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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County
Capital Action
Honorable R. Keith Kelly, Circuit Court Judge

JAMES ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000505

**APPENDIX
VOLUME 13 OF 14
(PAGES 5835-6334)**

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

JAMES D. ROBERTSON,

PETITIONER,

V.

THE STATE,

RESPONDENT

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The judge erred in denying 3 separate motions for a directed verdict based on insufficient evidence and State's failure to meet the burden of proof as to first element of corpus delicti of murder at the conclusion of State's case.

✓ 2. The judge erred by forcing appellant to submit to a state-sponsored psychological evaluation solely for the purpose of obtaining evidence to be used against him at sentencing, since neither competency to stand trial, guilty but mentally ill nor insanity were ever at issue in the case.

3. The judge erred by denying the jury's request to take notes while being recharged as to the law during guilt phase deliberations.

4. The judge erred in revealing the location where the jurors were sequestered thereby denying appellant his constitutional right to a fair and impartial jury.

5. The judge erred in not allowing defense to define "life imprisonment" as it appears in the state statute to potential jurors during voir dire, thereby denying appellant a fair and impartial jury.

✓ 6. The judge erred by refusing to select an unbiased jury from another county, given the notoriety of the case and community sentiment against appellant.

7. The judge erred in sentencing appellant to death.

STATEMENT OF FACTS

On April 23, 1998, a York County grand jury indicted James Robertson, twenty-four, for the murders of his parents, Terry and Earl, as well as a related armed robbery and credit card fraud. The Robertsons were beaten to death the morning of November 25, 1997. Given the lurid nature of the case and the fact that the family was wealthy and prominent – Earl Robertson was an executive at Springs Industries and his personal wealth exceeded two million dollars – the crimes were heavily publicized locally and community sentiment about the case was strong.

The state decided to seek the death penalty, relying on five statutory aggravating circumstances: (1) the murders were committed during an armed robbery; (2) the murders were committed during larceny involving the use of a deadly weapon; (3) the murders involved physical torture; (4) the murders were committed for money; and (5) two people were murdered pursuant to one scheme. S.C. Code Section 16-3-20(C)(a). The state asserted that Robertson had killed his parents so that he and his younger brother, Chip, would inherit their money before Earl could invest it in a golf course he hoped to build after retiring from Springs. Robertson talked with Chip twice on the telephone only hours before the homicides and was arrested outside Chip's apartment in Philadelphia later that day.

But the evidence suggested that something deeper than mere greed underlay these crimes. Beneath their affluent exterior, the Robertson family was profoundly strange and dysfunctional. This is a case about a family that imploded.¹ The nature of the killings

¹ Intrafamily crimes of this type show remarkable similarities – mental illness, substance abuse, ancient resentments grown poisonous and a shocking level of violence. A review of the history of “domesticated” homicide concludes that “in general murderous attacks tended... to grow wilder as the relationship between victim and killers grew closer, as the fury of betrayal, or years of anger, were reflected in the number of shots, blows, or cuts inflicted, often on an already lifeless body.” Roger Lane, *Murder in America* (1997),

themselves illustrates this point. Terry Robertson was beaten to death with a hammer as she lay in bed. Tr. p. 1355, lines 5–20; tr. p. 1788, line 8 – p. 1789, line 10. A pathologist also observed “cuts that were on her arms, her chest and her face and neck, as well as some stab wounds on her back” consistent with a steak knife, but concluded that “the heart had probably stopped before that has occurred.” Tr. p. 1789, lines 11–17; tr. p. 1793, line 18 – p. 1794, line 16. Earl Robertson was attacked with the hammer and a baseball bat as he got out of the shower and stepped into the upstairs hallway. Tr. p. 1354, line 15 – p. 1355, line 4; tr. p. 1794, line 25 – p. 1798, line 2. The upstairs of the Robertson house resembled an abattoir. Blood dripped from the walls and ceiling and pooled on the floor. Tr. p. 1399, lines 8–19. Robertson’s accomplice, Meredith Moon, testified that he was covered in his parents’ blood when he finished. Tr. p. 1599, line 15 – p. 1601, line 25.

Referring to the condition of the victim’s bodies, a neurologist observed, “[H]e obliterated them.” Tr. p. 2499, line 19 – p. 2500, line 3. When discussing the details of the crimes with a social worker, Robertson stated that “[t]wenty-two years of hatred came out.” Tr. p. 3018, lines 16 and 17. A seasoned SLED crime scene investigator concurred with these assessments: “[Y]ou look and see this type of mutilation and you think of anger – a lot of anger.” Tr. p. 2410, lines 13–19.

p. 259. For example, as this brief was being written, news reports from New Hampshire concerned a state supreme court justice who was savagely attacked by his son as he slept. The son, who was thirty, lived with his parents and had a history of alcohol abuse and brushes with the law. The relationship between father and son was contentious. Early one morning, after consuming four glasses of whiskey, the son began bludgeoning his sleeping father with the neck of a guitar. (The mother was knocked out on sleeping pills in another room.) The father was beaten beyond recognition, and even experienced investigators were appalled at the extent of his injuries. The apartment was awash in blood. Fortunately, the father is expected to recover. (The foregoing summary is derived from the Concord Monitor of April 1 and 2, 2002.) The parallels with the present case are self-evident.

Robertson had previously discussed killing his parents on a number of occasions. Tr. p. 2155, lines 9–15; tr. p. 2228, lines 6–13. He was involuntarily committed to the state hospital in 1995 because of growing concern that he would harm them, particularly his mother. Tr. p. 2421, line 22 – p. 2422, line 24. He once told a roommate he wanted to kill his parents because “[t]hey have made my life a living hell.” Tr. p. 2202, line 18 – p. 2204, line 2.

The entire family was psychologically and emotionally unbalanced and in consequence heavily medicated. Tr. p. 2700, line 15 – p. 2702, line 20; tr. p. 2687, line 7 – p. 2690, line 2; tr. p. 2752, line 24 – p. 2753, line 18. A pharmacologist testified that “the quantities of drugs coming into the household was pretty impressive... Just large, large sums of medications being prescribed and dispensed to every member of the family.” Tr. p. 2684, line 9 – p. 2685, line 6.

Judge John C. Hayes, III, presided at Robertson’s jury trial, which began March 15, 1999, following a series of pretrial hearings. He denied a defense motion to import an unbiased jury from another county due to the notoriety of the case. (See Issue Presented III.)

The state’s key witness was Meredith Moon, who testified that she had been present when Robertson killed his parents. Tr. p. 1592, line 6 – p. 1602, line 20. He shattered a downstairs window so it would appear the house had been burglarized by someone else, then he and Moon set out for Chip’s apartment in Philadelphia in his parents’ car. Tr. p. 1603, line 19 – p. 1604, line 21; tr. p. 1608, lines 19 and 20. On the way there, Robertson kept repeating, “Chip is going to be so proud.” Tr. p. 1610, lines 1–3. According to Moon, the plan was that, after returning to Rock Hill, “him and Chip were going to go into the

house and discover the bodies and call 911, et cetera, et cetera.” Tr. p. 1610, lines 18–25. Robertson told Moon that “he was going to buy a house on the lake and renovate a club in Rock Hill” with the insurance proceeds. Tr. p. 1610, lines 7–9. But this was not to be: the police were onto them almost immediately, and Robertson and Moon were arrested shortly after arriving in Philadelphia before they could meet up with Chip. Tr. p. 1611, lines 8–14.

The defense rested without presenting any witnesses at the guilt phase. The jury found Robertson guilty as charged after deliberating a little less than two hours.

At sentencing, the state introduced a substantial amount of victim impact evidence, as well as evidence of Robertson’s aberrant behavior in the years leading up to the homicides. The jury also learned of brother Chip’s fate. After his parents’ deaths, Chip dropped out of school and moved into their – now his – house. Tr. p. 2167, line 22 – p. 2168, line 2. Since his brother had been arrested for their murders, Chip stood to inherit the entire family fortune. Just over one month after the killings, he threw a New Year’s Eve party at the house. Tr. p. 2196, lines 9–15. “[A]s the night continued to grow older and people got drunker,” one partygoer testified, some of the guests staggered upstairs to gawk at the dried bloodstains. Tr. p. 2196, line 16 – p. 2197, line 4. At the time of his brother’s trial, Chip was in jail, charged with possession of “three eight balls of cocaine and thirty–something Xanaxes.” Tr. p. 2197, lines 9–24. (The April 2002 Department of Corrections inmate locator does not contain a listing for Earl “Chip” Robertson, Jr.)

The defense introduced evidence that Robertson was in the grip of a genetically–derived and biologically–based mania, exacerbated by the consumption of 250 mg. of Chip’s Ritalin (an amphetamine), at the time of the homicides. Tr. p. 2423, lines 12–17; tr. p. 2494, line 11 – p. 2496, line 12; tr. p. 2497, lines 12–18. A neurologist testified that

Robertson was “out of control.” Tr. p. 2502, lines 5 and 6. A neuropsychologist explained that Robertson’s brain was damaged and malfunctioning. Tr. p. 2546, line 19 – p. 2558, line 16.

On reply, the state presented a psychologist who had examined Robertson on their behalf over the insistent objections of defense counsel. (See Issue Presented I.) He agreed with defense experts about the nature of Robertson’s mental illness, but concluded that his mania was “in full remission” at the time of the crimes. Tr. p. 3063, line 25 – p. 3064, line 19. He also found that Robertson had “features of borderline antisocial personality traits.” Tr. p. 3064, lines 20 and 21. In short, the state’s psychologist summarized, when he killed his parents Robertson was neither insane, guilty but mentally ill nor was he overwhelmed by mania. Tr. p. 3067, line 23 – p. 3072, line 19; tr. p. 3082, line 24 – p. 3083, line 1.

Robertson did not testify at either phase of his trial. At the end of the sentencing phase, he apologized for what he had done and began sobbing. Tr. p. 3193, line 4 – p. 3194, line 11.

In his final instructions, with regard to the state’s victim impact evidence the judge told the jury, “In determining your sentence recommendation, you may consider the evidence of the victims’ personal characteristics... the victims’ uniqueness as individual human beings.” Tr. p. 3219, line 16 – p. 3220, line 5. On the other hand, the judge refused a defense request to instruct that “[e]vidence of voluntary intoxication is a proper matter for consideration by the jury in mitigation of punishment.” Tr. p. 3097, line 8 – p. 3099, line 1; tr. p. 3119, line 15 – p. 3123, line 13. (See Issue Presented II.) (He had previously charged that “voluntary intoxication is never an excuse for... a crime” in his guilt phase instructions. Tr. p. 1955, line 19 – p. 1956, line 6.)

In addition to the five statutory aggravating circumstances previously listed, the judge instructed the jury on five statutory mitigators: (1) Robertson had no prior convictions involving the use of violence against another person; (2) the murders were committed while Robertson was under the influence of mental or emotional disturbance; (3) Robertson's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; and (4,5) Robertson's age and mentality at the time of the crimes. S.C.Code Section 16-3-20(C)(b).

The jury deliberated for just over three and a half hours, then recommended that Robertson be sentenced to death for both murders after finding all five aggravators alleged by the state. The judge affirmed their decision.

I.

The judge erred in denying 3 separate motions for a directed verdict based on insufficient evidence and State's failure to meet the burden of proof as to first element of corpus delicti of murder at the conclusion of the State's case.

Appellate was indicted on April 23, 1998, for the murders of Earl Robertson and Terry Robertson. (98-GS-46-1020, 1021) The State offered no evidence or testimony to prove that the deceased were in fact Earl and Terry Robertson. Defense motioned for directed verdicts on the murder counts and trial judge denied each motion. Tr. p.1886, line 13-24; Tr. p.1895, line 12- p.1896, line 5. From the State's opening statement on throughout it is apparently assumed that a positive identification was made at some point during the investigation. The State offered not one witness to testify as to the identification of the victims. The State's burden was to prove that appellant murdered the very same 2 specific human beings listed in the indictments and not just any two human beings. Could positive identification have been made? Yes, 2 surviving family members were available. The first person to the crime scene, Ms. Debbie Brisson, testified that she had stumbled onto a male body, clad only in underwear, lying face down. Tr. p.1364, line 24- p.1365, line 3. When questioned as to whether she recognized the male, Ms. Brisson responded "...so I'm not sure. I mean I guessed I assumed that it was Earl, but I didn't investigate to figure out if it was Earl or not.". Tr. p.1365, lines 7-9. The State further called SLED experts to testify

as to DNA evidence. While unknown samples collected from lots of places clearly were consistent with samples taken from the victims, it is unclear if those victims were Earl and Terry Robertson. There is no testimony or evidence to suggest that these "known" samples came from The Robertson's and not from 2 victims that the State arbitrarily identified as Earl and Terry Robertson. The only thing "known" about samples used for comparison is that they were taken from those 2 victims.

Even in viewing the evidence in a light most favorable to the State, human beings aren't who the State says they are just because of assumptions. The defense did not have the burden of proving that either Earl and Terry Robertson were alive or that the victims were not Earl and Terry Robertson. The jury untrained in the law was left little choice other than to assume that since these 2 names were being referenced so often they must be accurate. While the jury had no reason to doubt the assumed identities (defense had no burden to prove otherwise), it wasn't because the State had met it's burden but rather had no reason not to believe. This unfairly shifted the burden to the defense. The state has the burden to prove that person named in indictment as being murdered is the same person proved murdered at trial. The State had the burden of proving that Earl and Terry Robertson were human beings and were in fact dead.

For these reasons, the Court should reverse appellant's murder convictions and remand for a new trial.

II.

The judge erred by forcing appellant to submit to a state-sponsored psychological evaluation solely for the purpose of obtaining evidence to be used against him at sentencing, since neither competency to stand trial, guilty but mentally ill nor insanity were ever at issue in the case.

Prior to trial, the state moved to have Robertson evaluated by its own psychologist solely for the purpose of obtaining evidence to use against him at sentencing, even though neither competency to stand trial, guilty but mentally ill nor insanity would ever be at issue in this case. ROA p. 74, line 12 – p. 76, line 8; ROA p. 81, line 8 – p. 82, line 4; ROA p. 94, line 11 – p. 97, line 14; ROA p. 113, line 24 – p. 114, line 23; ROA p. 133, lines 4–7; ROA p. 366, line 22 – p. 369, line 3. The defense objected that an evaluation under these circumstances would violate Robertson's privilege against self-incrimination. ROA p. 144, line 21 – p. 146, line 5. Counsel conceded that "psychiatric and psychological issues" might become relevant at sentencing, depending upon their experts' findings. ROA p. 153, lines 7–10. The judge ordered the defense to provide the state with written reports from any experts they intended to use at trial. ROA p. 142, line 6 – p. 144, line 15. But he initially denied the state's motion for its own evaluation. ROA pp. 162–166 (written order).

The state subsequently moved for reconsideration because "[t]he defense has indicated the potential to use at least three experts" at sentencing. ROA pp. 167–168 (written motion); ROA p. 176, line 23 – p. 177, line 25. The solicitor stated, "The state is asking for an evaluation to confirm whatever may come from the defense or to refute what may come from the defense." ROA p. 180, lines 5–7. The defense noted that they would be

providing the state with these experts' reports, but continued to object to the evaluation under the Fifth Amendment. ROA p. 181, line 3 – p. 183, line 16. After reviewing the reports, the judge later reversed himself and granted the state's motion for an evaluation:

Fundamental fairness dictates that the state be afforded the opportunity to verify or rebut evidence presented by the defense through expert testimony regarding the defendant's mental status. Adequate rebuttal cannot be had without an independent examination... An independent psychiatric examination under these circumstances is warranted and is a distinct aid in the determination and the administration of justice, in order to confirm a claim of mental illness, discover fraudulent claims, or to rebut psychiatric testimony which can only reasonably be accomplished by the presentation of expert testimony... It is therefore, under the circumstances of this case, within the inherent power of this court to require an independent psychiatric evaluation of the defendant, where he may offer such evidence in this case.

ROA pp. 195–198 (written order; citations omitted). Earlier, the judge had made it clear that failure to cooperate with this state-sponsored evaluation would preclude Robertson's own experts from testifying at sentencing. ROA p. 153, line 17 – p. 154, line 8.

The defense then made its own motion for reconsideration. ROA pp. 199–201 (written motion). At a subsequent hearing on the motion, counsel argued that the judge “no authority... to grant a motion to have the defendant evaluated in order for the state to be able to rebut mitigation testimony.” ROA p. 250, lines 2–11. The solicitor responded that the judge had the “inherent authority” to order an evaluation in the interests of “truth ... and justice.” ROA p. 250, line 14 – p. 254, line 14. The judge ordered briefing and took the matter under advisement. ROA p. 266, lines 12–14. Both sides submitted briefs advancing their respective positions. ROA pp. 268–276 (defendant's brief); ROA pp. 277–307 (state's brief). In a written order denying the defense motion for reconsideration, the judge found:

The court has the inherent authority in appropriate circumstances, as the court here finds exists, to order a defendant to undergo an independent mental evaluation. U.S. v. Albright, 385 F.2d 719 (4th Circuit 1968). Albright deals with a situation in which the defendant asserted an insanity defense, not the case here. However, I find the rationale of Albright equally applicable here, where mental health issues are being explored by defendant... and where, as here, the current record reveals the presence of myriad mental issues which may be relevant as to issues which arise in a case wherein the death penalty is sought.

ROA pp. 308–310.

Robertson submitted to the state-sponsored evaluation shortly before the start of his trial. ROA pp. 311–313 (psychologist's report). The psychologist performed tests and conducted two "clinical interviews." Tr. p. 3062, line 4 - p. 3063, line 7.

At sentencing, the defense introduced expert testimony that Robertson's behavior at the time of the homicides was not the product of rational thought but of a synergistic combination of inherited mania and amphetamine abuse. Tr. p. 2423, lines 12–17; tr. p. 2494, line 11 – p. 2496, line 12; tr. p. 2497, lines 12–18. A neurologist testified that Robertson was "out of control." Tr. p. 2502, lines 5 and 6. A neuropsychologist explained the genetic and biological basis of Robertson's mental illness. Tr. p. 2546, line 19 – p. 2558, line 16.

The defense renewed its objection to the testimony of the state psychologist, whom the state called in reply. Tr. p. 3044, lines 5–20. The judge overruled the objection "[a]s long as [the psychologist's testimony is] responsive to evidence presented by the defense in their direct case." Tr. p. 3045, lines 16 and 17. The psychologist then testified that while he agreed with defense experts about the nature of Robertson's mental illness, he was of the opinion that his mania was "in full remission" at the time of the crimes. Tr. p. 3063, line 25

– p. 3064, line 19. He also found that Robertson had “features of borderline antisocial personality traits.” Tr. p. 3064, lines 20 and 21. The judge overruled defense counsel’s objection that this particular testimony was “not in rebuttal to anything we put up.” Tr. p. 3064, lines 22 – p. 24.

In short, the state psychologist summarized, when Robertson killed his parents he was neither insane, guilty but mentally ill nor was he seized by uncontrollable mania. Tr. p. 3067, line 23 – p. 3070, line 25; tr. p. 3082, line 24 – p. 3083, line 1. As proof of this, he pointed out that Robertson had demonstrated “enough control to not make a statement during his interrogation” following his arrest in Philadelphia. Tr. p. 3071, line 1 – p. 3072, line 19. (The judge sustained a defense objection to this comment and gave a curative instruction. Tr. p. 3072, line 20 – p. 3073, line 14; tr. p. 3078, lines 13–22.) In his closing argument, the solicitor argued that his psychologist’s testimony proved that Robertson “knew right from wrong” and was more likely just “an antisocial personality.” Tr. p. 3146, lines 1–10; tr. p. 3147, lines 6–9.

In South Carolina, a judge can order a criminal defendant to submit to a psychological evaluation when he has reason to believe that the defendant “is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.” S.C. Code Section 44–23–410.

The mental competency of the defendant to stand trial is a baseline inquiry by the court. In order to protect the legal process and preserve the integrity of the trial, a trial judge has the authority to order a psychiatric evaluation of the defendant when his or her competency may be in question.

State v. Locklair, 341 S.C. 352, 535 S.E.2d 420, 426 (2000). This statute does not authorize a judge to order an evaluation at the state's request solely for the purpose of allowing it to obtain evidence to be used against a capital defendant at sentencing, where neither competency to stand trial, guilty but mentally ill nor insanity are at issue.

In Locklair, defense counsel indicated that guilty but mentally ill or insanity were possible verdicts in the case. See, also, State v. Myers, 220 S.C. 309, 67 S.E.2d 506 (1951). Here, Robertson's competency and sanity were never in question and at no time did he pursue a verdict of guilty but mentally ill.

In People v. Lee, 196 Ill. 2d 368, 752 N.E.2d 1017 (2001), the Illinois Supreme Court was faced with an identical situation. At the sentencing phase of his death penalty trial, Lee presented expert testimony regarding "his mental condition at the time of the shooting." 752 N.E.2d at 1019. The state argued that "it was entitled to a fair opportunity to rebut any information [the] defendant might present at the death penalty hearing regarding his mental health." *Id.* at 1021. Although the court was "cognizant of the problems confronting the state," it was nevertheless compelled to conclude:

The trial court's order was not authorized either by statute or by rule. As such, the trial court's order was improper... [T]he actions of the trial court and the actions of this court must be guided by the... rules as presently written. At the time the trial court ordered [the] defendant to submit to the psychiatric examination, such action was not authorized.

Id. at 1025.

Moreover, a compelled psychological evaluation conducted solely to assist the state in marshalling evidence to be used against a capital defendant at sentencing violates the privilege against self-incrimination found in the Fifth Amendment. Estelle v. Smith, 451

U.S. 454 (1981). Buchanan v. Kentucky, 483 U.S. 402, 422–3 (1987), suggests a solution to the state's dilemma:

[I]f a defendant requests... an evaluation or presents psychiatric evidence, then, at the very least, the prosecution may rebut this presentation with evidence from the reports of the examination that the defendant requested. The defendant would have no Fifth Amendment privilege against the introduction of this psychiatric testimony by the prosecution.

In fact, the state's psychologist was provided with copies of reports prepared by the defense experts and relied on them in making his diagnosis. Tr. p. 3062, lines 4–19. Had he stopped there, there would have been no Fifth Amendment violation (or violation of state law, for that matter), but the psychologist also questioned Robertson and in his testimony relied on "what he told him" as well. Tr. p. 3062, line 20 – p. 3063, line 7; tr. p. 3067, line 23 – p. 3069, line 7.

The error was far from harmless. The psychologist's testimony was crucial to the state's case because it challenged defense claims that Robertson's behavior was dictated by a combination of inherited mental illness and drug abuse and advanced the alternative theory that Robertson was simply amoral and antisocial. Compare State v. Locklair. The solicitor then specifically exploited this evidence in his closing argument.

In short, the compelled psychological evaluation in this case violated both state law and Robertson's privilege against self-incrimination. For these reasons, the Court should reverse his death sentences and remand for resentencing.

III.

The judge erred by denying the jury's request to take notes while being recharged as to the law during guilt phase deliberations.

After 25 minutes of deliberation, the jury notified the Court that they had a question. The jury requested a recharge on the charges and also asked to be allowed to take notes during the recharge. Tr. p.1963, lines 9-19. The judge explained his reasoning for denying their request to take notes and then recharged. Tr. p.1964, line 1-p.1965, line 1.

The jurors were obviously not clear on some manner of the law. The law, the charges, and the specific elements of the charges are complex and tedious to one trained in the law. They are even moreso to an untrained jury with a voluminous amount of testimony and evidence to consider.

For this reason, the Court should reverse appellant's convictions and remand for a new trial.

IV.

The judge erred in revealing the location where the jurors were sequestered thereby denying appellant his constitutional right to a fair and impartial jury.

At the start of proceedings on March 19, 1999 the judge read a note received from the foreman. The judge noted that the note was on Microtel Inn and Suites paper and was signed by the foreman, Jerry Gwinn. Tr. p.1526, lines 2-10. (See Court's Exhibit 12) Eventhough this revelation was made in camera, the courtroom was packed with spectators and media.

The Microtel Inn and Suites may not have been the sequestration locale. However it seems highly unlikely that the foreman would be communicating with the judge first thing in the morning on stationery from somewhere other than from where the foreman came. By exposing the jury's living quarters, the judge left open the possibility of jury tampering.

For these reasons, the Court should reverse appellant's convictions and remand for a new trial.

V.

The judge erred in not allowing defense to define "life imprisonment" as it appears in the state statute to potential jurors during voir dire, thereby denying appellant a fair and impartial jury.

During voir dire, the defense sought to frame the word/sentence of "life" as it is defined statutorily in the State of South Carolina. Tr. p.198, line 20- p.199, line 3. The judge ruled based on Simmons that the jury wouldn't be charged in that manner. Tr. p.199, lines 4-7. This was around the time of the Shafer decision that ultimately prompted the judge in this trial to go ahead with the life without possibility of parole charge to the jury. In order to find jurors who will be fair and follow the law, jurors must be made aware of the laws as written. Jurors may state that they can follow the law but if they don't know what they are following then they can't know if there is something about the law that they can't follow. The sentence of death is cut and dried and self-explanatory, whereas "life" and/or "life imprisonment" is vague and not clearly defined. Just as the court's have ruled that this a proper matter for a seated jury's consideration, potential jurors should be made aware as well.

For these reasons, the Court should reverse appellant's convictions and remand for a new trial.

VI.

The judge erred by refusing to select an unbiased jury from another county, given the notoriety of the case and community sentiment against appellant.

At the start of voir dire, the judge observed that Robertson's case had been the focus of substantial media and public attention -- "notoriety" was the word he used. ROA p. 352, lines 20-24; ROA p. 445, lines 20 and 21. The Robertson family was wealthy and prominent. The crimes were lurid and sensational. And, as the solicitor noted, York County is small enough that "[i]t's impossible... to find people who don't know other people." Tr. p. 446, lines 18-21. Television cameras and newspaper reporters were in the courtroom to cover the trial. ROA p. 394, lines 5-22.

Of the 61 potential jurors questioned about the subject of pretrial publicity, 44 indicated that they had prior knowledge of Robertson's case and eight of those were eventually seated on his jury.⁴ In addition, the public at large had strong opinions about the case and definite expectations about how it ought to turn out. One of the potential jurors, Mr. Samios, initially testified, "I had never heard anything about the case before at all." Tr. p. 351, lines 15-20. But that evening, he stopped at a "bar and grill" for dinner and let slip that he might be selected for Robertson's jury. Tr. p. 1282, line 16 -- p. 1284, line 3. Samios recounted the other patrons' reactions:

[E]verybody seemed to know what the case was. It's not a

⁴ In the order they appeared, here is a list of those 61 jurors, divided into those who had been exposed to pretrial publicity and those who had not. Jurors from both groups who were seated on Robertson's jury are in capital letters. Exposed to pretrial publicity: PARLER; Lowder; Norton; Kaylor; LaBarge; Holt; Matthews; Witherspoon; Gill; Shelley; Samios; Landrum; McAllister; Frederick; Goeller; Young; Hamrick; STIKELEATHER; Roysak; Parker; GWINN; Deaton; Wright; Jones; Christensen; SMITH; ZAPATA; Hargrove; McGuirt; Hovis; Fernald; Thomas; Love; Shaw; Crawford; Elmes; COCHRAN; Melton; Dunlap; James; Cook; MOORE; TERLINDE; and McAllister. Not exposed to pretrial publicity: LILLY; Johnson; Fudge; Sigler; Shackelford; Sanders; LONCARIC; Racer; Crotts; Gordon; Cristina; Guffey; HOPE; Goff; Wilson; Milbury; and THURMAN.

secret, I found that out... [I]t was a pretty big, well-publicized case... [a]nd it seems like everybody pretty much has their mind made up on certain decisions. That kind of makes me feel uneasy about it.

Tr. p. 1284, lines 3–11. Samios then asked to be excused from jury service due to the pressure of community sentiment:

It kind of made me feel a little bit different, now knowing that somebody knows that I'm here. And I live in the community... I think it would change my point of view a little bit.

Tr. p. 1285, lines 1–4. The judge allowed Samios to exit. Tr. p. 1285, lines 21–23.

Jurors on one of the panels – consisting of “eight or nine” prospective jurors, including Mr. Stikeleather, who was later seated on Robertson’s jury – disregarded the judge’s admonition not to discuss the case and speculated about the relevance of Philadelphia, guessing (incorrectly) that it probably had something to do with the armed robbery charge. Tr. p. 413, lines 18–23; tr. p. 420, line 12 – p. 421, line 23; tr. p. 437, line 21 – p. 438, line 19; tr. p. 468, line 22 – p. 470, line 5; tr. p. 476, line 13 – p. 477, line 3 (Stikeleather). The judge denied a defense motion to disqualify that panel, stating that he would give a curative instruction once a sufficient number of jurors had been qualified. Tr. p. 424, line 20 – p. 427, line 6; tr. p. 894, line 7 – p. 895, l. 20.

Once voir dire was completed, the defense moved pursuant to S.C. Code Section 17–21–85 to select an unbiased jury from another county due to the notoriety of the case and community sentiment against Robertson. Tr. p. 1273, line 5 – p. 1274, line 8. The judge denied this motion, pointing out that only four potential jurors had been excused because they could not set aside their prior knowledge about the case. Tr. p. 1274, line 9 – p. 1275, line 4. At that point, the judge directed the prospective jurors to disregard any premature

discussions about the case or stand if they could not. Tr. p. 1286, line 14 – p. 1288, line 16. No one responded, and jury selection proceeded.

The trial judge has an overarching duty to ensure that a criminal defendant is tried by an unbiased, impartial jury. State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985). “Transfer of a jury pursuant to [S.C. Code Section] 17–21–85 is similar in effect to a change of venue and is subject to the same scope of review.” State v. Longworth, 313 S.C. 360, 438 S.E.2d 219, 221 (1993).

Mere exposure to pretrial publicity does not normally disqualify a jury. State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997); State v. Fowler, 266 S.C. 203, 222 S.E.2d 497 (1976). “The relevant question is not whether the community remembered the case, but whether the jurors... had ‘such fixed opinions that they could not judge impartially the guilt of the defendant’.” State v. Tucker, 324 S.C. 155, 478 S.E.2d 260, 266 (1996), quoting Patton v. Yount, 467 U.S. 125, 1035 (1984). “It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.” Irvin v. Dowd, 366 U.S. 717, 724 (1961); State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).

In special circumstances, usually involving a combination of pretrial publicity and strong public sentiment, juror bias may be expected as a matter of human nature and common sense. Rideau v. Louisiana, 373 U.S. 723 (1963).

[T]he lower courts have looked to the following factors: (1) the nature of pretrial publicity and the particular degree to which it has circulated in the community, (2) the connection of government officials with the release of publicity, (3) the length of time between the dissemination of the publicity in the trial, (4) the severity and notoriety of the offense, (5) the area from which the jury is to be drawn, (6) others once occurring in the community which effect or reflect the attitude of the community or individual jurors toward the

defendant, and (7) any other factor likely to effect the candor or veracity of the prospective jurors on voir dire.

LaFave, Israel and King, Criminal Procedure (2nd Ed. 1999) (quotation marks and footnotes omitted.).

Here, the judge erred by failing to take into account public sentiment against Robertson. See State v. Davis, 138 S.C. 532, 137 S.E.139 (1927). Instead, he focused solely upon the pretrial publicity the case had received and regarded the jurors' professed ability to disregard prior knowledge of the case as dispositive. Mr. Samios' testimony demonstrated that the likelihood of bias in this case was more than merely speculative. As the solicitor noted, the community in which these crimes occurred was small and closely-knit. The Robertsons were prominent members of that community. The shocking details of this double parricide were extensively recounted by the media. Eight of the twelve jurors seated on Robertson's jury had prior knowledge of the case. One panel of prospective jurors began to discuss the case in contravention of the judge's express directive not to do so. Samios testified that community expectations about "certain decisions" relating to the case were palpable and unnerving. The presence of cameras and reporters during the trial ensured that this influence would continue to be felt in the courtroom.

This combination of pretrial publicity and public expectations about the case denied Robertson a fair trial before an unbiased jury. For this reason, the Court should reverse his convictions and remand for a new trial.

VII.

The judge erred in sentencing appellant to death.

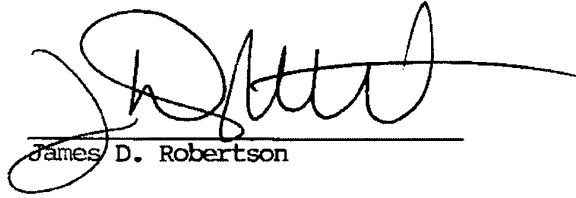
Following the jury's recommendation of death, the judge did sentence the appellant to death. Tr. p.3241, line 17- p.3242, line 11. The United States Supreme Court recently ruled that in all cases where death penalty is sought the jury and not the judge is to be the sentencer. While the judge did note to the jury that he would impose their recommended sentence, under South Carolina law he was under no obligation to do so. Tr. p.3224, lines 18-21. The judge certainly could have decided that the jury's verdict was the result of prejudice or passion and imposed a lesser sentence. The jury is supposed to be the sentencer but the juror's signatures on the "Jury's Determination Of The Sentence To Be Imposed" form indicate that, "We the jury in the above-entitled case unanimously recommend that the Defendant, James Dejarnette Robertson, be sentenced to death."

Appellant had a right to be sentenced by the fact finders, the jury. For this reason, the Court should reverse appellant's death sentences and remand for resentencing.

CONCLUSION

For the foregoing reasons, the Court should reverse appellant's convictions (Arguments I, III, IV, V and VI) and his death sentences (Arguments II and VII).

Respectfully submitted,



James D. Robertson

APPELLANT, pro se

This 25th day of July, 2003.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

JAMES D. ROBERTSON,

PETITIONER,

V.

THE STATE,

RESPONDENT

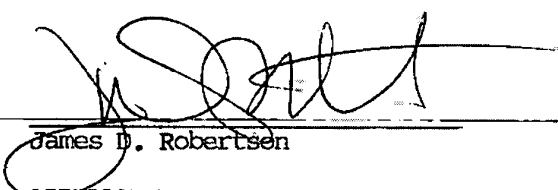
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in Record on Appeal:

- (1) Pretrial hearings
- (2) The July 21, 2003 issue of Newsweek
- (3) Trial transcript
- (4) Indictments
- (5) Court Exhibit #12
- (6) Notice of intent to seek the death penalty
- (7) Motions, briefs and orders pertaining to the state-sponsored psychiatric evaluation
- (8) Written sentencing phase instructions
- (9) Jury's finding of aggravating circumstances
- (10) Jury's recommendation of death

I certify that this designation contains only a minimal amount of matter which is irrelevant to this appeal.

July 25, 2003


James D. Robertson

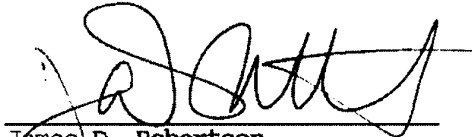
APPELLANT, pro se

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SK5067 RA133
P.O. Box 205
Ridgeville, S.C. 29472

CONCLUSION

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This 25th day of July, 2003.

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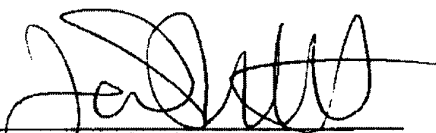
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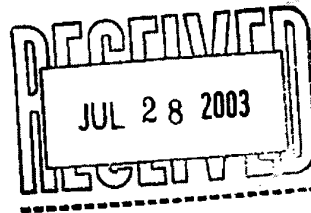
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JAMES D. ROBERTSON
SK5067 RA133 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

JULY 25, 2003

THE SUPREME COURT OF S.C.
P.O. BOX 11330
COLUMBIA, SC 29211



DEAR COURT:

ENCLOSED PLEASE FIND A COPY OF MY INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL. ALSO ENCLOSED IS A COPY OF MY LETTER TO DAVID HAMILTON, YORK COUNTY CLERK OF COURT, REQUESTING THAT COURT EXHIBIT 12 FROM STATE V. ROBERTSON BE TRANSPORTED TO THIS COURT TO BE INCLUDED IN THE RECORD ON APPEAL.

THANK YOU. I REMAIN,

RESPECTFULLY YOURS,

JAMES D. ROBERTSON

ENCLOSURES

CC: SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III
DEPUTY CHIEF ATTORNEY JOSEPH L. SAVITZ, III ✓

JAMES D. ROBERTSON
SK5067 RA1 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

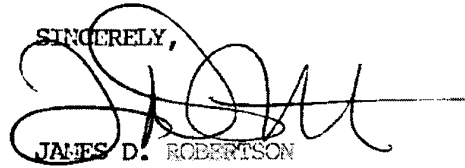
JULY 25, 2003

CLERK OF COURT
MR. DAVID HAMILTON
1675-A YORK HIGHWAY.
YORK, SC 29745

DEAR MR. HAMILTON:

I WOULD LIKE TO REQUEST THAT COURT EXHIBIT #12 FROM STATE V. ROBERTSON
BE TRANSPORTED TO THE SOUTH CAROLINA SUPREME COURT SO THAT IT MAY BE INCLUDED
IN THE RECORD ON APPEAL.

IF THERE ARE QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT ME. THANK
YOU FOR YOUR TIME AND HELP.

SINCERELY,

JAMES D. ROBERTSON

CC: THE SOUTH CAROLINA SUPREME COURT
SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III
DEPUTY CHIEF ATTORNEY JOSEPH L. SAVITZ, III ✓



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 13, 2004

REGULAR AND CERTIFIED MAIL

Mr. James D. Robertson
SK5067
RB 205 Lieber Correctional
P. O. Box 205
Ridgeville, SC 29472

Re: Robertson, James D. v. State

Dear Mr. Robertson:

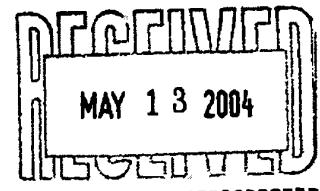
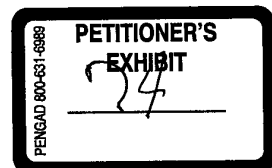
Enclosed is the order issued in the above entitled matter.

Please be advised that all necessary documents for the record on appeal must be provided to the Office of Appellate Defense within twenty (20) days of the date of this letter.

By copy of this letter, we are advising their office that the record on appeal must be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK



BFS/dmh

Enclosure

Mr. James D. Robertson

Page Two

May 13, 2004

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III

The Supreme Court of South Carolina

James D. Robertson,

Petitioner,

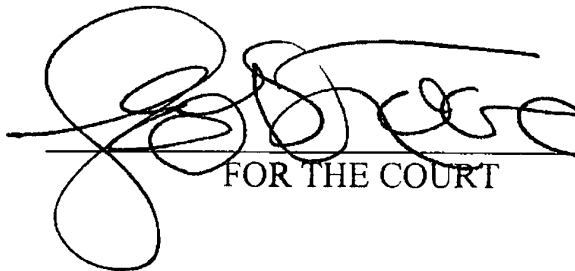
v.

State of South Carolina,

Respondent.

ORDER

Petitioner seeks an order allowing him to communicate confidentially with and pay for the services of anyone he deems necessary concerning his appeal. Because the Initial Briefs have already been prepared and filed, no further investigation, research, or communication is necessary for petitioner to serve and file the Record on Appeal and his Final Brief. Accordingly, petitioner's request is denied.

 C. J.
FOR THE COURT

Columbia, South Carolina

May 13, 2004

JAMES D. ROBERTSON
SK5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

MAY 17, 2004

THE SUPREME COURT OF SOUTH CAROLINA
P.O. BOX 11330
COLUMBIA, SC 29211

RE: JAMES D. ROBERTSON V. STATE

DEAR COURT:

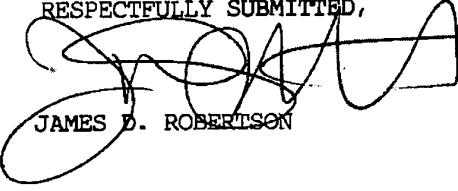
PLEASE LET THIS LETTER SERVE AS A MOTION TO RECONSIDER THIS COURT'S ORDER OF MAY 13, 2004 AS WELL AS A RESPONSE TO THIS COURT'S LETTER OF MAY 13, 2004.

I RESPECTFULLY DISAGREE WITH THE COURT'S DENIAL OF MY REQUEST. IT REMAINS MY POSITION THAT I SHOULD BE ALLOWED, AMONG OTHER THINGS, TO COMMUNICATE AND SEEK ADVICE OF ANYONE AT ANYTIME DURING THE APPELLATE PROCESS BEFORE THIS COURT. I ASSERT THAT COUNSEL FOR THE STATE WILL BE PERMITTED TO RETAIN THE SERVICES OF AND COMMUNICATE WITH ANYONE THEY DEEM NECESSARY. THERE IS NO REASON THAT I SHOULDN'T BE AFFORDED THE SAME OPPORTUNITY. WITHOUT EQUAL OPPORTUNITY TO ACCESS, I AM BEING DENIED MEANINGFUL ACCESS TO THE COURT.

IN RESPONSE TO THE COURT'S LETTER REGARDING THE SERVICE AND FILING OF THE RECORD ON APPEAL, I STATE, AGAIN, THAT THE NECESSARY DOCUMENTS CANNOT BE PRODUCED. THE RECORD ON APPEAL IN THE ABOVE-REFERENCED MATTER HAS BEEN FILED WITH THE COURT AND SERVED ON COUNSEL FOR THE RESPONDENT. IT IS ACCURATE AND I DO NOT WISH TO AMEND OR WITHDRAW IT.

BY COPY OF THIS LETTER, I AM INFORMING WILLIAM EDGAR SALTER, III, OF THE S.C. ATTORNEY GENERAL'S OFFICE, OF MY REQUEST AND RESPONSE.

RESPECTFULLY SUBMITTED,

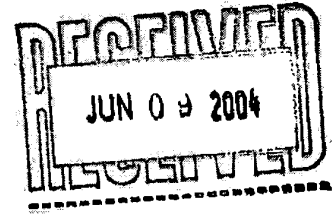

JAMES D. ROBERTSON



THE SUPREME COURT OF SOUTH CAROLINA
PAGE TWO
MAY 17, 2004

CC: ACTING CHIEF ATTORNEY JOSEPH L. SAVITZ, III ✓
SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III

JAMES D. ROBERTSON
SK 5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472



JUNE 7, 2004

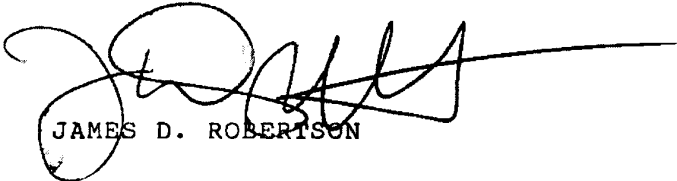
S.C. OFFICE OF APPELLATE DEFENSE
JOSEPH L. SAVITZ, III
1205 PENDLETON ST., ROOM 306
COLUMBIA, SC 29201

DEAR MR. SAVITZ:

I WANTED TO MAKE SURE MY INTENTIONS CONCERNING THE RECORD ON APPEAL WERE CLEAR TO YOU. I HAVE FILED THE RECORD ON APPEAL. I DO NOT WISH FOR YOU TO FILE ANYTHING FURTHER WITH THE COURT. I HAVEN'T PROVIDED YOU WITH ANY MATERIAL WITHIN THE PRESCRIBED TIME LIMIT AND THEREFORE I EXPECT THAT YOU WILL HAVE NOTHING FURTHER TO FILE WITH THE COURT.

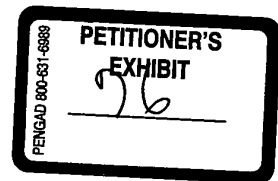
THIS ISN'T PERSONAL. IT'S JUST THAT I HAVE FILED WHAT I WISH TO BE CONSIDERED AS THE RECORD ON APPEAL IN THIS CASE AND I HAVE NO DESIRE TO AMEND OR SUPPLEMENT IT. THANK YOU FOR YOUR TIME.

SINCERELY,



A large, stylized handwritten signature in black ink, appearing to read "J. Robertson".

JAMES D. ROBERTSON



JAMES D. ROBERTSON
5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

S.C. OFFICE OF APPELLATE
DEFENSE

JOSEPH L. SAVITZ, III
1205 PENDLETON ST., ROOM 306
COLUMBIA, SC 29201

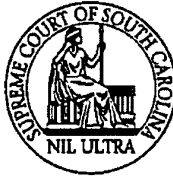
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JUN 26 2000

MAIL ROOM

29201-3731 76





The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 28, 2004

REGULAR AND CERTIFIED MAIL

Mr. James D. Robertson
SK5067
RB 205 Lieber Correctional
P. O. Box 205
Ridgeville, SC 29472

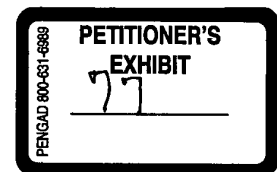
Re: Robertson, James D. v. State

Dear Mr. Robertson:

The following Order has been endorsed on your letter of September 20, 2004 in the above entitled case on appeal.

"Extension granted until
October 25, 2004.

s/ Jean H. Toal C.J.
For the Court



September 28, 2004."

Please be advised that the record on appeal must be served and filed no later than October 25, 2004.

Mr. James D. Robertson
Page Two
September 28, 2004

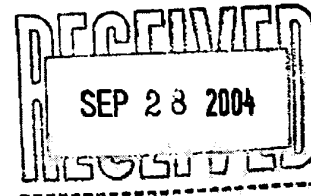
Very truly yours,

Dianda J. Shealy

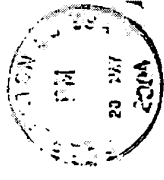
CHIEF DEPUTY CLERK

BFS/dmh

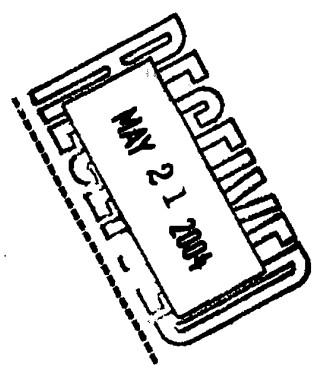
cc: ✓ Acting Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III



Jane D. Robertson
SK 5067 A-7 232 LCI.
P.O. Box 205
Ridgeville, S.C. 29472



Joseph L. Savitz, III
Office of Appellate Defense
205 Pendleton St.
Columbia, S.C.



23201/3333





The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 13, 2000

Honorable John C. Hayes
Moss Justice Center
1675-1H York Highway
York, South Carolina 29745

Re: James D. Robertson v. State

Dear Judge Hayes:

I am in receipt of an Order of the Supreme Court of South Carolina remanding the Robertson matter to the Circuit Court to conduct a full competency hearing under the standard of Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993) and to determine whether Robertson is competent to proceed pro se. You have been directed to appoint counsel to represent Robertson in the competency matter.

By copy of this letter, I am again advising Solicitor Thomas Pope of this matter and his appellate counsel, Robert M. Dudek, Assistant Appellate Defender, of my communication with the Court. Please advise me when we can have a status conference on this matter for scheduling purposes. At the outset I anticipate that the Court will need to refer Mr. Robertson for a mental health evaluation by court experts as in the Mar-Reece Hughes matter in addition to the appointment of counsel.

If you have any questions please advise me.

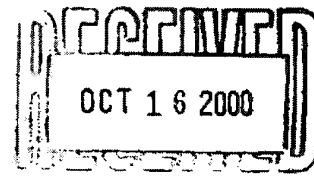
Sincerely,

Donald J. Zelenka
Assistant Deputy Attorney General



DJA/lbb
Enclosure: October 6, 2000 Order

cc: Thomas E. Pope, Solicitor
Robert M. Dudek, Esquire
Honorable Daniel E. Shearouse



The Supreme Court of South Carolina

James D. Robertson, Petitioner,

V.

State of South Carolina, Respondent.

U. S. ATTORNEY GENERAL'S OFFICE
RECEIVED 10-6-06
ADMINISTRATIVE INSTRUCTIONS
FILE OPEN END
HAVE COPIES MADE
FOR

ORDER

Petitioner was convicted of two counts of murder and sentenced to death. Petitioner failed to timely file a notice of appeal and this petition for a writ of certiorari is being treated as a direct appeal. Petitioner, pro se, previously moved to relieve appellate counsel, proceed pro se, and set an execution date. By order dated August 31, 2000, this Court declined to take any action on petitioner's requests based upon representations by petitioner's appellate counsel, Robert Dudek.

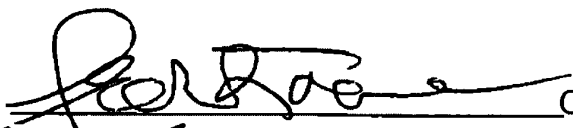
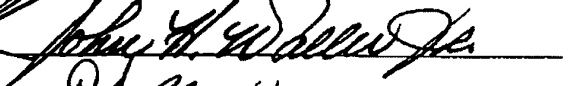
Prior to the issuance of this Court's order, petitioner apparently received a copy of the letter Dudek sent to this Court. Petitioner again requested that he be allowed to proceed pro se and requested that all his appeals be dismissed. Dudek and the State have both filed a return. The Court is also in receipt of a letter written by Paige M. McRight to Chief Justice Toal addressing the issue of petitioner's competency.

We remand this matter to the circuit court to conduct a full

competency hearing. Specifically, the circuit court shall apply the standard enunciated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). See State v. Torrence, 317 S.C. 45, 451 S.E.2d 883 (1994). Furthermore, since a knowing and intelligent waiver of the right to counsel is necessary in order to proceed pro se, the circuit court shall determine whether petitioner is competent to proceed pro se. See Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997).

The Honorable John C. Hayes, III, is hereby assigned to these proceedings, and shall appoint counsel to represent petitioner in the competency matter. The proceedings before this Court shall be held in abeyance pending a determination of competency by the circuit court.

IT IS SO ORDERED.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

October 6, 2000

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

COURT OF GENERAL SESSI、

STATE OF SOUTH CAROLINA)
)
 -V-)
)
JAMES D. ROBERTSON)

TRANSCRIPT OF RECORD

98-GS-46-1020
98-GS-46-1021
98-GS-46-1022
98-GS-46-1023

NOVEMBER 20, 1998
YORK, SOUTH CAROLINA

B E F O R E:
THE HONORABLE JOHN C. HAYES, III

A P P E A R A N C E S:

THOMAS POPE, SOLICITOR
KEVIN BRACKETT, DEPUTY SOLICITOR
1675 1-A YORK HIGHWAY
YORK, SC 29745
ATTORNEYS FOR STATE

JAMES W. HANCOCK, JR. ESQUIRE
POST OFFICE BOX 2851
ROCK HILL, SC 29731
JAMES BOYD, ESQUIRE
POST OFFICE BOX 12111
ROCK HILL, SC 29731
ATTORNEYS FOR THE DEFENDANT

1 THE COURT: THIS IS THE STATE VERSUS JAMES
2 D. ROBERTSON. WE HAVE SEVERAL MATTERS. THE
3 STATE WOULD PROCEED FIRST.

4 MR. POPE: PLEASE THE COURT. AS THE COURT
5 INDICATED, I'VE GIVEN THE COURT REPORTER THE
6 NUMBERS. THIS IS A DEATH PENALTY CASE.
7 98-1020, 1021, 1022, AND 1023.

8 THE COURT: AND MR. ROBERTSON IS PRESENT
9 WITH COUNSEL.

10 MR. POPE: PLEASE THE COURT, YOUR HONOR. A
11 NUMBER OF HOUSEKEEPING ISSUES TO ADDRESS. FIRST
12 AND FOREMOST I DID RECEIVE A COPY FROM THE
13 SOLICITOR'S OFFICE IN THE GREENWOOD OF A
14 PROPOSED JURY QUESTIONNAIRE. I PROVIDED THE
15 COURT WITH A COPY AND I PROVIDED MR. HANCOCK
16 WITH A COPY. I DON'T KNOW WHAT TIME FRAME WE
17 HAVE. I KNOW THE JURY IS TO BE DRAWN ON THE
18 14TH I BELIEVE BUT THE COURT'S AWARE AND JUST
19 FOR THE RECORD WE HAVE NOW THOSE COPIES AND I
20 ASSUME WE'LL HAVE A CONFERENCE.

21 YOUR HONOR, ON YESTERDAY'S DATE A DISCOVERY
22 CONFERENCE WAS HELD. THE DEFENSE WAS AFFORDED
23 AN OPPORTUNITY TO SEE ALL PHYSICAL EVIDENCE THAT
24 WAS IN THE STATE'S POSSESSION AT THIS TIME.
25 COPIES HAVE BEEN, A NUMBER OF WRITINGS WERE

1 PROVIDED FOR AUTHENTICATION AND THE QUESTION OF
2 WHETHER THERE WOULD NEED TO BE FURTHER TESTING
3 IN THAT REGARD AND MR. BRACKETT AND MR. HANCOCK
4 I BELIEVE WILL DEAL WITH THAT AT SOME LATER TIME
5 IN THE HEARING. I WAS NOT PRESENT FOR ALL THE
6 DISCOVERY CONFERENCE. I DON'T KNOW IF THERE IS
7 SOME PARTICULAR ISSUE THE DEFENSE STILL HAS THAT
8 WE NEED TO RESOLVE. I DID PROVIDE THEM OR HAVE
9 PROVIDED THEM WITH EVERY REPORT FROM SLED WITH
10 THE EXCEPTION OF THE CRIME SCENE/FINGERPRINT LAB
11 REPORT. I DID GIVE THEM THE INFORMATION AS IT
12 WAS RELATED TO ME FROM SLED AND WE HOPED THAT
13 THE REPORT WOULD BE HERE THIS WEEK AND WITHIN
14 THE NEXT WEEK SOMETIME RIGHT AROUND THE
15 THANKSGIVING HOLIDAYS.

16 ALSO WENT THROUGH THE SEROLOGY/DNA REPORT THAT
17 HAD COME BACK THAT INDICATED WHERE BLOOD WAS
18 FOUND AND WHERE THEY HAD SAMPLES SUFFICIENT FOR
19 DNA AND WHERE THEY DID NOT AND WE'VE GONE
20 THROUGH AND SHOWN WHAT IS IN THE PROCESS OF
21 BEING DNA TESTED ON THOSE AND SO THAT'S WHERE WE
22 STAND ON THOSE. I BELIEVE WE RESOLVED MOST OF
23 THOSE ISSUES YESTERDAY. AGAIN IF THEY HAVE
24 ANYTHING FOR THE RECORD BUT THAT'S WHERE I
25 BELIEVE WE STAND AS FAR AS DISCOVERY AT THIS

1 TIME.

2 THE COURT: ANY COMMENTS ON WHERE WE ARE AS
3 FAR AS DISCOVERY, MR. HANCOCK AND MR. BOYD.

4 MR. HANCOCK: NO, SIR. WHAT HE'S STATING
5 IS CORRECT. WE SPENT OVER SIX HOURS LOOKING AT
6 THE EVIDENCE. WE KNOW WHICH EVIDENCE IS NOT
7 AVAILABLE AT THIS TIME AND WILL BE AVAILABLE
8 LATER FROM SLED, BUT WE KNOW THERE IS
9 OUTSTANDING DNA EVIDENCE AT THIS TIME.

10 THE COURT: ALL RIGHT.

11 MR. POPE: MAY IT PLEASE THE COURT, I NOW
12 DRAW THE COURT'S ATTENTION TO A MOTION
13 CONCERNING RULE FIVE AND MENTAL EVALUATION. I
14 PROVIDED A COPY TO THE DEFENSE YESTERDAY AND THE
15 DAY BEFORE YESTERDAY, AND I PROVIDED TO THE
16 COURT AND THE DEFENSE A COPY OF A NUMBER OF THE
17 CASES AND AN ORDER THAT HAD TAKEN PLACE IN A
18 SIMILAR CASE IN ANOTHER CIRCUIT. BASICALLY
19 THERE ARE THREE ISSUES TO BE ADDRESSED, YOUR
20 HONOR. THE FIRST ISSUE CONCERNS THE ISSUE WE
21 DEALT SEVERAL TIMES HERE IN THE COURTROOM AND I
22 JUST WANT A CLEAR CLARIFICATION ON THE RECORD
23 WHERE WE'RE AT AS FAR AS THE RULE FIVE NOTICE OF
24 INSANITY AND GUILTY BUT MENTALLY ILL, ALIBI. MY
25 UNDERSTANDING IS WE CLARIFIED THE ALIBI

1 SITUATION. THERE WILL BE NO ALIBI. A LETTER
2 DATED NOVEMBER 6 FROM MR. HANCOCK HE'S TOLD ME
3 THAT THE DEFENSE DOES NOT INTEND TO USE ALIBI OR
4 INSANITY OR HE DOES NOT USE GUILTY BUT MENTALLY
5 ILL. THERE WAS SOME CONCERN WHEN MR. BOYD WAS
6 QUOTED THE FOLLOWING DAY IN THE HERALD SAYING
7 THAT EVIDENCE OF INSTANTLY, THEY COULD STILL
8 PLEAD INSANITY IF THE EVIDENCE SURFACED LATER.
9 THE STATE'S CONCERN IS BASICALLY THAT'S EXACTLY
10 WHY, AND OF COURSE, HE SAID AT THIS TIME, AND OF
11 COURSE WE DEALT WITH THIS ISSUE IN THE COURT
12 THUS FAR, THE CONCERN I HAVE WITH AT THIS TIME
13 IS THE WHOLE REASON THERE IS RULE FIVE IS TO
14 GIVE US NOTICE.

15 YOUR HONOR, AS TO INSANITY ISSUES AS TO GUILTY
16 BUT MENTALLY ILL, THE DEFENSE HAS MADE CLEAR
17 THEY HAVE HAD VARIOUS INDIVIDUALS LOOKED AND
18 TALKED TO THE DEFENDANT, TEST THE DEFENDANT AS
19 FAR AS HIS MENTAL CAPACITY, AND BASED ON THAT
20 THEY'VE TOLD THE COURT AND THEY'VE TOLD THE
21 STATE THERE WOULD BE NO GUILTY BUT MENTAL ILL
22 AND THERE WOULD BE NO INSANITY.

23 THE CONCERN WE HAVE FOR AT THIS TIME IS THE SAME
24 BIND THAT IT PUTS US IN IF WE WERE NOT GIVEN
25 NOTICE AT ALL, THE AT THIS TIME CAN PUT US ON

1 THE EVE OF TRIAL, CAN PUT US IN TRIAL, THAT
2 ISSUE COME UP, AND WE HAVE A JURY SEQUESTERED
3 AND THAT WOULD REQUIRE A CONTINUANCE WITHIN THE
4 TRIAL AS HAS HAPPENED IN SOME FEDERAL CASES AND
5 ORDER THAT PROPER TESTING COULD BE DONE IF THAT
6 BECOMES AN ISSUE. I WOULD SUBMIT THAT BASED ON
7 THE NATURE OF INSANITY, BASED ON THE NATURE OF
8 GUILTY BUT MENTALLY ILL, THE QUESTION IS NOT
9 COMPETENCY. I UNDERSTAND COMPETENCY CAN CHANGE
10 DAY BY DAY. THE QUESTION IS ON THE NIGHT OF THE
11 INCIDENT OR THE DATE OF THE INCIDENT WAS THE
12 DEFENDANT INSANE AND/OR WAS THE DEFENDANT IN A
13 POSITION OF NOT BEING ABLE TO CONTROL HIS
14 ACTIONS SUCH THAT HE WOULD BE GUILTY BUT
15 MENTALLY ILL. I WOULD SUBMIT THAT IF HE IS THAT
16 NOT TODAY, IN OTHER WORDS IF NEITHER ONE OF
17 THOSE APPLY, THEN THEY WOULD NOT APPLY IN THE
18 FUTURE, SO AT THIS POINT I WOULD ASK FOR A CLEAR
19 CLARIFICATION THAT WE'RE NOT PROCEEDING ON
20 GUILTY BUT MENTALLY ILL AND NOT PROCEEDING ON
21 INSANITY IN THIS CASE.

22 THE COURT: ALL RIGHT.

23 MR. HANCOCK: AGAIN, YOUR HONOR, AS I READ
24 THE RULE AND THE RULE INDICATES THAT I MUST TEN
25 DAYS AFTER THE SOLICITOR REQUESTS RESPOND TO

1 HIM. HE COULD HAVE THE FIRST DAY THAT THE
2 GENTLEMAN WAS INDICTED OR SOUGHT THE DEATH
3 PENALTY ASKED FOR THAT TO BE DONE. I WOULD HAVE
4 NO WAY TO DO IT. THE RULE STILL INDICATE THAT
5 IT MAY BE USED AS THE COURT MAY DIRECT, AND SO I
6 DO NOT KNOW AT ANY TIME THAT THE SITUATION MAY
7 NOT COMPLETELY CHANGE.

8 MY READING IS THAT IF WE DO AND WE EVENTUALLY
9 MUST MOVE THE COURT IN SOME MANNER THAT THIS
10 MIGHT CHANGE, THAT OUR EXPERTS CAN BE DENIED,
11 YOU CAN DENY THEM ACCESS TO THE WITNESS STAND,
12 BUT IT BASICALLY SAYS THAT WE ARE NOT AT THIS
13 TIME SEEKING GUILTY BUT MENTALLY ILL NOR ARE WE
14 SEEKING INSANITY.

15 BUT AGAIN IF I AM HELD TO THAT THEN I HAVE NOT
16 BEEN ABLE AND STILL THE SAME ARGUMENT EXISTS
17 THAT, IT'S A GATHERING OF INFORMATION AND ALL
18 THAT INFORMATION HAS TO BE GATHERED AND WE HAVE
19 ONLY JUST RECENTLY SEEN ALL OF THE INFORMATION
20 THAT MAY REFLECT ON THE CASE EXCEPT FOR THE
21 DNA. SO THAT'S JUST THE WAY I READ THE RULE.
22 IT'S YOUR CALL, JUDGE, BUT THE WAY I READ THE
23 RULE IS IT SAYS THAT WITHIN TEN DAYS OR AT SUCH
24 TIME AS THE COURT MAY DIRECT. YOU DIRECT IT, I
25 BELIEVE, AND IF THAT IS A RESPONSE, THEN THAT IS

1 A RESPONSE. IT DOES NOT CHANGE.

2 THE COURT: WELL, MR. SOLICITOR, I'M NOT
3 SURE I CAN REQUIRE THEM TO DO ANYMORE THAN WHAT
4 THEY HAVE ALREADY DONE. THERE ARE SAFETY NETS
5 IN THE RULE THAT IF THEY ON THE EVE OF TRIAL
6 COME UP WITH, IF THEY FAIL TO COMPLY, IF THEY
7 HAVE FAILED TO COMPLY WITH RULE FIVE THAT
8 TESTIMONY MAY BE EXCLUDED. NOW THIS IS A DEATH
9 PENALTY CASE AND THAT CERTAINLY WILL HAVE TO BE
10 LOOKED AT WITH GREAT CIRCUMSPECT AT THAT TIME
11 AND THE COURT FOR GOOD CAUSE SHOWN, WHICH IS
12 THAT ILL DEFINED PHRASE WE SEE VERY OFTEN, IT'S
13 BASICALLY PUTS THE DISCRETION IN THE COURT'S
14 LAP, MAY ALLOW A LATE FILING. I DON'T KNOW OF
15 ANYTHING ELSE THE COURT CAN DO AT THIS TIME.
16 THE DEFENSE HAS COMPLIED, BUT I CANNOT LOCK THE
17 DEFENSE DOWN AND SAY, THEY CAN'T HAVE FURTHER
18 TESTING. I CAN'T SAY THAT IF, I MEAN, AND VERY
19 CANDIDLY THIS IS A DIFFICULT SITUATION TO DEAL
20 WITH BECAUSE IF THE DEFENSE IS AT SOME LATER
21 POINT IS CONFRONTED WITH SOME EVIDENCE THAT
22 VARIES THE POSITION THEY'VE MADE, THEN WE'LL
23 JUST HAVE TO LOOK AT IT AT THE TIME. I GUESS
24 WHAT I'M SAYING IS I DON'T KNOW ANYTHING ELSE
25 THE COURT COULD DO AT THIS TIME AND IF THAT POPS

1 UP, WE'LL HAVE TO DEAL WITH IT IF IT DOES.

2 MR. POPE: SO AT THIS POINT --

3 THE COURT: I KNOW IT'S NOT A LOT OF HELP
4 TO YOU. BUT I JUST DON'T SEE ANY OTHER WAY TO
5 APPROACH IT.

6 MR. POPE: YES, I UNDERSTAND, YOUR HONOR.
7 WITH RESPECT TO THE COURT, IT BASICALLY REMOVES
8 ANY USE AND WITH DUE DEFERENCE TO YOUR RULING,
9 ANY USE OF RULE FIVE FROM THE STATE'S
10 STANDPOINT. I RESPECT THIS IS A DEATH PENALTY
11 CASE, BUT IF THE COURT INTENDED TO SAY EXCEPT IN
12 DEATH PENALTY CASES, AND YOUR HONOR, I
13 UNDERSTAND. I WILL MOVE FORWARD. THE STATE
14 WILL PROCEED WITH THE --

15 THE COURT: LET ME GO BACK, I MEAN, ALL I'M
16 DOING IS SAYING THAT THE RULE WILL BE COMPLIED
17 WITH.

18 MR. POPE: AND THE COURT DEEMS THEY HAVE
19 COMPLIED FROM THE STANDPOINT THEY SAID WE DON'T
20 HAVE INSANITY, WE DON'T HAVE GUILTY BUT MENTALLY
21 ILL, BUT IF IT COMES BACK UP WE'LL DEAL WITH IT
22 WHEN IT COMES UP.

23 THE COURT: WE'LL HAVE TO. I MEAN THAT'S
24 JUST WHAT THE RULE SAYS. IF THE DEFENDANT FAILS
25 TO COMPLY THEN IT MAY BE EXCLUDED, AND IT ALSO

1 SAYS THAT THE COURT MAY FOR GOOD CAUSE SHOWN
2 MAKE SUCH ORDER AS APPROPRIATE AND OF COURSE WE
3 CAN'T DO EITHER OF THOSE NOW BECAUSE WE DON'T
4 HAVE EITHER OF THOSE SITUATIONS, SO THEY HAVE
5 COMPLIED.

6 MR. POPE: YES. AND AGAIN IN THE SPIRIT
7 OF WHAT THE RULE SAYS THE STATE WOULD PROCEED
8 WITH NO GUILTY BUT MENTALLY ILL AND NO INSANITY
9 BECAUSE THAT'S WHAT THE DEFENSE HAS TOLD US
10 UNTIL WE HEAR OTHERWISE.

11 AS TO THE SECOND ISSUE WE ALSO FILED AT THE SAME
12 TIME BACK IN JULY, IN JULY, A RECIPROCAL
13 DISCOVERY REQUEST. PARTICULARLY, YOU KNOW, ANY
14 REPORTS AND MATTERS THAT THEY MAY HAVE
15 PARTICULARLY AS RELATING TO THE MENTAL ISSUE,
16 YOUR HONOR. THE DEFENDANT HAS REQUESTED TO MEET
17 UNDERSIGNED ATTORNEY OF THE STATE TO INSPECT
18 COPY OF RESULTS OF REPORTS OF PHYSICAL AND
19 MENTAL EXAMINATIONS AND SCIENTIFIC TESTS MADE IN
20 CONNECTION WITH THE CASE WITHIN THE POSSESSION
21 AND CONTROL OF THE DEFENDANT OR HIS ATTORNEY
22 WHICH THE DEFENDANT INTENDS TO INTRODUCE AT
23 TRIAL WHICH IS PREPARED BY WITNESSES WHOM THE
24 DEFENDANT INTENDS TO CALL AT TRIAL WHICH THE
25 RESULTS WOULD RELATE TO HIS TESTIMONY. YOUR

1 HONOR, I WOULD ASK AT THIS TIME AND WE TALKED TO
2 MR. HANCOCK A LITTLE BIT YESTERDAY, WE HAVE NOT
3 RECEIVED ANY MENTAL REPORTS OR ANY TESTING. I
4 KNOW EXTENSIVE MENTAL TESTING HAVE BEEN DONE.
5 YOUR HONOR, IT'S THE SAME SITUATION. I KNOW
6 THAT WOULD BE ONGOING AND THEY MAY HAVE SOME
7 STUFF NOW, BUT IF THEY HAVE THUS FAR DONE ALL
8 THE TESTING THAT HAS BEEN INDICATED TO THE
9 COURT, THEY'VE GOT TO BE MMPIS, ALL THE
10 DIFFERENT PSYCHOLOGICAL TESTS, ALL THE TESTING
11 THAT WAS RENDERED. NOW THE DEFENSE MAKE TAKE
12 THE POSITION, WELL, I DON'T KNOW IF I'M GOING TO
13 USE THAT PARTICULAR WITNESS IN TRIAL, BUT AGAIN
14 THAT WOULD CIRCUMVENT THE INTENT OF THIS RULE.
15 WE SHOULD BE PROVIDED THAT INFORMATION. IF THEY
16 DON'T USE THIS WITNESS IN TRIAL THEN WE CAN
17 NEVER MAKE ANY USE OF IT. THE COURT, YOU'RE
18 STILL THE GATEKEEPER. YOU WOULD STILL DETERMINE
19 WHAT COMES BEFORE THE JURY AND WHAT DOESN'T COME
20 TO THE JURY, BUT AS FAR AS THE MENTAL RESULTS OF
21 ANY TESTING OR ANYBODY THAT WOULD TESTIFY IN
22 EITHER PHASE OF THE TRIAL, AT THIS POINT WE
23 HADN'T HAD ANYTHING AND AGAIN WE WORKED
24 DILIGENTLY. I KNOW THERE HAS BEEN AN ISSUES
25 CONCERNING PHYSICAL EVIDENCE AND WE'VE DONE

1 EVERYTHING POSSIBLE TO PROVIDE EVERYTHING TO THE
2 DEFENSE IN A TIMELY MANNER AS POSSIBLE. WE'VE
3 NOT RECEIVED ANY ITEM OF ANY EVIDENCE OR ANY
4 TEST THAT HAS BEEN DONE YET AND I WOULD REQUEST
5 THE COURT IN YOUR DISCRETION ORDER THAT IT WOULD
6 BE PROVIDED, YOUR HONOR.

7 THE COURT: WHERE DO WE STAND ON THAT, MR.
8 HANCOCK.

9 MR. HANCOCK: WELL, IF IT PLEASE THE
10 COURT. AS YOU ARE WELL AWARE I HAD BEEN IN
11 TRIAL MOST OF THE WEEK YESTERDAY AND THE
12 SOLICITOR HAS PROVIDED ME WITH PORTIONS OF THIS
13 ON, AT EARLIER TIMES DURING THE WEEK, BUT
14 YESTERDAY THE ENTIRE PACKAGE WAS PRESENTED AS A
15 MOTION CONCERNING RULE FIVE AND EVALUATION. I
16 WAS UP HERE UNTIL ABOUT FOUR O'CLOCK YESTERDAY
17 AFTERNOON, YOUR HONOR, WE'VE NOT HAD TIME TO
18 COMPLY WITH THE MOTION. THERE ARE NO, AS FAR AS
19 I KNOW THERE ARE NO TIME FRAMES SET IN THE RULES
20 OF CRIMINAL PROCEDURE SO I WOULD IMAGINE THAT
21 THE RULES OF CIVIL PROCEDURE WOULD APPLY. WE
22 WOULD HAVE AT LEAST TEN DAYS TO REPLY TO A
23 MOTION AND I RECEIVED THAT MOTION YESTERDAY.
24 FURTHER IF IT COMES TO AN ARGUMENT AT THIS
25 PARTICULAR POINT I BELIEVE THE RULE IS FAIRLY,

1 IS FAIRLY STRAIGHT FORWARD AND SAYS THAT RULE
2 FIVE DISCOVERY IS AVAILABLE TO THE SOLICITOR
3 ONLY AFTER HE COMPLIES WITH OUR RULE FIVE AND IT
4 IS EVIDENT FROM WHAT HE'S TOLD THE COURT, THEY
5 HAVE NOT FULLY COMPLIED WITH IT. IT DOESN'T SAY
6 UPON PARTIAL COMPLIANCE. IT SAYS UPON
7 COMPLIANCE. BUT WE WOULD ASK FOR TIME TO ANSWER
8 THIS MOTION. THESE ARE MANY CASES AND IT'S WELL
9 WRITTEN AND IT NEEDS OUR EVALUATION AND
10 CONTEMPLATION BEFORE WE ANSWER IN A COMPLETE
11 MANNER, YOUR HONOR.

12 MR. POPE: PLEASE THE COURT. THE MOTION
13 THAT THIS ADDRESSES, IF YOU LOOK IN THE BODY OF
14 OUR ORDERED MOTION, WE'RE GOING TO GET TO THE
15 THIRD ISSUE, BUT THE MOTION THIS ADDRESSES IS
16 ABOUT A PARAGRAPH, AND I WOULD SUBMIT TO YOU THE
17 MOTION WAS MADE JULY 8 OF 1998, SO THIS IS NOT
18 SOME NEW ANGLE, NEW ADDITION. WHAT WE'RE ASKING
19 FOR IS THE REPORTS, THE TESTING, ALL THESE
20 MENTAL THINGS THAT HAVE BEEN DONE THAT THEY ARE
21 BASING THIS DETERMINATION, WE'D ASK FOR A COPY
22 OF THEM. YOUR HONOR, IF IT'S FAIRLY STRAIGHT
23 FORWARD THAT THE EXPERTS THAT THEY ARE
24 CONSULTING, WE WOULD ASK FOR THE ITEMS THEY ARE
25 RELYING ON. AGAIN IT'S A FUNDAMENTAL FAIRNESS

1 ISSUE AND THERE IS RULES THERE TO PROVIDE THOSE
2 VERY THINGS, YOUR HONOR, AND WE WOULD LIKE AN
3 OPPORTUNITY TO SEE THOSE ITEMS.

4 THE COURT: I'M PROBABLY GOING TO HAVE TO
5 TAKE THIS UNDER ADVISEMENT AND DO SOME RESEARCH
6 ON IT. ONE OF THE THINGS THAT CONCERNS ME IS AT
7 THIS STAGE THE RULE DOES SAY THAT IT MUST
8 DISCLOSE ITEMS AND DOCUMENTS THAT RELATE TO
9 WITNESSES WHOM THEY INTEND TO CALL. IS THAT ALL
10 THE STATE'S ASKING FOR? OR ARE YOU ASKING FOR?

11 MR. POPE: AS OPPOSED TO WHAT, YOUR HONOR.

12 THE COURT: AS OPPOSED TO ANY REPORTS.
13 THEY MAY HAVE HAD, ASSUME AN EXAMINATION WAS
14 MADE BY SOMEONE AND THEY HAVE DECIDED THAT THEY
15 DO NOT WANT TO USE THAT WITNESS, IS IT YOUR
16 POSITION THAT YOU WOULD BE ENTITLED TO THAT
17 REPORT TOO?

18 MR. POPE: I DON'T THINK I WOULD BASED ON
19 THE RULE. BUT THE ISSUE BECOMES I COULDN'T SAY
20 WELL I DON'T KNOW WHO I'M GOING TO CALL ALL THE
21 WAY UNTIL WE GET UP TO TRIAL.

22 THE COURT: I KNOW BUT THERE HAS GOT TO BE,
23 I UNDERSTAND THAT BECAUSE THERE HAS GOT TO BE
24 FROM A PRACTICAL STANDPOINT SOME OPPORTUNITY FOR
25 YOUR, FOR YOU TO REVIEW IT AND DETERMINE WHETHER

1 OR NOT YOU NEED AN EXPERT TO COUNTER THEIR
2 EXPERT. I MEAN, THERE IS NO QUESTION ABOUT
3 THAT.

4 MR. POPE: I THINK THE ISSUE BEING CLEAR
5 THAT WOULD BE A CALL THE DEFENSE HAS TO MAKE,
6 SAY YOU HAD SIX EXPERTS LOOK AT IT AND SAY WELL
7 I DON'T THINK THEY WANT TO USE SAY THREE SO THEY
8 SAY WELL I'M GOING TO GIVE THE STATE THREE, BUT
9 THEY CAN DO THAT BUT THEY DO THAT AT THEIR PERIL
10 BECAUSE IF THEY DID PROVIDE THAT WOULD PREVENT
11 THEM FROM USING THAT INDIVIDUAL LATER ON.

12 YOUR HONOR, AGAIN AS MR. HANCOCK HAS INDICATED
13 MENTAL ISSUES CAN TAKE A LONG TIME. I KNOW
14 THERE HAVE BEEN THINGS THEY'VE BEEN TRYING TO
15 WORK ON IN THE PAST, THINGS THAT WILL CONTINUE
16 TO WORK ON, BUT AGAIN AS THE COURT JUST
17 INDICATED, I KNOW THERE HAS BEEN TESTS DONE TO
18 SOME EXTENT NOW UNLESS HE'S REPRESENTED TO THE
19 COURT THAT ALL THE PEOPLE DID WAS TALK, THEY
20 NEVER TOOK ANY NOTES, THEY NEVER DID ANY
21 TESTING. THAT'S NOT VERY GOOD SCIENTIFIC
22 INVESTIGATION IF THAT'S THE CASE AND I'M NOT
23 SAYING THAT'S WHAT THE DEFENSE IS SAYING, BUT
24 I'M JUST SAYING THE BASIC TESTS THAT HE'S
25 TAKEN. YOU KNOW, THE ITEMS THAT WERE USED TO

1 TEST TO GET THESE ISSUES WE WOULD REQUEST COPIES
2 OF. OF COURSE AGAIN I'M AVAILING MYSELF TO THE
3 ENTIRETY AND THAT CERTAINLY THAT PROVIDES FOR
4 DOCUMENTS AND TANGIBLE OBJECTS AND THAT OTHER
5 THINGS THAT WE'VE REQUESTED RESPECTIVELY, BUT
6 I'M MOST CONCERNED BECAUSE OF TIME CONSTRAINTS
7 IS THE MENTAL ISSUE.

8 MR. BOYD: YOUR HONOR---

9 THE COURT: MR. BOYD, BEFORE YOU RESPOND
10 BECAUSE YOU CAN INCLUDE THIS. ASSUMING I
11 DETERMINE THAT THE STATE HAS COMPLIED BECAUSE
12 MR. HANCOCK SAID THE STATE HADN'T COMPLIED SO
13 YOU DON'T HAVE TO UNTIL THEY DO. ASSUMING I
14 FIND THAT THE STATE HAS COMPLIED, WHEN WOULD YOU
15 BE ABLE TO REALISTICALLY HAVE A CUTOFF DATE FOR
16 SAYING THAT Y'ALL HAVE DECIDED WHO YOU ARE GOING
17 TO USE FOR WITNESSES AND BE ABLE TO TURN OVER
18 THIS INFORMATION.

19 MR. BOYD: YOUR HONOR, WE WOULD BE ABLE TO
20 DO THAT SHORTLY AFTER THE STATE'S FULLY
21 COMPLIED. I WANT TO POINT OUT, UNTIL WE GET THE
22 DNA EVIDENCE WE CANNOT MAKE A DETERMINATION AS
23 TO WHAT WE MAY OR MAY NOT CALL FROM WHAT WE'VE
24 DONE. WE'VE GOT TO KNOW THAT INFORMATION TO
25 DETERMINE, I MEAN, THE DETERMINATION OF WHAT WE

1 MAY PRESENT DEPENDS ON WHAT THE STATE'S GOING TO
2 PROVIDE AND THE BLOOD INFORMATION AND THE DNA
3 INFORMATION IS CERTAINLY CRITICAL TO WHAT'S
4 GOING TO BE PRESENTED, SO THAT IS, UNTIL WE GET
5 THAT INFORMATION I DON'T THINK WE CAN BE IN A
6 POSITION TO KNOW FOR SURE WHAT WE'RE GOING TO
7 USE AND WHAT WE'RE NOT.

8 MR. POPE: YOUR HONOR, AGAIN TWO THINGS
9 I'LL SAY, ONE AS FAR AS RULE FIVE, RULE FIVE IS
10 CONTINUING. I CAN ONLY GIVE THEM WHERE WE'RE AT
11 NOW AND I CONTINUE TO GIVE THEM THINGS AS THEY
12 COME IN. AND THE SAME WOULD BE TRUE OF A
13 RECIPROCAL RULE FIVE, IF THEY NEED MORE TESTING
14 NEXT WEEK, THEY CAN'T GIVE THAT TO ME YET, BUT
15 THEY HAVE TO KEEP IT ONGOING.

16 YOUR HONOR, THE BLOOD EVIDENCE AND MENTAL STATE,
17 I CAN REALIZE THAT MAY BEAR ON WHO THEY DECIDE
18 TO CALL, BUT THAT'S EXACTLY WHY THEY OUGHT TO
19 GIVE IT ALL TO ME BECAUSE I CANNOT USE IT UNLESS
20 IT'S IN REBUTTAL OF WHAT THESE PEOPLE TESTIFY
21 TO. I CAN'T JUST RANDOMLY STAND UP AND USE IT
22 IN MY CASE IN CHIEF MYSELF. IT'S FOR CROSS
23 EXAMINATION, FOR REBUTTAL, AND AS YOU SAID IF WE
24 NEED TO GET EXPERTS TO LOOK AT IT, BUT WAITING
25 ON TO DECIDE WHOSE BLOOD IS ON WHAT HAMMER AND

1 WHAT BAT AND WHAT KNIFE AND WAITING ON THAT HAS
2 ABSOLUTELY NOTHING TO DO WITH MENTAL STATE. IT
3 MAY HAVE TO DO WITH THEIR STRATEGY, BUT AGAIN
4 THAT'S WHY IF YOU HAVE SIX EXPERTS, THEN GIVE
5 THE INFORMATION FROM SIX EXPERTS. IF THEY DON'T
6 TAKE THE STAND, THEN IT STAYS RIGHT HERE IN THE
7 FILE AND WE NEVER GET TO USE IT.

8 MR. BOYD: WELL, YOUR HONOR, THAT'S NOT
9 EXACTLY RIGHT. THEY'RE POTENTIALLY, THE
10 INFORMATION WE'VE GOTTEN FROM THE EXPERTS THAT
11 CAN DAMAGING IN THE MITIGATION PHASE OR HELPFUL
12 IN THE MITIGATION PHASE BUT COULD LEAD THE STATE
13 TO INFORMATION THAT'S DAMAGING IN THE GUILT
14 PHASE. THAT'S WHY WE NEED TO KNOW WHAT THE
15 STATE HAS IN THE GUILT PHASE BEFORE WE CAN MAKE
16 THE DETERMINATION AS TO WHAT WE'RE GOING TO USE
17 IN THE MITIGATION PHASE, IF IT GETS TO THAT
18 POINT, SO IT DOES MAKES A DIFFERENCE.

19 THE COURT: WELL, UNFORTUNATELY THE CASES
20 LIKE THIS THE DISCOVERY IS SOMEWHAT A PING PONG
21 MATCH WITH THE COURT TRYING TO OFFICIATE.

22 MR. POPE: YOUR HONOR, I FEEL LIKE WE'RE
23 SERVING IT ALL AND WE'RE NOT GETTING ANY BALLS
24 BACK OVER THE NET.

25 THE COURT: WELL. WHEN DO YOU THINK YOU'LL

1 HAVE THE DNA.

2 MR. POPE: YOUR HONOR, THE DNA MAY WELL BE
3 COMPLETED AFTER THE HOLIDAYS. I'M TALKING MAYBE
4 EVEN AFTER THE CHRISTMAS HOLIDAYS IN MY TALKING
5 TO THEM. AGAIN, YOU KNOW, I UNDERSTAND THAT WAS
6 YOUR QUESTION, AND TO MY KNOWLEDGE IT MAY BE
7 INTO THE FIRST OF JANUARY BEFORE WE RECEIVE IT.
8 AGAIN THAT NOW, IF YOU COUCH IT ON THAT, THEN
9 WHAT IF WE DO FURTHER TESTING OR WHAT IF
10 SOMETHING ELSE COMES UP. IN OTHER WORDS, WE
11 WOULD BE TO ENTITLED, THE ISSUE IS TRUTH AND THE
12 ISSUE IS FUNDAMENTAL FAIRNESS AND THERE IS NO
13 DETRIMENT THAT CAN BE HAD TO THEM BY LETTING US
14 HAVE THIS IF IT'S ALL ABOUT THE TRUTH. ONE IS
15 NOT CONNECTED TO THE OTHER, YOUR HONOR. BUT
16 AGAIN, THE SHORT ANSWER TO YOUR QUESTION IT MAY
17 BE IN THE BEGINNING OF JANUARY BEFORE WE RECEIVE
18 IT.

19 MR. HANCOCK: YOUR HONOR, AND TRUTH AND
20 FAIRNESS LIES IN BOTH BALL PARKS. WE HAVE OUR
21 DEFENDANT AND WE HAVE TO REPRESENT HIM. IF WE
22 HAVE HIM EVALUATED AND WE ARE ABLE TO LOOK AT
23 ALL OF THE EVALUATIONS AND EVERYTHING THAT'S
24 THERE AND WE DECIDE NOT TO USE IT, THEN AT THAT
25 POINT IN TIME THERE IS NO, THE RULES SAYS WE

1 DON'T HAVE TO TURN IT OVER TO THEM. I KNOW
2 THERE HAS TO BE SOME TURNING POINT AND SOME
3 TIME, BUT THE STATE ALSO HAS BEEN HELD OR HAS
4 SAID THAT IT CANNOT BE HELD TO ANY TIME FRAMES.
5 THEY'VE HAD THE DNA EVIDENCE FOR OVER ONE YEAR.
6 WE'RE TRYING TO BE AS FAIR AS WE CAN TOO, BUT WE
7 ALSO HAVE TO HAVE JUST AS IN, OR IN DISCERNING
8 THIS MATERIAL, WE HAVE TO HAVE TIME TO DIGEST
9 OUR CASE AND TO SIT DOWN WITH OUR CASE AND
10 DECIDE WHAT EXACTLY WE'RE GOING TO USE AND NOT
11 AND WE WILL TURN IT OVER WHEN WE DECIDE IT OR AT
12 THE COURT'S DIRECTION AND CERTAINLY SO, BUT WE
13 ALSO NEED SOME TIME AT THIS POINT TO DIGEST THAT
14 PARTICULAR PORTION OF THIS CASE AND WE HAVE
15 ONLY, WHEN LESS THAN, I BELIEVE WE WERE IN HERE
16 LESS THAN THREE WEEKS AGO AND WE SAID WE HAD NOT
17 FINISHED AND HAD JUST FINISHED THAT PARTICULAR
18 PORTION AND THAT THE MENTAL EVALUATIONS MOST
19 WERE DONE, ALL ARE DONE I THINK EXCEPT ONE, BUT
20 WE NEED US A LITTLE BIT OF TIME TO SIT DOWN AND
21 DIGEST THE INFORMATION SO WE CAN DECIDE WHAT OUR
22 CASE IS.

23 THE COURT: I'M GOING TO HAVE TO TAKE THIS
24 UNDER ADVISEMENT AND THINK THROUGH IT AND LOOK
25 IT AT THE RULE AGAIN AND WEIGH EVERYBODY'S

1 POSTURE. NOW WHAT ELSE DO WE NEED TO ADDRESS
2 TODAY.

3 MR. POPE: YOUR HONOR, THE FINAL ISSUE IS
4 JUST STRAIGHT FORWARD AND IT TIES RIGHT BACK IN
5 WITH ALL THIS, THAT THE STATE WOULD REQUEST THAT
6 WE BE ALLOWED TO GET AN INDEPENDENT MENTAL
7 EXAMINATION OF THE DEFENDANT. WE TALKED TIME
8 AND TIME AGAIN ABOUT THE EXAMINATIONS THAT WERE
9 BEING DONE, WE'VE GOT NO REPORTS FROM THAT, AND
10 OF COURSE, YOUR HONOR, I'D BE, IN FAIRNESS TO
11 THE COURT I'D BE BEFORE THE COURT ASKING FOR AN
12 EXAMINATION WHETHER I HAD THEIR REPORTS OR NOT.
13 THE TRUTH OF THE MATTER IS I DON'T KNOW WHAT,
14 YOU KNOW, WE'RE DEALING WITH IT IN THE DARK. I
15 DON'T KNOW WHAT THE MENTAL EXAMINATION MAY HOLD.
16 IT MAY HAVE SOMETHING THAT THE STATE WOULD HAVE
17 TO CONCEDE IS FAVORABLE TO THE DEFENDANT. I
18 DON'T KNOW, WE CAN'T SEE IT, BUT THE COURT'S
19 HAVE VIEWED THAT AND OUR COURT ALONE IN SLOANE
20 HAS VIEWED THAT, AGAIN HE CAN REFUSE, THE
21 DEFENDANT HAS A RIGHT TO REFUSE A COURT ORDERED
22 MENTAL EXAMINATION BUT WHAT THAT PRECLUDES THEM
23 FROM DOING IS USING MENTAL ISSUES IN TRIAL.
24 KIND OF TIES BACK TO WHAT MR. HANCOCK WAS
TALKING ABOUT IN THE BEGINNING ABOUT THE MENTAL

1 EVIDENCE AND TALKED ABOUT THE DISCOVERY, THEY
2 CAN CHOOSE TO NOT HAVE A MENTAL ISSUE AT ALL IN
3 THIS TRIAL BUT WHAT THEY CAN'T DO IS INTERJECT
4 IT AND THEN RETAIN THE ONE PIECE OF INFORMATION
5 THAT WOULD ALLOW THE STATE TO EITHER CONFIRM
6 WHAT THEY ARE SAYING OR TO EFFECTIVELY REBUT
7 WHAT THEY ARE SAYING, AND SO, YOUR HONOR, AND
8 THIS IS PROBABLY, THEY ARE ALL TIED IN TOGETHER,
9 BUT THIS IS THE MOST IMPORTANT ISSUE AND I
10 UNDERSTAND THE COURT MOST LIKELY WILL TAKE THIS
11 UNDER ADVISEMENT TOO, BUT THIS IS THE MOST
12 TIMELY OF ISSUES WE HAVE FOR ALL THE SAME
13 REASONS. IT'S GOING TO TAKE TIME TO HAVE AN
14 EVALUATION AND WE NEED TO HAVE A FAIR
15 OPPORTUNITY TO REVIEW IT. IT WOULD NOT BE
16 SUITABLE FROM THE STANDPOINT OF GETTING TO
17 TRIAL, WAITING TO SEE IF THEY USE ANY MENTAL
18 ISSUES AT ALL. IT MAY BE IN THEORY PRACTICAL
19 BUT YOU KNOW AS WELL AS I DO IF WE'RE THEN IN
20 THE PENALTY PHASE AND THEY SUDDENLY PUT UP
21 EXPERTS AND THEN YOU REHEAR MY MOTION FOR
22 TESTING, AS A PRACTICAL MATTER LEAVING A JURY
23 SEQUESTERED FOR 30 DAYS, LIKE I SAID IN THE
24 FEDERAL CASE IT HAS BEEN DONE, IT IS NOT
25 PRACTICAL IN OUR SITUATION. SO WHAT I'M ASKING

1 IS AN INDEPENDENT EVALUATION BY THE STATE AND
2 AGAIN THIS IS THE MOST CRUCIAL OF ISSUES, YOUR
3 HONOR. AND IT MAY ULTIMATELY BE THAT THERE IS
4 NOTHING WE CAN USE IT FOR. THAT THEY NEVER
5 INJECT THE ISSUE AND WE NEVER BE ABLE TO USE IT,
6 BUT AT SOME POINT IT DOES COME BACK TO FAIRNESS
7 THAT THE STATE HAS THE OPPORTUNITY TO PREPARE.
8 AGAIN I REALIZE THIS IS A DEATH PENALTY AND SOME
9 THINGS ARE DIFFERENT BUT THE THINGS THAT ARE
10 DIFFERENT IN A DEATH PENALTY CASE ARE LISTED IN
11 THE STATUTE AS DIFFERENT. OTHERWISE, IT GOES
12 BACK TO TRUTH AND IT GOES BACK TO FAIRNESS. IF
13 WE HAVE AN EVALUATION, WE MAY NEVER BE ABLE TO
14 USE IT. THAT WOULD BE UP TO THEM INTERJECTING
15 MENTAL ISSUES. WHAT WE'RE DEALING WITH NOW ON
16 THESE VARIOUS FRONTS WITH THE MENTAL ISSUE IS
17 GIVING THE DEFENDANT THE OPPORTUNITY TO
18 INTERJECT ISSUES IN THE TRIAL OR POTENTIALLY
19 INTERJECT ISSUES IN THE TRIAL OR HOLD BACK AND
20 SAY THEY CAN'T DECIDE AND THE STATE NEVER BE
21 GIVEN A FAIR OPPORTUNITY TO EITHER CONFIRM OR TO
22 REBUT IT AND THAT'S WHAT WE'RE ASKING FOR HERE
23 TODAY, YOUR HONOR.

24 MR. HANCOCK: JUST BRIEFLY, YOUR HONOR, I'M
25 JUST ASKING THE COURT TO RULE, ARE WE GOING TO

1 HAVE THE TIME THIS MOTION, IF YOU LOOK AT THE
2 MOTION THAT WE ARE REFERRING TO, IT SAYS MOTION
3 CONCERNING RULE FIVE MENTAL EVALUATION, I
4 BELIEVE IF YOU WILL LOOK AT THE CLOKED COPY,
5 IT'S CLOKED YESTERDAY, AND I'M USUALLY HELD IN
6 COURT TO THAT CLOKED COPY THAT'S SERVED ON ME
7 AND THAT WAS A CLOKED COPY YESTERDAY WHEN I
8 RECEIVED ALL OF THIS SUPPORTING INFORMATION.
9 I'M ASKING IF THE COURT IS GOING TO ALLOW US TO
10 HAVE TIME TO PROPERLY RESPOND TO THIS MOTION AND
11 ALSO IT IS A MOTION I BELIEVE ONLY FOR
12 COMPETENCY. NOT FOR FULL MENTAL EVALUATION. I
13 DON'T KNOW EXACTLY WHAT IT'S SEEKING UNTIL I
14 HAVE TIME TO GO THROUGH ALL OF IT. COMPETENCY
15 AT THIS POINT IN TIME HAS NOT BEEN BROUGHT INTO
16 THIS TRIAL. WE HAVE NOT AT ANY TIME SAID THAT
17 THE DEFENDANT WAS NOT COMPETENT TO UNDERSTAND
18 THE NATURE OF THE PROCEEDINGS AGAINST HIM AND
19 PARTICIPATE IN HIS OWN DEFENSE TO THIS TIME.
20 THERE HAS BEEN NO HINT TO THIS COURT THAT THAT
21 WAS THERE, BUT I WOULD LIKE SOME TIME TO RESPOND
22 TO THE MOTION PROPERLY. I DON'T FEEL LIKE I
23 CAN, YOUR HONOR, AT THIS PARTICULAR TIME, SIR.
24 FURTHER, I WOULD LIKE ALSO TO RESPOND TO THE
25 STATE HAS HAD BLOOD IN ITS POSSESSION FOR OVER A

1 YEAR AND NOW WE'RE FINDING OUT THAT WE MAY HAVE
2 RESULTS FROM THAT DNA TESTING WHICH IS VERY,
3 VERY COMPLEX AS EARLY AS AFTER THE HOLIDAYS.
4 WELL, IF THERE IS ANY DELAY, IF WE HAVE TO
5 EVALUATE AND WE HAVE ANY CONTROVERSY AS FAR AS
6 THE DNA, THEN I IMAGINE IT'S GOING TO TAKE US
7 MORE THAN TWO WEEKS TO HAVE ALL OF THAT TESTING
8 DONE OURSELVES, SO WE'RE NOT HERE TO DELAY, YOUR
9 HONOR. WE'RE HERE TO TRY TO COMPLY WITH THE
10 COURT RULES AND GET THIS TO THE JURY AS QUICKLY
11 AS WE CAN, BUT THE THING IS, IT'S NOT OUR
12 DELAY. AND WE STILL HAVE TO EVALUATE DNA
13 EVIDENCE THAT WE'RE NOT GOING TO GET UNTIL 14
14 MONTHS LATER. SO WE ARE TRYING TO DO EVERYTHING
15 WE CAN. LET ME COUCH IT THIS, I WOULD ASK THE
16 COURT TO ALLOW US TIME TO PROPERLY PREPARE FOR
17 THAT MOTION ON THE COMPETENCY.
18 THE COURT: ALL RIGHT. I'M GOING TO GIVE
19 YOU 10 DAYS.
20 MR. HANCOCK: YES, SIR.
21 THE COURT: AND DON'T ASK FOR AN
22 EXTENSION. I CAN TELL YOU THAT IN ADVANCE.
23 WE'RE PRESSED FOR TIME AND I CAN CERTAINLY START
24 RESEARCHING IT. I DON'T NEED TO GET YOUR BRIEF
25 TO START LOOKING INTO IT, BUT I CERTAINLY LOOK

1 FORWARD TO HAVING YOUR BRIEF TEN DAYS FROM
2 TODAY'S DATE.

3 MR. HANCOCK: YES, SIR.

4 THE COURT: AND, OF COURSE, PROVIDE ME A
5 COPY AND SERVE THE SOLICITOR. LET'S DO LOOK AT
6 ONE OTHER THING THOUGH, WHY HAS IT TAKEN SO LONG
7 TO GET THE DNA?

8 MR. POPE: YOUR HONOR, I WENT TO SLED LAST
9 MONDAY. ONE THING WE'RE MISSING IS THIS
10 DEFENDANT WAS OUTSIDE THIS JURISDICTION AND
11 WASN'T BROUGHT BACK UNTIL, WAS IT MARCH, APRIL,
12 REMEMBER WE BATTLED AND HAD DELAYS AND BATTLED
13 AND THAT WASN'T RETAINED I BELIEVE, YOUR HONOR,
14 AND I APOLOGIZE IF I'M INCORRECT UNTIL THE END
15 OF JULY, SO WE'RE NOW LOOKING AUGUST, SEPTEMBER,
16 SO WE'RE NOT LOOKING AT A YEAR. WE'RE LOOKING
17 AT THE TAIL END OF SIX MONTHS, YOUR HONOR.

18 I WILL TELL YOU THIS, TOO, I CHECKED WITH SLED
19 AND ANTICIPATED THE VERY THING THAT TESTING,
20 MAYBE WE NEED TESTING, MAYBE WE DON'T, TO FIND
21 OUT WHAT SAMPLES WOULD BE AVAILABLE IF THEY
22 WANTED INDEPENDENT TESTING THAT THEY CAN GET
23 RIGHT NOW IF THEY DETERMINED THAT'S WHAT THEY
24 WANT TO DO AND EACH PIECE OF EVIDENCE THAT'S
25 BEEN DNA TESTED, THERE IS AN AVAILABLE SAMPLE

1 FOR PCR TESTING IF THAT'S WHAT THEY WANT TO DO.

2 YOU KNOW, AGAIN ULTIMATELY THAT IS A CALL THEY
3 GOT TO MAKE. THEY GOT TO LOOK AT WHAT THEY ARE
4 TRYING TO SHOW HERE AND WHAT THIS EVIDENCE IS
5 GOING TO SHOW HERE.

6 THE COURT: SO YOU GOT SAMPLES AVAILABLE
7 FOR THEM TO GO AHEAD AND START TESTING NOW?

8 MR. POPE: IF THAT'S WHAT THEY WANT TO DO.

9 THE COURT: ALL RIGHT.

10 MR. HANCOCK: WE'RE GLAD TO KNOW THAT, YOUR
11 HONOR.

12 THE COURT: SO YOU'LL BE PROVIDED WITH
13 SAMPLES, WHEN, HOW SOON?

14 MR. POPE: DO THEY WANT DNA TESTING? ARE
15 THEY GOING TO RELY ON THIS? YOU KNOW, THAT'S
16 WHAT I DON'T UNDERSTAND. IF THEY WANT DNA
17 TESTING, WE'LL MAKE IT AVAILABLE FOR THEM TO GET
18 IT.

19 THE COURT: DO YOU WANT TO DO DNA TESTING?

20 MR. POPE: BUT AGAIN THIS IS A CASE WHERE
21 THE ISSUE IS YOU'VE GOT A NUMBER OF ITEMS
22 COVERED IN BLOOD THAT ARE GOING TO BE THESE
23 VICTIMS' BLOOD. AGAIN THAT'S A CALL THEY HAVE
24 TO MAKE ULTIMATELY, BUT I MEAN, THEY SEEN THE
25 EVIDENCE, THEY KNOW WHAT THE EVIDENCE IS, WE'VE

1 DISCUSSED IT OFF THE RECORD, BUT THEY HAVE TO
2 MAKE THE CALL. I KNOW THE STATE IS UNLIMITED IN
3 THEIR FUNDING OF WHAT THEY ARE GOING TO GIVE FOR
4 MENTAL EXPERTS OR DNA TESTING, BUT AT SOME POINT
5 JUST AS I'M FORCED TO MAKE A REASONABLE
6 DETERMINATION, I MAKE A REASONABLE DETERMINATION
7 IS THAT NEEDED, IS THAT GOING TO CHANGE ANYTHING
8 IN THE CASE.

9 THE COURT: Y'ALL WANT THE SAMPLES AND YOU
10 WANT TO BE PROVIDED WITH THE SAMPLES SO YOU HAVE
11 THE OPPORTUNITY TO DO THE TESTING WHETHER YOU
12 WISH TO OR NOT.

13 MR. HANCOCK: YES, SIR. BUT IN THE, AGAIN
14 WE'RE NOT HELD TO, WE TRY TO BE HELD TO SOME
15 ECONOMY IN THESE PARTICULAR MATTERS BUT THAT'S
16 WHY A TIMELY RESULT FROM THE STATE GIVES US WHAT
17 IF ANYTHING WE NEED TO ACTUALLY TEST RATHER THAN
18 GOING FISHING JUST FOR THE PURPOSES OF A DEATH
19 PENALTY CASE AND HAVING EVERYTHING TESTED,
20 PAYING FOR EVERYTHING TO BE TESTED TO COVER
21 EVERYTHING. WHEN WE GET ANY CONTROVERSY, THEN
22 WE LOOK FOR THE TEST, YOUR HONOR. AND IN
23 INTEREST OF ECONOMY, WE WON'T HOLD UP THE TRIAL
24 FOR ISSUES OF ECONOMY IF THE STATE LIKES TO PAY
25 FOR IT. SO WE WILL DETERMINE AND TRY TO

1 DETERMINE WHAT ITEMS OR WHAT THINGS THAT WE WISH
2 TO HAVE TESTED, BUT THAT WE CAN'T GUARANTEE THAT
3 THEY WON'T COME BACK WITH SOMETHING DIFFERENT ON
4 THEIR DNA AND A CONTROVERSY WON'T EXIST. WE
5 WILL DOING EVERYTHING WE CAN, YOUR HONOR, TO
6 DETERMINE WHAT ITEMS WE MIGHT WANT DNA TESTING
7 ON AND IF THEY ARE PROVIDED TO US. WE SAW THAT
8 EVIDENCE. WE HAD KNOWLEDGE OF IT BEING THERE,
9 BUT WE SAW THAT EVIDENCE YESTERDAY AFTERNOON
10 FOR THE FIRST TIME.

11 MR. POPE: PLEASE THE COURT. AGAIN I'VE
12 TALKED TO THE DNA LAB. IF THE DEFENSE
13 DETERMINES THEY WANT TO RETAIN SOMEBODY TO DO
14 DNA TESTING, IF MR. HANCOCK OR MR. BOYD WILL
15 JUST CONTACT ME, I WILL PUT THEM IN CONNECTION
16 SO THAT ANY CHAIN OF EVIDENCE QUESTIONS OR ANY
17 ISSUE THEY HAVE TO DEAL WITH IN THAT REGARD, I
18 CAN PUT THEM IN DIRECT CONTACT WITH THE LAB.
19 I'LL BE GLAD TO DO THAT.

20 THE COURT: ALL RIGHT.

21 MR. HANCOCK: I THINK WE HAVE ANOTHER
22 ISSUE, SCHMERBER.

23 MR. BRACKETT: WE DO.

24 MR. HANCOCK: YOUR HONOR, IN INTEREST OF
25 ECONOMY HERE, I AM GOING TO BE REFERRING TO SOME

1 ITEMS THAT HAVE BEEN REQUESTED FOR A WRITING
2 EXEMPLARS AND WE HAVE --

3 MR. BRACKETT: THERE ARE TWO.

4 MR. HANCOCK: AND WE HAVE AGREED AND I WANT
5 TO PUT THIS ON THE RECORD, WE HAVE AGREED THAT
6 IT IS THE HANDWRITING AND I'M REFERRING TO
7 LETTERS WRITTEN BY THE DEFENDANT AS OF JANUARY
8 23, 1998, THAT LETTER IS NOT CONTESTED.

9 AS TO THE LETTER OF JANUARY 13, 1998.

10 MR. BRACKETT: MR. HANCOCK, WOULD YOU WAIT
11 JUST ONE SECOND. I WANT TO MAKE SURE I'M
12 REFERRING TO THE SAME LETTER. THIS IS A LETTER
13 JANUARY 23, 1998, POST MARKED PHILADELPHIA,
14 PENNSYLVANIA, TO CHIP ROBERTSON, THE BACK SIDE
15 OF THE ENVELOPE SAYS ROBERTSON 7091 STATE ROAD
16 PHILADELPHIA, PENNSYLVANIA, AND THE LETTER
17 STATED ON THE INTERIOR JANUARY 23, 1998. DEAR
18 CHIP, I WON'T MAKE THIS LONG BECAUSE, AND THEN
19 IT GOES ON FOR SOME PAGES, BUT THE LETTER STARTS
20 I WON'T MAKE THIS LONG BECAUSE I DON'T EXPECT
21 YOU TO WRITE BACK, AND SO FORTH.

22 MR. HANCOCK: ALL LETTERS WILL BE REFERRED
23 TO AS TO THE INTERIOR DATE AND I THINK I'LL JUST
24 SHOW THEM TO YOU AND YOU CAN MAKE SURE THEY ARE
25 THE SAME AS YOURS. THE SECOND LETTER---

1 MR. BRACKETT: THAT LETTER IS NOT
2 CONTESTED.

3 MR. HANCOCK: NOT CONTESTED, YOUR HONOR.

4 MR. BRACKETT: THAT IS HIS HANDWRITING.

5 MR. HANCOCK: THE SECOND LETTER JANUARY 13,
6 1998.

7 MR. BRACKETT: THAT IS A LETTER THAT WAS
8 MAILED IN THE ENVELOPE POST MARKED PHILADELPHIA,
9 PENNSYLVANIA, 14 JANUARY 1998. THE INTERIOR
10 LETTER IS DATED JANUARY 13, 1998, AND IT STARTS,
11 DEAR CHIP, WELL, I DON'T KNOW EXACTLY WHAT TO
12 SAY. THAT LETTER NOT CONTESTED.

13 MR. HANCOCK: IT'S NOT CONTESTED.

14 MR. BRACKETT: AS BEING IN HIS HANDWRITING.

15 MR. HANCOCK: NUMBER THREE IS A LETTER
16 DATED 1-9-1998 GOES TO DEAR CHIP.

17 MR. BRACKETT: THAT'S A POST MARK JANUARY
18 10, PHILADELPHIA, PENNSYLVANIA, TO CHIP
19 ROBERTSON. DEAR CHIP, WELL, BRO YOU HAVE ME
20 THOROUGHLY CONFUSED. THE INTERIOR DATE IS
21 1-9-98.

22 MR. HANCOCK: RIGHT.

23 MR. BRACKETT: THAT IS HIS HANDWRITING.

24 MR. HANCOCK: LETTER DATED 2-4-1998 TO A
25 BETH LANGLEY. POST DATE IS 5 FEBRUARY.

1 MR. BRACKETT: POST MARKED PHILADELPHIA,
2 PENNSYLVANIA, TO BETH LANGLEY AND FAMILY ON THE
3 ENVELOPE. IT'S STARTS INTERIOR DATE 2-4-98.

4 DEAR BETH, HEY, HOW ARE YOU. I AM OKAY.

5 THE COURT: THAT'S NOT CONTESTED.

6 MR. HANCOCK: NOT CONTESTED. A LETTER, I
7 DO NOT HAVE THE EXTERIOR ENVELOPE.

8 MR. BRACKETT: WE DO NOT HAVE IT.

9 MR. HANCOCK: BUT IT'S DATED JANUARY 16,
10 1998, ON ITS INTERIOR AND BEGINS DEAR MR.
11 SULLIVAN, FIRST OF ALL.

12 MR. BRACKETT: THANK YOU FOR ALL YOU HAVE
13 DONE.

14 MR. HANCOCK: RIGHT. THEY ARE NOT
15 CONTESTED.

16 MR. BRACKETT: WE DON'T HAVE AN ENVELOPE
17 FOR THAT LETTER, YOUR HONOR.

18 MR. HANCOCK: THE NEXT LETTER JANUARY 20,
19 1998, INTERIOR DATE, NO ENVELOPE, THAT BEGINS,
20 DEAR MR. SULLIVAN, THANK YOU FOR WRITING BACK
21 AND HOLDING IN THERE. NOT CONTESTED.

22 THE NEXT LETTER MARCH 19, 1998, INTERIOR DATE;
23 EXTERIOR 20 MARCH POST MARK, TO THE SOLICITOR
24 MR. POPE. I SAID INTERIOR DATE MARCH 19, 1998.
25 DEAR MR. POPE, I'M WRITING THIS TO, I CAN'T READ

1 THAT.

2 MR. BRACKETT: I AM WRITING THIS TO ADDRESS
3 A FEW ISSUES SURROUNDING MY SITUATION.

4 MR. HANCOCK: THAT'S NOT CONTESTED. WE
5 HAVE ANOTHER DOCUMENT THAT IS WRITTEN ON THE
6 SEMINAR BY FRED PRIOR. THE FIRST PAGE, THE
7 SECOND PAGE HAS PRIOR RESOURCES INC. 200 SHONEY
8 MISSION PARKWAY. THERE ARE CERTAIN WRITINGS ON
9 THE SECOND PAGE.

10 MR. BRACKETT: ACTUALLY THIS IS A PAMPHLET.
11 IT'S PROBABLY, THIS IS JUST A FRONT AND A BACK
12 PAGE OF MAYBE A 15 OR 20 PAGE PAMPHLET THAT WAS
13 HANDED OUT AT A FRED PRIOR SEMINAR HOW TO MANAGE
14 CONFLICT, ANGER, AND EMOTIONS. WE DON'T KNOW
15 WHO ATTENDED IT. ON THE BACK SIDE OF THE
16 PAMPHLET THERE IS A LIST ONE, TWO, AND THREE.
17 NUMBER ONE SAYS ALARM CLOCK. NUMBER TWO SAYS
18 WIPE DOWNSTAIRS DOOR KNOB. NUMBER THREE SAYS
19 DISPOSE OF YARD RAKE. THERE WAS A YARD RAKE
20 THAT WAS USED IN THIS CASE THAT WE WOULD
21 PROBABLY BE PUTTING INTO EVIDENCE. WE THINK
22 THIS WOULD BE A LIST OF THINGS TO DO POST-MURDER
23 AND WE WOULD ASK FOR EITHER ACKNOWLEDGEMENT OF
24 THIS BEING THE DEFENDANT'S HANDWRITING OR THE
25 HANDWRITING FOR THE DEFENDANT TO SUBMIT

1 EXEMPLARS FOR.

2 MR. HANCOCK: THERE IS NO ACKNOWLEDGEMENT
3 AS TO THAT. THAT WOULD BE CONTESTED AND IF
4 THERE IS TO BE A HANDWRITING EXEMPLARS, IT WILL
5 BE BY COURT ORDER, SIR. THERE WAS ANOTHER ITEM.
6 IT'S AN ITEM THAT IS A RECEIPT FROM THE PEACH
7 STAND ON A CREDIT CARD RECEIPT. I'M LOOKING FOR
8 THE DATE. KEVIN, HAVE YOU GOT THE DATE?

9 MR. BRACKETT: THIS, YOUR HONOR, THIS
10 RECEIPT WAS PRINTED AT THE PEACH STAND ON
11 11/25/97 AT 8:36 IN THE MORNING. IT WAS CHARGED
12 TO CREDIT CARD, A VISA CREDIT CARD, WHICH WAS
13 ISSUED TO EARL ROBERTSON THE VICTIM IN THE
14 CASE. THIS WAS SHORTLY AFTER THE MURDERS THAT
15 THIS CHARGE WAS MADE AT THE PEACH STAND IN FORT
16 MILL. YOUR HONOR, WE REVIEWED THE VIDEO TAPE
17 WHICH WE BELIEVE PURPORTS TO SHOW THE DEFENDANT
18 ENTERED THE PEACH STAND PURCHASING SOME ITEMS
19 AND IT IS SIGNED, ALTHOUGH THE CARD IS ISSUED TO
20 EARL ROBERTSON, IT IS SIGNED JIM ROBERTSON, AND
21 WE SUBMIT THAT IS HIS SIGNATURE AND WE WOULD
22 REQUEST SIGNATURE EXEMPLARS FOR COMPARATIVE
23 PURPOSES WITH THIS.

24 MR. HANCOCK: YOUR HONOR, WE CONTEST THAT
25 AND IF THERE IS TO BE HANDWRITING EXEMPLARS IT

1 MUST BE BY ORDER OF THE COURT, SIR. YOU HAVE
2 HEARD ARGUMENTS PREVIOUSLY ON THIS MATTER, SIR.

3 MR. BRACKETT: THERE WAS ANOTHER RECEIPT
4 FROM LADY SMITH, VIRGINIA.

5 MR. HANCOCK: I DON'T HAVE THAT ONE. IF IT
6 IS A CREDIT CARD RECEIPT, YOUR HONOR.

7 MR. BRACKETT: IT WAS IN THE INITIAL BATCH
8 OF DISCOVERY YOU RECEIVED, I'LL FIND THAT, BUT
9 ON THESE TWO RIGHT NOW WE WILL EITHER AGREE OR
10 INCORPORATE THAT IN THERE. WE'LL FIND THAT
11 BEFORE THE END OF THE HEARING.

12 MR. HANCOCK: IF THAT IS A CREDIT CARD
13 RECEIPT IN THE SAME MANNER AS THIS ONE IS IN THE
14 PEACH STAND, THEN WE WOULD CONTEST THAT, YOUR
15 HONOR, AND ASK THAT ANY HANDWRITING EXEMPLAR ON
16 THAT MATTER ALSO BE BY ORDER OF THE COURT.

17 MR. BRACKETT: YOUR HONOR, THIS COURT HAS
18 PREVIOUSLY ENTERTAINED A SCHMERBER MOTION DURING
19 THE COURSE OF WHICH WE REQUESTED HANDWRITING
20 EXEMPLARS FOR A NOTE THAT HAD BEEN FOUND IN THE
21 VICTIM'S RESIDENCE THAT WAS PURPORTEDLY WRITTEN
22 BY THE DEFENDANT TO HIS PARENTS. THE COURT
23 GRANTED THAT MOTION. THESE ARE SOME ADDITIONAL
24 ITEMS THAT WE HAVE SINCE COME INTO CUSTODY OF OR
25 BECOME AWARE THAT WE WERE IN CUSTODY. THERE IS

1 A LARGE AMOUNT OF EVIDENCE IN THIS CASE. WE
2 TRAVELLED TO COLUMBIA, SOLICITOR POPE AND
3 MYSELF, A WEEK AGO AND THERE WERE BOXES OF
4 EVIDENCE THAT HAD BEEN SEIZED FROM THE HOUSE AND
5 THERE WAS ALSO A LARGE BAG OF ITEMS THAT HAD
6 BEEN SEIZED FROM THE VEHICLE, THE MAZDA PROTEGE,
7 THAT THE DEFENDANT AND MEREDITH MOON DROVE FROM
8 YORK COUNTY TO PHILADELPHIA AFTER THE MURDERS.
9 INSIDE THAT BAG WERE A NUMBER OF PAPERS THAT HAD
10 BEEN SEIZED AND ON THE BACK SIDE WAS THE LIST,
11 ALARM CLOCK, WIPE DOWNSTAIRS DOOR KNOB, AND
12 DISPOSE OF YARD RAKE AND IF I COULD HAND UP A
13 COPY OF THAT TO THE COURT JUST SO YOU CAN
14 UNDERSTAND IT.

15 (THE DOCUMENT IS HANDED TO THE COURT.)

16 MR. BRACKETT: YOUR HONOR, IN THE COURSE OF
17 GOING THROUGH THIS EVIDENCE TO PREPARE FOR TRIAL
18 I SAW THAT LIST ON THE BACK SIDE AND OF COURSE
19 INSTANTLY RECOGNIZED ITS RELEVANCE AND WANTED
20 TO, NEEDED THE ADDITIONAL EXEMPLARS. I'VE BEEN
21 INFORMED BY THE EXPERT AT SLED WHO DOES
22 HANDWRITING ANALYSIS THAT WHEN THEY GET AN
23 EXEMPLAR THEY USUALLY GET AN EXEMPLAR FOR THE
24 SOLE PURPOSE OF ANALYZING THE ONE PIECE OF
25 DOCUMENTARY EVIDENCE THAT THEY HAVE. IN THIS

1 CASE THEY GOT EXEMPLARS FOR THE NOTE THAT WAS
2 FOUND IN THE HOUSE, SO THEY BASICALLY HAD ASKED
3 THE DEFENDANT JAMES ROBERTSON TO WRITE OUT
4 EXACTLY WHAT WAS WRITTEN ON THE NOTE SO THEY
5 COULD COMPARE HIS HANDWRITING WITH WHAT WAS ON
6 THE NOTE. THEY DON'T HAVE EXEMPLARS WHICH DEAL
7 WITH THAT HANDWRITING RIGHT THERE WITH THOSE
8 EXACT WORDS WRITTEN DOWN AND WE WOULD NEED THAT
9 FOR THAT PURPOSE, FOR COMPARATIVE PURPOSES.

10 YOUR HONOR, UNDER I BELIEVE I CITED THE CASE
11 UNITED STATES VERSUS O'MARA IN THE INITIAL
12 MOTION FOR A HANDWRITING ANALYSIS. I HAVE A
13 COPY OF THAT JUST TO REFRESH THE COURT'S
14 RECOLLECTION. I'LL PROVIDE A COPY TO DEFENSE
15 COUNSEL. I THINK THEY HAVE ONE ORIGINALLY. THE
16 SUPREME COURT, THE UNITED STATES SUPREME COURT
17 RULED IN THAT CASE THAT THIS WAS NOT
18 TESTAMENTARY EVIDENCE AND THUS WAS NOT SUBJECT
19 TO FIFTH AMENDMENT PROTECTION. THAT THIS IS
20 MORE A LONG THE LINES OF A PHYSICAL PIECE OF
21 EVIDENCE THAT IS ON DISPLAY AT ANY TIME
22 THEREFORE THE DEFENDANT DOES NOT HAVE A FIFTH
23 AMENDMENT RIGHT TO OBJECT TO THE OBTAINING OF
24 THIS TYPE OF EVIDENCE FROM HIM AND I THINK WE'VE
25 SHOWN THAT THERE IS A REASONABLE NEED FOR IT AND

1 PROBABLE CAUSE EXISTS TO BELIEVE THAT THIS
2 DEFENDANT COMMITTED THIS CRIME. IN FACT TRUE
3 BILLED INDICTMENTS HAVE BEEN RETURNED BASED ON
4 THAT.

5 THE COURT: I'M GOING TO TAKE A LOOK AT IT
6 AND AGAIN I KNOW I'VE RULED FAVORABLY ON THE
7 REQUEST EARLIER BUT LET ME LOOK AT THIS ONE
8 ALSO.

9 MR. BRACKETT: NOW I HAVE A COPY, IT'S A
10 SHELL STATION VISA ISSUED TO EARL ROBERTSON
11 SIGNED AGAIN JIM ROBERTSON. IT WAS FOR A TOTAL
12 AMOUNT OF \$13.68. IT WAS CHARGED ON 11/25 OF 97
13 AND I DON'T SEE A TIME ON HERE, YOUR HONOR, BUT
14 I BELIEVE THAT THE DEFENSE HAS ALREADY BEEN
15 PROVIDED WITH A COPY OF THIS. I'LL PROVIDE THEM
16 WITH ANOTHER COPY OF IT SO THAT THEY KNOW
17 EXACTLY WHAT IT IS WE'RE SEEKING.

18 THE COURT: ANYTHING ELSE WE NEED TO
19 ADDRESS TODAY.

20 MR. POPE: NOTHING FROM THE STATE, YOUR
21 HONOR.

22 THE COURT: ANYTHING FROM THE DEFENSE?

23 MR. HANCOCK: NOTHING FROM THE DEFENSE,
24 YOUR HONOR.

25 THE COURT: I'M GOING TO ASK THE DEFENSE TO

1 LOOK AT THAT QUESTIONNAIRE AND I'M GOING TO ASK
2 BOTH SIDES TO THE WEEK AFTER THANKSGIVING, ABOUT
3 THE MIDDLE OF THAT WEEK, TO LET ME HAVE THEIR
4 THOUGHTS ON IT.

5 MR. POPE: YOUR HONOR, THAT WILL BE, IS
6 THAT A COURT WEEK THAT WEEK?

7 THE COURT: I THINK IT IS.

8 MR. POPE: OUR TEN DAYS, IN OTHER WORDS IF
9 WE CAN HAVE A HEARING AND DEAL WITH ALL THOSE
10 ISSUES INCLUDING THAT ON THOSE TEN DAYS, IS THAT
11 CORRECT? I'M TRYING TO THINK, FRIDAY WEEK WOULD
12 BE FOLLOWING WEEK. WILL YOU BE IN CHAMBERS?

13 THE COURT: I THINK I'VE GOT COMMON PLEAS
14 BUT I'LL STILL BE AVAILABLE.

15 MR. POPE: WE'LL COORDINATE WITH THE COURT
16 AND WITH THE DEFENSE TO TRY COORDINATE SOMETHING
17 THAT WEEK.

18 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE A
19 BREAK BEFORE WE GO ON TO OUR NEXT MATTER OF
20 BUSINESS. THANK ALL OF YOU.

21 (COURT'S IN RECESS AT 10:47.)
22
23
24
25

1 I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT
2 REPORTER FOR THE 16TH JUDICIAL CIRCUIT OF THE
3 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
4 THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE
5 TRANSCRIPT OF RECORD OF ALL THE TESTIMONY HAD
6 AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT
8 OF GENERAL SESSIONS FOR YORK COUNTY, SOUTH
9 CAROLINA, ON THE 20 OF NOVEMBER, 1998.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
11 COUNSEL NOR INTEREST TO ANY PARTY HERETO.
12
13
14

15 SEPTEMBER 14, 2000

16 
17 JANET M. RICH
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	:	
THE STATE,	)	
	:	TRANSCRIPT OF RECORD
PLAINTIFF,	)	98GS46-1020
	:	98GS46-1021
VERSUS	)	98GS46-1022
	:	98GS46-1023
JAMES W. ROBERTSON,	)	
	:	DECEMBER 18, 1998
DEFENDANT.	)	YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, JUDGE

A P P E A R A N C E S:

FOR THE STATE:

THOMAS C. POPE, SOLICITOR
KEVIN W. BRACKETT, DEPUTY SOLICITOR

FOR THE DEFENSE:

JAMES W. HANCOCK, ESQ.
JAMES W. BOYD, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT
ROCK HILL, SOUTH CAROLINA

1 THE COURT: MR. BRACKETT, THIS IS YOUR MOTION.

2 MR. BRACKETT: YOUR HONOR, WE FILED A MOTION IN THIS
3 CASE, AND WE ALSO SERVED A SUBPOENA ON KEYSTONE ALCOHOL
4 AND DRUG ABUSE CENTER IN ROCK HILL FOR ANY RECORDS
5 PERTAINING TO THE TREATMENT OF THE DEFENDANT IN THIS
6 CASE.

7 THEY RESPONDED THAT THEY COULD NOT UNDER FEDERAL
8 LAW TURN THE MATERIAL WE REQUESTED OVER WITHOUT AN ORDER
9 FROM THIS COURT, AND THAT THE SUBPOENA WAS INSUFFICIENT
10 UNDER FEDERAL LAW.

11 I WENT DOWN AND SPOKE WITH JANET MARTINI, WHO IS
12 PRESENT IN CHAMBERS HERE, AND SHE GAVE ME A COPY OF
13 TITLE 42 CODE OF FEDERAL REGULATIONS. MR. BOYD HAS ALSO
14 GOTTEN A COPY ON THE INTERNET. WHICH PRESCRIBES THE
15 METHOD BY WHICH THIS INFORMATION CAN BE TURNED OVER TO
16 THE STATE.

17 UNDER SECTION 2.65, COURT ORDERS AUTHORIZING
18 DISCLOSURE AND USE OF CONFIDENTIALITY OF ALCOHOL AND DRUG
19 ABUSE PATIENT RECORDS. AND THEN SECTION 2.65, THIS
20 PROCEDURE AUTHORIZING DISCLOSURE AND USE OF RECORDS.

21 THERE MUST BE A NOTICE OF A HEARING GIVEN TO THE
22 DEFENSE, AN OPPORTUNITY TO APPEAR AND BE HEARD FOR THE
23 PURPOSE OF PROVIDING EVIDENCE. AND I'LL TURN THIS COPY
24 OVER TO YOU, JUST SUMMARIZING BRIEFLY, OUR OPPORTUNITY
25 TO APPEAR AND BE HEARD.

26 ONE OF THE REQUIREMENTS, AND THE REASON THAT WE ARE

1 IN CHAMBERS FOR THIS, IS THAT UNDER SECTION 2.65-C,
2 CONDUCT OF HEARINGS, ANY ORAL ARGUMENT OR REVIEW OF
3 EVIDENCE OF THE APPLICATION SHALL BE HELD IN THE JUDGE'S
4 CHAMBERS OR IN SOME OTHER MANNER WHICH INSURES THAT THE
5 PATIENT IDENTIFYING INFORMATION IS NOT DISCLOSED TO
6 ANYONE OTHER THAN THE PARTY SEEKING SUCH INFORMATION.
7 THE PROCEEDING MAY INCLUDE EXAMINATION BY THE JUDGE OF
8 THE PATIENT RECORDS REFERRED TO IN THE APPLICATION.

9 AS SPELLED OUT IN SECTION D, THE CRITERIA, THE
10 COURT MAY AUTHORIZE THE DISCLOSURE AND USE OF PATIENT
11 RECORDS FOR THE PURPOSE OF CONDUCTING A CRIMINAL
12 INVESTIGATION OR THE PROSECUTION OF A PATIENT ONLY IF THE
13 COURT FINDS THAT ALL OF THE FOLLOWING CRITERIA ARE MET.

14 AND THEN IT HAS THE SUBSECTIONS ON THERE. I'LL GO
15 THROUGH THEM ONE BY ONE. THE FIRST ONE IS THE CRIME
16 INVOLVED MUST BE EXTREMELY SERIOUS, SUCH AS ONE WHICH
17 CAUSES OR DIRECTLY THREATENS LOSS OF LIFE OR SERIOUS
18 BODILY INJURY, INCLUDING HOMICIDE, RAPE, KIDNAPPING,
19 ARMED ROBBERY, ASSAULT WITH A DEADLY WEAPON, AND CHILD
20 ABUSE AND NEGLECT.

21 THE STATE SUBMITS THAT THIS CASE IS A CAPITAL
22 MURDER AND THAT CRITERIA IS MET.

23 THERE IS A REASONABLE LIKELIHOOD THAT THE RECORDS
24 WOULD DISCLOSE INFORMATION OF SUBSTANTIAL VALUE IN THE
25 INVESTIGATION OR PROSECUTION.

26 ALCOHOL AND DRUG ABUSE IS A MITIGATING FACTOR IN

4
1 THE PENALTY PHASE. WE ANTICIPATE THAT THAT WILL BE USED.
2 OUR INVESTIGATION REVEALS THAT THIS DEFENDANT WAS,
3 HAS BEEN DIAGNOSED AS ALCOHOLIC-DEPENDENT AND ALSO WAS
4 ABUSING RITALIN AT THE TIME OF THIS CRIME.

5 SO, SUBSEQUENTLY, WE SUSPECT THAT THAT WILL BE
6 MENTIONED IN MITIGATION IN THE PENALTY PHASE OF THIS
7 CASE, SHOULD WE ARRIVE AT SUCH A PHASE. THEREFORE,
8 KNOWLEDGE OF WHAT TREATMENT THIS DEFENDANT WAS OFFERED
9 AND REFUSED, OR WAS OFFERED AND DID NOT COOPERATE WITH,
10 THAT SORT OF THING, WOULD HELP UP EDUCATE THE JURY ON
11 EXACTLY WHAT SORT OF ALCOHOL AND DRUG COUNSELING THIS
12 DEFENDANT MAY HAVE BEEN OFFERED AND WOULD ASSIST THE
13 JURY IN UNDERSTANDING WHO THIS PERSON IS AND WHAT KIND
14 OF HELP MAY HAVE BEEN OFFERED IN THE PAST AND EITHER
15 REFUSED OR NOT COMPLETED OR WHATEVER.

16 THIS KIND OF INFORMATION IS ESSENTIAL TO THE JURY TO
17 CONSIDER THAT INFORMATION.

18 WE WOULD SUBMIT THAT THAT CRITERIA, THAT SUBSECTION
19 IS ALSO MET.

20 THREE, OTHER WAYS OF OBTAINING INFORMATION THAT IS
21 NOT AVAILABLE OR WOULD NOT BE AFFECTED. THE ONLY PEOPLE
22 THAT HAVE THIS INFORMATION ARE KEYSTONE AND THE
23 DEFENDANT. AND HE OBVIOUSLY HAS A FIFTH AMENDMENT
24 RIGHT. SO WE CAN'T GET THAT FROM ANYBODY ELSE BUT
25 KEYSTONE.

26 FOUR, THE POTENTIAL INJURY TO THE PATIENT, TO THE

1 PHYSICIAN-PATIENT RELATIONSHIP. THE ABILITY OF THE
2 PROGRAM TO PROVIDE SERVICES TO OTHER PATIENTS IS
3 OUTWEIGHED BY THE PUBLIC INTEREST AND THE NEED, THE NEED
4 FOR DISCLOSURE.

5 YOUR HONOR, WE SUBMIT THAT THIS IS A SERIOUS CASE
6 AND, OBVIOUSLY, THE PUBLIC HAS A STRONG INTEREST IN
7 ANY CAPITAL MURDER CASE, IN ASSURING THAT JUSTICE IS
8 DONE, NOT ONLY TO THE DEFENSE, BUT ALSO TO THE VICTIMS
9 IN THIS CASE.

10 THERE WOULD BE NO DAMAGE IF THEY DON'T INTEND,
11 SPECIFICALLY, THE PATIENT, IF THEY DON'T INTEND TO
12 PUT ANY OF THAT EVIDENCE UP, THEN WE ARE NOT GOING TO
13 KNOW ANY OF THIS. IF THEY'LL SAY THAT THEY DON'T INTEND
14 TO USE ANY EVIDENCE OF DRUG ABUSE, ANY EVIDENCE OF
15 ALCOHOL DEPENDENCY IN THE MITIGATION IN THE PENALTY
16 PHASE, THEN OBVIOUSLY WE WOULD NOT USE THIS INFORMATION
17 THEN.

18 THE TRIGGERING MECHANISM FOR US TO GET THIS
19 INFORMATION IN WOULD BE FOR THEM TO RAISE THAT ISSUE
20 IN THE PENALTY PHASE. IF THEY DON'T DO THAT, THEN WE'RE
21 NOT GOING TO GO INTO IT.

22 THE ONLY THING WE WOULD USE THIS FOR IS TO SHOW THE
23 JURY AFTER THEY HAVE BROUGHT EVIDENCE OF DRUG AND ALCOHOL
24 DEPENDENCY FROM EITHER A SOCIAL WORKER OR A PSYCHOLOGIST
25 OR A PSYCHIATRIST. ONCE THEY BROUGHT THAT UP, THEN WE
26 WOULD BRING THIS INFORMATION OUT TO SHOW THE JURY THAT HE

1 WAS GIVEN AN OPPORTUNITY TO ENTER TREATMENT.

2 TO POINT BACK TO, WE KNOW FROM RECORDS WE HAVE
3 OBTAINED FROM WILLIAM S. HALL AFTER HE WAS INVOLUNTARILY
4 COMMITTED BY JUDGE GETTYS BACK IN 1995. UPON HIS RELEASE
5 HE WAS REFERRED TO KEYSTONE. HE HAD BEEN DIAGNOSED AS
6 ALCOHOL AND DRUG DEPENDENT AND THEY REFERRED HIM TO
7 KEYSTONE FOR COUNSELING AND TREATMENT FOR THOSE
8 DEPENDENCIES.

9 AND THIS WOULD BE VERY HELPFUL FOR THE JURY TO
10 UNDERSTAND, AGAIN, WHO HE IS AND WHAT SORT OF HELP HAS
11 BEEN MADE AVAILABLE TO HIM IN THE PAST. AND HELP THAT WE
12 WOULD SUSPECT THAT HE REFUSED.

13 JUST FROM THE RECORDS THAT WE GOT FROM WILLIAM S.
14 HALL, HE DENIED THAT HE HAD ALCOHOL DEPENDENCY, INDICATED
15 THAT HE WASN'T GOING TO STOP OR ANYTHING. HE SAID THAT
16 THIS WASN'T ANYTHING THAT HE WAS GOING TO DO UNTIL HE
17 FELT HE WAS READY TO AND HE REFUSED TO, YOU KNOW,
18 ACKNOWLEDGE THAT THIS WAS A PROBLEM WITH HIM, AND THAT
19 WAS JUST SOMETHING THAT HE INTENDED TO KEEP DOING.

20 IF THAT'S THE CASE AND THAT'S THE ATTITUDE THAT HE
21 WENT INTO COUNSELING WITH, THEN CERTAINLY THE JURY
22 SHOULD BE INFORMED OF THAT. AND THE IMPORTANCE OF
23 HAVING A JURY EDUCATED AS TO THESE ISSUES OUTWEIGHS ANY
24 PUBLIC INTEREST IN CONFIDENTIALITY OF THE RECORDS.

25 OTHER CRITERIA, UNDER SECTION FIVE, IF THE
26 APPLICANT IS A PERSON PERFORMING A LAW ENFORCEMENT

1 FUNCTION, THEN...

2 ONE, THE PERSON HOLDING THE RECORDS HAS BEEN
3 AFFORDED THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT
4 COUNSEL. KEYSTONE IS REPRESENTED BY INDEPENDENT COUNSEL.
5 THEY HAVE AN ATTORNEY AVAILABLE. I HAVE SPOKEN WITH
6 JANET AND HAVE SPOKEN WITH THE DIRECTOR OF KEYSTONE.

7 THIS IS A FAIRLY ROUTINE PROCEDURE IN THE FAMILY
8 COURT TO REQUEST THIS INFORMATION, MUCH MORE FREQUENTLY
9 THAN THE CIRCUIT COURT. I HAVE NEVER REQUESTED THIS
10 KIND OF INFORMATION BEFORE. BUT APPARENTLY THEY HAVE
11 A FORM THAT THEY USE FOR FAMILY COURT REQUESTS FOR THE
12 FAMILY COURT JUDGE TO SIGN. SO, THIS IS A FAIRLY ROUTINE
13 PROCEDURE.

14 THE PROCEDURE THAT THEY TAKE ON ANYBODY WHO REQUESTS
15 RECORDS UNDER THESE CIRCUMSTANCES IS THAT THEY ARE GOING
16 TO OPPOSE THE REQUEST AND THEY ARE NOT GOING TO CONSENT
17 WITHOUT BEING ORDERED BY THE COURT TO DO SO.

18 AND THEY DO HAVE COUNSEL ALTHOUGH THEY ARE NOT HERE.
19 AND WE ALSO HAVE MS. MARTINI HERE TO SPEAK TO THAT ISSUE
20 IF NECESSARY.

21 NEXT, IS RELATED TO THAT, ANY PERSON HOLDING THE
22 RECORDS WHICH IS AN ENTITY WITHIN FEDERAL, STATE OR
23 LOCAL GOVERNMENT, WHICH I BELIEVE KEYSTONE IS, I
24 BELIEVE, STATE FUNDED. SO, THEY WOULD BE CONSIDERED
25 AN ENTITY, AND HAS, IN FACT, BEEN REPRESENTED BY COUNSEL.
26 WE OBVIOUSLY DON'T REPRESENT THEM.

1 THEY ARE REPRESENTED BY COUNSEL, BUT, AS I SAID,
2 THEY JUST CHOSE NOT TO HAVE COUNSEL HERE.

3 IF YOUR HONOR CHOOSES TO ISSUE AN ORDER RELEASING
4 THESE RECORDS, ANY ORDER AUTHORIZING DISCLOSURE FOR THE
5 USE OF PATIENT RECORDS MUST LIMIT DISCLOSURE AND USE TO
6 THOSE PARTS OF THE PATIENT'S RECORDS WHICH ARE ESSENTIAL
7 TO FULFILL THE OBJECTIVE OF THE ORDER AND LIMIT
8 DISCLOSURE TO THOSE LAW ENFORCEMENT AND PROSECUTORIAL
9 OFFICIALS WHO ARE RESPONSIBLE FOR AND/OR CONDUCTING THE
10 INVESTIGATION OR PROSECUTION.

11 WE WOULD NOT DISCLOSE HIS RECORDS TO ANYBODY ELSE
12 IF YOUR HONOR CHOSE TO ORDER KEYSTONE TO RELEASE THESE
13 RECORDS TO US. OBVIOUSLY, WE WOULD USE THEM ONLY FOR
14 PROSECUTION PURPOSES IN PREPARING FOR THE CASE AND
15 IN PREPARING FOR WHAT WE CONSIDER TO BE THE INEVITABLE
16 CONTINGENCY, BECAUSE DEFENSE WILL BE USING THIS SORT OF
17 INFORMATION.

18 THE COURT: MS. MARTINI, DO YOU WANT TO SAY ANYTHING
19 BEFORE I HEAR FROM THE DEFENSE?

20 MS. MARTINI: NO SIR, YOUR HONOR, OTHER THAN THE
21 FACT THAT WE DO FEEL VERY STRONGLY THAT THE RECORDS
22 THEY ARE REQUESTING IS THE TYPE OF RELEASE THAT WOULD
23 HAVE TO BE ORDERED BY A COURT ORDER.

24 THE COURT: MR. BOYD.

25 MR. POPE: EXCUSE ME, YOUR HONOR. I DON'T MEAN TO
26 INTERRUPT MR. BOYD. BUT I JUST WANT TO MAKE CLEAR ON THE

1 RECORD WHO ALL IS PRESENT. I ALWAYS DO THAT. WE DIDN'T
2 DO IT AT THE VERY BEGINNING, SO....

3 THE COURT: YES SIR. FOR THE RECORD, I'LL MAKE THIS
4 STATEMENT. THIS IS A CLOSED HEARING. I AM, OF COURSE,
5 JUDGE JOHN HAYES. I AM PRESENT.

6 JIMMY PRATT OF THE SHERIFF'S OFFICE, AND MY LAW
7 CLERK, ARCHIE DIXON IS HERE. AND I WOULD JUST ASK
8 EVERYBODY ELSE TO INTRODUCE THEMSELVES INTO THE RECORD.

9 MR. POPE: TOMMY POPE AND KEVIN BRACKETT OF THE
10 SIXTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE.

11 MRS. BOLIN: I'M POLLY BOLIN AND TERESA SCOGGINS,
12 CLERKS FROM THE CLERK OF COURT'S OFFICE.

13 MR. COMER: WADE COMER, INVESTIGATOR FOR THE HANCOCK
14 FIRM.

15 MR. BOYD: JIM BOYD, ATTORNEY FOR MR. ROBERTSON.

16 THE COURT: OF COURSE, MR. ROBERTSON, THE DEFENDANT,
17 IS HERE.

18 MR. HANCOCK: BILL HANCOCK, ATTORNEY FOR MR.
19 ROBERTSON.

20 THE COURT: AND YOUR FIRST NAME, MS. MARTINI?

21 MS. MARTINI: JANET.

22 THE COURT: THANK YOU. MR. BOYD.

23 MR. BOYD: YOUR HONOR, I WOULD LIKE TO GIVE TO THE
24 COURT THE CODE SECTIONS AND THE FEDERAL REGULATIONS
25 THAT APPLY TO THIS. I'VE ALREADY GIVEN A COPY OF THIS
26 TO MR. BRACKETT EARLIER TODAY.

1 THIS IS THE FEDERAL CODE SECTION WHICH IS SECTION
2 42-290-DD2, WHICH DEALS WITH CONFIDENTIALITY OF RECORDS.
3 ALSO, I'M PASSING UP SECTIONS FROM TITLE 42 OF THE CODE
4 OF FEDERAL REGULATIONS WHICH DEAL WITH THIS SECTION.

5 YOUR HONOR, AS A THRESHOLD MATTER, IT'S MY
6 UNDERSTANDING, AND MR. BRACKETT ALLUDED TO THIS, ONE OF
7 THE REQUIREMENTS OF THE FINDING OF THE COURT IS IF ANY
8 PERSON HOLDING THE RECORDS WHICH IS AN ENTITY WITHIN
9 FEDERAL, STATE OR LOCAL GOVERNMENT. SO THE REQUIREMENT
10 HAS, IN FACT, BEEN MET, IN THAT THEY ARE REPRESENTED BY
11 COUNSEL INDEPENDENT OF THE APPLICANT OF THE STATE.

12 NOW, OF COURSE, KEYSTONE DOES NOT HAVE AN ATTORNEY
13 HERE. MY READING OF THAT, AND I'M REFERRING TO THE
14 CODE OF FEDERAL REGULATIONS 2.65-D, WHICH IS IT
15 IS ON THE SECOND PAGE.

16 IT STATES..... THE WAY I READ THAT IS THAT ACTUALLY
17 THAT REQUIRES THAT KEYSTONE WOULD HAVE AN ATTORNEY
18 REPRESENTING THEM AT THIS HEARING.

19 I DON'T THINK THERE'S ANY DISCRETION OF KEYSTONE
20 TO WAIVE AN ATTORNEY AT THIS HEARING.

21 THE COURT: THEY HAVE BEEN AFFORDED THE OPPORTUNITY.
22 I'M LOOKING AT NUMBER FIVE-I.

23 MR. BOYD: I'M LOOKING AT NUMBER FIVE-2. THAT
24 REQUIRES IF THEY ARE, IN FACT, AN ENTITY THEY HAVE TO BE,
25 IN FACT, PRESENTED BY COUNSEL AT THIS HEARING.

26 THE COURT: WHAT ABOUT HAS BEEN REPRESENTED BY

1 COUNSEL AND THE APPLICANT? I DON'T READ THAT AS
2 SAYING THEY HAVE TO BE SITTING IN THIS ROOM.

3 MR. BOYD: I THINK IF THE COURT TAKES THAT POSITION
4 I THINK THE COURT NEEDS TO AT LEAST INQUIRE IF AN
5 ATTORNEY HAS ACTUALLY BEEN CONSULTED AND IS REPRESENTING
6 KEYSTONE, EVEN OUTSIDE THE, THIS HEARING, IN THIS
7 PARTICULAR MATTER.

8 I DON'T THINK KEYSTONE HAS AN OPPORTUNITY TO WAIVE
9 HAVING AN ATTORNEY PRESENT UNDER THAT SECTION. IT
10 REQUIRES.....

11 THE COURT: MS. MARTINI, WHAT DO YOU KNOW ABOUT ANY
12 COUNSEL BEING CONTACTED ON BEHALF OF KEYSTONE?

13 MS. MARTINI: I DISCUSSED THIS SITUATION WITH OUR
14 EXECUTIVE DIRECTOR YESTERDAY AFTERNOON. IN MATTERS SUCH
15 AS THESE, WE HAVE, NOT THAT I KNOW OF, EVER HAD A LAWYER
16 PRESENT. OUR USUAL PROCEDURE IS TO GO AHEAD AND FOLLOW
17 WHATEVER THE COURT REQUIRES FOR US TO DO.

18 I TALKED WITH OUR EXECUTIVE DIRECTOR AND HE
19 INSTRUCTED ME JUST TO COME ON TO THIS HEARING AND DO
20 WHATEVER IS NECESSARY.

21 THE COURT: YOU MAY CONTINUE, MR. BOYD.

22 MR. BOYD: YES SIR. OF COURSE, I DON'T THINK THAT'S
23 SUFFICIENT UNDER THAT SECTION.

24 BUT GOING TO THE MERITS OF THIS, YOUR HONOR, THAT
25 IS CONTAINED IN SECTION 2.65 THAT MR. BRACKETT WENT
26 THROUGH A FEW MINUTES AGO.

1 I WOULD POINT OUT TO THE COURT FIRST ON SECTION
2 290-DD2 OF THE ACTUAL FEDERAL CODE, SUBSECTION C STATES
3 THAT EXCEPT AS AUTHORIZED BY COURT ORDER GRANTED UNDER
4 SECTION B-2-C OF THIS SECTION, NO RECORD REFERRED TO IN
5 SUBSECTION A MAY BE USED TO INITIATE OR SUBSTANTIATE ANY
6 CRIMINAL CHARGES AGAINST A PATIENT IN CONDUCTING AN
7 INVESTIGATION OF A PATIENT.

8 AND THEN IF YOU GO UP TO THAT SECTION B-2-C, IT
9 STATES THE APPLICATION MUST SHOW GOOD CAUSE, INCLUDING
10 THE NEED TO AVERT A SUBSTANTIAL RISK OF DEATH OR SERIOUS
11 BODILY HARM, WEIGHING THE PUBLIC INTEREST AGAINST THE
12 INJURY TO THE PATIENT.

13 THE CODE ITSELF GOES THROUGH THE CRITERIA THAT
14 MR. BRACKETT MENTIONED. OBVIOUSLY, THE FIRST CRITERIA
15 IS THAT BECAUSE THIS DOES INVOLVE A CHARGE OF MURDER.
16 SO, WE WOULD CONCEDE THAT IT DOES INVOLVE THAT.

17 NUMBER TWO, THERE IS A REASONABLE LIKELIHOOD THAT
18 THE RECORDS WOULD DISCLOSE CERTAIN INFORMATION OF
19 SUBSTANTIAL VALUE IN THE INVESTIGATION AND THE
20 PROSECUTION.

21 YOUR HONOR, THEY ARE ASKING FOR THESE RECORDS NOT
22 FOR PURPOSES OF PRESENTING OR PROVING INNOCENCE OR GUILT
23 IN THE CASE IN CHIEF, BUT IN DETERMINING THE SENTENCE
24 THAT MR. ROBERTSON WILL RECEIVE.

25 I THINK IT'S CLEAR FROM THE CODE SECTION AND FROM
26 THE CODE OF FEDERAL REGULATIONS THAT ONLY WHEN THERE'S

1 AN ABSOLUTE NECESSITY SHOULD RECORDS BE DISCLOSED.

2 IN THIS CASE THERE'S, BY THE FILING OF A MOTION,
3 IT'S WANTED IN THE SENTENCING, NOT THE GUILT OR
4 INNOCENCE PHASE, THEY'RE CONCEDING BASICALLY THE STATE IS
5 ASKING FOR THESE RECORDS, NOT TO PROVE GUILT OR
6 INNOCENCE. THERE IS NOT SOMETHING IN THESE RECORDS THAT
7 WILL SHOW WHETHER OR NOT MR. ROBERTSON COMMITTED THIS
8 OFFENSE.

9 THEY'RE ASKING FOR THESE RECORDS IN THE HOPES THAT
10 THERE'S SOMETHING IN THERE THAT WILL ENHANCE THE
11 SENTENCE.

12 IF MR. ROBERTSON IS FOUND GUILTY HE'S EITHER GOING
13 TO RECEIVE LIFE IN PRISON WITHOUT PAROLE, OR HE'S GOING
14 TO RECEIVE THE DEATH PENALTY.

15 I SUBMIT, YOUR HONOR, THERE'S NO... THIS.... THE
16 CODE OF FEDERAL REGULATIONS AND THE CODE INDICATES WHEN
17 THE NECESSITY OF A RECORD IS TO PREVENT SOME MISCARRIAGE
18 OF JUSTICE, SUCH AS SOMEONE WHO IS A DANGER TO THE
19 COMMUNITY BEING FOUND NOT GUILTY OR SOMEBODY, ON THE
20 OTHER HAND, WHO MAY BE INNOCENT, BEING CONVICTED,
21 THOSE ARE THE SITUATIONS IN WHICH THESE RECORDS SHOULD
22 BE RELEASED, NOT A SITUATION WHICH SOMEONE IS FACING
23 A SENTENCING HEARING, IN WHICH THE RECORDS ARE JUST BEING
24 USED TO POTENTIALLY ENHANCE A SENTENCE.

25 NUMBER THERE, OTHER WAYS OF OBTAINING INFORMATION
26 WHICH IS NOT AVAILABLE OR WHICH WOULD NOT BE AFFECTED.

1 I CAN'T STATE WHETHER THERE'S ANY OTHER WAY AT THIS
2 POINT THAT WOULD BE AVAILABLE BY NOT KNOWING WHAT IS
3 IN THE RECORD.

4 NUMBER FOUR, POTENTIAL INJURY TO THE PATIENT, TO
5 THE PATIENT-PHYSICIAN RELATIONSHIP, AND THE ABILITY OF
6 A PROGRAM TO PROVIDE SERVICES. OBVIOUSLY, THE POTENTIAL
7 INJURY TO THE PATIENT IS THERE IF IT'S GOING TO BE USED
8 AS AN ENHANCEMENT TO A SENTENCING HEARING.

9 YOUR HONOR, ON THE, AS FAR AS THE PUBLIC GOES, THE
10 LAW REQUIRES THESE RECORDS TO BE CONFIDENTIAL SO
11 PEOPLE CAN BE OPEN IN DISCUSSING THEIR PROBLEMS WITH
12 COUNSELORS IN GETTING TREATMENT FOR ALCOHOL AND DRUG
13 PROBLEMS.

14 THE LAW HAS PROVIDED UNDER CERTAIN CIRCUMSTANCES
15 THAT CAN BE DISCLOSED. THE CODE SECTION SAYS IN
16 CONCLUDING AVERTING A SUBSTANTIAL RISK OF DEATH OR
17 SERIOUS BODILY HARM.

18 YOU HAVE A SITUATION IN WHICH SOMEONE IS POTENTIALLY
19 DANGEROUS. CERTAINLY, THAT'S A SITUATION IN WHICH
20 THESE RECORDS SHOULD BE DISCLOSED. AND THE OTHER NEED
21 WOULD OVERRIDE ANY NEED OF THE PHYSICIAN-PATIENT
22 RELATIONSHIP.

23 BUT IN THIS PARTICULAR CASE WE HAVE A SITUATION
24 BECAUSE IT'S GOING TO BE USED IN ENHANCING SENTENCING
25 PATIENTS GOING TO KEYSTONE OR ANY DRUG OR ALCOHOL
26 ABUSE PROGRAM, WOULD BE IN THE SITUATION OF BEING,

1 DISCLOSING MATTERS WHICH POTENTIALLY COULD BE USED
2 AGAINST THEM IN COURT LATER, NOT TO PROVE GUILT OR
3 INNOCENCE, BUT TO POTENTIALLY ENHANCE A SENTENCE AGAINST
4 THEM.

5 A PERSON HOPING, FOR INSTANCE, TO GET TREATMENT
6 FOR A DRUG PROBLEM IS GOING TO, I SUBMIT, BE RELUCTANT
7 TO TELL A COUNSELOR ALL ABOUT THEIR DRUG PROBLEM OR
8 THE THINGS THEY'VE DONE WHEN IT MAY BE USED AGAINST
9 THEM IN A COURT PROCEEDING AT A LATER TIME.

10 AND I SUBMIT, YOUR HONOR, THIS IS EXACTLY THE
11 SITUATION WE HAVE HERE THAT THIS CODE SECTION AND
12 FEDERAL REGULATIONS ARE DESIGNED TO PREVENT.

13 SO, YOUR HONOR, I WOULD ASK THE COURT TO DENY THE
14 STATE'S REQUEST.

15 THE COURT: ANY FOLLOW-UP?

16 MR. BRACKETT: JUST BRIEFLY, YOUR HONOR. THE LAST
17 SECTION THAT MR. BOYD REFERENCED WAS THE POTENTIAL
18 INJURY TO THE PATIENT, TO THE PATIENT-PHYSICIAN
19 RELATIONSHIP AND TO THE ABILITY OF THE PROGRAM TO
20 PROVIDE SERVICES TO OTHER PATIENTS IS OUTWEIGHED BY THE
21 PUBLIC INTEREST.

22 OBVIOUSLY, IT'S GOING TO BE A POTENTIAL INJURY TO
23 THE PATIENT IN PROCEEDING TO ENHANCE THE SENTENCE FROM
24 LIFE TO DEATH.

25 BUT IT'S, THAT SUBSECTION FOUR IS BASICALLY ASKING
26 THE COURT TO DO A BALANCING TEST TO DETERMINE WHETHER

1 OR NOT THE POTENTIAL INJURY IS OUTWEIGHED BY THE PUBLIC
2 INTEREST AND THE NEED FOR DISCLOSURE.

3 YOUR HONOR, WHAT WE'RE ASKING, WHAT WE WILL BE
4 ASKING THIS JURY OF TWELVE TO DO IS UNDOUBTEDLY THE MOST
5 DIFFICULT TASK THAT ANY JURY COULD BE ASSIGNED. IT'S
6 THE ULTIMATE TASK, ASKING THEM TO MAKE A DECISION ON
7 LIFE OR DEATH.

8 THEY NEED ALL THE INFORMATION THEY CAN GET. THE
9 PRIMARY FUNCTION OF ANY COURT IS TO SEEK THE TRUTH, TO
10 FIND THE TRUTH OF THE MATTER. AND THE TRUTH, WHAT THE
11 SENTENCE IN THIS CASE SHOULD BE, IF MR. ROBERTSON IS
12 CONVICTED, THERE CAN BE NO GREATER PUBLIC INTEREST IN
13 MAKING SURE THAT THE JURY WE'RE GOING TO BE ASSIGNING
14 THIS VERY DIFFICULT TASK TO IS ARMED WITH ALL THE
15 RELEVANT INFORMATION, INCLUDING INFORMATION REGARDING
16 ANY ALCOHOL DEPENDENCY THIS DEFENDANT HAD AND COUNSELING
17 FOR ALCOHOL AND DRUG PROBLEMS.

18 MR. BOYD: YOUR HONOR, IF I COULD RESPOND. I
19 SHOULD HAVE BROUGHT THIS UP EARLIER.

20 THE COURT: IN DETERMINING OTHER WAYS OF OBTAINING
21 INFORMATION, OF COURSE, THE STATE HAS OTHER INFORMATION
22 CONCERNING SUBSTANCE ABUSE ON THE PART OF MR. ROBERTSON.

23 THIS, WHAT THEY'RE ASKING FOR, DOESN'T GO, I MEAN
24 GOES TO AN ISSUE THAT MAY COME UP IN A HEARING, BUT IS
25 NOT SOMETHING WHICH IS A MAKE OR BREAK SITUATION IN
26 PROVING AN AGGRAVATING OR MITIGATING FACTOR IN THIS

1 CASE.

2 I WOULD ALSO ASK THE COURT, YOUR HONOR, IF YOU'RE
3 INCLINED TO GRANT THE STATE'S MOTION, THIS SECTION DOES
4 PROVIDE THAT THE COURT MAY EXAMINE THE PATIENT RECORDS
5 TO DETERMINE THE RELEVANCY. AND I WOULD ASK THAT IF YOU
6 ARE INCLINED TO GRANT THIS TO FIRST EXAMINE THE RECORDS
7 AND MAKE THAT DETERMINATION.

8 THE COURT: ALL RIGHT. LET ME TAKE THIS... I'VE
9 NEVER HAD THIS BEFORE. LET ME TAKE THIS UNDER
10 ADVISEMENT.

11 MS. MARTINI, I'M NOT GOING TO ASK YOU TO BRING
12 THE RECORDS OR DO ANYTHING TODAY. IF I GET TO THAT
13 POINT WHERE I NEED TO REVIEW THEM, I'LL CONTACT YOU
14 MYSELF OR MY LAW CLERK, AND WE WILL MAKE ARRANGEMENTS
15 TO GET THE RECORDS.

16 MR. BRACKETT: IF YOUR HONOR CHOOSES TO TAKE MR.
17 BOYD'S SUGGESTION AND REVIEW THE RECORDS, MAY I JUST
18 POINT OUT TO THE COURT THAT THE ABSENCE OF TREATMENT IS
19 SIGNIFICANT TO THE STATE'S CASE. IF THERE WAS ANY
20 TREATMENT THAT WAS OFFERED AND DENIED, IT IS
21 SIGNIFICANT, WE FEEL, TO THE JURY'S UNDERSTANDING OF
22 MR. ROBERTSON AS IF HE HAD GONE DOWN THERE AND
23 UNDERGONE MONTHS OF TREATMENT AT KEYSTONE. THAT
24 INFORMATION IS SIGNIFICANT.

25 SO, IF SHE COMES TO YOU AND SAYS, WELL, THREE
26 APPOINTMENTS WERE MADE AND NEVER KEPT AND THAT'S ALL

1 THE INFORMATION WE HAVE, WE DON'T KNOW WHAT'S IN THE
2 RECORDS. BUT IF THAT'S, IN FACT, ALL THE INFORMATION
3 THAT THEY HAVE, I WOULD SUBMIT THAT WOULD BE JUST AS
4 IMPORTANT TO US, TO THE STATE, AS A DOSSIER THAT THICK.

5 SO, IF THAT OPPORTUNITY WAS OFFERED AND HE HAD AN
6 OPPORTUNITY TO HELP HIMSELF DEAL WITH THESE PROBLEMS AND
7 HE REFUSED THAT HELP, THAT IS SIGNIFICANT TO OUR CASE.

8 THE COURT: OF COURSE, YOU CAN ARGUE THAT. BUT
9 IF HE DID NOT MAKE AN APPOINTMENT, AND SOMETIMES THERE
10 ARE GOOD REASONS WHY PEOPLE DON'T MAKE APPOINTMENTS. SO
11 I DON'T KNOW HOW I CAN ANALYZE THAT.

12 MR. HANCOCK: YOUR HONOR, IF I MAY, AND I KNOW I'VE
13 BEEN SILENT, AND IT'S NOT OFTEN THAT I REMAIN SILENT.
14 BUT THEY ALREADY HAVE SUBSTANTIAL INFORMATION AS TO THE
15 DRUG AND ALCOHOL PROBLEM AND ANYTHING ELSE, I SUBMIT,
16 WOULD BE CUMULATIVE.

17 I THINK THEY HAVE ALREADY OUTLINED TO YOU THE
18 INFORMATION THEY HAVE AND THEY HAVE BASICALLY EVERYTHING
19 THEY NEED REGARDING THE DRUG AND ALCOHOL PROBLEMS. IT
20 WOULD BE CUMULATIVE.

21 I WOULD ASK THE COURT TO LOOK AT THE MANNER OF IT
22 BEING CUMULATIVE, OF WHAT THEY WANT.

23 THE COURT: I THINK I HAVE A HANDLE ON WHAT THEY
24 WANT, BUT MR. BRACKETT, TELL ME ONCE AGAIN WHAT THE
25 RELEVANCY OF THE RECORDS WOULD BE.

26 MR. BRACKETT: IF THE DEFENSE INTENDS TO SHOW AS

1 A MITIGATING FACTOR, STATUTORY OR NON-STATUTORY
2 MITIGATING FACTORS, THAT IF THEY INTEND TO SHOW DRUG
3 AND ALCOHOL DEPENDENCY AS A MITIGATING FACTOR, THE USE
4 OF DRUGS AND/OR ALCOHOL OVER A PERIOD OF YEARS, WE WOULD
5 INTEND TO REFUTE THAT BY SAYING HE WAS GIVEN
6 OPPORTUNITIES TO GET HELP FOR THIS PROBLEM.

7 THE COURT: WELL, THAT WOULDN'T EVEN SUPPORT IT.

8 MR. POPE: IT WOULD BE RELEVANT INFORMATION.

9 MR. BRACKETT: IT WOULD BE RELEVANT INFORMATION FOR
10 THE JURY TO CONSIDER THE SIGNIFICANCE OF THIS DRUG
11 AND ALCOHOL DEPENDENCY. OBVIOUSLY, SOMEONE WHO HAS DRUG
12 AND ALCOHOL DEPENDENCY WHO HAS NEVER BEEN GIVEN THE
13 OPPORTUNITY TO HELP HIMSELF SHOULD BE JUDGED IN A
14 DIFFERENT LIGHT THAN SOMEBODY WHO HAS BEEN GIVEN, WHO
15 PEOPLE HAVE BEEN CHASING DOWN AND COMMITTING HIM
16 INVOLUNTARILY.

17 THE VERY PARENTS THAT HE IS ACCUSED OF KILLING HAD
18 BEEN WORKING DILIGENTLY TO TRY AND HELP HIM WITH THE SAME
19 DRUG AND ALCOHOL PROBLEM THAT HE NOW USES TO SHIELD
20 HIMSELF ULTIMATELY FROM THE RESPONSIBILITY OF HIS ACTS.

21 I THINK IT IS VERY SIGNIFICANT THAT THE JURY BE
22 MADE AWARE OF THIS.

23 THE COURT: ALL RIGHT. I WILL TAKE IT UNDER
24 ADVISEMENT.

25 MR. POPE: YES SIR.

26 THE COURT: ALL RIGHT. WE WILL TAKE A BREAK BEFORE

1 WE RE-CONVENE IN THE COURTROOM AND LET THE COURT
2 REPORTER SET UP IN THERE.

3 (WHEREUPON A BRIEF RECESS WAS TAKEN)

4 THE COURT: FOR THE RECORD, MR. ROBERTSON, THE
5 DEFENDANT IS PRESENT, MR. BOYD AND MR. HANCOCK.
6 APPEARING FOR THE STATE IS MR. POPE AND MR. BRACKETT.

7 MR. POPE: MAY IT PLEASE THE COURT.

8 THE COURT: YES SIR.

9 MR. POPE: THERE ARE TWO MORE ISSUES THAT NEED TO
10 BE ADDRESSED. THE FIRST ISSUE I HAVE BEFORE THE COURT
11 IS AT THE BEGINNING OF THIS MONTH, DECEMBER, THE COURT
12 ISSUED AN ORDER FOR DISCOVERY AND ORDERED THE DEFENSE
13 TO SUBMIT TO THE STATE TO COPIES OF ANY RESULTS OF ANY
14 PHYSICAL OR MENTAL EXAMINATIONS CONDUCTED IN CONNECTION
15 WITH THIS CASE OR ANY COPIES THEREOF IN POSSESSION AND
16 CONTROL OF THE DEFENDANT OR HIS ATTORNEY AND PRODUCE THIS
17 EVIDENCE AT TRIAL, WHICH WOULD BE TESTIFIED TO AT TRIAL,
18 SO THAT WE WOULD BE PREPARED TO CROSS EXAMINE THOSE
19 WITNESSES AT TRIAL AS RELATES TO THAT TESTIMONY.

20 THAT WAS TO BE DONE BY MONDAY, DECEMBER 7 AT TWELVE
21 NOON. THE STATE HAS NOT RECEIVED ANY INFORMATION IN
22 THAT REGARD, YOUR HONOR.

23 WE HAVE TRIED TO TALK TO MR. HANCOCK ABOUT THIS
24 TWICE, YOUR HONOR, AND HIS INVESTIGATOR. MR. HANCOCK IS
25 PRESENT AND PERHAPS HE CAN EXPLAIN THIS. AT ONE POINT
26 MR. HANCOCK TOLD ME THAT HE DID NOT INTEND TO CALL ANY OF

1 THE WITNESSES. THEREFORE, OBVIOUSLY, THAT WOULD BE
2 AVAILABLE TO THEM.

3 THIS MORNING HE TELLS ME HE DOES NOT HAVE THE
4 REPORTS, BUT THAT THERE MAY BE SOME REPORT.

5 THE STATE'S POSITION IS THIS, YOUR HONOR, WHETHER
6 THESE ARE CLEARED, IF ALL THE INDIVIDUALS THAT HAVE
7 EVALUATED THE DEFENDANT IN ANY CAPACITY OR GIVEN ANY
8 MENTAL TESTS, ALL THE ONES THAT WERE DISCUSSED IN THE
9 LAST SIX MONTHS DON'T INTEND TO TESTIFY, THEN CERTAINLY
10 THE STATE WOULD NOT BE ENTITLED TO ANY OF THOSE REPORTS.

11 IF THEY INTEND TO TESTIFY THEN I SUBMIT THEY WOULD
12 AT SOME POINT, I WOULD ASK THE COURT TO HAVE MR. HANCOCK
13 ACTUALLY PROVIDE THOSE REPORTS. WE CAN'T JUST
14 CONTINUALLY GO ON AND SAY, WELL, THEY JUST HAVEN'T GIVEN
15 ME THOSE REPORTS YET, THEY HAVEN'T GIVEN ME THE REPORT
16 YET.

17 BECAUSE AT SOME POINT WE'RE GOING TO BE ON THE EVE
18 OF TRIAL AND WE HAVEN'T RECEIVED THEM AND WE DON'T WANT
19 TO BE PUT IN THE POSITION OF HAVING TO RECESS AND REVIEW
20 DOCUMENTS WHEN WE HAVE GOT A JURY SEQUESTERED, YOUR
21 HONOR.

22 SO, I WOULD ASK FOR THE DEFENSE'S RESPONSE TO THAT
23 AND I MAY NEED TO ADDRESS THIS FURTHER.

24 THE COURT: THIS SOUNDS FAMILIAR.

25 MR. HANCOCK: SIR?

26 THE COURT: I SAID, THIS SOUNDS FAMILIAR.

1 MR. HANCOCK: SOUNDS FAMILIAR, JUDGE; IT IS.
2 JUDGE, AGAIN, WE'RE IN A SITUATION WHERE I DON'T HAVE
3 THE REPORTS. AND I HAVE, WHICH I MAY OR MAY NOT USE, I
4 HAVE ONE MORE EXPERT THAT IS GOING TO GET ME A REPORT AND
5 THAT WILL TELL ME WHO I'M GOING TO USE, HOW MANY PEOPLE
6 I'M GOING TO USE, WHAT'S GOING TO BE USED. AS SOON AS I
7 GET THAT...

8 I'M NOT INTENTIONALLY HIDING ANYTHING. I'M JUST
9 DOING THE BEST I CAN WITH THE YOUNG LADY, GET IT DONE, SO
10 I CAN GET IT TO THE SOLICITOR. BECAUSE WE UNDERSTAND
11 FROM THE ORDER IF WE DON'T GET IT TO THEM WE DON'T GET
12 TO USE ANY OF IT. AND WE CAN'T USE IT AT TRIAL IN CHIEF
13 OR IN THE DEATH PENALTY PHASE, SHOULD IT GO TO SUCH
14 PHASE, AT THE END OF THE TRIAL.

15 SO, WE'RE NOT HIDING ANYTHING. PLUS, THEIR
16 TIMETABLE, I DON'T KNOW WHO THEY HAVE TO ANALYZE THAT
17 SORT OF THING. BUT THEY HAVE ALSO BEEN AFFORD, AS YOU
18 CAN TELL FROM THE PREVIOUS HEARING TODAY, THEY'VE ALSO
19 BEEN AFFORDED MOST OF WHAT WE HAVE AS FAR AS INFORMATION
20 CONCERNING ANY MEDICAL REPORTS OR MENTAL REPORTS AND
21 EVALUATIONS WHICH HAVE BEEN DONE ON MR. ROBERTSON.

22 BUT AS SOON AS WE GET IT WE'LL TURN IT OVER, PER
23 YOUR ORDER. WE'VE TRIED TO DO OUR BEST TO FOLLOW YOUR
24 ORDER AND COMPLY WITH DISCOVERY.

25 MR. POPE: IF IT PLEASE THE COURT. YOUR HONOR,
26 THE ORDER SAID MONDAY AT NOON. AT SOME POINT THE STATE

1 HAS TO HAVE A FAIR OPPORTUNITY TO COMPARE THESE MATTERS.

2 I REALIZE, AGAIN, THAT IF THEY DON'T USE IT, THEN
3 I'M NOT ENTITLED TO ANY OF IT. WHAT I WOULD ASK THE
4 COURT TO DO IS A POTENTIAL REMEDY.

5 AGAIN, WE'VE HEARD DIFFERENT WEEKS THAT DIFFERENT
6 PEOPLE ARE LOOKING. I CAN'T KEEP UP AND I TRULY DON'T
7 KNOW HOW MANY PEOPLE HAVE LOOKED AT IT. THERE'S
8 OBVIOUSLY BEEN SEVERAL, BASED ON WHAT WE HAVE HEARD
9 AT COURT AT THESE VARIOUS HEARINGS.

10 I WOULD ASK THAT THE DEFENSE SUBMIT TO THE COURT,
11 NOT TO THE STATE, TO THE COURT A LIST OF THE INDIVIDUALS
12 THAT HAVE EVALUATED OR PERFORMED TESTS ON THIS DEFENDANT
13 AND SOME REASONABLE EXPECTATION OF WHEN WE CAN EXPECT
14 TO SEE REPORTS.

15 AGAIN, THEY COULD HAVE TWO HUNDRED REPORTS BUT IF
16 THEY'RE NOT GOING TO USE THEM, THEN I UNDERSTAND THAT WE
17 WOULD NOT BE ENTITLED TO SEE THEM.

18 BUT AT SOME POINT, I WOULD ASK THE COURT TO REQUIRE
19 THE DEFENSE TO GIVE YOU A COPY OF EVERYBODY WHO HAD
20 EVALUATED THUS FAR SO THAT WE DON'T COME UP NOW....

21 AND FROM WHAT I UNDERSTAND THAT MR. HANCOCK HAS TOLD
22 ME PREVIOUSLY, THE PEOPLE THAT HAVE EVALUATED THUS FAR
23 ARE THE ONE FEMALE THAT I NOW HEAR TODAY THAT MAY HAVE A
24 REPORT.

25 NONE OF THE OTHER PEOPLE THAT ARE EVALUATING WILL
26 BE TESTIFYING. IS THAT CORRECT?

1 MR. HANCOCK: THAT'S NOT CORRECT.

2 THE COURT: THAT'S NOT WHAT I UNDERSTOOD. I
3 UNDERSTOOD THEY JUST HAVEN'T MADE THAT DECISION.

4 MR. POPE: WELL, THAT'S DIFFERENT FROM WHAT I WAS
5 TOLD OUTSIDE THE COURT, YOUR HONOR. THAT'S WHY I NEED
6 TO HAVE THIS CLARIFIED. NOT TO ARGUE WITH MR. HANCOCK,
7 BUT TO ADDRESS THE COURT, I HAD PREVIOUSLY BEEN INDICATED
8 THAT THEY DIDN'T INTEND TO CALL THE PEOPLE.

9 YOUR HONOR, AT SOME POINT, THE RULE HAS GOT TO HAVE
10 SOME TEETH THAT GIVES THE STATE SOME BENEFIT. FOR THEM
11 TO JUST CONTINUE TO SAY, WE DON'T KNOW, WE HAVEN'T
12 DECIDED, WE DON'T KNOW WE ARE GOING TO GET THE REPORTS,
13 I MEAN, THAT WOULD JUST LIKE THE STATE DECIDING THAT
14 FROM NOW ON ANY EVIDENCE THAT'S EVER TESTED THAT WE JUST
15 DON'T HAVE A REPORT. THAT WOULDN'T BE FAIR TO THEM AND
16 THIS IS NOT FAIR TO US, YOUR HONOR.

17 MR. HANCOCK: WELL, REGARDING THE STATE, WE'VE BEEN
18 TRYING TO DECIDE ON A DNA EXPERT AND, AGAIN, THE STATE
19 ON THE SAME THING, AT SOME POINT THE FAIR OPPORTUNITY
20 MUST BE HAD. AT SOME POINT THEY'VE GOT TO HAVE DNA
21 EVIDENCE, TOO. NOW, I'VE GOT TO GO SCRAMBLE AND GET
22 MINE.

23 I'M NOT ARGUING ABOUT.... I'LL BE GLAD TO SUBMIT TO
24 THE COURT THE NAMES OF THE INDIVIDUALS THAT HAVE
25 EVALUATED HIM, THE STATUS AND STAGE OF THEIR

1 INVESTIGATION AND WHAT MAY BE THE IMPLICATION AND THE USE
2 OF THE DOCUMENTS THAT I WILL PRESENT TO THE COURT.

3 THE COURT: I'M NOT GOING TO REQUIRE THAT. I KNOW
4 THESE KIND OF CASES TAKE A LITTLE BIT MORE HANDLING THAN
5 USUAL. BUT AT TRIAL, ANY REPORTS ARE GOING TO HAVE
6 INFORMATION IN THEM SHOWING WHEN THEY WERE RENDERED,
7 WHEN THE EVALUATIONS TOOK PLACE. AND THE COURT MAKES A
8 DETERMINATION AT THAT TIME WHETHER OR NOT THERE HAS BEEN
9 SUFFICIENT COMPLIANCE.

10 I'M NOT SAYING.... IF THE DEFENSE WOULD COME UP AT
11 TRIAL WITH A REPORT DATED OCTOBER 31 AND WANTED TO GET
12 THAT EVIDENCE IN, AND YOU HADN'T GIVEN IT TO THE STATE
13 BY NOW, IT'S PROBABLY NOT GOING TO COME IN BECAUSE I'LL
14 TO FIND THAT YOU HAVE NOT COMPLIED WITH THE RULE.

15 I KNOW THAT THE EDGE IN THAT IS, WELL, YOUR HONOR,
16 WE DIDN'T DECIDE UNTIL LAST NIGHT TO USE IT. AND I
17 WOULD HAVE TO WEIGH ALL THAT. BUT I DON'T THINK YOU'RE
18 GIVING ME.... I DON'T KNOW WHAT I WOULD DO WITH THIS.
19 I GUESS THAT'S PART OF IT. I DON'T KNOW WHAT I WOULD
20 DO WITH IT. I GUESS I WOULD JUST PUT IT IN THE FILE.

21 MR. POPE: WELL, THAT'S ALL I WOULD ASK THAT YOU
22 WOULD HAVE THAT. IF THIS PERSON SHOWS UP AND SUDDENLY
23 WANTS TO TESTIFY AND THEY'VE EVALUATED IN THE LAST SIX
24 MONTHS, BUT CONVENIENTLY, THEY DON'T HAVE A REPORT.
25 THEY'VE DONE TESTS, BUT THEY JUST DECIDED TO TESTIFY.

26 I MEAN, WHAT'S THE PURPOSE OF THE RULE, YOUR HONOR,

1 IF WE DON'T HAVE SOME ADVANTAGE TO ULTIMATELY SEE THE ---

2 THE COURT: WELL, I THINK THE RULE IS CLEAR. BUT
3 UNFORTUNATELY, THE RULE HAS SOME PLAY IN IT. AND I
4 MEAN THAT NOT IN A SMALL FASHION. BUT IT DOES ALLOW
5 TO THAT SIDE SOME STRATEGY AND SOME OPPORTUNITY TO DO
6 LAST MINUTE PLANNING AND THAT SORT OF THING.

7 AND I CAN'T MAKE THOSE DECISIONS. I CAN ONLY LOOK
8 AT WHERE WE ARE. AND WHERE WE ARE RIGHT NOW IS THEY
9 SAY THEY DON'T HAVE THE REPORT.

10 I CAN'T MAKE THEM GIVE UP WHAT THEY DON'T HAVE.
11 I CAN'T TELL THEM THAT THEY HAVE GOT TO HAVE A REPORT
12 BY A CERTAIN DATE. I CAN'T NOW TELL THEM THAT THEY
13 CAN'T USE IT AT TRIAL, ANYTHING THAT THEY DON'T HAVE
14 TODAY.

15 I'M JUST IN A BOX AS TO WHAT TO DO TO HELP. I KNOW
16 THAT THE STATE IS ANXIOUS TO FIND OUT AND WANTS THEM TO
17 COMPLY WITH THE RULE. BUT I'M IN THE SAME SITUATION THAT
18 I'VE BEEN IN, NOT JUST IN THIS CASE, WHERE IF THEY
19 COMPLY WITH THE RULE, AND I SAY COMPLY WITH THE RULE
20 AND THEY SAY WE'RE COMPLYING WITH THE RULE.

21 WHY DON'T JUST GO AHEAD AND PREPARE THAT LIST LIKE
22 YOU'VE SAID AND I'LL KEEP IT SEALED AND CONFIDENTIAL AND
23 WE'LL HAVE IT AVAILABLE.

24 BUT EVEN THOUGH THIS IS A DEATH PENALTY CASE AND
25 THEY ARE LOOKED AT DIFFERENTLY, I'M NOT SUBSCRIBING
26 THIS HAS ANY MOTIVE OTHERWISE, BUT WE DO HAVE RULES.

1 THE RULES ARE THERE TO PREVENT A SO-CALLED TRIAL BY
2 AMBUSH. AND I AM NOT GOING TO ALLOW A TRIAL BY AMBUSH.
3 I WILL DO MY BEST TO THWART THAT. BUT FROM A PRACTICAL
4 STANDPOINT THERE IS ONLY SO MUCH THE COURT CAN DO.

5 AND MR. POPE, I DON'T WHAT ELSE I CAN DO RIGHT NOW.
6 HE'S SAYING WE'RE COMPLYING WITH THE RULE. HE'S AN
7 OFFICER OF THE COURT. HE'S SAYING, I HAVEN'T MADE
8 THESE DECISIONS.

9 I HAVE A HARD TIME SAYING YOU'VE GOT TO MAKE THESE
10 DECISIONS BY DECEMBER 31.

11 MR. POPE: WELL, YOUR HONOR, WITH ALL DUE RESPECT,
12 THAT'S PROBABLY ONE PART THAT I DO DISAGREE WITH. AT
13 SOME POINT YOU COULD PUT SOME REASONABLE AMOUNT OF TIME
14 ON HIM TO MAKE A DECISION. I KNOW YOU CAN'T FORCE HIM
15 TO DO IT. BUT MY ANSWER WOULD BE, YOUR HONOR, YOU KNOW,
16 UNTIL WE REALLY SEE THE JURY MAKE-UP, YOU KNOW, I CAN'T
17 REALLY DECIDE IF THIS WITNESS APPEALS TO ME. I MEAN,
18 YOU KNOW....

19 THE COURT: WELL, THAT MIGHT BE LEGITIMATE.

20 MR. POPE: AND IF THAT'S THE CASE, WE MAY AS WELL
21 JUST NOT HAVE THE RULE BECAUSE WE TRY TO BALANCE THE
22 PLAYING FIELD SOMEWHAT. I APOLOGIZE FOR BEING
23 ARGUMENTATIVE WITH THE COURT. BUT WE'RE TRYING TO
24 BALANCE THE PLAYING FIELD AND IT'S JUST FRUSTRATING.

25 THE COURT: I'M INCLINED TO AGREE. I THINK YOUR
26 OBSERVATIONS ARE VERY WELL STATED, VERY WELL TAKEN

1 AND VERY APT.

2 MR. POPE: IF IT PLEASE THE COURT. YOUR HONOR,
3 THIS MAY TAKE IT TO THE NEXT AREA AND REALLY ISN'T MORE
4 IN THE FORM OF A MOTION, BUT MORE IN THE FORM OF AN ISSUE
5 THAT....

6 WITH THE COURT'S INDULGENCE. ARE WE IN A POSITION
7 TO KNOW WHERE WE STAND ON THE MENTAL EVALUATION, THE
8 STATE'S REQUEST?

9 THE COURT: THAT ORDER IS JUST ABOUT FINISHED. I
10 THINK WE WILL HAVE IT FILED BY TODAY. WE'RE DOWN TO
11 ONE LAST REVIEW AND RE-WRITE. BUT IT WILL BE FINALIZED
12 AND FILED BY TODAY, THAT'S MY GOAL.

13 MR. POPE: AND YOUR HONOR, THIS MAY OR MAY NOT BE
14 APPROPRIATE. WOULD IT BE APPROPRIATE TO DISCUSS THE
15 RULING NOW WHILE WE HAVE THE DEFENDANT PRESENT, OR DO
16 THOSE ISSUES NEED TO BE ADDRESSED OR ARGUED?

17 I'M NOT TRYING TO BUTT IN, BUT I UNDERSTAND WHAT WE
18 GET IN THE ORDER TODAY, OR IS THAT SOMETHING WE NEED
19 TO DEAL WITH NOW.

20 THE COURT: WELL, AGAIN, I CAN'T MAKE THAT DECISION.
21 I MEAN, I KNOW WHAT I WILL MAKE ON THE RULING, BUT WHAT
22 OTHER ISSUES THAT MAY SPAWN. AND I KNOW THAT'S NOT
23 JUDICIAL ECONOMY. WE ARE GETTING CLOSE. WE ARE GETTING
24 TO THE HOLIDAYS. BUT I'M JUST NOT ABLE TO MAKE THAT
25 DECISION AT THIS POINT.

26 MR. POPE: YES SIR. YOUR HONOR, THE OTHER ISSUES

1 I SEE BEFORE US AS FAR AS SCHEDULING THE TRIAL, WE'VE
2 GOT THE FIRST TWO WEEKS IN FEBRUARY AND MR. HANCOCK'S
3 REPORT ON THE DNA.

4 AGAIN, I DON'T THINK YOU CAN MAKE MR. HANCOCK DO
5 ANYTHING. HIS DNA... HE DID NOT SUBMIT HIS DNA UNTIL
6 THREE HEARINGS AGO, WHEN I THINK WE DISCUSSED THE
7 AVAILABILITY OF HAVING THAT SET.

8 AND BASICALLY, IN TALKING WITH MY DNA EXPERT, THERE
9 ARE TWO POSSIBILITIES, TWO OPTIONS AS FAR AS THE
10 DEFENDANT'S DNA. ONE IS TO PHYSICALLY GET THE SAMPLES
11 AND DO DNA TESTING. THE SECOND IS TO EVALUATE THE
12 RESULTS OF SLED'S DNA ANALYSIS.

13 THE SLED DNA CHEMIST THAT I TALKED TO EARLIER THIS
14 WEEK INDICATED THAT HE SHOULD HAVE HIS PICTURES, WHICH
15 ARE THE AUTOGRADS, SET BY THE END OF THIS MONTH. THEY
16 WOULD BE AVAILABLE TO MAKE A SECOND COPY OF THOSE.

17 AN ISSUE THAT WE HAVE TO ADDRESS IS, AND AGAIN, THIS
18 IS JUDICIAL ECONOMY. IF MR. HANCOCK INTENDS TO REVIEW
19 THOSE, THEN CERTAINLY WE ARE ON TRACK. IF MR. HANCOCK
20 INTENDS TO DO A TOTALLY NEW DNA TEST, THEN WE'RE NOT
21 GOING TO TRIAL IN FEBRUARY. I THINK WE NEED TO FACE THAT
22 REALITY.

23 THE CHEMIST TELLS ME, AND I WAS CURIOUS AS TO WHAT
24 HOW OFTEN DO YOU DO ADDITIONAL TESTS, HOW OFTEN DO YOU
25 DO EVALUATIONS. HE TOLD ME, AND MR. HANCOCK'S RESEARCH
26 MAY SHOW OTHERWISE, IN THE AREA OF IN THE FIELD WHAT

1 THEY'VE SEEN NINETY-NINE TIMES OUT OF A HUNDRED NOW HAVE
2 THE EVALUATION OF THE RESULTS AS OPPOSED TO TOTALLY NEW
3 TESTS.

4 HE SAID THE EXPERTS THEY'RE GOING TO RETAIN ARE
5 NOT GOING TO WANT TO DO NEW TESTS FOR THE MOST PART. AND
6 AGAIN, THAT'S WHAT I'M GETTING FROM THE SLED CHEMIST. I
7 DON'T KNOW IF THAT'S GOING TO BE THE CASE.

8 THE TRUTH OF THE MATTER IS THAT EVERYONE IS PUTTING
9 A LOT OF WORK INTO THIS, YOUR HONOR. TO BE QUITE CANDID,
10 IF WE'RE NOT GOING TO TRIAL IN FEBRUARY, THEN I'M GOING
11 TO WORK ON JARRELL, ANOTHER DEATH PENALTY CASE. I'M
12 NOT GOING TO WORK ALL JANUARY ON THIS ONE.

13 SO, I'M JUST TRYING TO MAKE A DETERMINATION OF WHERE
14 WE STAND ON THAT.

15 MR. HANCOCK: IF IT PLEASE THE COURT, AS HE SPOKE,
16 I DON'T THINK WE DISCUSSED THE DNA MATTER AT THE OTHER
17 HEARING. I THINK IT WAS THE LAST HEARING, WHICH WAS
18 LESS THAN TEN DAYS AGO, SIR.

19 AT THAT POINT IN TIME, WE HAD BEGUN CONTACTING
20 LABORATORIES AND OTHER FACILITIES. WE HAVE CERTAIN
21 DNA EVIDENCE, IT JUST HAS TO BE EVALUATED, THE STATE
22 HAS GIVEN US. THEN WE HAVE A BODY OF DNA EVIDENCE THAT
23 WE ARE GOING TO HAVE TO DO OUR OWN TESTING BECAUSE THEY
24 HAVE HAD THE SAMPLES OF BLOOD SINCE NOVEMBER OF 1997.
25 IT HAS TAKEN THEM A YEAR TO DO IT.

1 PLUS THAT, AND THAT'S WHAT I AM TALKING ABOUT AT THE
2 LAST HEARING, JUDICIAL ECONOMY. WE'RE TRYING TO FIND
3 LABORATORIES THAT CAN TELL US THEY CAN SPLIT IT UP.
4 OKAY? WE CAN EVALUATE THIS, WHAT YOU HAVE GIVEN US.
5 BUT WE ALSO HAVE TO DO THESE TOTALLY INDEPENDENT TESTS
6 AND EVALUATE THEM. AND WE NEED THE THIRD WEEK IN
7 JANUARY TO DO IT.

8 WE HAVEN'T HAD ANYBODY SAY THAT WE CAN DO THAT IN
9 THAT PERIOD OF TIME. IF THE STATE... AND THE STATE
10 INDICATES NOW.... IF THE STATE SAYS AT SOME POINT IT
11 MUST BE A CUT-OFF. WELL, HOW ABOUT THEIR DNA EVIDENCE?
12 ISN'T THERE SOMEPLACE THAT IT HAS TO BE CUT OFF? THEY
13 HAVE HAD IT A YEAR. IT COULD HAVE BEEN FORWARDED TO US
14 AND IT HASN'T.

15 AND THAT'S SUPPOSED TO BE THE FINEST LABORATORY WE
16 HAVE, REPRESENTING THE STATE OF SOUTH CAROLINA.

17 SO, WE'RE DOING WHAT WE CAN WITH THAT. WHEN WE
18 GET OUR DNA EVIDENCE, YOU WILL HAVE IT. WE HAVE BEEN PUT
19 IN THAT SITUATION ALSO. I CAN'T TELL YOU AT THIS TIME,
20 YOUR HONOR. WHEN I GET SOMETHING IN WRITING FROM THE
21 PEOPLE WE HAVE CONTACTED, I WILL CERTAINLY FORWARD IT TO
22 THE COURT AND TO MR. POPE.

23 MR. POPE. IF IT PLEASE THE COURT. YOUR HONOR,
24 ONE POINT I WANT TO MAKE ON THE DNA EVIDENCE. THIS
25 DEFENDANT RESISTED GIVING SAMPLES. THIS DEFENDANT
26 RESISTED TAKING PICTURES. THIS DEFENDANT WASN'T

1 AVAILABLE UNTIL JULY OF THIS YEAR.

2 NOW, THAT DOESN'T MEAN HE STILL HASN'T BEEN TESTED
3 FOR THE LAST FIVE MONTHS, FOUR MONTHS, WHATEVER THE CASE
4 MAY BE.

5 YOUR HONOR, WE HAVE DISCUSSED DNA, AND IT DOESN'T
6 MATTER IF WE DISCUSSED IT LAST TIME OR EVERYTIME. THE
7 BOTTOM LINE ISSUE, AND I THINK WHAT MR. HANCOCK WAS
8 SAYING, BUT I DID GET A CLEAR INDICATION THAT THEY WANT
9 TO DO INDEPENDENT TESTING.

10 IF THEY DO WANT TO, THAT'S FINE. IF THEY WANT TO
11 DO INDEPENDENT TESTING, UNLESS I'M TOTALLY WRONG,
12 SCIENTIFICALLY, IT CAN'T BE READY IN A MONTH'S PERIOD
13 OF TIME. I MAY BE WRONG, BUT MY UNDERSTANDING OF THE
14 PROCEDURES AND THE BREAKDOWN OF THE AUTOGRADS AND THE
15 THINGS THAT HAVE TO TAKE PLACE, I DON'T THINK THEY'RE
16 GOING TO BE READY.

17 HE MAY HAVE A DIFFERENT IMPRESSION, BUT WITH
18 EVERYTHING I'VE HEARD, IT WON'T BE READY. THAT'S TO
19 PROTECT HIM AND THAT'S FINE. BUT IF THAT'S THE CASE
20 THEN WE NEED TO KIND OF PUT THIS ONE ON THE BACK BURNER.

21 THE SAMPLES HAVE BEEN AVAILABLE FROM SLED AS WE
22 INDICATED. AND NOT TO SPLIT HAIRS, BUT AGAIN, I THINK
23 IT WAS AT LEAST TWO HEARINGS AGO, THE FIRST TIME WE WENT
24 THROUGH THE LIST AND TALKED ABOUT THE DIFFERENT THINGS
25 THEY WERE ACTUALLY TESTING. AND THE CHEMIST INDICATED
26 HE DID HAVE ADDITIONAL SAMPLES FOR EACH ONE THAT WERE

1 AVAILABLE.

2 IF THE DEFENSE WANTS THOSE SAMPLES, AS I HAVE
3 INDICATED BEFORE THEY NEED TO CONTACT SLED OR WE NEED
4 TO POSTPONE THIS TRIAL.

5 THE COURT: DO YOU WANT THOSE SAMPLES?

6 MR. HANCOCK: BEGGING THE INDULGENCE OF THE COURT.

7 (PAUSE)

8 MR. HANCOCK: YOUR HONOR, WE'RE PUT IN A SITUATION
9 THAT WE PROBABLY WOULD BE PERFECTLY COMFORTABLE WITH THE
10 SLED SAMPLES IF WE HAD THEM NOW. AND WE DON'T KNOW IF
11 OUR SAMPLES ARE GOING TO SHOW US SOMETHING DIFFERENT
12 THAN THEIR SAMPLES. AND WE ARE NOT GOING TO BE PROVIDED
13 WITH THOSE UNTIL SOME TIME, I DON'T KNOW, I UNDERSTAND
14 IT MIGHT NOT BE UNTIL NEXT WEEK, SOME FOURTEEN DAYS
15 BEFORE TRIAL.

16 SO, AGAIN, I WOULD ASK THE COURT TO ALLOW ME TO
17 ANSWER THAT QUESTION ON TUESDAY SO I CAN SEE IF I CAN
18 FIND A LABORATORY THAT CAN DO THIS IN THAT TIME.

19 AS MR. POPE SAYS, HE DOESN'T THE TIME FRAME IN
20 WHICH THEY DO IT; I DON'T KNOW IT EITHER. AT THIS POINT
21 IN TIME, IF I CALL THE LABORATORY AND THEY SAY WE HAVE
22 AT LEAST SEVEN SAMPLES, WE'RE GOING TO TAKE ONE FROM
23 THE SWEATER, WE'RE GOING TO TAKE ONE FROM THIS AND ONE
24 FROM THAT AND THE OTHER. IF WE GET THOSE SEVEN SAMPLES
25 WE CAN DO IT IN THAT PERIOD OF TIME.

26 WE CAN TAKE THOSE SEVEN SAMPLES AND HAVE THEM READY

1 FEBRUARY 1. IF NOT, IT MAY BE A DIFFERENT TIME FRAME
2 AND A DIFFERENT ANSWER, YOUR HONOR, THEN WE MAY BE IN
3 A SITUATION WHERE WE MAY HAVE TO POSTPONE THINGS.

4 MR. POPE: YOUR HONOR, IF IT PLEASE THE COURT.
5 AT THE COMPLETION OF THIS HEARING, I WILL GO WITH MR.
6 HANCOCK AND THE DEFENSE STRAIGHT TO MY OFFICE AND SEE IF
7 WE CAN'T GET THE ACTUAL CHEMIST ON LINE FROM SLED. AND
8 I WILL LET HIM TALK WITH HIM DIRECTLY.

9 AGAIN, I'M NOT SAYING A WORD AGAINST MR. HANCOCK,
10 BUT EVALUATING SLED RESULTS AND DOING NEW TESTS ARE
11 TWO DIFFERENT THINGS. ONE IS SIGNIFICANTLY LONGER THAN
12 THE OTHER. AND I UNDERSTAND THEY MIGHT NOT KNOW THAT YET
13 BUT HOPEFULLY WE CAN GET IN TOUCH WITH SLED.

14 THE COURT: WELL, I'LL JUST TELL EVERYONE, IF IT'S
15 NOT TRIED IN FEBRUARY, THEN IT WON'T BE TRIED UNTIL
16 JULY 1.

17 MR. POPE: YOUR HONOR, I THINK EVERYONE HAS AN
18 INTEREST IN MOVING FORWARD, BUT AT SOME POINT I ---

19 THE COURT: WELL, I ---

20 MR. POPE: WE CAN'T BE HAMSTRUNG AT THAT POINT IF
21 WE AREN'T READY TO GO TO TRIAL, EITHER SIDE.

22 YOUR HONOR, THE ONLY OTHER ISSUE, AND IT MAY BE SET
23 AFTER THE HOLIDAYS, THE REQUEST FROM THE DEFENSE ABOUT
24 LEAVING THE DEFENDANT HERE IN YORK COUNTY FROM TODAY
25 FORWARD. I DISCUSSED THE MATTER ---

26 THE COURT: I HAVEN'T HEARD THAT REQUEST. DID YOU

1 MAKE THAT REQUEST?

2 MR. HANCOCK: YES SIR. WE WERE GETTING READY TO
3 MAKE THE REQUEST.

4 MR. POPE: I HAVEN'T ---

5 MR. HANCOCK: I HAVE GIVEN TO THE SOLICITOR AND HE
6 MAY NOT EVEN BE THE PROPER PARTY TO MAKE THE
7 ARRANGEMENTS WITH THE SHERIFF. AND I UNDERSTAND FROM
8 MR. POPE THAT THE SHERIFF MAY HAVE SOME PROBLEM
9 RETAINING HIM HERE IN YORK COUNTY FROM THIS DAY PRESENT
10 UNTIL THE TRIAL DATE DUE TO THE HOLIDAYS.

11 I BELIEVE FROM THE INFORMATION THAT MR. POPE GAVE
12 ME HE HAS NO PROBLEM RETAINING HIM HERE AFTER
13 JANUARY 1 OR JANUARY 4, I BELIEVE IT IS, ON A MONDAY,
14 UNTIL THE CONCLUSION OF THE TRIAL.

15 MR. POPE: THAT IS CORRECT YOUR HONOR.

16 MR. HANCOCK: IS THAT MY UNDERSTANDING?

17 MR. POPE: THAT IS CORRECT YOUR HONOR. I CONTACTED
18 THE SHERIFF. IT OBVIOUSLY INVOLVES SOME SECURITY
19 ISSUES AND I WANTED HIM TO HAVE THE OPPORTUNITY TO BE
20 HEARD ON IT.

21 HIS INDICATION WAS HE HAD A GREAT CONCERN IF IT WAS
22 EFFECTIVE AS OF TODAY. BECAUSE OF THE HOLIDAYS, THEY
23 HAVE INCREASED STAFF AND WORK BECAUSE OF TRAFFIC-
24 RELATED INCIDENTS, ALCOHOL RELATED INCIDENTS.

25 HE SAID HE HAS THOSE MAIN SECURITY CONCERNS, BUT
26 THAT HE MAY BE IN A POSITION TO DISCUSS IT ON THE DATE

1 THAT MR. HANCOCK SAID, JANUARY 4.

2 AGAIN, WE MAY NEED TO REVISIT THAT JANUARY 4 BECAUSE
3 WE DON'T KNOW WHAT ELSE MAY HAPPEN ON THE ISSUES WE HAVE
4 DISCUSSED.

5 THE COURT: YES, LET'S HOLD THIS IN ABEYANCE, TOO
6 UNTIL WE SEE WHAT IS GOING TO HAPPEN ON THE DNA ISSUE
7 AND SEE WHETHER OR NOT WE ARE ON TRACK.

8 MR. HANCOCK: YES SIR.

9 MR. BRACKETT: YOUR HONOR, ONE BRIEF MATTER. OUR
10 OFFICE HAS PRESENTED TO THE COURT A REQUEST FOR
11 PROTECTION FROM JANUARY UNTIL TRIAL DATE FROM ANY
12 RESPONSIBILITIES. BUT IF THIS CASE IS GOING TO BE PUT
13 OFF, THEN ---

14 THE COURT: THEY OBVIOUSLY WILL NEED PROTECTION IF
15 IT'S GOING FORWARD

16 MR. BRACKETT: YES SIR. AND I AM PUTTING THEM ON
17 NOTICE NOW THAT IT MAY BE A SUPPLEMENTAL MATTER, BUT AS
18 THE JANUARY 4 TERM, IT'S ALREADY BEEN FILED. AND I WOULD
19 LIKE TO PUT THEM ON NOTICE FOR SOME OTHER CASES IN THE
20 CHANCE THAT WE ARE NOT ABLE TO GO FORWARD.

21 THE COURT: WELL, FROM A PRACTICAL STANDPOINT, CAN
22 THE SOLICITOR'S OFFICE DO TWO MORE WEEKS OF GENERAL
23 SESSIONS. I DON'T KNOW IF WE'RE GOING TO NEED THOSE OR
24 NOT. SO, THAT IS SOMETHING TO BE THINKING ABOUT THAT.

25 MR. POPE: YOUR HONOR, MR. McKEOWN INDICATED THAT
26 IF THIS OCCURRED THAT WE WOULD PROBABLY HAVE ONE OF THE

1 WEEK, ONE WEEK WE COULD TAKE BACK AND USE SOMEWHERE ELSE.
2 I'LL HAVE TO LOOK AT THE SCHEDULE.

3 THE COURT: ALL RIGHT. WELL, I WILL GET THIS
4 MENTAL EVALUATION ORDER DONE TODAY BEFORE I LEAVE.
5 ALSO, I DON'T THINK I CAN TODAY CONCLUDE THE OTHER
6 MATTER. WE WILL DEAL WITH THAT AS OF THE FIRST OF THE
7 WEEK. THEN I'LL JUST HAVE TO HEAR FROM Y'ALL ABOUT WHAT
8 YOU WOULD LIKE ME TO DO.

9 THANK YOU. WE'LL ADJOURN AT THIS TIME.

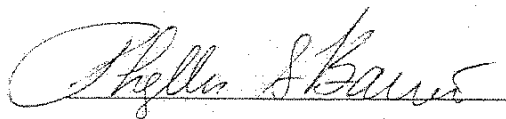
10 MR. POPE: THANK YOU, YOUR HONOR.

11 MR. HANCOCK: THANK YOU, YOUR HONOR.
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CERTIFICATE

I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL
CERTIFIED COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING CONSTITUTE A COMPLETE,
ACCURATE AND CORRECT TRANSCRIPT OF RECORD OF THE PROCEEDING IN
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE SIXTEENTH
JUDICIAL CIRCUIT, YORK COUNTY, SOUTH CAROLINA ON THE 18TH DAY
OF DECEMBER, 1998.

I HEREBY CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.



PHYLLIS S. BARRETT

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) COURT OF GENERAL SESSIONS
3) No. 98 GS — 1020, 1021,
4) 1022, 1023
5)
6 STATE OF SOUTH CAROLINA)
7)
8)
9 versus) TRANSCRIPT OF RECORD
10)
11)
12)
13 JAMES D. ROBERTSON,)
14 Defendant.)
15)
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25)

Rock Hill, South Carolina
February 12, 1999

B E F O R E :

HONORABLE JOHN C. HAYES, Judge.

A P P E A R A N C E S :

For the State: THOMAS E. POPE, Esq.
Solicitor

KEVIN S. BRACKETT, Esq.
Assistant Solicitor

For the Defendant: JAMES W. BOYD, Esq.
JAMES W. HANCOCK, Esq.

Reporter: JANET M. FISCHER

HARRIET P. BENNETT
Reporter, Ninth Judicial Circuit
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EXHIBITS

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1 (The within matter came before the Court on February
2 12, 1999)

3 THE COURT: Mr. Pope, you have made a couple of motions.
4 One is to reconsider the Court's earlier ruling regarding
5 the identification of experts, regarding possible mental
6 issues, and one that was just handed to me five minutes ago
7 dated February 8th and I hadn't seen it -- is that the orig-
8 inal motion?

9 MR. POPE: That motion has been served today for future
10 notice. That was just to provide notice to them.

11 The second motion you have before you is just to go ahead
12 and give it to the Defense, and look toward the future in
13 dealing with those issues.

14 THE COURT: Okay, so you have a motion to reconsider,
15 and just for initial housekeeping what I would also like to
16 do today, if there is enough time, we can go through the
17 jurors' responses that we've got and see where we stand with
18 that.

19 For the record, Mr. Robertson is present with both
20 attorneys, Mr. Boyd and Mr. Hancock.

21 MR. POPE: Your Honor, I at the time made a similar
22 list, kind of a laundry list of things to do, and concluded
23 maybe at the tail end of this we can address deadlines for
24 motions and motion hearings and things of that matter, to
25 deal with that, and issues dealing with the jury and some of

1 those matters.

2 Your Honor, before we begin, we have the Probate Judge
3 here today on the subpoena issue on part of the record of
4 this case.

5 Out of deference to him, before we get into our motion
6 for reconsideration, I believe Mr. Brackett has an issue that
7 we can go ahead and hear.

8 THE COURT: All right, what is it?

9 MR. BRACKETT: Judge, to clear up some confusion, the
10 item I handed you just moments ago, that deals with the Pro-
11 bate Judge and some probate records we were attempting to
12 get.

13 THE COURT: All right.

14 MR. BRACKETT: The other matter that Mr. Pope is talking
15 about, we will handle it another date right here, and I will
16 hand that up now.

17 I've provided the Defense with a copy of it, and we just
18 need to set a date to argue these motions.

19 THE COURT: All right.

20 MR. BRACKETT: And as far as the Probate Court records,
21 Your Honor, the State has subpoenaed from the Probate Court
22 some documents relating to a 1995 involuntary commitment of
23 the Defendant in this case, and the State submits it's rele-
24 vant to the issues in this case.

25

1 Possibly in guilt, but certainly in penalty. The State
2 has asked the Probate Court to provide these records.

3 Your Honor, by statute the records are confidential and
4 are to be held by the Court and not released except upon good
5 cause.

6 I hand up to the Court at this time a copy of 44 22 100
7 dealing with confidentiality of records, which addresses re-
8 cords that have been created or filed pursuant to Chapter 17,
9 Title 44.

10 Your Honor, the statute in that case basically says
11 that the Probate Court must keep the records and not reveal
12 them except upon good cause shown to a Court under Section
13 Two, and if the Court directs the disclosure is necessary
14 for the conduct of proceedings before it then the failure to
15 make the disclosure is contrary to the public interest.

16 More importantly, under Subsection Four, disclosure is
17 necessary to cooperate with law enforcement, health, welfare
18 and other state or federal agencies, or when furthering the
19 welfare of the patient or his family.

20 We submit that the disclosure of these records is neces-
21 sary to cooperate with law enforcement in this case.

22 Mr. Hancock and I discussed this motion last week. He
23 just got the motion at the beginning of this week, and he
24 indicates that he is not prepared to discuss the matter now.

25 I just wanted to argue the State's position. Judge

1 Geddes who is here now wants to argue the position of the
2 Probate Court, and I told him I had no objection to Mr.
3 Hancock filing -- the Court taking the matter under advise-
4 ment and Mr. Hancock filing any written response that he has
5 to my argument or Judge Geddes, and the Court can issue its
6 ruling at a later time, when the Defense has had time to re-
7 spond.

8 Mr. Hancock's contention is that he has had insufficient
9 time to prepare for this motion, and, therefore, he would
10 like additional time. We have no problem with that, but we
11 just need to get the ball rolling so we can get these records
12 at some time in the near future.

13 THE COURT: Mr. Hancock?

14 MR. HANCOCK: I'm just asking the Court -- my understand-
15 ing of the rules of procedure is when I'm served with a motion
16 I've got ten days to respond, unless the Court suspends that
17 time.

18 I've got . .

19 THE COURT: He's acknowledging that. He's just saying
20 as an expedient matter and Judge Geddes is here -- you cer-
21 tainly have a right to do that.

22 MR. HANCOCK: Yes, sir, but it's not that I'm not pre-
23 pared. I'm just trying to go by the rules of procedure,
24 sir.

25 MR. BRACKETT: I'm sorry if I intimated he wasn't

1 prepared. I want to give him the time he feels he needs for
2 that, and that's the State's position.

3 It's a straight forward matter . .

4 THE COURT: Judge Geddes, since you are here, it's sort
5 of like -- you don't have a position in this, do you, other
6 than you . .

7 JUDGE GEDDES: I have one, Your Honor.

8 THE COURT: All right. Then I was wrong.

9 JUDGE GEDDES: Mr. Brackett mentioned A four of Section
10 44 22 100.

11 THE COURT: All right.

12 JUDGE GEDDES: I would call the Court's attention to
13 44 22 10 three, which says for purposes of this section the
14 Probate Court.

15 I think Mr. Brackett wants to argue that he's entitled
16 to disclosure, under A four he needs to make that argument to
17 the Probate Court.

18 I would be happy to comply with your Order under number
19 two if Your Honor . .

20 THE COURT: I see.

21 JUDGE GEDDES: . . makes the finding. I will be happy
22 to deliver them.

23 THE COURT: I see, okay.

24 JUDGE GEDDES: I was also -- it was my belief that those
25 were the same items that have already been obtained, but I

1 will be happy to make myself available, under the Court's Order.

2 THE COURT: What was the other section, 44 22 10?

3 JUDGE GEDDES: It says -- the definitions of that chapter
4 says the Court means Probate Court, so I would take the posi-
5 tion that under 100 any of those items would be before my
6 Court, or I have one, two -- excuse me, I have one through
7 four; on the next page, five -- would be before my Court.

8 Whereas, item A two would be another Court directing
9 my Court to deliver the documents pursuant to a court pro-
10 ceeding before you.

11 THE COURT: Any comments on that while we have Judge
12 Geddes here?

13 MR. BRACKETT: No, sir.

14 THE COURT: Mr. Hancock, we're not arguing now, but
15 while Judge Geddes is here do you want to say anything?

16 MR. HANCOCK: No, sir. It's the Court's decision, and
17 as to which Court has jurisdiction that's fine. Just tell me
18 what Court to argue it in.

19 THE COURT: All right, fine. Appreciate your coming
20 over. Good to see you.

21 JUDGE GEDDES: I appreciate the opportunity to come.

22 THE COURT: All right, continue.

23 MR. POPE: May it please the Court, Your Honor, this
24 matter is concerning a motion for reconsideration.

25 In large part, it is under the arguments I've made

1 previously to the Court, but there has been a chance in cir-
2 cumstances that, I argue to the Court and have argued to
3 the Court, should have taken place a long time ago, but in
4 fact has taken place in recent days.

5 The Defense has indicated the potential to use at least
6 three experts that have evaluated the Defendant in the last
7 seven or eight months, and included in these are Dr. Pinkus.
8 Dr. Pinkus of the Department of Neurology. Ms. Toni Kestkoe
9 which is a psycho-surgical efficiency expert, and other
10 psychiatrists -- psychiatrists/psychologists unknown to the
11 State.

12 In fairness to Mr. Hancock, he did -- he and his in-
13 vestigator did indicate another name to me that I believe is
14 Mr. Evans that I did not include. In fairness to them,
15 that was indicated to me.

16 Your Honor, the second part of the motion is to get
17 compliance for your Order that they -- in fact in the begin-
18 ning of December, 1998, had called for compliance on Monday,
19 December 17 -- concerning the reports of the various experts,
20 Your Honor.

21 From what I read of the Court's Order denying the State
22 motion, initially the Court indicated that -- almost to the
23 effect that it's not right; at this point if the matter
24 changed, the Court would be willing to consider it was not
25 right.

1 By the same token, the Defense is allowed to never make
2 it right in any way, or to continue to delay.

3 Your Honor, we stand here today -- had the case gone
4 forward on the original schedule, and I understand the case
5 was delayed due to DNA issues -- had the case gone forward as
6 originally scheduled, we would be through -- would be through
7 by now or close to it now.

8 Yet we still have no reports or no response to these
9 matters.

10 Your Honor, I've made a copy, and for the record I will
11 hand up what the Judge was referring to when he said probate
12 matters may be covered in other records -- this is Court's
13 Exhibit 1 for our purposes here today, Your Honor. I hand it
14 up.

15 To my knowledge, I have referenced these matters in pre-
16 vious hearings, Your Honor, but did not specifically hand it
17 up, did not specifically put it in the record.

18 (Report marked Court's Exhibit 1 for identification
19 purposes)

20 MR. POPE: As far as the requirement of the Court that
21 there be brought to the Court's attention mental issues that
22 need to be dealt with in the form of evaluation, this con-
23 cerns when the Defendant was involuntarily committed, Your
24 Honor, back in August of 1995.

25 If the Court would like, I would give the Court an

1 opportunity to review this before I go further.

2 THE COURT: Go ahead. It's pretty long.

3 MR. POPE: Your Honor, just to point out some of the as-
4 pects, he was diagnosed as being bipolar.

5 If you turn to the second page, he was bipolar manic;
6 middle ear illness; severe family strife, and some language
7 that I had gone through, I believe in the psychological
8 evaluation of acting out, an acting out potential; depres-
9 sion.

10 He is hyperactive and manic; has a potential -- under-
11 lying depression.

12 Your Honor, the point made -- and, again, you have it
13 before you. You can read the entire matter.

14 It may be well that none of this becomes an issue in
15 this case, but it is before the Court to observe, and my
16 second big concern is I don't want to be here three years
17 from now and this be boldly before the Court, boldly before
18 the Defense; they don't pursue it and then the Defense is in
19 the position of saying that we chose -- we didn't do it and
20 suddenly there's a PCR granted and we're coming back.

21 Now, in fairness to the Defense, Mr. Hancock has con-
22 tinually indicated to me that they are assessing these mat-
23 ters, so I don't think my worst fear would be a concern,
24 that it would become a PCR issue.

25 The Defense has indicated they are dealing with these

1 matters, and, again, Mr. Hancock is present and as best I
2 understand they are telling me that they are going to give me
3 the report; they just haven't gotten the report yet.

4 And so the bottom line we're at now, Your Honor, is the
5 same thing I said at the last hearing. The State is asking
6 for an evaluation to confirm whatever may come from the De-
7 fense or to refute what may come from the Defense.

8 But the issue we're at now is we're about a month away
9 from trial. If we wait until this matter comes up in trial,
10 we have the jury sequestered. It's sheer logistics.

11 Certainly I'm going to ask for a motion for him to be
12 evaluated then -- we're going to ask that we stop the trial
13 until we have an opportunity to review the matter, and bas-
14 ically we've got a jury sequestered with the same issue that
15 we've dealt with now.

16 One, I submit that it's ripe and it is before you now,
17 and that circumstances have changed.

18 Two, that that is basically taken care of to admit to
19 efficient justice when the trial actually comes to pass, Your
20 Honor.

21 So, again, I would renew my request that we have the
22 opportunity for mental evaluation. As you saw from the list
23 of experts, that would include a neurology evaluation.

24 I think that would be encompassed in the standard evalua-
25 tion from what I've seen in the past. If not, we would ask

1 that that be added into it.

2 THE COURT: Mr. Hancock?

3 MR. HANCOCK: Your Honor, I still stand on your Order
4 as far as them having an independent psychological evaluation
5 of my client.

6 As far as providing the psychiatric evaluations, I don't
7 know who the State has got working evaluating the probably
8 hundreds and hundreds of pages of psychological information
9 such as this, which they already had, or what their evalua-
10 tion is.

11 I have seen no reports on that either so with their
12 retained experts to evaluate all this psychological informa-
13 tion, it would seem to me like they would have sufficient
14 time.

15 We have indicated we have had experts evaluate Mr.
16 Robertson, and I will provide everything to the Solicitor
17 that he needs under the previous Order for discovery.

18 It was reciprocal discovery that we were to provide him
19 if we were going to use it at trial.

20 Your Honor, the reports he's talking about are not the
21 thousands of pages. What we have is one report that if we
22 use it is approximately three pages long, and another report
23 that's approximately two pages long, and another report that
24 is probably going to be four pages.

25 So, Your Honor, we are trying to provide that to him by

1 the end of next week, everything that he will need that we
2 will hopefully use.

3 MR. POPE: Your Honor, right now we hear there are re-
4 ports of certain page length. I'm not wanting to argue with
5 Mr. Hancock. I'm arguing here before the Court, but it goes
6 on and on and on.

7 Now, maybe we'll have it the end of next week. Your
8 Honor, you ordered this back in December. At some point,
9 you have the authority to take control of this situation and
10 not just let it continue to spiral, again in the interest of
11 justice to both sides.

12 Your Honor, now the answer is we wait until next week,
13 and then I would ask when we receive them, and we have to
14 have another hearing.

15 Independent of any report -- and again, we're bouncing
16 back and forth on two issues. I submit that you have an
17 abundant amount of information before you, just based on the
18 Court's Exhibit 1, that would inquire into that by way
19 of an independent evaluation.

20 Your Honor, I will say as to the State's experts who
21 have been retained, there are none because we don't know other
22 than what we have now that there will be mental issues.

23 I mean, that's the whole situation we're trying to de-
24 termine, and we're not able to do it. Are they going to
25 interject mental issues and the State not have an opportunity

1 to cross, effectively cross?

2 Are they going to interject mental issues that we would
3 agree that are present?

4 I mean, that is the problem. This is a truth-seeking
5 function, Your Honor, and it's not occurring here based on
6 these circumstances.

7 MR. HANCOCK: Your Honor, if it please the Court? I'm
8 trying to understand what -- they want to take Mr. Robertson
9 and have him evaluated by their own psychologists or psychia-
10 trists in a setting where he asks him questions and goes
11 through his mental state and form.

12 Is that what he's doing?

13 THE COURT: Well, it's pretty obvious, yes.

14 MR. HANCOCK: Your Honor, I thought that -- I don't
15 think he can be forced to testify against himself under the
16 Fifth Amendment, and that would certainly apply here.

17 Now, . . .

18 THE COURT: Wait, wait, wait.

19 MR. HANCOCK: Yes, sir.

20 THE COURT: I can order that he go. I can't order that
21 he answer the questions.

22 So if I say he has to submit to an evaluation, and he
23 goes to an evaluation, he can exercise his constitutional
24 right to remain silent.

25 MR. HANCOCK: Yes, sir.

1 MR. POPE: Judge, I would agree, and, of course, we've
2 argued that previously here in Court.

3 The situation or judgment he has to make is if he does
4 not comply, that would then preclude his own interests of
5 mental issues in the case.

6 So, again, he needs to be fully apprised, and it's not
7 just a Miranda situation. He has to make a determination,
8 and I'm sure the Defense will discuss that with him, that
9 that is the issue that he has to deal with, of whether he
10 chooses by deciding not to cooperate with whoever the Court
11 orders to make the evaluation, that he would not be able
12 to bring these issues in in guilt or sentencing.

13 THE COURT: All right. The reports under the rules as I
14 recall, and I'm not looking at it right now, that the Defense
15 has would only be producible if they intend to use them at
16 trial.

17 Is that correct?

18 MR. HANCOCK: Yes, sir.

19 SOLICITOR: Or if generated by someone who they intend
20 to use at trial, and that may be a subtlety but the reports
21 themselves or someone they intend to use at trial.

22 THE COURT: Let me see -- anybody got real handy a copy
23 of my last Order? The one we're talking about.

24 All right, I'm going to take it under advisement until I
25 can read in entirety State's Exhibit 1.

1 Anything else this morning?

2 MR. BRACKETT: Yes, sir, Your Honor. Mr. Brackett has
3 given the Defense a number of future motions that probably go
4 more into a scheduling issue of when we have the various hear-
5 ings.

6 As a potential proposal, I would request we create some
7 deadlines for the State and the Defense on pre-trial guilt
8 phase motions, knowing full well issues will come up once we
9 get to trial and we can't make everything, but I would submit
10 in fairness to the Defense -- I haven't had a chance to talk
11 to them about specific dates, but looking at the way things
12 are shaping up now, Your Honor, Friday, February 26, would be
13 roughly the Friday about two weeks before the trial starts on
14 the following Monday.

15 If we had a deadline of Friday, February 6th, for all pre-
16 trial motions to be filed, and then perhaps we can have a
17 motion hearing on those matters that following Friday, which
18 would be March 5th, actually we'd still be about a week prior
19 to trial, because I know the actual . .

20 THE COURT: Let me see where -- I'm supposed to be in
21 Spartanburg that week.

22 MR. HANCOCK: Your Honor, just for the Court's informa-
23 tion, I've got to be before the Fourth Circuit Court of Appeals
24 on the morning of August 5th -- March 5th. Excuse me.

25 I don't think that's -- they're not included in the

1 protected people.

2 THE COURT: Well, I certainly will let you be there.

3 MR. POPE: Maybe we can do this off the record with the
4 Defense, you know, March 4th.

5 The issue we're running into is the actual week prior to
6 trial, Your Honor, obviously due to the sheer volume of the
7 potential witnesses in this case we're going to be involved,
8 as I'm sure the Defense will be also, in actually working
9 with the witnesses in the case.

10 THE COURT: You mentioned first February 26th. What's wrong
11 with that date?

12 MR. BRACKETT: I was mentioning that as being the dead-
13 line to file the motions, but we'll be glad to do so.

14 THE COURT: Why don't we set February 26th as the dead-
15 line for filing motions, substantive motions?

16 MR. HANCOCK: Could we go to February 28th? That's on a
17 Monday I know, but that also gives additional time, a full
18 weekend, to do everything and file it on that Monday, in case
19 anything of an emergency nature comes up.

20 THE COURT: All right, February 28th.

21 MR. POPE: That would be Monday, the first.

22 THE COURT: Monday, March first.

23 MR. POPE: When would you propose to argue those, Your
24 Honor?

25 THE COURT: Let me get my calendar and see.

1 MR. POPE: While you're looking at that, Your Honor,
2 would it be possible to still tentatively set -- it's my under-
3 standing now the Defendant will be left here in York County.

4 Would it be feasible to tentatively schedule the -- I
5 don't know the -- the motions that were just made today, if it
6 would be appropriate to argue those that Friday, Friday the
7 28th? Friday, the 26th. I'm sorry.

8 THE COURT: I have a commitment already that Friday.

9 MR. POPE: Perhaps that Thursday. I know you're going to
10 be in the Third Circuit.

11 THE COURT: I'm going to be on vacation that week, but
12 that's not the problem that Friday. I'm going to do a workshop
13 in Columbia that Friday that I have committed to.

14 MR. POPE: Your Honor, I don't have a calendar before me
15 but I guess the next Friday prior to that would be the 21st.

16 THE COURT: The 19th.

17 MR. HANCOCK: That doesn't give the ten days.

18 MR. BRACKETT: Your Honor, the Order of Protection is in
19 place, and if it's going to be enforced then that is plenty
20 of time for us to argue these motions. We'd be glad to argue
21 them that Friday.

22 THE COURT: March 19th -- no, February 19th.

23 MR. POPE: Your Honor, you had indicated also that at
24 some point dealing with the jury issues, where we sit down and
25 -- I'm sure the Clerk has been instructed not to strike anybody

1 and . .

2 THE COURT: We'll do that the same day.

3 As far as the jury is concerned, what I like to do is to
4 get together with counsel and go through those jurors who have
5 sent back requests to be excused because they are a teacher or
6 student or have a child under the age of seven or have a doc-
7 tor's excuse.

8 At that time, if there are people that we can agree to
9 excuse, we will excuse them and not even require them to come.
10 If there are questions and we can't agree on them, then they'll
11 have to come that Monday.

12 MR. HANCOCK: Thank you, sir.

13 MR. POPE: Your Honor, it's my understanding that SLED has
14 been contacted as far the jury at this point. The only . .

15 THE COURT: I'm supposed to meet with them on Tuesday.

16 MR. POPE: The only other issues I have, Your Honor, the
17 Court issued and I've discussed it briefly with the Defense.
18 I'm not sure not to handle it, but the DNA issue -- and there
19 are two things.

20 Mr. Hancock hasn't asked me about it today but I know he
21 is curious about it, but as far as the SLED reports go, SLED
22 is in the process -- they say it's administrative review which
23 probably sounds to me like they are actually typing the re-
24 port now.

25 The preliminary work sheet indicates either the mother or

1 father's blood on all items -- either one or the other. Ms.
2 Robertson's is on the first, the end of the knife blade, the
3 knife blade. The father's is on the Tylex bottle. The front of
4 the pants is Mr. Robertson's. The back of the pants is Ms.
5 Robertson's.

6 The cloth handle is Mr. Robertson's and there's a sock
7 with Mr. Robertson's blood, a sock with Ms. Robertson's blood,
8 a sock with both of them's blood, and a sock with Ms.
9 Robertson's blood, a sock with Mr. Robertson's blood.

10 A towel with Ms. Robertson's blood. The tip of the bat
11 has both of their blood on it.

12 That's what we have from the SLED report, and that's my
13 understanding of what it will reflect.

14 As far as the testing in Tennessee, SLED experts talked
15 with them today, and before the day is out I should be able to
16 give Mr. Hancock a firm understanding of what's come out of
17 there, and where they are on that.

18 The only other issue I have concerns the DNA payment.
19 The Court has issued an Order. I have presented it to the
20 Defense.

21 I'm not sure if there's anything else the State needs to
22 do. The Sheriff's Office was assigned initially to get the
23 ball rolling on the PCR.

24 I understand you all have referred that Order over to
25 whoever pays for it.

1 THE COURT: OID.

2 MR. POPE: The Office of Indigent Defense. I didn't know
3 if there was anything further that needed to be addressed.

4 The Court could actually order the Indigent Defense
5 Fund to pay the money to Micro Diagnostics which is in Ten-
6 nessee, and this hasn't come to be an issue yet but when Micro
7 Diagnostics' paper work was originally filled out to expedite
8 the process the Sheriff signed for it to get it sent.

9 I guess the best thing would be when they send the bill
10 is just to address it to the Court. Mr. Hancock, is that the
11 next step?

12 MR. HANCOCK: Yes.

13 MR. POPE: I know one day the Sheriff is going to call me
14 up and say, what about the bill, and I just wanted to bring it
15 to the forefront.

16 Your Honor, I believe those are all the matters we have.

17 MR. BRACKETT: Just one -- we have met previously on at
18 least two occasions and gone over discovery, and I just offer
19 to the Defense again to schedule another day.

20 We will bring out again all our files, all the physical
21 evidence, everything that we've got, and we'll allow them to
22 go through it and make sure they have everything we've got.

23 We have a complete open file policy in the case, and we
24 will share with them everything that we've got.

25 But just out of an abundance of caution, to prevent any

1 last minute glitches, we will be happy at any time between now
2 and March 15th that they want to bring all the evidence out
3 and let them pour over it to their heart's content, to satisfy
4 themselves that they have everything we've got.

5 The physical evidence and any documentary evidence or
6 both. Photographs, videos -- whatever they . .

7 THE COURT: Mr. Hancock?

8 MR. HANCOCK: Your Honor, we will schedule a day for them
9 to trot the evidence out, but we will just all sit down and go
10 over it one more time before we . .

11 THE COURT: Mr. Boyd, anything you want to add?

12 MR. BOYD: Your Honor, we have created a March first
13 deadline for pre-trial motions, and obviously the guilt phase.
14 Do we need to schedule a date for hearing that now, or are we
15 going to talk about that next time?

16 THE COURT: Well, . .

17 MR. BOYD: It may be that we can see the magnitude of
18 what we offer forth and what the Defense offers forth and see
19 where we're at in that regard.

20 THE COURT: I'm scheduled for two solid weeks in March
21 for an asbestos case in Spartanburg. I will probably call
22 down and put those cases on hold, and what I'm suggesting
23 is that if you all agree to a time that perhaps we look at
24 Wednesday, March 3rd -- that afternoon.

25 I can just shut Court in Spartanburg at lunchtime, come

1 over here and have all afternoon, if need be.

2 Is that too early, too late? Is there a conflict?

3 MR. POPE: Your Honor, that should take care of the mat-
4 ter again unless there is some flood, and if there is we can
5 deal with it at that point.

6 The motion that was filed today -- I don't know if
7 there is any supporting documentation that we need bring to
8 the Court's attention at this time.

9 MR. BRACKETT: I just handed up the case of State ver-
10 sus Ted Benjamin Powers. It's a copy from the advance
11 sheet. I apologize that in my motion I did not have the
12 citation for that.

13 I did want to hand up the advance sheet copy of the
14 case.

15 THE COURT: Mr. Hancock, what about March 3rd?

16 MR. HANCOCK: I don't see any problem, Your Honor.

17 THE COURT: Mr. Boyd?

18 MR. BOYD: No problem, Your Honor.

19 THE COURT: All right. Well, we will work on that
20 then. Is there anything else?

21 MR. POPE: Your Honor, I understand you've taken the
22 motion for reconsideration under advisement.

23 THE COURT: Yes.

24 MR. POPE: Do you have a schedule as far as . .

25 THE COURT: Well, next week is in Chambers. I mean,

1 obviously this is the eleventh hour, but I would like to
2 get it done. I don't know it will be today, but early
3 next week I should get to it.

4 MR. POPE: All right, sir.

5 THE COURT: So that completes the hearing on this
6 matter.

7 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing is a true and complete transcript of record in the captioned matter as heard on February 12, 1999, in the Court of General Sessions for York County, and prepared from the records of Janet M. Fischer, to the best of my ability.

Further, I certify that I am not of kin or counsel to any party to this action, nor do I have any interest therein.



June 15, 2000

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
: SIXTEENTH JUDICIAL CIRCUIT)
SIXTEENTH JUDICIAL CIRCUIT)

JAMES D. ROBERTSON,)
: APPLICANT-PLAINTIFF,)
: VERSUS) TRANSCRIPT OF RECORD
: STATE OF SOUTH CAROLINA,) 06-CP-46-00532
: DEFENDANT.) VOLUME I

MONDAY, JANUARY 29, 2007
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE

A P P E A R A N C E S:

FOR THE APPLICANT-PLAINTIFF:
MICHAEL L. BROWN, ESQ.
JOSEPH MATLOCK, ESQ.

FOR THE STATE:
WILLIAM EDGAR SALTER III, ESQ., ASSISTANT ATTORNEY GENERAL

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

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1 THE COURT: MR. BROWN, LET'S START, IF IT SUITS YOU, BY YOU SORT
2 OF LAYING OUT FOR ME IN THE FASHION OF AN ABBREVIATED OPENING
3 STATEMENT— OR REALLY, IT DOESN'T HAVE TO BE ABBREVIATED. BUT I
4 WOULD LIKE TO HEAR AT LEAST AN ABBREVIATED OPENING STATEMENT AS
5 TO THE ISSUES YOU WANT TO ADDRESS AND HOW YOU WANT TO GO ABOUT
6 DOING THAT. AND THEN I'LL LET YOU GO AHEAD AND START WITH YOUR
7 EVIDENCE.

8 MR. BROWN: OF COURSE, YOUR HONOR, AS YOU WELL KNOW, WE
9 FILED A POST CONVICTION RELIEF. I WAS COURT-APPOINTED TO REPRESENT
10 MR. ROBERTSON, ALONG WITH MR. MATLOCK. AND WE FILED A POST
11 CONVICTION RELIEF PURSUANT TO STATUTE. PRIMARY FOR US WOULD BE
12 INEFFECTIVE ASSISTANCE OF COUNSEL. I HAVE THREE PRIMARY POINTS
13 THERE. ONE IS TESTIMONY. ONE IS THE INAPPROPRIATENESS OF THE
14 DEFENSE IN CALLING DOCTOR CASCIO AND THE RAMIFICATIONS FROM THAT
15 TESTIMONY. AND THE FAILURE TO CALL CERTAIN WITNESSES; IN
16 PARTICULAR, DOCTOR McMEEKIN, AND THE DEFENDANT'S BROTHER, CHIP
17 ROBERTSON.

18 WE HAVE VARIOUS AND OTHER SUNDRY ISSUES, YOUR HONOR,
19 RELATED TO MENTAL EVALUATION, MENTAL TESTIMONY, POST PLEA
20 BARGAINS, POSSIBLE PLEAS TO GUILTY BUT MENTALLY ILL; CERTAIN
21 FAMILY HISTORY MATTERS THAT WERE NOT RAISED I THOUGHT SHOULD
22 HAVE BEEN STATED PARTICULARLY IN MITIGATION CONCERNING THE
23 PSYCHOLOGICAL AND PSYCHIATRIC RECORDS OF EARL ROBERTSON AND
24 TERRY ROBERTSON; THE CROSS EXAMINATION OF MEREDITH MOON; THE
25 TIME THAT DEFENSE COUNSEL SPENT WITH MR. ROBERTSON PRIOR TO TRIAL.

1 I HAVE RECEIVED INFORMATION, ALSO, YOUR HONOR. I RECEIVED
2 THIS LAST THURSDAY, THAT ONE OF THE JURORS WHO GAVE THE VOIR DIRE
3 GAVE CERTAIN RESPONSES. AND I'VE ALSO BEEN INFORMED THAT
4 SUBSEQUENTLY IN THE MITIGATION PHASE THAT HE WAS GUNG-HO,
5 ASSERTING EVERYONE ELSE TO VOTE FOR DEATH.

6 MR. SALTER: YOUR HONOR, IF I MIGHT INTERRUPT AND JUST INQUIRE
7 WHO THAT JUROR IS, BECAUSE I HAVE NOT HEARD OF THIS ISSUE.

8 MR. BROWN: I DON'T KNOW. I'M SUPPOSED TO KNOW. WHEN I FIND
9 OUT I WILL LET YOU KNOW AS SOON AS I DO. I'VE GOT SOMEBODY WORKING
10 ON THAT.

11 YOUR HONOR, I TOLD MR. SALTER EVERYTHING. I FOUND THIS OUT
12 THURSDAY FROM MR. BOYD. I DON'T KNOW WHO THE JUROR IS BUT I CAN
13 GIVE THAT TO HIM AS SOON AS WE FIND IT OUT.

14 YOUR HONOR, WE ALSO RAISED THE FACT THAT THERE WAS LITTLE
15 OR NO EVIDENCE OF SKIPPER V. SOUTH CAROLINA EVIDENCE, OR
16 ADAPTABILITY EVIDENCE. WE'D LIKE TO ADDRESS THAT ISSUE TO THE
17 ATTORNEYS AND INEFFECTIVE ASSISTANCE OF COUNSEL.

18 IN A NUTSHELL, YOUR HONOR, THAT'S A BROAD, BROAD BASED
19 OUTLINE OF WHAT WE INTEND TO INTRODUCE. WE INTEND TO CALL MR.
20 ROBERTSON, MR. HANCOCK, MR. BOYD. IF MR. SALTER DOES NOT CALL MR.
21 BRACKETT AND MR. POPE, I WILL CALL THEM. BUT I AM SURE THAT HE'S
22 GOING TO CALL THEM.

23 THE COURT: LET ME GO BACK THROUGH THOSE A LITTLE BIT MORE
24 SLOWLY. THE WITNESS THAT THEY DID CALL, THE FIRST THING YOU
25 MENTIONED, WHAT WAS THAT WITNESS' NAME?

1 MR. BROWN: THE ONE THEY DID CALL, YOUR HONOR?

2 THE COURT: YES SIR.

3 MR. BROWN: THEY CALLED THE SOCIAL-- I GUESS IT WAS A
4 COUNSELOR. IT'S NOT A DOCTOR. SHE HAS A MASTER'S DEGREE IN FAMILY
5 THERAPY AND FAMILY COUNSELING, DOCTOR-- EXCUSE ME. SKIP MEYER,
6 WHO IS BASICALLY A FAMILY COUNSELOR WHO SAW THE MOTHER AND THE
7 FATHER AND BOTH SONS AT VARIOUS AND SUNDRY TIMES.

8 THE COURT: AND THAT WAS-- THERE WAS SOME ERROR IN CALLING
9 THAT WITNESS?

10 MR. BROWN: NO SIR. I THINK THE ERROR BECOMES WHEN THEY DO
11 NOT CROSS EXAMINE HIM AS TO THE DECEASED'S, EARL'S, PSYCHIATRIC AND
12 PSYCHOLOGICAL EVALUATION.

13 THE COURT: OKAY. WELL, GO BACK THROUGH EVERYTHING YOU
14 JUST LISTED FOR ME BECAUSE YOU GOT AHEAD OF ME. I COULDN'T KEEP UP
15 WITH IT. LET'S JUST GO BACK THROUGH THEM ONE AT A TIME. IT'S GOING
16 TO GIVE ME A NICE FRAMEWORK TO HEAR THE EVIDENCE IF I KNOW WHAT
17 ALL THE CLAIMS ARE.

18 MR. BROWN: YES SIR.

19 THE COURT: AND I KNOW THEY'RE IN THE PAPERS. BUT YOU'VE HAD A
20 CHANCE TO REFINE IT OVER THE LAST SEVERAL DAYS, I'M SURE.

21 MR. BROWN: YES SIR.

22 THE COURT: SO, THE SAME THING YOU JUST READ ME, LET'S GO A
23 LITTLE MORE SLOWLY.

24 MR. BROWN: YOUR HONOR, THE FIRST THING I'M GOING TO DO--
25 THERE'S NO CHRONOLOGICAL ORDER THAT I'M GONNA DO THIS, BUT JUST

1 THE WAY I GOT THEM WROTE DOWN. THERE WAS A PROPOSED PLEA
2 BARGAIN, YOUR HONOR. I UNDERSTAND FROM MY DEFENDANT, IT WAS
3 NEVER PURSUED.

4 THE COURT: ALL RIGHT.

5 MR. BROWN: THE DEFENDANT CLAIMS HE WANTED TO TESTIFY TO
6 CLEAR UP CERTAIN MATTERS THAT WERE BROUGHT OUT BY DOCTOR
7 CASCIO. AND I'LL COME BACK TO THAT ISSUE LATER. HE WAS ADVISED NOT
8 TO, AND BASED ON THEIR ADVICE, HE DIDN'T.

9 THE COURT: ALL RIGHT. HOLD ON.

10 (PAUSE)

11 GO AHEAD.

12 MR. BROWN: YOUR HONOR, THE STATE'S MENTAL EVALUATION, IN
13 PARTICULAR THERE, THE ADVICE HE WAS GIVEN AND HOW THAT MATTER
14 WAS HANDLED BY DEFENSE COUNSEL.

15 THE COURT: OKAY.

16 MR. BROWN: THE FACT THAT GUILTY BUT MENTALLY ILL WAS NOT
17 PURSUED.

18 THE COURT: ALL RIGHT, SIR.

19 MR. BROWN: YOUR HONOR, THE FAMILY HISTORY. AND WHEN I SAY
20 FAMILY HISTORY, I'M MAKING A MORE SPECIFIC REFERENCE TO
21 PSYCHIATRIC AND PSYCHOLOGICAL RECORDS OF THE TWO DECEASED AND
22 THE BROTHER. YOUR HONOR, ALL THESE GO TO MITIGATION OR THE
23 SENTENCING PHASE OF THE TRIAL WITH FEW EXCEPTIONS.

1 THE FACT THAT DOCTOR McMEEKIN, HAYNE McMEEKIN, WAS NOT
2 CALLED AS A WITNESS, AND HE WAS - FOR LACK OF A BETTER TERM - THE
3 FAMILY PSYCHIATRIST.

4 THE COURT: HOW DO I SPELL HIS LAST NAME?

5 MR. BROWN: M-c-M-E-E-K-I-N.

6 THE COURT: K-I-N?

7 MR. BROWN: YES SIR.

8 THE COURT: OKAY.

9 MR. BROWN: THE CROSS EXAMINATION OF SKIP MEYERS BY DEFENSE
10 COUNSEL. AND IN PARTICULAR, THE FACT THAT THE RECORDS AND THE
11 CONDITION OF EARL ROBERTSON, THE PSYCHOLOGICAL CONDITION OF EARL
12 ROBERTSON WAS NEVER BROUGHT FORWARD.

13 THE COURT: OKAY.

14 MR. BROWN: THE CROSS EXAMINATION OF MEREDITH MOON AND
15 THINGS THAT WERE LACKING IN THAT, WHO WAS THE KEY STATE'S WITNESS.

16 THE COURT: ALL RIGHT. HOLD ON JUST A SECOND.

17 (PAUSE)

18 ALL RIGHT.

19 MR. BROWN: THE TIME SPENT WITH DEFENDANT PRIOR TO TRIAL.

20 THE COURT: OKAY.

21 MR. BROWN: YOUR HONOR, THE JURY-- AND I JUST THROW THIS OUT
22 IN CASE I DO RAISE IT. IT MAY LEAD TO NOTHING, BUT I WANT TO MAKE THE
23 COURT AWARE OF THAT IN CASE IT DOES COME UP.

24 THE COURT: OKAY.

25 MR. BROWN: FAILURE TO CALL CHIP ROBERTSON AS A WITNESS.

1 THE COURT: OKAY.

2 MR. BROWN: FAILURE TO INTERJECT CHIP'S PSYCHOLOGICAL AND
3 PSYCHIATRIC RECORDS INTO EVIDENCE.

4 THE COURT: IS HE THE BROTHER?

5 MR. BROWN: YES SIR.

6 THE COURT: OKAY.

7 MR. BROWN: FAILURE OR LACK OF, OR VERY LITTLE SKIPPER V. SOUTH
8 CAROLINA OR ADAPTABILITY EVIDENCE.

9 THE COURT: OKAY.

10 MR. BROWN: BEG THE COURT'S INDULGENCE.

11 (PAUSE)

12 MR. BROWN: AND YOUR HONOR, THE LAST AND MOST IMPORTANT
13 AND WOULD PROBABLY WOULD BE ONE-THIRD TO ONE-FOURTH OF MY
14 CASE, IS THE TESTIMONY AND CONDITIONS SURROUNDING THE CALLING OF
15 DOCTOR TONI CASCIO, WHO WAS THE MITIGATION WITNESS FOR THE
16 DEFENSE.

17 THE COURT: SAY ALL THAT AGAIN, PLEASE.

18 MR. BROWN: YOUR HONOR, IT WOULD BE THE DECISION TO TEST AND
19 THE WAY THEY WERE RENDERED AND THE JUDGMENT TO CALL DOCTOR
20 TONI CASCIO AS A WITNESS.

21 THE COURT: ALL RIGHT. ANYTHING Y'ALL WANT TO SAY IN RESPONSE
22 AT THIS TIME?

23 MR. SALTER: NO, YOUR HONOR.

24 THE COURT: YOU CAN CALL YOUR FIRST WITNESS.

25 MR. BROWN: I'M SORRY, YOUR HONOR.

1 THE COURT: YOU CAN CALL YOUR FIRST WITNESS.

2 MR. BROWN: YOUR HONOR, BEFORE WE START I HAVE ONE MOTION
3 FOR THE COURT. I WOULD ASK FOR SEQUESTRATION OF WITNESSES IN THIS
4 MATTER. I THINK THE INTEREST OF JUSTICE WILL BE SERVED.

5 THE COURT: TELL ME WHAT IT IS ABOUT THIS CASE THAT MAKES IT
6 ADVISABLE TO SEQUESTER THE WITNESSES. NORMALLY, I WOULD EXPECT
7 THAT REQUEST TO COME FROM THE PARTY RESISTING THE BURDEN OF
8 PROOF, RATHER THAN THE PARTY BEARING IT. BUT, GO AHEAD.

9 MR. BROWN: IN THIS PARTICULAR CASE, YOUR HONOR, WHERE YOU
10 HAVE TWO PROSECUTORS AND TWO DEFENSE ATTORNEYS WHO WERE
11 WORKING TOGETHER, I WOULD LIKE TO SEE IF THEIR THOUGHT PROCESSES
12 ARE THE SAME OR IF THEY'RE CONTRADICTED.

13 THE COURT: ALL RIGHT. TELL ME WHO THE DEFENSE ATTORNEYS
14 WERE AT TRIAL.

15 MR. BROWN: JAMES W. HANCOCK AND JAMES W. BOYD.

16 THE COURT: ARE THEY HERE?

17 MR. BROWN: MR. HANCOCK IS, YOUR HONOR.

18 THE COURT: AT WHAT POINT DO YOU INTEND TO CALL MR. HANCOCK?

19 MR. BROWN: TODAY, AS SOON AS MR. ROBERTSON GETS OFF THE
20 STAND.

21 THE COURT: AND SO, YOU DON'T WANT MR. HANCOCK TO HEAR MR.
22 ROBERTSON'S TESTIMONY?

23 MR. BROWN: I DON'T CARE IF HE HEARS MR. ROBERTSON'S
24 TESTIMONY. I DON'T WANT HIM TO HEAR MR. BOYD'S TESTIMONY, OR MR.
25 BOYD TO HEAR HIS TESTIMONY, OR THEY DISCUSS IT.

1 THE COURT: WELL, MR. BOYD'S APPARENTLY NOT HERE ANYWAY.

2 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

3 THE COURT: IS MR. BOYD COMING TODAY?

4 MR. SALTER: I DON'T BELIEVE HE'S GOING TO COME TODAY, YOUR
5 HONOR.

6 THE COURT: IS THERE ANY OTHER WITNESS YOU WANT
7 SEQUESTERED?

8 MR. BROWN: THERE'S MR. POPE AND MR. BRACKETT, YOUR HONOR.
9 THEY CAN STAY IN AS LONG AS ONE DOESN'T HEAR THE OTHER TESTIFY.

10 MR. SALTER: YOUR HONOR, I WOULD OPPOSE HAVING EITHER OF
11 THEM SEQUESTERED SINCE I'M GOING TO LOOK TO THEM FOR ASSISTANCE.

12 THE COURT: WELL, YOUR REQUEST REGARDING SOLICITOR POPE AND
13 SOLICITOR BRACKETT IS THAT THEY NOT HEAR EACH OTHER'S TESTIMONY?

14 MR. BROWN: CORRECT, YOUR HONOR.

15 THE COURT: WHY DON'T WE JUST-- WE'VE GOT MR. HANCOCK AND
16 MR. BOYD TAKEN CARE OF.

17 MR. BROWN: YES SIR.

18 THE COURT: WHY DON'T WE JUST WAIT UNTIL WE GET TO THE POINT
19 WHERE THE SOLICITORS WILL BE CALLED AND WE'LL DECIDE AT THAT TIME
20 IF THERE'S ANY NEED TO SEQUESTER THEM?

21 MR. BROWN: YES SIR.

22 THE COURT: OKAY. GO AHEAD.

23 MR. MATLOCK: JUDGE, THE APPLICANT CALLS JAMES ROBERTSON.
24
25

1 JAMES ROBERTSON, DULY SWORN,

2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. MATLOCK:

4 Q MR. ROBERTSON, JUST FOR THE RECORD, IF YOU WOULD, GIVE
5 US YOUR FULL NAME AND SPELL YOUR MIDDLE NAME.

6 A JAMES deJARNETTE ROBERTSON. deJARNETTE: LITTLE d-e,
7 BIG J-A-R-N-E-T-T-E.

8 Q MR. ROBERTSON, AGAIN, FOR THE RECORD, YOU ARE THE
9 DEFENDANT IN THIS CASE, AND YOU WERE CONVICTED IN NOVEMBER
10 OF 2007, OR, OF 1997 OF A DOUBLE MURDER. IS THAT CORRECT?

11 A YES, I WAS CONVICTED.

12 Q AND YOU WERE SENTENCED. AND WHAT WERE YOU SENTENCED
13 TO?

14 A DEATH.

15 Q AND WHERE ARE YOU CURRENTLY HOUSED?

16 A DEATH ROW, SOUTH CAROLINA.

17 Q THAT'S IN LIEBER PRISON. IS THAT CORRECT?

18 A YES, RIDGELAND, SOUTH CAROLINA.

19 Q NOW, PEOPLE REFER TO YOU, AND YOU GO BY JIMMY. IS THAT
20 CORRECT?

21 A JIMMY, JIM.

22 Q DO YOU MIND IF I CALL YOU JIMMY?

23 A NOT AT ALL.

24 Q ALL RIGHT, JIMMY. LET'S TALK A LITTLE BIT ABOUT YOUR
25 BACKGROUND, JUST AS A SYNOPSIS FOR THE COURT, SO THEY KNOW

1 A LITTLE ABOUT YOU. TELL US ABOUT WHERE YOU WERE BORN AND
2 YOUR LIFE IN SOUTH CAROLINA.

3 A I WAS BORN IN YORK COUNTY. WE MOVED TO CALIFORNIA
4 WHEN I WAS VERY YOUNG. IN FACT, I DON'T REMEMBER IT. WE
5 MOVED TO MICHIGAN SUBSEQUENTLY. AND THEN BACK TO ROCK
6 HILL IN 1981.

7 Q 1981? CALIFORNIA, HOW LONG WERE THERE?

8 A I WAS EIGHT YEARS OLD. I WAS BORN IN 1973.

9 Q TELL ME A LITTLE BIT ABOUT YOUR PARENTS, IF YOU WOULD,
10 PLEASE.

11 A MOM WAS FOR THE MOST PART A HOUSEWIFE. SHE HAD
12 TAUGHT SCHOOL A LITTLE BIT BEFORE, BUT AFTER MY BROTHER AND
13 I WERE BORN SHE BASICALLY BECAME A FULL-TIME MOTHER AND
14 WIFE.

15 MY FATHER WAS AN EXECUTIVE AT SPRINGS INDUSTRIES IN
16 LANCASTER, SOUTH CAROLINA.

17 Q HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP AS A FAMILY
18 DURING THAT PERIOD OF TIME?

19 A TENUOUS.

20 Q TENUOUS, WHY WAS THAT?

21 A (NO RESPONSE)

22 Q WOULD YOU DESCRIBE YOUR FAMILY AS YOUR TYPICAL
23 AMERICAN FAMILY?

24 A I WOULD DESCRIBE THEM AS APPEARING TO BE THE TYPICAL
25 AMERICAN FAMILY.

1 Q OKAY.

2 A IF YOU SAW A PICTURE OF US, IF YOU SAW US AT A PUBLIC
3 FUNCTION, IF YOU SAW US AT CHURCH, YOU WOULD ASSUME THAT
4 EVERYTHING WAS PERFECT, IT COULDN'T HAVE BEEN BETTER. BUT
5 THAT WASN'T NECESSARILY THE CASE ALL THE TIME.

6 Q TELL ME ABOUT YOUR MOTHER FOR A MINUTE. DID SHE HAVE
7 EMOTIONAL OR MENTAL HEALTH PROBLEMS?

8 A SHE DID. I DON'T KNOW THE SPECIFICS OF THEM. I MEAN, WHAT
9 THEY'RE SPECIFICALLY CALLED, BUT SHE OBVIOUSLY HAD, PROBABLY
10 OBSESSIVE-COMPULSIVE DISORDER, BI-POLAR DISORDER.

11 Q WELL, BASED ON YOUR DIAGNOSIS, SHE WAS OBVIOUSLY
12 HAVING COUNSELING AND MENTAL HEALTH-- IS THAT WHAT WAS---

13 A YES. I'D SAY THINGS WENT DOWNHILL FOR HER WHEN HER
14 FATHER DIED. FROM THERE IT JUST SEEMED LIKE THINGS CRUMBLED.
15 SHE COULDN'T TAKE CARE OF HERSELF. IT DIDN'T APPEAR THAT SHE
16 COULD TAKE CARE OF HERSELF, MUCH LESS ANYTHING ELSE.

17 Q WHAT WAS HER RELATIONSHIP WITH YOUR FATHER?

18 A FROM A CHILD'S POINT OF VIEW, IT APPEARED, IT APPEARED
19 MOST OF THE TIME TO BE LOVING, COMMITTED, FAITHFUL. I GUESS,
20 AS I GOT OLDER, AS I UNDERSTOOD MORE, BECAME AN ADULT, YOU
21 COULD SEE THE STRAIN. BUT THEY MAINLY LOOKED, YOU KNOW,
22 LIKE FAIRLY ROUTINE, STRAINED PARENTS.

23 MOST OF THEIR PROBLEMS BETWEEN THEM WERE CENTERED
24 AROUND PROBLEMS CENTERED AROUND ME AND MY BROTHER.

1 Q OKAY. WHAT WAS YOUR RELATIONSHIP, AND YOUR BROTHER--

2 WELL, LET'S JUST STICK WITH YOUR RELATIONSHIP. WHAT WAS YOUR
3 RELATIONSHIP WITH YOUR FATHER?

4 A A BATTLE, LITERALLY FROM, I GUESS FROM ABOUT THE AGE,
5 THE EARLIEST I CAN REMEMBER. WE'LL SAY TEN OR ELEVEN. IT WAS
6 A MATTER OF LIVING UP TO SOMETHING THAT I WASN'T ALWAYS SURE
7 HOW FAR I HAD TO GO.

8 Q AND YOUR FATHER WAS PRETTY SUCCESSFUL, WASN'T HE?

9 A HE WAS. HE BROUGHT HIMSELF UP FROM NOTHING, BASICALLY,
10 AND BECAME SUCCESSFUL.

11 Q YOU WERE HAVING, BASICALLY, YOU WERE HAVING MENTAL
12 HEALTH PROBLEMS IN YOUR ENTIRE MEMORY OF YOUR CHILDHOOD.
13 IS THAT CORRECT? COUNSELING AND PSYCHIATRIC EVALUATIONS
14 AND PSYCHOLOGICAL REPORTS DONE?

15 A YES, FROM EARLY TEENS ON.

16 Q OKAY.

17 A AT THAT TIME I WONDERED WHY THE PROBLEMS HAD JUST
18 THEN SURFACED. THE DOCTOR HAD SAID THEY PROBABLY HAD BEEN
19 THERE ALL ALONG.

20 Q AND DIDN'T THIS CULMINATE IN YOUR BEING INVOLUNTARILY
21 COMMITTED TO A MENTAL INSTITUTION, A MENTAL HEALTH
22 INSTITUTION?

23 A IT DID, IN 1995.

24 Q HOW OLD WERE YOU THEN?

25 A TWENTY-ONE, TWENTY-TWO.

1 Q HOW LONG DID YOU STAY THERE?

2 A TEN DAYS.

3 Q ABOUT TEN DAYS. DO YOU RECALL WHAT THE CRUX OF THE
4 EVALUATION WAS AND WHAT ASSISTANCE THEY GAVE YOU AS FAR
5 AS DRUGS OR ANYTHING ALONG THOSE LINES?

6 A I BELIEVE I WAS DIAGNOSED AS MANIC DEPRESSIVE, BI-POLAR,
7 ADD. I WAS PRESCRIBED SEVERAL DRUGS. I WAS TAKEN OFF A DRUG
8 OR TWO BECAUSE IT INTERFERED WITH A HEART MURMUR OR
9 SOMETHING.

10 Q DID YOU TAKE ANY OTHER DRUGS THAT WEREN'T PRESCRIBED?

11 A YES. I SMOKED MARIJUANA, I DRANK, ONE THING OR ANOTHER.
12 AND I GUESS AT SOME POINT IN MY LIFE I TRIED, DECIDED TO TRY
13 MAJOR DRUGS.

14 Q YOU WERE IN COLLEGE DURING THIS PERIOD, FOR A PORTION OF
15 TIME. IS THAT RIGHT?

16 A YES, PRIOR TO THIS IN '95, I GUESS.

17 Q AND WHAT HAPPENED WITH YOUR COLLEGE?

18 A IT WAS A CHANGE FROM HIGH SCHOOL, WHERE HIGH SCHOOL I
19 DIDN'T HAVE TO DO ANYTHING. HIGH SCHOOL WAS JUST HIGH
20 SCHOOL. AND I GUESS I CAME TO EXPECT IT WOULD BE SO EASY AND
21 WENT SOMEWHERE WHERE I THOUGHT I WANTED TO GO, BUT REALLY
22 WHERE MY FATHER WANTED ME TO GO, AND MY FATHER HAD
23 GRADUATED.

24 Q FROM WHERE?

25 A GEORGIA TECH.

JAMES ROBERTSON - DIRECT EXAMINATION BY MR. MATLOCK

1 Q HOW LONG DID YOU STAY AT GEORGIA TECH?

2 A ON AND OFF, ABOUT TWO AND A HALF YEARS.

3 Q WHY DID YOU LEAVE?

4 A TECHNICALLY, I GUESS I FLUNKED OUT, BUT I FLUNKED OUT TO
5 SPITE MY FATHER.

6 Q OKAY.

7 A ON PURPOSE.

8 Q WHAT WAS YOUR FATHER'S REACTION TO YOUR LEAVING
9 COLLEGE, FOR WHATEVER REASON?

10 A LIKE THE WORLD HAD ENDED; LIKE, YOU KNOW, -- THE FACT
11 THAT I WANTED TO TAKE ONE QUARTER OFF AFTER THE FIRST YEAR
12 WAS LIKE THE WORLD HAD COME TO AN END.

13 Q SO, IT WOULD BE FAIR TO DESCRIBE THE SITUATION IN YOUR
14 HOME LIFE AS HAVING BEGUN A DOWNWARD SPIRAL?

15 A OH, STEADILY DETERIORATING. YOU KNOW, FROM THE FIRST
16 TIME I TOLD HIM THAT I DIDN'T WANT TO GO BACK TO SCHOOL AND
17 HE ASKED ME WHY. I TOLD HIM I DIDN'T WANT TO GO BACK; I JUST
18 PREFERRED TO WORK FOR A WHILE. YOU KNOW, HE JUST WENT--

19 I WAS EXPECTED TO DO THINGS THEIR WAY. I WAS EXPECTED
20 TO GO TO COLLEGE AND BE FINISHED IN A CERTAIN AMOUNT OF TIME,
21 BE MARRIED, HAVE CHILDREN, BLAH, BLAH, BLAH, YOU KNOW,
22 STRAIGHT DOWN THE LINE. AND WHAT I WANTED JUST DIDN'T
23 FOLLOW THAT LINE. THAT'S UNFORTUNATE, I GUESS. WE BUTTED
24 HEADS AND WE DID IT OFTEN.

1 Q WHAT WAS YOUR RELATIONSHIP WITH YOUR BROTHER AT THIS
2 PARTICULAR TIME, CHIP?

3 A MY RELATIONSHIP WITH MY BROTHER HAS ALWAYS BEEN VERY
4 CLOSE.

5 Q WHERE WAS HE DURING THIS SPECIFIC PERIOD OF YOUR
6 COLLEGE YEARS?

7 A MY FIRST-- WELL, '92 TO '94, HE WAS FINISHING HIGH SCHOOL IN
8 ROCK HILL. AND THEN IN '94, HE GRADUATED AND WENT TO THE
9 UNIVERSITY OF PENNSYLVANIA. AND THAT COINCIDED WITH MY
10 LAST LITTLE, YOU KNOW, SHINDIG AT GEORGIA TECH, MY LAST TWO
11 QUARTERS THERE. SO, THERE WAS A TIME THAT WE WERE BOTH IN
12 COLLEGE, BUT IT WAS VERY BRIEF.

13 Q IN YOUR ASSOCIATIONS WITH YOUR BROTHER, DID YOU USE
14 DRUGS OR ALCOHOL OR ANYTHING?

15 A YES. WE, YOU KNOW, IF WE WERE HOME TOGETHER ON A
16 BREAK OR DURING THE SUMMER, WE SHARED AN AFFINITY FOR
17 ALCOHOL AND MARIJUANA, MAINLY.

18 Q SPECIFICALLY, WAS THERE ANY OTHER DRUGS THAT YOU USED
19 WITH YOUR BROTHER, THAT MIGHT HAVE BEEN PRESCRIBED TO YOU?

20 A YES. LATER, RITALIN, HE WAS PRESCRIBED RITALIN FOR ADD
21 AND IT HELPED HIM WHEN HE TOOK IT, WHEN HE TOOK IT AS
22 PRESCRIBED. AND WE ENDED UP NOT TAKING IT AS PRESCRIBED AND
23 SO, IT'S A PRETTY NASTY DRUG WHEN YOU DON'T TAKE IT AS
24 PRESCRIBED.

1 Q WHEN YOU SAY YOU WERE NOT TAKING IT AS PRESCRIBED, HOW
2 WERE YOU INGESTING IT?

3 A WE WERE ELIMINATING THE TIME-RELEASED PART OF IT,
4 CRUSHING IT, SNORTING IT, LIKE YOU WOULD SNORT COCAINE.

5 Q OKAY. LET'S FAST FORWARD, THEN, TO THE ACTUAL DATE OF
6 YOUR TRIAL, WHICH WAS IN NOVEMBER OF 1997. IS THAT CORRECT?

7 A NO, THAT WOULD HAVE BEEN IN MARCH, 1998.

8 Q MARCH, OKAY. NOW DURING THE COURSE OF YOUR TRIAL DID
9 YOUR ATTORNEYS AT ANY TIME DISCUSS WITH YOU A PLEA BARGAIN
10 OF ANY TYPE THAT HE WOULD BE MAKING WITH THE STATE IN THIS
11 CASE?

12 A NO, I DON'T REMEMBER DISCUSSING ANYTHING. ALL I EVER
13 REMEMBER DISCUSSING IS WHEN WE WERE GOING TO TRIAL, WHAT
14 EXPERT I NEEDED TO TALK TO NEXT.

15 Q SPECIFICALLY, I'M REFERRING TO AN INCIDENT WHERE YOU
16 FOUND OUT THROUGH THE PAPER, THROUGH YOUR ATTORNEYS, THAT
17 MR. KEVIN BRACKETT, WHO WAS THE DEPUTY SOLICITOR AT THE
18 TIME, HAD A CONVERSATION WITH YOUR ATTORNEYS, REGARDING
19 SOME TYPE, REFERRING TO SOME TYPE OF PLEA BARGAIN.

20 A YES. I KNEW NOTHING ABOUT IT UNTIL I GOT ON DEATH ROW
21 AND READ A NEWSPAPER ARTICLE FROM A REPORTER. AND I WAS
22 SHOCKED. I MEAN, I KNEW ABSOLUTELY NOTHING ABOUT IT.
23 BASICALLY, THE ARTICLE SAID THAT BRACKETT, MR. BRACKETT, AND
24 MY BROTHER'S ATTORNEY HAD SPOKEN IN PASSING, OR PERHAPS HAD
25 BEEN WALKING DOWN THE HALLWAY OR SOMETHING, AND MR.

1 BRACKETT HAD SOMETHING TO THE EFFECT OF IF CHIP, - CHIP, MY
2 BROTHER - FORFEITS, THEN THE STATE WILL DROP THE DEATH
3 PENALTY ON HIS BROTHER. AND--

4 Q AND WHEN THEY SAY DROP THE DEATH PENALTY, WHAT
5 WOULD BE THE ALTERNATIVE?

6 A LIFE.

7 Q IT WOULD BE LIFE.

8 A AND ALLOW JIMMY TO PLEAD TO LIFE. AND THAT WAS THE
9 FIRST I HAD EVER READ OF IT; I MEAN, EVER EVEN HEARD OF IT. I
10 DIDN'T KNOW ANYTHING ABOUT IT UNTIL THEN. I DON'T EVEN-- THE
11 FIRST TIME I MENTIONED IT TO MR. HANCOCK BEFORE AND AFTER
12 THAT MAY VERY WELL HAVE BEEN A PHONE CALL A WEEK OR SO
13 LATER, OR A LETTER A WEEK OR SO LATER, IN PASSING, JUST
14 WANTING TO KNOW WHAT HAPPENED HERE, WHEN DID THIS HAPPEN;
15 YOU KNOW, WHAT WAS THE RESULT; DID YOU PURSUE THIS, YOU
16 KNOW.

17 THE ARTICLE DID STATE THAT MR. BRACKETT DID STATE TO HIM
18 THAT HE CONSIDERED IT A JOKE. THAT MY BROTHER'S ATTORNEY
19 COULDN'T CONSIDER IT A JOKE.

20 Q YOUR BROTHER'S ATTORNEY COULD NOT CONSIDER IT A JOKE?

21 A HE COULDN'T. HE HAD TO TAKE IT TO HIS CLIENT.

22 Q RIGHT.

23 A IT WAS HIS OBLIGATION TO TAKE IT TO HIS CLIENT.

24 Q HE TOOK IT TO HIS CLIENT AND THEN IN FACT DID
25 COMMUNICATE WITH YOUR ATTORNEY. IS THAT CORRECT?

1 A YEAH, AND THEN COMMUNICATED WITH MY ATTORNEY. IT WAS
2 APPARENTLY SERIOUS ENOUGH IN HIS EYES TO TAKE IT TO HIS CLIENT.

3 MR. SALTER: OBJECTION, YOUR HONOR, BOTH TO HEARSAY AND
4 SPECULATION.

5 THE COURT: I SUSTAIN THE OBJECTION.

6 Q SPECIFICALLY, THOUGH, YOUR ATTORNEY NEVER DISCUSSED
7 THIS INCIDENT WITH YOU. NOT THE INCIDENT, BUT NEVER DISCUSSED
8 THIS CONVERSATION UNTIL WHEN?

9 A AT LEAST A WEEK AFTER BEEN SENTENCED TO DEATH.

10 Q WERE THERE ANY OTHER DISCUSSIONS WITH REGARD TO PLEA
11 BARGAINS OR TRIAL TACTICS, OR WHATEVER? SPECIFICALLY, LET ME
12 DIRECT YOUR ATTENTION TO THESE PSYCHOLOGICAL EVALUATIONS
13 THAT YOU'D BEEN HAVING. WAS THERE ANY DISCUSSION ABOUT A
14 GUILTY BUT MENTALLY IMPAIRED, OR ANY INSANITY PLEAS, OR
15 ANYTHING ALONG THOSE LINES WITH YOUR ATTORNEYS?

16 A NO SIR. I WAS TOLD I WAS SEEING THESE EXPERTS
17 SPECIFICALLY TO GATHER INFORMATION AND EVIDENCE FOR TRIAL,
18 SPECIFICALLY FOR THE SENTENCING PHASE OF THE TRIAL,
19 SPECIFICALLY.

20 Q DID THEY EVER ASK YOUR ASSESSMENT OF THIS TACTIC? DID
21 YOU GIVE ANY INPUT? DID YOU ASSIST THEM IN YOUR OWN DEFENSE
22 WITH REGARD TO HOW THIS WAS GOING DOWN?

23 A YES. BUT, TO BE QUITE HONEST, I DON'T BELIEVE THAT I EVER
24 BROUGHT UP A PLEA. IT WASN'T MENTIONED TO ME, BUT I DON'T
25 BELIEVE THAT I WAS BEATING DOWN THE DOOR.

1 Q DID YOUR ATTORNEYS EVER EXPLAIN TO YOU YOUR OPTIONS IN
2 THAT REGARD?

3 A NO.

4 Q DID HE EVER EXPLAIN TO YOU THE GUILTY BUT MENTALLY
5 IMPAIRED POTENTIAL?

6 A NO. THERE ONLY SEEMED LIKE ONE OPTION: THEY WERE GOING
7 TO TRIAL.

8 Q YOU WERE GOING TO TRIAL. AND THE DECISION, I BELIEVE, WAS
9 TO NOT PRESENT ANY DEFENSE. IS THAT RIGHT?

10 A WE PRESENTED NO DEFENSE AT ALL.

11 Q DURING THE GUILTY PHASE, THERE WAS NOTHING PUT ON
12 RECORD BY YOUR ATTORNEYS IN ANY WAY TO PRESENT YOUR
13 POSITION AND YOUR DEFENSE IN THIS CASE?

14 A NO SIR.

15 Q DESPITE THE FACT THAT YOU HAD TESTIMONY, OR YOU HAD
16 EVALUATIONS BY SOME VERY, A NUMBER OF PSYCHOANALYSTS AND
17 PSYCHOLOGISTS AND PSYCHIATRISTS, NONE OF THAT WAS PRESENTED
18 DURING YOUR CASE IN CHIEF. IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q AND ONE OF THESE PSYCHOLOGISTS, OR, ACTUALLY THE
21 PROFESSOR OF NEUROSURGERY, OR NEUROLOGY, AND CHAIRMAN
22 EMERITUS AT GEORGETOWN UNIVERSITY, RENDERED A REPORT ON
23 YOUR CASE. ISN'T THAT RIGHT?

24 A YES, IT IS.

1 Q AND IN THAT REPORT BY THIS HIGHLY ACCLAIMED PHYSICIAN,
2 HE, IN FACT, STATED-- AND I'LL LET YOU REFER TO THIS SENTENCE
3 HERE, AND MAYBE YOU CAN JUST READ IT TO THE COURT.

4 MR. SALTER: YOUR HONOR, I HAVE AN OBJECTION TO READING
5 FROM THE REPORT. I BELIEVE DOCTOR PINCUS' TESTIMONY, IF THAT'S
6 THE DOCTOR TO WHOM HE'S REFERRING, DOCTOR PINCUS' TESTIMONY
7 IS IN THE RECORD. IN TERMS OF READING THIS REPORT, I OBJECT,
8 OBVIOUSLY.

9 THE COURT: IT SOUNDS TO ME AS THOUGH WHAT'S COMING
10 FROM THAT REPORT WOULD BE HEARSAY.

11 MR. MATLOCK: THAT'S CORRECT, YOUR HONOR. BUT WE'RE
12 HERE ON INEFFECTIVE ASSISTANCE OF COUNSEL, AND WHAT I'M JUST
13 TRYING TO DO IS JUST SHOW THAT THE TRIAL ATTORNEYS WERE
14 INEFFECTIVE IN NOT PRESENTING THIS WITNESS AT TRIAL, IN THE
15 GUILTY PHASE.

16 THE COURT: IN THAT CASE, THEN, IT'S NOT OFFERED TO PROVE
17 THE TRUTH OF THE MATTER ASSERTED.

18 MR. MATLOCK: THAT'S CORRECT.

19 THE COURT: IT'S OFFERED TO SHOW THAT THIS IS THE
20 EVIDENCE, THIS IS WHAT WAS BEFORE DEFENSE COUNSEL WHEN THEY
21 MADE CERTAIN DECISIONS. SO,...

22 MR. SALTER: JUST SO I'M CLEAR. DOCTOR PINCUS DID TESTIFY.
23 ARE YOU SAYING THAT HE, THAT HE TESTIFIED IN THE GUILT PHASE?

24 MR. MATLOCK: YES.

1 THE COURT: WELL, IF YOU'RE OFFERING THAT REPORT, YOU
2 DON'T HAVE TO GET HIM TO READ IT, FIRST OF ALL.

3 MR. MATLOCK: I WANT---

4 THE COURT: YOU CAN OFFER IT INTO EVIDENCE. I'LL ACTUALLY
5 PREFER TO LOOK AT IT MYSELF. BUT IF YOU'RE OFFERING IT TO SHOW
6 WHY YOU CLAIM THEY, THE DEFENSE LAWYERS, SHOULD HAVE MADE
7 A DIFFERENT DECISION IN PRESENTING DOCTOR PINCUS, THEN IT
8 WOULD NOT BE HEARSAY, AND I WOULD ADMIT IT.

9 YOU CAN DO IT IF YOU WANT TO, BUT YOU DON'T HAVE TO GET
10 HIM TO READ IT. I'LL LET YOU MAKE THAT CHOICE.

11 MR. MATLOCK: SO, IN OTHER WORDS, WHAT YOUR HONOR'S
12 SAYING IS I CAN JUST SUBMIT IT.

13 THE COURT: YOU CAN SUBMIT IT.

14 MR. MATLOCK: ALL RIGHT. THEN I'LL DO THAT, IN THE
15 INTEREST OF JUDICIAL ECONOMY.

16 Q AND THERE WERE A NUMBER OF OTHER PSYCHOLOGISTS AND
17 PSYCHIATRISTS THAT YOU SAW, IN PARTICULAR?

18 A YEAH, THERE WAS A STEADY STREAM OF THEM.

19 Q HOW MANY? DO YOU RECALL HOW MANY?

20 A NO. BUT I SPENT A GOOD PORTION OF A YEAR.

21 Q WELL, WAS IT MORE THAN TEN, FIVE, SOMEWHERE IN THAT
22 AREA?

23 A BETWEEN FIVE AND TEN.

24 Q OKAY.

25 A MULTIPLE TIMES WITH EACH.

JAMES ROBERTSON - DIRECT EXAMINATION BY MR. MATLOCK

27

1 Q ONE OF THOSE PSYCHOLOGISTS, I'LL USE FOR WANT OF A
2 BETTER TERM, WAS TONI CASCIO. IS THAT CORRECT?

3 A YEAH.

4 Q NOW, JUST TO CLARIFY, --

5 THE COURT: BEFORE WE MOVE ON, LET ME BACK UP JUST A
6 LITTLE BIT TO THAT REPORT.

7 MR. MATLOCK: YES SIR.

8 THE COURT: TO THAT REPORT. THERE ARE TWO COMPONENTS
9 TO YOUR BURDEN OF PROOF HERE. ONE IS THAT IT IS TO PROVE THAT
10 COUNSEL DID SOMETHING THAT WAS BELOW PROFESSIONAL NORMS.
11 AND THE SECOND WOULD BE THAT AS TO EACH OF THOSE POINTS
12 WHERE YOU MIGHT SUCCESSFULLY PROVE THAT COUNSEL'S
13 PERFORMANCE FELL BELOW PROFESSIONAL NORMS, THAT THERE IS A
14 REASONABLE PROBABILITY THAT THE OUTCOME OF THE CASE WOULD
15 HAVE BEEN DIFFERENT.

16 NOW, ON THAT FIRST PRONG, OFFERING THE REPORT OF THE, OF
17 DOCTOR PINCUS DOES NOT SEEM TO ME AS THOUGH IT WOULD BE
18 HEARSAY IN YOUR PROVING WHETHER OR NOT THE DECISION THAT
19 COUNSEL MADE WAS REASONABLE.

20 BUT, ON THE SECOND PRONG, IN TRYING TO PROVE THAT THE
21 TESTIMONY OF THE WITNESS WOULD HAVE MADE A DIFFERENCE,
22 THEN I THINK IT WOULD BE HEARSAY, DEPENDING ON WHAT IT IS.
23 BUT IF IT IS HIS CONCLUSIONS AND HIS OPINIONS, THEN I THINK IT
24 WOULD BE HEARSAY.

1 WELL, IT'S SORT OF AN ARTIFICIAL DISTINCTION THAT I HAVE TO
2 MAKE. BECAUSE IF I'M GOING TO HEAR THE TESTIMONY, I'M SAYING
3 THAT I THINK I CAN CONSIDER IT ON THE FIRST PRONG BECAUSE IT'S
4 NOT OFFERED FOR IT'S TRUTH. BUT IF IT'S ON THE SECOND PRONG, IF
5 YOU'RE SAYING THAT THIS PARTICULAR TESTIMONY MIGHT HAVE
6 CONVINCED THE JURY TO DO SOMETHING DIFFERENT, THEN I THINK
7 THAT WOULD BE HEARSAY.

8 SO, I WON'T BE ABLE TO CONSIDER THAT REPORT FOR ITS TRUTH
9 IN EVALUATING YOUR CLAIM ON THE SECOND PRONG OF STRICKLAND.
10 IF YOU DISAGREE WITH THAT, LET ME KNOW. BUT THAT'S MY
11 REACTION TO YOUR OFFERING THAT DOCUMENT INTO EVIDENCE.

12 MR. MATLOCK: THAT'S CORRECT, YOUR HONOR. AND IN
13 FURTHER TESTIMONY, AS THE HEARING UNFOLDS, THAT WILL BE
14 BROUGHT OUT IN A DIFFERENT WAY SO IT WON'T BE HEARSAY.

15 THE COURT: ALL RIGHT, SIR.

16 MR. MATLOCK: THANK YOU, YOUR HONOR.

17 Q NOW, TO GET BACK TO WHERE I WAS, JIMMY, IF YOU'RE
18 FOLLOWING ME SO FAR. WE WERE TALKING ABOUT DOCTOR CASCIO.

19 A YES.

20 Q AND SHE WAS CALLED, NOT DURING THE CASE IN CHIEF OR THE
21 GUILTY PHASE, BUT DURING THE SENTENCING PHASE. IS THAT RIGHT?

22 A YES, SHE WAS CALLED DURING THE SENTENCING PHASE.

23 Q AS PART OF HER TESTIMONY SHE SUBMITTED A REPORT. SHE
24 ALSO VOL-- YOUR ATTORNEYS VOLUNTARILY GAVE THE

1 PROSECUTION CERTAIN NOTES THAT SHE HAD MADE IN SUPPORT OF
2 THAT. IS THAT CORRECT?

3 A YES. BUT, IN A NUTSHELL, YES. I'M NOT SURE OF THE SPECIFIC
4 SURROUNDINGS HOW THAT PROCESS HAPPENED. BUT, YES, SOMEHOW
5 THE PROSECUTION WOUND UP WITH HER NOTES.

6 Q AND SHE WAS CROSS EXAMINED EXTENSIVELY ON THE NOTES
7 AND THE REPORT, AND THE NOTES, SPECIFICALLY, RIGHT, DURING
8 THE---

9 A YES, WORD FOR WORD.

10 Q ---TRIAL. NOW, AS A RESULT OF THAT CROSS EXAMINATION, DID
11 YOU HAVE A DISCUSSION WITH YOUR ATTORNEY THAT YOU WANTED
12 TO TESTIFY TO DO SOME - AGAIN, FOR WANT OF A BETTER TERM -
13 DAMAGE CONTROL IN THAT AREA?

14 A I DID. SHE WAS THE LAST-- I BELIEVE SHE WAS PRETTY CLOSE
15 TO ONE OF LAST WITNESSES. AND I REMEMBER GOING IN THE
16 CONFERENCE ROOM AND SITTING DOWN WITH BOTH MY ATTORNEYS
17 AND BEING UPSET BECAUSE WHAT SHE HAD DIVULGED TO THE COURT,
18 TO THE JURY WAS ABOUT THE SAME AS ME DIVULGING IT MYSELF. I
19 MIGHT AS WELL HAVE TESTIFIED, YOU KNOW.

20 AND I WAS UPSET. I WAS CLEARLY UPSET. I BELIEVE MY
21 ATTORNEYS WERE UPSET. I BELIEVE THAT THEY MAY HAVE MADE A
22 MIS-- I BELIEVE THAT THEY THOUGHT THEY MAY HAVE MADE A
23 MISTAKE.

24 Q MADE A MISTAKE HOW?

1 A BY PUTTING HER ON THE STAND, OR BY, OR SOME PROCESS
2 THAT ENDED UP WITH THE PROSECUTOR HAVING THESE NOTES. AS I
3 SAID, I DON'T UNDERSTAND THAT ENTIRE PROCESS OF HOW THE
4 INFORMATION GETS EXCHANGED.

5 I TOLD THEM, I SAID I WANT TO TESTIFY NOW BECAUSE THERE'S
6 NOTHING TO LOSE. THAT AT LEAST I COULD GET UP THERE AND LET
7 THE JURY HEAR IT OUT OF MY OWN MOUTH. THEY HAD BASICALLY
8 HEARD IT, BUT THEY HAD HEARD IT FROM A THIRD PARTY.

9 Q AND WHAT WAS YOUR ATTORNEYS' RESPONSE TO THAT?
10 SPECIFICALLY, WHO WAS YOUR ATTORNEY WHEN YOU WERE HAVING
11 THE MAJORITY OF THIS DISCUSSION?

12 A MR. HANCOCK.

13 Q OKAY.

14 A I WOULDN'T SAY IT WAS A HEATED ARGUMENT OR A
15 DISCUSSION. I MEAN, IT WAS EMOTIONAL. YOU KNOW, IT APPEARED
16 TO BE A PRETTY CRITICAL POINT AT THAT POINT. SHE SPENT ALL DAY
17 UP HERE AND BASICALLY JUST TOLD THE STORY. AND I WAS ADVISED
18 BY BOTH OF THEM NOT TO TESTIFY; THAT IF I DID I WOULD OPEN
19 MYSELF UP TO ALL KINDS OF AVENUES FOR THE PROSECUTOR TO
20 EXPLORE. I WANTED TO TESTIFY. I HEADED MY ATTORNEY'S ADVICE.

21 Q NOW, WHEN THEY WERE ADVISING YOU, YOUR ATTORNEYS,
22 AGAIN, ON SPEAKING WITH THESE VARIOUS MENTAL HEALTH
23 OFFICIALS, PARTICULARLY CASCIO, WHAT DID THEY TELL YOU WITH
24 REGARD TO YOUR OPENNESS WITH THIS PRIVILEGED INFORMATION?
25 DO YOU SEE WHERE I'M GOING WITH THIS?

1 A YES. ON THE FIRST DAY I WAS TOLD, YOU KNOW, YOU NEED TO
2 TELL EVERYTHING. YOU KNOW, BASICALLY WE'RE TRYING. YOU
3 KNOW, WE CAN'T-- UNLESS WE KNOW EVERYTHING WE CAN'T BUILD,
4 WE CAN'T FIGURE OUT WE NEED TO BE ABLE TO FIGURE OUT. AND WE
5 NEED TO KNOW EVERYTHING THAT WE CAN KNOW.

6 AND THIS WAS FROM MY FIRST MEETING WITH THE SOCIAL
7 WORKER THAT WAS PUTTING TOGETHER A SOCIAL HISTORY OF THE
8 FAMILY, ALL THE WAY THROUGH THE STATE'S PSYCHIATRIST, WITH
9 TONI CASCIO. I WAS TOLD TO BE COMPLETELY OPEN AND HONEST. I
10 WAS TOLD TO SPEAK FRANKLY WITH RESPECT TO WHAT HAPPENED
11 THAT EVENING.

12 Q AND THESE WERE WITH YOUR PROSPECTIVE WITNESSES?

13 A YES.

14 Q DID THEY TELL YOU THAT ANYTHING YOU SAID TO THEM
15 COULD BE HELD BACK, OR THEY DIDN'T HAVE TO PRESENT THEM TO
16 THE COURT, AND THEREFORE YOU SHOULD-- IS THAT THE GIST OF
17 WHAT THEY WERE SAYING?

18 A THEY TOLD ME THAT THEIR REPORT WOULD BE OUR REPORT.

19 Q RIGHT.

20 A IT WAS GONNA BE THE DEFENSE'S REPORT. AND THAT, YOU
21 KNOW, I MEAN I INSTRUCTED MY ATTORNEYS THAT IF I'M TELLING
22 SOMEBODY-- THEY TOLD ME TO TELL THEM EVERYTHING, THAT IT'S
23 NOT GOING TO WIND UP IN THE WRONG HANDS.

24 Q OKAY.

1 A NOW, I WAS TOLD TO BE COMPLETELY HONEST ABOUT MY
2 FAMILY, MY FAMILY HISTORY, EVERYTHING GOING BACK THAT I
3 COULD REMEMBER AS A CHILD AS EARLY AS TWO TO THREE YEARS
4 OLD.

5 Q UH-HUH.

6 A AND WE WEREN'T JUST DISCUSSING CRIMINAL ACTIVITY. WE
7 WERE DISCUSSING VERY SENSITIVE, INTIMATE THINGS; THINGS THAT I
8 WOULD HAVE PREFERRED NOT TO HAVE DISCUSSED.

9 Q SO, YOU DID DISCUSS SOME OF THE CRIMINAL ASPECTS OF THE
10 TRIAL WITH THESE PEOPLE?

11 A YES. I TOLD THEM NO DIFFERENTLY THAN I TOLD MY
12 ATTORNEYS THE FIRST AND SECOND TIME THAT I MEET WITH THEM.

13 Q AND, OF COURSE, YOU WERE PRIVY TO THE-- YOU AND YOUR
14 ATTORNEYS WERE PRIVY TO THESE REPORTS AND ANY NOTES THAT
15 THE VARIOUS WITNESS MAY HAVE TAKEN?

16 A YES SIR.

17 Q AND, AGAIN, YOU WERE TOLD THAT ALL THIS WOULD BE
18 PRIVILEGED INFORMATION, A DECISION WOULD BE MADE LATER ON
19 WHETHER OR NOT TO ADMIT IT AT TRIAL. SO, YOU WERE PERFECTLY
20 FREE TO BE OPEN AND CANDID WITH THESE WITNESSES?

21 A YES. I WAS TO SPEAK WITH THEM AS IF I WAS SPEAKING WITH
22 MY ATTORNEYS.

23 Q NOW, FINALLY, JIMMY, YOU TERMINATED ALL AVENUES OF
24 DIRECT APPEAL. ISN'T THAT CORRECT?

25 A I DID.

1 Q AND THEN YOU DECIDED TO GO WITH THIS ACTION, WHICH WAS
2 A POST CONVICTION RELIEF CIVIL ACTION?

3 A I DID.

4 Q AND YOU UNDERSTAND THAT YOUR ONLY REDRESS AS A
5 RESULT OF THIS HEARING IS A NEW TRIAL?

6 A YES.

7 Q YOU UNDERSTAND THAT IT'S NOT AN APPEAL, OR NOT THE
8 APPELLATE PROCESS? WHAT WE'RE SEEKING TODAY IS NOT TO HAVE
9 A REVERSAL OR ANYTHING ALONG THOSE LINES; IT'S JUST TO
10 BASICALLY TO EFFECT A NEW HEARING IN THIS ACTION AND A NEW
11 JURY?

12 A A CIVIL ACTION, AND THE ONLY THING I CAN GAIN BY IT IS A
13 NEW TRIAL.

14 Q SO, YOU DON'T HAVE ANY QUESTIONS IN THAT REGARD?

15 A NO, I DO NOT.

16 MR. MATLOCK: YOUR HONOR, I HAVE NO FURTHER QUESTIONS
17 OF THIS WITNESS.

18 Q ANSWER ANY QUESTIONS THAT THE STATE HAS FOR YOU.

19 **CROSS EXAMINATION BY MR. SALTER:**

20 Q GOOD AFTERNOON, MR. ROBERTSON. AGAIN, MY NAME IS ED
21 SALTER. WE'VE HAD OCCASION TO TALK A COUPLE OF TIMES BEFORE.
22 LET ME ASK YOU A FEW QUESTIONS.

23 ONE OF THE FIRST THINGS YOU MENTIONED WAS THE TRIAL
24 DATE, AND IT WAS SAID WRONG. THE TRIAL WAS NOT IN 1997, WAS IT?

25 A IT WAS MARCH, 1999.

1 Q ALL RIGHT. YOU EARLIER SAID THAT ON DIRECT EXAMINATION
2 THAT MOST OF YOUR MOTHER'S PROBLEMS YOU THOUGHT BEGAN
3 AFTER THE DEATH OF HER FATHER?

4 A FROM A CHILD'S VIEWPOINT IT APPEARS THAT THINGS WENT
5 DOWNHILL FROM THAT POINT.

6 Q WHEN WAS HER FATHER'S DEATH? DO YOU REMEMBER?

7 A 1986.

8 Q 1986. DIDN'T YOUR PROBLEMS ACTUALLY BEGIN A FEW YEARS
9 LATER THAN THAT?

10 A WELL, AS I SAID, AS A CHILD, LIVING IN THE HOUSEHOLD IT
11 APPEARED THAT THINGS STARTED, YOU KNOW,... MORE OFTEN THAN
12 NOT, I FOUND MOM SITTING ALONE, CRYING. OR, YOU KNOW, THINGS
13 CHANGED THAN THEY HAD BEEN. SO, YES. THE MORE NOTICEABLE
14 PROBLEMS THAT YOU WOULD SEE IN PUBLIC OR THE PROBLEMS THAT
15 ENDED UP BEING TREATED BY VARIOUS DOCTORS, YES, THAT MAY
16 HAVE COME LATER.

17 Q THOSE CAME LATER BECAUSE YOU SAID, YOURSELF, THAT
18 MOST OF THE FAMILY'S PROBLEMS STEMMED FROM ACTIONS BY YOU
19 AND YOUR BROTHER. CORRECT?

20 A YES. AS WE GOT OLDER OUR DECISIONS TENDED TO BE WRONG.
21 AND THOSE WRONG DECISIONS TENDED TO CAUSE PROBLEMS IN THE
22 FAMILY, CAUSE PROBLEMS BETWEEN MOM AND DAD. AND, YOU
23 KNOW, I WOULDN'T SAY THAT WAS THE ROOT OF MY MOTHER'S
24 MENTAL ILLNESS. YES, IT OBVIOUSLY PLAYED A PART IN IT.

25 Q IT AGGRAVATED IT A GOOD DEAL, DIDN'T IT?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A I'M SURE IT DID.

2 Q YOU TALKED ABOUT YOU AND YOUR BROTHER BECOMING
3 INVOLVED IN CRIMINAL ACTIVITY, DID YOU NOT? A BURGLARY
4 CONVICTION?

5 A YES.

6 Q AND THE USE OF DRUGS ALSO. CORRECT?

7 A YES.

8 Q YOUR BAILING OUT OF SCHOOL, YOUR REFUSAL TO APPLY
9 YOURSELF. CORRECT?

10 A BAILING OUT OF SCHOOL, YES.

11 Q YOU SAID YOU DID THAT DELIBERATELY?

12 A YES.

13 Q TO SPITE YOUR DAD. RIGHT? WHY WAS IT IMPORTANT TO SPITE
14 YOUR FATHER?

15 A BECAUSE HE WAS THE ONE WHO FORCED ME INTO IT.

16 Q HE FORCED YOU TO GO TO SCHOOL?

17 A HE DIDN'T HOLD A GUN TO MY HEAD, BUT, IT WAS PRETTY
18 CLEAR I DIDN'T HAVE MUCH CHOICE IN THE MATTER.

19 Q DID HE PRESENT YOU WITH ANY OTHER CHOICE, LIKE, PERHAPS,
20 GET A JOB?

21 A THAT WAS THE CHOICE I PREFERRED AND THAT WAS THE
22 CHOICE THAT HE DIDN'T WANT.

23 Q YOU WOULD RATHER HAVE GOTTEN A JOB THAN GO TO
24 SCHOOL?

25 A I HAD A JOB. HE PREFERRED I GIVE THE JOB UP.

1 Q WHAT JOB WAS THAT?

2 A ANY NUMBER OF THINGS. WHERE SHALL WE START?

3 Q START WHEREVER YOU WOULD LIKE.

4 A WELL, WE COULD START, YOU KNOW, WE COULD START AT THE
5 BAGEL BAKERY, AND I REALLY ENJOYED WORKING AT IT.

6 Q WHAT WERE YOU DOING THERE?

7 A I WAS MANAGING THE NIGHT OPERATIONS AND ENJOYED IT. I
8 DIDN'T MIND BEING PAID SEVEN, EIGHT DOLLARS AN HOUR.

9 Q YOU WANTED A JOB PAYING SEVEN OR EIGHT DOLLARS
10 INSTEAD OF GOING TO COLLEGE?

11 A I DIDN'T NECESSARILY SAY I WANTED IT, BUT I WAS WORKING.
12 IT WASN'T A MATTER OF WORK OR SCHOOL. I CHOSE TO WORK. I
13 DIDN'T WANT TO GO BACK TO SCHOOL.

14 Q NOW, YOU MENTIONED THE 1995 INVOLUNTARY COMMITMENT.
15 YOU AGREED TO GO THROUGH THEIR PROGRAM, DID YOU NOT, IN
16 ORDER TO GET OUT?

17 A I AGREED TO STAY SEVEN DAYS. I AGREED TO STAY TEN DAYS,
18 BUT SEVEN OF IT VOLUNTARILY.

19 Q YOU ALSO AGREED TO TAKE MEDICATION THAT THEY
20 PRESCRIBED FOR YOU. CORRECT?

21 A YES.

22 Q AND YOU DIDN'T DO THAT, DID YOU?

23 A FOR AN EXTENDED PERIOD OF TIME, NO.

24 Q YOU'RE PRESENTLY BEING MEDICATED, THOUGH, WITHIN THE
25 DEPARTMENT OF CORRECTIONS, AREN'T YOU?

1 A YES.

2 Q SO, WHATEVER PROBLEMS YOU MAY HAVE HAD IN THE PAST
3 ARE GONE NOW?

4 A UNDER CONTROL, NO; MANAGED, YES.

5 Q YOU INDICATED THAT YOUR PARENTS WANTED YOU TO GO TO
6 COLLEGE, MARRY, AND HAVE CHILDREN. RIGHT?

7 A YES SIR.

8 Q AND I BELIEVE YOU INDICATED, YOUR TESTIMONY WAS, AND I
9 QUOTE, "WHAT I WANTED DIDN'T FOLLOW THAT LINE." THAT'S WHAT
10 YOUR RESPONSE WAS.

11 A YES SIR.

12 Q YOU'D RATHER-- AT THE TIME YOU WOULD RATHER DRINK
13 ALCOHOL AND SMOKE MARIJUANA, WOULDN'T YOU?

14 A AND THOSE WERE THINGS THAT I ENDED UP DOING, YES. WERE
15 THOSE THINGS THAT I PREFERRED TO DO RATHER THAN GO TO
16 COLLEGE, OR RATHER THAN LIVE THE AMERICAN DREAM OR
17 WHATEVER MY FATHER HAD HOPED FOR ME? NO, NOT NECESSARILY.

18 Q BUT YOU DIDN'T MIND DOING IT?

19 A YES, THAT IS SOME OF THE THINGS THAT I WOUND UP DOING,
20 YES.

21 Q WITH RESPECT TO THE PLEA OFFER, YOU SAID YOU READ ABOUT
22 A PLEA OFFER IN THE NEWSPAPER?

23 A I DIDN'T READ ABOUT A PLEA OFFER THAT WAS OFFERED TO ME,
24 NO. I READ ABOUT A CONVERSATION BETWEEN MR. BRACKETT AND
25 MR. GILLEN.

1 Q AND YOU READ ABOUT THAT IN THE NEWSPAPER. RIGHT?

2 A YES.

3 Q CHIP DIDN'T TELL YOU ABOUT IT, DID HE?

4 A CHIP COULDN'T TELL ME ABOUT IT.

5 Q HE COULDN'T? HOW WOULD YOU KNOW WHETHER OR NOT CHIP
6 COULD TELL YOU ABOUT IT?

7 A CHIP HAD NO WAY OF CONTACTING ME; I HAD NO WAY OF
8 CONTACTING CHIP.

9 Q YOU WERE REPRESENTED BY COUNSEL, WERE YOU NOT?

10 A YES SIR. WELL, NO. FIVE DAYS AFTER THE TRIAL I WASN'T
11 REPRESENTED BY ANYBODY.

12 Q YOU WERE STILL BEING REPRESENTED BY YOUR TRIAL
13 ATTORNEYS, WERE YOU NOT?

14 A BY WHO?

15 Q YOUR TRIAL ATTORNEYS, THEY WERE STILL REPRESENTING
16 YOU?

17 A I WOULDN'T KNOW.

18 Q YOU WOULDN'T KNOW?

19 A I WAS TOLD THAT I WAS-- IN FACT, I WAS RECENTLY TOLD THAT
20 THEIR REPRESENTATION ENDED AT THE TIME WE WALKED OUT OF THE
21 COURTROOM WITH THE DEATH SENTENCE. SO,... BUT I HAD NO
22 CONTACT WITH MY BROTHER, NO. I HAD NO WAY OF CONTACTING
23 HIM.

24 Q AND TO YOUR KNOWLEDGE, HE NEVER MADE ANY EFFORT TO
25 ACT ON ANY PLEA OFFER?

1 A WELL, OUT OF REVERENCE FOR THE COURT I WON'T TELL YOU
2 WHAT HE TOLD HIS ATTORNEY.

3 Q I'M NOT ASKING YOU WHAT HE TOLD YOUR ATTORNEY. I'M
4 ASKING YOU WHETHER OR NOT HE IN FACT MADE AN EFFORT TO
5 COMPLY WITH THIS SUPPOSED PLEA OFFER.

6 A WHY WOULD HE COMPLY? HE DIDN'T WANT IT. I'LL BE GLAD TO
7 TELL YOU WHAT HE REPLIED.

8 Q NO SIR. THAT'S NOT WHAT I ASKED YOU. THAT'S ALL RIGHT.
9 NOW, YOU COMPLAINED ABOUT THE WAY YOUR LAWYERS HANDLED
10 THE, TONI CASCIO. RIGHT? THE SOCIAL WORKER?

11 A YES.

12 Q YOU SAID THAT AFTER SHE HAD TESTIFIED YOU THOUGHT THAT
13 YOU MIGHT AS WELL TESTIFY YOURSELF. CORRECT?

14 A YES.

15 Q NOW, YOU'RE NOT SAYING WHAT SHE SAID WASN'T TRUE, ARE
16 YOU?

17 A I'M NOT MAKING ANY CLAIM AS TO WHAT SHE SAID WAS TRUE
18 OR NOT. I'M SIMPLY SAYING THAT AFTER SHE TESTIFIED I MADE IT
19 CLEAR THAT I WANTED TO TESTIFY.

20 Q NOW, THE JUDGE WENT OVER WITH YOU YOUR RIGHT TO
21 TESTIFY IN BOTH THE GUILT PHASE AND THE PENALTY PHASE, DID HE
22 NOT?

23 A I BELIEVE SO.

24 Q HE EXPLAINED TO YOU THAT THAT WAS YOUR RIGHT, DIDN'T
25 HE, AS WELL AS YOUR ATTORNEY'S?

1 A THAT'S CORRECT.

2 Q AND IN BOTH INSTANCES YOU DECLINED HIS OFFER TO TESTIFY.

3 A ON THE ADVICE OF MY ATTORNEY.

4 Q BUT YOU UNDERSTOOD THAT IT WAS YOUR RIGHT AND NOT
5 YOUR ATTORNEY'S RIGHT, AND YOU STILL DECIDED NOT TO TESTIFY.
6 CORRECT?

7 A TRUE.

8 Q YOU CLAIMED, I BELIEVE THAT TRIAL COUNSEL WAS
9 INEFFECTIVE FOR---

10 MR. BROWN: EXCUSE ME, YOUR HONOR. THERE'S SOMETHING
11 VIBRATING BACK HERE. I BELIEVE IT'S A CELL PHONE.

12 (WHEREUPON CELL PHONE ISSUE WAS ALLEVIATED)

13 Q YOU ARE CLAIMING THAT TRIAL COUNSEL WAS INEFFECTIVE
14 FOR FAILING TO PROVIDE EVIDENCE TO YOUR ADAPTABILITY TO
15 PRISON LIFE. NOW, SINCE YOU'VE BEEN INCARCERATED ON DEATH
16 ROW, HAVEN'T YOU BEEN ADJUDICATED-- OR, I SHOULD SAY, HASN'T
17 THERE BEEN A DISCIPLINARY ADJUDICATION OF A NUMBER OF
18 CONVICTIONS YOU'VE BEEN INVOLVED IN? OR INFRACTIONS?

19 A YES, OF MINOR THINGS, YES.

20 Q WHEN YOU SAY MINOR, WHAT ARE WE TALKING ABOUT?

21 A CONTRABAND POSSESSION, WINE MAKING. THEY RUN THE
22 GAMUT OF PRETTY PETTY THINGS WHEN YOU'RE SITTING ON DEATH
23 ROW.

24 THE COURT: DID YOU SAY WINE DRINKING?

25 A WINE MAKING AND DRINKING.

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

- 1 Q HOW ABOUT---
- 2 A ALCOHOLIC BEVERAGES.
- 3 Q HOW ABOUT USE AND POSSESSION OF NARCOTICS,
- 4 SPECIFICALLY MARIJUANA?
- 5 A YES.
- 6 Q HOW ABOUT LOAN SHARKING?
- 7 A NO.
- 8 Q YOU DIDN'T HAVE A LOAN SHARKING BUSINESS?
- 9 A LOAN SHARKING?
- 10 Q YES.
- 11 A NO.
- 12 Q HOW ABOUT GAMBLING OR LOAN SHARKING, TRYING TO STAB
- 13 WITH A FORK?
- 14 A NO.
- 15 Q IN FEBRUARY OF 2003, ABOUT REFUSING OR FAILING TO OBEY
- 16 AN OFFICER?
- 17 A YES. I WAS TOLD NOT TO WRITE SOMEBODY.
- 18 Q AND YOU WROTE THEM ANYHOW?
- 19 A I WROTE THEM ANYHOW.
- 20 Q BECAUSE THAT'S WHAT YOU WANTED TO DO. RIGHT?
- 21 A YEAH. IT WASN'T THAT WRITING WAS WRONG. IT WAS THAT I
- 22 DISOBEYED THEIR ORDER NOT TO WRITE THEM. WRITING THEM
- 23 WASN'T THE WRONG PART.
- 24 Q YOU ALSO HAVE A COUPLE OF INFRACTIONS OF EITHER BEING
- 25 UNDER THE INFLUENCE OR POSSESSING CONTRABAND. CORRECT? IS

1 THAT THE WINE YOU'RE TALKING ABOUT? WOULD THAT HAVE BEEN
2 WINE OR MARIJUANA OR BOTH?

3 A CONTRABAND?

4 Q YES.

5 A CONTRABAND FALLS-- I MEAN, WINE DRINKING, IT COULD BE.
6 IT COULD BE MARIJUANA. THEY COULD CHARGE YOU WITH
7 POSSESSION OF DRUGS. WINE MAKING WOULD BE CONTRABAND. IT'S
8 NO DIFFERENT THAN THE REGULAR JUSTICE SYSTEM. THINGS ARE
9 PLEADED DOWN.

10 Q THESE ALL OCCURRED-- THESE ITEMS THAT WE'RE TALKING
11 ABOUT HERE ALL OCCURRED AFTER YOU WERE ON DEATH ROW.
12 CORRECT?

13 A YES.

14 Q NOW, YOU KILLED BOTH YOUR MOTHER AND YOUR FATHER
15 BACK ON NOVEMBER 26, 1997, DID YOU NOT?

16 A (NO RESPONSE)

17 MR. MATLOCK: YOUR HONOR, I WOULD OBJECT TO THAT
18 QUESTION. THE ISSUE HERE IS INEFFECTIVE ASSISTANCE OF COUNSEL.
19 WE DON'T WANT TO GO BACK AND START TRYING THE WHOLE CASE
20 ALL OVER AGAIN. SO, I WOULD OBJECT ON THE GROUNDS OF
21 RELEVANCE AND ALSO IN THE INTEREST OF JUDICIAL ECONOMY.

22 THE COURT: DO YOU CONTEND-- ARE YOU CONTENDING THAT
23 YOU ARE ENTITLED TO A NEW TRIAL IN THE GUILT PHASE?

24 MR. MATLOCK: NO SIR.

1 THE COURT: ALL RIGHT, THEN. AS TO THE ISSUES WITH REGARD
2 TO THE PENALTY PHASE, WHAT IS THE, EXPLAIN TO ME THE BASIS FOR
3 RELEVANCE AND....

4 MR. SALTER: FIRST OFF, THE STRICKLAND STANDARD IS ONE OF
5 WHETHER OR NOT IT'S A REASONABLE POSSIBILITY OF A DIFFERENT
6 RESULT; I.E., WHETHER OR NOT THE FACT FINDER, INCLUDING THIS
7 COURT, I BELIEVE, TO DETERMINE IF THERE IS THE AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES WHICH REACHED A RESULT THAT
9 CONCLUDED THE MITIGATION OUTWEIGHS THE AGGRAVATION.
10 UNLIKE A CRIMINAL PROCEEDING, IN A CIVIL PROCEEDING, HE HAS
11 THE BURDEN OF PROOF. HE'S FILED HIS VERIFIED APPLICATION. IT'S
12 BEEN AMENDED TO INCLUDE ALL HIS VARIOUS ALLEGATIONS. THE
13 QUESTION IS WHETHER OR NOT WE HAVE THE RIGHT PERSON.

14 THE COURT: THE QUESTION IS WHETHER OR NOT WHAT?

15 MR. SALTER: WHETHER OR NOT WE HAVE THE RIGHT PERSON.
16 WHETHER OR NOT-- THE CONCLUSION IS WHETHER OR NOT WE HAVE
17 THE RIGHT PERSON.

18 I PLAN TO ASK HIM A SERIES OF QUESTIONS CONCERNING
19 STATEMENTS HE'S MADE TO OTHER PEOPLE, INCLUDING MS. CASCIO.
20 AS I UNDERSTAND IT, HE HAS THE RIGHT TO INVOKE THE FIFTH
21 AMENDMENT TO ESSENTIALLY JUST NOT OTHERWISE TALK ABOUT
22 THE CRIME. BUT THE COURT HAS THE RIGHT TO DRAW AN ADVERSE
23 CONCLUSION.

24 THE COURT: OKAY.

1 MR. BROWN: YOUR HONOR, CAN I BE HEARD ON THAT VERY
2 BRIEFLY?

3 THE COURT: YES SIR.

4 MR. BROWN: YOUR HONOR, WE'RE NOT CONTESTING THE GUILT
5 PHASE HERE. THAT'S NOT AT ISSUE. WE'RE CONTESTING THE
6 MITIGATION PHASE.

7 MR. SALTER: WITH ALL DUE RESPECT, YOUR HONOR, THERE IS
8 AN ALLEGATION THAT COUNSEL WAS INEFFECTIVE FOR FAILING TO
9 PURSUE A GUILTY BUT MENTALLY ILL VERDICT. AND GUILTY BUT
10 MENTALLY ILL SAYS I AM GUILTY BUT MENTALLY ILL.

11 MR. BROWN: YOUR HONOR, OUT OF AN ABUNDANCE OF
12 CAUTION, I WOULD ADVISE HIM TO TAKE THE FIFTH AMENDMENT,
13 ASSUMING, ARGUENDO, HE DOES-- IF THIS COURT GRANTS HIM RELIEF
14 IT WOULD BE HIGHLY PREJUDICIAL IN A SUBSEQUENT PROCEEDING. I
15 DON'T SEE THE RELEVANCE HERE. IT'S NOT AN ISSUE BEFORE THE
16 COURT.

17 THE COURT: THE ONLY-- LET'S CLEAR THIS UP. THE ONLY
18 CLAIM THAT YOU HAVE REGARDING THE GUILT PHASE IS FAILURE OF
19 COUNSEL TO PURSUE A VERDICT OF GUILTY BUT MENTALLY ILL.

20 MR. BROWN: NO SIR, THAT'S NOT CORRECT. WHAT I HAVE IS A
21 CONTINUATION OF THE WHOLE THING. I THINK CERTAIN THINGS
22 SHOULD HAVE BEEN DONE IN THE GUILT PHASE. HOWEVER, WE DON'T
23 CONTEST THE GUILT PHASE.

24 MY OPINION, FROM HAVING REVIEWED THE WHOLE
25 TRANSCRIPT, I THINK CERTAIN THINGS COULD HAVE BEEN DONE IN

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 THE GUILT PHASE TO LAY THE GROUNDWORK FOR THE SENTENCING
2 PHASE. AS FAR AS THE GUILT ITSELF, WE DON'T CONTEST THAT.

3 BASICALLY, OUR PREMISE WOULD BE TO ASK FOR A NEW TRIAL
4 IN THE SENTENCING PHASE. HOWEVER, I CAN'T TIE IT TO---

5 THE COURT: ALL RIGHT. LET ME ASK YOU THIS: ARE YOU
6 ASKING FOR A NEW TRIAL IN THE GUILT PHASE?

7 MR. BROWN: NO SIR. AS AN OFFICER OF THE COURT I WOULD BE
8 ERRONEOUS TO SIT HERE AND TELL YOU THAT I THINK WE'RE
9 ENTITLED TO THAT; I'M NOT.

10 BUT I HAVE TO TIE IT ALL TOGETHER, YOUR HONOR, AS A
11 CONTINUAL PROCESS BY COUNSEL, WHICH LED TO THE RESULTS. I
12 DON'T WANT TO BAR---

13 THE COURT: THE ANSWER THAT YOU JUST GAVE KNOCKS OUT
14 YOUR CLAIM THAT THEY SHOULD HAVE PURSUED GUILTY BUT
15 MENTALLY ILL.

16 MR. BROWN: YOUR HONOR, I DON'T WANT TO BAR MYSELF.

17 THE COURT: WELL, YOU JUST SAID THAT. THAT'S WHY I WANT
18 TO CLEAR IT UP. IF YOU'RE PURSUING YOUR CLAIM THAT THEY
19 SHOULD HAVE SOUGHT A VERDICT OF GUILTY BUT MENTALLY ILL,
20 THAT'S A GUILT PHASE-RELATED CLAIM. AND IF I GRANT IT, IT WOULD
21 RESULT IN A NEW TRIAL IN THE GUILT PHASE.

22 MR. BROWN: YOUR HONOR, MY UNDERSTANDING IS IF HE'S
23 PLEADING GUILTY BUT MENTALLY ILL HE GOES STRAIGHT TO THE
24 SENTENCING PHASE AND ALL PENALTIES ARE APPLICABLE, INCLUDING
25 DEATH.

1 THE COURT: WELL, WHAT....

2 MR. BROWN: THE COURT HAS TO MAKE A FINDING OF THE
3 MENTAL ILLNESS.

4 THE COURT: SO, YOUR CLAIM, THEN, ON THE GUILTY BUT
5 MENTALLY ILL IS THAT COUNSEL SHOULD HAVE ADVISED HIM TO
6 PLEAD GUILTY BUT MENTALLY ILL AND THEN MOVE ON INTO THE
7 SENTENCING PHASE?

8 MR. BROWN: THAT WOULD ENTITLE US TO THE OPTION
9 BECAUSE THE FACT IS THERE IS BASICALLY NO EVIDENCE ON CROSS
10 OR DIRECT IN THE GUILT PHASE.

11 THE COURT: ALL RIGHT. WELL,---

12 MR. BROWN: LET ME REPHRASE MY ANSWER, YOUR HONOR. I
13 DON'T THINK I'M ENTITLED OBJECTIVELY TO A NEW GUILT PHASE
14 TRIAL, YOUR HONOR. I DON'T REALLY WANT TO WAIVE THAT. I DON'T
15 WANT TO BE BARRED FROM GOING BACK IN THERE BECAUSE IT'S A
16 CONTINUATION OF EVENTS THAT LEADS UP TO THE MITIGATION
17 PHASE.

18 THE COURT: I'M NOT SAYING YOU CAN'T-- I'M NOT SAYING
19 ANYTHING. I'M JUST ASKING WHAT YOUR POSITION IS. THE QUESTION
20 CAME UP IN THE COURSE OF THAT DISCUSSION.

21 MR. BROWN: MY POSITION---

22 THE COURT: I DON'T SEE ANY REASON WHY YOU CAN'T
23 EXPLORE WHAT HAPPENED IN THE GUILT PHASE.

24 MR. BROWN: YES SIR, THAT'S RIGHT.

1 THE COURT: BUT I THINK-- I WANT TO-- IF WE CAN, WE SHOULD
2 PIN HIM DOWN AND ANSWER THE QUESTION WHETHER OR NOT YOU
3 ARE SEEKING A NEW TRIAL IN THE GUILT PHASE, AND YOU'RE SAYING
4 NO.

5 MR. BROWN: YOUR HONOR, OF COURSE WE ASK FOR IT.
6 OBJECTIVELY, NO, WE'RE NOT. I DON'T WANT TO BAR MYSELF FROM
7 GOING INTO IT.

8 THE COURT: SO, THAT I CAN HELP MYSELF TO UNDERSTAND
9 YOUR PRESENTATION OF EVIDENCE, WHICH OF THESE CLAIMS THAT
10 WE DISCUSSED IN THE BEGINNING THAT YOU ARE GOING TO MAKE
11 DURING THE COURSE OF THIS TRIAL ABOUT THE INEFFECTIVENESS OF
12 COUNSEL, WHICH OF THOSE CLAIMS, IF GRANTED, WOULD RESULT IN A
13 NEW TRIAL IN THE GUILT PHASE?

14 MR. BROWN: PROBABLY NONE; OBJECTIVELY, PROBABLY NONE.

15 THE COURT: ALL RIGHT. SO, YOU'RE ADVISING HIM TO ASSERT
16 HIS RIGHT UNDER THE FIFTH AMENDMENT TO REMAIN SILENT?

17 MR. BROWN: OUT OF AN ABUNDANCE OF CAUTION, YOUR
18 HONOR. I DON'T SEE THE RELEVANCE---

19 THE COURT: DO YOU HAVE ANY RESPONSE TO THAT, MR.
20 SALTER?

21 MR. SALTER: YOUR HONOR, THE PROBLEM THAT I HAVE, AMONG
22 THE OTHER ALLEGATIONS, WHICH SHOULD HAVE BEEN POINTED OUT
23 TO YOU, BOTH, IN FACT, TWO OTHER ALLEGATIONS. ONE WHICH IS
24 CROSS EXAMINATION OF MEREDITH MOON. MEREDITH MOON WAS A
25 GUILT PHASE WITNESS. THE EXISTENCE OF A PROPOSED PLEA

1 BARGAIN WHICH HE READ ABOUT IN THE NEWSPAPER, THAT'S
2 OBVIOUSLY A GUILT OR INNOCENCE TYPE ISSUE.

3 THE COURT: WELL, THE PLEA BARGAIN, I DON'T BELIEVE,
4 WOULD BE BECAUSE THAT WOULD HAVE-- I THINK THEIR ARGUMENT
5 IS THAT IF HAD BEEN OFFERED THE PLEA BARGAIN, AND IF HE HAD
6 TAKEN IT, AND IF IT HAD EVEN EXISTED, HE WOULD HAVE GOTTEN A
7 LIFE SENTENCE FOR MURDER.

8 MR. BROWN: THAT'S CORRECT, YOUR HONOR. ASSUMING,
9 ARGUENDO, THAT SUCH A THING EXISTED AND WAS VALID.

10 THE COURT: AND AS FAR AS MEREDITH MOON IS CONCERNED, I
11 DON'T SEE ANY REASON WHY IN CONTESTING COUNSEL'S
12 PERFORMANCE REGARDING PENALTY THAT THEY CAN'T RAISE AND
13 DISCUSS SOMETHING THAT HAPPENED DURING THE GUILT PHASE. IF
14 COUNSEL DID SOMETHING THAT WAS JUST VERY UNWISE DURING THE
15 GUILT PHASE THAT IF THEY HADN'T HAVE DONE IT MIGHT HAVE MADE
16 A DIFFERENCE IN THE PENALTY PHASE, JUST SPEAKING
17 HYPOTHETICALLY. AND THAT COULD BE THE BASIS OF RELIEF AS FAR
18 AS THE PENALTY PHASE.

19 BUT MY QUESTION-- YOU JUST SAID THAT YOU THOUGHT THAT
20 IF HE ASSERTS HIS RIGHT UNDER THE FIFTH AMENDMENT HE'S
21 ENTITLED TO DO THAT.

22 MR. SALTER: HE'S ENTITLED TO AND YOU'RE ENTITLED TO
23 DRAW AN ADVERSE INFERENCE.

24 THE COURT: OKAY. WELL, WE'LL---

1 MR. SALTER: MY UNDERSTANDING OF THE LAW-- I'M SORRY
2 FOR INTERRUPTING.

3 THE COURT: THAT'S OKAY. NO, YOU GO AHEAD AND SAY WHAT
4 YOU WERE GOING TO SAY, PLEASE.

5 MR. SALTER: I WAS GOING TO SAY THAT FROM WHERE I STAND
6 UNDER THE LAW I WOULD HAVE TO ASK HIM-- I WOULD HAVE TO
7 PROFFER THE QUESTIONS I WANTED TO ASK AND HAVE HIM INVOKE
8 HIS PRIVILEGE.

9 THE COURT: OKAY. THEN, THAT'S DONE. YOU'VE ASKED THE
10 QUESTION. HE'S INVOKED THE PRIVILEGE AND WE'LL MOVE ON AND
11 WE'LL DISCUSS WHAT INFERENCES MIGHT BE DRAWN FROM THAT
12 WHEN WE GET AROUND TO WRAPPING IT UP.

13 MR. SALTER: ALL RIGHT, SIR.

14 MR. BROWN: YOUR HONOR, IF I MAY, WHILE WE'RE ON THE
15 RECORD, YOU ASKED MR. MATLOCK ABOUT HIS UNDERSTANDING OF
16 STRICKLAND V. WASHINGTON, WHEN YOU CONSIDERED THE SECOND
17 PRONG AND THE FIRST PRONG, AND YOU UNDERSTOOD THE FIRST
18 PRONG. STRICKLAND V. WASHINGTON, 466 US 668 104, SUPREME
19 COURT AT PAGE 2069, WHEN THE DEFENDANT CHALLENGED THE
20 DEATH SENTENCE SUCH AS THE ONE ISSUED IN THIS CASE, THE
21 QUESTION WAS, WHETHER THERE'S A REASONABLE PROBABILITY
22 THAT HAS TO BEAR THE SENTENCE OR INCLUDING AN APPELLATE
23 BOARD TO THE EXTENT THEY END UP INDEPENDENTLY WAIVING THE
24 EVIDENCE WOULD HAVE CONCLUDED THAT WITHOUT AGGRAVATING
25 AND MITIGATING CIRCUMSTANCES DID NOT WARRANT DEATH.

1 IN MAKING THIS DETERMINATION A COURT HEARING FOR AN
2 INEFFECTIVE ASSISTANCE CLAIM MUST CONSIDER THE TOTALITY OF
3 THE EVIDENCE BEFORE THE JUDGE AND JURY.

4 AND I THINK THAT'S WHAT WE'RE ASKING THE COURT TO DO, IS
5 TO CONSIDER THE TOTALITY HERE, YOUR HONOR.

6 THE COURT: ALL RIGHT MR. SALTER, UNLESS YOU'RE RIGHT ON
7 THE VERGE OF COMPLETING YOUR CROSS EXAMINATION, I'D LIKE TO
8 TAKE A SHORT BREAK.

9 MR. SALTER: THAT'S FINE, YOUR HONOR.

10 THE COURT: WE'LL TAKE A SHORT BREAK, ABOUT FIVE
11 MINUTES.

12 (WHEREUPON THE COURT WAS IN RECESS AT 2:25 P.M.)

13 COURT IN SESSION - 2:35 P.M.

14 RESUMPTION OF CROSS EXAMINATION OF WITNESS ROBERTSON BY MR.
15 SALTER:

16 Q MR. ROBERTSON, EARLIER ON DIRECT EXAMINATION YOU WERE
17 ASKED ABOUT DOCTOR PINCUS. AND DOCTOR PINCUS WAS A
18 NEUROLOGIST WHOM YOU SAW. CORRECT?

19 A YES.

20 Q NOW, HE WASN'T THE ONLY WITNESS TO TESTIFY IN THE
21 PENALTY PHASE, WAS HE? I'M SORRY. MENTAL HEALTH WITNESS TO
22 TESTIFY IN THE PENALTY PHASE, WAS HE?

23 A NO, I DON'T BELIEVE SO.

24 Q WHAT OTHER PEOPLE TESTIFIED CONCERNING YOUR MENTAL
25 HEALTH STATUS?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

- 1 A SPECIFICALLY, MINE?
- 2 Q YES.
- 3 A THE STATE'S EXPERT, MR. McKEE.
- 4 Q WHAT ABOUT JIM EVANS? REMEMBER HIM?
- 5 A I BELIEVE JIM EVANS.
- 6 Q HE WAS A PSYCHOLOGIST. RIGHT?
- 7 A I REMEMBER NAMES; I DON'T REMEMBER TITLES.
- 8 Q OKAY. DO YOU REMEMBER DOCTOR MORTON, ALEXANDER
- 9 MORTON, FROM DOWN IN CHARLESTON?
- 10 A YES SIR.
- 11 Q HE'S A PHARMACOLOGIST?
- 12 A YES SIR.
- 13 Q HE ALSO TESTIFIED. AND MS. CASCIO, THE SOCIAL WORKER.
- 14 AND THERE WERE A NUMBER OF OTHER PEOPLE WHO TESTIFIED
- 15 CONCERNING THEIR TREATMENT OF YOU PRIOR TO THE EVENTS FOR
- 16 WHICH YOU WERE ON TRIAL. RIGHT?
- 17 A YES.
- 18 Q EARLIER, I'D ASKED YOU ABOUT THE PLEA OFFER AND YOU
- 19 MENTIONED SOMETHING ABOUT WHAT CHIP HAD SAID TO YOU ABOUT
- 20 THE PLEA OFFER. I DIDN'T QUITE CATCH ALL YOUR ANSWER. WHAT
- 21 DID YOU SAY?
- 22 A YOU WANT TO KNOW WHAT CHIP TOLD HIS ATTORNEY?
- 23 Q I WANT TO KNOW WHAT CHIP TOLD YOU.
- 24 A WHAT CHIP TOLD ME IS WHAT HE TOLD HIS ATTORNEY.
- 25 Q WHAT DID HE TELL YOU?

1 A THAT HE TOLD HIS ATTORNEY THAT BASICALLY, HELL, NO.

2 Q SO, YOU'RE AWARE THAT YOUR BROTHER WAS NOT GONNA--
3 EVEN IF THE PLEA OFFER HAD BEEN SERIOUS, HE WAS NOT GONNA
4 HAVE ANY PART OF IT. CORRECT?

5 THE COURT: LET ME ASK THIS QUESTION.

6 A I---

7 THE COURT: I'M SORRY. YOU CAN GO AHEAD.

8 A I WASN'T GOING TO HAVE ANY PART OF IT. EVEN IF MY
9 BROTHER HAD SAID, HERE'S \$500,000,000, I WOULDN'T HAVE HAD ANY
10 PART OF IT. SO, IT DIDN'T MAKE ANY DIFFERENCE. THE FACT IS, I
11 DIDN'T KNOW ABOUT IT.

12 Q NOW, WITH RESPECT TO YOUR TESTIMONY CONCERNING TONI
13 CASCIO, YOU COMPLAINED AND SAID THAT YOUR LAWYERS TOLD
14 YOU TO BE TRUTHFUL AND FRANK WITH ALL YOUR EXPERTS. RIGHT?

15 A YES.

16 Q AND YOU WERE TRUTHFUL FRANK WITH HER AND YOU WERE
17 TRUTHFUL AND FRANK WITH EVERY OTHER EXPERT YOU TALKED TO.
18 CORRECT?

19 A TO THE BEST OF MY RECOLLECTION, YES.

20 Q NOW, DO YOU RECALL GIVING A STATEMENT CONCERNING
21 YOUR PARENTS' DEATH TO INVESTIGATORS FROM THE YORK COUNTY
22 SHERIFF'S DEPARTMENT BACK ON NOVEMBER 26, 1997?

23 A NO. I BELIEVE ON NOVEMBER 26, 1997, I WAS IN PHILADELPHIA.

1 Q CORRECT. DO YOU REMEMBER INVESTIGATOR RALPH MISLE
2 CAME UP THERE AND TALKED TO YOU? THEY WERE GONNA BRING
3 YOU BACK AND HE SPOKE TO YOU UP THERE?

4 A IT'S BEEN A WHILE. I SPOKE TO A BUNCH OF PEOPLE. AND I
5 BELIEVE I TOLD MR. POPE DURING THE TRIAL, I DON'T REMEMBER
6 NAMES OF THOSE PEOPLE I SAW, THAT WERE INTERVIEWED. I
7 INTERVIEWED-- YOU KNOW, I MUST HAVE HAD FIFTY DETECTIVES
8 WALK IN AND OUT OF THAT ROOM IN THE COURSE OF A DAY AND A
9 HALF. YES, I SUPPOSE SOME OF THEM WERE FROM SOUTH CAROLINA.

10 Q TWO OF THEM IN PARTICULAR, INVESTIGATOR MISLE AND
11 ANOTHER INVESTIGATOR. CORRECT?

12 A IF YOU SAY THERE'S TWO OF THEM FROM SOUTH CAROLINA,
13 THEN THAT MUST BE.

14 Q DIDN'T YOU TELL HIM THAT YOUR PARENTS WERE STILL ALIVE
15 WHEN YOU LEFT?

16 A AS FAR AS I KNEW, YES.

17 Q AND THEN ON MARCH 2, 1998, YOU HAD A CONVERSATION, BACK
18 HERE IN YORK COUNTY, YOU HAD A CONVERSATION AT THE
19 DETENTION CENTER WITH INVESTIGATOR MISLE AND TIM HAGER.
20 CORRECT? DO YOU REMEMBER THAT?

21 A YES.

22 Q NOW,--

23 A I BELIEVE I ASKED FOR COUNSEL AS WELL.

1 Q DO YOU REMEMBER TALKING TO THEM NOT ABOUT THE CRIME
2 ITSELF, BUT ABOUT YOUR FAMILY BACKGROUND AND ALL THAT,
3 BEFORE INVOKING YOUR RIGHT TO COUNSEL?

4 A WE MAY HAVE TALKED ABOUT SOME BRIEF, GENERAL STUFF,
5 YES.

6 Q DIDN'T YOU TELL THEM THAT YOUR MOTHER HAD VISITED YOU
7 WHEN YOU WERE PREVIOUSLY INCARCERATED?

8 A I MAY HAVE.

9 Q YOU SAID SHE MAILED THINGS TO YOU?

10 A THAT'S ALL A MATTER OF RECORD. THAT CAN ALL BE FOUND IN
11 THE RECORD. I'M NOT SURE WHETHER I SAID IT OR NOT.

12 Q YOU DON'T RECALL TELLING THEM YOUR RELATIONSHIP WITH
13 YOUR MOM WAS PRETTY GOOD?

14 A LIKE I SAY, IF I DID, OKAY, I DID. I'M NOT SAYING I DIDN'T. I
15 DON'T REMEMBER THE SPECIFICS OF THE CONVERSATION. I DO
16 REMEMBER THAT I ASKED FOR COUNSEL. WE TALKED ABOUT THIS
17 DURING THE TRIAL, ABOUT EIGHT YEARS AGO. I DID INVOKE THE
18 RIGHT, MY RIGHT TO COUNSEL AT THAT TIME.

19 Q BUT NOT AT FIRST IS WHAT YOU'RE SAYING. CORRECT?

20 A YES, AT SOME POINT PRIOR TO THAT I DID INVOKE MY RIGHT TO
21 COUNSEL.

22 Q NOW, EVEN THOUGH YOU DIDN'T TESTIFY AT TRIAL, YOU DID
23 STAND UP IN FRONT OF THE JURY, DIDN'T YOU, AND GIVE A
24 STATEMENT IN THE SENTENCING PHASE?

25 A I DID.

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 Q DID YOU TELL THE JURORS YOU WERE SORRY FOR WHAT
2 HAPPENED?

3 A I BELIEVE THOSE ARE PRETTY CLOSE TO THE WORDS.

4 Q AND THAT YOU WOULD NEVER BE ABLE TO EXPLAIN WHAT
5 HAPPENED?

6 A I GUESS SO.

7 Q DO YOU REMEMBER TALKING TO MS. CASCIO ON DECEMBER 7,
8 1998?

9 A THE SPECIFIC DAY, NO.

10 Q DO YOU RECALL TALKING TO HER?

11 A YES, MULTIPLE TIMES.

12 Q IN PREPARATION FOR THE TRIAL?

13 A YES.

14 Q AND ONE OCCASION, SPECIFICALLY, SHE WAS ASKED IF Y'ALL
15 DISCUSSED WHAT HAPPENED THE NIGHT OF THE CRIME. CORRECT?

16 A WE DISCUSSED WHAT HAPPENED ON NOVEMBER 25, 1997, THAT'S
17 CORRECT.

18 Q I BELIEVE YOU TOLD HER AT THAT TIME THAT YOU HAD TAKEN
19 SOME 250 TO 280 MILLIGRAMS OF RITALIN OVER THE COURSE OF THE
20 PREVIOUS EVENING AND THE MORNING OF THE MURDERS?

21 A YES.

22 Q YOU TOLD HER THAT MEREDITH MOON HAD BEEN THERE, HAD
23 COME OVER FOR APPROXIMATELY HALF AN HOUR?

24 A YES.

1 Q AND YOU TOLD HER THAT MEREDITH MOON HAD SCORED
2 RITALIN WHEN SHE WAS OVER THERE THE FIRST TIME?

3 A YES. THEY WEREN'T THERE THAT-- YES.

4 Q DID YOU TELL MS. CASCIO THAT YOU HAD SPOKEN TO CHIP FOR
5 ABOUT A HALF HOUR ABOUT COMING HOME FOR THANKSGIVING,
6 THAT HE WAS DROPPING OUT OF SCHOOL?

7 A YES. I SPOKE TO HIM SEVERAL TIMES THAT NIGHT.

8 Q THE FIRST CONVERSATION BEING APPROXIMATELY ABOUT A
9 HALF HOUR LONG?

10 A IF I TOLD YOU I COULD REMEMBER THE SEQUENCE EXACTLY, I
11 CAN'T. YEAH.

12 Q SO, WHAT'S YOUR RECOLLECTION?

13 A THAT EARLY IN THE EVENING-- I MEAN, AS IN EARLY, SEVEN,
14 EIGHT P.M.---

15 Q RIGHT.

16 A --THAT HE HAD CALLED. AND MY FATHER HAD INSTRUCTED ME
17 THAT WE DON'T TAKE PHONE CALLS FROM HIM AT THIS HOUSE
18 ANYMORE. AND SO, BASICALLY, I TOLD CHIP, I CAN'T TALK RIGHT
19 NOW. RIGHT NOW I'M LIVING UNDER HIS HOUSE AND HE PAYS THIS
20 PHONE BILL. I CAN'T TALK TO YOU RIGHT NOW. THAT I WOULD CALL
21 HIM BACK WHEN I COULD. I THINK I MAY HAVE CALLED BACK ONE-
22 THIRTY, TWO A.M., AFTER MOM AND DAD HAD GONE TO BED.

23 AND WE TALKED MOSTLY ABOUT WHAT HE WAS DOING AND,
24 YOU KNOW, HIM COMING HOME FOR THANKSGIVING, OR THE FACT
25 THAT MOM AND DAD, OR DAD WASN'T GONNA ALLOW HIM TO COME

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 HOME FOR THANKSGIVING; THAT I WAS GONNA FIND A WAY TO GET
2 HIM HOME FOR THANKSGIVING. BUT, YES, IT CENTERED AROUND
3 CHIP, THANKSGIVING, WHAT HE HAD DONE THE LAST WEEK AT
4 SCHOOL.

5 I BELIEVE OVER THAT NEXT HALF HOUR, WE MAY HAVE TALKED
6 FOR A MINUTE OR TWO HERE AND THERE. I BELIEVE THE BATTERY
7 WAS GOING DEAD ON THE PHONE AND IT WAS KINDA CHOPPY. I
8 WOULD TALK, IT WOULD KINDA GO OFF, AND I WOULD HANG IT UP
9 FOR A MINUTE, LET IT CHARGE FOR A SECOND, AND CALL RIGHT BACK
10 TO SAY SOMETHING.

11 I BELIEVE WE TALKED SEVERAL TIMES OVER THE COURSE OF
12 THAT NEXT HALF HOUR. BUT ULTIMATELY, I TOLD HIM THAT I WOULD
13 MAKE SURE HE WOULD HAVE A PLANE TICKET OR A BUS TICKET IN HIS
14 HAND, THAT TO HELL WITH MOM AND DAD, YOU WERE COMING HOME
15 FOR THANKSGIVING.

16 Q YOU LATER CALLED MEREDITH MOON AND SPOKE TO HER?

17 A I DID.

18 Q DO YOU RECALL WHAT THAT CONVERSATION WAS ABOUT?

19 A AT SOME POINT AFTERWARDS, YES.

20 Q DID YOU CALL HER ON MORE THAN ONE OCCASION?

21 A I BELIEVE I CALLED HER THE FIRST TIME AND ASKED HER IF SHE
22 WOULD PUT A BUS TICKET OR A PLANE TICKET ON HER CREDIT CARD
23 OR HER FATHER'S CREDIT CARD FOR CHIP. SHE WAS STILL AWAKE
24 BECAUSE SHE WAS STILL FLYING HIGH ON RITALIN.

1 I BELIEVE THAT I MADE ANOTHER PHONE CALL WHEN I ASKED
2 TO COME OVER SO WE COULD DRIVE TO PHILADELPHIA. IT MAY BE
3 THAT THAT WAS ALL IN ONE PHONE CALL. I CANNOT REMEMBER
4 NOW. OKAY? SOMEBODY WOULD HAVE TO REFRESH MY MEMORY.

5 IT MAY HAVE BEEN TWO SEPARATE PHONE CALLS TWENTY
6 MINUTES APART, OR IT MAY HAVE BEEN ONE PHONE CALL. I'M NOT
7 SURE. IN ANY CASE, SHE SAID NO TO THE CREDIT CARD, BUT YES, SHE
8 WOULD BE MORE THAN WILLING TO DRIVE WITH ME TO PHILADELPHIA
9 TO GET CHIP.

10 Q YOU TOLD MS. CASCIO, DID YOU NOT, THAT MEREDITH MOON
11 WAS INFATUATED WITH YOU AND WOULD HAVE DONE ANYTHING
12 THAT YOU ASKED HER TO?

13 A I GUESS I SAID THAT.

14 Q AND DIDN'T YOU TELL MS. CASCIO THAT AFTER MEREDITH
15 CAME TO YOUR HOUSE, THE TWO OF Y'ALL BEGAN TALKING ABOUT
16 THE PROBLEMS SURROUNDING CHIP COMING HOME. CORRECT?

17 A YES, AMONG OTHER THINGS.

18 Q AND THEN ULTIMATELY THIS CONVERSATION LED TO,
19 "SOMEHOW IT LED TO I'M GONNA DO IT." ?

20 A I TAKE THE FIFTH.

21 Q NOW, YOU TOLD MS. CASCIO, DID YOU NOT, THAT YOU AND
22 MEREDITH DID IT?

23 A I'M SORRY?

24 Q YOU TOLD MS. CASCIO THAT YOU HAD SAWED OFF THE BAT YOU
25 USED ON YOUR FATHER, DID YOU NOT?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A I TAKE THE FIFTH.

2 Q DIDN'T YOU TELL HER YOU DECIDED NOT TO USE THE WOODEN
3 ONE BECAUSE IT WAS AUTOGRAPHED---

4 A I TAKE---

5 Q ---AND YOU DIDN'T WANT TO RUIN IT?

6 A YOUR HONOR, DO I NEED TO SAY SOMETHING OTHER THAN
7 TAKE THE FIFTH, OR IS THAT ENOUGH FOR YOU?

8 THE COURT: THAT'LL BE SUFFICIENT.

9 A I TAKE THE FIFTH.

10 Q DIDN'T YOU ALSO TELL MS. CASCIO THAT YOU HAD TAKEN TWO
11 BOTTLES OF TILEX?

12 A I TAKE THE FIFTH.

13 Q YOU ALSO TOLD HER THAT YOU THEN SAT IN YOUR ROOM AND
14 WAITED FOR YOUR FATHER TO GET IN THE SHOWER IN ORDER TO KILL
15 YOU MOTHER BECAUSE THERE WOULD BE NOISE?

16 A I TAKE THE FIFTH.

17 Q YOU TOLD MS. CASCIO THAT YOU TOOK THE PHONE OFF THE
18 HOOK AND YOU LAID A KNIFE IN THE HALLWAY IN CASE YOUR DAD
19 CAME IN. CORRECT?

20 A I TAKE THE FIFTH.

21 Q YOU TOLD DR. CASCIO YOU THEN WENT IN THE BEDROOM AND
22 STARTED FUCKING WITH YOUR MOTHER AND SHE BEGAN SCREAMING
23 FOR YOUR FATHER?

24 A I TAKE THE FIFTH.

1 Q DIDN'T YOU ALSO TELL HER THAT IT WAS "GETTING AT ME TO
2 HEAR HER SCREAMING"?

3 A I TAKE THE FIFTH.

4 Q YOU ALSO TOLD HER THAT YOU WERE "IN A RAGE", AND THAT
5 YOU WERE "LIKE A MANIAC"?

6 A I TAKE THE FIFTH.

7 Q DIDN'T YOU ALSO TELL HER THAT YOU LATER WENT
8 DOWNSTAIRS AND SAID, "ONE DOWN AND ONE TO GO"?

9 A I TAKE THE FIFTH.

10 Q DIDN'T YOU ALSO TELL HER THAT YOU LAID THE BAT DOWN AT
11 THE TOP OF THE STAIRS AND SAT AND WAITED WITH A HAMMER, "LIKE
12 I WAS STANDING ON THE OTHER SIDE OF MYSELF WATCHING ME"?

13 A I TAKE THE FIFTH.

14 Q YOU ALSO SAID IT WAS "LIKE SOMEONE ELSE COMMITTING THE
15 CRIME AND I WAS WATCHING IT TAKE PLACE"?

16 A I TAKE THE FIFTH.

17 Q DIDN'T YOU TELL HER THAT YOU SPRAYED TILEX IN YOUR
18 FATHER'S EYES AND BURIED THE HAMMER IN HIS HEAD?

19 A I TAKE THE FIFTH.

20 Q DIDN'T YOU ALSO TELL HER THAT YOUR FATHER "PUT UP A
21 FIGHT WITH THE HAMMER STUCK IN HIS HEAD"?

22 A I TAKE THE FIFTH.

23 Q AND DIDN'T YOU TELL HER THAT EVENTUALLY YOUR FATHER
24 FELL TO THE GROUND AND YOU HIT HIM SOME TWO HUNDRED TIMES
25 WITH THE BAT AND HAMMER?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

- 1 A I TAKE THE FIFTH.
- 2 Q AND YOU ALSO TOLD HER, DID YOU NOT, THAT THIS WAS
3 TWENTY YEARS OF HATRED COMING OUT?
- 4 A I TAKE THE FIFTH.
- 5 Q DID YOU TELL HER THAT "IT WAS OVERKILLING, IT WENT ON
6 AND ON AND ON AND ON"?
- 7 A I TAKE THE FIFTH.
- 8 Q YOU ALSO TOLD HER THAT YOU THEN WENT TO THE BEDROOM
9 TO CHECK ON YOUR MOTHER?
- 10 A I TAKE THE FIFTH.
- 11 Q DIDN'T YOU TELL HER AT THAT POINT THAT YOU HIT YOUR
12 MOTHER IN THE HEAD WITH A HAMMER JUST TO MAKE SURE SHE WAS
13 DEAD?
- 14 A I TAKE THE FIFTH.
- 15 Q YOU ALSO TOLD HER THAT YOU LATER HEARD NOISE UPSTAIRS
16 AND THOUGHT IT WAS YOUR FATHER "BREATHING INTO THE CARPET"?
- 17 A I TAKE THE FIFTH.
- 18 Q DIDN'T YOU ALSO TELL HER THAT YOU WENT TO FIND A DRILL
19 TO END THE MATTER?
- 20 A I TAKE THE FIFTH.
- 21 Q YOU TOLD HER THAT YOU LATER WENT WITH THE BAT
22 UPSTAIRS TO BEAT HIM AGAIN AND YOU KICKED YOUR FATHER WITH
23 YOUR TOE TO MAKE SURE HE WAS DEAD?
- 24 A I TAKE THE FIFTH.

1 Q YOU TOLD HER THAT YOU CLEANED UP, TOOK THE MONEY AND
2 CAR KEYS AND PACKED UP THE TRASH AND TOOK IT TO THE DUMP?

3 A I TAKE THE FIFTH.

4 Q DIDN'T YOU ALSO TELL HER THAT YOU DIDN'T THINK MEREDITH
5 MOON'S TESTIMONY WOULD BE ENOUGH BY ITSELF TO CONVICT YOU?

6 A I TAKE THE FIFTH.

7 Q YOU TOLD MS. CASCIO THAT YOU BROKE A WINDOW
8 DOWNSTAIRS TO MAKE IT LOOK LIKE A ROBBERY?

9 A I TAKE THE FIFTH.

10 Q YOU TOLD HER THAT THE VAN ACROSS THE STREET PULLED UP,
11 YOU WAVED AND THEN GOT IN YOUR CAR AND LEFT?

12 A I TAKE THE FIFTH.

13 Q DIDN'T YOU ALSO TELL HER THAT WHAT YOU HAD DONE
14 WOULD NOT BE A SURPRISE TO YOUR BROTHER?

15 A I TAKE THE FIFTH.

16 Q DIDN'T YOU ALSO TELL HER THAT YOU WERE GONNA GO UP THE
17 ROAD AND NO ONE WOULD KNOW THAT YOUR PARENTS WERE
18 MISSING?

19 A I TAKE THE FIFTH.

20 Q YOU ALSO TOLD HER THAT YOU CALLED HOME AND REALIZED
21 THAT SOMEONE HAD FOUND THE BODIES BECAUSE SOMEBODY PUT
22 THE PHONE ON THE HOOK?

23 A I TAKE THE FIFTH.

24 Q DIDN'T YOU TELL HER THAT YOU WERE JUST TOO SMART TO LET
25 THIS HAPPEN.

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A I TAKE THE FIFTH.

2 MR. SALTER: BEG THE COURT'S INDULGENCE.

3 (PAUSE)

4 I HAVE NOTHING FURTHER, YOUR HONOR.

5 THE COURT: NOW, LET ME RAISE THIS QUESTION: ONE OF YOUR
6 CLAIMS IS THAT THE DEFENDANT WANTED TO TESTIFY IN, AT SOME
7 PHASE OF THE TRIAL, IN ORDER TO RESPOND TO WHAT DOCTOR
8 CASCIO HAD SAID ABOUT CERTAIN THINGS?

9 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: NOW, IN ORDER, OBVIOUSLY, FOR HIM TO TESTIFY,
11 HE WOULD HAVE TO WAIVE HIS RIGHT TO REMAIN SILENT UNDER THE
12 FIFTH AMENDMENT.

13 HIS INVOKING THE RIGHT TO REMAIN SILENT UNDER THE FIFTH
14 AMENDMENT IS GOING TO EXTINGUISH YOUR CLAIM THAT HE SHOULD
15 HAVE BEEN ALLOWED TO TESTIFY TO RESPOND TO DOCTOR CASCIO.
16 BECAUSE THE ONLY WAY HE WOULD BE ABLE TO SATISFY THE
17 SECOND PRONG OF STRICKLAND WOULD BE FOR ME TO HEAR THAT
18 TESTIMONY.

19 MR. BROWN: AS WE DISCUSSED IN CHAMBERS, YOUR HONOR,
20 THAT'S ONE OF THE ISSUES THAT MR. ROBERTSON WANTED ME TO
21 RAISE IN COURT.

22 THE COURT: ALL RIGHT. ANY RE-DIRECT?

23 MR. MATLOCK: YES SIR. IF IT PLEASE THE COURT.

24

25

1 RE-DIRECT EXAMINATION BY MR. MATLOCK:

2 Q NOW, JIMMY, YOU SAID THAT-- WE'RE NOT ASSUMING IN ANY
3 WAY THAT YOU TOLD MS. CASCIO THAT, BECAUSE YOU WERE AT
4 TRIAL. AND THESE VARIOUS POINTS THAT MR. SALTER BROUGHT UP,
5 ISN'T THAT WHAT SHE SAID AT TRIAL?

6 A YES.

7 Q AND ISN'T IT FACT THAT YOUR ATTORNEYS KNEW IN ADVANCE
8 THAT THAT'S WHAT SHE WOULD TESTIFY?

9 A YES.

10 Q BECAUSE YOU WENT OVER HER REPORT AND HER NOTES WITH
11 THEM AND YOU KNEW THAT THAT WOULD BE HER TESTIMONY?

12 A I DIDN'T KNOW SHE WAS GOING TO TESTIFY TO WHAT SHE
13 TESTIFIED TO.

14 Q OKAY.

15 A I KNEW THAT SHE WAS GONNA TESTIFY, BUT I DIDN'T HAVE ANY
16 CLUE AS TO WHAT SHE TESTIFIED TO WAS WHAT SHE WOULD TESTIFY
17 TO.

18 Q IT CAME INTO EVIDENCE THAT THIS WOULD BE THE SUBSTANCE
19 OF HER TESTIMONY AND YOUR LAWYERS STILL PERSISTED IN
20 BRINGING HER ON AS A WITNESS IN YOUR BEHALF?

21 A YES.

22 Q AND, OF COURSE, THE OBVIOUS NEXT QUESTION, DO YOU THINK
23 THAT THIS HURT YOUR CASE IN MITIGATION?

24 A YEAH.

25 Q HOWEVER BRIEF?

1 A FROM MY STANDPOINT, THAT DAY IT ESSENTIALLY WIPED OUT
2 EVERYTHING WE'D DONE BEFORE, ALL THE WORK WE'D PUT IN, HAD
3 PUT IN; ALL THE WORK THAT WE HAD PRESENTED TO MITIGATE WHAT
4 THE STATE HAD PUT UP AS AGGRAVATING CIRCUMSTANCES HAD BEEN
5 THROWN OUT THE DOOR IN A MATTER OF AN HOUR AND A HALF.

6 Q LET'S GO BACK TO—

7 THE COURT: CAN I ASK A QUESTION SO I MAKE SURE I
8 UNDERSTAND THIS?

9 MR. MATLOCK: SURE

10 THE COURT: WHEN DID DOCTOR CASCIO TESTIFY?

11 MR. MATLOCK: IN MITIGATION, SHE WAS ONE OF THE LAST
12 WITNESSES, YOUR HONOR.

13 THE COURT: AND SHE WAS CALLED BY THE DEFENSE?

14 MR. BROWN: SHE WAS THE LAST EXPERT, YOUR HONOR.

15 THE COURT: OKAY, THANK YOU.

16 Q JIMMY, GETTING BACK TO THE PLEA BARGAIN, IF YOU WILL,
17 WITH MR. GILLEN. MR. GILLEN WAS YOUR BROTHER'S ATTORNEY?

18 A THAT'S CORRECT.

19 Q THE POINT IS, AT NO TIME DURING THE COURSE OF THE TRIAL
20 DID YOUR ATTORNEYS IN ANY WAY DISCUSS THAT PLEA BARGAIN
21 WITH YOU. IS THAT CORRECT?

22 A RIGHT. I DIDN'T KNOW IT EXISTED.

23 Q YOU DIDN'T EVEN KNOW IT EXISTED. WHAT DO YOU MEAN BY
24 THAT?

1 A I DIDN'T KNOW THAT IT EXISTED. OKAY? AND THE ARTICLE IN
2 THE PAPER DOESN'T EVEN MENTION MY ATTORNEY.

3 Q RIGHT.

4 A I MEAN, I DIDN'T KNOW THAT MY ATTORNEYS KNEW ANYTHING
5 ABOUT IT, MUCH LESS KNEW ENOUGH ABOUT IT TO APPROACH ME
6 WITH IT.

7 Q OKAY. BUT YOU TALKED TO MR. BOYD. YOU SAID LATER ON
8 YOU WROTE HIM OR BY TELEPHONE OR SOMETHING LIKE THAT?

9 A YES.

10 Q AT THIS TIME, HE RELAYED THAT THIS HAD---

11 A YEAH, THIS HAD OCCURRED AND THAT HE DID KNOW ABOUT IT.
12 HE FOUND OUT AT THE LAST MINUTE BEFORE TRIAL OR MAYBE
13 DURING THE JURY SELECTION. BUT THAT HE WAS AWARE OF IT BY
14 ONE OR BOTH OF THE PARTIES.

15 Q THE POINT BEING THAT THEY KNEW ABOUT THIS ALL THROUGH
16 THE COURSE OF THE TRIAL, AND NEVER TALKED TO YOU ABOUT IT,
17 NEVER BROUGHT IT UP TO YOU.

18 A YES. THEY OBVIOUSLY KNEW ABOUT IT.

19 Q THEY KNEW. AND YOU COULDN'T HAVE KNOWN IF YOU HADN'T
20 HAD A DISCUSSION WITH YOUR BROTHER AT THAT TIME CONCERNING
21 THIS OFFER, OR WHATEVER, WHICH, OBVIOUSLY, HIS ATTORNEY
22 SPECIFICALLY DISCUSSED WITH HIM WHAT THE OUTCOME OF THAT
23 CONVERSATION WOULD BE. YOU WOULDN'T KNOW THAT?

24 A NO, I WOULDN'T.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q SO, YOUR BROTHER MAY HAVE SAID IN THE SPIRIT OF SAVING
2 YOU FROM THE DEATH PENALTY, HE WOULD FORFEIT HIS RIGHT TO
3 ANY INHERITANCE. IS THAT CORRECT?

4 A IT'S POSSIBLE.

5 Q DID YOUR BROTHER GIVE YOU ANY MONEY WHILE YOU WERE
6 INCARCERATED ON DEATH ROW?

7 A YES.

8 Q APPROXIMATELY, HOW MUCH TOTAL MONEY DID HE SEND YOU
9 WHILE YOU'VE BEEN THERE? OVER THE COURSE OF YOUR EIGHT
10 YEARS THERE, SEVEN YEARS?

11 A \$45,000, MAYBE \$45,000, \$50,000.

12 MR. MATLOCK: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE,
13 YOUR HONOR.

14 THE COURT: ANY RE-CROSS?

15 MR. SALTER: I DON'T BELIEVE SO, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN, MR. ROBERTSON.

17 MR. BROWN: THE PETITIONER WOULD CALL JAMES W. HANCOCK
18 TO THE STAND.

19 JAMES W. HANCOCK, DULY SWORN,

20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. BROWN:

22 Q YOU'RE BILL HANCOCK. IS THAT CORRECT?

23 A I AM.

24 Q AND MR. HANCOCK, TELL ME HOW YOU CAME TO REPRESENT
25 MR. ROBERTSON.

1 A WE HAD SEVEN PEOPLE ON THE DEATH PENALTY LIST AT THAT
2 TIME QUALIFIED TO TRY THE DEATH PENALTY. THERE HAD BEEN
3 ABOUT FIVE MURDERS THAT WERE CONNECTED WITH DRUGS AND
4 THIS SORT OF THING. AND SOMEONE WAS APPOINTED IN COLUMBIA
5 AND CALLED ME---

6 Q WOULD THAT BE SOMEBODY FROM THE ANDERS FIRM?

7 A YEAH, FROM THE ANDERS FIRM. AND I FIGURED THAT-- I WAS
8 SECOND COMING UP ON THE LIST. SO, I SAID I'LL GO AHEAD AND GET
9 THIS AND GET THIS OVER WITH SO I WON'T HAVE ANOTHER ONE IN
10 FIVE, SIX, SEVEN, EIGHT YEARS, I HOPE.

11 Q HOW DID YOU KNOW, IF YOU KNOW, THAT MR. BOYD WAS NEXT
12 ON THE LIST?

13 A HE MUST HAVE BEEN SOMEWHERE CLOSE BECAUSE HE GOT
14 APPOINTED ALSO.

15 Q AND YOU WERE COURT-APPOINTED TO REPRESENT MR.
16 ROBERTSON. IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q DO YOU RECALL TALKING TO HIM WHEN YOU RECEIVED THAT
19 APPOINTMENT?

20 A I DO NOT KNOW. HE WAS TRIED IN 1999. I WOULD SAY
21 SOMETIME IN '98.

22 Q WAS IT APPROXIMATELY MAY OR APRIL OF '98?

23 A I WOULD SAY SOMEWHERE AROUND THERE.

24 Q AS A MATTER OF FACT, YOU DIDN'T FILE THE INITIAL BRADY
25 MOTION, DID YOU?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A NO. THE OTHER FIRM, I THINK, HAD FILED IT. IF I MAY PREFACE
2 THIS, MR. BROWN: I DON'T HAVE MY FILE. IT WAS GIVEN TO MR.
3 ROBERTSON. I'M SPEAKING FROM MEMORY, FROM EIGHT YEARS AGO.
4 I HAVE NO NOTES. IT WOULD HAVE TO-- IT CAN ALL BE DONE IN THE
5 FILE.

6 Q DO YOU RECALL IF YOU REVIEWED THE BRADY MOTION AND
7 THE EXCULPATORY-- EXCUSE ME. THE BRADY MOTION AND RULE 5
8 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE, THE RULE
9 5 MOTION THEY FILED?

10 A I KNOW THAT I MUST HAVE GONE OVER IT, YOU KNOW. THIS
11 WAS A DEATH PENALTY CASE. I CAN'T TELL YOU. I DON'T HAVE MY
12 NOTES. BUT I WOULD HAVE GONE OVER IT.

13 Q WHAT WAS THE FIRST THING YOU DID IN YOUR
14 REPRESENTATION OF MR. ROBERTSON?

15 A MR. BROWN, I CAN'T TELL YOU, REALLY, BECAUSE I DON'T HAVE
16 MY FILE. BUT I WENT THROUGH THE PROCEDURES OF GETTING THE
17 DISCOVERY, TALKING TO MR. BOYD, JUST TRYING TO FIGURE OUT
18 WHAT WE HAD AS A MURDER CASE.

19 Q EVENTUALLY, IN YOUR CONVERSATION WITH MR. BOYD, DID
20 YOU AND HE COME UPON A TRIAL STRATEGY?

21 A WELL, AFTER WE REVIEWED EVERYTHING THE STATE HAD, IT
22 WAS-- I'VE ONLY BEEN TRIED OR BROUGHT TO TRIAL, UP TO TRIAL,
23 THREE OTHER DEATH PENALTY CASES. AND HE-- THE EVIDENCE HERE
24 WAS JUST TOTALLY OVERWHELMING. THE SITUATION WAS JUST--
25 THERE WAS JUST VOLUMINOUS EVIDENCE.

1 WHAT WE COULD KEEP OUT WOULD NOT IN ANY WAY LEAD TO
2 HIS HAVING A NOT GUILTY. AND WE DECIDED AT SOME POINT IN TIME
3 THAT WE HAD TO HAVE SOME CREDIBILITY WITH THE JURY. AND IF
4 WE FOUGHT ALL OF THAT, THEN WE WOULD HAVE NO CREDIBILITY
5 EXAMINING OUR WITNESSES, OTHERWISE, AT THE DEATH PENALTY
6 PHASE.

7 Q LET ME MAKE SURE I UNDERSTAND WHERE YOU ARE. YOU
8 EXAMINED ALL THE STATE'S EVIDENCE. THEY HAD BEEN
9 FORTHCOMING IN DISCOVERY. IS THAT CORRECT?

10 A AS FAR AS WE KNOW, WE GOT EVERYTHING THEY HAD. WE
11 WENT OVER IT FOR DAYS AND DAYS AND DAYS, NUMBERING IT,
12 SORTING IT, DETERMINING CHAINS OF CUSTODY. SO, WE HAD---

13 Q CHANGE OF CUSTODY, OR CHAIN?

14 A CHAIN OF CUSTODY. BECAUSE WE HAD SO MANY PEOPLE
15 INVOLVED FROM MARYLAND, FROM PENNSYLVANIA, FROM SOUTH
16 CAROLINA, BRINGING ALL THAT STUFF DOWN; THE STUFF THAT WAS
17 THROWN IN THE DUMPSTER; THE QUESTIONING AND EVERYTHING;
18 AND THE EVIDENCE GARNERED FROM THE CAR IN PENNSYLVANIA. WE
19 WENT OVER THAT EVIDENCE FOR DAYS AND DAYS AND DAYS, WITH
20 THE SOLICITOR. AND AS FAR AS WE KNOW, WE RECEIVED
21 EVERYTHING THEY HAD.

22 Q LET ME ASK YOU, THIS, SIR: DID MR. ROBERTSON AFTER HIS
23 ARREST EVER GIVE ANY STATEMENT OF A CONFESSORY NATURE
24 TO ANYBODY THAT YOU'RE AWARE OF?

25 A NOT THAT I'M AWARE OF.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

- 1 Q SO, HE NEVER DID CONFESS TO THIS CRIME, DID HE?
- 2 A NOT THAT I'M AWARE OF.
- 3 Q AND IN THE EVIDENCE YOU DISCOVERED THERE WAS
- 4 EXTENSIVE FORENSIC EVIDENCE IN THIS CASE, WAS THERE NOT?
- 5 A YES, EXTENSIVE FORENSIC EVIDENCE, EXTENSIVE DNA
- 6 EVIDENCE. IT WAS ALL THERE. AND HANDWRITING EXEMPLARS, I
- 7 BELIEVE, AND THE WHOLE WORKS. THEY HAD PUT TOGETHER A GOOD
- 8 CASE.
- 9 Q LET'S GO THROUGH IT TO THE BEST OF YOUR MEMORY. WE'LL
- 10 START WITH THE HANDWRITING. WE'LL START WITH THE LAST FIRST.
- 11 WHAT WAS THE HANDWRITING EXPERT ON? WAS IT ON THE NOTE HE
- 12 LEFT?
- 13 A ON THE NOTE.
- 14 Q AND THE NOTE BASICALLY SAID, "MOM AND DAD, GONE TO GET
- 15 CHIP, BE BACK SOON", OR WORDS TO THAT EFFECT?
- 16 A TO THAT EFFECT. "I LOVE YOU, JIM", WAS THE LAST THING.
- 17 Q THAT NOTE BY THE HANDWRITING EXPERT WAS DETERMINED
- 18 TO BE JIM. IS THAT CORRECT?
- 19 A YES.
- 20 Q WITHOUT BELABORING THE POINT, THE DNA EVIDENCE, WHAT
- 21 DID IT SHOW TO THE BEST OF YOUR RECOLLECTION?
- 22 A IT SHOWED EVERYTHING AND POINTED TO JIMMY, TO BLOOD,
- 23 TO EVERYTHING ELSE. WE WENT THROUGH THAT FOR A DAY ONE
- 24 SUNDAY AFTERNOON WITH-- AND I'M TRYING TO LOOK FOR MY
- 25 NAMES HERE. I THINK HIS NAME MAY HAVE BEEN OSTROWSKI. IT

1 WAS A DNA EVIDENCE EXPERT WE HIRED FROM NORTH CAROLINA
2 THAT CAME DOWN. AND ONE SUNDAY WE WENT AFTER ALL THE-- WE
3 WENT THROUGH ALL THE DNA EVIDENCE TO SEE IF IT COULD BE
4 CHALLENGED. AND THEN LATER, HE WAS--

5 Q WAIT A MINUTE. I HATE TO INTERRUPT YOU. YOU SAY YOU AND
6 THE EXPERT WENT THROUGH IT. DID YOU ACTUALLY GET SAMPLES
7 FROM SLED AND CONDUCT YOUR OWN TEST, OR DID YOU GO
8 THROUGH THE REPORT GENERATED BY SLED?

9 A TO MY RECOLLECTION, IT WAS THE REPORT GENERATED BY
10 SLED.

11 Q SO, YOU DIDN'T HAVE YOUR ACTUAL DNA TEST?

12 A NO, I DON'T BELIEVE SO.

13 Q NOW, LET ME ASK YOU THIS: DID YOU DEEM THAT NECESSARY
14 TO YOUR DEFENSE OF MR. ROBERTSON?

15 A I DID NOT. WHAT WE DID, WE HAD-- WE DIDN'T HAVE ANY
16 EVIDENCE THAT WOULD SHOW THAT THE DNA OR THE BLOOD OR
17 ANYTHING ELSE WOULD BE SOMEWHERE ELSE OTHER THAN HIS, HIS
18 MOM'S AND HIS DAD'S.

19 Q AND TO THE BEST OF YOUR MEMORY, WHAT DID THE DNA
20 RESULTS SHOW, IN A NUTSHELL, WITHOUT GETTING TOO LONG-
21 WINDED ON THAT?

22 A WELL, IT SHOWED THAT HIS DAD AND MOM, THEY WERE KILLED,
23 AND THE BAT KILLED THEM. AND THE SPLATTERS WERE CONSISTENT
24 WITH-- THE BLOOD SPLATTERS CONSISTENT-- THIS ISN'T DNA, BUT
25 PART OF IT. THAT THE BLOOD SPLATTERS WERE CONSISTENT WITH A

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 BAT COMING UP AND THROWN ON THE CEILING AND BACK TOWARD
2 HER BEDROOM. AND I CANNOT REMEMBER WHETHER HIS BLOOD WAS
3 FOUND THERE OR NOT.

4 Q WOULD IT REFRESH YOUR MEMORY IF I TOLD YOU HIS BLOOD
5 WAS NOT FOUND THERE?

6 A LIKE I SAID, I WOULD REMEMBER. I DON'T REMEMBER HIS
7 BLOOD BEING FOUND THERE SPECIFICALLY, NOR DO I REMEMBER
8 MEREDITH MOON'S BEING FOUND THERE TO CONNECT HIM TO THE
9 CRIME.

10 Q AND YOU ALSO HAD, I GUESS IT WOULD BE FORENSIC EVIDENCE
11 FROM THE BAGS DROPPED IN VIRGINIA AND MARYLAND. IS THAT
12 CORRECT?

13 A RIGHT. THAT IT WAS THEIR BLOOD AND THE CLOTHES WERE
14 JIMMY'S. THE BLOOD WAS THEIRS. I DON'T KNOW WHETHER THE BAT
15 WAS FOUND UP THERE OR NOT, BUT IT TIED EVERYTHING TOGETHER
16 THAT MR. ROBERTSON HAD BEEN IN THE HOUSE. AND TO OUR
17 KNOWLEDGE WE WERE-- YOU KNOW, WE WERE TRYING TO
18 CONSTRUCT A DEFENSE, BUT NOTHING WAS LEADING TO MEREDITH
19 MOON OR SOMEBODY ELSE DOING IT.

20 Q NOT TO BELABOR THE POINT, BUT FOR THE COURT'S
21 EXPLANATION, THE BAGS FOUND IN VIRGINIA AND MARYLAND
22 CONTAINED BAGS OF CLOTHING, VARIOUS AND SUNDRY ARTICLES
23 THAT WERE TIED BACK TO THE HOUSE. IS THAT CORRECT?

24 A YES. AND TIED BACK TO THEM THROWING THEM IN THE
25 DUMPSTER AND IT WAS CONSISTENT WITH A ROUTE TO

1 PENNSYLVANIA WHERE HE WAS GOING. IT WAS RIGHT OFF THE
2 INTERSTATE.

3 Q WHICH MEREDITH MOON LATER CONFIRMED WAS THE ROUTE
4 THEY TOOK AND WHERE THEY DROPPED IT. IS THAT CORRECT?

5 A I THINK SHE'S THE ONE WHO TOLD THEM EXACTLY WHERE THE
6 THINGS WERE AND THEY CAME DOWN VERY QUICKLY AND PICKED
7 ALL OF THAT UP AND TIED IT TO THEM VERY QUICKLY.

8 Q AND THERE WERE NO OTHER AVENUES TO POINT THE FINGER AT
9 ANYBODY ELSE. IS THAT CORRECT?

10 A WELL, WE LOOKED AT POINTING THE FINGER AT MEREDITH
11 MOON. WE WENT AS FAR AS TO GO TO THE HOUSE AND HAVE MY
12 INVESTIGATOR TALK IN THE UPSTAIRS, WHILE I STOOD DOWNSTAIRS
13 IN THE ROOM WHERE SHE WAS SUPPOSED TO BE MOST OF THE TIME. I
14 BELIEVE SHE TESTIFIED SHE CAME TO THE TOP OF THE STAIRS ONE
15 TIME. AND TO TALK SO THAT WE COULD DETERMINE WHAT SHE
16 HEARD, SHE COULD HEAR, AND NOT BEING THERE WITH A WEAPON IN
17 HER HAND OR OTHERWISE. AND WE DETERMINED THAT SHE COULD
18 PRETTY MUCH HEAR WHAT WAS GOING ON UP THERE AS EVENTUALLY
19 SHE TESTIFIED TO.

20 Q AS A RESULT OF YOUR EXPERT REVIEWING THE DNA-- WELL,
21 LET ME BACK UP A SECOND. DID YOUR EXPERT CONFIRM WHAT THE
22 SLED REPORT SHOWED?

23 A YES SIR. BASICALLY HE TOLD US THAT WE DIDN'T HAVE AN
24 AVENUE.

25 Q SO, YOU SAW REALLY NO WAY TO PURSUE THAT. CORRECT?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A WE DIDN'T.

2 Q AND BASED ON YOUR INVESTIGATION, ALL THE EVIDENCE
3 GIVEN TO YOU, ALL THE DISCOVERY REVEALED TO YOU, YOUR
4 EXPERTS, AS TO THE GUILT PHASE AND THE CRIME SCENE WHEN
5 MEREDITH MOON WAS THERE, THERE WAS REALLY NO WAY TO TIE
6 MEREDITH MOON TO THAT AT ALL?

7 A NO SIR.

8 Q SO, YOU WOULD AGREE WITH ME, TO POINT THE FINGER AT
9 MEREDITH MOON AS BEING INVOLVED IN THE ACTUAL KILLING - NOT
10 WHAT SHE DID BEFORE AND AFTER - BUT THE ACTUAL KILLING OF
11 BOTH ROBERTSONS WAS A TOTALLY FELONIOUS DEFENSE?

12 A AS FAR AS I WAS CONCERNED, YES.

13 Q SO, THAT WAS GOING NOWHERE?

14 A NOWHERE.

15 Q AND, WOULD IT BE SAFE TO SAY, BASED ON WHAT YOU HAD
16 BEFORE YOU, THAT THE EVIDENCE AS TO HIS GUILT WAS
17 OVERWHELMING?

18 A IT WAS.

19 Q AFTER YOU REVIEWED ALL THESE DOCUMENTS AND ALL THE
20 EVIDENCE, WHAT DECISION, OR WHAT STRATEGY DID YOU AND MR.
21 BOYD TAKE THEN?

22 A WELL, WE DECIDED THAT-- WE WENT BACK INTO AND TALKED
23 WITH JIMMY. AND WE GOT A HISTORY OF HIS FAMILY. WE GOT THE-- I
24 THINK WE GOT-- AND YOU MAY HAVE THEM OVER THERE. WE GOT

1 THE SCHOOL RECORDS FROM CALIFORNIA. WE GOT THE RECORDS
2 FROM THE JUVENILE AGENCIES. WE GOT---

3 Q WHEN YOU SAY CALIFORNIA, WAS THAT FROM ELEMENTARY
4 AND GRADE SCHOOL?

5 A I THINK IT WAS A GRADE SCHOOL THERE, OR SOMETHING OF
6 THAT NATURE. BUT WE WENT AFTER ALL THE RECORDS WE COULD
7 FIND TO DETERMINE WHAT WE COULD DO TO DEFENDING JIMMY IN
8 THE MATTER.

9 Q YOU GOT HIS SCHOOL RECORDS. WHAT ELSE DID YOU GET?

10 A OH, GRACIOUS.

11 Q TO THE BEST OF YOUR MEMORY.

12 A TO THE BEST OF MY MEMORY, I THINK HE HAD A YOA SENTENCE
13 THAT HE WAS INCARCERATED. I THINK WE GOT SOME RECORDS FROM
14 THERE.

15 Q DID HE HAVE-- LET ME SEE IF I CAN REFRESH YOUR MEMORY A
16 LITTLE BIT. I WAS AN ATTORNEY IN 1996. ARE WE TALKING ABOUT
17 THE YOA SENTENCE THAT HE GOT FOR THE BURGLARY, SECOND
18 DEGREE, ON THE NEXT-DOOR NEIGHBOR'S HOUSEHOLD?

19 A AND I PROBABLY TALKED TO YOU ABOUT IT. I DON'T
20 REMEMBER, BUT YES.

21 Q AND HE RECEIVED AN ACTIVE YOA, WITH A RECOMMENDATION
22 OF SHOCK. IS THAT CORRECT?

23 A YES, I THINK SO.

24 Q AND HE DIDN'T QUALIFY FOR SHOCK, SO HE WOUND UP DOING
25 TEN AND A HALF MONTHS, THE MINIMUM YOA. IS THAT CORRECT?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A YES SIR.

2 Q AND DID YOU GET THE RECORDS FROM HIS TENURE AT YOA?

3 A I BELIEVE SO.

4 Q DID YOU ALSO GET HIS RECORDS FROM WILLIAM S. HALL WHEN
5 HE WAS INVOLUNTARILY COMMITTED IN 1995?

6 A I BELIEVE SO.

7 Q AND DID YOU GET HIS COUNSELING RECORDS FROM DOCTOR
8 McMEEKIN?

9 A DOCTOR McMEEKIN, I THINK THEY WERE CONTAINED IN
10 DOCTOR, OR, SKIP MEYERS' RECORDS. I THINK THEY WERE ALL IN
11 ONE, BECAUSE OF THE FAMILY COUNSELING THEN. HER COUNSELING,
12 MRS. ROBERTSON'S COUNSELING, AND THEN MR. ROBERTSON'S
13 COUNSELING. SO, I THINK THEY CAME ALL IN A PACKAGE.

14 Q WOULD IT BE SAFE TO SAY THAT YOU DID NOT ISSUE A
15 SUBPOENA TO DOCTOR McMEEKIN, AS TO THE BEST OF YOUR
16 MEMORY?

17 A NO, WE DID NOT.

18 Q I'M COME BACK TO THIS. BUT WERE YOU AWARE THAT DOCTOR
19 McMEEKIN WAS, FOR LACK OF A BETTER TERM, THE FAMILY
20 PSYCHIATRIST IN THAT HE WAS SEEING EARL ROBERTSON, TERRY
21 ROBERTSON, JIMMY ROBERTSON, AND CHIP ROBERTSON?

22 A I THINK THAT IT WAS NOT McMEEKIN THAT WAS SEEING THEM
23 ALL. THE RECORDS THAT WERE SEEN WERE MEYERS' AND THAT'S
24 WHERE WE GOT ALL OF THOSE. NOW, IF DOCTOR McMEEKIN HAD

1 SOME RECORDS, THEN I DIDN'T SEE IT OR FIND IT NECESSARY TO
2 SUBPOENA THEM.

3 Q TO YOUR KNOWLEDGE, DID THE STATE HAVE THOSE RECORDS,
4 OR IF YOU KNOW?

5 A I DON'T REMEMBER.

6 Q OKAY. SO, YOU GO THROUGH THE EVIDENCE. YOU'RE AT THE
7 STAGE WHERE YOU'VE GOT TO MAKE A DECISION AND THE GUILT'S
8 OVERWHELMING. IS THAT CORRECT?

9 A YES, I'D SAY THAT.

10 Q WHO, IF ANYONE, DID YOU AND MR. BOYD CONSULT ABOUT, AS
11 FAR AS EXPERTS ON HOW TO PROCEED ON THIS CASE?

12 A WE WENT TO THE CAPITAL DEFENSE.

13 Q IT'S CHANGED NAMES NOW. WHAT'S IT NOW, CENTER FOR
14 CAPITAL LITIGATION?

15 A CENTER FOR CAPITAL LITIGATION. WE SPENT HOURS AND
16 HOURS WITH---

17 Q JEFF BLUME?

18 A JEFF BLUME, DRUCY GLASS AND JOHN - WHO IS IT? ANYWAY, A
19 GROUP OF ATTORNEYS THAT SPECIALIZE IN CAPITAL CASES. I THINK
20 FROM THE INVOICES AND EVERYTHING THEY WERE PAID, BECAUSE WE
21 ALMOST WEEKLY DURING THE LAST PHASE, WE WERE IN TOUCH WITH
22 THEM. WE WERE SEEKING THEIR ADVICE. WE WERE ASKING THEM
23 HOW TO MAKE SURE THAT WE HAD MATTER FOR APPEAL; TO MAKE
24 SURE THAT WE WERE TRYING TO GET THE PROPER PEOPLE IN THE

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 PROPER SEQUENCE. I THINK THAT THEY SENT US TO PINCUS; THEY
2 SENT UP TO EVANS BECAUSE THEY'D USED THEM BEFORE.

3 Q LET ME INTERRUPT YOU AGAIN.

4 A YES.

5 Q DOCTOR PINCUS WAS THE NEUROLOGIST FROM GEORGETOWN
6 UNIVERSITY. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q DOCTOR PINCUS AT THIS TIME WAS ALSO VICE-PRESIDENT OF
9 THE AMERICAN ASSOCIATION OF NEUROLOGISTS. IS THAT CORRECT?

10 A HE HAD TESTIFIED IN MANY TRIALS AND HE WAS VERY WELL-
11 QUALIFIED AFTER WE SOUGHT HIM OUT.

12 Q OUTSTANDING, WOULD THAT BE A CORRECT STATEMENT?

13 A I THOUGHT HE WAS VERY GOOD.

14 Q NOW, WHO WAS DOCTOR EVANS?

15 A DOCTOR EVANS WAS FROM COLUMBIA. HE WAS A
16 PSYCHOLOGIST, PSYCHIATRIST. AND WHAT HE HAD-- WE WERE
17 TRYING TO FIGURE OUT HOW WE COULD EXPLAIN TO A JURY WHY
18 THIS HAD HAPPENED. WE TIED IT TO RITALIN. WE BROUGHT DOCTOR
19 MORTON IN, THAT THAT HAD OVERTAKEN WHATEVER JUDGMENT HE
20 MAY HAVE.

21 Q DOCTOR MORTON WAS FROM THE MEDICAL UNIVERSITY OF
22 SOUTH CAROLINA, WAS HE NOT?

23 A YES. HE TESTIFIED TO THE EFFECTS OF RITALIN. HE WAS
24 TRYING TO---

25 Q HE WAS A PHARMACOLOGIST, WAS HE NOT?

1 A YES. AND WE WANTED HIM TO INDICATE THAT---

2 Q EXCUSE ME. I HATE TO INTERRUPT YOU.

3 A GO AHEAD.

4 Q DOCTOR EVANS WAS A CLINICAL PSYCHOLOGIST. IS THAT
5 CORRECT?

6 A YES. AND HE WAS TESTIFYING THAT THERE WERE ENOUGH
7 STUDIES AVAILABLE - AND THERE'S BEEN SOMETHING ELSE ON IT
8 SINCE - THAT ANYONE WHO, NUMEROUS INTERVIEWS WITH PEOPLE ON
9 DEATH ROW HAD SHOWN THAT THERE WAS AN ABNORMALITY OF
10 THAT PERSON IN THE RIGHT FRONTAL LOBE OF THE BRAIN.

11 Q SO, THE CENTER FOR DEATH PENALTY LITIGATION REFERRED TO
12 DOCTOR PINCUS, DOCTOR EVANS, DOCTOR MORTON?

13 A YES.

14 Q AND DOCTOR CASCIO?

15 A YES.

16 Q TELL ME WHO REFERRED YOU TO DOCTOR CASCIO?

17 A I THINK IT WAS DRUCY GLASS, FROM THE CENTER FOR CAPITAL
18 LITIGATION.

19 Q AND WHAT IS HER PARTICULAR POSITION THERE?

20 A MR. BROWN, I DON'T KNOW.

21 Q TO THE BEST OF YOUR MEMORY.

22 A I DON'T KNOW HER OFFICIAL TITLE. SHE WAS THERE WORKING
23 WITH THEM, WORKING WITH WITNESSES AND INDICATED THAT THIS
24 LADY COULD DO THE JOB. AND I WILL TELL YOU THE TRUTH, THERE
25 WAS ANOTHER LADY THAT HAD DONE THIS ON SEVERAL OCCASIONS

1 AND THAT WE WENT TO DOCTOR CASCIO AND INTERVIEWED HER TO
2 DETERMINE HER QUALIFICATIONS AND INDICATED THAT SHE WAS
3 QUALIFIED TO HELP US IN THIS MATTER.

4 Q AT WHAT POINT DID YOU AND MR. BOYD REACH THE
5 CONCLUSION THAT BASICALLY WE HAVE NO - FOR LACK OF A BETTER
6 TERM - GUILT PHASE DEFENSE HERE; ALL THE EVIDENCE IS PRETTY
7 MUCH OVERWHELMING POINTING TO THAT HE DID IT; AND WE NEED
8 TO GO BASICALLY WITH A MENTAL ILLNESS DEFENSE?

9 A I CAN'T TELL YOU AT WHAT POINT. BUT AS WE LOOKED AT IT
10 AND REVIEWED THE EVIDENCE AND WENT OVER EVERYTHING WE
11 WERE PRETTY SURE THAT HE WAS GOING TO BE CONVICTED, PERIOD.
12 SO, IT WAS AT SOME POINT. IT DIDN'T TAKE LONG.

13 Q WAS THE GUILTY BUT MENTALLY ILL STRATEGY EVER
14 DISCUSSED?

15 A WE WERE NEVER OFFERED A PLEA TO THAT. AND I BELIEVE
16 THAT WE DID DISCUSS IT. WE HAD RESEARCHED IT. AND I THINK
17 THAT THE WAY - THIS IS JUST MEMORY - THAT WE WOULD HAVE FIRED
18 ALL OUR GUNS AT THAT POINT AND THAT IT WOULD NOT REALLY
19 TREMENDOUSLY AFFECT THE TRIAL AT THAT POINT, OR THAT WE
20 EVEN COULD CARRY THAT FORWARD, BECAUSE WE COULDN'T PROVE
21 HE WAS MENTALLY ILL.

22 WE HAD ALL HIS RECORDS, BUT WE NEVER REALLY COULD
23 PROVE THAT HE WAS MENTALLY ILL. WE COULD PROVE THAT HE HAD
24 BI-POLAR DISORDER. BUT AS FAR AS MENTALLY ILL TO THE POINT

1 THAT WAS NECESSARY UNDER THE LAW, WE DIDN'T FEEL LIKE IT WAS
2 A PROPER DEFENSE.

3 Q YOU HAD TESTIMONY WHICH CAME OUT IN THE MITIGATION
4 PHASE FROM DOCTOR MORTON, DOCTOR PINCUS AND DOCTOR EVANS
5 THAT SAYS HE WAS MENTALLY ILL AND HAVING A BI-POLAR
6 REACTION, A MANIC EPISODE WHEN HE DID THIS. IS THAT CORRECT?

7 A I DON'T REMEMBER THEIR TESTIMONY THAT HE WAS MENTALLY
8 ILL.

9 Q NOT MENTALLY ILL, THAT HE WAS HAVING A MANIC EPISODE
10 DUE TO HIS BI-POLAR DISORDER.

11 A RIGHT. AND THE INGESTION OF RITALIN.

12 Q AND DO YOU RECALL THAT DOCTOR MORTON TESTIFIED THAT
13 THE RITALIN AMPLIFIED THE MANIA ASSOCIATED WITH BI-POLAR
14 DISORDER WHEN IT OCCURS?

15 A YES.

16 Q DID YOU RESEARCH WHETHER THAT WOULD QUALIFY AS
17 MENTALLY ILL?

18 A AS FAR AS-- YES, I DID. I WOULD HAVE RESEARCHED IT, BUT I
19 FIGURED WHAT I HAD WAS NOT SUFFICIENT OR THAT WAS NOT
20 PROPER TO DO AT THE END OF TRIAL, OR I WOULD HAVE PURSUED IT.

21 Q COULD YOU HAVE PROFFERED THAT TO PLEASE THE COURT,
22 KNOWING THE SOLE DEFENSE WAS BASED ON EXPERT WITNESS AND
23 MENTAL ILLNESS MITIGATION? I GUESS MY QUESTION BECOMES
24 COULD YOU NOT HAVE TAKEN WHAT THE STATE HAD IN THE GUILT

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1 PHASE WITH ALL THIS EVIDENCE OF DNA AND SO FORTH AND TIE IT
2 TOGETHER BY DOING IT THAT WAY?

3 A IT WAS OUR DECISION THAT THAT WOULDN'T HAPPEN THAT
4 WAY, THAT WE NEEDED TO-- RATHER THAN TRY TO DO THAT-- IT
5 WOULD ADVERSELY AFFECT THE DEATH PENALTY PHASE WHICH WE
6 FIGURED WE KNEW WHAT WAS COMING.

7 Q DO YOU THINK IT WOULD HAVE HELPED IF YOU HAD
8 ESTABLISHED THAT MINDSET WITH THE JURY FROM DAY ONE THAT,
9 HEY, HE DID THIS, BUT HE WAS MENTALLY ILL, BECAUSE WE KNEW IT
10 WAS GONNA COME DOWN TO THAT ANYWAY, AS A TRIAL STRATEGY?

11 A IT MAY HAVE BEEN CONSIDERED. I DON'T REMEMBER WHETHER
12 IT WOULD HAVE BEEN CONSIDERED IN DISCUSSIONS WITH MR. BOYD
13 AND I, BUT WE REJECTED IT, EVIDENTLY, BECAUSE WE DIDN'T PUT IT
14 ON.

15 Q WAS THERE ANY PLEA BARGAINS DISCUSSED?

16 A NONE THAT I REMEMBER.

17 Q AND I HAVE TO ASK YOU THIS QUESTION: WERE YOU AWARE OF
18 ANY ALLEGED PLEA BARGAINS MADE TO CHIP ROBERTSON'S LAWYER,
19 MIKE GILLEN?

20 A YES, I SURE WAS. AND I HAD TALKED TO THE SOLICITOR ABOUT
21 IT. AND IT WAS DETERMINED THAT I BELIEVE IT WAS FRIVOLOUS. IT
22 WAS WHAT I CALL HALL TALK. DURING THE DEATH PENALTY TRIAL,
23 YOU GO BACK AND YOU TALK ABOUT ANYTHING. AND PEOPLE
24 WOULD CALL SOME OF THE HUMOR THAT WE HAVE BETWEEN THE
25 ATTORNEYS MACABRE. BUT IT WAS SOMETHING THAT WAS SAID—

1 Q NEEDLESS TO SAY, THAT WAS NOT A SERIOUS---

2 A IT WAS NOT A-- IT WAS NOT A SERIOUS OFFER. AND WHEN I
3 SAID TO GILLEN SOMETHING ABOUT THIS, IT WAS WE WERE JUST
4 TALKING. IT WAS NEVER A SERIOUS OFFER ON THE TABLE. IF THERE
5 HAD EVER BEEN A SERIOUS OFFER ON THE TABLE IN THIS CASE, I
6 CERTAINLY WOULD HAVE URGED MY CLIENT TO TAKE IT BECAUSE I
7 DIDN'T ENJOY TRYING THE CASE EITHER.

8 Q DID YOU OR MR. BOYD HIRE A JURY CONSULTANT?

9 A I DON'T REMEMBER.

10 Q DO YOU RECALL IF YOU HAD ANYBODY ASSISTING WHEN YOU
11 WERE STRUCK THE JURY?

12 A I REALLY DON'T REMEMBER.

13 Q IF I TOLD YOU YOU DIDN'T, WOULD YOU DISAGREE WITH ME?

14 A NO, I WOULDN'T.

15 Q WHAT RESEARCH, IF ANY, DID YOU DO ON THE JURORS?

16 A WE HAD PRETTY MUCH ALL THE RESEARCH NECESSARY
17 BECAUSE THE JURY QUESTIONNAIRE WAS REALLY EXTENSIVE AS TO
18 CHILDREN, EVERYTHING ELSE. THAT WAS A LATER CONCERN OF MINE
19 IN THE FILE AND EVERYTHING ELSE. BUT IT WAS FAIRLY EXTENSIVE. I
20 BELIEVE WE HAD MOTIONS EARLIER THAT ASKED FOR A CHANGE OF
21 VENUE. AND UNDER THE SYSTEM THAT WE HAVE NOW WE WERE
22 ALMOST CERTAIN THAT WE WERE GONNA GET A JURY IN YORK
23 COUNTY. WE EVALUATED IT AS WE COULD WITH MR. BOYD'S
24 EXPERIENCE IN DEATH PENALTY CASES AND MINE.

25 Q WERE YOU LEAD COUNSEL ON THIS?

1 A I GUESS YOU COULD SAY THAT I WAS. I DID A BUNCH OF IT. I

2 GUESS YOU COULD SAY THAT, BUT JIM AND I BOTH DIVIDED THINGS

3 UP AFTER WE AMASSED ALL THE RECORDS AND EVERYTHING ELSE.

4 AS FAR AS CROSS EXAMINATION, ARGUMENT, WE EACH TOOK

5 DIFFERENT WITNESSES THAT HE FELT COMFORTABLE WITH ONE

6 WITNESS AND I FELT MORE COMFORTABLE WITH ANOTHER.

7 I THINK THAT WAS DONE WITH DOCTOR PINCUS, I BELIEVE JIM

8 TOOK. AND I TOOK DOCTOR EVANS AND I MAY HAVE TAKEN DOCTOR

9 MORTON, TOO. I'M NOT SURE. WE JUST DIVIDED UP THE WITNESSES AS

10 WE FELT COMFORTABLE WITH THEM.

11 Q DID YOU TELL JUDGE HAYES AT THE START OF THE TRIAL THAT

12 YOU WOULD BE LEAD COUNSEL?

13 A I MAY HAVE.

14 Q OKAY.

15 A I HAVEN'T SEEN THE TRANSCRIPT EITHER.

16 MR. BROWN: BEG THE COURT'S INDULGENCE.

17 (PAUSE)

18 Q JUST TO REFRESH YOUR MEMORY, PAGE 32 OF THE TRANSCRIPT,

19 LINES 19 THROUGH 25. "MR. HANCOCK:" IS THAT YOU?

20 A YES.

21 Q WERE YOU EVER AWARE OF A JUROR WHO TRIED TO TAIN--

22 NOT TAIN. EXCUSE ME, INCORRECT WORD. TRIED TO PERSUADE THE

23 REST OF THE JURORS TO VOTE FOR DEATH. DID YOU EVER BECOME

24 AWARE OF THAT, A GENTLEMAN IN A COWBOY HAT?

1 A AS FAR AS I KNOW, AND MY MEMORY, THE FIRST THING I HEARD
2 ANYTHING ABOUT THAT WAS SITTING BACK OVER HERE TODAY. AND
3 JUST FOR COUNSEL-- I TOOK SOME NOTES DURING MR. ROBERTSON'S
4 TESTIMONY, AND THAT'S WHY I'M LOOKING DOWN AT THE PAD, JUST A
5 FEW NOTES OF HIS TESTIMONY TO HOPEFULLY JOGGLE MY MEMORY.

6 Q HOW MUCH TIME DID YOU SPEND WITH JAMES ROBERTSON
7 PRIOR TO HIS TRIAL?

8 A NO IDEA.

9 Q MORE THAN TEN HOURS?

10 A IT MAY OR MAY NOT HAVE BEEN THAT MUCH; IT MAY HAVE
11 BEEN MORE THAN THAT. THE THING WAS, IS WE SAT DOWN WITH HIM,
12 ONCE WE DETERMINED THE FACTS AND EVERYTHING ELSE. AND
13 BASICALLY, WE WERE GOING ON EXPERTS TO TRY TO-- AND THEY
14 WERE OUR CONTACT SO THAT WE COULD REVIEW WHAT WAS THERE
15 AND TRY TO PUT IT INTO SOME KIND OF CONTEXT THAT WE COULD
16 SHOOT FOR NOT GETTING THE DEATH PENALTY. SO THAT WAS MUCH
17 OF THE CONTACT. BUT WE SAT DOWN WITH HIM LONG ENOUGH TO
18 LET HIM KNOW ABOUT THE TRIAL, ABOUT THE CASE AND WHAT WE
19 WERE DOING.

20 Q WAS IT EVER DISCUSSED WITH HIM THE OPTION, BASED ON
21 YOUR OR MR. BOYD'S CRITIQUE OF THE CASE, THAT THE GUILT PHASE
22 WAS BASICALLY A FOREGONE CONCLUSION AND THAT THE EFFORT
23 WOULD BE IN MITIGATION, THE PLEA OF GUILTY BUT MENTALLY ILL?

24 A I DON'T REMEMBER DISCUSSING WITH HIM THE PLEA OF GUILTY
25 BUT MENTALLY ILL. BUT IF OUR EVALUATION WAS THERE, IT'S

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1 PROBABLY SOMEWHERE IN MY NOTES, THAT WE DID, WE WOULD
2 HAVE GIVEN-- I BELIEVE WE WOULD HAVE GIVEN OUR CLIENT OR AT
3 LEAST TOLD HIM THAT THAT WAS OUR STRATEGY THAT WE HAD TO
4 GO SOLELY IN THE DEATH PENALTY PHASE.

5 Q WHAT, IF ANYTHING, DO YOU REMEMBER DISCUSSING WITH MR.
6 ROBERTSON ABOUT THE EXPERT WITNESSES AND HOW TO DEAL WITH
7 THEM, HOW TO TALK WITH THEM?

8 A I TALKED TO HIM TO DEAL WITH THEM WITH THE TRUTH. I
9 MEAN, WE COULDN'T TRY A CASE IF HE'S LYING TO THEM, THEN WE'RE
10 GONNA LIE TO THE JURY, AND THEY GONNA FIGURE THAT OUT
11 SOMEWHERE ALONG THE LINE. SO, YOU KNOW, WE TOLD HIM TO BE
12 HONEST.

13 Q WHEN DID DOCTOR McKEE, THE STATE'S EXPERT WITNESS,
14 EXAMINE MR. ROBERTSON?

15 A THAT I DON'T KNOW. I THINK IT WAS PRIOR TO-- I DON'T KNOW
16 EXACTLY WHEN IT WAS. IF I REMEMBER CORRECTLY, I THOUGHT WE
17 HAD SOME MOTION HEARINGS ON THAT, AS TO WHETHER HE COULD
18 EXAMINE HIM, AND IT WAS DETERMINED THAT HE COULD EXAMINE
19 HIM, IF I REMEMBER CORRECTLY.

20 Q WOULD YOU AGREE WITH ME THAT IT IS PRETTY CLEAR CUT IN
21 SOUTH CAROLINA THAT YOU CAN PRESENT A MENTALLY ILL DEFENSE,
22 THE STATE HAS THE RIGHT TO HAVE AN EXPERT EXAMINE HIM?

23 A THAT'S WHAT WE DETERMINED.

24 Q DID YOU DISCUSS THAT WITH MR. ROBERTSON?

25 A YES.

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1 Q THAT YOU WERE GOING TO PUT UP ANY KIND OF A MENTAL
2 ILLNESS DEFENSE THAT THE STATE HAD A RIGHT TO HAVE THEIR
3 EXPERT EXAMINE HIM?

4 A YES.

5 Q AND HE CONSENTED TO THAT VOLUNTARILY?

6 A AS FAR AS I KNOW. I DON'T HAVE IT WRITTEN HERE. BUT HE
7 EVENTUALLY WENT DOWN THERE, SO THAT WOULD HAVE SHOWN HIS
8 CONSENT, I BELIEVE.

9 Q HIS RIGHT TO TESTIFY. AFTER DOCTOR CASCIO TESTIFIED, DO
10 YOU RECALL A CONVERSATION HE HAD WITH YOU AND MR. BOYD
11 WHERE HE WANTED TO TESTIFY TO CORRECT HER DEFICIENCIES, FOR
12 LACK OF A BETTER TERM. I MEAN LITTLE DEFICIENCIES WHERE HE
13 COULD SEE THE TRIAL DEFICIENCIES?

14 A MR. BROWN, IT WAS HEATED. I REMEMBER IT BECAUSE I
15 THOUGHT CASCIO HURT US.

16 Q IS IT SAFE TO SAY CASCIO BURIED YOU?

17 A I WOULD SAY NOT ALL THE WAY, BUT SHE SURE PUT, SHE PUT A
18 SPADE OF DIRT ON IT. HER TESTIMONY WAS WITH THEM HANDED THE
19 NOTES THAT THEY DID - AND I DON'T KNOW WHETHER IT MADE ANY
20 DIFFERENCE. HER TESTIMONY, I THOUGHT, WAS VERY DAMNING.
21 LET'S PUT IT THAT WAY. AND HARMFUL TO OUR---

22 Q I'M GOING TO COME BACK TO MS. CASCIO. I'M GOING TO COME
23 BACK TO THAT IN A MINUTE.

24 A OKAY.

1 Q THE CONVERSATION BETWEEN YOU AND MR. ROBERTSON, YOU

2 RECALL THAT. IT WAS VERY HEATED. CORRECT?

3 A I REMEMBER I WAS UPSET. I DON'T KNOW HOW UPSET JIM WAS.

4 JIM'S A VERY CALM PERSON. I'M NOT. JIMMY---

5 Q AS FAR AS YOU KNOW, WAS IT---

6 A JIMMY---

7 Q AS LONG AS YOU'VE KNOWN MR. BOYD, DID HE SEEM TO BE

8 UPSET?

9 A I WAS--

10 Q IT WAS ALL COMING OUT. RIGHT?

11 A RIGHT. BUT THE THING IS, WE DISCUSSED THAT WITH JIMMY

12 AND I ADVISED JIMMY THAT ALTHOUGH SHE WAS ONE OF THE LAST

13 WITNESSES, WE MIGHT COULD GET AROUND THAT, BUT WE WOULD

14 NEVER GET AROUND HIM GETTING ON THE WITNESS STAND.

15 Q SO, IT WAS YOUR ADVICE TO HIM NOT TO TESTIFY?

16 A YES SIR.

17 Q DID YOU THINK HE EVEN-- HE STILL UNDERSTOOD THAT IT WAS

18 HIS RIGHT. YES OR NO? CORRECT?

19 A I BELIEVE SO. I MEAN, THE JUDGE TOOK EXTENSIVE TESTIMONY

20 ON THAT, I BELIEVE. BUT THAT WAS MY ADVICE. I DID NOT THINK

21 HE'D MAKE A GOOD WITNESS. I'VE TRIED ANOTHER DEATH PENALTY

22 CASE WHERE WE PLEAD IT OUT BECAUSE I KNEW THE PERSON WAS

23 ONE OF THE WITNESSES I'D SEEN. I THOUGHT JIMMY WOULD BURY

24 HIMSELF ON THE WITNESS STAND FURTHER THAN TONI CASCIO HAD.

1 Q WHO DID THE EVALUATION ON MR. ROBERTSON, IF YOU RECALL,
2 AS TO THE McNAUGHTON RULE OR THE McNAUGHTON TEST?

3 A I DON'T RECALL.

4 Q WAS THAT DONE?

5 A AS FAR AS KNOWING THE DIFFERENCE BETWEEN RIGHT AND
6 WRONG, I DON'T THINK SO. I EVALUATED THAT IN THAT WE HAD NO
7 REAL BASIS FOR THAT. FROM THE NOTE AND EVERYTHING ELSE THAT
8 WAS DONE, IT PRETTY MUCH SHOWED THAT HE, YOU KNOW, HE KNEW
9 THE DIFFERENCE IN RIGHT AND WRONG. AND WE LOOKED AT THAT
10 VERY CLOSELY TO SEE.

11 BUT THAT WAS ANOTHER ONE OF THE THINGS THAT WE WOULD,
12 MIGHT OPEN UP EVEN WORSE TESTIMONY, TRYING TO DETERMINE
13 THAT. BUT WE CONSIDERED THAT, BUT THE EVIDENCE BASICALLY, AS
14 I VIEWED IT, WAS THAT THERE WAS NO, THERE WAS NO QUESTION OF
15 HIM KNOWING THE DIFFERENCE IN RIGHT AND WRONG.

16 Q CAN YOU TELL ME A SPECIFIC EXPERT TO DO THAT TEST FOR US?

17 A NO, HUH-UH.

18 Q CHIP ROBERTSON WAS NEVER CHARGED IN THIS THING, WAS HE?

19 A NO. THERE WERE RUMORS FLYING ABOUT EVERYWHERE, BUT
20 HE WAS NEVER CHARGED.

21 Q TO THE BEST OF YOUR MEMORY, WAS THAT DISCUSSED WITH
22 VARIOUS AND SUNDRY PARTIES INVOLVED IN THIS MATTER?

23 A YES.

1 Q DID YOU OR MR. BOYD OR ANYONE WORKING FOR YOU DURING
2 THIS PARTICULAR CASE ASK TO INTERVIEW, OR INTERVIEWED CHIP
3 ROBERTSON?

4 A I DON'T THINK WE DID BECAUSE MR. GILLEN WAS
5 REPRESENTING HIM AND WE WERE NOT ABLE TO-- YOU KNOW, HE
6 WAS REPRESENTING HIM ON THE POSSIBILITY OF CRIMINAL CHARGES
7 TO HIM AND THE POSSIBILITY OF THE DEATH PENALTY GOING
8 AGAINST HIM AS SOME KIND OF CONSPIRACY BECAUSE IT WAS
9 SUPPOSEDLY-- THE TELEPHONE CALLS, WE GOT RUMORS AND THINGS
10 THAT CHIP HAD TOLD HIM TO GO AHEAD AND GET IT DONE. ALL KIND
11 OF THINGS WERE FLYING AROUND. AND SO, NO, WE---

12 Q I WANT TO STOP YOU RIGHT THERE ONE SECOND. I DON'T MEAN
13 TO INTERRUPT.

14 A GO AHEAD.

15 Q APPROXIMATELY AN HOUR OR AN HOUR AND A HALF BEFORE
16 THE ALLEGED MURDERS, OR THE MURDERS THAT OCCURRED - OKAY -
17 IS THERE NOT TWO PHONE CALLS APPROXIMATELY FORTY-FIVE
18 MINUTES TOTAL, FROM JAMES TO CHIP IN PENNSYLVANIA?

19 A YES.

20 Q DID YOU FOLLOW UP OR INVESTIGATE THOSE LEADS THAT CHIP
21 TOLD JIMMY-- LET ME BACK UP A SECOND. NO QUESTION JIMMY WAS
22 DOING RITALIN THAT NIGHT? RIGHT?

23 A A MASSIVE AMOUNT.

24 Q IN YOUR OPINION, AFTER ALL YOUR INVESTIGATION, WOULD
25 YOU SAY HE WAS UNDER THE INFLUENCE OF RITALIN?

1 A I CERTAINLY WOULD.

2 Q YOU'VE STUDIED ALL THE PSYCHIATRIC AND PSYCHOLOGICAL
3 RECORDS?

4 A YES SIR.

5 Q IN YOUR OPINION, AFTER REVIEWING THOSE RECORDS, DO YOU
6 FEEL LIKE HE HAS A CLOSE BOND WITH HIS BROTHER? OR AT THAT
7 POINT IN TIME, DID. NOT NOW. BUT AT THAT POINT IN TIME.

8 A NO, I MIGHT HEDGE HERE, MR. BROWN.

9 Q THERE'S NO RIGHT OR WRONG ANSWER.

10 A OKAY.

11 Q I JUST WANT YOUR OPINION.

12 A THAT IT WAS-- THAT THEY WERE KINDA CLOSE, BUT THEY
13 WERE MORE LIKE PARTNERS IN CRIME, YOU KNOW, THIS AND THAT.
14 THEY WEREN'T JUST EVERY MINUTE WITH EACH OTHER, BUT THEY
15 WERE PARTNERS IN CRIME IN THEIR ATTITUDE AND THEIR ACTIONS
16 AND THEIR USE OF DRUGS AND THEIR-- WHAT-- THEIR RELATIONSHIP
17 WITH THEIR PARENTS.

18 Q AS A MATTER OF FACT, THE RITALIN JIMMY WAS TAKING THAT
19 NIGHT WAS FOR CHIP?

20 A IT WAS CHIP'S.

21 Q AND DID YOUR INVESTIGATION ALSO REVEAL THAT EARL
22 ROBERTSON HAD A PRESCRIPTION FOR RITALIN FROM DOCTOR
23 McMEEKIN?

24 A I DON'T REMEMBER THAT HE HAD ONE. I REMEMBER THAT HE
25 AND MRS. ROBERTSON WERE HAVING TREMENDOUS DIFFICULTIES

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1 THAT STARTED ABOUT THREE OR FOUR YEARS BEFORE THAT. MRS.
2 ROBERTSON HAD GAINED A GREAT DEAL OF WEIGHT. SHE WAS A
3 PETITE LADY. AND EARL HAD HAD PROBLEMS. AND MOST OF THAT
4 CAME OUT IN THE NOTES OF MR. MEYERS'.

5 A WHAT, IF ANY INVESTIGATION DID THE FOLLOW-UP, THOSE
6 PHONE CALLS, THAT SOMEWHERE OUT THERE WAS SOME ALLEGATION
7 OR SOME WORDS THAT CHIP TOLD JIMMY TO GO AHEAD AND DO IT,
8 BASICALLY MEANING TO KILL HIS PARENTS?

9 A I DON'T THINK WE WOULD HAVE DONE IT. I DON'T REMEMBER. I
10 THINK I ASKED. AND I SEEM TO REMEMBER SITTING HERE, IT KIND OF
11 CLICKED THAT THAT'S WHAT JIMMY HAD SAID. WHAT HE SAID TODAY
12 WAS ABOUT EXACTLY WHAT HE SAID AND TOLD US THAT HE TALKED
13 TO CHIP ABOUT.

14 Q WHEN YOU SAY TALKED ABOUT, DO YOU MEAN TALKED ABOUT
15 KILLING THEIR PARENTS?

16 A NO, NO.

17 Q OKAY.

18 A WHAT HE TESTIFIED TO ON THE STAND TODAY, ABOUT COMING
19 HOME FROM SCHOOL FOR THANKSGIVING, THAT HE WAS GONNA GET
20 HIM HOME FOR THANKSGIVING REGARDLESS OF WHAT HIS PARENTS
21 FELT OR THOUGHT. AND THAT JUST KIND OF CLICKED. AND SO, WE
22 HAD DISCUSSED IT SOME.

23 Q WOULD THAT BE-- WOULD YOUR MIND BE CHANGED
24 SOMEWHAT AFTER HEARING THE TESTIMONY TODAY THAT CHIP HAD
25 SENT JIMMY APPROXIMATELY \$50,000?

1 A I WAS SHOCKED AT THAT AMOUNT, HOW YOU CAN GET RID OF
2 IT ON DEATH ROW. BUT, NO-- I'M SHOCKED. BUT I HAD NEVER SEEN
3 THAT HAD INDICATED THAT THERE WAS A CONSPIRACY BETWEEN THE
4 BOYS.

5 Q WOULD IT BE SAFE TO ASSUME THAT SINCE CHIP HAD BEEN AT
6 SCHOOL UNTIL VERY RECENTLY THAT THE MONEY HAD TO BE
7 COMING FROM THE ESTATE?

8 A I WOULD IMAGINE SO.

9 Q WOULD THAT LEND CREDENCE TO ANY POSSIBLE
10 INVESTIGATION OR DISCOVERY ON YOUR BEHALF THAT CHIP WAS
11 SOMEHOW INVOLVED IN THIS AND MAYBE EGGING JIMMY ON TO DO
12 THIS?

13 A WE NEVER ARRIVED AT THAT. WE TALKED. THE THING IS, WE
14 TALKED TO SO MANY WITNESSES, AND THEY WERE YOUNG FOLKS,
15 THAT WERE CONTEMPORARIES OF JIMMY AND CHIP. AND THAT WE
16 NEVER FOUND ANYTHING THAT CHIP HAD INDICATED TO THEM OR IN
17 THEIR PRESENCE ANY HARM TO THE PARENTS.

18 Q AS A TRIAL STRATEGY DID YOU EVER THINK ABOUT CALLING
19 CHIP TO THE STAND AND ASK HIM THAT QUESTION POINT-BLANK?

20 A I DON'T KNOW THAT I ASKED JIMMY WHETHER WE SHOULD
21 CALL CHIP. BUT AS I RECALL, IF IT WAS EVER THOUGHT OF, IT WAS
22 NIXED, THAT HE COULD NOT HELP US. THAT WHAT WE COULD DO IS
23 WHAT WE MIGHT ELICIT FROM HIM. I DON'T THINK HE EVER REALLY
24 TALKED TO US, BUT WHAT WE WOULD ELICIT FROM HIM MIGHT BACK
25 UP WHAT SOME OF THE CONTEMPORARIES WERE SAYING. AND I DON'T

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1 THINK IT WOULD HAVE INVOLVED HIM IN A CONSPIRACY WHERE HE
2 WOULD HAVE BEEN THE HAND OF ONE, THE HAND OF ALL OR
3 ANYTHING LIKE THAT.

4 Q DID YOU---

5 A EXCUSE ME, IF I MAY INTERRUPT?

6 Q GO AHEAD.

7 A WE FELT HE COULD HAVE HURT US MORE THAN HE COULD HAVE
8 HELPED US.

9 Q BUT YOU DIDN'T KNOW?

10 A SURE, NO, SURE. JUST FROM MY INTERVIEW OF ALL OF THE
11 WITNESSES THAT HE HAD NEVER BEEN INVOLVED IN ANY
12 CONSPIRACY THAT WE HEARD OF.

13 Q DID YOU INVESTIGATE A PARTY THAT CHIP HAD AROUND
14 CHRISTMASTIME, RIGHT AFTER THESE MURDERS OCCURRED?

15 A WELL, YOU CAN'T SAY INVESTIGATE. AGAIN, IT JUST...

16 Q OR WHATEVER CAME TO YOUR ATTENTION?

17 A IT'S STRICTLY RUMOR.

18 Q AS A MATTER OF FACT, YOU ASKED A COUPLE OF THE STATE'S
19 WITNESSES ABOUT IT, DIDN'T YOU?

20 A I MAY HAVE.

21 Q AND THEY ADMITTED THE PARTY WENT ON?

22 A THE PARTY WENT ON. AND THE RUMOR WAS THAT HE WAS
23 CONDUCTING GUIDED TOURS OF THE HOUSE WHERE THE CARPET HAD
24 BEEN TORN UP AND EVERYTHING.

25 Q DID YOU SUBPOENA ANYTHING OF CHIP'S MEDICAL RECORDS?

1 A I DON'T REMEMBER SEEING ANY.

2 Q I'LL ASK YOU IF YOU'VE EVER SEEN THIS DOCUMENTS FROM
3 EASTOVER PSYCHOLOGICAL AND PSYCHIATRIC GROUP IN CHARLOTTE
4 CONCERNING CHIP ROBERTSON? AND IF YOU COULD, JUST TAKE A
5 FEW MINUTES TO REVIEW THEM.

6 A DID THEY COME OUT OF MY FILES? I KNOW I'M NOT SUPPOSED
7 TO ASK QUESTIONS.

8 Q MR. HANCOCK, I ASSUME THEY DID BECAUSE I'VE GOT YOUR
9 FILE.

10 A OKAY.

11 (PAUSE TO PERUSE RECORDS)

12 I HAVE SEEN THESE. I DON'T KNOW WHAT'S IN ALL OF THEM,
13 BUT I HAVE SEEN THESE BECAUSE I SPECIFICALLY REMEMBERED
14 WHERE IT SAYS THAT "HE MAY BE A BIT OBSESSIVE, OVERACTIVE
15 AND DRIVEN. AND HIS GENERAL ATTITUDE TOWARDS HIMSELF HAS
16 CONTRIBUTED TO MORALE." AND I TOLD SOMEBODY IT SOUNDED
17 LIKE A LAWYER.

18 Q IN THOSE RECORDS, DOES IT ALSO SAY HE IS BI-POLAR, ALSO?

19 A I BELIEVE SO.

20 Q OKAY.

21 A HE HAS THE SAME-- IT BASICALLY SAYS FITS OF DEPRESSION,
22 BOUTS OF DEPRESSION. I DID NOT PARTICULARLY SEE BI-POLAR. BUT
23 WHAT I SAW WAS...

24 Q WAS HE ON PROZAC ALSO, ACCORDING TO THOSE DOCUMENTS?

25 A YES SIR, I THINK SO.

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1 Q RITALIN, ALSO. IS THAT CORRECT?

2 A I BELIEVE SO. I CAN'T DENY THAT. I HAVEN'T SEEN IT IN THE
3 RECORD.

4 Q IF YOU NEED TIME TO REVIEW IT, TAKE YOUR TIME. THAT'S
5 ABOUT AS CONDENSED AS I CAN GET IT FOR YOU.

6 A OKAY. WELL, IF YOU'VE EVIDENTLY READ THEM, THEN YOU
7 KNOW ITS THERE. SO,...

8 Q WELL, I CAN'T TESTIFY FOR YOU.

9 A I KNOW. SO, I WILL NOT DENY THAT.

10 Q WELL, TAKE YOUR TIME AND VERIFY THAT WHAT I'M TELLING
11 YOU IS IN THERE.

12 A YOU'RE LOOKING FOR RITALIN?

13 Q RITALIN, PROZAC, BI-POLARITY.

14 A (PAUSE TO PERUSE RECORDS) I WOULD SAY RITALIN IS THERE
15 BECAUSE IT REFERS TO IT. I DON'T SEE... BUT IT REFERS TO
16 COUNSELING SESSIONS WHERE HE WAS... IT SAYS HE CONTINUED THE
17 PROZAC AND THE MOTHER OF PATIENT ACKNOWLEDGED HE WAS
18 USING ALCOHOL IN CONJUNCTION WITH THE RITALIN. SO, I WOULD
19 IMAGINE THE RITALIN IS THERE.

20 Q LOOK AT THE RECORD FROM 8/11 FROM PIEDMONT PSYCHIATRIC
21 ASSOCIATES.

22 A 8/11?

23 Q YES.

24 A OKAY.

25 Q UNDER MENTAL STATUS EXAMINATION, IT SHOULD BE THERE.

1 A IT SAYS HE SHOWED. IT DOESN'T SPECIFICALLY SAY THAT HE
2 HAD BI-POLAR, BUT HE SHOWED THE SYMPTOMS OF BI-POLAR. AND
3 THAT'S IN LAB RESPONSE, COLD HANDS AND FEET, TYPICAL
4 DISTRACTIBILITY, DIFFICULTY STAYING STILL THAT YOU SEE IN BI-
5 POLAR DISORDER.

6 Q YOU WOULD AGREE WITH ME IN THE GUILT PHRASE OF THIS
7 TRIAL I BELIEVE THE TERM WAS USED IN THE COURTROOM BY
8 SOMEONE THAT THE ROBERTSONS WERE THE "OZZIE AND HARRIET
9 NELSON FAMILY." IS THAT CORRECT?

10 A RIGHT, SIR.

11 Q IN YOUR INVESTIGATION, DID YOU DISCOVER THAT ALL FOUR
12 MEMBERS OF THE FAMILY WERE UNDER THE CARE OF A
13 PSYCHIATRIST, DOCTOR McMEEKIN?

14 A MY EVALUATION OF IT IS YES, THAT THE BOYS HAD BEEN
15 TAKEN DOWN THERE AND THEN THERE HAD BEEN FAMILY
16 COUNSELING AND THEY HAD ALL BEEN IN THERE TOGETHER. AND I
17 LOOKED AT THE PREVIOUS HISTORY, THE PREVIOUS HISTORY OF THE
18 MOM AND DAD, AND I WILL HAVE TO SAY THAT I DIDN'T KNOW
19 WHETHER A JURY WOULD DECIDE THAT THEY WERE ALL-- THAT THEY
20 HAD THEIR SPECIFIC PROBLEMS, OR THAT THE BOYS HAD CAUSED
21 THEM SUCH TREMENDOUS PROBLEMS OVER THE YEARS, IT WOULD
22 HAVE LED TO THAT. BECAUSE THEIR TREATMENT AND EVERYTHING
23 STARTED AT ABOUT THE TIME THAT THE BOYS WERE DOING WHAT
24 THEY WERE DOING IN HIGH SCHOOL. JIMMY WAS GOING OFF TO JAIL.

1 AND SO, I REALLY EVALUATED IT IN THAT WE WERE TRYING TO
2 SAY THAT THEY WERE DYSFUNCTIONAL; THAT IT MIGHT SOMEHOW
3 REFLECT ON THAT IF WE PUT THOSE RECORDS IN; THAT THE JURY
4 COULD ACTUALLY EVALUATE IT AS I DID.

5 Q IT IS NOWHERE IN HERE THAT SAYS THAT CHIP HAD ANY
6 PROBLEMS, OR IS CAUSING HIS PARENTS ANY PROBLEMS, DOES IT?

7 A NO, IT DOESN'T.

8 Q LET ME ASK YOU THIS: AS YOU GO THROUGH THE MITIGATION
9 PHASE, I NOTICE THAT YOU AND MR. BOYD SPENT TIME STUDYING
10 JIMMY'S PSYCHIATRIST RECORDS AND TERRY ROBERTSON'S
11 PSYCHIATRIC RECORDS, BUT YOU NEVER TOUCH ON EARL'S
12 PSYCHIATRIC RECORDS OR CHIP'S PSYCHIATRIC RECORDS. IS THAT
13 CORRECT?

14 A THAT'S CORRECT. I HAVEN'T SEEN THE TRANSCRIPT, BUT IF
15 MEMORY SERVES, IT WAS BASICALLY THAT WE HAD SAID THAT EARL
16 WAS THERE. EARL STARTED TREATMENT SO MUCH LATER THAN
17 EVERYBODY ELSE. HE WAS ONLY IN TREATMENT, IF I REMEMBER
18 CORRECTLY, FOR A VERY SHORT PERIOD OF TIME.

19 Q WOULD IT BE SAFE TO SAY THAT PART OF YOUR DEFENSE IN
20 MITIGATION WAS THE FACT THAT THE WHOLE FAMILY WAS IN
21 COUNSELING AND HAD THESE VARIOUS AND SUNDRY PSYCHIATRIC
22 PROBLEMS?

23 A AND I THINK WE GOT-- RATHER THAN BEING SO SPECIFIC, WE
24 WERE LOOKING AT THAT AS A GENERAL ARGUMENT TO THE JURY
25 THAT WE DIDN'T GET DOWN TO SPECIFICS WHERE WE WOULD TESTIFY

1 AND ANYBODY WOULD CROSS EXAMINE AND SAY WOULD IT BE SAFE
2 TO SAY THE QUESTION I JUST ASKED: WOULD THEIR PROBLEMS
3 RESULT FROM THE CHILDREN RATHER THAN FROM ANY PREVIOUS
4 PROBLEMS. BECAUSE I COULD NOT FIND WHERE-- A LOT--

5 AS I REMEMBER, WHERE MANY, MANY YEARS AGO THEY WERE
6 HAVING THESE PROBLEMS BEFORE MARRIAGE OR ANYTHING OF THAT
7 NATURE. I DON'T REMEMBER IT.

8 Q DO YOU THINK IT WOULD HAVE BEEN BENEFICIAL TO INSERT
9 CHIP'S PSYCHIATRIC PAST INTO THIS QUAGMIRE OF PSYCHIATRIC
10 RECORDS? THE BULK OF YOUR POSITION, IT'S NOT JUST JIMMY AND
11 IT'S NOT JUST TERRY; EARL AND CHIP ALSO?

12 A LET'S PUT IT THIS WAY: HINDSIGHT IS AN EXACT SCIENCE.
13 WHEN THE DECISION WAS MADE, THAT WAS THE TRIAL DECISION NOT
14 TO-- AND IT MAY HAVE BEEN-- AND I DON'T REMEMBER. IT MAY HAVE
15 BEEN JIMMY THAT DID NOT WANT CHIP TOTALLY INVOLVED IN IT.
16 AND IF I REMEMBER, I DON'T THINK HE WANTED CHIP RIGHT IN THE
17 MIDDLE OF IT AT THAT TIME.

18 Q I UNDERSTAND HE WANTED TO PROTECT HIS BROTHER. IS THAT
19 RIGHT?

20 A RIGHT.

21 Q WAS THAT A CURRENT THING WITH JIMMY THROUGHOUT THE
22 COURSE OF THE PROCEEDINGS?

23 A YES.

24 Q THESE ARE CHIP ROBERTSON'S RECORDS, ARE THEY NOT, THAT I
25 SHOWED YOU?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A IT SAYS EARL CHIP ROBERTSON, BORN 9/10/75. THAT WOULD BE
2 CHIP.

3 MR. BROWN: YOUR HONOR, WE MOVE TO ADMIT THESE
4 PSYCHIATRIC RECORDS FOR CHIP ROBERTSON IN EVIDENCE, NOT FOR
5 THE TRUTH OF THE MATTER ASSERTED, BUT FOR WHAT COULD BE
6 OFFERED TO THE COURT UNDER STRICKLAND.

7 MR. SALTER: WITHOUT OBJECTION.

8 MR. BROWN: AND MITIGATION.

9 THE COURT: THEY'RE ADMITTED.

10 (WHEREUPON APPLICANT'S EXHIBIT NUMBER ONE WAS ADMITTED
11 INTO EVIDENCE WITHOUT OBJECTION)

12 Q DID YOU REVIEW THE RECORDS FROM SKIP MEYERS
13 CONCERNING EARL ROBERTSON, SR.?

14 A YES.

15 Q IN YOUR REVIEW OF THOSE RECORDS, DO YOU RECALL THAT
16 MR. ROBERTSON SEEMS TO COMPLAIN ABOUT HIS WIFE GETTING
17 OVERWEIGHT, NOT KEEPING HOUSE, NOT COOKING, NOT DOING
18 ANYTHING?

19 A IT SEEMED LIKE SHE WAS DEPRESSED, FROM THE RECORDS I
20 SAW.

21 Q DOES HE COMPLAIN A LOT ABOUT MONEY IN THOSE RECORDS?

22 A I DON'T REMEMBER HIM COMPLAINING ABOUT MONEY. I KNOW
23 THAT AFTER REVIEWING EVERYTHING I WAS TOTALLY SURPRISED AT
24 THE SIZE OF THE ESTATE. BUT I DON'T REMEMBER HIM COMPLAINING
25 ABOUT MONEY AND NOT HAVING ANY.

1 Q LET ME ASK YOU IF YOU RECOGNIZE THESE?

2 A THESE ARE-- AGAIN, THESE ARE EASTOVER PSYCHOLOGICAL
3 AND PSYCHIATRIC GROUP.

4 Q ARE THOSE FOR EARL ROBERTSON, SR.?

5 A THEY ARE.

6 Q THEY ALSO INCLUDE COUNSELING SESSIONS WITH SKIP
7 MEYERS, I ASSUME?

8 A YES SIR.

9 Q NOW, SKIP MEYERS ON THE STAND, YOU DIDN'T CROSS EXAMINE
10 HIM ABOUT ANY OF THESE THINGS CONCERNING EARL ROBERTSON,
11 SR. YOU ACTUALLY CROSS EXAMINED HIM ABOUT TERRY
12 ROBERTSON. WHY IS THAT?

13 A AT THIS POINT IN TIME I HAVE NO MEMORY. THERE WOULD BE A
14 REASON THAT I BELIEVE-- I'M JUST SITTING HERE AND I'M LOOKING AT
15 THIS AND I'M JUST TAKING A QUICK GANDER.

16 SO MUCH OF HIS WAS INTER-RELATIONSHIP WITH HIS WIFE
17 RATHER THAN THE CHILDREN. BUT I WOULD THINK JUST SITTING
18 HERE NOW, AND I DON'T REMEMBER WHAT MY THOUGHT PROCESS
19 WAS THEN; THAT WE WERE GOING MORE TOWARD-- WE COULDN'T--

20 WE COULDN'T TOTALLY TRASH THE WHOLE FAMILY IN FRONT
21 OF THE JURY. THOSE TWO PEOPLE WHO HAD BEEN BEATEN AND CUT
22 UP, WE COULDN'T TRASH THEM TO SUCH AN EXTENT THAT WE WOULD
23 ALIENATE THE JURY, IS KIND OF WHAT I'M LOOKING AT. BUT I'M JUST
24 LOOKING TO SEE. AND THAT'S JUST TO QUALIFY AND SAY THAT
25 THERE WAS SOME THOUGHT PROCESS IN IT THAT WE DIDN'T DO THAT.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q WOULD YOUR STRATEGY HAVE BEEN TO PUT THESE RECORDS
2 UP IN EVIDENCE, NOT TO TRASH THEM, BUT TO SHOW THAT ON
3 AUGUST 8, 1995, THAT MR. ROBERTSON SAYS THAT MY WIFE SAYS I'VE
4 NEVER BEEN A HAPPY PERSON; I AGREE WITH THAT. THE LAST TIME
5 WOULD HAVE BEEN IN HIGH SCHOOL?

6 A (NO RESPONSE)

7 Q I MEAN, YOU ATTACKED TERRY ROBERTSON WITH SKIP MEYERS,
8 DID YOU NOT? AND I TELL YOU, ATTACK IS PROBABLY A POOR CHOICE
9 OF WORDS. YOU BROUGHT OUT HER PSYCHOLOGICAL AND
10 PSYCHIATRIC PROBLEMS?

11 A YES SIR.

12 Q BUT YOU DIDN'T BRING OUT THE ONES IN CHIP, THE MENTAL
13 ILLNESS HE HAD AND THE MENTAL ILLNESS EARL HAD? IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q BUT YOU BROUGHT OUT THE MENTAL ILLNESS TERRY HAD?

17 A RIGHT.

18 Q LOOKING BACK, REALIZING HINDSIGHT IS TWENTY-TWENTY, DO
19 YOU THINK THAT WOULD HAVE HELPED THE JURY AS TO MR.
20 ROBERTSON IN THE MITIGATION PHASE, OR THE SENTENCING PHASE?

21 A IT MAY HAVE. I CAN'T TELL YOU THAT. AGAIN, THAT WOULD
22 JUST BE SPECULATION ON MY PART.

23 Q AND, FOR THE RECORD, THESE ARE THE RECORDS THAT I GOT
24 FROM YOU. IS THAT CORRECT?

25 A YES SIR. YOU WOULD HAVE GOTTEN THEM FROM ME.

1 MR. BROWN: MOVE TO ADMIT, YOUR HONOR.

2 MR. SALTER: WITHOUT OBJECTION.

3 THE COURT: THEY'RE ADMITTED.

4 (WHEREUPON APPLICANT'S EXHIBIT NUMBER TWO WAS ADMITTED
5 INTO EVIDENCE WITHOUT OBJECTION)

6 Q YOU'RE AWARE THAT DOCTOR McMEEKIN WAS SEEING EVERY
7 MEMBER OF THIS FAMILY. IS THAT CORRECT?

8 A I...

9 Q LET ME BACK UP. WHO IS DOCTOR HAYNE McMEEKIN?

10 A DOCTOR McMEEKIN IS A PSYCHOLOGIST, PSYCHIATRIST. AND
11 DOCTOR MEYER WAS A PSYCHOLOGIST, I BELIEVE, IN HIS OFFICE WHO
12 HAD THE CONTACT WITH THE FAMILY.

13 Q AS A MATTER OF FACT, THOSE TWO ARE KIND OF SIDE BY SIDE
14 IN THIS MATTER? DOCTOR MEYER IS THE COUNSELOR AND DOCTOR
15 McMEEKIN IS THE MEDICAL DOCTOR WHO PRESCRIBED DRUGS?

16 A DESCRIBED A GREAT DEAL OF THEIR MEDICATION, YES. HE
17 WASN'T DOING A LOT OF THE COUNSELING. THE MEDICATION WAS
18 COMING FROM HIS PRESCRIPTIONS.

19 Q IN YOUR INVESTIGATION, DID YOU EVER CONSULT WITH
20 ANOTHER PSYCHIATRIST TO REVIEW HIS RECORDS ABOUT HIS OVER-
21 PRESCRIPTION OF RITALIN?

22 A NO, BECAUSE I WASN'T GOING AFTER HIM. AND IT WASN'T
23 JIMMY'S RITALIN; IT WAS HIS BROTHER'S RITALIN. AND I WASN'T
24 PARTICULARLY PURSUING ANYTHING AGAINST HIS MEDICAL DEGREE
25 OR HIS TREATMENT OF THESE FOLKS. AND IF I MAY CONTINUE THAT?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q GO AHEAD.

2 A IT'S ALSO HIS-- AT THAT POINT IN TIME WE WERE LOOKING AT
3 RITALIN AND TRYING TO AT LEAST PUT IT IN THERE. BUT I DON'T
4 BELIEVE AT THAT TIME THE ZOLOFT DEFENSE HAD EVER WORKED IN A
5 MURDER CASE OR A DEATH PENALTY CASE.

6 Q BUT YOU TRIED TO TIE THAT INTO DOCTOR MORTON, THE
7 PHARMACOLOGIST, DID YOU NOT?

8 A WE TRIED.

9 Q AS A MATTER OF FACT, HE MADE A GOOD WITNESS, DIDN'T HE?

10 A I THOUGHT HE WAS REAL GOOD. HE NEVER WOULD SAY THAT
11 RITALIN WAS THE SOLE CAUSE THAT WOULD CAUSE SOMEONE TO
12 ERUPT INTO THIS TYPE BEHAVIOR AND OVERRIDE EVERYTHING ELSE
13 THEY HAD ALREADY LEARNED. BUT WE GOT A PRETTY GOOD
14 WITNESS OUT OF HIM, I THOUGHT.

15 Q RITALIN WAS NOT A VERY ABUSIVE DRUG AT THAT POINT IN
16 TIME, WAS IT?

17 A AS I RECALL, RITALIN HAS ALWAYS BEEN PRETTY MUCH-- IT'S
18 AN UPPER AND IT'S ALWAYS-- IT OR A DERIVATIVE THEREOF,
19 AMPHETAMINES HAS ALWAYS BEEN SOMEWHAT ABUSED, IN MY
20 EXPERIENCE.

21 Q ARE THESE COPIES OF THE RECORDS THAT YOU HAD OF TERRY
22 ROBERTSON FROM PIEDMONT MEDICAL CENTER, DOCTOR McMEEKIN
23 AND SKIP MEYERS?

1 A IT MAY HAVE BEEN. IF YOU GAVE THEM TO ME-- I GAVE THEM
2 AND THEY'RE IN YOUR FILE. SO, I WOULD HAVE TO SAY THAT THEY
3 ARE THE RECORDS.

4 Q I'LL ASK YOU IF YOU GAVE DOCTOR McMEEKIN SOME NOTES IN
5 THOSE MEDICAL RECORDS?

6 A HIS NOTES IN THESE MEDICAL RECORDS?

7 Q YES SIR.

8 A I WOULD HAVE TO LOOK AND SEE.

9 (PAUSE TO GO THROUGH FILE)

10 IF YOU COULD ASK ME SPECIFICALLY, THEY MAY BE HERE. I
11 DON'T KNOW WHAT HIS HANDWRITING LOOKS LIKE. I'VE GOT NOTES
12 THAT MAY BE EITHER HIS OR....

13 YES, THERE ARE PROGRESS NOTES.

14 Q ON OCTOBER 6, 1995, DO YOU HAVE THE NOTES FROM THAT
15 DATE?

16 A OCTOBER 6, '95. (PAUSE TO GO THROUGH FILE) I'M TRYING TO
17 FIND IT, BUT I DON'T....

18 Q IT SHOULD BE IN CHRONOLOGICAL ORDER.

19 A (PAUSE TO GO THROUGH FILE) MR. BROWN, WHERE I START....
20 OCTOBER 6, '95?

21 Q YES.

22 A BECAUSE, WHAT I'VE GOT-- WHAT I'VE GOT IS STARTING WITH
23 12/95, 12/13/95. SO, THEN, THEY-- I'M GOING TO '96 AND '97.

24 Q DO YOU HAVE SEPTEMBER 6, '95?

1 A I DON'T AT THIS POINT, NO SIR. THAT'S '95, AND THEN I'VE GOT

2 '97.

3 Q THESE ARE THE NOTES OF DOCTOR McMEEKIN, THE
4 PSYCHIATRIST. IS THAT CORRECT?

5 A YES.

6 Q ON 10/06/95, HIS NOTES SAY THAT MRS. ROBERTSON HAS NOT
7 BEEN SLEEPING; THAT HER HUSBAND'S GONE OFF HIS MEDS, AND SHE
8 DENIES SUICIDE THOUGHTS. IS THAT CORRECT?

9 A YES.

10 Q NO MENTION OF THE CHILDREN BEING A PROBLEM. IS THAT
11 CORRECT?

12 A NO SIR.

13 Q ON 10/10/95, PATIENT PHONED AND DISCUSSED MEDICATION AS A
14 BRIBE, HADN'T TAKEN FOR THREE DAYS, AND SOUNDED CONFUSED
15 AND THERE WAS SOME CONFUSION AS TO WHETHER TO TAKE TWO OR
16 THREE ONE-HALF TABLETS PER DAY. AFTER QUESTIONING THE
17 PATIENT ABOUT THIS, NOTICED A CERTAIN LEVEL OF AGITATION;
18 PLEASE CALL PATIENT. IS THAT CORRECT?

19 A IT LOOKS LIKE 7/10/95.

20 Q YEAH. 10/10/95, SHOULD BE IN YOUR NOTES.

21 A I'VE GOT 10/06/95; LOOKS LIKE 7/10/95, 10/16/95.

22 Q NO MENTION OF THE CHILDREN IN THERE. CORRECT?

23 A RIGHT.

24 Q A DISCUSSION ABOUT HER PROBLEMS AND MEDICATION SHE'S
25 TAKING?

- 1 A YES.
- 2 Q 10/16/95, DISCUSSION OF MEDICATION.
- 3 A YES.
- 4 Q NO MENTION OF THE CHILDREN BEING A PROBLEM?
- 5 A RIGHT.
- 6 Q 10/19/95, SHE GOT HER LITHIUM.
- 7 A THAT'S CUT OFF AGAIN. THAT'S '97?
- 8 Q 12/1/95. DO YOU RECALL LINDA WEAVER TESTIFYING AT TRIAL?
- 9 A I DON'T RECALL HER TESTIFYING. DID WE CALL HER?
- 10 Q DO YOU RECALL THAT SHE WAS A VERY GOOD FRIEND, HER AND
- 11 BILL WEAVER WERE VERY GOOD FRIENDS OF EARL AND TERRY
- 12 ROBERTSON, SR.?
- 13 A YES.
- 14 Q AND THE STATE CALLED HER AND SHE TESTIFIED ABOUT WHAT
- 15 A GREAT PERSON SHE WAS AND HOW THE CHILDREN HAD DESTROYED
- 16 HER LIFE, IN A NUTSHELL?
- 17 A I THINK THERE WAS SOME OF THAT.
- 18 Q 11/1/95. DOCTOR McMEEKIN'S NOTES INDICATE LINDA WEAVER
- 19 CALLED HER; SEEMS TO THINK SHE IS PRESENTLY SUICIDAL,
- 20 WHEREABOUTS UNKNOWN; PATIENT PROMISED SKIP SHE WOULD
- 21 RETURN SKIP'S CALL, NOT LINDA WEAVER; TOLD HER TO TELL
- 22 HUSBAND TO GET A DETENTION ORDER SO THAT SHE MAY BE PICKED
- 23 UP AND CARRIED TO THE HOSPITAL AND BE ADMITTED.
- 24 A RIGHT.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

- 1 Q NO MENTION OF THE CHILDREN BEING A PROBLEM. IS THAT
2 CORRECT?
- 3 A THAT'S RIGHT.
- 4 Q SAME THING ON 12/4/95. A NOTE THAT THE PATIENT IS OCD,
5 OBSESSIVE COMPULSIVE DISORDER.
- 6 A I'VE GOT 12/14/95, WORK IN THROUGH SKIP, HOSPITAL,
7 SOMETHING OCD.
- 8 Q DOES THAT SAY OBSESSIVE COMPULSIVE DISORDER?
- 9 A I DON'T SEE THAT. I DON'T READ THAT.
- 10 Q LOOK ON FEBRUARY 15, FEBRUARY 29, 1996.
- 11 A RIGHT.
- 12 Q DIRECTING YOUR ATTENTION TO THE NOTES OF FEBRUARY 29,
13 1996, LINDA WEAVER HAS TALKED TO SKIP REGARDING TERRY
14 BEFORE. LEFT MESSAGE WITH SKIP SHE WAS SERIOUSLY REGARDED
15 SUICIDAL, MORE SERIOUS ABOUT IT NOW. SWEATING, SHAKING, DRY
16 MOUTH. DO YOU SEE THAT?
- 17 A WHAT DATE?
- 18 Q FEBRUARY 29, 1996?
- 19 A YES, OKAY. RIGHT.
- 20 Q IF YOU REVIEW THE NOTES, THERE'S NO MENTION OF THE
21 CHILDREN BEING INVOLVED IN THE PSYCHIATRIST'S NOTES
22 ANYWHERE, DOES IT?
- 23 A NO SIR. THERE'S A PLACE.
- 24 Q NOT SKIP MEYERS' NOTES; DOCTOR McMEEKIN, THE
25 PSYCHIATRIST'S NOTES.

1 A WELL, I'M JUST GIVEN NOTES HERE. I DON'T KNOW WHICH ONES
2 THEY ARE. WHERE IT-- AND I DON'T KNOW WHICH ONES THEY ARE,
3 WHETHER THEY ARE MEYERS' OR OTHERWISE THAT THEY MENTION IN
4 HERE WHERE SHE'S BEEN CONTEMPLATING SUICIDE BECAUSE HE WAS
5 COMING HOME FROM PRISON.

6 Q THAT WOULD BE SKIP MEYERS' NOTES.

7 A SKIP, OKAY.

8 Q LET ME CHECK THAT TO REFRESH YOUR MEMORY. HOLD ON
9 ONE SECOND.

10 A '97.

11 Q WOULD THAT BE JULY 29, 1997, THE NOTES OF SKIP MEYERS?

12 A IS IT MEYERS'? I DIDN'T KNOW WHICH NOTES IT WAS.

13 Q YOU WOULD AGREE WITH ME THAT A PSYCHIATRIST IS
14 PROBABLY A MORE CREDIBLE WITNESS THAN A PSYCHOLOGIST?
15 WOULD THAT BE A FAIR STATEMENT, BECAUSE OF BEING A MEDICAL
16 DOCTOR?

17 A I WOULD AGREE IN THEORY.

18 Q WE HAVE NOTES FROM HAYNE McMEEKIN WHERE HE SAW EARL
19 ROBERTSON, TERRY ROBERTSON, CHIP ROBERTSON, WHERE THERE
20 WAS NO MENTION OF CHILDREN BEING A PROBLEM. IS THAT
21 CORRECT?

22 A YES.

23 Q WOULD THAT NOT HAVE HELPED THE JURY IN MITIGATION
24 SENTENCING AS FAR AS JIMMY ROBERTSON GOES?

25 A I DO NOT KNOW HOW THEY WOULD HAVE TAKEN IT.

1 Q WELL, WE KNOW MR. MEYERS' NOTES SAY HE WAS A PROBLEM.

2 RIGHT?

3 A RIGHT.

4 Q AND WE KNOW MR. McMEEKIN'S NOTES DON'T MENTION THAT,
5 THAT EARL AND TERRY ARE SUICIDAL AT ALL. IS THAT CORRECT? WE
6 KNOW THAT NOW?

7 A YES.

8 Q WOULD YOU AGREE WITH ME THAT DOCTOR McMEEKIN WOULD
9 NOT HAVE BEEN A STATE OR A DEFENSE WITNESS INSOMUCH AS HE
10 WASN'T HIRED BY Y'ALL TO EVALUATE ANYBODY, AND THE STATE
11 DIDN'T USE HIM TO HIRE (SIC) ANYBODY IN PREPARATION FOR TRIAL.
12 IS THAT CORRECT?

13 A CORRECT.

14 Q AND THESE RECORDS WERE ALREADY IN EXISTENCE. IS THAT
15 CORRECT?

16 A YES.

17 Q I MAY HAVE ASKED YOU THIS ALREADY, BUT I WANT TO ASK
18 YOU AGAIN. IN YOUR CROSS EXAMINATION OF MR. MEYER, YOU WENT
19 THROUGH TERRY'S MEDICAL RECORDS WHICH ALLUDE TO THE FACT
20 THAT PART OF HER PROBLEM WAS WITH THE CHILDREN. YOU RECALL
21 THAT. CORRECT? I'M TALKING ABOUT SKIP MEYER, NOT McMEEKIN,
22 NOW.

23 A RIGHT. I DON'T REMEMBER. BUT, YES.

24 MR. BROWN: YOUR HONOR, I DON'T THINK WE'RE GOING TO GET
25 THROUGH THIS WITNESS TODAY.

1 Q BUT I WILL GIVE YOU THAT AND ASK THAT YOU REVIEW IT; IT'S
2 VERY BRIEF IF. I TOLD YOU FOR THE SAKE OF THIS NEXT QUESTION,
3 AND WE CAN SHORE IT UP TOMORROW, THAT YOU DIDN'T ASK AT ALL
4 ABOUT JIMMY'S MEDICAL RECORDS THROUGH SKIP MEYERS, OR
5 EARL'S MEDICAL RECORDS THROUGH SKIP MEYERS, OR CHIP'S
6 MEDICAL RECORDS THROUGH SKIP MEYERS. WHY WAS THAT?

7 A I DON'T KNOW AT THIS POINT. I CAN'T TELL YOU.

8 Q WAS PART OF YOUR PURPOSE, OR YOU AND MR. BOYD'S
9 PURPOSE IN SENTENCING TO SHOW THE MEDICAL PROBLEMS THIS
10 FAMILY HAD? THE PSYCHIATRIC AND PSYCHOLOGICAL PROBLEMS
11 THEY HAD?

12 A WE WERE TRYING TO FIND A REASON THAT JIMMY COULD DO
13 WHAT HE DID AND WE WENT TOWARD HIS PARENTS' PROBLEMS AS
14 BEING HIS PROBLEMS, BUT NEVER COULD FIND HIS PROBLEMS BEING
15 ENOUGH TO GO TO GUILTY BUT MENTALLY ILL BECAUSE THEY WERE
16 MENTALLY ILL.

17 THE COURT: DO YOU THINK YOU'RE GOING TO BE A LOT
18 LONGER ON DIRECT?

19 MR. BROWN: THIRTY, FORTY-FIVE MINUTES MAX, YOUR HONOR.

20 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK NOW AND
21 COME BACK.

22 (WHEREUPON COURT WAS IN RECESS AT 4:10 P.M.)
23
24
25

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 COURT IN SESSION - 4:20 P.M.

2 RESUMPTION OF DIRECT EXAMINATION OF WITNESS HANCOCK BY MR.

3 BROWN:

4 Q DO YOU RECALL AN EX-GIRLFRIEND OF JIMMY'S WHO TESTIFIED
5 NAMED ERIN?

6 A NO, I DON'T. REFRESH MY MEMORY.

7 Q SEE IF THAT WON'T REFRESH YOUR MEMORY. ERIN ELIZABETH
8 SAVAGE, WHO WAS AN EX-GIRLFRIEND OF JIMMY'S.

9 A I DON'T RECALL HER TESTIMONY.

10 Q DO YOU RECALL AN INCIDENT WHERE MR. BRACKETT WAS
11 ASKING HER ABOUT A PHONE CONVERSATION SHE HAD WITH JIMMY
12 DURING THE MIDDLE OF THE TRIAL WHERE HE HAD CALLED HER-- SEE
13 IF THIS WOULD REFRESH YOUR MEMORY: HE HAD CALLED HER AND
14 TOLD HER NOT TO BOTHER TO COME BACK THIS AFTERNOON BECAUSE
15 THEY PROBABLY WERE NOT GOING TO GET TO HER TODAY?

16 A I SURE DO BECAUSE IT GOT THE ATTENTION OF THE SHERIFF
17 AND EVERYTHING ELSE THAT HE HAD GOTTEN A HOLD OF A PHONE
18 BACK THERE, AND I THINK THERE WAS A BIG ROW ABOUT THAT.

19 Q WHERE'D HE GET THE PHONE FROM?

20 A I DON'T KNOW. IT MIGHT HAVE BEEN MY PARALEGAL. I'M NOT
21 SURE.

22 Q TO REFRESH YOUR MEMORY, YOU DIDN'T OBJECT TO THAT, DID
23 YOU. LET ME ASK THAT QUESTION.

24 A NO SIR. ALTHOUGH, IT'S IRRELEVANT. I SAW NO OBJECTION. IT
25 WASN'T HARMFUL OR HELPFUL THAT I COULD SEE.

1 Q DO YOU THINK IT MADE AN IMPRESSION JUST FOR THE JURY
2 THAT HE WAS TELLING A WITNESS, BABY, DON'T COME BACK UP HERE
3 TODAY.

4 A I DIDN'T THINK IT WAS CRITICAL FOR THE JURY, NO SIR.

5 Q IN THE SENTENCING PHASE-- WELL, LET ME BACK UP A SECOND.
6 YOU'RE FAMILIAR WITH SKIPPER V. SOUTH CAROLINA, AS TO
7 ADAPTABILITY AND SO FORTH. IS THAT CORRECT?

8 A YES SIR.

9 Q YOU AND MR. BOYD DID NOT PUT ANY ADAPTABILITY UP
10 EXCEPT FOR THE RECORDS THROUGH MR. STOBEE, THROUGH THE
11 STAFF AT THE DEPARTMENT OF CORRECTIONS. IS THAT CORRECT?

12 A I BELIEVE SO.

13 Q BUT YET, THERE WAS TESTIMONY IN THE RECORD, AND Y'ALL
14 MADE A GREAT DEAL OF POINTING OUT THE FACT THAT SINCE HE HAS
15 BEEN CORRECTLY DIAGNOSED AT SCDC, THAT HE'S GOTTEN A LOT
16 BETTER. THOSE WERE THE MEDICAL REPORTS. IS THAT CORRECT?

17 A I THINK SO.

18 Q DO YOU THINK THAT WOULD HAVE BEEN CRUCIAL TO
19 ADAPTABILITY IN THAT THE RECORDS FROM DOCTOR STOBEE AT
20 SCDC SAY THAT HE IS NOT, HE HAS NOT BEEN CORRECTLY DIAGNOSED
21 AND NOW HE'S GOTTEN A LOT BETTER SINCE WE GOT HIM ON
22 REGULAR MEDICATION?

23 A I DON'T KNOW WHETHER THOSE RECORDS CAME IN OR THEY
24 WERE EVEN COMMENTED ON IN THAT MANNER.

25 Q YOU RECALL THE RECORDS I'M TALKING ABOUT, DO YOU NOT?

1 A NOT SPECIFICALLY. I REMEMBER THAT WE REVIEWED SCDC
2 RECORDS. AND I THOUGHT WE PUT IN SOMETHING AS TO THE
3 ADAPTABILITY WITH THE SCDC RECORDS. THAT'S ALL I RECALL. AND
4 I DON'T RECALL WHO PUT THEM IN OR HOW THEY WERE PUT IN
5 EVIDENCE.

6 Q FOR THE SAKE OF THIS QUESTION, THE RECORD INDICATES,
7 WHICH, ASSUMING IT DOES, THAT THE DOCTOR AT SCDC SAYS HIS
8 MEDICATION MADE HIM DO BETTER, THAT HE BASICALLY HAS BI-
9 POLAR, HAS HIM UNDER CONTROL. DO YOU NOT THINK THAT WOULD
10 HAVE BEEN A SALIENT FACT ON THE ADAPTABILITY; I.E., HE'S NO
11 LONGER A THREAT TO SOCIETY SINCE HIS MANIA AND BI-POLARISM IS
12 UNDER CONTROL WITH THE DEPARTMENT'S MEDICATION?

13 A IT COULD HAVE BEEN, YES SIR.

14 Q YOU AND MR. BOYD DID NOT CALL THAT DOCTOR UP HERE. IS
15 THAT CORRECT?

16 A I DON'T REMEMBER. I DON'T REMEMBER CALLING HIM UP HERE.

17 Q DID YOU AND HE RESEARCH THE FACT OR EVER THINK ABOUT
18 CALLING AN ADAPTABILITY EXPERT?

19 A I DON'T REMEMBER WHETHER WE DID OR DID NOT. I CAN'T TELL
20 YOU THAT.

21 Q IN ANY EVENT, YOU DIDN'T PRESENT ANY EVIDENCE OF
22 ADAPTABILITY OTHER THAN THOSE RECORDS, DID YOU?

23 A NO.

24 Q YOU WILL AGREE WITH ME THE FACT THAT HIS MEDICAL
25 DIAGNOSIS HAD CHANGED THROUGH, UNDER SCDC, AND THAT THE

1 DOCTOR WROTE THAT HE'S DOING MUCH BETTER NOW WITH THE
2 PROPER MEDICATION. IS THAT CORRECT?

3 A I DON'T REMEMBER IT. THAT MAY BE IN THE RECORD.

4 Q ON DIRECT EXAMINATION OF MR. MICHAEL JOHN STOBEE BY
5 MR. BRACKETT, HE BRINGS OUT THE FACT OF THE INFRACTION SHEETS
6 THAT MR. ROBERTSON HAD. DO YOU REMEMBER THAT?

7 A I REMEMBER HE HAD SOME INFRACTIONS.

8 Q AND WAS ONE OF THEM FOR BANGING ON A CELL DOOR, IF YOU
9 REMEMBER?

10 A I CAN'T DENY THAT.

11 Q LET ME ASK YOU TO TAKE THE TIME TO LOOK AT THESE LAST
12 TWO PAGES, 2133 THROUGH 2137. IT'S YOUR CROSS-EXAMINATION OF
13 MR. STOBEE AS TO THE VIOLATIONS IN THE CENTRAL REGISTRY AT
14 SCDC.

15 A (PAUSE TO REVIEW TRANSCRIPT) YES SIR.

16 Q YOU WOULD AGREE WITH ME THAT THOSE VIOLATIONS, OR THE
17 INFRACTIONS THAT HE HAD WERE VERY MINOR. IS THAT CORRECT?

18 A I DO, AND I THINK THAT WAS THE POINT THAT WE WERE TRYING
19 TO REACH.

20 Q IF LIFE WITHOUT PAROLE WAS ONE OF THE OPTIONS FOR MR.
21 ROBERTSON, COULD IT HAVE BEEN POSSIBLE THAT A VIABILITY OR
22 ADAPTABILITY EXPERT, WITH THESE RECORDS, WITH THAT MEDICAL
23 DIAGNOSIS, WHICH IS VERY FAVORABLE TO HIM AT SCDC, WOULD
24 HAVE BEEN HELPFUL IN THE SENTENCING PHASE?

1 A IF IT HAD BEEN LIFE-- LET'S SEE, IF IT HAD BEEN LIFE WITHOUT
2 THE POSSIBILITY OF PAROLE AT THAT TIME, I---

3 Q IT WAS. IF I TOLD YOU IT WAS---

4 A I'M TRYING TO FIGURE OUT, WAS THAT IN THE CASE IN CHIEF OR
5 IN THE DEATH PENALTY PHASE?

6 Q THAT WAS IN THE CASE IN CHIEF.

7 A WE DIDN'T KNOW WHETHER WE HAD LIFE WITHOUT THE
8 POSSIBILITY OF PAROLE IN THE CASE IN CHIEF BECAUSE THE JUDGE
9 HAD NOT RULED ON IT. WE DID NOT GET THAT---

10 Q I'M NOT TALKING ABOUT THE CHARGE. I'M TALKING ABOUT,
11 THAT WAS THE LAW. IT'S NOT A QUESTION OF WHAT THE LAW WAS.
12 HE'D EITHER GOT DEATH OR LIFE WITHOUT PAROLE. IS THAT
13 CORRECT?

14 A YES.

15 Q AND WOULD NOT AN ADAPTABILITY EXPERT HELP THE
16 SENTENCING PHASE, BASED ON THESE CRITERIA WE HAVE?

17 A HE MAY HAVE. I DON'T KNOW. I CAN'T PREDICT THAT IN THE
18 JURY'S MIND.

19 Q WOULD YOU AGREE WITH ME THAT IN THE MITIGATION OR
20 SENTENCING PHASE THAT DOCTOR EVANS, DOCTOR MORTON AND
21 DOCTOR PINCUS WERE GOOD WITNESSES?

22 A IN THE...?

23 Q IN THE SENTENCING PHASE?

24 A YEAH, I THINK THEY WERE.

1 Q AS A MATTER OF FACT, Y'ALL DIDN'T PUT ON ANY EVIDENCE IN
2 THE GUILT PHASE, DID YOU?

3 A NO.

4 Q NOW, I WANT TO MOVE TO DOCTOR CASCIO, THE FOURTH
5 WITNESS YOU USED, OR, YOU AND MR. BOYD USED. I BELIEVE YOU
6 TESTIFIED EARLIER THAT YOU GOT HER FROM THE CENTER FOR
7 CAPITAL LITIGATION?

8 A YES.

9 Q AND I BELIEVE YOU SAID, WHAT WAS THE LADY'S NAME WHO
10 RECOMMENDED HER?

11 A DRUCY GLASS, I BELIEVE.

12 Q DID YOU DO ANY BACKGROUND ON MS. CASCIO PRIOR TO
13 EMPLOYING HER IN THIS MATTER?

14 A YES. SHE SENT US A CURRICULUM VITAE.

15 Q WOULD THIS BE A COPY OF THAT?

16 A THAT APPEARS TO BE HER CURRICULUM VITAE, YES.

17 MR. BROWN: MOVE TO ADMIT THIS INTO EVIDENCE, YOUR
18 HONOR.

19 MR. SALTER: WITHOUT OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON APPLICANT'S EXHIBIT NUMBER FOUR WAS ADMITTED
22 INTO EVIDENCE WITHOUT OBJECTION)

23 Q DOES IT SHOW THAT SHE FINALLY FINISHED HER ACADEMIC
24 WORK AT THE UNIVERSITY OF PENNSYLVANIA SCHOOL OF SOCIAL
25 WORK IN 1996?

1 A YES.

2 Q AND SHE BECAME EMPLOYED IN 1996, AS AN ASSISTANT
3 PROFESSOR AT THE UNIVERSITY OF SOUTH CAROLINA. IS THAT
4 CORRECT?

5 A YES.

6 Q IN 1997, SHE LISTED HER PRACTICAL EXPERIENCE IN EXPERT
7 WITNESS TESTIMONY IN CAPITAL LITIGATION CASES AT THE CENTER
8 FOR CAPITAL LITIGATION IN COLUMBIA, SOUTH CAROLINA. IS THAT
9 CORRECT?

10 A YES SIR.

11 Q YOU WILL AGREE WITH ME THAT THIS IS A DEATH PENALTY
12 CASE, AND THAT'S ABOUT AS SERIOUS AS IT GETS IN ANY LITIGATION
13 IN SOUTH CAROLINA. WOULD THAT BE A CORRECT STATEMENT?

14 A I'D SAY IT'S MOST SERIOUS.

15 Q WERE YOU AWARE BEFORE SHE TOOK THE STAND THAT SHE
16 HAD NEVER TESTIFIED IN COURT BEFORE?

17 A YES. WE HAD GONE OVER HER TESTIMONY QUITE A FEW TIMES,
18 TRYING TO DO WHAT WE COULD. YES, I WAS AWARE OF THAT.

19 Q IN A DEATH PENALTY CASE WOULD IT NOT BE BETTER TO GET
20 SOMEONE WITH THE BACKGROUND AND EXPERIENCE OF DOCTOR
21 PINCUS, DOCTOR EVANS AND DOCTOR MORTON HAD, WHERE THEY
22 HAD TESTIFIED HUNDREDS OF TIMES?

23 A WE HAD LOOKED FOR THAT. IN FACT, WE HAD A LADY THAT WE
24 TRIED TO EMPLOY. BUT IT WASN'T LIKE WE COULD PICK THESE
25 SOCIAL WORKERS OFF TREES. AND WE WAS ASSURED THAT SHE

1 WOULD DO A GOOD JOB. WE WORKED WITH HER FOR A YEAR TRYING
2 TO GET HER WHERE SHE NEEDED TO BE IN THE TESTIMONY. AND
3 THAT'S WHAT WE HAD CHOSE TO DO.

4 Q YOU WOULD AGREE WITH ME, AS WITH LAWYERS, YOUR FIRST
5 CASE SHOULDN'T BE A DEATH PENALTY CASE; WITH SOCIAL WORKERS
6 YOUR FIRST CASE SHOULDN'T BE A DEATH PENALTY CASE? I MEAN,
7 EXPERIENCE HAS GOT TO PLAY A FACTOR IN THAT. WOULD YOU
8 AGREE WITH ME?

9 A I WOULD AGREE WITH YOU TO A POINT, BUT I WAS IN THE
10 PRACTICE OF LAW ELEVEN MONTHS WHEN I TRIED MY FIRST DEATH
11 PENALTY CASE.

12 Q YOU CAN'T DO THAT ANYMORE, CAN YOU?

13 A YOU CAN'T DO IT ANYMORE.

14 Q DO YOU THINK, WOULD YOU AGREE WITH ME THAT HER
15 TESTIMONY WAS HORRENDOUS FOR THE DEFENSE?

16 A I WILL AGREE THAT IT WAS HARMFUL. AND THE ONE THING
17 THAT I HAVE SEEN IN THIS IS-- AND I HAVE LOOKED AND I CANNOT
18 REMEMBER WHETHER WE MADE MOTIONS AS TO THE STATE'S
19 OBTAINING HER NOTES.

20 MR. BROWN: BEG THE COURT'S INDULGENCE.

21 (PAUSE)

22 Q DO YOU REMEMBER A HEARING SET BEFORE THE HONORABLE
23 JOHN C. HAYES ON FEBRUARY 19, 1998, DISCUSSING EXPERT
24 TESTIMONY AND WHO WAS ENTITLED TO WHAT?

1 A I DON'T REMEMBER WHAT HAPPENED IN THE HEARING. I

2 BELIEVE THAT WE HAD A HEARING TO DETERMINE WHAT WE HAD TO
3 TURN OVER. AND I DON'T KNOW WHETHER WE PROPERLY OBJECTED
4 TO TURNING OVER THE NOTES, TO TURNING OVER HER NOTES.
5 BECAUSE, IN HINDSIGHT AGAIN, I DON'T KNOW WHETHER THE JUDGE
6 EVER RULED WE HAD TO. BUT I DON'T KNOW WHY WE WOULD HAVE
7 HAD HER NOTES HERE, IF HE HAD NOT ORDERED US TO HAVE HER
8 NOTES.

9 Q I'M SHOWING YOU THE TRANSCRIPT FROM THAT FROM YOU AND
10 MR. BOYD. I'M ASKING YOU TO USE THIS TO REFRESH YOUR MEMORY,
11 PAGE 44, LINE 9.

12 "I WOULD JUST ASK YOU TO BE AVAILABLE MARCH 9. ALL
13 RIGHT. COMPEL DEFENDANTS TO BRING WITH THEM ALL DATA AND
14 FACTS. WHAT DO YOU HAVE TO SAY ABOUT THAT?"

15 "MR. BOYD: YOUR HONOR, MY UNDERSTANDING, THAT MOTION,
16 THE WITNESS IS COMING TO COURT TO TESTIFY. HE WILL BRING WITH
17 HIM THE DATA AND THE UNDERLYING FACTS."

18 "THE COURT: THAT'S WHAT THEY'RE ASKING. IT'S NOT
19 UNUSUAL FOR INDIVIDUALS' TESTIMONY TO BE ELICITED, AND THEN
20 ON CROSS EXAMINATION SOMEONE HAS SAID, HAVE YOU GOT THE
21 REPORT WITH YOU AND THEY SAY, NO, I DIDN'T BRING THAT. I RELIED
22 ON IT BUT I DIDN'T BRING IT. I DIDN'T THINK I NEEDED IT, ALL I'VE GOT
23 IS MY SUMMARY. THEY JUST WANT THE EXPERTS TO BRING THEIR
24 FILES."

1 "MR. BOYD:" PAGE 45, LINE 1. "WE HAVE NO OBJECTION TO
2 THAT."
3 A I DON'T REMEMBER THE HEARING.
4 Q IS THAT AN ACCURATE READING OF THE TRANSCRIPT?
5 A THAT IS AN ACCURATE READING OF THE TRANSCRIPT.
6 Q MR. BOYD CONSENTED TO TURNING OVER Y'ALL'S EXPERT'S
7 NOTES TO THE PROSECUTION.
8 A YES SIR.
9 Q YOU'RE FAMILIAR WITH RULE 5-B-1 OF THE SOUTH CAROLINA
10 RULES OF CRIMINAL PROCEDURE.
11 A YES.
12 Q 5-B-1, IT'S DISCOVERY.
13 A YES SIR.
14 Q DOES IT REGULATE WHAT THE DEFENSE HAS TO TURN OVER TO
15 THE STATE IF A RECIPROCAL DISCOVERY MOTION IS FILED?
16 A YES.
17 Q AND IN THAT RULE-- LET ME BACK UP. A RECIPROCAL MOTION
18 WAS OFFERED IN THIS CASE. CORRECT?
19 A YES.
20 Q AND IN THAT RULE, "REPORTS OF EXAMINATION AND TESTS, IF
21 THE DEFENDANT REQUESTS DISCLOSURE OF THIS SUBDIVISION OF
22 THIS RULE, UPON COMPLIANCE WITH SUCH REQUEST BY THE
23 PROSECUTION, DEFENDANT ON REQUEST OF PROSECUTION SHALL
24 PERMIT THE PROSECUTION TO INSPECT AND COPY ANY RESULTS OR

1 REPORTS OF PHYSICAL OR MENTAL EXAMINATION AND OF SCIENTIFIC
2 TESTS OR EXPERIMENTS, ET CETERA, ET AL." IS THAT CORRECT?

3 A YES.

4 Q NOWHERE IN THERE DOES IT REQUIRE THAT YOUR NOTES, OR
5 THE WITNESS' NOTES BE TURNED OVER. IS THAT CORRECT? IT'S SELF-
6 EVIDENT.

7 A WE FELT THE JUDGE HAD ALREADY DECIDED THAT. AND
8 THERE SHOULD HAVE BEEN A FURTHER-- AND I WILL SAY THAT I FEEL
9 IN HINDSIGHT, THERE SHOULD HAVE BEEN A FURTHER RULING AND A
10 FURTHER CHALLENGE TO THOSE NOTES COMING IN OF THOSE
11 EXPERTS.

12 Q YOU WOULD AGREE WITH ME THAT MR. BOYD HAD STATE'S 44-
13 FF-1, "WE HAVE NO OBJECTION TO THAT", MEANING GIVING THEM THE
14 NOTES FROM OUR EXPERTS?

15 A YES SIR. THAT WOULD HAVE BEEN IN CONSULTATION. IT
16 WOULD HAVE BEEN BOTH OF US, NOT JUST MR. BOYD.

17 Q I UNDERSTAND, I UNDERSTAND. BUT YOU FREELY ADMIT YOU
18 NOR HE OBJECTED TO TURNING OVER THE NOTES?

19 A THAT'S RIGHT.

20 Q FROM A STRATEGIC VIEWPOINT, THE STATE HAS ONE EXPERT
21 AND Y'ALL HAVE FOUR OR FIVE. IS THAT CORRECT?

22 A RIGHT.

23 Q YOU WOULD AGREE WITH ME THAT THAT WAS NOT A GOOD
24 GIVE-UP, FOR LACK OF A BETTER TERM, OR CONSENT TO?

25 A THAT TONI CASCIO BRING HER NOTES HERE AND---

1 Q EVERYBODY'S NOTES.

2 A WELL, THE QUESTION IS,--

3 Q Y'ALL HAD FOUR OR FIVE EXPERTS AND THEY HAD ONE.

4 A I DON'T THINK IT HURT US WITH THE OTHERS. I THOUGHT THAT
5 IT REALLY HURT WITH TONI CASCIO AND THAT THEY HAD THE NOTES
6 THAT WERE AVAILABLE. I DON'T REMEMBER JUST IN HINDSIGHT. I
7 CAN'T TELL YOU WHY THERE WAS NO FURTHER PURSUIT OF THE
8 EXPERTS' BRINGING THEIR NOTES.

9 Q AND YOU WOULD AGREE WITH ME THAT JUDGE HAYES DID NOT
10 ORDER Y'ALL TO DO THIS OVER OBJECTION; THAT JIM BOYD
11 CONSENTED TO IT?

12 A I AGREE THAT'S WHAT THE TRANSCRIPT SAID.

13 Q AND DO YOU KNOW OF ANY AUTHORITY IN THE STATE OF
14 SOUTH CAROLINA TO THE BEST OF YOUR KNOWLEDGE THAT
15 REQUIRES THE NOTES TO BE GIVEN?

16 A ONLY IF THAT'S THE WAY THE RULE IS READ, AND I KNOW OF
17 NONE OTHER. THAT'S IN THE DISCOVERY RULE. THAT'S HOW IT'S
18 INTERPRETED, PER MY OPINION.

19 Q DO YOU RECALL DURING THE COURSE OF THE TRIAL, MR.
20 BRACKETT THE DAY BEFORE MS. CASCIO WAS GOING TO TESTIFY,
21 THAT HE REQUESTED THE NOTES? DO YOU RECALL THAT?

22 A I DON'T KNOW.

23 MR. BROWN: IF YOUR HONOR WOULD BEAR WITH ME FOR JUST
24 A SECOND.

25 (PAUSE)

1 Q DO YOU RECALL WHEN THE NOTES WERE TURNED TO MR.

2 BRACKETT?

3 A I DO NOT.

4 Q IF I TELL YOU THAT IT'S THE RECORD THAT THEY WERE TURNED
5 OVER THE DAY BEFORE SHE TOOK THE STAND, WOULD YOU DISAGREE
6 WITH ME?

7 A I COULDN'T CONTEST THAT. HE ONLY GOT A HOLD OF THEM,
8 AND IT WAS SOMETIME BEFORE.

9 Q HAD YOU REVIEWED THE NOTES BEFORE THEY WERE GIVEN TO
10 HIM?

11 A I WOULD-- I SIT HERE AND I... I BELIEVE I DID, YES.

12 Q DID YOU OR MR. BOYD? BECAUSE MR. BOYD TOOK HER AS A
13 WITNESS. I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH.

14 A NO. I CAN'T TELL YOU WHETHER I REVIEWED THEM IN THEIR
15 ENTIRETY. IF MR. BOYD WAS DOING IT, I MAY HAVE REVIEWED THEM
16 AND I MAY NOT HAVE. THAT'S ALL I CAN TELL YOU.

17 Q I'M GOING TO ASK YOU IF YOU CAN IDENTIFY THIS DOCUMENT
18 OF HER REPORT AND ALSO A COPY OF HER NOTES GIVEN TO THE
19 PROSECUTION?

20 A THESE ARE-- THESE ARE NOTES. THEY'RE IDENTIFIED AS HER
21 NOTES, CASCIO AND PRELIMINARY REPORT, MARCH 1, 1999.

22 Q I'M ALSO GOING TO SHOW YOU A LETTER, A COPY OF A FAXED
23 LETTER TO YOURSELF DATED MARCH 1, 1999. IS THAT WHERE SHE
24 FIRST GIVES YOU THE REPORT AND THE NOTES?

1 A I BELIEVE WE HAD DISCUSSED THEM BUT THAT MAY BE THE
2 FIRST TIME I'VE SEEN THEM.

3 Q SO, SHE GOT THEM TO YOU TWO WEEKS BEFORE TRIAL. IS THAT
4 CORRECT?

5 A RIGHT.

6 MR. BROWN: MOVE TO ADMIT THE REPORT INTO EVIDENCE AND
7 THE NOTES, YOUR HONOR.

8 MR. SALTER: WITHOUT OBJECTION.

9 THE COURT: THEY'RE ADMITTED.

10 (WHEREUPON APPLICANT'S EXHIBIT NUMBER FIVE WAS ADMITTED
11 INTO EVIDENCE WITHOUT OBJECTION)

12 Q UP UNTIL THIS TIME OF TRIAL, THERE HAVE BEEN NO
13 STATEMENTS, INCULPATORY TOWARD MR. ROBERTSON INTRODUCED
14 INTO EVIDENCE, HAD THERE? OTHER THAN THE TESTIMONY OF
15 MEREDITH MOON?

16 A SURE. IT'S AS IF MR. ROBERTSON WAS TESTIFYING AGAINST
17 HIMSELF, WHEN THOSE NOTES WERE BROUGHT INTO TRIAL.

18 Q WHO MADE THE DECISION TO PUT HER ON THE STAND? WAS
19 THAT JOINT WITH MR. BOYD?

20 A I'M NOT GONNA-- I'M NOT GONNA SAY IT WAS SOLELY MR.
21 BOYD'S DECISION; I'M NOT GONNA SAY IT'S SOLELY MINE. I WOULD
22 SAY IT WOULD BE A MUTUAL DECISION; THAT WE DISCUSSED WHO
23 WERE GONNA PUT ON THE WITNESS STAND AND HOW WE WERE
24 GONNA DO IT BETWEEN US, AS I REMEMBER. I DON'T THINK I MADE
25 ALL THE DECISIONS AT THE TRIAL.

1 Q YOU WILL AGREE WITH ME, FROM YOUR RECOLLECTION AND
2 THE REPORT THAT WAS INTRODUCED INTO EVIDENCE, THAT HER
3 NOTES CONTRADICT HER REPORT?

4 A I DIDN'T SEE IT. I DON'T SEE IT IN THAT MANNER. THE
5 NECESSARY EVIDENCE IN HER NOTES-- I MEAN, IN THE NOTES THAT
6 WERE INculpATORY TOWARD HIM HAD ALREADY BEEN INTRODUCED
7 INTO EVIDENCE AS TO WHAT WAS THERE. I REMEMBER THE THINGS,
8 WHAT HE SAID TO HER ABOUT BASEBALL BATS AND STUFF. SOME OF
9 THAT HAD NOT BEEN IN THERE AND THAT'S WHAT I FELT SHOULDN'T
10 BE IN THERE.

11 Q I'M GOING TO ASK YOU, BECAUSE THE REPORT'S ONLY TWO AND
12 A HALF PAGES LONG, ANYWHERE IN THERE IS ANY INculpATORY
13 STATEMENTS, IN HER REPORT - NOT HER NOTES - IN HER REPORT BY
14 MR. ROBERTSON?

15 A NO SIR.

16 Q REALIZING HOW IT IS IN DEATH PENALTY CASES, COULD IT BE
17 POSSIBLE THAT YOU AND JIM JUST READ THE REPORT AND DIDN'T
18 BOTHER TO READ THE NOTES? I'M NOT SAYING THAT HAPPENED, BUT
19 COULD THAT HAPPEN?

20 A I DON'T THINK SO.

21 Q YOU WOULD AGREE WITH ME, AT THAT POINT IN TIME, YOU HAD
22 A GOOD MITIGATION CASE GOING ON WITH DOCTOR PINCUS, DOCTOR
23 EVANS AND DOCTOR MORTON?

24 A I CAN'T AGREE WITH YOU ON THAT.

25 Q WOULD YOU AGREE THEY WERE GOOD WITNESSES?

1 A I WOULD AGREE THEY WERE GOOD WITNESSES. I JUST---

2 Q CONSIDERING THE CARDS YOU WERE DEALT IN THIS CASE?

3 A WE WERE DEALING, AND WE WERE GRASPING FOR STRAWS AND
4 WE WERE LOOKING FOR A STRAW. I THOUGHT MAYBE ONE OF THEM
5 MIGHT HAVE BEEN THAT STRAW.

6 MR. BROWN: YOUR HONOR, I DON'T WANT TO BELABOR THE
7 COURT'S TIME. THIS REPORT'S VERY SHORT AND THE NOTES ARE VERY
8 SHORT. I WOULD JUST ASK THE COURT TO PLEASE REVIEW IT IN THE
9 CONTEXT.

10 THE COURT: THE REPORT AND THE NOTES?

11 MR. BROWN: YES SIR.

12 THE COURT: THE REPORT AND THE NOTES ARE ALL TOGETHER?

13 MR. BROWN: YES SIR.

14 THE COURT: AND THAT'S STATE'S EXHIBIT WHAT?

15 MR. BROWN: APPLICANT'S EXHIBIT NUMBER FIVE, YOUR HONOR.

16 THE COURT: APPLICANT'S EXHIBIT. OKAY. IF YOU'LL PASS THAT
17 UP TO ME.

18 MR. BROWN: YES SIR.

19 THE COURT: THANK YOU.

20 Q SHE TESTIFIED THAT HE WAS PHYSICALLY ABUSED, THAT HE
21 WAS A VICTIM OF DOMESTIC VIOLENCE IN THE HOUSEHOLD.

22 A UH-HUH.

23 Q CORRECT? THAT HE WAS BI-POLAR, CERTAIN MANIC EPISODES?

24 A YES.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q AND BASICALLY, IN A NUTSHELL, KIND OF BLAMED HIS
2 PARENTS IN A ROUNDABOUT WAY FOR WHAT HAPPENED, HOW HE WAS
3 BROUGHT UP?

4 A THAT'S KIND OF WHERE WE WERE GOING.

5 Q NOT ANYTHING TO WIND UP, WAS IT?

6 A WASN'T ANY WIND UP. THAT'S WHAT WE WERE DOING
7 BASICALLY WITH ALL THE WITNESSES.

8 Q AS A MATTER OF FACT, SHE TESTIFIED THAT VIOLENCE WAS HIS
9 ONLY ALTERNATIVE ON THE NIGHT OF THE MURDER. IS THAT
10 CORRECT?

11 A I DON'T REMEMBER THAT TESTIMONY, BUT IF IT'S IN THE
12 TRANSCRIPT, THEN I'M SURE NOT GOING TO DENY IT.

13 Q PRIOR TO THAT, ALSO, THE STATE, THROUGH MR. POPE AND MR.
14 BRACKETT, HAD INTRODUCED A PROFFER OF CERTAIN EVIDENCE OF
15 STALKING BY MR. ROBERTSON ON FOUR SEPARATE WOMEN. I
16 BELIEVE CATHY BIGHAM, ANN KATHRYN BOSDELL, AND TWO OTHER
17 WOMEN. DO YOU REMEMBER THAT?

18 A YES.

19 Q AND YOU AND MR. BOYD OBJECTED TO THAT TESTIMONY AND
20 JUDGE HAYES ULTIMATELY KEPT IT OUT OF EVIDENCE. IS THAT
21 CORRECT?

22 A I DON'T REMEMBER IT GOING INTO EVIDENCE.

23 Q JUST TO MAKE SURE THE RECORD IS COMPLETE HERE.

1 MR. BROWN: BEG THE COURT'S INDULGENCE. (PAUSE) LOOK
2 WITH ME ON PAGE 2007 OF THE TRANSCRIPT WHERE CATHY BIGHAM
3 TESTIFIED.

4 A IT'S KELLY BIGHAM.

5 Q KELLY BIGHAM. I APOLOGIZE. KELLY BIGHAM TESTIFIED AND
6 SHE WENT ON WITH THE TESTIMONY FOR A WHILE LONGER, NOT IN
7 FRONT OF THE JURY, OF KELLY BIGHAM, CHRISTINE ERMSEN
8 (PHONETIC), LESLIE HERRING, ANN KATHRYN KING, WILLIAM ANDREW
9 GEORGE. DID ALL THOSE RELATED TO STALKING INCIDENTS TO THE
10 BEST OF YOUR MEMORY?

11 LET ME SEE IF I CAN REFRESH YOUR MEMORY. KELLY BIGHAM
12 WAS THE YOUNG LADY WHO ALLEGEDLY PROFFERED HE KEPT
13 CALLING HER UP AND TELLING HER SHE WAS SOMEONE HE WANTED
14 TO HAVE SEX WITH. CHRISTINE ERMSEN, I BELIEVE WAS THE
15 BARTENDER AT THE SILVER DOLLAR SALOON WHERE HE WAS
16 STANDING OUTSIDE OF HER HOUSE ONE NIGHT.

17 A RIGHT. ANN KATHRYN KING....

18 Q WILLIAM ANDREW GEORGE WAS A FRIEND WHO WAS OVER
19 THERE WATCHING THAT. ANN KATHRYN KING WAS ANOTHER GIRL
20 THAT HE STALKED.

21 A THAT APPEARS TO BE WHAT'S HERE.

22 Q DO YOU RECALL THAT YOU AND MR. BOYD OBJECTED TO THAT
23 TESTIMONY AND JUDGE HAYES DID NOT LET IT IN?

1 A I DON'T RECALL WHAT THE RULING WAS. IT WOULD BE PART OF
2 THE RECORD. BUT IF YOU SAY SO AND YOU'VE READ IT, THEN THAT
3 WOULD BE CORRECT.

4 Q ON PAGE 2055, AS TO THE STALKING INCIDENT AND OTHER
5 EVIDENCE OF BAD CONDUCT, WHICH WAS BREAKING INTO CARS AND
6 SO FORTH, WHAT WAS JUDGE HAYES' RULING ON THAT? LINE ONE.

7 A HE SUSTAINED THE OBJECTION AND DIDN'T ALLOW IT IN.

8 Q SO, NONE OF THE STALKING AND NONE OF THE BAD ACTS CAME
9 IN. IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q YOU AND MR. BOYD MANAGED TO KEEP THAT OUT OF
12 EVIDENCE?

13 A THAT'S CORRECT.

14 THE COURT: WHAT PHASE OF THE TRIAL WAS THAT?

15 MR. BROWN: SAY AGAIN, YOUR HONOR.

16 THE COURT: WHAT PHASE OF THE TRIAL WAS THAT?

17 MR. BROWN: 2055, LINE 1, YOUR HONOR.

18 THE COURT: GUILT PHASE OR SENTENCING PHASE?

19 MR. BROWN: THAT WOULD BE THE SEN---

20 MR. SALTER: IT WAS THE PENALTY PHASE, YOUR HONOR.

21 MR. BROWN: THAT WAS THE PENALTY PHASE. CORRECT. THE
22 PENALTY PHASE.

23 Q SO, AT THAT POINT IN TIME, THE JUDGE RULED IN THE PENALTY
24 PHASE NO EVIDENCE OF STALKING, THREE WOMEN WHO HAD BEEN
25 STALKED; NO EVIDENCE OF BREAKING INTO CARS AT SOME GOLF

1 CLUB OR COUNTRY CLUB; OR ANY OTHER BAD ACTS BY THIS
2 DEFENDANT COMING IN. IS THAT CORRECT?

3 A AS I RECALL, NO, IT WAS NOT COMING IN. AND THERE HAD BEEN
4 NO FURTHER EVIDENCE THAT I KNOW OF PRIOR TO THAT.

5 Q STARTING ON PAGE 2957, CROSS EXAMINATION BY MR. POPE OF
6 TONI CASCIO, AT THE TOP OF THE PAGE, DOES SHE ADMIT THAT ALL
7 HIS PARENTS WANTED FOR JIMMY WAS TO HAVE THE AMERICAN
8 DREAM OF KIDS AND A COLLEGE EDUCATION?

9 A YOU'RE TALKING ABOUT 2957?

10 Q YEAH, THE TOP OF THE PAGE.

11 A YEAH, THEY'RE JUST SAYING THAT THEY WANTED THE
12 AMERICAN PIE THING, COLLEGE, KIDS, GRANDKIDS, ET CETERA, ET
13 CETERA.

14 Q AND HER ANSWER'S YES?

15 A YES.

16 Q MS. CASCIO'S. 2957, BOTTOM OF THE PAGE, TOP OF PAGE 2958,
17 MR. POPE ASKED HER IF IT WAS IN HER REPORT OR NOTES THAT HE
18 FAILED IN COLLEGE TO PROVE A POINT TO HIS PARENTS?

19 A RIGHT.

20 Q 2959 AND 2960, SOME TESTIMONY THAT MOM PROTECTING HIM
21 AND GAVE HIM MONEY?

22 A RIGHT.

23 Q PAGE 2963, DOES MR. POPE BRING OUT THAT "...THERE WERE
24 PEOPLE AVAILABLE TO HELP HIM BUT HE DIDN'T WANT THEIR HELP.

1 IS THAT RIGHT?" "THAT'S WHAT IT SAYS.", THE ANSWER BY MS.

2 CASCIO.

3 A YES.

4 Q SO, IT'S SAFE TO SAY THAT HE DIDN'T WANT HELP. IS THAT
5 RIGHT?

6 A (NO RESPONSE)

7 Q NOW, ON PAGE 2962, SHE TESTIFIED THAT HE TOLD HER HIS
8 PARENTS WERE CLUELESS ABOUT HIS DRUG USE.

9 A I THINK WHAT HE WAS SAYING WAS MOST ADOLESCENTS DO IT
10 AT SOME POINT, TRY DRUGS. WHEN THEIR PARENTS FIND OUT THEY
11 OVERREACT BECAUSE THEY WERE SO CLUELESS.

12 Q IS THAT JIMMY TALKING ABOUT HIS PARENTS?

13 A RIGHT. THOSE WERE HIS WORDS, YES.

14 Q AND THAT'S MS. CASCIO'S TESTIMONY, QUOTING TO JIMMY?

15 A YES.

16 Q ON 2965, AND THEN ON CROSS EXAMINATION BY MR. POPE, DOES
17 SHE TESTIFY THAT THE DEFENDANT TOLD HER HE WAS CONTENT WITH
18 ALCOHOL AND WEED?

19 A YES.

20 Q ON 2970, AT THE BOTTOM OF PAGE 2969, AND TOP OF PAGE 2970,
21 DOES IT MAKE REFERENCE THAT THE DEFENDANT WAS GOING TO
22 PULL A KNIFE AND HAVE A SHOWDOWN WITH EARL?

23 A YES.

24 Q AND, AGAIN, THAT'S TESTIMONY THAT MS. CASCIO TESTIFIED ON
25 CROSS EXAMINATION THAT WERE STATEMENTS BY MR. ROBERTSON?

1 A RIGHT.

2 Q 2979 TO 2980, MS. CASCIO TESTIFIED ON CROSS EXAMINATION BY
3 MR. POPE THAT THE DEFENDANT, JIMMY ROBERTSON, STOLE MONEY
4 AND CREDIT CARDS FROM EARL. IS THAT CORRECT?

5 A GIVE ME A MOMENT. YEAH, IT SAYS HE STOLE SOME CREDIT
6 CARDS AND SAID IT WASN'T THE END OF THE WORLD, AND SHE SAID, I
7 BELIEVE SO, YES.

8 Q 2982 TO 2983, DOES IT GO THROUGH THIS DEFENDANT'S WORK
9 RECORDS, AND THAT HE HAD TEN JOBS AND A BAD WORK RECORD?

10 A IT APPEARS TO CHECK HOW MANY JOBS, HAD A FEW DIFFERENT
11 ONES, YES, CAME TO TEN. THAT SOUNDS ABOUT RIGHT.

12 Q NONE OF THIS IS IN EVIDENCE PRIOR TO THIS POINT IN TIME
13 THAT WE'RE GOING TO. IS THAT CORRECT?

14 A I DON'T BELIEVE SO. I HAVEN'T READ THE TRANSCRIPT, BUT I
15 DON'T BELIEVE SO.

16 Q DO PAGES 2985 AND 2988, CROSS EXAMINATION BY MR. POPE, ON
17 STATEMENTS THAT MR. ROBINSON MADE TO MS. CASCIO, DOES IT
18 DISCUSS THAT HE PROVOKED ARGUMENTS WITH HIS FATHER?

19 A YES, THAT WHAT HE DID, YES. IT SAYS, HE USED TO SAY WHAT'S
20 GONNA HAPPEN.

21 Q 2991 TO 2992, IT DISCUSSES THE TRIP THAT HE TOOK TO EUROPE
22 AND THAT WHEN HE CAME HOME HE WAS MAD BECAUSE CHIP GOT A
23 CONVERTIBLE CAR.

24 A YES. HE SAID HE KICKED ME IN THE TEETH WHEN I WENT OVER
25 THERE AND HE'D BOUGHT CHIP A CONVERTIBLE.

1 Q DID YOU EVER DISCUSS, ON THAT SUBJECT, VERY BRIEFLY, DID
2 HE EVER TELL YOU THAT THE TRIP TO EUROPE WAS AN ACADEMIC
3 AWARD FOR JIM AND HE WAS ONE OF TWO PEOPLE CHOSEN TO GO
4 FINISH HIS SENIOR YEAR IN HIGH SCHOOL IN GERMANY?

5 A YEAH.

6 Q WAS THAT EVER BROUGHT OUT WHEN MR. BRACKETT AND MR.
7 POPE WERE MAKING HAY OUT OF THE FACT THEY WERE SENDING HIM
8 A THOUSAND DOLLARS A MONTH TO LIVE THE HIGH LIFE IN
9 GERMANY?

10 A IF IT WAS, I DON'T SEE IT IN THE TRANSCRIPT.

11 Q 2995 TO 2997, DOES HE DISCUSS HIS MAMA'S FAMILY OR HIS
12 DADDY'S FAMILY?

13 A 29-WHAT?

14 Q 95 THROUGH 97.

15 A IF IT'S SOMEBODY WITH MORE CULTURE THAN SOMEBODY ELSE
16 AND THEY WERE ASKING GRANDPARENTS FOR MONEY, AND YEAH,
17 THEY DISCUSSED SOME INTERACTION WITH OTHER FAMILY.

18 Q ON 2999, DOES HE DISCUSS BEING DEFLIANT WITH HIS PARENTS?

19 A YES. ANYTHING THEY WANTED I HAD TO DO.

20 Q ON PAGE 3000, DOES HE START DISCUSSING VARIOUS AND
21 SUNDRY STALKING INCIDENTS? IS THAT CORRECT?

22 A YES.

23 Q DOES THAT GO ON FOR THE NEXT SEVEN OR EIGHT PAGES,
24 APPROXIMATELY? IF YOU WOULD, JUST TAKE A FEW MINUTES TO

1 REVIEW THAT AND REFRESH YOUR MEMORY BECAUSE THERE'S A
2 QUESTION I WANT TO ASK YOU ABOUT SPECIFIC THINGS HE DID.

3 A WE OBJECTED TO THAT COMING IN OUT OF HER NOTES.

4 Q AND THE JUDGE OVERRULED YOUR OBJECTION, DID HE NOT?

5 A EVIDENTLY HE DID.

6 Q WAS THAT NOT BASED ON THE FACT THAT THESE WERE NOTES
7 THAT MS. CASCIO HAD USED TO FORM HER OPINION?

8 A YES. THE ARGUMENT WAS THAT THIS HAD ALREADY BEEN
9 RULED ON; THAT THESE STALKING INCIDENTS COULD NOT COME INTO
10 EVIDENCE. AND THEN HE OVER-- I FEEL HE OVERRULED HIMSELF BY
11 SAYING THAT THESE-- BECAUSE THE NOTES, THEY WERE HER NOTES,
12 THEN THEY COULD COME INTO EVIDENCE AT THAT TIME OVER THE
13 PRIOR OBJECTION.

14 Q COULD IT BE THAT YOU OR MR. BOYD - THIS IS MR. BOYD'S
15 WITNESS - OPENED THE DOOR WITH THOSE NOTES TO EVIDENCE THAT
16 HAD PREVIOUSLY BEEN KEPT OUT OF EVIDENCE? WOULD THAT BE
17 MORE PRECISELY JUDGE HAYES' RULING?

18 A THAT'S NOT WHAT HE SAID. HE RULED THAT THESE WERE
19 NOTES; THE NOTES WERE AVAILABLE TO BE CROSS EXAMINED ON,
20 AND THEREFORE THEY COULD ASK ABOUT WHAT WAS IN THE NOTES.
21 OUR OBJECTION WAS, HEY, THIS WAS RULED ON. THEY PUT UP A
22 PROFFER AND YOU SAID NO.

23 Q COULD IT BE POSSIBLE THE DOOR WAS OPENED UP?

1 A I DON'T KNOW THAT WE WOULD OPEN THE DOOR WITH THE
2 NOTES? I MEAN, I JUST GOT WHAT HE SAYS AND I DON'T REMEMBER
3 ANY OTHER GROUNDS. THAT'S WHAT I TEND TO READ HERE.

4 BUT, AGAIN, AS I'VE SAID, I DON'T KNOW WHETHER IT WAS IN
5 ANOTHER HEARING WHERE WE HAD DETERMINED THAT THE NOTES
6 WERE TO BE TURNED OVER DUE TO DISCOVERY OR NOT.

7 Q I'VE SHOWN YOU THE TRANSCRIPT---

8 A YES.

9 Q ---WHERE ON PAGE 45, LINE 1---

10 A RIGHT.

11 Q ---WHERE MR. BOYD CONSENTED TO THE NOTES BEING TURNED
12 OVER. CORRECT?

13 A YES.

14 Q AND YOU WOULD AGREE WITH ME THAT IF MS. CASCIO NEVER
15 TAKES THE STAND, NONE OF WHAT WE'VE COVERED SO FAR COMES
16 INTO EVIDENCE?

17 A I DON'T THINK IT WOULD, NO.

18 Q NOW, MOVING TO PAGE 3010, DO YOU HAVE THAT IN FRONT OF
19 YOU?

20 A YES, I'VE GOT 3010 RIGHT HERE.

21 Q STARTING ON PAGE 3010, DOES HE NOT DESCRIBE THE CRIME
22 EVENT?

23 A YES. YES, HE SURE DOES, UH-HUH. IT'S WHERE HE TALKS ABOUT
24 THE BAT AND ALL THAT.

1 Q DOES IT COME BEFORE THE JURY UNDER CROSS EXAMINATION
2 BY MR. POPE OF MS. CASCIO THAT THERE WERE NOTES THAT HE WAS
3 HAVING A MORAL DILEMMA OVER WHETHER TO USE A BASEBALL BAT
4 OR ALUMINUM BAT?

5 A YEAH.

6 Q YOU WILL AGREE WITH ME THAT'S PRETTY DAMNING EVIDENCE
7 IN THE SENTENCING PHASE OF A DEATH PENALTY TRIAL WHEN THE
8 DEFENDANT HAS A MORAL DILEMMA ON WHETHER TO USE A
9 BASEBALL BAT OR AN ALUMINUM BAT?

10 A I CAN'T TELL YOU. I'VE NEVER BEEN ON A DEATH PENALTY
11 CASE THAT---

12 Q IN YOUR EXPERIENCE OF THIRTY-PLUS PRACTICING LAW---

13 A MY EXPERIENCE IS THAT THIS COULD POSSIBLY SWAY AND
14 WOULD PREJUDICE THE DEFENDANT. BUT I CAN'T REMEMBER
15 WHETHER ANY OF THAT CAME OUT ON MEREDITH MOON'S
16 TESTIMONY.

17 Q IF I TOLD YOU FOR THE SAKE OF THAT QUESTION THAT IT DID
18 NOT, WOULD YOU BELIEVE ME?

19 A I DON'T REMEMBER WHETHER IT DID OR DID NOT.

20 MR. BROWN: BEG THE COURT'S INDULGENCE.

21 (PAUSE)

22 Q THE AG HAS BEEN KIND ENOUGH TO LOAN ME HIS COPY OF THE
23 TRANSCRIPT FOR THE NEXT FEW QUESTIONS. WE'RE STARTING ON
24 PAGE 3022. ON PAGE 7, DOES MS. CASCIO TESTIFY UNDER CROSS

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 EXAMINATION BY MR. POPE THAT MR. ROBERTSON SAID GET, SEE, NO
2 ONE WILL KNOW HIS PARENTS ARE MISSING?

3 A WHERE ARE YOU REFERRING?

4 Q PAGE 3022, LINE 7.

5 A RIGHT.

6 Q QUESTION 17. EXCUSE ME. LINE 17:

7 "Q. WHAT WERE THEY GOING TO DO WHEN THEY GOT BACK?

8 A. I BELIEVE THEY WERE GOING BACK TO THE HOUSE.

9 Q. AND DISCOVER THEIR PARENTS?

10 A. YES."

11 A RIGHT.

12 Q OKAY. SO, IT SAYS, QUOTING HER NOTES AGAIN, QUOTING MR.
13 ROBERTSON IN CROSS EXAMINATION OF MS. CASCIO BY MR. POPE: "I'M
14 NOT SURPRISED THAT MY BROTHER." THEY'RE TALKING ABOUT CHIP
15 THERE. IS THAT CORRECT?

16 A YES.

17 Q LINE 25, THE TOP OF THE NEXT PAGE: "I BELIEVE IT REFERRED
18 TO HE WASN'T SURPRISED AT WHAT HE HAD DONE. IT WOULDN'T
19 SURPRISE HIS BROTHER." MAKING REFERENCE TO CHIP AGAIN. IS
20 THAT CORRECT?

21 A RIGHT.

22 Q LINE 6:

23 "Q. CALLED HOME AND REALIZED THAT SOMEONE FOUND
24 BODIES, PUT PHONE ON HOOK?

25 A. YES."

1 IS THAT CORRECT?

2 A UH-HUH.

3 Q IS THAT A YES?

4 A YES.

5 Q IS THAT INDICATIVE OF A PHONE CALL HE MADE, ALLEGEDLY
6 MADE GOING TO PHILADELPHIA AFTER THESE EVENTS HAD
7 OCCURRED?

8 A YES.

9 Q AND, AGAIN, NONE OF THIS IS IN EVIDENCE AT THIS POINT IN
10 TIME, PRIOR TO THIS? IS THAT CORRECT?

11 A CORRECT. I CAN'T SAY NONE OF IT BECAUSE I HAVEN'T READ
12 THE TRANSCRIPT.

13 Q YES SIR. TO THE BEST OF YOUR KNOWLEDGE?

14 A TO THE BEST OF MY KNOWLEDGE.

15 Q PAGE 3024:

16 "Q." LINE 14, AND DOWN NEXT TO THE BOTTOM OF THE
17 PAGE, NOT THE BOTTOM LINE, BUT NEXT TO THE BOTTOM LINE
18 HE SAID, "RUNNING HER MOUTH?"

19 A. YES. Q. SO, MEREDITH WAS RUNNING HER MOUTH? A.
20 YES."

21 IS THAT CORRECT?

22 A RIGHT.

23 Q PAGE 3025, LINE 9, AGAIN QUOTING MR. ROBERTSON UNDER
24 CROSS EXAMINATION OF TONI CASCIO BY MR. POPE: "KILL MOM

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 BECAUSE HE COULDN'T LIVE WITH HER KNOWING HE KILLED DAD,
2 LEAVING HER ALONE."

3 A RIGHT.

4 Q "SO, HE KILLED MOM SO MOM WOULDN'T HAVE TO LIVE
5 KNOWING THAT JIMMY KILLED DAD. IS THAT RIGHT?

6 A. YES."

7 A RIGHT.

8 Q I'M GOING TO SHOW 3042 OF THE TRANSCRIPT, STARTING ON
9 LINE 8. IT SAYS-- AND AGAIN, ALL THESE STATEMENTS I AM QUOTING
10 ARE STATEMENTS BY MR. ROBERTSON THAT MS. CASCIO TESTIFIED TO
11 UNDER CROSS EXAMINATION BY MR. POPE, THAT MR. ROBERTSON
12 MADE.

13 DOES IT NOT STATE THAT MEREDITH WAS INFATUATED WITH
14 THE DEFENDANT?

15 A RIGHT. IT GOES ON TO SAY THAT THAT WAS A STATEMENT,
16 SHE'D DO ANYTHING FOR HIM, AND THAT WAS A STATEMENT FROM
17 HIM.

18 Q PAGE 3015, LINE 11: DISCUSSED WHICH BAT TO USE. IS THAT
19 CORRECT?

20 A YES.

21 Q ANOTHER QUOTE BY MS. CASCIO OR MR. ROBERTSON: "NOT
22 WOOD, SIGNED AND AUTOGRAPHED, DIDN'T WANT TO USE." IS THAT
23 CORRECT?

24 A CORRECT.

- 1 Q LINE 22, QUOTING MR. ROBERTSON AGAIN, MS. CASCIO'S
2 TESTIMONY: "CONDENSE TWO BATTLES OF TILEX." IS THAT
3 CORRECT?
- 4 A CORRECT.
- 5 Q "AND THEN SAT IN ROOM AND WAITED TILL FATHER WENT IN
6 SHOWER." IS THAT CORRECT?
- 7 A CORRECT.
- 8 Q "KILLED MOM WHILE DAD WAS IN SHOWER." IS THAT CORRECT?
- 9 A YES.
- 10 Q "TOOK PHONE OFF THE HOOK, LEFT ONE KNIFE IN HALLWAY." IS
11 THAT CORRECT?
- 12 A CORRECT.
- 13 Q "IN CASE DAD CAME IN." IS THAT CORRECT?
- 14 A CORRECT.
- 15 Q "WENT TO BEDROOM." CORRECT?
- 16 A CORRECT.
- 17 Q "STRUGGLED WITH MOM FOR A FEW MINUTES." CORRECT?
- 18 A CORRECT.
- 19 Q "WHAT DID SHE START DOING? SCREAMING." IS THAT
20 CORRECT?
- 21 A CORRECT.
- 22 Q "WAS SHE SCREAMING FOR EARL? WHO WAS SHE SCREAMING
23 FOR?
- 24 A. EARL."
- 25 A YES.

1 Q AND IT SAYS NEXT, "IT WAS GETTING AT ME TO HEAR HER
2 SCREAM.

3 A. YES."

4 "Q. AND HE'S DESCRIBING THIS TO YOU AGAIN. IS THAT
5 CORRECT?

6 "A. YES." "HE WAS IN A RAGE LIKE A MANIAC."
7 IS THAT CORRECT?

8 A YES.

9 Q "Q. THEN HE'S IN A MANIACAL RAGE. WHAT DOES HE DO
10 THEN?

11 A. COME DOWNSTAIRS."

12 IS THAT CORRECT?

13 A CORRECT.

14 Q "Q. AND WHAT DOES HE SAY? ONE DOWN AND ONE TO GO."
15 IS THAT CORRECT?

16 A CORRECT.

17 Q "Q. WHAT DID HE DO WITH THE BAT?

18 A. PUT IT AT THE TOP OF THE STAIRS."

19 IS THAT CORRECT?

20 A CORRECT.

21 Q "Q. OKAY. THEN WHEN HE PUT THE BAT AT THE TOP OF THE
22 STAIRS, WHAT DID HE DO?

23 A. HE SAT AND WAITED." IS THAT CORRECT?

24 A CORRECT.

25 Q "Q. HE SAT AND WAITED FOR WHAT?

- 1 A. HE SAT AND WAITED FOR A HAMMER LIKE I WAS
2 STANDING ON THE OTHER SIDE OF MYSELF WATCHING ME."
3 IS THAT CORRECT?
4 A CORRECT.
5 Q "Q. TELL THEN WHAT HE DID NEXT.
6 A. SPRAYED TILEX IN HIS FATHER'S EYES AND HIT HIM WITH A
7 CLAW HAMMER."
8 A CORRECT.
9 Q "Q. WHAT DID HIS FATHER DO?
10 A. HIS FATHER PUT UP A FIGHT WITH A HAMMER STUCK IN HIS
11 HEAD."
12 IS THAT CORRECT?
13 A YES.
14 Q "AND WHAT HAPPENED NEXT?
15 A. IMMEDIATELY DAD FELL TO THE GROUND. HIT HIM TWO
16 HUNDRED TIMES WITH HAMMER AND BASEBALL BAT."
17 CORRECT?
18 A CORRECT.
19 Q "Q. WHAT WAS HIS NEXT STATEMENT?
20 A. TWENTY-TWO YEARS OF HATRED CAME OUT."
21 CORRECT?
22 A CORRECT.
23 Q "Q. HE SAID IT WAS OVERKILL AND HE KEPT ON AND ON AND
24 ON?
25 A. YES."

- 1 IS THAT CORRECT?
- 2 A CORRECT.
- 3 Q "Q. THEN HE WENT IN THE BEDROOM TO CHECK ON HIS MOM?
- 4 A. YES.
- 5 Q. WHAT DID HE DO TO HER?
- 6 A. HE HIT HER WITH A HAMMER TO MAKE SURE SHE WAS DEAD."
- 7 CORRECT?
- 8 A CORRECT.
- 9 Q "Q. MEREDITH THOUGHT HE WAS GOING TO KILL HER?
- 10 A. YES."
- 11 CORRECT?
- 12 A CORRECT.
- 13 Q "Q. HE HEARD NOISES UPSTAIRS. WHAT IS THAT?
- 14 A. HE WAS-- I DON'T KNOW WHAT WAS GOING ON, BUT HE
- 15 THOUGHT HE HEARD NOISES UPSTAIRS.
- 16 Q. AND WHAT DID HE INDICATE THAT WAS?
- 17 A. HE THOUGHT IT WAS HIS FATHER BREATHING INTO THE
- 18 CARPET."
- 19 CORRECT?
- 20 A CORRECT.
- 21 Q "Q. OKAY. WHAT DOES HE SAY NEXT?
- 22 A. HOW WAS HE STILL LIVING.
- 23 Q. IF YOU WOULD, TELL THE JURY WHAT HE DID THEN.
- 24 A. I WENT TO FIND A DRILL TO END THE MATTER."
- 25 CORRECT?

1 A CORRECT.

2 Q "Q. OKAY. SO WHAT DID HE DO NEXT?

3 A. TOOK THE BAT UPSTAIRS TO BEAT ON HIM AGAIN.

4 Q. AND AFTER THAT?

5 A. KICKED WITH TOE TO MAKE SURE HE WAS DEAD."

6 CORRECT?

7 A CORRECT.

8 Q "Q. OKAY. SO, AFTER HE DOES THAT, AFTER HE KICKED HIM, HE

9 SAID TO MAKE SURE HE WAS DEAD, TELL THE JURY WHAT HE DID

10 NEXT.

11 A. HE CLEANED UP, TOOK MONEY AND CAR KEYS AND PACKED

12 STUFF AND WAS GONE.

13 Q. WHAT WAS IT HE SAID NEXT?

14 A. MEREDITH'S TESTIMONY NOT GOOD ENOUGH BY ITSELF."

15 CORRECT?

16 A CORRECT.

17 Q "Q. OKAY. COMING ON DOWN TO THE BOTTOM PARAGRAPH. HE

18 BROKE THE WINDOW DOWNSTAIRS TO MAKE IT LOOK LIKE A

19 ROBBERY?

20 A. UH-HUH.

21 Q. AND THE MAN ACROSS THE STREET PULLING UP. I THINK IT

22 WAS MR. WHITEN. IS THAT RIGHT?

23 A. I BELIEVE IT WAS.

24 Q. DID YOU TALK TO HIM, TOO?

1 A. I SPOKE TO SCOTT BRADLEY. I DID NOT SPEAK WITH HIS
2 FATHER.

3 Q. OKAY. SO, JIM WADE GOT IN THE CAR AND LEFT. IS THAT
4 RIGHT.

5 A. YES."
6 IS THAT CORRECT?

7 A CORRECT.

8 Q PRIOR TO MS. CASCIO TAKING THE STAND, NONE OF THESE,
9 NONE OF THIS EVIDENCE OR STATEMENTS BY HIM WERE IN EVIDENCE,
10 WERE THEY?

11 A NOW, THAT I CAN'T TELL YOU, BECAUSE THEY HAD THE TILEX
12 BOTTLE, THEY HAD THE HAMMER, THEY HAD ALL OF THE FORENSIC
13 EVIDENCE DONE THERE; THAT IT WAS HIS HAIR ON THE HAMMER.
14 THEY HAD---

15 Q NONE OF THAT WAS CORROBO--

16 A ---THE BASEBALL BAT.

17 Q LET ME REPHRASE MY QUESTION. NO STATEMENTS OF
18 ADMISSION OR INCULPATORY STATEMENTS BY MR. ROBERTSON WERE
19 IN EVIDENCE PRIOR TO THIS, WERE THEY?

20 A NO.

21 Q NEVER WAS?

22 A NO.

23 Q THIS WAS THE LAST WITNESS, OR THE NEXT TO THE LAST
24 WITNESS THE STATE PRESENTED, WAS IT NOT?

25 A YES.

- 1 Q BEGS THIS QUESTION, THEN: CAN YOU SAY WITHIN A
2 REASONABLE CERTAINTY THAT IF THE JURY HAD NOT HAVE HEARD
3 THAT TESTIMONY WE MAY HAVE HAD A DIFFERENT OUTCOME ON THE
4 SENTENCING PHASE?
- 5 A I CAN'T, MR. BROWN.
- 6 Q POSSIBLY?
- 7 A THAT WOULD BE CONJECTURE. ANYTHING THAT WAS DONE OR
8 SAID---
- 9 Q COULD IT HAVE BEEN--
- 10 A ---COULD---
- 11 Q ---POSSIBLE---
- 12 A ---POSSIBLY---
- 13 Q ---THERE WOULD HAVE BEEN---
- 14 A --MADE A CHANGE--
- 15 Q --A DIFFERENT OUTCOME--
- 16 A --IN THE--
- 17 Q --BUT FOR THAT TESTIMONY?
- 18 A ANY OF IT CAN. YOU KNOW AND I KNOW THAT WE'VE TRIED
19 ENOUGH CASES THAT WE DON'T KNOW WHAT POSSIBLY THEY
20 CONSIDER. IT POSSIBLY COULD HAVE, YES SIR.
- 21 Q AND YOU WOULD AGREE WITH ME THAT WAS EXTREMELY
22 DAMNING TESTIMONY?
- 23 A I WAS NOT HAPPY WITH IT AT ALL, SIR.
- 24 MR. BROWN: BEG THE COURT'S INDULGENCE.
- 25 (PAUSE)

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A IF I MAY REPHRASE THAT WHILE YOU'RE INDULGING. I WAS-- I
2 WAS NOT HAPPY WITH THAT COMING FROM THOSE NOTES BECAUSE I
3 DON'T THINK THEY COULD HAVE GOTTEN INTO ALL THAT WITHOUT
4 THOSE NOTES, AND I THOUGHT IT WAS DAMAGING.

5 Q Y'ALL PUT THAT WITNESS UP DESPITE THE NOTES. CORRECT?

6 A YES SIR.

7 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: WHAT'S YOUR ESTIMATE FOR HOW LONG YOUR
9 CROSS EXAMINATION IS GOING TO BE?

10 MR. SALTER: A LITTLE IN EXCESS OF AN HOUR, YOUR HONOR.

11 THE COURT: SIR?

12 MR. SALTER: I'M SORRY. A LITTLE IN EXCESS OF AN HOUR.

13 THE COURT: ALL RIGHT. LET'S GO AHEAD AND BREAK. DOES
14 THAT SUIT Y'ALL?

15 MR. BROWN: YES SIR.

16 MR. SALTER: THAT'S FINE, YOUR HONOR.

17 THE COURT: AND WE'LL START BACK, WHAT'D I SAY, TWO?

18 MR. BROWN: YES SIR.

19 THE COURT: AND THAT'S WHAT SUITS Y'ALL?

20 MR. BROWN: YES SIR, THAT'S FINE.

21 MR. SALTER: THAT'S FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. WE'LL SEE Y'ALL AT TWO O'CLOCK
23 TOMORROW.

24 (WHEREUPON COURT WAS ADJOURNED AT 5:20 P.M.)

25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	:	
SIXTEENTH JUDICIAL CIRCUIT	)	SIXTEENTH JUDICIAL CIRCUIT

JAMES D. ROBERTSON,	)	
	:	
APPLICANT-PLAINTIFF,	)	
	:	
VERSUS	)	TRANSCRIPT OF RECORD
	:	
STATE OF SOUTH CAROLINA,	)	06-CP-46-00532
	:	VOLUME II
DEFENDANT.	)	

TUESDAY, JANUARY 30, 2007
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE

A P P E A R A N C E S:

FOR THE APPLICANT-PLAINTIFF:
MICHAEL L. BROWN, ESQ.
JOSEPH MATLOCK, ESQ.

FOR THE STATE:
WILLIAM EDGAR SALTER III, ESQ., ASSISTANT ATTORNEY GENERAL

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 TUESDAY, JANUARY 30, 2007 - COURT IN SESSION - 2:00 P.M.

2 THE COURT: MR. SALTER, ARE YOU READY TO DO YOUR CROSS
3 EXAMINATION?

4 MR. SALTER: YES SIR.

5 THE COURT: ALL RIGHT.

6 CROSS EXAMINATION OF WITNESS HANCOCK BY MR. SALTER:

7 Q I BELIEVE YOU INDICATED EARLIER YOU COULDN'T RECALL
8 EXACTLY WHEN YOU WERE APPOINTED. IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q SO, WAS IT A LONG TIME PRIOR TO TRIAL?

11 A IT WAS QUITE SOME TIME, AS I REMEMBER.

12 Q DO YOU RECALL-- EXCUSE ME. DESPITE THE FACT THAT YOU
13 WERE LEAD COUNSEL, AS YOU TESTIFIED ON DIRECT EXAMINATION,
14 Y'ALL PRETTY MUCH SEPARATED YOUR RESPONSIBILITIES MORE OR
15 LESS EVENLY?

16 A YES SIR. WE JUST AGREED, AS I SAID BEFORE ON YESTERDAY, I
17 BELIEVE, IF YOU FELT MORE COMFORTABLE WITH ONE WITNESS OR
18 THE FIELD OR AREA, THEN JIM WOULD TAKE IT OR I WOULD TAKE IT,
19 THE WITNESS.

20 Q RIGHT. AND Y'ALL SHARED MANY RESPONSIBILITIES PRE-TRIAL.
21 CORRECT?

22 A YES SIR. I MEAN, WE SHARED THE MOTIONS, PREPARING
23 EVERYTHING THAT WAS TO BE DONE PRIOR TO THE TRIAL. WE
24 PARTICIPATED IN GOING OVER ALL THE EVIDENCE, AS I SAID, THE

1 CHAINS OF CUSTODY, A COUPLE OR THREE DAYS, THAT I REMEMBER.
2 WE SHARED EVERYTHING.

3 Q GOING BACK TO WHEN YOU WERE APPOINTED, I'LL SHOW YOU
4 THE ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENCY. DO
5 YOU RECOGNIZE THAT?

6 A THIS SAYS 30 APRIL. THAT'S WHEN JIM WAS APPOINTED? IT
7 SAYS JAMES BOYD WAS APPOINTED. NOW, HE WAS APPOINTED 30
8 APRIL.

9 Q I'LL SHOW YOU ANOTHER, SEPARATE ORDER, A ONE-PAGE
10 ORDER.

11 A THAT LOOKS LIKE I WAS APPOINTED THE SAME TIME, ON 30
12 APRIL OF 1998.

13 Q SO, YOU WERE BOTH APPOINTED AT THE SAME TIME?

14 A IT APPEARS SO.

15 MR. BROWN: NO OBJECTION, YOUR HONOR.

16 MR. SALTER: YOUR HONOR, I WOULD MOVE TO INTRODUCE
17 THESE TWO ORDERS OF APPOINTMENT AS RESPONDENT'S EXHIBITS
18 ONE AND TWO.

19 THE COURT: THEY'RE ADMITTED.

20 (WHEREUPON DEFENDANT'S EXHIBITS ONE AND TWO WERE ADMITTED
21 INTO EVIDENCE WITHOUT OBJECTION)

22 Q IS IT FAIR TO SAY THAT BOTH YOU AND MR. BOYD HAVE FAIRLY
23 GOOD, A FAIRLY EXTENSIVE HISTORY OF TRYING CRIMINAL CASES?

24 A YES SIR.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

- 1 Q YOU TESTIFIED YESTERDAY, I BELIEVE, THAT YOU'D TRIED
2 THREE DEATH PENALTY CASES BEFORE THIS. IS THAT CORRECT?
- 3 A HAD TRIED TWO, PREPARED FOR ONE, AND RIGHT BEFORE TRIAL
4 HE PLEAD GUILTY TO MURDER.
- 5 Q DO YOU RECALL THOSE CASES?
- 6 A YES SIR.
- 7 Q WHAT WERE THEY?
- 8 A ONE WAS WARDELL PATTERSON. I REPRESENTED MICHELLE
9 PATTON. THE OTHER WAS RICKY TIM CALDWELL, THAT WAS THE
10 DEATH PENALTY PHASE. THE OTHER WAS ROY BUFF. AND LIKE I SAID,
11 WE WERE GOING TO THE DEATH PENALTY, BUT I WAS OFFERED A PLEA
12 OF MURDER AND HE TOOK IT.
- 13 Q HAD YOU TRIED ANY NON-CAPITAL MURDER CASES PRIOR TO
14 YOUR APPOINTMENT?
- 15 A YES SIR, I'D TRIED ABOUT EIGHT.
- 16 Q DO YOU RECALL THE RESULTS OF ANY OF THOSE CASES?
- 17 A WELL, IT'S ACCORDING TO WHAT YOU CALL WINNING OR
18 LOSING, BUT I GOT NOT GUILTY, I THINK, ON SIX, AND
19 MANSLAUGHTER ON TWO. AND THE TWO DEATH PENALTIES, HE WAS
20 NOT SENTENCED TO DEATH ON ONE, AND MY CLIENT WAS SENTENCED
21 TO LIFE IN THE OTHER. SO, I NEVER FELT THAT I'D LOST ONE TILL THIS
22 POINT.
- 23 Q DID YOU HAVE ANY OTHER EXPERIENCE TRYING MAJOR
24 FELONIES?

1 A YES SIR. I'VE TRIED ARMED ROBBERY; I'VE TRIED ASSAULT AND
2 BATTERY WITH INTENT TO KILL. YOU NAME IT, I'VE TRIED MOST OF
3 IT. I JUST FINISHED ABOUT SIX WEEKS AGO TRYING A CRIMINAL
4 SEXUAL CONDUCT WITH SIX COUNTS. SO, YES SIR, I'VE TRIED JUST
5 ABOUT ALL OF THEM.

6 Q SO, YOU KNEW YOUR WAY AROUND THE COURTROOM?

7 A SIR?

8 Q SO, YOU KNEW YOUR WAY AROUND THE COURTROOM?

9 A YES SIR, I FELT I DID.

10 Q IN TERMS OF YOUR PRE-TRIAL PREPARATION, I BELIEVE YOU
11 INDICATED YOU DID NOT RECALL SPECIFICALLY ABOUT HOW LONG
12 YOU SPENT WITH YOUR CLIENT BEFORE THE TRIAL?

13 A NO SIR, I DON'T. THAT WOULD BE IN MY NOTES, THAT WOULD
14 BE IN DEFENDANT'S STATEMENTS AND THAT SORT OF THING. I FELT
15 LIKE IT WAS ADEQUATE TIME.

16 Q DO YOU HAVE ANY IDEA HOW MANY TIMES YOU MAY HAVE
17 MET WITH HIM?

18 A NO SIR, I DON'T.

19 Q WOULD IT HAVE BEEN MORE THAN ONCE?

20 A OH, YES. I MEAN, HE WAS BROUGHT OVER HERE AND WE MET
21 DOWNSTAIRS IN THE JAIL QUITE A FEW TIMES.

22 Q WAS MR. ROBERTSON COOPERATIVE WITH YOU?

23 A YES, I FELT HE WAS COOPERATIVE.

24 Q IN YOUR VARIOUS CONVERSATIONS WITH HIM, DID HE EVER
25 ADMIT TO KILLING HIS PARENTS?

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 A I DON'T KNOW HOW FAR I CAN GO IN REVEALING THE
2 CONFIDENCES OF A CLIENT.

3 MR. BROWN: OBJECT, YOUR HONOR. WHAT'S THE RELEVANCE?

4 THE COURT: WHEN HE FILES A POST CONVICTION RELIEF
5 ACTION, HE WAIVES THE ATTORNEY CLIENT PRIVILEGE.

6 A THAT'S MY UNDERSTANDING, BUT, IF I MAY, YES SIR. I'M SORRY.

7 MR. BROWN: YOUR HONOR, I RENEW MY OBJECTIONS ON
8 RELEVANCE.

9 THE COURT: TELL ME THE QUESTION AGAIN, PLEASE.

10 MR. SALTER: WHETHER OR NOT MR. ROBERTSON ADMITTED HIS
11 GUILT TO COUNSEL DURING THEIR CONVERSATIONS.

12 MR. BROWN: I WOULD PROCEED PURSUANT TO STATUTE, YOUR
13 HONOR, BUT HE DOES WAIVE ATTORNEY-CLIENT PRIVILEGE. IN THIS
14 PROCEEDING, I RENEW MY OBJECTION AS TO RELEVANCE.

15 MR. SALTER: IT'S RELEVANT NOT ONLY TO THERE'S BEEN SOME
16 ALLEGATION AS TO WHETHER OR NOT COUNSEL WAS INEFFECTIVE IN
17 NOT PRESENTING HIM AS A WITNESS; BUT ALSO, I THINK IT'S
18 RELEVANT TO THE COURT'S DETERMINATION OF THE BALANCING OF
19 MITIGATING, AGGRAVATING FACTORS IN TERMS OF WHAT PREJUDICE
20 THERE IS UNDER STRICKLAND, AS WELL AS A DEFICIENCY PROBLEM IN
21 THAT, YOU KNOW, COUNSEL CANNOT KNOWINGLY PRESENT FALSE
22 TESTIMONY.

23 THE COURT: DO YOU-- WHEN YOU-- YOU HAVE MADE AN
24 ARGUMENT OF... AS I UNDERSTAND YOUR CLAIMS, THE ARGUMENT,
25 THE CLAIM THAT YOU'VE MADE REGARDING THE DEFENDANT'S

1 DECISION NOT TO TESTIFY IS THAT HE TOLD HIS LAWYERS THAT
2 AFTER DOCTOR CASCIO TESTIFIED IN THE PENALTY PHASE HE
3 WANTED TO GET ON THE STAND AND CLEAR UP SOME OF THOSE, SOME
4 OF THE THINGS SHE SAID.

5 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: I HAVEN'T READ THAT PORTION OF THE
7 TRANSCRIPT WHERE JUDGE HAYES WENT OVER WITH HIM HIS RIGHT
8 TO REMAIN SILENT AND HIS RIGHT TO TESTIFY IN ORDER TO MAKE
9 SURE THAT HE UNDERSTOOD ALL THAT, BUT I'M ASSUMING THAT IT
10 WAS FAIRLY WELL-DONE.

11 MR. BROWN: FOR THE PURPOSES OF THIS MOTION, YOUR
12 HONOR, THIS OBJECTION, YOUR HONOR, I WILL CONCEDE THAT IT WAS
13 WELL DONE AND PROPERLY DONE.

14 THE COURT: ALL RIGHT. THEN, THE DECISION, YOU WOULD
15 CONCEDE, TO TESTIFY OR NOT TESTIFY WAS ACTUALLY MADE BY THE
16 DEFENDANT. IS THAT RIGHT?

17 MR. BROWN: YES SIR.

18 THE COURT: AND SO, YOUR CLAIM IS THAT HE MADE THAT
19 DECISION BASED ON WHAT YOU CONTEND TO HAVE BEEN FAULTY
20 ADVICE BY HIS LAWYERS?

21 MR. BROWN: YES SIR. BUT, HONESTLY, IN ALL CANDOR, YOUR
22 HONOR, I THINK HE WAIVED THAT OBJECTION, OR THAT CLAIM OF
23 INEFFECTIVE ASSISTANCE OF COUNSEL YESTERDAY WHEN HE TOOK
24 THE FIFTH AMENDMENT. SO, I REALLY THINK THOSE HAVE JUST GONE
25 BY THE WAYSIDE.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 THE COURT: UNLESS YOU ACTUALLY WITHDRAW THAT CLAIM,
2 THEN I BELIEVE THAT IF THE DEFENDANT-- IF YOUR CLAIM IS THAT
3 HIS LAWYERS GAVE HIM BAD ADVICE IN ADVISING HIM NOT TO
4 TESTIFY, THEN WHETHER OR NOT THE LAWYER KNEW THAT THE
5 DEFENDANT WOULD HAVE TO ADMIT HIS GUILT IF ASKED ABOUT IT
6 ON THE STAND IS VERY RELEVANT.

7 MR. BROWN: YOUR HONOR, AGAIN, MR. ROBERTSON WANTED
8 ME TO RAISE THAT ISSUE.

9 THE COURT: I OVERRULE THE OBJECTION.

10 MR. BROWN: YES SIR.

11 MR. SALTER: THANK YOU, YOUR HONOR.

12 Q WOULD YOU PLEASE ANSWER THE QUESTION?

13 A YES SIR, HE DID ADMIT.

14 Q DO YOU RECALL WHAT HE TOLD YOU ABOUT THE CRIME?

15 A HE TOLD US MOST EVERYTHING THAT HAPPENED, HOW IT HAD
16 HAPPENED, WHY HE SELECTED THE BAT, WHY THIS HAD HAPPENED.
17 HE DISCUSSED WITH US MANY OF THE DETAILS. I DON'T REMEMBER
18 EACH AND EVERY ONE.

19 I PROBABLY WOULD HAVE WRITTEN THEM DOWN, BUT THEY
20 WERE REVELATIONS AND THERE WAS ENOUGH THERE THAT IF I PUT
21 HIM ON THE WITNESS STAND AT ANY TIME, THEN I WOULD NOT HAVE
22 BEEN ABLE TO DIRECT EXAMINE HIM ANYWAY, IF HE HAD SAID
23 ANYTHING THAT WAS CONTRARY TO WHAT I HAD LEARNED AND
24 WHAT HE HAD TOLD ME IN CONFIDENCE BEFORE THE TRIAL.

1 Q NOW, DID YOU AND CO-COUNSEL DISCUSS YOUR VARIOUS
2 STRATEGIC MATTERS, OVERALL STRATEGIC MATTERS WITH MR.
3 ROBERTSON?

4 A I CAN'T REMEMBER SPECIFIC CONVERSATIONS. I KNOW THAT AT
5 SOME POINT VERY EARLY AFTER WE HAD REVEALED AND HE WAS,
6 HAD SPOKEN TO ME AND MY INVESTIGATOR AND MY PARALEGAL, WE
7 WERE ALL PREPARING THE CASE, I'M NOT SURE THAT MR. BOYD WAS
8 THERE, BUT WE DISCUSSED THE FACT THAT WE HAD GIVEN UP THE
9 GUILT PHASE, AND THAT WE WERE GOING AFTER NOT, HIM NOT
10 RECEIVING THE DEATH PENALTY.

11 Q DID YOU EXPLAIN THAT TO HIM?

12 A YES SIR.

13 Q DID HE UNDERSTAND YOUR EXPLANATION?

14 A YES, I THINK-- I DON'T KNOW WHAT HIS IQ IS. IT'S SOMEWHERE
15 IN THE RECORDS. HE'S AN INTELLIGENT INDIVIDUAL. HE
16 UNDERSTOOD WHAT WAS GOING ON AND WHY IT WAS GOING ON. I
17 THINK WE DISCUSSED GUILTY BUT MENTALLY ILL BECAUSE I TOOK - I
18 CALL IT THE BOOK - THAT EXPLAINS THAT DEFENSE, CRIMINAL
19 DEFENSE IN SOUTH CAROLINA, I BELIEVE IT IS, AND I DIDN'T THINK IT
20 FELL INTO THAT. WE DISCUSSED THAT TYPE OF THING.

21 JMS WAS-- HE WAS THE CLIENT. HE WASN'T TRYING TO RUN
22 THE SHOW. WE TOLD HIM WHAT WE WERE DOING AND TRIED TO DO
23 THE BEST WE COULD IN THE DEATH PENALTY PHASE.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

- 1 Q YOU TOUCHED ON SOME OF THIS YESTERDAY. Y'ALL HAD
2 OTHER PEOPLE TO ASSIST YOU IN PREPARING FOR THE TRIAL, DID YOU
3 NOT?
- 4 A YES SIR, THAT WAS THE CENTER FOR CAPITAL DEFENSE DOWN
5 IN COLUMBIA. AND OF COURSE, ALL THE EXPERTS AND REALLY
6 ANYBODY ELSE WE COULD GATHER ANY EXPERIENCE ANY
7 KNOWLEDGE FROM; OTHER ATTORNEYS THAT HAD RECENTLY TRIED
8 DEATH PENALTY CASES, JUST IN GENERAL CONVERSATION. BUT WE
9 WENT DOWN TO THE CENTER FOR CAPITAL DEFENSE ON MANY
10 OCCASIONS.
- 11 Q DID YOU HAVE ANYONE WITHIN YOUR OWN OFFICE TO HELP
12 YOU PREPARE THIS CASE?
- 13 A NOT IN MY OFFICE. I HAD A LAW STUDENT AT THAT TIME WHO
14 WAS ASSISTING ME IN COLUMBIA AND KEPT ALMOST DAILY CONTACT
15 WITH THE CENTER FOR CAPITAL DEFENSE.
- 16 Q WOULD THAT HAVE BEEN KATHERINE SMITH?
- 17 A KATHERINE, YES.
- 18 Q DID YOU HAVE AN INVESTIGATOR?
- 19 A YES, WADE COMER.
- 20 Q DID EITHER OR YOU OR SOMEONE ACTING ON BEHALF OF THE
21 DEFENSE EVER SPEAK TO MEREDITH MOON?
- 22 A I DON'T THINK SO.
- 23 Q OKAY.
- 24 A I'VE FORGOTTEN WHO HER ATTORNEY WAS, BUT I DON'T THINK
25 WE SPOKE DIRECTLY WITH MEREDITH MOON.

1 Q WHY WOULD THAT HAVE BEEN?

2 A SHE WAS, I GUESS, A WITNESS, BUT SHE WAS REPRESENTED AND
3 WE-- I CAN'T-- I DON'T HAVE THE RECORD. AND I WOULD HAVE-- WE
4 PRETTY MUCH KNEW WHAT SHE WAS GONNA SAY. AND WE MAY
5 HAVE DISCUSSED IT WITH HER ATTORNEY WHETHER SHE WAS GONNA
6 TESTIFY, WAS SHE WAS GONNA BREAK A DEAL, WHAT WAS SHE
7 GONNA DO.

8 LIKE I SAID, I DON'T KNOW WHO HER ATTORNEY IS. BUT WE
9 WOULD HAVE TALKED WITH HIM, YOU KNOW, WAS SHE GONNA
10 TESTIFY TO WHAT HAPPENED.

11 Q YOU TESTIFIED ON DIRECT EXAMINATION YOU DON'T BELIEVE
12 ANYONE FROM THE DEFENSE EVER SPOKE TO CHIP ROBERTSON.
13 CORRECT?

14 A I DON'T THINK SO.

15 Q AND I--

16 A HE HAD AN ATTORNEY. HE WAS BEING INVESTIGATED FOR
17 CAPITAL MURDER. NO SIR, I DIDN'T EXPECT HIM TO TALK TO US AT
18 ALL.

19 Q DID THE DEFENSE HAD NOT BEEN ABLE TO DEVELOP ANY
20 INFORMATION SUGGESTING THAT CHIP AIDED HIS BROTHER IN ANY
21 WAY?

22 A THERE WERE THE PHONE CALLS. JIMMY-- AS I REMEMBER,
23 JIMMY DIDN'T WANT US TO GO AFTER CHIP. I THINK THAT WE
24 ACCEDDED TO HIS WISHES THERE, THAT WE WEREN'T GOING AFTER
25 CHIP, BECAUSE THEN, THAT WOULD JUST PUT-- YOU KNOW, I'M NOT

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 GONNA DO THE STATE'S JOB FOR THEM. NO OFFENSE, BUT I WASN'T
2 THERE TO TRY TO INVOLVE CHIP AND POINT THE FINGER AT HIM
3 WHEN HE WAS IN PHILADELPHIA AND THE ACT WAS DOWN HERE.

4 Q YOU TESTIFIED YESTERDAY AND REFERRED TO IT JUST A
5 MINUTE AGO, Y'ALL LOOKED INTO THE POSSIBILITY OF AN INSANITY
6 DEFENSE. CORRECT?

7 A YES SIR. JIMMY WASN'T INSANE.

8 Q WAS IT YOUR UNDERSTANDING THAT HE UNDERSTOOD RIGHT
9 FROM WRONG?

10 A OH, YES SIR.

11 Q AND YOU ALSO--

12 A IF I MAY INTERJECT. ALSO, ALL THE EVIDENCE SHOWED THAT,
13 FROM THE WAY WE WERE LOOKING AT THE EVIDENCE, THE BREAKING
14 OF THE WINDOW TO HIDE THE KILLING, MAKE IT LOOK LIKE A
15 BURGLARY, THE NOTE; EVERYTHING ELSE POINTED TO THE FACT THAT
16 WE COULDN'T COME UP HERE AND SAY HE DIDN'T KNOW RIGHT FROM
17 WRONG.

18 Q AND I BELIEVE YOU TESTIFIED YESTERDAY Y'ALL HAD A DNA
19 EXPERT TO ASSIST YOU IN PRE-TRIAL PREPARATION?

20 A YES SIR. WE LOOKED AT ALL THAT. WE LOOKED AT-- WE WERE
21 TRYING TO DEVELOP-- WE LOOKED AT THE-- EVEN AS FAR AS THE
22 HAIR THAT WAS IN EARL ROBERTSON'S HANDS, WE THOUGHT THAT
23 MAYBE THAT WAS SOMEBODY ELSE'S. THEY LOOKED AT THAT DNA; IT
24 WASN'T, IT WAS HIS. AND SO WE LOOKED AT JUST ABOUT
25 EVERYTHING WE COULD.

1 Q NOW, ON DIRECT EXAMINATION, YOU WERE ASKED ABOUT A
2 LETTER FOUND AT THE SCENE, A NOTE THAT WAS FOUND AT THE
3 SCENE, SIGNED, "LOVE, JIMMY"?

4 A YES.

5 Q IS THIS A NOTE WRITTEN BY YOUR CLIENT?

6 A YES.

7 Q WELL, THERE WAS ANOTHER NOTE, OR A TO-DO LIST FOUND
8 ALSO, WASN'T THERE?

9 A YES. THERE WAS A TO-DO LIST. WHAT THEY WERE SUPPOSED
10 TO WAS WASH OUT THE BATHROOM. JUST DIFFERENT THINGS. I CAN'T
11 REMEMBER WHAT WAS ON THE LIST. BUT IT WAS WHAT HE WAS TO
12 DO AFTER HE KILLED HIS PARENTS.

13 Q AND I BELIEVE THAT MEREDITH MOON TESTIFIED, DID SHE NOT,
14 THAT SHE WROTE THAT LIST?

15 A I BELIEVE SO.

16 Q BUT THE SLED AGENT TESTIFIED THAT THE HANDWRITING WAS
17 CONSISTENT WITH YOUR CLIENT. CORRECT?

18 A YES.

19 Q AND DIDN'T YOU MAKE A LITTLE BIT OF HAY WITH THAT IN
20 CLOSING ARGUMENT IN THE GUILT PHASE?

21 A I DON'T REMEMBER. IT MAY HAVE BEEN. I REALLY DON'T
22 REMEMBER OTHER THAN TO SAY THAT THE STATE COULD MAKE A
23 MISTAKE OR SOMETHING LIKE THAT. IT WAS JUST ONE PIECE OF
24 EVIDENCE OUT OF SOMETHING LIKE A HUNDRED TWENTY-THREE,

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 WASN'T IT? AND IT WAS KINDA LIKE THE STATE'S GOT A HUNDRED
2 AND TWENTY POINTS AND YOU GET TWO.

3 MR. SALTER: YOUR HONOR, THIS MAY BE SOMETHING THAT WE
4 MAY ARGUE ABOUT A LITTLE BIT. THE CLOSING ARGUMENT BEGINS
5 ON PAGE 1917, FOR THE RECORD.

6 THE COURT: OKAY.

7 Q MR. HANCOCK, IF I TOLD YOU THAT THE RECORD REFLECTED
8 THAT YOU TOLD YOUR CLIENT THAT YOU LIED ABOUT HAVING
9 WRITTEN THAT TO-DO LIST, AND IF YOU LIED ABOUT THAT, YOU'D LIE
10 ABOUT ANYTHING ELSE YOU'D TESTIFY TO. DOES THAT REFRESH
11 YOUR RECOLLECTION ON IT?

12 A I PROBABLY WOULD HAVE GONE THAT WAY. YES SIR. I CAN'T
13 DENY THAT.

14 Q ISN'T IT FAIR TO SAY THAT THE ONE PERSON Y'ALL DIDN'T WANT
15 TO DISCREDIT IN THE GUILT PHASE WAS MS. MOON?

16 A THERE WAS NO DISCREDITING OF HER. THAT WAS BASICALLY
17 WHAT I CALL LAWYERS FLAPPING YOUR WINGS. THE ONE THING WE
18 WANTED FROM MEREDITH MOON WE OBTAINED, AND THAT WAS
19 WHEN SHE TESTIFIED THAT SHE WAS AVOIDING EITHER THE DEATH
20 PENALTY OR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

21 Q YOU LATER GOT A CHARGE FOR LIFE?

22 A RIGHT. WE DIDN'T KNOW WE WERE GONNA GET THAT CHARGE.

23 Q NOW, ONE OF THE ITEMS OF EVIDENCE THAT WAS NOT
24 MENTIONED YESTERDAY, DO YOU RECALL A BLOODY TEE SHIRT THAT
25 WAS FOUND IN MARYLAND THAT HAD YOUR CLIENT'S PICTURE ON IT?

1 A I DON'T RECALL THAT.

2 Q YOU DON'T RECALL THAT?

3 A (NO RESPONSE)

4 Q NOW, YOU MENTIONED EARLIER THAT YOU GOT A LOT OF
5 ASSISTANCE FROM THE CENTER FOR CAPITAL LITIGATION DOWN IN
6 COLUMBIA?

7 A YES.

8 Q AND YOUR DEALINGS INCLUDED TALKING WITH JOHN BLUME,
9 DID IT NOT?

10 A WE SAT DOWN FOR HOURS OVER THE TABLE WITH JOHN, DRUCY,
11 AND OTHER PEOPLE, AND THEIR STAFF THAT WOULD COME IN. AND
12 WE SAT DOWN FOR HOURS TRYING TO GAIN SOME UNDERSTANDING
13 OF EXACTLY WHAT WE WERE DOING, WHAT EXPERTS WE COULD GO
14 TO AND TRY TO HELP IN SOME WAY.

15 Q NOW, DRUCY GLASS, THAT WOULD BE MR. BLUME'S WIFE?

16 A THAT'S JOHN'S WIFE, YES.

17 Q AND SHE'S ALSO A MITIGATION SPECIALIST. RIGHT?

18 A YES, SHE IS.

19 Q YOU RELIED ON HER EXPERTISE, DID YOU NOT?

20 A YES, WE DID.

21 Q YOU TESTIFIED YESTERDAY YOU COULDN'T RECALL WHETHER
22 OR NOT YOU HAD THE ASSISTANCE OF A JURY SELECTION EXPERT, OR
23 ANYONE TO ASSIST YOU IN JURY SELECTION. IS THAT CORRECT?

24 A I DON'T REMEMBER US HIRING ONE PRIOR TO TRIAL. I DON'T
25 REMEMBER ONE BEING SEATED HERE WHEN WE PICKED THE JURY.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

- 1 Q BUT YOU HAD MS. GLASS THERE DURING THE TRIAL, DID YOU
2 NOT?
- 3 A YES.
- 4 Q AT LEAST SHE WAS THERE TO PROVIDE Y'ALL WITH SOME HELP?
- 5 A AND IN FACT, NOW THAT YOU MENTIONED IT, DRUCY WAS HERE
6 FOR SEVERAL DAYS OF THE TRIAL, IF I REMEMBER. AND IT MIGHT
7 HAVE BEEN JURY SELECTION.
- 8 Q NOW, YOU TOLD US ONE OF THE EXPERTS, YOU HAD DOCTOR
9 PINCUS, A NEUROLOGIST. CORRECT?
- 10 A (NO RESPONSE)
- 11 Q AND YOU HAD JIM EVANS, A FORENSIC PSYCHOLOGIST?
- 12 A RIGHT.
- 13 Q YOU ALSO HAD DOCTOR MORTON WHO WAS A PSYCHO-
14 PHARMACOLOGIST?
- 15 A YES.
- 16 Q AND YOU HAD MS. CASCIO, THE SOCIAL WORKER?
- 17 A YES.
- 18 Q NOW, ALL THESE OTHER EXPERTS WERE CALLED TO TESTIFY,
19 BUT YOU ONLY USED MS. CASCIO IN THE PENALTY PHASE. CORRECT?
- 20 A YES, THEY ALL TESTIFIED. ALL OF OUR EXPERTS TESTIFIED AND
21 I THOUGHT THEY DID A PRETTY GOOD JOB.
- 22 Q DID YOU DEVELOP THESE EXPERTS THROUGH THE CENTER FOR
23 CAPITAL LITIGATION?
- 24 A YES. MOST OF THEM WERE DEVELOPED THROUGH THERE.

1 Q DID YOU, AS AN ATTORNEY WHO HAS HANDLED EACH OF THESE
2 EXPERTS, WOULD YOU HAVE FOCUSSED ON THAT INDIVIDUALLY WITH
3 THE EXPERT, OR WOULD YOU HAVE MET TOGETHER WITH THE EXPERT
4 OUTSIDE OF...?

5 A JIM AND I MET AT GEORGETOWN UNIVERSITY WITH DOCTOR
6 PINCUS. WE FLEW UP THERE. I MET INDIVIDUALLY WITH JIM EVANS, I
7 KNOW TWICE, THREE TIMES IN COLUMBIA. AS FAR AS MORTON-- WE
8 MET WITH THE DNA EXPERT. WE BOTH MET WITH HIM ON A SUNDAY
9 AFTERNOON. AND THEN DOCTOR MORTON-- DOCTOR MORTON, I
10 CAN'T SAY WHETHER WE MET TOGETHER OR SEPARATELY WITH
11 DOCTOR MORTON.

12 Q HOW ABOUT MS. CASCIO?

13 A MS. CASCIO, I DON'T KNOW WHETHER JIM WAS WITH US WHEN
14 WE MADE THE INITIAL CONTACT WITH MS. CASCIO DOWN IN
15 COLUMBIA. BUT I THINK IT WAS ME AND MY PARALEGAL. AND I
16 THINK THAT WE MET-- WE MET SEVERAL OTHER TIMES WITH HER.
17 AND I CAN'T REMEMBER WHETHER IT WAS JOINTLY OR JIM
18 DEVELOPING OR ME DEVELOPING AT THAT TIME.

19 Q BUT BOTH OF Y'ALL SAT DOWN AND TALKED ABOUT WHETHER
20 OR NOT YOU WANTED A PARTICULAR WITNESS?

21 A YES.

22 Q AN EXPERT. DO YOU RECALL THE STEPS THAT YOU TOOK TO
23 OBTAIN THE MENTAL HEALTH RECORDS OF YOUR CLIENT AND HIS
24 FAMILY?

25 A COULD YOU REPEAT THE QUESTION?

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q DO YOU RECALL THE STEPS THAT YOU TOOK TO OBTAIN THE
2 MENTAL HEALTH RECORDS OF YOUR CLIENT AND HIS FAMILY?

3 A WE SUBPOENAED MENTAL HEALTH RECORDS FROM
4 EVERYWHERE. I KNOW THAT WE HAD SKIP MEYER. HE OBJECTED TO--
5 NOT OBJECTED TO, HE HAD US HAVE A HEARING SO THAT THE COURT
6 COULD PROPERLY ORDER HIM TO TURN OVER RECORDS. WE WERE
7 SUBPOENAING RECORDS FROM EVERYWHERE THAT WE COULD FIND,
8 JUST TO FIND THEM.

9 Q I'D LIKE TO SHOW YOU TWO ONE-PAGE ORDERS AND ASK YOU
10 TO SEE IF YOU CAN RECALL THESE. WHAT IS THE FIRST ORDER?

11 A INSURANCE RECORDS.

12 Q FOR?

13 A FOR USE BY THE MITIGATION EXPERT, INVESTIGATOR, AND ANY
14 EXPERT WITNESS. THE SECOND IS MEDICAL RECORDS FROM
15 PIEDMONT MEDICAL CENTER. TO BE RELEASED ONLY TO, ONLY TO
16 PERSONS EMPLOYED BY THE DEFENSE AND FOR MITIGATION AND
17 INVESTIGATOR AND THE ASSESSMENT OF THE DEFENDANT.

18 MR. SALTER: YOUR HONOR, I WOULD ASK TO ADMIT THESE INTO
19 EVIDENCE AS RESPONDENT'S EXHIBITS THREE AND FOUR.

20 MR. BROWN: WITHOUT OBJECTION, YOUR HONOR.

21 THE COURT: THEY'RE ADMITTED.

22 (WHEREUPON DEFENDANT'S EXHIBITS THREE AND FOUR WERE
23 ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

24 Q NOW, DID EITHER YOU OR MR. BOYD WITHHOLD ANY
25 INFORMATION FROM ANY EXPERTS Y'ALL EMPLOYED?

1 A IF THEY REQUESTED IT, THEY GOT IT. THEY GOT WHAT WE HAD.
2 AND IF THEY TOLD US TO GO GET SOMETHING AND WE TRIED TO GET
3 IT AND SUBPOENA IN ORDER THAT THEY COULD PROPERLY TESTIFY,
4 SIR.

5 Q DID ANY EXPERT TELL YOU THAT HE OR SHE DIDN'T HAVE AN
6 ADEQUATE AMOUNT OF INFORMATION, OR DO YOU RECALL THAT?

7 A NOT THAT I RECALL.

8 Q I BELIEVE YOU INDICATED EARLIER THAT THE DEFENSE DURING
9 THE PENALTY PHASE HAD TRIED TO GET A JURY INSTRUCTION FOR
10 LIFE WITHOUT PAROLE?

11 A THAT'S WHAT IT MEANT, THAT HE WOULD BE IN JAIL FOR THE
12 REST OF HIS NATURAL LIFE WITHOUT POSSIBILITY OF PAROLE. AND
13 THAT WAS-- AS I SAID, THAT'S WHAT WE HAD MS. MOON. ALL THE
14 OTHER TESTIMONY WAS BASICALLY IRRELEVANT. WE WANTED THE
15 WORDS, LIFE WITHOUT POSSIBILITY OF PAROLE.

16 Q I BELIEVE YOUR TESTIMONY MOSTLY WAS YOU GOT AS MANY
17 RECORDS AS YOU COULD TO DETERMINE WHETHER OR NOT THERE
18 WAS ANY PHYSICAL OR SEXUAL ABUSE IN THE PAST?

19 A YES SIR. WE DIDN'T DETERMINE ANY REAL PHYSICAL ABUSE OR
20 RECORDS OF TREMENDOUS PHYSICAL ABUSE BY EARL. WE DID HAVE
21 SOME ISOLATED INCIDENTS OVER PERIODS OF TIME.

22 THE FAMILY, THEY WERE VERY CONFRONTATIONAL. WE DID
23 HAVE ONE TIME THAT SUPPOSEDLY EARL HELD JIMMY OUT OVER A
24 BALCONY IN THE HOUSE. WE WENT UP TO THE BALCONY TO SEE
25 WHAT PERIL THAT PUT HIM IN. I STOOD THERE. BUT AS FAR AS WHAT

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 I WOULD TERM PHYSICAL ABUSE, WE DIDN'T FIND ENOUGH, I DON'T
2 BELIEVE, TO PRESENT OTHER THAN THROUGH THE EXPERTS.

3 Q HOW ABOUT SEXUAL ABUSE?

4 A NEVER FOUND-- I NEVER FOUND ANYTHING OF THAT NATURE,
5 SIR, THAT I REMEMBER.

6 Q DID EITHER YOU OR CO-COUNSEL SPEAK WITH MR. MEYERS, OR
7 DID ANYONE ASSOCIATED WITH YOUR CASE REVIEW THE RECORDS
8 WITH MR. MEYERS?

9 A I DON'T KNOW. I REALLY DON'T. I DON'T KNOW WHETHER WE
10 TALKED TO SKIP MEYER BECAUSE-- WE WERE USING HIS RECORDS
11 COMPLETELY AND I'M NOT SURE HOW WE EVEN PRESENTED THEM.
12 BUT WE DID GO THROUGH IT. I KNOW THAT WE ASKED MR. MEYER
13 FOR THE RECORDS. WE SUBPOENAED THEM AND WE HAD TO COME TO
14 COURT FOR THE COURT TO RULE FOR HIM TO GIVE US HIS RECORDS.
15 BUT AS FAR AS SITTING DOWN AND SAYING, SKIP, IS THIS YOUR
16 HANDWRITING, WHAT DOES THIS MEAN, WHAT DOES THIS MEAN, I
17 DON'T REMEMBER SITTING DOWN WITH HIM FOR REVIEW OF HIS
18 RECORDS.

19 Q YOU PROVIDED HIS RECORDS OR ANY OF THE OTHER RECORDS
20 THAT YOU GOT TO YOUR EXPERTS. CORRECT?

21 A YES.

22 Q YOU TESTIFIED ON DIRECT EXAMINATION BY YOU NEVER
23 RETAINED A PSYCHIATRIST TO REVIEW WHETHER OR NOT DOCTOR
24 McMEEKIN HAD OVER-PRESCRIBED RITALIN. IS THAT CORRECT?

1 A YES SIR. AND I SAID I DIDN'T FEEL LIKE IT WAS MY-- HE
2 PRESCRIBED IT NOT FOR JIMMY, BUT FOR CHIP. AND SO, I DIDN'T FEEL
3 LIKE IT WAS MY JOB TO SET THE MEDICAL COMMUNITY STRAIGHT IN
4 THIS CASE.

5 Q WERE YOU AWARE OF ANY INFORMATION THAT THERE MAY
6 HAVE BEEN A DISCIPLINARY AGAINST DOCTOR McMEEKIN WITHIN
7 TWO YEARS OR SO OF THIS 1999 TRIAL?

8 A YES SIR, I BELIEVE I WAS.

9 Q HOW WOULD THAT IMPACT UPON YOUR DECISION TO PRESENT
10 HIM AS A POTENTIAL WITNESS?

11 A WELL, AGAIN, IT WASN'T DOCTOR McMEEKIN THAT WE WERE
12 LOOKING AT; IT WAS MR. MEYER AND WHAT HE HAD DONE WITH THE
13 FAMILY. HE HAD EVIDENTLY BEEN, WE FELT, THE PRIMARY
14 COUNSELOR AND THE PRIMARY SOURCE THAT COULD PROVE THE
15 DYSFUNCTION OF THE FAMILY.

16 Q AND Y'ALL WERE ABLE TO GET THAT THROUGH HIS RECORDS?

17 A YES.

18 Q Y'ALL ALSO MADE A DECISION TO EMPLOY DOCTOR MORTON,
19 THE PHARMACOLOGIST?

20 A YES.

21 Q DO YOU RECALL WHAT DOCTOR MORTON'S ASSESSMENT OF
22 HOW MR. ROBERTSON AND HIS FAMILY HAD BEEN TREATED WITH
23 RESPECT TO THEIR DRUG USAGE, PARTICULARLY YOUR CLIENT, HOW
24 HIS DRUG USE HAD BEEN TREATED?

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 A DOCTOR MORTON-- AND AS I REMEMBER IT, WHAT I WAS
2 LOOKING FOR WAS THAT DOCTOR MORTON COULD TESTIFY AS MUCH
3 TOWARD A ZOLOFT-TYPE DEFENSE. THAT, EXCEPT FOR THE RITALIN,
4 THAT WAS BEING HORRIBLY ABUSED, WHICH WAS PRESCRIBED TO
5 CHIP. THAT, EXCEPT FOR THAT, THEN THIS WOULD NOT HAVE
6 OCCURRED. THAT IT WAS A PRIMARY FACILITATING AGENT; THAT
7 JIMMY WOULD NOT HAVE DONE THIS EXCEPT FOR THE RITALIN. WE
8 NEVER GOT THAT OUT OF HIM, I DON'T THINK.

9 Q SPECIFICALLY, DO YOU RECALL INDICATING HE THOUGHT THAT
10 YOUR CLIENT DID NOT RECEIVE ADEQUATE TREATMENT FOR HIS
11 DRUG PROBLEM?

12 A I DON'T REMEMBER THAT.

13 Q I'LL SHOW YOU PAGE 2665, BEGINNING AT LINE 21. WOULD YOU
14 REVIEW THE QUESTION AND ANSWER?

15 A IT SAYS,

16 "Q. LET ME ASK YOU, YOU REVIEWED THE RECORDS OF JIMMY
17 AND HIS TREATMENT. IN YOUR OPINION, DID HE RECEIVE PROPER
18 TREATMENT FOR A DRUG PROBLEM?

19 A. I DON'T THINK HE EVER RECEIVED TREATMENT FOR HIS DRUG
20 PROBLEMS. I THINK IT WAS TALKED ABOUT THAT HE SHOULD QUIT
21 DRINKING WHEN HE CAME OUT OF THE STATE HOSPITAL. IT WAS
22 TALKED ABOUT VARIOUS THERAPISTS; THAT HE SHOULD STOP
23 DRINKING, HE SHOULD ATTEND AA MEETINGS. I DON'T KNOW THAT HE
24 WAS EVER GIVEN AN ULTIMATUM TO GO TO A TREATMENT PROGRAM.

1 I DON'T KNOW THAT HE WAS EVER FORCED INTO A TREATMENT
2 PROGRAM WITH CONSEQUENCES."

3 Q SO, DOCTOR MORTON DIDN'T THINK HE HAD GOTTEN ADEQUATE
4 TREATMENT?

5 A NO SIR.

6 Q WITH RESPECT TO YOU AND CO-COUNSEL PREPARING TO
7 PRESENT A GREAT DEAL OF INFORMATION CONCERNING THE MENTAL
8 HEALTH TREATMENT OF CHIP ROBERTSON AND EARL ROBERTSON,
9 WHAT WERE THE PRIMARY PREMISE WHICH Y'ALL WERE TRYING TO
10 DEVELOP DURING THE PENALTY PHASE?

11 A WE WERE TRYING TO INDICATE THAT THE PARENTS WERE THE
12 CAUSE AND THAT THEIR PREVIOUS PROBLEMS. I THINK WE HAD EARL
13 AND CHIP'S RECORDS. THERE WAS COUNSELING THERE. AND THAT
14 THE FAMILY WAS DYSFUNCTIONAL AND BECAUSE OF THAT, THAT
15 JIMMY HAD TURNED TO SOME ALCOHOL, DRUGS, RITALIN, AND THAT
16 IT WAS BASICALLY THE PARENTS' FAULT FOR JIMMY HAVING KILLED
17 THEM. I THINK THAT'S WHERE IT CAME OUT, IT FINALLY LANDED.

18 WE WERE TRYING TO BALANCE BETWEEN HAVING TOTALLY
19 TRASHED THE PARENTS AND SHOWING THAT THERE WAS SOME
20 SYMPATHETIC PROBLEMS THAT COULD BE ASSOCIATED WITH THE
21 FAMILY THAT THE JURY COULD FIND SOME SYMPATHY TOWARDS
22 JIMMY.

23 Q YOU INDICATED AGAIN, JUST NOW AND YESTERDAY, THAT YOU
24 WERE KIND OF CAREFUL ABOUT NOT WANTING TO COMPLETELY
25 TRASH THE VICTIMS IN THIS CASE.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 A YES SIR.

2 Q WHY WAS THAT?

3 A WELL, I MEAN, IT'S HIS MAMA AND DADDY. AND YOU CAN'T GO
4 BUT SO FAR IN SAYING THAT A MAMA AND DADDY HAD MADE A SON
5 KILL THEM. AND YOU'VE GOT TO BALANCE THAT PRETTY CLOSELY
6 BECAUSE THESE ARE TWELVE PEOPLE FROM YORK COUNTY, SOUTH
7 CAROLINA. WE'RE NOT IN LOS ANGELES AND OTHER PLACES. WE'VE
8 STILL GOT SOME CORE VALUES THAT ARE THERE AND THINGS THAT
9 PEOPLE WANT TO THINK ABOUT PARENTS AND WHAT THEIR ROLE IS.

10 AND SO, WE FELT LIKE WE WERE TALKING TO A YORK COUNTY
11 JURY AND THAT'S THE WAY WE OUGHT TO PRESENT IT.

12 Q YOU TESTIFIED EARLIER TODAY AND YESTERDAY THAT YOU
13 DIDN'T HAVE ENOUGH EVIDENCE TO MEET THE GUILTY BUT
14 MENTALLY ILL STANDARD.

15 A AND I BELIEVE I BROUGHT THE BOOK DOWN THERE AND
16 SHOWED IT. I DIDN'T THINK THE EVIDENCE FELL INTO THAT
17 CATEGORY. IT WAS A SHOT DEAL.

18 MY UNDERSTANDING, AND I MAY HAVE BEEN WRONG IN THE
19 LAW-- MY UNDERSTANDING IS IF HE GOT GUILTY BUT MENTALLY ILL
20 THEN WE STILL COULD HAVE GONE TO A DEATH PENALTY PHASE, I
21 BELIEVE. AND SO, WE WOULD SHOOT ALL OUR GUNS AT ONE SHOT
22 AND THEN SIT THERE AND TWIDDLE OUR THUMBS AFTER THEY GOT
23 THE SHOT AT THE DEATH PENALTY. SO, IT WAS A CHOICE.

24 Q AND A PLEA OF GUILTY BUT MENTALLY ILL WOULD OBVIOUSLY
25 REQUIRE A GUILTY PLEA. CORRECT?

1 A WE WERE NEVER OFFERED ANYTHING THAT I REMEMBER, ONE
2 HUNDRED PERCENT, OTHER THAN THAT FRIVOLOUS THING THAT WAS
3 TALKED ABOUT. THIS WAS A STRAIGHT-UP DEATH PENALTY CASE
4 FROM BEGINNING TO END.

5 Q DID EITHER YOU OR YOUR CLIENT WANT THE JUDGE TO
6 SENTENCE HIM?

7 A I DON'T REMEMBER. I DON'T REMEMBER SPEAKING WITH HIM,
8 BUT WE WOULD HAVE JUST TRIED IT, YOU KNOW, IN FRONT OF A
9 JUDGE. NO, WE FELT LIKE WE HAD-- WE ARE PRETTY FAMILIAR WITH
10 THE JUDGES AND WE PRETTY MUCH KNOW WHAT THEY'RE GOING TO
11 DO, AND WE FELT LIKE WE HAD A BETTER CHANCE IN FRONT OF
12 TWELVE PEOPLE. WE COULD GET ONE OF THOSE. WE DIDN'T THINK
13 WE COULD SWAY ONE JUDGE.

14 Q AND EXPLAINING TO YOUR CLIENT WHY YOU DIDN'T THINK HE
15 MET THE GUILTY BUT MENTALLY ILL STANDARD, WAS THAT BECAUSE
16 HE HAD THE ABILITY TO CONFORM HIS CONDUCT TO THE
17 REQUIREMENTS OF THE LAW?

18 A OH, YES SIR.

19 Q NOW, TONY CASCIO WAS ACTUALLY-- SHE WAS THE WITNESS
20 THAT ACTUALLY WAS EXAMINED BY MR. BOYD. CORRECT?

21 A I BELIEVE SO.

22 Q DID Y'ALL BOTH MAKE THE DECISION TO PUT HER UP? IS THAT
23 RIGHT?

24 A YES SIR. I WOULD HOPE THAT IT WAS BOTH OF OUR DECISIONS.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

- 1 Q AND Y'ALL DID THAT AFTER TALKING TO HER AND SITTING
2 DOWN AND WORKING WITH HER FOR AN EXTENDED PERIOD OF TIME.
3 IS THAT RIGHT?
- 4 A YES SIR. WE FIGURED WE COULD, WE MAY COULD OVERCOME
5 ANYTHING THAT WAS THERE AND IT WOULD AT LEAST BE SOMETHING
6 TO PUT BEFORE THE JURY, HOPEFULLY, FOR SOME TYPE OF SENTENCE;
7 THE SAME THING WE HAD BEEN DEVELOPING, A SOCIAL DYSFUNCTION
8 THAT MIGHT LEAD TO SOME SYMPATHETIC MEMBER OF THE JURY TO
9 NOT VOTE FOR THE DEATH PENALTY.
- 10 Q AND I BELIEVE THAT YOU INDICATED THAT Y'ALL HAD
11 CHECKED HER QUALIFICATIONS?
- 12 A YES SIR. WE HAD A CURRICULUM VITAE. WE HAD
13 RECOMMENDATIONS FROM DRUCY GLASS. WE KNEW THAT SHE HAD
14 NOT-- THAT SHE WAS COMPETENT. WE KNEW THAT SHE HAD NOT
15 TESTIFIED IN A CASE OF THIS NATURE AT THAT TIME, ALSO, THOUGH.
- 16 Q NOW, HAVING TRIED AS MANY CASES AS YOU HAVE, YOU'RE
17 OBVIOUSLY FAMILIAR WITH RULE 705 OF THE SOUTH CAROLINA RULES
18 OF EVIDENCE GOVERNING THE TESTIMONY OF AN EXPERT AND
19 HAVING TO DISCLOSE UNDERLYING DOUBT?
- 20 A YES SIR, I AM. AND I HAVE-- IF YOU WANT AN EXPLANATION,
21 I'LL GIVE YOU ONE.
- 22 Q PLEASE.
- 23 A I DON'T-- I DON'T SEE-- WE EVIDENTLY FELT THAT WE WERE
24 COMPLYING WITH RULE 5, AND WE DID SO WITHOUT OBJECTION, JIM
25 DID. BUT I DON'T KNOW WHETHER THIS HAD JUST COME TO MIND OR

1 WAS IN A PREVIOUS PROCEEDING, BUT I THOUGHT I REMEMBERED -
2 AND I MAY BE WRONG - THAT THE JUDGE ORDERED US TO TURN OVER
3 UNDERLYING DATA. I DON'T KNOW.

4 BECAUSE I SOMEWHERE, EITHER-- AND IT MAY NOT-- AND WHY
5 WE WERE NOT GONNA PUT IT ON THE RECORD, I DON'T KNOW. BUT
6 THAT I WAS THINKING THAT IT WAS BASICALLY CAUSING HIM TO
7 TESTIFY AGAINST HIMSELF WHEN HE INVOKED THE RIGHT NOT TO, IN
8 THOSE NOTES. BECAUSE WE HAD TO GIVE TRUTHFUL INFORMATION
9 TO OUR ASSESSORS, PSYCHOLOGIST, PSYCHIATRISTS AND OTHERS.
10 AND WERE THAT BROUGHT IN, BASICALLY, I FELT THAT THAT WAS
11 HIM BEING REQUIRED TO TESTIFY AGAINST HIMSELF.

12 I DON'T SEE THAT ON THE RECORD. AND ANY-- Y'ALL HAVE THE
13 RECORDS. I WOULD HAVE THOUGHT THAT WOULD HAVE BEEN
14 ORDERED BY THE JUDGE OR THAT WAS DISCUSSED AT SOME POINT.

15 Q DESPITE THE FACT THAT YOU WERE AWARE THAT HER NOTES
16 HAD TO BE DISCLOSED, Y'ALL DECIDED THAT IT WAS NECESSARY TO
17 PUT HER UP?

18 A YES SIR.

19 Q AND THAT'S BECAUSE SHE WAS ABLE TO TIE THINGS TOGETHER
20 FOR YOU, WASN'T SHE?

21 A WELL, YES. THE STATE AND MR. POPE AND MR. BRACKETT DID A
22 MASTERFUL JOB ON CROSS EXAMINATION OF HER. OF COURSE, THEY
23 HAD THE NOTES. BUT WE WERE TRYING TO LET HER TIE EVERYTHING
24 TOGETHER THAT WE HAD PUT UP FOR POSSIBLY SOME SYMPATHETIC
25 VOTE FROM ONE OF THE JURORS.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q AND THAT WAS NECESSARY BECAUSE WITHOUT THAT, A LOT OF
2 SPECULATION WOULD HAVE TO BE MADE BY THE EXPERT?

3 A YES.

4 Q WITHOUT GOING THROUGH EVERY ITEM THAT YOU WERE
5 EXAMINED ABOUT YESTERDAY, IS IT FAIR TO SAY THAT WHILE THERE
6 WERE NO INCULPATORY STATEMENTS BY YOUR CLIENT THAT WERE
7 ENTERED INTO EVIDENCE, THAT A LOT OF CIRCUMSTANTIAL
8 EVIDENCE WAS ENTERED BY THE STATE ELICITED MANY OF THE SAME
9 FACTS THAT WERE ELICITED THROUGH THOSE STATEMENTS BY HIM,
10 WERE THEY NOT?

11 A YES. I MEAN, YOU HAD EVERYTHING FROM THE CLAW HAMMER
12 TO THE BAT. YOU DIDN'T HAVE A REASON THE BAT WAS USED. BUT
13 YOU HAD ALL OF THAT. YOU HAD THE TILEX. YOU HAD THE KNIFE.
14 YOU HAD-- YOU HAD ALL OF IT.

15 AS I SAID, I THINK THERE WERE SOME HUNDRED AND TWENTY-
16 ODD PIECES OF EVIDENCE FROM WHICH THE JURY COULD DRAW
17 THOSE CONCLUSIONS. THEY DIDN'T KNOW EXACTLY HOW IT
18 HAPPENED.

19 Q THEY ALSO HAD MS. MOON'S TESTIMONY.

20 A THEY HAD MS. MOON'S TESTIMONY PRETTY MUCH OUTLINED
21 THE WAY EVERYTHING WAS. AND I THINK THAT WAS WITH THE TILEX
22 BOTTLE. AND EVEN SHE TESTIFIED SHE WENT UPSTAIRS AND LOOKED
23 AT SOMETHING. SHE WAS STANDING UP THERE, UP THE STAIRS.

24 LIKE I SAID, WE WENT AS FAR AS EVEN-- BECAUSE WE KNEW
25 THAT IT WAS COMING. WE WENT AS FAR TO GO INVESTIGATE AND SEE

1 IF SHE COULD HAVE HEARD WHAT SHE HAD, IF SHE COULD HAVE BEEN
2 WHERE SHE WAS. WE WENT INTO JIMMY'S ROOM. WE EXAMINED
3 EVERYTHING DOWN THERE. WE OPENED AND CLOSED DOORS JUST TO
4 FIND OUT IF MEREDITH MOON WOULD BE CREDIBLE TO A JURY.

5 Q NOW,---

6 A WHEN I SAY, WE, THOUGH, LET ME QUALIFY THAT. THAT WAS
7 MY INVESTIGATOR AND MYSELF BECAUSE MR. BOYD WASN'T WITH US
8 THAT DAY.

9 Q BUT YOU MADE THAT DETERMINATION---

10 A YES.

11 Q ---AND WERE ABLE TO PASS INFORMATION ALONG TO CO-
12 COUNSEL?

13 A YES.

14 Q WITH RESPECT TO YOUR ADVICE TO YOUR CLIENT AS TO
15 WHETHER OR NOT HE SHOULD TESTIFY IN LIGHT OF MS. CASCIO'S
16 STATEMENT, OR HER TESTIMONY, WOULD IT BE FAIR TO SAY THAT
17 WHAT YOU TALKED ABOUT EARLIER, IN TERMS OF WHAT YOU
18 PROVIDED, AND YOUR INABILITY TO EXAMINE HIM ON DIRECT
19 EXAMINATION, WOULD THAT BE ONE REASON WHY YOU FELT IT WAS
20 IMPORTANT TO NOT TESTIFY?

21 A I DON'T REMEMBER THE EXACT CONVERSATION, BUT I WILL
22 JUST HAVE TO SAY I HAVE TO EVALUATE WITNESSES. AND THAT'S
23 WHAT MY JOB IS AND HOW SOMEBODY'S GOING TO BE ON THE
24 WITNESS STAND.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 I ALSO HAVE TO EVALUATE THE INFORMATION THAT'S BEEN PUT
2 BEFORE THE COURT TO THAT POINT AND I HAVE TO EVALUATE THE
3 PEOPLE THAT WERE CROSS EXAMINED.

4 IN MY OPINION, IF JIMMY HAD GOTTEN ON THE WITNESS STAND
5 WITH HIS DEMEANOR, WITH HIS - I CAN'T SAY - SOMEWHAT, HIS
6 ATTITUDE, WITH JUST KNOWING JIMMY, THAT THERE WOULD HAVE
7 BEEN NO REASON TO DO ANYTHING ELSE. HE WOULD HAVE-- HE
8 WOULD NOT HAVE MADE A GOOD WITNESS AND THE PROSECUTION
9 WAS PREPARED TO DO MORE DAMAGE THAN MS. CASCIO EVER DID.

10 Q ONE LAST THING I WOULD LIKE TO ASK YOU ABOUT, THE
11 STATE'S EVALUATION BY JEFFREY McKEE, DOCTOR JEFFREY McKEE.
12 NOW, PRIOR TO THAT EVALUATION I BELIEVE YOU SAT DOWN AND
13 DISCUSSED THAT WITH YOUR CLIENT?

14 A YES SIR.

15 Q AND EXPLAINED TO HIM WHY THE EVALUATION WAS
16 NECESSARY?

17 A THEY HAD THE RIGHT.

18 Q DID YOU ALSO EXPLAIN TO HIM THAT WITHOUT THAT
19 EVALUATION HE WOULDN'T BE ABLE TO GO TO A MENTAL HEALTH
20 DEFENSE?

21 A YES.

22 Q DID HE UNDERSTAND YOUR EXPLANATION?

23 A I BELIEVE HE DID, SIR. THAT WAS THE ONLY DEFENSE, WAS THE
24 MENTAL HEALTH DEFENSE.

25 Q AND HE CONSENTED TO THE EVALUATION?

1 A YES SIR. HE WENT DOWN THERE. I DIDN'T FORCE HIM AND I
2 DIDN'T DRIVE HIM.

3 Q NOW, WHEN DOCTOR McKEE TESTIFIED IN FRONT OF THE JURY
4 AND MENTIONED AN IMPLICATION OF YOUR CLIENT'S FIFTH
5 AMENDMENT RIGHTS, OR AN UNDERSTANDING OF HIS FIFTH
6 AMENDMENT RIGHTS, I BELIEVE Y'ALL OBJECTED AND MOVED FOR A
7 MISTRIAL?

8 A YES.

9 Q THAT MISTRIAL MOTION WAS DENIED. CORRECT?

10 A YES.

11 Q AND THE JURY NEVER HEARD FROM DOCTOR McKEE ANY OTHER
12 INFORMATION INVOLVING VIOLATION OF HIS FIFTH AMENDMENT
13 RIGHTS. IS THAT CORRECT?

14 A I DON'T THINK SO. I DON'T REMEMBER THE EXACT
15 INFORMATION HEARD AFTER THAT, BUT I DON'T THINK SO.

16 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: RE-DIRECT.

18 MR. BROWN: VERY BRIEFLY, YOUR HONOR.

19 RE-DIRECT EXAMINATION BY MR. BROWN:

20 Q MEREDITH MOON, YOU SAID, CORROBORATED A LOT OF
21 STATEMENTS MS. CASCIO SAID?

22 A AS I REMEMBER.

23 Q ISN'T IT TRUE THAT HER TESTIMONY ON PAGES 1596 THROUGH
24 1605, ---

25 A IF I MAY. THAT IS PER MY MEMORY.

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 Q OKAY.

2 A I HAVE NOT REVIEWED YOUR DOCUMENTS. I HAVE NOT
3 REVIEWED MY FILE. I'M JUST SAYING THAT THAT'S WHAT I
4 REMEMBER.

5 Q INSTEAD OF BELABORING THE COURT LIKE I DID YESTERDAY,
6 GOING THROUGH THE TRANSCRIPT, ARE THOSE THE PAGES, 1596
7 THROUGH 1605, WHERE SHE TESTIFIES AS TO THE EVENTS AND THE
8 STATEMENTS AND HE MADE THAT NIGHT.

9 THE COURT: CASCIO?

10 MR. BROWN: NO, MEREDITH MOON.

11 THE COURT: MOON, YEAH.

12 A YES.

13 MR. BROWN: I WON'T BORE THE COURT WITH THIS.

14 THE COURT: ALL RIGHT.

15 Q ON CROSS, MR. HANCOCK, YOU SAID THAT Y'ALL HAD
16 BASICALLY GIVEN UP ON THE GUILT PHASE AND WENT TOWARD THE
17 SENTENCING PHASE. IS THAT CORRECT?

18 A YES.

19 Q SO, THIS CASE CAME TO MENTAL ILLNESS. WOULD THAT BE
20 CORRECT?

21 A IT CAME DOWN, I BELIEVE, TO SYMPATHY.

22 Q IT WAS PUT UP ON MENTAL ILLNESS?

23 A IT'S A MENTAL ILLNESS DEFENSE, BUT IT'S A DEFENSE THAT WAS
24 PUT UP WITH SYMPATHY.

1 Q YOU'RE FAMILIAR WITH SECTION 17-24-20, SOUTH CAROLINA
2 CODE OF LAWS, GUILTY BUT MENTALLY ILL, GENERAL REQUIREMENTS
3 FOR VERDICTS?

4 A I'VE READ IT.

5 Q I'LL SHOW IT TO YOU.

6 A (PAUSE TO READ CODE SECTION) YES SIR. I'M JUST-- I JUST-- I
7 KNOW I WENT THROUGH IT AT THAT PARTICULAR TIME. GUILTY BUT
8 MENTALLY ILL, HE HAD THE CAPACITY TO DISTINGUISH RIGHT FROM
9 WRONG, TO RECOGNIZE HIS ACTIONS AS BEING WRONG.

10 Q WOULD YOU AGREE WITH ME, SIR, THAT THE FIRST PRONG IS
11 THE DEFENDANT IS GUILTY BUT MENTALLY ILL IF AT THE TIME OF THE
12 COMMISSION OF THE ACT, OR THE ACT CONSTITUTING THE DEFENSE,
13 HE HAD THE CAPACITY TO DISTINGUISH RIGHT FROM WRONG; I.E., TO
14 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW?

15 A YES, WE DISCUSSED THAT YESTERDAY.

16 Q BUT BECAUSE OF MENTAL DISEASE OR DEFECT, HE LACKS
17 SUFFICIENT CAPACITY TO CONFORM HIS CONDUCT TO THE
18 REQUIREMENTS OF THE LAW. CORRECT?

19 A RIGHT.

20 Q AND THE STATE HAS TO PROVE BEYOND A REASONABLE DOUBT
21 THAT HE COMMITTED THE CRIME AND YOU HAVE TO PROVE BY
22 PREPONDERANCE OF THE EVIDENCE THAT WHEN HE COMMITTED THE
23 CRIME HE WAS MENTALLY ILL, AS DEFINED IN SUBSECTION A?

24 A YES.

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

- 1 Q YOU HAVE THE REPORT FROM DOCTOR PINCUS. IS THAT
2 CORRECT?
- 3 A YES.
- 4 Q AND I'M QUOTING - I ONLY HAVE ONE COPY - "IN SUMMARY
5 THERE IS HISTORIC EVIDENCE, BOTH IN THE FAMILY HISTORY AND HIS
6 OWN THAT SUPPORTS VERY STRONGLY THAT DIAGNOSIS OF BI-POLAR,
7 EFFECTIVE DISORDER, AND OBSESSIVE COMPULSIVE DISORDER. IN
8 ADDITION, THERE IS DRUG INTOXICATION AT THE TIME OF THE
9 KILLING. HE WAS UNDER THE INFLUENCE OF RITALIN AND ALCOHOL.
10 ON NEUROLOGICAL EXAMINATION THERE IS EVIDENCE OF CORTICAL
11 AND SUB-CORTICAL DYSFUNCTION IN THE FRONTAL LOBE, AND OTHER
12 PORTIONS OF THE NERVOUS SYSTEM PRODUCING A SIGNIFICANT
13 DISCREPANCY BETWEEN THE STRENGTH IN HIS RIGHT AND LEFT
14 HANDS AND FROM BI-LATERAL WORK REFLEXES AND THE SNAP
15 REFLEX. THE NEUROLOGICAL ABNORMALITIES, LIKE THE EFFECTS OF
16 INTOXICATION, HAVE A DIS-INHIBITING EFFECT THAT PERMIT THE
17 EXPRESSION OF URGES THAT ARE ORDINARILY CONTROLLED BY THE
18 NORMAL BRAIN."
- 19 A YES.
- 20 Q THAT CERTAINLY QUALIFIES FOR MENTALLY ILL AT THE TIME
21 OF THE COMMISSION OF THE CRIME.
- 22 A NO SIR.
- 23 Q YOU DON'T THINK SO?
- 24 A NO SIR. I DIDN'T THINK SO THEN BECAUSE THAT'S WHY WE HAD
25 MORTON HERE TO SAY THAT THE RITALIN-- YOU COULDN'T SAY THAT

1 THE BI-POLAR HE WAS BEING TREATED FOR, THAT WOULD MAKE HIM
2 MENTALLY ILL TO THE POINT HE COULDN'T CONFORM. AND WE WERE
3 TRYING TO SAY THAT THE RITALIN WAS THERE AND THAT WOULD
4 CAUSE HIM TO LOOSE CONTROL TO THE POINT THAT HE COULD NOT
5 CONFORM, AND WE NEVER GOT THAT FROM DOCTOR MORTON THAT I
6 REMEMBER.

7 Q YOU WERE APPOINTED TO REPRESENT JIMMY ROBERTSON. IS
8 THAT CORRECT?

9 A I WHAT?

10 Q YOU WERE COURT APPOINTED TO REPRESENT JIMMY
11 ROBERTSON.

12 A YES, YES.

13 Q AND YOUR JOB WAS OBVIOUSLY TO ZEALOUSLY REPRESENT
14 HIM TO THE BEST OF YOUR ABILITY?

15 A THAT'S RIGHT.

16 Q EVEN THOUGH HE CLAIMED HIS BROTHER WAS NOT INVOLVED,
17 THERE WAS EVIDENCE POINTING TOWARD HIM. IS THAT CORRECT?

18 A YOU HAD A PHONE CALL, SOMETHING OF THAT NATURE. THERE
19 WERE RUMORS OUT THAT CHIP HAD DONE THIS OR THAT OR THE
20 OTHER. BUT WHEN WE INTERVIEWED ALL OF JIMMY'S FRIENDS, WHEN
21 HE WAS TALKING ABOUT, AND IT CAME ON AND SAID THAT HE WAS
22 GONNA KILL THEM FOR THE MONEY, CHIP MAY HAVE BEEN PRESENT A
23 COUPLE OF TIMES.

24 BUT THEN THERE WAS OTHER EVIDENCE FROM HIS FRIENDS
25 THAT CHIP HAD SAID, TOLD THEM THAT HE WANTED NOTHING TO DO

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 WITH ANYTHING LIKE THAT. AT LEAST AS I REMEMBER IN
2 INTERVIEWING MANY OF THEIR MUTUAL FRIENDS.

3 Q AS A MATTER OF FACT, YOUR OWN EXPERT GIVES YOU PROOF
4 THAT CHIP'S INVOLVED, WITH MS. CASCIO'S NOTES. AND CROSS
5 EXAMINATION WE WENT THROUGH YESTERDAY WITH MR. POPE
6 BROUGHT, ELICITED THAT CHIP, I'M IN EUROPE. CHIP'S GOING TO BE
7 PROUD OF ME. I'M GETTING CHIP AND I'M GONNA GET THIS THING
8 COVERED UP.

9 A FINE. TO ME, THAT'S NOT RELEVANT.

10 Q I UNDERSTAND. BUT YOU---

11 A YES. I DIDN'T SEE WHERE PUTTING CHIP IN FOR A CONVICTION
12 FOR THE DEATH PENALTY WOULD MITIGATE JIMMY'S ACTION WHEN
13 CHIP WAS STILL IN PHILADELPHIA.

14 THE COURT: NOW, LET ME MAKE SURE I HAVEN'T MISSED
15 SOMETHING. YOU HAVEN'T SAID ANYTHING TO ME, IN LISTING YOUR
16 CLAIMS ABOUT FAILURE TO PROVE THAT CHIP AS INVOLVED IN THE
17 CRIME.

18 MR. BROWN: CHIP'S MEDICAL RECORDS AND THE FAILURE TO
19 CALL HIM AS A WITNESS WAS ONE OF MY...

20 THE COURT: SO, THAT'S WHAT YOU MEAN BY FAILURE TO CALL
21 CHIP AS A WITNESS?

22 MR. BROWN: YES SIR.

23 THE COURT: I THOUGHT YOU WERE GETTING AT THAT FROM
24 THE STANDPOINT OF CHIP'S OWN MENTAL ILLNESS HISTORY.

1 MR. BROWN: THAT, AND HIS, WHATEVER POSSIBLE
2 INVOLVEMENT.

3 THE COURT: ALL RIGHT.

4 MR. BROWN: ANYTHING TO TAKE THE FOCUS OFF MR.
5 ROBERTSON, JAMES ROBERTSON, IN THIS TRIAL, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 Q YOU SAY MR. McMEEKIN, HAYNE McMEEKIN WAS NOT WORTH
8 PURSUING. ARE YOU, DID YOU DEEM---

9 A I DIDN'T SAY NOT WORTH PURSUING. I FELT THAT MR. MEYER
10 WAS GIVING US THE RECORDS THAT WE NEEDED AND WHAT WE
11 NEEDED IN ORDER TO PRESENT THE DEFENSE.

12 Q ON PAGES 2689 TO 2691, THIS IS YOUR OWN EXPERT, BASICALLY,
13 TESTIFYING, MR. MORTON, THAT MR. McMEEKIN WAS OVER-
14 MEDICATING THE WHOLE FAMILY?

15 A HE SAYS HERE CHIP, GIVE HIM TWENTY TO TWENTY-FIVE
16 MILLIGRAMS OF RITALIN. AGAIN, I DON'T BELIEVE THAT JIMMY WAS
17 TAKING RITALIN AT THAT TIME. HE WAS TAKING CHIP'S RITALIN.

18 Q AND IS NOT IN THERE ALSO THAT MR. MORTON TESTIFIED UPON
19 REVIEWING MR. McMEEKIN'S NOTE, THAT DOCTOR McMEEKIN KNEW
20 THAT CHIP WAS SELLING THE DRUG AND TAKING IT WITH ALCOHOL,
21 CRUSHING IT UP AND SNORTING IT, BUT HE CONTINUED TO PRESCRIBE
22 IT TO HIM?

23 A IF IT SAYS SO HERE, FINE.

24 Q IT'S IN HERE, TWO PAGES.

25 A RIGHT. I WON'T ARGUE WITH YOU.

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 Q AND DON'T YOU AGREE THAT PART OF THE CAUSE OF THIS
2 WHOLE MURDER WAS RITALIN?

3 A YES SIR, THAT'S WHY WE HAD DOCTOR MORTON.

4 Q BUT Y'ALL NEVER SUBPOENAED HIS RECORDS AND YOU NEVER
5 SENT ANYBODY TO INTERVIEW HIM OR DISCUSS THIS WITH HIM, EVEN
6 THOUGH YOU KNEW AT THAT TIME HE'D BEEN DISCIPLINED FOR OVER-
7 PRESCRIBING MEDICATION?

8 A NO SIR.

9 Q OKAY.

10 A BUT I THOUGHT WE'D GOTTEN HIS RECORDS.

11 Q I JUST WANT TO PUT UP ONE THING FOR THE RECORD. YOU SAID
12 YOU THOUGHT THE JUDGE ORDERED TO TURN THOSE NOTES OVER. I'M
13 GOING TO SHOW YOU THE TRANSCRIPT FROM THE HEARING ON
14 FEBRUARY 19, '98, WHEN THAT WAS DISCUSSED.

15 STARTING ON PAGE 44, LINE 17: "THE COURT: THAT'S WHAT
16 THEY'RE ASKING FOR. IT'S NOT BEEN UNUSUAL FOR INDIVIDUALS'
17 TESTIMONY TO BE ELICITED AND THEN ON CROSS-EXAMINATION
18 SOMEONE SAYS HAVE YOU GOT THAT REPORT WITH YOU AND THE
19 WITNESS SAYS, NO, I DIDN'T BRING THAT. I RELIED ON IT BUT I DIDN'T
20 BRING IT. I DIDN'T THINK I NEEDED IT. ALL I'VE GOT IS MY SUMMARY.
21 THEY JUST WANT THE EXPERT'S TO BRING THEIR FILE."

22 "MR. BOYD: WE HAVE NO OBJECTION TO THAT."

23 "MR. HANCOCK: IT GOES BOTH WAYS."

1 "MR. BRACKETT: THAT'S EXACTLY THE SCENARIO BECAUSE WE
2 HAVE TO STOP COURT AND WAIT FOR THEM TO GO BACK TO
3 COLUMBIA AND GET THAT STUFF."

4 A YES SIR.

5 Q SO, YOU AND MR. BOYD CONSENTED TO TURNING OVER THE
6 NOTES. IS THAT CORRECT?

7 A MR. BOYD DID. I MEAN, I'M IN THIS WITH HIM. SO, IT WOULD
8 HAVE BEEN BOTH OF OUR DECISIONS.

9 Q I UNDERSTAND. AND GIVING OVER THOSE NOTES, MS. CASCIO'S
10 NOTES?

11 A WHAT I THINK, MR. BROWN, IS THAT AT THIS TIME WE HAD FELT
12 THAT THE JUDGE RULED THAT THAT WAS WHAT WE WERE TO DO
13 UNDER THE PRESENT RULES OF DISCOVERY.

14 Q AND RULE 5 SPEAKS FOR ITSELF.

15 A YES.

16 Q OKAY. AND---

17 A I MEAN, IF IT'S NOT IN AN ORDER THAT Y'ALL HAVE FOUND AND
18 NOT IN A HEARING, THEN THAT WOULD BE OUR THINKING, I BELIEVE.

19 Q AND DESPITE MS. CASCIO'S NOTES AND THE DAMAGE MADE
20 FROM THOSE, Y'ALL CHOSE TO PUT HER ON THE STAND ANYWAY?

21 A YES SIR.

22 Q WHY?

23 A WELL, MR. BROWN, AT THAT TIME WE FELT LIKE SHE WAS
24 PULLING EVERYTHING TOGETHER. WE KNEW THAT WE WOULD BE
25 HURT BY CROSS EXAMINATION, BUT WE FELT LIKE SHE PUT ENOUGH

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 TOGETHER. AGAIN, WE'RE PLAYING TO ONE WITNESS. I MEAN, ONE
2 JUROR, THAT MAY BE A JUROR THAT SHE TIED TOGETHER THAT THEY
3 REALLY HAD SO MANY OF THE OPERATIVE FACTS ALREADY, THROUGH
4 THE TESTIMONY, THROUGH THE MASSIVE AMOUNT OF EVIDENCE
5 THAT WAS PUT THERE THAT EVIDENTLY WE MADE A DECISION THAT
6 WE WOULD, THAT THAT WOULD TIE IT TOGETHER ENOUGH OR GIVE US
7 SOME REASON OR SOMETHING TO ARGUE TO THAT ONE JUROR.

8 Q AT THAT TIME OF THE TRIAL THERE WERE NO INCULPATORY
9 STATEMENTS IN EVIDENCE MADE BY MR. ROBERTSON, OTHER THAN
10 MEREDITH MOON'S TESTIMONY?

11 A AND ANYTHING THAT COULD BE TAKEN FROM THE OTHER
12 EXPERTS. I DON'T KNOW WHAT---

13 Q IF I TELL YOU FOR THE RECORD IT WAS NO INCULPATORY
14 STATEMENTS FROM THE OTHER EXPERTS, WOULD YOU DISAGREE
15 WITH ME?

16 A NO, I WOULDN'T DISAGREE WITH YOU.

17 Q AND AS YOU TESTIFIED YESTERDAY, HER TESTIMONY, WITHOUT
18 IT, COULD HAVE MADE A DIFFERENCE IN THIS TRIAL, POSSIBLY MADE
19 A DIFFERENCE?

20 A THAT'S CONJECTURE, AS I SAID YESTERDAY. IT-- AGAIN, WE
21 WERE GRASPING AT STRAWS. WE HAD ONE OF THE WORST CASES I'VE
22 SEEN. AND SO, I'M NOT SURE WHAT THE JURY-- THEY HAD SUCH
23 MASSIVE EVIDENCE BEFORE THEM, I'M NOT SURE WHETHER NOT
24 PUTTING HER UP WOULD HAVE LEFT HIM NOT RECEIVING THE DEATH

1 PENALTY. IT'S JUST A CALL THAT YOU GO THROUGH AT THAT
2 PARTICULAR TIME.

3 Q WELL, YESTERDAY, DID YOU NOT SAY IT POSSIBLY COULD HAVE
4 CHANGED THE OUTCOME?

5 A ANYTHING THAT WAS PUT BEFORE THE JURY POSSIBLY COULD
6 HAVE CHANGED THE OUTCOME. WE JUST DIDN'T KNOW WHAT. WE
7 WERE TRYING TO FIND SOMETHING.

8 Q AND YOU WOULD AGREE WITH ME THAT SHE WAS A HORRIBLE
9 WITNESS?

10 A OH, YES.

11 MR. BROWN: BEG THE COURT'S INDULGENCE JUST A SECOND.

12 A CAN I QUALIFY THAT, MR. BROWN?

13 Q SURE.

14 A I CAN'T SAY HORRIBLE. SHE WAS A BAD WITNESS.

15 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

16 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: ALL RIGHT. I WANT TO ASK A COUPLE OF
18 QUESTIONS REGARDING THE DECISION TO CALL THIS DOCTOR CASCIO.
19 DID I PRONOUNCE IT CORRECTLY? CASCIO?

20 A CASCIO.

21 THE COURT: YOU AND MR. BOYD DID IN FACT KNOW ABOUT THE
22 NOTES WHEN YOU MADE THE DECISION TO CALL HER?

23 A WE HAD TO TURN THEM OVER, YES SIR.

24 THE COURT: BUT YOU PERSONALLY HAD READ THOSE NOTES?

25 A YES SIR.

JAMES HANCOCK - QUESTIONS BY THE COURT

1 THE COURT: AND YOU KNEW WHAT WAS IN THEM?

2 A YES SIR.

3 THE COURT: AND YOU REALIZED WHEN YOU PUT HER ON THE
4 STAND SHE WAS GOING TO BE CROSS EXAMINED ABOUT THE
5 CONTENTS OF THOSE NOTES?

6 A YES SIR, BECAUSE WE HAD THE DAY BEFORE, SHE HAD TO TURN
7 THEM OVER. SO, I KNEW THEY HAD THEM. NOW, AS FAR AS WHAT
8 DECISIONS WERE MADE AND HOW THEY WERE MADE, AS I SAID, I
9 DON'T REMEMBER. BUT WE REVIEWED EVERYTHING THAT THEY HAD
10 AND THEY---

11 THE COURT: NOW, MY QUESTION IS VERY SPECIFIC.

12 A YES SIR.

13 THE COURT: DID YOU ACTUALLY KNOW ABOUT THE NOTES
14 WHEN YOU MADE THE DECISION TO CALL THIS WITNESS TO TESTIFY?

15 A YES SIR, WE HAD TO, BECAUSE---

16 THE COURT: ALL RIGHT. I JUST WANT TO KNOW, YES OR NO.

17 A YES SIR.

18 THE COURT: AND THEN, SO YOU ACTUALLY HAD READ THE
19 NOTES?

20 A YES SIR.

21 THE COURT: AND THEN, IN MAKING THE DECISION TO CALL HER
22 TO TESTIFY DID YOU BALANCE WHAT YOU THOUGHT WOULD BE THE
23 BENEFIT FROM CALLING HER AGAINST THE OBVIOUS HARM THAT
24 WOULD COME FROM THE CONTENT OF THOSE NOTES COMING OUT?

25 A YES SIR, WE HAD TO DO THAT.

1 THE COURT: HOW FAR IN ADVANCE OF TRIAL DID YOU FIND OUT
2 ABOUT THESE NOTES?

3 A JUDGE, I CAN'T TELL YOU.

4 THE COURT: WELL, GIVE ME YOUR BEST ESTIMATE.

5 A MAYBE-- I WAS NOT DEALING WITH MS. CASCIO. JIM WAS
6 DEALING WITH HER. AND I DON'T EVEN HAVE-- IT WOULD HAVE ONLY
7 BEEN A WEEK OR SO AT THE MOST, PROBABLY. IT MIGHT HAVE BEEN
8 LONGER THAN THAT. BUT I CAN'T TELL YOU. I CAN'T EVEN-- I CAN'T
9 EVEN GIVE YOU A GOOD GUESS.

10 THE COURT: BUT YOU THINK IT WAS LESS, AROUND A WEEK?

11 A MAYBE A WEEK. THAT'S JUST A GUESS. AGAIN, I DO NOT
12 REMEMBER.

13 THE COURT: CAN I SEE THAT EXHIBIT, PLEASE?

14 MR. BROWN: YOUR HONOR, IF I MAY. AS TO PETITIONER'S
15 EXHIBIT NUMBER 5, I HAVE A COVER LETTER, THIS IS DATED MARCH 1,
16 1999. I HAVE A COVER LETTER SOMEWHERE THAT IS ADDRESSED TO
17 MR. HANCOCK WHERE THE PRELIMINARY REPORT AND NOTES WERE
18 MAILED MARCH 1. IF I CAN BEG THE COURT'S INDULGENCE JUST ONE
19 SECOND.

20 THE COURT: MARCH 1, 1999?

21 MR. BROWN: YES SIR. HERE IT IS.

22 THE COURT: AND THE TRIAL IS?

23 MR. BROWN: STARTED MARCH 15, YOUR HONOR. FOR THE
24 RECORD, I WOULD MOVE TO ADMIT THIS LETTER. IT'S THE COVER
25 LETTER THAT CAME WITH THE REPORT.

1 THE COURT: IS THERE ANY EVIDENCE THAT WE KNOW OF RIGHT
2 NOW AS TO WHEN THE NOTES WERE MADE, WHEN THE INTERVIEW
3 BETWEEN DOCTOR CASCIO AND THE DEFENDANT OCCURRED?

4 MR. BROWN: YES SIR. AND, BEGGING THE COURT'S
5 INDULGENCE, I CAN GIVE YOU THOSE DATES.

6 THE COURT: MADAM CLERK, WILL YOU GIVE THAT TO THE
7 COURT REPORTER OR WHOEVER IS KEEPING TRACK OF THE EXHIBITS.

8 (WHEREUPON LETTER DATED MARCH 1, 1999, WAS PASSED TO
9 THE COURT REPORTER AND MARKED AS APPLICANT'S EXHIBIT
10 NUMBER SIX.)

11 (PAUSE)

12 MR. BROWN: YOUR HONOR, AS IT IS RIGHT NOW, IT'S GOING TO
13 TAKE ME A COUPLE OF MINUTES TO FIND THEM. THERE WERE THREE
14 DATES, THREE OR FOUR TIMES SHE MAILED THEM IN '98.

15 THE COURT: ALL RIGHT. THOSE FACTS ARE GOING TO NEED TO
16 BE PROVEN BEFORE THE END OF THE TRIAL.

17 GO AHEAD. YOU CAN CALL YOUR NEXT WITNESS. COME ON
18 DOWN, SIR. THANK YOU. UNLESS EITHER OF YOU WISHES TO RESPOND
19 BY FOLLOW-UP TO MY QUESTIONS.

20 MR. SALTER: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

21 MR. BROWN: I JUST WANT TO MAKE THE POINT THAT THE
22 INFORMATION I HAVE IS IT WAS MAILED MARCH 1, 1999.

23 THE COURT: THANK YOU.

24 MR. SALTER: WE WOULD ASK THAT MR. HANCOCK BE EXCUSED.

25 MR. BROWN: WITHOUT OBJECTION.

1 THE COURT: HE'S EXCUSED.

2 MR. BROWN: YOUR HONOR, MAY WE APPROACH ONE SECOND?

3 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

4 THE COURT: I UNDERSTAND THAT THE STATE IS GOING TO CALL
5 A WITNESS OUT OF ORDER WITH THE CONSENT OF THE APPLICANT.

6 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

7 MR. SALTER: YES SIR, YOUR HONOR. THE STATE WOULD CALL
8 SOLICITOR POPE.

9 THOMAS E. POPE, DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. SALTER:

12 Q MR. POPE, WOULD YOU STATE YOUR FULL NAME FOR THE
13 RECORD?

14 A THOMAS E. POPE, P-O-P-E.

15 Q WHERE AND HOW ARE YOU CURRENTLY EMPLOYED?

16 A I'M EMPLOYED AT THOMAS E. POPE AND ASSOCIATES IN ROCK
17 HILL, ACROSS THE STREET.

18 Q HOW LONG HAVE YOU BEEN IN PRIVATE PRACTICE?

19 A A MONTH AND A HALF, TWO MONTHS.

20 Q PRIOR TO THAT TIME YOU WERE THE SOLICITOR HERE?

21 A I HAVE, SIR. I'VE RETIRED AS THE SOLICITOR OF THE SIXTEENTH
22 CIRCUIT.

23 Q HOW LONG WERE YOU SOLICITOR?

24 A I GOT ELECTED IN '92; APPROXIMATELY FOURTEEN YEARS, I
25 BELIEVE.

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 Q AS PART OF YOUR DUTIES DID YOU HAVE OCCASION TO
2 PROSECUTE MR. JAMES ROBERTSON FOR MURDER OF HIS PARENTS?

3 A YES SIR.

4 Q DO YOU RECALL WHETHER OR NOT THE PROSECUTION ALSO
5 INVESTIGATED MR. ROBERTSON'S BROTHER, CHIP, AS A POSSIBLE
6 DEFENDANT?

7 A I KNOW AT THE BEGINNING, AND MR. HANCOCK HAD ELUDED TO
8 IT, THE POSSIBILITY OF HIM BEING INVOLVED. IT WAS PARTICULARLY
9 INTERESTING. AS I RECALL, THERE WERE PHONE CALLS. I THINK MR.
10 ROBERTSON HAS TESTIFIED TO THIS: PHONE CALLS AROUND TWO
11 O'CLOCK IN THE MORNING AND THEN A SHORT PHONE CALL RIGHT
12 PRIOR TO IT.

13 THERE WAS DIFFERENT CIRCUMSTANCES THAT POINTED IN
14 THAT DIRECTION, BUT ULTIMATELY NOTHING THAT WE COULD MAKE
15 A CASE ON, OR LAW ENFORCEMENT COULD MAKE A CASE ON.

16 Q DO YOU RECALL WHETHER OR NOT, AS PART OF YOUR DUTIES,
17 EITHER YOU OR-- DID YOU HAVE ANYONE ASSISTING YOU?

18 A WELL, WE HAD A LARGE STAFF IN THE OFFICE ASSISTING, DOING
19 VARIOUS DUTIES. AS FAR AS SECOND-SEATING THE CASE, MR.
20 BRACKETT, WHO IS THE CURRENT SOLICITOR, WAS ASSISTING ME IN
21 THAT PARTICULAR CASE. AND THEN IN ADDITION TO OUR
22 INVESTIGATIVE STAFF, IN PARTICULAR COMES TO MIND, MS. MERRY
23 COLLINS, WHO KIND OF WAS THE GATE KEEPER FOR OUR DISCOVERY
24 ISSUES.

1 Q DO YOU RECALL WHETHER OR NOT EITHER YOU OR MR.
2 BRACKETT ENTERED INTO ANY PLEA NEGOTIATIONS IN CONNECTION
3 WITH THIS CASE?

4 A WE DID NOT. WE ASSESS EVERY CASE ON WHETHER OR NOT IT
5 WILL BE A PLEA OR WHETHER THERE WILL BE A PLEA OFFERED. AS
6 YOU ARE AWARE, THERE ARE NUMBER OF DIFFERENT FACTS THAT
7 COME INTO PLAY. THE NATURE OF THIS CASE WAS SUCH THAT IT
8 REALLY LENT ITSELF TO ONLY ONE END RESULT.

9 THE ISSUE THAT'S BEEN REFERRED TO, AS I RECALL, CAME UP
10 WITH MR. BRACKETT. FOR LACK OF A BETTER TERM, MR. HANCOCK'S
11 BACK HALL TALK, AND I THINK ACTUALLY IT OCCURRED SOMEWHERE
12 RIGHT BEHIND WHERE I'M SITTING NOW. SOMETHING TO THE EFFECT
13 THAT MR. BRACKETT SAID WHAT HE WAS DOING AND I THINK MR.
14 GILLEN WAS REPRESENTING CHIP. AND, YOU KNOW, AGAIN, WE HAD
15 SOME BELIEF THAT CHIP WAS INVOLVED, BUT NOTHING THAT WE
16 COULD PROVE. SUPPOSEDLY, MR. BRACKETT MADE SOME
17 STATEMENT, YOU KNOW, IF CHIP'LL PONY UP ALL THE MONEY THAT
18 THEY GOT AS PART OF THIS PLAYING OUT, THAT THERE WOULD BE
19 SOME TYPE OF PLEA OFFER.

20 OF COURSE, ULTIMATELY, THE BUCK STOPS WITH ME. I DIDN'T--
21 WE NEVER TENDERED ANY OFFERS. MR. BRACKETT AS MY AGENT DID
22 NOT. AND ULTIMATELY, IT REALLY, AS I RECALL BACK THEN KIND OF
23 PLAYED OUT IN THE MEDIA THAT THERE WAS SOME BIG DEAL AND AN
24 ETHICAL ISSUE ABOUT MR. BRACKETT, YOU KNOW, BROKERING JIM

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 AGAINST HIS BROTHER, OR WHATEVER. BUT, I MEAN, AS HAS BEEN
2 INDICATED EARLIER, THERE WAS REALLY NO SUBSTANCE TO IT.

3 Q DO YOU RECALL SPEAKING TO EITHER OF MR. ROBERTSON'S
4 ATTORNEYS ABOUT THE SUPPOSED DEAL?

5 A IF WE DISCUSSED IT, IT WOULD BE AFTER IT FLARED UP, YOU
6 KNOW. NO REAL-- NOW, OPERATING THE TWO PARTS, AS FAR AS ANY
7 REAL OFFERS, YOU KNOW, AS FAR AS ANY PLEA OFFERS, THERE WERE
8 NEVER ANY PLEA OFFERS. BUT AS FAR AS DISCUSSING HOW IT
9 PLAYED OUT IN THE PAPER, OR YOU KNOW-- I THINK IT WAS MR.
10 McDOW AND MR. GILLEN AND IT PLAYED OUT IN THE PAPER, I RECALL,
11 YOU KNOW, MAKING GENERAL TALK IN THE HALL, LIKE DID YOU SEE
12 THE PAPER TODAY, AND YOU KNOW THERE'S NOT--

13 IT WAS ABUNDANTLY CLEAR AND MR. BOYD AND MR. HANCOCK
14 KNEW THAT WE NEVER TENDERED AN OFFER IN THIS CASE.

15 Q AND YOU INDICATED A FEW MINUTES AGO THAT THE BUCK
16 STOPPED WITH YOU, SO TO SPEAK.

17 A THAT'S WHY MY HAIR'S TURNING GRAY, YES.

18 Q AND YOU WOULD NOT HAVE ALLOWED ANY PLEA OFFER IN THIS
19 CASE?

20 A NO SIR. AND AGAIN, I UNDERSTAND MY RESPONSIBILITIES AND,
21 YOU KNOW, MR. BRACKETT BEING MY AGENT. BUT THIS JUST WASN'T
22 THE CASE. ANY PLEA OFFERS WE DO IN ANY OF THESE CASES, YOU
23 KNOW, NEVER COME FROM THE HIP. YOU KNOW, WE ALWAYS WORK
24 IT OUT. WE SIT DOWN, WE TALK IT AMONGST OURSELVES. YOU

1 KNOW, WE WEREN'T EVEN CLOSE IN THIS PARTICULAR SITUATION TO
2 ANY TYPE OF PLEA OFFER.

3 Q YOU WERE NEVER APPROACHED BY DEFENSE COUNSEL
4 CONCERNING A PLEA OF GUILTY BUT MENTALLY ILL?

5 A NO SIR. TO MY RECOLLECTION, WE WERE NOT. AND AS I
6 RECALL, YOU KNOW, THE WHOLE ISSUE, AND IT'S KIND OF
7 CONVENTIONAL DEATH PENALTY WISDOM THAT THE PROBLEM WITH
8 ENTERING A PLEA FOR MR. ROBERTSON IS THAT SUDDENLY THEN
9 YOU'RE MAKING THEIR APPEAL TO THE ONE JUDGE AS OPPOSED TO
10 THE TWELVE JURORS.

11 AND SO, AS I RECALL, THEY INTERJECTED MENTAL HEALTH
12 ISSUES THROUGHOUT THE CASE. BUT IT WAS NEVER AN ISSUE OF
13 THEM WANTING TO PLEAD GUILTY BECAUSE THEY WERE RELYING ON
14 PART OF THEIR OVERALL STRATEGY. AGAIN, I WASN'T PRIVY TO THEIR
15 STRATEGY, BUT JUST BASED ON MY EXPERIENCE, FROM THE OUTSIDE
16 LOOKING IN.

17 Q WOULD YOU AS THE SOLICITOR HAVE ENTERTAINED A PLEA OF
18 GUILTY BUT MENTALLY ILL CHARGE?

19 A I DIDN'T. IT WOULD HAVE BEEN DIFFICULT IN THIS CASE
20 BECAUSE THE EVIDENCE DID NOT SEEM TO SUPPORT THE MENTAL
21 EVALUATIONS. IT DID NOT SEEM TO SUPPORT THAT-- I MEAN,
22 CLEARLY, IT APPEARED THAT HE DID HAVE MANIC DEPRESSION, BUT I
23 DON'T THINK HE MET THE STATUTE.

24 Q YOU'VE BEEN PRESENT THROUGHOUT THE TESTIMONY THUS
25 FAR?

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 A YES SIR.

2 Q AND ONE OF THE ISSUES CONCERNS THE DISCLOSURE BY THE
3 DEFENSE OF MS. CASCIO'S NOTES.

4 A YES SIR.

5 Q WOULD YOU AGREE THAT ONE OF THE MOST HIGHLY
6 CONTESTED ISSUES AT THE TIME OF TRIAL, OR AT PRE-TRIAL, WAS THE
7 STATE'S DESIRE TO GET AN INDEPENDENT EVALUATION?

8 A YES SIR. YOU KNOW, WE PARTICULARLY HERE IN MY OFFICE
9 HAVE ALWAYS TAKEN THE TACTIC OF-- SOMETIMES IT WAS AN
10 UPHILL BATTLE. JUDGE COLE HAD HAD SOME CASES OVER IN
11 SPARTANBURG, I THINK. I THINK THE NAME MIGHT HAVE BEEN
12 PATTERSON OR SOMETHING. BUT THE WHOLE ISSUE OF WHEN THE
13 STATE'S ENTITLED FOR AN EVALUATION, AND YOU KNOW, THE
14 FUNDAMENTAL FAIRNESS OF IT.

15 THEY'RE GONNA PUT IN MENTAL HEALTH ISSUES AND WE DON'T
16 GET TO HAVE AN OPPORTUNITY TO ADDRESS THOSE ISSUES. SO, WE
17 HAD ALWAYS MADE THAT FIGHT AND DID SO IN THIS CASE. IN
18 CONJUNCTION WITH THAT, OF COURSE, IF WE'RE GONNA BE STUCK
19 WITH EITHER HAVING OR NOT HAVING, THEN WE AT LEAST WANT TO
20 TRY TO GET BEHIND THE UNDERLYING DATA. BECAUSE OTHERWISE,
21 WHAT HAPPENS, YOU KNOW, EXPERTS COME UP; THEY TALK ABOUT
22 ALL THESE THINGS THEY'VE CONSIDERED, BUT WE NEVER GET TO
23 REALLY HAVE AN EFFECTIVE CROSS OF THEM.

24 Q NOW, ULTIMATELY, THE TRIAL JUDGE ALLOWED THE STATE TO
25 HAVE A FULL AND INDEPENDENT EVALUATION. CORRECT?

1 A I RECALL THAT FROM DOCTOR McKEE'S INVOLVEMENT. I DON'T
2 RECALL THE SPECIFIC MECHANICS. YOU KNOW, I HAVEN'T REVIEWED,
3 LIKE, THE ORDERS AND STUFF. BUT I DO REMEMBER DOCTOR McKEE
4 BEING INVOLVED. AND I ASSUME IT WAS JEFF McKEE. PERHAPS THEY
5 USED SOMEBODY ELSE FROM THE STATE HOSPITAL. BUT, AGAIN, I
6 DON'T RECALL.

7 Q DO YOU RECALL WHETHER OR NOT THERE WAS A PROBLEM,
8 FROM THE STATE'S PERSPECTIVE, WHETHER OR NOT THERE WAS A
9 PROBLEM IN OBTAINING RECIPROCAL RULE FIVE DISCLOSURES?

10 A I KNOW WE HAVE ALWAYS BEEN AGGRESSIVE IN TRYING TO
11 MAKE SURE THE DEFENSE HAS BEEN FORTHCOMING. BECAUSE,
12 NORMALLY WHAT HAPPENS IN THESE ISSUES IS, OFTENTIMES WHEN
13 YOU HAVE THE EXPERTS: (A) YOU KNOW, IT'S A BURDEN FOR US TO
14 TRY TO DETERMINE WHO THE EXPERTS ARE; (B) TO GET ANY
15 MEANINGFUL REPORT; AND THEN (C) OBVIOUSLY, THE UNDERLYING
16 DATA.

17 AND SO, I RECALL THAT BATTLE, YOU KNOW, AGAIN, NO
18 DIFFERENT THAN THE STANDARD WE'VE HAD FROM THE DEATH
19 PENALTY RESOURCE CENTER, KIND OF THEIR TACK.

20 BUT I REMEMBER PARTICULARLY IN REGARDS TO MS. CASCIO'S
21 NOTES AND SOME OF THE OTHER INFORMATION THAT IT WAS KIND OF
22 AN ONGOING BATTLE TO GET IT. AND YOU KNOW, IN REVIEWING
23 SOME OF THE TRANSCRIPT IT APPEARED THAT ALMOST EACH DAY OR
24 EACH BREAK WHEN THE JUDGE WOULD BE ABOUT TO TAKE A BREAK,
25 WE WOULD KIND OF UPDATE HIM ON HERE'S WHERE WE'RE AT, HERE'S

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 WHERE THE NOTES ARE. AND I THINK ULTIMATELY WE RECEIVED
2 CASCIO'S, IN PARTICULAR, INFORMATION, IT MUST HAVE BEEN THE
3 NIGHT BEFORE SHE TESTIFIED. AND I THINK THAT'S REFLECTED IN THE
4 RECORD.

5 Q WHAT IS YOUR RECOLLECTION IN TERMS OF HOW, WHETHER OR
6 NOT THE DEFENSE DISCLOSED THESE NOTES UNDER COURT ORDER?

7 A AS I RECALL IT, MR. BOYD HAD OBJECTED. AND, AGAIN, I DON'T
8 REMEMBER THE ORDER OF IT PLAYING OUT. BUT AT SOME POINT, AND
9 I ASSUME THE TRANSCRIPT WOULD BEAR THIS OUT, WE WOULD BRING
10 IT TO JUDGE HAYES' ATTENTION THAT, YOU KNOW, TIME'S DRAWING
11 NIGH, IT'S GETTING CLOSER, YOU KNOW. BECAUSE THE JUDGE WAS
12 TRYING TO MOVE THE CASE FORWARD.

13 AND AS I RECALL, THE DEFENSE CONTINUED TO FIGHT IT UNTIL
14 IT WAS CLEAR THAT JUDGE HAYES WAS GOING TO ORDER IT.
15 BECAUSE OUR POINT FINALLY GOT, YOUR HONOR, I KNOW
16 TECHNICALLY THEY MAY BE ABLE TO HAND US THIS WHOLE STACK
17 OF NOTES RIGHT AFTER SHE TESTIFIES; THE PROBLEM BEING, YOUR
18 HONOR, THAT WE'RE GOING TO TAKE, REQUEST A CONTINUANCE TO
19 HAVE THE OPPORTUNITY TO REVIEW IT.

20 SO, I THINK BY THE END OF THE DAY, RIGHT BEFORE THAT, AT
21 SOME POINT JUDGE HAYES-- AND AGAIN, IT MIGHT BE FROM ONE OF
22 THE BREAKS. JUDGE HAYES HAD INDICATED THAT HE WAS GOING TO
23 ORDER IT. AND SO THERE WAS A SERIES OF CONVERSATIONS OR
24 DISCUSSIONS BEFORE THE COURT ON SHE NEEDS TO GET THE NOTES

1 HERE; SOME ARE IN COLUMBIA AND SOME ARE HERE. AND
2 ULTIMATELY THEY WERE BROUGHT.

3 SO, THEY FOUGHT IT INITIALLY, EVEN THOUGH, ULTIMATELY,
4 OUT OF RESPECT FOR THE COURT, ONCE THE COURT HAD INDICATED
5 THEY WERE COMING, THEN AT THAT POINT THEY ETHICALLY
6 COMPLIED. YOU KNOW, THEY TRIED TO BRING IT FORWARD.

7 Q WHAT IS YOUR UNDERSTANDING OF RULE 705 IN THE SOUTH
8 CAROLINA RULES OF EVIDENCE?

9 A I THINK THAT, AGAIN, WE HAVE AN OPPORTUNITY TO CROSS AS
10 FAR AS THE UNDERLYING DATA AND TO RECEIVE WHAT IT'S BASED
11 ON. AND THAT'S-- WE'VE WORKED HARD HERE IN THE SIXTEENTH
12 CIRCUIT FOR THE VERY REASON THAT OTHERWISE, AS ALL OF US
13 KNOW, ATTORNEYS IN OUR EXPERIENCE, AN EXPERT GETS HERE AND
14 TALKS ABOUT ALL THESE THINGS, PUTS ALL THESE THINGS BEFORE
15 THE JURY. I CAN ASK THEM QUESTIONS ALL DAY LONG, BUT IF IT'S
16 SOMETHING THEY'VE LOOKED AT OR READ ELSEWHERE OR--

17 AND I'VE HONED ON THIS THROUGHOUT THE TRIAL WITH ALL
18 THE WITNESSES. OFTENTIMES, WHAT THEY COME AND SAY, JIMMY
19 TOLD THEM, JIMMY TOLD THEM. NOT JUST MS. CASCIO, BUT THE
20 OTHERS. IT WAS ALWAYS JIMMY TOLD THEM.

21 AND SO, WHAT I WAS TRYING TO DO IN CROSS IN GETTING
22 THESE UNDERLYING RECORDS, IF YOU CAN DESTROY, YOU KNOW, THE
23 FOUNDATION OF THEIR PREMISE OR THEIR THEORY, THEN YOU CAN
24 DISCREDIT THAT WITNESS. SO, THAT'S WHAT I DID.

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 Q WITH RESPECT TO THE DEFENSE'S CASE IN MITIGATION, MS.

2 CASCIO WASN'T THE ONLY WITNESS PRESENTED, WAS SHE?

3 A NO. AGAIN, WHEN YOU LOOK AT THE CASE OVERALL, THEY
4 TOOK REALLY-- YOU KNOW, IF YOU WERE ANALYZING THE CASE
5 BEFORE THE ATTORNEYS EVER GOT INVOLVED AND LOOKED AT IT,
6 THEY TOOK THE ONLY REAL LEGITIMATE ROUTE THEY HAD TO TRY TO
7 SAVE THIS MAN'S LIFE.

8 AND THAT WAS KIND OF THE-- THE RITALIN DEFENSE WAS A
9 LITTLE BIT UNIQUE, YOU KNOW. AND I GUESS IT WAS LIKE THE
10 ZOLOFT APPROACH A LITTLE BIT. IT WAS A LITTLE BIT BEFORE IT'S
11 TIME, PERHAPS.

12 THE FAMILY SITUATION, YOU KNOW, I THINK TRADITIONALLY I
13 THINK EVERY DEATH PENALTY CASE I'VE BEEN INVOLVED IN, I'VE
14 SEEN SOME PSYCHO-SOCIAL DEVELOPMENTS SIDE, YOU KNOW, KIND
15 OF THE CASE WORKER COMPONENT.

16 AND MUCH LIKE IN THIS SITUATION, YOU KNOW, THEY HAD A
17 NEUROLOGIST; THEY HAD DOCTOR EVANS, DOCTOR PINCUS. THEY
18 HAD DOCTOR EVANS WHO DID THE QEEG. THEY HAD THE
19 PHARMACOLOGIST THAT TESTIFIED FOR A NUMBER OF HOURS ON
20 KIND OF THE RITALIN PSYCHOSIS.

21 AND THEN, HER JOB, AS I PERCEIVE IT, MS. CASCIO'S, WAS TO
22 KIND OF SEW ALL THESE PIECES TOGETHER. YOU KNOW, WE'VE
23 TALKED ABOUT HER BEING A GOOD OR BAD WITNESS. SHE DID A
24 GOOD JOB - AND I THINK THE RECORD WILL BEAR THIS OUT - OF
25 PULLING IT ALL TOGETHER.

1 AS I RECALL, BOTH SHE AND I BELIEVE THE PHARMACOLOGIST
2 REVIEWED EVERYTHING, YOU KNOW, ALL THE FAMILY RECORDS.
3 BECAUSE I REMEMBER THEY TALKED ABOUT CHIP; THEY TALKED
4 ABOUT THE DAD. AND YOU KNOW, THE PSYCHO-SOCIAL ISSUES AND
5 HOW THAT, YOU KNOW, THESE THINGS PLAYED IN.

6 AND HER JOB INITIALLY ON DIRECT WITH MR. BOYD WAS TO
7 BRING ALL OF THE PIECES TOGETHER FOR THE JURY. IN OTHER
8 WORDS, TO TAKE ALL KIND OF, I WON'T SAY SCATTERED
9 INFORMATION, BUT ALL THE DIFFERENT COMPONENTS THE DEFENSE
10 HAD GIVEN, TO THEN TRY TO SEW IT TOGETHER FOR THE JURY TO,
11 YOU KNOW, GIVE A CLEAR PICTURE OF MAYBE A REASON THAT JIM
12 DID THIS.

13 Q IS THAT WHY IN YOUR OBSERVATION IT'S IMPORTANT TO
14 UNDERMINE THE CREDIBILITY BEFORE THE JURY?

15 A YES SIR. YOU KNOW, I HAVE ETHICAL OBLIGATIONS, TOO. IF IT
16 WAS ALL VALID AND TRUTHFUL, THEN, YOU KNOW, I'VE GOT TO BE
17 CAREFUL THE WAY I CROSS THEM. BUT IT WAS DIFFICULT. I CAN
18 REMEMBER LOOKING AT THE RECORD. I SAID, YOUR HONOR, I OUGHT
19 TO BE ABOUT AN HOUR AND A HALF. AND I THINK, IF I RECALL, IT
20 WENT ON FOR HOURS.

21 AT SOME POINT I WENT THROUGH ALL THE UNDERLYING
22 MATTERS SHE HAD ADDRESSED BECAUSE SHE MADE SOME POINTS.
23 THE PROBLEM IS WHEN SHE GOT THROUGH SHE DID SAY THERE WERE
24 INDICATIONS OF SEXUAL ISSUES.

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 NOW, WHEN MR. HANCOCK WAS TALKING, I ASSUMED HE DIDN'T
2 HAVE ANY PHYSICAL EVIDENCE OF SEXUAL ISSUES. BUT SHE MADE
3 THE SUPPOSITION THAT THERE WAS PHYSICAL ABUSE; THAT THERE
4 WAS SEXUAL ABUSE, YOU KNOW, PAINTED THIS REALLY CLOUDY, OR,
5 DISTURBING PICTURE OF THAT FAMILY. AND SO, WHEN I CROSSED,
6 BASICALLY I HAD TO UNFOLD THE PIECES, SO TO SPEAK, AND TO GET
7 BACK TO, WERE YOU BASING IT ON THIS, WERE YOU BASING ON THAT.

8 SO, WE DID THAT ON THE FIRST PART. THEN THE SECOND PART
9 IS WHEN I SAID I WANT TO SHIFT GEARS AND I WANT TO LOOK AT
10 YOUR NOTES.

11 Q MUCH OF YOUR CROSS EXAMINATION CONCERNED THE NOTES
12 AND RELAYED MORE INFORMATION?

13 A YES SIR. AND I THINK AT THAT POINT IT WAS REALLY, YOU
14 KNOW, THAT WAS THE GUILT ISSUE. OF COURSE, HE WAS GUILTY AT
15 THAT POINT BECAUSE WE WERE IN THE SECOND PHASE OF THE TRIAL.
16 BUT MOST OF THE POINTS ABOUT THE NOTES WERE JUST THERE. YOU
17 KNOW, AT THAT POINT, TRUTHFULLY, I THINK THE CROSS DAMAGE
18 HAD BEEN DONE BECAUSE I'D UNDERMINED IT.

19 YOU KNOW, YOU REALLY GOT A HOUSE OF CARDS, I THINK I
20 SAID SOMETHING TO THAT EFFECT IN CLOSING.

21 YOU KNOW, THE ISSUES WITH WHAT JIM SAID JUST REALLY DID
22 NO MORE THAN CONFIRM WHAT THE PHYSICAL EVIDENCE SAID. YOU
23 KNOW, IF ANYTHING, IT SHORED THAT UP.

24 Q WAS THE PROSECUTION READY TO CROSS EXAMINE MR.
25 ROBERTSON, SHOULD HE HAVE TESTIFIED?

1 A YES SIR. I PERSONALLY WOULD HAVE CONDUCTED THAT CROSS
2 EXAMINATION.

3 Q AND YOU WERE PREPARED TO DO THAT?

4 A YOU HOPE. AS MUCH AS AN ATTORNEY CAN BE PREPARED. I
5 FELT LIKE I HAD A LOT OF MATERIAL TO WORK WITH. I FELT LIKE I
6 HAD A PRETTY GOOD GRASP ON MR. ROBERTSON. AND I FELT LIKE I
7 EXPECTED--

8 AGAIN, YOU KNOW, I DIDN'T TALK TO HIM EVERYDAY LIKE HIS
9 ATTORNEYS DID, BUT I FELT LIKE I KNEW WHAT I WOULD SEE FROM
10 THE STAND. AND I FELT I HAD THE ABILITY TO MEET THAT.

11 Q NOW, NEITHER THE STATE NOR THE DEFENSE PRESENTED
12 DOCTOR McMEEKIN?

13 A RIGHT.

14 Q DO YOU RECALL WHETHER OR NOT THE STATE HAD
15 INTERVIEWED HIM?

16 A I CAN'T REMEMBER IF LAW ENFORCEMENT DID OR NOT. I'M
17 GOING TO CHOOSE MY WORDS CAREFULLY HERE. I WOULD HAVE HAD
18 SOME CONCERNS WITH US PUTTING UP DOCTOR McMEEKIN FROM A
19 CREDIBILITY STANDPOINT. NI UNDERSTAND WHAT MR. BROWN WAS
20 SAYING EARLIER.

21 BUT THE ISSUE IS THE DEFENSE WAS ABLE TO GET THE GOOD OF
22 WHAT McMEEKIN'S INFORMATION BROUGHT WITHOUT GIVING ME A
23 CHANCE TO OBJECT TO---

24 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO THAT. HE
25 SAID HE DIDN'T INTERVIEW HIM AND DIDN'T KNOW IF LAW

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 ENFORCEMENT HAD. HOW CAN HE KNOW WHAT GOOD MR.
2 McMEEKIN HAD? THERE'S NO BASIS FOR HIS OPINION, YOUR HONOR.
3 IF HE DIDN'T INTERVIEW HIS NOTES, DIDN'T INTERVIEW DOCTOR
4 McMEEKIN, AND DIDN'T REVIEW HIS NOTES, HOW CAN HE KNOW WHAT
5 HE WOULD HAVE SAID?

6 MR. SALTER: I'LL SEE IF I CAN'T ESTABLISH A BETTER
7 FOUNDATION.

8 THE COURT: ALL RIGHT.

9 Q WHETHER OR NOT HE WAS ACTUALLY INTERVIEWED, HAD THE
10 INVESTIGATION COVERED THE NOTES THAT WERE AVAILABLE FROM
11 HIM?

12 A RIGHT. AND I WAS AWARE-- AS I RECALL - AND AGAIN, THE
13 RECORD SHOULD BEAR THIS OUT - BUT I THINK IT CAME-- THE
14 McMEEKIN CONNECTION CAME FROM SKIP MEYERS, AS I RECALL. I
15 DID NOT INTERVIEW DOCTOR McMEEKIN, BUT I KNEW, ARGUABLY,
16 THE PART HE PLAYED IN THE FAMILY TREATMENT OR THE THINGS OF
17 THAT NATURE.

18 I ALSO KNEW THAT IF THEY BROUGHT HIM IN THAT I WOULD
19 HAVE SOME THINGS TO CROSS EXAMINE HIM ON. AND, AGAIN, LIKE
20 YOU HAD ALLUDED TO EARLIER, SOME DISCIPLINARY THINGS, AND
21 THINGS OF THAT NATURE.

22 SO, THAT WAS MY POINT IN THAT REGARD, THAT I FELT LIKE
23 (A) I WOULDN'T PUT HIM PUT HIM BECAUSE, (B) I WOULD BE IN A
24 BETTER POSITION, REALLY, TO CROSS HIM IF NEED BE.

1 BUT AGAIN, AS FAR AS THE INVESTIGATION, TO MY KNOWLEDGE
2 I DID NOT SPEAK TO DOCTOR McMEEKIN.

3 Q WOULD YOU HAVE SUBPOENAED, OR WOULD YOU HAVE SEEN
4 ANY NECESSITY TO DO SO?

5 A WELL, YOU KNOW, AS A PROSECUTOR YOU CAN NEVER TALK TO
6 TOO MANY PEOPLE IF THEY'RE WILLING TO TALK TO YOU. I THINK, IN
7 THE OVERALL ASSESSMENT IN THE CASE, WHERE WE WERE AT ON
8 THAT CASE, I DID NOT REALLY HAVE A NEED TO.

9 MR. SALTER: I DON'T BELIEVE I HAVE ANYTHING FURTHER AT
10 THIS POINT, YOUR HONOR.

11 MR. BROWN: IF IT PLEASE THE COURT.

12 CROSS EXAMINATION BY MR. BROWN:

13 Q MR. POPE, YOU WILL AGREE WITH ME THAT GUILTY BUT
14 MENTALLY ILL DOESN'T MEAN THE JUDGE MAKES THE DECISION; YOU
15 STILL EMPANEL A JURY AS TO THE SENTENCING PHASE. ISN'T THAT
16 CORRECT?

17 A I DON'T BELIEVE SO. NOW, I MAY BE INCORRECT ON THAT. BUT I
18 THINK IF YOU PLEAD, ONCE YOU ENTER A GUILTY PLEA IN A DEATH
19 PENALTY CASE, THE JUDGE DOES THE SENTENCING, IF THERE'S A PLEA.

20 Q ARE YOU FAMILIAR WITH THE CASE, STATE V. HORNSBY, WHERE
21 A JURY WAS EMPANELLED AFTER HE PLEAD GUILTY BUT MENTALLY
22 ILL, THE JUDGE FOUND GUILTY BUT MENTALLY ILL AND THEY WENT
23 TO THE SENTENCING PHASE WHERE A JURY WAS EMPANELLED?

24 A I'M NOT AWARE OF THAT CASE. I'M NOT SAYING IT DOESN'T
25 EXIST. I'M NOT AWARE OF IT.

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

- 1 Q ASSUMING, ARGUENDO, I'M CORRECT---
- 2 A SURE.
- 3 Q --YOU COULD STILL HAVE THE JURY?
- 4 A WELL, IF YOU'RE CORRECT, THEN YOU'RE CORRECT.
- 5 Q AND THEN HE COULD HAVE HAD A TRIAL ON THE GUILTY BUT
- 6 MENTALLY ILL PROPOSITION ON A PLEA BARGAIN, COULD HE NOT
- 7 HAVE?
- 8 A ASSUMING, ARGUENDO, IF YOU SAY THERE'S A CASE THAT SAYS
- 9 THAT, THEN THAT'S THE CASE.
- 10 Q AND HE DOESN'T HAVE TO HAVE YOUR CONSENT TO DO THAT,
- 11 DOES HE? HE CAN JUST COME UP HERE AND PLEAD GUILTY BUT
- 12 MENTALLY ILL, AND LET A JUDGE DECIDE? IF YOU'VE PROVED
- 13 BEYOND A REASONABLE DOUBT HE COMMITTED THE CRIME, LET THE
- 14 JUDGE DECIDE, OR A JURY DECIDE, OR A JURY DECIDE WHAT THEY'VE
- 15 SHOWN BY THE PREPONDERANCE OF THE EVIDENCE, HE'S MENTALLY
- 16 ILL?
- 17 A I DON'T KNOW. OVER THE YEARS WE'VE STRUGGLED WITH CAN
- 18 YOU COME UP HERE AND PLEAD ANYTHING OTHER THAN STRAIGHT
- 19 UP. SO, THAT MAY BE MORE A QUESTION OF LAW. I THINK,
- 20 ARGUABLY, THE JUDGE CAN TAKE JUDICIAL NOTICE OF WHETHER THE
- 21 CORRECT STATE OF LAW.
- 22 Q THAT WAS NEVER PROFFERED TO YOU OR ANYTHING? RIGHT?
- 23 A WHAT IS THAT?
- 24 Q THAT OFFER OF---

1 A FROM THE DEFENSE, LET US PLEAD GUILTY BUT MENTALLY ILL,
2 OR ANY VARIATION?

3 Q RIGHT.

4 A TO MY RECOLLECTION, NO.

5 Q SO, THEY NEVER CAME TO YOU WITH THAT OFFER OR
6 SUGGESTED THAT OR ANYTHING, TO THE BEST OF YOUR MEMORY?

7 A TO THE BEST OF MY MEMORY, WE WERE ALWAYS GOING TO
8 TRIAL.

9 Q DO YOU AGREE WITH MR. HANCOCK IN YOUR ASSESSMENT OF
10 THE FACTS OF THIS CASE, THAT THIS WASN'T A CASE WHERE IN
11 DEFENDING IT, THERE WAS SO MUCH CONCERN WITH THE GUILT
12 PHASE AS THE SENTENCING PHASE?

13 A I THINK, OVERALL, THAT'S ACCURATE . YOU KNOW, I ALWAYS
14 HAVE CITIZENS THAT SAY, WELL, THEY CONFESSED; WHY ARE YOU
15 EVEN HAVING TO TRY IT. SO I NEVER WANT TO TAKE IT FOR GRANTED.
16 I MEAN, YOU KNOW, SOME JUROR COULD HAVE BOUGHT THE BROKEN
17 GLASS OR THE NOTE LEFT.

18 BUT AS A PRACTICAL MATTER, WE HAVE TO PROVE OUR CASE
19 BEYOND A REASONABLE DOUBT. BUT WE WERE PREPARED-- TO
20 FAIRLY ANSWER YOUR QUESTION, I FELT LIKE WE WERE PREPARED
21 FOR A PENALTY PHASE ULTIMATELY.

22 Q AND YOU WOULD AGREE WITH ME THE EVIDENCE OF HIS GUILT
23 WAS OVERWHELMING, FROM FORENSICS, DNA, SEROLOGY, ET CETERA,
24 ET AL, MEREDITH MOON?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A WELL, AFTER THE PROSECUTION GOT THROUGH PRESENTING IT,
2 IT WAS.

3 Q AND THE JURY WAS ONLY OUT A HOUR AND FIFTEEN MINUTES
4 IN THE GUILT PHASE. RIGHT?

5 A IF YOU SAY SO. I DON'T RECALL.

6 Q A VERY SHORT PERIOD OF TIME FOR A MURDER CASE?

7 A I'M NOT BEING EVASIVE. I JUST DON'T REMEMBER. BUT IF IT
8 WAS, THAT WOULDN'T SURPRISE ME.

9 Q NOW, YOU TESTIFIED THAT YOU THOUGHT MR. BOYD FOUGHT
10 THE INTERDICTION OF THOSE NOTES?

11 A INITIALLY, I THINK. YOU KNOW, I SAY MR. BOYD, THE DEFENSE.

12 Q RIGHT.

13 THE COURT: LET ME BACK YOU UP JUST A MINUTE. I WANT TO
14 SEE IF I CAN GET YOU TO CLARIFY YOUR POSITION ON THIS GUILTY
15 BUT MENTALLY ILL.

16 THE STATE VERSUS HORNSBY WAS A CASE IN WHICH THE
17 DEFENDANT PLEAD NOT GUILTY BY REASON OF INSANITY AND IT
18 WENT TO THE JURY IN THE GUILT PHASE.

19 MR. BROWN: CORRECT.

20 THE COURT: AND THE JURY FOUND HIM GUILTY BUT MENTALLY
21 ILL.

22 MR. BROWN: CORRECT.

23 THE COURT: SO, IT WASN'T A SITUATION WHERE HE PLEAD
24 GUILTY BUT MENTALLY ILL.

1 MR. BROWN: I STILL THINK FROM THAT STATUTE, YOUR HONOR,
2 ON THAT CASE LAW, YOU CAN STILL EMPANEL A JURY TO MAKE THE
3 DETERMINATION WHETHER HE'S GUILTY BUT MENTALLY ILL BECAUSE
4 THE BURDEN OF PROOF IS THE SAME ON THE STATE AND THE SAME ON
5 THE DEFENSE UNDER STATUTE.

6 THE COURT: OKAY. BUT DO YOU TAKE THE POSITION THAT THE
7 DEFENDANT HAD THE RIGHT OVER THE STATE'S OBJECTION TO PLEAD
8 GUILTY BUT MENTALLY ILL?

9 MR. BROWN: I DON'T KNOW, YOUR HONOR. I CALLED THE
10 CENTER FOR DEATH PENALTY RESOURCE. THEY SAID THAT'S AN
11 INTERESTING QUESTION. THEY KNEW OF NO CASE IN SOUTH
12 CAROLINA.

13 BUT THE STATUTE, I GUESS MY POINT BEING, YOUR HONOR, IT
14 DOESN'T FORBID IT AND IT MAKES REFERENCE TO CASES.

15 THE COURT: WELL, THE STATUTE REQUIRES A FACTUAL
16 FINDING.

17 MR. BROWN: CORRECT.

18 THE COURT: BEFORE THERE CAN BE A PLEA---

19 MR. BROWN: CORRECT.

20 THE COURT: --OR A CONVICTION OF GUILTY BUT MENTALLY
21 ILL.

22 MR. BROWN: IT TAKES A FACTUAL FINDING AS I UNDERSTAND
23 IT, YOUR HONOR.

24 THE COURT: WOULDN'T THE STATE HAVE A RIGHT TO A TRIAL
25 BY JURY ON THAT FACTUAL FINDING?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 MR. BROWN: YES SIR. BOTH SIDES WOULD, I WOULD SUBMIT,
2 YOUR HONOR.

3 THE COURT: SO, IF THAT'S TRUE, THE DEFENDANT WOULD NOT
4 HAVE THE RIGHT TO PLEAD GUILTY BUT MENTALLY ILL OVER THE
5 STATE'S OBJECTION.

6 MR. BROWN: HE COULD PLEAD TO IT, YOUR HONOR. HE COULD
7 REQUEST THAT THAT BE ONE OF THE FORMS OF THE VERDICT. I GUESS
8 MY POINT BECOMES---

9 THE COURT: I JUST WANT TO MAKE SURE I UNDERSTAND YOUR
10 POSITION.

11 MR. BROWN: YES SIR.

12 THE COURT: SURE, THE DEFENDANT CAN ASK FOR IT.

13 MR. BROWN: YES SIR.

14 THE COURT: BUT WHEN THE DEFENDANT, YOU KNOW,
15 TECHNICALLY, WE USUALLY SKIP OVER THIS STAGE, BUT
16 TECHNICALLY, YOU'RE GETTING READY TO START A TRIAL YOU WANT
17 TO KNOW HOW THE DEFENDANT PLEADS. AND IF THE DEFENDANT
18 PLEADS GUILTY THEN YOU GO ONE WAY. IF THE DEFENDANT PLEADS
19 NOT GUILTY, YOU GO INTO TRIAL.

20 MR. BROWN: WELL, YOUR---

21 THE COURT: IF THE DEFENDANT PLEADS GUILTY BUT-- IF THE
22 DEFENDANT ASKS FOR A VERDICT OR A JUDGMENT OF GUILTY BUT
23 MENTALLY ILL AND THE STATE OBJECTS TO IT, THEN THERE'S NO
24 GUILTY PLEA, THERE IS A TRIAL.

25 MR. BROWN: YOUR HONOR, I GUESS---

1 THE COURT: LET ME ASK---

2 MR. BROWN: I GUESS I'M NOT MAKING MYSELF CLEAR. MY OWN
3 POSITION IS THAT THE DEFENSE IN THIS CASE COULD HAVE BROUGHT
4 IN EVIDENCE IN THE GUILT PHASE.

5 THE COURT: WELL, THAT'S WHAT I'M ASKING YOU. ARE YOU
6 TELLING-- DO YOU TAKE THE POSITION THAT DEFENSE COUNSEL AT
7 TRIAL SHOULD HAVE ENTERED A PLEA OF GUILTY BUT MENTALLY
8 ILL---

9 MR. BROWN: IF THAT---

10 THE COURT: ---OR DO YOU TAKE THE POSITION THAT THEY
11 SHOULD HAVE OFFERED EVIDENCE OF GUILTY BUT MENTALLY ILL
12 AND ASK THE JURY TO FIND HIM GUILTY BUT MENTALLY ILL?

13 MR. BROWN: EITHER ONE, YOUR HONOR, BECAUSE THEY---

14 THE COURT: ALL RIGHT, THEN. TAKING THAT FIRST ONE: YOUR
15 POSITION THAT THE DEFENDANT, THE DEFENSE SHOULD HAVE PLEAD
16 HIM GUILTY BUT MENTALLY ILL, DO YOU BELIEVE THAT THE DEFENSE
17 HAD THE RIGHT TO DO THAT OVER THE STATE'S OBJECTION?

18 MR. BROWN: YES SIR.

19 THE COURT: ALL RIGHT.

20 MR. BROWN: YES SIR, I DO. AND TO ANSWER THE SECOND
21 PRONG OF YOUR ARGUMENT, YOUR HONOR. IF, AS MR. HANCOCK
22 ADMITTED, AND I ASSUME MR. BOYD IS GOING TO TESTIFY, TOO, THE
23 GUILT PHASE WAS GONE, THIS BECAME A QUESTION OF MENTAL
24 ILLNESS, I SUBMIT THAT THE BETTER STRATEGY WOULD HAVE BEEN
25 IN THE GUILT PHASE TO START BUILDING THAT CASE TOWARD

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 MENTAL ILLNESS AND AT LEAST REQUEST A CHARGE OF IT WHEN YOU
2 GET THE JURY OF GUILTY BUT MENTALLY ILL, WHICH WOULD HAVE
3 SET THE TONE FOR THE SENTENCING PHASE.

4 IT ALL GOES BACK TO STRATEGY, YOUR HONOR. I KNOW
5 HINDSIGHT IS TWENTY/TWENTY. IF THAT WAS THEIR TO STRATEGY AT
6 THE BEGINNING, YOUR HONOR, I THINK THEY SHOULD HAVE
7 FOLLOWED THE WHOLE WAY THROUGH.

8 THE COURT: ALL RIGHT.

9 Q YOU'RE FAMILIAR WITH THE HEARING FROM FEBRUARY 19, 1998?

10 A SURE.

11 Q I'M GOING TO ASK YOU IF YOU CAN READ LINE 17 THROUGH, I
12 GUESS IT WOULD BE LINE 9, ON THE NEXT PAGE, CONCERNING THE
13 NOTES AND SO FORTH.

14 A DO YOU WANT ME TO READ IT TO MYSELF?

15 Q YES SIR.

16 A OKAY.

17 Q SEE IF IT WILL REFRESH YOUR MEMORY.

18 A (PAUSE TO READ TRANSCRIPT) I'VE READ THAT. DO YOU MIND
19 IF I LOOK BACK?

20 Q YES SIR. FOR YOUR INFORMATION, MR. BRACKETT FILED THAT
21 MOTION---

22 A RIGHT.

23 Q ---AT YOUR REQUEST AND ON YOUR BEHALF. JUDGE HAYES IS
24 TALKING ABOUT THE NOTES FROM THE EXPERTS.

25 A (PAUSE TO READ TRANSCRIPT) ALL RIGHT.

1 Q REALIZING THIS CASE WAS TEN YEARS AGO, ---

2 A SURE.

3 Q ---AND YOU'VE HAD CASES IN BETWEEN, IS THAT TRANSCRIPT
4 INDICATIVE THAT MR. BOYD DID NOT OBJECT TO THE EXCHANGE OF
5 NOTES?

6 A IT APPEARS THAT HE AGREED TO WHAT THE COURT TOLD HIM,
7 TO COMPLY WITH THE RULE OR WHATEVER.

8 Q DOES MR. BOYD OBJECT, OR DOES HE SAY, WE HAVE NO
9 OBJECTION TO THAT? HE DOESN'T OBJECT TO IT, DOES HE?

10 A AT THIS TIME IT APPEARS THAT HE DIDN'T. LET ME MAKE SURE
11 I'M... THE DISCUSSIONS CONCERNING WHETHER THE WITNESSES WILL
12 BRING THEIR NOTES AND UNDERLYING DATA, JUDGE HAYES SAYS,
13 "IT'S NOT UNUSUAL TO HAVE THEM SAY WHEN THEY GET HERE THAT
14 THEY DIDN'T HAVE IT; I RELIED ON IT, BUT I DIDN'T BRING IT; I DIDN'T
15 THINK I'D NEED IT; ALL I'VE GOT IS MY SUMMARY."

16 AND JUDGE HAYES SAYS TO MR. BOYD: "THEY JUST WANT THE
17 EXPERTS TO BRING THEIR FILE." AND MR. BOYD SAYS, WE HAVE NO
18 OBJECTION TO THEM BRINGING THEIR FILE.

19 Q SO, HE DIDN'T OBJECT TO TURNING OVER NOTES. IS THAT
20 CORRECT?

21 A AT THAT STAGE IN THAT HEARING IT APPEARS THAT HE AGREED
22 WITH WHAT THE COURT WAS SAYING.

23 Q CAN YOU SHOW ME ANYWHERE IN THE TRANSCRIPT WHERE HE
24 OBJECTED?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A I HAVE NOT REVIEWED THE WHOLE TRANSCRIPT. I KNOW IT
2 WAS A HARD FOUGHT CASE.

3 Q I UNDERSTAND.

4 A IF MR. BOYD WOULD COME IN TOMORROW AND SAY I NEVER
5 OBJECTED TO IT, I WOULD NOT DISPUTE THAT.

6 Q OKAY. AND IF HE DIDN'T OBJECT TO IT, AS THINGS STAND NOW
7 WITH MS. CASCIO, THAT WOULD BE A MISTAKE, WOULD IT NOT?

8 A I THINK IF HE DIDN'T OBJECT TO IT, HE WAS JUST AGREEING TO
9 COMPLY WITH THE RULE OF EVIDENCE THAT REQUIRES THAT TO BE
10 COMPLIED WITH.

11 Q LET'S DISCUSS RULE 705. ARE YOU FAMILIAR WITH IT?

12 A I'VE SEEN IT FROM TIME TO TIME. I PROBABLY COULD BE
13 REFRESHED.

14 THE COURT: YOU MIGHT CAN SAVE A LITTLE TIME BY---

15 MR. BROWN: THE RULE SPEAKS FOR ITSELF, YOUR HONOR.

16 THE COURT: WELL, BUT, MY RULING IS GOING TO BE IF THE
17 WITNESS TESTIFIES THE NOTES GET TURNED OVER, NO EXCEPTIONS.
18 AND THE SUPREME COURT CAN CHANGE MY MIND, BUT THAT WILL BE
19 MY RULE.

20 MR. BROWN: WHAT IF THE NOTES AREN'T HERE, OUT OF
21 CURIOSITY?

22 THE COURT: IF THE NOTES AREN'T HERE?

23 MR. BROWN: YES SIR. THAT WAS GOING TO BE MY NEXT STEP.

24 THE COURT: WELL, I DON'T KNOW. IF YOU WERE ABOUT TO
25 DEBATE THE LEGAL ISSUE, --

1 MR. BROWN: YES SIR, THE---

2 THE COURT: ---ABOUT WHETHER OR NOT THE---

3 MR. BROWN: ----RULE SPEAKS FOR ITSELF.

4 THE COURT: --SHOULD HAVE OBJECTED-- THE DECISION TO ME
5 IS WHETHER OR NOT TO CALL A WITNESS. IF YOU CALL THE WITNESS,
6 THE NOTES ARE GOING TO GET TURNED OVER.

7 MR. BROWN: YES SIR.

8 Q YOU GOT THE NOTES THE NIGHT BEFORE CROSS EXAMINATION
9 OF CASCIO. IS THAT HOW YOU REMEMBER IT?

10 A YES SIR. AND, AGAIN, BEING REFRESHED FROM THE RECORD,
11 THAT IS CORRECT.

12 Q DO YOU RECALL SUBSEQUENTLY DISCUSSING THESE NOTES
13 WITH LYNN RIDDLE?

14 A WHO IS-- THAT NAME SOUNDS FAMILIAR.

15 Q I BELIEVE SHE WROTE A BOOK ABOUT THIS MATTER CALLED
16 FAMILY BLOOD.

17 A IT SEEMS LIKE SHE CAME TO MY OFFICE. YOU'RE NOT TALKING
18 ABOUT DURING THE TRIAL?

19 Q AFTER THE TRIAL.

20 A RIGHT.

21 Q AND DID YOU TELL HER THAT YOU EAGERLY READ THROUGH
22 THOSE NOTES BECAUSE YOU COULDN'T BELIEVE WHAT YOU WERE
23 READING?

24 A THAT I COULDN'T BELIEVE WHAT I WAS READING IN THOSE
25 NOTES?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

- 1 Q THAT WAS SO GOOD FOR Y'ALL?
- 2 A OH, ABSOLUTELY.
- 3 Q THAT YOU AND MR. BRACKETT HIGHLIGHTED AND
- 4 HIGHLIGHTED ALL THE INFORMATION THAT YOU BELIEVED WOULD
- 5 HELP THEIR CASE?
- 6 A HELP OUR CASE?
- 7 Q YES SIR.
- 8 A ABSOLUTELY.
- 9 Q DID YOU LATER TELL HER IT WAS LIKE BEING A WIDE RECEIVER
- 10 ON A FOOTBALL FIELD IN THE END ZONE WIDE OPEN, JUST PRAYING
- 11 YOU DON'T DROP THE FOOTBALL, ONCE YOU GOT THOSE NOTES?
- 12 A I TELL YOU, WHEN I WAS DOING THE CROSS EXAMINATION, AS I
- 13 INDICATED EARLIER, I WENT THROUGH ALL THE UNDERLYING DATA
- 14 FIRST. AND JIM'S PART TYING IN TO SHORE THINGS UP WAS JUST A
- 15 COLLATERAL GIFT, YOU KNOW. AND I WAS JUST HOPING I DIDN'T
- 16 BLOW IT.
- 17 Q SO, THESE NOTES WERE VERY HELPFUL TO THE PROSECUTION IN
- 18 THIS CASE. IS THAT CORRECT?
- 19 A I WOULD SAY IT WAS A BONUS.
- 20 Q IT WAS A BONUS?
- 21 A A BONUS, A BENEFIT, A COLLATERAL BENEFIT. I THINK HAD WE
- 22 NOT HAD THEM-- I UNDERMINED-- AND AGAIN, IF YOU WOULD LOOK
- 23 AT THE TRANSCRIPT, IT'S KIND OF TWO-PART CROSS. THE FIRST PART
- 24 WAS DEALING WITH, WELL, WHAT YOU'RE SAYING IS THE DATA

1 REALLY, TOTALLY IT. AND THAT WAS SOMEWHAT EFFECTIVE. BUT,
2 YOU KNOW, COLLATERALLY, THIS WAS NICE.

3 Q SURE. AND YOU READ THE REPORT VERSUS THE NOTES. IS THAT
4 CORRECT?

5 A ABSOLUTELY.

6 Q AND THE REPORT DIDN'T MATCH THE NOTES, DID IT?

7 A WELL, I THINK THAT THE REPORT DREW HER VIEW OF
8 CONCLUSIONS FROM THE TOTALITY OF THE DATA. I JUST ARGUED
9 THAT THE DATA COULD ALSO SHOW DIFFERENT CONCLUSIONS.

10 Q AND SHE LEFT OUT THE DAMNING THINGS THAT WE WENT
11 THROUGH YESTERDAY. YOU WERE HERE YESTERDAY. I DON'T WANT
12 TO REHASH THAT TESTIMONY.

13 A SURE, SURE.

14 Q BUT SHE LEFT ALL THE DAMNING EVIDENCE OF THE REPORT. IS
15 THAT CORRECT?

16 A MY RECOLLECTION-- I MEAN, AGAIN, I HAVEN'T LOOKED AT THE
17 REPORT IN A LONG TIME, BUT IF YOU'VE GOT A COPY OF IT, I WON'T
18 WASTE THE COURT'S TIME. BUT I CAN ALMOST GUARANTEE YOU
19 WITHOUT EVER EVEN READING IT AGAIN THAT IT WAS NOT IN THERE.
20 YOU KNOW, THESE WERE THE THINGS THAT SHE CHOSE THAT, YOU
21 KNOW, THE MENTAL ILLNESS THINGS, THE THINGS THAT SHORED UP
22 HER DIRECT TESTIMONY. I READ IT AT THE TIME, BUT I WON'T WASTE
23 YOUR TIME READING UNLESS YOU NEED ME TO.

24 Q AND YOU WILL AGREE IT WAS A TACTICAL ERROR FOR THEM TO
25 CALL THAT WITNESS?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A I THINK IT WAS A JUDGMENT CALL THEY HAD TO MAKE.

2 BECAUSE, AGAIN, HAD THEY NOT PUT HER UP - AND I GUESS YOU'RE
3 ASKING MY OPINION - HAD THEY NOT PUT HER UP, THEY HAD KIND OF
4 A SHOTGUN MITIGATION. YOU KNOW, THROW IT AGAINST THE WALL
5 AND HOPE SOMETHING STICKS.

6 HER WHOLE ROLE AS THE PSYCHO-SOCIAL ANALYST, OR
7 WHATEVER YOU CALL THEM, CASEWORKERS, HAD BEEN IN THE PAST
8 IN THESE DEATH PENALTY CASES IS TO SEW ALL THESE PIECES
9 TOGETHER TO TRY TO PAINT THE PICTURE THAT WOULD GIVE ONE OR
10 MORE OF THESE JURORS A REASON TO, YOU KNOW, ANY REASON OR
11 NO REASON AT ALL, TO GIVE A LIFE SENTENCE.

12 SO, I CAN'T SAY THAT THAT ONE THING, YOU KNOW. I THINK WE
13 HAD A STRONG CASE THROUGHOUT. BUT I DON'T THINK THAT ONE
14 THING THREW IT.

15 Q THAT WAS THE LAST WITNESS THE DEFENSE PUT UP, WAS IT
16 NOT? THE LAST EXPERT WITNESS?

17 A YEAH. BECAUSE I WAS THINKING THERE WAS SOME FAMILY,
18 PEOPLE THAT SAID WHAT TERRY AND EARL WOULD HAVE WANTED OR
19 SOMETHING LIKE THAT.

20 Q YOU WOULD AGREE WITH ME THAT DOCTOR PINCUS MADE A
21 GOOD WITNESS FOR THE DEFENSE?

22 A THE BEST I RECALL. IT SOUNDS SELF-SERVING, BUT I THINK WE
23 MADE SOME HAY WITH EACH ONE OF THEM. BUT, YOU KNOW, ---

24 Q NO WHERE NEAR LIKE THE FIRE YOU MADE WITH MS. CASCIO,
25 WAS IT?

1 A I HAD A VERY GOOD CROSS EXAMINATION OF MS. CASCIO.

2 Q AS A MATTER OF FACT, THE CROSS EXAMINATION OF MS.
3 CASCIO BECAME A TEXT FILM FOR YOUR OFFICE FOR YOUR YOUNG
4 PROSECUTORS, DID IT NOT?

5 A I HAVE USED THAT CROSS NUMEROUS TIMES WITH
6 PROSECUTORS.

7 Q PRIOR TO THAT, OTHER THAN THE TESTIMONY OF MEREDITH
8 MOON, WHICH IS IN THE RECORD, THERE WERE NO INCULPATORY
9 STATEMENTS INTRODUCED INTO EVIDENCE BY MR. ROBERTSON, WERE
10 THEY, TO YOUR MEMORY, OTHER THAN THE TESTIMONY OF MEREDITH
11 MOON?

12 A RIGHT. I WAS GOING TO SAY, I CAN'T REMEMBER HOW IT
13 PLAYED OUT WITH-- I WAS TRYING TO REMEMBER WHEN YOU HAD
14 ASKED YESTERDAY ABOUT WHAT JIM HAD SAID OR NOT SAID. I KNOW
15 THERE WAS SOMETHING IN PHILADELPHIA THAT---

16 Q I'M SORRY. JIM?

17 A MR. ROBERTSON.

18 Q OKAY.

19 A I CAN'T REMEMBER WHAT IT WAS HE-- NOT JIM BOYD. WHAT
20 HE SAID OR DIDN'T SAY. IF THE RECORD BEARS OUT THAT THAT'S
21 WHAT CAME OUT, I WOULDN'T DISPUTE THAT. I CAN'T RECALL. BUT I
22 KNOW THERE WERE SOME THINGS THAT MAYBE HE SAID THAT HE
23 SAID HE INVOKED HIS RIGHTS AND JUDGE HAYES EXCLUDED.

24 Q YOU CHOSE NOT TO USE DOCTOR McMEEKIN. IS THAT CORRECT?

25 A THAT'S CORRECT.

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 Q AND THAT WAS BECAUSE OF HIS DISCIPLINARY PROBLEMS?

2 A IT WAS KIND OF A COMBINATION OF FACTORS, BUT THE GIST OF
3 IT IS WE HAD NOTHING TO GAIN FROM PUTTING HIM UP AND HE COULD
4 BE CROSS EXAMINED. AND IT WAS REALLY NOTHING THAT ADDED TO
5 OUR CASE.

6 Q DID YOU PERSONALLY REVIEW THOSE RECORDS, OR DID
7 SOMEONE IN YOUR INVESTIGATORY STAFF OR LAW ENFORCEMENT
8 REVIEW THEM?

9 A IF YOU SHOW ME A PARTICULAR DOCUMENT I MIGHT BE ABLE
10 TO TELL YOU. YOU KNOW, I'M NOT TRYING TO BELABOR THIS, BUT I
11 MAY BE ABLE TO TELL YOU IF I READ IT OR NOT. BECAUSE, YOU
12 KNOW, I WENT THROUGH A LARGE VOLUME OF STUFF. BUT IF MERRY
13 -- COLLINS TOLD ME, FOR EXAMPLE, THAT THIS IS THE SUMMARY, I
14 WOULDN'T DISPUTE THAT EITHER.

15 Q OF WHAT YOU REVIEWED, ARE YOU AWARE THAT IN DOCTOR
16 McMEEKIN'S RECORDS, NOWHERE DOES TERRY BLAME HER PROBLEMS
17 ON HER CHILDREN?

18 A I---

19 Q NOT DOCTOR MEYERS, BUT DOCTOR McMEEKIN.

20 A RIGHT, RIGHT. THAT WOULDN'T NECESSARILY SURPRISE ME.
21 YOU KNOW, IT'S ALMOST, LIKE I SAID, LIKE PIXELS. THERE ARE ALL
22 THESE SMALL PICTURES AND THEN YOU GET BACK AND SEE, OR
23 PIECES, AND YOU GET BACK AND YOU SEE THE BIGGER PICTURE. I
24 COULDN'T TELL YOU RIGHT NOW AND PROBABLY COULDN'T TELL YOU
25 THEN WHICH DOCTOR WAS SAYING THAT TERRY SAID THIS WAS A

1 PROBLEM. IT WAS JUST CLEAR, EARLIER, THAT JIM AND CHIP WERE
2 BRINGING SOME PROBLEMS TO THE FAMILY. NOT THAT THEY DIDN'T
3 HAVE THEIR OWN PROBLEMS INDEPENDENTLY.

4 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

5 MR. SALTER: YOUR HONOR, I DON'T THINK I HAVE ANY RE-
6 DIRECT.

7 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN. ARE YOU
8 READY TO CALL YOUR NEXT WITNESS.

9 MR. BROWN: YOUR HONOR, MR. BOYD IS GOING TO BE HERE
10 TOMORROW.

11 THE COURT: HE'S YOUR LAST WITNESS?

12 MR. BROWN: YES SIR.

13 MR. SALTER: YOUR HONOR, I COULD PUT UP A BRIEF WITNESS.
14 I'VE ALREADY DISCUSSED THIS WITH COUNSEL.

15 MR. BROWN: WITHOUT OBJECTION.

16 THE COURT: SO, YOU'RE JUST GONNA PUT UP ONE MORE
17 WITNESS AND YOU'LL BE DONE?

18 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

19 THE COURT: NOW, ISN'T MR. BOYD GONNA BE GONE? NO, HE'LL
20 BE HERE TOMORROW. IT'S MR. BRACKETT---

21 MR. BROWN: MR. BRACKETT.

22 THE COURT: ---WHO'S GOING TO BE HERE TOMORROW
23 AFTERNOON. MR. BOYD WILL BE HERE IN THE MORNING.

24 MR. BROWN: YES SIR.

25 THE COURT: ALL RIGHT. PUT UP WHOEVER YOU CAN PUT UP

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 TODAY.

2 MR. SALTER: ALL RIGHT, SIR. WE WOULD CALL MERRY

3 COLLINS.

4 MERRY A. COLLINS, WHO AFFIRMED,

5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. SALTER:

7 Q MS. COLLINS, PLEASE STATE YOUR FULL NAME FOR THE

8 RECORD, AND SPELL YOUR FIRST NAME.

9 A MERRY A. COLLINS, M-E-R-R-Y.

10 Q HOW YOU CURRENTLY EMPLOYED?

11 A I'M AN INVESTIGATOR WITH THE SOLICITOR, SIXTEENTH CIRCUIT

12 SOLICITOR'S OFFICE.

13 Q HOW LONG HAVE YOU BEEN THERE?

14 A TWELVE YEARS, TWELVE AND A HALF YEARS.

15 Q TWELVE AND A HALF YEARS. SO, YOU WERE THERE DURING THE

16 COURSE OF THE TRIAL OF MR. ROBERTSON?

17 A YES SIR, I WAS.

18 Q WHAT WERE YOUR DUTIES IN CONNECTION WITH THAT TRIAL?

19 A BASICALLY DISCOVERY AND HELPING CORRAL THE

20 PAPERWORK, MORE OR LESS, AND MAKING SURE THAT ALL THE

21 SOLICITORS HAD THEIR COPIES AND WHATNOT.

22 Q WHEN YOU SAY DISCOVERY, WHAT PRECISELY WERE YOUR

23 RESPONSIBILITIES?

24 A ANY DISCOVERY THAT WE HAD TO GIVE OUT, I GAVE TO THE

25 DEFENSE. AND AT THAT TIME I BELIEVE I WASN'T NUMBERING THE

1 PAGES MYSELF; I WAS HAVING THE DEFENSE SIGN THE BACK OF MY
2 DISCOVERY PAGE. I WOULD HAVE MY DISCOVERY COPY AND A COPY
3 FOR THEM. AND I WOULD FLIP OVER PAGE BY PAGE WITH THEM AND
4 THEY WOULD INITIAL MY COPY THAT THEY HAD RECEIVED THAT
5 PAGE OF DISCOVERY.

6 Q WERE YOU ALSO RESPONSIBLE FOR RECEIVING CERTAIN
7 DISCOVERY INFORMATION?

8 A SOMETIMES DISCOVERY WOULD EITHER BE GIVEN TO THE
9 SOLICITOR OR DIRECTLY TO ME, AND IT WAS MY RESPONSIBILITY TO
10 KEEP IT SEPARATE IN THAT I COULD SHOW THAT THAT'S WHAT THEY
11 GAVE US. AND THEN I WOULD MAKE COPIES FOR MY ATTORNEYS'
12 NOTEBOOKS IN THE OFFICE.

13 Q CAN YOU TELL THE COURT WHETHER OR NOT YOU RECALL
14 RECEIVING ANY DISCOVERY INFORMATION DURING THE COURSE OF
15 THE TRIAL?

16 A YES SIR. ACTUALLY, DURING THE TRIAL, I'M NOT SURE AT WHAT
17 POINT DURING THE TRIAL, BUT I REMEMBER IT BEING DURING THE
18 TRIAL ONE EVENING, WADE COMER KNOCKED AT OUR BACK DOOR
19 RIGHT AFTER WE RECESSED FOR THE DAY AND HANDED ME THIS BOX
20 OF DISCOVERY.

21 Q WHEN YOU SAY THIS BOX OF DISCOVERY, IS THIS THE BOX
22 SITTING HERE?

23 A YES SIR. IT WAS IN THIS KINKO'S BOX.

24 Q HAVE YOU REVIEWED THE DOCUMENTS THAT ARE IN THAT
25 BOX?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A IVE ACTUALLY NOT LOOKED AT THEM PAGE BY PAGE, BUT I
2 HAVE FLIPPED THROUGH TO MAKE SURE THAT WAS WHAT WAS IN
3 THAT BOX.

4 Q SO, THIS IS IN FACT WHAT YOU RECEIVED FROM THE DEFENSE?

5 A YES SIR.

6 Q AND THAT PURPORTED TO BE THE MEDICAL RECORDS AND
7 MENTAL HEALTH RECORDS THAT THEY HAD THEY WERE DISCLOSING
8 TO THE STATE?

9 A YES SIR, IT APPEARS SO.

10 MR. SALTER: YOUR HONOR, I WOULD OFFER THIS AS A STATE'S
11 EXHIBIT. WE CAN MAKE A COPY OF THESE AND SUBSTITUTE THEM
12 FOR THE ORIGINALS LATER.

13 MR. BROWN: WITHOUT OBJECTION.

14 THE COURT: THAT'S FINE.

15 (WHEREUPON DEFENDANT'S EXHIBIT FIVE WAS ADMITTED INTO
16 EVIDENCE WITHOUT OBJECTION)

17 MR. SALTER: NOTHING FURTHER.

18 MR. BROWN: NO QUESTIONS, YOUR HONOR.

19 THE COURT: THANK YOU. YOU MAY STEP DOWN. IS THERE
20 ANYTHING ELSE THAT WE CAN TODAY?

21 MR. BROWN: I DON'T KNOW OF ANYTHING, YOUR HONOR.

22 MR. SALTER: NOTHING FROM THE STATE, YOUR HONOR.

23 THE COURT: ALL RIGHT. WE'LL ADJOURN AND RECONVENE AT
24 1:00 TOMORROW.

25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	:	
SIXTEENTH JUDICIAL CIRCUIT	)	SIXTEENTH JUDICIAL CIRCUIT

JAMES D. ROBERTSON,	)	
	:	
APPLICANT-PLAINTIFF,	)	
	:	
VERSUS	)	TRANSCRIPT OF RECORD
	:	
STATE OF SOUTH CAROLINA,	)	06-CP-46-00532
	:	VOLUME III
DEFENDANT.	)	

WEDNESDAY, JANUARY 31, 2007
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE

A P P E A R A N C E S:

FOR THE APPLICANT-PLAINTIFF:
MICHAEL L. BROWN, ESQ.
JOSEPH MATLOCK, ESQ.

FOR THE STATE:
WILLIAM EDGAR SALTER III, ESQ., ASSISTANT ATTORNEY GENERAL

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 WEDNESDAY, JANUARY 31, 2007 - COURT IN SESSION - 1:00 P.M.

2 MR. BROWN: YOUR HONOR, BEFORE WE BEGIN, BY AGREEMENT
3 WE HAVE STIPULATED-- AND I THINK IT WAS A BIT OF AN OVERSIGHT
4 ON MY BEHALF. I INTRODUCED A LETTER YESTERDAY AND YOU
5 INITIALLY REQUIRED, WHERE MR. HANCOCK GOT A PRELIMINARY
6 REPORT FROM MS. CASCIO. THE LETTER WAS MARKED MARCH 1, 1999.
7 BY AGREEMENT WE ARE MOVING THAT INTO EVIDENCE.

8 YOUR HONOR, I'VE ALSO GIVEN MR. SALTER A COPY OF THE
9 REMAINDER OF MS. CASCIO'S NOTES. THESE ARE THE ORIGINALS. I
10 HAVE A COPY. I WANT TO MOVE THE ORIGINALS INTO EVIDENCE BY
11 AGREEMENT.

12 MR. SALTER: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: DOES EVERYBODY HAVE COPIES OF THE FULL SET
14 OF NOTES?

15 MR. SALTER: YES SIR, YOUR HONOR.

16 MR. BROWN: YES SIR.

17 THE COURT: SO, THE FULL SET OF NOTES OBVIOUSLY IS A GOOD
18 BIT MORE THAN WHAT I HAVE REVIEWED---

19 MR. BROWN: THAT IS CORRECT, ---

20 THE COURT: ---AS APPLICANT'S EXHIBIT FIVE?

21 MR. BROWN: ---YOUR HONOR.

22 THE COURT: AND---

23 MR. BROWN: EVERYONE HAS A COPY, YOUR HONOR. THOSE ARE
24 THE ORIGINALS.

1 THE COURT: IS THIS THE-- IS THIS WHAT-- IS THIS THE ORIGINAL
2 OF WHAT SOLICITOR POPE WAS GIVEN THE NIGHT BEFORE DOCTOR
3 CASCIO TESTIFIED?

4 MR. BROWN: THAT'S WHAT I'M A LITTLE BIT CONFUSED, YOUR
5 HONOR. I'M GOING TO ASK MR. BOYD ABOUT THAT TODAY.

6 THE COURT: HERE, JUST SHOW HIM.

7 MR. BROWN: HE'S GOT A COPY, YOUR HONOR.
8 (WHEREUPON APPLICANT'S EXHIBITS SIX AND SEVEN WERE ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION)

10 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS WHENEVER
11 YOU'RE READY.

12 MR. BROWN: AND YOUR HONOR, ONE LAST THING, THE COURT
13 INQUIRED, AND WE AGREED UPON, THAT MS. CASCIO INTERVIEWED
14 MR. ROBERTSON ON THE FOLLOWING DAYS, AND THIS IS FROM THE
15 TRANSCRIPT: JULY 17, 1998, JULY 22, 1998. THERE'S A NOTATION THAT
16 ONE OCCURRED IN NOVEMBER OF 1998, IN HER NOTES, BUT THE
17 TRANSCRIPT REFLECTS IT WAS NOVEMBER 30, 1998. THERE'S ONE,
18 WHICH IS ALREADY IN EVIDENCE, OF DECEMBER 7, 1998.

19 THE COURT: REPEAT THOSE DATES AGAIN, PLEASE.

20 MR. BROWN: JULY 17, 1998, JULY 22, 1998, NOVEMBER 30, 1998,
21 DECEMBER 7, 1998.

22 THE COURT: THOSE ARE THE DATES THAT SHE MET WITH HIM?

23 MR. BROWN: YES SIR.

24 THE COURT: IS THERE EVIDENCE IN THE RECORD THAT
25 CORRELATES THOSE MEETING DATES WITH THESE NOTES?

1 MR. BROWN: YOUR HONOR, THE DATES IN THE RECORD ARE
2 JULY 17, 1998, JULY 22, 1998, NOVEMBER OF '98. BUT IN HER NOTES IT
3 REFLECTS THE DATE OF NOVEMBER 30, 1998.

4 THE COURT: SO, THE NOTES WERE MADE FROM THE FIRST
5 THREE MEETINGS?

6 MR. BROWN: AND DECEMBER 7, WHICH IS ALREADY IN THE
7 RECORD, YOUR HONOR. THAT'S WHAT YOU ALREADY READ AND WAS
8 ATTACHED TO THE MARCH 1, LETTER WITH THE PRELIMINARY
9 REPORT, NOTES FROM DECEMBER 7.

10 MR. SALTER: AND YOUR HONOR, IF I MIGHT ADD THAT ON
11 CROSS EXAMINATION SOLICITOR POPE ESTABLISHED THAT AT LEAST
12 TWO OF THOSE DATES WERE IN FACT ACCURATE, THE NOVEMBER 30
13 AND DECEMBER 7 DATES, WHICH SPECIFICALLY REFERS TO NOTES
14 FROM THOSE DAYS.

15 THE COURT: AND THE TRIAL WAS MARCH OF '99?

16 MR. BROWN: MARCH 15, 1999, YOUR HONOR.

17 THE COURT: OKAY.

18 MR. BROWN: WE CALL TO THE STAND JIM BOYD.

19 THE COURT: WELL, LET ME ASK ONE MORE QUESTION ABOUT
20 THE NOTES. THE PORTION OF THE-- THE NOTES OBVIOUSLY DEAL
21 WITH A LOT MORE THAN JUST WHAT ROBERTSON SAID ABOUT WHAT
22 HAPPENED AT THE TIME OF THE KILLINGS.

23 MR. BROWN: CORRECT, YOUR HONOR.

1 THE COURT: THE NOTES ABOUT WHAT HE SAID ABOUT WHAT
2 HAPPENED AT THE TIME OF THE KILLING, ARE THEY ALL FROM ONE
3 INTERVIEW?

4 MR. BROWN: NO SIR. TO THE BEST OF MY RECOLLECTION, NO
5 SIR.

6 THE COURT: WELL, WHICH INTERVIEW DID THOSE COME FROM?
7 IS THAT WHAT YOU WERE REFERRING TO A SECOND AGO?

8 MR. SALTER: TO GIVE SOME DIRECTION, ON CROSS
9 EXAMINATION THE RECORD REFLECTS THAT SOLICITOR POPE ASKED
10 HER A SERIES OF QUESTIONS NOT RELATED TO THE CRIME ITSELF, BUT
11 FROM THE NOVEMBER 30, NOTES. AND THE REMAINING QUESTIONS
12 DEAL WITH THE CRIME ITSELF. I THINK VIRTUALLY ALL THOSE CAME
13 FROM THE DECEMBER 7 INTERVIEW.

14 THE COURT: OKAY. SO,---

15 MR. SALTER: THOSE WERE THE NOTES THAT I HAD AND
16 PROVIDED A COPY TO OPPOSING COUNSEL.

17 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: OKAY, I'M READY.

19 MR. BROWN: WE CALL TO THE STAND, JIM BOYD.

20 JAMES W. BOYD, DULY SWORN, TESTIFIED AS

21 FOLLOWS:

22 DIRECT EXAMINATION BY MR. BROWN:

23 Q YOU'RE JAMES W. BOYD?

24 A THAT'S CORRECT.

25 Q HOW DID YOU BECOME INVOLVED IN THIS CASE?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q HOW DID YOU BECOME INVOLVED IN THIS CASE?

2 A I WAS APPOINTED TO REPRESENT MR. ROBERTSON.

3 Q AND THAT WAS, WHICH IS ALREADY IN THE RECORD, ON APRIL
4 30, OF '98?

5 A I BELIEVE THAT IS CORRECT.

6 Q WHEN DID YOU FIND OUT MR. HANCOCK WAS YOUR CO-
7 COUNSEL?

8 A I MAY HAVE ALREADY KNOWN. HE WAS APPOINTED PRIOR TO
9 ME, IF I RECOLLECT CORRECTLY. I THINK HE HAD BEEN ON THE CASE
10 FOR SOME TIME AND I THINK I ALREADY KNEW HE WAS
11 REPRESENTING MR. ROBERTSON.

12 Q DO YOU RECALL HOW HE BECAME INVOLVED IN THIS CASE?

13 A NO, I DON'T.

14 Q WHAT WAS THE FIRST THING YOU DID WHEN YOU BECAME
15 INVOLVED IN THIS CASE?

16 A IT'S HARD FOR ME TO REMEMBER AT THIS POINT IN TIME. I
17 THINK THE FIRST THING I DID, I BELIEVE, WAS SPEAK WITH MR.
18 HANCOCK. I KNOW AT ONE POINT EARLY ON I ASKED TO BE RELIEVED
19 OF REPRESENTING MR. ROBERTSON.

20 Q WHY?

21 A WELL, ONE THING, AT THAT TIME I WAS ON THE BOARD OF
22 DIRECTORS OF THE PUBLIC DEFENDER CORPORATION. AND I BELIEVE
23 MEREDITH MOON, THE CO-DEFENDANT, WAS BEING REPRESENTED BY
24 THE PUBLIC DEFENDER'S OFFICE. I POINTED OUT TO THE COURT, I
25 THINK, JUDGE RAWL, THAT THAT WAS A POTENTIAL CONFLICT.

1 AND ANOTHER THING, I THINK I SAID I FELT LIKE I HAD DONE
2 MY SHARE OF THESE CASES; THAT I HAD THE LAST BIG ONE, ONE NOT
3 TOO LONG BEFOREHAND.

4 Q WAS THAT THE SYLVESTER ADAMS' CASE?

5 A YES, IT WAS.

6 Q SPEAKING OF WHICH, HOW LONG HAVE YOU PRACTICED LAW?

7 A SINCE 1977.

8 Q AND YOUR FIRST JOB WAS THE PUBLIC DEFENDER, IS THAT
9 CORRECT, OF YORK COUNTY?

10 A NO. MY FIRST JOB WAS WITH MELVIN ROBERTS, AND THEN THE
11 PUBLIC DEFENDER.

12 Q IN YOUR EXPERIENCE, DID YOU ALSO SERVE AS SOLICITOR OR
13 ASSISTANT SOLICITOR?

14 A YES, PART-TIME, AFTER BEING WITH THE PUBLIC DEFENDER'S
15 OFFICE.

16 Q AND YOU'VE DONE CRIMINAL WORK FOR ALMOST THIRTY
17 YEARS. IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND IF YOU WOULD, JUST TELL THE COURT HOW MANY DEATH
20 PENALTY CASES YOU'VE BEEN INVOLVED IN.

21 A I HAVE REPRESENTED SIX CLIENTS WHO HAVE BEEN IN CAPITAL
22 MURDERS TRIALS NOW. ONE OF THOSE CASES WAS ACTUALLY TRIED
23 TWICE. SO, I'VE BEEN THROUGH MORE DEATH PENALTY CASES
24 THAN---

25 Q WAS THAT SYLVESTER ADAMS?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 A SYLVESTER ADAMS WAS TRIED TWICE. I ALSO ASSISTED THE
2 STATE IN THE PROSECUTION OF ONE DEATH PENALTY CASE.

3 Q WOULD IT BE SAFE TO SAY THAT YOU HAD LOTS OF EXPERIENCE
4 AS A DEATH PENALTY LITIGATOR IN YORK COUNTY?

5 A I WOULD THINK THAT'S PROBABLY CORRECT.

6 Q AND YOU HAVE BEEN INVOLVED IN THE PROSECUTION AND
7 DEFENSE OF DEATH PENALTY CASES?

8 A I'VE DONE SIX DEFENSES AND I'VE DONE ONE PROSECUTION.

9 Q DO YOU RECALL WHEN YOU FIRST GOT ALL THE DISCOVERY IN
10 THIS CASE?

11 A NO, I DON'T RECALL WHEN AT THIS TIME. I THINK DISCOVERY
12 WAS BASICALLY AN ONGOING PROCESS. I BELIEVE MR. HANCOCK HAD
13 ALREADY RECEIVED A GOOD BIT OF THE DISCOVERY. AND SO,
14 BASICALLY IT WAS A MATTER OF SHARING THAT WITH---

15 Q DID YOU OFFER DISCOVER?

16 A ---WITH ME.

17 Q I'M SORRY. I DIDN'T MEAN TO CUT YOU OFF.

18 A I'M SORRY. HE WAS SHARING IT WITH ME. HE ALREADY HAD A
19 GREAT DEAL OF IT.

20 Q DID YOU REVIEW ALL THE DISCOVERY?

21 A I BELIEVE SO. I BELIEVE I REVIEWED ALL THE DISCOVERY
22 PROVIDED BY THE STATE.

23 Q AND AFTER REVIEWING ALL THAT, DID YOU COME TO A
24 DECISION AS TO WHAT TACK OR WHAT STRATEGY YOU AND MR.
25 HANCOCK SHOULD TAKE IN THE DEFENSE OF MR. ROBERTSON?

1 A I THINK MR. HANCOCK HAD ALREADY BEEN IN TOUCH WITH THE
2 DEATH PENALTY RESOURCE CENTER AND HAD CONSULTED WITH
3 THEM. OR, IT WAS EARLY ON WE CONSULTED WITH THEM.

4 BASICALLY, IT WAS-- THEY-- OF COURSE, WE CONDUCTED A
5 BACKGROUND INVESTIGATION OF MR. ROBERTSON TO COME UP WITH
6 ANY MITIGATION THAT WE COULD, GO INTO HIS SOCIAL HISTORY, HIS
7 MENTAL HEALTH HISTORY, THAT TYPE OF THING, TRYING TO REASON
8 WHY HE WOULD HAVE DONE SOMETHING LIKE THIS.

9 THERE WAS ALSO A QUESTION EARLY ON ABOUT HOW MUCH TO
10 FIGHT THE ACTUAL-- OR, PLEAD NOT GUILTY AND FIGHT THE
11 CONVICTION ITSELF, THE GUILT OR INNOCENCE PHASE OF IT.

12 Q WHAT WAS YOUR OPINION ON THAT AS TO HOW TO HANDLE OR
13 LITIGATE OR DEFEND THE GUILT PHASE?

14 A WELL, BASICALLY, I THINK, BASICALLY CONCEDED GUILT WAS
15 PROBABLY THE BEST PHILOSOPHY ON THAT. HOWEVER, IF MY
16 RECOLLECTION'S RIGHT, MR. ROBERTSON, THOUGH HE RATIONALLY
17 UNDERSTOOD THAT HE WAS UNLIKELY TO BE ACQUITTED OF IT,
18 DIDN'T WANT TO ACTUALLY CONCEDE THAT POINT AND ACTUALLY
19 ADMIT GUILT.

20 Q HE DIDN'T WANT TO CONCEDE IT?

21 A THAT'S CORRECT.

22 Q IN YOUR TACTICAL JUDGMENT AND ALL YOUR EXPERIENCE
23 WITH DEATH PENALTY CASES, WOULD IT BE A FAIR STATEMENT TO
24 SAY THAT THE EVIDENCE OF GUILT WAS OVERWHELMING?

25 A I THINK SO, YES.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q AND WOULD THAT BE BASED ON THE FORENSIC EVIDENCE, THE
2 DNA, THE SEROLOGIST, THE TESTIMONY OF MEREDITH MOON, AND SO
3 FORTH?

4 A THAT'S CORRECT.

5 Q IN YOUR EXPERIENCE OF APPROXIMATELY THIRTY YEARS OF
6 CRIMINAL DEFENSE WORK, WOULD YOU AGREE THIS WAS NOT A
7 WELL-CONCEIVED OR WELL-THOUGHT OUT CRIME?

8 A WELL, NO, I WOULD AGREE WITH THAT.

9 Q WOULD YOU AGREE THAT IT WAS A SPUR OF THE MOMENT,
10 SPORADIC, ILL-THOUGHT OUT THING?

11 A I DON'T KNOW HOW SPUR OF THE MOMENT IT WAS.

12 Q I DON'T MEAN THAT HIS MIND WAS SPUR OF THE MOMENT, BUT
13 IT WAS NOT A WELL-PLANNED OUT PROCESS.

14 A NO, I DON'T THINK IT WAS A DETAILED, PLANNED OUT IN
15 ADVANCE, THE DETAILS, NO.

16 Q AND THEN THAT LEAVES THE OVERWHELMING FORENSIC
17 EVIDENCE POINTING TO HIS GUILT?

18 A I THINK THAT HAD SOMETHING TO DO WITH IT, YES.

19 Q NOW, MR. HANCOCK WAS LEAD COUNSEL ON THIS CASE. IS
20 THAT CORRECT?

21 A WELL, I DON'T-- WE NEVER DISCUSSED WHO WAS ACTUALLY
22 THE LEAD COUNSEL. MR. HANCOCK HAD BEEN IN THE CASE BEFORE I
23 WAS. SO, HE HAD ALREADY LINED UP A LOT OF THE DEFENSE IN THE
24 CASE ALREADY. IT WAS HIS INVESTIGATOR THAT WAS ACTING AS
25 INVESTIGATOR. HIS PARALEGAL WAS DOING A LOT OF WORK ON IT. I

1 THINK HE HAD BEEN IN TOUCH WITH THE DEATH PENALTY CENTER.

2 SO, AS FAR AS LINING THAT UP, PROBABLY, YOU KNOW, DURING THE

3 TRIAL, I BELIEVE THAT EQUAL PARTIES HAD A HAND IN THE WEEKS

4 LEADING, AND MONTHS LEADING UP TO THE TRIAL.

5 Q IF I TOLD YOU IN THE TRANSCRIPT, AND THAT HE TESTIFIED

6 YESTERDAY THAT HE WAS AND TOLD JUDGE HAYES HE WAS LEAD

7 COUNSEL, WOULD YOU DISAGREE WITH THAT STATEMENT?

8 A YES.

9 THE COURT: ME?

10 MR. BROWN: I'M SORRY, YOUR HONOR. I WAS ASKING HIM IF HE

11 WOULD DISAGREE WITH THAT STATEMENT.

12 THE COURT: DID HE TELL ME THAT OR DID HE TELL JUDGE

13 HAYES THAT?

14 MR. BROWN: TOLD JUDGE HAYES THAT, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 Q FOR CLARIFICATION'S SAKE, HE TOLD JUDGE HAYES THAT IN

17 THE ACTUAL TRIAL. WOULD YOU DISAGREE WITH THAT STATEMENT?

18 A HE MAY HAVE. I DON'T RECALL THAT STATEMENT.

19 Q HAD HE MADE CERTAIN STRATEGIC DECISIONS BEFORE YOU

20 BECAME INVOLVED?

21 A HE HAD-- TO THE EXTENT THAT-- HE HAD LINED UP, I THINK,

22 WITH THE DEATH PENALTY RESOURCE CENTER AND I THINK THE

23 MITIGATION DEFENSE HAD BEEN STARTED IN PLAY AT THAT TIME,

24 YES.

VOLUME EIGHT OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Few, Circuit Court Judge

JAMES D. ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

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JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q HAD THE EXPERTS BEEN PICKED OUT BY MR. HANCOCK AND THE
2 DEATH PENALTY RESOURCE CENTER?

3 A I DON'T KNOW EXACTLY WHEN EACH OF THOSE WAS PICKED
4 OUT. BUT I BELIEVE MOST, IF NOT ALL OF THEM, HAD BEEN
5 CONTACTED, OR WERE IN THE PROCESS OF BEING PICKED OUT PRIOR
6 TO MY APPOINTMENT.

7 Q SO, IT WOULD BE SAFE TO SAY THAT MR. HANCOCK DID THE
8 LOGISTICAL WORK OF OBTAINING THE EXPERT WITNESSES IN
9 MITIGATION?

10 A I BELIEVE SO.

11 Q DID YOU HAVE ANY INPUT INTO THAT?

12 A WELL, AS FAR AS-- AT THAT TIME I DIDN'T-- THERE WAS
13 NOTHING HE HAD DONE AT THAT POINT THAT I DISAGREED WITH. SO,
14 I, TO THE EXTENT-- I DIDN'T REALLY PUT IN ANY INPUT INTO THE
15 SELECTION.

16 Q AFTER YOU RECEIVED ALL THE DISCOVERY MATERIAL AND GOT
17 TO THE POINT WHERE FIGHTING GUILT WAS ALMOST A LOSING
18 BATTLE, FOR LACK OF A BETTER WORD, I'M NOT TRYING TO PUT
19 WORDS IN YOUR MOUTH, DID YOU AGREE WITH MR. HANCOCK THAT
20 THE BEST DEFENSE WOULD BE TO PUT FORWARD A MENTAL ILLNESS
21 DEFENSE IN MITIGATION?

22 A YES.

23 Q IN YOUR EXPERIENCE IN DEATH PENALTY CASES, WOULD YOU
24 AGREE WITH ME THAT JURY SELECTION IS ONE OF THE MOST
25 IMPORTANT PHASES OF ANY DEATH PENALTY CASE?

1 A I WOULD AGREE.

2 Q DID YOU OR MR. HANCOCK HIRE A JURY CONSULTANT?

3 A NO, WE DID NOT.

4 Q WHAT DID YOU USE IN THE SELECTION OF THE JURY, OTHER
5 THAN THE VOIR DIRE AND THE QUESTIONNAIRES RETURNED TO THE
6 COURT?

7 A I'M TRYING TO THINK IF THERE WAS ANY OTHER INVESTIGATION
8 WITH RESPECT TO THE JURORS, AND I CANNOT THINK OF ANYTHING
9 ELSE.

10 Q PRIOR TO TRIAL, WAS THERE ANY DISCUSSION, TO YOUR
11 RECOLLECTION, OF ANY PLEA BARGAINS WITH THE SOLICITOR'S
12 OFFICE, MR. POPE OR MR. BRACKETT, OR ANYONE ASSOCIATED WITH
13 THEM?

14 A I BELIEVE THERE WAS A DISCUSSION ABOUT IT, OR AT LEAST
15 SOME TALKING ABOUT THE POSSIBILITY OF IT. BUT TO MY
16 RECOLLECTION, THERE WAS NEVER ANY-- IT DIDN'T COME TO THE
17 POINT OF ANY, CLOSE TO ANY AGREEMENT BEING REACHED.

18 Q WAS THERE ANY ROOM, IN YOUR OPINION, TO NEGOTIATE THIS
19 CASE?

20 A IF...

21 Q TO THE BEST OF YOUR MEMORY.

22 A I'M NOT SURE WHAT YOU MEAN BY ROOM. BY EITHER SIDE?

23 Q EITHER SIDE, OR WAS THERE ANY CHANCE OF PLEADING HIM TO
24 LIFE WITHOUT PAROLE? WAS THAT EVER OFFERED OR DISCUSSED OR
25 ANYTHING?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 A I KNOW IT WAS DISCUSSED. I THINK I ASKED MR. POPE ABOUT
2 THAT BEING A POSSIBILITY. I BELIEVE I WAS TOLD NO.

3 Q AND THAT WAS PRETTY MUCH THE EXTENT OF THE PLEA
4 NEGOTIATIONS?

5 A WELL, WE PROBABLY MENTIONED THAT SEVERAL TIMES, BUT IT
6 WAS ALWAYS NO. THERE WAS NEVER ANY MOVE BY THE STATE THAT
7 THEY WOULD GO IN THAT DIRECTION.

8 Q SO, YOU UNDERSTOOD THAT YOU WERE KIND OF STUCK
9 BECAUSE YOU HAD TO TRY THIS CASE. IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q WOULD YOU BEGAN TRIAL, WOULD IT BE SAFE TO SAY, FROM
12 THE TRANSCRIPT, THAT YOU BASICALLY PUT UP NO EVIDENCE IN THE
13 GUILT PHASE?

14 A THAT'S CORRECT.

15 Q WHY IS THAT?

16 A WELL, THERE WAS REALLY-- THE CASE WAS OVERWHELMING.
17 THERE WAS REALLY NO EVIDENCE TO PUT UP THAT MR. ROBERTSON
18 WAS NOT GUILTY, THAT WAS VIABLE TO PUT UP.

19 ANOTHER REASON WAS ANYTHING WE COULD HAVE PUT UP
20 MAY HAVE DIMINISHED THE, COULD HAVE DIMINISHED THE
21 MITIGATION PHASE OF IT.

22 Q DID YOU EVER DISCUSS WITH MR. ROBERTSON, OR YOU AND MR.
23 HANCOCK TALK ABOUT A GUILTY BUT MENTALLY ILL PLEA?

24 A I CANNOT REMEMBER A DISCUSSION OF THAT. A GUILTY BUT
25 MENTALLY-- I MEAN, MY UNDERSTANDING THE DEFENDANT CAN

1 STILL GET THE DEATH PENALTY EVEN IF THE COURT ACCEPTS A PLEA
2 OF GUILTY BUT MENTALLY ILL. THAT WOULD HAVE TAKEN IT AWAY
3 FROM THE JURY.

4 Q FROM A STRATEGIC VIEWPOINT, THOUGH, YOU WOULD AGREE
5 WITH ME THAT THE GUILT WAS OVERWHELMING. IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q AND YOU WOULD AGREE WITH ME THAT THE ONLY WAY TO GO
8 TO THE BEST OF YOUR KNOWLEDGE AND TO THE BEST OF YOUR
9 ABILITY IN THIS CASE IN YOUR EXPERIENCE WAS WITH A MENTAL
10 ILLNESS DEFENSE. IS THAT CORRECT?

11 A THAT'S CORRECT.

12 Q AND YOU HAD EVIDENCE FROM AT LEAST DOCTOR PINCUS,
13 DOCTOR MORGAN, AND---

14 A DOCTOR EVANS.

15 Q DOCTOR EVANS. THANK YOU. THAT HE WAS MENTALLY ILL?

16 A THAT'S CORRECT.

17 Q AS A MATTER OF FACT, PINCUS EVEN OPINED AT THE TIME OF
18 THE INCIDENT THAT HE WAS UNDER A MANIC STATE. IS THAT
19 CORRECT?

20 A I BELIEVE SO. I CAN'T REMEMBER THE DETAILS.

21 Q I WANT TO ADDRESS YOUR EXPERTS RIGHT NOW. WOULD YOU
22 NOT AGREE THAT PINCUS, BY FAR AND AWAY, HAD THE BEST RESUME,
23 SO TO SPEAK, AND THAT HE WAS VICE-CHAIRMAN OF THE AMERICAN
24 BOARD OF NEUROLOGY?

25 A I...

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q THE GUY FROM GEORGETOWN UNIVERSITY?

2 A YEAH, YEAH, I KNOW WHO HE IS. YES, I THINK AS FAR AS
3 CREDENTIALS AND A NATIONWIDE REPUTATION, I THINK HE HAD THE
4 BEST CREDENTIALS.

5 Q WOULD IT NOT HAVE BEEN FEASIBLE IN THIS CASE TO PRESENT
6 EVIDENCE OF MENTAL ILLNESS IN THE GUILT PHASE FOR TWO
7 REASONS. ONE: TO GET THE JURY TO START THINKING ABOUT IT.
8 AND TWO: TO REQUEST THAT VERDICT AT THE CLOSE OF EVIDENCE.
9 WOULD THAT NOT HAVE BEEN A FEASIBLE ALTERNATIVE IN THE CASE
10 WHERE THE GUILT'S OVERWHELMING AND YOU ARE ARGUING
11 MENTAL ILLNESS, KIND OF LIKE TO SET A TONE FOR THE WHOLE
12 TRIAL?

13 A THAT WOULD BE A POSSIBILITY TO DO THAT. YOU KNOW, ONE
14 OF THE PROBLEMS WITH THAT WOULD BE THAT WE WOULD HAVE HAD
15 TO HAVE CONCEDED GUILT AT THAT PORTION OF THE TRIAL, WHICH
16 MAY HAVE BEEN A GOOD STRATEGY, BUT MR. ROBERTSON DID NOT
17 WANT TO DO THAT.

18 Q SO, HE COULD FORBID, KEPT Y'ALL FROM DOING THAT?

19 A I WOULDN'T SAY HE KEPT-- I DON'T REMEMBER THE EXACT
20 DISCUSSIONS WE HAD ABOUT THAT. BUT I DO REMEMBER MR.
21 ROBERTSON BASICALLY, ALTHOUGH HE FELT LIKE HE WOULD BE
22 FOUND GUILTY, HE WANTED TO TAKE WHATEVER THAT LITTLE
23 CHANCE WAS. THE PROSPECT OF SPENDING LIFE IN PRISON AS
24 OPPOSED TO THE DEATH PENALTY REALLY WASN'T APPEALING TO
25 HIM.

1 Q BUT FOR THAT OBJECTION, DO YOU THINK THAT WOULD HAVE
2 BEEN THE BETTER COURSE TO PURSUE?

3 A IT'S HARD TO ANSWER THAT AFTER THIS MANY YEARS, BUT
4 THAT WOULD HAVE CERTAINLY BEEN A VIABLE OPTION TO DO, TO
5 ASK THE JURY TO DO THAT.

6 Q HOW MUCH TIME DID YOU AND MR. HANCOCK SPEND WITH MR.
7 ROBERTSON PRIOR TO TRIAL?

8 A I DON'T REMEMBER HOW MUCH TIME I SPENT WITH MR.
9 ROBERTSON BEFORE TRIAL. I REMEMBER MEETINGS THAT WERE
10 RATHER LENGTHY WITH HIM. I THINK-- LIKE I SAY, WE WENT OVER
11 THE DETAILS OF IT, OF WHAT HAPPENED AND SOME OF HIS
12 BACKGROUND PRETTY EXTENSIVELY. BUT THE NUMBER OF MEETINGS
13 AND THE LENGTH I DON'T REMEMBER AT THIS STAGE.

14 Q IN YOUR MEETINGS WITH HIM AND CONVERSATIONS WITH HIM
15 DID YOU FIND HIM TO BE COMPETENT TO HELP IN HIS DEFENSE, OR
16 WAS HE SOMETIMES ON AND SOMETIMES OFF, FOR LACK OF A BETTER
17 TERM?

18 A I DON'T REMEMBER AT ANY TIME I WOULD THINK HE WOULD BE
19 NOT COMPETENT TO HELP WITH HIS DEFENSE. I MEAN, HE WAS ABLE
20 TO DISCUSS THINGS RATIONALLY. BY RATIONALLY, I DON'T MEAN
21 EVERY TIME IT WOULD BE A CORRECT DECISION WE WOULD WANT IT
22 TO BE, BUT HE UNDERSTOOD EVERYTHING AND WAS ABLE TO
23 CONVERSE AND I THINK UNDERSTOOD THE LEGAL CONCEPTS AND
24 THOSE TYPES OF THINGS.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q YOU WOULD AGREE WITH ME IN YOUR ASSESSMENT OF THIS
2 CASE THAT AFTER EVALUATING ALL OF THE PSYCHOLOGICAL AND
3 PSYCHIATRIC RECORDS THAT THIS FAMILY HAD SOME SEVERE
4 PSYCHOLOGICAL AND PSYCHIATRIC PROBLEMS. WOULD THAT BE A
5 CORRECT STATEMENT?

6 A THAT WOULD BE CORRECT.

7 Q HOWEVER, IN THE GUILT PHASE, WHEN THE PROSECUTION, AND
8 I'LL GIVE YOU AN EXACT QUOTE FROM THE TRANSCRIPT, SAID IT WAS
9 "AN OZZIE AND HARRIET NELSON-TYPE FAMILY". YOU NOR MR.
10 HANCOCK ATTACKED ANY OF THOSE WITNESSES. IS THAT CORRECT?

11 A I--

12 Q I'M TALKING ABOUT FRIENDS, NEIGHBORS, SO FORTH, PUT
13 FORTH THIS OZZIE AND HARRIET NELSON PHILOSOPHY.

14 A IN THE GUILT PHASE?

15 Q IN THE GUILT PHASE.

16 A I GUESS NOT. I DON'T REMEMBER THOSE WITNESSES EXACTLY.
17 SO...

18 Q WOULD IT NOT HAVE BEEN A GOOD STRATEGY TO START
19 TEARING DOWN THAT FAÇADE AT THAT POINT IN TIME, POINTING OUT
20 THE PSYCHIATRIC AND PSYCHOLOGICAL PROBLEMS? I'M NOT
21 TALKING ABOUT JIMMY'S. I'M TALKING ABOUT CHIP, EARL AND
22 TERRY'S.

23 A I'D HAVE TO THINK ABOUT THAT. I'M NOT SURE BECAUSE....
24 AGAIN, IF YOU SPREAD IT OUT LIKE THAT, THAT MAY NOT BE THE

1 BEST TACTIC. I MEAN, THAT'S CERTAINLY ONE TACTIC. I DON'T KNOW
2 IF THAT WOULD BE BETTER OR NOT.

3 Q TELL ME WHAT Y'ALL'S, OR, YOUR THINKING WAS AS TO HOW TO
4 ATTACK THAT, OR BRING THAT BEFORE THE JURY?

5 A WELL, I THINK IN THE MITIGATION PHASE TO USE THE
6 MITIGATION BASICALLY THAT WE PUT ON TO ATTACK THAT IN FRONT
7 OF THE JURY.

8 Q WHEN WAS THE DECISION MADE TO GO WITH THE MENTAL
9 ILLNESS DEFENSE?

10 A I CAN'T SAY AN EXACT POINT IN IT, BUT PROBABLY FROM THE
11 VERY BEGINNING, AFTER HE HAD BEEN EXAMINED BY EXPERTS AND
12 THAT TYPE OF THING, AND LOOKING AT THE BACKGROUND TO GO
13 WITH THAT.

14 WHEN YOU'VE GOT A TRIAL LIKE THIS, THAT THE GUILT'S
15 OVERWHELMING, THERE'S REALLY NOTHING ELSE TO DO BUT GO WITH
16 THAT.

17 Q I'M SHOWING YOU APPLICANT'S EXHIBIT NUMBER FIVE, WHICH
18 IS THE PRELIMINARY REPORT FOR JAMES ROBERTSON BY MS. CASCIO,
19 DOCTOR CASCIO. WAS THAT NOT RECEIVED UNTIL MARCH 1, OR
20 MAILED TO YOU BY MARCH 1, 1999? ACTUALLY TO MR. HANCOCK ON
21 MARCH 1, 1999?

22 A IT APPEARS TO BE.

23 Q PRIOR TO THAT YOU HAD NOT RECEIVED ANYTHING FROM HER.
24 IS THAT CORRECT?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

- 1 A I DON'T RECALL ANYTHING. I DON'T RECALL WHEN I FIRST SAW
2 THIS REPORT. SO.... I KNOW-- I BELIEVE WE HAD MET WITH HER
3 PRIOR TO THIS ON SEVERAL OCCASIONS.
- 4 Q WAS THAT THE LAST REPORT THAT YOU RECEIVED, TO THE BEST
5 OF YOUR MEMORY?
- 6 A TO THE BEST OF MY MEMORY, BUT THAT'S BEEN EIGHT YEARS,
7 SO I DON'T REMEMBER ANOTHER REPORT.
- 8 Q DID YOU REVIEW THE MEDICAL RECORDS FROM DOCTOR HAYNE
9 McMEEKIN?
- 10 A I DON'T REMEMBER SITTING DOWN AND LOOKING AT THOSE
11 RECORDS. I CAN SAY I REVIEWED SO MUCH THAT I CAN'T REMEMBER
12 EXACTLY WHAT. I KNOW THAT MR. ROBERTSON HAD SEEN HIM. I
13 KNEW THAT WE HAD LOOKED AT RECORDS ABOUT THAT. BUT I DON'T
14 HAVE A DEFINITE RECOLLECTION OF SITTING DOWN AND LOOKING AT
15 THOSE RECORDS.
- 16 Q WHO CALLED SKIP MEYER TO THE STAND?
- 17 A I THINK MR. HANCOCK DIRECTED, DID THE DIRECT
18 EXAMINATION.
- 19 Q AND Y'ALL CALLED, YOU AND MR. HANCOCK CALLED HIM AS
20 YOUR WITNESS. IS THAT CORRECT?
- 21 A THAT'S CORRECT.
- 22 Q AT THAT POINT IN TIME MR. MEYER WAS HANDLING, OR
23 COUNSELING THE WHOLE FAMILY. IS THAT CORRECT?
- 24 A NOT AT THE TIME OF THE TRIAL, BUT PRIOR TO THAT, YES.

1 Q EXCUSE ME. DURING HIS-- IN THOSE RECORDS HE HAD
2 COUNSELED ALL FOUR OF THEM AT SOME POINT. IS THAT CORRECT?

3 A I BELIEVE SO. I CAN'T QUITE REMEMBER IF HE HAD COUNSELING
4 THE FATHER OR NOT, BUT I KNOW HE HAD BEEN HEAVILY INVOLVED
5 WITH THE MOTHER AND THE CHILDREN.

6 Q AND DID YOU ALSO KNOW THAT DOCTOR McMEEKIN HAD SEEN
7 CHIP, JIMMY AND TERRY ROBERTSON?

8 A I CAN'T RECALL AT THIS TIME. I KNOW HE HAD SEEN JIMMY,
9 BUT I DON'T REMEMBER THE OTHERS.

10 Q IF I TOLD YOU THAT DOCTOR McMEEKIN'S RECORDS DON'T
11 REFLECT ANY CONFLICT, OR TERRY'S AGGRAVATION, OR
12 DEGRADATION WITH HER CHILDREN, WOULD YOU NOT FIND THAT
13 SALIENT TO PRESENT TO THE JURY? WHEREAS, DOCTOR MEYER'S
14 RECORDS SHOW THE CONFLICT AND THE AGONY THE CHILDREN WERE
15 CAUSING HER.

16 A I DON'T-- THAT HIS RECORDS DID NOT SHOW THE CONFLICT? AT
17 THIS POINT I DON'T REMEMBER WHETHER THEY DID OR NOT. BUT I
18 DON'T KNOW IF PRESENTING THAT THEY DID NOT SHOW THAT WOULD
19 BE HELPFUL IN MITIGATION.

20 Q YOU WOULD AGREE THE USE OF RITALIN WAS AT THE CORE OF
21 THESE EVENTS. WOULD THAT BE A CORRECT STATEMENT?

22 A I THINK IT WAS-- ACCORDING TO WHAT WAS PRESENTED, THAT
23 WAS A-- THAT WAS SORT OF AN INSTIGATOR OF HIS ACTIONS.

24 Q WOULD THAT BE THE MATCH THAT LIT THE POWDER KEG, FOR
25 LACK OF A BETTER TERM?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 A I WOULD SAY SO, YES.

2 Q AND THE RITALIN HE WAS TAKING WAS GIVEN TO HIM BY HIS
3 BROTHER, WAS CHIP'S RITALIN. WOULD THAT BE A CORRECT
4 STATEMENT?

5 A I'M TRYING TO RECALL THAT. I'D FORGOTTEN, BUT I THINK
6 THAT STRIKES A BELL. I THINK THAT'S CORRECT.

7 Q WERE YOU AWARE IN DOCTOR McMEEKIN'S NOTES THAT HE WAS
8 AWARE THAT CHIP WAS SNORTING AND SELLING THE RITALIN, BUT HE
9 STILL PRESCRIBED IT TO HIM?

10 A THAT STRIKES A BELL, TOO, AT THIS POINT. I THINK THERE WAS
11 SOMETHING IN THERE ABOUT THAT.

12 Q AS A MATTER OF FACT, WAS THERE SOMETHING IN MR., OR
13 DOCTOR McMEEKIN'S NOTES THAT SAID THAT IF CHIP AGREES TO GO
14 BACK TO SCHOOL I'LL WRITE HIM ANOTHER PRESCRIPTION FOR
15 RITALIN. SO, CHIP WENT BACK TO SCHOOL AND HE GOT ANOTHER
16 PRESCRIPTION FOR RITALIN. DO YOU REMEMBER THAT?

17 A AGAIN, THAT'S STRIKING A BELL, BUT I DON'T REMEMBER
18 EXACTLY.

19 Q DO YOU HAVE SOME VAGUE RECOLLECTION OF THAT?

20 A I HAVE A VAGUE RECOLLECTION OF THAT.

21 Q WOULD IT NOT HAVE A BEEN A GOOD STRATEGY-- DO YOU
22 KNOW IF DOCTOR McMEEKIN HAD BEEN DISCIPLINED BY THE SOUTH
23 CAROLINA MEDICAL ASSOCIATION, OR WHATEVER THE GOVERNING
24 AGENCY IS FOR DOCTORS IN THIS STATE? YOU KNEW THAT AT THE
25 TIME OF TRIAL, DID YOU NOT?

1 A YES.

2 Q DO YOU NOT THINK IN YOUR EXPERIENCE AS A DEATH PENALTY
3 LITIGANT THAT THE JURY WOULD NEED TO HEAR THAT BECAUSE
4 WHAT HE WAS DISCIPLINED FOR WAS OVER-PRESCRIBING DRUGS, AND
5 THE SAME THING WAS HAPPENING HERE? DO YOU NOT THINK THAT
6 WOULD HAVE HELPED JIMMY'S DEFENSE?

7 A I THOUGHT WE DID GET THAT OUT THROUGH DOCTOR MORTON.

8 Q IT'S TOUCHED ON IN DOCTOR-- LET ME SHOW YOU THE
9 TRANSCRIPT AND ASK YOU TO REVIEW IT.

10 (PAUSE TO LOCATE TRANSCRIPT REFERENCE)

11 STARTING ON PAGE 2690, IF YOU WILL JUST REVIEW DOWN TO
12 2692, THAT'S FOR ABOUT....

13 A (PAUSE TO REVIEW TRANSCRIPT) OKAY. I... OKAY. I'VE
14 REVIEWED THAT PART. I WAS THINKING, AND, OF COURSE, AFTER THIS
15 TIME, I COULD BE WRONG, THAT DOCTOR MORTON DID MENTION
16 SOMEWHERE IN HERE THAT DOCTOR McMEEKIN HAD BEEN
17 DISCIPLINED AT SOME POINT.

18 Q HE DOES.

19 A OKAY.

20 Q THAT'S IN THERE.

21 A OKAY.

22 Q LET ME ASK YOU THIS: DOCTOR MORTON-- ALL THE
23 INFORMATION YOU RECEIVED BY DOCTOR McMEEKIN CAME STRAIGHT
24 FROM DOCTOR McMEEKIN'S NOTES, DID IT NOT?

25 A YES, AS FAR AS I KNOW, YES.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q EVEN THOUGH IT WAS BROUGHT OUT, IT WAS NEVER POINT-
2 BLANK ASKED, BUT FOR THIS OVER-PRESCRIBING OF DRUGS, THE
3 MATCH MIGHT NOT HAVE BEEN LIT AS TO WHAT HAPPENED. IS THAT
4 CORRECT?

5 A I DON'T THINK THAT BUT FOR QUESTION WAS ASKED. I DON'T
6 KNOW IF THAT WOULD-- I DON'T KNOW IF ANYBODY COULD TESTIFY
7 TO THAT.

8 Q IN A CASE OF THIS NATURE, A HEINOUS CRIME, WOULD IT NOT
9 BE A GOOD TACTICAL STRATEGY TO HAVE SOMEBODY ELSE TO POINT
10 THE FINGER TO TAKE SOME OF THE BLAME OFF OF THE DEFENDANT IN
11 THIS CASE, SUCH AS HAYNE McMEEKIN, WHO WOULD BE A BOXED-IN
12 WITNESS; THERE'S NOWHERE HE COULD GO ON THE STAND WITH
13 THOSE NOTES. WOULD THAT BE A CORRECT STATEMENT?

14 A I'M NOT SURE OF THAT. AS FAR AS PUTTING HIM ON THE
15 WITNESS STAND. BUT WHAT WE HAD FROM DOCTOR MORTON,
16 DOCTOR MORTON BASICALLY INDICTED DOCTOR McMEEKIN FOR
17 WHAT HE HAD DONE. TO GIVE DOCTOR McMEEKIN A CHANCE TO
18 EXPLAIN IT, I DON'T THINK PROBABLY WOULD HAVE BEEN A GOOD
19 IDEA.

20 THERE IS-- CERTAINLY, PROBABLY, HE WOULD HAVE GIVEN
21 REASONS. I'VE YET TO-- HAVING EXAMINED AND CROSS EXAMINED
22 DOCTORS BEFORE THEY SEEM TO ALWAYS BE ABLE TO JUSTIFY THEIR
23 ACTIONS SOME WAY. OR, HAVING DONE MEDICAL MALPRACTICE AND
24 SOME OTHER THINGS.

1 Q BUT, IN DOCTOR McMEEKIN'S CASE AT THIS GIVEN TIME, HE'S
2 JUST BEEN DISCIPLINED, PUBLICLY REPRIMANDED, THE NOTES WERE
3 THERE, THAT'S WHAT DOCTOR MORTON BASED HIS OPINION ON. AND
4 WE SPENT ABOUT TWO PAGES OF THE WHOLE TRIAL ON THIS ISSUE.
5 DO YOU NOT THINK IT SHOULD HAVE DELVED IN FURTHER?

6 A WELL, I DON'T KNOW IF IT COULD HAVE BEEN DELVED IN ANY
7 FURTHER WITHOUT ACTUALLY CALLING HIM TO THE WITNESS STAND.
8 BUT, YOU KNOW, THAT WOULD HAVE A POTENTIAL TACTIC. I MEAN, I
9 CAN SEE THAT BEING DONE. BUT WHETHER IT SHOULD HAVE BEEN
10 GONE INTO MORE, AFTER THIS PERIOD OF TIME, I REALLY CAN'T SAY
11 ONE WAY OR THE OTHER.

12 Q DID YOU CONSULT WITH ANOTHER PSYCHIATRISTS AS TO ANY
13 ETHICAL CONSIDERATIONS THAT DOCTOR McMEEKIN HAD IN
14 COUNSELING, TERRY, EARL, AND JIMMY, DUE TO THE FAMILY
15 CONFLICTS?

16 A NOT THAT I RECALL.

17 Q DID YOU FIND THAT TO BE SOMEWHAT OF AN ETHICAL
18 VIOLATION ON HIS BEHALF?

19 A I'M NOT FAMILIAR WITH THE ETHICS OF PSYCHIATRISTS AS FAR
20 AS COUNSELING DIFFERENT PEOPLE IN THE SAME FAMILY. SO, I
21 COULDN'T ANSWER THAT.

22 Q YOU WOULD AGREE THAT THAT WAS ALMOST A TRIANGLE, OR
23 FINGER-POINTING AT EACH OTHER, WHOSE FAULT THIS FAMILY
24 BREAK-UP WAS. WOULD THAT BE A CORRECT STATEMENT? IN

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 REVIEW DOCTOR MEYER'S RECORDS AND DOCTOR McMEEKIN'S

2 RECORDS. JIMMY'S BLAMING TERRY AND EARL'S BLAMING TERRY---

3 A OH, YES, I WOULD--

4 Q ---AND TERRY'S BLAMING EARL---

5 A ---THINK SO, YES.

6 Q ---AND TERRY'S BLAMING JIMMY.

7 A THAT'S CORRECT.

8 Q DO YOU THINK THAT AVENUE WITH DOCTOR McMEEKIN WOULD

9 HAVE BEEN WORTH PURSUING - HOW COULD HE COUNSEL ONE OF

10 THEM WHEN HE'S GETTING CONFLICTING INFORMATION? AS A---

11 A WELL, THAT---

12 Q ---PSYCHIATRIST, NOT AS A COUNSELOR.

13 A THAT COULD BE SOMETHING THAT COULD BE BROUGHT UP.

14 Q TELL ME WHAT, IF ANY, DIRECTION THE INVESTIGATION, YOU

15 AND MR. HANCOCK'S INVESTIGATION IN DEFENSE OF THIS CASE DID

16 CONCERNING CHIP ROBERTSON?

17 A WELL, THE INFORMATION WE HAD ON CHIP WAS BASICALLY ON

18 THE SOCIAL BACKGROUND, THAT TYPE OF THING. CHIP WAS BEING

19 REPRESENTED AT THAT TIME BY AN ATTORNEY, MIKE GILLEN. AND

20 CHIP WAS NOT-- I THINK WE APPROACHED MIKE ABOUT WHETHER

21 CHIP WOULD BE WILLING TO TESTIFY OR GIVE INFORMATION ABOUT

22 WHAT WENT ON IN THE FAMILY, THAT TYPE OF THING. CHIP WAS NOT

23 COOPERATIVE AT ALL DURING THIS WHOLE TIME.

24 Q DID YOU---

1 A HE HAD SOME OTHER LEGAL-- I THINK HE HAD SOME DRUG
2 CHARGES OR SOMETHING. HE WAS JUST NOT COOPERATIVE.

3 Q WAS HE NOT INCARCERATED ON HIS DRUG CHARGES DURING
4 THE VAST PERIOD OF THIS TIME?

5 A I CAN'T REMEMBER IF HE WAS INCARCERATED OR NOT, BUT I
6 KNEW THEY WERE PENDING.

7 Q DID MR. GILLEN GIVE YOU ACCESS TO HIM AS TO THE EVENTS
8 CONCERNING JIMMY ROBERTSON?

9 A I DIDN'T HAVE ANY ACCESS TO CHIP AT ALL.

10 Q DO YOU RECALL ANY REFERENCES TO CHIP IN MS. CASCIO'S
11 NOTES?

12 A NOT AT THIS TIME.

13 Q LET ME SHOW WHAT'S A COPY OF WHAT'S BEEN MARKED AS
14 APPLICANT'S EXHIBIT NUMBER SEVEN, A COPY OF MS. CASCIO'S NOTES.
15 AND DOES IT NOT SAY, "MOM WOULD MAIL CHIP RITALIN, TEN TO
16 FIFTEEN TABLETS PER WEEK"? IS THAT IN MS. CASCIO'S NOTES?

17 A WELL, IF THAT'S WHAT'S BEEN MARKED. I DON'T RECOGNIZE
18 THE HANDWRITING. I'M SURE---

19 Q BUT YOU---

20 A I'LL TAKE YOUR WORD FOR THAT, YES.

21 Q IT'S A COPY OF THIS DOCUMENT.

22 A I'LL TAKE YOUR WORD FOR IT.

23 Q IS THAT WHAT THAT SAYS?

24 A THAT'S CORRECT.

25 Q AND THAT WAS NOT BROUGHT BEFORE THE JURY?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 A I DON'T REMEMBER IF THAT WAS OR NOT.

2 Q DOES IT ALSO NOT INDICATE IN THESE NOTES OF MS. CASCIO'S
3 THAT MM, MEREDITH MOON, WOULD KEEP HER MOUTH SHUT, A
4 CHECK FOR 50G?

5 A THAT'S WHAT THAT SAYS. I DON'T KNOW WHO MM REFERS TO.

6 Q ASSUMING, ARGUENDO, FOR THE SAKE OF THIS QUESTION, IT
7 REFERS TO MEREDITH MOON, WOULD THAT NOT BE---

8 A THAT WOULD BE WHAT IT SAYS.

9 Q MEREDITH MOON WAS ONE OF THE KEY WITNESSES AGAINST
10 HIM IN THIS CASE. IS THAT CORRECT?

11 A IN THE GUILT PHASE, YES.

12 Q AS A MATTER OF FACT, SHE WAS THE ONE WHO UNLOCKED THE
13 WHOLE KEY BY COOPERATING WITH THE PHILADELPHIA POLICE,
14 WHICH RESULTED IN A SEARCH IN VIRGINIA, MARYLAND, AND THE
15 HOUSE BACK IN ROCK HILL. IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q DO YOU THINK THIS WOULD NOT HAVE BEEN SALIENT TO
18 ATTACK HER CREDIBILITY WITH THIS STATEMENT, AFTER MR. POPE'S
19 CROSS EXAMINATION OF MS. CASCIO?

20 A WELL, ACTUALLY, I-- IT COULD HAVE PROBABLY BEEN USED IN
21 THE CROSS EXAMINATION OF MS. MOON, PERHAPS, AND BROUGHT
22 FORTH IN THAT. AGAIN, I DON'T REMEMBER WHETHER IT WAS OR NOT.

23 Q IF I TOLD YOU THAT-- MR. HANCOCK EXAMINED MS. MOON, DID
24 HE NOT?

25 A HE DID.

1 Q YOU WOULD AGREE WITH ME, THOUGH, THAT THAT WOULD BE
2 A VERY SALIENT ATTACK ON HER CREDIBILITY?

3 A IT WOULD.

4 Q AND IT WOULD ALSO SHOW THAT SHE HAD FURTHER
5 INVOLVEMENT IN THIS CRIME AND THAT SHE WAS IN IT FOR THE
6 MONEY, TOO?

7 A THAT'S CORRECT.

8 Q AND THAT WAS THE MAIN ALLEGATION THE PROSECUTION
9 MADE AGAINST MR. ROBERTSON, THAT HE KILLED HIS PARENTS FOR
10 MONEY, IS IT NOT?

11 A THAT'S CORRECT.

12 Q I'M SHOWING YOU ALSO ANOTHER COPY OF MS. CASCIO'S NOTES
13 IN REFERENCE TO CHIP. DOES IT NOT SAY, "CHIP CONSPIRED IN THIS
14 AND TOLD ME HE WAS GOING TO COME HOME AND DO IT, TOO." ALSO,
15 "HALLOWEEN, CHIP SAID, GO AHEAD AND DO IT. JUST BE CAREFUL
16 WHAT YOU DO."?

17 A YES, THAT'S IN HERE.

18 Q AND WOULD THAT NOT BE SAYING TO THE JURY THAT IT TAKES
19 SOME OF THE BLAME OR GUILT OFF JIMMY IN THIS CASE? WOULD
20 THAT NOT BE CORRECT?

21 A THAT COULD DO THAT. I MEAN, I CAN SEE THIS WORKING TWO
22 WAYS. ONE: IT PUTS IT MORE AS A PREMEDITATED TYPE THING,
23 RATHER THAN A DRUG-INDUCED, IMPULSIVE ACT. SO, I MEAN, I CAN
24 SEE THAT WORKING BOTH WAYS.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q COULD IT NOT CONFIRM THAT HE WAS ACTING UNDER THE
2 CONTROL OR PERSUASION OF CHIP TO DO THIS; I.E., CHIP SUPPLYING
3 HIM WITH THE RITALIN, CHIP SAYING GO AHEAD AND DO IT, CHIP
4 SAYING DO IT HALLOWEEN, JUST DON'T GET CAUGHT?

5 A YEAH, I THINK THAT COULD, YES.

6 Q WOULD THAT NOT HAVE GIVEN YOU ANOTHER MITIGATING
7 CIRCUMSTANCE UNDER 16-03-20, SUBSECTION FIVE, WHICH IS ACTING
8 UNDER THE INFLUENCE OF ANOTHER PERSON?

9 A I THINK I'M FAMILIAR WITH ACTING UNDER THE INFLUENCE OF
10 ANOTHER PERSON.

11 Q ACTS UNDER DURESS OR DOMINATION OF ANOTHER PERSON.
12 WOULD THAT NOT HAVE GIVEN YOU ANOTHER MITIGATING
13 CIRCUMSTANCE TO ARGUE TO THE JURY?

14 A THAT COULD. I THINK THAT'S PRETTY WEAK, THAT IF THAT WAS
15 DOMINATION FROM JUST THAT, BUT POTENTIALLY, YES.

16 Q BUT IN THIS CASE, WHAT YOU HAD WAS WEAK, WAS IT NOT?

17 A WELL, I DON'T KNOW IF THE MITIGATION WAS THAT WEAK, AS
18 FAR AS THE HISTORY. BUT THE-- YOU KNOW, THAT WOULD HAVE
19 BEEN ANOTHER FACTOR. I THOUGHT IT DID COME OUT AT SOME POINT
20 THAT CHIP HAD TALKED ABOUT KILLING HIS PARENTS ALSO, BUT I
21 COULD BE WRONG ABOUT THAT.

22 Q MR. HANCOCK PUT MR. MEYER UP. IS THAT CORRECT?

23 A YES.

24 Q AND IN THAT TESTIMONY, ALTHOUGH HE GOES THROUGH
25 TERRY'S MEDICAL HISTORY, STARTING WITH HER IN THE NINTH

1 GRADE HAVING SUICIDAL THOUGHTS, HE DOES NOTHING WITH EARL'S,
2 WHICH RUNS ALONG THE SAME THEME, BASICALLY. WHY WAS THAT,
3 IF YOU KNOW?

4 A I DON'T REMEMBER.

5 Q DO YOU NOT THINK THAT WOULD HAVE BEEN SALIENT TO
6 BRING OUT TO THIS JURY THAT EARL ALSO HAD SOME OF THE SAME
7 PROBLEMS THAT TERRY HAD?

8 A I THINK IT WOULD, YES.

9 Q HOW DID MR. ROBERTSON GET A PHONE DURING THE LUNCH
10 BREAK TO CALL ERIN SAVAGE, ON THE LUNCH BREAK AND TELL HER
11 NOT TO COME BACK UP HERE? WAS THAT FROM MR. HANCOCK'S
12 PARALEGAL, OR FROM HIS INVESTIGATOR?

13 A I REMEMBER THAT HAPPENING. I DON'T REMEMBER HOW HE
14 GOT THE PHONE. I KNOW THERE WAS A SITUATION IN WHICH HIS
15 PARALEGAL DID LET JIMMY USE A CELL PHONE AT ONE POINT. I DON'T
16 REMEMBER IF THAT WAS THE CALL THAT THAT HAPPENED ON OR NOT.

17 Q AND WHEN MS. SAVAGE TOOK THE STAND, MR. BRACKETT
18 ASKED HER, DID HE TELL YOU NOT TO COME BACK UP HERE, AND
19 THERE WAS NO OBJECTION. DO YOU REMEMBER THAT?

20 A I REMEMBER THAT COMING OUT. I DON'T REMEMBER IF THERE
21 WAS AN OBJECTION OR NOT.

22 Q IF I TOLD YOU THERE WAS NOT AN OBJECTION, WOULD-- LET ME
23 ASK YOU THIS: DO YOU NOT THINK THAT SINCE HE DID NOT TAKE THE
24 STAND AND PRESENTED NO EVIDENCE IN THE GUILT PHASE, DO YOU
25 NOT THINK THAT AFFECTED HIS CREDIBILITY OR BELIEVABILITY ON

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

- 1 THE MITIGATION END AND THAT HE WAS TRYING TO HIDE SOMETHING
2 OR IS DEVIOUS?
- 3 A IT COULD, YES.
- 4 Q DID YOU KNOW ANYTHING ABOUT THE PHONE BEING GIVEN TO
5 HIM BACK THERE?
- 6 A NO, I DIDN'T.
- 7 Q YOU'RE FAMILIAR WITH SKIPPER V. SOUTH CAROLINA.
8 CORRECT?
- 9 A CORRECT.
- 10 Q AND YOU'RE FAMILIAR WITH ADAPTABILITY EVIDENCE. IS THAT
11 CORRECT?
- 12 A CORRECT.
- 13 Q YOU, NOR MR. HANCOCK, WITH THE EXCEPTION OF MR. STOBEE
14 WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
15 PRESENTED ANY ADAPTABILITY EVIDENCE. IS THAT CORRECT?
- 16 A AS FAR AS I RECALL, NO.
- 17 Q AND ALTHOUGH HIS RECORD WASN'T PERFECT AT FIRST AND HE
18 HAD SOME MINOR INFRACTIONS, OVERALL IT WASN'T THAT BAD.
19 WOULD YOU AGREE WITH ME ON THAT?
- 20 A I DON'T BELIEVE HE HAD BEEN A BAD PRISONER.
- 21 Q AND AS A MATTER OF FACT, THE MEDICAL RECORDS FROM SCDC
22 - AND MR. HANCOCK DOES MAKE A POINT OF THIS IN THE RECORD - IS
23 THAT HE'S FINALLY GOT THE CORRECT DIAGNOSIS AND HIS MANIA,
24 MANIC DEPRESSIVE; I.E., BI-POLARISM, IS UNDER CONTROL. IS THAT A
25 CORRECT STATEMENT?

1 A I DON'T REMEMBER MR. HANCOCK MAKING THAT POINT, BUT
2 THAT PROBABLY, YES. PROBABLY.

3 Q WHY DIDN'T YOU AND MR. HANCOCK BRING THE DOCTOR FROM
4 SCDC UP HERE, WHO WROTE THAT REPORT?

5 A I DON'T RECALL AT THIS TIME.

6 Q DO YOU NOT THINK HE WOULD HAVE BEEN A GOOD WITNESS IN
7 MITIGATION BECAUSE HERE'S A GUY WHO WORKS FOR THE STATE
8 WHO'S COMING TO TESTIFY ABOUT HIS OWN DOCUMENTATION; HE'S
9 DOING BETTER, HE'S ON THE RIGHT MEDICATION, HE HAS THE RIGHT
10 DIAGNOSIS. DO YOU NOT THINK THAT WOULD IMPACT THE JURY AS
11 FAR AS ADAPTABILITY UNDER SKIPPER V. SOUTH CAROLINA
12 EVIDENCE?

13 A IT COULD. AGAIN, I HAVE ABSOLUTELY NO RECOLLECTION
14 ABOUT ANY THOUGHT PROCESS OF DOING THAT AT THAT TIME, AT
15 THIS POINT.

16 Q WAS ADAPT---

17 THE COURT: WHAT WAS THE NAME OF THAT WITNESS?

18 MR. BROWN: MR. STOBEE, WHO'S GOING TO TESTIFY TODAY.
19 HE'S THE---

20 THE COURT: HE IS TESTIFYING LATER TODAY?

21 MR. BROWN: YES SIR. HE'S THE CUSTODIAN OF RECORDS. BUT
22 IN THOSE RECORDS, YOUR HONOR, THE TRANSCRIPT, THERE WAS A
23 REPORT, A MEDICAL REPORT FROM A DOCTOR AT SCDC WHOSE NAME
24 ESCAPES ME RIGHT NOW. I CAN GET IT TO THE COURT IF YOU WANT IT,
25 YOUR HONOR. BUT IT'S A REPORT.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 THE COURT: THAT'S ALL RIGHT. I'LL WAIT UNTIL I HEAR THAT
2 OTHER WITNESS.

3 MR. BROWN: OKAY.

4 Q BUT THAT WAS NEVER PURSUED. IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q WAS ADAPTABILITY DISCUSSED IN THINKING, IN STRATEGIZING
7 FOR THIS CASE?

8 A I'M SURE IT PROBABLY WAS, BUT I DON'T REMEMBER DETAIL OR
9 ANY SPECIFIC INSTRUCTIONS, DISCUSSIONS ABOUT IT.

10 Q YOU WOULD AGREE WITH ME THAT'S ONE OF THE IMPORTANT
11 THINGS IN A MITIGATION PHASE IN A DEATH PENALTY PHASE IN YOUR
12 EXPERIENCE. IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND YOU DIDN'T-- NEITHER YOU NOR MR. HANCOCK GOT AN
15 ADAPTABILITY EXPERT. IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND AS FAR AS ADAPTABILITY GOES COMPARATIVELY TO
18 OTHER DEATH PENALTY CASES YOU'VE TRIED, MR. ROBERTSON'S
19 RECORD, UP UNTIL THE TIME OF THE TRIAL, WAS PRETTY CLEAN AS
20 FAR AS ADAPTABILITY GOES, IN PRISON?

21 A YOU'RE ASKING COMPARED TO OTHER DEATH PENALTY---

22 Q YES SIR.

23 A ---I'VE HAD?

24 Q YES.

1 A I DON'T-- I DON'T RECALL ANY OF MY CLIENTS REALLY HAVING
2 A BAD PRISON RECORD PRIOR TO A TRIAL. SO, THE QUESTION IS
3 COMPARATIVELY. MR. ROBERTSON DID NOT HAVE A BAD PRISON OR
4 JAIL RECORD. I KNOW THAT.

5 Q HAVE YOU IN THE PAST, HAVE YOU ALWAYS PRESENTED
6 EVIDENCE OF ADAPTABILITY?

7 A I KNOW I HAVE IN AT LEAST TWO OTHER TRIALS, I BELIEVE. I
8 DON'T RECALL THE OTHERS THAT THERE WAS EVIDENCE OF
9 ADAPTABILITY PRESENTED.

10 Q WOULD YOU AGREE WITH ME THAT WHEN YOU'RE ARGUING FOR
11 LIFE VERSUS THE DEATH PENALTY THAT ADAPTABILITY IS A KEY
12 COMPONENT IN THE DEFENSE?

13 A YES, THAT'S AN IMPORTANT ISSUE.

14 Q AND THAT ISSUE REALLY WASN'T EXPLORED TOO MUCH IN MR.
15 ROBERTSON'S CASE, WAS IT? ASSUMING, ARGUENDO, THAT I'M
16 GIVING YOU THE FACTS DIRECTLY, OUTSIDE OF MR. STOBEE, THERE
17 WAS NO ADAPTABILITY EVIDENCE?

18 A THAT WOULD BE CORRECT.

19 Q I'M GOING TO SHOW YOU THE INDEX ON TRANSCRIPT ONE, PAGE
20 11. STARTING WITH THE MITIGATION PHASE ON DEFENSE, Y'ALL
21 CALLED DOCTOR PRYOR. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND THEN YOU CALLED DOCTOR PINCUS?

24 A THAT'S CORRECT.

25 Q AND THEN YOU CALL CALLED DOCTOR EVANS?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

- 1 A THAT'S CORRECT.
- 2 Q THEN YOU CALLED DOCTOR MILLER?
- 3 A THAT'S CORRECT.
- 4 Q THEN YOU CALLED DOCTOR STOBEE, OR MICHAEL STOBEE, THE
- 5 GUY FROM SCDL CUSTODIAL RECORDS?
- 6 A OKAY.
- 7 Q THEN YOU CALLED DOCTOR, MR. MEYER?
- 8 A THAT'S CORRECT.
- 9 Q AND THEN YOU CALLED SOME FRIENDS OF THE FAMILY WHO
- 10 BASICALLY ASKED-- DOCTOR HOPE, LINDA HOPE, JULIET
- 11 McLAUGHLIN, MICHAEL FAULKNER, WHO BASICALLY ASKED FOR
- 12 MERCY. IS THAT CORRECT?
- 13 A THAT'S CORRECT.
- 14 Q AND THEN YOU WIND UP WITH DOCTOR CASCIO. IS THAT
- 15 CORRECT?
- 16 A THAT'S CORRECT.
- 17 Q AND SHE IS THE LAST EXPERT, IS SHE NOT?
- 18 A I BELIEVE THAT'S CORRECT.
- 19 Q WOULD YOU AGREE WITH ME THAT IN YOUR RECOLLECTION OF
- 20 THIS CASE THAT DOCTOR PRYOR MADE A PRETTY GOOD WITNESS IN
- 21 MITIGATION?
- 22 A AS FAR AS I CAN RECALL, YES.
- 23 Q DOCTOR PINCUS MADE A PRETTY GOOD WITNESS IN
- 24 MITIGATION?
- 25 A THAT'S CORRECT.

1 Q DOCTOR EVANS MADE A PRETTY GOOD WITNESS IN
2 MITIGATION?

3 A THAT'S CORRECT.

4 Q DOCTOR MORTON MADE A PRETTY GOOD WITNESS IN
5 MITIGATION?

6 A THAT'S CORRECT.

7 Q WOULD YOU AGREE WITH ME THAT DOCTOR CASCIO WAS AN
8 UNMITIGATED DISASTER OF BIBLICAL PROPORTIONS IN THIS CASE?

9 A I DON'T KNOW IF I WOULD GO THAT FAR.

10 THE COURT: IN REFLECTING OVER THE TESTIMONY, THAT'S
11 GONNA CONFUSE ME.

12 (LAUGHTER)

13 MR. BROWN: A LITTLE LITERARY LICENSE, YOUR HONOR.

14 A I THINK DOCTOR CASCIO WAS ABLE ON THE DIRECT EXAM TO
15 BRING OUT GOOD POINTS AND HAVE BENEFICIAL INFORMATION. I
16 THINK THAT WAS OVERSHADOWED BY THE CROSS EXAMINATION AND
17 THAT THAT PART WAS A, VERY DEVASTATING TO THE DEFENSE.

18 Q LET ME BACK UP A SECOND, AND DO THIS CHRONOLOGICALLY.
19 THE DECISION THAT YOU TESTIFIED TO EARLIER NOT TO HAVE HIM--
20 MR. HANCOCK HAD CONTACTED THE DEATH PENALTY RESOURCE
21 CENTER AND GOT THESE EXPERTS. IS THAT CORRECT?

22 A YES. OR THEY HAD-- WE GOT THE NAMES AT LEAST FROM
23 THEM. AND I THINK THESE ARE EXPERTS MOST OF WHOM HAD BEEN
24 USED IN OTHER DEATH PENALTY LITIGATION.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q SO, YOU DIDN'T RESEARCH THEIR RESUMES AND
2 BACKGROUNDS, YOU DIDN'T?

3 A I DON'T RECALL-- I SAW THEIR RESUMES, BUT AS FAR AS
4 RESEARCHING THEM PRIOR TO GETTING THEM, NO.

5 Q WERE YOU AWARE WHEN YOU PUT MS. CASCIO ON THE STAND
6 THAT SHE HAD NEVER TESTIFIED IN ANY COURT AS AN EXPERT
7 BEFORE?

8 A I DON'T RECALL IF I-- I KNEW THAT-- I MAY HAVE KNOWN THAT,
9 BUT I CAN'T REMEMBER RIGHT NOW IF SHE WAS.

10 Q WOULD YOU AGREE WITH ME IN A DEATH PENALTY CASE, IT'S
11 NOT WHERE YOU MAKE YOUR GREATEST EXPERT START OUT WITH?

12 A WELL, IT'S CERTAINLY BETTER IF SOMEONE HAS TESTIFIED
13 BEFORE. SOMETIMES, HAVING SOMEONE THAT IS NOT-- I MEAN,
14 HAVING PRIOR TESTIMONY DOESN'T NECESSARILY MEAN SOMEONE IS
15 GOING TO BE A BETTER WITNESS OR NOT A BETTER WITNESS. I CAN
16 FORESEE OF HAVING EXPERTS THAT HAVE NOT TESTIFIED IN THE
17 PAST, YOU KNOW, THEY COME WITH LESS BAGGAGE. THAT WOULDN'T
18 BE MY MAIN POINT OF WHETHER TO USE A WITNESS OR NOT, THEIR
19 PRIOR TESTIMONY.

20 Q AND WOULD THAT PLAY INTO YOUR DECISION, THOUGH,
21 WHETHER OR NOT TO--

22 A YEAH, IT COULD. IF I HAD TALKED TO OTHER ATTORNEYS AND
23 SAID THIS PERSON MAKES A GREAT WITNESS, YES. I MEAN, THAT-- OR
24 HAS MADE A BAD WITNESS IN THE PAST, THAT WOULD CERTAINLY

1 PLAY A PART IN THE DECISION. THAT WOULDN'T BE MY PRIMARY
2 DECISION MAKING.

3 Q WERE YOU ALSO AWARE THAT HER RESUME THAT SHE LISTS
4 THAT SINCE SHE GOT OUT OR GRADUATED-- OR, WERE YOU AWARE
5 THAT SHE GRADUATED FROM, OR FINISHED HER ACADEMIA IN 1996
6 FROM THE UNIVERSITY OF PENNSYLVANIA?

7 A I'M SURE I SAW HER RESUME. I DON'T REMEMBER WHEN SHE
8 GRADUATED.

9 Q I'LL SHOW YOU APPLICANT'S NUMBER FOUR WHERE IT SHOWS
10 SHE FINISHED UP HER Ph.D. IN 1996, AT THE UNIVERSITY OF
11 PENNSYLVANIA.

12 A THAT'S CORRECT.

13 Q AND THIS TRIAL TOOK PLACE IN MARCH OF 1999. IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q AND ALSO, SHE SHOWS ON HER PRACTICE EXPERIENCE 1997
17 THROUGH PRESENT, EXPERT WITNESS TESTIMONY, CAPITAL
18 LITIGATION CASES, CENTER FOR CAPITAL LITIGATION, COLUMBIA,
19 SOUTH CAROLINA. IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q AND THAT'S THE ONLY EXPERIENCE THAT SHE SHOWS AS TO
22 DEATH PENALTY MATTERS AND CRIMINAL MATTERS. IS THAT
23 CORRECT?

24 A THAT'S CORRECT.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q AND THAT'S THE DEATH PENALTY RESOURCE CENTER WE'RE
2 TALKING ABOUT. RIGHT?

3 A THAT'S CORRECT.

4 Q DOES THAT NOT HURT HER RESUME, SHOWING THAT THE ONLY
5 PEOPLE SHE'S WORKED FOR IS PEOPLE WHO DEFEND DEATH PENALTY
6 CASES?

7 A THAT'S CERTAINLY SOMETHING THAT CAN BE BROUGHT UP, AS
8 OPPOSED TO PROSECUTION OR SOMETHING OF THAT NATURE.

9 Q AND, FINDING AN EXPERT MASTER SOCIAL WORKER IS NOT
10 THAT HARD TO FIND, IS IT?

11 A PROBABLY NOT.

12 Q DO YOU KNOW WHO RECOMMENDED HER TO MR. HANCOCK?

13 A I THOUGHT THE DEATH PENALTY RESOURCE CENTER DID.

14 Q HOW DID IT BECOME IN THE PAST THAT YOU WERE GOING TO
15 TAKE HER AS A WITNESS?

16 A I DON'T RECALL EXACTLY. I KNOW MR. HANCOCK WAS TAKING,
17 I THINK, DOCTOR PINCUS AND DOCTOR EVANS. I WAS TAKING DOCTOR
18 MORTON. IT BASICALLY, I DON'T KNOW HOW IT CAME DOWN, BUT I
19 ENDED UP TAKING HER.

20 Q DO YOU RECALL WHEN YOU FIRST MET HER?

21 A I DON'T RECALL THE DATE. I THINK WE MET WITH HER AT THE
22 DEATH PENALTY RESOURCE CENTER IN COLUMBIA ON ONE OR MORE
23 OCCASIONS. I MET WITH HER ANOTHER TIME AT THE LAW SCHOOL IN
24 COLUMBIA, JUST ONE OTHER TIME.

1 Q DO YOU RECALL, EVEN THOUGH THE REPORT WAS MAILED TO
2 MR. HANCOCK, WHEN YOU FIRST GOT HER PRELIMINARY REPORT?

3 A I DON'T RECALL WHEN.

4 Q DO YOU RECALL WHEN YOU GOT HER NOTES, WHICH IS
5 APPLICANT'S EXHIBIT NUMBER SEVEN?

6 A I DO NOT.

7 Q DO YOU RECALL CONSENTING PRIOR TO TRIAL AT A MOTION
8 HEARING TO TURNING OVER ALL UNDERLYING DATA TO THE
9 PROSECUTION?

10 A I DON'T RECALL CONSENTING TO THAT, OR WHETHER THAT WAS
11 ORDERED. I GUESS THE ANSWER IS, NO, I DON'T RECALL THAT.

12 Q I'M GOING TO SHOW YOU A TRANSCRIPT, SIR, OF A HEARING ON
13 FEBRUARY 19, 1998, STARTING ON PAGE 44, LINE 9, IF YOU WOULD, JUST
14 BRIEFLY READ DOWN TO 45, LINE 10.

15 A (PAUSE TO REACH TRANSCRIPT) OKAY.

16 Q YOU DIDN'T OBJECT TO TURNING OVER UNDERLYING DATA. IS
17 THAT CORRECT?

18 A THAT'S CORRECT.

19 Q BY FEBRUARY 19, 1998, MR. AND MR. HANCOCK KNEW YOU HAD
20 A MENTALLY ILLNESS DEFENSE. IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND YOU ALSO KNEW THAT YOU WOULD HAVE SEVERAL MORE
23 EXPERTS PROBABLY THAN THE STATE. WOULD THAT BE A CORRECT
24 STATEMENT?

25 A THAT'S CORRECT.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

- 1 Q WHERE WAS THE STRATEGIC ADVANTAGE OF AGREEING TO
2 THAT, WHEN Y'ALL WOUND UP WITH FIVE EXPERTS AND THEY ONLY
3 HAD ONE?
- 4 A I DON'T KNOW IF THERE WAS A STRATEGIC ADVANTAGE TO
5 THAT. MY IMPRESSION FROM, I THINK IT'S RULE 705 OF THE EVIDENCE
6 RULES, IS THAT BASICALLY THAT'S THE RULE THAT YOU, THAT THE
7 OTHER SIDE IS ENTITLED TO ALL UNDERLYING DATA.
- 8 Q AFTER THE PERSON TESTIFIES.
- 9 A DURING CROSS EXAMINATION, YES.
- 10 Q AND RULE 705-- THROUGHOUT THAT TRANSCRIPT, IF I TOLD
11 YOU, WOULD YOU DISAGREE WITH ME THAT NOBODY RAISES RULE 705
12 THROUGH THE WHOLE TRANSCRIPT?
- 13 A I DON'T RECALL THAT.
- 14 Q BUT AT ANY EVENT, IT WASN'T AN ISSUE BECAUSE YOU AGREED
15 TO IT. CORRECT?
- 16 A THAT'S CORRECT.
- 17 Q AND DO YOU KNOW WHEN THESE NOTES WERE TURNED OVER
18 TO THE STATE?
- 19 A ON MS. CASCIO?
- 20 Q YES.
- 21 A I THINK IT WAS THE EVENING BEFORE SHE TESTIFIED.
- 22 Q AS A MATTER OF FACT - AND SEE IF THIS WILL REFRESH YOUR
23 MEMORY - THERE'S A COLLOQUY BACK AND FORTH BETWEEN YOU
24 AND MR. HANCOCK AND MR. BRACKETT AND MR. POPE AND JUDGE
25 HAYES ABOUT WHERE THE NOTES ARE, SHE'S ON THE WAY UP HERE

1 WITH THEM, WHAT HAPPENED TO YOU, BLAH, BLAH, BLAH. DO YOU
2 RECALL THAT?

3 A VAGUELY, BUT I DO REMEMBER THEM BEING TURNED OVER.

4 Q WHEN DID YOU FIRST GET THESE NOTES, TO THE BEST OF YOUR
5 MEMORY?

6 A I DON'T REMEMBER.

7 Q DID YOU REVIEW THESE NOTES BEFORE YOU GAVE THEM TO
8 THE STATE?

9 A I'M SURE I DID.

10 Q DO THEY CONCERN YOU?

11 A YES.

12 MR. BROWN: YOUR HONOR, I DON'T WANT TO GO THROUGH THE
13 LITANY OF QUESTIONS I WENT THROUGH WITH MR. HANCOCK THE
14 OTHER DAY. I WOULD TIE THIS INTO ONE LONG QUESTION ABOUT THE
15 STATEMENTS THAT WERE BROUGHT OUT ON CROSS EXAMINATION.
16 OR, IF MR. SALTER WANTS TO STIPULATE IT WOULD BE THE SAME
17 THING AS THE PAGES IN THE TRANSCRIPT THAT I ASKED MR. HANCOCK
18 THE OTHER DAY.

19 I MEAN, YOU'RE THE TRYER, THE FINDER OF FACT IN THIS CASE
20 AND YOU'VE ALREADY HEARD THAT. I JUST DIDN'T WANT TO
21 BELABOR THE COURT, IF YOU DON'T THINK I NEED TO PUT THIS IN THE
22 RECORD.

23 THE COURT: NO, I DON'T THINK YOU HAVE TO PRESERVE THE
24 RECORD. THAT STUFF'S IN THE RECORD.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q WITHOUT BORING YOU WITH THE WHOLE DETAILS THAT I WENT
2 THROUGH WITH MR. HANCOCK THE OTHER DAY ABOUT THE
3 STATEMENTS ON CROSS EXAMINATION, YOU WOULD AGREE WITH ME
4 THAT THEY WERE SEVERELY DAMAGING TO MR. ROBERTSON'S CASE?

5 A I WOULD SAY YES.

6 Q AS A MATTER OF FACT, I BELIEVE YOU SAID IN THE, TO THE
7 AUTHOR OF FAMILY BLOOD, LYNN RIDDLE, "LOOKING BACK, BOYD
8 SAID CASCIO'S TESTIMONY WAS THE MOST DAMAGING OF THE TRIAL."
9 WOULD THAT BE A CORRECT STATEMENT?

10 A THAT'S CORRECT.

11 Q AND AS FAR AS DEFENDING MR. ROBERTSON, THAT WAS THE
12 MOST DAMAGING OF THE TRIAL?

13 A I BELIEVE SO.

14 Q IT'S Y'ALL'S WITNESS.

15 A THAT'S CORRECT.

16 Q AND LET ME SAY THIS: DO YOU THINK BECAUSE OF HER
17 INEXPERIENCE AND NEVER TESTIFYING BEFORE THAT AS SHE GOT
18 BOXED IN SEVERAL TIMES BY MR. POPE WHERE SHE GOT YES, YES,
19 YES, AND SHE GOT THE MINDSET, WITHOUT EXPLAINING HER
20 ANSWERS, JUST AGREEING WITH WHATEVER HE PUT UP THERE?

21 A I DON'T KNOW IF THAT WAS THE INEXPERIENCE OR NOT, BUT---

22 Q COULD THAT BE ONE FACTOR FOR AN EXPERT WITNESS WHO'D
23 NEVER TESTIFIED BEFORE, NOT GOING ON AND EXPLAINING THEIR
24 ANSWERS, NOT EVEN OFFERING AN EXPLANATION, JUST AGREEING
25 WITH EVERYTHING THAT HE SAID?

1 A THAT COULD BE.

2 Q AND THIS WAS THE LAST EXPERT WITNESS YOU PUT UP?

3 A THAT'S CORRECT.

4 Q BUT FOR CALLING DOCTOR CASCIO, IS IT POSSIBLE YOU MAY
5 HAVE HAD A DIFFERENT OUTCOME IN THE SENTENCING PHASE?

6 A ANYTHING'S POSSIBLE.

7 Q COULD THAT HAVE BEEN A POSSIBILITY?

8 A THAT'S A POSSIBILITY.

9 Q REVIEWING THIS MATERIAL AND KNOWING HOW DAMNING IT
10 WAS TO THE DEFENDANT'S CASE, WOULD IT NOT HAVE BEEN BETTER
11 NOT TO PUT HER AND RESTED WITH DOCTOR PRYOR, DOCTOR PINCUS,
12 DOCTOR EVANS, AND DOCTOR MORTON?

13 MR. SALTER: YOUR HONOR, AT THIS POINT I'M GOING TO
14 OBJECT. THIS CALLS FOR SPECULATION INTO HINDSIGHT.

15 MR. BROWN: YOUR HONOR, I THINK THAT MR. BOYD IS
16 INFINITELY QUALIFIED AS PROBABLY THE BEST DEATH PENALTY
17 LITIGATION IN THE UPPER STATE. HIS RESUME AND RECORD SPEAKS
18 FOR ITSELF. I'VE TRIED CASES WITH HIM AND I CAN VOUCH FOR HIS
19 CREDIBILITY. I THINK HE'S ENTITLED AS AN EXPERT ALMOST IN
20 DEATH PENALTY LITIGATION TO ANSWER THAT QUESTION.

21 THE COURT: LET ME HEAR YOU ASK THE QUESTION, PLEASE.

22 Q DO YOU NOT THINK AT THE CONCLUSION OF DOCTOR MORTON,
23 DOCTOR PINCUS, DOCTOR EVANS, AND DOCTOR PRYOR THAT THE
24 BETTER MOVE, OR THE BETTER DECISION WOULD NOT HAVE BEEN TO
25 PUT HER UP?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

- 1 THE COURT: I OVERRULE THE OBJECTION.
- 2 A IN HINDSIGHT I WOULD AGREE WITH THAT.
- 3 Q AND YOU WOULD AGREE WITH ME THAT YOU HAD A WITNESS
- 4 WITH NO PRIOR TESTIFYING EXPERIENCE?
- 5 A I AGREE WITH THAT.
- 6 Q WHO WAS A DISASTER ON CROSS EXAMINATION. CORRECT?
- 7 A THAT'S CORRECT.
- 8 Q WHO DID NOT EXPLAIN HER ANSWERS WHEN THERE WAS A FULL
- 9 EXPLANATION SHE COULD HAVE WITH MR. POPE AND SHE GOT IN THE
- 10 HABIT OF JUST AGREEING TO EVERYTHING THAT HE SAID. IS THAT
- 11 CORRECT?
- 12 A THAT'S CORRECT.
- 13 Q AND ALL THE-- LET ME ASK YOU THIS: PRIOR TO THAT, WERE
- 14 THERE ANY INCULPATORY STATEMENTS ON MR. ROBERTSON'S
- 15 BEHALF, OTHER THAN WHAT MEREDITH MOON TESTIFIED TO?
- 16 A I DON'T REMEMBER. I'M TRYING TO THINK IF ANY OF THE OTHER
- 17 EXPERT WITNESSES HAD TESTIFIED ABOUT MR. ROBERTSON'S, THAT
- 18 MR. ROBERTSON FOUND WHAT HAPPENED. THERE'S CERTAINLY
- 19 NOTHING OF THAT DETAILED ABOUT IT IN THERE.
- 20 Q LET ME ASK THIS: YOUR OTHER EXPERTS, BECAUSE OF THEIR
- 21 EXPERIENCE IN TESTIFYING AS EXPERTS, DIDN'T PUT ALL THEIR
- 22 MATERIAL IN EVIDENCE, DID THEY?
- 23 A NO, THEY DIDN'T.
- 24 Q AND THAT'S AN EXPERIENCED EXPECT WITNESS, IS IT NOT?
- 25 A WELL, I DON'T KNOW THE REASON, BUT THEY DID NOT.

1 Q ONE LAST THING: MR. ROBERTSON SAID THAT NO ONE WAS
2 PRESENT WHEN THE STATE DID HIS MENTAL EVALUATION, OR DOCTOR
3 McKEE DID HIS MENTAL EVALUATION. DO YOU REMEMBER WHY THAT
4 WAS?

5 A NO, I DON'T AT THIS TIME.

6 Q AND WHEN DOCTOR McKEE TESTIFIED THAT ONE OF THE
7 REASONS FOR HIS UNDERLYING PREMISE WAS THAT HE ASSERTED HIS
8 FIFTH AMENDMENT PRIVILEGE IN PHILADELPHIA, YOU DID OBJECT TO
9 THAT?

10 A THAT'S CORRECT. I BELIEVE I MOVED FOR A MISTRIAL.

11 Q YES SIR, YOU DID.

12 MR. BROWN: I HAVE NO FURTHER QUESTIONS.

13 **CROSS EXAMINATION BY MR. SALTER:**

14 Q GOOD AFTERNOON, MR. BOYD. I'LL TRY TO BE AS BRIEF AS
15 POSSIBLE. YOU INDICATED YOU WERE FIRST APPOINTED ON APRIL 30,
16 1998?

17 A I BELIEVE THAT'S CORRECT.

18 Q THAT'S ABOUT A YEAR, ELEVEN MONTHS BEFORE THE MARCH
19 TRIAL. CORRECT?

20 A THAT'S CORRECT.

21 Q AND THE RECORD REFLECTS THAT CO-COUNSEL WAS
22 APPOINTED THE SAME DATE? DO YOU AGREE THAT'S CORRECT?

23 A WELL, IF THAT'S WHAT THE RECORD SAYS. I WAS UNDER THE
24 IMPRESSION HE HAD BEEN APPOINTED PRIOR TO ME, BUT I COULD BE
25 WRONG ON THAT.

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

- 1 Q I'LL SHOW YOU RESPONDENT'S EXHIBITS ONE AND TWO.
- 2 A THEY SHOW THE SAME DATE.
- 3 Q SO, Y'ALL WERE BOTH APPOINTED AT THE SAME TIME?
- 4 A IT APPEARS THAT WAY, YES.
- 5 Q BUT, REGARDLESS, THERE HAD BEEN SOME CONTACT MADE
- 6 WITH THE RESOURCE CENTER EARLY ON?
- 7 A THAT'S CORRECT.
- 8 Q NOW KNOWN AS THE CENTER FOR CAPITAL LITIGATION.
- 9 A THAT'S CORRECT.
- 10 Q AND YOU INDICATED ON DIRECT THAT ONE OF THE PERSONS
- 11 THAT YOU DID A SIT-DOWN WITH WAS YOUR CO-COUNSEL?
- 12 A THAT'S CORRECT.
- 13 Q DID YOU ALSO SPEAK TO YOUR CLIENT?
- 14 A SOMETIME AFTER THAT, YES.
- 15 Q DO YOU RECALL HOW MANY TIMES YOU MAY HAVE SPOKEN TO
- 16 HIM?
- 17 A NOT AT THIS TIME. I KNOW I VISITED HIM AT THE JAIL A
- 18 NUMBER OF TIMES, BUT I DON'T REMEMBER HOW MANY TIMES.
- 19 Q MORE THAN ONCE?
- 20 A OH, YES.
- 21 Q AND DID HE TELL YOU THAT HE IN FACT COMMITTED THE
- 22 MURDERS?
- 23 A YES.
- 24 Q THAT CREATED A PROBLEM IN PRESENTING A DEFENSE, DID IT
- 25 NOT, IN TERMS OF THE GUILT PHASE OF THE TRIAL?

1 A IN TERMS OF PUTTING HIM ON THE WITNESS STAND, YES. IN
2 TERMS OF PUTTING UP ANY EVIDENCE THAT WOULD HAVE BEEN
3 OBVIOUSLY FALSE, LIKE AN ALIBI, YES.

4 Q AND YOU INDICATED EARLIER THAT HE UNDERSTOOD YOUR
5 VARIOUS CONVERSATIONS WITH HIM, THAT HE UNDERSTOOD THAT HE
6 WOULD PROBABLY BE CONVICTED. CORRECT?

7 A THAT'S CORRECT.

8 Q BUT HE DIDN'T WANT TO PLEAD GUILTY?

9 A THAT'S CORRECT.

10 Q SO, THAT MADE A GUILTY BUT MENTALLY ILL PLEA SOMETHING
11 OF, THAT WAS NOT A FACTOR. CORRECT?

12 A IT WOULD'VE. THAT WOULDN'T HAVE BEEN MY
13 RECOMMENDATION ANYWAY, AS FAR AS A PLEA.

14 Q WHY IS THAT?

15 A BECAUSE THAT WOULD HAVE TAKEN IT AWAY FROM THE JURY,
16 EVEN IF THAT HAD BEEN ACCEPTED.

17 Q WHAT ABOUT A JURY INSTRUCTION OF GUILTY BUT MENTALLY
18 ILL?

19 A OKAY. HE COULD HAVE ENTERED THE NOT GUILTY PLEA AND
20 WE COULD HAVE ASKED FOR A PLEA OF GUILTY. I'M SORRY. A
21 VERDICT OF GUILTY BUT MENTALLY ILL FROM THE JURY. I DIDN'T--
22 THAT WAS NOT A ROUTE THAT I THINK THAT HE WOULD WANT TO GO.
23 HE WOULD NOT WANT TO CONCEDE GUILT.

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

- 1 Q NOW, WHEN YOU WENT OVER SOME OF YOUR PRIOR WORK
2 EXPERIENCE, I BELIEVE YOU INDICATED THAT YOU HAD TRIED SIX
3 DEATH PENALTY CASES PRIOR TO THIS ONE?
- 4 A SIX CLIENTS, YES.
- 5 Q SIX CLIENTS AND WON TWICE?
- 6 A YES.
- 7 Q AND YOU ASSISTED IN THE PROSECUTION OF ONE CASE?
- 8 A THAT'S CORRECT.
- 9 Q WOULD THAT HAVE BEEN RICKY TIM CALDWELL?
- 10 A THAT'S CORRECT.
- 11 Q AND YOU'VE TRIED A NUMBER OF MURDER CASES, ALSO, NOT
12 CAPITAL MURDER CASES, HAD YOU NOT?
- 13 A YES, I'VE TRIED A GOOD MANY.
- 14 Q DO YOU HAVE ANY IDEA HOW MANY?
- 15 A PROBABLY IN THE THIRTIES, SOMETHING OF THAT NATURE.
- 16 Q AND YOU'VE HAD OTHER MAJOR FELONY TRIAL EXPERIENCE AS
17 WELL. CORRECT?
- 18 A THAT'S CORRECT.
- 19 Q DO YOU RECALL, I THINK YOU TESTIFIED TO THIS PREVIOUSLY,
20 BUT HOW Y'ALL MADE A DECISION BETWEEN YOU AND YOUR CO-
21 COUNSEL IN TERMS OF HOW Y'ALL WOULD DIVIDE YOUR
22 RESPONSIBILITIES?
- 23 A WELL, AS IT CAME CLOSER TO TRIAL WE DID MAKE A DECISION
24 ON WHO WOULD TAKE WHAT WITNESS. GENERALLY, ON THE VOIR
25 DIRE, WE AGREED JUST TO BASICALLY TAKE TURNS DOING THAT. ON

1 THE-- WE HAD AGREED THAT ON OPENING STATEMENTS AND SOME OF
2 THE WITNESSES WE HAD AGREED TO DIVIDE UP THAT RESPONSIBILITY.

3 Q SO, Y'ALL HAD BOTH THE PARALEGAL AND THE INVESTIGATOR
4 FROM MR. HANCOCK'S OFFICE?

5 A THAT'S CORRECT.

6 Q TO ASSIST Y'ALL IN GATHERING INFORMATION. CORRECT?

7 A THAT'S CORRECT.

8 Q AND I BELIEVE MS. CASCIO, TO A CERTAIN EXTENT IN TERMS OF
9 GATHERING INFORMATION?

10 A THAT'S CORRECT.

11 Q DID Y'ALL NOT ALSO HAVE THE ASSISTANCE OF A LADY NAMED
12 DRUCY GLASS?

13 A SHE DID SOME WORK ON THE CASE. THAT IS CORRECT. SHE WAS
14 WITH THE DEATH PENALTY RESOURCE CENTER, I BELIEVE, AND DID
15 SOME WORK ON IT.

16 Q SHE WAS ACTUALLY PRESENT DURING MUCH, IF NOT ALL, OF
17 THE TRIAL. CORRECT?

18 A SHE WAS, YES, THAT'S CORRECT.

19 Q AND MS. CASCIO'S INVOLVEMENT WAS INVESTIGATION THE
20 FAMILY HISTORY AND THE MENTAL HEALTH HISTORY?

21 A THAT'S CORRECT.

22 Q DO YOU RECALL WHAT EFFORTS YOU AND YOUR CO-COUNSEL
23 MADE TO FIND THE MENTAL HEALTH RECORDS?

24 A WELL, WE GOT RECORDS FROM EVERY PHYSICIAN OR
25 PSYCHIATRIST OR PSYCHOLOGIST THAT HAD CONTACT WITH MR.

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

1 ROBERTSON AND THE FAMILY, TO MY KNOWLEDGE. THAT WAS
2 PRETTY EXHAUSTING.

3 I REMEMBER— I THINK WE HAD SOME DIFFICULTY GETTING THE
4 RECORD FROM MR. MEYER. HE ACTUALLY RETAINED A LAWYER AND
5 TRIED TO PREVENT US FROM GETTING THOSE RECORDS, AND THERE
6 WAS A COURT HEARING ON THAT, I BELIEVE.

7 BUT, BASICALLY, LIKE I SAID, WE FOUND EVERY DOCTOR OR
8 PSYCHIATRIST OR PSYCHOLOGIST THAT HAD DEALT WITH THE
9 FAMILY.

10 Q YOU WERE ASKED EARLIER IF YOU HAD ANY INFO WITH REGARD
11 TO THE EXPERTS WHO WERE BEING USED IN THE CASE, AND I BELIEVE
12 YOU INDICATED YOU DIDN'T OBJECT, BUT YOU DIDN'T HAVE ANY
13 PROBLEMS WITH WHAT WAS BEING DONE. CORRECT?

14 A NO, I DID NOT.

15 Q AND THAT INCLUDED UP UNTIL THE TIME OF TRIAL. IS THAT
16 CORRECT?

17 A THAT'S CORRECT.

18 Q NOW, WITH RESPECT TO YOUR OVERALL STRATEGIC POSITIONS,
19 DID Y'ALL KEEP MR. ROBERTSON ADVISED OF ALL THOSE?

20 A YES.

21 Q AND HE SEEMED TO UNDERSTAND YOUR DISCUSSIONS?

22 A YES, HE DID.

23 Q NOW, YOU AND YOUR CO-COUNSEL DISCUSSED WITH MR.
24 ROBERTSON WHETHER OR NOT HE SHOULD TESTIFY. CORRECT?

25 A THAT'S CORRECT.

1 Q DID Y'ALL HAVE A DISCUSSION CONCERNING HIS DECISION TO
2 TESTIFY BEFORE THE TRIAL OR DURING THE TRIAL, OR DO YOU
3 RECALL WHEN THAT WOULD HAVE BEEN?

4 A I DON'T RECALL THE DISCUSSIONS BEFORE THE TRIAL. I'M SURE
5 THAT WAS DISCUSSED. WE HAD-- OF COURSE, IN DISCUSSING IT WITH
6 HIM BEFORE THE TRIAL, SINCE HE HAD ADMITTED TO US THAT HE
7 COMMITTED THE OFFENSE, IT WASN'T A QUESTION, YOU KNOW, OF
8 WHETHER HE WAS GONNA PLEAD NOT GUILTY, AND THEN GET UP AND
9 TELL WHAT HAPPENED.

10 I REMEMBER DISCUSSION AS FAR AS THE PENALTY PHASE OF IT.
11 THERE WAS A LOT OF DISCUSSION BETWEEN MR. ROBERTSON AND MR.
12 HANCOCK AND MYSELF CONCERNING THAT.

13 Q WOULD THAT HAVE BEEN BECAUSE OF MS. CASCIO'S
14 TESTIMONY?

15 A I DON'T RECALL IF THAT HAD ANYTHING TO DO WITH IT. IT WAS
16 BASICALLY, JIMMY FELT LIKE HE COULD GET UP, HE COULD TESTIFY
17 ABOUT A LOT OF THINGS THAT WENT ON IN THE FAMILY. AND HE
18 COULD HAVE TESTIFIED ABOUT THAT.

19 Q AND WAS THERE A FEELING BETWEEN YOU AND CO-COUNSEL
20 THAT THAT WOULD NOT HAVE BEEN BENEFICIAL TO HIM?

21 A YES, THAT WAS MY STRONG OPINION, THAT HE SHOULDN'T
22 HAVE TESTIFIED.

23 Q BECAUSE WHY?

24 A WELL, I THINK MS. CASCIO'S TESTIMONY BASICALLY
25 HIGHLIGHTED WHY HE SHOULDN'T TESTIFY. THAT WOULD HAVE BEEN

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

1 AN OPPORTUNITY FOR MR. POPE TO GO THROUGH WITH MR.
2 ROBERTSON EVERY SINGLE THING THAT HAPPENED DURING THAT
3 NIGHT, THE BLOW BY BLOW DESCRIPTION OF IT, IN FRONT OF THE
4 JURY. AND I THINK THAT WOULD HAVE BEEN EXTREMELY HARMFUL,
5 FOR HIM TO TESTIFY.

6 Q YOU WERE ASKED ABOUT CHIP ROBERTSON, AND WHETHER OR
7 NOT Y'ALL WOULD USE HIM AS A WITNESS, AND I BELIEVE YOU
8 INDICATED HE WAS PRETTY MUCH UNAVAILABLE TO YOU?

9 A YES, THAT'S CORRECT.

10 Q DO YOU RECALL WHETHER OR NOT YOU AND CO-COUNSEL
11 SPOKE TO MS. MOON?

12 A I SPOKE TO HER. SHE WAS REPRESENTED BY COUNSEL.

13 Q DO YOU KNOW OF ANYTHING THAT SHE MIGHT HAVE BEEN
14 ABLE TO TESTIFY TO , DURING THE GUILT PHASE, SOME SORT OF
15 MITIGATION EVIDENCE THAT WASN'T ALREADY DEVELOPED?

16 A NOT GUILT PHASE. WITHOUT TALKING TO HER-- I DON'T KNOW
17 ABOUT MITIGATING. I SUPPOSE SHE COULD HAVE TESTIFIED ABOUT
18 HE WAS UNDER THE INFLUENCE OF DRUGS OR SOMETHING OF THAT
19 NATURE, POTENTIALLY. BUT I WOULDN'T CONSIDER HER TO BE A
20 VERY HELPFUL WITNESS TO THE DEFENSE ON EITHER PART.

21 Q DO YOU RECALL WHETHER OR NOT Y'ALL ATTEMPTED TO
22 EXPLOIT THE POSSIBILITY OF AN INSANITY DEFENSE?

23 A WELL, THAT'S ALWAYS A QUESTION IN A CASE OF THIS NATURE,
24 BUT THERE WAS NO DOCTOR OR PSYCHIATRIST OR ANYONE WHO
25 THOUGHT THAT HE WAS LEGALLY INSANE.

1 Q DID YOUR EXPERTS INDICATE TO YOU THAT HE LACKED THE
2 CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE
3 LAW?

4 A THERE WAS-- I DON'T BELIEVE THEY STATED THAT. THERE WAS
5 TESTIMONY THAT AT THE TIME IT HAPPENED HE WAS UNDER THE
6 INFLUENCE OF THE DRUGS, BUT I DON'T THINK THAT WOULD COME
7 UNDER THE DEFINITION.

8 Q IS THAT WHY THE DEFENSE RESISTED THE STATE'S EVIDENCE TO
9 HAVE AN EVALUATION PRIOR TO TRIAL?

10 A WELL, WE RESISTED THOSE EFFORTS. ONE: THAT WOULD BE AN
11 OPPORTUNITY FOR THE STATE TO GATHER INFORMATION ON HIM TO
12 POTENTIALLY, THAT COULD BE USED AGAINST HIM. ANY STATEMENTS
13 HE MADE COULD BE USED AGAINST HIM POTENTIALLY. ANY KIND OF--
14 NOT KNOWING EXACTLY WHAT HE WOULD HAVE SAID. IT'S OF NO
15 BENEFIT TO THE DEFENSE TO CONSENT TO AN EVALUATION BY THE
16 PROSECUTION.

17 Q NOW, THE JUDGE ULTIMATELY ORDERED THE EVALUATION.
18 CORRECT?

19 A THAT'S CORRECT.

20 Q DO YOU RECALL WHETHER OR NOT YOU AND YOUR CO-
21 COUNSEL WOULD SIT DOWN, OR WHETHER OR NOT Y'ALL DID SIT
22 DOWN AND TALK TO MR. ROBERTSON AND EXPLAIN TO HIM THE
23 REASON FOR THE EVALUATION?

24 A YES.

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

1 Q DO YOU RECALL WHAT YOU WERE ABLE TO ADVISE HIM WITH
2 RESPECT TO THAT?

3 A I RECALL WE ADVISED HIM, I BELIEVE, TO TAKE THE FIFTH
4 AMENDMENT AS FAR AS ANY DETAILS ABOUT THE CRIME.

5 MR. BROWN: I'M SORRY. COULD YOU REPEAT THAT ANSWER?

6 A WE ADVISED HIM TO TAKE THE FIFTH AMENDMENT
7 CONCERNING ANY DETAILS ABOUT THE CRIME.

8 Q NOW, WITH RESPECT TO EFFORTS TO NEGOTIATE A PLEA, WERE
9 YOU EVER MADE AWARE OF A SUPPOSED OFFER OR PLEA BARGAIN
10 EXTENDED BY KEVIN BRACKETT TO CHIP ROBERTSON'S ATTORNEY?

11 A I HEARD THAT, I BELIEVE, FROM CHIP ROBERTSON'S ATTORNEY,
12 SOMETHING TO THE EFFECT THAT IT HAD BEEN TOLD TO HIM BY MR.
13 BRACKETT THAT IF HE CONTRIBUTED THE, SOME AMOUNT OF MONEY,
14 OR MAYBE THE ENTIRE ESTATE TO SOME CHARITY, THAT THEY
15 WOULD AGREE TO A LIFE SENTENCE.

16 I REMEMBER TALKING TO MR. POPE AND MR. BRACKETT ABOUT
17 IT. THIS WAS DURING THE TRIAL ITSELF, IF I RECALL, TALKING TO
18 THEM ABOUT IT. MR. BRACKETT SAID-- BECAUSE IT RAISED SOME
19 ETHICAL CONCERNS. SO, FRANKLY, I DIDN'T THINK IT WAS PROBABLY
20 SERIOUS. AND I DID TALK TO MR. POPE AND MR. BRACKETT ABOUT IT
21 AND MR. BRACKETT SAID THAT HE HAD BEEN JOKING AROUND WITH
22 MR. GILLEN WHEN HE SAID THAT AT THAT POINT. AND I TOOK MR.
23 BRACKETT AT HIS WORD ON THAT AND HAD NO REASON TO BELIEVE
24 OTHERWISE.

1 Q AND MR. POPE WOULD HAVE BEEN THE ONE WHO WOULD HAVE
2 THE POWER TO SAY SO?

3 A THAT'S CORRECT.

4 Q AND HE DIDN'T AGREE TO SUCH A PLEA?

5 A NO. IT WAS NEVER ANY DISCUSSION BETWEEN THE DEFENSE
6 AND MR. BRACKETT ABOUT IT. THIS WAS JUST SOMETHING I'D BEEN
7 TOLD. IT WAS BASICALLY TELLING MR. POPE, LOOK HERE, THIS IS
8 WHAT I'VE BEEN TOLD. IT WASN'T EVEN SOMETHING WE WERE
9 TALKING ABOUT AGREEING TO. I DON'T THINK IT WOULD HAVE BEEN
10 ETHICAL TO MAKE SUCH AN AGREEMENT.

11 BUT BECAUSE IT WAS AN ETHICAL CONCERN I APPROACHED
12 THEM ABOUT IT PRIVATELY. I DIDN'T THINK SUCH AN OFFER HAD
13 BEEN SERIOUS MADE, EVEN BEFORE I TOLD THEM. BUT I SAID THAT'S
14 WHAT I'M HEARING.

15 Q WITH RESPECT TO THE VARIOUS EXPERTS THAT Y'ALL
16 EMPLOYED, DO YOU RECALL WHETHER OR NOT EACH ATTORNEY
17 WOULD HAVE SAT DOWN WITH THE EXPERT THAT HE WAS GOING TO
18 HANDLE, OR DID Y'ALL SIT DOWN TOGETHER, FOR THE MOST PART?
19 HOW DID Y'ALL WORK THAT OUT?

20 A WELL, WE SAT DOWN TOGETHER WITH ALL OF THEM. WE HAD
21 MORE THAN ONE MEETING WITH ALL OF THEM. WE MET-- MR.
22 HANCOCK AND I WENT TO WASHINGTON, DC AND MET WITH DOCTOR
23 PINCUS. WE MET WITH DOCTOR EVANS AT THE DEATH PENALTY
24 RESOURCE CENTER IN COLUMBIA. I THINK MR. HANCOCK ALSO, PRIOR
25 TO HIS TESTIMONY, WENT OVER SOME MATTERS WITH DOCTOR EVANS

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

1 WHILE I WAS DOING SOMETHING ELSE. I DON'T REMEMBER WHAT
2 EXACTLY WHAT I WAS DOING.

3 I MET WITH DOCTOR MORTON TWICE WITHOUT MR. HANCOCK. I
4 THINK I MET WITH MS. CASCIO ONCE WITHOUT, DOCTOR CASCIO, ONCE
5 WITHOUT MR. HANCOCK.

6 DOCTOR MORTON CAME UP THE NIGHT BEFORE HIS TESTIMONY
7 AND I MET HIM AT HIS MOTEL AND WENT THROUGH HIS TESTIMONY
8 WITH HIM.

9 Q NOW, WITH RESPECT TO THE VARIOUS EXPERTS YOU HAD, DID
10 ANY OF THEM EVER REQUEST ADDITIONAL INFORMATION IN ORDER
11 TO RENDER AN OPINION?

12 A IF THEY DID, IT WAS PROVIDED TO THEM.

13 Q SO, YOU DON'T RECALL ANY OF THEM EVER TELLING YOU THAT
14 THEY HAD INSUFFICIENT INFORMATION TO RENDER AN OPINION?

15 A NOT THAT I RECALL.

16 Q I BELIEVE YOU INDICATED THAT YOU COULDN'T RECALL
17 WHETHER OR NOT YOU SPOKE TO DOCTOR McMEEKIN?

18 A I DON'T RECALL SPEAKING TO DOCTOR McMEEKIN.

19 Q BUT Y'ALL HAD HIS RECORDS?

20 A THAT'S CORRECT.

21 Q SO, Y'ALL HAD THAT INFORMATION. THE GOOD THAT YOU
22 COULD HAVE GOTTEN FROM HIM YOU ALREADY HAD. IS THAT
23 CORRECT?

24 A THAT'S CORRECT.

25 Q AND Y'ALL COULD GIVE THAT TO YOUR EXPERTS?

- 1 A YES.
- 2 Q AND THEY COULD UTILIZE IT AS THEY SAW BEST. CORRECT?
- 3 A THAT'S CORRECT.
- 4 Q AND YOU'VE INDICATED THAT YOU DIDN'T SEE HOW IT
- 5 WOULDN'T HAVE BEEN OF BENEFIT PUTTING HIM UP AND ALLOWING
- 6 HIM TO EXPLAIN ANY OVER-PRESCRIPTION OF RITALIN. CORRECT?
- 7 A THAT'S CORRECT.
- 8 Q WERE YOU AWARE OF ANY DISCIPLINARY PROBLEMS THAT HE
- 9 HAD AT SOME PERIOD BEFORE THE TRIAL?
- 10 A I DON'T REMEMBER WHEN I BECAME AWARE OF THAT. I THINK
- 11 THAT HAD BEEN CHECKED OUT AT SOME TIME PRIOR TO DOCTOR
- 12 MORTON'S TESTIMONY, OR I THINK PRIOR TO TRIAL WE WERE AWARE
- 13 OF THAT.
- 14 Q AND DOCTOR MORTON WAS VERY CRITICAL OF THE MANNER IN
- 15 WHICH DOCTOR McMEEKIN HAD HANDLED MR. ROBERTSON AND THE
- 16 ENTIRE FAMILY. CORRECT?
- 17 A THAT'S CORRECT.
- 18 Q SO, Y'ALL MADE A DECISION TO CALL HIM AS A WITNESS?
- 19 A THAT'S CORRECT.
- 20 Q AND Y'ALL NEEDED HIS TESTIMONY. CORRECT?
- 21 A THAT'S CORRECT.
- 22 Q NOW, WOULD THERE HAVE BEEN A PROBLEM IF YOU PUT HIM UP
- 23 AS A WITNESS, WOULD THERE HAVE THEN BE A PROBLEM TO PUT UP A
- 24 DOCTOR OF WHOM HE'S BEEN SO CRITICAL AS YOUR WITNESS?

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

1 A WELL, IT COULD. TYPICALLY, IF DOCTOR McMEEKIN HAD BEEN
2 ABLE TO GIVE GOOD EXPLANATIONS OF DOING WHAT HE HAD DONE.

3 Q SO, TO PUT HIM UP IN THAT SITUATION COULD POTENTIALLY
4 UNDERMINE THE GOOD THAT WAS DONE BY DOCTOR MORTON. IS
5 THAT CORRECT?

6 A THAT'S POSSIBLE.

7 Q WITH RESPECT TO MS. CASCIO, DID YOU AND CO-COUNSEL
8 WORK WITH HER AND TRY TO PREPARE HER FOR WHAT WOULD
9 HAPPEN ON CROSS EXAMINATION?

10 A WE WENT OVER SOME THINGS, YES. THE EXACT DETAILS I CAN'T
11 REMEMBER AFTER THIS PERIOD OF TIME.

12 Q DID YOU EXPLAIN TO HER THAT THE NOTES THAT SHE HAD
13 TAKEN WOULD BE SOMETHING THAT THE SOLICITOR BE ABLE TO
14 QUESTION HER ABOUT?

15 A YES, I'M SURE WE DID. AGAIN, THE DETAILS I CAN'T REMEMBER
16 AT THIS TIME.

17 Q AND Y'ALL MADE A DECISION TO PUT HER UP, KNOWING THAT
18 THE NOTES WOULD HAVE TO BE DISCUSSED UNDER RULE 705, THAT
19 WOULD BE REQUIRED?

20 A THAT'S CORRECT.

21 Q AND YOU WERE ASKED WHETHER OR NOT YOU THOUGHT SHE
22 WAS A DAMAGING WITNESS TO YOU. DID YOU HAVE THE SAME
23 ASSESSMENT AT THE END OF YOUR DIRECT EXAMINATION OF HER?

24 A AT THE END OF DIRECT EXAMINATION?

25 Q YES.

- 1 A I THOUGHT SHE HAD DONE WELL ON HER DIRECT EXAMINATION.
- 2 Q WASN'T SHE ABLE TO KIND OF PULL THINGS TOGETHER, OR
- 3 DRAW THINGS TOGETHER THAT THE OTHER EXPERTS WERE KIND OF A
- 4 LITTLE BIT SCATTERED ON?
- 5 A WELL, THAT WAS THE PURPOSE OF HAVING HER AS A WITNESS.
- 6 Q AND SHE DID THAT JOB WELL?
- 7 A YES, I WOULD SAY SO.
- 8 Q THE PROBLEM IS THAT SOLICITOR POPE CROSS EXAMINED HER
- 9 FROM HER NOTES?
- 10 A THAT'S CORRECT.
- 11 Q DO YOU RECALL WHETHER OR NOT Y'ALL MADE ANY EFFORTS
- 12 TO GET A DIFFERENT SOCIAL WORKER?
- 13 A NOT THAT I RECALL.
- 14 Q AND SHE'D BEEN RECOMMENDED BY THE RESOURCE CENTER.
- 15 CORRECT?
- 16 A I BELIEVE SO, YES.
- 17 Q AND MS. GLASS FROM THE RESOURCE CENTER WAS THERE WITH
- 18 Y'ALL?
- 19 A THAT'S CORRECT.
- 20 Q DO YOU RECALL WHETHER MS. GLASS SAID NO, DON'T PUT HER
- 21 UP ON THE STAND IF SHE'S GOT THESE NOTES?
- 22 A NO, I DON'T RECALL THAT. I DON'T KNOW IF MS. GLASS HAD
- 23 EVER READ THE NOTES, BUT I DON'T RECALL HER SAYING THAT.

JAMES BOYD - CROSS EXAMINATION BY MR. SALTER

1 Q HAS IT EVER BEEN-- IN YOUR YEARS OF EXPERIENCE HAS IT
2 EVER BEEN YOUR PRACTICE TO TELL AN EXPERT THAT YOU'VE
3 EMPLOYED HOW TO GO ABOUT HIS OR HER FIELD OF EXPERTISE?

4 A NO, NOT GENERALLY.

5 Q DO YOU BELIEVE THAT IS THEIR POSITION?

6 A YES.

7 Q YOU INDICATED ON DIRECT EXAMINATION THAT THE LACK OF
8 EXPERIENCE WOULD NOT BE A KEY REASON FOR NOT PUTTING UP A
9 WITNESS.

10 A THAT'S CORRECT.

11 Q WHY IS THAT?

12 A WELL, I THINK THAT'S NOT NECESSARILY AN INDICATION OF
13 WHY, OF HOW WELL A WITNESS WILL DO ON THE WITNESS STAND.
14 JUST FOR AN EXAMPLE, I ALSO HANDLED SOME MEDICAL
15 MALPRACTICE LITIGATION AND I THINK IN THOSE CIRCUMSTANCES
16 OFTENTIMES THE EXPERT THAT HAS NOT TESTIFIED BEFORE IS BETTER
17 OFF.

18 IF YOU GET ONE THAT HAS TOO MUCH EXPERIENCE THEY'RE
19 ATTACKED AS A HIRED GUN. OFTENTIMES THEY HAVE A TRAIL. I'VE
20 HAD SOME BAD EXPERIENCES IN CIVIL CASES WITH SOME EXPERTS
21 THAT HAVE TOO MUCH EXPERIENCE.

22 Q WITH RESPECT TO WHETHER OR NOT SHE WAS BOXED IN BY THE
23 STATE ON CROSS EXAMINATION WERE YOU NOT ABLE TO ON RE-
24 DIRECT TO DEVELOP ANYTHING THAT YOU FELT WHERE SHE'D BEEN
25 BOXED IN?

1 A I THINK I DID A RE-DIRECT, BUT I DON'T REMEMBER WHAT I
2 ASKED AT THAT TIME OR ANY OF THE DETAILS OF THAT.

3 MR. SALTER: I DON'T BELIEVE I HAVE ANYTHING FURTHER,
4 YOUR HONOR.

5 RE-DIRECT EXAMINATION BY MR. BROWN:

6 Q ON RE-DIRECT EXAMINATION OF MS. CASCIO, STARTING WITH
7 2856, QUESTION BY YOU:

8 "Q. WHAT WERE YOU ASKED TO DO IN REFERENCE TO THIS
9 CASE?

10 A. I WAS ASKED TO CONDUCT A SOCIAL HISTORY ASSESSMENT.

11 Q. OF WHO?

12 A. OF JIMMY ROBERTSON.

13 Q. OKAY. AND WHAT IS A SOCIAL HISTORY ASSESSMENT?

14 A. IN A SOCIAL HISTORY ASSESSMENT, WHAT YOU DO IS GET A
15 VARIETY OF DATA FROM A NUMBER OF DIFFERENT SOURCES.
16 YOU SIT DOWN, YOU ANALYZE IT, YOU SYNTHESIZE IT, YOU TRY
17 TO COME UP WITH WHAT'S THE DEFINITION OF THE PROBLEM.
18 AND THEN YOU LOOK AT WHAT FACTORS CONTRIBUTED TO
19 THAT PROBLEM AND MAINTAINED THAT PROBLEM.

20 Q. WHAT DID YOU DO IN YOUR ASSESSMENT OF THIS CASE?
21 WHAT DID YOUR ASSESSMENT IN THIS CASE CONSIST OF IN
22 GENERAL TERMS OF HOW'D YOU GO ABOUT IT?

23 A. I LOOKED AT A VARIETY OF DOCUMENTS HAVING TO DO
24 WITH THE ROBERTSON FAMILY. I LOOKED AT MEDICAL AND
25 PSYCHOLOGICAL RECORDS FROM ALL MEMBERS OF THE

JAMES BOYD - RE-DIRECT EXAMINATION BY MR. BROWN

1 FAMILY. I ALSO EXAMINED EARL ROBERTSON'S WORK
2 DOCUMENTS, SOME OF JIMMY'S INCARCERATION DOCUMENTS,
3 THE PERSONAL NOTEBOOKS OF TERRY ROBERTSON. I ALSO
4 CONDUCTED ABOUT THIRTEEN INTERVIEWS WITH PEOPLE WHO
5 WERE FROM A VARIETY OF AREAS OF JIMMY'S LIFE."

6 IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q NOWHERE IN THERE DOES SHE SAY SHE EVER INTERVIEWED
9 JIMMY. IS THAT CORRECT?

10 A NO, SHE DOESN'T.

11 Q AS A MATTER OF FACT, HER JOB IN THIS CASE WAS NOT TO GET
12 INTO THE DETAILS OF THIS CRIME, BUT TO CONDUCT A SOCIAL
13 HISTORY OF WHAT LED UP TO THIS PROBLEM.

14 A THAT'S CORRECT.

15 Q SO, SHE BASICALLY WENT ON A FISHING EXPEDITION NOT
16 RELATED TO WHAT SHE WAS THERE FOR.

17 A I DON'T KNOW HOW MUCH DETAIL SHE NEEDS TO GET TO
18 RELATE WHAT HAPPENED TO THE SOCIAL HISTORY. SO, I DON'T KNOW
19 AS I'M QUALIFIED TO ANSWER THAT. BUT IT WASN'T HER JOB TO GET
20 DETAILS OF THE CRIME, IF THAT'S WHAT YOU'RE SAYING.

21 Q BUT AS WE ALL KNOW, SHE DID THAT ANYWAY. IS THAT
22 CORRECT?

23 A THAT'S CORRECT.

24 Q WOULD IT BE SAFE TO SAY, OR, COULD ONE OF THE
25 CONTRIBUTING FACTORS TO HER GOING BEYOND THE SCOPE OF HER

1 EMPLOYMENT, FOR LACK OF A BETTER TERM, WAS HER
2 INEXPERIENCE?

3 A THAT'S A POSSIBILITY.

4 Q MR. SALTER ASKED YOU ABOUT THE MENTAL ILLNESS. DID NOT
5 DOCTOR PINCUS TESTIFY ON RE-CROSS BY MR. BRACKETT THAT IT
6 WAS THAT EXPERIENCE, PLUS THE PSYCHIATRIC DISEASE, PLUS THE
7 NEUROLOGICAL DISEASE AND THE DRUGS THAT BROUGHT HIM TO
8 THIS TERRIBLE, TERRIBLE SITUATION AND THIS TERRIBLE, TERRIBLE
9 ACT?

10 A THAT'S CORRECT.

11 Q THAT WOULD QUALIFY AS MENTAL ILLNESS, WOULD IT NOT?

12 A YES. WELL, THE DRUGS PART WOULD, YES.

13 Q AND ALSO, ON DIRECT BY MR. HANCOCK, DID HE NOT ALSO
14 TESTIFY, "WELL, IT WAS AN IMPULSE. THE NERVES WERE NOT ONLY
15 STIMULATED BY THE DRUGS HE WAS ON. AND THE MANIA HE WAS
16 HAVING WAS ALSO NOT CHECKED BY THE FUNCTIONING OF HIS
17 FRONTAL LOBE AT THE TIME, WHICH WAS NOT WORKING WELL
18 BECAUSE OF THE MEDICINE HE HAD TAKEN AND BECAUSE OF THE
19 ALCOHOL THAT HE HAD DRUNK AND BECAUSE THE STATUS OF HIS
20 BRAIN TO BEGIN WITH. THE THREE THINGS COMBINED, THE DISEASE,
21 THE DRUGS HE WAS ON, THE DAMAGE HE WAS ALREADY CARRYING."?

22 A THAT'S CORRECT.

23 Q AND YOU WOULD AGREE WITH ME THAT WOULD QUALIFY AS A
24 MENTAL ILLNESS. CORRECT?

25 A YES.

1 MR. BROWN: NO FURTHER QUESTIONS.

2 MR. SALTER: VERY BRIEFLY.

3 RE-CROSS EXAMINATION BY MR. SALTER:

4 Q YOU WERE ASKED ABOUT WHETHER OR NOT MS. CASCIO WAS
5 ON A FISHING EXPEDITION WITH RESPECT TO HER CONFERRING WITH
6 YOUR CLIENT. IS IT FAIR TO SAY THAT SINCE YOU ADVISED YOUR
7 CLIENT TO INVOKE THE FIFTH AMENDMENT WITH RESPECT TO
8 ANYTHING ABOUT THE CRIME WHEN HE SPOKE WITH DOCTOR McKEE,
9 AND HE DIDN'T DO IT, IS IT FAIR TO SAY THAT TELLING YOUR CLIENT
10 TO KEEP HIS MOUTH SHUT WITH OTHER PEOPLE, THAT THAT'S KIND OF
11 A HARD THING FOR YOU TO?

12 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO THAT
13 BECAUSE HE HAS NO INPUT IN PREPPING HIS OWN WITNESS. IT'S NOT
14 A---

15 THE COURT: WELL, I DON'T THE QUESTION RELATED TO THE
16 FIFTH AMENDMENT. I THINK THE QUESTION WAS WHETHER OR NOT IT
17 WAS DIFFICULT TO KEEP JIMMY ROBERTSON'S MOUTH SHUT.

18 MR. BROWN: YOUR HONOR, I WILL STIPULATE TO THAT.

19 THE COURT: YOU WILL STIPULATE THAT IT IS DIFFICULT?

20 (NO RESPONSE)

21 I'M GOING TO GO AHEAD AND LET THE WITNESS ANSWER THE
22 QUESTION.

23 A I'M NOT SURE I UNDERSTOOD THE QUESTION.

24 Q IN LIGHT OF THE FACT THAT YOU ADVISED YOUR CLIENT NOT
25 TO SPEAK TO DOCTOR McKEE ABOUT THE FACTS CONCERNING THE

1 CRIME, AND HE ULTIMATELY DID SO, ISN'T IT FAIR TO SAY THAT HE
2 WOULD HAVE A HARD TIME KEEPING HIS MOUTH SHUT WITH RESPECT
3 TO WHAT HAPPENED ON NOVEMBER 25?

4 A I THINK THAT WOULD BE A FAIR STATEMENT.

5 RE-DIRECT EXAMINATION BY MR. BROWN:

6 Q WOULD THAT NOT BE PART OF COUNSEL'S JOB, TO KEEP HIS
7 MOUTH SHUT?

8 A YES.

9 Q THAT WAS PART OF YOU AND MR. HANCOCK'S JOB?

10 A I AGREE.

11 Q AND THAT WAS ALSO PART OF MS. CASCIO'S JOB, NOT TO GO
12 INTO THINGS SHE'S GOT NO BUSINESS GOING INTO, KNOWING SHE
13 COULD BE CROSS EXAMINED ON THEM.

14 A THAT WOULD BE TRUE, TOO.

15 Q AND THAT WASN'T DONE IN THIS CASE, WAS IT?

16 A NO.

17 MR. BROWN: NO FURTHER QUESTIONS.

18 THE COURT: MR. BOYD, I WANT TO ASK YOU A FEW QUESTIONS
19 ABOUT THAT SAME SUBJECT OF DOCTOR CASCIO.

20 A YES SIR.

21 THE COURT: YOU TESTIFIED THAT YOU DIDN'T RECALL
22 PRECISELY WHEN YOU RECEIVED THE NOTES FROM DOCTOR CASCIO.

23 A THAT'S CORRECT.

1 THE COURT: DO YOU RECALL GENERALLY? WAS IT JUST
2 BEFORE TRIAL, WAS IT WEEKS OR MONTHS BEFORE TRIAL? DO YOU
3 RECALL GENERALLY?

4 A I THINK THE RAW NOTES THEMSELVES WAS SOME TIME EITHER
5 RIGHT BEFORE OR DURING THE TRIAL.

6 Q DO YOU RECALL WHEN WAS THE FIRST TIME THAT YOU
7 REALIZED THAT JIMMY HAD MADE THESE STATEMENTS ABOUT THE
8 CRIME ITSELF TO DOCTOR CASCIO? WAS IT WHEN YOU RECEIVED THE
9 NOTES OR WAS IT SOMETIME BEFOREHAND?

10 A I BELIEVE IT WAS WHEN WE RECEIVED THE NOTES.

11 THE COURT: NOW, AS I RECALL THE DISCUSSION WE HAD
12 EARLIER TODAY, DOCTOR CASCIO HAD FOUR INTERVIEWS WITH
13 JIMMY, AND THE LAST ONE WAS DECEMBER 7, OR THEREABOUTS, OR
14 '98?

15 A THAT'S CORRECT.

16 THE COURT: SO, THOSE STATEMENTS HAD TO HAVE BEEN MADE
17 TO HER BEFORE, ON OR BEFORE THAT TIME?

18 A THAT'S CORRECT.

19 THE COURT: DURING THAT PERIOD BETWEEN DECEMBER AND
20 MARCH YOU DON'T THINK YOU KNEW THAT HE MADE SIMILAR, THOSE
21 TYPES OF STATEMENTS TO HER UNTIL YOU GOT INTO THE TRIAL?

22 A I DON'T BELIEVE SO. WE MAY HAVE HAD DISCUSSIONS WITH
23 HER THAT SHE RELATED SOMETHING ABOUT THAT, BUT NOT THAT I-- I
24 DON'T REMEMBER ANY DISCUSSIONS WITH HER ABOUT THOSE KIND OF
25 DETAILS.

1 THE COURT: OKAY. IF EITHER OF Y'ALL HAVE ANY QUESTIONS
2 YOU WANT TO ASK IN FOLLOW-UP TO MINE YOU MAY DO SO AT THIS
3 TIME.

4 MR. SALTER: I HAVE NO QUESTIONS, YOUR HONOR.

5 MR. BROWN: JUST ONE, YOUR HONOR.

6 **RE-DIRECT EXAMINATION BY MR. BROWN:**

7 Q THE NOTES CAME TO MR. HANCOCK. IS THAT CORRECT? OR AS
8 FAR AS I, AS THE RECORD INDICATES. WOULD THAT BE A CORRECT
9 STATEMENT?

10 A I DON'T REMEMBER HOW THEY CAME, FIRST CAME TO-- THEY
11 CAME-- THE REPORT CAME TO MR. HANCOCK. I DON'T REMEMBER
12 EXACTLY HOW THE NOTES CAME.

13 Q LET ME ASK YOU THIS: AND I HATE TO BEAT THIS DEAD HORSE.
14 BUT SHE WAS HIRED TO DO A SOCIAL HISTORY OF THE ROBERTSON
15 FAMILY, IN ESSENCE. IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q SHE WAS NOT HIRED TO INVESTIGATE THE CAUSE OR CAUSES OR
18 WHAT HAPPENED IN THE CRIME. IS THAT CORRECT?

19 A WELL,...

20 Q SHE WASN'T CALLED TO TESTIFY ABOUT THE CRIME, WAS SHE?

21 A THAT'S CORRECT.

22 Q COULD IT HAVE BEEN FEASIBLE IN THIS CASE, FOR THE PURPOSE
23 SHE WAS CALLED FOR; I.E., A SOCIAL HISTORY OF THE ROBERTSON
24 FAMILY, THAT THAT'S WHAT SHE WAS GONNA TESTIFY TO, WAS TO
25 SUPPRESS THOSE NOTES AS NOT RELEVANT AS TO WHAT SHE WAS

1 TESTIFYING TO? UNDER RULE 705 OR RULE 5 OR WHATEVER LEGAL
2 THEORY YOU WANT TO PROCEED ON?

3 A THAT WOULD BE A POSSIBLE OBJECTION TO THAT LINE, YES.

4 Q AND THE TRUTH OF THE MATTER IS, ON DIRECT, YOU NEVER
5 WENT INTO WHAT HAPPENED IN THE CRIME; YOU WENT INTO SOCIAL
6 HISTORY. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 MR. BROWN: NO FURTHER QUESTIONS.

9 THE COURT: THANK YOU. YOU MAY STEP DOWN. ALL RIGHT.
10 WE'LL TAKE A SHORT BREAK AND THEN WE'LL-- DO YOU HAVE ONE
11 MORE WITNESS?

12 MR. BROWN: YOUR HONOR, WE HAVE-- CAN I INFORM THE
13 COURT IN ABOUT TWO MINUTES?

14 THE COURT: SURE. YOU CAN EVEN CHANGE YOUR MIND AFTER
15 YOU INFORM THE COURT IF YOU WANT TO. I'M JUST CURIOUS.

16 MR. BROWN: THANK YOU, YOUR HONOR.

17 (WHEREUPON THE COURT WAS IN RECESS AT 2:50 P.M.)

18 **COURT IN SESSION - 3:00 P.M.**

19 THE COURT: IS THERE SOMETHING YOU WANT TO PUT ON THE
20 RECORD?

21 MR. BROWN: YES SIR, YOUR HONOR. WE HAD PREVIOUSLY
22 STIPULATED THAT ONE OF THE APPLICANT'S EXHIBITS WERE THE
23 NOTES OF DOCTOR CASCIO. DURING MR. BOYD'S CROSS
24 EXAMINATION, MR. ROBERTSON HANDED ME A NOTE STATING HE
25 DIDN'T THINK THEY WERE THE NOTES. FOR THE RECORD, YOUR

1 HONOR, THESE ARE THE NOTES THAT I FOUND IN THE FILE LABELED
2 "DOCTOR CASCIO". IT HAD A REPORT THERE. IT HAD SEVERAL NOTES
3 AND THAT LETTER FROM HANCOCK. IT ALSO HAD THESE NOTES IN
4 THERE. IN CONVERSATION WITH MR. POPE AND MR. SALTER WE WANT
5 TO WITHDRAW THAT STIPULATION NOW. WE HAVE BOTH AGREED
6 THAT ONCE THE REAL NOTES ARE FOUND, ASSUMING ARGUENDO,
7 THESE ARE NOT THEM, THEY WILL BE BY STIPULATION PUT IN THE
8 RECORD.

9 MR. SALTER: THAT'S CORRECT, YOUR HONOR.

10 MR. BROWN: YOUR HONOR, I WILL ALSO NOTE FOR THE RECORD
11 THESE NOTES THAT I HAVE ALLUDED, PREVIOUSLY MARKED
12 APPLICANT'S EXHIBIT, COINCIDE WITH THE SAME DATES IN THE
13 TRANSCRIPT AND VERIFY HE WAS INTERVIEWED BY MS. CASCIO, THAT
14 BEING JULY 17, 1998 AND JULY 22, 1998, AND NOVEMBER 30, 1998. THE
15 DATES ON THESE NOTES MATCH THE SAME DATES IN THE TRANSCRIPT.

16 THE COURT: OKAY. CALL YOUR NEXT WITNESS.

17 MR. MATLOCK: YOUR HONOR, IF IT PLEASE THE COURT. WE
18 CALL JAMES ROBERTSON.

19 THE COURT: WELL, NOW, ARE YOU CALLING HIM IN REPLY?

20 MR. MATLOCK: REPLY, YES SIR.

21 THE COURT: YOU MIGHT WANT TO--

22 MR. MATLOCK: YOUR HONOR, ---

23 THE COURT: I'LL LET YOU DO WHATEVER YOU WANT; I DON'T
24 CARE. BUT I DON'T WANT YOU TO CALL HIM IN REPLY TWICE.

25 MR. MATLOCK: WE WON'T CALL HIM.

1 THE COURT: OKAY. DO Y'ALL HAVE ANY OTHER WITNESSES I
2 YOUR CASE IN CHIEF?

3 MR. BROWN: NO SIR.

4 THE COURT: OKAY. WELL, WHO IS THIS WITNESS THAT'S GOING
5 TO, THAT I WAS ASKING ABOUT A MINUTE AGO THAT Y'ALL-- IS THAT
6 SOMEBODY YOU'RE GOING TO CALL?

7 MR. BROWN: THAT'S HIS WITNESS, YOUR HONOR.

8 THE COURT: I SEE.

9 MR. BROWN: PART OF OUR STIPULATION.

10 THE COURT: GO AHEAD, THEN.

11 MR. SALTER: YOUR HONOR, THE STATE WOULD CALL MICHAEL
12 STOBEE.

13 MICHAEL STOBEE, DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 **DIRECT EXAMINATION BY MR. SALTER:**

16 Q MR. STOBEE, WOULD YOU PLEASE STATE YOUR FULL NAME FOR
17 THE RECORD AND SPELL YOUR LAST NAME?

18 A MICHAEL JOHN STOBEE, S-T-O-B-E-E.

19 Q WHERE ARE YOU CURRENTLY EMPLOYED AND IN WHAT
20 POSITION?

21 A I'M THE BRANCH CHIEF AT THE SOUTH CAROLINA DEPARTMENT
22 OF CORRECTIONS IN THE INMATE RECORDS OFFICE.

23 Q WHAT DO YOUR DUTIES ENTAIL AS BRANCH CHIEF?

24 A BASICALLY, CUSTODIAN OF RECORDS. AND I IMMEDIATELY
25 SUPERVISE THE DOCUMENT PROCESSING AND RELEASE SECTION

1 STAFF. IN GENERAL, ANY DOCUMENT THAT COMES IN ON AN INMATE
2 PAST THE SECOND DAY THAT THEY'RE INDUCTED INTO SCDC, MY
3 PEOPLE ANALYZE AND STICK IT IN THE COMPUTER. OF COURSE, WE
4 CHECK THE RECORDS RIGHT BEFORE THE INMATES ARE RELEASED TO
5 MAKE SURE THAT EVERYBODY'S DONE THE TIME THEY'RE SUPPOSED
6 TO, AND THAT WE RELEASE THE INMATES TO THE WARRANTING
7 AGENCIES THAT WANT THEM AND MAKE SURE THE RIGHT GUY GETS
8 OUT AT THE RIGHT TIME.

9 Q SO, YOU'RE THE RECORDS CUSTODIAN?

10 A RIGHT.

11 Q NOW, I'VE ASKED YOU TO BRING CERTAIN RECORDS PERTAINING
12 TO JAMES ROBERTSON.

13 A YES SIR. JAMES KENNEALLY, THE RECORDS MANAGEMENT
14 AREA PERSONNEL, GAVE ME THE CENTRAL RECORD OF MR.
15 ROBERTSON.

16 Q NOW, THE CENTRAL RECORD, TELL US WHAT THAT IS.

17 A BASICALLY, THE SENTENCING SHEETS; ALL THE COMPUTER
18 INFORMATION THAT WE GENERATE, TO A CERTAIN DEGREE. ANY
19 WARRANT, ARREST WARRANT INFORMATION THAT MIGHT STILL BE
20 PENDING AS FAR AS ADJUDICATION.

21 AND THEN, DISCIPLINARY-TYPE THINGS THAT HAPPEN TO THE
22 INMATE WHILE HE'S AT THE INSTITUTION. AND IF THAT GENERATES
23 CORRESPONDENCE WITH, LIKE, OUR LEGAL OFFICE, OR WITH OUR
24 OFFICE, THAT'S MAINTAINED THERE IN THE CENTRAL RECORD ALSO.

1 Q AND THE RECORDS THAT HAVE IN YOUR POSSESSION, ARE
2 THOSE GENERATED MORE OR LESS CONTEMPORANEOUSLY WITH THE
3 EVENTS THAT OCCUR?

4 A YES.

5 Q DO YOU HAVE THE DISCIPLINARY RECORDS OF MR. ROBERTSON?

6 A I HAVEN'T EXACTLY GONE THROUGH THEM AND TICKED THEM
7 OFF. I HAVE THE AUTOMATED DUMP FROM THE COMPUTER AND I DO
8 KNOW THAT THERE ARE QUITE A FEW DISCIPLINARIES WITHIN THE
9 CENTRAL RECORDS.

10 Q ALL RIGHT. WOULD YOU LOOK AT THOSE RECORDS, IF YOU
11 WOULD. AND STARTING WITH THE DATE OF NOVEMBER, 1997 FOR MR.
12 ROBERTSON, CAN YOU TELL ME THE VERY FIRST DISCIPLINARY
13 ACTION YOU SEE THERE FOR WHICH HE RECEIVED A DISCIPLINARY
14 PROCEDURE FOR VIOLATION OF SCDC RULES AND REGS?

15 A I'M SORRY, SIR. WHAT WAS THE DATE THAT YOU NEED?

16 Q NOVEMBER, 1997, ANYTHING FROM NOVEMBER, 1997, FORWARD.

17 A (PAUSE TO PERUSE RECORDS)

18 Q LET ME STOP YOU. WHEN DOES IT INDICATE THAT HE WAS FIRST
19 ADMITTED TO SCDC IN CONNECTION WITH THE DEATH SENTENCE?

20 A MARCH 27, 1999.

21 Q OKAY, FROM THAT DATE FORWARD,

22 A THE REASON I'M PAUSING HERE IS I HAVE-- STARTING FROM
23 MARCH OF 1999, THE INITIAL ONE WAS A POSSESSION OF A
24 CONTRABAND CHARGE. REPORTEDLY, IT HAPPENED NOVEMBER 29,
25 2002.

1 Q WHAT'S THE DATE OF THE POSSESSION?

2 MR. BROWN: YOUR HONOR, AS TO THIS HEARING I'M GOING TO
3 OBJECT TO ANYTHING AFTER MARCH OF 1999. ONE OF THE ISSUES I
4 RAISED WAS SKIPPER V. SOUTH CAROLINA ADAPTABILITY EVIDENCE.
5 AND I THINK THAT THE ONLY THING THAT WOULD BE RELEVANT AT
6 THIS HEARING IS WHAT HIS PRISON RECORD WAS AT THE TIME OF HIS
7 INCARCERATION IN NOVEMBER, 1997 UNTIL HIS TRIAL IN MARCH OF
8 1999.

9 MR. SALTER: AND THE PROBLEM I HAVE WITH THAT, YOUR
10 HONOR, IS WE GO BACK TO A RE-SENTENCING PROCEEDING, THEN
11 THESE RECORDS WILL BE SUBJECT TO COMING IN.

12 MR. BROWN: AND I AGREE, IF HE'S USING THEM FOR RE-
13 SENTENCING, THEY WOULD BE ADMISSIBLE AT THAT TIME, AS TO
14 ADAPTABILITY. BUT AS TO THIS HEARING ON INEFFECTIVE
15 ASSISTANCE OF COUNSEL---

16 THE COURT: I THINK I AGREE, THAT THE ONLY THING THAT'S
17 RELEVANT TO THIS HEARING IS WHAT WAS IN EXISTENCE UP UNTIL
18 THE TIME OF TRIAL. BECAUSE WHAT WE'RE DOING HERE IS
19 EVALUATING DECISIONS THAT WERE MADE BY COUNSEL AT THAT
20 POINT IN TIME. ANYTHING THAT HAPPENED AFTERWARDS COULD NOT
21 POSSIBLY HAVE WEIGHED-- AS I UNDERSTAND. MAYBE I'M WRONG.
22 YOU CAN EXPLAIN IT IF I AM. BUT ANYTHING THAT HAPPENED AFTER
23 THE TIME OF TRIAL COULDN'T HAVE WEIGHED INTO DECISIONS THAT
24 COUNSEL MADE DURING TRIAL OR BEFORE TRIAL.

1 MR. SALTER: I'M NOT SUGGESTING IT WEIGHED INTO COUNSEL'S
2 DECISION-MAKING PROCESS. WHAT I'M SAYING IT'S RELEVANT AS TO
3 WHETHER OR NOT IT WOULD SHOW PREJUDICE UNDER STRICKLAND
4 BECAUSE IF WE GO BACK FOR RE-SENTENCING AND THESE RECORDS
5 ARE GOING TO CERTAINLY COME IN. AND I THINK WHERE WE'RE
6 HEADED IS A SITUATION WHERE THEY WOULD NOT BE ADAPTABILITY
7 CONSIDERED.

8 THE COURT: WELL, I DON'T THINK THE STRICKLAND PRONG-- I
9 THINK THE STRICKLAND PRONG IS-- THE QUESTION ON SECOND
10 PRONG STRICKLAND IS IF COUNSEL HAD MADE A DIFFERENT
11 DECISION, WHAT IS THE PROBABILITY THAT THE OUTCOME OF THE
12 PROCEEDING WOULD HAVE BEEN DIFFERENT IN THE PREVIOUS TRIAL;
13 NOT WHAT IS THE PROBABILITY THAT THE OUTCOME WILL BE
14 DIFFERENT IN A FUTURE TRIAL. AND SO, I'M GOING TO SUSTAIN THE
15 OBJECTION.

16 MR. SALTER: YOUR HONOR, MAY I GO AHEAD AND PROFFER HIS
17 RECORDS?

18 THE COURT: YOU CAN PROFFER THE RECORDS.

19 Q JUST TO EXPEDITE THE MATTER, DO YOU HAVE A COPY OF THE
20 DISCIPLINARY RECORDS REFLECTING DISPOSITIONS FROM MARCH OF
21 1999 THROUGH 2007?

22 A SIR, I HAVE THOSE RECORDS THAT WERE GIVEN TO ME BY THE
23 RECORDS MANAGEMENT STAFF YESTERDAY AFTERNOON. NOW, I
24 HAVE NOT PERSONALLY GONE THROUGH THEM TO MAKE SURE, YOU
25 KNOW, MY AUTOMATED STUFF MATCHES WITH WHAT'S HERE. I MEAN,

1 IN THE COURSE OF A DAILY WORK AT OUR OFFICE, IF IT'S SENT, WE
2 FILE IT IN THE RECORD. IF IT'S NOT SENT, THEN IT MAY NOT BE IN THE
3 RECORD. AND I'M NOT SAYING THAT IT IS OR ISN'T, BECAUSE I DON'T
4 KNOW.

5 Q YOUR COMPUTER-GENERATED RECORDS, THEY CONTAIN THOSE
6 ITEMS THAT WERE IN FACT SENT?

7 A WELL, THE COMPUTER INFORMATION IS GENERATED AT THE
8 INSTITUTION AT THE TIME OR AS SOON THEREAFTER A HEARING IS
9 ACTUALLY CONDUCTED.

10 Q I SEE.

11 A SO, OF COURSE, THE PAPERWORK WOULD THE BASIS UNDER
12 WHICH THAT WOULD BE ENTERED INTO THE COMPUTER.

13 Q BUT THOSE MATTERS THAT ARE ACTUALLY ENTERED INTO THE
14 COMPUTER ARE THOSE FOR WHICH THE PAPERWORK HAS BEEN
15 REVIEWED. IS THAT CORRECT?

16 A YES SIR.

17 Q DO YOU HAVE A COPY OF THE COMPUTER-GENERATED LIST OF
18 INFRACTIONS?

19 A YES SIR.

20 Q AND THE DISPOSITIONS?

21 A YES SIR.

22 MR. SALTER: I WOULD MOVE TO INTRODUCE THOSE AS
23 RESPONDENT'S EXHIBIT SIX, SEVEN.

24 THE COURT: ALL RIGHT. THEY'RE ADMITTED. OR, ACTUALLY,
25 THEY'RE---

1 MR. SALTER: FOR IDENTIFICATION PURPOSES.

2 THE COURT: THEY'RE MARKED FOR IDENTIFICATION.

3 MR. BROWN: OF COURSE, YOUR HONOR, I HAVE NO OBJECTION
4 TO THE DISCIPLINARY RECORDS FROM NOVEMBER OF '97 TO MARCH
5 OF 1999 BEING ADMITTED.

6 MR. SALTER: YOUR HONOR, I DON'T BELIEVE I HAVE ANY OTHER
7 QUESTIONS OF MR. STOBEE.

8 THE COURT: OKAY.

9 MR. BROWN: NO QUESTIONS.

10 THE COURT: YOU CAN STEP DOWN.

11 (WHEREUPON WITNESS REMAINS ON THE STAND FOR CONFERENCE
12 WITH MR. SALTER)

13 Q MR. STOBEE, I BELIEVE YOU WERE JUST EXPLAINING
14 SOMETHING TO ME WITH RESPECT TO RESPONDENT'S EXHIBIT NUMBER
15 SEVEN FOR IDENTIFICATION PURPOSES.

16 A AGAIN, I JUST SHOULD HAVE WRITTEN IT DOWN THE FIRST TIME
17 YOU ASKED ME, AND I DIDN'T. THERE'S A DATE IN 1997 THAT SEEMS TO
18 BE, YOU KNOW, A CRUCIAL DATE. PRIOR TO HIS CONVICTION FOR
19 THESE MURDERS HE WAS WITH US AS A YOUTHFUL OFFENDER ON
20 PRIOR CHARGES.

21 TO THE BEST OF MY REMEMBRANCE FROM LOOKING AT THOSE
22 A FEW MINUTES AGO, THERE IS A 1998 OFFENSE THAT IS CATALOGED
23 OR LISTED UNDER HIS YOUTHFUL OFFENDER RECORD.

24 MR. BROWN: YOUR HONOR, THAT IS CORRECT. I HAVE NO
25 OBJECTION TO THOSE RECORDS.

1 Q I BELIEVE THOSE ARE THE FIRST SET OF RECORDS.

2 A THAT WAS THE FIRST GROUP. NOW, THERE WERE DOCUMENTS
3 INVOLVING DISCIPLINARIES THAT WERE PRIOR TO THAT '97 DATE, BUT
4 IT ALSO INCLUDED THE '98 DATE.

5 Q AND THE SECOND GROUP OF RECORDS YOU HANDED TO ME,
6 WOULD THOSE BE DISCIPLINARIES WHICH OCCURRED AFTER HE WAS
7 COMMITTED UNDER THE DEATH SENTENCE?

8 A THAT'S CORRECT.

9 MR. STOBEE: YOUR HONOR, I NOW MOVE, I BELIEVE, SIX INTO
10 EVIDENCE WITHOUT OBJECTION, AND SEVEN FOR IDENTIFICATION
11 PURPOSES.

12 MR. BROWN: SIX IS WHICH ONE?

13 MR. SALTER: THAT'S THE SAFEKEEPER OF RECORDS.

14 MR. BROWN: THOSE ARE YOA RECORDS?

15 MR. SALTER: YES.

16 MR. BROWN: NO OBJECTION TO THOSE.

17 (WHEREUPON DEFENDANT'S EXHIBIT SIX WAS ADMITTED INTO
18 EVIDENCE WITHOUT OBJECTION. DEFENDANT'S EXHIBIT NUMBER
19 SEVEN WAS MARKED FOR IDENTIFICATION PURPOSES)

20 Q THANK YOU, MR. STOBEE.

21 MR. BROWN: ONE QUESTION, YOUR HONOR. MY CLIENT JUST
22 ASKED ME SOMETHING.

23 **CROSS EXAMINATION BY MR. BROWN:**

24 Q MR. STOBEE, IS THE SAFEKEEPER-- WHAT IS SAFEKEEPER?

25 A UH,---

1 Q IN A NUTSHELL.

2 A IN A NUTSHELL, IT'S A PRE-TRIAL DETAINMENT REQUESTED BY
3 THE SHERIFF TO THE GOVERNOR THAT THE INMATE BE HOUSED AT
4 THE DEPARTMENT OF CORRECTIONS PRIOR TO HIS TRIAL BASED ON
5 SEVERAL DIFFERENT CRITERIA THAT THE COUNTY THAT'S
6 PROSECUTING HIM FEELS HE'S BETTER WITH THE DEPARTMENT OF
7 CORRECTIONS THAN HE WOULD BE THAN IN THE LOCAL DETENTION
8 CENTER.

9 AGAIN, THEY HAVE TO APPLY TO THE GOVERNOR AND THE
10 GOVERNOR HAS TO APPROVE IT.

11 Q DOES THAT HAVE ANYTHING TO DO WITH HIS DISCIPLINARY
12 RECORD WHILE INCARCERATED IN YOA PRIOR TO TRIAL?

13 A AGAIN, SIR, YOU ASKED ME THE QUESTION. NOT TO MY
14 KNOWLEDGE. I MEAN, AGAIN, TO THE BEST OF MY KNOWLEDGE, WE
15 WERE-- HE WAS UNDER AN ACTIVE YOUTHFUL OFFENDER SENTENCE
16 PRIOR TO HIS CONVICTION FOR THE MURDER TRIAL.

17 Q ARE THOSE THOSE RECORDS?

18 A YES SIR.

19 Q OKAY.

20 A SO, IN ESSENCE, WE ONLY HAVE HIM LISTED FOR TWO NUMBERS:
21 THE YOUTHFUL OFFENDER NUMBER AND THE PRISON FOUR-DIGIT
22 DEATH ROW.

23 MR. BROWN: BEG THE COURT'S INDULGENCE.

24 (PAUSE)

1 Q YOU JUST INTRODUCED INTO EVIDENCE THE RECORDS OF HIS
2 DISCIPLINARY PROCEEDINGS WHILE IN YOA ACTIVE AND PRIOR TO
3 THIS TRIAL WHILE HE WAS INCARCERATED. IS THAT CORRECT?

4 A YES SIR.

5 MR. BROWN: I HAVE NO OBJECTION TO THAT, YOUR HONOR.

6 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

7 A YES SIR.

8 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

9 MR. SALTER: THE RESPONDENT CALLS KEVIN BRACKETT.

10 KEVIN BRACKETT, DULY SWORN,

11 TESTIFIED AS FOLLOWS:

12 **DIRECT EXAMINATION BY MR. SALTER:**

13 Q PLEASE STATE YOUR NAME FOR THE RECORD.

14 A KEVIN BRACKETT.

15 Q SOLICITOR BRACKETT, HOW LONG HAVE YOU BEEN THE
16 SIXTEENTH JUDICIAL CIRCUIT SOLICITOR?

17 A SINCE NOVEMBER 17, 2006.

18 Q PRIOR TO THAT TIME HOW WERE YOU EMPLOYED?

19 A I WAS THE DEPUTY SOLICITOR, TOMMY POPE'S CHIEF DEPUTY
20 SOLICITOR.

21 Q FOR HOW LONG?

22 A SINCE MAY OF 1995.

23 Q SO, I ASSUME YOU WERE DEPUTY SOLICITOR BACK DURING THE
24 TIME PERIOD OF THE TRIAL OF MR. ROBERTSON FOR MURDER?

25 A YES SIR.

1 A NO SERIOUS PLEA OFFER, NO. CHIP ROBERTSON WASN'T
2 CHARGED WITH ANY CRIME IN RELATION TO THIS. HE WAS CHARGED
3 WITH SOME DRUG OFFENSES THAT WERE TOTALLY UNRELATED, THAT
4 CAME ABOUT AS A RESULT OF SOME SUBSEQUENT INVESTIGATION BY
5 THE DRUG UNIT. BUT THAT WAS TOTALLY UNRELATED TO THIS
6 EVENT. SO, HE WASN'T CHARGED. THERE WAS NO REASON TO ENTER
7 INTO ANY PLEA NEGOTIATIONS. I HAD NO LEVERAGE ON HIM FOR THE
8 EVENTS RELATING TO THE DEATH OF TERRY AND EARL ROBERTSON.

9 Q DID YOU EVER HAVE ANY CONVERSATION WITH EITHER MR.
10 ROBERTSON OR HIS, CHIP ROBERTSON OR HIS ATTORNEY RELATING
11 TO A PLEA BY JAMES ROBERTSON TO THE MURDER CHARGES?

12 A A SERIOUS PLEA OFFER?

13 Q NO SIR. JUST ANY KIND OF CONVERSATION WHATSOEVER.

14 A THERE WAS A JOKE PLEA OFFER, BUT NOT A SERIOUS ONE.

15 Q WHAT WAS THE NATURE OF THAT JOKE?

16 A ESSENTIALLY, IT WAS BASED ON, IT FOCUSED ON OUR
17 SUSPICIONS. AND, FRANKLY, I THINK PRETTY MUCH EVERYBODY
18 THAT WAS INVOLVED IN THE CASE ON EITHER SIDE, THE DEFENSE OR
19 PROSECUTION, YOU KNOW, THERE WAS A SUSPICION THAT CHIP WAS
20 INVOLVED AND IT FOCUSED ON THE IRONY OF THE FACT THAT JIMMY
21 WAS PROBABLY GOING TO GET SENTENCED TO DEATH, OR LIFE, AT
22 THE VERY LEAST, AND THAT HE WAS GONNA TAKE THE FALL FOR
23 THIS. AND WE BELIEVED THAT CHIP WAS INVOLVED IN IT AS WELL.
24 THE IRONY SURROUNDING THAT.

1 Q WHAT WERE YOUR DUTIES DURING THAT TRIAL?

2 A DURING THE ROBERTSON TRIAL?

3 Q YES SIR.

4 A TOMMY AND I BASICALLY SPLIT THE TRIAL UP. WE DIVIDED UP
5 THE WITNESSES AND I THINK I DID THE CLOSING IN THE GUILT PHASE
6 AND TOMMY DID THE CLOSING IN THE PENALTY PHASE. I DID THE
7 OPENING IN PENALTY AND TOMMY DID OPENING IN GUILT. AND THEN
8 WE HAD THE WITNESSES JUST DIVIDED UP BETWEEN US AS TO WHO
9 WAS GOING TO HANDLE WHICH ONE.

10 Q CAN YOU STATE WHETHER OR NOT CHIP ROBERTSON WAS EVER
11 INVESTIGATED AS A POSSIBLE SUSPECT?

12 A WE LOOKED VERY HARD AT CHIP. WE SUSPECTED AT THE TIME
13 AND STILL BELIEVE, I STILL BELIEVE THAT HE HAD SOME
14 INVOLVEMENT IN THIS CRIME. BUT SUSPICIONS DON'T AMOUNT TO
15 PROBABLE CAUSE SOMETIMES OR BEYOND A REASONABLE DOUBT.
16 SO, HE WAS NOT CHARGED. BUT WE DEFINITELY TOOK A HARD LOOK
17 AT THE EVIDENCE AND DID OUR BEST TO SEE IF HE WAS INVOLVED
18 BECAUSE IF HE WAS WE WANTED HIM TO BE BROUGHT TO JUSTICE AS
19 WELL.

20 Q DO YOU RECALL WHETHER OR NOT AS A PART OF YOUR DUTIES
21 AS DEPUTY SOLICITOR YOU WOULD HAVE ENTERED INTO ANY PLEA
22 NEGOTIATIONS IN CONNECTION WITH THIS CASE?

23 A NO SIR, I DID NOT.

24 Q DO YOU RECALL ANY PURPORTED PLEA OFFER MADE TO EITHER
25 CHIP ROBERTSON OR HIS ATTORNEY IN CONNECTION WITH THIS CASE?

1 I THINK THAT SOMETHING TO THE EFFECT-- I CAN'T EVEN
2 REMEMBER HOW MANY-- IT WAS WITHIN A DAY OR TWO PERIOD. I
3 FIRST TALKED ABOUT IT TO TOMMY AND WE WERE LAUGHING ABOUT
4 IT IN THE CONTEXT OF SOMETHING ELSE. BUT IT WAS NOT SERIOUS.
5 AND THEN I MENTIONED IT TO MR. HANCOCK AND MIKE GILLEN.
6 MAYBE EVEN MEREDITH MOON'S ATTORNEYS. I CAN'T RECALL.

7 Q SO, IT WAS BROUGHT TO THE ATTENTION OF TRIAL COUNSEL,
8 MR. HANCOCK?

9 A YES, AS A JOKE.

10 Q AND THEY UNDERSTOOD IT AS SUCH. CORRECT?

11 A I ASSUME SO. I MEAN, I NEVER FOLLOWED UP; THEY NEVER
12 CAME BACK TO ME. IT WAS INTENDED AS A JOKE. HOW THEY
13 RECEIVED IT, I CAN'T SPEAK TO THAT. BUT I CERTAINLY INTENDED IT
14 AS A JOKE.

15 Q NOW, AT THE TIME OF THE TRIAL, WOULD YOU HAVE BEEN
16 AUTHORIZED AS DEPUTY SOLICITOR TO MAKE ANY PLEA
17 NEGOTIATIONS WITHOUT THE APPROVAL OF SOLICITOR POPE?

18 A NO. I DIDN'T HAVE THE AUTHORITY TO SEEK THE DEATH
19 PENALTY. AND ONCE SOUGHT, I HAD NO AUTHORITY TO UN-SEEK IT.
20 THAT WOULD HAVE HAD TO COME FROM SOLICITOR POPE.

21 Q AND HE NEVER APPROVED ANY PLEA NEGOTIATIONS IN THIS
22 CASE?

23 A NO.

24 Q WHAT IS YOUR RECOLLECTION OF HOW THE PROSECUTION
25 OBTAINED THE NOTES OF TONI CASCIO, THE SOCIAL WORKER?

1 A OF COURSE, TONI CASCIO WAS TOMMY'S WITNESS TO CROSS,
2 NOT MINE. SO, MY MEMORY OF IT AS BEST I CAN RECALL IS WE GOT
3 HER NOTES PURSUANT TO RULE 705 IN THE MIDDLE OF HER
4 TESTIMONY. I THOUGHT THAT'S HOW WE CAME ABOUT GETTING
5 THEM. WE ASKED HER WHAT WAS THE UNDERLYING BASIS OF HER
6 OPINIONS, WHAT DID SHE RELY ON IN FORMING HER OPINIONS. THAT'S
7 WHAT I THOUGHT. I HAVEN'T-- I'M NOT POSITIVE ABOUT THAT,
8 THOUGH.

9 I SEEM TO RECALL WE GOT THEM MID-TRIAL, AND THAT WE
10 WERE REVIEWING THEM. WE GOT THEM IN THE COURTROOM BY
11 ASKING HER FOR THEM WHILE SHE WAS ON THE STAND. AND THEN
12 THERE WAS SOME SORT OF BREAK AND I SEEM TO RECALL TOMMY
13 AND I BACK IN OUR OFFICE GOING THROUGH THE NOTES, REVIEWING
14 THEM. PRIMARILY TOMMY WAS DOING THAT, BUT HE WOULD
15 PERIODICALLY CALL ME IN TO MENTION SOMETHING HE HAD FOUND
16 AND WAS HIGHLIGHTING THEM AND BASICALLY PREPARING TO CROSS
17 HER ON THOSE.

18 Q ALTHOUGH SHE WAS CROSS EXAMINED BY MR. POPE WHAT WAS
19 YOUR RECOLLECTION OF WHY SHE HAD BEEN IMPORTANT, OR
20 WHETHER OR NOT SHE WOULD BE IMPORTANT AS A DEFENSE
21 WITNESS?

22 A WHAT WAS MY RECOLLECTION OF WHY SHE WOULD BE
23 IMPORTANT AS A DEFENSE WITNESS?

24 Q YES SIR.

1 A IN ALMOST CAPITAL CASE THAT I'VE BEEN INVOLVED IN,
2 THERE'S BEEN A SOCIAL WORKER WHO'S COME IN AND BASICALLY
3 LAID THE GROUNDWORK FOR THE SOCIO-PSYCHOLOGICAL HISTORY
4 OF THE DEFENDANT. AND BASICALLY THEY COME IN AND EXPLAIN
5 WHAT A HORRIBLE CHILDHOOD THEY HAD AND ALL THE PROBLEMS
6 AND TRAUMAS THAT THEY ENDURED AND HOW ALL OF THIS LED UP
7 TO THE, SHAPING THEM TO BE THE PERSON THAT COMMITTED THIS
8 CRIME, OR CAUSED THEM TO DO WHAT THEY DID.

9 AND IT'S BASICALLY DONE IN MITIGATION. IT'S DONE WITH AN
10 EYE TOWARDS EVOKING SYMPATHY FOR THE DEFENDANT, DRAGGING
11 UP, YOU KNOW, A PARADE OF HORRIBLE INCIDENTS AND SO FORTH TO
12 TRY TO GET THE JURY TO FEEL SORRY FOR THE DEFENDANT.

13 MR. SALTER: I DON'T BELIEVE I HAVE ANYTHING FURTHER.

14 **CROSS EXAMINATION BY MR. BROWN:**

15 Q MR. BRACKETT, DO YOU RECALL THAT YOU GOT THE NOTES THE
16 NIGHT BEFORE SHE TESTIFIED?

17 A HONESTLY, MR. BROWN, I CAN'T RECALL SPECIFICALLY WHEN
18 WE GOT THEM. I RECALL-- I THOUGHT WE GOT THEM WHILE SHE WAS
19 ON THE STAND; THAT SHE HAD TO GO SOMEWHERE AND GET THEM.
20 AND THEN I RECALL THAT WE HAD SOME PERIOD OF TIME WITH THEM.
21 AND I THOUGHT IT WAS MAYBE OVER A LUNCH BREAK OR DURING
22 SOME BREAK.

23 IT WASN'T A LOT OF TIME BECAUSE I REMEMBER TOMMY SORT
24 OF HOLING UP IN HIS OFFICE TO GO THROUGH THEM BECAUSE HE
25 DIDN'T HAVE A LOT OF TIME TO DO IT. AND HE HAD A HIGHLIGHTER.

1 AND I WAS IN MY OFFICE AND HE CALLED ME IN SEVERAL TIMES TO
2 POINT OUT THINGS THAT HE'D DISCOVERED TO ASK, YOU KNOW,
3 STRATEGIC QUESTIONS, HOW BEST TO DEAL WITH THIS INFORMATION,
4 THAT SORT OF THING. BUT I CAN'T RECALL WITH CERTAINTY
5 EXACTLY WHEN WE GOT THEM.

6 Q I'M SHOWING YOU PAGE 2749 OF THE TRANSCRIPT, MARCH 24,
7 1999, WHEN THE COURT'S CLOSING DOWN.

8 "THE COURT: NO, WE'RE OFF THE RECORD. LET'S STAY ON IT.

9 MR. POPE: MS. CASCIO'S UNDERLYING DATA-- I KNOW Y'ALL
10 HAVE BEEN WORKING. I KNOW SHE HAD TO GO BACK AND FORTH.
11 BUT WE STILL NEED TO TRY TO GET THAT SO WE DON'T RUN INTO
12 THAT PROBLEM TOMORROW. WE'VE GOT A COPY TO GIVE YOU RIGHT
13 NOW.

14 THE COURT: ALL RIGHT. WE'LL BE AT EASE UNTIL NINE-THIRTY
15 IN THE MORNING."

16 AND IT STARTS BACK UP THE NEXT DAY, DOES IT NOT?

17 A YES, BUT I DON'T KNOW. IT SAYS UNDERLYING DATA. I DON'T
18 KNOW WHETHER SHE KNEW THE NOTES-- I MEAN, SPECIFICALLY THE
19 NOTES. I MEAN, THERE'S A LOT OF THINGS THAT SHE MAY HAVE
20 RELIED ON, LIKE SCHOOL RECORDS--

21 Q ARE YOU SAYING THAT'S NOT THE NOTES?

22 A I DON'T KNOW. I'M SAYING I'M NOT CERTAIN THAT THE NOTES
23 WERE INCLUDED IN WHAT-- SHE SAID WE HAVE THE UNDERLYING
24 DATA. I DON'T KNOW IF THAT ENCOMPASSES THE NOTES AS WELL AS
25 THE SCHOOL RECORDS AND ALL THE OTHER THINGS THAT, YOU

1 KNOW, MEDICAL HISTORY AND THAT SORT OF THING, SKIP MEYERS'
2 NOTES, OR WHATEVER, OTHER THINGS SHE MAY HAVE RELIEF ON.

3 Q ARE YOU-- HAVE YOU REVIEWED THIS TRANSCRIPT?

4 A BITS AND PIECES OF IT. I HAVE NOT REVIEWED IT IN ITS
5 ENTIRETY.

6 Q ARE YOU AWARE OF ANY OTHER PLACE IN THIS TRANSCRIPT
7 WHERE IT'S DISCUSSES MS. CASCIO'S UNDERLYING DATA?

8 A I AM AWARE OF SOME POINT IN THAT TRANSCRIPT SHE SAYS
9 SHE THINKS SHE HAS HER NOTES IN THE LIBRARY. I THOUGHT THERE
10 WAS SOME PART IN THERE THAT SOMETHING ABOUT THEY'RE IN THE
11 LIBRARY, I'LL HAVE TO GO GET THEM. I THOUGHT THAT WAS IN
12 THERE, TOO.

13 Q DO YOU RECALL TALKING TO LYNN RIDDLE ABOUT THIS
14 MATTER, THE AUTHOR OF FAMILY BLOOD?

15 A I REMEMBER SPEAKING TO LYNN RIDDLE, YES.

16 Q DO YOU NOT RECALL TELLING HER THE NIGHT BEFORE WHEN
17 THE NOTES WERE DELIVERED, BRACKETT THOUGHT HE COULD RIP
18 THROUGH THEM THE NIGHT BEFORE SHE TESTIFIED?

19 A NO, I DON'T RECALL TALKING ABOUT THAT.

20 Q COULD IT BE CORRECT THAT SHE---

21 A IS THAT A QUOTATION OR IS IT A... IS IT A DIGEST OF A
22 STATEMENT?

23 Q I DON'T KNOW IF IT IS OR NOT. I'LL LET YOU READ IT AND TELL
24 ME. "THEY COULD NOT BELIEVE THEY WERE READING ROBERTSON'S
25 OWN WORDS. THEY HIGHLIGHTED AND HIGHLIGHTED AND

1 HIGHLIGHTED SOME MORE INFORMATION THEY KNEW WOULD HELP
2 THEIR CASE. THEN THEY STARTED WHITTILING DOWN. IT WAS SO
3 MUCH, BRACKETT REMEMBERED LATER."

4 A THAT'S NOT A QUOTATION. IT'S JUST A DIGEST OF HER
5 INTERVIEW. SHE TALKED TO ME. SHE MAY HAVE TALKED TO MR.
6 BOYD AND MR. HANCOCK AND MR. POPE. I'M SURE SHE TALKED TO
7 EVERYBODY THAT SHE COULD HAVE. AND MAYBE SHE TALKED TO
8 MR. ROBERTSON. BUT THAT'S NOT A QUOTE.

9 Q I'M GOING TO SHOW YOU PART OF MR. POPE'S CROSS OF DOCTOR
10 CASCIO AND ASK YOU IF THIS WILL REFRESH YOUR MEMORY.

11 "Q MS. CASCIO, HAVE YOU HAD AN OPPORTUNITY RETRIEVE
12 YOUR NOTES?

13 A YES.

14 Q AND I BELIEVE YOU PROVIDED ME WITH A COPY OF THOSE
15 YESTERDAY?

16 A. YES."

17 A THAT'S WHAT IT SAYS.

18 Q SO, IT'S OBVIOUS PRETTY MUCH-- I KNOW IT'S TEN YEARS AGO.
19 BUT IT'S OBVIOUS PRETTY MUCH YOU GOT THE NOTES THE NIGHT
20 BEFORE. WOULD THAT BE A CORRECT STATEMENT BASED ON THIS?

21 A IT WOULD SEEM SO, BUT I COULDN'T SAY DEFINITELY. THE
22 TRANSCRIPT WOULD CERTAINLY SPEAK FOR ITSELF. BUT I CAN'T
23 RECALL GETTING THEM THE NIGHT BEFORE. THAT DOESN'T REFRESH
24 MY MEMORY.

25 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

1 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ALL RIGHT, SIR. YOU CAN STEP DOWN.

3 MR. SALTER: THE STATE DOESN'T HAVE ANY FURTHER
4 WITNESSES.

5 MR. MATLOCK: YOUR HONOR, IF IT PLEASE THE COURT. WE
6 WOULD CALL MR. ROBERTSON TO THE STAND.

7 THE COURT: MR. ROBERTSON, COME AROUND. YOU ARE STILL
8 UNDER OATH FROM WHEN YOU TESTIFIED EARLIER IN THE WEEK.

9 JAMES ROBERTSON, HAVING BEEN
10 REMINDED OF HIS PREVIOUS OATH BY THE COURT, TESTIFIED AS
11 FOLLOWS:

12 **DIRECT EXAMINATION BY MR. MATLOCK:**

13 Q MR. ROBERTSON, YOU'VE HEARD THE TESTIMONY OF YOUR
14 TRIAL ATTORNEYS OVER THE COURSE OF THE PAST THREE DAYS. DID
15 YOU HEAR ANYTHING THAT WOULD PERSUADE YOU IN ANY MANNER
16 TO CHANGE YOUR POSITION WITH REGARD TO THIS POST CONVICTION
17 RELIEF ACTION?

18 A NO.

19 Q SO, IT'S YOUR POSITION AND YOU'RE STILL CONVINCED THAT
20 YOUR ATTORNEYS WERE INEFFECTIVE IN ASSISTING YOU IN YOUR
21 DEFENSE IN THIS CASE?

22 A YES SIR.

23 Q I'D LIKE TO ASK YOU SOME SPECIFIC QUESTIONS REGARDING
24 THAT POSITION. NOW, YOU WERE ARRESTED IN NOVEMBER OF 1997.

25 A YES.

1 Q CORRECT?

2 A YES.

3 Q AND YOU DIDN'T COME TO TRIAL UNTIL MARCH OF '99.

4 A THAT'S CORRECT.

5 Q NOW, DURING THAT PERIOD YOU WENT THROUGH EXTENSIVE
6 PSYCHOLOGICAL ANALYSIS AND GARNERING OF EVIDENCE AND
7 REVIEWING OF EVIDENCE, MEETING WITH YOUR ATTORNEYS. IS THAT
8 RIGHT?

9 A YES.

10 Q APPROXIMATELY HOW MANY HOURS DID YOU SPEND WITH
11 YOUR ATTORNEYS DURING THOSE MANY MONTHS?

12 MR. SALTER: YOUR HONOR, I'M GOING TO OBJECT. THIS IS
13 SOMETHING THAT SHOULD HAVE BEEN BROUGHT OUT, I BELIEVE, IN
14 HIS CASE IN CHIEF.

15 THE COURT: I'LL ALLOW IT. THEY DID ASK THESE QUESTIONS
16 OF-- AND YOU DID ASK THE LAWYERS THESE QUESTIONS. I'LL ALLOW
17 IT. OVERRULED.

18 MR. MATLOCK: THANK YOU.

19 Q HOW MANY HOURS DID YOU SPEND WITH YOUR ATTORNEYS
20 OUTSIDE THE COURTROOM?

21 A WITH ATTORNEYS SPECIFICALLY, I'D PUT THE GUESTIMATE AT
22 ABOUT TEN.

23 Q ABOUT TEN TOTAL HOURS?

24 A YES. AND THE MAJORITY OF THAT CAME IN ONE, ONE VERY
25 LENGTHY DAY AT LEE CORRECTIONAL INSTITUTION WITH SEVERAL

1 EXPERTS AND INVESTIGATORS. WE SAT AROUND A PRETTY BIG
2 CAFETERIA TABLE.

3 Q WAS THAT YOUR FIRST MEETING WITH YOUR ATTORNEYS?

4 A THAT MAY VERY WELL HAVE BEEN THE FIRST ONE. I GUESS I'D
5 BEEN DOWN THERE FOR ABOUT A MONTH OR SO, AND I WAS ON THE
6 VIOLATION OF A YOA. I MAY HAVE SEEN, MAY HAVE SEEN MR.
7 HANCOCK'S INVESTIGATOR BEFORE THAT, BUT I DON'T-- I BELIEVE
8 THAT'S THE FIRST TIME I SAW MR. HANCOCK AND MR. BOYD AND
9 THEIR PARALEGALS.

10 Q UNDERSTANDING, OF COURSE, THAT THIS WAS QUITE A FEW
11 YEARS AGO, EIGHT OR NINE YEARS AGO, SO THIS IS JUST AN
12 APPROXIMATION, SOMEWHERE AROUND TEN HOURS TOTAL TIME.
13 BETWEEN THE TIME YOU WERE ARRESTED IN 1997, IN NOVEMBER,
14 UNTIL MARCH OF 1999, YOU SAID YOU'D SPENT APPROXIMATELY TEN
15 HOURS WITH YOUR ATTORNEYS?

16 A YES.

17 Q AND THIS INITIAL MEETING WAS THE LION'S SHARE OF THAT. IS
18 THAT RIGHT?

19 A YES. THIS WAS A GOOD FOUR OR FIVE HOURS.

20 Q DURING THAT MEETING DID YOU DISCUSS ANY TRIAL TACTICS,
21 OR DID THEY ADVISE YOU ON THE LAW, OR WAS THIS BASICALLY JUST
22 BACKGROUND AND YOUR FAMILY HISTORY, ET CETERA?

23 A I WAS ASKED TO TELL THEM WHAT HAPPENED, AND THEN IT
24 BECAME VERY CLEAR THAT MY JOB IN MY DEFENSE WAS TO TELL
25 THEM EVERYTHING I KNEW ABOUT MY LIFE, MY BROTHER'S LIFE, MY

1 FAMILY LIFE, MY FATHER'S LIFE, MY MOTHER'S LIFE, WHERE RECORDS
2 COULD BE FOUND, WHAT HOSPITALS WERE VISITED, WHAT DOCTOR
3 WAS VISITED, WHAT SCHOOLS WERE ATTENDED. YOU KNOW, ANY
4 PLACE THAT ONE OF THEIR EXPERTS COULD GO AND DIG UP SOME
5 PAPERWORK. THAT BECAME MY JOB FOR THE NEXT YEAR.

6 Q SO, HOW WOULD YOU IN GENERAL DESCRIBE YOUR
7 PARTICIPATION IN YOUR OWN DEFENSE AS THIS PROCESS UNFOLDED?

8 A I MEAN, AS A DEFENSE, AS STRATEGICALLY, I WOULD SAY I WAS
9 LEFT OUT COMPLETELY.

10 Q DID YOU ASK TO BE MORE INVOLVED?

11 A IN AU- ---

12 Q DID YOU ASK TO SEE THE EVIDENCE?

13 A YES. IN AUGUST OF 1998, I WROTE A LETTER TO MR. HANCOCK
14 AND TOLD HIM THAT I'D LIKE TO SEE WHAT WAS BEING TURNED OVER
15 BY THE PROSECUTION IN DISCOVERY. HE RESPONDED THAT HE DIDN'T
16 THINK IT WAS A GOOD IDEA SINCE I WAS SITTING IN PRISON WITH A
17 ROOMMATE. AND I REITERATED MY FACT IN FURTHER LETTERS THAT
18 I WANTED TO SEE THIS, I HAD A RIGHT TO SEE THIS, I HAD A RIGHT TO
19 REVIEW THE EVIDENCE. AND EVENTUALLY IT JUST BECAME A MOOT
20 POINT; WE WEREN'T JUST GOING TO ARGUE ABOUT IT ANYMORE.

21 I ASKED TO GO AND SEE THE PHYSICAL EVIDENCE. I ASKED TO
22 GO AND SEE THIS BAT THAT THEY CLAIMED TO HAVE, THIS HAMMER.

23 Q BUT, BY AND LARGE, YOU DIDN'T SEE ANY OF THE EVIDENCE.
24 WOULD IT BE FAIR TO DESCRIBE YOUR PARTICIPATION IN YOUR OWN
25 DEFENSE AS MINIMAL?

1 A YES.

2 Q ALMOST NON-EXISTENT, I WOULD VENTURE?

3 A YES, STRATEGICALLY, NON-EXISTENT.

4 Q DID THEY EVER EXPLAIN TO YOU ANY OF THE LEGAL CONCEPTS
5 SUCH AS GUILTY BUT MENTALLY ILL THAT YOU'VE HEARD DISCUSSED,
6 AND OTHER CONCEPTS WITH REGARD TO TACTICS AND PROCEDURE
7 WITH THE TRIAL, WITH YOU?

8 A NO. I DON'T EVEN KNOW-- I DON'T BELIEVE I KNEW WHAT
9 WOULD HAPPEN IF YOU WALKED INTO A COURTROOM AND PLEAD
10 GUILTY TO CAPITAL MURDER UNTIL ABOUT THREE WEEKS AFTER I
11 GOT TO DEATH ROW AND I SPOKE TO SOMEBODY THAT HAD DONE IT.
12 THEN I REALIZED THAT YOU COULD ACTUALLY PLEAD GUILTY TO
13 CAPITAL MURDER AND YOU WOULD AUTOMATICALLY BE SENTENCED
14 TO DEATH.

15 BUT THOSE TWO YEARS PRIOR TO, I THOUGHT THAT WAS THE
16 DEAL, IF I WALKED IN HERE AND PLEAD GUILTY TO CAPITAL MURDER,
17 I WOULD RECEIVE THE DEATH PENALTY, I WAS GOING DOWN THE
18 ROAD TO DEATH ROW. I DIDN'T KNOW THAT THERE WAS AN OPTION. I
19 THOUGHT THAT THERE WAS NO OPTION; NO PLEA WAS BEING OFFERED
20 TO ME. THEY HAD COME TO ME WITH NO PLEA. THEY DISCUSSED NO
21 PLEA WITH ME. I THOUGHT THE ONLY OPTION WAS TRIAL.

22 Q NOW, YOUR ATTORNEYS OBVIOUSLY MADE A VERY SERIOUS
23 TACTICAL DECISION IN PRESENTING NO DEFENSE DURING THE GUILT
24 PORTION OF YOUR TRIAL. AND THAT WAS TANTAMOUNT TO

1 PLEADING GUILTY IN THIS CASE BECAUSE, OBVIOUSLY, AS WE HEARD,
2 THE EVIDENCE WAS OVERWHELMING.

3 WERE YOU BROUGHT INTO THE LOOP IN THAT DECISION TO THE
4 EXTENT THAT YOU FEEL YOU WOULD BE SATISFIED?

5 A YOU KNOW, I THINK I CAN POSSIBLY AGREE WITH A LITTLE BIT
6 OF WHAT THEY SAY, THAT IT WAS PRETTY CLEAR WHAT THE RESULT
7 OF THAT FIRST PART OF THE TRIAL WAS GOING TO BE.

8 Q I UNDERSTAND THAT. BUT YOU HAD---

9 A BUT I HAD NO SAY IN IT. I HAD NO REASON TO HAVE A SAY
10 BECAUSE I DIDN'T KNOW. I DIDN'T KNOW THAT THERE WAS AN OPTION
11 OTHER THAN---

12 Q BECAUSE THEY DIDN'T ADVISE YOU?

13 A RIGHT.

14 Q BUT THEY DID ADVISE YOU AND THEY SET YOU UP WITH EXPERT
15 WITNESSES, AS WE TALKED ABOUT. I THINK PINCUS, EVANS, CASCIO,
16 AND YOU HAD GONE TO SEE THOSE INDIVIDUALS AND HAD BEEN
17 INTERVIEWED BY THEM OVER THE COURSE OF THAT YEAR PLUS
18 THREE MONTHS.

19 A YES, I WAS TOLD TO SPEAK THE TRUTH.

20 Q OKAY. NOW STOP THERE JUST A SECOND. YOU WERE TOLD TO
21 SPEAK THE TRUTH. DID THEY AT ANY TIME TELL YOU TO INVOKE THE
22 FIFTH AMENDMENT IN YOUR DISCUSSIONS WITH THESE EXPERT
23 WITNESSES?

24 A NO. THE ONLY TIME THE FIFTH AMENDMENT EVEN BECAME A
25 DISCUSSION WAS OVER ABOUT AN EIGHT-MONTH PERIOD THAT WE

1 ARGUED OVER WHETHER I WOULD HAVE TO SEE THE STATE
2 PSYCHIATRIST OR SUBMIT TO THIS STATE-SPONSORED
3 PSYCHOLOGICAL EVALUATION. AND THAT WAS AN ONGOING THING
4 AND JUDGE HAYES FINALLY RULED ABOUT THAT. I GUESS IT WASN'T
5 BUT ABOUT TWO WEEKS BEFORE TRIAL. AND THEY GOT A DOCTOR
6 DOWN HERE. AND HE MADE IT CLEAR TO ME, MY ATTORNEYS MADE IT
7 CLEAR TO ME THAT I HAD A CHOICE. I DIDN'T HAVE TO SAY A WORD
8 TO THIS MAN, BUT EVERYTHING THAT OUR ENTIRE DEFENSE WAS
9 CENTERED AROUND COULD COME IN.

10 Q THIS WAS DOCTOR McKEE?

11 A YES.

12 Q AND YOUR ATTORNEYS DIDN'T SIT IN WITH YOU ON THAT
13 EVALUATION, DID THEY?

14 A NO. THEY TOLD ME THAT THEY COULDN'T. JUDGE HAYES TOLD
15 THEM THAT THEY COULDN'T.

16 Q OKAY.

17 A BUT THE DOCTOR--

18 Q THE DOCTOR TOLD YOU THEY COULD.

19 A THE DOCTOR TOLD THEM THEY COULD.

20 Q OBVIOUSLY, HE READ YOU YOUR MIRANDA RIGHTS. RIGHT?

21 A TO THIS DAY I'M STILL CONFUSED.

22 Q WELL, THAT'S WHAT I MEAN, DID YOU EVER ASK YOUR
23 ATTORNEYS TO ENLIGHTEN YOU OR FURTHER EXPLAIN WHAT WAS
24 GOING ON HERE WHEN THIS CONFUSION AROSE BEFORE YOU
25 PROCEEDED WITH THE INTERVIEW?

1 A NO. THEY MET WITH ME OUT IN THE HALLWAY BEFORE I WENT
2 INTO THE ROOM WITH THE DOCTOR AND REMINDED ME OF MY
3 CHOICES. AND THEY SAID, YOU CAME HERE TO TALK AND IF YOU
4 TALK YOU'VE GOT TO TELL HIM EVERYTHING. OR YOU CANNOT TALK.
5 IF YOU DON'T TALK, THEN THIS WHOLE THING'S OVER WITH.

6 Q AND THAT WAS DOCTOR McKEE. NOW, GETTING BACK TO YOUR
7 WITNESSES, THE DEFENSE'S EXPERT WITNESSES, CASCIO, PINCUS, AND
8 SO ON AND SO FORTH. DID THEY DISCUSS WITH YOU HOW YOU
9 SHOULD PROCEED WITH THESE INTERVIEWS? AND DID THEY PRETTY
10 MUCH TELL YOU HOW TO HANDLE YOURSELF? DID THEY ASK TO BE
11 THERE? I REALIZE IT'S A COMPOUND QUESTION. GO AHEAD.

12 A IF I REMEMBER CORRECTLY, DRUCY GLASS, MAYBE KATHERINE
13 SMITH, WERE AT PORTIONS OF SOME OF THESE THINGS.

14 Q I'M SORRY. I---

15 A MAYBE BRIEFLY AT THE BEGINNING OR END. BUT THEIR
16 OVERALL, GENERAL WORD OF ADVICE WAS TELL THEM EVERYTHING
17 YOU TOLD US, FROM THE MOMENT YOU WOKE UP THAT MORNING,
18 EVERYTHING. TO TREAT THEM AS IF IT WERE ATTORNEYS; AS IF IT
19 WAS PROTECTED.

20 Q AND DID THEY IN FACT TELL YOU THAT ANYTHING YOU TELL
21 THESE WITNESSES, YOUR EXPERT WITNESSES, YOUR DEFENSE
22 WITNESSES, WOULD BE PRIVILEGED AND WOULD NOT HAVE TO BE
23 PRESENTED IN THE COURSE OF THE TRIAL?

24 A YES.

25 Q SO, THAT WAS YOUR UNDERSTANDING?

1 A YES.

2 Q AND SO, SPECIFICALLY, DRAWING ATTENTION TO DOCTOR
3 CASCIO'S INTERVIEW, YOU WENT FAR AND AWAY BEYOND WHAT A
4 SOCIAL WORKER WOULD NORMALLY QUESTION YOU ON AND CAME
5 UP WITH THESE ANSWERS THAT WE HEARD EARLIER HERE IN THE
6 DAY, IN THE WEEK?

7 A YES. AND I WAS AWARE THAT SHE WAS WRITING A REPORT.
8 WHAT I WASN'T AWARE OF WAS THAT SHE WAS WRITING WHAT I SAID
9 WORD FOR WORD. AND, YOU KNOW, I WAS TOLD BEFORE I MET WITH
10 ONE EXPERT THAT THEY WOULD ALL BE WRITING REPORTS.

11 Q UH-HUH.

12 A BUT THAT I COULD SPEAK MY MIND, IT WOULD ALL BE
13 DIGESTED AND ALL SUMMARIZED, YOU KNOW. THAT WORDS WOULD
14 NOT BE TAKEN OUT OF CONTEXT. THAT MY FIRST INITIAL THOUGHT
15 WOULD BE NOTED, BUT IT WOULDN'T NECESSARILY BE NOTED WORD
16 FOR WORD.

17 Q NOW, YOU'VE GOT REPORTS FROM THESE VARIOUS WITNESSES
18 AND EXPERTS THAT YOU HAD CONSULTED WITH. IS THAT RIGHT? I
19 MEAN, YOUR DEFENSE GOT REPORTS.

20 A YES.

21 Q DID YOU SEE THESE REPORTS AT ALL PRIOR TO GOING TO TRIAL?

22 A NO. ABOUT SIX MONTHS AFTER I WAS SENTENCED.

23 Q ABOUT SIX MONTHS AFTER YOU WERE SENTENCED BEFORE YOU
24 EVEN SAW THE CONTENTS OF THESE REPORTS?

1 A YES, WHEN I PROCEEDED TO TRY TO GET MY FILE FROM MY
2 TRIAL ATTORNEY.

3 Q NOW, OF COURSE, YOU KNEW WHAT DOCTOR CASCIO'S REPORT
4 SAID BECAUSE SHE TESTIFIED ON THE STAND.

5 A YES. I WOUND UP SEEING WHAT A LOT OF THEM WROTE
6 BECAUSE I HEARD THEM TESTIFY TO IT.

7 Q WELL, LET ME ASK YOU THIS, JIM: IF YOU HAD KNOWN THAT
8 DOCTOR PINCUS, WHO WAS THE, BY FAR THE MOST CREDIBLE
9 WITNESS THAT APPEARED ON YOUR BEHALF-- I MEAN, HERE'S A MAN
10 WHO WENT TO COLUMBIA MEDICAL SCHOOL, YALE RESIDENCY, WAS A
11 PROFESSOR AT YALE AND ENDED UP AS A PROFESSOR EMERITUS AT
12 GEORGETOWN. IF YOU HAD KNOWN WHAT HE WOULD HAVE
13 TESTIFIED TO AND SEEN THESE REPORTS, DO YOU THINK IT WOULD
14 MADE ANY DIFFERENCE IN YOUR NEGOTIATIONS WITH YOUR
15 ATTORNEY REGARDING TRIAL TACTICS DURING THE CASE IN CHIEF OR
16 THE GUILTY PHASE OF THIS TRIAL? KNOWING WHAT YOU KNOW NOW
17 AND WHAT HE TESTIFIED?

18 WOULD IT HELP YOU IF I REFRESHED YOUR RECOLLECTION AS
19 TO WHAT HE TESTIFIED?

20 A I BELIEVE HE TESTIFIED THAT I WAS MENTALLY ILL. AND IT
21 WAS AS CLEAR CUT AS ANYTHING COULD BE CLEAR CUT. YOU KNOW,
22 AS CLEAR CUT AS YOU CAN DEFINE MENTALLY ILL IN THESE DAYS
23 AND AGES. NOW, KNOWING WHAT I KNOW, WHAT I READ SIX OR
24 SEVEN DAYS AFTER I GOT TO DEATH ROW, YOU KNOW, YOU WOULD

1 THINK THAT THE BETTER OPTION WOULD HAVE BEEN GUILTY BUT
2 MENTALLY ILL.

3 I DIDN'T UNDERSTAND. EVEN SIX DAYS AFTER I GOT TO DEATH
4 ROW AND SAW THE FIRST LAW BOOK AND TALKED TO THE FIRST GUY
5 ON THE ROW, I STILL DIDN'T UNDERSTAND THE WHOLE CONCEPT, ALL
6 AT WILL. BUT I UNDERSTOOD IT ENOUGH TO SAY, YOU KNOW WHAT,
7 THROW IN THE TOWEL IN THE GUILT PHASE, YOU'VE ALREADY
8 THROWN IT IN ANYWAY, AND SET THE FOUNDATION.

9 Q THAT WAS YOUR LEGAL ADVICE. RIGHT?

10 A THAT'S WHAT I LEARNED.

11 Q OKAY. DESPITE THE FACT THAT DOCTOR PINCUS TESTIFIED, OR,
12 DIAGNOSED YOU AS HAVING PHYSIOLOGICAL FRONTAL LOBE
13 DAMAGE OR ABNORMALITIES, PHYSIOLOGICAL PROBLEMS ---

14 A YES.

15 Q AND THIS IS A PHYSICIAN; THIS ISN'T PROFESSOR EMERITUS IN
16 THAT PARTICULAR FIELD OF STUDY. AND DESPITE THAT, PLUS THE
17 OTHER MENTAL HEALTH PROBLEMS, MENTAL ILLNESS THAT YOU
18 HAVE, BI-POLAR, MANIC DEPRESSIVE, STILL NO DISCUSSION AS TO
19 WHETHER OR NOT IT WAS IN YOUR BEST INTEREST TO THROW IN THE
20 TOWEL OR JUST GO WITH NO DEFENSE?

21 A RIGHT. I'D NEVER HEARD A DISCUSSION.

22 Q OKAY.

23 A THAT'S NOT TO SAY THAT THEY DIDN'T DISCUSS IT AMONG
24 THEMSELVES, BUT IT CERTAINLY WASN'T BROUGHT UP TO ME.
25 LITERALLY, THAT YEAR, THAT YEAR AND A HALF, OR WHATEVER, MY

1 JOB WAS TO TELL THEM ABOUT MY CHILDHOOD, MY BROTHER'S
2 CHILDHOOD, MY MOTHER'S CHILDHOOD, MY FATHER'S CHILDHOOD,
3 MY GREAT GRANDPARENTS' CHILDHOOD, YOU KNOW.

4 Q UH-HUH.

5 A YES, I UNDERSTOOD LEGAL TERMS, BUT PLEAS, NONE OF THAT,
6 YOU KNOW. I DIDN'T EVEN UNDERSTAND THAT YOU COULD STAND IN
7 FRONT OF A JUDGE AND PLEAD GUILTY TO CAPITAL MURDER. I DIDN'T
8 EVEN UNDERSTAND WHY YOU WOULD. I MEAN, WHAT'S THE POINT?

9 Q THE POINT BEING THAT IT WAS NOT EXPLAINED TO YOU.

10 A RIGHT.

11 Q YOU DIDN'T KNOW.

12 A WHAT WOULD BE THE POINT? I MEAN, YOU MIGHT AS WELL
13 TAKE A CRACK AT TWELVE JURORS.

14 Q OKAY.

15 A THAT WAS MY POSITION AT THE TIME. I KNOW THAT IT IS
16 DIFFERENT NOW, NOT THAT I HAVE READ A STATUTE OR TWO, AND
17 I'VE TALKED TO A FEW PEOPLE AND I'VE MET A FEW PEOPLE WHO
18 HAVE STOOD IN FRONT OF A JUDGE AND PLEAD GUILTY TO CAPITAL
19 MURDER.

20 Q AT THE TIME OF THE TRIAL, YOU WERE HOW OLD?

21 A TWENTY-FOUR.

22 Q YOU HAD NO LEGAL TRAINING?

23 A NO.

24 Q SO, BASICALLY, YOU WERE RELYING ENTIRELY ON YOUR
25 ATTORNEYS?

1 A ON MY ATTORNEYS. I MEAN, I DIDN'T HAVE, YOU KNOW, FOR--
2 HALF THE TIME I SPENT HERE AT THIS JAIL I HAD NO ACCESS TO A LAW
3 LIBRARY.

4 Q UH-HUH.

5 A AND THE OTHER HALF WAS IN LEE COUNTY, AND MY ACCESS
6 THERE WAS LIMITED. TO MAKE A LONG STORY SHORT BECAUSE I WAS
7 THERE ON A YOA AND YOU COULDN'T EXPLAIN TO A LIBRARIAN THAT,
8 HEY, I GOT DOUBLE MURDER HANGING OVER MY HEAD; I NEED TO
9 LOOK AT A FEW STATUTES.

10 THEY JUST DIDN'T BELIEVE BECAUSE ALL THEY SAW WAS A YOA
11 NUMBER. IT WASN'T UNTIL ABOUT THREE MONTHS BEFORE I LEFT
12 THERE THEY REALIZED THAT YORK COUNTY WAS WAITING ON ME FOR
13 CAPITAL MURDER. AND THEY PUT ME IN ANOTHER SECURITY
14 ASSIGNMENT, PUT ME IN A WHOLE DIFFERENT BUILDING, EVERYTHING
15 ELSE.

16 BY THEN I MIGHT HAVE BEEN ABLE TO GET INTO THE LIBRARY.
17 BUT, CONSEQUENTLY, IT WASN'T UNTIL DEATH ROW THAT I HAD
18 COMPLETE ACCESS TO A FULL LAW LIBRARY.

19 Q DIRECTING YOUR ATTENTION NOW, AND MOVING AHEAD A
20 LITTLE BIT TO SPECIFICALLY YOU HEARD AN AWFUL LOT OF
21 TESTIMONY AND FACTS COME OUT DURING THE COURSE OF THE LAST
22 THREE DAYS ABOUT DOCTOR CASCIO AND HER SNAFU OF BIBLICAL
23 PROPORTIONS, AS MR. BROWN BROUGHT UP.

24 DID YOU HAVE ANY IDEA WHEN SHE WAS BEING CALLED TO THE
25 STAND THAT SHE WAS GOING TO TESTIFY SO FAR BEYOND THE SCOPE

1 OF YOUR, THE INTENT OF YOUR INTERVIEW, OR WHAT YOU WERE
2 ADVISED YOUR INTERVIEW WAS GOING TO BE, AND INTO THOSE
3 DAMNING STATEMENTS AND TESTIMONY REGARDING YOURSELF AND
4 THE DEFENSE?

5 A IT WAS MY UNDERSTANDING THAT HER JOB WAS TO SIMPLY TIE
6 IT IN, EVERYTHING THAT EVERYBODY ELSE HAD DONE. THAT, YOU
7 KNOW, EVERYTHING THAT DRUCY GLASS HAD DONE, HER REPORT;
8 ALL THE DOCTORS; TO GO OVER ALL THE NOTES.

9 IT WASN'T NECESSARILY HER JOB TO INSTIGATE ANYTHING, TO
10 START ANYTHING NEW. IT WAS TO SIMPLY LOOK AT RECORDS THAT
11 HAD ALREADY BEEN PROVIDED TO HER THAT HAD BEEN GENERATED
12 BY OTHER EXPERTS, AND SIMPLY TIE EVERYTHING IN TO ONE,
13 CONCISE PICTURE OF THE FAMILY, THE PROBLEMS, MAYBE WHY THE
14 PROBLEMS WERE CAUSED, YOU KNOW.

15 Q RIGHT.

16 A WHERE BLAME SHOULD BE ACCESSED OR WHATNOT. BUT IT
17 WASN'T MY UNDERSTANDING THAT SHE EVEN, THAT SHE HAD ANY
18 POSITION, ANY JOB TO SEEK NEW INFORMATION.

19 Q EXACTLY. SHE WASN'T AN INVESTIGATOR; SHE WAS AN
20 EVALUATOR OF YOU AND YOUR PERSONAL HISTORY.

21 A SHE WAS LIKE AN EDITOR. HER JOB WAS TO LOOK AT
22 SOMETHING THAT HAD ALREADY BEEN WRITTEN AND PUT IT
23 TOGETHER.

24 Q WELL, AS IT TURNED OUT, THAT WAS NOT THE CASE. IS THAT
25 RIGHT?

1 A AS IT TURNED OUT, SHE TESTIFIED FOR ME.

2 Q AND SHE ACTUALLY TESTIFIED TO EVERYTHING THAT YOU
3 WERE TRYING TO KEEP OUT, OR YOUR ATTORNEYS AND YOU WERE
4 TRYING TO KEEP OUT OF THIS TRIAL? ISN'T THAT RIGHT? BY YOU NOT
5 TESTIFYING AND INVOKING YOUR FIFTH AMENDMENT PRIVILEGE?

6 A YES.

7 Q OKAY. NOW, YOU'RE A PRETTY SMART GUY. RIGHT?

8 A YEAH.

9 Q I MEAN, YOU'VE BEEN TO COLLEGE AND YOU'VE GOTTEN GOOD
10 IT SCORES AND WE KNOW ALL THAT, IT'S A MATTER OF RECORD. IS
11 THAT A FACT? YOU DON'T HAVE TO ANSWER THAT.

12 BUT IF YOU HAD BEEN TRYING THIS CASE PRO SE OR BY
13 YOURSELF, ACTING AS YOUR OWN ATTORNEY, WOULD YOU HAVE PUT
14 HER ON THE STAND KNOWING THAT SHE WAS GOING TO---

15 MR. SALTER: OBJECTION TO SPECULATION, YOUR HONOR.

16 THE COURT: SUSTAINED.

17 MR. MATLOCK: I WITHDRAW THAT QUESTION.

18 Q JUST A COUPLE OF COLLATERAL ITEMS AND I'LL LET YOU GET
19 DOWN OUT OF THERE, JIM. FIRST OF ALL, YOU TESTIFIED ON
20 EXAMINATION ON MONDAY THAT YOUR BROTHER GAVE YOU \$50,000
21 OVER THE COURSE OF THE TIME YOU'VE BEEN ON DEATH ROW. IS
22 THAT CORRECT?

23 A YES, APPROXIMATELY.

24 Q AND THAT WASN'T IN ANY WAY GIVEN TO YOU TO---

1 MR. SALTER: YOUR HONOR, IF COUNSEL COULD-- I MEAN, I'VE
2 SHOWN SOME INDULGENCE. BUT IF COUNSEL COULD ASK HIM A
3 QUESTION AND ALLOW HIM TO ANSWER.

4 MR. MATLOCK: I'LL REPHRASE THE QUESTION, YOUR HONOR.

5 MR. SALTER: THANK YOU.

6 Q YOU TESTIFIED THAT YOUR BROTHER GAVE YOU \$50,000?

7 A YES, APPROXIMATELY.

8 Q WHAT WAS THE REASON FOR THAT?

9 A OUT OF HIS GOOD GRACES, BECAUSE HE LOVES ME.

10 Q ANY ULTERIOR MOTIVE?

11 A BECAUSE HE WANTED TO. NO. IT WASN'T HANDED TO ME AT
12 ONE TIME. IT WASN'T HANDED TO ME WITH STRINGS ATTACHED. IT
13 WASN'T ARRANGED PRIOR TO. THERE WASN'T A CHECK WRITTEN
14 PRIOR TO THAT SAID PLEASE DO THIS. THIS WAS GIVEN TO ME
15 BECAUSE HE WANTED TO GIVE IT TO ME. AND I WAS TOLD TO SPEND
16 IT AS I SAW FIT.

17 Q LET ME JUST VERY BRIEFLY BACK UP TO THE CASCIO, DOCTOR
18 CASCIO'S TESTIMONY. AFTER SHE TESTIFIED WHAT HAPPENED WITH
19 REGARD TO DIALOG BETWEEN YOU AND YOUR ATTORNEYS?

20 A EXCUSE ME. I'M SORRY.

21 Q OKAY. AFTER DOCTOR CASCIO CONCLUDED HER TESTIMONY,
22 DID YOU HAVE OCCASION TO HAVE A DISCUSSION WITH YOUR
23 ATTORNEYS REGARDING YOUR POSITION AND WHETHER OR NOT YOU
24 WANTED TO DO SOME DAMAGE CONTROL, AS YOU MENTIONED ON
25 MONDAY?

1 A YES. THAT LITTLE ROOM RIGHT THERE, OUTSIDE THE
2 COURTROOM.

3 MR. MATLOCK: THE RECORD REFLECTS---

4 A YES.

5 MR. MATLOCK: ---THAT THE WITNESS IS POINTING TO---

6 A AS MR. HANCOCK SAID, MR. BOYD'S A PRETTY CALM PERSON.
7 SO, I WOULDN'T HAVE KNOWN HOW UPSET HE WAS. BUT HANCOCK
8 AND I GOT INTO EACH OTHER'S FACE. I MEAN, IT WAS HEATED.

9 Q LIKE THAT?

10 A IT WASN'T PERSONAL, BUT IT WAS HEATED AND IT WAS
11 EMOTIONAL. THERE WAS CRYING, THERE WAS YELLING. AND FOR
12 ALL I KNOW HE MAY HAVE BEEN JUST AS UPSET AT TONI CASCIO. AT
13 THE TIME I WAS UPSET AT HIM.

14 Q UH-HUH.

15 A I WASN'T REAL CONCERNED WITH WHO HE WAS UPSET WITH.

16 Q DID YOU ASK TO TESTIFY? TO RESPOND TO THAT, TO REPLY TO
17 THAT?

18 A I ALMOST DEMANDED. I ALMOST SAID, LOOK, THERE'S NO
19 CHOICE NOW; I MIGHT AS WELL. I'VE GOT NOTHING TO LOSE. BUT I
20 WAS ADVISED NOT TO. I WAS ADVISED THAT WHATEVER DAMAGE SHE
21 HAD DONE, TOMMY POPE COULD OPEN THE DOOR TO SOME MORE.
22 AND, YOU KNOW, YOU'RE ON TRIAL FOR YOUR LIFE AND YOU HAVE,
23 ARGUABLY, TWO OF THE BEST ATTORNEYS IN SOUTH CAROLINA, IN
24 THE UPSTATE OR ROCK HILL OR YORK COUNTY TELLING YOU THAT
25 WE CAN LIMIT THE DAMAGE BY LEAVING IT AS IS. WHAT DO YOU DO?

1 Q IN CONCLUSION, THOUGH, YOU WANTED TO TAKE THE STAND.
2 YOU VEHEMENTLY PROTESTED---

3 A YES.

4 Q ---THEIR NOT ALLOWING YOU TO DO SO?

5 A YES.

6 MR. MATLOCK: I HAVE NO FURTHER QUESTIONS.

7 Q ANSWER DEFENSE'S QUESTIONS.

8 MR. SALTER: BEFORE WE BEGIN, I WOULD ASK FOR A FIVE
9 MINUTE BREAK. WE'RE TRYING TO LOCATE SOME RECORDS
10 PERTAINING TO VISITATION BY COUNSEL, TO SHOW THAT COUNSEL
11 VISITED MORE THAN TEN HOURS.

12 MR. BROWN: WITHOUT OBJECTION, YOUR HONOR.

13 THE COURT: DO YOU THINK YOU'LL BE ABLE TO GET THAT
14 DONE IN THE NEXT FEW MINUTES?

15 MR. SALTER: I WOULD HOPE SO, YOUR HONOR.

16 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

17 MR. SALTER: IF NOT, I'LL JUST GO AHEAD AND PROCEED.

18 (WHEREUPON COURT WAS IN RECESS AT 3:55 P.M.)

19 COURT IN SESSION - 4:00 P.M.

20 CROSS EXAMINATION BY MR. SALTER:

21 Q MR. ROBERTSON, WHEN YOUR ATTORNEYS ASKED YOU WHAT
22 HAPPENED ON THAT LONG INITIAL VISIT THAT YOU DESCRIBED
23 EARLIER, THE ONE THAT YOU SAID LASTED ABOUT FOUR OR FIVE
24 HOURS, YOU TOLD THEM WHAT HAPPENED. RIGHT?

25 A YES.

1 Q YOU TOLD THEM THAT YOU COMMITTED THE CRIME. RIGHT?

2 DID YOU NOT?

3 A YES.

4 Q AND YOU ALSO TOLD THEM ABOUT YOUR BACKGROUND, AS

5 BEST THAT YOU COULD, PROVIDED THEM WITH AS MUCH

6 INFORMATION AS YOU COULD. RIGHT?

7 A YES.

8 Q AND YOU CONTINUED TO DO THAT, DID YOU NOT?

9 A YES.

10 Q SO, YOU TOLD THEM EVERYTHING THAT YOU COULD THINK OF

11 ABOUT YOUR FAMILY'S BACKGROUND AND MENTAL HEALTH

12 HISTORY?

13 A YES.

14 Q NOW, AS I UNDERSTAND IT, YOU SAID YOU WANTED TO SEE THE

15 PHYSICAL EVIDENCE, YOU WANTED TO SEE THE PHYSICAL EVIDENCE

16 IN THIS CASE?

17 A THAT IS TRUE.

18 Q SPECIFICALLY, I THINK YOU SAID YOU WANTED TO SEE THE BAT

19 AND THE HAMMER?

20 A I WAS— YES. I WAS-- I DIDN'T MEAN JUST THOSE TWO. I WAS

21 JUST USING THOSE AS AN EXAMPLE.

22 Q WHY DID YOU WANT TO SEE THEM?

23 A THAT'S WHAT'S GOING TO BE USED TO TRY ME. THAT WAS

24 WHAT GOING TO BE USED TO DETERMINE MY FATE.

25 Q WELL, YOU HAD ALREADY SEEN THEM BEFORE, HADN'T YOU?

1 A IT WAS OFFERED TO ME BY TOMMY POPE.

2 Q YOU HAD ALREADY SEEN THEM BEFORE, HAD YOU NOT?

3 A I SUPPOSE I HAD.

4 Q WHEN YOU USED THEM ON YOUR PARENTS?

5 A I TAKE THE FIFTH.

6 MR. SALTER: YOUR HONOR, HASN'T HE ALREADY WAIVED THAT
7 NOW?

8 THE COURT: BY ANSWERING THE PREVIOUS QUESTION?

9 MR. SALTER: YES SIR.

10 A YES. WE'LL MAKE THIS EASY.

11 Q YOU---

12 THE COURT: LET'S CLEAR UP. LET'S CLEAR THIS UP. ASK THE
13 QUESTION AGAIN, PLEASE. I DON'T THE RECORD ACCURATELY
14 REFLECTS WHETHER OR NOT THE QUESTION ANSWERED, AND IF SO,
15 WHAT THE ANSWER WAS.

16 Q YOU HAD PREVIOUSLY SEEN THE BAT AND THE HAMMER WHEN
17 YOU USED THEM ON YOUR PARENTS. CORRECT?

18 A YOUR HONOR, I'M TAKING THE FIFTH TO THAT. I ADMIT THAT I
19 COMMITTED THE CRIME, BUT NOT NECESSARILY IN THE MANNER THAT
20 HE'S STATING. I HAVE NO PROBLEM TO ADMITTING TO THE CRIME,
21 BUT TO THE MANNER THAT HE'S STATING, THAT A BAT WAS USED,
22 NECESSARILY, SPECIFICALLY, I TAKE THE FIFTH.

23 MR. SALTER: YOUR HONOR, I THINK HE'S WAIVED IT.

24 MR. BROWN: BEG THE COURT'S INDULGENCE JUST ONE SECOND.

25 (PAUSE)

1 MR. MATLOCK: YOUR HONOR, MY QUESTION, AS I RECALL, WAS
2 A VERY GENERAL QUESTION WITH RESPECT TO HAVING-- I DIDN'T GET
3 INTO ANY SPECIFICS. I DIDN'T ASK ABOUT ANY BALL BATS OR
4 HAMMERS OR ANYTHING LIKE THAT. I JUST ASKED A GENERAL
5 QUESTION, DID YOU ASK TO REVIEW THE EVIDENCE AND IT WAS
6 GENERALLY OUT THERE, THE BAT. AND HE ANSWERED.

7 THE COURT: IS IT YOUR POINT THAT THE QUESTION MR. SALTER
8 JUST ASKED IS NOT PROPERLY ASKED IN CROSS EXAMINATION?

9 MR. MATLOCK: NO. IT'S BEYOND THE SCOPE OF MY DIRECT
10 EXAMINATION.

11 THE COURT: WELL, I'M NOT GOING TO LIMIT-- THIS IS NOT AS
12 THOUGH THE-- I THINK THE QUESTION IS PROPERLY IN RESPONSE TO
13 QUESTIONS THAT WERE ASKED ON DIRECT. BUT THE REAL-- IF THAT'S
14 YOUR OBJECTION, I OVERRULE THAT OBJECTION.

15 BUT THE REAL ISSUE IS, WHEN HE ANSWERED THE QUESTION A
16 MINUTE AGO WHETHER OR NOT HE COMMITTED THE CRIMES, AND HE
17 ANSWERED THE QUESTION YES, IS THAT A WAIVER OF HIS RIGHT TO
18 REMAIN SILENT UNDER THE FIFTH AMENDMENT SUCH THAT I SHOULD
19 ORDER HIM TO ANSWER ALL SUBSEQUENT QUESTIONS RELATED TO
20 THE CRIME.

21 MR. MATLOCK: IF HE COMMITTED THE OFFENSE, THAT WAS THE
22 QUESTION AND HE ANSWERED YES, THEN---

23 THE COURT: DID THE YOU COMMIT THE CRIME, OR SOMETHING
24 LIKE THAT?

1 MR. SALTER: I ASKED WHETHER OR NOT HE TOLD HIS
2 ATTORNEYS THAT HE COMMITTED THE OFFENSES.

3 MR. MATLOCK: AND THAT WOULD BE A WAIVER OF HIS ENTIRE
4 RIGHTS UNDER THE FIFTH AMENDMENT? I DON'T BELIEVE SO.

5 THE COURT: THEN, SUBSEQUENTLY, THEN, HE SAID I DON'T
6 HAVE ANY PROBLEM ADMITTING THAT I COMMITTED THE CRIME. AND
7 IT'S MY UNDERSTANDING THAT THERE IS NO SUCH THING OF A
8 PARTIAL WAIVER OF THE RIGHT TO REMAIN SILENT. IT IS EITHER A
9 COMPLETE WAIVER OR IT IS A COMPLETE EXERCISE OF THAT RIGHT.

10 NOW, MR. ROBERTSON, YOU, OF COURSE, HAVE HAD YOUR
11 RIGHT TO REMAIN SILENT EXPLAINED TO YOU REPEATEDLY
12 THROUGHOUT THE LAST TEN YEARS. CORRECT?

13 A YES.

14 THE COURT: AND YOU UNDERSTAND IT?

15 A YES. THE ONE POINT THAT I WAS MAKING IS THAT---

16 THE COURT: NO, I DIDN'T ASK YOU WHAT POINT YOU WERE
17 MAKING. I ASKED YOU WHETHER OR NOT YOU UNDERSTAND YOUR
18 RIGHT TO REMAIN SILENT AND THE ANSWER IS YES.

19 NOW, WHEN YOU ANSWERED THAT QUESTION A MINUTE AGO,
20 YOU DIDN'T GET TRICKED INTO ANSWERING THAT QUESTION, DID
21 YOU?

22 A NO.

23 THE COURT: YOU CHOSE TO ANSWER THE QUESTION THAT YOU
24 HAD COMMITTED THE CRIMES?

1 A YES, IN THE HOPES OF AVOIDING THE OTHER SIXTY-FIVE
2 QUESTIONS THAT I PLEAD THE FIFTH TO---

3 THE COURT: RIGHT.

4 A ---THE OTHER DAY.

5 THE COURT: AND WHEN YOU ANSWERED THAT QUESTION YOU
6 KNEW THAT YOU DID NOT HAVE TO ANSWER THE QUESTION BECAUSE
7 YOU HAD THE RIGHT TO REMAIN SILENT REGARDING THE CRIME
8 ITSELF AND ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE
9 CRIME. ANYTHING THAT MIGHT TEND TO INCRIMINATE YOU, YOU
10 KNEW THAT YOU DIDN'T HAVE TO ANSWER THOSE QUESTIONS, DIDN'T
11 YOU?

12 A YES, EVEN THOUGH MY ATTORNEYS INCRIMINATED ME. THE
13 RIGHT TO SELF-INCRIMINATION WENT OUT THE DOOR WHEN THEY
14 BOTH TESTIFIED THAT I TOLD THEM SO. ALL I DID IS REPEAT THAT
15 YES, I TOLD MY ATTORNEYS---

16 THE COURT: THAT'S ENOUGH. I DIDN'T ASK YOU THAT.

17 A I'M SORRY.

18 THE COURT: DO Y'ALL HAVE-- THE STATE'S POSITION IS THAT
19 HE WAIVED HIS RIGHT TO REMAIN SILENT. AND I SUPPOSE THE
20 REQUEST IS THAT I ORDER HIM TO ANSWER THESE QUESTIONS?

21 MR. SALTER: YES SIR, YOUR HONOR.

22 MR. MATLOCK: YOUR HONOR, I UNDERSTAND THERE'S A LEGAL
23 PRINCIPLE THAT---

24 THE COURT: I'M JUST ASKING. I'M ASKING FOR YOUR
25 RESPONSE. I MEAN, THERE'S A LOT OF LAW THAT I DON'T KNOW OFF

1 THE TOP OF MY HEAD, AND THERE'S A LOT OF LAW THAT I THINK I
2 KNOW OFF THE TOP OF MY HEAD. BUT THAT'S ONE THAT I'M NOT
3 ABSOLUTELY POSITIVE I KNOW. AND BEFORE I JUMP RIGHT OUT AND
4 RULE ON IT, I WANT TO HEAR WHAT Y'ALL HAVE TO SAY.

5 MR. BROWN: YOUR HONOR, I WOULD SUBMIT TO YOU THAT DUE
6 TO THE BIFURCATION OF THE DEATH PENALTY CASE, THAT HE HAS
7 NOT WAIVED HIS FIFTH AMENDMENT RIGHT, BECAUSE, AS I TOLD YOU
8 EARLY ON, EVEN THOUGH I DON'T WAIVE MY RIGHT TO GO BACK INTO
9 THAT PHASE, WE HAVE NO QUALMS IN THIS POST CONVICTION RELIEF
10 AS TO A NEW TRIAL, POSSIBLY AS TO A NEW SENTENCING HEARING.

11 THE FACT THAT HE DID THE CRIME AS TO THE GUILT PHASE I
12 THINK IS A WASH. AS TO MITIGATION AND AGGRAVATION, I THINK HE
13 WOULD HAVE A FIFTH AMENDMENT RIGHT THERE DUE TO THE
14 HEINOUS NATURE OF THE ALLEGATION OF THIS CRIME. AND I THINK
15 HE HAS CHOSEN NOW TO ASSERT HIS FIFTH AMENDMENT RIGHT AS TO
16 THE AGGRAVATION, THE AGGRAVATED CIRCUMSTANCES OR THE
17 MITIGATING CIRCUMSTANCES OF THAT CRIME. AND I THINK HE
18 WOULD ALSO HAVE A FIFTH AMENDMENT RIGHT AS TO THAT PHASE
19 OF THE TRIAL, OR THE ALLEGATIONS.

20 MR. MATLOCK: AND IF I MAY, YOUR HONOR, JUST VERY
21 BRIEFLY. YOU WERE ASKING IF HE UNDERSTOOD HIS FIFTH
22 AMENDMENT RIGHTS. I THINK IT'S PATENTLY OBVIOUS FROM HIS
23 ANSWER THAT HE DIDN'T UNDERSTAND HIS FIFTH AMENDMENT
24 RIGHTS WHEN HE RESPONDED TO THAT QUESTION. HE WAS GOING ON
25 THE PREMISE THAT HIS ATTORNEYS HAD ALREADY WAIVED HIS FIFTH

1 AMENDMENT RIGHTS. HE HASN'T AFFIRMATIVELY WAIVED HIS
2 RIGHTS OR BEEN ADVISED OF HIS RIGHTS IN THIS PARTICULAR
3 QUESTION. SO, I DON'T THINK HE KNOWINGLY AND WILLINGLY
4 WAIVED HIS RIGHT BY ANSWERING THAT QUESTION.

5 MR. BROWN: I MEAN, AN ANALOGOUS SITUATION, YOUR HONOR,
6 WOULD BE, LIKE, YES, I COMMITTED THE CRIME; HOWEVER, I MAY
7 HAVE SOME AFFIRMATIVE DEFENSES SUCH AS SELF-DEFENSE,
8 INSANITY, MENTAL ILLNESS, ET CETERA. I DON'T THINK HE'S WAIVED
9 HIS FIFTH AMENDMENT RIGHT IN MITIGATION AND AGGRAVATION.

10 THE COURT: ALL RIGHT. IF YOU WANT TO CONTINUE ASKING
11 HIM QUESTIONS ON ANOTHER LINE, YOU MAY. AND I WILL RULE
12 WHEN I GET READY.

13 MR. SALTER: YES SIR, YOUR HONOR. VERY BRIEFLY, THEN.

14 Q YOU TESTIFIED ON DIRECT EXAMINATION THAT YOUR
15 ATTORNEY MET WITH YOU AND IMMEDIATELY ORDERED YOUR
16 EVALUATION BY DOCTOR McKEE, THE STATE'S EXPERT?

17 A YES. I'M ALMOST-- I CANNOT-- I CAN STILL SEE IT, STANDING IN
18 THE HALLWAY FOR ABOUT A MINUTE AND A HALF OR TWO. I MAY BE
19 WRONG. IT MAY HAVE BEEN MR. MORTON, BUT I'M ALMOST POSITIVE.

20 Q AND I BELIEVE THEY TOLD YOU THAT YOU HAD AN OPTION; YOU
21 COULD EITHER TALK AND TELL THE TRUTH, OR DON'T TALK AT ALL
22 AND IT'S OVER. IS THAT RIGHT?

23 A THEY TOLD ME---

24 Q IS THAT---

1 A ---THAT I HAD TO COOPERATE; THAT I HAD TO TELL THEM
2 EVERYTHING.

3 Q SO THEY COULD PRESENT A MENTAL HEALTH DEFENSE. IS THAT
4 RIGHT?

5 A OTHERWISE, EVERYTHING THAT WE HAD PUT TOGETHER IN
6 MENTAL HEALTH WAS OUT.

7 Q AND YOU CHOSE TO GO AHEAD AND TALK TO HIM? AFTER THEY
8 MADE THIS EXPLANATION TO YOU, YOU CHOSE TO GO AHEAD AND
9 TALK TO HIM?

10 A AFTER THE ADVICE I WAS GIVEN, YES, I CHOSE TO TALK TO HIM.

11 Q NOW, I BELIEVE YOU SAID YOU HAD CHANGED YOUR VIEW ON
12 PLEADING CAPITAL MURDER AFTER DISCUSSIONS WITH SEVERAL
13 PEOPLE WHO HAVE PLEAD GUILTY TO CAPITAL MURDER? IS THAT
14 RIGHT?

15 A I JUST BELIEVE THAT I-- I BECAME-- I UNDERSTOOD MORE
16 ABOUT CAPITAL MURDER A LITTLE LATER ON.

17 Q AFTER TALKING TO PEOPLE LIKE MICHAEL PISSARO?

18 A I BELIEVE HE WAS ONE.

19 Q Y'ALL WERE FRIENDS, WEREN'T YOU?

20 A OH, WELL, YES, THAT'S UNQUESTIONABLE.

21 Q WHO ELSE?

22 A SPECIFIC NAMES, I DON'T REMEMBER. I DO REMEMBER HEARING
23 THAT YOU COULD SIMPLY, YOU KNOW, YOU COULD PLEAD GUILTY.
24 AND AFTER YOU PLEAD GUILTY, ASSUMING THAT THE JUDGE
25 ACCEPTED YOUR PLEA, THAT YOU COULD EMPANEL A JURY OR ASK

1 THE JUDGE TO DECIDE ON SENTENCING, YOU KNOW, ONE OF THE TWO.
2 BUT PRIOR TO THIS, I JUST ASSUMED IF I PLEAD GUILTY I WAS ON THE
3 ROPES FOR WHATEVER SENTENCE THE PROSECUTOR ASKED FOR, OR IT
4 COULD BE NEGOTIATED RIGHT THAT MINUTE IN COURT.

5 Q AND YOUR ATTORNEYS NEVER TOLD YOU ANYTHING
6 DIFFERENT?

7 A NO.

8 Q WITH RESPECT TO YOUR REQUEST TO TESTIFY AFTER MS.
9 CASCIO HAD TESTIFIED, WHAT DID YOU WANT TO TESTIFY TO?

10 A I WANTED TO TAKE THE SUBSTANCE OF WHAT SHE SAID AND
11 PUT IT BACK IN CONTEXT.

12 Q THE SUBSTANCE OF WHAT SHE SAID. THE SUBSTANCE OF WHAT
13 SHE SAID WITH RESPECT TO YOUR FAMILY'S MENTAL HEALTH
14 HISTORY, OR THE SUBSTANCE OF WHAT CAME OUT THROUGH HER
15 EXAMINATION AND CROSS EXAMINATION CONCERNING THE CRIME?

16 A THE SUBSTANCE OF HER REPORT, OF WHAT SHE WAS HIRED TO
17 DO.

18 Q BUT WHEN YOU SAID SUBSTANCE OF WHAT SHE WAS HIRED TO
19 DO, DO YOU WANT TO CLARIFY WHAT THE INFORMATION SHE
20 RELATED CONCERNING YOUR FAMILY'S PAST AND MENTAL HEALTH
21 HISTORY OR WHAT INFORMATION THAT CAME OUT CONCERNING THE
22 CRIME, OR BOTH?

23 A PRIMARILY THE HISTORY OF THE FAMILY. I WANTED TO BE THE
24 ONE-- I WANTED, YOU KNOW, I WANTED TO MAKE IT CLEAR THAT I
25 WAS LIVING IN THAT HOUSE. I KNEW WHAT HAPPENED, YOU KNOW.

1 THAT THE JURY WOULD HEAR IT OUT OF MY MOUTH. THAT THEY
2 WOULD HEAR, YOU KNOW, THE NIGHT THAT DAD DANGLED ME OVER
3 THE BALCONY. THAT THIS WASN'T JUST HEARSAY OR THIS WASN'T,
4 JUST DIDN'T COME THROUGH ME TALKING TO ONE EXPERT OR
5 ANOTHER EXPERT OR WHATEVER.

6 Q I'M GLAD YOU SAID THAT. YOU TOLD EACH OF YOUR EXPERTS
7 AS MUCH INFORMATION AS YOU COULD ABOUT YOUR MENTAL
8 HEALTH HISTORY. CORRECT? INCLUDING YOUR FAMILY'S?

9 A YEAH. I MEAN, I'M NOT A MEDICAL PROFESSIONAL, BUT, YES, AS
10 MUCH AS I KNEW OF THE SITUATION.

11 Q NOT JUST MS. CASCIO, ---

12 A WHO WAS BEING TREATED.

13 Q ---BUT THE OTHER EXPERTS AS WELL?

14 A YES.

15 MR. SALTER: YOUR HONOR, OTHER THAN MY OTHER
16 QUESTIONS, I THINK WE'RE BACK RIGHT WHERE WE WERE.

17 THE COURT: WELL, I'LL TELL YOU WHAT I'M GOING TO DO. I AM
18 NOT GOING TO GRANT YOUR MOTION AT THIS TIME. I AM NOT
19 SATISFIED THAT BY ANSWERING THE QUESTIONS THAT HE ANSWERED
20 THAT THAT CONSTITUTES A KNOWING AND VOLUNTARY AND
21 INTELLIGENT WAIVER OF HIS RIGHT TO REMAIN SILENT. AND SO, I
22 WILL NOT ORDER HIM AT THIS TIME TO ANSWER ANY FURTHER
23 QUESTIONS.

24 HOWEVER, ACKNOWLEDGING THAT THIS IS A COMPLICATED
25 AREA OF LAW THAT NONE OF US CAN RECITE OFF THE TOP OF OUR

1 HEADS, YOU MAY GET BACK TO YOUR OFFICE AND DECIDE THAT YOU
2 WANT TO RENEW YOUR MOTION IN WRITING WITH SOME LAW TO
3 BACK IT UP, AND I'LL BE HAPPY TO ENTERTAIN THAT MOTION IF YOU
4 DO, GIVING DEFENSE, GIVING APPLICANT'S COUNSEL A CHANCE TO
5 RESPOND. AND THEN I WILL RULE. AND IF I DECIDE AT THAT TIME TO
6 GRANT YOUR MOTION, WE'LL RECONVENE AND YOU CAN ASK THOSE
7 QUESTIONS.

8 MR. SALTER: THANK YOU, YOUR HONOR. I APPRECIATE THAT.
9 JUST TWO MORE QUESTIONS.

10 Q AS I UNDERSTAND YOUR COMPLAINT CONCERNING COUNSEL'S
11 HANDLING OF MS. CASCIO, IT'S BECAUSE OF THE INFORMATION THAT
12 YOU IMPARTED TO HER WAS RELAYED TO THE JURY. RIGHT?

13 A YES.

14 Q AND YOU SAID IN YOUR PREVIOUS TESTIMONY THAT YOU WERE
15 TRUTHFUL WITH ALL THESE EXPERTS. CORRECT?

16 A YES. I WAS TOLD TO BE.

17 Q SO, IN ESSENCE, WHAT YOU'RE COMPLAINING ABOUT IS THAT
18 COUNSEL WAS INEFFECTIVE FOR FAILING TO SUPPRESS THE TRUTH. IS
19 THAT CORRECT? IS THAT WHAT YOUR COMPLAINT IS?

20 A NO. IT'S MORE THAT---

21 MR. MATLOCK: YOUR HONOR, I OBJECT. THAT'S A STOP BEATING
22 YOUR WIFE QUESTION.

23 THE COURT: I THINK THAT REALLY THE QUESTION THAT YOU
24 ASKED IS MORE OF A LEGAL QUESTION AND I'M GOING TO SUSTAIN
25 THE OBJECTION.

1 MR. MATLOCK: THANK YOU, YOUR HONOR.

2 MR. SALTER: YOUR HONOR, I DON'T HAVE ANY FURTHER
3 QUESTIONS, BUT I DO BELIEVE THERE'S BEEN A STIPULATION I'LL BE
4 ALLOWED TO INTRODUCE VISITATION RECORDS DURING THE TIME
5 THAT MR. ROBERTSON WAS INCARCERATED FROM THE TIME HE WAS
6 INCARCERATED UNTIL THE TIME OF TRIAL.

7 MR. BROWN: CERTAINLY NO OBJECTION, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. MATLOCK: I HAVE NO FURTHER QUESTIONS.

10 THE COURT: NOW, IN WHAT TIME FRAME DO YOU ANTICIPATE
11 THESE VISITATION RECORDS COMING IN? WELL, FIRST OF ALL, ANY
12 RE-DIRECT?

13 MR. MATLOCK: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. MR. ROBERTSON, YOU CAN STEP
15 DOWN.

16 WE'RE STILL LOOKING FOR YOU ALL TO CLEAR UP THE
17 QUESTION OF THESE NOTES.

18 MR. SALTER: YES SIR.

19 THE COURT: AND THEN YOU MIGHT INTRODUCE SOME
20 VISITATION RECORDS.

21 MR. SALTER: YES SIR.

22 THE COURT: OTHER THAN THOSE TWO THINGS, IS THERE GOING
23 TO BE ANY FURTHER EVIDENCE?

24 MR. SALTER: YOUR HONOR, I JUST SPOKE TO OTHER COUNSEL
25 ABOUT THIS. THESE ARE THE YORK COUNTY DETENTION RECORDS.

1 COUNSEL DOES NOT OPPOSE ME SUPPLEMENTING THEM WITH THE
2 SCDC VISITATION RECORDS THAT MAY BE AVAILABLE.

3 MR. BROWN: I HAVE THE VISITATION BY MR. HANCOCK AND MR.
4 BOYD AND ANYBODY CONNECTED WITH THEM IN THIS TRIAL. AND
5 THERE IS NOT OBJECTION TO THAT.

6 THE COURT: ALL RIGHT.
7 (WHEREUPON VISITATION NOTES WERE MARKED AS DEFENDANT'S
8 EXHIBIT NUMBER EIGHT AND ADMITTED INTO EVIDENCE WITHOUT
9 OBJECTION)

10 MR. BROWN: YOUR HONOR, I WOULD ALSO LIKE TO STIPULATE
11 THAT UPON RECEIPT OF DOCTOR CASCIO'S NOTES, WHEREVER THEY
12 MAY BE, THAT THEY WILL BE MADE PART OF THE RECORD.

13 MR. SALTER: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: WELL, ADDRESSING THOSE TWO QUESTIONS. I
15 DON'T THINK THAT THE PRECISE AUTHENTICATION OF THIS UNKNOWN
16 SET OF NOTES FROM DOCTOR CASCIO IS REALLY ALL THAT
17 IMPORTANT. WHAT'S IMPORTANT IS THE NOTES THAT WE KNOW ARE
18 DOCTOR CASCIO'S AND WE KNOW THAT THOSE NOTES WERE CREATED
19 ON OR BEFORE DECEMBER 7, 1998. AND I THINK THAT'S ALL THE
20 INFORMATION THAT I NEED REGARDING THOSE NOTES.

21 Y'ALL MIGHT WANT TO CLEAR THAT UP JUST TO CLEAR IT UP.
22 BUT I DON'T THINK THAT STANDS IN THE WAY OF ME RULING ON THE
23 ISSUES REGARDING DOCTOR CASCIO.

24 MR. BROWN: YES SIR. AND I UNDERSTAND. I MEAN, I THINK THE
25 RECORDS ARE FULL OF WHAT OCCURRED.