CLOSE. I MEAN, TYPICALLY IF I DID SOMETHING OF ANY
12 SIGNIFICANCE IN THE CASE I WOULD GO BACK TO MY OFFICE, I
13 WOULD DICTATE IT, AND MY SECRETARY WOULD TYPE IT UP.

14 Q. ALL RIGHT. IF YOU WOULD LOOK AT YOUR NOTES FOR
15 DECEMBER 27, 2001, SPECIFICALLY ON PAGE 10. AND IT'LL BE
16 THE LAST PARAGRAPH, SIR, BEFORE THE NEXT ENTRY DATE.

17 MR. BLUME: YOUR HONOR, I DON'T KNOW IF HE'S TRYING TO
18 REFRESH HIS RECOLLECTION. I DON'T KNOW IF HE'S ---

19 MR. SALTER: YES.

20 MR. BLUME: --- HE DOESN'T HAVE ANY MEMORY. I'M NOT
21 SURE WHAT'S HAPPENING HERE.

22 THE COURT: ALL RIGHT. COUNSEL, I GENERALLY --
23 REFERENCE TO NOTES OR WRITTEN REFERENCE COMES AFTER THE
24 COUNSEL OR THE WITNESS IS UNABLE TO RECALL INDEPENDENTLY.
25 YOU MAY ASK FIRST ---

1 MR. SALTER: WELL, I THOUGHT I'D DONE THAT, YOUR HONOR.

2 I THOUGHT HE'D INDICATED HE DID NOT RECALL.

3 THE COURT: VERY GOOD. YOU DID.

4 MR. SALTER: I WAS JUST GOING TO ASK HIM IF THAT WOULD
5 REFRESH HIS RECOLLECTION.

6 THE COURT: ALL RIGHT. PLEASE PROCEED. OBJECTION
7 OVERRULED.

8 A. I'M LOOKING AT PAGE 10. AND YOU'RE TALKING ABOUT THE
9 LAST PARAGRAPH BELOW PARAGRAPH 11?

10 Q. YES, SIR. THE PARAGRAPH ---

11 A. OKAY.

12 Q. --- BEGINNING ---

13 A. OKAY.

14 Q. I DO NOT WANT YOU TO READ IT ALOUD.

15 A. I UNDERSTAND. OKAY. ALL RIGHT.

16 Q. DOES THAT REFRESH YOUR RECOLLECTION?

17 A. YES.

18 Q. SO DID YOU OR DID YOU NOT ASK MR. BINNEY ABOUT WHETHER
19 OR NOT HE HAD ANY CONNECTION WITH MR. OR MS. SOUTHERN?

20 A. YES.

21 Q. AND WHAT WAS HIS RESPONSE?

22 A. HE WANTED TO KNOW WHAT THE SIGNIFICANCE OF THAT MIGHT
23 BE IN REFERENCE TO HIS CASE.

24 Q. AND DO YOU RECALL WHETHER OR NOT YOU EXPLAINED WHAT YOU
25 THOUGHT THE SIGNIFICANCE MIGHT BE?

1 A. RIGHT.

2 Q. AND WHAT DID YOU TELL HIM?

3 A. WELL, JUST IN RELATION TO THIS MURDER FOR HIRE

4 POSSIBILITY.

5 Q. ALL RIGHT. AND WHAT DID HE -- WHAT DID HE THEN TELL

6 YOU IN RESPONSE TO YOUR INITIAL ---

7 A. WELL, THIS MAY NOT BE WHAT I'M THINKING OF. WELL, IT

8 MAY NOT BE REFERENCED IN THAT PARAGRAPH, BUT THAT'S WHEN WE

9 KIND OF OUTLINED THE FACTS OF THE CASE SURROUNDING THE DEATH

10 OF MS. SOUTHERN. AND I ASKED HIM FOR AN EXPLANATION FOR

11 THAT OR WHAT HE KNEW ABOUT IT. HE SAID, WELL, I'LL GET BACK

12 IN TOUCH WITH YOU OR CAN I GET BACK IN TOUCH WITH YOU, WORDS

13 TO THAT EFFECT.

14 Q. AND DO YOU RECALL WHETHER OR NOT YOU THEREAFTER

15 RECEIVED A WRITTEN COMMUNICATION FROM HIM?

16 A. YES.

17 Q. AND WHAT WAS THE NATURE OF THAT COMMUNICATION?

18 A. IT WAS HIS EXPLANATION FOR THE EVENTS BASED UPON THE

19 FACTS I HAD REPRESENTED TO HIM AT OUR MEETING. IN OTHER

20 WORDS, I WAS TRYING TO GET AN EXPLANATION -- HOW CAN YOU

21 EXPLAIN THESE EVENTS OR WHAT INVOLVEMENT, IF ANY, DO YOU

22 HAVE IN THE FACTS THAT I'VE RELATED. AND HIS RESPONSE,

23 WELL, LET ME GET BACK -- CAN I GET BACK WITH YOU ON THAT?

24 AND THEN WHEN HE WROTE THE LETTER IT WAS HIS EXPLANATION OF

25 THE FACTS AS REPRESENTED IN THE CONTEXT OF WHAT HE KNEW.

1 Q. AND WHAT DID HE -- WHAT DID HE INDICATE?

2 A. IT'S A RATHER INVOLVED STORY ABOUT HE'D HAD AN
3 EXTRAMARITAL AFFAIR WITH MS. SOUTHERN AND THAT HE HAD GONE
4 TO THEIR HOME THAT DAY TO MEET MS. SOUTHERN. AND IN THE
5 COURSE OF THEIR ARGUMENT HE HAD A GUN AND WAS THREATENING
6 SUICIDE. THEY STRUGGLED OVER THE GUN AND THAT'S HOW SHE WAS
7 SHOT.

8 Q. DO YOU RECALL WHETHER OR NOT YOU EVER OBTAINED WRITTEN
9 INFORMATION PROVIDED BY YOUR CLIENT TO HIS PARENTS
10 INDICATING THAT THAT STORY WAS FALSE?

11 A. FROM HIS PARENTS?

12 Q. YES.

13 A. I DON'T HAVE ANY INDEPENDENT RECOLLECTION AS TO THAT.

14 Q. ALL RIGHT, SIR. IF YOU WOULD TURN TO PAGE 19 OF YOUR
15 NOTES. AND IT'S UNDER THE DATE OF MARCH 25, 2002.

16 A. IT SAYS MARCH 25TH?

17 Q. YES, SIR. I'M SORRY, IT'S ON PAGE 20. I APOLOGIZE.
18 AND IT WILL BE THE SECOND LINE. THE SENTENCE BEGAN ON THE
19 SECOND LINE OF PAGE 20.

20 A. OKAY. I DON'T THINK I HAD THAT LETTER ITSELF. SO THEY
21 HAD TO TELL ME ABOUT THAT. I DON'T BELIEVE I'VE EVER
22 ACTUALLY SEEN THAT LETTER THAT HE WROTE THEM.

23 Q. HE APPARENTLY WROTE THEM A LETTER?

24 A. CORRECT.

25 Q. AND HE INDICATED THAT WHAT HE'D PREVIOUSLY TOLD YOU WAS

1 FALSE?

2 A. CORRECT.

3 Q. NOW DID EVER -- DID YOU THEREAFTER PRIOR TO THE TRIAL
4 OBTAIN ANY OTHER STATEMENTS FROM YOUR CLIENT CONCERNING HIS
5 VERSION OF WHAT HAD OCCURRED ON THE DAY OF THE CRIME?

6 A. WELL, AT DIFFERENT TIMES THAT WAS DISCUSSED WITH HIM.
7 I CAN RECALL AT ONE POINT WE DISCUSSED WHAT HE INITIALLY
8 TOLD MR. THOMPSON, WHO WAS HIS FIRST APPOINTED COUNSEL. AND
9 THAT WAS THAT MR. BINNEY HAD MET MR. SOUTHERN AT A
10 RESTAURANT IN GREENVILLE AND MR. SOUTHERN HAD OFFERED TO PAY
11 THREE THOUSAND DOLLARS TO MR. BINNEY IF HE WERE TO KILL MS.
12 SOUTHERN.

13 THE COURT: COUNSEL, EXCUSE ME. TO WHOM WAS THAT STORY
14 OR THAT SET OF FACTS RELATED; DID YOU SAY?

15 A. TO DON THOMPSON.

16 THE COURT: ALL RIGHT.

17 A. MR. THOMPSON IS THE CHIEF PUBLIC DEFENDER IN CHEROKEE
18 COUNTY. AND HE WAS INITIALLY RETAINED TO REPRESENT OR
19 APPOINTED TO REPRESENT MR. BINNEY.

20 THE COURT: THANK YOU.

21 A. SO MR. THOMPSON LIVES IN GREENVILLE COUNTY AND HAPPENED
22 TO BE FAMILIAR WITH THAT PARTICULAR RESTAURANT AND KNEW THE
23 RESTAURANT HAD BEEN CLOSED FOR SOME TIME AND, THEREFORE,
24 THAT MEETING COULD NOT HAVE OCCURRED AS DESCRIBED. AND WHEN
25 MR. THOMPSON CONFRONTED MR. BINNEY HE ADMITTED THAT HE MADE

1 IT UP.

2 Q. ALL RIGHT.

3 A. AND MR. BINNEY AT SUBSEQUENT TIMES ADMITTED TO ME THE
4 SAME THING, THAT HE HAD MISREPRESENTED TO MR. THOMPSON THIS
5 MURDER FOR HIRE SCENARIO.

6 Q. OKAY. BEFORE I GET INTO ANY REAL SPECIFIC MATTERS THAT
7 HAVE BEEN ALLEGED CONCERNING YOUR REPRESENTATION, FROM YOUR
8 PERSPECTIVE WHAT WAS THE MOST DIFFICULT THING THAT THE
9 DEFENSE WOULD HAVE TO -- WITH WHAT YOU WOULD HAVE TO DEAL
10 WITH RESPECT TO THE GUILT OR INNOCENCE PHASE OF THE TRIAL?

11 A. THE CRIMINAL SEXUAL CONDUCT CONVICTIONS AND THE
12 CIRCUMSTANCES SURROUNDING THAT CONVICTION. BY THAT I MEAN
13 THE FACTS THAT SUPPORTED THE CONVICTION IN QUESTION.

14 Q. ALL RIGHT. AND WHY WAS THAT SUCH AN IMPORTANT THING
15 FOR YOU?

16 A. WELL, I MEAN, IN THE SCHEME OF CASES THAT PROSECUTORS
17 DEAL WITH, IT WAS A PARTICULARLY EGREGIOUS SET OF FACTS. IT
18 WAS HIS OWN DAUGHTER THAT WAS THREE MONTHS OLD AT THE TIME.
19 AND INITIALLY WE WERE UNDER THE IMPRESSION IT INVOLVED THE
20 USE OF SOME OBJECT. AND THEN PRIOR TO TRIAL THERE WAS A
21 STATEMENT BY MR. BINNEY THAT IT WAS ACTUAL SEXUAL
22 INTERCOURSE WITH HIM.

23 AND THOSE KIND OF FACTS ARE HIGHLY PREJUDICIAL EVEN IN
24 THE MINDS OF ATTORNEYS AND JUDGES THAT HAVE TO HEAR THESE
25 CASES. WE SEE A LOT OF THOSE KIND OF INCIDENTS OVER A

1 PERIOD OF TIME. IT'S STILL VERY INFLAMMATORY, VERY
2 PREJUDICIAL.

3 AND THE DANGER WAS, AND I THINK THAT PLAYED OUT IN THE
4 COURT, THAT THE JURY WOULD JUDGE WHETHER OR NOT HE SHOULD
5 RECEIVE THE DEATH PENALTY BASED UPON NOT NECESSARILY THE
6 MURDER OF MS. SOUTHERN AS SO MUCH AS HIS PAST CRIMINAL
7 CONDUCT, WHICH INCLUDED THE CRIMINAL SEXUAL CONDUCT.

8 Q. OKAY. FOLLOWING YOUR INITIAL MEETING WITH MR. BINNEY
9 DO YOU HAVE ANY IDEA HOW MANY TIMES YOU MAY HAVE MET WITH
10 HIM THEREAFTER?

11 A. WE ONLY TRAVELED TO LIEBER CORRECTIONAL ON THAT ONE
12 OCCASION IN DECEMBER.

13 Q. OKAY.

14 A. AND THEREAFTER, THE ONLY TIME WE MET FACE TO FACE WITH
15 HIM WOULD HAVE BEEN WHEN HE WAS TRANSPORTED UP FOR HEARINGS
16 OVER THE COURSE OF THE SUMMER AND THEN WHEN HE EVENTUALLY
17 WAS TRANSPORTED TO CHEROKEE COUNTY.

18 Q. OKAY. DID YOU TALK TO HIM AT ALL -- DO YOU RECALL
19 WHETHER OR NOT YOU TALKED TO HIM AT ALL BY TELEPHONE?

20 A. NO. I DON'T RECALL EVER DOING THAT.

21 Q. WOULD YOU DESCRIBE WHETHER OR NOT YOU FELT YOUR CLIENT
22 WAS COOPERATIVE WITH YOU?

23 A. WELL, AT TIMES. YOU KNOW, JONATHAN'S BEHAVIOR, IT KIND
24 OF DEPENDED ON WHAT WAS GOING AROUND THE CASE AT THAT TIME.
25 BY THAT I MEAN HOW HE COOPERATED OR DIDN'T COOPERATE

1 DEPENDED UPON WHAT WAS HAPPENING WITH THE REST OF THE CASE.
2 CLOSER TO THE TRIAL, I THOUGHT HE WAS VERY COOPERATIVE. AS
3 WE ACTUALLY BEGAN PREPARING FOR A TRIAL, I THOUGHT WE HAD A
4 FAIRLY GOOD CLIENT/ATTORNEY RELATIONSHIP.

5 Q. BY THAT POINT?

6 A. SURE. I'D SAY ABOUT A MONTH BEFORE THE TRIAL WE WERE
7 MEETING ON A REGULAR BASIS, YES.

8 Q. ALL RIGHT. DO YOU RECALL WHETHER OR NOT YOU OR MR.
9 SLADE EVER GAVE THOUGHT TO EMPLOYING A PRIVATE INVESTIGATOR
10 OR SOMEONE TO HELP YOU WITH THE INVESTIGATION OF THE FACTS
11 OF THE CASE?

12 A. AT DIFFERENT TIMES WHEN WE WERE SERIOUSLY LOOKING INTO
13 THE POTENTIAL OF A THIRD PARTY GUILT SCENARIO OR A MURDER
14 FOR HIRE SCENARIO, SERIOUS THOUGHT WAS GIVEN AT THAT POINT
15 TO THE POSSIBILITY OF PURSUING THAT. DAVID HUFF, WHO WAS A
16 PROFESSOR AT LIMESTONE COLLEGE, HE'D WORKED WITH ME ON A FEW
17 CASES. I CONSIDERED USING HIM AND DISCUSSED WITH HIM THAT
18 POSSIBILITY. AND AT ONE POINT I HAD SPOKEN TO PETE SKIDMORE
19 ALSO.

20 Q. ALL RIGHT. DID YOU AND MR. SLADE EVER ULTIMATELY
21 DECIDE TO USE THE SERVICES OF AN INVESTIGATOR?

22 A. WELL, THE PRIMARY CONSIDERATION FOR HIRING AN
23 INVESTIGATOR WOULD HAVE BEEN TO PURSUE THESE ISSUES RELATING
24 TO THE MURDER FOR HIRE AND THE THIRD PARTY GUILT. AND WE
25 CAME TO THE CONCLUSION IN OUR OWN MINDS THAT THERE WAS NOT A

1 SUFFICIENT FACTUAL BASIS FOR THAT, WHICH IS BASED PRIMARILY
2 ON JONATHAN BINNEY'S REPRESENTATIONS TO US THAT IT DID NOT
3 HAPPEN. THEN THE NEED FOR DOING THAT WAS LESSENER. SOME OF
4 THE THINGS THAT WE MIGHT HAVE HIRED AN INVESTIGATOR TO DO,
5 WE JUST DID OURSELVES.

6 Q. ALL RIGHT. THE THIRD PARTY GUILT ISSUES -- WELL, FIRST
7 RIGHT NOW I'D LIKE TO TALK TO YOU ABOUT -- I THINK -- I
8 BELIEVE YOU JUST INDICATED YOUR CLIENT HAD TOLD YOU THAT MR.
9 SOUTHERN HAD NO INVOLVEMENT IN THE CRIME, IS THAT CORRECT?

10 A. CORRECT.

11 Q. IS THAT INFORMATION THAT YOU'D HAD PROVIDED TO YOU ---
12 MR. BLUME: HE'S LEADING THE WITNESS.

13 THE COURT: THAT WAS A LEADING QUESTION, COUNSEL. AND
14 IT HASN'T BEEN -- WELL, SUSTAINED ---

15 MR. SALTER: VERY WELL, YOUR HONOR.

16 THE COURT: --- AS TO THAT QUESTION. GO AHEAD AND
17 REPHRASE.

18 Q. DO YOU RECALL WHAT INFORMATION YOUR CLIENT HAD PROVIDED
19 TO YOU CONCERNING -- AFTER THE INITIAL STATEMENT THAT MR.
20 THOMPSON -- AFTER THE INITIAL STATEMENT TO YOU WHICH YOU
21 LATER FOUND WAS FALSE, DO YOU RECALL WHAT, IF ANYTHING, YOUR
22 CLIENT SAID CONCERNING MR. SOUTHERN'S INVOLVEMENT IN THE
23 DEATH OF HIS WIFE?

24 A. WELL, AGAIN, AT DIFFERENT TIMES IT VARIED INITIALLY.
25 BUT WHEN WE GOT INTO THE CASE AND DISCUSSED THAT WITH HIM,

1 DISCUSSED THAT WITH HIM, WE ASKED THE QUESTION POINT BLANK,
2 IS THIS A MURDER FOR HIRE SCHEME? ARE YOU IN ANY WAY
3 INVOLVED? DID YOU KNOW THESE PEOPLE PRIOR TO THE INCIDENT
4 DATE? AND HIS ANSWER WAS, NO. NO, THERE WAS NO MURDER FOR
5 HIRE. NO, THERE WAS NO PRIOR KNOWLEDGE OR INVOLVEMENT WITH
6 EITHER MR. SOUTHERN OR MS. SOUTHERN.

7 Q. ALL RIGHT. DO YOU RECALL WHETHER OR NOT YOU AND MR.
8 SLADE WERE -- HAD INTERVIEWED ANYONE WHO EITHER WORKED WITH
9 OR WAS FRIENDS WITH JUDY SOUTHERN CONCERNING POSSIBLE THIRD
10 PARTY GUILT?

11 A. WE SPOKE TO TONYA BROWN, WHO WORKED AT THE POST OFFICE
12 WITH HER AND A MS. NORA LEWIS, WHO WAS AN ATTORNEY FOR UNION
13 COUNTY THAT SHARED A HOBBY OR SIMILARITIES, HOBBIES WITH MS.
14 SOUTHERN. SHE WAS A HORSE -- I WON'T SAY FANATIC, BUT SHE
15 -- ENTHUSIAST, HORSEBACK RIDING.

16 Q. ALL RIGHT, SIR. YOU RECALL WHAT INFORMATION MS. BROWN
17 RELAYED TO YOU CONCERNING WHATEVER SUSPICIONS SHE MAY OR MAY
18 NOT HAVE ABOUT ALLAN SOUTHERN'S INVOLVEMENT?

19 A. WELL, THERE WAS THE DAY THAT MS. SOUTHERN WAS KILLED.
20 AND THAT OBVIOUSLY WAS SOMETHING OF INTEREST TO HER JUST TO
21 BACKTRACK WHAT SHE WAS DOING THAT DAY THAT LED UP TO THE
22 POINT WHERE SHE WAS AT HER RESIDENCE AND WAS KILLED OR SHOT.

23 AND WE SPOKE TO MS. BROWN. AND SHE JUST DESCRIBED MS.
24 SOUTHERN AS BEING VERY OUT OF SORTS ON THAT PARTICULAR DAY,
25 VERY UPSET. MADE THE COMMENT OR THE STATEMENT THAT THAT WAS

1 THE DAY THAT SHE WAS GOING TO DIE. AND THEY WERE OBVIOUSLY
2 VERY CONCERNED FOR HER BECAUSE SHE WAS NOT THE -- NOT
3 USUALLY THE KIND OF PERSON THAT WOULD EXPRESS THOSE KIND OF
4 EMOTIONS OR MAKE THOSE KIND OF STATEMENTS.

5 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT SHE MAY
6 HAVE PROVIDED YOU WITH INFORMATION AS TO WHICH -- I'M SORRY.
7 STRIKE THAT, PLEASE.

8 DO YOU RECALL WHETHER OR NOT SHE TOLD YOU ANYTHING
9 WHICH MAY HAVE SUGGESTED THAT THE VICTIM DID NOT KNOW MR.
10 BINNEY?

11 A. THAT WAS A LONG INTERVIEW. AND I KNOW MY NOTES ON THAT
12 WERE SEVERAL PAGES LONG.

13 Q. ALL RIGHT, SIR. IF YOU'LL TURN TO PAGE 14 OF YOUR
14 NOTES. IT'S -- THE DATE OF THAT INTERVIEW IS FEBRUARY 26TH,
15 2002. AND IT'S PAGE 14. AND THERE'S ONLY ONE FULL
16 PARAGRAPH ON THAT PAGE, SMALL PARAGRAPH.

17 A. RIGHT, RIGHT. I RECALL THAT.

18 Q. ALL RIGHT, SIR. WHAT, IF ANYTHING, DID SHE TELL YOU?

19 A. THAT MS. BROWN HAD READ OR WAS DISCUSSING MR. BINNEY'S
20 ARREST FOR CRIMINAL SEXUAL CONDUCT, AND HIS NAME WAS
21 DISCUSSED IN THE POST OFFICE, AND MS. SOUTHERN DIDN'T MAKE
22 ANY INDICATION THAT SHE KNEW WHO MR. BINNEY WAS.

23 THAT'S NOT TO SAY THAT SHE DIDN'T KNOW, BUT SHE DIDN'T
24 SPEAK UP AND MAKE ANY STATEMENT THAT, OH, I KNOW WHO YOU'RE
25 TALKING ABOUT OR THAT PERSON LIVES DOWN THE ROAD OR I'VE

1 SEEN HIM. SO THE INFERENCE WAS, AT LEAST BY MS. BROWN, THAT
2 SHE DIDN'T KNOW WHO JONATHAN BINNEY WAS.

3 Q. ALL RIGHT, SIR. WHAT IF ANY OTHER INFORMATION DID MS.
4 BROWN PROVIDE TO YOU CONCERNING MARITAL DISCORD, IF YOU
5 WILL, BETWEEN THE VICTIM AND HER HUSBAND?

6 A. THAT THEY HAD PROBLEMS, THAT EACH WERE SEEING PEOPLE
7 DURING THE MARRIAGE, EACH HAD EXTRAMARITAL AFFAIRS AND THAT
8 THEY WERE IN THE PROCESS OF MARRIAGE COUNSELING.

9 Q. DO YOU RECALL WHETHER OR NOT YOU RECEIVED ANY
10 INFORMATION CONCERNING EFFORTS BY MR. SOUTHERN TO TRY TO
11 KEEP TABS ON HIS WIFE, SO TO SPEAK?

12 A. I CAN'T RECALL HOW THAT INFORMATION CAME TO LIGHT, BUT
13 MR. SOUTHERN HAD TAPPED OR PUT RECORDING DEVICES ON THE
14 RESIDENTIAL TELEPHONE WITHOUT HIS WIFE'S KNOWLEDGE. SO SHE
15 WAS BEING SECRETLY RECORDED.

16 Q. ALL RIGHT. DO YOU RECALL WHETHER OR NOT YOU OR MR.
17 SLADE WERE ABLE TO ALSO DEVELOP INFORMATION CONCERNING
18 MONIES SPENT BY MR. SOUTHERN FOLLOWING HIS WIFE'S DEATH?

19 A. THAT WAS RATHER COMMON KNOWLEDGE, I THINK. HE HAD
20 PURCHASED A NEW VEHICLE. THEY HAD MADE IMPROVEMENTS TO THE
21 RESIDENCE INCLUDING A SWIMMING POOL. AND THERE WERE THINGS
22 THAT WE JUST HEARD FROM OTHER PERSONS, NO WAY FOR US TO KNOW
23 THAT, I HAD NO IDEA WHAT KIND OF TRUCK MR. SOUTHERN DROVE OR
24 DIDN'T DRIVE.

25 Q. ALL RIGHT. DID YOU TRY TO FOLLOW UP ON ALL THE

1 INFORMATION THAT YOU WERE PROVIDED IN THIS REGARD?

2 A. WE DID IN THE SENSE THAT WE KIND OF KEPT AN OPEN MIND
3 AS TO THERE STILL BEING SOME TYPE OF CONNECTION BETWEEN
4 JONATHAN BINNEY AND ALLAN SOUTHERN OR JUDY SOUTHERN EVEN
5 THOUGH OUR CLIENT IS TELLING US THAT THERE IS NO CONNECTION.
6 THE CIRCUMSTANCES WERE SO SUGGESTIVE OF THAT THAT I DIDN'T
7 WANT TO FORECLOSE THAT POSSIBILITY.

8 IT'S NOT UNUSUAL IN MY OWN REPRESENTATION OF
9 INDIVIDUALS THAT THEY DON'T TELL ME OR THE ATTORNEY
10 EVERYTHING THAT THERE IS ABOUT THE CASE FOR WHATEVER REASON.
11 MAYBE IT'S PERSONAL EMBARRASSMENT OR MAYBE THEY'RE TRYING TO
12 PROTECT SOMEBODY.

13 SO THE -- THE CIRCUMSTANCES HERE WERE EXTREMELY
14 SUGGESTIVE. AND IT MAY JUST HAVE BEEN PURELY COINCIDENTAL
15 AND APPEARS THAT WAS THE CASE. BUT WHEN YOU'RE FIRST
16 BEGINNING YOUR INVESTIGATION OF A CASE YOU NEED TO KEEP AN
17 OPEN MIND THAT THAT POSSIBILITY EXISTS AT THE RISK OF
18 CONNECTION.

19 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU EVER
20 PROVIDED ACCESS TO -- YOU MENTIONED THE TAPING BY MR.
21 SOUTHERN.

22 A. CORRECT.

23 Q. DO YOU RECALL WHETHER OR NOT YOU WERE PROVIDED ACCESS
24 TO THOSE ACTUAL TAPES THAT HE MADE?

25 A. YEAH, I STILL HAVE COPIES OF IT.

1 Q. DO YOU RECALL WHETHER OR NOT YOU MAY HAVE LISTENED TO
2 THEM?

3 A. I DID. LISTENED TO ALL OF THEM. AND WE TRANSCRIBED
4 THEM.

5 Q. DO YOU RECALL WHETHER OR NOT THOSE TAPES THAT WERE
6 PROVIDED TO YOU AND THE INFORMATION SOMEHOW CONNECTED MR.
7 SOUTHERN TO THE DEATH OF HIS WIFE?

8 A. NO.

9 Q. NO, YOU DON'T RECALL OR ---

10 A. NO, I DID LISTEN TO ALL THE TAPES. AND MY RECOLLECTION
11 IS THERE WAS NO CONNECTION BETWEEN WHAT WAS HAPPENING
12 BETWEEN HIM AND HIS WIFE AND HER DEATH.

13 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU MAY
14 HAVE OBTAINED ANY RECORDS RELATING TO COUNSELING MR. AND MS.
15 SOUTHERN MAY HAVE BEEN UNDERGOING?

16 A. I WENT TO BLUE WATER COUNSELING IN SPARTANBURG. THEY
17 HAD BEEN ATTENDING COUNSELING THERE. AND MY RECOLLECTION IS
18 IS THAT MS. SOUTHERN'S HEALTH INSURANCE POLICY WAS PAYING
19 FOR THAT. SO I ACTUALLY WENT TO THE LOCATION AND SPOKE TO
20 THE COUNSELOR AND OBTAINED THE RECORDS FROM HIM.

21 Q. DO YOU RECALL WHETHER OR NOT YOU AND MR. SLADE EVER
22 VISITED THE CRIME SCENE?

23 A. WE DID.

24 Q. ALL RIGHT. DO YOU RECALL WHETHER OR NOT YOU WERE ABLE
25 TO GO INTO THE SOUTHERN RESIDENCE?

1 A. WE ACTUALLY WENT OUT THERE TWICE. THE FIRST TIME, MY
2 RECOLLECTION IS, WE DROVE OUT THERE JUST TO KIND OF GET A
3 FEEL FOR THE DISTANCES BETWEEN THE SOUTHERN RESIDENCE, MARY
4 BLACK HOSPITAL, UPSTATE CAROLINA MEDICAL HOSPITAL, WHICH IS
5 IN CHEROKEE COUNTY, AND WHERE MELANIE BINNEY WAS LIVING AT
6 AND JUST TRY TO GET A FEEL FOR THE DISTANCES BETWEEN EACH OF
7 THESE PRINCIPLE PLACES.

8 AND THE NEXT TIME WE WENT OUT THERE WOULD HAVE BEEN
9 WHEN WE'D ARRANGED WITH THE SHERIFF'S OFFICE AND THE
10 SOLICITOR'S OFFICE TO ACTUALLY GO INSIDE THE HOME, WALK
11 THROUGH IT AND WALK AROUND THE AREA SURROUNDING THE HOME.

12 Q. YOU MENTIONED MEASURING THE DISTANCE TO DETERMINE THE
13 TIME IT WOULD TAKE TO DRIVE FROM THE RESIDENCE TO THE
14 HOSPITAL.

15 A. YES.

16 Q. ALL RIGHT. WHY WAS THAT IMPORTANT?

17 A. WELL, AGAIN, WE WANTED TO ASSURE OURSELVES OF ANY
18 EXISTENCE OR NON-EXISTENCE OF A MURDER FOR HIRE SCHEME OR
19 THE POTENTIAL OF MS. SOUTHERN -- MR. SOUTHERN BEING
20 INVOLVED, NOT TO SAY THERE WAS OR WASN'T, BUT WE HAD TO FIND
21 OUT WHETHER OR NOT THAT WAS A POSSIBILITY. SO ONE OF THE
22 THINGS YOU WANTED TO LOOK AT WAS HOW LONG IT WOULD TAKE TO
23 DRIVE FROM THE BOWLING ALLEY WHERE MR. CHAPMAN WAS, MR.
24 SOUTHERN HAD BEEN, TO THE RESIDENCE, AND THEN FROM THE HOME
25 TO THE HOSPITAL, WHETHER OR NOT HE TOOK LONGER THAN WHAT

1 MAYBE HE SHOULD HAVE OR DROVE AT A RATE OF SPEED THAT YOU
2 WOULD EXPECT HIM TO ARRIVE FROM THIS HOUSE TO THE HOSPITAL.

3 AND THERE WAS JUST AN IDEA THAT WE HAD TO EITHER, YOU
4 KNOW, ESTABLISH OR DISCOUNT THAT HE COULD HAVE CONTRIBUTED
5 THROUGH HIS WIFE'S DEATH BY ESSENTIALLY A SLOW DRIVE FROM
6 THE HOME TO THE HOSPITAL. AND THE ONLY WAY TO DO THAT IS TO
7 MAKE THE DRIVE YOURSELF.

8 Q. ALL RIGHT, SIR. WHAT WERE YOUR -- WHAT WERE THE
9 RESULTS OF YOUR INVESTIGATION?

10 A. I THINK THEY WERE WITHIN THE SAME RANGE THAT HE LATER
11 TESTIFIED TO. I MEAN, THAT -- DEPENDING ON HOW FAST YOU
12 WANTED TO DRIVE DOWN HIGHWAY 29, THAT'S REALLY THE
13 DIFFERENCE, IN MY OPINION, AS TO HOW SLOW OR HOW FAST YOU
14 ARRIVE AT THE HOSPITAL FROM HIS RESIDENCE. IT'S RIGHT ON
15 THE COUNTY LINE.

16 SPARTANBURG/CHEROKEE COUNTY KIND OF MEET RIGHT WHERE
17 PACOLET/COWPENS HIGHWAY IS. SO IT'S ALMOST IN BETWEEN
18 UPSTATE CAROLINA MEDICAL CENTER, WHICH IS IN GAFFNEY, AND
19 MARY BLACK HOSPITAL, WHICH IS IN SPARTANBURG. ACTUALLY MARY
20 BLACK IS JUST A LITTLE BIT CLOSER.

21 Q. DO YOU RECALL WHETHER OR NOT YOU EVER MADE ANY EFFORTS
22 TO OBTAIN PHONE RECORDS?

23 A. I KNOW WE DID. I THINK WE RECEIVED THEM.

24 Q. YOU DO? DO YOU RECALL WHAT PHONE RECORDS YOU WERE
25 GIVEN OR OBTAINED?

1 A. THE CELL PHONE RECORDS, WHICH WOULD HAVE BEEN MADE ON
2 THE PHONE USED BY MR. SOUTHERN OR MS. SOUTHERN.

3 Q. OKAY. DO YOU -- WHAT, IF ANYTHING, DO YOU RECALL ABOUT
4 AN FBI REPORT?

5 A. WELL, WE HAD HEARD, MITCH AND I, THERE HAD BEEN
6 CERTAINLY SOME SUGGESTION, EVEN BEFORE WE GOT THE FILE, THAT
7 THERE WAS A POTENTIAL MURDER FOR HIRE THEORY THAT HAD BEEN
8 INVESTIGATED. AND SO WHEN WE RECEIVED THE FILE THE
9 SOLICITOR'S OFFICE PUT AS PAGE 1 ON TOP OF THE FILE THE FBI
10 INVESTIGATION REPORT, WHICH WE READ THROUGH.

11 Q. ALL RIGHT, SIR. AND DO YOU RECALL WHETHER OR NOT THERE
12 WAS ANYTHING IN THAT REPORT WHICH SUGGESTED TO YOUR MIND
13 TOGETHER WITH ANY OTHER INFORMATION THAT YOU HAD AT YOUR
14 DISPOSAL THAT MR. SOUTHERN WAS INVOLVED IN ---

15 A. WELL, INITIALLY, SURE. I MEAN, THAT'S -- THAT'S WHAT
16 IT SUGGESTED. AND OUR JOB WAS TO SEE WHETHER OR NOT THERE
17 WAS ANY MERIT TO THAT THEORY. APPARENTLY THEY DISCOUNTED
18 THAT AS DID THE SOLICITOR'S OFFICE. BUT AS THE ATTORNEYS
19 REPRESENTING MR. BINNEY, OUR JOB WAS TO NOT ACCEPT THEIR
20 CONCLUSIONS, BUT TO REACH OUR OWN.

21 Q. ALL RIGHT. AND WHAT WERE YOUR ULTIMATE CONCLUSIONS IN
22 THIS REGARD?

23 A. WE BASED OUR ULTIMATE CONCLUSION ON WHAT WE WERE TOLD
24 BY JONATHAN BINNEY.

25 Q. ALL RIGHT, SIR.

1 A. THAT AND, I THINK, HIS INCONSISTENT ANSWERS. I MEAN,
2 IF THERE WAS A TRUTH TO BE TOLD, YOU KNOW, CERTAINLY HE KEPT
3 CHANGING HIS STORY AS TO HOW HE KNEW THE SOUTHERNS OR WHAT
4 INVOLVEMENT HE MIGHT HAVE. IT LENDED LESS CREDIBILITY TO
5 WHAT HE HAD TO SAY TO US, BUT ULTIMATELY HE SAID HE HAD NO
6 CONNECTION WITH THEM AND THERE WAS NO MURDER FOR HIRE.

7 Q. ALL RIGHT. DURING THE COURSE OF YOUR INVESTIGATION
8 WERE YOU PROVIDED WITH THE RULE 5 AND BRADY RESPONSES BY
9 PROSECUTION?

10 A. WELL, I THINK SO. YOU NEVER KNOW FOR SURE IF YOU GET
11 EVERYTHING, BUT EVERYTHING THEY SAID THEY HAD IN THEIR
12 POSSESSION THEY PROVIDED TO US.

13 Q. ALL RIGHT, SIR. WERE Y'ALL ABLE TO DEVELOP INFORMATION
14 THAT MR. SOUTHERN -- DO YOU RECALL WHETHER OR NOT YOU WERE
15 ABLE TO DEVELOP INFORMATION THAT MR. SOUTHERN HAD A SMALL
16 CALIBER WEAPON?

17 A. I HAD A RECOLLECTION -- IT SEEMED LIKE HE HAD A GUN IN
18 THE HOUSE, BUT I CAN'T RECALL THAT INDEPENDENTLY.

19 Q. ALL RIGHT, SIR. DO YOU RECALL WHAT OTHER STEPS YOU MAY
20 HAVE TAKEN TO INVESTIGATE THE FACTUAL GUILT OR INNOCENCE OF
21 YOUR CLIENT THAT I'VE NOT COVERED WITH YOU 'THUS FAR?

22 A. WELL, WE ESSENTIALLY WALKED THROUGH THE STATEMENT OF
23 MR. BINNEY AS HE GAVE TO THE POLICE AND CONFERRED WITH MR.
24 BINNEY ABOUT THE STATEMENT HE MADE AS TO ITS ACCURACY. AND
25 THOSE WERE IN MY NOTES. THERE WERE A FEW SMALL THINGS HE

1 POINTED OUT LIKE I DIDN'T HAVE THIS OBJECT WITH ME, BUT I
2 DID HAVE SOMETHING ELSE. BUT FOR THE MOST PART HE STATED
3 THAT HIS STATEMENT WAS CONSISTENT WITH THE ACTS THAT
4 ACTUALLY OCCURRED.

5 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU
6 LISTENED TO WHAT WAS PLAYED FOR THE COURT THIS MORNING, THE
7 911 TAPE?

8 A. I'M SURE I DID.

9 Q. AND WHY WOULD YOU HAVE DONE THAT?

10 A. WELL, JUST TRYING TO GAGE THE DEMEANOR OF MR. SOUTHERN
11 WAS MY PRIMARY INTEREST. YOU KNOW, WE'RE STILL LOOKING AT
12 WHAT INVOLVEMENT HE HAD, IF ANY. TAKING THAT ALONG WITH
13 WHAT WE'VE BEEN TOLD BY TONYA BROWN, WHO IS THE CALLER, JUST
14 TRYING TO MENTALLY MATCH UP IN OUR MINDS WHAT WE KNEW OR
15 THOUGHT WE KNEW FACTUALLY WITH THE ACTUAL CALL ITSELF, WHICH
16 IS PROBABLY THE MOST RELIABLE PIECE OF EVIDENCE.

17 PEOPLE CAN RECOLLECT WHAT THE EVENTS WERE OR MR.
18 SOUTHERN CAN TRY TO RECOLLECT WHAT HAPPENED DURING THAT
19 DRIVE. MS. BROWN CAN TRY TO RECOLLECT WHAT SHE SAID OR WHAT
20 WAS SAID, BUT THE TAPE ITSELF, I THOUGHT, WAS FAIRLY
21 INFORMATIVE AS TO WHAT REALLY HAPPENED.

22 Q. IN THE SUBSEQUENT TRIAL ITSELF, IN LIGHT OF WHAT YOUR
23 CLIENT HAD TOLD YOU, HOW DID YOU DECIDE BEST TO UTILIZE
24 WHATEVER INFORMATION THAT YOU HAD UNCOVERED THAT
25 CIRCUMSTANCES SEEM TO SUGGEST THAT ALLAN SOUTHERN MAY HAVE

1 HAD SOME INVOLVEMENT IN THE AFFAIR?

2 A. WELL, MY THINKING ON THAT WAS TWO-FOLD. ONE WAS, IT
3 WAS JUST PART OF THE CASE. IT WAS *RES GESTAE*, WHAT
4 HAPPENED. AND SECONDLY, THINGS HAPPEN IN TRIALS. IT MIGHT
5 STILL HAVE BEEN POSSIBLE FOR JONATHAN BINNEY TO TELL ME
6 THERE WAS A CONNECTION THERE.

7 IN MY MIND I WANTED TO KEEP THAT DOOR OPEN IF IN FACT
8 DURING THE TRIAL FOR WHATEVER REASON HE WERE TO TELL ME
9 SOMETHING THAT AT THAT POINT I HAD NOT KNOWN. AND I'M NOT
10 SAYING THAT THAT WOULD HAPPEN, BUT I HAVE PERSONALLY
11 EXPERIENCED THAT. SO I LEFT THAT DOOR OPEN. AND I DID
12 DEVELOP MAYBE A LITTLE INDIRECTLY, SOMETIMES DIRECTLY THAT
13 POSSIBILITY.

14 Q. ALL RIGHT, SIR. WHAT -- DO YOU RECALL WHETHER OR NOT
15 YOU GAVE SOME THOUGHT TO PRESENTING MS. BROWN OR SOMEONE
16 LIKE HER TO TESTIFY?

17 A. WELL, OUR THINKING ON THAT WAS TO LEAVE THE DOOR OPEN
18 FOR THE POSSIBILITY FOR MURDER FOR HIRE, BUT GIVEN OUR OWN
19 CLIENT'S STATEMENTS UP TO THAT POINT THAT THERE WAS NO
20 MURDER FOR HIRE OR THERE WAS NO CONSPIRACY THERE TO KILL MS.
21 SOUTHERN, YOU HAVE TO DRAW A LINE BETWEEN WHAT IS A CREDIBLE
22 DEFENSE OR WHAT IS A FRAUD UPON THE COURT.

23 IF MY CLIENT HAD BEEN TELLING ME, EVEN IF I HAD SOME
24 SKEPTICAL RESERVATIONS ABOUT IT HAPPENING, IF HE WERE TO
25 TELL ME THIS IS WHAT HAPPENED, THEN I THINK I WOULD HAVE TO

1 PURSUE THAT LINE OF QUESTIONING AND PUT UP THAT KIND OF
2 EVIDENCE AS TO THIRD PARTY GUILT IN THIS CASE. BUT IF MY
3 CLIENT'S TELLING ME IT DIDN'T HAPPEN THAT WAY, I THINK IT'S
4 -- I THINK IT'S MISLEADING, IT'S UNETHICAL TO CALL SOMEBODY
5 THAT YOU KNOW IS NOT LAYING A FACTUAL FOUNDATION THAT CAN'T
6 BE SUPPORTED OR THE TRUTH AS YOU KNOW IT TO BE.

7 Q. ALL RIGHT, SIR. IN THAT REGARD DO YOU RECALL WHETHER
8 OR NOT YOU MAY HAVE HAD A CONVERSATION WITH YOUR CLIENT AT
9 SOME POINT DURING THE TRIAL CONCERNING ANY INVOLVEMENT HE
10 MAY HAVE HAD WITH ALLAN SOUTHERN OR JUDY SOUTHERN?

11 A. YES, I DID.

12 Q. CAN YOU DESCRIBE THE CIRCUMSTANCES SURROUNDING THAT
13 CONVERSATION?

14 A. IT WAS AT THE CLOSE OF THE EVIDENCE IN THE GUILT PHASE.
15 AND WE SAT DOWN, WE BEING JONATHAN BINNEY AND I, AND I
16 ESSENTIALLY EXPLAINED TO HIM THAT GIVEN THAT THE PROSECUTION
17 HAD ABANDONED THE MURDER FOR HIRE AGGRAVATING CIRCUMSTANCE
18 AND THAT THE ONLY REAL CIRCUMSTANCE REMAINED WAS THE
19 AGGRAVATING CIRCUMSTANCE OF MURDER WHILE IN THE COMMISSION
20 OF A BURGLARY THAT, FROM A STRATEGIC POINT OF VIEW, IF HE
21 WERE TO NOW TAKE THE WITNESS STAND AND SAY IT WAS A MURDER
22 FOR HIRE, I DON'T KNOW THAT THE DEATH PENALTY COULD BE
23 IMPOSED.

24 I'M NOT SAYING THAT IT WOULDN'T BE, BUT THAT WAS
25 CERTAINLY A POSSIBILITY THAT THEY COULD JUST SAY, YOU KNOW,

1 IT WASN'T A BURGLARY BECAUSE HE WAS LET IN THE HOME BY MR.
2 SOUTHERN, SO THERE WAS NO ENTRY WITHOUT CONSENT. NOW I
3 DON'T KNOW IF THAT THEORY OF LAW WOULD HAVE BEEN UPHELD BY
4 THE SUPREME COURT, BUT IF HE LET, ALLAN SOUTHERN LET MR.
5 BINNEY IN THE RESIDENCE IT WOULDN'T HAVE BEEN A BURGLARY AT
6 LEAST IN THE OPINION OF MR. SLADE AND I.

7 SO WITHOUT THAT AGGRAVATING CIRCUMSTANCE AND THERE
8 BEING NONE OTHER THERE WOULD BE NO BASIS FOR THE DEATH
9 PENALTY TO BE IMPOSED. AND THAT'S WHAT I WAS EXPLAINING TO
10 MR. BINNEY AT THE CLOSE OF THE CASE FOR BOTH THE STATE AND
11 THE DEFENSE.

12 Q. ALL RIGHT, SIR. DO YOU RECALL WHAT HE TOLD YOU?

13 A. THERE WAS NO INVOLVEMENT, DID NOT KNOW THE SOUTHERNS
14 PRIOR TO THAT DATE AND THAT THERE WAS NO MURDER FOR HIRE.

15 Q. DID YOU HAPPEN TO MEMORIALIZE YOUR CONVERSATION WITH
16 HIM ---

17 A. I DID.

18 Q. --- IN ANY MANNER?

19 A. I DID. I KNEW THIS WAS A PIVOTAL MOMENT IN OUR
20 REPRESENTATION OF MR. BINNEY. AND I TOLD MR. SLADE, I THINK
21 IT'S IMPORTANT THAT WE, YOU KNOW, RECORD IT TO BE CERTAIN
22 THAT THERE'S EQUIVOCATION LATER ABOUT WHAT WAS SAID AND WHAT
23 THE STRATEGY WAS AT THAT POINT BECAUSE AT ANY POINT IN TIME
24 IF HE WAS GOING TO TELL ME THE TRUTH I WOULD THINK IT WAS
25 GOING TO BE THEN WHEN HE WAS ABOUT TO GO INTO THE SENTENCING

1 PHASE AND FACE THE POTENTIAL OF RECEIVING THE DEATH PENALTY.

2 Q. ALL RIGHT, SIR. SO YOU TAPE RECORDED THIS
3 CONVERSATION?

4 A. I DID, WITH HIS KNOWLEDGE. THE TAPE RECORDER WAS IN
5 FRONT OF MR. BINNEY. I SAID, I'M GOING TO TAPE RECORD THIS,
6 JONATHAN, UNLESS YOU HAVE AN OBJECTION. AND HE SAID, NO.

7 Q. DID YOU THEREAFTER KEEP THAT TAPE RECORDING IN YOUR
8 POSSESSION?

9 A. YES, ALONG WITH THE OTHER PARTS OF THE FILE.

10 Q. DO YOU HAVE THAT TAPE RECORDING WITH YOU ---

11 A. I DID. PER YOUR REQUEST, I BROUGHT IT WITH ME,
12 SOMEWHERE. YES, I HAVE IT WITH ME.

13 Q. HAVE YOU PREVIOUSLY LISTENED TO ---

14 A. OH, YES.

15 Q. --- THE TAPE RECORDING?

16 A. OH, YES.

17 Q. DOES IT ACCURATELY REFLECT YOUR CONVERSATION WITH YOUR
18 CLIENT AT THAT POINT IN TIME?

19 A. YES, IT DOES.

20 MR. SALTER: YOUR HONOR, WE'D MOVE TO INTRODUCE THIS
21 RECORDING AS RESPONDENT'S EXHIBIT 11.

22 THE COURT: WHAT SAYS THE APPLICANT?

23 MR. BLUME: ONE SECOND, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 (PAUSE)

1 THE COURT: AND WHILE HE'S CONSIDERING IT, TO MAKE SURE
2 I UNDERSTAND, THIS CONVERSATION OCCURRED AFTER A FINDING OF
3 GUILT HAD BEEN BROUGHT BACK BY THE JURY?

4 A. YES, SIR.

5 THE COURT: ALL RIGHT. BUT BEFORE THE SENTENCING PHASE
6 HAD BEGUN?

7 A. YES, SIR.

8 THE COURT: VERY GOOD. YES, SIR.

9 MR. BLUME: THIS IS, I MEAN, I THINK THIS IS PART OF
10 OUR ONGOING OBJECTION ABOUT THE ENTIRE FILE BEING PRODUCED
11 TO THE PROSECUTION IN THIS MATTER BECAUSE THIS STATEMENT IN
12 MY MIND DOESN'T REALLY -- ISN'T REALLY RESPONSIVE TO WHAT
13 OUR ALLEGATIONS ARE.

14 THE COURT: WELL, DIDN'T YOU RAISE QUESTIONS IN YOUR
15 CASE ABOUT THIRD PARTY GUILT AND THE ASSERTION OF A THIRD
16 PARTY GUILT DEFENSE?

17 MR. BLUME: YES, BUT IT IS NOT -- NOT BEEN OUR
18 CONTENTION THAT THERE WAS A MURDER FOR HIRE. AND THIS
19 STATEMENT GOES DIRECTLY TO A MURDER FOR HIRE, PURSUIT OF A
20 MURDER FOR HIRE DEFENSE. AND THAT IS NOT AND HAS NOT BEEN
21 OUR CONTENTION.

22 THE COURT: ALL RIGHT. I'M GOING TO OVERRULE YOUR
23 OBJECTION. AND LET'S MARK RESPONDENT'S 11 IN EVIDENCE OVER
24 OBJECTION.

25 (PAUSE)

1 THE COURT: ALL RIGHT. IN EVIDENCE

2 A. NEED TO MARK IT.

3 Q. MR. PRUETT, CAN I SEE THE TAPE SO I CAN MARK IT? THANK.

4 YOU. MR. PRUETT, DO YOU HAVE THE ENVELOPE OR ANYTHING THAT

5 THIS CAME IN SO WE CAN MARK IT?

6 A. I THINK I HAVE IT OVER IN MY FILE. I'VE GOT AN

7 ENVELOPE FOR THAT.

8 (WHEREUPON RESPONDENT'S EXHIBIT 11 WAS MARKED AND

9 ENTERED INTO EVIDENCE)

10 MR. SALTER: YOUR HONOR, MAY I PUBLISH THE STATEMENT?

11 THE COURT: YOU MAY.

12 (WHEREUPON RESPONDENT'S EXHIBIT 11 WAS PLAYED FOR THE

13 COURT)

14 A. THAT'S IT.

15 Q. THANK YOU. MR. PRUETT, IN YOUR ESTIMATION OR FROM YOUR

16 PERSPECTIVE WHAT WAS THE GUILT PHASE DEFENSE?

17 A. OUR DEFENSE WAS WAS THAT IT WAS NOT A BURGLARY. AND WE

18 WERE HOPING THAT IF WE COULD CONVINCE THE JURY THERE WAS NO

19 BURGLARY, THEN THERE WOULD BE NO DEATH PENALTY. BASED UPON

20 MR. BINNEY'S OWN STATEMENTS AND THE EVIDENCE THAT WE KNEW

21 EXISTED WE FELT COMPETENT THAT THE PROSECUTION COULD PROVE

22 THE MURDER CASE, BUT THE BURGLARY WAS STILL AN ISSUE.

23 AND WE THOUGHT IF WE PUT FORWARD THIS DEFENSE THAT HE

24 ENTERED THE HOME WITHOUT THE INTENT TO COMMIT A CRIME,

25 THEREFORE, THERE WAS NO BURGLARY. AND IF WE COULD WIN ON

1 THAT ONE ISSUE, CONVINCE THE JURY TO RETURN A VERDICT OF NOT
2 GUILTY, THEN WE'D ONLY HAVE THE MURDER CONVICTION AND
3 THERE'D BE NO SENTENCING PHASE. SO THAT WAS THE STRATEGY.

4 Q. ALL RIGHT, SIR. NOW I'M GOING TO TALK TO YOU LATER
5 ABOUT YOUR INVESTIGATION AND WORK IN THE PENALTY PHASE. BUT
6 YOU HAD TESTIFIED EARLIER THAT ONE OF THE BIGGEST PROBLEMS
7 FROM YOUR PERSPECTIVE WAS THE CSC CHARGE.

8 A. CORRECT.

9 Q. IS IT FAIR TO SAY YOU DID NOT WANT EVIDENCE OF THE CSC
10 CHARGE COMING IN INTO THE GUILT PHASE?

11 A. ABSOLUTELY.

12 Q. OKAY.

13 A. JUST FOR THE PREJUDICIAL IMPACT IT WOULD HAVE ON THE
14 JURY.

15 Q. DO YOU RECALL WHETHER OR NOT YOU HAD HIRED ANY EXPERT
16 OR EXPERTS WHO MAY HAVE BEEN ABLE TO PROVIDE SOME
17 EXPLANATION WITH RESPECT TO MR. BINNEY'S ACTIONS CONCERNING
18 THAT CHARGE?

19 A. MY RECOLLECTION IS THERE WERE FOUR DIFFERENT EXPERTS
20 WHO WE CONSULTED WITH PERSONALLY THAT WERE RETAINED OR PAID.
21 DR. McNAUGHT IS SOMEBODY I NEVER DEALT WITH BUT MITCH SLADE
22 HAD USED IN THE PAST IN CASES.

23 DR. SCHWARTZ-WATTS WAS SOMEBODY I HAVE KNOWN SINCE SHE
24 FIRST STARTED TESTIFYING IN COURT YEARS BEFORE. SHE PUT ME
25 IN TOUCH WITH TWO OTHER PERSONS, DR. BACHMAN, B-A-C-H-M-A-N,

1 AND A DR. ALEX MORTON, WHO WAS A PHARMACOLOGIST. SO THOSE
2 WERE THE FOUR INDIVIDUALS OR EXPERTS THAT I CAN RECALL WE
3 SPECIFICALLY DEALT WITH.

4 Q. NOW I SUPPOSE DR. SCHWARTZ-WATTS AND DR. MORTON
5 TESTIFIED IN THE PENALTY PHASE?

6 A. YES.

7 Q. DID YOU GIVE ANY THOUGHT -- DO YOU RECALL WHETHER OR
8 NOT YOU GAVE ANY THOUGHT TO PERHAPS PUTTING UP ONE OF YOUR
9 EXPERTS TO TESTIFY TO SUPPORT YOUR THEORY OF A SUICIDE IN
10 THE GUILT PHASE?

11 A. WELL, WE GAVE IT THOUGHT, BUT WE IMMEDIATELY DISCOUNTED
12 THAT IDEA OF DOING THAT.

13 Q. AND WHY WAS THAT?

14 A. WELL, ONCE WE OPENED THE DOOR TO ISSUES RELATING TO MR.
15 BINNEY'S MENTAL HEALTH OR HIS MENTAL ILLNESSES, I THINK THAT
16 WOULD HAVE ALSO OPENED THE DOOR FOR THE PROSECUTION TO
17 INTRODUCE EVIDENCE OF OTHER MENTAL ILLNESSES THAT WERE
18 CONSISTENT WITH THEIR THEORY AS TO WHY HE BURGLARIZED THE
19 HOME. THEY WERE RELYING UPON THE STATEMENT HE MADE, THAT HE
20 INTENDED TO BREAK IN THE HOME TO RAPE MS. SOUTHERN.

21 Q. OKAY. DO YOU RECALL WHETHER OR NOT YOUR INVESTIGATION
22 HAD UNCOVERED ANY PRIOR SUICIDE ATTEMPTS BY YOUR CLIENT?

23 A. YES. I MEAN, HE PURPORTED ON DIFFERENT OCCASIONS
24 ATTEMPTED SUICIDES IN THE PAST.

25 Q. AGAIN, DID YOU GIVE ANY THOUGHT TO PRESENTING EVIDENCE

1 CONCERNING THOSE PRIOR ATTEMPTS?

2 A. WE DID, BUT FOR THE SAME REASON WE DISCOUNTED IT. WE
3 WERE TRYING TO WALK A FINE LINE BY INTRODUCING THE EVIDENCE
4 OF HIS SUICIDE OR PLANNING TO COMMIT SUICIDE ON THE INCIDENT
5 DATE WITHOUT CROSSING THAT LINE AND OPENING THE DOOR AND
6 ALLOWING THE PROSECUTION TO GET INTO HIS MENTAL ILLNESS THAT
7 WOULD HAVE SUPPORTED THEIR THEORY. SO WE HAD TO PRETTY MUCH
8 STAY ON WHAT I WOULD CONSIDER TO BE A STRICTLY FACTUAL
9 ACCOUNT OF WHAT HIS INTENT WAS WITHOUT GETTING INTO HIS
10 MENTAL ILLNESS.

11 Q. ALL RIGHT. AND SINCE WE'RE TALKING ABOUT THAT, DO YOU
12 RECALL WHETHER OR NOT THE PROSECUTION WAS ABLE TO OBTAIN
13 THEIR OWN INDEPENDENT EVALUATION OF YOUR CLIENT?

14 A. OVER OUR OBJECTION, THEY EVENTUALLY DID.

15 Q. AND DO YOU RECALL WHO MAY HAVE INTERVIEWED YOUR CLIENT?

16 A. DR. PAMELA CRAWFORD.

17 Q. AND DO YOU RECALL WHETHER OR NOT THERE WAS SPECIFIC
18 INFORMATION -- LET ME BACK TRACK. WERE YOU -- DID YOU
19 HAPPEN TO BE PRESENT IN HER INTERVIEW OF YOUR CLIENT?

20 A. I WAS.

21 Q. ALL RIGHT, SIR. AND DO YOU RECALL WHETHER OR NOT THAT
22 INTERVIEW WAS MEMORIALIZED IN ANY FASHION BY YOU?

23 A. I TAPE RECORDED THAT.

24 Q. ALL RIGHT, SIR. AND PRIOR TO THE TRIAL OF THIS CASE
25 HAD YOU FAMILIARIZED YOURSELF WITH THE CONTENTS OF THAT TAPE

1 RECORDING?

2 A. WELL, I WAS PRESENT WHEN IT OCCURRED. AND RECOLLECTION
3 WAS IT WAS NOT THAT FAR IN TIME TO THE TRIAL ITSELF. SO IT
4 WAS STILL FRESH IN MY RECOLLECTION.

5 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT THERE WAS
6 CERTAIN INFORMATION THAT YOUR CLIENT MAY HAVE IMPARTED TO
7 DR. CRAWFORD THAT YOU DID NOT WANT A GUILT PHASE JURY TO
8 HEAR?

9 A. PROOF I DIDN'T WANT TO HEAR -- HAVE THEM HEAR ANYTHING,
10 BUT BASICALLY ALL HIS PROBLEMS AND SADISM AND MASOCHISM, I
11 MEAN, ESSENTIALLY ALL THE SEXUAL DISORDERS, I THINK, THAT
12 DR. SCHWARTZ-WATTS TESTIFIED TO IN THE PENALTY PHASE. AND
13 THERE WERE OTHER ACTS, OTHER INCIDENTS THAT HE ADMITTED TO
14 HER ABOUT. IS YOUR QUESTION ABOUT HOW THAT RELATES TO THE
15 GUILT PHASE?

16 Q. YES, SIR.

17 A. WELL, I THINK THE SADISM, WHICH WOULD BE CONSISTENT
18 WITH THE STATE'S THEORY THAT HE BROKE IN THE HOME TO COMMIT
19 THE CRIME OF CRIMINAL SEXUAL CONDUCT.

20 Q. ALL RIGHT, SIR. AND FOR THE REASONS WE HAVE ALREADY
21 GONE THROUGH HERE IS IT FAIR TO SAY YOU DIDN'T WANT TO PUT
22 UP A MENTAL HEALTH DEFENSE OF ANY KIND IN THE GUILT PHASE?

23 A. THAT'S CORRECT.

24 Q. OKAY. DO YOU RECALL WHETHER OR NOT YOU AND MR. SLADE
25 CONSIDERED EMPLOYING A JURY SELECTION EXPERT?

1 A. WE DID.

2 Q. ALL RIGHT, SIR. DID YOU ULTIMATELY EMPLOY AN EXPERT?

3 A. WE DID NOT.

4 Q. WHY IS THAT?

5 A. WE HAD MET WITH JUDGE COLE ABOUT THAT. THIS WAS REALLY
6 MITCH SLADE'S IDEA. HE HAD SOMEBODY SPECIFICALLY IN MIND
7 THAT HE HAD EITHER DISCUSSED JURY SELECTION ISSUES WITH IN
8 THE PAST. I HAD SEEN THIS INDIVIDUAL AT A SEMINAR. HE WAS
9 VERY MUCH INTERESTED. I CAN'T RECALL THE GUY'S NAME, EXCUSE
10 ME, THE PERSON'S NAME. BUT IT WAS SOMEBODY THAT HE VERY
11 MUCH WANTED TO HIRE SPECIFICALLY.

12 SO THAT WAS HIS IDEA TO GO TO JUDGE COLE AND ASK THAT
13 WE BE ALLOWED TO RETAIN THAT PARTICULAR EXPERT. JUDGE COLE
14 WASN'T VERY, I GUESS, OPEN TO THAT IDEA. HE THOUGHT THAT
15 GIVEN OUR RELATIVE EXPERIENCE BETWEEN THE TWO OF US THAT WE
16 SHOULD BE ABLE TO SELECT THE JURY.

17 WHAT I DID WAS I KNOW THAT THERE WAS ANOTHER CAPITAL
18 CASE THAT HAD BEEN TRIED WITHIN THE YEAR, I BELIEVE, OF THE
19 BINNEY CASE. AND I KNEW THEY HAD A JURY SELECTION EXPERT IN
20 THAT CASE. SO I SPOKE TO THE COUNSEL IN THAT CASE, KEITH
21 KELLY, AND SAID, DO YOU HAVE ANY MATERIALS PROVIDED TO YOU?
22 AND HE GAVE IT TO ME. I READ THOSE MATERIALS OVER.

23 Q. DO YOU RECALL WHETHER OR NOT YOU AND MR. SLADE
24 DISCUSSED WHAT KIND OF A JURY YOU WANTED ON YOUR CLIENT'S
25 CASE?

1 A. WE DID. AND I MAY HAVE MADE SOME NOTATIONS ON THAT.
2 YOU KNOW, PRINCIPALLY YOU WANT A JURY THAT'S GOING TO BE
3 RECEPTIVE TO IMPOSING A LIFE SENTENCE. AND YOU DON'T
4 NECESSARILY BEGIN TO PICTURE PEOPLE BASED UPON THEIR RACE OR
5 AGENDA OR THEIR BACKGROUND.

6 I'M ALWAYS SURPRISED WHO'S WILLING TO IMPOSE A DEATH
7 PENALTY OR WHO'S NOT IN THESE VOIR DIRE QUALIFICATIONS. BUT
8 WE WERE CERTAINLY SENSITIVE OF THE IDEA THAT WE'RE DEALING
9 WITH A CASE THAT IF IT GOT TO THE PENALTY PHASE WE WERE
10 GOING TO HAVE AGGRAVATING EVIDENCE OF ALL THE CRIMINAL
11 SEXUAL CONDUCT OF A THREE MONTH OLD CHILD.

12 SO OUR INITIAL IMPRESSION WAS YOUNG MOTHERS MAYBE,
13 MAYBE MOTHERS IN GENERAL MIGHT BE MORE PREJUDICED BY THAT
14 KIND OF EVIDENCE AS OPPOSED TO OTHER PERSONS. AND THAT MAY
15 NOT BE THE CASE. AGAIN, OUR TANTAMOUNT DECISION-MAKING
16 PROCESS WAS FOCUSED ON WHO'S GOING TO IMPOSE A LIFE
17 SENTENCE, NOT JUST A CATEGORICAL EXCLUSION OF CERTAIN TYPES
18 OF INDIVIDUALS.

19 Q. ALL RIGHT, SIR.

20 A. IT'S KIND OF A MIXTURE BECAUSE WE'RE HOPING TO WIN THIS
21 CASE IN THE GUILT PHASE. IF IT GOT TO THE PENALTY PHASE,
22 THEN WE KNEW WE WERE IN REALLY BIG TROUBLE. SO IT'S NOT TO
23 SAY THAT WE PINNED EVERYTHING ON THE GUILT PHASE WITH THE
24 IDEA OF WE'RE GOING TO WIN BY HAVING A VERDICT OF NOT GUILTY
25 OF THE BURGLARY.

1 SO YOU WANT TO GIVE PEOPLE WHO ARE RECEPTIVE OF THE
2 IDEA THAT HE COULD HAVE COMMITTED SUICIDE OR THAT WAS THE
3 INTENT THAT AFTERNOON OR THAT DAY. AND THOSE JURORS MAY NOT
4 ALWAYS BE THE SAME AS THE JURORS YOU WOULD HAVE SITTING IN
5 THE PENALTY PHASE. SO ALL OF THOSE THINGS WERE
6 CONSIDERATIONS IN DECIDING WHO'S GOING TO SIT ON THAT JURY.

7 Q. AND YOU RELIED UPON THE DISTILLATION OF ALL THIS
8 INFORMATION WHEN YOU MADE YOUR ---

9 A. RIGHT.

10 Q. --- SELECTIONS? OKAY. DO YOU RECALL HOW YOUR CLIENT
11 WAS ATTIRED THROUGHOUT THE COURSE OF THE TRIAL?

12 A. HE WAS WEARING A ORANGE CHEROKEE COUNTY JAIL SET OF
13 OVERALLS. HE HAD A WHITE T-SHIRT ON, WHITE SOCKS AND, I
14 GUESS, FLIP-FLOPS OR TENNIS SHOES.

15 Q. AND DO YOU RECALL WHY HE WAS TRIED THAT WAY?

16 A. THAT WAS SOMETHING WE ACTUALLY DISCUSSED QUITE A BIT,
17 MR. SLADE AND I, PRIOR TO THE TRIAL ITSELF. AND, OF COURSE,
18 WE DISCUSSED IT WITH MR. BINNEY. AND I BELIEVE WE ALSO
19 DISCUSSED IT WITH HIS PARENTS ABOUT HOW HE SHOULD BE ATTIRED
20 DURING THE TRIAL. AND WE CAME TO THE DECISION THAT HE
21 SHOULD WEAR HIS CHEROKEE COUNTY JAIL ORANGE JUMPSUIT.

22 AND THE HOPE WAS -- THE IDEA BEHIND THAT WAS THAT WE
23 WANTED THE JURY TO THINK THROUGHOUT THE PROCESS THAT HERE IS
24 A PERSON, THAT HE IS INCARCERATED. HE'S NOT GOING TO GET UP
25 OUT OF THE SEAT AND WALK OUT THE DOOR DURING OR AFTER THE

1 TRIAL. AND THAT HOPEFULLY WOULD HAVE BEEN THE IDEA. AND IF
2 WE GOT TO PENALTY PHASE THAT THAT WOULD HAVE BEEN INGRAINED
3 IN THEIR MINDS WHEN IT CAME TIME FOR THEM TO IMPOSE THE
4 SENTENCE.

5 Q. ALL RIGHT, SIR. DID MR. BINNEY APPEAR TO BE IN
6 AGREEMENT WITH YOUR DECISION IN THIS REGARD?

7 A. WELL, WE DISCUSSED IT WITH HIM. I CAN SAFELY SAY THAT
8 IF MR. BINNEY OR FOR THAT MATTER MAYBE HIS PARENTS HAD
9 STRONGLY DISAGREED WITH THAT IDEA WE'D JUST SAID WE'RE NOT
10 GOING TO DO IT. WE WOULD JUST ABANDON THE IDEA. AND THAT
11 WAS, MR. SLADE AND I SAID IF ANYBODY DISAGREES WITH THIS
12 IDEA, WE'RE JUST NOT GOING TO DO IT.

13 I DISCUSSED IT WITH OTHER ATTORNEYS BESIDES MR. BINNEY.
14 IT WASN'T SOMETHING THAT WE UNDERTOOK LIGHTLY. AND I HAD
15 TALKED TO OTHER ATTORNEYS, PUBLIC DEFENDERS IN OTHER CAPITAL
16 CASES. AND I EXPLAINED TO HIM WHAT THE REASONING TO THEM,
17 WHAT THE REASONING WAS BEHIND THAT. AND I DIDN'T HAVE
18 ANYBODY RETURN BACK WITH A NEGATIVE COMMENT ABOUT DOING IT
19 OR ADVISING ME NOT TO DO IT.

20 Q. ALL RIGHT, SIR. AND DO YOU RECALL WHETHER OR NOT THE
21 TRIAL JUDGE ADDRESSED MR. BINNEY ABOUT THIS ISSUE?

22 A. IT'S IN THE TRANSCRIPT. HE SPECIFICALLY ASKED MR.
23 BINNEY IF THAT'S WHAT HE AGREED TO DO AND WANTED TO DO. AND
24 MR. BINNEY ANSWERED IN THE AFFIRMATIVE THAT HE DID WANT TO
25 DO IT.

1 Q. ALL RIGHT, SIR. TURN NOW TO YOUR PREPARATION IN --
2 PRESENTATION OF EVIDENCE IN THE PENALTY PHASE OF THE TRIAL.
3 COULD YOU TELL THE COURT WHO INVESTIGATED FACTS WITH RESPECT
4 TO DEVELOPING THE CASE IN MITIGATION?

5 A. I'M NOT SURE I KNOW WHAT YOU MEAN BY FACTS. BECAUSE, I
6 MEAN, WE KIND OF DIVIDED, AGAIN, THE WORK BETWEEN THE TWO OF
7 US. MR. SLADE DEALT WITH MR. BINNEY, THE GENTLEMAN, I
8 THINK, THAT HAD THE VIDEOTAPE OF HIS FAMILY MEMBER. AND I
9 CONTINUED TO DEAL WITH THE MENTAL HEALTH ISSUES.

10 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU AND
11 MR. SLADE GAVE CONSIDERATION TO EMPLOYING SOMEONE TO ASSIST
12 YOU IN DEVELOPING THIS INFORMATION?

13 A. WE'RE TALKING ABOUT A SOCIAL WORKER TO PRESENT ---

14 Q. YES, SIR, OR MITIGATION SPECIALIST OR SOMEONE LIKE
15 THAT.

16 A. NO. I MEAN, WE CONSIDERED IT, BUT WE DIDN'T DO IT.

17 Q. ALL RIGHT, SIR. WHY WAS THAT?

18 A. WELL, THERE'S DIFFERENT TYPES OF EXPERTS YOU CAN HIRE.
19 AND FOR PENALTY PHASE PRESENTATIONS THE SOCIAL WORKER, MY
20 EXPERIENCE, DECISION I MADE NOT TO HIRE ONE, MR. SLADE WOULD
21 CONCUR WITH THAT, WAS FOR THE MOST PART MY EXPERIENCE HAS
22 BEEN THE SOCIAL WORKER'S TESTIMONY IS VERY INEFFECTIVE.
23 IT'S HAVING SOMEBODY THAT IS NOT CONNECTED WITH THE
24 INDIVIDUAL COME IN AND TESTIFY ABOUT THAT INDIVIDUAL'S
25 BACKGROUND.

1 AND AGAIN, IN MY EXPERIENCE, WATCHING TRIALS,
2 PARTICIPATING IN CAPITAL TRIALS, IF YOU HAVE AN INDIVIDUAL
3 CLOSE TO THE PERSON ON TRIAL AND IS ABLE TO EFFECTIVELY
4 ARTICULATE AND TELL THAT PERSON'S LIFE STORY, USE THAT
5 PERSON.

6 THE ONLY TIME I WOULD SEE THE NECESSITY OF HIRING A
7 SOCIAL WORKER TO COME IN AND TESTIFY WOULD BE IF YOU DON'T
8 HAVE ANYBODY THAT CAN FILL THAT VOID. IN OTHER WORDS, IF
9 YOU HAD AN INDIVIDUAL THAT HAD BEEN SEXUALLY ABUSED BY THEIR
10 PARENTS OR HAD BEEN MISTREATED OR HAD BEEN ORPHANED OR
11 THERE'S NOBODY THERE TO COME IN AND TELL THAT LIFE STORY.
12 BUT IF YOU'VE GOT SOMEBODY CLOSE TO THE DEFENDANT THAT IS
13 ABLE TO DO THAT, THEN IT'S FAR MORE, IN MY OPINION, FAR MORE
14 EFFECTIVE TO PUT THAT PERSON ON THE WITNESS STAND AND HAVE
15 THEM TELL THAT STORY. IN THIS CASE WE HAD THAT. WE HAD
16 THAT IN, WHAT I BELIEVE, IN HIS FATHER.

17 Q. ALL RIGHT, SIR. DID YOU -- DID EITHER YOU OR CO-
18 COUNSEL CONSIDER PERHAPS EMPLOYING A SOCIAL WORKER OR SOME
19 SORT OF MITIGATION INVESTIGATOR TO HELP YOU, JUST HELP YOU
20 TO GATHER RECORDS OR DO SOME OF THE LEG WORK LEADING UP TO
21 THE TRIAL OF THE CASE ITSELF?

22 A. WELL, WE DIDN'T ACTUALLY DISCUSS DOING THAT. AND WE
23 KIND OF LOOKED AT WHAT WE HAD TO DO AND THOUGHT THAT WE
24 COULD DO THAT OURSELVES. I'LL SAY THIS, IT'S UNUSUAL IN
25 CAPITAL CASES TO HAVE SOMEBODY LIKE MR. BINNEY'S FATHER.

1 HE'S WELL EDUCATED, VERY ARTICULATE, BOTH HIS PARENTS WERE.

2 AND THEY COULD PROVIDE THAT INFORMATION TO US.

3 THEY GAVE A COMPLETE SOCIAL HISTORY TO US OF THE DAY

4 THEY ADOPTED HIM OR WENT TO THE UNWED MOTHER'S HOME. HE WAS

5 FOUR DAYS OLD, FROM THAT POINT PRETTY MUCH UP TO THE

6 PRESENT. AND WHAT THEY COULDN'T TELL US, I THINK, MR.

7 BINNEY COULD FILL IN ANY GAPS THAT THEY COULDN'T, WHICH, TO

8 ME, WEREN'T THAT MANY.

9 Q. ALL RIGHT, SIR. COULD YOU ENLIGHTEN THE COURT AS TO

10 WHAT EFFORTS, IF ANY, YOU MADE TO GATHER RECORDS CONCERNING

11 YOUR CLIENT?

12 A. I'D HAVE TO LOOK THROUGH THE BOOK. I KNOW THAT WE

13 CONTACTED THE VARIOUS PLACES WHERE HE WAS EITHER

14 HOSPITALIZED OR HE WAS SENT TO, FOR A LACK OF A BETTER WORD,

15 REHABILITATION, WERE CERTAIN SCHOOLS. AND ONE THAT COMES TO

16 MIND IS THE RAPHA FACILITY, AFTER CARE, WHICH WAS ANOTHER

17 ONE, THE HOSPITALS, SPARTANBURG REGIONAL, UPSTATE CAROLINA

18 MEDICAL CENTER. AND THERE WERE SOME OTHERS. BUT

19 ESSENTIALLY WE EITHER WROTE TO THOSE PLACES OR I WENT THERE

20 IN PERSON.

21 Q. ALL RIGHT, SIR.

22 A. LIKE PATRICK HARRIS, UPSTATE CAROLINA MEDICAL CENTER,

23 SPARTANBURG, THEY'RE ALL CLOSE ENOUGH TO DRIVE. SO I JUST

24 DROVE THERE.

25 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU MAY

1 HAVE HAD ANY INFORMATION -- ANY INFORMATION CONCERNING AN
2 EVALUATION BY GEOFFREY McKEE?

3 A. YES.

4 Q. AND WHAT INFORMATION DID YOU HAVE CONCERNING DR. McKEE
5 OR HIS EVALUATION?

6 A. WELL, HE HAD TESTIFIED IN MR. BINNEY'S CRIMINAL SEXUAL
7 CONDUCT TRIAL, WHICH PRECEDED HIS TRIAL ON THE
8 MURDER/BURGLARY CASE INVOLVING THE SOUTHERNS. SO WE HAD THE
9 ACTUAL TRANSCRIPT OF HIS TESTIMONY.

10 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU EVER
11 SPOKE TO MR. BINNEY'S TRIAL COUNSEL ON THE OTHER CHARGE?

12 A. I DID NOT, BUT I BELIEVE MR. SLADE DID. AND I'M ALMOST
13 POSITIVE HE ACTUALLY OBTAINED A FILE FROM JIM BANNISTER.

14 Q. WOULD MR. BANNISTER BE THE ATTORNEY WHO HANDLED THAT
15 OTHER ---

16 A. HE WAS. THAT'S CORRECT.

17 Q. DO YOU RECALL WHETHER OR NOT YOU WERE EVER ABLE TO
18 GATHER ANY RECORDS OF YOUR CLIENT'S PRIOR INCARCERATION?

19 A. WELL, WE HAD SEVERAL. I DON'T, I MEAN, WE OBTAINED
20 RECORDS OF HIS CONVICTIONS OF THE PROSECUTION BECAUSE THEY
21 WERE INTERESTED IN PRESENTING THOSE DURING THE PENALTY
22 PHASE. SO WE HAD HIS PRIOR CONVICTIONS INVOLVING LARCENIES
23 AND RELATED CRIMES TO THE LARCENIES. AND THEN WE HAD THE
24 SPARTANBURG COUNTY JAIL RECORDS WHERE HE'D BEEN INCARCERATED
25 A FEW TIMES.

1 Q. OKAY. DID YOU DISCUSS WITH YOUR CLIENT -- DO YOU
2 RECALL WHETHER OR NOT YOU DISCUSSED WITH YOUR CLIENT ANY
3 POSSIBLE MITIGATING EVIDENCE THAT HE MAY HAVE BEEN ABLE TO
4 PROVIDE TO YOU?

5 A. WELL, OTHER THAN JUST DISCUSSING HIS BACKGROUND. I
6 MEAN, THAT COVERS EVERYTHING INCLUDING HIS RELATIONSHIP TO
7 HIS PARENTS AND TO HIS NATURAL MOTHER AND HIS RELATIONSHIP
8 TO HIS WIFE, WHICH WE SPENT A LOT OF TIME ON THAT AND
9 DISCUSSING WHETHER OR NOT WE SHOULD CALL HER AS A POTENTIAL
10 WITNESS IN THE TRIAL.

11 BUT I'M NOT SURE WHAT YOU'RE ASKING. I MEAN, DID I
12 DISCUSS WITH JONATHAN BINNEY THE PRESENTATION OF MITIGATING
13 EVIDENCE? YES.

14 Q. THAT WAS MY QUESTION, WHETHER OR NOT YOU WERE ABLE TO
15 OBTAIN BACKGROUND INFORMATION FROM YOUR CLIENT?

16 A. YES.

17 Q. DO YOU RECALL WHETHER OR NOT YOU OBTAINED ADDITIONAL
18 EVIDENCE CONCERNING HIS BACKGROUND FROM ANY OTHER FAMILY
19 MEMBER?

20 A. FROM HIS PARENTS AND FROM MELANIE, WHO WAS HIS WIFE.

21 Q. DO YOU RECALL HOW MANY TIMES YOU MAY HAVE MET WITH HIS
22 PARENTS?

23 A. IT'S DIFFICULT BECAUSE THERE WERE THE INITIAL MEETINGS
24 WE HAD AND THEN AS WE GOT CLOSER TO TRIAL THERE WERE
25 OBVIOUSLY MORE. I WOULD SAY A ROUGH FIGURE, MAYBE HALF A

1 DOZEN TIMES. WITH MR. BINNEY MORE BECAUSE HE ACTUALLY
2 TESTIFIED. BUT PRIOR TO THE TRIAL OF THE CASE I WOULD SAY
3 MAYBE A HALF A DOZEN TIMES OVER A COURSE OF ABOUT EIGHT
4 MONTHS.

5 Q. WOULD YOU STATE WHETHER OR NOT YOU WOULD CHARACTERIZE
6 MR. BINNEY -- REVEREND BINNEY'S PENALTY PHASE TESTIMONY AS
7 COVERING MOST OF THE POSITIVE ASPECTS YOU WERE ABLE TO LEARN
8 ABOUT YOUR CLIENT?

9 A. I THINK SO.

10 Q. DO YOU RECALL WHETHER OR NOT DR. SCHWARTZ-WATTS ALSO
11 TESTIFIED TO SOME OF THIS OTHER -- THIS SAME INFORMATION ---

12 A. SHE DID. SOME OF IT WAS DUPLICATIVE.

13 Q. ALL RIGHT, SIR. WE'VE TALKED ABOUT THE FOUR EXPERTS
14 THAT YOU RETAINED OR UTILIZED IN THIS CASE. DO YOU RECALL
15 HOW YOU WENT ABOUT GETTING THOSE EXPERTS, DEVELOPING THEM AS
16 POSSIBLE DEFENSE EXPERTS?

17 A. WELL, AGAIN, I ALLUDED TO EARLIER MY TESTIMONY, MR.
18 SLADE HAD KNOWN DR. McNAUGHT, WHO, I BELIEVE, WAS FROM
19 CHARLOTTE. AND HE USED HIM IN PRIOR CASES INVOLVING
20 CRIMINAL SEXUAL RELATED OFFENSES. SO HE DEALT WITH MR.
21 McNAUGHT. I NEVER CONVERSED WITH HIM.

22 DR. SCHWARTZ-WATTS WAS SOMEBODY I HAD KNOWN FOR SEVERAL
23 YEARS. AND I THINK I MADE THE DECISION TO APPROACH HER WHEN
24 THE BINNEYS HAD RECEIVED SOME COMMUNICATION OR LETTER FROM
25 JEFFREY BLUME ABOUT POTENTIAL EXPERTS. HER NAME WAS ON THAT

1 LIST AT JEFF BLUME'S CAPITAL LITIGATOR, DEFENSE, LITIGATOR.
2 SO I SAW HER NAME ON THAT LIST. I KNEW HER. AND I THOUGHT
3 SHE'D BE SOMEBODY I COULD WORK WITH BECAUSE I HAD WORKED
4 WITH HER IN THE PAST. SO THAT'S HOW I SELECTED DR.
5 SCHWARTZ-WATTS.

6 Q. ALL RIGHT. HOW ABOUT DRS. ALEXANDER MORTON AND DR.
7 DAVID BACHMAN?

8 A. THEY WERE BOTH REFERRED TO ME BY DR. SCHWARTZ-WATTS.

9 Q. ALL RIGHT, SIR. COULD YOU INFORM THE COURT OF WHAT, IF
10 ANY, EFFORTS YOU AND MR. SLADE MADE TO DEVELOP A POSSIBLE
11 DIAGNOSIS ON YOUR CLIENT'S BEHALF OF FETAL ALCOHOL SYNDROME?
12 A. WELL, MR. AND MS. BINNEY HAD MENTIONED THAT TO US THE
13 FIRST TIME THEY MET WITH US. AND I EVEN THINK, I'M FAIRLY
14 COMPETENT, THAT MS. BINNEY OR MR. BINNEY BROUGHT WITH THEM
15 LITERATURE IN REGARDS TO THAT. AND I MAY HAVE EVEN PUT THAT
16 IN THE FILE. I DO HAVE MATERIALS THEY GAVE ME AT DIFFERENT
17 POINTS. MR. SLADE MAY HAVE KEPT THAT IN HIS FILE.

18 BUT IT WAS ESSENTIALLY GENERALIZATION ABOUT FETAL
19 ALCOHOL SYNDROME AND ANECDOTAL ACCOUNTS OF PERSONS THAT HAD
20 IT. SO THAT WAS THE FIRST BASICALLY EXPOSURE TO IT IN THIS
21 CASE. BUT IT WOULD HAVE BEEN THROUGH MR. AND MS. BINNEY.

22 THEREAFTER, WHEN DR. SCHWARTZ-WATTS WAS RETAINED I
23 MENTIONED THAT TO HER, PROBABLY THE FIRST OR SECOND TIME WE
24 SPOKE, THAT THIS WAS SOMETHING THAT COULD BE A POTENTIAL
25 ISSUE IN THE CASE.

1 Q. WHAT, IF ANYTHING, DID DR. SCHWARTZ-WATTS TELL YOU
2 CONCERNING HER EXPERIENCE IN DEALING WITH SOMEONE OR PERSONS
3 THAT HAVE FETAL ALCOHOL SYNDROME?

4 A. WELL, SHE TOLD ME THAT SHE HAD EXPERIENCE DEALING WITH
5 INDIVIDUALS WITH FETAL ALCOHOL SYNDROME. AND SHE
6 SPECIFICALLY REFERRED TO YOUNG PERSONS THAT SHE WAS SEEING
7 AT THAT TIME THAT THERE WAS NO DOUBT IN HER MIND THEY SUFFER
8 FROM FETAL ALCOHOL SYNDROME OR FETAL ALCOHOL EFFECT. SO SHE
9 INDICATED TO ME THAT SHE HAD SOME PERSONAL EXPERIENCE,
10 PERSONAL KNOWLEDGE OF DEALING WITH THAT.

11 Q. IN ADDITION TO THAT AREA OF EXPERTISE THAT SHE HAD DO
12 YOU RECALL WHETHER OR NOT SHE HAD ANY EXPERTISE IN THE AREA
13 CONCERNING SEXUAL DISORDERS OR THOSE TYPES OF DIAGNOSES?

14 A. WELL, I DON'T WANT TO SPEAK FOR DR. SCHWARTZ-WATTS, BUT
15 HER TESTIMONY IS IN THE RECORD. AND IT APPEARS TO BE HER
16 PRIMARY AREA OF EXPERTISE, DEALING WITH SEXUAL RELATED
17 OFFENSES OR SEXUAL RELATED DISORDERS.

18 Q. AND IS IT FAIR TO SAY THERE WAS A GOOD DEAL OF
19 INFORMATION IN THIS CASE THAT YOU WOULD HAVE TO EXPLAIN
20 RELATED TO SOME SORT OF PECULIAR SEXUAL, I DON'T KNOW IF
21 THIS MAKES SENSE, ANY PECULIAR SEXUAL INFORMATION THAT YOU
22 WOULD HAVE HER EXPLAIN?

23 A. I WOULD AGREE THAT MR. BINNEY PRIMARILY SEEMED TO HAVE
24 SEXUAL RELATED DISORDERS. I MEAN, HE HAD A CASE WHERE HE
25 HAD INTERCOURSE WITH HIS THREE MONTH OLD CHILD. SO I DON'T

1 KNOW IF ANY JURY CAN ACCEPT THAT OBVIOUSLY AS CONDUCT THEY
2 CAN SEE AS NOT BEING OFFENSIVE, BUT YOU CAN TRY AS AN
3 ATTORNEY MAYBE TO EXPLAIN WHY IT HAPPENED. NOT TO JUSTIFY
4 IT OR EXCUSE IT, BUT TO EXPLAIN WHY.

5 Q. ALL RIGHT. DID YOU ULTIMATELY OBTAIN A REPORT FROM DR.
6 SCHWARTZ-WATTS?

7 A. I DID. I THINK I RECEIVED A PRELIMINARY REPORT FROM
8 HER.

9 Q. ALL RIGHT, SIR. DO YOU RECALL WHAT SHE HAD REVEALED TO
10 YOU IN THAT PRELIMINARY REPORT?

11 A. ESSENTIALLY THE SUMMARY -- HER TESTIMONY PRESENTED IN
12 THE PENALTY PHASE, IT'S ESSENTIALLY WHAT THE REPORT ALSO
13 CONTAINED. THIS IS THE REPORT, I'M THINKING IT WAS DATED
14 OCTOBER 2ND, IF THAT'S WHAT YOU'RE REFERRING TO. THAT'S THE
15 ONLY ---

16 Q. YES, SIR.

17 A. --- REPORT I CAN RECALL RECEIVING.

18 Q. ALL RIGHT, SIR. AND DO YOU RECALL WHETHER OR NOT THERE
19 WAS ANY MENTION IN THAT REPORT OF FETAL ALCOHOL SYNDROME?

20 A. THERE IS. I'D HAVE TO LOOK AT THE ACTUAL REPORT TO
21 RECALL THE WORDING, BUT THERE WAS A REFERENCE TO IT. AND IT
22 DIDN'T STATE THAT MR. BINNEY DID OR DID NOT HAVE FETAL
23 ALCOHOL SYNDROME. I THINK SHE MADE SOME REFERENCE TO HIS
24 EARS BEING LOW SET OR SOMETHING TO THAT EFFECT.

25 Q. ALL RIGHT, SIR. AND DO YOU RECALL WHETHER OR NOT YOU

1 HAD ANY FURTHER COMMUNICATIONS WITH DR. SCHWARTZ-WATTS WITH
2 RESPECT TO A DIAGNOSIS OF FETAL ALCOHOL SYNDROME?
3 A. AFTER I RECEIVED THAT REPORT. THE REPORT WAS DATED
4 OCTOBER 2ND. AND I THINK SHE FAXED IT TO ME ON OCTOBER 8TH
5 OR OCTOBER 10TH. AND THEN I LOOKED IT OVER, AND I WAS
6 TRYING TO GET BACK IN TOUCH WITH HER. AND I THINK
7 EVENTUALLY I JUST SENT A LONG LETTER OR A FAX TO HER WITH A
8 LIST OF QUESTIONS I INTENDED TO ASK. AND IN THOSE FACTS AS
9 I HAD MENTIONED, I NEEDED TO KNOW WHAT POSITION SHE WAS
10 GOING TO TAKE ON THIS FETAL ALCOHOL SYNDROME.

11 THE COURT: ALL RIGHT. COUNSEL, LET'S JUST TAKE A
12 BREAK FOR A MOMENT, WE'VE FINISHED THAT ANSWER, AND LET'S
13 COME UP AND TALK ABOUT SCHEDULING, IF WE MAY.

14 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD)

15 THE COURT: LADIES AND GENTLEMEN, WE'VE MADE A
16 SCHEDULING DECISION HERE. RATHER THAN ANYONE FEEL THAT WE
17 HAVE RUSHED TO SOME JUDGMENT TODAY, WE ARE GOING TO FINISH
18 THE DIRECT EXAMINATION, WHICH IS PROBABLY GOING TO TAKE
19 FIFTEEN TO TWENTY MINUTES, WE'RE GOING TO STOP FOR THE DAY.
20 WE'LL COME BACK IN THE MORNING FOR CROSS EXAMINATION AND
21 THEN FOR THE FINAL -- THERE'S ALSO AN ADDITIONAL WITNESS WHO
22 MAY BE CALLED IN THE MORNING, AN EXPERT, AS WELL AS AN
23 ATTORNEY WITNESS. SO WE'RE GOING TO STOP AND COME BACK
24 TOMORROW MORNING.

25 BUT WE'RE GOING TO TAKE JUST A MOMENT -- WE'RE GOING TO

1 GO OFF THE RECORD SO THAT OUR COURT REPORTER, WHO HAS A
2 CONFLICT FOR TOMORROW IS GOING TO CALL IN TO MAKE SURE THAT
3 WE HAVE A STAND-BY COURT REPORTER WHO WILL BE HERE AT 9:30
4 TOMORROW MORNING. WE'LL JUST WAIT RIGHT HERE ON YOU WHILE
5 YOU MAKE THAT CALL. ALL RIGHT. WE'LL JUST BE AT EAST FOR A
6 MOMENT, LADIES AND GENTLEMEN.

7 (WHEREUPON COURT WAS IN RECESS AT 5:07 PM)

8 THE COURT: THANK YOU. PLEASE BE SEATED, LADIES AND
9 GENTLEMEN. IT'S BEEN A LITTLE WARM IN THE COURTROOM. WE'VE
10 ALSO TURNED THE AIR CONDITIONING DOWN A LITTLE BIT FOR
11 EVERYONE'S COMFORT. AND WE WERE IN DIRECT EXAMINATION. GO
12 AHEAD, MR. SALTER.

13 MR. SALTER: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION BY MR. SALTER CONTINUED:

15 Q. MR. PRUETT, WE WERE TALKING BEFORE THE BREAK ABOUT YOUR
16 COMMUNICATIONS WITH DR. SCHWARTZ-WATTS. AND I BELIEVE YOU
17 TESTIFIED THAT YOU HAD RECEIVED A REPORT ON OCTOBER 2ND.

18 A. DATED OCTOBER 2ND. SHE HAD FAXED IT TO ME. AND IT WAS
19 THE 8TH OR THE 10TH OF OCTOBER THAT I RECEIVED IT.

20 Q. ALL RIGHT. DO YOU RECALL WHETHER OR NOT YOU THEREAFTER
21 WROTE HER IN CONNECTION WITH HER DIAGNOSIS OF YOUR CLIENT?

22 A. YES, I FAXED SOMETHING TO HER.

23 Q. ALL RIGHT, SIR. I'LL SHOW YOU A LETTER DATED OCTOBER
24 29TH OF 2002 FROM YOU TO DR. SCHWARTZ-WATTS AND ASK YOU IF
25 YOU CAN IDENTIFY THAT?

1 A. I CAN IDENTIFY IT AS THE FAX I SENT HER ON OCTOBER
2 29TH.

3 Q. ALL RIGHT, SIR.

4 A. 2002.

5 MR. SALTER: YOUR HONOR, WE'D MOVE THAT INTO EVIDENCE
6 AS RESPONDENT'S, I BELIEVE IT'S EXHIBIT 12.

7 THE COURT: HAS MR. BLUME SEEN THAT?

8 MR. BLUME: YES.

9 MR. SALTER: YES.

10 THE COURT: ALL RIGHT. WITHOUT OBJECTION, RESPONDENT'S
11 12 IN EVIDENCE.

12 (WHEREUPON RESPONDENT'S EXHIBIT 12 WAS MARKED AND
13 ENTERED INTO EVIDENCE)

14 Q. MR. PRUETT, WOULD YOU PLEASE TELL ME WHAT YOU
15 COMMUNICATED TO DR. SCHWARTZ-WATTS SPECIFICALLY RELATED TO
16 FETAL ALCOHOL SYNDROME?

17 A. WELL, AS I STATED, HER REPORT DATED OCTOBER 2ND DIDN'T
18 REALLY SPELL OUT WHETHER OR NOT MR. BINNEY DID OR DID NOT
19 HAVE FETAL ALCOHOL SYNDROME. AND THIS FAX SIMPLY IS ASKING
20 HER WHETHER OR NOT SHE CAN FORMULATE AN OPINION THAT SHE'S
21 COMFORTABLE TESTIFYING TO, AT TRIAL, AS TO WHETHER OR NOT HE
22 DOES OR DOES NOT HAVE IT.

23 Q. ALL RIGHT, SIR. AND DO YOU RECALL WHETHER OR NOT SHE
24 THEREAFTER GAVE YOU ANYMORE SPECIFIC INDICATION AS TO WHAT
25 HER DIAGNOSIS MAY BE?

- 1 A. SHE STATED THAT SHE FELT LIKE SHE COULD SUPPORT A
2 CONCLUSION THAT MR. BINNEY HAD FETAL ALCOHOL SYNDROME.
3 Q. AND YOU LATER PRESENTED HER TO TESTIFY AS TO HER
4 FINDINGS?
5 A. THAT'S CORRECT.
6 Q. ALL RIGHT, SIR. WITH RESPECT TO DR. BACHMAN DO YOU
7 RECALL WHETHER OR NOT YOU HAD ANY COMMUNICATIONS WITH DR.
8 BACHMAN CONCERNING FETAL ALCOHOL SYNDROME?
9 A. I KNOW THAT'S WHAT -- ONE OF THE THINGS WE WERE ASKING
10 HIM TO LOOK AT WHEN HE WAS ASKED TO ASSIST IN EXAMINING MR.
11 BINNEY.
12 Q. ALL RIGHT, SIR. ARE YOU AWARE OF WHAT TESTING HE MAY
13 HAVE DONE?
14 A. WELL, HE RAN SEVERAL TESTS. I REMEMBER THE PET SCAN
15 AND SOME OTHER NEUROLOGICAL TESTS THAT HE CONDUCTED.
16 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT HE MAY
17 HAVE ADMINISTERED AN MRI?
18 A. I DON'T HAVE ANY RECOLLECTION OF THAT. I JUST KNOW HE
19 RAN SOME TESTS.
20 Q. ALL RIGHT. DO YOU RECALL WHAT HIS INITIAL RESPONSE WAS
21 TO YOU CONCERNING HIS FINDINGS?
22 A. RELATING TO THE FETAL ALCOHOL SYNDROME OR JUST IN
23 GENERAL?
24 Q. BOTH.
25 A. WELL, GENERALLY HE FOUND NO ABNORMALITIES THAT WOULD BE

1 INDICATIVE OF SOME ORGANIC BRAIN DISORDER. I THINK HE
2 STATED IN HIS OPINION LATER, WHICH HE SENT AFTER THE TRIAL,
3 I ASKED HIM TO GO AHEAD AND WRITE SOMETHING UP PRIOR TO
4 TRIAL. HE SAID THERE WAS NOTHING REALLY THERE THAT WOULD
5 SUGGEST TO HIM ANY PHYSICAL OR ORGANIC ABNORMALITY.

6 AS TO THE FETAL ALCOHOL SYNDROME, I HAD SENT HIM SOME
7 PHOTOGRAPHS OF JONATHAN BINNEY WHEN HE WAS YOUNG. AND THE
8 PURPOSE OF THAT WAS HE WAS GOING TO LOOK AT THE FACIAL
9 FEATURES AND SEE WHETHER OR NOT THE EARLY DEVELOPMENTAL
10 STAGES OF MR. BINNEY WOULD HAVE BEEN CONSISTENT WITH
11 SOMEBODY WITH FETAL ALCOHOL SYNDROME.

12 Q. ALL RIGHT, SIR. I NOW SHOW YOU A ONE PAGE DOCUMENT
13 THAT'S PREVIOUSLY BEEN IDENTIFIED AS RESPONDENT'S EXHIBIT
14 10. AND I BELIEVE IT'LL BE ADMITTED WITHOUT OBJECTION.

15 MR. BLUME: CORRECT.

16 Q. CAN YOU IDENTIFY THAT DOCUMENT?

17 A. WELL, IT'S ON MY LETTERHEAD DATED AUGUST 13TH, 2002.
18 IT'S THE LETTER TO DR. BACHMAN. AND IT APPEARS TO BE A
19 LETTER THAT I WROTE TO HIM ON THAT DATE.

20 Q. WHAT WAS THE PURPOSE OF THAT LETTER?

21 A. I FORWARDED HIM SOME PHOTOGRAPHS.

22 Q. AND WHAT WAS YOUR UNDERSTANDING AS TO WHY YOU WERE
23 FORWARDING HIM PHOTOGRAPHS?

24 A. AGAIN, HE WAS GOING TO LOOK TO SEE WHETHER OR NOT THE
25 FACIAL FEATURES -- MR. BINNEY AS A YOUNG CHILD OR

1 SPECIFICALLY WAS SOMEBODY WITH FETAL ALCOHOL SYNDROME.

2 THE COURT: ALL RIGHT. RESPONDENT'S 10 IN EVIDENCE
3 WITHOUT OBJECTION.

4 (WHEREUPON RESPONDENT'S EXHIBIT 10 WAS ENTERED INTO
5 EVIDENCE)

6 Q. DID YOU THEREAFTER HAVE ANY FURTHER COMMUNICATIONS WITH
7 DR. BACHMAN?

8 A. I DID. I SPOKE TO HIM BY TELEPHONE. ACTUALLY AFTER
9 THAT LETTER WAS WRITTEN, I MEAN, THERE WAS A FEW PHONE
10 CALLS. HE, MY RECOLLECTION IS HE WENT TO LIEBER
11 CORRECTIONAL, THERE WAS SOME PROBLEM WITH HIM GETTING IN THE
12 PRISON TO SEE MR. BINNEY, AND WE HAD TO KIND OF SORT THAT
13 OUT. BUT AS FAR AS DISCUSSING HIS FINDINGS, WE SPOKE ON THE
14 TELEPHONE SOMETIME AFTER THAT.

15 Q. ALL RIGHT, SIR. I NOW SHOW YOU ANOTHER TWO PAGE
16 DOCUMENT. IT'S ACTUALLY A FAX COVER SHEET AND A ONE PAGE
17 LETTER DATED AUGUST 21, 2002 TO DR. BACHMAN FROM YOU. CAN
18 YOU IDENTIFY THIS?

19 A. THIS IS ALSO ON MY LETTERHEAD. THE LETTER'S DATED
20 AUGUST 21. IT'S ACTUALLY SIGNED BY MY SECRETARY, BUT IT'S A
21 LETTER THAT I DICTATED.

22 Q. ALL RIGHT, SIR.

23 MR. SALTER: AND WE'D MOVE THIS INTO EVIDENCE AS THE
24 NEXT RESPONDENT'S EXHIBIT.

25 THE COURT: OBJECTION?

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1 MR. BLUME: I'M SORRY. NO OBJECTION.

2 THE COURT: 13?

3 MR. SALTER: YES, SIR, YOUR HONOR.

4 THE COURT: ALL RIGHT. RESPONDENT'S 13 WITHOUT
5 OBJECTION.

6 (WHEREUPON RESPONDENT'S EXHIBIT 13 WAS MARKED AND
7 ENTERED INTO EVIDENCE)

8 Q. WHAT WAS YOUR -- DO YOU RECALL WHAT YOUR PURPOSE WAS IN
9 WRITING THIS LETTER TO DR. BACHMAN?

10 A. IT JUST WAS TO CONFIRM THE CONVERSATION WE HAD IN
11 RELATION TO THE PHOTOGRAPHS THAT I HAD SUBMITTED, WHICH WAS,
12 BASED UPON THE PHOTOGRAPHS ALONE, THEY DIDN'T APPEAR TO BE
13 CONSISTENT WITH FETAL ALCOHOL SYNDROME -- MR. BINNEY HAD
14 FETAL ALCOHOL SYNDROME, BUT I HAVE A NOTATION HERE THAT HE
15 COULD NOT COMPLETELY RULE OUT WHETHER OR NOT HE HAD FETAL
16 ALCOHOL SYNDROME JUST BASED UPON CHILDHOOD APPEARANCE.

17 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT YOU MAY
18 HAVE HAD A CONVERSATION WITH DR. BACHMAN CONCERNING WHETHER
19 HIS FINDINGS WOULD BE BENEFICIAL ON OCTOBER 2ND, 2002?

20 A. OCTOBER 2ND, 2002?

21 Q. YES, SIR.

22 A. HE AIN'T GOT IN TROUBLE -- WHAT WAS YOUR QUESTION
23 AGAIN?

24 Q. DO YOU RECALL WHETHER OR NOT YOU HAD A CONVERSATION
25 WITH DR. BACHMAN AT THAT TIME CONCERNING WHETHER OR NOT HIS

1 FINDINGS WOULD BE BENEFICIAL TO YOUR CLIENT?

2 A. I DON'T RECALL IT BEING ON OCTOBER 2ND, BUT THE GENERAL
3 VIEW, I THINK, OF DR. BACHMAN WAS HE COULD NOT REALLY ADD
4 ANYTHING BENEFICIAL TO MR. BINNEY'S CASE. HIS FINDINGS WERE
5 EITHER INCONCLUSIVE OR THEY WERE NEGATIVE AS TO ANY ORGANIC
6 BRAIN DISORDER.

7 Q. AND DO YOU RECALL WHETHER OR NOT DURING THAT
8 CONVERSATION DR. BACHMAN INDICATED TO YOU ANYTHING ABOUT
9 SHOWING US PHOTOGRAPHS THAT YOU PREVIOUSLY SENT TO A
10 GENETICIST?

11 A. HE'D REFERRED, EXCUSE ME, HE HAD SAID HE WAS GOING TO
12 REFER OR SHOW THE PHOTOGRAPHS TO A GENETICIST THAT WORKED AT
13 THE UNIVERSITY HOSPITAL.

14 Q. ALL RIGHT.

15 A. NOW WHETHER HE DID OR NOT, I CAN'T SPECIFICALLY RECALL.
16 BUT THAT'S WHAT HE STATED HE INTENDED TO DO WITH THE
17 PHOTOGRAPHS.

18 Q. AND DO YOU RECALL WHETHER OR NOT AT ANY TIME DURING
19 YOUR CONVERSATIONS WITH DR. BACHMAN HE INDICATED THAT HIS
20 EXPERTISE IN NEUROLOGY WOULD NOT PERMIT HIM TO MAKE A
21 SUFFICIENT FINDING WITH RESPECT TO FETAL ALCOHOL SYNDROME?

22 A. HE -- HE PUT THAT IN HIS LETTER THAT WAS DATED -- I
23 THINK IT WAS DATED NOVEMBER 25TH AFTER THE TRIAL. BUT I'M
24 SURE THAT'S WHAT HE RELATED TO ME IN OUR CONVERSATION ON THE
25 PHONE, WAS THAT I PROBABLY NEEDED TO TALK TO DR. SCHWARTZ-

1 WATTS MORE ABOUT PURSUING ANY FETAL ALCOHOL SYNDROME

2 CONCLUSION OR OBTAINING ANOTHER EXPERT.

3 Q. AND HAD YOU DONE SO?

4 A. WELL, I SPOKE TO DR. SCHWARTZ-WATTS AGAIN. AND ALL

5 THIS WAS HAPPENING DURING THE SAME TIME PERIOD THAT WE'RE --

6 I'M RECEIVING THE LETTER FROM DR. SCHWARTZ-WATTS, I'M

7 SPEAKING TO DR. BACHMAN. I'M TRYING TO GET HIS REPORT. I

8 REALLY WANTED TO HAVE HIS REPORT IN MY HAND BEFORE THE TRIAL

9 STARTED. AND FOR WHATEVER REASON HE JUST COULDN'T GET IT TO
10 ME UNTIL AFTER THE TRIAL.

11 Q. ALL RIGHT. I'LL SHOW YOU A THREE PAGE LETTER TO YOU
12 FROM DR. BACHMAN DATED NOVEMBER 25, 2002 AND ASK YOU IF YOU
13 CAN IDENTIFY THAT?

14 A. THIS -- THIS IS THE LETTER I JUST REFERRED TO. AND
15 THIS IS THE ONLY WRITTEN REPORT I RECEIVED FROM DR. BACHMAN.

16 MR. SALTER: YOUR HONOR, WE'D MOVE THAT INTO EVIDENCE
17 AS RESPONDENT'S EXHIBIT 14.

18 MR. BLUME: WITHOUT OBJECTION.

19 THE COURT: WITHOUT OBJECTION, RESPONDENT'S 14 IN
20 EVIDENCE.

21 (WHEREUPON RESPONDENT'S EXHIBIT 14 WAS MARKED AND
22 ENTERED INTO EVIDENCE)

23 Q. DO YOU RECALL WHETHER OR NOT EITHER DR. BACHMAN OR DR.
24 SCHWARTZ-WATTS INDICATED TO YOU THAT HE OR SHE NEEDED MORE
25 RECORDS IN ORDER TO REACH A FINDING?

1 A. NO.

2 Q. WITH RESPECT TO EITHER FETAL ALCOHOL SYNDROME OR
3 ANYTHING ELSE?

4 A. I DON'T RECALL THAT BEING RELATED TO ME BY DR. BACHMAN.
5 AND I DIDN'T KNOW OF ANY OTHER RECORDS IN EXISTENCE OTHER
6 THAN WHAT I HAD ALREADY PROVIDED DR. SCHWARTZ-WATTS.

7 Q. ALL RIGHT.

8 A. AND I DON'T RECALL THEM ASKING ABOUT THAT. IF YOU'RE
9 REFERRING TO MR. BINNEY'S MOTHER, WE HAD THE ACCOUNTS FROM
10 HER DIRECTLY TO MR. BINNEY'S PARENTS AND TO MR. BINNEY.

11 Q. ALL RIGHT.

12 A. SO THAT WAS RELATED TO HIM IN ADDITION TO THE RECORDS.

13 Q. DO YOU RECALL WHETHER OR NOT YOU PROVIDED EVERYTHING
14 YOU HAD, ANY RECORDS YOU HAD THAT THEY SAID THEY NEEDED,
15 WOULD YOU HAVE PROVIDED THEM TO THEM?

16 A. WELL, EVERYTHING I HAD THEY HAD. IF THERE WAS ANYTHING
17 ELSE OUT THERE, I'M NOT SURE WHAT YOU'RE ASKING, BUT THERE
18 WAS NOTHING ELSE I COULD RECALL THAT THEY ASKED FOR THAT I
19 DID NOT PROVIDE TO THEM.

20 Q. OKAY. DO YOU RECALL WHETHER OR NOT YOU AND MR. SLADE
21 GAVE CONSIDERATION TO PRESENTING SANDRA BINNEY AS A WITNESS
22 IN THE PENALTY PHASE?

23 A. WE CONSIDERED IT, YES.

24 Q. WHAT WAS YOUR CONCLUSION?

25 A. WELL, WE JUST HAD DOUBTS ABOUT WHETHER OR NOT SHE COULD

1 EFFECTIVELY TESTIFY IN THE SENTENCING PHASE. THERE WERE TWO
2 REASONS FOR THAT. ONE WAS SHE WAS VERY EMOTIONAL DURING THE
3 TRIAL AND EVEN IN THE PRETRIAL PREPARATION. AND THE SECOND
4 WAS OUR CONCERN THAT MAYBE SHE WOULD NOT STAY ON TOP AS TO
5 WHAT WE WANTED TO PRESENT TO THE JURY.

6 Q. HOW SO?

7 A. WELL, ONE OF THE THINGS THAT CONCERNED ME, AND MR.
8 SLADE MADE THE SAME CONCLUSION, WAS THERE SEEMED TO BE A
9 TENDENCY TO BLAME EVERYTHING ON THE FETAL ALCOHOL SYNDROME.
10 AND THE ONE QUOTE THAT STICKS OUT IN MY MIND AND -- WAS WE
11 DIDN'T KNOW HE WAS THAT WAY WHEN WE ADOPTED HIM.

12 SO IT WAS ALMOST A TENDENCY TO BLAME EVERYTHING ON THE
13 FETAL ALCOHOL SYNDROME AND THAT'S ALL THAT SHE WANTED TO
14 TALK ABOUT. AND THAT HAS ITS PLACE IN THE SENTENCING PHASE
15 OF THE TRIAL, BUT IT SHOULDN'T BE, IN MY OPINION, COMING
16 FROM THE PARENTS. THAT'S WHAT WE HAVE THE PSYCHIATRIST FOR.

17 Q. ALL RIGHT, SIR. NOW DO YOU RECALL WHETHER OR NOT Y'ALL
18 CONSIDERED PERHAPS USING MELANIE BINNEY, MR. BINNEY'S WIFE?

19 A. WELL, I THOUGHT THAT WOULD HAVE BEEN A GOOD IDEA IF SHE
20 WAS COMFORTABLE WITH TESTIFYING, BUT IN THE END SHE JUST
21 WASN'T COMFORTABLE TESTIFYING. MR. SLADE DEALT WITH HER
22 MORE THAN I DID. HE ACTUALLY SPOKE TO HER MORE THAN I DID.

23 AND THERE WERE PROS AND CONS ABOUT PUTTING HER UP. I
24 DON'T KNOW HOW THE JURY WOULD HAVE RECEIVED HER TESTIMONY
25 FROM THE STANDPOINT THAT SHE WAS STILL PROTECTING OR STILL

1 CARED FOR THE PERSON WHO HAD MOLESTED HER OWN DAUGHTER. AND
2 THAT HAS POTENTIAL NEGATIVE CONSEQUENCES. THEY MAY HAVE
3 JUDGED HER TO BE AS BAD AS HIM IN THAT SENSE.

4 Q. DID EITHER OF YOUR CLIENTS -- DID EITHER YOUR CLIENT OR
5 HIS PARENTS EVER SUGGEST TO YOU THAT YOU SHOULD PERHAPS
6 PRESENT A TEENAGE COUSIN AS A MITIGATION WITNESS?

7 A. I DON'T HAVE ANY RECOLLECTION OF THAT. IT'S NOT IN MY
8 NOTES, AND I DON'T RECALL THAT.

9 Q. NOW YOU PRESENTED -- YOU PRESENTED ONE FORMER EMPLOYER
10 AT YOUR -- IN THE PENALTY PHASE OF YOUR CLIENT'S TRIAL. DO
11 YOU RECALL WHETHER OR NOT YOU MADE ANY EFFORTS TO FIND
12 ANOTHER FORMER EMPLOYER TO TESTIFY?

13 A. IF YOU WOULD, WHO IS THE INDIVIDUAL? I CAN'T RECALL
14 THEIR NAME. IT ESCAPES ME.

15 Q. DOES THE NAME OF -- DOES THE LAST NAME BOLT ---

16 A. NO, WHO TESTIFIED AT TRIAL? I DON'T RECALL. I DON'T
17 REMEMBER A FORMER EMPLOYER TESTIFYING AT TRIAL. NOW THERE
18 WAS SOMEBODY WE SPOKE TO IN REFERENCE TO A POSSIBILITY OF
19 TESTIFYING. THAT WAS MR. BOLT.

20 Q. OKAY. AND WHO IS MR. BOLT?

21 A. HE OWNED A CAR DEALERSHIP IN ANDERSON COUNTY AND, I
22 BELIEVE, IN GREENVILLE. AND HE WAS FRIENDS OF MR. BINNEY'S
23 PARENTS.

24 Q. OKAY. AND DO YOU RECALL WHY YOU DID NOT PRESENT HIM AS
25 A WITNESS?

1 A. WELL, I PUT THAT IN MY NOTES, BUT I HAD A SPECIFIC
2 RECOLLECTION OF THAT MEETING. AND MR. BOLT, I THINK I SPOKE
3 TO HIM BY TELEPHONE, MR. BOLT HAD GOOD THINGS TO SAY ABOUT
4 JONATHAN, BUT HE ALSO SAID THAT HE WAS EVENTUALLY FIRED
5 BECAUSE HE WAS TAKING CARS OFF THE LOT WHEN HE WASN'T
6 SUPPOSED TO AND BASICALLY ENGAGING IN ILLEGAL ACTIVITIES.
7 AND FOR THAT REASON HE HAD TO FIRE HIM.

8 SO ON THE ONE HAND HE SAID JONATHAN WAS VERY
9 CONSCIENTIOUS WHEN HE DID WORK. HE ACCEPTED ADDITIONAL
10 RESPONSIBILITIES THAT OTHER EMPLOYEES WOULD KIND OF PUT OFF
11 ON HIM. THOSE WERE GOOD THINGS. BUT ULTIMATELY HE HAD TO
12 BE FIRED BECAUSE HE WAS COMMITTING CRIMES.

13 Q. ALL RIGHT. BETWEEN YOU AND MR. SLADE WHO WOULD HAVE
14 BEEN RESPONSIBLE, PRIMARILY RESPONSIBLE FOR OBJECTING TO THE
15 PROSECUTION'S CLOSING ARGUMENT IN THE PENALTY PHASE?

16 A. WELL, I WOULD ASSUME IT WOULD HAVE BEEN MR. SLADE'S
17 BECAUSE HE DID THE CLOSING FOR THE DEFENSE. AND TYPICALLY
18 THAT'S HOW THAT WORKS, DIVIDE IT UP. WHOEVER DOES THE
19 CLOSING, YOU OBJECT TO OPPOSING COUNSEL. THE SAME THING
20 TRUE WITH OPENING STATEMENTS.

21 Q. ALL RIGHT, SIR. DO YOU RECALL THE PROSECUTION'S
22 CLOSING ARGUMENT?

23 A. WELL, I'VE READ IT OVER AGAIN. I DON'T HAVE AN
24 INDEPENDENT RECOLLECTION. I HAD TO READ THE TRANSCRIPT OVER
25 OVER THE WEEKEND.

1 Q. ALL RIGHT, SIR. DO YOU -- IS IT FAIR TO SAY YOU DIDN'T
2 RECALL ANYTHING OBJECTIONABLE OR IMPERMISSIBLE IN THE
3 CLOSING ARGUMENT?

4 A. NOT AT THE TIME THAT IT WAS MADE, NO.

5 Q. THE LAST THING I WANT TO TALK TO YOU ABOUT THIS
6 AFTERNOON OR JUST TWO BRIEF MATTERS. ONE, DO YOU RECALL
7 WHETHER OR NOT THERE WAS SOME PROBLEM WITH OUTSIDE
8 INTERFERENCE IN YOUR ATTORNEY/CLIENT RELATIONSHIP?

9 A. IF YOU'RE REFERRING TO MR. BRIGGS ...

10 Q. YES, SIR.

11 A. YES, I RECALL THAT. YES.

12 Q. AND COULD YOU ENLIGHTEN THE COURT BASICALLY AS TO WHAT
13 HAPPENED?

14 A. IT WAS MR. BRIGGS -- THERE WAS SOME OTHER ATTORNEYS AS
15 WELL BESIDES MR. BRIGGS THAT WERE CONTACTED DURING THE
16 SUMMER BEFORE THE TRIAL. BUT MR. BRIGGS SPECIFICALLY
17 APPARENTLY WAS COMMUNICATING WITH THE PARENTS, MR. BINNEY --
18 I DON'T -- I DON'T KNOW IF HE WAS TALKING DIRECTLY TO
19 JONATHAN OR NOT, BUT ESSENTIALLY THEY CAME TO A CONCLUSION
20 THAT BECAUSE MR. SLADE AND I HAD BOTH BEEN FORMER
21 PROSECUTORS AND NEITHER ONE OF US HAD EVER DEFENDED A
22 CAPITAL CASE THAT ONE OF US NEEDED TO BE REPLACED.

23 SO THE GIST OF MR. BRIGGS' INVOLVEMENT IN THE CASE WAS
24 TO EITHER, ONE, REPLACE ONE OF US, MR. SLADE OR MYSELF, OR,
25 TWO, QUESTION US ABOUT WHETHER OR NOT WE WERE REQUIRING THIS

1 FETAL ALCOHOL SYNDROME AS A MITIGATING CIRCUMSTANCE OR
2 MITIGATING EVIDENCE.

3 Q. AND HOW WAS THAT ULTIMATELY RESOLVED, THE PROBLEM THAT
4 YOU WERE HAVING?

5 A. WELL, ULTIMATELY WE HAD A MOTION HEARING IN FRONT OF
6 JUDGE COLE. AND WE -- MR. BRIGGS, I GUESS, REPRESENTED MR.
7 BINNEY IN SOME CAPACITY, JONATHAN BINNEY, AND DISCUSSED, YOU
8 KNOW, WHETHER OR NOT WE WERE PURSUING THE FETAL ALCOHOL
9 SYNDROME. WE HAD ASKED TO BE RELIEVED, I THINK, AT THAT --
10 I DON'T HAVE A COPY OF THE TRANSCRIPT. SO THIS IS BY PURE
11 RECOLLECTION. BUT I THINK I REMEMBER SAYING THAT I THOUGHT
12 THE ATTORNEY/CLIENT RELATIONSHIP HAD BEEN IRRETRIEVABLY
13 BROKEN, DISINTEGRATED AND FOR THAT REASON ASKED THAT WE BE
14 RELIEVED.

15 Q. ALL RIGHT, SIR. DO YOU RECALL WHETHER OR NOT -- I'M
16 SORRY. MOVE BACK. DO YOU RECALL WHAT THE JUDGE'S RULING
17 WAS?

18 A. WELL, HE STATED WE HAD TO STAY ON THE CASE. AND I
19 SHOULD BACKTRACK A LITTLE BIT. IT WAS AT THAT SAME MOTION
20 HEARING THAT WE HAD A MEETING WITH JONATHAN BINNEY. AND
21 MORESO THAN WHAT HAPPENED IN THE COURTROOM, I RECALL THAT
22 MEETING WITH MR. BINNEY.

23 THERE'S A HOLDING AREA AT THE SPARTANBURG COUNTY
24 COURTHOUSE. AND THAT'S WHERE THE MOTION HEARING WAS HELD.
25 AND INSIDE THE HOLDING AREA THEY KEEP PRISONERS UP FROM THE

1 JAIL. THERE'S A SMALL INTERVIEW ROOM.

2 SO WE WERE IN THAT INTERVIEW ROOM, AND WE WERE TALKING
3 TO JONATHAN ABOUT THE SUBSTITUTION OF COUNSEL MOTION OR US
4 BEING RELIEVED AS HIS COUNSEL. AND HE WAS UNDER THE
5 IMPRESSION OF SOMEBODY THAT THERE WERE FIVE OR SIX LAWYERS
6 WAITING TO STEP INTO OUR PLACE AND SERVE AS HIS COUNSEL.
7 AND WE HAD TO BREAK THE NEWS TO HIM THAT THERE WAS NOBODY
8 THERE WILLING TO SERVE AS HIS COUNSEL AND THAT HE
9 ESSENTIALLY HAD TO RECOGNIZE THAT FOR BETTER OR WORSE WE
10 WERE THE ONLY ATTORNEYS THAT WERE GOING TO BE REPRESENTING
11 HIM.

12 AND I REMEMBER THAT WITH A FAIR DEGREE OF ACCURACY
13 BECAUSE HE BECAME VERY EMOTIONAL. HE GOT UPSET. HE STARTED
14 CRYING. AND WE SAID, YOU'RE GOING TO HAVE TO DEAL WITH US
15 FOR BETTER OR WORSE, WE'RE GOING TO HAVE TO WORK TOGETHER,
16 WE'RE GOING TO DEFEND YOU. AND THAT'S THE MEETING THAT I
17 RECALL HAVING WITH MR. BINNEY ON THAT DAY.

18 WHAT HAPPENED IN THE COURTROOM, I JUST REMEMBER
19 OBJECTING TO MR. BRIGGS INTERFERING WITH THE CASE, TRYING TO
20 DIRECT WHAT WE SHOULD OR SHOULD NOT BE DOING. AND OUR
21 POSITION WAS IF MR. BRIGGS IS WILLING TO TRY THE CASE, HE'S
22 WELCOME TO SERVE AS COUNSEL.

23 Q. ALL RIGHT.

24 A. IF NOT, THEN HE NEEDS TO LET US TRY TO DO OUR JOB AS WE
25 SEE FIT.

1 Q. WAS YOUR -- DID YOUR RELATIONSHIP WITH YOUR CLIENT
2 THEREAFTER IMPROVE?

3 A. I WOULD SAY SO. I MEAN, HE GOT BETTER AS WE GOT CLOSER
4 TO TRIAL, AS I SAID EARLIER.

5 Q. REAL QUICKLY, HAD YOU DISCUSSED WHETHER OR NOT YOUR
6 CLIENT SHOULD TESTIFY IN EITHER PHASE OF THE TRIAL?

7 A. AT DIFFERENT TIMES, WE DID.

8 Q. ALL RIGHT, SIR. WHAT WAS THE ULTIMATE ---

9 A. YOU SAY WE, DO YOU MEAN WE, MITCH SLADE AND I AND
10 JONATHAN BINNEY OR ---

11 Q. YES, SIR.

12 A. --- JUST MITCH AND I? WELL, ACTUALLY BOTH. I MEAN,
13 MITCH AND I THOUGHT IT WAS A BAD IDEA, BUT THE ULTIMATE
14 DECISION WOULD HAVE TO BE JONATHAN BINNEY'S. AN HE AGREED
15 THAT IT WAS A BAD IDEA FOR HIM TO TESTIFY AS WELL.

16 Q. ALL RIGHT. AND WHY -- WHY WOULD THAT BE?

17 MR. BLUME: YOUR HONOR, I AM GOING TO OBJECT TO THIS
18 FOR THE SAME REASON THERE IS NO ALLEGATION IN THIS
19 APPLICATION AT ALL THAT HAS ANYTHING TO DO WITH WHETHER
20 COUNSEL WAS INEFFECTIVE FOR FAILING TO HAVE MR. BINNEY
21 TESTIFY OR MAKE A STATEMENT. AND I THINK THIS IS A CLASSIC
22 EXAMPLE OF COMMUNICATION OR DECISION TO WHICH THE PRIVILEGE
23 WOULD REMAIN IN TACT. IT'S NOT GERMANE, AND IT'S NOT
24 RELEVANT.

25 THE COURT: HOW IS IT RELEVANT NOT BEING AN ALLEGATION,

1 MR. SALTER?

2 MR. SALTER: WELL, YOUR HONOR, TO THE EXTENT THEY'RE
3 SAYING COUNSEL'S INEFFECTIVE -- I GUESS I, YOU KNOW,
4 COUNSEL'S POSITION IS HIS HANDS WERE TIED ESSENTIALLY BY
5 THEIR CLIENT. AND ---

6 THE COURT: ALL RIGHT. MR. BLUME, I'M GOING TO
7 OVERRULE YOUR OBJECTION. YOU KNOW, WHETHER OR NOT A LAWYER
8 IS -- WHETHER A LAWYER IS EFFECTIVE OR NOT MAY INVOLVE A
9 SPECIFIC INCIDENT OR IT MAY INVOLVE A TOTALITY OF
10 CIRCUMSTANCES. I REALIZE THERE'S NO ALLEGATION HERE WITH
11 SPECIFICITY ON THIS ISSUE, BUT THE COURT WOULD OVERRULE YOUR
12 OBJECTION BECAUSE I BELIEVE THE EVIDENCE IS RELEVANT. AND
13 GO AHEAD, MR. SALTER.

14 MR. SALTER: ALL RIGHT. JUST VERY BRIEFLY.

15 Q. WHY DID Y'ALL COME TO THE CONCLUSION JOINTLY WITH YOUR
16 CLIENT THAT IT WOULD BE A BAD IDEA FOR HIM TO TESTIFY?

17 A. IN THE GUILT PHASE I JUST THINK THERE WAS SOME
18 DIFFICULTY CONTROLLING MR. BINNEY ON THE WITNESS STAND. HE
19 DID TESTIFY IN THE SUPPRESSION HEARING. AND THAT WAS KIND
20 OF LIKE A TEST RUN IN MY MIND, HOW WELL CAN HE HANDLE
21 HIMSELF ON THE WITNESS STAND.

22 AND READING OVER THE TRANSCRIPT AND RECALLING THAT
23 INCIDENT, HE WAS EASILY LED BY THE PROSECUTION. AND THIS
24 WAS NOT REALLY AN ADVERSARIAL TYPE OF PROCEEDING AND ISN'T
25 IN A SUPPRESSION MOTION. IN FRONT OF THE JURY I THINK IT

1 WOULD HAVE BEEN MUCH MORE DRAMATIC. SO I WAS VERY CONCERNED
2 ABOUT HIS ABILITY JUST TO BE ABLE TO BASICALLY GO HEAD TO
3 HEAD WITH THE PROSECUTOR AND BEING CROSS EXAMINED.

4 AND SECONDLY, I DON'T KNOW THAT HE COULD ADD A LOT TO
5 WHAT WAS PRESENTED IN THE GUILT PHASE. HE COULD HAVE BEEN
6 CROSS EXAMINED, YOU KNOW, ON HIS STATEMENT. I JUST DIDN'T
7 SEE THE BENEFIT.

8 IN THE SENTENCING PHASE I THINK IT'S MORE OBVIOUS. I
9 MEAN, FOR HIM NOT TO TESTIFY IN THE SENTENCING PHASE WAS
10 NEVER A QUESTION. THE KINDS OF QUESTIONS THEY COULD HAVE
11 ASKED HIM ABOUT THE CRIMINAL SEXUAL CONDUCT CASE WOULD JUST
12 -- WOULD HAVE BEEN HORRENDOUS.

13 Q. ALL RIGHT, SIR. DID YOU AND MR. SLADE GIVE ANY
14 CONSIDERATION TO EITHER ATTEMPTING TO PUT UP LAY TESTIMONY
15 CONCERNING ADAPTABILITY TO PRISON OR AN EXPERT ON
16 ADAPTABILITY TO PRISON LIFE?

17 A. I DID. AND I DON'T KNOW THAT WE EVER REALLY DISCUSSED
18 THAT, MITCH AND I. I MEAN, I MAY HAVE JUST TOLD HIM I DON'T
19 THINK THAT'S A GOOD IDEA, I'M GOING TO LEAVE IT UP TO YOU.
20 BUT I CAN'T RECALL SPECIFICALLY MITCH AND I SITTING IN MY
21 OFFICE OR HIS OFFICE DISCUSSING THAT.

22 I DIDN'T LIKE THE IDEA OF PRESENTING ADAPTABILITY
23 EVIDENCE NOT SO MUCH BECAUSE HE HADN'T ADAPTED DURING THE
24 TIME HE WAS IN JAIL OR THE DEPARTMENT OF CORRECTIONS. I
25 MEAN, MY GENERAL IMPRESSION OF JONATHAN FROM SPEAKING TO THE

1 PEOPLE AT THE CHEROKEE COUNTY JAIL AND LOOKING AT HIS
2 RECORDS WAS THAT HE HAD NEVER DONE ANYTHING REALLY BAD, SO
3 TO SPEAK. I DON'T KNOW THAT HE WAS EVER LOCKED DOWN IN C-
4 MAX, WHICH IS THE MAXIMUM FACILITY. HE WAS MORE OR LESS, IN
5 THEIR MINDS AT LEAST, KIND OF A GENERAL NUISANCE. HE WAS
6 ALWAYS TRYING TO STIR THINGS UP INSIDE THE POD HE WAS IN.

7 MY CONCERN WAS WAS THAT THE SOLICITOR'S OFFICE, IN THIS
8 CASE, MR. WILLINGHAM AND MR. GOWDY, HAD IN CASES PRIOR TO
9 THIS ONE PRESENTED AN EXPERT FROM THE DEPARTMENT OF
10 CORRECTIONS CLASSIFICATIONS OFFICER THAT TESTIFIED IN REPLY
11 OR REBUTTAL TO ADAPTABILITY EVIDENCE THAT BEING IN PRISON
12 WAS MORE OR LESS LIKE BEING AT A RESORT, YOU KNOW, THAT THEY
13 HAD THE YARD PRIVILEGES, AND THEY COULD MAYBE WORK, AND THEY
14 ESSENTIALLY WERE ABLE TO LEAD A NORMAL TYPE LIFE INSIDE
15 PRISON, THAT PRISON WASN'T ALL THAT BAD.

16 TO ME, IF WE'D PUT UP ANY TYPE OF ADAPTABILITY EVIDENCE
17 THEY COULD HAVE CALLED THAT PERSON IN REPLY. AND THAT WOULD
18 HAVE BEEN THE LAST THING THE JURY WOULD HAVE HEARD. AND MY
19 CONCERN WAS IF WE'RE TRYING TO SHOW HOW BAD PRISON IS, THAT
20 WAS KIND OF THE OVER-ARCHING THEME OF THE SENTENCING PHASE
21 WAS, YOU KNOW, PRISON'S A BAD PLACE, HE'S IN PRISON GARB
22 NOW, HE'S GOING TO BE THAT WAY THE REST OF HIS LIFE. DON'T
23 LET THE JURY GO BACK TO THE JURY ROOM WITH THE LAST THING
24 THEY'RE HEARING IS, IT'S REALLY NOT THAT BAD. PRISON'S NOT
25 A BAD PLACE TO GO TO CONSIDERING ALL YOUR PRIVILEGES.

1 Q. ALL RIGHT. AND DO YOU RECALL WHETHER OR NOT DURING THE
2 CONVERSATION -- THE INTERVIEW OF YOUR CLIENT BY DR. CRAWFORD
3 WHETHER OR NOT THERE WAS CERTAIN INFORMATION PRESENTED TO
4 HER CONCERNING HIS CONDUCT ---

5 A. HE TALKED ABOUT, I MEAN, SOME THINGS WITH HER ABOUT
6 STEALING A VCR AND SOME OTHER MINOR MATTERS, IN MY OPINION.
7 I MEAN, THAT REALLY WASN'T, TO ME, THE REASON WHY WE
8 WOULDN'T PRESENT ADAPTABILITY EVIDENCE. I MEAN, I DON'T
9 KNOW THAT JONATHAN HAD EVER TOLD ME ABOUT THE VCR INCIDENT
10 BEFORE THAT.

11 I MEAN, CRAWFORD'S INTERVIEW WITH HIM CAME SO LATE IN
12 OUR PREPARATION THAT THAT WASN'T REALLY THE DECIDING FACTOR.
13 I MEAN, CLEARLY THAT COULD HAVE BEEN USED AGAINST HIM HAD WE
14 GONE THAT DIRECTION DURING THE SENTENCING PHASE. BUT THE
15 DECISION NOT TO PRESENT ADAPTABILITY EVIDENCE HAD BEEN MADE
16 BEFORE THAT.

17 Q. ALL RIGHT, SIR. AND FINALLY, IN CONNECTION WITH YOUR
18 INVESTIGATION INTO THE GUILT PHASE OF THE TRIAL DO YOU
19 RECALL WHETHER OR NOT YOU OBTAINED THE HOSPITAL RECORDS
20 CONCERNING THE TREATMENT THE VICTIM RECEIVED?

21 A. I DON'T HAVE AN INDEPENDENT RECOLLECTION OF THAT.

22 Q. I'LL SHOW YOU A SIX PAGE DOCUMENT THAT'S PREVIOUSLY
23 MARKED AS RESPONDENT'S EXHIBIT 4 FOR IDENTIFICATION
24 PURPOSES. IT'S THE EMERGENCY ROOM REPORT FROM MARY BLACK.
25 SEE IF YOU CAN RECOGNIZE THAT.

1 A. I DON'T HAVE A RECOLLECTION. I KNOW IT HAS GOT THE
2 PAGE NUMBERS THAT THE PROSECUTION ASSIGNED TO THEM, BUT I
3 DON'T HAVE A RECOLLECTION OF SEEING THIS. IT MAY BE IN MY
4 FILE. AND IT MAY BE BECAUSE MAYBE MITCH DEALT WITH THIS
5 MORE THAN I DID.

6 Q. DO YOU RECALL WHETHER OR NOT Y'ALL INVESTIGATED A
7 POSSIBILITY OF NEGLIGENT TREATMENT OF THE VICTIM BY THE
8 HOSPITAL?

9 A. AGAIN, I WANT TO SAY THAT MITCH LOOKED AT THAT ISSUE
10 CLOSER THAN I DID, BUT WE CERTAINLY DISCUSSED THAT. AND
11 YOU'RE TALKING ABOUT A CAUSATION ISSUE. I DON'T THINK THERE
12 WAS EVIDENCE HERE OF AN INTERVENING CAUSE EITHER BY MR.
13 SOUTHERN NOR BY ANY MEDICAL PERSONNEL.

14 Q. ALL RIGHT, SIR.

15 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

16 THE COURT: VERY GOOD. THEN WE WILL END OUR
17 PROCEEDINGS FOR TODAY. MR. PRUETT, I'M GOING TO ASK YOU NOT
18 OVERNIGHT TO PLEASE HAVE ANY DISCUSSIONS WITH COUNSEL FOR
19 THE STATE OR FOR THE APPLICANT BECAUSE WE'LL COME BACK AND
20 START TOMORROW MORNING AT 9:30 ON YOUR CROSS EXAMINATION.
21 COURT WILL BE IN RECESS UNTIL THAT TIME.

22 (WHEREUPON COURT WAS IN RECESS AT 5:49 PM)

23 FRIDAY, JUNE 1, 2007:

24 (WHEREUPON APPLICANT'S EXHIBITS 12, 13 AND 14 WERE
25 MARKED FOR IDENTIFICATION)

1 THE COURT: THANK YOU. PLEASE BE SEATED, EVERYONE.
2 ALL RIGHT. LET'S SEE. MR. PRUETT, PLEASE RETURN TO THE
3 STAND, IF YOU WILL, SIR. GOOD MORNING. COUNSEL, GOOD
4 MORNING. AND AS YOU WILL RECALL WE WERE ABOUT TO -- WELL,
5 WE ENDED DIRECT EXAMINATION. AND WE'RE READY FOR CROSS
6 EXAMINATION. MR. BLUME.

7 MR. BLUME: THANK YOU, YOUR HONOR.

8 CROSS EXAMINATION BY MR. BLUME:

9 Q. GOOD MORNING, MR. PRUETT.

10 A. MORNING.

11 Q. AS I UNDERSTAND, BASED ON YOUR DIRECT EXAMINATION
12 TESTIMONY, THIS WAS YOUR FIRST CAPITAL CASE AS THE DEFENSE
13 LAWYER?

14 A. THAT'S CORRECT.

15 Q. AND IN THAT REGARD DO YOU REMEMBER IF YOU CONTACTED ANY
16 OTHER CAPITAL DEFENSE LAWYERS FOR RESOURCES ABOUT THE CASE?

17 A. WELL, I CONTACTED OTHER DEFENSE ATTORNEYS IN OUR AREA,
18 THE SEVENTH CIRCUIT, QUESTIONED THEM ABOUT HOW TREY GOWDY,
19 DONNIE WILLINGHAM HAD PRESENTED THEIR CASES. I ALSO SPOKE
20 TO SOMEBODY AT THE CAPITAL DEFENSE RESOURCE OR LITIGATION
21 CENTER IN COLUMBIA. AND I ALSO CONTACTED THE ATTORNEY
22 GENERAL'S OFFICE AND SPOKE TO DON ZELENKA.

23 Q. AND DO YOU RECALL WHETHER IF WHEN YOU CALLED THE
24 RESOURCE CENTER DID YOU SPEAK TO A WOMAN BY THE NAME OF
25 TERESA NORRIS?

1 A. I THINK THAT'S WHAT I PUT IN MY NOTES, IF I RECALL.

2 Q. AND DO YOU RECALL WHETHER MS. NORRIS ADVISED YOU OF THE
3 OR SUGGESTED THAT IT WOULD BE A GOOD IDEA TO RETAIN A
4 MITIGATING SPECIALIST, SOCIAL HISTORY INVESTIGATOR?

5 A. I DON'T RECALL THAT. I MAY HAVE. IT MAY BE IN MY
6 NOTES, MR. BLUME. IF IT IS, THEN I DID.

7 Q. BUT YOU DON'T RECALL IT TODAY?

8 A. NO, I DON'T INDEPENDENTLY RECALL HER SAYING THAT.

9 Q. AND ---

10 A. IT WAS A VERY GENERAL CONVERSATION, PROBABLY LASTED
11 FIFTEEN MINUTES, SOMETHING LIKE THAT.

12 Q. AND YOU SAID YOU ALSO CONTACTED DON ZELENKA AT THE
13 ATTORNEY GENERAL'S OFFICE?

14 A. I DID.

15 Q. AND WAS THE PURPOSE OF THAT TO ASK HIM WHAT IN HIS
16 OPINION THE ATTORNEYS WERE BEING FOUND INEFFECTIVE FOR
17 DOING?

18 A. CORRECT.

19 Q. DID MR. ZELENKA ADVISE YOU TO DO ANYTHING SUCH AS
20 REVIEW THE ABA GUIDELINES ON THE PERFORMANCE OF DEFENSE
21 COUNSEL IN CAPITAL CASES?

22 A. NO. WHAT I ASKED HIM TO DO WAS JUST TO REVIEW THOSE
23 APPLICATIONS THAT WERE BEING FILED DURING THAT TIME PERIOD,
24 WHAT WERE SOME OF THE MISTAKES THAT ATTORNEYS WERE BEING --
25 DEFENSE ATTORNEYS WERE BEING ALLEGED TO HAVE COMMITTED AND

1 GIVE ME SOME IDEA SO THAT I WOULDN'T COMMIT THE SAME MISTAKE
2 OR MISTAKES.

3 Q. NOW ---

4 A. BUT, YOU KNOW, HE NEVER GOT BACK WITH ME, I SHOULD -- I
5 ASKED HIM TO SEND ME SOME APPLICATIONS OR WHATEVER AND HE
6 NEVER DID.

7 Q. AND THAT WAS THE SUM TOTAL OF THAT CONVERSATION?

8 A. CORRECT.

9 Q. NOW AS I UNDERSTAND IT YOUR STRATEGY AT THE GUILT OR
10 INNOCENCE PHASE WAS TWO-FOLD. FIRST WAS TO TRY AND CREATE A
11 REASONABLE DOUBT AS TO WHETHER MR. BINNEY, IN FACT,
12 COMMITTED A BURGLARY?

13 A. CORRECT. THAT WAS THE GUILT PHASE STRATEGY.

14 Q. THAT'S WHAT I'M TALKING ABOUT NOW. THAT'S ---

15 A. YES, SIR. OKAY. I'M SORRY. I'M SORRY.

16 Q. TO RAISE A REASONABLE DOUBT AS TO WHETHER HE COMMITTED
17 A BURGLARY?

18 A. YES.

19 Q. AND THE BASIS OF THAT THEORY WAS THAT HE DIDN'T ENTER
20 THE DWELLING WITH THE INTENT TO COMMIT ANY CRIME?

21 A. CORRECT.

22 Q. BUT RATHER HE ENTERED WITH THE INTENT TO COMMIT
23 SUICIDE, WHICH IS NOT A CRIME IN SOUTH CAROLINA?

24 A. THAT'S WHAT WE ALREADY -- AND THE JUDGE ACCEPTED THAT
25 ARGUMENT.

1 Q. AND THEN YOUR SECONDARY STRATEGY OR MODE OF ATTACK AT
2 THE GUILT OR INNOCENCE PHASE WAS TO RAISE QUESTIONS ABOUT
3 THE POSSIBLE INVOLVEMENT OF THE VICTIM'S HUSBAND IN THIS
4 CASE, ALLAN SOUTHERN?

5 A. I WOULD SAY THAT WAS -- THAT WAS REALLY GEARED MORE
6 TOWARDS, IN MY MIND, TOWARDS THE SENTENCING PHASE AS A FALL-
7 BACK POSITION IF IT DIDN'T WORK. I MEAN, IT WAS PART OF THE
8 GUILT PHASE STRATEGY TO KIND OF RAISE THAT ISSUE AND TO
9 RAISE SOME QUESTIONS ABOUT WHAT HAD OCCURRED ON THAT DAY.
10 YOU'RE CORRECT.

11 Q. AND YOU DID THAT BASED ON INFORMATION WHICH WAS MADE
12 AVAILABLE TO YOU BY THE PROSECUTION, IN PART?

13 A. CORRECT.

14 Q. AND ON OTHER WITNESS INTERVIEWS YOU AND MR. SLADE HAD
15 CONDUCTED?

16 A. THAT'S CORRECT.

17 Q. AND THE BASIS YOU INDICATED, I BELIEVE, DURING YOUR
18 DIRECT EXAMINATION THAT THERE WERE MANY CIRCUMSTANCES IN
19 THIS CASE WHICH WERE HIGHLY SUGGESTIVE OF MR. SOUTHERN'S
20 INVOLVEMENT IN THIS CASE?

21 A. WITHOUT ANY DOUBT.

22 Q. AND THOSE HAD TO DO WITH THE FACT THAT THERE WAS -- THE
23 EVIDENCE INDICATED THERE HAD BEEN A HISTORY OF MARITAL
24 DISCORD?

25 A. THAT'S CORRECT.

1 Q. THERE HAD BEEN, AT LEAST ACCORDING TO THE DOCUMENTS YOU
2 RECEIVED, MULTIPLE AFFAIRS ON THE SIDES OF BOTH PARTIES?

3 A. I DON'T KNOW ABOUT MULTIPLE, BUT THERE HAD BEEN
4 EXTRAMARITAL AFFAIRS DURING THE TIME PERIOD THAT WE'RE
5 TALKING ABOUT. YES, SIR.

6 Q. THERE HAD BEEN A PREVIOUS REQUEST FOR A DIVORCE BY MS.
7 SOUTHERN?

8 A. I DON'T KNOW IF SHE EVER -- YOU MEAN FILED FOR A
9 DIVORCE, MR. BLUME?

10 Q. OR AT LEAST A REQUEST FOR A DIVORCE. YOU HAD
11 INFORMATION TO THAT EFFECT?

12 A. YES, THEY WERE DISCUSSING THAT. AND SHE WAS CERTAINLY
13 DISCUSSING THAT, I BELIEVE, WITH HER SISTER AT THE TIME.

14 Q. AND SHE HAD GOOD INFORMATION FROM STATEMENTS SHE HAD
15 PREVIOUSLY SOME YEARS BEFORE REQUESTED A DIVORCE FROM MR.
16 SOUTHERN BECAUSE OF AN AFFAIR THAT HE HAD?

17 A. THAT, I UNDERSTOOD, IS CORRECT.

18 Q. BUT THAT THAT -- APPARENTLY THAT DIDN'T HAPPEN AT THAT
19 TIME BECAUSE MR. SOUTHERN DIDN'T WANT TO DIVIDE THE MARITAL
20 ASSETS?

21 A. THAT WAS MY THINKING. THAT'S JUST MY RECOLLECTION OF
22 IT.

23 Q. THAT WAS CONTAINED IN A STATEMENT, WHICH WAS PROVIDED
24 TO YOU?

25 A. OKAY. THEN THAT WOULD BE CORRECT. AND IT SOUNDS

1 CORRECT.

2 Q. AND ALSO YOU DISCOVERED INFORMATION OR YOU WERE
3 PRESENTED WITH INFORMATION THAT MR. SOUTHERN HAD BEEN
4 MARRIED PREVIOUSLY?

5 A. YES.

6 Q. AND YOU DEDUCED FROM THAT IN YOUR NOTES THAT BECAUSE OF
7 THAT HE WOULD HAVE SOME IDEA OF THE FINANCIAL RAMIFICATIONS
8 OF ANOTHER DIVORCE?

9 A. THAT WAS MY DEDUCTION, YES, SIR. I THINK IT'S PROBABLY
10 TRUE.

11 Q. AND YOU ALSO HAD INFORMATION THAT MS. SOUTHERN WAS
12 SEEING -- POTENTIALLY SEEING AN ATTORNEY AND MAKING PLANS TO
13 LEAVE?

14 A. I PROBABLY DID. AND THAT PROBABLY CAME MAYBE FROM THE
15 TELEPHONE CONVERSATION TAPES. BUT THAT'S MY UNDERSTANDING
16 THAT SHE HAD DEFINITELY TAKEN AFFIRMATIVE STEPS AT ONE POINT
17 AND HAD MADE COMMENTS TO THE EFFECT, I'M GOING TO MAKE IT
18 LOOK GOOD, GO TO COUNSELING FOR A WHILE. AND THEN THERE WAS
19 THIS SUICIDE ATTEMPT IN THE INTERVENING TIME THAT, I THINK,
20 KIND OF PUT THOSE PLANS ON HOLD OR SIDETRACKED THOSE PLANS.

21 Q. SO YOU HAD SORT OF ALL OF THAT AS BACKGROUND MATERIAL?

22 A. YES, SIR.

23 Q. IN ADDITION TO THAT, I THINK, YOU ALSO HAD WHAT ANY
24 PERSON WOULD CHARACTERIZE AS UNUSUAL CIRCUMSTANCES THE DAY
25 THAT MS. SOUTHERN DIED?

1 A. YES, SIR.

2 Q. THAT YOU HAD STATEMENTS FROM PEOPLE THAT KNEW HER THAT
3 SHE WAS VISIBLY UPSET AT WORK, CORRECT?

4 A. THAT'S CORRECT.

5 Q. THAT SHE HAD MADE A STATEMENT TO THE EFFECT THAT THAT
6 WAS THE DAY SHE WAS GOING TO DIE?

7 A. THAT'S MS. BROWN'S STATEMENT, YES, SIR.

8 Q. AND OTHER PEOPLE ALSO THAT WORKED THERE GAVE STATEMENTS
9 WHICH CORROBORATED THE FACT THAT SHE APPEARED DIFFERENT,
10 VISIBLY UPSET, SHAKEN THAT DAY?

11 A. YES, SIR.

12 Q. AND THEN AFTER MAKING THAT STATEMENT THAT TURNS OUT TO
13 BE, IN FACT, THE DAY SHE DIES?

14 A. THAT'S CORRECT.

15 Q. AND SO ONE WOULD THINK THAT THAT'S A HIGHLY SUSPICIOUS
16 CIRCUMSTANCE, CORRECT?

17 A. NO DOUBT.

18 Q. IN ADDITION TO THAT YOU HAD WHAT YOU RAISED AND ARGUED
19 AS, I DON'T KNOW HOW TO CHARACTERIZE IT, BUT -- DON'T WANT
20 TO UNFAIRLY CHARACTERIZE IT, AS UNUSUAL OR AT LEAST ARGUABLY
21 UNUSUAL BEHAVIOR ON THE PART OF MR. SOUTHERN AFTER HIS WIFE
22 WAS SHOT?

23 A. CORRECT.

24 Q. NO ONE OR AT LEAST EARLY ON THERE WAS NOT AN IMMEDIATE
25 CALL TO 911.

- 1 A. CORRECT. ARE YOU ASKING ME TO RESPOND? I MEAN, YOU'RE
2 MAKING ---
- 3 Q. I'M SORRY.
- 4 A. I'M JUST KIND OF CHIMING IN, BUT IF YOU'RE ASKING A
5 QUESTION, YES, ---
- 6 Q. YES.
- 7 A. --- THAT'S CORRECT.
- 8 Q. AND THAT YOU ALSO INDICATED ON DIRECT THERE WAS
9 INFORMATION THAT HE DROVE BY AN EMS SUBSTATION AND DID NOT
10 STOP, CORRECT?
- 11 A. THAT WAS IN HIS TESTIMONY. I DON'T BELIEVE I TESTIFIED
12 TO IT, BUT THAT'S CORRECT. THERE WAS AN EMS SUBSTATION ON
13 HIGHWAY 29 BETWEEN MARY BLACK AND THE SOUTHERN RESIDENCE.
- 14 Q. AND THEN THERE WAS THE TESTIMONY THAT EVEN THOUGH HE
15 HAD AT LEAST SUPPOSEDLY BEEN ADVISED THAT MS. SOUTHERN WAS
16 IN THE PASTURE HE FIRST WENT TO THE HOUSE, CORRECT?
- 17 A. THAT'S CORRECT.
- 18 Q. THEN THERE WAS SOME TESTIMONY WHICH YOU ATTACKED WHICH
19 SEEMED INCORRECT ABOUT WHETHER THE PHONE LINES WERE, IN
20 FACT, CUT.
- 21 A. IF THAT'S IN THE RECORD, THAT SPEAKS -- I DON'T RECALL.
22 I REMEMBER THERE BEING SOME QUESTION ABOUT THE TELEPHONE
23 LINES BEING CUT BY ---
- 24 Q. SINCE THERE ---
- 25 A. --- MR. BINNEY.

1 Q. --- WAS A MESSAGE LEFT, SUPPOSEDLY, ON THE MACHINE
2 HEARD BY ---

3 A. RIGHT.

4 Q. WHICH WOULD APPEAR TO BE INCONSISTENT WITH THE PHONE
5 LINES BEING CUT?

6 A. THAT'S CORRECT. MR. BINNEY'S STATEMENT, RIGHT.

7 Q. OKAY. AND SO THOSE CIRCUMSTANCES WERE WHAT GAVE RISE
8 TO WHAT I BELIEVE -- BECAUSE YOU WANTED TO, QUOTE, LEAVE THE
9 DOOR OPEN FOR THE POSSIBILITY OF SOME INVOLVEMENT BY MR.
10 SOUTHERN IN THIS CASE, CORRECT?

11 A. CORRECT.

12 Q. OKAY. AND THAT WAS YOUR, I'M GOING TO COME BACK IN A
13 LITTLE BIT, BUT THAT WAS BASICALLY THE STRATEGY OF THE GUILT
14 OR INNOCENCE PHASE OF THE TRIAL, THOSE SORT OF TWO MOVING
15 PIECES, THE PRIMARY STRATEGY?

16 A. WELL, THAT AND NOT GETTING INTO AREAS THAT WE DID NOT
17 WANT THE JURY TO KNOW UNTIL THE SENTENCING PHASE. SO WE
18 KIND OF HAD TO ---

19 Q. LIMITING INFORMATION OR EXCLUDING INFORMATION REGARDING
20 THE CRIMINAL SEXUAL CONDUCT OF HIS DAUGHTER?

21 A. THAT AND HIS PRIOR CRIMINAL RECORD. I MEAN, ALL OF
22 THOSE THINGS -- KIND OF NOT HAVE THE JURY CONSIDER THAT,
23 JUST FOCUS ON THE BURGLARY ISSUE WITHOUT HAVING THESE OTHER
24 MATTERS MAYBE INFLUENCE THEIR VERDICT.

25 Q. NOW -- AND THEN AT THE SENTENCING PHASE YOU PRIMARILY

1 RELIED UPON DR. DONNA SCHWARTZ-WATTS TO PRESENT THE EVIDENCE
2 IN MITIGATION OF PUNISHMENT?

3 A. RELATING TO HIS MENTAL HEALTH ISSUES.

4 Q. AND THEN YOU PRESENTED HIS FATHER, CORRECT?

5 A. CORRECT.

6 Q. AND THEN IN ADDITION TO THAT YOU PRESENTED THE
7 TESTIMONY OF ALEX MORTON TO CORROBORATE APPARENTLY THE
8 SUICIDE PART THAT YOU RAISED PREVIOUSLY?

9 A. THAT AND HIS BEHAVIOR THAT DAY.

10 Q. OKAY. SO NOW LET ME TURN TO A SLIGHTLY DIFFERENT
11 MATTER. IN THIS CASE I BELIEVE YOU TESTIFIED YOU DID NOT
12 HAVE A JURY SELECTION EXPERT?

13 A. NO.

14 Q. AND YOU DISCUSSED THE NEED OR THE POSSIBILITY OF
15 OBTAINING ONE WITH MR. SLADE ON SEVERAL OCCASIONS?

16 A. ACTUALLY HE DISCUSSED WITH ME. THAT WAS HIS DESIRE
17 MORESO THAN MINE. SO I JUST LET HIM TAKE CARE OF THAT. I
18 MEAN, HE EXPLAINED TO ME WHY HE THOUGHT WE NEEDED ONE. HE
19 HAD SOMEBODY SPECIFICALLY IN MIND THAT HE HAD SEEN AT A
20 SEMINAR, I THINK, IN ATLANTA, GEORGIA. AND THAT'S WHO HE
21 WANTED SPECIFICALLY. SO I LET HIM ADDRESS THAT AND
22 DISCUSSED THAT WITH JUDGE COLE.

23 Q. YOU DISCUSSED IT WITH JUDGE COLE?

24 A. NO, I LET MR. SLADE -- I WAS PRESENT WHEN THAT
25 CONVERSATION OCCURRED, BUT MITCH MORE OR LESS TOOK CONTROL

1 OF THAT ISSUE AND MADE THE CASE TO JUDGE COLE WHY HE THOUGHT
2 WE NEEDED A JURY SELECTION EXPERT.

3 Q. AND JUDGE COLE DENIED THE REQUEST FOR FUNDS FOR A JURY
4 SELECTION EXPERT?

5 A. THAT'S CORRECT.

6 Q. DO YOU RECALL WHETHER YOU EVER PUT THAT ON THE RECORD?

7 A. I DON'T BELIEVE WE DID. I DON'T BELIEVE WE DID.

8 Q. PARDON ME?

9 A. I DON'T BELIEVE WE DID. I DON'T RECALL DOING THAT.

10 Q. AND ARE YOU FAMILIAR WITH THE SUPREME COURT'S DECISION
11 IN AKE VERSUS OKLAHOMA?

12 A. YES, SIR, SOMEWHAT. IT'S BEEN A WHILE SINCE I'VE READ
13 IT.

14 Q. BUT IN AKE THE SUPREME COURT HELD THAT AN INDIGENT
15 DEFENDANT IS ENTITLED TO CERTAIN EXPERT SERVICES IN A
16 CAPITAL CASE, CORRECT?

17 A. YES, SIR.

18 Q. SO DID YOU CONSIDER EVER PUTTING THIS ON THE RECORD,
19 THE DENIAL OF FUNDS FOR A JURY SELECTION EXPERT, IN ORDER TO
20 PRESERVE THAT ISSUE FOR APPEAL?

21 A. I DIDN'T.

22 Q. NOW AT THE GUILT OR INNOCENCE PHASE OF THE TRIAL -- I
23 BELIEVE YOU TESTIFIED IN YOUR DIRECT EXAMINATION THAT YOU
24 DID NOT HIRE A PRIVATE INVESTIGATOR IN THIS CASE?

25 A. NO.

1 Q. AND AS I -- I DON'T WANT TO UNFAIRLY CHARACTERIZE YOUR
2 TESTIMONY. SO YOU CORRECT ME AT ANY TIME WHILE I'M TRYING
3 TO CUT TO THE CHASE ON MANY ---

4 A. OKAY.

5 Q. --- OF THESE MATTERS. AND AS I UNDERSTAND YOUR
6 TESTIMONY YOU SAID YOU DID NOT DO THAT BECAUSE YOU BELIEVED
7 THAT THE PRIMARY ROLE A FACT INVESTIGATOR WOULD PLAY WOULD
8 HAVE BEEN TO DEVELOP ADDITIONAL ELEMENTS ON THE POSSIBLE
9 INVOLVEMENT OF MR. SOUTHERN IN THIS CASE?

10 A. CORRECT.

11 Q. AND YOU -- AND SINCE MR. BINNEY DENIED DURING YOUR
12 CONVERSATIONS ANY INVOLVEMENT BY MR. SOUTHERN THAT DIDN'T
13 SEEM TO BE A FRUITFUL AVENUE TO PURSUE?

14 A. THAT ALONG WITH HIS OWN ADMISSION THAT HE HAD SHOT MS.
15 SOUTHERN, PUT THE TWO TOGETHER. AND I'M SORRY. CAN I
16 EXPLAIN THAT OR ...

17 Q. SURE.

18 A. OKAY. BY THAT I MEAN NOT ONLY WAS THERE NOT A THIRD
19 PARTY INVOLVED, THAT BEING MR. SOUTHERN, BUT THAT HE HIMSELF
20 HAD ACTUALLY SHOT MS. SOUTHERN. SO THERE WASN'T A THIRD
21 PARTY TO GO LOOK FOR IF HE'S SAYING I'M THE PERSON THAT SHOT
22 HER.

23 Q. BUT -- OKAY. SO, BUT YOU ALSO SAID, I BELIEVE, IN YOUR
24 DIRECT EXAMINATION THAT YOU WANTED TO LEAVE THE DOOR OPEN
25 DURING THE TRIAL FOR THE POSSIBILITY THAT MR. BINNEY MIGHT

1 SAY TO YOU AT SOME POINT, YOU KNOW, REALLY, IN FACT, MR.
2 SOUTHERN WAS INVOLVED?

3 A. THAT'S TRUE. AND I BELIEVE THAT WAS A POSSIBILITY.
4 THERE WERE SOME OTHER -- SOME OF IT'S RUMOR BASED, MR.
5 BLUME. SO I'M HESITANT TO TESTIFY TO IT. BUT THERE WERE
6 STATEMENTS MADE THAT MAYBE THE TWO OF THEM HAD SOMEHOW MET
7 EACH OTHER AT ONE POINT IN TIME. I KNOW HE'D BEEN TO THE
8 BOWLING ALLEY THAT MR. SOUTHERN OWNED BECAUSE HE ADMITTED
9 HE'D BEEN THERE. THERE WERE SOME STATEMENTS THAT MAYBE THE
10 CHILDREN OF MR. BINNEY AND MR. SOUTHERN'S SON HAD STAYED AT
11 THE SAME DAYCARE AT SOME POINT. THEY LIVED ON THE SAME
12 ROAD. THERE'S A LOT THERE TO SUGGEST POSSIBLE CONTACTS.

13 Q. HAD AN INTERNET INVOLVEMENT OR CONNECTION IN THAT
14 REGARD?

15 A. RIGHT. PORNOGRAPHY. WE JUST DIDN'T KNOW. AND THIS
16 CASE HAD SO MANY WEIRD FACETS TO IT. AND WEIRD IS THE ONLY
17 WORD I CAN THINK OF THAT IT CERTAINLY LEFT OPEN IN MY MIND,
18 WELL, THERE MAY BE A CONNECTION. AND FOR WHATEVER ---

19 Q. AND BASED ON ---

20 A. I'M SORRY.

21 Q. I'M SORRY. I DID NOT MEAN ---

22 A. AND FOR WHATEVER REASON, YOU KNOW, CLIENTS DON'T TELL
23 THEIR ATTORNEYS THE WHOLE TRUTH, THAT MIGHT APPLY IN THIS
24 CASE.

25 Q. AND THE FACTS AND CIRCUMSTANCES AS SUCH WERE SO SORT OF

1 SUGGESTIVE IN YOUR MIND THAT YOU COULDN'T RULE THAT OUT AS A
2 POSSIBILITY?

3 A. NO. I DIDN'T RULE IT OUT.

4 Q. SO I GUESS, YOU KNOW, WHAT I'M TRYING TO FIGURE OUT
5 HERE IS IF THAT WAS OPEN AS A POSSIBILITY IN YOUR BRAIN AND
6 CONTINUED TO BE OPEN, THEN WHY WOULDN'T THE SERVICES OF A
7 PRIVATE INVESTIGATOR TO DEVELOP ADDITIONAL EVIDENCE AND IN
8 CASE THE DOOR OPENED TO HAVE ADDITIONAL EVIDENCE TO TAKE
9 THROUGH THE DOOR, HOW THAT WOULD NOT HAVE BEEN BENEFICIAL TO
10 THE DEVELOPMENT AND PRESENTATION OF EVIDENCE IN THIS CASE?

11 A. WELL, THE ONLY PERSON THAT WOULD HAVE KNOWN THAT WOULD
12 HAVE BEEN MR. BINNEY, AND ASSUMING MR. SOUTHERN WAS
13 INVOLVED, MR. SOUTHERN. AND I DIDN'T KNOW OF ANY OTHER
14 EVIDENCE TO EXIST TO GIVE TO A PRIVATE INVESTIGATOR OR
15 INVESTIGATOR TO PURSUE. IT'S ALMOST LIKE HIRING SOMEBODY TO
16 PURSUE SOMETHING THAT DOESN'T EXIST IF YOU DON'T KNOW IT'S
17 THERE.

18 Q. WELL, I MEAN, THERE COULD HAVE BEEN, FOR EXAMPLE,
19 ADDITIONAL EVIDENCE REGARDING HIS PRIOR MARRIAGES, REGARDING
20 HIS BACKGROUND, REGARDING HIS PRIOR FINANCIAL TRANSACTIONS,
21 REGARDING OTHER MATTERS IN THIS CASE, WHICH POTENTIALLY
22 COULD HAVE BEEN CORROBORATIVE OF THIS EVIDENCE.

23 A. THAT MIGHT AGAIN GO TO THE ISSUE OF MR. SOUTHERN'S
24 INVOLVEMENT, IF THERE WAS ANY, BUT THE QUESTION I HAD,
25 WHAT'S THE LINK BETWEEN MR. BINNEY AND MR. SOUTHERN? THAT

1 WAS -- WOULD BE THE EVIDENCE THAT I WOULD BE LOOKING FOR. I
2 JUST DIDN'T KNOW OF ANY.

3 Q. BUT IF THAT DOOR OPENED YOU WOULD AGREE THAT YOU WOULD
4 HAVE WANTED TO HAVE PRESENTED THE STRONGEST CASE POSSIBLE
5 ~~---~~

6 A. CORRECT.

7 Q. --- IN THAT REGARD?

8 A. CORRECT.

9 Q. NOW LET ME MOVE TO ANOTHER ASPECT OF THIS. NOW ONE
10 POSSIBILITY OF WHAT HAPPENED IS THAT IT HAPPENED MORE OR
11 LESS RIGHT LIKE THE PROSECUTION SAID IT HAPPENED, CORRECT?

12 A. WHICH IS JUST A ---

13 Q. THE CRIME. I'M SORRY, THE DEFINITENESS OF IT. THAT
14 WAS THAT MR. BINNEY WENT IN THE HOUSE FOR EITHER BECAUSE, AS
15 YOU'VE ALLEGED, TO COMMIT SUICIDE OR, AS THEY ALLEGED, TO
16 COMMIT SOME OTHER CRIME. HE REMAINS IN THE HOUSE. MS.
17 SOUTHERN COMES HOME. HE SHOOTS HER. AND HE -- SHE STARTLES
18 HIM OR WHATEVER AND HE SHOOTS HER. SHE RUNS OUT INTO THE
19 PASTURE. HE RUNS OUT. AND THAT'S CERTAINLY POSSIBLY WHAT
20 HAPPENED IN THIS CASE. IN FACT, IT'S WHAT THE JURY FOUND IN
21 ~~---~~

22 A. WELL, I MEAN, THAT WAS PROBABLY FROM BOTH SIDES'
23 PERSPECTIVE AS TO WHAT HAPPENED AS I UNDERSTOOD THE FACTS.

24 Q. ANOTHER POSSIBILITY WHICH YOU KEPT OPEN THROUGHOUT THE
25 TRIAL WAS A MURDER FOR HIRE SCHEME?

1 A. CORRECT.

2 Q. NOW ANOTHER POSSIBILITY, WHICH I BELIEVE YOU SUGGESTED,
3 REMAINED OPEN OR AT LEAST WERE TRYING TO KEEP OPEN DURING
4 THE STRATEGY TO WHICH MR. SLADE TESTIFIED WAS THE
5 POSSIBILITY THAT MR. BINNEY DID, IN FACT, SHOOT MS. SOUTHERN
6 -- MS. SOUTHER, AND MR. SOUTHERN WAS IN SOME WAY LESS THAN
7 DILIGENT IN GETTING HER TO THE HOSPITAL?

8 A. AND I'M SORRY, YOUR QUESTION WAS?

9 Q. THAT WAS A THIRD POSSIBILITY WHICH WAS AT LEAST
10 SUGGESTED AND REMAINED OPEN BY THE EVIDENCE?

11 A. WELL, MY THOUGHT ON THAT WAS IT WASN'T AN INDEPENDENT
12 CAUSATION ISSUE AS TO THAT DRIVE. EITHER IT WAS LINKED TO
13 THIS IDEA THERE WAS A CONSPIRACY THERE BETWEEN BINNEY AND
14 MR. SOUTHERN OR THERE WASN'T. BUT I REALLY DIDN'T THINK
15 THAT THE -- IF THERE WAS NO LINK BETWEEN THE TWO OF THEM,
16 THEN I DIDN'T THINK THERE WAS AN INDEPENDENT GROUND TO
17 ARGUE, INTERVENING CAUSE OR A CAUSATION ISSUE.

18 Q. WELL, LET'S TALK ABOUT THAT AT LEAST AS A POSSIBILITY
19 FOR A MOMENT. YOU HAD NO REASON TO QUESTION AT LEAST THE
20 GENERAL VERACITY OF THE UNDERLYING INFORMATION ABOUT THE
21 PROBLEMS IN THE MARRIAGE?

22 A. NO.

23 Q. AND CERTAINLY LET'S ASSUME FOR A MOMENT THAT, JUST
24 ASSUMING THAT MR. SOUTHERN DID THIS, HE WOULD NOT HAVE BEEN
25 THE FIRST HUSBAND IN THE HISTORY OF THIS COUNTY OR THIS

1 COUNTRY TO HAVE KILLED A SPOUSE UNDER SIMILAR CIRCUMSTANCES?

2 A. YOU'RE CORRECT, SIR. RIGHT.

3 Q. THAT THIS TYPE OF MARITAL DISCORD, FINANCIAL STRUGGLES
4 AND PRESSURE HAVE RESULTED CERTAINLY IN OTHER TYPES OF
5 DOMESTIC HOMICIDES OF THIS NATURE?

6 A. I HAVE PROSECUTED CASES JUST LIKE THAT.

7 Q. SO YOU -- AND YOU AGREE THAT THE CIRCUMSTANCES OF THIS
8 WERE STRANGE AND BIZARRE NO MATTER HOW YOU CUT IT?

9 A. THAT, I'D AGREE WITH, YES.

10 Q. SO IS IT NOT AT LEAST POSSIBLE CONSIDERING ALL THE
11 FACTS AND CIRCUMSTANCES THAT IT WAS A BIZARRE SET OF
12 CIRCUMSTANCES THAT THERE WAS SOME EITHER DESIRE, INTENT OR
13 PLAN ON MR. SOUTHERN'S PART TO KILL HIS WIFE OR HAVE HIS
14 WIFE KILLED, MR. BINNEY WAS THERE, HE ARRIVES BACK, SHE'S
15 WOUNDED AND HE THINKS, WELL, OKAY, HERE'S A SITUATION, YOU
16 KNOW?

17 OR POSSIBLY SHE BELIEVES HE'S INVOLVED IN MR. BINNEY'S
18 -- AND STARTS MAKING ACCUSATIONS AGAINST HIM, YOU KNOW, WHY
19 DID YOU DO THAT? AND HE FEELS AS IF HE HAS TO DO THIS. AT
20 LEAST THAT'S -- THERE IS NOTHING IN THE FACTS AND
21 CIRCUMSTANCES OF THIS CASE WHICH RULE THAT OUT AS A
22 POSSIBILITY?

23 A. NOW, I WANT TO BE SURE I UNDERSTAND WHAT YOU'RE ASKING.
24 IN OTHER WORDS, MR. SOUTHERN, THE QUESTION AS I UNDERSTAND
25 IT, FOUND AN OPPORTUNE SITUATION ...

1 Q. AND TOOK ADVANTAGE OF IT?

2 A. RIGHT. NOT THAT MR. BINNEY AND HE HAD CONSPIRED
3 TOGETHER.

4 Q. CORRECT.

5 A. WE CONSIDERED THAT. THE SLOW DRIVE THEORY TO THE
6 HOSPITAL.

7 Q. AND THAT WAS LEFT OPEN BY AT LEAST IN PART TO WHAT --
8 YOUR EXAMINATION IN THIS CASE?

9 A. MORESO JUST BECAUSE THAT'S WHAT HAPPENED. MORESO
10 BECAUSE WHEN HE GOT THERE THAT'S HOW THE FACTS UNFOLDED.

11 Q. WELL, THERE WERE ALSO ADDITIONAL FACTS, RIGHT? FOR
12 EXAMPLE, NO ONE KNOWS FOR SURE WHAT TIME MR. SOUTHERN
13 ARRIVED AT THE HOUSE.

14 A. NOT THE EXACT TIME.

15 Q. RIGHT.

16 A. THERE'S APPROXIMATE TIMES.

17 Q. WELL, WITHIN A FIVE, TEN, FIFTEEN MINUTE WINDOW?

18 A. RIGHT.

19 Q. NO ONE IS FOR SURE. THERE IS NO OBJECTIVE EVIDENCE AS
20 TO WHEN HE ARRIVED AT THE HOUSE?

21 A. THAT'S CORRECT.

22 Q. AND THERE IS NO HARD OBJECTIVE EVIDENCE AS TO WHEN HE
23 LEFT THE HOUSE FOR THE HOSPITAL?

24 A. I WAS TRYING TO REMEMBER WHEN HE RECEIVED -- HE
25 RECEIVED THE TELEPHONE CALL EN ROUTE TO THE HOSPITAL. BUT,

1 YOU'RE RIGHT, THERE IS NO TIME ANYBODY COULD TESTIFY TO AS
2 TO WHEN HE LEFT.

3 Q. AS TO WHEN HE LEFT?

4 A. YES, SIR. I'D AGREE WITH THAT.

5 Q. AND GIVEN THE NATURE OF THESE INJURIES, FIVE, TEN OR
6 FIFTEEN MINUTES COULD HAVE MADE A SIGNIFICANT DIFFERENCE?

7 A. COULD HAVE.

8 Q. IN THE CASE. ALL RIGHT. AND THEN A FOURTH POSSIBILITY
9 NOT EXCLUDED BY THE EVIDENCE, AS I UNDERSTAND IT, YOU SAID
10 THAT MR. BINNEY ADMITTED TO YOU THAT HE SHOT MS. SOUTHERN?

11 A. YES, HE DID.

12 Q. BUT, IN FACT, RIGHT, WHAT MR. BINNEY ADMITTED IS THAT
13 HE SHOT AT MS. SOUTHERN?

14 A. I DON'T -- I DON'T KNOW IF I AGREE WITH THAT. HE WAS
15 SO CLOSE TO HER WHEN SHE PASSED THE HALLWAY. MY
16 RECOLLECTION IS HE SAID I -- YOU'RE RIGHT. IN HIS STATEMENT
17 HE SAYS I SHOT AT. HE DOES NOT SAY I SHOT. AND ---

18 Q. WELL, ---

19 A. --- HE SAYS IN HIS STATEMENT, I DON'T KNOW WHEN I RAN
20 OUT OF THE HOUSE IF I'D SHOT HER OR NOT.

21 Q. WELL, WHETHER OR NOT IT'D BE UNUSUAL, I BELIEVE, HE
22 SAID HE CLOSED HIS EYES AND SHOT HER IS ---

23 A. YOU'RE RIGHT.

24 Q. --- WHAT IT SAYS IN HIS STATEMENT.

25 A. THAT IS WHAT HIS STATEMENT SAYS.

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1 Q. SO THAT WOULD INDICATE THAT HE DID ADMIT HE FIRED THE
2 GUN AT MS. SOUTHERN?

3 A. CORRECT.

4 Q. BUT IT'S AT LEAST POSSIBLE THAT HE DID NOT HIT HER?

5 A. IT'S POSSIBLE.

6 Q. AND THE FACTS, WHICH AT LEAST DON'T EXCLUDE THAT AS A
7 POSSIBILITY, CORRECT, OR THERE WAS NO BLOOD IN THE HOUSE?

8 A. THAT'S MY ---

9 Q. CORRECT?

10 A. --- RECOLLECTION.

11 Q. AND THERE WAS NO BLOOD FOUND ON THE BULLET, WHICH WAS
12 FOUND IN THE HOUSE?

13 A. THAT'S CORRECT.

14 Q. IN ADDITION TO THAT IS IT NOT TRUE THAT MR. SOUTHERN
15 HAD BOTH A 9 MILLIMETER AND A .22 PISTOL?

16 A. I DON'T HAVE ANY INDEPENDENT RECOLLECTION OF THAT. I
17 KNOW -- I THINK MR. SALTER ASKED ME THAT YESTERDAY, BUT THAT
18 SOUNDS CONSISTENT WITH WHAT I REMEMBER OR WHAT I THINK I
19 REMEMBER.

20 Q. AND A 9 MILLIMETER WAS THE MURDER WEAPON OR ALLEGED
21 MURDER WEAPON POSSESSED BY MR. BINNEY?

22 A. THAT SOUNDS CORRECT.

23 Q. AND THEN DO YOU ALSO RECALL THE TESTIMONY AT THE TRIAL
24 THAT MR. SOUTHERN HAD A .22, BUT HE COULD NOT FIND IT?

25 A. I DON'T RECALL THAT. I MEAN, IT'S EITHER IN THE RECORD

1 OR IT ISN'T. I DON'T RECALL THAT.

2 Q. SO AT LEAST AN ADDITIONAL POSSIBILITY NOT EXCLUDED BY
3 THE PHYSICAL EVIDENCE IN ANY WAY IS THAT MR. BINNEY SHOOTS
4 MS., MR. SOUTHERN ARRIVES HOME, SOMETHING HAPPENS, SHE
5 BELIEVES HE'S INVOLVED WITH IT SOMEHOW, AN ALTERCATION
6 OCCURS, AND HE SHOOTS AND KILLS HIS WIFE?

7 A. WELL, THAT'S A LITTLE MORE HYPOTHETICAL THAN THE OTHER
8 SCENARIOS YOU'VE MENTIONED BECAUSE SHE DID MAKE THE CALL TO
9 MR. CHAPMAN AND SAYS I'VE BEEN STABBED. AND THE TELEPHONE
10 CALL, THE TIME-LINE THERE KIND OF FITS MORE WITH THE OTHER
11 VERSIONS YOU'VE MENTIONED.

12 Q. RIGHT. BUT LET'S -- LET'S ALSO TALK ABOUT THAT FOR A
13 MINUTE. ROY CHAPMAN WORKED FOR MR. SOUTHERN?

14 A. THAT'S TRUE.

15 Q. ROY CHAPMAN WAS HEAVILY FINANCIALLY DEPENDENT UPON MR.
16 SOUTHERN?

17 A. I'D AGREE WITH THAT.

18 Q. ROY CHAPMAN, YOU ALSO HAD INFORMATION AFTER MS.
19 SOUTHERN'S DEATH, ROY CHAPMAN, PEOPLE TOLD YOU, THAT HE'D
20 RECEIVED A NEW TRUCK OR HE MOVED ON MR. SOUTHERN'S PROPERTY,
21 IN THAT REGARD, CORRECT?

22 A. I DON'T KNOW ABOUT HIM MOVING ON THE PROPERTY. HE MAY
23 HAVE. BUT I REMEMBER THERE WAS SOME TALK ABOUT HIM HAVING A
24 NEW TRUCK.

25 Q. AND HE ONLY -- WE ONLY HAD -- IT'S NOT AS IF THERE'S A

- 1 RECORDING OF ANY PHONE CALL MADE FROM MS. SOUTHERN'S CELL
2 PHONE TO ROY CHAPMAN?
3 A. NO. THERE WAS JUST ---
4 Q. WE ONLY HAVE HIS VERSION AS TO WHAT HAPPENED?
5 A. I THINK THE PHONE RECORDS ALSO.
6 Q. RIGHT. BUT THE PHONE RECORDS DON'T INDICATE WHO MADE
7 THE CALL. THEY JUST INDICATE WHOSE PHONE IT WAS MADE FROM?
8 A. THAT'S TRUE. THAT'S CORRECT.
9 Q. I MEAN, THE PHONE RECORDS DON'T TELL YOU THAT JUDY
10 SOUTHERN, IN FACT, USED HER CELL PHONE TO CALL. THEY JUST
11 TELL YOU THAT JUDY SOUTHERN'S CELL PHONE WAS USED.
12 A. THAT'S CORRECT.
13 Q. AND THE POLICE, IN FACT, INVESTIGATED OR AT LEAST
14 CONSIDERED THE POSSIBILITY OF ROY CHAPMAN'S INVOLVEMENT IN
15 THIS AS WELL. DO YOU ---
16 A. THEY DID.
17 Q. --- RECALL THAT? IN PART THAT WAS BECAUSE OF EVIDENCE
18 THEY RECEIVED THAT MR. CHAPMAN HAD SOMETIMES FOLLOWED MS.
19 SOUTHERN?
20 A. YES.
21 Q. WORKED -- AND WORKED FOR MR. SOUTHERN?
22 A. YES.
23 Q. IN FACT, DO YOU RECALL THE EVIDENCE THAT THE POLICE
24 ASKED MR. CHAPMAN IF HE WOULD TAKE A POLYGRAPH AND HE
25 REFUSED?

1 A. THAT'S CORRECT.

2 MR. SALTER: YOUR HONOR, I'M GOING TO OBJECT TO THE
3 LAST QUESTION AND ANSWER. I DON'T BELIEVE THAT EVIDENCE
4 CONCERNING THE POLYGRAPH WOULD BE ADMISSIBLE.

5 THE COURT: I'M GOING TO OVERRULE. WHETHER IT'S
6 ADMISSIBLE OR NOT IS NOT REALLY THE ISSUE. THE QUESTION
7 GOES TO COUNSEL'S INVESTIGATION OF THE CASE.

8 MR. SALTER: ALL RIGHT. YOUR HONOR, MY POINT -- I
9 DON'T MEAN TO ARGUE WITH YOU, YOUR HONOR. SO CUT ME OFF IF
10 YOU'D LIKE.

11 THE COURT: GO AHEAD.

12 MR. SALTER: BUT I GUESS MY POINT WOULD BE EVEN IF
13 COUNSEL HAD THIS INFORMATION, HOW DO YOU USE IT? THAT'S --
14 THAT'S MY POINT.

15 THE COURT: ALL RIGHT. AGAIN, YOUR OBJECTION IS NOTED,
16 BUT ---

17 MR. SALTER: THANK YOU.

18 THE COURT: AND I'M NOT SURE WHERE THE NEXT QUESTION IS
19 GOING WITH THIS OR WHETHER IT WILL BEAR ON THAT ISSUE OR
20 NOT, BUT THE COURT WILL GIVE MR. BLUME SOME LATITUDE AS HE
21 INVESTIGATES THESE VARIOUS MATTERS WITH COUNSEL. OVERRULED.
22 GO AHEAD, MR. BLUME.

23 Q. WELL, -- SO AGAIN, THAT IS AT LEAST A POSSIBLE SCENARIO
24 NOT EXCLUDED BY THE EVIDENCE IN THIS CASE, CORRECT?

25 A. I DON'T KNOW IF I WOULD GO SO FAR TO NOT EXCLUDE IT BY

1 THE EVIDENCE. I MEAN, YOU CAN -- YOU CAN MAKE THAT CASE,
2 THAT HYPOTHETICAL, BUT I'M NOT AS OPEN TO THAT AS YOU MAY
3 BE. I THINK THE OTHER SCENARIOS WERE MORE PLAUSIBLE, BUT
4 THE LAST ONE I DON'T NECESSARILY AGREE WITH, THAT MR.
5 SOUTHERN CAME IN, THAT HE'S THE ONE THAT TOOK THE PISTOL AND
6 SHOT -- SHOT HIS WIFE.

7 Q. CAN YOU POINT TO ANY FACT THAT YOU'RE AWARE OF IN THE
8 RECORD WHICH EXCLUDES THAT AS A POSSIBILITY?

9 A. I WOULD JUST SAY THE TELEPHONE CALLS AND THE TIMING
10 THAT SHE WOULD HAVE LEFT FROM WORK TO GET HOME AND THEN THE
11 CALLS SHE MADE TO MR. CHAPMAN. YOU CAN OBVIOUSLY LOOK AT
12 THE CREDIBILITY OF MR. CHAPMAN AND SAY THAT HE'S NOT
13 CREDIBLE ON THAT ISSUE, BUT THAT'S THE EVIDENCE I WOULD LOOK
14 AT.

15 Q. BUT AGAIN, THE PHONE RECORDS, THEY DON'T INDICATE WHO
16 CALLED AND WHO SAID WHAT?

17 A. THEY DON'T. IF YOU ASK ME TO POINT TO EVIDENCE THAT
18 WOULD EXCLUDE THAT, THAT WOULD BE ---

19 Q. AND ---

20 A. --- THE EVIDENCE.

21 Q. I'M SORRY. EXCUSE ME.

22 A. I FINISHED. GO AHEAD.

23 Q. AND ALSO ARE YOU AWARE OF THE FACT THAT, FOR EXAMPLE,
24 THERE WAS NEVER -- MR. SOUTHERN'S TRUCK WAS NEVER PROCESSED
25 OR LOOKED AT BY THE POLICE?

1 A. THAT'S MY RECOLLECTION.

2 Q. OKAY. I'M THROUGH WITH THAT AREA. I'M GOING TO MOVE
3 ON NOW TO SOMETHING ELSE. NOW THERE WAS SOME DISCUSSION ON
4 YOUR DIRECT EXAMINATION ABOUT SUICIDE AND THE SUICIDE THEORY
5 IN YOUR CASE, CORRECT? DO YOU ---

6 A. YES, SIR.

7 Q. --- RECALL THAT?

8 A. YES, SIR.

9 Q. AND I BELIEVE THAT YOU WERE ASKED ABOUT -- WELL -- OR I
10 BELIEVE YOU TESTIFIED THAT YOU TOOK A MORE FACTUAL, CORRECT
11 ME IF I'M WRONG, MORE FACTUAL APPROACH TO THE SUICIDE ASPECT
12 AT THE GUILT OR INNOCENCE PHASE BECAUSE OF THE CONCERN OR
13 FEAR THAT YOU MIGHT OPEN THE DOOR TO EVIDENCE ABOUT THE
14 CRIMINAL SEXUAL CONDUCT?

15 A. CORRECT. NOT SO MUCH THAT AS HIS MENTAL ILLNESSES
16 WHICH WOULD INCLUDE SOME OF THE THINGS WE REFERRED TO ---

17 Q. THINGS THAT WERE CONTAINED, FOR EXAMPLE, THE TESTIMONY
18 OF DR. SCHWARTZ-WATTS ---

19 A. RIGHT, ---

20 Q. --- AT THE SENTENCING PHASE?

21 A. --- SADISM, THINGS THAT WOULD BE MORE CONSISTENT WITH
22 THE PROSECUTION'S THEORY.

23 Q. BUT ON THE OTHER HAND, RIGHT, YOU BELIEVED THAT YOUR
24 BEST CHANCE, AND AGAIN, I DON'T WANT TO UNFAIRLY
25 CHARACTERIZE, YOUR BEST CHANCE TO SAVE MR. BINNEY'S LIFE WAS

1 TO OBTAIN AN ACQUITTAL ON THE BURGLARY CHARGE?

2 A. YES.

3 Q. BECAUSE IT WAS YOUR BELIEF THAT IF HE WAS NOT GUILTY OF
4 BURGLARY HE WAS NOT ELIGIBLE FOR DEATH BECAUSE THERE WAS NOT
5 AN AGGRAVATING CIRCUMSTANCE AND YOU COULD AVOID THE
6 SENTENCING PHASE OF THE TRIAL, CORRECT?

7 A. THAT WAS OUR THINKING. AND THERE STILL WERE TWO OTHER
8 AGGRAVATING CIRCUMSTANCES THERE. AND THE ONE WAS THE MURDER
9 FOR HIRE THEY ALLEGED. AND THE OTHER WAS THE, I THINK, THE
10 LARCENY DURING THE COMMISSION.

11 Q. WHICH JUDGE COLE GRANTED A DIRECTED VERDICT ON THAT
12 AGGRAVATING CIRCUMSTANCE?

13 A. AT THE SENTENCING PHASE. NO, THE MURDER FOR HIRE, I
14 THINK THEY JUST CHOSE TO ABANDON THAT ON THEIR OWN.

15 Q. NOW BUT YOU WANTED TO PRESENT THE STRONGEST CASE
16 POSSIBLE THAT YOU COULD WITHIN THOSE RESTRICTIONS ON THE
17 SUICIDE AT THE GUILT OR INNOCENCE PHASE OF THE TRIAL?

18 A. YES, SIR.

19 Q. AND SO DO YOU RECALL THAT YOU CALLED DR. MORTON AT THE
20 SENTENCING PHASE?

21 A. YES.

22 Q. CORRECT?

23 A. YES.

24 Q. AND DR. MORTON'S TESTIMONY WAS -- IT WENT TO THE
25 SUICIDE ASPECT OF THE CASE, THAT YOU COULD KILL YOURSELF

1 WITH THE NICOTINE PATCHES THAT HE HAD ON?

2 A. RIGHT. YES.

3 Q. SO WHAT -- I GUESS WITHIN THOSE CONFINES WHAT I DON'T
4 QUITE UNDERSTAND IS HOW THE PRESENTATION OF FACTUAL EVIDENCE
5 SUCH AS THAT BY DR. MORTON, HAD THAT BEEN PRESENTED AT THE
6 GUILT OR INNOCENCE PHASE, HOW THAT WOULD BEING FACTUAL IN
7 NATURE BASED ON WHAT MR. BINNEY HAD ON, HOW THAT WOULD HAVE
8 OPENED THE DOOR TO ANY OF THIS OTHER INFORMATION YOU WERE
9 CONCERNED ABOUT COMING IN.

10 A. I WAS JUST VERY CONSCIOUS OF NOT WANTING TO CROSS THAT
11 LINE. I DON'T KNOW HOW CLOSE YOU CAN GET UP TO IT. I DON'T
12 KNOW IF DR. MORTON'S TESTIMONY WOULD HAVE OPENED THE DOOR OR
13 NOT. I THINK ANYTHING BEARING UPON HIS MENTAL STATE OF MIND
14 WHERE WE'RE PRESENTING EXPERT TESTIMONY OR OTHER LIKE
15 EVIDENCE BEARING UPON HIS MENTAL STATE OF MIND MIGHT HAVE
16 OPENED THAT DOOR.

17 I CONSIDERED PUTTING MORTON UP. I CONSIDERED PUTTING
18 ROCKY JONES UP IN THE GUILT PHASE. BUT MY CONCERN WAS IF I
19 CROSSED THAT LINE AND GOT INTO IT, THEN IT'D OPEN THE FLOOD
20 GATE UP AND ALL THAT EVIDENCE ABOUT HIS MENTAL ILLNESSES
21 WOULD COME IN.

22 Q. BUT DR. MORTON'S EVIDENCE, WAS IT NOT, WAS NOT MENTAL
23 -- GO TO HIS MENTAL STATE, BUT WAS PHYSICAL IN NATURE?

24 A. WELL, LET ME SAY THIS TOO. I NEGLECTED TO SAY IT
25 YESTERDAY. THE OTHER PART OF THE STRATEGY WAS, THE

1 PROSECUTION HAD NO IDEA WHAT OUR STRATEGY WAS. AND THE MORE
2 WE FOCUSED ON FACTS RELATING TO SUICIDE, THE MORE WE RISKED
3 DRAWING THEIR ATTENTION TO THAT STRATEGY.

4 THEY WERE COMPLETELY CAUGHT OFF GUARD WHEN WE
5 INTRODUCED OUR OR MADE THAT ARGUMENT WITH JUDGE COLE THAT
6 SUICIDE IS NOT A CRIME AND THAT IF HE WENT IN FOR THAT
7 PURPOSE THEN HE DIDN'T GO IN WITH THE INTENT TO COMMIT A
8 CRIME. AND THE MORE WE TALKED ABOUT SUICIDE THE MORE WE
9 RISKED THE POSSIBILITY THEY WOULD CATCH ON TO WHAT DIRECTION
10 WE WERE TAKING.

11 IT SOUNDS KIND OF LIKE TRIAL BY AMBUSH, BUT PART OF HOW
12 YOU TRY A CASE FROM THE DEFENSE PERSPECTIVE IS NOT LETTING
13 THE PROSECUTION KNOW WHAT DIRECTION YOU'RE GOING WITH THE
14 CASE. SO THAT WAS A REAL DANGER IN MY MIND, IF WE TALK
15 ABOUT IT TOO MUCH THEY MIGHT, YOU KNOW, HAVE A LIGHT GO ON
16 AND THEY'LL KNOW WHICH WAY TO GO WITH THE CASE AND HOW TO
17 ARGUE OR CONVINCE THE JUDGE NOT TO ALLOW US TO MAKE THAT
18 ARGUMENT TO THE JURY.

19 Q. ALL RIGHT. BUT THE LAW IS THE LAW. I MEAN, WHATEVER
20 THEY DO CAN'T CHANGE WHAT THE LAW IS, THAT SUICIDE IS NOT A
21 CRIME.

22 A. WELL, STATE VERSUS LEVELLE SAYS IT IS A CRIME. AND THE
23 SUPREME COURT, I MEAN, I KNOW IT'S NOT -- IT'S NOT PART OF
24 THE DECISION, BUT WHEN THEY DID THAT WEBCAST, I THINK THIS
25 WAS THE CASE OF THE MONTH, I DON'T KNOW IF YOU WATCHED THAT

1 OR NOT, BUT ---

2 Q. NO, SIR, I DIDN'T.

3 A. OKAY. WHICH WAS THE FIRST ONE THEY DID, THE WEBCAST
4 CASE OF THE MONTH. AND THE JUSTICES CAME OUT AND THEY
5 SPECIFICALLY STATED DURING THE WEBCAST THAT SUICIDE IS A
6 CRIME. AND THEY POSED THAT QUESTION TO MR. SAVITZ DURING
7 ORAL ARGUMENTS. AND HE SAID, WELL, IT'S THE LAW OF THE
8 CASE, NOBODY OBJECTED TO IT. AND THE COMMON LAW IS
9 CONSTANTLY DEVELOPING AND, THEREFORE, AND THAT WAS A
10 LEGITIMATE ARGUMENT TO MAKE.

11 BUT I'M NOT SURE THAT THE JUSTICES WOULD AGREE WITH THE
12 FINDING THAT SUICIDE IS NOT A CRIME. STATE VERSUS LEVELLE
13 STATED THAT IT IS. MR. SLADE'S ARGUMENT WAS, YOU KNOW, THAT
14 CASE WAS DECIDED A HUNDRED YEARS AGO. IT'S NO LONGER
15 RELEVANT TO THE LAW IN THIS STATE. AND JUDGE COLE AGREED
16 WITH US.

17 SO I THINK HAD THE PROSECUTION BEEN GIVEN A LITTLE MORE
18 ADVANCED NOTICE THEY MIGHT COULD HAVE MADE A BETTER CASE
19 THAT SUICIDE IS A CRIME. AND I THINK THAT'S PROBABLY WHAT
20 THE LAW IS GIVEN WHAT I HEARD IN THE CONVERSATION AMONG THE
21 JUSTICES WHEN THEY HEARD ORAL ARGUMENTS IN THIS CASE.

22 THE COURT: AND, COUNSEL, JUST A MOMENT. GIVE ME THE
23 CITE OF THE CASE THAT SAYS SUICIDE IS A CRIME, PLEASE.

24 A. STATE VERSUS LEVELLE, L-E-V-E-L-L-E.

25 THE COURT: THANK YOU.

1 A. I THINK IT'S AN 1895 CASE.

2 THE COURT: THANK YOU. GO AHEAD, COUNSEL.

3 Q. BACK TO THE ISSUE OF EITHER DR. MORTON OR SOME OTHER
4 PERSON, TAKING THAT ASIDE. DR. MORTON'S FACTUAL
5 UNDERSTANDING -- YOU'RE SAYING, YES, IT WAS FACTUAL, BUT
6 STILL, YOU KNOW, MAYBE THAT WOULD HAVE OPENED THE DOOR TO
7 SOMETHING?

8 A. THAT AND PUTTING THEM ON NOTICE AS TO WHAT OUR STRATEGY
9 WAS.

10 Q. BUT AS TO THE FIRST PART, I ASSUME, I DON'T MEAN TO BE
11 -- TO ASK THIS IN A SMART WAY, BUT YOU HAVE HEARD MOTIONS IN
12 LIMINE?

13 A. SURE. YES, I HAVE.

14 Q. AND IF IN ONE POSSIBILITY, RIGHT, THAT WAS A CONCERN
15 WOULD HAVE BEEN TO ASK IN ADVANCE FOR A MOTION IN LIMINE, TO
16 FILE A MOTION IN LIMINE? THIS IS WHAT WE INTEND TO PRESENT.
17 WILL THIS OPEN THE DOOR IN SOME WAY? THIS IS WHAT I
18 PRESENT, IS THIS GOING TO OPEN THE DOOR?

19 A. WELL, AGAIN, MY CONCERN HERE WAS TWO-FOLD, NOT ONLY
20 OPENING THE DOOR, BUT ALSO PUTTING THEM ON NOTICE AS TO WHAT
21 OUR STRATEGY WAS. YOU'RE RIGHT. I COULD HAVE -- I COULD
22 HAVE DONE THAT. AND JUDGE COLE MAY HAVE SAID, WELL, YOU'RE
23 NOT GOING TO.

24 BUT I'VE BEEN CAUGHT IN THAT POSITION BEFORE WHERE I
25 MAKE A PROFFER AND THEN HAVE A WITNESS THAT INADVERTENTLY

1 BEGINS TESTIFYING IN A MATTER THAT DO OPEN THE DOOR, AND
2 BEFORE I CAN OBJECT, IT'S OUT THERE. AND THE RULE OF LAW IS
3 IF YOU BROUGHT IT UP, YOU ASKED THE QUESTION, YOU HAVE TO
4 LIVE WITH THE CONSEQUENCES.

5 Q. AND YOU PURSUED THIS LINE IN ADDITION AT THE SENTENCING
6 PHASE OF THE TRIAL. YOU CONTINUED TO PURSUE THE SUICIDE
7 ASPECT AT SENTENCING?

8 A. CORRECT.

9 Q. AND YOU HAD DONNA SCHWARTZ-WATTS GAVE SOME TESTIMONY
10 ABOUT IT.

11 A. YES, SIR.

12 Q. CORRECT?

13 A. YES, SIR.

14 Q. AND DR. MORTON ALSO PROVIDED SOME EVIDENCE ON THE
15 PHYSICAL SIDE?

16 A. YES, SIR.

17 Q. AND DID YOU CONSIDER RETAINING SOMEONE WHOSE AREA OF
18 EXPERTISE WAS SUICIDE?

19 A. NO. I THOUGHT BETWEEN DR. SCHWARTZ-WATTS AND DR.
20 MORTON, HIS TREATMENT AT THE JAIL AND THE SUICIDE NOTE, IF
21 THAT DIDN'T ESTABLISH HIS INTENT TO COMMIT SUICIDE, I JUST
22 DON'T KNOW WHAT WOULD HAVE.

23 Q. NOW LET ME ASK YOU -- LET ME TALK WITH YOU A LITTLE BIT
24 ABOUT THE QUESTION OF FETAL ALCOHOL SYNDROME.

25 A. YES, SIR.

1 Q. NOW YOU HAD INFORMATION PROVIDED TO YOU BY MS. BINNEY,
2 JONATHAN BINNEY'S ADOPTIVE MOTHER, ---

3 A. YES.

4 Q. --- THAT HIS MOTHER DRANK, HIS BIOLOGICAL MOTHER DRANK
5 DURING PREGNANCY.

6 A. YES.

7 Q. SHE TOLD YOU THAT. DO YOU RECALL, DID YOU GET HIS
8 BIOLOGICAL MOTHER'S, ANY RECORDS ON HIS BIOLOGICAL MOTHER?

9 A. NO.

10 Q. I'M SORRY?

11 A. NO, I DID NOT. NO, SIR.

12 Q. DO YOU RECALL IF YOU WERE ADVISED BY DR. SCHWARTZ-WATTS
13 THAT THIS WOULD BE A GOOD IDEA TO DO SO?

14 A. I DON'T RECALL THAT.

15 Q. AND DO YOU RECALL WHETHER YOU HAD SOME CONCERN ABOUT
16 THE FACT THAT THE ONLY EVIDENCE YOU HAD CAME FROM MS.
17 BINNEY? HIS BIOLOGICAL MOTHER WAS DEAD AT THE TIME OF
18 TRIAL, CORRECT?

19 A. YES. SHE COMMITTED SUICIDE.

20 Q. THAT YOU WOULD HAVE SOME CONCERN THAT THE ONLY PROOF OF
21 MATERNAL INGESTION THAT YOU HAD WOULD COME FROM HIS ADOPTIVE
22 MOTHER?

23 A. THAT'S CORRECT.

24 Q. DO YOU RECALL DID YOU DO ANY RESEARCH REGARDING FETAL
25 ALCOHOL SYNDROME?

1 A. I READ OVER SOME OF THE ARTICLES, ALL THE ARTICLES THAT
2 THE BINNEYS GAVE ME. AND I -- I THINK I DID SOME ONLINE
3 RESEARCH. AND I MAY HAVE READ SOME SHORT ARTICLES.

4 Q. DO YOU RECALL READING, FOR EXAMPLE, THE CHILDREN WITH
5 FETAL ALCOHOL SYNDROME ARE OFTEN DIAGNOSED WITH ATTENTION
6 DEFICIT DISORDER?

7 A. YES, SIR.

8 Q. DO YOU RECALL READING THAT THEY HAVE FREQUENT PROBLEMS
9 WITH THE LAW WHEN THEY GROW UP?

10 A. I READ THAT IN THE -- SOME OF THE LITERATURE SHE GAVE
11 ME AND WHAT I READ, YES, SIR.

12 Q. AND STEALING IS A COMMON THING THEY ENGAGE IN?

13 A. YES, SIR.

14 Q. INAPPROPRIATE SEXUAL BEHAVIOR?

15 A. YES, SIR.

16 Q. THEY CAN BE HIGHLY IMPULSIVE. DO YOU RECALL READING
17 THAT?

18 A. YES, SIR.

19 Q. EASILY SUGGESTIBLE?

20 A. I'D AGREE, YES. I READ THAT IN THE LITERATURE THAT I
21 REVIEWED. YES, SIR.

22 Q. THEY CAN HAVE A HIGH INCIDENCE OF SUICIDAL IDEATION?

23 A. I MAY HAVE READ THAT. I DON'T RECALL THAT.

24 Q. AND DO YOU RECALL ALSO READING IN THAT LITERATURE THAT
25 EVEN CHILDREN FROM, YOU KNOW, LOVING SUPPORTIVE FAMILIES

1 WITH FETAL ALCOHOL SYNDROME OFTEN STILL GROW UP TO BE VERY
2 DISTURBED AND TROUBLED INDIVIDUALS?

3 A. I READ THAT IN THE MATERIALS THAT THE BINNEYS GAVE ME
4 AND SOME OTHER MATERIALS I CAME ACROSS. YES, SIR.

5 Q. AND YOU WOULD -- WOULD YOU AGREE WITH ME THAT MANY OF
6 THE FACTS AND CIRCUMSTANCES -- MR. BINNEY, FOR EXAMPLE, WAS
7 DIAGNOSED WITH A. D. D. ---?

8 A. YES, SIR.

9 Q. --- WHEN HE WAS A CHILD? HE HAD PROBLEMS STEALING AS A
10 CHILD.

11 A. YES, SIR.

12 Q. AND LATER ON INTO HIS TEENAGE YEARS AND ADULTHOOD
13 CERTAINLY THERE WAS EVIDENCE OF INAPPROPRIATE SEXUAL
14 BEHAVIOR ON HIS PART?

15 A. THAT'S CORRECT.

16 Q. HAD IMPULSIVITY, HAD A HISTORY OF IMPULSIVE, IMPULSIVE
17 ACTIONS IN HIS LIFE?

18 A. YES, SIR.

19 Q. AND ALSO DIFFICULTY APPRECIATING THE CONSEQUENCES OF
20 HIS ACTIONS AT TIMES?

21 A. THAT'S WHAT I WAS TOLD, YES, SIR.

22 Q. SO THAT INFORMATION ABOUT -- THAT YOU READ ABOUT FETAL
23 ALCOHOL SYNDROME AND THAT INFORMATION ABOUT HIS LIFE HISTORY
24 WERE CONSISTENT?

25 A. YES, SIR.

1 Q. CORRECT?

2 A. I'D AGREE WITH THAT.

3 Q. NOW THIS -- THE ISSUE OF FETAL ALCOHOL SYNDROME WAS
4 SOMEWHAT, IF I'M UNFAIRLY CHARACTERIZING IT, WAS A SOURCE OF
5 CONTENTION BETWEEN YOU AND THE BINNEY FAMILY?

6 A. I'D AGREE WITH THAT INITIALLY. I AGREE WITH THAT.

7 Q. THAT YOU AND MR. SLADE FELT AS IF THEY WERE REALLY
8 PUSHING THIS, THE FAS AGENDA, WOULDN'T YOU?

9 A. I AGREE WITH THAT.

10 Q. AND THAT IS IN PART WHAT LED TO SOME OF THE BREAKDOWN
11 BETWEEN YOU AND THE FAMILY AND YOU AND MR. BINNEY?

12 A. WITH JONATHAN BINNEY OR ---

13 Q. YES, JONATHAN BINNEY.

14 A. NOT SO MUCH WITH JONATHAN BINNEY. I MEAN, I DON'T
15 REMEMBER JONATHAN EVEN DISCUSSING THAT WITH US.

16 Q. WELL, LET ME ASK YOU THIS. YOU READ THE MATERIAL WHICH
17 YOU WERE PROVIDED. DO YOU RECALL THAT IN THAT MATERIAL IT
18 -- THERE WERE A NUMBER OF REFERENCES TO THE WORK AND THE
19 RESEARCH WHICH WAS BEING DONE AT THE UNIVERSITY OF
20 WASHINGTON FETAL ALCOHOL ABUSE?

21 A. I DO REMEMBER SOME REFERENCES TO THE UNIVERSITY OF
22 WASHINGTON. YES, SIR.

23 Q. AND THAT DR. ANN STREISSGUTH WAS ONE OF THE PIONEERS IN
24 THIS AREA?

25 A. THAT, I CAN'T -- I CAN'T RECOLLECT THAT.

1 Q. BUT YOU DO RECALL THAT, THAT THERE WAS A LOT OF THIS
2 WORK AND STUFF BEING DONE AT THE UNIVERSITY OF WASHINGTON?

3 A. YES, SIR.

4 Q. SO DID YOU AT ANY POINT CONTACT THE UNIVERSITY OF
5 WASHINGTON?

6 A. NO, I DIDN'T.

7 Q. OR MAKE OR LOOK FOR OR MAKE AN EFFORT TO FIND SOMEONE
8 WHOSE AREA OF EXPERTISE AND SPECIALTY WAS FETAL ALCOHOL
9 SYNDROME?

10 A. I DID NOT DO THAT.

11 Q. NOW I'M THROUGH WITH THAT. SO I'M GOING TO MOVE ON TO
12 ---

13 A. OKAY.

14 Q. --- SOMETHING ELSE. DID YOU -- YOU TESTIFIED YESTERDAY
15 ABOUT -- YOU WERE ASKED, YOU KNOW, WHETHER -- WHY YOU -- DID
16 YOU OR DID YOU NOT RETAIN A SOCIAL WORKER. DO YOU RECALL
17 THAT?

18 A. OH, YEAH. YES, SIR.

19 Q. AND I BELIEVE ---WELL, YOU CLEARLY TESTIFIED THAT YOU
20 DID NOT.

21 A. I DID NOT.

22 Q. AND I THINK PART OF YOUR -- WHAT YOU TOLD MR. SALTER
23 WAS THAT YOU DID NOT BECAUSE IN YOUR EXPERIENCE THE
24 TESTIMONY OF SOCIAL WORKERS IN THE SENTENCING PHASE WAS NOT
25 PARTICULARLY EFFECTIVE.

1 A. THAT'S MY GENERAL IMPRESSION ESPECIALLY IF YOU HAVE A
2 FAMILY MEMBER OR A CLOSE PERSON WHO IS ABLE TO RELATE
3 ESSENTIALLY THE SAME FACTS THAT A SOCIAL WORKER WOULD.
4 THERE'S NOBODY THERE TO FILL THAT VOID.

5 AND I'VE SEEN MANY CASES WHERE A PERSON WILL COME FROM
6 A DYSFUNCTIONAL FAMILY WHERE THE PARENTS MAY BE RESPONSIBLE
7 FOR THE ABUSE THAT RESULTED IN HIS BEHAVIOR OR HER BEHAVIOR.
8 AND CLEARLY YOU'D WANT SOMEBODY FROM OUTSIDE THE FAMILY TO
9 COME IN AND DO AN OBJECTIVE ASSESSMENT.

10 BUT WHEN YOU HAVE A SITUATION WHERE YOU HAVE A PARENT
11 OR SOMEBODY CLOSE, A BROTHER, THAT CAN COME IN AND GIVE A
12 COMPLETE HISTORY, THEN I THINK IT'S MUCH MORE EFFECTIVE TO
13 HAVE THAT PERSON ON THE WITNESS STAND ESPECIALLY IF THEY'RE
14 AN ARTICULATE SPEAKER LIKE MR. BINNEY WAS, JIM BINNEY, TO
15 RELATE THAT HISTORY AND HOPEFULLY HE CAN MAKE SOME
16 CONNECTION WITH THE JURY DURING THE PROCESS THAT HE'S
17 TESTIFYING.

18 Q. OKAY.

19 A. DURING THE TIME HE'S TESTIFYING. I'M SORRY.

20 Q. THE TWO ARE NOT USUALLY EXCLUSIVE? YOU WOULD AGREE
21 WITH THAT?

22 A. THE TWO WHAT?

23 Q. THE TWO OPTIONS, USING A SOCIAL WORKER AND USING A
24 FAMILY MEMBER, THEY ARE NOT USUALLY EXCLUSIVE OPTIONS?

25 A. WELL, YOU COULD OBVIOUSLY CALL BOTH. YOU DON'T HAVE TO

1 MAKE THAT DECISION. IT'S A STRATEGY MATTER.

2 Q. AND OFTEN, WOULD YOU AGREE THAT OFTEN WITH AN EXPERT OF
3 ANY KIND IT'S DIFFICULT TO KNOW WHAT THEY'RE GOING TO SAY
4 AND WHETHER IT WILL HELP UNTIL YOU KNOW WHAT THEY'RE GOING
5 TO SAY?

6 A. SOME EXPERTS, THAT'S TRUE.

7 Q. AND YOU COULD ALSO, RIGHT, COULD YOU NOT, UTILIZE A MSW
8 OR A SOCIAL WORKER TO DEVELOP AND GATHER ALL THE RELATIVE
9 RECORDS, DEVELOP THE INFORMATION AND POSSIBLY EVEN NOT
10 TESTIFY, BUT PROVIDE THAT INFORMATION TO A PSYCHIATRIST OR
11 SOME OTHER PERSON YOU'RE GOING TO CALL?

12 A. THAT'S TRUE. THEY COULD DO THE LEG WORK FOR YOU
13 INSTEAD OF YOU HAVING TO DO IT YOURSELF.

14 Q. AND YOU ALSO, I THINK, KNEW, DIDN'T YOU, THAT BASED ON
15 YOUR TIME SHEETS THAT THERE -- THERE WERE A LOT OF DIFFERENT
16 THINGS GOING ON IN MR. BINNEY'S LIFE AT THE TIME HE WENT
17 INTO THE SOUTHERN RESIDENCE? DIFFERENT DYNAMICS?

18 A. STRESSORS, IS THAT WHAT YOU MEAN?

19 Q. YES. I MEAN, HE WAS ESSENTIALLY HOMELESS. HE DIDN'T
20 REALLY ---

21 A. RIGHT.

22 Q. --- HAVE A PLACE TO LIVE.

23 A. RIGHT.

24 Q. HE'D BEEN CUT OFF FROM HIS, YOU KNOW, FAMILY AND HIS
25 WIFE, WHO HE WAS DEPENDENT UPON IN MANY RESPECTS.

1 A. THAT'S CORRECT. HE WAS ESTRANGED FROM HIS, I THINK,
2 MOTHER AT THE TIME.

3 Q. SHE WAS ---

4 A. WELL, ACTUALLY SHE MIGHT HAVE ---

5 Q. RIGHT. HIS BIOLOGICAL MOTHER HAD KICKED HIM OUT
6 BECAUSE ---

7 A. CORRECT.

8 Q. --- OF THE STRESS BETWEEN HIM AND HER HUSBAND ---

9 A. HER -- HIS GRANDFATHER ---

10 Q. HIS GRANDFATHER, THAT'S CORRECT. AND HE HAD TRIED TO
11 COMMIT SUICIDE DURING THIS TIME PERIOD.

12 A. I BELIEVE SO, YES.

13 Q. AND SO HIS LIFE WAS SORT OF IN A DOWNWARD SPIRAL ---

14 A. YES.

15 Q. --- AT THIS POINT.

16 A. AND WE KNEW THOSE THINGS. YES.

17 Q. NOW DO YOU RECALL WHEN WAS THE FIRST TIME THAT YOU MET
18 MR. BINNEY?

19 A. FIRST TIME I MET MR. BINNEY WAS ACTUALLY WHEN HIS BOND
20 WAS BEING SET ON THE CRIMINAL SEXUAL CONDUCT CHARGE IN
21 SPARTANBURG. I WAS OVER THERE ON AN UNRELATED MATTER. I
22 WAS REPRESENTING SOMEBODY THAT WAS SEEKING A BOND. AND THAT
23 WAS THE FIRST TIME I MET HIM.

24 Q. AND THEN YOUR FIRST INTERVIEW WITH HIM WAS AT LIEBER,
25 IS THAT CORRECT?

- 1 A. YES.
- 2 Q. AND THAT WAS ON THE 27TH OF DECEMBER OF 2001?
- 3 A. THAT SOUNDS CORRECT. YES.
- 4 Q. AND THAT WOULD HAVE BEEN, DO YOU RECALL, THAT WOULD
- 5 HAVE BEEN SEVERAL MONTHS AFTER YOU WERE APPOINTED IN THE
- 6 MATTER?
- 7 A. TWO MONTHS.
- 8 Q. AND THEN YOUR NEXT MEETING WITH HIM BASED ON YOUR TIME
- 9 SHEETS WAS MARCH THE 25TH OF 2002?
- 10 A. THAT SOUNDS CORRECT.
- 11 Q. SO THAT WOULD HAVE BEEN APPROXIMATELY THREE MONTHS
- 12 AFTER YOUR FIRST MEETING?
- 13 A. WHATEVER PERIOD OF TIME IT WAS, MR. BLUME, FROM
- 14 DECEMBER TO MARCH. THAT'S CORRECT.
- 15 Q. AND THAT WOULD HAVE BEEN AT THE COURTHOUSE?
- 16 A. CORRECT.
- 17 Q. PRIOR TO A MOTIONS HEARING, I BELIEVE, OF SOME TYPE?
- 18 A. RIGHT.
- 19 Q. AND THEN YOU NEXT SAW HIM ON JULY 12TH OF 2002?
- 20 A. THAT'S CORRECT.
- 21 Q. AND THAT WOULD HAVE BEEN -- AND THAT'S APPROXIMATELY
- 22 FOUR MONTHS AFTER THE MARCH MEETING?
- 23 A. THAT SOUNDS CORRECT.
- 24 Q. AND THAT WAS ALSO PRIOR TO A COURT HEARING?
- 25 A. THAT SOUNDS CORRECT.

1 Q. AND UP UNTIL THE WEEKS BEFORE TRIAL HE WAS MOVED TO

2 CHEROKEE COUNTY THOSE WERE -- THAT WAS THE NUMBER OF

3 MEETINGS THAT YOU HAD WITH MR. BINNEY? IT WAS ---

4 A. THAT SOUNDS RIGHT.

5 Q. --- THREE WEEKS BEFORE TRIAL?

6 A. HE WAS GOING TO TESTIFY -- THE ONLY TIME I SAW HIM

7 WOULD HAVE BEEN AT COURT HEARINGS OVER THE SUMMER, EARLY

8 SPRING AND THEN WHEN HE WAS TRANSFERRED TO CHEROKEE COUNTY.

9 Q. DID YOU EVER TALK TO MR. BINNEY'S GRANDPARENTS?

10 A. MATERNAL, PATERNAL?

11 Q. ANY?

12 A. NO.

13 Q. WHAT ABOUT HIS AUNTS, UNCLES, ANY OTHER RELATIVES?

14 A. NO.

15 Q. COUSINS?

16 A. I DON'T BELIEVE SO.

17 Q. DO YOU REMEMBER DID YOU TALK TO ANY OF HIS CHILDHOOD

18 FRIENDS?

19 A. I DON'T -- I DON'T THINK SO.

20 Q. ANYBODY THAT KNEW HIS MOTHER OR HIS BIOLOGICAL MOTHER?

21 ANYBODY WHO WAS ---

22 A. NO.

23 Q. --- FAMILIAR WITH HER?

24 A. OTHER THAN JONATHAN AND HIS PARENTS, NO.

25 Q. DO YOU RECALL DID YOU TALK TO ANY OF HIS FORMER SCHOOL

- 1 TEACHERS?
- 2 A. NO, I DIDN'T.
- 3 Q. GUIDANCE COUNSELORS?
- 4 A. NO.
- 5 Q. AND ALSO IN THIS CASE YOU DIDN'T HAVE ANYBODY AS PART
- 6 OF YOUR TEAM WHOSE JOB THAT WAS? LIKE A SOCIAL HISTORY
- 7 INVESTIGATOR IN MITIGATION ---
- 8 A. NO, WE DIDN'T HAVE A -- YOU ASKED ME DID WE HIRE
- 9 SOMEBODY TO DO THAT? THE ANSWER IS NO.
- 10 Q. NOW DO YOU RECALL WHETHER YOU GOT HIS RECORDS FROM THE
- 11 ROSE PARK BAPTIST ACADEMY SCHOOL?
- 12 A. NO, I DON'T BELIEVE SO.
- 13 Q. THE ALBANY COUNTY JAIL?
- 14 A. NO. I'M CERTAIN OF THAT.
- 15 Q. THE CORNERSTONE CHRISTIAN ACADEMY?
- 16 A. THAT SOUNDS FAMILIAR.
- 17 Q. THE DUBLIN CHRISTIAN ACADEMY?
- 18 A. THAT SOUNDS FAMILIAR. DUBLIN, NEW HAMPSHIRE? I THINK
- 19 ---
- 20 Q. THE FREEDOM ACADEMY. FREEDOM ACADEMY?
- 21 A. WHERE IS IT LOCATED AT?
- 22 Q. HONESTLY, I DON'T KNOW.
- 23 A. THE DUBLIN PLACE WAS DUBLIN, NEW HAMPSHIRE. I THINK WE
- 24 HAD RECORDS FROM THERE.
- 25 Q. WELL, I CAN KEEP GOING THROUGH THE LIST, BUT ---

1 A. SURE. SURE.

2 Q. --- LET ME ASK YOU A ---

3 A. OKAY.

4 Q. --- MAYBE AN EASIER QUESTION. RECORDS THAT YOU
5 OBTAINED WOULD BE IN YOUR FILE?

6 A. CORRECT.

7 Q. I MEAN, YOU CAN'T THINK OF ANY RECORDS THAT YOU WOULD
8 HAVE HAD WHICH YOU WOULD HAVE DESTROYED AND NOT PLACED IN
9 YOUR FILE?

10 A. NO, I WOULD NOT HAVE DONE THAT.

11 Q. OKAY. NOW LET ME -- I WANTED TO ASK YOU A QUESTION
12 ABOUT MELANIE BINNEY, A COUPLE OF QUESTIONS ABOUT MELANIE
13 BINNEY. YOU TESTIFIED THAT YOU WANTED, IF POSSIBLE, OR JUST
14 CONSIDERED THE IDEA OF HAVING MELANIE BINNEY TESTIFY?

15 A. THAT'S CORRECT.

16 Q. AND PART OF THAT WAS -- WELL, PART OF THE REASON FOR
17 THAT WAS THAT YOU KNEW OR BELIEVED OR KNEW THAT A LARGE PART
18 OF THE PROSECUTION'S CASE FOR DEATH WAS GOING TO FOCUS ON
19 THE CRIMINAL SEXUAL CONDUCT OF HIS DAUGHTER?

20 A. THAT'S CORRECT.

21 Q. AND I BELIEVE YOU ALSO TESTIFIED ON DIRECT EXAMINATION
22 THAT IF YOU TOOK THAT OUT OF THE EQUATION THIS MAY WELL NOT
23 HAVE EVEN BEEN A CAPITAL CASE?

24 A. I WOULD AGREE WITH THAT. YES.

25 Q. AND SO AN ADVANTAGE TO HAVING MS. BINNEY, MELANIE, I'M

1 SORRY, AT THIS POINT TO TESTIFY WOULD HAVE BEEN THAT SHE
2 COULD HAVE SOMEHOW HELPED OFFSET -- NOTHING CAN NEVER ERASE,
3 I DON'T MEAN TO DO THAT.

4 A. RIGHT.

5 Q. SO IT'S JUST -- BUT SOMEWHAT MITIGATE OR LESSEN THE
6 IMPACT OF THAT SOMEWHAT?

7 A. THAT WAS THE CONSIDERATION. THAT'S WHAT WE WERE
8 UNDERTAKING.

9 Q. AND WHAT YOU WANTED HER TO TESTIFY TO HAD TO DO WITH
10 THE FACT THAT SHE HAD A GENETIC CONDITION, WHICH IS
11 BASICALLY A BEARD?

12 A. YES, SIR.

13 Q. SHE WAS SEXUALLY ABUSED AS A CHILD?

14 A. YES, SIR.

15 Q. SHE WAS OLDER THAN JONATHAN? AND THAT YOU WANTED HER
16 BASICALLY TO BE WILLING TO SAY THAT THERE WERE A FEW MEN WHO
17 WOULD BE WILLING TO ACCEPT HER WITH THE PROBLEM THAT SHE
18 HAD?

19 A. THAT WAS KIND OF MY THINKING OR WAS MY THINKING. YES.

20 Q. AND THAT HE, MR. BINNEY, WAS SUCH A PERSON, AND THAT HE
21 WAS, YOU KNOW, WILLING TO LOVE HER AS SUCH A PERSON THAT SHE
22 WAS THAT SHE FINALLY HAD A FAMILY AND HAPPINESS AND THAT SHE
23 WOULD ALSO HOPE, YOU KNOW, THAT ONE DAY REALIZED HER DREAM
24 HAD COME TO AN END. THAT WAS SORT OF THE GIST OF WHAT YOU
25 WANTED HER ---

- 1 A. YOU'RE READING FROM MY NOTES, BUT ---
- 2 Q. YES, I AM ---
- 3 A. YEAH, THAT'S CORRECT.
- 4 Q. IT'S ON PAGE 86 ---
- 5 A. RIGHT.
- 6 Q. --- IF YOU WANT TO CORRECT THE ACCURACY OF IT.
- 7 A. NO, NO. THAT'S CORRECT. THAT WAS MY THINKING OF WHAT
- 8 I WOULD HOPE SHE'D BE ABLE TO TESTIFY TO, BUT SHE SAID SHE
- 9 WASN'T COMFORTABLE DOING THAT.
- 10 Q. SHE WASN'T COMFORTABLE DOING THAT, CORRECT?
- 11 A. NO.
- 12 Q. WELL, DID -- DID YOU CONSIDER ASKING HER TO DO A LITTLE
- 13 LESS?
- 14 A. WE DID. MITCH SLADE PRIMARILY DEALT WITH MS. BINNEY,
- 15 MELANIE BINNEY. WE DISCUSSED WHAT SHE COULD OFFER IN THE
- 16 SENTENCING PHASE. AND HE ACTUALLY SPOKE WITH HER DIRECTLY.
- 17 AND I THOUGHT HE HAD MORE OF A RAPPORT WITH HER BECAUSE I
- 18 REALLY HAD NOT DEALT WITH HER THAT MUCH. THAT MIGHT HAVE
- 19 BEEN BECAUSE I THINK SHE WAS LIVING IN THE SPARTANBURG AREA.
- 20 HIS OFFICE WAS IN SPARTANBURG. SO IT WAS JUST MORE
- 21 CONVENIENT FOR HER TO SPEAK WITH HIM. SO I KIND OF RELIED A
- 22 LITTLE BIT ON WHAT THAT DECISION-MAKING PROCESS WAS FROM
- 23 WHAT MITCH HAD TOLD ME ABOUT HIS CONVERSATION WITH HER.
- 24 Q. BUT ONE OF THE THINGS PERHAPS SHE COULD HAVE
- 25 POTENTIALLY OFFERED IN ONE FORM OR ANOTHER IS IF YOU'RE

1 THINKING ABOUT GIVING THE DEATH PENALTY IN ORDER TO HELP MY
2 CHILD, IT'S NOT GOING TO HELP MY CHILD.

3 A. WE THOUGHT ABOUT THAT. AND AS I SAID YESTERDAY,
4 THERE'S A REAL POTENTIAL THERE FOR A BACKLASH ABOUT HERE'S A
5 WOMAN WHOSE DAUGHTER HAS BEEN SEXUALLY MOLESTED AND SHE'S
6 STILL TAKING UP FOR HIM. AND I'M JUST NOT SURE IF THE
7 NEGATIVES WOULD HAVE OUTWEIGHED THE POSITIVES ON THAT.

8 I TEND TO THINK, THIS IS JUST MY THINKING, THAT WOMEN
9 TEND TO JUDGE OTHER WOMEN MORE HARSHLY THAN MEN DO,
10 ESPECIALLY MOTHERS. AND I THINK THEY WOULD HAVE PROBABLY
11 HELD THAT AGAINST HER FOR TAKING UP FOR HIM IN THE
12 SENTENCING PHASE.

13 AND THAT WAS ALWAYS THE COUNTERWEIGHT FOR HER
14 TESTIFYING ABOUT THE OTHER ATTRIBUTES ABOUT JONATHAN, HE'S A
15 LITTLE MORE OPEN-MINDED, WILLING TO ACCEPT PEOPLE MORE. I
16 THINK THAT WAS A POSITIVE THING, BUT SHE JUST WASN'T WILLING
17 TO TESTIFY TO THAT.

18 Q. BUT ON THE OTHER SIDE OF THE EQUATION IT WOULD HAVE AT
19 LEAST TO A DEGREE MET THIS IDEA THAT IT WAS IMPORTANT TO
20 GIVE THE DEATH PENALTY BECAUSE OF WHAT HE DID TO HIS
21 DAUGHTER.

22 A. AGAIN, I THINK THAT WAS COUNTER WEIGHTED BY THE FACT
23 THAT SHE COULD BE PERCEIVED AS STILL PROTECTING THE PERSON
24 THAT MOLESTED HER OWN CHILD.

25 Q. I WANT TO GO TO THE -- EXCUSE ME ONE SECOND.

1 (PAUSE)

2 MR. BLUME: SORRY. I APOLOGIZE.

3 Q. DID YOU -- DID THE POINT ABOUT THE IMPACT OF THE DEATH
4 PENALTY ON -- FOR THE CHILD -- I UNDERSTOOD -- I UNDERSTAND
5 YOUR TESTIMONY, WHETHER I -- WHETHER WE AGREE ABOUT IT OR
6 NOT, I AT LEAST UNDERSTAND YOUR TESTIMONY ABOUT THE DECISION
7 TO CALL MELANIE BINNEY. DID YOU CONSIDER TRYING TO ELICIT
8 SIMILAR EVIDENCE FROM MR. BINNEY?

9 A. JONATHAN?

10 Q. NO, NO, NO. THE REVEREND BINNEY. I'M SORRY. I MEAN,
11 HE WAS THE GRANDFATHER OF THE CHILDREN.

12 A. CORRECT. AS IT RELATED TO MELANIE?

13 Q. AS IT RELATED TO THE FAMILY.

14 A. WELL, I THINK HE DID TESTIFY TO SOME OF -- HIS ROLE,
15 THEIR ROLE AS THE GRANDPARENTS AND THE FOLKS, YOU KNOW, IN
16 THE CAR AND WELL-BEING OF THE GRANDCHILDREN.

17 Q. AND THE POTENTIAL IMPACT OF THE EXECUTION OF THE FATHER
18 OF THE CHILD ---

19 A. I THINK HE ALLUDED TO THAT. I MEAN, MY RECOLLECTION IS
20 A LITTLE VAGUE. I READ HIS TESTIMONY A FEW DAYS AGO OVER
21 THE WEEKEND, BUT MY RECOLLECTION IS HE DID TOUCH UPON THAT.

22 Q. NOW BACK TO -- JUST ONE -- WE WERE TALKING ABOUT, YOU
23 KNOW, GATHERING THE RECORDS AND PEOPLE AND GETTING THOSE.
24 NOW YOU, YOURSELF, I TAKE IT, DON'T HAVE ANY SPECIAL
25 TRAINING OR EXPERTISE IN ANALYZING SOCIAL HISTORY RECORDS?

1 A. I'VE DONE A LOT OF IT IN TWENTY-FIVE YEARS. I'VE DONE
2 A LOT OF ANALYZING SOCIAL RECORDS, MEDICAL RECORDS JUST IN
3 MY ROLE AS PROSECUTOR, AND DEFENSE ATTORNEY, AND HAD TO
4 HANDLE, BEFORE THAT, A LOT OF FAMILY COURT RECORDS, CUSTODY
5 DISPUTES. AND THAT'S WHAT I DID BEFORE I BECAME A
6 PROSECUTOR.

7 Q. BUT YOU DON'T HAVE AN MSW?

8 A. NO, I'M NOT ---

9 Q. YOU DON'T HAVE A MASTERS IN PSYCHOLOGY?

10 A. NO, I DON'T.

11 Q. A PHD IN PSYCHOLOGY OR ANY RELATED FIELD?

12 A. NO, I DON'T.

13 Q. NOW ON TO THE QUESTION OF PRISON ADAPTABILITY, DO YOU
14 RECALL WHETHER YOU WERE ADVISED BY DR. SCHWARTZ-WATTS ON
15 WHETHER TO HIRE POSSIBLY -- CONSIDER HIRING JAMES AIKEN?

16 A. SHE DID REFER OR SUGGEST THAT I PURSUE THE POSSIBILITY
17 OF HIRING AN ADAPTABILITY EXPERT. AND I HAD THE LETTER OR
18 SOMETHING FILED TO THE EFFECT. SHE GAVE ME A FEW -- I CAN'T
19 RECALL, MR. BLUME, WHICH -- BY NAME, BUT SHE MENTIONED A FEW
20 NAMES. AND I WROTE THEM DOWN.

21 Q. YOU JUST REMEMBER A NAME? SHE TOLD YOU TO HIRE -- SHE
22 SUGGESTED THAT YOU HIRE SOMEBODY IN THIS AREA?

23 A. IT IS IN THE LETTER. I BELIEVE THAT I ACTUALLY WROTE
24 THE PROPER NAME OF EACH INDIVIDUAL THAT SHE SUGGESTED.

25 Q. WOULD IT REFRESH YOUR RECOLLECTION ---

1 A. SURE.

2 Q. --- TO SEE IT?

3 A. SURE.

4 MR. BLUME: I'M SORRY. MAY I APPROACH THE WITNESS,
5 YOUR HONOR?

6 THE COURT: YOU MAY. YES, SIR.

7 A. IT'S MR. AIKEN, THE ONLY ONE I SEE. I WANT TO SAY
8 THERE WAS ONE OR TWO OTHERS, BUT ---

9 Q. YOU MAY NEED TO TAKE YOUR GLASSES OFF TO READ. IN THAT
10 RECORD, THAT LETTER, I'M SORRY, FROM YOUR FILE, INDICATES
11 THE PERSON SHE RECOMMENDED WAS JAMES AIKEN?

12 A. CORRECT.

13 Q. AND I BELIEVE THAT YOU TESTIFIED THAT YOU DIDN'T DO
14 THAT BECAUSE OF THE FEAR OF OPENING THE DOOR TO A COUNTER
15 WITNESS THAT THE STATE WOULD CALL TO SAY BASICALLY PRISON IS
16 CLUB MED?

17 A. CORRECT. THAT'S PREDICATED UPON TWO OR THREE THINGS.
18 THIS IS MY FEELING, I MEAN, MR. SLADE DIDN'T THINK OF THE
19 IDEA OF ADAPTABILITY TO PRISON IN THIS PARTICULAR CASE FOR
20 HIS OWN REASONS. MY REASONING WAS AS A PROSECUTOR I'D
21 CONSIDERED DOING IT ON A NUMBER OF DIFFERENT CASES, DEATH
22 PENALTY CASES, AND I ALWAYS THOUGHT THAT WOULD BE MUCH MORE
23 EFFECTIVE THAN ANYTHING THE DEFENSE COULD PRESENT. AND JUST
24 THE THREAT OF MY DOING THAT, THE CASES THAT I HAD, PRECLUDED
25 THE DEFENSE IN ANY OF THOSE CASES FROM CALLING AN

1 ADAPTABILITY EXPERT. SO I HAD A CONCERN ABOUT THAT.

2 AND MY RECOLLECTION WAS, I THINK I TESTIFIED YESTERDAY
3 THAT THE SOLICITOR'S OFFICE HAD DONE THAT IN A DEATH PENALTY
4 CASE IN SPARTANBURG. THAT'S MY RECOLLECTION THAT THEY HAD
5 DONE IT OR THREATENED TO DO IT. AND IT WAS DISCUSSED AT
6 SOME POINT IN THIS CASE. I THINK THE PROSECUTION HAD THROWN
7 THAT OUT AS A POSSIBILITY. BUT I'M A LITTLE VAGUE ON WHEN
8 THAT CONVERSATION OCCURRED. AND I REMEMBER MR. WILLINGHAM
9 WAS THE PERSON THAT WOULD HAVE BEEN RESPONSIBLE FOR CALLING
10 THAT EXPERT.

11 Q. AND ARE YOU ALSO -- WELL, ONE ON THAT, OF COURSE, WOULD
12 YOU AGREE WITH ME THAT WHAT OPENS THE DOOR TO TESTIMONY IS
13 DEPENDENT UPON WHAT'S PRESENTED?

14 A. CORRECT.

15 Q. AND THAT THERE ARE A VARIETY OF WAYS IN WHICH
16 ADAPTABILITY TO PRISON TESTIMONY CAN BE PRESENTED?

17 A. I'D AGREE WITH THAT.

18 Q. SOME OF WHICH CAN BE THROUGH CORRECTIONAL OFFICERS
19 THEMSELVES AND A CERTAIN PERSON THAT SAID, YOU KNOW, HE'S
20 NOT A PERSON, I DON'T ANTICIPATE HIM TO BE A PROBLEM?

21 A. RIGHT.

22 Q. SOME OF IT IS THROUGH EXPERT TESTIMONY?

23 A. CORRECT.

24 Q. AND THE EXPERT TESTIMONY CAN EVEN TAKE A VARIETY OF
25 FORMS?

1 A. I'M ASSUMING ---

2 Q. CORRECT?

3 A. I'M ASSUMING THAT COULD, MR. BLUME. I'VE NEVER SEEN

4 THAT OR READ CASES IN REFERENCE TO THAT, BUT I'M ASSUMING

5 THAT YOU MIGHT COULD TAILOR MAKE IT FOR A PARTICULAR CASE

6 AND NOT RUN THE RISK OF OPENING THE DOOR.

7 Q. DEPENDING ON WHAT'S PRESENTED, RIGHT? I MEAN, THE DOOR

8 IS OPENED DEPENDENT UPON WHAT IS PRESENTED IN THE FIRST

9 PLACE?

10 A. CORRECT.

11 Q. AND ARE YOU ALSO AWARE THAT THE EVIDENCE TO WHICH YOU

12 HAVE SUGGESTED YOU WERE AFRAID OF OPENING THE DOOR TO HAS

13 SUBSEQUENTLY BEEN DECLARED INADMISSIBLE IN SOUTH CAROLINA?

14 A. AS RECENTLY AS THIS YEAR, YES, I'M AWARE OF THAT. IT'S

15 THE BURKHART CASE, YES.

16 Q. BURKHART AND BOWEN, I BELIEVE.

17 A. A LITTLE LESS SO IN BOWEN, BUT BURKHART, DEFINITELY.

18 Q. NOW ---

19 A. BUT I THINK WITH BURKHART, I DON'T WANT TO ARGUE WHAT

20 THE LAW IS, BUT I THINK THERE ARE EVEN SITUATIONS WHERE IN

21 BURKHART, THAT TYPE OF REBUTTAL EVIDENCE CAN COME IN

22 DEPENDING ON WHAT, AGAIN, THE DEFENSE PRESENTS IN ITS CASE

23 IN CHIEF.

24 Q. NOW MOVING ON TO ANOTHER AREA. YOU TESTIFIED ABOUT THE

25 DECISION TO HAVE MR. BINNEY WEAR A JAIL UNIFORM IN THIS

1 CASE. DO YOU KNOW OF ANY OTHER CAPITAL CASES WHERE A
2 DEFENDANT WENT TO TRIAL IN A JAIL UNIFORM?

3 A. I CANNOT RECALL ANY.

4 Q. NOW -- AND YOU UNDERSTAND, I ASSUME, THAT THE REASON
5 THAT A DEFENDANT DOESN'T NORMALLY OR WHY HE CAN'T BE FORCED
6 TO STAND TRIAL IN THEIR JAIL CLOTHES IS BECAUSE OF THE
7 CONCERN THAT THE JURY WOULD DRAW AN ADVERSE INFERENCE FROM
8 THAT?

9 A. THAT'S THE RATIONALE AS I UNDERSTAND IT, YES, SIR.

10 Q. THAT IT WILL -- THE JURY WILL SOMEHOW DEDUCE OR DRAW A
11 CONCLUSION ABOUT THE DEFENDANT'S GUILT FROM THE FACT THAT
12 HE'S IN JAIL CLOTHES AND IT WILL SOMEHOW -- AND IT WILL
13 POTENTIALLY IMPINGE UPON THE PRESUMPTION OF INNOCENCE?

14 A. YES, SIR.

15 Q. THAT'S THE RATIONALE --

16 A. RIGHT.

17 Q. --- FOR THE RULE. AND IN THIS CASE YOU'VE ALSO
18 TESTIFIED THAT YOU BELIEVED THAT YOU WERE -- YOUR BEST
19 CHANCE OF AVOIDING A DEATH SENTENCE FOR MR. BINNEY WAS TO
20 OBTAIN AN ACQUITTAL ON THE BURGLARY CHARGE, CORRECT?

21 A. YES, SIR.

22 Q. AND THAT WAS GOING TO HAPPEN AT THE GUILT OR INNOCENCE
23 PHASE OF THE PROCEEDINGS, ---

24 A. YES, SIR.

25 Q. --- CORRECT?

1 A. YES, SIR.

2 Q. SO, I GUESS, WHAT I'M HAVING A LITTLE TROUBLE WITH IS
3 IF THE TRIAL IN THE PRISON CLOTHES MIGHT SOMEHOW IMPINGE
4 UPON OR -- ON THE PRESUMPTION OF INNOCENCE IN THE CASE AND
5 IF -- BUT ON THE OTHER HAND THE BEST CHANCE WAS TO OBTAIN AN
6 ACQUITTAL ON THE BURGLARY AT THE GUILT OR INNOCENCE PHASE
7 WHY WOULD IT HELP MR. BINNEY TO HAVE THE PRISON CLOTHES ON
8 AT THE GUILT OR INNOCENCE PHASE? DO YOU SEE MY POINT?

9 A. I DO. I DO. AND I THINK WE'VE KIND OF WENT BACK AND
10 FORTH ON THAT IDEA OF WHETHER OR NOT TO WAIT TIL AFTER THE
11 GUILT PHASE TO BRING HIM OUT IN PRISON GARB OR TO DO IT
12 DURING THE TRIAL.

13 AND THE THINKING ON THAT WAS -- IS THAT THE POINT YOU
14 JUST MADE MAY BE PREJUDICIAL ON THE ONE HAND. ON THE OTHER
15 HAND, THERE'S A CERTAIN AMOUNT OF INTELLECTUAL HONESTY YOU
16 HAVE TO HAVE WITH THE JURY. AND YOU'RE LOOKING -- YOU'RE
17 LOOKING AT THE GUILT PHASE, MR. BLUME, BUT YOU'RE LOOKING AT
18 THE SENTENCING PHASE ALSO.

19 AND WHEN THEY HEAR THAT HE'S SERVING A THIRTY YEAR
20 SENTENCE, HE'S DRESSED UP LIKE HE'S GOING TO WALK OUT THAT
21 DOOR IN A SUIT AND TIE, I'M JUST NOT SURE HOW THAT SITS WITH
22 THE JURY, THAT THEY'VE BEEN DECEIVED AS TO WHAT HIS REAL
23 STATUS IS AS FAR AS HIS FREEDOM OR INCARCERATION GOES.

24 ANOTHER THING ABOUT THAT IS ---

25 Q. BUT YOU WERE ALREADY IN THE DECEPTION GAME WITH THIS

1 JURY, RIGHT? YOU WERE ---

2 A. HOW ---

3 Q. --- HIDING THE CSC FROM THEM. YOU WERE IN -- AT THE
4 GUILT OR INNOCENCE PHASE, RIGHT. YOU WERE HIDING WHAT YOU
5 BELIEVED TO BE THE MOST PREJUDICIAL AND IMPORTANT FACT
6 DRIVING TOWARDS DEATH IN THIS CASE.

7 A. I'D AGREE WITH THAT. BUT I WOULD ALSO THINK THAT --
8 THERE'S EVEN A CASE THAT SAYS TO THIS EFFECT, STATE VERSUS
9 MOORE, WE LOOKED AT ALL THESE CASES DEALING WITH PRISON
10 CLOTHING OR PERSONS APPEARING IN SHACKLES IN FRONT OF THE
11 JURY. AND I WOULD THINK THAT MOST REASONABLE PEOPLE WOULD
12 UNDERSTAND THAT SOMEBODY CHARGED WITH MURDER AND BURGLARY
13 WOULD HAVE BEEN ARRESTED, THEY WOULD HAVE BEEN INDICTED,
14 THEY WOULD HAVE BEEN INCARCERATED. AND SO IT'S NOT A GREAT
15 STRETCH OF THE IMAGINATION TO SAY, WELL, IF HE'S BEEN
16 ARRESTED AND CHARGED WITH MURDER, HE'S BEING TRIED FOR THAT,
17 THAT HE MIGHT STILL BE INCARCERATED.

18 SO, AGAIN, I THINK THE PREJUDICIAL VERSUS THE FAVORABLE
19 INFLUENCE IT MIGHT HAVE FROM THE JURY, IN MY MIND, WASN'T
20 THAT GREATLY OUTWEIGHED. THERE'S SOME RISK OF PREJUDICE.
21 I'M NOT GOING TO SAY IT WASN'T. BUT AGAIN, REASONABLE
22 PEOPLE, I WOULD THINK, WOULD UNDERSTAND IF YOU'RE FACING A
23 MURDER CHARGE, A POTENTIAL DEATH PENALTY, THAT YOU WOULDN'T
24 BE OUT WALKING AROUND ON THE STREET.

25 Q. DO YOU RECALL AFTER MR. BINNEY WAS FOUND GUILTY -- YOU

1 RECALL THE SENTENCING PHASE OF THE TRIAL, CORRECT?

2 A. YES, SIR.

3 Q. DO YOU RECALL WHETHER AT THAT POINT DURING THE
4 SENTENCING PHASE IF MR. BINNEY WORE LEG IRONS?

5 A. I DON'T -- I DON'T RECALL THAT, HIM EVER WEARING
6 SHACKLES WITH LEG IRONS.

7 Q. YOU DON'T HAVE AN INDEPENDENT RECOLLECTION ONE WAY OR
8 THE OTHER?

9 A. I REMEMBER THAT HE DIDN'T, BUT THAT'S MY RECOLLECTION.

10 Q. NOW AS I RECALL YOUR TESTIMONY, AND I DON'T WANT TO
11 WASTE -- THAT IT WAS PRIMARILY, I MEAN, IT WOULD HAVE BEEN
12 MR. SLADE'S RESPONSIBILITY TO OBJECT TO ANYTHING HE BELIEVED
13 WAS PREJUDICIAL DURING THE CLOSING ARGUMENTS IN THE CASE?

14 A. YES, SIR, THAT WOULD HAVE BEEN MY THINKING. IF ANYBODY
15 WAS GOING TO OBJECT IT WOULD BE MR. SLADE. IF I -- IF I
16 HEARD SOMETHING I REALLY THOUGHT WAS OBJECTIONABLE I
17 PROBABLY WOULD HAVE LOOKED AT HIM.

18 Q. BUT YOU DON'T RECALL MAKING A STRATEGIC DECISION NOT TO
19 OBJECT ---

20 A. NO, SIR.

21 Q. --- TO ANYTHING WHICH WAS SAID IN CLOSING ARGUMENT?

22 A. NO, SIR. IF THERE HAD BEEN SOMETHING THERE
23 OBJECTIONABLE I WOULD HAVE NUDGED HIM AND WE WOULD HAVE MADE
24 A NOTATION OR SOMETHING ABOUT IT. BUT, NO, SIR, I DON'T
25 RECALL ANYTHING OBJECTIONABLE IN THE CLOSING ARGUMENT OF THE

- 1 ---
- 2 Q. IN EITHER CLOSING ARGUMENT?
- 3 A. NO. NO, SIR.
- 4 Q. HE -- AS I RECALL, HE MADE THE CLOSING ARGUMENTS AT THE
- 5 GUILT OR INNOCENCE PHASE.
- 6 A. HE DID.
- 7 Q. AND HE MADE THE CLOSING ARGUMENT ---
- 8 A. THAT'S CORRECT. THAT'S CORRECT.
- 9 Q. AND I BELIEVE WHAT YOU TESTIFIED TO IS THE GENERAL RULE
- 10 WHICH IS -- IS THAT THE PERSON WHO'S GIVING THE ARGUMENT
- 11 ALSO OBJECTS TO THE OTHER PERSON'S ARGUMENT?
- 12 A. THAT'S HOW I'VE ALWAYS DONE IT, YES, SIR.
- 13 Q. BUT ALSO YOU'RE SAYING THAT YOU DIDN'T MAKE -- YOU
- 14 DON'T HAVE ANY RECOLLECTION TODAY OF MAKING ANY STRATEGIC
- 15 DECISION NOT TO OBJECT TO ANYTHING WHICH WAS SAID BY, YOU
- 16 KNOW, EITHER SOLICITOR IN EITHER ARGUMENT?
- 17 A. YOU COULDN'T HAVE DONE THAT TIL YOU HEARD WHAT WAS
- 18 BEING SAID. I DON'T UNDERSTAND -- YOU MEAN WE MADE A
- 19 DECISION BEFOREHAND NOT TO ---
- 20 Q. NO, NO. YOU DON'T RECALL TODAY MAKING A DECISION ---
- 21 A. OH, NO.
- 22 Q. --- NOT TO OBJECT DURING THE ARGUMENT?
- 23 A. NO, SIR.
- 24 Q. ONE SECOND.
- 25 (PAUSE)

1 THE COURT: AND IS THERE REDIRECT?

2 MR. BLUME: NO FURTHER QUESTIONS.

3 THE COURT: OKAY.

4 MR. SALTER: THANK YOU, YOUR HONOR. JUST VERY, VERY
5 BRIEFLY.

6 REDIRECT EXAMINATION BY MR. SALTER:

7 Q. I WON'T GO BACK THROUGH THE RECORD WITH YOU SINCE WE
8 COVERED SOME OF THAT YESTERDAY. BUT YOU WERE ASKED EARLIER
9 ABOUT WHETHER OR NOT MR. ZELENKA FROM MY OFFICE HAD
10 RECOMMENDED THE ABA GUIDELINES TO YOU. DO YOU RECALL
11 WHETHER OR NOT YOU YOURSELF INDEPENDENTLY MAY HAVE LOOKED AT
12 THE ABA GUIDELINES?

13 A. NOW I DON'T RECALL MR. ZELENKA EVER MENTIONING ABA
14 GUIDELINES. INsofar AS MY LOOKING TO THOSE PRIOR TO THE
15 TRIAL OF THE CASE, NO. THIS WAS 2002. AND I THINK THEY
16 WERE IN THE PROCESS OF REVISING THE GUIDELINES. SO I DIDN'T
17 -- I DIDN'T LOOK AT THE PRE-EXISTING GUIDELINES.

18 Q. YOU WERE ASKED EARLIER ABOUT WHAT THE -- WHAT YOUR
19 FORMER CLIENT HAD SAID REGARDING SHOOTING THE VICTIM AS
20 OPPOSED TO SHOOTING AT HER. AND YOUR TESTIMONY WAS THAT THE
21 STATEMENTS REFLECT THAT HE SHOT AT HER, CORRECT?

22 A. THAT'S CORRECT.

23 Q. JUST SO THAT WE'RE CLEAR, WHAT DID HE TELL YOU?

24 A. I'M NOT GOING TO SAY HE ACTUALLY EVER SAID I KNOW I
25 SHOT HER. I THINK THAT WOULD BE INACCURATE. HE NEVER

1 SEEMED TO DENY CULPABILITY, BUT I DON'T RECALL HIM SAYING I
2 LOOKED AT HER AND I SHOT HER. I MEAN, HE STUCK TO HIS
3 STATEMENT OR WAS CONSISTENT WITH HIS STATEMENT THAT HE
4 PULLED THE TRIGGER AND KIND OF LOOKED AWAY AT THE SAME TIME.

5 Q. AND YOU WERE ASKED ABOUT THE LEVELLE CASE?

6 A. YES, SIR.

7 Q. ALL RIGHT. DO YOU RECALL THE HOLDING IN LEVELLE?

8 A. THAT SUICIDE IS A CRIME. IT'S A FELONY PUNISHABLE
9 UNDER THE COMMON LAW.

10 Q. ALL RIGHT, SIR. NOTHING FURTHER.

11 THE COURT: VERY GOOD. ANY OBJECTION TO THE RELEASE OF
12 THIS WITNESS?

13 MR. BLUME: NO, SIR.

14 MR. SALTER: NO, SIR. WE'D ASK THAT HE BE EXCUSED.

15 THE COURT: YOU'RE NOT REQUIRED TO LEAVE, BUT YOU'RE
16 FREE TO GO IF YOU WISH.

17 A. I NEED TO GO. THANK YOU, JUDGE.

18 THE COURT: HAVE A GOOD DAY. ALL RIGHT. LADIES AND
19 GENTLEMEN, WE'VE BEEN HERE FOR ABOUT AN HOUR AND FIFTEEN
20 MINUTES. LET'S TAKE OUR MORNING BREAK AT THIS TIME. COURT
21 WILL BE IN RECESS APPROXIMATELY TEN TO FIFTEEN MINUTES.

22 (WHEREUPON COURT WAS IN RECESS AT 10:46 AM)

23 THE COURT: THANK YOU. PLEASE BE AT EASE. ALL RIGHT.

24 MR. MABRY, PLEASE CALL YOUR NEXT WITNESS.

25 MR. MABRY: YES, SIR, YOUR HONOR. THE STATE CALLS

1 DONNA SCHWARTZ-WATTS.

2 THE COURT: AND PLEASE COME FORWARD AND TAKE THE OATH
3 OF A WITNESS.

4 DONNA SCHWARTZ-WATTS, M. D.,
5 BEING DULY SWORN TESTIFIED AS FOLLOWS:

6 THE COURT: GOOD MORNING. GOOD MORNING. WOULD YOU
7 PLEASE BEGIN BY STATING YOUR FULL NAME AND SPELL YOUR LAST
8 NAME FOR US.

9 DR. SCHWARTZ-WATTS: YES. DONNA MARIE SCHWARTZ-WATTS,
10 S-C-H-W-A-R-T-Z-W-A-T-T-S.

11 THE COURT: GOOD MORNING. AND, COUNSEL, YOU MAY
12 PROCEED.

13 MR. MABRY: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION BY MR. MABRY:

15 Q. DR. SCHWARTZ-WATTS, IF YOU WOULD, GIVE US THE BENEFIT
16 OF YOUR EDUCATIONAL BACKGROUND.

17 A. SURE. I GRADUATED FROM FURMAN UNIVERSITY IN 1985 WITH
18 A BACHELOR OF ARTS DEGREE IN PSYCHOLOGY. I GRADUATED FROM
19 MEDICAL SCHOOL IN 1989 FROM THE UNIVERSITY OF SOUTH CAROLINA
20 SCHOOL OF MEDICINE WITH A DOCTORATE OF MEDICINE.

21 I COMPLETED A RESIDENCY IN GENERAL PSYCHIATRY AT THE
22 WILLIAM S. HALL PSYCHIATRIC INSTITUTE IN COLUMBIA, WHICH WAS
23 A DEPARTMENT OF MENTAL HEALTH HOSPITAL AT THE TIME. AND I
24 COMPLETED THAT TRAINING IN 1993.

25 I COMPLETED A YEAR OF EXTRA STUDY, A FELLOWSHIP IN

1 FORENSIC PSYCHIATRY AND COMPLETED THAT AT THE DEPARTMENT OF
2 MENTAL HEALTH IN 1994. I'VE WORKED AT THE DEPARTMENT OF
3 MENTAL HEALTH FOR A NUMBER OF YEARS PERFORMING COURT ORDERED
4 COMPETENCY TO STAND TRIAL AND CRIMINAL RESPONSIBILITY
5 EVALUATIONS.

6 I THEN MOVED OVER AND WORKED FOR A FEW YEARS AT THE
7 INSANITY EQUITY PROJECT. AND THEN I WENT OVER TO USC, IT
8 WAS AROUND, I BELIEVE, 1995 WHERE I CONTINUE TO WORK TODAY.

9 Q. ALL RIGHT. AND WHAT IS YOUR OCCUPATION THERE?

10 A. I'M A PROFESSOR OF CLINICAL PSYCHIATRY. AND I AM
11 DIRECTOR OF FORENSIC SERVICES.

12 Q. ALL RIGHT. WOULD YOU TELL US -- DO YOU HAVE ANY
13 EXPERTISE IN THE AREA OF FETAL ALCOHOL SYNDROME, TREATMENT
14 OF PATIENTS WITH FETAL ALCOHOL SYNDROME?

15 A. YES. I DO HAVE SOME CLINICAL EXPERIENCE IN TREATING
16 INDIVIDUALS WITH FETAL ALCOHOL SYNDROME OR FETAL ALCOHOL
17 EFFECTS. AS PART OF MY JOB DUTIES AT USC FOR FIFTEEN YEARS
18 OFF AND ON, RIGHT NOW I'M NOT WORKING THERE, BUT I'VE WORKED
19 AT THE DEPARTMENT OF JUVENILE JUSTICE WHERE I HAVE TREATED
20 CHILDREN THAT HAVE BEEN ADJUDICATED DELINQUENT FOR VARIOUS
21 OFFENSES.

22 AND I'VE WORKED AT THE WILLOW LANE CAMPUS, WHICH WAS
23 ACTUALLY THE CAMPUS THAT WAS -- THAT HOUSED CHILDREN WITH
24 ATTENTION DEFICIT DISORDER. AND SO OVER THE YEARS I'VE
25 TREATED HUNDREDS OF CHILDREN WITH ATTENTION DEFICIT DISORDER

1 AND PROBABLY FIVE PERCENT OF THOSE CHILDREN HAVE HAD -- FIVE
2 TO TEN PERCENT OF THOSE CHILDREN HAVE, IN MY OPINION, MET
3 THE CRITERIA FOR FETAL ALCOHOL EXPOSURE OR SYNDROME.

4 Q. ALL RIGHT.

5 MR. MABRY: YOUR HONOR, AT THIS TIME WE'D OFFER HER ---

6 Q. WELL, LET ME ASK YOU THIS QUESTION. HAVE YOU EVER BEEN
7 QUALIFIED AS AN EXPERT IN COURT BEFORE?

8 A. YES.

9 Q. AND APPROXIMATELY HOW MANY TIMES?

10 A. BETWEEN FIVE AND -- FIVE HUNDRED AND ONE THOUSAND
11 TIMES.

12 Q. OKAY.

13 MR. MABRY: YOUR HONOR, AT THIS TIME WE'D OFFER HER AS
14 AN EXPERT IN FORENSIC PSYCHIATRY IN THE TREATMENT OF
15 INDIVIDUALS WITH FETAL ALCOHOL SYNDROME OR FETAL ALCOHOL
16 EFFECTS.

17 THE COURT: ALL RIGHT. AND WHAT SAYS APPLICANT?

18 MS. JOHNSON: I'D LIKE TO VOIR DIRE HER.

19 THE COURT: YOU MAY. COUNSEL, AS YOU KNOW, OR EXCUSE
20 ME, DR. SCHWARTZ-WATTS, AS YOU KNOW, OPPOSING COUNSEL HAS A
21 RIGHT TO QUESTION ABOUT THE AREA OF EXPERTISE AT THIS POINT.
22 AND WE'LL STOP NOW FOR THAT. AND YOU MAY PROCEED, MS.
23 JOHNSON.

24 VOIR DIRE BY MS. JOHNSON:

25 Q. YOUR -- YOU HAVE TRAINING IN PSYCHIATRY GENERALLY?

- 1 A. YES, MA'AM.
- 2 Q. YOU ARE A MEDICAL DOCTOR?
- 3 A. CORRECT.
- 4 Q. AND YOU ALSO HAVE EXTENSIVE ADDITIONAL TRAINING IN
- 5 SEXUAL DISORDERS, IS THAT RIGHT?
- 6 A. CORRECT.
- 7 Q. AND IF YOU WERE TO DESCRIBE YOUR OWN EXPERTISE YOU
- 8 WOULD DESCRIBE YOUR EXPERTISE AS IN FORENSIC PSYCHIATRY IN A
- 9 GENERAL WAY AND IN SEXUAL DISORDERS IN PARTICULAR?
- 10 A. YES, THAT'S FAIR TO SAY.
- 11 Q. AND YOU HAVE TREATED PEOPLE WITH A WIDE VARIETY OF
- 12 DISORDERS?
- 13 A. CORRECT.
- 14 Q. THAT WOULD BE WHETHER WE WERE ASKING ABOUT HOW MANY
- 15 PEOPLE YOU TREATED WITH FETAL ALCOHOL SYNDROME OR HOW MANY
- 16 PEOPLE YOU'VE TREATED WITH MENTAL RETARDATION OR HOW MANY
- 17 PEOPLE YOU'VE TREATED WITH BI-POLAR DISORDER, ANY OF THOSE
- 18 YOU WOULD HAVE TREATED A REASONABLE NUMBER OF PEOPLE?
- 19 A. THAT'S CORRECT.
- 20 Q. BUT YOU DON'T HAVE THAT -- YOU DON'T PARTICULARLY FOCUS
- 21 ON FETAL ALCOHOL DISORDERS?
- 22 A. NOT AT ALL.
- 23 Q. AND YOU -- YOU HAVE NEVER SET YOURSELF OUT IN ANY
- 24 PREVIOUS PROCEEDING AS AN EXPERT IN FETAL ALCOHOL DISORDERS,
- 25 HAVE YOU?

1 A. THAT'S CORRECT.

2 Q. AND YOU'VE NEVER BEEN QUALIFIED IN THAT WAY IN ANY
3 PREVIOUS PROCEEDING?

4 A. NO.

5 Q. SO YOU HAVE A GENERAL EXPERTISE IN FORENSIC PSYCHIATRY
6 AND AN EXPERTISE IN SEXUAL DISORDERS, BUT NOT ANY PARTICULAR
7 EXPERTISE IN FETAL ALCOHOL?

8 A. THAT'S CORRECT. OTHER THAN I'VE JUST CLINICALLY
9 TREATED SOME CHILDREN THAT HAD ATTENTION DEFICIT DISORDER
10 AND AS, IN MY OPINION, AS A CAUSE OF THAT WAS EXPOSURE TO
11 FETAL -- FETAL ALCOHOL.

12 Q. RIGHT. AND YOU HAVEN'T WRITTEN ANYTHING ON THIS
13 SUBJECT?

14 A. NO. AND I CERTAINLY WOULDN'T CONSIDER MYSELF A
15 NATIONAL EXPERT IN FETAL ALCOHOL DISORDERS.

16 MS. JOHNSON: YOUR HONOR, I'M GOING TO OBJECT TO HER
17 QUALIFICATION AS AN EXPERT IN FETAL ALCOHOL SYNDROME, BUT
18 NOT TO THE QUALIFICATION AS AN EXPERT IN SEXUAL DISORDERS OR
19 IN FORENSIC PSYCHIATRY.

20 THE COURT: ALL RIGHT. LET'S TALK ABOUT THIS. AND
21 WHAT'S YOUR POSITION, MR. MABRY?

22 MR. MABRY: YOUR HONOR, SHE'S TESTIFIED THAT OVER
23 FIFTEEN YEARS SHE HAS TREATED VARIOUS INDIVIDUALS, CHILDREN
24 WHO HAVE FETAL ALCOHOL SYNDROME. SHE IS ALSO A MEDICAL
25 DOCTOR IN ADDITION TO BEING A PSYCHIATRIST. I THINK THAT IS

1 SUFFICIENT FOR HER TO BE QUALIFIED AS AN EXPERT IN THE
2 TREATMENT OF INDIVIDUALS WITH FETAL ALCOHOL SYNDROME.

3 THE COURT: ALL RIGHT. JUST ONE MOMENT.

4 MS. JOHNSON: YOUR HONOR, IF I MIGHT SAY ONE MORE
5 THING.

6 THE COURT: JUST A MOMENT, PLEASE.

7 (PAUSE)

8 THE COURT: GO AHEAD, MA'AM.

9 MS. JOHNSON: I JUST WANTED TO SAY THAT SHE HAS NEVER
10 BEEN QUALIFIED AND SHE DOESN'T CONSIDER HERSELF AN EXPERT.
11 AND IT SEEMS TO ME EXTRAORDINARY TO QUALIFY SOMEONE AS AN
12 EXPERT IN THE AREA THAT THEY DON'T CONSIDER THEMSELVES AN
13 EXPERT.

14 THE COURT: ALL RIGHT. LET ME SPEAK WITH THE WITNESS
15 ABOUT THIS, IF I MAY. DR. SCHWARTZ-WATTS, FIRST OF ALL, WE
16 UNDERSTAND YOU WERE SICK YESTERDAY. I HOPE YOU'RE FEELING
17 BETTER TODAY.

18 A. THANK YOU, YOUR HONOR.

19 THE COURT: VERY GOOD. AND CONGRATULATIONS ON THE
20 GRADUATION OF YOUR SON, I BELIEVE.

21 A. THANK YOU.

22 THE COURT: ARE YOU FEELING ALL RIGHT TODAY?

23 A. YES, SIR. I'VE HAD THREE DOSES OF ANTIBIOTICS. I WAS
24 MORE CONCERNED THAT I WAS ALSO CONTAGIOUS. SO I DON'T THINK
25 I'M CONTAGIOUS AT THIS POINT.

1 THE COURT: ALL RIGHT. THANK YOU FOR THAT CONCERN FOR
2 US. TELL ME, HOW MANY, IF YOU COULD ESTIMATE, CHILDREN OR
3 ADULTS HAVE YOU TREATED THAT YOU BELIEVE HAD FETAL ALCOHOL
4 SYNDROME?

5 A. PROBABLY BETWEEN TWENTY TO FIFTY.

6 THE COURT: HAVE YOU EVER TAKEN THROUGH MEDICAL SCHOOL
7 OR ANY CONTINUING EDUCATION COURSES THAT INVOLVE OR TALK
8 ABOUT FETAL ALCOHOL SYNDROME?

9 A. YES. IN MEDICAL SCHOOL OUR TRAINING IN THE PEDIATRIC
10 ROTATION IS THE AREA WHERE WE WOULD HAVE BEEN EXPOSED TO
11 FETAL ALCOHOL SYNDROME AND ITS EFFECTS. ALSO DURING
12 RESIDENCY WE HAD TO HAVE SPECIFIC TRAINING IN CHILD
13 PSYCHIATRY. AND ON THE CHILD PSYCHIATRIC SERVICES WE WOULD
14 HAVE RECEIVED LECTURES. SO I HAD A GENERAL -- A GENERAL
15 PSYCHIATRIC KNOWLEDGE OF FETAL ALCOHOL.

16 THE COURT: ALL RIGHT. AND DO YOU FEEL CAPABLE AND
17 COMPETENT TO ANSWER QUESTIONS THAT MAY ASK AN OPINION FROM
18 YOU ON FETAL ALCOHOL SYNDROME AND ITS EFFECTS ON
19 INDIVIDUALS?

20 A. ONLY IN A GENERAL SENSE, YOUR HONOR, AS MUCH AS ANY
21 OTHER PHYSICIAN OR PSYCHIATRIST. I CERTAINLY DON'T KNOW ALL
22 OF THE RESEARCH AND CERTAINLY WHEN COMPARING THAT TO MY
23 EXPERTISE IN SEXUAL DISORDERS WHERE I KNOW ALL OF THE
24 RESEARCH, I'M CERTAINLY NOT FAMILIAR WITH ALL OF THE
25 EXISTING RESEARCH AND ALL OF THE NUANCES OF FETAL ALCOHOL.

1 THE COURT: ALL RIGHT. AND WOULD YOU FEEL COMFORTABLE
2 IF A QUESTION WAS POSED TO YOU THAT INVOLVED AN AREA OF
3 FETAL ALCOHOL SYNDROME FOR WHICH YOU DID NOT KNOW THE ANSWER
4 TO A REASONABLE DEGREE OF MEDICAL CERTAINTY IN SIMPLY SAYING
5 THAT YOU DO NOT KNOW THE ANSWER TO THAT?

6 A. I HAVE NO PROBLEM WITH THAT, YOUR HONOR.

7 THE COURT: ALL RIGHT. JUST ONE MOMENT, PLEASE.

8 (PAUSE)

9 THE COURT: ALL RIGHT. ANYTHING FURTHER BEFORE THE
10 COURT RULES ON THIS MATTER? FIRST, FROM THE STATE WHO
11 OFFERS THE WITNESS?

12 MR. MABRY: NO, SIR.

13 THE COURT: NEXT FROM THE APPLICANT?

14 MS. JOHNSON: NO, SIR.

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I HAVE
16 REVIEWED RULE 702. AND IT SAYS THAT IF SCIENTIFIC,
17 TECHNICAL OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST THE
18 TRIER OF FACT TO UNDERSTAND THE EVIDENCE OR TO DETERMINE A
19 FACT IN ISSUE A WITNESS QUALIFIED AS AN EXPERT BY KNOWLEDGE,
20 SKILL, EXPERIENCE, TRAINING OR EDUCATION MAY TESTIFY THERETO
21 IN THE FORM OF AN OPINION OR OTHERWISE.

22 DR. SCHWARTZ-WATTS CANDIDLY, AND I APPRECIATE YOUR
23 CANDOR, MA'AM, TELLS US THAT WHILE SHE HAS TREATED OR THAT
24 SHE HAS TREATED INDIVIDUALS THAT SHE IS AWARE HAVE FETAL
25 ALCOHOL SYNDROME, SHE HAS SOME SCHOOLING IN THAT AND SOME

1 COURSE -- COURSES IN THAT, I BELIEVE SHE MEETS THE
2 REQUIREMENTS OF RULE 702.

3 NOW TO RULE OTHERWISE WOULD BE -- WOULD DO THIS, IT
4 WOULD NOT ALLOW THE WITNESS TO GIVE AN OPINION. AND
5 CERTAINLY HER KNOWLEDGE AS AN EXPERT IS MUCH GREATER THAN
6 THE TRIER OF FACTS IN THIS CASE. SO I BELIEVE SHE RISES TO
7 THE LEVEL OF AN EXPERT.

8 AND I FIND THAT SHE IS QUALIFIED AS AN EXPERT IN
9 FORENSIC PSYCHIATRY, SEXUAL DISORDERS, BUT ALSO IN FETAL
10 ALCOHOL SYNDROME. THE WITNESS HAS AGREED THAT IF SHE'S
11 POSED A QUESTION WHICH REQUESTS AN OPINION THAT SHE DOES NOT
12 FEEL CAPABLE OF RENDERING, THEN SHE WOULD TELL US THAT.

13 BUT ALSO THIS GOES TO THE HEART OF THIS CASE. AND TO
14 OTHERWISE STRIP THE WITNESS OF AN ABILITY TO OFFER AN
15 OPINION MAY COMPROMISE MY ABILITY TO DETERMINE THE VARIOUS
16 MERITS OF THE ISSUES BEFORE ME ON FETAL ALCOHOL SYNDROME AND
17 HOW IT AFFECTS THE FACTS OF THIS CASE. THESE ARE THE
18 REASONS FOR MY RULING. AND YOU MAY PROCEED. AND YOU MAY
19 ASK A QUESTION THAT REQUESTS AN EXPERT OPINION ON FETAL
20 ALCOHOL SYNDROME.

21 MR. MABRY: THANK YOU, YOUR HONOR.

22 THE COURT: VERY GOOD.

23 DIRECT EXAMINATION BY MR. MABRY CONTINUED:

24 Q. DR. SCHWARTZ-WATTS, WERE YOU RETAINED AS AN EXPERT IN
25 THIS CASE, THE STATE VERSUS JONATHAN BINNEY?

1 A. YES.

2 Q. ALL RIGHT. IF YOU WOULD, JUST BRIEFLY TELL THE COURT
3 HOW YOU FIRST BECAME INVOLVED IN THE CASE.

4 A. YES. AND I APOLOGIZE, I DON'T REMEMBER THE EXACT
5 DETAILS. MR. PRUETT EITHER CALLED MY OFFICE OR PROBABLY
6 CONTACTED ME IN SOME WAY, SHAPE OR FORM AND ASKED ME WOULD I
7 PLEASE EVALUATE MR. BINNEY FOR HIM.

8 Q. OKAY. AND ARE YOU A NATIONALLY RECOGNIZED EXPERT IN
9 SEXUAL DEVIANT BEHAVIOR OR SEXUAL MENTAL ILLNESSES?

10 A. I THINK THAT'S FAIR TO SAY, YES.

11 Q. OKAY. AND AFTER -- FIRST OF ALL, TELL ME WHAT
12 DOCUMENTS YOU RELIED UPON IN YOUR DIAGNOSIS AND WHAT
13 INTERVIEWS YOU CONDUCTED, THOSE TYPE OF THINGS?

14 A. YES. I REMEMBER VERY CLEARLY, I HAD MET WITH MR.
15 BINNEY ON TWO OCCASIONS. I BELIEVE HE WAS AT THE LIEBER
16 CORRECTIONAL INSTITUTE AT THAT TIME. AND I SAW HIM.
17 I ALSO SPENT A GREAT DEAL OF TIME WITH HIS PARENTS, WHO
18 WERE VERY HELPFUL. THEY TRAVELED, I BELIEVE, ALL THE WAY
19 FROM NORTH CAROLINA AT THE TIME. I THINK THAT'S WHERE THEY
20 WERE LIVING. AND THEY CAME TO COLUMBIA AND MET WITH ME.
21 AND I HAD ALSO SPOKEN WITH THEM BY TELEPHONE.

22 I HAD A NUMBER OF PSYCHIATRIC RECORDS. I KNEW THAT MR.
23 BINNEY HAD VERY RECENTLY BEEN HOSPITALIZED PRIOR TO HIS
24 OFFENSES AT THE HARRIS PSYCHIATRIC HOSPITAL. HE ALSO HAD
25 VARIOUS PSYCHIATRIC RECORDS FROM HIS FORMATIVE YEARS.

1 AND I SEE HERE IN REFERRING TO MY REPORT, HE HAD -- I
2 HAD MEDICALS FROM RIVEREDGE HOSPITAL. I HAD A PSYCHOSOCIAL
3 ASSESSMENT FROM THERE. I HAD A PSYCHIATRIC EVALUATION.

4 I ALSO HAD RELIED UPON DR. GEOFFREY MCKEE, WAS A
5 PSYCHOLOGIST WHO HAD EVALUATED MR. BINNEY. HE HAD SOME
6 OTHER CHARGES, YOUR HONOR, PRIOR TO THIS. AND I HAD THE
7 TRANSCRIPT OF HIS TESTIMONY AND, I BELIEVE, SOME OF THE
8 RESULTS OF HIS TESTING.

9 I ALSO, AFTER EVALUATING MR. BINNEY, ORDERED A NUMBER
10 OF CONSULTATIONS. I HAD SOME PSYCHOLOGICAL TESTING
11 PERFORMED ON HIM. I'D ALSO RECOMMENDED A NEUROLOGICAL
12 CONSULT, WHICH -- WITH DR. DAVID BACHMAN. AND I ALSO
13 CONSULTED WITH DR. ALEX MORTON, WHO IS A
14 PSYCHOPHARMACOLOGIST.

15 Q. OKAY. AND WHAT WAS DR. BACHMAN TO DO IN THIS CASE
16 BESIDES RUN SOME PSYCHOLOGICAL TESTS ON MR. BINNEY? DO YOU
17 REMEMBER, WAS THERE ANYTHING SPECIFIC HE WAS SUPPOSED TO DO?

18 A. WELL ACTUALLY, DR. BACHMAN'S A NEUROLOGIST.

19 Q. I'M SORRY. GO AHEAD.

20 A. YES. AND I REMEMBER VERY SPECIFICALLY I WANTED DR.
21 BACHMAN OR A BEHAVIORAL NEUROLOGIST TO SEE HIM. MR. BINNEY
22 HAD A HISTORY OF SOME CLOSED HEAD INJURIES, WHICH I WAS VERY
23 CONCERNED ABOUT. HE HAD A HISTORY OF POOR ACADEMIC
24 ACHIEVEMENT. HE HAD A HISTORY OF A DIAGNOSIS OF ATTENTION
25 DEFICIT DISORDER.

1 HE HAD MULTIPLE -- MULTIPLE HISTORIES THAT IN MY MIND
2 ARE AND COULD BE INDICATIVE OF A NEUROLOGICAL DISORDER, AND
3 MORE SPECIFICALLY BECAUSE OF MY DIAGNOSIS OF HIM. I
4 DIAGNOSED HIM WITH SEXUAL SADISM, WHICH IS A SEXUAL
5 DISORDER.

6 AND I KNEW AT THAT POINT IN TIME THAT THERE HAD BEEN
7 SOME STUDIES THAT SHOWED THAT PEOPLE WITH SEXUAL SADISM HAD
8 BRAIN ABNORMALITIES. SO I ALSO VERY SPECIFICALLY ASKED FOR
9 A CERTAIN KIND OF IMAGING SCAN ON MR. BINNEY TO SEE THAT IF
10 INDEED HE HAD ANY BRAIN ABNORMALITIES THAT WE COULD RELATE
11 TO A SEXUAL DISORDER.

12 Q. ALL RIGHT. WHAT KIND OF TEST WAS THAT THAT YOU WOULD
13 RUN FOR THE BRAIN ABNORMALITIES?

14 A. IT WOULD HAVE BEEN A SPECTER, A PET SCAN. AND I
15 IMAGINE AT THAT TIME IT WAS PROBABLY A PET SCAN.

16 Q. AND WAS AN MRI ALSO DONE ON MR. BINNEY TO YOUR
17 KNOWLEDGE?

18 A. TO MY RECOLLECTION, YES.

19 Q. AND WHAT WERE THE RESULTS -- WOULD YOU TELL THE COURT
20 WHAT THE RESULTS WERE OF THE MRI AND THE PET SCAN AS FAR AS
21 YOU REMEMBER?

22 A. AS I CAN REMEMBER DR. BACHMAN WAS NOT ABLE TO FIND
23 ANYTHING NEUROLOGICALLY IN MY -- THAT HE COULD HELP ME WITH
24 IN THE TRIAL.

25 Q. ALL RIGHT. IF YOU WOULD, TELL US ABOUT FETAL ALCOHOL

1 SYNDROME AND HOW THAT CAME UP IN YOUR TREATMENT OR DIAGNOSIS
2 OF MR. BINNEY IN THIS CASE.

3 A. YES. THAT WAS HIS PARENTS. AND I REMEMBER THEM VERY
4 SPECIFICALLY COMING TO MY OFFICE. AND THEY HAVE ALWAYS,
5 YOUR HONOR, THEY WERE VERY CONVINCED. AND THEY WERE THE
6 ONES THAT BROUGHT IT TO MY ATTENTION. AND I REMEMBER
7 TELLING THEM THAT I WOULD LOOK INTO THAT AND PERHAPS HE MAY
8 VERY WELL HAVE THAT. BUT I NEEDED -- I NEEDED PROOF.

9 AND THE PROBLEM WAS, YOUR HONOR, AT THE TIME, AND I
10 REMEMBER, MR. BINNEY'S BIOLOGICAL MOTHER HAD KILLED HERSELF
11 BEFORE I GOT TO EVALUATE MR. BINNEY. SO I NEVER HAD AN
12 OPPORTUNITY TO SPEAK WITH HER.

13 AND WHAT WE WERE CONCERNED ABOUT, MR. BINNEY'S
14 BIOLOGICAL MOTHER HAD CERTAINLY GIVEN HIS MOTHER A HISTORY
15 THAT SHE WAS AWARE, THE MOTHER WAS AWARE OF A HISTORY THAT
16 SHE DRANK WHILE PREGNANT. AND THE CONCERN WAS AT THE TIME
17 WE JUST DIDN'T HAVE PROOF. THERE WEREN'T ANY MEDICAL
18 RECORDS. THERE WAS NO WAY FOR ME TO FIND ANY EVIDENCE THAT
19 WOULD SHOW THAT INDEED HE HAD EXPOSURE TO ALCOHOL WHILE HE
20 WAS IN UTERO OTHER THAN THE MOTHER'S HISTORY.

21 AND I REMEMBER HIS PARENTS, THEY -- I -- THEY TRIED, I
22 THINK, VERY DILIGENTLY TO FIND HIS BIOLOGICAL FATHER. WE
23 WERE TRYING TO GET SOME KIND OF HISTORY TO BE ABLE TO
24 CONFIRM THAT. SO THE IDEA CAME UP THROUGH THEM.

25 AND CERTAINLY THERE WERE SOME THINGS ABOUT MR. BINNEY

1 THAT WERE CONSISTENT WITH THAT. HE DID HAVE A HISTORY OF
2 ATTENTION DEFICIT DISORDER. AND THEN LATER HIS PARENTS -- I
3 WAS PROVIDED, I DON'T KNOW WHETHER IT WAS THROUGH THE
4 PARENTS OR HIS COUNSEL, BUT I ACTUALLY HAD PICTURES OF MR.
5 BINNEY AS A CHILD. AND IT WAS MY OPINION THAT IN LOOKING AT
6 THOSE PICTURES HE CERTAINLY HAD THE PHYSICAL ABNORMALITIES
7 THAT YOU SEE WITH FETAL ALCOHOL SYNDROME. AND, I THOUGHT,
8 INDEED HE MET THE CRITERIA. THE CONCERN WAS IS THAT WE
9 DIDN'T HAVE EVIDENCE OTHER THAN HIS MOTHER'S TESTIMONY THAT
10 HIS BIOLOGICAL MOTHER HAD USED ALCOHOL DURING PREGNANCY.

11 Q. OKAY. AND DID YOU EVALUATE MR. BINNEY DURING THE
12 COURSE OF YOUR WORK ON THIS CASE TO DETERMINE WHETHER, IN
13 YOUR OPINION, HE HAD FETAL ALCOHOL SYNDROME?

14 A. WELL, IT WAS MY OPINION THAT HE CERTAINLY -- I REMEMBER
15 VERY CLEARLY, AND I STILL HAVE HIS PICTURES, HE HAD THE
16 HYPERTELORISM, HE HAD THE WIDE SET EYES THAT YOU SEE. HE
17 WAS VERY SMALL FOR STATURE. I THOUGHT HIS EARS WERE LOW-
18 SET.

19 IN HIS PICTURES YOU COULDN'T SEE WHAT'S CALLED THE
20 PHILTRUM, WHICH IS THE AREA IN BETWEEN THE NOSE AND THE LIP.
21 AND IT'S FLATTENED TYPICALLY IN CHILDREN WITH FETAL ALCOHOL
22 SYNDROME OR EXPOSURE. I COULDN'T SEE THAT FROM THE
23 PICTURES. BUT WE CERTAINLY HAD THE HISTORY OF ATTENTION
24 DEFICIT DISORDER, FAILURE TO THRIVE, HIS SMALL SIZE. SO IN
25 MY OPINION IT WAS -- I CERTAINLY CONSIDERED THAT HE HAD IT.

1 Q. OKAY. AND CAN YOU TELL US WHETHER OR NOT YOU TESTIFIED
2 TO YOUR FINDINGS OF FETAL ALCOHOL SYNDROME WITH THE JURY IN
3 THE PENALTY PHASE OF HIS TRIAL?

4 A. I HAVE NOT SEEN MY TESTIMONY. SO I'M GOING TO RELY ON
5 YOU ALL. AND I'M TOLD THAT I DID. AND I THINK THERE WAS --
6 THE CONCERN WAS I JUST DIDN'T

7 MS. JOHNSON: YOUR HONOR, I'M GOING TO HAVE TO OBJECT,
8 IF SHE DOESN'T RECALL HER TESTIMONY. HE CAN ASK HER TO
9 REFRESH HER RECOLLECTION, BUT SHE JUST SAID SHE DOESN'T
10 RECALL IT.

11 THE COURT: SUSTAINED. DO YOU WISH TO LET THE WITNESS
12 REVIEW PORTIONS OF HER TESTIMONY ---

13 MR. MABRY: YES, SIR, YOUR HONOR.

14 Q. I'LL SHOW YOU PAGE 3,200 -- BEGINNING ON PAGE 3,283, I
15 BELIEVE. IT ACTUALLY STARTS AT THE BOTTOM OF PAGE 3,282.

16 A. THANK YOU.

17 Q. IF YOU'LL START READING THERE AND SEE IF THAT REFRESHES
18 YOUR RECOLLECTION.

19 (PAUSE)

20 A. OKAY.

21 Q. I'M SORRY. DOES THAT REFRESH YOUR RECOLLECTION?

22 A. YES.

23 Q. MY QUESTION, ORIGINAL QUESTION WAS DO YOU RECALL
24 WHETHER YOU TESTIFIED IN THE PENALTY PHASE OF THE TRIAL
25 REGARDING YOUR FINDINGS REGARDING MR. BINNEY HAD FETAL

1 ALCOHOL SYNDROME?

2 A. YES, I DID.

3 Q. ALL RIGHT. DID YOU ALSO -- CAN YOU TELL ME WHETHER OR
4 NOT YOU TESTIFIED REGARDING THE CHARACTERISTICS OF A PERSON
5 WHO HAS FETAL ALCOHOL SYNDROME?

6 A. YES. IT'S CERTAINLY CONSISTENT WITH THE KNOWLEDGE I
7 HAVE TO DATE STILL. THAT WOULD BE CONSISTENT WITH MY
8 KNOWLEDGE OF FETAL ALCOHOL SYNDROME.

9 Q. NOW WITH YOUR DIAGNOSIS OF FETAL ALCOHOL SYNDROME OF
10 MR. BINNEY CAN YOU TELL US WHETHER OR NOT IN YOUR OPINION
11 FETAL ALCOHOL SYNDROME HAD ANYTHING TO DO WITH THE
12 COMMISSION OF THIS CRIME? DID IT CAUSE HIM TO COMMIT THIS
13 MURDER?

14 A. IN MY OPINION, AND TO DATE IT'S STILL THE SAME, YOUR
15 HONOR, UNLESS I HAVE OTHER INFORMATION, ALTHOUGH I DIAGNOSED
16 HIM WITH FETAL ALCOHOL, CERTAINLY WHEN I WAS TESTIFYING
17 ABOUT HIM I KNOW OF NO -- IT'S MY OPINION HE'S SUFFERING
18 FROM A SEXUAL DISORDER AT THE TIME OF HIS OFFENSES AND THAT
19 THE REASON HE WAS IN MS. SOUTHERN'S HOUSE WAS BECAUSE OF HIS
20 SEXUAL DISORDER AND THAT HIS PRIMARY DIAGNOSIS AT THE TIME
21 WAS A SEXUAL DISORDER.

22 Q. AND WHAT WAS THE SEXUAL DISORDER THAT HE WAS SUFFERING
23 FROM?

24 A. IT WAS IN THE GROUP OF WHAT'S CALLED PARAPHILIA, WHICH
25 IS A DEVIANT SEXUAL AROUSAL OR BEHAVIORS. AND HE HAD A

1 NUMBER OF THOSE. PEOPLE THAT HAVE THESE PARAPHILIC
2 DISORDERS AVERAGE FOUR IN A LIFETIME. AND MR. BINNEY
3 ENDORSED -- ACTUALLY HIS SYMPTOMS WERE PRETTY CONSISTENT
4 WITH FOUR. AND HE HAD A VERY SEVERE FORM.

5 YOUR HONOR, THIS IS AN ILLNESS HE DOESN'T CHOOSE TO
6 HAVE. AND WE DO KNOW THAT IT ALSO HAS, SIMILAR TO FETAL
7 ALCOHOL, IT HAS BIOCHEMICAL ORIGINS. IT'S NOT A CHOICE.
8 AND THIS DISORDER WAS VERY EGODYSTONIC, MEANING HE DID NOT
9 LIKE HAVING THE THOUGHTS AND IMPULSES HE HAD. THAT'S WHY HE
10 WAS TRYING TO KILL HIMSELF. HE DIDN'T WANT TO ACT ON THE
11 URGES HE HAD.

12 AND IN MY OPINION HE WAS VERY SICK. BUT IT WAS ALSO MY
13 OPINION, EVEN CONSIDERING IF HE HAD FETAL ALCOHOL, I DON'T
14 THINK THAT WAS THE REASON HE WAS -- THAT IT WAS RELATED TO
15 THIS CRIME.

16 Q. OKAY. IF YOU WOULD, RELATE TO US, WHAT ARE YOU TALKING
17 ABOUT? WHAT SEXUAL DISORDER DID HE HAVE THAT WE'RE TALKING
18 ABOUT?

19 A. HE HAD A NUMBER. FIRST AND FOREMOST WE KNEW THAT HE
20 HAD A -- SOME PEDOFILIC URGES. HE HAD ACTED ON THOSE
21 IMPULSES AND WAS STILL HAVING SOME IDEAS AND AROUSAL TO
22 CHILDREN AT THE TIME I'D SEEN HIM. SO HE MET THE CRITERIA
23 OF A PEDOPHILIA.

24 BUT MORE IMPORTANTLY, AND WHAT I FELT WAS RESPONSIBLE
25 FOR HIS CHARGES, HE HAD SEXUAL SADISM. HE WAS HAVING

1 THOUGHTS AND URGES AND HAVING AROUSAL TO THE THOUGHT OF
2 CAUSING PAIN AND SUFFERING DURING SEXUAL ACTIVITY. AND
3 THAT'S A VERY SERIOUS DISORDER. HE HAD HAD THE URGES. HE
4 HAD NEVER ACTED ON THEM BEFORE. ALTHOUGH HE WAS HAVING SOME
5 QUITE STRONG IMPULSES.

6 Q. ALL RIGHT. AND I ASSUME -- DID YOU, IN YOUR EVALUATION
7 OF MR. BINNEY, DID YOU TALK TO HIM ABOUT THIS CRIME AND WHY
8 HE WAS THERE AT THE HOUSE THAT DAY?

9 A. YES. MR. BINNEY WAS ALWAYS OPEN. HE WAS -- HE WAS
10 VERY VERBAL. HE WAS VERY -- HE WAS NOT VERY DEFENDANT. HE
11 WAS VERY FORTHCOMING IN GIVING SOME PRETTY SENSITIVE
12 INFORMATION ABOUT HIMSELF. AND WE DISCUSSED IT AT LENGTH.

13 Q. OKAY. IF YOU WOULD, INFORM THE COURT OR TELL THE COURT
14 WHAT MR. BINNEY SAID WHY HE WAS THERE THAT DAY AT MS.
15 SOUTHERN'S HOUSE.

16 A. HE HAD BEEN HAVING A NUMBER OF WHAT'S CALLED SADISTIC
17 IMPULSES, YOUR HONOR. AND SOME OF THOSE INCLUDED SOME IDEAS
18 ABOUT HIS WIFE AT THE TIME. SOME OF THOSE INCLUDED IDEAS
19 ABOUT A CLOSE FRIEND OF HIS AT THE TIME. AND HE HAD HAD
20 IMPULSES.

21 WHAT HE TOLD ME WAS THAT HE HAD THOUGHT ABOUT
22 ASSAULTING MS. SOUTHERN SEXUALLY DURING THAT PERIOD OF TIME
23 WHILE HE WAS IN THE HOUSE AND THAT WHILE HE WAS IN THE HOUSE
24 FOR THOSE PURPOSES AND ALSO TO KILL HIMSELF AFTERWARDS. HE
25 NEVER ACTED ON THOSE IMPULSES BECAUSE HE WAS SURPRISED -- I

1 REMEMBER HIM TELLING ME MS. SOUTHERN CAME HOME BEFORE HE HAD
2 A CHANCE TO ACT ON THOSE IMPULSES AND HE WAS SURPRISED.

3 Q. OKAY.

4 A. BY HER PRESENCE.

5 Q. AND WHAT HAPPENED WHEN HE WAS SURPRISED BY MS.

6 SOUTHERN'S PRESENCE ACCORDING TO WHAT HE TOLD YOU?

7 A. BASED ON MY RECOLLECTION, I BELIEVE HE SAID HE WAS IN
8 THE BATHROOM AT THE TIME. HE HAD -- HE WAS VERY ILL. HE
9 HAD SOME GI DISTURBANCES BECAUSE HE HAD OVERDOSED ON SOME
10 NICOTINE PATCHES AND WAS IN THE BATHROOM.

11 AND I REMEMBERED HIM TELLING ME THAT HE WAS LOOKING IN
12 THE MEDICINE CABINET, LOOKING IN THE MIRROR, AND THAT HE SAW
13 MS. SOUTHERN WALK DOWN THE HALLWAY PAST HIM AND THEY BOTH
14 STARTLED.

15 Q. AND WHAT DID HE DO WHEN HE WAS SURPRISED TO SEE MS.
16 SOUTHERN?

17 A. I BELIEVE AS SHE FLED HE SHOT AT HER.

18 Q. OKAY. AND DO YOU HAVE AN OPINION WHETHER HIS SEXUAL
19 SADISM CAUSED HIM TO SHOOT MS. SOUTHERN?

20 A. NO. AND, IN FACT, THAT'S WHY I DIDN'T TESTIFY -- I
21 REMEMBER MR. PRUETT WAS PRETTY UPSET WITH ME BECAUSE HE
22 WANTED ME TO SAY THAT MR. BINNEY WAS GUILTY, BUT MENTALLY
23 ILL BECAUSE OF THESE CHARGES, AND I COULDN'T.

24 IF HE HAD INDEED ASSAULTED THE VICTIM, THEN HE
25 CERTAINLY WOULD HAVE BEEN ACTING ON HIS IMPULSES. HE DIDN'T

1 HAVE RECURRING IMPULSES TO SHOOT WOMEN. HE CERTAINLY DIDN'T
2 HAVE A RECURRING IMPULSE TO SHOOT MS. SOUTHERN. HE HAD
3 RECURRING IMPULSES TO HAVE SEXUAL RELATIONSHIPS WITH A
4 PARTNER AND CAUSE PAIN AND SUFFERING ON THEM.

5 Q. OKAY. AND REGARDING THE BURGLARY OF THE HOME, WHAT
6 EVIDENCE DID YOU HAVE THAT THIS WAS NOT AN IMPULSIVE
7 BEHAVIOR, THAT HE HAD GONE THERE WITH SOME TYPE OF PLAN OR
8 THOUGHT OUT PLAN?

9 A. I THINK IT'S FAIR TO SAY HE DID HAVE A PLAN. HE HAD,
10 IF I REMEMBER CORRECTLY, HE HAD BEEN IN THAT AREA BEFORE
11 WITH A FRIEND IN THE WOODS. I'M NOT SURE -- I DON'T
12 REMEMBER THE CIRCUMSTANCES. BUT HE HAD SEEN THAT HOUSE
13 BEFORE AND HAD PLANNED TO GO THERE.

14 HE HAD WRITTEN A SUICIDE NOTE THAT DAY. AND I DON'T
15 RECOLLECT WHERE IT WAS. BUT HE HAD PLANS TO KILL HIMSELF AS
16 WELL. SO HE -- HE HAD SEEN THAT HOME BEFORE.

17 Q. OKAY. DO YOU REMEMBER ANY -- WELL, CAN YOU TELL US
18 WHETHER OR NOT THERE WAS ANYTHING HE DID WITH HIS MOPED OR
19 ANY ITEMS HE TOOK WITH HIM TO COMMIT THE BURGLARY?

20 A. I REMEMBER A MOPED, BUT I DON'T RECALL -- I DON'T
21 RECALL THOSE FACTS.

22 Q. CAN YOU TELL US WHAT HE TOLD YOU HE -- WHAT HE USED TO
23 SHOOT MS. SOUTHERN?

24 A. I DON'T RECALL. I KNOW -- I CERTAINLY KNOW IT WAS A
25 GUN, BUT WHAT MODEL, I DON'T KNOW.

1 Q. DO YOU KNOW WHERE HE GOT THE GUN?

2 A. I DON'T REMEMBER. SORRY.

3 Q. NOW YOU TESTIFIED YOU'RE AN EXPERT IN -- NATIONALLY
4 RECOGNIZED EXPERT IN SEXUAL DISORDERS. DO YOU KNOW OF ANY
5 RESEARCH IN YOUR YEARS OF PRACTICE AS AN EXPERT, DO YOU KNOW
6 OF ANY VALID RESEARCH THAT SHOWS A LINK BETWEEN FETAL
7 ALCOHOL SYNDROME AND SEXUAL SADISM?

8 A. NOT AT -- NOT AT THIS TIME. NOW IT'S INTERESTING,
9 THEY'RE BOTH AREAS OF THE BRAIN, AND THEY'RE VERY CLOSE TO
10 ONE ANOTHER. IF YOU -- IF YOU ACCEPT THE FACT THAT FETAL
11 ALCOHOL AFFECTS THE FRONT PART OF THE BRAIN. WE DO KNOW
12 THAT THE SEXUAL DISORDERS AFFECT THE MIDDLE PART OF THE
13 BRAIN. AND IT DOES ACTUALLY ABUT UP TO THE FRONT PART OF
14 THE BRAIN.

15 SO THEY'RE SIMILAR AREAS OF THE BRAIN, BUT AT THIS
16 POINT I HAVE RESEARCHED, I HAVE CONSULTED WITH EXPERTS IN
17 PARAPHILIAS, AND AT THIS POINT IN FORENSIC PSYCHIATRIC
18 LITERATURE AND RESEARCH I DON'T -- I HAVEN'T FOUND ANY
19 ASSOCIATION BETWEEN FETAL ALCOHOL SYNDROME, FETAL ALCOHOL
20 EFFECTS AND SEXUAL SADISM.

21 Q. ALL RIGHT. AND THAT IS YOUR OPINION NOW. I ASSUME
22 THAT WAS ALSO YOUR OPINION IN 2002 WHEN YOU TESTIFIED?

23 A. ACTUALLY BACK THEN I WASN'T AWARE. SO I HAD NOT
24 RESEARCHED THAT. BUT, YES, AT THAT POINT BACK IN 2002 I
25 WASN'T AWARE OF ANY RESEARCH THAT LISTS FETAL ALCOHOL

1 SYNDROME OR FETAL ALCOHOL EXPOSURE AS A SEPARATE RISK FACTOR
2 TO THE ONSET OF A PARAPHILIC DISORDER.

3 Q. DO YOU BELIEVE IN YOUR EXPERT OPINION THAT FETAL
4 ALCOHOL SYNDROME HAD ANYTHING TO DO WITH THE CRIME THAT WAS
5 COMMITTED AGAINST MS. SOUTHERN IN HER HOME?

6 A. NOT IN TERMS OF THE SEXUAL DISORDER, NO. CERTAINLY
7 THERE WERE TIMES WHERE MR. BINNEY'S BEEN IMPULSIVE. AND I
8 THINK I REFERENCED THAT IN MY REPORT TO THE COURT. BUT IN
9 TERMS OF WHY HE WAS THERE THAT DAY, NO.

10 Q. ALL RIGHT. PRIOR TO TESTIFYING TODAY DID YOU REVIEW AN
11 AFFIDAVIT THAT WAS PREPARED BY MS. NATALIE NOVICK-BROWN?

12 A. YES. MR. BLUME SENT THAT TO ME.

13 Q. OKAY. AND IN REVIEWING THAT DOCUMENT DID YOU COME
14 ACROSS ANY STUDIES THAT SHE CITED IN HER REPORT?

15 A. YES.

16 Q. CAN YOU TELL US WHAT YOUR EXPERT OPINION IS REGARDING
17 THOSE STUDIES THAT SHE CITED AND THEIR VALIDITY OR NON-
18 VALIDITY?

19 A. YES. I REVIEWED TWO OF THOSE STUDIES. AND THE -- I
20 ACTUALLY COPIED THE CITES. THERE WAS A STUDY CITED BY
21 JEREMY BAUMBACH, B-A-U-M-B-A-C-H. AND IT WAS -- THE TITLE
22 OF THE STUDY WAS SOME IMPLICATIONS OF PRENATAL ALCOHOL
23 EXPOSURE FOR THE TREATMENT OF ADOLESCENCE WITH SEXUAL
24 OFFENDING BEHAVIORS.

25 AND, YOUR HONOR, WHILE THIS WAS A VERY GOOD ARTICLE IT

1 ACTUALLY WASN'T A SCIENTIFIC STUDY. THIS WAS AN ARTICLE
2 THAT WAS REFERENCING A PRIOR STUDY THAT TALKED ABOUT THE
3 PREVALENCE AND RATES OF INAPPROPRIATE SEXUAL BEHAVIORS THAT
4 ARE ASSOCIATED WITH FETAL ALCOHOL.

5 AND THE ARTICLE WAS VERY INFORMATIVE. AND IT CERTAINLY
6 LISTED -- IT HAD SOME IMPRESSIVE PERCENTAGES OF THE NUMBER
7 OF ADULTS -- CHILDREN THAT HAVE FETAL ALCOHOL THAT GO ON
8 INTO ADULthood AND THERE'S SOME ASSOCIATION WITH
9 INAPPROPRIATE SEXUAL BEHAVIORS.

10 BUT EVEN IN THIS STUDY, YOUR HONOR, THERE IS NO MENTION
11 OF SEXUAL SADISM. THEIR INAPPROPRIATE SEXUAL BEHAVIORS
12 MENTIONED INCLUDED INCEST, ACTS OF INCEST, ACTS OF
13 BESTIALITY. BUT THIS ACTUALLY WASN'T A STUDY.

14 AND WHAT I ATTEMPTED TO DO AFTER THAT -- I BELIEVE THE
15 OTHER STUDY CITED WAS -- AND I DON'T WANT TO MASSACRE THE
16 DOCTOR'S NAME, BUT I BELIEVE IT'S DR. STREISSGUTH, WHO
17 EVIDENTLY IS THE NATIONAL -- AND LOOKING AT THE AFFIDAVIT
18 MR. BLUME PROVIDED, SHE CLEARLY IS A NATIONAL EXPERT IN
19 FETAL ALCOHOL, NO QUESTION, AND HAS IMPECCABLE CREDENTIALS.

20 BUT EVIDENTLY THE MOST I COULD FIND IS THAT SHE HAD
21 WRITTEN A BOOK AND THAT THIS INFORMATION THAT DR. BAUMBACH
22 RELIED UPON WAS FROM THIS BOOK. AND I DON'T HAVE ACCESS TO
23 THAT BOOK. SO I DON'T KNOW WHAT -- HOW MANY PEOPLE SHE
24 STUDIED, WHAT MEASURES SHE USED TO DETERMINE WHETHER THEY
25 HAD PARAPHILIA OR NOT.

1 BUT AFTER THAT I DID AN EXTENSIVE -- MY RESIDENT IN
2 FORENSIC PSYCHIATRY, DR. DWYER, AND MYSELF, WE DID AN
3 EXTENSIVE SEARCH. HE'S AN NCIS AGENT FORMERLY. HE HAS ONE
4 OF THE LARGEST DATABASES INCLUDING THE DEPARTMENT OF
5 JUSTICE, ALL THE MEDICAL JOURNALS, FORENSIC JOURNALS, POLICE
6 JOURNALS.

7 AND WE COULD NOT FIND ONE STUDY TO REPLICATE THAT
8 FINDING. AND, I'M SORRY, I TRIED. I CANNOT FIND ANY
9 STUDIES THAT REPLICATE PARAPHILIUS WITH FETAL ALCOHOL
10 EXPOSURE, FETAL ALCOHOL SYNDROME. IT DOESN'T MEAN IT'S NOT
11 GOING TO HAPPEN. IT DOESN'T MEAN IT'S NOT TRUE, BUT THE
12 SCIENCE JUST ISN'T THERE YET.

13 Q. OKAY. AND WHAT DOES THAT MEAN REGARDING THE VALIDITY
14 OF THAT INFORMATION?

15 A. I -- I DON'T KNOW. I GUESS THAT WOULD BE A LEGAL -- A
16 LEGAL OPINION. FOR ME, I WOULD NEED TO SEE MORE STUDIES
17 BEFORE I COULD ACCEPT THAT.

18 Q. OKAY. BEFORE YOU ACCEPT IT AS WHAT?

19 A. THAT FETAL ALCOHOL SYNDROME OR FETAL ALCOHOL EXPOSURE
20 IS A SEPARATE RISK FACTOR FOR -- OR ASSOCIATED WITH
21 PARAPHILIUS.

22 Q. WERE YOU ABLE TO FIND ANY STUDY THAT RELATED FETAL
23 ALCOHOL SYNDROME TO SEXUAL SADISM?

24 A. NOT AT THIS TIME.

25 Q. MR. PRUETT HAD ALSO SENT SOME PICTURES TO DR. BACHMAN,

1 SOME YOUNG PICTURES OF MR. BINNEY WHEN HE WAS A CHILD.

2 A. YES, I WAS AWARE OF THAT.

3 Q. OKAY. DO YOU KNOW WHAT -- FOR WHAT PURPOSE THAT WAS
4 DONE?

5 A. I ALSO -- I THINK AT THE TIME THAT I CONSIDERED FETAL
6 ALCOHOL I ALSO ASKED MR. PRUETT TO CONSULT WITH DR. BACHMAN.
7 HE'S A BEHAVIORAL NEUROLOGIST. SO HE CERTAINLY SHOULD HAVE
8 HAD SOME EXPERTISE IN THAT AREA. I WANTED A SECOND OPINION.

9 AND IF I REMEMBER CORRECTLY, DR. BACHMAN DID NOT
10 DIAGNOSE HIM WITH FETAL ALCOHOL SYNDROME, BUT I DID ANYWAY
11 BECAUSE I FELT STRONGLY ENOUGH BASED ON THE PICTURES AND
12 THOSE SORTS OF THINGS THAT I FELT COMFORTABLE -- ONCE THE
13 COURT -- I REMEMBER MY CONCERN WAS, YOUR HONOR, AGAIN, I
14 DIDN'T HAVE EVIDENCE THAT HIS BIOLOGICAL MOTHER WAS EXPOSED
15 IN THE FIRST TRIMESTER. BUT I BELIEVE IN COURT IT WORKED
16 OUT THAT I WAS ALLOWED TO TALK ABOUT THOSE THINGS. AND I
17 DON'T REMEMBER IF THERE WAS A SEPARATE HEARING OR WHAT
18 HAPPENED, BUT I WAS ABLE TO DISCUSS MY OPINIONS.

19 Q. ALL RIGHT. AFTER DR. BACHMAN WAS UNABLE TO DIAGNOSE
20 MR. BINNEY WITH FETAL ALCOHOL SYNDROME FROM THOSE PICTURES
21 DO YOU REMEMBER MR. PRUETT COMING BACK TO YOU AND ASKING YOU
22 ABOUT WHAT WAS YOUR OPINION AND WHAT YOUR EXPERTISE WAS?

23 A. YES. I REMEMBER HIM ASKING ME DID I HAVE -- HAD I EVER
24 TREATED ANYBODY OR HE ASKED ME WAS I FAMILIAR WITH FETAL
25 ALCOHOL. AND I TOLD HIM, YES, I WAS.

1 Q. OKAY. DID YOU TELL HIM THE TRAINING THAT YOU HAD IN
2 FETAL ALCOHOL AND THE TREATMENT THAT YOU HAD PROVIDED TO
3 CHILDREN?

4 A. I PROBABLY WOULD HAVE JUST TOLD HIM WHAT I TOLD THE
5 COURT TODAY, THAT I'VE CERTAINLY TREATED A NUMBER OF
6 CHILDREN FOR ATTENTION DEFICIT DISORDER AND IN MY OPINION
7 THOSE CHILDREN -- THE CAUSE OF THEIR ATTENTION DEFICIT
8 DISORDER WAS FETAL ALCOHOL SYNDROME OR FETAL ALCOHOL
9 EXPOSURE.

10 Q. AND WOULD YOU HAVE TOLD HIM THAT YOU WERE FAMILIAR WITH
11 THE MEDICAL -- AT LEAST THE MEDICAL KNOWLEDGE ---

12 MS. JOHNSON: OBJECTION, YOUR HONOR.

13 Q. --- OF WHAT ---

14 MS. JOHNSON: THIS IS A LEADING QUESTION.

15 THE COURT: SUSTAINED. COUNSEL, THAT IS -- IT'S ONE OF
16 A SERIES. AND IT IS LEADING. AN EVEN BETTER QUESTION IS
17 WHAT DID YOU TELL HIM?

18 Q. YEAH, WELL, CAN YOU TELL US WHETHER OR NOT YOU
19 DISCUSSED WITH MR. PRUETT YOUR MEDICAL KNOWLEDGE?

20 MS. JOHNSON: YOUR HONOR, THIS IS STILL A LEADING
21 QUESTION.

22 THE COURT: THE COURT WILL ALLOW IT IN THAT FORM.
23 OVERRULED.

24 A. AGAIN, WHAT I RECOLLECT, AND IT'S VERY VAGUE, IS THAT I
25 JUST WOULD HAVE TOLD HIM THAT I WAS FAMILIAR WITH FETAL

1 ALCOHOL SYNDROME AND I HAD TREATED, JUST AS I TOLD THE COURT
2 TODAY.

3 Q. WELL, CAN YOU TELL ME HOW MANY PEOPLE YOU TOLD HIM YOU
4 HAD TREATED?

5 A. NO. I JUST ---

6 MS. JOHNSON: OBJECTION, YOUR HONOR. SHE DIDN'T SAY
7 SHE TOLD HIM HOW MANY.

8 THE COURT: AGAIN, I'M GOING TO SUSTAIN THAT OBJECTION,
9 COUNSEL, BASED ON OUR PREVIOUS ANSWER. AS THE TRIER OF
10 FACT, I'M LISTENING, I UNDERSTAND WHAT THE QUESTIONS ARE AND
11 WHAT THE ANSWERS ARE. ANYTHING FURTHER?

12 MR. MABRY: YES.

13 Q. DID -- AFTER YOU EXAMINED MR. BINNEY CAN YOU TELL US
14 WHETHER OR NOT YOU INFORMED MR. PRUETT WHETHER OR NOT YOU
15 DIAGNOSED MR. BINNEY WITH FETAL ALCOHOL SYNDROME?

16 A. YES. I THINK HE WAS AWARE. I CERTAINLY THOUGHT AFTER
17 THE PICTURES -- THE PICTURES WERE VERY CONVINCING TO ME.
18 AND I WOULD HAVE RELAYED THAT TO MR. PRUETT. AND I MAY -- I
19 JUST DON'T RECOLLECT ALL THE NUANCES OF THAT CONVERSATION.
20 I MAY HAVE TOLD HIM MORE. I DON'T REMEMBER.

21 Q. OKAY. DO YOU RECALL A -- DO YOU RECALL DISCUSSING WITH
22 HIM WHETHER YOU COULD TESTIFY TO YOUR FINDINGS REGARDING
23 FETAL ALCOHOL SYNDROME?

24 A. I REMEMBER SOME SORT OF DISCUSSION. AND AGAIN, IT WAS
25 MORE ME SAYING, NO, UNTIL YOU GET THE EVIDENCE THAT HE WAS

1 INDEED EXPOSED TO ALCOHOL DURING THE FIRST TRIMESTER OR, YOU
2 KNOW, DURING PREGNANCY AT SOME POINT. I THINK WE -- I
3 REMEMBER HAVING A DISCUSSION.

4 AND I BELIEVE THE NATURE OF THAT DISCUSSION WAS IF WE
5 CAN GET THAT EVIDENCE, THEN I WOULD BE GLAD TO TESTIFY TO
6 THOSE THINGS. SO I REMEMBER WE -- I CERTAINLY TOLD HIM I
7 WOULD BE WILLING TO TESTIFY TO THAT.

8 Q. DID YOU HAVE ANY RESERVATION WHETHER YOU COULD TESTIFY
9 TO YOUR FINDINGS?

10 A. NO, NOT AT ALL BECAUSE, AGAIN, IT WAS MY OPINION EVEN
11 IF HE HAD THAT IT HAD NOTHING TO DO WITH THIS CRIME.

12 Q. DID YOU HAVE ANY QUESTION OR DID YOU EVER COMMUNICATE
13 TO MR. PRUETT THAT YOU HAD ANY RESERVATIONS ABOUT YOUR
14 QUALIFICATIONS TO TESTIFY TO YOUR FINDINGS OF FETAL ALCOHOL
15 SYNDROME?

16 A. NO.

17 Q. NOTHING FURTHER.

18 THE COURT: AND NOW CROSS EXAMINATION.

19 CROSS EXAMINATION BY MS. JOHNSON:

20 Q. DR. SCHWARTZ-WATTS, YOU'RE A FORENSIC PSYCHOLOGIST?

21 A. PSYCHIATRIST.

22 Q. OKAY. AND YOUR EXPERTISE IS IN SEXUAL DISORDERS?

23 A. OTHER AREAS TOO, BUT THAT'S ONE AREA, YES.

24 Q. WHAT OTHER AREAS DO YOU HAVE EXPERTISE IN THAT YOU
25 WOULD CONSIDER YOU'RE EXPERT?

1 A. STALKING, STALKING CRIMES, THAT SORT OF THING. AND
2 I'VE ALSO PUBLISHED IN THE AREAS CONCERNING DEATH PENALTY.

3 Q. AND YOU MIGHT ALSO SAY YOU WOULD HAVE SOME EXPERTISE IN
4 ADHD?

5 A. YES. AND I NEED TO ADD ALSO PROBABLY NOW I ACTUALLY
6 COULD, BECAUSE OF MR. BLUME, TOO IN SOME WAYS I'VE SOME
7 EXPERTISE IN DEVELOPMENTAL DISORDERS AND SPECIFICALLY
8 ASPERGER'S DISORDER AS IT RELATES TO HOMICIDE AND THAT SORT
9 OF THING. BUT, YES, I DO HAVE SOME GENERAL -- I THINK IT'S
10 FAIR TO SAY I HAVE GENERAL PSYCHIATRIC KNOWLEDGE OF ADHD AND
11 THE TREATMENT OF THAT.

12 Q. BUT YOU WOULD BE CALLED TO CONSULT ABOUT A CASE -- YOU
13 FREQUENTLY ARE CALLED BECAUSE THERE'S SOME BELIEF THAT A
14 SEXUAL DISORDER IS PRESENT?

15 A. SURE. THAT'S PROBABLY FIFTY PERCENT OF THE CALLS.
16 ABSOLUTELY.

17 Q. AND THEN YOU PROBABLY -- MAYBE ALSO IF YOU THOUGHT --
18 SOMEONE THOUGHT ASPERGER'S WAS PRESENT, THAT WOULD BE
19 ANOTHER AREA IN WHICH YOU WOULD HAVE ---

20 A. YES, MA'AM.

21 Q. NOW REGARDLESS OF WHETHER YOU ARE TESTIFYING ABOUT
22 ASPERGER'S OR SEXUAL DISORDERS OR ANYTHING ELSE ARE YOU --
23 DO YOU TYPICALLY WORK AS A TEAM WITH OTHER PEOPLE IN THE
24 DEFENSE?

25 A. IT DEPENDS. IN FORENSIC PSYCHIATRY WE DON'T CALL IT A.

1 TEAM, BUT CERTAINLY THE ATTORNEY -- I CERTAINLY WILL CONSULT
2 WITH OTHER EXPERTS ESPECIALLY -- AND THERE'S TIMES DEPENDENT
3 UPON THE LAWYER, THEY MAY ASK ME, YOU KNOW, WHO ELSE WOULD
4 YOU LIKE TO CONSULT WITH? DO YOU HAVE A NEUROLOGIST YOU
5 WOULD RECOMMEND? SO THERE'S CERTAINLY -- I WILL CONSULT
6 WITH OTHER EXPERTS AS EITHER THE ATTORNEY ASKS ME TO DO OR
7 AS I NEED THEM IN TERMS OF BEING ABLE TO DIAGNOSE SOMEONE OR
8 TESTIFY.

9 Q. AND SO, FOR EXAMPLE, IN THIS CASE YOU CONSULTED -- YOU
10 ASKED FOR A CONSULT WITH DR. BACHMAN RELATED TO WHETHER HE
11 WOULD FIND EVIDENCE CONNECTED TO SEXUAL SADISM?

12 A. THAT'S CORRECT. THAT WAS MY SPECIFIC REFERRAL QUESTION
13 BECAUSE I WAS VERY CONCERNED ABOUT THE STUDIES AGAIN. AND I
14 -- DR. JOHN BRADFORD IS MY MENTOR. AND HE IS THE --
15 PROBABLY THE WORLD'S EXPERT IN PARAPHILIA. AND HE'S IN
16 CANADA.

17 AND I WAS VERY -- I TALKED WITH JOHN BRADFORD ALSO
18 DURING THE COURSE OF THIS CASE WITH MR. BINNEY. AND JOHN
19 HAD SENT ME SOME STUDIES THAT HE HAD ACTUALLY PUBLISHED THAT
20 SHOWED SEXUAL SADISM WAS ASSOCIATED WITH BRAIN ABNORMALITIES
21 ON PET SCAN.

22 SO I WAS VERY SPECIFIC -- AND ALSO -- BUT GENERALLY, I
23 ALSO GENERALLY WILL CONSULT WITH A NEUROLOGIST IN ANY KINDS
24 OF CASE, ANY CAPITAL CASE WHERE SOMEBODY HAS A HISTORY OF
25 CLOSED HEAD INJURIES AND THAT SORT OF THING. SO WE ALSO HAD

- 1 JUST HISTORICAL FACTORS AS WELL THAT ---
- 2 Q. SO ---
- 3 A. --- I WANTED A NEUROLOGIST TO CONSULT.
- 4 Q. --- YOU WERE HOPING THAT HE WOULD BE -- HE MIGHT BE
- 5 ABLE TO SAY SOMETHING ABOUT HEAD INJURIES, THEN HE MIGHT BE
- 6 ABLE TO SAY SOMETHING THAT WAS RELEVANT TO YOUR DIAGNOSIS OF
- 7 SEXUAL SADISM?
- 8 A. CORRECT. OR ---
- 9 Q. AND THAT'S WHY YOU WANTED HIM CONSULTED?
- 10 A. CORRECT.
- 11 Q. IN A CAPITAL CASE -- HAVE YOU WORKED WITH THE DEFENSE
- 12 ON A NUMBER OF CAPITAL CASES?
- 13 A. SURE.
- 14 Q. AND IN A CAPITAL CASE IS IT COMMON THAT, IN THE CAPITAL
- 15 CASES YOU'VE WORKED ON, THAT A -- SOMEONE PERFORMS A SOCIAL
- 16 HISTORY?
- 17 A. ABSOLUTELY.
- 18 Q. DO YOU RECALL WORKING ON ANY OTHER CASE IN WHICH THERE
- 19 WAS NO SOCIAL HISTORY PERFORMED?
- 20 A. THERE MAY BE, BUT NOT THAT I CAN RECALL.
- 21 Q. NOT THAT YOU CAN RECALL. AND YOU -- A PERSON THAT --
- 22 IN YOUR PAST EXPERIENCE WHAT A PERSON DOES IN CONDUCTING A
- 23 SOCIAL HISTORY IS THEY GATHER RECORDS. IS ---
- 24 A. YES.
- 25 Q. --- THAT ONE THING THEY DO?

1 A. YES.

2 Q. AND THEY TALK TO A LOT OF PEOPLE, FAMILY MEMBERS,
3 SCHOOL TEACHERS, EXTENDED FAMILY MEMBERS, FRIENDS, THOSE
4 SORTS OF THINGS?

5 A. ABSOLUTELY.

6 Q. AND WHEN THEY'RE DONE WITH THEIR INVESTIGATION THEY
7 TURN THAT INFORMATION OVER TO YOU?

8 A. YES, EITHER IN TERMS OF A REPORT OR I WILL CONSULT --
9 ABSOLUTELY. IT'S VERY COMMON IN CAPITAL CASES, I WILL -- IF
10 THEY DON'T -- EVEN -- THERE'S BEEN SOME CASES WHERE I'M NOT
11 SURE IF THEY HAD A SOCIAL WORKER, BUT THEY CERTAINLY HAD A
12 MITIGATION SPECIALIST.

13 Q. AT LEAST SOMEBODY WHO GATHERS THE INFORMATION?

14 A. CORRECT. AND IT'S CERTAINLY BEEN MY EXPERIENCE THAT I
15 WOULD EITHER CONSULT WITH THE MITIGATION SPECIALIST AND THEY
16 PERHAPS WOULD WRITE REPORTS. I WOULD REVIEW THOSE REPORTS.
17 CALL A PERSON IF THERE WERE SOMETHING IN THE REPORT THAT I
18 THOUGHT WAS PERTINENT TO MY OPINION, I WOULD CALL THAT
19 PERSON. OR IN TERMS IF THERE'S A SOCIAL WORKER IN FORENSIC
20 PSYCHIATRY IT'S OKAY TO RELY UPON THEIR REPORTS AND DATE.
21 SO I MAY EITHER HAVE A REPORT, I MAY CONSULT WITH THAT
22 SOCIAL WORKER OR I MAY BE PRESENT FOR THEIR TESTIMONY.

23 Q. BECAUSE IT'S NOT YOUR JOB TO GATHER RECORDS?

24 A. WELL, IT'S NOT -- IT'S CERTAINLY A RESPONSIBILITY IF I
25 KNOW OF RECORDS THAT EXISTS, BUT CERTAINLY I AM NOT TRAINED

1 TO GET SOCIAL HISTORIES FROM FAMILY MEMBERS. THAT'S JUST

2 NOT ---

3 Q. OR TO SEND OUT SUBPOENAS GETTING RECORDS EITHER?

4 A. CORRECT. THE MOST ---

5 Q. THAT WOULD BE SOMETHING ---

6 A. THE MOST I COULD DO IS IF I HAD A CLIENT THAT I HAD
7 RECORDS AND IF I'VE NOT BEEN PROVIDED I COULD HAVE THEM SIGN
8 A HIIPA RELEASE IF THEY'RE AWARE OF THE HOSPITALS AND THAT
9 SORT OF THING. SO I WOULD HAVE NO ABILITY WHATSOEVER, SAY,
10 FOR EXAMPLE, TO GET A FAMILY MEMBER OF MR. BINNEY'S UNLESS I
11 SAW THAT PERSON AND HAVE THEM SIGN A MEDICAL RELEASE. MY
12 POWER IS JUST LIMITED TO HAVING THE PERSON THAT I SEE SIGN A
13 MEDICAL RELEASE FOR HIS OR HER OWN RECORDS AND NO ONE OTHER
14 THAN THAT.

15 THE COURT: COUNSEL, JUST ONE MOMENT. PLEASE BE SURE
16 TO LET THE WITNESS FINISH BEFORE YOU ASK YOUR NEXT QUESTION
17 ---

18 MS. JOHNSON: I'M SORRY.

19 THE COURT: --- FOR OUR COURT REPORTER'S SAKE. THANK
20 YOU.

21 Q. AND THE REASON THAT YOU WOULD BE GIVEN RECORDS AND
22 INTERVIEWS AND THAT SORT OF THING IS BECAUSE SOMETIMES A
23 SOCIAL HISTORY MIGHT GIVE YOU NEW AREAS TO INQUIRE WITH A
24 CLIENT ABOUT?

25 A. ABSOLUTELY.

1 Q. OR IT MIGHT EVEN CAUSE YOU TO DOUBT SOME THINGS THAT A
2 CLIENT HAD TOLD YOU?

3 A. CERTAINLY. THE MAIN THING IT -- IT PROVIDES DETAILS
4 ABOUT SOMEONE'S UPBRINGING THAT I NEED TO HAVE INFORMATION.
5 IT CAN PROVIDE INFORMATION ABOUT MENTAL ILLNESSES THAT MAY
6 BE HEREDITARY. IT'S CERTAINLY VERY IMPORTANT.

7 Q. AND SOMETIMES MIGHT CORROBORATE SOMETHING THAT THE
8 DEFENDANT SAYS TO YOU TOO?

9 A. CERTAINLY.

10 Q. SO IN THIS CASE YOU WERE NOT PROVIDED WITH ANY ACCESS
11 TO A MITIGATION INVESTIGATOR?

12 A. NOT THAT I REMEMBER. AND I REMEMBER -- I DO REMEMBER I
13 THINK I ASKED MR. PRUETT ABOUT A SOCIAL WORKER OR A
14 MITIGATION SPECIALIST. AND I DIDN'T CONSULT WITH ANY.

15 Q. SO DID YOU ASK HIM TO GET SUCH A PERSON, TO HIRE SUCH A
16 PERSON TO GATHER THOSE RECORDS?

17 A. I RECALL WE DID HAVE A CONVERSATION. MR. PRUETT TOLD
18 ME HE HAD ME. AND I TOLD HIM HE NEEDED A LITTLE BIT MORE
19 THAN ME, THAT I COULDN'T JUST COVER THE SOCIAL HISTORY BASED
20 ON MY TRAINING AND EXPERTISE.

21 Q. AND TO YOUR KNOWLEDGE HE DIDN'T HIRE SUCH A PERSON?

22 A. NOT THAT I'M AWARE OF.

23 Q. AND HE CERTAINLY NEVER GAVE YOU INFORMATION OTHER THAN
24 THE INFORMATION THAT IS REFLECTED IN YOUR REPORT?

25 A. THAT'S CORRECT. MR. AND MS. BINNEY, THE SOCIAL HISTORY

1 I HAD CAME FROM THEM. AND THEY WERE VERY COOPERATIVE. THEY
2 MADE A TIME-LINE FOR ME. I ASKED THEM TO DO A LOT TO HELP
3 ME. AND THEY MADE A VERY EXTENSIVE TIME-LINE. AND THEY MET
4 WITH ME FOR TWO AND A HALF HOURS. BUT THAT WAS IT. THAT'S
5 ALL I HAD.

6 Q. SO YOU HAD YOUR INTERVIEWS WITH MR. BINNEY, WITH
7 JONATHAN BINNEY AND WITH HIS PARENTS?

8 A. CORRECT.

9 Q. AND THEN YOU HAD A LIMITED NUMBER OF RECORDS?

10 A. CORRECT. AND I DID SPEAK -- I HAVE TO ADD, I THINK I
11 SPOKE WITH HIS WIFE TOO, BUT I ACTUALLY THINK THAT MAY HAVE
12 BEEN PRIOR TO MY TESTIMONY. AND I DID -- I DID HAVE SOME
13 CONVERSATION WITH HER AS WELL. BUT THAT WAS IT.

14 Q. YOUR -- THE REPORT THAT YOU SENT TO TRIAL COUNSEL
15 ACTUALLY DOESN'T HAVE A DIAGNOSIS OF FAS OR FASD ---

16 A. CORRECT.

17 Q. AND THEN TRIAL COUNSEL CALLS YOU AND SAID, WELL, CAN
18 YOU DO IT?

19 A. I THINK -- I THINK ACTUALLY WHAT IT WAS IS THAT I
20 WASN'T WILLING TO PUT THAT AS A DIAGNOSIS UNTIL I HAD PROOF.
21 I WAS CONCERNED, AGAIN, ABOUT THE EVIDENCE. SO I DIDN'T PUT
22 THAT. BUT THEN ONCE I -- AND AGAIN, I APOLOGIZE. I THINK
23 SOMETHING HAPPENED WHERE I WAS ALLOWED TO DISCUSS THAT. SO
24 I WAS COMFORTABLE AS LONG AS I WASN'T GOING TO BE HELD TO
25 THE STANDARD THAT I HAD NO PROOF THAT HE WAS ACTUALLY

1 EXPOSED DURING HER PREGNANCY WITH HIM.

2 Q. ALL RIGHT. SO YOU WERE WORRIED ABOUT WHETHER LEGALLY
3 YOU COULD DO THAT?

4 A. CORRECT.

5 Q. BUT, IN FACT, HE DIDN'T PROVIDE YOU WITH ANY
6 INFORMATION IN THE INTERIM THAT WOULD HAVE PROVIDED
7 OBJECTIVE CONFIRMATION OF PRENATAL EXPOSURE OF ALCOHOL?

8 A. NO, OTHER THAN MS. BINNEY'S HISTORY TO ME. AND SHE HAD
9 HAD -- SHE HAD HAD -- NOW SHE HAD HAD DIRECT TELEPHONE
10 CONVERSATIONS WITH MR. BINNEY'S NATURAL MOTHER. SO SHE HAD
11 DIRECT INFORMATION. BUT AGAIN, I COULDN'T CONFIRM THAT
12 BECAUSE HIS BIOLOGICAL MOTHER HAD KILLED HERSELF.

13 Q. SO IN YOUR TRIAL TESTIMONY THERE'S ACTUALLY NOT ANY
14 POINT IN WHICH YOU SAY THE WORDS, I DIAGNOSE HIM WITH FASD,
15 IS THAT RIGHT? HAVE YOU LOOKED OVER YOUR TESTIMONY?

16 A. I DON'T -- I DON'T THINK I ACTUALLY DIAGNOSED IT. I
17 MAY HAVE SAID CONSISTENT WITH, BUT I DON'T RECALL SAYING HIS
18 DIAGNOSIS IS FETAL ALCOHOL SYNDROME.

19 Q. RIGHT. AND YOU DID SAY I HAVE A FOURTH CRITERIA AND I
20 HAVE SOMETHING ON EACH OF THESE CRITERIA?

21 A. YES.

22 MR. MABRY: OBJECT TO THE -- THAT'S NOT WHAT SHE
23 TESTIFIED TO. THAT'S A MISCHARACTERIZATION OF HER
24 TESTIMONY.

25 THE COURT: ALL RIGHT. OBJECTION'S NOTED. AGAIN, THE

1 COURT'S LISTENING TO THE TESTIMONY AND IS AWARE OF THE

2 EVIDENCE AND ITS NUANCES. YOU MAY PROCEED, COUNSEL.

3 Q. BUT TO YOUR RECOLLECTION YOU DIDN'T SAY I DIAGNOSE HIM?

4 A. I DON'T THINK SO.

5 Q. YOU DID TESTIFY THAT YOU SAW THAT THERE ARE FACIAL

6 ABNORMALITIES CONNECTED WITH FETAL ALCOHOL SYNDROME AND THAT

7 YOU SAW SOME OF THEM PRESENT ---

8 A. YES.

9 Q. --- IN MR. BINNEY. AND YOU SAID THAT YOU SAW THERE WAS
10 FAILURE TO THRIVE.

11 A. YES.

12 Q. AND THAT'S -- THAT'S AS AN INFANT, IS THAT RIGHT?

13 A. YES.

14 Q. SO THAT WOULD BE SOMETHING ELSE THAT WOULD BE RELEVANT?

15 A. YES.

16 Q. AND THEN YOU SAID THAT HIS MOTHER HAD -- THAT YOU HAD
17 INFORMATION FROM THE BINNEYS THAT HIS MOTHER HAD INGESTED
18 ALCOHOL WHEN SHE WAS PREGNANT?

19 A. YES. AND THEN I ALSO SAID HE HAD THE ATTENTION DEFICIT
20 DISORDER WHICH ---

21 Q. AND ALSO ---

22 A. --- HE ALSO ---

23 Q. SO HE ALSO HAD THAT?

24 A. YES.

25 Q. BUT YOU -- YOU DIDN'T KNOW THAT -- YOU DIDN'T TESTIFY

- 1 TO THE FACT THAT THE EXTRA NIPPLE THAT HE HAS IS ALSO AN
2 INDICATOR OF FETAL ALCOHOL SYNDROME?
- 3 A. NO. I HAD NO -- I HAD NO KNOWLEDGE OF THAT.
- 4 Q. YOU KNEW THAT HE HAD IT, BUT YOU DIDN'T KNOW THAT IT
5 WAS AN INDICATOR?
- 6 A. THAT'S CORRECT. THAT'S CALL A SUPERNUMERY NIPPLE.
7 AND, NO -- AND I -- TO THIS DAY THAT'S SURPRISING. I DIDN'T
8 KNOW THAT.
- 9 Q. AND YOU ACTUALLY DIDN'T KNOW THAT HE HAS ANY
10 ABNORMALITIES TO THE BRIDGE OF HIS MOUTH, IS THAT RIGHT?
- 11 A. NOT THAT I'M AWARE OF, NO.
- 12 Q. AND YOU DIDN'T HAVE ANY INFORMATION ABOUT NEUROLOGICAL
13 ABNORMALITIES SUCH AS STARING EPISODES, OR TWITCHING OR
14 SEIZURES, IS THAT RIGHT?
- 15 A. I'M NOT AWARE OF ANY HISTORY THAT MR. BINNEY HAS
16 DOCUMENTED EVIDENCE OF SEIZURES.
- 17 Q. OR ANY REPORTS THAT SHOW A SOFT, NEUROLOGICAL SOFT
18 SIGNS, A CENTRAL NERVOUS SYSTEM DYSFUNCTION?
- 19 A. NO. I THINK -- I THINK I WAS AWARE OF THAT. THERE'S
20 CERTAINLY IN SOME OF HIS RECORDS THAT TALKED ABOUT HIS
21 IMPULSIVITY AND ATTENTION DEFICIT. THAT'S ONE OF THE
22 REASONS -- AND CERTAINLY WITH A CLOSED HEAD INJURY. I WAS
23 AWARE THAT HE HAD SOFT NEUROLOGICAL SIGNS, BUT DID I
24 ATTRIBUTE THOSE TO FETAL ALCOHOL? NO.
- 25 Q. NO. AND YOU -- YOU DIDN'T -- YOU KNEW ABOUT HIS ADHD?

1 A. YES.

2 Q. BUT YOU DIDN'T KNOW ABOUT THE SHARP DISCREPANCIES
3 BETWEEN HIS MATH PERFORMANCE AND HIS OVERALL IQ?

4 A. I SEEM TO RECALL THAT HE HAD SOME SORTS OF
5 DIFFICULTIES. AND I THOUGHT IT WAS WITH MATH, BUT I MAY --
6 I'M NOT SURE. I WAS AWARE THAT HE HAD SOME ACADEMIC
7 ACHIEVEMENT PROBLEMS.

8 Q. BUT IF YOU WERE AWARE OF THEM YOU DIDN'T RECOGNIZE THAT
9 THOSE WERE CONNECTED TO FETAL ALCOHOL SYNDROME?

10 A. CORRECT. CERTAINLY I HAD NO KNOWLEDGE THAT MATH
11 DIFFICULTIES WERE RELATED TO FETAL ALCOHOL SYNDROME.

12 Q. AND YOU DID KNOW THAT HE HAD SOME ACADEMIC DIFFICULTY,
13 BUT THAT COULD BE ATTRIBUTABLE TO A LOT OF DIFFERENT THINGS?

14 A. ATTENTION DEFICIT DISORDER. ACTUALLY THE ONSET OF
15 SEXUAL DISORDERS CAN OCCUR AROUND THAT AGE. HE HAD A LOT OF
16 THINGS GOING ON EMOTIONALLY AND MENTALLY.

17 Q. AND DID YOU HAVE INFORMATION PROVIDED TO YOU ABOUT
18 SOCIAL SKILLS DEFICITS THAT HE HAD GROWING UP, INABILITY TO
19 MAKE FRIENDS, ISOLATION, IMPULSIVE BEHAVIOR AS A CHILD? DID
20 YOU HAVE INFORMATION ABOUT THAT?

21 A. SOME, BUT CERTAINLY NOT EXTENSIVELY. I REMEMBER MR.
22 BINNEY, HE DESCRIBED HIMSELF AS A LONER. AND, IN FACT, I
23 WAS QUITE AWARE OF THAT EVEN AT THE DEPARTMENT OF
24 CORRECTIONS WHEN I SAW HIM AT LIEBER. HE REALLY DIDN'T
25 ASSOCIATE WITH A LOT OF OTHER INMATES. HE'S BEEN ONE THAT

1 KEEPS TO HIMSELF.

2 Q. SO YOU KNEW THAT?

3 A. YES.

4 Q. BUT YOU DIDN'T KNOW DEVELOPMENTALLY THAT THIS WAS A
5 PROBLEM?

6 A. I'M SORRY, I JUST DON'T RECALL. HIS PARENTS MAY HAVE,
7 YOU KNOW. I KNEW HE HAD LOTS OF MUSICAL SKILLS. I KNEW
8 THAT HE WAS LOVED AS A CHILD. BUT I DON'T RECALL -- FOR
9 SOME REASON SOMETHING SEEMS TO STRIKE A CORD THAT I WAS
10 AWARE THAT HE WASN'T -- GIVEN HIS -- PUT IT THIS WAY, GIVEN
11 HIS UPBRINGING AND THE LOVE HE HAD BY HIS PARENTS AND ALL
12 THE WONDERFUL THINGS HE WAS EXPOSED TO, I WAS AWARE THAT HE
13 PROBABLY WASN'T AS ACCEPTED AS HE SHOULD HAVE BEEN GIVEN HIS
14 UPBRINGING AND BACKGROUND AND THAT SORT OF THING.

15 Q. BUT YOU DIDN'T HAVE THE SPECIFIC INFORMATION ABOUT
16 THAT?

17 A. NO, NOT ---

18 Q. AND DID ---

19 A. --- THAT I RECALL.

20 Q. --- YOU HAVE -- I'M SORRY. I'M SORRY TO ---

21 THE COURT: THANK YOU.

22 Q. I'M SORRY. DID YOU KNOW THAT HE WAS ARRESTED FOUR
23 TIMES AS A JUVENILE FOR HABITUAL -- FOR AUTO THEFT?

24 A. I WAS AWARE THAT HE HAD A JUVENILE HISTORY. THE ACTUAL
25 FACTS, I CAN'T REMEMBER. IT'S BEEN TOO LONG. BUT I

1 CERTAINLY WAS AWARE THAT HE HAD SOME JUVENILE DETENTIONS AND
2 SOME ---

3 Q. RIGHT. BUT IF YOU DIDN'T KNOW WHAT THOSE WERE FOR YOU
4 WOULDN'T KNOW WHETHER THAT HAD SOME CONNECTION TO, LET'S
5 SAY, A DIFFICULTY WITH CAUSE AND EFFECT?

6 A. BEAR WITH ME ONE MINUTE.

7 MR. MABRY: I'M GOING TO OBJECT TO THAT QUESTION 'CAUSE
8 SHE DIDN'T SAY THAT SHE DIDN'T KNOW WHAT THEY WERE FOR. SHE
9 SAID, I REMEMBER HE HAD TROUBLE WITH THE LAW. SHE NEVER
10 SAID, I DIDN'T KNOW BACK THEN WHAT THEY WERE FOR.

11 THE COURT: ALL RIGHT. I'M GOING TO HOLD MY RESPONSE
12 IN ABEYANCE WHILE OUR WITNESS REVIEWS SOME RECORDS.

13 A. I'M SORRY, I DON'T RECALL. I LISTED IN MY REPORT THAT
14 HE HAD PRIOR CHARGES AS A JUVENILE. AND I ALSO KNEW I HAD
15 DR. CRAWFORD'S REPORT. AND SHE DIDN'T LIST THE CHARGES. SO
16 I'M SORRY, I JUST -- I DON'T REMEMBER.

17 IF I KNEW THAT HE WAS -- WHAT HIS SPECIFIC CHARGES WERE
18 OR NOT. I CERTAINLY DIDN'T REVIEW ANY RECORDS. I DIDN'T
19 HAVE ANY JUVENILE JUSTICE RECORDS THAT WOULD HAVE GONE INTO
20 THE INCIDENT REPORTS IN DETAILS OF THAT AND THAT SORT OF
21 THING.

22 THE COURT: OBJECTION SUSTAINED. PLEASE MOVE TO YOUR
23 NEXT QUESTION.

24 MS. JOHNSON: ARE YOU STRIKING THE TESTIMONY SHE JUST
25 GAVE?

1 THE COURT: NO, I SIMPLY SUSTAINED THE OBJECTION. GO
2 AHEAD.

3 Q. IF YOU HAD HAVE HAD DETAILED INFORMATION ABOUT THE
4 SPECIFIC CRIMES THAT HE COMMITTED IS IT SOMETIMES THE CASE
5 THAT YOU CAN MAKE INFERENCES ABOUT SOMEONE HAVING POOR
6 JUDGMENT OR HAVING DIFFICULTY WITH CAUSE AND EFFECT?

7 A. SURE.

8 Q. AND YOU KNOW THAT DIFFICULTY WITH CAUSE AND EFFECT AND
9 POOR JUDGMENT ARE INDICATORS OF FETAL ALCOHOL SYNDROME, IS
10 THAT RIGHT?

11 A. THEY'RE INDICATORS OF THAT AND MANY OTHER DISORDERS AS
12 WELL. THOSE ARE VERY GENERAL SYMPTOMS. THAT WOULD BE LIKE
13 ABDOMINAL PAIN BEING CAUSED BY MANY SOURCES. BUT CERTAINLY,
14 YES. AND PEER JUDGMENT, IMPULSIVITY, I'M AWARE THAT THAT'S
15 RELATED TO FETAL ALCOHOL.

16 Q. AND SO WHEN YOU MAKE A DIAGNOSIS THOUGH THE MORE
17 FACTORS YOU HAVE THAT ARE ASSOCIATED THE STRONGER YOUR
18 DIAGNOSIS, IS THAT RIGHT?

19 A. SURE.

20 Q. AND SO WITH RESPECT THEN TO THAT FIRST PRONG OR THE
21 QUESTION OF PRENATAL ALCOHOL EXPOSURE YOU HAD INFORMATION
22 FROM THE BINNEYS?

23 A. YES.

24 Q. BUT YOU DIDN'T HAVE ANY RECORDS THAT REFLECTED PRENATAL
25 ALCOHOL EXPOSURE?

1 A. NO.

2 Q. AND, IN FACT, WHEN YOU WERE ASKED ON CROSS EXAMINATION
3 IF YOU HAD ANY RECORDS, SUPPORT, ANY SUPPORT OTHER THAN WHAT
4 THEY HAD TO SAY YOU HAD TO SAY NO, DIDN'T YOU?

5 A. CORRECT.

6 Q. AND AT ONE POINT EVEN YOU SAID IN YOUR TESTIMONY IF HE
7 HAS FETAL ALCOHOL EFFECT, IS THAT RIGHT?

8 A. I DON'T RECALL, BUT I WOULDN'T DISPUTE YOU.

9 Q. BECAUSE YOU WERE HESITANT ABOUT THIS WITHOUT A LOT OF
10 CONFIRMATION THAT CONFIRMED THIS?

11 A. CORRECT, BECAUSE NO MATTER WHAT THE SYMPTOMS ARE, IF
12 YOU DON'T HAVE EXPOSURE TO ALCOHOL IN UTERO, YOU CAN'T HAVE
13 THE SYNDROME.

14 Q. SO YOU SAID YOU DO NOT YOURSELF THINK THAT YOU HAVE AN
15 EXPERTISE IN FETAL ALCOHOL?

16 A. NOT -- CERTAINLY NOT AT A NATIONAL LEVEL. AND I THINK
17 IT'S FAIR TO SAY I HAVE CLINICAL KNOWLEDGE OF THAT DISORDER
18 AS WELL AS ANY OTHER GENERAL PSYCHIATRIST, PROBABLY ANY
19 PSYCHIATRIST THAT WORKS IN A JUVENILE JUSTICE SYSTEM AND
20 TREATS JUVENILES WITH ATTENTION DEFICIT DISORDER.

21 Q. AND ACTUALLY YOUR EXPOSURE TO THEM LARGELY WAS IN THE
22 CONTEXT OF TREATING ATTENTION DEFICIT DISORDERS, IS THAT
23 CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND SO YOU WOULD BE ATTUNED TO THOSE SIGNS,

1 PARTICULARLY SIGNS THAT RELATED TO ATTENTION DEFICIT

2 DISORDER BECAUSE THAT IS WHAT YOU KNOW ABOUT?

3 A. CORRECT, CERTAINLY THE COGNITIVE DEFICITS ASSOCIATED

4 WITH THAT. CORRECT.

5 Q. BUT YOUR TREATMENT OF THEM WAS NOT RELATED TO, LET'S

6 SAY, IMPULSIVITY OR MAKING JUDGMENTS IN THE REST OF THEIR

7 LIVES?

8 A. I DISAGREE WITH THAT. THAT'S THE TARGET SYMPTOMS I WAS

9 TREATING IN THAT GROUP OF CHILDREN BECAUSE THEY GET IN

10 TROUBLE AND THEY END UP LOCKED UP. SO ACTUALLY THE REASON I

11 WOULD MEDICATE THE CHILDREN WAS BECAUSE EXACTLY FOR THOSE

12 REASONS, VERY POOR JUDGMENT, BEING IMPULSIVE, GETTING INTO

13 TROUBLE.

14 Q. BUT A LOT OF THE POOR JUDGMENT WOULD BE ABOUT ACADEMIC

15 BEHAVIOR, IS THAT RIGHT?

16 A. NO.

17 Q. A LOT OF IT?

18 A. NOT IN THE JUVENILE JUSTICE SETTING. THEY WERE GETTING

19 IN TROUBLE FOR ASSAULTING OTHER CHILDREN, FOR BEING

20 INCREDIBLY IMPULSIVE, ACTING OUT IN CLASS, DISRESPECTING

21 TEACHERS. THEY HAD A LOT OF CONDUCT DISORDER BEHAVIORS

22 WHICH WERE CONCERNING ME THAT WERE BEING DRIVEN BY AN

23 UNDERLYING ATTENTION DEFICIT DISORDER. SO THESE -- THESE

24 CHILDREN WERE GETTING INTO TROUBLE.

25 Q. AND IF YOU HAD MORE INFORMATION ABOUT THAT YOU MIGHT BE

1 ABLE TO TALK ABOUT WHETHER THAT WAS A CONSISTENT PATTERN
2 WITH MR. BINNEY?

3 A. OH, CERTAINLY FOR MR. BINNEY, BUT IT'S ABSOLUTELY A
4 PATTERN CONSISTENT WITH ---

5 Q. FOR MANY?

6 A. YES.

7 Q. I'M SORRY. I DID THE SAME THING AGAIN.

8 THE COURT: THANK YOU.

9 Q. I APOLOGIZE. YOU DO ACTUALLY DISCUSS IN FRONT OF THE
10 JURY ANY OTHER IMPULSIVE BEHAVIORS THAT PEOPLE WITH FASD
11 HAVE OTHER THAN DIFFICULTIES IN PAYING ATTENTION IN SCHOOL
12 AND KIDS MAKING POOR JUDGMENTS LIKE SLUGGING EACH OTHER?

13 A. I THINK ---

14 MR. MABRY: I'M GOING TO OBJECT. I THINK THE TESTIMONY
15 SPEAKS FOR ITSELF.

16 THE COURT: OVERRULED.

17 Q. YOU DIDN'T TALK ABOUT ANYTHING OTHER THAN THAT?

18 A. ACTUALLY, I RECALL, JUST IN REVIEWING, I THINK I TALKED
19 ABOUT PROBLEMS WITH MEMORY. I THINK THERE IS -- I PROBABLY
20 EXPANDED A LITTLE BIT MORE THAN JUST THOSE THINGS.

21 Q. OH, I'M SORRY. I MEANT AS FAR AS IMPULSIVITY AND POOR
22 JUDGMENT, WHAT YOU TOLD THE JURY THAT WAS DIFFICULTIES THAT
23 YOUNG CHILDREN HAVE.

24 A. YES. I CERTAINLY -- RIGHT. CORRECT. I DIDN'T
25 ATTRIBUTE THAT -- I DON'T RECALL MAKING ANY REFERENCE TO

1 ADULT BEHAVIORS AND THOSE SORTS OF BEHAVIORS. THAT'S

2 CORRECT.

3 Q. BECAUSE YOU REALLY DIDN'T HAVE INFORMATION ABOUT THAT
4 CONNECTED TO MR. BINNEY, NOT ANY DETAILED INFORMATION?

5 A. NOT ENOUGH THAT I WOULD HAVE ASSOCIATED THOSE WITH
6 FETAL ALCOHOL.

7 Q. NOW I'M GOING TO SHIFT A LITTLE BIT. YOUR PRIMARY
8 DIAGNOSIS HERE WAS PARAPHILIUS, IS THAT RIGHT?

9 A. CORRECT.

10 Q. AND THEN YOU HAVE SORT OF TWO OR THREE OTHER
11 POSSIBILITIES? I'M SORRY, I SHOULDN'T SAY POSSIBILITIES. I
12 SHOULD SAY SUB-CATEGORIES OF PARAPHILIUS.

13 A. CORRECT.

14 Q. AND WITH THE EXCEPTION OF THE ABUSE AGAINST [REDACTED] DID
15 YOU HAVE ANY EVIDENCE OTHER THAN WHAT MR. BINNEY TOLD YOU
16 ABOUT THESE DISORDERS?

17 A. SURE. I HAD DR. MCKEE'S TESTIMONY. AND I BELIEVE I
18 REVIEWED ACTUALLY THE TEST RESULTS AND THINGS THAT HE HAD
19 GIVEN MR. BINNEY FOR THOSE CHARGES.

20 Q. BUT THAT STILL WOULD HAVE BEEN -- MAYBE I'M SAYING IT
21 IN A LAY PERSON'S WAY. THAT STILL WOULD HAVE BEEN
22 INFORMATION THAT CAME FROM MR. BINNEY AS OPPOSED TO ACTIONS
23 THAT HE HAD TAKEN THAT WERE DOCUMENTED?

24 A. I'M NOT SURE IF I FOLLOW YOUR QUESTION. I FELT VERY
25 COMFORTABLE IN THOSE DIAGNOSES. HE HAD THE BEHAVIORS. AND

1 THE HALLMARK OF THE PARAPHILIUS, USUALLY PEOPLE WITH
2 PARAPHILIUS DON'T VOLUNTEER WHAT THEY'RE THINKING. AND THE
3 DIAGNOSIS USUALLY IS BASED ON YOU HAVE TO TALK TO THE
4 PATIENT AND THEY HAVE TO ADMIT THAT THEY HAVE RECURRENT
5 URGES OR AROUSAL. SO MR. BINNEY WAS VERY FORTHCOMING.

6 A LOT -- I THINK IT'S VERY FAIR TO SAY A LOT OF MY
7 DIAGNOSIS WAS BASED ON THE THINGS THAT MR. BINNEY TOLD ME.
8 AND THEY CERTAINLY WERE CONSISTENT WITH MY KNOWLEDGE OF
9 PARAPHILIUS.

10 Q. I'M SORRY. I THINK I'M BEING STUPID ABOUT THIS. SO
11 I'LL TRY TO ASK THE QUESTION A DIFFERENT WAY. I'M NOT
12 ASKING WHETHER YOU WERE CONFIDENT WITH YOUR DIAGNOSIS. I'M
13 ASKING WHETHER THERE WERE BEHAVIORS OF MR. BINNEY OTHER THAN
14 ONES THAT HE REPORTED THAT WERE PART OF THIS?

15 A. YES.

16 Q. AND WHAT WOULD THAT BE?

17 A. HIS PARENTS AND HE GAVE A HISTORY WHEN MR. BINNEY WOULD
18 HAVE HOUSE GUESTS FROM A VERY EARLY AGE MR. BINNEY WOULD
19 TAKE FEMALE UNDERCLOTHES, UNDERGARMENTS, AND HE HOARDED
20 THOSE. AND THE -- HIS FAMILY TOLD ME AS WELL THEY FOUND A
21 SUITCASE. AND I BELIEVE IT WAS IN, IT WAS IN A ROOF OR IN
22 THE CEILING SOMEWHERE. AND WHEN THAT SUITCASE WAS TAKEN
23 DOWN IT HAD QUITE AN EXTENSIVE COLLECTION OF FEMALE
24 UNDERGARMENTS.

25 Q. AND THAT WAS WITH RESPECT TO THE SUBCATEGORY OF

1 TRANSVESTISM, IF I SAID THAT RIGHT?

2 A. YES AND NO. IT'S ALSO ASSOCIATED WITH SEXUAL SADISM.

3 Q. BUT HE DID NOT -- MAYBE I'LL ASK IT IN A REALLY DUMB

4 WAY. HE DIDN'T TAKE ANY SEXUALLY SADISTIC ACTIONS THAT

5 YOU'RE AWARE OF?

6 A. OH, THAT'S ABSOLUTELY CORRECT. HE HAD -- WHICH WAS A

7 TESTAMENT, IN MY OPINION, YOUR HONOR, TO HIS PERSONALITY AND

8 HIS UPBRINGING, HE DID NOT LIKE THESE IMPULSES. HE HAD

9 IMPULSES TO HARM HIS WIFE AND A FRIEND. AND HE NEVER -- AS

10 FAR AS I KNOW, I'VE NEVER BEEN PRESENTED WITH ANY EVIDENCE

11 OR ANY INDICATION THAT HE HAD ACTED ON THOSE URGES. IN MY

12 OPINION, THIS CRIME WOULD HAVE BEEN THE FIRST TIME THAT HE

13 HAD INDEED ACTED ON THOSE URGES. I HAD NO OTHER HISTORY NOR

14 BEHAVIORS THAT WOULD INDICATE HE HAD ACTED ON THOSE URGES.

15 Q. AND YOU TOLD TRIAL COUNSEL THAT PRESENTING SEXUAL

16 SADISM AS A DEFENSE WOULD BE PROBLEMATIC?

17 A. WE HAD A DISCUSSION ABOUT THAT. I REMEMBER VERY

18 SPECIFICALLY, I TOLD MR. PRUETT THAT I ACTUALLY OFFERED TO

19 RECUSE MYSELF AND WAIVE MY FEE AND HAVE HIM HIRE DR. JOHN

20 BRADFORD, WHO, IN MY OPINION, IS THE WORLD'S EXPERT ON

21 SEXUAL SADISM. AND BUT I ALSO -- AND I WAS CONCERNED ABOUT

22 THAT.

23 IT'S HARD TO PRESENT TO A JURY THE FACT THAT A PATIENT

24 HAS RECURRENT IMPULSES TO HARM OTHERS AND CAUSE PAIN AND

25 SUFFERING FROM SEXUAL ACTS. BUT I ALSO RECALL I HAD TALKED

1 WITH DR. BRADFORD AND HE HAD ACTUALLY PRESENTED THAT
2 MITIGATION BEFORE IN CALIFORNIA IN A CAPITAL CASE, AND THE
3 PERSON GOT LIFE. BUT, YES, I THINK WE HAD A DISCUSSION THAT
4 THAT WAS A VERY SERIOUS ILLNESS AND THE BEHAVIORS ASSOCIATED
5 WITH THAT ILLNESS I DIDN'T THINK A JURY WOULD BE VERY ---

6 Q. BUT YOU ---

7 A. --- AMENABLE. CORRECT.

8 Q. AND IT ACTUALLY ALSO INVOLVED REVEALING NEGATIVE
9 INFORMATION ABOUT MR. BINNEY THAT WAS NOT OTHERWISE
10 AVAILABLE?

11 A. CORRECT.

12 Q. AND THAT'S WHAT I WAS TRYING TO ELICIT BEFORE. THE
13 INFORMATION ABOUT THE SEXUAL SADISM WAS NOT INFORMATION THAT
14 WAS DOCUMENTED OUT IN THE WORLD. IT WAS INFORMATION THAT
15 WOULD COME FROM YOU, WHICH WOULD BE POSSIBLY NEGATIVE AS
16 WELL AS POSSIBLY POSITIVE?

17 A. THAT'S CORRECT.

18 Q. AND YOU TOLD MR. PRUETT THIS?

19 A. CERTAINLY.

20 Q. AND A SECOND PROBLEM WITH PRESENTING SEXUAL SADISM AS A
21 MITIGATING FACTOR IS, AS YOU TOLD MR. MABRY, THERE'S -- YOU
22 REALLY DON'T BELIEVE THAT SEXUAL SADISM CAUSED MR. BINNEY TO
23 COMMIT THIS CRIME.

24 A. NO, I DIDN'T SAY THAT. I SAID HE WASN'T GUILTY BUT
25 MENTALLY ILL FOR THE -- SHOOTING MS. SOUTHERN BECAUSE

1 SHOOTING MS. SOUTHERN WASN'T PART OF HIS SEXUALLY SADISTIC
2 URGES. SO IT WAS, IN MY OPINION, IT WAS CLEARLY RELATED TO
3 THIS OFFENSE, BUT HE DIDN'T ACT ON THOSE URGES. HE WAS IN
4 THAT HOUSE BECAUSE OF THOSE IMPULSES, BUT HE CERTAINLY --
5 RIGHT, SHOOTING MS. SOUTHERN WAS NOT PART OF THOSE IMPULSES.

6 Q. RIGHT. HE WAS IN THE HOUSE IN PART BECAUSE OF THOSE
7 IMPULSES?

8 A. CORRECT.

9 Q. AND ACTUALLY THAT HELPED TO SUPPORT SOME THEORY THAT HE
10 WAS IN THE HOUSE, HE HAD AN INTENT TO COMMIT A CRIME IN THE
11 HOUSE?

12 A. CORRECT.

13 Q. SO WHAT HE -- AS FAR AS THE ACT OF SHOOTING HER REALLY
14 YOU -- SEXUAL SADISM DIDN'T HAVE ANYTHING TO DO WITH THAT?

15 A. THAT'S CORRECT.

16 Q. AND SO THAT'S ANOTHER WAY IN WHICH IT WAS -- SEXUAL
17 SADISM WAS NOT AN IDEAL MITIGATING FACTOR?

18 A. I CAN'T TESTIFY TO THAT. I JUST -- I CAN ONLY ---

19 Q. IT WAS CONCERN THAT YOU EXPRESSED TO MR. PRUETT?

20 A. SURE. I CAN ONLY DIAGNOSE SOMEONE. I CAN'T DECIDE
21 WHETHER SOMETHING'S IDEAL OR NOT. THAT WAS HIS DIAGNOSIS.
22 THAT'S WHAT HE SUFFERED FROM. AND IN MY OPINION IT WAS
23 DIRECTLY RELATED TO HIS CHARGES.

24 Q. BUT YOU TOLD MR. PRUETT THAT YOU COULDN'T -- YOU
25 COULDN'T SAY THAT THE SHOOTING ITSELF WAS A RESULT OF SEXUAL

1 SADISM?

2 A. THAT'S CORRECT.

3 Q. AND ACTUALLY IT'S NOT YOUR OPINION THAT EVEN THE ABUSE
4 AGAINST [REDACTED] WAS AS A RESULT OF SEXUAL SADISM?

5 A. OH, ABSOLUTELY NOT. THAT WAS A TOTALLY DIFFERENT
6 PARAPHILIA. HE, AS FAR AS I KNOW, HE'S NEVER HAD ANY URGES,
7 SADISTIC URGES TOWARDS HIS DAUGHTER.

8 Q. SO THE SEXUAL SADISM ACTUALLY WASN'T ANY MITIGATION FOR
9 -- WAS NOT ANY EXPLANATION FOR THE ABUSE AGAINST [REDACTED]

10 A. NO. THAT WOULD HAVE BEEN HIS OTHER PARAPHILIC
11 DIAGNOSIS. THAT'S CORRECT, IT WASN'T RELATED. SAME
12 CATEGORY OF ILLNESSES, BUT A DIFFERENT ILLNESS.

13 Q. ON THE OTHER HAND LOOKING AT FAS OR FASD YOU DID NOT
14 FIND THAT IT WAS THE CAUSE OF HIM ENTERING THE HOUSE, IS
15 THAT RIGHT?

16 A. THAT'S CORRECT.

17 Q. AND YOU ACTUALLY TESTIFIED THAT IT WASN'T THAT?

18 A. I DIDN'T REALIZE THAT, BUT THAT WOULD CERTAINLY BE
19 CONSISTENT WITH MY OPINION TODAY AS WELL.

20 Q. BUT A PATTERN OF SORT OF DISORGANIZED BEHAVIOR THAT HE
21 EXHIBITED, HAVING A COUPLE OF PLANS, STAYING ALL NIGHT,
22 WANDERING AROUND IN THE HOUSE DOING LOTS OF OTHER THINGS,
23 THAT MIGHT BE CHARACTERISTIC OF FASD?

24 A. I CAN'T SAY BECAUSE HE WAS DRINKING THAT DAY, HE WAS
25 UNDER THE INFLUENCE OF NICOTINE PATCHES. AND I DID LEARN

1 THROUGH CONSULTING WITH DR. MORTON A GOOD DEAL ABOUT THAT.
2 THE EFFECTS OF THOSE DRUGS PROBABLY WERE ALSO -- I WOULD
3 HAVE TO SAY WERE PROBABLY MORE SO RELATED IF THERE WAS ANY
4 RELATION.

5 Q. SO WITH THE INFORMATION YOU HAD ABOUT HIS BACKGROUND AT
6 THE TIME OF THE CRIME AND THE INFORMATION YOU HAD ABOUT FASD
7 AT THE TIME YOU COULDN'T DESCRIBE A WAY IN WHICH THAT
8 AFFECTED THE CRIME, IS THAT RIGHT?

9 A. CORRECT.

10 Q. YOU WERE CONVINCED THAT MR. BINNEY HAD A PERSONALITY
11 DISORDER AS WELL AS A MAJOR MENTAL ILLNESS, ISN'T THAT
12 RIGHT?

13 A. YES. NO, ACTUALLY NO. I DIAGNOSED HIM WITH TRAITS. I
14 DID NOT DIAGNOSE HIM WITH A PERSONALITY DISORDER.

15 Q. AND THAT'S ACTUALLY WHY I ASKED IT THAT WAY. YOU
16 DIDN'T DIAGNOSE HIM THAT, BUT I'M ASKING YOU YOURSELF WERE
17 CONVINCED THAT HE HAD SOME PERSONALITY DISORDER?

18 A. HE HAD PERSONALITY TRAITS. LET ME EXPLAIN. IN
19 PSYCHIATRY ON AXIS II YOU DIAGNOSE PERSONALITY DISORDERS.
20 BUT IF SOMEONE HAS TRAITS THAT ARE PROMINENT ENOUGH AND THEY
21 DON'T MEET THE CRITERIA FOR PERSONALITY DISORDER, IF YOU
22 CODE TRAITS ON AXIS II THAT'S FAIR TO SAY THAT THEY'RE VERY
23 PROMINENT. AND IT DOESN'T RISE TO THE LEVEL OF A LIFELONG
24 PATTERN OF MALADAPTIVE FUNCTIONING.

25 BUT CERTAINLY AROUND THE PERIOD OF TIME WHERE I

1 EVALUATED MR. BINNEY, HE HAD -- THOSE TRAITS WERE VERY
2 MARKED. HE WAS HARMING HIMSELF, YOUR HONOR. HE HAD VERY
3 SERIOUS IMPULSES TO HARM HIMSELF.

4 AND SOME OF THOSE WERE RELATED TO HIS SEXUAL DISORDER,
5 BUT OTHERS WERE RELATED -- HE WANTED TO DIE. AT ONE POINT
6 HE HAD ASKED FOR THE DEATH PENALTY. HE WAS DEALING WITH
7 SUICIDAL IMPULSES. HE HAD A LOT OF THOUGHTS OF HARMING
8 HIMSELF. SO THOSE TRAITS WERE VERY PROMINENT AT THE TIME I
9 EVALUATED HIM.

10 Q. AND YOU TESTIFIED THAT IT WAS VERY DIFFICULT TO SORT
11 OUT DEPRESSION FROM PERSONALITY DISORDER FROM HIS SITUATION
12 FROM HIS SEXUAL DISORDERS?

13 A. I DON'T RECALL THAT, BUT THAT -- IT CERTAINLY WOULD. I
14 MEAN, HE IS A VERY COMPLICATED INDIVIDUAL AND VERY, VERY
15 SICK. AND SO SOMETIMES WHEN YOU HAVE MAJOR MENTAL ILLNESSES
16 THAT ARE ACTIVE YOU CAN DEVELOP TRAITS THAT MAY OR MAY NOT
17 PERSIST. YOU KNOW, THEY COME IN COURSE WITH THE ILLNESS.
18 SO IT WAS VERY DIFFICULT TO TEASE OUT.

19 Q. AND WOULD IT HAVE BEEN HELPFUL IN SORTING OUT WHETHER
20 HE HAD SOME PERSONALITY DISORDER OR HOW WELL THESE THINGS
21 WORKED TOGETHER TO HAVE RECORDS DOCUMENTING HIS MOTHER'S
22 MENTAL ILLNESS?

23 A. IN TERMS OF PERSONALITY DISORDER, NO. WHAT I DID FOR
24 HIS PERSONALITY DISORDERS, WE ACTUALLY HAD SOME
25 PSYCHOLOGICAL TESTING DONE. AND I -- LEE JONES ACTUALLY DID

1 A PERSONALITY ASSESSMENT ON HIM. BUT IN TERMS OF MAJOR
2 MENTAL ILLNESSES, THINGS LIKE ANXIETY DISORDERS OR
3 DEPRESSION, THOSE THINGS RUN IN FAMILIES. SO IT WOULD BE
4 HELPFUL TO HAVE A FAMILY HISTORY MORE FOR THE AXIS I
5 DISORDERS.

6 Q. AND THOSE YOU WERE NOT CERTAIN ABOUT HOW THEY --
7 WHETHER THEY WERE PRESENT OR HOW THEY WERE PRESENT EITHER?

8 A. NO, I WAS VERY SURE ABOUT, I MEAN, THE DIAGNOSIS I GAVE
9 HIM, I WAS VERY SURE OF AND REMAIN SURE OF TODAY. I'M VERY
10 -- I'M VERY SURE THAT THOSE WERE HIS ILLNESSES. NOW HE MAY
11 HAVE OTHERS. THERE MAY BE SOME I DON'T KNOW ABOUT. BUT I'M
12 VERY CONFIDENT HE MEETS THE DIAGNOSTIC CRITERIA FOR THE
13 DIAGNOSES I GAVE HIM.

14 Q. BUT IT WOULD HAVE BEEN HELPFUL IN UNDERSTANDING WHETHER
15 HE HAD OTHER MENTAL ILLNESSES TO HAVE RECORDS OF EITHER HIS
16 MOTHER'S MENTAL ILLNESS OR REPORTS OF MENTAL ILLNESS OF
17 OTHER MEMBERS OF HIS BIRTH FAMILY?

18 A. ABSOLUTELY.

19 Q. AND LIKEWISE SUICIDE ATTEMPTS BY OTHER MEMBERS OF HIS
20 BIRTH FAMILY WOULD HAVE BEEN USEFUL?

21 A. CERTAINLY COULD BE, YES.

22 Q. AND, IN FACT, YOU ASKED FOR SOME RECORDS ABOUT HIS
23 BIRTH MOTHER, IS THAT RIGHT?

24 A. I'M -- I DON'T RECALL. I CERTAINLY ASKED FOR
25 INFORMATION ABOUT HER. AND I THINK AT THE LEVEL IT WAS -- I

1 WASN'T AWARE SINCE I DON'T KNOW HER. I JUST -- I REMEMBERED
2 ASKING MR. AND MS. BINNEY IF THEY COULD FIND ANY KIND OF
3 EVIDENCE. AND AGAIN, THEY WOULDN'T HAVE THE ABILITY TO GET
4 MEDICAL RECORDS. BUT I CERTAINLY ASKED FOR MORE INFORMATION
5 ABOUT HIS BIOLOGICAL MOTHER.

6 Q. DID YOU ASK TRIAL COUNSEL FOR RECORDS RELATING TO HER
7 INCLUDING A RECORD OF HER SUICIDE?

8 A. I -- I RECALL I THINK I ASKED FOR A DEATH CERTIFICATE.
9 I DID MAKE SOME INQUIRIES IF THERE WERE ANY RECORDS
10 AVAILABLE.

11 Q. BUT YOU DIDN'T GET ANY?

12 A. NO.

13 Q. YOUR REPORT REFLECTS THAT YOU SPOKE TO CAPTAIN NETTLES
14 AT LIEBER.

15 A. YES.

16 Q. AND DO YOU RECALL THAT CAPTAIN NETTLES TOLD YOU THAT
17 MR. BINNEY HAD POSED NO PROBLEMS DURING HIS CONFINEMENT?

18 A. THAT'S CORRECT. AND THAT WAS CERTAINLY CONSISTENT WITH
19 MY EVALUATION OF HIM.

20 Q. AND DO YOU RECALL THAT YOU TOLD MR. PRUETT THAT HE
21 SHOULD HIRE MR. AIKEN TO ADDRESS PRISON ADAPTABILITY?

22 A. I THINK WE HAD THAT DISCUSSION. ONE OF THE THINGS I
23 REMARKED UPON IS THAT MR. BINNEY DID SEEM TO ADAPT VERY
24 WELL. I WAS CONCERNED HE HAD SOME BEHAVIORS IN THE
25 DEPARTMENT OF CORRECTIONS WHERE HE WAS HARMING HIMSELF, BUT

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1 IN TERMS OF ME HAVING AN OPINION THAT HE WAS DANGEROUS TO
2 OTHERS, I DID NOT HAVE THAT OPINION. AND SO I THINK I DO --
3 I DON'T KNOW IF I RECOMMENDED THAT SPECIFIC PERSON, BUT I
4 THINK WE DID TALK ABOUT THAT IT WOULD BE HELPFUL PERHAPS TO
5 HAVE SOMEBODY THAT'S AN EXPERT IN ADAPTATION TO PRISON.

6 Q. IF MR. PRUETT'S RECORDS REFLECTED THAT YOU TOLD HIM TO
7 HIRE -- SUGGESTED THAT HE HIRE MR. AIKEN, THAT WOULD BE
8 POSSIBLE?

9 A. SURE.

10 Q. YOU KNEW MR. AIKEN?

11 A. SURE. SURE. VERY IMPRESSIVE.

12 Q. THANK YOU, DR. SCHWARTZ-WATTS.

13 A. YOU'RE WELCOME.

14 THE COURT: IS THERE REDIRECT?

15 MR. MABRY: YES, VERY BRIEFLY JUST ON A NEW MATTER THAT
16 SHE BROUGHT UP ABOUT BORDERLINE PERSONALITY DISORDER.

17 THE COURT: GO AHEAD.

18 REDIRECT EXAMINATION BY MR. MABRY:

19 Q. THIS BOOK I'M HOLDING UP, DSM IV, ARE YOU FAMILIAR WITH
20 THAT?

21 A. YES, SIR.

22 Q. IF YOU WOULD, RELAY TO THE COURT THE DIAGNOSTIC
23 CRITERIA FOR BORDERLINE PERSONALITY DISORDER?

24 A. SURE. BUT KEEP IN MIND NOW I DIAGNOSED HIM WITH
25 TRAITS, WHICH IS A LITTLE ---

1 Q. SURE.

2 A. --- BIT DIFFERENT FROM DISORDER. SURE. THE DIAGNOSTIC
3 CRITERIA FOR BORDERLINE PERSONALITY DISORDER IS A PERVASIVE
4 PATTERN OF INSTABILITY OF INTERPERSONAL RELATIONSHIPS, SELF
5 IMAGE AND AFFECTS, AND MARKED IMPULSIVITY BEGINNING BY EARLY
6 ADULTHOOD AND PRESENT IN A VARIETY OF CONTEXTS.

7 AND YOU HAVE TO HAVE FIVE SYMPTOMS TO MEET THE FULL
8 CRITERIA; EFFORTS TO AVOID ABANDONMENT, A PATTERN OF
9 UNSTABLE INTENTS, INTERPERSONAL RELATIONSHIPS, AN IDENTITY
10 DISTURBANCE, IMPULSIVITY IN AT LEAST TWO AREAS THAT ARE
11 POTENTIALLY SELF-DAMAGING, RECURRENT SUICIDAL BEHAVIOR,
12 GESTURES OR THREATS, OR SELF-MUTILATING BEHAVIOR, AFFECTIVE
13 INSTABILITY DUE TO A MARKED REACTIVITY OF MOOD, CHRONIC
14 FEELINGS OF EMPTINESS, INAPPROPRIATE INTENSE ANGER OR
15 DIFFICULTY CONTROLLING ANGER, AND THEN FINALLY TRANSIENT
16 STRESS RELATED PARANOID IDEATION OR SEVERE DISSOCIATIVE
17 SYMPTOMS.

18 Q. AND YOU WERE ASKED ABOUT, I BELIEVE, ABOUT DR. BACHMAN.

19 MR. MABRY: JUST ONE MOMENT, YOUR HONOR.

20 (PAUSE)

21 Q. WHICH TRAITS OF BORDERLINE PERSONALITY DISORDER DO YOU
22 BELIEVE ARE PREVALENT IN MR. BINNEY?

23 A. A NUMBER. FIRST OF ALL, THE NATURE OF THE
24 RELATIONSHIPS THAT HE HAD. I HAD ONLY -- IT WAS REALLY
25 INTERESTING. I HAD ONLY SEEN MR. BINNEY TWICE AND DR.

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1 CRAWFORD EVALUATED HIM FOR THE -- FOR PROSECUTION. AND SHE
2 HAD AN AUDIOTAPE OF THAT EVALUATION.

3 AND I WAS VERY IMPRESSED BY -- MR. BINNEY, I THINK, SAW
4 ME IN A VERY POSITIVE LIGHT, HAD A LOT -- A VERY STRONG
5 ATTACHMENT TO ME VERY EARLY ON DESPITE I PROBABLY HAD SPENT
6 MAYBE FOUR OR FIVE HOURS WITH HIM. BUT HE HAD A VERY
7 INTENSE ATTACHMENT TO ME, I THINK, FIRST OF ALL.

8 SECONDLY, I BASE THAT ON HE WAS HAVING CHRONIC SUICIDAL
9 IDEATION. AND THAT'S WHERE IT WAS DIFFICULT BECAUSE HE WAS
10 ALSO HAVING IMPULSES THAT WERE SEXUAL IN NATURE THAT
11 INVOLVED HIM HARMING HIMSELF AS WELL. BUT HE HAD CHRONIC
12 FEELINGS OF SUICIDE AND WAS DEALING AND STRUGGLING WITH
13 THOSE ON A DAILY BASIS TO THE POINT HE WAS ACTUALLY GETTING
14 TREATMENT IN THE DEPARTMENT OF CORRECTIONS FOR THAT.

15 AND HE'S -- THOSE WERE THE MAIN SYMPTOMS. IT'S MORE
16 THE -- AND THE IDENTITY DISTURBANCE I NEED TO ADD ALSO.
17 HE'S HAD SOME ISSUES WHERE GROWING UP AND DURING ADULTHOOD
18 HE'S BEEN UNSURE OF HIS SEXUALITY. HE DESCRIBED TO ME WHILE
19 DURING HIS EVALUATION THAT HE HAD -- SOMETIMES HE WASN'T
20 SURE IF HE WAS SUPPOSED TO BE FEMALE OR MALE TO THE POINT
21 THAT I EVEN HAD PROVISIONALLY CONSIDERED RULING OUT A GENDER
22 IDENTITY DISORDER IN HIM.

23 SO AGAIN, YOU SEE HE HAD SOME SYMPTOMS THAT WERE
24 CONSISTENT WITH BORDERLINE TRAITS, BUT THEY ALSO COULD HAVE
25 BEEN SYMPTOMS OF SOME OF HIS OTHER SEXUAL DISORDERS. SO

1 THAT'S WHY I CODED TRAITS INSTEAD OF PERSONALITY.

2 Q. ALL RIGHT. NO FURTHER QUESTIONS.

3 THE COURT: ALL RIGHT. ANY OBJECTION TO THE RELEASE OF
4 THE WITNESS?

5 MS. JOHNSON: NO, YOUR HONOR.

6 MR. MABRY: NO, SIR.

7 THE COURT: ALL RIGHT. VERY GOOD.

8 A. THANK YOU, YOUR HONOR.

9 THE COURT: THANK YOU. HAVE A GOOD DAY.

10 A. THANK YOU.

11 MR. MABRY: THE STATE CALLS DONNIE WILLINGHAM.

12 THE COURT: PLEASE COME FORWARD AND TAKE THE OATH OF A
13 WITNESS.

14 DONNIE WILLINGHAM, BEING
15 DULY SWORN TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. MABRY:

17 Q. TELL US YOUR NAME, PLEASE.

18 A. DONNIE WILLINGHAM.

19 THE COURT: PLEASE SPELL YOUR LAST NAME FOR US, IF YOU
20 WILL, FOR OUR RECORD.

21 A. IT'S W-I-L-L-I-N-G-H-A-M.

22 Q. WHERE DO YOU WORK, MR. WILLINGHAM?

23 A. I WORK FOR THE SEVENTH CIRCUIT SOLICITOR'S OFFICE.

24 Q. AND DID YOU WORK THERE IN 2001 AND 2002?

25 A. YES.

- 1 Q. AND WHAT IS YOUR OCCUPATION THERE?
- 2 A. I AM THE DEPUTY SOLICITOR.
- 3 Q. ALL RIGHT. AND HOW LONG HAVE YOU BEEN A DEPUTY
- 4 SOLICITOR IN THE SEVENTH CIRCUIT SOLICITOR'S OFFICE?
- 5 A. SINCE 1998.
- 6 Q. WERE YOU PART OF THE TRIAL TEAM THAT INVESTIGATED THE
- 7 FACTS OF THIS CASE?
- 8 A. YES, I WAS.
- 9 Q. AND WERE YOU INVOLVED IN PROVIDING DISCOVERY TO MR.
- 10 PRUETT AND MR. SLADE?
- 11 A. YES, I WAS.
- 12 Q. AND ARE YOU FAMILIAR WITH THE FACTS OF THE MURDERS --
- 13 THE FACTS SURROUNDING THE MURDER OF JUDY SOUTHERN?
- 14 A. YES, I AM.
- 15 Q. AND ARE YOU FAMILIAR WITH THE FACTS SURROUNDING HER
- 16 TREATMENT WHEN SHE WAS TAKEN TO MARY BLACK HOSPITAL?
- 17 A. YES, I AM.
- 18 Q. I'LL SHOW YOU WHAT'S BEEN MARKED DEFENDANT'S EXHIBIT 4
- 19 FOR IDENTIFICATION. AND TELL ME IF YOU CAN IDENTIFY THOSE
- 20 DOCUMENTS.
- 21 A. THOSE APPEAR TO BE THE MEDICAL RECORDS FROM HER, -- FROM
- 22 JUDY SOUTHERN'S ARRIVAL AT THE EMERGENCY ROOM AT MARY BLACK
- 23 HOSPITAL.
- 24 Q. OKAY. WOULD YOU PLEASE FLIP THROUGH ALL OF THEM AND
- 25 MAKE SURE WE'RE TALKING ABOUT -- THEY'RE ALL PART OF THE

1 SAME RECORDS?

2 A. YES, THEY APPEAR TO BE.

3 Q. ALL RIGHT. IN YOUR INVESTIGATION OF THE CASE DID YOU
4 AND MR. GOWDY LOOK AT WHETHER MS. SOUTHERN RECEIVED PROPER
5 TREATMENT AT THE HOSPITAL? WAS THAT A POSSIBLE ISSUE IN THE
6 CASE?

7 A. WE'VE LOOKED AT, WITH IT BEING A CHEROKEE COUNTY
8 JURISDICTION CASE, ---

9 Q. RIGHT.

10 A. --- WE LOOKED AT WHY HE WENT TO MARY BLACK VERSUS
11 UPSTATE CAROLINA BECAUSE UPSTATE CAROLINA MEDICAL CENTER IS
12 THE HOSPITAL HERE IN CHEROKEE. BUT FROM THE LOCATION OF
13 WHERE THIS HAPPENED, AND FOLKS MAY NOT LIKE TO HEAR, BUT
14 MARY BLACK IS PROBABLY A BETTER HOSPITAL AND NOT DISTANCED
15 OR TIME-WISE ANY DIFFERENCE TO GET THERE FROM WHERE THIS
16 HAPPENED.

17 Q. OKAY. WHERE IS UPSTATE LOCATED? WHAT ---

18 A. UPSTATE -- UPSTATE CAROLINA MEDICAL CENTER IS LOCATED,
19 I BELIEVE IT'S ON CHEROKEE AVENUE. IT'S OUT HERE TOWARD
20 I-85. I THINK IT'S EXIT 94, 95.

21 Q. ALL RIGHT. WOULD IT BE ON THE NORTH SIDE OR THE SOUTH
22 SIDE OF FLOYD BAKER BOULEVARD WHERE ALL THE RESTAURANTS ---

23 A. IT WOULD BE ON THE NORTH SIDE. IT WOULD BE TOWARD
24 CHARLOTTE FROM FLOYD BAKER.

25 Q. TO GET FROM THE BINNEY'S RESIDENCE TO UPSTATE WOULD YOU

1 HAVE TO GO THROUGH THE CITY OF GAFFNEY, BASICALLY?

2 A. TO GET FROM THE SOUTHERN RESIDENCE ---

3 Q. RIGHT.

4 A. --- TO -- TO -- YES, YOU'D HAVE TO GO THROUGH --

5 THROUGH GAFFNEY AND THEN TRAVEL FURTHER TO THE HOSPITAL.

6 Q. OKAY.

7 A. LIKE I SAY, FROM WHERE THEY LIVED, IT'S KIND OF IN THE

8 PACOLET TYPE AREA CLOSE TO THE COUNTY LINE. MARY BLACK'S

9 PROBABLY THE BETTER HOSPITAL QUALITY-WISE TO GO TO AND

10 PROBABLY THE CLOSER ONE TIME-WISE TO GO TO.

11 Q. DO YOU REMEMBER FROM YOUR INVESTIGATION WHEN MS.

12 SOUTHERN ARRIVED AT THE HOSPITAL AT MARY BLACK WHAT HER

13 CONDITION WAS?

14 A. HER CONDITION, FROM WHAT I RECALL, WAS VERY POOR. I

15 WAS UNDER THE IMPRESSION THAT SHE WAS VERY, VERY CLOSE TO

16 DEATH, IF NOT ACTUALLY DEAD ON ARRIVAL.

17 MR. BLUME: YOUR HONOR, I OBJECT. I DON'T BELIEVE THAT

18 MR. WILLINGHAM -- HE'S NOT A MEDICAL DOCTOR. I DON'T

19 BELIEVE THAT HE HAS ANY EXPERTISE IN THIS AREA. AND THE

20 RECORDS REFLECT WHAT THEY REFLECT.

21 THE COURT: WHAT'S THE PURPOSE OF YOUR QUESTION,

22 COUNSEL?

23 MR. MABRY: WELL, I'M GETTING -- I WAS GETTING TO THAT,

24 YOUR HONOR.

25 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION TO THE

1 ANSWER. THAT DID GET INTO A MEDICAL OPINION. HE WAS
2 TELLING WHAT THE ANALYSIS OF HIS INVESTIGATION WAS, BUT I'LL
3 SUSTAIN IT TO -- WITH REGARD TO THE OPINION GIVEN. GO AHEAD
4 TO YOUR NEXT QUESTION.

5 MR. MABRY: YES, SIR.

6 Q. WERE THOSE RECORDS PROVIDED TO MR. PRUETT AND MR.
7 SLADE?

8 A. YES.

9 Q. ALL RIGHT. AND YOU HAVE THEM IN YOUR FILE AS WELL?

10 A. YES.

11 Q. ALL RIGHT. IF -- IF YOU WOULD TURN, I BELIEVE, TO THE
12 SECOND PAGE. WHAT DATE -- WHAT TIME DO THOSE RECORDS
13 INDICATE MS. SOUTHERN GOT TO THE HOSPITAL?

14 A. 16:39 LOOKS LIKE.

15 Q. OKAY. IS THAT A 4 OR A 9?

16 A. LOOKS LIKE A 9. COULD BE A 4, BUT LOOKS LIKE A 9 TO
17 ME.

18 Q. OKAY. SHE GOT THERE AT 16:39 ACCORDING TO THE RECORDS?

19 A. YES.

20 Q. ALL RIGHT. IF YOU'D TURN OVER TO THE NEXT PAGE. WHAT
21 DOES IT INDICATE REGARDING THE STATUS OF HER PUPILS AND HER
22 BLOOD PRESSURE WHEN SHE ARRIVED AT THE HOSPITAL?

23 A. PUPILS WERE FIXED AND DILATED. BLOOD PRESSURE WAS ZERO
24 AND PULSE WAS ZERO.

25 Q. OKAY. AND WHAT TIME WAS THAT?

- 1 A. 16:46.
- 2 Q. ALL RIGHT. AND ARE OTHER TIME ENTRIES ON THAT RECORD
- 3 ---
- 4 A. YES, THERE ARE.
- 5 Q. --- REGARDING HER CONDITION?
- 6 A. YES, THERE ARE.
- 7 Q. HOW LONG WAS IT ACCORDING TO THOSE MEDICAL RECORDS
- 8 BEFORE HER PUPILS WERE NO LONGER FIXED AND DILATED AND THEY
- 9 WERE ABLE TO GET SOME KIND OF BLOOD PRESSURE OR HEARTBEAT?
- 10 A. PUPILS ARE STILL FIXED AT 17:00. THERE IS A BLOOD
- 11 PRESSURE OF 149 OVER 91 AT 17:00 HOURS.
- 12 Q. ALL RIGHT. IF YOU WOULD TURN OVER. IS THERE ANY
- 13 INDICATION OF WHEN THEY WERE ABLE TO GET A HEARTBEAT, WHAT
- 14 TIME?
- 15 A. WELL, THE FIRST TIME THEY HAVE A PULSE IS BACK ON THE
- 16 OTHER PAGE. FIRST TIME THEY GOT A PULSE IS AT 17:03.
- 17 Q. OKAY. 17:03?
- 18 A. RIGHT. AND THAT'S 178.
- 19 Q. ALL RIGHT. AND THEN IF YOU WOULD TURN OVER.
- 20 A. OKAY.
- 21 Q. DID THEY LOSE A PULSE AT SOME POINT?
- 22 A. APPARENTLY AT 17:07 THERE'S A LINE FOR PULSE AND IT'S
- 23 STRUCK. IT HAS 166 STRUCK OUT AND THEN IT'S ACTUALLY PUT AT
- 24 17:09 A PULSE OF 166. AT 17:10 THERE WAS A PULSE OF 148.
- 25 AT 17:13 THEY HAVE NO PULSE LISTED. 17:14 THERE WAS A PULSE

1 OF 145.

2 Q. OKAY. AND CAN YOU TELL ME WHAT THEY WERE -- WERE THEY
3 DOING ANYTHING OTHER TO MS. SOUTHERN DURING -- ACCORDING TO
4 THE RECORDS DURING THAT TIME PERIOD?

5 A. YES. IT LOOKS -- AND DURING THIS TIME PERIOD THEY WERE
6 DOING DIFFERENT THINGS. SOME THINGS I UNDERSTAND AND SOME
7 THINGS I DON'T. THEY WERE DOING BLOOD DRAWS. THEY WERE
8 DOING EKGs. THEY WERE DOING ABDOMINAL ---

9 MR. BLUME: YOUR HONOR, ---

10 A. --- X-RAYS.

11 MR. BLUME: --- I OBJECT 'CAUSE HE'S NOT -- HE'S NOT
12 COMPETENT. HE JUST ADMITTED HE'S NOT ---

13 THE COURT: COUNSEL, I'LL BE -- AS A TRIER OF FACT,
14 I'LL BE GLAD TO GET THE MEDICAL RECORDS AND LOOK AT THEM. I
15 MEAN, WE HAVE AN ATTORNEY HERE WHO'S PUBLISHING MEDICAL
16 RECORDS.

17 MR. MABRY: YES, SIR. I WOULD JUST MOVE THEM INTO
18 EVIDENCE AT THIS TIME, YOUR HONOR. THEY'RE MARKED.

19 THE COURT: IS THERE ---

20 MR. MABRY: FOR ID.

21 THE COURT: --- AN OBJECTION?

22 MR. BLUME: NO, SIR.

23 THE COURT: ALL RIGHT. AND LET'S TAKE A MOMENT WHILE
24 THOSE ARE MARKED AS BEING IN EVIDENCE. AND WHAT NUMBER IS
25 IT?

1 MADAME COURT REPORTER: NUMBER 4.

2 THE COURT: ALL RIGHT.

3 (WHEREUPON RESPONDENT'S EXHIBIT 4 WAS ENTERED INTO
4 EVIDENCE)

5 THE COURT: RESPONDENT'S 4 IN EVIDENCE. AND THAT'S
6 WITHOUT OBJECTION.

7 Q. MR. WILLINGHAM, COULD YOU TELL US ABOUT THE DEALINGS
8 WITH, I BELIEVE, A WITNESS NAMED JERRY JOHNSON, JR.?

9 A. JERRY JOHNSON WAS A WITNESS IN THIS TRIAL. HE CAME TO
10 MY OFFICE A COUPLE OF WEEKS PRIOR TO TRIAL OF JONATHAN
11 BINNEY. AND HE HAD IN HIS POSSESSION, I BELIEVE IT WAS A
12 DOCUMENT, I BELIEVE IT WAS A MAP, THAT HAD BEEN GIVEN TO HIM
13 BY ANOTHER INMATE IN THE CHEROKEE COUNTY DETENTION CENTER
14 THAT HAD ATTRIBUTED THAT BACK TO JONATHAN BINNEY.

15 Q. ALL RIGHT. AND WAS MR. JOHNSON CHARGED WITH ANYTHING?
16 DID HE HAVE ANY PENDING CHARGES?

17 A. YES, HE DID. HE WAS CURRENTLY, AT THAT TIME, HE WAS
18 CHARGED WITH MANUFACTURING METHAMPHETAMINE, PWID
19 METHAMPHETAMINE AND UNLAWFUL NEGLECT OF A CHILD.

20 Q. OKAY. DID YOU OR MR. PRUETT CALL MR. JOHNSON AS A
21 WITNESS IN THE CASE?

22 A. THE STATE DID. SOLICITOR GOWDY AND I DID.

23 Q. THAT'S WHAT I -- THAT'S ---

24 A. YEAH.

25 Q. --- WHAT I MEANT. AND THE PURPOSE OF CALLING HIM WAS

1 TO DO WHAT?

2 A. BASICALLY HE WAS A CHAIN, FOR LACK OF A BETTER TERM, A
3 CHAIN OF CUSTODY ON THE AUTHENTICATION OF THAT MAP. HE HAD
4 GOTTEN IT FROM DANNY EDWARDS, WHO HAD GOTTEN IT FROM
5 JONATHAN BINNEY. SO WITHOUT HIM I THOUGHT I HAD A CHAIN
6 PROBLEM AS FAR AS AUTHENTICATION OF THAT MAP.

7 Q. DID -- WAS THAT MAP LATER AUTHENTICATED BY A
8 HANDWRITING EXPERT ---

9 A. I BELIEVE IT WAS, GAYLE HEATH WITH SLED.

10 Q. AND WHO DID SHE ATTRIBUTE THE HANDWRITING TO?

11 A. TO JONATHAN BINNEY.

12 Q. DID YOU OR MR. GOWDY, TO YOUR KNOWLEDGE, MAKE ANY
13 PROMISE OR HOLD OUT ANY HOPE OF REWARD TO MR. JOHNSON IN
14 ORDER TO GET HIM TO TESTIFY OR FOR HIS TESTIMONY?

15 A. NO, TO THE CONTRARY. I TOLD MR. JOHNSON NOT TO EXPECT
16 ANYTHING.

17 Q. WHAT HAPPENED TO MR. JOHNSON'S CHARGES AFTER THE TRIAL?

18 A. THEY WERE ULTIMATELY DISMISSED. I BELIEVE THE TRIAL
19 WAS IN NOVEMBER. HIS CHARGES WERE DISMISSED IN JANUARY, THE
20 FOLLOWING JANUARY. I HAD PLACED MR. JOHNSON'S TRIAL ON THE
21 TRIAL DOCKET TO BE TRIED.

22 IN PREPARATION FOR THAT TRIAL IN JANUARY WE CONTACTED
23 SLED 'CAUSE SLED HAD HELPED THE LOCAL LAW ENFORCEMENT HERE
24 IN EXECUTING THE SEARCH WARRANT AND TAKING DOWN THIS METH
25 LAB. WE CONTACTED SLED IN THE PREPARATION, CONTACTED THE

1 OFFICERS IN PREPARATION FOR TRIAL TO GET THE EVIDENCE HERE.
2 WE WERE LATER INFORMED THAT THE EVIDENCE COULD NOT BE
3 LOCATED.

4 Q. AND WHAT HAPPENED TO THE CHARGES?

5 A. THE CHARGES WERE ULTIMATELY DISMISSED.

6 Q. AND THE BASIS FOR DISMISSING THE CHARGES WAS WHAT?
7 WHY?

8 A. IT WAS DISMISSED BECAUSE WE HAD NO EVIDENCE TO
9 PROSECUTE. I MEAN, THE EVIDENCE OF THE METH LAB ITSELF WAS
10 GONE.

11 Q. DID YOU OR MR. GOWDY HAVE ANYTHING TO DO WITH THE LOSS
12 OR DESTRUCTION ---

13 A. NO.

14 Q. --- OF THAT EVIDENCE?

15 A. NO.

16 Q. NOTHING FURTHER.

17 THE COURT: ALL RIGHT. JUST TO MAKE SURE I UNDERSTAND.
18 ARE YOU SAYING THAT THE EVIDENCE WAS LOST WHILE AT SLED?

19 A. YES, SIR.

20 THE COURT: ALL RIGHT. VERY GOOD. CROSS EXAMINATION.

21 MR. BLUME: VERY BRIEFLY.

22 CROSS EXAMINATION BY MR. BLUME:

23 Q. I GUESS IT'S GOOD AFTERNOON.

24 A. YES, SIR.

25 Q. SOMEWHERE BETWEEN MORNING AND AFTERNOON. MR.

1 WILLINGHAM, CAN -- ARE THERE ANY OTHER CASES YOU'RE AWARE OF
2 IN WHICH A WITNESS TESTIFIED FOR THE PROSECUTION WITH
3 PENDING CHARGES AND THE EVIDENCE HAS BEEN LOST OR DESTROYED?

4 A. ASK ME THAT AGAIN.

5 Q. ARE YOU AWARE OF ANY OTHER CASES IN YOUR OFFICE WHERE
6 SOMEONE TESTIFIED FOR THE PROSECUTION WITH PENDING CHARGES
7 AND THE EVIDENCE WAS SUBSEQUENTLY LOST OR DESTROYED?

8 A. NO, SIR.

9 Q. THANK YOU.

10 THE COURT: ALL RIGHT. REDIRECT?

11 MR. MABRY: NONE, YOUR HONOR.

12 THE COURT: VERY GOOD.

13 MR. MABRY: I'D ASK THAT HE BE EXCUSED.

14 THE COURT: ANY OBJECTION TO THAT?

15 MR. BLUME: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU'RE FREE TO GO, MR.

17 WILLINGHAM. HAVE A GOOD DAY. AND ARE THERE FURTHER
18 WITNESSES NOW FROM THE RESPONDENT? FURTHER WITNESSES?

19 MR. SALTER: NO, SIR, YOUR HONOR.

20 THE COURT: RESPONDENT RESTS. ANYTHING IN REPLY?

21 MR. BLUME: YOUR HONOR, WE PROBABLY HAVE ABOUT TEN
22 MINUTES OF REPLY TESTIMONY.

23 THE COURT: ALL RIGHT. TELL ME WHAT THE NATURE OF IT
24 IS, COUNSEL.

25 MR. BLUME: IT IS -- ONE WITNESS WILL TESTIFY BRIEFLY

1 THAT -- A CONVERSATION SHE HAD WITH MR. PRUETT, DISCUSSED
2 WHEN HE DIDN'T HAVE A RECOLLECTION OF WHAT WAS SAID. AND
3 SHE'S GOING TO TESTIFY THAT SHE SPECIFICALLY ADVISED HIM TO
4 GET A MITIGATION SPECIALIST AND THE ESSENCE OF THAT. MS.
5 NORRIS IS HERE.

6 THE SECOND REPLY WITNESS WILL BE ACTUALLY JILL RIDER,
7 WHO IS A PARALEGAL, WHO IS GOING TO -- COULDN'T DO THIS
8 UNTIL ACTUALLY AFTER COUNSEL TESTIFIED, TO SAY THAT THESE
9 WERE THE RECORDS COUNSEL HAD IN THEIR FILES. SHE'S REVIEWED
10 THE FILES. THESE WERE THE SOCIAL HISTORY RECORDS COUNSEL
11 HAD.

12 AND THEN WE WILL TEND TO MOVE IN THE OTHER ADDITIONAL
13 SOCIAL HISTORY RECORDS WHICH WERE AVAILABLE BUT NOT
14 OBTAINED.

15 THE COURT: ALL RIGHT.

16 MR. SALTER: YOUR HONOR, WE WOULD OPPOSE MS. RIDER'S
17 TESTIMONY. THE TIME FOR INTRODUCING THOSE RECORDS WOULD
18 HAVE BEEN WITH COUNSEL BECAUSE COUNSEL WOULD HAVE HAD THE
19 ORIGINALS, COULD HAVE AUTHENTICATED WHETHER OR NOT THEY WERE
20 ORIGINALS THAT CAME FROM HIS FILE.

21 THE COURT: HOW IS THIS REPLY AS OPPOSED TO DIRECT,
22 COUNSEL?

23 MR. BLUME: IT WAS -- IT'S REPLY BECAUSE WE WEREN'T
24 ABLE TO DO THIS UNTIL WE COULD VERIFY AND DETERMINE THROUGH
25 THE EXAMINATION OF COUNSEL THAT ANY AND ALL RECORDS THEY HAD

1 WERE IN THEIR FILE AND THAT THEY DIDN'T HAVE ADDITIONAL
2 RECORDS. I WENT THROUGH THAT WITH BOTH MR. SLADE AND MR.
3 PRUETT, DID YOU HAVE THIS, DID YOU HAVE THAT. AND SOME
4 THINGS THEY KNEW ABOUT AND SOME THINGS THEY DIDN'T.

5 BUT WE HAD TO ESTABLISH THAT THEY DIDN'T HAVE RECORDS
6 WHICH THEY DESTROYED OR WHICH THEY GOT RID OF AND WHICH THEY
7 NO LONGER HAVE. AND THEY BOTH TESTIFIED THAT ANY AND ALL
8 SOCIAL HISTORY RECORDS WHICH THEY OBTAINED WERE IN THEIR
9 FILE. WITHOUT THAT FACTUAL PREDICATE WE DIDN'T FEEL LIKE WE
10 COULD DO IT IN OUR CASE IN CHIEF. WE HAD TO ESTABLISH THE
11 PARAMETERS OF WHAT WAS THERE OR NOT.

12 THE COURT: VERY GOOD. LET ME CONSIDER THAT FURTHER.
13 LET'S GO AHEAD AND TAKE YOUR FIRST WITNESS IN REPLY AND THEN
14 WE'LL COME TO THE SECOND.

15 MS. JOHNSON: TERESA NORRIS.

16 TERESA NORRIS, BEING DULY
17 SWORN TESTIFIED AS FOLLOWS:

18 THE COURT: AND, MA'AM, WHAT IS YOUR FULL NAME, PLEASE?

19 MS. NORRIS: TERESA LYNN NORRIS. AND THERE'S NO "H" IN
20 MY FIRST NAME.

21 THE COURT: VERY GOOD. GO AHEAD, COUNSEL.

22 DIRECT EXAMINATION BY MS. JOHNSON:

23 Q. MS. NORRIS, WHERE ARE YOU EMPLOYED NOW?

24 A. I AM A PARTNER IN THE FIRM OF BLUME, WEYBLE AND NORRIS.
25 MR. BLUME, MR. BINNEY'S COUNSEL, IS, IN FACT, MY LAW

1 PARTNER.

2 Q. AND AT THE TIME OF MR. BINNEY'S TRIAL WERE YOU EMPLOYED
3 IN THAT PARTNERSHIP?

4 A. WELL, I DON'T KNOW WHEN HIS TRIAL DATE WAS, BUT I HAVE
5 BEEN IN THAT FIRM FOR A LITTLE OVER A YEAR. PRIOR TO THAT
6 FOR TWELVE YEARS. I WAS EMPLOYED BY THE CENTER FOR CAPITAL
7 LITIGATION AND SERVED AS A DIRECTOR FOR TEN YEARS.

8 Q. AND WHAT IS THE CENTER -- WHAT DID THE CENTER FOR
9 CAPITAL LITIGATION DO?

10 A. DURING MY TIME PERIOD THERE WE PROVIDED DIRECT
11 REPRESENTATION TO DEATH SENTENCED INMATES PRIMARILY IN
12 STATE, POST CONVICTION PROCEEDINGS AND FEDERAL HABEAS
13 PROCEEDINGS. WE PROVIDED CONSULTATION TO OTHER ATTORNEYS IN
14 BOTH TRIAL CASES AND OTHER POST CONVICTION CASES. WE, AT
15 TIMES, PROVIDED TRAINING FOR OTHER ATTORNEYS. BASICALLY WE
16 WERE A RESOURCE FOR ANY ATTORNEY APPOINTED ON A CAPITAL
17 CASE.

18 Q. AND APPROXIMATELY HOW MANY LAWYERS DO YOU THINK CALLED
19 YOU DURING THAT PERIOD?

20 MR. SALTER: YOUR HONOR, I OBJECT TO RELEVANCY.

21 THE COURT: COUNSEL, WHERE ARE WE GOING WITH THIS ON
22 REPLY?

23 MS. JOHNSON: WELL, MY REPLY IS BOTH TO WHETHER HE
24 CALLED HER AND WHETHER IT WAS REASONABLE FOR HIM TO RELY ON
25 WHAT SHE HAD TO SAY.

1 THE COURT: ALL RIGHT. HAVE YOU ASKED WHETHER OR NOT
2 MR. PRUETT HAS CALLED?

3 MS. JOHNSON: I'M JUST ABOUT TO -- AS SOON AS SHE
4 ANSWERS THIS QUESTION, I'M GOING TO ASK THAT.

5 THE COURT: ALL RIGHT. I'LL OVERRULE THE OBJECTION AT
6 THIS POINT. GO AHEAD.

7 A. COULD YOU SPECIFY THE TIME PERIOD? I'M SORRY. IT WAS
8 PRETTY ---

9 Q. WHEN YOU WERE AT THE CENTER FOR CAPITAL LITIGATION.

10 A. DURING THE ENTIRE TWELVE YEARS?

11 Q. YES.

12 A. BOY, THAT'S TOUGH. I WOULD SAY THAT IN A LARGE NUMBER
13 OF CASES PROBABLY A HUNDRED, A HUNDRED AND FIFTY TIMES
14 PEOPLE SPECIFICALLY CALLED AND ASKED FOR ME BY NAME. I
15 WOULD SAY THAT PROBABLY IN ANOTHER FIFTY TO A HUNDRED CASES
16 SOMEONE WOULD JUST CALL AND ASK TO SPEAK TO A ATTORNEY, AND
17 I WOULD TALK TO THEM.

18 Q. AND DO YOU RECALL WHETHER MR. PRUETT CALLED YOU DURING
19 THE COURSE OF HIS REPRESENTATION OF JONATHAN BINNEY?

20 A. I DO.

21 Q. AND DO YOU RECALL WHAT HE TOLD YOU ABOUT THE CASE?

22 A. I RECALL IN GENERAL THAT THE SPECIFIC PURPOSE OF HIS
23 CALL IN HIS MIND AND WHAT HE RELAYED TO ME WAS THAT HE
24 WANTED A REFERRAL FOR A PSYCHIATRIST. AS A MATTER OF
25 PRACTICE AND IN THAT PARTICULAR CONVERSATION I DO RECALL

1 THAT I ASKED HIM SOME SPECIFICS ABOUT THE CASE BECAUSE IN
2 ORDER TO REFER SOMEONE TO AN APPROPRIATE EXPERT I LIKE TO
3 HAVE SOME BACKGROUND BECAUSE THERE IS A DIFFERENCE,
4 OBVIOUSLY AS BEEN DISCUSSED THIS MORNING, BETWEEN
5 PSYCHIATRISTS EVEN IN THEIR SUB-SPECIALTY.

6 SO HE RELAYED THAT HE DIDN'T KNOW A WHOLE LOT ABOUT THE
7 CASE. SO THEN I SUGGESTED TO HIM THAT PRIOR TO A
8 PSYCHIATRIST THAT HE NEEDED TO RETAIN A MITIGATION
9 INVESTIGATOR TO CONDUCT A BACKGROUND.

10 Q. AND DID HE ASK YOU FOR A REFERENCE AS TO WHO TO HIRE
11 FOR SUCH POSITION?

12 A. FOR -- AS A MITIGATION INVESTIGATOR?

13 Q. YES.

14 A. I DO NOT RECALL. MY BEST RECOLLECTION IS AT THAT POINT
15 MR. PRUETT RELATED THAT MR. BINNEY HAD SOME ALLEGATION OR
16 PERHAPS SOME PRIOR CHARGES AND THERE WAS SOME CONCERN ABOUT
17 SEXUAL DISORDER. AND IT WAS -- IT WAS CLEAR THAT HE FELT
18 LIKE HE HAD ALL THE INFORMATION THAT HE WANTED. SO DID HE
19 ASK FOR A SPECIFIC NAME? DID I GIVE HIM ONE? I DON'T KNOW.
20 I DON'T RECALL.

21 Q. WHEN YOU HEARD THIS INFORMATION ABOUT PRIOR SEXUAL
22 CHARGES DID YOU SAY ANYTHING ADDITIONAL TO HIM ABOUT HIRING
23 A MITIGATION INVESTIGATOR?

24 A. THE ONLY THING FURTHER THAT I RECALL SAYING IS I
25 SPECIFICALLY REFERRED DR. SCHWARTZ-WATTS. AND I DID TELL

1 HIM THAT IF HE CALLED HER THAT I FELT CONFIDENT THAT SHE WAS
2 GOING TO SAY THAT SHE NEEDED SUBSTANTIAL BACKGROUND
3 INFORMATION WHICH A MITIGATION INVESTIGATOR TYPICALLY GETS
4 PRIOR TO HER BEING RETAINED. BEYOND THAT, I DON'T THINK WE
5 DISCUSSED IT FURTHER BECAUSE MR. PRUETT, AT LEAST IN MY
6 MIND, CLEARLY WASN'T INTERESTED IN IT, HE FELT LIKE HE HAD
7 WHAT HE NEEDED.

8 Q. HAVE YOU EVER TRANSCRIBED A CONVERSATION BETWEEN A
9 CLIENT AND YOURSELF?

10 MR. SALTER: OBJECTION, AGAIN, TO RELEVANCY, YOUR
11 HONOR.

12 MS. JOHNSON: CAN I ADDRESS THAT, YOUR HONOR?

13 THE COURT: COUNSEL, YOU'RE OFFERING THE WITNESS AS AN
14 EXPERT NOW ON -- ARE YOU GOING TO ASK HER AN OPINION ABOUT
15 THIS?

16 MS. JOHNSON: I'M NOT GOING TO ASK FOR AN OPINION, I'M
17 JUST ---

18 THE COURT: GO AHEAD.

19 MS. JOHNSON: --- GOING TO ASK HER IF SHE ---

20 MR. SALTER: YOUR HONOR, IF I MIGHT FURTHER OBJECT
21 UNDER GREEN VERSUS STATE. OUR STATE SUPREME COURT HAS
22 INDICATED THAT SHE CAN'T PRESENT TESTIMONY FROM AN ATTORNEY
23 AS TO WHAT IS APPROPRIATE OR INAPPROPRIATE FOR INEFFECTIVE
24 ASSISTANCE OF COUNSEL. AND I THINK THAT'S WHAT THEY'RE
25 TRYING TO DO INDIRECTLY ---

1 **THE COURT:** I'M GOING TO SUSTAIN, BUT FOR A DIFFERENT
2 REASON. THIS WITNESS -- AND WE'LL TALK ABOUT THIS ON THE
3 RECORD BECAUSE I JUST DON'T WANT THIS WITNESS TO BE
4 PRESENTED WITHOUT A COMMENT ABOUT IT. BUT WE'VE HAD A
5 DISCUSSION ABOUT WHETHER THERE WOULD BE A DISQUALIFICATION
6 OF MR. BLUME NOW HERE AT THE ELEVENTH HOUR SHOULD THERE BE
7 -- WELL OVER THE FACT THAT MR. PRUETT HAD CALLED THE CAPITAL
8 LITIGATION CENTER DURING THE PENDENCY OF THIS UNDERLYING
9 CASE.

10 AND IT IS MY DISTINCT RECOLLECTION BECAUSE WE HAD A
11 SUBSTANTIAL TELEPHONE CONFERENCE ABOUT IT WAS THAT THE STATE
12 TOOK NO POSITION THAT THIS WOULD DISQUALIFY. AND MR. BLUME
13 TOOK NO POSITION THAT THIS WOULD DISQUALIFY, BUT SIMPLY MADE
14 THE COURT AWARE OF THAT.

15 NOW WHEN THE -- MS. NORRIS IS CALLED AS A WITNESS, OF
16 COURSE, THAT RAISES THE PROFILE OF THIS ISSUE. AND I WANT
17 TO MAKE SURE THAT WE STOP HERE AT THIS JUNCTURE. AND I ASK
18 YOU IS THERE ANY OBJECTION OR QUESTIONS ABOUT RECUSAL OR
19 DISQUALIFICATION OF COUNSEL BASED ON WHAT WE HAVE HERE THUS
20 FAR?

21 **MR. SALTER:** BASED ON WHAT WE HAVE THUS FAR, YOUR
22 HONOR, I DO NOT RAISE ANY KIND OF ---

23 **THE COURT:** VERY GOOD. NOW IS -- FROM APPLICANT, THE
24 SAME OPPORTUNITY TO THE APPLICANT, IS THERE SOME CONCERN
25 HERE ON THE APPLICANT'S PART, MR. BLUME, ABOUT WHETHER

1 THERE'S -- WE'VE GOTTEN TO A POSITION OF DISQUALIFICATION?

2 MR. BLUME: NO, I DON'T THINK SO. I MEAN, I JUST WANT
3 TO BE CLEAR. I THOUGHT I ADVISED THE COURT THAT I BELIEVED
4 THERE WAS A LIKELIHOOD MS. NORRIS WOULD BE CALLED AS A
5 WITNESS TO SAY -- TO RELATE THIS CONVERSATION THAT HAPPENED
6 AT THE TIME.

7 THE COURT: ALL RIGHT. WELL, AND THANK YOU FOR
8 CORRECTING ME. I DIDN'T HAVE THAT RECOLLECTION. MY REAL
9 RECOLLECTION WAS THAT THIS UNDERLYING ISSUE WAS OUT THERE
10 AND THAT THE COURT SHOULD BE AWARE OF IT.

11 BUT I AM GOING TO SUSTAIN THE OBJECTION TO ANY FURTHER
12 ISSUES AND TESTIMONY OF THIS WITNESS BECAUSE I DO BELIEVE WE
13 GET IN THE POSITION OF PITTING WHAT IS ESSENTIALLY COUNSEL'S
14 PARTNER AS A WITNESS IN THE PROCEEDING. AND SO FOR ANY
15 FURTHER QUESTIONS OTHER THAN THE CONTACT WITH REGARD TO THIS
16 PENDING CASE AND THE INFORMATION BY DR. SCHWARTZ-WATTS AND
17 THE MITIGATION EXPERT, THE COURT WOULD NOT BELIEVE IT TO BE
18 APPROPRIATE.

19 IF YOU HAVE SOMETHING FURTHER YOU WANT TO GO INTO, I
20 WOULD ASK YOU TO TELL ME AND WE CAN DISCUSS IT. BUT I DO
21 NOT BELIEVE THE COMMENTS ABOUT WHETHER IT'S APPROPRIATE TO
22 TAPE A CONVERSATION FROM THIS WITNESS WOULD BE APPROPRIATE.

23 MS. JOHNSON: NOTHING MORE, YOUR HONOR.

24 THE COURT: VERY GOOD. NOW IS THERE CROSS EXAMINATION?

25 MR. SALTER: YES, SIR, JUST BRIEFLY.

1 CROSS EXAMINATION BY MR. SALTER:

2 Q. MS. NORRIS, YOU WERE ASKED CONCERNING THE NUMBER OF
3 TIMES YOU'VE BEEN CONTACTED DURING THE TWELVE YEARS OR SO
4 THAT YOU WERE AT THE CENTER FOR CAPITAL LITIGATION BY OTHER
5 ATTORNEYS. AND I BELIEVE YOU INDICATED SOMETHING BETWEEN
6 SAY FIFTY AND A HUNDRED TIMES SOMEONE CALLED ASKING FOR AN
7 ATTORNEY AND YOU TALKED TO THEM. AND THEN ON A NUMBER OF
8 OTHER OCCASIONS THEY CALLED AND ASKED FOR YOU BY NAME. IS
9 IT FAIR TO SAY THAT THE NATURE OF YOUR VARIOUS CONVERSATIONS
10 VARY?

11 A. ABSOLUTELY.

12 Q. THEY WEREN'T ALL ASKING FOR THE SAME TYPE OF
13 INFORMATION, CORRECT?

14 A. CORRECT.

15 Q. NOW WITH RESPECT TO YOUR CONVERSATION WITH MR. PRUETT,
16 YOU REFERRED HIM TO DR. SCHWARTZ-WATTS?

17 A. I DID.

18 Q. ALL RIGHT. AND YOU ALSO INDICATED YOU THOUGHT HE
19 NEEDED TO EMPLOY A MITIGATION SPECIALIST?

20 A. YES. WELL, THE PHRASE I WOULD HAVE USED IS MITIGATION
21 INVESTIGATOR BECAUSE TO ME THERE ARE TWO DIFFERENT TYPES OF
22 PEOPLE THAT FIT WITHIN THE PHRASE OF MITIGATION SPECIALIST.
23 ONE IS AN INVESTIGATOR WHO GATHERS THE BACKGROUND. ONE IS A
24 FORENSIC SOCIAL WORKER TO PROVIDE TESTIMONY. AND THEY MAY
25 BE ONE IN THE SAME, BUT ---

1 Q. BUT AN INVESTIGATOR SUCH AS MR. BLUME'S SISTER?

2 A. I ASSUME YOU'RE REFERRING TO PAMELA BLUME LEONARD?

3 Q. YES.

4 A. YES.

5 Q. AND YOU DON'T KNOW WHAT, IF ANY, INFORMATION MR. PRUETT

6 HAD GATHERED PRIOR TO YOUR CONVERSATION WITH HIM, DO YOU?

7 A. NO. I CAN ONLY TELL YOU WHAT HE TOLD ME, WHICH WAS

8 WHAT I'VE ALREADY TESTIFIED TO.

9 Q. AND YOU DON'T KNOW WHATEVER INFORMATION HE WAS ABLE TO

10 THEREAFTER DEVELOP, DO YOU?

11 A. ABSOLUTELY NOT.

12 Q. THANK YOU VERY MUCH.

13 THE COURT: IS THERE REDIRECT?

14 MS. JOHNSON: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT. MA'AM, YOU'RE FREE TO STEP

16 DOWN. AND AFTER FURTHER CONSIDERATION MR. BLUME HAS GIVEN

17 US A REASONABLE BASIS FOR RESERVING HIS WITNESS, FINAL

18 WITNESS TO REPLY. THE COURT BELIEVES THAT IS APPROPRIATE.

19 AND YOU MAY CALL YOUR WITNESS. I OVERRULE THE OBJECTION.

20 MS. PAAVOLA: JILL RIDER.

21 THE COURT: ALL RIGHT. PLEASE COME FORWARD AND TAKE

22 THE OATH OF A WITNESS.

23 MR. BLUME: YOUR HONOR, MAY MS. NORRIS BE EXCUSED?

24 THE COURT: YES, CERTAINLY. ABSOLUTELY. IS THERE AN

25 OBJECTION FROM ---

1 MR. SALTER: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 JILL RIDER, BEING DULY
4 SWORN TESTIFIED AS FOLLOWS:

5 MR. BLUME: YOUR HONOR, WE'LL JUST TAKE A MINUTE TO
6 MARK THESE BEFOREHAND. I THINK IT'LL BE EASIER IF WE CAN
7 JUST MARK THEM ONCE RATHER THAN ONE ---

8 THE COURT: LET'S JUST MARK THEM ALL AS ONE PACKAGE,
9 PLEASE. MAY WE DO IT THAT WAY?

10 MR. BLUME: IT'S FINE WITH ME.

11 THE COURT: LET'S DO THAT RATHER THAN MARK THEM IN
12 SEPARATE -- COUNSEL, LOOK AT THEM. AND LET'S MARK THEM AS
13 ONE PACKAGE.

14 (WHEREUPON APPLICANT'S EXHIBIT 15 WAS MARKED)

15 MR. MABRY: JUDGE, WE DO HAVE A PROBLEM WITH SOME OF
16 THESE RECORDS. THERE ARE LETTERS IN HERE, AN APRIL THE
17 18TH, 2006 LETTER, APRIL 16TH, 2007 LETTER. THERE'S NO WAY
18 MR. PRUETT COULD HAVE HAD THOSE IN HIS FILE.

19 THE COURT: WELL, ARE THEY JUST COVER LETTERS?

20 MR. MABRY: YEAH, THEY'RE COVER LETTERS, BUT I BELIEVE
21 THEY NEED TO BE REMOVED IF THEY'RE GOING TO BE ENTERED IN AS
22 PART OF HIS FILE BECAUSE THEY'RE MR. -- ONE OF THEM IS FROM
23 MR. BLUME'S FIRM. SO ...

24 MR. BLUME: THE POINT, I MEAN, THESE ARE NOT RECORDS
25 WHICH WERE IN THEIR FILE. THESE ARE RECORDS WHICH WERE NOT

1 IN THEIR FILE. THE COVER LETTERS WERE ATTACHED TO ESTABLISH
2 THAT WE OBTAINED THEM.

3 THE COURT: ALL RIGHT.

4 MR. BLUME: YOU KNOW, BUT THESE WERE RECORDS WHICH WERE
5 AVAILABLE AND COULD HAVE BEEN OBTAINED, BUT COUNSEL DID NOT
6 DO SO. SO THAT'S THE REASON THE COVER LETTERS ARE THERE TO
7 ESTABLISH THAT MS. RIDER, AT OUR REQUEST, REQUESTED THESE
8 RECORDS AND OBTAINED THEM.

9 THE COURT: ALL RIGHT. OF COURSE, MR. MABRY, THE COURT
10 IN REVIEWING THESE WILL HAVE SOME UNDERSTANDING OF WHAT'S A
11 COVER LETTER AND WHAT'S AN UNDERLYING RECORD. I'M GOING TO
12 OVERRULE YOUR OBJECTION ON THAT BASIS.

13 (PAUSE)

14 MR. MABRY: YOUR HONOR, WE OBJECT TO ...

15 THE COURT: TO WHICH -- TO SPECIFIC ONES OR TO THE
16 ENTIRE GROUP?

17 MR. MABRY: NO, TO A SPECIFIC ONE. THERE'S A DOCUMENT
18 IN HERE CALLED ALL ABOUT YOU THAT LOOKS LIKE A ADOPTION BOOK
19 WITH PHOTOGRAPHS, PHOTOGRAPHS OF THE BINNEY FAMILY,
20 PHOTOGRAPHS OF THEIR HOME, THE FIRST DAY AT SCHOOL, THOSE
21 KIND OF THINGS. I HAVE NEVER SEEN THIS DOCUMENT TO MY
22 RECOLLECTION AND NEITHER HAS MR. SALTER.

23 MR. SALTER: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 MR. MABRY: THAT NEVER WAS PROVIDED IN DISCOVERY.

1 THE COURT: DO YOU HAVE A RESPONSE, MR. BLUME?

2 MR. BLUME: OUR RECOLLECTION, THIS WAS PROVIDED IN
3 DISCOVERY, BUT IN ORDER TO EXPEDITE MATTERS, I'LL BE WILLING
4 TO TAKE THIS ONE OUT, YOUR HONOR.

5 THE COURT: VERY GOOD.

6 MR. MABRY: HERE'S ALSO AN AWARD OF MERIT. LOOKS LIKE
7 SOME KIND OF SCHOOL RECORDS. I DON'T THINK I'VE EVER SEEN
8 THESE. I DON'T HAVE A RECOLLECTION OF EVER SEEING THESE.

9 MR. BLUME: IT'S ALL PART OF THE SAME DOCUMENT.

10 THE COURT: ALL RIGHT. VERY GOOD. ANYTHING FURTHER,
11 MR. MABRY?

12 MR. MABRY: YEAH, WE'RE STILL LOOKING, JUDGE. IF WE'D
13 BEEN PROVIDED WITH THESE YESTERDAY WE COULD HAVE STAYED HERE
14 LAST NIGHT AND REVIEWED THEM, BUT, YOU KNOW, WE'RE HANDED A
15 STACK OF DOCUMENTS THAT WE'VE NOW FOUND SOME THAT WE NEVER
16 HAD. SO THAT PUTS US IN A POSITION WHERE WE HAVE TO GO
17 THROUGH EACH DOCUMENT AND MAKE SURE ---

18 THE COURT: HOW MANY MORE DO YOU HAVE TO GO THROUGH?

19 MR. MABRY: HE HAS TWO ACCORDION -- TWO ACCORDION FILE
20 FOLDERS HERE, YOUR HONOR.

21 MR. BLUME: THAT'S ALL ONE DOCUMENT THOUGH. YOU KNOW
22 YOU'VE GOT THOSE. THOSE WERE ---

23 MR. MABRY: WELL, I'VE SEEN SOME OF THOSE RECORDS, BUT
24 I DON'T KNOW BECAUSE YOU JUST HANDED ME ---

25 THE COURT: ALL RIGHT. COUNSEL, JUST -- LET'S RATHER

JILL RIDER - DIRECT EXAMINATION BY MR. BLUME

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1 THAN ARGUE, LET'S JUST DO IT, PLEASE. THANK YOU.

2 MR. MABRY: YES, SIR.

3 (PAUSE)

4 THE COURT: MR. BLUME, WHY WAS NOT ALL THIS DIVULGED
5 BEFORE -- WHY WASN'T OPPOSING COUNSEL ADVISED OF THIS?

6 MR. BLUME: WELL, THE RECORDS HAVE BEEN PROVIDED IN
7 DISCOVERY.

8 THE COURT: ALL RIGHT. WELL, THEN ---

9 MR. BLUME: IT'S ---

10 THE COURT: --- LET ME REFINER MY QUESTION. WHY WASN'T
11 OPPOSING COUNSEL TOLD THAT THIS WAS COMING AND GIVE THEM AN
12 OPPORTUNITY TO REVIEW THIS?

13 MR. BLUME: THAT'S A LEGITIMATE COMPLAINT FOR WHICH I
14 APOLOGIZE. I DIDN'T, I GUESS, ANTICIPATE THE AMOUNT OF TIME
15 IT WOULD TAKE. I'M SORRY. THAT'S MY -- THAT'S NO ONE'S
16 FAULT BUT MY OWN. AND I APOLOGIZE.

17 (PAUSE)

18 DIRECT EXAMINATION BY MR. BLUME:

19 Q. MS. RIDER, ---

20 MR. BLUME: I'M SORRY.

21 MR. MABRY: NO, GO AHEAD. I'LL WAIT.

22 Q. MS. RIDER, HOW ARE YOU CURRENTLY EMPLOYED?

23 A. I'M EMPLOYED BY BLUME, WEYBLE AND NORRIS.

24 Q. SO -- AND YOU'RE A PARALEGAL?

25 A. PARALEGAL, YES.

1 Q. AT THE REQUEST OF MYSELF OR ANOTHER ATTORNEY WORKING
2 WITH THIS CASE DID YOU REQUEST A NUMBER OF SOCIAL HISTORY
3 RECORDS AND DOCUMENTS RELATING TO JONATHAN BINNEY?

4 A. YES.

5 Q. AND ALSO AT MY REQUEST DID YOU REVIEW THE FILES OF
6 TRENT PRUETT AND MITCHELL SLADE?

7 A. YES.

8 Q. AND ALSO AT MY REQUEST DID YOU MAKE A STACK OF COPIES
9 OF RECORDS WHICH YOU OBTAINED DURING YOUR WORKING ON THIS
10 CASE THAT WERE NOT IN THE FILES OF MR. SLADE OR MR. PRUETT?

11 A. YES.

12 Q. AND IS THAT WHAT THIS STACK OF RECORDS IS?

13 A. YES.

14 Q. IS THERE ONE SMALL EXCEPTION TO THAT?

15 A. THE ONE HE JUST TOOK OUT.

16 Q. IN ADDITION TO WHAT I JUST TOOK OUT. AND I BELIEVE
17 ALSO THERE WERE THREE PAGES OF THE ROSE PARK RECORDS?

18 A. IN TRIAL COUNSEL'S FILE THERE WERE THREE RECORDS,
19 SCHOOL RECORDS THAT I PERSONALLY COULDN'T TELL WHERE THEY
20 CAME FROM. AND I ALSO REVIEWED ALL OF THE CORRESPONDENCE
21 AND DIDN'T SEE ANY RECORDS OR REQUESTS. SO I DON'T -- I
22 CAN'T PERSONALLY SAY WHERE THEY CAME FROM, BUT THERE WERE
23 THREE PAGES OF SCHOOL RECORDS.

24 Q. BUT RECORDS -- RECORDS YOU OBTAINED WHICH WERE IN TRIAL
25 COUNSEL'S FILE, YOU DID NOT INCLUDE IN THIS STACK?

JILL RIDER - CROSS EXAMINATION BY MR. MABRY

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1 A. CORRECT.

2 Q. THIS IS ONLY THE INFORMATION YOU OBTAINED THAT WE
3 DEVELOPED IN THIS CASE WHICH WAS NOT IN TRIAL COUNSEL'S
4 FILE?

5 A. THAT IS CORRECT.

6 Q. THANK YOU.

7 THE COURT: AND, COUNSEL, YOU OFFER THIS AS AN EXHIBIT,
8 I ASSUME.

9 MR. BLUME: YES, SIR. I'M SORRY, YOUR HONOR. YES,
10 THIS IS PLAINTIFF'S EXHIBIT 15. AND WE OFFER THESE RECORDS
11 NOW INTO EVIDENCE.

12 THE COURT: ALL RIGHT. AND IS THERE AN OBJECTION TO
13 IT, MR. MABRY?

14 MR. MABRY: I'D LIKE TO QUESTION HER IF I COULD FIRST
15 BEFORE WE ---

16 THE COURT: ALL RIGHT. I'LL WITHHOLD THE DECISION.
17 AND YOU MAY.

18 CROSS EXAMINATION BY MR. MABRY:

19 Q. TELL ME YOUR NAME AGAIN, PLEASE.

20 A.. JILL RIDER.

21 Q. MS. RIDER, OKAY. HOW DID YOU COME TO BE IN POSSESSION
22 OF MR. SLADE'S FILE AND MR. PRUETT'S FILE? HOW DID YOU
23 BECOME IN POSSESSION OF IT?

24 A. I DON'T UNDERSTAND, I MEAN, IT WAS PROVIDED BY THEM.

25 Q. OKAY. WELL, WHAT I'M ASKING IS DID YOU GO PICK UP THE

- 1 FILE ---
- 2 A. I DID NOT GO PICK UP THE FILE.
- 3 Q. WHO PICKED UP THE FILE FROM MR. PRUETT AND MR. SLADE?
- 4 A. A LAW CLERK.
- 5 Q. ALL RIGHT. WHICH LAW CLERK?
- 6 A. IT WAS LAST SUMMER, I BELIEVE. I DON'T KNOW.
- 7 Q. ALL RIGHT. DID THEY -- DID THEY COME FROM COLUMBIA AND
- 8 PICK THEM UP?
- 9 A. THE LAW CLERK?
- 10 Q. YES.
- 11 A. YES.
- 12 Q. ALL RIGHT. AND HOW LONG -- HOW LONG WERE THE FILES IN
- 13 THE POSSESSION OF THE LAW CLERK, IF YOU KNOW?
- 14 A. I DO NOT KNOW.
- 15 Q. AND AFTER THE LAW CLERK BROUGHT THE FILES TO YOUR
- 16 OFFICE IN COLUMBIA OR DID HE BRING THEM TO YOUR OFFICE?
- 17 A. I KNOW WITH SLADE'S FILE THEY DID BECAUSE I PERSONALLY
- 18 SENT THOSE TO BE COPIED. PRUETT'S FILE, I CANNOT RECALL. I
- 19 KNOW THAT I HAVE A COPY ---
- 20 Q. FROM SOMEWHERE ---
- 21 A. --- OF HIS FILE.
- 22 Q. BUT YOU DON'T KNOW WHERE YOU GOT IT?
- 23 A. I KNOW THAT A LAW CLERK OBTAINED IT, BUT I -- AND IT
- 24 CAME FROM HIM, BUT I DON'T KNOW.
- 25 Q. YOU DON'T KNOW HOW HE GOT IT?

1 A. I DIDN'T PERSONALLY GO GET THE FILE FROM MR. PRUETT IF

2 THAT'S ---

3 Q. YOU ---

4 A. --- YOUR QUESTION.

5 Q. --- DON'T KNOW WHO DID?

6 A. NO.

7 Q. OKAY. AND YOU DON'T KNOW HOW LONG IT HAD BEEN AT YOUR

8 OFFICE BEFORE EITHER ONE OF THESE FILES -- BEFORE YOU SENT

9 THEM OUT TO BE COPIED?

10 A. I ASSUME THEY WERE IMMEDIATELY SENT OUT.

11 Q. DO YOU KNOW?

12 A. NO, I DON'T KNOW.

13 Q. WHO HAD ACCESS TO THESE FILES WHILE THEY WERE IN THE

14 LAW FIRM?

15 A. I WOULD ASSUME ANYBODY THAT WORKED IN THE OFFICE.

16 Q. OKAY. AND DID YOU HAVE YOUR EYES ON THE FILES THE

17 WHOLE TIME THEY WERE THERE OR WERE THEY IN SOME ROOM AWAY

18 FROM YOU?

19 A. THEY WERE IN OUR FILE ROOM.

20 Q. IN THE FILE ROOM?

21 A. UM-HUM (AFFIRMATIVE).

22 Q. DO YOU STAY IN THAT FILE ROOM ALL DAY?

23 A. OF COURSE NOT.

24 Q. AND DID YOU -- WHEN YOU SENT THE FILES OUT TO BE COPIED

25 DID YOU ACTUALLY GO COPY THEM OR DID SOMEONE OUTSIDE OF THE

- 1 ---
- 2 A. IKON COPIED THEM.
- 3 Q. IKON COPIED THEM? HAVE YOU TALKED TO EVERYBODY IN THE
- 4 LAW FIRM ABOUT THEIR ACCESS TO THESE FILES?
- 5 A. I DON'T UNDERSTAND YOUR QUESTION.
- 6 Q. HAVE YOU QUESTIONED EACH PERSON IN THE LAW FIRM ABOUT
- 7 WHETHER THEY GOT ANYTHING OUT OF THESE FILES?
- 8 A. NO. I HAVE NO REASON TO BELIEVE THAT ANYBODY WOULD
- 9 HAVE A DESIRE TO TAKE ANYTHING FROM THE FILE.
- 10 Q. WELL, THERE ARE ATTORNEYS IN YOUR OFFICE WHO ARE
- 11 WORKING ON THE CASE, AM I CORRECT?
- 12 A. YES.
- 13 Q. HOW MANY ATTORNEYS IN THE OFFICE WERE WORKING ON THE
- 14 BINNEY CASE?
- 15 A. ONE.
- 16 Q. MR. BLUME?
- 17 A. JOHN BLUME.
- 18 Q. AND HOW MANY OTHER PEOPLE IN THE OFFICE WERE WORKING ON
- 19 THE CASE?
- 20 A. MYSELF. THAT'S IT.
- 21 Q. WHAT ABOUT MR. SKIDMORE?
- 22 A. HE'S NOT IN MY OFFICE.
- 23 Q. DOES HE COME IN YOUR OFFICE?
- 24 A. NOT UNLESS HE'S COMING FOR A MEETING. BUT HE'S NOT
- 25 EMPLOYED BY OUR OFFICE.

1 Q. DOES HE -- DID HE DO WORK ON THIS CASE?

2 A. YES. HE WAS RETAINED AS A PRIVATE INVESTIGATOR.

3 Q. DID HE REVIEW FILE MATERIALS ON THIS CASE?

4 A. ONLY WHAT I PROVIDED HIM, BUT HE DIDN'T HAVE ACCESS TO
5 TRIAL COUNSEL'S FILES UNLESS IT WAS SOMETHING I GAVE HIM.

6 THE COURT: COUNSEL, IS THERE AN OBJECTION?

7 MR. MABRY: YES, SIR. FIRST OF ALL, I DON'T THINK THEY
8 PRESERVED THE CHAIN OF CUSTODY ON THE FILES.

9 THE COURT: ALL RIGHT. WHAT SAY YOU, MR. BLUME, ABOUT
10 THE CHAIN OF CUSTODY? THIS IS NOT NECESSARILY PERISHABLE
11 EVIDENCE, BUT IT IS EVIDENCE FOR WHICH THERE COULD BE A LOSS
12 OR A TAMPER. WHAT DO YOU SAY TO THAT?

13 MR. BLUME: MS. RIDER, WERE YOU ASKED TO COPY ANY AND
14 EVERYTHING?

15 A. YES. AND I ---

16 MR. BLUME: DID YOU COPY -- AND, IN FACT, DID YOU COPY
17 EVERYTHING THAT'S IN THE FILE?

18 A. THE TRIAL COUNSEL'S FILE?

19 MR. BLUME: CORRECT.

20 A. IKON DID. I DIDN'T PERSONALLY.

21 MR. BLUME: AND DID YOU TAKE ANYTHING OUT OF THE FILE?

22 A. I DID NOT.

23 MR. BLUME: AND WHEN THE FILES WERE IN THE OFFICE YOU
24 WERE THE PRIMARY CUSTODIAN OF THE FILES?

25 A. THAT IS CORRECT.

1 MR. BLUME: AND IF I OR ANYBODY ELSE WANTS SOMETHING I
2 ASK YOU FOR IT, IS ---

3 A.. THAT IS CORRECT.

4 MR. BLUME: --- THAT CORRECT?

5 THE COURT: ALL RIGHT.

6 MR. MABRY: OBJECTION, LEADING.

7 THE COURT: THAT'S SUFFICIENT. THAT IS LEADING, BUT,
8 GENTLEMEN, WE -- I'M GOING TO OVERRULE YOUR OBJECTION. YOU
9 RAISED QUESTIONS ABOUT THE CHAIN OF CUSTODY. AGAIN, THIS IS
10 NOT NECESSARILY PERISHABLE EVIDENCE SUCH AS BLOOD OR
11 SOMETHING OF THAT NATURE, BUT THE COURT'S GOING TO OVERRULE
12 THE OBJECTION.

13 MR. MABRY: OKAY. MY SECOND OBJECTION, YOUR HONOR, IS
14 ON A DIFFERENT BASIS.

15 THE COURT: GO AHEAD.

16 MR. MABRY: THE MEDICAL RECORDS OF THE MOTHER ARE BEING
17 OFFERED TO SUM THAT TRIAL COUNSEL SHOULD HAVE HAD THOSE
18 RECORDS. MOST OF THOSE RECORDS, IT HAS BEEN THE TESTIMONY
19 IN THIS CASE, MOST OF HER MEDICAL RECORDS DEAL WITH HER POST
20 TRAUMATIC STRESS DISORDER, WHICH IS TOTALLY UNRELATED TO
21 ANYTHING IN THIS CASE AND COULD HAVE NO CONSIDERATION IN ANY
22 MENTAL ILLNESS DEFENSE THAT MR. BINNEY WAS FROM A RAPE THAT
23 SHE SUFFERED WHEN SHE WAS TWENTY-FIVE YEARS OLD.

24 THE COURT: ALL RIGHT. COUNSEL, I'M GOING TO OVERRULE
25 THAT OBJECTION TOO. AGAIN, THE COURT BRINGS SOME LEVEL OF

1 UNDERSTANDING TO WHAT'S PROBATIVE AND WHAT'S RELEVANT IN THE
2 INVESTIGATION STAGE OF A DEATH PENALTY CASE. AND WITH THAT
3 UNDERSTANDING I'M GOING TO OVERRULE THE OBJECTION JUST SO
4 THE APPLICANT WILL HAVE THE BENEFIT OF HAVING EVERYTHING
5 THEY WANT IN THE RECORD TO BE REVIEWED BY THE COURT. SO FOR
6 THOSE REASONS, I OVERRULE -- WHAT NUMBER DO WE HAVE?

7 MADAME COURT REPORTER: 15.

8 THE COURT: ALL RIGHT. APPLICANT'S 15 OVER OBJECTION
9 IN EVIDENCE.

10 (WHEREUPON APPLICANT'S EXHIBIT 15 WAS ENTERED INTO
11 EVIDENCE)

12 THE COURT: ANYTHING NOW -- ACTUALLY WE WERE IN CROSS
13 WHEN THIS BEGAN.

14 MR. MABRY: I HAVE NO MORE QUESTIONS FOR THIS NICE
15 LADY, YOUR HONOR.

16 THE COURT: ALL RIGHT. THEN ANY REDIRECT?

17 MR. BLUME: NO, SIR, YOUR HONOR.

18 THE COURT: OKAY. YOU MAY STEP DOWN, MS. RIDER. THANK
19 YOU.

20 MR. BLUME: NOTHING ADDITIONAL FROM THE APPLICANT.

21 THE COURT: ALL RIGHT. NO FURTHER REPLY TESTIMONY,
22 THEN, LADIES AND GENTLEMEN, THAT CONCLUDES THE TRIAL PORTION
23 OF THIS CASE.

24 NOW, COUNSEL, SO OUR RECORD WILL BE CLEAR, WE HAVE
25 THREE WITNESSES THAT WE HAVE -- COUNSEL HAS AGREED TO TAKE

1 OUT OF TIME WITHIN THIRTY DAYS BY DEPOSITION TO BE SUBMITTED
2 FOR THIS RECORD BECAUSE OF THEIR UNAVAILABILITY. AND TELL
3 ME, MR. BLUME, WHAT ARE THEIR NAMES?

4 MR. BLUME: DR. BOOKSTEIN, MELANIE BINNEY AND DR.
5 GROSSMAN.

6 THE COURT: NOW ALL OF THESE ARE APPLICANT'S WITNESSES?

7 MR. BLUME: YES.

8 THE COURT: AND TWO OF THESE ARE EXPERT WITNESSES?

9 MR. BLUME: YES.

10 THE COURT: ALL RIGHT. NOW IS THERE ANY OBJECTION TO
11 DR. BOOKSTEIN, DR. GROSSMAN AND MELANIE BINNEY'S TESTIMONY
12 BEING SUBMITTED BY DEPOSITION WITHIN THIRTY DAYS? WHAT SAY
13 YOU, MR. SALTER?

14 MR. SALTER: NO, SIR, YOUR HONOR. WE PREVIOUSLY HAD
15 AGREED TELEPHONICALLY TO ALLOW MS. BINNEY'S DEPOSITION AND
16 DR. GROSSMAN'S DEPOSITION. WE STAND BY THAT AGREEMENT. WE
17 ALSO HAVE PREVIOUSLY INDICATED THIS WEEK THAT WE DID NOT
18 HAVE ANY OBJECTION TO DR. BOOKSTEIN'S DEPOSITION AND WE
19 STILL DO NOT.

20 THE COURT: VERY GOOD. NOW, GENTLEMEN, IS THERE
21 ANYTHING FURTHER FOR THE RECORD BEFORE WE CLOSE THE RECORD
22 HERE AT TRIAL IN THIS MATTER? WHAT SAYS -- WELL, YOU'RE
23 STANDING, MR. BLUME. WHAT SAYS THE APPLICANT?

24 MR. BLUME: NO, SIR, YOUR HONOR.

25 THE COURT: AND THE STATE, RESPONDENT?

1 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ALL RIGHT. THEN WHAT I'D ASK YOU TO DO IS
3 TO SUBMIT TO ME WITHIN THIRTY DAYS THE TEXTS OF THESE
4 DEPOSITIONS. IF THERE'S SOME PROBLEM WITH THAT TIME-FRAME,
5 THE COURT DOESN'T DEMAND THAT TIME-FRAME, I JUST SET IT SO
6 THAT WE'LL HAVE SOME FINALITY. PLEASE ADVISE ME EARLY ON SO
7 THAT WE CAN ADJUST THE TIME-FRAME.

8 LET ME SAY TO THE PEOPLE HERE. AND, COUNSEL, JUST BE
9 SEATED JUST ONE MOMENT, IF YOU WILL. I HAVE PEOPLE IN THE
10 AUDIENCE. OTHER THAN ONE ACT BY MR. BINNEY, WHICH WAS NOT
11 APPROPRIATE TO THE COURTROOM, I APPRECIATE THE
12 PROFESSIONALISM, THE DEMEANOR AND THE WAY -- EXCUSE ME, SIR,
13 MA'AM, I'M SPEAKING RIGHT THROUGH YOU TO THE PEOPLE RIGHT
14 BEHIND YOU. THANK YOU. THANK YOU. PLEASE LISTEN.

15 I APPRECIATE THE WAY YOU'VE CONDUCTED YOURSELVES
16 THROUGHOUT THIS MATTER. THERE'S NO GREATER GRAVITY IN A
17 CASE THAN WHAT'S HAPPENED HERE ON THE VICTIM'S SIDE AND WHAT
18 IS HAPPENING HERE ON THE APPLICANT'S SIDE. AND I'M WELL
19 AWARE OF THE -- JUST THE LIFE CHANGING, GRIPPING NATURE OF
20 WHAT WE'RE DOING HERE.

21 AND I KNOW THAT IT'S BEEN VERY DIFFICULT FOR THE
22 VICTIM'S FAMILY, THAT IS THE SOUTHERN FAMILY, AS WELL AS THE
23 APPLICANT'S FAMILY, THE BINNEY FAMILY, TO LISTEN TO SOME OF
24 THIS TESTIMONY WHICH HAS WITHIN IT ACCUSATIONS AND QUESTIONS
25 RAISED THAT OPEN WOUNDS THAT ARE SOME NEW AND SOME OLD. BUT

1 I APPRECIATE THE WAY THAT ALL OF YOU HAVE CONDUCTED
2 YOURSELVES IN THIS PROCEEDING.

3 THE COURT IS GOING TO TAKE THIS MATTER UNDER
4 ADVISEMENT. YOU HEARD IT SAID, THERE'S MORE TESTIMONY TO
5 COME IN, THREE WITNESSES AND ONLY THREE. AND THEREAFTER THE
6 COURT'S GOING TO HAVE TO REVIEW THAT, DIGEST IT AND MAKE A
7 DECISION. AND IT WILL TAKE SOME TIME FOR THAT TO OCCUR.

8 I APPRECIATE YOUR PATIENCE WHILE WE ARE -- WHILE THE
9 COURT IS, WHILE I AM IN THAT PROCESS. BUT AT THIS POINT AND
10 AT THIS TIME THE COURT CLOSES THE RECORD IN THIS MATTER
11 SUBJECT TO THE THREE ADDITIONAL DEPOSITIONS. AND THIS TRIAL
12 IS ADJOURNED.

13 (HEARING ENDED AT 1:08 PM)

14 (END OF VOLUME TWO OF TWO)

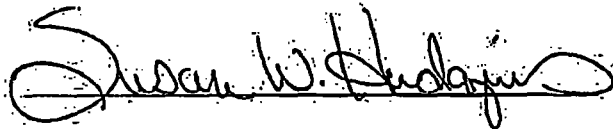
15 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 29TH DAY
9 OF MAY - 1ST DAY OF JUNE, 2007.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 MARCH 25, 2008

13 
14

15 CIRCUIT COURT REPORTER

**COURT OF COMMON PLEAS AND GENERAL SESSIONS
EXHIBIT RECORD AND RECEIPT FORM**

PLAINTIFF Jonathan Binney
 DEFENDANT State
 CASE NO. 2006-CP-11-223
 DATE 5/29/07
 DATE ENDED _____

ATTORNEY John Blume, Sheri Johnson, Paul
 ATTORNEY Ed Salter, Anthony Malrey
 JUDGE Michael Bayley
 COURT REPORTER Susan Hudgins

Applicant - Binney
PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
✓ 1	Dr. Andrew Andrews' CV	✓	✓
✓ 2	List of Records + Interviews Reviewed	✓	✓
✓ 3	Interviewing for psychosocial assessment	✓	✓
✓ 4	Natalie Horvick Brown CV	✓	
✓ 5	Natalie Horvick Brown Affidavit	✓	
* 6	Dr. Backstrom's Report	✓	
✓ 7	Johnny Ray Edwards' Interview	✓	✓
* 8	Dr. Evans' Report	✓	
* 9	Dr. Adlers Report	✓	
✓ 10	Court Records of Jerry Johnson	✓	✓
* 11	Prostate Court Records	✓	
✓ 12	Jandy Smith's Statement	✓	
✓ 13	Stephanie Heflin's Statement	✓	
✓ 14	Susie Kinley's Statement	✓	
✓ 15	Records	✓	✓

Court's:
DEFENDANT'S EXHIBITS

NO	DESCRIPTION	ID	EV
✓ 1	Jury Verdict Affidavit	✓	
	+ Deposition	✓	
✓ 2	Applicant's exhibits 1-9	✓	
✓ 3	Applicant's exhibit 11	✓	
✓ 4	Preformed testimony - Dr. Andrews Sandra Binney	✓	

Susan W. Hudgins
 COURT REPORTER

Brandy M. McBee
 CLERK OF COURT

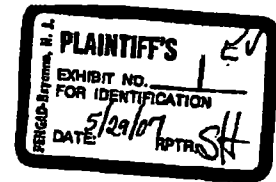
PAGE 1 OF _____

DATE 6-1-07

* Exhibits were made Court's Exhibits.

COURT REPORTER

4779



CURRICULUM VITA

ARLENE BOWERS ANDREWS

Address: College of Social Work, Desaussure College
University of South Carolina, Columbia, SC 29208
Phone: (803) 777-5291
FAX: (803) 777-3498
email: Arlene.andrews@sc.edu

Educational History

Ph.D., 1985 (Clinical-Community Psychology), University of South Carolina, Columbia, S.C.
M.S.W., 1974 (Community Social Work), University of South Carolina, Columbia, S.C.
B.A., magna cum laude, 1972 (Psychology and Sociology), Duke University, Durham, N.C.

Professional Positions

Licensed Independent Social Worker (LISW), S.C. no. 706. Level: Clinical Practice (CP) and Advanced Practice (AP).

Professor, University of South Carolina, College of Social Work, Columbia, S.C. (May 1999 - present); Associate Professor (April 1991 - May 1999); Assistant Professor, August 1986-April 1991. Teaching areas: Community organization and social administration, policy, discrimination/deprivation, research, electives on child abuse/neglect, child psychopathology, victimization, doctoral dissertation preparation, management.

Director, University of South Carolina Institute for Families in Society, 1999-2006; Director, Division of Family Policy 1995-1999; Associate Director, 1994-95. Interim Co-Director, July 1992-June 1994. Direct interdisciplinary research and training with emphasis on family enhancement.

Project Director, University of South Carolina, Child Abuse and Neglect Interdisciplinary Training Project, Columbia, S.C. 29208. October 1987 - October 1990. Duties: Direct training project for master's and doctoral students in social work, psychology, medicine, criminal justice, education, health and nursing.

Partner, Social Policy Resource Associates, P.O. Box 8514, Columbia, S.C. 29202. June 1984 - June 1987.

Lecturer and Training Coordinator (part-time faculty position), University of South Carolina, College of Social Work. August 1983 - August 1986. Taught introductory and advanced graduate courses in macro-level social work skills and discrimination/deprivation and directed a field project funded by the National Institute of Mental Health to train six graduate students in child abuse and neglect intervention.

Executive Director, SISTERCARE, INC., Columbia, S.C. August 1981 - August 1983. Duties: Directed the establishment of this new agency serving abused women and their children in a four-county area.

Instructor, University of South Carolina, Department of Psychology, July 1980 - August 1981. Duties: Teaching "Psychology of Marriage".

Executive Director, Council on Child Abuse and Neglect, Inc., (now known as Prevent Child Abuse - South Carolina), Columbia, S.C. May 1977 - August 1978. Duties: Directed the establishment of this new agency for the prevention of child abuse and neglect.

Director of Research and Evaluation, S.C. Office of the Governor, Office of Social Development, Columbia, S.C., July 1974 - April, 1977.

Social Worker, S.C. Department of Mental Retardation, Midlands Center for the Retarded. Columbia, S.C., June - December, 1973.

Professional Activities

Publications

Books:

- Beck, E., Britto, S. & Andrews, A. (2007). *In the Shadow of Death: Restorative Justice and Death Row Families*. Oxford University Press.
- Andrews, A.B. (2007). *Social History Assessment*. Newbury Park, CA: Sage Press.
- Andrews, A. B., Culp, J., & Dexter, A. (2006). *Send Me! The Story of Salkehatchie Summer Service*. Nashville, TN: Providence House Publishing.
- Ben-Arieh, A., Kaufman, N. H., Andrews, A.B., Goerge, R., Lee, B. J., & Aber, L.J. (2001). *Monitoring and Measuring Children's Well Being*. NY: Kluwer.
- Andrews, A.B. & Kaufman, N.K. (Eds.) (1999). *The UN Convention on the Rights of the Child: Implementing the Right to an Adequate Standard of Living*. Westport, CT: Praeger.
- Andrews, A.B. (1992). *Victimization and Survivor Services*, NY: Springer.

Book chapters, articles, and monographs:

- Andrews, A. B. (2007). Social work and survivor assistance. In A. R. Roberts & D. W. Springer (Eds.), *Forensic social work in juvenile and criminal justice: An evidence-based handbook* (pp. 247-268). Springfield, IL: Charles Thomas Publisher.
- Andrews, A. B. & Motes, P. S. (2007). Strengthening families through organizational and community capacity building. In Motes, P.S. & Hess, P. M. (Eds.) *Building the capacity of communities and human service organizations* (pp.1-18). NY: Columbia University Press.
- Andrews, A.B., Motes, P.S., Floyd, A.G., Flerx, V.C., & Lopez-De Fede, A. (2005). Building evaluation capacity in community-based organizations: Reflections of an empowerment evaluation team. *Journal of Community Practice*, 13 (4), 85-104.
- Andrews, A. B. & Greenberg, R. (2005). Introduction. In Cosby, A. G., Greenberg, R.E., Southward, L. H., & Weitzman, M. (Eds), *The Atlas of American Children* (pp.1-7). Elk Grove Village, IL: American Academy of Pediatrics.
- Andrews, A. B. (2004). Women and multidimensional contextual practice. In Guadalupe, K., & Lum, D. (Eds.) *Multidimensional contextual practice: Beyond stereotypes*, (pp. 166-186). Pacific Grove, CA: Brooks/Cole.
- Andrews, A.B. (2004). Start at the end: Empowerment evaluation product planning. *Evaluation and Program Planning*, 27, 275-285.
- Andrews, A.B., Luckey, L, Bolden, E., Whiting-Fickling, J., & Lind, K. (2004). Public perceptions about father involvement: Results of a statewide household survey. *Journal of Family Issues*, 25(5), 603-633.
- Flaspohler, P., Wandersman, A., Keener, D., North, K., Ace, A., Andrews, A., & Holmes, B. (2003). Promoting program success and fulfilling accountability requirements in a statewide community-based initiative: Challenges and lessons learned in program evaluation. *Journal of Prevention and Intervention in Communities*, 26(2), 37-52.
- Wandersman, A., Flaspohler, P., Ace, A., Ford, L., Imm, P., Chinman, M., Sheldon, J., Andrews, A., Crusto, C., Kaufman, J. (2003). PIE a la mode: Mainstreaming evaluation and accountability in each program in every county of a state-wide school readiness initiative. *New Directions in Evaluation*, 99, 33-49.
- Andrews, A.B., Guadalupe, J. L., & Bolden, E. (2003). Faith, hope and mutual support: Paths to empowerment as perceived by women in poverty. *Journal of Social Work Research and Evaluation: An International Journal*, 4(1), 5-14.
- Andrews, A.B. (2003). Interdisciplinary professional education. In Miller, J. M., Lerner, R. M., Schiamberg, L. B., & Anderson, P. M. (Eds.), *Human ecology: An encyclopedia of children, families, communities, and environments*. Santa Barbara, CA: ABC-Clío.
- Andrews, A.B. (2003). Comprehensive community initiatives. In Miller, J. M., Lerner, R. M., Schiamberg, L. B., & Anderson, P. M. (Eds.), *Human ecology: An encyclopedia of children, families, communities, and environments*. Santa Barbara, CA: ABC-Clío.
- Andrews, A.B. (2002). Children and family life. In Kaufman, N. H. & Rizzini, I. (Eds.) *Globalization and children: Exploring potentials for enhancing opportunities in the lives of children and youth*, (pp. 71-

80), NY: Kluwer / Plenum.

Melton, G. B. & Andrews, A. B. (2000). Building systems for safety in the family: The U. S. experience. *New Global Development: Journal of International and Comparative Social Welfare*, 16, 24-35.

Andrews, A.B. (2000). Victim advocacy. In Rafter, N.H. (Ed.), *Encyclopedia of Women and Crime*. Phoenix, AZ: Oryx Press.

Andrews, A.B. & Ben-Arieh, A. (1999). Measuring and monitoring children's well-being across the world. *Social Work*, 44(2), 105-115.

Andrews, A.B. (1998). An exploratory study of political attitudes and acts among child and family services workers. *Children and Youth Services Review*, 20(5), 435-461.

Andrews, A. B. (1997). Assessing neighbourhood and community factors that influence children's well-being. In A. Ben-Arieh & H. Wintersberger (Eds.), *Monitoring and measuring the state of children - beyond survival*, pp.127-141. Vienna, Austria: European Centre for Social Welfare Policy and Research.

Andrews, A. B. & Freeman, M. L. (1997). The congruence of international children's rights and feminist principles as a foundation for therapy with young people. *Women and Therapy*, 20(2), 7-27.

Andrews, A. B. & Morrison, B. *The changing American family: Impact on South Carolina's children*. Columbia, S.C.: Maternal, Infant, and Child Health Council. Fall 1996-Winter 1997.

Patterson, E.G. & Andrews, A. B. (1996). Protecting the child against separation from the family environment: Articles 9 and 25 of the UN Convention on the Rights of the Child. *Children's Legal Rights Journal*, 16 (3), 2-16.

Patterson, E.G. & Andrews, A. B. (1996). Civil commitment for pregnancy substance abusers: Unmet preconditions and preoccupation with punishment. *Politics and the Life Sciences*, 15(1), 64-66.

Andrews, A. B. (Ed.) (1996). *Strong Neighborhoods, Strong Families: Strengthening Families through Neighborhood Development*. Columbia, SC: Univ. South Carolina.

Andrews, A. B. (Ed.) (1996). *Promoting Family Safety and Nurture: Steps toward Preventing Family Violence and Neglect*. Columbia, SC: Univ. South Carolina.

Andrews, A. B. (1996). Public opinions about what a citizen can do to help abused and neglected children in addictive families. *Journal of Community Practice*, 3 (1).

Andrews, A. B., McLeese, I.G., & Curran, S. (1995). The impact of a media campaign on public response to maltreated children in addictive families. *Child Abuse and Neglect: The International Journal*, 19, 921-932.

Andrews, A. B. (1995). Realizing participant empowerment in the evaluation of nonprofit women's services organizations: Notes from the front line. In Fetterman, D., Kaftarian, S., & Wandersman, A. *Empowerment evaluation: Knowledge and tools for self-assessment and accountability* (pp.141-160). Newbury Park, CA: Sage.

Andrews, A. B. & Patterson, E. G. (1995). Searching for solutions to alcohol and other drug abuse during pregnancy: Ethics, values and constitutional principles. *Social Work*, 40(1), 55-64.

Andrews, A. B. (1995). *Helping families survive and thrive: Call to action for citizens who want to help*. Columbia, SC: Alliance for South Carolina's Children.

Andrews, A. B. (1994). Developing community systems for the primary prevention of family violence. *Family and Community Health*, 16 (4), 1-9.

Andrews, A. B. & Veronen, L. J. (1993). Sexual assault and people with disabilities. *Journal of Social Work and Human Sexuality*, 8:2, 137-159.

Andrews, A. B. (1991). Social work expert testimony regarding mitigation in capital sentencing proceedings. *Social Work*, 36:5, 440-445.

Andrews, A. B. (1990). Crisis and recovery services for family violence survivors. In Roberts, A. R. (Ed.), *Helping crime victims: A National survey and service guide*, Beverly Hills: Sage, 206-232.

Andrews, A. B. (1990). Interdisciplinary and interorganizational collaboration. *Encyclopedia of social work supplement*. Silver Spring, MD: NASW, 175-188.

Andrews, A. B., Williams, H., and Kinney, J. (1988). Three models of social work intervention with tuberculosis patients. *Health and Social Work*, 13:4, 288-295.

Andrews, A. B. (1988). A social worker's perspective on pornography. *Affilia: Journal of Women and Social Work*, 3:3, 23-32.

Andrews, A. B. and Frost-Hewitt, N. (1985). *How to be your own best hero - Teaching children to resist sexual abuse: A resource manual*. South Carolina Office of the Governor.

Wandersman, A., Andrews, A. B., Riddle, D. and Fancett, C., (1983). "Environmental Psychology and Prevention." In Felner, R., Farber, S., Jason, L., and Moritaugu, J. (Eds.), *Preventive Psychology: Theory, Research, and Practice*. NY: Permagon.

Research Activities

Andrews, A. B., Leith, K., Rivers, J., & Gibson, R. *Midlands Area Consortium for the Homeless: Needs and Resource Assessment 2005*. August 2005.

Andrews, A. B. & Motes, P. S. (2004-2005). Technical Assistance Regarding Systems Reform of Services to Children, Adolescents, and Families at the SC Department of Mental Health.

Andrews, A.B. Use of the genogram in mitigation assessment and testimony. 2002 Award of the American Psychological Foundation Randy Gerson Memorial Grant Fund.

Andrews, A.B. & Wandersman, A., et al. Consultation and technical assistance regarding SC First Steps to School Readiness statewide initiative. SC Office of First Steps, Columbia, SC, August 1999 - Dec. 2002.

Andrews, A.B., Floyd, A.G., et al. Consultation regarding community partnerships for children and families. The Duke Endowment, Charlotte, NC. Aug 1998 - Dec 2002.

Andrews, A.B. & Luckey, L. Co-p.i.'s. Technical assistance and evaluation of the Fatherhood Engagement Initiative, Sisters of Charity Foundation - S.C. Statewide, South Carolina. Feb 1999 - present.

Andrews, A. B., Flerx, V., Cokkinides, V., & Bolden, E. Local evaluation of Pee Dee Healthy Start, regional system reform to reduce infant mortality and promote healthy birth outcomes. Jan 1997 - May 2001.

Andrews, A. B., Motes, P., Lopez-DeFede, A. et al. Empowerment evaluation consultation to the Building a Better Future Initiative of the Foundation For The Carolinas, Charlotte, NC. April 1997 - September 2000.

Andrews, A. B. & Cokkinides, V. Consultation regarding measurement of consumer empowerment and community change in neighborhoods served by Healthy Start. University of South Florida, Tampa. March - Dec. 1998.

Andrews, A. B. & Morrison, B. The changing American family: Impact on South Carolina's children. Consultation with the S.C. Maternal, Infant, and Child Health Council. Fall 1996-Winter 1997.

Andrews, A. B. Coordinator of "Personal Life Skills" work group for the international project to measure and monitor the well-being of children beyond survival. Lead organization: national Council for the Child, Israel.

Andrews, A. B., Project Director. Family needs and resources in South Carolina communities: A study to support community action to strengthen families. 1994-95.

Andrews, A. B., Principal Investigator. Ways and means: A study of how transient families move toward stability. 1994-95.

Andrews, A. B., Supervisor of graduate social work student research groups which produced these reports: "Evaluation of the victim impact statement as used in Richland County, Fifth Judicial Circuit, S.C.", 1987. "Preliminary Study of Factors Associated with Divorce Mediation in Child Custody Disputes", 1988.

Consultation

Centers for Disease Control, Violence Against Women Initiative; National Consortium for Capital Defense Training; S. C. Office of First Steps, Assessing Child's Readiness for School; South Carolina Dept. of Mental Health, Systems of Care Strategic Planning, 2004-5; South Carolina First Steps to School Readiness (46 county partnerships); Central Carolina Community Foundation; Federation of Families - SC; The Duke Endowment Child and Family Services Program (12 community partnerships); Sisters of Charity Foundation Fatherhood Engagement Initiative (18 community programs); Pee Dee Healthy Start (7 counties); Foundation For The Carolinas (Charlotte, NC) (26 community programs); S.C. Coalition against Domestic and Sexual Assault; Alliance for South Carolina's Children (co-founder); Council on Child Abuse and Neglect, Inc. (now Prevent Child Abuse-SC); Rape Crisis Network; Cooperative Ministries; Carolina Children's Home; the Nurturing Center; SISTERCARE, Inc.; Richland County Volunteer Guardian ad Litem; Department of Social Work, Medical University of South Carolina, Charleston, SC; Thompson Children's Home (therapeutic residential center), Charlotte, NC; Barnwell County HELPLINE; South Carolina Chapter, National Association of Social Workers; Coalition to Assist Abused Persons, Inc., Aiken, S. C.

Expert witness, impact of child history on adult behavior; child welfare services. State and federal courts in California, Georgia, North Carolina, South Carolina, and Texas.

Memberships

National Association of Social Workers

American Psychological Association

Div. 9 - Psychological Study of Social Issues

Div. 27 - Community Research and Action

Div. 37 - Child and Family

American Evaluation Association

Association for Community Organization and Social Administration

Midlands Women in Philanthropy

USC: Women's Studies faculty; Consortium on Latino Immigration Studies

Service and Other Accomplishments

Certificate of completion, Introductory Spanish for Social Scientists and Social Workers (three-week course), Centro Panamericano de Idiomas (CPI), Heredia, Costa Rica, May-June, 2002

Leader, United Methodist Volunteers in Mission youth team to El Ayudante, León, Nicaragua, May-June, 2006

Assistant Camp Director or Adult Counselor, Salkehatchie Summer Service, each year from 1993-2006

Gubernatorial appointee (eight years, appointed by Gov. Riley and Gov. Campbell), Joint Legislative Committee on Children and Families, S. C. General Assembly

Board memberships at various times for the following: Parents Anonymous (national) Child Maltreatment Prevention Work Group; The Nurturing Center (child maltreatment family-based intervention), S. C. Christian Action Council (interfaith justice ministry), Southern Regional Council - Atlanta, Georgia (civil right and justice advocacy), S. C. Children's Voices (policy advocacy), Growing Home (national therapeutic foster care), Prevent Child Abuse - S. C., Sistercare, SC Chapter of the American Professional Society on the Abuse of Children (SCAPSAC) State Advisory Board on Training for Victim Services Providers, S.C. Office of the Governor

5-28-2007

**Arlene Bowers Andrews
Records Reviewed and Interviews**

Jonathan Binney



Adoption records

Forrest County, MS, Final Decree of Adoption, with attached consents
And petitions 8/16/1974
Letter from Brother Roloff, Nov. 18, 1991
Jonathan Kyle Binney birth certificate

School records

Rose Park Baptist Academy – Holland, MI – 1981-1987
Cornerstone Christian Academy, Fayetteville, NC – 1988
Zanesville Christian School, Zanesville, OH – 1990 (aka Freedom Village)
Victory Family Ministries, Home for Boys, Wausaukee (Amberg), WI – 1990
Dublin Christian Academy – Dublin, NH – 1990 (letter Oct 6, 2006)
Freedom Academy, Lakemont, NY 10/31/91
Hyles-Anderson College, Crown Point, IN – 1994 application
Test of general educational development (GED) – 11/27/92

Psychological assessment records

Education and Remediation Clinic, Fayetteville, NC, test 10-26-88
Educational assessment, 3-11-92, The Learning Center (Forest Park, IL – at HCA
– see below)
Psychiatric evaluation @ Southeastern Correctional Institution, Lancaster, OH
3-17-94 – page 1 only
Lee Jones, MS – USC University Specialty Clinics, 11-20-02, MMPI & Hare PC-R

Medical & psychiatric records

Holland Pediatric Associates, Holland, MI, 1977-1984
Zanesville-Muskingum Health Dept, 1994
Good Samaritan Hospital, Zanesville, OH – 6/28/92
HCA Riverside Hospital, Forest Park, IL – 5/26/92 – 6/24/92
Discharge summary 7-15-92
Learning Center Evaluation Summary 3-11-92
Medical Hx & Exam 5-27-92
Summary of Diagnostic Assessment Data 6-5-92
Psychosocial Assessment 5-28-92
Consultant's Report – Auditory Processing Problems 6-7-92
Activity Therapy 6/1 – 6/16/92
Intake Assessment 5/26/92
Nursing Care Plan

5-28-2007

Laboratory report 5/29/92
2003 website summary of Rapha treatment services

Bethesda Hospital, Zanesville, OH 1993

Foothills Family Medicine, Spartanburg, SC 9/11/98 - 4/6/00

Patrick B Harris Psychiatric Hospital 5/7/00
Final discharge summary 5/23/00
Dx: Adjustment reaction with mixed features (I)
Personality disorder NOS (II)
Psychiatric History & mental status exam 5/7/00
History and physical exam 5/7/00
Nursing assessment n.d.
Educational needs assessment 5/7/00
Socio-cultural history and assessment 5/9/00
Voc rehab referral
Multidisciplinary progress notes
Discharge planning notes 5/11/00
Nursing service notes

Spartanburg Area Mental Health Center
Physician's medication orders and progress notes 6/27/00

Spartanburg Regional Healthcare System
2/6/00 Motor vehicle accident
5/7/00 Suicidal depression - transfer to PB Harris PH

Spartanburg Urology Surgicenter, 1999
Vasectomy

Carolina Center for Oral and Maxillofacial Surgery, 3-23-00

Gary E. Ford, Psy D. Competency Evaluation 10-26-1993
Pamela M. Crawford, MD - psychiatric evaluation - 11/3/02
David L. Bachman, MD - neurologic exam 11/25/02
Donna Schwartz-Watts, MD Psychiatric evaluation draft, n.d.
Fred L. Bookstein, analysis of MRI, 4-6-07
James R. Evans neuropsychological report, 5-5-07
Draft affidavit of Natalie Novick Brown, 5-23-07

Juvenile & criminal justice system records

Wisconsin, Marinette County, Petition for determination of delinquency: Nov 19,
1990

5-28-2007

Wisconsin, Marinette County, Notice of Hearing: Dec 12, 1990

Albany County Jail

Health history 11/1/91

Booking 9/18/91

Ohio, Guernsey County, Juvenile Court ? 1992

State of Ohio Dept. of Youth Services Individual Treatment Plan 8-10-92

State of Ohio Rehabilitation Services Notice of Disability Examination 9-27-93

State of Ohio Grand Jury indictment Nov 5, 1993

Letter from attorney Mark Kaido, 11-1-1993

Letter from Jim and Sandra Binney, 10-93

Letter from RA Persicketti, The Lighthouse, n.d.

With documents about the Lighthouse

Richard P Wright, attorney, motion for shock probation, 4-8-1994

Ohio, Licking County Court of Common Pleas,

Warrant for removal Jan 21 1994

Judgment entry - Feb 11, 1994

Southeastern Correctional Institution, Lancaster, OH

"Interdisciplinary Progress Notes" [DMH?] 12/12/93 - 5/94

Doctor's orders

Incident record

Clinical lab report

Employment assessment

Intake report

Social worker report

Food list

Ohio, Licking County Court of Common Pleas, 5-16-94

Judgment entry - suspended sentence

OH Dept Rehabilitation & Correction, 5/10/94 - receipt of records

Chillicothe Psychiatric Institute, 3/17/94

Arrest warrant (SC) 7-7-97 for shooting chickens

Arrest warrant & SBI records (NC), felonious larceny, 11-9-98

Arrest warrant (SC) 12/9/99 for criminal sex with minor

Spartanburg County Sheriff's Dept

5-28-2007

Incident Report – Sexual Assault – 12-7-99
Supplemental Report 12-8-99
Investigation Report 12-7-99
Voluntary Statement 12-7-99
Property Report 12-9-99
Voluntary statement 12-8-99
Voluntary statement 12-9-99, 12:50pm
Voluntary statement 12-9-99, 2:10pm
Voluntary statement 12-9-99, 3:17pm
Investigation Report 12-13-99

Voluntary Statement (n.d.), 5pp, pertaining to charges related to death of Judy Southern

Transcript of record testimony of Dr. Geoff McKee 4/23/01 [CSC trial]

Letter from Jim and Sandra Binney to Hon. Judge J. Derham Cole, 7-25-02

Deposition of Donna Schwartz-Watts, MD, 3/22/05

Transcript of the J Binney trial for murder of Judy Southern, sentencing phase, pp. 3052-3502

SC Dept of Corrections Div. Health Services 5/9/01 – 9/30/06

Handwritten letter signed by Jonathan Binney dated 7-7-00

Photographs of injuries to [REDACTED] Binney

Reduced B&W copies of pornographic images found on Jonathan Binney's computer

Child protective services records

SC DSS 7/25/00 Action log report

SCDSS 12/21/99 Indicated report

Family Court Consent Order 12/17/99

Family Court Final Order 1/18/00

SC DSS Investigative Matrix Report 1/11/00

SC DSS Action Log 3/1/00

SC DSS Action Log 5/25/00

SC DSS Work Activity and Contacts 6/9/00

Letter from S Binney to DSS 6/17/00

Letter from Melanie Binney to DSS 6/20/00

Letters about James and Sandra's Binney's character from:

CF Keen 6/19/00

B Jones 6/16/00

HA Casey 6/15/00

ME & ME Scott n.d.

RF Rhodes 6/14/00

LD McCallister 6/14/00

P Shaver 6/14/00

Driver Record

SC DOT(?) 4/3/2007

Employment records

Best Buy 12/6/96 – 7/26/97
B&R Communications 1998
Kelly Services 1998
Nestle 1999
Walmart 2000
Resume'

Other pertaining to Jonathan Binney

"Baby Book" about Jonathan
Family "health record" about Jonathan 1st year
Certificate of baptism
Sandra – letter to Jonathan 3/15/90
Jonathan's "Feelings Journal" while at Rapha, n.d.
Letter to "Rick" written by Jon Binney with Hyles-Anderson College
address n.d.
Letter from Jonathan to his parents while at "TCY" n.d.
Note from Jonathan to officials at Albany jail describing harassment by other
inmates
Letter from Sandra Binney to "Valerie & Laura," n.d.
Photos of injury to [REDACTED] Binney
Photos of Melanie & Jonathan Binney's basement
L.E.A.D. Ministries website biography of Jim Binney
Letter from Noel Swain about Jonathan's helpful video ability
Gregory Stevens Thrasher – MI Dept Corrections – criminal sexual conduct
Record
Various family photographs

Records pertaining to Gayle ~~Binney~~ ^{Dove}

National Personnel Records – Military Service of Gayle Binney
Honorable discharge, Air Force,
Dept. of Veteran's Affairs Medical Records
1994-2001
Spartanburg General Medical Records, 2000
Death certificate, 2-25-02
Augusta GA Coroner's report regarding death of Gayle Dove Murray

Interviews

Jonathan Binney, 3-30-07; 5-7-07
Jim and Sandra Binney, 5-3-07
Sandra Binney (by phone), 5-25-07
Melanie Binney, 5-14-07; by phone 5-25-07

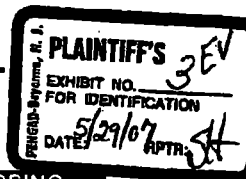
5-28-2007

Ruth Morris, 5-20-07 (by phone)
John Morris, 5-20-07 (by phone)
Allison Haygood, 5-21-07 (by phone)
Lou Ann Dove, 5-22-07 (by phone)
Joy (maternal aunt by adoption) and Gene Branham, 5-24-07 (by phone)
Mikel (uncle by birth) Dove, 5-24-07 (by phone)
Jim Bannister, 5-25-07 (by phone)
Raymond Dove 5-29-07

Affidavits

Natalie Novak Brown, 5-23-07 - Also spoke by phone
Tom Lemmen, n.d. (5-23-07)
Kristi Lemmen, n.d. (5-23-07)
Sandra Binney, n.d. (5-23-07)
Ruth Morris, 5-23-07
Raymond Henry Dove n.d. (rec'd 5-22-07)

INTERDISCIPLINARY BIOPSYCHOSOCIAL ASSESSMENT



SECTION I: Clinical Data Base

NURSING

Date: 7/22/99 Time: 2020 Unit: 62G-1
 Court Commitment: Yes ☒ No ☐ Admission Dx: Severe Depression & Suicide Ideation
 VS: T 99° P 87 R 18 B/P 114/73 R. LL ☒ SW Lying — Ht. 5'6" Wt. 130
 DOB: 8-15-57 Race: White Sex: M ☒ F ☐ Age: 41

PATIENT RIGHTS

Advance Directive: ☒ No ☐ Type: Living Will Location: BYAMC
 Organ Donor: ☒ Yes ☐ No Tissue Donor: ☒ Yes ☐ No Information/Pamphlet Provided: Yes ☒ No ☐ Refused

Presenting Problem/Precipitating Event (Describe Problems/Symptoms "As Evidenced By")

Depressed mood: Sad affect. Anxious.

Patient's Perception of Problems & Needs:

Broken Relationship, Dear friend died. Started to cry and
could not stop.

Current Risks (Clarify all affirmative responses):

History of Assaultive Ideation? Yes ☒ No ☐ Assaults? Yes ☒ No ☐

History of Suicidal or Self Harm Thoughts? ☒ Yes ☐ No Suicide Attempts? ☒ Yes ☐ No How many 2 Dates: 8/1973
2/1994

Describe: 1973 (Took Valium) + 1 bottle of gun 1994. Took 90 Eland.

Current Plan? Yes ☒ No ☐ If yes, describe: State had option of Street drug - shooting
self.

Self Harm Attempts? ☒ Yes ☐ No How many 2 Dates: 1973 - 1994

Describe: Same as above

Problems as Evidenced by: #7 Ongoing Risk to Rel: State is suicidal

Current Medications (Prescription or Nonprescription) Gabapentin 300mg po BID, Diltiazem 30mg po
Ramitidine 150mg po BID, Fluoxetine 20mg po AM, Estrogen

Drug Sensitivities, Allergies and Allergic Reactions - Describe: NKA - no ASA, Motrin, 2° PUD.

Food Allergies or Intolerances - Describe: NKA - Noisist like fish.

Patient and Family Educational Needs: Medication / Diagnosis teaching.

Problems as Evidenced by: #16 Knowledge Deficit.

SIGNATURE AND TITLE OF PRACTITIONER

Donna Overland RN

DATE

7/22/99

IMPRINT PATIENT DATA CARD (Name, Address and Social Security Number)

DOVE, GAYLE

SEVERE DEPRESSION/W/SUICIDE I

62G-1

DR MATHIS

MEDICAL RECORD

SUPPLEMENT TO PROGRESS NOTE FOR
SPECIALIZED DISCIPLINES-VERTICAL

520-OP-211-116A-1 July '98 PAGE 1

VA FORM 10-0114J(R)
SEP 1992

U.S. Government Printing Office: 1997 - 515-805/83728

SECTION II: Nursing Assessment

NURSING

Activities of Daily Living/Level of Functioning

Assess patient's level of functioning, check appropriate box

Items	Self Care	Assist	Total Care	Comments
Bathing	☒			
Dressing	☒			
Mobility	☒			
Oral hygiene	☒			
Toileting	☒			
Foot Care	☒			
Eating	☒			
Other	☒			

Need for Functional Assessment by Occupational Therapist? Yes ☐ No ☒Problems as Evidenced by: NA

NUTRITIONAL ASSESSMENT:

Problems	Yes	No	Unk	Comments
1. Chewing Problems		☒		
2. Swallowing Problems		☒		
3. Nausea	☒			
4. Vomiting		☒		

General Status: ☐ Obese ☒ Well-Nourished ☐ Emaciated ☐ DehydratedAppetite: ☐ Good ☒ Fair ☐ PoorTeeth: ☒ Own ☐ Partial Own ☐ Partial Dent ☐ Full DentRecent Change in Weight: Yes ☐ No ☒ If yes, describe: NASpecial Diet: Yes ☐ No ☒ If yes, type: NAIs the patient NPO greater than 3 days? Yes ☐ No ☒Is there an unintentional weight loss of 5 pounds or more during the previous week? Yes ☐ No ☒Is there an unintentional weight loss of 10 pounds during the previous month? Yes ☐ No ☒Is the patient admitted on tube feedings or IV nutritional support? Yes ☐ No ☒Is the patient on non-formulary nutritional support (tube feedings, parenteral products)? Yes ☐ No ☒Nutritional Screening by Clinical Dietitian Needed: ☒ Yes ☐ No Consulted: ☒ Yes ☐ No E-mail to MS MooreProblems as Evidence by: #21 Nutritional Problem: Nauseated X 3 days.

ELIMINATION

Bowel Problems: ☒ Yes ☐ No Describe: Constipation freq.Last BM 1 days ago Regular bowel habits 8d CB irregularProblems Urinating: ☒ Yes ☐ No ☒ Starting ☐ Burning ☐ Frequency ☐ Change in color ☐ Incont ☐ Drain/DischgUrinate at night ☒ Yes ☐ No How many times? 6 Comments: Does not understand why - doesn't drink anything past 6

Respiratory/Cardiovascular System

Breathing Problems: Yes ☒ No ☐ Dyspnea ☐ SOB at rest ☐ SOB on exertion ☐ Parox Noc Dyspnea ☐ Orthopnea

Comments: c/o sinus infection

Cough: Yes ☒ No ☐ If yes: ☐ Prod ☒ NonProd ☐ Trach Hx of TB: Yes ☒ No ☐ Hx of Positive PPD Yes ☒ No ☐

Any Heart Problems: Yes ☒ No ☐ With activity/at rest Yes ☒ No ☐ Pacemaker Yes ☒ No ☐

Describe: Wheezing

Pain Severity (least) 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 (most) #9

Any other pain? Yes ☐ No ☒ Describe: Headache - Toothache

What relieves it? Demerol - Phenergan - Also Stadol - also Percocet

History of High Blood Pressure: Yes ☒ No ☐ How treated: NA

Musculoskeletal/Neurological 2° Jaking disorder -

Have you ever lost consciousness? Yes ☒ No ☐ If yes, describe: Seizures

History of: ☐ Amputation ☒ Seizures ☐ Atrophy ☐ Paralysis ☐ Contractures ☐ Spasticity ☐ Other

Assistive Devices Used for Mobility? ☒ Cane ☒ Walker ☒ Wheelchair ☒ Artificial Limb

Describe: NA

Cognitive-Sensory/Psychosocial

Changes in Sensory Perception? Yes ☐ No ☒ Sight ☐ Hearing ☒ Taste ☐ Touch ☐ Smell

If yes, describe: "Nothing taste right"

Hallucinations? Yes ☒ No ☐ If yes, describe: NA

Delusions? Yes ☒ No ☐ If yes, describe: NA

Special Need or Cultural Practices? Yes ☒ No ☐ If yes, describe: NA

Speech: ☒ Clear ☐ Slurred ☐ Aphasic ☐ Disorganized

Problems as Evidenced by: #2 Depressed Mood: Crying, Unable to stop crying, food doesn't taste right, friend died - broke up w/ boy friend

Sleep/Rest:

Problems with sleep? Yes ☒ No ☐ If yes, describe: Getting to sleep - "Waken up all the time"

Describe usual patterns of sleep: Waken up off and on all night

Sexual/Reproductive System:

Has your health affected your sexual relationships? Yes ☒ No ☐ If yes, describe: PTSD - 2° Sexual Trauma; Raped by Supervisor during 1987

Do you perform routine self breast/testicular exams? Yes ☒ No ☐ Sometimes

Have you ever been at risk for STD or AIDS? Yes ☒ No ☐ explain: Contact w/ 2 Hep C "PTs" - 1989

IMPRINT PATIENT DATA CARD (Name, Address and Social Security Number)

DOVE, GAYLE

SEVERE DEPRESSION/W/SUICIDE I

626-1

DR MATHEIS

PREDISPOSITION FOR FALLING

Postural hypotension ☐ Yes ☒ No Neurological problems ☒ Yes ☐ No 65 or older ☐ Yes ☒ No
 Unsteady on feet ☐ Yes ☒ No Current Meds (Seds) ☒ Yes ☐ No Dizziness/fainting ☐ Yes ☒ No
 Confused/disoriented ☐ Yes ☒ No Poor bladder control ☒ Yes ☐ No Unsafe footwear ☐ Yes ☒ No
 Patient falls previously ☐ Yes ☒ No Poor eyesight ☐ Yes ☒ No Narcotics, seds, diuretics ☐ Yes ☒ No

Comments: Has Seizure D/O 2' Medication. Last seizure moved ago

BRADEN RISK SCALE

SCORE	1	2	3	4	TOTAL
Sensory Perception	Unresponsive	Responds to Pain	Responds to Verbal	No Problem	4
Moisture	Always Wet	Often Wet	Rarely Wet	Dry	4
Activity	Bedfast	Chairfast	Slightly Limited	Walks Frequently	4
Mobility	Completely Limited	Limited	Slightly Limited	No Limits	4
Nutrition	Very Poor	Inadequate <1/2	Adequate >1/2	Excellent	3
Friction	Max assist to move to Bed	Minimum assist to move to bed	No Problem	No Problem	4
				TOTAL	23

If Score is <16 Initiate Nursing Procedure 311 and Notify Enterostomal Therapy Nurse

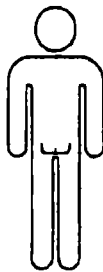
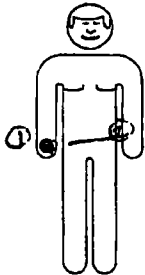
Method of Notification: NA

Comments: NA

SKIN PROBLEMS: ☒ N/A ☐ Itching ☐ Discoloration ☐ Dryness ☐ Sores ☐ Hair-Scalp

Problems as Evidenced by: NA

Identify Location of Skin Breaks/Lesions/Scars/Tattoos:



LOCATION	APPEARANCE	SIZE	STAGE	DRAINAGE
1. Hand	Scrubbed	Cup	Unroofed	Healed
2.3	Scrubbed - Hypert - Refuse Adherence (W/Space)			
3.				

Patient and Family Educational Needs: NA

Problems as Evidenced by: NA

SECTION III: Substance Abuse Screening

NURSING

History of Substance Use/Abuse: ☒ Yes ☐ No Drug of Choice (Alcohol, Cocaine, etc.) Recovering Alcoholic

Tobacco: ☒ Yes ☐ No History of Substance Abuse Withdrawal/DT's/Seizures: ☒ Yes ☐ No Last drunk almost 5 yrs ago - Oct 2, 1994

Describe: NA

History of Treatment for Addiction: Once - Gupert - SATP Oct 1994

Evidence of Current Intoxication or withdrawal: None

Need for Further Counseling Concerning Substance Abuse? Yes ☐ No ☒

Problems as Evidenced by: NA

SECTION IV: Initial Screening for Women

NURSING

Number of normal pregnancies: 1 Number of miscarriages: 0 Describe: NA
 Date of last mammogram: 1999 Date of last pap smear: unable to remember Osteoporosis: Yes ☒ No ☒
 Birth control? Yes ☒ No ☐ Present None Past Yes
 Patient and Family Educational Needs: NA
 Problems as Evidenced by: NA

Nursing Admission Assessment Summary Notes:

7/22/99 2020: 41 y/o W/F Admitted through BVAAC E.R.
 & Dx of Severe Depression & Suicide Ideation. Pt claims
 she recently broke off relation w her Boy friend at that a
 dear friend died recently. Stated she started to cry this AM
 & has not been able to stop crying. Has history of PTSD
 2° being raped by her Supervisor while in the Military in 1987.
 % since relation w Migraine Headaches. Temp 97.8
 Paula Overland RN

Orientation To Unit			
Unit <u>62G-1</u>	Bed <u>138-28</u>	Unit Guidelines ☒	Rights/Responsibilities ☒
ID Armband: ☒	TV/Telephone: ☒	Meal Hours: ☒	Visiting Hours: ☒
Smoking Policy: ☒	Bathroom: ☒	Nurse/Emergency Call: ☒	Safety: ☒
Bed Controls: ☒	Bed in Low Position: ☒	Slippers: ☒	Contact Lens: ☒
Valuables: Money <u>\$20.02</u>	Jewelry: <u>None</u>	Glasses: ☒	
Hearing Aid: ☒	W/C: ☒		
Clothes: ☒	Pt is responsible for own clothes		
Disposition of Valuables: Home/Agent/Cashier/Patient/Staff			
Comments: <u>\$20.02 returned to Pt.</u>			
Signature: <u>Paula Overland RN</u>	Date: <u>7/22/99</u>	Time: <u>2115</u>	

RN SIGNATURE: Paula Overland RN DATE: 7/22/99 TIME: 2115

IMPRINT PATIENT DATA CARD (Name, Address and Social Security Number)

DOVE, GAYLE

SEVERE DEPRESSION/W/SUICIDE I

62G-1

DR MATHIS

SECTION V: Psychological Issues

PSYCHOLOGY

History of Previous Hospitalizations: Reported that the admission is her first inpatient admission to any hospital

History of Prior Outpatient Mental Health Care: Outpatient

Does Mental Status Suggest that Patient is Capable of Engaging in Psychotherapy? ☒ Yes ☐ No

Ms. Doe may benefit from Cognitive-behavioral interventions to assist coping skills.

History of Alleged or Suspected Abuse or Neglect: Yes ☐ No ☐ Physical/Sexual/Military Trauma ☒ Yes ☐ No

Describe: reported that she had been sexually abused as a child and teenager, was physically abused by 2nd husband, then raped & sexually abused.

Psycho Social History: Describe Marital Status; Family Constellation and History; Significant Social Issue:

Married/Divorced x 3; no children. 2 brothers (close to one of them); father lives with her; recent loss of significant relationship (dead of heart & liver of estranged wife not close to mother).

Social Support Resources: Father and Mother (whom she does not see and not too close)

Need for further psychological testing: Yes ☐ No ☒

Patient and Family Educational Needs: none reported

Problems as Evidenced by: Problem #2: severe depression; Problem #16: lack of insight related to her adherence to treatment; Problem #7: thoughts of harming self

SECTION VI: Religious/Spiritual Profile

PSYCHOLOGY

Belief in God/Higher Power: ☒ Yes ☐ No Religious/Spiritual Preference: Protestant

Name and Address of Church, Synagogue, Temple: none presently attending

Problems as Evidenced by: none reported

SECTION VII: Recreation Screening

PSYCHOLOGY

Does patient have difficulty making leisure choices? ☒ Yes ☐ No

Does patient have problems interacting socially? ☒ Yes ☐ No

Does patient have any problems pursuing recreational hobbies in the community? ☒ Yes ☐ No

Any "yes" answer constitutes a referral.

E-Mail referral to Recreation Therapy: ☒ Yes ☐ No

Problems as Evidenced by: avoidance of recreational activities

SIGNATURE: S. A. Doe, M.D.

DATE: 7/23/99

TIME: 9:30am

GPT-PRRTP

08/30/1999 13:45

Page:

PATIENT NAME	AGE	SEX	RACE	SSN	CLAIM NUMB
DOVE, GAYLE A	42	F	WHIT	[REDACTED]	515646094

ADM DATE	DISC DATE	TYPE OF RELEASE	INP	ABS	WARD NO
AUG 18, 1999	AUG 21, 1999	IRREGULAR	3	0	4G-1SARRTP

DICTATION DATE: AUG 25, 1999

TRANSCRIPTION DATE: AUG 28, 1999

TRANSCRIPTIONIST: wyh

DISCHARGE DIAGNOSIS:

AXIS I. SUBSTANCE DEPENDENCE, ANALGESICS, PRESCRIPTION DRUGS, CONTINUOUS
MAINLY OPIATES.
DEPRESSION NOT OTHERWISE SPECIFIED.

AXIS II. PERSONALITY DISORDER WITH BORDERLINE FEATURES.

AXIS III. STATUS POST ABDOMINAL SURGERY X 3 AND GANGLION REMOVED ON RIGHT
WRIST, MIGRAINE HEADACHES.

AXIS IV. PSYCHOSOCIAL STRESSORS MODERATE.

AXIS V. GAF AT ADMISSION WAS AROUND 68, HIGHEST 74.

DIAGNOSES NOTED BUT NOT TREATED:

OPERATIONS/PROCEDURES PERFORMED:

SUMMARY:

HISTORY OF PRESENT ILLNESS:

Ms Dove is a 43 year old white female admitted to the residential substance abuse treatment program on August 18, 1999 and left AMA on August 21, 1999. Her chief complaint upon admission was that she is addicted to cocaine and some opiates. This is the second program for her, she was here in 1994 at which time she was addicted to alcohol. She stated that never did drink after she got out of this program but developed several migraine headaches and getting a variety of medications. She was taking tylenol #3, percocet, demerol and was on Klonopin, vistaril.

She started drinking at age 15 and was drinking heavily until she was here in 1994. She is a service connected veteran. 100% for PTSD, sexual assault and hysterectomy. She has no known allergies.

FAMILY HISTORY:

Father is an alcoholic and parents divorced when she was five years old. Her mother raised here and she feels that her mother was schizophrenic. She has two brothers and they are alcoholic. She married three times and she was abused in her second marriage. She does have a retired Coast Guard man for her boyfriend.

VA FORM 10-1000 DISCHARGE SUMMARY
CHART COPY

MEDICAL RECORD

History of Present Illness

JCT 5, 1994 at 11:12 AM

CHIEF COMPLAINT:

It is a 37-year-old female admitted to the SATP on 10/5/94. Her chief complaint is that she is an alcoholic who is a binge drinker. She said she doesn't drink every day, but once a week or every two weeks she will drink and when she drinks she drinks a lot. She says she does not want to live this way any longer because it is ruining her life, and she is seeking help. She was in the program in 1987; this was just before she was terminated from the service.

John King MD
JMK, JULIUS

JCT 5, 1994 at 11:13 AM

HISTORY OF PRESENT ILLNESS:

She started drinking at age 14. By age 21, her drinking was out of control.

She works as an auditor until two years ago. She quit that job and worked in a warehouse, but obviously she hasn't been regularly employed due to her excessive drinking. She served in the Air Force from 1975 to 1987; she was discharged from the service because of her drinking, but she did receive an honorable discharge.

Her father is a retired cook; he is an alcoholic but stopped drinking several years ago. Her mother works as a toll collector on a turnpike; she does not drink. She has two brothers who are both alcoholics; one still drinks and the other quit drinking. She has been married three times; the first marriage was at age 23 and lasted two years. She said they were separated because of the service. Her husband got out of the service and she remained in the service, and that made the marriage impossible. She married again to an alcoholic who became very abusive; this lasted 1 1/2 years. Her third marriage was at age 33; she is still married to him. He is in the Air Force. He is two years younger than she is, and he wants a divorce. She has no children because she has severe pelvic inflammatory disease with adhesions and had a hysterectomy.

As a child, she had mumps, chickenpox, and measles but no serious illnesses. She has had surgery on the right wrist times four for a ganglion which keeps recurring. She had a hysterectomy in 1987 and said she may have to have further surgery. She had a complete gynecological examination two weeks ago and is scheduled for a mammogram in about a month. She has no known allergies.

SYSTEM REVIEW: In general, this is a well-developed, 37-year-old female who appears her stated age. HEENT/neck - Negative. Respiratory - Negative. Cardiovascular - Negative. Gastrointestinal - Negative. Genitourinary - She has a history of severe adhesive pelvic disease and had a hysterectomy in the past. Hematopoietic - Negative. Lymphatic - Negative. Musculoskeletal - Repeated surgery for a ganglion of the right wrist. Neurological - Negative.

MENTAL STATUS EVALUATION: Reveals that this 37-year-old white female is well oriented as to time, place, and person. She is coherent. There is no evidence of any overt thought disorder. There is no evidence of any delusional thought content or paranoid ideations. She is moderately depressed; she is on Zoloft 50 mg qd. She said that her depression manifests by her having crying spells, not sleeping well, and she lost about ten pounds. When her husband informed her that he wants a divorce, this made her more depressed. She is not suicidal or homicidal. She has not had DTs or seizures but experienced blackouts in the

(Continued on next page)

0640

DOVE, GAYLE A

VAMC BILOXI/GULFPORT VAMC

VAF 10-9034

MEDICAL RECORD

History of Present Illness

(Continued from previous page)

past. Recent and remote memory is not impaired. She gives a good past history with dates and names, and she can recall very well the events of the day before. She can recall four presidents. She does mathematics with ease. She is capable of interpreting proverbs and is able to think in an abstract manner. She denies any physical abuse, but she was sexually abused at age nine by a non-family member.

Julius Earl M.D.
EARL, JULIUS

OWE, GAYLE A

15-64-6094 DOB AUG 15, 1957

VANC BILOXI/GULFPORT VANC

VAF 10-9034

(VICE SF 504)

0641

f. Legal Situation:

Living Will: NO

Legal Assessment:

Report A DUI, in 1981. The incident occurred on a military base. Denies any history of jail or prison and there are no pending legal issues, which will impact on treatment.

II. Current Substance Abuse Problems: YES

Comments on Substance Abuse:

HISTORY OF SUBSTANCE USE/ABUSE : Reports first drink of beer at 14 with an increase in consumption prior to entry in the Air Force at 17. At 21 regular drinking commenced and she recalls averaging about six mixed drinks a day. This pattern continued for about a year and decreased following her transfer from Greenland. She recalls drinking about a 12 pack of beer a week and continued at this level until 1984. She was transferred to Alaska and consumed about 20 mixed drinks a week and maintained this pattern until 1986, when there was a decrease in consumption. In 1987 there was a gradual escalation to daily drinking of at least the equivalent of 12 ounces of whiskey for most of 1987 with a brief period of reduction, followed by an increase to a case of beer and two liters of whiskey a week. This pattern continued to 1990, when wine became beverage of choice and she consumed an average of a gallon of wine a week. She continued this pattern for six months. She maintained six months sobriety in 1991. There was a return to drinking wine. She reports having two glasses of wine a day for a period of about four months, then she switched to mixed drinks and consumed three to four a day. This pattern continued to 1994,

Veteran's Name: DOVE, GAYLE A

3D-SECTION: 125-21

GUS RIVERS, MSW, CSW, Social Worker

Social Work Service Reports and Summaries
10-9034 VAF VICE 10-1349

0637

CLINICAL RECORD

Report on Diagnostic SummaryContinuation of S. F. Master Treatment Plan
(Strike out one line) (Specify typical examination or data)

(Sign and date)

Diagnosis: AXIS: IAlcohol Dependence

History Substance Abuse Dependence:

Vet is a 32 year old Female, Alcoholic Binge drinker. She started drinking at age 14 and it became a problem for her at age 21. She has been drinking for 28 years. She drinks Vodka 1/2 Pint - her longest period of Sobriety is 6 months. She has a positive Fm Hx - Father & 2 brothers are Alcoholics

Psychiatric/Psychological:

Vet is Alert & Oriented Thoughts are relevant & Coherent - Recent/Remote memory is intact. She denies any suicidal ideation. She is somewhat Depressed (marital problems) She is pleasant & Cooperative - She denies any physical abuse - but was sexually abused at age 9 by a non-family member.

Social Support Network/Recreational Skills/Spiritual Orientation:

Vet has 2 brothers who are both Alcoholics and her Father is recovering at present - Mother is a non drinker. She has poor AA Attendance. Last attended AA 5 years ago. She enjoys Bowling & Shooting Pool in her Leisure Time. She also enjoys collecting old coins as a hobby. She believes in and calls GOD her "Higher Power" married X3 Divorced X2 no children currently married for 4 years - Husband informed her - He wants a divorce

Medical/Legal/ Vocational:

Veteran has a severe pelvic inflammatory disease with adhesions and has had a hysterectomy. Lab work completed prior to admission All Lab work is within normal limits - Some further testing has been ordered. NO Acute Distress Normal Heterosexual development. NO legal issues are pending. Ganglion @ wrist

She has a High School Ed. and has 3 years of college - She has worked as an auditor until 2 yrs ago. She also worked in a warehouse - She is presently unemployed

Assessment of Needs/Outpatient Referrals:

Aftercare planning
Support System
Need to control urges to drink
Improving marital relations
vet will return home after completion of treatment

AA & Sponsor

MHC - Follow up SATP out patient clinic - VA Galtport MS

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle, grade, date; hospital or medical facility)

REGISTER NO.

DOVE, GAYLE A
5246 A STREET25
047
MC 20522

REPORT ON 0546

or CONTINUATION OF
STANDARD FORM 587
General Services Administration and Interagency Committee
on Medical Records



**Curriculum Vitae
Natalie Novick Brown, Ph.D.
Northwest Forensic Associates, LLC**

2716 Elliott Ave., #600 Seattle, WA 98121
425-275-1238 / 206-728-2425 (fax)
fstnat@yahoo.com

- **Licensed Psychologist, #PY1965 (Washington), #PY6219 (Florida)**
- **Certified Psychologist (CPQ #3258), Association of State and Provincial Psychology Boards**
- **Certified Sex Offense Treatment Provider (Washington State SOTP #FC112)**
- **Polygraph Examiner / Certified in Post-conviction Sex Offender Testing (PCSOT)**
- **Certified Evaluator for Department of Corrections / Division of Developmental Disabilities (Washington State)**
- **Listed in the National Register of Health Service Providers in Psychology, #49892**
- **Clinical Assistant Professor, Department of Psychiatry and Behavioral Medicine, University of Washington**
- **Forensic specialties: psychosexual and psychological evaluations for prosecution and defense, competency, parenting and child development issues, Fetal Alcohol Spectrum Disorders (FASD), developmental disabilities, and capital murder mitigation assessment (FASD)**

Education and Training

Certificate, Post-conviction Sex Offender Polygraph, 2004
Certificate, International School of Polygraph, Fort Lauderdale, FL, 2003
Certificate, Sex Offense Treatment Provider (SOTP), 1995
Post-Doctoral Training, Fetal Alcohol and Drug Unit, Univ. of Washington, 1995
Certified Parenting Evaluator, University of Washington, 1995
Ph.D., Clinical Psychology, University of Washington, 1994

CV: Natalie Novick Brown, Ph.D.
Revised: 3/07
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M.H.A., Health Care Administration, University of Washington, 1979
M.L.S., Library and Information Sciences, University of Washington, 1975
B.A., Sociology (Psychology minor), UCLA, 1968

Clinical Experience

1994 - present

Clinical Psychologist / Forensic Evaluator / Expert Witness

- **Capital murder post-conviction mitigation case review, assessment, and testimony re Fetal Alcohol Spectrum Disorders (FASD)**
- **Adult and juvenile sex offense and risk assessment evaluation (criminal state and federal prosecution; civil commitment cases under Sexually Violent Predator law]**
- **Parenting evaluation and Guardian ad Litem investigation (court-appointed and stipulated cases involving such issues as physical and sexual abuse allegations, neglect, and parental alienation)**
- **Adult, adolescent, and child psychological evaluation (over 1000 cases involving competency, dependency, FASD, developmental delay, Asperger Syndrome, Shaken Baby Syndrome, abuse and neglect allegations)**
- **Private therapy practice, 1994-2000, 2004-present (adult and adolescent therapy involving multiple issues, including sexual offending, developmental delay, and FASD)**

2005 - present

Clinical Assistant Professor, Department of Psychiatry and Behavioral Sciences, University of Washington, Seattle

- **Assessment of recidivists referred by King County Mental Health Court and King County Drug Court to screen for FASD/organic brain impairment (Fetal Alcohol and Drug Unit)**

1994 - 1995

Psychologist, Postdoctoral / Faculty Appointment, Fetal Alcohol and Drug Unit (Dr. Ann Streissguth), University of Washington

- **Evaluation/treatment of FAS/FAE patients with sex offense issues**
- **Research on Secondary Disabilities related to FAS/FAE in Washington State Prison system**

1992 - 1994

Predoctoral Internships, University of Washington

CV: Natalie Novick Brown, Ph.D.

Revised: 3/07

Page 2 of 6

- Specialized training, experience, and certification in forensic evaluation and expert testimony
- Specialized training, experience in pain management, Pain Clinic, University of Washington
- Specialized training, experience in individual psychotherapy, Group Health Cooperative, Seattle
- Specialized training, experience in rehabilitation therapy (including traumatic brain injury)

Pre-Doctoral Work Experience

1979 – 1989 Hospital / Clinic Administrator

1975 – 1979 Hospital Medical Librarian

Research

2005 – present referred	Consultant / Assessment involving individuals with suspected FASD by King County Mental Health and Drug Courts
1994 - 1995	Postdoctoral Fellow: Fetal Alcohol Unit, University of Washington. Developed and conducted FAS research project in Washington State prison system (men's and women's correctional facilities at Shelton and Purdy).
1991 - 1994	Dissertation: Relation Between Psychological Correlates of Alcoholism Risk and Stress-Response Dampening Across the Blood Alcohol Curve
1991 - 1993	Research Coordinator: Prediction of High Risk Drinking
1990 - 1992	Research Coordinator: Alcohol and Social Influence
1989 - 1991	Research Coordinator: Self-Esteem in Young Adults

Publications

CV: Natalie Novick Brown, Ph.D.
Revised: 3/07
Page 3 of 6

Brown, N.N. (2007). ADHD and FASD: Comorbidity and Its Effect on Sexual Behavior Problems. In K. O'Malley (Ed.), *ADHD and FASD: Diagnosis, Natural History, and Therapeutic Issues Across the Lifespan*, Hauppauge, NY: Nova Pub.

Brown, J.D., & Novick (Brown), N.J. (1991). *Social Context, Psychological Relatedness, and Self-Appraisals*. Paper presented at the 99th Annual Convention of the American Psychological Association, San Francisco.

Brown, J.D., Novick (Brown), N.J., Lord, K.A., & Richards, J.M. (1992). When Gulliver travels: Social context, psychological relatedness, and self-appraisals. Journal of Personality and Social Psychology, 62, 717-727.

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Peer Review

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Presentations

- 5-23-07 Capital Federal Public Defender Unit (capital habeas and trial attorneys,
Federal District of Nevada)
Fetal Alcohol Spectrum Disorders: History, Diagnosis, and Mitigation Issues
- 4-14-07 American Bar Association/Harvard Law School National Conference on
Children and the Law, Cambridge, MA
What Attorneys and Policy Makers Need to Know About FAS and FASD
- 2-18-07 California Attorneys for Criminal Justice/California Public Defender
Association (CACJ/CPDA) Annual Death Penalty Conference, Monterey,
CA
Fetal Alcohol Spectrum Disorders (FASD)
- 6-30-06 Florida Public Defenders Sexually Violent Predator Conference, Orlando,
FL
Sexually Violent Predator Evaluation, Risk Assessment, and Testimony
- 4-19-06 King County Mental Health / Drug Courts, Seattle, WA
Screening Protocol for Fetal Alcohol Spectrum Disorders (FASD)
- 2-26-05 2005 FASD National Conference, Victoria, British Columbia, Canada
FASD: Problems of Witness Suggestibility and False Confessions

Professional Memberships

- 1990 – present American Psychological Association
- 2005 – present Association for the Treatment of Sex Abusers (ATSA)
- 2004 – present Association of Family & Conciliatory Courts
- 2000 – present American College of Forensic Examiners
- 2002 – 2005 Florida Psychological Association
- 2001 – 2003 Jacksonville Youth Authority Advisory Board

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1996 – 2000 Chairman, Social Issues Committee, Washington State Psychological Association

1994 – 2000 Washington State Psychological Association, Board of Directors

1996 – 2000 Family Forensic Specialists Association Executive Board

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)
)
JONATHAN KYLE BINNEY)
)
Applicant,)
v.)
JON OZMINT, Director, South Carolina)
Department of Corrections, and)
HENRY MCMASTER, Attorney General,)
State of South Carolina)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
Case No.: 06-CP-11-223

AFFIDAVIT OF NATALIE NOVICK BROWN, PH.D.

I, Natalie Novick Brown, state as follows:

1. My name is Natalie Novick Brown. I am over the age of eighteen years, and I am competent to make this Affidavit. All of the statements contained in this Affidavit are true and correct and are based on my personal knowledge.
2. I am a licensed psychologist (PY1965) and certified as an evaluator and treatment provider for the Division of Developmental Disabilities in the State of Washington. I also am certified in Washington as a Sex Offense Treatment Provider (SOTP). For the past 12 years, I have specialized in the evaluation and treatment of individuals with fetal alcohol impairment. My training in this field began in 1994 when I accepted a postdoctoral fellowship with Dr. Ann Streissguth at the University of Washington in Seattle. Dr. Streissguth is a pioneer researcher in Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effects (FAE), and Alcohol Related Neurodevelopmental Disorder (ARND), which are now commonly referred to by the umbrella term "Fetal Alcohol Spectrum Disorders," or FASD. Up until her retirement last year, Dr.

Streissguth was the director of the University's Fetal Alcohol and Drug Unit as well as a prolific research scientist and highly respected international expert in the FASD field. After completing a year of training and research with Dr. Streissguth in 1995, I began evaluating and treating youth and adults with FASD or suspected FASD and estimate that since 1995, I have evaluated and treated approximately 300 children and adults affected by prenatal alcohol exposure. In addition, I currently hold a faculty position at the University of Washington as a Clinical Assistant Professor in the Department of Psychiatry and Behavioral Sciences. In this position, I consult with staff at the Fetal Alcohol and Drug Unit and screen adults and juveniles for FASD referred by the local drug and mental health courts. I also evaluate and diagnose individuals referred by the Division of Developmental Disabilities who may have fetal alcohol impairment. I currently provide individual therapy to FASD youth in an effort to prevent adverse life outcomes (i.e., "secondary disabilities") and to adults with FASD, many of whom are sex offenders in Washington State's Community Protection Program. I have authored several scholarly articles and two book chapters on FASD and provided technical presentations on the behavioral and developmental effects of prenatal alcohol exposure at mental health and legal conferences. In the course of this work, I have reviewed hundreds of medical evaluations involving FASD diagnoses and am quite familiar with the diagnostic criteria and process of evaluation. I have qualified as an FASD expert witness in the courts of Washington and New Jersey.

3. I have been retained by Jonathan Binney's counsel of record to complete an evaluation and provide a report regarding whether or not Mr. Binney suffers from Fetal Alcohol Syndrome or another FASD condition caused by prenatal alcohol exposure. This Affidavit provides the findings of that analysis. Procedures involved a review of primary source documents provided by

Mr. Binney's counsel, which included records from the following: elementary school, Victory Boys Home, Hyles Anderson College, Ohio juvenile records, Ohio Department of Rehabilitation and Corrections, Riveredge Hospital, Good Samaritan Hospital, Foothill Family Medicine, Patrick B. Harris Hospital, Spartanburg Area Mental Health, Spartanburg Regional Healthcare, VA Hospital (Gayle Dove), Holland Pediatric Associates, Spartanburg County Detention Center, Cherokee County Detention Center, and the South Carolina Department of Corrections. I reviewed a suicide note, multiple letters from Mr. Binney to his wife and others, and statements he made to the police. I reviewed a synopsis of complete trial testimony and the specific testimony of Drs. John Tate and Janice Ross. I reviewed affidavits from Ruth Morris, Jon Morris, and Kristi Lemmen, and I reviewed reports from the following individuals: Dr. Donna Schwartz-Watts (draft report), Dr. David Buchman, Dr. Pamela Crawford, Dr. James Evans, PhD, Dr. Fred Bookstein, and Dr. Richard Adler (draft report). I reviewed the following miscellaneous documents: childhood photographs of Jonathan Binney, research on the Boys/Girls Home, the coroner's report regarding the death of birth mother Gayle Dove, employment records, South Carolina Department of Corrections records, a draft Social History Chronology (revised 1/24/07), and a draft genogram completed by Dr. Arlene Andrews. I spoke to the following individuals: Dr. Arlene Andrews, Sandra Binney (adoptive mother), and Melanie Binney (spouse), and on May 10th of this year, I interviewed Jonathan Binney for over five hours at the prison where he is currently incarcerated. Dr. Richard Adler and counsel John Blume were present during the interview.

Fetal Alcohol Spectrum Disorders (FASD)

4. Fetal Alcohol Syndrome, or FAS, is one of several conditions included under the umbrella term Fetal Alcohol Spectrum Disorders (FASD). Other FASD conditions include

Alcohol Related Neurodevelopmental Disorder (ARND), Alcohol Related Birth Defects (ARBD), static encephalopathy/alcohol exposed, Possible or Partial Fetal Alcohol Syndrome (PFAS), and Fetal Alcohol Effects (FAE). Although the two latter terms have been superseded in diagnostic formulations developed by the Institute of Medicine (IOM 1996) and the Center for Disease Control and Prevention (CDC, 2004), they are still used by some diagnosticians.

5. Fetal Alcohol Syndrome was first recognized in the United States and discussed in a public paper by researchers at the University of Washington in 1973 (Jones & Smith, 1973). These researchers identified three diagnostic features associated with the syndrome: 1) pre- and/or postnatal growth deficiency, 2) a characteristic set of facial anomalies (referred to as "facial dysmorphology"), and 3) central nervous system (CNS) damage and dysfunction. Several years later, a study of alcohol related damage in the central nervous system suggested that structural brain damage might be the basis for many of the neurodevelopmental abnormalities and resulting behavior problems observed in FAS-affected individuals. These abnormalities are classified under the broader heading "CNS dysfunction" (Clarren & Smith, 1978).

6. FASD diagnoses involve permanent birth defects caused by maternal consumption of alcohol during any point in pregnancy. Alcohol is a teratogen that inhibits and disrupts fetal development by causing structural and functional damage to developing cells, organs, and systems, including the brain and central nervous system. Because alcohol causes damage throughout the developing fetus, physical anomalies and neurobehavioral defects can be widespread. Hence, the condition is referred to as a "syndrome." The most serious and pervasive damage occurs in the central nervous system. In particular, brain imaging studies over the last decade have shown that prenatal alcohol exposure causes significant malformation in structures within the brain (e.g., corpus callosum, frontal lobes, basal ganglia, cerebellum,

hippocampus) that are necessary for normal development and functioning (e.g., Bookstein et al., 2001, 2002a, 2002b). Notably, even children who do not meet all criteria for a full FAS diagnosis have many or all of the same neurological and functional abnormalities as children diagnosed with full FAS (Mattson & Riley, 1994). In other words, the brain damage seen in individuals diagnosed with *any* condition involving prenatal alcohol exposure can be as severe as those diagnosed with full FAS.

7. By 1978, after more than 250 published case reports, it was clear that FAS was only one of several identifiable disorders associated with maternal alcohol abuse. Hence, the term Fetal Alcohol Effects, or FAE, was developed to classify additional manifestations (Clarren & Smith, 1978). While individuals with FAE did not display the growth deficits or facial abnormalities associated with FAS (e.g., short palpebral fissures, flat philtrum, and thin upper lip), research consistently showed that compared to individuals diagnosed with FAS, those with FAE could suffer from as many or more of the neurodevelopmental deficits (Streissguth & O'Malley, 2000). Thus, even without facial stigmata, the brain damage and resulting cognitive-behavioral problems can be as severe in individuals with FAE as in those with FAS.

FASD Diagnostic Criteria

8. The following criteria must be fully met for a diagnosis of FAS:

- **growth deficiency** (prenatal or postnatal height or weight at or below the 10th percentile);
- **facial dysmorphology** (smooth philtrum or upper lip, a thin vermilion border on the upper lip, and small palpebral fissures or eye width); and
- **CNS dysfunction** (structural, neurological, and/or functional abnormalities).

A fourth criterion, **prenatal alcohol exposure**, can be classified as either "confirmed" or "unknown."

9. In addition to the four diagnostic criteria noted above, a number of other structural and functional abnormalities are associated with FASD, including additional facial abnormalities (e.g., flat midface, short nose, micrognathia, low nasal bridge, epicanthal folds, eye asymmetries, eyelid tsosis, microphthalmia, cleft lip/palate), heart defects (ventricular septal defects are most commonly seen, followed by atrial septal defects), kidney problems (e.g., horseshoe, aplastic, dysplastic, or hypoplastic kidneys), skeletal anomalies (e.g., joint anomalies including abnormal position and function, altered palmar crease patterns, small distal phalanges, and small fifth fingernails), ocular problems (e.g., strabismus and optic nerve hypoplasia which may cause light sensitivity, decreased visual acuity, or involuntary eye movements), dental problems (e.g., narrow maxillary dental arches, high arched palate, misaligned/misshapen secondary teeth), and occasional abnormalities (e.g., webbed neck, short neck, Tetralogy of Fallot, coarctation of the aorta, Spina bifida, polythelia or supernumerary nipple, and hydrocephalus).

10. Currently, FAS is the only expression of prenatal alcohol exposure defined by the *International Statistical Classification of Diseases and Related Health Problems (ICD)* and assigned an *ICD-9* or *ICD-10* diagnosis. To make this diagnosis, a multidisciplinary evaluation is necessary to assess each of the four key features involved in FAS. Generally, a trained physician will assess physical and neurological manifestations of FASD. According to the CDC, structural damage viewed through imaging techniques is assessed by an appropriately trained professional. Functional damage is assessed by psychologists, neuropsychologists, speech and language professionals, and/or occupational therapists. Functional assessment focuses on identifying clinically significant impairments in three or more of ten brain domains: learning disabilities,

academic achievement, impulse control, social perception, communication, abstraction, math skills, memory, attention, judgment. Prenatal alcohol exposure may be assessed by a qualified physician, psychologist, social worker, or substance abuse professional. When evaluating an individual in the community, these professionals often work together as a team to assess and interpret data involving key features of FASD and develop an integrated multidisciplinary report to diagnose an FASD condition.

11. The Institute of Medicine (IOM) was mandated by Congress in the early 1990s to conduct a study of FAS and related birth defects. As a result, in 1996 the IOM produced a standardized approach for diagnosing FAS and two related FASD conditions (i.e., ARND and ARBD). This diagnostic formulation (see Appendix A) is now used extensively in the United States and other countries to diagnose FASD conditions. In 2002, Congress authorized the Center for Disease Control (CDC) to make diagnostic criteria for FAS even more precise in terms of measurement. As a result, in 2004 the CDC produced *Fetal Alcohol Syndrome: Guidelines for Referral and Diagnosis*, which established specific measurement criteria for the four key components of an FAS diagnosis (i.e., prenatal alcohol exposure, facial dysmorphism, growth deficits, and CNS abnormalities). The task force limited its scope to FAS alone but also supported future efforts to develop specific diagnostic guidelines for other FASD conditions (CDC, 2004).

12. Thus, by the time of Jonathan Binney's trial in 2002, FASD was definitely not a new or novel concept in medicine or psychology.

Central Nervous System Damage

13. The mechanisms that underlie CNS damage begin at the molecular and cellular levels and are generally investigated in animal studies and in nerve cells grown in culture. Prenatal alcohol

exposure is associated with increased susceptibility to cell damage caused by free radicals that kill brain cells, affecting the formation and migration of brain cells and altering the production or function of regulatory substances that help promote the orderly growth and differentiation of neurons (Michaelis & Michaelis, 1994). Neurons, or brain cells, are the building blocks of the brain. Within the fetus, embryonic cells destined to become brain neurons grow in number, move to their ultimate locations, and mature into a wide variety of functionally distinct neuronal cell types. Once in place, these neurons form connections with other brain cells in a predetermined pattern. Damage can occur at any point in this process.

14. As of 2002, there were 25 reports of autopsies on babies known to have been suffering from FAS (Mattson & Riley, 2002). The first autopsy involved an infant with FAS who died shortly after birth in 1973. Examination revealed extensive brain damage, including microcephaly (small head circumference), cell migration anomalies, callosal dysgenesis (malformation of the corpus callosum), and a massive neuroglial, leptomeningeal heterotopia (i.e., clumps of gray matter located in the wrong part of the brain) covering the left hemisphere (Mattson & Riley, 2002). Autopsies since that time have shown consistent abnormalities in the brains of FAS-affected infants.

15. Relatively recent advances in brain imaging research have revealed reduced overall brain size in some individuals living with FASD and disproportionate reductions in the size of specific brain structures (Roebuck, Mattson, & Riley, 1998). Notably, FASD is the only known factor reliably associated with alterations in the geometry of the corpus callosum (Riley, et al., 1995; Swayze, et al., 1997). The corpus callosum is the band of nerve fibers deep in the brain that functions as the communication link between the right and left lobes. Approximately 7 percent of children with FAS lack a corpus callosum altogether, an incidence rate 20 times higher than that

in the general population (Riley, et al., 1995). Damage to the corpus callosum and adjacent prefrontal cortex has been associated with a relatively consistent pattern of executive function deficits in FASD-affected individuals (Bookstein et al., 2001).

16. Studies also have shown that prenatal alcohol exposure damages the basal ganglia (another deep-brain structure), which impairs spatial memory and set shifting in animals (Mattson, et al., 1996; Mattson & Riley, 1999) and a variety of cognitive processes in humans (Bannister, 1992). Another frequent finding is reduced size of the cerebellum (Mattson, et al., 1994; Sowell, et al., 1996), a structure involved in balance, gait, coordination, and cognition (Riley, et al., 1995).

Dose, Exposure, and Timing

17. Alcohol exposure at any point in gestation damages the CNS since the brain develops throughout the entire pregnancy (Guerri, 2002). The minimum quantity of alcohol required to produce adverse fetal consequences is still unknown (Roebuck, Mattson, & Riley, 1999). Moderate alcohol consumption can be harmful, especially in the case of binge drinking (Barr, et al., 2006). For example, in a recent study one episode of binge drinking (defined as seven drinks in one episode) was more harmful to the fetus than one drink per day for seven days (Mattson, Schoenfeld, & Riley, 2001). Another study found FASD in children whose mothers consumed just two drinks per day at certain stages of pregnancy (May, et al., 2006). Even very light drinking can cause abnormalities. For example, a large-scale prospective study involving 31,000 pregnancies found that consumption of just one drink per day was associated with increased risk of giving birth to an infant with growth retardation, one of the four FASD criteria (Mills, et al., 1984). In another study, an average of one-quarter ounce of absolute alcohol daily had adverse effects on children's verbal language and comprehension skills (Gusella & Fried, 1984). Current

recommendations on clinical thresholds of alcohol consumption during pregnancy do not support the concept of a "safe level" of alcohol consumption in terms of possible damage to the fetus.

Primary Disabilities

18. CNS damage may manifest in a number of cognitive and functional deficits, which are referred to in the FASD literature as "primary disabilities." Often, primary disabilities are mistaken as behavior problems (e.g., distractibility in school) when the underlying CNS damage is actually the source of the functional problem (Malbin, 1993). Recent studies have found that specific neurobehavioral functions are almost always impaired in individuals with FASD, including verbal memory (Mattson, et al., 1996a), visual-spatial learning (Uecker & Nadel, 1996), attention (Mattson & Riley, 1998), reaction time (Streissguth, et al., 1986), and executive functioning (Roebuck, Mattson, & Riley, 1999). An FASD diagnosis is particularly significant in terms of mitigation because of associated CNS impairments in executive functioning.

19. Primary disabilities stemming from FASD are generally categorized into ten domains:

- achievement: learning disabilities
- adaptive behavior: poor daily living skills, developmental delays
- attention: Attention-Deficit/Hyperactivity Disorder (ADHD), poor attention or concentration, distractibility
- cognition: mental retardation (in a minority of cases), confusion under pressure, poor abstract skills, difficulty distinguishing between fantasy and reality, slower cognitive processing
- executive functioning: deficient impulse control, poor personal boundaries, poor emotion modulation, perseveration, poor judgment, faulty reasoning, deficient cause and effect reasoning, difficulty learning from experience

- language: expressive or receptive language disorders, able to grasp parts but not whole concepts, lack understanding of metaphor / idioms / sarcasm
- memory: poor short-term memory, inconsistent memory and knowledge base
- motor skills: poor handwriting, poor fine and gross motor skills, delayed motor skill development
- sensory integration and soft neurological problems: sensory integration disorders, tactile defensiveness, under-/over-sensitive to stimulation
- social communication: intrusiveness, inability to read nonverbal or social cues, "chatty" but without substance

In infancy, primary disabilities are often first noticed in infants who show early evidence of self-regulation problems, such as passivity, difficulties in self-soothing or over-sensitivity to environmental stimuli, and difficulty in reciprocal social interaction. An example of the latter is an infant who resists the nurturing touches of a caregiver. Examples of functional deficits in early childhood (i.e., toddlers) include delayed development in one or more functional capacities (e.g., motor skills, verbal skills, social skills, emotional self-modulation skills, behavioral self-regulation). During the elementary school years, functional deficits may manifest as communication disorders, attention deficits, learning disorders, poor impulse control, problems in social perception, interpersonal communication deficits, and problems in working memory. Elementary school children with FASD are unable to defer gratification or control urges and often take things that don't belong to them. Unable to understand their own cognitive limitations or explain their lack of control to others, they typically choose what they perceive as the path of least resistance and lie about their behavior in a transparent attempt to avoid discipline. Consequently, FASD-affected children often have recurrent problems with both stealing and

lying. In later childhood, functional deficits are observed as abstraction difficulties (particularly in mathematics when coursework becomes complex and less dependent upon rote memorization), impulse control and judgment problems, and socialization deficits. It is often in the adolescent years that social skill deficits become obvious to professionals beyond the school environment. For example, youth who have not developed the ability to make and keep friends begin gravitating toward delinquent youth who accept them on the basis of their willingness to engage in similar antisocial conduct. This is typically the time when alcohol consumption and drug use begin, and rule-breaking behaviors escalate to law-breaking behaviors. In addition, once FASD-impaired youth enter puberty, which may be somewhat delayed, functional deficits significantly impact how they handle their developing sexuality. Maintaining appropriate sexual boundaries is a complex behavior requiring multiple skills, including self- and other-awareness (e.g., boundaries), memory (e.g., retaining knowledge about appropriate social behavior), impulse control (e.g., restraining inappropriate sexual urges), and self-regulation (e.g., stopping inappropriate behavior in the face of negative environmental cues). Most unimpaired children are sexually socialized in a subtle and gradual manner as they assimilate information from parents, television, movies, social interaction with peers, and other environmental sources. However, if the ability to distinguish between appropriate and inappropriate environmental cues and integrate them into one's behavioral repertoire is compromised by multiple functional deficits, the process can go awry. Consequently, sexual boundary violations – both minor and major – are frequently seen in individuals with FASD.

20. Intact executive functioning is essential for pro-social behavior. Executive functions control emotions, urges, and impulses and channel them into appropriate behaviors. Executive functioning is based on underlying cognitive skills such as social awareness, self-awareness,

ability to organize thoughts and behavior, planning, time perception, internal ordering, working memory, inhibition skill, motor control, emotion regulation, motivation, decision making, and judgment. When executive functions are compromised by prenatal alcohol exposure, an individual may:

- be unable to figure out solutions spontaneously;
- lie and fabricate improbable stories to either avoid punishment or hold others' attention;
- have difficulty perceiving, prioritizing, processing, and retrieving information;
- act without thinking;
- lack personal boundaries and not recognize them in others;
- be unable to control sexual impulses or anger;
- have difficulty with abstract concepts or time and money;
- need frequent cues and reminders of appropriate behavior;
- be vulnerable to personal exploitation by others;
- show impairment in motor skills (particularly fine motor skills);
- display exaggerated, roller-coaster emotions;
- lack empathy and/or remorse;
- need external motivators;
- be unable to generalize and apply consequences from past actions to future actions;
- be unable to weigh pros and cons when making decisions; and
- engage in a wide range of socially inappropriate or illegal behaviors, such as stealing items for personal use from friends, family, or neighbors; shoplifting, particularly items for immediate consumption (e.g., food or cigarettes); committing crimes at the

behest of more sophisticated criminals; committing the same kind of crime over and over; engaging in panic behaviors such as running away or lashing out when cornered and overwhelmed by environmental stimuli; committing inexplicably foolish crimes involving obvious risk of apprehension; repeatedly engaging in relatively minor crimes without escalating to more serious offenses (e.g., repeated pattern of shoplifting or burglary); giving guileless confessions when apprehended by the authorities that most offenders would never make; and obtaining multiple technical violations while on probation or parole.

Executive function deficits explain why children with FASD, even those with average or higher IQ scores, have difficulty succeeding in school. Executive functions are particularly important in unfamiliar situations where one doesn't know from repetitive experiences or training what to do or in situations where established ways of behaving are no longer useful or appropriate. In other words, executive functions involve all of the skills that enable individuals to analyze what it is they want, determine how they might get it, decide whether their plan is appropriate (and legal), revise their plan if it seems inefficient or ineffective, and then carry out their intentions, sometimes changing their behavior midstream if they realize it is unproductive or yielding unwanted results. It is widely accepted that executive functions play a central role in complex social behaviors such as understanding how our actions impact others (e.g., empathy) and controlling anger and frustration. Thus, socialization depends on *intact* executive functioning (Connor et al., 2000). While individuals with intact executive functioning can make choices about their behavior and consider consequences before acting, those with deficient executive skills act before deliberating and function only to the level of socialization that their brain

impairments permit (Connor et al., 2000). In other words, deficits in executive functioning have profound real-life implications for people with FASD.

Prenatal Alcohol Exposure

21. With respect to prenatal alcohol exposure, "confirmed" prenatal alcohol exposure requires documentation of alcohol consumption by the birth mother during the index pregnancy. Acceptable documentation of maternal drinking can be based on clinical observation, self-report, a report of heavy alcohol use during pregnancy by a reliable informant, medical records documenting positive blood alcohol levels or alcohol treatment, or other social, legal, or medical problems related to drinking during the index pregnancy. FAS also can be diagnosed in the case of unknown prenatal exposure to alcohol. The designation "unknown" prenatal alcohol exposure indicates there is neither confirmed presence nor confirmed absence of exposure (e.g., the individual was adopted and prenatal exposure is unknown, the birth mother was an alcoholic but confirmed evidence of exposure does not exist, etc.). In Jonathan Binney's case, prenatal alcohol exposure is documented in the birth mother's report to her doctor that she abused alcohol during the time of her pregnancy. According to VA medical records (Psychology Report, 10/13/94; PTSD Exam, 6/28/95; Discharge Summary, 8/25/99; Discharge Summary, 3/17/00), Gayle Dove self-reported that she began drinking at age 14, with an increase in her drinking prior to her entry in the Air Force at age 17. She became pregnant with her son Jonathan when she was 15 and gave birth to him when she was 16. Thus, the pregnancy coincides with a period of documented alcohol abuse. Adoptive mother Sandra Binney also reported that Gayle Dove used drugs and drank heavily during her pregnancy in an attempt to abort (Dr. Donna Schwartz-Watts testimony, p. 3280-81, 3289, 3318). According to VA Hospital records, in 1973 when she learned she was pregnant, Gayle Dove made a suicide attempt by overdosing on prescription medication and was

taken to a hospital for treatment (VA medical records, 10/13/94). Family friend Ruth Morris reported in an affidavit that she was aware Gayle Dove was abusing alcohol when she returned from the Bethesda Home where she had given birth (Ruth Morris, Affidavit, p. 2). Thus, records document alcohol abuse before, during, and after the birth mother's pregnancy and prescription drug abuse during the pregnancy.

Facial Dysmorphology

22. The classic facial dysmorphology associated with FAS is seen in a small minority of cases, typically in young children before they enter puberty. Malformation of the face reflects alcohol consumption during a small window of time during the first trimester of pregnancy when facial features are forming in the fetus. When FASD-affected individuals go through puberty, the facial stigmata fade and often disappear entirely. In Mr. Binney's case, childhood photos indicate the possibility of FAS facial abnormalities. Confirmation of facial dysmorphology is the domain of a medical doctor trained in this area. Donna Schwartz-Watts, MD, who reviewed childhood facial photographs of Mr. Binney, found hypertelorism (wide-set eyes) and low-set ears (Testimony, p. 3320).

Growth Deficit

23. Growth deficits, variably defined, have been documented consistently in individuals with FAS (CDC, 2004). These observations use a variety of parameters (e.g., height, weight, head circumference), severity levels (e.g., below the 25th percentile, below the 10th percentile, or below the 3rd or 2nd percentiles), and timing of growth problems (e.g., current, birth, or present at any point during life). As with facial dysmorphology, growth deficits also tend to disappear with puberty. According to CDC guidelines, the relevant growth parameters are height or weight at or below the 10th percentile at any single point in time (adjusted for age, sex, gestational age, and

race/ethnicity). Nutritional deprivation must be ruled out during the time in question. Head circumference is now included as a CNS parameter rather than a growth parameter. In Jonathan Binney's case, records document a history of slow weight gain in infancy (Holland Pediatric medical records, p. 1-2) and childhood (The Learning Center, Evaluation Summary, 3/11/92, p. 2), which Dr. Donna Schwartz-Watts characterized as "failure to thrive" (Testimony, p. 3320). At age three years and four months, he was 36 inches in height and weighed 28.5 pounds, which placed him under the 10th percentile for both height and weight (Holland Pediatric Associates medical records, p. 2). When he was 17, multiple records document that he weighed between 116 – 122 pounds and was five feet, eight-and-a-quarter inches tall, indicating weight at the 8th percentile (Albany County Jail, Riveredge Hospital, The Learning Center). Confirmation of growth deficiency is the domain of a medical doctor.

CNS Abnormalities

24. The third FAS diagnostic criterion involves CNS abnormalities in either the structural, neurological, or functional domain. CNS abnormalities are the key feature of any FASD diagnosis that relate to behavior. As noted previously, alcohol exposure at any point in pregnancy affects brain development. According to the CDC (2004), more than 2000 scientific papers regarding the teratogenic effects of alcohol exposure on CNS development have been published over the past 30 years. CNS deficits are permanent and irreparable (Streissguth, et al., 1991). Damage to the central nervous system can vary from subtle impairments to catastrophic damage that disrupts virtually every domain of functioning (Stratton, et al., 1996). The extent of damage depends on the amount, timing, and frequency of alcohol exposure as well as the genetic predispositions of the fetus and mother (IOM, 1996; West, 1986). For example, longitudinal studies have found that many adults affected by FASD have complex mental health disorders and

are unable to sustain independent living (Streissguth & O'Malley, 2000). CDC guidelines for establishing CNS abnormalities involve documentation of *at least one of the following three categories*:

a) Structural Abnormalities:

- head circumference at or below the 10th percentile, adjusted for age and sex; or
- clinically significant brain abnormalities observable through imaging techniques (e.g., reduction in size, or change in shape, of the corpus callosum, cerebellum, or basal ganglia) as assessed by an appropriately trained professional.

Structural abnormalities in Jonathan Binney's case are confirmed by magnetic resonance imaging of his corpus callosum. Dr. Fred Bookstein, Research Director of the University of Washington's Fetal Alcohol and Drug Unit, conducted a statistical analysis of Mr. Binney's corpus callosum and concluded:

Mr. Binney's midline callosal outline shows clear features of damage from high prenatal exposure to alcohol. No similar pattern of callosal damage has been reported in connection with any other prenatal exposure than to alcohol or as a sign of any other syndrome occurring with any frequency in the general population....The callosum shape abnormalities demonstrated here serve as a detection of the CNS abnormality that is required for most of the diagnoses in the FASD range. His seems to be an unusually severe case in view of the magnitude of that deformity at isthmus.

b) Neurological Abnormalities:

- seizures not due to a postnatal insult or fever, or
- other soft neurological signs outside normal limits (e.g., coordination problems and difficulty with motor control, visual motor difficulties, nystagmus).

In terms of differential diagnosis, along with structural damage, abnormal neurological findings can be most predictive of underlying CNS abnormality due to prenatal alcohol exposure rather than later environmental traumas. Neurological abnormalities in Jonathan Binney are documented by the following:

- when he was 17, his adoptive mother reported “staring episodes” when it was difficult to get his attention over the previous three years (The Learning Center, Evaluation Summary, 3/11/92, p. 1) and “ritualistic twitching” of his neck at age 15 (The Learning Center, Evaluation Summary, 3/11/92, p. 2);
- when he was 19, he experienced a possible seizure (Spartanburg Area Mental Health records, 6/22/00); and
- when he was 32, neuropsychologist Dr. James Evans found evidence of neurological abnormalities in a quantitative EEG evaluation (James Evans Neuropsychological Evaluation Report, 5/5/07, p. 3).

c) Functional Abnormalities:

According to the CDC, for functional deficits it is generally accepted that multiple locations in the brain (and corresponding functional capabilities) are affected by prenatal exposure to alcohol. To address this issue, functional deficits that fulfill the CNS abnormality criteria can be met in two ways:

- 1) a global cognitive deficit (e.g., cognitive or intellectual deficits representing multiple domains of performance below the 3rd percentile, or 2 standard deviations below the mean for standardized testing) or significant developmental delay in children too young for an IQ assessment; *or*
- 2) deficits in *three or more* specific functional domains:

cognitive deficits or significant developmental discrepancies (e.g., specific learning disabilities – especially math and/or visual-spatial deficits; uneven profile of cognitive skills; poor academic achievement; discrepancy between verbal and nonverbal skills; slowed movements or reactions to stimuli);

executive function deficits (e.g., poor organization, planning, or strategy use; concrete thinking; lack of inhibition; difficulty grasping cause and effect; inability to delay gratification; difficulty following multi-step directions; perseveration or difficulty changing strategies or thinking of things in a different way; poor judgment; inability to generalize or apply knowledge to new situations);

motor function delays or deficits (e.g., poor suck in infants; delayed motor milestones; difficulty with writing or drawing; clumsiness; balance problems; tremors; poor dexterity);

attention deficits or hyperactivity (e.g., described by adults as “busy”; inattentive; easily distracted; difficulty calming down; overly active; difficulty completing tasks; trouble with transitions);

social skill deficits (e.g., lack of stranger fear; often scapegoated; naiveté and gullibility; easily taken advantage of; inappropriate choice of friends; preference for younger friends; immaturity; superficial interactions; adaptive skills significantly below cognitive potential; inappropriate sexual behaviors; difficulty understanding the perspectives of others; poor social cognition; clinically significant inappropriate initiations or interactions); and

other deficits (e.g., tactile defensiveness and oral sensitivity; pragmatic language problems such as difficulty reading facial expression; memory deficits such as

forgetting well-learned material or needing many trials to remember; difficulty responding appropriately to common parenting practices such as not understanding cause-and-effect discipline).

Functional abnormalities are documented in Mr. Binney by the following:

Cognitive Deficits / Developmental Discrepancies

Records document learning disabilities, a specific math deficit, and increasingly poor academic achievement as subject matter became more complex in school. Learning impairments are associated with impaired dendrites of the hippocampus (Abel, Jacobson, & Sherwin, 1983).

- Learning Disabilities:

In seventh grade, Mr. Binney was seen at a clinic at the request of his parents, who were concerned about his lack of academic progress. Despite an average IQ, it was noted that his primary problems were in math computation, problem solving, and written expression and that he subsequently received one-on-one tutoring in these areas. Standardized testing on the Diagnostic Achievement Test for Adolescents indicated significant unevenness in his abilities. He scored above the 65th percentile on Word Identification and Reading Comprehension but at the 5th percentile for Math Calculation, Math Problem Solving, and Written Composition. (Education and Remediation Clinic, 10/26/88). He "struggled academically, repeating the sixth and ninth grades" and finally dropped out of school when told he had to repeat the ninth grade (HCA Riveredge Hospital, Summary of Diagnostic Assessment Data, p. 1). When he was 18, his adoptive mother reported learning problems since third grade (HCA Riveredge Hospital, Intake Assessment/Psychiatric Evaluation, p. 3).

- Specific Math Deficit (due to working memory deficits):

In fourth grade, Mr. Binney scored at the 18th percentile on Language Mechanics and Mathematics Computation on standardized testing (Rose Park Baptist Academy school records). In standardized testing during his second year of sixth grade, he scored at the 4.9 grade level on language and at the 3.8 grade level in mathematics, which placed him at the 9th percentile on the latter subtest (California Achievement Test, Cornerstone Christian Academy, 5/12/87). In seventh grade, his math scores on an achievement test were substantially lower than average and much lower than his next lowest scores (California Achievement Test, 5/28/88). When he was 17, his adoptive mother reported he had difficulty learning new math skills (The Learning Center, Evaluation Summary, 3/11/92, p. 2). When he was 18, his arithmetic skill deficits were rated as "catastrophic/profound" (HCA Riveredge Hospital, Intake Assessment/Psychiatric Evaluation, p. 1). On a test in 1992, his lowest score (38th percentile) was in Mathematics (Test of General Educational Development, 11/5/92).

- **Poor Academic Achievement:**

In his first semester of seventh grade, Mr. Binney's grades dropped from Bs and Cs to Ds and Fs. On December 1, 1986, he withdrew from Rose Park Baptist Academy. His grades during his last semester there were four Ds, one F, and an A in PE (Rose Park Baptist Academy school records, Fall 1986, p. 3). Shortly after the family moved to a new community, he was placed back in sixth grade. On the North Carolina Science and Social Studies Test, he scored below average in comparison to other sixth grade students in the state (Zanesville Christian School, Spring 1987). In eighth grade, his first semester grades in academic classes were two Cs, two Ds, and one F. His second semester grades were two Ds and three Fs (Zanesville Christian School, Grade 8, 1989/90). He withdrew

from school in his second attempt at ninth grade. His grades at the time were two Ds and three Fs (Victory Family Ministries records, December 1990).

Executive Function Deficits

Records in Mr. Binney's case confirm executive function deficits in multiple domains: organization, planning, and strategy use; impulse control; linking cause and effect; and poor judgment, which involves inability to learn from past mistakes and apply that learning to new situations. In general, individuals with FASD have difficulty absorbing and retaining new information because they are distracted by irrelevant stimuli (a selective attention deficit). They also tend to have deficits in short-term memory and thus have problems dealing with more than one stimulus at a time. The more complex the stimuli, the more difficulty the individual will have. Hence, socialization is a pervasive difficulty.

- **Storage and Retrieval Problems:**

At age 17, a consultation referral noted "auditory processing problems" that caused storage and retrieval problems (Riveredge Hospital, Consultation Report, 6/7/92).

- **Poor Organization, Planning, and Strategy Use:**

When Mr. Binney was 17, his adoptive mother reported he had difficulty completing homework, knowing how to study for a test, and organizing his study time. He acknowledged problems with cognitive efficiency during testing, and at the conclusion of testing, "general organization" was noted as a moderate concern (The Learning Center, Evaluation Summary, 3/11/92, pp. 2-5). At age 18, he was found to have "poor cognitive processing" (HCA Riveredge Hospital Discharge Summary, 6/24/92). Assessment also found "high word finding problems" and "impaired planning/organizational skills which impact time management" (Riveredge Hospital, Consultation Report, 6/7/92).

- **Sequencing Problems:**

At age 17, a consultation referral noted sequencing problems that impacted attention and follow through of directions (Riveredge Hospital, Consultation Report, 6/7/92). In 2002, Mr. Binney reported to Dr. David Bachman (11/25/02) that he had lifelong difficulty judging time sequences.

- **Lack of Inhibitory Control:**

During testing at age 17, Mr. Binney displayed impulsivity (The Learning Center, Evaluation Summary, 3/11/92, p. 4). At age 18, he was again noted to be "very impulsive" (HCA Riveredge Hospital, Psychosocial Assessment Data, p. 1). Testing also rated his aggressive/impulsive behavior problems as "catastrophic/profound" (HCA Riveredge Hospital, Intake Assessment/Psychiatric Evaluation, pp. 1-2). Family friend Kristi Lemmen observed that Mr. Binney was impulsive during his childhood (Affidavit, p. 2). He reported to Dr. David Bachman (11/25/02) that he had a problem with kleptomania and would steal items even if he didn't need them.

- **Difficulty Grasping Cause and Effect:**

While still a juvenile, Mr. Binney was arrested four times for "habitual auto theft" and was finally court-ordered to psychiatric evaluation at Riveredge Hospital (HCA Riveredge Hospital, Psychosocial Assessment, 5/28/92).

- **Poor Judgment:**

Mr. Binney's history during his teen years is replete with examples of poor judgment. For example, when he was 16 he stole checks and a car as he was running away from the Victory Home for Boys (Wisconsin Petition for Determination of Status, 11/19/90, p. 1-2). When he was 17, he was charged with forgery and burglary (DOC Commitment to

Local Criminal Court (9/1/91, 11/1/91). When he was 18, he took 100 aspirin tablets (ER records, Good Samaritan Medical Center, 6/28/92). At age 25, he was arrested after shooting his neighbor's chicken (Patrick B. Harris Psychiatric Hospital Records, 1/19/99). At age 26, he overdosed on Tylenol PM after being charged with sexual misconduct involving his daughter (Patrick B. Harris Psychiatric Hospital, Socio-cultural History and Assessment, 5/7/00). The sexual misconduct with his four-month-old daughter involved vaginal penetration with a vibrator, which caused serious injury and required stitches (Patrick B. Harris Psychiatric Hospital, Socio-cultural History and Assessment, 5/7/00). At the time of his arrest on June 8, 2000, for murder and burglary, he reported having multiple nicotine patches on his body in an apparent suicide attempt (Donna Schwartz-Watts, Testimony, p. 3349-51).

- **Poor Mood Control:**

Mr. Binney has a history of running away, self-mutilation, and suicidal gestures, all of which indicate a deficit in mood modulation. For example, when he was 17, an evaluation report noted poor mood control (The Learning Center, Evaluation Summary, 3/11/92, p. 2) and his history of running away to avoid getting into trouble (The Learning Center, Evaluation Summary, 3/11/92, p. 1). When he was 18, he took 110 aspirin in a suicidal gesture (Good Samaritan Medical Center, 6/28/92, p. 1-2). Dr. Donna Schwartz-Watts testified that his suicide attempts and self-mutilation were related to affective instability (Testimony, p. 3307). She noted intense anxiety and panic attacks (Testimony, p. 3308) and also indicated that he first attempted suicide prior to age 15 (Testimony, p. 3330).

Motor Skill Deficits

Motor skill deficits reflect damage to the cerebellum as well as the corpus callosum (Meyer, Kotch, & Riley, 1990). In Mr. Binney's case, there is documentation of deficits in both fine and gross motor skills.

- **Difficulty with Writing or Drawing:**

Tested at age 17, "pencil control" was listed as a moderate concern for Mr. Binney (The Learning Center, Evaluation Summary, 3/11/92, p. 5). He also self-reported difficulty with fine motor control (The Learning Center, Evaluation Summary, 3/11/92, p. 4).

- **Clumsiness:**

Testing at age 17 also noted gross motor skills as a possible concern (The Learning Center, Evaluation Summary, 3/11/92, p. 5). When he was 18, motor coordination was rated as "severe to extreme" (HCA Riveredge Hospital, Intake Assessment/Psychiatric Evaluation, p. 1).

Attention Deficits / Hyperactivity

Attention deficit and hyperactivity disorders are highly correlated with FASD. The attention problems stem in part from difficulty in tuning out extraneous stimuli so as to focus on the target stimulus. Hyperactivity is associated with decreased size of the corpus callosum (Zimmerberg & Michus, 1990) and stems in part from deficient ability to self-soothe and moderate reactivity to external and internal stimuli. Records document both attention problems and hyperactivity in Mr. Binney. Evaluated at The Learning Center when he was 17, Mr. Binney's adoptive mother reported he could only concentrate for a short time, that he was restless and fidgety, that he daydreamed and became bored easily, and that he got into trouble without meaning to (The Learning Center, Evaluation Summary, 3/11/92, p. 2). Tested at The Learning Center, he displayed significant problems in distractibility, attention to detail, and overactivity. Selective

attention was determined to be a serious problem (The Learning Center, Evaluation Summary, 3/11/92, pp. 4-5). He was diagnosed with Attention-deficit/Hyperactivity Disorder (ADHD) at age 18 (HCA Riveredge Hospital Discharge Summary, 6/24/92). When he was 18, distractibility was rated as "catastrophic/profound," and inattentiveness and recklessness were rated as "extreme" (HCA Riveredge Hospital, Intake Assessment/Psychiatric Evaluation, p. 1). Family friend Kristi Lemmen observed attention deficits in Mr. Binney during his childhood (Affidavit, p. 2). Current testing this year by Dr. James Evans is consistent with these earlier records, noting in particular multiple cognitive deficits associated with attention problems and underlying damage to the corpus callosum. Dr. Schwartz-Watts noted that Ritalin wasn't effective for Mr. Binney's attention problems (Testimony, p. 3303), a finding that is consistent with FASD.

Social Skill Deficits

Social skills enable an individual to interact appropriately with others. Social skills require intact executive functioning and depend on the ability to accurately perceive and understand subtle social cues, encode that information into memory, access the information quickly when new situations require interactions with others, simultaneously screen the information for appropriate versus inappropriate behavior, inhibit impulses that are inconsistent with the stored pro-social "model," and engage in social behavior while monitoring the impact of that behavior on others and perhaps fine-tuning the behavior as one interacts. Simply put, appropriate social behavior is a highly complex skill built on interconnected, underlying executive skills. FASD-affected youth invariably have social skill deficits. Children with FASD have significant difficulty making friends. Their social perception deficits interfere with their ability to detect subtle social cues and interact easily with others. Social perception deficits also interfere with the development of empathy. Youth and adults with FASD often fabricate stories or exaggerate events in an effort to

hold the interest of peers and fit in. Because they lack awareness of their effect on others (i.e., social boundaries), they sometimes stand too close to others or touch inappropriately. As a result of these skill deficits, the childhood histories of individuals with FASD typically reflect loneliness and isolation from peers. As they grow older, they often have problems understanding appropriate sexual expression and acting accordingly – a problem observed in nearly half of all individuals affected by FASD. Lack of sexual outlets can lead to unusual sexual interests and behaviors (e.g., sexual fetishes). Social skills deficits can affect self-concept development, which coupled with executive function deficits also can affect sexual expression. Records indicate that Jonathan Binney had significant problems in this area. When he was 17, his adoptive mother reported he had empathy deficits and “difficulty with making friends” (The Learning Center, Evaluation Summary, 3/11/92, p. 2). During assessment, he self-reported difficulty with peer relationships (The Learning Center, Evaluation Summary, 3/11/92, p. 4). When he was 18, an evaluation found he had “always” struggled with making friends (HCA Riveredge Hospital, Summary of Diagnostic Assessment Data, 5/26/92, p. 1). Observation notes during his hospitalization indicated “poor social interaction and inhibited communication” (HCA Riveredge Hospital, Psychosocial Assessment Data, p. 1). Progress notes observed he tended to draw attention to himself by inappropriately discussing with peers the reasons for his hospitalization and “telling war stories” (Riveredge Activity Therapy, Progress Summary, 6/9/92). Overall, it was observed that he had a “hard time fitting in with a group of kids” (HCA Riveredge Hospital, Discharge Summary, 6/24/92, p. 1). Family friend Kristi Lemmen observed that Mr. Binney could be “overly friendly” with people, even those whom he didn’t know (Affidavit, p. 2). In 2002, Mr. Binney self-reported during a psychiatric evaluation that he had problems in school

because he would talk too much and show off to get attention (Psychiatric Evaluation, Dr. Pamela Crawford, 11/3/02, p. 4).

Other Deficits

- **Pragmatic Language Problems:**

Tested at age 17, receptive language was found to be a marked deficiency (The Learning Center, Evaluation Summary, 3/11/92, p. 5). At age 17, a consultation referral noted "auditory processing problems." Following assessment, the following deficiencies were noted: significant auditory processing impairment, semantic/temporal confusion, sequencing problems that impacted attention and follow through of directions and storage and retrieval problems. The assessment also found "significantly impaired ability to process verbal stimulus in the presence of background/environmental noises with continued 'overloading' characteristics and semantic/temporal confusion" (Riveredge Hospital, Consultation Report, 6/7/92).

- **Delay in Emotional Development:**

At age 25, Mr. Binney was described as "immature" (Patrick B. Harris Psychiatric Hospital, 5/7/00).

- **Visual-Spatial Deficits:**

At age 17, testing found selective attention deficits during language and visual processing tasks (The Learning Center, Evaluation Summary, 3/11/92, p. 4).

- **Memory Deficits:**

During testing at age 17, Mr. Binney reported trouble remembering what he read or studied, and "active working memory" was noted as a moderate concern at the conclusion of testing (The Learning Center, Evaluation Summary, 3/11/92, pp. 4-5).

Neuropsychologist Dr. James Evans found mild to moderate memory impairment in Mr. Binney (James Evans Neuropsychological Evaluation Report, 5/5/07, p. 2-3).

Differential Diagnosis

25. According to CDC diagnostic guidelines, differential diagnosis of CNS abnormalities involves ruling out other disorders and specifying co-occurring disorders. The functional CNS deficits associated with FAS can be produced by many different factors in addition to prenatal alcohol exposure. Thus, it is important to determine whether the observed functional deficits are better explained by other causes, such as abuse, neglect, and/or an unstable childhood. If there are structural and neurological deficits in the brain and central nervous system, there also is a high likelihood of observable functional deficits. The question then becomes: is there any other possible explanation (other than FASD) for the individual's structural and/or neurological deficits? In Mr. Binney's case, review of the record suggests no likely alternative explanations. Although he suffered three minor head injuries at different times in his life, there is no indication that any of these injuries required hospitalization (Psychiatric Evaluation by Pamela Crawford, MD, 11/3/02, p. 4). There also is no evidence in the record that genetic factors might explain his deficits. Consequently, in terms of explanations for his brain damage and neurological dysfunction, FASD is the most compelling hypothesis.

26. Even in the presence of structural and/or neurological deficits, differential diagnosis involves careful analysis of other factors to determine the relative contribution of FASD to the behavior in question – in this case, Mr. Binney's offense conduct on June 7, 2000. Acute mental illness is ruled out as an explanatory factor because there is insufficient evidence of impairment severe enough to compromise Mr. Binney's capacity to know right from wrong. While acute intoxication may have been a factor in his functioning at the time of the murder, evidence is

insufficient to establish substance-related impairment as the sole explanation for his conduct. Personality disorders are also insufficient to explain his behavior, in particular, antisocial personality disorder. Antisocial personality disorder doesn't suddenly manifest in the absence of negative environmental experiences. According to the *DSM-IV-TR*, the disorder requires evidence of conduct disordered behavior prior to age 15 that involves a "repetitive and persistent pattern" of aggression, property destruction, deceitfulness or theft, and serious rule violations. In Mr. Binney's case, while he self-reported stealing in his early elementary school years, data are insufficient to support multiple symptoms of conduct disordered behavior prior to his mid-teens. Thus, the record indicates multiple incidents of stealing relatively worthless items at home beginning in childhood, which expanded to theft of valuable items in his mid-teens. Coupled with this pattern of theft are some bizarre behaviors. The sexual abuse of his infant daughter is an example of the latter. Even among pedophiles, sexual abuse of infants is extremely rare, and when it does occur, it typically involves touching (but not insertion) of the victim's genitalia by the perpetrator's fingers, penis, or tongue.

27. Review of the information provided to me indicates that Mr. Binney's functional abnormalities began manifesting within the context of a relatively nurturing and structured family environment, with positive parenting practices and pro-social role modeling. The only traumatic event throughout his entire childhood was one (or possibly two) incidents of sexual fondling by an adolescent boy at school when Mr. Binney was in third grade. As a certified Sex Offender Treatment Provider (SOTP) who has conducted over a thousand sex offender evaluations and kept up to date with respect to the relevant research, such experience – while possibly quite traumatic at the time – is not associated with later antisocial or even sexual misconduct if a child's environment is otherwise positive. In Jonathan Binney's case, his

childhood environment appears to have been generally positive. He was adopted four days after his birth by the Binneys, who were described as "very supportive parents" (Dr. Donna Schwartz-Watts testimony, p. 3317). Mr. Binney was a pastor; Mrs. Binney was a hairdresser and homemaker. Jonathan Binney was raised as an only child in this "financially comfortable home" (Dr. Pamela Crawford evaluation, 11/3/02, p. 3) in an atmosphere that was described as "a very sheltered Christian environment" with "no history of substance abuse" or any other kind of abuse within the family (HCA Riveredge Hospital, Summary of Diagnostic Assessment Data, p. 1). He was "clearly loved" (Dr. Donna Schwartz-Watts testimony, p. 3317). Mr. Binney self-reported that he was treated well by his adoptive parents and denied physical, sexual or emotional abuse within the home (Dr. Pamela Crawford evaluation, 11/3/02, p. 3). He went to a single Christian private school during his elementary school years. The only negative event documented during his elementary school years was the sexual fondling at age eight by a fourteen-year-old boy at school (Rose Park Baptist Academy school records, 1982). Records indicate that this was an isolated event in an otherwise positive childhood. Nonetheless, despite the loving home, Mr. Binney self-reported that he began to steal frequently in first or second grade and continued this behavior despite discipline from his adoptive parents (Dr. Pamela Crawford evaluation, 11/3/02, p. 3). As might be predicted in someone with an average IQ (Dr. James Evans Evaluation, undated) but multiple neurodevelopmental deficits, he made adequate but gradually declining grades in school as coursework became more complex. His academic and behavior control problems became more apparent as he entered junior high, which also is typical for someone with FASD. In 1990, when he was 15, the Binney family moved to a rural area. By this point, he was in eighth grade and failing several classes (Zanesville Christian Academy school records). The relocation required that he not only handle coursework beyond his cognitive abilities, he

also had to face new social challenges that exceeded his executive function abilities. As his matured, and expectations for his behavior in every domain became more demanding and required more complex skills, he began to falter. The record indicates that his failures were not due to environmental causes but rather inherent deficiencies that stemmed impaired executive functioning.

28. The first self-reported evidence of an inability to control behavior occurred in elementary school. Mr. Binney told Dr. Pamela Crawford that he began stealing in first or second grade (Psychiatric Evaluation, 11/3/02, p. 3). Stealing in FASD-affected children is common and, as noted previously, typically stems from multiple neurodevelopmental and executive functioning deficits, including lack of boundary awareness, deficient impulse control, inability to delay gratification, inability to consider consequences, inability to generalize, and poor judgment. Because FASD-affected individuals tend to lack the ability to link cause with effect and generalize from one instance to another, discipline regarding an inappropriate behavior in one context will not generalize to a new context. Thus, the individual will view each and every opportunity for stealing as completely unrelated to the previous episode. This appears to have been the case in Mr. Binney's history. His childhood pattern of taking things that did not belong to him eventually evolved into theft and burglary in his teen and adults years. His first documented arrest for stealing occurred when he was 16 and stole checks and a car in order to run away from the Victory Home for Boys (Victory Family Ministries, 10/10/90). The most recent episode of stealing occurred in prison when he stole a videotape player (Psychiatric Evaluation by Pamela Crawford, MD, 11/3/02, p. 7).

29. There is a tendency among diagnosticians to view illegal behaviors as evidence of antisocial personality disorder or other personality disorders involving Cluster B symptoms.

Because training in FASD is not a standard part of any medical school or graduate curriculum, the condition is often missed even by the most learned diagnosticians. Consequently, adolescents and adults with FASD who have not been diagnosed as such in early childhood typically present as individuals with "complex" psychopathology and a long list of diagnoses they've received over the years, each of which may explain a portion of their behavior but not all of their behavior. Records indicate that in Mr. Binney's case, it wasn't until age 17 that experts began to evaluate problems in his functioning (The Learning Center, Evaluation Summary, 3/11/92). At age 18, when he was court-ordered to Riveredge Hospital for psychiatric evaluation after an "overall deterioration in his functioning," multiple executive function deficits were noted: attention deficit disorder and impulsivity, identity problems, mood irritability, poor cognitive processing, drug abuse, sexual misconduct, disconnectedness from the family, and disconnectedness from school and learning (Riveredge Hospital, Discharge Summary, 6/24/92). Records reviewed in the current assessment document the following Axis I diagnoses:

- Attention Deficit Hyperactivity Disorder (Riveredge Hospital, 6/24/92)
- Attention Deficit Disorder (Ohio DOC, 2-21-94)
- Atypical Depression (Riveredge Hospital, 6/24/92)
- Dysthymic Disorder (Riveredge Hospital, 6/24/92)
- Dysthymic Disorder, in partial remission (Dr. Pamela Crawford, 11/3/02)
- Conduct Disorder, Socialized, Nonaggressive (Riveredge Hospital, 6/24/92)
- Specific Cognitive Processing Problems (Riveredge Hospital, 6/24/92)
- Adjustment reaction with mixed features (Patrick B. Harris Psychiatric Hospital, 5/12/00)
- Pedophilia, Sexually Attracted to Both (Dr. Pamela Crawford, 11/3/02)

- Transvestic Fetishism (Dr. Pamela Crawford, 11/3/02)
- Sexual Sadism (Dr. Pamela Crawford, 11/3/02)
- Paraphilia Not Otherwise Specified (Dr. Pamela Crawford, 11/3/02)

Records also indicate the following Axis II diagnoses:

- Antisocial Personality Disorder (Spartanburg Area Mental Health Center, 10/22/02; Dr. Pamela Crawford, 11/3/02)
- Rule out Antisocial Personality Disorder (Patrick B. Harris Hospital, 5/18/00)
- Borderline Personality Traits (Donna Schwartz-Watts, MD; undated but approximately 2004)
- Personality Disorder NOS (Patrick B. Harris Psychiatric Hospital, 5/12/00)

While many of these diagnoses may explain some of his behaviors at a particular point in time, differential diagnosis would eliminate many of them in the presence of an underlying medical condition (such as FASD) that has direct physiological effect on symptom expression. An FASD condition accounts for *all* of Mr. Binney's behavioral history, from infancy to the present. Overall, the neurodevelopmental abnormalities documented in his file are consistent with the type of primary disabilities typically seen in children diagnosed with FASD. His conduct from adolescence into adulthood is consistent with the histories of FASD-affected individuals who experience pervasive adverse life outcomes or "secondary disabilities" because their primary disabilities are not diagnosed and treated during childhood.

Secondary Disabilities

30. It wasn't until age 18 that Mr. Binney was diagnosed with attention deficit disorder (Riveredge Hospital, 6/24/92) and not until Dr. Donna Schwartz-Watts, MD, performed a psychiatric evaluation during his criminal investigation that FASD was suspected (draft

Psychiatric Evaluation, undated). According to research in the 1990s, disabilities stemming from FASD are categorized as either "primary" or "secondary" depending upon whether they are a direct manifestation of CNS abnormalities (i.e., primary disabilities) or whether they are mediated by environmental influences (i.e., secondary disabilities). "Primary disabilities" are defined as functional deficits that stem directly from structural brain damage and CNS dysfunction caused by prenatal ethanol exposure (e.g., Streissguth et al., 1996). Individuals with FASD are typically born with some or many of these primary disabilities, which include the deficits noted in Section 16 above. "Secondary disabilities" reflect the adverse life outcomes that an individual experiences as he/she enters adolescence and adulthood that presumably could have been ameliorated if there had been early diagnosis and intervention. Environmental factors exert positive or negative influences on the expression of secondary disabilities but have nothing to do with primary disabilities, which are inherent in the individual's brain damage. With effective treatment of primary disabilities, secondary disabilities can be prevented or at least reduced (Streissguth, 1997). However, without early diagnosis and treatment, secondary disabilities manifest in adolescence and adulthood as severe problems in psychosocial functioning. Secondary disabilities include mental health problems, disrupted school experience, trouble with the law, confinement, inappropriate sexual behavior, alcohol and drug problems, and problems with employment. A surprisingly large number of individuals with fetal alcohol impairment display secondary disabilities (Streissguth et al., 1996; Streissguth & O'Malley, 2000). For example, 90% have mental health problems such as ADHD, depression, or other mental illness; 60% are arrested, charged, and/or convicted of a crime; 50% display inappropriate sexual behavior (e.g., sexual advances, sexual touching, or promiscuity); 50% are

confined in institutional settings (i.e., psychiatric hospital, jail, prison, residential substance abuse treatment); and 35% have alcohol or drug abuse problems (Streissguth, et al., 1996).

Jonathan Binney

31. To a reasonable degree of psychological certainty, review of the case materials noted above indicates that Jonathan Binney meets criteria for an FASD condition. His birth mother reported drinking at age 14 and heavy alcohol use from age 16 on, which coincides with the time of the pregnancy. There also is documented evidence that he displayed facial abnormalities and growth deficits associated with FAS. Finally, based on the current analysis, he also meets CDC criteria for CNS functional abnormalities associated with FAS (see Appendix B). In fact, records indicate he displayed almost every major primary disability typically seen in individuals with FASD. Beginning in adolescence, he also began displaying a number of secondary disabilities because his primary disabilities were not diagnosed and treated in childhood. Multiple sources (Riveredge Hospital, 1992; Tests of General Educational Development, 11/5/92; State of Ohio DOC, 1994; Judgment, Licking County, Ohio, 2/11/94; Patrick B. Harris Psychiatric Hospital, 2000; Psychiatric Evaluation by Pamela Crawford, MD, 11/3/02) document the following secondary disabilities in Mr. Binney: mental health problems, substance abuse, disrupted school experience, sexual misconduct, chronic unemployment, criminal behavior, and confinement.

32. When faced with events that trigger negative emotions, individuals with FASD often overreact and behave impulsively because of executive function deficits. For example, it is not uncommon for these individuals to make dramatic suicidal gestures (e.g., swallowing objects such as razor blades, pencils, toothbrushes; attempts to hang themselves with shoelaces or clothing; ingesting large quantities of aspirin or other over-the-counter medications; superficial cuts on the wrist with sharp objects) when faced with stress as they lack the ability to handle

frustration well or identify and communicate their distress appropriately. In some individuals with FASD, executive functions are so severely affected that there is chronic difficulty in functioning appropriately in virtually every context. In other affected individuals, executive function impairment is noticeable only at certain times, such as when the individual is severely stressed, encounters multiple unfamiliar stimuli, and/or is under the influence of a substance that further compromises executive functioning (e.g., alcohol and/or drugs). This latter example may be relevant with respect to Mr. Binney's behavior on June 7, 2000, which apparently occurred in the context of multiple stressors (e.g., recent civil commitment, psychiatric hospitalization, and medication following a suicide attempt in the aftermath of legal charges involving sexual abuse of his infant daughter) and possible intoxication. When substance intoxication is paired with executive function deficits, the result can be atypical behavior that is even more uncontrolled than usual because alcohol and drugs further reduce judgment and impulse control. Mr. Binney reported drinking 6-7 beers over a 2-3 hour period prior to the murder, that he took two Lortab tablets (hydrocodone and acetaminophen) approximately eight hours before shooting Ms. Southern, and that he placed several nicotine patches on himself the day of the shooting (Psychiatric Evaluation by Pamela Crawford, MD, 11/3/02, pp. 4-7). It should be noted that FASD by itself does not preclude the possibility of planning a crime, even methodical planning that involves some sophistication for those who have average IQs. However, what is typically missing from the planning is foresight, careful consideration of all likely outcomes and alternative courses of action, and the ability to control any urges that might occur as they are engaging in a particular behavior.

33. Individuals with FASD also tend to be highly suggestible. In fact, it is typical for affected individuals to not only agree to whatever suggestions are made to them during interrogation

following an offense but to assimilate these suggestions as "fact." Thus, it is important to validate any self-reports that are made regarding offense conduct with independent and credible sources of information. In Mr. Binney's case, his self-reported intentions regarding the Southern home and family cannot be known for sure as there is no way to determine what was going on in his mind leading up to and during the incident or how influenced he was by those who questioned him after the incident. However, his report of his conduct in another horrific crime may be relevant. When interviewed on May 10 of this year, Mr. Binney was asked to describe why he had sexually abused his infant daughter, and his responses depicted several executive control deficits: impulse control, self/other awareness, ability to foresee consequences, and judgment. He indicated that approximately 30 seconds after reading a sexual story on the Internet, he was standing at his daughter's crib trying to insert a vibrator into her vagina. He reported no previous sexual thoughts involving his infant daughter and no masturbation to memories of the act afterward. While there is no way to corroborate his self-report, the following conclusion is reasonable: his actions with his infant daughter are inconsistent with pedophilic behavior but consistent with the lack of impulse control and judgment seen in individuals with FASD,

34. By the time of Jonathan Binney's trial in 2002, FASD had been recognized for over 30 years as a major known cause of neurodevelopmental disabilities, and the life-long implications of these disabilities had been recognized for 10 years. Follow-up studies in four countries had demonstrated the ongoing adverse effects of prenatal alcohol exposure into adolescence and adulthood (Streissguth & Kanter, Eds., 1997). However, when Mr. Binney was a child and teenager, no one knew about the damage and long-term effects that prenatal alcohol exposure could cause. When he was born in 1974, little was known about the long-term effects of FASD on adult functioning. The term "Fetal Alcohol Syndrome" had just been identified publicly

(Jones & Smith, 1973). It was not until he was ten that researchers began to publicize information about Fetal Alcohol Effects (Abel, 1984), and he was 15 (i.e., 1989) when Congress finally passed legislation to mandate labels on all alcohol beverage containers sold in the United States that warned against drinking alcohol during pregnancy. Although the term "secondary disabilities" was not widely recognized before the mid-1990s, by the late 1980s there was growing awareness that fetal alcohol impairment caused structural brain damage (West, 1986) and that this damage in turn caused long-term behavioral and developmental disturbances (Spohr & Steinhausen, 1987; Streissguth & Randels, 1988; Streissguth, 1990). By the mid-1990s, knowledge about secondary disabilities was widespread (e.g., Meyer et al., 1990; Phillips, 1992; Streissguth, 1992). For example, in 1992 the Centers for Disease Control and Prevention (CDC) funded a major research project at the University of Washington to study secondary disabilities, and in early 1994, *Alcohol Health and Research World* (now titled *Alcohol Research and Health*) devoted a full issue to the topic of FAS and other alcohol-related birth defects (see Volume 18, Number 1, 1994) that provided a comprehensive overview of the existing knowledge on the effects of prenatal alcohol exposure. (This issue was later awarded first prize in the technical publications category by the National Association of Government Communicators.) In the mid 1990s, the United States Congress directed the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to prepare a comprehensive report on the subject. In response, NIAAA commissioned the Institute of Medicine (IOM) of the National Academy of Sciences to conduct a study. The resulting seminal report was titled, *Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention, and Treatment* (Stratton et al., 1996). This report critically reviewed the major scientific issues in fetal alcohol research and made a number of recommendations, including the new diagnostic terminology referred to earlier in this affidavit (i.e., FAS Types 1-

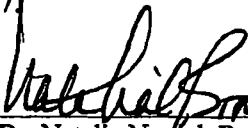
5). By 1996, research at the University of Washington had revealed that secondary disabilities became observable in people with FASD by their young adults years (Streissguth et al., 1996) and specifically identified the risk and protective factors associated with these secondary disabilities. A year later, Streissguth (1997) published a book for the lay public regarding these secondary disabilities. Thus, by 2002, the year of Mr. Binney's trial, any expert with knowledge about FASD could have testified about the primary disabilities and long-term social and behavioral ramifications of prenatal alcohol exposure in general, and any expert armed with the information provided to me could have testified about the effects of FASD on Mr. Binney's life and offense conduct.

35. The awareness that FASD is a birth defect with pervasive and long-range neurodevelopmental effects has led to increasing awareness in the legal profession that a different level of attribution is warranted for individuals with this condition (Fast, Conry, & Loock, 1999; Baumbach, 2002). Rather than assuming they become unmotivated, manipulative, antisocial, and self-defeating solely because of poor parenting experiences and/or free will, research over the last 15 years has shown consistently that *untreated primary disabilities* are the basis for maladaptive behaviors. Notwithstanding the fact that environmental influences can play a significant role in the expression of secondary disabilities, it also has been established in the scientific research that individuals with FASD have structural brain damage that makes it highly unlikely they will be able to withstand the negative influence of environmental risk factors without appropriate support and treatment.

36. As Streissguth and colleagues noted recently (Streissguth et al., 2004), one of the strongest correlates of adverse outcomes in individuals with FASD is lack of an early diagnosis: "The longer the delay in receiving diagnostic information, the greater the odds of adverse

outcomes." Thus, the research suggests that for Jonathan Binney's brutal aggression to have been prevented, he needed appropriate identification and intervention in childhood. While he might have been identified as a child at risk and referred for evaluation had he been born in the 1990s, unfortunately he was born too early to be detected in routine screening by medical or school personnel and referred for medical evaluation. Thus, it was the timing of his birth that prevented him from being diagnosed and treated as a child for FASD. Had he received appropriate treatment for his primary disabilities in childhood, it is highly likely that his secondary disabilities would have been more manageable and less extreme, if they had developed at all. This conclusion is based upon multiple studies of secondary disabilities in the 1990s (Streissguth et al., 1996; Streissguth et al., 1999; Yates et al., 1998), including research that I participated in during my postgraduate training.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Seattle, Washington, on May 28, 2007.


Dr. Natalie Novick Brown

5-29-07


notary public for state of SC
commission expires: 6/06/19

Appendix A
Institute of Medicine FASD Criteria (1996)

In 1996, the Institute of Medicine (IOM) developed five diagnostic categories related to fetal alcohol exposure:

Category 1. Fetal Alcohol Syndrome (FAS) with Confirmed Maternal Alcohol Exposure

Requires:

- a. confirmed maternal alcohol exposure
- b. facial dysmorphism, including short palpebral fissures and abnormalities of the premaxillary zone (e.g., flat upper lip, flat philtrum, flat midface)
- c. growth retardation, such as low birth weight, lack of weight gain over time, disproportional low weight to height
- d. neurodevelopmental abnormalities of the Central Nervous System (CNS), such as small head size at birth and structural brain abnormalities with neurological hard or soft signs (e.g., impaired fine motor skills, neurosensory hearing loss, poor tandem gait, poor eye-hand coordination)

Category 2. FAS Without Confirmed Maternal Alcohol Exposure

Requires:

- b. through d. above

Category 3. Partial FAS With Confirmed Maternal Alcohol Exposure

Requires:

- a. confirmed maternal alcohol exposure
- b. some components of the FAS facial pattern
- c. growth retardation as in Category 1
- d. CNS neurodevelopmental abnormalities as in Category 1
- e. Complex pattern of behavioral or cognitive abnormalities inconsistent with developmental level and unexplained by genetic background or environmental conditions (e.g., learning difficulties, deficits in school performance, poor impulse control, problems in social perception, language deficits, poor capacity for abstraction, specific deficits in mathematical skills, and problems in memory, attention, or judgment)

Category 4. Alcohol-Related Birth Defects (ARBD)

Requires:

- a. confirmed maternal alcohol exposure
- b. one or more congenital defects including malformations and dysplasias of the heart, bone, kidney, vision, or hearing systems

Category 5. Alcohol-Related Neurodevelopmental Disorder (ARND)

Requires:

- a. confirmed maternal alcohol exposure
- b. CNS neurodevelopmental abnormalities as in Category 1 *and/or*
- c. complex pattern of behavioral or cognitive deficits as in Category 3

Appendix B
CDC Criteria (2004)

I. Facial dysmorphism

Based on racial norms, individual exhibits all three characteristic facial features:

- a) Smooth philtrum (University of Washington Lip-Philtrum Guide rank 4 or 5)
- b) Thin vermilion border (University of Washington Lip-Philtrum Guide rank 4 or 5)
- c) Small palpebral fissures (at or below 10th percentile)

II. Growth problems

Confirmed prenatal or postnatal height or weight, or both, at or below the 10th percentile, documented at any one point in time (adjusted for age, sex, gestational age, and race or ethnicity).

III. Central Nervous System Abnormalities

1. Structural

- a) Head circumference (OFC) at or below the 10th percentile adjusted for age and sex.
- b) Clinically significant brain abnormalities observable through imaging.

2. Neurological

Neurological problems not due to a postnatal insult or fever, or other soft neurological signs outside normal limits.

3. Functional

Performance substantially below that expected for an individual's age, schooling, or circumstances, as evidenced by:

- a) Global cognitive or intellectual deficits representing multiple domains of deficit (or significant developmental delay in younger children) with performance below the 3rd percentile (2 standard deviations below the mean for standardized testing) or
- b) Functional deficits below the 16th percentile (1 standard deviation below the mean for standardized testing) in at least three of the following domains: cognitive or developmental deficits or discrepancies; executive functioning deficits; motor functioning delays; problems with attention or hyperactivity; social skills; other, such as sensory problems, pragmatic language problems, memory deficits, etc.

IV. Maternal Alcohol Exposure

- a) Confirmed prenatal alcohol exposure
- b) Unknown prenatal alcohol exposure

Criteria for FAS Diagnosis

Requires all three of the following findings:

- a) Documentation of all three facial abnormalities (smooth philtrum, thin vermilion border, and small palpebral fissures);
- b) Documentation of growth deficits
- c) Documentation of CNS abnormality

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	C/A No.: 06-CP-11-223
	)	
JONATHAN KYLE BINNEY	)	
Applicant,	)	
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

AFFIDAVIT OF DR. FRED BOOKSTEIN

Dr. Fred Bookstein, who appeared personally before me, affirms and states the following:

1. I am a Professor of Statistics in the College of Arts and Science at the University of Washington. I am also Adjunct Professor of Psychiatry and Behavioral Sciences at the Fetal Alcohol and Drug Unit in the School of Medicine at the University of Washington and Professor of Morphometrics at the University of Vienna, Austria.
2. I obtained a Bachelor of Arts Degree in Mathematics from the University of Michigan in 1966. I have a Master's Degree in Sociology from Harvard University, and I have a Ph.D. in Statistics and Biology from the University of Michigan. I was trained in both statistics and the behavioral sciences through the Harvard Social Relations Graduate Program.
3. Within the field of statistics, my particular area of expertise is morphometrics. This involves measuring parts of the body, discovering predictable patterns, and investigating the cause of that pattern and what effects it may have.
4. I have extensive experience with mapping a particular area of the brain called the corpus callosum. I have studied the corpus callosum of hundreds of individuals, some with Fetal Alcohol Spectrum Disorder (FASD) and some without, and developed a very precise method for measuring the corpus callosum, and compiled the results of my findings.
5. I have published over forty (40) papers and one book relating to my research in FASD. I was awarded the University of Michigan Distinguished Research Scientist Award in connection with my work in morphometrics.
6. I have been qualified to testify as an expert witness in the fields of morphometrics and fetal alcohol statistics approximately 10 times in courts in California, South Carolina, New Jersey, Montana, and the state of Washington.

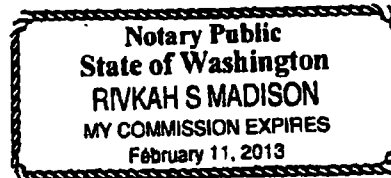
7. I was retained by Jonathan Binney's attorneys to compare certain measurements upon Mr. Binney's brain images, compare them to statistical summaries of corresponding measurements from adults with FASD and from normal adults, and report my findings. My findings in Mr. Binney's case are recounted in detail in my report dated April 6, 2007.

Further affiant sayeth naught.

Dr. Fred Bookstein
DR. FRED BOOKSTEIN

Sworn to and subscribed before me
This 20th day of JANUARY, 2010

Rivkah S. Madison
Notary Public for the State of Washington
My commission expires: 2/11/2013



April 6, 2007

Emily Paavola, Esq.
Baker & Daniels, LLP
300 North Meridian Street, Suite 2700
Indianapolis, Indiana 46204
by email to emily.paavola@bakerd.com

Dear Ms. Paavola,

This report conveys my analysis of a magnetic resonance image (MRI) of the brain of your client Jonathan Binney. The image was sent to me in March from the Medical University of South Carolina where it was produced using a particular combination of MR machine settings that I specified in a document sent to you for forwarding to them. My aim was to compare certain measurements upon your client's brain image to statistical summaries of the corresponding measurements in analogously specified MR images for adults with fetal-alcohol-related diagnoses, and likewise normal adults, as published in two peer-reviewed scientific papers that appeared in 2002:

Bookstein, F. L., A. P. Streissguth, P. D. Sampson, P. D. Connor, and H. M. Barr. Corpus callosum shape and neuropsychological deficits in adult males with heavy fetal alcohol exposure. *NeuroImage* 15:233-251, 2002.

Bookstein, F. L., P. D. Sampson, P. D. Connor, and A. P. Streissguth. The midline corpus callosum is a neuroanatomical focus of fetal alcohol damage. *The Anatomical Record - The New Anatomist* 269:162-174, 2002.

The purpose of this report is to summarize the measurements and comparisons in terms that would be useful in combination with evidence that your client was exposed to high levels of alcohol before birth. In that context my findings mean it is highly likely that his brain was damaged by that exposure. These findings serve as part of the documentation that supports the production of a specific diagnosis within the range of particular disorders (patterns of damage) that prenatal alcohol is known to produce. While these diagnoses vary to accommodate variability of the associated facial features and of the childhood size deficits, according to the most current U. S. federal guidelines the diagnostic process always incorporates evidence of a central nervous system (CNS) abnormality in terms of "structural, neurological, or functional deficits, or a combination thereof." The finding here meets the requirement via the structural prong (I explain this in the memorandum appended to this letter, intended for forwarding to the diagnostician). Furthermore, as diagnosis from a combination is likely to be more persuasive than diagnosis from just one single channel, it would be helpful if an additional expert report (perhaps from a neuropsychologist, neurologist, or psychiatrist) was used in the course of diagnosis along with this report of mine and the evidence for exposure.

Fetal Alcohol Syndrome (FAS) and what used to be called Fetal Alcohol Effects

(FAE)—this report will usually refer to them together as "Fetal Alcohol Spectrum Disorder" or FASD, as they entail the same typical brain damage—are irremediable congenital conditions found in a substantial fraction of persons exposed to high levels of alcohol before birth. The principal focus of damage is the brain. This damage is expressed in a variety of encephalopathies (brain structural abnormalities) as well as a range of specific neurological, cognitive and neurobehavioral deficits. The brain measurements that my colleagues and I use to assess the structural damage concentrate on the cerebral neural structure called the *corpus callosum*, the arch of neural tissue that links the two halves of the cerebral cortex.



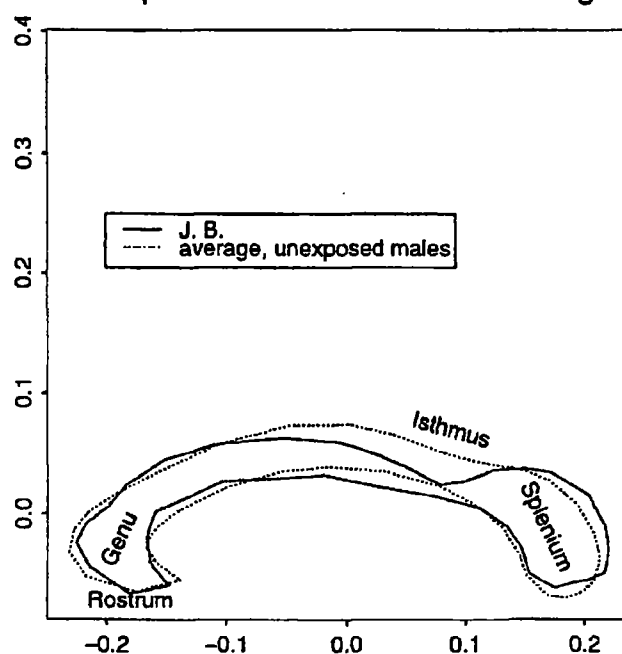
*Jonathan Binney's callosal midcurve,
superimposed over a nearby section of his MR image*

Summary. Clear effects of heavy prenatal alcohol exposure can be detected in regions of Mr. Binney's corpus callosum where the literature of this disease spectrum typically finds effects. In one of these regions, the *isthmus* (the narrowing just right of center), Mr. Binney's callosum shows a very severe deformity, nearly a **disconnection of the callosum (partial callosal agenesis)**, that is more extreme than anything we see in our Seattle sample but that is reported in samples of more severely alcohol-damaged patients.

As a specific sign of prenatal alcohol damage this feature would have been recognized by any competent examiner of the image examining it in 1995 or later. In the other region, the *rostrum* (hook at lower left), Mr. Binney's callosum shows localized shape characteristics that we have previously encountered only in some of our Seattle adult males who had been diagnosed with a fetal alcohol spectrum disorder. These quantitative features, interpreted in the context of the extensive fetal alcohol research literature, comprise sufficient evidence that Binney's brain should be considered as having been damaged by his prenatal exposure.

Persons with FASD generally have specific difficulties with "executive function"—making plans, regulating their own behavior, understanding the consequences of their behavior, and understanding the reactions of others to their behavior—that bring them frequently into repeated trouble with the law. That some of Mr. Binney's difficulties in these domains owes to circumstances preceding his birth, and to that extent were beyond his control, should be held as mitigating of culpability in respect of the crime for which he has been judged.

complete callosal midcurve tracing

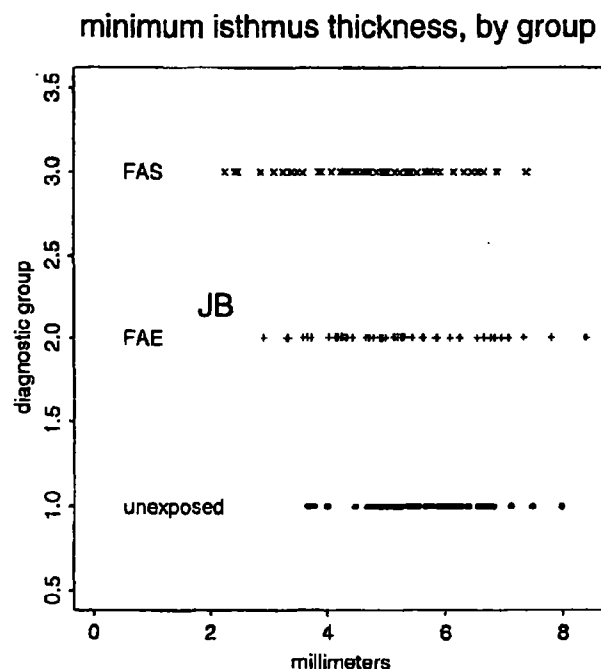


*Comparison of Mr. Binney's callosal midcurve
with the unexposed Seattle adult male average*

Detailed physical findings. I reformatted the March MR image for analysis by the computer program Edgewarp and traced its callosal midcurve at forty points, as described in detail in the references cited on page 1. The corpus callosum is the bundle of nerve fibers that connects the two halves of the cortex across the middle of the brain, and the

midcurve is the "waist" of this bundle of fibers, the curve across which the full three-dimensional bundle is most nearly symmetric. Once this curve has been located in an MR image, its points can be shown as if superimposed over some nearby cut through the original image. The figure on page 2 shows how this set of forty points (the plus signs) represents the form of that arch it is tracing. (But the points of Mr. Binney's callosal midcurve do not lie exactly in this picture plane or any other exact mathematical plane. Their exact relationship to the callosal bundle can be viewed only in 3D, as described in the references.)

As shown in the comparison of Mr. Binney's callosal outline to the average for the 15 normal adult male Seattle subjects (previous page), the outline shape of his callosal midcurve appears abnormal both at the left of the figure (the anatomical anterior, the regions called "genu" [knee] and "rostrum" [beak]) and just to the right (the anatomical posterior) of the top of the arch, the region called "isthmus" [narrowing]. I will review these two aspects separately.

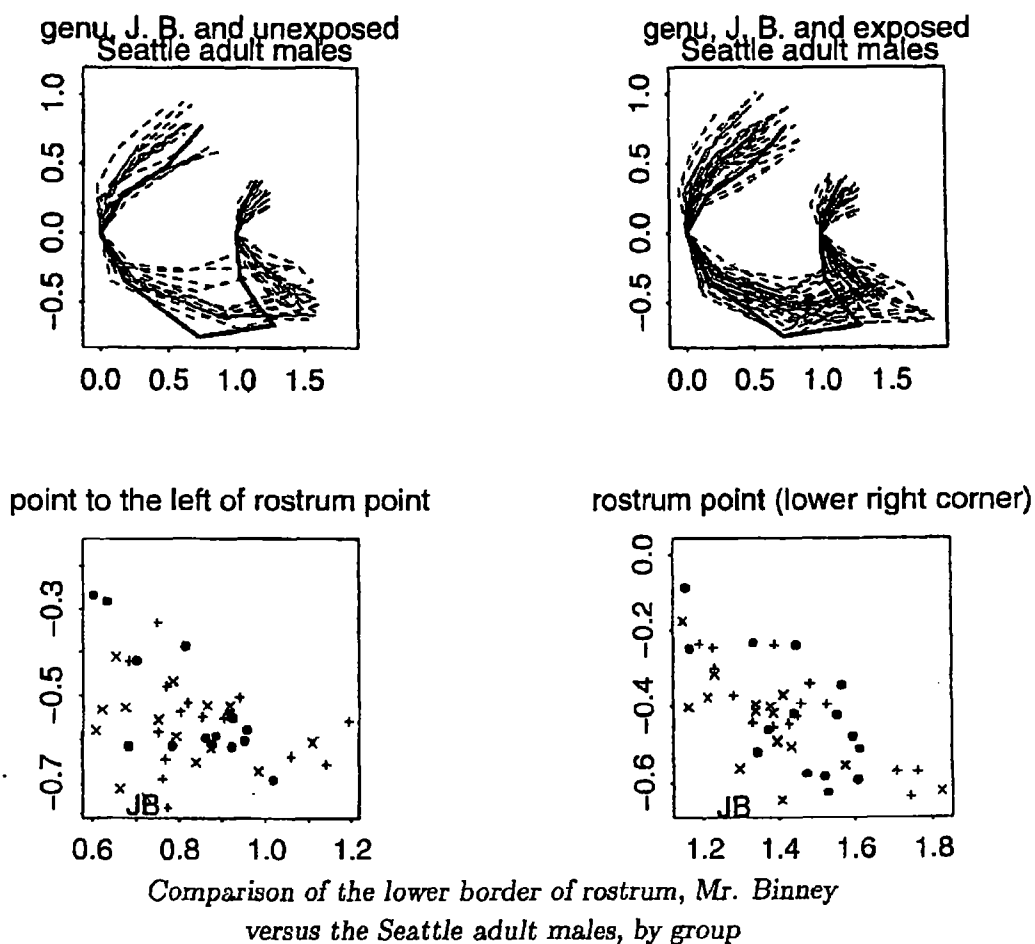


*Comparison of Mr. Binney's isthmus thickness
with that of the Seattle subjects by group*

The figure on this page considers the more striking of the two features, the isthmus thinning. The figure here shows the range of minimum isthmus widths in the entire Seattle sample of 180 subjects. The solid dots are for the 60 subjects unexposed to alcohol, while the + 's and x 's denote the FAE and FAS cases, respectively, and "JB" stands for Mr. Binney. The horizontal axis of the graph sets out millimeters of separation in the actual

brain, distance from top to bottom in the narrowing corresponding to the crimp in Mr. Binney's outline (page 3). One out of every nine of the FASD isthmuses (top two rows) is thinner than the thinnest Seattle unexposed isthmus.

But Mr. Binney's isthmus thickness of 2.1 millimeters is not even 40% of the Seattle normal average — it is less than two-thirds the thickness of any isthmus in our normal sample, and is in fact 10% thinner than even the thinnest isthmus in our sample of Seattle patients with FASD. Put another way, **Mr. Binney's isthmus is the thinnest on this entire chart of 178 callosa**, including 117 from people diagnosed with FASD. It is almost two-thirds of the way to the actual disconnection (a "thickness" of 0) that is reported to characterize some of the earliest-affected FASD cases, whose neuropsychological deficits are usually seen to be particularly severe.



The other striking feature of Mr. Binney's callosal outline as displayed on page 3 is the deformity at the lower left (lower anterior) of the callosum, the structure called rostrum.

In the top row of the four-part figure above I have displayed this part of the callosal outline as if two of its points, the "front" and the "back" of the knee, were both fixed in position. (This is called *two-point shape coordinates*, a standard technique in the kind of statistics I am using.) The heavy line is Mr. Binney's genu outline; the dashed lines on the left are those for the Seattle unexposed adult males, and on the right for the FASD adult males. In the region of the rostrum, Mr. Binney's outline clearly drops well below and to the left — antero-caudally — with respect to the normal outlines, but it is not at all far from some of the outlines in the panel at the right that show the shape of this part of the callosum in our Seattle FASD subsample. In the bottom row I convert these patterns to little dot diagrams as I did for the isthmus thickness data on page 5. At both of the lowest points on this outline, Mr. Binney's callosal form is much more similar to that of some of our Seattle adult males with FASD than it is to any of the Seattle normals.

A useful way to summarize the information in a diagram like this one for the purpose of detecting FASD damage that we are pursuing here is to pretend that Mr. Binney was a 46th "subject" in our Seattle adult male study, then inquire as to the odds of his having come from the FASD group vs. from the group of unexposed. This standard statistical computation proceeds by a version of the familiar bell-curve model used for many other kinds of statistical reasoning. The statistic corresponding to the odds-ratio we were asking about is called a *likelihood ratio*. Judging by his rostrum, Mr. Binney's odds of having come from the FASD group are about 80 to 1. This inference is separate from the inference based in the obvious damage at isthmus, and, clearly, each strengthens the other.

Conclusions. Mr. Binney's midline callosal outline shows clear features of damage from high prenatal exposure to alcohol. No similar pattern of callosal damage has been reported in connection with any other prenatal exposure than to alcohol or as a sign of any other syndrome occurring with any frequency in a general population. Once the fact of his exposure is established, then, one infers that this callosal shape abnormality is a direct effect of the prenatal environment: that is, that Mr. Binney's brain was permanently damaged before birth by the prenatal alcohol exposure. The callosum shape abnormalities demonstrated here serve as a detection of the CNS abnormality that is required for most of the diagnoses in the FASD range. His seems to be an unusually severe case, in view of the magnitude of that deformity at isthmus.

Recall that FASD is a collection of irreversible congenital syndromes of organic brain damage induced by heavy prenatal exposure to alcohol. One looks at the callosum because it's the brain region that shows most clearly whether there has been alcohol damage. That's partly because it is so sensitive to alcohol (the cells are moving around early in embryonic life, and alcohol confuses the signals they use for deciding when to stop moving); partly because it is relatively feasible to measure carefully, as I have done to produce the shape and the statistics here; but mainly because its shape is stable among normal individuals yet so variable among the alcohol-damaged as to be suitable for use as a reliable sign of

damage the way we are using it here. For these three reasons, an abnormality of shape of the corpus callosum in a person who has been exposed to high levels of prenatal alcohol counts as evidence of the CNS abnormalities that must be detected in order to assert that that person has actually incurred one of the fetal alcohol spectrum of disorders.

It appears from the analysis detailed above that Mr. Binney shows CNS structural abnormalities, namely, abnormalities of callosal shape, similar to those encountered in some patients already diagnosed in the FASD range. Once exposure is established, a specific diagnosis in the FASD range would then follow from a professional who is licensed to pronounce diagnoses in this way. Additional evidence of alcohol-related neurobehavioral abnormalities often strengthens inferences like these. I detail the logic of the associated diagnosis in the memorandum appended to this report, a memorandum intended for forwarding to a diagnosing physician.

There are typical ways that persons diagnosed with fetal alcohol spectrum disorder behave in specific social contexts requiring competent *executive functioning* (P. D. Connor, P. Sampson, F. Bookstein, H. Barr, and A. Streissguth, "Direct and indirect effects of prenatal alcohol damage on executive function," *Developmental Neuropsychology* 18:331-354, 2000): contexts involving, in particular, authority, rule-based behavior, or assessment of the intentions of others. The damage at the anterior (left) end of Mr. Binney's callosum correlates with associated deficits in the functioning of the corresponding parts of the cortex, the frontal lobes, which specialize in these executive functions.

In particular, the great majority of persons diagnosed with FASD have specific deficits of "social intelligence" much more profound than their deficits of IQ (see Ann Streissguth, F. Bookstein, H. Barr, P. Sampson, and J. Young, "Risk factors for adverse life outcomes in Fetal Alcohol Syndrome and Fetal Alcohol Effects," *Journal of Developmental and Behavioral Pediatrics* 25:228-238, 2004). They are typically rated, for instance, as unaware of the consequences of their behaviors, as sharing poor judgment in choosing whom to trust, and as having specific deficits in the domain of moral reasoning (telling right from wrong: A. M. Schonfeld, S. N. Mattson, and E. P. Riley, "Moral maturity and delinquency after prenatal alcohol exposure," *Journal of Studies of Alcohol* 66:545-554, 2005). For a discussion of these and other typical behaviors, see, for example, Ann Streissguth, *Fetal Alcohol Syndrome: A Guide for Families and Communities* (Paul H. Brookes, Inc., 1997), or A. P. Streissguth, F. L. Bookstein et al., "A Fetal Alcohol Behavior Scale," *Alcoholism: Clinical and Experimental Research* 22:325-333, 1998. Persons with FASD typically have great difficulty staying out of trouble and make terrible decisions under stress, often over and over again. Often they have special difficulties with inappropriate sexual behaviors. Any forensic construal of Mr. Binney's crimes should take into account the possible origin of typical behaviors like these in the congenital brain damage that, pending evaluation of exposure, has been statistically detected here — damage for which, of course, Mr. Binney bears no personal responsibility.

Availability of this knowledge as of the date of the trial. Mr. Binney's trial took place in 2003. Fetal alcohol syndrome has been known since 1973, and the shared aspects of behavioral deficit between patients who did and did not have the facial stigmata (patients with diagnoses of FAS vs. FAE) were well known to the research community by the early 1990's. In respect of the neuroanatomical signs, the fetal alcohol research community already knew by 1995 that the corpus callosum was a particular focus of the structural damage caused by prenatal alcohol exposure, that the midline isthmus was the most sensitive part of the callosum for measurement of this damage, and that the most common sign of the disease was a thinning of the arch in that region. (Edward P. Riley et al., "Abnormalities of the corpus callosum in children prenatally exposed to alcohol," *Alcoholism: Clinical and Experimental Research*, volume 19, pp. 1198-1202, 1995; this paper had been presented in many national conferences beginning in 1992.) Riley was then, and remains, the most senior neuropsychologist in the American fetal alcohol research community, and so his result would be known to any competent expert examining Mr. Binney's MR image. In fact, it was this Riley paper that stimulated our own research into improved quantification of this same region, the research published in 2002 as cited on page 1. By 2003, the combination of Riley's results, ours, and additional confirmations by groups at UCLA and elsewhere had already led to the recommendation (part of the 2004 U. S. government guidelines) that "change in shape of the corpus callosum" would count as confirmation of the brain damage component needed for an FASD diagnosis. (The recommendation was already present in the drafts of those guidelines circulated to the scientific working group of 40—an unusually large group of experts—who ratified them the same year.) In short, as of the date of Mr. Binney's trial, any clinician competent to examine a brain image for evidence of FASD would know he needed to look at the slice on page 2 of this report and would recognize the implications for the decision at hand of what is so obvious in that image.



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March 27, 2007

MEMORANDUM

TO: any physician who may be considering diagnosing Mr. Jonathan Binney
with a fetal-alcohol-related disorder

FROM: Fred L. Bookstein

RE: the logical role of my structural finding in producing an FASD diagnosis

Dear Doctor,

This memorandum is appended to a letter setting out my technical findings regarding the form of Mr. Jonathan Binney's midline corpus callosum in a recent MR image of his brain. I have detected abnormalities in that image, namely, shape features noted in his image that are also found in some patients in our sample of Seattle adult males with an FAS or FAE diagnosis (which today would be lumped together as FASD, "fetal alcohol spectrum disorders") but that are not encountered in our sample of adult males prenatally unexposed to alcohol. Once it is established that Mr. Binney was prenatally exposed to high levels of alcohol, these abnormalities become clinically significant. My report should have been accompanied by a dossier of the evidence for that exposure and possibly also by an evaluation of neurological or functional performance deficits, the other prongs of the standard diagnostic protocols. This memo is to set out the role of my specific finding within the data flow according to which diagnoses in the FASD domain are generally produced.

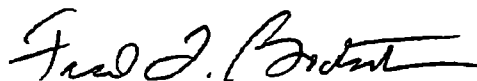
Fetal Alcohol Syndrome is a specific medical diagnosis based on a joint assessment of prenatal alcohol exposure, growth deficiencies, particular facial signs, and central nervous system (CNS) abnormalities. Fetal alcohol spectrum disorder (FASD) is an "umbrella"—a range of diagnoses that modify the preceding list to accommodate (i) evidence for alcohol-related brain damage without all of the growth-related or face-related features or (ii) evidence of that damage as observed at ages at which the corresponding growth effects or facial effects are no longer reliably detectable.

Protocols for assessing CNS damage are the same throughout the FASD range. For instance, in the definitions of ARND [alcohol-related neurodevelopmental disorder] and FAS as tabulated in Stratton et al., eds., *Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention, and Treatment*, Institute of Medicine, National Academy [of Sciences] Press, 1996, pages 76–77, the language about "CNS neurodevelopmental abnormalities" in ARND, paragraph D of that characterization, is identical to the language about the same class of abnormalities as they pertain to FAS, paragraph A of *that* characterization.

These CNS assessments are typically classified as structural, neurological, or functional. Abnormalities must be noted under one or more of these three headings, as set out in the current United States federal guidelines (*Fetal Alcohol Syndrome: Guidelines for Referral and Diagnosis*, National Center on Birth Defects and Developmental Disabilities,

Centers for Disease Control and Prevention, Department of Health and Human Services, 2004). On page 14 of that document, "reduction in size, or change in shape of the corpus callosum" is explicitly noted as one of the officially recognized varieties of CNS structural abnormalities associated with confirmed exposure to high levels of alcohol before birth. The federal guidelines also suggest assessments of size or shape of the cerebellum and the basal ganglia. Of these three brain structures, the corpus callosum seems to afford the optimal combination of ease and reliability of assessment with strength of the discriminatory signal. I would be happy to supply you with electronic copies of either of the documents mentioned in this paragraph or the preceding one.

My finding of an alcohol-related callosal abnormality, by counting as a "structural" abnormality in the sense of the CDC document, satisfies the requirement that there be evidence of CNS abnormality in terms of "structural, neurological, or functional deficits, or a combination thereof." The particular callosal criterion of the finding put forward here is consistent not only with the publications of my group cited above and of other groups also interested in the human callosum but also with a great range of experimental findings in laboratory animals. For a good recent review volume on all these matters, please see Michael W. Miller, ed., *Brain Development: Normal Processes and the Effects of Alcohol and Nicotine*, Oxford University Press, 2006. The chapters by Claire Coles and by Susanna Fryer et al. are particularly helpful for placing the current standards for detection of CNS abnormalities in their experimental and epidemiological context. The discrimination protocol used for this report is explicitly approved as an "especially useful diagnostic tool" on page 147 of this authoritative review volume. In practice, an FASD diagnosis will better lead to an understanding of the individual defendant when this assessment of alcohol-related brain structural abnormalities is combined with assessments of cognitive or neurobehavioral deficits as well, and in the course of the main text of my report I have recommended this supplementary strategy to defense counsel, even though it is not strictly necessary for the production of the diagnosis you have been asked to consider.



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1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 FLORENCE DIVISION

4 UNITED STATES OF AMERICA)

5 VS.)

6 DANNY RAY EDWARDS,)

7 DEFENDANT.)

8 -----X

CRIMINAL
NO. 4:99-722

9 UNITED STATES COURTHOUSE
10 FLORENCE, SOUTH CAROLINA
11 THURSDAY, 10:00 A.M.,
12 MAY 18, 2000.

13 TRANSCRIPT OF SENTENCING HEARING PROCEEDINGS
14 BEFORE THE HON. C. WESTON HOUCK, CHIEF DISTRICT JUDGE

15 APPEARANCES:

16 A. W. BETHEA, JR., ESQ.
17 ASSISTANT UNITED STATES ATTORNEY
18 FLORENCE, SOUTH CAROLINA
FOR THE GOVERNMENT.

19 WILLIAM F. NETTLES IV, ESQ.
20 ASSISTANT FEDERAL PUBLIC DEFENDER
21 FLORENCE, SOUTH CAROLINA
FOR THE DEFENDANT.

22 STENOGRAPHIC REPORTING AND COMPUTER-AIDED TRANSCRIPTION
23 VINCE ROLLAND P O BOX 2317 FLORENCE SC 29503 843-669-7726
24
25

1 (THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:)

2 THE COURT: ALL RIGHT. MR. BETHEA.

3 MR. BETHEA: UNITED STATES VS. DANNY RAY EDWARDS,
4 99-722.

5 THE COURT: MR. NETTLES, YOU REPRESENT MR.
6 EDWARDS?

7 MR. NETTLES, THAT IS MR. EDWARDS THERE WITH YOU?

8 MR. NETTLES: YES, SIR.

9 THE COURT: LET'S LOOK AT THE PRESENTENCE
10 INVESTIGATION REPORT AND BE SURE THAT WE'RE ALL TALKING
11 ABOUT THE SAME DOCUMENT. THE REPORT THAT I HAVE HERE
12 INDICATES IT WAS PREPARED ON SEPTEMBER 30, 1999. THERE'S
13 NO INDICATION IT WAS EVER REVISED. IT'S 26 PAGES, 127
14 PARAGRAPHS LONG. IT'S SIGNED ON THE LAST PAGE BY MAUREEN
15 J. KINNEY AND APPROVED BY MICHAEL LEESON. IS THAT THE
16 REPORT WE'RE TALKING ABOUT?

17 MR. NETTLES: YES, SIR.

18 THE COURT: ATTACHED THERETO IS A 7 PAGE ADDENDUM
19 SIGNED BY THE SAME PEOPLE.

20 MR. NETTLES: THAT'S CORRECT, JUDGE.

21 THE COURT: IS THAT THE ONLY ADDENDUM?

22 MR. NETTLES: JUDGE, THERE WAS A SECOND ADDENDUM.

23 THE COURT: I HAVE THAT, DATED APRIL 4.

24 MR. NETTLES: RIGHT. ALL IT DID WAS CHANGE THE
25 RESTITUTION FIGURE FROM \$15,140 TO \$2,925.

1 THE COURT: YOU HAVE TWO THOSE ADDENDUMS IN THE
2 REPORT?

3 MR. NETTLES: YES, SIR.

4 THE COURT: HAVE YOU GONE OVER THEM WITH YOUR
5 CLIENT?

6 MR. NETTLES: YES, SIR.

7 THE COURT: IN YOUR JUDGMENT, DOES HE UNDERSTAND
8 THEM?

9 MR. NETTLES: YES, SIR.

10 THE COURT: MR. EDWARDS, YOU'VE HEARD THE
11 STATEMENTS MADE HERE IN COURT. HAVE YOU SEEN THAT REPORT
12 AND THOSE TWO ADDENDUMS?

13 THE DEFENDANT: YES, SIR, I HAVE.

14 THE COURT: HAVE YOU READ THEM?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: UPON READING THEM, DO YOU UNDERSTAND
17 THEM?

18 THE DEFENDANT: YOU'RE SAYING ON THE \$15,000, ON
19 THE SECOND ADDENDUM --

20 THE COURT: HAVE YOU READ THE INVESTIGATION REPORT
21 AND THE TWO ADDENDUMS?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: AND UPON READING THEM, DO YOU
24 UNDERSTAND THEM?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: IN ADDITION TO THAT, MR. NETTLES HAS
2 EXPLAINED THEM TO YOU?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT'S
5 IN THERE?

6 THE DEFENDANT: NO, SIR.

7 THE COURT: WHAT ABOUT EXCEPTIONS, MR. NETTLES,
8 ARE THERE ANY FACTUAL EXCEPTIONS OR OBJECTIONS
9 OUTSTANDING?

10 MR. NETTLES: YES, SIR.

11 THE COURT: I HAVE THE FIRST ADDENDUM HERE. WHICH
12 OF THOSE EXCEPTIONS ARE STILL OUTSTANDING?

13 MR. NETTLES: JUDGE, PAGE 2, PARAGRAPH 22.

14 THE COURT: THAT'S STILL OUTSTANDING.

15 MR. NETTLES: YES, SIR, JUDGE, AND THE REASON
16 THAT'S IMPORTANT, IT'S STILL OUTSTANDING IS THAT IS MY
17 CLIENT'S VERSION OF THE WAY THE EVENTS TRANSPIRED, THE
18 INFORMATION THAT WE SUBMITTED. HE'S GOING TO HAVE TO
19 TESTIFY PROBABLY DOWN THE ROAD.

20 THE COURT: WHAT OTHER -- LET'S GO THROUGH THE
21 EXCEPTIONS AND IDENTIFY THEM AND THEN WE'LL PROBABLY BE
22 AT ONE O'CLOCK, RECESS AND COME BACK AND TAKE THEM UP ONE
23 BY ONE. PARAGRAPH 22. WHAT'S THE NEXT ONE?

24 MR. NETTLES: PARAGRAPH 36. THESE OBJECTIONS ALL
25 RELATE TOGETHER, JUDGE, AND CAN BE DONE AT THE SAME TIME.

1 PAGE THREE AT THE TOP. PARAGRAPH 47, 49, 51 THROUGH 55
2 AND 61, ACTUALLY ONE LEGAL ARGUMENT FOR ALL OF THEM AT
3 THE SAME TIME.

4 THE COURT: 47, 49, 50, 51 THROUGH 55 AND 61.
5 WHAT'S NEXT?

6 MR. NETTLES: PARAGRAPH 49.

7 THE COURT: OKAY.

8 MR. NETTLES: PARAGRAPH 62. PARAGRAPH 65 AND, 64
9 AND 65 WILL BE DETERMINED BY WHAT YOU RULE ON THE
10 PRECEDING PARAGRAPHS.

11 PARAGRAPH 79.

12 THE COURT: OKAY.

13 MR. NETTLES: AND THE REMAINDER OF THE EXCEPTIONS
14 HAVE ALREADY BEEN ACCEPTED AS SUPPLEMENTAL INFORMATION BY
15 WAY OF THE ADDENDUM.

16 THE COURT: LET'S TAKE A RECESS AND WE'LL COME
17 BACK AT 2:30. FRANKLY, THIS REPORT WAS MISSING FROM MY
18 PACKET AND I DID NOT GET IT UNTIL THIS MORNING, SO I'LL
19 HAVE TO STUDY IT OVER LUNCH. WE'LL COME BACK AT 2:30 AND
20 PICK IT UP AT THAT TIME.

21 (RECESS).

22 THE COURT: ALL RIGHT. MR. BETHEA. BEFORE WE
23 TOOK THE RECESS, WE WENT THROUGH THE ADDENDUM AND MR.
24 NETTLES ADVISED WHICH OBJECTIONS TO THE PRESENTENCE
25 REPORT HE STILL WISHED TO PURSUE. HOW DO YOU WANT TO

1 PROCEED?

2 MR. BETHEA: JUDGE, WE RESOLVED MOST OF IT. IT'S
3 A LEGAL DISPUTE WHETHER THE OFFENSES ARE RELATED OR
4 UNRELATED WITHIN THE DEFINITION. THE OBJECTION BY THE
5 DEFENDANT, AS I UNDERSTAND IT, MR. NETTLES CAN CORRECT ME
6 IF I'M WRONG, I'M LOOKING AT THE ADDENDUM TO THE
7 PRESENTENCE REPORT. PAGE THREE AT THE TOP, IT DEALS WITH
8 THE MOST SECTIONS AT ONCE. PARAGRAPHS 47, 49, 50, ON AND
9 ON THROUGH 61, IT'S MY UNDERSTANDING THAT HE AGREES NOW
10 THAT THOSE SHOULD COUNT, AND WE AGREE THAT ONE OF HIS
11 OTHER OBJECTIONS IS PROBABLY MERITORIOUS, SO MAYBE IT
12 WOULD BE BETTER IF I LET HIM RESPOND TO WHAT HE WANTS TO
13 WITHDRAW AND WHAT HE WANTS TO MAINTAIN.

14 MR. NETTLES: THANK YOU, YOUR HONOR. PARAGRAPH
15 47.

16 THE COURT: LET'S START AT 22. THAT'S THE FIRST
17 ONE.

18 MR. NETTLES: JUDGE, WE WOULD JUST ASK THAT THE
19 LANGUAGE WE HAVE IN THE ADDENDUM WHERE IT STARTS THE
20 DEFENDANT MAINTAINS, BE ADDED TO THE PRESENTENCE REPORT.
21 THAT'S THE DEFENDANT'S VERSION OF WHAT HAPPENED AT THAT
22 INCIDENT. HE'S GOING TO BE CALLED UPON TO TESTIFY LATER
23 BY THE GOVERNMENT AGAINST SOME OTHER INDIVIDUALS, AND
24 THAT IS GOING TO BE HIS TESTIMONY, WHAT WE'VE ADDED, AND
25 IF HE'S CROSS EXAMINED ABOUT THE OFFENSE CONDUCT OF HIS

1 PRESENTENCE REPORT, WE WANT THAT TO BE CONSISTENT TO WHAT
2 HE TESTIFIES TO LATER ON.

3 MR. BETHEA: I HAVE NO OBJECTION TO THAT, YOUR
4 HONOR.

5 THE COURT: OKAY.

6 MR. NETTLES: DO YOU WANT ME TO GO TO PARAGRAPH 36
7 NOW, JUDGE?

8 THE COURT: I THINK SO. THAT'S THE NEXT ONE.

9 MR. NETTLES: JUDGE, PARAGRAPH 36 IS WHERE MY
10 CLIENT WAS DENIED BY THE PROBATION OFFICER AND
11 RECOMMENDED TO THE COURT THAT HE RECEIVE NO ADJUSTMENT
12 FOR ACCEPTANCE OF RESPONSIBILITY. I BELIEVE THAT IS
13 BASED ON THE FACT THAT THE DEFENDANT COMMITTED, STOLE
14 SOME THINGS WHILE HE WAS OUT ON BOND, HE VIOLATED THE
15 TERMS OF HIS BOND AT THAT TIME.

16 WE WOULD ASK YOUR HONOR TO GIVE HIM ACCEPTANCE OF
17 RESPONSIBILITY BECAUSE HE HAS TRUTHFULLY ADMITTED THE
18 CONDUCT THAT CONSTITUTES THIS OFFENSE. HE DID SO ON AN
19 INFORMATION. HE MADE HIS INITIAL APPEARANCE BEFORE THIS
20 COURT WHEN HE PLED GUILTY. HE WAS THE FIRST PERSON TO
21 COME FORWARD IN THIS CASE, WHICH IS, AS WILL DEVELOP
22 TODAY, JUDGE, THERE'S GOING TO BE A HUGE CASE IN FRONT OF
23 YOUR HONOR DEALING WITH A NUMBER OF STOLEN PIECES OF
24 EQUIPMENT AND INDIVIDUALS PURCHASING THAT EQUIPMENT, HE
25 VOLUNTARILY ASSISTED AUTHORITIES.

1 THE COURT: LET'S HEAR FROM MR. BETHEA. DO YOU
2 OBJECT TO HIM RECEIVING AN ACCEPTANCE OF RESPONSIBILITY
3 DEDUCTION?

4 MR. BETHEA: YOUR HONOR, AFTER HE COMMITTED --
5 IT'S MY OPINION HE DIDN'T ACCEPT RESPONSIBILITY FOR THE
6 OFFENSE HE PLED TO. THE PROBLEM CAME WHEN HE WAS OUT ON
7 BOND, HE COMMITTED AN ADDITIONAL OFFENSE WHILE OUT ON
8 BOND. AS A RESULT OF THAT, PROBATION TOOK AWAY THE THREE
9 POINTS.

10 THE COURT: WHY?

11 MR. BETHEA: BECAUSE I GUESS THE PLEA AGREEMENT
12 REQUIRES THAT YOU TRUTHFULLY ACCEPT RESPONSIBILITY AND
13 THAT CARRIES WITH IT, YOU KNOW, THE ESSENCE THAT YOU'RE
14 REMORSEFUL FOR YOUR CONDUCT AND YOU'RE NOT GOING TO
15 CONTINUE THAT KIND OF BEHAVIOR.

16 THE COURT: SHOW ME WHERE 3E1.1 SAYS ANYTHING
17 ABOUT THAT.

18 MR. BETHEA: WELL, I DIDN'T TAKE THE POINTS AWAY,
19 JUDGE, AND I'M NOT QUITE SURE EXACTLY WHAT THE BASIS WAS.
20 MAYBE I BETTER LET PROBATION ANSWER THAT.

21 THE COURT: ALL RIGHT.

22 THE PROBATION OFFICE CORRECTLY LOOKED AT THE
23 APPLICATION NOTES IN THE COMMENTARY, TO 3E1.1 AND THEREIN
24 IT SAYS, IN DETERMINING WHETHER A DEFENDANT QUALIFIES
25 UNDER SUBSECTION A, APPROPRIATE CONSIDERATIONS INCLUDE

1 BUT ARE NOT LIMITED TO THE FOLLOWING. AND THERE ARE A
2 NUMBER OF ITEMS LISTED THERE. THE SECOND ONE, B, READS
3 AS FOLLOWS. VOLUNTARY TERMINATION OR WITHDRAWAL FROM
4 CRIMINAL CONDUCT OR ASSOCIATION.

5 THEY CONTEND THAT HE DID NOT DO THAT BECAUSE HE
6 CONTINUED TO COMMIT THE SAME CRIME OR A SIMILAR CRIME TO
7 THAT WITH WHICH HE WAS CHARGED. I THINK THEY WERE
8 CORRECT IN CONSIDERING THAT. BUT THERE ARE OTHER
9 CONSIDERATIONS, AND I THINK WHEN I LOOK AT THE TOTAL
10 PICTURE, THAT HE IS ENTITLED TO A REDUCTION FOR
11 ACCEPTANCE OF RESPONSIBILITY, AND I'M GOING TO GIVE HIM
12 THAT DEDUCTION. I GUESS IT WAS 3, WASN'T IT?

13 MR. NETTLES: YES, SIR, JUDGE.

14 THE COURT: I'M GOING TO GIVE HIM THAT. SO
15 PARAGRAPH 36 WILL BE AMENDED TO PROVIDE A THREE LEVEL
16 REDUCTION.

17 OKAY. WHERE DO WE GO FROM THERE? THAT DISPOSES
18 OF PARAGRAPH 36.

19 MR. NETTLES: YES, SIR.

20 THE COURT: THE NEXT ONE IS 47, 49, ET CETERA, ET
21 CETERA.

22 MR. NETTLES: YES, SIR, JUDGE. I'VE DISCUSSED
23 THIS WITH MR. BETHEA, AND IN ALL CANDOR WITH THE COURT, I
24 THINK I WOULD LOSE, YOUR HONOR, I THINK THE LAW IS
25 AGAINST ME AND MR. BETHEA AGREES WITH ME.

1 THE COURT: CERTAINLY.

2 MR. NETTLES: THAT THE THREE POINTS WOULD REMAIN
3 ON PARAGRAPH 47, THAT THOSE THREE POINTS WOULD REMAIN,
4 AND THAT ON PARAGRAPH 49, MR. BETHEA HAS AGREED WITH ME,
5 HE AGREES I'M RIGHT, THAT THOSE THREE POINTS SHOULD COME
6 OFF ON PARAGRAPH 49, AND THAT 49 AND 47 ARE RELATED
7 OFFENSES.

8 THE COURT: SO WHAT YOU'RE SAYING IS YOU WITHDRAW
9 YOUR OBJECTION TO 47, AND MR. BETHEA AGREES WITH YOU ON
10 49.

11 MR. NETTLES: YES, SIR, THAT HE SHOULD HAVE NO
12 CRIMINAL HISTORY POINTS FOR THAT.

13 THE COURT: OKAY. THAT GETS US DOWN TO 50.

14 MR. NETTLES: WELL, JUDGE, THAT WOULD RESOLVE THE
15 PARAGRAPHS 47, 49, 50, 51, 52, 53, 54, 55.

16 THE COURT: OKAY. 61.

17 MR. NETTLES: JUDGE, 61, 62 I'M GOING TO HAVE TO
18 CONSULT WITH MY CLIENT JUST A SECOND. MY CLIENT WANTS ME
19 TO GO FORWARD ON THAT, JUDGE. HE MAINTAINS THAT
20 PARAGRAPH 61 AND 62 SHOULD HAVE BEEN CONSOLIDATED AS
21 RELATED CASES UNDER 4A1.3 OR 4A1.2 APPLICATION NOTE 3.
22 IF YOU LOOK BASICALLY AT ALL OF THESE CONVICTIONS, THE
23 DEFENDANT RECEIVED THEM ON 11-1-93. HE GOT THE SAME
24 SENTENCE, BASICALLY, ON ALL OF THOSE. EXCEPT, ALL THE
25 WAY THROUGH 62, FOUR YEARS SUSPENDED TO THREE YEARS PLUS

1 THREE YEARS PROBATION.

2 THE COURT: LET ME LOOK AT THEM A LITTLE CLOSER.

3 SO WE'RE LOOKING NOW AT 61 AND 62. IS THAT
4 CORRECT?

5 MR. NETTLES: YES, SIR. IF YOU LOOK BACK AT THE
6 ENTIRE --

7 THE COURT: YOU'RE SAYING THAT THEY WERE
8 CONSOLIDATED FOR SENTENCING?

9 MR. NETTLES: YES, SIR, I'M SAYING THEY WERE
10 RELATED CASES AND CONSOLIDATED FOR SENTENCING.

11 THE COURT: ONE OF THEM IS MARLBORO AND ONE IS IN
12 FLORENCE COUNTY.

13 MR. NETTLES: I CAN TELL YOU HOW THAT HAPPENED.
14 HE PLED GUILTY TO THE MARLBORO COUNTY CONVICTION WHILE HE
15 WAS IN DARLINGTON COUNTY PLEADING TO THESE OTHER ONES.

16 THE COURT: HE DID IT OVER THE TELEPHONE?

17 MR. NETTLES: NO, SIR, WITHIN CIRCUITS YOU CAN
18 WAIVE YOUR RIGHT TO PLEAD IN ONE COUNTY OR THE NEXT.

19 THE COURT: SO HE MOVED THE MARLBORO TO
20 DARLINGTON, BOTH OF THEM BEING IN THE FOURTH CIRCUIT?

21 MR. NETTLES: YES, SIR.

22 THE COURT: OKAY.

23 MR. NETTLES: THEN THE VERY NEXT DAY OR FOUR DAYS
24 LATER, TO COMPLETE THE PLEA BARGAIN HE WENT TO FLORENCE
25 COUNTY AND PLED TO THE OFFENSE LISTED IN PARAGRAPH 62.

1 THE COURT: HOW DO WE KNOW THAT?

2 MR. NETTLES: IT SAYS IT.

3 THE COURT: WHERE?

4 MR. NETTLES: IT SAYS PARAGRAPH 62, PLED ON
5 11-5-93, PARAGRAPH 61 --

6 THE COURT: I UNDERSTAND. YOU SAID HE WENT TO
7 FLORENCE COUNTY AND COMPLETED THE PLEA BARGAIN. HOW DO
8 WE KNOW THAT?

9 MR. NETTLES: WELL, HE TELLS ME HIS ATTORNEY
10 WORKED OUT A DEAL WHERE HE WOULD PLEAD TO ALL OF THESE
11 OFFENSES AND THIS WOULD BE THE SENTENCE HE RECEIVED AND
12 THEY WOULD ALL BE CONCURRENT, JUDGE.

13 THE COURT: YES, SIR.

14 THE PROBATION OFFICER: I WOULD POINT OUT THE
15 CASES HE'S TALKING ABOUT IN THE OTHER COUNTIES, HE WAS
16 SENTENCED ON 11-1-93. HE WAS ARRESTED FOR A NUMBER OF
17 THOSE OFFENSES ON APRIL OF '92, AND THE OFFENSE HE'S
18 TALKING ABOUT IN PARAGRAPH 61 OCCURRED IN JULY OF '93 AND
19 HE WAS ARRESTED IN AUGUST OF '93, SO WHAT YOU'VE GOT IS
20 AN INTERVENING ARREST.

21 THE COURT: WHAT ABOUT IF THEY ARE CONSOLIDATED
22 FOR SENTENCING?

23 THE PROBATION OFFICER: IT DOESN'T MATTER. IF
24 THERE'S AN INTERVENING ARREST, IT'S NOT A RELATED CASE.

25 THE REFERENCE WOULD BE APPLICATION NOTE 3 UNDER

1 4A1.2, THE VERY FIRST SENTENCE.

2 THE COURT: LET ME FINISH READING THIS.

3 NOW, GO THROUGH THAT AGAIN, MR. LEESON.

4 THE PROBATION OFFICER: IF YOU LOOK AT PARAGRAPH
5 60 AND THOSE PRIOR TO THAT, THE OFFENSES OCCURRED IN
6 1991.

7 THE COURT: DECEMBER 19, 1991.

8 THE PROBATION OFFICER: YES, SIR. HE WAS ARRESTED
9 IN APRIL OF '92 ON THOSE OFFENSES. NOW WE GO TO A
10 DIFFERENT COURT, MARLBORO COUNTY, AND THE OFFENSE
11 OCCURRED IN JULY OF '93, WHICH IS APPROXIMATELY A COUPLE
12 OF YEARS LATER. HE WASN'T ARRESTED ON THOSE OFFENSES
13 UNTIL AUGUST OF '93. SO ESSENTIALLY WHAT YOU HAVE IS AN
14 INTERVENING ARREST FROM APRIL OF '92 THROUGH AUGUST OF
15 '93.

16 THE COURT: LET'S LOOK AT 62. WHAT DID WE LEARN
17 AT 62?

18 THE PROBATION OFFICER: THE POSITION WE'VE TAKEN
19 IS THOSE OFFENSES OCCURRED AND WERE SENTENCED IN SEPARATE
20 COURTS AND OCCURRED IN 1993, WHICH IS NOT EVEN RELATED TO
21 THOSE '91 OFFENSES. YOU'VE GOT TIME SEPARATION.

22 THE COURT: WHAT ABOUT RELATED TO PARAGRAPH 61?

23 THE PROBATION OFFICER: AGAIN, SIR, WE'VE GOT
24 DIFFERENT JURISDICTION. THIS SENTENCING OCCURRED IN
25 FLORENCE COUNTY AND WAS INVESTIGATED IN FLORENCE COUNTY,

1 THE OTHER WAS INVESTIGATED AND SENTENCED IN MARLBORO
2 COUNTY, DIFFERENT JURISDICTIONS.

3 THE COURT: MR. NETTLES CONTENDS THAT THEY WERE
4 ALL PART OF THE SAME PLEA AGREEMENT AND THAT CONSTITUTES
5 A CONSOLIDATION FOR SENTENCING PURPOSES.

6 THE PROBATION OFFICER: UNLESS THERE IS SOME
7 INDICATION ON THE RECORD THEY WERE SENTENCED AS RELATED
8 CASES IN STATE COURT, THEY ARE NOT RELATED. AGAIN,
9 APPLICATION NOTE 3 SAYS PRIOR SENTENCES ARE NOT RELATED
10 IF THEY ARE OFFENSES SEPARATED BY AN INTERVENING ARREST.
11 WE HAVE AN INTERVENING ARREST.

12 THE COURT: WHAT IS THE INTERVENING ARREST BETWEEN
13 61 AND 62?

14 THE PROBATION OFFICER: WELL, IN THIS CASE WE'RE
15 NOT SAYING IT'S AN INTERVENING ARREST. WHAT WE'RE SAYING
16 IS IT'S DIFFERENT JURISDICTIONS, DIFFERENT OFFENSES
17 INVESTIGATED BY DIFFERENT AGENCIES, SO THEY ARE SEPARATE
18 CONVICTIONS.

19 THE COURT: HOW DO WE KNOW THEY AREN'T? THIS
20 INFORMATION THAT'S IN THE PROBATION OFFICE HERE WAS TAKEN
21 FROM THE OFFICIAL RECORDS OF THOSE COURTS.

22 MR. NETTLES: JUDGE --

23 THE COURT: AND WHAT YOU'RE ASKING ME TO DO IS
24 DISREGARD THOSE OFFICIAL RECORDS AND EXCEPT THE HEARSAY
25 STATEMENT OF YOUR CLIENT ABOUT WHAT HIS LAWYER TOLD HIM,

1 AND YOU'VE BEEN IN THIS BUSINESS LONG ENOUGH TO KNOW THAT
2 I CAN'T DO THAT.

3 MR. NETTLES: I UNDERSTAND, AND I WOULDN'T BE
4 ASKING YOU TO DO THAT, JUDGE, IF -- WERE IT NOT FOR THE
5 FACT THAT IF YOU LOOK AT THIS PRESENTENCE REPORT AND YOU
6 LOOK AT THESE CONVICTIONS AND YOU SEE THE DATE OF
7 CONVICTION, WHEN HE PLED GUILTY, AND SEE THE SENTENCE
8 THAT HE GOT IN RELATION, THAT CORROBORATES WHAT YOU'VE
9 TERMED MY CLIENT'S HEARSAY STATEMENTS.

10 THE COURT: I DON'T THINK IT DOES. I DON'T THINK
11 IT'S A BIT UNCOMMON FOR SOMEONE TO BE SENTENCED FOR AN
12 OFFENSE, A FLORENCE COUNTY OFFENSE THAT RELATES TO AN
13 OFFENSE HERE, AND THEN WHEN I'M SENTENCING THAT PERSON
14 FOR A RELATED OFFENSE, FOR ME TO ASK WHAT THE GUY GOT
15 OVER THERE. BECAUSE I WANT TO BE FAIR WITH HIM AND I
16 WANT TO SEE WHAT HAPPENS. AND I THINK WE ASK WHAT WE
17 GAVE, PARTICULARLY IN MOST INSTANCES WHETHER IT'S RUNNING
18 CONSECUTIVE OR CONCURRENT OR WHATEVER.

19 SO THE FACT THAT THE SENTENCES, THE WORDS ARE THE
20 SAME, DOESN'T NECESSARILY MEAN THAT THEY AROSE OUT OF THE
21 SAME AGREEMENT AND THEREBY, THEREFORE, BECAUSE OF THAT
22 SAME AGREEMENT, THEY WERE CONSOLIDATED FOR SENTENCING.
23 UNLESS THERE'S SOMETHING IN WRITING THAT BINDS THAT LATER
24 JUDGE, I DON'T SEE HOW YOU CAN SAY THAT.

25 MR. NETTLES: I'M NOT AWARE OF ANY ORDER THAT

1 CONSOLIDATES THEM, JUDGE.

2 THE COURT: YOU'VE GOT -- OBVIOUSLY, CASES ARE NOT
3 MOVED AROUND. IN THE FOURTH CIRCUIT, IT MAY BE SINCE
4 YOU'VE GOT THE SAME SOLICITOR IN MARLBORO THAT YOU'VE GOT
5 IN DARLINGTON, BECAUSE THEY ARE ELECTED CIRCUIT WIDE, IT
6 MAY BE THAT THAT SOLICITOR WILL MOVE A CASE TO MARLBORO
7 FROM DARLINGTON OR VICE-VERSA TO ACCOMMODATE AN ATTORNEY
8 OR A DEFENDANT. HE CAN'T BE IN TWO JAILS AT ONE TIME AND
9 HE MIGHT BE IN ONE JAIL IN ONE PLACE. BUT THAT'S THE
10 FOURTH CIRCUIT. FLORENCE IS IN THE 12TH CIRCUIT. THERE
11 IS NO RELATIONSHIP TO THEM. THEY GOT THEIR OWN JUDGES,
12 THEY GOT A SEPARATE SOLICITOR. THAT SOLICITOR IN
13 DARLINGTON DOESN'T HAVE ONE BIT OF JURISDICTION IN THIS
14 CIRCUIT.

15 MR. NETTLES: I UNDERSTAND.

16 THE COURT: AND UNLESS IT ALL AROSE OUT OF THE
17 STATEWIDE GRAND JURY, AND I'M NOT EVEN SURE THE STATEWIDE
18 GRAND JURY EXISTED IN 1993. WHEN DID IT COME INTO
19 EFFECT?

20 MR. NETTLES: IN THE LATE EIGHTIES, I BELIEVE.

21 THE COURT: IF IT WAS A STATEWIDE GRAND JURY,
22 THAT'S THE PURPOSE OF THE STATEWIDE GRAND JURY, TO TAKE
23 CASES ACROSS COUNTY LINES AND INDICT PEOPLE IN ONE COURT
24 FOR WHAT THEY HAVE DONE IN VARIOUS CIRCUITS AND COUNTIES.
25 I DON'T KNOW HOW I CAN GO ALONG WITH YOU ON THAT

1 ARGUMENT. I THINK WE'VE GOT TO TAKE THE OFFICIAL
2 RECORDS, WE TAKE THE OFFICIAL RECORD, THAT'S WHAT THEY
3 ARE THERE FOR. WE APPLY THOSE OFFICIAL RECORDS, AND I
4 JUST DON'T KNOW HOW YOU DO ANYTHING ELSE.

5 IF I WERE REPRESENTING THIS DEFENDANT IN FLORENCE
6 COUNTY, I'D GO IN THERE AND TELL THAT JUDGE, NOW JUDGE,
7 THIS IS WHAT HE'S DONE. HE'S GOTTEN HIMSELF IN A MESS
8 ALL OVER THIS AREA AND THIS IS WHAT HE'S DONE, AND HE'S
9 GOING TO GET SO MUCH TIME, SO WHY ARE YOU GOING TO DOUBLE
10 DIP HIM? WHY DON'T YOU GIVE HIM A BREAK, HE'S ALREADY
11 BEEN PUNISHED, AND TRY TO SELL HIM ON THE FOUR YEARS
12 SUSPENDED TO THREE YEARS AND THREE YEARS PROBATION
13 CONCURRENT. I'VE HAD YOU TRY TO DO THAT WITH A STATE
14 SENTENCE, AND I DIDN'T HAVE ANY DEAL WITH THEM. I CAN DO
15 WHAT I WANTED.

16 I JUST DON'T BUY THAT. I DON'T THINK THEY ARE
17 RELATED WITHIN THE MEANING OF 4A1.2. I'LL BE GLAD TO
18 HEAR ANYTHING ELSE YOU'VE GOT ON IT.

19 MR. NETTLES: NO, THANK YOU, JUDGE.

20 THE COURT: I'M ASSUMING YOU AGREE IF ONE WENT TO
21 THE OFFICIAL RECORDS, THEY WOULD FIND EXACTLY WHAT THE
22 PROBATION OFFICER HAS PUT IN THIS REPORT.

23 MR. NETTLES: WE DON'T HAVE ANY DISAGREEMENT.

24 THE COURT: ALL RIGHT. LET'S KEEP GOING. I GUESS
25 THE NEXT ONE IS 49.

1 MR. NETTLES: WELL, JUDGE, THAT WOULD RESOLVE
2 EVERYTHING UP TO PARAGRAPH 64 AND 65.

3 THE COURT: WELL, LET'S ADD UP, MR. BETHEA AND MR.
4 NETTLES.

5 THE PROBATION OFFICER: YOUR HONOR, PARAGRAPH 64
6 WE WILL ADJUST THE TOTAL HISTORY TOTAL SCORE FROM 20 DOWN
7 TO 17 BASED ON YOUR GRANTING OF THE THREE POINT
8 DIFFERENCE IN PARAGRAPH 49.

9 THE COURT: IS THAT ACCURATE, MR. NETTLES?

10 MR. NETTLES: I THINK IT WOULD BE A TOTAL OF 16.

11 THE PROBATION OFFICER: YES, IN 65 THE 19 WOULD BE
12 ADJUSTED TO 14 POINTS. HOWEVER, IT REMAINS A CATEGORY 6.

13 THE COURT: OKAY. MR. BETHEA, YOU CHECK THE
14 FIGURES AND YOU DO THE SAME, MR. NETTLES.

15 MR. NETTLES: THAT'S CORRECT.

16 MR. BETHEA: WE AGREE WITH THAT.

17 THE COURT: WE'RE TALKING ABOUT A CRIMINAL HISTORY
18 CATEGORY OF SIX.

19 MR. BETHEA: YES, SIR.

20 MR. NETTLES: YES, SIR.

21 THE COURT: WHAT'S NEXT.

22 MR. NETTLES: PARAGRAPH 66 WOULD BE WITHDRAWN,
23 JUDGE. PARAGRAPH 79 --

24 THE COURT: YOU DIDN'T MENTION 66 TO BEGIN WITH.
25 79?

1 MR. NETTLES: YES, SIR. WE WOULD LIKE, I HAVE
2 SLED AGENT DAVID ROPER HERE TO TESTIFY, TO TELL YOUR
3 HONOR ABOUT THIS INCIDENT, IF YOUR HONOR WANTS TO HEAR
4 TESTIMONY, BUT IT'S OUR POSITION THAT MY CLIENT, SLED
5 INVESTIGATED A BOUNTY THAT MIGHT HAVE BEEN ON MY CLIENT'S
6 HEAD FOR HIS COOPERATION WITH SLED. THE WAY THE
7 PRESENTENCE REPORT IS WRITTEN, IT TENDS TO POOH-POOH
8 THAT, BUT WE WANTED IT IN THE RECORD THAT THERE WAS AN
9 INVESTIGATION, AND THE INVESTIGATION TURNED OUT THERE WAS
10 NOT A BOUNTY, BUT THAT MY CLIENT LEGITIMATELY THOUGHT
11 THERE WAS ONE, AND BASED ON THE STATEMENTS THAT WERE MADE
12 -- WHAT HAPPENED WAS, IS A MAN MADE A STATEMENT THAT HE
13 WOULD PAY \$50,000 FOR DANNY EDWARD'S CORPSE. SLED CAME
14 TO DANNY EDWARDS AND SAID LAY LOW, DON'T GO NEAR YOUR
15 WINDOW, WE'VE GOT TO INVESTIGATE THIS THING.

16 THE COURT: YOUR CLIENT IS SHAKING HIS HEAD. I
17 DON'T KNOW WHAT HE MEANS BY THAT.

18 MR. NETTLES: I DON'T, EITHER. I CAN CALL DAVID
19 ROPER.

20 THE COURT: WHAT ABOUT IT, MR. EDWARDS?

21 THE DEFENDANT: YOUR HONOR, I HAD A TELEPHONE CALL
22 AT NINE O'CLOCK AT NIGHT SAYING I HAD TO GET AWAY FROM
23 THE WINDOWS. I GOT MY WIFE AND SON, WE WENT INTO
24 CHARLOTTE. MR. ROPER TOLD US THAT DARLINGTON COUNTY
25 WOULD BE THERE IN A FEW MINUTES TO GET OUT OF THE HOUSE.

1 WE WERE MOVED FOR THREE DAYS FROM HOME, SCARED.
2 EVERYBODY WE SAW WAS AGAINST ME. WELL, THEY ARE TRYING
3 TO MAKE IT LOOK LIKE IT WAS NOT RELEVANT, THAT IT DIDN'T
4 HAPPEN. IT HAPPENED. THREE DAYS LATER WE GO BACK HOME,
5 AND I TRIED TO ISSUE WARRANTS AGAINST MR. BESCHER THAT
6 ACTUALLY MADE THE THREAT, AND I WAS TOLD BY SLED NOT TO
7 DO IT, THAT THEY WERE GOING TO HANDLE IT AND MY
8 UNDERSTANDING AT THIS TIME IS THAT THE FEDERAL GOVERNMENT
9 HAS A SUBPOENA OR INDICTMENTS AGAINST HIM AT THIS TIME,
10 SO YOU KNOW, I FEEL LIKE SOMETHING IS GOING TO BE DONE
11 ABOUT THE SITUATION, BUT I HATE TO BE IN FEDERAL PRISON
12 AND GET BLOWED AWAY FOR SOMETHING THEY THINK WAS A JOKE.

13 THE COURT: WHAT'S THE SLED AGENT'S NAME?

14 MR. NETTLES: DAVID ROPER. HE'S SITTING RIGHT
15 OVER THERE. MR. ROPER, IS THAT TRUE?

16 MR. DAVID ROPER: BASICALLY, SIR. IF YOU WOULD
17 LIKE ME TO TELL YOU ABOUT IT, I WILL.

18 THE COURT: IF HE'S ALREADY TOLD ME ABOUT IT, I
19 DON'T WANT YOU TO TELL ME ABOUT IT UNLESS HE SAID
20 SOMETHING THAT ISN'T TRUE.

21 MR. DAVID ROPER: BASICALLY, SIR, IT'S TRUE.
22 THERE WAS A STATEMENT MADE AND WE DID INVESTIGATE IT. WE
23 DID INFORM MR. EDWARDS THAT THAT THIS STATEMENT WAS MADE
24 AND ASKED HIM TO REALLY TAKE CARE OF HIMSELF, AND THEN WE
25 ASKED HIM TO LEAVE THE HOUSE THAT NIGHT SO WE COULD

1 FURTHER INVESTIGATE IT AND FIND OUT IF THE THREAT WAS
2 REALLY VIABLE OR NOT.

3 THE COURT: DID YOU FIND OUT IT WAS A VALID
4 THREAT?

5 MR. DAVID ROPER: YES, SIR, THAT NIGHT WE WENT AND
6 GOT THE GENTLEMAN WHO MADE THE THREAT, SAT HIM DOWN AND
7 INTERVIEWED HIM, HE MADE THE STATEMENT IN A CONVENIENCE
8 STORE ADJACENT TO HIS BUSINESS IN FRONT OF TWO OR THREE
9 PEOPLE. HE SAID HE WAS JUST KIND OF, FOR BETTER TERMS,
10 JUDGE, JUST RUNNING OFF AT THE MOUTH. BUT THE STATEMENT
11 WAS MADE. WHETHER OR NOT HE WAS GOING TO CARRY IT OUT OR
12 NOT, THERE WAS NO PROOF OF THAT, BUT IT WAS MADE.

13 THE COURT: DOES THAT SATISFY YOUR OBJECTION TO
14 PARAGRAPH 79?

15 MR. NETTLES: YES, YOUR HONOR.

16 THE COURT: WHAT'S NEXT? THAT'S IT, ISN'T IT?

17 MR. NETTLES: YES, SIR. PARAGRAPH 86 HAS BEEN
18 ADOPTED BY THE PRESENTENCE WRITER, AND SO HAS PARAGRAPH
19 94. YES, SIR.

20 THAT WOULD CHANGE, OF COURSE, HIS GUIDELINE RANGE
21 TO 70 TO 87 MONTHS AT LEVEL 20, TO --

22 THE COURT: THE WAY I COMPUTE IT, THE GUIDELINE
23 RANGE IS AS FOLLOWS: TOTAL OFFENSE LEVEL 20, CRIMINAL
24 HISTORY CATEGORY OF SIX, WHICH MAKES THE DEFENDANT
25 INELIGIBLE FOR PROBATION AND DICTATES A TERM OF

1 CONFINEMENT OF BETWEEN 70 AND 87 MONTHS. FOLLOWED BY TWO
2 TO THREE YEARS SUPERVISED RELEASE, PLUS RESTITUTION IN
3 THE AMOUNT OF \$16,283.34 PLUS AN AUTOMATIC SPECIAL
4 ASSESSMENT FEE OF TWO HUNDRED DOLLARS. THE DEFENDANT
5 CAN'T PAY A FINE AND NONE IS CALCULATED. ANY OBJECTION
6 TO THAT GUIDELINE RANGE?

7 MR. NETTLES: NO, SIR.

8 THE COURT: ANY MOTION OR SUGGESTION OF ANY KIND
9 THAT WE SENTENCE ANYWHERE OUTSIDE OF THE STATED GUIDELINE
10 RANGE?

11 MR. BETHEA: YOUR HONOR, PARAGRAPH 127 OF THE
12 PRESENTENCE REPORT BY PROBATION HAS INDICATED THAT THE
13 COURT SHOULD CONSIDER THE ADEQUACY OF CRIMINAL HISTORY
14 UNDER 4A1.3 IN DETERMINING WHETHER OR NOT THE COURT
15 SHOULD DEPART UPWARD IN THIS CASE.

16 THE COURT: HOW DO I DO THAT?

17 MR. BETHEA: HOW DO YOU DO WHAT, JUDGE?

18 THE COURT: HOW DO I -- YOU'RE SAYING THAT THE
19 CRIMINAL HISTORY IS NOT ADEQUATE. HE'S GOT THE HIGHEST
20 CRIMINAL HISTORY HE CAN GET. HE'S A SIX, I CAN'T GO ANY
21 HIGHER THAN THAT. HOW DO I DEPART UPWARD?

22 MR. BETHEA: WELL, YOU RAISE THE GUIDELINES,
23 JUDGE. GENERALLY WHAT'S DONE IN THESE TYPE CASES IS ONCE
24 YOU GET SIX, YOU START GOING DOWN THE CHART. I MEAN
25 MECHANICALLY, IT'S POSSIBLE.

1 THE COURT: I DON'T KNOW WHETHER IT IS OR NOT.

2 YES. THAT'S WHAT IT SAYS.

3 WHAT ABOUT THAT, MR. NETTLES?

4 MR. NETTLES: JUDGE, I'D ASK YOU NOT TO DEPART. I
5 THINK HE'S GOT A SERIOUS CRIMINAL HISTORY CATEGORY, HE
6 DOES HAVE A SERIOUS RECORD, IT'S REFLECTED IN THE
7 CATEGORY SIX. I DON'T THINK THE FACT THAT THE PROBATION
8 OFFICER CITED IN PARAGRAPH 127, TO ADEQUATELY GIVE YOUR
9 HONOR A BASIS TO UPWARDLY DEPART, AND I'D ASK YOUR HONOR
10 NOT TO UPWARDLY DEPART AND SENTENCE HIM WITHIN THE
11 GUIDELINE RANGE. HIS ARRESTS ARE FOR THEFT OR THEFT TYPE
12 OFFENSES. HE'S NEVER BEEN A VIOLENT PERSON. THE
13 RELEVANT CONDUCT THE PROBATION OFFICER TALKS ABOUT IS NOT
14 TAKEN INTO ACCOUNT. WELL, IT IS TAKEN INTO ACCOUNT.
15 HE'S BEING HELD ACCOUNTABLE FOR 800,000 TO 1.5 MILLION
16 DOLLARS WORTH OF EQUIPMENT. HE'S BEING HELD ACCOUNTABLE
17 FOR ROLE IN THE OFFENSE. HE'S BEING HELD ACCOUNTABLE TO
18 OTHER THINGS WE DIDN'T OBJECT TO WHICH GETS HIS
19 GUIDELINES ON UP THERE, JUDGE. HE'S LOOKING AT A LOT OF
20 TIME, AND I BELIEVE THAT HIS CRIMINAL HISTORY ADEQUATELY
21 TAKES INTO ACCOUNT -- FOR INSTANCE, LOOK AT THE NATURE OF
22 SOME OF HIS CONVICTIONS. IN PARAGRAPH 47, HE GOT SOME
23 POINTS AND IT'S FOR STEALING A SWIMMING POOL PUMP.
24 PARAGRAPH 49, A LAWN MOWER AND A BRIGGS AND STRATTON
25 ENGINE. PARAGRAPH 56, STOLEN T.V. AND V.C.R.

1 THE COURT: THAT'S WHAT HAPPENED TO BE WHAT WAS
2 THERE. HE'S A THIEF AND HE'S GOING TO TAKE WHATEVER HE
3 CAN GETS HIS HANDS ON.

4 MR. NETTLES: I'M NOT SAYING THAT. BUT THOSE ARE
5 THE OFFENSES FOR WHICH HE'S BEEN CONVICTED, AND THOSE ARE
6 THE OFFENSES, I DON'T THINK THOSE ARE SUCH A NATURE THAT
7 YOUR HONOR SHOULD DEPART UPWARD, AND I WOULD ASK YOUR
8 HONOR NOT TO DEPART UPWARD. HE'S A CRIMINAL HISTORY
9 CATEGORY SIX.

10 THE COURT: THE GOVERNMENT HAS MADE A MOTION I
11 DEPART UPWARD BECAUSE THE CRIMINAL HISTORY DOES NOT
12 ADEQUATELY REPRESENT HIS CRIMINAL CONDUCT. HAVE YOU MADE
13 THE ONLY ARGUMENT YOU WANT TO MAKE ON THAT?

14 MR. NETTLES: YES, SIR, JUDGE, I HAVE.

15 THE COURT: I'D LIKE TO HEAR YOU BEFORE I RULE ON
16 THAT, I'D LIKE TO HEAR YOU AS TO WHERE YOU THINK I SHOULD
17 SENTENCE HIM WITHIN THE GUIDELINES, AND I'D LIKE TO HEAR
18 FROM THE DEFENDANT, I INVITE HIM TO MAKE ANY STATEMENT
19 HE'D LIKE TO BY WAY OF MITIGATION OR INFORMATION, AND THE
20 REASON I'M NOT RULING ON THE MOTION TO DEPART UPWARD IS
21 BECAUSE I'D LIKE TO HEAR FROM THE DEFENDANT BEFORE I RULE
22 ON IT. 4A1.3, IT SAYS A DEPARTURE UNDER THIS PROVISION
23 IS WARRANTED IF THE CRIMINAL HISTORY CATEGORY
24 SIGNIFICANTLY UNDERREPRESENTS THE SIGNIFICANCE OF THE
25 DEFENDANT'S CRIMINAL HISTORY OR THE LIKELIHOOD THAT THE

1 DEFENDANT WILL COMMIT FURTHER CRIMES.

2 IT SEEMS TO ME THAT ONE CAN ALMOST PREDICT THAT AS
3 SOON AS HE GETS OUT, HE'S GOING TO COMMIT FURTHER CRIMES.
4 IF HE CAN GET HIS HANDS ON ANYTHING TO STEAL, LOOK LIKE
5 HE'S GOING TO STEAL IT, AND IT LOOKS LIKE UNDER THAT
6 STATEMENT AND POLICY AND IN LIGHT OF THOSE FACTS, THAT
7 THE COURT SHOULD SERIOUSLY CONSIDER DEPARTING UPWARD, BUT
8 BEFORE I DO THAT, I WANT TO HEAR FROM YOU.

9 MR. BETHEA: JUDGE, THERE'S ONE THING I NEED TO
10 ADD, TOO. THIS IS AN UNUSUAL CASE. MR. EDWARDS HAS BEEN
11 -- THIS CASE AS YOU CAN TELL FROM READING IT, INVOLVED
12 THE STEALING OF, I GUESS, A LARGE AMOUNT, OVER A HUNDRED
13 PIECES OF HEAVY EQUIPMENT, A LOT OF WHICH WAS THEN SOLD
14 TO A NUMBER OF INDIVIDUALS, MANY OF WHOM ARE WELL TO DO
15 AND WHITE COLLAR TYPES, FOR INSTANCE, MIGHT BUY A
16 BULLDOZER FOR \$2,000 AND THEN CLAIM THEY DIDN'T KNOW IT
17 WAS STOLEN. WE'VE CHARGED SIX WITH COMPLAINTS THIS PAST
18 WEEK. MR. EDWARDS IS GOING TO BE A WITNESS FOR THE
19 GOVERNMENT IN A LARGE NUMBER OF CASES ALONG WITH, I
20 BELIEVE HIS NAME IS MORRISON, BEN MORRISON, MR.
21 SWERLING'S CLIENT THAT PLED IN FRONT OF YOU IN
22 CHARLESTON. THEY WERE THE TWO PRIMARY PEOPLE INVOLVED IN
23 THIS. DESPITE THE FACT WE'RE MAKING THIS MOTION, WE'RE
24 ALSO IN THE FUTURE AT SOME POINT PROBABLY GOING TO BE
25 MAKING A DOWNWARD DEPARTURE MOTION FOR HIS COOPERATION IN

1 CONNECTION WITH THOSE CASES, BECAUSE WE'RE GOING TO BE
2 CHARGING SOME 50 PEOPLE.

3 OUR ORIGINAL DEAL, I TOLD MR. NETTLES AND MR.
4 SWERLING UP FRONT BEFORE WE EVER CHARGED THESE CASES THAT
5 THAT WAS THE WAY WE WERE GOING TO HANDLE THEM. THERE
6 WERE SO MANY FACTORS INVOLVED HERE. AS I SAID, MR.
7 EDWARDS HAS BEEN COOPERATIVE, BUT I THINK I NEED TO MAKE
8 YOU AWARE IN CONNECTION WITH THAT, AT SOME POINT WE'RE
9 GOING TO BE MAKING A DOWNWARD DEPARTURE MOTION.

10 THE COURT: ALL RIGHT. MR. NETTLES.

11 MR. NETTLES: JUDGE, DANNY IS THE 11TH OF 13
12 CHILDREN. AT THE AGE OF FOUR, HE AND HIS BROTHER WERE
13 PUT UP FOR ADOPTION. HE AND HIS BROTHER WERE THE ONLY
14 TWO OF THE 13 CHILDREN PUT UP FOR ADOPTION. HE WAS
15 ADOPTED, HIS ADOPTED FATHER SEXUALLY ABUSED DANNY,
16 SUBJECTED HIM TO THAT TYPE OF TORTURE FOR OVER A YEAR.
17 HIS MOTHER, ADOPTED MOTHER, BEAT DANNY ON A REGULAR BASIS
18 AND SUBJECTED HIM TO OTHER HUMILIATING THINGS THAT I'VE
19 SET FORTH IN MY ADDENDUM, MY OBJECTION TO THE PRESENTENCE
20 REPORT, WHICH I'M SURE YOUR HONOR HAS SEEN IN CONJUNCTION
21 WITH PARAGRAPH 86, BUT WHICH I WON'T MENTION HERE IN THE
22 COURTROOM TODAY.

23 JUDGE, AS A RESULT OF THAT, DANNY RAN AWAY FROM
24 HOME ON A NUMBER OF OCCASIONS. HE HAD A HORRIBLE
25 CHILDHOOD. TO BE ABANDONED BY YOUR PARENTS AT THE AGE OF

1 FOUR AND THEN ADOPTED BY PEOPLE WHO ABUSED YOU WOULD BE
2 AWFUL, SO HE RAN AWAY AT AGE 16 AND GOT MARRIED TO
3 EMANCIPATE HIMSELF FROM THAT SITUATION. HE'S BEEN
4 MARRIED TWICE, JUDGE. HIS FIRST TWO MARRIAGES ENDED IN
5 DIVORCE AND HE HAD NO CHILDREN.

6 HE FINALLY SETTLED DOWN A NUMBER OF YEARS AGO AND
7 MARRIED HIS CURRENT WIFE SONYA, WHO IS IN THE COURTROOM
8 TODAY WITH HIS SON SITTING BACK THERE ON THE SECOND ROW.
9 I CAN TELL YOU FROM MY MANY CONVERSATIONS WITH DANNY, HE
10 CARES VERY MUCH FOR HIS WIFE AND HIS SON. DANNY BECAME
11 INVOLVED WITH THESE INDIVIDUALS AND IN ALL CANDOR TO THE
12 COURT, DANNY BECAME ONE OF THE MAIN PEOPLE INVOLVED WITH
13 THESE PEOPLE IN STEALING EQUIPMENT AND RESELLING IT.
14 DANNY, A LOT OF MONEY CAME INTO DANNY'S HANDS, A LOT OF
15 MONEY WENT OUT OF DANNY'S HANDS, BUT DURING THIS TIME
16 WHILE ALL THIS WAS GOING ON, DANNY HAD A DRUG PROBLEM.
17 DANNY STARTED DOING COCAINE, THAT PROGRESSED TO
18 METHAMPHETAMINE. THE METHAMPHETAMINES KEPT HIM UP FOUR
19 OR FIVE DAYS AT A TIME WHEN THEY WERE STEALING EQUIPMENT
20 AND SELLING IT.

21 SO DURING THE HEIGHT OF THIS SITUATION, DANNY WAS
22 ABUSING DRUGS PRETTY HEAVILY, AND I THINK HE STAYED IN
23 THIS SITUATION BECAUSE HE NEEDED THE MONEY THAT THE
24 EQUIPMENT GAVE HIM TO FUEL HIS DRUG HABIT.

25 IN CONJUNCTION WITH WHATEVER SENTENCE YOUR HONOR

1 IMPOSES UPON DANNY, I WOULD ASK THAT YOU RECOMMEND THAT
2 THE BUREAU OF PRISONS EVALUATE HIM FOR ANY DRUG TREATMENT
3 THAT HE MIGHT RECEIVE PURSUANT TO TITLE 18 UNITED STATES
4 CODE SECTION 3621B.

5 WHEN HE GOT OUT ON BOND AND GOT INVOLVED IN THE
6 OTHER CRIMINAL ACTIVITY WE'RE TALKING ABOUT, IT WAS
7 BECAUSE HE WAS MOVING HIS FAMILY, HE WAS UNDER STRESS AND
8 HE WAS TAKING DRUGS AT THE TIME, JUDGE, HE WAS TAKING
9 RITALIN. I DON'T KNOW REALLY KNOW HOW MUCH MONEY DANNY
10 CAME INTO. THE PRESENTENCE REPORT STATES THAT BEN
11 MORRISON STATES DANNY WAS LIVING THE HIGH LIFE. HIS LIFE
12 REALLY CONSISTED OF DOING DRUGS AND PROVIDING FOR HIS
13 WIFE AND SON, JUDGE.

14 FINALLY, JUDGE, DANNY CAME FORWARD AFTER HIS
15 ARREST ON THE STATE CHARGE AND THROUGH DANNY EDWARDS, AND
16 DANNY EDWARDS AT THE TIME PROVIDED SLED THROUGH AGENT
17 DAVID ROPER WITH ENOUGH INFORMATION SO THAT SLED WAS ABLE
18 TO IDENTIFY 86 PEOPLE THAT WERE INVOLVED IN THIS STOLEN
19 PROPERTY RING. DANNY OUTLINED IT FOR THEM, DANNY TOLD
20 THEM HOW IT WORKED, AND AS A RESULT OF THAT, SLED, I
21 BELIEVE, WAS ABLE TO RECOVER SOME 186 PIECES OF STOLEN
22 EQUIPMENT WHICH WOULD NOT HAVE BEEN RECOVERED BUT FOR
23 DANNY EDWARD'S ASSISTANCE IN THIS CASE.

24 I THINK IT'S SAFE TO SAY THIS CASE WOULD NOT HAVE
25 BEEN MADE IN AS TIMELY A MANNER AND THE RESULTING

1 SEIZURES WOULD NOT HAVE BEEN AS GREAT WITHOUT DANNY
2 EDWARD'S COOPERATION.

3 JUDGE, DANNY HAS A LOT TO GET OVER, FROM A BAD
4 CHILDHOOD, FROM DRUG ADDICTION. HE'S GOT A WIFE THAT IS
5 TRYING TO HELP HIM. HE'S GOT A SON HE DEARLY LOVES AND
6 HE RELAPSED WHILE HE WAS OUT ON BOND. FOR THAT HE'S BEEN
7 IN JAIL SINCE SEPTEMBER, LATE SEPTEMBER, JUDGE, FOR
8 VIOLATING THE TERMS OF HIS BOND.

9 HE REALLY AND TRULY BELIEVES THAT AL BESCHER, WHO
10 IS THE GENTLEMAN THAT WAS QUOTED AS PUTTING A \$50,000
11 BOUNTY ON HIM, WAS OUT TO KILL HIM. HE'S LIVED HIS LIFE
12 BASICALLY IN FEAR WHILE HE WAS OUT, WHEN ONE OF THESE
13 INDIVIDUALS WHO HE HAS GIVEN THE GOVERNMENT INFORMATION
14 ABOUT IS GOING TO KILL HIM OR ENDANGER HIS FAMILY, AND HE
15 REALLY AND TRULY BELIEVES THAT, JUDGE.

16 HE'S GOT FRIENDS AND FAMILY HERE. I'LL ASK HIS
17 WIFE TO STAND AND I'LL ASK HIS SON TO STAND. THEY ARE ON
18 THE SECOND ROW. THEY ARE HERE SUPPORTING HIM. I DON'T
19 KNOW IF THEY WANT TO SAY ANYTHING. I WOULD INVITE THEM
20 TO THE COURT. I DON'T THINK THEY DO. HIS MINISTER WAS
21 HERE EARLIER, WHO DANNY HAS BEFRIENDED AND STARTED
22 FOLLOWING. HE HAD TO LEAVE. HE HAD A MEETING AT THREE
23 O'CLOCK. HIS FRIEND CARL ALTMAN IS HERE. IT'S A LITTLE
24 UNUSUAL A BAIL BONDSMAN WOULD COME AND TALK. HE TOLD ME
25 HE WOULD SPEAK ON DANNY'S BEHALF. IF THE COURT WOULD

1 HEAR FROM HIM.

2 THE COURT: YES, SIR.

3 MR. CARL ALTMAN: YOUR HONOR, I'VE BEEN KNOWING
4 DANNY FOR ABOUT TEN YEARS. I THINK I BONDED HIM OUT THE
5 FIRST TROUBLE HE GOT INTO, SO I'VE BEEN KNOWING HIM FOR A
6 RIGHT GOOD WHILE. HE NEVER MISSED A COURT DATE OR
7 APPOINTMENT. IN FACT, HE HELPED ME FIND SOME PEOPLE I
8 HAD MISSING, SOME OTHER PEOPLE THAT HAD MISSED COURT
9 DATES, HE HELPED ME FIND. HE'S BEEN A TRUSTWORTHY FELLOW
10 AS FAR AS I CAN TELL, OTHER THAN THE TROUBLE HE'S IN NOW,
11 BUT HE TURNED OUT TO BE A GOOD FRIEND AND I JUST WANTED
12 TO COME SAY A WORD FOR HIM.

13 MR. NETTLES: YOUR HONOR, MR. EDWARDS WOULD LIKE
14 TO ADDRESS THE COURT.

15 THE DEFENDANT: YOUR HONOR, I WANT TO THANK DAVID.
16 YOUR HONOR, I'M SORRY FOR THE THINGS I'VE DONE. I WANT
17 TO APOLOGIZE TO THE GOVERNMENT, THE STATE AND MY WIFE AND
18 SON. WE LOST A \$130,000 HOME. I'M TRUSTING THE LORD
19 THAT YOU'LL GIVE MERCY TO ME, YOUR HONOR. THANK YOU.

20 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

21 MR. NETTLES: NO, YOUR HONOR.

22 THE COURT: GOVERNMENT?

23 MR. BETHEA: NO, YOUR HONOR.

24 THE COURT: I THINK THERE'S A GOOD ARGUMENT FOR
25 DEPARTING UPWARD, BUT I'M GOING TO DENY THE MOTION IN

1 THAT REGARD.

2 PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT
3 IS THE SENTENCE OF THIS COURT THAT THE DEFENDANT, DANNY
4 RAY EDWARDS, BE COMMITTED TO THE CUSTODY OF THE BUREAU OF
5 PRISONS TO BE IMPRISONED FOR A TERM OF 87 MONTHS. 87
6 MONTHS AS TO COUNT 1, 87 MONTHS AS TO COUNT 2, COUNTS ONE
7 AND TWO, TO RUN CONCURRENTLY.

8 THE DEFENDANT SHALL ALSO PAY RESTITUTION TO THE
9 CLERK OF THIS COURT TO BE FORWARDED TO THE FOLLOWING
10 VICTIMS IN THE FOLLOWING AMOUNT. ROYAL SUN ALLIANCE,
11 \$8,025. E.L.T. CONSTRUCTION, \$333.34. REGIONAL READING
12 SUBROGATION UNIT, \$2,925. FIRST SOUTH UTILITY
13 CONSTRUCTION, INC., \$5,000. RESTITUTION IS DUE IN SAID
14 AMOUNTS IMMEDIATELY, INTEREST IS WAIVED.

15 WHILE INCARCERATED, THE DEFENDANT SHALL PAY IN THE
16 BUREAU OF PRISONS INMATE FINANCIAL RESPONSIBILITY
17 PROGRAM. UPON RELEASE FROM IMPRISONMENT HE SHALL BE
18 PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS AS
19 TO COUNT 1, AND COUNT 2, SAID TERMS TO RUN CONCURRENTLY.
20 WITHIN 72 HOURS OF HIS RELEASE FROM CUSTODY BY THE BUREAU
21 OF PRISONS, THE DEFENDANT SHALL REPORT IN PERSON TO THE
22 PROBATION OFFICE IN THE DISTRICT TO WHICH HE'S RELEASED.
23 WHILE ON SUPERVISED RELEASE, THE DEFENDANT SHALL COMPLY
24 WITH THE MANDATORY AND STANDARD CONDITIONS OF SUPERVISED
25 RELEASE OUTLINED IN TITLE 18 UNITED STATES CODE SECTION

1 3583D, AND THE FOLLOWING SPECIAL CONDITIONS.

2 FIRST, THE DEFENDANT SHALL PAY ANY OUTSTANDING
3 RESTITUTION IN THE AMOUNT OF AT LEAST \$500 PER MONTH
4 BEGINNING 30 DAYS AFTER RELEASE. RESTITUTION IS TO BE
5 DISTRIBUTED IN EQUAL AMOUNTS TO EACH OF THE ABOVE NAMED
6 VICTIMS. THE COURT RETAINS AUTHORITY TO ADJUST SAID
7 PAYMENTS SHOULD THE DEFENDANT'S FINANCIAL STATUS CHANGE.
8 SECOND, THE DEFENDANT SHALL SUBMIT PERSONAL AND BUSINESS
9 FINANCIAL INFORMATION TO INCLUDE COPIES OF PERSONAL AND
10 BUSINESS INCOME TAX RETURNS AS REQUESTED BY THE PROBATION
11 OFFICE. THIRD, THE DEFENDANT SHALL PARTICIPATE IN A
12 PROGRAM OF TESTING AND TREATMENT FOR DRUG AND ALCOHOL
13 ABUSE ON AN IN-PATIENT AND/OR OUT-PATIENT BASIS AS
14 DIRECTED BY THE PROBATION OFFICE. FOURTH, THE DEFENDANT
15 SHALL PARTICIPATE IN A PROGRAM OF MENTAL HEALTH TREATMENT
16 AS DIRECTED BY THE PROBATION OFFICE. FIFTH, THE
17 DEFENDANT SHALL ATTEND, PARTICIPATE AND SUCCESSFULLY
18 COMPLETE ANY PROGRAM OF SELF HELP AS DEEMED APPROPRIATE
19 AND NECESSARY BY THE PROBATION OFFICE.

20 WHILE IN PRISON, THE DEFENDANT SHALL BE EVALUATED
21 BY THE BUREAU OF PRISONS TO DETERMINE WHAT TYPE DRUG
22 TREATMENT HE SHOULD RECEIVE, AND THE SAME SHOULD BE
23 APPLIED. THE DEFENDANT DOES NOT HAVE THE ABILITY TO PAY
24 A FINE AND NONE IS ORDERED. THE DEFENDANT IS HOWEVER
25 REQUIRED TO PAY A SPECIAL ASSESSMENT OF TWO HUNDRED

1 DOLLARS, DUE AND PAYABLE IMMEDIATELY. ANY QUESTIONS?

2 MR. NETTLES: NO, YOUR HONOR.

3 THE COURT: YOU'VE GOT TEN DAYS TO APPEAL THAT
4 SENTENCE.

5 (THEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

6
7 I CERTIFY THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT
8 OF THE RECORD OF PROCEEDINGS AS HEREINABOVE SET OUT.

9
10 /S/ VINCE ROLLAND

MAY 16, 2006

11 _____

12 VINCE ROLLAND

DATE

13 OFFICIAL COURT REPORTER

14 UNITED STATES DISTRICT COURT

15 DISTRICT OF SOUTH CAROLINA

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Neuropsychological Evaluation Report

Name: Jonathan Binney

Date of Birth: 05-09-1974 Age; 32

Handedness: Ambidextrous

Date of Evaluation: 05-05-2007

Reason for Evaluation: This evaluation was requested by Mr. Binney's attorney, Mr. John Blume, to obtain information regarding areas of possible neuropsychological dysfunction.

Relevant Background Information

The following information was obtained from Mr. Binney during a clinical interview and from Mr. Binney's attorney, John Blume.

Mr. Binney was adopted as an infant by a minister (now a Christian marriage counselor) and his wife. He claimed that his biological Mother was 15 or 16 years of age when he was born, and that she had attempted abortion via ingesting alcohol and drugs during the pregnancy. He also expressed his belief that she was mentally ill. She committed suicide in 2002. Mr. Binney was expelled from school in the 7th grade at age 16 after having been held back in grades 6 and 7. He then spent some time in a "juvenile facility" where he took and passed the GED evaluation. He claimed that he has been previously determined to have attention deficit disorder (ADHD) and several sexual disorders. A Magnetic Resonance Imaging Test (MRI) is said to have indicated malformation of the corpus callosum.

When asked about history of alcohol and drug use, Mr. Binney said that he had used "quite a lot" of alcohol, and was a moderate user of marijuana and Loritab prior to coming to prison. He reported having been sexually molested by a teen-age male at approximately age 7. He married at age 22, and remains married. He and his wife have two children, ages 9 and 7. He has held various jobs, but for only short periods of time. He claimed that employers told him he could not follow orders, and, in one case, accused him of theft. Prior criminal convictions include three for theft and one for criminal sexual conduct.

Evaluation Results

Behavioral Observations. Mr. Binney presented as a personable and appropriately dressed and groomed man. He seemed very willing to participate in the evaluation, verbalized freely, and openly discussed personal details of his life, interests, etc. There were no behavioral indications of malingering, and he seemed motivated to perform well. He seemed to take a slow and deliberate approach to difficult tasks. He stated on some arithmetic tasks that he is unable to "solve problems in my

head", i.e., without using pencil and paper, and noted that he cannot work with fractions.

He claimed that he is transsexual, and has felt he should be a woman. He said he perceives his genitals as "rancid", has thought of castration and wants to pursue a sex change operation. He seemed to have some difficulty reconciling this with being in a heterosexual relationship and fathering two children. He said he wife accommodated his cross-dressing, but did not want him to have the sex change operation. Throughout the evaluation Mr. Binney made frequent references to anatomy and sex-related topics. And, when asked to give responses to ambiguous ink-blot, his responses primarily involved female underwear and anatomy. It seems he is very concerned with such matters at both surface and deeper levels.

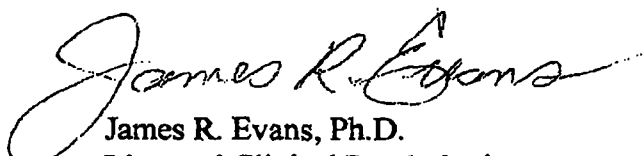
Mr. Binney said that he is "different" in many other ways as well, and when asked to explain, reported the following: 1. At times feeling like he is "thinking in a cloud"; 2. Attacking problems differently from others; 3. Getting "caught up" in things to the degree that all else "takes a back seat", and he does something and then says to himself "that was dumb" (even if not caught doing it); 4. Often wondering if he did something or just thought about doing it; 5. Forgetting important events in his life. During the evaluation it was noted that he seemed at times to be holding his left arm and hand down under his right arm as he completed visual-motor tasks. When asked if this was because one side of his body seemed to be in competition with the other, he answered affirmatively, but associated it with a simultaneous sense of "cloudy consciousness" rather than a right-left conflict.

Test Results. The Wechsler Adult Intelligence Scale-III (WAIS-III), major subtests from the Reitan Neuropsychological Test Battery, and miscellaneous other neuropsychological tests were administered. Mr. Binney attained the following WAIS-III quotients: Verbal 94, Performance 106, Full Scale 99. Sub-test scaled scores ranged from lows of 7 on Digit Symbol and Digit Span to highs of 13 on Picture Arrangement and 14 on Picture Completion. This is a pattern often seen in persons with specific learning disabilities and/or ADHD. On the Reitan subtests, Mr. Binney obtained a T-score of 37 on the Seashore Rhythm Test, which is in the impaired range. Support for a diagnosis of ADHD was obtained from his performance on the Integrated Visual and Auditory Continuous Performance Test (IVA). On that test he attained a Full Scale Attention Quotient of 79 (where the average is 100 and the standard deviation is 15). Mild to moderate memory problems were indicated by scores attained on certain tests. That is, he had a sub-test scaled score of 8 on the delayed Logical (verbal) Memory sub-test of the Wechsler Memory Scale III, and a 10th percentile score on a test of incidental visual memory which required him to recall the digit-symbol relationships from the WAIS-III Digit Symbol sub-test immediately following administration of that test

and without access to the key. It is of relevance that when trying to recall the content of stories read to him (Logical Memory subtest), he often added material which was not in the stories, but apparently "intruded" into his memory. The other test on which he scored below average was the Controlled Oral Word Association Test (COWA) where his performance was at the 30th percentile. These neuropsychological test results point toward brain damage/dysfunction, and certain of these results, along with some specific behavioral observations and self-reports (e.g., left arm held down by right, report of variable "cloudy consciousness, apparent thought/behavior dissociation) are especially compatible with corpus callosum malfunction. For example, it could be expected that verbal-non-verbal integration tasks such as involved in the Digit Symbol test would be difficult for him. Furthermore, problems with sustained attention frequently are reported by persons with corpus callosum malformation or agenesis.

A quantitative EEG evaluation (QEEG) also was completed under both eyes closed and eyes open, resting conditions. After as many artifacts were removed as possible, data were analyzed with a spectral analysis computer program and scores obtained were compared to a normative database (Neuroguide). Excessive power (absolute and relative) was noted at most electrode sites in the 8-9 Hz frequency range (eyes closed) and 8-10 Hz range (eyes open). This is often seen in persons diagnosed with ADHD. Some coherence (neural communication) abnormalities were found, with most of these being with eyes open and involving excessive coherence in the 25-30 Hz range.

In summary, results of this evaluation, the client's history and results of an MRI suggest that Mr. Binney suffers from brain damage/dysfunction. Problems with sustained attention, delayed verbal memory, verbal-non-verbal integration, word finding, and thought-behavior dissociation are indicated. These problems are compatible with malfunction of the corpus callosum. Additionally, this man seems to be preoccupied at consciously and unconscious levels with gender identity concerns.


James R. Evans, Ph.D.
Licensed Clinical Psychologist



RICHARD S. ADLER, M.D.

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May 28, 2007

Ms. Emily C. Paavola
Attorney at Law
Baker & Daniels LLP
300 North Meridian Street
Indianapolis, Indiana 46204

RE: Binney v. State of South Carolina
Case No. 06-CP-11-223

Dear Ms. Paavola:

You have asked me to examine Mr. Binney to assess him for Fetal Alcohol Spectrum Disorder (FASD).

I am a Board-certified Adult, Child and Adolescent Psychiatrist. A copy of my resume is provided as Attachment #1.

I examined and observed Mr. Binney at the Lieber Correctional Center on May 10, 2007 over the course of five hours. The examination was also informed by review of extensive data as detailed in Attachment #2.

FASD is an umbrella term which encompasses Fetal Alcohol Effects (FAE), Alcohol-Related Neurodevelopmental Disorders (ARND) and Alcohol-Related Birth Defects (ARBD).

It is my opinion, with reasonable medical certainty, that Mr. Binney does warrant a diagnosis of Fetal Alcohol Spectrum Disorder.

In keeping with the *clinical nature of this evaluation*, the voluminous data has been reported with a focus on those elements most relevant to the diagnostic issue.

Mr. Binney was informed of the purpose(s) of my involvement, the limits upon its confidentiality, and his right not to respond to questions. Mr. John Blume, defense counsel was present for the interview. Natalie Novick-Brown, Ph.D. was also present and also interviewed Mr. Binney. Mr. Binney was able to demonstrate an understanding of these notifications. After this, Mr. Binney was asked explicitly if he wished to proceed, and he indicated a willingness to do so.

Mr. Binney is a 33 year old man. He has been convicted of Murder in the First Degree. He has been sentenced to Death, although there are appellate motions pending.

Relevant History:

Mr. Binney is reported to have been born to a 16 year old woman, Ms. Gayle Dove (see review of Ms. Dove's records below). According to Mr. Binney, he was told by his biological mother (as an adult) that he was conceived in the context of a rape. Ms. Dove is now deceased as a result of suicide.

Details of the pregnancy are recounted in the Declaration of Natalie Novick-Brown, Ph.D. In particular, VA Medical Records reflect Ms. Dove's report that she was suicidal during the pregnancy, attempted to abort the fetus by ingesting various substances of abuse and that there were binges of alcohol use during gestation. [Efforts by your office to obtain Mr. Binney's birth records and mother's OB-GYN medical records have not been successful so far].

Mr. Binney was adopted when he was 4 days old. He was raised as an only child. His adoptive father, early on, was an Independent Baptist pastor and his mother was a hairdresser and homemaker. He described his parents as affectionate, but he felt that he had poor communication with them; he described this as "an invisible wall."

His early development was essentially uneventful, with the exception of short stature and low weight (at or below the 10th percentile) which is documented in the table on the next page.

Date	Age (years)	Source	Height (inches)	Percentile	Less than 10%	Weight (pound)	Percentile	Less than 10%
05/09/1974	Birth	Holland Pediatric Associates (HPA)	21"			6.1875		
09/23/1977	3.33	HPA	36"	5-10	YES	28.5	< 5	YES
07/31/1981	7.33	HPA	45.5	5-10	YES	42	<5	YES
11/9/1984	10.5	HPA	51.5	5-10	YES	56.5	5	YES
05/26/1992	18	HCA Riveredge Hospital, Forest Park, IL, Dr. Bayola, Phys. Exam	68.75	36	NO	126	<10	YES

Mr. Binney has a long and well-documented history of academic difficulties.

A California Achievement Test (CAT) in 4th grade reflected Total Mathematics at the 4th percentile. A CAT in 6th grade included a Total Mathematics score putting him at the 3.8 grade equivalent. He repeated several grades, including 6th. In his 7th grade, at the Cornerstone Christian Academy, most of his final grades were failing (i.e. below 65). Although his CAT scores were not exceptionally poor in grade 7, his Math Scores were his lowest, some at the 20 – 30th percentile.

Mr. Binney was evaluated at the Education and Remediation Clinic in Fayetteville in 1988, during 7th grade. He scored in the 2nd to 5th percentile in Math Problem Solving and Math Calculation on the Diagnostic Achievement Test for Adolescents (but was roughly grade average on the Key Math Test). A note reflects that he received tutoring from October 1988 to May 1989, particularly in the area of fractions.

An application to the Zanesville Christian School in August 1989, completed by his adoptive mother, endorsed that Mr. Binney had been dropped from a prior school for disciplinary problems. In the 1989 – 1990 year, 8th grade, the report card available for review reflects D's and F's in the core courses and a C in Physical Education.

The last full grade he completed was 8th. [It is recorded in a 1992 psychiatric admission that he left school when told he would have to repeat 9th grade].

Mr. Binney did obtain a GED on November 11, 1992. His overall standard score was 49.8; Mathematics was his lowest score at the 38th percentile.

Mr. Binney enrolled at Hyles-Anderson College, in Crown Point Indiana in 1994, intended to pursue Music Education. By November 2nd he had received 235 demerits and was later expelled.

Mr. Binney's social-behavioral history is notable for the absence of temper tantrums, fire-setting, cruelty to animals or bedwetting as a youngster as well as the absence of violent/aggressive behavior to others. He did admit to repeated incidents of stealing (i.e. "hundreds of times") both at school and at home, describing himself as "pretty good at it." However, he was clear that the impulse to steal something would arise 'in an instant' and his poor impulse control at times made it likely he would (and did) get caught.

Mr. Binney recalled generally avoiding most sports, especially contact sports, as a youngster, feeling uncoordinated and being a slow runner. He stated that he was "horrible at throwing a ball." He reported always feeling that there was "something different" about him, felt more comfortable with female peers and eagerly sought out conversation with them. He recalled enjoying dressing up in parades, and being in skits and "little plays" at Vacation Bible School.

Mr. Binney described himself as a "preacher's kid" and had a persistent feeling of low self-esteem, felt "lonely, misunderstood...people didn't see the real me...I wasn't living up to expectations." Mr. Binney reported being molested by a male high school student on 2-3 occasions when he was 6 or 7 years old. At age 10 he had a number of sexual encounters with two siblings - an 11 - 12 year old girl and an 8-9 year old boy. At around 12 or 13 he began to collect female clothing and secretly wore female undergarments on a daily basis. He became increasingly aware of his discomfort with male gender identity. At the age of 21 - 22 he undertook a trial of (female) hormone therapy.

Mr. Binney does report a near lifelong history of problems with (a) low attention span for routine tasks (b) marked over-focusing on tasks of keen interest (c) distractibility (d) impulsivity (e) persistent fidgetiness (f) a subjective sense of restlessness (g) interrupting others (h) losing things (i) being disorganized (j) having problems with prioritizing and planning. He indicated that he would give up easily and when frustrated with a task he would "go off alone and cry." He describes himself as a visual learner, with particular problems with short term memory and poor recollections for "time frames." He reported problems 'reading people' (nonverbal cues) and found it hard to make friends. He described himself as a follower. He also reported being "always anxious."

He also reported that as a general rule it has been hard for him "to understand how I feel," and "hard to learn from experience."

Mr. Binney reported a markedly extended puberty. He had the appearance of underarm hair at age 11 or 12, began masturbating at 16 and his voice did not change until age 17 or 18. He attributes his

Clinical Psychiatric Evaluation
RE: BINNEY, Jonathan A.

May 28, 2007
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marked misbehavior around the age of 15 or 16 to an attempt to be accepted by other males, to hide his gender identity issues, "blend in," look like a "macho...bad boy."

Mr. Binney was admitted to the HCA Riveredge Hospital in Forest Park, IL from May 26, 1992 to June 24, 1992. The admission was court-ordered in the context of stealing, running away, uncontrolled symptoms of Attention Deficit Disorder and Learning Disabilities.

Prior to the admission he was taking Ritalin SR 20 mg for 6 weeks.

On May 7, 1992 he had an evaluation that found "significant auditory processing impairment with semantic/temporal confusion, sequencing problems impacting attention and follow through of directions, storage and retrieval problems...high level of word finding problems...impaired planning/organizational skills." At discharge he was given a diagnosis that included "Specific Cognitive Processing Problems."

He was started on Desipramine 100 mg at bedtime. During the hospitalization he had a low therapeutic serum level of desipramine.

In August 1993 he was prescribed Cylert for ADHD, but it appears that he could only tolerate a dose of 37.5 mg daily.

He was admitted to The Patrick B. Harris Psychiatric Hospital in Anderson, SC on May 7, 2000 and discharged 5 days later. This was in the context of criminal charges, marital problems and an attempted overdose of Tylenol PM (#30 pills). He had been arrested in December 1999. He was living with his biological mother and his biological maternal grandfather at the time of admission. The admission note recorded that "judgment is impaired. Insight was absent." He was discharged on Remeron 15 mg (an antidepressant) at bedtime.

His present medication regimen by his report is: Zoloft 200 mg daily (an antidepressant) and Buspirone 20 mg daily (an anti-anxiety agent)

Mr. Binney's general medical history is benign. He had some episodes of asthma early in his life. Also, he appears to have had an allergy to hay fever, but no medication allergies.

Mr. Binney's family history of psychiatric and/or medical illness includes his mother who had a history of alcohol dependence, polysubstance dependence (particularly opiates) and depression. Also, the maternal grandfather and great uncle had alcoholism and two maternal uncles.

Mental Status Examination:

Mr. Binney appeared several years younger than his stated age. He was dressed in a green prison jumpsuit. He appears diminutive at his reported height of 5'8" and 135#. He was not clearly dysmorphic in his facial features, although there was a suggestion of a slightly thinned upper lip. He was cooperative. His motor activity was within normal limits. There were no tics, twitches or unusual mannerisms noted.

Mr. Binney's speech was normal in rate, tone, volume or style.

His mood appeared within normal limits. His affect was consistent with his mood, appropriate in range and there were no grossly bizarre or inappropriate elements noted.

Mr. Binney was oriented to all spheres. He recalled three items immediately and 2 of the three items after a delay of 1-2 minutes. He identified the final item from a verbally-provided list.

Mr. Binney's thought processes were coherent and relevant and no psychotic process was noted. He denied any history of auditory or visual hallucinations, other than seeing ants crawling on the walls intermittently with onset long after incarceration/access to alcohol. There was no evidence of suicidality at interview. He denied homicidal ideation. He denied paranoid ideation.

Mr. Binney's attention appeared grossly appropriate at interview. He was able to spell WORLD backwards. His insight appeared good. His judgment was not possibly impaired. When asked how he might respond to a small fire in a movie theater, he said he would 'go find a fire extinguisher.' When asked explicitly if he would yell "fire," he said that was a possibility too. When asked what he'd do if he found a stamped addressed letter in the street marked "Personal and Confidential," he said he would "pick it up and read it...inquiring minds want to know." His vocabulary was adequate. His intelligence is estimated to be average to low average.

Regarding abstracting ability, Mr. Binney was asked to provide the meaning of a number of proverbs. When asked about the saying "A rolling stone gathers no moss," he could offer no explanation. When asked about "People in glass houses shouldn't throw stones," he replied "they'd break the glass," and when pressed: "they might kill themselves." When presented with "A stitch in time saves nine," he was unable to offer any explanation. When asked about "The tongue is the enemy of the neck," he replied that if you 'snitch somebody might wring your neck...it would make me want to shut up."

When asked how a shadow and reflection were different, he replied that one shows shape, the other details.

Mr. Binney was able to copy a simple geometric diagram, draw a clock depicting 2:15 and a flower in a pot. He generated a sentence upon request exhibited good cursive and print writing.

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RE: BINNEY, Jonathan A.

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MRI:

A magnetic resonance imaging (MRI) study of Mr. Binney's brain was done in March 2007 at the Medical University of South Carolina. I reviewed the MRI images with a neuroradiologist on May 22, 2007 and I have also reviewed the analysis/report of Fred Bookstein, Ph.D.

Per Dr. Bookstein, Mr. Binney's MRI is clearly abnormal with prominent narrowing of the isthmus of the corpus callosum, described as a partial callosal agenesis. Mr. Binney's minimum isthmus thickness is reported to be 2 millimeters. Mr. Binney's isthmus was "the thinnest" of all the 178 subjects, including 117 with diagnosed Fetal Alcohol Spectrum Disorder. Narrowing was also appreciated upon my review of the MRI images.

Furthermore, analysis of the rostrum region of the Corpus Callosum by Dr. Bookstein using a "likelihood ratio," reveals that Mr. Binney's odds of being in the FASD group (and NOT the normal control group) is about 80 to 1.

Dr. Bookstein's analysis of the data reflects that combined with evidence of prenatal alcohol exposure, these anatomical findings are indicative of Fetal Alcohol Syndrome.

Review of Medical/Psychiatric/Substance Abuse Treatment Records of Mr. Binney's mother:

From the Post-Traumatic Stress Disorder Exam, Biloxi Veterans Administration on June 29, 1995, Mr. Binney's mother, Ms. Gayle Dove, is recorded as being born on August 15, 1957. Mr. Binney was born on May 9, 1974. Thus, she was 16 ¾ years old when she delivered, and just barely 16 when she became pregnant. The pregnancy is recorded here as having resulted from "a brief relationship with a *much older man, a policeman, who did not want to marry her.*"

She is reported to have been in only 8th grade at age 16. She left school in 8th grade. She was sent to some kind of "home" [likely for unwed mothers] when she became pregnant and stayed there for 6 months after the delivery. She enlisted in the Air Force on September 4, 1975.

An undated Certificate of Release or Discharge from Active Duty reflects that the reason was "Alcohol Abuse Rehabilitation Failure."

Ms. Dove entered inpatient substance abuse treatment in October 1994. It is recorded that she "began drinking at the age of 14, but this was once a week or once every two weeks..."

An Admission History dated October 5, 1994 from the Veteran's Administration (VA) Biloxi/Gulfport reflects that Ms. Dove characterized herself as "a binge drinker." It appears that a prior alcohol treatment episode was undertaken in 1987.

It is reported her that her father was a recovering alcoholic. She had two brothers who she described as alcoholics.

A Social Work Service Report, undated, authored by Mr. Gus Rivers, MSW, includes a mention that Ms. Dove's paternal grandfather and a paternal uncle both died from "alcohol related conditions." It also documents her report of starting alcohol use "at 14 with an increase in consumption prior to entry in the Air Force at 17."

A Diagnostic Summary/Master Treatment Plan from the VA reflects that she reported having "no children."

There is also a Psychology Report dated October 13, 1994 signed by Dr. McNally. An MMPI-2 had been administered. The clinician recorded that "She made a suicide attempt at the age of 16 by an overdose of pills after learning that she was pregnant. She was taken to a hospital and released the same day."

A therapy progress note dated March 5, 1996 indicates that Ms. Dove "discussed several traumatic events which took place in her life."

A therapy note of May 7, 1996 includes "she knows she has issues to work on but avoiding these issues is easier than dealing with them."

A progress note dated July 23, 1999 also reflects a suicide attempt by overdose in 1973 and one in 1993.

A Discharge Summary dated August 25, 1999 reflects a diagnosis of [Poly]substance dependence including analgesics, prescription drugs (mainly opiates). In this note it is recorded that "She started drinking at age 15 and was drinking heavily until she was here in 1994 [for treatment]...Father is an alcoholic and parents divorced when she was five years old. Her mother raised here [sic] and she feels that her mother was schizophrenic."

A Chaplaincy Assessment dated August 30, 1999 reflects the need to address "...her feelings concerning not having seen her son..."

A Women's MHPC Clinic Individual Therapy note, dated December 9, 1999 documents that "since our last session she has been reunited with her son that she gave up for adoption when she was 16...Patient has a tendency to over-self disclose when developing a relationship. Identified topics that may be better left unsaid at this time."

An excerpt of Direct Examination of Dr. Donna Schwartz-Watts by Mr. Pruett [at p.3281] includes her statement: "And we know from ...his adoptive mother...[that his birth mother]...had a history

that while she was pregnant with Jonathan Binney, that she used drugs, that she *drank very heavily* in an attempt to abort this pregnancy."

Diagnostic Criteria for FASD:

Diagnostic criteria for FASD have been generated by a number of authorities.

Among published diagnostic schema is the 1996 report of the Institute of Medicine (Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention and Treatment).

It defines Alcohol-Related Neurodevelopmental Disorder (ARND) – one of the qualifying conditions for FASD - as being present when there is:

- A. A history of maternal alcohol exposure,
- B. Evidence of a Central Nervous System neurodevelopmental abnormality and/or,
- C. Evidence of a complex pattern of behavior or cognitive abnormalities that are inconsistent with developmental level and cannot be explained by familial background or environment alone, such as learning difficulties, deficits in school performance, poor impulse control, problems in social perception, deficits in higher level receptive and expressive language, poor capacity for abstraction or metacognition, specific deficits in mathematical skills, or problems in memory, attention or judgment.

Opinion:

Mr. Binney robustly meets all three criteria for Alcohol-Related Neurodevelopmental Disorder (and thus Fetal Alcohol Spectrum Disorder).

Regarding a history of maternal alcohol exposure, there is an abundant record (reviewed above) indicating its presence in this case. In particular, the VA records are explicit in noting that Ms. Dove began drinking at age 14 and that her drinking escalated prior to entry into the military at age 17 (around the time of Mr. Binney's birth). Furthermore, she described herself as a "binge drinker" – a pattern of drinking felt especially harmful to the fetus. She has a prominent family history of severe alcoholism, likely experienced trauma in the context of conceiving Mr. Binney and responded by [increased] alcohol abuse – the most common substance of abuse among teenagers.

As for evidence of a Central Nervous System neurodevelopmental abnormality, Mr. Binney's MRI demonstrates a marked abnormality of the corpus Callosum – a finding that is considered emblematic of Fetal Alcohol Syndrome. In fact, the thinness of this structure was the most severe of any of those subjects in Dr. Bookstein's study.

The third criterion is the issue of behavior/cognitive abnormalities. Sadly, Mr. Binney has suffered with a multitude of these including problems with academics (especially Mathematics), poor

Clinical Psychiatric Evaluation
RE: BINNEY, Jonathan A.

May 28, 2007
Page 10 of 10

impulse control (especially recurrent stealing), problems with social perception, receptive language problems, a pronounced deficit in abstraction (as demonstrated during my examination) and a history of attention deficits, and impairment in judgment.

Last, although not a criterion for ARND, it should be appreciated that Mr. Binney did have the significant height and weight deficits seen characteristically in Fetal Alcohol Syndrome.

Taken all together, it is rather clear that Mr. Binney has suffered from the effects of prenatal alcohol exposure.

Hopefully, this report has answered the consultative question in a clear manner. Should you have any questions regarding its content, or if I may be of help in any way, please do not hesitate to contact me.

Thank you for permitting me to provide professional services in this matter.

Respectfully submitted,



RICHARD S. ADLER, M.D.

Forensic & Clinical Psychiatry

1700 Seventh Avenue, Suite 210

Seattle, WA 98101

(206) 624 - 3800 • OFFICE

(206) 624 - 3801 • FAX

ATTACHMENT #1

EDUCATION

1998 - 2000	Senior Fellow in Forensic Psychiatry University of Washington School of Medicine Seattle, WA
1986 - 1988	Fellow in Child Psychiatry Massachusetts General Hospital /Harvard Medical School Boston, MA 02114
1984 - 1986	Resident in Adult Psychiatry McLean Hospital/Harvard Medical School, Belmont, MA 02478 <i>Included rotations in Consult - liaison Adolescent and Family Treatment Unit at McLean Hospital</i>
1983 - 1984	Internship year in Adult Psychiatry McLean Hospital/Harvard Medical School <i>Six months medical internship at Mt. Auburn MGH, two months of Inpatient Geriatric Psychiatry, two months of Substance Abuse Psychiatry</i>
1978 - 1983	Albany Medical College of Union University (AMC) Albany, NY 12208 Doctor of Medicine <i>Alpha Omega Alpha Honor Society Shaeffer Prize in Pathology Honor Committee Member 1978 - 1980</i>
1980 - 1981	Research in Gastrointestinal Pathology Brigham and Women's Hospital Department of Pathology, Ramzi Cotran, M.D., Chief Boston, MA 02115 <i>American Gastroenterological Association Award for</i>

Medical Student Research - Poster Presentation

1976 - 1982 **Rensselaer Polytechnic Institute (RPI)**
Troy, NY 12180
Bachelor of Science in Biology
Summa cum laude, RPI - AMC 6-year Biomedical Program

POSITIONS

2006 **Psychiatric Consultant**
Renton Academy
Employed by the Renton School District to provide on-site psychiatric services for a new specialty school informed by the Re-Education Approach pioneered by Nicholas Hobbs, Ph.D.

2006 **National Advisory Panel**
Cephalon, Inc., makers of Sparlon ® (modafanil)
New Drug Application (FDA) pending

2006 **Clinical Instructor**
Forensic Psychiatry Fellowship
University of Washington School of Medicine
(Formal appointment in process)
Bruce C. Gage, Training Director

2/97 - 10/06 **Staff Psychiatrist**
Children's Hospital & Medical Center, Bellevue Satellite Clinic
1135 116th St. NE, Bellevue, WA 98004
(206) 454-9003. Chris Cowles, Psy.D., Clinic Director
Patient evaluation and psychopharmacologic management, team consultation two days a week

2/97 - present **Private Practice**
Forensic and clinical psychiatric practice in child and adult psychiatry

3/00 - present **Speakers Bureau and National Advisory Board**
McNeil Consumer Healthcare, makers of Concerta ®

7/00 - 12/00 **Staff Psychiatrist**
Western State Hospital
Program for Forensic Evaluations in Corrections and the Community, Tacoma, WA 98498

- 7/98 - 6/00 **Acting Clinical Instructor (*)**
Children's Hospital & Medical Center, Lake City Way Satellite
(206) 368-4949
*Individual and group supervision of Child Psychiatry Fellows,
Adult Psychiatry Residents, Psychology Interns at a University of
Washington Medical School teaching site.*
- (*) During the Senior Fellowship in Forensic Psychiatry (see
Education), University of Washington regulations require that the
instructorship be regarded as "acting".*
- 1/98 - 7/98 **Clinical Instructor**
Children's Hospital & Medical Center, Lake City Way Satellite
- 8/96 - 6/98 **Staff Psychiatrist**
Seattle Mental Health Institute, 1600 East Olive Street,
Seattle, WA 98122. (206) 324-2400
*Provided staff consultation and treatment to adults, children and
adolescents, including The Deaf Services unit, in a large CMHC
with a wide continuum of care.*
- 8/91 - 7/96 **Medical Director & Founding President**
Comprehensive Psychiatric Group, 120 East Main Street,
Salisbury, MD 21801.
*Region's largest multi-disciplinary mental health
practice with Addictions, Eating Disorders and
extensive Group Psychotherapy Programs.*
- 3/95 - 7/95 **Consultant - Behavioral Health Services**
Peninsula Regional Medical Center (PRMC)
100 East Carroll Street, Salisbury, MD 21801
*Retained to design integrated and managed care-
friendly inpatient, outpatient, consult-liaison and
emergency mental health services.*
- 1/94 -12/95 **Community Affiliate, Peninsula Regional Medical Center**
- 11/91-12/93 **Attending Psychiatrist, Peninsula Regional Medical Center**
Inpatient, emergency and consult - liaison services

- 7/88 - 6/92 **Medical Director, Mental Health Clinic**
Somerset County Health Department, Westover, MD 21871
National Health Service Corps Scholarship Placement.
Included consultation to Colbourne Substance Abuse
Center, Crisfield, MD & Somerset County Sheriff's
Department, Public Schools, and Developmental Center.
- 7/88 - 6/91 **Medical Director, Mental Health Clinics**
Worcester County Health Department, Snow Hill, MD
21863.
National Health Service Corps Scholarship Placement
- 7/86 - 6/88 **Part-time private practice**
Boston, MA
- 10/86 - 6/88 **Ciba-Geigy Clinical Trial of Clomipramine for Obsessive-
Compulsive Disorder in Children and**
Adolescents. Massachusetts General Hospital, Boston, MA
Co-investigator with Joseph Biederman, M.D.
- 1986 - 1990 **Doctor-on-Call**
Pembroke Hospital, Pembroke, MA
150 bed Private Psychiatric Hospital
- 1985 - 1990 **Doctor-on-Call**
Norwood Hospital, Norwood, MA
21 bed locked psychiatric unit in a suburban community
General hospital with Emergency Room and Consult-
liaison consultation services.
- 1985 - 1986 **Psychopharmacology Consultant**
Cutler Counseling Center, Norwood, MA
Non-profit, community outpatient facility

LICENSES

1996 -	Washington	33536	(3/12/96) :
1988 - 1996	Maryland	D36903	(6/18/88)
1984 - 1991	Massachusetts	54358	(6/1/84)

CERTIFICATIONS

1992	Child and Adolescent Psychiatry American Board of Psychiatry and Neurology, #2903
1990	Adult Psychiatry American Board of Psychiatry and Neurology, #33030
1984	National Board of Medical Examiners, #262751

MAJOR COMMITTEE ASSIGNMENTS

2005 -	Chairman, Ethics Committee Washington State Psychiatric Association
1998	Managed Care Committee Division of Child & Adolescent Psychiatry, Children's Hospital
1995	Representative of the Maryland Psychiatric Society to the Rural Psychiatry Task Force American Psychiatric Association Annual Meeting May, Miami Beach, FL
1992 - 1996	Board of Directors Life Crisis Center, 216 East Main Street, Salisbury, <i>Chairman, Executive Director Search Committee (1994)</i>
1993	Select Committee, Quality Council Peninsula Regional Medical Center Empowered to re-engineer Emergency Room Psychiatric Services. Developed satisfaction assessment tool
1992 - 1993	Utilization Review Committee Peninsula Regional Medical Center
1991 - 1993	Founding President Eastern Shore Psychiatrists' Group <i>Established to provide networking opportunities</i>

- 1991 **Physicians' Steering Committee**
Atlantic General Hospital, Berlin, MD
Providing input on design of new community General hospital
- 1988 - 1992 **Utilization Review Committee**
Peyton Psychogeriatric Unit
McCready Hospital, Crisfield, MD
Specialty in-patient locked unit for chronically mentally ill geriatric patients

MEMBERSHIPS

- 1996 - American Academy of Psychiatry and the Law
1984 - American Psychiatric Association
1991 - 1996 Eastern Shore Psychiatrists' Group
1988 - 1996 Maryland Psychiatric Society
1986 - 1988 Massachusetts Psychiatric Society

PUBLICATIONS & PRESENTATIONS

- 2007 **"The Criminalization and Adultification of Juvenile Sex Offenders"**
St. Joseph's Altercrest Treatment Facility
Cincinnati, OH
- 2007 **Reactive Attachment Disorder**
Shriner's Hospital
Cincinnati, OH
- 2004 & 2006 **"How to Help Your Client Survive a Parenting Evaluation in Washington"**
National Business Institute Seminar, Washington State Convention and Trade Center, Seattle, WA
www.nbi-sems.com
- 2002 **"Child Abuse and Neglect"**
Western State Hospital Forensic Seminar Series
Greg Gagliardi, Ph.D., Seminar Director

- 2000 **"Pediatric Psychopharmacology: The Cutting Edge"**
Washington State and British Columbia Associations of School
Psychologists Fall Conference, Vancouver, B.C.
- 1999 **"Pediatric Psychopharmacology: The Cutting Edge"**
Child and Adolescent Neuropsychiatry Conference, Children's
Hospital and Regional Medical Center, Seattle, WA
- 1998 **"The Broad Bandwidth of Autism Spectrum Disorders"**
Child and Adolescent Neuropsychiatry Conference, Children's
Hospital and Regional Medical Center, Seattle, WA
- 1997 **"No Need to Panic: Anxiety Disorders Update for the
Clinician."** Child and Adolescent Neuropsychiatry Conference,
Children's Hospital and Regional Medical Center, Seattle, WA
- 1991 **"The Transition from Resident to Medical Director",** American
Psychiatric Annual Meeting, Course: Administration in Austerity.
Paul Rodenhauser, M.D., Course Director.
- 1990 Adler RS, Jellinek MS. **Special Article: "After Teen Suicide:
Issues for Pediatricians Who Are Asked to Consult to Schools".**
Pediatrics. 86:6, 982 - 7.
- 1990 Adler RS. **Out-of-Control Behavior.** The Massachusetts General
Hospital: Psychiatric Aspects of General Hospital Pediatrics.
Jellinek MS, Herzog DB, Eds. Chicago: Year Book Medical
Publishers, pp. 298-304.
- 1990 Adler RS, Jellinek M. **Suicide.** Ibid. pp. 324 - 30.
- 1985 Adler RS, Nafradi J, Szabo S. **"Cysteamine-induced Duodenal
Ulcer is not Site-specific: Effect of Local Modulating Factors".**
J. Experimental Pathology 2:2, 111-22.
- 1983 Adler RS, Gallagher GT, Szabo S. **"Duodenal Ulcerogens
Cysteamine and Propionitrile Decrease Duodenal
Neutralization of Acid in the Rat".** Digestive Diseases and
Sciences 28:8, 716-23.



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ATTACHMENT #2

DATABASE FOR EVALUATION REPORT ON MR. BINNEY

1. Interview of Mr. Binney, Lieber Correctional Center, May 10, 2007, 10:00 a.m. to 3:00 p.m.
2. Affidavit of Natalie Novick Brown, Ph.D., earlier draft and final report, as provided May 28, 2007,
3. Draft report of Fred L. Bookstein, dated April 6, 2007,
4. Cornerstone Christian Academy, 7th grade report card and California Achievement Test results,
5. Dublin Christian Academy records,
6. Diagnostic Evaluation and Report of Progress, Education and Remediation Clinic, dated October 26, 1988,
7. Application for Admission and other records from Hyles-Anderson College,
8. Report card, Zanesville Christian School, 1989 - 1990 school year,
9. Medical records, Holland Pediatric Associates,
10. Genesis - Good Samaritan Hospital 1992 Emergency Room records, Zanesville, OH,
11. Medical records, Patrick B. Harris Psychiatric Hospital, Anderson, SC, 2000,
12. Medical records, HCA Riveredge Hospital, 1992,
13. Medical records, Zanesville Health Department, Dr. Williams,
14. VA Medical Records of Ms. Gayle Dove, biological mother of Mr. Binney,
15. 'Suicide note,' undated, signed by Jonathan Binney
16. MRI of head, Mr. Binney, Medical University of South Carolina, dated February 28, 2007.

WITNESSES

David Oglesby,
Metro Drug Unit

ARREST WARRANT NO. G373996

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 00-GS-11-749

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

SEP 06 2000 TERM

THE STATE

vs.

Jerry Wayne Johnson, Jr.

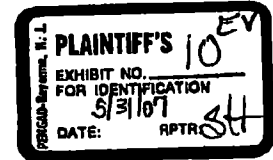
1/21/03 - NP - per office

[Signature]

Indictment for
Unlawful Drugs

Holman C. Gossett

A TRUE COPY
Brandy W. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.



STATE OF SOUTH CAROLINA)
)
COUNTY OF Cherokee)

INDICTMENT FOR UNLAWFUL DRUGS

At a Court of General Sessions, convened on SEP 06 2000,
the Grand Jurors of Cherokee County present upon their oath:

COUNT ONE — POSSESSION

That _____ did in _____ County
on or about _____, knowingly and intentionally possess a quantity
of _____, a controlled substance under
provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such posses-
sion not having been authorized by law.

COUNT TWO — POSSESSION WITH INTENT TO DISTRIBUTE

That Jerry Wayne Johnson, Jr. did in Cherokee County on
or about June 15, 2000, possess with intent to distribute a quantity of
Methamphetamines, a controlled substance
under provisions of §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended,
such possession not having been authorized by law.

COUNT THREE — DISTRIBUTION

That _____ did in _____ County
on or about _____, distribute to one _____
a quantity of _____, a controlled substance
under provisions §§ 44-53-110, *et. seq.*, *Code of Laws of South Carolina* (1976), as amended, such
distribution not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

Jason G. Wall
SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)

INDICTMENT FOR
Manufacturing
Methemphetamines

At a Court of General Sessions, convened on SEP 06 2000,
the Grand Jurors of Cherokee County present upon their oath:

That Jerry Wayne Johnson, Jr. did in Cherokee County on or about the 15th day of June, 2000, manufacture, distribute, dispense, deliver, purchase, or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase methamphetamines, in violation of Section 44-53-370 of the Code of Laws of S.C., 1976.

A TRUE COPY
Brandy W McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jason G. Wall
SOLICITOR

DOCKET NO. 00-GS-11-750

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

SEP 06 2000 TERM

THE STATE

vs.

Jerry Wayne Johnson, Jr.

1/21/03- NP - per officer

[Signature]

Indictment for

Manufacturing
Methamphetamines

Holman C. Gossett

WITNESSES

David Oglesby, Metro Drug

ARREST WARRANT NO. G373997

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

A TRUE COPY

Brandy H McBee

CLERK OF COURT
CHEROKEE COUNTY, S.C.

DEFENSE OF INDIGENTS ACT

FORM NO. 4

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

DOCKET NO. 6373991)

STATE OF SOUTH CAROLINA)

vs.)

Jerry Johnson
Defendant)

ORDER OF APPOINTMENT

OF

LEGAL COUNSEL

FOR

INDIGENT DEFENDANT

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, *Mike Hamrick*, Attorney at Law, is appointed as counsel for the defendant.

This day of *July 11*, 20*20*
at _____ (a.m.) (p.m.)

NO. TIMES APPOINTED *1*

Katie W. Baines
KATIE W. BAINES, CLERK OF COURT

KATIE W. BAINES
CLERK OF COURT

2020 JUL 11 A 8:30

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)

INDICTMENT FOR
Unlawful Neglect by Guardian
§20-7-50

At a Court of General Sessions, convened on SEP 06 2000,
the Grand Jurors of Cherokee County present upon their oath:

That Jerry Wayne Johnson, Jr. did in Cherokee County on or about the 15th day of June, 2000, unlawfully, he being the parent of a five year son, place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety, by possessing a lab used for the purpose of manufacturing methamphetamines in the residence, in violation of Section 20-7-50 of the Code of laws of S.C., 1976.

A TRUE COPY
Brandy H. McBee
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jason G. Wall
SOLICITOR

DOCKET NO. 00-GS-11-748

The State of South Carolina,

County of Cherokee

COURT OF GENERAL SESSIONS

SEP 06 2000 TERM

THE STATE

vs.

Jerry Wayne Johnson, Jr.

1/21/03-NP-PW/SPW

[Signature]

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreman of Grand Jury

Indictment for

Unlawful Neglect by
Guardian

\$20-7-50

Holman C. Gossett

WITNESSES

David Oglesby, Metro Drug

ARREST WARRANT NO. G373991

VERDICT

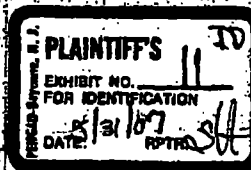
Foreman of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

IN THE MATTER OF: Judy Lynne Southern
(Decedent Name)

CASE NUMBER 2000ES1100200



COURT'S
EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT. #
DATE 5/31/07

PROBATE COURT

APPLICATION FOR

(check any that apply)

INFORMAL

☐ PROBATE OF WILL

☒ APPOINTMENT

PETITION FOR

FORMAL

☐ TESTACY

☐ APPOINTMENT

Applicant/Petitioner: Allen Southern

Address: 2545 Cowpens-Pacolet Hwy.

Telephone: Spartanburg, SC 29307

489-1715 474-9039

1. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of Interest of undersigned:

Husband of the decedent

2. Decedent information

Name: Judy Lynne Southern

Social Security Number: [REDACTED]

Date of Birth: 9/4/1960

Date of Death: 6/7/2000

Age at date of death: 39

Domicile at date of death: Cherokee County, SC

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.

☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.

☐ Decedent has a right to take legal action in this county because:

4a. Names and addresses of devisees, including dates of birth of minors:

Name	Date of Birth	Address	Relationship to Decedent

(use additional sheet if necessary)

4b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors:

Name	Date of Birth	Address	Relationship to Decedent
<u>Allen Southern</u>	<u>adult</u>	<u>2545 Cowpens-Pacolet Hwy.</u>	<u>husband</u>
		<u>Spartanburg, SC 29307</u>	
<u>[REDACTED]</u>	<u>6/21/1994</u>	<u>2545 Cowpens-Pacolet Hwy.</u>	<u>son</u>
		<u>Spartanburg, SC 29307</u>	

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of the Will (if one exists), or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
☒ NO ☐ YES If yes, please explain on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
☒ NO ☐ YES If yes, please explain on page 3.
7. Has a guardian or conservator ever been appointed for this person?
☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative, on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
☒ NO ☐ YES If yes, please state details, including names and address, on page 3.
10. Have more than ten years passed since the decedent's death?
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of under \$5,000.00
 and real estate of about the value of 87,612.00 (A full inventory and appraisal, form #350PC, must be filed within 90 days.) If decedent was a non-resident, please attach South Carolina Tax Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:
- ☐ the original is attached
 - ☐ the original is in the Court's possession
 - ☐ an authenticated copy of a will probated in another jurisdiction is attached
 - ☐ an authenticated copy of a will not probated in another jurisdiction is attached
 - ☐ the will is lost, destroyed, or otherwise unavailable; however, a description of its contents is attached
2. Do you believe, to the best of your knowledge, the will described above was validly executed?
☐ YES ☐ NO If no, please explain on page 3.
3. The date of execution of the will was: _____
 codicil(s): _____
4. Are you aware of any instrument or document amending or revoking the will?
☐ NO ☐ YES If yes, please explain on page 3.
5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?
☐ YES ☐ NO If no, please explain on page 3.
6. Do you believe the will defined in "1" above is the decedent's last will?
☐ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I AND II HERE.
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Allen Southern
2545 Cowpens-Pacolat Hwy.
Spartanburg, SC 29307

2. Priority for this appointment is:

- ☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
☒ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
☐ other devisee of decedent (describe): _____ or nominee of said devisee
☐ surviving spouse of decedent or nominee of said spouse
☐ other heir of decedent (describe): _____ or nominee of said heir
☐ creditor (Forty-five days after death must have passed) or nominee of creditor
☐ other (describe): _____
☐ nominee of any of the above

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

3 of 5
20

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 7th day of July, 19 2000

Notary Public for South Carolina
My Commission Expires: 08-30-04

Signature: [Signature]

Name: Allen Southern

Signature: [Signature]

Name: 25

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED. Informally this day of , 19 .

Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE:

TIME:

PLACE:

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this day of , 19 .

Probate Court Judge

4 of 5
VCP

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS THEREFORE ORDERED that the Last Will and Testament of the above-named decedent, dated _____ be admitted formally to probate.

Executed this _____ day of _____, 19____

Probate Court Judge

☐ SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 7th day of July, 2000

W. R. Douglas
W. R. Douglas

Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: *Allen Southern*

Name: Allen Southern

Address: 2545 Cowpens-Pacoler Hwy.

Spartanburg, SC 29307

Telephone (O): 489-1716

(H): 476-3039

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2000

Thomas J. Pace
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

INVENTORY AND APPRAISEMENT

☒ ORIGINAL
☐ SUPPLEMENTAL # _____

Personal Representative(s): Allen Southern

Decedent's Social Security Number: _____ Was there a will? ☐ YES ☒ NO
Decedent's Date of Death: 6/1/2000 Domicile at death: Cherokee County, SC
(1/County) (1/State)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 7th day of July, 2000

Melinda S. Conway
Notary Public for South Carolina
My Commission Expires: 08-30-04

Signature: Allen Southern
Name: Allen Southern
Address: 2545 Cowpens-Facoley Hwy.
Spartanburg, SC 29307
Telephone (O): 489-1716
(H): 474-3039

Attorney: _____
Address: _____
Telephone: _____

Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory files with the Probate Court.

RECAPITULATION

	Out-of-state	In-state
Schedule A - Real Estate	\$	\$ 87,612.00
Schedule B - Stocks and Bonds		0
Schedule C - Mortgages, Notes and Cash		1,362.06
Schedule D - Insurance on Decedent's Life: Part 1 - Payable to Estate		0
Part 2 - Payable to Beneficiary		98,000.00
Schedule E - Jointly Owned Property		0
Schedule F - Other Miscellaneous		0
Schedule G - Transfers during Decedent's life		0
Schedule H - Powers of Appointment		0
Schedule I - Annuities		0
TOTAL GROSS VALUE	\$	186,974.06
ENCUMBRANCES	(	47,445.00
TOTAL NET WORTH	\$	139,529.06

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE-ASSETS MUST BE DISCLOSED.

SCHEDULE A — Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E):

Item No.	Description	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
	Nine acres, more or less, with one house		150,000.00	75,000.00
	8.02 acres		9,624.00	4,812.00
	7.00 acres		8,400.00	4,200.00
	8.00 acres		7,200.00	3,600.00

WAL

TOTAL SCHEDULE A \$ 87,612.00
(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value

TOTAL SCHEDULE B \$ *0*
(also enter under recapitulation, page 1)

SCHEDULE C - Mortgages, Notes and Cash (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value
	Carolina Foothills Credit Union	356.89
	American Federal chg.	739.02
	American Federal sav.	251.01
	American Federal sav.	15.14

TOTAL SCHEDULE C \$ 1,362.06
(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

*2 of 6
1/2/99*

SCHEDULE D - Insurance (if none, so state.)**Part 1 - Life Insurance Payable to the Estate**

Item No.	Description	Value

TOTAL PART 1

(also enter under recapitulation, page 1)

\$ 0**Part 2 - Life Insurance Payable to Beneficiaries**

Item No.	Description	Beneficiary	Value

	Postal Service Ins. (Company unknown)		

48,000.00			
50,000.00			

Allen Southern, husband			
Trudy Smith, sister			

TOTAL PART 2

(also enter under recapitulation, page 1)

\$ 98,000.00**SCHEDULE E - Jointly owned Property** (with right of survivorship) (if none, so state.)**NOTE:** You must complete Schedule E if the decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is includible in the gross estate.**Percentage Includible:**

1 - Joint interest held by decedent and spouse — the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest — Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$ 0

SCHEDULE F - Miscellaneous Personal Property - (tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Value

TOTAL SCHEDULE F

(also enter under recapitulation, page 1)

\$ 0

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death. United States Government Bonds "Payable on Death". Trust created by Decedent in which income for life was retained, life insurance transfers, Lifetime transfers of real property in which Decedent retains a life estate or other incidents of ownership. (If none, so state.)

Item No.	Description	Value

TOTAL SCHEDULE G

(also enter under recapitulation, page 1)

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

FORM #350PC (1/81)

PAGE 4 OF 5

(If more space is required, insert tax schedules or additional sheets of same size.)

FORM #350PC (1/81)

PAGE 2 OF 5

SCHEDULE H - Powers of Appointment - Property over which Decedent possessed a Power of Appointment both real and personal, whether Testamentary or otherwise. (If none, so state.)

Item No.	Description	Value

TOTAL SCHEDULE H

(also enter under recapitulation, page 1)

\$ 0

SCHEDULE I - Annuities (If none, so state.) (IRA's, Keogh's, etc.)

Item No.	Description	Value

TOTAL SCHEDULE I

(also enter under recapitulation, page 1)

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount
	Mortgage on house and nine acres	87,890.00 50%
	Mortgage on other acreage	7,000.00 50%

TOTAL ENCUMBRANCES
(also enter under recapitulation, page 1)

\$ 47,445.00

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is not REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this County, such estate is not reportable to the South Carolina Tax Commission.

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of MAY, 2007, 19__

John L. Patten
Judge, Probate Court

Cherokee County, S.C.

Probate Court Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

I HEREBY CERTIFY THIS IS A
TRUE COPY OF THE RECORD
ON FILE IN THE SPARTANBURG
COUNTY HEALTH DEPARTMENT

JUN 27 2000

E. J. C. C.
COUNTY REGISTRAR

TYPE/PRINT
IN
PERMANENT
BLACK INK
FOR
INSTRUCTIONS
SEX
OTHER SIDE
AND HANDBOOK

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CERTIFICATE OF DEATH

STATE BIRTH NUMBER

STATE FILE NUMBER

1. Decedent's Name: Judy Lynne Southern		2. Sex: Female	3. Date of Death (Month, Day, Year): June 07, 2000
4. Social Security Number: [REDACTED]	5. Age - Last Birthday (Years): 39	6. Date of Birth (Month, Day, Year): September 04, 1960	7. Birthplace (City, State, and Country): Augusta Georgia

8. Was Decedent Ever in U.S. Armed Forces? (Yes or No): No	9. Place of Death (Check only one box and give instructions on other side): ☐ Hospital ☐ Home ☐ Other (Specify): Other (Specify)

10. Facility Name (If not institution, give street and number): Mary Black Memorial Hospital	11. City, Town, or Location of Death: Spartanburg	12. County of Death: Spartanburg

13. Marital Status - Married, Never Married, Widowed, Divorced (Specify): Married	14. Surviving Spouse (If wife, give maiden name): Allen Southern	15. Decedent's Usual Occupation (Give kind of work done during last of working life. Do not use retired): Rural Mail Carrier	16. Kind of Business/Profession: Post Office

17. Residence - State: South Carolina	18. City, Town, or Location: Spartanburg	19. Street and Number: 2545 Cowpens-Pacolet Hwy	20. Inside City Limits? (Yes or No): Yes

21. EP CODE: 29307	22. Was Decedent of Hispanic Origin? (Specify Yes or No - If yes, specify Cuban, Mexican, Puerto Rican, etc.): No	23. Race - American Indian, Black, White, etc. (Specify): White	24. Decedent's Education (Specify only highest grade completed): 12

25. Father's Name: Wayne Hennings	26. Mother's Name: Mary Harpe

27. Informant's Name (Type/Print): Allen Southern	28. Mailing Address (Street and Number or Rural Route Number, City or Town, State, Zip Code): 2545 Cowpens-Pacolet Highway Spartanburg, South Carolina 29307

29. Method of Disposition: ☒ Burial ☐ Cremation ☐ Removal from State ☐ Donation ☐ Other (Specify):	30. Place of Disposition (Name of cemetery, crematory, or other place): Oleander Memorial Gardens	31. Location - (City or Town, State): Wilmington

32. Funeral Director or Person Acting as Such (Signature): [Signature]	33. Funeral Dir. License No.: 2006	34. Name and Address of Facility: Shuford Hatcher Funeral Home 211 East Frederick Gaffney, South Carolina, 29340

35. Embalmer (Signature): [Signature]	36. Embalmer License No.: 1574	37. License Number: 150

38. Complete Form (Do not only when certifying physician is not available at time of death to certify cause of death):	39. Signature and Title (Sign):	40. License Number:	41. Date Signed (Month, Day, Year):

42. Time of Death: 2257	43. Date Pronounced Dead (Month, Day, Year): 6/7/00	44. Was Case Referred to Medical Examiner/Coroner? (Yes or No): Yes

27. PART I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cutting or respiratory arrest, shock, or heart failure. List only one cause on each line.

45. Immediate Cause (Final disease or condition resulting in death): TWIST ABDOMINAL HEMORRHAGE	46. Due to (or as a consequence of): Injury Duodenal Perforation, W.K. injury	47. Due to (or as a consequence of): GUNSHOT wound ABDOMEN	48. Due to (or as a consequence of): 6 hr.

PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.

49. Manner of Death: ☐ Natural ☐ Pending Investigation ☐ Accident ☐ Suicide ☐ Homicide ☐ Could not be Determined	50. Date of Injury (Month, Day, Year): 6/7/00	51. Time of Injury: 6:00	52. Injury at Work? (Yes or No): No	53. Describe How Injury Occurred: GSW

54. Place of Injury - (Residence, Street, Factory, Office, etc.) (Specify):	55. Location (Street and Number or Rural Route Number, City or Town, State):

56. Certifier (Check only one): ☒ CERTIFYING PHYSICIAN (Physician certifying cause of death) ☐ MEDICAL EXAMINER ☐ CORONER ☐ PROSECUTOR AND CERTIFYING PHYSICIAN (Physician both pronouncing death and certifying to cause of death)	57. Name of Attending Physician if Other Than Certifier:

58. Signature and Title of Certifier (Type/Print): John Tate MD	59. License Number: SC 9463	60. Date Signed (Month, Day, Year): 6/7/00

61. Name and Address of Person Who Signed in 58. (Type/Print): John Tate MD 1650 S.G. - DE SPARTANBURG SC 29307

62. Registrar's Signature: [Signature]	63. Date Filed (Month, Day, Year): June 26, 2000

Name of Decedent:
For Use By Physician Or Institution

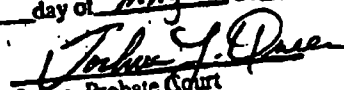
Pronouncing
Physician
Only →
See
↑
Definition
On Other
Side

See Instructions On Other Side

See Definition
On Other Side

OHEC 670
Rev. 1990

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of MAY, 2007


Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

INFORMATION TO HEIRS AND DEVISEES

Application/Petition was made to the Probate Court of Cherokee
County, at (address) Peachtree Centre, 1434 N. Limestone Street, Gaffney, SC for the (check all that apply):

INFORMAL

- ☐ PROBATE OF WILL
☒ APPOINTMENT

FORMAL

- ☐ TESTACY
☐ APPOINTMENT

in the above matter.

(Complete if applicable) The decedent's will dated _____
and codicil(s) dated _____ was/were presented.

This notice is being sent to persons who have or may have some interest in the estate.

Bond HAS ☐ HAS NOT ☒ been filed.

My application/petition was granted within the past thirty days on July 7 2000

Applicant/Personal Representative Name: Allen Southern
Address: 2545 Cowpens-Pacquet Hwy.
Spartanburg, SC 29307
Telephone (O): 489-1716
(H): 474-3039

Applicant/Personal Representative Name: _____
Address: _____
Telephone (O): _____
(H): _____

Attorney: _____
Address: _____
Telephone: _____

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of MAY, 2000

Thomas J. E. Dean
Judge, Probate Court
Cherokee County, S. C.

FORM #205PC (1/91)
CP-3-306, 62-3-402, 62-3-705

GRAPHIC PRESS 3631 Dairies Street, West Columbia, South Carolina 29170 (803) 786-4207

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

PROOF OF DELIVERY

On the 7th day of July, 19 2000 mailed or delivered a copy of _____

Information to heirs and devisees

a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☒ personal delivery
☐ ordinary first class mail
☐ certified mail
☐ registered mail

Each of the following persons at the addresses shown:

NAME	ADDRESS
<u>Judy Lynne Southern</u>	<u>2545 Cowpens-Pacolet Hwy</u>
_____	<u>Spartanburg S.C.</u>
_____	<u>29307</u>
_____	_____
_____	_____
_____	_____

SWORN to before me this 7th day of July, 2000

Melinda B. Hulsey
Notary Public for South Carolina
My Commission Expires: 08-30-04

Signature: [Signature]
Name: Allen Southern
Address: 2545 Cowpens-Pacolet Hwy.
Spartanburg, SC 29307
Telephone (O): 689-1716
(H): 674-3039

Signature: _____
Name: _____
Address: _____

Telephone (O): _____
(H): _____

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2002

[Signature]
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

NOTICE TO CREDITORS

*NOTICE TO CREDITORS OF ESTATES

All persons having claims against the following estates are required to deliver or mail their claims to the indicated Personal Representatives, appointed to administer these estates, and to file their claims on Form #371PC with the Probate Court of Cherokee County, the address of which is P. O. Box 22, Caffney, SC 29342, on or before the date that is eight months after the date of the first publication of this Notice to Creditors (unless barred by operation of Section 62-3-803), or such persons shall be forever barred as to their claims. All claims are required to be presented in written statements, indicating the name and the address of the claimant, the basis of the claim, the amount claimed, the date when the claim will become due, the nature of any uncertainty as to the amount claimed and the date when due, and a description of any security as to the claim.

Estate: Judy Lynne Southern
Personal Representative: Allen Southern
Address: 2545 Cowpens-Pacolet Hwy., Spartanburg, SC 29307
Attorney, if applicable: _____
Address: _____

INSTRUCTIONS: Publication to be in The Cherokee Chronicle, a newspaper of general circulation in Cherokee County. Publish only this (*) portion of this form. Notices may be combined by listing individualized statements of the information concerning each of the estates under one heading consisting of the notice text. Publish once a week for three successive weeks.

File a copy of this form with proof of its publication with the Probate Court.

CERTIFICATE OF PUBLICATION

I hereby certify that on these dates: _____ and _____
I did publish the Notice to Creditors in _____
a newspaper of general circulation in _____ County in accordance with law.

SWORN to before me this _____ day of _____, 19____.

Signature: _____
Name: _____
Address: _____

Notary Public for South Carolina
My Commission Expires: _____

Telephone (O): _____
(H): _____

Signature: _____
Name: _____
Address: _____

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2007.

FORM #370PC (1/91)
62-3-704, 62-3-801, 62-3-803, 62-3-804

Thomas J. Preece
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

FIDUCIARY LETTERS

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIANSHIP
☐ CONSERVATORSHIP
☐ TRUSTEESHIP
☐ _____

On the 7th day of July, 2000
Allen Southern

was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the above fiduciary(ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS:

n/a

Executed this 7th day of July, 2000

W. R. Douglas
W. R. Douglas, Probate Court Judge

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2007

John J. Preece
Judge, Probate Court
Cherokee County, S. C.

W. ROBERT DOUGLAS

Office of the Probate Judge
CHEROKEE COUNTY, SOUTH CAROLINA

DATE July 7 No 2000

DATE	NAME	TYPE SERVICE			
		License	Estate Cost	Cert. Copy	Other
	Estate of Judy Lynne Southern		\$95.00		

RECAPITULATION:

Total Licenses issued \$ _____
Total Estate Costs \$ _____
Total Cert. Copies \$ _____
Total Misc. Costs \$ _____
Grand Total \$ _____

PD 7-7-00

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2007

William J. Dace
Judge, Probate Court
Cherokee County, S. C.

125,000 (150,000)
87,800.00

BM: A Port of
034-00-00-010.001

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Address of grantor: c/o Veteran Home
1000 N. Pine Street
Spartanburg, SC 29303

KNOW ALL MEN BY THESE PRESENTS, that I, JOE DEAN COSTNER

In consideration of Ninety Three Thousand Seven Hundred Fifty & No/100 Dollars, (\$93,750.00) the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto ALLEN GRANT SOUTHERN AND JUDY LYNN SOUTHERN, their heirs or assigns forever:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Cherokee, being designated as 9.00 acres, more or less, as shown on plat prepared for Allen Grant Southern and Judy Lynne Southern by Lavender, Smith and Associates, Inc., dated September 24, 1991 and revised August 20, 1992 to be recorded herewith in the office of the Clerk of Court for Cherokee County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof: 12-2-766

This being a portion of the same property conveyed to Joe Dean Costner by deed of Max M. Robbins dated May 10, 1982 and recorded in Volume 11-P, Page 415, in the office of the Clerk of Court for Cherokee County, S.C.

244.40

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
AUG 25 10 02 AM '92
VOLUME 12 PAGE 767
CLERK OF COURT
CHEROKEE CO.
STAMP PAID
\$103.40

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)' heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof except as to easements, restrictions and rights-of-way of record.

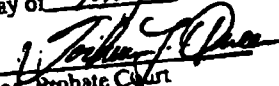
WITNESS the grantor(s)' hand(s) and seal(s) this 21st day of August 19 92
SIGNED, sealed and delivered in the presence of:
Samuel M. Price (SEAL)
Joe Dean Costner (SEAL)
JOE DEAN COSTNER (SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
PROBATE
Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor(s)' act and deed deliver the within instrument and that (s)he, with the other witness subscribed above witnessed the execution thereof.
SWORN to before me this 21st day of August 19 92
Samuel M. Price (SEAL)
Notary Public for South Carolina
My Commission Expires: 6-22-2002

Decedentary Stamp Dover No Longer Necessary

L 767

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2007


Judge, Probate Court
Cherokee County, S. C.

DEED ONLY - NO TITLE INSURANCE OR CERTIFICATION

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That

Joe Dean Costner

In consideration of Nine Thousand Six Hundred Twenty Four and No/100
the receipt of which is hereby acknowledged, have granted, bargained, sold,
by these presents do grant, bargain, sell and release unto

Allen Grant Southern and Judy Lynne Southern, their heirs and

All that certain piece, parcel or lot of land, situate, lying and being in the State of South
Carolina, County of Spartanburg, being shown and designated as 8.02 acres, more or less, as
shown on plat prepared for Allen Grant Southern and Judy Lynne Southern by Lavender,
Smith and Associates, Inc. dated March 26, 1993 to be recorded herewith in the office of the
Clerk of Court for Cherokee County, S.C. For a more complete and particular description,
reference is hereby made to the above referred to plat and record thereof.

This being a portion of the property conveyed to Joe Dean Costner by deed of Max M.
Robbins dated May 10, 1982 and recorded in Deed Book 11-F, Page 415 in the Office of the
Clerk of Court for Cherokee County, S.C.

Block Map No.: A Portion of 034-00-00-010.01

Mailing Address: 2545 CONPENS-PAULET HIGHWAY
SPARTANBURG, S.C. 29303

together with all and singular the rights, members, hereditaments and appurtenances to said
premises belonging or in any wise incident or appertaining: to have and to hold all and singular
the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and
assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s')
heirs or successors, executors and administrators to warrant and forever defend all and singular
said premises unto the grantee(s) and the grantee's(s') heirs or successors and against every
person whomsoever lawfully claiming or to claim the same or any part thereof except as to
caveats, restrictions and rights-of-way of record.

WITNESS the grantor's(s') hand(s) and seal(s) this 4th day of May, 1993.

SIGNED, sealed and delivered in the presence of:

[Signature]
[Signature]

[Signature]
JOE DEAN COSTNER

(SEAL)

410

CHEROKEE CO.
STAMP PAID
\$11.00

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May 2007
Thomas J. Davis
Judge, Probate Court
Cherokee County, S. C.

BN: A Port ☐ f
034-00-00-010.001

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Address of Grantee

C/O Veteran Home
1000N. PINE STREET
SAVANNAH, S.C.
29303

KNOW ALL MEN BY THESE PRESENTS, that I, JOE DEAN COSTNER

in consideration of Seven Thousand Two Hundred and No/100 (\$7,200.00) ——— Dollars,
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant,
bargain, sell and release unto ALLEN GRANT SOUTHERN AND JUDY LYNN SOUTHERN, their heirs
or assigns forever:

All that certain piece, parcel or lot of land situate, lying and
being in the State of South Carolina, County of Cherokee, being
designated as 8.00 acres, more or less, as shown on plat prepared
for Allen Grant Southern and Judy Lynne Southern by Lavender,
Smith and Associates, Inc., dated August 10, 1992 to be recorded
herewith in the office of the Clerk of Court for Cherokee County,
S.C. For a more complete and particular description, reference is
hereby made to the above referred to plat and record thereof. 134/915

This being a portion of the same property conveyed to Joe Dean
Costner by deed of Max M. Robbins dated May 10, 1982 and recorded
in Volume 11-P, Page 415, in the office of the Clerk
Cherokee County, S.C.

CHEROKEE CO.
STAMP PAID
\$ 8.25

granted with all and singular the rights, members, hereditaments and appurtenances to said premises belonging to in any wise
in deed or otherwise: to have and to hold all and singular the premises before mentioned unto the grantor(s), and the
grantee(s) heirs, successors and assigns, forever. And, the grantor(s) do hereby bind the grantor(s) and the grantor(s)
heirs, successors and administrators to warrant and forever defend all and singular said premises unto the
grantee(s) heirs, successors and assigns forever against every person whomsoever lawfully claiming or to claim the same
in any way (thereof) except as to encumbrances, restrictions and rights of way of record.

Witness my hand and seal the 25th day of August 19 92
JOE DEAN COSTNER (SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within
instrument signed and sealed as the grantor(s) act and deed deliver the within written deed and that (s)he, with the other
witnesses subscribed the execution thereof.

Subscribed and sworn to before me this 25th day of August 19 92

Notary Public for South Carolina
My Commission Expires: 4-22-2002

Deeds No Longer Necessary

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May, 2007

Thomas J. Duce
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that

Joe Dean Costner

In consideration of EIGHT THOUSAND FOUR HUNDRED AND No/100 (\$8,400.00) Dollars
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by
these presents do grant, bargain, sell and release unto:

Allen Grant Southern and Judy Lynne Southern, their heirs and assigns

All that certain piece, parcel or lot of land, situate, lying and being in the State of
South Carolina, County of Spartanburg, being shown and designated as 7.00 acres, more
or less, as shown on plat prepared for Allen Grant Southern and Judy Lynne Southern by
Lavender, Smith and Associates, Inc. dated July 19, 1994 to be recorded herewith in the
office of the Clerk of Court for Cherokee County, S.C. For a more complete and
particular description, reference is hereby made to the above referred to plat and record
thereof.

This being a portion of the property conveyed to Joe Dean Costner by deed of Max M.
Robbins dated May 10, 1982 and recorded in Deed Book 11-P, Page 415 in the Office
of the Clerk of Court for Cherokee County, S.C.

Block Map No.: P/O 034-00-00-010.001

Mailing Address: 2545 Cowpens-Pawlet Highway
Spartanburg, S.C. 29307

together with all and singular the rights, members, hereditaments and appurtenances to said
premises belonging or in any wise incident or appertaining; to have and to hold all and singular
the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and
assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs
or successors, executors and administrators to warrant and forever defend all and singular said
premises unto the grantee(s) and the grantee's(s') heirs or successors and against every person
whosoever lawfully claiming or to claim the same or any part thereof except as to easements,
restrictions and rights-of-way of record.

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May, 2002

John J. Pallen
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200



PROBATE COURT



NOTICE TO CREDITORS

*NOTICE TO CREDITORS OF ESTATES

All persons having claims against the following estates are required to deliver or mail their claims to the indicated Personal Representatives, appointed to administer these estates, and to file their claims on Form #371PC with the Probate Court of Cherokee County, the address of which is P. O. Box 22, Gaffney, SC 29342 on or before the date that is eight months after the date of the first publication of this Notice to Creditors (unless barred by operation of Section 62-3-803), or such persons shall be forever barred as to their claims. All claims are required to be presented in written statements, indicating the name and the address of the claimant, the basis of the claim, the amount claimed, the date when the claim will become due, the nature of any uncertainty as to the amount claimed and the date when due, and a description of any security as to the claim.

Estate: Judy Lynne Southern
Personal Representative: Allen Southern
Address: 2545 Cowpens-Pacolet Hwy., Spartanburg, SC 29307
Attorney, if applicable: _____
Address: _____

INSTRUCTIONS: Publication to be in The Cherokee Chronicle, a newspaper of general circulation in Cherokee County. Publish only this (*) portion of this form. Notices may be combined by listing individualized statements of the information concerning each of the estates under one heading consisting of the notice text. Publish once a week for three successive weeks.

File a copy of this form with proof of its publication with the Probate Court.

CERTIFICATE OF PUBLICATION

I hereby certify that on these dates: 8/22/00 8/29/00 and 9/5/00
I did publish the Notice to Creditors in The Cherokee Chronicle
a newspaper of general circulation in Cherokee County in accordance with law.

SWORN to before me this 5th day of September, 192000

[Signature]
Notary Public for South Carolina
My Commission Expires: 7/1/2001

Signature: [Signature]
Name: Halcy H. Daniels
Address: 103 Alexander St
Gaffney, SC 29340
Telephone (O): (803) 488-1016
(H): (803) 206-0307

Signature: [Signature]
Name: Jackie W. Simmons
Address: 116 Carter Hgts Pt.
Gaffney, SC 29340
Telephone (O): (803) 488-1016
(H): (803) 489-8396

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2000

FORM #370PC (1/91)
62-3-704, 62-3-801, 62-3-803, 62-3-804

[Signature]
Judge, Probate Court
Cherokee County, S. C.

(1-1448)
FROM: OWN
COMPUTER?
 From Home
 0 - \$7,000
 p/t, f/t Free
 800-210-
 nw.makesuc-
 n(9/7)

Driver with
 or Pipeline
 or. Good
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 g free. Call
 it (704) 875-
 fax resume
 875-9842.

of Being
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 ore cash?
 Call 800-
 1. (12/5)

24 PEO-
 O LOSE
 Incentive
 1-888-819-
)

office
 9a.m.-2:30
 -F. Send
 with refer-
 Cherokee
 Literacy
 n P.O. Box
 fney, SC
 7)

Office

Benefits including
 401-K - Hourly pay -
 Paid weekly.
 Hamricks' Family
 Clothing I-85 Exit 90
 Gaffney, SC 29341.
 Apply in person - Left
 side of bldg -
 Personnel Office.
 EOE. (9/7)

NOW HIRING: com-
 panies desperately
 need employees to
 assemble products
 at home. No selling,
 any hours. \$500
 weekly potential info.
 1-504-646-1700
 DEPT. SC-4904 (9/7)

Computers



Internet Access as
 low as \$16.62 per
 month. No Smut!
 Get on line quickly,
 safely & inexpen-
 sively with just a
 phone call to USAP
 487-3991. (TFN25)

Health Supplies



LOSE LBS AND
INCHES FAST!! All
Natural
 Guaranteed Call 1-
 800-789-5435 Ext.
 1763 FREE
 Samples. Programs
 start as low as \$38.
 (9/7)

Pulpwood, Hardwood
 & Logs. Will cut from
 one to 100 acres res-
 idential & commer-
 cial.
 (864) 427-5664
 (864) 427-6338
 (10/31)

Wanted to buy Pine,
Hardwood,
Pulpwood and
Sawtimber. 10 acre
tracts and larger.
Call John Carter,
Licensed Forester
at 864-429-5035
leave message.
(10/24)

Services



Moffatt's Home
 repair and improve-
 ment, vinyl siding,
 window, deck and
 more! Insured and
 bonded. 864-463-
 8262. Leave mes-
 sage please.
 (TFN 8)

Will do yard work,
 clean gutters, and
 other misc. jobs.
 Ralph Jones. 487-
 4140. (9/28)

Pa. ng. Interior -
Exterior. Residential -
Commercial. 20
 yrs. experience.
Good references.
Pressure washing
and minor repairs.
488-1247 or 949-
0260 after 3:30pm.
(9/28)

1986 Chevrolet
Cavalier. Good
parts. \$200 or Best
offer. Call 489-4709
after 6pm or 489-
5855. (TFNnc)

1995 Jeep Grand
Cherokee Larado.
Fully equipped, 4x4.
\$14,500. 77,000
actual miles. Call
487-9773. (TFNnc)

1997 Harley
Davidson Heritage
Softail. 6k miles.
Violet pearl color.
Windshield, pipers
and saddle bags.
\$16,800. Work: 864-
303-2106, home:
427-6656. Leave
message. (tfn)

1985 Ford F-150
Stepside. Looks and
runs good. \$1,995.
Call 487-4454 after 5
p.m. (9/5)

For Sale



Medical scooters,
jazzy's, ramps, lifts
(Inside van or
behind vehicle).
Buy-Sell-Trade. Call
Monty Cooper 864-
969-9658 or 1-800-
234-4241. (864 zone
only.) (9/28)

4 Michelin tires
\$75. Call 489-4709
after 6pm or 489-
5855. (tfn)

Okra, half bushel
\$12.00. 578-8214.
(9/28)

Must Sell 3 Arch
Style Steel Bldgs.
Damaged During
Delivery. 25X30,
30X38, 35X56. Huge
Discount to Buyers.
Will Finance. No
Reasonable Offer
Refused. 1-800-222-
6335. (9/14)

Homes For Rent



House for rent.
3BR, 2BA. 1900
square feet. Large
dining area. Country
setting. \$650/mo +
deposit. 494-4617.
(9/5)

Mobile Homes



Pre-owned mobile
homes. 2 and 3 BR.
Small transa fee
and low monthly
payments. Call Tom,
Teresa or Elaine at
Clayton Homes
704-481-0895.
(TFN23)

\$50 a week will buy
a 2 or 3 BR Clayton
Mobile Home.
Special programs for
first time buyers. All
Applications
Accepted. Call Tom,
Teresa or Elaine at
Clayton Homes
704-481-0895.
(TFN31)

needs and your bud-
get. We can do well
and septic or water
tap. Call Tom,
Teresa or Elaine at
Clayton Homes.
704-481-0895.
(TFN37)

You can own a 3BR
home in only 84
mos. Payments start
at \$350/mo. Call
Tom, Teresa or
Elaine at Clayton
Homes 704-481-
0895. (TFN23)

Land/Home pkgs.
@ 5.75% available.
Call 1-888-888-
6639. (9/28)

New Horton
5BR/3BA, 1944 Sq.
Ft. Available @
\$375.00 per mo.
(9/28)

New Horton
2BR/2BA, 14'X64'
Available @ \$210.00
per mo. Call 1-888-
888-6639. (9/28)

New Horton
3BR/3BA, 1632 Sq.
Ft. Available @
\$370.00 per mo. Call
1-888-888-6639
(9/28)

Homeless?? It's
easy to qualify @
Horton Homes of
Rutherfordton. Call
1-888-888-6639.
(9/28)

Owner Abandoned
2 story Modular
Cane Creek overlook

Legal Notices



STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

NOTICE TO CREDITORS

All persons having claims
 against the following
 estates are required to
 deliver or mail their claims
 to the indicated Personal
 Representatives, appointed
 to administer these estates,
 and to file their claims on
 Form #371PC, with the
 Probate Court of Cherokee
 County, the address of
 which is PO Box 22,
 Gaffney, SC 29342, on or
 before the date that is eight
 month after the date of the
 first publication of this
 Notice to Creditors (unless
 barred by operation of
 Section 62-3-803), or such
 persons shall be forever
 barred as to their claims.
 All claims are required to
 be presented in written
 statements, indicating the
 name and the address of
 the claimant, the basis of
 the claim, the amount
 claimed, the date when the
 claims will become due,
 the nature of any uncertain-
 ty as to the amount claimed
 and the date when due, and
 a description of any secu-
 rity as to the claim.
 Estate: Judy Lynne
 Southern
 Personal Representative:
 Allen Southern
 Address: 2545 Cowpens-
 Pacolet Hwy., Spartanburg,
 SC 29307
 Published: 8/22/2000,
 8/29/2000 and 9/5/2000.

estates are requi-
 deliver or mail their
 to the indicated P-
 Representatives, app-
 to administer these
 and to file their clai-
 Form #371PC wit
 Probate Court of Ch
 County, the addre-
 which is PO Bo.
 Gaffney, SC 29342,
 before the date that i-
 month after the date
 first publication of
 Notice to Creditors (i-
 barred by operatic
 Section 62-3-803), or
 persons shall be fo-
 barred as to their cl-
 All claims are requir-
 be presented in w-
 statements, indicating
 name and the address
 claimant, the basis o-
 claim, the amount clai-
 the date when the cl-
 will become due, the n-
 of any uncertainty as
 amount claimed and
 date when due, an
 description of any sec-
 as to the claim.
 Estate: Nettie Ha-
 Bright
 Personal Representat-
 Katherine Owensby of
 Freezer St., Gaffney,
 29340 and Pat
 McAbee, 171 Hall
 Gaffney, SC
 Published: 8/22/20
 8/29/2000 and 9/5/2000

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

NOTICE TO CREDITORS

All persons having clai-
 against the follow-
 estates are required
 deliver or mail their clai-
 to the indicated Perso-
 Representatives, appoint-
 to administer these estat-

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 31st day of May 2009
John J. Price
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

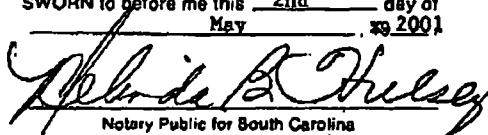
CASE NUMBER 2000ES1100200

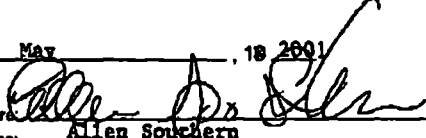
PETITION FOR SETTLEMENT

1. The undersigned as the Personal Representative(s) has/have collected and managed the assets of the estate; has/have paid all lawful claims against the estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to estate of decedent.
2. The Personal Representative(s) has/have filed:
☒ Proof of Publication.
☒ an Inventory.
☐ a Proposal for Distribution.
☒ a Final Accounting.
☐ all required returns (including final income tax return, fiduciary income tax return, estate tax return). If not, please explain.
3. The time period for submission of claims has expired.
4. I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Court may deem applicable and proper.
5. I request that the Court: (check all that apply)
☐ A. Consider and approve an accounting and the proposal for distribution.
☐ B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for Distribution (Form #410PC).
☐ C. Find that the decedent died testate and make a determination of the testacy status and beneficiaries of the decedent.
☐ D. Find that the decedent died intestate and make a determination of the heirs at law of the decedent.
☒ E. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
☐ F. (Other:)
6. Notice of right to demand hearing and copies of the final accounting, the proposal for distribution, and this petition have been/are being sent to all interested persons as required by law.

Executed this 2nd day of May, 18 2001

SWORN to before me this 2nd day of May, 2001


Notary Public for South Carolina
My Commission Expires: 08-30-04

Signature: 
Name: Allen Southern
Address: 2545 Cowpens-Pacolet Hwy.
Spartanburg, SC 29307
Telephone (O): 489-1716
(H): 474-3039

Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May, 2007


Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

ACCOUNTING

☒ FINAL
☐ INTERIM # _____

The undersigned Personal Representative(s) submits this accounting, which covers the period from 7/7/2000
19____ through 5/2/2001 19____

The documentation on the reverse side of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance	<u>1,362.06</u>	Credit union and Amer. Fed.
Plus: Receipts	<u>110.00</u>	Advanced by PR
Subtotal	<u>1,472.06</u>	
Less: Disbursements	<u>1,472.06</u>	Notice, court cost, funeral bill
Ending Balance	<u>0</u>	

The Personal Representative declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s).

SWORN to before me this 2nd day of
May, 18 2001

Notary Public for South Carolina
My Commission Expires: 08-30-04

Signature: [Signature]
Name: Allen Southern
Address: 2545 Cowpens-Pacolet Hwy.
Spartanburg, SC 29307
Telephone (O): 489-1716
(H): 474-3039

Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2001

[Signature]
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

- IN THE PROBATE COURT

IN THE MATTER OF: JUDY LYNNE SOUTHERN

CASE NUMBER: 2000-ES-11-00200

FILED, RETURNED, INDEXED
02/14/2002 02:04:00PM
Rec Fee: 10.00 St Fee: 0.00
Clk Fee: 0.00 Pages: 4
Clerk of Court
KATIE W. BRIDGES

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 7th day of June, 2000; and,

WHEREAS, the Estate of the decedent is being administered in the Probate Court for Cherokee County, South Carolina in File No. 2000-ES-11-00200; and,

WHEREAS, the Grantees herein are either beneficiaries or heirs at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release to:

Allen Southern, as Husband
2545 Cowpens-Pacolet Hwy.
Spartanburg, SC 29307

Allen Southern,
as Conservator for [REDACTED], son
2545 Cowpens-Pacolet Hwy.
Spartanburg, SC 29307

the following described property:

All that certain piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, lying and being situate in the State of South Carolina, County of Cherokee, being shown as 9.00 acres on plat for Allen Grant Southern and Judy Lynne Southern by Lavender, Smith and Associates, Inc. dated September 24, 1991 and revised August 20, 1992, and recorded in 13-U, Page 756 with the Cherokee County Clerk of Court.

This is the identical property conveyed to Allen Grant Southern and Judy Lynne Southern by deed of Joe Dean Costner dated August 21, 1992 and recorded in the Office of the Cherokee County Clerk of Court on August 26, 1992 in Deed Book 13-U, Page 767. Judy Lynn Southern subsequently died intestate on June 7, 2000 (Cherokee County Probate File 2000-ES-11-00200), leaving as her sole heirs her husband, Allen Grant Southern, and son, [REDACTED]. See for more information Cherokee County Probate File 2001-GC-11-00023 on a conservatorship action.

Form #400PC (9/87)

Page 1 of 3

1207 BK: 00116 Pg: 00293

Received 02-14-02 15:40

From-

To-CHEROKEE COUNTY PROB Page 02

1 of 3
VLP

ALSO: All that certain piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, lying and being situate in the State of South Carolina, County of Cherokee, being shown as 8.00 acres on plat for Allen Grant Southern and Judy Lynne Southern by Lavender, Smith and Associates, Inc. dated August 20, 1992, and recorded in 13-U, Page 915 with the Cherokee County Clerk of Court.

This is the identical property conveyed to Allen Grant Southern and Judy Lynne Southern by deed of Joe Dean Costner dated August 21, 1992 and recorded in the Office of the Cherokee County Clerk of Court on August 26, 1992 in Deed Book 13-U, Page 916. Judy Lynn Southern subsequently died intestate on June 7, 2000 (Cherokee County Probate File 2000-ES-11-00200), leaving as her sole heirs her husband, Allen Grant Southern, and son, Jacob Clay Southern. See for more information Cherokee County Probate File 2001-GC-11-00023 on a Conservatorship action.

ALSO: All that certain piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, lying and being situate in the State of South Carolina, County of Cherokee, being shown as 8.02 acres on plat for Allen Grant Southern and Judy Lynne Southern by Lavender, Smith and Associates, Inc. dated March 26, 1993, and recorded in 13-Y, Page 409 with the Cherokee County Clerk of Court.

This is the identical property conveyed to Allen Grant Southern and Judy Lynne Southern by deed of Joe Dean Costner dated May 4, 1993 and recorded in the Office of the Cherokee County Clerk of Court on May 6, 1993 in Deed Book 13-Y, Page 410. Judy Lynn Southern subsequently died intestate on June 7, 2000 (Cherokee County Probate File 2000-ES-11-00200), leaving as her sole heirs her husband, Allen Grant Southern, and son, [REDACTED]. See for more information Cherokee County Probate File 2001-GC-11-00023 on a Conservatorship action.

ALSO: All that certain piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, lying and being situate in the State of South Carolina, County of Cherokee, being shown as 7.00 acres on plat for Allen Grant Southern and Judy Lynne Southern by Lavender, Smith and Associates, Inc. dated July 19, 1994, and recorded in 14-R, Page 24 with the Cherokee County Clerk of Court.

This is the identical property conveyed to Allen Grant Southern and Judy Lynne Southern by deed of Joe Dean Costner and recorded in the Office of the Cherokee County Clerk of Court in Deed Book 14-P, Page 25. Judy Lynn Southern subsequently died intestate on June 7, 2000 (Cherokee County Probate File 2000-ES-11-00200), leaving as her sole heirs her husband, Allen Grant Southern, and son, [REDACTED]. See for more information Cherokee County Probate File 2001-GC-11-00023 on a Conservatorship action.

Form #400PC (9/87)

Page 2 of 3

1207 Bk: 00116 Pg: 00294

2 of 3
VLP

Received 02-14-02 15:40

From-

To-CHEROKEE COUNTY PROB Page 03

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Grantees, their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the Estate of the decedent, has executed this Deed of Distribution, this 1st day of February, 2002.

ESTATE OF JUDY LYRNE SOUTHERN

BY:

Allen Southern
ALLEN SOUTHERN
Personal Representative

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Lynn Hall

Witness: Barbara R. Davis

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF CHEROKEE

PERSONALLY appeared before me Lynn Hall and made oath that (s)he saw the within named Personal Representative, sign, seal, and as her act and deed, deliver the within written Deed, and that (s)he with witnessed the execution thereof.

SWORN to before me this 1st
day of February, 2002.

Witness Signature:

Barbara R. Davis (SEAL)
Notary Public for South Carolina

My Commission Expires: 05/23/2006

1207 Bk: 00116 Pg: 00295

Form #400PC (9/87)

Page 3 of 3

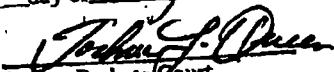
3 of 3
VCP

Received 02-14-02 16:46

From=

To= CHEROKEE COUNTY PROB Page 04

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May, 2007


Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

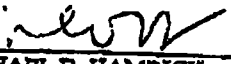
ATTORNEY'S AFFIDAVIT

IN RE: JUDY LYNNE SOUTHERN, Deceased

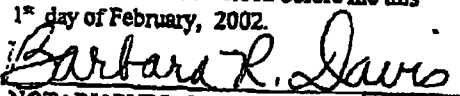
CASE NUMBER: 2000-ES-11-00200

PERSONALLY appeared before me the undersigned attorney who, being duly sworn, certifies that he is licensed to practice law in the State of South Carolina; that he has prepared the attached Deed of Distribution for the Personal Representative in the Estate of Judy Lynne Southern, deceased; and, that the Grantee(s) therein is/are correct and conform(s) to the Estate file for the above-named Decedent.

SIGNED:

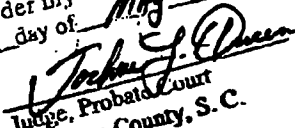

MICHAEL D. HAMRICK
HAMRICK LAW FIRM, PC
202-A N. Petty Street
Gaffney, SC 29340
864-488-2722

SWORN to and subscribed before me this
1st day of February, 2002.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 05/23/2006

1207 BK: 00116 Pg: 00296

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May, 2007

Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

CERTIFICATE OF DISCHARGE

This is to certify that
the personal representative(s)
in the above estate
appear(s) to have completed the administration, and this
Court has closed this estate
by order dated 2/15/2002

It appears appropriate
that the sureties on the bond in this estate
be discharged from future liability thereon.

IT IS THEREFORE ORDERED
that the sureties on the bond of the
personal representative(s) be and are hereby discharged.
the bond is cancelled, and the security instrument
recorded in the Office of the Clerk of Court (or RMC)
in Book _____, at page _____, be and is hereby released,
and cancellation of said instrument is authorized.

Executed this 15th day of February, 18 2002

W. R. Douglas
W. R. Douglas, Probate Court Judge

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this 30th day of May, 2007

John J. Queen
Judge, Probate Court
Cherokee County, S. C.

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee

PROBATE COURT

IN THE MATTER OF Judy Lynne Southern

CASE NUMBER 2000ES1100200

ORDER CLOSING ESTATE

Upon the consideration of the Petition for Settlement, it appears to the Court that the allegations and statements in the Petition are true and correct; that all required notices have been given; that this estate has been administered according to the laws of South Carolina and the Orders of this Court; that the Estate should be closed in accordance with the Court's Order and

☐ (Testate-Complete Settlement) That the decedent's will dated _____, 19____, and codicil(s) dated _____, 19____, which was/were previously admitted to probate, constitute the valid unrevoked Last Will and Testament of the decedent.

☒ (Intestate-Complete Settlement) That the decedent died leaving no valid unrevoked Last Will and Testament.

☐ (Other:)

IT IS HEREBY ORDERED

- ☐ 1. That the final account and proposal for distribution is approved.
- ☐ 2. That the Personal Representative(s) is/are authorized and directed to deliver and distribute title and possession of the assets of this estate to the distributees in the amount and manner set forth in the Proposal for Distribution.
- ☐ 3. That, upon compliance with this Court's Order as set forth in #2 above and upon presentation of proper proof of such compliance, the appointment of the Personal Representative(s) shall be terminated and the estate closed.
- ☐ 4. That the Personal Representative(s) is/are released and discharged as the Personal Representative(s).
- ☒ 5. That the appointment of the Personal Representative(s) is/are hereby terminated and this estate is closed.
- ☐ 6. (Other:)

Executed this 15th day of February to 2002

W. R. Douglas

W. R. Douglas

Probate Court Judge

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office. Given under my hand and seal of office this 30th day of May, 2007


Judge, Probate Court
Cherokee County, S. C.

PROBATE COURT DOCKET SHEET

FILING DATE 07/07/00

CASE NUMBER 0055140000 - ☐

DATE FIDUCIARY QUALIFIED 07/07/00

☐ CHECK IF G/C CASE IS A TRUST ESTATE

ESTATE OR GUARDIANSHIP / CONSERVATORSHIP FOR

☒ PERSONAL REPRESENTATIVE
☐ CONSERVATOR ☐ GUARDIAN

☐ TESTATE
☒ INTTESTATE

LAST SOUTHERN FIRST STUDY MIDDLE INITIAL LYNNE

LAST SOUTHERN FIRST ALLEN MIDDLE INITIAL

STREET ADDRESS 2545 Cowpens-Pacolet Hwy, Spartanburg SC CITY SPARTANBURG STATE SC ZIP 29307 TELEPHONE NUMBER (489-1716) 474-3039

ATTORNEY OR OTHER CONTACT John White Jr. LAST WHITE FIRST JOHN MIDDLE INITIAL JR

STREET ADDRESS CITY STATE ZIP TELEPHONE NUMBER

EXCEPTIONS

☐ TAXABLE ESTATE ☐ TAX CLOSING LETTER RECEIVED DATE
☐ SMALL ESTATE AFFIDAVIT (82-3-1201) DATE
☐ SUMMARY ADMINISTRATION/VERIFIED STATEMENT FILED (82-3-1203) DATE
☐ CERTIFIED/EXEMPLIFIED COPY FROM (DOMICILE)
☐ WILL OR PAPERS FILED ONLY ☐ WILL PROBATED ONLY
☐ LITIGATION PENDING ☐ LITIGATION REVOLVED DATE
☐ OTHER

DATE OF FINAL DISPOSITION 02/15/02 JUDGE AT DISPOSITION 17 DATE
☒ FINAL ACCOUNTING RECEIVED 5-2-01
☒ PETITION FOR FINAL DISCHARGE 5-2-01
☒ FINAL DISCHARGE / LETTERS DISMISSORY (ALSO SHOWN AS DATE OF FINAL DISPOSITION) 2-15-02

ESTATE CASE HISTORY / ELEMENTS OF CASE

☒ NOTICE TO CREDITORS INITIALLY PUBLISHED
☒ CERTIFICATE OF PUBLICATION/PRINTER'S AFFIDAVIT
☒ INVENTORY AND APPRAISEMENT RECEIVED
☒ PROBATE COURT COST PAID \$75.00
☐ NOTIFICATION SENT TO TAX COMMISSION (COPY TO SCCA)

DATE RECEIVED

8/22/00
9/15/00
7-7-00
7-7-00

INTERIM ACCOUNTINGS (PLEASE NOTE IF EXTENSION GRANTED)

GUARDIANSHIP / CONSERVATORSHIP

PROBATE COST PAID \$ DATE
DATE OF BIRTH OF PROTECTED PERSON: 00/00/00
DATE INVENTORY RECEIVED: 00/00/00
LIST BELOW ALL ACCOUNTINGS RECEIVED (PLEASE NOTE IF EXTENSION GRANTED)
LIST ALL ACTIONS NOT LISTED ABOVE ON REVERSE SIDE

LIST ALL ACTIONS NOT LISTED ABOVE ON REVERSE SIDE
SCCA-301 (REV 11/98)

SOUTH CAROLINA COURT ADMINISTRATION

Date _____

☐ _____

I do hereby certify that the foregoing is a true and correct copy of the original on file in my hands and seal of this office.

Given under of my hand and seal of the day of May, 20, 1907.

John L. Gorman

Judge, Probate Court,
Charlotte County, S. C.

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 07/14/00

TRODY GWYN (HENNINGES) SMITH, born on September 4, 1960, with Social Security Account Number [REDACTED], and residing at 3412 Bethel Road, Wilmington, North Carolina (NC), telephone number (910)392-3361, contacted Special Agent (SA) Craig N. Ackley regarding the shooting death of her twin sister, JUDY LYNN SOUTHERN, at SOUTHERN's residence in Gaffney, South Carolina (SC), On June 7, 2000. SMITH thereafter provided the following information:

SMITH and her sister were very best friends and spoke to each other on the telephone at least three to four times a week. They confided in each other regarding all the details of their personal lives.

JUDY had been married to ALLEN SOUTHERN for over fifteen years, and they had a six year old son, [REDACTED]. JUDY and ALLEN had never had a very stable marriage, and JUDY had first asked ALLEN for a divorce sometime in the late 1980's while they were living in Brevard, NC. JUDY asked for the divorce after learning ALLEN had been involved with another woman. At the time, ALLEN refused to grant her a divorce because he didn't want to give up any financial interest in a bowling alley which they were part owners. The relationship remained strained; however they stayed together and, in 1994, JUDY became pregnant with [REDACTED].

ALLEN was not happy about the pregnancy, and the relationship continued to worsen. After [REDACTED] was born, JUDY and ALLEN began sleeping in separate bedrooms, and continued to do so until her death. During that time, JUDY and ALLEN had engaged in sexual relations on five or six occasions; however, the relationship never improved, and they did not engage in any type of sexual activity during the last two years.

In 1999, JUDY learned that ALLEN had been having several affairs. ALLEN had been involved with a woman named "SANDY", who was a secretary for one of the Saturday morning children's bowling leagues. He also was involved with a woman named "SONYA", who was employed with the bowling alley. JUDY confronted ALLEN about the affairs and told him she wanted a

Investigation on 06/16/00 at Wilmington, NCFile # _____ Date dictated 07/14/00by SA Craig N. Ackley

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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Continuation of FD-302 of Trudy Gwyn Smith, On 06/16/00, Page 2

divorce. He told her he had never loved her, and had only married her because he felt pressured by their families. He also stated he had been depressed ever since [REDACTED] had been born, but especially so over the last several years. However, he now realized how much he loved his son and did not want JUDY to take JACOB away from him. JUDY told him she was going to file for a divorce, but she agreed to stay at the house with ALLEN because of [REDACTED]. JUDY only agreed to do so after ALLEN promised to put a trailer on the property, which he would live in. In November of 1999, JUDY met with Grace Dunbar, an attorney in Spartansburg, SC, to file for divorce.

JUDY worked as a mail carrier with the United States Post Office and, shortly after seeing the attorney, JUDY became sexually involved with a co-worker named "HAROLD". The relationship was strictly sexual in nature, as HAROLD was married, and ended sometime in early December of 1999. In November of 1999, JUDY met ROY GLASS, a horse trainer, through a friend. GLASS agreed to train a horse which JUDY kept on her property, and began spending a lot of time at JUDY's residence. JUDY stated GLASS was interested in her, and she was interested in him; however, she was involved with HAROLD at the time and her relationship with GLASS was as a good friend.

On Christmas Day, JUDY and ALLEN invited GLASS and several others to their residence. GLASS gave JUDY a belt and buckle as a gift. Allen became very upset when he saw the gift and accused JUDY of being involved with GLASS. ALLEN became so angry that GLASS left the residence. After GLASS left, ALLEN told JUDY the gift was very expensive and again accused her of being involved with GLASS. ALLEN also told her he did not want GLASS in their house anymore, especially around their son. JUDY called SMITH several times that day and evening. During the telephone calls, she was crying and very upset about what had happened.

JUDY became involved with GLASS shortly after Christmas, and she and SMITH talked about the relationship during telephone conversations.

SMITH and her sister believed ALLEN started tape recording JUDY's telephone conversations shortly after that time. SMITH worked for a company which audited day care center meal

Continuation of FD-302 of Trudy Gwyn Smith, On 06/16/00, Page 3

programs in eastern North Carolina. Shortly after Christmas, she began auditing a new center in Raleigh, NC. During telephone conversations with JUDY, she talked about traveling to the day care center in Raleigh, NC. They also talked about other details of their personal lives which JUDY would never have shared with ALLEN. During subsequent conversations between SMITH and ALLEN, ALLEN mentioned the change in SMITH's work schedule as well as several other specific things which SMITH had discussed only with JUDY. JUDY stated she had never told any of that information to ALLEN, and they believed he could have known that information only if he had listened to their conversations. They had suspicions as early as February of 2000 that ALLEN might have been tape recording JUDY's conversations.

On April 28, 2000, ALLEN attempted suicide by running his truck in a closed garage. A friend, ROY CHAPMAN, came by, found ALLEN in the truck, and took him to the hospital. After ALLEN was released from the hospital, JUDY allowed him to sleep in the same bed with her for three nights, because she was worried that he might try to hurt himself. He had told her he first tried to shoot himself; however the bullets were no good. She then made ALLEN go back to sleeping in his bedroom which upset him. He acted very depressed and sometimes his behavior would scare her (sometimes she would wake during the night to find him next to the bed staring at her). JUDY wanted him to see a psychiatrist/counselor. ALLEN agreed, but only if he saw a marriage counselor and only if JUDY would go with him. She had no intention of reconciling their relationship; however, she agreed to do so hoping it would help ALLEN through his depression. They started seeing a counselor shortly after that. As part of the sessions, the counselor had ALLEN and JUDY write out their thoughts. At some point during the sessions, the counselor showed some concerns about things ALLEN had written (comparisons of his marriage to Custer's last stand and a poem about JUDY in a pasture).

About three weeks prior to the shooting, SMITH and her sister had a telephone conversation during which JUDY stated she had made plans to spend the night with GLASS. The following day, ALLEN confronted JUDY about her relationship with GLASS, telling her he had been taping her telephone calls. ALLEN was extremely upset and met with GLASS' wife, ANGIE, playing several taped conversations for her. (GLASS later told SMITH that ALLEN had

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offered to put ANGIE up on the last twenty-two acres of his property).

On June 7, 2000, at approximately 5:45 pm, ALLEN called SMITH and asked if she had talked to JUDY that day. SMITH told him she had not and asked why he wanted to know. ALLEN then asked her again if she had spoken with JUDY that day. SMITH again told him she had not and began to get worried. ALLEN then asked her if she was sure she had not spoken to JUDY that day. SMITH was very worried at this point and started asking ALLEN what was wrong. ALLEN then told her that JUDY had been shot. SMITH asked how bad it was and ALLEN stated he didn't know, and that she was at the hospital. SMITH then told him she was going to leave right then and drive there. SMITH drove from Wilmington, NC, and arrived at the hospital at approximately 11:20 pm. While at the hospital, ALLEN told JUDY's father, WAYNE HENNINGES, that, while on his way home earlier that day, he had received a call from CHAPMAN on his cellular phone. CHAPMAN said JUDY had been stabbed and was at the house. When ALLEN arrived at the house, he searched through the house and surrounding area but could not find JUDY. He subsequently found her in the pasture behind the house. She was alive and conscious when he found her. She tried to tell him what had happened. She told ALLEN she had found a note and that the name of the man who had shot her was MIKE or MARK BERRY. ALLEN then put her in his truck and drove her to the hospital.

On the following day, June 8, 2000, ALLEN told SMITH that JUDY had called CHAPMAN and told him she had been stabbed in her bathroom. CHAPMAN thought it was a prank telephone call and hung up. Several minutes later, JUDY called CHAPMAN back and said that she had been shot and was in the pasture. CHAPMAN told JUDY that ALLEN was on the way. CHAPMAN then called ALLEN on his cellular telephone and told him JUDY had been shot and was in the pasture. When ALLEN arrived at the house, he started yelling for JUDY. JUDY called out to him, "I've been shot. I'm in the pasture. Help me." JUDY was conscious when he reached her. He carried her to his truck; however, it took him a while because he had trouble with the lock on the gate. He stated if he were stronger, he could have gotten her to the truck quicker. When he got to the truck, he tried to put her in through the driver's side. CHAPMAN arrived at about the same time and called 911. They then put her in the truck and took her to the hospital.

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SMITH asked ALLEN if JUDY had said anything else when he found her in the pasture. He said her eyes were open when he found her, but he didn't say if she said anything to him. ALLEN did tell SMITH that JUDY never regained consciousness.

Over the next several days, SMITH spoke to several of JUDY's friends. One of JUDY's co-workers, SUSIE (last name unknown), said that on the day JUDY was shot, JUDY arrived at work late. She was crying and visibly upset when she arrived at work. JUDY stated she was afraid ALLEN was going to hurt her or JACOB that day. She told SUSIE that earlier that morning, ALLEN had been sitting in a chair writing a list of things he had to do that day. JUDY walked into the room while he was writing, and he looked up at her. She described the look on his face as "scary", "wide-eyed", and "crazy". He got up from the chair and walked into the other room, leaving the paper on the chair. While he was in the other room, JUDY looked at the paper and saw that ALLEN was writing "Things I hate about you", and they were about JUDY. She then stayed at the house until ALLEN took JACOB to the day care center. She then went to work and called the day care center to make sure ALLEN had dropped JACOB off. She then told her union representative that she was worried about JACOB and that was why she had been late. She then went on her route. Throughout the day, she spoke with SUSIE by cellular telephone. She told SUSIE she wanted to get [REDACTED] and leave the house because she was worried about ALLEN. SUSIE gave her the name and number of a place to go to. JUDY told SUSIE she had called ALLEN to have him meet her at the house. They were scheduled to go to a counseling session that evening. JUDY wanted to get home and find the list ("Things I hate about you") ALLEN had made. JUDY wanted to give the list to the counselor. JUDY planned to leave with JACOB after the counseling session, and she wanted the counselor to have the list in case anything happened to her. SUSIE last spoke with JUDY about 3:30 pm, at which time JUDY said she was turning onto her road and was going to the house.

SMITH also spoke with GLASS, who stated that TONYA (last name unknown), a friend of JUDY's, had called JUDY on her cellular telephone sometime between 3:30 pm and 4:00 pm, on the day JUDY was shot. ALLEN answered the telephone and TONYA could hear JUDY in the background asking who was on the telephone. ALLEN sounded angry, saying he didn't have time for this, and hung up on TONYA. TONYA called back and left a message on JUDY's

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answering machine.

Prior to speaking with ALLEN on the day JUDY was shot, SMITH had never heard the name MIKE or MARK BERRY. JUDY had never mentioned his name. The only relationships JUDY had ever mentioned to SMITH were with ALLEN, HAROLD (last name unknown), and GLASS. SMITH believed JUDY would have told her about any other relationships she may have had.

JUDY had talked to SMITH about CHAPMAN following her on numerous occasions, trying to kiss her, and making other unwanted advances. JUDY said she was not attracted to CHAPMAN in any way and let him know that she didn't appreciate him following her or making advances toward her. JUDY was not frightened of CHAPMAN, but she was very angry about the incidents and even spoke to ALLEN about them. ALLEN spoke to SMITH about CHAPMAN on the day ALLEN attempted suicide. He told SMITH he was going to talk with CHAPMAN; however, he later tried to commit suicide and SMITH was unsure if he actually spoke to CHAPMAN. Other than the incidents with CHAPMAN, JUDY had never mentioned any problems with anyone, or anything that would lead SMITH to believe anyone was harassing, stalking, or bothering JUDY in any way.

About three weeks prior to the shooting, SMITH and her sister, BARBARA, went to stay with JUDY for the weekend while ALLEN was in New Mexico. BARBARA went to bed early while SMITH and JUDY stayed up talking. During the evening, they heard noises outside the house. The dogs were barking and they could hear the horses from the pasture. JUDY thought the horses must have gotten out somehow and said she needed to get them back into the pasture. She told SMITH to get the flashlights which were under the sink in the kitchen. SMITH got two flashlights out from under the sink and checked to make sure there were batteries in them. She did this while standing in front of the window over the sink, which faced the pasture. She then went to the door and gave one of the flashlights to JUDY. JUDY walked out and shined the flashlight around, and found that the horses had not gotten out of the pasture. JUDY said the dogs never barked like that unless someone was in the yard. SMITH was frightened and made JUDY go back into the house. They originally had been talking in the sun room; however, after hearing the noises and the dogs barking, they went to another area of the house. JUDY didn't appear to be as frightened as SMITH, and kept saying it was

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Continuation of FD-302 of Trudy Gwyn Smith, On 06/16/00, Page 7

probably nothing. ALLEN had called a number of times late that afternoon to make sure JUDY was home, but did not call that evening. SMITH did not know if JUDY told ALLEN about the noises. Other than that instance, JUDY had never mentioned anything which would indicate someone had been at the house or on the property.

It would be very unusual for JUDY to leave the doors to the house unlocked while she was not home. If she were home during the day, she would leave the sun room door unlocked, and sometimes the door near the fireplace unlocked. She always locked all the doors when she was home and it was dark outside. SMITH never knew JUDY to keep the front door unlocked, day or night, because it was never used.

On July 12, 2000, SMITH spoke with ALLEN by telephone. Part of the conversation regarded CHAPMAN's refusal to take a polygraph examination. ALLEN said CHAPMAN was nervous about taking any polygraph examination, especially for law enforcement. ALLEN told CHAPMAN that if he didn't feel comfortable taking a polygraph then he shouldn't take one. ALLEN stated he and CHAPMAN were in the process of finding a private polygrapher. SMITH asked ALLEN why he or CHAPMAN did not call 911 when they got the telephone calls from JUDY. ALLEN said he was at the bowling alley when JUDY first called CHAPMAN. CHAPMAN told ALLEN that JUDY had called and said she had been stabbed in the bathroom, and that she was on her cell phone. Both CHAPMAN and ALLEN thought it was a prank call, and ALLEN left to go to the house to see what was going on. A short time later, CHAPMAN called ALLEN on his cellular telephone and said that JUDY had called back and said she had been stabbed, and that she was in the pasture. ALLEN thought, at that point, it was still some kind of prank because it didn't make any sense to him that she would have been stabbed, and be in the pasture with her cell phone. When he got to the house, he went to the sun room door, opened it, and yelled for JUDY two or three times. When she didn't answer, he thought, even though it didn't make any sense, she might be in the pasture. He then went to the pasture; however, he didn't get there very quickly because he dropped his cell phone three times while looking for her, and he had to keep stopping to pick it up. He then found her in the pasture. He didn't say if she said anything, but he did say she had a look of relief on her face when she saw him. He then carried her to his truck and took her to the hospital.

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As far as SMITH was aware, there was only one life insurance policy for JUDY, and SMITH was the beneficiary. The day after JUDY was shot, SMITH and ALLEN went to the funeral home to pick out a casket. The man at the funeral home was showing them the selection, when ALLEN told SMITH that JUDY had one life insurance policy for \$100,000.00, and that SMITH was the beneficiary. ALLEN apparently mentioned the policy in regards to paying for the casket. The man at the funeral home then told SMITH and ALLEN that they didn't need to worry about it because it would be paid for by Victim Advocacy. Sometime over the next two days, ALLEN told SMITH he wanted to take \$50,000.00 from the insurance policy to pay bills and pay off the mortgage on his land. He wanted SMITH to place the remaining \$50,000.00 in a bank and by the time [REDACTED] would need it, the interest would have accrued and it would be around the original amount. SMITH told him she didn't want to discuss anything regarding the insurance money. She also told him whatever money came from insurance would all go to [REDACTED] B. The following week, ALLEN gave SMITH a list of how he wanted the insurance money to be spent (a copy of that list is attached to and made a part of this FD-302). ALLEN seemed to be very concerned about paying off bills and his mortgage. Shortly before JUDY's death, ALLEN had received \$6,000.00 to \$12,000.00 in bonuses from the bowling alley, so he should have had money to pay some of the bills he was worried about.

Stephanie Heflin- Statement
Binney, Jonathan Pruet's File

PLAINTIFF'S 13th
EXHIBIT NO. 13th
FOR IDENTIFICATION
DATE 6/10/07 RPTR. SH

Voluntary Statement

PAGE 1 OF 156

NAME: STEPHANIE HEFLIN

CASE NUMBER

CREDIT CARDS MADE OUT IN HER NAME AT BOWLING ALLEY
INFORMATION

GAVE ALLEN \$20,000 TO INVEST IN GAFFNEY BOWLING ALLEY
ALLEN TOOK MONEY TO GEORGIA AND INVESTED IN BOWLING
ALLEY

ALLEN HAD CELL PHONES THAT JUDY DIDN'T KNOW

JUDY FOUND PORNO MATERIAL ABOUT TWO WEEKS AGO

JUDY WENT TO TWO LAWYERS

WEDNESDAY JUDY ~~WAS~~ WAS NERVOUS, ACTING STRANGE
SMOKED FIVE CIGARETTES WITH STEPHANIE.

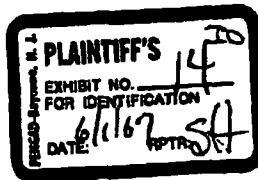
BETH BOKLER AND JACOB

DENISE WILSON (HUSBAND TERRY)

WITNESS: _____

WITNESS: _____

Signature of person giving voluntary statement



6/9/00

1135 A.M.

SUSAN P. KIRBY - PH # 487-9775
146 BEAVER CREEK DRIVE
GAFFNEY SC 29341

WORKED WITH JUDY SOUTHERN AT POST OFFICE.
CLOSE FRIENDS. KNEW ABOUT AFFAIR WITH ROY GLASS.
ALLEN HAS APPROACHED HER TWICE WANTING INFORMATION
ABOUT THE AFFAIR. SHE WOULD NOT SAY ANYTHING
NOT WANTING TO GET INVOLVED. ALLEN GOT SUSAN'S
CELL PHONE # OUT OF JUDY'S POCKETBOOK AND CALLED
SUSAN ASKING HER ABOUT JUDY'S AFFAIR.

KNOWS THAT JUDY AND ALLEN WERE IN MARRIAGE
COUNSELING AT BLUE WATER COUNSELING WITH TIM HOLLA
IN SPARTANBURG.

HAS NEVER HEARD JONATHAN BINNEY'S NAME OR
JUDY MENTION A JONATHAN BINNEY.

KNOWS THAT ALLEN HAS TRIED TO COMMIT SUICIDE
AT LEAST TWICE BY JUDY'S ACCOUNT. THE LAST
TIME ABOUT A MONTH AGO. ROY CHAPMAN FOUND
ALLEN IN GARAGE WITH HOSE LEADING FROM TAIL PIPE
INTO VEHICLE. ROY CHAPMAN TOOK ALLEN TO A SPTB
HOSPITAL.

SUSAN IS IN FEAR FOR HER LIFE. BELIEVES ALLEN IS
MAD AT HER FOR NOT TELLING HIM ABOUT JUDY
AND ROY.

JUDY TOLD SUSAN ALLEN MENTIONED A BOOK AND
SAID IN COUNSELING THAT HE ~~COULD~~ ADMIRER

SOMETHING IN THE BOOK ABOUT KILLING A LOT OF PEOPLE AND THEN KILLING THEMSELF.

THIS PAST SUNDAY, ALLEN PICKED JUDY UP AT BETH BOHELER'S HOUSE AND TOOK HER DOWN A DIRT ROAD AND PARKED. ALLEN ASKED JUDY HOW SHE COULD NOT LOVE HIM. ALLEN GOT OUT AND HIT THE HOOD OF THE TRUCK. ALLEN TRIED TO RIP THE SEAT OUT AND DOOR. JUDY TOLD ALLEN JUST GET BACK IN THE TRUCK. ON THE WAY HOME, ALLEN TOLD JUDY, I DON'T MEAN TO SCARE YOU BUT I COULD EASILY SEE HOW SOMEONE COULD KILL THEIR FAMILY AND THEMSELF.

JUDY TOLD SUSAN WHAT DOES HE MEAN HE DOES MEAN TO SCARE ME?

SUSAN KNOWS THAT ALLEN WAS TAPPING HOME PHONE BECAUSE ALLEN GAVE JUDY SOME TAPES. SUSAN KNOWS THAT TONIA BROWN KNOWS ABOUT JUDY'S AFFAIR ALSO IRVING, JUDY'S SISTER KNEW.

JUDY TOLD ALLEN ABOUT THE AFFAIR FINALLY AFTER ALLEN HAD BEEN QUESTIONING HER FOR MONTHS, SOMETIME AROUND APRIL OR MAY THAT SHE LOVED ROY.

SUSAN LIVED WITH ALLEN AND JUDY IN SEPTEMBER, 1999 FOR A MONTH DURING SUSAN'S SEPERATION. ALLEN "HIT" ON SUSAN, SHE MOVED OUT.

MIKE FOWLER

Albany County Jail & Penitentiary
Medical Department
Physicians Orders

Bennett Johnson
John Deane

9-25-91 - ① X-ray LS back - 9/26/91.

② Restrict from work & rec.

Dr. C. Attala / 9/26/91

9-26-91

① Off Restriction

② Sildane 1 tab B & D what has RD

10/2/91 Medical back

Dr. Maffei / 10/2/91

11-7-91

Off medical back

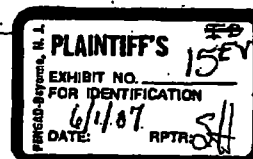
Dr. Maffei / 11/7/91

11-25-91 - ① Med restriction from work & rec

② Drey Rt eye prob

③ Cold pack 1st 24 hrs - 11/26/91

Dr. D. Maffei / 11/26/91



**Albany County Jail & Penitentiary
Medical Department**

**HEALTH HISTORY
AND
PHYSICAL EXAMINATION**

Instructions: Please answer all questions. Please print neatly and clearly

NAME Bunney Jonathan D.O.B. 5-9-74 AGE 17 SEX Male
ADDRESS Box 312 New Concord Ohio HEIGHT 5-6 WEIGHT 116 MARITAL S

What illness, injuries, or operations have you had in the past?

None

Who is your family physician? Are you under the care of a physician? If yes, for what reason? None

Are you taking any medications of any kind? If yes, for what reason?

None

Have you ever had any of the following?

ASTHMA ~~or~~ HAYFEVER	<u>NO</u>	<u>YES</u>	RHEUMATIC FEVER	<u>NO</u>	<u>YES</u>
HEADACHES	<u>NO</u>	<u>YES</u>	SCARLET FEVER	<u>NO</u>	<u>YES</u>
BRONCHITIS	<u>NO</u>	<u>YES</u>	SINUS TROUBLE	<u>NO</u>	<u>YES</u>
TUBERCULOSIS	<u>NO</u>	<u>YES</u>	EAR TROUBLE or DEFECT	<u>NO</u>	<u>YES</u>
EPILEPSY	<u>NO</u>	<u>YES</u>	NERVOUS or MENTAL	<u>NO</u>	<u>YES</u>
ARTHRITIS	<u>NO</u>	<u>YES</u>	VARICOSE VEINS	<u>NO</u>	<u>YES</u>
DIABETES	<u>NO</u>	<u>YES</u>	TETANUS or TOKOID	<u>NO</u>	<u>YES</u>
HEART DISEASE	<u>NO</u>	<u>YES</u>	EYE TROUBLE or INJURY	<u>NO</u>	<u>YES</u>
STOMACH ULCER	<u>NO</u>	<u>YES</u>	X-RAYS TAKEN	<u>NO</u>	<u>YES</u>
PNEUMONIA	<u>NO</u>	<u>YES</u>	BROKEN BONES	<u>NO</u>	<u>YES</u>
HIGH BLOOD PRESSURE	<u>NO</u>	<u>YES</u>	KIDNEY DISEASE	<u>NO</u>	<u>YES</u>
HERNIA or RUPTURE	<u>NO</u>	<u>YES</u>			

HAVE YOU EVER HAD ANY FAINTING OR DIZZY SPELLS? NO YES

HAVE YOU EVER HAD ANY INJURIES, CATCHES OR PAIN IN YOUR BACK?
WORN A BACK BRACE? NO YES

HAVE YOU EVER RECEIVED COMPENSATION FOR AN INDUSTRIAL INJURY? NO YES

HAVE YOU EVER HAD ANY INJURY TO YOUR ARMS, LEGS, HANDS OR FEET? NO YES

HAVE YOU EVER HAD ANY BREAKING OUT OR IRRITATION OF YOUR SKIN? e.g., FOOD? NO YES

HAVE YOU RECEIVED DISABILITY BENEFITS FROM THE GOV'T., STATE OR OTHER? NO YES

DO YOU HAVE PAINFUL MENSTRUAL PERIODS? NO YES

WHEN WAS YOUR LAST PERIOD? None NO YES

REMARKS URINE GLU
PROTEIN
PH

MEDICAL DEPARTMENT DATE

Albany County Jail & Penitentiary
Medical Department
Admittance Record

NAME: BINNEY, JONATHAN DATE ADMITTED 11/1/91

AGE: 18 DATE EXAMINED _____

BLOOD PRESSURE 110/72 PULSE 80 TEMP. _____ RESPIRATION 16

	NORMAL	ABNORMAL	OTHER <u>124</u>
1. GENERAL APPEARANCE			
2. HEAD			
3. EYES			
4. EARS			
5. NOSE			
6. MOUTH			
7. THROAT			
8. NECK			
9. GLANDS			
10. CHEST			
11. BREASTS			
12. HEART			
13. LUNGS			
14. ABDOMEN			
15. GENITALIA			
16. RECTAL			
17. BLOOD VESSELS			
18. DORSALIS PEDIS			
19. EXTREMITIES			
20. JOINTS			
21. SKIN			
22. NEUROLOGIC			
23. MENTAL STATUS			
DIAGNOSIS			
PHYSICIAN			

ALBANY COUNTY JAIL AND PENITENTIARY
840 ALBANY SHAKER ROAD
ALBANY, NEW YORK 12211

I, JONATHAN BINNEY, do hereby voluntarily consent and give permission for
(Print Name in Full)
the Albany County Jail medical staff to perform the following medical treatment/procedure:

GENERAL SCREENING - MEDICAL EXAM - MEDICAL TREATMENT
(Specify)

Date:

11/2/91

Signature:

Jonathan Binney

Witness:

A. Carter

NAME: Bunney Jonathan DATE ADMITTED: 9-18-91
AGE: 17 DATE EXAMINED: 9-26-91
BLOOD PRESSURE: 100/68 PULSE: 70 TEMP: _____ RESPIRATION: 16
NORMAL ABNORMAL OTHER: 116

4988

ALBANY COUNTY JAIL AND PENITENTIARY
840 ALBANY SHAKER ROAD
ALBANY, NEW YORK 12211

I, Bennet Jonathan do hereby voluntarily consent and give permission for
(Print Name in Full)
the Albany County Jail medical staff to perform the following medical treatment/procedure:

GENERAL SCREENING - MEDICAL EXAM - MEDICAL TREATMENT
(Specify)

Date: 9/18/91 Signature: Jonathan Bennet Witness: B. Enfield

Albany County Jail & Penitentiary
Medical Department
Progress Notes

Benny Johnathan

11-25-91 - Inmate involved in altercation
on floor - Sustained bruising & swelling
to Rt eye & orbit - Will restrict, order VMA
& give cold packs. neuro & O.K. - B/P - 1
11/27/91 - P-76 R-16 - Will monitor - V4 3mb

RELEASED 12/11/91

Albany County Jail & Penitentiary
Medical Department
Progress Notes

ALBANY COUNTY JAIL & PENITENTIARY
ALBANY, NEW YORK 12211

REQUEST TO SEE FACILITY'S DOCTOR

SUBMIT TO NURSE ON 8AM MEDICATION ROUND ONLY

DATE: 10-1-91

DESCRIPTION OF PROBLEM: I think my Ear lobe is infected. Like to see nurse.

NAME OF REQUESTER: Jon Binney

TIER: 4E L-11

10/3

FOR OFFICE USE ONLY

DATE OF REQUEST: _____

DATE SEEN: 10-3-91

WHITE - MEDICAL
YELLOW - CAPT. OFFICE
PINK - INMATE

R. D. Doherty RMD
(SIGNATURE)

Alcohol and - to
left ear lobe

RELEASED: 11/1/91

10/1/91 pt readmitted pt office to complaints
by injuries on readmission pt refuses
blood work - pt placed in sick lock
W. Courtis

7-9-91 Patient Name: G.C. Jones

Surrey, Jonathan

Albany County Jail & Penitentiary
Medical Department
Progress Notes

9-18-91 1st admitted to ACD - NO

Complaints of illness - Has
abras. on rt hand posterior.
Cleanse & betadine Antiseptic.
VDR - PPD done

Undershirt on

9-25-91 - Injured back & Rt eye during fight

9-22-91 - Cosmetic area Rd around Rt eye

3" superficial healing abrasion lt scapula

2 dime size superficial healing abrasions

Rt & Lt lumbar sacral area - 10% pain - Full ROM

Noted - Will report to Dr. - VZ just -

9-26-91 Pt denies using med illness. Pt

has 4 allergies - takes on counter meds

Pt denies drug abuse. Pt denies being
in. Use alcohol minimally.

Pt denies using, poss. H, or VD.

Pt in fight on Fri & other inmates

Pt had chiropractor R - 1 X / yr

for back alignment.

fly

90-1-91 - Did not come to work call - VZ

AIDANY County Jail & Penitentiary
Medical Department
Laboratory Reports

Dinney Jonathan

NAME Binnery Jonathan
DOB 5-9-74

INSURANCE INFORMATION

DO YOU HAVE INSURANCE

YES ☒ NO

WHAT TYPE OF INSURANCE

But unaware of name

DO YOU HAVE INSURANCE CARD WITH YOU

YES NO

IDENTIFICATION NUMBER

PLAN CODE

SIGNATURE OF INSUREE

Jonathan Binnery

ALL EMPLOYEES MUST SIGN

ALBANY COUNTY JAIL AND PENITENTIARY

TO: Tour Commander

FROM: Medical Department

DATE: 9-25-91

SUBJECT: Form for Medical Restriction/Lock-Ins

Inmate's Name Burney Delnath Tier 4E Class Level _____

Type of Restrictions (Check all that apply)

Lock-Ins	☐	School	☐
Restricted to Tier	☐	Consultations	☐
Restricted from Recreation	☒	Church Services	☐
Contact Visitation	☐	Commissary	☐
Non-Contact Visitation	☐	Isolate/Possible Contagious	☐
Legal Library	☐	Meals on Disposable Utensils	☐
Library	☐	Special Instructions (see below)	☐
Work	☒		

Medical Staff ordering restriction W. J. Smith (Must be reviewed by doctor if not ordered by doctor)

Brief statement of reason for restriction:

Special Instructions: _____

Ordered by: [Signature]
(Doctor's Signature)

(VIA Phone - Doctor's Name)

Nurse _____ Review by Tour Commander: _____

Original - Medical File
cc - Superintendent
Inmate's File

FINAL

BENDER HYGIENIC LABORATORY

FINAL

9 SAMARITAN DRIVE

ALBANY, NEW YORK 12208

518-472-9124

Patient: KINNEL, JONATHAN	Instit: ALBANY COUNTY JAIL	Order #: 912620291	Page: 1
	ALBANY SHAKER ROAD	Collect Dt: 09/19/91	Dr. Prt: 09/24/91
	ALBANY, NY 12241	Doctor: RUTLEY, DR. GEORGE	8 14:05
		DOB: 05/09/74	

TEST	RESULT	UNITS	REFERENCE	STATUS
SYPHILIS SEROLOGY (RPR):				
RPR	NON-REACTIVE			
Ent: NBD Rel: KEK				
THIS COMPLETES THE REPORT FOR ACCESSION # 912620291.				

[Handwritten signature]
[Handwritten date: 9/26/91]



REQUEST FOR PORTABLE PROCEDURE

N/A

LUMBAR SPINE

Involved in Altercation - C/O Pain

DATE OF EXAMINATION September 26, 1991

There is no fracture.

Thomas Murnane, M.D.

MOBILE IMAGING LTD.

ALBANY COUNTY JAIL AND PENITENTIARY
ADMISSIONS & DISCHARGE UNIT
BOOKING SHEET (PRINT OR TYPE)

Date Rec: 9/18/91

Sex: ☒ Male ☐ Female

Time Rec: 12³² AM ☐ PM

P H D/O/B: 5-9-74 Age: 17

Tier: 4E Cell: 123

E I Place/Birth: MISSISSIPPI

Prints & Photo taken by:
D. F. FAVRE

S T S.S.#: [REDACTED]

ACCF LOG#: 70693 NYSID:

O O Race: ☒ W ☐ B ☐ Asian
N R ☐ Amer. Ind ☐ Other ☐
A Y U.S. Citizen: ☒ Yes ☐ No
L Read/Write: ☒ Yes ☐ No

Name: BINNEY JONATHAN KYLE Alias:
(Last) (First) (Middle Name) (Suff)

Residence: BOX 312 NEW CONCORD OHIO 43762 Tele: (614) 877-3815
(Street) (C/T/V) (State)

Maiden Name/If Married: Military NA / Discharge: NA

Next of Kin: JAMES BINNEY Relationship: FATHER

Address: SAME Tele: SAME

In case of Emergency Notify: SAME Relationship: SAME Tele: SAME

RELIGION: ☒ Bapt ☐ Rm Cat ☐ Hebrew ☐ Muslim ☐ Protestant ☐ None ☐ Other

HIGHEST GRADE COMPLETED: 9

MARTIAL STA: ☐ Divorced ☐ Married ☐ Separated ☒ Single ☐ Widowed

Occupation: STUDENT Employer: DUBLIN CHRISTIAN ACADEMY NEW YORK
(Name) (Address)

**** PHYSICAL DESCRIPTION ****

Est. Height: 5'6" Est. Weight: 126 Eyes: HAZEL Hair: BROWN Glasses: ☐ Yes ☒ No

Skin Tone: LM ☐ M ☐ D ☐ Right or Left Handed: RIGHT

False Teeth: ☐ Yes ☒ No Upper ☐ Lower ☐ Both ☐ Partial ☐ Full Plate ☐

Scars, Marks or Tattoos: ON RIGHT HAND

IS THERE ANY EVIDENCE OF RECENT PHYSICAL INJURY SEEN ON THE INMATE: ☒ Yes ☐ No

If Yes describe injuries: HAS SEVERAL CLBS ON RIGHT HAND

How were injuries received according to inmate: FROM A TREE LIMB

Location and Date of Treatment: NO TREATMENT

**** ARREST INFORMATION ****

Arresting Agency: COLONIE Committing Judge: ①

Court of Arraignment: COLONIE Bail: CRISDAY

IS THERE A EXAMINATION ORDERED BY THE COURT: ☐ BY BOOKING ☐ WATCH: ☐

MENTAL HEALTH EXAMINATION ☐ PHYSICAL EXAMINATION ☐

CHARGES 1: CPSP 3rd CPSP 4th CPSP 5th

2: BUR 3rd

**** ARREST DISPOSITION ****

Awaiting further court action: ☒ Yes ☐ No Holds/Detainers

Sentenced to Alb County Pen: ☐ Yes ☒ No Term of Sentence:

Parole ☐ Probation ☐ P.O.'s Name:

Officer Completing Form: Badge # 103

*** Copy Distribution *** White Identification Bureau ☐ YELLOW Medical
PINK Front Office ☐ DK YELLOW Inmate Services

NAME JOHN BINNEY A.K.A. _____

D.O.A. 9-18-91 SEX MALE D.O.B. 5-4-74

1. ANY VISIBLE INJURIES _____ YES X NO _____

IF YES, DESCRIBE _____

2. a.) APPEARS INTOXICATED _____ YES X NO _____

b.) USING ILLEGAL DRUGS _____ YES X NO _____

3. MEDICAL CONDITIONS STATS HE HAS ALLERGIES

4. ON ANY MEDICATION _____ YES X NO _____

IF YES, LIST TYPE & AMT. _____

5. MENTAL CONCERN STATES NONE

6. PHYSICAL CONCERN STATES NONE

6. a.) PRIOR INCARCERATION NO PRIOR

7. ASSESSMENT OF INMATES APPEARANCE AND BEHAVIOR:

COOPERATIVE

8. TIER PLACEMENT 4E CELL _____

DATE 9-18-91 TIME 12³³ AM

ADMISSIONS & DISCHARGE UNIT STAFF John R. Gravelle

ALBANY COUNTY JAIL AND PENITENTIARY
ADMISSIONS & DISCHARGE UNIT
BOOKING SHEET (PRINT OR TYPE)

Date Rec: 11/1/91

Sex: ☒ Male ☐ Female

Time Rec: 6²⁸ [] AM ☒ PM

P.H. D/O/B: 10-9-73 Age: 18

Tier: 4E Cell: L11

E I

R S

S T

O O

N R

A Y

L

Place/Birth: Hick. MISSISSAUGA

S.S.#: 1-1-0116

Hispanic: ☐ Yes ☒ No

Race: ☒ W ☐ B ☐ Asian

☐ Amer. Ind ☐ Other ☐

U.S. Citizen: ☒ Yes ☐ No

Read/Write: ☒ Yes ☐ No

Prints & Photo taken by:

W. Spallano

ACCF LOG#: 71461 NYSID

Name: Binney Jonathan Kulp
(Last) (First) (Middle Name) (Suxf)

Alias: Boozer

Residence: Boy 312 New Concord Ohio
(Street) (C/T/V) (State)

Tele: (614) 872-2816

Maiden Name/If Married:

Military /Discharge:

Next of Kin: Jim Binney

Relationship: Father

Address: Same

Tele: Same

In case of Emergency Notify: Same

Relationship: Same

Tele: Same

RELIGION: ☒ Bapt ☐ Rm Cat ☐ Hebrew ☐ Muslim ☐ Protestant ☐ None ☐ Other

HIGHEST GRADE COMPLETED: 11th

MARTIAL STA: ☐ Divorced ☐ Married ☐ Separated ☒ Single ☐ Widowed

Occupation: Student Employer:

(Name)

(Address)

**** PHYSICAL DESCRIPTION ****

Est. Height: 5'7" Est. Weight: 120 Eyes: BL Hair: Br Glasses: ☐ Yes ☒ No

Skin Tone: ☒ M ☐ D ☐ Right or Left Handed: Right

False Teeth: ☐ Yes ☒ No /Upper ☐ Lower ☐ Both ☐ Partial ☐ Full Plate ☐

Scars, Marks or Tattoos:

IS THERE ANY EVIDENCE OF RECENT PHYSICAL INJURY SEEN ON THE INMATE: ☐ Yes ☒ No
If Yes describe injuries:

How were injuries received according to inmate?

Location and Date of Treatment:

**** ARREST INFORMATION ****

Arresting Agency: Colonie P.D.

Committing Judge: Criscome

Court of Arraignment: Town of Colonie

Bail: \$2,000

IS THERE A EXAMINATION ORDERED BY THE COURT: ☐ BY BOOKING ☐ WATCH: ☐

MENTAL HEALTH EXAMINATION ☐ PHYSICAL EXAMINATION ☐

CHARGES 1: Forgery 3rd

2:

**** ARREST DISPOSITION ****

Awaiting further court action: ☒ Yes ☐ No Holds/Detainers

Sentenced to Alb County Pen: ☒ Yes ☐ No Term of Sentence:

Parole ☐ Probation ☐ P.O.'s Name

Officer Completing Form: W. Spallano Badge # 242

Copy Distribution White Identification Bureau LT YELLOW-Medical

PINK-Front Office DK YELLOW-Inmate Services