

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014- 002131

Mikal D. Mahdi, #5238

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Vol. V of XXVIII

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15 *Note* (Even though Applicant's Exhibit Nos. 19 & 20
16 are not formally entered into evidence, it is agreed
17 by all that the only exhibit that is not in evidence
18 is Applicant's Exhibit No. 32.)

19

20

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25

1 (Whereupon, on March 9, 2011 the following
2 proceedings were held:)

3 THE COURT: This is the case of Mikal Mahdi versus
4 the State of South Carolina, 09-CP-09-164, post-conviction
5 relief application. Before me today is the applicant, his
6 lawyers, as well as representatives from the attorney
7 general's office. Ready to proceed?

8 MS. NORRIS: Yes, sir.

9 THE COURT: You're the moving party.

10 MS. NORRIS: Your Honor, if I may, I understand
11 Mr. Mahdi's super-max status and we are, obviously, doing
12 this hearing inside the prison for that reason, but I
13 would ask if we could at least get the black box off of
14 Mr. Mahdi so that he would be able to write notes if he
15 needs to to us.

16 THE COURT: I'll allow him to remove the handcuff on
17 his writing hand. Are you right-handed or left-handed?

18 MR. LOMINACK: Right-handed, Your Honor.

19 THE COURT: Take it off the right hand. Let me set
20 some grounds rules before we start. My rules are this.
21 It's very simple. There is no talking, no walking around,
22 no snacks. We take breaks from time to time. As
23 witnesses come and go off the witness stand if you need to
24 discuss some things I'll allow you to do it at that time.

25 You may proceed, Ms. Norris.

1 MS. NORRIS: Thank you, Your Honor. If I may just to
2 sort of set the stage for us in the opening statement the
3 story of Mikal Mahdi killing Jimmy Myers -- Captain Jimmy
4 Myers, an off-duty police officer -- was well told at his
5 trial proceedings. It's in our transcript and also a
6 burglary and grand larceny on or about July 18, 2004.
7 That was preceded by Mr. Mahdi stealing a car in Virginia,
8 skipping parole only two months after release, and
9 starting this chain on July 15. That part of the story
10 was well told.

11 It's also well told and it's on videotape that he
12 shot Christopher Boggs in the face in Winston-Salem
13 July 15, came on down to Columbia, carjacked Cory Pitts.
14 That's on July 18. All of that came before the murder of
15 Jimmy Myers.

16 THE COURT: Hold on one second. One second, please.
17 (Whereupon, someone entered the room.)

18 MS. NORRIS: It was followed by his arrest in
19 Satellite Beach, Florida.

20 THE COURT: What is the disposition of the North
21 Carolina situation?

22 MS. NORRIS: He has pending charges there.

23 THE COURT: For?

24 MS. NORRIS: Capital murder.

25 THE COURT: In Florida?

1 MS. NORRIS: He has no charges in Florida --

2 THE COURT: Thank you.

3 MS. NORRIS: -- that I'm aware of. All of that
4 information the trial counsel in his case knew was coming
5 at him and they knew in all likelihood however they went
6 about it that they were going to end up in a capital
7 sentencing hearing where the only question was life
8 without parole or the death penalty. To that end they
9 hired Paige Tarr Haas. They hired Marjorie Hammock, a
10 social worker, but they did little to prepare for
11 mitigation otherwise.

12 They did hire Dr. Tom Martin and Dr. Geoff McKee, but
13 those experts we'll submit were really looking at
14 competence and capacity at the time of the offenses. They
15 also had little information. With that they went into the
16 trial proceedings, went through jury selection. Mr. Mahdi
17 was, of course, found with a key, and at that point I
18 submit that the trial attorneys simply threw up their
19 hands in frustration, advised him to plead guilty, and he
20 did that, and then in the sentencing the state put in all
21 of the aggravation.

22 This part of the story was also told: His prior
23 crimes when he was a juvenile, went into confinement at
24 age 14, a number of incidents while he was in confinement.
25 He came out and only several weeks later was in a

1 stand-off with police at the end of which he made a
2 statement that one day he would kill a cop. That was
3 told.

4 After he gets out of confinement then only five
5 months later he assaulted Moises Rivera who testified in
6 the sentencing and he was sentenced to prison as an adult.
7 From there his incidents while he was in confinement came
8 out only two months after he was paroled. That's when
9 this crime spree, if you will, started in South Carolina.
10 When he went into confinement pretrial, again, lots and
11 lots of incidents.

12 All of that information came out, and he was even in
13 maximum security MSU where he is now pretrial. I have
14 never even heard of that for a pretrial inmate, and the
15 tragedy for Captain Jimmy Myers and his family was told.
16 The victim impact -- It is a tragedy. There is nothing
17 else to say. You know, I personally wish I could take it
18 back and make things right, but what Judge Newman did not
19 hear was Mikal Mahdi's story.

20 What the trial attorneys presented was a short brief
21 cursory testimony from Ms. Hammock and they presented an
22 adaptability expert, basically, to say that Mr. Mahdi
23 would adapt to prison, and there is little doubt or there
24 was little doubt when Judge Newman made his decision that
25 Mikal would be sentenced to death. He gave the guilty

1 plea no weight as mitigation as it came on the heels of
2 the homemade key. He saw no remorse in Mr. Mahdi and
3 although he said that he likes to temper justice with
4 mercy or temper mercy with justice, he simply saw, quote,
5 no sense of humanity in Mr. Mahdi.

6 What we're going to do for the next few days is tell
7 the rest of the story. We're going to show the humanity
8 in him. We're going to show the tragedy of his life.
9 This young man wasn't born with a gun in his hands. We're
10 going to explain how he got here, and we're going to show
11 how trial counsel failed him.

12 On the humanity aspect during that capital sentencing
13 hearing there was only one family member in the courtroom
14 -- his grandmother Nancy Burwell. She didn't testify.
15 I'm sure Your Honor can see behind me. We've got family
16 members here, aunts and uncles. We've got school
17 teachers. We've got a community mental health worker,
18 even a community activist, and by affidavit we've even got
19 law enforcement officers -- the sheriff then of the
20 county -- Sheriff Woodley -- and the Chief of Police of
21 the town Doug Pond.

22 All of these folks would have spoken up to give the
23 humanity to explain part of how Mr. Mahdi lands here
24 today. You know, the basics of the story were told with a
25 very broad brush, you know, by Ms. Hammock, but the

1 details of that -- the details that make the difference in
2 this young man were missing.

3 He started life with impaired parents and this came
4 down generationally. His parents had an arranged
5 marriage. His father was domineering and abusive. There
6 was extreme violence in the home when he was so small much
7 of it he probably didn't even remember, but it was
8 happening, and then before he's even five years old his
9 mother left. Whether she abandoned him or whether she
10 left for fear I'll leave to Your Honor to decide, but this
11 young man was told that his mother didn't care about him;
12 that she was dead.

13 From there at the age of five up until eight there
14 were multiple school moves. You know, I think at least
15 five schools, maybe a few more, jumping back and forth
16 between Richmond, Virginia and Brunswick County, Virginia.
17 They are about an hour or so apart, but just constantly
18 moving. He never had an opportunity to form friendships.
19 He never had an opportunity to stay with the same teacher,
20 to have somebody outside of his father looking after him,
21 and his father was depressed -- ultimately diagnosed with
22 depression and schizophrenia. He was just isolated with
23 his father.

24 Ultimately, at age eight his family did decide to
25 step in and he went to his aunt and uncle in Baltimore,

1 both of whom will testify -- Carson Burwell and Lawanda
2 Burwell. After the first eight to nine months with them
3 he visited his father back in Virginia and during that
4 summer visit when he's nine years old witnesses his dad
5 attempt to kill his mother. His dad also beat Mikal's
6 grandmother with a belt. This young man saw it. He saw
7 his dad being arrested for that.

8 Only two weeks later he went into a mental hospital
9 at nine years old. He told the police officer, Just shoot
10 me. He had been making those statements in the schools.
11 Two months of hospitalization for a nine-year-old. He was
12 diagnosed with major depression, and they put, Rule out --
13 meaning, basically, the possibility we don't have enough
14 to say -- post traumatic stress disorder.

15 When they asked him while he was in the hospital if
16 he had three wishes what would he want. He said I've only
17 got one wish. I want my family back together. What
18 nine-year-old says that? Certainly not a nine-year-old
19 that is getting the nurturing and all of those things that
20 loving parents give. When he came out of the hospital
21 that was a window where this young man had a chance to
22 succeed.

23 He was living with his aunt and uncle. Uncle Carson
24 is well educated, holds down a job. His Aunt Lawanda has
25 a Ph.D from Harvard. She's an educator. These folks were

1 all about education and trying to help this young man.
2 They gave him some structure. At the same time in the
3 third grade he had a loving, wonderful teacher, but the
4 opportunity slipped because Shareef wanted him back home.
5 Ten-year-old Mikal wanted to go home and nobody in the
6 family, the system didn't stop that. So he went right
7 back.

8 Nine months later -- six to nine months later in the
9 fourth grade back in Brunswick County, Virginia the school
10 system wants to put him in the special education for
11 emotional disabilities he was so shut down. There was
12 just no emotion. He couldn't function in school. He was
13 just acting out what depressed boys do. Depression
14 manifests a lot of time in aggression.

15 Again, he had another caring teacher, Ms.~Wilson who
16 is here, along with Ms. Harris Ramsey that I mentioned
17 from the third grade. They're both here. But rather than
18 allowing him to get the special assistance from the
19 school, his father when this young man was only 11 or 12
20 years old took him out of school saying he was going to
21 homeschool him. He didn't.

22 So, from 11 -- from 11 to 14 he's living with his
23 father out in very rural area, isolated only with his
24 father and his brother. His father, again, is depressed.
25 He's schizophrenic. His father hates white people to put

1 it bluntly. He rages and rants against white people,
2 against the system, and this is what Mikal was learning.
3 That was his homeschooling. He was being indoctrinated by
4 his father and his father was all he had because his
5 mother was gone.

6 From that point he does go into juvenile justice in
7 Virginia at age 14 which is really the beginning of the
8 story the state told. What they left out of that in the
9 initial incarceration when he had first been picked up on
10 charges he wasn't in confinement. He ended up getting put
11 in confinement because he didn't show for court
12 proceedings and even in the DJJ notes it is clear that he
13 wasn't showing because his father wasn't getting him
14 there. So he went into confinement in part because of his
15 father.

16 When he got out that two weeks before the stand-off,
17 the stand-off was prompted by his father. It was his
18 father's idea that they're going to do this. Even the
19 news reports talked about his father ranting and raving
20 religious things out the window for eight hours. At the
21 end of that eight hours there were no guns in that house.
22 You know, Sheriff Woodley's affidavit tells us that, you
23 know, nobody was even watching the door. That's what this
24 stand-off was.

25 At 17 when he got out of there for a brief moment he

1 did try to reconnect with his mother. His mother herself
2 is impaired. He at that point -- They just couldn't
3 connect and things went wrong. He slashed his mother's
4 tires, but, you know, there were all of these people and
5 all of this story to tell. When he went in -- went back
6 into prison what we didn't hear about his prison
7 misbehavior in adult confinement starting at age 17 was
8 that, you know, the last prison he was in was a place
9 called Wallens Ridge which the entire prison is a
10 super-max facility in Virginia that, you know, is sort of
11 legendary -- lots of media, lots of lawsuits for
12 atrocities there. It was built in a coal-mining town as
13 an industry. The correctional officers were, you know,
14 there to do a job. No training, no nothing.

15 That's the sort of story -- the road map of how this
16 young man comes here today. That's the other side of this
17 story that we're going to tell, and, hopefully, we can
18 show the humanity in him and how he got here.

19 THE COURT: Thank you.

20 MR. MABRY: May it please the Court. Your Honor, I
21 am just going to, I guess, first of all, as part of my
22 opening statement we would move all of the exhibits from
23 the trial, both the state and the defense, into evidence
24 and the entire record into evidence at this time.

25 THE COURT: Ms. Norris, any objection?

1 MS. NORRIS: Your Honor, it's in the record and I
2 don't see how a lot of it is relevant to our proceedings.
3 We had asked for the transport of his prison records and
4 some of his social history documents were in evidence.
5 Certainly, no objection to that. I do object to crime
6 scene pictures, guns, et cetera, here.

7 THE COURT: Overruled.

8 MR. MABRY: Judge, they're raising several
9 allegations. The first one is that trial counsel failed
10 to object to Judge Newman punishing Mr. Mahdi for pleading
11 guilty in the sentencing order. If you'll look at the
12 sentencing order there is absolutely no evidence of that.
13 In fact, they asked Judge Newman to consider it as a
14 mitigating factor which he did and he says in his order he
15 decided not to give it great weight. So, that ground has
16 absolutely no merit.

17 The next ground they're alleging that counsel failed
18 to investigate, develop, and present his social,
19 institutional, and psychiatric history, and what the
20 record will show is that counsel did a
21 constitutionally-effective investigation.

22 In fact, they retained Paige Tarr a mitigation
23 specialist. She went to Richmond, Lawrenceville,
24 Baltimore, and I believe Philadelphia and Winston-Salem
25 where the attorneys that are defending the North Carolina

1 case. They also retained Ms. Hammock who the court knows
2 as a forensic social worker. She also interviewed family
3 members. Some she was unable to interview because they
4 either would not talk to her or repeatedly made themselves
5 unavailable to her.

6 Counsel brought the grandmother here to testify at
7 the trial, made a strategic decision not to call her. I
8 think the record will support that decision, but the
9 record is going to show that investigation was adequate
10 and the testimony that is being brought forth today is a
11 fancier mitigation case, and, basically, the information
12 that's being brought forth today was brought forth at the
13 trial.

14 Ms. Hammock testified to the abandonment of his
15 mother, the numerous changes in school, the problems he
16 had as a result of that, the fact that his father could
17 not provide for him, could not raise him and a chart was
18 also introduced showing the timeline, showing the
19 psychiatric commitment when he was nine years old and what
20 he was diagnosed with, and, so, basically, that's our
21 position on that, and the last ground that they have
22 raised is that he has a -- counsel should have objected to
23 the death sentence because he has a juvenile mentality.
24 There is no such law that even provides that. He was 21
25 at the time he murdered Captain Myers and murdered

1 Mr. Boggs in North Carolina.

2 That's our position at this time. We believe the
3 record will also show that he did not have a juvenile
4 mentality at the time of the crime if they decide to go
5 forward on those grounds.

6 THE COURT: Thank you. You may call your first
7 witness.

8 MS. NORRIS: Your Honor, we'll call Carson Burwell,
9 and, also, Your Honor, I would offer the four affidavits
10 that we had the motion on before. Those are Dora Wynn,
11 Doug Pond, retired Sheriff James Woodley, and Sandra Wynn
12 Burwell.

13 THE COURT: My ruling was this -- that I would accept
14 those affidavits pursuant to the statute but I would not
15 consider the hearsay information in them and that I would
16 give the state the opportunity if they deem necessary to
17 supplement the record by way of a deposition or
18 supplemental affidavits.

19 MR. MABRY: Thank you, Your Honor. Just note our
20 previous objection to the submission of the affidavits.

21 THE COURT: Thank you.

22 (WHEREUPON, Applicant's Exhibit Nos. 1 - 4 were
23 marked for identification and received into
24 evidence.)

25 CARSON A. BURWELL, after being duly sworn,

1 testified as follows:

2 THE COURT: If you would, please, sir, give us your
3 full name spelling your last.

4 THE WITNESS: My name is Carson Alvin Burwell;
5 B-U-R-W-E-L-L.

6 DIRECT EXAMINATION

7 BY MS. NORRIS:

8 Q How old are you, Mr. Burwell?

9 A I am 63.

10 Q And what is your relationship to Mikal Mahdi?

11 A I am Mikal Mahdi's father's brother.

12 Q And where did you grow up?

13 A I grew up in Lawrenceville, Virginia.

14 Q And can you describe Lawrenceville and Brunswick
15 County for us so the Court can understand what type of
16 place we're talking about?

17 A Well, it was very southern, very gracious, very
18 segregated, very entrenched in maintaining that and
19 keeping it that way. There was a small HBC there --
20 historically black college. So, there was a little bit of
21 an oasis. We had a library that allowed us to go in the
22 back door where in the surrounding counties the black
23 people couldn't go in the library at all. So, there was a
24 little bit of brightness to go into the back door of the
25 library, but you were confined in that one back room that

1 had some negro chronicles and negro information and it was
2 a segregated school system.

3 It was at a time right after -- the time immediately
4 before my birth there was no bus transportation in school
5 for black people, but I was able to experience a time when
6 they provided bus transportation and we could get to
7 school.

8 Q Is it a rural area?

9 A Yes, it is very rural. It's -- We lived in a little
10 town -- the county seat -- but it is very rural.

11 THE COURT: Where is it in relationship to --

12 THE WITNESS: It is south central north Virginia. It
13 butts up against North Carolina.

14 Q And who were your parents and Shareef Mahdi's
15 parents?

16 A My father was Nathan Burwell. He taught agriculture
17 at the school. My mother was Nancy Thomas Burwell. She
18 was a housewife for a long period until she was able to
19 get her college degree and teach elementary school.

20 Q When she was a housewife was she working outside of
21 the home then, too?

22 A No, sporadically. Every now and then she would work.

23 Q And was there a significant age difference between
24 your parents?

25 A Yes, probably about 20 years.

1 Q And how many children total did they have together?

2 A They had six children.

3 (WHEREUPON, Applicant's Exhibit No. 5 was marked for
4 identification only.)

5 Q I am going to hand the witness what's been marked as
6 Applicant's Exhibit 5 for ID and I would just ask you,
7 sir, if that's an accurate representation, basically, of
8 your parents and your siblings where everybody falls in
9 line there just so we can sort of keep people straight?

10 A Yes. There's one -- Well, certainly. Okay. You
11 have Thomas before Carolyn, but Carolyn is before Thomas.

12 Q Okay. Carolyn is older than Thomas?

13 A Yes.

14 Q Okay.

15 Your Honor, with noting that it's inaccurate to that
16 extent I exchange them we would offer them into evidence
17 as Applicant's Exhibit 5.

18 THE COURT: And there was no objection?

19 MR. MABRY: No objection.

20 THE COURT: Thank you.

21 (WHEREUPON, Applicant's Exhibit No. 5 was admitted
22 into evidence.)

23 Q Carson, when you -- or, Mr. Burwell, when you were
24 growing up were your parents happy in their marriage?

25 A No, certainly not. My parents argued every day.

1 Every day.

2 Q Did your dad even want to be married to your mom?

3 A I can't -- I don't know about that. There was no
4 choice at that time. There was very little divorce and if
5 you wanted your job you had to -- Well, my father -- From
6 what I understand when he impregnated his student which is
7 my mom he went away. He went to New York and worked as a
8 butler for a year. He found out that's not what he wanted
9 to do, but in order to get his job back he had to marry
10 the student he impregnated. So he came back and married
11 my mom so he could get his job back.

12 Q And what was he like as a father to you?

13 A He worked two jobs. So, he wasn't home a lot and
14 then when he was home he was pretty strict in terms of --
15 He was pretty quiet, didn't say much. He was easily
16 angered because I imagine he was someplace he didn't want
17 to be, a situation he didn't want to be in. So, he was
18 easily angered, but he wasn't abusive or anything. He
19 never touched us, never beat us. He just tongue-lashed us
20 a lot, but he was fair.

21 Q And did your father also tongue-lash your mother?

22 A Yea, but she tongue-lashed him back. I mean, they --
23 tit for tat. They tongue-lashed each other.

24 Q Did your mother nurture you and your siblings as you
25 were growing up?

1 A No, there wasn't a lot of that. She didn't know how
2 to do that.

3 Q Why -- Can you explain why she didn't know how to do
4 that?

5 A Well, she was a child when he married her. She was
6 like 17 -- She was 18 when she was impregnated. She
7 didn't have -- Well, she didn't have a lot to go by. Her
8 father was 20 years older than her mother -- the same
9 thing, I mean, so they weren't -- She didn't have parental
10 skills.

11 Q Did it seem like she actually wanted children?

12 A No. She didn't want children at all.

13 Q Did she ever tell you that?

14 A Yea. Probably, yea.

15 Q Do you recall the day that Mikal's father was born?

16 A Yes, I do. Yea. In fact, the exact day.

17 Q Does anything stand out to you about that day?

18 A I know all about that day. I was in the dining room
19 and playing with my sister Carla and we were playing with
20 pennies, stacking pennies, and I knew something was going
21 on because strange people were in the house and these were
22 midwives walking through the dining room with pots of
23 boiling water and whatever, and, so, I -- At five or six
24 years old I didn't recognize my mom having a big stomach
25 so I was really surprised that a baby was being born, but

1 then when the doctor knocked on the door just in time
2 before Thomas Shareef came I knew something was amiss when
3 this white man came into the house.

4 So, I snuck into the bedroom and they shoed me out,
5 but -- and then my father came in later and I remember
6 that incident because 50 years later my mom recalled that
7 story in a different way. She said that --

8 MR. MABRY: Objection. Hearsay.

9 THE COURT: Hold on a second. I'll allow it. We
10 don't have a jury here. Let's make a complete record.

11 MR. MABRY: Yes, sir.

12 THE COURT: Go ahead. What did your mama say?

13 THE WITNESS: She told me you were always interested
14 in the past and I want to tell you this story. When
15 Shareef was born the doctor came and the doctor said, You
16 have -- This is your fifth child. You don't need to have
17 any more. We can fix this. All I need is for you to do
18 is to sign this paper and I sign it and your husband sign
19 it and we can fix it so you won't have any more.

20 So, she said that she had signed it and the doctor
21 had signed it and my father came in and I remember when he
22 came in and the doctor spoke to him and said, We can fix
23 this and you won't have to have any more children. Just
24 sign your name here and you won't have any more, and he
25 looked at the doctor and said, I want to have eight

1 children, and my mother thought that was cruel, but I
2 thought she missed the sarcasm that he wasn't really
3 trying to have 8 or 15 children. It was just that no one
4 dictates to him in his house. You dictate to me in the
5 world and here I come home and you're going to tell me
6 what to do.

7 So, I thought it was -- I was hurt because she missed
8 the sarcasm that my father really didn't want to have
9 eight children.

10 Q Had your father been married before her?

11 A Yes. My father was married and happily married from
12 what I understand and his wife and his child -- Both of
13 them died on the table at childbirth. They died together
14 and he was pretty destroyed because as a teenager I picked
15 up an individual who was walking from the town to the --
16 from the town to the black community. I gave him a ride.

17 At that time we didn't have drug addicts. We had
18 winos, and, so, I picked him up and he said, You look like
19 Burwell. I said, Yea, that's my father. He said, I
20 remember when his wife and his baby died and I was his
21 student. We kept his car for two weeks. My father was so
22 out of it students were riding around in his car.

23 Q When -- I understand when Mikal's father was born his
24 name was Thomas?

25 A Yes. That's my mother's maiden name.

1 Q Thomas Burwell. After he was born and your mother
2 wasn't able to stop having children with the doctor's
3 help, did she seem different after that -- more so
4 different than --

5 A Yea. Oh, most definitely. She wasn't about to be --
6 you know, the little nourishment we had, Shareef wasn't
7 going to get any of that. She was very mechanical with
8 him and very -- did the basics which was -- which was what
9 we all got. We got the basics.

10 Q And what would Thomas do when he didn't get his
11 mother's attention?

12 A Oh, he always had tantrums all the time.

13 Q And were there any -- As he was growing up was there
14 anything significant that happened to him in particular
15 that didn't necessarily happen to you and your older
16 siblings?

17 A Yea. He had a disrupted education. When they had a
18 slow transition to integration the first part of it was a
19 freedom of choice effort meaning that we're not going to
20 force everyone to go to the same school. It is whether or
21 not you choose to send your child to this situation where
22 it was once all white. So, my parents and a few other
23 people chose to send their kids to these predominantly
24 white schools, and I'm pretty sure and I know from talking
25 to him and from listening to him and my younger siblings

1 that it was a fairly terrible experience.

2 My parents didn't lose their jobs because they had
3 very public jobs, but a lot of people who chose to send
4 their kids to a predominantly white school lost their
5 jobs. So, it was a lot of pressure to maintain. There
6 was what you call massive resistance.

7 Q Could you tell a difference in Thomas then and his
8 demeanor?

9 A Oh, yea. Yea. He was really suddenly a lot more
10 angry and a lot more uncontrollable, a lot more
11 despondent, a lot more disappointed and angry because, you
12 know, we all had ambition of growing up and playing sports
13 for the school and so forth, but in this situation he had
14 no opportunity to play sports or any of that, you know,
15 because -- Once you did this -- Once they did this, I
16 don't know what happened.

17 I imagine -- I know what happened in Virginia. What
18 happened was that once you integrated the situation, all
19 of the top positions that black people formerly had were
20 gone. There was no longer a black principal. He might be
21 an assistant principal. There is no longer a black coach.
22 He might be an assistant coach. So, the coaches you had
23 that might give you an opportunity was no more. So, they
24 played the other people, the people that they wanted to
25 play.

1 So, my baby brother object -- The older children --
2 My older brother and I had an opportunity to play ball.
3 He didn't have the opportunity to do that.

4 Q You went to the segregated school?

5 A I went to the segregated school.

6 Q And you had described your father for us earlier.
7 Describe your mother for us. What was she like when you
8 were growing up?

9 A Well, she was pretty distant. She had her own
10 agenda. She wanted to be -- She wanted to be more than --
11 something different than a housewife. It took her eight
12 years and four children to finish college and she was a
13 country girl and my father was a country guy. They
14 were -- Both came from farming families and they wanted to
15 transform themselves into town people, and that was a
16 pretty difficult thing.

17 I can remember my mother standing in front of the
18 mirror practicing speech and trying to learn the speech --
19 trying to speak English correctly, trying to sound
20 country-proper, trying to sound proper, and she
21 over-exaggerates. I mean, I've had grown-ups come to me
22 imitating her. My friends growing up, they would imitate
23 her, but she certainly wanted to be something other than
24 what she had been. She wanted to -- She didn't want six
25 children and she certainly had a hard time with that.

1 Q And how did she talk to you about race issues? Was
2 it just a black and white thing or was it also skin tone?

3 A Yea. My mom was very fair. If she didn't have these
4 children by this black man she could have gone somewhere
5 and passed as a caucasian and she certainly saw that it
6 was an advantage to being lighter in the society at that
7 time so she certainly forwarded that.

8 She didn't want us to associate with people who were
9 darker. She didn't want us to have girlfriends or
10 boyfriends with people who were darker. She made us go
11 outside in the summertime with big mexican sombreros on to
12 keep us light. She would pinch our nose every morning to
13 try to make our nose keener and, so, there were certain
14 advantages to being lighter. I mean, I imagine she wanted
15 to take advantage of those.

16 Q And those were the kind of things that she did with
17 you but also your brother Thomas; is that correct?

18 A Well, I don't know. I mean, by that time she might
19 have given up. I don't know. I wasn't around when she
20 was doing whatever she was doing with Thomas.

21 Q Do you recall what year he was born?

22 A He was born February 24, 1954.

23 Q When Shareef was going to the segregated school did
24 he -- or the desegregated school, did he graduate from
25 that school?

1 A No. He didn't graduate. He dropped out of school
2 and -- but before he dropped out he went to stay with my
3 uncle in New Jersey in Asbury Park, New Jersey with the
4 hope of continuing school there in a better atmosphere,
5 but he didn't go to school regularly there, and from there
6 he went to the military and he later got his GED, but, no,
7 he didn't graduate from school.

8 Q Is he the only one of the six children that did not
9 graduate from high school?

10 A The only one that didn't graduate from high school
11 and the only one that didn't go to college.

12 THE COURT: Where did you go to college, sir?

13 THE WITNESS: I went to a small HBCU in Petersburg,
14 Virginia State University. I originally went to a small
15 HBCU in Elizabeth City, North Carolina, Elizabeth City
16 University. I got a degree in philosophy from Virginia
17 State and then got another degree from Virginia State in
18 social studies education -- a master's degree.

19 THE COURT: And you your profession?

20 THE WITNESS: I am a barber.

21 THE COURT: A what?

22 THE WITNESS: A barber.

23 Q Do you recall -- Aside from going to the mostly white
24 school do you recall any other particularly traumatic
25 events for your brother Thomas or anything -- any conflict

1 with a sibling?

2 A Yea. He had a very -- He was staying at a house that
3 my mom had on her farm and I think he had a very bad
4 incident with my older sister in which they had a severe
5 disagreement because my older sister was at home because
6 she was -- She was divorcing her husband. So, she had no
7 place to live. So, she was living with my mom.

8 Q This is your sister Loretta?

9 A Loretta in Atlanta.

10 Q Well, that's -- Go ahead and tell us that, but that's
11 a little later. I was talking about when he was growing
12 up.

13 A Yea. Well, yea, so he had a disagreement with her
14 and I think they destroyed her car. They tore her car
15 apart -- he and his two sons. They just opened the hood
16 and ripped out the engine and destroyed -- I don't know
17 what they did, but it was all because of some disagreement
18 they had, but earlier incidents -- I do remember my sister
19 being -- my youngest sister being angry with him because
20 he and his friend were playing basketball in the backyard
21 and she came home. I guess she was maybe 11 and one of
22 the boys came down to the -- into the house where she was
23 and no one else was there and raped her and she was -- She
24 wants to blame Shareef for not being able to stop it or
25 not being aware of it or maybe being aware of it.

1 So, I don't think she had forgiven him for, you know,
2 that incident, and I don't know if Shareef had a part in
3 it. I don't think he had a part in it. So, I don't know.

4 Q After Shareef left school what did he do then? And I
5 guess he was still Thomas then, but what did he do after
6 that?

7 A He went into the marines and I think he did two
8 stints in the marines. He did one and he came home and
9 there was nothing to do, no jobs. So he went back to the
10 marines and that second stint -- I don't know what
11 happened, but something happened to him. He had a
12 discharge and I don't know -- It was not good. I don't
13 know what kind of discharge. I don't know if it was
14 honorable or not, but it made him a more radical person,
15 angry person his second stint in the marines.

16 Q And when he came home more radical and angry did he
17 make any significant changes in his life?

18 A Oh, yea. He became a Moslem, changed his name --
19 changed his name to Shareef Mahdi and I don't know --
20 Mahdi was the arabic warrior who kicked the British out of
21 Saudi Arabia. So it was very significant to him to name
22 himself after someone who kicked the British out.

23 Q And was he Nation of Islam, Sunni, Sufi? Do you know
24 that detail?

25 A Yea. He was the American version -- Wallace D.

1 Mohammed, Elijah Mohammed's son, who was in the more
2 conventional split. They split -- The black Moslems
3 split. James XV X took the black Moslems and he went with
4 the more conventional people who considered themselves
5 more traditional Moslems. It became a World Community of
6 Islam in the west led by Wallace D. Mohammed which was
7 less radical and more related to world Moslems.

8 Q How many other Moslems were you aware of in Brunswick
9 County?

10 A None.

11 Q And what timeframe are we talking about? What year
12 thereabouts when he got out of the marines?

13 A Oh, it had to be in the 70's somewhere. Mid 70's, I
14 guess.

15 Q Do you recall when Shareef married Mikal's mother?

16 A Yes, I do. He had been going to a mosque in
17 Petersburg which is 45 miles north of Lawrenceville and he
18 had met someone there that through someone -- They don't
19 approach women on their own. They have mediaries and
20 someone arranged that they would meet and that they --
21 seemed to be a good idea for the two of them to get
22 together, I guess.

23 So, he worked through someone. He didn't approach
24 her. It is part of their tradition not to court or
25 anything. It was part of their tradition to arrange these

1 things.

2 Q And what was Mikal's mother's name? Do you recall
3 that?

4 A Yea. In the community I think in the Moslem
5 community they call her Tilea, but I think her name was
6 Vera otherwise.

7 Q And did she actually change her name officially to
8 Tilea?

9 A I have no idea, but that's what we knew her as in
10 Lawrenceville. She came and she was going to school
11 there.

12 Q And after they married where did they live?

13 A They lived at my mother's house, I think.

14 Q And what was Tilea like at the beginning of the
15 marriage?

16 A She was quiet, reserved, apprehensive, didn't know --
17 I don't think she knew what she had gotten herself into.

18 Q Do you know how old she was when they married?

19 A I think 17 -- 16, 17.

20 Q How old was Shareef then?

21 A He was probably about 30.

22 Q Was it -- Was Shareef working and able to support
23 her?

24 A No. He wasn't working, wasn't able to support her.
25 He had a Moslem name. No one in the town was going to

1 give him a job. He had a GED, didn't have any type of
2 education, no skill, nothing.

3 Q Did he try a variety of different jobs?

4 A Yea. My mom and dad took out monies for him to learn
5 things: Truck driving school, masonry school to be a
6 brick mason, to be a truck driver, various things he
7 tried. None of them -- None of them caught on.

8 Q And when she was living in the home with your mother
9 was your mother Nancy supportive of Tilea in the marriage?

10 A Oh, I don't think so. I mean, she wasn't supportive
11 of her own children. So, it wouldn't have been -- No, I
12 don't think she was very happy with that at all.

13 Q Did Shareef and Tilea seem to have a happy marriage?

14 A It seemed to be okay until the children were born. I
15 mean, it was -- She was going to school. She was going to
16 high school. She was getting straight A's, and, so, you
17 know, I thought it was a great thing. She seemed to be a
18 very bright girl getting straight A's. Everything was
19 going along well until she got pregnant and they had kids.

20 Q And then what changed after that? Who was that first
21 kid? Let me start there.

22 A The first child was Saleem and that was taken in
23 stride moreso. I mean, she went back to school making
24 straight A's again and -- I wasn't there. I don't know
25 how she was able to do that -- to go to school -- and I

1 don't know who took care of the baby while she was at
2 school or whether they had an in-school program. I don't
3 know.

4 Q And do you know how much older Saleem is than Mikal?

5 A Probably less than two years.

6 Q And did Vera or Tilea seem like she wanted to have
7 children or were you around at all during that time
8 period?

9 A I was -- I was in and out. I mean, she had -- She
10 was smart and she wanted to make something of herself. A
11 lot of children -- She knew that would hold her back.

12 Q Did Shareef ever complain to you about the lack of
13 marital relations between them?

14 A Yea. Yea, he complained that it was difficult; that
15 she would not be there for him for his needs and that she
16 had problems with that and that was a problem for him.

17 Q So, basically, she didn't want to have sex with him?
18 At least that's what he was telling you?

19 A I don't know. I can't say whether it is wouldn't or
20 couldn't. He expressed to me and I think to some degree
21 he understood that she was having problems with that.
22 Whether she wouldn't or couldn't, he couldn't determine
23 that either.

24 Q How was Tilea with Mikal when he was a baby -- small?

25 A Yea, I certainly noticed a difference with that. She

1 was a little more able to deal with the one child, but the
2 second child was very hard for her because it made it
3 difficult for her to continue in school and so she was
4 certainly not very happy with that. She was not -- and it
5 showed in her treatment of him. I mean, she wasn't cruel,
6 but she just wasn't doting.

7 Q So, she didn't -- she didn't pay him so much
8 attention?

9 A Yea, not so much. He cried and she wasn't really
10 jumping to see what was wrong. She was really more laid
11 back about it.

12 Q And how was Shareef with Mikal? Did he show the
13 nurturing and attention?

14 A Oh, yea. He was very affectionate, very concerned,
15 very much concerned. You know, he was always doting on
16 his sons and always very, very affectionate with them.

17 Q Did he seem to favor one son over the other?

18 A He was certainly softer with Mikal, certainly very --
19 It was very -- I mean, he understood that Mikal needed to
20 be -- He understood Mikal wasn't getting what Saleem was
21 getting. So, he tried to compensate. He certainly tried
22 to do -- show favoritism to Mikal as much as he could,
23 yea.

24 Q And did Shareef have the same views about skin tone
25 that your mother had had?

1 A I don't know. I really don't know.

2 Q Do you recall how old Mikal was when Tilea left the
3 home?

4 A Mikal was a baby I think about three years old when
5 she left. I mean, she went to Richmond to start a life
6 for herself, and I don't think my brother liked that too
7 much and it was hard for him. I'm sure he went looking
8 for her and tried to find her, I mean, but she wanted a
9 better life. So, she left.

10 Q And after she left was Shareef capable of adequately
11 raising these boys?

12 A No. He never -- He never had a job to speak of --
13 consistently employed -- and they never -- They didn't
14 consistently go to school and he lived in public housing
15 and section eight or whatever. No, he couldn't take care
16 of them.

17 Q Did he move frequently during ---

18 A Yes, he moved a lot.

19 Q And was he depressed?

20 A I would say so. I mean, he was powerless to gain
21 control of the situation. He couldn't -- You know, his
22 boys were doing what they wanted to do and that was
23 staying at home and probably watching cartoons and playing
24 out in the yard, in the street, and so forth.

25

1 (WHEREUPON, Applicant's Exhibit Nos. 6 - 8 were
2 marked for identification only.)

3 Q Mr. Burwell, let me show you what's been marked as
4 Applicant's Exhibit 6 and ask you in particular about the
5 middle row of pictures, the one on the left. Who are the
6 three people starting from the right?

7 A My brother Shareef, then Tilea Vera also known as
8 Vera, and my mother Nancy Burwell.

9 Q And so your mother is the lady with the red hair?

10 A Yes.

11 THE COURT: Your Honor, I'd offer that as Applicant's
12 Exhibit 6.

13 MR. MABRY: No objection.

14 THE COURT: Thank you.

15 (WHEREUPON, Applicant's Exhibit No. 6 was admitted
16 into evidence.)

17 Q I hand your what's been marked as Applicant's
18 Exhibit 7 and ask you if you can tell me who the folks in
19 those pictures are?

20 A The top pictures are Mikal and Saleem and then
21 Vera -- The lower picture is Vera and my brother Shareef.

22 MS. NORRIS: Your Honor, I'd offer that as
23 Applicant's Exhibit 7?

24 THE COURT: Without objection?

25 MR. MABRY: No, sir. No objection.

1 (WHEREUPON, Applicant's Exhibit No. 7 was admitted
2 into evidence.)

3 Q I show you what's marked as Applicant's Exhibit 8.
4 Who are those folks in the pictures?

5 A Tilea also known as Vera and Shareef and that looks
6 like Mikal as a baby and then there is Mikal and Saleem
7 and Shareef with the toboggan.

8 MS. NORRIS: Your Honor, I'd offer that as
9 Applicant's 8.

10 MR. MABRY: No objection.

11 (WHEREUPON, Applicant's Exhibit No. 8 was admitted
12 into evidence.)

13 Q After Tilea left what was Shareef's parenting style,
14 if you will?

15 A Oh, lackadaisical. He couldn't do -- Well, in his
16 emotional state he couldn't do anything. He couldn't --
17 He couldn't institute discipline. There was no discipline
18 and he was real soft with his discipline, you know, like,
19 Don't do that, no, and his favorite term was, You're
20 messing up. But, no, he was not heavy-handed at all.

21 Q Did there come a point when you and other family
22 members decided that you had to do something?

23 A Yea. I would visit him in Richmond in one of the
24 section eight homes in the middle of the day or weekday.
25 They weren't in school and they were playing out in the

1 yard and being destructive, tearing up toys that were left
2 out, and my brother not really noticing what they were
3 doing. You know, I'm standing there talking to him and
4 they're destroying something and he is not saying
5 anything, and I decided -- and then from what I could
6 determine -- My nephew was 8 years old. From what I could
7 determine he didn't have the ability to read and I was
8 concerned about that because statistically people who get
9 in trouble later on are people who are illiterate.

10 So, I determined -- I didn't discuss it with
11 anyone -- sisters, brothers, parents, anyone. I
12 determined that I was going to take him.

13 Q And did you take both boys?

14 A No. I called my sister in Dallas -- Carolyn -- and
15 asked her to take the other one -- Saleem. I determined
16 that I was going to take Mikal.

17 Q And where were you living then?

18 A I was living in Baltimore, Maryland, Randallstown
19 section in Northwest Baltimore, Baltimore County,
20 actually, just outside of Baltimore City.

21 Q Do you still live in that area?

22 A No. I don't live in that area. I live in the White
23 Marsh area which is North Baltimore, north -- in the
24 northern part.

25 Q But still Baltimore County?

1 A I think it's still. I am not sure if it's Hartford
2 County or Baltimore County, but I think it's still
3 Baltimore County.

4 Q And when you took Mikal into your home who else lived
5 with you?

6 A My wife at the time -- We are in the process of
7 divorcing -- Lawanda Burwell and my two children at the
8 time -- my two children by her. Sara at the time was
9 maybe five and Isaiah was one.

10 Q And why did you determine that Saleem should go to a
11 different home?

12 A Well, I couldn't take them both.

13 Q Just too much for you?

14 A Yea, too much for me and too much to ask of my wife.
15 I don't even think I discussed it with with her. I don't
16 even think I asked her which is my fault I would imagine.

17 Q In your observations prior to that time between
18 Saleem and Mikal, was Saleem a positive influence on
19 Mikal?

20 A I don't think so. I mean, I -- From what I observed
21 Saleem would influence Mikal to do bad things so it would
22 make him look good. They would get involved with
23 something and Saleem would egg him on, would make him do
24 more and more destructive things, and laugh and be amused
25 by it.

1 Q How old was Mikal when he came to you?

2 A Eight years old, I think.

3 Q And did he easily fit into the structure of your home
4 and your family?

5 A No, it wasn't easy. I mean, he wasn't disruptive in
6 terms of violence or anything, but he had nothing -- He
7 had no experience with school and that's what we worried
8 about. We worried about the school and it was very hard
9 for him to adjust to school, going to school every day.

10 Q Did he want to be away from his father and his
11 brother?

12 A Oh, no. He didn't want to do that. I mean, I guess
13 originally he thought it was a nice adventure, but I guess
14 as time went on this is where he was going to be, going to
15 school every day.

16 Q And did you or his father explain to him why all of a
17 sudden he's living with you?

18 A No, I didn't explain anything. I don't know if his
19 father explained anything. I'm sure it was disruptive,
20 but I don't know -- I just wanted to do this and do the
21 right thing. I didn't think --

22 Q Sure.

23 A -- I didn't want to discuss it with a child. You
24 have no say in this.

25 Q Sure.

1 A You're eight years old. What say do you have?

2 Q Did Mikal ask about his father frequently or at all?

3 A No. I don't remember discussing that with him. I
4 don't remember him asking about him.

5 Q Did he talk about shooting himself or wanting to die?

6 A Well, that was -- That incident came about from some
7 discipline that my wife was giving Mikal. She was giving
8 him a beating and --

9 Q Before we get to that --

10 (WHEREUPON, Applicant's Exhibit No. 9 was marked for
11 identification only.)

12 Q Let me show you what's been marked as Applicant's
13 Exhibit 9 and ask if you have ever seen that before?

14 A I have heard that before. I mean, you know, I --
15 That he would say that to a person at school --

16 Q Uh-huh.

17 A -- I am not surprised because I have heard that
18 statement before myself.

19 Q So, you've heard it. Is that letter addressed to you
20 and your wife?

21 A Yes, it is addressed to my wife and I.

22 MS. NORRIS: Your Honor, it's a letter from a school
23 principal to Mr. Burwell and his wife. It is in the
24 school records. I would offer it.

25 MR. MABRY: No objection.

1 THE COURT: There's no objection.

2 (WHEREUPON, Applicant's Exhibit No. 9 was admitted
3 into evidence.)

4 Q Mr. Burwell, what statement was the principal
5 concerned that Mikal was making in March of 1992?

6 A Well, why doesn't someone just shoot me? If I had a
7 gun I would just shoot myself. Yea.

8 Q Did he say things like that at home?

9 A Yea. Maybe once or twice, yes.

10 Q And then the incident you were talking about with
11 your wife, tell us what happened that day.

12 A Well, I came home and she was giving him a whipping
13 and it was a thorough whipping and I would have intervened
14 except that I wanted to show a united front. I didn't
15 want to interfere. You know, I don't want it to be -- to
16 give him an opportunity to play one against the other.
17 So, I didn't intervene. I was just monitoring to make
18 sure she didn't go overboard.

19 Q Right.

20 A But after it happened he put soot on his face, on
21 parts of his body to make it look like it was bruised and
22 some ketchup on his face and called 9-1-1 and the police
23 came to the door and these young policemen from
24 Pennsylvania -- I mean, they worked in Baltimore County.
25 Pennsylvania had -- You had to pay for your own police

1 training in Pennsylvania, but if you came to Maryland,
2 Maryland had a system where they would send you to school
3 and you just had to work three years to pay for your
4 school. So, a lot of rural white young men from
5 Pennsylvania would come to Baltimore County so that they
6 could get that training.

7 They knocked on the door and I doubt if they had --
8 Well, I can't say, but it didn't seem like they had very
9 much experience with black people -- especially black
10 people like my wife and I. So, they knocked on the door
11 and said, We got a 9-1-1 call from here. I said, Okay.
12 They said, We want to see your nephew, and so they looked
13 at him and I don't know why they chose to see what they
14 saw. I don't know why they chose not to see ketchup but
15 to see blood, not to see soot from the fireplace but to
16 see bruises, but that's what they chose.

17 Q But the allegation of child abuse --

18 A Yea.

19 Q -- nobody pursued that; right?

20 A No. They just took him to the hospital and they
21 said, We're going to take you to the hospital and then
22 we're going to come back and arrest you. I said, No,
23 you're not going to come back and arrest me. I am going
24 to go to the hospital with you. You're going to have to
25 arrest me at the hospital.

1 Q And what had Mikal said to them that led them to
2 hospitalize him?

3 A Well, I went to the hospital and I waited for my
4 nephew to come out because I knew he didn't have any
5 broken bones, he didn't have any bruises, he didn't have
6 any blood. So, I waited for two hours and I asked the
7 nurse, Where is my nephew, and she said that the doctors
8 had chastised the policemen for bringing someone that
9 didn't -- bringing someone -- bringing someone that didn't
10 need to be there. Why are you wasting our time? And I'm
11 sure that it was hard.

12 Q Do you recall --

13 A I'm sure it was hard for the policemen to deal with
14 that. So, and the policeman -- So, from what I understand
15 they didn't bring him back to me. That statement was also
16 made, You need to just give me your gun so I can shoot
17 myself, and what I am advised is that it was a way out for
18 these young policemen. They took him straight to a
19 psychiatric ward in Baltimore City. It took us two months
20 to get him out of there -- to get him -- to get him. It
21 took us two months to get him out of there.

22 Q If you need some water, the Judge has poured you a
23 cup there. Do you recall what month that was when he went
24 into the hospital?

25 A I don't know. It wasn't cold. Maybe April or

1 something like that.

2 Q How about August of '92? Does that sound right?

3 A Sounds about right.

4 Q And that summer weeks before he had gone in to the
5 hospital had Mikal visited his father back in Virginia?

6 A Yea. I'm sure in summertime we let him -- We let him
7 go home for two weeks or so.

8 Q Do you recall whether anything unusual happened
9 there?

10 A No. I don't know. I have been told --

11 Q But you --

12 A -- what happened, but I don't know. I wasn't aware.

13 Q Do you know -- Well, while Mikal spent that two
14 months in the hospital were you able to see him and visit
15 him?

16 A Yea. They would let us bring him home for weekends
17 after he was there for a month or so. I don't remember
18 how long he was there before he could come home on
19 weekends.

20 Q And what was he like when he came home on the
21 weekends?

22 A I don't know. Maybe -- I don't know. Maybe they
23 they had him on medication or something. I don't
24 remember. He was -- It was routine. I mean, he came home
25 and washed his clothes. He washed his clothes before he

1 would go back.

2 Q When he was released from the hospital did they
3 recommend follow-up care and counseling for him?

4 A Yea. I sent him to a psychiatrist every Monday.
5 Every Monday I would have to wait while the psychiatrist
6 talked to him.

7 Q And how long did that continue?

8 A I don't know. Three or four months. I don't
9 remember.

10 Q When he got out of the hospital did Mikal seem to
11 improve any with his behavior and his school work?

12 A I don't remember him going to school after he came in
13 the hospital. I think after he got out of high school he
14 went back to Lawrenceville.

15 Q Immediately?

16 A Not immediately. I mean, there was an incident in
17 Texas where his brother was -- My brother-in-law wouldn't
18 put up with his brother anymore so his brother was sent
19 back. Mikal was aware that his brother was no longer in
20 Texas and it was very difficult to keep him after that.
21 He wanted to go be with his brother.

22 Q While Mikal was in your home -- Let's leave the
23 hospital aside. Did you help him with his school work?

24 A Initially, I wanted -- I helped him try to recognize
25 words. I tried to help him recognize words and sight read

1 and, you know, once I got past him being able to recognize
2 words and I -- I left it to the teachers after that with
3 the homework.

4 Q But --

5 A But my wife did homework after school. I was still
6 at work. So, she did homework with all of the kids or he
7 did it at the babysitter's house.

8 Q So, you helped him learn to read?

9 A Initially, yes. From what I believe.

10 Q Uh-huh.

11 A He might say something different.

12 Q While Mikal was staying with you in Baltimore did
13 Shareef ever visit?

14 A Not that I remember.

15 Q Did his mother Tilea visit?

16 A No.

17 Q And now you mentioned when Saleem went home. Tell me
18 about that. When Saleem was sent back from Texas, what
19 impact did that have on Mikal staying with you?

20 A Yea. It was hard. I couldn't keep Mikal any longer.
21 He wanted to go back to Virginia where his brother was.
22 He was not -- He -- You know, he wasn't -- He couldn't
23 concentrate on going to school or school work or anything.
24 He didn't want to be there. It was just -- You know, I
25 had a wife and two kids and it was hard on them.

1 Q Did Mikal seem to think that because Saleem got to go
2 home that he was the favored son?

3 A I don't know. I can't say. I can't speak on that.

4 Q And when Mikal went back to Shareef was Shareef any
5 more capable in your view of taking care of him than he
6 had been when you took Mikal out?

7 A Oh, certainly not. He wasn't employed. I think they
8 were staying at the farm house. Mikal was going to school
9 and as far as I knew Mikal was taking care of him.

10 Q And how old was Mikal when he left your home?

11 A Probably about 10.

12 Q Do you regret allowing Mikal to return to Shareef?

13 A Yea. I don't think it was a good idea. You know, I
14 wish that I had suffered through whatever we had to suffer
15 through to keep him. You know, that's water under the
16 bridge, but it would have been hard, and I didn't know how
17 much of a team we were -- you know, my wife and I. We
18 weren't often on the same page ourselves.

19 Q From that time when Mikal left your home at 10 until
20 now, have you seen Mikal at all?

21 A I saw Mikal once when he got out of -- once before he
22 went in the last time when he went to that facility in the
23 western part of Virginia. There was a window in which I
24 saw him before he got into -- before he attacked someone
25 with a stabbing or something. I saw him briefly somewhere

1 in there. I think I saw him when he was like -- I don't
2 know -- 16.

3 Q And when Mikal was released from prison -- the prison
4 in Western Virginia -- just a couple of months before his
5 current arrest were you aware of where he was living then?

6 A Yea. He was in a -- From what I understand he was in
7 a halfway house in Richmond and in order for -- He had to
8 stay there unless my mother -- his grandmother -- signed
9 for him to come to Lawrenceville and she signed for him to
10 come to Lawrenceville instead of staying at the halfway
11 house. So, and then that's when he came to Lawrenceville
12 and he got into trouble then.

13 Q Was he able to get a job in Lawrenceville?

14 A No. Not that I know of.

15 Q And did he stay with Nancy or did he have to leave
16 her home?

17 A Well, my brother was living there with my mom and my
18 brother was -- He wasn't happy with taking care of my mom
19 and now he had to take care of -- you know, financially
20 because food had to be provided and stuff. He didn't
21 really like that idea so I think he invited my nephew to
22 leave or asked him to leave and from what I understood my
23 nephew found him a place to live in Lawrenceville.
24 Someone allowed him to live in their house that was
25 somewhat under disrepair and he got to stay there with the

1 understanding that he would do some repairs.

2 Q Were you -- After Mikal was arrested on these charges
3 in July of 2004 were you aware that he had been charged
4 with capital murder?

5 A No. I found out -- I mean, someone had to call me.

6 Q But generally you knew?

7 A Generally, I knew what?

8 Q That he was facing capital murder charges in South
9 Carolina or did you know?

10 A When? I mean, I only -- I knew that -- I got the
11 word maybe a day or two after --

12 Q Okay.

13 A -- he had committed the murder.

14 Q That's what I am asking. Were you interviewed by
15 anyone from Mikal's South Carolina defense team prior to
16 his trial in December of 2006?

17 A I don't remember. I mean, I may have been, but I
18 don't recall.

19 Q Do you recall being interviewed or talking to his
20 attorneys -- two black gentlemen?

21 A No.

22 Q If you had been asked then if you would testify on
23 his behalf and tell the family story, would you have been
24 willing to do so?

25 A Oh, most definitely.

1 Q And if you had testified before the sentencing
2 judge -- Judge Newman -- and had been given the
3 opportunity to ask for mercy for Mikal would you have done
4 that?

5 A Oh, yes.

6 Q Why?

7 A Because, you know, all along the way it was as a
8 child, I mean, he had -- He didn't have a chance in hell.
9 You know, the parenting he had, the moving around, the
10 mother abandoning him, all kinds of poverty, hunger at
11 some times, clothing -- lack of. You name it.

12 MS. NORRIS: Give me one second, Your Honor.

13 You mentioned that your brother was living with your
14 mother when Mikal -- shortly before these crimes. Which
15 brother was living with your mother?

16 THE WITNESS: My older brother, Nathan. He still
17 lived with my mother.

18 Q Okay. And when Saleem was sent back from Texas, do
19 you know why Saleem was sent back?

20 A Yes. My sister has a son that's about the age of
21 Mikal and Saleem was adversely influencing him they
22 believe. So, they refused to have him around.

23 Q All right.

24 A So they sent him back.

25 Q Thank you, sir. I don't have any other questions,

1 Your Honor.

2 THE COURT: Mr. Mabry, how long is your cross?

3 MR. MABRY: It is hard for me to judge, Judge.

4 THE COURT: It is hard for you to judge. Everybody
5 okay bathroom-wise? Some people need to go?

6 FEMALE SPEAKER: Yes, Your Honor.

7 THE COURT: A mass exodus or just a couple?

8 FEMALE SPEAKER: I believe it's just a couple, Your
9 Honor.

10 THE COURT: All right. Let them slide on out.

11 (Whereupon, some people left the room.)

12 THE COURT: As they finish using the restroom, just
13 let them trickle back in. No loving and hugging in here.
14 Please, let's do that outside. This is not a reunion.
15 Let me have order.

16 Mr. Mabry?

17 MR. MABRY: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MABRY:

20 Q Mr. -- You're Carson Burwell and you live in
21 Baltimore, Maryland; is that correct?

22 A Yes, sir.

23 Q Mr. Burwell, do you remember meeting a lady by the
24 name of Paige Munn Tarr? Her last name is T-A-R-R?

25 A No, I don't.

1 Q In March 2 of 2006?

2 A No, I don't remember.

3 Q Okay. She's a thin, white lady in her mid 30's,
4 maybe early 40's. Do you remember meeting with her in
5 Baltimore, Maryland?

6 A No, sir.

7 Q Okay. Do you remember meeting with a lady named
8 Marjorie Hammock who was a forensic social worker who came
9 to Baltimore, Maryland and talked to you about this case?

10 A No, I don't remember.

11 Q All right. Do you remember telling anyone from
12 Mr. Mahdi's defense team that Mikal was a manipulative
13 person?

14 A I don't remember saying that, but he certainly had
15 his ways of trying to get his way, yea.

16 Q In fact, he came to you when he was 8 years old and
17 then when he was 9 years old he got a whipping from your
18 wife with a belt because she told him to do his homework
19 and he went outside -- disobeyed an order and she gave him
20 a whipping; is that correct?

21 A I never learned why she was whipping him, but she did
22 give him a whipping, yes.

23 Q Okay. Well, do you remember ever telling anybody
24 from the defense team that you came home and she had gave
25 him a whipping because she had told him to do his school

1 assignments and he went outside and played instead?

2 A I don't remember why he got the whipping but I
3 remember him getting the whipping.

4 Q Okay. Well, what I am asking you is do you remember
5 telling the defense team either -- Ms. Hammock or
6 Ms. Tarr -- or do you just not remember talking to them at
7 all?

8 A I don't remember talking to them at all.

9 Q Okay.

10 A Seriously.

11 Q And what Mr. Mahdi did was he took ashes and ketchup
12 and put it on his body after he got the whipping and went
13 and called 9-1-1 without you to or your wife knowing about
14 it?

15 A Yes.

16 Q Okay. And he told them that he had been abused by
17 your wife Lawanda?

18 A Uh-huh.

19 Q Okay. And then when the police got there based on
20 what he said you and your wife almost got arrested; didn't
21 you?

22 A Well, they said they were going to arrest us if there
23 was any abuse.

24 Q Okay.

25 A After they examined -- after the doctors examined

1 him.

2 Q All right. Well, you -- A while ago when you
3 testified you got very upset and started crying when you
4 were talking about the fact that they were going to arrest
5 you at your house and threatened to arrest you at the
6 hospital?

7 A No. They didn't threaten to arrest me. They never
8 saw me at the hospital.

9 Q Okay.

10 A I told them they wouldn't have to arrest me at the
11 house. I was going to go to the hospital and they could
12 arrest me at the hospital.

13 Q Okay.

14 A Because I was confident there was no abuse.

15 Q Okay. All right. But that occurred because of what
16 Mikal Mahdi did?

17 A Yea. He didn't do his homework, if that's the case.
18 You have to ask my wife why she was beating him.

19 Q Okay. No, that's not what I am asking you. Mikal
20 calling the police and putting ashes on his body --

21 A Oh, yes.

22 Q -- and putting ketchup --

23 A Oh, yes.

24 Q -- almost got you and your wife arrested?

25 A I don't know how close -- I don't think there was a

1 possibility of us getting arrested because I don't think
2 the doctors would have found any abuse.

3 Q Well, the police were talking about it, weren't they?

4 A Yea, the police were talking about it.

5 Q And you got upset a minute ago talking about the fact
6 that the police were going to arrest you?

7 A I wasn't upset because the police threatened to
8 arrest me. I was upset because this was the beginning --

9 Q Uh-huh.

10 A -- the initial brush with the law.

11 Q Okay.

12 A I don't think he was in the system until then.

13 Q Well, they took him to the hospital not because of
14 any criminal behavior. When you talk about brush with the
15 law, they took him to the hospital because he was saying
16 that your wife had abused him; right?

17 A Yea. When they found no abuse they didn't bring him
18 home.

19 Q All right. So, the real reason you got upset a
20 minute ago is because you and your wife almost got
21 arrested?

22 A No. I got upset because he got sent to the mental
23 institution.

24 Q Oh, okay. And he didn't get sent to this mental
25 institution because of child abuse. He got sent there

1 because he was, basically, missing his father and his
2 brother. That's what it came down to, wasn't it?

3 A No. He got sent there because he said, You need to
4 give me your gun so I can shoot myself.

5 Q Oh, okay. And isn't it a fact that you told the
6 police that day there at your house that he says that all
7 the time?

8 A I didn't tell the police that.

9 Q Okay.

10 A The only thing I said to the police is I am going to
11 follow you to the hospital and you have to arrest me
12 there.

13 Q Isn't it true that you told the doctors at --

14 A I never spoke to the doctor

15 Q Well, isn't it true your wife told the doctor --

16 A I don't know what she said.

17 Q -- that he does that all the time when he doesn't get
18 his way?

19 A I don't know what my wife said. I can't speak for
20 her.

21 Q And, in fact, you had counseling meetings where you
22 went to and your wife went to at the hospital when he was
23 committed for those 60 days; isn't that correct?

24 A There's only one meeting that we went to with the
25 counselors that I went to --

1 Q Uh-huh.

2 A -- and that was because my wife and I had gotten a
3 notice for us to sign off on them giving him a certain
4 kind of medication.

5 Q Uh-huh.

6 A My wife, being the person that she is, she looked up
7 the medication in the New England Journal of Medical --
8 what is it? new England Journal of Medical Research or --

9 Q I don't know.

10 A One of those renowned --

11 Q Right.

12 A -- things about medicine and found out the drug was
13 experimental. So, then we went into a meeting and I
14 raised holy hell.

15 Q And y'all refused to let them give him that medicine;
16 correct?

17 A I don't know. I just cursed them out --

18 Q Okay.

19 A -- for giving this black child something that's
20 experimental or wanting to give an experimental drug.

21 Q Do you remember making this statement -- that, in
22 fact, you were talking about the policeman asked Mikal why
23 he wanted his pistol and Mikal said just to go on and kill
24 himself rather than leave him there at y'all's house and
25 you started laughing when talking to the mitigation

1 investigator Ms.~Tarr even now and said, That's Mikal just
2 being manipulative. Do you remember that -- telling
3 Ms.~Tarr that?

4 A No. I don't remember saying that.

5 Q Okay. March 2 of 2006. That would have been --

6 A Yea, but I can understand -- What I was meaning is
7 that he didn't really want to kill himself.

8 Q Right.

9 A He was just playing games.

10 Q Right.

11 A So, but, they took it to mean that he really wanted
12 to kill himself --

13 Q Right.

14 A -- and so they sent him to a mental institution.

15 Q Right. And when he was living there with you and
16 your wife at your house for a year and a half to two years
17 if he did something wrong and got in trouble or he didn't
18 get his way he would talk about killing himself or why
19 don't y'all just go ahead and shoot me? Isn't that true?

20 A Not all the time. Some -- not all the time. Most of
21 the time it would go along smoothly and it would -- His
22 behavior would manifest in other ways like sometimes he
23 would be at school and sometimes he would just walk away
24 from the school and I had to go and find him.

25 Q Right.

1 A So, he did not say he wanted to kill himself all the
2 time. Sometimes he would do other things.

3 Q Right. Sometime --

4 A But he would never be --

5 Q I didn't mean to --

6 A He would never tear the house down or anything.

7 Q Right.

8 A Most of the times he just hurt himself.

9 Q Well, the reason I am asking you that is that letter
10 was sent to you from the school before he went into the
11 Walter Carter Center. So --

12 A Yes, Walter P. Carter.

13 Q They were recommend -- They said based on that
14 statement he made at school he needed psychiatric
15 treatment or some kind of counseling, but y'all didn't do
16 anything about it because that's the kind of thing he said
17 when he didn't get his way or he got in trouble. Isn't
18 that correct?

19 A Yea, I don't remember doing anything about it. I
20 don't remember him -- I don't remember anything being done
21 about it until the policeman took him to Walter Carter.
22 We certainly -- I didn't believe he would seriously kill
23 himself.

24 Q Right. And, in fact, you went to see him at the
25 hospital. Your wife went to see him at the hospital.

1 A Yea.

2 Q When he got out of the hospital he came back to live
3 with y'all?

4 A Yes.

5 Q Isn't that right? Now, but you also found out while
6 he was at that hospital he assaulted other patients?

7 A (Witness nods head.)

8 Q Didn't he?

9 A I understood that he got into fights at the
10 hospital --

11 Q Uh-huh.

12 A -- but people at the hospital were people that -- I
13 mean, they were all sick people.

14 Q Uh-huh.

15 A So, who is to say who caused it -- him or them?

16 Q All right. You also knew that he tried to escape
17 from the hospital while he was there?

18 A I didn't know that. This is the first I am hearing
19 that.

20 Q He also would throw chairs, throw objects, kick the
21 doors, kick the windows, and he got put in what they call
22 solitude at least six times while he was there at Walter
23 Carter; isn't that correct?

24 A I don't remember the number. I didn't read those
25 reports, but I'm sure that he got into incidents there,

1 yes. I was aware of that.

2 Q And he threatened to staff members. You with aware
3 of that, too, weren't you?

4 A I didn't know about that, no.

5 Q Okay. But you were aware of the other incidents?

6 A I was aware that he got into some altercations. I
7 didn't know the specifics.

8 Q Okay. Now, when he came back home to live with
9 you -- when he first came there he did not read very well
10 and you taught him to read, basically?

11 A Yea, basically, yes. I thought so. You know, I
12 mean, I didn't think he knew how to read, but, certainly,
13 yea, he learned -- He learned, yea, the rudiments, yea.

14 Q And you tried to play sports with him in the yard.
15 You tried to get him to work on cars with you. You tried
16 to do things with him like a father would?

17 A No. I didn't participate that much. I bought him a
18 bike. He rode his bike.

19 Q Okay.

20 A And, no, I didn't do a lot of playing with him. I
21 think he did more of that with the babysitter in the
22 afterschool care person, but I didn't get home until at
23 night.

24 Q So, y'all had an afterschool care person for him?

25 A Yea.

1 Q Now, when he found out that his brother had been sent
2 back to live with his father his acting out became worse,
3 didn't it?

4 A Yea. I think so, yea.

5 Q In fact, it was more than just worse. It got so bad
6 that you had to send him back to his father. You couldn't
7 take it anymore?

8 A Well, it wasn't that I couldn't take it. He never
9 acted out at home. It was just at school. He had
10 problems at school and the school wasn't able to handle it
11 a lot of times and then that disrupted our lives. I had
12 to leave work and go to the school or go looking for him
13 in the community, but he was -- He was good at home. He
14 didn't bother his cousins -- my two little kids and --

15 Q He was getting in fights at school?

16 A Yea. Whatever problems he had was at school. I
17 didn't have a problem, but --

18 Q Well, tell us what the problems were.

19 A At school?

20 Q Yea.

21 A I don't know. I wasn't at school.

22 Q Well, what were the problems at school that caused
23 you and your wife to send him back to live with his
24 father?

25 A Because we had to take off more and more time to go

1 and address school.

2 Q To deal with the problems?

3 A Yea. He wasn't causing any problems in my home.

4 Q Right. But when when you got to the school to deal
5 with the problems why don't you tell the Judge what the
6 problems were at school? What was he doing at school?

7 A You know, you have to talk to my wife about that
8 because I don't really know what was going on at school.

9 All I know is that I was -- I went in various times to get
10 him and I went in various times to look for him.

11 Q Uh-huh.

12 A But I don't know the difficulty that they had with
13 him at school. I really don't.

14 Q You had mentioned on direct there was an incident
15 where Mikal and his brother and his father were involved
16 in destroying your sister's car?

17 A Yea. From what I understand, yes.

18 Q And Mikal threw a cement block through her car
19 window? Is that right?

20 A That may be true. I don't know the particulars of
21 it. All I know is destroyed the car. That's all I know.
22 How they did it with a sledge hammer or cement block, I
23 don't know.

24 Q Now, when -- You know that Mikal was convicted of
25 stabbing the man and he went to adult prison. You knew

1 about that?

2 A Yea. Yea.

3 Q So, he left you when he was 9 or 10?

4 A When he was 10, yes.

5 Q And then you didn't have really any contact with him
6 until he went to adult prison; is that right?

7 A Yea, I didn't see him. What little contact I had
8 with him is just, Hello, How are you.

9 Q Okay. And after he went to adult prison he got out
10 and he went to live with your Uncle Nathan and your
11 grandmother?

12 A Right.

13 Q Isn't it a fact that your -- his uncle Nathan, your
14 brother had set certain rules at the house --

15 A I'm sure.

16 Q -- that Mikal had to live by?

17 A Yes.

18 Q And Mikal could not live by those rules and so Mikal
19 moved out?

20 A Yes, that's what I understand.

21 Q Okay. Do you remember talking to an investigator or
22 an attorney from the North Carolina defense team that
23 represented Mr. Mahdi?

24 A Yea. I remember some people from North Carolina,
25 yes.

1 Q Okay. Do you remember telling them that Mikal was a
2 demon?

3 A I don't remember that.

4 Q You don't?

5 A Huh-uh. I don't remember that.

6 Q But you could have?

7 MS. NORRIS: Your Honor, I am going to pose an
8 objection. Unless there is a good faith basis for that
9 question or he's got something he can show us, I object to
10 that.

11 MR. MABRY: I have a good faith basis for the
12 question.

13 THE COURT: Overruled.

14 Could you have said that, sir?

15 THE WITNESS: Yea, given his behavior I guess I could
16 have said it.

17 Q Okay. And did you, in fact, tell Glenn Walters and
18 Mr. Koger that you and your wife were not going to be able
19 to help with the mitigation case in this case? Do you
20 remember communicating that to them before the trial?

21 A I don't remember, but I could have said that.

22 Q And why would you have not been able to help with the
23 mitigation case in this case?

24 A You know, I don't know what the people in -- people
25 from North Carolina?

1 Q No. This is Mr. Walters and Mr. Koger down here.

2 A Down here?

3 Q Uh-huh.

4 A And I said I wouldn't be able to help?

5 Q Right. You said you and your wife would not be able
6 to help with the mitigation case.

7 A Do you have that on record for me saying that?

8 Q I have a record where they talked to you and you said
9 that.

10 A I don't remember.

11 Q I am asking why you told them that.

12 A Yea, I don't remember saying that, but --

13 Q But it had something to do with Mikal's behavior when
14 he lived with you?

15 A No, huh-uh. I don't know why I said that. If I did
16 say that, it didn't have anything to do with Mikal's
17 behavior while staying with me. It might have had
18 something to do with my wife -- the current situation
19 between my wife and I. My wife and I are in the middle of
20 a divorce. So --

21 Q Right now?

22 A Right now. I go to court next week for that.

23 Q I'm talking about back in 2005 and 2006 as this case
24 was proceeding to trial after their investigator had
25 talked to you and their --

1 A And that's what I'm saying. It didn't have anything
2 to do with Mikal. It might have had something to do with
3 maintaining my marriage and maintaining my family. I
4 might have refused any type of participation because I'm
5 concentrating on this over here -- my marriage and my
6 family. So, it didn't have anything to do with Mikal.

7 Q Well, what was your response when you found out that
8 Mikal had committed a murder in North Carolina and
9 committed a murder in South Carolina?

10 A I nearly died. I nearly died. I was totally
11 destroyed.

12 Q Were you shocked?

13 A I was -- Yea, certainly.

14 Q Were you embarrassed?

15 A Not embarrassed. I was dumbfounded that someone
16 could take someone's life. I was just totally -- It just
17 -- It seemed unreal.

18 Q Were you upset and angry with Mikal that he had done
19 those acts?

20 A Man, at the moment that that happens what do you
21 think? I wasn't angry with him. Who do you think about?
22 Don't you think about the families of the people whose
23 loved one is taken from them? I didn't think about Mikal
24 at all. I thought about the families of the people who
25 lost their loved ones.

1 Q Well, I'm asking --

2 A Come on now. Come on now.

3 THE COURT: Hold on. No arguing. Just answer the
4 question, please.

5 Q Were you upset or angry at Mikal --

6 A No, I wasn't.

7 Q -- for committing those two murders?

8 A No.

9 Q Back in 2005?

10 A No, I wasn't upset.

11 THE COURT: Move to another subject.

12 MR. MABRY: I'm sorry, Your Honor?

13 THE COURT: Move along.

14 MR. MABRY: Yes, sir, I am. That's all I have, Your
15 Honor.

16 THE COURT: Anything on redirect?

17 MS. NORRIS: Yes, sir, just briefly.

18 REDIRECT EXAMINATION

19 BY MS. NORRIS:

20 Q Mr. Burwell, during the incidents when manipulative
21 Mr. Mahdi called 9-1-1 and was in the hospital throwing
22 things and having fights, how old was he?

23 A He had to be almost 10, nine and a half.

24 Q And do you recall what the hospital diagnosed him
25 with?

1 A No, I don't. Manic depressive maybe. I don't know.

2 THE COURT: Don't guess for me.

3 THE WITNESS: Okay.

4 THE COURT: I'm sure they got the records.

5 THE WITNESS: Thank you.

6 (WHEREUPON, Applicant's Exhibit Nos. 10 - 11 were
7 marked for identification only.)

8 Q Mr. Burwell, you were asked about what sorts of
9 troubles you would get called to the school for. Let me
10 show you what's been marked as Applicant's Exhibit 10, a
11 letter to you. What does that tell you was the problem at
12 that time?

13 THE COURT: That's a letter from where to who or
14 whom?

15 MS. NORRIS: I'm sorry, Your Honor. It is a notice
16 from the school system to Mr. and Mrs. Burwell.

17 THE WITNESS: Yea, I mean they -- Whatever -- They
18 couldn't control him.

19 Q And I show you another one. This one is Applicant's
20 Exhibit 11. Tell you what sorts of problems were going on
21 there?

22 A Yes, most definitely.

23 MS. NORRIS: Your Honor, I am going to offer both of
24 those. Those are from his school records --

25 MR. MABRY: No objection.

1 MS. NORRIS: -- while he was in Mr. Burwell's care.

2 THE COURT: Thank you, ma'am. Are these the only
3 ones? Are there more?

4 MS. NORRIS: Well, those are the notices in the
5 school records while he was in Baltimore.

6 THE COURT: Thank you, ma'am.

7 (WHEREUPON, Applicant's Exhibit No. 10 - 11 were
8 admitted into evidence.)

9 Q Mr. Burwell, you mentioned the incident with
10 Loretta's car and a cinder block. Do you know who was
11 actually arrested after that incident?

12 A No, I don't.

13 MS. NORRIS: I don't have anything further.

14 THE COURT: Thank you. You may step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Sorry to meet you under these
17 circumstances. Nice to see you. Good luck to you.

18 Let's take about -- How long do y'all need for him to
19 get to the bathroom? About 10 minutes? Let me know when
20 you're ready. We'll take about a ten-minute break.

21 (Whereupon, a break was taken.)

22 MS. NORRIS: The applicant calls Rose Gupton.

23 ROSE M. GUPTON, after being duly sworn,
24 testified as follows:

25 THE COURT: Give us your full name and spell your

1 last for the record, please.

2 THE WITNESS: Rose Marie Gupton; G-U-P-T-O-N.

3 DIRECT EXAMINATION

4 BY MS. NORRIS:

5 Q How old are you, ma'am? I know I'm not supposed to
6 ask that. How old are you?

7 A Fifty-four.

8 Q And what is your relationship to Mikal Mahdi?

9 A I'm his mother's sister.

10 THE COURT: Mom's sister. So you're his aunt?

11 THE WITNESS: (Witness nods head.)

12 Q And where did you grow up?

13 A Sussex County.

14 Q And where is that in relation to Richmond and
15 Brunswick County?

16 A It's -- In relation to Richmond just south of
17 Richmond. Brunswick County it would be north --

18 Q Okay.

19 A -- of Brunswick county.

20 Q And where do you live now?

21 A I live in Richmond, Virginia.

22 Q And who were your parents?

23 A My parents were George Ardis and Julia Newsome Ardis.

24 Q And your sister Vera, does she have the same parents?

25 A She had the same mother but not the same father.

1 Q And was she born during the marriage when your mother
2 and father were still together?

3 A Yes, she was.

4 Q And do you recall where your father was when she --
5 Vera -- was conceived?

6 A I believe he was incarcerated.

7 Q And how many children total were there in the family?

8 A It was twelve in all. Two died at birth which left
9 ten.

10 (WHEREUPON, Applicant's Exhibit No. 12 was marked for
11 identification only.)

12 Q Let me show you Applicant's Exhibit 12. See the
13 chart I put together and see if that reflects the ten that
14 are living and got them accurate?

15 A Yea.

16 MS. NORRIS: Your Honor, we'd offer that as
17 Applicant's 10 -- Applicant's 12. I'm sorry.

18 THE COURT: Any objection?

19 MR. MABRY: No, sir.

20 THE COURT: Thank you. Twelve.

21 (WHEREUPON, Applicant's Exhibit No. 12 was admitted
22 into evidence.)

23 Q How much older are you than Vera?

24 A She's five years younger than me.

25 Q And going back to your parents now, did your parents

1 have a happy marriage?

2 A Well, my dad was an alcoholic. So, no, it wasn't
3 very happy, no.

4 Q Was he a happy alcoholic or a mean alcoholic?

5 A No. He was actually a mean alcoholic.

6 Q Was he abusive?

7 A Well, he wasn't physically -- He was verbally
8 abusive, but physically only when something really
9 affected him personally. So, he could get mean when
10 something really affected him.

11 Q Did he ever hit your mother?

12 A Yes.

13 Q How often or how many times?

14 A When -- He would hit her when something didn't go his
15 way, basically. I mean, not all the time, just certain
16 incidents that happened that he would do that.

17 Q And did your father provide well for the family?

18 A Well, basic necessities, but no luxuries, no, even
19 though he did make the money to do that.

20 Q And you mentioned that he may have been incarcerated
21 when Vera was conceived. Was that a one-time event or was
22 he incarcerated more times?

23 A Well, he just -- He went in a couple of times but
24 just for drinking and driving and stuff like that because
25 she never would call the police when they argued.

1 Q And when you said that he was verbally abusive did he
2 treat Vera any differently than he did you, for instance?

3 A Oh, yea.

4 Q What was different about it?

5 A Well, he was constantly telling her that she wasn't
6 his child.

7 Q And how would she react to that?

8 A Well, you know, when it first started to happen, I
9 mean, we were young. We didn't even know about paternity
10 until he --

11 Q Sure.

12 A -- started to say it and then he was saying it more
13 and more, you know, and she -- In the beginning she would
14 cry and then later she just tried to stay out of his way
15 mostly or tried to hide whenever he was drinking.

16 Q Would he only say that when he was drinking?

17 A No, he would say it when he was sober, too, but more
18 when he was drinking.

19 Q Uh-huh. Did your mom eventually leave your dad?

20 A Yes, she did.

21 Q How old were you then?

22 A When she left my dad I was about maybe 18.

23 Q So, Vera would have been about 13 you think?

24 A Yea.

25 Q Did it -- Other than leaving your dad did your mom

1 make any other big changes in life then?

2 A Well, she became a Moslem and the four children --
3 the younger four, Gene, Vera, Sophia, and Carlos -- they
4 were with her. We were grown then -- eighteen. They
5 moved to Petersburg and they joined Moslems.

6 Q And what was -- What was Vera like generally as a
7 child?

8 A She was very quiet. Like I said, from the time she
9 knew what was -- From the time she remembered anything she
10 -- What she heard was you're not my child. So, she was
11 always quiet, always basically not trying to be seen.
12 That's what she did -- you know, mostly in her room and
13 she never said a lot, never socialized with us, you know,
14 like when we were playing games and stuff like that.

15 Q Did she --

16 A She didn't want to play.

17 Q Did she have any friends from school?

18 A I don't remember any.

19 Q And would -- Did she ever play at all? Did she go
20 out and get dirty and play with other kids?

21 A Oh, she hated to get dirty. She never got dirty.

22 Q Is she sort of a neat freak?

23 A Yes.

24 Q Do you recall -- Well, let me ask you this. Do you
25 know Shareef Mahdi?

1 A Yea, I know him.

2 Q Do you recall when you met him and how you met him?

3 A Yea.

4 Q Okay. Tell us about that.

5 A Well, I met him -- I saw him before they got married,
6 but, actually, I really met him when they were getting
7 married -- you know, to talk to him.

8 Q And --

9 A I heard more about him than actually met him until
10 they got married.

11 Q And what was he like when you met him initially?

12 A I thought he was charming, handsome.

13 Q And were you aware that it was an arranged marriage?

14 A Yea, I found out it was arranged.

15 Q And do you know whether Vera was Shareef's first
16 choice for a wife?

17 A Well, I was told by my sister that he -- and this is
18 the sister next to me -- that he had initially asked to
19 marry her.

20 Q And what is her name?

21 A Her name was Doris.

22 Q And was she -- I take it she wasn't agreeable to
23 that, but why wasn't she agreeable?

24 A She said she just didn't -- something about him. She
25 didn't want to marry him. She said no.

1 Q When he married Vera, how old was Vera?

2 A I think she was 17 -- 17 or 18.

3 Q And how did Vera react to or do you know how Vera
4 reacted to the news that a marriage had been arranged
5 between her and this older man?

6 A Well, what the impression that I got was that she --
7 Well, you know, I don't know if maybe she was just -- I
8 know she was a virgin. I know that and I don't know if
9 she was shy or whatever because she wasn't saying a lot,
10 but I didn't get the impression that she really wanted the
11 marriage. No, I didn't get that impression.

12 Q Did she act like a normal happy bride going in?

13 A No.

14 Q Had she even had a boyfriend or dated?

15 A Never. Never.

16 Q And did you attend their wedding?

17 A Yes, I did. I went to the wedding.

18 Q And was there anything notable or anything that stood
19 out to you about the wedding?

20 A Well, the wedding -- Well, one thing did stand out.
21 She -- A Moslem wedding is not like a traditional wedding
22 and the couple -- They sit opposite each other and they
23 were sitting opposite of each other and she never looked
24 at him.

25 Q Let me show you what's been marked as Applicant's

1 Exhibit 6. Is that pictures from their wedding?

2 A Yes, it is.

3 Q And did you ever see her smile at all during the
4 wedding?

5 A I didn't see her smile. She kept her head down the
6 entire time like that. She never looked at him. I kind
7 of thought that was strange.

8 Q Not your normal wedding. Did Vera ever talk to you
9 about her wedding night beforehand? Did she ask you or
10 any of your sisters what to expect?

11 A She didn't ask me and I can't say if she asked any of
12 the others.

13 Q After that time did she tell you about her wedding
14 night?

15 A She told me one disturbing thing.

16 Q What was that?

17 A I don't want to say that in front of Mikal.

18 Q Okay.

19 THE COURT: Well, we'll just do it when we take a
20 lunch break or something. I am not going to usher him out
21 right now. You can answer it or do it when he's not
22 present.

23 Q Ma'am, I am going to ask you to answer it. I believe
24 I've told Mr. Mahdi this information.

25 A Well, she told me Shareef raped her on her wedding

1 night. She told me that.

2 Q And after her marriage did you stay in touch with
3 Vera?

4 A Excuse me?

5 Q Did you stay in touch with Vera during -- while she
6 was married to Shareef?

7 A Well, you know, I saw her a couple of times, but, no,
8 we wasn't in touch because I was living in Richmond. She
9 was all the way in Lawrenceville. So, no, we didn't have
10 a lot of communication.

11 Q How many times would you say you saw her during the
12 marriage?

13 A Maybe about four and then she had came to stay with
14 me at one point.

15 Q During those four times before she came to stay with
16 you what was she like?

17 A Well, three and then the fourth was when she came.

18 Q Okay. Well, those three times, what was she like?
19 Was she different -- Let me put it this way. Was she
20 different than she had been growing up?

21 A Well, it is really hard to say about her, but I would
22 -- I mean, if you asking me if she was happy, the answer
23 is no. I mean, that's -- She doesn't talk a lot. So, you
24 know, it's really hard to get, you know, a feel for what
25 she's thinking or feeling because she doesn't communicate

1 that much.

2 Q And you said that Vera came to stay with you at one
3 point. Was that while she was still married to Shareef?

4 A I believe she is still married. Do they have a
5 divorce? I don't think they even get got a divorce. I
6 don't know.

7 Q All right. Let me rephrase that. Was that before
8 she left Shareef?

9 A She had left him. She had left him and from what I
10 understand she went up north for a couple of months. How
11 many months, I don't know, but it was in between -- after
12 she left him maybe -- I mean, it's hard to give a
13 timeframe, but I know it was -- Mikal was about -- At the
14 time she came to stay with me Mikal was about maybe five.

15 Q And you said that --

16 A Five years old.

17 Q -- she had been up north for some time period. Do
18 you know who she was staying with then?

19 A I believe she was staying with my sister named Doris.

20 Q And then when she came to stay with you, did you know
21 she was coming?

22 A I had no idea. I just got there one day and her
23 clothes and everything was in my house.

24 Q And how long did she stay with you?

25 A About maybe four months. Not long.

1 Q And during that timeframe was she in touch with
2 Shareef at all?

3 A Yea. He was calling and calling and calling and
4 calling and calling.

5 Q And did she take the calls?

6 A She took them and -- She took some of them and then I
7 had my phone number changed.

8 Q And did -- While she was staying with you did Mikal
9 come to your home at all?

10 A Yes, he did.

11 Q And did he stay there?

12 A He stayed maybe two days, maybe three days.

13 Q What was Mikal like then?

14 A Mikal was very angry. He was angry.

15 Q And how did the angry 5-year-old display that?

16 A Well, he'd throw cereal bowls across the kitchen
17 floor. He hit her a couple of times.

18 Q Did Vera want to leave her sons with Shareef?

19 A No.

20 Q Do you know why she did?

21 A Because he threatened to kill her if she took them
22 and he meant it, too. I believe he did and I think she
23 did, too.

24 Q When Vera left your home, do you know where she went
25 to live then?

1 A Well, I'm not sure. I'm not sure.

2 Q Did Vera after that time ever have anything else to
3 do with Mikal?

4 A I mean, in what -- I mean --

5 Q Did she ever see him again? Was there a time --

6 A Yea, she saw him again.

7 Q Okay. Tell me when that was.

8 A I mean, you mean -- I don't know exactly what the
9 question is.

10 Q Did -- Was Mikal ever around his mother when he was a
11 teenager?

12 A Yea, he was.

13 Q But from that timeframe, basically, when he was about
14 five until then to your knowledge there wasn't any
15 contact?

16 A No.

17 Q Okay. And where does your sister Vera live now?

18 A She lives in -- It's in South Richmond. She lives in
19 South Richmond.

20 Q And does she interact with you and your sisters and
21 your brothers any better than when she was a child?

22 A No. Actually, it's a little less at this point.

23 Q Were you interviewed by anyone from Mikal's South
24 Carolina defense team prior to his trial?

25 A No.

1 Q Were you aware that he had been arrested for capital
2 murder?

3 A I wasn't aware until my sister called me and told me
4 about it and at that point he was -- I think he had --
5 When she told me he had already been convicted, I believe.

6 Q And which sister told you about that?

7 A Sophia did. She called me.

8 Q And, so, I take it nobody asked you to testify for
9 Mikal?

10 A I didn't hear a word.

11 Q If you had been asked to testify in his sentencing in
12 2006, would you have done that?

13 A Yes, ma'am.

14 Q And would your testimony have been the same as it is
15 today?

16 A Yes, ma'am.

17 Q If you had testified before the sentencing judge and
18 been given the opportunity to ask for mercy for Mikal,
19 would you have done that?

20 A Yes, I would have.

21 Q Why?

22 A Because I think he deserves mercy. I really do. You
23 know, he never had a chance. Mikal never had a chance.
24 It is really, really sad.

25 MS. NORRIS: One second, Your Honor. I don't have

1 any further questions.

2 CROSS-EXAMINATION

3 BY MR. MABRY:

4 Q Your name is Rose. Tell me your last name again,
5 please.

6 A Gupton; G-U-P-T-O-N.

7 Q Gupton. Okay. Who is Sophie Gee?

8 A My sister.

9 Q Okay. And who is Corliss Artis?

10 A Sister.

11 Q All right. If your sister Sophie Gee and your sister
12 Corliss Artis were talked to by Paige Tarr and
13 Investigator Marjorie Hammock, the social worker and the
14 lawyers on this case, is there any reason Sophie and
15 Corliss would not have told you about the upcoming trial?

16 A I don't believe Sophie or Corliss knew about it
17 because we talk every day.

18 Q But you don't know whether they talked to these
19 investigators for the lawyers before the trial, do you?

20 A Well, I believe they would tell me. No, I don't
21 know, but like she told me because I didn't even know
22 anything about Mika1 until she told me --

23 Q Do you --

24 A -- because at the time I didn't have a computer and
25 she said she heard -- She saw it on the computer.

1 Q Okay. Do you know why Mikal's mother wouldn't have
2 been cooperative in talking to his lawyers and their
3 investigators?

4 A Do I know why?

5 Q Yea. Do you know why?

6 A She -- As far -- I can tell you my opinion. I mean,
7 I don't know why because I -- You know, that's her mind,
8 but --

9 Q You don't know?

10 A She doesn't like -- She doesn't like -- She's
11 antisocial.

12 Q Okay.

13 A She always have been.

14 Q Would you know why she would have told them she had a
15 hair appointment and she didn't have time to talk to them?

16 A Again, I would say because of her antisocial
17 behavior. I mean, it's all we can do to get her to talk
18 to us and we're her sisters.

19 Q But Ms. Gee -- your sister Ms. Gee and your sister
20 Ms. Artis didn't tell you about --

21 A Didn't tell me a thing about it, no.

22 Q Okay. Thank you.

23 THE COURT: Redirect, if any.

24 MS. NORRIS: Nothing, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 Next witness.

2 MS. NORRIS: I would call Sophia Gee.

3 SOPHIA A. GEE, after being duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MS. NORRIS:

7 Q State your full name for the record, please.

8 A Sophia Artis Gee; G-E-E.

9 Q I know I am not supposed to ask this, but how old are
10 you, ma'am?

11 A Forty-five.

12 Q What is your relationship to Mikal?

13 A Mikal is my nephew. Vera Mahdi is my sister.

14 Q And where do you live now?

15 A Richmond, Virginia.

16 Q And what do you do for a living?

17 A I am a registered nurse.

18 Q And is Vera older or younger than you?

19 A She's older.

20 Q How much older?

21 A I believe she's three years older.

22 Q And from your observation did your father treat Vera
23 differently than the rest of them?

24 A Yes.

25 Q Tell me how.

1 A Verbally abusive and he would just say to her that he
2 didn't think he was her father.

3 Q And do you recall how she would react to that?

4 A I think she, basically, like my sister said tried to
5 stay out of his way pretty much.

6 Q And now I believe Ms. Rose listed you and a group of
7 the younger four children that y'all became Moslem, too,
8 is that correct?

9 A Correct.

10 Q And what was different about that than how you had
11 been living?

12 A It was more restrictive as far as like socializing
13 with other people and we went to a different kind of place
14 of worship and we wore different clothes.

15 Q And what was different about the clothes?

16 A Well, we wore the Moslem outfits. The skirts were
17 long and our hair had to be covered at all times.

18 Q And was it Nation of Islam?

19 A Yes.

20 Q And did you go to school at the mosque?

21 A We were -- yea, yea. At the mosque, uh-huh.

22 Q Was the mosque sort of the social center --

23 A Yea.

24 Q -- of everything?

25 A Yea.

1 Q And were you allowed to date?

2 A No. Absolutely not.

3 Q I take it Vera wasn't allowed to date either?

4 A None of us.

5 Q And what was Vera like generally as a child?

6 A She was shy, quiet. She liked being alone.

7 Q Did she have any friends at all that you recall?

8 A I believe I can recall two friends that she had as a
9 teenager.

10 Q As a teenager?

11 A Yea.

12 Q And do you recall when you first met Shareef Mahdi?

13 A Yea. It was at the mosque.

14 Q And what was he like then?

15 A He was charming. He was nice. He was well spoken,
16 well dressed, and handsome.

17 Q Was he clean-cut?

18 A Oh, definitely.

19 Q That was sort of -- Was that part of the Nation of
20 Islam that you were always clean-cut and dressed up?

21 A Yes.

22 Q Do you know whether Vera was his first choice for a
23 wife?

24 A No, she wasn't. He asked for my sister that was
25 older than Vera. I think she was like two years older --

1 Doris.

2 Q And do you recall how old Vera was when they got
3 married?

4 A She was 17.

5 Q And did you stay in touch with Vera after her
6 marriage?

7 A I believe I saw her twice after her marriage until
8 they separated or she left.

9 Q And the two times that you saw her did she have
10 children on the first visit?

11 A Well, once I saw her she had Saleem and then the next
12 time I saw her she had Mikal.

13 Q And did you know there was going to be a Saleem or
14 she just showed up with Saleem?

15 A Yea.

16 Q And her personally did she interact any differently
17 with you and your sisters than she had before the
18 marriage?

19 A What, after she was married?

20 Q Uh-huh. Was she better, worse, same?

21 A She was about the same or -- the same.

22 Q And what was she like with the boys? You said each
23 time you saw her she had one child and then two child --
24 two children. What was she like with them?

25 A She was really protective -- I thought

1 over-protective.

2 Q Tell me why.

3 A She wouldn't let them play. They wanted to play and
4 she wouldn't let them play and she had them dressed in all
5 white and she was saying something about she didn't want
6 them to get their white dirty. I thought she was
7 over-protective.

8 Q And how old was Mikal when that happened?

9 A Mikal was a baby. He must have been, I would say,
10 maybe a year old.

11 Q And after Vera left Shareef, do you know where she
12 stayed?

13 A She went to my sister's house -- Doris -- in
14 Pennsylvania.

15 Q And then after that we heard she went to Ms. Rose.

16 A She went to Rose's --

17 Q Where did she go after that?

18 A She came to my house.

19 Q And did you know beforehand that she was coming?

20 A No. She showed up.

21 Q She just showed up on your doorstep?

22 A Yes.

23 Q And from your knowledge did Vera want to leave her
24 sons with Shareef?

25 A No. No.

1 Q Why did she?

2 A He threatened to kill her.

3 Q And did she tell you why she couldn't stay with
4 Shareef anymore?

5 A She said he was abusive; that he used to beat her and
6 he was controlling.

7 Q Do you know whether Vera tried to maintain contact
8 with the boys?

9 A Yes, she did.

10 Q Did she ever hear back from them?

11 A Shareef wouldn't let her see them or speak to them,
12 but I know that she used to send them toys and clothes.

13 Q Do you know -- have any knowledge at all of whether
14 they got it?

15 A No.

16 Q Did you try to maintain contact with the boys?

17 A I did not. No.

18 Q And when Vera came to live with you what was she
19 like? I mean, was she like a roommate? Was she sisterly?

20 A She was like a roommate mostly. She stayed in her
21 room besides work and I -- She was really quiet.

22 Sometimes I didn't know she was in the house unless her
23 car -- I would look outside and her car was outside.

24 Q And do you recall an incident when Vera just
25 disappeared from your home?

1 A Yes. I woke up one morning and the car was outside
2 -- her car -- but the front door was open. It was just
3 wide open and so I went in her room and she was gone and I
4 didn't know where she was. She was gone mostly all day
5 and she came home later that night and she was covered in
6 bruises from head to toe and she said Shareef beat her up.
7 She was trying to see the children and he beat her up.

8 Q Do you recall when that was?

9 A It must have been I would say about 1993.

10 Q So, Mikal would have been 9 or 10 years old then?

11 A Yes, '92 or '93.

12 Q Did you encourage Vera to call the police?

13 A Yes, I did. She wouldn't.

14 Q Why?

15 A I guess she was afraid of him.

16 Q At some point later were you -- Did you get back in
17 contact with Mikal and Saleem?

18 A Yea, I did.

19 Q How did that happen?

20 A I was in the grocery store and Shareef happened up on
21 me. I was checking out. He asked me if my name was
22 Sophia and I said, Yea, and then I recognized him. He had
23 this little beard and --

24 Q How was he dressed then?

25 A Well, it was in the summertime and he had like a

1 winter coat. He had on a winter coat and I thought he was
2 not stable. He was cursing me, carrying on in the grocery
3 store.

4 Q Was he -- what was he cursing about?

5 A He was cursing about my sister.

6 Q And did you ask about the boys then?

7 A Yea. I did.

8 Q And what did he tell you?

9 A He said that they were not boys; they were men.

10 Q And that store, was that in Richmond?

11 A Uh-huh.

12 Q And did you give him your contact information?

13 A Yea. I gave him my address and my phone number.

14 Q And how long was it before you saw the boys?

15 A Well, he said he was not going to bring them, but
16 then that same night they came to my house.

17 Q Do you recall how old Mikal was then?

18 A I believe he was 16 or 17.

19 Q And how was Mikal with you? I mean, did he know you
20 were his aunt or was he basically just meeting you?

21 A Yea, he was just meeting me. He didn't know me.

22 Q And did you offer to take him to see his mother?

23 A Yea.

24 Q How did he react to that?

25 A Well, I asked him if he wanted to see his mom and --

1 him and Saleem because I saw both of them at the same time
2 the same night and Saleem didn't want to meet her but
3 Mikal did.

4 Q Did Mikal know that she was still living?

5 A No. They thought she was dead.

6 Q And did the reunion between Mikal and Vera go well?

7 A I think at first it did but then after a while I
8 think it went bad.

9 Q And how did -- Did you develop, maintain a
10 relationship with Mikal in that timeframe?

11 A Well, he would come to my house -- and Saleem, too.
12 In the beginning he was with his dad and then I think --
13 Later on I think he went to live with his mama for a
14 while.

15 Q And how did Mikal treat you when he came to your
16 home?

17 A He was nice to me -- loving, respectable, typical
18 teenager.

19 Q Would he hang out and --

20 A Yea.

21 Q -- watch movies and that sort of thing?

22 A TV and dinners and mall -- that sort of thing.
23 Fashion, clothes.

24 Q And would he turn up at times just to eat?

25 A Yea.

1 Q Was it because you were a good cook?

2 A Probably.

3 Q Did Mikal ever talk about the future or about what he
4 wanted to be?

5 A Not that I can recall.

6 Q And going back to Vera, what is your sister like
7 today?

8 A I think she's a introvert. She doesn't like
9 socializing and she likes being alone and she doesn't
10 really attend family functions.

11 (WHEREUPON, Applicant's Exhibit Nos. 13 - 14 were
12 marked for identification only.)

13 Q All right. Ma'am, I am going to show you what's been
14 marked as Applicant's Exhibit 13 and ask if you can tell
15 me who that young lady is?

16 A That is Vera.

17 Q Do you know how old she was?

18 A She looks, I believe, 16.

19 Q About the time she got married?

20 A Yea, right about that time.

21 MS. NORRIS: I'll offer Applicant's 16.

22 THE COURT: Without objection.

23 THE COURT REPORTER: Thirteen.

24 MS. NORRIS: Thirteen.

25 THE COURT: Thirteen.

1 (WHEREUPON, Applicant's Exhibit No. 13 was admitted
2 into evidence.)

3 Q I will show you what's been marked as Applicant's 14
4 and ask you who those ladies are starting from the left?

5 A From the left is myself and my sister Rose, my sister
6 Corliss, Vera, and my oldest sister Frances.

7 Q Do you know when that picture was made?

8 A This was a couple of days after my mom's funeral.

9 Q And what year was that?

10 A 2005.

11 MS. NORRIS: Your Honor, we'll offer Applicant's 14.

12 THE COURT: Without objection.

13 (WHEREUPON, Applicant's Exhibit No. 14 was admitted
14 into evidence.)

15 Q And Vera is the one next to the one on the right,
16 right, Ms. Gee?

17 A Yes.

18 Q Were you interviewed by anyone from Mikal's South
19 Carolina defense team prior to trial?

20 A Yes.

21 Q Did they ask you how to get in touch with your other
22 sisters and family members?

23 A No, they didn't. Well, they interviewed myself and
24 my sister Corliss at the same time. She was at my house.

25 Q And in the same room at the same time?

1 A Yes.

2 Q Did they ask you to call Rose Gupton?

3 A No.

4 Q Ask about any of your other siblings -- how to get in
5 touch with them?

6 A No.

7 Q Did you -- Do you recall how long they were at your
8 house?

9 A Maybe an hour.

10 Q And when I say they, do you remember --

11 A It was.

12 Q -- names?

13 A I don't remember the names, but it was two. It was a
14 social worker and it was, I believe, an attorney maybe.

15 Q Was the social worker black?

16 A Yes.

17 Q And the woman with her, was she white?

18 A Yes.

19 Q Okay. Did she have sort of brown hair sort of my
20 color?

21 A I can't remember at all.

22 Q And did -- Outside of that -- Well, let me ask you
23 this this way. Did you ever talk to men attorneys from
24 South Carolina?

25 A No.

1 Q If you had been asked to testify in Mikal's
2 sentencing would you have testified on his behalf?

3 A Absolutely.

4 Q Do you love your nephew?

5 A Yes, I do.

6 Q Would your testimony have been the same as it has
7 been today?

8 A Yes.

9 Q And if you had had the opportunity to ask the
10 sentencing judge -- Judge Newman -- would you have asked
11 for mercy for Mikal?

12 A I certainly would have.

13 Q Why?

14 A I believe that his parents failed him from the
15 beginning.

16 MS. NORRIS: No further questions, Your Honor.

17 THE COURT: Mr. Mabry?

18 MR. MABRY: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MABRY:

21 Q Ms. Gee, you said -- Is it Gee?

22 A Gee.

23 Q Gee. You said you were interviewed by an
24 African-American lady, a white lady?

25 A Uh-huh. The social worker was black.

1 Q Okay. And that was you and your sister together?

2 A Corliss.

3 Q Corliss. Okay. In fact, one of y'all told
4 Ms. Hammock, the social worker, that Mikal had tried to
5 live with y'all; is that right?

6 A No; not correct.

7 Q Okay. Well, had he ever tried to live with you?

8 A No.

9 Q Had he ever tried to live with Corliss?

10 A No.

11 Q Did you tell Ms. Hammock that Mikal tried to pull one
12 over on you?

13 A No. One as in...

14 Q As in Mikal tried to steal money from you?

15 A No.

16 Q Did your sister ever tell Ms. Hammock --

17 A No.

18 Q -- that he tried to swindle or steal money from her?

19 A No.

20 Q You said that Mikal reunited with his mother -- your
21 sister -- and at first it went okay and then went bad.

22 Tell me what happened. Why did it go bad?

23 A I believe he had slashed her tires.

24 Q Okay. And do you know why he slashed her tires?

25 A I think she said because he wouldn't -- she wouldn't

1 let him use the car.

2 Q She wouldn't let him use the car?

3 A Use her car, Uh-huh.

4 Q And she actually called the police on him; is that
5 right?

6 A I can't answer that. I wasn't there.

7 Q Well, did -- You testified that he slashed her tires
8 and it was because she told you she wouldn't let him use
9 the car.

10 A Uh-huh.

11 Q Did she tell you she called the police?

12 A No, she didn't.

13 Q Okay. Are you aware --

14 A I don't know if she did or not.

15 Q Okay. Are you aware that he was arrested for that?

16 A I read on the internet --

17 Q Okay.

18 A -- that he was.

19 Q Did she have any other problems with Mikal other than
20 slashing her tires?

21 A Not that she discussed with me.

22 Q Did that end the relationship as far as you know?

23 A Pretty much I think.

24 Q He was living with her at the time --

25 A Yes.

1 Q -- he slashed her tires? Now, did you and your
2 sister Corliss live together?

3 A No.

4 Q You lived -- Y'all had separate homes?

5 A We had houses a few houses from each other.

6 Q From each other?

7 A Uh-huh.

8 Q Okay. But there is no question you met with the
9 social worker and the female lady for at least an hour?

10 A Right. I met with her.

11 Q And you told them what you knew?

12 A I answered their questions.

13 Q Okay.

14 A Yes.

15 Q Was there anything stopping you from telling them any
16 other information that you thought might be helpful to
17 Mikal?

18 A No.

19 Q And you knew they were there acting on Mikal's
20 behalf?

21 A Uh-huh.

22 Q And you live where?

23 A In Richmond.

24 Q Virginia?

25 A Yes.

1 MR. MABRY: That's all I have, Your Honor.

2 THE COURT: Ms. Norris.

3 REDIRECT EXAMINATION

4 BY MS. NORRIS:

5 Q Ma'am, did you have any idea what was helpful to
6 Mikal in a capital sentencing trial?

7 A Not really. I mean, no.

8 Q And did you -- did you just answer their questions?

9 A Yes.

10 Q Did they tell you is there anything else significant
11 that you can tell us about Mikal or any of these other
12 people? Did you -- Let me phrase it this way. Did you
13 not cooperate with them?

14 A I cooperated.

15 Q If they had wanted to stay two hours, would you have
16 let them?

17 A Yes.

18 Q If they had wanted to come back again, would you have
19 talked to them?

20 A Absolutely.

21 MS. NORRIS: Nothing further.

22 THE COURT: You may step down. Next witness.

23 MS. NORRIS: Myra Harris Ramsey.

24 MYRA R. HARRIS, after being duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MS. NORRIS:

3 Q Tell us your full name, ma'am.

4 A Myra Ramsey Harris.

5 Q I got it backwards. And where do you live, ma'am?

6 A In Windsor Mill, Maryland.

7 Q In Maryland?

8 A Yes.

9 Q How far is that from Baltimore?

10 A A hop, skip, and a jump.

11 Q And what do you do for a living?

12 A I am a pastor, teacher.

13 Q And do you know this young man Mikal Mahdi?

14 A Very much so.

15 Q And how do you know him?

16 A I was his third grade teacher.

17 Q And, now, prior to being his third grade teacher,
18 tell me what your educational level is.

19 A I have a master's degree in education administration.

20 Q And when did you start teaching?

21 A 1978.

22 Q And what grade levels did you teach between 1978 and
23 1992?

24 A Grades three through five. My specialty was third
25 and fourth.

1 Q And during those years from 1978 to 1992 do you
2 recall total how many students you had taught in that
3 timeframe?

4 A Over 100 because I also did after school and before
5 school and weekends.

6 Q And do you recall -- Do you recall whether there was
7 anything significant that happened to Mikal before he
8 joined your life in terms of what was discussed in the
9 school?

10 A Very much so. That's how I came to know Mikal.
11 There was a significant situation that had occurred and we
12 had to have a team meeting.

13 Q What was the significant situation?

14 A Obviously, he had attempted to commit suicide.

15 Q And, so, let me put it this way. Did he come to you
16 after he was released from the Walter P. Carter Center
17 where he was hospitalized?

18 A I believe it was an institution. I don't recall the
19 name, but it was after that and it was after the school
20 year had begun.

21 Q And when you had this meeting were you chosen as his
22 teacher for a particular reason or was it just flip a
23 coin, you get him?

24 A Oh, no. I was the designated receiver of Mikal
25 because I was the veteran on staff and I had the, in

1 quotes, not conventional classroom setting.

2 Q Okay. Explain that to me.

3 A Well, I used different strategies at that time that
4 would allow some students who may not have made it to
5 engage and become successful.

6 Q And what were the different strategies?

7 A A lot of concrete but I think the most important
8 thing was grasping relationships with them, giving them an
9 opportunity to have a voice.

10 Q And when you say that you were sort of the veteran,
11 were you the teacher that ended up the troubled kids, to
12 put it that way?

13 A If you would like to put it that way, but the
14 children who had not been successful in other classrooms
15 is how I would like to put it.

16 Q All right. I like your way better, too. Did you
17 know anything at all about his home life when he came to
18 you other than he had been hospitalized?

19 A Very little about the home setting. Moreso the focus
20 in the team meeting was what had occurred that led to him
21 being institutionalized and what preventative strategies
22 the school wanted to put in place so that that would not
23 occur.

24 Q And when Mikal first joined your class, what was he
25 like?

1 A Withdrawn and not as friendly towards -- He wasn't a
2 socialite at first.

3 Q And --

4 A Not willing to engage in activities, but that was
5 typical of children who join my group.

6 Q And did that change over time? Did he socialize a
7 little better?

8 A Oh, very much so.

9 Q Did he ultimately mix in with the other kids and make
10 friends?

11 A Yes, he did.

12 Q Did he ever get in trouble while he was in your
13 class?

14 A In the beginning, but that was quickly remedied, but
15 he was moreso in trouble in other people's classrooms than
16 he was in mine.

17 Q And how did you quickly remedy him from getting in
18 trouble in your class?

19 A Well, I did not treat him fragilely. I used
20 consistency. The most important thing I think it was is
21 that I had developed a relationship with him where we
22 would sit and talk. He understood that I was fair and
23 that fairness was very important to Mikal you know and it
24 was the relationship that would -- that helped me to be
25 able to communicate with him.

1 Q When he would get in trouble with other teachers --

2 A They called --

3 Q -- would you be involved?

4 A They called me, not the principal. They would call
5 me.

6 Q And what would you do?

7 A I would sit down and help, one, to calm him down by
8 allowing him to have voice. Oftentimes he felt that he
9 had not been given an opportunity to give voice to the
10 situation and the important thing for him was to be able
11 to have an opinion and allow him to voice it in order for
12 me to lead him back to what a reasonable point would be.

13 Q Did you have these discussions in class or were you
14 meeting him outside of of your classroom time?

15 A Well, he would end up in detention and in detention
16 he would -- The best place would be to bring him back to
17 the safe, nurturing environment of the classroom and we
18 would have a talk.

19 Q So, when he went to detention he came to you to talk?

20 A Well, he was sent to me usually and I would -- or I
21 would find him there. I would be walking by and I would
22 see that he was in detention and I was like, oh. So then
23 I would go in and retrieve him and take him back to my
24 classroom.

25 Q And did he sometimes come to your classroom after

1 school was over to see you?

2 A Oh, yea. Yes. As a matter of fact, it had to be on
3 the run, but my classroom was the hang-out most of the
4 time for students in the evening. So, it was not uncommon
5 for him to show up there even if it was a Hi or Bye, but
6 he he was usually a show-up.

7 Q Were you a sort of just a teacher that lectures to
8 students or were you more motherly to your students?

9 A I think that that would be the methodology upon which
10 I was able to get into the minds and the hearts of most of
11 my students.

12 Q And did you hug Mikal --

13 A Yes, I did.

14 Q -- when you were his teacher? Did he hug you back?

15 A Not at first, no. He was not the easiest one to get
16 a hug from, but because the environment was warm and
17 friendly and he saw others, eventually, yes, we were able
18 to do that.

19 Q How long do you think it took before he would hug you
20 back?

21 A I would say by the spring of the year we were into a
22 relationship where he felt safe and comfortable that that
23 was an okay thing to do.

24 Q So, he came to you about October?

25 A About October, November. So, somewhere around this

1 time of the year would be --

2 Q What was Mikal like in class in terms of his interest
3 academically? Did he have any?

4 A Well, the difficult thing was that he came with an
5 interruption and gaps in skills and because those gaps
6 were there he oftentimes did not want to actively
7 participate. So, sometimes he had to be nurtured into
8 participating and he would require special assistance and
9 sometimes that would be after class or in between -- Even
10 at lunchtime talks sometimes I would have conversation
11 with him about his homework which would be the reason why
12 he had not gone to lunch because he had detention because
13 of homework.

14 Homework was a major issue. We could encourage him
15 to do it in school, but getting it to come from home back
16 into school was an issue. He came with skills that were
17 gaping, but one of the things that I did notice about
18 Mikal was he had a great memory. So, oftentimes you
19 couldn't get him to write it but he could verbalize it and
20 articulate it extremely well. So, therefore, I used that
21 as his strength to get him to move about and become
22 successful in other ways.

23 Q You used the phrase interruptions and gaps. Tell me
24 what that means.

25 A He was a student who did not come with all of the

1 pieces in place, you know, that some of the reading skills
2 were, you know, up and down and writing was definitely a
3 chore and math was definitely a thing that was an aversion
4 to him. He did not like math. So that would become an
5 issue.

6 Q And was his skill level in those areas -- the reading
7 and the writing and the math -- what it should have been
8 at the third grade level?

9 A No. They were weak. They were very, very weak and
10 required specific types of strategies for him to show that
11 he was able to acquire that information and ultimately
12 produce it.

13 Q And was he able to do that?

14 A Oh, yes, when other strategies were put in place for
15 him.

16 Q Did Mikal respond easily to any sort of change at the
17 school or change in your classroom or other classrooms?

18 A Change was difficult for Mikal. I think if I was
19 able to keep him all day we would have have limited
20 occurrences, but moving from class to class sometimes
21 became difficult for him.

22 Q Do you know why that was?

23 A I would believe that not all -- not everyone was
24 interested in developing a relationship to find out what
25 the truth was in regards to his ability. So, it was just,

1 you know, either you did it or you didn't and it really
2 wasn't a question about how to get him to do it.

3 Q Do you recall Mikal's general demeanor when he came
4 to you at the beginning?

5 A Yea. Removed, you know, solemn.

6 Q And how was it at the end of the year with you?

7 A He was smiling. He was your typical young -- getting
8 ready to enter into fourth grade. He had some friends
9 and, you know, he was just like all the rest of the kids.
10 There was nothing different.

11 Q Do you recall what your final observations of Mikal
12 were in his records?

13 A I believe that he received grades that reflected his
14 performance on grade level testing as well as behaviorally
15 because one of the things was reward in my classroom the
16 student who do achieve, and, so, therefore, he responded
17 to that very well. When you gave him compliments he
18 worked to continue to get those compliments, and, so, he
19 was definitely a success -- success story.

20 Q Was he sort of leaps and bounds from what he had been
21 when he came to you?

22 A Very much so. As a matter of fact, he was -- You
23 know, third grade is one where we have standardized
24 testing, and, so, that is one of the areas where we were
25 most concerned about Mikal because of the fact that there

1 were gaps when he first came, but he was comfortable
2 entering into the standardized testing and I didn't see
3 him exhibit any different behaviors from any of the other
4 children.

5 MR. MABRY: No objection.

6 (WHEREUPON, Applicant's Exhibit Nos. 15 - 16 were
7 marked for identification only.)

8 MS. NORRIS: I am going to tell the judge that you
9 left your glasses in the car. So, I am going to ask to
10 admit Applicant's 15. I don't think she can read it for
11 us, but her name is on it.

12 THE COURT: Without objection?

13 MR. MABRY: No objection.

14 THE COURT: Thank you. I can read it.

15 MS. NORRIS: I apologize. We don't have a better
16 copy.

17 THE COURT: That's fine.

18 (WHEREUPON, Applicant's Exhibit No. 15 was admitted
19 into evidence.)

20 Q Do you recall whether you gave Mikal any certificates
21 for achievement or anything like that?

22 A Well, that was standard in my classroom to provide
23 opportunities to have visual rewards. So, I would use
24 that, yes. That would have been possible.

25 Q Would it surprise you to know that you're the only

1 teacher that ever gave him anything like that?

2 A Yea, that would definitely surprise me.

3 MS. NORRIS: Your Honor, I am going to hand up and
4 offer Applicant's 16. It is from the third grade and one
5 of them is signed by Ms. Harris --

6 THE COURT: Thank you.

7 MS. NORRIS: -- so I assume those are her words.

8 (WHEREUPON, Applicant's Exhibit No. 16 was admitted
9 into evidence.)

10 Q One of them was an outstanding achievement in art.
11 What do you recall about his art ability?

12 A Yea. That was -- that was his escape. He loved art
13 and I remember that was one way that he also, you know,
14 when he was concerned about things he would doodle. He
15 would doodle a lot.

16 Q Would he draw anything in particular that you can
17 remember?

18 A Not that I can remember, but I remember the art being
19 his place of comfort.

20 Q Did he just use black and white or did he use colors?

21 A I'm sure that color was introduced in the art room,
22 but doodling usually was paper and pencil.

23 Q He was a doodler, huh?

24 A Yea.

25 Q And one of them was a certificate for academic

1 achievement. Was that something that you gave all of the
2 students or did he stand out?

3 A Well, if that was an end-of-the-year award then that
4 means that there had to be some consistency in terms, but
5 I did give out awards, but if that was an
6 end-of-the-year --

7 THE COURT: It was in June.

8 THE WITNESS: Okay. Then, yes. That meant that
9 there had been some consistency of academic achievement
10 over a period of time.

11 Q When Mikal left your class did he seem to you like
12 the kind of kid that was some day destined for prison or
13 death row?

14 A No.

15 Q If you had been asked if you would foster Mikal in
16 your home as a foster parent, would you have done that for
17 him?

18 A Yes. I believe I would.

19 Q Were you aware of Mikal's arrest and subsequent
20 sentence to death back in 2004, 2006?

21 A No, ma'am.

22 Q When did you learn that had been sentenced to death?

23 A About a month ago when I was contacted.

24 Q So, I take it you never talked to any lawyers before
25 a month ago?

1 A No.

2 Q If you had been asked back in 2006 if you would
3 testify on his behalf, would you have testified?

4 A Of course, yes.

5 Q And would your testimony have been any different than
6 it is today?

7 A Not at all.

8 Q If you had been able to ask the sentencing judge in
9 2006 would you have asked for mercy from Mikal?

10 A Yes.

11 Q Why?

12 A Well, I believe that hearing about the background of
13 experiences that the success rate without the guidance was
14 not there.

15 MS. NORRIS: Nothing further, Your Honor. Thank you,
16 ma'am.

17 THE COURT: Mr. Mabry?

18 CROSS-EXAMINATION

19 BY MR. MABRY:

20 Q Tell me your name again, please, ma'am.

21 A Myra Ramsey Harris.

22 Q Okay. Ms. Harris, I am Anthony Mabry. I am an
23 assistant attorney general. I just wanted to clear up
24 some things with you. You said you got involved with
25 Mikal after he attempted suicide. I want to make sure

1 that I'm talking about the same thing. Are you talking
2 about the incident at the home of Carson and Lawanda where
3 he asked for the officer's gun?

4 A I'm talking about the situation that he was being
5 released from an institution.

6 Q Walter Carter Center?

7 A I don't know what the name. I don't recall.

8 Q And he --

9 A But he was being released because of an attempted
10 suicide.

11 Q All right. So, you don't know exactly what the facts
12 were to the attempted suicide?

13 A That was not -- that was not my --

14 Q Okay. You just know that he had been committed to
15 the the Walter Carter Center for 60 days or two months?

16 A I can't recall the timeframe, but when the team
17 meeting -- That was the significance was that there had
18 been an attempted suicide. He had been in -- He had been
19 institutionalized for this reason and they wanted to make
20 sure that he had proper placement.

21 Q All right. But you don't know what the act -- what
22 the acts were behind that commitment?

23 A Well, I heard.

24 Q You what he did. You heard it here today.

25 A I heard it here today. Prior to that --

1 Q We're talking about that same incident. That's what
2 I'm asking you. He asked for the officer's gun after he
3 reported child abuse on his Aunt Lawanda. That's what
4 we're talking about; right? The same incident?

5 A Well, I believe that that must be it --

6 Q Okay.

7 A -- now that I've heard it here.

8 Q Okay. That's all I am trying to clarify. Now, I
9 heard you say that when he got out of Walter Carter Center
10 there was -- he had some trouble in your room that you had
11 to deal with and correct. What kind of problems were you
12 having with him in your room that you had to deal with?

13 A Well, one, that he had to respect authority and
14 understand that there were rules and limits in the
15 classroom and probably talking or -- but nothing that I
16 would say was out of the ordinary for that setting.

17 Q Okay.

18 A But he had to -- Just as any other child coming in
19 late into the school year, he was entering in after the
20 classroom had been established, sir.

21 Q Okay.

22 A So, students who are coming in often exhibit not the
23 same behavior. So, he had to learn what was expected of
24 him and homework was an issue.

25 Q Okay. And you were able to explain it to him in your

1 special way and you were able to deal with it at least in
2 your classroom?

3 A In my classroom, yes.

4 Q But he continued to have problems in other
5 classrooms?

6 A Yes.

7 Q What were the problems he was having in the other
8 classrooms?

9 A Well, there would be times when he would have
10 outbursts and they were not quite sure exactly what to do.

11 Q Uh-huh.

12 A And I have seen those things occur in the hallway or
13 whatever, but --

14 Q He had been aggressive with other students?

15 A I didn't say aggressive. I said he had had
16 outbursts.

17 Q Outbursts in in hallway?

18 A Yea.

19 Q Like what?

20 A Making loud verbal gestures.

21 Q At who?

22 A Friends and, you know, sometimes the anger would get
23 to a level where, you know, he would have to go into a
24 time out, but that's not atypical in school for children
25 who were misbehaving, but -- and he did have those issues

1 with, you know, when he was accused of something not
2 wanting to receive that right away and he would need to
3 have correction.

4 Q Okay. What else was he doing in the other classrooms
5 that he was having to be put in detention?

6 A Sometimes shutting down, not doing anything.

7 Q Refusing to do work?

8 A Yea, just -- sometimes just not doing anything and
9 being I would say defiant in that regard.

10 Q All right. Anything else that he was doing that you
11 recall he was being placed in detention or sent to your
12 classroom?

13 A Those would be the typical behaviors that would do
14 that.

15 Q And how often ---

16 A There was one time about him running out of the
17 classroom and having to be retrieved.

18 Q Leaving classroom?

19 A Leaving the classroom, leaving the building, and
20 having to be retrieved.

21 Q Okay. Now, there came a point in time where he found
22 out his brother was living back with his father in
23 Lawrenceville, Virginia and you heard Mr. Carson Burwell
24 describe that his behavior got worse at school. Do you
25 remember that?

1 A I don't recall there being a time that there was a
2 significant difference in his behavior than what it had
3 been. He always had to be monitored in other areas. So,
4 maybe those teachers would have been the ones that could
5 have responded in that way, but I never saw it to be any
6 more different than what it was. He would go out and have
7 to sometimes have to be corrected. It was the same thing
8 again, and remember my classroom was the one that had
9 multiple children that were doing those things. So, his
10 would not be anymore unreasonable than the others.

11 Q This was a classroom for children with discipline
12 problems?

13 A Somewhat, yes. They had -- and I don't want to label
14 it as a class that children had discipline problems
15 because certainly that's why they were probably called
16 that, but I would say that they needed a different
17 approach so that they wouldn't have discipline.

18 Q And do you remember Mikal being or leaving your
19 school to go back to live with his father?

20 A I would venture to say that something occurred
21 because he, obviously, didn't return back the following
22 year, but to what reason that was -- I now realize what it
23 is having heard that here, but...

24 Q Okay. Were you aware that Mikal's IQ was tested when
25 he was in elementary school and it was I believe 118 or

1 119?

2 A I am not surprised with that.

3 Q You're not surprised with that. You think -- You
4 found him to be intelligent?

5 A Very much so.

6 MR. MABRY: That's all I have.

7 THE COURT: Anything else?

8 REDIRECT EXAMINATION

9 BY MS. NORRIS:

10 Q Ma'am, did you teach Mikal in fourth grade?

11 A In -- I'm trying to take a look at this. I believe
12 that I was his third grade teacher, and, so, no.

13 Q So what happened in the fourth grade ---

14 A With the fourth grade teacher --

15 Q --- you weren't involved?

16 A No.

17 THE COURT: Thank you, ma'am. You may step down.

18 All right. We're going to take a few minutes to eat
19 whatever is brought in. Those of you who did not get
20 lunch, you're welcome to leave the premises. When we come
21 back you can join us. Just tap on the door. We'll let
22 you in. We'll stand at ease until you've had a chance to
23 gobble up your lunch. Thank you.

24 (Whereupon, a lunch break was taken.)

25 MS. NORRIS: The applicant calls Carol Wilson.

1 CAROL E. WILSON, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. NORRIS:

5 Q State your full name for the record, please.

6 A Carol Elizabeth Wilson.

7 Q Where do you live, ma'am?

8 A I live in Brodnax, Virginia.

9 Q Is that in Brunswick county?

10 A Yes, it is.

11 Q And what do you do for a living?

12 A Well, right now I'm retired school teacher.

13 Q And how do you know Mikal Mahdi?

14 A Mikal was in my class in the fifth grade.

15 Q And what is your educational background?

16 A Well, I have a bachelor's degree in health education
17 and I have a master's in special education.

18 Q And when did you start teaching?

19 A In 1983.

20 Q And where did you start out at?

21 A I started in New York City in special education --
22 severely emotionally disturbed children and then we
23 relocated to Virginia in 1985 and I subbed for a while
24 while at Totaro and then I started teaching full time at
25 Totaro from 1992.

1 Q And I take it you are teaching special education at
2 Totaro?

3 A Yes. That's all I did teach was special education
4 and, also, was chair of the child study team and that's
5 the first time that I came to any knowledge of Mikal
6 Mahdi.

7 Q Well, tell me about that. How did you get involved
8 with Mikal?

9 A Well, what happens in special education services the
10 children are referred through child study, and, so, being
11 the chair I would get the name of the individual -- the
12 child -- and then we would get together and we would
13 conduct different evaluations. He had a psychological
14 evaluation, the educational diagnostician and the guidance
15 counselor and myself doing classroom observations, and
16 then we would get together as a team to determine
17 eligibility.

18 Q And who -- who would -- who would refer a student to
19 your team for assessment?

20 A Well, anyone could. It could be a teacher. It could
21 be a concerned parent. It could be a child that's
22 entering the school system and may need special education
23 services or a student that was already receiving special
24 education services.

25 Q Do you recall how Mikal came to the attention of your

1 team?

2 A I believe it was the application that was completed
3 for observation for evaluation for special services.

4 Q And going back a little bit you said you started
5 teaching in 1984?

6 A Yes.

7 Q From that time up until 1994 -- 10 years -- how many
8 students would you say total that you had taught?

9 A Maybe 100 because in my -- In special education you
10 have the same student, you know, from year to year and so
11 I would say about 100 students from that time.

12 Q And special education at Totaro -- That's Brunswick
13 County; right?

14 A Yes.

15 Q Special education there -- Did that label apply to
16 mentally retarded kids, Down's Syndrome?

17 A Mental retardation, emotionally disturbed, learning
18 disabilities, severe and profound handicapped. We had all
19 of the exceptionalities at Totaro.

20 Q So, basically, every special needs kid regardless of
21 whether it was emotional or more mentally challenged went
22 to the same class?

23 A Well, I just taught the learning disabled and the
24 emotionally disturbed.

25 Q Okay. And there was a separate class for --

1 A Yes.

2 Q -- other --

3 A For the severe and profound -- the mentally disabled.

4 Q And now when -- Going back to the assessment team,
5 when you became aware of Mikal what was your initial
6 involvement in assessing him to determine whether he
7 needed to be in special education?

8 A Well, what I did was the classroom observation and
9 then all of the other team members were doing their
10 evaluations and then we bring that together as a team to
11 determine if he was eligible for services.

12 Q And do you recall what happened while you were
13 observing him?

14 A I did not observe anything that stood out in my mind.

15 Q When you did an assessment team meeting when you all
16 got back together would you give your part of the report
17 there where you observed him?

18 A Yes. Everyone had to read their report and what
19 their findings were and that -- I will never forget that
20 meeting.

21 Q Why won't you ever forget that meeting?

22 A Because as we went around the table there was also
23 Dr. Bobby Browder. He was the director of pupil personnel
24 and then our principal Mrs. Dora Wynn, our guidance
25 counselor Beverly Hawkins, and Mr. Mahdi was there at the

1 meeting along with myself.

2 Q Mr. Shareef Mahdi?

3 A Yes. And I don't know if I mentioned our
4 psychologist A. J. Vecker and Mr. Mahdi became very angry.

5 THE COURT: This is the dad?

6 THE WITNESS: Yes, the father. Mikal's father was at
7 the meeting.

8 Q And do you know why he was angry?

9 A When Mr. Beckham read his psychological findings he
10 became very angry and Mr. Browder and Mrs. Wynn tried to
11 calm him down because the meeting wasn't even half over
12 and he got up and he cursed us and he left because
13 Mr. Vecker is caucasian and he said that he didn't want
14 any white man writing any negative reports about his son.

15 Q The psychologist was a white man?

16 A Yes.

17 Q How about everybody else in the room?

18 A Dr. Browder which he was very angry at him was also
19 caucasian and then myself, the guidance counselor, we're
20 black.

21 Q Is it fair to say the majority of the folks in the
22 room were black?

23 A Yes.

24 Q Or non-caucasian?

25 A Yes.

1 (WHEREUPON, Applicant's Exhibit No. 17 was marked for
2 identification only.)

3 Q Let me show you what's been marked as Applicant's 17.
4 Is that the report that would come from your assessment
5 meeting?

6 A Yes. Yes.

7 Q And you had mentioned -- Well, maybe you did, maybe
8 you didn't. I don't recall. Do you recall whether
9 medical -- a physical examination was part of an
10 assessment?

11 A I believe it was. I believe our school nurse was
12 present. I just cannot remember, but I believe usually
13 they are present. The signature of everyone that attended
14 is on this -- on this list.

15 Q And on the back two pages is that your report or your
16 observation?

17 A Yes, this is mine.

18 Q And on that what is an ITBS? What does that mean?

19 A A test of basic standings. I believe that's what it
20 was. I am retired now. But it was just a test of basic
21 skills and all students were given that test.

22 Q And is this your handwriting where it says, "Mikal
23 was observed during testing for the ITBS. He was gazing
24 around the classroom."

25 A Yes.

1 Q "He would look at his test booklet and flip through
2 the pages. Then he would pick up his pencil and mark a
3 few answers."

4 A Yes.

5 Q "This was his pattern throughout this observer's
6 presence."

7 A Yes.

8 Q And what is the Burch Rating Scale?

9 A It was a test about behavior. It focused on that to
10 see if someone was like ADHD.

11 Q And what did you write about the Burks Rating Scale
12 and his marks?

13 A He scored -- and I put it in quotes -- very
14 significant and excessive self-blame, poor impulse
15 control, and excessive resistance. He has also exhibited
16 periods of extreme sadness at times.

17 Q And that's in the portion on the form where it says
18 incident and then the bottom it says interpretation. Is
19 that --

20 A What I got --

21 Q -- sort of a conclusion ---

22 A Yes.

23 Q -- your findings?

24 A Yes, that he was -- appeared to be unable to cope
25 with these feelings of self esteem and this makes him

1 unable to function and effectively learn in school.

2 Q And, so, this would have been the report that you
3 reported back to all the other folks at that meeting?

4 A Yes. This is just one of the reports, but when I
5 wrote his IEP I took all of the team's evaluations to
6 write up his special education program.

7 Q Are you saying that you wrote this up?

8 A No. I said that when I wrote his IEP I had
9 Mr. Vecker's report, my report, the diagnostician's
10 report, and so on. That would make an IEP and you then
11 develop a plan for him.

12 Q Tell me what an IEP is?

13 A Individual Educational Program and that's
14 individualized for the student.

15 Q And on the medical aspect on the first page of the
16 eligibility minutes --

17 A All right.

18 Q -- do you recall whether Mikal was a skinny kid? Was
19 he ---

20 A He was.

21 Q Describe him for me.

22 A He was plump.

23 Q So, it doesn't surprise you that they listed him as
24 overweight?

25 A No.

1 Q And anemic. That seemed to be the things on the
2 medical aside from glasses and checking his eyes and those
3 kind of things to find they're normal?

4 A Yes.

5 Q Do you recall or looking at the psychological
6 paragraph there, I guess --

7 A Yes.

8 Q -- that's the point you were talking about where
9 Mr. Mahdi wasn't happy?

10 A Yes, because what happened is Mr. Vecker's report
11 might have been three or four pages. This is just a
12 summary of all of the evaluations.

13 Q And Mr. Vecker's finding was that Mikal had a full
14 scale IQ of 118?

15 A Yes.

16 Q As a school teacher I imagine you can tell us whether
17 that's low, average, or high?

18 A I feel that it was a good, you know, a good IQ.

19 Q He's an intelligent kid?

20 A Yes, yes. He definitely was.

21 Q And then the psychological testing also showed
22 psychological blocking and characteristics of children who
23 present academic problems particularly in language arts?

24 A Yes.

25 Q Projectives. Do you know what projectives is?

1 A As to what you could see in the future and, you know,
2 just to say -- Mr. Vecker is just excellent at projecting
3 behavior in children.

4 Q And his findings projectives reveal depressive and
5 victimization themes, feelings of helplessness,
6 withdrawal, denial, and lack of self esteem?

7 A Yes.

8 Q And now on the socio-cultural part, before being part
9 of this meeting did you know anything at all about Mikal
10 Mahdi?

11 A No.

12 Q And as part of this meeting I guess you did get some
13 information about him?

14 A I only received that information -- what information
15 we could get at the actual eligibility meeting itself
16 because someone else -- either the guidance counselor or
17 we have a home-bound instructor that would do the
18 socio-cultural report.

19 Q Do you recall that at the time you had that meeting
20 and it's listed in here that Mr. Mahdi is currently is
21 employed as a substitute teacher with Brunswick County
22 Public Schools?

23 A Yes, I was not aware of that.

24 Q And then there's some information about his
25 background and then on the educational assessment --

1 A Yes.

2 Q -- if you look on over it reflects that he had been
3 to Sister Clara Muhammad School in Richmond, Virginia for
4 kindergarten, first grade at Totaro, transferred back to
5 Richmond City Public Schools for second grade, transferred
6 to Baltimore City Public Schools for grade three with
7 transfer back to Totaro in September of 1993 and this
8 report, of course, is April of '94. In your experience as
9 a teacher had you seen a child in the fourth grade before
10 that that had moved homes and schools so many times?

11 A No, I haven't, not specifically in the fourth grade,
12 but I have seen -- I have seen and experienced it and, you
13 know, the stability is very low when they're constantly --
14 He is at elementary age and so building basic blocks of
15 learning, that would be difficult when he's being
16 transferred back and forth for any child.

17 Q And would it also be difficult for a caring teacher
18 to sort of stay on top of the problem, so to speak, if
19 they're only in your school for a little while?

20 A Yes.

21 Q And now moving on down to the educational report,
22 that is you, Ms. Carol Wilson?

23 A Yes.

24 Q You gave your observations and then the summary
25 statement.

1 A Okay.

2 Q We move on down. You listed in there -- skipping a
3 little bit -- "Psychological data revealed that Mikal's
4 intellectual functioning falls in the high average range?"

5 A Yes.

6 Q So everybody knew he was a smart kid?

7 A Yes.

8 Q And then again the projectives reveal difficulty with
9 feelings of helplessness, withdrawal, and lack of self
10 esteem?

11 A Yes.

12 Q How does -- Do you recall how the lack of self esteem
13 would manifest in Mikal? How did you know he didn't have
14 self esteem?

15 A Well, again, when we do the evaluations and
16 especially that psychological and the educational
17 diagnostic report and the guidance counselor meeting there
18 are projectives. There are scales and that's federal.
19 There are federal standards. So, that's what we had to go
20 by because this is a, you know, a legal document. So, we
21 could see what -- again, what they were saying was that
22 Mikal needed counseling and he was eligible for special
23 education services.

24 Q So, out of this you did certify or found that he was
25 eligible for the emotionally disabled program?

1 A As a team. It has to be -- because Mr. Browder --

2 Q I understand.

3 A Oh, I'm sorry.

4 Q I wasn't saying just you. You collectively?

5 A Yes.

6 Q But everybody was unanimous. All the checkmarks are
7 in the agreed?

8 A Yes. Yes.

9 Q But he was found eligible for the emotionally
10 disabled program with recommended assistance in the area
11 of reading?

12 A Yes.

13 Q And then there was also a recommendation that he
14 continued counseling at the Brunswick County Mental
15 Health. Do you know -- have any idea what he was in
16 counseling for at the Brunswick County Mental Health?

17 A I wasn't -- I wasn't knowledgeable as to exactly what
18 was going on because, see, at the meeting itself Mr. Mahdi
19 refused any counseling because Mr. Vecker, our school
20 psychologist, was going to offer counseling services.

21 Q Mr. Mahdi as in Shareef Mahdi, Mikal's father --

22 A Mikal's father.

23 Q -- refused counseling.

24 A So, when he left we just had to complete the meeting
25 because if you notice this is Mr. Browder's handwriting.

1 It says other parties present. So where you see agree and
2 disagree, Mr. Mahdi did not sign off as to agreeing or
3 disagreeing. He just left, but we had to document
4 everyone who was in attendance and, so, that's why
5 Mr. Browder wrote Shareef Mahdi father under other parties
6 present. So, he had no input in the decision and because
7 he didn't give us permission to let Mr. Vecker provide the
8 counseling, then I guess that's why he went to Brunswick
9 Mental Health because he said he did not want a white man
10 messing up his kid's mind and, so, unless we had
11 permission we couldn't offer those services.

12 Q Sure. But is it fair to say -- Well, is it fair to
13 say based on a recommendation and the unanimous agreement
14 that everybody else in that room believed there should be
15 counseling?

16 A Yes.

17 Q Other than Mr. Mahdi?

18 A Yes.

19 MS. NORRIS: Just to make sure if I didn't move it in
20 before I'll offer Applicant's 17.

21 THE COURT: Any objection?

22 MR. MABRY: No, sir, Your Honor.

23 THE COURT: Thank you.

24 (WHEREUPON, Applicant's Exhibit No. 17 was admitted
25 into evidence.)

1 Q You said before that you were the person that
2 developed the IEP, the individual plan for Mikal Mahdi?

3 A Yes.

4 Q Do you recall what that plan was?

5 A It was, what, 17 years ago? I believe that I pulled
6 him from his homeroom because he was not self-contained.
7 That meant being with me all day. So, I would pull him
8 for language arts and I don't know -- I might have pulled
9 him for social studies. I am not sure.

10 Q And, so, after he went into the program you not only
11 were the chairperson for the assessment team you were his
12 teacher after that time?

13 A Yes and I -- If I recall correctly Mr. Mahdi, Mikal's
14 dad, signed off on the IEP because, see, that has to
15 happen, too. The father doesn't sign or a parent we can't
16 even put the child in special ed. So, I believe his
17 signature is on the IEP.

18 Q And do you recall how he came around to working at
19 least with you on that?

20 A Well, the funniest thing is that he said he was going
21 to sort of -- I would like you because you're not dark
22 skinned. So, I mean...

23 Q What did you take that to mean?

24 A I don't think that he cared for dark-skinned people.

25 Q So, he didn't like white people and he didn't like

1 dark-skinned black folks. Who did he like?

2 A I don't know.

3 Q All right. When Mikal joined your class do you have
4 any specific memory of what he was like early on?

5 A Yes. I will never forget him. He did like to draw
6 and he was able to do well, but it came a point of time
7 that I had to sit him next to me in order for him to get
8 his work done. He was never disrespectful. The thing
9 that I noticed about Mikal was that he was depressed and
10 he was very sad. That's what I noticed about him and I --
11 Just to keep him on task I had his chair and desk next to
12 me.

13 Q How many students did you have in the class?

14 A At that time it might have been about eight or nine
15 that were either learning disabled or emotionally
16 disturbed.

17 Q And is the curriculum for a learning disabled child
18 and emotionally disturbed child the same or did you have
19 to do different things with each student?

20 A Yes, because I would have each child on their grade
21 level, and, so, therefore, Mikal didn't -- He was in the
22 fifth grade. So, he had fifth grade work. I wasn't
23 remediating skills for Mikal because he had the ability to
24 go ahead and do well, even to excel if it could be
25 possible.

1 Q And you mentioned Mikal like to draw. Do you recall
2 what he drew?

3 A Like I said, at that time he was depressed and he
4 would use ink and draw pictures of people hanging, the
5 nooses and things like that. It is sort of difficult to
6 get Mikal to use color.

7 Q Did that -- Was Mikal in your room the entire year
8 for the fifth grade or at least coming to you for the
9 language arts and the social studies? Did you have him
10 the whole year?

11 A I did not have him the complete year. I don't recall
12 having him a complete year because the issue that you
13 brought up about Mr. Mahdi substituting, he was
14 substituting at our school, too, and there were some
15 issues and my principal Ms.~Wynn came and said to me that
16 Mr. Mahdi wasn't allowed to substitute anymore and he was
17 not allowed to come to the school anymore. I believe she
18 said she sent him a registered or certified letter. So,
19 after that Ms.~Wynn came and said to me that he took Mikal
20 out of school.

21 Q And, now, do you recall -- If it wasn't a whole year
22 do you recall if it was six months, two months, four
23 months? Any idea?

24 A I can't recall.

25 Q But it was more than a few days?

1 A Oh, yes, definitely.

2 Q More than a few weeks?

3 A Yes. Yes.

4 Q And during from the beginning to the end when he left
5 school and left your class did you see any change in
6 Mikal's demeanor?

7 A I just felt that it was very hard for me to approach
8 him. I felt that he did not trust. I wanted to help him
9 as much as I could. See, what made it difficult a little
10 bit, too, is that Mr. Mahdi -- Mikal's father -- would
11 request to come in and observe my classroom.

12 Q And what would happen then?

13 A Then I think that Mikal was sort of tight. I don't
14 know if he was nervous, but that didn't last too long
15 because Ms.~Wynn did put a stop to it, but I felt he was
16 flat. I felt that Mikal -- You couldn't get any real like
17 joy out of him, any interest, any motivation. He was just
18 like always to his self and quiet, little interaction with
19 the other students. He was not a behavior problem. I
20 just had him next to me to keep him on task, but he was
21 never disrespectful or anything like that.

22 Q So, even though he had come to you having problems in
23 classes, with you he wasn't a behavior problem?

24 A No. I think it was the depression that just kept him
25 very low key.

1 Q And in your experience I assume that you've had other
2 students who were depressed?

3 A When I first started teaching in special ed I was in
4 the Bronx, New York. I taught fifth and sixth grade.
5 They were in padded cells. They were in lock-up.

6 Q Is it unusual for depressed kids, particularly boys,
7 to act out with aggression?

8 A It certainly is. It certainly is.

9 Q It's unusual?

10 A They can. I think it all depends on the individual.

11 Q How is it that you are able to recall Mikal so
12 clearly after all of these years of students? Did he
13 stand out in some way to you?

14 A From the time that I started teaching in '84 -- and I
15 even taught at a prison up through '06 -- I will never
16 forget Mikal. He just -- I felt that we could have helped
17 him because really and truly Mr. Vecker really wanted to
18 help Mikal and I just feel so lost about the fact that it
19 wasn't able to materialize because after Mikal was just --
20 I felt he was sort of yanked out of my class by his dad
21 and I would see his dad and his dad would say, Look, I am
22 homeschooling him, you know. You can come over and see
23 Mikal. But I never saw Mikal after that and it's just --
24 I do wish I could have done more.

25 Q And you mentioned that it was when Mr. Shareef Mahdi

1 was asked to leave the school --

2 A I felt --

3 Q -- that Mikal was taken out. Do you recall what the
4 incident was that caused the termination, if you will, of
5 Mr. Shareef Mahdi?

6 A Because he was substituting in Mikal's homeroom class
7 and Ms.~Wynn, my principal, knocked on my door and she
8 said, Do you know what Mr. Mahdi did in the fifth grade
9 class? He told the girls to get fitted for birth control,
10 use condoms, don't have illegitimate children and get on
11 welfare. So, parents -- You know, he had to go.

12 Q And was there a truancy officer or somebody
13 responsible in Brunswick County to follow up on kids to
14 make sure they were being homeschooled?

15 A Yes. Mr. Browder, again, who was the director of
16 pupil personnel, he did enforce that. He would take
17 parents to court if the children -- if, you know, students
18 were out of school -- not just special ed, but, you know,
19 for the whole county. So, yes, we were very concerned
20 because students if they were absent a certain amount of
21 days they could be retained.

22 Q Do you have any idea why nobody followed up with
23 Shareef and Mikal?

24 A I think he just got lost in the cracks.

25 Q And when Mikal was arrested for these crimes in July

1 of 2004, were you aware that he had been arrested?

2 A I saw it on the Virginia news station and in the
3 Brunswick Times newspaper.

4 Q Did you recognize him then as your student?

5 A (Witness nods head.)

6 Q Did it surprise you that he had been charged with
7 murder?

8 A Was I surprised? I just never forgot him, like I
9 said, and with everything the way that it was going and
10 with his father, I couldn't expect anything else.

11 Q And did anyone from Mikal's South Carolina defense
12 team ever come talk to you prior to him being sentenced in
13 December of 2006?

14 A I waited. I kept saying to myself they're coming to
15 Brunswick. Somebody is coming. Somebody has got to hear
16 it. Somebody has got to hear this, but nobody came.
17 Sheila Rankin -- she called me last year.

18 Q Sheila Cronin?

19 A Cronin, yes.

20 Q My initial investigator?

21 A (Witness nods head.)

22 Q Is that --

23 A That's it.

24 Q That's the first person that you talked to?

25 A I said, Where have you been? Because, you know, he

1 took a life. He took an innocent life -- a person that
2 didn't deserve to die. That -- I'm half and half, but
3 nobody has ever heard until now. He's 27.

4 Q If you had been asked to testify in that sentencing
5 hearing would you have done so?

6 A Yes, I would've.

7 Q And if you had had the opportunity to ask the judge
8 for mercy for him would you have done that?

9 A Yes, but I know, you know, it's up to the judge to
10 make a final decision.

11 Q What is it -- just summation about a kid you taught
12 in the fourth grade and haven't seen since, why would you
13 stand up and ask for mercy for him?

14 A Because from the Bronx, New York down here in
15 Virginia, I taught at Montgomery County, I taught in Giles
16 County, Virginia, I taught in prison, murderers, rapists,
17 drive-by's, but nobody -- I have never met anybody that
18 had no chance in life from a child who was helpless. Even
19 though he took a life I have to keep that in mind, but I
20 just think things -- I wish things could have been
21 different.

22 Q Thank you, ma'am. I don't have any further
23 questions. Mr. Mabry may. There's some -- There are some
24 paper towels there beside you.

25 THE COURT: Do you want some water, ma'am?

1 THE WITNESS: No, I'm fine. Thank you.

2 THE COURT: Do you need to a break? You okay?

3 THE WITNESS: I'm fine. Thank you.

4 THE COURT: Mr. Mabry?

5 MR. MABRY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MABRY:

8 Q Ms.~Wilson, I noted in this report this was in the
9 fourth grade; is that right?

10 A Fifth grade.

11 Q Fifth grade. Okay. I heard -- I got confused. I
12 thought you said fourth grade one time and then I thought
13 you said fifth grade one time.

14 A No.

15 Q It was --

16 A I had him in the fifth grade.

17 THE COURT: Well, now, number 17 does say grade four.
18 That's why I think that we're all confused a little bit.

19 THE WITNESS: And you see this paper I did not type.
20 I don't -- Mr. Browder is the one that typed this paper
21 up, but I had him in the --

22 (Whereupon, there was a noise in the room.).

23 THE COURT: Hold on one second.

24 THE POLICE OFFICER: The video conferencing unit
25 reset.

1 THE COURT: No problem. I thought they were
2 commenting on Mr. Mabry's question.

3 MS. NORRIS: It sounds like it's going to take off.

4 THE COURT: Well, I've had a lot of interruptions but
5 not a video camera. Thank you.

6 I think he is trying to figure out the fourth and the
7 fifth -- why it says fourth on there and you taught in the
8 fifth; is that correct?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 THE WITNESS: I was just looking at the date that we
12 had the meeting which was April. So, if it was April we
13 have 60 days according to federal standards to prepare an
14 IEP. It doesn't get done right away. So, then he came to
15 me in the fifth grade.

16 THE COURT: That probably was at the end of the
17 fourth?

18 THE WITNESS: Yes. That would have been the fourth.

19 Q So, at the end of the fourth grade?

20 A The eligibility meeting was held on 4/6, I believe,
21 '94.

22 Q Okay.

23 A By federal standards we have 60 days. That's two
24 months to prepare an IEP. So he wouldn't have come to me
25 until the fifth grade. We very rarely would take in a

1 child at the end of the school year.

2 Q So, this would have been -- You've been sitting in
3 here listening to the testimony today and you heard
4 Mr. Carson Burwell and Mikal was returned to his father
5 and his father couldn't provide for him and couldn't --
6 They didn't have anything to eat, very little food. Tell
7 me how Mikal was overweight according to this record and
8 you said he was chubby?

9 A Right. He was. And I did not have any knowledge
10 about what was going on with the family unit. I didn't
11 know what was going on with his family unit. I did not
12 know that he was institutionalized at 8.

13 Q Okay. But when you saw him at the end of the fourth
14 grade, the beginning of the fifth, he was a chubby?

15 A He was a little chubby, plump in the face.

16 Q In fact, the record says he was overweight, does it
17 not?

18 THE COURT: Where are you referring to so she can
19 look at it?

20 MR. MABRY: It is in Exhibit 17. I can't remember
21 exactly where it is, but it's in there. It was described
22 by Ms. Norris, in fact.

23 MS. NORRIS: Your Honor, it's in the medical section.
24 The second paragraph starts with medical.

25 THE COURT: Right here. He was overweight.

1 THE WITNESS: I say -- I still stand by the fact
2 that, you know, I felt he was, you know, chubby.

3 Q You say he is chubby and you agree that the doctor
4 said he is overweight. I am just trying to understand how
5 he could not be getting food and there is nothing at home?
6 I guess you disagree with that?

7 A I don't have any knowledge of that.

8 MS. NORRIS: Your Honor, I don't believe this -- I
9 object to that.

10 THE COURT: I am going to sustain that. I have heard
11 the testimony. I just have to listen to all of it.

12 MR. MABRY: Okay. Yes, sir. I'll move on.

13 Now, Mikal's IQ was tested and it came out to be 119;
14 is that correct?

15 A I believe that's what the paper said. I believe
16 Janet Roberts administered his IQ --

17 Q That's pretty good --

18 A -- test.

19 Q That's a pretty good result, isn't it?

20 A I think it was a very good result.

21 Q Above average?

22 A I think so. Again, I didn't administer that test.

23 Q And as I understand the records -- and you tell me if
24 I am wrong -- the reason he was referred to you was Mikal
25 was acting out in class or being aggressive towards other

1 students or walking away from class and they were trying
2 to determine what was causing the problem and one of the
3 things they thought might be causing the problem was he
4 had a difficulty in reading. Is that --

5 A That's possibly -- As chair of a child's study I
6 don't get all of the information. I just get a form --

7 Q Right.

8 A -- that says we need to do a child's study on this
9 specific student.

10 Q Uh-huh.

11 A So, that's the guidance counselor's job.

12 Q Okay.

13 A I give the papers to her and she goes ahead and she
14 gives him some testing and we then meet as a team to see
15 if he qualifies for further evaluation.

16 Q Right.

17 A That's how it works for special education.

18 Q Right. But what I am understanding is from my
19 reading of the records and you tell me if I am wrong
20 because you were the one involved one of the things that
21 was being looked at is that his difficulty in reading was
22 causing him to become frustrated and when he became
23 frustrated he became angry and when he became angry he
24 acted out.

25 A That's a possibility. He wasn't in my classroom. I

1 didn't even know him at that time.

2 Q Okay.

3 A See, I just get paperwork.

4 Q Right.

5 A That's what I am trying to explain. I just get the
6 paperwork and then we go and we observe and evaluate the
7 child.

8 Q Okay. Well, I guess my question is after he was
9 referred to you for those reasons and then after you
10 evaluated him was it not in fact -- Isn't it, in fact,
11 true that what I think you testified to on direct he was
12 assigned to Special Education classes dealing with reading
13 and language skills?

14 A This is the document that would -- yes.

15 Q Okay. That was my question. All right. In addition
16 to that there was a recommendation that he receive some
17 kind of psychological counseling?

18 A Yes, during the eligibility -- during the
19 determination for eligibility for special education.

20 Q And he was not -- Mr. Mahdi is not mentally retarded;
21 am I correct?

22 A Mr. Mahdi? You mean Mikal?

23 Q Mikal.

24 A No.

25 Q He doesn't have Down's Syndrome?

1 A Everything that's here. This is legal. Whatever
2 Mr. Browder -- All of the tests are put together and
3 Mr. Browder writes that up and then I get it.

4 Q Uh-huh.

5 A So, my part is just as an observation Special
6 Education teacher. That's the only part that I have and
7 to be present at the eligibility meeting.

8 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
9 identification only.)

10 Q I am going to show you Defendant's Exhibit 1 and you
11 mentioned Mr. Vecker. Is this Mr. Vecker's confidential
12 psychological evaluation of Mr. Mahdi?

13 A Okay.

14 Q Is it? Can you tell me if it is or isn't?

15 A Yes. That's the signature.

16 Q And that's the person that you're referring to,
17 Mr. Vecker that you talked about earlier?

18 A Yes.

19 Q Okay. Now, would you have received this report from
20 him?

21 A It would be in Mikal's confidential folders, yes. I
22 would receive that report. I would have access to it as
23 well.

24 Q And in this report it indicates that Mikal had
25 transferred to Brunswick County in September of '93 from

1 Baltimore City public schools. Is that correct?

2 A If that's what it says, it is correct.

3 Q Okay. And you've been in here today. That would
4 have been when he was living with his Uncle Carson and his
5 Aunt Lawanda?

6 A Possibly. Like I said, I did not have knowledge of
7 his previous family unit.

8 Q And in this evaluation it basically discusses the
9 fact that Mr. Mahdi has moved around, had been moved
10 around several -- "Different places and different people
11 taking care of him may be interfering with his ability
12 particularly in spelling and language arts." Would you
13 like for me to show you that?

14 A Uh-huh. I agree.

15 Q Okay. So, when we talk about ED with regard to
16 Mr. Mahdi that's what we're talking about? Am I correct?

17 A What are you saying? Excuse me. Could you repeat
18 that again?

19 Q When we're talking about ED he was assigned to
20 special education services -- ED. You'll see that in the
21 records. They are referring to the fact that he has been
22 transferred around to different places, had different
23 caregivers, and he may have developed difficulty in
24 spelling and language arts?

25 A Uh-huh.

1 Q Okay. And the test also showed -- The test that
2 Mr. Vecker gave also showed that Mr. Mahdi has episodes of
3 acting out, unwillingness to deal with difficult school
4 tasks, those kinds of things, does it not?

5 A That's based on Mr. Vecker evaluating him. I'm not --

6 Q Okay.

7 A Yes. It's --

8 Q Fair enough.

9 A -- based on the evaluation. A kid could have a bad
10 day. It is subjective.

11 Q Okay. I wanted to ask you about one sentence in
12 here. It says, "Mikal has realized improvement with
13 respect to his overall school adjustment. However, he
14 presents persistent personal adjustment difficulties which
15 suggest the need for special education and mental health
16 intervention. Given his good intelligence, other positive
17 personality traits, and the strong concern by his father
18 he presents a good prognosis for school success."

19 A Okay. That's Mr. Vecker. That's his summary and
20 that's his recommendation.

21 Q What I want to ask about is what is the strong
22 concern of his father?

23 A I'm saying to you that when it came up in the
24 eligibility meeting about Mikal receiving some
25 counseling --

1 Q Uh-huh.

2 A -- Mr. Mahdi said, You are all full of bullshit, and
3 he got up and he left out.

4 Q I understand.

5 A So, therefore, that stopped. Can I say something to
6 you, too?

7 Q Sure.

8 A When we do the eligibility meeting -- Again, it is a
9 team effort and it's a team decision and, also, according
10 to the federal law there were points that he scores.
11 Mr. Browder handled those. The points that were totaled
12 up for Mikal put him in the category of emotional
13 disturbance.

14 Q Okay.

15 A So, that's -- that's the way that it goes for every
16 IEP in this country.

17 Q And the classes he were put in that you taught him
18 were for reading, spelling, and language arts --

19 A Yes.

20 Q -- because he was testing out at a third grade level
21 on reading; is that right?

22 A He needed assistance.

23 Q Okay. And are there later notes where the father
24 finally agreed that Mikal should be in special ed or at
25 least he said I want to do what's best for my son?

1 A Do you have a copy of the IEP? Could I see it,
2 please?

3 Q Is this what you're talking about?

4 A No.

5 Q I don't know what the IEP is. So, look through that.
6 That's what I have.

7 A Okay.

8 MR. LOMINACK: Just so the record can reflect that
9 Mr. Mabry has been --

10 THE COURT: Hold on. Whoa.

11 MR. LOMINACK: I would just like the record to
12 reflect --

13 THE COURT: Let's play by the rules. It is her
14 witness.

15 THE WITNESS: I was trying to find the signature
16 page. Yes, here is his father's signature. We cannot put
17 a child into special education without the father's
18 signature and there his is right there.

19 Q Okay. I remembered seeing a record, though, where he
20 sat down with you or somebody in the program and said
21 while he didn't agree with it initially, he wanted to do
22 what was best for his son. Is that what I'm talking
23 about?

24 A I don't recall that he said he wanted to do what was
25 best for his son.

1 Q All right.

2 A But we did have this meeting, the IEP. Because of
3 the situation you can see that Bobby Browder, Director of
4 Pupil Personnel, was present and usually they're not, but
5 with this IEP he was because of what had transpired during
6 our eligibility meeting.

7 Q Do you have -- Do you have the file with any other
8 documents from later?

9 A This is the document.

10 Q From later I'm talking about.

11 A No.

12 Q Okay. That's fine. Did Mikal want to be in special
13 ed? Mikal Mahdi?

14 A Since he was 10 or whatever age he was at that point
15 he was told that his father had given permission --

16 Q Right.

17 A -- to be in this special education program.

18 Q But he didn't think he should be in there, did he?

19 A But the father was the -- is his guardian.

20 Q I understand that, but I am asking you. You were his
21 teacher.

22 A I talked ---

23 Q Let me ---

24 A I tried ---

25 THE COURT: Hold on. Ma'am, Hold on.

1 THE WITNESS: Okay.

2 THE COURT: Let him ask. Finish the question. Let's
3 move along. Last question concerning this is did he want
4 to be in there?

5 Q Did Mikal want to be in your special education class?

6 A I did not know Mikal at that time. That's what I am
7 trying to tell you. I just did the paperwork. I did not
8 get him until the beginning of the school year. I didn't
9 know Mikal.

10 Q Right. I am talking about that year, the fifth grade
11 when you said you had him.

12 A No. He never told me he didn't want to be there.

13 Q Did you know he went to the principal and asked the
14 principal --

15 A I have no --

16 Q -- to take him out of the special ed?

17 A I have no knowledge of that.

18 Q Did you know he's told his social worker in this case
19 that he never should have been in special education and
20 they branded him for life by putting him in something he
21 never should have been in?

22 A No, I didn't know that, but out of all of the
23 hundreds of kids do you know how many don't want to be in
24 special ed? I mean, it's just -- to say that -- I can't
25 put a lot of credence in it.

1 Q Okay. Thank you, ma'am. I need to get those back
2 except for that one.

3 THE COURT: Anything on redirect, ma'am?

4 MS. NORRIS: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. NORRIS:

7 Q Ms.~Wilson, going back to your eligibility meetings
8 -- do you have it?

9 A There is a copy of it.

10 Q The bottom line is was Mikal Mahdi put into the
11 Special Education program of because of emotional
12 difficulties or was it this reading stuff? What was the
13 primary reason?

14 A Okay. That last paragraph -- it says that the
15 eligibility committee found Mikal Mahdi eligible for the
16 emotionally disturbed disabled program with recommended
17 assistance in the area of reading and that was a team
18 determination because of Mr. Vecker's report that there
19 were some psychological issues.

20 Q And do you have Defendant's Exhibit 1 up there with
21 you?

22 A And what -- is this --

23 Q That was Mr. Vecker's report.

24 A He took the --

25 MR. MABRY: I am trying to make sure that I got the

1 right pages here.

2 THE COURT: All right. Defendant's exhibit 1 is a
3 two-page document; is that correct?

4 MS. NORRIS: It is a three-page -- It is a three-page
5 document. It is three pages. Well, four if you count
6 front and back but two sheets of paper.

7 THE COURT: Two sheets of paper. Thank you.

8 MR. MABRY: Okay. We got it.

9 MS. NORRIS: I'm going to staple it together.

10 THE COURT: But it's not in evidence. You didn't --

11 MR. MABRY: Yes, sir, I did. I thought I did.

12 THE COURT: You didn't, but no objection?

13 MS. NORRIS: No objection.

14 THE COURT: Thank you.

15 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
16 into evidence.)

17 Q Handing you back Defendant's Exhibit 1, Mr. Vecker's
18 report, was that something that would have been done
19 before Mr. Shareef stormed out of that meeting?

20 A Oh, yes. All of these are done within a specific
21 timeframe in order to have the eligibility meeting and
22 that's mandated by the government. It's a federal
23 document.

24 Q And Mr. Vecker in particular was one of the white men
25 that Mr. Mahdi was upset with?

1 A Yes, because you can see on this paper Mr. Vecker
2 signed off that he was present at the meeting, but if
3 Mr. Mahdi did not want Mikal to be in the program all he
4 had to do was refuse to sign the IEP. He can take him out
5 at any time. A parent can take a student out of special
6 education at any time and if there were -- if we felt that
7 that was due to maybe abuse or negligence, it could be
8 handled further. You know, it could go over to social
9 services, but he had the freedom to say, no, I don't want
10 to sign this and I don't want him in there.

11 Q And I'll make Mr. Vecker's report Defendant's Exhibit
12 2. I believe the second page of that down at the bottom
13 where it says -- the last paragraph starts with the
14 projective measures?

15 A Yes.

16 Q And thereagain, this is after the reading problems
17 and language arts, particularly in spelling that Mr. Mabry
18 was pointing out. Down there at the bottom we get back
19 into depressive tendencies, lack of self esteem, and
20 feelings of hopelessness?

21 A Yes. Yes.

22 Q And then the last sentence there projectives point to
23 psychological blocking and expansive behavior under stress
24 which may help to account for his episodic acting out
25 behavior and difficulties and or unwillingness to deal

1 with difficult-for-him school tasks?

2 A Yes.

3 Q So, basically, the psychologist was saying that some
4 of that behavior may have been because of the depression
5 and all that sort of stuff?

6 MR. MABRY: Objection, leading the witness.

7 THE COURT: Overruled.

8 Q And Mr. Vecker, the school psychologist -- when you
9 look at the third page, his final paragraph before his
10 signature --

11 A Yes.

12 Q -- he is suggesting, quote, the need for special
13 education and mental health intervention?

14 A Yes.

15 MS. NORRIS: Nothing further

16 THE COURT: Thank you, Ms.~Wilson.

17 Next witness, please.

18 MS. NORRIS: George Smith.

19 GEORGE R. SMITH, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. NORRIS:

23 Q Tell us your full name, Mr. Smith.

24 A George Randolph Smith.

25 Q Do you have a nickname you go by?

1 A They call me Billy.

2 Q And where do you live, Mr. Smith?

3 A I live in Brunswick County, Lawrenceville, Virginia.

4 Q And did you grow up in Brunswick County?

5 A Yes, I was born in Brunswick County.

6 Q And I'm going to ask you this: How old are you, sir?

7 A Seventy-six.

8 Q And did you graduate from high school in Brunswick
9 County?

10 A I did.

11 Q And did you know Shareef Mahdi's parents Nancy and
12 Nathan Burwell when you were growing up?

13 A I knew the mother vaguely. The father taught me.
14 His grandfather taught me.

15 THE COURT: Whose grandfather?

16 THE WITNESS: Mikal's grandfather. Agricultural. I
17 took agricultural courses.

18 Q What did you do for a living after you went away --
19 Well, did you leave Brunswick County after high school?

20 A I left Brunswick County in 1953 after I finished high
21 school and went into the army and I served three years.

22 Q And then what did you do for a living after that?

23 A Well, I started college -- local college of St. Paul.
24 I received a bachelor of science degree in elementary
25 education.

1 Q Is St. Paul in Lawrenceville, Brunswick County?

2 A Yes. Yes.

3 Q You got your degree in education. Did you teach
4 schools?

5 A Yes. I taught for a number of years. I went back
6 and I received a master's degree in education from
7 Virginia State University.

8 Q When did you move back into Brunswick County after
9 college?

10 A About '81, '82.

11 Q And are you retired now?

12 A Yes, I am retired.

13 Q And do you know Mikal Mahdi at all?

14 A Yes, I know him.

15 Q Okay. How do you know him?

16 A Well, I remember one summer they had a problem with
17 some management at the pool and some people came to me and
18 asked me if I would serve to manage the pool. I don't
19 know why, but it appealed to my civic responsibility and I
20 went there. I am not a swimmer or anything. They just
21 needed a manager. I couldn't swim.

22 Q Do you recall what year or how old Mikal might have
23 been then?

24 A It looked like to me he must have been extremely
25 young because -- I don't know whether I had retired or

1 not. I retired in '92.

2 Q Was he walking?

3 A He was walking. He was walking. I remember his
4 father used to bring the two of them to the pool just
5 about every day.

6 Q Did you ever see his mother?

7 A I never saw his mother.

8 Q And the pool where they wanted you to do your civic
9 duty, did black and white folks swim down there?

10 A No. It is just the black pool. There was a white
11 pool in Lawrenceville, but blacks couldn't use it.

12 Q And when you saw Mikal at the pool with his father,
13 did anything stand out about Mikal at all?

14 A Nothing stood out. I mean, we never had much of a
15 discipline problem from anyone really. No running.
16 Stopping them from running.

17 Q At the pool?

18 A Yes, at the pool and keeping the lifeguards focused
19 because I couldn't swim.

20 Q And Shareef Mahdi -- we've heard various
21 descriptions. Was he clean-cut then when you saw him at
22 the pool or was he the guy with the long beard?

23 A He seemed to have been rather clean-cut, but I just
24 remembered him vaguely, you know, as bringing these kids
25 to the pool every day. I paid no particular attention to

1 him.

2 Q And then later on did you get to know Mr. Shareef
3 Mahdi somewhat?

4 A I did, yes.

5 Q How did that come about?

6 A Well, back in the late 80's I filed a suit against
7 the County of Brunswick under the Voting Rights Act with
8 two other plaintiffs and I think after it was finalized it
9 took about six or seven months for a decision to come
10 down. I am just estimating. I am not sure about that.
11 It was in all the newspapers -- the Richmond Times and the
12 local papers and it was in the federal district court and
13 we won. The judge ruled in our favor and I was downtown
14 somewhere -- we don't live that far apart -- and when I
15 got home my wife told me I had a visitor and it was
16 Shareef -- the father -- had come by to congratulate me on
17 winning the case.

18 Q And did he -- Did he periodically contact you then or
19 stop by to see you or call?

20 A Well, that was my first contact with him and from
21 then on, you know, I think he admired me. I sensed that
22 he did, you know, for taking on these white people and
23 winning because as was stated he didn't particularly like
24 white people.

25 Q He hated them, didn't he?

1 A Yea. He hated them.

2 Q It's a little stronger --

3 A Yea.

4 MR. MABRY: Objection to leading the witness.

5 MS. NORRIS: I'm asking.

6 THE COURT: Come on. We're doing good. Don't lead
7 too much, but, you know, we don't have a jury and I have
8 been doing this 37 years.

9 MR. MABRY: Yes, sir.

10 THE COURT: I understand.

11 Q From your view --

12 A I'm sorry?

13 Q -- describe in your own words how Shareef Mahdi felt
14 about white people?

15 A Well, he hated white people. I mean, he just hated
16 them with a passion, and, you know, I remember once -- I
17 watch the military channel sometimes. I am not fascinated
18 with Hitler, but I am interested in him, you know, and
19 sometimes I wonder, you know, to myself how he led these
20 people to destruction being the kind of person he was and
21 I remember once he told me, When he killed those Jews he
22 knew what he was doing -- something to that effect.

23 Q Was it because the Jews were white people or he
24 didn't like Jewish folks either?

25 A I didn't question him, you know. I thought that was

1 a little odd, you know, because it was something that
2 always disturbed me -- the Holocaust -- but I guess it was
3 because he was a Moslem. You know, I am not sure of that
4 either. That is an assumption.

5 THE COURT: Let's get back to what we know in fact.

6 THE WITNESS: Okay.

7 Q Well, did Shareef seem to you to be mentally stable?

8 A I thought --

9 THE COURT: Hold on a second. How can he -- from a
10 layman's standpoint? I mean, he's not a psychiatrist,
11 psychologist.

12 MS. NORRIS: Certainly not. I agree, Your Honor,
13 but, you know, I walk around. If somebody strikes me as
14 crazy --

15 THE COURT: But you know the rules. Unless you're
16 qualified as an expert you can't render an opinion. I
17 have been real lenient about all of this hearsay and what
18 this person said and that person. We're getting a little
19 bit afoul of the rules in allowing a lay person to render
20 an opinion as to somebody's mental capacity. So, I am not
21 going to allow that question.

22 Q Yes, sir. Thank you. Mr. Smith, to your knowledge
23 did Shareef Mahdi have a job?

24 A No. I don't think he had a job. I saw him on
25 occasions and, well, he didn't work.

1 Q And do you know how he got around town?

2 A Most of the time he walked and at one time I think he
3 had a bike and he rode that. You would see him riding up
4 and down the highway.

5 Q And did you have any knowledge of how he was
6 supporting his sons?

7 A No. I think when they were at home the grandmother
8 supported them.

9 Q Do you recall an incident where law enforcement
10 sought out your help with Mr. Shareef Mahdi?

11 A Yes.

12 Q Tell us about that.

13 A Well, one afternoon I had just finished cutting grass
14 and I received a call from an investigator from the
15 Sheriff's Department that they were having a problem with
16 a fellow that had gotten into a white swimming pool and
17 they were having a problem getting him out of the pool.
18 Someone had called the dogs -- called the state police for
19 dogs or something. They were informed that you couldn't
20 sic dogs on the man, something I was told, and so they
21 asked me would I come down and assist and I told them I
22 would.

23 So, I drove down to the pool. He was in the pool
24 swimming around and cursing, using extremely vile
25 language, and I do remember it was in the timeframe of

1 maybe after the O.J. Simpson trial and he was making
2 disparaging remarks about Nicole and why he killed her and
3 cursing and hollering as loud as he possibly could as to
4 try to inflame these policemen that were standing around.

5 Q Was it all white police officers or were there black
6 folks?

7 A There were black officers there. As a matter of
8 fact, the officer that called me was black. He was an
9 investigator with the Sheriff's Department.

10 Q Do you have any idea what why they called you as
11 opposed to anybody else that Mr. Mahdi may have known?

12 A Well, I guess -- I don't know whether he mentioned me
13 that he would get out if a certain person came or
14 whatever, you know, but this fellow called me and I went
15 down and I, you know ---

16 Q Well, were you able to get Mr. Mahdi out of that
17 pool?

18 A Yes. They unlocked the gate and I went in and I
19 asked him, I said, Well, why don't you come out? I said,
20 You're not going to solve anything by doing this. You
21 know, maybe we can settle it, you know. Calmer heads can
22 relate. He was still just cursing and saying everything
23 he wanted to say and he said -- Eventually he said, I'll
24 come out of it for you. He said, I am going to swim
25 around the pool again, and he did. He said, I'll come out

1 in a minute.

2 So, he called me to the side and that's when the
3 deputy called me and told me and said, Don't get too
4 close. He can pull you in the pool. I hadn't thought
5 about it, but I knew I couldn't swim.

6 Q Well, did Mr. Mahdi have a condition for what had to
7 happen if he got out of the pool?

8 A He had a condition. He said, You advise them that
9 they allow you to walk between me and them back up to the
10 sheriff's office where the jail is located which is
11 approximately 100 yards up a hill. That he would come out
12 of the pool. So I walked out and I told them what he had
13 said and I know one of the deputies -- a white -- I think
14 he was second in charge with the department -- made the
15 statement, You just get him out and we'll handle it. I
16 said, Well, you called me. You were already handling it
17 or mishandling it. I think they debated it for a few
18 seconds and they agreed to his condition and he came out
19 of -- They didn't handcuff him.

20 I got between the officers and Shareef. I was
21 walking in the middle. They were walking behind me and
22 this one white officer, I think he was the second in
23 command from the Sheriff's Office. He turned around and
24 started cursing him and I can't quote him exactly, but it
25 was something to, You watch that MF or SOB or something

1 because he really knows how to kill a nigger and it was
2 uneventful, you know, walking back up to the jail.

3 When we got there they opened the doors -- and I
4 never had been in a cell. I wasn't thinking about it at
5 the time, but the officers locked their guns in the lock
6 box and I went into the cell. I'm assuming it is where
7 the magistrate had his office. I had never seen inside of
8 the cell. When we got into the cell he just went wild.
9 He took the furniture and started throwing the chairs
10 against the wall, breaking the tables, not directed at any
11 individual at the time, but it was just wild, you know. I
12 wondered why I had gone in there because I hadn't seen
13 that side of him before, but it was just as violent as
14 anything I have ever seen in my life. And I just left.

15 Q When Mr. Mikal Mahdi was arrested in 2004 for killing
16 Captain Jimmy Myers and those other crimes, were you aware
17 of his arrest at that time?

18 A I was aware of it probably the next day or the day
19 after.

20 Q And did anybody from his defense team come talk to
21 you -- his South Carolina defense team?

22 A No. No one.

23 Q If you had been asked to testify as you have today in
24 December of 2006 would you have done that?

25 A I would have.

1 Q And if you had been given the opportunity to ask the
2 sentencing Judge to show mercy would you have asked for
3 mercy for him?

4 A I probably would have.

5 Q Why?

6 A Well, simply because of the rumors I had heard and,
7 you know ---

8 Q Well, I don't want you to get into that.

9 A I am not going to get into the rumors. I was just
10 going to say there was a lot of rumors, rampant rumors
11 about what was going on in that household, et cetera.

12 MS. NORRIS: Just a second, Your Honor.

13 Mr. Smith, was there an occasion later on that you
14 appeared in court or you were in court when Mikal Mahdi
15 was having a proceeding but you were there with Shareef?

16 THE WITNESS: Yes. He called me once and said one of
17 his sons was being tried for something. I think it was
18 after that stand-off and he asked me if I would go down
19 there with him.

20 Q And did anything unusual happen that day concerning
21 Shareef Mahdi?

22 A Yes. One of them was on the stand -- I don't
23 remember which, but -- and it was about the stand-off or
24 something to do with the stand-off. There were other
25 important things going on. I do remember the judge and

1 the prosecutor, I think, was questioning him. The
2 prosecutor was questioning him or something and they had
3 some deputies on the stand testifying and I don't know
4 whether a decision as to whether what he had done was a
5 misdemeanor or felony or something, but I do remember
6 there was this -- a deputy on the stand and he was a black
7 deputy, as a matter of fact, that was embellishing a lot
8 of stuff and there were other deputies testifying, too,
9 but they seemed to be telling the truth, you know, as it
10 happened, and, so, the judge said something to the
11 effect -- Well, he said this exactly, I remember. He
12 said, He's a smart kid. He's a nice-looking kid. I'm not
13 going to burden him or saddle him with this or something.
14 His problem is his father out there. That's his problem.
15 And --

16 Q How did Mr. Mahdi -- Shareef Mahdi -- react to that?

17 A Well, we walked out of the courtroom together and he
18 was really upset at what the judge had said about him, and
19 you know, I said, well, you know, I'm on the side of the
20 judge. He was trying to help your son, you know, and I
21 don't think you should be upset about it, but I don't
22 think he saw that.

23 MS. NORRIS: I don't have anything further, Your
24 Honor.

25 CROSS-EXAMINATION

1 BY MR. MABRY:

2 Q If you had to come and testified in 2006 would you
3 have told the jury that Mr. Mahdi brought his children to
4 the swimming pool when you were running the swimming pool?

5 A Yes.

6 Q Thank you, sir.

7 THE COURT: You may step ---

8 MS. NORRIS: Nothing further.

9 THE COURT: You may step down. Thank you. Be
10 careful going down those steps. Everybody okay
11 bathroom-wise? All right. Next witness.

12 MS. NORRIS: Sharon Pond.

13 SHARON C. POND, after being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. NORRIS:

17 Q State your full name for the record, please.

18 A I'm Sharon Coomer (phonetic) Pond; P-O-N-D.

19 Q And I submitted an affidavit earlier from the Mayor
20 Doug Pond. Do you know that gentleman?

21 A Yes. He is my husband.

22 Q And where do you live?

23 A I live in Lawrenceville, Virginia.

24 Q What do you do for a living?

25 A I'm a mental health therapist.

1 Q Where?

2 A At Brunswick Behavioral Health Center.

3 Q And what is your educational level?

4 A I'm a master's-level psychologist.

5 Q And how long have you been with the Behavioral Health
6 Center?

7 A Since 1988.

8 Q Does it offend you if I call that a mental health
9 center instead?

10 A No.

11 Q It's easier for me to say.

12 A Not at all. That's fine.

13 Q Do you know Mikal Mahdi or know of him?

14 A I know of him. I'm not sure whether I ever met him
15 before today.

16 Q Were you asked to see if you had any records related
17 to Mikal Mahdi or Shareef Mahdi?

18 A Yes, I was.

19 Q And were you able to find any records?

20 A No ma'am. Other than face sheet which was printed by
21 our computer all of those records from that long ago had
22 been purged.

23 (WHEREUPON, Applicant's Exhibit Nos. 18 - 19 were
24 marked for identification only.)

25 Q Let me show you Applicant's Exhibit 18 that's been

1 marked. Is that what you're referring to for Mikal Mahdi?

2 A Yes.

3 Q Do you have any personal recollection whatsoever of
4 Mikal Mahdi being at the mental health center?

5 A No.

6 Q What can you tell us from that record?

7 A From this record I see that an intake was done which
8 involved a rather involved database and it was put
9 together on February 24, 1994 and his case was closed
10 September 14, 1994. It gives his address at the time,
11 phone number, his social security number, date of birth,
12 and age.

13 Q And that --

14 A And some other demographics.

15 Q And that time period from February 24, '94 to
16 September 1 of '94, can you tell from that form whether he
17 was seen once or ten times or ---

18 A No, I can't. There is no information about who saw
19 him, which therapist saw him, about the specific services
20 he received, about how many times he was seen or his
21 diagnosis.

22 MS. NORRIS: Your Honor, I would move Applicant's 18
23 into evidence.

24 MR. MABRY: No objection.

25

1 (WHEREUPON, Applicant's Exhibit No. 18 was admitted
2 into evidence.)

3 Q I show you what's been marked as Applicant's 19. Is
4 that the face sheet for Mr. Shareef Mahdi?

5 A Yes, it is.

6 Q And what information can you tell us about that form
7 about whether he was seen at the mental health center?

8 A He was seen for mental health outpatient; that is, he
9 got the same kind of intake database assessment on
10 March 4, 1994 and he was discharged on May 16, 1994. He
11 was then seen for emergency services on July 9, 1994 and
12 his case was closed on September 1, 1994.

13 Q And how would a case be classified as an emergency
14 for your admissions?

15 A If he was seen in crisis for the purposes of
16 prescreening to determine whether he needed
17 hospitalization.

18 Q So, would this be something where an individual or
19 someone would petition a court --

20 A It could be.

21 Q -- to hospitalize someone?

22 A It could be, but it doesn't have to be that way.

23 Q Okay. And if it goes that way --

24 A Uh-huh.

25 Q -- does it -- Is there a certain legal standard in

1 Virginia that has to be met before a person can be
2 involuntarily hospitalized?

3 A Yes, it does.

4 Q And what is that standard, basically? I understand
5 you're not a lawyer, but from a mental health perspective.

6 A At that time -- The law has change recently in
7 Virginia since the Virginia Tech episode, but at that time
8 it was imminently dangerous to self or to others.

9 Q And do you have any personal recollection of what --
10 or do you have any personal recollection of seeing Shareef
11 Mahdi?

12 A When you initially asked me that I told you that my
13 recollection of him was vague. You showed me a picture
14 and the picture looked familiar like I had seen him, but I
15 can't really say whether I had direct contact with him or
16 whether I supervised the individual who did.

17 Q So, did you supervise all of the people in the mental
18 health center that -- If Shareef was seen there, you
19 supervised whoever saw him?

20 A Uh-huh.

21 Q Do you have a recollection of why he was there for
22 emergency services or why he was seen for emergency
23 services?

24 A I believe he was seen for emergency services
25 following the pool incident. He was then jailed for

1 trespassing and one of our emergency workers was called to
2 do an assessment and it ended with his being committed
3 involuntarily to Central State Hospital Forensic Unit.

4 Q And was the assessment there at the mental health
5 center that he had a mental illness?

6 A The assessment of the pre-screener was that he had a
7 mental illness, yes.

8 Q And would that also -- The fact that he was sent to
9 the hospital, does that indicate that the opinion was that
10 he was a danger to himself or others?

11 A Yes. The standard requires that he be assessed to
12 determine whether he is, in fact, mentally ill or a
13 substance abuser and whether he met the criteria as
14 dangerous to self or others imminently.

15 Q Do you recall whether as part of that assessment
16 or -- as part of that assessment or any other assessment
17 of Shareef Mahdi that you may have supervised talking to
18 his mother about this problem?

19 A Yes, I do. I do remember that rather clearly. Nancy
20 Burwell was on our board at that time -- the Community
21 Services Board -- and she came in and talked to me one day
22 in my office and was expressing concern for Shareef and
23 expressing regrets for choices that she had made in the
24 past.

25 Q Did she, basically, blame herself for his problems?

1 A Somewhat, yea.

2 Q Was there any particular incident that she felt had
3 been significant to him?

4 A She talked about having been involved in the movement
5 for integrating the public schools and that when the time
6 came for the schools to be integrated that people were
7 asked whether they wanted to send their children to be one
8 of the first in the new -- in the white school and that
9 she put her children forth to be one of the first, and she
10 felt at the time that it was the right thing to do
11 civically, morally, socially that that was absolutely the
12 right thing to do, but that in retrospect she felt it had
13 been absolutely the wrong thing to do for her son and that
14 he was very damaged, very hurt by the way he was treated
15 and the treatment he received at that time.

16 Q Were you aware when around the time in 2004 when
17 Mikal was arrested for killing Captain Jimmy Myers?

18 A I'm sure I saw it on the news.

19 Q Did you realize at that time that he was Shareef
20 Mahdi's son and Nancy Burwell's grandson?

21 A That's been a while back. I don't know.

22 Q Do you recall whether anybody from South Carolina
23 came to talk to you until recently to ask you what you
24 knew about this family?

25 A To the best of my knowledge, no.

1 MS. NORRIS: Just a second. Nothing further, Your
2 Honor.

3 THE COURT: Mr. Mabry?

4 CROSS-EXAMINATION

5 BY MR. MABRY:

6 Q Do you know what the state hospital found as far as
7 Mr. Mahdi when he was sent --

8 THE COURT: Which Mr. Mahdi?

9 Q Shareef.

10 A Shareef.

11 Q Right. He was referred to the state hospital you
12 said because of the charges. Did they not send him back
13 to the county jail?

14 A I do believe that that's right.

15 Q They didn't find any major mental illness, did they?

16 A In their opinion, no.

17 THE COURT: You may step down. Thank you. All
18 right. Everybody okay? One more witness or do you need a
19 bathroom?

20 MS. NORRIS: I'd prefer a break, Your Honor. We're
21 getting ready to go into a long witness. We're moving now
22 into an expert witness.

23 THE COURT: Let's take about 10. Is that long
24 enough?

25 MS. NORRIS: It should be, Your Honor.

1 (Whereupon, a break was taken.)

2 (WHEREUPON, Applicant's Exhibit No. 20 was marked for
3 identification only.)

4 NICHOLAS C. COOPER-LEWTER, after being duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. NORRIS:

8 Q State your full name for the record, please.

9 A Nicholas Charles Cooper-Lewter.

10 THE COURT: Spell the last, please.

11 THE WITNESS: Cooper-Lewter is a hyphenated name;
12 C-O-O-P-E-R-L-E-W-T-E-R.

13 Q And how are you employed, sir?

14 A I currently work at the University of South Carolina
15 where I am a lecturer in the College of Social Work and
16 from time to time in the Honors college. I also have a
17 private practice that I do several times a day and then I
18 consult in legal cases.

19 Q And what is your education level?

20 A I have a master's degree in social work and a Ph.D in
21 psychology.

22 Q And are you licensed as a social worker?

23 A I am licensed in the State of South Carolina as a
24 LISW; Licensed Independent Social Worker-CP with the
25 distinction of being a supervisor which means that I can

1 supervise other socialworkers in their hours for
2 licensure.

3 Q And how long have you been a licensed social worker,
4 South Carolina or otherwise? When did you begin your
5 career as a social worker?

6 A I graduated in 1978 and I acquired the ACSW
7 distinction for social work. That's the Academy of
8 Certified Social Workers. That was the first one. I was
9 in California at the time. At that time I successfully
10 got licensed as a marriage and family therapist and then
11 moving -- I also got licensed as an advanced clinical
12 practitioner and social work in Texas, then in Minnesota
13 marriage and family therapist again and then in South
14 Carolina. So, since 1978 I've had a certification of one
15 type or another.

16 Q And or license?

17 A And do you have any -- Particularly at USC do you
18 have any particular special interest and focus in your
19 teaching or in your practice.

20 A Yes. All of us are required to, of course, have one
21 or two. I have several. One is multi-generational
22 legacies of trauma, grief, resilience, risk. Another one
23 is psychopathology. Currently, I am the main instructor
24 of psychopathy and have been for the last nine years at
25 USC in the College of Social Work.

1 Q And what is psychopathology?

2 A Psychopathology is the study of both mental health
3 and mental illness.

4 Q Have you testified in court as an expert witness
5 before?

6 A Yes, ma'am.

7 Q In capital cases?

8 A Yes, ma'am.

9 Q In South Carolina?

10 A Yes, ma'am.

11 MS. NORRIS: Your Honor, I'd offer Dr. Cooper-Lewter
12 as an expert in clinical social work and psycho-social
13 assessment?

14 THE COURT: You want to cross examine him on his
15 qualifications?

16 MR. MABRY: No, sir.

17 THE COURT: All right. I'll accept him as an expert
18 and he'll be allowed to give opinion testimony in that
19 particular.

20 Q Dr. Cooper-Lewter, what is a psycho-social
21 assessment?

22 A Social work says that human behavior occurs in an
23 environment. So, psycho-social or social history
24 assessment, basically, is an attempt to pull together all
25 of the factors that go into influencing a person -- such

1 things as their birth, such things as things that have
2 happened to them in their life. It involves interviewing
3 people, family members in this case, also conferring with
4 other experts as needed.

5 It also has to do with looking at all of the records
6 that are available so that one can pull together, if you
7 will, a history or kind of story that kind of brings
8 together who a person is and we would call that a social
9 history assessment.

10 Q And did you do one of those social history
11 assessments on Mr. Mikal Mahdi?

12 A Yes, ma'am.

13 Q And did you prepare a report on that?

14 A Yes, ma'am.

15 Q I show you what's been marked as Applicant's
16 Exhibit 20 and ask you, sir, is that your report?

17 A Yes, ma'am.

18 Q In conducting the assessment -- In conducting your
19 assessment did you interview Mr. Mahdi?

20 A Yes, ma'am. I spent a total of 32 hours to date with
21 him.

22 Q And did you talk with other people?

23 A Yes. I spoke to family members. I spoke to -- In
24 fact, I spoke to some of the people that were here today:
25 Carson Burwell, Lawanda Gwen Burwell, Frances Read, Rose

1 Gupton, Sophia Artis Gee, Sandra Burwell, Debra Gay --

2 Gray, Excuse me. I spoke with Pastor Myra Harris, Gerald

3 Wilson, George Smith, Sharon Pond to name a few.

4 Q And looking at your report on page two you list there
5 at the bottom who you interviewed; is that correct?

6 A Yes. That is correct.

7 Q And did you also review records -- and if you will to
8 condense this if you listed the records that you've
9 reviewed this your report just tell us where it's listed.

10 A Yes. The records that I looked at you will find
11 partially on page one and partially on page two right
12 before we talk about the immediate family.

13 Q And did you receive those records in notebooks such
14 as this?

15 A Yes, ma'am. I received two books just like those.

16 MS. NORRIS: Your Honor, we're going to actually
17 offer these. I think Mr. Mabry may have some objection,
18 but it's all the records that were provided to our expert
19 witnesses.

20 MR. MABRY: Yes, Your Honor, we do object.

21 THE COURT: And?

22 MR. MABRY: Simply because he looked at them and
23 relied on them I don't think makes them admissible.

24 THE COURT: That's correct. The expert can rely on
25 all of that, but I don't know if it's admissible in the

1 trial of this case, but since this is a death penalty PCR
2 I will allow it.

3 MS. NORRIS: Thank you.

4 (WHEREUPON, Applicant's Exhibit Nos. 21 - 22 were
5 marked for identification and received into
6 evidence.)

7 THE COURT: Hold on a second. Is there any way we
8 can get a little bit of air?

9 THE POLICE OFFICER: I'm working on it.

10 MS. NORRIS: That's Applicant's 22 and Applicant's
11 21. Actually, what I am going to do to make this easier
12 for the judge is give them to him and I am going to give
13 you my copy of that.

14 Your Honor, we have a witness that needs to leave.
15 Is it okay if she does that now?

16 THE COURT: Absolutely.

17 Q Now, in reviewing the information -- the records and
18 that sort of thing -- is it simply an individual
19 assessment of Mikal or are you assessing essentially the
20 entire family and environment around him?

21 A Human behavior and the social environment. So, it's
22 important that you look at everything we can in the
23 environment, all the people if we can in the environment.
24 Those kinds of things.

25 Q And is what you do in this social history assessment,

1 is that different than what a psychiatrist or a
2 psychologist would do?

3 A Yes, very much. Basically, for instance, when
4 defense contacted me and asked me to put together a
5 history, I said, Fine. Basically, what it is it's the
6 story of a person. It's -- You look at all the
7 information around that person's life and you simply
8 describe it. The effort different from a psychiatrist or
9 psychologist is I don't do testing. I'm not an expert in
10 testing. A psychiatrist -- Even though a social worker is
11 allowed to make diagnosis, as a social historian I make
12 none.

13 So, it's, basically, just a story and how it comes
14 together and looking at it in light of social work theory,
15 looking at it in light of the kinds of sociology -- all of
16 those things that go into social work -- the idea simply
17 being that a person is influenced throughout their life
18 and what are those influences. It has to do with
19 explaining -- not excusing, but it has to do with
20 explaining.

21 Q And as part of your evaluation and involvement with
22 Mikal Mahdi did you consult with other experts involved in
23 the case?

24 A Yes. I had an opportunity to consult with deRusset
25 Myers, Ph.D, and Donna Schwartz-Watts, MD, and that was

1 more towards in the last few months.

2 Q And from this assessment did you reach any overall
3 conclusions?

4 A From what I did in terms of ---

5 Q From what you did. Conclusions.

6 A Oh, yes.

7 Q Sort of a summary, the high points, and we'll talk
8 about them, but I am asking you now to summarize your
9 conclusion, the high points, the impacts on this young
10 man.

11 A It was clear from interviews with the family members
12 as well as interviews with Mikal Mahdi that he was born
13 into a family like all of us are, but he was born into a
14 family that was very fragile, a family that had a number
15 of characteristics such as toxic kinds of relationships
16 between husband and wife, issues of parenting and it was
17 really on both sides of the family, and, so, I saw that as
18 I looked at everything, listened to everyone that there
19 was a lot of unpredictable repeated losses, things that
20 would destabilize -- yea, destabilize a child particularly
21 such as the loss or abandonment of a mother figure at age
22 between four and five.

23 Also, I saw that another crucial issue was his
24 relationship to his father. His father, when you look at
25 his history, has issues with depression, has issues with

1 being angry and upset, and had issues as a child with
2 tantrums and things like that, and it was this person, his
3 father, that ultimately when his mother left that served
4 as his role model whereas we would say the person he was
5 most attached to. I found that significant.

6 Then in looking at the history I saw there were times
7 when things seem to get better meaning there was more
8 stability and there was improvement in terms of acting out
9 and things one would expect if a child had some major
10 losses and also was very isolated and never had an
11 opportunity to finish their grieving process. So, when
12 you look at all of that it became clear to me that this
13 individual had a whole lot to overcome, and I think for me
14 at least as I look at his history that it starts -- Of
15 course, the family passed on how they do life, but at the
16 same time I think it starts most notably between the age
17 of four and five when he lost his mother.

18 Q And when you sort of talked about the fragile family
19 that he was born into was there indication of mental
20 illness in his father's family or his mother's family?

21 A Actually, there was indication of unhealthy
22 relationships, resentments. There was a lot of bitterness
23 and depression, alcoholism and it affected both sides of
24 his -- both his maternal and his paternal side of the
25 family.

1 Q And did you look at -- Well, let me ask it this way.
2 What did you learn about Mikal Mahdi's life from birth to
3 age five of significance to you as an expert in social
4 work?

5 A Well, first of all, we start from the premise that a
6 child comes into the world and requires, if you will, a
7 family -- someone to socialize them, someone to teach
8 them, someone to comfort them. Nurturing is a key. So,
9 how a child is nurtured. We believe that there is only
10 two things -- temperament and other genetic disorders --
11 that might get in the way, but other than that nurturing
12 from the social work perspective is key. So, one wants to
13 look at how a child is nurtured and so a mother, the
14 primary caregiver, and her style of nurturing would be
15 very, very important, and when I got to interview the
16 family it was clear at the very, very beginning Mikal and
17 his mother -- She enjoyed him. They laughed and sang
18 together and did all of those kinds of things and then as
19 he began to get older it became a little more stressful,
20 but ultimately for a four or five year old to suddenly
21 look up and lose their mother -- We know that children
22 don't even conceptualize permanence until probably around
23 the age of seven.

24 So, in this case you have a child who is saying,
25 Where is my mommy? I want my mommy. When she coming

1 back? And he is yearning for her and it's a trauma when
2 she doesn't return. What would make it worse is what he,
3 in fact, had to deal with and that was his father's rage,
4 his father's anger, his father's opinion about his mother,
5 and the fact that ultimately he was told not only did she
6 abandon you and not want you, but she's dead, and, so, I
7 have not in 30-something years been able to when I deal
8 with children -- that's traumatizing.

9 In other words, a lot of children don't ever really
10 get over that unless someone helps them and they get some
11 kind of comforting. In this case I did not see any
12 comforting that has been given to Mikal Mahdi.

13 Q And during that birth to 5-year-old timeframe was
14 there physical violence in the home?

15 A Yes. One of the things that we see and it's in kind
16 of the literature is that even though children cannot
17 articulate things they do, in fact, react to violence in
18 the home. They react to anything that is uncomfortable in
19 the home and one of the ways they do that is they either
20 seek more attention, they become agitated. They can
21 become hyper-vigilant. There is a number of things they
22 can do because they sense their vulnerability,
23 particularly with their parental -- with their parents.

24 Q And this birth to 5-year-old phase, is that -- In
25 terms of importance is that more important than 6 to 10,

1 11 to 15?

2 A Yes.

3 Q How does it fit in in terms of importance?

4 A Well, let's look at it this way. We're building a
5 life and we're going to lay a foundation for the effective
6 movement through life in those very early years, and, so,
7 what, for instance, has a baby learned? A baby learns
8 that it's important because mother gives eye contact.
9 They goo-goo with each other. They touch and that kind of
10 thing.

11 A child learns to empathize meaning initially they're
12 very self-centered. You know, I am here. Just take care
13 of me. But they learn through the process of interacting
14 with their parents that other people do exist and that we
15 have to show some respect for others, those kinds of
16 things and that other people matter.

17 They also have to learn how to communicate. They
18 have to learn how to modulate their feelings, their
19 anxieties, and things like that and they do all of this in
20 that first seven years, but if we look at developmentally
21 those first five years are amazingly significant and that
22 foundation -- Whatever you lay right there, whatever you
23 put right there, unless it is intentionally worked through
24 and resources are put in to dealing with that, the
25 grieving process of loss which a child doesn't understand

1 at that age will go on and on and it more or less kind of
2 flavors the future relationships, future expectations.

3 After all, if I am vulnerable and I require someone
4 to provide and protect for me and I attach to them and
5 then they suddenly disappear all that's left is my
6 vulnerability, and, so, I'm -- I don't know what's going
7 on, but I know I'm in trouble, and, so, at that point you
8 attach to whoever you can attach to and in Mikal Mahdi's
9 case he attached to his father who was not very helpful.

10 Q And, so, if I look at it in sort of comparison to
11 building a house that first five years is when you're
12 going to find out whether you got bedrock or quicksand
13 under there --

14 A Yes.

15 Q -- so to speak? After that everything you build is
16 on top of that foundation?

17 A If that foundation isn't solid, firm, then you've got
18 a problem. As anybody knows if they own a home, if your
19 basement or your foundation isn't right, you can build the
20 prettiest anything you want, but ultimately that
21 foundation is going to determine whether that home can
22 withstand a storm, whether it can withstand rain, whatever
23 the case may be. So, yes, it's important.

24 Q And taking the next time period sort of in Mikal's
25 life -- ages five to eight -- was his mama leaving him --

1 A Yes.

2 Q -- the only bad thing from a social work perspective
3 that happened?

4 A No. That's not the only bad thing. Simply because
5 another thing that a child has to learn is how to get
6 along with other people. They have to -- They need to
7 interact so that they can become better members of a
8 family or society or whatever, and in that period of time
9 between five and eight, in fact, research shows that if --
10 that before the age of eight that children are very, very,
11 very vulnerable, for instance, to being unsupervised, and
12 what's interesting about that is that children before the
13 age of eight actually assume full responsibility for
14 whatever happens to the parents, and, so, now you have a
15 person who is vulnerable, a person who doesn't know what
16 is going on, a person who need needs to be provided for
17 and protected, and now they're being put in a situation
18 where there is no supervision, and, unfortunately, with no
19 supervision then the only thing that's operating is what's
20 ever inside of that child.

21 Q And how do you know that there -- that Mikal had
22 virtually no supervision?

23 A Well, one way I know it is I asked his father and his
24 father very frankly said to me, he said, I did not
25 supervise my boys like I should have, particularly Mikal.

1 I allowed them to kind of come and go and get away with
2 things. He said, The only thing that I would do is if it
3 interfered with my life or interfered with something I was
4 trying to do, then I would get on them about it. He said,
5 But for the most part -- He ultimately says and I'll talk
6 about that when you ask me, but he ultimately says that he
7 put Mikal in the position where Mikal -- it was some role
8 reversal so where Mikal started looking after his dad and
9 his brother.

10 Q And was the violence between his parents limited to
11 the birth to 5-year-old time or was there more violence in
12 the five to eight time period?

13 A Yes. He continued to see violence as a way his
14 father solved problems. He wanted, of course -- He wanted
15 to make things right. He wanted his family to be put back
16 together again.

17 Q And when a child -- Mikal or any other child -- let's
18 say a son -- sees the father trying to resolve problems
19 with violence, what message or does it impart a particular
20 message that you find?

21 A Well, particularly in Mikal's case because he
22 believed his mother had abandoned him, and, so, then
23 seeing his father operate he thought this was, of course,
24 the standard. This is what -- This is what you should
25 become. You're supposed to become like your dad. So, if

1 you're being fed that, then that's what you start to
2 believe.

3 At age eight, you know, Mikal found out that his
4 mother was alive which was a shock to him because up until
5 then he had been hearing she was dead, she didn't love
6 him, she didn't want him, and those kind of things, and in
7 that process now imagine that he is real excited mom
8 exists, mom is not dead. He is trying to figure this out.
9 What is this all about?

10 That's grown folk's business. He is eight years old.
11 He is trying to figure that out, and, so, there is a
12 certain excitement that he expressed about being able to
13 say, well, mom is alive, and, unfortunately, he then saw
14 his father kidnap and beat his mother and he saw his
15 father also beat his own mother, and, so, this sends a
16 very, very unhealthy message about how you solve life's
17 problem and how you relationship with others.

18 Q And during the incident when his father kidnapped
19 Mikal's mother, was Mikal present for that?

20 A Yes.

21 Q And did Mikal try to intervene?

22 A Mikal and his brother, actually, Saleem, but Mikal
23 said, Leave my mommy alone. He tried to grab his mother
24 and protect her and pull her away and he was just simply
25 at 8 years of old not strong enough or big enough to fight

1 off his father, and, ultimately, he suffered another
2 trauma and that was the losing of his mother again because
3 when she left he didn't know if he was going to see her
4 again. He was so traumatized by that that he started
5 thinking that he was stupid and he started -- he started
6 blaming himself for all of those problems because he
7 couldn't resolve it.

8 Q Well, all of that time period between five and eight,
9 let's talk about Mikal's schooling in there. Was there
10 anything significant about Mikal's school experience that
11 you found important?

12 A Well, first of all, some of the records -- I was not
13 surprised to see some of the records because such things
14 as reading, such things as spelling, such -- All of these
15 things are learned, and, so, you would need somebody there
16 to help you do that, but we have in this case someone who
17 is very damaged, very hurt, very upset. They're grieving,
18 and grief can be -- You know, it can be at any level, but
19 it's unresolved, and, so, you have a person who is not
20 able to trust, and at that point it -- from where I sit
21 looking at his records, looking at -- and talking to him
22 no one was listening to him and so he goes to school.
23 What does he do in school? He acts out.

24 Q And do you recall how many different schools Mikal
25 attended from when he started in kindergarten or

1 pre-kindergarten up to the eighth grade when he went to
2 Baltimore?

3 A Five. From my recollection, it is five. In fact,
4 that is a lot of schools, particularly because one of the
5 other tasks to do in the first eight years if you will is
6 to develop relationships with peers, to develop
7 relationships, of course, with adults and authority
8 figures. It's to explore all of that and come away with a
9 way to operate appropriately, and if you're constantly
10 being moved, there is a great deal of inconsistency, and
11 if there is a great deal of inconsistency, then it's
12 really hard for a child that age to organize all that.

13 (WHEREUPON, Applicant's Exhibit Nos. 23 - 24 were
14 marked for identification only.)

15 Q I want to show you what's been marked as Applicant's
16 23 and Applicant's 24. Are those, basically, pie chart
17 sort of diagramming how many different schools he went to?

18 A Yes, ma'am.

19 Q And where did he start there at that, basically,
20 12 o'clock?

21 A Under the -- at 24 -- You want the days or the times?
22 Which one ---

23 Q Give me the name of the school and, you know, how
24 many days he went there.

25 A Okay. We have Sister Clara Muhammed School.

1 Although it's hard to determine from the records, we know
2 he did go there. So, we have one day there. We have
3 Totaro, 490. We have Chamberlin, 112. We've got the
4 University of Islam or homeschool, 117. We have short
5 Pump Elementary, 87. We've got in that same period of
6 time 13 days not in school. Then it goes on to Overby
7 Shepherd Elementary, 237, and then we have Scott's Branch
8 Elementary School, 297, and then we ultimately come around
9 to some days at Walter Carter Center which is 58 and then
10 we go to 404 at Scott's Branch Elementary and then we go
11 to 546 at Totaro Elementary when he returned and then you
12 have 915 days of homeschooling until he was incarcerated
13 in DJJ.

14 Q So, up -- Do you know where Scott's Branch School is?
15 Is that the one in Baltimore?

16 A Yes, because that would be after the -- yes.

17 Q So, from kindergarten up until -- and kindergarten is
18 around 1990. From then until October of '91 -- 18-month,
19 two-year time period, six different schools? Is that ---

20 A You're up until -- You're going up 'til '91, yes.

21 Q Yea. And then at Scott's Branch he was there -- Why
22 is there -- Is the Walter Carter Center when he was
23 hospitalized?

24 A Yes.

25 Q So, he was at Scott's Branch before that and then

1 after that was when he was with Ms. Harris?

2 A Right.

3 Q And then when he returned to Totaro that's where
4 Ms.~Wilson saw him at least for a portion of the time
5 period?

6 A Yes.

7 Q And aside from the difficulty -- and, Your Honor, I
8 would move those into evidence.

9 MR. MABRY: No objection.

10 (WHEREUPON, Applicant's Exhibit Nos. 23 - 24 were
11 admitted into evidence.)

12 Q Aside from the impact on a child of not really being
13 able to put your feet under you so to speak of moving so
14 much, does it interrupt the educational process itself?

15 A I would say yes. One of the things that children
16 need in the first eight years especially is some
17 consistency. It takes -- Even for a child that hasn't
18 lost its mother and is having its father be toxic in terms
19 of that relationship, a child who has both parents and
20 things are going pretty good, moving a great deal is
21 problematic. We often see that. For instance, when we
22 counsel children of people in the military and if they
23 move too much it often upset the children.

24 Children get upset when they can't keep their
25 friends, for example. They look forward to them. It

1 takes them a while to establish those relationships and so
2 it's very meaningful to them to be able to do that. A lot
3 of movement doesn't allow that.

4 The other thing is that he moved often and had to
5 interact with adults -- male and female -- and here is a
6 young man who hadn't finished grieving his mother. He is
7 not so sure he wants to trust anyone else because he just
8 wants his mother. Then he has his father, and, of course,
9 his father has his own issues.

10 Q And did Mikal -- Aside from whether he could attach
11 to an adult outside of the home, was there really an
12 opportunity for him to connect with peers or a caring
13 teacher with all of those moves prior to age eight?

14 A I would say difficult.

15 Q And can you tell from your review of the school
16 records, talking to the family, your whole assessment,
17 what the impact of all of this was aside from abandonment?
18 Like when the school records describe a lack of
19 self-esteem, is that consistent with what you learned?

20 A Self-esteem we often consider it's something that's
21 bestowed meaning it comes out of your relationship with
22 significant others. They kind of tell you who you are.
23 For instance, a small child -- When the mother holds that
24 child and attends to its crying and feeds it and responds
25 to its voice, if you will, then that tells that child --

1 it sends the message to that child that it's important and
2 so that's very crucial and so if a child doesn't get that,
3 then, of course, there's got to be something wrong with
4 me, something terrible, and, so, self esteem is I'm not
5 important. I'm not -- Another way a child could look at
6 something is simply to say if my mother really loved me no
7 matter how bad things were she would stay in touch. My
8 mother would come back. My mother wouldn't leave me. And
9 for a very young child, they don't understand adult
10 business. For them it would be their loss and they would
11 take it very personally, and it would result in how they
12 would see themselves -- their self esteem, their self
13 worth and their self-efficacy. So, self-worth is what a
14 person does based on who they believe they are and
15 self-efficacy is just how well they do it.

16 Mothers should be teaching me to read. Mother should
17 be teaching me to spell. Dad should be doing these things
18 and now these other people who I don't know and they keep
19 changing are trying to get me to do something and don't
20 they realize I am still upset. I am still grieving. Just
21 give me my mother.

22 In fact, I think at age nine he makes the statement
23 very simply, I just want my family.

24 Q And there at age nine you heard earlier -- Were you
25 in the room when Mr. Burwell testified about Mikal going

1 to the hospital?

2 A Right.

3 Q The incidents that you have described of Shareef
4 kidnapping --

5 A Yes.

6 Q -- attempting to kill his wife -- I won't say ex
7 although she wasn't with him. We also heard they're not
8 divorced, but was that incident close in time with the
9 hospitalization?

10 A Oh, yes. It was very close in time. I believe
11 within a couple of weeks.

12 Q And was it also close in time with Shareef beating
13 Nancy Burwell, his mother?

14 A Yes.

15 Q And from your review of the records and all of the
16 information that you had, did Mikal receive significant
17 intensive treatment at the Walter Carter Center during
18 that two months?

19 A Not what he needed, no.

20 Q Was he getting some treatment?

21 A Well, the only thing I would say is that there was
22 some stability there which there wasn't before, but that
23 doesn't mean that he was in the mood for that particular
24 stability. There were those individuals who wanted to
25 assess him and be of some help to him, but beyond that he

1 still was pretty upset about everything that he had been
2 seeing and he had been experiencing.

3 Q And in the notebook there, volume one, what's the tab
4 -- tab three, if you would -- are those the hospital
5 records?

6 A Yes, tab three.

7 Q And up at the top there are some bate stamps. If you
8 would find page 111 for me.

9 A Yes.

10 Q Down at -- Let me just show you. I've got
11 highlighting on my copy so you can find where I'm looking
12 at in the page. It starts with, Mikal said he states --
13 he states that my mother doesn't care for me and she
14 abandoned him at the age of four. Is that consistent
15 throughout those two months in the hospital where he's
16 saying his mother abandoned him and she doesn't care about
17 him?

18 A Yes.

19 Q Okay. And were you aware prior to this
20 hospitalization was there another incident at least that
21 Mikal reported of him being suicidal?

22 A Yes. In fact, they talk about it here at the bottom
23 of the page, and it has to do with him attempting to kill
24 himself by jumping off of a bridge and he had a friend
25 who, basically, stopped him from doing that.

1 Q And then on page 127, also, in tab two --

2 A In tab two.

3 Q Oh, I'm sorry. Tab three.

4 A Okay. Tab three. What am I looking at now?

5 Q In the middle of the page where it talks about two
6 weeks prior to to admission and that is where it talks
7 about what went on before then, was there reports from his
8 family down at the last couple of sentences -- Was the
9 hospital aware that the family had observed an impact on
10 Mikal prior to the hospitalization of these events?

11 A Yes. It says Mrs. Burwell, his aunt, states that he
12 has had increased sadness after his return from Virginia.
13 He also states that he's scared of failing the third grade
14 and blames himself for his family's break-up.

15 Q Why would a child -- Why would this child -- He is
16 not a child now, of course, but why did Mikal Mahdi think
17 that he was responsible for his family's break-up? How
18 could that happen?

19 A Well, first of all, developmentally it's not out of
20 the ordinary for a child under the age of 8 as I suggested
21 earlier to see all things from where they sit and whether
22 it be a divorce or loss or something like that, they often
23 blame themselves. Added to that is that he really wanted
24 to keep his family and he tried to pull it together. He
25 tried to get mom and dad together. He tried to do all of

1 that and he was impotent to do that. So, it would make it
2 much more traumatizing for him.

3 Q And then on page 129 there in tab three up at the top
4 the third sentence in, when he was asked by the doctors
5 and the counselors there at the mental health hospital
6 what his wish was, what was this young man's only wish?

7 A I want my family to be together and that is all I ask
8 for.

9 Q Did he have any plans at all reported to them what he
10 wanted to do in the future?

11 A No.

12 Q And there at the last segment before the physical
13 status on examination, was it clear to them that he
14 couldn't think of any way to solve his problems?

15 A The only solution to my problems is to get out of
16 this life.

17 Q And the diagnosis from the hospital is there at the
18 bottom. What was he diagnosed with on this interim
19 psychiatric evaluation?

20 A Major depression recurrent with suicidal ideation and
21 they have to rule out adjustment disorder and
22 developmental reading disorder.

23 Q And going to 134 in tab three there is a reference
24 down towards the bottom of the page above where it says
25 Axis IV, that paragraph before that -- Do you see it?

1 A Yes.

2 Q It starts with psycho-social stressor. What is a
3 psycho-social stresor?

4 A Basically, stress is normal and all of us experience
5 stress, but there are some stresses that impact
6 psychologically. That would mean our emotions, our
7 feelings, the way we see things, social relationships.
8 So, a psycho-social stressor would be something that
9 impacts those two areas of a person's life.

10 Q And what they found in the hospital there and they
11 list multiple moves -- You agree that that is significant?

12 A Yes. They say they include the multiple moves,
13 school changes, abandonment by mother, father's
14 depression, violence towards the mother and grandmother.
15 Then it goes on to talk about placement in his aunt and
16 uncle's home required him moving from Virginia to
17 Maryland, also resulted in separation from his brother as
18 well as his father and resulted in grandmother -- It said
19 Mikal has had multiple caretakers inconsistent,
20 ineffective parenting, school failure. It goes on to say
21 when his mother abandoned the family Mikal did not see her
22 for years and thought she was dead.

23 Q And when it lists school failure, did you see a
24 school failure in that timeframe from the kindergarten to
25 age 8 that these folks are listing here?

1 A Yes.

2 Q What is the school failure?

3 A Well, first of all, he was very hard to teach. He
4 didn't want to interact. He would need to be -- He
5 couldn't focus on learning and even though when tested
6 it's clear that he's intelligent, but emotionally he was
7 distraught and so it came out in his inability to stay
8 focused on tasks in school.

9 Q And do you agree with the characterization they have
10 there again in that same paragraph you just read to us
11 starting with psycho-social stressors they characterize
12 the stressor as severe to extreme and enduring. Do you
13 agree with that assessment?

14 A From this description and what I, you know --

15 Q Based on what you know.

16 A Oh, yea. From what I've been able to ascertain
17 interviewing family members, talking with him, looking at
18 the records, all of that, I have -- When I first saw that
19 in the record and even that Axis IV, the GAF score of 30
20 suggests that that is a person who is not able to focus.
21 It even says I think they can't even function in school or
22 -- Those are some of the indicators that they're severely
23 limited at that point.

24 Q You just referred to a GAF score of 30 and I see a 30
25 on that page, but you're going to have to tell me what a

1 GAF score is.

2 A Yes. What a GAF score is a Global Assessment of
3 Functioning and the idea is very simple that if you're at
4 100 it means that you're able to function fully. That
5 means all your capacities. So, as you move towards zero
6 that means that you're losing function. So, right about
7 maybe 50, 60, you're still functioning -- not well -- but
8 if you're down around 30 you're not functioning well at
9 all in terms of your psycho-social -- that whole package.

10 Q Basically, you're not a normal person?

11 A What happens is if a clinician comes in and gives
12 that kind of score they're saying this person is in
13 trouble. They need to be observed. They need to be
14 looked after. They need to be cared about because they're
15 not able to take care of themselves.

16 Q And down on page 139 there in tab three it lists an
17 IQ score of 98 and we heard earlier today that he had an
18 IQ of 118 a couple of years after that.

19 A Yes.

20 Q Do you have an opinion about what could have caused
21 the IQ score at being that low as compared to 118 several
22 years later?

23 A It's -- The literature is clear. Trauma affects
24 people's ability to think and to feel and if trauma is
25 severe enough you can -- your score will drop. You can

1 have something as simple as hypoglycemia meaning you
2 haven't eaten in several days and your IQ score will
3 change just simply because your brain needs certain
4 nutrition, and, so, trauma definitely would cause an IQ
5 score to drop.

6 Q And on the next page there 140 at the end of that
7 first partial paragraph, did they essentially come to the
8 same conclusion that his IQ score was affected by the
9 depression and anxiety is how they list it?

10 A On 140 here?

11 Q Uh-huh.

12 A We're looking where? Towards the bottom?

13 Q No, towards the end of the first portion of the
14 paragraph.

15 A Oh, okay. Yes, yes.

16 Q And in addition to the depression and anxiety they
17 listed the possibility that emotional factors had slowed
18 his performance?

19 A Yes. There is some significant variability in his
20 sub-test scores. Factor analysis suggests that Mikal is
21 significantly weak in processing speed as indicated by his
22 low score in coding. It's possible that depression and
23 anxiety slowed Mikal's processing of information.
24 Similarly, this IQ testing indicates that Mikal has some
25 difficulty with mental calculation or tasks that can be

1 adversely affected by depression and anxiety. It is
2 possible that emotional factors have slowed his
3 performance and or depressed the scores such that these IQ
4 scores might represent an underestimate of Mikal's true
5 potential. In fact, he did evidence significant strength
6 in abstract thinking abilities.

7 Q And then down to the last paragraph on the same page
8 he was apparently given projective testing that's reported
9 in this psychological evaluation?

10 A Yes.

11 Q That projective testing -- that last paragraph -- if
12 you could read that first sentence for us.

13 A Yes. Projective test results suggest: A, profound
14 depression, significant losses, and preoccupation with
15 death; B, anxiety and occasionally expansiveness; C, some
16 unconventional loose and disorganized thinking; and, D,
17 the possibility of past experiences with trauma; and then
18 E, poor mechanisms for coping with external and internal
19 states and then, of course, F, underlying anger and a
20 potential for impulsively acting out his feelings and then
21 it goes on to say this test suggests that Mikal
22 experiences a need for more nurturance and protection from
23 caregivers.

24 Q So, basically, that sentence sort of summarizes all
25 of the problems he had going on there that you're seeing

1 from his history. The psychological testing -- Is that
2 consistent with the history as we know it of what you
3 would expect?

4 A It is consistent, yes.

5 Q And now at page 216 and tab three. Just before the
6 signature in the middle of the page there is about five
7 lines there that start with, Client became extremely upset
8 and tearful when peer cursed his mother; stated what did
9 she do to him for him to curse my mother. Client very
10 concerned about his mother; stated that he misses her and
11 would like to see her.

12 A Yes.

13 Q We go back and forth in some of the records and in
14 some of the information about whether Mikal was told she
15 was dead or whether she just left because she didn't want
16 him and you see -- Do you see inconsistencies in the
17 records of what this child knew or thought then?

18 A He didn't understand it, first of all, and he was
19 getting different kind of information, and one thing that
20 thematically is strong for me is that he never really
21 stopped looking for her, never stopped wanting her. He
22 just didn't know how to make that happen. So, this
23 statement here fits what else I found going on in the
24 family.

25 Q And you said that one of the good things about this

1 hospitalization was structure?

2 A Yes.

3 Q Had Mikal ever had any real structure in his life
4 before that?

5 A We know from his father -- That's one of the people I
6 talked to and others, but I thought it was pretty good
7 coming from his father and his father would admit that.
8 He said he didn't have a lot of structure and particularly
9 between the age of five and eight he kind of did whatever
10 he wanted and by the time he got a little bit older it was
11 even more so.

12 Q And you said earlier that you didn't feel like the
13 hospital had done enough?

14 A Yes.

15 Q What did you mean by that?

16 A Well, first of all, different entities -- school,
17 psychiatric center, different people are noting sadness.
18 They're noting depression. They're noting all of these
19 kinds of things that are more pronounced after his mother
20 has left and then his father kind of rants and raves about
21 her saying she's abandoned him or doesn't want him or dead
22 or that kind of thing, and, yet, he retains kind of a
23 hopefulness and then, of course, at age eight he finds out
24 she's not dead.

25 Now he has a problem because what is it to believe

1 from dad, you know, because dad has been saying all of
2 this up 'til now. So, the confusion about what's going on
3 would become pronounced. The very person he is counting
4 on who may not be really structuring his life and helping
5 him do what he needs to do still is the person he's
6 attached to, he now finds that person lied to him.

7 Q And after Mikal left the hospital, did things appear
8 to improve for him at that point or were they better than
9 they had been when he went into the hospital? I'll put it
10 that way.

11 A You're saying when he came out of ---

12 Q When he came out of the hospital for depression --

13 A Uh-huh.

14 Q -- was he any more improved than he had been when he
15 went into that hospital?

16 A Well, that's a hard question for me to answer. Let
17 me answer it this way. Briefly there seemed to be
18 improvement, but once he was returned, you know, back on
19 -- you know, counting on himself and things like that,
20 then the same issues kept popping up.

21 Q And during that brief improvement was Ms. Ramsey
22 Harris his teacher then?

23 A Yes. She -- in fact, it was stunning not only to
24 interview her but to read the records and to see as the
25 court already knows that she had awarded him achievement

1 certificates and other things. So, I found that profound,
2 and, so, when I interviewed her my question to her is what
3 were you doing that nobody else seemed to be doing and she
4 just said, well, a lot of nurturing, a lot of mothering, a
5 lot of listening, a lot of those kinds of things which if
6 you were going to recommend a stable, caring, loving
7 environment, those are things you would have in there.
8 They are also things that a mother would do and one of the
9 things that she said to me in the interview was is that
10 she did not hold his past against him, and, so, she simply
11 said we're going to deal from where you are today and --
12 but her -- as she indicated on the stand she did a lot of
13 listening. She was consistent. She was caring. She told
14 him the rules. There was discipline, and he responded to
15 that. In fact, his school records suggest that that is
16 probably one of the best times academically he ever had.

17 Q And that timeframe when he was with Ms. Harris and --
18 Ms. Ramsey Harris and with Carson and Lawanda Burwell, was
19 that a period in your view of had he stayed in that home
20 would he have landed over here, a deathrow inmate?

21 A I titled that in the report that I have given to the
22 court ---

23 MR. MABRY: Objection.

24 THE WITNESS: --- Missed Hope.

25 THE COURT: What is the objection?

1 MR. MABRY: I don't think he can make that -- give
2 that opinion.

3 THE COURT: Well, we don't have a jury. That's a
4 pretty speculative opinion, but I'll let it in and give it
5 whatever weight it deserves.

6 Sir in the blue shirt back there, you need to either
7 go out or wake up.

8 MALE SPEAKER: Okay.

9 THE COURT: Thank you. If I catch you asleep again I
10 am going to ask you to leave for good.

11 Q Let me narrow the question for you a little bit.

12 A Thank you.

13 Q Was that a window of opportunity where this young
14 man's life could have continued to improve?

15 A Yes, ma'am.

16 Q Tell me why.

17 A As a socialworker those are the kinds of things that
18 when you bring a child who is in trouble in to say how do
19 you help them, there are things that you would recommend,
20 and you would recommend a firm, consistent environment
21 where the rules are clear, a fair environment. This is
22 what you would tell parents a child who is having those
23 kind of troubles requires. That, hopefully, would be,
24 again, a foundational moment to build on.

25 Q And what happened instead of that foundational

1 moment?

2 A It was ripped away from him. He went back to his
3 father and lost all of that structure. He lost people who
4 were very educated, very balanced and stable. He lost the
5 resource of Mrs. Harris and others and he was put back in
6 a situation where he was pretty much on his own.

7 Q And Mr. Burwell testified earlier that Mikal wanted
8 to go back to his father. If his father was so bad and
9 was so abusive and inadequate as a parent, why would a
10 10-year-old want to go back to him?

11 A It would be a lot of reasons. One of the things that
12 we know is that abused children -- even abused adults --
13 tend to cling to their abuser. That's one thing. Another
14 thing is his father is the only thing that he had. He was
15 still attached to his father, still hoping to the best
16 would be another reason. The other reason is that Saleem
17 got to go home, and he always felt at that time in his
18 life that he was -- the family kind of said it, too --
19 that he was more his mother's child and Saleem was more
20 favored by his father.

21 I asked his father about that and he said, Yes, I did
22 show difference, and, so, I said, Okay, simply because
23 that made it clear to me that young Mikal wasn't imagining
24 that. The bottom line is that he wanted to be with his
25 father. He wanted to be with his brother. He wanted to

1 be with the only family he knew and that it wouldn't be
2 out of the ordinary for someone to not only want to be
3 with their family but also to cling to those -- someone
4 who might be abusing him. We see that all the time in
5 domestic violence cases.

6 Q And did you learn when you mentioned that Shareef
7 somewhat favored Saleem, was that because Saleem -- Well,
8 was there a particular reason for that that you learned?

9 A None that anyone told me. So, I could only
10 speculate.

11 Q All right. Do you recall how much time period there
12 was from when Mikal left Baltimore, went back to Shareef,
13 until he is being assessed for special education,
14 emotional handicap classes in Brunswick County?

15 A It wasn't a very long time -- a matter of months.

16 Q And how could the child that Mrs. Ramsey Harris
17 testified about -- the happy child, the secure child -- go
18 from that to Ms.~Wilson drawing a hanging man with a black
19 pen and never a smile? What happened in those months?

20 A Well, again, if you return a person to an environment
21 that does not support their growth, doesn't support their
22 healing, doesn't comfort them, it doesn't -- you know, it
23 is just more of the same and, so, if you take away the
24 structure, you take away those things that have been
25 making a difference. Then a person easily can regress

1 back to operating the way they were before.

2 Q So, when Carson and Lawanda Burwell aren't there and
3 it's Shareef in charge, am I understanding you that that
4 can sort of impact everything?

5 A Yes, because Shareef was still dealing with his own
6 depressions, his own ranting and raving, his own hatred
7 for white people, his own issues with his own mother, his
8 own issues with his wife. He was consumed by this. He
9 was not working. He wasn't able to provide, and, so, that
10 hadn't changed.

11 Q And Ms.~Wilson talked about Mikal being taken out of
12 school by Shareef Mahdi. Do you know how old Mikal was at
13 that time?

14 A When she talked about that?

15 Q When he left school from your knowledge all the
16 information available to you?

17 A Yea, 10 or 11 when he got back there. Yes.

18 Q Now, we've talked about, basically, the time period
19 from birth up to about that 10 or 11. What happened to
20 Mikal in his life from 10 or 11 once he's taken out of
21 school up until that point when he goes into incarceration
22 in the juvenile justice system? A three or four-year
23 period?

24 A What happened to him during that time?

25 Q Uh-huh. What was his life like?

1 A Well, first of all, he was -- This is something --
2 This is something his father said. He said, Look, Mikal
3 took care of me and Saleem. He said, I wasn't -- I didn't
4 have enough money. I didn't have enough -- I didn't have
5 a job -- all these things. So, he said it was kind of
6 role reversal, and, of course, when I spoke to his father
7 about it he said he regretted it, but he said the bottom
8 line was he sent this young as he called it his warrior --
9 his young Mahdi out to take care of the family, and, so,
10 he said his son did that, and, so, in the case of -- He
11 would get lectures. Mikal would get lectures on you don't
12 steal, you don't do this, you don't do that, but his
13 father would then take the items and make use of them and
14 thank him.

15 Q So, I take it when you're talking about Mikal was
16 taking care of the family, it wasn't with a job?

17 A No.

18 Q How was he doing that?

19 A He was securing resources without a job, although
20 there was a period of time in there that Mikal and I
21 talked about extensively where Mikal was attempting to
22 clean gutters and mow lawns and do handiman type of jobs
23 and he said that if he could get 10 jobs in a row he could
24 make a little bit of money and it was during that time
25 that he also said that he -- If somebody was hungry or a

1 kid didn't have a bike he would make sure they got a bike
2 or he fed them, and, so, he -- Mikal in one sense during
3 that same period of time not only was taking care of his
4 father and brother but in a sense was taking care of
5 anyone around him that he thought was suffering.

6 Q And what is the impact in terms of mentally of being
7 an 11, 12-year-old child, basically, being the caretaker
8 for your parent -- the person that's supposed to be caring
9 for you?

10 A At the very least it's extremely confusing. It's --
11 You know, parents are supposed to provide and protect for
12 you, and, you know, children don't come here equipped to
13 handle the world. So, when you find yourself in that kind
14 of setting on one hand you gain your father's respect
15 because your father knows what you're doing. On the other
16 hand, it puts you at risk.

17 Q Now, during this period when Shareef had told the
18 school he was going to homeschool him, what type of actual
19 schooling was Mikal Mahdi getting from his father in that
20 11 to 14-year-old timeframe?

21 A Well, first of all, they were in a very rural place.
22 I've had one witness or one person that I interviewed say
23 to me you go to the end of the earth and turn right.
24 That's how far out in the country they were, and when you
25 get out there is nothing really out there. There is

1 nothing really to do. So, imagine now that you have a
2 father who is ranting and raving about the world order and
3 hatred for white people and all of the problems that he
4 sees going on in the world including, you know, their
5 mother, the whole works, and this is what you get 24/7
6 most of the month. This is what you're being
7 home-schooled on and so that then becomes your -- as we
8 would say your mental diet.

9 Q You referred earlier you used the phrase "an angry
10 warrior." Is that what Shareef was teaching, training
11 Mikal to be?

12 A When I interviewed Shareef he very humbly put his
13 head down. He had a tear in his eye. He looked at me and
14 he said, Look, I wanted him to be my warrior. He said he
15 was fearless. He would do things that I was afraid to do
16 and he segwayed into what I'm sure you'll ask me about
17 later at 15.

18 Q Did he actually physically teach Mikal how to be a,
19 quote, warrior?

20 A Well, yes. They practiced shooting and using knives
21 and moving about in the countryside as if there was an
22 enemy and how you could distract people and to do whatever
23 you feel you need to do to the enemy. They were being
24 taught that regularly on a daily basis.

25 Q So it was a bit more --

1 A Boot camp like the marine corps except, you know, it
2 was his father working out his own issues with his sons.

3 Q Now, during that timeframe from 11 to 14 to your
4 knowledge with all of the records, information you had,
5 was there any intervention at all by the school system or
6 by social services to this situation where this young boy
7 was not in school and going through this?

8 A No. He was supposedly being home-schooled and we've
9 already discussed what that home-schooling involved and
10 from the socialwork perspective he fell through the social
11 network that should have stepped in and assisted him.

12 Q So, to the best of your knowledge with all of the
13 records and information Ms.~Wilson was right that he just
14 slipped through the cracks?

15 A I would have to agree with her and particularly after
16 the interviews and reading the records and, of course, I
17 did get a chance to ask her what happened and she
18 explained the same thing to me. So, I have no reason to
19 -- In fact, you have family failure and you got
20 institutional failure, social failure. When we say human
21 behavior in the social environment what we're saying is
22 that there is the micro which is, you know, personal and
23 then there is kind of the mezzo which is for family,
24 neighborhood, that kind of thing and then on to the larger
25 community, and, so, the reason that we have a DJJ or,

1 better yet, a DSS or we have any of these kinds of
2 services is ultimately to be a net for those people who
3 need it. So, if someone needs it and doesn't get it, then
4 they go through the net.

5 Q And was there -- were there time periods in there 11
6 to 14 when Mikal was outside of Shareef's home or to put
7 it differently was Shareef constantly there during that
8 whole time period?

9 A During the time period of 11 to 14 was he always
10 there? No.

11 Q Where was he?

12 A Sometimes nobody knew where he was, actually. Let me
13 think for a minute.

14 Q Do you recall whether or not Shareef spent any time
15 in jail in that timeframe?

16 A Oh, yes.

17 Q What was he in jail for?

18 A Prior to the incident in the swimming pool?

19 Q Uh-huh.

20 A Well, he -- I forget the exact thing right now -- I
21 think my blood sugar is dropping -- but it has to do with
22 him, you know, being belligerent and acting out in some
23 way that brought the law to him -- brought him to the
24 attention of the law.

25 Q If you will, turn in the Volume II of tab seven.

1 A May I sit this here, sir?

2 THE COURT: Sure.

3 THE WITNESS: Okay.

4 Q The page I'm looking at is page 1344 at the top.

5 A Tab?

6 Q Tab seven, page 1344.

7 A 1334.

8 Q Yes, sir.

9 THE COURT: Thirty-four?

10 MS. NORRIS: Yes, sir.

11 THE WITNESS: 1334. Yes.

12 Q When Mikal first went in to DJJ, that court record
13 there, starting under paragraph A was the indication that
14 Mikal was not showing up in court?

15 A Oh, yes. Mikal was a minor and when he was ordered
16 to come to court his father was supposed to make sure that
17 he did and on a number of occasions Mikal didn't show up
18 and his father didn't help facilitate that.

19 Q And as a result of that what happened to Mikal?

20 A Mikal, of course, got the attention of the system and
21 they got him.

22 Q And there on page 1350, the last paragraph in the
23 summary evaluation there --

24 A Yes.

25 Q -- where they list the major negative factors are the

1 inappropriate supervision provided within the home setting
2 for the subject and the emotional turmoil in the subject's
3 life as a result of this circumstance.

4 A Yes.

5 Q It appears to be a child who would respond well to a
6 structured setting; should be noted that preparation for
7 this report was hampered by the lack of cooperation from
8 Mr. Mahdi and the missed appointments, failure to respond
9 to letters sent to him, and it was finally necessary to
10 have a show cause issued against him for his lack of
11 assistance.

12 Aside from this incarceration and it is clear that
13 Mr. Mahdi was not cooperative, is that consistent overall
14 with what you could determine from the records from your
15 interviews about Shareef's parenting? For instance, if
16 the school called or sent him a letter and said we're
17 having a problem with Mikal, was this a man who showed up
18 at the school to try to help the problem?

19 A Number one, he didn't like being told what to do and
20 it made him feel like he was forced to and depending on
21 who was going to be there in particular -- and he was very
22 sensitive to anyone interfering in his family business and
23 so many times as he indicated to me he just would be
24 oppositional -- this is the father -- and just not show
25 up.

1 Q And do you recall whether he was evaluated when he
2 initially went into the department of youth and family
3 services? I forget what they call it in Virginia. I am
4 going to call it DJJ, juvenile justice.

5 A Okay.

6 Q Did he receive a mental health evaluation there?

7 A Well, they -- yes. They had a very extensive, but
8 they, basically, based it on his files, though, because
9 his files by then had started to build.

10 Q I am going to ask you to look at tab four, page 410.

11 A Back in Volume I?

12 Q Yes, sir.

13 A Tab four and what number?

14 Q 410.

15 A Yes, ma'am.

16 Q All right. The second full paragraph there where it
17 says test results in clinical impressions describe an
18 impulsive, undersocialized, angry, and alienated young
19 man. Mikal described his criminal offending quite
20 remorselessly and admitted that a great deal of thought
21 and planning was involved. Now, down below that skip the
22 next paragraph and then down below that it says the
23 etiology of misused conduct disorder. What is a conduct
24 disorder?

25 A Yes. This is -- and as you look at Mikal's case

1 slowly as he gets older and more people are testing him
2 and evaluating him additional labels are being placed on
3 him, but the conduct disorder, basically, in very simple
4 terms means that you -- you act in ways that are
5 unacceptable, maybe even harmful. In other words, you
6 don't behave properly.

7 Q And does a person with conduct disorder show remorse,
8 typically?

9 A No. Something else that comes out in this case is --
10 and I think we haven't really spoken to it. I hope it's
11 acceptable. It's just that children puff up. For
12 instance, when he went to DJJ and he's like 14 and the
13 other kids are bigger than him he had to be tougher than
14 those kids to protect himself, and, so, he already has
15 been operating and looking after his father. He is
16 looking after his brother. He is doing all of these
17 things, and, so, there are times when, you know, his
18 behavior is not surprising to me that he would come off
19 very tough and if you add conduct disorder to it, then
20 that would make perfect sense.

21 Q All right. And in their report there the paragraph
22 we were just looking at the etiology of misused conduct
23 disorder probably can be traced to incompetent parenting
24 and poor guidance supervision and monitoring in an
25 unstable, nomadic, dysfunctional family. So, in essence,

1 is it your assessment as well that this young man of 14,
2 this remorseless guy, this under-socialized angry guy, the
3 reason he is that way are these reasons that they found?

4 A I would agree with those.

5 Q And then on page 11 -- Well, they are still on 410,
6 the recommendations at the bottom.

7 A Yes.

8 Q Mikal would benefit from a highly structured,
9 carefully supervised, thoroughly monitored environment,
10 and then you skip a few sentences and go to the top of
11 411: It is recommended that he be placed outside of the
12 family from which he came when he is returned to the
13 community on parole in hopes of stabilizing, maintaining,
14 and generalizing any treatment gains made through
15 treatment through DJJ. When he was released from DJJ was
16 he removed from that home?

17 A No, ma'am.

18 Q Do you recall how long he was in DJJ that first time?

19 A I need to refresh my memory on that.

20 Q If I said it was six months, does that sound like ---

21 A Yes. Six months. Like I said, my blood sugar must
22 be dropping.

23 Q Do you need a Co-cola?

24 A If you don't mind I'd like to get some candy out of
25 my pocket.

1 MS. NORRIS: Your Honor, he --

2 THE COURT: Yes. I am not that mean.

3 THE WITNESS: Yea. I am diabetic, and, so, I ate at
4 seven this morning.

5 THE COURT: You want a Milky Way?

6 THE WITNESS: I would, but I can't eat chocolate. I
7 am going to eat this right here. I will be with you in a
8 minute. I just know I'm losing it.

9 THE COURT: Well, if you're getting that bad we can
10 stop.

11 THE WITNESS: I want to do whatever the court wants,
12 but I do know that --

13 THE COURT: I know that but I'm not ---

14 THE WITNESS: -- i'm having trouble with -- I am
15 usually better than that. You said six months. I would
16 have said it. Whatever you decide, Judge.

17 THE COURT: You tell me how you're feeling. You need
18 to stop? Are you feeling a little light-headed? You need
19 some sugar? Whatever you need.

20 THE WITNESS: Well, I just got some sugar. It will
21 take about 10 or 15 minutes for it to kick in. It might
22 be better for me to wait.

23 THE COURT: Well, let's wait about 10 minutes and see
24 how you're doing. Let me see you fellows and ladies back
25 here.

1 (Whereupon, a break was taken.)

2 THE COURT: Here is where we are. Dr. Cooper-Lewter
3 asked me to let's stop for the day. We've gotten a lot
4 done. So, I am not going to push you. Do me a favor.
5 Bring you some extra candy.

6 THE WITNESS: Oh, I'll be ready to in the morning,
7 sir.

8 THE COURT: I'll bring you some stuff from Bamberg
9 County.

10 THE WITNESS: I'll look forward to it.

11 THE COURT: I'd like to start at nine in the morning.
12 We're coming from Bamberg, and, you know, by the time we
13 get up here and get through the gates and all -- Let's say
14 9:30. Let's be ready to go at 9:30. We've had a little
15 in-chambers discussion about logistics tomorrow. We'll go
16 as efficiently as we can in the morning and then we'll
17 reassess things around 11 or 11:30 so you'll know what to
18 do with your witnesses, Mr. Mabry.

19 MR. MABRY: Yes, sir.

20 THE COURT: Is there anything for the record before
21 we break for the evening, Ms. Norris?

22 MS. NORRIS: No, sir.

23 THE COURT: Mr. Mabry?

24 MR. MABRY: No, sir, Your Honor. Thank you.

25 THE COURT: Doctor, normally I give this instruction

1 with a witness who is right in the middle of his testimony
2 is that it would not be proper to discuss your testimony
3 either with lawyers representing the applicant or the
4 state unless y'all waive that.

5 MR. MABRY: We would not waive it, Judge, at this
6 time. We'd like to -- since he's half-way through.

7 THE COURT: You're right in the middle of it so just
8 go home and get you plenty of candy, get your blood sugar
9 right, and get you a good supper --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- and be ready to go at 9:30 in the
12 morning. I'll let you step down.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Thank you very much. You can leave all
15 of that.

16 THE WITNESS: Right there?

17 THE COURT: Yes, sir. It's not going anywhere.
18 We've got a lot of material in here. Is this room going
19 to be locked?

20 THE POLICE OFFICER: Yes, sir.

21 THE COURT: We'll just leave -- Leave what you want
22 to leave. Carry home what you want to carry home. If
23 you'll get with Mr. Mabry -- are they going to take care
24 of the exhibits? They know how to do that? Everything is
25 going back -- the guns and all won't come back tomorrow.

1 That might speed up a little bit. But he'll discuss that
2 with you.

3 All right. Once again, anything for the record
4 before we break?

5 MR. MABRY: No, sir, Your Honor.

6 MS. NORRIS: No, sir.

7 THE COURT: Thank y'all all very much and we'll see
8 you bright and early in the morning and everybody have a
9 wonderful evening.

10 Madam Court Reporter, I'll just put all the exhibits
11 back in my chambers.

12 THE COURT REPORTER: Yes, the ones for today.

13 (Whereupon, the proceedings were concluded for the
14 day and were reconvened on March 10, 2011 as
15 follows:)

16 THE COURT: Let the record reflect we're back in day
17 two of the trial. Present are the Applicant, his lawyers,
18 the state's lawyers. You may call your first witness.

19 MS. NORRIS: Dr. Lawanda Burwell.

20 LAWANDA G. BURWELL, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. NORRIS:

24 Q Ma'am, would you state your full name for the record?

25 A I am Lawanda Green Burwell.

1 Q And what is your relationship to Mikal Mahdi?

2 A I am his aunt by marriage.

3 Q And you were married to or are married to,
4 divorcing ---

5 A Almost unmarried to.

6 Q From?

7 A From Carson.

8 Q From Carson. Where did you grow up?

9 A In Lawrenceville, Virginia.

10 Q Did you know Carson and his family when you were in
11 school?

12 A Yes. It's a small community. We lived within a mile
13 of each other and went to the same schools. From second
14 grade through high school Carson and I were in the same
15 class and his brothers and sisters were distributed ahead
16 of us and below us.

17 Q And after high school did you leave Brunswick County?

18 A Yes, I did. Three weeks after high school graduation
19 I went to California.

20 Q And tell me your educational level.

21 A In California I received a master's in communication
22 disorders from the University of Southern California. I
23 worked there for a year, and I was able to get a job in
24 Massachusetts and there I was -- While I was there I
25 entered Harvard School of Public Health and from that

1 institution I received a Doctorate of Maternal Child
2 Health.

3 Q And when did you reunite with Carson and begin dating
4 him again?

5 A It was around 1983 just about the time that Mikal was
6 born.

7 Q And where did you live then?

8 A I lived in Stanford, Connecticut.

9 Q And would you visit back to Brunswick County? Was
10 your family still there?

11 A My mother was still there. She was in the process of
12 moving from Lawrenceville. She and Mrs. Burwell lived
13 within walking distance, you know, saw each other and so
14 my mother was in the process of moving but we did -- The
15 first trip that we took together after getting back
16 together was to Lawrenceville.

17 Q And where do you live now?

18 A I live in Baltimore County, Maryland.

19 Q When did you move there?

20 A In 1985.

21 Q And how are you currently employed?

22 A I work for the Baltimore City Public Schools. I'm
23 Executive Assistant to the Chief of Staff for Strategic
24 Affairs.

25 Q If I were counting from the top down are you number

1 two down, number five down?

2 A Well, there is a CEO who is in charge. There is
3 chief of staff who is his direct report, and I am the
4 direct report to the chief of staff.

5 Q Now, going back to Brunswick County when you were
6 growing up describe for me generally what people did for a
7 living. What were the options?

8 A Well, in Brunswick County you were either a farmer or
9 an educator -- at least in the black community. It was a
10 very segregated community. We had very, very little
11 contact with people who were not black except in the
12 stores in which we did business with them, and I found it
13 a very -- Well, my mother had a mission to move to the
14 city and that's what sort of transferred to me. So, I
15 found it a very sort of a suffocating environment where
16 everything was very rigid. Everybody knew everybody's
17 business. A friend of mine said, you know, if someone
18 sneezes in their home someone else knows about it before
19 they blow their nose and that's Lawrenceville.

20 There is also a small black college -- historically
21 black college in the community -- which does give it some
22 differences. We had a lot of interaction with the college
23 as kids because our elementary school is actually on the
24 campus of the college.

25 Q And between the educators and the farmers which were

1 Nancy and Nathan Burwell?

2 A Well, Nancy and Nathan as adults were educators.
3 Mrs. Burwell had -- Mrs. Burwell's family had a very big
4 farm and so she started there. Mr. Burwell, to my
5 understanding, moved from somewhere else to Lawrenceville
6 as an educator. So, by the time that I knew them as
7 adults they were both educators.

8 Q And did Nathan, Sr -- Nancy's husband -- in your
9 observation knowing them growing up and then being married
10 into the family, did he provide well for his family, his
11 six children?

12 A No and that was the understanding in the community
13 that -- My father actually said to me that the Burwell
14 family was struggling because there were a lot of children
15 and there were not a lot of resources and he thought that
16 this was cause for concern and as I said everyone knew
17 everyone else's business. So, you know, this was no
18 secret.

19 Q And did Nathan himself -- Was he making enough money
20 and not just spending it on the family or not making
21 enough money period?

22 A He made a teacher's salary which was quite regular,
23 and according to family stories he bought a new car every
24 other year, but they were never sure whether they were
25 going to have enough to eat or whether their house would

1 be heated.

2 Q And did Nathan instill, basically, a work ethic in
3 his sons to provide for their families?

4 A My sense was that he was not about parenting and
5 instilling in his children. He pretty much ignored them.
6 The story that Carson related to me was that the most
7 attention he ever had from his father was once when he had
8 pneumonia. So, in terms of a role model I think
9 Mr. Burwell had a very good job. He taught agriculture in
10 a farm community. So, that was not exactly hard work.

11 So, yes, he showed up and, you know, and he did what
12 he needed to do in that school environment, but I don't
13 know that he set a role model of a very strong work ethic
14 or tried to do that directly.

15 Q From your observation did Nathan and Nancy have a
16 happy marriage?

17 A From my direct observation -- I was obviously not ---
18 (Whereupon, the witness was given a cup of water.)

19 THE WITNESS: Thank you. I was not in their
20 household as a child and teen, but when I married Carson I
21 spent quite a bit of time with Nancy when she would come
22 to Baltimore. Sometimes she would stay with us.
23 Sometimes she would stay with her sister and we would
24 still visit and she would tell stories of their
25 relationship and it sort of affirmed my initial impression

1 that he was very distant, non-participatory, had sort of
2 an angry demeanor most of the time.

3 She told me a story of once early in their marriage
4 that he came into the house and she called him Dear and he
5 said, Don't ever, ever, ever call me Dear. So to me that
6 was the tone of their relationship.

7 Q Did Nathan seem to from your observation, your
8 experience seem to resent the financial aspects of having
9 a family to care for or his financial station in life?

10 A I think his behavior if it was as reported pretty
11 much said it. He -- Mrs. Burwell had to provide the
12 financial support for the family. She went back to -- She
13 started working at the shirt factory in the town, went on
14 to get a degree in education and to teach and she really
15 was the person who held the finances together.

16 Q And there's no easy way to ask this other than to ask
17 it. In talking with various Burwell family members, I
18 have heard references to somebody being a massah's
19 children and somebody being the overseer's children. Was
20 that the kind of comment that Nathan would make or his
21 sons learned from him?

22 A Well, I definitely heard that from his son, my
23 husband, who would call me a massah's children. He was
24 not a massah's children.

25 Q What does that mean?

1 A That means -- Well, in the slavery terminology of
2 house negroes and field negroes, I was a house negro and
3 he considered himself to be a field negro and this was not
4 a compliment.

5 Q And when Mikal was small was he living in the home
6 with Nancy and Nathan?

7 A Yes. When Mikal was born my best recollection of
8 that trip was that when he went to Lawrenceville for
9 spring break of 1983 Mikal was practically a newborn and I
10 was able to have a conversation with Mr. Burwell. He was
11 considerably older than Mrs. Burwell, and, so, I walked in
12 and asked him if he remembered me. He said, yes, he did
13 and we chatted for a few minutes, but then within a year
14 or so his health really deteriorated and the next time I
15 saw him I'm not -- I can't remember definitely the
16 timeframe, but the next time that I saw him he was in bed
17 in kind of a semi-comatose state. His eyes were open, but
18 he was totally unresponsive and couldn't move. So, that
19 was the environment that I knew that Mikal was born into.

20 Q Did Nancy have respect from her children? How did
21 they treat her -- Shareef, Carson, all of those folks?

22 A I have to say it is something that was very
23 mysterious to me because I had never seen children be so
24 disrespectful to their mother just in conversation -- what
25 they would say to her face, what they would say behind her

1 back and -- I don't know. My concept of mothering from
2 the black community, you know, is that the mother is the
3 glue that holds everybody together and they clearly didn't
4 see that.

5 They would -- She would sort of initiate. She could
6 say things that were just not highly appropriate or, you
7 know, kind of off base and they would kind of attack her
8 for such statements and it was difficult being with them
9 most of the time that I was in family gatherings with
10 them. I was the one who was talking to Nancy. Everyone
11 else was ignoring her.

12 Q Did Shareef Thomas Burwell who became Shareef Mahdi
13 who, of course, is Mikal Mahdi's father, did he also
14 degrade her and disrespect her in that fashion?

15 A I didn't see that.

16 Q And when Nancy was getting the disrespect from her
17 children, how did she react to that? I mean, other than
18 talking to you, what was her coping mechanism?

19 A I think that she sort of created her own little world
20 as a survival tactic that in dealing with Nathan, in
21 dealing with having six kids, she sort of insulated
22 herself from what was real. So, she would -- It would
23 seem as if she thought there was normal interaction going
24 on here and she'd sigh and look very sad, you know, when
25 there was an outburst directed at her, but she -- she just

1 never seemed to really grasp or want to grasp what was
2 going on and how deeply it was going on.

3 Q And if you were to describe her, was Nancy just a
4 normal person or did she try to act like she was more than
5 she was?

6 A Well, she definitely wanted to be more than she
7 thought people thought she was, perhaps. I remember the
8 first time that I knew who she was and saw her and my
9 reaction to her was that I didn't like her very much
10 because the expression at that time was putting on airs.
11 I felt she was -- that she was putting on airs and
12 children are very sensitive to that kind of
13 disingenuousness and that's what I sensed from her at that
14 time.

15 Q And we've heard some testimony before about Brunswick
16 County and the community there, and, certainly,
17 understanding that there was segregation -- the white and
18 black.

19 A Yes, sir.

20 Q What was the atmosphere in the black community in
21 terms of skin tone --

22 A Yes.

23 Q -- and more particularly the Burwell family?

24 A Right. Well, I think the Burwell family prided
25 itself on being very goodlooking light people of color and

1 that was -- That was an advantage in a town like that
2 because as we well know the lighter you were the closer
3 you were to the white people and the white blood. So,
4 there were certain advantages to that. My grandfather and
5 his children certainly benefitted from that as well as his
6 efforts. So, that was definitely the tone of things.

7 Typically, you know, the lighter you were, the more
8 highly you were praised and everyone knew families where
9 the darker children were sort of discriminated against.
10 However, some other families the lighter children were
11 discriminated against. It just depended upon where the
12 parents were on that continuum of that thinking.

13 Q And Nancy Burwell in particular, was she proud -- Did
14 she try to pass as I've heard it mentioned?

15 A I'm sure she did and that it was situational. First
16 and foremost, she lived in Brunswick County. So, everyone
17 knew what her background was. If she went to downtown and
18 interacted with people, they knew she was a light
19 red-headed black woman, but when she left Lawrenceville
20 then it depended upon what people thought. If they didn't
21 think she was black, she could be white, and if they did,
22 well, she'd be black.

23 Members of my family have done the same thing. It
24 just, you know -- They're not -- There are people who have
25 disappeared and who have really passed over and they're

1 sort of never heard from again and then there are other
2 people where depending upon the situation they can pass or
3 if they can't, then they don't.

4 Q Now, shifting gears to Shareef Mahdi --

5 A Yes.

6 Q -- and being a Moslem.

7 A Yes.

8 Q Are you aware of any other Moslems in Brunswick
9 Counties, especially back in the 1970's?

10 A No. No. That was a very radical thing to do.

11 Q And when -- From your observation when Shareef became
12 a Moslem living with Nancy, did that create conflict even
13 within the household?

14 A Yes. I remember things like the celebration of
15 christian holidays like Christmas -- could there be a
16 Christmas tree or couldn't there be a Christmas tree. If
17 we came through there at Christmas time and Shareef -- I
18 mean, Mikal and his brother were little boys, we brought
19 presents. They couldn't be wrapped as Christmas presents.
20 We could be bring presents, but there couldn't be a
21 celebration of Christmas, and I think, you know, adults
22 sharing a household like that -- My mother -- My parents
23 lived with my grandmother for the early part of my life
24 and I still remember some of the scenes from that. So, I
25 think that there are some of those tensions that are

1 inherent, but I think that the religious factor I think
2 probably added an additional stress in a very christian
3 Bible-belt kind of community.

4 Q And then when you -- When Mikal was small and Shareef
5 was married to Tilea did she treat her any better than his
6 own father had treated his mother?

7 A I didn't spend a lot of time with them, but some of
8 the things that I heard or observed directly were that
9 when they separated Shareef said that she thought he
10 didn't like her, and I thought, well, if you walk around
11 acting like Carson acts, that would give a wife, you know,
12 the impression that you don't like her, you know, because
13 you're dismissive or angry or just, you know, unavailable
14 for contact or conversation. So, I could identify with
15 that and I did hear of an incident which he had physically
16 hurt her. So, I think that -- I sort of assumed that
17 people's default mode is, you know, what they've
18 experienced in their own family and unless you work really
19 hard you sort of recreate those circumstances in families
20 that you create.

21 Q And when you would visit the Burwell home where
22 Shareef, Tilea, and their sons lived, what was Tilea's
23 interactions with others when she was in that house?

24 A She was very quiet. Even before I met her and went
25 there Carson told me that Tilea didn't talk to anyone and

1 I thought about her circumstance that she was living in
2 Nancy's household and as far as I understood this was an
3 arranged marriage in which there was very soon one child
4 and then a second and I sort of sympathized with her
5 position. I thought, well, hey, this is her coping
6 strategy. She is going to try to stay very quiet and stay
7 out of the way, but as I got to know her a little bit she
8 and I did talk like mothers of young children. So, it's
9 not that she refused to talk to me, but what I heard of
10 her before I met her was that she didn't talk.

11 Q And did Shareef ever bring Tilea and the boys to
12 visit at your home in Baltimore?

13 A Yes, a couple of times. At one time before they
14 separated the whole family came and another time after the
15 separation there was kind of a -- an attempted
16 reconciliation at our house. I didn't know exactly where
17 Tilea was, but I think she might have been in
18 Pennsylvania. So, she wasn't that far from us. So, they
19 came together then and there was at least one other time
20 when Shareef by himself brought the boys to visit to our
21 house.

22 Q And when Tilea was in your home did she interact and
23 talk with you moreso --

24 A Yes.

25 Q -- than she did at the Burwells?

1 A Yes, yes.

2 Q And when Mikal was small -- say, two years old --
3 describe him for us.

4 A He was just an active, bright little boy and in the
5 country children -- Well, this was before video games and
6 whatnot. In the country children played. They went
7 outside and ran around and chased, you know, cats and dogs
8 and did those kinds of things. So, it was -- I saw the
9 two of them just behaving like two little brothers and the
10 first time that we came to the Burwell house with our
11 first child they greeted my daughter who was about six
12 weeks old. They said, Hello Sara. It is the first time I
13 had ever heard anybody talk to her like a person, but
14 Mikal and Saleem did.

15 Q And what was Shareef's interaction with his sons?
16 Did he treat them equally?

17 A I didn't -- I really didn't see much of that. Again,
18 in these visits they were -- they were -- We were busy.
19 We were doing things and the men were sort of hanging out
20 over here and I was sort of watching the kids. Again, I
21 heard from Carson that it seemed that Saleem was his
22 favorite -- that he was Shareef's favorite, not
23 necessarily Mikal.

24 Q And was that because he was the oldest, skin tone?
25 Any idea?

1 A I really -- I didn't understand it until I sort of
2 thought about it, perhaps, and this is my speculation in
3 the concept of his Moslem --

4 MR. MABRY: Excuse me. I am going to object to
5 speculation.

6 THE COURT: Well, I've been pretty --

7 MR. MABRY: Yes, sir.

8 THE COURT: -- lenient the whole time and I am going
9 to let them make the record. So, overruled.

10 Q Go ahead.

11 A That in the context of being a Moslem perhaps, you
12 know, skin tone actually took on more meaning although
13 Malcom himself was light, but nonetheless I felt that
14 Saleem looked a little more like Shareef as a younger
15 child and one of the first comments I heard about Mikal
16 is, well, he's a little light and I thought, well, in the
17 Burwell family what does that mean that he's a little
18 light? You know, who's lense is this through? And one of
19 the visits when Tilea came with the boys when the family
20 was still together she was telling me that she thought
21 there was something wrong with his hair because it was
22 kind of reddish and --

23 Q His meaning Mikal?

24 A Mikal. And she had been trying to wash this color --
25 this funny color -- out of his hair and she said, well,

1 you know, I guess that's just his hair color and I
2 thought, well, you know, I know that, you know, Nancy's
3 color might be out of a bottle now, but, you know, this is
4 a family of red-heads. So, what's wrong with Mikal's
5 hair?

6 So, I put these things together. It was subtle and
7 much of what I knew was in brief visits firsthand -- from
8 firsthand information, but then Carson was always my
9 filter about what was going on in the family.

10 Q And, now, later on did Mikal come to live in your
11 home?

12 A Yes, he did.

13 Q Did you know he was coming prior to his arrival at
14 your house?

15 A Yes, I did know. I had heard that Shareef was having
16 a lot of difficulty doing all of the parenting things that
17 were necessary and that Carson and his sister Carolyn
18 would -- had been asked to each take one of the boys and
19 one of the boys would be coming to live with us.

20 Q And how did you feel about Mikal coming into your
21 home?

22 A I was excited about it. I love children and being
23 late to the parenting game I had two and was very
24 delighted with that and would love to have had more but
25 thought I better quit while I was ahead. So, I thought,

1 you know, I get to have another child. If I hadn't been
2 able to have children myself I wanted to adopt. I
3 thought, okay, so this is my opportunity. I can do what
4 I've wanted to do. So I was excited about his can coming.

5 Q And did you treat him as your son?

6 A I tried to, but I recognized that he was not my son.
7 He was old enough to know that. I had step-parented
8 before. Carson has a son. So, I know that the thing that
9 you can't do with children that are not your children who
10 are in your house is to try to pretend that you are their
11 mother, but to be -- but to be a strong, loving mother
12 figure, yes, that is what I wanted to do.

13 Q And what was Mikal told about why he was living with
14 you?

15 A I'm not sure he knew anything at all. That was --
16 that kind of emerged over time. Carson went to get him.
17 He was at our house and sort of trying to get adjusted and
18 as I talked with him I realized that he didn't know how
19 long he was going to stay. He didn't know where his
20 father was. I had heard that his father had some plan to
21 go work for an oil company in Saudi Arabia or something
22 like that and perhaps the kids knew that. So, they might
23 have thought that he had left the country. Shareef didn't
24 call. So, Mikal in the first -- I don't know -- at least
25 three or four months didn't have any contact with him.

1 So, I thought -- So, he didn't know anything as far as I
2 could tell.

3 Q And did he often talk about and ask about Shareef?

4 A He would say that he wanted to talk to his father,
5 only I didn't know how to reach him by phone because
6 unless he was actually at Nancy's house I don't know that
7 there was a phone at the farm at that particular time.
8 So, I'd say, well, you know, if I could, you know, we
9 would call him, but I didn't have a direct way to get in
10 touch with him.

11 Q Did Mikal also ever ask about his mother?

12 A He didn't ask where she was directly, but there were
13 some incidents that really brought home to me what his
14 pain was about it. One was -- one incident was there was
15 a homework assignment that he had in second grade where
16 the kids were asked to draw their family tree and he
17 didn't know what to put for his mother's side of the
18 family and I could help him with the Burwell side but I
19 didn't know anything about his mother's side of the
20 family. So, he was in tears and I was close to tears
21 myself at that moment.

22 Another time -- most of our -- most of our most
23 dramatic interactions -- Mikal's and mine -- were around
24 homework. We got along pretty well if we didn't have to
25 do schoolwork, but another time was when he was frustrated

1 about trying to do something that was in his homework. He
2 said, I'm just -- I'm just stupid. My mother left because
3 I was stupid, and I said, No, that's not true. You know,
4 that is really not true. What happened to your parents
5 was what happened between the two of them. You're not
6 stupid and she didn't leave because you were stupid.

7 So, those two incidents made a very big impression on
8 me, but he didn't ask for her because by then I think it
9 had been a couple of years that she had been out of the
10 family. So, he didn't ask for her.

11 Q And when he first came to your home describe his
12 demeanor.

13 A Well, he was kind of grumpy and felt since I had two
14 little children -- one five and one barely a year old and
15 he got along with them well -- no problems with them
16 whatsoever. He seemed to feel that he wasn't as well
17 loved as my children. You know, they're your children. I
18 am not your child. You love them better. And I tried to
19 say to him, I love you the way I love you. Yes, they are
20 my children, but I love you for you.

21 So, I think he felt that he had sort of the short end
22 of the stick here -- that here were two little kids that
23 all of this love was being lavished on and he wasn't
24 getting that.

25 Q And did that improve somewhat over time?

1 A I'm not sure that it did because I never felt that he
2 really, really trusted me. There was always some distance
3 and perhaps between living with his grandmother and the
4 loss of his mother, his ability to attach to, you know, to
5 women -- to women mother figures -- he had some bumps in
6 that already. So, I tried to accept that and say, okay,
7 you know, if we can have kind of a good working
8 relationship here until you get to be 18 and can finish
9 high school, you know, then we can manage, but I didn't
10 feel that we had as much affection between the two of us
11 as I would have liked.

12 Q So, is it fair to say as a little boy he wasn't
13 receptive to you mothering or trying to mother him?

14 A Not really. He didn't totally reject or resist it,
15 but he didn't lean into it.

16 Q Did you interact with the school administrators and
17 teachers --

18 A Yes.

19 Q -- as his parent --

20 A Yes.

21 Q -- his guardian?

22 A Yes, I did.

23 Q When Mikal entered the school at Scott's Branch did
24 they put him in his regular class -- the class he would
25 have been in timewise coming in?

1 A No. He was third grade age, but -- and I tried to
2 advocate for putting him in the third grade because I felt
3 that he would be with his peers and he had already been in
4 second grade and that's a blow to children to have to
5 repeat a grade. So, I was all prepared to, you know, just
6 do battle over getting him in third grade, but two things
7 happened. One, I did some informal assessing with him
8 with first and second grade academic tasks and he had
9 gaps. I could see he could do some things and he couldn't
10 do other things. Then I met with the principal and I
11 presented my case that I thought he ought to be in third
12 grade and she showed me the curriculum and what the
13 expectations were in third grade and I knew that he
14 couldn't meet those expectations because he didn't have
15 that really solid foundation. His schooling had been so
16 interrupted that he didn't have that.

17 So, I had to concede that, no, I didn't want him to
18 be in the third grade and just not be able to keep up in
19 the third grade. So -- and I don't know that they would
20 have really let me insist that he go to the third grade,
21 but nonetheless I felt that I had to concede and he went
22 into second grade, but the good news was he had really
23 quite an extraordinary teacher in second grade whose
24 classroom was just so accepting of differences. So, his
25 teacher's whole thing was you do what you do and nobody is

1 going to criticize anybody else or call anybody else
2 stupid.

3 So, I felt that that was -- that was good in itself
4 and also the school was a title one school which meant
5 that there was extra tutoring. So, I knew that was an
6 opportunity for him to have small group tutoring that
7 would help him catch up. So, I let up on my push to try
8 to get his grade level advanced.

9 Q Was there a discussion by the school even of putting
10 him in special education when he came?

11 A Oh, yes. Yes. And that's interesting to me. That
12 hits me on a lot of different levels because I started my
13 career in special education and my doctoral research is on
14 the -- is on the precursor to the present special
15 education law. I studied that law because it was brand
16 new at the time that I was a doctoral student and I have
17 also worked as an administrator -- special ed
18 administrator in two school systems with one in Stanford,
19 Connecticut and in Stanford I was the chair of the
20 district team that decided whether or not kids were
21 eligible for -- elementary aged kids -- whether or not
22 they were eligible for special ed.

23 So, I so I knew the pluses and minuses. I knew how
24 different teams can come to -- can look at the same
25 information and come to very different decisions and I

1 also knew the push to get the difficult child labeled
2 special ed to get them out of the classroom.

3 Q So, what was your opinion? What fight -- Which side
4 of the fight did you land on on whether Mikal needed to be
5 in special education?

6 A I was adamant that he should not go into special
7 education. Yes, he had emotional issues around learning
8 because he had gaps, and, so, everything didn't come easy
9 and he is a perfectionist. He wanted every letter on that
10 paper to be absolutely perfect and wanted to throw the
11 paper away if every letter didn't meet his standards. So,
12 I knew that he did have an emotional overlay. I knew that
13 he had gaps, but I also knew that he -- that the data
14 would show that he had gaps and that would be determined
15 to be a disability and the data -- that kind of testing
16 doesn't make a distinction between lack of experience with
17 and lack of ability to do it, and I felt that that would
18 be quite a blow to his self-esteem to be in special
19 education -- special education class, particularly when he
20 didn't need to.

21 So, I knew exactly what to do. I just refused to
22 cooperate. I wouldn't sign anything. I wouldn't go to
23 any meetings. I told the principal, I am a former special
24 ed administrator. I know what my rights are. No.

25 Q And you talked about gaps in his learning and school

1 interruptions. What do you mean by that?

2 A Well, Shareef and the family moved around a bit even
3 when they were an intact family and with the two boys
4 Saleem got off to a more stable start. I think he got his
5 basics down before a lot of the moving around started.
6 The moving around started when Mikal -- just about the
7 time he started school. So, they were in Lawrenceville.
8 They were in an apartment in Petersburg -- back and forth
9 between the two when -- before Tilea left.

10 After Tilea left and they were living in the farm
11 house, the farm house was right on the border between two
12 districts -- two school districts. So, they sort of --
13 One year they'd say, oh, we're on this side of the line
14 and we're going to this school and on the next year, Well,
15 we're on the other side of the line. So -- and I think
16 part of this was a strategy because they were not getting
17 to school regularly. The school were looking into, you
18 know, why are they absent or whatnot. I assumed this was
19 a strategy of Shareef's to just kind of stay under the
20 radar with the academic -- with the educational system and
21 it just meant a lot of interruptions.

22 Q And was there -- Academically speaking in Mikal's
23 learning and you working with him, did Mikal have a
24 particular area of concern when he came to you?

25 A With regard to his academics?

1 Q Yes.

2 A Well, he was not reading at second grade level and
3 that was a concern for him as well as for his uncle who is
4 an avid reader and felt that -- and I agree
5 wholeheartedly. I mean, reading is the key to a whole
6 world that you may not experience any other way. So,
7 reading was a big focus and I worked with most of the
8 other academic areas, but Carson sat down with him and
9 read with him because he was on a mission to make sure
10 that Mikal did learn how to read well.

11 Q And when Mikal was in the school did he succeed or
12 was he a struggling student coming in?

13 A Well, in second grade -- second grade he did well
14 enough to be passed to third grade. He did very well in
15 third grade. That was in Ms. Harris' class, but that was
16 a specialized grouping. It wasn't special ed, but the
17 principal decided that I've got some rambunctious boys
18 that, you know, need a teacher who can really make them
19 sit down and do their work, and, so, she put this class
20 together and I was thrilled at how well he did.

21 He had lots of A's in third grade and I think that he
22 had earned them. He only spent the first part of fourth
23 grade with us and then that's when he went back to
24 Virginia.

25 Q And then when he went to the hospital and Carson

1 testified yesterday and understand I am not accusing you
2 of abusing him.

3 A Yes.

4 Q Would you tell us in your own words how that whole
5 event came about?

6 A Well, my parenting belief is that sometimes you do
7 have to spank children so that they know that you really
8 are serious, but that's got to be the worst offenses is
9 that, and my standard which I think I articulated was if
10 you don't do what I tell you to do when I give you a
11 direct you got to do it or not do it, that's -- you know,
12 that's when I am going to do the max.

13 So, Mikal had a bicycle and I don't know whether
14 there was any incident that led up to that. What I
15 remember most clearly was that he took off on a bicycle
16 ride without permission and Carson worked not too far away
17 in a barber shop. Mikal stopped in and spoke to Carson
18 and I had already called him to tell him that Mikal had
19 left on his bicycle and I didn't know where he was. So,
20 Carson said, Well, you know, I told Mikal he needed to
21 come home because you were looking for him, and, so, you
22 know, more time elapsed -- maybe another half hour or
23 whatnot and then he came on in, and I thought, okay, I
24 really have to -- I really have to do something very
25 strong here because he's eight or nine years old and he is

1 almost as big as I am and I need to let him know that I'm
2 in charge here.

3 So, I did take his belt and I spanked him with his
4 belt. I didn't make him remove any clothing and my
5 purpose was not to really hurt him but to let him know
6 that I was in charge and I thought that that was the way
7 that he would know that I was in charge.

8 Q Was that the first time you --

9 A That was the first time, yes.

10 Q -- had ever spanked him? Was that the only time?

11 A That's the only time, yes.

12 Q Now --

13 A Yes.

14 Q -- tell us the rest of it.

15 A So, I can't recall exactly how much time elapsed
16 after that, but one day I got a knock on the door from the
17 Baltimore County police who came to say that they had
18 gotten a 9-1-1 call from a child who stated he had been
19 abused. So, I was just kind of in a state of shock, but I
20 wasn't in the room when the police officers I think were
21 talking to Carson so I don't think I heard this, but what
22 I was told was that Mikal said to the police officer
23 something like, Take your gun and shoot me or just shoot
24 me. He used to say, Just shoot me a lot, but that's what
25 he said and they thought he is suicidal and he's been

1 abused so we need to remove him immediately and see that
2 he gets care.

3 Q Had you ever received notice from the school
4 principal that he was making that same sort of
5 statement -- Just shoot me -- at the school?

6 A No, I hadn't heard that.

7 Q But to your knowledge I think you said he said that
8 all the time?

9 A No, yes, I heard him say that and I've been searching
10 my memory because when the question of, you know, was he
11 suicidal came up I was trying to think, well, where were
12 my antennae at the time? You know, if he really were --
13 if he were a suicidal child, you know, how did I not know
14 when he is living with us? And I thought this was maybe
15 there was someone on television who said, Just shoot me.
16 I just thought he was -- most of the time that he was,
17 yes, frustrated, but I never thought that he was serious
18 about it at that time.

19 Q And when he went to the hospital during that two
20 months time --

21 A Yes.

22 Q -- was he -- Were you able to visit him?

23 A Well, first I had to find him because as the person
24 who was accused of abusing him I wasn't supposed to know
25 where he was, but it happened that the facility -- not

1 where he was literally, but the -- Well, maybe it was the
2 actual facility. It wasn't -- It really wasn't far from
3 where I worked in downtown Baltimore. I was working at
4 the health department then.

5 So, I made lots of calls and I did find out where he
6 was and I went to the facility and they said they were
7 having, you know, some kind of team meeting about him and
8 I insisted that I needed to come in order to participate,
9 and that's when I knew that where he was and, you know,
10 what -- That's when I knew where he was. That's about all
11 I knew at that point.

12 Q And after he was released two months later from the
13 hospital did the hospital or the doctors recommend further
14 treatment?

15 A Yes. There was a psychiatrist who got involved with
16 him in the facility who was doing follow-up therapy. So,
17 yes, they did recommend therapy.

18 Q And how long did he continue going to that therapy?

19 A Just for a few months because he -- As far as what
20 the therapist said to me he wouldn't talk to her. So, I
21 took him to therapy and he played with the toys she had.
22 He didn't talk to her. We came home. And he was doing --
23 He was doing well in school then. So, he was in the third
24 grade by then and was doing well, and, so, and I don't
25 know whether there was a limit on her time with him that

1 was reached or she felt that he was progressing, but,
2 certainly, he was fine at home. He was doing well in
3 school. So, that therapy was terminated.

4 Q So, after the hospital both in the home and in school
5 you could see improvement?

6 A Yes.

7 Q At the end of that time in the third grade with
8 Ms. Harris Ramsey who testified for us yesterday -- At the
9 end of that year describe Mikal's demeanor.

10 A I think we were in a very good place at that
11 particular time because he had a very successful year in
12 school, and, again, I just felt -- I felt that it was a
13 good place. We were sort of, you know, settling in into
14 the family routines and things were working smoothly, but
15 what happened that summer that I didn't know about
16 initially was that Saleem was returned from Texas with
17 Carolyn to Lawrenceville and I don't know whether Mikal
18 learned about it before I did or whether we learned about
19 it at the same time, but what I found -- What I felt was
20 the turning point in that -- early in that school year was
21 when Mikal learned that Saleem was back with his father.

22 Q Was there a particular picture or moment that sort of
23 summed up happy Mikal before it started crashing down
24 again?

25 A Well, that would have been the end of third grade

1 when Ms. Harris had her celebration formal dance or party
2 and his uncle bought him very nice clothes to wear and
3 whatnot and I think that that was really a wonderful
4 moment.

5 (WHEREUPON, Applicant's Exhibit No. 25 was marked for
6 identification only.)

7 Q Dr. Burwell, I'm going to show you what's been marked
8 as Applicant's 25. Is that the moment you're talking
9 about?

10 A Yes. That is the moment I'm talking about.

11 MS. NORRIS: Your Honor, I'd move that into evidence,
12 please.

13 THE COURT: Without objection.

14 (WHEREUPON, Applicant's Exhibit No. 25 was admitted
15 into evidence.)

16 Q Now, you mentioned that Saleem went home and Mikal
17 learned about that?

18 A Right.

19 Q What happened then?

20 A Well, I knew Mikal also wanted to go home. He wanted
21 to be back with his father and his brother and I said to
22 him -- and it wasn't the first time I said it to him. I
23 said, They can't take care of you. I know you want to go
24 back to Lawrenceville to be with your father and your
25 brother, but you know how things were. They can't take

1 care of you as well as you can be taken care of here. And
2 I didn't get a lot of response back from him, but I knew
3 that that was on his mind and so what changed was his
4 behavior.

5 Q Did it go downhill again?

6 A Yes, it did.

7 Q How so?

8 A Well, let me describe the beginning of fourth grade.
9 The beginning of fourth grade by then I had -- The
10 principal had changed, but I still had the relationship
11 with the principal and I wanted to know whose class was
12 Mikal going to and whose class was my daughter going to
13 because she was now entering the same school and the
14 principal said, Oh, well, you know, we've got a brand new
15 teacher in the fourth grade and, you know, blah, blah,
16 blah, and I thought, oh, brand new teacher. I don't know
17 about that. Okay. So, that's a placement.

18 So, Mikal went off to fourth grade. Everything
19 seemed fine at home. He came home, did his homework, and
20 I went to back-to-school night and at back-to-school
21 night, you know, the sort of general things for all
22 parents and then at the end -- At the close of the
23 back-to-school night the principal said, Will the parents
24 of students in Ms. Blah-Blah's class please stay after.
25 So I said, oh, my goodness. What is going on? So, they

1 said, you know, things are not working out in
2 Mrs. Blah-Blah's class. The kids are out of control and
3 whatever. It was a new assistant principal so -- and he
4 was part of this meeting and they said we're going to get
5 another teacher for this class. We got to get it settled
6 down. We are going to do this, that, and the other. We
7 just wanted to let you know.

8 So, I grabbed the assistant principal and I said --
9 who was new. I said, Do you know Mikal Mahdi? Because I
10 know assistant principals do the discipline in the
11 schools. Mikal Mahdi? No, I don't think I know him. So,
12 I took that as a great relief that he had not been sent to
13 the office.

14 So, I asked Mikal, What is going on in your
15 classroom? And he said -- and he told me, you know, oh,
16 well, you know, the kids are running the classroom and,
17 you know, they've got factions and they're doing stuff. I
18 said, What are you doing? He said, I'm doing my work.
19 I'm not in that.

20 Now, I wasn't in the classroom, but that was -- and
21 the assistant principal didn't know him and he was coming
22 home doing his homework. So, I thought that, hey, you
23 know, it's all working. He's made this adjustment and,
24 you know, even a disruptive class isn't going to disrupt
25 him. That's what I thought at that moment.

1 Q Did it turn out to be true?

2 A No, it did not. As I said, his behavior
3 deteriorated, but my feeling even at that time was that he
4 was trying to get back to Lawrenceville. He figured if he
5 acted up that we'd send him back.

6 Q And did you think that he should stay with you?

7 A Yes, I did.

8 Q And how is it that that didn't happen? How did your
9 view get overruled?

10 A Well, first of all, I'm not his blood relative. I
11 may have taken the -- I may have taken the responsibility
12 for all of the interactions with the school and whatnot,
13 but he is Carson's nephew and Carson didn't like the
14 additional responsibility. He didn't like a whole lot the
15 responsibility of two kids, but then a third one and
16 particularly one who could be difficult.

17 So, I thought, well, if Carson is not on board with
18 this -- Carson wanted him to go back because there was an
19 incident where something happened at school. They sent a
20 note home to ask us to come to a meeting and we didn't get
21 the note because Mikal didn't give it to us. The school
22 said he said that we got the note but we didn't respond.
23 So, that from Carson's point of view was, you know, that
24 was the last straw that you're not going to lie on me, you
25 know. So, you're going to go home, and I knew that

1 without the support of a strong male figure in the
2 house -- it just couldn't be my role with Mikal.

3 So, I thought, well, if this is Carson's decision I
4 have to go along with it because I really can't do this
5 unless he is as invested in it as I am.

6 Q And how -- Do you recall how old Mikal was when he
7 left your home?

8 A I think he was about 11 or close to that.

9 Q And did you ever see Mikal again after that time?

10 A I saw him once after that and that was a visit that
11 we made to the farm and by then I knew that he had been
12 placed in special ed and I was very upset. I had tried to
13 talk to Shareef about the fact -- Don't let them put him
14 in special ed and, oh, this is wonderful, you know, the
15 special -- but this is what parents are always told, you
16 know, that he's going to get small class, you know,
17 specialized teacher, you know, lots of help, blah, blah,
18 and I felt this is just so -- This is just so not the
19 right thing.

20 So, we visited them briefly at the farm house and I
21 really didn't say much to Mikal because I couldn't think
22 of what to talk to him about. How are you doing? Well, I
23 see the bedding is on the floor in the living room so
24 you're sleeping on the floor in the living room. Well,
25 how's school? Well, I already know he's in special ed. I

1 don't think I want to talk to him about that. So, I said
2 very little to him. That was the last time I saw him
3 before today.

4 Q And did Shareef at that time when Mikal went back
5 into his home and your observations there did it appear
6 that Shareef was any more capable of caring for the boys
7 than he had been when Mikal came to you?

8 A Well, then the reports came, well, Mikal got picked
9 up for stealing and so there were those kinds of reports.
10 Oh, he went to juvenile. Well, I asked Carson, well,
11 where is he? You know, can we go visit him? Well, he
12 didn't quite know where he was or you know whether we
13 could go visit and so I run into dead ends about that and
14 then there was the incident of the SWAT team coming to the
15 household. That was very dramatic. So, those -- That was
16 the news that got to me about what was going on.

17 Q Were you interviewed by anyone from Mikal's South
18 Carolina defense team after his arrest in 2004 and before
19 sentencing in 2006?

20 A Yes, I was.

21 Q Okay. Do you recall who interviewed you?

22 A I don't recall their names. I remember the primary
23 interviewer was a social worker.

24 Q Black lady?

25 A Yes.

1 Q Elderly?

2 A Yes.

3 Q And did you ever talk to his lawyers -- two black
4 gentlemen?

5 A No.

6 Q Did anyone ask you to testify for Mikal?

7 A No, I wasn't asked to testify.

8 Q If you had been would you have come down and
9 testified in his behalf?

10 A I'm not sure. I think I might have done the same
11 thing I did this time. Initially I would say, oh, I don't
12 think I want to do that because I hadn't seen him in so
13 long, but I think I probably would have come around to the
14 idea that, yes, I should have come.

15 Q You came around this time; right?

16 A Yes, I did.

17 MS. NORRIS: Thank you, ma'am. I don't have any
18 further questions. Answer any Mr. Mabry has.

19 CROSS-EXAMINATION

20 BY MR. MABRY:

21 Q Good morning, Ms. Burwell.

22 THE COURT: Dr. Burwell.

23 Q I'm sorry. I didn't think of that. Dr. Burwell. I
24 first wanted the talk about Mikal's family and you
25 mentioned some things. Your husband -- What did he do

1 before he owned a barber shop and cut hair?

2 A He was a teacher -- full time teacher briefly and a
3 substitute teacher.

4 Q So he had a college education?

5 A Yes. He has a master's degree in education.

6 Q A master's degree in education. Okay. And his
7 brother Nathan --

8 A Uh-huh.

9 Q -- what does he do?

10 A Nathan pretty much worked for funeral directors.
11 Nathan spent some time living in Baltimore and worked as a
12 substitute teacher then so he had -- I don't know that he
13 had a master's degree, but he had enough credentials to be
14 a substitute teacher, but most of the work that I've known
15 Nathan doing was working for a funeral home and he did
16 work in a correctional facility in Lawrenceville -- not
17 too far from Lawrenceville.

18 Q And am I correct he was also a college professor at
19 the local college?

20 A He was not a professor. I think he was called Dean
21 of Men which was pretty much keeping order in the dorm --
22 in the male dormitories.

23 Q Okay.

24 THE COURT: What kind of education did he have?

25 THE WITNESS: I think he went -- I'm sure he went to

1 college, but I'm not sure whether he got a b.a. degree or
2 not. I know he didn't go past the b.a. That's as much as
3 I know.

4 Q All right. And are you aware that Mikal when he got
5 out of adult prison was living with his Uncle Nathan and
6 his grandma?

7 A Yes.

8 Q And are you aware that he could not live under the
9 rules that Nathan set for the household and he moved out?

10 A Yes. I heard of that from Nancy.

11 Q Okay. Are there any other brothers?

12 A Shareef, his father.

13 Q And Shareef didn't graduate from high school but he
14 got his GED; is that correct?

15 A I don't know about that. He's a lot younger. Nathan
16 and Carson and I went to high school together. Shareef is
17 one of the younger children. So, I didn't know where he
18 went to school. I knew he went in the marine corps.

19 Q Did you know that he also went to college for a
20 period of time?

21 A No, I didn't know that.

22 Q All right. What about the sisters?

23 A Well, we could start at the top. Loretta has at
24 least a master's because she's taught at the college
25 level.

1 Q Okay.

2 A Carolyn is -- has a master's in nutrition. She's a
3 nutritionist in Texas.

4 Q Okay.

5 A And Kathy I don't think finished college but she went
6 to college and she's a flight attendant.

7 Q She's been a stewardess --

8 A Yes.

9 Q -- for what airline?

10 A For Continental.

11 Q Okay. So, that's -- and for how many years? Twenty
12 or thirty years?

13 A No, no, not quite that long. When Mikal lived with
14 us actually Kathy lived with us. That was when she first
15 was stationed out of Baltimore. So, I would say maybe
16 almost 20 years, but not 30.

17 Q Okay. And she's traveled all over the world?

18 A Yes.

19 Q And where -- She lived in different places?

20 A Yes.

21 Q Where all has she lived?

22 A To my knowledge -- Again, she's the baby.

23 Q Right.

24 A So, I wasn't keeping tabs on her, but she lived in
25 California. When Carson and I got back together again she

1 was living in California and then she subsequently moved
2 to Baltimore.

3 Q Did she ever live in Hawaii?

4 A Yes. Oh, yes, she did live in Hawaii.

5 Q Okay. Did she live in Amsterdam?

6 A I don't know about Amsterdam.

7 Q Now, that's the children; right?

8 A Yes.

9 Q That's the six children?

10 A Uh-huh.

11 THE COURT: What did you say Carolyn did?

12 THE WITNESS: Carolyn is the nutritionist.

13 THE COURT: Kathy is the flight attendant?

14 THE WITNESS: Yes.

15 THE COURT: Carson is your husband.

16 THE WITNESS: Yes.

17 THE COURT: Nathan we talked about and then Loretta
18 we talked about.

19 Q Why did your husband quit teaching?

20 A He didn't like it.

21 Q Okay. He wanted to own his own business?

22 A Yes.

23 THE COURT: Has he been successful in the barber
24 business?

25 THE WITNESS: I don't think so.

1 THE COURT: I apologize for that. I should have
2 known.

3 Q I was going to ask that question. That's been a bone
4 of contention, I guess, in the marriage. Am I right? The
5 financial part of it?

6 A Well, no.

7 THE COURT: We don't need to get into that.

8 MR. MABRY: You're right. Forget I asked that.

9 THE WITNESS: Okay.

10 THE COURT: Listen, I practiced law for 30 years. I
11 did enough domestic relations I don't ever want to see
12 another one.

13 Q All right. And the grandfather now --

14 A Yes.

15 Q -- he taught at the college?

16 A He taught at the high school.

17 Q And did he not eventually end up teaching at the
18 college? Teaching agriculture?

19 A Now, maybe he did. I left at 17. So, between ages
20 17 and about 35 I didn't live in Lawrenceville. I had
21 very little contact. If he did it would have been in that
22 time period.

23 Q Okay. And after he would teach during the days he
24 would go out and help local farmers as well, would he not?

25 A I think that was part of his job there. You know,

1 the farm extension program and all of that --

2 Q Right.

3 A -- is very big there.

4 Q Okay. And Mikal's grandmother got her teaching
5 degree?

6 A Yes.

7 Q And how many years did she teach in the public
8 schools?

9 A I'm not positive, but she did -- she was able to
10 retire, you know, with the retirement system. So, you
11 have to have a certain amount of time in there in order to
12 be able to retire.

13 Q Twenty-five, thirty, thirty-five years -- something
14 like that?

15 A Uh-huh.

16 Q Are you aware of the fact that they used to have
17 cookouts at the Burwell home and other people would come
18 to the Burwell home -- other kids and teenagers?

19 A I wasn't aware of that.

20 THE COURT: How big was the farm?

21 THE WITNESS: I don't know. My only experience with
22 the farm was that Mrs. Burwell built a house there. She
23 had a house in Lawrenceville. She built a house and that
24 was called "at the farm." I knew that she had tobacco
25 allotments that, you know, how the government pays farmers

1 not to grow things, and, so, she was involved in managing
2 those things, but how large it was by then, you know, is
3 another story.

4 I read in a book by one of Mrs. Burwell's nephews
5 about the farm back in the 40's --

6 Q Uh-huh.

7 A -- how large and expansive it was, but I don't have
8 any personal knowledge of that.

9 Q Okay. So she had a house in Lawrenceville?

10 A Uh-huh.

11 Q And then they built a house --

12 A On the farm.

13 Q -- on the farm? So they had two houses?

14 A Yes.

15 Q And when she moved out to the farm she actually
16 started renting the house in town, did she not?

17 A Well, that was an interesting maneuver. That wasn't
18 her idea.

19 Q Whose idea was that?

20 A That was Loretta's idea.

21 Q Okay.

22 A Loretta was living in Lawrenceville and teaching at
23 the college in Lawrenceville at that time and she and
24 Carolyn decided -- Well, I don't know the extent to which
25 Carolyn was a mover in this, but Loretta decided that

1 Nancy wasn't taking care of her business adequately and so
2 they arranged a visit for Nancy to go stay with Carolyn in
3 Texas and while Nancy was in Texas Loretta rented out the
4 house.

5 Q Okay. I got you. Now, there were times when Mikal
6 was living with his father on the farm?

7 A Yes.

8 Q Is that right? And they actually had a modular
9 home --

10 A Yes.

11 Q -- that Mrs. Burwell, the grandmother, bought for
12 them; is that correct?

13 A Right. She would never say precisely I bought it for
14 them, but you knew that you know she was trying to provide
15 for them -- the same thing with her car and her truck.
16 She had a car and a truck and Saleem -- Shareef and his
17 family used the truck. She never said I bought it for
18 them, but nonetheless it gave them transportation.

19 Q Who taught Mikal how to drive?

20 A I have no idea.

21 Q Did you know he eventually learned how to drive?

22 A As I said, I had no contact with him at all from age
23 10 to 11 until now.

24 Q Okay. So --

25 THE COURT: How many nephews and nieces were there?

1 I know we got Mikal and we got Saleem, but how many other
2 children?

3 THE WITNESS: I would have to sort of count on my
4 fingers. Loretta has two. Carolyn has three. Kathy has
5 no children. Carson and I have two -- have three together
6 and Shareef had two. So that's --

7 THE COURT: Any of the rest of those children --
8 nephews and nieces -- have experienced the problems that
9 this Applicant has?

10 THE WITNESS: Not that I'm aware of.

11 Q I was going to ask you, Saleem went in the army?

12 A Yes.

13 Q He served in Afghanistan?

14 A Yes.

15 Q Is he still in the army?

16 A Yes, he is still in the army as far as I know. I
17 haven't been in touch with him for several years. The
18 last I heard he was still in the army. He did two tours
19 in Afghanistan.

20 Q What is his rank now in the army?

21 A I don't know.

22 Q Now, when Mikal came to live with y'all when he first
23 came to live with you was there disruptive behavior on his
24 part?

25 A Somewhat. I mean, he was grumpy, unhappy, but I had

1 two little kids. I had a 5-year-old and my son wasn't
2 even walking, but I never had any fear of them being with
3 Mikal and his interaction with him. So, yes, he was
4 trying to adjust to this new situation. Yes, he had been
5 through a lot. So, yes, he was more difficult than the
6 other two, but he -- but he did not -- He was not
7 constantly creating disruption.

8 He was doing things that I didn't necessarily want
9 him to do and I would have to tell him about it and were
10 arguing over doing his homework and whatnot and it was
11 just kind of parenting 202.

12 Q I was going to ask you, he didn't assault your
13 children or anything like that?

14 A No, no.

15 Q Or the teenage son that your husband had?

16 A No.

17 Q Okay. But he had problems at school?

18 A Yes.

19 Q And he was involved in fights at school, wasn't he?

20 A I don't have a recollection of that. If -- Carson
21 worked just a few blocks from the school. So, if he went
22 to the school for things around fighting I might not have
23 been involved, but I thought I knew everything that was
24 school related and I don't remember school fights.

25 Q He spent a lot of time in detention?

1 A Are we talking about in Baltimore or in other places?

2 Q Where you were.

3 A Okay. I wasn't aware of that.

4 Q Okay. And this incident that occurred, you've
5 already talked about it and we you've heard about it.

6 There is no question that you did not abuse Mikal when he
7 disobeyed your direct instruction to do his homework and
8 not to go outside. You gave him a whipping with a belt?

9 A Yes, I did.

10 Q Okay. And you've had to do with that your other
11 children when they do something wrong?

12 A I have never had to use a belt, but they were not --
13 They were my children from the beginning. So --

14 Q Okay.

15 A -- they understood my rules from the baby up.

16 Q Okay. They knew what would happen if they --

17 A Yes.

18 Q -- didn't do something?

19 A Yes.

20 Q Okay. But you did not abuse Mikal in that instance?

21 A No.

22 Q You were just trying to discipline him for disobeying
23 an order?

24 A That's correct.

25 Q Okay. And what happened was he called the police?

1 A He did.

2 Q And told them that you had abused him?

3 A Yes.

4 Q And he also put things on his body to make it look
5 like he -- you had hurt him worse than you did?

6 A Yes, he did.

7 Q Or that you didn't? Is that correct?

8 A Yes. That's correct.

9 Q Okay. And it almost got you arrested by the police;
10 isn't that correct?

11 A Well, I didn't know that I was about to be arrested
12 at that particular time. I did get a follow-up visit by
13 the Department of Social Services which was investigative
14 and interviewed my daughter. My son wasn't old enough to
15 participate, but interviewed her about my disciplinary
16 practices in the home, but if the police were going to
17 take me away at that time --

18 Q You didn't know that.

19 A -- I wasn't really aware of it.

20 Q Okay. Now, Mikal went to this Carter Center --

21 A Yes.

22 Q -- in Washington and, in fact, you told them at the
23 Carter Center that he would say things at home like you
24 have described -- why don't somebody shoot me or something
25 like that -- and, in fact, you told them that he would say

1 things like that when he did not get his way or he had
2 done something wrong. Do you remember that?

3 A I don't remember specific incidents, but that sounds
4 about right.

5 Q Okay. And, in fact, they later told you that Mikal
6 finally admitted to them that he did those kind of things.
7 He would make those kind of statements to either get
8 attention or because he didn't like how a certain
9 situation turned out.

10 A I don't know about that. They didn't -- They didn't
11 give me any information at all. At the time that the
12 police took him from our house to the emergency room what
13 I knew from my work in the school system is that if
14 someone says that they have any suicidal thoughts then
15 there are certain things that have to happen, you know, by
16 the law --

17 Q Correct.

18 A -- this is what they have to do. So, that is -- that
19 is -- That's what I know most clearly that he said
20 something to them that indicated that he had suicidal
21 thoughts. They told me that he had -- The Carter Center
22 told me he had suicide ideation. He had a plan.

23 Q Right.

24 A These were things I didn't know about.

25 Q What I am asking you is during the conferences you

1 had with them -- You had several --

2 A Yes.

3 Q -- with Mikal and the doctors. Did they ever inform
4 you that he had admitted to them to saying these kind of
5 things in a manipulative sort of way?

6 A I never had a conference with the doctors and Mikal.

7 Q Okay.

8 A I had some conferences with the doctors and no one
9 said to me that he said...

10 Q Okay. Now, eventually after several weeks there they
11 started letting him go home with y'all?

12 A Yes.

13 Q Letting day trips?

14 A Yes.

15 Q Eventually they placed him back in your home; right?

16 A That's correct.

17 Q And they didn't find any abuse -- you committed any
18 kind of abuse on him?

19 A That's correct. The social services investigation
20 said that there was no abuse. They cautioned me that I
21 should not beat children with belts and I hoped that I
22 would never have to do that again.

23 Q All right. Now, about that, do you remember you and
24 your husband Carson thought that the psychiatrist at the
25 Carter Center was kind of kooky, to say the word -- kind

1 of strange?

2 A No. That was not my impression. I was not impressed
3 with the Carter Center --

4 Q Okay.

5 A -- at all overall because in work with
6 multiply-handicapped children that I had done earlier in
7 my career I had been involved with setting up behavior
8 management systems for various things -- not always for
9 disruptive behavior, but even for children with eating
10 problems, you know, how do you -- at the Eunice Kennedy
11 Shriver Center in Massachusetts we work with very unusual
12 cases of child development and delay.

13 So, what I noted about the Carter Center was that
14 when Mikal was able to come home he was supposed to earn
15 points in order to be able to come home and mid-week
16 they'd say, oh, Mikal hasn't been behaving and he is not
17 going to have enough points and he is not going to be able
18 to come visit for the weekend, and then on Thursday and
19 Friday he could earn enough points to come home for the
20 weekend and I said, well, you know, this is clearly not a
21 behavior management system that's working, you know, if
22 you can act up all week and then at the last minute you
23 can score enough points to come home. So, I was not
24 impressed with their -- with their program.

25 Q Okay. Did they tell you he was hitting other

1 patients there at the Carter Center?

2 A No.

3 Q Okay. Did they tell you that he was threatening
4 staff there at the Carter Center?

5 A No.

6 Q Did they tell you he tried to escape from the Carter
7 Center?

8 A No.

9 Q Did they tell you he was throwing chairs at the
10 Carter Center?

11 A Yes.

12 Q Did they tell you he was kicking doors at the Carter
13 Center?

14 A That sounds familiar.

15 Q Did they tell you that he set off the fire alarm when
16 he was at the Carter Center?

17 A No.

18 Q But they told you he was --

19 A They told me he was disruptive.

20 Q He was disruptive.

21 A Right.

22 Q They actually had to put him in isolation about six
23 times.

24 A I don't know how many times, but I know, yes, they
25 had to do something.

1 Q Okay. Now, when he came back to live with you he
2 seemed to be better?

3 A Yes.

4 Q And then the problems started when he found out that
5 his brother had moved back in with his father?

6 A That's correct.

7 Q And I believe at that time he started being
8 disrespectful to you?

9 A No.

10 Q You don't remember telling Ms. Hammock that he became
11 disrespectful at home to you?

12 A No.

13 Q Tell me what the problems were. What was -- He was
14 acting out. What happened?

15 A It was school related.

16 Q Okay.

17 A It was how he was behaving in school. I think there
18 was an incident where he ran out of the school.

19 Q Okay.

20 A And, of course, that just, you know, sent the school
21 people in apoplexy. You know, if a child runs out of the
22 building there can't be much worse case than that other
23 than really hurting someone in the school. So, things
24 were pretty much the same at home except that he was
25 talking about the fact that Saleem was back in

1 Lawrenceville and I knew this was on his mind and I put
2 together these two things that he was -- he wanted to go
3 back home and his behavior was deteriorating in school.

4 Q Okay. Do you remember what the other behaviors were?
5 There had to be more than just leaving school. What else
6 was going on?

7 A Perhaps I don't remember the specific incidents. I
8 had already mentioned the note that came home about some
9 behavior from school and maybe that was fighting. I just
10 don't remember what it was at all, but I know that it was
11 an incident that the school wanted us to come in for a
12 conference for.

13 Q Okay. One more question, I think. Am I correct
14 Mikal had a great-great-grandfather who went to Harvard;
15 is that right?

16 A Now, that's a very interesting point. Excuse me. My
17 -- Carson's and my daughter is a graduate of Harvard.

18 THE COURT: Say that again.

19 THE WITNESS: Carson's and my daughter is a graduate
20 Harvard College. I went to graduate school. That's not
21 the same thing as getting into Harvard college. That's
22 a --

23 Q Your daughter is at Harvard or graduated?

24 A No, no. She's graduated from Harvard.

25 Q Okay.

1 A And Nancy was -- Mrs. Burwell was revealing -- was
2 talking about her grandfather who went -- that she thought
3 went to Harvard. Her father or grandfather. Yea, this --
4 I'm trying to remember.

5 THE COURT: Grandfather was a gardener.

6 THE WITNESS: Right. No, her father was the farmer.
7 So, this -- I think this was the father's father that we
8 were speaking of.

9 THE COURT: Okay.

10 THE WITNESS: Yea.

11 Q Maybe one more grandfather above --

12 A Right, but -- Okay. So, to go back to the original
13 story of as I heard it this person that we're speaking of
14 was the product of a relationship between a slave and an
15 irish woman.

16 Q Okay.

17 A So, that created the family lightness and red hair --

18 Q Okay.

19 A -- and all of the other things that went along with
20 it. According to what Nancy told me this woman was sent
21 to Boston with child and the father of the child
22 disappeared, was never seen again, but, so, this was the
23 child who was supposed to have grown up in Boston and went
24 to Harvard. While my daughter -- Nancy spoke of this and
25 when my daughter was at school I asked her to go through

1 the records and see if she could find him in the record
2 because this was sort of family legend --

3 Q Right.

4 A -- and Nancy was very anxious to verify this. So, my
5 daughter did. She went through the archives and, you
6 know, got assistance from historians there and whatnot and
7 we could never find a record of his having attended.

8 Q Okay.

9 A Now, this is why I had to pause before I said this
10 because my daughter said to her grandmother, I went
11 through all of the records and there is no record that he
12 attended, and she said, Oh, well, thank so much. I always
13 knew that he went there. I mean, her response to the
14 message --

15 Q Wasn't ---

16 A -- wasn't what the message was and she went right on
17 with it, but, again, that's how she -- that's how she
18 carried it as the people say.

19 Q But ---

20 A So, that is the family legend and my daughter did try
21 her darnedest to verify that it was true, but she was
22 unable to get verification of that.

23 Q Supposedly he was a doctor -- a medical doctor?

24 A Veterinarian.

25 Q Veterinarian.

1 A I thought it was veterinary medicine. It was
2 supposed to be veterinarian medicine.

3 Q Okay. Thank you very much.

4 THE COURT: Anything else?

5 MS. NORRIS: No, sir.

6 THE COURT: Dr. Burwell, thank you for coming.

7 Interesting story. You got a way back out to the airport?

8 THE WITNESS: Yes, I do. Thank you.

9 THE COURT: All right. Let's take a little quick
10 bathroom break. We'll start back in about ten minutes.

11 (Whereupon, a break was taken.)

12 MS. NORRIS: Dr. Cooper-Lewter.

13 THE COURT: You're still under oath. I ran out of
14 candy.

15 THE WITNESS: Well, I want to thank the Court for
16 being considerate. I did get sick a little later.

17 THE COURT: I'm so sorry.

18 THE WITNESS: But I am better now.

19 THE COURT: If you start feeling the least little bit
20 bad, let me know.

21 THE WITNESS: All right. I think I'll be fine this
22 morning. Thank you, sir.

23 THE COURT: If not, let us know. Everybody's health
24 takes precedent.

25 THE WITNESS: Thank you.

1 THE COURT: Sometimes.

2 CONTINUED DIRECT EXAMINATION

3 BY MS. NORRIS:

4 Q Dr. Cooper-Lewter, we were talking -- we were up to
5 DJJ.

6 A Yes.

7 Q Mikal's experience there and talking about his
8 evaluation there. Do you recall -- Well, let me just ask
9 you to turn the tab four in volume one there, page 490.

10 THE COURT: Tab four?

11 MS. NORRIS: Yes, sir.

12 THE WITNESS: 490.

13 Q Down at the bottom where it lists interest. The
14 subject indicated no interest or hobbies and stated that
15 he does not know what he would like to do when he grows
16 up. He has no goals and no firm plans for what he would
17 like to do with his life.

18 A Yes, ma'am.

19 Q Is that consistent with a 14-year-old child with the
20 issues that you were describing yesterday that Mikal Mahdi
21 had?

22 A This response fits in with that. You would expect a
23 child of that age to at least have some idea of what they
24 wanted to do with their life or what they wanted to
25 become. That's what you would expect. He did not have

1 that. It fits with what I was talking about yesterday.

2 Q And then this is in tab 10, 1206.

3 A Volume II.

4 Q Let me ask you first before you look. Do you recall
5 during that first trip to DJJ in six months whether Mikal
6 had any visitors at all?

7 A I don't remember that there was anyone.

8 MR. MABRY: What page are you at?

9 MS. NORRIS: That's at tab 10, 1206.

10 (Whereupon, the attorneys conferred.)

11 Q Do their records there at tab 10, 1206.

12 A Family involvement number 4 it says, No visits were
13 made by family members while individual was incarcerated.
14 To my knowledge phone contact was very limited.

15 Q And then after Mikal got out of confinement, out of
16 DJJ that first time, do you recall how long it was until
17 he was back again?

18 A A couple of weeks.

19 Q And what happened in the middle there?

20 A I think that brings us to the incident when he was 15
21 where there was a stand-off at the house. His father was
22 there. He was there and the officers were serving him
23 concerning something that had previously -- I forget how
24 to say it because I am not a lawyer.

25 THE COURT: An order and rule to show cause as to why

1 he didn't appear in court.

2 THE WITNESS: Yes, sir. Thank you. Order to show
3 cause and so a stand-off ensued and it lasted about eight
4 hours and there was a lot of media. During that time
5 people heard his father making statements. In the very
6 end he ended up going to jail.

7 Q And did that incident in itself have any significance
8 in Mikal's life, his view?

9 A Well, first of all, this would have been the most
10 dramatic time, but at least another time the person he was
11 most attached to betrayed him and left him to take on the
12 full brunt of a situation. This is a child in the
13 presence of his father and when the situation comes to a
14 head the father blames it on the son and it's a major
15 betrayal. Devastating.

16 Q And was there system betrayal in that as well?

17 A Well, according to the records Mikal was actually
18 correct in that he had already I guess it's called served
19 time for or went through whatever the process was for that
20 particular thing they were coming to see him about and so
21 in that sense he felt they were being unfair.

22 Q Now, when he went back in the mental health
23 evaluations -- particularly at tab 4, page 554 -- down at
24 the last paragraph, Personality assessment revealed a
25 dysphoric emotionally immature adolescent with a conduct

1 disorder. Mikal experiences his emotional states in a
2 global poorly-differentiated manner. He has has not
3 developed the ability to self-soothe and does not use his
4 emotional states to form decision making. Interpersonally
5 Mikal tends to be guarded and mistruthful of others.

6 Do you agree with that assessment and your
7 understanding of Mikal's world view?

8 A Yes, it progressed over time. I mean, if we -- His
9 inability to self soothe, we see that time and time again
10 through his his development. We see that all of the way
11 back to when he was 5 years old. That is something that a
12 child learns how to do through good parenting
13 developmentally and then ultimately he'd been betrayed and
14 I would expect this kind of betrayal -- in fact, we call
15 that -- we could put that under the -- we would probably
16 call it relative relational trauma.

17 That's a trauma where -- for instance, if a storm
18 comes and something bad happens, that's one kind of
19 trauma. The worst kind of trauma is that which is done by
20 someone who you have a relationship with and the stronger
21 the relationship the stronger the trauma. So, those kinds
22 of responses would also make sense.

23 Q Tell me what dysphoric means.

24 A Dysphoric -- he is not able to -- he is not
25 clear-minded. He's -- One would want to test at that

1 point for delusions and hallucinations and things of that
2 particular nature. A person who is a dysphoric could be a
3 danger to themselves simply because they're not
4 100 percent in contact with reality.

5 Q And when you talk about self-soothing tell me what
6 that means.

7 A Yes.

8 Q How would I self-soothe?

9 A One of the things is we first begin to learn how to
10 do that as infants and toddlers and small children and
11 we're taught that through how we interact within
12 relationship with our caregivers and then as we get
13 older -- and you got to understand that say between zero
14 and three developmentally we are emotionally and mentally
15 in a certain place. When we get a little bit older we
16 have more tools in terms of our cognitive ability, but,
17 ultimately, if we don't learn how to do that from someone
18 else much later in life it depends on how well our
19 prefrontal lobe, if you will, our front of our brain, our
20 ability to plan, our ability to be logical and that kind
21 of thing, how well it works. Research simply shows that
22 it takes a long time for that part to develop. That's if
23 it hasn't been damaged and if it hasn't been traumatized.

24 Q And during that incarceration -- that second
25 incarceration in DJJ -- did Mikal continue sort of the

1 downhill decline mentally or did he get better?

2 A No, he got worse.

3 Q And tell me how he got worse.

4 A Well, all of the things that has been problematic for
5 him up 'til now continued on -- the dysphoria, the
6 immaturity, the anger, the upset, the inability to
7 self-soothe -- those kind of things and decision-making
8 and trust. He operated in a very -- a way as if he was
9 emotionally isolated and mistrustful of the world around
10 him.

11 Q Looking at tab four, 867, did that culminate in what
12 they're talking about here -- suicidal ideation or
13 suicidal threats and gestures? I'm looking at the middle
14 of that page right under the label current mental health
15 services and issues.

16 A Yes. One thing that's very important as I'm reading
17 this is to realize is that in my training any time a
18 person appears suicidal you take that seriously because
19 you don't want to have a situation where you didn't take
20 it seriously. A lot of people -- That's an uncomfortable
21 thing to deal with, but if you have as they say here some
22 paranoia and they even suggest a trial of antidepressants,
23 these kinds of things.

24 Q Well, looking particularly that first full paragraph
25 under the label current mental health services about

1 towards the bottom third there. There is a sentence that
2 says, His preoccupation with conspiracy theories along
3 racial and institutional lines also seem to have a
4 paranoid quality to them.

5 A Yes, I see that.

6 Q Was that sort of conspiracy theory along racial and
7 institutional lines?

8 A Well, I think --

9 Q To your knowledge, where is that coming from?

10 A Well, it could come from a number of places. One is
11 we already know that his father has taught him of how to
12 see the world, how to interact with the world, how to deal
13 with the world, that kind of thing. So, we know that he
14 already has that kind of information inside of himself and
15 then he finds himself pretty much alone, betrayed, and at
16 odds with the system, and, so, the racial peace -- we know
17 his father talked about that extensively and, of course,
18 he's been interacting with institutions.

19 Q And then that -- At the end of that paragraph they
20 indicate the next day he tried to electrocute himself in
21 his cell?

22 A Yes.

23 Q And then going on down the next paragraph about the
24 third or fourth line down, "His emotional state appeared
25 to brighten around October 8, 1999 when he was placed in a

1 cell with a window."

2 Does the environment having a window, having light,
3 does that -- From a mental health perspective is that
4 something that improves a situation at least minimally?

5 A I would say simply yes and most people know that even
6 in corporations if you get a window, that's a lot better.
7 If you stay inside where there's no way to look out it
8 impacts people who are functioning perfectly well, but in
9 this particular case it would be particularly important
10 because it would allow him an opportunity to look out and
11 not feel so contained.

12 Q And then in that same paragraph it says, "As Mikal's
13 mood elevated he also began to act out in destructive
14 ways," and it lists covering up the camera in his room
15 with toilet paper, writing on the window with soap.

16 A Yes.

17 Q Is that -- Can you tell me from the mental health
18 perspective when a person who is severely depressed --

19 A Yes.

20 Q -- does start to feel better, how in the world do you
21 turn that into doing destructive things in the cell?

22 A First of all, when you have a major depression one of
23 the things that we note is that not only have you lost
24 interest you lose energy and having lost energy you may --

25 MR. MABRY: Excuse me a minute. I'm going to object.

1 I think we are getting a little outside of this person's
2 expertise of social work. Now we're in the psychological.
3 That's my objection.

4 THE COURT: Well, he is a Ph.D in psychology so I'll
5 allow it.

6 MS. NORRIS: Go ahead. You can go ahead with your
7 answer.

8 THE WITNESS: Ask me again.

9 Q Basically, how in the world did a person from severe
10 depression when he feels a little better, how does that
11 translate into tearing up the prison cell?

12 A Yes. Let me give you an example from my private
13 practice. A person when they're deeply depressed comes
14 in. They don't have much interest. They don't have much
15 energy, those kind of things. The protocol is that once
16 they begin to feel better then you have to be particularly
17 on the watch for them because as they get energy then this
18 depression can often shift to a kind of anger and in that
19 anger now that they have that energy and especially if
20 they have some kind of plan that's when it is most likely
21 that they will do some harm either to themselves or to
22 whomever, and, so, within a couple of weeks of feeling a
23 little bit better to about four to six months is when most
24 suicide attempts get serious, and, so, this simply says to
25 me that he started feel better and had more energy and so

1 the anger came out whereas previously depression would
2 prevent that.

3 Q And then at tab four, page 905. We're up now -- The
4 date of this report is February 1, 2000. Mikal was almost
5 17 years old. The second full paragraph there in the
6 middle, it says, "During times of increased stress Mikal's
7 ability to think coherently and logically was compromised.
8 At these times his thinking becomes acutely paranoid and
9 unavailable to therapeutic intervention." What ---

10 A Yes.

11 Q Is that consistent with what you know of Mikal
12 talking to him from his records, everything you know about
13 this young man?

14 A It's important to know that human beings want to feel
15 internally good. All human beings protect themselves in
16 some kind of way from painful or traumatic kinds of
17 information, experiences, and things like that. So, when
18 we're looking at this I think we have to look at it in the
19 context that as the stress increases, he's -- his ability
20 to think coherently and logically, of course, would be
21 compromised simply because a lot is going on inside of his
22 head.

23 Q And then at page 965 in tab four about five lines
24 down in that first paragraph it says, "The content of the
25 sessions" -- and this is mental health sessions -- "was

1 Mikal's preoccupation with the idea that there is a
2 conspiracy against him and that CJCC, the Culpepper
3 Juvenile Correctional Center staff, are active and knowing
4 participants in this process."

5 From that and all the other information in these
6 records -- and there is a lot there, obviously, I am not
7 pointing out, but was Mikal continuing downhill?

8 A Yes.

9 Q Or getting better?

10 A He is getting worse day by day almost or report by
11 report.

12 Q Do you recall that second DJJ confinement? Do you
13 recall how long that was?

14 A A little less than two years.

15 Q And how old was he when he got out?

16 A Seventeen.

17 Q Did things get better then?

18 A No.

19 Q What happened?

20 A Well, he was left to himself and there really hadn't
21 been any -- there hadn't really been anything to make
22 things better for him and he returned back to the same
23 environment he was always in.

24 Q And what did you learn about his reconnection, if you
25 will, to use that phrase loosely with his mother?

1 A It didn't go well -- had wanted something from his
2 mother. His mother didn't want to participate in that and
3 the result was he got angry. It didn't go well.

4 Q And how long was it before he landed back in
5 confinement this time as an adult?

6 A It wasn't long. I want to say a few weeks.

7 Q How about five months? It wasn't long?

8 A I would put it at one month, somewhere like that just
9 from my memory.

10 Q All right. And then once he was incarcerated then as
11 an adult, and, of course, this is for stabbing Moises
12 Rivera, what happened overall when he was in adult prison
13 in Virginia there?

14 A He continued to go downhill. He continued to have to
15 survive and he continued to act out.

16 Q And 18 months in when he went in to Wallens Ridge,
17 the super-max facility, is there anything significant
18 about that time period at Wallens Ridge to your knowledge?

19 A Well, from interviews particularly with Mikal
20 accounting for his experiences there it was a environment
21 where racial epithets were spoken to the correctional
22 officers, where people were tasered. He was. He speaks
23 of at least 14 to 15 times that he was tasered.

24 THE COURT: Did you get the record from there or
25 that's just all from his conversation?

1 THE WITNESS: That's from him.

2 MS. NORRIS: We do have the records, Your Honor.

3 These incidents are not reflected in there.

4 Q Go ahead.

5 A He spoke of an incident where there was an older
6 inmate whose battery had gone out on his little speaking
7 tube and I believe they were supposed to get him to speak
8 and this person couldn't speak and so he spoke up on
9 behalf of that person and he was tasered for that, and,
10 also, the other person was dealt with in some particular
11 way, and these kinds of incidents occurred regularly and
12 routinely from the perspective of Mikal Mahdi.

13 Q And how about being shot with rubber pellets? Did he
14 mention that?

15 A Yes. He talked about how the prison was set up so
16 that the guards could stand behind a particular kind of
17 like an overhang. The idea was is that you used the
18 rubber pellets in a serious situation. There was one at
19 least where he reported where some gang members started
20 something, but everyone got shot, and, so, he got shot
21 also by the rubber pellets.

22 Q And with those sorts of events going on what happened
23 in this young man's brain? Was he coming out of there a
24 survivor or are we still going downhill?

25 A Well, one problem that I saw looking at the records

1 is that when he was being -- in his father's bootcamp his
2 father told him how terrible the world was and when he got
3 to Wallens Ridge he started to say maybe his dad was right
4 and so he continued to go downhill because at that point
5 where he had maybe hope or he wanted to believe something
6 else he stopped believing it. He started believing his
7 dad was right.

8 Q And how long after his release from Wallens Ridge was
9 it until that young man killed Captain Jimmy Myers?

10 A It wasn't long. A few weeks.

11 Q Looking at Mikal's whole life prior to that, prior to
12 his arrest in this case when he was 21 years old -- I'll
13 get back to the question.

14 (WHEREUPON, Applicant's Exhibit Nos. 26 & 27 were
15 marked for identification only.)

16 Q I hand you Applicant's 26 and Applicant's 27 and ask
17 you if that sort of is just a pie chart of Mikal's life
18 zero to 21 and where he was?

19 A Yes, ma'am.

20 Q All right. And when you're looking there of all the
21 different moves and it started out with both of his
22 parents, then with his father only, then with his aunt and
23 uncle in Baltimore separated, of course, by a couple of
24 months mental hospital, back to Lawanda and Carson, and
25 then back to his father only, and then we go up to DYFS is

1 how we've got it listed here -- their official name what
2 I've been calling DJJ -- and then the Department of
3 Corrections.

4 Let me ask you first those big pieces of pie there
5 where he was in your father only, in your view is that
6 entirely accurate?

7 A I would say it doesn't depict accurately what was
8 going on because even though he was supposed to be with
9 his father much of the time his father was not able to
10 take care of him. He was on his own pretty much -- Mikal
11 was pretty much -- and his father at times was depressed,
12 and, so, when you look at that I think you have to look at
13 particularly the time where Mikal is with his father and
14 the fact that Mikal was on his own and there is kind of
15 some overlap there.

16 Q And looking at I guess Applicant's 27 that lists by
17 days, 1746 with both parents, then total days with his
18 father 2700 some, 707 days -- a couple of years -- with
19 aunts and uncles, and then from there at age 14 we've got
20 870 days total in DJJ, 11,051 in prison. When you think
21 of as a social worker the normal development starting back
22 there with zero to five attachment and all of those things
23 we should be learning, is this typically the picture that
24 you're going to see?

25 A When you asked that question you mean -- it says days

1 with both parents, days with father. That by itself is
2 not particularly alarming unless the days with both
3 parents are filled with trauma and the days with father
4 are filled with more trauma. Then at that part when you
5 -- if you know that, if you understand that, then when you
6 get over here to days in DJJ and days in prison that would
7 make some sense.

8 Just being with parents, just being with a father
9 without knowing the nature of the relationship really
10 doesn't tell us a lot.

11 MS. NORRIS: Your Honor, I'll move Applicant's 26 and
12 27 into evidence.

13 MR. MABRY: I want to see which one you're talking
14 about.

15 MS. NORRIS: That's 26.

16 MR. MABRY: I don't have any objection to this one,
17 Your Honor. I do have an objection to this one and the
18 reason is it doesn't include his entire life. It includes
19 -- It's a whole pie, but it doesn't include his whole
20 life. It only lists ---

21 THE COURT: She characterized it as up to a certain
22 date. I'll overrule it. I'll allow it in. She wasn't
23 representing the whole life. She represented it was up
24 to ---

25 MR. MABRY: That wasn't my objection, Your Honor.

1 THE COURT: Well, what is the objection?

2 MR. MABRY: My objection is I understand it's up to
3 the prior incarceration, but there were periods of time
4 where he was on his own that are not included in this
5 chart.

6 THE COURT: Well, that goes to weight as opposed to
7 admissibility.

8 MR. MABRY: Yes, sir.

9 THE COURT: I've listened to it.

10 (WHEREUPON, Applicant's Exhibit Nos. 26 & 27 were
11 admitted into evidence.)

12 Q Dr. Cooper-Lewter, if you had been retained in 2006
13 all of the information -- Well, let me rephrase that. Any
14 of the information that you have relied on, was that all
15 available in December of 2006 to your knowledge?

16 A The only thing that was different is I spent 32 hours
17 talking with Mikal Mahdi. If you take that out of the
18 equation, everything else was available.

19 THE COURT: He was available to speak to back then,
20 wasn't he? He was around, wasn't he?

21 THE WITNESS: Yea, but I didn't talk to him.

22 THE COURT: I understand, but she asked you was all
23 of that available. I mean, he was available, too.

24 THE WITNESS: Yes, sir. Everything is available.

25 MS. NORRIS: Just a second, Your Honor. Nothing

1 further.

2 THE COURT: Thank you.

3 CROSS-EXAMINATION

4 BY MR. MABRY:

5 Q Dr. Cooper-Lewter, I want to first talk about your
6 report and I notice one of the things you don't have is an
7 employment history. Now, you've talked to Mr. Mahdi for
8 32 hours. Tell us the various jobs that Mr. Mahdi has
9 held.

10 A Well, again, I mentioned it yesterday that as far as
11 a specific employment record I didn't see one.

12 Q Well, who provided you -- Did you subpoena records or
13 were the records provided to you by these attorneys?

14 A Employment records would have been subpoenaed by the
15 attorneys.

16 Q Okay. And they didn't provide you with any
17 employment records, did they?

18 A I did not see any.

19 Q Okay. Did Mr. Mahdi tell you he had been employed as
20 a roofer?

21 A Yes.

22 Q Did he tell you he had been employed in construction
23 work?

24 A Yes.

25 Q Did he tell you he had been employed in car

1 detailing?

2 A Yes.

3 Q He told you -- In fact, he enjoyed that job very
4 much, didn't he?

5 A I thought he enjoyed all of those jobs.

6 Q Okay. He was also employed at a Walmart?

7 A I don't remember that.

8 Q At a grocery store, Food Lion?

9 A I don't remember that.

10 Q Okay. Tell me what other jobs he held besides those
11 I've just ---

12 A Cutting grass.

13 Q Cutting grass.

14 A Raking leaves.

15 Q Okay.

16 A Doing odd jobs around the community.

17 Q Okay. But that's not listed in your report. Any of
18 those occupations are not listed in your report -- 38-page
19 report that you prepared, are they?

20 A No, sir.

21 Q And tell me why. Tell the court why you didn't
22 choose to include the fact that he had been employed
23 several times in your report.

24 A The psycho-social history that I was attempting to
25 put together assessment basically was a history of those

1 things that I thought directly impacted and affected and
2 helped to explain the history of this person and, so, I
3 didn't include them.

4 Q So, you didn't think they were important to impact on
5 his life, the fact that he had been employed -- gainfully
6 employed four or five times -- not just cutting grass but
7 he had actually worked for companies or worked for someone
8 at a job?

9 A I think it's important. I just didn't think it was
10 important in terms of how it impacted his psycho-social
11 history.

12 Q Okay. I also noticed that your report -- You
13 interviewed several people and there is someone that you
14 didn't interview in the immediate family -- Saleem, his
15 brother.

16 A Yes.

17 Q Can you tell me why you did not interview Saleem?

18 A He did not want to talk to me.

19 Q Okay.

20 A His brother didn't.

21 Q Did he understand that you were working on his
22 brother's behalf?

23 A I don't know.

24 Q But he wouldn't talk to you?

25 A No.

1 Q Okay. Where is he --

2 THE COURT: Hold on a second. He wouldn't talk to
3 you. You mean ---

4 THE WITNESS: He did not want to meet with me and so
5 it was not arranged for me to meet with him.

6 Q Okay. Now, Saleem grew up in the exact same
7 circumstances that Mr. Mahdi did except for the time
8 period where Mr. Mahdi was living with his aunt and
9 uncle -- Carson and Lawanda?

10 A When you say exact same ---

11 Q Well, they grew up in the same household?

12 A Yes, sir.

13 Q Had the same father and mother?

14 A Yes, sir.

15 Q They were brothers and they lived together until they
16 were split up and Saleem went to Texas and Mr. Mahdi went
17 to the Burwell's?

18 A Yes, sir.

19 Q And then Saleem went back to his father and then
20 Mikal came back -- actually came back to his father before
21 Mikal?

22 A Yes, sir.

23 Q And then Mikal came back to his father?

24 A Yes, sir.

25 Q All right. And they lived there together --

1 A Yes, sir.

2 Q -- on the farm? Am I right?

3 A Yes, sir.

4 Q Okay. And Saleem went into the Job Corps. Am I
5 right?

6 A Yes, sir.

7 Q And Mikal ended up going to the Department of
8 Juvenile Justice?

9 A Yes, sir.

10 Q Okay. Now, I also noticed in your report your report
11 stops at when he is released from Wallens Ridge State
12 Prison.

13 A Yes, sir.

14 Q Okay. Tell me what happened to Mikal Mahdi from the
15 time he was released from Wallens Ridge until he left the
16 State of Virginia on June 14.

17 A I was asked by the defense to concentrate on his
18 social history assessment up to his release from Wallens
19 Ridge, and, so, my focus was just that and so I stopped at
20 that point.

21 Q Do you know why you were asked to stop at Wallens
22 Ridge?

23 A I did not ask.

24 Q Did you talk with Mr. Mahdi about what happened to
25 him after he left Wallens Ridge?

1 A He and I both were instructed that that wasn't what I
2 was there for and so we did not discuss it.

3 Q Okay. And what date was he released from Wallens
4 Ridge State Prison?

5 A What specific date?

6 Q You can give me a rough date.

7 A I can give you the exact date in a minute.

8 Q Okay.

9 A It looks like 5/12/04.

10 Q 5/12/04. So, May 12, 2004. And when was he arrested
11 for this crime?

12 A I don't know when he was arrested. I do not know.

13 Q When was the murder of Captain Myers?

14 A I don't know. I know it happened.

15 Q Right.

16 A I did not focus on it. I was asked to keep my
17 efforts to the social history assessment up to Wallens
18 Ridge and that is what I did because that's what I was
19 asked to do contractually.

20 Q Okay. Do you think it's important in determining why
21 he committed these crimes that he committed in this case
22 what psycho-social stressors he was under from the time of
23 his release from Wallens Ridge until the time he committed
24 this murder?

25 A I believe it's important, but I wasn't asked to

1 address that.

2 Q Okay. So, you can't tell this court why he left the
3 State of Virginia?

4 A I cannot tell this court why he left the State of
5 Virginia.

6 Q Okay. And you can't tell the court what the
7 psycho-social stressors he was under during that time
8 period?

9 A No, sir.

10 Q Okay. And whether those stressors had anything to do
11 with why he came down here and committed the murder of
12 Captain Myers?

13 A No, sir.

14 Q Because you don't know what they are?

15 A I don't know what they are.

16 Q Okay. I wanted to ask you about -- Did you review
17 his Department of Juvenile Justice records?

18 A I reviewed his records, yes.

19 Q Okay.

20 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
21 identification only.)

22 THE COURT: Where are you referring to so Ms. Norris
23 can look at it?

24 MR. MABRY: It is a case report, Your Honor, from
25 September 13 of 1999 from the Department of Juvenile

1 Justice.

2 THE COURT: September of '99?

3 MR. MABRY: Yes, sir. September 13, 1999.

4 Now, this is a report from the Department of Juvenile
5 Justice, September of '99. Okay? And that would have
6 been before Mr. Mahdi started threatening suicide because
7 he was actually put in isolation in October of '99 for
8 suicidal threats. What did he tell the people at DJJ in
9 September of '99 he was going to do if he wasn't released
10 from DJJ on schedule?

11 THE WITNESS: Right under here on 9/13/99?

12 Q Yes, sir.

13 A It says -- It starts with him so it's continuing from
14 somewhere else, but it says, "Due to his aggressive and
15 inappropriate behavior he will no longer be able to
16 participate in anger control group. Mahdi was very upset
17 and continually threatened that if he does not get
18 released from DJJ on 9/23/99 he is going to fuck people up
19 and go around acting crazy. Mahdi stated that he was not
20 responsible for his actions. This counselor informed him
21 that he is responsible for his own actions."

22 Q Okay. We'd offer that, Your Honor.

23 THE COURT: Any objection?

24 MS. NORRIS: No objection.

25 THE COURT: Thank you, ma'am.

1 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
2 into evidence.)

3 Q In fact, there is a later report, isn't there,
4 Dr. Cooper-Lewter, where he actually told them if he
5 wasn't released on time they were going to find him
6 hanging in his cell?

7 A I vaguely remember it, but you'd have to show it to
8 me.

9 Q Okay. Well, that's fine if you remember it. Then in
10 October that's when he ties a sheet around his neck. They
11 find him with a sheet tied around his neck sitting in his
12 cell and they put him on suicide watch. Do you remember
13 that?

14 A I remember the incident, yes, sir.

15 Q Okay.

16 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
17 identification only.)

18 MS. NORRIS: No objection.

19 Q I want to show you Defendant's Exhibit 4 and this is
20 a report that was written later. What I want to
21 specifically ask you is did he report anything to the
22 psychologist -- the psychology supervisor about his
23 suicide threats later according to that record?

24 A Yes. I see in the first paragraph it says that Mikal
25 has had six contacts in November, one in December, and it

1 mentions the person's name. It says, "Mikal's emotional
2 state was more cheerful with few depressive symptoms
3 endorsed or observed this period. Nonetheless, Mikal was
4 placed on suicide precautions 11/16/99 as a result of him
5 threatening to kill himself and tying a sheet around his
6 neck. When I asked Mikal about this incident he reported
7 he did not really intend to harm himself. He just wanted
8 to go to special housing because he believed he could
9 receive more recreation time there."

10 Q And what did she tell him about doing that?

11 A "I pointed out the negative long term consequences of
12 having incidences documented in his record and discouraged
13 him making insincere suicidal threats in the future
14 despite any short term gains he intends to derive from
15 them. Suicide precautions were reduced to 15 minute
16 checks on 11/19/99 and removed on 11/29/99."

17 MR. MABRY: We would offer this, Your Honor, I
18 believe without objection.

19 THE COURT: Thank you.

20 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
21 into evidence.)

22 Q Dr. Cooper-Lewter, that was not the first time that
23 Mikal had talked about committing suicide when he didn't
24 get his way, wasn't it?

25 A You're correct.

1 Q When was the first time he did that?

2 A I don't remember it right this moment. Perhaps you
3 can refresh me.

4 Q About when he was nine years old?

5 A Oh, you're talking about when he was with the ---

6 Q The Burwells? Uh-huh

7 A Carson and his Aunt Lawanda.

8 Q Correct.

9 A Yes. That's true.

10 Q In fact, while he was there at the Carter Center he
11 admitted to the people at the hospital that he only talks
12 about hurting himself when he doesn't get his way?

13 A I remember in my interview with Dr. Burwell that she
14 talked about the fact that he said that a lot. I don't
15 remember it specifically from the report.

16 Q Okay.

17 A I'd like to see it, if possible.

18 Q Well, I can probably direct you to it --

19 A Okay.

20 Q -- if I can remember where I put my copy. While I'm
21 looking for that, did Mrs. Lawanda Burwell also tell the
22 people at the hospital that Mikal would talk about
23 committing suicide when he didn't get his way or he got
24 into trouble?

25 A He talked about shooting himself. I remember those

1 words.

2 Q Right. Did she tell the people at the hospital that
3 he did that when he didn't get his way or when he got in
4 trouble?

5 A I'd like to see that.

6 Q Okay. I can give you a date pretty quickly. I guess
7 if you can go ahead and find the Carter Center records --
8 Okay. Here it is. It would be 8/27/92, psychiatric
9 progress notes.

10 THE COURT: Have you got a copy of it? Just hand it
11 to him.

12 MR. MABRY: I am going by the summary that Ms.~Tarr
13 did for trial counsel. If you could turn to ---

14 THE COURT: Do you have a bates number?

15 MR. MABRY: No, I don't. I'm going by the summary
16 that I have. 8/27/92. He was relating to the counselor
17 things that Mikal said at home.

18 THE WITNESS: Give me a minute. I am still stuck in
19 8/23 so far.

20 Q Yes, sir. That's fine.

21 A You said 8/27?

22 Q Psychiatric progress note and it would go down to
23 find where they're actually talking to Mrs. Burwell,
24 Lawanda, the aunt, where she's relating where Mikal
25 doesn't -- thinks he's not very smart, stupid, and then

1 the next ---

2 THE COURT: Well, ask your question. It might
3 refresh his memory.

4 Q Okay. Do you recall Mrs. Burwell telling them that
5 Mikal would say these things at home in reaction to not
6 getting his way or when he did something wrong?

7 A Without reading it I would say I remember -- I'd like
8 to still see it, but yes. I know that it was discussed.

9 Q Okay.

10 A Whether or not I remember seeing that she
11 specifically said that in their notes, that's what I am
12 having trouble with.

13 Q Okay. Well, I'll move on. Do you remember -- You
14 can look in the 8/29/92 notes. This is a NSG note. Is
15 that a nursing -- I guess that's a nursing note where
16 Mikal said, "I only want to hurt myself when I can't have
17 my way."

18 THE COURT: Do you recall that?

19 Q Do you recall that?

20 A Oh, do I recall it?

21 Q Yes, sir.

22 THE COURT: Sir?

23 A Yes. I'm doing that from memory, yes.

24 Q Okay. That's all I'm asking.

25 THE COURT: That's all he asked you.

1 THE WITNESS: I wanted to be accurate.

2 Q Yes, sir. Now, do you know Ms. Marjorie Hammock?

3 A Yes.

4 Q And what is your professional opinion of Ms. Hammock?

5 MS. NORRIS: Objection.

6 THE COURT: Sustained.

7 Q How many death penalty cases have you testified in?

8 A Three.

9 Q Did you review Ms. Hammock's interview notes in
10 preparing your report or reaching your opinion today?

11 A I did not read her interview notes. I read
12 transcript of the trial.

13 Q Okay. All right. So, you also read her testimony at
14 the trial?

15 A Yes, sir.

16 Q Okay. Did you review Ms. Tarr's interview notes --
17 the mitigation investigator -- in rendering your opinion?

18 A No.

19 Q Did you review the private investigator Jim Gordon's
20 notes?

21 A No.

22 Q How about Dr. McKee's notes?

23 A No.

24 Q How about Dr. Martin's notes?

25 A No.

1 Q Those -- Am I right the reason you didn't review
2 those notes is they were not provided to you?

3 A I don't remember those notes being provided to me.

4 Q Okay. Do you know whether or not -- You wouldn't
5 know whether or not they took a social history from
6 Mr. Mahdi?

7 A I know that if Marj Hammock was the social worker
8 that she would ---

9 THE COURT: Don't speculate. Don't speculate.

10 Q I'll move on. So, you couldn't -- You didn't compare
11 the social history that you had with the social history
12 that was taken by Ms. Hammock, Ms.~Tarr, Dr. McKee,
13 Dr. Martin, or the trial attorneys because you didn't have
14 those notes? Am I correct?

15 A Well, first of all, my first effort in researching a
16 history is to get as much firsthand information as
17 possible, and, so, interviewing people was very important
18 to me so that I could get my own impression of what people
19 were saying. With that in mind then I looked at the rest
20 of the material that supports all of that, and you're
21 correct. Certain things I wasn't given.

22 Q Okay. Did you talk to Nathan Burwell, the uncle?

23 A I did not get an opportunity to talk to Nathan
24 Burwell.

25 Q Okay. Do you know what his occupation is?

1 A I don't know what his occupation is, but I understood
2 that he was supposedly taking care of his mother.

3 Q Okay. You don't know what he does for a living?

4 A I don't remember.

5 Q Okay.

6 A I didn't interview him and I just right now don't
7 remember.

8 Q Did you review a videotaped statement that was taken
9 of the grandmother by Carl Grant?

10 A No. I did not.

11 Q Okay. Now, I looked at your report and I noticed you
12 said Mrs. Burwell had six children and in your report it
13 says all six children were the product of rape.

14 A That was what was reported to me.

15 THE COURT: By whom?

16 THE WITNESS: That was reported to me by a social
17 worker who interviewed her because of her dementia before
18 she became unable to talk about it.

19 Q Okay.

20 A Also, her oldest daughter said that -- I think that
21 was Rose said that there was some questions about how they
22 all got there. They knew that the mother did not want to
23 have conjugal relationships -- that's what they
24 believed -- with the father and so the mother took that to
25 mean, you know, that she didn't want to and he wanted to

1 and they had children.

2 Q Okay. Well, your report says that all six children
3 were the product of rape, does it not?

4 A Yes, that's what the report says.

5 Q Okay. And how long were Mr. and Mrs. Burwell
6 married? It is a simple question, if you know. How long
7 were they married?

8 A I forget right now.

9 Q Okay. And the children were born over various --

10 A Yes.

11 Q -- years?

12 A Yes.

13 Q And, of course, you couldn't interview the
14 grandfather because he was deceased; am I right?

15 A Sir?

16 Q You didn't interview the grandfather because he was
17 deceased?

18 A Yes, sir.

19 Q Yes.

20 THE COURT: Yes, sir, he was deceased; is that
21 correct?

22 Q Yes, sir, he was deceased?

23 A Yes, sir, he was deceased.

24 Q Now, you also talk about Mikal's father's rantings on
25 race and those types of things. Did Mikal ever tell you

1 that he was embarrassed by his father's rantings?

2 A Mikal talked about how other people in the community
3 called his dad the crazy man and how at the school that
4 they were attending his father was viewed that way and it
5 became a source of embarrassment for Mikal and he talked
6 about that as well as his father talked about the fact he
7 did it.

8 Q Okay. My question was did he ever tell you that he
9 was embarrassed by his father's preaching or ranting or
10 whatever?

11 A Yes, sir.

12 Q Okay. And did he ever tell you that he didn't put
13 much stock in his father's rantings and ravings because he
14 would rant about racial injustice but he wouldn't keep a
15 job very long?

16 A That's not quite how he stated it. He said that the
17 ranting and ravings were on and on and on and on and on
18 and on and you reach a point where you just stop
19 listening.

20 Q Okay. Now, you said you reviewed the sentencing
21 proceeding before Judge Newman. Did Ms. Hammock testify
22 that Mikal's mother left him when he was around 5 years
23 old?

24 A I believe she did do that, yes.

25 Q Did she testify that he witnessed domestic violence

1 on his mother and on his grandmother?

2 A I believe so.

3 Q And did she testify he was committed to a psychiatric
4 facility when he was 9 years old for major depression?

5 A I believe so.

6 Q Suicidal ideation and adjustment disorder?

7 A I believe so.

8 Q And did the attorneys not introduce a timeline
9 showing that commitment, the diagnosis, and the length of
10 treatment?

11 A Within the trial?

12 Q Yea, within the trial.

13 A Oh, I don't know about that.

14 MS. NORRIS: Your Honor, I am going to object to
15 this. He's already testified that he stopped when he got
16 out of prison. He hasn't ---

17 THE COURT: Well, he testified he read the
18 transcript. He ought to know what they said, I guess. I
19 assume I am going to be asked to compare the mitigation
20 that you put up vis-a-vis the mitigation that was put up
21 at the trial. I assume that's where we're going.

22 MS. NORRIS: I absolutely agree with that. It's just
23 this isn't the witness I don't think, but...

24 THE COURT: Well, he is just asking did you review a
25 timeline that allegedly was in the trial.

1 Q This is Defendant's Exhibit 2 from the trial.

2 A All I read was the transcript. I don't remember
3 reading any particular exhibits.

4 Q Okay. Well, let me ask you to look at it then. Just
5 take a moment to look over it.

6 A Yes, sir.

7 Q Okay. Can I have that back? Does that exhibit not
8 indicate that -- which was admitted at the trial --
9 Mrs. Burwell wanted to have her tubes tied but her husband
10 wouldn't allow her to in 1948?

11 A That exhibit says that, yes.

12 Q Okay. And it also talks about Shareef going into
13 desegregated schools and being ridiculed, isolated,
14 challenged by classmates, traumatized?

15 A Yes, sir.

16 Q Okay. It also talks about Shareef's -- the
17 father's -- young childhood. He threw tantrums and the
18 mother was not emotionally available to Shareef?

19 A Yes, sir.

20 Q And Kathy? Does it also not state that Shareef
21 joined the marines? He left the marine corps, attempts
22 school, odd jobs, temporary employment as an orderly,
23 teacher's aid, and he suffered from depression?

24 A Yes, sir.

25 Q Does it also indicate that Mrs. Burwell moved to

1 Maryland?

2 A Yes, sir.

3 Q Does it indicate that Shareef converted to Islam and
4 he's involved in a series of misdemeanors locally all said
5 to be racially motivated?

6 A Yes, sir.

7 Q And that 27 years old Shareef and Vera, age 16,
8 marry. The marriage is arranged by Vera's mother who is
9 raising 16 children and Shareef changes Vera's name to
10 Tilea and they move to Lawrenceville with Mrs. Burwell?

11 A Yes, sir.

12 Q Does it also indicate when Saleem -- that Saleem and
13 Mikal was born shortly after the marriage?

14 A Yes, sir.

15 Q And the grandfather died. Nathan Burwell.

16 A Yes. Uh-huh.

17 Q Does it not indicate that in 1986 Vera left Shareef
18 and the boys?

19 A Yes, sir.

20 Q And the Shareef lives in the Burwell home with the
21 boys after the wife left him?

22 A Yes, sir.

23 Q Does it not indicate that Shareef took the boys to
24 Richmond to live but he couldn't keep a job, could not
25 supervise or provide care for the boys?

1 A Yes, sir.

2 Q And he moved back to Lawrenceville; is that correct?

3 A Yes, sir.

4 Q Does it also not indicate that Shareef could not take
5 care of himself or the boys?

6 A Yes, sir.

7 Q And in 1988 Vera, Tilea -- that's the wife -- is
8 taken to Lawrenceville from Richmond by Shareef who abuses
9 her and Nathan, the brother, had to rescue Vera and Mikal
10 and Saleem witnessed more abuse and violence by their
11 father?

12 A Yes, sir.

13 Q Okay. Does it also indicate that Vera moved to
14 Pottsdale without the children to get away from Shareef
15 and Shareef then attacks his mother Mrs. Burwell?

16 A Yes, sir.

17 Q Does it also not indicate that Vera joins the
18 military? The mother joined the military?

19 A Yes, sir.

20 Q Does it also indicate that Saleem was sent to Texas
21 to live with his aunt, Mikal to Baltimore with his uncle
22 and aunt Lawanda, and Carson described Mikal as very smart
23 but unable to read at age eight?

24 A Yes, sir.

25 Q Okay. Does it also describe his involuntary

1 admission to the psychiatric facility?

2 A Yes, sir.

3 Q Does it also describe his discharge from Walter P.
4 Carter with major depression, single episode, but then
5 Mikal becomes disruptive in the home because he finds out
6 his brother has moved back in with his father?

7 A Yes, sir.

8 Q Does it also state in this summary that the three
9 reunite on the Burwell property -- the father, the son,
10 and the brother -- and this was an isolated place and they
11 often had no food, heat, or money?

12 A Yes, sir.

13 Q Does it also indicate that then Mikal was admitted to
14 the Reception and Diagnostic Center -- that's Culpepper
15 Juvenile Facility -- for two counts of breaking and
16 entering and two counts of grand larceny?

17 A Yes, sir.

18 Q And then Mikal was released from that facility and
19 Shareef sent Mikal to Richmond to live with his mother?

20 A Yes, sir.

21 Q And Saleem finished high school and then Saleem joins
22 -- goes to Job Corps and then joins the army; is that
23 correct?

24 A I believe so. I mean, it's a lot. I just read it
25 one time. Yes, sir.

1 Q Okay. And then Mikal was committed to a juvenile
2 facility in December of '97?

3 A Yes, sir.

4 Q And then also states he was committed to adult prison
5 in 4/2001.

6 THE COURT: Is that in this trial or is that in the
7 other trial or what do you mean?

8 MR. MABRY: That was admitted.

9 THE COURT: I know it's in the other trial, but do
10 you want to put it into this one?

11 MR. MABRY: Yes, sir. I want to introduce it in this
12 trial.

13 THE COURT: Well, then you need to mark it for this
14 case and ask Ms. Norris if she objects.

15 MS. NORRIS: No objection.

16 THE COURT: We're going to have to double mark it or
17 however you want to do it.

18 MR. MABRY: Yes, sir. That will be fine.

19 THE COURT: I suspect you ought to make a copy of it
20 so you'll have one back for the original --

21 MR. MABRY: The original back.

22 THE COURT: -- and one for this.

23 MS. NORRIS: We'll do that.

24 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
25 identification and received into evidence.)

1 Q Did Ms. Hammock -- not talking about her testimony
2 that you reviewed -- did she not testify that Mikal had
3 numerous changes in his residence while he was a young
4 child in school?

5 A At this point all I can say is I believe so. I just
6 don't remember at this point. I'm feeling a bit
7 overwhelmed by, one, reading that and then trying to
8 remember everything, but I believe so.

9 Q Did she testify that Mikal had low self-esteem?

10 A I believe so.

11 Q Now, you testified that you have reviewed his DJJ
12 records?

13 A I reviewed, yes, all the files that I was given.

14 Q Okay. And did -- In there Mikal tells the DJJ
15 employee his favorite things to do were hiking, fishing --
16 There was something else. I can't remember what it was.
17 Do you remember that being in the records?

18 A I remember that subject and if you say it was in that
19 record, then that's where I remember it from. I do know
20 that that was discussed.

21 Q Do you know who was taking him hiking and who was
22 taking him fishing?

23 A I do not know who was doing that, but I know that
24 when he was out in the country there his brother and he
25 and his father sometimes would do that.

1 Q Okay. And his father taught him how to survive in
2 the woods?

3 A Yes, sir.

4 Q His father had been a marine?

5 A Yes, sir.

6 Q And his father also taught him how to box?

7 A Yes, sir.

8 Q Okay. His grandmother also spent time with him, did
9 she not?

10 A Yes, sir.

11 Q They had a vegetable garden? The boys would work
12 with her in the vegetable garden?

13 A I believe so.

14 Q And his uncle taught him how to read? Uncle Carson?
15 Tried to?

16 A Yes, sir.

17 Q He spent a lot of time with his brother Saleem; is
18 that correct?

19 A Yes, sir.

20 Q Did -- Isn't it true that there was no evidence in
21 this case that Mr. Mahdi was physically abused by his
22 father?

23 A No. There was -- In the medical reports there was
24 incident where he fell off his bike and hurt his leg and
25 another time his arm, but as far as physical violence from

1 his father, no.

2 Q Okay. And I believe the time he hurt his arm he fell
3 off the monkey bars playing chicken?

4 A Something like that.

5 Q Right. And he was taken to the hospital for those
6 injuries?

7 A I don't remember how that ended up, but I do know
8 that occurred.

9 Q Right. And you found no evidence of any sexual abuse
10 of Mr. Mahdi by his father?

11 A No.

12 Q Or his mother?

13 A No.

14 Q And there was no physical abuse of Mr. Mahdi by
15 Lawanda or Carson Burwell?

16 A No.

17 Q There was no sexual abuse?

18 A No.

19 Q And you're aware of the incident where Mr. Mahdi
20 reported abuse on his aunt but there actually was no abuse
21 at all; isn't that correct?

22 A Referring to the ---

23 Q Carter Center?

24 A Oh, yes, sir.

25 Q Okay. And, actually, when he got to the hospital he

1 continued to refer to his aunt as abusive, did he not?

2 A I would need to review that if you're talking about a
3 particular file,.

4 Q Right.

5 A Are you still talking about a file or are you talking
6 about something ---

7 Q Yes, actually in the records --

8 A -- that was testified to?

9 Q -- he was insistent on saying his Aunt Lawanda was
10 abusive.

11 A Well, yea, he stuck to that story because that was
12 the story he initiated.

13 Q Okay. But there wasn't any truth to that story, was
14 there?

15 A They did not find that there had been any.

16 Q And, actually, he went home with them. I mean, they
17 sent him back to that home; right? He went back to the
18 Burwells?

19 A Yes, sir.

20 Q And that's when he started acting up or shortly
21 thereafter and had to be sent back to live with his
22 father?

23 A Yes, acting up particularly in school, yes.

24 Q Okay. Now, let's talk about his juvenile record a
25 little bit. The first thing -- his first involvement with

1 the law was breaking into a car and stealing something out
2 of a car; correct?

3 A Yes, sir.

4 Q And he was arrested and put in a police car and he
5 actually escaped from police custody or ran from the
6 police car; is that right?

7 A Yes, sir.

8 Q And he wasn't incarcerated for that offense. He was
9 put on some kind of juvenile probation?

10 A Yes, sir.

11 Q And then while he was on juvenile probation he broke
12 into two different houses and stold handguns?

13 A Yes, sir.

14 Q Including a 44 Magnum handgun?

15 A I don't remember whether it was a 45 or 44, but I
16 think it was a 44, yes, sir.

17 Q And that's what he got shipped down to DJJ for the
18 first time was -- Actually, he was on probation for
19 car-breaking and then committed two burglaries and he got
20 committed; is that correct?

21 A I believe so.

22 Q And when he was down there the first time he didn't
23 like being down there the first time, did he?

24 A No, sir.

25 Q In fact, he told them he didn't think he should have

1 been committed because he really didn't have a lengthy
2 criminal record?

3 A I know he didn't want to be there. That is vaguely
4 -- I vaguely remember that from the records.

5 Q And while he was there at DJJ the first time he had
6 several institutional violations, even though he was there
7 rightfully for violating his probation and committing two
8 burglaries. He was written up for fighting on
9 December 14, 1997. Does that sound right?

10 A Sounds right.

11 Q Pushed and shoved another inmate on February 17,
12 1998?

13 A Sounds right.

14 Q On October 23 of 1998 he cursed one of the officers
15 there at DJJ?

16 A Sounds right.

17 Q November of '98 he called a guard a -- I am not going
18 to use the exact words, but an MF and used the word
19 nigger?

20 A Yes, sir.

21 Q So he's using racial epithets as well; right? If he
22 called the officer a M-F-N-I-G-G-E-R -- Mr. Mahdi?

23 A When you say as well I'm not sure what you mean.

24 Q Well, he talked about Wallens Ridge State Prison and
25 the guards were using racial epithets, but he was using

1 them as well?

2 A Calling -- yes. Yes, sir.

3 Q December 6, '98, fighting?

4 A Sounds right.

5 Q December 8, 1998, fighting?

6 A Sounds right.

7 Q January 21, '99, threw a chair at Mrs. Woodridge, a
8 teacher?

9 A Sounds correct.

10 Q 1/20 -- January 20, 1999, sexual gestures to a
11 teacher in class?

12 A Yes, sir.

13 Q February 11 of '99, pushed a TV off of a stand?

14 A Yes, sir.

15 Q February 26 of 1999, tore pages from a science book
16 and threw them across the room?

17 A Yes, sir.

18 Q April 1 of '99, assaulted teacher, Mr. Wilkins, by
19 hitting him in the head?

20 A I believe so, sir.

21 Q April 8 of 1999, broke a light fixture and hid it
22 under his bed?

23 A Yes, sir.

24 Q April 10, '99, attempted to break out of DJJ by
25 stealing the radio from one officer and asking for another

1 officer's keys. That was involving an assault on a female
2 officer. Do you remember that?

3 A Yes, sir.

4 Q 4/17/99, kicked a chair and hit an officer in the
5 back. Does that sound right?

6 A Sounds familiar.

7 Q 4/11/99 -- April 11, '99, hit an inmate in the head
8 with a broom?

9 A Yes, sir.

10 Q June 11, 1999, almost started a riot threatening jail
11 guards. That was him and another inmate walking around
12 the guards in a threatening manner. Do you remember that?

13 A I don't remember that as well, but it sounds right.

14 Q June 22, 1999, cursed officers -- I won't use the
15 word, but FU and I ain't doing this S-H-I-T.

16 A I remember a report like that.

17 Q Okay. June 24, '99, advanced on a guard using
18 abusive language?

19 A Sounds right.

20 Q June 27, 1999, tore a pencil sharpener off the wall,
21 threatened a guard and threw the pencil sharpener?

22 A Sounds right.

23 Q April 29, 1999, destroyed a fire alarm?

24 A Sounds right.

25 Q May 5, 1999, turned over a desk, turned over a wall

1 locker, and threw stacked chairs?

2 A Sounds right.

3 Q April 27, 1999, slapped an inmate in the face which
4 was witnessed by guards?

5 A Yes, sir.

6 Q June 23, '99, tore up a manual after being disruptive
7 in class?

8 A Yes, sir.

9 Q October -- Let's see. Excuse me. September 9, 1999,
10 threw a punch at a guard?

11 A Sounds right.

12 Q Same date, September 9, 1999, grabbed a report,
13 balled it up, and threw it away?

14 A Sounds right.

15 Q Took it away from the guard. And the three guards
16 had to actually carry him to an isolation cell. Do you
17 remember that?

18 A Sounds right.

19 Q 9/14/99, shook the monitor loose from the wall?

20 A Sounds right.

21 Q September 25, 1999, threw orange juice in a guard's
22 face?

23 A I don't remember that. I just don't remember it.

24 Q September 29, 1999, punched a guard in the face?

25 A Sounds right.

1 Q October 2, 1999, destroyed a camera in his cell?

2 A Yes, sir.

3 Q 9/13/99, kicked out of the anger control group?

4 A Yes, sir.

5 Q 10/6/99, assaults an officer and accuses him of being
6 a white supremacist?

7 A I don't remember that one.

8 Q Okay. Then there was several more assaults. He
9 threw food on the psychologist when she was in his cell
10 talking to him?

11 A Sounds right.

12 Q Assaulted guards in 2000.

13 A Sounds right.

14 Q Now, he had, I believe, a total of over 40
15 disciplinary violations while he was at the Department of
16 Juvenile Justice?

17 A That I remember.

18 THE COURT: How long was he there? What time span?

19 Q Do you remember what time span? It is '97, '98, '99,
20 2000, but there was a break where he actually got out and
21 he was sent back. Now, he also lived with his mother for
22 a while when he was a teenager?

23 A Briefly. Tried to.

24 Q And she wouldn't let him in the house one day and so
25 he slashed her tires; is that right?

1 A Yes, sir.

2 Q And the police went to arrest him for slashing her
3 tires and he got into a scuffle with the officers?

4 A Yes, sir.

5 Q And he grabbed one of the officers' guns or tried to?

6 A Tried. He reached. He tried, yes.

7 Q Okay. Now, when he was released from DJJ it wasn't
8 long until he committed another crime -- this time as an
9 adult?

10 A Yes, sir.

11 Q All right. And this was a gentleman named Moises
12 Rivera that was a maintenance worker at an apartment
13 complex?

14 A According to the record, yes, sir.

15 Q He is a former police officer?

16 A I believe so, sir.

17 Q And he caught Mr. Mahdi trying to break into an
18 apartment and Mr. Mahdi stabbed him multiple times.

19 A I believe that's what the record says.

20 Q Okay. And Mr. Mahdi was charged with that assault
21 and he plead guilty and received a 30-year suspended
22 sentence to three years or 20 years suspended to three,
23 something to that effect?

24 A Yes. The sentence was changed.

25 Q Okay. And so he goes off to an adult prison?

1 A Yes, sir.

2 Q And while he's at adult prison he engaged in the same
3 kind of conduct as when he went to -- Excuse me just a
4 minute -- the same kind of conduct he engaged in at DJJ;
5 isn't that correct?

6 A In general, yes, sir.

7 Q Okay. Well, he didn't go to Wallens Ridge right
8 away, did he?

9 A No, sir.

10 Q Can you tell me what institution he went to first?

11 A I believe it was Culpepper.

12 Q Okay. And while he's at Culpepper he -- that was in
13 November of 2001 -- he got disciplinary violations for
14 being in an unauthorized area on November 5th. On
15 November 6, 2001, failure to follow institution account
16 procedures; November 12, disobeying an order; November 14,
17 vulgar or indecent language or gestures towards an
18 employer. He actually said, "MF ho, broke as a bitch" on
19 a request form. November 27, 2001, possession of
20 contraband; November 28, failure to follow institutional
21 account procedures.

22 THE COURT: What kind of contraband?

23 MR. MABRY: Walkman radio. Failure to follow
24 institutional account procedures. December 6, disobeying
25 an order; December 7, using vulgar language towards an

1 employee. I won't -- to a female officer. Do you
2 remember those?

3 A Sounds all familiar with me, sir.

4 Q December 15, 2001, being in an unauthorized area and
5 he was then transferred to Nottoway Correctional Center?

6 A Yes.

7 Q Okay. So, he's moved from one facility to another
8 and that was because of his disciplinary behavior?

9 A I believe that's correct, sir.

10 Q Once he gets to Nottoway on June 4 -- He goes there
11 on January 2001. On June 4, 2002 he gets a disciplinary
12 for disobeying a direct order. September 24, disobeying
13 an order. October 24, disobeying an order. October 24,
14 setting a fire. No damage or injury. November 25, 2002,
15 threatening bodily harm to any person in writing where he
16 threatened to kill a guard. Do you remember that?

17 A I remember everything up 'til this last statement.

18 Q I can tell you what he said. He wrote a letter and
19 it said, Read this bitch.

20 A Oh, I remember that.

21 Q The day you die, thug killer. Remember that?

22 A Yes, I remember that in the file.

23 Q Okay. January ---

24 THE COURT: Hold on a second.

25 (Whereupon, the attorney conferred with the client.)

1 THE COURT: Thank you. Go ahead.

2 Q January 22 he was -- That's when he was transferred
3 to Wallens Ridge. Do you remember that?

4 A Yes, sir.

5 Q 2003. And that was because of his poor institutional
6 behavior, was it not?

7 A Yes, sir.

8 Q And the fact that they had to increase his security
9 level?

10 A Yes, sir.

11 Q And then once he got to Wallens Ridge he got more
12 disciplinary violations?

13 A Yes, sir.

14 Q Disobeying on order, February 27, 2003. Disobeying
15 an order, April 28. Disobeying a direct order, April 29.
16 Intentionally throwing food or other substances, May 1.
17 Disobeying a direct order times two on August 5, 2003.
18 Throwing food, October 5, 2003. Possession of contraband.
19 This would have been an altered adapter in a Sony radio.
20 October 23, lying or giving false information to an
21 employee, possession of a sharpened instrument.
22 November 22, 2003, disobeying a direct order and
23 November 26, 2003 destroying state property and assault on
24 a non-inmate. Do you remember that?

25 A Sounds correct.

1 THE COURT: Where do you stand, Mr. Mabry?

2 MR. MABRY: I am almost done, Your Honor.

3 THE COURT: Go ahead.

4 MR. MABRY: That's all I have, Judge.

5 THE COURT: Thank you. Ms. Norris, how long is your
6 redirect?

7 MS. NORRIS: I don't believe I have any, Doctor.

8 THE COURT: Thank you. You may step down, Doctor.

9 THE WITNESS: Thank you.

10 THE COURT: Let me know when everybody has completed
11 eating and we'll start right back up.

12 MR. MABRY: Can we meet real quick -- the lawyers?

13 THE COURT: Yea, y'all come on back. I think we said
14 we were going to do that.

15 (Whereupon, a lunch break was taken.).

16 DR. CRAIG HANEY, after being duly sworn,
17 testified as follows:

18 THE WITNESS: My name is Craig William Haney;
19 H-A-N-E-Y.

20 DIRECT EXAMINATION

21 BY MR. LOMINACK:

22 Q What do you do, Dr. Haney?

23 A I'm a professor of psychology at the University of
24 California, Santa Cruz.

25 Q You said a professor of?

1 A Psychology.

2 Q Okay. And if you could, just provide a summary of
3 your educational background.

4 A I have a bachelors degree from the University of
5 Pennsylvania where I majored in psychology. I went to
6 graduate school at Stanford University in psychology.
7 While I was there I got interested in applications of
8 psychology to different aspects of the legal system. So,
9 I got a Ph.D in psychology and I also went to Stanford Law
10 School and graduated from both programs in 1978.

11 Q So you have your JD as well?

12 A Yes.

13 Q And your Ph.D is in what type of psychology?

14 A In social psychology.

15 Q What is the difference between social psychology and
16 clinical psychology?

17 A Social psychologists study the behavior of a whole
18 range of people in different kinds of social settings, in
19 social groups, in social institutions. We don't focus or
20 specialize on clinical disorders. So, I don't treat
21 people. I don't do diagnosis. I don't have a private
22 practice, but I study human social behavior in a variety
23 of different contexts. For me that's primarily legal and
24 institutional context.

25 Q So, if you could articulate a little bit more

1 specifically what your field of expertise has primarily
2 been within the field of social psychology.

3 A Well, I have been doing this for a long time. Over
4 the last almost four years I've studied primarily the way
5 in which people behaved in or shaped and affected by being
6 in institutional environments -- primarily prison
7 environments -- primarily maximum security prisons, but
8 also to a certain extent mental institutions and juvenile
9 justice institutions. I also in the late 1970's and early
10 1980's began to be involved in studying people's
11 backgrounds or social histories of particularly people who
12 have been accused or convicted of a violent crime, looking
13 at the formative experiences that they had in childhood
14 and adolescence and especially in institutional settings
15 in assessing the ways in which those experiences may have
16 influenced or affected the course of their life or the
17 path of their development.

18 Q All right. So, you've also focused a little bit of
19 your work on basically conducting social history
20 assessments in some form?

21 A Yes. A fair amount of it, but certainly not as much
22 as studying juvenile and prison environments and how
23 people -- incidentally, people who worked in them as well
24 as people who are confined in them involuntarily are
25 affected by those environments.

1 Q All right. In the very early part of your career did
2 you conduct a study about the effects of incarceration on
3 both prisoners, inmates, and correctional officers?

4 A Yes, I did. It was a formative study for me. I was
5 a graduate student at Stanford and in collaboration with
6 Phillip Zimbardo we conducted an experiment which has come
7 to be known as the Stanford Prison Experiment in which we
8 placed college student volunteers who were abandonly
9 assigned to be prisoners or guards in a prison-like
10 environment. It was an environment that was created in
11 the basement in the psychology department in Stanford and
12 we had preselected a group of people who were
13 psychologically normal and healthy.

14 So out of a group of those 20 people we randomly
15 assigned ten of them to be prisoners and ten of them to be
16 guards expecting that over the period of the next two
17 weeks some subtle changes would take place in the way in
18 way they both reacted and behaved and thought about each
19 other and even to a certain extent thought about
20 themselves in the course of what was a relatively short
21 period of this kind of simulated confinement.

22 Q And at the outset when you began the study it was
23 supposed to last 14 days?

24 A Yes, it was.

25 Q What happened?

1 A Well, the study became much more powerful and the
2 reactions that people had to the environment, both the
3 prisoners and the guards, was much more severe than
4 anything we had anticipated. The very first prisoner
5 broke down 36 hours into the study. I actually was the
6 person who had to release him. We had not anticipated
7 this. In the subsequent several days several other
8 prisoners broke down. The guards also were changed
9 dramatically very quickly by the role that they were
10 playing. They became abusive, increasingly abusive over
11 time, and we learned after the study was over with that
12 they actually conspired to mistreat the prisoners out of
13 our presence or out of our sight.

14 We had built in roles for ourself in the prison.
15 When I say ourselves I mean Professor Zimbardo and myself
16 and Curtis Banks and were all at different points in time
17 but all in the prison environment to try to prevent things
18 from getting more extreme and as I said we learned that
19 the guards had actually arranged to take the prisoners
20 into the men's rooms and to physically abuse them while
21 they were in the men's room out of our sight or out of our
22 presence.

23 So, we ended the study six days into it. We never
24 got into the 14th day, and as I say we ended it because it
25 -- the results and the reactions were so dramatic we

1 simply had to stop it. To be frank we should have stopped
2 it earlier, but we were ourselves very surprised by what
3 happened.

4 Q Is that a study that's well known in your field?

5 A Yes, it is I think because of the magnitude of the
6 reactions that people had, the speed with which these
7 reactions occurred, and also the fact that, frankly, we
8 had so carefully selected the participants in this study
9 so that the people who went into the prison were people
10 who as I said a moment ago were selected on the basis of
11 their psychological health and normality and yet they were
12 significantly transformed in a very short period of time
13 by the environment that they were placed in.

14 Q What other studies have you done or work have you
15 done to examine the effects of incarceration on both
16 prisoners and guards?

17 A Well, that was the only study like that one that I
18 did. Since that time I began to look at so-called real
19 prisoners and real correctional environments in juvenile
20 and adult settings and most of that work involves
21 observation. A great deal of it involves doing interviews
22 with people, with correctional officers and officials, but
23 also a substantial number of interviews with prisoners and
24 that's probably entailed hundreds and hundreds of
25 interviews with prisoners over the period of time since --

1 1971 was when the Stanford Prison Experiment was done and
2 some of the studies also involve doing assessments of
3 people who were in particular kinds of prison
4 environments.

5 During this 30 or 35-year period of time that I
6 looked at actual prisons and actual juvenile institutions
7 they changed in two ways; primarily, one is that many of
8 them have gotten very overcrowded. So, one area of
9 expertise is to study the effects of overcrowding on
10 people who are confined in correctional environments of
11 one or another kind, but the other thing that has emerged
12 over the last 30 or 35 years is the use of isolation on a
13 much more widespread basis than had been used in previous
14 decades and the advent of so-called super-max prisons
15 which really didn't exist 30 or 40 years ago -- at least
16 not in the form that they've taken nowadays.

17 So, over the last 15 or so years I have done a lot of
18 research on what happens to people placed in super-maxed
19 prisons and what the effects are on people that are
20 confined there.

21 Q And in addition to studying those effects have you
22 also evaluated or assessed prisons?

23 A Yes. Yes. I am involved in doing this in a number
24 of different capacities. Oftentimes it involves lawsuits
25 where inmates are suing over what they allege are

1 unconstitutional conditions of confinement and I've done
2 that in a variety of different capacities starting way
3 back in the late 1970's, early 1980's, all the way up to
4 the present time.

5 I was a witness in a recent California case that was
6 argued in front of the US Supreme Court about a month and
7 a half ago involving the effects of overcrowding on the
8 provision of mental health services in the California
9 prison system. A lot of what I do looks at how people who
10 have special needs or mental illness in prison are
11 affected by different kinds of conditions in
12 confinement -- sometimes overcrowding as in the California
13 case I mentioned a minute ago, but also in the case of
14 super-max prisons -- what happens to mentally ill people
15 when they go into super-max prison.

16 Q Have you also been asked to consult with government
17 entities whether it's Department of Justice or states
18 about the conditions of some of the prisons?

19 A Yes, a lot of different times. In the late 1970's
20 not long after I got out of graduate school I started to
21 work for the United States Department of Justice. They
22 have a special division in the justice department which
23 evaluates primarily state prison conditions, but I also
24 worked evaluating some state mental hospital facilities
25 and I also over the years have worked with juvenile

1 justice institutions.

2 I have testified in front of different legislative
3 committees in California and other parts of the country
4 about the nature of prison conditions, how people are
5 being affected by it.

6 Q Have you also been qualified in court as an expert in
7 assessing the effects of incarceration on inmates?

8 A Yes.

9 Q Ballpark estimate of how many times.

10 A Very rough estimate, 15 to 20 times.

11 Q And did I ask you to provide me with a copy of your
12 CV?

13 A You did.

14 (WHEREUPON, Applicant's Exhibit No. 28 was marked for
15 identification only.)

16 Q I hand up to you what's been marked as Applicant's
17 28. Is that an up-to-date copy of your CV?

18 A Yes, it is.

19 Q I noticed when I reviewed the CV there is a pretty
20 long list of -- Your Honor, at this time I'd move to enter
21 Applicant's 28 into evidence.

22 MR. MABRY: No objection.

23 THE COURT: Without objection

24 (WHEREUPON, Applicant's Exhibit No. 28 was admitted
25 into evidence.)

1 Q There is a pretty long list of publication. Is there
2 a primary focus of those publications?

3 A Yes. Beginning early in graduate school I got
4 interested in something I mentioned a moment ago --
5 psychology law. So, virtually everything that I published
6 deals in some way or another with that general area of
7 application of psychological principals or psychological
8 data to some kind of legal question or legal issues. So,
9 I have done a lot of writing about prisons, institutions,
10 how people are affected by institutions. Also, a fair
11 amount of writing about people's backgrounds and social
12 histories, how their developmental experiences or life
13 experiences or institutional experiences shape the course
14 or trajectory of their life, a fair amount of writing
15 about capital punishment or different aspects of capital
16 punishment.

17 MR. LOMINACK: Your Honor, at this time I'd move to
18 qualify Dr. Haney as an expert in social psychology with
19 specific expertise in prison systems and the effects of
20 incarceration on inmates.

21 MR. MABRY: No objection.

22 THE COURT: Without objection.

23 Q Dr. Haney, what were you asked to do in this case?

24 A You asked me to review Mr. Mahdi's institutional
25 records and you specifically said you wanted to send me

1 his school records, psychiatric records, his juvenile
2 justice records, DJJ records, and the records of his
3 incarceration in the adult prison system in Virginia or
4 Virginia Department of Corrections, rather, and you wanted
5 me to review those records, form an opinion about
6 Mr. Mahdi's institutional history, and its significant in
7 terms of his life or social history.

8 Q And after you reviewed all of those materials are
9 there some major themes that stuck out after you concluded
10 that review?

11 A Yes, there were. There were in my mind a number of
12 major themes.

13 Q And what are those themes?

14 A Well, the first theme is that -- I should say
15 incidentally I also reviewed in addition to those
16 institutional documentary records a social history which
17 was we've already heard a fair amount of testimony about
18 and the records themselves along with the social history
19 report underscored for me the fact that Mikal Mahdi really
20 was exposed in his life to an enormous number of what
21 psychologists and others call risk factors. These are
22 experiences which happen primarily early in someone's
23 childhood and early Adolescence which can significantly
24 damage and shape who they become to redirect their
25 trajectory or life course in a significant or adverse or

1 negative way and many of -- what we have learned from
2 numerous studies, many of the risk factors that are most
3 damaging are risk factors that impacted him that he was
4 exposed to beginning as a small child and then continuing
5 with only a few moments of respite or a few brief periods
6 of respite one of which you heard about this morning when
7 he was kept relatively safe from those risk factors, but
8 that he entered his childhood, his later childhood years,
9 bearing the marks or the signs of that early exposure.

10 He was early-on identified as somebody with a
11 significant psychological or psychiatric disorder. I
12 think I mentioned to you that I have been doing this work
13 for a long time. I have looked at a lot of records --
14 probably by this time thousands of inmate files. I don't
15 have a full range of clinical experience because I am not
16 a clinical psychologist, but I don't ever having remember
17 seeing a case of a 9-year-old talking about suicide as
18 much as Mikal did and really a kind of childhood
19 depression being manifested in school at an earlier age.

20 You recall at age six he's in first grade and the
21 report from his first grade teacher is that he's doing
22 reasonably well, but she wishes he was happier in school.
23 In the context of three years later when he is telling
24 people that he wants to end his life and asking the police
25 officers to shoot him and so on again you get a sense of

1 how these risk factors have added up in his life and the
2 impact it had on him. The picture that emerges very early
3 on is a picture which I think is consistent.

4 At the time he goes into the juvenile institution he
5 is a very, very troubled young man and he is in an
6 institutional setting where the kind of depression he was
7 experiencing as a younger child is beginning to take a
8 different form as often happens in an institutional
9 setting. The depression is sometimes sadness and
10 hopelessness and sometimes it's anger and acting out and
11 it doesn't appear to me that in the institutional settings
12 he was in even as a juvenile although they were far better
13 than the once he was in as an adult enough significance
14 was attached to the depths of his problems perhaps because
15 of the people in the institution setting didn't know the
16 full extent of the things he had been exposed to, perhaps
17 because they simply weren't in a position to provide him
18 with a different setting and a different kind of therapy
19 or treatment, but this problem continues and the
20 understatement of the magnitude of his problem in the
21 institutional settings is the significant theme.

22 Q All right. Let's back up for a moment. You
23 mentioned the institutional setting at the Walter Carter
24 Center as an inpatient psychiatric hospital for almost 60
25 days and you, obviously, know he was diagnosed with major

1 depression. For a 9-year-old to get that diagnosis after
2 an inpatient stay for 60 days was the treatment after he
3 was released from Walter Carter Center in your mind enough
4 to, quote, cure him or fix the problem?

5 A Well, it's not clear that anybody claimed they had
6 fixed the problem or cured him. He was released from the
7 hospital. He was kept there for what I would regard as a
8 fairly significant amount of time, essentially 60 days --
9 a 58-, 59-day stay in a psychiatric setting for a
10 9-year-old is a significant hospitalization. It is clear
11 from those records that they also took very seriously the
12 depth of the problem and described him in a variety of
13 different ways as being profoundly affected by the things
14 that happened to him early in his life.

15 They release him with the recommendation that he
16 receive follow-up treatment or therapy. I was surprised
17 not to find any records of that subsequent -- of that
18 subsequent treatment. I asked you a couple of times
19 whether such records existed. You told me you searched
20 for them, but you were unable to locate them. I learned
21 this morning and I learned from talking to him that he had
22 had -- there were some counseling sessions that he went to
23 after he was hospitalized and had been released back to
24 his aunt and uncle, but that these sessions didn't go on
25 for very long and they did not include among other things

1 medication which I also understood from the records that
2 his aunt and uncle were opposed to him having received and
3 not surprisingly from my reading of the records many of
4 these problems emerged later on when he's in an
5 institutional setting again and being looked at fairly
6 carefully in the juvenile justice system.

7 Q All right. So, let's fast forward to age 14. He is
8 placed in the Department of Juvenile Justice. Before we
9 talk about his experience specifically, generally what is
10 a DJJ facility like for a 14-year-old? What is its goal
11 with these kids?

12 A Well, the goal -- in general the goal of juvenile
13 justice institutions is, of course, to confine young
14 people who have gotten into trouble, but to presumably
15 confine them in an appropriate and productive way. In
16 other words, if they come in with preexisting problems,
17 those problems are -- need to be addressed. If they come
18 in with issues of adjustment in school, then those issues
19 need to be addressed. Because these are kids,
20 essentially -- they are young people; they are
21 teenagers -- the institution makes an effort to prepare
22 them for subsequent release back into society at an older
23 stage in their life when they're going to be expected to
24 fend for themselves and that's in essence the purpose of
25 the institution is what they're designed to do.

1 Now, you know, they often fall short of that, but
2 that's the goal.

3 Q And is a juvenile who is incarcerated at a DJJ
4 facility going to get the type of counseling and therapy
5 that you would at an inpatient hospital -- in an inpatient
6 hospital setting like Walter Carter Center?

7 A No, they're clearly not. These are facilities which
8 are set up primarily as correctional facilities. They are
9 run that way. They are run with many of the same kind of
10 rules and regulations and expectations that correctional
11 facilities are run with. They don't have the same kind of
12 resources that -- treatment resources or therapeutic
13 resources that a treatment facility would have. They're
14 not intended to find as or set up to be treatment centers.

15 Now, they do have treatment resources, and, indeed,
16 Mr. Mahdi got some contact with some therapists in this
17 facility, but it was in the context of a correctional
18 institution -- a correctional institution whose primary
19 purpose was not to provide therapy.

20 Q And there was earlier testimony about the amount of
21 time that Mr. Mahdi spent once he was incarcerated that
22 first time in the Department of Juvenile Justice -- how
23 much time over the next seven years he spent behind some
24 sort of bars, whether it was DJJ or adult prison, and it
25 was almost the entire 7-year period. In a case like that,

1 does one's institutional history merge with their social
2 history?

3 A Yes, and I think that's an important point. Mikal's
4 social history became an institutional history at age 14.
5 He went into an institutional setting while he was still
6 in his teenage years -- his early teenage years -- and he
7 essentially was confined or institutionalized almost,
8 almost for the entire period of time up until he was
9 released from Wallens Ridge at age 21.

10 When I say almost, I saw the calculation that you
11 did. I checked the numbers. It looks accurate to me. He
12 was institutionalized for approximately eight and a half
13 out of every 10 days of his life after the age of 14 in
14 juvenile facilities and adult prison facilities.

15 THE COURT: Eight and a half days out of 10?

16 THE WITNESS: Out of 10.

17 Q About 86 percent. And when a kid at the age of 14
18 goes into a Department of Juvenile Justice facility
19 earlier you mentioned risk factors when you were
20 discussing his younger years and when you were discussing
21 social history assessments. Are there also risk factors
22 inside of the DJJ facility?

23 A Yes. Yes, there are. This is an interesting issue
24 and an important issue and I think it was an important
25 issue in Mr. Mahdi's case. People -- Young people who

1 have experienced trauma in their life who have been
2 exposed to risk factors like the ones he was exposed to --
3 abandonment, neglect, witnessing violence, instability,
4 unpredictability -- all things that characterized his
5 childhood in very severe ways and had the kind of
6 consequences that I alluded to earlier describing his
7 mental health as very suicidal at age nine.

8 They go into a juvenile institution and some of the
9 experienceness which they have there are eerily familiar.
10 That is to say they're in an environment where they feel
11 some of the same kinds of feelings of abandonment that
12 they felt earlier in their life. They can be exposed to
13 violence. They can watch other people victimizing one
14 another -- things that they've experienced again earlier
15 in his life. Mr. Mahdi saw his father victimizing his
16 mother. They can experience a degree of instability or
17 unpredictability. The environment changes and they have
18 no control over the environment and so on.

19 So, some of the very same things they've experienced
20 as children which is partly what got them there is their
21 reactions to these things and how these things adversely
22 affected them is what often in part explains their
23 presence in this environment they reexperience when
24 they're there and so there is another layer of risk
25 factors to which you can be exposed and then there are the

1 kinds of things that happen to people in institutional
2 settings that are different from the things they've
3 experienced on the streets but which can also change or
4 affect them adversely.

5 These are places where, for better or worse, groups
6 of other young people who also have problems many times
7 are acting out or dealing with their problems by being
8 aggressive are concentrated in one place and young people
9 in these settings have to learn how to defend themselves.
10 They have to learn how not to be a victim in an
11 environment where they see other people being victimized.
12 They have to figure out how to take the internal problems
13 which they're having which may have led to them being
14 there in the first place and manage this and cope with it
15 in a way that is not going to look weak or not going to
16 look vulnerable to the people around them and so what you
17 see oftentimes is people who have been hurt or wounded by
18 the experiences which they've had as children going into
19 juvenile institutions and becoming angry and tough and
20 projecting a kind of tough exterior as a way of insuring
21 their own self-defense in an environment where they can't
22 be sure that they're going to be safe otherwise and this,
23 too, is a kind of risk factor. It is an institutional
24 risk factor because somebody is in an environment like
25 that and they learn that way of being or they learn that

1 style of dealing with conflict or that style of dealing
2 with their own internal conflict and then it can
3 significantly jeopardize who they are and what they can
4 become when they get out of these institutions and it's a
5 sad pattern but it's one that you see all too often and I
6 think it applies in this case.

7 Q Did you see indications in Mikal's DJJ records that
8 he was engaging in that self-defense mechanism by puffing
9 up or trying to be tough when he was 14 years old? Yes.
10 I mean, you see some of it even earlier than that. I
11 mean, he's a very troubled young man and I think we
12 know -- you've heard earlier today about why he was
13 troubled and what the origins of some of those -- that
14 internal turmoil is about and he is trying to cope with it
15 in a variety of different ways and he goes into -- he's
16 hospitalized in a psychiatric hospital and there is some
17 conflict there.

18 He is not just depressed there, but he is also
19 dealing with feelings of anger and sometimes that anger
20 leads to impulsivity and it leads to aggression, but when
21 he gets into a juvenile setting the stakes are higher and
22 the dangers are greater and there is much more jockeying
23 for position by other people who are coming for the same
24 kinds of problems and dealing with the same kinds of
25 problems in the same kind of ways. Many of these

1 environments are very harsh environments for children and,
2 after all, we're talking about a 14-year-old child
3 essentially to be able to manage and to be able to survive
4 in and so you see a lot of maladaptive behavior, a lot of
5 acting-out behavior.

6 His record is replete with this kind of impulsive
7 acting out combined with at times real genuine attempt to
8 get insight. So, some of the records describe him talking
9 about himself and about his life and about his sadness in
10 his life in very poignant ways and trying to work with the
11 counselors that are talking to him about why he feels this
12 way, why he feels hopeless, why he feels there is no
13 future, but in other instances that kind of depression
14 then gets turned outward and it turns into anger and he
15 acts up and sometimes he acts up aggressively.

16 Other times he acts up just for, you know, for lack
17 of a better word I'll say stupidly. He does foolish
18 things, irrational things, things which are designed to
19 gain him nothing at all except punishment, and, indeed,
20 there is plenty of that in the juvenile justice records.
21 He spends a lot of time in isolation and he also
22 manifests -- outwardly manifests the suicidality that was
23 talked about earlier. There are repeated discussions of
24 this.

25 The therapists in the institutions that he's in take

1 it very seriously. They see it not only in the
2 conversations they have with him, but they see it in his
3 behavior and it emerges in testing that they do with him
4 as well and they describe it as great length.

5 Q And but there are also clearly some times when he was
6 expressing suicidality and later ascribed a manipulative
7 purpose to that; right?

8 A Yes.

9 Q How can both of those co-exist in the same person?

10 A Well, they're not inconsistent at all. I mean,
11 particularly -- A couple of things need to be understood.
12 First of all, when you express suicidality you are
13 treated -- you're placed in an environment where you're on
14 suicide watch. He was on suicide watch a number of times.
15 You have nothing. They take your property away.
16 Oftentimes they take your clothes away and it's quite --
17 It's important. It is intelligent. It needs to be done,
18 but it's a very severe way to live, way to be, and one of
19 the ways you get out of suicide watch is to tell the
20 people who have put you there that you no longer have
21 these feelings and to basically delegitimize what it was
22 you were going through and what it was you were feeling.
23 You know, it's also true that young -- It's difficult
24 for young people particularly to talk about suicidality,
25 to talk about wanting to end their life. It isn't a

1 rational thing and sometimes you do have a difficult time
2 explaining it to yourself even. That doesn't undercut the
3 authenticity of the experience and the danger of having
4 these kinds of thoughts which is why even though
5 occasionally he would, in fact, articulate this kind of
6 secondary purpose, the people in the institution took it
7 seriously because they know and I've seen these kinds of
8 files and records again and again of people who do provide
9 a secondary explanation -- a manipulative, if you will,
10 explanation for why they voiced intentions to take their
11 life and subsequently do take their life. The two are not
12 inconsistent and they don't negate one another.

13 Q All right. And we've been talking about his
14 Department of Juvenile Justice incarceration as one lump,
15 but we know that he went in for the first time for six or
16 seven months give or take a few days, was only out for two
17 weeks, and went back in. What was the significance of how
18 he ended going back in that second time to you?

19 A Well, it certainly reflected in the records that I
20 reviewed that he goes in a second time because of what
21 appears to be a misunderstanding and it's a
22 misunderstanding which he and his father -- his father at
23 least as I read it initially much more clearly and
24 forcefully as he or than he resist the police arresting
25 him again and taking him back into the institution. There

1 is this very dramatic stand-off. I saw some of the
2 records. There were newspaper reports of it and so on --
3 an eight-hour stand-off with the police that the police
4 subsequently take both of them into custody, but Mr. Mahdi
5 is sent off to a juvenile institution.

6 Apparently -- and it's difficult to get exactly at
7 the bottom of this, but, apparently, to do time for
8 something that he already served his time for and that was
9 the nature of the complaint. Apparently, when they were
10 taken into custody his father betrayed him and said that
11 this was his idea, his doing, that he, the father, was not
12 involved in this at all, and I think, you know, this was
13 -- this was one more betrayal in a whole series of
14 betrayals that Mikal has experienced.

15 Q So, in other words the paperwork gets mixed up. The
16 police show up at the door to take him into custody for
17 something he's already served time for. Rather than
18 navigate that bureaucracy and deal with it like a normal
19 person would Shareef Mahdi engages in an eight-hour
20 stand-off and Mikal goes right back into DJJ for the next
21 how many months or years?

22 A Well it's quite a while. It is longer than the first
23 time and it is over a year and a half. I mean, his second
24 juvenile justice incarceration lasts much longer than the
25 first one. It is at a different facility, a more -- a

1 higher level security facility. So, he goes -- he was
2 originally at the facility called Hanover. He goes to
3 another one, a more serious one called Culpepper, I
4 believe. He is there for a good year and a half, almost
5 two years before he's released.

6 They release him without a whole lot of -- without a
7 whole lot of improvement in his behavior and arguably a
8 record of worsening behavior. He ends up being released
9 because he's nearing adulthood. He's nearing his 18th
10 birthday and he is remarkably -- to me remarkably released
11 without any requirement of aftercare or therapy or group
12 home placement of any kind -- simply released to the
13 streets.

14 Q You were here earlier and you heard the cross
15 examination of Dr. Cooper-Lewter and the laundry list of
16 the close to 40 incidents within the Department of
17 Juvenile Justice. I mean, no doubt he was acting out;
18 right?

19 A Absolutely. I read all of those reports. I -- They
20 were familiar to me when I heard Counsel.

21 Q And he was causing problems?

22 A Yes.

23 Q And --

24 A He caused lots of problems.

25 Q All right. So, you know, what are they supposed to

1 do? What's the Department of Juvenile Justice supposed to
2 do in a case like this?

3 A I'll give you a simple answer and a more complicated
4 answer. The simple answer is not to keep doing what
5 they're doing. Here's -- What they're doing is obviously
6 not working. He is continuing to do the same thing again
7 and again and again, and so the institution, obviously, is
8 not addressing the nature of his problems. This starts
9 when he's 14 years old and it continues consistently and
10 the record in the first period of juvenile
11 institutionalization is not much different from the second
12 one. So, the problems he has when he's 16 or 17 are the
13 same problems -- the same problems he's having when he's
14 14 and the institutions are doing essentially exactly the
15 same thing. They're keeping him in what is essentially a
16 correctional institution, not a treatment facility and
17 they're dealing with him more or less the same way which,
18 of course, is what they're set up to do. I didn't mean
19 they singled him out for this. I mean rather they didn't
20 single him out for some kind of special extra therapeutic
21 treatment that he, obviously, needed designed to address
22 the underlying problems which they, obviously, were not
23 getting at.

24 When you reflect on your experiences we've all had
25 with our own children when you do the same kind of

1 parenting over and over again and it doesn't work you have
2 to approach the problem differently, and clearly Mikal's
3 problems were deeper than the institution understood them
4 to be and little of what they were doing was effectively
5 dealing with or grappling with the nature of those
6 problems.

7 Q And so when he was released from the Department of
8 Juvenile Justice at the age -- I think May of 2000 at the
9 age of 17 did he leave that institution with the same
10 problems he had come with at the age of 14?

11 A He left with the same problems arguably worsened by
12 the fact that he had been in this institutional setting
13 and had developed in part as a way of trying to adjust in
14 this setting an even more defiant and oppositional
15 approach to conflict and to interactions and you see even
16 in the later case notes while he's there exactly the same
17 kind of descriptions of his problems being talked about
18 and including not only his very severe depression,
19 including not only his commitment to ending his life
20 because he feels hopeless about his future, including also
21 paranoia which has now gotten much worse than it appeared
22 to have been when he went in -- a belief on his part which
23 some of the clinicians thought bordered on being a
24 psychotic belief that they were controlling him and that
25 they were controlling the outcomes in his life.

1 So, there is at no point a picture of a healthy
2 well-adjusted young man who they can confidently now
3 release to the street. Instead, quite the opposite is
4 very, very carefully detailed and, yet, there is no plan
5 for what to do with him once he's released and, of course,
6 not surprisingly he is in trouble very quickly after that.
7 I think he's out for a total of about five months after
8 he's released from the Department of Juvenile Justice and
9 now he's in the throes of the adult prison system in
10 Virginia.

11 Q All right. So, he commits a serious assault. He
12 gets sent to the Virginia Department of Corrections, the
13 adult facility. Now we've discussed the difference
14 between a DJJ facility and a setting at an inpatient
15 hospital. What is the difference between a DJJ facility
16 and the adult Department of Corrections institution?

17 A Well, again, by design -- this is not a criticism of
18 these facilities. This is what they're intended to be.
19 They're not therapeutic facilities. They're not set up to
20 provide therapy or treatment. They're prisons and he is
21 there to receive punishment and ideally along the way some
22 kind of training or rehabilitative services, but not
23 necessarily. It depends on the facility and it depends on
24 what's available at the time a prisoner is there.

25 They are clearly not set up, not intended to be

1 facilities to address his underlying problems and they
2 don't. He has almost no psychological or psychiatric
3 contact during the entire period of time that he's
4 institutionalized. He has what appears be a fairly
5 superficial psychological evaluation going in. It
6 appeared to have been conducted by somebody who is not
7 aware of his juvenile records and not aware of his earlier
8 long history of suicidality, his psychiatric
9 hospitalization, et cetera, and he gets assigned to a
10 regular housing unit both in the intake facility which he
11 originally goes into in the Virginia Department of
12 Corrections. Then he's sent to an actual maximum security
13 or level-four prison, Nottoway, and then from Nottoway he
14 is sent to a very severe super-max prison at Wallens
15 Ridge.

16 Q Well, and we'll get to Wallens Ridge specifically in
17 a moment and super-max more generally first, but, I mean,
18 he earned his way into a super-max facility I think some
19 would say; right?

20 A Yes. Yes and no. He did. Of course he did, but he
21 did in the way that many inmates who have underlying
22 psychological problems and issues earn their way into
23 super-max which is by engaging in numerous relatively
24 minor -- and, you know, the emphasis is on relatively. I
25 am not understating what any kind of a write-up is or

1 disciplinary infraction is in prison. For the people who
2 work there they're all serious. There are irritants and
3 then more and he was irritable. He was irritable and
4 irritating to a lot of the people who were around him and
5 at times it was much more than that. It was worse than
6 that, but most of these offenses are irrational offenses
7 and the overwhelming majority of them are minor, but what
8 happens to people who have underlying psychological
9 problems in these environments is that they simply can't
10 control themselves and they don't control themselves and
11 they rack up a lot of disciplinary infractions for
12 irrational pointless things and sometimes if those
13 underlying problems aren't dealt with they make their way
14 into or they earn their way into a super-max facility --
15 not because they're the worst of the worst, not because
16 they're so dangerous that the other facilities can't
17 manage them or handle them, but because they are so
18 irritating and disruptive in their behavior that
19 eventually the prison -- main line prison or the typical
20 prison simply throws up its hand and says we don't know
21 what to do with this guy. Let's put him in isolation.
22 Let's send him to super-max.

23 Q All right. We'll get to Wallens Ridge in a moment.
24 Just tell us what a super-max prison is.

25 A It's a prison where for the most part prisoners are

1 held in single cells for 23 hours out of every day.
2 They're typically subjected to very high security.
3 Whenever they are taken out of their cell they are placed
4 in restraints. Typically before the cell doors are even
5 opened they're placed in restraints. They're moved
6 individually around the institution like in the very brief
7 periods of time during which they're permitted out of the
8 cells.

9 These are facilities that have essentially no
10 programming. The prisoners stay in their cells either by
11 themselves or in some facilities there are actually double
12 cells so there will be two people in a cell being kept
13 under these conditions, and they are essentially periods
14 of or places where extended solitary confinement is
15 imposed on people.

16 Q And have there been studies done on the effects of
17 extensive solitary confinement?

18 A Yes. There have been over the years many, many
19 studies done on solitary confinement dating nearly back to
20 the 19th century when solitary confinement was used on a
21 more widespread basis in the United States. It was
22 essentially done away with because of what was understood
23 to be the harmful psychological and psychiatric effects of
24 it when practiced on a long-term basis. Since the 19th
25 century there have been studies in the United States and

1 other countries about what happens to people when they're
2 in solitary confinement. I've done some of these myself.

3 Q And what do those studies establish happens to
4 somebody who is subjected to prolonged isolation?

5 A Well, let me say at the outset that not everybody is
6 the same. So, not everybody experiences all of these
7 things and some people experience very few of these
8 reactions, but many people experience many if not most of
9 these reactions. Solitary confinement is an
10 extraordinarily stressful environment for people to be in.
11 There is nothing to do and prisoners simply sit idly
12 throughout the day and try to manage whatever kinds of
13 anxiety they're feeling as a result of the environment in
14 which they're being kept.

15 Some prisoners are overcome with the anxiety so there
16 is in the literature what's called isolation panic. Some
17 prisoners can only handle this on a very, very short-term
18 basis and they have full-blown anxiety reactions,
19 emotional reactions. Oftentimes they're removed from the
20 institution to receive treatment and placed back in the
21 environment. Prisoners begin to deteriorate mentally.
22 Because they don't use their cognitive capacities those
23 capacities begin to atrophy. So, prisoners find it
24 difficult to think. They find it difficult to reason.

25 They're forced understandably so by the institution

1 to become entirely dependent upon the institution to
2 regulate or control their behavior. So, they begin to
3 lose their ability to initiate behavior or make
4 responsible judgments about their own behavior because
5 literally everything they do is controlled by the
6 institution. Again, they rarely even come out of their
7 cells. They're typically fed this their cells and there
8 are limited opportunities for exercise and no opportunity
9 for programming.

10 So, they become very dependent on the institution and
11 really unable to control their own behavior or to control
12 themselves absent these very significant external
13 constraints that are placed on them. If a prisoner
14 suffers from depression that depression almost certainly
15 will deepen inside a super-max prison. There is a
16 sameness to these institutions. Every day is like the one
17 before and the one that follows, and, indeed, in the
18 studies that I've done many people who were not depressed
19 before they went in to super-max prisons are depressed and
20 sometimes even clinically depressed while they're there
21 and sometimes even afterwards.

22 Sometimes the environment is so frustrating that
23 prisoners begin to fill with frustration and the
24 frustration turns to anger and even can turn to rage and
25 so prisoners in super-max prisons sometimes lash out

1 sometimes impulsively and irrationally to the people
2 around them because they're simply filled with frustration
3 and they have no pro-social avenues for the release of
4 that frustration. People deteriorate over time in these
5 environments.

6 Q Now, earlier -- and I don't know if you were here,
7 but there was testimony about an incident when Mikal was
8 at the Department of Juvenile Justice and the officers
9 there noted that his mood lightened when he was placed in
10 a cell with a window. Was that surprising to you or was
11 that noteworthy?

12 A Well, it didn't surprise me at all. It -- I mean,
13 what it reflected was that he was sensitive to his
14 environment and that when his environment was improved
15 some that at least temporarily his mood improved some. He
16 had not lost his sensitivity to the way in which he was
17 being treated. He is described in a number of these case
18 notes dating all of the way back to his psychiatric
19 hospitalization as somebody who is acutely aware of his
20 surroundings -- maybe, if anything, overly sensitive to
21 them. So I was not surprised to see that he did react
22 positively to something that occurred positively in his
23 immediate surroundings, but I also noted that fairly
24 quickly after that his behavior began to deteriorate in
25 another way.

1 The depression lifted, but his anger took over -- not
2 an unusual dynamic or pattern and he began to act out
3 because, again, the real issues, the real frustrations
4 were not being dealt with at all.

5 Q You mentioned studies about super-max facilities.
6 Has there been even one study conducted about long-term
7 isolation that has found that it is harmless and that it
8 does not effect the person who is confined in that manner?

9 A Well, the dozens and dozens of studies that have been
10 done on this issue -- There was a study that was done in
11 Canada in 60 days in administrative segregation which
12 found no measurable ill effects. Other than that, there
13 are no published studies which reach that conclusion.

14 Q All the others --

15 A All the others show negative.

16 Q Now, are there, in fact, some states that have
17 guidelines about certain prisoners who cannot be housed in
18 a super-max facility no matter what their behavior is?

19 A Yes. Yes. This has come about as a result of some
20 litigation -- some of which is litigation which I
21 participated in -- in which because of the extraordinarily
22 stressful nature of this environment and because of the
23 psychological risks that people were subjected to when
24 they're placed in super-max or long-term ice isolation
25 several courts have ordered in constitutional challenges

1 to the constitutionality of super-max confinement that
2 certain categories of prisoners simply cannot be housed in
3 these environments. Prisoners with certain kinds of
4 preexisting psychological disorders are prohibited from
5 being placed in super-max and in these cases the prisoners
6 who are already there, in fact, needed -- had to be
7 evaluated and removed from the super-max environment
8 because of their preexisting psychological disorders.

9 Other states have simply implemented these procedures
10 without being ordered to do so by the court. I was
11 involved in the state of New Mexico, for example, in which
12 in conjunction with their corrections officials we
13 developed a screening procedure for screening certain
14 categories of prisoners out of super-max because of the
15 risks that would incur to them as a result of being placed
16 there given their conditions.

17 Q All right. Let's turn to Wallens Ridge. Were you
18 provided materials that were relevant to Wallens Ridge
19 State Prison?

20 A Yes.

21 Q What types of materials were you provided?

22 A You sent me a whole binder of materials which
23 contained newspaper reports, articles which had been
24 written about Wallens Ridge, video footage of the
25 facility.

1 MR. MABRY: Judge, I am going to object to all this
2 unless --

3 THE COURT: Where are we going? I mean, what's
4 Wallens Ridge got to do with his ineffective assistance of
5 counsel?

6 MR. LOMINACK: Mr. Mahdi spent a year and a half at
7 Wallens Ridge and the prosecution listed every single
8 disciplinary action at Wallens Ridge and this puts those
9 actions into context and is mitigating, frankly.

10 THE COURT: Maybe. Maybe not. I have been awfully
11 patient with all of this testimony. I realize y'all are
12 building a record. I realize you're asking me to look at
13 all this, but -- I'll allow it, but please move along.

14 MR. LOMINACK: Thank you, Your Honor.

15 MR. MABRY: Judge, can I put my basis on the record?

16 THE COURT: Yes.

17 MR. MABRY: My basis is the conditions of -- general
18 conditions of confinement as our Supreme Court has said
19 are not admissible unless you can tie them directly to
20 this defendant and what happened to other inmates at
21 Wallens Ridge or whether there was a lawsuit involving
22 other inmates or a movie or documentary produced is
23 totally irrelevant unless it's tied to this defendant.

24 THE COURT: Well, I sort of agree with that. I mean,
25 let's confine it to the Applicant here.

1 Q Dr. Haney, before I called you were you familiar with
2 Wallens Ridge State Prison?

3 A Yes.

4 Q Is it considered a tough prison even among super-max
5 prisons?

6 A Yes, one of the worst.

7 THE COURT: One of the worst meaning what?

8 THE WITNESS: Meaning one of the most severe, Your
9 Honor. One of the most severe -- harshest conditions of
10 confinement amongst super-maxes.

11 THE COURT: Well, how can me being in solitary here
12 as opposed to there be any worse than the other? I mean,
13 I am going to be by myself one or the other.

14 THE WITNESS: Well, among other things it has a
15 reputation for very harsh treatment at the hands of the
16 correctional officers who work there. There have been
17 lawsuits about it. There are been a number of cases in
18 which the particular kinds of treatment that have been
19 imposed over and above the solitary confinement itself has
20 been identified and in some instances actually confirmed.

21 Q And did some states actually have contracts where
22 they would send inmates to Wallens Ridge?

23 A Yes. The State of Connecticut and New Mexico had
24 these contracts. That was my primary exposure to the
25 facility was through people from New Mexico who had been

1 confined there.

2 Q And did those states renege on their contracts
3 eventually?

4 A Yes.

5 Q Or withdraw their inmates?

6 THE COURT: You object?

7 MR. MABRY: Yes, sir.

8 THE COURT: Sustained. Limit it to Mr. Mahdi,
9 please.

10 MR. LOMINACK: Well, if I could respond to the
11 objection, you just asked the expert why it matters that
12 he was at Wallens Ridge versus any others.

13 THE COURT: I was just trying to get to something
14 relevant.

15 MR. LOMINACK: And I think that this is part of that
16 answer.

17 THE COURT: I've ruled. Move along.

18 Q You've looked at Mr. Mahdi's records at Wallens
19 Ridge?

20 A Yes.

21 Q What was significant? What stood out to you from his
22 records there?

23 A Well, two things: One is that the pattern of
24 behavior that I described earlier of him acting out
25 oftentimes in very irrational ways impulsively, in ways

1 which I would connect to his underlying psychological
2 issues, disorders, that remain untreated while he was in
3 adult prison.

4 THE COURT: The same kind of acting out that he was
5 doing while in the juvenile --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- facility?

8 THE WITNESS: Yes, sir. I mean, it is the same --
9 You see the same pattern more or less and he is not
10 receiving any kind of psychological or psychiatric
11 attention at all in Wallens Ridge.

12 Q Throughout his institutional history has there ever
13 been documentation of a membership in a prison gang?

14 A No.

15 Q Or dealing drugs in prison?

16 A No, none whatsoever.

17 Q And has there ever been documentation of any type of
18 misbehavior that seemed to have a goal? That seemed to
19 get him something at the end of it?

20 A Well, I mean, not a goal which is worth the
21 consequences that he incurs in response. So, I mean, he
22 does -- There are times when he acts up because he doesn't
23 like the situation that he's in, but he does it in such a
24 way that's quite clear that the punishment which is going
25 to follow is going to be more severe than whatever it is