

VOLUME SEVEN OF TEN
[PP 3001-3500]

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
(Capital PCR 2006-CP-23-7719)
The Honorable D Garrison Hill, Circuit Court Judge

S C Supreme Court

Kamell Delshawn Evans, #6016,

Respondent/Petitioner,

v

State of South Carolina,

Petitioner/Respondent

APPENDIX

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INDEX

{DIRECT APPEAL RECORDS}

RECORD ON APPEAL

INDEX	1
TRIAL TRANSCRIPT	1
COURT REPORTER'S INDEX	2
JURY QUALIFICATION	23
JURY SELECTION	966
MOTIONS	985

GUILT PHASE

{IN CAMERA} TESTIMONY

JEFFREY KINDLEY	1014

MOTIONS	1043

JURY SWORN	1050

OPENING STATEMENTS	1058

TESTIMONY

JORGE CRUMPTON	1079

DAMON HUBBER	1088

ARNOLD TAYLOR	1093

MARCUS A CANNON	1103

TONY LEE	1112

ANDREW SOULE	1135

DAVID WILLIAMS	1158

JOHN ELDRIDGE	1180

RONALD RICHARDSON, JR	1194

PAUL ANDREW SILVAGGIO	1206

JEFFREY KINDLEY	1256

GENE DONAHUE	1266

DONNIE HENRY	1273

MICHAEL ALLEN PETERSON	1279

DARWIN SHAW	1313

JOSEPH HORNSBY	1332

ROBERT RANDY SUTTLES	1340

JAMES WILLIAM ARMSTRONG	1344

MICHAEL MCNAMARA	1368

MANWELL JOHN ORTUNO	1373

DR MICHAEL EUGENE WARD	1383

KAMELL DESHAWN EVANS	1414

REQUESTS TO CHARGE	1446

CLOSING ARGUMENTS	1451

JURY CHARGE	1474

VERDICTS	1502
SENTENCING PHASE	1516
OPENING STATEMENTS	1528
TESTIMONY	
STEPHEN DALE LOFTIS	1528
MARCIA SAPINOSO	1535
CHERI JONES	1555
GEORGE CATHLEEN TRIPP	1568
JOSEPH HORNSBY	1576
JAMES CHRISTOPHER WILSON	1578
LEWIS EDWARD O'CAIN	1582
JOHN MERKLE	1615
GEORGE M MARTIN	1624
STEVE WATSON	1642
JEFF NEELY	1645
SCOTT PARKER	1648
STUART HOLCOMBE	1651
TERRY E PEDEN	1653
RONALD PATRICK PLATT	1659
BENJAMIN YOUNG	1664
BARRY EVANS	1665
SHATIMA EVANS	1671
DR JAMES R EVANS	1678
DR ELIN BERG	1711
CLOSING ARGUMENTS	1743
JURY CHARGE	1776
VERDICT	1793
SENTENCING	1798
INDICTMENTS	1802
NOTICE OF INTENT TO SEEK THE DEATH PENALTY	1814
STATE'S NOTICE OF EVIDENCE IN AGGRAVATION	1815
STATUTORY INSTRUCTIONS	1816
RECOMMENDATION OF A SENTENCE OF DEATH	1817
AFFIRMATION OF DEATH SENTENCE	1818
SENTENCE	1819
CERTIFICATE OF APPELLANT	1820
FINAL BRIEF OF APPELLANT	1821
FINAL BRIEF OF RESPONDENT	1836
STATE VS EVAN, OPINION NO 26220	1858

REMITTITUR	1864

{POST CONVICTION RELIEF ACTION RECORDS}

ORDER APPOINTING JUDGE	1865

POST CONVICTION RELIEF APPLICATION	1866

RETURN TO APPLICATION, MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR STATUS HEARING	1879

AMENDED APPLICATION, DATED NOVEMBER 16, 2007	1896

AMENDED APPLICATION, DATED JANUARY 28, 2009	1903

ORDER APPOINTING COUNSEL	1912

NOTICE, MOTION AND MEMORANDUM FOR PROTECTIVE ORDER	1916

RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER	1928

RESPONDENT'S MOTION FOR COURT ORDER FOR THE MEDICAL RECORDS OF THE APPELLANT	1943

MOTION TO EXCLUDE EVIDENCE RELATING TO THE PUBLIC SAFETY OFFICER'S BENEFITS ACT	1946

ORDER (MEDICAL RECORDS)	1969

PCR HEARING TRANSCRIPT (JUNE) TESTIMONY	1971

DENNIS BUNKLEY

DIRECT	1973

CROSS	2019

REDIRECT	2028

RECROSS	2029

RODNEY RICHEY

DIRECT	2031

CROSS	2042

REDIRECT	2047

RECROSS	2050

KIMBERLY TRAMELL

DIRECT	2050

CROSS	2061

REDIRECT	2066
RECROSS	2067
BRUCE COFFEE	
DIRECT	2069
CROSS	2079
REDIRECT	2083
BOB NANCE	
DIRECT	2084
CROSS	2092
REDIRECT	2096
RECROSS	2097
JOHNATHAN LANDINGHAM	
DIRECT	2098
CROSS	2103
REDIRECT	2106
RECROSS	2106
VIRGINIA GOLDEN	
DIRECT	2107
CROSS	2122
TYRONE JOHNSON	
DIRECT	2132
CROSS	2141
REDIRECT	2144
RECROSS	2146
JOHN MAULDIN	
DIRECT	2147
CROSS	2156
REDIRECT	2160
JAMES GOLDSMITH	
DIRECT	2166
CROSS	2212
REDIRECT	2228
RECROSS	2231
STEVE W SUMNER	
DIRECT	2232
CROSS	2369
REDIRECT	2459
RECROSS	2485
DALE DAVIS	
DIRECT	2496
CROSS	2518
REDIRECT	2532
LENORA TOPP	
DIRECT	2533
CROSS	2556

REDIRECT	2571
RECROSS	2574
NICHOLAS WIDEMAN	
DIRECT	2579
CROSS	2592
REDIRECT	2598
RECROSS	2599
SARAH ENGLISH	
DIRECT	2599
CROSS	2604
BARRY EVANS	
DIRECT	2604
CROSS	2611
RUBIN GUR	
DIRECT	2632
CROSS	2683
JOSEPH SAVITZ	
DIRECT	2704
CROSS	2716
JUSTIN McKEE	
DIRECT	2726
CROSS	2730
JOHNATHAN ARDEN	
DIRECT	2734
CROSS	2751
REDIRECT	2778
RECROSS	2781
RICHARD CANFIELD	
DIRECT	2793
CROSS	2816
REDIRECT	2828
RECROSS	2831
RENEE EVANS	
DIRECT	2834
CROSS	2849
REDIRECT	2858
RECROSS	2860
ROBYN EVANS	
DIRECT	2861
CROSS	2887
REDIRECT	2899
RECROSS	2901

LETTER REQUESTING <i>DE BENE ESSE</i> DEPOSITION OF DR DAVID L BACHMAN, M D	2907

RESPONDENT'S LETTER ADDRESSING APPELLANT'S MOTION TO TAKE <i>DE BENE ESSE</i> DEPOSITION OF DR. DAVID L. BACHMAN, M.D.	2911
ORDER DENYING MOTION TO TAKE <i>DE BENE ESSE</i> DEPOSITION OF DR. DAVID L. BACHMAN, M.D.	2914
NOTICE AND MOTION TO AMEND	2915
AMENDED APPLICATION, AUGUST 28, 2009	2916
PCR HEARING TRANSCRIPT (OCTOBER)	2927
TESTIMONY	
SHATIMA MARTIN	
DIRECT	2933
CROSS	2989
REDIRECT	3004
RECROSS	3010
NICHOLAS COOPER-LEWTER	
DIRECT	3012
CROSS	3043
REDIRECT	3063
RECROSS	3066
DAVID BACHMAN, M.D.	
DIRECT	3069
CROSS	3105
REDIRECT	3140
RECROSS	3144
RE-REDIRECT	3145
RE-RECROSS	3152
MOTIONS	3154
JAROD TOWE	
DIRECT	3188
CROSS	3192
REDIRECT	3194
CHRISTOPHER LONG	
DIRECT	3195
CROSS	3199
REDIRECT	3200
KENNETH SPICER, M.D.	
DIRECT	3204
CROSS	3229
REDIRECT	3244
RECROSS	3249
RE-REDIRECT	3256
STEVEN SUMNER	

DIRECT	3257
CROSS	3261
REDIRECT	3268
JAMES GOLDSMITH	
DIRECT	3270
CROSS	3273
REDIRECT	3279

PCR HEARING EXHIBITS

APPLICANT'S EXHIBITS

1-SCHOOL DISTRICT RECORDS	3287
2-7 9 2004 RODNEY RICHEY LETTER	3374
3-MOTION FOR DISCOVERY AND INSPECTION	3375
4-FOURTH GRADE SCHOOL RECORDS	3394
5-PHOTOGRAPH	3405
6-PHOTOGRAPH	3406
7-PHOTOGRAPH	3407
8-NEWSPAPER ARTICLE	3408
9-MOTION FOR SUBSTITUTION OF COURT APPOINTED COUNSEL	3410
10-STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBSTITUTION OF COURT APPOINTED COUNSEL	3414
11-8 31 2004 DALE DAVIS EMAIL	3418
12-8 31 2004 JOHN MAULDIN EMAIL	3420
13-7 9 2004 RODNEY RICHEY LETTER	3421
14-CONSENT ORDER	3422
15-7 21 2004 DALE DAVIS LETTER	3424
16-7 28 2004 DALE DAVIS EMAIL	3425
17-7 31 2004 DALE DAVIS EMAIL	3427
18-7 30 2004 LENORA TOPP LETTER	3429
19 A -RON PLATT INTERVIEW	3430
19 B -SCOTT PARKER INTERVIEW	3432
20-TERRY PEDEN INTERVIEW	3433
20 A-8 3 2004 GEORGE MARTIN MEMORANDUM	3436
21-8 25 2004 LENORA TOPP MEMORANDUM	3440
22-8 26 2004 GEORGE MARTIN EMAIL	3442
23-8 27 2004 LENORA TOPP EMAIL	3443
24-BENJAMIN YOUNG INTERVIEW	3444
25-BARRY EVANS INTERVIEW	3446
26-SHATIMA EVANS INTERVIEW	3450
27-9 10 2004 MEMORANDUM	3454
28-9 12 2004 LENORA TOPP EMAIL	3456
29-9 15 2004 LENORA TOPP EMAIL	3457
30-GEORGIA MAE CARGILE INTERVIEW	3458
31-8 4 2004 BETTY STROM LETTER	3460

32-GREENVILLE COUNTY DETENTION CENTER INMATE VISITOR LOG PRINTOUT	3485
33-LEAD POISONING REPORT	3488
34-4 2 2003 INTERVIEW WITH CHRISTINA RODRIGUEZ	3505
35-DIVORCE DECREE	3548
36-PHOTOGRAPH	3556
37-PHOTOGRAPH	3557
38-PHOTOGRAPH	3558
39-INVESTIGATIVE SUPPLEMENTAL REPORT	3559
40-8 3 2004 DALE DAVIS LETTER	3561
41-8 4 2004 DALE DAVIS LETTER	3562
42-8 3 2004 MEMORANDUM	3563
43-8 9 2004 STEVE SUMNER EMAIL	3564
44-DALE DAVIS RESUME	3565
45-2 14 2005 STEVE SUMNER EMAIL	3567
46-DALE DAVIS AFFIDAVIT	3568
47-LEAD POISONING DOCUMENT	3570
48-MEDICAL RECORDS	3571
49-LEAD EXPOSURE ARTICLE	3665
50-LEAD EXPOSURE ARTICLE	3673
51-BRAIN DIAGRAM	3683
52-DR GUR'S REPORT	3687
53-10 1 2004 DALE DAVIS LETTER	3689
54-PHOTOGRAPH	3690
55-PHOTOGRAPH	3691
56-PHOTOGRAPH	3692
57-PHOTOGRAPH	3693
58-PHOTOGRAPH	3694
59-PHOTOGRAPH	3695
60-PHOTOGRAPH	3696
61-PHOTOGRAPH	3697
62-PHOTOGRAPH	3698
63-CHART	3699
64-DIAGRAM	3700
65-DIAGRAM	3701
66-SLIDES	3702
67-RENEE L EVANS PAPER	3709
68-VARIOUS PHOTOGRAPHS	3711
69-5 27 2004 KAMELL EVANS LETTER	3734
70-JOANN BRUGGER AFFIDAVIT	3736
71-VARIOUS AFFIDAVITS	3739
RESPONDENT'S EXHIBITS	
1-7 9 2004 FILE NOTES	3752
2-7 12 2004 FILE NOTES	3759
3-7 13 2004 FILE MEMORANDUM	3762

4-7 14 2004 FILE NOTES	3764
5-7 23 2004 FILE NOTES	3766
6-7 30 2004 FILE NOTES	3767
7-7 30 2004 FILE NOTES	3769
8-7 22 2004 STEVE SUMNER LETTER	3771
9-7 22 2004 STEVE SUMNER LETTER	3772
10-8 12 2004 GEORGE MARTIN EMAIL	3775
11-7 9 2004 FILE NOTES	3776
12-OFFICE OF INDIGENT DEFENSE VOUCHER, STEVE W SUMNER	3777
13-OFFICE OF INDIGENT DEFENSE VOUCHER, JAMES GOLDSMITH	3782
14-GEORGE MARTIN INVOICE	3792
15-DALE DAVIS INVOICE	3794
16-LENORA TOPP INVOICE	3796
17-JAMES R EVANS INVOICE	3799
18-7 23 2004 FILE NOTES	3800
19-EVANS FAMILY TREE	3801
20-9 9 2004 STEVE SUMNER LETTER	3802
21-NOTES ON SCDC POLICY	3803
22-SIGNED RELEASE	3804
23-9 2 2004 FILE NOTES	3806
23 A-4 2 2003 PROPERTY REPORT	3810
24-9 1 2004 FILE NOTES	3814
25-8 10 2004 FILE NOTES	3821
26-7 24 2004 FILE NOTES	3822
27-8 26 2004 LENORA TOPP EMAIL	3825
28-UNDATED FILE NOTES	3826
29-8 3 2004 FILE NOTES	3828
30-8 5 2004 STEVE SUMNER LETTER	3834
31-8 30 2004 FILE NOTES	3836
32-9 16 2004 FILE NOTES	3838
33-9 6 2004 FILE NOTES	3839
34-8 30 2004 FILE NOTES	3840
35-UNDATED FILE NOTES	3841
36-8 26 2004 LENORA TOPP EMAIL	3842
37-AUTOPSY PHOTOGRAPH	3843
38-AUTOPSY PHOTOGRAPH	3845
39-AUTOPSY PHOTOGRAPH	3847
40-AUTOPSY PHOTOGRAPH	3849
41-AUTOPSY PHOTOGRAPH	3851
42-AUTOPSY PHOTOGRAPH	3853
43-DIAGRAM	3855
44-DIAGRAM	3856
45-DEMONSTRATIVE AID	3857

46–8 11 2004 DALE DAVIS LETTER	3872
47–RADIOLOGY REPORT	3973
48–MRI REPORT, 11 24 2006	3874
49–STATE’S MOTION FOR THE PRODUCTION OF MEDICAL RECORDS	3875
50–MRI REPORT, 11 24 2008	3883
COURT’S EXHIBITS	
1–8 1 1998 MEDICAL RECORDS	3885
2–LIEUTENANT SHEA SMITH AFFIDAVIT	3900
3–SHERIFF STEVE LOFTIS AFFIDAVIT	3902
4–PHOTOGRAPH	3904
5–PHOTOGRAPH	3904
APPLICANT’S POST HEARING BRIEF	3906
RESPONDENT’S POST HEARING BRIEF	4104
APPLICANT’S POST HEARING BRIEF–REPLY	4217
RESPONDENT’S SECOND POST HEARING BRIEF	4238
APPLICANT’S SECOND POST HEARING BRIEF	4245
APPLICANT’S PROPOSED ORDER FOR POST CONVICTION RELIEF	4254
RESPONDENT’S PROPOSED ORDER FOR POST CONVICTION RELIEF	4274
ORDER GRANTING NEW SENTENCING	4384
MOTION TO ALTER OR AMEND	4501
ORDER DENYING MOTION TO ALTER OR AMEND	4515

SHATIMA MARTIN - CROSS EXAMINATION BY MS. BROWN

75

1 Q OH, OKAY THEY DID ASK YOU THAT AND YOU DID NOT
2 BELIEVE HE WAS IN A GANG?

3 A NO, MA'AM

4 Q AND AFTER MR EVANS AND CHRISTINA MOVED OUT OF YOUR
5 HOUSE, YOUR HOUSE OR APARTMENT, I'M NOT REAL ---

6 A I'M IN A HOUSE

7 Q YOUR HOUSE?

8 A YES, MA'AM

9 Q YOU DIDN'T SEE THEM DAILY DID YOU?

10 A NO, NOT DAILY

11 Q OKAY WELL, LET ME ASK YOU A FEW THINGS GOING BACK TO,
12 I BELIEVE IT'S CLEVELAND HEIGHTS OHIO?

13 A YES MA'AM

14 Q OKAY YOU MENTIONED THAT THERE WAS -- THERE WAS SOME
15 TENSION OVER SPELLING WORDS AND THAT SORT OF THING BUT IT
16 SOUNDED LIKE YOU WERE SAYING THAT YOUR FATHER DID GO OVER
17 SCHOOL-WORK WITH BOTH OF YOU KIDS, IS THAT ---,

18 A HE DIDN'T --

19 Q --- CORRECT?

20 A HE DIDN'T GO OVER MY SCHOOL-WORK I NEVER SAID ---

21 Q HE DID NOT?

22 A --- THAT NO MA'AM

23 Q YOU WERE DOING WELL?

24 A YES, MA'AM

25 Q YOU WERE DOING VERY WELL OKAY BUT HE DID TAKE AN

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

76

1 INTEREST IN SCHOOL-WORK?

2 A I MEAN, HE WOULD COME HOME AND ---

3 Q AS DID YOUR MOTHER?

4 MR NETTLES I'M SORRY I'D JUST LIKE TO ASK HER TO

5 LET HER, I MEAN, TO FINISH HER ANSWER

6 THE COURT OKAY YEAH

7 Q WERE YOU FINISHED?

8 A I LOST MY TRAIN OF THOUGHT I DON'T EVEN -- I M SORRY

9 Q OKAY WELL, YOUR FATHER TOOK AN INTEREST IN YOUR
10 SCHOOL-WORK, CORRECT?

11 A OF HIS, NOT MINE

12 Q OKAY

13 A I WAS DOING WELL I DIDN'T HAVE ANY PROBLEMS WITH
14 SCHOOL I LOVED SCHOOL

15 Q AND YOUR MOTHER, DID SHE TAKE AN INTEREST IN YOUR
16 SCHOOL-WORK?

17 A OF HIS

18 Q OF HIS?

19 A MY BROTHER'S

20 Q O-KAY ARE YOU AWARE OF YOUR MOTHER GOING TO KAMELL
21 EVANS' SCHOOL AND MAKING SURE HE WAS DOING HIS WORK OR
22 ASKING IF HE NEEDED ANY HELP THAT SHE COULD BE A PART OF
23 THAT?

24 A YES SHE WOULD BE THE ONE TO CHECK UP ON KAMELL

25 Q OKAY AND YOU REMEMBER HER WRITING NOTES TO THE SCHOOL

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

77

1 FOR KAMELL?

2 A NO MA'AM

3 Q YOU DON'T REMEMBER THAT?

4 A I DON'T KNOW THAT I KNOW THAT IF -- OUT OF BOTH OUR
5 PARENTS MY MOM WOULD BE THE ONE TO COME UP TO THE SCHOOL I
6 DO KNOW THAT

7 Q OKAY

8 A WRITING NOTES, I DON'T KNOW ANYTHING ABOUT ANY NOTES

9 Q OKAY DID SHE KEEP SCHOOL RECORDS FOR BOTH OF YOU?

10 A OH, SHE KEEP EVERYTHING

11 Q SO SHE WOULD ---

12 A LIKE REPORT CARDS?

13 Q YES, MA'AM

14 A YES, MA'AM

15 Q SO SHE WOULD HAVE SCHOOL RECORDS FOR BOTH YOU AND MR
16 EVANS?

17 A YES, MA'AM

18 Q OKAY DID YOU NOTICE, AND THIS IS AFTER KAMELL EVANS
19 HAS MOVED BACK OR MOVED TO GREER AND MOVED IN WITH YOUR
20 FATHER, DID YOU NOTICE YOUR FATHER TAKING AN INTEREST IN
21 KAMELL EVANS' SCHOOL AT THAT TIME?

22 A I DID NOT KNOW

23 Q DO YOU REMEMBER YOUR STEP-MOTHER TAKING AN INTEREST IN
24 SCHOOL?

25 A I KNOW BOTH OF THEM WOULD -- IF THEY HAD TO GO UP TO

SHATIMA MARTIN - REDIRECT EXAMINATION BY MR. NETTLES

78

1 THE SCHOOL, BOTH OF THEM WOULD USUALLY GO

2 Q OKAY AND I NOTICED THAT YOU SAID THAT YOU HAVE SOME
3 MEMORIES OF THE VIOLENCE IN CLEVELAND HEIGHTS AND DO I
4 UNDERSTAND THAT YOUR EXPOSURE TO THAT KIND OF VIOLENCE HAS
5 LED YOU TO ACTUALLY ESCHEW VIOLENCE, TO AVOID VIOLENCE AT
6 THIS TIME?

7 A YES, MA'AM

8 MS BROWN YOUR HONOR, MAY I HAVE JUST A MOMENT?

9 THE COURT CERTAINLY

10 (PAUSE)

11 MS BROWN THOSE ARE ALL THE QUESTIONS WE HAVE, YOUR
12 HONOR THANK YOU

13 A YOU'RE WELCOME

14 THE COURT REDIRECT

15 MR NETTLES MAY I HAVE ONE ---

16 THE COURT SJRE

17 (PAUSE)

18 MR NETTLES WE'RE JUST CHECKING, JUDGE

19 THE COURT OKAY

20 MR NETTLES THE EVIDENCE ISN'T HERE SHE'S GOT AN
21 EVIDENCE SHEET

22 (PAUSE)

23 REDIRECT EXAMINATION BY MR. NETTLES

24 Q NOW -- HEY

25 A HEY

SHATIMA MARTIN - REDIRECT EXAMINATION BY MR NETTLES

79

1 Q OKAY YOU TOOK ON DIRECT, I MEAN, ON CROSS EXAMINATION
2 -- WELL, LET ME PUT IT THIS WAY ON DIRECT YOU AND I SPOKE
3 ABOUT MEETING WITH THE LAWYERS

4 A RIGHT

5 Q OKAY AND YOU MET WITH THE LAWYER A WEEK OR TWO
6 BEFORE, A PERIOD OF TIME BEFORE TRIAL, RIGHT?

7 A YES, SIR

8 Q NOW WHEN YOU MET WITH LENORA TOPP, WAS THAT BEFORE OR
9 AFTER YOU MET WITH THE LAWYERS?

10 A I CANNOT REMEMBER

11 Q OKAY

12 A I CANNOT REMEMBER THAT

13 Q OKAY IF -- OKAY BUT WHEN YOU MET WITH LENORA TOPP
14 DID SHE ASK YOU ABOUT WHETHER YOUR BROTHER WAS IN A GANG?

15 A I CAN'T RECALL THE CONVERSATION

16 Q OKAY OKAY ALL RIGHT BUT LET ME ASK YOU THIS, IF
17 MS TOPP TOOK NOTES OF Y'ALL'S INTERVIEW, OKAY, DID YOU EVER
18 HAVE ANY REASON TO BELIEVE THAT SHE REPORTED ANYTHING OTHER
19 THAN THE TRUTH ABOUT WHAT YOU SAID?

20 A I WOULD HOPE SHE WOULD REPORT THE TRUTH

21 Q OKAY AND HOW LONG HAD YOU -- YOU SPENT TWO HOURS WITH
22 HER

23 A NO, IT WASN'T -- WELL, IT WAS NOT A FULL HOUR BECAUSE
24 THAT'S HOW I BOOK MY CLIENTS

25 Q RIGHT

SHATIMA MARTIN - REDIRECT EXAMINATION BY MR. NETTLES

80

1 A AND I PUT HER IN BETWEEN MY CLIENTS

2 Q YOU MET WITH HER ON TWO OCCASIONS?

3 A YES, TWO OCCASIONS

4 Q OKAY YOU MET WITH HER FOR ROUGHLY TWICE AS LONG AS
5 YOU MET WITH THE LAWYERS?

6 A YES

7 Q OKAY

8 A YES

9 Q ALL RIGHT NOW HAD -- DO YOU REMEMBER HER ASKING YOU
10 ABOUT THE ABUSE -- DO YOU REMEMBER WHETHER SHE ASKED YOU
11 ABOUT -- I THINK YOU TESTIFIED ON CROSS EXAMINATION THAT SHE
12 ASKED YOU ABOUT THE ABUSE IN OHIO AND YOU TOLD HER ABOUT IT

13 A YES

14 Q OKAY AND WERE THERE ANY QUESTIONS -- DO YOU REMEMBER
15 ANY QUESTIONS THAT SHE ASKED YOU THAT YOU REFUSED TO ANSWER?

16 A NO

17 Q NOW THERE WAS SOME DISCUSSION ABOUT YOUR DAD TAKING AN
18 INTEREST IN KAMELL'S SCHOOL

19 A RIGHT

20 Q ALL RIGHT WHEN WE WERE IN OHIO, WHEN YOU WERE IN
21 OHIO, RIGHT?

22 A (AFFIRMATIVE NOD)

23 Q NOW LET'S SORT OF DRILL DOWN ON THAT A LITTLE BIT

24 A OKAY

25 Q SHARE WITH US WHAT YOU WITNESSED IN TERMS OF YOUR

SHATIMA MARTIN - REDIRECT EXAMINATION BY MR. NETTLES

81

1 FATHER'S INTEREST IN KAMELL'S SCHOOLING AND THE
2 RAMIFICATIONS OF KAMELL NOT MEETING YOUR FATHER'S
3 EXPECTATIONS WITH THE SCHOOLING

4 A CAN YOU REWORD THAT?

5 Q YEAH TELL US WHAT YOUR DAD DID AS IT RELATES TO
6 KAMELL'S SCHOOLING

7 A HE WOULD COME IN AND TRY TO GO OVER HIS STUFF AND IF
8 IT WASN'T RIGHT HE WOULD GET IN TROUBLE

9 Q AND WHEN YOU SAY TRY TO GO OVER HIS STUFF IN YOUR MIND
10 WERE YOU -- WERE YOU HELPING KAMELL WITH HIS SCHOOLING?

11 A I WAS HELPING HIM

12 Q ALL RIGHT BEFORE YOUR DAD GOT HOME?

13 A YES

14 Q OKAY SO WHAT IS DIFFERENT ABOUT WHAT YOU DID WITH
15 KAMELL BEFORE YOUR DAD GOT HOME AS OPPOSED TO WHAT YOUR DAD
16 DID WHEN HE GOT HOME?

17 A I GUESS I -- I HAD MORE PATIENCE WITH KAMELL I WOULD
18 KEEP INTERATING (PHONETICS) GOING OVER AND OVER SAY IT
19 WAS A WORD HE DIDN'T UNDERSTAND OR DIDN'T KNOW HOW TO SPELL,
20 I WOULD TRY TO MAKE A SONG OUT OF IT OR SOMETHING FUNNY ---

21 Q RIGHT

22 A --- TO MAKE HIM TRY TO LEARN THAT WORD

23 Q RIGHT IS THAT -- WERE YOU HELPING HIM TO LEARN?

24 A YES

25 Q OKAY WERE YOU -- WAS YOUR DAD HELPING HIM TO LEARN?

SHATIMA MARTIN - REDIRECT EXAMINATION BY MR. NETTLES

82

1 A I FEEL NO

2 Q WHAT -- WHY DO YOU SAY THAT?

3 A HE WOULD -- HE WOULD TRAUMATIZE HIM

4 Q IF KAMELL GOT SOMETHING WRONG WHEN YOUR DAD WAS
5 INTERACTING WITH HIM ABOUT HIS SCHOOL WORDS WOULD YOUR DAD
6 TRY TO HELP HIM? WHAT WOULD YOUR DAD DO IF KAMELL GOT IT
7 WRONG?

8 A GET THE BLACK BELT OUT

9 Q WHAT WOULD YOU DO IF KAMELL GOT IT WRONG?

10 A TRY TO FIND ANOTHER WAY TO HELP HIM UNDERSTAND LIKE
11 MAKE FLASH CARDS IF THE SONGS DIDN'T WORK OR WE WOULD SIT
12 DOWN AND I'D SAY, WELL, LET'S SEE WHO CAN WRITE IT THE
13 FASTEST

14 Q OKAY WHEN -- ALL RIGHT LET'S TALK FOR A SECOND
15 ABOUT -- NOW THERE'S BEEN SOME DISCUSSION ABOUT, ON BOTH
16 DIRECT AND CROSS EXAMINATION ABOUT CHRISTINA AND KAMELL
17 LOOKING AT INFORMATION RELATED TO GANGS ON THE INTERNET, ALL
18 RIGHT? DID YOU HAVE ANY OPPORTUNITY TO WITNESS THAT?

19 A YES, WHEN I CAME HOME FROM WORK

20 Q WHEN YOU CAME HOME FROM WORK? WHAT WAS YOUR IMPRESSION
21 OF WHY THEY WERE DOING THAT?

22 A I CALL IT PERPETRATING, BUT I DON'T KNOW WHAT ---

23 Q YOU CALL IT WHAT?

24 MS BROWN OBJECTION IT'S CALLING FOR SPECULATION I
25 BELIEVE

SHATIMA MARTIN - REDIRECT EXAMINATION BY MR. NETTLES

83

1 THE COURT ALL RIGHT JUST REPHRASE IT

2 MR. NETTLES OKAY

3 Q WHEN YOU SAW THEM DOING THAT, OKAY YOU SAW THEM DOING
4 THAT?

5 A YES

6 Q WE CAN AGREE ON THAT?

7 A YES, SIR

8 Q WHEN YOU SAW THEM DOING THAT DID YOU THINK THEY WERE
9 DOING THAT BECAUSE THEY WERE AT THE -- IN YOUR OPINION, DID
10 YOU THINK THEY WERE DOING IT BECAUSE THEY WERE IN A GANG?

11 A NO

12 Q OKAY

13 A NO

14 Q WHAT WAS YOUR IMPRESSION OF WHY THEY WERE DOING IT?

15 MS. BROWN OBJECTION IT'S IRRELEVANT AND IT CALLS
16 FOR SPECULATION

17 THE COURT OVERRULED I'M GOING TO LET HER ANSWER IT

18 Q WHAT WAS YOUR IMPRESSION? THAT MEANS YOU GET TO ANSWER
19 IT

20 A OKAY I'M SORRY

21 Q THAT'S FINE

22 A GO AHEAD AND ASK ME AGAIN

23 Q WHAT WAS YOUR IMPRESSION OF WHY THEY WERE LOOKING AT
24 THIS INFORMATION ON THE INTERNET?

25 A I CALL IT PERPETRATING I DON'T KNOW WHAT ---

SHATIMA MARTIN - RECROSS EXAMINATION BY MS BROWN

84

1 Q PERPETRATING?

2 A YES

3 Q ALL RIGHT YOU NEED TO SHARE WITH ME WHAT ---

4 A TRYING TO ACT LIKE YOU'RE SOMEBODY THAT YOU'RE NOT

5 Q LIKE POSING?

6 A YES

7 Q OKAY NOW EVEN AFTER YOU SAW THEM LOOKING AT THIS

8 STUFF ON THE INTERNET DID YOU EVER SEE KAMELL BEGIN,

9 SEPARATE AND APART FROM THAT, ---

10 A UM-HUM (AFFIRMATIVE)

11 Q --- OKAY, DID YOU EVER GET TO -- DID YOU EVER SEE ANY

12 EVIDENCE THAT LED YOU TO BELIEVE THAT KAMELL WAS IN A GANC?

13 A NO I -- NO, I DON'T

14 Q OKAY HAD ANYBODY ASKED YOU UP UNTIL THE DATE OF THE

15 TRIAL IF KAMELL WAS IN A GANG WHAT WOULD YOUR ANSWER HAVE

16 BEEN?

17 A NO

18 MR NETTLES NOTHING FURTHER THANK YOU

19 MS BROWN YOUR HONOR, MAY I HAVE JUST MAYBE ---

20 THE COURT SURE ABSOLUTELY

21 MS BROWN --- TWO, THREE QUESTIONS?

22 RECROSS EXAMINATION BY MS BROWN

23 Q YOU JUST TESTIFIED THAT IT WAS YOUR OPINION THAT KAMELL

24 EVANS AND CHRISTINA WERE LOOKING AT ALL OF THESE THINGS ON

25 THE INTERNET AND WRITING DOWN GANG SYMBOLS, THEY WERE IN THE

SHATIMA MARTIN - RECROSS EXAMINATION BY MS BROWN

85

- 1 PROCESS OF POSING, IS THAT CORRECT?
- 2 A I CALL IT PERPETRATING HE ---
- 3 Q PERPETRATING?
- 4 A --- SAID POSING
- 5 Q OKAY I HAVE THEM REVERSED YOU SAID PERPETRATING
- 6 A I SAID PERPETRATING
- 7 Q AND WHAT DOES THAT MEAN TO YOU?
- 8 A ACTING LIKE YOU RE SOMEBODY YOU'RE NOT
- 9 Q ACTING LIKE -- AND IN THIS CASE IT WOULD BE ACTING LIKE
- 10 A GANG MEMBER?
- 11 A YES, MA'AM
- 12 Q OKAY SO YOU SAW, IN YOUR OPINION, ACTS THAT REFLECTED
- 13 GANG MEMBERSHIP, WHETHER THEY WERE ACTUALLY IN GANG
- 14 MEMBERSHIP OR POSING, THEY REFLECTED GANG MEMBERSHIP?
- 15 A RIGHT YOU MEAN LIKE LOOKING UP SYMBOLS?
- 16 Q RIGHT
- 17 A YES, MA'AM YES, MA'AM
- 18 Q OKAY AND YOU UNDERSTOOD WHEN YOU WERE TALKING TO MS
- 19 TOPP THAT YOU NEEDED TO TELL HER AS MUCH AS YOU COULD IN
- 20 RESPONSE TO THE QUESTIONS ASKED, RIGHT, BECAUSE THIS WAS FOR
- 21 YOUR BROTHER'S TRIAL?
- 22 A YES, MA'AM
- 23 Q THANK YOU
- 24 MS BROWN NO FURTHER QUESTIONS, YOUR HONOR
- 25 MR NETTLES NOTHING FURTHER

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

86

1 THE COURT ALL RIGHT THANK YOU VERY MUCH I

2 APPRECIATE YOU BEING HERE

3 MS MARTIN YES, SIR

4 THE COURT OKAY YES, SIR YOU CAN CALL YOUR NEXT

5 WITNESS

6 MR NETTLES THANK YOU JUST GIVE ME A SECOND

7 (PAUSE)

8 NICHOLAS COOPER-LEWTER,

9 BEING DULY SWORN TESTIFIED AS FOLLOWS

10 DIRECT EXAMINATION BY MR NETTLES

11 Q HOW YOU DOING?

12 A FINE

13 Q OKAY PROBABLY YOU EITHER NEED TO PULL THAT MICROPHONE

14 A LITTLE CLOSER TO YOU OR SLIDE UP A LITTLE BIT OR A

15 COMBINATION OF BOTH

16 A HOW IS THIS?

17 Q THAT'S GOOD PLEASE SHARE WITH US WHO YOU ARE

18 A MY NAME IS NICHOLAS CHARLES COOPER-LEWTER

19 Q OKAY

20 A AND I AM A LICENSED INDEPENDENT SOCIAL WORKER, CLINICAL

21 PRACTITIONER AND SUPERVISOR ACCORDING TO THE STATE OF SOUTH

22 CAROLINA, A PROFESSOR AT THE UNIVERSITY OF SOUTH CAROLINA IN

23 SOCIAL WORK AND I HAVE A CLINICAL PRIVATE PRACTICE AND I

24 DO CONSULTING, ALSO AN ORDAINED CLERGY

25 Q OKAY YOU DO YOUR CLINICAL -- YOU DO A PRIVATE

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

87

1 PRACTICE IN WHAT?

2 A PRIVATE PRACTICE IN SOCIAL WORK, CLINICAL SOCIAL WORK

3 Q ALL RIGHT NOW SHARE WITH US A LITTLE BIT ABOUT YOUR

4 EDUCATIONAL BACKGROUND IN THE FIELD OF SOCIAL WORK

5 A YES CURRENTLY I AM TEACHING AT THE UNIVERSITY OF

6 SOUTH CAROLINA AT THE COLLEGE OF SOCIAL WORK AND I TEACH

7 PRIMARILY PSYCHOPATHOLOGY AND HUMAN BEHAVIOR IN THE SOCIAL

8 ENVIRONMENT I AND II

9 Q OKAY

10 A THOSE ARE SOME OF THE STANDARD COURSES THAT I TEACH I

11 HAVE A MASTER'S DEGREE IN SOCIAL WORK FOR WHICH I ---

12 Q WHERE DID YOU GET THAT MASTER'S ---

13 A UNIVERSITY OF MINNESOTA

14 Q OKAY

15 A AND I HAVE -- OF COURSE, TO GET THE MASTER'S I HAD TO

16 PREVIOUSLY HAVE A BACHELOR'S DEGREE

17 Q AND WHERE DID YOU GET YOUR BACHELOR'S DEGREE?

18 A ASHLAND COLLEGE, NOW ASHLAND UNIVERSITY IN ASHLAND,

19 OHIO

20 Q OKAY

21 A AND ALSO A PHD IN PSYCHOLOGY

22 Q FROM WHERE?

23 A AND THAT'S FROM CALIFORNIA COAST UNIVERSITY IN

24 CALIFORNIA, ~SANTA ANA

25 Q OKAY SO YOU CURRENTLY -- ARE YOU -- BUT YOU'RE

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

88

1 CURRENTLY LICENSED AS A SOCIAL WORKER AS A RESULT OF YOUR
2 MASTER'S IN SOCIAL WORK?

3 A YES, SIR

4 Q OKAY AND YOU TEACH SOCIAL WORK AT THE UNIVERSITY OF
5 SOUTH CAROLINA?

6 A YES, SIR

7 MR NETTLES YOUR HONOR, AT THIS TIME I D LIKE TO -- I
8 WOULD LIKE TO PRESENT DR COOPER-LEWTER IN THE FIELD -- AS
9 AN EXPERT IN THE FIELD OF SOCIAL WORK

10 MS BROWN YOUR HONOR, MAY I HAVE JUST A FEW QUESTIONS
11 OF VOIR DIRE?

12 THE COURT YES, MA'AM YOU MAY VOIR DIRE THE WITNESS
13 VOIR DIRE BY MS BROWN

14 Q DO YOU PREFER DR COOPER-LEWTER OR MR COOPER-LEWTER?

15 A WHATEVER YOU PREFER

16 Q OKAY

17 A MY STUDENTS CALL ME DOCTOR

18 Q SIR, I UNDERSTAND YOU'VE HAD YOUR MASTER'S IN SOCIAL
19 WORK SINCE 1978, IS THAT ---

20 A YES, MA'AM

21 Q OKAY AND SINCE THAT TIME CAN YOU TELL US HOW YOUR
22 PRACTICE IS GENERALLY STRUCTURED?

23 A WELL, I HAVE HAD PRIVATE PRACTICE, WHICH, OF COURSE,
24 MEANS SEEING INDIVIDUAL CLIENTS AND I'VE ALSO HAD A RIGHTS
25 OF PASSAGE PROGRAM WHERE WE'VE WORKED WITH AT-RISK CHILDREN

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

89

1 WHO HAVE BEEN PUT IN THE FOSTER CARE SYSTEM SO I'VE ALSO
2 HAD THAT AND SO OVER THE COURSE OF THOSE YEARS I'VE
3 MAINTAINED MY PRIVATE PRACTICE AND ALSO AS A CONSULTANT I
4 CONSULT WITH CHURCHES, ORGANIZATIONS, OTHER ENTITIES
5 I'VE HAD AN OPPORTUNITY TO SPEAK BEFORE CONGRESS,
6 PARTICULARLY THE CONGRESSIONAL BLACK CONGRESS, BRING HEALTH,
7 TRUST, THOSE KINDS OF THINGS, WORK WITH A NATIONAL -- A NEW
8 AFRICAN AMERICAN DRUG POLICY, A PROGRAM THAT'S COMING ON,
9 TEEN DATING, THESE KINDS OF THINGS AND SO I'VE WORKED
10 ACROSS THE BOARD AND MAINTAINED A PRACTICE THE ENTIRE TIME
11 Q HAVE YOU DONE ANY CLINICAL WORK OR IS IT JUST PRIVATE
12 PRACTICE AND TEACHING?
13 A MY UNDERSTANDING IS IS THAT CLINICAL WORK IS PRIVATE
14 PRACTICE
15 Q OKAY SO ---
16 A AND ---
17 Q I'M SORRY
18 A AND I TEACH PSYCHOPATHOLOGY, WHICH IS A REQUIRED COURSE
19 FOR ALL SOCIAL WORKERS TO GET LICENSED IN THE STATE OF SOUTH
20 CAROLINA AND I AM THE PRIMARY TEACHER OF THAT AT THE
21 COLLEGE OF SOCIAL WORK AND THAT'S CONSIDERED NECESSARY FOR
22 CLINICAL WORK AFTER MY NAME IS LISW ARE THE INITIALS CP,
23 WHICH MEANS CLINICAL PRACTITIONER
24 Q OKAY AND CAN YOU TELL US HOW MANY PSYCHOSOCIAL
25 ASSESSMENTS YOU'VE COMPLETED?

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

90

1 A OVER THE COURSE OF THIRTY YEARS, HUNDREDS HUNDREDS
2 I WANT TO BE CONSERVATIVE PROBABLY MORE LIKE SEVERAL
3 THOUSAND

4 MS BROWN YOUR HONOR, NO FURTHER QUESTIONS AND NO
5 OBJECTIONS TO HIS QUALIFICATIONS

6 THE COURT OKAY AND SO HE'S QUALIFIED AS AN EXPERT
7 IN SOCIAL WORK?

8 MR NETTLES YES, SIR

9 THE COURT GENERAL SOCIAL WORK?

10 MR NETTLES YES, YOUR HONOR

11 THE COURT ALL RIGHT AND, SIR, COULD YOU SPELL YOUR
12 LAST NAME FOR US?

13 A YES I HAVE A DOUBLE LAST NAME

14 THE COURT OKAY

15 A IT'S COOPER, C-O-O-P-E-R I HYPHENATED IT AND L-E-W-
16 T-E-R

17 THE COURT THANK YOU, SIR

18 A UM-HUM (AFFIRMATIVE)

19 Q OKAY NOW DID WE ASK YOU TO -- DID WE ASK YOU TO MAKE
20 AN ASSESSMENT OF KAMELL EVANS AS A -- DID WE ASK YOU AS A
21 SOCIAL WORKER TO MAKE AN ASSESSMENT OF KAMELL EVANS?

22 A YES, SIR

23 Q OKAY AND IN DOING THAT WHAT DID WE ASK YOU TO DO?

24 A YOU ASKED ME TO TAKE A LOOK AT HIS LIFE AND DO A SOCIAL
25 HISTORY ASSESSMENT, SEE WHAT FACTORS MAY HAVE INFLUENCED WHO

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

91

1 HE IS TODAY AND HIS BEHAVIOR

2 Q NOW IS THAT SOMETHING THAT WHETHER IT'S DONE FOR
3 PURPOSES OF CRIMINAL LAW OR CIVIL OR JUST A CLINICAL
4 ASSESSMENT OF SOMEONE, IS FINDING OUT FACTORS OR IDENTIFYING
5 FACTORS THAT AFFECT AN INDIVIDUAL, IS THAT SOMETHING THAT
6 SOCIAL WORKERS REGULARLY DO?

7 A THAT'S STANDARD PROCEDURE, IT'S REQUIRED, IT'S TAUGHT
8 IN OUR CURRICULUM FOR AN MSW AND YOU NEED SEVERAL THOUSAND
9 HOURS AFTER YOUR MSW OF SUPERVISION TO BE ABLE TO GET
10 LICENSED AND DO THAT INDEPENDENTLY

11 Q AND YOU -- HAVE YOU OBTAINED THAT LICENSE TO DO THAT
12 INDEPENDENTLY?

13 A YES, SIR I'M AN LISW CP, CLINICAL PRACTITIONER
14 SUPERVISOR, MEANING I SUPERVISE PEOPLE WHO WANT TO BE
15 LICENSED IN THE STATE OF SOUTH CAROLINA

16 Q OKAY NOW SO IN OTHER WORDS IS THE PROCEDURE THAT'S
17 USED TO -- SO WE ASKED YOU TO IDENTIFY EVENTS THAT POSSIBLY
18 AFFECTED KAMELL OR DO A SOCIAL WORK ON KAMELL, A SOCIAL WORK
19 ON KAMELL -- A SOCIAL -- WE ASKED YOU TO LOOK AT KAMELL'S
20 LIFE USING YOUR EXPERTISE AS A SOCIAL WORKER

21 A YES, SIR

22 Q IS THERE -- SO IS THERE A PROCEDURE, A STANDARD
23 PROCEDURE FOR DOING THAT?

24 A YES, SIR

25 Q WHAT IS THAT STANDARD PROCEDURE?

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

92

1 A IT INVOLVES INTERVIEWING THE INDIVIDUAL, INTERVIEWING
2 OTHER PEOPLE IN THE PERSON'S FAMILY, EXAMINING
3 RELATIONSHIPS, LOOKING AT MEDICAL RECORDS EMPLOYMENT
4 RECORDS, LOOKING AT ANY DOCUMENTS PERTAINING TO THE PERSON'S
5 LIFE AND IN PARTICULAR ANY OF THE RELATIONSHIPS THAT THEY
6 HAVE AND BEHAVIORS

7 IT WOULD -- YOU WOULD LOOK AT THEIR POLICE RECORDS, IF
8 THEY HAVE ANY AND YOU WOULD BASICALLY LOOK AT EVERYTHING
9 THAT HAS TO DO WITH THE HUMAN BEHAVIOR IN A SOCIAL
10 ENVIRONMENT AND RELATIONSHIPS

11 Q OKAY AND IS THAT A STANDARDIZED SORT OF, I MEAN IS
12 THAT -- IS THERE A PLACE YOU CAN GO AND READ ABOUT HOW TO DO
13 THAT? I MEAN, IS THAT A -- IS THERE A WAY THAT YOU DO THAT?
14 IS THERE A PROCEDURE?

15 A YES, SIR WE'RE TAUGHT HOW TO DO THAT ONE OF THE
16 NUMBER ONE BOOKS ON THAT IS A BOOK CALLED SOCIAL HISTORY
17 ASSESSMENT I BROUGHT A COPY IN CASE ANYONE NEEDED TO SEE
18 IT BY DR ARLENE BOWERS ANDREWS AND WE HAVE A NUMBER OF
19 BOOKS LIKE THAT, BUT HERS IS CONSIDERED ONE OF THE BEST

20 Q AND THAT'S PUBLISHED?

21 A IT'S PUBLISHED BY SAGE PUBLICATIONS AND I BROUGHT A
22 COPY WITH ME IF ANYONE NEEDS TO SEE IT

23 Q YEAH AND IN CONDUCTING THE SOCIAL WORK ASSESSMENT OF
24 KAMELL EVANS DID YOU FOLLOW THE PROCEDURES THAT HAVE BEEN
25 DOCUMENTED IN WRITINGS IN YOUR FIELD ON SOCIAL WORK?

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

93

1 A YES, SIR

2 Q NOW CAN YOU SUMMARIZE YOUR FINDINGS FOR THE COURT TO A
3 REASONABLE DEGREE OF CERTAINTY IN THE FIELD OF SOCIAL WORK?

4 A YES, SIR

5 Q PLEASE SUMMARIZE THOSE FINDINGS FOR US

6 A IN THE CASE OF KAMELL EVANS AND HIS SOCIAL HISTORY
7 ASSESSMENT, WHICH I DID, I FOUND SIX AREAS THAT MAY HAVE
8 HAD, PROBABLY NOT MAY, HAD AN AFFECT ON HIS LIFE ONE WAS
9 WITNESSING VIOLENCE, TWO WAS EXPERIENCING VIOLENCE THREE
10 WAS LEAD POISONING, FOUR WAS NEGLECT, FIVE WAS LOW COGNITIVE
11 ANALYTICAL FUNCTIONING AND LEARNING ISSUES, AND SIX WOULD
12 HAVE BEEN TOXIC RELATIONSHIP WITH A -- WITH CHRISTINA, ONE
13 OF HIS GIRLFRIENDS

14 Q OKAY NOW IF YOU DON'T MIND, SHARE WITH THE COURT A
15 LITTLE BIT ABOUT -- LET'S GIVE A BRIEF SUMMARY BECAUSE I
16 THINK THAT AS WE GO, JUST TO LET YOU KNOW, AS WE GO THROUGH
17 THESE INDIVIDUAL AREAS I THINK IT'LL GIVE YOU A CHANCE TO
18 EXPAND ON IT BUT SHARE WITH THE COURT IN GENERAL TERMS
19 WHERE YOU GOT THE INFORMATION TO MAKE THOSE DIAGNOSES

20 A YES I INTERVIEWED KAMELL EVANS I INTERVIEWED HIS
21 FAMILY, HIS IMMEDIATE FAMILY I INTERVIEWED COLLATERAL
22 FAMILY MEMBERS AND FRIENDS I LOOKED AT DOCUMENTS THAT HAVE
23 ALREADY BEEN PREPARED FROM THE POLICE DEPARTMENT AND MEDICAL
24 RECORDS, VITAL STATISTICS SUCH AS A BIRTH CERTIFICATE I
25 LOOKED AT KAISER PERMANENTE HOSPITAL RECORDS I LOOKED AT

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

94

1 HIS MOTHER'S RECORDS I LOOKED AT KAMELL'S BIRTH RECORDS
2 I LOOKED AT THE SCHOOL RECORDS, PARTICULARLY IN OHIO
3 FROM KINDERGARTEN TO THE FIRST HALF OF SEVENTH GRADE AND HIS
4 SCHOOL RECORDS IN SOUTH CAROLINA, LAST HALF OF THE SEVENTH
5 GRADE THROUGH THE TWELFTH GRADE I LOOKED AT HIS RECORDS AT
6 NORTH GREENVILLE COLLEGE, WHICH IS NOW, I'M TOLD, NORTH
7 GREENVILLE UNIVERSITY

8 I LOOKED AT HIS EMPLOYMENT HISTORY, RECORDS
9 PARTICULARLY IN THE AREA OF UPS I LOOKED FOR MILITARY
10 RECORDS I REVIEWED THOSE

11 I LOOKED AT ARREST, JAIL, PRISON, PAROLE, PROBATION,
12 JUVENILE RECORDS, SPECIFICALLY DR JAMES EVANS' EVALUATION
13 PRE-TRIAL INTERVIEW NOTES I LOOKED AT KAMELL EVANS' RAP
14 SHEET I LOOKED AT THE SLED REPORT CONCERNING GUN
15 PURCHASES

16 I ALSO LOOKED AT KAMELL EVANS' RECORDS CONCERNING HIS
17 LEAD SCREEN, WHICH CAME BACK POSITIVE AT TWENTY-THREE MONTHS
18 FOR HAVING LEAD POISONING I LOOKED AT THE MEDIA RECORDS,
19 PARTICULARLY THE GREENVILLE NEWS AND SOUTH CAROLINA
20 FRATERNAL ORDER OF POLICE

21 AS I INDICATED PREVIOUSLY, I INTERVIEWED THE IMMEDIATE
22 FAMILY, THAT WOULD BE RENEE, HIS MOTHER, BARRY, HIS FATHER
23 I INTERVIEWED SHATIMA, NICK-NAMED TINA EVANS THAT WOULD BE
24 HIS SISTER I INTERVIEWED BRITNEY LATISHA EVANS, ALSO IN
25 THIS CASE A HALF SISTER

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

95

1 AND I INTERVIEWED WILMA PAGE, HIS PATERNAL GRANDMOTHER,
2 VIRGINIA GOLDEN, THEY CALLED HER JENNIE, HIS MATERNAL AUNT,
3 MOTHER'S SISTER, SANDRA NANCE PAGE, PATERNAL AUNT, CYNTHIA
4 PAGE, PATERNAL AUNT, DANTE JERMAL CARGIL, THEY CALL HIM DJ,
5 MATERNAL NEPHEW, SHATIMA'S SON, ROBERT MARTIN, SHATIMA EVANS
6 MARTIN'S HUSBAND

7 THEN I LOOKED AT OTHER DOCUMENTS AND RECORDS AND I
8 ALSO INTERVIEWED -- I REVIEWED THE INTERVIEWS OF OTHERS SUCH
9 AS ATTORNEYS AND OTHERS I LOOKED AT THE LIEBER
10 CORRECTIONAL INSTITUTION REQUEST AND RESPONSE, SPECIAL
11 VISITATION OF THE FAMILY SIGNED BY WARDEN BODISON

12 I LOOKED AT THE INTERVIEWS OF DAVID CAMP, A CHILDHOOD
13 FRIEND, JONATHAN LANNINCHAM, A CHILDHOOD FRIEND, RAY
14 PATTAWAY, KAMELL'S COACH IN THE MOONEY LEAGUE, BRUCE COFFEE,
15 ANOTHER COACH, KIRK MIDDLE SCHOOL, KIMBERLY TAYLOR, FOURTH
16 GRADE TEACHER, STUART HOLCOMBE, HEAD FOOTBALL COACH, GREER
17 HIGH SCHOOL, JEFF NEELY, KAMELL'S HEAD BASKETBALL COACH,
18 BRIAN SMITH, HIS OFFENSIVE COACH AT GREER HIGH SCHOOL ---

19 Q OKAY YOU TALKED TO A BUNCH OF PEOPLE?

20 A YES, I DID

21 Q OKAY

22 A I TALKED TO EVERYONE ---

23 Q AND I GUESS WHAT I'M GETTING INTO IS AS WE GO BACK
24 THROUGH THESE INDIVIDUAL AREAS WE'LL HAVE A CHANCE TO TALK
25 ABOUT THEM, YOU KNOW, SHOULD IT COME UP YOU FOLLOW WHAT

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

96

1 I'M SAYING?

2 A YES, SIR

3 Q DID YOU FEEL THAT YOU GOT TO TALK TO EVERYBODY YOU
4 NEEDED TO TALK TO TO MAKE AN ASSESSMENT?

5 A YES, SIR

6 Q OKAY GOOD NOW LET'S TALK FOR A SECOND ABOUT --
7 LET'S GO BACK AND GO THROUGH THESE INDIVIDUAL FINDINGS AND
8 WE'RE GOING TO TALK ABOUT THOSE, IF YOU DON'T MIND, ALL
9 RIGHT? THE FIRST ONE I BELIEVE YOU TALKED ABOUT WAS -- YOU
10 SAID THAT ONE OF THE ASSESSMENTS YOU HAD MADE TO A
11 REASONABLE DEGREE WITH SCIENTIFIC CERTAINTY YOU FEEL IN YOUR
12 SOCIAL WORK WAS THAT KAMELL EVANS HAD BEEN SUBJECTED TO
13 CHILD ABUSE

14 A YES, SIR

15 Q OKAY NOW FIRST LET'S TALK ABOUT -- DO YOU HAVE THE
16 TIME-FRAME THAT THAT WAS -- THAT YOU FELT THAT HE WAS
17 SUBJECTED TO THAT?

18 A YES TIME-FRAME WOULD BE -- AND YOU'D HAVE TO KIND OF
19 LOOK AT IT THIS WAY, THERE IS EVIDENCE THAT HIS MOTHER WAS
20 IN AN ABUSIVE RELATIONSHIP WHILE SHE WAS CARRYING HIM

21 Q OKAY

22 A AND SO IT WOULD HAVE STARTED IN UTERO AND CONTINUED UP
23 UNTIL ABOUT THE AGE OF FOURTEEN

24 Q OKAY NOW AS A SOCIAL WORKER, ALL RIGHT, IS THE
25 EXPOSURE TO -- BY A CHILD TO VIOLENCE, IS THAT A -- WHAT IS

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

97

1 THE EFFECT THAT HAS ON A CHILD?

2 A YES ACCORDING TO THE LITERATURE AND IN MY EXPERIENCE
3 WHAT A CHILD SEES CAN BE HELPFUL OR DAMAGING A CHILD'S
4 TASK IS TO FIGURE OUT WHO THEY ARE, WHAT SHOULD BE GOING ON,
5 WHERE SHOULD IT BE GOING ON, WHEN SHOULD IT BE GOING ON AND
6 HOW SHOULD THINGS BE GOING ON THEY HAVE NO PRIOR KNOWLEDGE
7 OF THAT AND SO THEIR TASK IS TO DETERMINE THAT
8 WITNESSING THINGS THEN ---

9 Q OKAY WHO DO THEY LOOK TO TO HELP THEM LEARN THOSE
10 TASKS?

11 A START WITH THEIR PARENTS AND EXTENDED FAMILY

12 Q SO WHAT EFFECT DOES IT HAVE ON A CHILD IF WHAT THAT
13 CHILD IS SEEING IS LONG-TERM SUSTAINED DOMESTIC VIOLENCE?

14 A IT WILL AFFECT THEIR BRAIN DEVELOPMENT IT WILL AFFECT
15 THEIR SOCIAL BEHAVIOR IT WILL AFFECT HOW THEY VIEW THE
16 WORLD IT WILL AFFECT HOW THEY RELATIONSHIP IT WILL
17 AFFECT THEIR SELF-ESTEEM, THEIR SENSE OF SELF-WORTH IT'LL
18 AFFECT HOW THEY SEE THEMSELVES BEING ABLE TO SOLVE PROBLEMS
19 IT CAN AFFECT EVERY ASPECT OF THEIR LIFE

20 Q NOW BASED ON YOUR FINDINGS WAS KAMELL EVANS -- WHAT WE
21 HAVE TERMED CHILD ABUSE, WAS THAT MERELY OBSERVING ABUSE
22 INFLICTED ON ANOTHER OR DO YOU, BASED ON YOUR FINDINGS, DO
23 YOU HAVE THAT THERE WAS ACTUAL PHYSICAL ABUSE INFLICTED ON
24 KAMELL?

25 A NOT ONLY WITNESSED IT, BUT IT WAS ALSO INFLICTED UPON

1 HIM

2 Q AT THE HANDS OF WHO?

3 A HIS FATHER

4 Q OKAY AND HOW DO YOU -- WHY DO YOU BELIEVE THAT? NOT
5 WHY DO YOU BELIEVE HIS DADDY DID IT, BUT WHY DO YOU BELIEVE
6 IT IS A FACT THAT HIS DADDY DID IT?

7 A WELL I INTERVIEWED KAMELL HE INDICATED IT HAD
8 HAPPENED I INTERVIEWED HIS MOTHER SHE INDICATED THAT IT
9 HAPPENED I INTERVIEWED HIS FATHER AND HIS FATHER
10 ADMITTED THAT IT HAPPENED

11 Q DID YOU INTERVIEW THEM ALL IN THE SAME ROOM?

12 A NO, SIR

13 Q OKAY NOW WAS -- IN YOUR OPINION WAS THIS ABUSE
14 SPORADIC?

15 A NO, SIR

16 Q OKAY

17 A IT WAS UNPREDICTABLE, BUT NOT SPORADIC

18 Q AND SHARE WITH US -- WHAT IS THE EFFECT OF
19 UNPREDICTABLE VIOLENCE?

20 A UNPREDICTABLE VIOLENCE IS -- CAN BE VERY SHATTERING
21 BECAUSE ONE OF THE KEY ELEMENTS NECESSARY FOR A HEALTHY
22 CHILD TO DEVELOP IS CONSISTENCY AND SO IF VIOLENCE IS
23 UNPREDICTABLE, WHAT IT DOES IS IT KEEPS A CHILD IN A
24 CONSTANT STATE OF FEAR, AGITATION, UNCERTAINTY

25 Q NOW DID YOU EVER TALK TO ANYONE DURING THE COURSE OF

NICHOLAS COOPER-LEWTFR- DIRECT EXAMINATION BY MR NETTLES

99

1 YOUR -- NOW, LET'S TALK FOR A SECOND ABOUT -- WE SORT OF
2 DIVIDED UP THE VIOLENCE INTO TWO AREAS, OKAY? ONE WOULD BE
3 THE DIRECT VIOLENCE INFLICTED UPON KAMELL AND THE SECOND
4 WOULD BE THE VIOLENCE THAT HE WITNESSED

5 A YES, SIR

6 Q NOW WE TALKED ABOUT THAT BRIEFLY, BUT JUST -- I WANT TO
7 TALK ABOUT -- AND YOU STARTED TO TALK ABOUT IT AND I
8 INTERRUPTED YOU, FRANKLY, AND WE CHANGED THIS ON HIM LET'S
9 TALK FOR A SECOND ABOUT WHAT VIOLENCE INFLICTED UPON --
10 WATCHING VIOLENCE BE INFLICTED UPON YOUR MOTHER WELL, LET
11 ME ASK YOU THIS DO YOU HAVE ANY EVIDENCE THAT KAMELL
12 WITNESSED VIOLENCE BEING INFLICTED ON HIS MOTHER?

13 A YES, SIR

14 Q OKAY SHARE WITH US THE EFFECT THAT IT, BASED ON YOUR
15 INFORMATION AND YOUR TRAINING, THAT WITNESSING YOUR MOTHER
16 BE ABUSED BY YOUR FATHER HAS ON YOU

17 A FIRST OF ALL, IT'S TRAUMATIC BECAUSE THIS IS A PERSON
18 WHO GAVE YOU BIRTH AND IS TAKING CARE OF YOU AND YOU WANT TO
19 TRUST THEM FROM TALKING TO KAMELL, HIS FATHER, AND HIS
20 MOTHER AND HIS SISTER, THEY ALL INDICATED THAT KAMELL'S
21 REACTION, OTHER THAN BEING EXTREMELY FRIGHTENED ON SOME
22 OCCASIONS WAS TO TRY TO PROTECT HIS MOTHER AND STOP THE
23 ABUSE

24 Q OKAY WHAT IS THE EFFECT -- IS THERE AN EFFECT ON A
25 CHILD FOR NOT BEING ABLE TO STOP THE ABUSE?

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

100

1 A THEY FEEL HELPLESS, POWERLESS THEY CLEARLY DON'T
2 UNDERSTAND WHAT'S GOING ON THEY WANT IT TO STOP BUT IT
3 DOESN'T HELP THEM IN TERMS OF THEIR SENSE OF BEING ABLE TO
4 SOLVE THE PROBLEM

5 Q NOW ONE OF THE OTHER AREAS THAT YOU DISCUSSED WAS
6 NEGLECT SHARE WITH US, SHARE FOR THE COURT WHAT YOUR -- AS
7 A PROFESSIONAL LICENSED SOCIAL WORKER, WHAT IS THE
8 DIFFERENCE BETWEEN CHILDHOOD ABUSE, WITNESSING ABUSE,
9 DOMESTIC ABUSE AND NEGLECT? I MEAN, HOW IS THAT DIFFERENT
10 FROM THE OTHER TWO?

11 A OKAY FIRST OF ALL, CHILD ABUSE IS THE MALTREATMENT
12 PARTICULARLY OF CHILDREN ---

13 Q RIGHT

14 A --- BY THEIR PARENTS THEIR GUARDIAN SO IT'S A
15 TREATMENT IT'S A ---

16 Q AND IS THERE ANY DOUBT IN YOUR MIND THAT KAMELL WAS
17 SUBJECT TO THAT?

18 A THERE'S NO DOUBT IN MY MIND

19 Q OKAY ALL RIGHT NOW -- AND THEN THE SECOND ONE IS
20

21 A NOW CHILD ABUSE ALSO IS THE WITNESSING OF VIOLENCE ---

22 Q RIGHT

23 A --- BECAUSE IT'S ABUSIVE -- IN OTHER WORDS, THE CHILD
24 IS TAKING IN THIS INFORMATION AND THIS INFORMATION IS
25 OVERWHELMING, AND THEY CAN'T UNDERSTAND IT SO IT FALLS

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

101

1 UNDER CHILD ABUSE ALSO

2 Q OKAY

3 A IT'S JUST A DIFFERENT KIND OF A ---

4 Q I UNDERSTAND I UNDERSTAND

5 A WHEN WE TALK ABOUT NEGLECT, ---

6 Q OKAY

7 A --- WHAT WE'RE SAYING THEN IS SOMETHING SHOULD HAVE
8 BEEN DONE THAT WAS NOT

9 Q AND ---

10 A SO CHILD ABUSE IS THE DOING, AND THE NEGLECT IS
11 SOMETHING SHOULD HAVE BEEN DONE, BUT IT WAS NOT

12 Q OKAY SHARE WITH US THE EXAMPLES THAT YOU FOUND OF
13 NEGLECT

14 A YES I'LL BE TALKING ABOUT IT WHEN YOU ASK ME ABOUT
15 THE LEAD POISONING

16 Q OKAY

17 A IN A LOT OF OLDER HOMES DURING THE TIME THAT KAMELL WAS
18 GROWING UP THERE WAS LEAD IN THE PAINT, CHILDREN WOULD EAT
19 THE PAINT AND A LOT OF TIMES PARENTS DIDN'T SEE THAT THAT
20 WAS A MAJOR PROBLEM BECAUSE THE FIRST FOUR, FIVE, SIX YEARS
21 CHILDREN TEND TO PUT A LOT OF THINGS IN THEIR MOUTH ALSO
22 THERE WERE, IN THOSE DAYS, TONKA TOYS WHICH WERE HEAVILY
23 LEAD BASED AND THOSE KINDS OF THINGS SO YOU HAVE THAT
24 LATER ON IN KAMELL'S LIFE HE, ACCORDING TO HIS MOTHER,
25 WAS A LATCH-KEY KID AND BASICALLY WHEN HE DIDN'T -- WASN'T

1 ABLE TO GET HOLD OF HIS SISTER OR CERTAIN FAMILY MEMBERS ON
2 A DAILY BASIS HE HAD TO TAKE CARE OF HIMSELF AND FIGURE OUT
3 HOW TO FUNCTION ROUGHLY FROM THE AGE OF EIGHT TIL ABOUT
4 FOURTEEN

5 Q OKAY

6 A SO THAT WOULD HAVE BEEN NEGLECT BECAUSE A CHILD NEEDS
7 SUPERVISION, A CHILD NEEDS CONSISTENCY FROM THEIR PARENTS
8 THEY NEED TO KNOW WHAT'S RIGHT, WHAT'S WRONG THEY NEED TO
9 BE FED, HOUSED AND THESE KINDS OF THINGS AND SO THAT WOULD
10 HAVE BEEN A CASE OF NEGLECT

11 Q OKAY NOW LET'S TALK A LITTLE BIT ABOUT LEAD
12 POISONING ALL RIGHT AS A SOCIAL WORKER, IS THE EXPOSURE
13 TO LEAD -- AS A SOCIAL WORKER, IS A CHILD'S EXPOSURE TO LEAD
14 IN THEIR EARLY LIFE SIGNIFICANT?

15 A ACCORDING TO THE LITERATURE, YES

16 Q OKAY WHY IS IT SIGNIFICANT?

17 A FIRST OF ALL, THE BRAIN OF A CHILD IS DEVELOPING AND
18 THE CHILD'S BRAIN TENDS TO ABSORB CHEMICALS OR WHATEVER IS
19 IN ITS ENVIRONMENT, WHETHER IT BE BIOLOGICAL, OR
20 PSYCHOLOGICAL OR SOCIAL IT JUST ABSORBS A LOT BECAUSE A
21 CHILD IS BUSY LEARNING, TRYING TO PULL IN INFORMATION

22 THE PROBLEM THEN IS THAT CERTAIN PARTS OF THE BRAIN CAN
23 BE DAMAGED AND WHEN THOSE PARTS OF THE BRAIN ARE DAMAGED
24 CAN BE DAMAGED TO THE POINT THAT IT DECREASES FUNCTIONING

25 Q OKAY DID YOU FIND IN THIS CASE THERE WAS EVIDENCE

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

103

1 THAT KAMELL HAD BOTH BEEN EXPOSED TO AND AFFECTED BY LEAD?

2 A YES I READ MEDICAL REPORTS AT KAISER PERMANENTE THAT
3 AT TWENTY-THREE MONTHS HE WAS DIAGNOSED BY MEDICAL PERSONNEL
4 TO HAVE LEAD POISONING, AND THAT, AGAIN, I THINK IT WAS FOUR
5 YEARS LATER HE WAS DIAGNOSED ONCE AGAIN, AND THE LEAD
6 POISONING WAS STILL CONSISTENTLY HIGH

7 Q OKAY NOW IS THERE SOMETIMES -- THE NEXT CENERAL AREA
8 THAT YOU TALKED ABOUT WAS LOW COGNITIVE FUNCTIONING IS
9 THERE EVER A LINK BETWEEN LEAD POISONING AND LOW COGNITIVE
10 FUNCTIONING?

11 A ACCORDING TO THE LITERATURE, YES

12 Q OKAY AND `SHARE WITH US A LITTLE BIT ABOUT THAT

13 A WELL, FIRST OF ALL, IN STUDIES THAT HAVE TO DO WITH
14 ENVIRONMENTAL POLLUTION IT'S VERY CLEAR THAT HEAVY METALS
15 PERIOD ARE NOT GOOD FOR ANYONE'S BRAIN BUT PARTICULARLY A
16 CHILD'S BRAIN THERE HAVE BEEN MANY, MANY STUDIES THAT HAVE
17 BEEN DONE ON THE EFFECTS OF LEAD AND WHAT IT DOES AND IT
18 IMPACTS COGNITIVE FUNCTIONING IT CAN IMPACT BEHAVIOR
19 BECAUSE OF WHAT DAMACE IT DOES TO THE BRAIN ITSELF

20 Q OKAY SO DID IT COME AS A SURPRISE TO YOU WHEN YOU SAW
21 THAT THERE WAS EXPOSURE TO LEAD TO LATER FIND OUT THAT HE
22 WAS ALSO SOMEONE WHO YOU FELT HAD LOW COGNITIVE OR HAD BEEN
23 SHOWN HAD LOW COGNITIVE FUNCTIONING?

24 A NO, IT WAS NO SURPRISE

25 Q OKAY NOW DOES EVERY CHILD WHO GETS EXPOSED TO LEAD

1 BECOME LOW COGNITIVE FUNCTIONING?

2 A EVERY CHILD DOES NOT IT DEPENDS ON THE AMOUNT IT
3 DEPENDS ON WHEN IT HAPPENS THERE ARE A LOT OF FACTORS THAT
4 GO WITH THAT ONE OF THE -- ONE OF THE THINGS THAT THE BODY
5 ATTEMPTS TO DO IS GET RID OF THINGS IF IT'S A VERY MILD OR
6 MILD THE BODY WILL TRY TO GET RID OF IT HEAVY METALS, ON
7 THE OTHER HAND, LEAD FOR INSTANCE, DOESN'T LEAVE THE BODY
8 VERY EASILY

9 Q LET'S TALK FOR A SECOND ABOUT LOW COGNITIVE
10 FUNCTIONING, ALL RIGHT? NOW LET'S TALK ABOUT THE CHALLENGES
11 THAT ARE PRESENTED TO A FAMILY THAT HAS A CHILD WITH LOW
12 COGNITIVE FUNCTIONING SHARE WITH, I MEAN, WHAT DOES LOW
13 COGNITIVE FUNCTIONING MEAN? AS A SOCIAL WORKER, WHAT DOES
14 LOW COGNITIVE FUNCTIONING MEAN?

15 A IT MEANS THAT THE CHILD SHOULD HAVE ADDITIONAL
16 SUPERVISION, THE CHILD SHOULD HAVE MORE SUPPORT, THE CHILD
17 NEEDS MORE HELP IN BEING ABLE TO SORT THINGS OUT BASICALLY
18 THE CHILD JUST -- IT'S A TREMENDOUS DRAIN ON THE FAMILY IN
19 THE SENSE THAT THEY HAVE TO PUT A LOT OF RESOURCE INTO
20 WORKING WITH THAT CHILD SO THAT THAT CHILD CAN BECOME SELF-
21 SUFFICIENT

22 Q NOW CAN A CHILD THAT'S LOW -- THAT HAS LOW COGNITIVE
23 FUNCTIONING, THAT HAS THE APPROPRIATE SUPPORT AND
24 APPROPRIATE BACKUP AND APPROPRIATE ADDITIONAL HELP, CAN THEY
25 BECOME PRODUCTIVE MEMBERS OF SOCIETY?

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

105

1 A YES, SIR

2 Q OKAY NOW DID YOU SEE -- IS THERE A CRITICAL TIME --
3 IS THERE A CRITICAL TIME THAT A CHILD WITH LOW COGNITIVE
4 FUNCTIONING NEEDS SUPPORT AND BACKUP?

5 A THERE ARE TIMES THAT ARE MORE CRITICAL THAN OTHERS

6 Q LET'S TALK ABOUT THOSE MORE CRITICAL TIMES

7 A I WOULD SAY FROM THE WOMB TO -- THROUGH HIGH SCHOOL

8 Q OKAY FROM THE TIME THAT KAMELL EVANS WAS -- CAME OUT
9 OF THE WOMB OR WAS IN THE WOMB UNTIL THE TIME HE WENT TO
10 HIGH SCHOOL, DID YOU SEE WHERE HE HAD THE APPROPRIATE, AS A
11 SOCIAL WORKER, NOT APPROPRIATE, BUT THE NECESSARY SUPPORT TO
12 ALLOW A CHILD WITH LOW COGNITIVE FUNCTIONING TO GET BY?

13 A YES HE HAD MANY TEACHERS THAT ATTEMPTED TO HELP HIM,
14 COACHES TO HELP HIM BUT THERE IS ONE PARTICULAR TIME THAT
15 I SAW, AND THAT WAS DURING HIS YEARS AT GREER HIGH SCHOOL

16 Q OKAY

17 A AND THOSE WERE THE YEARS WHEN HE DID THE BEST IN
18 SCHOOL HE ALSO WAS ON THE FOOTBALL TEAM, STATE CHAMPS, AND
19 WAS A CAPTAIN ON THE TEAM AT THAT PARTICULAR TIME HE WAS
20 RECEIVING CONSISTENT SUPPORT AND HELP FROM HIS STEP-MOTHER

21 Q OKAY NOW -- AND IN THAT HOUSEHOLD HE WAS RECEIVING
22 CONSISTENT HELP AND SUPPORT FROM HIS STEP-MOTHER, AND THAT
23 RESULTED IN KAMELL BEING ABLE TO DO WHAT?

24 A HE DID BETTER IN SCHOOL THAN HE HAD PREVIOUSLY DONE
25 AND HE HAD A MUCH MORE STABLE -- WELL, THERE WAS STABILITY

1 IN HIS HOUSEHOLD SO HE COULD FOCUS THEN MORE ON DOING HIS
2 WORK AND THOSE ACTIVITIES HE'S INVOLVED IN

3 Q PRIOR TO HIM MOVING IN WITH HIS DAD, WHO WAS NOW LIVING
4 WITH HIS STEP-MOTHER PRIOR TO THAT HAD KAMELL BEEN GIVEN
5 THE STABLE HOUSEHOLD THAT WAS NECESSARY FOR A CHILD WITH LOW
6 COGNITIVE FUNCTIONING TO GET BY?

7 A HE WAS A LATCH-KEY CHILD AND SO FOR A PERIOD OF TIME
8 FROM ABOUT EIGHT TO FOURTEEN HE DEFINITELY DID NOT GET WHAT
9 HE NEEDED FROM A SOCIAL WORKER PERSPECTIVE

10 Q HOW ABOUT PRIOR TO EIGHT YEARS OLD, WAS HE RECEIVING
11 THE NECESSARY FAMILY STRUCTURE THEN?

12 A THERE WAS VIOLENCE AND UNPREDICTABLE VIOLENCE AND
13 CONSISTENT CHAOS MIXED WITH SOME LOVING AND CARING AND
14 NURTURING FROM HIS MOTHER, HIS SISTER HIS FATHER WAS A
15 GOOD PROVIDER, BUT EMOTIONALLY WAS ABUSIVE

16 Q WHEN YOU SAY PROVIDER, YOU MEAN

17 A HE BROUGHT MONEY INTO THE HOUSE SO THAT THE FAMILY
18 WOULD HAVE SHELTER AND FOOD

19 Q NOW -- SO LET'S TALK FOR NOW -- LET'S GO LAST -- WON'T
20 BE THE LAST THING WE TALK ABOUT, OF THESE FINDINGS YOU HAVE,
21 CHRISTINA ALL RIGHT WERE YOU ABLE TO ASSESS THE EFFECT,
22 AS A SOCIAL WORKER, THAT CHRISTINA'S INVOLVEMENT IN KAMELL'S
23 LIFE HAD?)

24 A YES

25 Q SHARE WITH JS THAT

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

107

1 A KAMELL HAD DEVELOPED OVER THE YEARS THE -- A PROCEDURE
2 AND THAT WAS TO GO TO SOMEONE AND ASK THEM TO HELP HIM WHEN
3 HE COULDN'T UNDERSTAND SOMETHING AND SO HE RELIED HEAVILY
4 ON CHRISTINA WHILE HE WAS DATING HER

5 THE RELATIONSHIP STARTED OFF FINE AND THEN BECAME
6 VOLATILE AND TOXIC IN THAT SHE BEGAN TO WANT TO DO CERTAIN
7 THINGS THAT -- AND HE WENT ALONG WITH IT AND IT WAS VERY
8 TURBULENT

9 Q OKAY WELL, LET'S JUST GO AHEAD AND GET IT OUT WHAT
10 DID SHE WANT TO GET INVOLVED WITH THAT HE DIDN'T WANT TO GET
11 INVOLVED WITH?

12 A WELL, SHE HAD A FASCINATION WITH GANG ACTIVITIES, HAD A
13 TATTOO, I'M TOLD, THAT WAS FROM THE FOLK NATION I DID GET
14 A CHANCE TO MEET HER AND SHE DIDN'T WANT TO TALK ABOUT ANY
15 OF THESE THINGS I ALSO HAD AN OPPORTUNITY TO TALK TO HER
16 EX-HUSBAND AND HE TALKED ABOUT A ---

17 MS BROWN OBJECTION, YOUR HONOR I THINK THIS MAY GO
18 INTO MATERIALS THAT WE HAVE ALREADY HAD A RULING ON THAT WE
19 COULD NOT GO INTO, AND THAT WAS ANYTHING THAT WOULD HAPPEN
20 SUPPOSEDLY IN MS SAPINOSO'S LIFE PRIOR TO MEETING MR
21 EVANS AND WHAT I JUST HEARD IS FORMER HUSBAND

22 MR NETTLES I DON'T KNOW WHAT HE WAS GOING TO SAY I
23 CAN'T BEGIN TO KNOW WHAT HE'S -- I M NOT GOING TO LIE TO
24 ANYBODY I MEAN I'M SURE WHAT HE SAYS IS THE TRUTH, IN
25 FACT, TRUE HE TALKED TO HIM I MEAN, I JUST DON'T KNOW

1 WHAT HE'S GOING TO SAY

2 **THE COURT** THERE WAS SOME EARLIER AGREEMENT NOT TO GO
3 INTO ---

4 **MR NETTLES** WELL, I MEAN, I DON'T KNOW -- CAN WE
5 APPROACH? JUST BECAUSE I DON'T WANT TO TAINT ANYTHING

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

7 Q OKAY WE'RE ALL ON EDGE NOW YOU TALKED TO HER FORMER
8 BOYFRIEND AND HE SAID WHAT?

9 A HE SAID THAT THEY HAD PROBLEMS THEY TURNED OUT TO BE
10 THE EXACT SAME PROBLEMS THAT KAMELL ---

11 **MS BROWN** YOUR HONOR, THIS IS JUST ---

12 **MR NETTLES** JUST RELAX

13 Q WE DON'T WANT TO TALK ABOUT THAT

14 A ALL RIGHT

15 Q THAT'S NOT RELEVANT TO US, OKAY? DID THE -- ALL RIGHT
16 SO LET'S TALK ABOUT THE EFFECT ---

17 **MR MABRY** EXCUSE ME, YOUR HONOR WE'D MOVE TO STRIKE
18 THAT STATEMENT, PLEASE

19 **THE COURT** ALL RIGHT

20 **MR NETTLES** THE PETITIONER ---

21 **THE COURT** HOLD ON A SECOND

22 **MR NETTLES** --- AGREES ---

23 **THE COURT** HOLD ON A SECOND OKAY

24 **MR NETTLES** WE AGREE THAT IT SHOULD BE STRICKEN

25 **THE COURT** WE'LL STRIKE IT THEN

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

109

1 Q THE -- WELL, LET ME ASK YOU THIS DID YOU EVER GET ANY
2 EVIDENCE DURING THE COURSE OF YOUR INVESTIGATION THAT
3 KATRINA -- CHRISTINA WAS IN A GANG?

4 A YES, SIR

5 Q OKAY NOW THE -- SHARE WITH US -- IN YOUR OPINION AS A
6 SOCIAL WORKER WAS CHRISTINA ABLE TO PROVIDE A STABLE
7 ENVIRONMENT FOR KAMELL?

8 A IT WAS VOLATILE AND TOXIC

9 Q OKAY NOW THE -- LET'S TALK FOR A SECOND ABOUT WHEN --
10 LET'S MOVE FOR A WHILE AND TALK ABOUT WHENEVER KAMELL MOVED
11 FROM OHIO TO SOUTH CAROLINA, OKAY? WE TALKED ABOUT IT A
12 LITTLE BIT WE TALKED ABOUT IT A LITTLE BIT AT THE CONTEXT
13 OF LOW COGNITIVE FUNCTIONING, BUT LET'S SORT OF EXPLORE
14 THAT KAMELL MOVES FROM OHIO TO SOUTH CAROLINA, RIGHT?

15 A YES, SIR

16 Q OKAY WHEN HE -- UP UNTIL A PERIOD -- FOR A PERIOD
17 THERE WHAT WAS THE -- WAS THAT A GOOD ENVIRONMENT FOR KAMELL
18 WHEN HE WAS LIVING WITH ROBIN AND LIVING WITH HIS DAD AT HIS
19 DAD'S HOUSE?

20 A A MUCH BETTER ENVIRONMENT, CONSISTENT AND HE OPERATED
21 IN SCHOOL AND IN THE COMMUNITY, IN THE FAMILY BETTER

22 Q AND I'M GOING TO ASK YOU TO SHARE WITH US, EXPAND ON
23 THAT WHAT YOU SAW THAT CAUSED YOU TO BELIEVE, OBJECTIVE
24 PROOF, THAT HE WAS DOING BETTER

25 A KAMELL ALWAYS TRIED HARD ACCORDING TO WHAT I FOUND OUT

NICHOLAS COOPFR-LEWTER- DIRECT EXAMINATION BY MR NETTLES

110

1 BUT IN PARTICULAR WITH THE HELP OF HIS STEP-MOTHER AND THE
2 SUPPORT AND ENCOURAGEMENT OF HIS FATHER, WHO HE HIMSELF HAD
3 -- WAS NO LONGER BEING ABUSIVE, KAMELL WAS IN AN ENVIRONMENT
4 WHERE HE WAS 'ABLE TO FOCUS ON THINGS THAT A TEENAGER FOCUSES
5 ON, WHICH IS GOING TO SCHOOL AND FUNCTIONING WITH SCHOOL
6 ACTIVITIES AND THOSE KINDS OF THINGS, AND PARTICULARLY
7 DURING THE HIGH SCHOOL YEARS SO IT TURNED OUT REALLY GOOD
8 FOR HIM

9 Q NOW IT'S MY UNDERSTANDING AND I THINK WE VE HEARD
10 TESTIMONY, THAT IT'S -- WELL, LET ME MAKE SURE YOU SHARE
11 THIS, HOW DID HIS GRADES CHANGE WHEN HE GOT PUT INTO THIS
12 ENVIRONMENT?

13 A THEY IMPROVED

14 Q OKAY NOW WHAT DO YOU ATTRIBUTE THAT IMPROVEMENT TO?

15 A ONE, THE SUPPORT OF HIS STEP-MOTHER AND HIS NEW FAMILY
16 ENVIRONMENT TWO HE HAD VERY GOOD ROLE MODELS ALSO IN
17 TERMS OF HIS COACHES WHO REQUIRED THAT HE DO HIS WORK AND
18 HE, OF COURSE WAS TRYING VERY, VERY HARD

19 Q WAS THERE ANYONE GIVING INCREASED OR ADDITIONAL
20 INSTRUCTION?

21 A HIS STEP-MOTHER CONSISTENTLY DID THAT, WORKED WITH HIM
22 CONSTANTLY, DAILY AND REALLY WAS -- IT WOULD HAVE BEEN
23 SOMETHING A SOCIAL WORKER WOULD HAVE WANTED TO SEE, TO SEE
24 THAT KIND OF INVOLVEMENT

25 Q OKAY NOW LET'S SHARE WITH ME A LITTLE BIT ABOUT WHAT

1 ROLE ATHLETICS PLAYED IN KAMELL'S LIFE

2 A ATHLETICS KEPT KAMELL BUSY KAMELL, LIKE HIS FATHER,
3 WAS VERY ATHLETIC AND PARTICULARLY SINCE HIS FATHER WAS
4 ONE OF HIS ROLE MODELS, HE LIKED THE IDEA THAT HE COULD DO
5 SOMETHING WELL HE WAS, IF YOU WILL, EMOTIONALLY HUNGRY TO
6 BE ABLE TO DO SOMETHING WELL ENOUGH THAT OTHERS WOULD BE
7 IMPRESSED AND PLEASED WITH HIM

8 SO IT WAS ALSO AN OUTLET FOR HIS ENERGY IT WAS
9 CONSTRUCTIVE IT WAS SOCIALLY ACCEPTABLE AND SO HE WAS
10 PRAISED AND THOUGHT OF HIGHLY BY COACHES AND COMMUNITY
11 PEOPLE, FAMILY PEOPLE, LIKED FOR HIS ATHLETIC ABILITIES SO
12 THAT'S ONE OF THE PLACES HE FELT VERY GOOD THAT HE HAD
13 SOMETHING GOOD TO OFFER

14 BEING AN ATHLETE, AND AS YOU KNOW FROM MY RESUME, I
15 WORK WITH A LOT OF ATHLETES HIS GRADES ALSO IMPROVED ABOUT
16 THE SAME TIME THAT GREER WENT TO STATE CHAMPIONSHIP THAT'S
17 NOT UNCOMMON

18 Q ALL RIGHT WHAT'S THE CORRELATION THERE IN YOUR
19 OPINION?

20 A WELL, I STILL WORK WITH A LOT OF ATHLETES AND IT'S NO
21 SECRET THAT THROUGHOUT THIS COUNTRY ATHLETES OFTENTIMES DO
22 BETTER IF THEY PLAY BETTER AND ON SUCCESSFUL TEAMS AT MAJOR
23 COLLEGES AND UNIVERSITIES ACADEMICALLY

24 Q I UNDERSTAND NOW LET ME ASK YOU THIS QUESTION DO
25 YOU, AS A SOCIAL WORKER, DID YOU -- HOW DID THE I MEAN, DID

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

112

1 THERE COME A TIME PRIOR TO -- AT THE TIME OF THIS INCIDENT
2 WHEN THE SHOOTING TOOK PLACE, THIS TRAGIC KILLING TOOK
3 PLACE WAS KAMELL AT THAT TIME, BASED ON THE RECORDS YOU'D
4 SEEN AND INTERVIEWS YOU'D DONE, WAS KAMELL INVOLVED IN A --
5 WAS HE STILL INVOLVED IN HIS RELATIONSHIP WITH CHRISTINA?

6 A YES, SIR

7 Q IT HAD NOT -- WELL, WHAT WAS HIS STATUS OF THAT
8 RELATIONSHIP AT THE TIME ON APRIL 1ST WHEN THIS TOOK PLACE?

9 A IT WAS TURBULENT THEY WERE ARGUING THEY HAD BEEN
10 ARGUING ABOUT BEING IN THE RELATIONSHIP OR NOT BEING IN THE
11 RELATIONSHIP AND ISSUES THAT HAD TO DO WITH THE
12 RELATIONSHIP

13 Q DO YOU THINK THAT -- IN YOUR OPINION HOW DID THAT, THE
14 ENVIRONMENT SURROUNDING THAT RELATIONSHIP, AFFECT KAMELL?

15 A IN A VERY NEGATIVE WAY

16 Q WHY?

17 A KAMELL HAS NOT BEEN A PERSON WHO'S BEEN ABLE TO ANALYZE
18 CERTAIN FACTORS VERY FAST HE'S A PERSON WHO DEPENDS ON
19 PEOPLE TO -- THAT HE CAN TRUST TO GIVE HIM ACCURATE
20 FEEDBACK DURING THAT PARTICULAR TIME IN THAT RELATIONSHIP
21 HE WAS NOT GETTING CONSISTENT FEEDBACK THAT WAS HELPFUL HE
22 AND SHE WERE ARGUING OVER WHAT WERE SAID TO BE LIES, MONEY
23 PROBLEMS AND THINGS LIKE THAT

24 Q LET ME ASK YOU THIS DO YOU BELIEVE IN YOUR -- FROM
25 ALL THE INFORMATION YOU'VE READ, ALL THE INTERVIEWS YOU'VE

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

113

1 DONE DO YOU -- ARE GANGS' INVOLVEMENTS IN COMMUNITIES
2 SOMETHING THAT SOCIAL WORKERS ARE -- RECOGNIZE AS AN EVENT
3 THAT HAPPENS?

4 A YES, SIR

5 Q OKAY IN YOUR OPINION BASED ON WHAT YOU'VE READ,
6 INTERVIEWS YOU'VE READ, RECORDS YOU'VE READ, WAS KAMELL
7 EVANS, FROM THE STANDPOINT OF A SOCIAL WORKER, IN A GANG?

8 A I DID NOT INTERVIEW ANYONE OR READ ANYTHING THAT SAID
9 THAT HE FOR SURE WAS IN A GANG

10 Q OKAY WHAT WOULD CAUSE -- AS A SOCIAL WORKER DO YOU
11 RECOGNIZE THAT SOMETIMES INDIVIDUALS MAY SAY THEY'RE IN
12 GANGS WHEN THEY RE NOT?

13 A IT'S VERY COMMON PARTICULARLY IN THE AFRICAN AMERICAN
14 COMMUNITY THROUGHOUT THIS COUNTRY WE CALL THEM PEOPLE WHO
15 SAY THEY'RE IN GANGS, WANNA-BES WE HAVE A TERM WE CALL
16 FALSE FLASHING WHERE ONE UTILIZES THAT SO THAT THEY CAN BE
17 IMPRESSIVE BE SAFE

18 Q OKAY WELL, LET'S TALK ABOUT THOSE WHY WOULD SOMEONE
19 DO THAT TO BE IMPRESSIVE? I MEAN, ---

20 A W-H-Y WOULD SOMEONE ---

21 Q --- WHAT ABOUT THAT IS IMPRESSIVE IS MY QUESTION?

22 A WELL, FIRST OF ALL IMAGINE THAT YOU RE GROWING UP, AND
23 REMEMBER I SAID IT'S WHO, WHAT, WHERE, WHEN AND HOW WHO AM
24 I? THAT'S A BIG QUESTION FOR CHILDREN THAT'S A BIG
25 QUESTION FOR ADOLESCENTS THAT'S A BIG QUESTION FOR MOST

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR. NETTLES

114

1 PEOPLE

2 AND SO IF THERE ARE ANY QUESTIONS ABOUT WHETHER OR NOT
3 WHO I MIGHT BE IS OKAY, THEN I'M GOING TO LOOK FOR THINGS IN
4 AND AROUND ME THAT WOULD SAY RESPECT ME, BE LOYAL TO ME, BE
5 IMPRESSED WITH ME AND COMING FROM CLEVELAND TO SOUTH
6 CAROLINA, CLEVELAND'S A BIG TOWN HE CAME TO A SMALL TOWN
7 IT WAS VERY EASY TO BUILD OR HAVE A READY-MADE IDENTITY
8 ATTACHED TO BEING -- LOOKING LIKE YOU'RE IN A GANG

9 Q OKAY LET ME TOUCH BASE WITH MY PEOPLE I MAY BE
10 FINISHED

11 (PAUSE)

12 DIRECT EXAMINATION BY MR. NETTLES CONTINUED

13 Q NOW -- OKAY I'M GOING TO TALK TO YOU ABOUT THREE
14 TOPICS BRIEFLY, ALL RIGHT BUT THEY'RE GOING TO BE --
15 THERE S NOT GOING TO BE MUCH FLOW TO THEM, OKAY? ALL RIGHT
16 I'M GOING TO TALK TO YOU ABOUT COGNITIVE FUNCTIONING
17 WE RE GOING TO GO BACK -- LET'S TALK ABOUT COGNITIVE
18 FUNCTIONING FOR A SECOND ALL RIGHT NOW WHEN HE WAS --
19 WHEN HE WAS -- WHEN HE CAME TO SOUTH CAROLINA AND HE GOT,
20 YOU KNOW, WE TALKED ABOUT HOW HE WAS GETTING INCREASED HELP
21 FROM ROBIN AND YOU SAW AN IMPROVEMENT IN HIS GRADES

22 A YES, SIR

23 Q OKAY WAS HE ABLE TO GET -- ESSENTIALLY DID HIS S A T
24 -- WHAT WERE HIS S A T SCORES? I MEAN, I DON'T KNOW IF YOU
25 KNOW THE EXACT NUMBER OR NOT, BUT WHERE DID THEY FALL IN THE

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

115

1 TERMS OF THE SPECTRA OF S A T SCORES?

2 A VERY LOW, SEVEN TO EIGHT HUNDRED

3 Q OKAY AND AS A RESULT OF HIS S A T -- DID HIS S A T
4 SCORES IN ANY WAY DIRECT WHERE HE WOUND UP GOING TO COLLEGE?

5 A YES HE WAS SOUGHT AFTER BY USC AND SOME OTHER
6 UNIVERSITIES

7 Q SOUGHT FOR WHAT?

8 A TO PLAY FOOTBALL

9 Q BUT WHAT HURDLE WAS HE NOT ABLE TO CLEAR?

10 A HE DID NOT MEET THEIR ACADEMIC STANDARDS EITHER ON HIS
11 S A T OR HIS GPA

12 Q OKAY NOW WAS THERE A PLACE THAT HE WAS ABLE TO GET
13 INTO?

14 A YES

15 Q WHERE?

16 A NORTH GREENVILLE COLLEGE

17 Q OKAY NOW WAS THAT A GOOD FIT FOR KAMELL?

18 A NO, SIR

19 Q WHY NOT?

20 A ONE, AFTER BEING AT GREER HIGH SCHOOL WHERE FOOTBALL IS
21 EVERYTHING AND HE WAS ABLE TO EXCEL, HE WENT TO A SCHOOL NOT
22 LIKE A TIER ONE SCHOOL LIKE USC OR CLEMSON, THOSE KINDS OF
23 SCHOOLS AND HE WENT TO A SCHOOL WHERE ATHLETES WERE NOT
24 THOUGHT OF VERY HIGHLY HE WENT TO A SCHOOL WHERE THEY HAD
25 A LOT OF RULES IT WAS A SMALL CHRISTIAN COLLEGE AND IT

NICHOLAS COOPER-LEWTER- DIRECT EXAMINATION BY MR NETTLES

116

1 WASN'T A GOOD FIT FOR HIM

2 Q LET ME WRAP UP WITH THIS FOR A SECOND LET'S TALK FOR

3 A SECOND ABOUT -- ON THAT LOW COGNITIVE FUNCTIONING

4 SOMEONE THAT WAS BUILT LIKE KAMELL, AND I MEAN

5 INTELLECTUALLY BUILT LIKE KAMELL ARE THEY ABLE TO MANAGE A

6 SERIES OF TASKS AT ONE TIME, TO MULTI-TASK?

7 A THEY CAN BE VERY GOOD AT DOING ONE TASK AT A TIME

8 MULTI-TASKING IS EXTREMELY DIFFICULT

9 Q OKAY IS -- WHAT'S A CONCRETE THINKER?

10 A A CONCRETE THINKER, JUST FOR SIMPLICITY IS A PERSON

11 WHO THINKS A PLUS B EQUALS C, IS VERY CHILD-LIKE IN THEIR

12 THINKING THEY NEED VERY FIRM, CONSISTENT INDICATORS FOR

13 THEM TO BE ABLE TO NOT BE CONFUSED AND SO A CONCRETE

14 THINKER, WE WOULD THINK, AS SOMEBODY -- A CHILD, ADOLESCENT,

15 SOMEONE VERY ---

16 Q IS KAMELL A CONCRETE THINKER?

17 A KAMELL IS VERY CONCRETE IN HIS THINKING

18 Q NOW LET'S TALK -- AND I BELIEVE THIS IS GOING TO BE

19 PROBABLY THE LAST THING I'M GOING TO TALK ABOUT, BUT IT'S

20 IMPORTANT AND I APOLOGIZE FOR NOT MENTIONING IT EARLIER

21 WHAT WAS KAMELL'S RELATIONSHIP, I MEAN, NOTWITHSTANDING WHAT

22 WE'VE TALKED ABOUT, YOU KNOW, ABOUT THE RELATIONSHIP THAT

23 YOU WITNESSED, THE RELATIONSHIP HE WAS INVOLVED IN IN OHIO,

24 WHAT WAS KAMELL'S RELATIONSHIP WITH HIS FATHER?

25 A HE ADORED HIS FATHER GROWING UP?

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

117

1 Q UM-HUM (AFFIRMATIVE)

2 A YES HE ADORED HIS FATHER, WANTED TO PLEASE HIS
3 FATHER, WAS CONFUSED BY HIS FATHER HIS FATHER ---

4 Q WHY?

5 A --- WOULD -- PARTICULARLY DRINKING, WOULD BEAT HIM, HIT
6 HIM LIKE A MAN, BEAT HIM WITH A BELT, CALL HIM DUMB, STUPID,
7 THOSE KINDS OF THINGS

8 Q WHAT EFFECT DOES THAT HAVE ON A CHILD TO HAVE SOMEONE
9 WHO YOU LOOK UP TO TREAT YOU LIKE THAT?

10 A IT'S DEVASTATING KAMELL TO THE VERY LAST TIME I SPOKE
11 TO HIM IN PERSON STILL WANTED TO PLEASE HIS FATHER, WHICH IN
12 THE LITERATURE IS VERY, VERY, VERY STANDARD CHILDREN TEND
13 TO WANT -- THEY TEND TO CLING TO THEIR ABUSERS, BUT THEY
14 ALSO WANT TO BE ABLE TO GET THEIR ABUSER'S LOVE

15 (PAUSE)

16 Q THANK YOU I HAVE NO FURTHER QUESTIONS

17 THE COURT YES, MA'AM, MS BROWN

18 MS BROWN THANK YOU, YOUR HONOR

19 CROSS EXAMINATION BY MS BROWN

20 Q SIR, YOU'VE TOLD US THAT YOU HAD SOME INFORMATION THAT
21 YOU REVIEWED IN MAKING THIS PARTICULAR DECISION I'M JUST
22 WONDERING, HOW DID YOU GET THAT INFORMATION? WAS IT ALL
23 FROM PERSONAL INTERVIEWS OR DID YOU HAVE ANY HELP IN
24 GATHERING INFORMATION?

25 A WELL, FIRST OF ALL, I INTERVIEWED ALL OF THE PEOPLE

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS. BROWN

118

1 THAT I MENTIONED I ALSO READ THE MATERIAL THAT HAD BEEN
2 PREVIOUSLY DONE BY THE LAWYERS IN TERMS OF INTERVIEWS AND
3 DOCUMENTS FROM THE HOSPITALS I READ THE SCHOOL RECORDS I
4 READ EVERYTHING THAT WAS AVAILABLE TO ME

5 Q OKAY ON THE INTERVIEWS THAT YOU CONDUCTED PERSONALLY
6 DID YOU RECORD ANY OF THOSE INTERVIEWS OR GET ANY SWORN
7 STATEMENTS FROM ANY OF THOSE INTERVIEWS?

8 A I TOOK NOTES

9 Q OKAY AND THIS WAS A QUESTION AND ANSWER TYPE OF
10 INTERVIEW?

11 A YES MA AM

12 Q AND YOU HAD FORMULATED QUESTIONS BEFORE YOU WENT INTO
13 THE INTERVIEWS?

14 A YES, MA'AM

15 Q OKAY LET ME ASK YOU SOMETHING HOW DID YOU COME TO
16 ASK ABOUT GANGS?

17 A I CAME TO ASK ABOUT GANGS BECAUSE THERE WAS IN THE
18 REPORTS SOME TALK ABOUT GANGS AND I ALSO SAW TATTOOS ON
19 KAMELL EVANS

20 Q DID YOU TALK TO HIM ABOUT HIS TATTOOS?

21 A YES, I DID

22 Q WHAT DID HE TELL YOU ABOUT THEM?

23 A HE SAID, FIRST OF ALL, HE WASN'T IN A GANG HE SAID,
24 NUMBER TWO, HE PUT SOME OF THOSE ON HIMSELF TO PLEASE HIS
25 GIRLFRIEND AND OTHERS HE PUT ON HIMSELF, FOR INSTANCE,

1 LIKE THE ONES OF HIS DOGS BECAUSE HE RESPECTED HIS DOGS AND
2 HIS DOGS WERE LOYAL AND RESPECTIVE TO HIM AND RESPECTFUL TO
3 HIM HE ALSO PUT A HUNDRED AND TWENTIETH ON HIS BODY TO
4 REPRESENT WHERE HE USED TO LIVE IN CLEVELAND AND SO HE
5 SAID THAT BASICALLY HE HAD MEANING ATTACHED TO ALL OF THEM

6 Q LET ME ASK YOU SOMETHING WHEN SOMEBODY TELLS YOU, I'M
7 NOT IN A GANG, DO YOU ACCEPT THAT AS THEIR STATEMENT AS A
8 FACT TO EVALUATE?

9 A WELL, I WOULD DO FURTHER EVALUATION

10 Q AND IF THEY TELL YOU IN THE CONVERSE THAT I AM IN A
11 GANG, DO YOU ACCEPT THAT AS A FACT TO TAKE INTO EVALUATION?

12 A I WOULD ALSO INVESTIGATE THAT FURTHER

13 Q OKAY IF, FOR INSTANCE, I WERE TO TELL YOU THAT MR
14 EVANS TOLD HIS ATTORNEYS THAT HE WAS IN A GANG AND ACTUALLY
15 SIGNED A STATEMENT SUPPORTING THAT WOULD THAT HAVE ANY
16 INFLUENCE OR AFFECT ON YOUR OPINION?

17 A IT WOULD HELP TO KNOW WHEN THAT WAS DONE

18 Q WELL, LET'S SAY A COUPLE OF MONTHS BEFORE TRIAL, IF
19 THAT WERE TO OCCUR WOULD THAT HAVE IMPACTED YOUR OPINION?

20 A A COUPLE OF MONTHS BEFORE TRIAL?

21 Q WHILE HE IS INCARCERATED IN THE DETENTION CENTER
22 AWAITING TRIAL

23 A WHILE HE WAS INCARCERATED?

24 Q UM-HUH (AFFIRMATIVE) AWAY FROM CHRISTINA, IN THE
25 DETENTION CENTER, AWAITING TRIAL FOR TWO MURDERS

1 A THAT WOULD NOT NECESSARILY SURPRISE ME ONE OF THE
2 THINGS THAT WE DEAL WITH ALL THE TIME IS HOW DO I REMAIN
3 SAFE IN PRISON AND ONE OF THE WAYS THAT A LOT OF PEOPLE DO
4 IS AFFILIATE THEMSELVES OR AT LEAST ACT LIKE THEY'RE
5 AFFILIATED WITH A CANG

6 Q SO AFFILIATE OR ACT LIKE? SORT OF LIKE FALSE FLAGGING,
7 YOU'RE EITHER IN THERE OR YOU'RE NOT, BUT YOU'RE STILL
8 ACTING THE SAME WAY

9 A YOU MIGHT SAY YOU'RE IN A GANC

10 Q LET ME ASK YOU, DO YOU VOLCH FOR THE COMPLETENESS OF
11 ANY OF THE STATEMENTS MADE IN THE INTERVIEWS THAT YOU
12 CONDUCTED?

13 A WHAT I CAN SAY IS IS THAT I INTERVIEWED PEOPLE ONE ON
14 ONE, MEANING THEY WERE NOT IN THE PRESENCE OF OTHER PEOPLE
15 THAT I HAD COME TO INTERVIEW THEY COLLABORATED QUITE A FEW
16 STORIES THAT WITHOUT THEM ALL GETTING TOGETHER AND TALKING
17 ABOUT THAT WOULD HAVE BEEN VERY HARD TO COLLABORATE, EVEN
18 TIME-LINES

19 SO I -- BECAUSE OF MEDICAL RECORDS, BECAUSE OF SCHOOL
20 RECORDS BECAUSE OF THE INTERVIEWS I WAS ABLE TO FEEL
21 CONFIDENT THAT SUCH THINGS AS CHILD ABUSE, CHILD NEGLECT,
22 LEAD POISONING, RELATIONSHIP ISSUES, COGNITIVE PROBLEMS IN
23 TERMS OF ANALYTICAL LEARNING, PROBLEMS, THINGS OF THAT
24 NATURE WERE, IN FACT, WELL DOCUMENTED AND THOSE I
25 INTERVIEWED SUPPORTED THAT WITHOUT BEING PRESENT WHILE I

1 INTERVIEWED OTHERS

2 Q WHAT ABOUT ANY POLICE REPORTS, POLICE BEING CALLED TO
3 THE THORNE HOUSE IN CLEVELAND HEIGHTS, DID YOU SEE ANY
4 POLICE REPORTS?

5 A I DIDN'T SEE ANY POLICE REPORTS, BUT IN DOMESTIC
6 VIOLENCE I THINK WE KNOW THAT POLICE OFTEN DON'T LIKE TO
7 COME TO DOMESTIC VIOLENCE SITUATIONS, AND THERE ARE NOT
8 ALWAYS REPORTS MADE

9 Q BUT THE MAJORITY OF PEOPLE THAT YOU INTERVIEWED WERE
10 EITHER FAMILY OR FRIENDS OF KAMELL EVANS?

11 A THE MAJORITY OF THE PEOPLE THAT I INTERVIEWED WERE
12 FAMILY OR FRIENDS, YES

13 Q ARE YOU FAMILIAR WITH A MULTIPLE SOURCE RULE USED BY
14 SOME SOCIAL WORKERS?

15 A THAT'S WHAT I'VE BEEN SPEAKING TO

16 Q OKAY

17 A I SAID THAT I SPOKE TO A NUMBER OF PEOPLE AND THEY
18 COLLABORATED THE INFORMATION OUR EFFORT IS TO HAVE TWO OR
19 MORE SOURCES FOR ANY PARTICULAR PIECE OF INFORMATION AND I
20 FELT RELATIVELY SECURE IN THE FACT THAT I WAS ABLE TO GATHER
21 INFORMATION IN THAT FORMAT

22 Q OKAY SO IF A MOTHER AND A FATHER INDIVIDUALLY,
23 SEPARATE INTERVIEWS TELL YOU THEIR CHILD IS NOT IN A GANG
24 WOULD YOU TAKE THAT AS CORROBORATION THE CHILD IS NOT IN A
25 GANG?

1 A I WOULD TAKE THAT THAT AS FAR AS THOSE PARENTS WERE
2 CONCERNED THAT THEY DIDN T BELIEVE THAT THE CHILD WAS IN THE
3 GANG

4 Q NOW I UNDERSTAND YOU SPOKE WITH MR EVANS PERSONALLY,
5 CORRECT? MR KAMELL EVANS?

6 A OH, YES I SPOKE WITH HIM AT -- FOR OVER TWENTY SOME
7 HOURS

8 Q OKAY DO YOU KNOW HOW MANY TIMES YOU WENT TO VISIT
9 HIM? CAN YOU BREAK THAT DOWN FOR US?

10 A I WAS COUNTING THAT LAST NIGHT WHILE I WAS WAITING I
11 CAME TO ABOUT TWENTY-TWO HOURS AND SO IF -- IT'S AT LEAST
12 TEN VISITS

13 Q OKAY WHEN DID YOU START WORKING ON THIS PARTICULAR
14 CASE?

15 A IT WAS KIND OF LATE IN THE WHOLE CASE, BUT I WOULD SAY
16 ABOUT APRIL

17 Q SO APRIL? AND YOU WERE ORIGINALLY GOING TO TESTIFY IN
18 JUNE AT THE JUNE HEARING, IS THAT CORRECT?

19 A YES, MA AM

20 Q SO APRIL, MAY AND JUNE DO YOU KNOW APPROXIMATELY HOW
21 MANY HOURS YOU WOULD HAVE SPENT, NOT JUST SPEAKING TO MR
22 EVANS, BUT ALSO IN INTERVIEWING PEOPLE AND MAKING --
23 FORMULATING YOUR OPINION?

24 A I HAVE NOT ADDED IT UP AS OF YET SIMPLY BECAUSE THE
25 TRIAL GOT CONTINUED AND I -- BUT I WOULD SAY IT'S PROBABLY

1 BETWEEN FIFTY AND SEVENTY-FIVE HOURS SO FAR

2 Q LET ME ASK YOU, IF THIS WAS A CLINICAL SETTING WHAT
3 KIND OF TREATMENT PLAN WOULD YOU SUGGEST FOR MR EVANS?

4 A I'M -- I'M NOT SURE

5 Q OKAY WOULD YOU HAVE REFERRED HIM TO SOME KIND OF
6 MEDICAL PROFESSIONAL FOR EVALUATION?

7 A WELL, I WAS ASKED TO DO HIS HISTORICAL ASSESSMENT AND
8 SO I DIDN'T REALLY FOCUS ON TREATMENT BECAUSE I DIDN'T FOCUS
9 ON DIAGNOSIS EVEN THOUGH AS A LICENSED CLINICAL SOCIAL
10 WORKER I AM LICENSED TO MAKE DIAGNOSIS, I DID NOT FOCUS ON
11 ANY OF THOSE THINGS SO MY ATTEMPT WAS TO GATHER
12 INFORMATION AND NOT SO MUCH THINK ABOUT TREATMENT,
13 MODALITIES I WOULD NEED SOME TIME TO THINK ABOUT THAT
14 BEFORE I WOULD SPEAK INTELLIGENTLY

15 Q OKAY SO THIS IS A MATTER OF GATHERING INFORMATION TO
16 LOOK AT AREAS AND THEN YOU COULD IDENTIFY LIKE ABUSE AND
17 THAT SORT OF THING?

18 A YES, MA'AM

19 Q NOW -- BUT YOU DON'T HAVE ANY SWORN STATEMENTS OR ANY
20 KIND OF THINGS FROM PEOPLE THAT WOULD -- INDICATED THEY
21 WOULD BE WILLING TO COME TO COURT AND TESTIFY TO WHAT THEY
22 TOLD YOU?

23 A I DID NOT REQUIRE SWORN STATEMENTS WHEN I INTERVIEWED
24 PEOPLE THAT TYPICALLY ISN'T WHAT WE DO IN A SOCIAL HISTORY
25 ASSESSMENT WE TYPICALLY INTERVIEW THE PEOPLE, TAKE OUR

1 NOTES AND PUT THAT TOGETHER MUCH LIKE IF A PERSON WERE TO
2 WALK IN YOU DO A HISTORY THE HISTORY THEN BECOMES THE
3 BASIS OF HOW YOU MOVE FORWARD AND SO BASED ON WHAT, FOR
4 INSTANCE, YOU'RE TOLD YOU WOULD PURSUE THAT AND TRY TO
5 COLLABORATE THAT INFORMATION

6 Q I SEE OKAY WHEN SPEAKING WITH MR EVANS, AND THIS
7 IS MR KAMELL EVANS, DID HE EVER TELL YOU THAT HE WAS
8 SUSPENDED FOR TAKING A GUN TO SCHOOL?

9 A YES, I KNEW ABOUT THAT

10 Q OKAY DID HE EVER TELL YOU THAT HE HAD A GUNSHOT TO --
11 WOUND TO HIS HAND?

12 A YES I ACTUALLY SAW HIS HAND, AND WE DISCUSSED IT

13 Q AND DID HE TELL YOU THAT HE WAS ARRESTED ON A DRUG
14 CHARGE?

15 A YES, HE TOLD ME THAT

16 Q ISN'T IT TRUE THAT VIOLENCE AND GANGS ARE CORRELATED?

17 A COULD YOU ASK ME THAT ANOTHER WAY BECAUSE I'M NOT QUITE
18 SURE WHAT YOU'RE ASKING ME? YOU SAY CORRELATED, I'M NOT
19 SURE IN WHAT WAY YOU'RE TALKING ABOUT

20 Q IS THERE A CORRELATION BETWEEN GANGS AND VIOLENCE?

21 A YES

22 Q AND I KNOW YOU LISTED OFF SEVERAL OF THE PEOPLE THAT
23 YOU ALREADY OR YOU SPOKE TO DID YOU TALK TO FAMILY BOTH IN
24 CLEVELAND HEIGHTS AND HERE IN SOUTH CAROLINA?

25 A YES, MA'AM

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

125

1 Q OKAY AND DID YOU TALK TO FOOTBALL TEAM MEMBERS AND
2 COACHES?

3 A I READ THE DOCUMENTS FROM INTERVIEWS, PRIMARILY FROM
4 THE COACHES

5 Q OKAY DID YOU TALK TO STEVE WATSON, WHO'S A FORMER
6 CHAPLAIN ON THE HIGH SCHOOL FOOTBALL TEAM?

7 A I READ THE DOCUMENT FOR STEVE WATSON

8 Q OKAY WERE YOU AWARE THAT HE TESTIFIED AT TRIAL?

9 A I HAVE BEEN SEQUESTERED FROM KNOWING WHO HAS BEEN HERE

10 Q WELL, LET ME RESTATE THAT WERE YOU AWARE THAT HE
11 TESTIFIED AT THE CRIMINAL TRIAL?

12 A FROM THE RECORD

13 Q OKAY SO YOU'VE READ THE RECORD OF THE CRIMINAL TRIAL?

14 A YES, MA'AM

15 Q OKAY WERE YOU AWARE THAT MR WATSON TESTIFIED THAT,
16 QUOTE, KAMELL IS JUST A TREMENDOUS YOUNG MAN, ESPECIALLY
17 AMONG THE PLAYERS? HE HAD A WAY OF BRINGING POSITIVE
18 SYNERGY INTO AN ENVIRONMENT HE KEPT THE TEAM PRETTY MUCH
19 MOTIVATED HE AND MY SON BECAME GOOD FRIENDS, AND THEY'RE
20 STILL GOOD FRIENDS TODAY

21 A I REMEMBER THAT

22 Q SO IT WAS A VERY POSITIVE OUTLOOK, WOULDN'T YOU SAY?

23 A YES, MA'AM

24 Q DO YOU RECALL READING THE TESTIMONY FROM JEFF NEELY'S
25 PRESENTATION AT THE PENALTY PHASE? THIS WAS THE VARSITY

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

126

1 BASKETBALL COACH FROM GREER HIGH SCHOOL

2 A YES I REMEMBER SEEING IT

3 Q OKAY DO YOU REMEMBER HIM CALLING MR KAMELL EVANS A

4 GOOD LEADER AND OUTSTANDING PLAYER VERY RESPECTFUL AROUND

5 FATHER AND SISTER, NEVER HAVING ANY DISCIPLINARY PROBLEMS

6 WITH KAMELL?

7 A MAY I SEE A COPY OF THAT?

8 Q SURE AND I M REFERRING TO RECORD, PAGE 1645 TO 1646

9 MR NETTLES I DON T HAVE IT, BUT I LL TAKE HER WORD

10 FOR IT

11 MS BROWN YOUR HONOR, MAY I APPROACH?

12 THE COURT SURE

13 Q 1645 TO 1646 THIS IS MR JEFF NEELY

14 A UM-HJM (AFFIRMATIVE)

15 (PAUSE)

16 A OH, THIS WAS THE DIRECT EXAMINATION BY MR SUMNER?

17 Q YES, SIR

18 A I REMEMBER SEEING THIS ---

19 Q OKAY

20 A --- BUT MY -- WHAT I UTILIZED WAS AN INTERVIEW WITH HIM

21 THAT HAD BEEN PREVIOUSLY PREPARED BUT, YES, I RECOGNIZE

22 THIS

23 Q OKAY WELL, WOULD YOU AGREE WITH ME THAT HE

24 CHARACTERIZED MR EVANS AS A GOOD LEADER?

25 A YES

1 Q AND THAT SEEMS TO BE SOMEWHAT AT ODDS WITH YOUR
2 CONCLUSION ABOUT BEING A FOLLOWER WITH CHRISTINE, WOULDN'T
3 YOU SAY?

4 A NO, MA'AM

5 Q WHY WOULD THAT BE?

6 A I THINK THAT PLAYING FOOTBALL AND BEING AN EMOTIONAL
7 LEADER IS VERY DIFFERENT FROM HAVING AN INVOLVED
8 RELATIONSHIP WITH A SIGNIFICANT OTHER I THINK THE DYNAMICS
9 ARE VERY, VERY DIFFERENT I THINK WHEN SOMEONE SAYS YOU'RE
10 A LEADER ON A FOOTBALL TEAM, THAT DOESN'T NECESSARILY MEAN
11 THAT YOU ARE LEADING AT HOME

12 I WOULD THINK THAT MOST PEOPLE KNOW THAT THE
13 RELATIONSHIP BETWEEN A MAN AND A WOMAN IN THE HOME OFTEN IS
14 A LITTLE BIT DIFFERENTLY THAN PORTRAYED, SAY AT WORK OR IN
15 THIS CASE, AT A FOOTBALL GAME SO I WOULDN'T FIND THAT --
16 THOSE TWO STATEMENTS AT ODDS

17 Q WHAT ABOUT TESTIMONY FROM TERRY PEDEN THAT MR EVANS
18 HELPED HIS CHILDREN AND WOULD HELP CHILDREN -- HE WAS GOOD
19 WITH CHILDREN, COACHED HIS LITTLE NEPHEW, AGAIN SHOWING
20 LEADERSHIP QUALITY AND INTERACTION WITH CHILDREN THIS TIME,
21 NOT JUST A FOOTBALL TEAM?

22 A THROUGHOUT THE HISTORY THAT I LOOKED AT, ONE THING
23 KEEPS COMING UP FROM FAMILY MEMBERS, FRIENDS, COACHES AND
24 OTHERS IS THAT KAMELL EVANS ALWAYS LOVES CHILDREN KAMELL
25 EVANS, AFTER I MET WITH HIM THE VERY FIRST TIME, WROTE ME A

1 LETTER TO HELP MY -- TO GIVE INFORMATION TO MY TWO YEAR OLD
2 BECAUSE HE SAID TO ME, DOC, WHATEVER HAPPENS, I DON'T WANT
3 YOUR TWO YEAR OLD TO NOT KNOW WHAT I NOW KNOW CAUSE I DON'T
4 WANT YOUR TWO YEAR OLD TO END UP IN THE SITUATION THAT I'M
5 CURRENTLY IN

6 SO AS I LOOKED INTO KAMELL'S HISTORY I SAW THAT TIME
7 AND TIME AGAIN HE LOVED CHILDREN HE THOUGHT HE WAS GOING
8 TO HAVE A CHILD AT ONE TIME, EVEN GOT A HOUSE THINKING A
9 CHILD WAS COMING AND THE CHILD DID NOT SHOW UP, AND THAT
10 HURT HIM DEEPLY

11 BUT -- SO I DON T HAVE ANY PROBLEM WITH THE FACT THAT
12 EVEN BEING CHILD-LIKE IN SOME WAYS, CHILDREN CAPE HE WAS A
13 PERSON WHO CARED IMMENSELY HIS SISTER CARED HE CARED
14 ABOUT HER HE CARED ABOUT TRYING TO PROTECT HIS MOTHER FROM
15 HIS FATHER WHEN HE WAS LITTLE

16 SO HIS CARING TO ME IS A POSITIVE CHARACTERISTIC THAT
17 DOESN'T NECESSARILY MEAN HE'S A LEADER IT MEANS HE HAS
18 EMPATHY HE HAS THE ABILITY TO HAVE COMPASSION AND CARE
19 ABOUT OTHERS I WOULD READ THAT THAT WAY

20 Q WHAT ABOUT WORKING ON A SPORTS ORGANIZATION FOR
21 CHILDREN, NOT JUST WORKING WITH CHILDREN, BUT GOING OUT AND
22 PUTTING AN ORGANIZATION TOGETHER WITH RONALD PLATT? THAT
23 SHOWS GOOD ORGANIZATIONAL QUALITIES AND ABILITY, DOES IT
24 NOT?

25 A I THINK THAT IF YOU GIVE A PERSON ENOUGH SUPPORT, AND

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

129

1 BELIEVE ME, I WORK WITH A LOT OF ATHLETES I TEACH TWO
2 HUNDRED SOME STUDENTS PER SEMESTER MANY OF THEM ATHLETES
3 AND WITH THE PROPER SUPPORT SYSTEMS IN PLACE, THE PROPER
4 RELATIONSHIPS IN PLACE A PERSON CAN PARTICIPATE IN A
5 FOOTBALL TEAM, AN ORGANIZATION, THAT KIND OF THING WHETHER
6 OR NOT THEY HAVE THE CAPACITY MENTALLY TO -- TO PERFORM
7 EXECUTIVE FUNCTIONING, PLANNING, ORGANIZING AND THOSE KINDS
8 OF THINGS ISN'T REQUIRED AT THAT HIGH LEVEL

9 Q DID YOU SPEAK WITH DR EVANS DR JAMES EVANS?

10 A I NEVER SPOKE WITH DR JAMES EVANS I JUST READ THE
11 REPORT

12 Q DID YOU SPEAK WITH DR ELIN BERG?

13 A NO

14 Q LET ME ASK YOU, SIR, HAVE YOU PROVIDED A WRITTEN REPORT
15 TO ANYBODY?

16 A NO MA'AM

17 Q OKAY

18 A OTHER THAN MY NOTES WHICH I HAVE AVAILABLE HERE FOR THE
19 COURT IF THEY WANT

20 Q HAVE YOU DONE ANY TRAINING TO WORK WITH DEFENSE IN
21 CAPITAL LITIGATION EITHER AT TRIAL OR COLLATERAL CHALLENGES?

22 A I AM BEING TRAINED BY A PERSON WHO DOES THAT, ANOTHER
23 SOCIAL WORKER, WHO HAPPENS TO BE THE AUTHOR OF A BOOK THAT I
24 WAS UTILIZING

25 Q THAT'D BE MS ANDREWS?

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

130

1 A YES

2 Q OKAY ISN'T IT TRUE THAT THE NATIONAL ASSOCIATION OF
3 SOCIAL WORKERS ENCOURAGES EVERY MEMBER TO DONATE PRO BONO
4 HOURS IN CASES?

5 A THAT'S A PROFESSIONAL IDEAL

6 Q UM-HUM (AFFIRMATIVE) AND YOU'RE A MEMBER OF THE
7 ASSOCIATION, CORRECT?

8 A NATIONAL ASSOCIATION OF SOCIAL WORKERS, ACADEMY OF
9 CERTIFIED SOCIAL WORKERS

10 Q BUT THIS IS NOT A PRO BONO CASE, IS IT?

11 A NO I'M ALLOWED TO CONSULT, MAKE MONEY SO THAT I CAN
12 PAY FOR MY CHILDREN TO GO TO SCHOOL AND FOR -- TO TAKE CARE
13 OF MY BILLS I ---

14 Q SURE

15 A I THOUGHT THAT WAS OKAY

16 Q DO YOU KNOW APPROXIMATELY WHAT YOU WILL BE PAID FOR
17 THIS SERVICE?

18 A AT THIS MOMENT, I DON'T KNOW I KNOW THAT INITIALLY I
19 PUT IN A BILL FOR A LITTLE UNDER FIVE THOUSAND DOLLARS

20 Q LET ME ASK YOU, DO YOU KNOW IF THE ASSOCIATION HAS A
21 PUBLISHED POSITION ON CAPITAL PUNISHMENT?

22 A SOCIAL -- I DON'T KNOW AS OF THIS -- AS I'M SITTING
23 HERE IF THEY'VE COME UP WITH A NEW ONE BUT I DO KNOW THAT
24 OUR CODE OF ETHICS WOULD SUGGEST THAT EVERYONE IS OF WORTH
25 AND VALUE, EVERYONE HAS A RIGHT TO SELF-DETERMINATION, THOSE

1 KINDS OF THINGS AND SO WE DO DEAL IN AREAS OF JUSTICE

2 Q SO IS THERE A POLICY TO OPPOSE THE DEATH PENALTY?

3 A I DON'T KNOW

4 Q O-KAY ARE YOU AWARE THAT THE ASSOCIATION ACTUALLY HAS

5 A DEDICATED LEGAL ARM?

6 A YES, I AM

7 Q ARE YOU AWARE THAT THEY OFTEN FILE AMICUS BRIEFS IN

8 CAPITAL CASES?

9 A I'M AWARE THE ORGANIZATION DOES THAT, YES

10 Q OKAY ARE YOU AWARE THAT THE ORGANIZATION ACTUALLY

11 WROTE A LETTER OF NON-SUPPORT FOR JUSTICE ALITO CITING IN

12 PART HIS DECISION IN THE WIGGINS CASE WHERE A SOCIAL WORKER

13 WAS NOT USED?

14 A I'M AWARE OF THAT HISTORY

15 Q LET ME ASK YOU, SIR YOU'VE WORKED WITH ECONOMICALLY

16 AND SOCIALLY DISADVANTAGED CLIENTS BEFORE, ISN'T THAT

17 CORRECT?

18 A YES, MA'AM

19 Q AND YOU'VE WORKED WITH MENTALLY CHALLENGED OR MENTALLY

20 DISADVANTAGED CLIENTS BEFORE?

21 A YES, MA'AM

22 Q OKAY FROM THE TIME THAT MR KAMELL EVANS CAME DOWN

23 HERE FROM OHIO TO LIVE WITH HIS FATHER UP UNTIL HE MOVED OUT

24 ON HIS OWN WOULD YOU ACREE WITH ME HE WAS IN A STABLE,

25 MIDDLE CLASS HOME?

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

132

1 A WHEN HE LIVED WITH HIS FATHER, YES

2 Q AND THAT HE WAS DOING WELL IN SCHOOL?

3 A YES

4 Q THAT HE HAD AN IQ IN THE 90s?

5 A I READ THAT I DIDN'T TEST HIM

6 Q OKAY WOULD YOU AGREE WITH ME THAT HE HAD SCHOOL

7 OPPORTUNITIES THAT HE TOOK, STUDYING FOR THE S A T , FOR

8 EXAMPLE?

9 A I THINK HE STUDIED FOR IT AND FAILED IT THREE TIMES OR

10 DIDN'T DO WELL ON IT THREE TIMES, YES

11 Q AND HE HAD THE OPPORTUNITY TO DO BETTER?

12 A HE WAS UNABLE TO ACCORDING TO THE TEST RESULTS

13 Q AND HE HAD -- CERTAINLY HE HAD SPORTS OPPORTUNITIES,

14 CORRECT?

15 A THE SCHOOLS TURNED HIM DOWN, I'M TOLD, BECAUSE HE DID

16 NOT HAVE THE GPA NOR THE PROPER S A T SCORES BUT YES

17 HE HAD OPPORTUNITIES HE ENDED UP AT NORTH GREENVILLE

18 COLLEGE, BUT THEY'RE NOT A FOOTBALL SCHOOL

19 Q ARE YOU AWARE THAT HE ALSO PLAYED SEMI-PRO BALL?

20 A I'M AWARE THAT HE ATTEMPTED TO DO THAT I TALKED TO --

21 I'M AN ATHLETE MYSELF, FORMER ATHLETE, WORKED WITH A LOT OF

22 ATHLETES AND I KNOW SEMI-PRO YOU USUALLY HAVE TO BRING A

23 LOT OF YOUR OWN GEAR SO IT'S -- IF YOU'RE GOING TO GO PRO,

24 YOU WANT TO GO PRO, NOT SEMI-PRO BUT I'M AWARE THAT HE

25 ATTEMPTED TO DO THAT

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

133

1 Q WERE YOU AWARE HE WAS EMPLOYED SHORTLY BEFORE THE
2 MURDERS OCCURRED IN THIS CASE?

3 A YES I WAS

4 Q GAINFULLY EMPLOYED?

5 A YES, MA'AM

6 Q AND THERE WAS TESTIMONY AT TRIAL THAT HE WAS THERE
7 EVERY DAY AND DID A GOOD JOB?

8 A YES, MA'AM

9 Q HE HAD SUPPORTIVE FAMILIES AND -- FAMILY AND FRIENDS,
10 WOULD YOU AGREE WITH THAT?

11 A YES, MA AM

12 Q AND HE HAD FREE WILL, DIDN'T HE?

13 A COULD YOU ASK ME THAT A LITTLE DIFFERENTLY? BEING A
14 MINISTER, I DIDN'T WANT TO GET INTO A THEOLOGICAL DISCUSSION
15 HERE ABOUT WHETHER OR NOT ---

16 Q WELL, I WAS LOOKING FOR YES OR NO, BUT THAT

17 A WELL, I DIDN'T KNOW WHETHER YOU WANTED TO LOOK AT THE
18 AUGUSTINIAN APPROACH TO FREE WILL OR -- I JUST DIDN T KNOW
19 WHERE YOU WANTED TO GO WITH THAT SO IT WOULD HELP ME IF
20 YOU COULD

21 Q LET'S FOCUS A LITTLE BIT WHY DON'T WE FOCUS WHEN
22 MR KAMELL EVANS REQUESTED THOSE TATTOOS, HE NEVER TOLD YOU
23 ANYBODY HAD A GUN TO HIS HEAD AND MADE HIM GET THEM,
24 CORRECT? IT WAS HIS DECISION

25 A I'VE WORKED WITH A LOT OF PEOPLE WHO'VE NEVER HAD A GUN

1 PUT TO THEIR HEAD AND THEY GO AND DO THINGS THAT WE THINK,
2 AS A SOCIETY, THEY SHOULDN'T DO SO I DON'T KNOW HOW TO
3 ANSWER THAT OTHER THAN TO SAY HE NEVER TOLD ME THAT ANYONE
4 PUT A GUN TO HIS HEAD AND MADE HIM GET TATTOOS

5 Q OKAY DID YOU TALK ABOUT THE CRIME WITH MR EVANS?

6 A I READ ABOUT THE CRIME I DID SPEAK TO HIM ABOUT IT
7 HE SIMPLY TOLD ME THAT HE WAS VERY VERY SORRY IT HAPPENED
8 WISHED IT HADN'T HAPPENED AND WISHED HE COULD TAKE IT ALL
9 BACK

10 MY EFFORT WITH HIM WAS TO DO A SOCIAL HISTORY SO I
11 DID MY BEST TO STAY AWAY FROM THE ACTUAL CRIME SCENE ITSELF
12 AND WHAT TOOK PLACE INSIDE THAT HOUSE

13 Q DO YOU KNOW THE CIRCUMSTANCES LEADING UP TO ENTRY IN
14 THE HOUSE?

15 A I HEARD -- I READ THE REPORTS, YES

16 Q DOES IT SHOCK YOU OR HAVE YOU HEARD THAT HE HAD A
17 HUNDRED AND FORTY ROUNDS OF AMMUNITION, AND A BLACK NYLON
18 BAG, PARKED SEVERAL STREETS AWAY, WALKED UP UNDER A COVER OF
19 DARKNESS, LAID IN WAIT FOR A DEPUTY TO COME BACK HOME? DOES
20 THAT SURPRISE YOU?

21 MR NETTLES OBJECTION I MEAN, I BELIEVE THAT I
22 MEAN, THOSE ARE NOT THE FACTS BEYOND DISPUTE IF SHE WANTS
23 TO ASK IT AS A HYPOTHETICAL, THAT'S ONE THING BUT MY
24 OBJECTION IS IS THAT THOSE ARE NOT ---

25 THE COURT I UNDERSTAND

NICHOLAS COOPER-LEWTER - CROSS EXAMINATION BY MS BROWN

135

1 MR NETTLES --- THE UNDISPUTED FACTS IN THIS CASE

2 THE COURT ALL RIGHT

3 MS BROWN ACTUALLY THEY ARE THEY'RE IN HIS

4 STATEMENT AT ONE POINT AND FURTHER IN HIS STATEMENT HE

5 ALSO SAYS THAT HE TOOK THE DEPUTY BY SURPRISE AND TOOK HIM

6 INTO THE HOUSE AT GUNPOINT I ---

7 MR NETTLES RIGHT BUT, I MEAN, THAT'S ONLY PART OF

8 WHAT SHE PUT IN THERE I MEAN, PARTS OF THAT ARE NOT IN

9 DISPUTE, PARTS OF IT ARE THE PARTS ABOUT HIM HAVING ALL

10 THE AMMUNITION, THAT'S IN DISPUTE

11 MS BROWN HOW'S THAT IN DISPUTE? WE INTRODUCED IT AT

12 TRIAL

13 MR NETTLES OH, YOU INTRODUCED -- THAT DOESN'T MEAN

14 -- WE SAID THAT, I MEAN, YOU CAN INTRODUCE ANYTHING YOU WANT

15 TO, BUT -- WELL, I'LL TELL THE COURT

16 MS BROWN AT THE CRIMINAL TRIAL

17 MR NETTLES RIGHT AND THAT SHOULD HAVE BEEN

18 OBJECTED TO I MEAN, THE FACT THAT -- THE FACT THAT THE

19 FIRST LAWYERS DIDN'T DO A GOOD JOB, IN NO WAY ARE WE BOUND

20 BY THEIR FAILURE TO PERFORM AN EFFECTIVE DEFENSE

21 THE COURT ALL RIGHT WELL, I UNDERSTAND THE

22 QUESTION I'LL ALLOW IT GO AHEAD

23 CROSS EXAMINATION BY MS BROWN CONTINUED

24 A WOULD YOU REPEAT THE QUESTION FOR ME, PLEASE?

25 Q WERE YOU AWARE THAT MR EVANS PACKED A HUNDRED AND

1 FORTY ROUNDS OF AMMUNITION IN A BLACK NYLON BAG, PARKED
2 SEVERAL STREETS AWAY AND CAME OVER TO THE HOUSE WEARING
3 BLACK AND ACTUALLY LAID IN WAIT FOR THE DEPUTY TO RETURN
4 HOME?

5 A I READ THE REPORT

6 Q YOU READ THAT?

7 A YES

8 MS BROWN MAY I HAVE JUST A MOMENT, YOUR HONOR?

9 THE COURT SURE

10 (PAUSE)

11 Q I THINK YOU TOLD US A LITTLE EARLIER THAT YOU STAYED
12 AWAY FROM THE CRIME, THE SHOOTING IS THAT CORRECT?

13 A I STAYED AWAY FROM ATTEMPTING TO EXAMINE THAT
14 PARTICULARLY WITH KAMELL EVANS

15 Q OKAY DO YOU KNOW ANYTHING ABOUT THE CONTACT THAT MR
16 EVANS HAD WITH HIS FAMILY PRIOR TO THE MURDERS? AND THIS IS
17 DURING THE HOSTAGE SITUATION

18 A I KNOW WHAT I WAS TOLD

19 Q OKAY

20 A I WAS TOLD THAT HIS FATHER WANTED TO SPEAK TO HIM I
21 WAS TOLD THAT HIS SISTER WANTED TO SPEAK TO HIM I WAS TOLD
22 THAT HE WANTED TO SPEAK TO THEM THOSE ARE THINGS THAT I
23 WAS TOLD BY THE FAMILY

24 Q NOW YOU SAID THAT IN YOUR OPINION MR EVANS HAD A VERY
25 GOOD RELATIONSHIP WITH HIS FATHER AND HE LOOKED UP TO HIS

1 FATHER, IS THAT CORRECT?

2 A I ALSO NEED TO SAY THAT FOR ABOUT EIGHTEEN MONTHS PRIOR
3 TO THIS INCIDENT KAMELL EVANS AND HIS FATHER WERE NOT
4 SPEAKING THEY HAD FALLEN OUT OVER SOME ISSUES AND SO
5 THEY WEREN'T TALKING THAT'S ONE OF THE REASONS THAT KAMELL
6 SAID THAT HE DIDN'T IMMEDIATELY TRY TO GET HOLD OF HIS
7 FATHER

8 Q WHAT ABOUT TINA EVANS MARTIN, THEY WERE ALWAYS CLOSE,
9 WEREN'T THEY?

10 A THEY WERE CLOSE, YES

11 Q ARE YOU AWARE THAT TINA TALKED TO HIM DURING THE
12 HOSTAGE SITUATION?

13 A I READ THAT

14 Q ARE YOU AWARE THAT BOTH OF THEM, HIS FATHER AND TINA,
15 ASKED HIM TO COME OUT WITHOUT SHOOTING THOSE TWO
16 INDIVIDUALS?

17 A I READ THAT

18 Q AND HE SHOT AND KILLED THOSE TWO INDIVIDUALS?

19 A I READ THAT

20 Q NO FURTHER QUESTIONS THANK YOU, SIR

21 THE COURT ANY REDIRECT?

22 MR. NETTLES JUST TWO QUICK -- I WANT TO CLEAR ONE
23 THING UP

24 REDIRECT EXAMINATION BY MR. NETTLES

25 Q THERE WAS SOME DISCUSSION ABOUT KAMELL EVANS SPENT SOME

NICHOLAS COOPER-LEWTER - REDIRECT EXAMINATION BY MR NETTLES 138

1 TIME IN WHAT WAS REFERRED TO AS A STABLE, MIDDLE CLASS HOME,
2 RIGHT?

3 A YES SIR

4 Q AND I WANTED TO MAKE SURE IT'S CLEAR WOULD KAMELL --
5 WOULD THE HOUSEHOLD THAT KAMELL WAS BROUGHT UP IN AS A
6 WHOLE FROM START TO FINISH, BE DESCRIBED AS A STABLE,
7 MIDDLE CLASS HOME?

8 A I WOULD SAY JUST THE OPPOSITE HIS FORMATIVE YEARS
9 WERE ANYTHING BUT STABLE

10 Q OKAY AND WAS THERE A PERIOD WHEN YOU WOULD SAY THAT
11 HE WAS IN A STABLE, MIDDLE CLASS HOME?

12 A ONCE HE WAS WITH HIS FATHER DURING HIS HIGH SCHOOL
13 YEARS UNTIL GRADUATION, THAT WAS THE MOST STABLE TIME IN HIS
14 LIFE

15 Q OKAY NOW WHY WOULD KAMELL EVANS SAY TO HIS LAWYER, I
16 MEAN ON CROSS EXAMINATION IT WAS BROUGHT OUT THAT KAMELL
17 EVANS HAD TOLD HIS LAWYERS WHILE HE WAS INCARCERATED TWO
18 MONTHS BEFORE OR, YOU KNOW, A PERIOD OF TIME BEFORE HE WENT
19 TO TRIAL THAT HE WAS IN A GANG WHY WOULD KAMELL EVANS DO
20 THAT?

21 A THERE ARE ALL KIND OF REASONS BUT ---

22 MS BROWN OBJECTION, YOUR HONOR, ---

23 A --- I ASKED ---

24 MS BROWN --- THEN THAT WOULD BE SPECULATION

25 THE COURT WELL, REPEAT THE QUESTION AGAIN

1 Q ARE THERE -- ARE THERE A BROAD RANGE OF REASONS WHY
2 KAMELL EVANS WOULD TELL A, IN FAIRNESS TO THE COURT AND TO
3 MY OPPOSING COUNSEL, THAT'S NOT EXACTLY THE QUESTION I
4 POSED

5 THE COURT I KNOW

6 Q ARE THERE A RANGE OF REASONS AS A SOCIAL WORKER, AND
7 SOMEONE WITH YOUR EXPERIENCE, AND YOUR BACKGROUND AND YOUR
8 TRAINING THAT IN YOUR OPINION THAT KAMELL EVANS WOULD TELL
9 AN ATTORNEY SHORTLY BEFORE TRIAL WHILE INCARCERATED THAT HE
10 WAS IN A GANG? ARE THERE A RANGE OF REASONS WHY THAT WOULD
11 HAPPEN?

12 A THERE ARE A RANGE OF REASONS

13 Q AND WHAT ARE -- WHAT ARE SOME EXAMPLES OF THE TYPES OF
14 REASONS THAT SOMEONE WOULD DO THAT?

15 A FEAR, CONFUSION, ABOUT THE UNCERTAINTY OF BEING IN
16 PRISON, GOING TO PRISON, THEIR OWN SAFETY, A TRAUMATIC EVENT
17 PARTICULARLY IF YOU'RE DEALING WITH SOMEONE WHO'S DEALT WITH
18 A LOT OF TRAUMA IN THEIR LIFE, THEY MAY EMOTIONALLY NOT BE
19 AS CLEAR MINDED AS THEY COULD BE THERE'D BE ALL KINDS OF
20 REASONS I'VE WORKED WITH GANGS

21 Q RIGHT

22 A AND HAVING WORKED WITH GANGS, THEY HAVE CERTAIN SIGNS,
23 HIERARCHIES THEY HAVE ALL KINDS OF THINGS THAT SAY I'M A
24 GANG MEMBER I AM NOT SURPRISED THAT HE SAID IT, BUT ON
25 INVESTIGATION HE DIDN'T KNOW ANY OF THEM FOR THE GANG HE WAS

NICHOLAS COOPER-LEWTER - RECROSS EXAMINATION BY MS BROWN

140

1 SUPPOSED TO BE PART OF SO I'M JUST SAYING THAT PEOPLE SAY
2 IT, ---

3 Q RIGHT

4 A --- BUT IT DOESN'T NECESSARILY MEAN THAT THEY ARE

5 Q AS A MATTER OF FACT ON CROSS EXAMINATION THE STATE WENT
6 OVER ALL THESE PEOPLE WHO KNEW KAMELL DURING TIMES THAT, YOU
7 KNOW, FOOTBALL COACHES THAT SAID ALL THESE GOOD THINGS ABOUT
8 KAMELL IS THAT CONSISTENT OR INCONSISTENT WITH SOMEONE
9 TRULY BEING INVOLVED IN GANG ACTIVITY?

10 A WELL, FIRST OF ALL, GANGS DEMAND LOYALTY AND THEY
11 DEMAND THAT YOU DO WHAT THEY WANT AND SO I HAVE FOUND IT
12 EXTREMELY RARE THAT GANG MEMBER -- GANG MEMBERSHIP AND
13 PLAYING FOOTBALL ON A STATE CHAMPIONSHIP TEAM GO TOGETHER
14 SOMEONE WHO IS SEEKING ATHLETICS AND HOPING TO GO TO THE NFL
15 AND THAT KIND OF THING, PUTTING THEIR EFFORT TOGETHER TO DO
16 THAT WOULD PRECLUDE HANGING OUT, IF YOU WILL, WITH THOSE
17 INDIVIDUALS WHO HAVE PLANS LIKE THAT

18 Q OKAY AND LASTLY WOULD BEING INVOLVED IN A VIOLENT
19 ACT AND HAVING A DRUG CHARGE MAKE ONE A GANG MEMBER?

20 A NO SIR

21 Q THANK YOU VERY MUCH

22 MS BROWN MAY I JUST BRIEFLY, YOUR HONOR?

23 RECROSS EXAMINATION BY MS BROWN

24 Q YOU SAID THAT SOMETIMES PEOPLE SAY THEY RE IN A GANG
25 AND THEY DON'T REALLY MEAN IT?

1 A YES, MA'AM

2 Q SOMETIMES THEY SAY IT AND THEY REALLY MEAN IT THOUGH,
3 DON'T THEY?

4 A YES, MA'AM

5 Q NO FURTHER QUESTIONS THANK YOU

6 THE COURT OKAY THANK YOU, DR COOPER-LEWTER

7 A THANK YOU

8 THE COURT AND WE'LL BE BACK IN SESSION AT 2 30 DOES
9 THAT GIVE EVERYBODY ENOUGH TIME? OR Y'ALL -- YOU SAID YOU
10 HAD SOME SCHEDULING ---

11 MR NETTLES WITH THE EXCEPTION OF THE ONE MORE
12 WITNESS WE'VE GOT, WHICH CAN BE HERE TOMORROW MORNING, WE
13 ARE -- THAT WILL BE OUR LAST WITNESS

14 MR EHLIES WE MAY NOT HAVE ANYTHING FURTHER ---

15 THE COURT OH, OKAY

16 MR EHLIES --- UNTIL MONDAY -- TUESDAY MORNING

17 THE COURT OH, SO YOU'VE ---

18 MR EHLIES UNLESS THEY HAVE SOMETHING THEY WANT TO
19 SANDWICH IN

20 MS BROWN WE DO NOT WE'VE GOT ---

21 THE COURT OH, OKAY SO YOU'RE DONE FOR TODAY?

22 MR NETTLES YES, SIR THESE ARE THE THREE PEOPLE WE
23 HAD

24 THE COURT OKAY I'M WITH YOU I DIDN'T KNOW THAT
25 BUT THAT -- OKAY SO WHAT TIME DO Y'ALL WANT TO START IN

1 THE MORNING?

2 MR EHLIES 9 30 WAS EARLY ENOUGH

3 THE COURT SOME PEOPLE COULDN'T EVEN GET HERE THEN

4 MR EHLIES WILL HE BE LOCAL THIS TIME FOR TOMORROW

5 MORNING? HE JUST ARRIVED IN TIME BUT THEY BROUGHT HIM UP

6 FROM LIEBER

7 THE OFFICER IS HE STAYING TONIGHT?

8 MR EHLIES HE'S STAYING TONIGHT YES, WE HAVE

9 TESTIMONY TOMORROW

10 THE OFFICER NOBODY INFORMED US

11 (WHEREUPON THE COURT AND ATTORNEYS WERE TALKING WITH

12 THE OFFICER)

13 THE COURT ALL RIGHT WE'LL SEE YOU AT 9 30 IN THE

14 MORNING

15 (WHEREUPON COURT WAS IN RECESS AT 1 14 PM)

1 TUESDAY, OCTOBER 13, 2009

2 (WHEREUPON DEFENDANT'S EXHIBITS 47, 48, 49 AND 50 WERE
3 MARKED)

4 THE COURT OKAY YES, SIR, MR NETTLES YOU MAY CALL
5 YOUR FIRST WITNESS

6 MR NETTLES DR BACHMAN

7 DAVID BACHMAN, M D ,

8 BEING DULY SWORN TESTIFIED AS FOLLOWS

9 DIRECT EXAMINATION BY MR NETTLES

10 Q GOOD MORNING

11 A GOOD MORNING

12 Q HOW WAS YOUR RIDE UP FROM CHARLESTON?

13 A IT WAS QUIET, ACTUALLY

14 Q SHARE WITH US WHO YOU ARE

15 A MY NAME IS DR DAVID BACHMAN I'M A NEUROLOGIST ON
16 FACULTY AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA

17 Q OKAY AND SHARE WITH US A LITTLE BIT ABOUT -- WELL,
18 BEFORE WE GET TOO FAR SHARE WITH US WHAT IS A NEUROLOGIST?

19 A A NEUROLOGIST IS A PHYSICIAN THAT SPECIALIZES IN THE
20 DIAGNOSIS AND TREATMENT OF PEOPLE WITH NEUROLOGICAL
21 PROBLEMS, PROBLEMS THAT INVOLVE THE CENTRAL NERVOUS SYSTEM
22 OR THE PERIPHERAL NERVES OR THE MUSCLES

23 Q OKAY NOW -- AND WHAT EDUCATION HAVE YOU RECEIVED IN
24 YOUR ROAD TO BECOMING A NEUROLOGIST?

25 A I HAVE A UNDERGRADUATE DEGREE FROM CORNELL UNIVERSITY

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

144

1 IN ITHACA NEW YORK I HAVE A MEDICAL DEGREE FROM EMORY
2 UNIVERSITY IN ATLANTA I THEN DID TWO YEARS OF INTERNAL
3 MEDICINE AT EMORY, THREE YEARS OF NEUROLOGY AT EMORY ALSO
4 AND THEN A YEAR OF BEHAVIORAL NEUROLOGY FELLOWSHIP AT BOSTON
5 UNIVERSITY

6 Q OKAY AND HAVE YOU PUBLISHED IN ANY OF THESE FIELDS?

7 A OH, YES, I HAVE

8 Q OKAY COULD YOU SHARE WITH US SOME OF THEM?

9 A MY -- I'VE PUBLISHED IN RELATIONSHIP TO PARTICULARLY
10 ALZHEIMER'S DISEASE AND DEMENTIA, ALSO IN RELATIONSHIP TO
11 STROKE AND RELATIONSHIP TO HEAD INJURY

12 MR NETTLES YOUR HONOR, ---

13 Q HAVE YOU TESTIFIED IN COURT OF LAW AS AN EXPERT IN
14 NEUROLOGY AND BEHAVIORAL NEUROLOGY ---

15 A I HAVE, YES

16 Q OKAY APPROXIMATELY HOW MANY TIMES?

17 A I GUESS THIRTY, FORTY TIMES I SUPPOSE

18 Q NOW WHAT DO YOU DO FOR A LIVING NOW? WHERE ARE YOU
19 NOW?

20 A I'M ON FULL-TIME FACULTY AT THE MEDICAL UNIVERSITY IN
21 CHARLESTON

22 Q OKAY AND WHAT DO YOU DO THERE AS -- IN FULL-TIME
23 FACULTY AT THE MEDICAL UNIVERSITY OF CHARLESTON?

24 A I'M CHIEF OF THE DIVISION OF ADULT NEUROLOGY AT THE
25 MEDICAL UNIVERSITY I DO TEACHING, I SEE PATIENTS, I'M

DAVID BACHMAN M D - DIRECT EXAMINATION BY MR NETTLES

145

1 INVOLVED IN RESEARCH AND I ALSO DO ADMINISTRATIVE WORK

2 Q OKAY

3 MR NETTLES NOW AT THIS TIME, YOUR HONOR, THE
4 PETITIONER WOULD PRESENT DR DAVID BACHMAN AS AN EXPERT IN
5 THE FIELD OF NEUROLOGY AND BEHAVIOR NEUROLOGY

6 MR MABRY JUST A FEW QUESTIONS, YOUR HONOR?

7 THE COURT YES, SIR, MR MABRY

8 VOIR DIRE BY MR MABRY

9 Q DR BACHMAN, AS I UNDERSTAND IT A NEUROLOGIST TREATS
10 PEOPLE WITH BRAIN DYSFUNCTION?

11 A CORRECT, YES

12 Q OKAY SO LIKE A FAMILY DOCTOR TREATS PEOPLE WITH EVERY
13 KIND OF AILMENT POSSIBLE, YOU SPECIALIZE IN TREATING PEOPLE
14 WITH BRAIN DYSFUNCTIONS OR PROBLEMS?

15 A YES, THAT WOULD BE TRUE

16 Q OKAY ARE YOU A RADIOLOGIST?

17 A I AM NOT

18 Q ALL RIGHT ARE YOU A NEURORADIOLOGIST?

19 A I AM NOT

20 Q AND WHAT DO YOU HAVE TO DO TO BECOME A RADIOLOGIST OR A
21 NEURORADIOLOGIST IN ADDITION TO WHAT YOU VE DONE?

22 A A RADIOLOGIST WOULD DO A RADIOLOGY RESIDENCY SO AFTER
23 MEDICAL SCHOOL THEY WOULD SPEND I THINK, THREE YEARS DOING
24 RESIDENCY AND THEN NEURORADIOLOGY WOULD REQUIRE AN EXTRA,
25 I THINK, ONE OR TWO YEARS OF TRAINING BEYOND RADIOLOGY

1 RESIDENCY TRAINING

2 Q AND WHAT -- ARE YOU FAMILIAR WITH THE TERM AN
3 INTERVENTIONAL NEURORADIOLOGIST?

4 A YES

5 Q ALL RIGHT AND DO YOU HAVE TO GO TO MORE TRAINING FOR
6 THAT?

7 A YES, YOU DO

8 Q ALL RIGHT HOW MUCH LONGER DO YOU HAVE TO GO FOR THAT?

9 A IT DEPENDS ON THE PROGRAM YOU GO TO IT'S EITHER ONE
10 OR TWO ADDITIONAL YEARS

11 Q OKAY AND YOU'RE NOT AN INTERVENTIONAL
12 NEURORADIOLOGIST, ARE YOU?

13 A NO, I M NOT

14 Q ARE YOU CERTIFIED BY MUSC TO INTERPRET MRI FILMS?

15 A NO

16 Q AND ARE YOU ---

17 A MAY I QUALIFY THAT? THERE -- AS PART OF MY DUTIES IN
18 EXAMINING PATIENTS I DO REVIEW MRI SCAN FILMS BUT IN TERMS
19 OF THE FORMAL INTERPRETATIONS THAT ARE PUT OUT BY THE
20 HOSPITAL, NO I DON'T DO THOSE

21 Q WELL, MY QUESTION WAS ARE YOU CERTIFIED BY MUSC TO
22 INTERPRET MRI FILMS?

23 A AS PART OF MY -- I'M CREDENTIALLED BY THE MEDICAL
24 UNIVERSITY AS PART OF MY DUTIES TO INTERPRET ANY DIAGNOSTIC
25 STUDIES THAT ARE PART OF THE PATIENT'S CARE SO THAT WOULD

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

147

1 INCLUDE EEGs, REPORTS OF EMGs, MRI SCANS, ET CETERA SO AS
2 PART OF MY DUTIES AS A NEUROLOGIST, YES, THAT'S AN EXPECTED
3 PART OF MY ACTIVITY

4 Q ARE YOU BOARD CERTIFIED IN THE INTERPRETATION OF MRI
5 FILMS?

6 A I'M BOARD CERTIFIED IN NEUROLOGY AND THAT DOES
7 INCLUDE THE INTERPRETATION OF MRI SCAN FILMS BUT IT'S A --
8 SO TO THAT EXTENT I WOULD HAVE TO SAY YES BUT I'M NOT A --
9 I'M NOT A RADIOLOGIST, I'M NOT A NEURORADIOLOGIST
10 BUT JUST LIKE AN ORTHOPAEDIST WOULD LOOK AT BONE FILMS
11 TO SEE IF SOMEBODY HAD A FRACTURE, AN ORTHOPAEDIST IS NOT A
12 RADIOLOGIST, BUT AN ORTHOPAEDIST WOULD STILL BE QUALIFIED TO
13 LOOK AT THOSE FILMS LIKEWISE, A NEUROLOGIST WOULD LOOK AT
14 MRI SCANS IN RELATIONSHIP TO THEIR PATIENT, BUT THEY STILL
15 WOULDN'T BE A RADIOLOGIST OR A NEURORADIOLOGIST IN
16 INTERPRETING THOSE FILMS IT'S THE SAME IDEA

17 Q CAN YOU GIVE SOMEBODY AN MRI FILM OR CONDUCT AN MRI
18 STUDY?

19 A I CAN ORDER ONE

20 Q THAT WASN'T MY QUESTION CAN YOU CONDUCT A TEST?

21 A WELL, THE RADIOLOGIST DON'T CONDUCT THE TEST EITHER
22 THE TECHNICIANS DO

23 Q ALL RIGHT WELL, MY QUESTION TO YOU WAS CAN YOU
24 CONDUCT AN MRI TEST?

25 A NO

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR. NETTLES

148

1 Q ALL RIGHT THANK YOU CAN YOU SIZE THE FIELD OF VIEW
2 OR CONDUCT DIAGNOSTIC STUDIES INVOLVING MRI FILMS?

3 A I'M NOT -- I'M NOT SURE WHAT YOU MEAN BY YOUR -- BY
4 THAT QUESTION

5 Q OKAY THAT ANSWERS THE QUESTION

6 MR NETTLES JUDGE, ---

7 Q ARE YOU TRAINED ---

8 MR NETTLES YOUR HONOR, JUST ONE SECOND I WOULD
9 OBJECT TO THAT COMMENT, OKAY? HE ASKED A QUESTION THE
10 WITNESS SAID, I DON T UNDERSTAND YOUR QUESTION I CAN'T
11 ANSWER THAT QUESTION BASED ON THE QUESTION AND THEN THE
12 LAWYER FOR THE STATE SAID, THAT ANSWERS THE QUESTION THAT
13 DOESN'T ANSWER THE QUESTION THE QUESTION WASN'T ASKED IS
14 MY POSITION

15 MR MABRY IF HE DOESN'T -- I'M SORRY IF HE DOESN'T
16 KNOW THE ANSWER THAT S THE ANSWER TO MY QUESTION I'LL
17 MOVE ON

18 THE COURT OKAY WELL, WE DON'T NEED TO EDITORIALIZE
19 ON ---

20 MR MABRY SURE

21 THE COURT --- THE ANSWERS GIVEN BY THE WITNESSES

22 Q DOCTOR, ARE YOU TRAINED IN THE INTERPRETATION OF MRI
23 FILMS?

24 A YES

25 Q OKAY AND HOW WERE YOU TRAINED?

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

149

1 A I WAS TRAINED AS PART OF MY RESIDENCY TRAINING AND
2 ALSO I HAVE ATTENDED OTHER WORKSHOPS OFFERED BY THE AMERICAN
3 ACADEMY OF NEUROLOGY

4 Q AND WHY DO YOU HAVE TO SEND SOMEBODY TO A RADIOLOGIST
5 TO HAVE A MRI FILM CONDUCTED?

6 A I DON'T SEND THEM TO A RADIOLOGIST I SEND THEM TO THE
7 RADIOLOGY SUITE TO HAVE THE MRI SCAN DONE I OFTEN
8 INTERPRET MY OWN STUDIES IN LIGHT OF WHAT I SEE, IN TERMS OF
9 WHAT I KNOW ABOUT THE PATIENT THE HOSPITAL EMPLOYEE
10 RADIOLOGIST WILL DO THE FORMAL READING

11 Q OKAY CAN YOU ISSUE AN MRI REPORT?

12 A NO

13 Q AND WHY IS THAT?

14 A I'M -- THAT'S NOT -- A ROUTINE PART OF MY JOB IS NOT TO
15 ISSUE RADIOLOGY REPORTS

16 Q OKAY WOULD MISC ALLOW YOU TO ISSUE AN MRI REPORT?

17 A I COULD ISSUE A REPORT OF MY OWN INTERPRETATION, BUT
18 IT'S DIFFERENT THAN THE REPORT OF THE DEPARTMENT OF
19 RADIOLOGY, WHICH PERFORMS THE STUDIES THERE ARE MANY
20 NEUROLOGISTS WHO ACTUALLY DO ISSUE AND BILL FOR RADIOLOGY
21 REPORTS, BUT I DON'T

22 Q YOU DON'T? OKAY

23 MR MABRY THAT'S ALL I HAVE, YOUR HONOR

24 THE COURT YES SIR, MR NETTLES

25 MR NETTLES YOUR HONOR, AT THIS TIME WE'D ASK HE BE

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR. NETTLES

150

1 QUALIFIED AS AN EXPERT IN THE FIELD OF NEUROLOGY AND NEURO
2 -- AND BEHAVIOR NEUROLOGY

3 MR MABRY NO OBJECTION TO BEING QUALIFIED AS AN
4 EXPERT IN NEUROLOGY

5 THE COURT OKAY HE'S SO QUALIFIED

6 MR NETTLES AND BEHAVIOR NEUROLOGY?

7 THE COURT WHAT'S THE OBJECTION TO BEHAVIOR NEUROLOGY?

8 MR MABRY NONE, YOUR HONOR

9 THE COURT ALL RIGHT OKAY

10 DIRECT EXAMINATION BY MR. NETTLES CONTINUED

11 Q OKAY NOW AS A PART OF BEING A NEUROLOGIST ARE YOU --
12 LET'S JUST SORT OF CLEAR UP ANY MISCONCEPTIONS, ALL RIGHT
13 IF YOU AS A NEUROLOGIST SOMETIMES DECIDE THAT AN MRI NEEDS
14 TO BE DONE, IS THAT CORRECT?

15 A CORRECT

16 Q ALL RIGHT NOW WHEN YOU DECIDE THAT NEEDS TO BE DONE
17 DO YOU WHEEL THE PATIENT DOWN THERE IN THE CHAIR, DO YOU PUT
18 THEM IN THE MRI MACHINE?

19 A NO, I DO NOT

20 Q OKAY WHAT DO YOU DO?

21 A I FILL OUT A FORM THAT REQUESTS AN MRI SCAN I PUT THE
22 REASONS I WANT THE MRI SCAN AND THEN DEPENDING UPON THE
23 STUDY I'LL SPECIFY WHAT KIND OF SPECIFIC STUDIES I WANT
24 DONE

25 Q OKAY NOW SO THEN THAT IS LIKE A PRESCRIPTION, RIGHT?

DAVID BACHMAN M D - DIRECT EXAMINATION BY MR NETTLES

151

1 A YES

2 Q SORT OF LIKE, RIGHT?

3 A YES

4 Q SO LIKE THAT PERSON THEN GOES TO ESSENTIALLY THE
5 PHARMACY, RIGHT, WHICH IS THE MRI DEPARTMENT?

6 A RIGHT

7 Q AND WHAT HAPPENS THERE?

8 A THE TECHNICIANS LOOK AT MY REQUEST AND THEY THEN
9 PERFORM THAT PARTICULAR STUDY

10 Q SO YOUR REQUEST DIRECTS THE TECHNICIANS TO DO WHAT?

11 A TO DO THE MRI SCAN AND THERE ARE -- THERE'S A LOT OF
12 MANY -- MOST HOSPITAL RADIOLOGY DEPARTMENTS HAVE THE CERTAIN
13 SET PROTOCOL THEY WILL DO THE CERTAIN SET PROTOCOL AND
14 THEN THEY'LL ADD WHATEVER FLOURISHES I'VE ASKED FOR IN
15 ADDITION TO THEIR STANDARD PROTOCOL

16 Q SO THEY ARE OPERATING -- WHOSE DIRECTION ARE THEY
17 OPERATING UNDER AS IT RELATES TO THE ORDER THAT YOU'VE SENT
18 DOWN?

19 A THEY ARE HOPEFULLY FOLLOWING THE SPECIFICATIONS FOR THE
20 SCAN THAT I'VE ASKED FOR

21 Q OKAY SO THEN A SCAN GETS DONE, RIGHT?

22 A RIGHT

23 Q AND WHAT COMES OUT OF THE OTHER SIDE OF THE SCAN OTHER
24 THAN THE PERSON? I MEAN, BUT WHAT GETS PRODUCED FROM THE
25 SCAN?

1 A THERE IS -- THERE IS A -- THERE ARE PICTURES THERE'S
2 A SERIES OF PICTURES WHICH ARE THE MRI SCANS

3 Q ALL RIGHT NOW THOSE PICTURES -- AND THEN WHO DO THOSE
4 PICTURES GO TO?

5 A THE PICTURES GO TWO PLACES ONE IS THE PICTURES GO TO
6 A -- THE RADIOLOGIST, WHO THEN INTERPRET THEM AND GIVE A
7 FORMAL REPORT THEY ALSO GET POSTED ON A SYSTEM THAT WE
8 HAVE SO THE PHYSICIANS ORDERING THOSE SCANS CAN REVIEW THE
9 MRI SCANS THEMSELVES

10 Q OKAY SO IF YOU ORDERED A SCAN, YOU ORDERED A SCAN FOR
11 ANY PERSON, THIS CASE OR ANY OTHER CASE, THE PICTURES, THAT
12 BEING THAT WERE PRODUCED BY THE MRI, WOULD GO TO THE
13 RADIOLOGY DEPARTMENT, RIGHT?

14 A RIGHT

15 Q AND WHO REVIEWS THEM THERE?

16 A WE HAVE A TEAM OF NEURORADIOLOGISTS THAT WOULD REVIEW
17 THEM IF IT'S A BRAIN, IF IT'S A NEUROLOGICAL STUDY

18 Q NOW -- AND THEN YOU GET A COPY OF IT?

19 A I GET A COPY OF THEIR REPORT, BUT I ALSO HAVE ACCESS TO
20 THE FILMS THEMSELVES

21 Q ALL RIGHT NOW IS IT WITHIN YOUR EXPERTISE -- DO YOU
22 REGULARLY, DURING THE COURSE OF YOUR EXPERTISE AS A
23 NEUROLOGIST AND A BEHAVIOR NEUROLOGIST, LOOK AT THOSE FILMS
24 THAT WERE PRODUCED OR THOSE PICTURES THAT WERE PRODUCED BY
25 THE MRI?

DAVID BACHMAN M D - DIRECT EXAMINATION BY MR NETTLES

153

1 A YES AND AGAIN, I THINK THE ANALOGY IS LIKE AN
2 ORTHOPAEDIST IF YOU GO TO THE ORTHOPAEDIST, THEY ORDER
3 NECK FILMS THE RADIOLOGIST IS GOING TO HAVE A FORMAL
4 REPORT OF WHAT THE NECK FILMS SHOW, BUT THE ORTHOPAEDIST
5 WOULD LOOK AT THE NECK FILMS HIM OR HERSELF AND DETERMINE
6 HOW THAT RELATES TO THAT PARTICULAR PATIENT AND LIKEWISE,
7 I'D LOOK AT THE BRAIN MRI SCANS MYSELF TO SEE HOW THEY
8 RELATE TO A PARTICULAR PATIENT I MAY BE SEEING

9 Q OKAY NOW IS THAT SOMETHING THAT JUST YOU DO OR THAT
10 SOMETHING THAT NEUROLOGISTS AND BEHAVIOR NEUROLOGISTS ALL
11 OVER THE COUNTRY DO?

12 A IT'S VERY COMMONLY DONE FOR INSTANCE, WE HAVE, IN OUR
13 STROKE SERVICE, WE HAVE A REGULAR APPOINTMENT EVERY MORNING
14 WHERE OUR STROKE TEAM MEETS WITH THE RADIOLOGISTS TO REVIEW
15 ALL THE FILMS RELATED TO STROKES SO THAT -- THE
16 NEUROLOGISTS MEETING WITH THE NEURORADIOLOGISTS TO GO OVER
17 FILMS, THE NEUROLOGISTS PROVIDE THE CLINICAL BACKGROUND AND
18 INFORMATION, THE RADIOLOGISTS PROVIDE SOME OF THE EXPERTISE
19 THAT THEY BRING AND SO THAT'S THE BEST POSSIBLE PATIENT
20 CARE

21 Q RIGHT RIGHT OKAY SO NOW LET'S TALK FOR A SECOND,
22 LET'S SHIFT HAVING SORT OF LAID THAT BACKGROUND IF WE
23 COULD NOW SHIFT TO WHAT YOU WERE ASKED TO DO IN THIS
24 PARTICULAR CASE

25 A RIGHT

DAVID BACHMAN, M. D. - DIRECT EXAMINATION BY MR. NETTLES

154

1 Q WHICH BEGS THE QUESTION, WHAT WERE YOU ASKED TO DO IN
2 THIS PARTICULAR CASE?

3 A I WAS ASKED TO PERFORM A NEUROLOGICAL AND BEHAVIORAL
4 NEUROLOGICAL EVALUATION OF MR EVANS

5 Q OKAY AND IN PRODUCING A NEUROLOGICAL AND BEHAVIORAL
6 EVALUATION OF DR -- OF MR EVANS, WHAT DOES THAT ENTAIL?

7 A THAT ENTAILED TAKING A MEDICAL HISTORY, A NEUROLOGICAL
8 HISTORY, FAMILY HISTORY, A REVIEW OF SYSTEMS, FINDING OUT
9 WHAT OTHER MEDICAL CONDITIONS HE MAY OR MAY NOT HAVE, DOING
10 A PHYSICAL EXAMINATION AND A NEUROLOGICAL EXAMINATION AND
11 ALSO DOING WHAT WE CALL MENTAL STATUS TESTING

12 Q DID YOU LOOK AT THE -- DID YOU PERFORM ALL THAT ON MR
13 EVANS?

14 A I DID

15 Q OKAY NOW WOULD IT BE FAIR TO SAY THAT -- WOULD IT BE
16 FAIR TO SAY THAT THAT IS SOMEWHAT OF A SCREEN?

17 A YES ANY KIND OF PHYSICAL EXAMINATION YOU'RE
18 SCREENING FOR DISEASE, YOU'RE SCREENING FOR PROBLEMS

19 Q NOW AFTER HAVING REVIEWED THE RECORDS THAT YOU FOUND
20 NECESSARY TO DO THIS AND DOING A -- AND YOU ACTUALLY WENT TO
21 THE PRISON, I BELIEVE, ---

22 A I DID, YES

23 Q --- AND MET WITH MR EVANS, RIGHT?

24 A I DID, YES

25 Q AND AFTER DOING ALL THAT DID YOU -- WHAT DID YOU DECIDE

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

155

1 WAS THE NEXT STEP THAT NEEDED TO BE TAKEN BASED ON WHAT YOU
2 HAD FOUND OUT FROM LOOKING AT THE HISTORY, LOOKING AT THE
3 MEDICAL RECORDS AND INTERVIEWING -- AND TESTING MR EVANS?

4 A WELL, THE RECORDS SHOW THAT MR EVANS HAD EXPOSURE TO
5 LEAD IN CHILDHOOD AND HIS TESTING THAT I DID AT THE PRISON
6 SUGGESTED HE DID HAVE SOME COGNITIVE DIFFICULTIES ON THE
7 EXAMINATION THAT I DID AND I ALSO HAD THE EXAMINATION TO
8 REVIEW THE NEUROPSYCHOLOGICAL TESTING THAT DR JIM EVANS HAD
9 PERFORMED

10 Q RIGHT

11 A AND THAT TESTING SHOWED PARTICULAR DIFFICULTIES IN
12 CERTAIN AREAS OF BRAIN FUNCTION, ESPECIALLY RELATED TO
13 FRONTAL LOBE FUNCTIONING BASED ON THAT AND THE HISTORY OF
14 PREVIOUS EXPOSURE TO LEAD I ORDERED AN MRI SCAN OF THE
15 BRAIN

16 Q GREAT NOW AND WAS THAT -- WAS THE MRI SCAN DONE?

17 A IT WAS, YES

18 Q GREAT NOW SO NOT TO BORE EVERYBODY WITH IT SO WE'RE
19 NOT, BUT THE PROCEDURE THAT WE JUST WENT THROUGH ABOUT YOU
20 ISSUE AN ORDER, HE GETS TAKEN -- THAT WAS DONE?

21 A YES

22 Q OKAY NOW WHEN THAT WAS DONE YOU LOOKED AT -- DID YOU
23 LOOK AT THE FILM?

24 A I DID IN FACT, I WENT DOWN TO NEURORADIOLOGY I HAD
25 ACTUALLY SEVERAL FILMS ON DIFFERENT PATIENTS AND I HAD

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR. NETTLES

156

1 REVIEWED THE FILMS WITH DR ZORAN RUMBOLDT, WHO IS THE ---

2 MR MABRY I'M GOING TO OBJECT TO ANYTHING THAT DR
3 RUMBOLDT SAID THEY CAN CALL HIM AS A WITNESS AND IF HE
4 GETS INTO WHAT HE SAID, I'M GOING TO OBJECT ON THE GROUNDS
5 OF HEARSAY

6 MR NETTLES I'LL REPHRASE THE QUESTION

7 THE COURT OKAY

8 Q DURING THE -- AS AN EXPERT, ---

9 A YES

10 Q --- IN YOUR FIELD AND IN ARRIVING AT YOUR OPINION DO
11 YOU SOMETIMES CONSULT WITH OTHER DOCTORS?

12 A YES

13 Q OKAY AND IS THAT A STANDARD PROCEDURE AS AN EXPERT IN
14 YOUR FIELD AT ARRIVING AT YOUR OPINION?

15 A YES

16 Q OKAY IN ARRIVING AT YOUR OPINION DID YOU CONSULT WITH
17 AN INDIVIDUAL NAMED ZORAN RUMBOLDT?

18 A I DID YES

19 Q OKAY SHARE WITH THE COURT WHO ZORAN RUMBOLDT IS

20 A DR RUMBOLDT IS THE CHIEF OF NEURORADIOLOGY AT MUSC

21 Q HE'S THE CHIEF OF NEURORADIOLOGY?

22 A CORRECT YES

23 Q OKAY SO THAT IS -- OF ALL THE NEURORADIOLOGISTS, HE'S
24 THE CHIEF?

25 A CORRECT

1 Q NOW IS DR RUMBOLDT -- DOES HE REVIEW NEURORADIOLOGICAL
2 SLIDES?

3 A YES

4 Q OKAY DID YOU CONSULT WITH HIM IN THIS?

5 A YES

6 Q WHAT -- AFTER YOU AND HE CONSULTED WHAT DID Y'ALL
7 DECIDE?

8 A WE DECIDED ---

9 MR MABRY I'M GOING TO OBJECT AGAIN TO ANYTHING THAT
10 IS DIRECTLY RELATED TO DR RUMBOLDT THEY CAN CALL HIM AS A
11 WITNESS AND, YOUR HONOR, I'LL TELL THE COURT AS AN
12 OFFICER, OUR EXPERT HAS TALKED TO DR RUMBOLDT AS WELL SO
13 WE'RE GOING TO GET INTO A SWEARING CONTEST ABOUT WHAT DR
14 RUMBOLDT SAID AS FAR AS THIS DEFENDANT, IF WE WANT TO GO DOWN
15 THAT ROAD

16 MR NETTLES OKAY WELL I CAN ADDRESS THE OBJECTION,
17 AND THEN I CAN ADDRESS THE TESTIMONY, YOU KNOW WHICH ONE
18 WOULD YOU LIKE FOR ME TO DO FIRST?

19 THE COURT LET ME HEAR ABOUT THE OBJECTION

20 MR NETTLES ALL RIGHT THE -- DR BACHMAN HAS SAID
21 THAT HE RELIED ON TALKING TO DR ZORAN RUMBOLDT IN ARRIVING
22 AT HIS OPINION I BELIEVE UNDER RULES OF EVIDENCE THAT HE
23 IS ENTITLED TO GIVE US PART OF THE BASIS FOR HIS OPINION
24 AND PART OF THE BASIS FOR HIS OPINION IS HIS CONSULT WITH
25 DR ZORAN RUMBOLDT

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

158

1 MR MABRY I DON'T HAVE A PROBLEM SAYING I CONSULTED
2 WITH HIM AND THAT I DID SUCH AND SUCH BUT IF HE STARTS
3 TESTIFYING TO WHAT DR ZORAN RUMBOLDT FOUND, THEN I DO
4 OBJECT BECAUSE IT IS HEARSAY AND AS I SAID THAT THERE'S
5 GOING TO BE DIFFERENCES OF TESTIMONY ABOUT WHAT DR RUMBOLDT
6 SAID OR HIS INTERPRETATION OF THIS FILM AND THEN WE'LL
7 JUST GET INTO A SWEARING CONTEST ABOUT WHAT DR RUMBOLDT
8 SAID, AND HE CAN COME IN HERE AND TESTIFY AND I WOULD LOVE
9 FOR HIM TO COME

10 THE COURT WELL, HOW DOES IT NOT MEET THE RULE OF 703
11 THOUGH?

12 MR MABRY AS I SAID, I DON'T HAVE ANY OBJECTION TO
13 HIM SAYING I CONSULTED WITH DR RUMBOLDT AND THEN THIS IS
14 WHAT I DECIDED TO DO BUT IF HE GETS INTO WHAT DR RUMBOLDT
15 SAID OR TOLD HIM, I DON'T THINK IT'S ADMISSIBLE I THINK
16 IT'S HEARSAY IT'S OFFERED STRICTLY FOR THE TRUTH OF THE
17 MATTER

18 MR NETTLES WELL, IT IS HEARSAY IT'S HEARSAY BUT
19 IT'S ADMISSIBLE UNDER THE RULES OF EVIDENCE AS AN EXCEPTION
20 BECAUSE A -- BECAUSE A EXPERT RELIED ON IT THE ISSUE ISN'T
21 WHETHER IT'S HEARSAY, IT'S WHETHER IT'S ADMISSIBLE

22 THE COURT BUT WHAT EXACTLY ARE YOU TRYING TO GET HIM
23 TO CONVEY THAT DR RUMBOLDT SAID?

24 MR NETTLES THAT HE TALKED TO DR -- THAT HE THOUGHT
25 IT WAS ABNORMAL, THAT HE ---

1 THE COURT WHO IS HE?

2 MR NETTLES DR BACHMAN

3 THE COURT OKAY

4 MR NETTLES THOUGHT IT WAS ABNORMAL AND HE WENT TO
5 -- BECAUSE THIS IS FAIRLY -- THERE'S A CERTAIN AMOUNT OF
6 SUBJECTIVITY IN THIS AND HE WENT TO DR ZORAN RUMBOLDT AND
7 SAID, WILL YOU PLEASE LOOK AT THIS AND TELL ME WHAT YOU
8 THINK? AND DR ZORAN RUMBOLDT SAID, I THINK IT'S ABNORMAL
9 FOR HIS AGE AND SO THAT HELPED HIM TO FORM THE BASIS OF
10 HIS OPINION

11 MR MABRY I STAND ON MY OBJECTION, YOUR HONOR IT'S
12 AN OPINION ON AN OPINION AND IT'S PATENT HEARSAY IN THIS
13 CASE AND AS HE ADMITTED, THERE'S SO MUCH SUBJECTIVITY IN
14 THIS -- WHAT WE'RE TALKING ABOUT HERE

15 AND AGAIN, WE'RE GOING TO BE IN A SWEARING CONTEST
16 ABOUT WHAT DR RUMBOLDT THINKS AND HE'S NOT HERE TO
17 TESTIFY THEY COULD HAVE CALLED HIM

18 THE COURT WELL,

19 MR MABRY YOUR HONOR, AND I'D POINT OUT RULE 703 SAYS
20 IT'S THE FACTS OR DATA IN A PARTICULAR CASE, NOT AN OPINION
21 OF SOMEONE ELSE

22 THE COURT YEAH, THAT'S WHAT I WAS JUST LOOKING AT I
23 MEAN, HOW DOES ANOTHER DOCTOR'S OPINION CONSTITUTE FACTS OR
24 DATA? THAT'S MORE OF AN OBJECTIVE PROOF OF MATTERS, ISN'T
25 IT?

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

160

1 MR NETTLES JUST ONE SECOND, YOUR HONOR

2 THE COURT ALL RIGHT

3 (PAUSE)

4 MR NETTLES WELL, EXCEPT FOR THE FACT THAT, I MEAN,

5 THERE IS THAT PORTION OF IT THERE'S ALSO THE PART AFTER

6 THE OR IT SAYS, INFERENCES MAY BE AS PERCEIVED OR MADE

7 KNOWN TO THE EXPERT AT OR BEFORE THE HEARING THE TYPE OF

8 -- IF A TYPE ---

9 THE COURT YEAH

10 MR NETTLES --- RELIED UPON BY EXPERTS SO, I MEAN,

11 WE WOULD SUBMIT THAT, YOU KNOW, THE FACT THAT THEY BOTHERED

12 TO PUT I MEAN, IF IT WAS READ UP UNTIL THE ORDER WE MIGHT

13 BE IN A LITTLE BIT DIFFERENT POSITION BUT AFTER WHERE IT

14 SAYS OR INFERENCES MAY BE THOSE PERCEIVED OR MADE KNOWN TO

15 THE EXPERT AT OR BEFORE THE HEARING

16 MR MABRY YOUR HONOR, IF YOU LOOK AT THE RULE, THE OR

17 IS CLEARLY REFERRING BACK TO FACTS OR DATA AND THEN AT THE

18 END -- AT THE END OF THE RULE IT AGAIN SAYS FACTS OR DATA

19 SO IT'S AN INFERENCE FROM THE FACTS OR DATA, NOT AN

20 INFERENCE FROM SOMEBODY'S OPINION

21 THE COURT WELL, I'M STILL HAVING TROUBLE PUTTING THIS

22 INTO CONTEXT I DON'T KNOW EXACTLY WHERE DR BACHMAN IS

23 GOING TO END UP WHY DON'T WE -- WHY DON'T YOU JUST GO

24 AHEAD AND PROFFER THE TESTIMONY ---

25 MR NETTLES THANK YOU

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

161

1 THE COURT --- AND I CAN HAVE A BETTER GRASP OF IT
2 AFTER THAT

3 MR NETTLES OKAY

4 PROFFERED TESTIMONY BY MR NETTLES

5 Q YOU ORDERED AN MRI?

6 A I DID, YES

7 Q THERE WAS AN MRI DONE?

8 A YES

9 Q THERE WAS A SCAN?

10 A YES

11 Q WHEN YOU LOOKED AT THE SCAN, ---

12 A YES

13 Q --- WAS THERE -- DID YOU RECEIVE INFORMATION -- DID YOU
14 HAVE AN OPINION AS TO WHAT YOU THOUGHT THE SCAN WAS?

15 A YES

16 Q AND WHAT WAS YOUR OPINION OF WHAT YOU THOUGHT THE SCAN
17 WAS?

18 MR MABRY I'M GOING TO OBJECT FOR THE RECORD BECAUSE
19 I DON'T THINK HE'S QUALIFIED HE'S TESTIFIED HE'S NOT
20 CERTIFIED BY THE HOSPITAL TO INTERPRET MRI FILMS THAT'S MY
21 OBJECTION TO HIS TESTIMONY

22 THE COURT I UNDERSTAND I OVERRULE THE OBJECTION
23 GO AHEAD

24 Q WHAT WAS YOUR OPINION?

25 A IT WAS MY OPINION THAT THE MRI SCAN SHOWED A MILD

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

162

1 DEGREE OF ATROPHY THAT IS SHRINKAGE OF THE BRAIN GIVEN THE
2 PATIENT'S AGE, WHICH I THINK, WAS THIRTY-TWO AT THE TIME THE
3 MRI SCAN WAS DONE

4 Q OKAY NOW WAS THERE A REPORT WITHIN MUSC THAT WAS
5 CONTRARY TO YOUR OPINION?

6 A YES

7 Q OKAY AND WHAT DID THAT REPORT SAY?

8 A THAT REPORT SAID NORMAL MRI SCAN

9 Q ALL RIGHT NOW SO AT THIS POINT YOU WERE PRESENTED
10 WITH YOUR OPINION, CORRECT?

11 A RIGHT

12 Q AND DO YOU KNOW WHO DID THE OTHER REPORT?

13 A I DO NOT I THINK IT WAS -- I DON T RECALL OFF THE TOP
14 OF MY HEAD I WOULD HAVE TO LOOK

15 Q BUT DO YOU KNOW WHO IT WAS THAT DID THE OTHER REPORT?

16 A YOU ---

17 Q I MEAN WHO IS THE PERSON WHO ACTUALLY MADE THE OTHER
18 OPINION?

19 A THERE WAS ANOTHER NEURORADIOLOGIST IN THE DEPARTMENT

20 Q OKAY SO AT THIS POINT YOU ARE -- YOU HAVE GOT WHAT --
21 YOU VE LOOKED AT THE SLIDE AT WHAT YOU BELIEVE IT TO BE?

22 A RIGHT

23 Q AND THEN YOU HAD THIS OTHER OPINION?

24 A RIGHT

25 Q SO WHAT DID YOU THEN DO?

1 A AT THAT POINT IN TIME I DID GO DOWN AND REVIEW THE
2 FILMS WITH DR RUMBOLDT

3 Q OKAY AND WHY DID YOU GO REVIEW THE FILMS WITH DR
4 RUMBOLDT?

5 A BECAUSE I RESPECT HIS OPINION

6 Q OKAY AND SO AT THAT POINT WERE YOU STILL IN THE
7 PROCESS OF ARRIVING AT YOUR FINAL OPINION?

8 A YES

9 MR MABRY OBJECTION, LEADING

10 Q LET ME -- WHEN YOU WENT ---

11 MR MABRY I'M SORRY, IT'S PROFFER

12 Q WHEN YOU WENT TO GO SEE DR RUMBOLDT DID YOU HAVE A
13 FINAL OPINION? (

14 A AFTER DISCUSSING THE CASE ---

15 Q BEFORE YOU WENT TO GO SEE HIM DID YOU HAVE A FINAL
16 OPINION?

17 A I DID NOT

18 Q OKAY NOW AFTER YOU TALKED WITH DR RUMBOLDT, OKAY,
19 DID YOU HAVE A FINAL OPINION?

20 A YES AFTER TALKING WITH DR RUMBOLDT, HE AND I AGREED
21 IT LOOKED LIKE THERE WAS MORE ATROPHY THAN ONE WOULD EXPECT
22 FOR THE PATIENT'S AGE

23 Q OKAY NOW WHEN YOU -- AFTER YOU AND DR RUMBOLDT ---

24 MR MABRY IS THAT THE END OF THE PROFFER?

25 THE COURT WELL, I DON T KNOW I WAS TRYING TO

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

164

1 DISCERN WHAT, I GUESS, WHAT HIS ULTIMATE OPINION'S GOING TO
2 BE BECAUSE I DON'T -- I'M TRYING TO FIGURE OUT HOW IT FITS
3 INTO THE WHOLE PICTURE, DR RUMBOLDT THAT'S WHAT I DON'T
4 KNOW

5 MR NETTLES I PROMISE I'M GETTING TO IT I MEAN, ---

6 THE COURT I'M NOT ---

7 MR NETTLES I MEAN, ---

8 THE COURT I'M NOT PUSHING YOU

9 MR NETTLES OKAY

10 THE COURT NO, HE ASKED IF THAT WAS THE END OF THE
11 PROFFER, BUT I THINK ---

12 MR MABRY I DIDN'T WANT TO INTERRUPT

13 THE COURT THAT'S FINE

14 MR NETTLES I CAN JUST MAKE -- I'LL JUST LET
15 EVERYBODY KNOW THIS, WHEN I'M DONE I'LL SAY, YOUR HONOR,
16 THAT S THE END OF OUR PROFFER

17 THE COURT OKAY

18 MR NETTLES IS THAT FAIR ENOUGH?

19 THE COURT YEAH

20 MR NETTLES OKAY

21 PROFFERED TESTIMONY BY MR NETTLES CONTINUED

22 Q SO THEN YOU AND DR RUMBOLDT -- AFTER YOU SPOKE WITH
23 DR RUMBOLDT WHAT DID YOU AND DR RUMBOLDT DO?

24 A DR RUMBOLDT DIDN'T DO ANYTHING AT THAT POINT WHAT I
25 DID WAS TO -- THE INTERPRETATION OF ATROPHY, ESPECIALLY MILD

1 ATROPHY, IS A CERTAIN AMOUNT OF SUBJECTIVITY YOU MAY HAVE
2 ONE RADIOLOGIST OR ONE NEUROLOGIST IN GOOD FAITH SAY IT'S
3 NORMAL YOU MAY HAVE ANOTHER NEUROLOGIST OR A RADIOLOGIST
4 IN GOOD FAITH SAY IT'S ABNORMAL SO THE WAY TO TEST THIS IS
5 TO ACTUALLY -- TO SUBMIT IT TO QUANTITATIVE ANALYSIS

6 Q OKAY NOW WE'RE GETTING A LITTLE AHEAD OF OURSELVES
7 THERE WE'LL GET BACK TO THAT

8 A OKAY

9 Q WHEN YOU SHARED WITH DR RUMBOLDT THE AGE -- DID YOU
10 SHARE WITH DR RUMBOLDT ---

11 A RIGHT, THAT'S ON ---

12 Q --- HIS AGE?

13 A --- THE REPORT RIGHT

14 Q OKAY YES WHAT WAS DR RUMBOLDT'S OPINION ABOUT
15 WHETHER KAMELL EVANS HAD BRAIN ATROPHY?

16 A HE AND I DR RUMBOLDT AND I AGREED THAT THERE APPEARED
17 TO BE MORE ATROPHY THAN ONE WOULD EXPECT FOR AGE

18 Q OKAY AND IS THAT IN YOUR OPINION NOW?

19 A YES

20 Q OKAY IS THAT BASED IN PART -- IS YOUR FINAL OPINION
21 NOW THAT DR , I'M SORRY, THAT KAMELL EVANS HAS MORE ATROPHY
22 THAN YOU WOULD EXPECT FROM A PERSON OF HIS AGE? IS THAT
23 OPINION BASED IN PART ON YOUR DISCUSSION WITH DR RUMBOLDT?

24 A IT WAS CONFIRMED BY MY DISCUSSION WITH DR RUMBOLDT,
25 BUT IT'S NOT DEPENDENT ON THAT DISCUSSION

1 Q OKAY

2 MR NETTLES THAT IS THE CONCLUSION OF OUR PROFFER

3 MR MABRY BEING A PROFFER, I MEAN, I -- I DON'T HAVE
4 AN OBJECTION

5 THE COURT ALL RIGHT OKAY

6 (PAUSE)

7 THE COURT WELL, -- AND I DON'T WANT TO GET INTO SOME
8 MEDOPHYSICAL DISCUSSION ABOUT WHAT'S A FACT AND WHAT'S AN
9 OPINION BUT AREN'T YOU JUST REALLY ASKING HIM TO RELAY
10 THAT HIS OPINION WHILE IT MIGHT HAVE BEEN PRODUCED BY DR
11 RUMBOLDT'S OPINION, WAS REALLY JUST CORROBORATED BY WHAT DR
12 RUMBOLDT SAID? I MEAN, YOU DON'T REALLY NEED -- DOESN'T
13 REALLY MAKE ANY DIFFERENCE

14 MR NETTLES WELL, ---

15 THE COURT I MEAN, I CAN -- THAT MAY BE A FLIPPANT WAY
16 TO PUT IT, BUT ---

17 MR NETTLES NO, IT'S NOT I MEAN, AND I HOPE MY
18 ANSWER ISN'T CONSIDERED FLIPPANT, BUT THAT'S ONLY BECAUSE HE
19 WAS RIGHT I MEAN, ---

20 THE COURT WELL, YEAH

21 MR NETTLES I MEAN, HE HAD AN OPINION

22 THE COURT RIGHT

23 MR NETTLES HE SAYS IT WASN'T HIS FINAL OPINION
24 THERE WAS A POINT IN HIS DECISION-MAKING PROCESS WHERE ONE
25 PERSON WHO WAS JUST SORT OF A, YOU KNOW, REGULAR

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR. NETTLES

167

1 NEUROLOGIST, NEURORADIOLOGIST, AND HE DISAGREED SO THEY
2 KIND OF WENT TO THE BOSS AND HE SAID, YOU KNOW, WHAT DO
3 YOU THINK?

4 NOW WE MIGHT BE IN A DIFFERENT POSITION -- LET'S PUT IT
5 TO IT THIS WAY, OKAY? LET'S JUST FLIP IT FOR A SECOND AND
6 LET'S SAY THAT HE HAD GONE UP TO DR RUMBOLDT AND DR
7 RUMBOLDT SAID, NO, YOU KNOW, I THINK THAT'S NORMAL, OKAY?

8 THE COURT YEAH

9 MR NETTLES AND HE HAD STILL COME IN HERE AND SAID, I
10 THINK IT'S ABNORMAL IT WOULD BE ---

11 THE COURT THEN YOU'D BE THE ONE MAKING ---C

12 MR NETTLES ABSOLUTELY

13 THE COURT --- THE 703 OBJECTION

14 MR NETTLES YOU KNOW, WHERE YOU STAND DEPENDS ON
15 WHERE YOU SIT AND I'M SITTING OVER HERE RIGHT NOW, OKAY?
16 AND SO I'M NOT GOING TO, I MEAN, I WILL BE GLAD TO ENGAGE IN
17 PART OF THAT ARGUMENT, BUT I MEAN, WE WOULD CHASE OUR TAILS
18 UNTIL WE TURN TO BUTTER

19 BUT, YOU KNOW, UNDER THE RULES OF EVIDENCE HE RELIED IN
20 THAT AND IT JUST HAPPENS TO BE THAT IT WAS CONSISTENT WITH
21 WHAT HE AGREED GOING INTO

22 THE COURT WELL, I GUESS I NEED TO HEAR MORE ABOUT
23 WHAT RELIANCE HE PUT ON IT, YOU KNOW

24 MR NETTLES THAT'S FAIR

25 THE COURT WALKING DOWN THE HALL AND SAYING, HEY, DO

1 YOU AGREE WITH ME?

2 PROFFERED TESTIMONY BY MR NETTLES CONTINUED

3 Q LET ME ASK YOU THIS LET ME PUT IT THIS WAY THAT'S A
4 FAIR QUESTION OKAY SO THERE'S A POINT IN TIME WHERE YOU
5 HAVE GOTTEN A -- YOU HAVE YOUR OPINION BASED ON YOUR REVIEW
6 NOW THERE IS ANOTHER REVIEW AND OPINION THAT'S OUT THERE,
7 OKAY? AND IT'S DIFFERENT FROM YOURS

8 A RIGHT

9 Q ALL RIGHT? NOW TO YOUR KNOWLEDGE HAD THE PERSON THAT
10 DID THE -- THAT HAD THE OPINION THAT WAS DIFFERENT FROM
11 YOURS, HAD THEY HAD THE OPPORTUNITY TO MEET WITH KAMELL
12 EVANS IN PERSON?

13 A NO, THEY HAD NOT

14 Q OKAY NOW WHEN YOU WENT AND SPOKE WITH DR RUMBOLDT
15 DID Y'ALL BOTH LOOK AT THE SLIDE?

16 A YES

17 Q OKAY DID YOU SHARE WITH DR RUMBOLDT YOUR INFORMATION
18 THAT YOU HAD ABOUT THE AGE OF THE -- OF MR EVANS?

19 A YES

20 Q OKAY NOW DID HE -- WHAT WAS HIS OPINION AS IT RELATED
21 TO WHETHER THERE WAS ATROPHY?

22 A AFTER ---

23 MR MABRY I'M GOING TO OBJECT AT THIS -- ARE WE BACK
24 IN THE PROFFER AT THIS POINT?

25 THE COURT YEAH

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

169

1 MR MABRY OKAY

2 THE COURT YOUR OBJECTION IS PRESERVED

3 MR MABRY OKAY THANK YOU, JUDGE

4 Q GO AHEAD

5 A OKAY AS WE REVIEWED THE FILMS TOGETHER I THOUGHT -- I
6 SAID THAT IT LOOKED TO ME LIKE THERE WAS A LITTLE MORE
7 ATROPHY THAN ONE WOULD EXPECT FOR SOMEBODY WHO'S THIRTY-TWO
8 YEARS OF AGE AND HE AGREED I MEAN I BELIEVE -- THAT'S
9 MY BEST RECOLLECTION OF HOW WE REACHED THAT AGREEMENT

10 Q OKAY NOW LET ME TAKE THIS ONE STEP FURTHER WE
11 HAVEN'T GOT THERE SO IS IT UNCOMMON FOR THE TWO OF Y'ALL
12 -- WAS THIS THE FIRST TIME THE TWO OF Y'ALL LOOKED AT A
13 SLIDE AND DISCUSSED IT?

14 A ABSOLUTELY NOT

15 Q OKAY NOW DOES THE FACT -- DOES THE MERE FACT THAT YOU
16 THOUGHT THERE WAS ATROPHY AND HE DIDN'T, I MEAN, DO YOU
17 ALWAYS TRUMP HIM?

18 A THE PERSON WHO CARES FOR THE PATIENT HAS TO MAKE THE
19 FINAL DECISION AS TO WHAT TREATMENT OR OTHER DIAGNOSTIC
20 STUDIES TO CARRY OUT SO WHETHER HE WOULD HAVE AGREED WITH
21 ME OR NOT, YOU KNOW, I STILL WOULD HAVE THAT OPINION AND
22 WOULD HAVE RECOMMENDED THE FOLLOW-UP STUDIES THAT WERE DONE
23 SO THAT HE AGREED WITH ME HELPED TO INCREASE MY
24 CONFIDENCE THAT I WAS GOING DOWN THE RIGHT TRAIL, BUT
25 ULTIMATELY I HAVE TO TAKE RESPONSIBILITY FOR WHAT OTHER

1 TESTS OR WHAT OTHER CONCLUSIONS TO DRAW

2 Q LET ME ASK YOU THIS IS IT POSSIBLE THAT IN -- THAT HE
3 COULD HAVE LOOKED AT, I MEAN, IS IT POSSIBLE THAT HE COULD
4 HAVE LOOKED AT THE SLIDE AND PERHAPS SHOWN YOU SOMETHING OR
5 ENLIGHTENED YOU TO SOMETHING THAT WOULD HAVE CHANGED YOUR
6 MIND?

7 A YES

8 Q OKAY SO BUT AFTER Y ALL CONSULTED ON IT Y'ALL CAME
9 OUT AND AGREED?

10 A I BELIEVE -- YES

11 Q NOW AFTER THAT HAPPENED -- THE REPORT THAT ORIGINALLY
12 SAID IT WAS ABNORMAL WHAT -- WERE THERE ANY ---

13 MR MABRY OBJECTION THE REPORT DIDN T SAY IT WAS
14 ABNORMAL IT SAID IT WAS NORMAL

15 MR NETTLES THE REPORT SAID IT WAS NORMAL

16 Q WERE THERE THEN ANY CHANGES MADE TO THE REPORT?

17 A SOMETIME -- SOMETIME LATER THERE ACTUALLY WAS --
18 THERE WAS A SECOND MRI SCAN THAT WAS DONE AND THE SECOND
19 MRI SCAN WAS DONE AT THE REQUEST OF DR GUR FROM THE
20 UNIVERSITY OF PENNSYLVANIA WHO HAD BEEN CONSULTED TO DO A
21 QUANTITATIVE ANALYSIS OF THE MRI SCAN

22 MY OPINION, DR RUMBOLDT'S OPINION, ANYBODY'S OPINION
23 LOOKING AT THAT MRI SCAN, THERE'S A CERTAIN DEGREE OF
24 SUBJECTIVITY IS THERE A LITTLE BIT OF ATROPHY? IS THERE
25 NCT ATROPHY?

1 SO THE WAY TO REALLY PUT IT TO THE TEST IS TO DO A
2 COMPUTERIZED QUANTITATIVE ANALYSIS AND IN ORDER TO DO THAT
3 ANALYSIS THE MRI SCAN HAD TO BE RE-DONE BECAUSE THERE'S A
4 CERTAIN PROTOCOL THAT HAS TO BE FOLLOWED ON THE MRI SCAN IN
5 ORDER FOR IT TO BE STATISTICALLY PROCESSED THROUGH DR GUR'S
6 LAB

7 Q OKAY

8 MR MABRY YOUR HONOR, I'M GOING TO OBJECT BECAUSE
9 IT'S NOT RESPONSIVE TO THE QUESTION HE ASKED HIM WAS THE
10 FIRST MRI REPORT CHANGED OR ADDENDED? AND HE DIDN'T ANSWER
11 THE QUESTION THE FIRST REPORT

12 MR NETTLES I APPRECIATE HIS HELP I PROMISE I CAN
13 GET THAT DONE I REALLY DO APPRECIATE HIS HELP, BUT I WILL
14 GET -- I'LL GET THAT DONE

15 THE COURT OKAY

16 Q THE -- AND HERE'S -- AND I APPRECIATE THAT AND WE'LL
17 TALK ABOUT THAT BUT SPECIFICALLY WHAT I WANT TO ASK YOU IS
18 THERE WAS A REPORT THAT SAID IT WAS NORMAL

19 A RIGHT

20 Q OKAY WAS THAT REPORT EVER CHANGED?

21 A NO

22 Q OKAY WAS THERE A SUBSEQUENT MRI DONE?

23 A YES

24 Q OKAY WAS -- WHAT WAS THE READING ON THAT MRI?

25 A THE INITIAL REPORT WAS THAT IT WAS READ AS NORMAL AND

1 THEN IT WAS AMENDED TO SAY -- TO REPORT EXCESSIVE ATROPHY
2 FOR AGE

3 Q OKAY AND WHY WAS IT AMENDED?

4 A BECAUSE OF THE -- BECAUSE THIS WAS A LEGAL CASE AND
5 BECAUSE IT HAD BEEN MY UNDERSTANDING AFTER TALKING TO DR
6 RUMBOLDT THAT IN FACT WAS ABNORMAL, I SENT AN EMAIL TO THE
7 RADIOLOGIST WHO HAD READ THE SECOND REPORT I SAID, YOU
8 KNOW, I HAVE REVIEWED THIS WITH DR RUMBOLDT WE THOUGHT
9 THIS WAS PERHAPS EXCESSIVE ATROPHY FOR AGE WOULD YOU TAKE
10 A LOOK AT THE SCAN AGAIN AND SEE IF YOU AGREE?

11 Q A SCAN IN LIGHT OF WHAT INFORMATION?

12 A THE FACT THAT MYSELF AND DR RUMBOLDT THOUGHT THAT
13 THERE WAS, IN FACT EXCESSIVE ATROPHY FOR THE PATIENT'S AGE

14 Q RIGHT OKAY AND THEN, WHAT WAS THERE AN AMENDMENT
15 MADE?

16 A WELL LET ME -- IF I COULD JUST ---

17 Q SURE

18 A --- FINISH MY RESPONSE MY EMAIL TO THIS RADIOLOGIST
19 SPECIFICALLY SAID, IF YOU AGREE WITH MY INTERPRETATION AND
20 DR RUMBOLDT'S INTERPRETATION DO YOU MIND AMENDING THE
21 REPORT? IF, HOWEVER, YOU STILL BELIEVE THAT IT, IN FACT, IS
22 NORMAL AND THERE IS NO ATROPHY, YOU KNOW, PLEASE LEAVE THE
23 REPORT AS IS

24 Q RIGHT AND WHAT WAS THE RESULT?

25 A THE REPORT WAS AMENDED TO SAY THAT THERE DID APPEAR TO

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR. NETTLES

173

1 BE MILD ATROPHY FOR AGE

2 MR NETTLES THAT CONCLUDES OUR PROFFER I BELIEVE WE
3 WERE STILL IN THE PROFFER STAGE

4 THE COURT DO YOU HAVE ANY QUESTIONS?

5 MR MABRY NO, SIR

6 THE COURT ALL RIGHT

7 MR MABRY I'LL SAVE MINE FOR ---

8 THE COURT SO I'M CONFUSED NOW

9 MR NETTLES IF YOU -- IF YOU'D LIKE TO ASK SOME
10 QUESTIONS YOU CERTAINLY CAN

11 THE COURT WELL WHO AMENDED THE REPORT?

12 A THE PERSON WHO AMENDED THE REPORT WAS THE RADIOLOGIST
13 WHO DID THE FORMAL READING, WHO ISSUED THE FORMAL WRITTEN
14 REPORT

15 THE COURT AT MUSC?

16 A AT MUSC, YES, SIR

17 MR MABRY I DO HAVE ONE

18 THE COURT YEAH GO AHEAD SURE

19 PROFFERED TESTIMONY BY MR MABRY

20 Q DOCTOR, YOU HAD TESTIFIED JUST A MOMENT AGO UNDER OATH
21 YOU WERE GOING TO SEND THIS MRI REPORT TO DR GUR IN
22 PENNSYLVANIA REGARDLESS OF WHAT DR RUMBOLDT TOLD YOU, IS
23 THAT CORRECT?

24 A THE SCAN ITSELF, NOT THE REPORT

25 Q THE SCAN?

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

174

1 A YES UH-HUH (AFFIRMATIVE) YES

2 Q OKAY SO REGARDLESS OF WHAT DR RUMBOLDT TOLD YOU,
3 WHAT YOU'RE RELATING HERE HE TOLD YOU, YOU WERE GOING TO
4 SEND IT ---

5 A YEAH MY MEETING WITH DR RUMBOLDT SORT OF INCREASED
6 MY CONFIDENCE IN MY READING BUT, YES, WE WERE GOING TO GO
7 AHEAD AND DO THAT AS -- IN ANY EVENT

8 MR MABRY NO FURTHER QUESTIONS

9 (PAUSE)

10 THE COURT ALL RIGHT IT SEEMS TO ME THAT THERE ARE
11 TWO WAYS OF LOOKING AT THE ISSUE ONE IS THAT WHAT DR
12 BACHMAN DID IN CONSULTING WITH DR RUMBOLDT WAS ESSENTIALLY
13 SEEKING A SECOND OPINION

14 THE OTHER WAY OF LOOKING AT IT IS, FROM WHAT I JUST
15 HEARD IS THAT THE CORRESPONDENCE TO THE MUSC OFFICIAL WHO
16 AMENDED THE REPORT REFLECTED THAT -- IT'S ESSENTIALLY A
17 JOINT OPINION OF BOTH HE AND DR RUMBOLDT AND I'M NOT SO
18 SURE THAT SOMEONE WHO ISSUES AN OPINION JOINING SOMEONE
19 ELSE'S OPINION CAN'T TESTIFY ABOUT THEIR CONVERSATIONS WITH
20 THAT OTHER PERSON

21 BUT LOOKING AT IT IN THE TOTAL CONTEXT AND BASED ON THE
22 PROFFER I'M GOING TO SUSTAIN THE STATE'S OBJECTION TO THE
23 ACTUAL CONVERSATIONS WITH DR RUMBOLDT I DON'T THINK THAT
24 THEY ARE FACTS OR DATA WITHIN THE MEANING OF RULE 703

25 MY UNDERSTANDING OF TESTIMONY THAT'S BEEN PROFFERED IS

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

175

1 THAT HE'S ESSENTIALLY TESTIFYING ABOUT WHAT DR RUMBOLDT'S
2 OPINION WAS, WHICH HAPPENED TO COINCIDE WITH HIS OWN, WHICH
3 INCIDENTALLY DOESN'T AFFECT THE WEIGHT OR ADMISSIBILITY OF
4 DR BACHMAN'S OPINION, WHICH CAN STAND ON ITS OWN SO I'M
5 GOING TO SUSTAIN THE STATE'S OBJECTION

6 MR MABRY THANK YOU, YOUR HONOR

7 MR NETTLES THANK YOU YOUR HONOR

8 DIRECT EXAMINATION BY MR NETTLES CONTINUED

9 Q OKAY NOW SO WAS THERE A SECOND MRI DONE?

10 A YES

11 Q OKAY NOW -- AND IN THAT -- WHY WAS THERE A SECOND MRI
12 DONE?

13 A THE SECOND MRI SCAN WAS DONE SO THAT IT COULD BE
14 PROCESSED THROUGH A CERTAIN PROTOCOL SO THAT THE DATA COULD
15 BE GIVEN TO DR GUR AT THE UNIVERSITY OF PENNSYLVANIA FOR
16 QUANTITATIVE COMPUTERIZED ANALYSIS

17 Q OKAY SO WAS THERE ANY OTHER REASON THERE WERE TWO
18 MRIs DONE?

19 A NO

20 Q OKAY NOW IN YOUR FIELD AS A NEUROLOGIST AND A
21 BEHAVIOR NEUROLOGIST WHAT IS THE IMPORTANCE OF THE RESULTS
22 OF A QUANTITATIVE MRI?

23 A THERE ARE A NUMBER OF ASPECTS OF READING AN MRI SCAN OR
24 ANY KIND OF X-RAY IMAGE THAT'S SUBJECTIVE SO FOR
25 INSTANCE, LET'S SAY YOU'RE LOOKING AT BONE FILMS AND YOU'RE

1 TRYING TO FIGURE WHETHER SOMEONE HAS OSTEOPOROSIS, THINNING
2 OF THE BONES YOU COULD SAY, WELL, I THINK THERE'S A LITTLE
3 THINNING I THINK THERE'S NOT BUT THERE ARE CERTAIN MORE
4 SPECIFIC QUANTITATIVE TESTS THAT WILL ACTUALLY MEASURE THE
5 DENSITY OF THE BONE IN A QUANTITATIVE COMPUTERIZED FASHION

6 SAME THING WITH TRYING TO DETERMINE ATROPHY OF THE
7 BRAIN IS THERE A LITTLE MORE SHRINKAGE? IS THERE NOT?
8 THERE'S A CERTAIN AMOUNT OF SUBJECTIVITY IN THAT AND AS I
9 SAID BEFORE, YOU COULD HAVE, YOU KNOW, GOOD PEOPLE, WELL
10 TRAINED WHO COULD HAVE A DIFFERENCE OF OPINION ABOUT WHETHER
11 THERE IS ATROPHY OR NOT

12 HAVING A COMPUTERIZED QUANTITATIVE ANALYSIS ENABLES YOU
13 TO SPECIFICALLY MEASURE AND COMPARE TO A CONTROLLED DATA
14 BASE WHETHER THERE REALLY IS ATROPHY PRESENT OR NOT

15 Q OKAY AND SO THE SECOND MRI WAS DONE AND THAT DATA
16 WAS SENT TO WHO?

17 A DR GUR, WHO IS AN EXPERT IN QUANTITATIVE MRI SCAN
18 ANALYSIS AT THE UNIVERSITY OF PENNSYLVANIA

19 Q AND THEN DID YOU RECEIVE A REPORT FROM DR GUR?

20 A I DID, YES

21 Q OKAY DID DR GUR -- DID YOU AND DR GUR CONCUR?

22 A YES

23 Q OKAY NOW LET ME ASK YOU THIS THEN AFTER HAVING MET
24 WITH HIM, MET WITH MR EVANS, REVIEWED ALL THE INFORMATION,
25 TALKED TO ZORAN RUMBOLDT, TALKED TO THE ---

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NFFTLES

177

1 MR MABRY I'M GOING TO OBJECT TO THAT

2 THE COURT I UNDERSTAND

3 MR MABRY YOU ALREADY RULED ON THAT

4 Q BUT -- I'LL ASK YOU THIS DID YOU TALK TO DR
5 RUMBOLDT?

6 A YES

7 Q OKAY AND YOU TALKED TO -- LET'S TALK ABOUT WHAT ALL
8 YOU DID YOU REVIEWED RECORDS?

9 A YES

10 Q YOU MET WITH EVANS?

11 A YES

12 Q YOU TALKED TO ZORAN RUMBOLDT?

13 A YES

14 Q YOU TALKED TO THE RADIOLOGIST WHO -- THE
15 NEURORADIOLOGIST WHO -- YOU SENT THE NEURORADIOLOGIST AN
16 EMAIL?

17 A YES

18 Q OKAY YOU SENT -- YOU DID A SECOND MRI?

19 A RIGHT

20 Q YOU SENT THOSE RESULTS OFF TO DR GUR?

21 A YES

22 Q OKAY YOU RECEIVED DR GUR'S RESULTS?

23 A YES

24 Q YOU LOOKED AT DR GUR'S RESULTS?

25 A YES

DAVID BACHMAN, M D - DIRECT EXAMINATION BY MR NETTLES

178

1 Q WHAT IS YOUR OPINION TO A REASONABLE DEGREE OF MEDICAL
2 CERTAINTY AS TO THE DIAGNOSIS OF KAMELL EVANS?

3 MR MABRY I'M GOING TO OBJECT TO THE EXTENT HE'S
4 RELYING ON HIS CONVERSATION WITH DR RUMBOLDT HE'S TRYING
5 TO GET AROUND THE COURT'S RULING NOW IF HE WANTS TO
6 EXCLUDE THAT PART, THAT'S FINE I DON'T HAVE ANY OBJECTION

7 THE COURT WELL, I MEAN, I'VE ALREADY EXCLUDED WHAT
8 DR RUMBOLDT SAID IF HE WANTS TO SAY HE TALKED TO HIM
9 WITHOUT IT COMING INTO EVIDENCE WHAT HE SAID, I DON'T -- I
10 DON T HAVE ANY OBJECTION TO THAT SEEING THIS IS A NON-JURY
11 ---

12 MR MABRY YES, SIR

13 THE COURT --- PROCEEDING

14 MR NETTLES THANK YOU, YOJR HONOR

15 Q AND YOUR OPINION IS?

16 A BASED ON MY EXAMINATION, DR EVANS' EXAMINATION,
17 THERE'S EVIDENCE OF COGNITIVE DYSFUNCTION IN MR EVANS'
18 MENTAL ABILITIES AND THAT THIS IS FURTHER STRENGTHENED BY --
19 THIS OPINION IS FURTHER STRENGTHENED BY THE FACT THERE'S
20 EVIDENCE OF ATROPHY, THERE'S SHRINKAGE OF THE BRAIN, TISSUE
21 TO AN ABNORMAL DEGREE, EVIDENCE BOTH ON MRI SCAN ON
22 QUANTITATIVE TESTING

23 THE MOST LIKELY CAUSE OF THAT IS EXPOSURE TO LEAD AS A
24 CHILD, ALTHOUGH THERE S NO ACTUAL DEFINITIVE WAY TO PROVE
25 THAT THAT S THE CAUSE OF THE COGNITIVE DYSFUNCTION, BUT IT

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

179

1 SEEMS THE MOST LIKELY CAUSE

2 Q OKAY I BELIEVE I HAVE NO FURTHER QUESTIONS THANK

3 YOU

4 THE COURT CROSS EXAMINATION

5 MR MABRY YES, SIR

6 CROSS EXAMINATION BY MR MABRY

7 Q DR BACHMAN, TELL THE COURT ABOUT YOUR RELATIONSHIP

8 WITH THE CENTER FOR CAPITAL LITIGATION

9 A THE CENTER FOR CAPITAL LITIGATION?

10 Q UM-HUM (AFFIRMATIVE)

11 A I HAVE NO FORMAL RELATIONSHIP WITH THE CENTER FOR

12 CAPITAL LITIGATION

13 Q ALL RIGHT HAVE YOU EVER TESTIFIED FOR THE CENTER FOR

14 CAPITAL LITIGATION BEFORE?

15 A I'VE HAD INDIVIDUAL ATTORNEYS WHO'VE ASKED ME TO

16 TESTIFY, IF THAT'S WHAT YOU MEAN AND SOME OF WHOM HAVE BEEN

17 INVOLVED WITH THE CENTER FOR CAPITAL LITIGATION BUT I HAVE

18 NO FORMAL RELATIONSHIP WITH THAT ORGANIZATION

19 Q OKAY WELL, LET'S TALK ABOUT THE LAWYERS THAT YOU'VE

20 TESTIFIED FOR WHO ARE ASSOCIATED WITH THE CENTER FOR CAPITAL

21 LITIGATION WHO ARE THOSE LAWYERS?

22 A I'M ASSUMING THAT YOU'RE TALKING ABOUT MR JOHN BLUME

23 Q OKAY THAT'S ONE

24 A DRUCY GLASS

25 Q OKAY

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

180

1 A AND THEN THERE WAS A DAVID BRUCK THAT WAS SOME YEARS
2 AGO

3 Q OKAY

4 A WHETHER THERE ARE OTHER ATTORNEYS I'VE WORKED WITH IN
5 THE PAST ASSOCIATED WITH THAT PARTICULAR ORGANIZATION, I
6 CAN'T TELL YOU BECAUSE I DON'T KNOW WHO BELONGS TO THAT
7 ORGANIZATION

8 Q HOW ABOUT JEFF BLOOME?

9 A I DON T BELIEVE SO

10 Q HOW ABOUT MR NETTLES?

11 A YES

12 Q OKAY YOU'VE TESTIFIED IN SEVERAL CAPITAL TRIALS FOR
13 DEFENSE ATTORNEYS EITHER ASSOCIATED WITH OR NOT ASSOCIATED
14 WITH THE CENTER FOR CAPITAL LITIGATION?

15 A OVER THE YEARS I HAVE, YES

16 Q OKAY WHY DON'T YOU TELL US THE NAMES OF THOSE TRIALS
17 THAT YOU'VE TESTIFIED IN FOR THEM

18 A MY MEMORY FOR NAMES IS PRETTY POOR SO I WOULD BE HARD
19 PRESSED TO GIVE YOU SPECIFIC NAMES TO BE HONEST WITH YOU I
20 KNOW I TESTIFIED AT A TRIAL REGARDING ROBERT SOUTH, WHO
21 SUBSEQUENTLY WAS EXECUTED

22 Q ALL RIGHT

23 A ALSO I TESTIFIED RELATING TO A CASE, AND I APOLOGIZE, I
24 DON'T REMEMBER THE NAME IT HAD TO DO WITH A CASE REGARDING
25 A MENTAL RETARDATION AND WHETHER MENTAL RETARDATION WAS

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

181

1 PRESENT IN THIS PARTICULAR INDIVIDUAL I APOLOGIZE, I DON'T
2 REMEMBER THE NAME OF THAT PARTICULAR CASE

3 I'VE ALSO -- I'VE TESTIFIED FOR A NUMBER OF TRIALS OVER
4 THE YEARS, BUT I'M AFRAID -- AS I SAID, MY MEMORY FOR NAMES
5 IS NOT VERY GOOD

6 Q WELL WHY DON'T YOU GIVE ME SOME NUMBERS HOW MANY
7 HAVE YOU TESTIFIED IN?

8 A HOW MANY DIFFERENT TRIALS?

9 Q CAPITAL TRIALS, DEATH PENALTY CASES

10 A PROBABLY OVER THE LAST FIFTEEN TO TWENTY YEARS,

11 PROBABLY A DOZEN, I GUESS

12 Q OKAY THOMAS DAVIS DO YOU REMEMBER THAT ONE?

13 A I DO NOT

14 Q OKAY JONATHAN BINNEY, WERE YOU INVOLVED IN THAT CASE?

15 A I HONESTLY DON'T RECALL I WOULD HAVE TO ---

16 Q DO YOU REMEMBER A MR BLOOME SENDING MR BINNEY TO YOU
17 TO GET AN MRI SCAN DONE?

18 A IT'S QUITE POSSIBLE, YES

19 Q OKAY ROBERT LEE NANCE, DID YOU TESTIFY IN THAT CASE?

20 A I DON T RECALL

21 Q HERBERT LEE HUGHES, DO YOU REMEMBER THAT ONE?

22 A I DO NOT RECALL

23 Q THERE HAVE BEEN SEVERAL, CORRECT?

24 A AS I SAID, I'VE BEEN IN PROBABLY TWELVE OR MORE, YES

25 Q ALL RIGHT AND WHEN YOU TESTIFIED IN THESE CASES WERE

1 YOU COMPENSATED FOR YOUR TESTIMONY?

2 A I WAS COMPENSATED FOR MY TIME, YES

3 Q FOR YOUR WORK?

4 A FOR MY TIME, YES

5 Q HAVE YOU EVER TESTIFIED FOR THE ATTORNEY GENERAL'S
6 OFFICE IN A CAPITAL CASE?

7 A NO, I DON'T BELIEVE I HAVE

8 Q OKAY NOW YOU TOLD US YOU'RE A NEUROLOGIST, RIGHT?

9 A CORRECT YES UM-HUM (AFFIRMATIVE)

10 Q CHECKING FOR BRAIN DYSFUNCTION?

11 A RIGHT

12 Q AND YOU'RE NOT A NEURORADIOLOGIST?

13 A CORRECT, YES

14 Q YOU'RE NOT A RADIOLOGIST?

15 A CORRECT

16 Q AND I BELIEVE YOU SAID ON OCCASION YOU WOULD CONSULT
17 WITH -- YOU SAID SOMETHING ABOUT THE BOARDS, THAT YOU WOULD
18 MEET -- MAYBE I MISUNDERSTOOD, BUT YOU AS A NEUROLOGIST
19 WOULD CONSULT WITH A NEURORADIOLOGIST IS THAT ---

20 A YEAH, FREQUENTLY

21 Q OKAY AND, IN FACT, YOU SEND PEOPLE TO HAVE AN MRI
22 DONE BECAUSE YOU CAN'T RUN IT YOURSELF, IS THAT CORRECT?

23 A I DON'T RUN MRI SCANS, THAT'S CORRECT

24 Q AND WHY DON T YOU RUN THEM?

25 A THERE ARE NEJROLOGISTS WHO RUN THEIR OWN MRI SCANS, BUT

1 I DON'T

2 Q IS THERE A REASON YOU DON T?

3 A BECAUSE AT THE MEDICAL UNIVERSITY WE HAVE A SYSTEM IN
4 PLACE THAT RUNS THEM FOR US SO I DON'T NEED TO

5 Q OKAY BUT YOU COULDN'T RUN THEM ANYWAY, COULD YOU?

6 A WELL, TECHNICIANS RUN MRI SCANS, TO BE HONEST WITH YOU
7 THERE ARE NEUROLOGISTS THAT HAVE -- MRI SCANNERS EMPLOY
8 THEIR OWN TECHNICIANS SO THEORETICALLY I COULD, BUT I
9 DON'T

10 Q YOU DON'T YOU CAN'T ISSUE AN MRI REPORT, CAN YOU?

11 A NOT -- GENERALLY I DO NOT ISSUE MRI SCAN REPORTS,
12 THAT'S TRUE

13 Q YOU CAN'T ISSUE ONE THROUGH MUSC, CAN YOU?

14 A CORRECT THAT S CORRECT

15 Q TELL THE COURT WHAT'S THE MOST SENSITIVE TEST FOR THE
16 LOSS OF NEURON FUNCTION IN THE BRAIN?

17 A I DON'T KNOW THAT THERE IS A CONSENSUS AGREEMENT ON
18 THAT, TO BE HONEST WITH YOU IN RESEARCH STUDIES THERE ARE
19 A VARIETY OF DIFFERENT TECHNIQUES THAT ARE USED

20 WE USE PET SCANS, WHICH IS POSITRON EMISSION TOMOGRAPHY
21 SCANS THAT LOOK AT REGIONAL METABOLIC ACTIVITY OF THE BRAIN
22 VARIOUS QUANTITATIVE MRI SCAN TECHNIQUES SUCH AS DR GUR HAS
23 USED, HAS ALSO BEEN USED TO EXAMINE PATIENTS FOR ALZHEIMER'S
24 DISEASE AND OTHER KINDS OF DISORDERS

25 THERE ARE OTHER KINDS OF MRI SCAN TECHNIQUES, SOMETHING

1 CALLED DIFFUSION TENSER IMAGING, FOR INSTANCE, THAT'S USED
2 THERE'S A NEW TECHNIQUE CALLED MAGNETIC
3 ELECTROENCEPHALOGRAPHY THAT'S USED SO I'M NOT SURE THAT
4 YOU WOULD GET A CENSUS AGREEMENT AS TO WHAT IS THE MOST
5 SENSITIVE TECHNIQUE

6 Q WELL, I'M ASKING YOUR OPINION WHICH ONE'S THE MOST
7 SENSITIVE?

8 A IT DEPENDS ON THE SPECIFIC TYPE OF DISORDER YOU'RE
9 TRYING TO STUDY AND THE QUESTION YOU'RE TRYING TO ANSWER

10 Q OKAY DID YOU ORDER A PET SCAN IN THIS CASE?

11 A NO, I DID NOT

12 Q DID YOU ORDER ANY OF THESE OTHER SCANS BESIDES AN MRI?

13 A I DID REQUEST DOCTOR GUR'S QUANTITATIVE MRI SCAN, YES

14 Q WELL, LET'S TALK ABOUT DR GUR HE'S PROFESSOR GUR AT
15 THE UNIVERSITY OF PENNSYLVANIA, IS THAT CORRECT?

16 A YES, THAT'S CORRECT

17 Q IS HE A MEDICAL DOCTOR?

18 A NO, HE'S A PHD

19 Q PHD IN WHAT?

20 A I DON'T KNOW

21 Q DID HE GO TO MEDICAL SCHOOL?

22 A NO, HE'S A PHD

23 Q ALL RIGHT DID HE -- IS HE A RADIOLOGIST OR A
24 NEURORADIOLOGIST?

25 A NO, HE'S NOT

1 Q IS HE A NEUROLOGIST?

2 A NO, HE'S NOT

3 Q SO YOU DIDN'T ORDER A PET SCAN, IS THAT CORRECT?

4 A CORRECT RIGHT

5 Q NOW AS I UNDERSTAND IT, CAPITAL LITIGATION OR THE
6 DEFENSE ATTORNEY REFERS SOMEBODY TO YOU FOR THE PURPOSE OF
7 HELPING THEM WITH THEIR CASE IS THAT CORRECT?

8 A MY UNDERSTANDING IS THAT THERE'S SOME SUSPICION THAT
9 THE PATIENT HAS SOME SORT OF COGNITIVE OR NEUROLOGICAL
10 PROBLEM, THAT THEY ASK ME TO SEE THE CASE USUALLY THE
11 PATIENT HAS HAD NEUROPSYCHOLOGICAL TESTING OR SOME OTHER
12 TESTING THAT POINTS TOWARDS A NEUROLOGICAL PROBLEM

13 Q WELL, WHEN THEY SEND A CLIENT TO YOU YOU KNOW THEY'RE
14 LOOKING FOR SOMETHING HOPEFULLY THAT WILL HELP THEM WITH
15 THEIR CASE, CORRECT?

16 A I'M ASSUMING SO, YES

17 Q OKAY AND YOU KNOW YOU'RE GOING TO BE COMPENSATED FOR
18 YOUR WORK IN THE CASE, CORRECT?

19 A COMPENSATED FOR MY TIME, YES

20 Q AND AS YOU SAID -- WERE YOU COMPENSATED IN THESE OTHER
21 CASES THAT YOU'VE TESTIFIED IN?

22 A YES, I BELIEVE SO

23 Q DO YOU HAVE ANY IDEA HOW MUCH MONEY YOU'VE BEEN
24 COMPENSATED FOR THESE TWELVE CASES, CAPITAL CASES?

25 A OVER THE YEARS? NO, I COULDN'T SAY

1 Q WOULD IT BE IN THE THOUSANDS OF DOLLARS?

2 A YES, IT WOULD BE

3 Q AND WHEN THIS CAME -- WHEN THIS CASE CAME TO YOU OR ANY
4 OF THESE CASES WHERE THE LAWYERS SEND YOU, YOU KNOW IT'S A
5 LEGAL CASE, CORRECT?

6 A OH, YES UM-HUM (AFFIRMATIVE)

7 Q THEY'RE NOT SENDING YOU THERE FOR YOU TO TREAT THEM?

8 A THAT'S TRUE THAT'S CORRECT

9 Q AND YOU KNOW THAT AT SOME POINT IN TIME THEY RE
10 PROBABLY GOING TO BE ASKING YOU TO PRESENT TESTIMONY IN
11 COURT?

12 A OFTENTIMES, YES

13 Q BUT YOU IN TURN REFER THEM TO SOMEONE ELSE FOR AN MRI
14 OR A PET SCAN OR SOMETHING OF THAT NATURE, IS THAT CORRECT?

15 A I REFER THEM TO THE -- USUALLY WE TRY TO HAVE THE
16 IMAGING DONE AT MUSC SO, ---

17 Q RIGHT

18 A --- YES

19 Q SO YOU REFER THEM TO THE RADIOLOGY DEPARTMENT AT MUSC?

20 A CORRECT YES, THAT'S TRUE

21 Q NOW CAN YOU TELL ME -- AND, IN FACT, YOU REFER THEM TO
22 A SPECIALIST LIKE DR TURK OR DR AGARWAL AT MUSC?

23 A THOSE ARE ACTUALLY GENTLEMEN THAT DO

24 NEUROINTERVENTIONAL TYPE WORK FOR THE MOST PART SO THEY

25 ARE -- IF I HAD SOMEBODY WHO I WANTED TREATED, I WOULD BE

1 MORE LIKELY TO REFER TO THEM MORE SO THAN FOR DIAGNOSTIC
2 STUDIES

3 Q WELL, IS DR TURK AND DR AGARWAL NEURORADIOLOGISTS?

4 A RIGHT BUT THEY RE PRIMARILY -- DR TURK PARTICULARLY
5 IS CHIEF OF NEUROINTERVENTIONAL MEDICINE SO I HAVE
6 REFERRED PATIENTS TO DR TURK FOR THAT -- FOR THAT PURPOSE

7 Q WELL, I'M GOING TO GET TO THAT SO MY QUESTION IS IS
8 DR TURK AND DR AGARWAL ARE THEY BOTH NEURORADIOLOGISTS?

9 A YES I BELIEVE THEY ARE

10 Q OKAY AND THEY'RE CERTIFIED BY MUSC TO INTERPRET MRI
11 FILMS OF THE BRAIN

12 A THEY ARE CREDENTIALAED TO DO SO, YES

13 Q AND, IN FACT, THEY'VE GONE TO FURTHER TRAINING EVEN
14 BEYOND THE NEURORADIOLOGIST TO BECOME AN INTERVENTIONAL
15 NEURORADIOLOGIST

16 A THAT IS TRUE YES

17 Q NOW MR EVANS YOU SENT FOR AN MRI IN SEPTEMBER OF 2008?

18 A CORRECT YES

19 Q IS THAT CORRECT? AND THAT MRI WAS CONDUCTED BY DR
20 TURK AND DR AGARWAL?

21 A YES I BELIEVE SO, YES

22 Q BOTH OF THEM INTERVENTIONAL NEURORADIOLOGISTS?

23 A YES

24 Q THEY RE MORE CREDENTIALAED THAN YOU ARE IN THE
25 INTERPRETATION OF MRI FILMS, AM I CORRECT?

1 A IN THAT RESPECT, YES

2 MR NETTLES NO OBJECTION I APOLOGIZE FOR NOT MOVING

3 IT IN MYSELF THANK YOU

4 (WHEREUPON DEFENDANT'S EXHIBIT 47 WAS ADMITTED INTO
5 EVIDENCE)

6 Q LET ME SHOW YOU WHAT'S BEEN MARKED DEFENDANT'S EXHIBIT
7 NUMBER 47 AND IF YOU COULD, TELL US WHAT THAT IS

8 A IT'S A REPORT OF AN MRI SCAN FROM SEPTEMBER 12TH, 2008

9 Q ALL RIGHT NOW WHEN YOU SEND THEM OVER THERE FOR AN
10 MRI STUDY TO BE DONE WHAT KIND OF HISTORY DO YOU GIVE THEM?

11 A THE RADIOLOGIST?

12 Q UM-HUM (AFFIRMATIVE)

13 A THEY USUALLY GET ONE OR TWO SENTENCES DESCRIBING THE
14 CASE

15 Q OKAY IF YOU WOULD TELL JUDGE HILL WHAT WAS THE
16 HISTORY THAT THEY WERE GIVEN BEFORE THE MRI STUDY WAS RUN

17 A IT SAYS, INDICATION, LEGAL CASE, SIGNIFICANT LEARNING
18 DISABILITY WITH KNOWN EXPOSURE TO LEAD

19 Q ALL RIGHT SO THESE TWO NEURORADIOLOGISTS KNEW BEFORE
20 THEY RAN THE FILM THAT YOU HAD A HISTORY OF LEAD POISONING
21 AND COGNITIVE PROBLEMS?

22 A RIGHT

23 Q ALLEGEDLY, CORRECT?

24 A RIGHT UM-HUM (AFFIRMATIVE)

25 Q ALL RIGHT AND AFTER THEY RAN THE FILMS THEY LOOKED AT

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

189

1 THEM AND INTERPRETED THE FILMS, IS THAT CORRECT?

2 A THEY DID

3 Q AND ISN'T IT CORRECT THAT BOTH OF THEM FOUND THAT HE
4 HAD A NORMAL BRAIN MRI?

5 A RIGHT

6 Q EVEN WITH THAT HISTORY OF LEAD POISONING AND COGNITIVE
7 PROBLEMS THEY DIDN'T SEE ANYTHING WRONG WITH HIS BRAIN, DID
8 THEY?

9 A THEY INTERPRETED IT AS NORMAL

10 Q ALL RIGHT THANK YOU IN FACT, THEY GO OVER A LONG
11 LIST OF THEIR FINDINGS, THE VENTRICLES AND OTHER CSF SPACES
12 ARE SYMMETRICAL AND APPROPRIATE THERE'S A LONG LIST OF
13 THINGS THAT ---

14 A SURE

15 Q --- THEY DESCRIBED AS NORMAL, CORRECT?

16 A RIGHT UM-HUM (AFFIRMATIVE)

17 Q ALL RIGHT AND THAT REPORT WOULD HAVE BEEN SENT TO
18 YOU, CORRECT?

19 A YES, I DID RECEIVE THAT REPORT

20 Q NOW AFTER RECEIVING THIS REPORT OF A NORMAL MRI YOU
21 SAID -- YOU SEND THIS MRI FILM TO PROFESSOR GUR IN
22 PENNSYLVANIA, IS THAT CORRECT?

23 A NO, SIR, THAT'S NOT CORRECT

24 Q YOU DIDN'T SEND THE MRI FILM ---

25 A YES, NOT THAT MRI SCAN FILM IT WAS A SUBSEQUENT MRI

- 1 SCAN THAT WE SENT TO DR GUR
- 2 Q OKAY SO YOU NEVER SENT THIS ONE TO HIM AND HE SAID,
- 3 NO, THIS IS THE WRONG TYPE OF MRI AND ---
- 4 A NO
- 5 Q --- AND SENT IT BACK?
- 6 A NO IT WAS THE -- THAT MRI SCAN DONE ON I THINK IT
- 7 WAS SEPTEMBER 12th, WAS DONE WITH A PROTOCOL THAT A STANDARD
- 8 MUSC PROTOCOL, BUT NOT A PROTOCOL THAT'S COMPATIBLE WITH THE
- 9 COMPUTER ANALYSIS SYSTEM THAT DR GUR HAS THAT'S WHY THE
- 10 SECOND MRI SCAN WAS DONE SO THE FIRST MRI SCAN INFORMATION
- 11 WAS NOT SENT TO DR GUR BECAUSE IT WASN'T IN THE RIGHT
- 12 FORMAT
- 13 Q OKAY LET ME SHOW YOU STATE'S EXHIBIT 47 AGAIN AND
- 14 WHAT DOES IT ALSO CONTAIN DOWN THERE AT THE BOTTOM AS FAR AS
- 15 HISTORY? NOW WE'RE STILL TALKING ABOUT THE SEPTEMBER MRI
- 16 A IT SAYS LEGAL CASE, SIGNIFICANT LEARNING DISABILITY
- 17 WITH KNOWN EXPOSURE TO LEAD, HAS CHILD HISTORY OF CONCUSSION
- 18 IN PAST RELATED TO F O I'M NOT SURE WHAT F O IS, BUT
- 19 Q FOOTBALL?
- 20 A IT COULD BE I DON'T KNOW
- 21 Q WELL, TELL ME WHAT HISTORY MR EVANS GAVE YOU AS FAR AS
- 22 HIM PLAYING FOOTBALL
- 23 A MR EVANS WAS A STAR, A FOOTBALL PLAYER HE REPORTED
- 24 TO ME THAT HE HAD -- THAT ALTHOUGH HE'D NEVER BEEN KNOCKED
- 25 OUT, BUT THAT IN PLAYING HE HAD A NUMBER OF EPISODES WHERE

- 1 HE WAS -- I THINK HAD
- 2 Q KNOCKED SILLY?
- 3 A I'M SORRY?
- 4 Q KNOCKED SILLY?
- 5 A SOMETHING TO THAT EXTENT I CAN'T REMEMBER HIS EXACT
- 6 WORDS, BUT, YES, IT WAS SOMETHING TO THAT AND HE HAD HAD A
- 7 NUMBER OF THOSE EPISODES WHILE PLAYING FOOTBALL
- 8 Q DID HE TELL YOU HE PLAYED -- HE WAS A STAR FOOTBALL
- 9 PLAYER IN HIGH SCHOOL?
- 10 A I KNEW THAT FROM OTHER INFORMATION, BUT HE DID NOT TELL
- 11 ME THAT SPECIFICALLY
- 12 Q THAT THE DEFENSE PROVIDED YOU?
- 13 A YES, THEY DID YES
- 14 Q ALL RIGHT DID HE TELL YOU THAT HE PLAYED COLLEGE
- 15 FOOTBALL AT NORTH GREENVILLE COLLEGE?
- 16 A FOR A SHORT PERIOD OF TIME, YES
- 17 Q OKAY AT LEAST -- HE WAS THERE FOR TWO YEARS?
- 18 A YES
- 19 Q DID HE TELL YOU THAT HE PLAYED SEMI-PPO FOOTBALL WHERE
- 20 HE HAD TO BRING HIS OWN EQUIPMENT WHETHER IT WAS GOOD
- 21 EQUIPMENT OR NOT?
- 22 A NO, I WAS NOT AWARE OF THAT
- 23 Q OKAY BUT HE DID GIVE YOU A HISTORY OF WHAT YOU
- 24 BELIEVE TO BE CONCUSSIONS?
- 25 A POSSIBLE CONCUSSIONS, YES

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

192

1 Q OKAY WELL, WHERE -- DR AGARWAL AND DR TURK WOULDN'T
2 HAVE HAD THIS HISTORY, WOULD THEY? THEY WOULD HAVE HAD TO
3 GET THIS HISTORY FROM YOU, WOULDN'T THEY?

4 A YES

5 Q OKAY

6 A RIGHT

7 Q AND DOES IT SAY HISTORY OF CONCUSSION OR DOES IT SAY
8 POSSIBLE HISTORY OF CONCUSSION?

9 A IT SAYS HISTORY OF CONCUSSION IN PAST RELATED TO F O

10 Q OKAY NOW CAN REPEATED CONCUSSIONS TO THE BRAIN OR TO
11 THE HEAD CAUSE ATROPHY OF THE BRAIN?

12 A ABSOLUTELY, YES

13 Q OKAY

14 A AND COGNITIVE DYSFUNCTION AS WELL

15 Q AND COGNITIVE DYSFUNCTION?

16 A RIGHT YES

17 Q AND CAN DRUG USE CAUSE ATROPHY OF THE BRAIN?

18 A IT CAN, YES

19 Q DID MR EVANS TELL YOU ABOUT A HISTORY OF DRUG USE?

20 A HE DID MORESO HE TOLD ME ABOUT A HISTORY OF ALCOHOL
21 USE

22 Q ALCOHOL ABUSE, CAN THAT CAUSE ATROPHY OF THE BRAIN?

23 A YES, IT CAN UM-HUM (AFFIRMATIVE)

24 Q ALL RIGHT SO WHEN DID YOU DECIDE TO CONDUCT THE
25 SECOND MRI?

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

193

1 A AFTER WE -- AFTER IT WAS DECIDED THAT WE WERE GOING TO
2 REFER THIS FOR A FURTHER QUANTITATIVE ANALYSIS WITH DR GUR
3 ---

4 Q DID YOU -- LET ME STOP YOU FOR JUST A SECOND ---

5 A YES

6 Q --- AND YOU CAN FINISH DID YOU CONSULT WITH MR
7 EVANS LAWYERS ABOUT SENDING HIM TO PENNSYLVANIA?

8 A YES, I DID

9 Q OKAY AND DID THEY AGREE TO THAT?

10 A YES, THEY DID

11 Q ALL RIGHT

12 A AND AT THAT TIME WE NEEDED TO DO A SECOND SCAN IN ORDER
13 TO DO THE APPROPRIATE MRI SCAN PROTOCOL SO THAT THE -- SO
14 THAT DR GUR COULD PROCESS THE MRI SCAN INFORMATION

15 Q ALL RIGHT LET ME GO BACK TO STATE'S EXHIBIT 47 WHEN
16 THIS REPORT IS GENERATED BY THE RADIOLOGY DEPARTMENT, I
17 MEAN, YOU'RE THE REFERRING PHYSICIAN, CORRECT?

18 A YES, CORRECT

19 Q DID THEY SEND YOU A COPY OF THIS REPORT?

20 A YES THEY DID

21 Q AND HOW MANY DAYS -- WITHIN HOW MANY DAYS OF THIS
22 REPORT BEING ISSUED WOULD YOU HAVE GOTTEN IT?

23 A PROBABLY TWO OR THREE DAYS

24 Q ALL RIGHT SO THIS WAS DONE ON SEPTEMBER 12TH, 2008
25 SO YOU PROBABLY GOT IT AROUND THE 15TH OR 16TH?

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

194

1 A VERY LIKELY YES

2 Q OKAY NOW A SECOND MRI DONE IN NOVEMBER OF -- NOVEMBER
3 24TH OF 2008, IS THAT CORRECT?

4 A THAT DATE'S PROBABLY CORRECT, YES

5 Q AND THAT WAS A DIFFERENT KIND OF PROTOCOL MRI?

6 A YES, THAT'S CORRECT

7 Q IS IT MORE SENSITIVE OR SOMETHING?

8 A NO IT'S JUST THE WAY THAT THE DATA IS STORED AFTER
9 IT'S COLLECTED IT HAS TO BE STORED IN A CERTAIN -- WHAT'S
10 CALLED DICOM FORMAT IN ORDER TO DOWNLOAD IT AND TO SEND IT
11 FOR FURTHER COMPUTER PROCESSING

12 Q OKAY DOES EVERYONE IN THE LEGAL COMMUNITY AGREE WITH
13 PROFESSOR GUR S TECHNOLOGY OR ---

14 MR NETTLES OBJECTION

15 Q --- METHODOLOGY?

16 MR NETTLES OBJECTION I THINK THAT'S OUTSIDE, I
17 MEAN, OUTSIDE THE SCOPE OF HIS

18 THE COURT DOES EVERYBODY IN THE MEDICAL COMMUNITY
19 AGREE?

20 MR MABRY YEAH

21 MR NETTLES CAUSE THAT'S NOT WHAT HE ASKED I THINK
22 HE SAID LEGAL

23 THE COURT HE SAID LEGAL

24 MR MABRY NO, I MEANT MEDICAL COMMUNITY

25 MR NETTLES WELL, I M SORRY I JUST HAD TO GO WITH

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

195

1 WHAT I HEARD I APOLOGIZE

2 THE COURT ALL RIGHT

3 A THE TECHNIQUES -- THE TECHNOLOGY HE'S USING IS A PRETTY
4 STANDARD TECHNOLOGY IN TERMS OF CONTROVERSY, I M NOT --
5 I M NOT SURE WHAT YOU'RE TALKING ABOUT I'M NOT AWARE OF
6 ANY SPECIFIC CONTROVERSY

7 Q OKAY ARE YOU AWARE THAT HIS METHODOLOGY WAS FOUND IN
8 A DISTRICT COURT CASE IN MISSOURI TO BE NOT SCIENTIFICALLY
9 RELIABLE?

10 A I COULDN'T COMMENT ON THAT I HAVE NO INFORMATION ON
11 THAT

12 Q THE SECOND REPORT OF NOVEMBER 2008, ---

13 MR NETTLES NO OBJECTION

14 MR MABRY OKAY

15 (WHEREUPON DEFENDANT'S EXHIBIT 48 WAS ADMITTED INTO
16 EVIDENCE)

17 Q --- AND I'LL TELL YOU WHAT I HAVE HERE I WENT TO MUSC
18 LAST WEEK AND I'M NOT TESTIFYING, BUT I ---

19 MR NETTLES WELL, -E IS TESTIFYING

20 THE COURT GO AHEAD

21 MR MABRY OKAY

22 Q AND I ASKED HIM TO REPRODUCE FOR ME AS BEST THEY COULD
23 WHAT THE ORIGINAL NOVEMBER REPORT LOOKED LIKE

24 A SURE

25 Q OKAY? BEFORE THERE WERE ANY ADDENDUMS TO IT

1 A RIGHT

2 Q OKAY? I'M GOING TO SHOW YOU DEFENDANT'S EXHIBIT 48 I
3 WANT TO MAKE SURE WE'RE CLEAR SO THAT THERE'S NOTHING
4 MISREPRESENTED IN THE RECORD THE DATE AT THE TOP OF THAT
5 REPORT WOULD NOT BE WHAT WAS IN THE ORIGINAL REPORT,
6 CORRECT?

7 A I DIDN'T UNDERSTAND YOUR QUESTION

8 Q I'M TALKING ABOUT IN NOVEMBER OF 2008, ---

9 A RIGHT

10 Q --- OKAY, THEY DID AN MRI AND THEY ISSUED A REPORT

11 A RIGHT UM-HUM (AFFIRMATIVE)

12 Q AND WITHIN A COUPLE OF DAYS IT WOULD HAVE BEEN SENT TO
13 YOU, CORRECT?

14 A YES, CORRECT

15 Q WHAT I'M ASKING IS THIS DATE AT THE TOP THAT SAYS
16 OCTOBER THE 8TH, 2009 THAT WOULDN'T HAVE BEEN ON THE
17 ORIGINAL REPORT?

18 A NO I'M ASSUMING THAT'S -- I DON'T KNOW WHAT THE -- I
19 DON'T KNOW WHAT THE OCTOBER 8TH, 2009, I'M NOT SURE WHAT
20 THAT DATE REFERS TO

21 Q OKAY THAT WAS MY QUESTION

22 A YEAH

23 Q AND THEN AT THE BOTTOM IT SHOWS AN ADDENDUM WAS LATER
24 ADDED BUT THAT WOULDN'T HAVE BEEN ON THE ORIGINAL REPORT
25 EITHER, WOULD IT?

1 A NO, THAT'S CORRECT

2 Q ALL RIGHT CAN I HAVE THAT BACK?

3 A SURE

4 Q NOW SOMETIME WITHIN A COUPLE OF DAYS OF NOVEMBER 24TH,
5 2008 AFTER THE SECOND MRI WAS DONE YOU WOULD HAVE RECEIVED
6 THIS REPORT?

7 A CORRECT THAT'S CORRECT

8 Q AND THAT WAS CONDUCTED AGAIN BY DR AGARWAL AND, I
9 BELIEVE ANOTHER LADY WAS HELPING HIM, A MS SPAMPINATO?

10 A SPAMPINATO, YES

11 Q OKAY AND AGAIN, DR AGARWAL IS AN INTERVENTIONAL
12 NEURORADIOLOGIST, CORRECT?

13 A YES

14 Q NOW WHAT IS MS SPAMPINATO?

15 A SHE'S A NEURORADIOLOGIST

16 Q SHE'S A NEURORADIOLOGIST AND WHAT WERE THE RESULTS ON
17 THAT MRI?

18 A UNREMARKABLE MRI OF THE BRAIN

19 Q ALL RIGHT AND WHAT DOES THAT MEAN IN LAYMAN'S TERMS?

20 A NORMAL MRI SCAN

21 Q OKAY AND DOES THAT MRI HAVE WITHIN IT DISCUSSIONS
22 ABOUT WHETHER THERE'S ATROPHY OF THE BRAIN OR THE GRAY
23 MATTER IN THE BRAIN?

24 A YES IT DOES SAY NO EVIDENCE OF BRAIN ATROPHY OR
25 MICROHEMORRHAGES

1 Q OKAY IT ALSO SAYS GRAY MATTER/WHITE MATTER CONTRAST
2 IS APPROPRIATE THROUGHOUT THE BRAIN, DOESN'T IT?

3 A YES, IT DOES

4 Q OKAY AND THE ATROPHY THAT YOU'RE TALKING ABOUT THAT
5 YOU SAY THAT YOU SEE ON THE MRI IS IN THE GRAY MATTER,
6 CORRECT?

7 A YES, THAT'S CORRECT

8 Q BUT THEY DIDN'T SEE THAT?

9 A ON THAT INITIAL REPORT, NO

10 Q OKAY AND AGAIN, WHAT WAS THE HISTORY THAT WAS GIVEN
11 TO DR AGARWAL AND DR SPAMPINATO IN NOVEMBER OF 2008?

12 A LEGAL CASE, SIGNIFICANT LEARNING DISABILITY WITH KNOWN
13 EXPOSURE TO LEAD AS A CHILD

14 Q OKAY SO THEY WERE AWARE THAT HE HAD THIS HISTORY OF
15 LEAD EXPOSURE?

16 A RIGHT

17 Q BUT THEY DIDN'T SEE ANYTHING, DID THEY?

18 A ON THAT REPORT THEY DID NOT INDICATE THEY SAW ANYTHING

19 Q OKAY AND AGAIN, THAT WOULD HAVE BEEN SENT TO YOU A
20 COUPLE OF DAYS AFTER IT WAS DONE?

21 A YES

22 Q AND THAT WOULD HAVE BEEN AT THE END OF NOVEMBER, 2008
23 WHEN YOU WOULD HAVE GOTTEN IT?

24 A YES, PROBABLY

25 Q NOW DID -- AFTER YOU RECEIVED THIS INITIAL REPORT, THE

DAVID BACHMAN, M.D. - CROSS EXAMINATION BY MR. MABRY

199

1 SEPTEMBER REPORT OF 2008, YOU SAID YOU GOT IT ABOUT THE
2 15TH AND YOU SAID YOU DISAGREED WITH THAT REPORT CORRECT?

3 A YES

4 Q ALL RIGHT DID YOU ASK DR AGARWAL OR DID YOU ASK DR
5 TURK TO LOOK AT THE FILMS AGAIN AND REVISE THEIR REPORT?

6 A I DID NOT

7 Q ALL RIGHT IN OCTOBER OF 2008 DID YOU ASK DR AGARWAL
8 OR DR TURK TO REVISE THEIR REPORT?

9 A I DID NOT

10 Q IN NOVEMBER OF 2008 DID YOU ASK DR AGARWAL OR DR TURK
11 TO REVISE THEIR REPORT OF SEPTEMBER, IT SAID NORMAL BRAIN
12 MRI?

13 A I DID NOT

14 Q ALL RIGHT IN NOVEMBER WHEN YOU GOT THIS REPORT BACK
15 FROM DR AGARWAL AND DR SPAMPINATO, NOVEMBER 2008, DID YOU
16 ASK THEM TO REVISE THEIR REPORT?

17 A I ASKED DR SPAMPINATO TO RE-REVIEW THE MRI SCAN TO SEE
18 IF SHE THOUGHT THERE WAS ATROPHY PRESENT

19 Q THAT WASN'T MY QUESTION LISTEN TO MY QUESTION, OKAY?

20 A RIGHT

21 Q IN NOVEMBER OF 2008 WHEN YOU GOT THIS REPORT, ---

22 A YES

23 Q --- DID YOU ASK DR AGARWAL OR DR SPAMPINATO IN
24 NOVEMBER OF 2008 TO REVISE THEIR REPORT?

25 A I DON'T -- I DID SEND DR SPAMPINATO SUBSEQUENTLY AN

1 EMAIL ASKING HER TO RE-REVIEW IT I DON'T REMEMBER THE DATE
2 THAT I HAD SENT HER THAT EMAIL ASKING HER TO DO THAT SO
3 WHETHER THAT WAS IN NOVEMBER OR WHETHER THAT WAS LATER, I
4 CAN'T SAY

5 Q OKAY WELL, I'M GOING TO SHOW YOU STATE'S OR
6 DEFENDANT'S EXHIBIT 50, WHICH IS THE FINAL REPORT AND DOES
7 THAT REPORT NOT STATE THAT YOU CONTACTED OR REQUESTED DR
8 SPAMPINATO TO CHANGE HER REPORT ON 5/27 OF '09?

9 A YES

10 Q OKAY DOES THAT REFRESH YOUR MEMORY ABOUT WHEN YOU
11 ASKED HER TO CHANGE HER REPORT?

12 A RIGHT THAT WOULD BE IN MAY OF 2009

13 (WHEREUPON MR NETTLES INDICATED HE HAD NO OBJECTION TO
14 THE ADMISSION OF DEFENDANT S EXHIBIT 50)

15 (WHEREUPON DEFENDANT'S EXHIBIT 50 WAS ADMITTED INTO
16 EVIDENCE)

17 Q ALL RIGHT SO I'M GOING TO GO BACK TO THE SAME
18 QUESTION I ASKED YOU A MINUTE AGO BECAUSE YOU'VE NOW
19 REFRESHED YOUR MEMORY IN NOVEMBER OF 2008 WHEN YOU GOT
20 THIS REPORT THAT SAID NORMAL MRI DID YOU ASK ANYONE TO
21 CHANGE THIS REPORT?

22 A I DID NOT

23 Q ALL RIGHT IN DECEMBER OF 2008 DID YOU ASK ANYONE TO
24 CHANGE THIS REPORT?

25 A I DID NOT

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

201

1 Q IN JANUARY OF 2008 DID YOU ASK ANYONE TO CHANGE OR
2 REVISE THIS REPORT?

3 A I DID NOT

4 Q IN FEBRUARY OF 2008 DID YOU ASK DR AGARWAL OR DR
5 SPAMPINATO TO REVISE A REPORT?

6 A I DID NOT

7 Q IN MARCH OF 2008 DID YOU ASK ANYONE TO REVISE OR CHANGE
8 THIS REPORT?

9 A I DID NOT

10 Q IN APRIL OF 2008 DID YOU ASK ANYONE TO REVISE OR CHANGE
11 THIS REPORT?

12 A I DID NOT

13 Q IN THE FIRST WEEK OF MAY DID YOU ASK ANYBODY TO CHANGE
14 THIS REPORT?

15 A SOMETIME IN MAY I SENT DR SPAMPINATO AN EMAIL, BUT
16 EXACTLY WHEN, I CAN T SAY

17 Q OKAY WELL, LET ME SHOW YOU DEFENDANT'S EXHIBIT 50
18 AGAIN AND SHE SAID YOU REQUESTED IT ON 5/27 OF 2009

19 A THEN THAT S PROBABLY CORRECT

20 Q OKAY WELL, THEN MY QUESTION IS THE FIRST WEEK OF MAY
21 DID YOU ASK HER TO CHANGE HER REPORT?

22 A I DID NOT

23 Q IN THE SECOND WEEK OF MAY DID YOU ASK HER TO CHANGE HER
24 REPORT?

25 A I DID NOT

1 Q IN THE THIRD WEEK OF MAY DID YOU ASK HER TO CHANGE HER
2 REPORT?

3 A I DID NOT

4 Q I'M GOING TO SHOW YOU DEFENDANT'S EXHIBIT 49

5 MR NETTLES NO OBJECTION

6 (WHEREUPON DEFENDANT'S EXHIBIT 49 WAS ADMITTED INTO
7 EVIDENCE)

8 Q ARE YOU FAMILIAR WITH THAT DOCUMENT? TAKE YOUR TIME TO
9 REVIEW THROUGH IT IT'S SEVERAL PAGES

10 (PAUSE)

11 A OKAY YES

12 Q DOES THAT EXHIBIT, I BELIEVE IT'S DEFENDANT'S EXHIBIT
13 49, IS THAT CORRECT?

14 A YES, IT IS MARKED 49

15 Q DOES THAT CONTAIN A MOTION BY THE STATE TO OBTAIN THE
16 MRI REPORTS OF NOVEMBER AND SEPTEMBER, 2008?

17 A THERE IS A -- THERE'S A SUBPOENA ON -- THERE'S A
18 SUBPOENA HERE FOR MEDICAL RECORDS OF APPLICANT THERE IS A
19 SUBPOENA ON HERE FOR MEDICAL RECORDS FROM THE MEDICAL
20 UNIVERSITY DATED MAY 27TH 2009

21 Q MAY 27TH, 2009

22 A RIGHT

23 Q IS THAT CORRECT?

24 A CORRECT

25 Q OKAY AND ALSO CONTAINS A MOTION TO GET THE MRI

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

203

1 REPORTS FROM MUSC ON MAY 27TH, 2009, IS THAT CORRECT?

2 A CORRECT

3 Q OKAY IS THAT THE SAME DAY THAT YOU ASKED MS
4 SPAMPINATO TO CHANGE HER REPORT?

5 A I NEVER ASKED MS SPAMPINATO TO CHANGE HER REPORT

6 Q WELL, IS THAT THE SAME DATE THAT SHE SAYS IN HER REPORT
7 YOU REQUESTED HER TO REVIEW THIS CASE AGAIN, ---

8 A YES, THAT IS ---

9 Q --- TO REVISE HER REPORT?

10 A I ASKED HER TO REVIEW THE -- I DID ASK HER TO RE-REVIEW
11 THE SCAN YES, IT WAS ON THAT DATE

12 Q OKAY IS THAT THE SAME DATE AS THOSE MOTIONS AND THAT
13 SUBPOENA, ---

14 A YES, IT IS

15 Q --- CORRECT?

16 A YES

17 Q OKAY DID ANYONE FROM THE DEFENSE TEAM CONTACT YOU AND
18 TELL YOU THAT WE HAD REQUESTED OR WERE SEEKING TO OBTAIN THE
19 ORIGINAL MRI REPORTS?

20 A NOT TO MY KNOWLEDGE, NO

21 Q DID JOHN BLUME CONTACT YOU?

22 A I DID HAVE DISCUSSIONS WITH MR BLUME, YES

23 Q OKAY TELL ME WHAT THOSE DISCUSSIONS WERE

24 A MY BEST RECOLLECTION OF OUR DISCUSSION WAS THAT WE --
25 THAT THE MATERIAL WAS BEING -- THAT THEY WERE PUTTING

1 TOGETHER THE PACKET OF MATERIALS FOR THE TRIAL AND THAT HE
2 AND I HAD PREVIOUSLY DISCUSSED THE FACT THAT -- AND I TOLD
3 HIM ABOUT MY OPINION ABOUT THE ATROPHY WE GOT THE ANALYSIS
4 FROM DR GUR AND THAT ALSO I HAD HAD PREVIOUS DISCUSSIONS
5 WITH DR RUMBOLDT OVER THE ORIGINAL MRI SCAN

6 AND IN FACT IT HAD BEEN MY IMPRESSION AFTER TALKING
7 WITH DR RUMBOLDT THAT THERE WAS GOING TO BE AN AMENDMENT TO
8 THE MRI SCAN SHOWING THAT THERE WAS SOME OPINION ABOUT
9 ATROPHY THERE HAD BEEN NO AMENDMENT, THERE HAD BEEN NO
10 REVISION ABOUT THE MRI SCAN

11 SO I THINK MR BLUME WAS CONCERNED ABOUT THE FACT THAT
12 THE MRI SCAN REPORT HAD NOT BEEN AMENDED AS I THOUGHT IT WAS
13 GOING TO BE AND ASKED ME TO ASK THE RADIOLOGIST TO RE-REVIEW
14 THE MRI SCAN AGAIN

15 Q OKAY AND THAT CONVERSATION WAS ALSO ON MAY 27TH
16 2009 WASN'T IT?

17 A I DO NOT KNOW THE DATE OF THAT CONVERSATION, BUT IT WAS
18 PROBABLY CLOSE TO THAT DATE

19 Q PROBABLY THAT DAY, WASN'T IT?

20 A I GENUINELY DON'T ---

21 MR NETTLES OBJECTION HE'S BADGERING HE SAYS HE
22 DOESN'T REMEMBER THE DAY

23 THE COURT OVERRULED GO AHEAD

24 Q IT WAS PROBABLY THAT DAY, WASN'T IT?

25 A IT COULD WELL HAVE BEEN I DON'T REMEMBER

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

205

1 Q AND AS A RESULT OF YOUR CONVERSATION WITH JOHN BLUME,
2 FORMERLY OF THE CENTER FOR CAPITAL LITIGATION, AND WHOM YOU
3 HAD WORKED WITH IN THE PAST ---

4 A YES

5 Q --- WHO WAS CONCERNED ABOUT THE ORIGINAL REPORT SHOWING
6 NORMAL BRAIN MRI, YOU CONTACTED MS SPAMPINATO, DIDN'T YOU?

7 A I DID, YES

8 Q AND YOU ASKED HER TO RE-REVIEW THESE FILMS, DIDN'T YOU?

9 A I DID

10 Q AND WHERE IS YOUR EMAIL TO MS SPAMPINATO?

11 A I DON'T HAVE A COPY OF IT

12 Q YOU DIDN'T BRING IT WITH YOU, DID YOU?

13 A I WASN'T ASKED TO

14 Q SO YOU WEREN'T ASKED BY THESE FELLOWS OVER HERE ---

15 A NO, SIR

16 Q --- TO BRING IT SO YOU COULD SHOW WHAT WAS EXACTLY IN
17 THERE AND WHAT YOU TOLD HER TO DO?

18 A NO, I DON'T BUT I'M SURE IF YOU ASKED DR SPAMPINATO
19 SHE WOULD BE HAPPY TO TELL YOU

20 Q IS SHE SUBJECT TO YOUR INFLUENCE?

21 A SHE IS NOT SHE DOES NOT REPORT TO ME NOR IN ANY WAY
22 DO I HAVE ANY CONTROL OVER HER

23 Q SHE DOESN'T WORK FOR YOU, RIGHT?

24 A SHE DOES NOT

25 Q BUT YOU REFER CASES TO HER, DON'T YOU?

1 A NO, I REFER CASES TO MUSC RADIOLOGY

2 Q HOW MANY CASES DO YOU REFER A YEAR?

3 A TO MUSC RADIOLOGY? IN-PATIENT, OUT-PATIENT, PROBABLY
4 ON THE ORDER OF ABOUT FORTY OR FIFTY

5 Q FORTY OR FIFTY?

6 A YEAH

7 Q IS THAT A LOT?

8 A I DON'T KNOW COMPARED TO THE NUMBER OF CASES DONE AT
9 MUSC, PROBABLY NOT

10 Q WELL, SHE WOULD LIKE TO STAY IN YOUR GOOD GRACES,
11 WOULDN'T SHE?

12 A I HAVE NO AUTHORITY OVER DR SPAMPINATO SHE DOES NOT
13 REPORT TO ME IN ANY WAY SHE IS IN NO WAY OBLIGATED TO ME

14 Q IS HER COMPENSATION BASED ON THE NUMBER OF CASES YOU
15 SEND TO HER IN ANY WAY?

16 A NO, IT IS NOT

17 Q ARE THEY PAID FOR RUNNING THESE REPORTS THAT YOU REFER
18 PATIENTS TO THEM?

19 A THEY ARE COMPENSATED FOR READING STUDIES OF ALL THE
20 NEUROLOGISTS ALL THE \EURORADIOLOGISTS, ALL THE INTERNIST
21 AND ALL THE PHYSICIANS AT MUSC

22 Q OKAY BUT THE MORE CASES YOU SEND TO THEM THE MORE
23 MONEY THEY GET PAID, CORRECT?

24 A THERE IS -- THERE IS NO DIRECT LINE BETWEEN ME AND DR
25 SPAMPINATO SHE IN NO WAY GETS ANY ADDITIONAL COMPENSATION

1 FOR ANY EXTRA CASES THAT I GENERATE OR DON'T GENERATE

2 ALL OF MY CASES ARE GOING TO GO TO MUSC ANYWAY I WORK
3 AT MUSC SO I HAVE NO WAY TO DISTRIBUTE FILMS TO HER OR ANY
4 OTHER SPECIFIC RADIOLOGIST

5 Q WELL SHE REVISED THE REPORT AT YOUR REQUEST, DIDN T
6 SHE?

7 A SHE RE-REVIEWED THE MRI SCAN WITH MY REQUEST THAT SHE
8 LOOK AT THE AGE OF THE PATIENT AND WHETHER OR NOT SHE
9 THOUGHT THAT THERE WAS ATROPHY PRESENT THAT, SHE DID

10 Q OKAY WHAT TIME WAS YOUR EMAIL TO HER? DO YOU KNOW?

11 A I HAVE NO WAY OF REMEMBERING THAT

12 Q WE WOULD KNOW IF WE HAD THE EMAIL, WOULDN'T WE?

13 A YES, WE WOULD

14 Q OKAY AND THIS IS THE FINAL REPORT, THE ONE SHE
15 REVISED HOW MANY TIMES DID SHE REVISE THAT REPORT?

16 A IT WAS REVISED -- THERE ARE NUMEROUS SIGNATURES HERE
17 BOTH FROM NOVEMBER AND FROM MAY

18 Q I'M TALKING ABOUT IN MAY WE KNOW THE REVISIONS TOOK
19 PLACE ON MAY THE 28TH ACTUALLY ISN'T THAT WHEN THE FINAL
20 REVISIONS WERE COMPLETED?

21 A I BELIEVE SO, YES

22 Q THE DAY AFTER WE FILED OUR MOTION TO GET THE MRI
23 REPORTS?

24 A I BELIEVE SO, YES

25 Q OKAY

1 A THERE WERE, LET'S SEE, ONE, TWO, THREE, FOUR, FIVE, SIX

2 -- IT SAYS ADDENDED BY -- SIX ADDENDED BYS MAY 28TH AND --

3 SO

4 Q SIX OF ADDENDUMS?

5 A WELL THERE'S SIX SIGNATURES THAT SAY ADDENDED BY WHY

6 IT WAS SIGNED -- IT DOESN'T MAKE ANY SENSE BECAUSE SOME OF

7 THESE SIGNATURES ARE ALL EXACTLY AT THE SAME TIME

8 Q OKAY THAT MAY HAVE JUST BEEN REPRODUCED BY THE

9 COMPUTER FOR SOME REASON?

10 A RIGHT

11 Q WELL, TURN TO THE FRONT PAGE HOW MANY ADDENDUMS ARE

12 ON THE FRONT PAGE?

13 A ONE THAT I SEE I'M SORRY, THERE ARE TWO

14 Q OKAY

15 A THERE'S A MILD DIFFUSE VOLUME LOSS GIVEN THE PATIENT'S

16 AGE AND THEN IT SAYS THERE'S MILD DIFFUSE VOLUME LOSS WITH

17 PROMINENT VENTRICLES AND CSF SPACES

18 Q ALL RIGHT WHAT'S THE FIRST -- LET'S BREAK IT DOWN

19 WHAT'S THE FIRST ADDENDUM SAY?

20 A IT SAYS THIS CASE WAS REVIEWED PER REQUEST OF DR

21 BACHMAN ON 5/27/09 THERE WAS MILD DIFFUSE VOLUME LOSS

22 GIVEN THE PATIENT'S AGE

23 Q ALL RIGHT AND THEN WHAT'S THE SECOND ADDENDUM SAY?

24 A THERE WAS MILD DIFFUSE VOLUME LOSS WITH PROMINENT

25 VENTRICLES AND CSF SPACES

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

209

1 Q ALL RIGHT DID YOU RECEIVE THE FIRST REPORT WITH THE
2 FIRST ADDENDUM?

3 A I DON'T BELIEVE I DID THE ONLY REPORT I RECEIVED WAS
4 THE FINAL REPORT

5 Q WHY WOULD THEY HAVE DONE ---

6 A YOU WOULD HAVE TO ASK DR SPAMPINATO I DID NOT TALK
7 WITH HER AND THE ONLY THING I SENT WITH HER WAS THE ONE
8 EMAIL ASKING HER IF SHE WOULD BE KIND ENOUGH TO RE-REVIEW
9 THE MRI SCAN

10 Q BUT SHE DIDN'T FINISH THE -- SHE DIDN'T ACTUALLY DO THE
11 REVISIONS ACCORDING TO THE REPORT UNTIL THE 28TH OF MAY?

12 A CORRECT

13 Q AND WHEN DID THIS CASE ORIGINALLY GO TO TRIAL, DR
14 BACHMAN?

15 A I DON'T KNOW THE DATE

16 Q DO YOU REMEMBER JUNE THE 1ST?

17 A I DON'T -- WHAT ABOUT JUNE THE 1ST?

18 Q WELL, THIS REPORT WAS REVISED ON MAY 28TH THAT ---

19 A YES

20 Q --- WOULD HAVE BEEN THE THURSDAY BEFORE THE TRIAL

21 A I DID NOT -- I HAVE NO IDEA WHEN THE DATE OF THE TRIAL
22 WAS I DID NOT PARTICIPATE IN THE TRIAL

23 Q WELL, WHY DIDN'T YOU HAVE IT REVISED, THE FIRST REPORT,
24 WHY DIDN'T YOU -- IF YOU WERE SO CONCERNED ABOUT IT, WHY
25 DIDN'T YOU HAVE IT REVISED IN SEPTEMBER OF 2008, THE FIRST

1 REPORT?

2 A PROBABLY SHOULD HAVE

3 Q WHY DIDN'T YOU HAVE IT REVISED IN NOVEMBER OF 2008?

4 A PROBABLY SHOULD HAVE

5 Q WHY DIDN'T YOU HAVE THE SECOND REPORT REVISED IN

6 DECEMBER OF 2008?

7 A PROBABLY SHOULD HAVE

8 Q WHAT ABOUT JANUARY AND FEBRUARY AND MARCH?

9 A I WOULD AGREE WITH YOU WE SHOULD HAVE

10 Q WHAT ABOUT APRIL?

11 A WE COULD HAVE DONE IT THEN AS WELL

12 Q WHY DID YOU WAIT TIL TWO DAYS BEFORE THE TRIAL TO HAVE

13 THIS REPORT REVISED TO SHOW WHAT YOU WANTED IT TO SHOW?

14 MR NETTLES OH, OBJECTION

15 THE COURT ALL RIGHT I SUSTAIN THE OBJECTION

16 A THE REPORT WAS NOT REVISED TO SHOW WHAT I WANTED IT TO

17 SHOW WHAT I ASKED WAS DR SPAMPINATO TO RE-REVIEW THE MRI

18 SCAN, WHICH SHE STATED SHE DID AND WHEN SHE DID

19 Q WELL, MY QUESTION IS WHY DID YOU WAIT UNTIL TWO DAYS

20 BEFORE TRIAL? WELL, DID THE TRIAL DATE HAVE SOMETHING TO DO

21 WITH IT?

22 A I DO -- I WILL TELL YOU THAT I DID RECEIVE A CALL FROM

23 MR BLUME AND HE WAS CONCERNED THAT THE FINAL REPORT

24 DIDN'T REFLECT WHAT HE UNDERSTOOD IN MY DISCUSSION AND DR

25 RUMBOLDT'S DISCUSSIONS WERE REGARDING THE MRI SCANS SO IT

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

211

1 WAS AT HIS REQUEST THAT I DID ASK THE RADIOLOGIST TO RE-
2 REVIEW THE MRI SCAN HOWEVER, THIS REFLECTS HER OPINION OF
3 THAT REVIEW

4 Q SO MR BLUME WANTED THE FINAL REPORT TO SHOW SOMETHING
5 THAT MR BLUME WANTED IT TO SHOW?

6 MR NETTLES OBJECTION

7 THE COURT WAIT A MINUTE HOLD ON I'LL LET YOU ASK
8 THAT QUESTION

9 Q MR BLUME WANTED IT TO SHOW SOMETHING THAT MR BLUME
10 WANTED IT TO SHOW?

11 A MR BLUME WANTED IT TO REFLECT WHAT HIS UNDERSTANDING
12 WAS OF WHAT THE READING OF THE MRI SCAN HAD BEEN AFTER MY
13 DISCUSSION WITH DR RUMBOLDT

14 Q BUT YOU AND DR RUMBOLDT DIDN'T ISSUE THE MRI REPORT IN
15 SEPTEMBER OR NOVEMBER, DID YOU?

16 A THAT'S CORRECT WE DID NOT

17 Q AND MR BLUME KNEW THAT, DIDN'T HE?

18 A I CAN'T TESTIFY TO WHAT MR BLUME DID AND DIDN'T KNOW

19 Q WELL, DID HE ASK YOU TO CONTACT MS SPAMPINATO AND SEE
20 IF SHE WOULD REVISE HER REPORT?

21 A HE ASKED ME TO ASK -- HAVE THE SCAN RE-REVIEWED, WHICH
22 I DID

23 Q OKAY WELL, HE KNEW YOU DIDN'T ISSUE THE REPORT,
24 DIDN'T HE?

25 A CORRECT HE KNEW I DID NOT ISSUE THE REPORT

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

212

1 Q DO YOU SEE MR BLUME OVER HERE AT THE DEFENSE TABLE?

2 A I DO NOT

3 Q DO YOU KNOW WHETHER HE WAS EVEN APPOINTED AS A LAWYER
4 ON THIS CASE?

5 A I'M ASSUMING -- I DON T KNOW WHO S FORMALLY APPOINTED
6 TO THE CASE OR NOT I'VE BEEN CONTACTED BY SEVERAL
7 ATTORNEYS IN REGARD TO THIS CASE WITH THE UNDERSTANDING THAT
8 THEY ARE PART OF THE DEFENSE TEAM IN ONE RESPECT OR ANOTHER

9 Q WELL, WHY ARE YOU TALKING TO MR BLUME? WHY AIN'T YOU
10 TALKING TO MR NETTLES, OR MR EHLIES OR MR SEED?

11 A YOU'D HAVE TO ASK THEM SIR I DON'T KNOW THE ANSWER
' 12 TO THAT

13 Q HOW MUCH CONTACT DID YOU HAVE WITH MR BLUME?

14 A WE HAVE HAD SEVERAL PHONE CALLS, IF THAT'S WHAT YOU'RE
15 TALKING ABOUT

16 Q YEAH HOW MANY?

17 A HOW MANY ALL TOGETHER DURING THE COURSE OF THIS
18 PARTICULAR CASE?

19 Q YES SIR

20 A I DON T KNOW HALF A DOZEN PERHAPS

21 Q AND WHAT WERE YOU TALKING ABOUT?

22 A GENERALLY IT WAS DISCUSSING THE RESULTS OF THE MRI SCAN
23 AND THE FOLLOW-UP OF THE MRI SCAN AND COORDINATING THE
24 ANALYSIS BY DR GUR

25 Q EVEN WITH THE REVISIONS THAT WERE MADE BY DR

DAVID BACHMAN, M D - CROSS EXAMINATION BY MR MABRY

213

1 SPAMPINATO AFTER YOU ASKED HER TO RE-REVIEW IT, ---

2 MR NETTLES OBJECTION OKAY

3 MR MABRY I HAVEN'T FINISHED

4 Q --- EVEN WITH THE CHANGES, DO HER FINDINGS INDICATE
5 ANYTHING THAT IS CLINICALLY SIGNIFICANT?

6 A HER FINDINGS ARE CONSISTENT WITH MILD ATROPHY, WHICH
7 WAS THE ONLY ABNORMALITY THAT I HAD IDENTIFIED TO BEGIN WITH
8 THAT WE SAW ON THAT MRI SCAN

9 Q OKAY

10 MR MABRY ONE MOMENT, YOUR HONOR

11 THE COURT TAKE YOUR TIME

12 (PAUSE)

13 MR MABRY BEFORE I STAND DOWN I JUST WANT TO
14 INTRODUCE 47, 48, 49 AND 50

15 THE COURT ALL RIGHT AND IF YOU DON'T MIND, MR
16 MABRY, CAN YOU JUST BRIEFLY SUMMARIZE WHAT THOSE DOCUMENTS
17 ARE?

18 MR MABRY YES, SIR DEFENDANT'S EXHIBIT 47 IS THE
19 FIRST MRI REPORT, SEPTEMBER 12TH, 2008 I'LL PUBLISH THAT
20 TO THE COURT

21 THE COURT THANK YOU

22 MR MABRY DEFENDANT'S EXHIBIT 48, WHICH IS WHAT THE
23 ORIGINAL NOVEMBER REPORT WOULD HAVE LOOKED LIKE
24 DEFENDANT S EXHIBIT 49 IS THE -- OUR MOTION AND SUBPOENA TO
25 GET THE MRI REPORTS AND THE EMAIL TO THE COURT SHOWING THAT

DAVID BACHMAN, M D - REDIRECT EXAMINATION BY MR NETTLES

214

1 DATE AND DEFENDANT'S EXHIBIT 50 IS THE FINAL REPORT, WHICH
2 INDICATES WHEN THE ADDENDUM WAS REQUESTED

3 THE COURT ALL RIGHT

4 MR MABRY NO FURTHER QUESTIONS

5 THE COURT THANK YOU MR NETTLES

6 REDIRECT EXAMINATION BY MR NETTLES

7 Q SO WHAT'S THE -- AT MUSC OKAY THE REPORT AT MUSC,
8 WHAT IS THE FINAL REPORT FROM MUSC, THE FINAL, ABOUT HIS --
9 THE READING OF HIS MRI?

10 A THE FINAL REPORT FROM NOVEMBER, THE NOVEMBER 2008 MRI
11 SCAN IS THAT THERE IS EVIDENCE OF MILD ATROPHY

12 Q IS THAT FINAL REPORT, OKAY, HAS THAT OPINION IN ANY WAY
13 BEEN SWAYED BY THE FACT THAT -- BY ANY OF THE LAWYERS?

14 A NO

15 Q OKAY HAS YOUR ABILITY TO SEND FIFTY CASES TO THE
16 RADIOLOGY DEPARTMENT AT MUSC IN ANY WAY SWAYED THE OPINION
17 IN THAT CASE?

18 A I HOPE NOT I GENUINELY ASKED FOR HER TO RE-REVIEW
19 THIS WITH THE KNOWLEDGE -- TO REALLY LOOK SPECIFICALLY AT
20 THE PATIENT'S AGE REGARDING THE AMOUNT OF ATROPHY, WHICH, I
21 BELIEVE, SHE DID ON HER OWN ACCORD

22 Q OKAY IS THERE -- AND LET'S BE CLEAR ABOUT THIS DID
23 YOU EVER ASK HER TO CHANGE HER REPORT?

24 A I DID NOT

25 Q OKAY DID YOU -- WHAT IS THE DIFFERENCE BETWEEN ASKING

1 SOMEONE TO CHANGE A REPORT AND ASKING SOMEONE TO REVIEW
2 THEIR FINDINGS?

3 A RIGHT IT'S NOT UNUSUAL THAT WE'LL MEET WITH A
4 RADIOLOGIST, AND AS I SAID, WHEN I MET WITH DR RUMBOLDT AT
5 THAT POINT IN TIME -- IT'S NOT UNUSUAL WHEN I MEET WITH A
6 NEURORADIOLOGIST THAT THE NEURORADIOLOGIST MAY SWAY MY
7 OPINION ABOUT AN ABNORMALITY OR I MAY POINT OUT SOMETHING
8 THE RADIOLOGIST HAD NOT APPRECIATED AS THEY HURRY THROUGH
9 READING, YOU KNOW, VERY MANY MRI SCANS

10 IT IS NOT UNUSUAL THAT THE RADIOLOGIST MAY AMEND THEIR
11 REPORT BASED ON ADDITIONAL INFORMATION OR THE RE-REVIEW OF
12 THE RECORD AND SO THAT WAS GENUINELY ALL I WAS SEEKING
13 HERE

14 Q NOW LET'S TALK ABOUT THIS FOR A SECOND DO YOU SENSE
15 -- HAVE YOU EVER SENSED A CERTAIN SENSE OF URGENCY AS A
16 TRIAL APPROACHES IN YOUR DEALINGS WITH LAWYERS?

17 A OH, YES

18 Q OKAY NOW LET ME ASK YOU THIS HAD YOU RECEIVED A
19 PHONE CALL, HYPOTHETICALLY, ANY TIME AFTER NOVEMBER FROM ANY
20 OF THE LAWYERS AND SAID, YOU KNOW WHAT, THE REPORT THAT'S
21 OUT THERE DOESN'T MATCH WHAT YOU AND I SAID, WHAT YOU AND I
22 DISCUSSED, WHAT WOULD YOU HAVE DONE?

23 A PROBABLY THE EXACTLY -- EXACTLY THE SAME THING I DID DO
24 AT THAT TIME

25 Q OKAY SO WHICH WAS?

1 A ASKING THE RADIOLOGIST TO RE-REVIEW THE MRI SCAN TO SEE
2 IF THEY AGREE OR DISAGREE WHETHER THERE'S ATROPHY PRESENT OR
3 NOT

4 Q AND HAD THAT RADIOLOGIST DISAGREED WHAT WOULD THE
5 REPORT READ?

6 A IT WOULD HAVE BEEN UNCHANGED IT WOULD HAVE BEEN
7 WHATEVER THE ORIGINAL REPORT SHOWED, WHICH WAS THAT IT WAS
8 NORMAL

9 Q OKAY BUT IN THIS CASE WAS IT CHANGED OR UNCHANGED?

10 A IN THIS CASE IT WAS ADDENDED TO REFLECT THE FACT THAT
11 THE RADIOLOGIST HAD RE-REVIEWED IT AND THOUGHT, IN FACT,
12 THERE WAS ATROPHY ALLOWING FOR THE PATIENT'S AGE

13 Q NOW IN YOUR OPINION, OKAY, AS AN EXPERT IN YOUR FIELD
14 IN NEUROLOGY AND BEHAVIOR NEUROLOGY, IF THERE IS A -- SOME
15 DISAGREEMENT AMONG LIKE-MINDED, EQUALLY EDUCATED INDIVIDUALS
16 WHO HAVE MADE OPINIONS AT LEAST SOME PART SUBJECTIVE, IS
17 THERE A, IN YOUR MIND, SORT OF A TIE BREAKER ON THAT? IS
18 THERE SOMETHING YOU CAN GO TO THAT'S SORT OF A -- THAT'S A
19 LESS SUBJECTIVE ---

20 MR MABRY I DON'T THINK THIS IS PROPER RE-DIRECT
21 I'M GOING TO OBJECT

22 THE COURT OKAY NOW TELL ME THE FIRST PART OF YOUR
23 QUESTION

24 MR NETTLES IF THERE'S TWO PEOPLE WHO DISAGREE,
25 EQUALLY MINDED, SMART, YOU KNOW, ONE OF THEM LOOKS AT IT AND

1 HE AGREED THAT PART OF IT IS SUBJECTIVE

2 THE COURT OKAY OKAY OF THE MRI?

3 MR NETTLES RIGHT

4 THE COURT OKAY I'M WITH YOU

5 Q IS THERE A TIE BREAKER ON THAT?

6 A YEAH THERE IS AN APPROACH WHEN YOU HAVE TWO DIFFERING
7 OPINIONS AND THAT'S DO A QUANTITATIVE ANALYSIS OF THE MRI
8 SCAN TO ACTUALLY HAVE A COMPUTER BASED MEASUREMENTS TO SEE
9 WHETHER THERE REALLY ARE CHANGES THERE OR NOT SOMETIMES
10 WE'LL DO COMPUTERIZED MEASUREMENTS SOMETIMES WE'LL HAVE
11 SPECIAL STUDIES THAT WE'LL DO

12 SO, YES, COMPUTER BASED MEASUREMENTS CAN SOMETIMES HELP
13 DETERMINE WHETHER THERE'S AN ABNORMALITY REALLY PRESENT OR
14 NOT ESPECIALLY IF THERE'S A DISAGREEMENT REGARDING THE
15 SUBJECTIVE INTERPRETATION

16 Q NOW IN THIS CASE WAS THERE A DISAGREEMENT AS REFLECTED
17 BY THE FINAL REPORT FROM MUSC?

18 A THE FINAL ADDENDED REPORT FROM NOVEMBER OF 2008 FROM
19 MUSC DID -- WAS CONSISTENT WITH ATROPHY

20 Q OKAY AND WAS THE QUANTITATIVE ANALYSIS CONSISTENT
21 WITH ATROPHY?

22 A YES, IT WAS

23 Q THANK YOU

24 MR MABRY JUST A COUPLE, YOUR HONOR MAY I ---

25 THE COURT YES, SIR ABSOLUTELY

1 RE-CROSS EXAMINATION BY MR MABRY

2 Q THE FINAL REPORT EXISTS IN THE STATE IT DOES BECAUSE
3 YOU REQUESTED DR SPAMPINATO TO RE-REVIEW THIS CASE, ISN'T
4 THAT CORRECT?

5 A YES, SIR, THAT'S TRUE

6 Q AND THE REASON YOU DID THAT IS BECAUSE MR BLUME WAS
7 CONCERNED THAT WE WERE GOING TO GET THE ORIGINAL REPORTS IN
8 THE ORIGINAL STATE, CORRECT?

9 MR NETTLES OBJECTION HE DOESN'T KNOW WHY, YOU
10 KNOW, HE -- FIRST OF ALL, HE DOESN'T KNOW WHAT JOHN BLUME
11 THOUGHT SECOND OF ALL, IT'S BEEN TESTIFIED TO THE ONLY
12 REASON HE CALLED WAS BECAUSE THERE HAD BEEN, YOU KNOW, WAS
13 THAT WHAT HE HAD BEEN TOLD WASN'T WHAT WAS BEING REFLECTED
14 IN THE REPORT

15 THE COURT ALL RIGHT I'M GOING TO DO TWO THINGS
16 ONE, I'M GOING TO LET YOU ASK THE QUESTION I UNDERSTAND
17 THE OBJECTION AND I APPRECIATE THE FERVENT WAY Y'ALL
18 ADVOCATE AND I'VE BEEN THINKING UP HERE THAT AFTER THIS
19 TRIAL'S OVER, MOSTLY FOR MR MEDLIN'S EDUCATION AND MAYBE MY
20 OWN AMUSEMENT, I'M GOING TO LET Y'ALL CROSS EXAMINE EACH
21 OTHER OKAY? SO GO AHEAD

22 MR NETTLES PICK THE PLACE

23 THE COURT WE'LL HAVE SECURITY

24 MR MABRY HE CAN GO FIRST

25 THE COURT YOU WANT TO GO LAST? ALL RIGHT OKAY

DAVID BACHMAN, M D - RE-REDIRECT EXAMINATION BY MR NETTLES

219

1 YES, SIR

2 Q MY QUESTION WAS, I BELIEVE YOU TESTIFIED EARLIER WHEN I
3 WAS EXAMINING YOJ, YOU TELL ME IF I'M WRONG, YOU TESTIFIED
4 THAT MR BLUME WAS CONCERNED ABOUT THE ORIGINAL REPORTS AND
5 THE STATE THAT THEY WERE IN, IS THAT CORRECT?

6 A THAT THEY -- YES, THAT'S CORRECT

7 Q NO FURTHER QUESTIONS

8 THE COURT ALL RIGHT I TELL YOU WHAT, WE'RE GOING TO
9 TAKE JUST A BRIEF RECESS I KNOW YOU WANT TO HIT THE ROAD,
10 BUT I MAY HAVE SOMETHING I WANT TO ASK YOU

11 A SURE THAT S FINE

12 THE COURT SO IF YOU DON'T MIND, WE'LL JUST TAKE A
13 BRIEF RECESS AND I WANT TO TALK TO THE LAWYERS BACK HERE
14 JUST BRIEFLY OKAY THANK YOU

15 (WHEREUPON COURT WAS IN RECESS AT 11 23 AM)

16 (WHEREUPON COURT RESUMED AT 11 43 AM)

17 THE COURT OKAY

18 RE-REDIRECT EXAMINATION BY MR NETTLES

19 Q DR BACHMAN, ---

20 A YES, SIR

21 Q --- IN PREPARATION FOR TRIAL DID YOU HAVE THE
22 OPPORTUNITY TO REVIEW -- YOU AND I TALKED ABOUT IT EARLIER,
23 YOU REFERRED TO IT AS A DEPOSITION AND I SHARED WITH YOU
24 IT WAS A TRANSCRIPT, ---

25 A RIGHT

DAVID BACHMAN, M D - RE-REDIRECT EXAMINATION BY MR NETTLES

220

1 Q --- OF DR EVANS' TESTIMONY?

2 A YES, I DID REVIEW THAT

3 Q AND, I MEAN, I'VE GOT A COPY OF THE HEARING IN CASE YOU
4 NEED IT BUT DO YOU -- WHAT'S YOUR MEMORY OF WHAT HE FOUND?

5 A DR EVANS FOUND A COUPLE OF THINGS FIRST OF ALL, HE
6 FOUND THAT MR EVANS HAD AVERAGE TO BELOW AVERAGE
7 INTELLIGENCE BUT -- AND THAT HIS GENERAL VERBAL SKILLS FOR
8 THE MOST PART WERE REASONABLY GOOD

9 WHAT HE FOUND PARTICULARLY THOUGH AS AN ABNORMALITY
10 WERE TESTS THAT HAD TO DO WITH MENTAL FLEXIBILITY THINGS
11 SUCH AS TRAILS B, WHICH IS A TEST WHERE THE INDIVIDUAL HAS
12 GO FROM ONE TO A, TWO TO B THREE TO C, SORT OF SCATTERED
13 AROUND

14 THERE'S ANOTHER TEST, FOR INSTANCE, CALLED THE
15 WISCONSIN CARD SORTING TEST, WHICH IS A VERY SENSITIVE TEST
16 PARTICULARLY TO FRONTAL LOBE TYPE EXECUTIVE PROBLEMS IT'S
17 ANOTHER MEASURE OF MENTAL REASONING, MENTAL FLEXIBILITY

18 HE ALSO HAD -- THERE WAS ANOTHER TACTUAL PERCEPTUAL
19 TEST WHERE MR EVANS HAD TO, WITH A BLINDFOLD ON, FEEL WHAT
20 FORMS ARE LIKE AND THEN FIND ON A BOARD, FIND THE CORRECT
21 SHAPE THAT WOULD FIT THAT FORM SO THERE WERE SOME VERY
22 SPECIFIC TYPE OF DEFICITS THAT DR EVANS DEMONSTRATED ON HIS
23 TESTING

24 Q OKAY AND YOU REVIEWED THOSE?

25 A YES

DAVID BACHMAN, M D - RE-REDIRECT EXAMINATION BY MR NETTLES

221

1 Q OKAY NOW DID YOU HAVE THE OPPORTUNITY TO REVIEW DR
2 ELIN BERG S TESTIMONY?

3 A I DID NOT

4 Q OKAY NOW ARE YOU FAMILIAR WITH DR ELIN BERG?

5 A I AM NOT

6 Q OKAY I AM GOING TO SHOW YOU TESTIMONY FROM THE
7 ORIGINAL TRIAL AND YOU UNDERSTAND THIS IS A POST
8 CONVICTION RELIEF?

9 A RIGHT

10 Q SO THERE WAS A TRIAL

11 A SURE, OF COURSE

12 Q AND I'M GOING TO ASK YOU TO READ SOMETHING AND THEN I M
13 GOING TO ASK YOU SOME QUESTIONS

14 MR NETTLES ONE SECOND I'M SORRY

15 (PAUSE)

16 Q I'M GOING TO ASK YOU TO BEGIN LOOKING AT ON THE BOTTOM
17 OF PAGE 1729 OF THE TRIAL TRANSCRIPT ON LINE 24 AND GO
18 THROUGH 17

19 A OKAY START HERE?

20 Q RIGHT, 1729, LINE 24

21 A OKAY

22 Q ALL RIGHT AND THEN YOU CAN SKIP THROUGH

23 (PAUSE)

24 A OKAY HOW FAR DID YOU WANT ME TO READ ON THIS? I'M
25 SORRY

1 Q DOWN TO WHERE SHE STARTS TALKING ABOUT DEPRESSION
2 BASICALLY

3 A OKAY YES

4 Q NOW YOU CAN EITHER TAKE MY WORD FOR IT OR I CAN DIRECT
5 YOU BACK TO THE BEGINNING SHE WAS QUALIFIED AS AN EXPERT
6 IN THE FIELD OF PSYCHIATRY

7 A UM-HUM (AFFIRMATIVE)

8 Q OKAY NOW LET ME ASK YOU THIS QUESTION AND YOU'VE
9 READ DR ELIN BERG'S TRIAL TESTIMONY?

10 A WELL, THIS PART OF IT, YES

11 Q THAT PORTION OF IT THAT'S CORRECT YEAH

12 A UM-HUM (AFFIRMATIVE)

13 Q HAD YOU BEEN PRESENTED -- HAD YOU DONE -- FIRST OF ALL,
14 IS THERE EVEN A FIELD AS -- YOU SEE LIKE LINE 9 ON PAGE
15 1730?

16 A YES

17 Q SEE LINE 9, IF I HAD A -- WHAT'S THAT WORD?

18 A I THINK IT'S MISSPELLED I THINK IT MEANT
19 PSYCHONEUROLOGICAL, ---

20 Q OKAY THERE'S BEEN ---

21 A --- I THINK WHAT THEY WERE SHOOTING FOR

22 Q --- SOME -- AS WHAT'S IN THAT WORD?

23 A WELL, THAT WORD IS USED, ALTHOUGH IT'S -- BUT IT HAS NO
24 SPECIFIC MEANING IT HAS SORT OF A VERY GENERAL MEANING

25 Q OKAY AND I M TALKING ABOUT THE WORD -- CAN YOU

1 PRONOUNCE IT?

2 A PSYCHONEUROLOGICAL

3 Q PSYCHONEUROLOGICAL ALL RIGHT NOW LET ME ASK YOU

4 THIS HAD YOU BEEN PRESENTED WITH DR EVANS' FINDINGS,

5 OKAY, AND HAD YOU -- DO YOU BELIEVE THAT THERE ARE

6 NEUROPSYCHOLOGICAL SYMPTOMS -- IS MR EVANS EXHIBITING

7 NEUROPSYCHOLOGICAL -- DID HE EXHIBIT NEUROPSYCHOLOGICAL

8 SYMPTOMS WHEN YOU SAW HIM?

9 A YES HE HAD -- HE HAD SOME EVIDENCE OF COGNITIVE

10 IMPAIRMENT ON SOME OF THE TESTING THAT I DID AS WELL

11 Q OKAY AND WHEN YOU SAID AS WELL, WHY DID YOU SAY AS

12 WELL?

13 A IN ADDITION TO THE TESTING THAT DR EVANS HAD DONE

14 Q OKAY SO HAD YOU BEEN ASKED TO GIVE AN EVALUATION --

15 AND DO WE -- LET'S TALK ABOUT THIS TOO NEUROPSYCHOLOGICAL

16 TESTING, IT'S NOT LIKE THE FLU, RIGHT? I MEAN, THE

17 NEUROPSYCHOLOGICAL RESULTS WE GET TODAY, COULD THEY BE

18 EXPECTED TO BE ABOUT THE SAME BACK THEN?

19 A THEY SHOULD BE AND AGAIN ONE OF THE THINGS THAT

20 IMPRESSED ME ABOUT THE TESTING THAT MR EVANS DID FOR ME AND

21 ALSO DID FOR DR EVANS IS IT WASN'T THAT HE JUST DID BAD

22 ACROSS THE BOARD HE ACTUALLY HAS SOME STRENGTH

23 HIS GENERAL INTELLECTUAL ABILITY IS IN THE AVERAGE TO

24 LOW AVERAGE RANGE BUT THERE ARE VERY SPECIFIC AREAS WHERE

25 HE HAD DIFFICULTIES SIMILAR TO THE AREAS THAT I'D FOUND ON

1 MY TESTING AND INTERESTINGLY ENOUGH ALSO CORRESPOND TO THE
2 AREAS OF ATROPHY IDENTIFIED ON THE SCANS THAT DR GUR DID,
3 THE ANALYSIS THAT DR GUR DID

4 SO IT REALLY DOES FIT TOGETHER IN A WAY SO, NO, I
5 DON'T THINK IT WAS JUST A FLUKE THAT MR EVANS HAD THE KIND
6 OF DEFICITS HE HAD WHEN DR EVANS TESTED HIM

7 Q NOW LET ME ASK YOU THIS SO THEN HAD YOU BEEN ARMED
8 WITH DR EVANS' RESULTS, WHICH YOU HAVE BEEN PROVIDED, AND
9 YOU DID YOUR TESTING WOULD YOU HAVE FELT, AND I THINK I KNOW
10 THE ANSWER TO THIS, THAT AN MRI WAS APPROPRIATE?

11 A YES

12 Q OKAY NOW LET ME ASK YOU THIS CAN A -- CAN AN MRI
13 HELP TO RULE IN OR RULE OUT FRONTAL LOBE ISSUES?

14 A IN SOME CASES AN MRI SCAN CAN BE -- DRAMATICALLY RULE
15 IT IN IF SOMEBODY HAS A TUMOR OR SOMETHING OF THAT NATURE
16 IN SOME OTHER CASES THE CHANGES IN THE FRONTAL LOBES MAY BE
17 VERY SUBTLE AND IN OTHER CASES YOU CAN HAVE FRONTAL LOBE
18 DYSFUNCTION AND THE MRIS CAN BE NORMAL

19 SO AN MRI SCAN SOMETIMES HELPS YOU, SOMETIMES DOESN'T
20 HELP YOU YOU HAVE TO PUT IT IN THE CONTEXT OF THE WHOLE
21 CLINICAL PICTURE

22 Q RIGHT SO THEN IN OTHER WORDS MUCH LIKE WITH CANCER, I
23 KNOW THERE'S A LOT OF TESTING IN CANCER MERELY THE FACT
24 THAT YOU DON'T TEST POSITIVE DOESN'T NECESSARILY MEAN YOU
25 DON'T HAVE CANCER?

1 A CORRECT

2 Q OKAY BUT IN YOUR OPINION -- AND YOU'VE ALREADY GIVEN
3 THIS BUT JUST BASED ON DR EVANS AND BASED ON YOUR
4 CLINICAL TESTING, YOUR VISIT TO THE PRISON, ---

5 A RIGHT

6 Q --- WAS AN MRI A WASTE OF MONEY?

7 A NO, I DON'T THINK SO

8 Q AS EVIDENCED BY WHAT?

9 A AS EVIDENCED BY THE FACT THAT IT WAS -- IT SHOWED SOME
10 MILD ATROPHY IN ITSELF IS AN INDICATION THERE'S SOME
11 COGNITIVE -- THERE'S LIKELY SOME COGNITIVE IMPAIRMENT, BUT
12 ALSO THEN IMPOTISE (PHONETICS) TO PURSUE THAT FURTHER AND
13 HAVE MORE SPECIFIC TESTING DONE THROUGH DR GUR SO I THINK
14 THE MRI SCAN WAS HELPFUL IN TERMS OF POINTING US THAT WE
15 NEEDED TO DO FURTHER INVESTIGATION

16 Q OKAY SO THEN LET ME ASK YOU THIS HAVING READ THE
17 STATEMENT THAT WAS GIVEN BY DR BERG, DO YOU AGREE WITH THAT
18 STATEMENT?

19 A NO

20 Q OKAY SPECIFICALLY WHAT ABOUT IT DO YOU NOT AGREE
21 WITH?

22 A WELL, FIRST OF ALL SHE SAID IF HE HAD -- IF I HAD HAD
23 -- I THINK WHAT SHE MEANS IS IF HE HAD DEMONSTRATED
24 PSYCHONEUROLOGICAL SYMPTOMS, AND IN A GENERAL SENSE I THINK
25 HE DOES HAVE PSYCHONEUROLOGICAL SYMPTOMS, AND THAT SHE SAID

1 I WOULD HAVE DONE AN MRI SCAN, OTHERWISE I PERCEIVE IT AS A
2 WASTE OF MONEY

3 SO I DISAGREE WITH HER IN THAT I THINK HE DOES HAVE
4 -- I DON'T LIKE TO USE THE TERM, PSYCHONEUROLOGICAL SYMPTOMS
5 IS SUCH A VAGUE TERM, BUT AND SO I THINK IN THAT RESPECT IT
6 WAS REASONABLE TO PURSUE AN MRI SCAN

7 Q OKAY AND DID THE RESULTS BEAR OUT THAT IT WAS IN
8 FACT?

9 A THE RESULTS SHOWED SOME MILD ABNORMALITIES THAT WITH
10 FURTHER ANALYSIS CONFIRMED THAT THERE WAS -- THERE IS, IN
11 FACT, EVIDENCE OF ATROPHY ON THOSE SCANS WHICH CORRELATES
12 WITH SOME OF THE OTHER NEUROPSYCHOLOGICAL TESTING THAT WAS
13 DONE

14 Q OKAY

15 MR NETTLES IF I COULD HAVE ONE SECOND

16 (PAUSE)

17 MR NETTLES NO FURTHER QUESTIONS THANK YOU

18 MR MABRY JUST A VERY BRIEF, ---

19 THE COURT YES, SIR

20 MR MABRY --- YOUR HONOR KEEPING WITH THE COURT'S
21 REQUEST

22 RE-RECROSS EXAMINATION BY MR MABRY

23 Q DR BACHMAN, YOU ARE NOT A PSYCHIATRIST, CORRECT?

24 A I'M BOARD CERTIFIED IN BEHAVIORAL NEUROLOGY AND THE
25 -- I TAKE THE SAME BOARDS AS THE NEUROPSYCHIATRISTS TAKE

1 IT'S THE -- IT'S THE UNITED COUNSEL OF NEUROLOGICAL -- IT'S
2 A BOARD IN BEHAVIORAL NEUROLOGY AND NEUROPSYCHIATRY

3 Q OKAY

4 A SO THAT IS THE BOARD I TOOK AND THAT'S WHAT I'M
5 CERTIFIED IN

6 Q ALL RIGHT

7 A BUT MY -- THE TRAINING DOES VARY A LITTLE BIT IN THAT
8 I'M A NEUROLOGIST THAT'S HAD TRAINING IN BEHAVIORAL
9 NEUROLOGY AND IN BEHAVIORAL DEFICITS RELATED TO BRAIN
10 INJURY NEUROPSYCHIATRISTS ARE -- HAVE MORE PSYCHIATRICAL
11 BEND BUT ARE ALSO TRAINED IN DEFICITS RELATED TO
12 NEUROLOGICAL DIFFICULTY BUT WE ACTUALLY SHARE SIMILAR
13 ORGANIZATIONS AND WE ALSO SHARE THE SAME CERTIFYING TESTS

14 Q MY QUESTION WAS ARE YOU A PSYCHIATRIST?

15 A OH, I'M NOT A PSYCHIATRIST, NO

16 Q OKAY AND DR BERG WAS QUALIFIED AS A PSYCHIATRIST IN
17 THIS TRIAL AT LEAST ACCORDING TO MR NETTLES, CORRECT?

18 A WELL I DON'T KNOW DR BERG, BUT IF YOU SAY SHE WAS,
19 THEN SHE WAS

20 Q OKAY WELL, YOU DON'T KNOW EXACTLY WHAT SHE WAS
21 REFERRING TO WHEN SHE SAID PSYCHONEUROLOGICAL SYMPTOMS, DO
22 YOU?

23 A I DO NOT IT'S A VERY VAGUE TERM

24 Q OKAY SHE MAY BE REFERRING TO HALLUCINATIONS, WHETHER
25 AUDITORY, VISUAL OR SOMETHING LIKE THAT?

1 A AGREED

2 Q OKAY NOW AS FAR AS DR EVANS, YOU DID REVIEW HIS
3 TESTING OF MR KAMELL EVANS?

4 A YES, SIR

5 Q OKAY DID YOU AGREE WITH HIS FINDINGS?

6 A I DO

7 Q NOTHING FURTHER

8 THE COURT ALL RIGHT THANK YOU VERY MUCH, DOCTOR

9 OKAY YOU CAN CALL YOUR NEXT WITNESS

10 MR NETTLES THAT'S THE LAST WITNESS -- THE LAST

11 PEOPLE INVOLVING A PULSE WE'VE GOT THAT'S THE LAST PERSON

12 WE'VE GOT

13 THE COURT OH, OKAY

14 MR NETTLES I'M SORRY

15 THE COURT OKAY YOU HAVE ANYTHING ELSE YOU WANT TO

16 ---

17 MR NETTLES I THINK WE'VE GOT SOME ARGUMENTS OH,

18 THE AFFIDAVITS WE'D LIKE TO INTRODUCE SOME AFFIDAVITS

19 THE COURT OKAY

20 MS BROWN WE HAD ORIGINALLY OBJECTED TO THESE

21 AFFIDAVITS WE DO HAVE COPIES MAY WE HAVE JUST A MOMENT,

22 YOUR HONOR?

23 THE COURT YEAH, SURE

24 (PAUSE)

25 MS BROWN YOUR HONOR, WE STILL HAVE AN OBJECTION TO

1 THE AFFIDAVITS SIMPLY BECAUSE WE HAVEN'T HAD AN OPPORTUNITY
2 TO CROSS EXAMINE AND THERE ARE SOME ISSUES WITHIN THE
3 AFFIDAVITS THERE ARE SOME FACTS OR ASSERTIONS THAT GO TO
4 FACTS THAT WE DO CONTEST WE DO ACKNOWLEDGE SIMPSON V
5 MOORE DOES ALLOW THE COURT DISCRETION TO ACCEPT AFFIDAVITS
6 AS DOES 17 27 80

7 BUT I WOULD BRING THE COURT'S ATTENTION TO SIMPSON
8 VERSUS MOORE IN FINDING THAT AFFIDAVITS OR THE TRIAL JUDGE
9 DID NOT ABUSE HIS DISCRETION IN ACCEPTING THE AFFIDAVITS
10 THE SUPREME COURT ALSO NOTED THAT THE STATE HAD THE
11 OPPORTUNITY TO CROSS EXAMINE MOST OF THESE WITNESSES WE
12 DIDN'T HAVE THAT OPPORTUNITY WITH THE WITNESSES WITH THE
13 AFFIDAVITS THAT ARE BEING PRESENTED TODAY AND BECAUSE IT
14 DOES GO TO A CONTESTED ISSUE WE'D ASK YOU TO NOT ACCEPT
15 THESE PARTICULAR AFFIDAVITS

16 THE COURT OKAY YES, SIR, MR NETTLES

17 MR NETTLES YOUR HONOR, I MEAN, I THINK OPPOSING
18 COUNSEL DID A GOOD JOB, I MEAN, WE ARE RELYING ON THE
19 STATUTE

20 THE COURT ALL RIGHT

21 MR NETTLES AND CERTAINLY JUST ASK THE COURT, I MEAN,
22 WE RECOGNIZE THEY'RE AFFIDAVITS AND THEY'RE NOT LIVE
23 TESTIMONY I RECOGNIZE THAT THE COURT MAY, YOU KNOW, DECIDE
24 HOW MUCH WEIGHT HE WANTS TO ASSIGN TO IT AND I THINK IT'S
25 WELL WITHIN YOUR DISCRETION GIVEN THE FACT IT'S AN AFFIDAVIT

1 AND NOT LIVE TESTIMONY

2 THE COURT WHAT ARE THEY AFFIDAVITS ---

3 MR NETTLES THEY'RE JUST -- THEY'RE ALL FROM PEOPLE
4 FROM OHIO

5 THE COURT OKAY

6 MR NETTLES AND VARIOUS STUFF MAINLY ABOUT HIS
7 CHILDHOOD

8 THE COURT RIGHT OKAY I'LL LOOK AT THEM

9 MR NETTLES THANK YOU

10 MS BROWN YOUR HONOR, ARE THEY ACCEPTED INTO
11 EVIDENCE?

12 THE COURT I'M NOT GOING TO RULE ON IT RIGHT NOW I'M
13 JUST GOING ---

14 MS BROWN OKAY WE DO HAVE KIND OF A COROLLARY
15 MOTION ---

16 THE COURT OKAY, SURE

17 MS BROWN --- THAT IF YOU DO ALLOW THE AFFIDAVITS

18 THE COURT RIGHT

19 MS BROWN OPPOSING COUNSEL HAS PROVIDED INFORMATION
20 AND WE CAN AT LEAST RUN CRIMINAL HISTORIES WE HAVE SOME
21 POSITIVE HITS AND CRIMINAL HISTORIES TO ATTACH TO THE
22 AFFIDAVITS IF YOU SHOULD ACCEPT THEM

23 THE COURT ALL RIGHT THANK YOU

24 MR NETTLES WE'D BE IN A SIMILAR POSITION EXCEPT ON
25 THE OTHER SIDE THIS TIME AROUND SO WE'D JUST ASK YOU TO

1 TAKE INTO THE FACT THAT THEY ARE RAP SHEETS AND I'VE HAD
2 THE OPPORTUNITY TO LOOK OVER THEM AND, SURE THE COURT WILL
3 HAVE THAT SAME OPPORTUNITY TO LOOK AT IT

4 AT THE BOTTOM THERE S A PARAGRAPH SORT OF SETTING OUT
5 THAT THEY, YOU KNOW, WHAT THEY SHOULD AND SHOULDN T BE USED
6 I WOULD JUST ASK THE COURT TO TAKE INTO ACCOUNT THAT THEY
7 ARE RAP SHEETS, THEY ARE NOT -- THEY ARE NOT COURT /
8 CONVICTIONS THAT ARE SHOWN FROM THE CLERK OF COURT I'D
9 JUST ASK YOU TO TAKE THAT INTO ACCOUNT

10 THE COURT THEY'RE HEARSAY

11 MR NETTLES THEY ARE HEARSAY

12 THE COURT OKAY ALL RIGHT I UNDERSTAND THANK YOU
13 VERY MUCH

14 MS BROWN MAY I HAVE JUST A MOMENT WITH OPPOSING
15 COUNSEL?

16 THE COURT CERTAINLY AND JUST LET ME KNOW WHAT
17 Y ALL'S PLEASURE IS AS FAR AS COING FORWARD AND WHAT WE
18 (WHEREUPON APPLICANT'S EXHIBIT 71 WAS MARKED)

19 (PAUSE)

20 MR EHLIES WE TOOK TWO DEPOSITIONS THAT -- IN
21 DISCOVERY ONE WAS OF A LADY AT THE WORKERS' COMPENSATION
22 COMMISSION AND ONE WAS OF AN SCDC WE ATTEMPTED TO DO MR
23 O'CAIN, BUT MR O'CAIN IS PROFOUNDLY ILL, UNAVAILABLE AND
24 WE SUBSTITUTED A PERSON OF SCDC'S CHOICE AND IT TURNED OUT
25 TO BE MR ELBERT PEARSON

1 AND MR PEARSON, UNLIKE THE SCDC -- THE WORKERS'
2 COMPENSATION LADY, RESERVED THE RIGHT TO READ AND SIGN THE
3 DEPOSITION AS EVIDENCED BY THE LAST PAGE OF THE DEPOSITION
4 AND I HAVE MADE A DILIGENT EFFORT TO FIND THE ORIGINAL AND
5 I THINK COUNSEL HAS ALSO WE NEVER RECEIVED THE ORIGINAL
6 DEPOSITION

7 WE'LL HAVE COPIES, IF THEY'RE RELEVANT AND ADMISSIBLE,
8 IF THERE LL BE AN ISSUE WHEN IT COMES UP IN THAT REGARD, WE
9 ARE PROPOSING TO USE THE COPY OF MR PEARSON INSTEAD OF THE
10 ORIGINAL OF MR PEARSON AND IF YOU DON'T WANT -- ARE
11 UNCOMFORTABLE WITH THAT, THEN MY OFFICE TODAY IS RUNNING
12 DOWN WITH THE COURT REPORTER THE HISTORY OF WHAT HAPPENED TO
13 THE ORIGINAL BUT I DO -- I CAN TELL YOU THAT THE COPY HAS
14 THE ERRATA SHEET FOR THE WITNESS WHO WANTS TO READ AND SIGN
15 AND I DON'T THINK IT EVER CAME BACK

16 MR PEARSON'S NOT AVAILABLE EITHER AT THE TIME SO
17 THAT'S THE ISSUE ON THE DEPOSITION, I THINK, A COPY OF THE
18 PEARSON DEPOSITION IS -- THAT WE'RE WILLING TO SUBMIT

19 WE THINK THOUGH THAT THOSE ARE NOT RELEVANT THEY WERE
20 DISCOVERY DEPOSITIONS AND THE RELEVANCE ISSUE REMAINS TO
21 BE -- REMAINS TO BE DISCUSSED

22 AND IT'LL TURN A LOT ON WHETHER OR NOT, FOR INSTANCE,
23 THE WORKERS' COMPENSATION DEPOSITION AND WHETHER OR NOT YOU
24 ALLOW THE LAW ENFORCEMENT TESTIMONY, WHICH WE WOULD
25 ANTICIPATE THE STATE WILL ATTEMPT BY AFFIDAVIT OR OTHERWISE

1 TO GET IN AS PERTAINS TO BENEFITS FOR A LAW ENFORCEMENT
2 OFFICER WHO DIES IN THE COURSE OF OR IN HIS EMPLOYMENT

3 WE THINK THAT IS TOTALLY IRRELEVANT, ALL OF THAT WE
4 THINK ALL ANYTHING IN THE SCDC FILE WOULD BE IRRELEVANT
5 BECAUSE IT'D BE POST-TRIAL NOTES, INTAKE NOTES AND THINGS
6 THAT WEREN'T IN EXISTENCE AT THE TIME, THINGS LIKE THAT THAT
7 NEED TO BE HEARD AND I'M NOT SURE THIS IS THE TIME I'M
8 JUST GIVING YOU A HEADS UP THAT THERE ARE ---

9 THE COURT OKAY

10 MR EHLIES WE WILL USE THEM AND SUBMIT THEM DEPENDING
11 ON THE RULINGS OR MAYBE NOT DEPENDING ON YOUR RULINGS AND
12 THAT'S THE ISSUE ON THE DEPOSITIONS SO IS THERE ---

13 THE COURT OKAY

14 MR EHLIES IS THERE ANY OTHER THING, CHRIS, BESIDES
15 THE DEPOSITIONS?

16 MR SEED NO

17 MR EHLIES I THINK THAT'S IT

18 MS BROWN ARE YOU MOVING IN THE WORKERS' COMPENSATION
19 ---

20 MR EHLIES NO, BECAUSE I DON'T THINK THAT'S RELEVANT
21 IS OUR POSITION BUT IF THE JUDGE RULES AGAINST US AND
22 FINDS IT RELEVANT, THEN WE WILL BE OFFERING THE WORKERS'
23 COMPENSATION COMMISSION DEPOSITION

24 THE COURT ALL RIGHT I READ YOUR MEMO THANK YOU
25 FOR THAT SO THE MEMO IS TO EXCLUDE EVIDENCE AT THIS

1 HEARING RELATED TO THE FEDERAL ACT AND WHETHER OR NOT DEPUTY
2 SAPINOSO WAS ON DUTY OR MET THAT AGGRAVATOR?

3 MR NETTLES CORRECT AND THERE ARE TWO MOTIONS,
4 JUDGE THERE'S THE AGGRAVATOR MOTION AND THEN THERE'S THEIR
5 FOUR PAGE ONE, I THINK YOU HAVE, ABOUT EXCLUDING REBUTTAL
6 AND THEY ADDRESS THE SAME THING

7 IT IS OUR POSITION THAT THE AGGRAVATOR, WHICH IS
8 PARAGRAPH 7, 16 3 20 (C) (A) (7)

9 THE COURT RIGHT

10 MR NETTLES THAT AGGRAVATOR'S A LEGISLATIVE
11 STATEMENT AND WHAT COLLATERAL CIVIL AGENCIES MAY THINK OR
12 EVEN THE SHERIFF HIMSELF MAY THINK CONSTITUTES A DEATH
13 BECAUSE OF THE PERFORMANCE OF DUTIES IS NOT RELEVANT THAT
14 IS A GATE-KEEPING FUNCTION FOR THE JUDGE TO DETERMINE BASED
15 ON THE FACTS OF THE CASE AND WE LL ARGUE THAT WHEN YOU SAY
16 IT'S APPROPRIATE BUT THAT S OUR POSITION

17 THE COURT OKAY

18 MS BROWN WOULD YOU LIKE ME TO RESPOND TO THE MOTIONS
19 AT THIS TIME OR WHAT WOULD YOU PREFER?

20 THE COURT WELL, BEFORE WE GET INTO THAT, WHAT
21 WITNESSES DO WE HAVE LEFT TO HEAR FROM FROM THE STATE OR
22 WHAT OTHER EVIDENCE IS THE STATE PLANNING TO PUT IN AT THIS
23 STAGE?

24 MS BROWN YOUR HONOR, WE WOULD CALL THREE WITNESSES
25 THIS AFTERNOON

1 THE COURT OKAY

2 MS BROWN THREE WITNESSES TOMORROW MORNING WOULD

3 YOU LIKE THE INDIVIDUAL NAMES AT THIS TIME?

4 THE COURT NO, THAT S OKAY I'M JUST TRYING TO GET AN
5 IDEA

6 MS BROWN OKAY WE DO ANTICIPATE JUST GOING THROUGH
7 THE MORNING SESSION TOMORROW

8 THE COURT OKAY ALL RIGHT YOU WANT TO RESPOND TO
9 THE MOTION?

10 MR EHLIES WAS THAT MY ARGUMENT?

11 THE COURT SIR?

12 (PAUSE)

13 THE COURT YOU GO AHEAD IT S YOUR MOTION YOU MAKE
14 THE ARGUMENT

15 MR EHLIES OKAY WELL, AS TO WHETHER ---

16 THE COURT I GUESS THE REASON I WAS ASKING HER IS I
17 DON'T KNOW IF SHE S PLANNING TO OFFER THIS KIND OF EVIDENCE

18 MR EHLIES YEAH, WELL, IT IS A LITTLE CART BEFORE THE
19 HORSE

20 THE COURT YEAH

21 MS BROWN WELL, I CAN TELL YOUR HONOR THAT AS I READ
22 THE MOTION TO EXCLUDE THE EVIDENCE FOR THE BENEFITS, IT'S TO
23 PREVENT EVIDENCE OF HOW THE BENEFIT WAS CONSIDERED AND
24 DECIDED UPON AND I CAN TELL YOU, WE'RE NOT GOING TO
25 PRESENT THAT THERE'S NOTHING IN THERE THAT WE'RE GOING TO

1 PRESENT

2 NOW TO ADDRESS THE ALLEGATIONS THAT OPPOSING COUNSEL
3 HAS MADE IN THE MOTION, WE DO PLAN TO PRESENT SOME EVIDENCE
4 AND THAT IS BASICALLY GOING TO WORKERS' COMPENSATION CLAIM
5 THAT YOU'VE HEARD A LITTLE BIT ABOUT THROUGH THE DEPOSITION
6 DISCUSSION

7 AND THE ABSENCE OF DEPUTY SAPINOSO'S NAME ON THE SLED
8 LIST WHERE THERE ARE OTHER MEMORIALS WHERE HE IS INCLUDED,
9 SPECIFICALLY GREENVILLE COUNTY MEMORIAL, AND WE'RE ALSO
10 SUBMITTING EVIDENCE ON THAT

11 BUT AS FAR AS THE BENEFITS IN AND OF THEMSELVES AND THE
12 WAY THAT THOSE WERE WEIGHED AND CONSIDERED, NO, WE'RE NOT
13 SUBMITTING ANY WE DON'T PLAN TO SUBMIT ANY EVIDENCE ON
14 THAT

15 **THE COURT** WELL, DOESN'T THE ISSUE OF WHETHER THE
16 AGGRAVATOR WAS PROPERLY PRESENTED TO THE JURY -- I'M TRYING
17 TO FIGURE OUT HOW ANY POST-TRIAL EVIDENCE COULD AFFECT THAT
18 I MEAN, DOESN'T IT DEPEND ENTIRELY ON WHAT WAS IN THE RECORD
19 AS TO WHAT GETS PRESENTED?

20 **MS BROWN** WELL, THAT WOULD BE PART OF MY RESPONSE,
21 YOUR HONOR, BECAUSE AS I READ THE MOTION THE FIRST PREMISE
22 OF THAT MOTION IS THAT THE AGGRAVATOR WAS IMPROPERLY CHARGED
23 BASED ON WHAT WAS HEARD AT TRIAL

24 AND, OF COURSE, AT TRIAL WE HAVE SHERIFF LOFTIS
25 TESTIFYING DIRECTLY THAT ACCORDING TO HIS POLICY IN

1 GREENVILLE COUNTY DEPUTY SAPINOSO WAS STILL ON DUTY BECAUSE
2 HE WAS IN HIS COUNTY ISSUED VEHICLE WHEN HE WAS ABDUCTED AND
3 BEFORE HE REACHED THE SAFETY OF HIS HOME AND, OF COURSE,
4 KIDNAPPING BEING A CONTINUOUS OFFENSE, HE WAS ON DUTY AT THE
5 TIME THAT THIS CRIME STARTED

6 WE ALSO HAVE SHERIFF LOFTIS' TESTIMONY THAT THE
7 DEPARTMENT REQUESTED AND RECEIVED BENEFITS THAT REQUIRED IN
8 LINE OF DUTY OR ON DUTY DESIGNATION WE ALSO INCIDENTALLY
9 HAVE MR EVANS' TESTIMONY AT TRIAL THAT HE DID CONFRONT THE
10 OFFICER AT HIS VEHICLE AND ALSO MR EVANS' STATEMENT THAT HE
11 WENT UP TO DEPUTY SAPINOSO WITH A GUN AT THE VEHICLE

12 THERE ARE MULTIPLE PIECES OF EVIDENCE IN THE RECORD
13 THAT WOULD SUPPORT THE AGGRAVATOR BEING GIVEN AND, OF
14 COURSE, THE TEST WHETHER AN AGGRAVATOR SHOULD BE CHARGED IS
15 THE PRESENCE OF EVIDENCE THE JUDGE DOESN'T CONSIDER THE
16 WEIGHT OF THE EVIDENCE SO UNDER STATE V LOCKLEAR THAT
17 AGGRAVATOR WAS APPROPRIATELY CHARGED ONCE WE HAD EVIDENCE
18 THAT DEPUTY SAPINOSO WAS ON DUTY, WHICH IS EVIDENT IN THE
19 RECORD

20 **THE COURT** SO I'M A LITTLE CONFUSED ABOUT THE POSTURE
21 WE'RE IN BECAUSE I CAN SEE WHERE MR EVANS IN HIS PCR CLAIM
22 MAY HAVE EVIDENCE THAT'S OUTSIDE THE TRIAL RECORD THAT WOULD
23 BEAR ON WHETHER OR NOT HIS TRIAL COUNSEL WAS EFFECTIVE IN
24 THE WAY THEY HANDLED THE AGGRAVATOR, BUT I'M NOT SURE WHAT
25 EVIDENCE THE STATE COULD HAVE, IF IT RELATES TO THAT

1 AND MAYBE I'M MISSING SOMETHING FROM THE FIRST HEARING
2 BECAUSE IT HAS BEEN FOUR MONTHS NOW BUT ---

3 **MS BROWN** ACTUALLY, I THINK I SEE WHERE YOUR HONOR'S
4 GOING THERE IS A DIFFERENCE BETWEEN THE ESTABLISHING OF
5 ERROR AND WEIGHING THE EVIDENCE OF AGGRAVATION AGAINST WHAT
6 WOULD HAVE BEEN ADMITTED OR SHOULD HAVE BEEN SUBMITTED AT
7 THE TRIAL THERE'S A DIFFERENCE THERE'S THE TWO PART
8 STRICKLAND TEST

9 OF COURSE, WE'RE STILL ON ERROR AND WHAT WE'RE DOING
10 HERE IN THIS ADVERSARIAL PROCEEDING IS TESTING THE
11 ALLEGATIONS AND THE EVIDENCE PRESENTED WE ARE STILL IN THE
12 ERROR PART OF THE ANALYSIS IT HAS NOTHING TO DO AT THIS
13 POINT WITH BRINGING UP THE EVIDENCE OF AGGRAVATION OR
14 WEIGHING FOR THE PREJUDICE ANALYSIS

15 WE HAVE THE RIGHT TO TEST THE EVIDENCE THAT'S A BASIC
16 COURT FUNCTION, IS TO MAKE SURE THAT THE COURT UNDERSTANDS
17 THE EVIDENCE THAT'S PRESENTED AND UNDERSTANDS ALL FACETS OF
18 THE EVIDENCE PRESENTED SO THAT THE COURT CAN CONSIDER
19 WHETHER THIS IS TRULY ADMISSIBLE EVIDENCE, WHETHER THIS WAS
20 EVIDENCE THAT SHOULD NOT HAVE BEEN PRESENTED BECAUSE COUNSEL
21 HAD A REASONABLE STRATEGY

22 WE'RE STILL ON THE ERROR PART OF THIS PRONG AND WE
23 HAVE THE RIGHT TO REBUT THE ALLEGATIONS TO SHOW THE JUDGE,
24 IN THIS CASE THE FACT-FINDER, THAT CERTAIN EVIDENCE IS NOT
25 AS QUALIFIED AS APPLICANT WOULD CONTEND IT SHOULD BE OR THAT

1 IT IS NOT AS -- NOT WEIGHTY, BUT IS NOT AS SIMPLE AS THE
2 APPLICANT PRESENTS IT

3 FOR INSTANCE, IF I CAN GO BACK TO THE ASSERTION IN THE
4 MOTION ABOUT DEPUTY SAPINOSO NOT BEING ON THE SLED LIST FOR
5 FALLEN OFFICERS, THAT S, FROM EVERY INDICATION THAT WE HAVE
6 THAT'S TRUE THAT'S WHAT'S ON THE SLED REPORT BUT HE IS
7 ON THE FALLEN OFFICERS MEMORIAL IN GREENVILLE, AND HE IS ON
8 THE FALLEN OFFICERS MEMORIAL ON THE STATE HOUSE GROUND

9 SO THAT WEIGHS IN TO WHETHER IT'S ERROR, NOT TO SUGGEST
10 THAT AT TRIAL, HEY, HE'S NOT ON THE SLED LIST THAT WEIGHS
11 INTO WHETHER THAT'S TRULY ERROR OR NOT AND THAT'S WHERE WE
12 ARE WE'RE NOT INTO ADDITIONAL EVIDENCE OF AGGRAVATION, FOR
13 INSTANCE, TO LEAD TO THE PREJUDICE ANALYSIS

14 THE COURT THANK YOU AND I MAY HAVE -- I READ THE 24
15 PAGER WAS IT 24? NO, 21 YEAH, 24 BUT I DID NOT READ
16 THE 4 PAGE ONE BECAUSE I THOUGHT IT WAS THE SAME THING I'M
17 SORRY

18 MR EHLIES NO, SIR THEY RE A LITTLE DIFFERENT

19 THE COURT YOU GOT A COPY OF THAT? OR YOU CAN
20 SUMMARIZE IT

21 MR EHLIES YES, SIR, IF I CAN

22 THE COURT WHATEVER YOU WANT TO DO MAYBE THAT'S WHY
23 I'M MISSING SOMETHING

24 MR EHLIES WELL, IT'S ACTUALLY, JUDGE, IN TWO PARTS
25 I MEAN, IT IS A FUNDAMENTAL, I'M SORRY, MAY I APPROACH?

1 THE COURT YES

2 MR EHLIES IT IS A FUNDAMENTAL ALLEGATION OF
3 INEFFECTIVE ASSISTANCE OF COUNSEL THAT AT THE TRIAL THERE
4 WAS NO OBJECTION

5 THE COURT RIGHT

6 MR EHLIES IT'S FIVE PAGES IT'S CLOCKED THIS IS A
7 ---

8 THE COURT THANK YOU

9 MR EHLIES --- COPY OF IT

10 THE COURT ALL RIGHT YEAH, WE'VE GOT IT I JUST --
11 I'M SORRY

12 MR EHLIES OH, OKAY

13 THE COURT IT'S SITTING ON MY DESK IN GREENVILLE BUT
14 I THOUGHT IT WAS THE SAME THING

15 MR EHLIES SO WE'VE GOT TWO MAJOR THINGS GOING HERE
16 WE'VE GOT AN IAC CLAIM THAT PERTAINS TO THE ACTUAL TRIAL
17 EVIDENCE, THE TRIAL MATERIALS AND WHETHER OR NOT PARAGRAPH 7
18 WAS AN APPROPRIATE CHARGE TO THE JURY

19 THE COURT OKAY

20 MR EHLIES AND THERE S A WHOLE LOT TO TALK ABOUT
21 THERE INCLUDING BROWN VERSUS SANDERS THAT I HANDED UP AND
22 HOW YOU HANDLE -- AND STATE V SIMMONS ---

23 THE COURT RIGHT

24 MR EHLIES SO I'M NOT GOING THERE NOW IS WHAT I'M

1 TRYING TO CLARIFY

2 THE COURT OKAY

3 MR EHLIES WHERE I'M GOING TO IS YOUR EFFORT TO GET
4 THIS CASE OVER, I MEAN, TO GET THE EVIDENCE IN ---

5 THE COURT RIGHT

6 MR EHLIES --- SO WE CAN MOVE ALONG AND SCHEDULE AND
7 THAT SORT OF THING THEN WE CAN TALK ABOUT LEGAL ISSUES

8 IN THAT REGARD WE ALSO ARGUE THAT ANYTHING THAT
9 OCCURRED AFTER THE TRIAL AND WAS NOT BEFORE THE JUDGE, THE
10 TRIAL JUDGE AT THE TIME, HE MADE THE DECISION TO CHARGE THE
11 AGGRAVATOR IS IRRELEVANT TO WHAT WE'RE HERE TO DETERMINE
12 WHICH IS AN IAC ON THAT PARTICULAR ISSUE

13 AND SO IF -- WE CAN SPEND ALL THIS TIME SUPPLEMENTING
14 IT AND IT'S NOT RELEVANT HOW MANY AWARDS HE GOT OR DIDN'T
15 GET OR WHO THINKS HE WAS IN THE LINE OF DUTY OR NOT IN THE
16 LINE OF DUTY WHAT WAS RELEVANT WAS AS A MATTER OF LAW
17 GIVEN THE LEGISLATIVE STATEMENT IN MERE INTENT IN PARAGRAPH
18 7, WAS THE CHARGE APPROPRIATE? AND IF IT WASN'T, WHY WASN'T
19 THERE AN OBJECTION? AND PART TWO BEING NO OBJECTION, WAS
20 THERE PREJUDICE OR HOW IS THAT DETERMINED PREJUDICE? AND
21 WE VE GOT A BIG ARGUMENT ON THAT KIND OF STUFF

22 SO WE'D SIMPLY SAY THAT THERE'S NOTHING FURTHER TO BE
23 HEARD FROM THE SHERIFF'S DEPARTMENT AS WE UNDERSTAND THEIR
24 TESTIMONY, HE'S ON ANOTHER LIST OR HE'S GOT OTHER BENEFITS
25 OR SUPPLEMENTING WHAT'S ALREADY IN THE RECORD THAT'S A

1 PRE-STANDING ISSUE IT'S DONE IT'S CLOSED IT'S
2 FINISHED IT'S NOT RELEVANT

3 WE HAD THE SAME ARGUMENT ON THE SCDC FILES, BUT THOSE
4 HAVEN'T COME UP AT THIS POINT YET SO THAT'S OUR POSITION
5 ON THAT AM I STATING THESE CORRECTLY? YEAH, HAVE I NOT
6 SAID THAT -- HAVE I MADE IT CLEAR THAT ANYTHING AFTER TRIAL,
7 EFFORTS AFTER THE TRIAL?

8 AND I M GOING A STEP FURTHER -- I AM GOING A STEP
9 FURTHER ANYTHING THAT WASN T BEFORE THE JUDGE AT THE TIME
10 HE MADE THE CHARGE I WOULD SAY IS IRRELEVANT, CERTAINLY
11 THINGS THAT HAPPENED THAT WEREN'T AVAILABLE EVEN AFTER THE
12 TRIAL COULDN'T HAVE BEEN RELEVANT

13 THE COURT WELL, BUT MS BROWN IS RAISING THE POINT
14 THAT YOU CAN'T REALLY CHERRY PICK IT I MEAN, IF YOU'RE
15 GOING TO SAY THAT, WELL HIS NAME S NOT ON ONE MEMORIAL AND
16 THEY SHOULD HAVE BROUGHT THAT OUT, THEN THE STATE OUGHT TO
17 BE ABLE TO PRESENT THE WHOLE PICTURE AND RAISE THE SPECTER
18 OF IF THE DEFENSE HAD TRIED TO BRING THAT UP, THEN THEY
19 WOULD HAVE OPENED THE DOOR TO PERHAPS MORE DAMAGING EVIDENCE
20 OR MORE PREJUDICIAL EVIDENCE I MEAN, I THINK THAT'S WHAT
21 SHE'S SAYING

22 MR EHLIES WE WOULD HAVE NEVER OFFERED THAT EVIDENCE
23 I OFFERED IT IN THE BRIEF THAT HE'S NOT ON THESE LISTS

24 THE COURT RIGHT

25 MR EHLIES NOT BECAUSE I WOULD HAVE AT TRIAL

1 THE COURT RIGHT

2 MR EHLIES ONLY TO HIGHLIGHT HOW IRRELEVANT ALL OF
3 THAT IS THERE S NO RELEVANCE IN ANY KIND OF COLLATERAL
4 DETERMINATION AS TO WHETHER HE'S ENTITLED TO BENEFITS FOR
5 INSTANCE, ON THE WORKERS' COMPENSATION THING, HE'S GOT TWO
6 YEARS AND ACTUALLY UNDER SOME CIRCUMSTANCES IT CAN BE
7 EXTENDED TO THREE YEARS BEFORE HE HAS TO FILE AN ACTUAL
8 APPLICATION FOR THE BENEFITS IF HE NOTICED THE CLAIM TIMELY
9 TO HIS EMPLOYER

10 SO, I MEAN, THAT'S A BIG WINDOW BEFORE WE'RE EVEN AT
11 TRIAL I THINK APRIL 1ST OF '03 IS THE EVENT AND THE TRIAL
12 WAS SEPTEMBER OF '04 SO THERE'S STILL AN OPEN WINDOW ON
13 THAT

14 FOR ALL OF THOSE REASONS ANYTHING FROM THE SHERIFF THAT
15 THEY WOULD BE OFFERING NOW WOULD BE IRRELEVANT YOU HAVE TO
16 ASSESS THAT BASED ON THE RECORD AS IT EXISTS TODAY AND WHAT
17 THE TRIAL JUDGE WAS CONFRONTED WITH THAT IS OUR POSITION,
18 IT'S NOT RELEVANT TO YOUR DETERMINATION ---

19 THE COURT IT'S A LITTLE DIFFERENT THAN AN APPEAL, A
20 DIRECT APPEAL WITH A JUDGE'S JURY CHARGE AND YOU'RE
21 SAYING, WELL, IT S GOT TO BE BASED ON THE EVIDENCE IN THE
22 RECORD BECAUSE YOU'RE -- PART OF YOUR CLAIM IS THAT THE
23 LAWYERS AT THE TRIAL SHOULD HAVE PUT MORE EVIDENCE IN THE
24 RECORD OR KEPT CERTAIN EVIDENCE OUT SO WHY IS IT NOT
25 PERMISSIBLE FOR ONE SIDE OPPOSING SUCH A CLAIM TO POINT OUT

1 THE HAZARDS OF DOING THAT?

2 MR EHLIES YOUR HONOR, I THINK THE ONLY OBJECTION IS
3 THAT THEY DIDN'T OBJECT THEY DIDN'T OBJECT

4 THE COURT YOU'RE NOT SAYING THAT THEY SHOULD HAVE ---

5 MR EHLIES DEVELOPED IT AT ALL THERE'S A DIFFERENCE
6 IN GOING AND DEVELOPING MITIGATION EVIDENCE ---

7 THE COURT OKAY

8 MR EHLIES --- THAT THEY DIDN'T DO

9 THE COURT WELL, THAT'S FAIR ENOUGH YEAH

10 MR EHLIES AND THERE'S A MAJOR DIFFERENCE IN THAT

11 THE COURT OKAY ALL RIGHT I UNDERSTAND THE
12 DISTINCTION YOU'RE MAKING

13 MR EHLIES AND NOT JUST SITTING ON YOUR HANDS AND NOT
14 OBJECTING

15 THE COURT YOU'RE JUST SAYING ---

16 MR EHLIES THAT'S CLEARLY INAPPROPRIATE

17 THE COURT --- THEY SHOULD HAVE OBJECTED TO IT

18 MR EHLIES CORRECT

19 THE COURT OKAY WHAT ABOUT THAT, MS BROWN?

20 MS BROWN WELL, THERE ARE TWO WAYS OF LOOKING AT
21 THAT AND THE FIRST PART IS MORE OF A DIRECT APPEAL ISSUE,
22 WHAT WE'RE LOOKING AT IN THE RECORD TO SUPPORT THE CHARGE
23 THERE CAN'T BE ANY DOUBT THAT THERE WAS EVIDENCE IN THE
24 RECORD, ALBEIT CIRCUMSTANTIAL EVIDENCE, STILL EVIDENCE WE
25 DON'T WEIGH AT THAT POINT LOOKING AT THE CHARGE TO SUPPORT

1 THE CHARGE BEING GIVEN

2 NOW AT THIS POINT WE'RE TALKING ABOUT INEFFECTIVE
3 ASSISTANCE OF COUNSEL AND LET ME GO BACK AND MAKE ONE MORE
4 POINT ON THE FREESTANDING CLAIM OF ERROR, WE HAVE MOVED
5 FOR SUMMARY JUDGMENT ON THAT AND WE INTEND TO AGAIN
6 REQUEST A DIRECTED VERDICT ON THAT ISSUE BECAUSE THOSE ARE
7 CLAIMS THAT ARE NOT COGNIZABLE IN PCR AS A CLAIM OF
8 INEFFECTIVE ASSISTANCE OF COUNSEL

9 SO WHETHER THE CHARGE WAS APPROPRIATE IS SOMETHING THAT
10 IS GONE UNDER THE SIMMONS DOCTRINE AND UNDER DRAYTON THOSE
11 ARE ISSUES THAT CANNOT COME BACK UP THAT SHOULD BE SET
12 ASIDE AND WE'LL MOVE TO DISMISS IT AT THE APPROPRIATE TIME

13 THE COURT BUT WHAT HE'S SAYING -- AS I UNDERSTAND
14 WHAT MR EHLIES IS SAYING IS THAT IT SHOULD HAVE NEVER
15 GOTTEN TO THE POINT WHERE THERE WAS EVIDENCE IN THE RECORD
16 TO SUPPORT THE CHARGE DUE TO THE LACK OF OBJECTION

17 MS BROWN AND THAT GOES BACK TO MY ARGUMENT ON ERROR
18 WHERE WE ARE WITH ERROR NOW IF YOU'LL RECALL MR STEVEN
19 SUMNER TESTIFIED THAT THEY ACTUALLY INVESTIGATED WHETHER
20 DEPUTY SAPINOSO WOULD BE CONSIDERED ON DUTY AT THIS POINT

21 THE COURT WELL, I THINK -- AND I'M JUST RECALLING
22 MEMORY, DIDN'T HE SAY HE ASKED ANOTHER DEPUTY OR SOMETHING?

23 MS BROWN I BELIEVE THERE WAS TESTIMONY THAT SEVERAL
24 PEOPLE WERE ASKED HE DID LOOK INTO THAT TO SEE IF THERE
25 WAS ANY WAY TO CHALLENGE THAT AND BOTH HE AND SKIP

1 GOLDSMITH TESTIFIED THAT IN THEIR OPINION IT WAS NOT A FAIR
2 BASIS TO CHALLENGE THEY DECIDED TO CONCENTRATE ON THE
3 DEFENSE AND THE TWO KAMELL EVANS THEORY

4 THE COURT OKAY SO THE STATE COULD POSITION ITSELF
5 AS SAYING THAT THAT WAS A VALID STRATEGY AND, OF COURSE,
6 THEY COULD CLAIM -- MR EVANS COULD CLAIM IT WAS NOT A VALID
7 STRATEGY BUT ---

8 MS BROWN YES, SIR AND WHEN THEY GO FORWARD AND
9 OFFER EVIDENCE TO SHOW WHY IT WAS NOT A VALID STRATEGY OR
10 WHY MORE INVESTIGATION SHOULD HAVE BEEN MADE, THAT'S WHEN WE
11 HAD THE OPPORTUNITY TO SAY, WELL, THIS IS ALSO WHAT WE HAVE

12 THE COURT BUT I DON'T SEE THEM DOING THAT THEY'RE
13 SAYING ---

14 MR EHLIES NO, WE'RE GOING BACKWARDS

15 MS BROWN WELL SEE, ACTUALLY THAT'S WHAT THEY HAVE
16 ASSERTED IN THE MOTION FOR INSTANCE, IN THE MOTION THEY'VE
17 SAID THAT THEY DID NOT RECEIVE ANY TYPE OF ORDER OR
18 PROVISION FROM THE SHERIFF'S DEPARTMENT WHERE THERE WOULD
19 HAVE BEEN AN ON DUTY EVALUATION BASED ON SOMEONE BEING AT
20 THE CAR, IF I MADE THAT CLEAR I MIGHT NOT HAVE MADE THAT
21 ---

22 THE COURT RIGHT

23 MS BROWN --- EXTRAORDINARILY CLEAR

24 THE COURT I UNDERSTAND WHAT YOU'RE SAYING

25 MS BROWN I WOULD OFFER FOR PURPOSES OF THIS MOTION

1 ONLY AND AS A COURT EXHIBIT, TWO AFFIDAVITS, ONE FROM
2 SHERIFF LOFTIS, ONE FROM LIEUTENANT SMITH, WHERE THE POLICY
3 OF THE SHERIFF'S OFFICE POLICY WAS ATTACHED AND WAS PROVIDED
4 TO OPPOSING COUNSEL AT THE JUNE 1ST HEARING UPON REQUEST
5 MAY I APPROACH AND HAVE THESE MARKED?

6 MR EHLIES SURE AS I UNDERSTAND IT, SHE'S OFFERING
7 UP SOMETHING IN SUPPORT OF HER RESISTANCE TO MY MOTION AND
8 ACTUALLY THE FIRST PART IS ALMOST LITERALLY OUT OF THE
9 TRANSCRIPT OF SHERIFF LOFTIS I DON'T THINK SHEA SMITH
10 ACTUALLY TESTIFIED AT TRIAL

11 AND THEN THE POLICY IS ATTACHED AND THE POLICY THAT'S
12 IN ISSUE IS THE SECOND PAGE ABOUT HAVING A CAR AND ALL OF
13 THAT GOES TO THE STATE OF THE RECORD AT THE TIME OF THE
14 TRIAL, JUDGE

15 SO I DON'T WANT TO MISLEAD YOU BY BEING INARTFUL IN MY
16 ARGUMENT BECAUSE I THINK YOU'RE UNDERSTANDING THAT REALLY IT
17 DOESN'T MAKE ANY DIFFERENCE WHAT THE SHERIFF'S POLICY IS
18 BECAUSE IT'S NOT THE SHERIFF'S POLICY THAT'S REFERENCED IN
19 THE STATUTE FROM COLUMBIA

20 THEY DON'T SAY WHAT YOU'RE -- BECAUSE OF YOUR -- THE
21 PERFORMANCE OF YOUR LAW ENFORCEMENT DUTY -- THEY DON'T SAY
22 BECAUSE OF WHATEVER THE SHERIFF SAYS YOU MIGHT BE AT HOME
23 SAWING Zs AND YOUR WIFE GETS ANGRY AND SLITS YOUR THROAT
24 WELL, YOU'RE EMPLOYED AS A DEPUTY SHERIFF AND YOU HAD AN
25 UNMARKED VEHICLE WITH NO RADIO, NO TAG, NO NOTHING, SO NOW
26 YOU'RE ELIGIBLE, I HATE THAT WORD, FOR A DEATH SENTENCE

1 BUT, THAT S IT

2 THE COURT SO WHAT WOULD THE OBJECTION HAVE BEEN?

3 MR EHLIES THE OBJECTION'S VERY SIMPLE AT TRIAL AND
4 AS SOON AS SHE GOT NOTICE FROM THE SOLICITOR THESE ARE GOING
5 TO BE THE AGGRAVATORS, IT IS OUR POSITION THAT EFFECTIVE
6 REPRESENTATION WOULD HAVE BEEN TO CHALLENGE THAT IMMEDIATELY
7 BY SAYING, JUDGE, THERE'S NOT ANY EVIDENCE AT ALL, GIVEN THE
8 POLICIES, WHATEVER ELSE BECAUSE YOU ONLY HAVE TO ASK TWO
9 QUESTIONS WOULD JOE SAPINOSO HAVE BEEN THE VICTIM OF THIS
10 CRIME HAD HE BEEN A PLUMBER? ANSWER, UNEQUIVOCALLY, YES
11 IF SHERIFF LOFTIS HAD WALKED UP THAT SIDEWALK IN UNIFORM
12 WOULD HE HAVE BEEN THE VICTIM? ANSWER, NO

13 AND THE REASON FOR THAT IS THE MOTIVATING KINGPIN IN
14 THIS CRIME HAS NOTHING TO DO WITH BECAUSE OF LAW ENFORCEMENT
15 DUTIES IT IS CHRISTINA RODRIGUEZ, WHO IS THE SISTER OF JOE
16 SAPINOSO AND THE DAUGHTER OF HIS DAD, MR SAPINOSO AND
17 THAT IS BEYOND DISPUTE THERE IS NO CONNECTION BETWEEN LAW
18 ENFORCEMENT AND THIS CRIME AND THAT'S WHY ---

19 THE COURT WELL, BUT THE STATUTE SAYS DURING OR
20 BECAUSE OF

21 MR EHLIES DURING IS STANDING THERE RIGHT MAKING THE
22 ARREST

23 THE COURT RIGHT

24 MR EHLIES STOPPED THE GUY WHO JUMPS OUT OF THE CAR
25 AND BLOWS YOU AWAY, YOU'RE IN UNIFORM, DURING BECAUSE OF,

1 I ARRESTED THE GUY, PUT HIM IN JAIL, HE THINKS HE'S
2 INNOCENT, I KNOW HE'S NOT, HE HUNTS ME DOWN AND BLOWS ME
3 AWAY FOR THAT REASON, BECAUSE OF

4 THEN THEY'VE CARVED OUT A LITTLE THING OF YOU WERE
5 ACTUALLY IN UNIFORM AND YOU MADE THE ARREST, HE CAME BACK ON
6 YOU IN THE MIDDLE OF THE NIGHT AND HE SHOT AND KILLED YOU
7 FOR THAT REASON THERE IS NOTHING IN COMMON WITH THIS CASE
8 UNDER THIS PARAGRAPH 7 AND IT'S HUGEY PREJUDICIAL I
9 KNOW WE'RE NOT THERE, WE'RE NOT EVEN IN THE COP, EXCUSE ME
10 FOR THAT SLANG, LAW ENFORCEMENT ARGUMENT AT THIS POINT I'M
11 JUST ARGUING RELEVANCY FOR YOUR SCHEDULING PURPOSE

12 MS BROWN YOUR HONOR, EVERY CHARGE IS GOING TO BE
13 BASED ON THOSE FACTS THE FACTS OF EACH CASE ARE GOING TO
14 VARY AND AS YOUR HONOR POINTED OUT, THE ACTUAL LANGUAGE
15 FOR THE AGGRAVATOR IS DURING OR BECAUSE OF PERFORMANCE OF
16 OFFICIAL DUTIES ABSOLUTELY TWO INDEPENDENT PHRASES IN THAT
17 AGGRAVATOR

18 AND IT IS EXTRAORDINARILY IMPORTANT WHETHER THERE WAS A
19 POLICY IN EFFECT AS TO THE TIME OF DUTY THAT WAS SHERIFF
20 LOFTIS' TESTIMONY IT'S CERTAINLY IN THE RECORD, CERTAINLY
21 SUPPORTIVE OF THIS AGGRAVATOR AS IT'S WRITTEN IN THE STATE
22 OF SOUTH CAROLINA IT SUPPORTS THE AGGRAVATOR

23 THE COURT ALL RIGHT AND EXCUSE ME FOR MY HARD
24 HEADEDNESS, BUT WHY DO YOU NEED TO PUT IN ADDITIONAL
25 EVIDENCE ABOUT THAT NOW? AND WHY SHOULD YOU BE ALLOWED TO

1 IF THE RECORD ITSELF IS WHAT WE HAVE TO LIVE WITH AT THIS
2 POINT?

3 MS BROWN WELL THE CHARGE ITSELF, YOUR HONOR, SHOULD
4 THAT ALLEGATION SURVIVE AND BE A FREESTANDING CLAIM, WE
5 WOULD NOT FOR INEFFECTIVE ASSISTANCE OF COUNSEL, WHERE
6 IT'S ALLEGED IN THE MOTION BEFORE THE COURT THAT THERE ARE
7 NO WORKERS' COMPENSATION BENEFITS AND THERE ARE NO --
8 THERE'S NO RECOGNITION THROUGH SLED, THEN JUST TO ESTABLISH
9 THE VALIDITY OF THOSE ASSERTIONS, THEN WE'RE ABLE TO PUT IN
10 THE EVIDENCE JUST TO SHOW THE VALIDITY OF THE ASSERTIONS
11 MADE IN THE POST CONVICTION RELIEF PROCESS TO ESTABLISH
12 ERROR

13 THE COURT WELL, CAN'T Y ALL STIPULATE TO THAT? I
14 DON'T -- IS THERE NOT -- YOU SAY THAT THERE'S, YOU KNOW,
15 ABOUT THE WORKERS' COMP AND THE

16 MR EHLIES WOULD YOU LIKE THE DEPOSITION?

17 THE COURT I DON'T WANT TO PUT YOU ON THE SPOT I'M
18 JUST TRYING TO SAY -- AND I DON'T -- I'M NOT TRYING TO PUSH
19 THE TRIAL I'M JUST ---

20 MR EHLIES COULD I TAKE HER TO LUNCH AND WORK IT OUT?

21 THE COURT WELL, I DON'T KNOW Y'ALL CAN -- WHY DON'T
22 WE DO THAT WHY DON'T WE JUST TAKE A LUNCH I MEAN I --
23 AGAIN, IT'S KIND OF A -- I M KIND OF RULING IN A VACUUM
24 BUT I THINK I UNDERSTAND THE ISSUES AND IF IT DOES BECOME
25 AN ISSUE, IT'S IN THE RECORD AND WE HAVE IT

1 BUT IF Y ALL WANT TO BRING THE WITNESSES IN, IF THERE
2 ARE REASONS WHY YOU WANT TO HAVE A LIVE TESTIMONY, I'M NOT
3 SAYING YOU CAN'T DO THAT AT THIS POINT, I HAVEN'T RULED ON
4 THE MOTION BUT IT SEEMS TO ME THAT IT'S SOMETHING THAT IS
5 PRETTY OBJECTIVE ON BOTH SIDES AS FAR AS WHAT IS OUT THERE
6 AS FAR AS THE WORKERS' COMP AND THE MEMORIAL STATUS AND
7 EVEN IF IT IS RELEVANT AND ADMISSIBLE IN THIS PROCEEDING, IT
8 SEEMS LIKE IT COULD BE PUT IN THE RECORD AS A PROFFER OR A
9 SLIPULATION

10 MR EHLIES COULD WE DO THAT JUST RESERVING YOUR
11 RULING ON THE RELEVANCE? JUST ---

12 THE COURT SURE

13 MR EHLIES --- JUST PUT IT IN AND ---

14 THE COURT YEAH, I MEAN, I THINK WE'RE SAYING THE SAME
15 THING

16 MR EHLIES ARE WE OKAY WITH THAT?

17 THE COURT WELL, ANYWAY, LET'S JUST TAKE A LUNCH
18 BREAK HOW LONG DO Y ALL NEED 1 45

19 MS BROWN ACTUALLY, I BELIEVE OUR FIRST WITNESS IS
20 SUPPOSED TO BE HERE AT TWO

21 THE COURT OKAY WELL, THAT'S FINE WE'LL BE BACK AT
22 TWO THANK YOU

23 (WHEREUPON COURT'S EXHIBITS 2 AND 3 WERE MARKED)

24 (WHEREUPON COURT WAS IN RECESS AT 12 30 PM)

25 (WHEREUPON COURT RESUMED AT 2 04 PM)

1 THE COURT OKAY MS BROWN, YOU MAY CALL YOUR NEXT --
2 FIRST WITNESS

3 MS BROWN WELL, WHEN WE LEFT WE WERE TALKING ABOUT AN
4 AGREEMENT ON ---

5 THE COURT RIGHT

6 MS BROWN --- TESTIMONY IF WE COULD JUST BRIEFLY
7 ADDRESS THAT MY UNDERSTANDING IS THE MOTION TO PREVENT US
8 FROM CALLING WITNESSES GOING TO BENEFITS AND MEMORIALS AND
9 WHATNOT IS A PREVENTATIVE KIND OF MOTION SO AS LONG AS
10 THERE ARE NO ALLEGATIONS GOING TO BENEFITS AND MEMORIALS
11 THAT WE WOULD NEED TO RESPOND TO, WE DON'T INTEND TO CALL
12 ---

13 THE COURT OKAY

14 MS BROWN --- A WITNESS

15 THE COURT ALL RIGHT

16 MS BROWN NOW I UNDERSTAND THAT MEANS THAT THE ONLY
17 ALLEGATIONS THAT -- OR CLAIMS TO BE ADDRESSED ARE SORT OF
18 FROZEN IN TIME CLAIMS BASED ON EVIDENCE AT TRIAL AND
19 ARGUMENTS AT TRIAL NOW IS THAT A FAIR STATEMENT?

20 MR EHLIES MY UNDERSTANDING IS THAT YOU HAVE NOT
21 RULED ON RELEVANCE AND SO WHAT WE'RE DOING IS AGREEING TO
22 AVOID CALLING THE DEPUTY -- LIEUTENANT SHEA SMITH AND HAVING
23 HIM TESTIFY AS TO BENEFITS AND THE REST OF THAT SHE'S
24 OFFERED UP AFFIDAVITS THAT PRETTY WELL ESTABLISH THAT AND
25 THERE IS THIS DEPOSITION OF THE WCC

1 IF YOU WERE TO RULE THAT THE STATE CAN GO INTO THOSE
2 MATTERS, THEN THE WCC DEPOSITION WOULD BE RELEVANT FROM OUR
3 PERSPECTIVE IF YOU RULE THAT THOSE ARE NOT RELEVANT
4 RECORDS, PERIOD, THEN NONE OF THIS WOULD BE OPEN OR GONE
5 INTO THIS IS THE -- SO I'M GIVING YOU THE ORIGINAL UNTIL
6 YOU MAKE UP YOUR MIND AND RULE ON THE MOTION, WCC

7 MS BROWN I THINK IT COMES DOWN IF WE DON'T OFFER THE
8 WITNESS, THEY DON'T OFFER THE DEPOSITION, CORRECT?

9 MR EHLIES WELL, ARE YOU WITHDRAWING THE AFFIDAVITS
10 THEN?

11 MS BROWN THE AFFIDAVITS, I AM ONLY PUTTING IN FOR
12 THE MOTION TO PROVE THAT WE PROVIDED YOU WITH THE POLICY AND
13 THE INFORMATION

14 MR EHLIES OKAY

15 MS BROWN AND THEY'RE ONLY MARKED AS COURT EXHIBITS

16 THE COURT ALL RIGHT SO THERE'S NO NEED FOR A RULING
17 UNLESS THEY'RE PUT IN

18 MR EHLIES UNLESS THEY ATTEMPT TO GET BEYOND THEIR
19 TRIAL RECORD ON THE BENEFITS ISSUE AND THAT SORT OF THING,
20 OKAY?

21 THE COURT IS THAT ---

22 MR EHLIES YES, SIR

23 THE COURT OKAY ALL RIGHT THANK YOU SO THE
24 AFFIDAVITS ARE NOT PART OF THE ---

25 MR EHLIES NO, THEY'RE JUST ---

1 THE COURT YOU DON T HAVE AN OBJECTION ON THAT?

2 MR EHLIES AS I UNDERSTAND IT, THEY WERE OFFERED IN
3 RESPONSE TO THE MOTION ---

4 MS BROWN IN RESPONSE TO THE MOTION

5 MR EHLIES --- ONLY AND SINCE NOW THEY'RE NOT
6 CALLING THESE OFFICERS WE'RE IN EFFECT WITHDRAWING THE
7 MOTION ON THAT SINCE IT'S NOT GOING TO HAPPEN SO THE
8 AFFIDAVITS WOULDN'T BE RELEVANT

9 THE COURT SO ARE YOU WITHDRAWING THE AFFIDAVITS?

10 MS BROWN IT'S A FILED MOTION, YOUR HONOR I THINK I
11 WOULD HAVE TO KEEP THE AFFIDAVITS ---

12 THE COURT WELL, YOU'RE NOT PUTTING THEM IN THE RECORD
13 FOR ---

14 MS BROWN NO NO SIR

15 THE COURT OKAY

16 MS BROWN JUST AS A COURT AFFIDAVIT IN RESPONSE TO
17 THE MOTION

18 THE COURT OKAY JUST FOR THAT MOTION ONLY

19 MS BROWN YES, SIR

20 THE COURT OKAY I'M WITH YOU

21 MS BROWN OKAY

22 THE COURT ALL RIGHT THANK YOU

23 MS BROWN AND, YOUR HONOR, AND IF WE COULD, I BELIEVE
24 THE APPLICANT HAS RESTED AT THIS TIME, IS THAT CORRECT?

25 MR NETTLES WE HAVE

1 THE COURT ALL RIGHT

2 MS BROWN YOUR HONOR, WE DO HAVE A MOTION FOR A
3 DIRECTED VERDICT SPECIFICALLY ON GROUNDS 9(D)1, 9(D)3
4 9(D)4, 9(D)5, 9(D)6, 9(E), 9(F) AND 9(G) THESE ARE
5 FREESTANDING CLAIMS OF CONSTITUTIONAL ERROR THEY'RE CLAIMS
6 THAT ARE NOT COGNIZABLE IN POST CONVICTION RELIEF UNDER THE
7 SIMMONS DOCTRINE AND DRAYTON VERSUS EVETTE WE'D ASK THAT
8 THOSE BE DISMISSED BECAUSE THEY ARE NOT COGNIZABLE

9 AS TO CLAIM 9(D)2 THAT IS THE BRADY CLAIM IT IS
10 COGNIZABLE, BUT THERE'S BEEN ABSOLUTELY NO EVIDENCE
11 PRESENTED WE PRESENTED IN OUR RESPONSE IN A MOTION FOR
12 SUMMARY JUDGMENT AN AFFIDAVIT FROM SKIP GOLDSMITH SAYING
13 THAT HE HAD NOT BEEN PRESENTED ANY EVIDENCE TO IDENTIFY AS
14 NOT GOING INTO THE FILE OR NOT HAVING ACCESS TO THE EVIDENCE
15 THROUGH THE OPEN FILE POLICY OF THE SOLICITOR'S OFFICE
16 THERE'S NOTHING IN TESTIMONY THAT ESTABLISHES THAT SOME BIT
17 OF EVIDENCE OR INFORMATION WAS NOT REVEALED TO THE DEFENSE
18 TO SUBSTANTIATE A BRADY CLAIM SO WE'D ASK FOR A DIRECTED
19 VERDICT ON THAT CLAIM

20 ON 9(A)3, IT IS AN INEFFECTIVE ASSISTANCE OF COUNSEL
21 CLAIM FOR CHANGE OF VENUE AS WE STATED IN THE RETURN TO
22 THE AMENDED APPLICATION, A MOTION WAS MADE AT TRIAL IT IS
23 ON RECORD, PAGE 108 AND 109 THERE WERE QUESTIONS OF THE
24 JURORS AT THAT TIME THERE WERE NO RESPONSES THAT COULD
25 REMOTELY SUPPORT THE MOTION IT WAS RULED ON

1 WHAT'S IMPORTANT IS THERE'S NO EVIDENCE IN THE RECORD
2 OF ANY FIXED OPINION THERE IS AMPLE EVIDENCE OF CAREFUL
3 QUESTIONING BY COUNSEL SO WE SUBMIT THE STATE IS ENTITLED
4 TO A DIRECTED VERDICT ON THAT ISSUE

5 ON 9(B)2, THIS IS THE INEFFECTIVE ASSISTANCE OF COUNSEL
6 CLAIM FOR FAILURE TO MOVE TO QUASH THE AGGRAVATING
7 CIRCUMSTANCES, A CIRCUMSTANCE OF LAW ENFORCEMENT OFFICER,
8 CIRCUMSTANCE -- THE APPLICANT HAS ARGUED THERE WAS, QUOTE
9 NO EVIDENCE AT TRIAL

10 WE HAVE POINTED TO JUST RECENTLY IN OUR MOTION HEARING
11 TO SHERIFF LOFTIS' TESTIMONY ABOUT DEPUTY SAPINOSO BEING ON
12 DUTY AT THE TIME THAT HE WAS TAKEN FROM HIS CAR THERE'S
13 OBVIOUSLY EXISTENCE OF EVIDENCE SUPPORTIVE OF THE
14 AGGRAVATING CIRCUMSTANCE WE DON'T LOOK INTO WHAT WEIGHT
15 SHOULD BE ASSIGNED, JUST THE EXISTENCE OF EVIDENCE SO WE'D
16 ASK FOR A DIRECTED VERDICT ON THAT ISSUE

17 ON 9(B)4, IT'S AN INEFFECTIVE ASSISTANCE OF COUNSEL
18 CLAIM FOR FAILURE TO OBJECT TO MR O CAIN'S TESTIMONY THIS
19 IS THE GANG EXPERT FROM SCDC THERE'S BEEN NO TESTIMONY
20 WHATSOEVER TO IMPUGN THE QUALIFICATIONS OR TESTIMONY WE'D
21 ASK FOR A DIRECTED VERDICT

22 ALLEGATION 9(C)1, INEFFECTIVE ASSISTANCE OF APPELLATE
23 COUNSEL, FAILURE TO RAISE TRIAL COURT'S DENIAL OF COUNSEL'S
24 REQUEST TO CHARGE VOLUNTARY MANSLAUGHTER WE SHOULD HAVE A
25 DIRECTED VERDICT ON THIS PARTICULAR ISSUE AS A MATTER OF LAW

1 BECAUSE THE ONLY FACT TO SUPPORT THAT PARTICULAR CHARGE
2 WOULD BE APPLICANT'S TESTIMONY THAT THE DEPUTY REACHED FOR A
3 GUN ON THE COFFEE TABLE AND IT IS WELL ESTABLISHED THAT A
4 VICTIM'S ATTEMPT TO RESIST OR DEFEND CANNOT SUPPORT THE
5 CHARGE THAT'S STATE VERSUS SHULER

6 AND LASTLY, WE HAVE 9(C)2, INEFFECTIVE ASSISTANCE OF
7 APPELLATE COUNSEL, FAILURE TO RAISE CHANGE OF VENUE AS I
8 MENTIONED EARLIER THERE WAS VOIR DIRE OF THE JURORS ABOUT
9 PUBLICITY AND PRETRIAL KNOWLEDGE THERE WAS NOTHING THAT
10 SHOWED ANY KIND OF FIXED BELIEF IN ANY OF THE RESPONSES FROM
11 THE JURORS SO WE REQUEST A DIRECTED VERDICT FOR THAT ISSUE
12 AS WELL

13 THE COURT OKAY DOES THE PETITIONER HAVE ANY
14 RESPONSE TO THAT AT THIS TIME? MR SEED?

15 MR SEED ON THE GROUNDS 9(A)2 9(B)2, 9(B)4, 9(C)1
16 AND 9(C)2 WE BELIEVE THAT THOSE ARE ALL MATTERS IN DISPUTE
17 AND WE'D ASK THE COURT TO DECIDE THOSE BASED ON THE EVIDENCE
18 PRESENTED HERE IN THE HEARING

19 THE COURT OKAY

20 MR SEED 9 ---

21 THE COURT I'M SORRY CAN YOU GIVE ME THOSE NUMBERS
22 ONE MORE TIME?

23 MR SEED RIGHT IT WAS 9(A)2, NO, I'M SORRY EXCUSE
24 ME 9(A)3, IT WAS NOT 9(A)2 IT WAS 9(A)3, CHANGE OF
25 VENUE

1 THE COURT RIGHT CHANGE OF VENUE OKAY

2 MR SEED 9(B)2 WITH RESPECT TO THE FAILURE TO
3 CHALLENGE THE LAW ENFORCEMENT AGGRAVATING FACTOR 9(B)4,
4 CHALLENGING -- FAILURE TO CHALLENGE MR O'CAIN'S TESTIMONY
5 IN VARIOUS RESPECTS 9(C)1, APPELLATE COUNSEL'S FAILURE TO
6 CHALLENGE A MANSLAUGHTER CHARGE AND 9(C)2, APPELLATE
7 COUNSEL'S FAILURE TO CHALLENGE OR RAISE THE VENUE CLAIM

8 THE COURT THE LAST ONE WAS WHAT NOW?

9 MR SEED 9(C)2

10 THE COURT ALL RIGHT

11 MR SEED WE BELIEVE EACH OF THOSE -- THOSE ARE
12 MATTERS IN DISPUTE AND WE'D ASK THAT THE COURT DECIDE
13 THOSE BASED ON THE EVIDENCE IN THE HEARING
14 WITH RESPECT TO 9(D)2, THAT'S THE BRADY CLAIM

15 THE COURT RIGHT

16 MR SEED BASED ON OUR INVESTIGATION AND WHAT'S BEEN
17 DISCLOSED TO US BY THE RESPONDENT AND FROM THE SOLICITOR'S
18 FILE WE WILL NOT -- WE DON'T HAVE GROUNDS SUPPORTING A
19 BRADY CLAIM AT THIS TIME AND WE HAVEN'T -- THERE'S BEEN NO
20 EVIDENCE PRESENTED IN THE HEARING AT THIS TIME

21 THE COURT ALL RIGHT

22 MR SEED GROUND 9(D)3 WE DISPUTE THE
23 CHARACTERIZATION OF THIS CLAIM, WHICH IS BASED ON A LINE OF
24 CASES WITH RESPECT TO THE KNOWING PRESENTATION OF FALSE
25 EVIDENCE BY THE STATE AT TRIAL WE DISPUTE THE

1 CHARACTERIZATION OF THIS CLAIM AS AN ON-THE-RECORD CLAIM
2 THAT CANNOT BE OR DOES NOT RELY ON EVIDENCE PRESENTED AT THE
3 POST CONVICTION -- THIS CLAIM'S BASED ON THE CASES OF NAPUE
4 VERSUS ILLINOIS AND OTHERS THAT DO RELY ON INFORMATION
5 PRESENTED AT THE POST CONVICTION HEARING TO ESTABLISH WHAT,
6 EXACTLY WHAT THE STATE KNEW OR SHOULD HAVE KNOWN AT THE TIME
7 OF TRIAL AND EVIDENCE TO THAT EXTENT HAS BEEN PRESENTED
8 HERE AT THIS HEARING

9 MS BROWN YOUR HONOR, MAY I ASK APPLICANT TO GO OVER
10 THE EVIDENCE THAT HE FEELS SUPPORTIVE OF 9(D)3 SO I MAY FORM
11 A RESPONSE?

12 MR SEED ONE EXAMPLE OF SUCH EVIDENCE WOULD BE
13 INFORMATION FROM TRIAL COUNSEL'S FILE THAT TRIAL COUNSEL
14 RECEIVED IN DISCOVERY FROM THE STATE PRIOR TO TRIAL FOR
15 INSTANCE, THE DOCUMENT OF THE INTERVIEW WITH MS CHRISTINA
16 RODRIGUEZ WHERE SHE TALKS ABOUT MR EVANS, QUESTIONS ASKED
17 THERE, REFLECTING THAT HE WAS NOT IN A GANG

18 MS BROWN YOUR HONOR I WOULD ARGUE THAT THAT DOESN'T
19 SUPPORT AN ALLEGATION THAT IS FALSE IT SUPPORTS AN
20 ALLEGATION THERE MAY HAVE BEEN A CONTEST OF EVIDENCE, BUT IT
21 CERTAINLY DOESN'T SUPPORT ANY ALLEGATION OF FALSE TESTIMONY
22 BEING PRESENTED

23 MR SEED OUR RESPONSE IS IT DOES SUPPORT IT AND
24 WHETHER IT PROVES IT OR NOT IS AN ISSUE FOR THE COURT TO
25 DECIDE

1 WITH RESPECT TO THE OTHER -- THE OTHER PARAGRAPHS AT
2 9(D) THAT THE RESPONDENT HAS RAISED, 9(D)1, 9(D)4, 9(D)5 AND
3 9(D)6, 9(E), (F) AND (G), EACH OF THOSE CLAIMS ARE PLED IN
4 THE APPLICATION IN AN ABUNDANCE AND CAUTION BECAUSE THEY ARE
5 SUBSTANTIVE BASES FOR THE INEFFECTIVE ASSISTANCE OF COUNSEL
6 CLAIMS

7 THE COURT O-KAY THANK YOU, MR SEED SO THE
8 PETITIONER IS WITHDRAWING 9(D)2, IS THAT RIGHT?

9 MR EHLIES THAT'S CORRECT

10 MR SEED THAT'S CORRECT

11 THE COURT OKAY AND AS FAR AS THE VENUE, CHANGE OF
12 VENUE, WHAT EVIDENCE WOULD THERE BE IN THE RECORD THAT COULD
13 SUPPORT A FINDING THAT THAT WAS DEFICIENT PERFORMANCE IN
14 LIGHT OF THE VOIR DIRE THAT WAS CONDUCTED IN THE SEATING OF
15 A JURY WITHOUT ANY PROBLEM?

16 MR EHLIES I THINK, JUDGE, THAT VENUE HAS TO BE
17 THOUGHT OF IN TWO PARTS VENUE HAS TO CHARGE IN THE
18 COMMUNITY FROM WHICH THE VENIRE IS DRAWN ALSO, VENUE IS TO
19 THE LOCATION OF TRIAL AND THERE WAS NO EFFORT MADE TO
20 SUPPORT TO MY KNOWLEDGE ' I STAND TO BE CORRECTED

21 WITH REGARDS TO THE FOCUS OF THE TRIAL ITSELF, THIS
22 TRIAL OCCURRED IN THE VOCATIONAL LIVINGROOM OF THE VICTIM
23 AND THERE WAS SUBSTANTIAL TESTIMONY IN THE TRIAL RECORD AT
24 PAGE -- IT WAS IN SHERIFF LOFTIS' TESTIMONY IDENTIFYING THE
25 VENUE, 1750, IN THAT RANGE I'M SORRY I THOUGHT I HAD

1 IDENTIFIED THE EXACT PAGE, BUT ---

2 THE COURT I UNDERSTAND

3 MR EHLIES IN SHERIFF LOFTIS' TESTIMONY HE TALKS
4 ABOUT DUTY ASSIGNMENT FOR DEPUTY SAPINOSO AND ALSO IN THE
5 -- 1528, AND ALSO A VERY ELABORATE DESCRIPTION OF THE VENUE
6 ISSUE AS IT PERTAINS TO THE ACTUAL COURTHOUSE WAS GIVEN BY A
7 FELLOW EMPLOYEE, ONE OF THE LADIES PRESENT IN THE COURTROOM,
8 CATHLEEN TRIPP, WHEN SHE DESCRIBED AND SET OUT FOR THE JURY
9 THAT, IN FACT, MR SAPINOSO WAS A SECURITY OFFICER THERE IN
10 THE COURTHOUSE

11 AND THE WHOLE THING WAS, IN OUR OPINION, ELABORATE IT
12 WAS ALSO KNOWN TO TRIAL COUNSEL AND REPRESENTED, IN FACT A
13 RECORD IN THIS CASE, IN TRIAL CASE CONTAINS REASONS WHY THE
14 PUBLIC DEFENDER WOULD NOT, COULD NOT UNDERTAKE A DEFENSE OF
15 THE CASE AND SO IT WAS ACTUALLY ASSIGNED TO OUTSIDE
16 COUNSEL INSTEAD OF THE PUBLIC DEFENDER

17 AND SO THE RECORD CONTAINS, IN OUR OPINION, SUBSTANTIAL
18 BASES AND FACTUAL REPRESENTATIONS AT LEAST TO SURVIVE THE
19 CURRENT MOTION BEFORE YOU THAT VENUE WAS NOT PROPERLY
20 ADDRESSED AND WE ALLEGE THAT TRIAL COUNSEL FAILED TO
21 EFFECTIVELY REPRESENT THE CLIENT IN THAT REGARD DOES THAT
22 ANSWER YOUR QUESTION?

23 THE COURT YES, SIR

24 MR EHLIES THANK YOU

25 MS BROWN YOUR HONOR, IF I MAY BRIEFLY RESPOND?

JAROD TOWE - DIRECT EXAMINATION BY MR MABRY

262

1 THE COURT SURE

2 MS BROWN I DON'T BELIEVE THAT I HEARD ANYTHING

3 ADDRESSING WHAT THE JURORS EXPRESSED AT THAT TIME AND WE

4 WOULD RELY ON THE SPECIFIC QUESTIONING OF EACH AND EVERY

5 JUROR WHO EXPRESSED NO KNOWLEDGE OR BIAS OR PRECONCEIVED

6 OPINION ON THIS PARTICULAR CASE WHETHER OR NOT IT HAD BEEN

7 POTENTIAL, THERE CERTAINLY WAS NO REALIZATION

8 MR EHLIES I SUSPECT THAT IT MIGHT HAVE BEEN BECAUSE

9 THEY DIDN'T KNOW ABOUT THE SETTLING DURING THE VOIR DIRE,

10 WHICH IS THE ESSENCE OF THE CHALLENGE THANK YOU

11 THE COURT THANK YOU

12 (PAUSE)

13 THE COURT OKAY WELL, OF COURSE, I CAN'T WEIGH THE

14 EVIDENCE AT THIS STAGE I CAN DETERMINE WHETHER THERE'S

15 EVIDENCE IN THE RECORD SUFFICIENT TO LET THE CLAIMS GO

16 FORWARD AND BASED ON THAT STANDARD OF REVIEWING THE

17 EVIDENCE IN THE LIGHT MOST FAVORABLE TO MR EVANS, I WOULD

18 RESPECTFULLY DENY THE MOTION FOR A DIRECTED VERDICT

19 ALLEGATION OR CLAIM 9(D)2 HAS BEEN WITHDRAWN SO WITH THAT,

20 WE LL MOVE ON AND YOU CAN CALL YOUR FIRST WITNESS

21 MS BROWN THANK YOU, YOUR HONOR

22 MR MABRY JAROD TOWE

23 JAROD TOWE, BEING DULY

24 SWORN TESTIFIED AS FOLLOWS

25 DIRECT EXAMINATION BY MR MABRY

JAROD TOWE - DIRECT EXAMINATION BY MR. MABRY

263

1 Q COULD YOU TELL US YOUR NAME, PLEASE?

2 A JAROD TOWE

3 Q YOU'RE GOING TO HAVE TO SPEAK UP, MR. TOWE

4 A JAROD TOWE

5 Q THAT'S CORRECT OKAY AND WHERE DO YOU WORK?

6 A I WORK AT FLUOR DANIEL

7 Q ALL RIGHT AND WHAT IS YOUR OCCUPATION AT FLUOR
8 DANIEL?

9 A I'M A GRAPHIC DESIGNER

10 Q ALL RIGHT AT SOME POINT IN TIME BACK IN, I BELIEVE,
11 2004, 2003 2004 WERE YOU ASKED TO PREPARE SOME THREE
12 DIMENSIONAL DIAGRAMS FOR THE SOLICITOR'S OFFICE INVOLVING
13 THE CASE OF THE STATE VERSUS KAMELL EVANS?

14 A YES, SIR

15 Q ALL RIGHT AND HOW DO YOU GO ABOUT -- WOULD YOU
16 EXPLAIN TO THE COURT HOW YOU GO ABOUT PREPARING THOSE
17 DIAGRAMS? WHAT DO YOU USE AND EXACTLY HOW DO YOU DO IT?

18 A I USE A 3D PROGRAM THAT HAS A GENERIC HEAD MODEL BUILT
19 INTO IT, JUST BASICALLY A HEAD THAT CAN BE ROTATED AROUND
20 YOU CAN LOOK AT IT FROM WHATEVER SIDE YOU WANT TO

21 SO BY LOOKING AT THE AUTOPSY PHOTOGRAPHS I WAS ABLE TO
22 TAKE AND TRY TO PINPOINT WHERE AT LEAST IT LINED UP ON THE
23 HEAD MODEL LIKE I SAY, IT'S NOT A COMPLETELY ACCURATE --
24 IT'S MEANT TO BE A GENERIC MODEL JUST FOR A VISUALIZATION
25 PURPOSE

1 BUT I THEN TOOK WHERE THE DOCTOR'S DIAGRAM SHOWED THE
2 ENTRY POINTS ALONG WITH THE AUTOPSY PHOTOGRAPHS AND THE --
3 WHERE HIS DIAGRAM SHOWED THE EXIT POINTS AND OVERLAID SOME
4 BARS TO SHOW THE PATHWAY THROUGH THE HEAD AT LEAST AS MUCH
5 COULD BE GATHERED FROM ENTRY AND EXIT WOUNDS AND ACCORDING
6 TO THE INJURIES TO THE -- THE INSIDE OF THE BRAIN, INSIDE OF
7 THE HEAD

8 Q OKAY AND WHEN YOU PREPARE THESE DIAGRAMS FOR THE
9 SOLICITOR'S OFFICE OR WHOEVER'S GOING TO USE THEM, WHAT DO
10 YOU USE? WHAT INFORMATION IS GIVEN TO YOU TO PREPARE THE
11 DIAGRAM OR THE THREE DIMENSIONAL DIAGRAM?

12 A WELL, GENERALLY I WOULD GET A CALL OR AN EMAIL FROM
13 SOMEBODY AT THE OFFICE TELLING ME THAT I NEEDED TO GO SEE
14 THE M E , WHICH USUALLY HAS BEEN DR WARD, SOMETIMES DR
15 CHRISTIANSEN AND I WOULD GO AND PICK UP THE PACKET WITH
16 THEIR DIAGRAMS, WHICH IS GENERALLY A 2D DRAWING OF THE BODY
17 AND THE HEAD IF THERE WERE HEAD WOUNDS SHOWING WHERE THE
18 RELATIVE -- WHERE THE INJURIES WERE YOU KNOW, THEY WOULD
19 MARK THEM DOWN TO SHOW WHAT THEY WERE AND THEN I WOULD
20 LOOK THROUGH THE PAPERWORK TO SEE -- TO LOOK AT THE
21 DESCRIPTIONS OF THE INJURIES TO SEE EXACTLY WHAT THEY WERE
22 TO TRY TO PINPOINT WHAT -- WHERE THE MOST SERIOUS ONES THAT
23 THEY WANTED TO SHOW

24 Q ALL RIGHT YOU TALKING ABOUT -- WHEN YOU SAY THE
25 PAPERWORK, YOU TALKING ABOUT THE AUTOPSY REPORT OF THE M E ?

1 A YES I WOULD LOOK THROUGH THE AUTOPSY REPORT JUST TO
2 TRY TO FIGURE OUT BECAUSE, LIKE I SAY, SOMETIMES SOME OF
3 THEM HAVE MULTIPLE INJURIES AND FIGURING OUT WHICH ONE'S
4 WHICH CAN BE DIFFICULT BUT I USUALLY WORK WITH THE M E ,
5 CREATE THE IMAGES, PASS THEM BACK AND FORTH MULTIPLE TIMES
6 UNTIL HE'S SATISFIED WITH THE PRODUCT LIKE I SAY, I HAVE
7 NO MEDICAL EXPERIENCE SO I HAVE TO RELY ON HIM

8 Q ALL RIGHT SO YOU TELL ME IF I'M WRONG, AS I
9 UNDERSTAND IT, YOU GET THE MATERIALS FROM HIM AND YOU DO A
10 DIAGRAM, AND THEN IT'S RETURNED TO HIM FOR HIM TO LOOK AT?

11 A YES

12 Q OKAY AND THEN THERE MAY BE PASSING BACK AND FORTH
13 FROM HIM TO YOU WITH HIM TELLING YOU WHAT? WHAT DOES HE
14 TELL YOU TO DO IF HE SENDS IT BACK TO YOU?

15 A WELL, HE MIGHT SAY THE -- LIKE FOR EXAMPLE, SOME OF THE
16 HEAD WOUND INJURIES, HE MIGHT SAY IT NEEDS TO BE UP A LITTLE
17 CLOSER TO THE RIGHT EAR, FOR EXAMPLE, YOU KNOW JUST MOVE
18 THE BAR A LITTLE -- MOVE THE BAR, WHICH IS THE BAR THAT
19 TRANSECTS THE -- INTERSECTS THE SKULL ITSELF, MOVE IT TO
20 WHERE IT WAS A MORE ACCURATE, AS FAR AS WHAT HE SAW, MORE
21 ACCURATE OF HOW HE PICTURED THE BULLET TO TRAVEL

22 Q ALL RIGHT AND BEFORE THE THREE DIMENSIONAL DIAGRAMS
23 THAT ARE USED IN THIS CASE, DEMONSTRATIVE AIDS, WOULD THAT
24 HAVE BEEN SUBJECT TO THE FINAL APPROVAL OF THE MEDICAL
25 EXAMINER?

JAROD TOWE - CROSS EXAMINATION BY MR. NETTLES

266

1 A YES HE WOULD ALWAYS BE THE ONE TO SAY THAT IT WAS
2 GOOD HE WAS ALWAYS THE ONE WHO WOULD TELL ME THAT THAT WAS
3 THE -- THAT WE WERE DONE WITH IT AT THAT POINT
4 Q OKAY SO THE FINAL PRODUCT, HE HAS TO APPROVE?
5 A RIGHT THE SOLICITOR GENERALLY ASKS ME TO GET APPROVAL
6 FROM THE M E
7 Q OKAY
8 A SO IT WENT THAT FAR
9 MR. MABRY THAT'S ALL I HAVE, YOUR HONOR

10 CROSS EXAMINATION BY MR. NETTLES

11 Q SO LET ME GET THIS STRAIGHT, THIS THING THAT YOU USED
12 THAT YOU'VE GOT -- THERE'S A COPY OF THIS IN EVIDENCE LIKE
13 THAT?
14 A YES, SIR
15 Q OKAY THAT IS A -- AND I BELIEVE IF I'M CORRECT, YOU
16 TESTIFIED THAT'S JUST A GENERAL SIZED HEAD?
17 A YEAH, IT'S JUST A -- IT'S NOT A -- IT'S MEANT TO BE AN
18 AVERAGE ---
19 Q JUST A GENERIC HEAD?
20 A YES SIR
21 Q SO IN OTHER WORDS, THE DIFFERENCE -- SO YOU WOULD USE
22 THE SAME HEAD FOR ALL ADULTS?
23 A NO I WOULD USE A DIFFERENT HEAD FOR FEMALES
24 Q OKAY YOU WOULD USE THE SAME HEAD FOR ALL MALE ADULTS?
25 A PRETTY MUCH

JAROD TOWE - CROSS EXAMINATION BY MR NETTLES

267

1 Q OKAY

2 A YES

3 Q SO THEN WHENEVER WE'RE TALKING ABOUT HOW FAR IT IS FROM
4 THE CENTER BACK TO LIKE DIRECTLY PERPENDICULAR OVER YOUR
5 EAR, THAT'S GOING TO BE THE SAME DISTANCE ON ALL OF YOUR
6 MALE ADULT HEADS?

7 A WELL, IN THE RESPECT THAT IF YOU LOOK AT THE M E 's
8 DIAGRAMS, THEY GENERALLY USE THE SAME 2D ILLUSTRATION FOR
9 ALL ADULT MALE BODIES SO FOLLOWING FROM HIS DIAGRAM AND
10 HIS -- BASICALLY HIS BACK AND FORTH WITH IT HE WAS ABLE TO
11 TELL ME THAT THIS IS AS ACCURATE AS HE COULD GUESS, PLUS
12 LOOKING AT THE AUTOPSY PHOTOS AS WELL

13 Q OKAY SO YOU'LL PUT THE HOLES PRETTY MUCH WHERE THE
14 M E TELLS YOU TO?

15 A WELL, I MEAN, MY OWN EYE LOOKS AT IT TOO TO GET IT IN
16 PLACE IN THE FIRST PLACE HE NEVER DIRECTS ME OTHER THAN
17 WITH HIS PAPERWORK FROM THE START BUT I WOULD LOOK AT IT
18 AND EYEBALL IT AND GO BY THE, I MEAN, SOME OF THE AUTOPSY
19 PHOTOGRAPHS ARE PRETTY ACCURATE AS FAR AS KNOWING WHERE THE
20 CENTER IS AND WHERE THE EAR IS AND KNOWING IT'S THREE
21 QUARTERS OF THE WAY IN BETWEEN IT MAY NOT BE EXACT, BUT IT
22 SERVES TO SHOW WHERE THE ENTRY POINT WAS

23 Q OKAY SO THEN YOU'RE NOT IN HERE TODAY TELLING US THAT
24 THE HOLES ON THESE PICTURES THAT YOU DID ARE EXACTLY WHERE
25 THE HOLES WERE ON THE BODIES?

JAROD TOWE - REDIRECT EXAMINATION BY MR. MABRY

268

1 A NO IT WAS MEANT TO BE A VISUALIZATION IT WAS NEVER
2 MEANT TO BE A SCIENTIFIC -- A SCIENTIFIC PRODUCT

3 Q IT WAS SUPPOSED TO BE AN APPROXIMATION?

4 A YES

5 Q SO WHAT WE'VE HERE THEN IS IS WE'VE GOT ON THESE
6 PHOTOGRAPHS, WHICH IS WHAT YOU PROVIDED, IS AN APPROXIMATE
7 LOCATION OF THE HOLES -- WHERE THE HOLES WERE ON THE REAL
8 BODIES?

9 A YES

10 MR. NETTLES I HAVE NO FURTHER QUESTIONS

11 REDIRECT EXAMINATION BY MR. MABRY

12 Q AND THE FINAL PRODUCT HAS TO BE APPROVED BY THE M E ,
13 IS THAT CORRECT?

14 A ALWAYS APPROVED BY THE MEDICAL EXAMINER

15 Q ALL RIGHT THANK YOU

16 MR. MABRY NOTHING FURTHER

17 THE COURT THANK YOU, MR. TOWE

18 MR. MABRY WE'D ASK HIM TO BE EXCUSED YOUR HONOR

19 THE COURT YES, SIR, YOU'RE EXCUSED

20 MS. BROWN YOUR HONOR WE ONLY HAVE ONE MORE WITNESS

21 AND I HAD A TELEPHONE CALL EARLIER AT ABOUT 1:30 THAT HE WAS
22 HELD UP IN A LITTLE CONFERENCE IN COLUMBIA HE SHOULD BE
23 HERE SHORTLY IF I COULD HAVE JUST A MINUTE JUST TO SEE IF
24 I COULD FIND HIM OUTSIDE, I WOULD APPRECIATE IT

25 THE COURT SO HE WAS IN COLUMBIA AT 1:30?

CHRISTOPHER LONG - DIRECT EXAMINATION BY MS BROWN

269

1 MS BROWN UM-HUM (AFFIRMATIVE)

2 MR EHLIES HE'S A POLICE OFFICER, JUDGE, AND A BLUE
3 LIGHT

4 MR NETTLES YOU SEE HOW THAT WORKED FOR THE GOVERNOR
5 THE COURT WELL, ---

6 MS BROWN HE IS AN OFFICER WITH SCDC AND THE
7 MESSAGES SAID THAT HE HAD AN IMPORTANT DUTY SO I'M NOT
8 REALLY SURE -- CAN T TELL YOU WHAT, CAN T TELL YOU HOW THAT
9 HAPPENED, BUT HE WAS GOING TO GET HERE AS SOON AS POSSIBLE
10 MAYBE IF I COULD JUST STEP OUT JUST REAL BRIEFLY

11 THE COURT OKAY

12 (WHEREUPON COURT WAS IN RECESS AT 2 34 PM)

13 (WHEREUPON COURT RESUMED AT 2 37 PM)

14 MS BROWN THE STATE WOULD CALL SERGEANT CHRIS LONG

15 THE COURT OKAY

16 CHRISTOPHER LONG, BEING

17 DULY SWORN TESTIFIED AS FOLLOWS

18 DIRECT EXAMINATION BY MS BROWN

19 Q SERGEANT LONG, WOULD YOU STATE YOUR NAME FOR THE
20 RECORD, PLEASE?

21 A SERGEANT CHRISTOPHER LONG

22 Q OKAY AND WHERE ARE YOU EMPLOYED?

23 A SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

24 Q AND IS THERE A CERTAIN DIVISION?

25 A DIVISION OF INVESTIGATIONS, SPECIAL INVESTIGATIONS

CHRISTOPHER LONG - DIRECT EXAMINATION BY MS BROWN

270

1 Q OKAY DOES THAT INCLUDE A SECURITY THREAT GROUP?

2 A YES, MA'AM WE ARE RESPONSIBLE FOR SECURITY THREAT
3 GROUPS

4 Q AND JUST BRIEFLY CAN YOU TELL THE COURT WHAT YOUR
5 RESPONSIBILITIES ARE IN THE SECURITY THREAT GROUP?

6 A WE OVERSEE THE MAINTAINING AND CREATION OF FILES ON
7 INMATES COMING IN THROUGHOUT THE STATE, IDENTIFYING
8 POTENTIAL AND/OR MEMBERS OF GANGS OR SECURITY THREAT GROUPS,
9 MAINTAINING THOSE FILES, MONITORING THE INMATES THROUGHOUT
10 THEIR INCARCERATION

11 Q IS IT CUSTOMARY WHEN AN INMATE COMES INTO SCDC TO ASK
12 HIM IF HE HAS ANY GANG AFFILIATION?

13 A USUALLY WHEN INMATES COME IN WE TAKE PHOTOGRAPHS OF
14 TATTOOS CHECK FOR POSSESSION OF MATERIALS, CLOTHING AND
15 WE DO ASK A QUESTIONNAIRE IF WE DO FIND ANY OF THOSE ITEMS

16 Q AND THE RESPONSES TO THE QUESTIONS AND THE PICTURES,
17 ARE THEY RECORDED AND MAINTAINED AT SCDC?

18 A YES, MA'AM

19 Q AS PART OF YOUR REGULAR BUSINESS RECORDS?

20 A WE KEEP THE PICTURES ON FILE IN A HARD FOLDER IN OUR
21 OFFICE OF ALL THOSE INMATES

22 Q OKAY ARE YOU FAMILIAR WITH THE SCDC OFFENDER
23 MANAGEMENT SCREENS?

24 A YES, MA'AM

25 Q OKAY I'D LIKE TO SHOW YOU A COPY OF A SCREEN PRINTOUT

CHRISTOPHER LONG - DIRECT EXAMINATION BY MS BROWN

271

1 AND ASK IF YOU CAN IDENTIFY IT?

2 A YES, MA'AM

3 Q OKAY AND THAT INFORMATION GOES TO WHICH INMATE?

4 A KAMELL EVANS

5 Q OKAY AND DOES -- IS THERE ANY INFORMATION ON THAT
6 SHEET THAT WOULD TELL YOU THAT HE WAS ASKED WHETHER HE WAS A
7 MEMBER OF A GANG AND WHAT HIS RESPONSE WOULD HAVE BEEN?

8 A YES DOWN TOWARD THE BOTTOM IT SAYS -- ASKED, ARE YOU
9 A MEMBER OF A GANG? AND THIS IS -- THIS IS ---

10 THE COURT HOLD ON

11 MR EHLIES EXCUSE ME, JUDGE

12 THE COURT YES, SIR

13 MR EHLIES WE TOOK A DEPOSITION IN DISCOVERY AND I
14 THINK I HAVE A HANDLE ON WHERE THIS IS GOING AND IT HAS TO
15 DO WITH POST CONVICTION, POST SENTENCING CREATION OF
16 DOCUMENTS PERTAINING, AND PHOTOGRAPHS PERTAINING TO THE
17 SECURITY ASSESSMENTS OF KAMELL EVANS AND ANY STATEMENTS HE
18 MAY HAVE MADE AFTER THE TRIAL, WHICH WERE IN NO WAY
19 AVAILABLE OR PRESENT OR EVEN EXISTED AT THE TIME OF TRIAL
20 THE RELEVANCE IS CHALLENGED AT THIS POINT 'CAUSE I THINK I
21 KNOW THE NEXT QUESTION ON THE -- INVOLVING THE SCREEN
22 IDENTIFICATION

23 MS BROWN THE STATEMENTS WOULD HAVE BEEN TAKEN
24 IMMEDIATELY AFTER TRIAL WHEN HE WENT INTO SCDC AFTER
25 SENTENCE WAS PRONOUNCED THERE WILL BE ANOTHER QUESTION

CHRISTOPHER LONG - DIRECT EXAMINATION BY MS BROWN

272

1 ABOUT ANY OTHER STATEMENTS MADE DURING THE TIME HE'S BEEN IN
2 SCDC THAT'S IN RESPONSE TO A LOT OF THE TESTIMONY THAT
3 YOU'VE HEARD BOTH IN JUNE AND IN THIS SESSION GOING TO
4 WHETHER HE IS A MEMBER OF A GANG AND HIS VARIOUS STATEMENTS
5 ALONG THE WAY THIS SHOWS WHAT STATEMENTS HE'S MADE TO SCDC
6 IN THAT CAPACITY

7 THE COURT O.KAY I OVERRULE THE OBJECTION

8 Q MR EVANS WAS ASKED BY THE SECURITY THREAT GROUP
9 EVALUATOR THAT HE WAS A MEMBER OF A GANG WHAT DID HE
10 REPLY?

11 A YES

12 Q IS THERE A PROCEDURE TO RENOUNCE GANG MEMBERSHIP IN
13 SCDC?

14 A YES, MA'AM, THERE IS

15 Q HAS MR ---

16 MR EHLIES YOUR HONOR, I WOULD ASSUME THAT WE'RE
17 PROTECTED THROUGHOUT THIS WHOLE ---

18 THE COURT YOU'RE CONTINUING YOUR OBJECTION?

19 MR EHLIES YES SIR

20 THE COURT O.KAY YES, SIR I OVERRULED THE
21 OBJECTION

22 Q HAS MR EVANS EVER REQUESTED TO RENOUNCE GANG
23 MEMBERSHIP?

24 A I HAVE NEVER SEEN THE QUESTIONNAIRE, THE RENUNCIATION
25 QUESTIONNAIRE WITH HIS NAME ON IT TO RENOUNCE

CHRISTOPHER LONG - CROSS EXAMINATION BY MR. EHLIES

273

1 Q AND YOU WOULD HAVE ACCESS TO THE RECORDS WHERE ANYTHING
2 ELSE MAY HAVE COME THROUGH?

3 A YES, MA'AM AS NOW CURRENTLY I'M LIKE SECOND SO MY
4 SUPERVISOR, IT WOULD COME PROBABLY THROUGH HIM AND AS HE
5 WOULD HAVE THE FINAL SAY IT WOULD COME DIRECTLY TO ME

6 MS BROWN A MOMENT, YOUR HONOR?

7 THE COURT SURE

8 (PAUSE)

9 MS BROWN NO FURTHER QUESTIONS YOUR HONOR

10 THE COURT CROSS EXAMINATION

11 CROSS EXAMINATION BY MR. EHLIES

12 Q SERGEANT LONG, ---

13 A YES, SIR

14 Q --- ARE YOU RESPONSIBLE FOR SHEPARDING VARIOUS FORMS
15 THROUGH THE PRISON POPULATION TO THE INMATES?

16 A I'M SORRY?

17 Q DO YOU TAKE THESE VARIOUS FORMS TO THE INMATES IN THE
18 POPULATION?

19 A NO, SIR THEY ARE DISTRIBUTED BY CONTRABAND UNITS

20 Q OKAY

21 A THE INMATE WOULD NORMALLY WOULD REQUEST THROUGH --
22 REQUEST A STAFF MEMBER THAT HE WOULD LIKE TO RENOUNCE THEY
23 WOULD GET THE FORMS AND THEY WOULD BE FORWARDED TO ME

24 Q AND, OF COURSE, IF HE WASN'T A MEMBER OF A GANG HE
25 WOULDN'T HAVE ANYTHING TO RENOUNCE?

CHRISTOPHER LONG - REDIRECT EXAMINATION BY MS BROWN

274

1 A THAT WOULD BE CORRECT

2 Q AND, OF COURSE, IF HE'S ISOLATED ON DEATH ROW AND THAT
3 SORT OF THING HE MAY NOT HAVE ACCESS TO ANY OF THOSE FORMS
4 OR EVEN KNOW ONE EXISTS?

5 A NO, SIR, EVERYBODY HAS ACCESS TO THOSE FORMS

6 Q IF THEY KNOW IT EXISTS?

7 A I CAN'T STATE TO WHAT HE MIGHT WOULD KNOW, BUT I KNOW
8 ALL THE FORMS ARE ACCESSIBLE TO ALL THE INMATES

9 Q THE POINT IS THAT YOU DON'T ADMINISTER THAT LEVEL ---

10 A NO, SIR

11 Q YOU'RE AT SOME OTHER LEVEL, ---

12 A YES, SIR

13 Q --- CORRECT? THANK YOU

14 REDIRECT EXAMINATION BY MS BROWN

15 Q SERGEANT LONG, IF SOMEONE TELLS YOU THEY'RE A MEMBER OF
16 A GANG, YOU RECORD THAT, DON'T YOU?

17 A YES, MA'AM, IT IS RECORDED

18 Q AND THEY UNDERSTAND WHEN THEY GIVE YOU AN ANSWER THAT
19 YOU'RE RECORDING THEM?

20 A YES, MA'AM

21 Q SO IF THEY TELL YOU THEY'RE A MEMBER OF A GANG, SCDC
22 BELIEVES THEY'RE A MEMBER OF A GANG?

23 A YES, MA'AM

24 MS BROWN NO FURTHER QUESTIONS

25 MR EHLIES THAT'S IT

1 THE COURT THANK YOU, SIR

2 MS BROWN MAY THE WITNESS BE EXCUSED?

3 THE COURT SURE

4 MS BROWN YOUR HONOR, THOSE ARE ALL THE WITNESSES WE
5 HAD TODAY

6 THE COURT ALL RIGHT ANYTHING ELSE WE NEED TO PUT ON
7 THE RECORD OR DISCUSS TODAY?

8 MR EHLIES YES SIR

9 THE COURT ALL RIGHT

10 MR EHLIES JUST A HOUSEKEEPING MATTER THESE HAVEN'T
11 BEEN MARKED THEY'RE FROM THE TRIAL RECORD ACTUALLY, THE
12 BIG TRIAL RECORD, THE LAST SESSION WE HAD OVER HERE BUT TO
13 SAVE CARTING IT BACK AND FORTH FROM THE CLERK OF COURT'S
14 OFFICE WE HAVE ISOLATED TWO PHOTOGRAPHS MAYBE WE SHOULD
15 MARK THEM

16 WE WANT THEM IN EVIDENCE FOR THE PURPOSE OF ASSISTING
17 US IN ARGUING THE LAW ENFORCEMENT AGGRAVATOR ---

18 THE COURT OKAY

19 MR EHLIES --- WHEN YOU GET TO THE POINT WHERE YOU'RE
20 GOING TO BE HEARING A LOT ABOUT THAT SO

21 MS BROWN YOUR HONOR, I DON'T MIND PERHAPS THEM GOING
22 IN AS A COURT EXHIBIT FOR THIS PARTICULAR HEARING BECAUSE WE
23 DON'T HAVE THE ORIGINAL PHOTOGRAPHS BUT I BELIEVE THE
24 ORIGINAL PHOTOGRAPHS SHOULD SERVE THE PURPOSE OF
25 DEMONSTRATING WHAT WAS ADMITTED AT TRIAL

1 SO I DO HAVE AN OBJECTION TO THEM COMING IN AS AN
2 EXHIBIT FOR JUST A DEMONSTRATIVE AID IN THESE PROCEEDINGS,
3 I HAVE NO OBJECTION TO IT BECAUSE IT SEEMS TO BE THE EXACT
4 PHOTOGRAPH THAT WAS ADMITTED AT TRIAL

5 MR EHLIES YEAH THIS IS A COPY FROM -- WE GET
6 SERVED FROM THE STATE AS -- THIS IS ALL WE EVER GET, BUT IT
7 ISN'T THE PHOTOGRAPH THEY PUT INTO THE BOX I'M JUST TRYING
8 TO SHORT-CIRCUIT HAVING TO GO TO THE BOX AND GET THAT AND
9 IT CAME OFF OF THIS DISK AND I THINK EVERYBODY RECOGNIZES
10 THESE TWO PHOTOGRAPHS SO YOU CAN USE THEM AS A COURT
11 EXHIBIT THEY'RE OF THE CAR ASSIGNED TO OFFICER SAPINOSO AT
12 THE TIME OF THE SHOOTING AND IT'S ACTUALLY IN HIS YARD,
13 THE LOCATION

14 THE COURT OKAY

15 MR EHLIES SO IF YOU WANT THEM AS COURT EXHIBITS OR
16 HOWEVER IT SUITS YOU, WE CAN DO THAT

17 THE COURT ALL RIGHT WE'LL MAKE THEM COURT EXHIBITS
18 THAT S FINE

19 (WHEREUPON COURT EXHIBITS 4 AND 5 WERE MARKED)

20 MR EHLIES JUDGE, I THINK THAT THAT SHOULD WIND US UP
21 FOR THE DAY, I THINK

22 MS BROWN YOUR HONOR, JUST FOR SCHEDULING, WE DID
23 HAVE OUR MEDICAL PROFESSIONAL COMING IN, DR SPICER,
24 TOMORROW HE HAD TO MAKE ARRANGEMENTS TO HAVE A STAND-IN AT
25 MUSC THAT'S WHY WE'RE SORT OF TIED TO TOMORROW MORNING FOR

1 HIS TESTIMONY

2 THE COURT OKAY

3 MS BROWN AND WE HAVE SKIP GOLDSMITH AND STEVE

4 SUMNER MR SUMNER HAS TO JOIN US AGAIN FOR JUST A BRIEF

5 REVIEW OF ONE ADDITIONAL ISSUE AND THAT SHOULD BE ABOUT

6 TEN MINUTES AND THAT WOULD BE THE STATE'S CASE AFTER THAT

7 POINT

8 THE COURT ALL RIGHT WELL, Y'ALL WANT TO SHOOT FOR

9 9 30 AGAIN? OR YOU WANT TO

10 MS BROWN SUITS ME

11 MR EHLIES THAT'S FINE WITH ME

12 THE COURT OKAY

13 MR NETTLES THAT'D BE FINE, JUDGE

14 THE COURT THANK YOU VERY MUCH

15 MS BROWN THANK YOU, SIR

16 MR NETTLES THANK YOU

17 (WHEREUPON COURT WAS IN RECESS AT 2 47 PM)

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR MABRY

278

1 WEDNESDAY, OCTOBER 14, 2009

2 THE COURT KEEP YOUR SEATS GOOD MORNING YES, SIR,

3 MR MABRY

4 MR MABRY YES, YOUR HONOR

5 KENNETH SPICER, M D ,

6 BEING DULY SWORN TESTIFIED AS FOLLOWS

7 DIRECT EXAMINATION BY MR MABRY

8 Q COULD YOU TELL US YOUR NAME PLEASE?

9 A KENNETH McGRAY SPICER

10 Q OKAY IF YOU COULD SPEAK UP JUST A LITTLE BIT MORE OR
11 MOVE THAT MICROPHONE A LITTLE CLOSER, THAT HELPS

12 A OKAY

13 Q MR SPICER, WHERE DO YOU WORK?

14 A I WORK AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN
15 CHARLESTON

16 Q ALL RIGHT AND WHAT IS YOUR OCCUPATION THERE?

17 A I M A PHYSICIAN EMPLOYED BY THE DEPARTMENT OF RADIOLOGY
18 AS A DIAGNOSTIC IMAGER

19 Q AND WOULD YOU GIVE US YOUR BACKGROUND AND
20 QUALIFICATIONS?

21 A HOW FAR BACK DO YOU WISH TO GO? JUST ---

22 Q I GUESS START WITH MEDICAL SCHOOL

23 A OKAY MEDICAL SCHOOL AT THE MEDICAL UNIVERSITY OF
24 SOUTH CAROLINA I DID A RESIDENCY IN DIAGNOSTIC RADIOLOGY
25 THERE AND LEFT AND WENT TO IH FOR TWO YEARS AND WENT TO

KENNETH SPICER, M.D. - DIRECT EXAMINATION BY MR. MABRY

279

1 THEIR IMAGING SECTION THERE WITH THE MEDICINE DEPARTMENT,
2 TRAINED THERE AND THEN RETURNED BACK IN '80, '79 OR '80 TO
3 THE MEDICAL UNIVERSITY IN CHARLESTON

4 Q AND WHAT POSITIONS HAVE YOU HELD THERE AT MUSC?

5 A WELL, I CAME IN AS A ASSISTANT PROFESSOR AND ROSE TO
6 THE RANKS TO ASSOCIATE AND FULL PROFESSOR ADMINISTRATIVELY
7 I'VE BEEN THE DIRECTOR OF THE DIVISION OF NUCLEAR MEDICINE,
8 FIRST THE DEPARTMENT, NOW THE DIVISION FOR ABOUT TWENTY SOME
9 YEARS, JUST RECENTLY TURNED IT OVER TO A COLLEAGUE

10 Q ALL RIGHT TWENTY YEARS AND WHY DID YOU TURN IT OVER
11 TO A COLLEAGUE?

12 A WELL, I'M NEARING RETIREMENT I ALSO WAS THE INTERIM
13 CHAIRMAN OF THE DEPARTMENT FOR FOUR YEARS BACK IN -- THE
14 DEPARTMENT OF RADIOLOGY ITSELF FOR FOUR YEARS

15 Q ALL RIGHT ARE YOU BOARD CERTIFIED?

16 A I AM I'M CERTIFIED BY THE AMERICAN BOARD OF RADIOLOGY
17 AS WELL AS BY THE AMERICAN BOARD OF NUCLEAR MEDICINE

18 Q ALL RIGHT AND ARE YOU A BOARD EXAMINER AS WELL?

19 A I'M A BOARD EXAMINER FOR THE AMERICAN BOARD OF
20 RADIOLOGY AND HAVE SERVED IN THAT FUNCTION FOR THE BOARD OF
21 NUCLEAR MEDICINE, BUT NOT CURRENTLY

22 Q AND WHAT DOES THAT MEAN YOU'RE A BOARD EXAMINER? WHAT
23 EXACTLY DO YOU DO?

24 A WELL, FOR RADIOLOGY THE CERTIFICATION REQUIRES THAT
25 CANDIDATES HAVING COMPLETED TRAINING IN A ACGME PROGRAM,

1 THEN SIT FOR A WRITTEN EXAMINATION THAT COVERS THEIR
2 DIAGNOSTIC INFORMATION, THEIR BACKGROUND AND WHAT THEY'VE
3 LEARNED DIDACTICALLY AS WELL AS THROUGH TEXTBOOKS AND THEN
4 THEY SIT FOR AN ORAL EXAMINATION A FEW MONTHS LATER, ABOUT
5 SEVEN MONTHS LATER

6 I PARTICIPATE PRIMARILY IN THE ORAL EXAMINATION SO WE
7 GO TO LOUISVILLE, KENTUCKY AND ROUGHLY SIXTEEN HUNDRED
8 CANDIDATES A YEAR COME TO KENTUCKY AND SIT THROUGH ELEVEN
9 HALF HOUR EXAMINATIONS THERE, ONE OF WHICH I PARTICIPATE IN,
10 WHICH IS THE NUCLEAR MEDICINE SECTION

11 Q OKAY I GUESS YOU'RE BASICALLY TESTING THESE PEOPLE TO
12 SEE IF THEY'RE BOARD CERTIFIED?

13 A TO SEE IF THEY ---

14 Q I MEAN, ---

15 A WE TELL THEM WE ARE TESTING THEM TO MAKE SURE THEY'RE
16 AT LEAST MINIMALLY COMPETENT

17 Q OKAY CAN YOU GIVE US A LITTLE HISTORY? HAS MUSC
18 ALWAYS HAD -- WELL, LET ME ASK YOU THIS DO YOU AS PART OF
19 YOUR ROUTINE DUTIES EXAMINE OR REVIEW MRI FILMS?

20 A YEAH, CERTAINLY, SINCE ABOUT 1985 WHEN I WAS MADE
21 RESPONSIBLE FOR BRINGING THE FIRST MAGNET INTO SOUTH
22 CAROLINA AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA I
23 PARTICIPATED IN READING MRIs, EXAMINATIONS THEN AND HAVE
24 SUBSEQUENTLY OVER THE INTERVENING YEARS

25 IN CANDOR, I DON'T ROUTINELY DO THAT AS A DAY TO DAY

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR MABRY

281

1 PART OF MY PRACTICE THE LAST FEW YEARS BECAUSE I'VE -- AS
2 I'VE BEGUN RETIREMENT I'VE MOVED MORE TOWARD NUCLEAR
3 MEDICINE AND FOCUSED MY PRACTICE A BIT

4 BUT ON AT LEAST THREE OR FOUR DAYS A WEEK I GO TO TUMOR
5 BOARDS OR SEIZURE BOARD OR THE ALZHEIMER'S BOARD MEETINGS
6 THESE ARE HOUR LONG MEETINGS WHERE CASES ARE BROUGHT UP
7 AND IN THOSE SESSIONS I'M RESPONSIBLE FOR INTERPRETING AND
8 DISPLAYING THE FINDINGS IN MRs AS WELL AS ALL THE OTHER
9 DIAGNOSTIC RADIOLOGY PROCEDURES

10 Q ARE THESE MRIs OF THE HUMAN BRAIN?

11 A SOME OF THEM ARE, YES BRAIN, HEAD AND NECK, ABDOMEN,
12 YOU NAME IT

13 Q ALL RIGHT AND DID I UNDERSTAND YOU ARE RESPONSIBLE
14 FOR BRINGING THE MRI MACHINE TO MUSC?

15 A RIGHT, THE FIRST ONE

16 Q OKAY WHAT YEAR WAS THAT?

17 A I BELIEVE 1985

18 Q DO YOU HAVE OTHER EXPERIENCE WHILE YOU'VE BEEN AT MUSC
19 IN EXAMINING OR INTERPRETING MRI FILMS OF A HUMAN BRAIN?

20 A I'M SORRY, CAN YOU REPEAT THAT QUESTION? I'M NOT SURE
21 ---

22 Q YEAH DURING YOUR TIME AT MUSC HAVE YOU BEEN ---

23 A OH, YES OKAY DURING MY TIME I HAVE, CERTAINLY

24 MR MABRY YOUR HONOR, AT THIS TIME I MOVE TO QUALIFY
25 HIM AS AN EXPERT IN DIAGNOSTIC RADIOLOGY

1 THE COURT ANY VOIR DIRE?

2 MR. NETTLES NONE

3 THE COURT OKAY HE'S QUALIFIED

4 Q DR. SPICER, DID I REQUEST THAT YOU REVIEW SOME MRI
5 FILMS IN THIS CASE OF KAMELL EVANS?

6 A YES, SIR YOU DID

7 Q AND DO YOU REMEMBER HOW MANY FILMS -- WELL HOW MANY
8 STUDIES, I GUESS, I DON'T MEAN -- I'M NOT A MEDICAL DOCTOR,
9 SO HOW MANY STUDIES DID YOU READ?

10 A MR. EVANS CAME TO THE MEDICAL UNIVERSITY AND HAD TWO
11 MRI STUDIES OF THE HEAD DONE WITH THOUSANDS OF IMAGES

12 Q OKAY AND DO YOU REMEMBER APPROXIMATE DATES WHEN THAT
13 OCCURRED?

14 A NO, BUT I HAVE THEM HERE SO I ---

15 Q OKAY

16 A I CAN REFER TO THEM THERE 2008 IN THE FALL IN
17 SEPTEMBER OR NOVEMBER, I BELIEVE, BUT PRECISE DATES I DON'T
18 REMEMBER

19 Q ALL RIGHT YOU THINK IT'S SOMETIME IN SEPTEMBER OR
20 NOVEMBER?

21 A YES

22 Q OKAY IF YOU WOULD, GIVE US YOUR EXPERT OPINION OF
23 WHAT YOU DO -- WHAT YOU SEE OR A CLINICAL SIGNIFICANCE IN
24 THESE MRIS, WHAT YOUR EXPERT OPINION IS

25 A WELL, I LOOKED AT THE IMAGES BLIND WHEN YOU ASKED ME

1 TO AND I THOUGHT THEY WERE COMPLETELY NORMAL SO THEN I
2 WENT TO THE REPORTS AND SAW WHAT MY COLLEAGUES AND
3 NEURORADIOLOGISTS HAD READ IT AT AND THEY SAID THEY WERE
4 NORMAL TOO ALTHOUGH THE SECOND ONE, THE REPORT WAS CHANGED
5 TO REFLECT AN ADDENDUM ON THAT BUT ESSENTIALLY, IT WAS A
6 NORMAL SCAN AS WELL

7 Q OKAY AND YOU'RE REFERRING TO -- WELL, LET ME SHOW YOU
8 FIRST, THIS IS DEFENDANT'S EXHIBIT 47 WOULD THAT BE A
9 REPORT FROM SEPTEMBER OF 2008?

10 A YES, IT WOULD

11 Q OKAY LET ME ASK YOU FIRST OF ALL, WHO IS DR AMIT
12 AGARWAL?

13 A DR AMIT AGARWAL IS A NEURORADIOLOGY FELLOW HE'S
14 COMPLETED DIAGNOSTIC RADIOLOGY TRAINING AND IS STAYING
15 EITHER ONE OR TWO YEARS IN A ACGME APPROVED RESIDENCY
16 TRAINING PROGRAM FOR ADDITIONAL SPECIALTY TRAINING IN
17 NEURORADIOLOGY

18 Q ALL RIGHT IS HE WHAT WOULD BE CALLED AN
19 INTERVENTIONAL NEURORADIOLOGIST?

20 A NO, THAT WOULD BE THE ATTENDING HE WAS THE FELLOW

21 Q OKAY

22 A THE OTHER SIGNATURE ON THIS REPORT IS THE
23 AUTHENTICATING RADIOLOGIST, WHICH IS THE ATTENDING AND
24 THAT'S DR AQUILLA TURK, III

25 Q THAT WOULD BE DR TURK?

1 A YES HE IS ---

2 Q WHAT'S THE DIFFERENCE IN DR TURK'S QUALIFICATIONS AND
3 DR AGARWAL'S?

4 A WELL, HE REALLY DIDN'T WANT TO GO TO WORK HE SPENT AN
5 EXTRA COUPLE OF YEARS AFTER ALL THE MEDICAL SCHOOL,
6 INTERNSHIP, DIAGNOSTIC RADIOLOGY AND THEN TWO YEARS OF
7 NEURORADIOLOGY HE WENT ON FOR ANOTHER TWO YEARS OF
8 INTERVENTIONAL NEURORADIOLOGY TRAINING

9 Q OKAY I GUESS -- AND YOUR STATEMENT, HE DIDN'T WANT TO
10 GO TO WORK, YOU'RE BEING FACETIOUS?

11 A YES

12 Q OKAY

13 A THAT IS

14 Q ALL RIGHT AND DO YOU KNOW HOW LONG DR AGARWAL HAS
15 BEEN PRACTICING NEUROLOGY?

16 A NEURORADIOLOGY? THIS IS 2008 I THINK HE WAS A FIRST
17 YEAR FELLOW THEN, SECOND YEAR NOW SO HE WAS IN HIS FIRST
18 YEAR AT THE TIME OF THIS REPORT

19 Q OKAY AND HOW ABOUT DR TURK?

20 A I'M NOT FAMILIAR WITH HOW LONG -- HE CAME TO US AS A
21 BOARD CERTIFIED AND SPECIALLY CERTIFIED NEUROINTERVENTIONAL
22 RADIOLOGIST AND HAD BEEN PRACTICING ALREADY AND I JUST
23 DON'T KNOW HOW MANY YEARS HE HAD BEEN PRACTICING PRIOR TO
24 WHEN HE CAME HERE

25 Q ALL RIGHT SO IT'S MY UNDERSTANDING YOU'VE LOOKED AT

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR MABRY

285

1 THIS REPORT IN --

2 A YES

3 Q --- ADDITION TO LOOKING AT THE FILMS?

4 A YES

5 Q OKAY DO YOU AGREE WITH THE FINDINGS IN THE SEPTEMBER
6 2008 REPORT AS FAR AS MR KAMELL EVANS' MRIs?

7 A YES I DO

8 Q I LL SHOW YOU WHAT'S BEEN MARKED DEFENDANT'S EXHIBIT 48
9 AND HAS BEEN IDENTIFIED AS WHAT THE NOVEMBER REPORT, MRI
10 REPORT WOULD HAVE ORIGINALLY LOOKED LIKE BEFORE THE ADDENDUM
11 WAS MADE

12 A OKAY

13 Q WHO ARE THE DOCTORS INVOLVED IN THAT?

14 A AGAIN, THE PHYSICIAN WHO WROTE THE REPORT, DICTATED THE
15 REPORT, WAS DR AMIT AGARWAL AND THIS IS TWO MONTHS MORE
16 TRAINING, IN OTHER WORDS, IN HIS FELLOWSHIP AND THE
17 ATTENDING WHO SIGNED THE REPORT AND SUPERVISED THE
18 INTERPRETATION, THE ADMINISTRATION OF THE STUDY, THE
19 INTERPRETATION AND THEN EDITED AND SIGNED THE REPORT IS DR
20 VICTORIA SPAMPINATO

21 Q OKAY AND WHO IS SHE?

22 A SHE IS ANOTHER NEURORADIOLOGY ATTENDING IN THE
23 DEPARTMENT OF RADIOLOGY AT MUSC

24 Q AND HOW LONG HAS SHE BEEN AT MUSC?

25 A GOOD QUESTION SHE'S A RELATIVELY RECENT -- SHE

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR. MABRY

286

1 RELATIVELY RECENTLY JOINED OUR PRACTICE I'M GUESSING, BUT

2 I'D SAY ROUGHLY TWO YEARS, MAYBE TWO AND A HALF NOW

3 Q OKAY AND IF YOU WOULD, CAN YOU PULL UP THE IMAGES FOR

4 THE COURT THAT WE'RE TALKING ABOUT, THE MRI FILMS? I GUESS

5 FIRST WE'D PULL UP THE SEPTEMBER FILMS

6 A OKAY

7 MR MABRY JUDGE, I'M GOING TO MARK THESE, MARK THE CD

8 WHEN WE'RE DONE

9 THE COURT ALL RIGHT, SIR

10 MR MABRY IF THAT S OKAY WITH YOU

11 MR NETTLES THAT'S FINE

12 A SO I'M GOING TO LEAVE THE MICROPHONE AND BRING THE

13 COMPUTER OVER SO THE JUDGE AND THE DEFENSE ---

14 Q WELL, WHATEVER -- WHERE EVERYBODY CAN SEE YOU NEED TO

15 MAKE SURE YOU TURN SO THIS LADY CAN HEAR YOU

16 A SO I TALK TO HER AND SHOW ---

17 Q YEAH, THAT S RIGHT

18 A AND SCRATCH MY BELLY AT THE SAME TIME

19 MR MABRY CAN YOU SEE, JUDGE?

20 THE COURT SURE

21 MR NETTLES I CAN SEE IT

22 A CAN I TURN A LITTLE BIT ---

23 Q OH, ABSOLUTELY

24 A I NEED TO ADJUST THIS SO THAT YOU CAN ACTUALLY SEE IT

25 IF I HAVE IT, YOU KNOW, YOU CAN'T SEE IT

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR. MABRY

287

1 THE COURT RIGHT

2 A CAN YOU TELL ME WHEN YOU SEE IT OPTIMALLY?

3 THE COURT RIGHT THERE

4 A OKAY SO THIS IS THE NOVEMBER STUDY SO IF YOU'D LIKE
5 ME TO GO BACK

6 Q I GUESS WE'LL START WITH THE SEPTEMBER

7 MADAME COURT REPORTER YOU'VE GOT TO KEEP YOUR VOICE
8 UP

9 A SORRY

10 Q THERE'S NO WAY TO -- I DON'T THINK YOU CAN -- YOU'VE
11 JUST GOT TO SPEAK AS LOUD AS ---

12 THE COURT YOU WANT ME TO COME DOWN THERE?

13 A NO, I'LL ---

14 MR. MABRY IT'S UP TO YOU

15 A I'LL RAISE MY VOICE

16 THE COURT OKAY WELL, I'LL ---

17 A I DO THAT IN LECTURES ANYWAY I'M JUST NOT THINKING OF
18 DOING MORE THAN TWO THINGS AT ONCE SO THIS IS THE, LET ME
19 GET THE DATES RIGHT, SEPTEMBER 24, 2008 STUDY AND I
20 BROUGHT UP TWO OF THE SEQUENCES ONE IS A SERIES OF 'SLICES
21 FROM THE SIDE OR ON THE LEFT OF THE SCREEN ON THE RIGHT OF
22 THE SCREEN IS WHAT WE CALL AN AXIAL SLICE IT'S LIKE A
23 SLICE FROM THE TOP OF THE HEAD DOWN THROUGH THE THROAT
24 THE BEAUTY OF THE LEFT HAND SLICE IS THAT IT IS WHAT WE
25 CALL T-1 WEIGHTED, THAT'S T HYPHEN 1 WEIGHTED, W-E-I-G-H-T-

1 E-D AND THAT JUST MEANS THE RATE OF WAVES WE PUT IN TO
2 MAKE THE IMAGE EMPHASIZE PROTONS THAT ARE IN FAT SO THE
3 BRIGHTEST THING YOU'LL SEE ON THE IMAGE IS FAT

4 AND YOU LL SEE THE WHITE MATTER OF THE BRAIN IS BRIGHT
5 WHITE, WHEREAS THE GRAY MATTER IS APPROPRIATELY LABELED GRAY
6 AND DISTINGUISHES NICELY SO YOU CAN APPRECIATE THAT MUCH
7 OF THE BRAIN REALLY ISN'T GRAY MATTER, IT'S A LOT WHITE
8 MATTER

9 THE CEREBRAL SPINAL FLUID IN THIS IS THE DARKEST THING
10 AND EVERYWHERE YOU SEE BLACK IS WHERE CEREBRAL SPINAL FLUID
11 OR WATERY SUBSTANCES ARE THE ONE EXCEPTION IS THAT THE
12 BONE ITSELF, THE CALVARIUM, IS VERY BLACK AND THAT'S
13 BECAUSE THE PROTONS IN IT DO NOT RESONATE VERY MUCH AND
14 THERE ARE VERY FEW OF THEM

15 THE COURT CAN YOU LIFT IT JUST A LITTLE BIT CLOSER, I
16 MEAN, THE SCREEN, FLIP IT A LITTLE BIT?

17 A OH, SORRY

18 THE COURT YEAH A LITTLE BIT MORE YEAH, OKAY

19 THAT'S GREAT THANK YOU

20 A I MAY HAVE TO SIT IN YOUR LAP OKAY SO THAT WAS THE
21/ T-1 WEIGHTED IMAGE OVER HERE IS THE T-2 WEIGHTED IMAGE
22 AND THE DIFFERENCE HERE IS THE RADIO PULSING IS PUT IN TO
23 MAKE THIS IMAGE -- EMPHASIZES PROTONS WHICH ARE IN WATER,
24 H2O AND THE BRIGHTEST THING IN THE IMAGE THEN IS THE WATER
25 THAT IS THERE

1 AND YOU CAN SEE THAT -- AND THE CEREBRAL SPINAL FLUID
2 IN THE VENTRICLES ARE BRIGHT WHITE, FOR INSTANCE, WHEREAS
3 THE FAT IS NO LONGER THE BRIGHTEST THING IT IS NOW THE
4 DARKER AREAS, THE DARKER GRAY AND THE ACTUAL GRAY MATTER
5 ITSELF IS KIND OF A LIGHTER SHADE OF GRAY SO THOSE ARE TWO
6 TYPICAL IMAGES FROM THE STUDY THAT WE USE FOR DIAGNOSIS

7 Q OKAY AND WHAT ARE YOU LOOKING FOR WHEN YOU EXAMINE TO
8 SEE IF IT'S A NORMAL BRAIN OR NOT A NORMAL BRAIN?

9 A WELL, THE FIRST THING ONE DOES IS LOOK AT THE OVERALL
10 SERIES OF SLICES TO MAKE SURE THERE'S -- ACTUALLY THE FIRST
11 THING WE DO IS LOOK AT THE REQUISITION TO SEE WHY THE
12 STUDY'S BEING ORDERED AND MAKE SURE, YOU KNOW, THAT WE HAVE
13 THE TYPE OF STUDY THAT YOU NEED FOR THE CLINICAL INDICATIONS
14 AND THEN LOOK FOR SIGNS OF OBVIOUS TRAUMA OR OTHER MAJOR
15 PROBLEMS OUTSIDE OF THE BRAIN ITSELF, SCALP AND THE
16 CALVARIUM, AND THE FACE, THE ORBITS AND THE FLOOR OF THE
17 BRAIN

18 THEN WE LOOK AT THE BRAIN ITSELF AND JUST A GROSSLY
19 OVERALL LOOK AT THE SIZE AND SHAPE, THE CONFIRMATION OF THE
20 GYRI AND THE CSF AND THEN MOVE OUR WAY UP AND DOWN THROUGH
21 THE SLICES LOOKING FOR SPECIFIC LESIONS, IF THERE'S AN
22 INFECTION, INFARCTION, OR TUMOR OR WHATEVER

23 Q OKAY DID YOU FIND ANYTHING LIKE THAT IN MR EVANS'
24 ---

25 A NO

1 Q --- BRAIN?

2 A WHEN I LOOKED THROUGH THE WHOLE SERIES, EVERYTHING
3 LOOKS PERFECTLY NORMAL I DIDN'T FIND ANY ABNORMALITIES

4 Q ALL RIGHT I GUESS IF YOU COULD, PULL UP THE NOVEMBER
5 MRI AS WELL?

6 A THAT WAS THE NOVEMBER ONE

7 Q OH, I'M SORRY

8 A SO I'LL GO BACK AND DO THE SEPTEMBER ONE IT TAKES A
9 MINUTE TO LOAD IT, UNFORTUNATELY

10 THE COURT NO PROBLEM

11 A I THINK IT DOES WELL, IT DOESN'T SEEM TO BE LOADING
12 THAT ONE NOW IT'S LOADING

13 (PAUSE)

14 A IT'S RELOADED THE SAME SERIES, UNFORTUNATELY

15 Q WELL, THAT'S OKAY IT'S ON THERE AS WELL, IS THAT
16 CORRECT?

17 A YEAH, IT'S -- THERE'S NO DIFFERENCE BETWEEN THE TWO
18 THAT I CAN SEE AT ALL OVER THE COUPLE OF MONTHS AND YOU
19 WOULDN'T EXPECT ANY CHANGE TO BE NOTICEABLE ON AN MRI SCAN
20 OF THE HEAD, YOU KNOW, WITHOUT INTERVENING TRAUMA, INFECTION
21 OR SOMETHING LIKE THAT

22 Q OKAY AND YOU CAN SIT BACK DOWN THANK YOU, DOCTOR
23 NOW YOU HAD TALKED ABOUT AN ADDENDUM I'M GOING TO SHOW YOU
24 DEFENDANT'S EXHIBIT 50 IS THAT WHAT YOU WERE REFERRING TO?

25 A YES

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR MABRY

291

1 Q OKAY AND WHEN WAS THAT ADDENDUM, BASED ON THE REPORT,
2 WHEN WAS THAT ADDENDUM ---

3 A ABOUT A HALF A YEAR LATER IN MAY OF 2009

4 Q DOES IT GIVE A DATE IN MAY?

5 A YES, MAY 27, 2009

6 Q OKAY NOW CAN -- AND WHO DID THAT ADDENDUM? WHO WAS
7 THE RADIOLOGIST THAT DID THAT?

8 A IT WAS DICTATED AGAIN BY DR AMIT AGARWAL, THE FELLOW,
9 AND SIGNED OFF -- AND SUPERVISED BY THE SAME ATTENDING WHO
10 READ THE SECOND OF THE TWO STUDIES, DR VICTORIA SPAMPINATO

11 Q OKAY

12 A SPAMPINATO IS S-P-A-M -- OKAY -- I-N-A-T-O

13 Q NOW DOES THE REPORT REFLECT WHO REQUESTED THAT?

14 A YES IT WAS APPROPRIATED ADDENDED DR SPAMPINATO
15 EDITED IT AND REFLECTS THE REQUEST FOR THE ADDENDUM WAS MADE
16 BY DR BACHMAN ON 5/27/2009

17 Q OKAY AND IS DR BACHMAN A NEUROLOGIST?

18 A HE IS AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA

19 Q ALL RIGHT NOW COULD DR BACHMAN DO AN ADDENDUM TO
20 THAT MRI REPORT?

21 A NO

22 Q OKAY WOULD IT HAVE -- AM I CORRECT IT WOULD HAVE TO
23 BE SOMEBODY IN THE RADIOLOGY DEPARTMENT?

24 A THAT'S CORRECT DR BACHMAN COULD MAKE HIS OWN
25 COMMENTS IN THE PATIENT'S MEDICAL RECORD OR SOMETHING LIKE

1 THAT, BUT THIS IS THE MEDICAL RECORD OF THE RADIOLOGIST

2 AND IT'S EDITED SOLELY BY THE RADIOLOGIST

3 Q OKAY COULD DR -- WELL LET ME ASK YOU, WHO IS ZORAN
4 RUMBOLDT?

5 A DR RUMBOLDT IS THE CHIEF OF THE NEURORADIOLOGY
6 SECTION

7 Q COULD HE HAVE ADDENDED THE REPORT?

8 A HE COULD, IN FACT, FROM A LEGAL OR A PROCEDURAL POINT
9 OF VIEW DO THAT IN GENERAL WE SHY VERY MUCH AWAY FROM
10 DOING THAT THE ADDENDUM OUGHT TO BE MADE BY THE INDIVIDUAL
11 WHO WROTE THE ORIGINAL REPORT AT THE VERY LEAST, IF THERE
12 IS -- BECAUSE THAT PERSON'S INCAPACITATED SUCH AS DR
13 SPAMPINATO IS NOW SHE'S ON PREGNANCY LEAVE THEN DR
14 RUMBOLDT COULD MAKE THE ADDENDUM BUT HE WOULD CERTAINLY
15 MAKE HER AWARE OF IT AND CLEAR WHATEVER HE HAD TO SAY WITH
16 HER BEFORE HE DID IT

17 Q OKAY AND NOW YOU SAID DR SPAMPINATO IS ON

18 A MATERNITY LEAVE

19 Q MATERNITY LEAVE?

20 A SHE JUST DELIVERED LAST WEEK, YEAH

21 Q OH, SHE HAD A CHILD?

22 A YES, SHE DID

23 Q I GUESS THAT WOULD BE OCTOBER, SOMETIME OCTOBER 7TH,
24 8TH, SOMETIME AROUND THERE?

25 A YEAH, EARLY OCTOBER

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR MABRY

293

1 Q OKAY NOW WHAT IS THE RELATIONSHIP THAT DR BACHMAN
2 HAS TO THE RADIOLOGY DEPARTMENT? DOES HE REFER CASES TO THE
3 RADIOLOGY DEPARTMENT?

4 A DR BACHMAN IS A NEURORADIOLOGIST, EXCUSE ME, A
5 NEUROLOGIST AT THE MEDICAL UNIVERSITY WHO SEES PATIENTS
6 DIRECTLY AND WHEN HE ENCOUNTERS PROBLEMS, DIAGNOSTIC
7 DILEMMAS OR THERAPEUTIC EVALUATIONS, HE REFERS PATIENTS TO
8 OUR DEPARTMENT TO IMAGE THEM TO HELP HIM IN HIS MANAGEMENT
9 OF THE PATIENTS SO NOT UNCOMMONLY HE'LL REFER HIS PATIENTS
10 FOR MR SCANS, CT SCANS, PET SCANS OF THE BRAIN, OCCASIONALLY
11 ULTRASOUNDS

12 Q OKAY IN YOUR OPINION COULD DR SPAMPINATO BE
13 INFLUENCED BY ---

14 MR NETTLES OBJECTION, ---

15 Q --- DR BACHMAN?

16 MR NETTLES --- YOUR HONOR

17 THE COURT I MEAN, HOW COULD HE BE ABLE TO ANSWER
18 THAT?

19 MR MABRY I'LL WITHDRAW THE QUESTION

20 THE COURT ALL RIGHT

21 Q DID YOU CONSULT WITH DR RUMBOLDT ON THIS CASE?

22 A YES

23 Q OKAY AND WHAT DID YOU AND DR RUMBOLDT DO?

24 MR NETTLES I'M GOING TO HAVE TO OBJECT UNDER THE
25 WELL KNOWN JURISPRUDENCE OF WHAT'S GOOD FOR THE GOOSE IS

1 GOOD FOR THE GANDER

2 THE COURT YEAH THAT IS A RULE THAT TRUMPS ALMOST
3 ALL OTHERS

4 MR MABRY WELL, THAT WAS GOING TO BE MY POSITION WAS
5 WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE GANDER DR
6 SPICER TESTIFIED -- WELL, YOU KNOW WHAT HE TESTIFIED TO
7 AND SO I THINK IT'S ONLY FAIR THAT IF THIS DOCTOR CONSULTED
8 DR RUMBOLDT HE SHOULD BE ALLOWED TO TESTIFY SIMILARLY

9 THE COURT BUT I THOUGHT I RULED HE COULDN'T TESTIFY

10 MR MABRY WELL, HE DID IT ANYWAY

11 THE COURT WELL THAT WAS DURING A PROFFER, WASN'T IT?

12 MR MABRY NO, EVEN AFTER THAT HE SAID THE REASON
13 THAT THE REPORT WAS AMENDED WAS BECAUSE MR BLUME WANTED TO
14 GET HIS AND DR RUMBOLDT'S OPINION IN THE REPORT

15 THE COURT BUT YOU ASKED HIM THAT

16 MR MABRY WELL, HE TESTIFIED TO IT I GUESS I NEED
17 TO MAKE A PROFFER THEN I THINK IT'S ONLY FAIR -- THEN I'M
18 GOING TO ---

19 THE COURT GO AHEAD, GO AHEAD

20 MR MABRY OKAY THIS IS STRICTLY PROFFER

21 PROFFERED TESTIMONY BY MR MABRY

22 Q DID YOU AND DR RUMBOLDT -- WHAT DID YOU AND DR
23 RUMBOLDT DO? WHAT DID YOU DO WITH DR RUMBOLDT?

24 A WELL, WHEN IT BECAME CLEAR THAT THIS WAS A LEGAL
25 PROCEEDING, I, AS MOST OF US IN AN ACADEMIC ENVIRONMENT WANT

1 TO DO, WE'LL CONSULT A COLLEAGUE AND SEE IF WE'RE ABLE TO
2 OBTAIN A DIFFERENT OPINION OR SUPPORT FOR OUR OPINION

3 SO IN ROUTINE PASSING ONE DAY AT THE HEAD AND NECK
4 TUMOR BOARD I BROUGHT THE CASE UP AND ASKED HIM TO LOOK AT
5 IT, AND HE SAID NORMAL AND I POINTED OUT TO HIM THAT THIS
6 IS A LEGAL PROCEEDING CASE AND THAT IT HAD ACTUALLY BEEN
7 ADDENDED TO SAY THAT THERE IS MILD DIFFUSE LOSS GIVEN THE
8 PATIENT'S -- VOLUME LOSS GIVEN THE PATIENT'S AGE

9 AND I STATED TO HIM THAT I THOUGHT IT WAS NORMAL, AND
10 THIS IS A PRETTY SUBJECTIVE OBSERVATION, DID HE THINK IT WAS
11 REALLY TRUE? AND HE SAID HE REALLY COULDN'T SAY ONE WAY OR
12 THE OTHER JUST LOOKING AT IT, THAT IT WAS A NORMAL LOOKING
13 SCAN, HOW OLD IS THE PATIENT? AND WE WENT ON DISCUSSING IT
14 FROM THERE

15 I LEFT THE DISCUSSION WITH HIM LEARNING WHAT CRITERIA
16 HE WOULD USE IF THEY WERE ANY DIFFERENT FROM MYSELF, THE
17 ONES I WOULD USE FOR ASSESSING VOLUME LOSS AND AS A FUNCTION
18 OF AGE AND REALLY GAINED NO INSIGHT FROM THE DISCUSSION WITH
19 HIM

20 Q OKAY DID IT CHANGE YOUR OPINION AT ALL?

21 MR. NETTLES YOUR HONOR, ---

22 A NO

23 MR. NETTLES --- AT THIS POINT I'D MOVE THAT THAT BE
24 STRICKEN, NOT ONLY UNDER GOOD FOR THE GOOSE, GOOD FOR THE
25 GANDER, BUT UNDER THE, I MEAN, AT THIS POINT I THINK THAT IT

1 DOESN'T MEET THE EXCEPTION RULE UNDER EXPERT TESTIMONY ---

2 MR MABRY IT'S ---

3 MR NETTLES BASED ON THAT LAST STATEMENT

4 MR MABRY YOUR HONOR IT'S A PROFFER

5 THE COURT OKAY GO AHEAD

6 MR MABRY ALL RIGHT

7 MR MABRY I END MY PROFFER AT THIS POINT

8 THE COURT SO YOUR OBJECTION NOW IS THAT IT DOESN'T

9 MEET THE CRITERIA FOR EXPERT ---

10 MR NETTLES THAT S RIGHT

11 THE COURT --- 703?

12 MR NETTLES YES, SIR

13 THE COURT IN WHAT PARTICULARS?

14 MR NETTLES WELL, THE RECORD'S CLOSED ON THIS ISSUE

15 HE JUST SAID, I DIDN'T GET ANYTHING FROM TALKING TO HIM SO

16 IF HE DIDN'T GET ANYTHING FROM IT, DIDN T RELY ON IT, SO IT

17 DOESN'T MATTER

18 MR MABRY THAT'S NOT WHAT HE SAID THEY DISCUSSED

19 THE CRITERIA AND THAT DR RUMBOLDT LOOKED AT IT AND HE SAID

20 HE LOOKED AT IT AS I UNDERSTAND HIS TESTIMONY, USING THOSE

21 SAME CRITERIA AND HE DIDN T GET ANY CHANGE, THERE WAS NO

22 CHANGE IN HIS OPINION I CAN CLARIFY THAT IF YOU WANT ME

23 TO

24 THE COURT NO, I THINK I UNDERSTOOD WHAT HE SAID

25 OKAY WELL I NOTE YOUR OBJECTION AND IT STILL IS A

KENNETH SPICER, M D - DIRECT EXAMINATION BY MR MABRY

297

1 PROFFER SO GO AHEAD

2 MR MABRY ALL RIGHT I ENDED MY PROFFER AND GO
3 FORWARD

4 THE COURT ALL RIGHT

5 DIRECT EXAMINATION BY MR MABRY CONTINUED

6 Q YOU'VE LOOKED AT THE ADDENDUM, DR SPICER, IS THAT
7 CORRECT?

8 A THAT IS TRUE

9 Q OKAY DO YOU -- WITH THAT ADDENDUM OR WHAT DOES THAT
10 ADDENDUM MEAN TO YOU? IS THERE ANY CLINICAL SIGNIFICANCE TO
11 THAT IN YOUR OPINION?

12 A I'M NOT CERTAIN IF THERE IS ANY CLINICAL SIGNIFICANCE
13 TO IT WHEN I WAS MADE AWARE OF THE ADDENDUM, I RE-LOOKED
14 AT THE SCANS TOO AND, I MEAN, THIS QUESTION OF DIFFUSE
15 VOLUME LOSS IS A VERY SUBJECTIVE OBSERVATION IT'S NOT
16 SOMETHING THAT ONE CAN MEASURE VERY RELIABLY YOU LOOK FOR
17 VERY GROSS CHANGES

18 I WAS UNCOMFORTABLE IT DIDN'T STRIKE ME THAT I KNEW
19 THE PATIENT'S AGE AT THE TIME, YOUNG MALE AND IT DIDN'T
20 STRIKE ME AS OUT OF THE ORDINARY VOLUME FOR THE -- WELL, THE
21 CRITERIA THAT ARE -- I GUESS IF I COULD GO INTO THE CRITERIA
22 THAT I WOULD USE ---

23 Q SURE

24 A --- FOR VOLUME LOSS? IT'S -- THE BRAIN IS A FIXED
25 GLOBE, THE SKULL BONE HOLDS INSIDE WHEN WE LOSE TISSUE

1 INSIDE THE BRAIN, IT'S REPLACED BY FLUID, CSF, CENTRAL
2 CEREBRAL SPINAL FLUID SO THE THINGS YOU'LL SEE ARE LOSS OF
3 CONTACT BETWEEN THE GYRI AND THE BRAIN SURFACE YOU'LL SEE
4 INCREASED CEREBRAL SPINAL FLUID BETWEEN THE GYRI AND IN THE
5 FALX AND AT THE BASE OF THE BRAIN AND YOU'LL SEE THE
6 VENTRICLES WIDENING AND ENLARGING AS WELL AND NONE OF
7 THESE SIGNS WERE EVIDENT THERE

8 Q OKAY DR. SPICER, THE THINGS THAT YOU HAVE TESTIFIED
9 TO HERE TODAY ON DIRECT EXAMINATION, ARE YOU TESTIFYING TO
10 THOSE TO A REASONABLE DEGREE OF MEDICAL CERTAINTY?

11 A YES

12 Q IF YOU WOULD, TELL THE COURT WHAT REMUNERATION, IF ANY,
13 YOU HAVE BEEN PROMISED BY THE STATE IN THIS CASE

14 A NONE, BUT LET ME CLARIFY THERE'S NO REMUNERATION TO
15 ME I HAVE ASKED AND BEEN TOLD I WILL BE GIVEN, NOT I'LL BE
16 GIVEN, THAT THE UNIVERSITY WILL BE REIMBURSED FOR MY
17 EXPENSES TO COME -- DRIVE UP HERE FOUR HOURS AND DRIVE FOUR
18 HOURS BACK AS WELL AS FOR MISSING A DAY OF WORK AT THE
19 MEDICAL UNIVERSITY

20 THOSE FUNDS WILL GO TO THE ADMINISTRATION AND A PORTION
21 OF WHICH WILL THEN GO TO THE CHAIRMAN OF RADIOLOGY WHO WILL
22 USE IT TO HIRE SOMEBODY ELSE TO TAKE MY PLACE AND MEET SOME
23 OF THE INDIRECT COSTS THE UNIVERSITY HAS

24 Q ALL RIGHT SO YOU HAD TO BE OUT OF WORK TODAY, AND
25 THEY HAVE TO PAY TO HIRE SOMEBODY TO REPLACE YOU?

1 A THAT'S CORRECT

2 Q I DO HAVE JUST A FEW QUESTIONS ABOUT -- WHAT -- AND I
3 UNDERSTAND WHAT YOUR EXPERT OPINION IS IN THIS CASE WHAT
4 ARE SOME OF THE CAUSES OF ATROPHY TO THE BRAIN?

5 A WELL, THERE'S A REALLY DIVERSE NUMBER OF CAUSES AND
6 IN VERY GENERAL TERMS, TRAUMA, INFECTIONS, TUMORS AND THE
7 THERAPY AS A CONSEQUENCE OF TUMORS

8 BUT IN OUR SOCIETY NOWADAYS WE'RE GAINING EVEN GREATER
9 RECOGNITION OF THE PROFOUND LOSS OF NEURONS THAT TAKE PLACE
10 AS WE AGE AND THE ONSET OF IDEOLOGY FACTORS WE DON'T KNOW
11 COMPLETELY THAT LEAD TO THE DEMENTIAS AND THERE ARE
12 CERTAIN DISEASES THAT WE HAVE SOME UNDERSTANDING OF LIKE
13 PARKINSON'S AND ALL, BUT MOST OF THE DEMENTIAS WE DON'T
14 REALLY FULLY UNDERSTAND BUT THEY LEAD TO DIFFUSE LOSS OF
15 BRAIN AND VERY EVIDENT DECREASED VOLUME LOSSES

16 Q OKAY CAN DRUG USE CAUSE IT?

17 A CERTAINLY DRUG ABUSE AND ---

18 Q ALCOHOL ABUSE?

19 A CERTAINLY

20 Q WHAT ABOUT REPEATED CONCUSSIONS?

21 A YES FUGILUS (PHONETICS) TO BRAIN IS WELL KNOWN AND
22 EVEN NOW, SOCCER BRAINS ARE BEGINNING TO BE DEVELOPED

23 Q WHAT IS THE MOST SENSITIVE TEST FOR NEURON MALFUNCTION
24 IN YOUR OPINION?

25 A WELL, I GUESS ULTIMATELY THE MOST SENSITIVE TEST WOULD

1 BE A BRAIN BIOPSY BUT OBVIOUSLY THAT'S PRETTY INVASIVE AND
2 NONE OF US WANT TO UNDERGO ONE OF THOSE THE NEXT MOST
3 SENSITIVE WOULD BE A METABOLIC IMAGING TYPE SCAN, WHICH
4 WOULD INCLUDE PET SCANNING, THAT SORT OF THING WHERE YOU
5 LOOK AT A RADIOACTIVE METABOLITE AND WATCH HOW IT'S TAKEN
6 AND HANDLED -- TAKEN UP BY BRAIN CELLS AND HOW IT'S HANDLED
7 AND A PAR WITH THAT ARE SOME CEREBRAL SPINAL FLUID --
8 YOU CAN DO A SPINAL TAP AND LOOK FOR THE PRESENCE OF SOME
9 METABOLITES OR -- AND PROTEINS THAT ARE PRETTY SENSITIVE
10 INDICES FOR THINGS GOING ON AS WELL

11 Q OKAY WAS A PET SCAN REQUESTED IN THIS CASE TO YOUR
12 KNOWLEDGE?

13 A I DON'T KNOW IF IT WAS REQUESTED NONE WAS DONE

14 Q OKAY AND THAT WOULD BE THE TREATING PHYSICIAN'S
15 RESPONSIBILITY TO REQUEST IT IF THEY WANTED ONE DONE?

16 A CORRECT

17 Q NOW ARE YOU FAMILIAR WITH A GENTLEMAN BY THE NAME OF
18 PROFESSOR RUBEN GUR AND HIS WORK?

19 A IS IT G-U-R? IS THAT ---

20 Q G-U-R

21 A --- HOW YOU SPELL HIS NAME? YES HE'S NOT A PERSONAL
22 FRIEND OR A DIRECT COLLEAGUE WE'RE IN DIFFERENT AREAS OF
23 ACADEMIA BUT I BELIEVE HE'S A PHYSICIAN AT THE UNIVERSITY
24 OF PENNSYLVANIA

25 Q IN YOUR EXPERT OPINION WOULD YOU RELY ON HIS

1 VOLUMETRIC, I GUESS IT'S CALLED ANALYSIS, IN DIAGNOSING ---
2 A NO WELL, I'M NOT AWARE THAT DR GUR'S WORK HAS GAINED
3 CLINICAL ACCEPTANCE TO WHERE IT'S A STANDARD PRACTICE OR ANY
4 OF THE OBSERVATIONS ARE UTILIZED FOR STANDARD PRACTICE
5 THEY'RE STILL IN THE RESEARCH REALM

6 I WOULD NOT BE -- I WOULD BE VERY -- LET ME REPHRASE
7 THAT I'D BE VERY IMPRESSED IF VOLUME MEASUREMENTS TURNED
8 OUT TO BE RELATIVELY SENSITIVE I HAVE SEEN SOME OF HIS
9 WORK IN THE AREA OF DEMENTIAS LOOKING FOR THE ABILITY TO
10 PREDICT IN PATIENTS WITH VERY MILD CHANGES IN BRAIN FUNCTION
11 WHETHER THEY WOULD BECOME DEMENTED IN A FEW YEARS SUCH AS
12 MILD COGNITIVE IMPAIRMENT PATIENTS THAT ARE EVENTUALLY GOING
13 TO BECOME ALZHEIMER'S DISEASE PATIENTS

14 AND IN THOSE CASES THE VOLUMETRIC ANALYSES FAILED TO
15 HELP PREDICT EARLY CHANGES AS GOING ON TO LATER CHANGES,
16 WHEREAS METABOLIC IMAGING HAS DONE VERY WELL IN THAT REGARD
17 AND CONTINUES TO PROGRESS

18 IN OTHER AREAS I'M NOT FAMILIAR WHERE VOLUMETRIC
19 CHANGES ARE VERY HELPFUL WITH THE ONE EXCEPTION BEING IN
20 TERMS OF TUMOR ANALYSIS WHEN WE HAVE GLIOS, BLASTOMAS OR
21 VERY AGGRESSIVE TUMORS IN THE BRAIN BEING ABLE TO SIZE
22 THEM SOMEWHAT ACCURATELY HELPS PROGNOSTICATE AS WELL AS
23 EVALUATE DIFFERENT TYPES OF THERAPY THAT ARE BEING TRIED IN
24 A RESEARCH VEIN PRIMARILY

25 IF YOU CAN VOLUMETRICALLY MEASURE THE TUMOR AND SEE

1 WHETHER IT CHANGED ON SUBSEQUENT SERIAL MRIs, IT'S OF SOME
2 HELP TO US AS WE EVALUATE WHETHER THIS FORM OF THERAPY IS
3 WORKING OR NOT

4 Q OKAY CAN YOU TELL ME WHETHER OR NOT DR GUR'S WORK
5 HAS BEEN PUBLISHED IN WHAT YOU WOULD CONSIDER A REPUTABLE
6 MEDICAL JOURNAL?

7 A I THINK HIS WORK HAS BEEN PUBLISHED IN REPUTABLE
8 JOURNALS HE HAS HAD SCIENTIFIC OBSERVATIONS, BUT NOT AS IN
9 CLINICAL TRIALS SAYING, YOU KNOW MAKE THIS VOLUME AND THIS
10 ALLOWS YOU TO PREDICT THAT THIS PERSON WILL HAVE THIS
11 DISEASE OR IT'LL PROGRESS IN SUCH A MANNER

12 SO IN TERMS OF MAKING ASSOCIATIONS BETWEEN SPECIFIC
13 ENTITIES, DISEASE ENTITIES AND VOLUME CHANGES HIS RESEARCH
14 HAS BEEN PUBLISHED IN TERMS OF UTILIZING THAT IN THE
15 CLINICAL -- IN THE DAY-TO-DAY CLINICAL PRACTICE THERE ARE NO
16 CLINICAL TRIALS THAT HAVE SHOWN, THAT I'M AWARE OF, THAT HIS
17 OBSERVATIONS ARE BENEFICIAL AS WE DIAGNOSE DISEASE AND
18 EVALUATE CHANGE IN THE PATIENTS

19 Q OKAY WELL, I GUESS MY QUESTION IS WOULD YOU RELY ON
20 HIS ANALYSIS OR METHODOLOGY IN DIAGNOSING A PATIENT?

21 A IN MY METHODOLOGY YOU MEAN THESE VOLUME MEASUREMENTS
22 ---

23 Q RIGHT

24 A --- IN THE BRAIN? NO, I WOULDN'T

25 Q THAT'S ALL I HAVE I'M SORRY

KENNETH SPICER, M D - CROSS EXAMINATION BY MR. NETTLES

303

1 (PAUSE)

2 Q NO FURTHER QUESTIONS THANK YOU

3 MR NETTLES ONE SECOND

4 (PAUSE)

5 CROSS EXAMINATION BY MR. NETTLES

6 Q AS IT RELATES TO DR GLR, WERE YOU PROVIDED WITH A COPY
7 OF HIS REPORT?

8 A NO, SIR

9 Q IF YOU WERE ASKED TO DO A -- OR SO ARE YOU TELLING THIS
10 COURT THAT IF, LET'S SAY WE HAD COME TO YOU, I MEAN, THERE'S
11 NOTHING PHILOSOPHICAL THAT YOU'VE GOT GOING THAT YOU WOULD
12 BE OPPOSED TO REPRESENTING OR LOOKING AT SLIDES ON BEHALF OF
13 SOMEONE WHO IS REPRESENTING SOMEBODY WHO HAS BEEN CHARGED
14 WITH A CRIME, IS THERE?

15 A NO, SIR

16 Q OKAY IF I CAME TO YOU AT YOUR OFFICE AT MUSC AND
17 SAID, DOCTOR, I'VE GOT A NUMBER OF THINGS HERE THAT WE'VE
18 ALREADY GOTTEN TOGETHER AND I'M ASKING YOU TO TAKE A LOOK AT
19 THIS SLIDE, ARE YOU TELLING THIS COURT THAT IF I HANDED YOU
20 DR GUR'S REPORT YOU'D SAY, NO, NO, NO, I DON'T EVEN WANT TO
21 LOOK AT THAT? IS THAT WHAT YOU'RE TELLING US?

22 A IF YOU'RE ASKING ME TO LOOK AT SOME INFORMATION THAT
23 YOU HAVE, ---

24 Q YEAH

25 A --- I WOULD NOT TURN YOU DOWN, NO

KENNETH SPICER, M D - CROSS EXAMINATION BY MR NETTLES

304

1 Q ALL RIGHT I MEAN, AND SO IN OTHER WORDS, IF I CAME TO
2 YOU AND SAID, YOU KNOW, WE'RE KIND OF COMING TO YOU TO LOOK
3 AT ALL THESE SLIDES HERE, WE'VE ALREADY GOTTEN DR GUR TO DO
4 A QMRI, A QUANTITATIVE ANALYSIS OF AN MRI, THAT IS SOMETHING
5 THAT YOU WOULD AT LEAST BE INTERESTED IN LOOKING AT IN THE
6 CONTEXT OF MAKING YOUR ULTIMATE DECISION, IF IT HAD ALREADY
7 BEEN DONE ON THIS INDIVIDUAL?

8 A I WOULD CERTAINLY BE INTERESTED IN LOOKING AT IT AND
9 I'M SURE I WOULD USE IT AND ALL IN THE CONTEXT OF MAKING A
10 DECISION

11 Q AND YOU COULDN'T MAKE THAT DECISION ABOUT WHETHER TO
12 UTILIZE IT OR NOT UNTIL YOU'VE LOOKED AT IT, ISN'T THAT
13 RIGHT?

14 A WELL, I THINK MY DECISION WHETHER TO UTILIZE IT WOULD
15 BE BASED ON CLINICAL PRACTICE, GUIDELINES IN TERMS OF
16 WHETHER A CRITERIA HE'S USING HAS BEEN ACCEPTED IN OUR
17 PROFESSION AS A VALID CRITERIA

18 Q OKAY SO WHAT DID DR GUR DO IN THIS CASE?

19 A SIR, I DON T KNOW

20 Q AND THE REASON YOU DON'T KNOW IS BECAUSE NOBODY'S EVER
21 PROVIDED YOU THE REPORT BEFORE YOU CAME IN HERE TODAY, ISN'T
22 THAT RIGHT?

23 A THAT'S CORRECT

24 Q SO THEN IN TERMS OF -- AS YOU SIT THERE TODAY YOU CAN'T
25 TELL US WHETHER YOU WOULD RELY ON DR GUR'S REPORT THAT WAS

KENNETH SPICER, M D - CROSS EXAMINATION BY MR. NETTLES

305

1 DONE ANALYSIS THAT WAS DONE ON THAT INDIVIDUAL BASED ON THE
2 SCANS THAT WERE DONE AT MUSC UNTIL YOU'VE ACTUALLY HAD AN
3 OPPORTUNITY TO READ THE ACTUAL REPORT AND WHAT HE DID, ISN'T
4 THAT RIGHT?

5 A I THINK FOR ME TO MAKE A VALID IMPRESSION BEFORE THE
6 COURT I WOULD NEED TO HAVE SEEN WHAT HE HAD TO SAY BUT ON
7 THE OTHER HAND, I HAVE FOLLOWED DR. GUR'S WORK IN OTHER
8 AREAS IN THE DEMENTIAS, AND THAT HASN'T PANNED OUT SO I
9 WOULD CERTAINLY APPROACH IT WITH A MEASURE OF SKEPTICISM
10 BUT I HAVE TO HAVE AN OPEN MIND UNTIL I SEE THINGS

11 Q I UNDERSTAND BUT MY POINT IS THIS, OKAY, AND I
12 APPRECIATE YOUR DISCUSSION ON DEMENTIA IS THERE ANY -- HAS
13 ANYONE LED YOU TO BELIEVE THAT DEMENTIA HAD ANYTHING TO DO
14 WITH THIS CASE?

15 A NO, SIR

16 Q OKAY WHAT -- SO BEFORE YOU COULD MAKE A DECISION, I'M
17 GOING TO ASK IT TO YOU ONE MORE TIME, AND KNOWING IT DOESN'T
18 HAVE ANYTHING TO DO WITH DEMENTIA, ALL RIGHT, HAS THE STATE
19 TOLD YOU WHAT TESTING DR. GUR DID?

20 A NO

21 Q HAVE THEY TOLD YOU WHAT ANALYSIS HE DID?

22 A NO

23 Q OKAY SO THEN YOU CAN'T TELL US TODAY THAT YOU WOULD
24 REJECT OUT OF HAND DR. GUR'S REPORT DONE ON THIS INDIVIDUAL
25 UNTIL YOU'VE HAD AN OPPORTUNITY TO LOOK AT IT, ISN'T THAT

1 RIGHT?

2 A I THINK IT'S OVERSTATING THE CASE WHAT YOU'RE ASKING
3 IS IF I PUT ENOUGH FAITH IN VOLUME MEASUREMENTS THAT I WOULD
4 REALLY LIKE TO SEE HIS TO MAKE AN EVALUATION

5 Q AND IF I ASK YOU THAT QUESTION, I'LL ASK YOU TO ANSWER
6 IT THE QUESTION -- I'M ASKING YOU THIS, ON THIS CASE, ---

7 A CORRECT

8 Q --- KAMELL EVANS, OKAY? IF THERE IS A REPORT FROM DR
9 GUR AT THE UNIVERSITY OF PENNSYLVANIA ABOUT THE TESTING HE
10 DID, OKAY?

11 A YES

12 Q THAT REPORT EXISTS CAN YOU TELL THIS COURT THAT YOU
13 WOULD NOT GIVE ANY WEIGHT TO IT, UNDERSTANDING THAT YOU
14 HAVEN'T EVEN LOOKED AT THE REPORT?

15 A WELL, I TEND TO HAVE AN OPEN MIND BEING A CLINICIAN
16 AND I WOULD CERTAINLY WANT TO TAKE IN EVERY BIT OF
17 INFORMATION AVAILABLE TO ME BEFORE I MAKE ANY KIND OF A
18 JUDGMENT SO I THINK IN FAIRNESS TO YOUR QUESTION IS YES, I
19 WOULD KEEP AN OPEN MIND

20 Q OKAY SO BUT TODAY YOU HAVE COME IN HERE TODAY AND YOU
21 HAVE MADE AND YOU HAVE GIVEN AN OPINION UNDER OATH WITHOUT
22 CONSULTING ANY REPORTS FROM DR GUR ON THIS ISSUE, ON THIS
23 PATIENT, ISN'T THAT RIGHT?

24 A THAT'S CORRECT

25 Q OKAY DID THE STATE TELL YOU BEFORE YOU CAME IN HERE

KENNETH SPICER, M D - CROSS EXAMINATION BY MR. NETTLES

307

1 TODAY THAT THERE WAS A REPORT OUT THERE FROM DR RUBEN GUR?

2 A NO

3 Q SO THEY DIDN'T TELL YOU THERE WAS A REPORT FROM DR

4 GUR?

5 A NO

6 Q OKAY HAD THEY TOLD YOU THERE WAS A REPORT FROM DR

7 GUR WOULD YOU HAVE SAID, I WANT TO SEE IT BEFORE I GET ON

8 THIS WITNESS STAND TODAY?

9 A WELL, I'M NOT ENTIRELY SURE AND I WOULD HAVE TO THINK

10 ABOUT THAT BECAUSE THE APPROACH TO ME WAS MADE, WOULD I

11 PLEASE LOOK AT THESE SCANS? AND I LOOKED AT THOSE SCANS AND

12 GAVE MY OPINION AND THAT'S ALL I'VE REALLY BEEN ASKED TO

13 DO, SIR

14 Q I UNDERSTAND THAT SO YOU WEREN'T ASKED TO REVIEW ANY

15 OF THE OTHER RECORDS?

16 A NO

17 Q OKAY SO BUT LET ME ASK YOU THIS THEN NOW IF THEY

18 HAD COME TO YOU AND SAID -- SO YOU WEREN'T GIVEN ANY SCHOOL

19 RECORDS, WERE YOU?

20 A NO, SIR

21 Q YOU WEREN'T GIVEN DR EVANS' REPORT, NOT HIS DADDY, BUT

22 DR EVANS' REPORT THAT WAS DONE? YOU WEREN'T GIVEN THAT,

23 WERE YOU?

24 A NO, SIR

25 Q WERE YOU GIVEN ANY TRIAL TRANSCRIPT TO LOOK AT?

1 A NO, SIR

2 Q YOU MADE A SUBJECTIVE, A PARTIALLY SUBJECTIVE OPINION
3 BASED ON VIEWING A FILM, CORRECT?

4 A CORRECT

5 Q OKAY NOW WE CAN AGREE, YOU AND I CAN AGREE THAT A
6 PART OF RADIOLOGY IS SUBJECTIVE WHEN YOU'RE LOOKING AT
7 SLIDES?

8 A YEAH PATHOLOGISTS LOOK AT SLIDES WE LOOK AT IMAGES

9 Q I APOLOGIZE I APOLOGIZE

10 A CERTAINLY

11 Q THAT WHEN LOOKING AT IMAGES AT THE BASE LEVEL THERE IS
12 A SUBJECTIVE ELEMENT OF IT?

13 A WELL, CERTAINLY THAT'S WHY WE TRAIN AS LONG AS WE DO,
14 TO MINIMIZE THAT

15 Q AND TWO EQUALLY QUALIFIED, AND TWO EQUALLY DEDICATED,
16 AND TWO EQUALLY EDUCATED INDIVIDUALS, DOCTORS, COULD LOOK AT
17 AN IMAGE AND HAVE A DISAGREEMENT ABOUT, LET'S SAY, ATROPHY
18 COULDN'T THEY?

19 A CERTAINLY WHEN ANY OBSERVATION YOU'RE TRYING TO MAKE
20 IS VERY SMALL, YOU HAVE A LOT OF SUBJECTIVITY WHEN IT'S
21 BIG, YOU HAVE CONCORDANCE

22 Q RIGHT SO IN OTHER WORDS, IF YOU'RE LOOKING AT LIKE A
23 TUMOR, I MEAN, THAT'S SOMETHING THAT -- FOR THE MOST PART
24 WHEN YOU LOOK AT IT IT'S LIKE THAT'S A TUMOR, AND EVERYBODY,
25 YEAH, THAT'S A TUMOR, RIGHT?

KENNETH SPICER, M D - CROSS EXAMINATION BY MR NETTLES

309

1 A (AFFIRMATIVE NOD)

2 Q OR IF YOU'RE LOOKING AT A BROKEN BONE, AND YOU SAY
3 THAT'S A BROKEN BONE, RIG-IT?

4 A YES

5 Q BUT WHEN YOU'RE TALKING ABOUT ATROPHY YOU'RE TALKING
6 ABOUT THE ABSENCE OF MATTER, CORRECT?

7 A CORRECT

8 Q OKAY SO THAT IS OFTENTIMES A SUBJECTIVE CALL?

9 A I'M NOT SURE ABOUT OFTENTIMES WHEN YOU'RE LOOKING AT
10 SITUATIONS WHERE THEY'RE A VERY MODEST AMOUNT OF CHANGE THAT
11 COULD BE DUE TO THE SEX OR JUST THE NORMAL VARIABILITY OF
12 PERSON TO PERSON CHANGES, THEN THERE'S A GOOD DEAL OF
13 SUBJECTIVITY

14 Q OKAY

15 A WHEN YOU'RE LOOKING AT DRAMATIC CHANGES AND ON SOMEBODY
16 WITH CLEARLY WITH ALZHEIMER'S DISEASE WHERE IT'S REFLECTED
17 CLINICALLY, THERE'S ALMOST COMPLETE CONCORDANCE BY THAT
18 TIME

19 Q OKAY

20 A SO THERE'S A GRADATION SCALE HERE ---

21 Q RIGHT AND ONE OF THE WAYS THAT YOU BREAK THE TIE ON
22 THAT IS YOU DO A QUANTITATIVE ANALYSIS ISN'T THAT RIGHT?

23 A WELL ONE HOPES TO MAKE THINGS LESS SUBJECTIVE BY
24 FINDING OBJECTIVE CRITERIA THAT YOU CAN QUANTIFY, THAT'S
25 TRUE

1 Q OKAY AND THAT WOULD BE ONE WAY TO MAKE THINGS LESS
2 SUBJECTIVE BY QUANTIFYING THINGS IS TO DO SOME SORT OF
3 QUANTITATIVE ANALYSIS, CORRECT?

4 A THAT'S TRUE

5 Q AS A MATTER OF FACT, YOU DO SOME QUANTITATIVE ANALYSIS,
6 DON'T YOU?

7 A SURE

8 Q OKAY SHARE WITH THE JUDGE WHAT QUANTITATIVE ANALYSIS
9 IS

10 A WELL, ONE MAKES AN OBSERVATION, BE IT LENGTH, BE IT
11 VOLUME, BE IT SIGNAL INTENSITY, BE IT CHANGES OVER TIME AND
12 THEN LOOKS AT A SELECT POPULOUS THAT REPRESENTS THE DISEASE
13 ENTITY POPULOUS THAT IS CLINICALLY NORMAL AND SEE HOW THAT
14 OBSERVATION GOES THERE

15 AND THEN ONE TAKES ANOTHER POPULOUS OF PATIENTS THAT
16 HAVE SIGNS AND SYMPTOMS OF THE DISEASE ENTITY YOU'RE
17 CONCERNED ABOUT AND MAKES THE OBSERVATION THERE

18 Q OKAY

19 A THEN ONE CORRELATES BETWEEN THE TWO AND SEES WHETHER
20 THE CORRELATION IS STRONG FOR THE GROUP THAT HAS THE DISEASE
21 AND THE OBSERVATION YOU'RE MAKING SO IF YOU WANT A MORE
22 CONCRETE EXAMPLE, THAT WAS KIND OF ABSTRACT

23 Q WELL, I MEAN, I THINK GIVEN THE EDUCATION WE'VE ALREADY
24 HAD IN THIS MATTER, I THINK IF THE COURT HAS MORE QUESTIONS
25 HE CAN ASK IT BUT I'LL PUT IT TO YOU IN THIS QUESTION

KENNETH SPICER, M D - CROSS EXAMINATION BY MR. NETTLES

311

1 AND I APPRECIATE THAT AND THAT S MY UNDERSTANDING OF
2 QUANTITATIVE ANALYSIS AS WELL AND ESSENTIALLY IT IS YOU
3 TAKE A WHOLE BUNCH OF DATA AND YOU CREATE A NORMAL RIGHT?

4 A YOU CREATE LIMITS FOR THE OBSERVATION YOU'RE MAKING,
5 WHICH WOULD ONLY BE IN THE NORMAL RANGE

6 Q RIGHT

7 A AND THEN EXCESS AMOUNTS OF THAT OBSERVATION YOU'RE
8 MAKING WOULD HAVE STRONG CORRELATION WITH THE DISEASE ENTITY
9 YOU'RE CONCERNED WITH

10 Q OKAY ONE WAY THAT YOU COULD DO A QUANTITATIVE
11 ANALYSIS, ESPECIALLY AS IT RELATES TO ATROPHY, AND I REALIZE
12 I M MAKING THIS VERY SIMPLE, BUT ESSENTIALLY TO DO -- TO
13 HAVE A STATISTICAL AVERAGE ON WHAT A NORMAL BRAIN SHOULD
14 LOOK LIKE FOR SOME -- A MALE THAT SEX, THAT RACE, I GUESS
15 THAT RACE, I DON'T KNOW, BUT CERTAINLY THAT SEX AND THAT
16 AGE, AND THEN YOU WOULD COMPARE IT TO THE -- TO THE IMAGE OF
17 THE INDIVIDUAL THAT YOU WERE SEEKING TO REACH A DECISION
18 ABOUT, RIGHT?

19 A CORRECT

20 Q OKAY NOW AND SO IN LAY TERMS YOU AND I CAN AGREE THAT
21 QUANTITATIVE ANALYSIS, WHEN WE'VE GOT TWO -- BACK UP ONE
22 SECOND IN THE CASE WHERE WE'VE GOT TWO EQUALLY TRAINED
23 INDIVIDUALS WHO ARE LOOKING AT IMAGES, ALL RIGHT?

24 A UM-HUM (AFFIRMATIVE)

25 Q YOU WOULD AGREE WITH ME -- IMAGES, THAT'S RIGHT I

KENNETH SPICER, M.D. - CROSS EXAMINATION BY MR. NETTLES

312

1 SAID IT RIGHT ALL RIGHT WHEN YOU'RE LOOKING AT IMAGES
2 AND YOU'RE JUST LOOKING AT THEM, Y'ALL ARE SITTING IN A
3 ROOM, AND I BELIEVE YOU ACTUALLY SAID ONE OF THE THINGS YOU
4 DO IS YOU GO AND YOU SORT OF -- I GUESS THERE'S A TERM Y'ALL
5 ---

6 A CONSULT

7 Q --- WE WOULD -- COUNSEL AND Y'ALL LOOK AND Y'ALL --
8 ONE OF THE THINGS Y'ALL MIGHT DO IS DISCUSS IMAGES

9 A SURE

10 Q RIGHT? ONE PERSON WOULD SAY, YOU KNOW WHAT, I THINK
11 THAT'S ATROPHY THE OTHER PERSON, I DON'T THINK SO AND
12 Y'ALL COULD -- THAT DISCUSSION COULD GO BACK AND FORTH,
13 RIGHT?

14 A YEAH

15 Q YOU TRY NOT TO TAKE IT TO COCKTAIL PARTIES, RIGHT?

16 A WELL, I'LL EVEN SHARE WITH IT AND GO FURTHER THE
17 NATIONAL BANNER OF THE RADIOLOGIST, ---

18 Q YEAH

19 A --- JOKINGLY AMONG MY COLLEAGUES, ALTHOUGH WE PUT THIS
20 OUT, IS THE WEASEL EATING THE WAFFLE UNDER THE HEDGE WHILE
21 PUNTING WE'LL HAVE A TWO THOUSAND DOLLAR MRI STUDY THAT'S
22 DONE FOR A QUESTIONED TUMOR OR NOT, AND WE'LL SAY COULD BE
23 NORMAL, COULD BE TUMOR, COULD BE INFECTION

24 Q OKAY

25 A SO THERE CERTAINLY IS SOME AMBIGUITY PRESENT IN MUCH OF

KENNETH SPICER, M D - CROSS EXAMINATION BY MR. NETTLES

313

1 WHAT WE DO AND THAT'S PARTICULARLY TRUE WHEN YOU'RE
2 LOOKING FOR VERY, VERY SUBTLE CHANGES AND WE'LL OFTENTIMES
3 END UP SAYING WE CAN'T REALLY TELL

4 Q RIGHT OR ESPECIALLY WHEN YOU'RE DEALING WITH THE
5 ABSENCE OF SOMETHING IF YOU'RE TALKING ABOUT THE PRESENCE
6 OF SOMETHING, THAT'S A LITTLE -- IT'S A LITTLE BIT EASIER
7 BUT WHEN WE'RE TALKING ABOUT THE ABSENCE OF SOMETHING,
8 THAT'S A LITTLE BIT MORE DIFFICULT, CORRECT?

9 A YES

10 Q OKAY NOW AND IN THAT CASE WHAT YOU MIGHT WANT TO DO
11 IF YOU HAD WANTED TO DO A TIE BREAKER IS DO SOME SORT OF
12 QUANTITATIVE ANALYSIS, RIGHT?

13 A IF YOU THOUGHT THERE WAS A QUANTITATIVE ANALYSIS THAT
14 WOULD BE VALUABLE AND HELP YOU IN THAT, CERTAINLY WE'D
15 CHECK THE LITERATURE AND SEE IF, YOU KNOW, THIS IS A VALID
16 CRITERIA TO UTILIZE

17 Q OKAY

18 A FREQUENTLY WE'LL CITE THAT IN THE REPORT THEN

19 Q NOW LET ME ASK YOU THIS IF THERE -- YOU HAVE MET ON
20 IMAGES -- ALL RIGHT LET ME ASK YOU THIS THERE'S BEEN
21 SOME DISCUSSION IN HERE ABOUT THIS REPORT BEING AMENDED,
22 CORRECT?

23 A UH-HUH (AFFIRMATIVE)

24 Q ALL RIGHT NOW THERE IS NOTHING, I MEAN, THAT IS NOT
25 THE FIRST TIME YOU'VE SEEN AN AMENDED REPORT?

1 A NO I'VE AMENDED REPORTS MYSELF

2 Q YOU'VE AMENDED REPORTS? AND YOU'VE AMENDED REPORTS
3 WHEN, LET'S SAY, YOU LOOKED AT AN IMAGE AND YOU DIAGNOSED IT
4 TO THE BEST OF YOUR ABILITY, RIGHT, AND YOU WROTE A REPORT?

5 A UM-HUM (AFFIRMATIVE)

6 Q CORRECT? AND THEN ONE OF THE GREAT THINGS ABOUT BEING
7 AT MUSC IS IF ANY, ESPECIALLY AT A TEACHING HOSPITAL, IS YOU
8 GET THE OPPORTUNITY TO SHOP A BUNCH OF DIFFERENT DISCIPLINES
9 IN A FAIRLY SMALL AREA, RIGHT?

10 A UM-HUM (AFFIRMATIVE)

11 Q OKAY SO THEN YOU WENT AND SPOKE WITH OTHER EXPERTS
12 AND THEY SAID WELL, YOU KNOW, I HEAR WHAT YOU'RE SAYING,
13 DR SPICER, BUT HOW ABOUT THIS OVER HERE? AND YOU SAID,
14 WELL, THAT CHANGED YOUR MIND, RIGHT? I MEAN OFTEN
15 CONSULTING WITH -- NOT OFTEN, BUT SOMETIMES WHEN YOU CONSULT
16 WITH OTHER DOCTORS THEY HAVE PERHAPS ENLIGHTENED YOU TO
17 SOMETHING YOU DIDN'T SEE?

18 A IT'S NOT SO MUCH WE DIDN'T SEE, IT MAYBE DIDN'T
19 EMPHASIZE IN A WAY THAT WOULD BE HELPFUL TO A CLINICIAN
20 WHO'S MANAGING A PATIENT

21 Q OKAY

22 A CLEARLY WE TRY NOT TO BE -- WE'RE NOT ON A PEDESTAL
23 ABOVE OUR COLLEAGUES IN FACT, WE'RE FORTUNATE AND
24 OFTENTIMES WE DON'T HAVE TO DEAL WITH OUR COLLEAGUES'
25 PROBLEMS WITH PATIENTS THAT THEY ---

KENNETH SPICER, M D - CROSS EXAMINATION BY MR NETTLES

315

1 Q RIGHT

2 A SO WE TRY TO KEEP AN OPEN PERSPECTIVE -- THOSE ARE
3 EXPERIENCED AND WE'LL LISTEN TO OUR COLLEAGUES WHEN THEY
4 COME TO US IF WE SAID SOMETHING IN THE REPORT THAT MIGHT
5 INADVERTENTLY LOSE THEM A CHANCE TO HAVE INSURANCE OR IF IT
6 IS SOMETHING THAT NEEDED TO BE SAID IN THE REPORT SO IF THEY
7 WOULD HAVE A THIRD PARTY PAIR THAT WOULD ALLOW THEM TO GET
8 THE APPROPRIATE ANTIBIOTIC

9 Q RIGHT

10 A YOU KNOW, MAYBE WE SAID IT COULD BE THIS, THIS AND
11 THIS, BUT WE SHOULD HAVE MENTIONED FIRST IN THE DIAGNOSIS
12 THAT ---

13 MR NETTLES YOUR HONOR, I MEAN, AT THIS POINT HE
14 MIGHT NEED TO GET A LAWYER I MEAN, YOU KNOW, ---

15 MR MABRY YOUR HONOR, I OBJECT TO THAT

16 MR NETTLES WELL, I MEAN, ---

17 MR MABRY I OBJECT THAT'S SLANDEROUS AND I WANT
18 IT STRICKEN FROM THE RECORD AND I WOULD LIKE HIM
19 REPRIMANDED BY THE COURT

20 THE COURT I UNDERSTOOD WHAT HE WAS SAYING I DIDN'T
21 TAKE IT IN ANY WAY ---

22 MR NETTLES OKAY

23 THE COURT --- THAT WOULD BE ---

24 A THERE ARE CIRCUMSTANCES WHERE WE VE -- ARE NOT AWARE OF
25 THE CLINICAL SETTING, AND WE DIDN'T EMPHASIZE ONE PART OF

KENNETH SPICER, M D - CROSS EXAMINATION BY MR NETTLES

316

1 THE REPORT MORE THAN ANOTHER THAT NEEDED TO BE THERE BEFORE
2 INSURANCE COMPANIES HAD VERY STRICT GUIDELINES IF IT S NOT
3 THE FIRST -- IF YOU GET A DIFFERENTIAL OF THREE OR FOUR
4 POSSIBILITIES, WHICH A RADIOLOGIST WILL NEED TO DO, AND WE
5 DIDN'T MENTION INFECTION FIRST, AND THE CLINICIAN WANTS TO
6 TREAT THE PATIENT FOR AN INFECTION IN HIS CLINICAL JUDGMENT,
7 I MEAN, HE'S THE ONE SEEING THE PATIENT, LIVING WITH THEM
8 INTIMATELY, WE HAVE A REQUEST THAT HAS VERY BRIEF HISTORIES,
9 AS YOU'VE PROBABLY NOTICED SO WE'RE NOT GOING TO
10 PONTIFICATE AND IMPAIR A THERAPY

11 NOW ON THE OTHER HAND, NO SELF-RESPECTING RADIOLOGIST
12 WOULD FABRICATE A REPORT THAT I KNOW OF EITHER OR THEY
13 CERTAINLY WOULDN'T LAST VERY LONG IN PRACTICE THEIR
14 COLLEAGUES WOULDN T RESPECT THEM AND WOULDN'T REFER THEIR
15 PATIENTS TO THEM SO WE'RE NOT GOING TO MAKE UP OR
16 FABRICATE ABNORMALITIES BASED ON INTERACTIONS WITH
17 COLLEAGUES

18 LET ME TAKE IT BACK A LITTLE BIT, WHEN YOU SAID
19 COUNSEL, I DON'T TYPICALLY COUNSEL WITH THE CLINICIANS IN MY
20 PRACTICE WHO ARE REQUESTING STUDIES FOR US I COUNSEL
21 GENERALLY WITH FELLOW RADIOLOGISTS IN THEIR OR FELLOWS --
22 INDIVIDUALS WHO ARE INTERPRETING AND DICTATING STUDIES
23 WHEN A CLINICIAN COMES TO ME, IT'S -- AND ASKS ABOUT A
24 STUDY, IT'S NOT IN A COUNSELING MODE THAT'S MORE IN A
25 CLINICAL CONSULT MODE

KENNETH SPICER, M D - CROSS EXAMINATION BY MR NETTLES

317

- 1 Q OKAY SO WHEN A CLINICIAN COMES TO YOU AND ASKS YOU TO
2 READ AN IMAGE AND YOU READ THAT IMAGE AND THE CLINICIAN
3 COMES -- THERE HAVE BEEN TIMES WHERE CLINICIANS HAVE COME
4 BACK TO YOU AND SHARED WITH YOU INFORMATION THAT THEY GET
5 BECAUSE -- THAT THEY KNOW BECAUSE THEY'VE SEEN THE CLIENT,
6 BECAUSE THEY'VE SEEN THE PATIENT IN A CLINICAL SETTING,
7 CORRECT? THAT'S CORRECT, RIGHT? THAT'S WHAT A CLINICIAN
8 ---
9 A CORRECT
10 Q THEY'VE SEEN THE CLIENT -- THE PATIENT IN A CLINICAL
11 SETTING?
12 A RIGHT
13 Q AND AS A RESULT OF THAT THEY'VE SHARED WITH YOU
14 INFORMATION THAT THEY HAVE GATHERED FROM THE CLINICAL
15 SETTING THERE HAVE BEEN TIMES WHERE THAT HAS CAUSED --
16 ONCE THE CLINICIAN SHARED THAT INFORMATION WITH YOU THAT
17 CAUSED YOU TO AMEND YOUR REPORT?
18 A CORRECT
19 Q OKAY WHO'S THE CLINICIAN IN THAT REPORT?
20 A THE REFERRING CLINICIAN ---
21 Q JM-HUM (AFFIRMATIVE)
22 A --- IS DAVID L BACHMAN
23 Q OKAY IN THIS CASE HAVE YOU DISCUSSED THIS CASE WITH
24 DR BACHMAN BEFORE YOU CAME IN HERE TODAY?
25 A NO

1 Q SO THEN YOU ARE HERE TODAY TESTIFYING UNDER OATH YOUR
2 OPINION ADMITTING THAT YOU HAVE NOT SEEN THE REPORT OF DR
3 GUR, CORRECT?

4 A CORRECT

5 Q ADMITTING THAT YOU HAVE NOT SEEN THE REPORT OF DR
6 EVANS, CORRECT?

7 A DR EVANS?

8 Q HAVE YOU SEEN THE REPORT FROM DR EVANS?

9 A NO

10 Q YOU ARE HERE TODAY AND YOU HAVE NOT SEEN -- HAVE YOU
11 SEEN THE TRIAL TRANSCRIPT?

12 A NO, SIR

13 Q OKAY HAVE YOU DISCUSSED THIS CASE WITH THE CLINICIAN
14 WHO ASKED FOR THE MRI?

15 A NO, SIR

16 MR MABRY OBJECTION THAT'S BEEN ASKED AND ANSWERED
17 HE SAID HE HASN'T TALKED TO DR BACHMAN

18 THE COURT OKAY

19 Q IS THERE -- DO YOU HAVE ANY INFORMATION THAT THE
20 AMENDMENT THAT WAS MADE TO THAT REPORT, THERE WAS ANYTHING
21 IMPROPER ABOUT THAT AMENDMENT TO THE MUSC REPORT?

22 A I HAVE NO INFORMATION THAT IT WAS IMPROPER

23 Q I HAVE NO FURTHER QUESTIONS

24 THE COURT REDIRECT

25 REDIRECT EXAMINATION BY MR MABRY

1 Q WAS THE AMENDMENT TO THAT REPORT UNUSUAL TO YOU?

2 A NO

3 Q WELL, LET ME ASK YOU THIS HAVE YOU EVER HAD A DOCTOR
4 ASK YOU TO AMEND A REPORT TWO DAYS BEFORE TRIAL?

5 A NO IT'S USUALLY WHEN THEY'RE ACTUALLY MANAGING THE
6 PATIENT AND THE DIFFICULTY THEY'RE HAVING WITH THEM

7 Q ARE YOU AWARE WHETHER OR NOT DR BACHMAN WAS TREATING
8 MR EVANS OR WAS THIS A LEGAL CASE HE WAS ---

9 A I DON'T BELIEVE HE WAS TREATING HIM I MEAN, I'M
10 JUDGING THAT FROM THE LIMITED INFORMATION I HAVE, WHICH IS
11 THIS REPORT, WHICH FOR THE FIRST MRI STUDY CAME IN SAYING
12 LEGAL CASE, SIGNIFICANT LEARNING DISABILITY WITH KNOWN
13 EXPOSURE TO LEAD

14 Q OKAY AND YOU TESTIFIED EARLIER ABOUT YOUR OPINION
15 REGARDING DR -- PROFESSOR GUR S METHODOLOGY IF MR GUR
16 TESTIFIED THAT HE FOUND MILD DIFFUSE VOLUME LOSS, KNOWING
17 THE METHODOLOGY HE USED, WOULD YOU RELY ON THAT IN YOUR
18 EXPERT OPINION HERE TODAY?

19 A WELL, IF THIS IS THE FIRST TIME I'VE HEARD OF THAT I
20 WOULD GO TO THE LITERATURE AND TRY TO SEE IF THERE ARE ANY
21 SCIENTIFIC STUDIES THAT HAVE LED TO THAT CONCLUSION THAT
22 THIS WOULD BE A VALUABLE INDEX TO USE WHEN INTERPRETING
23 AND IF I FOUND SUPPORT FOR THAT I WOULD SAY THAT -- I WOULD
24 CITE THE REFERENCE AND SAY ALTHOUGH THIS IS NOT STANDARD
25 CLINICAL PRACTICE AT THIS POINT IN TIME, THIS SERIES OF

1 EXPERIMENTS AND MANUSCRIPT LEND SUPPORT TO THAT OBSERVATION
2 ON THE OTHER HAND, MOST OF MY COLLEAGUES WOULDN T TAKE
3 THAT VERY STRONGLY IT'S NOT UNTIL SOMETHING THAT HAS BEEN
4 TRIED, AN OBSERVATION'S BEEN MADE AT A NUMBER OF
5 INSTITUTIONS AND SHOWN TO HAVE CLINICAL BENEFIT THAT IT'S
6 INCORPORATED IN OUR CLINICAL PRACTICE

7 THERE'S AN AWFUL LOT OF SCIENTIFIC INVESTIGATIONS THAT
8 GO ON THAT ARE VERY EXCITING IN THE BEGINNING AND THEN AS
9 YOU BEGIN TO HAVE OTHER PRACTITIONERS IN OTHER PARTS OF THE
10 COUNTRY AND WORLD TRY THESE THINGS YOU FIND OUT THAT THERE
11 WERE OTHER VARIABLES THAT WERE MORE CAUSATIVE

12 I MEAN, SO MUCH OF WHAT HAPPENS IN THE TYPE OF RESEARCH
13 WE DISCUSSED EARLIER IS THERE'S AN ASSOCIATION BETWEEN ONE
14 THING AND ANOTHER THAT DOESN'T NECESSARILY MEAN THERE'S A
15 CAUSE AND EFFECT

16 AND SO UNTIL COLLEAGUES AND OTHER INSTITUTIONS HAVE
17 TRIED TO MAKE THESE OBSERVATIONS AND PUT THEM INTO CLINICAL
18 PRACTICE, THEY'RE NOT ACCEPTED THEY RE NOT STANDARD
19 CRITERIA THAT OUR SOCIETIES ACCEPT AS REASONABLE FOR MAKING
20 DIAGNOSES

21 Q OKAY ONE MORE QLESTION IF DR GUR S FINDINGS WERE
22 THAT, MILD DIFFUSE VOLUME LOSS WOULD THAT CHANGE YOUR
23 EXPERT OPINION HERE TODAY KNOWING WHAT YOU KNOW ABOUT HIS
24 METHODOLOGY?

25 A WELL, PROBABLY NOT NO VOLUME LOSS IS A VERY

KENNETH SPICER, M.D. - RECROSS EXAMINATION BY MR. NETTLES

321

1 DIFFICULT THING TO ASSESS WE ALL HAVE DIFFERENT SHAPED
2 BRAINS, SIZED BRAINS JUST LIKE NOSES ARE DIFFERENT SIZES AND
3 SHAPES SO UNTIL THERE S PRETTY DRAMATIC CHANGES, IT'S VERY
4 DIFFICULT TO MAKE THAT OBSERVATION

5 Q AND ASSUMING THAT THAT WAS HIS TESTIMONY, WOULD THAT
6 CHANGE YOUR EXPERT OPINION ABOUT WHAT YOU SAW ON THE MRI
7 REPORTS AS YOU'VE TESTIFIED TODAY?

8 A NO, IT WOULD NOT CHANGE IT

9 Q NO FURTHER QUESTIONS

10 RECROSS EXAMINATION BY MR. NETTLES

11 Q OKAY THEN LET ME ASK YOU SOMETHING WHAT DID DR GUR
12 DO?

13 A WELL, I'VE ALREADY TESTIFIED THAT I HAVEN'T HAD DR
14 GUR'S REPORT SO I CAN'T TELL YOU THAT

15 Q SO THEN HOW CAN YOU -- HOW CAN YOU SIT THERE AND TELL
16 US, NOT KNOWING WHAT HE DID, NOT KNOWING WHAT'S IN THE
17 REPORT, NOT -- OH, LET ME ASK YOU THIS DO YOU KNOW WHAT'S
18 IN THE REPORT?

19 A DR GUR'S REPORT?

20 Q YES

21 A NO, I DO NOT

22 Q DO YOU KNOW WHAT PROCEDURE HE UTILIZED?

23 A WELL, I DON'T YOU'RE REITERATING THE SAME POINT
24 I VE NEVER SEEN HIS REPORT

25 Q OKAY SO THEN DO YOU KNOW WHAT LITERATURE THERE IS PRO

1 OR CON RELATING TO WHAT HE DID IN THIS CASE?

2 A WELL, YES, TO A CERTAIN EXTENT I DO I DID SURVEY THE
3 LITERATJRE BEFORE COMING HERE TO SEE IF THERE WERE
4 ASSOCIATIONS BETWEEN VOLUME AND LEAD POISONING AND,
5 INDEED, I DID FIND SOME

6 BUT I'LL HESITATE, OR NOT HESITATE, BUT HASTEN TO SAY
7 THAT THESE ARE ASSOCIATIONS I DID NOT FIND ANY LITERATURE
8 GIVING OBJECTIVE CRITERIA STATING THAT YOU MAKE THIS
9 OBSERVATION AND YOU HAVE A DIAGNOSIS OF LEAD POISONING

10 Q LET ME ASK YOU THIS DID YOU GET A CHANCE TO LOOK AT
11 -- DID YOU GET THE CHANCE TO LOOK AT ANY OF KAMELL EVANS'
12 MEDICAL RECORDS?

13 A NO, SIR YOU'VE ASKED THAT ALREADY A COUPLE OF TIMES

14 Q LET ME ASK YOU THIS QUESTION IF YOU HAD TWO EQUALLY
15 TRAINED, EQUALLY QUALIFIED EXPERTS, OKAY, ---

16 MR MABRY I'M GOING TO OBJECT THIS IS NOT PROPER
17 RE-REDIRECT I DIDN'T ASK THOSE QUESTIONS ON MY ---

18 THE COURT I DON T KNOW WHAT HE'S GOING TO ASK

19 MR NETTLES AND I THINK I M CROSSING

20 MR MABRY IT S RECROSS BUT HE'S LIMITED TO WHAT I
21 BROUGHT UP ON ---

22 THE COURT ALL RIGHT WELL GO AHEAD I'M GOING TO
23 LET YOU ASK IT

24 Q IF YOU HAD TWO EQUALLY QUALIFIED EXPERTS, ALL RIGHT, IN
25 YOUR FIELD, OKAY, AS AN EXPERT, IF YOU HAD GONE TO TWO

KENNETH SPICER, M D - RECROSS EXAMINATION BY MR. NETTLES

323

1 EQUALLY QUALIFIED EXPERTS, ALL RIGHT, AND ONE OF THEM HAD
2 THE OPPORTUNITY TO LOOK AT ALL THE MEDICAL RECORDS, HAD THE
3 OPPORTUNITY TO LOOK AT ALL THE OTHER EXPERTS THAT HAD SEEN
4 THE PATIENT, HAD THE OPPORTUNITY TO DO A CLINICAL ANALYSIS,
5 THAT'S ONE EXPERT, THE OTHER EXPERT HAD ONLY BEEN SHOWN THE
6 IMAGES AND HAD HAD THE OPPORTUNITY TO TALK BRIEFLY IN THE
7 HALLWAY WITH ANOTHER EXPERT, IN YOUR OPINION WHICH EXPERT
8 WOULD BE MORE ---

9 MR. MABRY I'M GOING TO OBJECT TO THAT -- THE FORM OF
10 THE QUESTION BECAUSE THAT'S NOT THE FACTS OF THIS CASE AND
11 AGAIN, IT'S NOT PROPER RECROSS BECAUSE I DIDN'T BRING IT UP

12 THE COURT I'M GOING TO LET HIM ASK IT I THINK IT'S,
13 I MEAN, YOU ASKED HIM ON REDIRECT A HYPOTHETICAL ASSUMING
14 CERTAIN FACTS WERE IN EVIDENCE AND I THINK HE'S
15 ESSENTIALLY DOING THE SAME THING SO GO AHEAD

16 Q OKAY WE AT THE SAME PLACE?

17 A YEAH, FINISH YOUR QUESTION WHICH WOULD

18 Q WHICH ONE IN YOUR -- IN YOUR PROFESSIONAL OPINION WOULD
19 BE THE ONE MOST QUALIFIED TO RENDER AN OPINION?

20 A I THINK -- I DON'T THINK I CAN ACTUALLY EXPRESS AN
21 OPINION AS TO WHICH WOULD BE MORE QUALIFIED BECAUSE -- AND
22 LET ME PREFACE THAT WITH ONE OF THE TENANTS OF OUR IMAGE
23 INTERPRETATIONS IS THAT WE LOOK AT THE IMAGES FIRST AND MAKE
24 THE INTERPRETATION THEN THEN WE BRING IN THE CLINICAL
25 INFORMATION

KENNETH SPICER, M D - QUESTIONS BY THE COURT

324

1 BECAUSE IF YOU INTERPRET WITH THE CLINICAL INFORMATION
2 ON THE FRONT-END OF THINGS, IT TENDS TO FOCUS YOU TOO FAST
3 ON ANY OBSERVATIONS YOU MAKE WITH THAT PREFACE, OBVIOUSLY
4 THE MORE INFORMATION YOU HAVE WHEN YOU'RE MAKING VERY
5 DIFFICULT DECISIONS OF VERY SUBTLE CHANGES, IT OUGHT TO BE
6 BENEFICIAL TO HAVE MORE INFORMATION

7 YOU ASKED THE QUESTION THOUGH WHICH IS MORE QUALIFIED?
8 I DON'T THINK QUALIFICATIONS WOULD BE CHANGED BY THE AMOUNT
9 OF INFORMATION YOU HAVE THERE YOUR ABILITY TO INTERPRET
10 IMAGES IS WHAT THE QUALIFICATIONS PROVIDE YOU WITH

11 Q THANK YOU

12 MR MABRY NO FURTHER QUESTIONS WE'D ASK THAT DR
13 SPICER BE EXCUSED THANK YOU, SIR

14 THE COURT ALL RIGHT WELL, I'VE GOT A COUPLE OF
15 QUESTIONS

16 MR MABRY OH, I'M SORRY

17 THE COURT THAT'S ALL RIGHT DR SPICER, TELL ME WHAT
18 THE RANK OR RANGE OF DESCRIPTIVE ADJECTIVES ON THE REPORTS
19 ARE I MEAN IT SAYS MILD -- THE AMENDED REPORT SAYS MILD
20 AND I DON'T HAVE IT IN FRONT OF ME SO I CAN'T QUOTE
21 EXACTLY WHAT -- WHAT DOES IT SAY? MILD

22 A MILD DIFFUSE VOLUME LOSS

23 THE COURT OKAY WHAT ARE THE RANGES? DOES IT GO
24 FROM MILD -- IS MILD THE ---

25 A MODERATE TO SEVERE

KENNETH SPICER, M.D. - QUESTIONS BY THE COURT

325

1 THE COURT --- LOWEST? OKAY SO THERE ARE THREE?

2 A NORMAL, MILD, MODERATE, SEVERE THAT'S TYPICALLY WHAT
3 I WOULD USE AND HAS BEEN POINTED OUT BY THE DEFENSE,
4 THEY'RE NOT GOOD OBJECTIVE CRITERIA FOR VOLUME LOSS WHEN
5 VOLUME LOSS IS NOT DIFFUSE, BUT FOCAL, THAT IS EASY TO SEE
6 BECAUSE OF ASYMMETRIES THAT'S WITH -- THROUGHOUT THE WHOLE
7 BRAIN IT'S A VERY DIFFICULT THING TO REALLY DO, TO COME UP
8 WITH SO WE GIVE VERY BROAD DESCRIPTORS

9 THE COURT AND IS THAT AMENDED REPORT THE DESCRIPTION
10 -- IS THAT RELATED TO THE BRAIN IN GENERAL OR IS IT SPECIFIC
11 TO ANY PARTICULAR REGION?

12 A WELL, IT SAYS DIFFUSE SO THAT MEANS TO ME THAT IT'S
13 THE WHOLE BRAIN

14 THE COURT WHOLE BRAIN? OKAY

15 A YEAH

16 THE COURT AND YOU SAY THERE ARE NO RELIABLE OBJECTIVE
17 INDICATORS WHATSOEVER IN THE FIELD? IS THAT WHAT I
18 UNDERSTOOD YOU TO SAY?

19 A FOR VOLUME ASSESSMENT? IS THAT ---

20 THE COURT YES, SIR

21 A --- WHAT YOU'RE SAYING?

22 THE COURT RIGHT

23 A WELL I THINK WHEN IT BECOMES SEVERE AND EVEN HAVING
24 MODERATE, THEN THERE'S A GOOD DEAL OF CONSENSUS OBTAINED
25 THERE ESPECIALLY IF IT'S FOCAL BUT IF IT'S DIFFUSE AND

KENNETH SPICER, M.D. - QUESTIONS BY THE COURT

326

1 MODERATE TO SEVERE, IT'S VERY DIFFICULT YOU'LL HAVE A GOOD
2 DEAL OF DISCUSSION AND DISAGREEMENT AMONGST CLINICAL AS WELL
3 AS IMAGING COLLEAGUES

4 WHEN IT'S MILD, THAT IS, YOU KNOW, I GUESS THE OTHER
5 THING IN THE BACK OF MY MIND HERE, BRAIN FUNCTION DOESN'T
6 RELATE TO OVERALL VOLUME CHANGES VERY WELL IF YOU REALLY
7 WANT TO BE SENSITIVE YOU LOOK AT GRAY MATTER THAT'S WHAT
8 DETERMINES OUR FUNCTION

9 AND YOU CAN CERTAINLY LOSE VOLUME BECAUSE OF LOSS OF
10 CSF, DEHYDRATION YOU CAN LOSE VOLUME WITH WHITE TRACT
11 DISEASE AND STILL PRESERVE YOUR GRAY MATTER

12 ON THE OTHER HAND, YOU CAN HAVE VERY SUBTLE CHANGES IN
13 YOUR GRAY MATTER AND HAVE VERY PROFOUND SYMPTOMS THAT RESULT
14 IN EARLY MEMORY LOSS, NOT JUST NOT BEING ABLE TO FIND YOUR
15 CAR IN A PARKING LOT, BUT, YOU KNOW, REALLY LOST, THAT SORT
16 OF THING, AND YET THERE'S NOTHING REALLY ABNORMAL ON THE MR
17 WE KNOW THAT NOW BECAUSE WE DO THESE PET SCANS THAT SHOW US
18 ALL SORTS OF CHANGES LONG BEFORE WE SEE ANATOMIC CHANGES ON
19 AN MR OR CT

20 THE COURT SO -- AND YOU MAY HAVE COVERED THIS AND I
21 JUST DIDN'T PICK IT UP BUT I GUESS WHAT I'M TRYING TO GET
22 AT IS IF -- YOU MENTIONED DR. GUR AND YOU MENTIONED, I
23 BELIEVE, THAT IF YOU'VE HAD A QUANTITATIVE ANALYSIS THAT'S
24 RELIABLE RELATED TO VOLUME LOSS YOU WOULD AS A RADIOLOGIST
25 WANT TO CONSIDER THAT AND YOU'RE SAYING THAT YOU'RE NOT

KENNETH SPICER, M.D. - QUESTIONS BY THE COURT

327

1 AWARE OF ANY, IN THE LITERATURE OR ANY OTHER SOURCE, OF A
2 QUANTITATIVE ANALYSIS FOR VOLUME LOSS THAT'S RELIABLE IN THE
3 FIELD IS THAT YOUR OPINION?

4 A THAT'S MY OPINION, YES

5 THE COURT OKAY

6 A WHAT HAPPENS WHEN YOU HAVE A CRITERIA LIKE THAT THAT
7 BECOMES RECOGNIZED IS OUR SOCIETIES SETS STANDARDS FOR WHAT
8 WE CAN USE OR CANNOT USE FOR INTERPRETING AND I CHECKED
9 THE AMERICAN COLLEGE OF RADIOLOGY'S AND AMERICAN SOCIETY OF
10 NEURORADIOLOGY'S STANDARDS, AND THEY DID NOT HAVE ANYTHING
11 IN THERE FOR VOLUME LOSS

12 I DIDN'T, AS THE DEFENSE ASKED, I DIDN'T PROVIDE
13 EXHAUSTIVE RESEARCH OF THAT GOING ON ALTHOUGH, I AM
14 FAMILIAR WITH IT, NOT IN PREPARATION FOR THIS COURT, BUT
15 JUST FROM YEAR'S PAST, IN THE DEMENTIA AREA, AND IT JUST
16 DIDN'T PAN OUT SO MAYBE THAT PREJUDICED ME IN A NEGATIVE
17 MANNER

18 THE COURT SO YOU'RE TALKING ABOUT A SOCIETAL
19 STANDARD IS THAT IN TERMS OF A DIAGNOSTIC CRITERIA?

20 A YES

21 THE COURT OKAY SO CURRENTLY FOR DIAGNOSTIC
22 CRITERIA, VOLUME LOSS HAS TO BE A SUBJECTIVE INTERPRETATION,
23 IS THAT WHAT I'M UNDERSTANDING YOU'RE SAYING?

24 A WELL, WHEN IT'S VERY SUBTLE

25 THE COURT OKAY

KENNETH SPICER, M D - QUESTIONS BY THE COURT

328

1 A WHEN IT'S FOCAL AND BIG OR, YOU KNOW, MONITORED -- WHEN
2 YOU HAVE CRITERIA LIKE YOU CAN SEE FLATTENING OF THE SOFT
3 SIDE, THE DISTANCE BETWEEN THE SOFT SIDE AND THE CRANIAL
4 VAULT, YOU CAN SEE THE VENTRICLES ARE WIDENED, THAT SORT OF
5 THING THOSE ARE CRITERIA THAT ARE CLEARLY AGREED UPON BY
6 IMAGERS AND WOULD LEAD TO THE DIAGNOSIS AND DISCUSSION IN
7 THE REPORT

8 THE COURT OKAY

9 A IN THIS CASE THERE WASN'T THAT I MEAN THERE'S CSF IN
10 BETWEEN THE GYRI IT DOESN'T SEEM EXCESSIVE THE
11 VENTRICLES AREN'T ABNORMALLY WIDE NONE OF THOSE CRITERIA
12 THAT WE WOULD NORMALLY USE IN INTERPRETING THE SCAN WERE
13 THERE

14 THE COURT THAT'S EVEN READING THE AMENDED REPORT? OR
15 IS THAT ---

16 A YEAH I'M NOT SURE WHAT MARIA WAS ACTUALLY OR DR
17 SPAMPINATO WAS ACTUALLY TALKING ABOUT WHEN SHE SAID MILD
18 DIFFUSE VOLUME LOSS THERE

19 THE COURT BUT WASN'T THERE ALSO A NOTATION, MAYBE IT
20 WAS THE SECOND MEMO ABOUT THE VENTRICLES?

21 A THERE'S MILD DIFFUSE VOLUME LOSS WITH PROMINENT
22 VENTRICLES IN CSF SPACES SHE MADE THAT -- I DIDN'T THINK
23 THAT THEY WERE PROMINENT AT ALL SO WHAT I DID LAST NIGHT
24 IS I WENT BACK ON AND LOOKED AT YESTERDAY'S MRIs AND
25 MEASURED VENTRICLES IN 25 TO 30 YEAR OLDS AND AGAIN 50 TO 60

KENNETH SPICER, M D - QUESTIONS BY THE COURT

329

1 YEAR OLDS AND THEY WERE ALL ABOUT A CENTIMETER IN
2 VENTRICLE ---

3 THE COURT SO -- OKAY SO THE SPACING WHICH IS
4 DIFFERENT THAN VOLUME, CORRECT?

5 A CORRECT THAT'S ONLY IN ONE PLANE

6 THE COURT SO THAT HAS STANDARD OBJECTIVE CRITERIA
7 THAT ARE RECOGNIZED IN THE FIELD?

8 A I WISH I COULD SAY YES TO THAT IT DOESN'T -- YOU
9 CAN'T SAY IF A VENTRICLE IS 1.3 CENTIMETERS WIDE THAT IT'S
10 ABNORMAL AT AGE 31 IT'S JUST, WOW, THAT'S MORE THAN I
11 USUALLY WOULD SEE OR EXPECT TO SEE

12 THE COURT OKAY

13 A OR I SEE IT ROUTINELY IN 60, 70 YEAR OLDS, BUT A 30
14 YEAR OLD, THAT'S NOT -- WHEN IT GETS TO BE THAT DIMENSION,
15 THEN WE WOULD CALL IT

16 THE COURT AND THAT ESSENTIALLY IS WHAT MAKES YOUR
17 FIELD IN SOMEWAY MORE OF AN ART VERSUS -- MORE OF AN ART
18 THAN A SCIENCE?

19 A SADLY SO, YES

20 THE COURT AND YOU WOULD TAKE THE MRI TOGETHER WITH
21 THE CLINICAL FINDINGS AND OTHER OBJECTIVE HISTORIES, I
22 SUPPOSE, AND COME UP WITH A COMPLETE DIAGNOSIS OF THAT,
23 CORRECT?

24 A YES

25 THE COURT AND YOU MENTIONED SOMETHING ABOUT THE

KENNETH SPICER, M D - RE-REDIRECT EXAMINATION BY MR. MABRY

330

1 NATIONAL BANNER BEING -- I COULDN'T HEAR ALL -- WHAT DID YOU
2 SAY? IT WAS A WEASEL OR ---

3 A THE NATIONAL BANNER OF THE RADIOLOGISTS IT'S IN A
4 JOKE WE STRUGGLE WITH OUR SUBJECTIVITY SO MUCH THAT -- AT
5 NATIONAL MEETINGS AND EDUCATIONAL SESSIONS WE POINT OUT OUR
6 WEAKNESS IT'S THE WEASEL EATING A WAFFLE UNDER A HEDGE
7 WHILE PUNTING

8 THE COURT ALL RIGHT WELL, 'CAUSE I

9 A IT MAY APPLY TO OTHER DISCIPLINES TOO

10 THE COURT IT REMINDED ME OF THE CLIENT WHO SAID HE
11 WANTED A ONE HANDED LAWYER BECAUSE THE LAWYER KEPT SAYING,
12 WELL, ON THE OTHER HAND ALL RIGHT ANY FOLLOW-UP
13 QUESTION?

14 MR MABRY I GUESS I JUST HAVE ONE

15 RE-REDIRECT EXAMINATION BY MR MABRY

16 Q THE AMENDED REPORT MENTIONS CSF SPACES DID YOU FIND
17 THAT WHEN YOU LOOKED AT THE FILMS? I THINK YOU ANSWERED
18 THAT

19 A AND PROMINENT VENTRICLES BOTH WERE MENTIONED AND I
20 DIDN'T FIND THAT, NO

21 Q OKAY AND THAT'S YOUR EXPERT OPINION?

22 A THAT IS MY EXPERT OPINION

23 Q NO FURTHER QUESTIONS

24 THE COURT OKAY THANK YOU VERY MUCH, DR SPICER

25 MR MABRY WE'D ASK THAT HE BE EXCUSED, YOUR HONOR

STEVEN SUMNER - DIRECT EXAMINATION BY MS BROWN

331

1 THE COURT YES, SIR, ABSOLUTELY

2 MR NETTLES I WOULD ASK THAT HE NOT TAKE THE EXHIBITS
3 WITH HIM

4 MR MABRY HE'S GOT TO TAKE HIS COMPUTER ---

5 MR NETTLES WE JUST GET A LITTLE EDGY ABOUT THAT
6 JUST LEAVE THEM ---

7 MR MABRY THEY STAY HERE LET'S GET THE CD OUT, AND
8 WE'LL MARK -- I'LL MARK THAT

9 MS BROWN YOUR HONOR WHILE THAT S BEING DONE MAY I
10 GO GET THE NEXT WITNESS?

11 THE COURT YES, MA'AM

12 MR EHLIES CAN WE JUST HAVE A MINUTE?

13 THE COURT LET'S TAKE ABOUT A FIVE MINUTE BREAK SO
14 EVERYBODY

15 (WHEREUPON DEFENDANT'S EXHIBIT 51 WAS MARKED)

16 (WHEREUPON COURT WAS IN RECESS AT 11 00 AM)

17 (WHEREUPON COURT RESUMED AT 11 12 AM)

18 THE COURT ALL RIGHT HE'S STILL UNDER OATH FROM THE
19 LAST TIME HE WAS HERE YES MA'AM, MS BROWN

20 MS BROWN YOUR HONOR, THE STATE IS RECALLING STEVE
21 SUMNER

22 STEVEN SUMNER, HAVING
23 ALREADY BEEN DULY SWORN TESTIFIED AS FOLLOWS

24 DIRECT EXAMINATION BY MS BROWN

25 Q MR SUMNER, THANK YOU FOR BEING HERE I HAVE A FEW

STEVEN SUMNER - DIRECT EXAMINATION BY MS BROWN

332

1 QUESTIONS GOING TO THE JURY CHARGE REGARDING SENTENCING
2 NOW BACK IN JUNE I BELIEVE YOU TESTIFIED THAT YOU AND MR
3 GOLDSMITH PRETTY MUCH WORKED TOGETHER AS OPPOSED TO HAVING
4 SEPARATE DUTIES IN THE TRIAL, IS THAT CORRECT?

5 A THAT IS CORRECT

6 Q AND WOULD THAT ALSO BE APPLICABLE TO THE PENALTY PHASE?

7 A IT WOULD BE

8 Q OKAY SO BOTH OF YOU WOULD HAVE HAD INPUT WITH THE
9 CHARGE?

10 A YES

11 Q OKAY COULD YOU TELL US, PLEASE ABOUT ANY CHARGE
12 REQUESTS OR CHARGE CONFERENCE THAT YOU MIGHT HAVE HAD
13 CONCERNING THE PENALTY PHASE CHARGE?

14 A YES IT'S KIND OF A VAGUE RECOLLECTION BECAUSE IT'S
15 BEEN QUITE SOME TIME AGO I DO REMEMBER -- WHAT I RECALL IS
16 A GENERAL CHARGE CONFERENCE THAT TOOK PLACE IN JUDGE COLE'S
17 CHAMBERS BETWEEN MYSELF AND SKIP GOLDSMITH ALONG WITH MR
18 ARIAIL AND BETTY STROM

19 AND MY RECOLLECTION IS THAT JUDGE COLE GAVE A TYPE OF
20 HEADNOTES OR CLIFF NOTES TYPE VERSION OF I'M GOING TO CHARGE
21 REASONABLE DOUBT IN TERMS OF YOU KNOW, HESITATION, I'M
22 GOING TO -- AND HE GAVE A ONE OR TWO SENTENCE SYNOPSIS OF
23 WHAT THE CHARGE WAS GOING TO BE

24 I BELIEVE HE STATED I'M GOING TO -- I'VE DONE DEATH
25 PENALTY CASES BEFORE, SO I'M GOING TO CHARGE EVERYTHING I

STEVEN SUMNER - DIRECT EXAMINATION BY MS. BROWN

333

1 CAN FOR THE DEFENDANT AND EVERYTHING I CAN FOR THE STATE
2 HE WENT THROUGH IT I DON'T RECALL ANY OBJECTIONS THAT
3 EITHER SKIP OR I HAD AT THAT POINT, NOR DO I RECALL ANY
4 ADDITIONS TO THAT

5 Q OKAY DO YOU RECALL ANY KIND OF CONVERSATION THAT --
6 IN WHICH THE JUDGE WOULD HAVE ADVISED THAT HE WAS GOING TO
7 CHARGE THERE'D BE A LIMITATION ON THE CONSIDERATION OR THE
8 ACCEPTANCE OF A PLEA OF MERCY?

9 A NO LIMITATION THAT I CAN RECALL

10 Q OKAY DO YOU REMEMBER DISCUSSING A HUGHEY CASE DURING
11 THE CHARGE CONFERENCE?

12 A I DO NOT

13 Q OKAY ALL RIGHT DO YOU REMEMBER THE CLOSING ARGUMENT
14 IN THIS CASE?

15 A VAGUELY, BUT YES

16 Q OKAY WOULD IT BE CORRECT TO SAY THAT MR GOLDSMITH
17 DELIVERED THE ARGUMENT?

18 A HE DID

19 Q DID -- WERE YOU AWARE OF THE CONTENT OF THE ARGUMENT
20 BEFORE HE DELIVERED THE ARGUMENT?

21 A I WAS HE AND I REVIEWED IT IN GENERAL, AND THEN HE
22 GAVE IT

23 Q DO YOU RECALL IF MERCY WAS PART OF THE ARGUMENT?

24 A IT WAS

25 Q OKAY WOULD YOU SAY THAT THAT WAS A FAIRLY MINOR OR A

1 FAIRLY MAJOR PART OF THE ARGUMENT?

2 A I WOULD SAY IT WAS A MAJOR PART

3 Q AND YOU RECALL THE JUDGE GIVING A CHARGE REFERENCING
4 MERCY DURING THE PENALTY PHASE?

5 A AFTER LOOKING BACK -- I DIDN'T UNTIL I'VE LOOKED BACK
6 AT THE TRANSCRIPT THIS MORNING WITH BOTH THE ATTORNEY
7 GENERAL'S OFFICE AND WITH MR EVANS' COUNSEL AND THAT'S
8 REFRESHED MY MEMORY AND I DO RECALL IT NOW

9 Q OKAY I'D LIKE YOU TO LOOK AT PARTICULAR LINES AND
10 READ THEM FOR THE COURT IF YOU WOULD NOT MIND

11 A SURE

12 Q AND THIS WOULD BE ---

13 MS BROWN IF I MAY APPROACH THE WITNESS, YOUR HONOR?

14 THE COURT CERTAINLY

15 Q PAGE 1785, LINES 8 THROUGH 10

16 A ALL RIGHT AND THIS IS PAGE 1785 OF THE TRANSCRIPT,
17 LINES 8 THROUGH 10 WHICH IS JUDGE COLE'S CHARGING PART
18 'SIMPLY STATED, YOU MAY RECOMMEND A SENTENCE OF LIFE
19 IMPRISONMENT FOR ANY REASON OR FOR NO REASON AT ALL OTHER
20 THAN AS AN ACT OF MERCY " "

21 Q OKAY DO YOU RECALL HEARING THAT CHARGE, THAT SPECIFIC
22 LANGUAGE?

23 A I RECALL THE CHARGE MORE AS A WHOLE I DON'T RECALL
24 EXACTLY HEARING THAT WHEN THE TRIAL OCCURRED NO

25 Q OKAY WELL, LET ME ASK YOU, HAVING REVIEWED THAT

STEVEN SUMNER - CROSS EXAMINATION BY MR. NETTLES

335

1 CHARGE AGAIN AND IN CONTEXT IN WHAT YOU DO REMEMBER, IS
2 THERE ANYTHING THAT WOULD CAUSE YOU TO THINK THE CHARGE
3 LIMITED IN ANY WAY THE USE OF MERCY?

4 A NO

5 Q HAD YOU HEARD A CHARGE THAT IN ANY WAY IN YOUR OPINION
6 LIMITED THE USE OF MERCY WOULD YOU HAVE OBJECTED?

7 A YES

8 MS BROWN NO FURTHER QUESTIONS, YOUR HONOR

9 THE COURT OKAY

10 A YOU WANT ME JUST TO LEAVE THIS HERE?

11 MR NETTLES YEAH, WE MIGHT TALK ABOUT IT

12 A OKAY

13 MR NETTLES MAY IT PLEASE THE COURT?

14 THE COURT CERTAINLY GO AHEAD

15 CROSS EXAMINATION BY MR. NETTLES

16 Q ALL RIGHT SO LET ME GET THIS STRAIGHT THEN, MR
17 SUMNER YOUR READING OF THE CHARGE THAT WAS GIVEN ON LINES
18 8 THROUGH 10 IS THAT THAT CHARGE IT'S YOUR UNDERSTANDING,
19 DOES NOT LIMIT MERCY AS A REASON FOR GIVING LIFE?

20 A NO, IT DOES NOT I AGREE WITH YOU, YES, SIR

21 Q OKAY

22 A THAT'S WHAT I THINK

23 Q IF YOU -- YOU WOULD AGREE WITH ME THAT IF -- WELL, LET
24 ME ASK YOU THIS YOU HAVE NOT HAD THE OPPORTUNITY TO READ
25 THIS CHARGE PRIOR TO THE JUDGE GIVING IT?

STEVEN SUMNER - CROSS EXAMINATION BY MR NETTLES

336

1 A I DON'T REMEMBER HAVING THE OPPORTUNITY TO REVIEW IT
2 BEFORE THEN IT WAS A VERBAL, AS I MENTIONED, FROM WHAT I
3 CAN RECALL, A VERBAL HEADNOTE, CLIFF NOTE TYPE EXPLANATION
4 FROM JUDGE COLE THAT'S WHAT I REMEMBER

5 Q OKAY NOW AND IF YOU HAD FELT IN YOUR PROFESSIONAL
6 OPINION THAT THIS JURY CHARGE LIMITED MERCY AS A REASON FOR
7 GIVING LIFE YOU WOULD HAVE TAKEN SOME ACTION? YOU WOULD
8 HAVE TAKEN ACTION, CORRECT?

9 A YES

10 Q AND ---

11 A YES, SIR I BELIEVE I WOULD HAVE

12 Q AND YOUR ACTION WOULD HAVE BEEN EITHER (A) NOT MAKING A
13 MAJOR PART OF YOUR CLOSING ARGUMENT BE MERCY?

14 A I THINK THAT S RIGHT

15 Q RIGHT? 'CAUSE YOU CAN AGREE WITH ME THAT IF YOU KNEW
16 THAT THIS MEANT YOU COULDN'T TAKE MERCY INTO ACCOUNT THAT
17 YOUR CREDIBILITY MIGHT SUFFER IF YOU GOT UP AND ARGUED
18 SOMETHING THAT THE JURY'S GOING TO BE TOLD THEY COULDN'T
19 EVEN CONSIDER?

20 A I AGREE

21 Q OKAY NOW OR THE OTHER THING YOU MIGHT HAVE DONE HAD
22 YOU THOUGHT THAT THIS LANGUAGE MEANT THAT MERCY COULD NOT BE
23 CONSIDERED IS YOU WOULD HAVE OBJECTED?

24 A I BELIEVE SO, YES, SIR

25 Q RIGHT AND YOU WOULD HAVE SAID, YOU KNOW, YOUR HONOR

STEVEN SUMNER - CROSS EXAMINATION BY MR. NETTLES

337

1 I BELIEVE THAT THAT LANGUAGE IS ---

2 A DEFICIENT IN SOME WAY OR DID NOT -- WAS NOT FAIR TO THE
3 DEFENDANT

4 Q NOW LET ME ASK YOU THIS HAD YOU BEEN GIVEN THE CHOICE
5 BETWEEN THE CHARGE SIMPLY STATED, YOU MAY RECOMMEND A LIFE
6 -- A SENTENCE OF LIFE IMPRISONMENT FOR ANY REASON OR NO
7 REASON AT ALL OTHER THAN AS AN ACT OF MERCY, OKAY, AND
8 THAT'S THE CHARGE YOU GOT ---

9 A IT IS

10 Q --- OR HAD YOU BEEN GIVEN THE CHOICE OF THIS CHARGE, AS
11 A MATTER OF FACT YOU CAN RECOMMEND THAT THE DEFENDANT
12 RECEIVE A LIFE SENTENCE IRRESPECTIVE OF WHETHER YOU FIND THE
13 EXISTENCE IN THE EVIDENCE OF AN ALLEGED STATUTORY MITIGATING
14 CIRCUMSTANCE OR NOT, IN FACT, YOU MAY RECOMMEND A SENTENCE
15 OF LIFE FOR ANY REASON YOU CAN THINK OF OR FOR NO REASON AT
16 ALL WHICH ONE OF THOSE TWO STATEMENTS DO YOU BELIEVE IS
17 MORE CONSISTENT -- OF THOSE CHARGES IS MORE CONSISTENT WITH
18 YOUR MITIGATION DEFENSE OF MERCY?

19 A THE FIRST ONE, THE ONE THAT WAS CHARGED

20 Q OKAY SO YOU THINK THAT THE LANGUAGE THAT WAS CHARGED
21 IS MORE SYMPATHETIC TO A CASE THAT RELIES IN LARGE PART ON
22 MERCY?

23 A I DO CAN I -- AND I'M GOING TO BE REAL BRIEF ---

24 Q SURE

25 A --- IF I CAN EXPLAIN THAT O-KAY I DON'T SEE A HUGE

STEVEN SUMNER - CROSS EXAMINATION BY MR. NETTLES

338

1 DIFFERENCE IN THE CHARCES THAT YOU -- THE ONE THAT YOU'RE
2 READING FROM AT YOUR TABLE VERSJUS THIS ONE THEY SEEM TO ME
3 TO BE SAYING PRETTY MUCH THE SAME THING I LIKE THIS ONE
4 BETTER, MR NETTLES, BECAUSE IT'S MORE BRIEF, AND IT DOES
5 USE THE WORD MERCY AND IT SEEMS TO GET ACROSS WHAT WE WERE
6 TRYING TO DO

7 Q OKAY NOW AT ANY TIME -- SO THEN -- BUT LET ME ASK YOU
8 THIS YOU NOR SKIP SUBMITTED ANY JURY CHARGES TO THE COURT?

9 A NO, SIR, I DON'T RECALL US SUBMITTING ANY JURY CHARGES

10 Q OKAY AND THE -- AND ADDITIONALLY, YOU DID NOT REQUEST
11 ANY JURY CHARGES?

12 A NO, SIR, I DON'T BELIEVE WE DID AFTER WE -- AS I
13 MENTIONED FOR MS BROWN, AFTER WE HAD THE CHARGE CONFERENCE
14 IN JUDGE COLE'S OFFICE I REMEMBER, AGAIN, IT'S BEEN A LONG
15 TIME AGO, THAT HE ASKED IF THERE WERE ANY ADDITIONS OR
16 ANYTHING THAT WE WANTED TO OBJECT TO AND MY ANSWER WAS NO,
17 AND I BELIEVE SKIP'S ANSWER WAS NO

18 Q OKAY SO WHENEVER HE SAID -- AND I'M BASICALLY
19 CLEARING UP STATEMENTS HE SAID, I'M GOING TO CHARGE
20 EVERYTHING FOR THE DEFENSE AND THE GOVERNMENT AND WHAT I
21 WANT TO MAKE CLEAR FOR THE RECORD IS, I MEAN, ONE WAY THAT
22 COULD BE TAKEN IS IS THAT THE DEFENSE SUBMITTED A BUNCH OF
23 JURY CHARGES AND THE GOVERNMENT SUBMITTED A BUNCH OF JURY
24 CHARGES AND HE SAID, LOOK, I'M JUST GOING TO SUBMIT
25 EVERYBODY'S JURY CHARGES THAT'S NOT WHAT HAPPENED?

STEVEN SUMNER - CROSS EXAMINATION BY MR. NETTLES

339

1 A I DON'T BELIEVE SO NO I DON'T BELIEVE SO WE DIDN'T
2 SUBMIT ANY I BELIEVE THAT JUDGE COLE, MY RECOLLECTION IS,
3 HE HAD A CHARGE BOOK, A DEATH PENALTY CHARGE BOOK IS WHAT I
4 REMEMBER AND HE SAID, HERE IS -- AND AGAIN, MR. NETTLES,
5 I'M PARAPHRASING I MAY NOT BE USING THE EXACT WORDS JUDGE
6 COLE USED BUT BASICALLY THIS IS UPDATED I'VE DONE DEATH
7 PENALTY CASES BEFORE HERE'S THE CHARGES THAT I'M GOING TO
8 GIVE AND HE WENT DOWN IN A HEADNOTE FASHION, A, B, C, THAT
9 TYPE THING AND IS THAT SATISFACTORY? AND WE, SKIP AND I,
10 SAID, YES, FROM OUR PERSPECTIVE

11 Q BUT IN THAT HEADNOTE FASHION, LET'S BE CLEAR ON WHAT
12 THAT TALKS ABOUT HE SAID, OKAY, LOOK, I CAN GIVE Y'ALL A
13 CHARGE ON REASONABLE DOUBT

14 A UM-HUM (AFFIRMATIVE)

15 Q I CAN GIVE Y'ALL -- AND YOU SAID, OKAY, THE REASONABLE
16 DOUBT CHARGE HE SAID, I CAN GIVE YOU A CHARGE ON

17 A YOU KNOW, I'M GOING TO CHARGE MERCY, OKAY I'M JUST
18 DOING THE BEST I CAN WITH THE RECOLLECTION OF IT I'M GOING
19 TO CHARGE MERCY I'M GOING TO CHARGE ABOUT THE AGGRAVATING,
20 STATUTORY AGGRAVATING FACTORS I M GOING TO CHARGE -- AND
21 HE JUST WENT DOWN AND JUST TALKED ABOUT -- AND AGAIN, THE
22 ONLY THING I CAN RECALL IS A BULLET, JUST HEADNOTE FASHION
23 I'M CHARGING A, B, C, D, E, F AND G AND THEN I'M CHARGING
24 -- I'M CHARGING MERCY I'M CHARGING UNANIMITY OF THE, YOU
25 KNOW, IT REQUIRES A UNANIMOUS VERDICT OR THAT TYPE THING

STEVEN SUMNER - CROSS EXAMINATION BY MR. NETTLES

340

1 THAT S JUST THE BEST RECOLLECTION I HAVE

2 Q OKAY SO WHEN HE SAID DURING THE BULLET POINT I'M
3 GOING TO CHARGE MERCY, WAS THERE ANYTHING ELSE SAID?

4 A TO MY -- TO MY RECOLLECTION NO

5 Q HE SAID, I'M GOING TO CHARGE MERCY?

6 A TO THE -- TO THE BEST OF MY -- TO THE BEST OF MY
7 RECOLLECTION I CAN'T -- LET ME ANSWER -- I CAN T
8 SPECIFICALLY SAY EXACTLY WHAT HE SAID ABOUT MERCY MY BEST
9 RECOLLECTION IS, I'M GOING TO CHARGE AS I MENTIONED BEFORE
10 AND I BELIEVE HE TOUCHED ON THE WORDS, THE HEADNOTE, AS, I
11 THINK, AS ACCURATE OF EVERYTHING THAT WOULD BE CHARGED

12 Q AND MAYBE I CAN -- WE CAN CLARIFY THIS A LITTLE BIT

13 A AND I'M TRYING TO ANSWER YOUR QUESTION

14 Q I UNDERSTAND NO, I KNOW YOU ARE AND WHEN YOU SAY --
15 IS YOUR TESTIMONY THAT YOU ARE CERTAIN THAT HE DURING THE
16 COURSE OF THE DISCUSSION, IN DISCUSSING JURY CHARGES HE
17 REFERENCED THEM BY HEADNOTES?

18 A THAT IS THE MOST SPECIFIC RECOLLECTION THAT I HAVE I
19 DO NOT -- I CAN SAY THIS AND I WANT IT -- I KNOW THIS IS
20 AN IMPORTANT POINT I DON'T HAVE -- I DO NOT HAVE ANY
21 RECOLLECTION OF HIM READING OUT THE ENTIRE CHARGE THAT HE
22 WAS GOING TO GIVE

23 Q OKAY

24 A MY RECOLLECTION IS THAT IT WAS IN HIS CHAMBERS, THE
25 SOLICITOR'S OFFICE WAS THERE, MYSELF AND MR GOLDSMITH WERE

STEVEN SUMNER - CROSS EXAMINATION BY MR. NETTLES

341

1 THERE AND THAT IT WAS AN ABBREVIATED STATEMENT AS TO WHAT HE
2 WAS GOING TO CHARGE

3 Q THAT'S FAIR ENOUGH THAT'S FAIR ENOUGH NOW LET ME
4 ASK YOU THIS DID YOU ASK THAT THE JURY CHARGES BE
5 SUBMITTED TO THE JURY?

6 A I DO NOT RECALL

7 Q OKAY

8 A I DON'T RECALL ASKING THAT THEY BE SUBMITTED

9 Q OKAY IF ---

10 A AND I QUITE CANDIDLY CAN'T REMEMBER IF THEY WERE OR
11 WERE NOT

12 Q OKAY IF THEY WERE NOT AND ASSUMING YOU DIDN'T ASK,
13 THERE'S NOTHING ON THE RECORD THAT YOU ASKED THEM TO BE, WAS
14 THERE A STRATEGIC REASON FOR THEM NOT BEING SENT BACK?

15 A GENERALLY, -- I CANNOT RECALL SPECIFICALLY THIS CASE
16 I GENERALLY AS AN ATTORNEY OR A DEFENSE ATTORNEY DO NOT WANT
17 THE JURY CHARGES TO BE SENT BACK IN WRITING I GENERALLY DO
18 NOT ASK FOR THAT

19 Q OKAY ARE YOU AWARE OF ANY STATUTE IN SOUTH CAROLINA
20 THAT ADDRESSES THAT ISSUE AS IT PERTAINS, THAT ISSUE BEING
21 JURY CHARGES, GOING BACK TO JURIES AS IT PERTAINS TO CAPITAL
22 CASES?

23 A NO, I'M NOT AWARE OF THAT

24 Q NO FURTHER QUESTIONS THANK YOU

25 THE COURT CROSS OR REDIRECT I'M SORRY

STEVEN SUMNER - REDIRECT EXAMINATION BY MS BROWN

342

1 REDIRECT EXAMINATION BY MS BROWN

2 Q MR SUMNER, YOU WERE ASKED ABOUT YOUR READING OF THE
3 CHARGE WOULD YOU AGREE WITH ME THAT THINGS CAN BE READ
4 DIFFERENTLY THAN ---

5 MR NETTLES OBJECTION LEADING

6 THE COURT WELL, I SUSTAIN THE OBJECTION

7 MS BROWN IT DOESN'T CALL FOR AN ANSWER, YOUR HONOR,
8 IT JUST CALLS FOR -- A SPECIFIC ANSWER IT'S A YES OR NO

9 THE COURT I'VE ALREADY RULED

10 MS BROWN THANK YOU YOUR HONOR

11 Q WHEN YOU READ A CHARGE IS THAT THE SAME AS HEARING THE
12 CHARGE?

13 A NO I WOULD SAY WHEN I READ A CHARGE, AS IF I WAS
14 READING A BOOK OR A PARAGRAPH OUT OF A BOOK, I'M LOOKING AT
15 IT, I'M -- I KNOW WHAT THE WORDS MEAN TO ME OR IF I
16 UNDERSTAND WHAT THE WORD IS, I KNOW WHAT THE WORDS MEAN TO
17 ME THE WAY SOMEBODY ELSE HEAPS IT, I DON'T KNOW OR THE
18 WAY SOMEBODY ELSE SEES IT, I DON'T KNOW

19 Q WHEN YOU WERE IN THE COURTROOM LISTENING TO THE CHARGE
20 WERE YOU AWARE OF THE INFLECTION THAT THE JUDGE USED AND THE
21 TONE THAT HE USED?

22 A I HAVE NO RECOLLECTION OF THAT

23 Q OKAY AND YOU SAID THAT JUDGE COLE WORKED FROM A DEATH
24 PENALTY CHARGE BOOK? IS THAT YOUR RECOLLECTION?

25 A MY RECOLLECTION IS THAT -- IS HE HAD A CHARGE BOOK, AS

STEVEN SUMNER - REDIRECT EXAMINATION BY MS BROWN

343

1 A LOT OF CIRCUIT JUDGES DO, HAD A CHARGE BOOK AND MY
2 RECOLLECTION WAS THERE WAS A SECTION OF IT THAT WAS DEATH
3 PENALTY

4 Q AND YOUR EXPERIENCE THOSE CHARGE BOOKS REFLECT THE
5 CURRENT AND CORRECT LAW OF THE STATE OF SOUTH CAROLINA?

6 MR NETTLES OBJECTION I DON'T THINK SHE'S GOT THE
7 FOUNDATION FOR THAT I MEAN THE PROPER FOUNDATION

8 THE COURT WELL, I'M NOT SURE HOW YOU COULD LAY A
9 FOUNDATION FOR THAT QUESTION AT ANY RATE OVERRULED I LL
10 LET YOU ASK THE QUESTION FOR WHATEVER IT'S WORTH

11 A WE DID NOT OBJECT TO THE CHARGE I DON'T RECALL ANY
12 OBJECTIONS TO THE CHARGE IN THE CHARGE CONFERENCE ROOM OR ON
13 THE RECORD SO THE CHARGES AS WERE READ IN THE RECORD, TO
14 THE BEST OF MY KNOWLEDGE, ARE THE CHARGES THAT THE JURY
15 HEARD

16 Q THANK YOU, SIR NO FURTHER QUESTIONS

17 THE COURT ANY RECROSS?

18 MR NETTLES NOTHING, YOUR HONOR

19 THE COURT THANK YOU, MR SUMNER, FOR YOUR TIME, SIR

20 A SURE DO I NEED TO WAIT? COULD I BE -- COULD I ASK,
21 DO I NEED TO WAIT HERE OR CAN I GO BACK TO GREENVILLE?

22 MS BROWN MAY THE WITNESS BE EXCUSED?

23 MR NETTLES I'VE GOT NO OBJECTION

24 THE COURT YEAH OKAY

25 MS BROWN YOUR HONOR, I JUST WANT TO GRAB MY

JAMES GOLDSMITH - DIRECT EXAMINATION BY MS BROWN

344

1 TRANSCRIPT

2 THE COURT OH, YES, MA'AM ABSOLUTELY

3 (PAUSE)

4 MS BROWN YOUR HONOR, MAY I STEP OUT FOR JUST A
5 MOMENT?

6 THE COURT ABSOLUTELY

7 (PAUSE)

8 MS BROWN YOUR HONOR?

9 THE COURT YES, MA'AM

10 MS BROWN THE STATE WOULD CALL -- RECALL SKIP
11 GOLDSMITH

12 THE COURT ALL RIGHT SIR YOU'RE STILL UNDER OATH,
13 MR GOLDSMITH

14 MR GOLDSMITH YES, SIR

15 JAMES GOLDSMITH, HAVING
16 ALREADY BEEN DULY SWORN TESTIFIED AS FOLLOWS

17 DIRECT EXAMINATION BY MS BROWN

18 Q MR GOLDSMITH, WE JUST HAVE A FEW QUESTIONS THIS
19 MORNING ON THE JURY CHARGE AND SENTENCING AND BEFORE WE
20 GET TO THE CHARGE ITSELF I WANT TO ASK YOU A LITTLE BIT
21 ABOUT YOUR CLOSING YOU RECALL MAKING THE CLOSING ARGUMENT
22 IN THIS CASE?

23 A YES, I DO

24 Q OKAY WAS MERCY AN ELEMENT OF YOUR ARGUMENT?

25 A IT WAS THE PRIMARY ELEMENT, YES I BUILT MY CLOSING

JAMES GOLDSMITH - DIRECT EXAMINATION BY MS BROWN

345

1 ARGUMENT AROUND THAT

2 Q OKAY SO WERE YOU FOCUSED ON MERCY WHEN YOU
3 PARTICIPATED IN THE CHARGE CONFERENCE?

4 A WELL, I WAS -- I KNEW THE CLOSING ARGUMENT WAS GOING TO
5 BE MINE TO MAKE AND I KNEW PRIOR TO EVEN THAT I HAD -- AS
6 THE EVIDENCE HAD COME IN AND AS I LOOKED AT THE WAY THE
7 CASE WAS, AND I PREPARED THE CLOSING ARGUMENT IN ADVANCE OR
8 THE ROUGH OUTLINE OF IT SO MERCY WAS GOING TO BE THE KEY
9 HIGHLIGHT AT THAT POINT SO AT THE TIME OF THE CHARGE
10 CONFERENCE THAT WAS STILL MY INTENT

11 Q WELL, CAN YOU TELL US A LITTLE BIT ABOUT WHAT KIND OF A
12 CONFERENCE OR CONVERSATION YOU HAD ABOUT THE CHARGE?

13 A WELL WE MET WITH JUDGE COLE I SAY WE, STEVE SUMNER,
14 MYSELF, BOB ARIAIL, BETTY STROM FROM THE SOLICITOR'S OFFICE
15 MY RECOLLECTION IS THAT DERHAM KIND OF LED THE CONFERENCE
16 AND SAID THIS IS WHAT I'M GOING TO CHARGE I'VE DONE
17 NUMEROUS DEATH PENALTY CASES AND PUT A LOT OF THOUGHT AND
18 RESEARCH INTO WHAT IS PERMISSIBLE, WHAT'S NOT

19 AND THEN HE WENT THROUGH WHAT HE PROPOSED TO CHARGE
20 AND WE DID NOT HAVE ANY OBJECTION IT PRETTY MUCH TRACKED
21 WITH WHAT WE THOUGHT SHOULD BE CHARGED AND SO -- AND
22 THOUGHT IT WAS APPROPRIATE AND A COUPLE OF CASES BENEFICIAL
23 TO OUR CLIENT AND SO WE ACCEPTED THAT

24 WE DIDN'T HAVE ANY ADDITIONAL REQUESTS OR MODIFICATIONS
25 OF THE LANGUAGE THAT HE PROPOSED TO CHARGE IS MY

JAMES GOLDSMITH - DIRECT EXAMINATION BY MS. BROWN

346

1 RECOLLECTION AND I DON'T BELIEVE THE STATE DID EITHER
2 BUT FROM OUR POINT OF VIEW, WE WERE SATISFIED WITH WHAT HE
3 PROPOSED TO CHARGE

4 Q OKAY I'D LIKE FOR YOU TO READ A CERTAIN PORTION OF
5 THE CHARGE

6 MS BROWN YOUR HONOR, MAY I APPROACH THE WITNESS?

7 THE COURT CERTAINLY

8 MS BROWN OKAY

9 Q AND THIS WOULD BE PAGE 1785 OF THE TRIAL TRANSCRIPT,
10 LINES 8 THROUGH 10

11 A BEGINNING AT LINE 8, SIMPLY STATED YOU MAY RECOMMEND A
12 SENTENCE OF LIFE IMPRISONMENT FOR ANY REASON OR FOR NO
13 REASON AT ALL OTHER THAN AS AN ACT OF MERCY IS THAT ---

14 Q THAT'S ---

15 A --- THE ONE WE'RE TALKING ABOUT? YES

16 Q YES, SIR DO YOU RECALL HEARING THAT PORTION OF THE
17 CHARGE?

18 A YES I KNEW HE WAS GOING TO CHARGE THAT IN ADVANCE

19 Q YOU DID?

20 A YES

21 Q OKAY AND DID YOU UNDERSTAND THE CHARGE AS GIVEN TO
22 ANY WAY LIMIT THE CONSIDERATION OF MERCY?

23 A NO I THOUGHT IT WAS SORT OF AN EXPANSIVE CHARGE, THAT
24 THE JURY, IN THE WAY I READ IT AND THE WAY I TRIED TO ARGUE
25 TO THE JURY AND THE WAY I THINK A JUROR WOULD PERCEIVE IT IS

JAMES GOLDSMITH - CROSS EXAMINATION BY MR NETTLES

347

1 EVEN IF YOU THINK THE EVIDENCE IS OVERWHELMING FOR DEATH YOU
2 CAN STILL RECOMMEND MERCY AND YOU DON'T REALLY HAVE TO
3 ATTACH A REASON TO THAT

4 WHEN WE TALK ABOUT REASONABLE DOUBT WE TALK ABOUT DOUBT
5 FOR WHICH YOU CAN ATTACH A REASON, BUT I VIEW THIS AND FELT
6 LIKE THE JURY WOULD VIEW IT AS YOU CAN RECOMMEND LIFE BASED
7 STRICTLY ON MERCY EVEN REGARDLESS OF THE WEIGHT OF THE
8 EVIDENCE TO THE CONTRARY SO I THOUGHT IT WAS AN EXPANSIVE
9 VIEW OF WHAT THE JURY COULD DO AND I THOUGHT THAT WAS
10 BENEFICIAL TO OUR CLIENT

11 Q AND THAT WAS BOTH READING IT AND HEARING IT, ACTUALLY
12 HEARING JUDGE COLE GIVE THIS CHARGE TO THE JURY?

13 A YES

14 MS BROWN NO FURTHER QUESTIONS, YOUR HONOR

15 THE COURT CROSS EXAMINATION

16 CROSS EXAMINATION BY MR NETTLES

17 Q HEY, MR GOLDSMITH IN YOUR CLOSING ARGUMENT YOU JUST
18 WERE THERE AND YOU GAVE US A FAIRLY SPIRITED CONNECTING THE
19 FACTS WITH THE LAW IN YOUR TESTIMONY THERE ---

20 A YES

21 Q --- WHERE YOU SAID, YOU KNOW, LOOK Y ALL, THIS IS WHAT
22 THIS STATEMENT MEANS ANY REASON -- WHERE YOU SAID THAT
23 WHAT YOU WANTED TO DO WAS ESSENTIALLY TELL THEM THAT YOU MAY
24 RENDER A SENTENCE OF LIFE IMPRISONMENT FOR ANY REASON OR NO
25 REASON AT ALL OTHER THAN LIFE, YOU KNOW, LET ME -- DID YOU

JAMES GOLDSMITH - CROSS EXAMINATION BY MR NETTLES

348

1 TELL THE JURY -- LET ME PUT IT TO YOU THIS WAY DID YOU
2 TELL THE JURY, LOOK Y'ALL, THE JUDGE IS GOING TO TELL YOU
3 THAT YOU MAY RECOMMEND A SENTENCE OF LIFE IMPRISONMENT FOR
4 ANY REASON OR NO REASON AT ALL OTHER THAN AS AN ACT OF
5 MERCY? NOW WHAT THAT MEANS IS, OKAY, THAT YOU CAN -- YOU
6 CAN FOR NO REASON OTHER THAN MERCY, YOU CAN GIVE HIM LIFE
7 DID YOU TELL THEM THAT?

8 A I BELIEVE I DID OR WORDS TO THAT EFFECT

9 Q ALL RIGHT WELL, I'M GOING TO OFFER YOU ---

10 MR NETTLES MAY I APPROACH, YOUR HONOR?

11 THE COURT SURE

12 Q AND I'M GOING TO -- HERE'S YOUR CLOSING ARGUMENT AND
13 IT STARTS -- IT BEGINS -- I MEAN, YOU'RE CERTAINLY WELCOME
14 TO LOOK AT YOUR WHOLE CLOSING ARGUMENT IT'S BEEN
15 REPRESENTED -- I WILL REPRESENT TO YOU THAT OF OUR READING
16 THIS IS THE PORTION RIGHT IN HERE WHERE YOU -- AND I'VE
17 TALKED ABOUT IT, PAGE 1770, PAGE [SIC] 10 THROUGH 15

18 A 10 THROUGH 15?

19 Q YEAH

20 A YOU WANT ME TO READ IT ALOUD OR JUST REFER ---

21 Q WHY DON'T YOU JUST -- WHICHEVER ONE YOU WANT TO DO IS
22 FINE WITH ME I PREFER THAT YOU READ IT ALOUD

23 A 10 THROUGH 15?

24 Q YES

25 A OKAY IF I COULD, THE SOLICITOR HAD SAID HE DOESN'T

JAMES GOLDSMITH - CROSS EXAMINATION BY MR. NETTLES

349

1 DESERVE MERCY AND THAT CAUGHT MY ATTENTION AS AN ATTORNEY,
2 ALSO FROM A THEOLOGICAL POINT OF VIEW, BUT WE WON'T GO INTO
3 THAT AND THEN I WAS ARGUING THAT WE DON'T DESERVE MERCY BY
4 ITS VERY DEFINITION MERCY IS UNMERITED, CANNOT BE EARNED

5 SO I SAID, IF WE DESERVED IT WE COULD -- IF WE COULD
6 EARN, THEN WE PROBABLY WOULDN'T NEED IT MERCY IS UNMERITED
7 FAVOR YOU CAN'T EARN IT YOU DON'T DESERVE IT, BUT YOU
8 GIVE IT TO HIM ANYWAY HE'S MEAN TO ME DADDY DON T BE
9 MEAN TO HIM WE DON'T REPAY EVIL FOR EVIL AND MERCY IS
10 APPROPRIATE IN THIS CASE

11 YOU CAN SHOW MERCY AND YOU CAN CHOOSE LIFE REGARDLESS
12 OF WHO DESERVES IT AND WHO DOES NOT WE ALL NEED MERCY, BUT
13 NONE OF US HAVE EARNED IT AND NONE OF US DESERVE IT

14 Q AND I THINK YOU CAN -- I THINK TO BE, OUT OF FAIRNESS
15 TO YOU, TO EVERYBODY, I MEAN, I THINK IT DOES GO ONTO PAGE
16 1771 ---

17 A RIGHT

18 Q I THINK THERE'S A LITTLE BIT MORE DISCUSSION THERE

19 A OKAY YOU WANT ME TO KEEP READING?

20 Q I WANT YOU TO READ UNTIL YOU FEEL LIKE YOU'VE COVERED
21 EVERYTHING THAT HAD TO DO WITH MERCY

22 A I HAVEN'T READ THE CLOSING ARGUMENT ---

23 Q I UNDERSTAND

24 A --- IN QUITE A LONG TIME

25 Q I UNDERSTAND

JAMES GOLDSMITH - CROSS EXAMINATION BY MR NETTLES

350

1 A SO IT -- NOW, LADIES AND GENTLEMEN, YOU HAVE THE SOLE
2 AND ABSOLUTE RIGHT TO DETERMINE LIFE OR DEATH IN THIS CASE,
3 THE SOLE RIGHT IT IS YOUR RESPONSIBILITY AND YOURS ALONE,
4 NOT MINE, NOT THE SOLICITOR'S, NOT JUDGE COLE'S, NOT ANY
5 OTHER COURT YOUR RESPONSIBILITY IS TO DECIDE LIFE OR DEATH
6 OF KAMELL EVANS AND IT IS THE ABSOLUTE RIGHT IT IS YOURS
7 ALONE IT IS AN ABSOLUTE RIGHT TO DETERMINE IF KAMELL LIVES
8 OR IF HE DIES I'M NOT SURE THAT WE'RE TALKING ABOUT MERCY
9 THEN, BUT I'M TRYING TO REINFORCE TO THE JURY IT'S THEIR
10 DECISION

11 Q RIGHT

12 A KEEP GOING?

13 Q IF YOU WANT TO OUR READING OF IT IS THAT IS THE
14 PORTION OF YOUR CLOSING WHERE YOU ADDRESSED MERCY

15 A I THINK THAT PROBABLY IS

16 Q OKAY

17 A OR AT LEAST THE PART THAT IT'S DIRECTLY ON POINT THERE
18 I MEAN, ---

19 Q OKAY

20 A THIS IS YOURS THAT'S HERS THERE YOU GO

21 Q SO THEN MY QUESTION IS -- AND YOU WOULD AGREE WITH ME
22 THEN THAT YOU DID NOT TELL THE JURY THAT THE LAW
23 SPECIFICALLY PROVIDES THAT YOU CAN GIVE LIFE FOR SIMPLY AS
24 AN ACT OF MERCY, THE LAW PROVIDES FOR THAT?

25 A I DIDN'T USE THOSE EXACT WORDS, NO I ASSUMED, NUMBER

JAMES GOLDSMITH - CROSS EXAMINATION BY MR NETTLES

351

1 ONE, THAT THEY HEARD, AND LISTENED AND PAID ATTENTION TO THE
2 JUDGE'S CHARGE AND HE TELLING THEM THAT WOULD PROBABLY BE A
3 LITTLE BIT MORE IMPACTFUL THAN I TELLING THEM I'M TRYING
4 TO -- AND I DO THIS IN ALL CASES I TRY TO CONNECT WITH THE
5 JURY AS IF I'M TALKING TO YOU SOMEWHERE OUT ON THE STREET

6 I DON'T -- I DIDN'T USE THOSE SPECIFIC WORDS, BUT I WAS
7 CONVEYING THAT MESSAGE THAT YOU CAN -- YOU CAN SHOW MERCY
8 AND YOU SHOULD SHOW MERCY IN THIS CASE THAT WAS MY INTENT
9 IN THE CLOSING ARGUMENT I DIDN'T SAY THE SPECIFIC WORDS,
10 BUT AGAIN, JUDGE COLE HAD SAID IT AND AS THE JUDGE OF THE
11 LAW I ASSUMED THAT CARRIED MORE IMPACT THAN ME I WANTED TO
12 COME AT IT FROM A LITTLE BIT DIFFERENT TACT

13 Q NOW LET ME ASK YOU THIS TO YOUR KNOWLEDGE DID THE --
14 DID THE INSTRUCTIONS AS THE STATUTORY AGGRAVATING AND
15 MITIGATING CIRCUMSTANCES, WERE THEY SUBMITTED TO THE JURY?

16 A AS FAR AS I KNOW, YES

17 Q THEY WERE? OKAY AND IS THAT THE REASON -- AND YOU'RE
18 BASING THAT ON THE FACT THAT THAT'S WHAT, YOU WOULD AGREE
19 WITH ME, THAT THAT IS WHAT THE LAW REQUIRES, 16 3 20
20 PARAGRAPH 10 RIGHT?

21 A YES

22 Q OKAY IN OTHER WORDS, YOU WOULD AGREE THAT THE LAW AT
23 THE TIME WHENEVER YOUR CASE WAS TRIED, THAT BEING 16 3 20
24 PARAGRAPH 10 IS THE STATUTORY, THE SECOND PARAGRAPH, THE
25 STATUTORY INSTRUCTIONS AS TO STATUTORY -- THE STATUTORY

JAMES GOLDSMITH - CROSS EXAMINATION BY MR. NETTLES

352

1 INSTRUCTIONS AS TO STATUTORY AGGRAVATING AND MITIGATING
2 CIRCUMSTANCES MUST BE GIVEN IN CHARGE AND IN WRITING TO THE
3 JURY FOR ITS DELIBERATION?

4 A YEAH, I DON'T HAVE THAT IN FRONT OF ME I'LL TRUST
5 THAT YOUR READING IS CORRECT AND, YES

6 Q OKAY AND IF -- I BELIEVE I HAVE NO FURTHER QUESTIONS
7 LET ME TALK TO MY PEOPLE

8 A SURE
9 (PAUSE)

10 Q DO YOU HAVE ANY -- DID YOU EVER HAVE AN OPPORTUNITY TO
11 LOOK AT THE JURY CHARGE, THE STATUTORY AGGRAVATING
12 CIRCUMSTANCES, THE JURY CHARGE, THREE THINGS, THE JURY
13 CHARGE, STATUTORY AGGRAVATING CIRCUMSTANCES, STATUTORY
14 MITIGATING CIRCUMSTANCES THAT WERE GOING TO BE GIVEN TO THE
15 JURY EITHER ORALLY OR IN WRITING? DID YOU ACTUALLY HAVE A
16 CHANCE TO LOOK AT THEM?

17 A I MEAN, WHAT ARE YOU TALKING ABOUT, IN PREPARATION FOR
18 THE -- FOR THAT OR ACTUALLY IF THEY WERE DUPLICATED AND
19 PHYSICALLY GIVEN TO THE JURY?

20 Q ACTUALLY EITHER AND ---

21 A OF COURSE WE LOOKED AT ALL OF THAT IN OUR PREPARATION
22 FOR THE CASE AND EVERYTHING AND IN THE COURSE OF OUR
23 PREPARATION I CAN'T RECALL IF JUDGE COLE SAYS, HERE, I'VE
24 GOT IT PRINTED OUT, LOOK THIS OVER I CAN'T RECALL THAT, IF
25 THAT OCCURRED

JAMES GOLDSMITH - REDIRECT EXAMINATION BY MS BROWN

353

1 Q OKAY SO THEN IS YOUR TESTIMONY THAT WHILE YOU
2 RESEARCHED JURY CHARGES DID YOU SUBMIT ANY JURY CHARGES?

3 A WE DID NOT

4 Q OKAY DID YOU -- WERE YOU GIVEN THE OPPORTUNITY, AS WE
5 ALL KNOW FROM TRYING CASES SOMETIMES JUDGES WILL SAY I'M
6 PRINTING Y'ALL OUT A COPY OF THESE JURY CHARGES, DID YOU
7 HAVE AN OPPORTUNITY TO SEE THE ACTUAL JURY CHARGE THAT WAS
8 GOING TO BE GIVEN TO THE JURY PRIOR TO YOUR CLOSING
9 ARGUMENT?

10 A I CAN'T RECALL IF WE DID OR NOT I CAN'T SPEAK FOR
11 STEVEN, IF HE DID WE DISCUSSED IT WITH JUDGE COLE AND I
12 DIDN'T -- I DIDN'T FEEL LIKE -- I UNDERSTAND WHAT YOU'RE
13 SAYING ABOUT SOME JUDGES WILL KIND OF LEAN ON YOU THAT THIS
14 IS WHAT WE'RE GOING TO DO AND -- BUT I DIDN'T GET THAT
15 SENSE BUT I GOT THE SENSE AS WE HAD OUR CONFERENCE THAT WE
16 WERE PRETTY MUCH IN AGREEMENT WITH WHAT HE WAS GOING TO
17 CHARGE WITH WHAT WE EXPECTED HIM AND NEEDED HIM TO CHARGE

18 Q I HAVE NO FURTHER QUESTIONS THANK YOU

19 THE COURT REDIRECT

20 REDIRECT EXAMINATION BY MS BROWN

21 Q MR GOLDSMITH, IF YOU HEARD ANYTHING THAT WOULD HAVE
22 LIMITED THE CONSIDERATION OF MERCY WOULD YOU HAVE OBJECTED
23 TO THAT CHARGE?

24 A OH YES, ABSOLUTELY

25 Q NO FURTHER QUESTIONS

1 MR NETTLES THANK YOU

2 THE COURT ALL RIGHT THANK YOU MR GOLDSMITH

3 MR MABRY YOUR HONOR, WE JUST WANT TO PUT ON THE
4 RECORD THE -- OH, SHE'S ALREADY MARKED IT I WAS GOING TO
5 HAVE IT MARKED IN THIS CASE, BUT I'LL JUST -- IT'S BEEN
6 MARKED AS DEFENDANT'S EXHIBIT 51 INTO EVIDENCE

7 THE COURT ALL RIGHT ANY OBJECTION?

8 MR NETTLES NO, NONE

9 THE COURT ALL RIGHT IT'S IN EVIDENCE

10 (WHEREUPON DEFENDANT'S EXHIBIT 51 WAS ADMITTED INTO
11 EVIDENCE)

12 MR MABRY THAT'D BE THE DVD, I MEAN, THE MRIs FROM
13 SEPTEMBER AND NOVEMBER 2008 I WANT TO JUST CHECK, YOUR
14 HONOR, TO MAKE SURE WE'VE GOT EVERYTHING IN
15 (PAUSE)

16 MS BROWN YOUR HONOR, RESPONDENT RESTS WE WOULD
17 LIKE TO RENEW OUR DIRECTED VERDICT MOTIONS ON THE GROUNDS
18 PREVIOUSLY ARGUED

19 THE COURT OKAY, MA'AM ALL RIGHT AND I
20 RESPECTFULLY DENY THE MOTIONS AT THIS STAGE DOES THE
21 PETITIONER HAVE ANY ADDITIONAL EVIDENCE?

22 MR EHLIES JUDGE, WE HAD AN OUTSTANDING MOTION TO
23 AMEND AS A FORMALITY AND WE'VE NOW HEARD THE TESTIMONY
24 AND I DIDN'T WANT TO -- BUT WE'RE AMENDING THE APPLICATION
25 FOR RELIEF BY ADDING PARAGRAPH 12, WHICH SETS FORTH THE

1 DETAILED ROSEMOND EXCEPTION AND I DON'T THINK SINCE WE'VE
2 HEARD THE EVIDENCE THERE S AN OBJECTION WE DIDN'T ARGUE
3 IT THAT IS A FORMAL WRITTEN MOTION FOR YOJ IN THE RECORD

4 MS BROWN YOUR HONOR, THAT ROSEMOND CASE WAS NOT
5 DECIDED UNTIL JUNE 29TH, 2009 IT WAS NOT DECIDED UNTIL
6 LONG AFTER WE BECAN THE EVIDENTIARY HEARING HERE RULE 15
7 WOULD ALLOW YOU TO ALLOW THE AMENDMENT UPON JUST CAUSE SO
8 WE LEAVE IT TO YOUR DISCRETION

9 THE COURT THIS IS A WRITTEN MOTION ---

10 MR EHLIES YES, SIR

11 THE COURT --- THAT I HAVE?

12 MR EHLIES SORRY, I FILED IT QUITE A WHILE AGO

13 THE COURT OH, YOU DID? OKAY

14 MR EHLIES HOLD ON, I'VE GOT IT I'VE GOT IT I CAN
15 HAND IT TO YOU AND IN ROSEMOND, THE DECISION OF THE COURTS
16 JUST HIGHLIGHTED THE EXISTING LAW THAT WAS IN PLACE AND AT
17 THE TIME STATE V BELL, FOR INSTANCE, 1990 ---

18 MS BROWN ACTUALLY, I DON'T BELIEVE THAT'S CORRECT
19 ROSEMOND -- THE SUPREME COURT ELECTED TO REVIEW THE HUGHEY
20 ISSUE, THE CHARGE ISSUE SINCE HUGHEY WAS DECIDED IN 2000
21 THE CHARGE THAT WE HAD JUST DISCUSSED IN MR GOLDSMITH'S
22 TESTIMONY AND MR SUMNER'S TESTIMONY WAS ACTUALLY GOOD LAW
23 FROM 2000 TO 2009, THAT WAS GOOD LAW SO TO THE EXTENT THE
24 AMENDMENT CANNOT BE PROVEN, WE WOULD ASK THE COURT TO
25 CONSIDER THAT IN ALLOWING THE AMENDMENT TO THE APPLICATION

1 AT THIS TIME

2 THE COURT OKAY AND YOU'RE SAYING, MS BROWN, IT
3 WOULD BE FUTILE BECAUSE IT WAS NOT THE APPLICABLE LAW?

4 MS BROWN YES, SIR

5 THE COURT IS THAT WHAT I'M UNDERSTANDING? OKAY

6 YES, MA'AM THANK YOU

7 MR EHLIES THIS IS MY COPY ---

8 THE COURT ALL RIGHT

9 MR EHLIES --- OF THE MOTION TO AMEND AND THE WHOLE
10 AMENDED APPLICATION ATTACHED AND I THINK IT'S PARAGRAPH
11 12 OF COURSE, OUR POSITION IS THAT THE ROSEMOND DECISION,
12 ALTHOUGH AFTER THE TRIAL CLARIFIED THE STATE OF THE LAW
13 THAT WAS IN CONFLICT AND THAT THE IAC CLAIM'S VALID SINCE IT
14 UNDERMINED COMPLETELY THE WHOLE THRUST OF THE CASE FOR THE
15 DEFENDANT AND THE RESPONSIVE THING TO HAVE DONE IS --
16 COUNSEL WOULD HAVE BEEN TO OBJECT TO THAT LANGUAGE

17 MS BROWN YOUR HONOR, I D LIKE TO POINT THE COURT'S
18 ATTENTION TO THE ROSEMOND OPINION IN ROSEMOND VERSUS CATOE
19 IT WOULD BE 680 SE 2d AT PAGE 10 IN THE OPINION AND THE
20 COURT IN REFERENCING HUGHEY WRITES, QUOTE, APPROVED AND
21 SANCTIONED THE CHARGE GIVEN HERE IN HUGHEY, THE 2000 IN
22 CASE, THE 2000 CASE THAT I HAD MENTIONED SO FROM 2000 TO
23 2009 THAT WAS A PROPER CHARGE

24 THE COURT OKAY THANK YOU I'LL ---

25 MR EHLIES YOUR HONOR, I THINK YOUR QUESTION ---

1 THE COURT --- HAVE TO LOOK AT THAT

2 MR EHLIES I'M SORRY I THINK YOUR QUESTION WAS
3 WHETHER WE HAD ANYTHING IN REPLY

4 THE COURT YES, SIR

5 MR EHLIES IS THAT WHERE WE ARE?

6 THE COURT YES, SIR

7 MR EHLIES I DON'T THINK SO, JUDGE I THINK THE
8 EVIDENCE IS IN

9 THE COURT ALL RIGHT IS THERE ANY POST HEARING
10 BRIEFING THAT EITHER PARTY WISHES TO DO?

11 MR EHLIES FOR THE APPLICANT, JUDGE, WE'D HAVE A
12 SUGGESTION WE ARE A LITTLE BIT COOL ON THE JUNE 2ND WEEK
13 AND THERE ARE IMPORTANT ISSUES THAT CAME UP DURING THE
14 TECHNICAL EVIDENCE, THE MEDICAL EVIDENCE THAT RELATE BACK TO
15 THAT

16 SO WE WOULD LIKE TO GET A COPY OF THE TRANSCRIPT AND
17 OFFER UP A BRIEF, A POST TRIAL BRIEF OF ALL OF THE SURVIVING
18 IAC CLAIMS AND ISSUES BEFORE YOU AND THEN AFTER YOU SEE
19 THE BRIEFING YOU MAY WANT TO HAVE ARGUMENT OR NOT OR YOU MAY
20 HAVE DIRECTIONS FOR US AFTER THAT BUT WE WOULD PROPOSE TO
21 GET THE TRANSCRIPTS OF BOTH HEARINGS AND SUBMIT POST TRIAL
22 BRIEFS THAT WOULD BE OUR SUGGESTION

23 MS BROWN YOUR HONOR, I WOULD AGREE THAT I WOULD LIKE
24 TO HAVE A COPY OF THE TRANSCRIPT I WONDER IF IT WOULD BE
25 APPROPRIATE TO ORDER JOINTLY THE TRANSCRIPT AND A COPY AND

1 SPLIT THE COSTS BETWEEN THE PARTIES AND HAVE A SCHEDULING
2 ORDER AFTER RECEIVING THE TRANSCRIPT, THAT APPLICANT MAY
3 SUBMIT A BRIEF AND WE CAN DO A RESPONSIVE BRIEF THEREAFTER

4 THE COURT SOUNDS GOOD TO ME WE'LL -- WHY DON'T
5 Y'ALL ORDER THE TRANSCRIPT OR MAKE SOME ARRANGEMENT ON THE
6 COST AND WHATEVER IS IN Y'ALL'S BEST INTEREST EITHER WAY
7 AND THEN ONCE WE RECEIVE THE TRANSCRIPT, JUST NOTIFY ME
8 AND IF Y'ALL HAVE A PROPOSED BRIEFING SCHEDULE, I'M SURE I
9 WON'T HAVE ANY PROBLEM WITH THAT EITHER

10 I DON'T KNOW HOW LONG IT'LL TAKE TO DO THE TRANSCRIPT
11 BECAUSE I DON'T BELIEVE MS HUDGINS WAS THE REPORTER THE
12 FIRST TIME AROUND I THINK IT WAS MS HISKELL SO -- AND
13 THAT WAS FIVE DAYS AS OPPOSED TO THREE SO I IMAGE IT'LL
14 TAKE SOME TIME, BUT THAT SOUNDS PERFECTLY FINE WITH ME

15 MR EHLIES GREAT

16 THE COURT OKAY WELL, LET ME JUST SAY THAT I
17 UNDERSTAND THIS IS A SERIOUS MATTER AND AN EMOTIONAL MATTER
18 FOR EVERYONE INVOLVED AND I JUST WANT TO COMPLIMENT THE
19 ATTORNEYS FOR THEIR FINE JOB ON BEHALF OF THEIR CLIENTS

20 MR MABRY, AND MS BROWN, AND MR NETTLES, AND MR
21 EHLIES AND MR SEED, I APPRECIATE YOUR PROFESSIONALISM AND
22 YOUR SPIRITED ADVOCACY ON BEHALF OF YOUR CLIENTS AND I
23 APPRECIATE ALSO THE FAMILY MEMBERS WHO HAVE BEEN HERE
24 THROUGHOUT AND HAVE TESTIFIED AND THE PEOPLE WHO HAVE SPENT
25 A LOT OF TIME HERE SUPPORTING THEIR RESPECTIVE SIDES

1 AND IT'S GOING TO TAKE AS YOU CAN SEE FROM SOME OF THE
2 COMMENTS ABOUT THE TRANSCRIPT AND BECAUSE OF THE NUMBER OF
3 ISSUES IN THE CASE AND COMPLEXITY OF THEM AND THE
4 SERIOUSNESS OF THIS MATTER, IT'S GOING TO TAKE SOME TIME FOR
5 ME TO REACH A DECISION AND IT'LL PROBABLY BE SEVERAL
6 MONTHS BEFORE I CAN ISSUE ONE IN WRITING, WHICH IS THE WAY
7 IT'LL BE ISSUED

8 BUT I DO WANT TO THANK EVERYONE FOR THEIR DECORUM
9 THROUGHOUT THIS PROCEEDING AND FOR THE HARD WORK THAT HAS
10 BEEN PUT INTO IT I KNOW THAT FOR EVERY HOUR OF COURT TIME
11 IT TAKES A NUMBER OF HOURS TO PRODUCE THAT AND A LOT OF HARD
12 WORK AND THOUGHT WENT INTO IT AND I JUST APPRECIATE THE
13 HIGH LEVEL AND THE SKILL THAT WENT INTO IT

14 AND WITH THAT WE'LL BE ADJOURNED AND JUST LET ME KNOW
15 WHEN YOU RECEIVE A TRANSCRIPT THANK YOU VERY MUCH

16 MR NETTLES THANK YOU, YOUR HONOR

17 MS BROWN THANK YOU, YOUR HONOR

18 (HEARING ENDED AT 11 55 AM)

19 (END OF REQUESTED TRANSCRIPT OF RECORD)

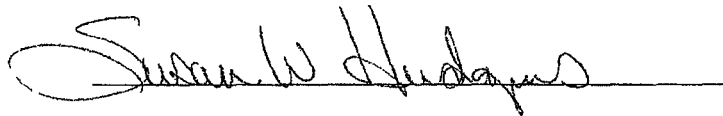
}

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 12TH -
9 14TH DAY OF OCTOBER 2009

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

12 JANUARY 5, 2010

13 
14

15 CIRCUIT COURT REPORTER



EAST CLEVELAND CITY SCHOOLS
PARENT TEACHER CONFERENCE SUMMARY

Child's name Kamell Evans Grade K

Conference with Mr. Evans Father
relationship

Date of conference Dec 3, 1982 Caledonia
school

Teacher's comments Kamell seems happy in school He gets along well with others.

He is working at his own level He seems frustrated when he cannot remember concepts already taught He is having difficulty progressing through skills. He depends on others to do his work He is not remembering the goldman lynch sounds He also shows evidence of color blindness.

He needs daily reinforcement in language, auditory, visual, and fine motor skills. Please review all papers taken home

We also discussed EPSF testing

Teacher's signature Mrs. P. Malone

Summary/Plans for cooperative action Father will spend more time on reinforcement areas. I will initiate

Parent's signature [Signature]





EAST CLEVELAND CITY SCHOOLS
PARENT TEACHER CONFERENCE SUMMARY

Child's name Kamell Evans Grade K
 Conference with Mrs Evans Mother
relationship
 Date of conference February 18, 1983 Caledonia
school

Teacher's comments Kamell is doing better in math. He is having difficulty recognizing numbers past ten. In reading, he is having difficulty following directions. He should get practice on auditory skills. He can learn to do the right things with help.

He needs practice on printing. He has progressed on printing his name. He needs to practice writing numbers in order to twenty.

Please work on remembering reading and math readiness skills. He should get daily practice in these areas.

If he does not improve, he could be retained in the kindergarten.

Teacher's signature Mrs Ethel M. Malone

Summary/Plans for cooperative action Mother works with him daily

I will continue to work with him in class. Mother says that Kamell is picking up

bad learning habits from others in the class. She has a lot of educational materials to work with

at home
 Parent's signature Rene L. Evans

I PUPIL PERSONNEL SERVICES TEAM CONFERENCE SUMMARY
(To Be Completed During PPS Team Conference)

DATE

11/11/85

Psychological Evaluation

EVALUATION RECOMMENDED ☒ YES ☐ NO

SUSPECTED HANDICAPPED

X (SLD)

NON HANDICAPPED ☐

II PRESENTOR TO PARENT

(NAME)

III ANTICIPATED EVALUATORS (Indicate Names of Evaluators)

☒ CLASSROOM TEACHER

Elizabeth Stewart

☐ SPECIAL EDUCATION TEACHER

☒ PSYCHOLOGIST

M. K. Gilmore

☐ SPEECH THERAPIST

☐ CONSULTANT

☐ NURSE

☐ OTHER

☐

☐

IV PPS TEAM MEMBERS (NAMES/POSITIONS)

1 *Patricia L. Parker / Curriculum Spec.* 6

2 *Sarahleen O'Sullivan / Administrator*

3 *Mayon K. D. Gilmore / School Psychologist* 8

4 *Genevieve Miller / Speech Path* 9

5 _____ 10

V PPS TEAM CHAIRPERSON

Stewart Gilmore

SIGNATURE

TITLE/POSITION

WHITE COPY TO PARENT VIA PRESENTOR
YELLOW COPY FOR SPECIAL EDUCATION PROGRAMS FILES
PINK COPY FOR BUILDING PERMANENT RECORDS FILE

Dear Parent,

Your child, John W. Evans, is doing unsatisfactory work in

☒ Literature	☐ English	☐ handwriting
☒ Spelling	☐ Science	☐ Health
☒ Mathematics	☐ Social Studies	☐ Thinking Skills
☐ Presentation/ Participation	☐ Language	☐

There can be many reasons why a student does not progress as he or she should. I have checked below the reason(s) I believe your child is having problems:

- ☐ does not listen attentively in class
- ☐ does not follow written/ oral directions
- ☐ does not complete homework assignments
- ☐ rushes to complete assignments, which are poorly done
- ☐ does not submit assignments at all/or frequently late
- ☐ does not practice self-control in his or her behavior
- ☐ is not polite in speech and/or action
- ☒ poor scholarship
- ☐ submits incomplete assignments

Needless to say, cooperation between the school and home can usually help the student hold firm to the necessary task commitment required in this program. Please give your assistance in solving this problem. ,

Please sign the tear-off slip below and have your child return it so that I will know you have received this notification and are aware that there is a problem.

Respectfully,

I have read the deficiency report concerning my child, _____, and will be discussing the matter with him/her.

Check here if you would like a conference concerning this matter ☒ _____ Parent Signature

EAST CLEVELAND CITY SCHOOLS KINDERGARTEN REPORT TO PARENTS

3291

Pupil _____ School _____
Teacher _____ Year _____

Note to Parents This report provides one means of communicating with you concerning your child's progress. You are also encouraged to visit the school for conferences with the staff.

Attendance	1	2		1	2		1	2
Days Due			Days Absent			Times Tardy		

Key S = Satisfactory N = Needs Improvement I = Improving

READING READINESS

Recognizes printed name
Prints name using capital and lower case letters
1st semester first name
2nd semester last name
Names eight basic colors
Names letters of alphabet (in order)
Names all capital letters (not in order)
Names all lower case letters (not in order)
Identifies beginning sounds

	1	2
Recognizes printed name		
Prints name using capital and lower case letters		
1st semester first name		
2nd semester last name		
Names eight basic colors		
Names letters of alphabet (in order)		
Names all capital letters (not in order)		
Names all lower case letters (not in order)		
Identifies beginning sounds		

SOCIAL GROWTH

Works and plays well with others
Participates in group activities
Shows self control

Works and plays well with others		
Participates in group activities		
Shows self control		

TEACHER COMMENTS

Period I

MATH READINESS

Names six basic shapes
Draws six basic shapes
Counts thirty objects
Recognizes numerals
1st semester 0 10
2nd semester 0 20
Places numerals in order
1st semester 0 10
2nd semester 0 20
Writes numerals
1st semester 0 10
2nd semester 0 20

	1	2
Names six basic shapes		
Draws six basic shapes		
Counts thirty objects		
Recognizes numerals		
1st semester 0 10		
2nd semester 0 20		
Places numerals in order		
1st semester 0 10		
2nd semester 0 20		
Writes numerals		
1st semester 0 10		
2nd semester 0 20		

PERSONAL INFORMATION

Knows name
Knows address
Knows phone number

WORK HABITS

Listens to and follows directions
Works independently
Completes tasks within allotted time
Cares for supplies and materials

Listens to and follows directions		
Works independently		
Completes tasks within allotted time		
Cares for supplies and materials		

Period II

This pupil is assigned to grade _____ Date _____ 19 _____

June 1983

Child Kamell Evans

Birth 12-15-76

Sex M

Teacher PATRICIA MALONE

School CALEDONIA

C A in Month's at Pre test Time	PLS Pre-test Raw Scores					PLS Pre Total Raw Score	PLS Pre Total Months Score	PLS Post Test Raw Scores					PLS Post Total Raw Score	PLS Post Total Months Score	PPVT MA Score in Months		VMI MA Score in Months	
	I	II	III	IV	V			I	II	III	IV	V			Pre- test Months	Post test Months	Pre test Month's	Post test Month's
69	6	3	1	4	8	22	58	8	4	8	8	12	40	99	39	61	67	57

Educational Planning
(As of June 1982)

Modality	*High	**Moderate
Language		✓
Auditory		✓
Visual		✓
Fine Motor	✓	

Comments

* High Risk - (Using Sept Scores) - those found to be two or more years between C A and performance levels in two or more modalities

** Moderate Risk - (Using Sept Scores) - one year more between C A and performance levels in one or more modalities

3292

3293

I am aware of the teacher's decision to recommend retention of
my child *[Signature]* for the school year 83-84

Parent's signature

Date

[Signature]
4-26-83

*Carol
Woods*

#11

CODES		E—Entered					W—Withdrawn					R—Reentered					T—Tardy					ABSENT					Half Day					All Day					UNEXCUSED					Half Day					All Day								
PERIODS	1ST WEEK					2ND WEEK					3RD WEEK					4TH WEEK					5TH WEEK					6TH WEEK					7TH WEEK					8TH WEEK					9TH WEEK					10TH WEEK					DAYS DUI	DAYS PRESENT	DAYS ABSENT	UN- EXCUSED	TIMES TARDY
	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F																				
1ST			I									X																										46	44	2	C	C													
2ND																																							42	42	0	C	C												
3RD																																								44	43	1	C	C											
4TH												X	X																												48	45	3	C	C										
																																								TOTAL FOR YEAR					180	174	6	C	C	0					

Building CALEDONIA

Transferred to _____

Withdrawn _____

 Month Day Year

Reason _____

Assigned to Grade 1

Teacher PATRICIA MALONE

Principal JAMES A MARINELLI

COMMENTS (Please Date)

ATTENDANCE AND SCHOLARSHIP RECORD

For [unclear]
[unclear]

page 1 of 2

Dear Caledonia School

I am concerned about my son who is enrolled into your school. This is his second year in the kindergarten at your school. I can still see that he is having some problems with the work. I had took him down from the doctor because I thought it was, I had a physical problem. But the doctor advised me that he has no problems with his hearing, and I had already corrected his vision by getting him his eyeglasses.

Now I am thinking that he may have some kind of learning disability. It would be for you to be his teacher so that I can be sure that he will not have any problems.

Please let him be able to learn. I hope to see him in the future. I am sure he will be able to learn. I am sure he will be able to learn. I am sure he will be able to learn.

page 2 of 2
understanding that he now seems
to be missing.

Thank You
From a concerned parent
Mrs Renee A Evans

P.S.

If there are any questions
that you would like to
ask me, Please call or
write me (216 681-3636)

September 22 '983

Dear Mrs Evans:

Thank you for your note about Kamell.

Usually after a child has repeated kindergarten and still experiences some problems, we do refer the child to our Pupil Personnel Department. Your letter will help us refer him sooner.

Thank you again.

Very truly yours,

James A. Marshall,
Principal

JAM slg

- 16 AM

November 21, 1983

Dear Mrs. Evans

Our new forms for testing just arrived and I spoke with Miss Handy about Kamell

She informed me that he was doing satisfactorily except for his inability to pick out the alphabet letters. Occasionally he forgets certain concepts presented.

If you don't mind, I would like to watch his progress through Miss Handy and if it is necessary before leaving kindergarten we will have him tested. Otherwise, I will send some forms to you now.

Thanks for keeping up on where we are with Kamell.

Very truly yours,

James A. Marinelli,
Principal

JAM slg

Kamell Evans
 10

Kamell had great difficulty with the comprehension questions. He would probably benefit from tutoring.

SEP 30 1983

Please complete and return the form by _____

yes I wish my child to participate in the Fluoride Mouth Rinse Program

_____ I do not wish my child to participate in the Fluoride Mouth Rinse Program

NAME OF CHILD EVANS KAMELL D AGE 6
(Last) (First) (Initial)

TEACHER _____ GRADE KEN

SIGNATURE OF PARENT OR GUARDIAN Renee L. Evans DATE 9-28-83

EAST CLEVELAND CITY SCHOOLS KINDERGARTEN REPORT TO PARENTS

3301

Pupil Samuel E. Williams School East Cleveland City Schools
Teacher Mrs. S. McMillen Year 1984

Note to Parents This report provides one means of communicating with you concerning your child's progress. You are also encouraged to visit the school for conferences with the staff.

Attendance	1	2	Days Absent	1	2	Times Tardy	1	2
Days Due	88	88	Days Absent	7	1	Times Tardy	2	8

Key S = Satisfactory N = Needs Improvement

READING READINESS

	1	2
Recognizes printed name	S	S
Prints name using capital and lower case letters	S	
1st semester first name		S
2nd semester last name		S
Names eight basic colors	S	S
Names letters of alphabet (in order)	S	S
Names all capital letters (not in order)	S	S
Names all lower case letters (not in order)	N	S
Identifies beginning sounds	N	N

SOCIAL GROWTH

	1	2
Works and plays well with others	S	S
Participates in group activities	S	S
Shows self control	N	S

MATH READINESS

	1	2
Names six basic shapes	S	S
Draws six basic shapes	S	S
Counts thirty objects	S	S
Recognizes numerals	S	
1st semester 0 10		S
2nd semester 0 20		S
Places numerals in order	S	
1st semester 0 10		S
2nd semester 0 20		S
Writes numerals	S	
1st semester 0 10		S
2nd semester 0 20		S

PERSONAL INFORMATION

	1	2
Knows name	S	S
Knows address	S	S
Knows phone number	S	S

WORK HABITS

	1	2
Listens to and follows directions	S	S
Works independently	S	S
Completes tasks within allotted time	S	S
Cares for supplies and materials	S	S

TEACHER COMMENTS

Period I Kamell is doing quite well in school this year. He is very dependable and is always willing to help others. Kamell has had to learn to talk out loud less and to easily get carried away with what others are doing around him. I have noticed that Kamell now has poor short-term memory. He is unable to recall significant information from printed material.

Kamell has continued to work well this year. He has improved his working skills & is not as busy with others as he was during the 1st period. Kamell has some difficulty recalling information & must continue to pay close attention to his school work. I have been pleased to have had Kamell as a student.

This pupil is assigned to grade 1 Date June 8 19 84

EPSF Test Information

June 1984

Child Karell Burns

Birth [REDACTED]

Sex M

Teacher Shirley

School CLEVELAND

C A in Month's at Pre test Time	PLS Pre-test Raw Scores					PLS Pre Total Raw Score	PLS Pre Total Month's Score	PLS Post Test Raw Scores					PLS Post Total Raw Score	PLS Post Total Month's Score	PPVT MA Score in Months		VMI MA Score in Months	
	I	II	III	IV	V			I	II	III	IV	V			Pre- test Month's	Post test Month's	Pre test Month's	Post test Month's
13	8	4	3	5	10	30	76	9	3	7	8	12	39	97	66	77	66	77

Educational Planning
(As of June 1984)

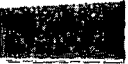
Modality	*Considerate Needs	* Moderate Needs
Language		
Auditory		
Visual		
Fine Motor		

As of June 1984, do you classify
this child as high risk? yes no

Comments

Moderate Need - 1 year below C A
Considerate Need - 2 years below C A
High Risk - 2 years below C A in two or more
modalities

3302

 name, must work harder to master and apply the word attack skills

Parent Comment Parent Signature

Mrs. Renie L Evans

 Kaimell is making progress in school He must study his facts everyday

Parent Comment Parent Signature



Grades 1 — 6

SCHOOL CALEDONIA

TEACHER P GORDY

PRINCIPAL JAMES A MARINELLI

ATTENDANCE

	1	2	3	4
Days Due	46	43	42	48
Days Absent	—	2	3	—
Times Tardy	—	—	—	—

NOTE TO PARENTS

This report reflects your child's progress in ACADEMIC and SOCIAL growth. Cooperation and understanding between the home and the school are essential. You are encouraged to visit the school for conferences with the principal and teacher to discuss the progress of your child.

Promoted to grade 2

3303

A — 90 — 100
 B — 80 — 89
 C — 70 — 79
 D — 60 — 69
 F — 59 — 0

1 — Superior
 2 — Satisfactory
 3 — Needs Improvement

I — Above Grade Level
 II — At Grade Level
 III — Below Grade Level

	1		2		3		4	
	Ach / Eff		Ach / Eff		Ach / Eff		Ach / Eff	
Reading	D	2	D	2	D	2	D	2
Level	—		—					
Math	A	1	B	1	C	2	C	2
Level	—		—					
Language	C	2	C	2	C	2	C	2
Spelling	D	2	D	2	C	1	C	2
Social Studies	B	1	C	2	C	1	C	1
Science/Health	D	2	C	1	C	1	C	1
Foreign Language								

SATISFACTORY = S
 PERFORMANCE AREAS

NEEDS IMPROVEMENT = N

	1	2	3	4
Physical Education	S	S	S	S
Art	S	S	S	S
Music	S	S	S	S
Library	S	S	S	S
Handwriting	S	S	S	S
Instrumental Music				

NAME K. Evans

ROOM 1

	1	2	3	4
Follows Directions				
Completes Classroom Work				
Does Required Homework				
Works Independently				
Organizes Personal Property and Materials				
Communicates in a Complete Sentence	N	N	N	N

	1	2	3	4
Is Polite in Speech and Actions				
Respects Others				
Obeys School and Classroom Rules				

Work Habits and Behavior and Attitude are Satisfactory unless otherwise noted with an N (Needs to Improve)

Parents who wish to have a conference with the teacher for this report period may check below The teacher will contact you for an appointment

☐ 1st Report Period ☐ 2nd Report Period ☐ 3rd Report Period

*Ramell is working hard in school
 He must continue to study his
 sounds and words*

Parent Comment Parent Signature

[Signature]

3304



EAST CLEVELAND CITY SCHOOLS
PARENT TEACHER CONFERENCE SUMMARY

Child's name Kamell Evans Grade 1
Conference with Mrs Evans Mr Evans mother + father
Date of conference November 8, 1984 Caledonia
relationship
school

Teacher's comments

attitude: Kamell is adjusting to school. He generally gets along with the other children. He is usually very cooperative in school.

Language: Kamell is enlarging his vocabulary. He should be encouraged to speak in complete sentences at all times. Have him participate in activities at school. Encourage him to use the new words related to the subjects being taught.

reading: Kamell is making progress in reading. He should study his new words everyday. He should also practice his oral reading at home. Ask him questions about the stories he reads to make sure he is comprehending the material. He must learn the sounds of a, u, e, i, o, and must also learn the sounds of the vowels. While he can produce the consonant sounds, he still has trouble giving words that have a particular sound. He must also practice using the sounds to unlock new words.

math: Kamell is progressing very well in math. He recognizes the numerals and can count to 89. He understands the concept of addition. He should start memorizing the basic addition facts.

work habits: Kamell is generally organized in school. He usually gets work done on time.

Teacher's signature Mrs P. Gordy

Summary/Plans for cooperative action

Parent's signature

Kamell Evans

WHITE OFFICE COPY

CANARY PARENT COPY

PINK TEACHER COPY

3309

GRADES 1-6

15

【例 1】

PHONE

COMMENTS (Please Date)

TOTAL FOR YEAR

Building _____

Assigned to Grade _____

Transferred to _____

Date _____ 19__

Withdrawn _____

Month _____ Day _____ Year _____

Teacher P GORDY

Reason _____

Principal JAMES A MARINELLI

COMMENTS (Please Date)

PERIOD 1

Teacher Comments

Kamell needs to dress with proper gym clothes on Tuesdays. This should include T-shirt with his name on it, shorts, + tennis shoes. Kamell needs to improve in his reading + spelling. He could benefit from reading aloud a short time each night as well as going over his weekly spelling words at home.

Parent Comments

East Cleveland City Schools

Report to Parents

19 85 to 19 86

X Renee L. Evans
Parent Signature

PERIOD 2

Teacher Comments

Kamell still needs to read aloud at home each night as well as practice writing his weekly spelling words.

Kamell erased + changed his grades Mrs Evans
Parent Comments (state in person)

X Renee L. Evans
Parent Signature

NAME

Kamell Evans

ROOM

12

GRADE 2

SCHOOL

CALEDONIA

TEACHER

E. Stewart

PRINCIPAL

STELLA LOEB MUNSON

PERIOD 3

Teacher Comments

Miss Clayton, our physical education teacher states Kamell needs to improve his behavior in gym. Kamell needs to study his weekly spelling words so he is able to pass his weekly tests.

Parent Comments

X Renee L. Evans
Parent Signature

Dear Parent,

This report card is a communications tool that reflects the summary of the academic and social growth of your child. Continued improvement is important during each report period. We share one common goal to help your child succeed in school. If we work together your child will benefit.

Sincerely,

Rose N. Doughty

Dr. Rosie N. Doughty
Superintendent of Schools

NAME Kamell Evans

ACHIEVEMENT MARKS

A - 90 - 100
 B - 80 - 89
 C - 70 - 79
 D - 60 - 69
 F - 59 - 0

EFFORT

1 - Superior
 2 - Satisfactory
 3 - Needs Improvement

WORK HABITS

	1	2	3	4
Follows Directions	N	N	N	N
Completes Classroom Work	S	S	S	S
Does Required Homework	S	S	S	S
Works Independently	N	N	N	N
Organizes Personal Property and Materials	S	S	S	S

SUBJECTS

	1 Ach/Eff		2 Ach/Eff		3 Ach/Eff		4 Ach/Eff	
Reading	D	3	D	3	D	3	D	3
Math	C	2	C	2	C	3	C	3
Language	C	2	C	2	C	2	C	2
Spelling	D	3	D	3	F	3	F	3
Social Studies	C	2	C	2	C	2	C	2
Science/Health	C	2	C	2	C	2	C	2
Foreign Language								

BEHAVIOR AND ATTITUDE

	1	2	3	4
Is Polite in Speech and Actions	S	S	S	S
Respects Others	S	S	S	S
Obeys School and Classroom Rules	S	S	S	S

ATTENDANCE

	1	2	3	4
Days Due	46	43	43	48
Days Absent	2	0	1	10
Times Tardy	0	0	0	0

PERFORMANCE AREAS

SATISFACTORY - S

NEEDS IMPROVEMENT - N

	1	2	3	4
Physical Education	N	S	N	S
Art	S	S	S	S
Music	S	S	S	S
Library	S	S	S	S
Handwriting	N	N	N	N
Instrumental Music				

PARENTS REQUEST FOR CONFERENCE

Parents who wish to have a conference with the teacher for this report period may check below The teacher will contact you for an appointment

☐ 1st Report Period ☐ 2nd Report Period

3308

EAST CLEVELAND CITY SCHOOLS
SPECIAL EDUCATION PROGRAMS
REFERRAL REQUEST

3309

SE 141

STUDENT KEMELL D. EVANS BIRTHDATE [REDACTED] CA 8
ADDRESS [REDACTED] PHONE [REDACTED]
PARENTS MR & MRS EVANS DATE REFERRED 11-1-85
SCHOOL CLEVELANDIA TEACHER E. Stewart GRADE 2

I STATEMENT OF PROBLEM AND REASON FOR REFERRAL REQUEST (Check Those That Apply)

A. ☐ Vision dx- color blind	I. ☐ Emotional Difficulties
B. ☐ Hearing	J. ☐ Study Skills and Work Habits
C. ☐ Speech	K. ☐ Attendance
D. ☒ Language	L. ☒ Poor Achievement: Reading
E. ☐ Physical/Motor	M. ☐ Poor Achievement: Arithmetic
F. ☐ Adjustment To Other Students	N. ☒ Poor Achievement: Language Arts
G. ☐ Adjustment To Authority Figures	O. ☒ Poor Achievement: <u>Spelling</u>
H. ☐ Medical Problem	P. ☐ Gifted

II DESCRIPTION OF SUSPECTED PROBLEM(S) (Please Be Specific) THAT

IN WORKING WITH MY CHILD I FIND HE IS VERY SLOW
IN SPELLING AND READING FOR HIS AGE (E.G. Evans)
His teacher agrees and wants Kamell tested to rule out
any serious reading disability (E.G.S.)

III INTERVENTIONS ALREADY ATTEMPTED AND RESULTS

The teacher has worked individually with Kamell
had him repeat directions, learning materials etc + has
given him special help. - We need to find out
if he needs or requires additional outside help.

IV COMMENTS

This teacher agrees with the parents' request
for further testing. Both mother + father are in
agreement on testing but mother was unable to come for
repeated testing - tutored in reading past summer

V SIGNATURE OF INITIATOR

DATE 11-1-85

RELATIONSHIP TO CHILD

FATHER (NATURE)

(TEACHER, PARENT OTHER)

SIGNATURE OF PRINCIPAL

Stella Zeb-Munro DATE 11/5/85

Date 1-3-3310

Dear Parent,

Your child, Kenneth, is doing unsatisfactory work in

☐ Literature	☐ English	☐ Handwriting
☒ Spelling	☐ Science	☐ Health
☐ Mathematics	☐ Social Studies	☐ Thinking Skill
☐ Presentation/ Participation	☐ Language	☐

There can be many reasons why a student does not progress as he or she should. I have checked below the reason(s) I believe your child is having problems:

- ☒ does not listen attentively in class
- ☒ trouble does not follow written/ oral directions
- ☐ does not complete homework assignments
- ☐ rushes to complete assignments, which are poorly done
- ☐ does not submit assignments at all/or frequently late
- ☐ does not practice self-control in his or her behavior
- ☐ is not polite in speech and/or action
- ☐ poor scholarship
- ☐ submits incomplete assignments

Needless to say, cooperation between the school and home can usually help the student hold firm to the necessary task commitment required in this program. Please give your assistance in solving this problem.

Please sign the tear-off slip below and have your child return it so that I will know you have received this notification and are aware that there is a problem.

Respectfully,

I have read the deficiency report concerning my child, Kenneth, and will be discussing the matter with him/her.

Check here if you would like a conference concerning this matter ☐

Parent Signature



EAST CLEVELAND CITY SCHOOLS
PARENT TEACHER CONFERENCE SUMMARY

Child's name Kamell Evans Grade 2

Conference with Franklin Father

Date of conference Nov. 1, 1985 relationship Caledonia
school

Teacher's comments

Teacher's signature _____

Summary/Plans for cooperative action

Parent's signature _____

Dear Parent,

(Return whole sheet)
Your child, Kennell Evans, is doing unsatisfactory work in

☒ Literature <u>Reading</u>	☐ English	☐ Handwriting
☒ Spelling <u>application</u>	☐ Science	☐ Health
☒ Mathematics <u>story problems</u> <u>timed tests</u>	☐ Social Studies	☐ Thinking Skills
☐ Presentation/ Participation	☐ Language	☐

There can be many reasons why a student does not progress as he or she should. I have checked below the reason(s) I believe your child is having problems.

- ☐ does not listen attentively in class
- ☐ does not follow written/oral directions
- ☐ does not complete homework assignments
- ☐ rushes to complete assignments, which are poorly done
- ☐ does not submit assignments at all/or frequently late
- ☐ does not practice self-control in his or her behavior
- ☐ is not polite in speech and/or action
- ☒ poor scholarship
- ☐ submits incomplete assignments

Needless to say, cooperation between the school and home can usually help the student hold firm to the necessary task commitment required in this program. Please give your assistance in solving this problem.

Please sign the tear-off slip below and have your child return it so that I will know you have received this notification and are aware that there is a problem.

Respectfully,

E. Stewart

I have read the deficiency report concerning my child, Kennell, and will be discussing the matter with him/her.

Check here if you would like a conference concerning this matter

Kennell L. Evans
Parent Signature

3313

GRADES 1-6

$$\begin{array}{r} 85 \\ 19 \overline{) 86} \end{array}$$

varis Kamell

TH

100

COMMENTS (Please Date)
1 - The above is correct

COMMENTS (Please Date)

11/1/85 - Kamall, needs to improve
in his reading and spell'ng.
He could benefit from reading
about a story to time each night
and well as going over words
spelling words at home. Kamall
needs to start with proper grammar
on Tuesday, this should include
T-shirt with his name printed, etc.
- Jim above

11/7/86 - Kamall still needs to
work at home each night and
well as practice with the
weekly spelling with the
3/21/86 - Mrs. Clayton, our observer
education, teacher, states Kamall
needs to improve handwriting
the year Kamall needs to start
his weekly spelling, words, etc.
is able to pass his weekly
- Jim

CODES		E—Entered	W—Withdrawn	R—Reentered	T—Tardy	ABSENT		☒ Half Day	☒ All Day	UNEXCUSED		☒ Half Day	☒ All Day																																										
PERIODS	1ST WEEK					2ND WEEK					3RD WEEK					4TH WEEK					5TH WEEK					6TH WEEK					7TH WEEK					8TH WEEK					9TH WEEK					10TH WEEK					DAYS DUE	DAYS PRESENT	DAYS ABSENT	UN- EXCUSED	TIME'S TARDY
	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F										
1ST	E					H			X																																														
2ND																																																							
3RD	H																																																						
4TH																																																							
																																										TOTAL FOR YEAR					180	67	13	0	0				

Building Caledonia
Transferred to _____
Withdrawn _____
Month Day Year
Reason _____

Building _____

Transferred to _____

Withdrawn _____

Month Day Year

Reason _____

Assigned to Grade 3
Date June 6 1936
Teacher E. Stewart
Principal STELLA LOEB MUNSON

PERIOD 1

Teacher Comments

Kamell does pay attention but continues to have difficulty remembering information. Continued daily review at home is recommended.

Parent Comments

Renee L. Evans
Parent Signature

PERIOD 2

Teacher Comments

Kamell continues to have a great deal of difficulty reading. Because of this, all of his subjects are affected. I am working towards providing Kamell with the help he needs.

Parent Comments

Renee L. Evans
Parent Signature

PERIOD 3

Teacher Comments

Kamell is working hard to keep up with his work. Reading & comprehending skills are still very weak. Kamell needs additional help outside the classroom. His time at home needs to be structured towards reviewing school work.

Parent Comments

Renee L. Evans
Parent Signature

Promoted to Grade 4

Date June 5 1981

East Cleveland City Schools

Report to Parents

19 86 to 19 87

Elementary
Grades 1-6

ROOM 21 GRADE 3

SCHOOL Caledonia

TEACHER A. McCarthy

PRINCIPAL A. Spil-Munson

Dear Parent,

This report card is a communications tool that reflects the summary of the academic and social growth of your child. Continued improvement is important during each report period. We share one common goal to help your child succeed in school. If we work together your child will benefit.

Sincerely

Rosie N. Doughty

Dr. Rosie N. Doughty
Superintendent of Schools

3314

Name Kamell Evans

ACHIEVEMENT MARKS

A — 90 — 100
B — 80 — 89
C — 70 — 79
D — 60 — 69
F — 50 — 0

EFFORT

1 — Superior
2 — Satisfactory
3 — Needs Improvement

SUBJECTS

	1 Ach / Eff		2 Ach / Eff		3 Ach / Eff		4 Ach / Eff	
Reading	D	2	D	3	D	2	D	2
Math	B	2	C	3	C	2	C	2
Language	D	2	D	3	D	2	D	2
Spelling	D	2	F	3	F	3	F	2
Social Studies	refer to Chapter 1		—		—		—	
Science	C	2	C	3	D	2	F	2
Health	C	2	B	3	C	2	B	2
Foreign Language	—							

PERFORMANCE AREAS

SATISFACTORY — S

NEEDS IMPROVEMENT — N

	1	2	3	4
Physical Education	S	S	S	S
Art	S	S	S	S
Music	S	S	S	S
Library Skills	S	S	S	S
Handwriting	N	N	N	S
Instrumental Music	—	—		

WORK HABITS

	1	2	3	4
Follows Directions	S	S	S	S
Completes Classroom Work	S	S	S	S
Does Required Homework	S	S	S	S
Works Independently	S	S	S	S
Organizes Personal Property and Materials	S	S	S	S

BEHAVIOR AND ATTITUDE

	1	2	3	4
Is Polite in Speech and Actions	S	S	S	S
Respects Others	S	S	S	S
Obeys School and Classroom Rules	S	S	S	S

ATTENDANCE

	1	2	3	4
Days Due	46	43	41 1/2	46
Days Absent	0	0	0	0
Times Tardy	1	0	0	0

PARENTS REQUEST FOR CONFERENCE

Parents who wish to have a conference with the teacher for this report period may check below. The teacher will contact you for an appointment.

☐ 1st Report Period

☐ 2nd Report Period

☐ 3rd Report Period

3315

**EAST CLEVELAND CITY SCHOOLS
SPECIAL EDUCATION PROGRAMS
REFERRAL REQUEST**

S E 1 410

STUDENT Kamell Evans BIRTHDATE [REDACTED] CA. 9-11
 ADDRESS [REDACTED] PHONE [REDACTED]
 PARENTS Mrs Renee Evans DATE REFERRED 11-10-86
 SCHOOL Caledonia TEACHER McCarthy GRADE 3
 I STATEMENT OF PROBLEM AND REASON FOR REFERRAL REQUEST (Check Those That Apply)

A. ☐ Vision	I. ☐ Emotional Difficulties
B. ☒ Hearing	J. ☐ Study Skills and Work Habits
C. ☐ Speech	K. ☐ Attendance
D. ☐ Language	L. ☒ Poor Achievement Reading
E. ☐ Physical/Motor	M. ☐ Poor Achievement Arithmetic
F. ☐ Adjustment To Other Students	N. ☒ Poor Achievement Language Arts
G. ☐ Adjustment To Authority Figures	O. ☐ Poor Achievement _____
H. ☐ Medical Problem _____	P. ☐ Gifted

II DESCRIPTION OF SUSPECTED PROBLEM(S) (Please Be Specific)

Extremely poor reading comprehension. Cannot decode words. Reverses order of letters in a word.
Very little short term memory.

III INTERVENTIONS ALREADY ATTEMPTED AND RESULTS

Chap. I Reading
Has vocab. cards on cards at home
Is slowed down when reading to take more time to figure out words
Works with teacher in small group when reading

IV COMMENTS Kamell does try. He becomes frustrated and rushes through work instead of trying to understand. - Mother has been very concerned for many years.

V SIGNATURE OF INITIATOR [Signature] DATE Nov 26, 1986
 RELATIONSHIP TO CHILD Teacher

(TEACHER PARENT OTHER)

SIGNATURE OF PRINCIPAL [Signature] DATE 12/1/86



East Cleveland City Schools

Rosie N. Doughty Ph.D.
Superintendent of Schools

PARENT TEACHER CONFERENCE SUMMARY

Child's name Karnell Evans Grade 3
Conference with Mrs. Evans Mother
relationship
Date of conference 10-8-82 Caledonia
school

Teacher's comments

Attitude Towards School Karnell is still making good
establishing a good attitude toward school & doing
part effort & thought into his work. Karnell needs to
work more carefully & with more care. He does good
homework assignments on occasion - often due to the
consequences to pay attention to the homework. Karnell
does not work hard. Karnell plays too much
video games. He is a who is the conversationalist in
the classroom & is always telling stories which
should be spent on Bellwork when Karnell is up next
to that. Between lessons, he is often busy talking to
other kids & with others & often speak to him for
many times each day about his behavior.
Karnell's math skills seem to be
improving. He is making more progress in
his reading. His weakness is his reading ability.

Teacher's signature [Signature] [Signature]

Summary/Plans for cooperative action Parents Karnell must continue
to work on his reading skills. The parent will be given
homework assignments and may be required to
signify if the child is doing well or not.
Mrs. Evans will help Karnell with sight word identification
during activities at home.

Parent's signature Kenneth L. Evans



East Cleveland City Schools

Rosie N. Doughty, Ph.D.
Superintendent of Schools

PARENT TEACHER CONFERENCE SUMMARY

Child's name Kamell Evans Grade 3
Conference with Mrs. Evans Relationship Mother
Date of conference March 25, 1987 School Calderwood

Teacher's comments

Attitude Towards School: Kamell continued to have an excellent attitude towards school. He is enthusiastic and a hard worker. Usually his homework is turned in on time.

Social & Emotional Growth: Kamell gets along very well with his classmates. He does like to talk and be disruptive at times.

Academic Progress: Kamell has shown very little growth in all areas throughout this school year. He does attend Chap. I Reading & I have referred him for further testing. Kamell is an oral learner & depends fully on oral directions and class discussions. He cannot read & comprehend independently. He has difficulty pronouncing words and spelling words correctly. Kamell does not have the necessary skills to go on to 4th grade.

Teacher's signature

A. Warner

Summary/Plans for cooperative action

I have encouraged Mrs. Evans to continue to work with Kamell. Also, she needs to contact Pupil Personnel & Services to see about further testing for Kamell.

Parent's signature

Mrs. Evans

I PUPIL PERSONNEL SERVICES TEAM CONFERENCE SUMMARY
(To Be Completed During PPS Team Conference)DATE 3/30/87Psychological EvaluationEVALUATION RECOMMENDED ☒ YES ☐ NOSUSPECTED HANDICAPPED ☒ SLO NON HANDICAPPED ☐II PRESENTOR TO PARENT S. Wimer
(NAME)

III ANTICIPATED EVALUATORS (Indicate Names of Evaluators)

☒ CLASSROOM TEACHER S. Wimer☐ SPECIAL EDUCATION TEACHER☒ PSYCHOLOGIST D. El-Amin☐ SPEECH THERAPIST☐ CONSULTANT☐ NURSE☐ OTHER☐☐

IV PPS TEAM MEMBERS (NAMES/POSITIONS)

1	<u>Shirleen A. Sullivan, Administrator</u>	
2	<u>Debra El-Amin, Psychologist</u>	7
3	<u>R. Brennan, RN, Nurse</u>	8
4	<u>Renee Muller, Speech Path.</u>	9
5		10

V PPS TEAM CHAIRPERSON

Patricia L. Parker

SIGNATURE

Curriculum Specialist

TITLE/POSITION

3320

EAST CLEVELAND CITY SCHOOLS

ROSIE N. DOUGHTY Ph.D.
SUPERINTENDENT

CALEDONIA ELEMENTARY SCHOOL
STELLA LOEB MUNSON PRINCIPAL

Date March 30, 1987

Re Kamell Evans

Dear Mr. & Mrs. Evans

Your child has been referred for psychological
evaluation. This referral form must be explained to you and signed by you
before evaluation procedures can begin. Therefore, it is important that you
make an appointment to meet with me and the classroom teacher as soon as
possible. Please contact me at 268-6690 for an appointment.

Sincerely,

Patricia L. Parker

Patricia L. Parker,
Curriculum Specialist



East Cleveland City Schools

Rosie N. Doughty, Ph D
Superintendent of Schools

PARENT TEACHER CONFERENCE SUMMARY

Child's name Karnell Evans Grade 3
Conference with Mrs Evans Relationship mother
Date of conference Jan 14, 1987 School Caledonia

Teacher's comments

Attitude Towards school Karnell's attitude is becoming less serious I will after have to redirect his attention back to his work. He is very interested in socializing.

Emotional Growth Karnell continues to have a pleasant attitude in the classroom. He does become easily confused when working independently and doesn't take the time to think through the problem. He is not showing much responsibility towards trying to work independently.

Academic Progress Karnell's strength is in math. He understands the process to solve equations. He does need to continue to strengthen his recognition of facts. Karnell's weakness is in Reading. He has seen very little improvement. Karnell's comprehension is extremely low as is word attack skills & oral reading. I am very concerned about Karnell's reading ability.

Teacher's signature

Summary/Plans for cooperative action

Suggestions - Read aloud one at a time each night & discuss. Test spelling words on cards & review every night. Read class questions on worksheets & explain what they say to do.

Parent's signature

Karnell's performance is not satisfactory. I have informed him for tutoring. - A Time

WHITE OFFICE COPY

CANARY PARENT COPY

PINK TEACHER COPY

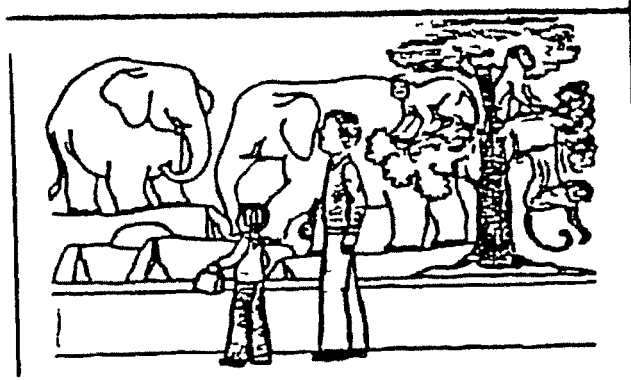
Karnell & Evans

School

2 1 3 1 1

2

C.

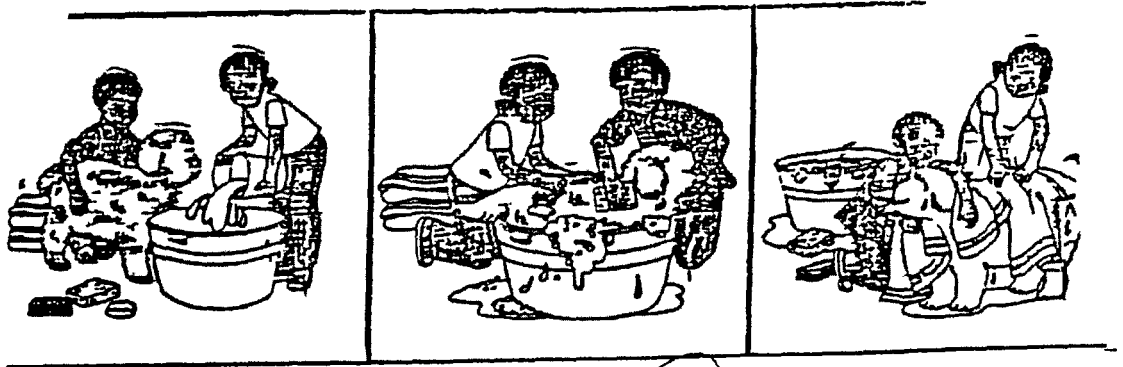


Look at this picture carefully
Write four sentences about the picture

3

- 1 _____
- 2 _____
- 3 _____
- 4 _____

D Write a story about what is happening in these pictures



3

- _____
- _____
- _____
- _____
- _____
- _____

CHAPTER 1 READING

STUDENT PROGRESS REPORT

1986 to 1987

Pupil Kamell Evans Grade 3rd School CALEDONIA
 Reading Teacher Gwynnda S Allen Classroom Teacher Ms McCarthy

Note to Parents

This report attempts to reflect as nearly as possible your child's growth and work in the Chapter 1 Remedial Reading Program, the work that he/she is doing and the development of those qualities which promote educational growth

KEY S = Satisfactory
 I = Improving
 N = Needs Improvement

I GENERAL COMMENTS

	1	2	3	4
Attendance	I	S	S	S
Punctuality	I	S	S	S
Attitude	I	S	S	S
Participation	I	S	S	S

II INTERMEDIATE READING

	1	2	3	4
1 Word Attack Skills	I	N	N	I
2 Vocabulary Skills	I	N	N	N
3 Oral Reading	I	N	N	I
4 Comprehension Skills	I	N	I	N

1st Period	Teacher Comments 	Parent Comments Signature
2nd Period	Teacher Comments Please remember your child's Chapter I homework is to read orally for 15 minutes every night. (See St book!)	Parent Comments Signature Rene L. Green
3rd Period	Teacher Comments Kamel has good listening skills His comprehension is good when someone else reads the story. But his poor decoding skills are	Parent Comments Signature Rene L. Green a real problem.
4th Period	Teacher Comments Kamel is still reading below grade level. Kamel will be tested early next year Hopefully this will enlighten us on how to better help him.	Parent Comments Signature

1987-1988

Yamell Evans 4th grade

ACHIEVEMENT MARKS

A — 90 — 100
B — 80 — 89
C — 70 — 79
D — 60 — 69
F — 59 — 0

EFFORT

1 — Superior
2 — Satisfactory
3 — Needs Improvement

SUBJECTS

	1 Ach / Eff		2 Ach / Eff		3 Ach / Eff		4 Ach / Eff	
Reading	D	2	D	2	F	2	D	1
Math	C	2	B	1	C	1	B	1
Language	D	2	C	1	F	2	C	1
Spelling	F	2	F	2	F	2	F	1
Social Studies	C	2	C	2	F	2	C	1
Science	refer to Chapter 1							
Health	refer to Chapter 1							
Foreign Language								

PERFORMANCE INDICATORS

S= SATISFACTORY

N= NEEDS IMPROVEMENT

PERFORMANCE AREAS

	1	2	3	4
Physical Education	S	S	S	S
Art	S	S	S	S
Music	S	S	S	S
Library Skills	S	S	S	S
Handwriting	N	N	N	S
Instrumental Music	—	—	—	—

WORK HABITS

	1	2	3	4
Follows Directions	S	S	S	S
Completes Classroom Work	S	S	S	S
Does Required Homework	S	S	S	S
Works Independently	S	S	S	S
Organizes Personal Property and Materials	S	S	S	S

BEHAVIOR AND ATTITUDE

	1	2	3	4
Is Polite in Speech and Actions	S	S	S	S
Respects Others	S	S	S	S
Obeys School and Classroom Rules	S	S	S	S

Work Habits and Behavior and Attitude are Satisfactory unless otherwise noted with an N (Needs to Improve)

3328



East Cleveland City Schools

Rosie N. Doughty, Ph D
Superintendent of Schools

PARENT TEACHER CONFERENCE SUMMARY

Child's name Kennell Evans
Conference with Mrs. Evans
Date of conference 1/26/88

Grade 1
Relationship Mother
School Caledonia

Teacher's comments

Attitude Kennell has such a positive attitude towards school, learning, and his classmates. He puts forth such a great effort in whatever he does.

Work Habits/Behavior Kennell works hard. He sincerely cares about his progress and achievements. Kennell does not misbehave. He is very friendly. This sometimes presents a problem during class. He does correct his behavior when I ask him.

Academic Kennell does very hard to achieve 'good' grades. He puts forth his best effort.

Teacher's signature L. Taylor

Summary/Plans for cooperative action Kennell will continue to work hard and improve. Mother will be informed regularly of his progress.

Parent's signature

Kennell L. Evans

Student

I Special Services Team Conference Summary
(To be completed during SS Team Conference)

Date Evaluation recommended ☐ Yes ☐ No☐ Suspected Handcapped ☐ Non Handcapped

II Presentor to Parent
 (Name)

III Anticipated evaluators (Indicate names of evaluators)

- ☒ Classroom teacher
- ☐ Special education teacher
- ☐ Psychologist
- ☐ Speech therapist
- ☐ Curriculum specialist
- ☐ Guidance counselor
- ☐ Nurse
- ☐ Consultant
- ☐ Other

IV SS Team Members (Names/positions)

1	<u> </u>	6	<u> </u>
2	<u> </u>	7	<u> </u>
3	<u> </u>	8	<u> </u>
4	<u> </u>	9	<u> </u>
5	<u> </u>	10	<u> </u>

V SS Team Chairperson

Signature

Title/Position

**EAST CLEVELAND CITY SCHOOLS
SPECIAL EDUCATION PROGRAMS**

68-3331
after 5:00 P.M.

**INDIVIDUALIZED EDUCATIONAL PROGRAM
1987 - 1988**

CASE NUMBER 00-87-5-257

STUDENT Kamell EVANS BIRTHDATE [REDACTED] CA. 11 years
 ADDRESS [REDACTED] PHONE [REDACTED]
 PARENTS Renee Evans PRESENT SCHOOL Caledonia GRADE 4th
 SCHOOL RECOMMENDED Caledonia COUNTY Cuyahoga
 RECOMMENDED DISTRICT OF EDUCATIONAL AGENCY OF ATTENDANCE East Cleveland
☒ EVALUATION TEAM CONFERENCE DATE 6-8-88
☒ IEP CONFERENCE - DATE 12/7/88
☐ IEP ANNUAL REVIEW CONFERENCE DATE _____

I STATEMENT OF THE SPECIFIC EDUCATIONAL PROGRAM/SERVICES RECOMMENDED

☒ IEP TEAM RECOMMENDS

- A ☒ that the student *not be placed* in a special education program and/or related services that the student continue in the regular education programs
- B ☐ that the student *be placed* in the special education program and/or related services indicated below by a check (✓)
- C ☐ that the student *continue* in the special education program and/or related services indicated below by a check (✓)

Program/Related Services	Date of Initiation	Anticipated Duration
☒ Regular Education Programs	<u>11/88</u>	<u>6/89</u>
☐ Supplemental Services		
☐ Individual Instruction (Tutoring)		
☐ Small Group Instruction (Tutoring)		
☐ Special Class (☐ ALP, ☐ SLD, ☐ - _____)		
☐ Learning Center (☐ ALP, ☐ SLD, ☐ - _____)		
☐ Home Instruction		
☐ Speech, Language and Hearing Therapy		
☐ Vocational Special Education Services _____		
☐ Work Study Services _____		
☐ Transportation		
☐ Other _____		

EXTENT OF PARTICIPATION IN REGULAR EDUCATION PROGRAMS

in Regular Education program

100% participation

Annual Goals and Short Term Objectives: Regular Education Curriculum with emphasis on developing sound-symbol association, spelling of sounds, vowel digraphs, vowel plus R, and vocabulary. Content to lead Kamell through the reasoning process if he gets confused when given questions with several parts in oral discourse

WHITE COPY FOR SPECIAL EDUCATION PROGRAMS FILES
 YELLOW COPY TO PARENT VIA PRESENTOR
 PINK COPY TO THERAPIST
 GOLDENROD COPY FOR BUILDING PERMANENT RECORDS FILE

II EVALUATIONS COMPLETED AND INFORMATION GATHERED-DATE 6-8-88 STUDENT 3332 Evans
 COMMUNICATION STATUS

Test Subtest	Age Equivalent	Standard Score	Percentile	Ratio	Other	Interpretation Within Normal Limits	Degree of Difficulty-- Comments
Word Test (Date <u>5-27-88</u>)							
Associations	13-6	56	89			✓	
Synonyms	12-1	53	63			✓	
Semantic Absurdities	11-10	53	64			✓	
Antonyms	10-8	51	53			✓	
Definitions	12-7	53	74			✓	
Multiple Definitions	12-0	53	68			✓	
TOTAL TEST	12-7	57	95			✓	
Peabody Picture Vocabulary Test Original <u>✓</u> Form <u>4</u> Date <u>4-29-88</u>	11-9	103	60			✓	
Bankson Language Screening (Date _____)							
Semantic Knowledge							
Body Parts							
Nouns							
Verbs							
Categories							
Functions							
Prepositions							
Colors/Quantity							
Opposites							
Morphological Rules							
Pronouns							
Verb Tenses							
Plurals/Comparatives/Superlatives							
Syntactic Rules							
Subject-Verb Agreement/Negation							
Sentence Repetition/Judgment-Correctness							
Visual Perception							
Visual Matching/Discrimination							
Visual Association/Sequencing							
Auditory Perception							
Auditory Memory							
Auditory Sequencing/Discrimination							
TOTAL TEST							
Test for Auditory Comprehension of Language (Date _____)							
Vocabulary Subscore							
Morphology Subscore							
Syntax Subscore							
TOTAL TEST							
Clinical Evaluation of Language Functions (Date <u>4-27-88</u>)							
Processing Subtests							
Word/Sentence Structure				41/40		✓	
Word Classes				35/32		✓	
Language Concepts				40/34		✓	
Relationships & Ambiguities				44/42		✓	
Oral Directions				43/36		✓	
Spoken Paragraphs				16/11		✓	
TOTAL PROCESSING	9-3	85	35	219			
Production Subtests							
Word Series				7/7 4/12			↓ grade level
Confrontation Naming				23 Dec/32 Dec			borderline
Word Associations				27/23		✓	
Model Sentences				48/33		✓	
Formulated Sentences				54/34		✓	
TOTAL PRODUCTION	8-10	86	35	152			

II. EVALUATIONS COMPLETED AND INFORMATION GATHERED- DATE 6-8-88 STUDENT Kamell Evans
 COMMUNICATION STATUS

Test Subtest	Sound-Symbol Tests	Date Tested	Age Equivalent	Standard Score	Percentile	Ratio	Other	Interpretation	Interpretation
								Within Normal Limits	Degree of Difficulty
Sound Mimicry		5-13-88	9-9↑		43		5	✓	low
Sound Recognition			8-8↑		28		4	✓	low
Sound Analysis			14-0↑		83		7	✓	high
Sound Blending			10-10↑		50		5	✓	average
Sound-Symbol Association			3-5↑		-			-	* below
Reading of Symbols			9-9		37		4	✓	low
Spelling of Sounds			7-9↑		11		2	-	* below

Arizona Articulation Proficiency Scale- Sound Errors

Stimulable for _____

AAPS TOTAL SCORE _____

Severity _____

Interpretation _____

Photo Articulation Test/Goldman Fristoe Test/Other Articulation Test _____

Sound Errors _____

Stimulable for _____

Age Score (PAT/GFTA) _____

Interpretation _____

Khan Lewis Phonological Analysis (KLPA)/Other Phonological Test _____

Sound System/ Phonological Processes _____

Developmental Phonological Process Rating _____

Composite Score _____

Percentile Rank _____

Speech Simplification Rating _____

Age Score _____

Interpretation _____

Ryan Fluency Scale/Other Test _____

Stuttered Words Per Minute _____ Automatics _____, Echoic _____, Making Up Sentences _____,

Reading _____, Monologue _____, Conversation _____

Stuttered Speech Characteristics _____

Secondary Stuttering Behavior _____

Degree of Social Interference _____

Fluency is
WNL

Voice Pitch Loudness Quality (Hyponasality, Hypernasality) _____

Hoarseness/Harshness/Stridency _____

Aphonia _____

Interpretation _____

Normal Voice is WNL

Further Test Interpretation or Discussion

On the Criterion Test of Basic Skills Kamell's scores were at the Mastery Level with the exception of special sounds (Vowel Digraphs and Controlling r) which were at the Instructional Level

Peripheral Oral Examination

Normal Structures & Functioning

In class Karnell gets easily confused if he is orally given question with several parts. He has to be led through reasoning process. He seems to have difficulty recalling phrases with different words.

Spontaneous Communication Sample (25 to 50 connected utterances) Receptive and expressive oral language-- semantics, pragmatics, syntax, morphology, phonology, including auditory processing and language integration Articulation Fluency Voice)

Approximate number of connected utterances 25 Interpretation Articulation, voice and fluency were WNL. Semantics, pragmatics, syntax and morphology were also judged as WNL. Karnell conversed easily and did not exhibit any problem processing simple conversational questions.

HEARING							HEARING							Interpretation	
Audiometric Screening Test							Audiometric Threshold Test								
Date <u>4-27-88</u>							Decibel Level/Right Ear								
							250	500	1000	2000	4000	8000	Hz		
							25 dB								

Other Hearing Tests and Results

Dates

has problems with sentence structure and comprehension * EDUCATIONAL FUNCTIONING (Academic Achievement, Communicative Performance, Social/Emotional Behavior, Psychomotor Behavior)

CTBS - Grade 4/6		3/88		Karnell's problem in	
Vocab. <u>22</u>		Lang Exp <u>56</u>		Reading crosses over	
Comp. <u>18</u>		TOTAL <u>65</u>		into all subject areas	
Total <u>20</u>		Math Comp <u>37</u>		He has inadequate u	
Spelling <u>7</u>		" Conc/ Appl. <u>40</u>		attack skills and so	
Avg Mech <u>82</u>		TOTAL <u>37</u>		letter association He has poor	

Other Information poor sentence structure and difficulties in the use of reading comprehension. He was also noted as having diff. expressing himself and poor vocabulary. Karnell likes math and is working on 4th grade level in this subject. Karnell is in Chapter I Reading however progress has been minimal.

Classification of Disorder (Check Appropriate Areas) Language Semantics 0 /Pragmatics 00 /Syntax 00 /Morphology 00 /Phonology 00 /Auditory Processing 5 Articulation 00 Fluency 00 Voice 00

Severity of Disorder (Mild=1-2 Moderate=3-4-5 Severe=6-7-8-9 Profound=10)

Non-handicapped Range Normal=00 Minimal=0)--

Language 5 Articulation 00 Fluency 00 Voice 00

Statement of Adverse Effect (Student) Karnell's communication disorder (classified above) seems to adversely affect educational performance as suggested by the following seen in the classroom-- reading difficulties.

The Chapter I reading program and classroom intervention will continue for Karnell.

III STATEMENT OF PRESENT LEVEL OF EDUCATIONAL PERFORMANCE - DATE 4-29-88

Karnell's receptive language skills are commensurate with those of a child 11 years 9 months. On the CELF, Karnell identified 41/52 word & sentence structures, 35/44 word classes, 1/44 linguistic concepts, 44/64 relationships & ambiguities, 43/50 directions and 16/34 spoken paragraphs. He also identified 7/33 word associations, 48/60 model sentences and 54/96 formulated sentences. He obtained a Processing Age of 9-3 and a Production Age of 8-10. On the WORD, Karnell obtained an equivalency of 12-7. On the G-F-W Sound Symbol to Karnell's greatest areas of difficulty were Sound Symbol

VII SCHEDULE FOR NEXT IEP ANNUAL REVIEW

None 3333

Criteria for next IEP Annual Review

- ☐ Mastery of Annual Goals (Including Short Term Instructional Objectives)
- ☐ Progress/Results of Standardized Pre/Post Tests ()
- ☐ Progress/Results of teacher made pre/post tests
- ☐ Other

VIII TO BE COMPLETED BY PARENT/GUARDIAN

YES

NO

I agree with this IEP and give permission for the special education program/services as indicated

✓

I have been informed of my rights and due process procedural safeguards.

✓

I waive my right to notification of this special education program/services by Certified Mail

✓

Date 12-7-88

Signature

Renee L. Evans

(Parent/Guardian)

* If parent was *not* in attendance at the IEP Conference, please attach parent's waiver to participate in the IEP Conference, and/or documentation of your efforts to include the parent.

IX. The undersigned agree that we are fully knowledgeable about the contents of this form, agree that the information provided was considered in the multi-factored evaluation and agree to the implementation of the program/services described herein. We understand that the student could not be placed in a special education program until after completion of this document. The undersigned parent agrees to a complete re evaluation in three years if the student is still enrolled in a special education program

	SIGNATURE	POSITION	AGREE/DISAGREE	DATE
1.	Kimberly Wilburn	Speech Pathologist	✓	12-7-88
2.				
3.				
4.	Patricia L. Parker	Curriculum Specialist	✓	12/7/88
5.	(IEP Chairperson)			
6.	Deella H. Blount	Supervisor	✓	12/2/88
	(Superintendent or Designee)			

ADDITIONAL COMMENTS

WHITE COPY FOR SPECIAL EDUCATION PROGRAMS FILES
 YELLOW COPY TO PARENT VIA PRESENTOR
 PINK COPY TO THERAPIST
 GOLDENROD COPY FOR BUILDING PERMANENT RECORDS FILE

CHAPTER 1 READING
STUDENT PROGRESS REPORT
19__ to 19__

Pupil _____ Grade 4 School _____

Reading Teacher _____ Classroom Teacher _____

Note to Parents

This report attempts to reflect as nearly as possible your child's growth and work in the Chapter 1 Remedial Reading Program, the work that he/she is doing and the development of those qualities which promote educational growth.

KEY S = Satisfactory
I = Improving
N = Needs Improvement

I GENERAL COMMENTS

	1	2	3	4
Attendance	-	-	S	S
Punctuality	-	S	S	S
Attitude	-	I	I	I
Participation	-	I	I	I

II. INTERMEDIATE READING

	1	2	3	4
1 Word Attack Skills	-	N	N	N
2 Vocabulary Skills	-	I	N	N
3 Oral Reading	-	I	N	N
4 Comprehension Skills	-	I	N	N

Comments. _____

Parent Signature _____

Rene L. Evans

EAST CLEVELAND CITY SCHOOLS

ROSIE N DOUGHTY Ph D
SUPERINTENDENT

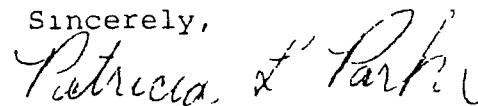
CALEDONIA ELEMENTARY SCHOOL
STELLA LOEB MUNSON PRINCIPAL

April 15, 1988

Dear Mrs Evans,

Contact me as soon as possible I would like to discuss Kamell's progress and needs with you Also, I have talked with Mr Evans, Kamell's father I must have permission from you before I give him any information

Sincerely,



Patricia L Parker
Curriculum Specialist

3-AR-8

$$\begin{array}{r} 87 \\ 19 \\ \hline 88 \end{array}$$

1
Kvans
L391

with

02

PHONE

COMMENTS (Please Date)

11/6/81 Kamell puts forth a grant of
one complementing - his were 4 however,
as usual the mads to increase - his gave
and a way to compare them & will
be constant with the - was was, 11/9 -

[illegible][illegible]

Building _____

Transferred to _____

Withdrawn _____
Month Day Year

Reason _____

Building _____

Transferred to _____

Withdrawn _____
Month Day Year

Reason _____

Assigned to Grade 5

Date June 9 1958

Teacher _____

Principal STELLA LOEB MUNSON

refer to Chapter 1.

122 year in remedi

Reading Program

Ms. A. 22.2

PERIOD 1

Teacher Comments

Kamell's effort is good, however he is struggling in Spelling and Science. He still needs consistent help every evening.

Parent Comments

Rene L Evans
Parent Signature

PERIOD 2

Teacher Comments

Kamell tries hard and he is making some progress, however his rate of achievement makes it difficult for him to keep up with his class. Most of his grades are for effort.

Parent Comments

Rene L Evans
Parent Signature

PERIOD 3

Teacher Comments

It was a pleasure having Kamell in my classroom. Please encourage him over the summer to read and use good study habits. 6/89

Parent Comments

Rene L Evans
Parent Signature

East Cleveland City Schools

Report to Parents

19 88 to 19 89

Elementary Grades 1-6

ROOM 10 GRADE 5

SCHOOL CALEDONIA

TEACHER Robbie Peaves

PRINCIPAL STELLA LOEB MUNSON

Dear Parent,

This report card is a communications tool that reflects the summary of the academic and social growth of your child. Continued improvement is important during each report period. We share one common goal, to help your child succeed in school. If we work together your child will benefit.

Sincerely

Rose N Doughty

Dr. Rosie N. Doughty

3339

Name Kamell Evans

ACHIEVEMENT MARKS

A — 90 — 100
B — 80 — 89
C — 70 — 79
D — 60 — 69
F — 50 — 0

EFFORT

1 — Superior
2 — Satisfactory
3 — Needs Improvement

SUBJECTS

	1 Ach / Eff		2 Ach / Eff		3 Ach / Eff		4 Ach / Eff	
Reading	C	2	C	2	C	2	C	2
Math	C	2	C	2	B	2	C	2
Language	C	2	C	2	C	2	C	2
Spelling	D	3	C	2	C	2	C	2
Social Studies	refer to Chapter 1							
Science	D	3	D	3	C	2	C	2
Health	C	2	C	2	C	2	C	2
Foreign Language	S	2	S	2	S	2	S	2

PERFORMANCE AREAS

SATISFACTORY — S

NEEDS IMPROVEMENT — N

	1	2	3	4
Physical Education	S	S	S	S
Art	S	S	S	S
Music	S	S	S	S
Library Skills	S	S	S	S
Handwriting	N	N	N	N
Instrumental Music				

WORK HABITS

	1	2	3	4
Follows Directions	N	S	S	S
Completes Classroom Work	S	S	S	S
Does Required Homework	S	S	S	S
Works Independently	S	S	S	S
Organizes Personal Property and Materials	S	S	S	S

BEHAVIOR AND ATTITUDE

	1	2	3	4
Is Polite in Speech and Actions	S	S	S	S
Respects Others	S	S	S	S
Obeys School and Classroom Rules	S	S	S	S

ATTENDANCE

	1	2	3	4
Days Due	47	42	41 1/2	47
Days Absent	0	0	0	1
Times Tardy	0	0	0	0

PARENTS REQUEST FOR CONFERENCE

Parents who wish to have a conference with the teacher for this report period may check below. The teacher will contact you for an appointment.

☐ 1st Report Period

☐ 2nd Report Period

☐ 3rd Report Period

3340

PARENT CONFERENCE FORM

GLOSSARY FOR SOI FACTOR DEFINITIONS FOR THE SOI-LA TEST

COGNITION

- CFU - Ability to identify objects by name visually and auditorially
- CFE - Classifies perceived objects
- CFS - Perceives spatial patterns and maintains orientation
- CFT - Manipulates or transforms objects into another visual arrangement
- CSR - Discovers relations involving letter patterns
- CSS - Ability to discover complex relationships forms patterns or systems involving symbols
- CAJ - Vocabulary
- CMR - Discovers relations in conceptual abstract meanings
- CMS - Ability to comprehend or structure problems in preparation for solving them

MEMORY

- VFJ - Recalls materials learned by visual and auditory presentation
- VSI - Recalls for immediate production after one presentation a series of numerals or letters
- VSI - Memory for well practiced number operations

EVALUATION

- EFU - Ability to identify identical forms
- EFC - Ability to classify units--to analyze how they are classified
- ESC - Ability to judge applicability of class properties of symbolic information in judging the appropriate class in which to place numbers letters or signs
- ESS - Ability to estimate appropriateness of aspects of a symbolic system

CONVERGENT PRODUCTION

- VFU - Ability to comprehend and reproduce an observed bit of behavior
- NSS - States the order of symbolic systems from start to goal correctly
- NST - Ability to produce new symbolic items of information by revising given letters
- VSI - Substitutes or derives symbols as expected

DIVERGENT PRODUCTION

- DFU - Ability to produce many figures conforming to simple specifications
- OSR - Generates a variety of relations between numbers or letters
- DMU - Ability to call up many ideas in a specified class

STUDENT Samell Evans

GRADE 5 DATE 11/88

SCHOOL Caledonia

☐ COGNITION	☐ FIGURAL	☐ UNITS
☐ MEMORY	☐ SYMBOLIC	☐ CLASSES
☐ EVALUATION	☐ SEMANTIC	☐ RELATIONS
☐ CONVERGENT PRODUCTION		☐ SYSTEMS
☐ DIVERGENT PRODUCTION		☐ TRANSFORMATIONS
		☐ IMPLICATIONS

3341

Name _____ Date _____ Grade _____ School _____

D - disabling
L - limiting
S - Superior
G - Gifted

READINESS ABILITIES

READING (Foundational abilities)

- ☒ CFU - Visual closure
- ☐ CFC - Visual conceptualization
- ☒ EFU - Visual discrimination
- ☐ EFC - Judging similarities and matching of concepts
- ☐ MSU - Visual attending
- ☐ MSS - Visual concentration for sequencing

READING (Enabling skills)

- ☐ CMU - Vocabulary of math and verbal concepts
- ☐ CMR - Comprehension of verbal relations
- ☐ CMS - Ability to comprehend extended verbal information
- ☒ MFU - Visual memory for details
- ☒ NST - Speed of word recognition

WRITING

- ☒ NFU - Psycho motor readiness

ARITHMETIC

- ☒ CFS - Constancy of object in space (Piaget)
- ☐ CFT - Spatial conservation (Piaget)
- ☐ CSR - Comprehension of abstract relations
- ☒ CSS - Comprehension of numerical progressions
- ☒ MSU - Auditory attending
- ☒ MSS - Auditory sequencing
- ☐ MSI - Inferential memory
- ☒ ESC - Judgment of arithmetic similarities
- ☐ ESS - Judgment of correctness of numerical facts
- ☐ NSS - Application of math facts
- ☒ NSI - Form reasoning (logic)

CREATIVITY

- ☒ DFU - Creativity with things (figural level)
- ☒ DSR - Creativity with math facts
- ☒ DMU - Creativity with words and ideas

The scores are taken from the expectancy graph for the SOI LA test. The letters used above stand for words which describe abilities tested by the SOI Learning Abilities (SOI LA) Test. These abilities include those required for learning to read, developing reading proficiency, learning arithmetic, learning to be creative, and learning to write. The + sign indicates above grade level; the - sign indicates a need for specific SOI training; the 0 sign indicates that the student is progressing well.

Col 1

KAMELL EVANS 5th GR. AGE 11 - 9/19/88

PI H-I-IND	LIMITING	LOW AVG	AVERAGE	HIGH AVG	SUPERIOR	GIFTED
✓CFU	✓NSI	✓CFC	CSR	CMS	CSS	MSU (A)
✓CFS	DSR	CFT	CMR	MSU (V)	EFU	MSS (A)
NFU		✓CMU	MFU	MSS (V)	DFU	ESC
✓NST		MSI	EFC	NSS		
✓DMU			✓ESS			

Annex:

I am making under separate cover
1-1-1-1. These are individual workbooks
you can use with Kamell They are checked

CFC has 5 levels

you have the original of this attached
to the 501-pages enclosed

1/11 - wasn't see complete word from the first
last letter

Learn to read - no line head when reading
Difficulty recognizing shapes

Low CFS - Critical for students having special understanding of
geometry trigonometry calculus

Recommend → Body & space sports - Karate

Karate
square dancing
folk dancing
gymnastics



Model buildings
knot tying

NFV - needs in-depth perceptual motor testing & training
Copy tape recorder when in position - note taking

Can Low score with good copying → sk -
writing careful & methodical student may have
drawing talent

NST word recognition
needs more time to get school work done

Recommend → Many interesting books 2 yrs below grade level

Possibly a speed reading course

MU Probably slow, methodical thinker

Sept 1st

2.15.11 Key history & material of the day
 1.15.11 Key for material & history for construction
 "critical for construction"

EC Conceptualizing reproducible material

Superior

CSS Conprehension of one mental progress...
 Achievement in materials

Since also high in MSU, MSS, NIS & ~~and~~ ^{also} ESS,
~~probably~~ plan a approach ^{the} ~~the~~ good for him

EFU - ability to make decisions, stores away small
 units of details

Probably some mental discomfort since
 CFU, NFU & NST also are low.

Teach spelling by having him 'surgong' aloud,
 first by reading what they spell, then
 close eyes & visualize then as 'they spell'
 them Encourage real practice

DFU Motor & educational flu ^{eg}
 Talent for drawing in all surface & should be
 noted as talent

Recommend -

① One or more activities for low CFS

Kung Fu

Karate

Square or folk dancing

gymnastics

② Daily reading of material that
he finds interesting and is below
his reading level by 2 years

③ Developmental exam

MATHEMATICS

CFS and CFT These are critical abilities for older students as far as preparation for geometry trigonometry and calculus

Recommendations If low get masculine-type toys for both boys and girls Let them help fathers/mothers with building projects Get into sports which cross the midline of the body Do model building Take mechanical drawing Do knot tying karate gymnastics square dancing folk dancing

WARNING Girls in particular may do well in arithmetic until eighth grade because they are using their excellent memory Yet without spatial awareness from using manipulatives difficulty will occur when geometry is taken

If CSR CMR and DSR are low this indicates in younger students an inability to see the invisible thread linking things numbers or ideas and difficulty in dealing with the abstract Low relational (R) thinking will have negative

Recommendations Always explain how ideas are related and have the child explain the relationship back Ask questions that will determine if the student *really* understands Often they explain what you have told them but do not understand what they have said A relaxed atmosphere is a must Use all R tasks in the *SOI Sourcebooks* for C M E, N & D

MSI - Inferential memory

This tests the ability to relate and tie together unrelated symbolic information when there is no obvious relationship implied in the nature of the information being tied together

High MSI with high CSR and DSR are excellent indicators for careers in foreign languages computer science and inventive theoretical or creative careers

High MSI and MSU v correlate highly with good spelling abilities

Recommendations MSI needs to be carefully looked at by parents and teachers Whole thinkers should be given more opportunities to look at seemingly unrelated objects as related There should be an emphasis on analogies "Parts thinkers" should be involved more in classifying and collecting One should explain cause and effect relationships to them while encouraging them to see obvious relationships *without* discouraging them from also seeing the creative ones The goal is to reduce random no

— — — — —

NSI - Logic and Reasoning

Recommendations For younger children if low teacher needs to work individually with the *SOI Sourcebooks* Parents may order individually prescribed books for their child

Parents need to realize that high NSI students may have better logic or reasoning than they do! Family harmony may perhaps be maintained with this insight

If NSI is low and CSS ESS NSS are not be wary of placing this person in algebra without NSI training—the tasks alone even with gifted memory will create too much pressure

SOI TEST RESULTS AND WHAT THEY MEAN

Mary Meeker

The following information is abstracted from *Using SOI Test Results A Teacher's Guide* (Meeker M) This information will help parents and teachers understand how the specific subtests on the SOI are related to school achievement The individual tests and combinations of tests are described with recommendations for teaching and parenting strategies For information relating to careers see the *Career and Vocation Guide*

READING—Foundation Abilities for comfort in reading

CFU—Visual Closure

If low the person may have discomfort seeing complete words from first to last letter or distinguishing one line from another

If EFU is also low the person may transpose or reverse letters and words

Recommendations A developmental vision exam will evaluate whether the student is really tracking and seeing correctly Purchase the *Simon Game* or *Fabulous Fred* and/or a kaleidoscope Use the *CFU Machine*

If CFU and Memory are high careful consideration should be given to how reading is taught

Recommendations Flash cards with printed word on one side and the written word on the other Use words the student wants to read The student could start an alphabet box that includes meanings and ideas for later use in creative writing speech making and research papers

CFC and EFC—Concept Formation

If both are low the person may not be forming concepts due to difficulty in classifying information

Recommendations Use *SOI Sourcebooks* Alphabet box words could be used to put together phrases (CMR) and then sentences (CMS) Begin collections of rocks shells stamps minerals and leaves to develop classification skills Work in the library is also helpful for students

If there are spelling problems look to see if EFU and MSU v are low

Recommendations If memory is otherwise good teach spelling by having each student sing/song aloud his spelling words first by reading them as he spells then by closing his eyes and visualizing the words as he spells Encourage much vocal practice

READING—Advanced

CMU The *st* section tests vocabulary concepts for arithmetic and math The understanding of the meanings of words in reading is tested on the *arrow* section

Recommendations If low present words weekly Use them consistently and repeatedly in vocal communication Keep in mind that reading programs often do not teach vocabulary—they present words most students are familiar with *Reader's Digest* has excellent words monthly to use at home in interesting ways

COGNITION Comprehension

CFU	Ability to identify objects visually and auditorially
CFC	Ability to classify perceived objects
CFR	Ability to discover relations in perceptual material
CFS	Ability to perceive spatial patterns and maintain orientation (for math)
CFT	Ability to understand transformed objects visually (for math)
CFI	Ability to explore visually ways to select most effective action
CSU	Ability to recognize graphic symbols codes numbers notes
CSC	Ability to identify attributes of patterns
CSR	Ability to discover abstract relations in symbolic patterns
CSS	Ability to understand systems involving symbols (arithmetic facts)
CST	Ability to recognize that a specific transformation of symbolic information has occurred
CSI	Ability to foresee or be sensitive to consequences in a symbolic problem
CMU	Ability to use vocabulary
CMC	Ability to comprehend concepts and classes of ideas and words
CMR	Ability to discover relations between concepts
CMS	Ability to comprehend systems of words and ideas (reading instructions)
CMT	Ability to see several meanings in words or ideas
CMI	Ability to anticipate needs or consequences

MEMORY

MFU	Ability to recall visual and auditory stimuli
MFC	Ability to remember previously presented classes of figural material visual auditory or kinesthetic
MFR	Ability to memorize relations between items of figural information presented
MFS	Ability to recall arrangements of objects previously presented
MFT	Ability to remember transformations of figural material previously changed
MFI	Ability to remember circumstantial connections between or among items of figural information
MSU	Ability to recall for immediate production a group of numerals or letters
MSC	Ability to remember symbolic class properties
MSR	Ability to remember definitive connections between units of symbolic information
MSS	Ability to remember systems of numerals letters in exact order (spelling)
MST	Ability to remember changes in symbolic information
MSI	Ability to remember symbols and their implications
MMU	Ability to reproduce previously presented ideas or words
MMC	Ability to remember verbal or ideational class properties
MMR	Ability to remember meaningful connections between items of verbal information
MMS	Ability to remember a system of ideas presented visually or auditorially
MMT	Ability to remember changes in meanings or redefinitions
MMI	Ability to remember arbitrary connections between pairs of meaningful ideas

EVALUATION Judgement planning reasoning and critical decision making

EFU	Ability to identify similarities and differences of shapes
EFC	Ability to develop the ability to judge whether figures are properly classified
EFR	Ability to evaluate spatial relationships
EFS	Ability to evaluate total systems of spatial information
EFT	Ability to judge or analyze how figures or objects will appear after changes
EFI	Ability to predict and evaluate defects and deficiencies in spatial information
ESU	Ability to make rapid decisions identifying letter or number sets
ESC	Ability to judge the applicability of class properties of symbolic information
ESR	Ability to determine the consistency of symbolic relations
ESS	Ability to estimate the appropriateness of aspects of a symbolic system
EST	Ability to judge adequacy of substitutive symbols
ESI	Ability to judge consistency of inferences from symbolic information
EMU	Ability to select appropriate variations in word meanings
EMC	Ability to judge applicability of class properties of semantic information
EMR	Ability to make choices among semantic relationships
EMS	Ability to appraise aspects of systems of words
EMT	Ability to apply changes in judgement about ideas
EMI	Ability to judge the adequacy of a meaningful deduction (deductive reasoning)

CONVERGENT PRODUCTION Solving problems where answers are known

NFU	Ability to reproduce exact information in spatial forms (writing copying)
NFC	Ability to sort or classify as pre specified
NFR	Ability to reproduce figural relationships
NFS	Ability to reproduce a known system or design
NFT	Ability to change figural information into new forms
NFI	Ability to solve simple equations in terms of familiar to more complex data
NSU	Ability to reproduce patterns of single simple symbols (coding)
NSC	Ability to classify items of symbolic information in pre specified ways (filling)
NSR	Ability to find nonverbal responses in relationships between numerals or letters
NSS	Ability to solve correctly a problem using symbolic systems
NST	Ability to reproduce new symbolic items of information by extending given items
NSI	Ability to substitute or derive symbols as expected (logic and algebra)
NMU	Ability to correctly name semantic concepts and ideas
NMC	Ability to classify correctly words or ideas
NMR	Ability to correlate verbal representations (analogies)
NMS	Ability to arrange ideas into a meaningful sequence (essay writing)
NMT	Ability to shift functions of ideas for use in new ways
NMI	Ability to infer correctly from given known information

DIVERGENT PRODUCTION Solving problems creatively

DFU	Ability to produce many and unique varieties of figures within structure (art)
DFC	Ability to reclassify perceived objects in unique ways
DFR	Ability to generate new and constructive relations between figural items
DFS	Ability to produce composites of figural information in new systems
DFT	Ability to devise figural information
DFI	Ability to elaborate on figural information in unexpected forms
DSU	Ability to produce many symbolic units which conform to simple specifications
DSC	Ability to group items of symbolic information in different ways
DSR	Ability to generate a variety of relations between numbers or letters
DSS	Ability to produce symbolic systems in unique ways
DST	Ability to transform symbolic material
DSI	Ability to produce varied implications from given symbolic information
DMU	Ability to create many ideas spontaneously (brain storming)
DMC	Ability to produce new ideas appropriate in meaning to given categories
DMR	Ability to produce unique ideas from associated words (poetry)
DMS	Ability to originate unique verbal ideas (creative writing)
DMT	Ability to produce remotely associated clever or uncommon verbal responses (puns)
DMI	Ability to specify details that develop a scheme or variation of an idea (joke humor)

OPERATIONS



CONTENTS PRODUCTS

C	Cognition	F	Figural	U	Units
M	Memory	S	Symbolic	C	Classes
E	Evaluation	M	Semantic	R	Relations
N	Convergent Production	B	Behavioral	S	Systems
D	Divergent Production			T	Transformations

MEMORY

- 1 Provide practice time
- 2 Set short time limits (10 minutes)
- 3 Check work after practice

EVALUATION

- 1 Prepare students for the next portion of information to follow
- 2 Explain real world relevancy of material to be learned
- 3 Personalize instruction by using many teaching strategies, a variety of teaching materials illustrations and examples in auditory visual vocal and tactile modes
- 4 Make clear transitions
- 5 Avoid vague and repetitive terms like you know , I mean don't you see and well
- 6 Reduce nonessential content
- 7 Stress how each decision is made and vocalize and show the incorrect decision with its results

CONVERGENT PRODUCTION

- 1 Provide standards and rules for satisfactory performance or grade equivalency
- 2 Answer questions but have references available
- 3 Continuously monitor student learning Adjust instructional strategy to the need of the learner who falters
- 4 **Never** criticize effort tap your feet or be sarcastic as any student falters Always provide the correct answer yourself then go to the next student rather than ask Who does know?
- 5 Emphasize key terms/ideas to be learned Provide these on a board or on handouts
- 6 Consistently review work as it is completed and provide students with feedback or knowledge of results and information on where to get the right answer

DIVERGENT PRODUCTION

To elicit creative responses is appropriate but only for part of the time For the specifics we recommend following the *SOI Sourcebooks* carefully In general don't expect anyone to become creative suddenly You will have to guide them slowly through successive incrementally small steps The most important variable and the most difficult for you will be the change in philosophy and attitude you need to adopt in order to encourage fluency and flexibility You can start by refraining from being judgmental A sense of humor is the best beginning

USING THE SOI—LA TEST

- I A report of the scores
- II What the scores mean
- III Strategies and competencies for being an SOI Teacher

East Cleveland City Schools
CHAPTER 1 READING
Student Progress Report
 19 88 to 19 89

Pupil Kamell Evans Grade 5th School Caledonia
 Reading Teacher Ms. Allen Classroom Teacher Mrs. Reaves

Note to Parents

This report attempts to reflect as nearly as possible your child's growth and work in the Chapter 1 Remedial Reading Program the work that he/she is doing and the development of those qualities which promote educational growth

KEY **S** = Satisfactory
 I = Improving
 N = Needs Improvement
 NA = Not Applicable

I GENERAL COMMENTS

	1	2	3	4
Attendance	—	S	S	S
Punctuality	—	S	S	S
Attitude	—	I	S	S
Participation	—	I	S	S

II INTERMEDIATE READING

	1	2	3	4
1 Word Attack Skills	—	N	I	I
2 Vocabulary Skills	—	N	I	I
3 Oral Reading	—	N	N	I
4 Comprehension Skills	—	N	I	I

Comments Kamell has difficulty following oral and written directions. We need to encourage him to strengthen his self discipline skills

Parent Signature _____

EAST CLEVELAND CITY SCHOOLS
ESSENTIAL SKILLS
Individual Record Sheet and Intervention Strategies
School Year 1988 to 1989
GRADE. 5

NAME Kamell Evans TEACHER B Beavers SCHOOL Calderia
ID# _____

DRP Pre /28 P F [circle one] MAT6 PRE / P F [circle one] AIMS Pre / P F [circle one]
DRP Post /28 P F [circle one] MAT6 Post / P F [circle one] AIMS Post / P F [circle one]

KEY: ☐ = Mastery of PPOs 1st semester ☒ = Non Mastery of PPOs 1st semester ☒ = Master of PPOs 2nd semester

Reading PPO#		Composition PPO#		Math PPO#	
1 Context Clues	☒	S3 2 Sequence Sentences	☒	1 4,2a Prime/Composite Numerals	☐
2 Antonyms	☐	S5.1 Conjunctions	☐	1 5 2a Decimal Fractions	☒
3 Inferential Comprehension	☒	L1 2 Thank you Note	☐	1 8 1a Rounding	☐
4 Fact & Opinion	☐	Par 2.1 Descriptive Paragraph	☒	1 9.1b Divisibility Test	☐
5 USSR	☐		☐	2 1 7a Add/Sub Multiple Digits	☐
	☐		☐	2 1.9a Multiple Digit Multiplication	☐
	☐		☐	3 2 2a Fractions	☐
	☐		☐	3 4 1a Fractions	☒
	☐		☐	4 1.1a Decimal Fractions	☒
	☐		☐	4 2 1a Add/Sub Decimal Fractions	☒
	☐		☐	4 3 1a Multiply Decimal Fractions	☒
	☐		☐	5 1 5a Classify Angles	☒
	☐		☐	5 5 1a Perimeter	☒
	☐		☐	9 1 3a Story Problems	☐

COMMENTS.

COMMENTS

COMMENTS

This student tried hard, but the work is difficult for him. He is in Chapter I Reading

3351

INTERVENTION STRATEGIES

READING	()	COMPOSITION	()	MATH	()
tutoring	✓	tutoring	✓	tutoring	✓
echo reading	_____	language experience	_____	computer asst instruc	_____
cloze	_____	USSW	_____	math incentives	_____
drta	_____	computer asst instruc	✓	career ed materials	_____
dlta	_____	journals	_____	simulation experience	_____
language experience	_____	learning centers	_____	supplemental materials	_____
phonics drill	_____	mapping	_____	learning centers	_____
USSR	_____	story frames	_____	games	_____
word banks	_____	advanced organizers	_____	manipulatives	_____
paired reading	_____	writing incentives	_____	math lab	_____
computer assisted instruc	✓	supplemental materials	✓	OTHER	_____
journals	_____	career ed materials	_____		
questioning techniques	✓	forms/letters/notes	_____		
learning centers	_____	proof reading partners	_____		
radio reading	_____	pen pals	_____		
story starters	_____	games	_____		
mapping	_____	simulation experience	_____		
story frames	_____	OTHER	_____		
advanced organizer	_____				
anticipation guide	_____				
reading incentives	_____				
vocabulary development	✓				
OTHER	_____				

ACHIEVEMENT MARKS

A — 90 — 100
 B — 80 — 89
 C — 70 — 79
 D — 60 — 69
 F — 59 — 0

EFFORT

1 — Superior
 2 — Satisfactory
 3 — Needs Improvement

SUBJECTS

	1 Ach / Eff		2 Ach / Eff		3 Ach / Eff		4 Ach / Eff	
Reading	C	1	C	1	C	1	C	1
Math	C	1	C	1	B	1	B	1
Language	C	1	C	1	C	1	B	1
Spelling	D	1	D	2	D	1	D	1
Social Studies	B	1	C	1	C	1	C	1
Science	C	1	C	1	B	1	B	1
Health	A	1	B	1	B	1	A	1
Foreign Language	—		—		—		—	

PERFORMANCE INDICATORS

S= SATISFACTORY N= NEEDS IMPROVEMENT

PERFORMANCE AREAS	1	2	3	4
Physical Education	S	S	S	S
Art	S	S	S	S
Music	S	S	S	S
Library Skills	S	S	S	S
Handwriting	S	S	S	S
Instrumental Music	—	—	—	—

WORK HABITS

	1	2	3	4
Follows Directions	S	S	S	S
Completes Classroom Work	S	S	S	S
Does Required Homework	S	S	S	S
Works Independently	S	S	S	S
Organizes Personal Property and Materials	S	S	S	S

BEHAVIOR AND ATTITUDE

	1	2	3	4
Is Polite in Speech and Actions	S	S	S	S
Respects Others	S	S	S	S
Obeys School and Classroom Rules	S	S	S	S

Work Habits and Behavior and Attitude are Satisfactory unless otherwise noted with an N (Needs to Improve)

CODES						E—Entered	W—Withdrawn	R—Reentered	T—Tardy	ABSENT							/ Half Day	X All Day	UNEXCUSED								/ Half Day	All Day																																																												
PERIODS	1ST WEEK					2ND WEEK					3RD WEEK					4TH WEEK					5TH WEEK					6TH WEEK					7TH WEEK					8TH WEEK					9TH WEEK					10TH WEEK					DAYS DUI	DAYS PRESENT	DAYS ABSENT	IN EXCUSED	TIME TAKE																																	
	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F																																											
1ST	E																																													-	1																																									
2ND								H	H										*	*																					20	21	C		C																																											
3RD			m _s																																						22	23	2		2																																											
4TH																																									24	25	1		3																																											
TOTAL FOR YEAR																																																																																				91	92	-11		-

Reason _____

Reason _____

Principal STELLA LOEB MUNSCH

COMMENTS. (Please Date)

EAST CLEVELAND CITY SCHOOLS
 ESSENTIAL SKILLS
 Individual Record Sheet and Intervention Strategies
 School Year 1989 to 1990
 GRADE. 6

NAME Amel, 218 TEACHER 13, 341/11 SCHOOL 10
 D# _____
 RP Pre / 28 P F [circle one] MAT6 Pre / P F [circle one] AIMS Pre / P F [circle one]
 RP Post / 28 P F [circle one] MAT6 Post / P F [circle one] AIMS Post / P F [circle one]

KEY: ☐ = Mastery of PPOs = 1st semester ☒ = Non-Mastery of PPOs = 1st semester ☒ = Mastery of PPOs = 2nd semester

Reading PPO#		Composition PPO#		Math PPO#	
Paraphrase	☒	S6.1 Subject/Verb Agreement	☒	1.1.11a Decimal Fractions	☐
Compare and Contrast	☒	S7.1 Compound Subj/Predicate	☒	1.8.2a Rounding	☐
Author's Point of View	☒	Par. 3.1 Write paragraphs	☒	1.8.5a Rounding	☐
Demonstrate Author Preference	☒	R2.2 Content Area Report	☒	1.9.1a Divisibility Test	☐
	☐		☐	1.9.2a Factorization	☒
	☐		☐	1.9.3a Lowest Common Multiple	☐
	☐		☐	2.1.9b Multiple Digit Multipli-	☐
	☐		☐	cation.	☐
	☐		☐	2.1.12a Multiple Digit Division	☐
	☐		☐	2.2.1a Estimation	☐
	☐		☐	3.3.2a Fractions	☐
	☐		☐	4 3.2a Fractions	☐
	☐		☐	4 3.3a Fractions	☐
	☐		☐	5.1.6a. -ID Solid Figures	☒
	☐		☐	5.5.2a Perimeter	☒
	☐		☐	5.7.1a Add/Subtract Units of	☐
	☐		☐	Measurement	☐
	☐		☐	7 1.2a Analyze Tables & Graphs	☒
	☐		☐	9 1 4a Story Problems	☐
	☐		☐	9.2.1a Story Problems	☐

COMMENTS:

COMMENTS.

COMMENTS.

East Cleveland City Schools

3357

Registration Form

SCHOOL Kirk Middle School

Student SS # _____
 Student ID No _____
 Name Evans La D
Last First Middle
 Address _____
No Street Apt
 Phone _____ Sex ☒ M ☐ F
 Grade 7 Teacher Ms. Leavelle Rm 122

FAMILY INFORMATION

Father Gregory Evans
 Address _____
 Employer _____
 Bus Address _____
 Occupation _____ Phone _____
 Mother B. Evans
 Address _____
 Employer _____
 Bus Address _____
 Occupation _____ Phone _____
 ADC Number _____

THIRD PARTY EMERGENCY INFORMATION

Name 11
 Address _____
No Street Apt
 City 11 Phone 8211
 RELATIONSHIP TO STUDENT _____

PERSONS RESIDING IN HOME (Not Listed Above)

Name/Relative	M	F	Age

STUDENT INFORMATION

Birth _____
Month Day Year
 Birthplace _____
City County State
 Birth Certificate _____
(New Entries Only)

EDUCATIONAL INFORMATION

ENTERED EAST CLEVELAND SCHOOLS

Month _____ Day _____ Year _____

TRANSFERRED FROM

School _____ District _____
 No _____ Street _____
 City _____ State _____ Zip _____

PREVIOUS EAST CLEVELAND SCHOOL

School _____ Grade _____ Enter/Left _____

SPECIAL EDUCATION

☐ ALP ☐ Gifted
☐ LD ☐ Other _____

NEW ENTRIES ONLY IMMUNIZATION HISTORY

DPT Toxoids _____ Mumps _____ TB _____
 1 _____ Rubella _____
 2 _____ Rubeola _____
 3 _____ Polio Vaccine _____
 4 _____ 1 _____
 5 _____ 2 _____
 3 _____

Parent(s) or Legal Guardian(s) Signature _____ Date _____

1st White — School Office Copy

2nd Yellow — Pupil Personnel

3rd Pink —

4th Copy Tag — Pupil Personnel

W H KIRK MIDDLE SCHOOL
EAST CLEVELAND, OHIO

3358

SCHOLARSHIP AND ATTENDANCE RECORD

LAST NAME

FIRST NAME

Evans

Kennell

GRADE 7 8 (CIRCLE ONE)

SUBJECT						
	1	2	3	4	FINAL GRADE	INSTRUCTOR
ENGLISH	<i>B+</i>	<i>B</i>				<i>Looney</i>
MATH	<i>C</i>	<i>C</i>				<i>Walker</i>
SCIENCE	<i>B-</i>	<i>C</i>				<i>Casper</i>
SOCIAL STUDIES	<i>B</i>	<i>C</i>				<i>Depree</i> <i>Beulah</i>
READING	<i>B</i>	<i>B</i>				<i>Harris</i>
FRENCH						
SPANISH						
CHAPTER 1 READING						
CHAPTER 1 MATH						

GRADING SCALE

- A = Outstanding
B = Good
C = Average
D = Below Average
F = Failure

SUBJECT

APPLIED ARTS I

ART

HEALTH

MUSIC GEN

PHYS ED

APPLIED ARTS II

COMPUTER

COOKING

DRAFTING

SEWING

WOODS

APPLIED ARTS III

BAND

CHOIR

ORCHESTRA

School year 19 *90-91*

Homeroom Number *125 14*

Homeroom Instructor

Date at close of Year

Classification at Close of Year

ATTENDANCE RECORD

[illegible]

1/2
1/2
X
T
E
W
EW
S
R
—
|

Absent a m only
Absent p m only
Absent all day
Tardy
Entered
Withdrawn
Expelled
Suspended
Truancy
Horizontal line through blocks because of
late entry or withdrawal
Vertical line in the block to denote
holiday

3360

who will be responsible
for a D. Karrell even-
that, regarding the
release of information

FORM 250 206

THE SCHOOL DISTRICT OF GREENVILLE COUNTY

Greenville S C

Kamell D Evans7th Gr

enrolled in

GREER MIDDLE SCHOOLSchool on 2/6/91

(Date)

Please send a record of his attendance and achievement and any other information which will be an aid in understanding his complete school background

Thank you

J. Williams

Principal

Greer Middle School301 Chandler Road

(School Address)

Greer, South Carolina 29651

pk
2/28/91

Howard L. Sims, PhD
Superintendent of Schools

Selma Gamble
Principal

February 15, 1991

Mrs. Renee Evans
[REDACTED]
Cleveland Heights, Ohio [REDACTED]

Dear Mrs. Evans,

I have received a telephone call from Mr. Evans requesting that Kamell's records be sent to Greer Middle School in South Carolina for the purpose of enrolling Kamell in school.

According to The Family Educational Rights and Privacy Act of 1974, a school district must provide access to both natural parents, custodial and non-custodial, unless there is a legally binding document that specifically removes that parent's FERPA rights."

I have attempted to contact you by phone, but have been unable to reach you. My secretary has left several messages with your supervisor, Mr. Dennis Hayes.

Unless I receive some type of legal document from you stating that Kamell's records not be released to his father, my office will have to grant his request.

Kamell has not been officially withdrawn from Kirk Middle School. Please call my office at 268-6611 so that we may discuss how to proceed with this matter.

Thank you for your prompt attention.

Sincerely,

Mrs. Myrna Loy Corley
Mrs. Myrna Loy Corley
7th Grade Unit Principal

cc Mr. Selma Gamble, Principal, Kirk Middle School
Mr. May, Director of Pupil Personnel
Student File

AUTHORIZATION FOR RELEASE OF SCHOOL INFORMATION

I hereby grant permission to Kirk Middle School to
release information to

NAME OF ORGANIZATION

ADDRESS

CITY, STATE, ZIP CODE

To release any information contained in the school records of

CHILD'S NAME

HOME ADDRESS

Signed

Address

Relationship of above to child

DATE

The W H Kirk Middle School
East Cleveland
CLEARANCE SLIP

Pupil 11111111111111111111 H R 1111

Reason for Transfer 11111111111111111111

Date of Transfer 11111111111111111111

Credits and transfers will be withheld until this slip is signed by those in charge of the following departments and presented at the unit principal's office

Unit/Guidance _____

Towel Fee _____

Foods Fee _____

Clothing Fee _____

Shop Fee _____

Art Fee _____

Library _____

Lunch Tickets _____

TEXT BOOKS

Foreign Lang.	GRADE TO DATE
English	
Math <i>Spalke</i>	
Science <i>Ciprus</i>	
Social Studies <i>Bentley</i>	

3365

Barry Evans

February 22 1991

Greer, SC

Mr Charles May
Kirk Middle School
Terrace Road
E Cleve , OH 44112

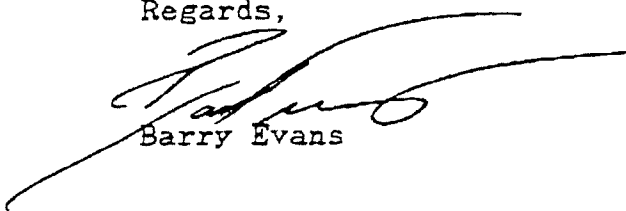
Dear Mr May

As you are aware my son, Kamell D Evans, has recently transferred from Kirk Middle High School in E Cleveland, Ohio to Greer Middle School in Greer, SC In my desire to assist him in making the academic and social adjustment successfully I give you (the school administrators) my permission to forward Kamell's documents to Greer Middle School as they have requested

If there are any concerns, please contact either my wife, or myself at work 803- , at your earliest convenience

Thank you so much for your interest

Regards,


Barry Evans

VANS
ORDY P L
ALEDONIA

KAMELL

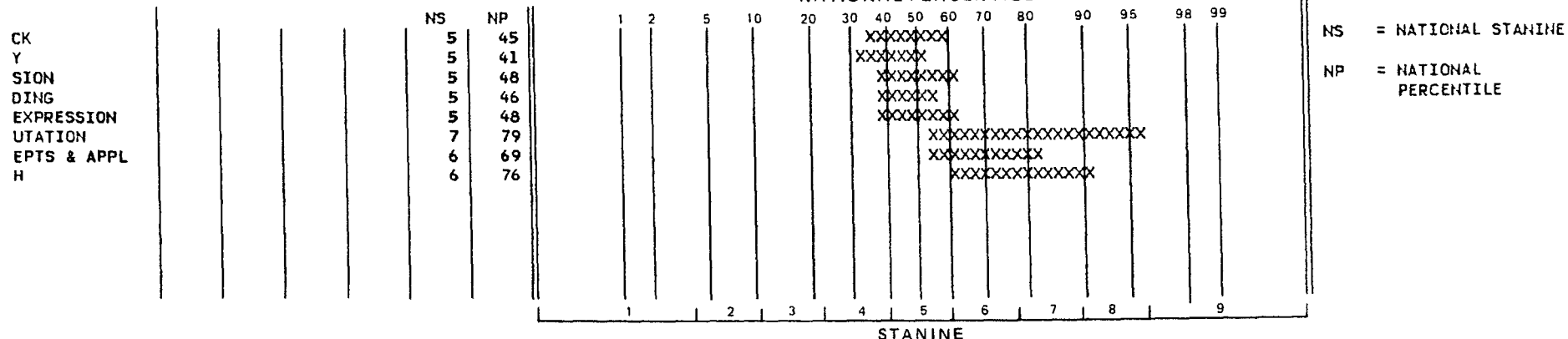
DISTRICT
CITY/STATE
RUN DATE

E CLEVE CITY
EAST CLEVELAN OH
05/27/85

FORM/LEVEL U/C
GRADE 01 7
TEST DATE 04/85

Student Interpretive Report

00750
00152



INTERPRETATION OF SCORES

NORMS

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP BY REFERRING TO THE NATIONAL PERCENTILE COLUMN (NP) ABOVE THE 50TH PERCENTILE INDICATES THE NATIONAL AVERAGE. IN TOTAL READING THE STUDENT'S ACHIEVEMENT WAS BETTER THAN APPROXIMATELY 46 PER CENT OF THE NATION'S 1ST GRADERS, IN LANGUAGE, BETTER THAN APPROXIMATELY ** PER CENT, IN TOTAL MATHEMATICS, BETTER THAN APPROXIMATELY 76 PER CENT.

(**) THIS STUDENT HAS NO NATIONAL PERCENTILE SCORE ON TESTS MARKED BY TWO ASTERISKS

OBJECTIVES

CONTENT AREAS INCLUDED IN CTBS ARE INDICATED AS FOLLOWS: READING (R), SPELLING (SP), LANGUAGE (L), MATHEMATICS (M), REFERENCE SKILLS (RS), SCIENCE (SC), AND SOCIAL STUDIES (SS).

THE STUDENT IS STRONG IN SKILLS RELATED TO:
SUBTRACTING WHOLE NUMBERS (M), IDENTIFYING INITIAL CONSONANT SOUNDS (R), IDENTIFYING SOUNDS OF CLUSTERS OR DIGRAPHS (R), ORDERING WORDS IN STATEMENTS OR QUESTIONS (L), ADDING WHOLE NUMBERS (M).

THE STUDENT MAY NEED FURTHER INSTRUCTION TO DEVELOP SKILLS RELATED TO:
EXTRACTING DETAILS GIVEN IN PASSAGES (R), ANALYZING CHARACTERS IN PASSAGES (R).

THE STUDENT MAY NEED REVIEW IN:
IDENTIFYING WORDS BY THEIR CATEGORY (R), USE OF VERBS (L), IDENTIFYING MEDIAL VOWEL SOUNDS (R).

VANS
TEWARTTE
ALEDONIA
PEC CODES

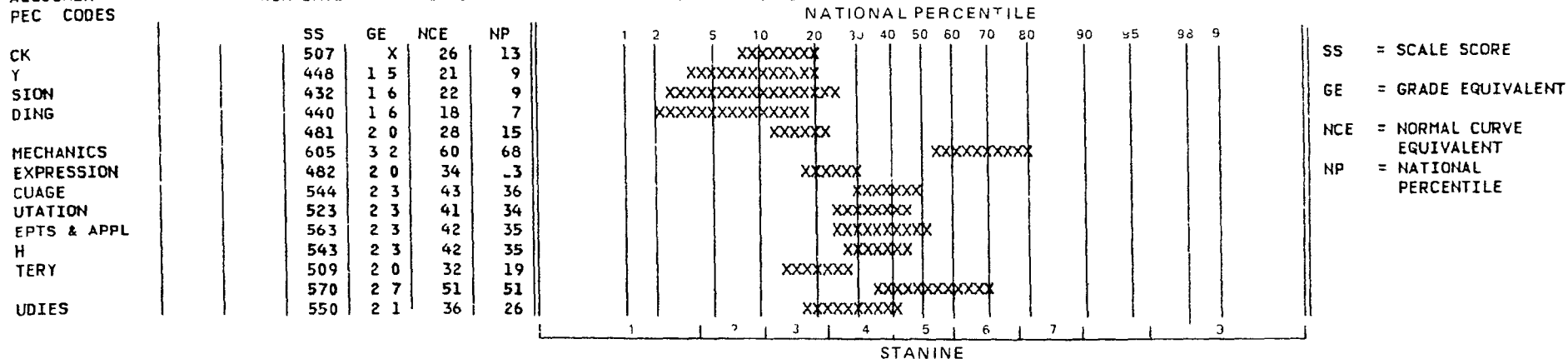
KAMELL D

DISTRICT E CLEVELAND
CITY/STATE E CLEVELAND OH
RUN DATE 04/11/86

FORM/LEVEL U/D
GRADE 02 6
TEST DATE 03/86

of Basic Skills Student Interpretive Report

007502
C 11 2



INTERPRETATION OF SCORES

NORMS

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP BY REFERRING TO THE NATIONAL PERCENTILE COLUMN (NP) ABOVE. ACHIEVEMENT IN THE BASIC SKILLS IS BEST SUMMARIZED BY THE TOTAL SCORES. THE STUDENT'S TOTAL BATTERY SCORE IS BELOW THE NATIONAL AVERAGE (THE 50TH PERCENTILE). IN READING, THE STUDENT'S ACHIEVEMENT WAS BETTER THAN APPROXIMATELY 7 PER CENT OF THE NATION'S 2ND GRADERS, IN LANGUAGE, BETTER THAN APPROXIMATELY 36 PER CENT, IN MATHEMATICS, BETTER THAN APPROXIMATELY 35 PER CENT.

(**) THIS STUDENT HAS NO NATIONAL PERCENTILE SCORE ON TESTS MARKED BY TWO ASTERISKS

OBJECTIVES

CONTENT AREAS INCLUDED IN CTBS ARE INDICATED AS FOLLOWS: READING (R), SPELLING (SP), LANGUAGE (L), MATHEMATICS (M), REFERENCE SKILLS (RS), SCIENCE (SC), AND SOCIAL STUDIES (SS).

THE STUDENT IS STRONG IN SKILLS RELATED TO:

CAPITALIZATION OF PRONOUN I, NOUNS, AND ADJECTIVES (L), ORDERING WORDS IN STATEMENTS OR QUESTIONS (L), UNDERSTANDING PROBLEM SOLVING (M), CAPITALIZATION OF BEGINNING WORDS AND TITLES (L), UNDERSTANDING PRINCIPLES AND METHODS IN ZOOLOGY (SC).

THE STUDENT MAY NEED FURTHER INSTRUCTION TO DEVELOP SKILLS RELATED TO:

ANALYZING CHARACTERS IN PASSAGES (R), DRAWING CONCLUSIONS FROM INFORMATION IN PASSAGES (R), EXTRACTING DETAILS GIVEN IN PASSAGES (R), IDENTIFYING UNFAMILIAR WORDS BY THEIR CONTEXT (R), IDENTIFYING DIPHTHONGS OR VARIANT VOWEL SOUNDS (R).

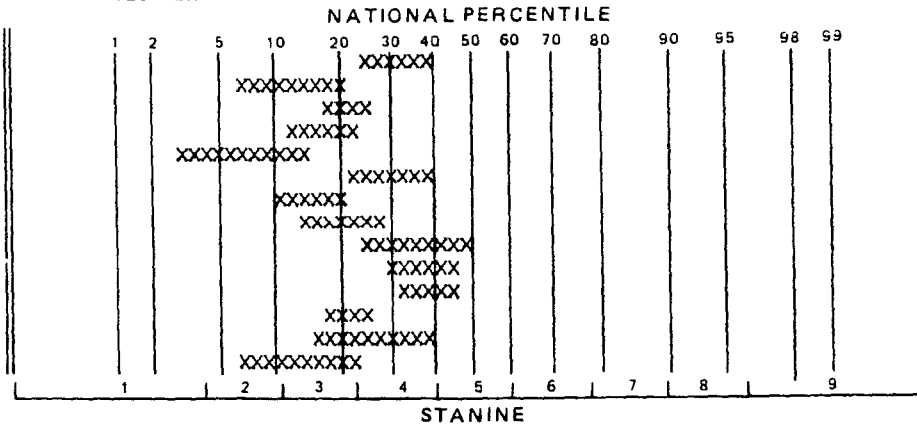


Comprehensive Tests of Basic Skills Student Interpretive Report

NAME EVANS KAMELL D DISTRICT E CLEVELAND
CLASS WIMER S CITY/STATE E CLEVELAND OH
SCHOOL CALEDONIA RUN DATE 04/30/87
SPEC CODES

FORM/LEVEL U/E
GRADE 03 6
TEST DATE 03/87

	SS	GE	NCE	AAGE	GED	NP
WORD ATTACK	589	X	39	X		30
VOCABULARY	532	2 2	25	3 1	-	12
COMPREHENSION	549	2 4	32	3 1		20
TOTAL READING	541	2 3	29	3 1	-	16
SPELLING	516	2 2	19	3 2	-	7
LANGUAGE MECHANICS	600	3 1	38	3 3		29
LANGUAGE EXPRESSION	517	2 3	27	3 1		14
TOTAL LANGUAGE	559	2 5	31	3 2		18
MATH COMPUTATION	625	3 4	41	3 7		34
MATH CONCEPTS & APPL	612	3 2	42	3 4		36
TOTAL MATH	619	3 4	43	3 6		37
TOTAL BATTERY	573	2 6	32	3 3	-	20
SCIENCE	559	2 5	35	2 5		24
SOCIAL STUDIES	571	2 3	26	2 8		13



SS = SCALE SCORE
GE = GRADE EQUIVALENT
NCE = NORMAL CURENT EQUIVALENT
AAGE = ANTICIPATED GRADE EQUIVALENT
GED = SIGNIFICANT GRADE EQUIVALENT
NP = NATIONAL PERCENTILE

INTERPRETATION OF SCORES

NORMS

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP BY REFERRING TO THE NATIONAL PERCENTILE COLUMN (NP) ABOVE. ACHIEVEMENT IN THE BASIC SKILLS IS BEST SUMMARIZED BY THE 'TOTAL SCORES'. THE STUDENT'S TOTAL BATTERY SCORE IS BELOW THE NATIONAL AVERAGE (THE 50TH PERCENTILE). IN READING, THE STUDENT'S ACHIEVEMENT WAS BETTER THAN APPROXIMATELY 16 PER CENT OF THE NATION'S 3RD GRADERS, IN LANGUAGE, BETTER THAN APPROXIMATELY 18 PER CENT, IN MATHEMATICS, BETTER THAN APPROXIMATELY 37 PER CENT.

(**) THIS STUDENT HAS NO NATIONAL PERCENTILE SCORE ON TESTS MARKED BY TWO ASTERISKS.

OBJECTIVES

CONTENT AREAS INCLUDED IN CTBS ARE INDICATED AS FOLLOWS: READING (R), SPELLING (SP), LANGUAGE (L), MATHEMATICS (M), REFERENCE SKILLS (RS), SCIENCE (SC), AND SOCIAL STUDIES (SS).

THE STUDENT IS STRONG IN SKILLS RELATED TO:

SUBTRACTING WHOLE NUMBERS (M), MULTIPLYING WHOLE NUMBERS (M), IDENTIFYING THE MEANING OF CONTRACTIONS (R), IDENTIFYING UNFAMILIAR WORDS IN THEIR CONTEXT (R), CAPITALIZATION OF BEGINNING WORDS AND TITLES (L).

THE STUDENT MAY NEED FURTHER INSTRUCTION TO DEVELOP SKILLS RELATED TO:

DIVIDING WHOLE NUMBERS (M), IDENTIFYING DEFINITIONS OF MULTIMEANING WORDS (R), UNDERSTANDING HISTORICAL PERSONS, EVENTS OR ERAS (SS), SPELLING OF CONSONANTS IN WORDS (SP), IDENTIFYING DIPHTHONGS OR VARIANT VOWEL SOUNDS (R).

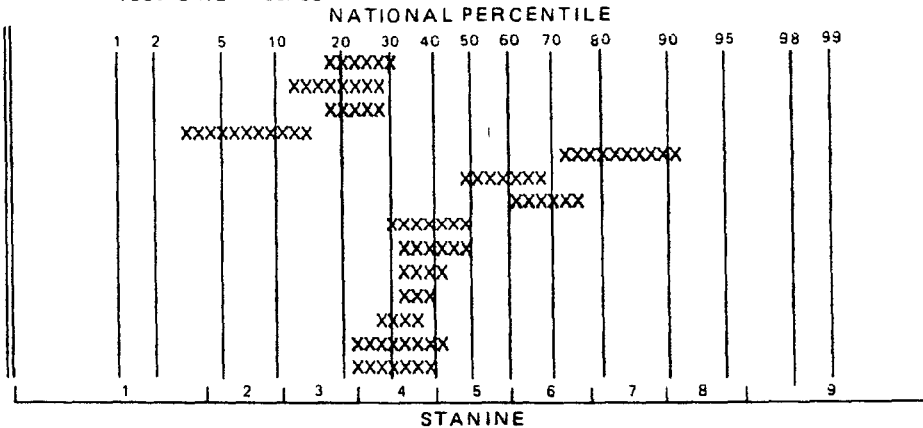


Comprehensive Tests of Basic Skills Student Interpretive Report

NAME EVAMS KAMELL D DISTRICT E CLEVELAND
CLASS K TAYLOR CITY/STATE EAST CLEVELAND OH
SCHOOL CALEDONIA RUN DATE 04/29/88
SPEC CODES

FORM/LEVEL U/F
GRADE 04 6
TEST DATE 03/88

	SS	GE	NCE	NP
VOCABULARY	612	3 3	34	22
COMPREHENSION	585	2 9	31	18
TOTAL READING	599	3 1	32	20
SPELLING	560	2 7	19	7
LANGUAGE MECHANICS	699	6 9	69	82
LANGUAGE EXPRESSION	667	4 8	53	56
TOTAL LANGUAGE	683	5 2	58	65
MATH COMPUTATION	671	4 4	43	37
MATH CONCEPTS & APPL	644	4 2	45	40
TOTAL MATH	658	4 2	43	37
TOTAL BATTERY	647	4 1	42	35
REFERENCE SKILLS "	587	3 6	39	30
SCIENCE	600	3 7	39	30
SOCIAL STUDIES	636	3 8	38	29



SS = SCALE SC
GE = GRADE EQ
NCE = NORMAL C
EQUIVALE
NP = NATIONAL
PERCENTI

INTERPRETATION OF SCORES

NORMS

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP BY REFERRING TO THE NATIONAL PERCENTILE COLUMN (NP) ABOVE ACHIEVEMENT IN THE BASIC SKILLS IS BEST SUMMARIZED BY THE 'TOTAL SCORES'. THE STUDENT'S TOTAL BATTERY SCORE IS BELOW THE NATIONAL AVERAGE (THE PERCENTILE). IN READING, THE STUDENT'S ACHIEVEMENT WAS BETTER THAN APPROXIMATELY 20 PER CENT OF THE NATION'S 4TH GRADERS, IN LANGUAGE, BETTER APPROXIMATELY 65 PER CENT, IN MATHEMATICS, BETTER THAN APPROXIMATELY 37 PER CENT.

(**) THIS STUDENT HAS NO NATIONAL PERCENTILE SCORE ON TESTS MARKED BY TWO ASTERISKS

OBJECTIVES

CONTENT AREAS INCLUDED IN CTBS ARE INDICATED AS FOLLOWS: READING (R), SPELLING (SP), LANGUAGE (L), MATHEMATICS (M), REFERENCE SKILLS (RS), SCIENCE (SC), AND SOCIAL STUDIES (SS).

THE STUDENT IS STRONG IN SKILLS RELATED TO:

ADDING DECIMALS OR FRACTIONS (M), CAPITALIZATION OF BEGINNING WORDS AND TITLES (L), CAPITALIZATION OF PRONOUN I, NOUNS, AND ADJECTIVES (L), USE OF QUOTATION MARKS (L), USE OF ADJECTIVES OR ADVERBS (L).

THE STUDENT MAY NEED FURTHER INSTRUCTION TO DEVELOP SKILLS RELATED TO:

SUBTRACTING WHOLE NUMBERS (M), SPELLING OF CONSONANTS IN WORDS (SP), DIFFERENTIATING BETWEEN FORMS OF WRITING (R), SPELLING OF VOWELS IN (SP), UNDERSTANDING THE MAIN IDEA OR PURPOSE IN PASSAGES (R).

3369

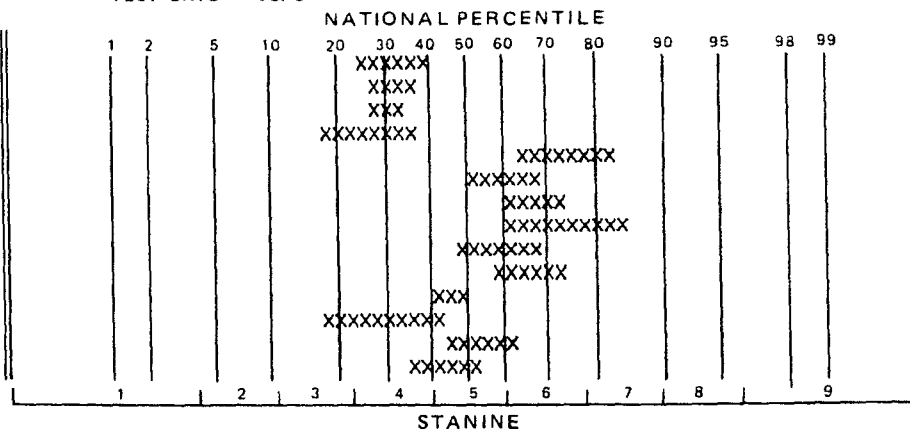
VANS KAMELL D DISTRICT E CLEVELAND
EAVES BOJBI CITY/STATE E CLEVELAND OH
ALEDONIA RUN DATE 04/27/89
SPEC CODES 010674 -

FORM/LEVEL V/G
GRADE 05 6
TEST DATE 03/89

of Basic Skills Student Interpretive Report

007502
W 1 502

	SS	GE	NCE	AAGE	GED	NP
Y	653	4 5	39	5 2		30
ISION	670	4 5	38	5 2		29
IDING	662	4 5	38	5 2		29
	649	4 5	35	4 9		24
MECHANICS	709	8 0	62	5 4		71
EXPRESSION	699	6 4	54	5 0		58
IGUAGE	704	7 4	59	5 1		66
PUTATION	712	6 4	63	5 7		73
EPTS & APPL	682	5 9	53	5 7		56
PH	697	6 3	57	5 8		64
ITERY	688	5 3	47	5 3		44
SKILLS	631	4 5	36	5 5		25
	662	5 7	51	5 6		52
UDIES	676	5 1	46	5 4		42



SS = SCALE SCORE
GE = GRADE EQUIVALENT
NCE = NORMAL CURVE
EQUIVALENT
AAGE = ANTICIP ACHIEVMENT
GRADE EQUIVALENT
GED = SIGNIFICANT DIFF
GRADE EQUIVALENT
NP = NATIONAL
PERCENTILE

INTERPRETATION OF SCORES

NORMS

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP BY REFERRING TO THE NATIONAL PERCENTILE COLUMN (NP) ABOVE ACHIEVEMENT IN THE BASIC SKILLS IS BEST SUMMARIZED BY THE TOTAL SCORES. THE STUDENT'S TOTAL BATTERY SCORE IS BELOW THE NATIONAL AVERAGE (THE 50TH PERCENTILE). IN READING, THE STUDENT'S ACHIEVEMENT WAS BETTER THAN APPROXIMATELY 29 PERCENT OF THE NATION'S 5TH GRADERS, IN LANGUAGE, BETTER THAN APPROXIMATELY 66 PERCENT, IN MATHEMATICS, BETTER THAN APPROXIMATELY 64 PERCENT.

(**) THIS STUDENT HAS NO NATIONAL PERCENTILE SCORE ON TESTS MARKED BY TWO ASTERISKS

OBJECTIVES

CONTENT AREAS INCLUDED IN CTBS ARE INDICATED AS FOLLOWS: READING (R), SPELLING (SP), LANGUAGE (L), MATHEMATICS (M), REFERENCE SKILLS (RS), SCIENCE (SC), AND SOCIAL STUDIES (SS).

THE STUDENT IS STRONG IN SKILLS RELATED TO

SUBTRACTING DECIMALS OR FRACTIONS (M), USE OF PRONOUNS (L), USE OF QUOTATION MARKS (L), COMBINING RELATED THOUGHTS IN SENTENCES (L), CAPITALIZATION OF PRONOUN I, NOUNS, AND ADJECTIVES (L).

THE STUDENT MAY NEED FURTHER INSTRUCTION TO DEVELOP SKILLS RELATED TO

RECOGNIZING WRITING TECHNIQUES (R), IDENTIFYING DEFINITIONS OF MULTIMEANING WORDS (R), SPELLING OF VOWELS IN WORDS (SP), LOCATING INFORMATION IN THE DICTIONARY (RS), MULTIPLYING DECIMALS OR FRACTIONS (M).

VANS KAMELL D
TRICKLAND B
ALEDO JIA
PEC CODES 010674 0

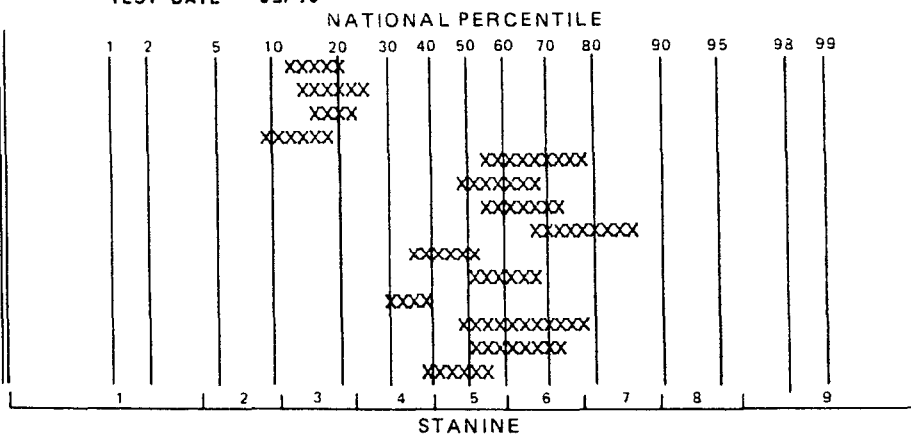
DISTRICT E CLEVELAND
CITY/STATE EAST CLEVELAND OH
RUN DATE 04/17/90

FORM/LEVEL U/G
GRADE 06 6
TEST DATE 03/90

Basic Skills Student Interpretive Report

007502

	SS	GE	NCE	AAGE	GED	NP
Y	644	4 2	29	6 9	-	16
SION	664	4 4	31	6 8	-	18
DING	654	4 3	30	6 9	-	18
	635	4 2	26	5 8	-	12
MECHANICS	712	8 3	58	6 3		64
EXPRESSION	705	8 3	53	5 9		55
IGUAGE	709	7 9	57	6 4		63
UTATION	724	7 6	65	6 8		77
EPTS & APPL	685	6 1	46	6 5		42
H	705	7 0	54	6 8		58
TERY	689	5 4	41	6 7		34
ILLS	713	7 6	57	6 9		62
	697	7 3	55	7 0		60
UDIES	691	6 1	47	6 7		44



SS = SCALE SCORE
GE = GRADE EQUIVALENT
NCE = NORMAL CURVE EQUIVALENT
AAGE = ANTICIP ACHIEV'L T GRADE EQUIVALENT
GED = SIGNIFICANT DIFF GRADE EQUIVALENT
NP = NATIONAL PERCENTILE

INTERPRETATION OF SCORES

NORMS

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP BY REFERRING TO THE NATIONAL PERCENTILE COLUMN (NP) ABOVE. ACHIEVEMENT IN THE BASIC SKILLS IS BEST SUMMARIZED BY THE TOTAL SCORES. THE STUDENT'S TOTAL BATTERY SCORE IS BELOW THE NATIONAL AVERAGE (THE 50TH PERCENTILE). IN READING, THE STUDENT'S ACHIEVEMENT WAS BETTER THAN APPROXIMATELY 18 PERCENT OF THE NATION'S 6TH GRADERS, IN LANGUAGE BETTER THAN APPROXIMATELY 63 PERCENT, IN MATHEMATICS, BETTER THAN APPROXIMATELY 58 PERCENT.

(**) THIS STUDENT HAS NO NATIONAL PERCENTILE SCORE ON TESTS MARKED BY TWO ASTERISKS

OBJECTIVES

CONTENT AREAS INCLUDED IN CTBS ARE INDICATED AS FOLLOWS: READING (R), SPELLING (SP), LANGUAGE (L), MATHEMATICS (M), REFERENCE SKILLS (RS), SCIENCE (SC), AND SOCIAL STUDIES (SS).

THE STUDENT IS STRONG IN SKILLS RELATED TO:

USE OF QUOTATION MARKS (L), MULTIPLYING WHOLE NUMBERS (M), DIVIDING WHOLE NUMBERS (M), UNDERSTANDING NUMERATION (M), USE OF PRONOUNS (L).

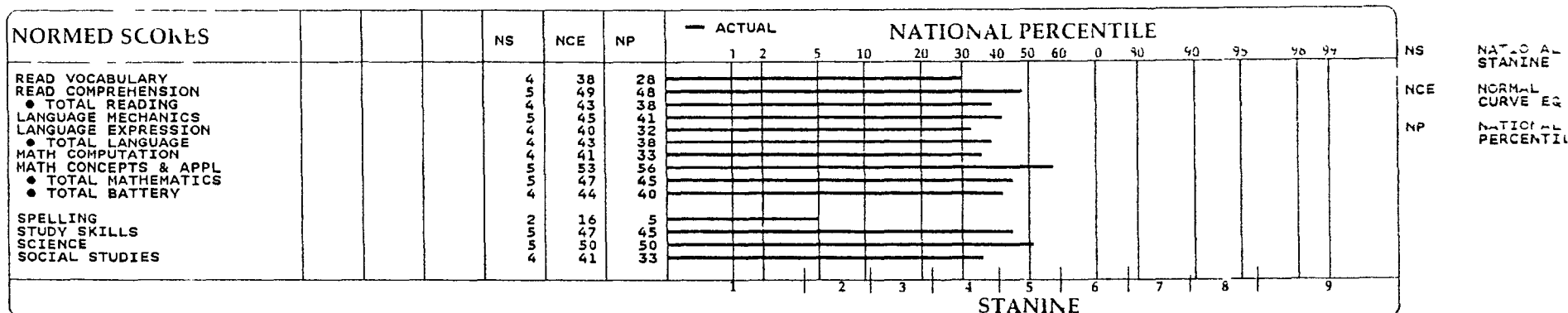
THE STUDENT MAY NEED FURTHER INSTRUCTION TO DEVELOP SKILLS RELATED TO:

UNDERSTANDING NUMBER SENTENCES (M), RECOGNIZING WRITING TECHNIQUES (R), IDENTIFYING DEFINITIONS OF MULTIMEANING WORDS (R), IDENTIFYING UNFAMILIAR WORDS BY THEIR CONTEXT (R), SPELLING OF STRUCTURAL UNITS IN WORDS (SP).

STUDENT PROFILE REPORT

STUDENT EVANS KAMELL D GRADE 6 7

BIRTH DATE 12/15/76 CODES 010674



NARRATIVE REPORT

THIS STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP AT THE SAME GRADE LEVEL BY REFERRING TO THE NATIONAL PERCENTILE SCORE ABOVE. ACHIEVEMENT IN BASIC SKILLS IS BEST SUMMARIZED BY THE TOTAL SCORES. THE STUDENT'S TOTAL SCORE IS BELOW THE NATIONAL AVERAGE (THE 50TH PERCENTILE). IN TOTAL READING THE STUDENT'S ACHIEVEMENT IS BETTER THAN APPROXIMATELY 38 PERCENT OF THE NATIONAL NORM GROUP. IN TOTAL LANGUAGE THE STUDENT'S ACHIEVEMENT IS BETTER THAN APPROXIMATELY 38 PERCENT OF THE NATIONAL NORM GROUP. IN TOTAL MATHEMATICS THE STUDENT'S ACHIEVEMENT IS BETTER THAN APPROXIMATELY 45 PERCENT OF THE NATIONAL NORM GROUP.

SPECIAL SCORES

NO SPECIAL SCORES HAVE BEEN REQUESTED

CONTENT SCORES				N	P	M					N	P	M					N	P	M				
READ VOCABULARY							LANGUAGE EXPRESSION				MATH CONCEPTS & APPL				SCIENCE									
18 WORD MEANING							38 NOUNS PRONOUNS				55 NUMERATION				67 PLANT BIOLOGY									
19 MULTIMEANING WORDS	✓		✓				39 VERBS			✓	56 NUMBER THEORY	✓		✓	68 ANIMAL BIOLOGY									
20 AFFIXES	✓						40 ADJECTIVES ADVERBS			✓	57 DATA INTERPRETATION			✓	69 ECOLOGY									
22 WORDS IN CONTEXT	✓						41 SENTENCE FORMATION			✓	58 PRE ALGEBRA			✓	70 MATTER AND ENERGY									
READ COMPREHENSION							42 SENTENCE COMBINING			✓	59 MEASUREMENT			✓	71 EARTH AND SPACE									
25 STATED INFORMATION			✓				43 PARAGRAPH STRUCTURE	✓			60 GEOMETRY	✓			72 PROCESS SKILLS									
27 PASSAGE ANALYSIS							44 PARAGRAPH COHERENCE	✓			SPELLING				SOCIAL STUDIES									
28 CENTRAL THOUGHT	✓										31 VOELS	✓			73 GEOGRAPHY									
29 WRITTEN FORMS TECHNIQUE			✓				MATH COMPUTATION				32 CONSONANTS	N			74 ECONOMICS									
30 CRITICAL ASSESSMENT				✓			46 SUBTRACT WHOLE NUMBERS			✓	33 STRUCTURAL UNITS	✓			75 HISTORY									
LANGUAGE MECHANICS							47 MULTIPLY WHOLE NUMBERS			✓					76 POLITICAL SCIENCE									
34 SENTENCE PHRASE CLAUSE			✓				48 DIVIDE WHOLE NUMBERS			✓					77 SOCIOLOGY ANTHROPOLOGY									
35 QUOTATIONS DIALOGUE			✓				49 DECIMALS			✓					78 INTERRELATED DISCIPLINES									
36 WRITING CONVENTIONS			✓				50 FRACTIONS	✓							79 APPLIED SOCIAL STUDIES									
37 EDITING SKILLS			✓																					

N = Not Mastered P = Partially Mastered

FORM LEVEL A 16
NORMS FROM 1988
TEST DATE 4/ 4/90
SCORING PATTERN (IRT)
QUARTER MONTH 28

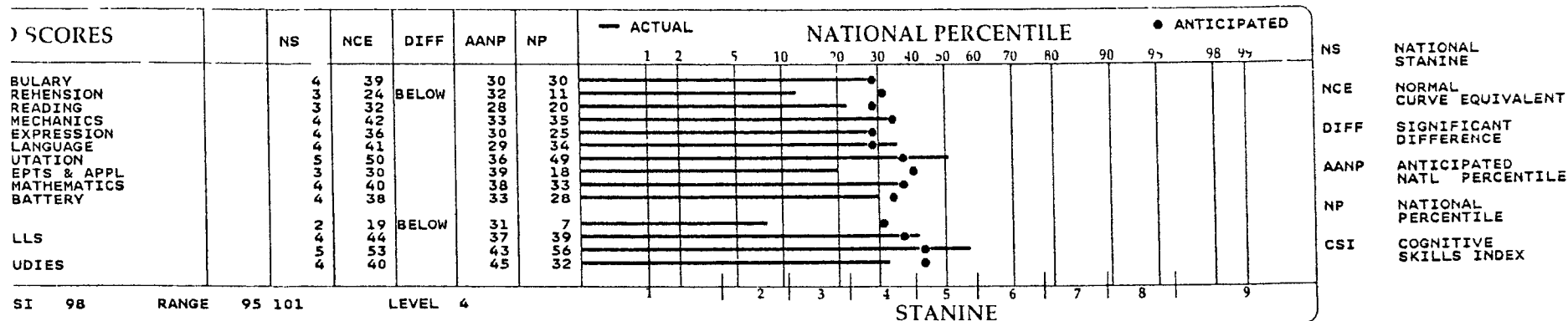
CITY EAST CLEVELAND CLASS STRICKLAND B
STATE OH SCHOOL CALEDONIA
DISTRICT E CLEVELAND

N NOT ALL ITEMS ATTEMPTED

STUDENT PROFILE REPORT

EVANS KAMELL D GRADE 7 1

E 12/15/76 AGE 13 10



ACHIEVEMENT REPORT

STUDENT'S TEST PERFORMANCE MAY BE COMPARED WITH THAT OF THE NATIONAL NORM GROUP AT THE SAME GRADE LEVEL BY REFERRING TO THE NATIONAL PERCENTILE SCORES. ACHIEVEMENT IN BASIC SKILLS IS BEST SUMMARIZED BY THE TOTAL SCORES. THE STUDENT'S TOTAL SCORE IS BELOW THE NATIONAL AVERAGE (THE 50TH PERCENTILE). READING THE STUDENT'S ACHIEVEMENT IS BETTER THAN APPROXIMATELY 20 PERCENT OF THE NATIONAL NORM GROUP. IN TOTAL LANGUAGE THE STUDENT'S ACHIEVEMENT IS AN APPROXIMATELY 34 PERCENT OF THE NATIONAL NORM GROUP. IN TOTAL MATHEMATICS THE STUDENT'S ACHIEVEMENT IS BETTER THAN APPROXIMATELY 33 PERCENT OF THE NORM GROUP.

TEST SCORES

ALL SCORES HAVE BEEN REQUESTED

TEST SCORES	N	P	M		N	P	M		N	P	M		N	P	M
BULARY				LANGUAGE EXPRESSION				MATH CONCEPTS & APPL				SCIENCE			
EANING		✓		38 NOUNS PRONOUNS		✓		55 NUMERATION	✓			67 PLANT BIOLOGY	✓		
EANING WORDS	✓			39 VERBS		✓		56 NUMBER THEORY	✓			68 ANIMAL BIOLOGY	✓	✓	
IN CONTEXT	✓			40 ADJECTIVES ADVERBS			✓	57 DATA INTERPRETATION	✓			69 ECOLOGY	✓		
REHENSION				41 SENTENCE FORMATION	✓			58 PRE ALGEBRA	✓			70 MATTER AND ENERGY	✓		
INFORMATION	✓			42 SENTENCE COMBINING	✓			59 MEASUREMENT	✓			71 EARTH AND SPACE	✓		
E ANALYSIS	✓			43 PARAGRAPH STRUCTURE	✓			60 GEOMETRY	✓			72 PROCESS SKILLS	✓		
L THOUGHT	✓			44 PARAGRAPH COHERENCE	✓										
N FORMS TECHNIQUE	✓			MATH COMPUTATION				SPELLING				SOCIAL STUDIES			
AL ASSESSMENT	✓			49 DECIMALS		✓		31 VOWELS	✓			73 GEOGRAPHY	✓		
MECHANICS				50 FRACTIONS	✓			32 CONSONANTS	✓			74 ECONOMICS	✓		
CE PHRASE CLAUSE	✓			51 INTEGERS	✓			33 STRUCTURAL UNITS	✓			75 HISTORY	✓		
IONS DIALOGUE		✓		52 PERCENTS	✓			STUDY SKILLS				76 POLITICAL SCIENCE	✓		
G CONVENTIONS		✓		53 ORDER OF OPERATIONS		✓		63 REFERENCE SOURCES	✓			77 SOCIOLOGY ANTHROPOLOGY	✓		
G SKILLS		✓						64 INTERPRETING GRAPHICS	✓	✓		78 INTERRELATED DISCIPLINES	✓		
								65 ORGANIZING INFORMATION	✓			79 APPLIED SOCIAL STUDIES	✓		
								66 ANALYZING INFORMATION	✓						

N = Not Mastered

P = Partially Mastered

M = Mastered

L A 17/18
M 1988
10/ 3/90
PATTERN (IRT)
ONTH 05

T CLEVELAN CLASS
SCHOOL
DISTRICT BEAVERS
KIRK
E CLEVELAN

RICHEY AND RICHEY
ATTORNEYS AT LAW

A Professional Association

RODNEY W RICHEY
LOLA S RICHEY

24 Vardry Street Suite 403
Greenville South Carolina 29601

Mailing Address
Post Office Box 10916
Greenville South Carolina 29603

(864) 467 0503
(864) 467 0646 FAX

Offices
Greenville/Spartanburg

Website
www.richeyandrichey.com

July 9, 2004

Steve Wayne Sumner
114 Manly Street
Greenville, SC 29601-3025

Re The State of South Carolina vs Kamell D Evans

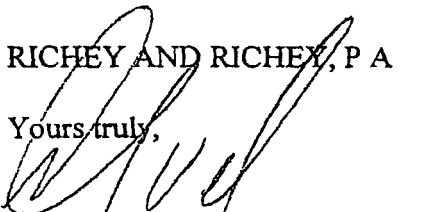
Dear Steve

This letter is a follow up to the conversation we had yesterday regarding Mr Evans' case. It is my understanding that you will be substituted in as the attorney for Mr Evans. It is my understanding that you picked up his file from my office on July 8, 2004. Also, we discussed that Judge Cole instructed you to receive all the funds that I obtained from Indigent Defense. Please be advised that I have forward all funds to co-counsel Skip Goldsmith and currently do not have any funds related to this case.

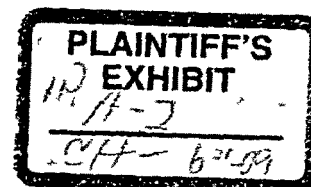
I wish you and Mr Evans the best of luck in your representation. If you should have any questions, please feel free to call me.

RICHEY AND RICHEY, P A

Yours truly,


Rodney Richey

RWR/tlg



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE GENERAL SESSIONS COURT
THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
vs)
KAMELL D EVANS)
NOTICE OF MOTION AND
MOTION FOR
DISCOVERY AND INSPECTION
Warrant Nos H359054, H359055,
H359052, H359051, H359056, H359058

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned counsel of record pursuant to Rule 5(a)(1)(A) & (B) of the South Carolina Rules of Criminal Procedure moves prosecution to permit the Defendant to inspect and copy or photograph within thirty (30) days of service of this Motion and at least within ten (10) days prior to trial, including but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such material come into existence or become available after initial disclosures

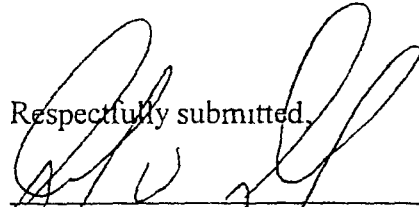
- A Any written or recorded statements made by the Defendant or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known or by the exercise of due diligence may become known, to the attorney for the prosecution,
- B The substance of any oral statement made by the Defendant, whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent
- C A copy of the Defendant's prior criminal record if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by exercise by due diligence may become known, to the attorney for the prosecution,
- D The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution

Upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances



For purposes of this Motion, the Defendant asserts that any item requested in Paragraphs (a), (b), (c), and (d) above is material to the preparation of the defense of this case

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rodney Richey', written over a horizontal line.

Rodney Richey
James L. Goldsmith, Jr.
Attorneys for the Defendant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
(864) 467-0646 fax

Greenville, South Carolina
August 12, 2003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	Warrant Nos H359054, H359055, H359052,
	)	H359051, H359056, H359058
THE STATE,	)	
	)	
-VS-	)	NOTICE OF MOTION AND MOTION
	)	FOR THE PRODUCTION AND
	)	INSPECTION OF EVIDENCE AND
KAMELL D EVANS	)	INFORMATION WHICH MAY LEAD
	)	TO EVIDENCE
	)	
	)	

TO ROBERT M ARIAIL, 13th CIRCUIT SOLICITOR

YOU WILL PLEASE TAKE NOTICE that as counsel for the above named, we are requesting, under the authority of Brady vs Maryland, 373 U S 83 (1963), Napue vs Illinois, 360 U S 364 (1959), Alcorta vs Texas, 355 U S 28 (1957), Mooney vs Holohan, 294 U S 103 (1935), Giglio vs U S, 405 U S 150 (1972), Moore vs Illinois, 408 U S 786 (1972), and Kyles vs Whitley, ____ U S ____ (1995), that your office supply to us, or make available for inspection, all evidence which may be favorable to the Defendant with regard to the offense with which he has been charged. The Defendant is requesting access to such favorable information as is in your custody as well as that being held by investigating officers or agencies. Such information would include but would not be confined to the following

1) All written statements of the Defendant, whether signed or unsigned,

2) All written statements made by witnesses or any other persons, whether signed or unsigned, which relate to this case,

3) All tape recordings made by witnesses or any other persons in connection with this case

4) Any and all written reports to the State Law Enforcement Division (SLED) Criminalistics Laboratory, Federal Bureau of Investigation Laboratories, City or County Police Department Criminalistics Identifications personnel, concerning an examination made by said laboratories and/or personnel thereof, of any physical, photographic or written evidence concerned with the investigation of this case,

5) Any and all photographs taken of the Defendant,

6) Any and all photographs taken at the scene' of the alleged crime and/or the victim, or otherwise relating to this case

7) Photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the name and address of the person(s) to whom the photographs were shown,

8) Handwritten notes made by police or other investigating officers of their conversations with the Defendant,

9) Handwritten notes made by police or their investigating officers of their conversations or interviews with witnesses,

10) All transcripts made of tape recorded statements made by the accused and by potential prosecution witnesses, as well as any handwritten notes,

11) Names and addresses of all witnesses having knowledge of the offense charged who have been interviewed by the Solicitor, his investigators, his staff or the investigating officers, whether subpoenaed or not, in the crime charged,

12) A copy of the incident report, together with copies of all supplemental reports written by officers investigating the crime involved in the above entitled action,

13) Right to inspect and/or copy or photograph all items of any kind and nature seized and removed as a result of any search of the Defendant and/or Co-Defendants, of any premises formerly occupied by the Defendant and/or Co-Defendants, if any, or any vehicle associated with the alleged crime,

14) Record of arrests and convictions of any and all witnesses, including the Defendant and any co-Defendants, known to the Solicitor's Office, in relation to this case,

15) All notes or memoranda, by police officers or other investigating officers of their conversations with persons who the State expects to or has called before the Grand Jury proceedings in connection with this case,

16) Autopsy reports and pathologist's reports to include any and all photographs of the victim, patient records provided to the pathologists, histological reports, toxicological studies, emergency room records, (including notations as to any medica-

tions administered as well as resuscitative measures instituted, if any),

17) Any physical or tangible item in the possession of the Solicitor's Office which may have relevance to the guilt or innocence of this Defendant,

18) Any criminalistics reports or results of tests performed upon items requested in Paragraph 4 above,

19) The right to inspect and examine any and all video/audio tapes made at the scene of the crime alleged herein and to obtain a copy thereof

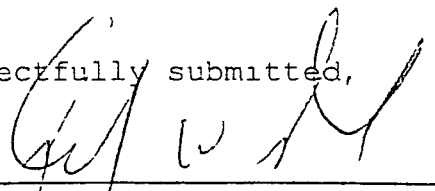
Recognizing that Brady vs. Maryland, supra, and other authorities cited require that only information favorable to the Defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the Court Order provide for an in camera inspection of the items sought to be discovered should you feel that such items are not favorable to the Defendant. By permitting the Court to examine the items requested, the legitimate interests of the State will be protected in that no disclosure in excess of Brady, et al, will occur. Further, it will be requested of the Court that said Order will be a continuing one, providing that in the event any items sought to be discovered herein become available subsequent to the making of the Order pursuant to this motion, said items

will be made available to the Defendant's attorney forthwith if discovered during trial, or no later than 12 00 noon on the first day following its acquisition if discovered before trial

The purpose of said motion is to enable the Defendant herein to properly prepare a defense to the offenses charged and to properly prepare for the examination of any witnesses who may testify in this case Defendant would show that the failure to produce any of the foregoing evidence or information by the law enforcement agency involved would result in a violation of the Fifth, Sixth and Fourteenth Amendments of the Federal Constitution of the United States

Respectfully submitted,

BY


Rodney W Richey
James L Goldsmith, Jr
24 Vardry Street, Suite 403
F C Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 (fax)
Attorneys for the Defendart

Greenville, South Carolina
Dated August 12, 2003

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Warrant No H359054, H359055,
 H359052, H359051, H350956, H359058

The State,	)	
	)	
v	)	NOTICE OF MOTION
	)	AND
	)	MOTION TO SEAL
KAMELL D EVANS,	)	VISITOR REGISTRATION LOG
	)	REGARDING THE DEFENDANT
Defendant	)	
	)	
	)	
	)	

To Robert M Ariail, 13th Circuit Solicitor

YOU WILL PLEASE TAKE NOTICE that the Defendant, KAMELL D EVANS, by and through his undersigned counsel will move this Court at a time and date to be hereafter ascertained for an Order sealing the civilian and professional visitor registration log at the Greenville County Detention Center and in support of the motion, would show unto the Court the following

1) That the Defendant is presently housed at the Greenville County Detention Center awaiting trial on the charge of murder,

2) That defense counsel for the Defendant is presently preparing for trial and, in that regard, intends to send civilian and professional personnel to the Detention Center for the purpose of preparing for the upcoming trial,

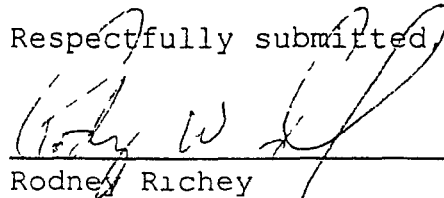
3) That the Detention Center, pursuant to policies and procedures, requires that all visitors identify themselves and sign a registration log when visiting at the jail,

4) That matters relating to the preparation of the defense in this case should remain confidential between the

Defendant and his legal counsel and the visitor logs maintained by the jail should be sealed and not revealed to anyone unless otherwise ordered by the Court,

5) That the Defendant moves that this Court issue its Order sealing the civilian and professional visitor registration logs maintained by the Greenville County Detention Center (or any other facility to which the Defendant might be transferred or assigned during the pendency of this matter) with such records not to be revealed to anyone without further Order of this Court

Respectfully submitted,



Rodney Richey
James L Goldsmith, Jr
Attorneys for Defendant
24 Vardry Street, Suite 403
Post Office Box 10916
Greenville, South Carolina 29603

Greenville, South Carolina
August 14, 2003

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSION
 COUNTY OF GREENVILLE)
) THIRTEENTH JUDICIAL CIRCUIT
 WARRANT NO H359054, H359055,
 H359052, H359051, H359056, H359058

THE STATE OF SOUTH CAROLINA,)
)
)

VS)
)

AFFIDAVIT OF SERVICE

KAMELL D EVANS,)
)
)

Defendant)
)
)

I hereby certify that I am an employee of RICHEY and RICHEY and that on the 15th day of August, 2003, I served the Notice of Motion and Motion to Seal Visitor Registration Log Regarding the Defendant, Motion for an Order Prohibiting the Solicitor From Assigning Police Operative/Undercover Operative Within the County Detention Facility in Contact with the Defendant and Motion for an Order Requiring the Solicitor to Respond in Writing to Each Motion which is Contested by the State, upon Robert M Ariail, Solicitor, by hand delivering the same to his office at the following address

Mr Robert M Ariail, Solicitor
 Solicitor's Office, 13th Judicial Circuit
 Greenville County Courthouse
 305 E North St , Suite 325
 Greenville, South Carolina 29601

Robert J Collins
 Affidavit

SWORN TO AND SUBSCRIBED BEFORE
 ME THIS 15 DAY OF Aug, 2003

Robert M Baker
 NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 7/28/2013

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Warrant No H359054, H359055,
 H359052, H359051, H350956, H359058

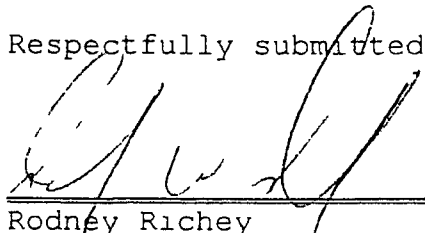
STATE OF SOUTH CAROLINA,)
)
)
)
 VS) MOTION
)
)
)
 KAMELL D EVANS,)
)
 DEFENDANT)
 _____)

MOTION FOR AN ORDER PROHIBITING THE
 SOLICITOR FROM ASSIGNING
 POLICE OPERATIVE/UNDERCOVER OPERATIVE
 WITHIN THE COUNTY DETENTION FACILITY
 IN CONTACT WITH THE DEFENDANT

NCW COMES the Defendant, KAMELL D EVANS, by and through
 counsel, and respectfully moves, pursuant to the provisions of
 the Fifth, Sixth, Eighth and Fourteenth Amendments to the Consti-
 tution of the United States and pursuant to the provisions of
 Article I, Sections Three, Nine, Fourteen and Fifteen of the
 Constitution of the State of South Carolina for an Order of this
 Court prohibiting the Solicitor from assigning or attempting to
 assign a police operative/undercover agent to make contact with

or engage the Defendant regarding the matter before the Court for the purpose of obtaining information from the Defendant while the Defendant is being detained in custody at the Greenville County Detention Center or any other detention facility during the pendency of this matter

Respectfully submitted,



Rodney Richey
James L. Goldsmith, Jr.
Attorney for the Defendant
24 Varady Street, Suite 403
Post Office Box 10916
Greenville, SC 29603

Greenville, South Carolina
August 14, 2003

2

This Defendant is on trial for his life The State is seeking the death by electrocution of this Defendant who is also a human being The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special "need for reliability in the determination that death is the appropriate punishment" in any capital case " Johnson v Mississippi, 486 U S 578, 108 S Ct 1981, 100 L Ed 2d 575, 584 (1988) (quoting, Gardner v Florida, 430 U S 349, 363-64, 97 S Ct 1197, 51 L Ed 2d 393 (1977) (quoting, Woodson v North Carolina, 428 U S 280, 305, 96 S Ct 2978, 49 L Ed 2d 944 (1976) (White, J , concurring)))

3

A motion is a request of the Court for a specific form of relief Virtually every jurisdiction recognizes the use of the motion to address issues relevant to either the prosecution or defense of a case

4

Rule 4 of the South Carolina Rules of Criminal Procedure is entitled "Motions in General" The Rule requires and mandates that all motions in a criminal case, unless made in open court during a hearing or trial, shall be made in writing

5

Clearly the Rules of Criminal Procedure mandate that the responsibility for either raising issues or waiving issues in criminal matters is on the defendant. Issues are raised by motions for the most part. It is patently unfair to require the defendant to either raise issues in writing or waive them and NOT require a written response from the State whenever the State is going to contest a particular issue.

6

The South Carolina Rules of Civil Procedure at Rule 7(b)(2) likewise require that motions be "in writing" and the rules applicable to "other matters of form of pleadings apply to all motions."

7

It seems somewhat sardonically ironic that if an individual in a civil case files a motion dealing with the proverbial law school "widget", a response is required but if an individual files a motion dealing with a human being's life - no response is required. Certainly the mandate of 'justice' requires more

8

The black hooded purveyors of death standing behind the executioners mask must surely be grinning at the irony of the procedural joke that no response is required or mandated in a

criminal - much less a death penalty case Our society's sense of fairness and justice must be affected by such a juxtaposition of values and valuelessness

9

This Defendant through his attorneys will be filing numerous motions in this case These motions will in part be determinative of whether or not he will live or die Yet - the Solicitor does not have to even respond to his cries for help from this court The Solicitor will, unless otherwise directed by this Court, do nothing more than appear in court with verbal that age-old expression used by prosecutors "There's no authority for that position" Surely Justice cries out for more than this

10

A person on trial for his or her life is entitled, under the Eighth and Fourteenth Amendments, to fundamental fairness, Houston v Estelle, 569 F 2d 372 (5th Cir 1978) In the case of United States v Young, 470 U S 1, 12-13, 105 S Ct 1038, 1045-46, 84 L Ed 2d 1, 10-11 (1985) the Supreme Court has rejected the notion of "invited responses" holding that '[r]eviewing courts should not be put in the position of weighing which of two responses was the lesser" The Court in United States v Young went on to admonish trial courts to require

prompt objections by the prosecutors to argument by the defense counsel

11

A prosecutor has a duty to uphold the dignity of the court and respect its authority, as well as maintain public confidence in the judicial system and the legal profession United States v Alabama, 571 F Supp 958 (N D Ala 1983) Accord ABA Standards on the Prosecution Function §3-1.1(d), Adams v State, 198 So 2d 255 (Ala 1967) (the primary duties of the office of the District Attorney are to see that justice is done)

12

The role of the public prosecutor has long been recognized as a special one

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

Rules of Professional Conduct, 3.8 (Comment), South Carolina Appellate Court Rules. See also American Bar Association *Standards of Criminal Justice*, 3-5.8(c) (prosecutor has responsibility to guard the rights of the accused as well as those of society at large)

13

The Solicitor and his assistants have an obligation to respond to each motion if the State is going to oppose the relief requested therein. To simply sit back and wait until the motions hearings and then orally respond fails to satisfy the obligations placed upon the Solicitor to actively respond to the defendant's appeals for relief for violations of his constitutional rights. How can the Solicitor say that he is fulfilling his duties if he never is required to respond to those points of law and fact for which relief should be granted. It is not enough for the Solicitor to stand in the wings of the halls of justice and ignore the just demands of a criminal defendant. If there are reasonable areas where the State has a legitimate interest in objecting to a particular motion, then the Solicitor should set forth his opposition to those requests in such a timely manner for the defendant to be prepared to present his case to the court.

14

Unless the State is required to respond in writing to the issues raised by the defendant through his motions, the defendant is forever banished to the arena of shadow boxing. At no time until the defendant's attorney is standing in the courtroom arguing the motions will he know what the State's responses will

be - if any Surely the mandates set forth in the Sixth and Eighth Amendments of the Constitution of the United States and the mandates enumerated in Article I of the Constitution of the State of South Carolina require more than this

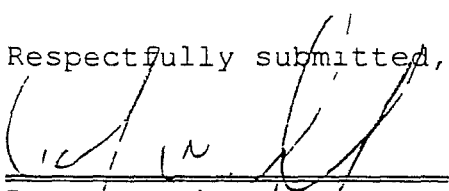
Wherefore, this Defendant respectfully demands that

(1) This Court grant him an evidentiary hearing on this Motion,

(2) That this Court issue an order directing the Solicitor to respond in writing, within a reasonable period of time, to all motions filed by this defendant which the State contests,

(3) That this Court grant to this defendant such other relief which is consistent with the requests set forth herein

Respectfully submitted,



Rodney Richey
James L. Coldsmith, Jr
Attorney for the Defendant
24 Vardry Street, Suite 403
Post Office Box 10916
Greenville, S C 29601
(864) 467-0503

Greenville, South Carolina
August 14, 2003

Yamell Evans - 4th grade

ACHIEVEMENT MARKS

100 — 100
90 — 89
80 — 79
70 — 69
60 — 60

EFFORT

1 — Superior
2 — Satisfactory
3 — Needs Improvement

WORK HABITS

	1	2	3	4
Follows Directions	S	S	S	S
Completes Classroom Work	S	S	S	S
Does Required Homework	S	S	S	S
Works Independently	S	S	S	S
Organizes Personal Property and Materials	S	S	S	S

RECORDS

	1 Ach / Eff	2 Ach / Eff	3 Ach / Eff	4 Ach / Eff
Reading	D 2	D 2	F 2	D 1
Writing	C 2	B 1	C 1	B 1
Math	D 2	C 1	F 2	C 1
Science	F 2	F 2	F 2	F 1
Language	C 2	C 2	F 2	C 1
Art	refer to Chapter 1			
Music	refer to Chapter 1			
Physical Education				
Language				

BEHAVIOR AND ATTITUDE

	1	2	3	4
Is Polite in Speech and Actions	S	S	S	S
Respects Others	S	S	S	S
Obeys School and Classroom Rules	S	S	S	S

Work Habits and Behavior and Attitude are Satisfactory unless otherwise noted with an N (Needs to Improve)

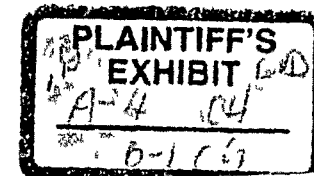
PERFORMANCE INDICATORS

S = SATISFACTORY

N = NEEDS IMPROVEMENT

PERFORMANCE AREAS

	1	2	3	4
Physical Education	S	S	S	S
Writing	S	S	S	S
Math Skills	S	S	S	S
Language	N	N	N	S
Instrumental Music	—	—	—	—



3394



East Cleveland City Schools

Rosie N. Doughty, Ph.D.
Superintendent of Schools

PARENT TEACHER CONFERENCE SUMMARY

Child's name Kamell Evans Grade 4
Conference with M. Evans Relationship Mother
Date of conference 1/26/88 School Caledonia

Teacher's comments

Attitude: Kamell has such a positive attitude towards school, learning, and his classmates. He puts forth such a great effort in whatever he does.

Work Habits/Behavior: Kamell works hard. He sincerely cares about his progress and achievements. Kamell does not misbehave. He is very friendly. This sometimes presents a problem during class. He does correct his behavior when I ask him.

Academics: Kamell tries very hard to achieve 'good' grades. He puts forth his best effort.

Teacher's signature L. Taylor

Summary/Plans for cooperative action: Kamell will continue to work hard and improve. Mother will be informed regularly of his progress.

Parent's signature Kenneth L. Evans

EAST CLEVELAND CITY SCHOOLS SPECIAL SERVICES REFERRAL REQUEST

Student Kennell Evans Birthdate [REDACTED] CA [REDACTED]
 Address [REDACTED] Phone [REDACTED]
 Parents [REDACTED] Date Referred 1/1/88
 School [REDACTED] Teacher Ms. Taylor Grade 4

I Statement of problem and reason for referral request (Check those that apply)

A ☐ Vision	J ☐ Attendance
B ☐ Hearing	K ☒ Study Skills and Work Habits
C ☐ Speech	L ☒ Poor Achievement Reading
D ☐ Language	M ☐ Poor Achievement Arithmetic
E ☐ Physical/Motor	N ☒ Poor Achievement Language Arts
F ☐ Medical Problem	O ☒ Poor Achievement <u>100%</u>
G ☐ Emotional/Behavioral Difficulties	P ☐ Suspect Substance Abuse
H ☐ Adjustment to Other Students	Q ☐ Gifted
I ☐ Adjustment to Authority Figures	R ☐ Other

II Description of suspected problem(s) (Please be specific)

Small problem in reading, can see, but not
recognize many words, difficulty in writing
words

III Interventions already attempted and results

Chapter 1 reading book, new words
read, read, read, read, read, read, read, read
read, read, read, read, read, read, read, read
read, read, read, read, read, read, read, read
read, read, read, read, read, read, read, read

IV Comments Kennell tries very hard but has low level in
reading, all of his reading is at the level of
first grade, reading many words

V Signature of initiator [Signature] Date 1/21/88
 Relationship to child Teacher
 (Teacher, Parent, Other)
 Signature of Principal _____ Date _____

Student

I Special Services Team Conference Summary
(To be completed during SS Team Conference)

Date 1/1/85for language evaluationEvaluation recommended: ☒ Yes ☐ No☒ Suspected Handicapped SLH☐ Non Handicapped

II. Presentor to Parent

P. K. K.
(Name)

III Anticipated evaluators (Indicate names of evaluators).

☐ Classroom teacher ☐ Special education teacher: ☐ Psychologist ☐ Speech therapist ☐ Curriculum specialist ☐ Guidance counselor ☐ Nurse ☐ Consultant ☐ Other

IV SS Team Members (Names/positions)

1 6 2 7 3 8 4 9 5 10

V SS Team Chairperson

 Signature

 Title/Position

EAST CLEVELAND CITY SCHOOLS
SPECIAL EDUCATION PROGRAMS

3398
687-7287
after 5:00 P.M.

INDIVIDUALIZED EDUCATIONAL PROGRAM
1987 - 1988

CASE NUMBER 00-87-5-257

STUDENT Kamell EVANS BIRTHDATE [REDACTED] CA 11 years
ADDRESS [REDACTED] PHONE [REDACTED]
PARENTS [REDACTED] PRESENT SCHOOL Caledonia GRADE 4th
SCHOOL RECOMMENDED Caledonia COUNTY Cuyahoga
RECOMMENDED DISTRICT OF EDUCATIONAL AGENCY OF ATTENDANCE East Cleveland
☒ EVALUATION TEAM CONFERENCE - DATE 6-8-88
☒ IEP CONFERENCE DATE 12/7/88
☐ IEP ANNUAL REVIEW CONFERENCE DATE _____

I STATEMENT OF THE SPECIFIC EDUCATIONAL PROGRAM/SERVICES RECOMMENDED

☒ IEP TEAM RECOMMENDS

- A. ☒ that the student *not be placed* in a special education program and/or related services that the student continue in the regular education programs
- B. ☐ that the student *be placed* in the special education program and/or related services indicated below by a check (✓)
- C. ☐ that the student *continue* in the special education program and/or related services indicated below by a check (✓)

Program/Related Services	Date of Initiation	Anticipated Duration
☒ Regular Education Programs	<u>11/88</u>	<u>6/89</u>
☐ Supplemental Services		
☐ Individual Instruction (Tutoring)		
☐ Small Group Instruction (Tutoring)		
☐ Special Class (☐ ALP, ☐ SLD ☐ - _____)		
☐ Learning Center (☐ ALP, ☐ SLD, ☐ - _____)		
☐ Home Instruction		
☐ Speech Language and Hearing Therapy		
☐ Vocational Special Education Services _____		

☐ Work Study Services _____		
☐ Transportation		
☐ Other _____		

EXTENT OF PARTICIPATION IN REGULAR EDUCATION PROGRAMS

in Regular Education Program

100% participation

Annual Goals and Short Term Objectives Regular Education Curriculum with emphasis on developing sound-symbol association, spelling of words, vowel digraphs

WHITE COPY FOR SPECIAL EDUCATION PROGRAMS FILES
YELLOW COPY TO PARENT VIA PRESENTOR

Test Subtest	Age Equiva- lent	Standard Score	Percent- ile	Ratio Other	Interpretation Within Normal Limits	Deviation of Difficulty-- Comments
Word Test (Date <u>5-27-88</u>)						
Associations	13-6	56	89		✓	
Synonyms	12-1	53	63		✓	
Semantic Absurdities	11-10	53	64		✓	
Antonyms	10-8	51	53		✓	
Definitions	12-7	53	74		✓	
Multiple Definitions	12-0	53	68		✓	
TOTAL TEST	12-7	57	95		✓	
Peabody Picture Vocabulary Test Original <u>✓</u> Form <u>✓</u> Date <u>4-29-88</u>	11-9	103	60		✓	
Bankson Language Screening (Date <u> </u>)						
Semantic Knowledge						
Body Parts						
Nouns						
Verbs						
Categories						
Functions						
Prepositions						
Colors/Quantity						
Opposites						
Morphological Rules						
Pronouns						
Verb Tenses						
Plurals/Comparatives/Superlatives						
Syntactic Rules						
Subject-Verb Agreement/Negation						
Sentence Repetition/Judgment-Correctness						
Visual Perception						
Visual Matching/Discrimination						
Visual Association/Sequencing						
Auditory Perception						
Auditory Memory						
Auditory Sequencing/Discrimination						
TOTAL TEST						
Test for Auditory Comprehension of Language (Date <u> </u>)						
Vocabulary Subscore						
Morphology Subscore						
Syntax Subscore						
TOTAL TEST						
Clinical Evaluation of Language Functions (Date <u>4-27-88</u>)						
Processing Subtests						
Word/Sentence Structure				41/40	✓	
Word Classes				35/32	✓	
Language Concepts				40/34	✓	
Relationships & Ambiguities				44/42	✓	
Oral Directions				43/36	✓	
Spoken Paragraphs				16/11	✓	
TOTAL PROCESSING	9-3	85	35	219		
Production Subtests						
Word Series				7/7 4/12		↓ grade level borderline
Confrontation Naming				23 sec/ 32 sec		
Word Associations				27/23	✓	
Model Sentences				48/33	✓	
Formulated Sentences				54/34	✓	
TOTAL	10-10	91	75	1-1		

II EVALUATIONS COMPLETED AND INFORMATION GATHERED- DATE 6/8/88 STUDENT Karnell Evans
 COMMUNICATION STATUS

Test Subtest	Sound-Symbol Tests	Date Tested	Age Equivalent	Standard Score	Percentile	Ratio	Other	Interpretation	Comments
Sound Memory	G-F-W	5-1388	9-9↑		43		5	✓	low ave
Sound Recognition			8-8↑		28		4	✓	low ave
Sound Analysis			14-0↑		83		7	✓	high ave
Sound Blending			10-10↑		50		5	✓	average
Sound-Symbol Association			3-5↑		-		-	-	* lower
Reading of Symbols			9-9		37		4	✓	low ave
Spelling of Sounds			7-9↑		11		2	-	* below ave

Arizona Articulation Proficiency Scale- Sound Errors

Stimulable for _____
 AAPS TOTAL SCORE _____ Severity _____ Interpretation _____
 Photo Articulation Test/Goldman Fristoe Test/Other Articulation Test Articulation is
 Sound Errors _____ Stimulable for WNL
 Age Score (PAT/GFTA) _____ Interpretation _____
 Khan Lewis Phonological Analysis (KLPA)/Other Phonological Test _____
 Sound System/ Phonological Processes _____
 Developmental Phonological Process Rating _____ Composite Score _____ Percentile Rank _____
 Speech Simplification Rating _____ Age Score _____ Interpretation _____

Ryan Fluency Scale/Other Test

Stuttered Words Per Minute _____ Automatics _____, Echoic _____, Making Up Sentences _____;
 Reading _____, Monologue _____, Conversation _____
 Stuttered Speech Characteristics _____

Secondary Stuttering Behavior _____

Degree of Social Interference _____

Fluency is
WNL

Voice _____ Pitch _____ Loudness _____ Quality (Hyponasality _____, Hypernasality _____,
 Hoarseness/Harshness/Stridency _____) Aphonia _____
 Interpretation Normal Voice is WNL

Further Test Interpretation or Discussion

In the Criterion Test of Basic Skills Karnell's scores were at the Mastery level with the exception of 1. (voiced Diphthongs, and Controlling r) which

6-8-88

3401

Karnell Evans

COMMUNICATION STATUS

Peripheral Oral Examination

Normal Structures & Functioning

A classmate said
Karnell was
confused & he usually gives
frustration with several points.
He has to be led through the
reasoning process. He reacts to
difficultly recalling phrases with
the difficult words.

Spontaneous Communication Sample (25 to 50 connected utterances) Receptive and expressive

oral language-- semantics, pragmatics, syntax, morphology, phonology, including auditory processing and language integration Articulation Fluency Voice)

Approximate number of connected utterances 25 Interpretation Articulation,

voice and fluency were WNL. Semantics, pragmatics

Syntax and morphology were also judged as WNL

Karnell conversed easily and did not exhibit any problem

processing simple conversational questions

Audiometric Screening Test

HEARING

Audiometric Threshold Test

Date 4-27-88

Decibel Level/Right Ear

Decibel Level/Left Ear

Interpretation

250	500	1000	2000	4000	8000	Hz
25 dB						

250	500	1000	2000	4000	8000	Hz
25 dB						

Hearing
is WNL

Other Hearing Tests and Results

Dates

* EDUCATIONAL FUNCTIONING

has problems with sentence structure and comprehension
(Academic Achievement, Communicative Performance, Social/Emotional Behavior, Psychomotor Behavior)

CTBS - Grade 4.6 3/88

NP	Lang Exp	56-average	Total Battery	35
22	56-average	65-average	REF Skills	30
18	Total	37	Science	30
20	Math Comp	40	Social Studies	29
7	" Conc/ Appl	40	Letter association	
82-average	Total	37	spelling & writing skills as well as	

Other Information poor sentence structure and difficulties in the area of reading comprehension. He was also noted as having difficulty expressing himself and poor vocabulary. Karnell likes Math and is working on 4th grade level in this subject. Karnell is in Chapter I Reading however progress has been minimal.

Classification of Disorder (Check Appropriate Areas)

Language Semantics 0 /Pragmatics 00 /Syntax 00 /Morphology 00 /Phonology 00 /Auditory Processing 5Articulation 00 Fluency 00 Voice 00

Severity of Disorder (Mild=1-2 Moderate=3-4-5 Severe=6-7-8-9 Profound=10)

Non-Handicapped Range Normal=00 Minimal=0)--

Language 5 Articulation 00 Fluency 00 Voice 00

Statement of Adverse Effect (Student) Karnell's communication disorder (classified above) seems to adversely affect educational performance as suggested by the following seen in the classroom-- reading difficulties

The Chapter I reading program and classroom intervention will continue for Karnell.

III STATEMENT OF PRESENT LEVEL OF EDUCATIONAL PERFORMANCE - DATE 4-29-88

Karnell's receptive language skills are commensurate with those of a child 11 years 9 months on the CELF. Karnell identified 41/52 word & sentence structures, 35/44 word classes, 10/44 linguistic concepts, 44/64 relationships & ambiguities 43/50 real directions and 16/34 spoken paragraphs. He also identified 27/33 word associations, 48/60 model sentences and 54/96 simulated sentences. He obtained a processing age of 9-3. The word learning obtained

Criteria for next IEP Annual Review

- _____ Mastery of Annual Goals (Including Short Term Instructional Objectives)
- _____ Progress/Results of Standardized Pre/Post Tests (_____)
- _____ Progress/Results of teacher made pre/post tests
- _____ Other _____

VIII TO BE COMPLETED BY PARENT/GUARDIAN

YES

NO

I agree with this IEP and give permission for the special education program/services as indicated

✓

I have been informed of my rights and due process procedural safeguards

✓

I waive my right to notification of this special education program/services by Certified Mail

✓

Date 12-7-88

Signature

Renee L. Evans

(Parent/Guardian)

* If parent was *not* in attendance at the IEP Conference, please attach parent's waiver to participate in the IEP Conference, and/or documentation of your efforts to include the parent.

IX. The undersigned agree that we are fully knowledgeable about the contents of this form agree that information provided was considered in the multi-factored evaluation and agree to the implementation of the program/services described herein. We understand that the student could not be placed in a special education program until after completion of this document. The undersigned parent agrees to a complete re evaluation in three years if the student is still enrolled in a special education program

SIGNATURE

POSITION

AGREE/DISAGREE

DATE

1
2
3
4
5
6

Kimberly Wilburn

Speech Pathologist

✓

12-7-88

Patricia L. Parker
(IEP Chairperson)

Curriculum Specialist

✓

12/7/88

Deella H. Blount
(Superintendent or Designee)

Supervisor

✓

12/23/88

ADDITIONAL COMMENTS

Reading Teacher _____ Classroom Teacher _____

1 2-2571

EAST CLEVELAND CITY SCHOOLS

ROSIE N DOUGHTY Ph D
SUPERINTENDENT

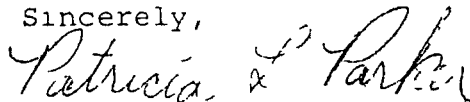
CALEDONIA ELEMENTARY SCHOOL
STELLA LOEB MUNSON PRINCIPAL

April 15, 1988

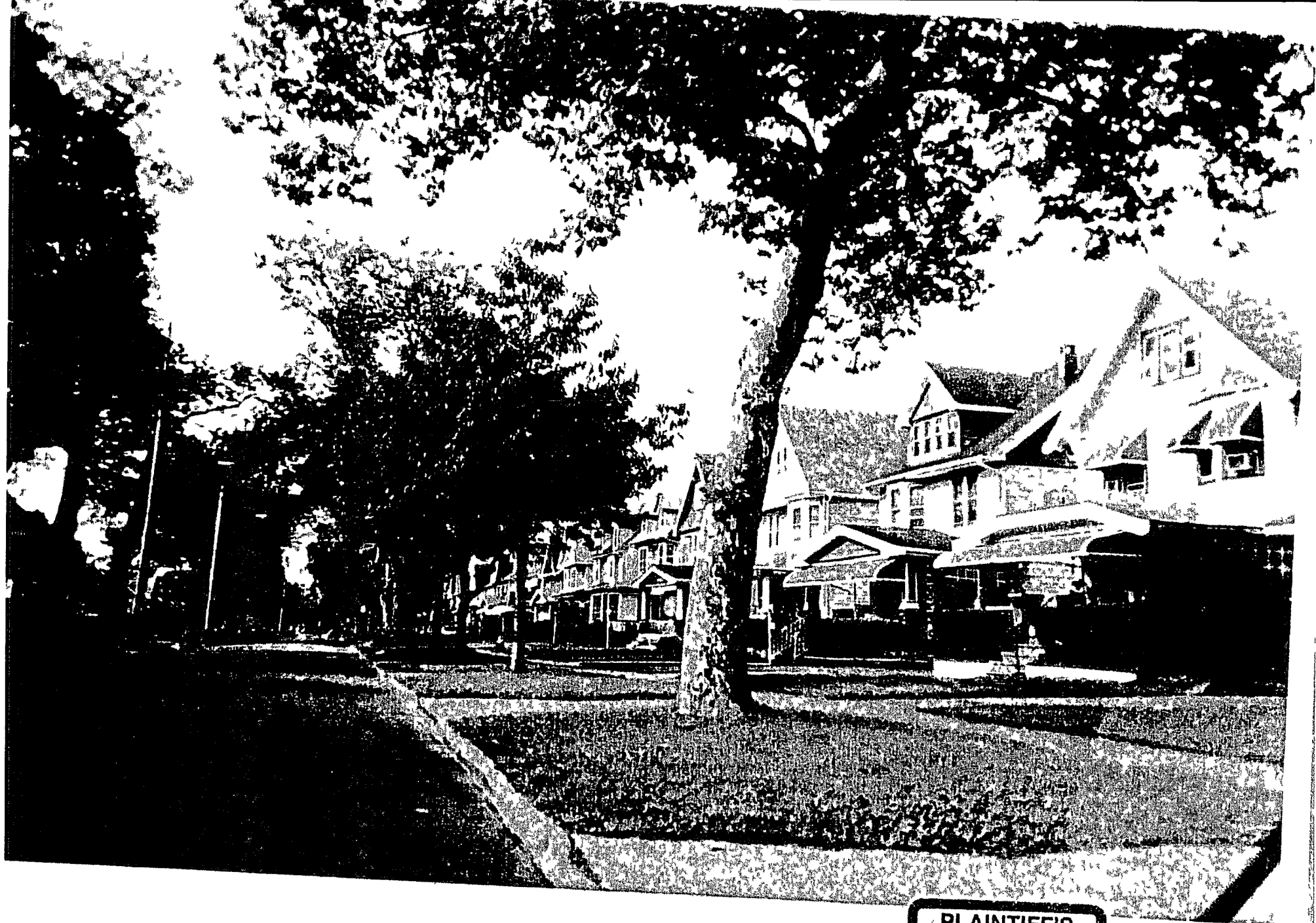
Dear Mrs Evans,

Contact me as soon as possible I would like to discuss Kamell's progress and needs with you Also, I have talked with Mr Evans, Kamell's father I must have permission from you before I give him any information

Sincerely,

A handwritten signature in cursive script that reads "Patricia L. Parker". The signature is written in dark ink and is positioned above the printed name and title.

Patricia L Parker
Curriculum Specialist



PLAINTIFF'S
EXHIBIT

17506



PLAINTIFF'S
EXHIBIT

A-6



3407

3408





The Champs -After falling just short last year, the South Carolina Seminoles captured

the CFL title on Saturday with a 34-0 win over Catawba. The Seminoles will begin national tournament play next week. (Photo by Joel FitzPatrick)

Seminoles clinch CFL title; await national playoff opening

by Joel FitzPatrick

A year ago the South Carolina Seminoles saw several questionable calls cost them the CFL championship.

The Seminoles have spent this season working to get back to that point and with just one loss in the regular season found themselves hosting the title game last Saturday at City Stadium.

This time, however, the Seminoles made sure they wouldn't have the title taken away from them when they came away with a 34-0 win over the Catawba Hornets. The title was the first in the organization's three-year history.

South Carolina will next host a national tournament game in two weeks.

Each day since we have won the title has only gotten better. Coach Tyrone Johnson said. It just feels

back. We went from the team that everyone was laughing at two years ago to the team that everyone is talking about now.

A play that didn't gain any yards told Johnson early in the contest that his team was going to win. Former Byrnes High player Lee Evans had gotten away from the defense, but the wide receiver was unable to come down with quarterback Kent Meredith's pass.

I knew right there that we were going to win, Johnson said. Their statistics didn't know the coverage and I knew we were going to be able to take advantage of that.

Meredith did take advantage of it later in the first quarter when he connected with Darnell Davidson (first side) on a 35-yard touchdown pass.

Two minutes later, Joe Dichter returned an interception for a touchdown, giving the Seminoles a 13-0

lead. After Joe scored on that interception, there were no more butterflies left and the guys were just ready to take care of business, Johnson said.

But I can't stop thinking about that first touchdown pass. It is all that has been on my mind since Saturday.

South Carolina pushed the lead to 27-0 before halftime on a one-yard run by Terry Blasingme and a 35-yard pass from Meredith to Kenya Crooks. The duo also hooked up in the fourth quarter for the only points of the second half.

I had a feeling that we were going to win, but I would have never thought that it would be 34-0, Johnson said. I was expecting another 20-16 battle. We are the new team to be it, and I think winning the title was only the start of something special.

PLAINTIFF'S
EXHIBIT
H-7 (4)
6-1-04

April 21, 2003

Hand delivered

The Honorable John W Kittredge
Greenville County Courthouse, Suite 213
305 E North Street
Greenville, SC 29601

Re State vs Kamell D Evans

Dear Judge Kittredge

I write to you regarding the above defendant and as a follow up to our chambers conference of April 7, 2003. As anticipated, I was appointed the next day to represent Mr. Evans and our meeting was solely for the purpose of considering substitute counsel.

I have discussed this matter with two excellent attorneys, Rauch Wise (864-229-5010) of Greenwood and Rick Vieth (864-582-2962) of Spartanburg. Both are very competent and furthermore qualified to serve if and when the State chooses to seek the death penalty in this case. Neither of these fine attorneys "wants" to be involved but both are willing to follow the Court's wishes.

I request that the substitution of counsel be resolved without delay and will be more than happy to submit a proposed Order on your instructions. If additional steps are necessary, please let me know.

Yours very truly,

John I Mauldin

JIM fg

cc Rauch Wise
Rick Vieth

h:\pd\general\4 21-03.doc



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 The State,)
)
 v)
)
)
)
 KAMELL DELSPAWN EVANS,)
)
 Defendant)
)

IN THE COURT OF GENERAL SESSIONS

NOTICE OF MOTION
 AND MOTION
 FOR SUBSTITUTION
 OF COURT-APPOINTED COUNSEL
 Warrant #H-359052 et al

FILED
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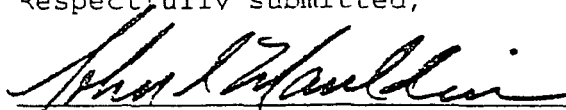
To Robert M. Ariail, 13th Circuit Solicitor

YOU WILL PLEASE TAKE NOTICE that the Defendant, KAMELL DELSPAWN EVANS, by and through his undersigned counsel, will move this Court at a time and date to be hereafter ascertained for an Order of the Court relieving the Greenville County Public Defender Office of further responsibility and substituting replacement counsel to represent the Defendant in this matter and, in support of this request, the Defendant would show unto the Court as follows

- 1) That the Defendant is charged with the offenses of murder x 2, kidnapping x 2, armed robbery, and possession of a firearm during a violent crime,
- 2) That the state intends to seek the death penalty and has served the defendant and counsel with Notice,
- 3) That at the time of his death, victim Antonio Joselito "Joe" Sapinoso was employed with the Greenville County Sheriff's Office and had been so employed since July 21, 1997,
- 4) That in his capacity as a Greenville County Sheriff Deputy, Mr. Sapinoso was assigned to the Courthouse Security Detail at the Greenville County Courthouse from July 24, 2000 until November 25, 2002
- 5) That among the many responsibilities of the Courthouse Security Detail is the transport and handling of prisoners for court appearances in both plea court and trial court as well as plain clothes security during capital murder trials and other overall security responsibilities for court house staff and employees,
- 6) That in the performance of his duties, Deputy Sapinoso performed all of these assignments, including participation in capital case security in cases involving clients represented by the Greenville County Public Defender Office
- 7) That the Defendant, facing the death penalty, is entitled to effective representation

- 8) That the Defendant is informed and believes that the Greenville County Public Defender Office should be relieved of further representation in this matter on the basis of the professional working relationship that existed between the victim and the Public Defender Office at the time just before the incident in this matter
- 9) That the undersigned court appointed counsel, Chief Public Defender for Greenville County whose office is housed in the Greenville County Courthouse, on behalf of the entire staff or the Public Defender Office, joins the request of the Defendant to be substituted in this matter

Respectfully submitted,



John I. Mauldin
Attorney for Defendant
Greenville County Courthouse
Greenville, South Carolina 29601

Greenville, South Carolina

29 day of May 2005

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

THE COURT OF GENERAL SESSIONS

The State,)
)

v)

CERTIFICATE OF SERVICE

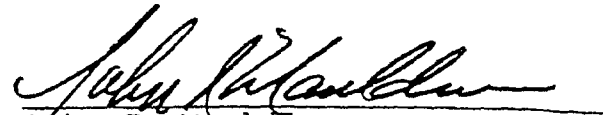
KAMELL D EVANS,)
 Defendant)
 _____)

I, John I Mauldin, Public Defender for Greenville County,
 do hereby certify that I have served the pleading listed below on
 Robert M Ariail, Solicitor, by causing the same to be hand-
 delivered to his office in the Greenville County Courthouse, 305
 E North Street, Greenville, South Carolina this 29 day of

May, 2003

Pleading

MOTION FOR SUBSTITUTION OF COUNSEL


 John I Mauldin
 Public Defender

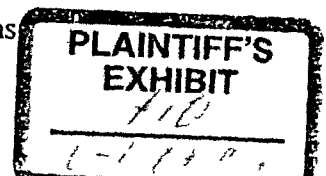
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)
VS) STATE'S RESPONSE TO DEFENDANT'S
KAMELL DELSHAWN EVANS) MOTION FOR SUBSTITUTION OF COURT-
DEFENDANT) APPOINTED COUNSEL
) H-359051, H-359052, H-359054, H-359055,
) H-359056, H-359057, H-359058

FILED
2003 JUL-4 PM 4 49

Comes now the State of South Carolina, by and through its attorney, Robert M Ariail,
Solicitor, Thirteenth Judicial Circuit and responds to the defendant's motion as follows

- 1 On the above listed warrants, the defendant is charged with two counts of murder,
two counts of kidnapping, one count of burglary 1st degree, one count of armed
robbery and one count of possession of a weapon during the commission of a
violent crime arising out of an incident which occurred on or about April 2, 2003
- 2 That on May 20, 2003, the State served upon the defendant and his counsel of
record, John Mauldin, the Notice of Intent to Seek the Death Penalty
- 3 The defendant's counsel states that the Greenville County Public Defender's
Office should be excused from representing this defendant because of the
professional working relationship that existed between one of the victims, Joe
Sapinoso, and the office of the Public Defender Counsel asserts that this
relationship existed because of the victim's presence in the courtroom during
previous death penalty cases in which defense counsel was involved Counsel has
failed to show this court how such a relationship, which counsel describes as



professional, could cause a conflict in his representation of the defendant in this matter. Counsel has not alleged any close personal relationship with either of the victims nor has counsel set forth any grounds upon which a conflict could exist.

- 4 According to Section 16-3-26 of the South Carolina Code of Laws, whenever a person is charged with murder and the death penalty is sought, "the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person and only one of the attorneys so appointed shall be the Public Defender or a member of his staff." 16-3-26(B)(1), South Carolina Code of Laws. The State submits that the legislative intent of this provision is to capture the experience of the Public Defender for all defendants charged with a capital crime. Such statutory purpose which is part of an overall legislative design for handling capital cases in this State should not be set aside absent a showing of compelling need.

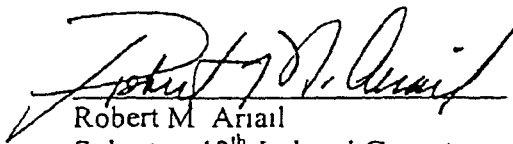
- 5 It should be noted for the court that counsel has previously represented three defendants charged with the murder of a law enforcement officer in the line of duty. In 1997, he defended Joseph Sheppard who was convicted of killing Officer Russ Sorrow of the Greenville City Police Department. In 2000, counsel defended Corey Harris who was convicted of killing Deputy Marcus Whitfield of the Greenville County Sheriff's Office and in 2002, counsel defended John Richard Wood who was convicted of killing Trooper Eric Nicholson of the South Carolina Highway Patrol.

- 6 Though it may be an unpleasant task to represent defendants who are charged with having murdered a law enforcement officer, it is a responsibility which

counsel undertook when he became the Public Defender for Greenville County
And simply because counsel may have known the victim and may have even
interacted with him on a small basis during the course of their professions, does
not create a conflict which would rise to the level contemplated by the legislature
when addressing substitution of counsel upon the existence of a conflict with the
public defender A courtroom relationship with the victim during the limited time
in which Mr Mauldin and his staff are in the courtroom would not create such a
relationship that would rise to the level of conflict contemplated by the law

- 7 Counsel states that the defendant is entitled to "effective" representation The
State agrees and would further add that Mr Mauldin has always provided to his
clients not merely "effective" representation, but exceptional representation
This defendant is entitled to that same degree of representation
- 8 Therefore, the State hereby submits that there has been no showing of a conflict in
the Public Defender participating as counsel for the defendant in this case and
therefore his motion should be denied

Respectfully submitted this 4th day of June, 2003


Robert M. Ariail
Solicitor, 13th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA

-vs

KAMELL DELSHAWN EVANS,

Defendant

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

H-359051 H-359052, H-359054

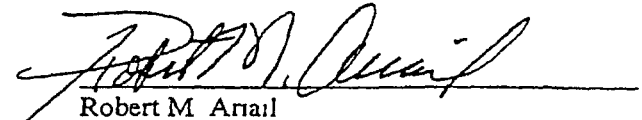
H-359055 H-359056, H-359057,

H-359058

2003 JUL 14 PM 4 49
ED. J. COURT

I Robert M Ariail Solicitor for the Thirteenth Circuit Solicitor s Office do hereby certify that I have served the pleading listed below on John Mauldin Public Defender by causing the same to be hand delivered to his office at the Greenville County Courthouse Suite 111 305 E North St Greenville, South Carolina this 4th day of June 2003

Pleading

State s Response to the Defendant's Motion for Substitution of
Court-Appointed Counsel


Robert M Ariail
Solicitor of the 13th Judicial Circuit
305 E North Street, Suite 325
Greenville, S C 29601

dale

From Dale Davis <dalemdavis@bellsouth.net>
 To <jmauldin@greenvillecounty.org>
 Sent Tuesday, August 31, 2004 2:47 PM
 Subject Evans

(I am extremely concerned about Kamell's life or I would not involve myself in something like this as I fear that it may have professional repercussions for me. After wrestling with the possibility of his getting a death sentence because I failed to act, I felt I had to do something.)

Pursuant to our conversation today, the following is a letter by e-mail that I sent to Steve Sumner prior to being replaced on the case.

Thanks for your help.

This was sent by e-mail on July 28, 2004.

Steve,

After we talked today, I had some difficulty getting this case off my mind. I very much want to work on Kamell's case as I enjoyed meeting him and his sister. I believe there are multiple issues of mitigation to investigate - possible low IQ, abusive father, neglectful mother, poverty, neighborhood conditions, and, of particular interest, the issue of the lead poisoning as a toddler and the treatment he received for it. It will take some time and skill to flush those records out but I'm confident they exist somewhere in Ohio's environmental records related to this issue. There have been many lawsuits and resulting databases of addresses & children exposed to lead. The exposure to lead in infancy and childhood is critical and can lead to many problems, there's a mountain of research demonstrating related problems.

The reason I had trouble getting the case off my mind is that the state's agenda seems to be driving this rush to court and their focus solely on expediency rather than saving Kamell's life, which is our focus. While I know it may be difficult to ask for a continuance until after the first of the year, in all of the cases I have been involved with, continuances surface frequently with circumstances a lot less severe than the ones in this case. This case will likely be scrutinized carefully due to the removal of one of the attorneys and at that point, everyone may question why a continuance for proper preparation of mitigation wasn't sought or granted.

Please don't think I am on a soapbox, but once this is done, it is



done - we don't get a second chance and a poorly prepared mitigation case is worse than none at all. At least if there is no mitigation presented, the case has a chance of being overturned. A poorly prepared case will meet some minimum standard but will usher the client directly to death row with little hope of any appellate help.

It seems unconscionable to me that a judge would expect you to be ready for trial in such a brief time when you have just gotten on the case. You have a private practice with many dates already scheduled - you cannot simply ignore the rest of your clients to prepare for a death penalty case. The issues in these cases are so complex and require such specialized training that surely he will allow time for you to better familiarize yourself with the case in preparation for trial as well as do a complete and thorough mitigation investigation as required by Wiggins. Can you make a motion setting out those issues? At least that way, that will be in the record for the PCR that will surely come later.

I truly am disturbed about this and can't figure out what the rush is all about. The other lawyer had it for a year and until the family brought up the problems with representation, no one was pushing to get it to court. This case has awful facts and will require the best mitigation presentation possible for Kamell to have a chance at life. Please don't think that I am setting myself up as some sort of mitigation magician because I'm not, but I have done a lot of these and know that this rush can only result in an almost certain death sentence.

Please consider my concerns.

Thanks,

Dale

Dale M. Davis
Capital Mitigation Specialist
Criminal Mitigation Services
Phone (843) 871-6176
Fax (843) 875-6626

dale

From 'Mauldin John' <JMAuldin@greenvillecounty.org>
To 'Teresa Norris (E-mail)' <normst1@bellsouth.net>
Cc <dalemndavis@bellsouth.net>
Sent Tuesday, August 31, 2004 5:03 PM
Subject FW: RE: Kamell Evans]

Teresa,

Pursuant to our phone call, below you will find a letter to Steve Sumner from Dale Davis. Dale called me and we discussed the case at length. You will recall that I was conflicted out of this case by then Circuit Judge Pettredge right after the incident happened (Spring of 2003 - one of the victims was on the Sheriff security detail at the courthouse).

I believe it should be seriously considered for "someone" to intervene on behalf of the client on the grounds that the case is being allowed to proceed without proper preparations. The case is currently scheduled to begin Monday, Sept 13 before Judge Cole. It seems apparent that the defense does not intend to request a continuance for whatever reason and I have no idea how the client may feel about this. Perhaps the defense counsel believes they are ready. Perhaps they are ready and nobody else knows it. Perhaps Dale would know.

I did receive a voice message from Steve Sumner yesterday about discussing capital voir dire. I have left a message for him and when he calls me back, I will ask if they intend to try to delay the case. In the meantime, think about what could be done by an outside source with affidavits. Call me.

John Mauldin
4-467-8522

-----Original Message-----

From: Dale Davis [mailto:dalemndavis@bellsouth.net]
Sent: Tuesday, August 31, 2004 2:52 PM
To: jmauldin@greenvillecounty.org
Subject: Fw: RE: Kamell Evans]

John,
In the letter below, I had changed a few things before I sent it and I didn't realize I sent you an earlier version.

John M. Davis
Capital Mitigation Specialist
Capital Mitigation Services
Phone (843) 871-6176
Fax (843) 875-6626

PLAINTIFF'S
EXHIBIT

4/11

RICHEY AND RICHEY
ATTORNEYS AT LAW

A Professional Association

RODNEY W RICHEY
LOLA S RICHEY

24 Vardry Street Suite 403
Greenville South Carolina 29601

Mailing Address
Post Office Box 10916
Greenville South Carolina 29603

(864) 467 0503
(864) 467 0646 FAX

Offices
Greenville/Spartanburg

Website
www.richeyandrichey.com

July 9, 2004

Steve Wayne Sumner
114 Manly Street
Greenville, SC 29601-3025

Re The State of South Carolina vs Kamell D Evans

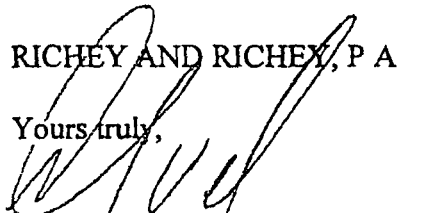
Dear Steve

This letter is a follow up to the conversation we had yesterday regarding Mr Evans' case. It is my understanding that you will be substituted in as the attorney for Mr Evans. It is my understanding that you picked up his file from my office on July 8, 2004. Also, we discussed that Judge Cole instructed you to receive all the funds that I obtained from Indigent Defense. Please be advised that I have forward all funds to co-counsel Skip Goldsmith and currently do not have any funds related to this case.

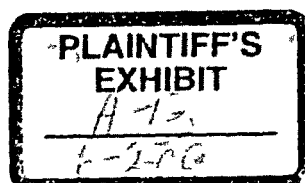
I wish you and Mr Evans the best of luck in your representation. If you should have any questions, please feel free to call me.

RICHEY AND RICHEY, P A

Yours truly,


Rodney Richey

RWR/tlg



SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, South Carolina 29601-2185

Robert M. Arian
Solicitor

Telephone (864) 467 8647
Facsimile (864) 467 8610

TO Steve Sumner - 233-8781
FAX# _____
FROM Betty Strom
RE Kamel Evans
DATE 7-26-04

TOTAL # PAGES, INCLUDING THIS COVER 13
MESSAGE _____

Any questions, please call
467-8784
Melita



07/26/2004 09 54 13TH CIRCUIT SOLICITOR GRNULE + 92338781

NO 938 D02

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)
VS) CONSENT ORDER
KAMEL EVANS)
DEFENDANT)

COMES NOW the State of South Carolina by and through its attorney, Robert M Ariail, Solicitor for the Thirteenth Judicial Circuit and the attorneys for the defense, Steve W Sumner and James L Goldsmith and hereby consent that the trial of the above referenced case will begin on September 13, 2004

Therefore, it is hereby ordered that the case of the State vs Kamel Evans will begin on September 13, 2004

So ordered this ____ day of July, 2004

Honorable J Derham Cole

Robert M Ariail, Solicitor

Steve W Sumner, Attorney for Defendant

James L Goldsmith, Attorney for Defendant

Dale M. Davis

Criminal Mitigation Services

P O Box 50944
Summerville SC 29485
Phone 843-871-6176
Fax 843-875-6626
e-mail dalemdavis@bellsouth.net

July 21, 2004

Steve W Sumner, Esquire
114 Manly St
Greenville, SC 29601

RE State v Kamel Evans

Dear Steve

I enjoyed talking to you today about the Kamel's case and I am sending the requested information. My resume and affidavit are enclosed.

Proper preparation of the mitigation in a death penalty case requires a thorough social investigation of the defendant's background. All records of any type i.e. birth, school, medical, jail, mental health, etc., related to his past must be collected and reviewed. Interviews of multiple family members, friends, teachers, employers, etc. must be conducted. Based on information gained from these sources, additional investigation and the need for expert consultation is a possibility. A case of this type generally requires approximately 300 to 400 hours to complete, discounting travel time.

My hourly fee is \$50 plus mileage and expenses (postage, long distance calls, copy fees, office supplies unless provided by the attorney, etc.)

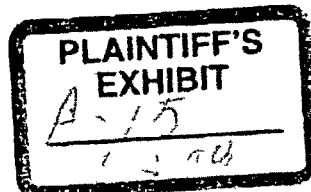
I just completed work on a case here in Charleston that resulted in a plea to life last week. I have four other death penalty cases pending – one in South Carolina and three in Georgia. One of the Georgia cases is scheduled to go to trial on October 4, 2004 and it will not be continued. None of the other cases have trial dates right now.

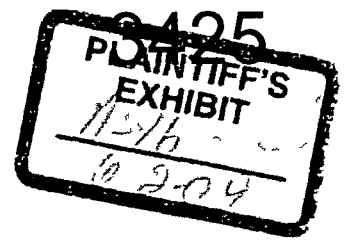
As we discussed, I will see Kamel at the jail on Thursday and then we will contact each other after the visit. I look forward to meeting you.

With warmest regards

Dale M. Davis
Capital Mitigation Specialist

Enclosures as stated above





Steve Sumner

From dalemdavis@bellsouth.net
Sent Wednesday, July 28, 2004 7:03 PM
To stevesumner@bellsouth.net
Subject Kamell Evans

Steve,
After we talked on Monday I had some difficulty getting this case off my mind. I am working on a couple of cases in Georgia this week and have continued to think about it as I've driven through Georgia and am now in Jacksonville, FL.

I very much want to work on Kamell's case as I enjoyed meeting him and his sister – and to a lesser degree his dad. I believe there are multiple issues of mitigation to investigate – possible low IQ, abusive father, neglectful mother, poverty, neighborhood conditions, and, of particular interest, the issue of the lead poisoning as a toddler and the treatment he received for it. It will take some time and skill to flush those records out but I'm confident they exist somewhere in Ohio's environmental records related to this issue. There have been many lawsuits and resulting databases of addresses & children exposed to lead. The exposure to lead in infancy and childhood is critical and can lead to many problems; there's a mountain of research demonstrating related problems.

Back to my point – the reason I have had trouble getting the case off my mind is that the State's agenda seems to be driving this rush to court and their focus is solely on expediency rather than saving Kamell's life, which is our focus. While I know it may be difficult to ask for a continuance until after the first of the year, in all of the cases I have been involved with, continuances surface frequently with circumstances a lot less severe than the ones in this case. This case will likely be scrutinized carefully due to the removal of one of the attorneys and at that point, everyone may question why a continuance for proper preparation of mitigation wasn't sought or granted.

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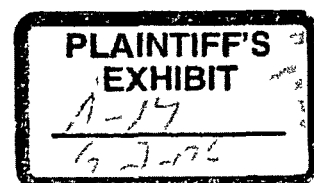
Whether you decide to continue using me as the mitigation person or not, please consider my concerns. Thanks,
Dale

Dale M Davis
Capital Mitigation Specialist
Criminal Mitigation Services
843-871-6176
843 875-6626

dale

From <dalemDavis@bellsouth.net>
 To <dalemDavis@bellsouth.net>
 Sent Saturday, July 31, 2004 8:21 PM
 Subject [Fwd: RE: Kamell Evans]

>
 > From "Steve Sumner" <stevesumner@bellsouth.net>
 > Date: 2004/07/29 Thu AM 10:46:28 EDT
 > To: <dalemDavis@bellsouth.net>
 > Subject: RE: Kamell Evans
 >
 > Thank you for your letter Dale. I may need an affidavit from you on
 > this point. I have alerted the prosecutor to this problem. I will be
 > in touch once I have more info - Steve
 >
 > -----Original Message-----
 > From: dalemDavis@bellsouth.net [mailto:dalemDavis@bellsouth.net]
 > Sent: Wednesday, July 28, 2004 7:03 PM
 > To: stevesumner@bellsouth.net
 > Subject: Kamell Evans
 >
 > Steve,
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 > have continued to think about it as I've driven through Georgia and am
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 > Back to my point - the reason I have had trouble getting the case off my
 > mind is that the State's agenda seems to be driving this rush to court
 > and their focus is solely on expediency rather than saving Kamell's
 > life, which is our focus. While I know it may be difficult to ask for a
 > continuance until after the first of the year, in all of the cases I
 > have been involved with, continuances surface frequently with
 > circumstances a lot less severe than the ones in this case. This case
 > will likely be scrutinized carefully due to the removal of one of the
 > attorneys and at that point, everyone may question why a continuance for
 > proper preparation of mitigation wasn't sought or granted



9/4/2007

Please don't think I am on a soapbox, but once this is done, it is done - we don't get a second chance and a poorly prepared mitigation case is worse than no mitigation at all. At least if there is no mitigation presented, the case has a chance of being overturned. A poorly prepared case will meet some minimum standard but will usher the client directly to death row with little hope of any appellate help.

It seems unconscionable to me that a judge would expect you to be ready for trial in such a brief time when you have just gotten on the case. You have a private practice with many dates already scheduled - you cannot simply ignore the rest of your clients to prepare for a death penalty case. The issues in these cases are so complex and require such specialized training that surely he will allow time for you to better familiarize yourself with the case in preparation for trial as well as do a complete and thorough mitigation investigation as required by Wiggins. Can you make a motion setting out those issues? At least that way, that will be in the record for the PCR that will surely come later.

I truly am disturbed about this and can't figure out what the rush is all about, the other lawyer had it for a year and until the family brought up the problems with representation, no one was pushing to get it to court. This case has awful facts and will require the best mitigation presentation possible for Kamell to have a chance at life. Please don't think that I am setting myself up as some sort of mitigation magician because I'm not, but I have done a lot of these and know that this rush can only result in an almost certain death sentence.

Whether you decide to continue using me as the mitigation person or not, please consider my concerns.

Thanks,

Dale

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Capital Mitigation Specialist
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July 30, 2004

Steve W Sumner
Attorney at Law
114 Manly Street
Greenville, SC 29601

RE State v Kamell Evans

Dear Steve

Thank you for taking the time this morning to speak with me regarding Kamell Evan's case. My resume is enclosed and the affidavit will be forthcoming.

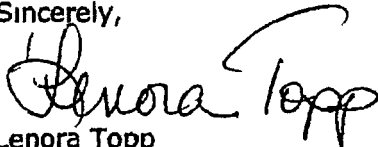
As you are well aware, proper preparation of the mitigation in a death penalty case requires a thorough social investigation of the defendant's background. All records of any type related to his past must be collected and reviewed. Interviews of multiple family members, friends, teachers, employers, etc. must be conducted. Additional investigation is a possibility based on information gathered from these sources.

Also in this case, a trip to Cleveland, OH must be made in order to collect records and especially to interview members of Mr. Evans' immediate family. Mr. Evans' grandmothers and his aunts, uncles and cousins live in Ohio. In addition to Ohio, it is possible that a trip to Atlanta, GA will be necessary.

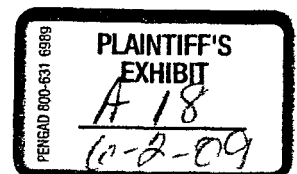
A case of this type should require approximately 100-150 hours to complete, discounting travel time. My hourly fee is \$50 plus mileage and expenses (postage, long distance calls, copy fees, plane fare, hotels, out-of-state meals, etc.).

Thank you so much for asking for my assistance with this very serious matter. I look forward to working with you and Kamell Evans,

Sincerely,



Lenora Topp
Mitigating Specialist



**INTERVIEW – RON PLATT
STATE V KAMELL EVANS
TAKEN BY LENORA TOPP
AUGUST 19, 2004**

On August 19, 2004, at approximately 11 00 am, Ron Platt was interviewed at the Michelin Plant in Sandy Springs between Anderson, SC and Clemson, SC Mr Platt works for ABM Janitorial Services, a contract company, and has ben at Michelin for the past 10 years His home address is [REDACTED] and his phone number is [REDACTED]. He is a soft spoken man who cares very much for Kamell "Mell" Evans The following information was obtained

- ↓ Mr Platt has known K Evans since the time that Evans played with the Seminole Warriors, a semi-pro football team in Greenville, SC
- ↓ During that time, Platt and several friends started a center for a sports team called the "Nickeltown Warriors"
- ↓ This center was for the Green Line and Nickeltown children, who lived in the low-income areas
- ↓ They played football and basketball
- ↓ Mr Platt met "Mell" at a friend's house one day in 2002, he thought, and they instantly became friends, although Mr Platt is at least 10 years older than Evans
- ↓ He felt Mell thought of him as a good friend and as an older brother that he never had
- ↓ Evans made a big impact on the kids from the center because he was the first semi-pro player they had ever met
- ↓ The kids fell in love with Evans and he did with them
- ↓ Evans was instrumental in getting the children to meet the other players at some of the games
- ↓ Evans would even go to the center and watch the kids practice
- ↓ Mr Platt said Evans has a golden heart
- ↓ He thought Evans had to leave the team because of a knee injury
- ↓ Barbeques were held at the Platt home with Evans being there all the time
- ↓ They talked to each other like brothers
- ↓ Mell would step up to the plate at the outings to attempt to stop any rowdiness—he'd tell them to "hold it down"
- ↓ When helping plan the barbeques, Evans made everyone contribute—he didn't like free loaders
- ↓ He was a peace keeper
- ↓ They never used drugs but both of them did drink beer
- ↓ Mr Platt never knew of any drug use or sales by Evans
- ↓ Evans was such a happy person, never talking about many personal problems
- ↓ He didn't talk much about his parents, but he did a lot about his sister and nephew



- Evans often took his nephew over to the Platt home to play with Mr Platt's children
- ✚ Mr Platt trusted Evans implicitly around his children and family members
- ✚ K Evans called Mrs Platt "Mom"
- ✚ Mr Platt recalled when his own son seemed to be undisciplined and had a hot temper, often arguing with his parents
- ✚ Mell counseled with him frequently reminding him how lucky he was to have a family who cared
- ✚ Mr Platt felt Evans had no family backing or support and that was why he dropped out of college
- ✚ He was not given any money so he could socialize like his peers
- ✚ Evans had a sense of wanting to be part of a crowd and maybe that's why he did the tattoo thing
- ✚ Mr Platt never heard Evans discuss gang activity or wanting to be in a gang
- ✚ Evans was dating Christina when he met Evans and she had visited the Platt home with Evans
- ✚ They seemed to care for each other like girlfriend/boyfriend
- ✚ Mr Platt recalled seeing Evans and Christina on the Saturday before the shootings
- ✚ Evans was driving a white convertible Mercedes and they drove by the Platt house
- ✚ Evans made a signal with his hand like he was coming back, but he never did
- ✚ When the incident happened, it blew everyone away
- ✚ Mr Platt is very willing to come to court for Kamell Evans
- ✚ He will probably bring his wife and his son, too
- ✚ Mr Platt does not condone what happened, but he feels "Mell" shouldn't be executed

**INTERVIEW - SCOTT PARKER
STATE V KAMELL EVANS
TAKEN BY LENORA TOPP
AUGUST 19, 2004**

On August 19, 2004, at approximately 10:10 am, Coach Scott Parker was interviewed at TL Hanna High School in Anderson, SC. Coach Parker was one of Kamell Evans' coaches at N. Greenville College. He requested any correspondence be directed to him at the school, 2600 Hwy 81 North, Anderson, SC 29621 with the phone number of 864/260-5151. He was extremely cooperative and before the end of the interview, he introduced me to Chris Davis, who played football with Evans at N. Greenville and who is now working security at TL Hanna High. Chris Davis would like to come to court for Kamell. The following information was obtained from Coach Parker:

- ✦ Coach Parker remembered K. Evans as being a great kid.
- ✦ He was so surprised when he heard about the incident.
- ✦ K. Evans was a good football player and although Evans seemed to "walk the line" sometimes, it was never to the point of discipline.
- ✦ Coach Parker thought the tattoos and "gang member dress style" was more of an image than anything and the image seemed to be portrayed by the black male students, not just by K. Evans.
- ✦ K. Evans was constantly polite and never had the wrong attitude toward him or any of the team players.
- ✦ The coach didn't really know why Evans dropped out of school, in fact, Evans told him he was going to come back, but he never did.
- ✦ Coach Parker last saw Evans about 4-5 years ago and everything seemed to be ok.
- ✦ He recalled his wife commenting that Kamell had the sweetest smile and he was always so nice.
- ✦ Coach Parker will be glad to come to court to testify for Kamell Evans—he does not want him to die.



**INTERVIEW – TERRY PEDEN
STATE V KAMELL EVANS
TAKEN BY LENORA TOPP
AUGUST 22, 2004**

On August 22, 2004, at approximately 2 30 pm, Terry Peden was interviewed at Shatima Evans' beauty shop in Duncan, SC. Mr. Peden is a long distance truck driver and was on his way home from a trip when he stopped for the interview. He is a strong advocate for Kamell Evans and will do what he can to help. His address is [REDACTED] and his phone number is [REDACTED]. The following information was obtained:

- ✦ Terry Peden has been self-employed with Peden Trucking for the past 16 years—he's been driving for the past 2 years
 - ✦ Prior to that, he was in the Marines for 15 years
 - ✦ Mr. Peden met K. Evans about 6 years ago when they both worked out at the YMCA
 - ✦ Mr. Peden's son and Evans' nephew played football on the same little league team
 - ✦ They became good friends then
 - ✦ When Mr. Peden started coaching football at the Greer Recreational Center, Evans would take his nephew over and he would help with the coaching
 - ✦ Mr. Peden influenced Evans to play semi-pro ball
 - ✦ Mr. Peden recalled the weekends after he'd get home from driving
 - ✦ He and Evans would take their two young men out for fun times, i.e. go cart driving, etc.
 - ✦ He trusted Evans with his son as if Evans were family
 - ✦ Mr. Peden used to throw cookouts and when friends knew Evans was going to be there, they showed up
 - ✦ It seemed that everyone just gravitated to Kamell
 - ✦ Evans was a happy man and a lot of people depended on him, from kids to adults
 - ✦ Mr. Peden knew Christina but she was never around when they did "man/boy" activities
- [REDACTED]
- ✦ About the only time he saw her was when they all rode motorcycles together or when she showed up for several cookouts
 - ✦ Mr. Peden saw Evans about to get in a fight one time
 - ✦ At one of the cookouts, some guy disrespected Christina by calling her a rude name and Evans stood up for her
 - ✦ It was a strong rule that no one called women rude names around Evans because he didn't like to hear it—he had too much respect for women
 - ✦ This was something Mr. Peden agreed with Evans on – no one should be rude in that manner



- ✦ Evans' nephew's name is DJ and he is like a brother now to Mr Peden's son
- ✦ DJ is devastated about the incident and Mr Peden is trying to keep his mind off of things and keep him busy
- ✦ He just enrolled him in football league
- ✦ Mr Peden always felt comfortable with Evans taking care of his son, who is now 12 years old
- ✦ Mr Peden doesn't know exactly why Evans quit college, but felt that there was some nagging from Christina about money issues
- ✦ He knew that Evans wanted things to be different for him as an adult than as they were when he was a child, but Evans never really talked about his childhood or his parents
- ✦ Mr Peden recalled Evans hurt his knee while playing semi-pro and that is why he had to quit
- ✦ In regard to drug use or sales, Mr Peden said neither he or Evans were involved with friends who were into drugs
- ✦ He doesn't know where any drug information came from because just before the shootings, he was running a crane in the area and saw Evans every afternoon—there were never any drugs around
- ✦ He remembered a time when he, Evans and another friend were in a car together on the way to Wildwinds, with Mr Peden driving
- ✦ He heard Evans ask the friend what he had in his pocket
- ✦ When he pulled out some marijuana, Evans told him to throw it out the window or get out of the car
- ✦ The weed was thrown out
- ✦ There also was absolutely no cursing around small kids—a strict rule they both followed
- ✦ Mr Peden said Christina was too demanding of Evans, but he was crazy about her
- ✦ She used to take money out of his pockets without his knowledge or permission, even though he never went through her purse
- ✦ Whatever she wanted, however, he tried to get
- ✦ Evans was working a steady job, but whenever he could, he helped Mr Peden with detailing and washing cars, washing motorcycles, cutting grass, helping with chores around the house—all to make a little extra money
- ✦ Mr Peden insisted on paying him for everything he did to help
- ✦ Mr Peden never knew Christina to work any type of job
- ✦ When asked what he knew about gang involvement, Mr Peden said Evans never talked about gangs, but they were going to start a motorcycle club
- ✦ He laughed and said that was the closest thing that was ever said about a gang

✦ [REDACTED]

✦ [REDACTED]

✦ [REDACTED]

✦ [REDACTED]

- ↓ [REDACTED]
- ↓ Both he and Evans liked the color blue
 - ↓ Mr. Peden never saw Evans or Christins with a gun
 - ↓ If Evans was known to carry a gun or show it off, he would never have been allowed to be around Mr. Peden, his son or his house
 - ↓ The only time Mr. Peden saw Evans in a confrontation was when they were driving through some apartments one day and they saw a friend, Curt, who was at a cookout, get into an altercation with a fellow who had pulled a gun on Curt
 - ↓ Evans made Mr. Peden stop the car and he got out, walked up to them and talked the fellow into putting up the gun
 - ↓ There were children around and although Evans wasn't involved with the fight, he wanted to protect the innocent children
 - ↓ They then left and apparently, the cookout continued
 - ↓ Evans often kept friends who were too drunk from driving—he'd take them home or get them rides
 - ↓ Besides Mr. Peden's brothers, Evans was the most dependable to check on things, i.e. the house or family when Mr. Peden was out of town
 - ↓ Earlier during the day of the incident, Evans called Peden and said he wanted to talk because he was feeling down
 - ↓ The two often called each other in the middle of the night just to talk about little things
 - ↓ At that time, Mr. Peden was on a trip in Atlanta, but he asked Evans to tell him what was going on while they were on the phone
 - ↓ Evans said, no, I just wanted to talk to you in person, but it can wait
 - ↓ Mr. Peden offered to turn around and go back to Greer, but Evans discouraged him from doing that
 - ↓ Mr. Peden feels extremely guilty about not going back—he thinks he may have been able to keep the shootings from happening
 - ↓ He would have never thought this could have happened
 - ↓ He can't believe it—not the "Mell" he knows
 - ↓ Evans would give the shirt off his back to anyone, even his last shirt
 - ↓ Mell wasn't rich but if he had something someone wanted, he'd share
 - ↓ Mr. Peden recalled their friend Julio had a motorcycle that really was just a piece of junk and he always ragged at him and Evans about wanting another bike
 - ↓ One day, Evans told Mr. Peden that he was going to set up a time payment plan for Julio and sell him his motorcycle
 - ↓ Mr. Peden knew Evans loved his bike and couldn't believe he would sell it
 - ↓ Evans told him he hated to see Julio be without, and he felt sorry for him, so he would just buy another one
 - ↓ Julio did pay Evans back
 - ↓ Mr. Peden definitely wants to testify for Kamell Evans

MEMORANDUM

TO Steve Sumner Esq

From George N Martin Corrections Consultant

Ref State of South Carolina vs Kamell Evans

Date August 30 2004

Regarding your request during our discussion on August 11, 2004 I will attempt to summarize the issues concerning Kamell Evans, his upcoming trial and what he might expect if incarcerated in the South Carolina Department of Corrections (SCDC)

In addition to our brief meeting with Kamell on July 23 I have seen him on two more times at the Greenville County Detention Center (GCDC) He has been polite and engaging on both occasions Although he has consistently expressed remorse for the circumstances that led to his being charged I am not at all certain he has an adequate appreciation for the seriousness of his situation

On the matter of my testimony I would assume the first order of business would be to establish my credentials as an 'expert' I would suggest some line of questioning such as the following

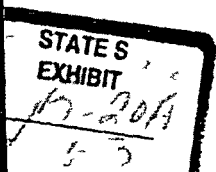
NAME	George N Martin III
AGE	61
EDUCATION	BA—University of Georgia, 1965 MPA—University of South Carolina 1977
MILITARY	U S Army Military Police Corps 1965-1968
PROFESSIONAL	30+ years service SCDC served as deputy warden warden of 3 major prisons, regional director and numerous staff positions in institutions and at the agency level While serving as warden at the Broad River Correctional Institution I presided over South Carolina executions during the period 1990-1994 and was involved in those done prior to that at the old Central Correctional Institution Most of my career involved supervision and management of long term offenders

(*) I have also presented expert testimony on capital punishment issues in Charleston Lexington and previously in Greenville Counties

> previously qualified as an "expert" in the field of corrections and prison administration

Additional details are available in the vita

REVIEW OF MATERIAL AND INTERVIEWS



In preparation for this trial I have reviewed the following documents

SCDC Policy OP-21 01 Security Threat Groups
 SCDC Policy OP-22 23 Protective Custody
 SCDC Policy OP 22 11 Special Management Units
 SCDC Policy OP 21 04 Inmate Classification Plan
 Extracted material from Crime Scene Investigative Report Greenville County Forensic
 Division Case Number 1-03-051978 dtd 4/2/03
 GCDC Inmate Files- Kamell Evans

I have also interviewed the following

Kamell Evans, defendant, 7/23/04, 8/11/04, 8/26/04
 Mr Ken McKellar, Director of Inmate Classification SCDC 8/04 & 9/1/04
 Ms Joette Scarborough Inmate Classification SCDC 9/1/04
 Mr John Banks Correctional Officer, GCDC, 8/26/04
 Mr John Merkle, Correctional Officer, GCDC 8/26/04

ISSUES FOR DIRECT QUESTIONING

- 1 Define the meaning of "Life Without Parole"
 - A Custody Restrictions
 - B Program Eligibility
 - C Security Levels
- 2 Security Threat Group — 7 —
 - A Membership Screening & Validation
 - 1 Self admission
 - 2 STG Tattoos
 - 3 Possession of STG publications, documents symbols logos, STG colors, hand signs, etc
 - 4 Involvement or attempted involvement in STG-like activities such as assaults on other inmates or staff, compromising of staff, contraband introduction possession of contraband, criminal activity, or any other type of STG involvement not mentioned in the above sections
- 3 Behavior and Adjustment at Greenville County Detention Center
 - A Individual Interview expressed pride in trust he has earned from staff and inmates
 - A Family Support frequency of family visits
 - B Staff confidence- works out of cell, looked to for positive influence by inmates
 Has remained in same "Pod" since arrest and detention
 - Ⓟ C Behavior in GCDC is best available predictor of adjustment to long term incarceration in SCDC
 - D Issues Relevant to Death Row and Capital Punishment (STEVE YOU MAY NOT WANT TO GO THERE)
 - 1 Deterrence

- 2 Cost Effectiveness
- 3 Public Safety vis-a-vis LWOP
- 4 Conditions of Incarceration for STG member i.e. Kamell is wannabe but will have to be managed as though he is 'real thing'
- 5 Likely will require Protective Custody or STG separation for lengthy period
- 6 In terms of day-to-day Death Row is less harsh than Kamell's prospects in a general population. Is execution without lengthy delay really more severe than LWOP for a likely 40+ years?

⊕ 4 Kamell Evans' Adjustment to Long Term Incarceration

A Impressions from personal interviews with Evans

I have seen Kamell on three occasions. He has been consistently courteous and engaging. He appears to have 'embraced' the GCDC culture and speaks highly of the security staff that oversees his life. He apparently enjoys a measure of respect by both the security staff and other inmates---often asked to intervene in resolving disputes among other inmates. He has been housed in the same area Yellow Pod since completing inprocessing at GCDC-- and never removed for 'cause'. He speaks with great enthusiasm regarding his gang affiliation---the Crips. He has regaled me with tales of gang culture, spitting knowledge, and would like to have me believe he was a major factor in the hierarchy. He is generously tattooed and enjoyed showing them to me.

All that being said, it is apparent that Kamell is something of a 'wannabe'. I understand from Ms. Topp that his actual involvement and activities were minimal. Never-the-less, his tattoos and bravado will not serve in his best interest in SCDC---whether housed in Death Row or a general prison population.

B Interview with Correctional Officer John Merkle

Correctional Officer Merkle impressed me as more mature and insightful officer than I'd expected. He has an unusually broad background in working with "special needs" populations. His observations were consistent with what I'd have expected them to be of Evans. Mr. Merkle described Evans in superlative terms throughout our discussion, i.e. 'model inmate, very respectful, never negative, no violent behavior, never in a bad mood, etc.'. He told me that the only rules violation he thinks might be a matter of record was an incident where he was found with too many jumpsuits in his possession. I would suggest calling Officer Merkle as a witness---questioning him on Evans' behavior and adjustment in GCDC.

⊕ C Review of GCDC Files

A review of Evans' GCDC records reveals nothing that would raise any concerns for his ability & willingness to make a satisfactory adjustment in a SCDC general

population His Requests to Staff all appeared reasonable--& were subsequently approved

I found only two Offense Reports—both for minor rules violations In one a torn towel was found under his bed & the other involved damage to an ID armband On both occasions he was charged a small amount for the damaged property but no other sanctions appear to have been imposed

Given the stressful and often violent nature of a high security environment Kamell Evans' clean disciplinary record is somewhat remarkable It is unusual for an inmate to spend a year and a half with no infractions—and that is, perhaps, the most accurate indicator of the kind of adjustment one should expect if he is sent to an SCDC general population

5 SUMMARY

(wrap up, opinion)

Based on personal interviews with Mr Evans, a review of relevant SCDC policies GCDC files and discussions with GCDC staff, I am of the opinion that Kamell Evans would likely make a successful adjustment to life in a prison His first years would be extremely difficult Though he seems to fancy himself as a Crips gangster he appears to be more of a wannabe who because of his numerous tattoos and idle talk would find himself being managed with much harsher measures than would otherwise be necessary

Following some difficult years he would likely come to terms with his LWOP sentence and begin making a productive life for himself There are opportunities to make a useful life for himself, and I suspect he would take advantage of the limited chances he would have He seems to have more than adequate family support and by nature, gets along well with fellow inmates and doesn't appear to have resentment toward authority

The fact remain however that Kamell Evans would spend the rest of his life and will die in a high security prison He would never be considered for assignment to a less secure facility Even in a medical emergency would not be taken from a double fenced perimeter without legirons, arm restraints on belly chain and two armed escort officers

Simply said, if a LWOP sentence is imposed, Kamell Evans would live the rest of his life in a difficult harsh and often violent place then die there

S/ George N Martin III

LENORA TOPP



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TO Steve Sumner
Attorney at Law

FROM Lenora Topp *LT*
Mitigating Specialist

DATE August 25, 2004

REF State v Kamell Evans

In regard to the interviews I have completed so far, I have found several common threads that are prevalent among associates of Kamell Evans, many of whom don't even know each other. One of these threads is—Kamell Evans is known to be a dependable, hard working, caring, loving and non-threatening man.

In addition to his personality attributes, Kamell Evans was not known to associate with gang members. There is no evidence to show he ever joined a gang. Both a former coach and a current friend relayed to me that they felt some of Kamell's actions indicated he just wanted to belong to and fit in with "the crowd", i.e. wearing gang style clothing while at college. The fact was, most of the male African-American students at N. Greenville College wore this style of clothing during that time.

Another common thread is—Kamell was crazy about Christina and wanted to please her any way he could. She apparently was one of the reasons he quit college. He needed to make money to keep her lifestyle up. She was known to be demanding and even Kamell said she "knew how to punch his buttons". She was on the outs with her family because of money issues and Kamell says that was one of the reasons he went to the family home was to tell them to know how she was lying to them about her debts. Kamell told me his father asked him if [REDACTED] because [REDACTED].

Christina's influence on Kamell even led him to get the gang tattoos. Both he and Christina started getting the tattoos together from J. McKee, 515 N. Lafayette, in Shelby, NC, 704/481-0082. Would it be prudent to send Scott Peterman, the investigator, to talk to Mr. McKee? He might have some helpful knowledge regarding any association Kamell might have had with gangs.

In any case, I am forming an opinion that [REDACTED]
[REDACTED]. We know she didn't pull the trigger, but she was the reason Kamell went to the house.

I also believe Christina does not want Kamell to die and I believe she should be interviewed.

Subj: Kamell Evans-GCDC
Date: 8/26/2004 10 23 48 PM Eastern Daylight Time
From: gnmartin3@sc.rr.com
To: stevesumner@bellsouth.net
CC: TOPPGUMSHU@AOL.COM

Steve,

First, let me thank you for the effort to get the SCDC policies. I think it might be helpful to have them and perhaps use some extracted material as evidence regarding the measures used to manage Security Threat Group (gang) members. In addition to any staff testimony we use, we'll still need the GCDC records.

As Lenora pointed out in our discussion earlier this morning, Kamell's gang involvement was probably more that of a "wannabe" but the tattoos will make it difficult for him to denounce gang affiliation. It would seem to me that we could pursue both sides of the matter to our advantage. He may be an inadequate wannabe, but he'll have to be treated like the real thing for a long time.

My visit with Kamell today was brief but worthwhile. As always, he was cooperative and anxious to please. I'm still unsure, however, that he really understands the seriousness of his situation. We talked again about his good record there at GCDC and what he'd like to do if he does get Life Without Parole. I had to tell him that his expectations on that issue are a little unrealistic—and certainly not what a jury would want to hear, i.e. "shoot baskets, watch TV and pick up a little trade."

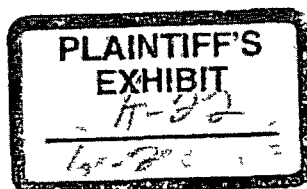
None of the officers I'd wanted to speak with were on duty there this morning, but I managed to contact two of them this evening. Fortunately, one was what we'd thought would be our best bet—and we did, indeed, hit the target. I first talked with Correctional Officer John Banks. He and Kamell had been teammates on the North Greenville College football squad. He stated that Kamell had not caused any problems there at GCDC—said the only problem he'd been aware of had been possession of too many jumpsuits. Mr. Banks went into some detail about another teammate who'd kept touch with Kamell prior to his arrest, a Nicholas Wideman. I gathered that Kamell and Wideman had talked by phone sometime during the course of the hostage negotiations at the Sapinoso home. Banks said that Wideman had initially tried to support Kamell with phone visits after the arrest but had given up because of Kamell's unrealistic expectation that the charges would soon be dropped. Officer Banks was understandably not too keen on appearing in court, but said he'd testify to Kamell's good behavior and adjustment at GCDC. Lenora, if you haven't already, it may be worth your time to ask Kamell about him and perhaps make a contact with Mr. Wideman.

After talking with Officer Banks, I found that Officer John Merkle was on duty this evening and was able to talk at some length with him. Steve, you'll recall that we'd thought, based on Kamell's description, he might be our best bet. That does, indeed, seem to be the case. Merkle is a white male, well spoken and mature sounding. He apparently has a good background with psychiatric patients, jail inmates and other "special needs" populations. He'd apparently worked for some time at the Dorthea Dix Hospital and has been at GCDC for approx. 5 years. When I identified myself and told him of the purpose for my call, Officer Merkle offered an unsolicited commentary about Kamell that would serve us well. Among his remarks he described Kamell as "model inmate, very respectful, never negative, no violent behavior, never in a bad mood, etc." If we elect to subpoena anyone regarding Kamell's behavior and adjustment to incarceration at GCDC, Merkle would work well. He proffered a willingness to testify on Kamell's behalf and would probably be just what a jury would need to hear. He works the evening shift or can be reached at [REDACTED]. I gave him my number and encouraged him to contact me if he needs to talk.

Steve, I'll begin working on the summary you'd requested and will try to have something for you to look at early next week.

I'll be in touch,

George



Friday, August 27, 2004 America Online Toppgumshu

Subj RE Kamell Evans-GCDC
Date 8/27/2004 4 31 39 PM Eastern Daylight Time
From stevesumner@bellsouth.net
To Toppgumshu@aol.com

I don't think so at this time

-----Original Message-----

From Toppgumshu@aol.com [mailto:Toppgumshu@aol.com]

Sent Friday, August 27, 2004 9 05 AM

To gnmartin3@sc.rr.com

Cc stevesumner@bellsouth.net

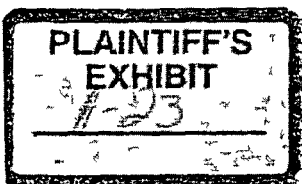
Subject Re: Kamell Evans-GCDC

George

You certainly had some good luck with the CO's Great work!

Steve, for some reason I recall Wideman was not going to be very helpful??? I guess it was Christina who had him call that night. Maybe I misunderstood about him and I'll certainly be glad to contact him if you wish

Lenora



Sunday, August 29 2004 America Online Toppgumshu

Kamell Evans v. State SC
Lenora Toppgumshu 100

no answer - 9/2/04
 final prep on phone - 9/8/04

**INTERVIEW - BENJAMIN YOUNG
 STATE VS KAMELL EVANS
 TAKEN BY LENORA TOPP
 SEPTEMBER 2, 2004**

On Sunday, August 29, 2004, at approximately 4 34 pm, Benjamin (BJ) Young was interviewed by telephone. He lives at [REDACTED]. The phone number is [REDACTED]. Mr. Young was a co-worker of K. Evans at UPS in Greenville, SC. He has remained a friend and they have been writing back and forth after Evans was arrested. Mr. Young is working two jobs at this time at UPS from 4am-8am and at Siemens from 2 30pm-10pm. He was extremely cooperative and will travel to Greenville to testify for K. Evans. He relayed the following information:

- + Mr. Young worked for UPS 3 years before K. Evans started to work.
- (+) He worked with him for 1-1/2 years and they became very good friends.
- (+) K. Evans got along with everyone, including his supervisors.
- (+) Mr. Young never heard Evans argue with anyone or talk down to his peers or supervisors.
- + When contests were held to see who could unload trucks the fastest, K. Evans always won.
- + He followed direction well and was extremely friendly to everyone.
- (+) If someone needed a little bit of money, Evans was the first to lend it and hardly asked for it to be paid back.
- + Mr. Young knew the story about the friend Julio who purchased Evans' motorcycle from him and Evans let him pay him back on an installment basis.
- + Mr. Young knew Evans and his father didn't get along.
- + He felt Mr. Evans did not like his son.
- + Mr. Young had met Christina on several occasions.
- + He saw her when they were on the motorcycle and they'd meet because Mr. Young sometimes made copies of CDs for K. Evans.
- + Mr. Young knew Evans worked in a detail shop with his brother-in-law.
- + When asked about his knowledge of Evans and gang activity, he said, "If Kamell had been in a gang, he would have told me."
- + Mr. Young said he didn't know when Evans would have had time to be in a gang because after working at UPS, Evans went home, took a short nap and then went to work at the detailing shop.
- + The shop was also open on Saturday, with Evans working.
- + Mr. Young said Evans never showed off his tattoos.
- + He never heard that Christina may have been in a gang, either.
- + He knew Evans liked to ride with bike with several friends and they sometimes rode to the beach.
- + [REDACTED]

PLAINTIFF'S
 EXHIBIT

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To 2

- ~ After the shootings, Mr Young received phone calls from a friend at the Greenville UPS and from his mother
- ~ He couldn't believe K Evans could have committed the crimes and he was extremely hurt to think Evans was not the person he knew
- ~ Mr Young said Evans called him after he was in jail and reassured him that he was the same person as before—he was not a changed person
- ~ Evans told him they "were scrambling for the gun and it just happened"
- ~ Evans has written several letters to Mr Young and told him the incident did not occur because of Christina—that it was between her father and him
- ~ Apparently the father did not like Christina dating K Evans
- ~ Evans told Mr Young, "When I get out, I'm gonna go see you and hang out with you"
- ~ Mr Young finalized the conversation by saying he would do all he could to help his friend, Kamell Evans

TO REACH BJ YOUNG, YOU WILL NEED TO CALL HIM BETWEEN 10AM AND 1PM WEEKDAYS I FOUND HIM AT HOME ON A SUNDAY AFTERNOON

9/8/04

- > this guy really can't offer much
- > a friend while they were at UPS
- > friendship pretty much ended then.
- > some letters while I in jail
- > Again, he really can't add much

**INTERVIEW-BARRY EVANS
STATE VS KAMELL EVANS
TAKEN BY LENORA TOPP
SEPTEMBER 7, 2004**

On September 5, 2004, at 1 pm, Barry Evans, father of Kamell Evans, was interviewed at his home. He lives at [REDACTED] and his phone numbers are [REDACTED] (home), [REDACTED] (cell), and [REDACTED] (direct work number). For the past 2 years, Mr. Evans has worked as an industrial engineer with Tyco Electronics, Spartanburg, SC. Prior to that, he worked for a short period of time as an industrial engineer with Federal Mogul in Alabama and prior to that he worked with GNC and Champion Aviation in Greenville, SC. At first, Mr. Evans appeared to be stand-offish and uncomfortable. He sat approximately 5 feet from me, but it may have been because of his cigarette smoking. For the first half of the interview, he adjusted the volume of CD playing music up and down. Later, he turned it down so low one could hardly hear it and seemed somewhat eager to talk to me. I believe Mr. Evans wants his son to live, but he is resigned to the alternative. He thinks Kamell put himself in this position and he should take responsibility for his actions, just as he has tried to raise Kamell in that same belief. "Don't do as I did, but do as I say." He also said he would answer any questions he was asked. Mr. Evans relayed the following information:

- ↓ Barry (NMN) Evans was born November 15, 1953 in Laurel, Mississippi
- ↓ His grandparents raised him the first 7 years, then he went to Cleveland, OH, to live with his mother
- ↓ He has 3 natural siblings and they were poor
- ↓ He did give his mother a lot of credit for what she could do for them while growing up, but he knew he was never going to be in that position again, nor was he going to raise his kids the same way
- ↓ Mr. Evans graduated from Glenville HS in Cleveland, OH, and then went to Cleveland State for 2 years where he received an Associate Degree in Industrial Engineering
- ↓ He later went to Southern Wesleyan University in Central, SC where he got his BS degree in Management
- ↓ Mr. Evans went to high school with Renee Evans, the mother of Kamell and Shatima
- ↓ They married in October of 1972 and divorced in 1986 (he thinks)
- ↓ Mr. Evans said he should have left the family long before he did because he and Renee were not getting along
- ↓ He will testify in court that there was physical violence between them
- ↓ When they separated, the children stayed with Renee and he moved to Springfield, OH, which was 200 miles away
- ↓ He recalls seeing the children almost every weekend and he drove to get them—they also spent most of the summers with him

**PLAINTIFF'S
EXHIBIT**

25
p. 2

- ✦ Mr Evans remembers Kamell as being a normal and happy child at that time
- ✦ In 1987, Mr Evans married his second wife, Robyn, and in 1988 they moved to South Carolina, where they both finished getting college degrees
- ✦ They had their first child, Brittany, in 1990
- ✦ One day in 1991, Kamell called him and said living in Cleveland wasn't a home anymore—that Renee wasn't there most of the time and there never was enough food in the house
- ✦ Mr Evans knew that his own sisters and one of their now ex-husband's were taking food to the house on occasion
- ✦ Kamell said he wanted to live with Barry Evans, so he went to get him
- ✦ Renee called the police, but because she couldn't find the papers showing she had full custody over Kamell, Mr Evans was able to take Kamell to SC
- ✦ He soon had an attorney and custody was given to Mr Evans
- ✦ Renee was to pay child support
- ✦ Soon thereafter, that side of the family stopped communicating with Kamell—no acknowledgement of birthdays, holidays, etc
- ✦ Mr Evans thinks Kamell may have had a dislike with that side of the family after that
- ✦ He remembers Kamell entered Greer Middle School and worked his butt off to get through school and through sports
- ✦ Kamell was an excellent student in class, very positive and made great efforts to do well
- ✦ He got along with everyone and had so many friends, he never really had a "best" friend
- ✦ Mr Evans recalled Kamell was tested for slowness at Caledonia Elementary in Cleveland Hgts, Ohio, while in 2nd grade
- ✦ Apparently, Kamell was held back once and the school wanted to hold him back again, but Mr Evans wouldn't allow that
- ✦ It was known then that Kamell had some learning disability
- ✦ When his grades slumped in school, Mr Evans gives credit to his wife, Robyn, for being very patient with Kamell and working with him
- ✦ His math scores were high because of her efforts
- ✦ During this time, however, Mr Evans began seeing another side to Kamell
- ✦ Kamell was caught in numerous lies, but he seemed to believe his own lies
- ✦ He liked to lie around his peers and present some type of false bravado—*I'm the big guy on the block*
- ✦ The Evans used to host cookouts at their house for the teams and Mr Evans would hear different stories that Kamell told and he wondered why Kamell needed to lie
- ✦ In 8th grade, Kamell took a gun Mr Evans owned to school—it had not been locked up, but Kamell had never expressed an interest in it before

- ↓ Kamell was expelled for the rest of the year (of course, Mr Evans then got the gun locks, etc)
- ↓ The school system ordered Kamell be tested and Mr Evans thinks it was done privately and was going to look for the paperwork
- ↓ Kamell's answer to his actions was, "Well, I'm only 13—what's the big deal?"
- ↓ Mr Evans still can't understand Kamell's rationale
- ↓ Mr Evans mentioned that a Mr Waters was the principal for Greer Middle School and then moved to Greer Senior High when Kamell was allowed back in school
- ↓ He believes Mr Waters has only good things to say about Kamell
- ↓ During the school years, the Evans wanted to maintain some control over Kamell by insuring he stayed home more rather than be on the streets
- ↓ They changed the garage into a recreation room and they also installed a swimming pool
- ↓ They wanted him and his friends to hang around the house, which they did quite a bit
- ↓ Mr Evans got Kamell a car when he was 15, but wouldn't let him drive it much
- ↓ He was very strict with Kamell—go to school, go to practice, come home—bring your friends home with you
- ↓ He wouldn't get Kamell a beeper
- ↓ Mr Evans was going to give Kamell everything he needed, not everything he wanted
- ↓ He expected Kamell to grow up to be a responsible adult
- ↓ Kamell was heavily recruited by large universities and because he couldn't get his SAT scores high enough, he was enrolled at Pennington Learning Center, where they tried to prep him
- ↓ Robyn worked with him, too
- ↓ She encouraged Kamell to get a degree in education because she found Kamell to be gentle, kind and very patient with children
- ↓ He thought Kamell quit N Greenville because he wanted material things, more money, etc , to keep up with his peers and to give a grandeur image
- ↓ He and Robyn urged him to get an education, but he quit anyway and started selling some drugs
- ↓ Before he quit, Kamell moved off campus and lived with a couple of girls
- ↓ Kamell worked with Mr Evans at GNC for a summer and he was a good employee
- ↓ Regarding gang activity, Mr Evans doesn't believe Kamell was ever in a gang—he only tried to portray the gangster image
- ↓ He knows he was selling drugs—didn't use them, but was trying to be "big" by selling drugs
- ↓ "He was trying to sell drugs to be seen as being tough"
- ↓ Then they had an argument when they were both drinking and they quit talking to each other for awhile

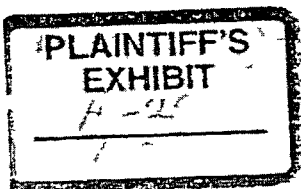
- ✚ Mr Evans tried to raise his kids to be independent so they could take care of themselves and not need to ask their parents for help
- ✚ Mr Evans describes himself as being a *hard* man
- ✚ The last four years before the shootings, Kamell seemed to be hanging around the wrong crowd
- ✚ The summer after high school, he started getting tattoos, but Mr Evans never noticed the "gang style" tattoos
- ✚ Mr Evans met Christina when she was working at the airport car rental office
- ✚ She spent a lot of time at the Evans' home and would sometimes even bring her son, Sergio, over
- ✚ They treated her as one of the family by buying them presents at Christmas
- ✚ Initially, there seemed to be a healthy relationship between Kamell and Christina
- ✚ Later on, Mr Evans didn't think Christina was very bright [REDACTED]
- ✚ He believes she is "dumb enough" to talk to us prior to court
- ✚ All in all, Mr Evans doesn't understand the need for Kamell to have another side or another lifestyle
- ✚ It's as if he has a split personality because the side Kamell usually projects is a friendly, loving and generous side, with no violent tendencies
- ✚ *But there is evil in Kamell*
- ✚ Mr Evans admitted he sees himself in Kamell because when he was younger, he wanted to hurt people (Renee)
- ✚ However, he took a different route back then and left the home
- ✚ He has tried to raise Kamell to make the right choices

END

**INTERVIEW – SHATIMA EVANS
STATE VS KAMELL EVANS
TAKEN BY LENORA TOPP
SEPTEMBER 7, 2004**

On August 11, 2004 and August 22, 2004, Shatima Evans was interviewed at her business, Tina's Day Spa, 192 Main Street, Duncan, SC Ms Evans is the full sister of Kamell Evans She lives at [REDACTED] and her phone numbers are [REDACTED] and [REDACTED] Ms Evans lives next door to their father, Barry Evans Ms Evans was called to the scene prior to the shootings and can testify to events that night She appears to be extremely close to her brother and becomes quite emotional when talking about the possible outcome of the trial Ms Evans relayed the following information

- ✦ Shatima Evans also goes by Tina, as evidenced by the name of her shop
- ✦ She was born in Cleveland and is 5 years older than K Evans
- ✦ Ms Evans recalls living at [REDACTED], Ohio, prior to leaving in order to attend college
- ✦ During the early years, Tina recalls a lot of fighting between her parents, both verbal and physical
- ✦ The police often came to the house because they were called by either her mother or the neighbors
- ✦ She does not know if her father was ever arrested
- ✦ After the fights, Tina, Kamell and their mother, Renee sometimes left the house and lived with maternal grandmother, Georgia Cargile
- ✦ Although her mother did not drink, her father was a heavy drinker and Tina saw him snort coke
- ✦ Tina recalled he worked at at least two locations, Gould and TRW
- ✦ Renee worked with customer service at the local gas company
- ✦ She said her father would spank both her and Kamell with a belt that would raise welts
- ✦ She recalled the last time she saw her parents fighting Her father was holding her mother by the hair on her head on the kitchen floor and hitting her
- ✦ Apparently he pulled hair from Renee's head
- ✦ This was the last time the family was together because Renee moved out for the last time and they filed for divorce
- ✦ Mr Evans moved to Springfield, OH
- ✦ She said she was scared of her father back then and recalls both she and Kamell visited him once a year in the summer
- ✦ She went to Alabama A&M in Huntsville, AL from 1990-1993, but got pregnant and went back to Cleveland to have her baby
- ✦ Prior to this time, she basically was estranged from her father
- ✦ During childbirth, Tina almost died and when her father heard about it, he went up to visit and they reconciled



- ✦ She continued to live in Cleveland with her mother and then with her grandmother, Georgia Cargile
- ✦ In 1999, Tina moved to Greer, SC to be closer with her father. He was not well, having had a stroke and finding out he was diabetic
- ✦ She wanted to buy a house and her father helped with the financing
- ✦ Before all this happened, Kamell had already moved down to Greer to live with their dad
- ✦ Tina doesn't know why Kamell called his father to say there was never any food in the Ohio house, etc., because her mother always had food for them to eat
- ✦ In any case, this was the incident that instigated the change in custody of Kamell and he began living with their father when he was in 7th or 8th grade
- ✦ Mr. Evans' stroke happened when Kamell was in the 9th or 10th grade
- ✦ When Tina moved down, Kamell and his father were getting along fine
- ✦ Before Tina bought the house, she lived in the house with Kamell, their father and his family
- ✦ Their father had remarried and Tina and Kamell had two young half-sisters
- ✦ Sometimes Kamell seemed to be jealous of the sisters
- ✦ Mr. Evans supported Kamell in regard to his sports playing—if Kamell's team lost he was sympathetic
- ✦ Then Kamell and Mr. Evans began arguing a lot
- ✦ Kamell later moved in with Tina for awhile
- ✦ He had been dating Christina and she ended up moving in, too, but she never paid any money toward rent or food
- ✦ Christina's son did not live with them—he stayed at his grandparents' house
- ✦ Kamell paid his sister a total of \$150 for both of them to live at the house
- ✦ Tina remembered when Christina bought Kamell a gun and then bought him a holster
- ✦ Because of the gun issue, Tina asked them to move out—she could not have a gun around her son, who was very close to Kamell
- ✦ Tina said Kamell and Christina did not follow the house rules and they had to move out
- ✦ The relationship between Kamell and his dad began to deteriorate
- ✦ She feels the "gang issue" was because Kamell wanted to be seen as a "big person" and he needed people to follow him—he was always a leader
- ✦ Tina does not believe Kamell was ever in a gang
- ✦ Christina purported to be a member of "The Folks", with their colors being black and white and Kamell supposedly a member of "The Crypts", with colors of blue and white
- ✦ Tina doesn't believe Christina ever was involved in gangs, either in Greer or Chicago, because Christina used to go on the internet to look up information on The Folks—if she was a member she would already know everything there was to know about them

- ✦ Christina and Kamell started getting gang tattoos together
- ✦ They went to a fellow named Justin McKee, 515 N Lafayette, Shelby, NC
- ✦ Tina has gone there to get tattoos, too, but none of them gang related
- ✦ After Christina and Kamell moved out, they retained a relationship with Tina by coming over on Sundays to eat or play videos
- ✦ Tina had gotten married by this time and had another child
- ✦ Her husband is Robert Martin
- ✦ One Sunday when Kamell and Christina were at Tina's, they were invited by their father to visit next door. Some of their stepmother's family were in from Ohio and Mr Evans wanted to have everyone socialize for awhile
- ✦ Both Mr Evans and Kamell had been drinking and when Kamell went over to the house, he took alcohol with him so they wouldn't be mooching off of his father
- ✦ After Tina's group went next door, the stepmother, Robyn, told Kamell she didn't want any drinking at the house because her family didn't drink
- ✦ This made Kamell mad, especially when his father took up for Robyn
- ✦ Mr Evans and Kamell began arguing—there was no yelling, just arguments
- ✦ Both were intoxicated and both stubborn
- ✦ This incident is what estranged Kamell and his father for the several years before the shootings—they didn't speak at all
- ✦ Tina recalled Christina and Christina's son were treated like members of the Evans family
- ✦ Presents were bought for her and her son at Christmas and birthdays
- ✦ Christina's immediate family was invited to Evans family socials
- ✦ But that family never reciprocated
- ✦ [REDACTED]
- ✦ [REDACTED]
- ✦ [REDACTED] Kamell and Christina would go watch her son in the competition [Kamell]
- ✦ Tina became the go-between when Kamell and Christina argued, with Christina often calling Tina afterward
- ✦ One time when Christina was kicked out of the house, she called Tina to tell Kamell to let her back in the house
- ✦ Christina had huge money problems—she was not paying the bills, but was taking money from Kamell to pay them
- ✦ Once, she called Tina and asked her to take \$300 from her brother, Joe, because he was personally delivering it to Tina to pay a bill that Christina owed
- ✦ Joe did arrive at the shop and give Tina money, then after he left, Christina showed up and Tina gave her the cash—the bill was never paid
- ✦ Tina was extremely uncomfortable in this situation

- ✦ Tina does not know anything about drug sales that Kamell might have been involved in
- ✦ She said he spent money on clothes and jewelry, but he always was working and sometimes working two jobs—he had no children
- ✦ During the night of the incident, Tina was called and she went to the scene
- ✦ The police would not let her go near the house, but she feels she could have stopped the events if Kamell had been able to see her
- ✦ She said more was said between Kamell and the police during the incident than was transcribed for discovery
- ✦ After the shootings, Christina went to the hospital with Tina and her dad—Christina was not angry at Kamell
- ✦ Tina later became angry when Christina claimed the truck that was in Christina's and Kamell's name
- ✦ Kamell had paid for it and Tina felt Christina had no claim to it, but the police released it to Christina
- ✦ She does not know what happened to the truck or to the pit bulldogs that Kamell loved and owned when living with Christina—they just disappeared
- ✦ Tina believes that Christina does not want Kamell to die

Shatima "Tina" Evans has a wealth of information about Christina. She has numerous pictures and newspaper articles she clipped during Kamell's sports days. She is devoted to helping her brother, but is getting angry at him because he is telling her children that he is getting out of jail and will be seeing them soon. She knows he will be serving a lot of time if he does not get the death penalty.

**PLAINTIFF'S
EXHIBIT**

137

r2

M E M O

TO The File

FROM SWS

SUBJECT State of South Carolina vs Kamell D Evans

DATE September 10, 2004

RE Trial Strategy

I am writing this Memo to the file in an effort to memorialize the trial strategy that has been developed by myself and Skip after numerous client conferences with the Defendant and a thorough review of the interviews conducted by the mitigation specialist and the interviews conducted by the attorneys. On the issue of Kamell testifying, the file reflects numerous conferences with him regarding his potential testimony. He has signed off on an acknowledgment regarding his constitutional rights and protections regarding testifying as a defendant in a criminal trial. As in all cases, this is a very tough decision. Skip and I have agonized over whether or not we should put him on the stand. I have gone over his potential court testimony with him on four or five occasions. Both Skip and I are both leaning toward having him testifying because we believe that he must show the jury a lot of remorse if he is going to have a chance at a life sentence. The cross-examination will be brutal, and both Skip and I have explained this to Kamell and told him that there are not any good answers for a lot of questions that will be asked by the solicitor. The facts of the crime are horrific. In our conference with John Mauldin he indicated that research consistently shows that the number one reason that juries give the death penalty is a lack of remorse by the defendant. Again, Skip and I don't see any good way to get this across other than through Kamell's testimony. However, as with any case, there are numerous risks with him testifying. Skip and I spoke in detail with his father and asked him whether or not he felt that Kamell could "hold it together" on the stand. We agreed with our assessment that this is a very difficult call to make with Kamell's personality. Barry Evans stressed that Kamell could do this if he could get out of the "gang, hoodlum" attitude that he often portrays. Openly, this will be Kamell's call to make. Next week during the trial, Skip and I will continue to go over his testimony and advise him of the pros and cons of testifying. Barry Evans indicated that he would be speaking with Kamell on a daily basis and advise Skip and me whether or not he thought Kamell could be a good witness. During the past few weeks, Skip and I have talked about the various angles that we could take with the jury in our presentation regarding this case, specifically in the anticipated mitigation phase of this trial. We have received conflicting information from Kamell and others regarding potential physical abuse which he endured as a child as an adolescent. Barry Evans denied to me and Skip any physical abuse. Kamell has given conflicting information on this point. There have been interviews where he said he feels like he was

abused and other interviews where he indicated it was more of strong discipline but short of abuse I notice in Dr. Berg's report that he denied any physical abuse to her in his interview with Dr. Berg. Some members of the family feel like there was abuse. Skip and I decided that there just is not enough hard proof on this point to try and use physical abuse as in his childhood in the mitigation phase of the trial. Alternatively, Skip and I believe that the best angle is to show that Kamell came from a solid family in the Greer area, worked two jobs several years after college, etc. and that this was a one day "melt down" which occurred. Significantly, we do not feel that it is a good angle with the jury to try and show any connection between the killings and past physical abuse. We have explained this proposed litigation strategy to Kamell and he is in agreement. Skip and I fully explained to Kamell that we feel that the best way to handle the case is to put up a good number of solid character witnesses for him (several close friends, old high school and college football coaches, etc.) and stress to the jury that he was a quality student, ball player and friend all of his life and that this incident was again a one-day "melt down" which occurred because of a bad relationship with Christina. The reports from Dr. Evans and Dr. Berg also back up this strategy as Dr. Berg as diagnosed him as going through a "major depressive episode" on the day of the incident and that it was not premeditated and he was not thinking clearly and rationally on the day the incident occurred. Dr. Evans' report also cites "cognitive and flexibility" or the inability to change one's mind after predetermining a course of action. Skip and I believe that the anticipated medical testimony ties into our proposed strategy of focusing on the positive points in Kamell's life and positive relationships and positive work ethic and positive ball playing days and again, that this was a common sense type "insanity" defense and that this is the best way to present the case to the jury. Skip and I recognize that there are always different litigation strategies and angles that can be examined but that ultimately a decision must be made as to the best way to present the case. Skip and I believe that after a full and complete review of the discovery, interviews, medical reports and client conferences that the best way to present this case is as outlined in this memorandum.

SWS/bb

Steve Sumner

From Toppgumshu@aol.com
Sent Sunday, September 12, 2004, 10:14 AM
To stevesumner@bellsouth.net
Subject: Re: Barry Evans

ave
After a lot of thought, I think you need to call Barry as a witness—what will the jury think if "Dad" doesn't testify for his son—He wants this case to get over with (not like Robyn who wants a continuance). He also is discouraging family members to come to trial. Do you think he's embarrassed or something? Or just resigned to the fact I believe he can warm up on the stand if given enough time, and who knows, he just might show emotion if it hits him that his only son is really facing death. But you might want to put him on before Robyn so she can soften things up afterward. And I don't think it's a bad idea for their oldest daughter, age 14, to testify if she wants to. Kamell really took a big brother interest in her—she recently wrote a poem about him, and I think it would be effective if she can read it when asked if she'd like to say something to the jury. (Robyn couldn't find it for me the other day).

Maybe you and Skip can sit down w/ him for about an hour the night before he testifies.

so I'd think about putting the family on after the coaches, etc.

I'm going to be at the courthouse at 9am tomorrow to hang around a little bit. I wanted to go see Kamell today (Sunday) but my water just came on at the house this morning, and I need to be able to get things settled and ready to finalize reports, etc. for the next two weeks. Kamell's mother has NOT been cooperative in sending me any information about the lead poisoning—I'll be checking on Kaiser Permanente's efforts to get us the medical records tomorrow, too. According to Barry, Kamell ate some paint chips and he was treated at the KP hospital in Cleveland when he was about 1 year old.

According to Robyn, Renee and some family members aren't showing up until next Sunday.

See you tomorrow and GOOD LUCK!!!!!! PS I heard Christina might not even show up for court—do you know?

bra

TIFF'S
IBIT

Steve Sumner

From Toppgumshu@aol.com
Sent Wednesday September 15 2004 6 24 PM
To stevesumner@bellsouth.net
Subject Mother & Grandmother

Steve

Well I endured 3 hours of listening to the above women (separately) talk about themselves. It was very hard to keep them on track about Kamell. Grandmother Cargile is rather theatrical but she is very well spoken and will do fine on the stand. She helped raise Kamell until he left and he held up well under her discipline.

Now Mother Renee was very emotional and cried off and on. I guess she thought I was her shrink because it was all about her and the bad life she had. Actually I feel so sorry for what she endured but I'll never understand the battered wife syndrome—I probably would have had Barry jailed very soon in the relationship. I'm faxing a paper she did for class. I didn't have the heart to show her the grammar errors but the theme says it all. I guess She'll be fine on the stand too.

It was extremely interesting to me how both women just kinda forgot about Kamell when he went to SC. I'm sure Barry probably did keep messages from him but you'd think Grandma would have been a little more assertive.

We're going to have to put them on the stand because they had so much interaction w/ Kamell when he was small and aren't you going to get into the family abuse??

Asheville is going into a catastrophic flood mode for Friday and Saturday. Sustained winds of 40 mph are expected which will make the storm worse because of falling trees. The universities are closing a day early and roads are already being closed. Asheville is getting a direct hit from the storm which means Greenville will be in trouble too!! Go get some water !!!!!!!!!!!

Lenora



9/15/2004

INTERVIEW – GEORGIA MAE CARGILE
STATE VS KAMELL EVANS
TAKEN BY LENORA TOPP
SEPTEMBER 15, 2004

On Tuesday, September 14, 2004, Georgia Mae Cargile was interviewed in person at approximately 2 15 pm at Shatima Evans' house in Greer, SC. Mrs. Cargile is the maternal grandmother of Kamell Evans and Shatima Evans. Her daughter, Renee' is Kamell's mother. Mrs. Cargile lives at [REDACTED]

[REDACTED] with a home number of [REDACTED]. Mrs. Cargile helped her daughter, Renee' with raising Renee's children up until the time Shatima left for school and Kamell was taken to South Carolina. She relayed the following information:

- ✚ Mrs. Cargile was born in Century, FL on June 9, 1935 to Hattie and Otis Smith—both are now deceased
- ✚ She is an only child
- ✚ Her parents separated/divorced when she was in 5th grade
- ✚ At this time they had been living in Alabama, but after the separation, she moved with her mother to Cleveland
- ✚ When Mrs. Cargile finished high school she got a job and met James Cargile when she was 19 yrs old
- ✚ She fell head over heels in love with him, married him and they moved to California because he was in the military
- ✚ She never had to work and they had four children, but Mr. Cargile was killed in an auto accident before the fourth child was born
- ✚ Her children are Renee', James, Ginny and Jeffrey
- ✚ She had to take over raising the children by herself--she became a beautician and moved in with her sister who had a large house
- ✚ She worked hard but always had time for her children
- ✚ When Renee' met Barry, Mrs. Cargile did not like him nor did she approve of him
- ✚ She wanted Renee' to go to college to better herself, but when Renee' became pregnant, she married Barry and they moved to an apartment
- ✚ Trouble between Renee' and Barry began soon thereafter and Mrs. Cargile would often go and get her, the baby and also Kamell after he was born
- ✚ She said there were so many times that both Shatima and Kamell saw violence between their parents
- ✚ Barry beat Renee' all the time
- ✚ Renee' never confided in her mother regarding her feelings—she seemed to hide her feelings and Mrs. Cargile never really knew all that was going on between Renee' and Barry
- ✚ It was apparent that Barry acted as if he was Lord and master and the boss of everything
- ✚ Kamell was spoiled by both Mrs. Cargile and his maternal grandmother who is now deceased

**PLAINTIFF'S
EXHIBIT**

- ✦ But Kamell was a good boy and a happy child, with no major discipline problems and no mean streak
- ✦ He and Shatima often went on out of town trips with their great aunt
- ✦ Kamell always treated his grandmother with respect and was always so happy to be with her
- ✦ Mrs Cargile thinks Renee' may have gotten tired of being so mistreated and that is why she left Barry
- ✦ Renee' and the children were living with her when Barry came to get Kamell and some time passed before Renee' told her mother the whole story
- ✦ Renee' was always so "hush-hush"
- ✦ Mrs Cargile had no problems with the children when they lived with her—she had rules in the house and she wasn't going to let them rip 'n run at her house
- ✦ "You are a kid and you stay in a kid's place"
- ✦ She recalled Renee' was on a bowling team and one day Renee' left, telling Kamell he was to stay home
- ✦ But when Renee' left, Mrs Cargile saw Kamell leave out the other door and she thinks he did this often
- ✦ When Kamell left with Barry, she didn't want to bother them by calling or writing and Kamell never called her, either
- ✦ When he got a little older, he visited Cleveland and she saw him again
- ✦ Shatima often sent pictures of Kamell and her family to Mrs Cargile
- ✦ Mrs Cargile couldn't believe it when she heard about the shootings
- ✦ She never ever thought he would hurt someone
- ✦ She has received letters from Kamell and is rather disgusted with his boasts of how strong and muscular he has become
- ✦ She knows life in prison will not be easy for him, but she certainly does not want him to lose his life

3460

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone 864 467 8647
Telefax 864 467 8610



Greenville County Courthouse
305 E North Street Suite 325
Greenville SC 29601 2185

Solicitor
Robert M. Ariail
August 4, 2004

Steve Sumner, Esquire
114 Manly Street
Greenville, South Carolina 29601

Re State v Kamell D Evans

Dear Steve

Enclosed please find the supplemental discoverable material, pursuant to Rule 5,
South Carolina Rules of Criminal Procedure

If you have any questions regarding this defendant's case, please do not hesitate
to call me

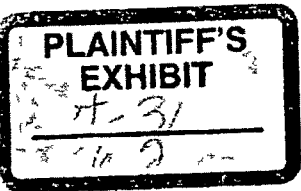
Sincerely,

Betty C Strom

Betty C Strom
Deputy Solicitor

Enclosures

SWS
8/30/04



Mel. DeShawn

4/2/03

Briefly - Kennell EVANS

12/15/76

Born - Cleveland Ohio

Crip on knuckles

on arm

tattoo on back - MJB

Victor

In cups - fraternal 120+ on neck

Antonio

Dating Christine Rodriguez

Sapiños

Semi pro ball

N. Greenville College

only 2 jobs - part time UPS

San Jil McDonald's Drive thru

tells her to pull over -

Jeff
Kendall

other guy gives phone number

lived - apt - got a house of Augusta Mel -

Christine would tell only - credit card jobs

gave her money for credit cards

She has child - would go for him to mother's house -

relationship family - got along & family

not real close -

They wouldn't pick up phone -

She leaves power - tells her to quit job

to leave - got married -

leaves 8pm on 4/1/03 -

works for her - black cloth - hands

takes 2 guns - puts in pocket of jeans coat

works behind house - was going to wait till 8:30

Deputy approaches & pistol - Sgt Deputy gun
pistol - takes in the Sgt call father
Deputy man & child upstairs -

tells dad - put out the

9 PM - 3 AM - she told father

import/export - confront Dad -

They were receipts - agreed to him -

Let him in there - in hand cuffs deputy -
able to know about - Talked to her for while & she
saw police outside - Talked to family &

negotiated - several people - cell phone -

Threat about off himself - Deputy offered to

go to him - considered sending G-man & DeLo -

deputy - planned to go outside - put gun in sweatshirt -

going to leg gun at the door - Joe turns around

fires - Joe & Dad -

↓
Said father is at 300 -

x sent Joe - 7x -

Sgt dad 3-1/4 - Police corner & "tucked away"

Christie - said threaten her & family

Clear coherent

refused Eval -

teammate to
coach →

→

Tony Lee →

1 - view crime scene entry

- Competency to
prosecute

4/3 03

a Margot P. Sapienza

Philippines

1967

with National Healthcare →

Dependent -

My daughter was friends with him
 Came over 1 or 2x - Thanks for, Choke
 didn't come again after - secretaries come home
 from work he would be there →

He seems respectful - told he didn't feel
 comfortable - He was materialistic - gold
 jewelry - Daughter naive - 27 years
 He stayed coming to the house - showing off →
 When he arrived very nice →

She might have been by him - Secret.
 Living at home - secretaries don't come home -
 deny it - After she left him
 She thought he was threatening her & stalk her -
 Threat to come to the house - He was at
 school until then - One night he kept on
 calling & calling - Husband on looked phone -
 Tony was lying - Tony told him to stop calling
 Sunday Friday night He was so disgusted
 She was at work - Rikhe, one night after
 the other - She was afraid to come home -

afraid to come home → she told Tony -
 to take care of it - Tony said he would take
 care of it - Danyel would pick up grandpa
 → last week or so - she could say
 if he comes home don't let him in - had a plan
 Husband's crazy - who is body that
 We used to know he seems not violent -
 no one associate with him →

I was sleeping in bed - woke up -
 grandpa in bed - heard voices - They were
 talking - about 10 pm - I didn't think
 anything of it - we were by the TV.
 Don't know - sound so quiet - He'd go out
 call grandpa - Husband went upstairs - he was
 shouting his head - He said Koral is there - There
 is Tony - Call told me to call 911 -
 He said don't call for the phone - The
 went to cell phone - I started calling 911 -

Took grandpa - locked door in closet -
 on phone to 911 all the time I had
 by husband's hand - try to put bullet -
 Thought about sneaking down - They said
 help of the - talk to Danyel -
 we were in closet - TV was on - tell the
 about 1/2 out of house - The dispatch said
 your son is handcuffed -

all
 time

I thought I could talk to it again -

I heard the person - 3 →

I said good - We went out
most before danger -

Her husband says - bridge -

It is done bus - new divorce →

Sergio = now →

Tyrone Johnson

Started a football team

He got what we needed - all around
make gy - when my baby died because of me -
we danced talked & shared

At one point next to him in complex
Never hang out if they'd call me

Professing minor league football team

→ South Carolina Seminary -
480 teams → NoS Carolina →

Karnell - met in summer of 2001 - He said (until)
came out ^{to me} at the pool -

2001 season - early July he came
knocked a door - interested in
getty back - why getty back - pulled
out of apartment - talked to wife -
Been in us ever since -

Havent seen in a while →
Havent seen in 1 1/2 months -

Spent a couple of weeks with -
His friend → - No one ever says anything
he - - - - - Would see every just -

M-W-F-Sun

Football game 1st week of August

Saw
My - Thanksgiving - a lot -
always together -

Don't know if he goes →
Don't know about day - if it was -
not in a football team if I see it -
Heard he sold day →

Nick
Buddy Nicholas Wideman



He called Kull - Knull called Bud
Carter - he was cool

What's up dog - what's going on -
 where you at -
 we have started -

3³⁹ - 3⁴⁵ AM - we were in the car -
 He like man Is tired - said
 Is just tired - Nick helped him
 about foot ball -

Nick - 3/10 - 6/10 - Nick / Koneal -

Kind of day; it - like what's going on -
 didn't go smoothly going - just wasn't
 as good as -



going - He is a bit of a Turp -
 pretty boy -> making money -
 -OPS ->

Christine ->
 fights at foot ball practice -

Nicholas Lavelle W. Deman →
I can't believe what

Now each other '97 - met at
N. Greenville College →

He was fresh I was James -
I was leader then →

We immediately clicked - I could tell
he had a handle on me - He lacked just -
not best reliability in his path -

Father just married - new family -
would treat + problem in both - They had
give 2 yrs to speaking -

Bridges - not Cleveland -

Dad leg: Green -

problem - Dad abused women -

bad alcohol - left home when -

renewing grandmother - which →

g-mom - alive - rebellious travel for

work - verbal - Father couldn't manage his

Father got job here - wife had job →

He lived in there → we had fun

Smart student - everybody lived to

work - bought late, drank late -

Days were involved - silly days -

Mayhem - silly -

In college →

Didn't graduate - after spring semester
left home - not by choice - he & father
had physical altercation → ended up in
79 - till last yr - 2002

Hooked up again - last July & Aug →
Beard - a lot of psychological issues
because of drugs - they were part of his life -

2002 - known part of his life -
Haventing started facing away - self -
Spent a lot of time →

See each other - 3-4x/week -
Came to get - go to his home - didn't know
Odds → ETOH - may have a drug problem -
also had one of these - drink every day
Case of 2 of - like royal -
drunk - Mr. Jedge & Mrs. Hyde -
tells about nobody here - you don't
understand him hard →

Chestnut - more full - he really loved
that girl -

They got back about a month ago
she got tired of being committed to him

He was being promiscuous towards her
 & abusive to her - Had car accident
 She got tired of it. She gave up plenty of
 chances - I told her I was going to stand
 tall to his father - He needed to know
 she left her - He couldn't take it -
 He wanted something to be in - never wanted
 to be alone - Started drinking & was drunk -
 Last week - he got into a car accident
 He threatened her life - She told her brother
 He kept telling her he'd do something to be fair
 to her - She told him - She wanted to help him -
 She talked Thursday - I didn't approach
 him - Told him about cutting his tongue -
 He was - got alone verbally, physically -
 because she was going to leave him - That was
 last night she saw him - He was looking for
 her - really around looking for her - Stayed in hotel
 long he found a place went to that place to sleep
 He followed her to school -

Hadn't talked to her since Sat -
 He called Mon night & Tues night → called
 both nights -

Thing out but - had good time - went to
 friends house - late to house

went to bodivas - He was fine,
 long → Didn't talk about her -
 gave her - I left I went here -
 stayed out til

Sawee always -
 b/w surf & weed → Didn't find
 funny →

- Christal called me 12³⁰ -
 she is - I was surf & was very -
 told me what was happening -

Started call hi
 12³⁸ - went when call
 went down - got down there - called her
 back - She was on my line -

He called me back -
 I said "I don't know" Man I
 just tried - I said I'm just feel up
 you know how I am - he said something saying
 I don't know about

Says he noticed - talked about
 N. Greenwell - ~~about~~ He started work
 how my copy out there - He wanted to go in
 the job & live to do some work

I think →

He told me guy to leave out
He asked to speak to his sister & me -

He doesn't like dealing with the
law - cops have been hassling about
trying to intimidate him -

Talked out of - said he lives there -
Told me what is "what's body" -
Made him nervous -

Never saw anyone - I know he did →

Sister and - coming got → Had to tell to →

Depressed - we hung out before - used to sell up
nobody lived in - → Sat next before we did →
She went back half a year before -
Sat next - took for out pointed out he felt -
we got for for - fella the floor -
got into a physical water - →
That night had been drunk -
was grabbed for like guy by himself -
His friends were his parents & a little girl →
like "get back" - (mother) -
Issued by you want to hurt him & the crew →

Anybody was in the hall he
was put in →

Went a real cup - 1, 2, 3, 4 -
sweet for him + relatives →

R. Greenville - no tattoos -

He thought he was a per - tried to get
tattooed like Tyroc - like all knew he was
falsy - → blue handkerchiefs →

never did →

Depressed - R. Greenville -

remembered - 2 wives - step father
felt like - ending →

OP - died -

OSW #1 husband

Other votes -

Did not want to be by self -

did not want to be left alone -

made plans to start business - said -

Start a bar →

UPS - quiet house - noisy he

was quiet - she paid his bills for him

so he quiet - she was too careful

Her parents money - she told about it -

Went to metal factory -

He told me he was hungry - sell drugs →

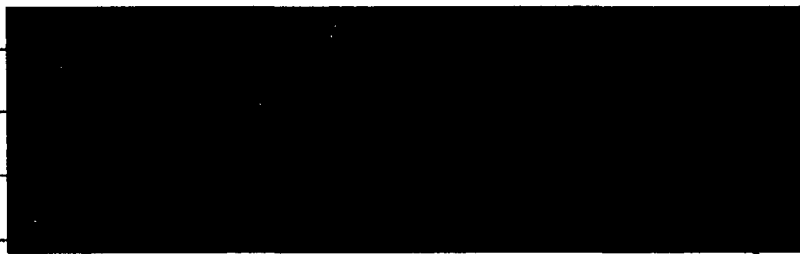
He knew I knew that -
told about drugs →

Exposure

father - had a few friends

He wanted to be held →

→ He was in -



Christine

He'd say know when son goes to school
know when son men & dad -

Started dat 3 yrs ago - asked for
Kamel
He - peaceful person - Kamel would
be happy to -
met in prison -
now again -

- Feb 2000 →

It was for a while place -
as in prison to neighbors →

Didn't come round to have much -
Spent Holiday there - He want close to
his dad - He want comfortable as
there - He'd say →

He didn't tell me how early -
Didn't he he had a job - said clearly days -
I go after →

He'd weed - coke -
never on his dad - showed me a lot of weed -
also weed - now in a while then we took -
He got for my club Aug 2000 -
I'd stay with them -

Problems start - wanted the bigger thing

Cheated on me all the time -
 never faithful - Cheated 12x -
 All I know about Greenville was hi -
 Didn't hang out else - Though
 I was sure - feel loved -

Been here 6 yrs - would have to
 Chicago - she said - living in Brother
 in Chicago - work -
 Brother here in '98

Raised - Chicago - Thru 25 -

27 yrs old now - Husband came here we →

Had put a picture -
 He denied it

Thru got worse I thought he was just tired of
 me - call me - hotel - a while. stayed

Always faithful to -

any point came - I thought I'd get
 wrong by dad - I told him about it

He started drag about cars - self-laved
- Phellipsen -

June - 2002: kept drag about stuff -

I kept say - I don't know -

kept kept say about - He wanted to

live that lifestyle - Bike, Marijuana

kept saying I myself - wouldn't let him -

pulled out of the way -

didn't want to be around - trying to keep him

"Started hanging out with 2002 - Gabley -

reckless - Tried to get - you -

had to be out - trying - great CPJ job -

He thought I was going to

Get in trouble - day chosen - I is not

then - had smoke weed - said when

Smoke weed does things - this -

Cops pulled him over -

you went to the point -

Cops said - said could be kept that

job - also said that you're -

Started talk about moving in here & stay

1st time did it - started twenty men

I don't want to be in the house

ok - I kept saying

Wed - call me - I said everyth you
didn't come to see me - know I'm scared -
I know it - you could have told me that

In you to get you - he threats me for
whole week - He told me I'm what
to know & did get off work - I'll pay
something when you lay for work - I'll
pay you better - Joe has got you -
over reported in my name - Joe said I'll
take care of it - take in the school -
lasted long - when he took in the school -
only for first - pulled into school - had
pulled in car with - parked - I pulled
out he followed me - on cell phone -
I took off - but JS took off called
mother - said next to go to World Police Reg
Money - He kept call said I want to talk
for you - we can be friends - In you -
keep calling phone - went out to eat & friend -
Wasty to go along in house -

Spent night at home - covered all the
also pulled to go home - Wasty to go home -

both called me - said I need to be you to work
He called for house - call the house -

Called the house - He said I'll
pay you and I got you know & did

you need to come in & talk to me -
 know and you need to come here
 you got to go - called back -
 you

He said come by yourself -
 you know what will happen if you bring
 the cops
 called 911

Saw deputy Sheriff -

Then -

When he let me go then -

I'll catch up to you -

I'll be with you by the house -

Said I'll shoot the other guy to death -
 and if you're in there -

I don't give a fuck I'll just get
 fuck a cop - I'm a drug dealer
 threat of force - I'll just jail -
 I'll kill anybody - I'm going to
 get somebody else to take care of
 Beets - who you want to shoot

→ never had to pay for

was substantiated -

→

never sexually assaulted -

① father →

I know his life was messed up
for dad kept a mother -

He moved here & he & his dad -

Both alcoholics →

not using - didn't smoke the weed just
sold →

didn't see depressed -

lots of friends - every body wanted -

② opened not sleeping

③ told put not into -

④

⑤ 500K / day come

⑥ was wrong →

Wanted to be by himself

Convinced self to resign

He says he's a cup for Cleveland -
noty dan here

Blue to blue that -
Start get tators - 99-2000 -
Started a grudge as a cup -
He came here when he was young -

Put on a front - always tries to
want to see him in some of the
So I'll like him in some -
wouldn't tell her job - pretend -
not have job - big do deal -
not to the extent says he is -
When you are in a gang request class -
don't suffer

Major wave →
I took the picture
plus up at him →
There's judge and is cup -

of put - always put -
by to pure - pure - can't up boy
think we - start fight & just -
says would love to stop in
What you love it - try to
be the man in the club -

He told me somebody tried to rob
him & he shot him -

Green - self defense
tried to rob him for his weed -

He lived →

shot 3x - 3rd time shot self

Ty before met him →

always talked about killing people

2000 He kept coming at the guy -
we in we went up -

Ronald started fight him -
other people tried to break

He knew when he lived -

down over there - could never
find him - guy moved -

Osteal -

Obst

→ deep-stuff →

beat up X girlfriend -

Neither lived together -

still in Greenville -

Hung around the docks -

advised them -

Threats to kill self - 3 weeks ago -

He was pretty fit

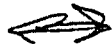
newspaper - wanted to shoot

guns in the air -

He turned the guns on them -

They were scared of him -

known drunk - kept Ann -



I paid very large bill -

Daddy bought part of the debt -

I supported him -

Paid 1/2 rent all the time

I run the then credit →

J7 VR004
01/23/08 16 07

Greenville County Detention Center
Inmate Visits

PAGE 02

Inmate 151664 EVANS KAMELL DELSHAUN

Sex M Race B DOB [REDACTED]

Booked 04/02/2003 Cell

PUBLIC RECORDS GVLE

864-467-5113

17 06

05/25/2008

From Date	Time	To Date	Time	Type	Visitor Name	Status
09/19/2004	08:30	09/19/2004	09 00	REGULAR	EVANS BARRY	VISITED
09/19/2004	10 30	09/19/2004	11 00	REGULAR	EVANS SHATIMA#1	VISITED
09/14/2004	19 30	09/14/2004	20 30	SPECIAL	EVANS RENEE	VISITED
09/10/2004	10 10	09/10/2004	10:20	PROFESSIONAL	ROBERSON, SCOTT	VISITED
09/09/2004	13 12	09/09/2004	14 25	PROFESSIONAL	SUMNER STEVE	VISITED
09/08/2004	09 30	09/08/2004	10 00	REGULAR	EVANS BARRY	VISITED
09/07/2004	16 34	09/07/2004	17 15	PROFESSIONAL	S SUMNER, S GOLDSMITH	VISITED
09/06/2004	10 15	09/06/2004	10 45	PROFESSIONAL	SUMNER STEVE	VISITED
09/06/2004	14 00	09/06/2004	14:30	REGULAR	EVANS SHATIMA#1	VISITED
09/03/2004	09 36	09/03/2004	10 16	PROFESSIONAL	GRAHAM, MELITA	VISITED
09/03/2004	12 30	09/03/2004	14 24	PROFESSIONAL	EVANS, DR JIM	VISITED
09/02/2004	14 21	09/02/2004	15:54	PROFESSIONAL	SUMNER STEVE	VISITED
08/31/2004	13:53	08/31/2004	14 34	PROFESSIONAL	SUMNER, STEVE	VISITED
08/29/2004	08 30	08/29/2004	09 00	REGULAR	EVANS BARRY	VISITED
08/27/2004	09 47	08/27/2004	10 30	PROFESSIONAL	SUMNER STEVE	VISITED
08/27/2004	13 46	08/27/2004	14 40	PROFESSIONAL	PETERMAN, SCOTT	VISITED
08/27/2004	14 30	08/27/2004	15 00	REGULAR	KENNEDY, LISA M	CANCELLED APP (PHONED)
08/26/2004	10 21	08/26/2004	11 00	PROFESSIONAL	MARTIN GEORGE	VISITED
08/25/2004	10 43	08/25/2004	12 19	PROFESSIONAL	TOPP LENORA	VISITED
08/22/2004	20 00	08/22/2004	20 30	REGULAR	KENNEDY LISA M	VISITED
08/18/2004	10 00	08/18/2004	13 59	PROFESSIONAL	BERG DR ELIN	VISITED
08/15/2004	09 00	08/15/2004	09 30	REGULAR	EVANS BARRY	VISITED
08/15/2004	12 30	08/15/2004	13 00	PROFESSIONAL	TOPP, LENOAR	VISITED
08/11/2004	10 50	08/11/2004	12:45	PROFESSIONAL	MARTIN, GEORGE	VISITED
08/10/2004	13 30	08/10/2004	14 00	REGULAR	KENNEDY LISA M	VISITED
08/10/2004	15 59	08/10/2004	16 47	PROFESSIONAL	SUMNER STEVE	VISITED
08/05/2004	09 17	08/05/2004	10 40	PROFESSIONAL	PETERSON SCOTT	VISITED
08/05/2004	13 00	08/05/2004	13:30	REGULAR	KENNEDY, LISA M	VISITED
08/04/2004	19 30	08/04/2004	20 00	REGULAR	EVANS, SHATIMA#1	VISITED
07/30/2004	09 19	07/30/2004	12 25	PROFESSIONAL	S SUMNER LENOAR TAPP	VISITED
07/29/2004	09 30	07/29/2004	10 00	REGULAR	KENNEDY, LISA M	VISITED
07/28/2004	09 32	07/28/2004	18:30	PROFESSIONAL	EVANS, DR JIM	VISITED
07/27/2004	10 30	07/27/2004	11 00	REGULAR	EVANS, BARRY	VISITED
07/23/2004	11 02	07/23/2004	12 05	PROFESSIONAL	S SUMNER, J EVANS, G MARTIN	VISITED
07/23/2004	13 30	07/23/2004	14 56	PROFESSIONAL	DAVIS DALE	VISITED
07/22/2004	10 28	07/22/2004	10 31	PROFESSIONAL	ROBERSON, SCOTTIE	VISITED
07/22/2004	14:18	07/22/2004	18 55	PROFESSIONAL	DAVIS, DALE	VISITED
07/13/2004	12 19	07/13/2004	12 58	PROFESSIONAL	SUMNER STEVE	VISITED
07/10/2004	13 00	07/10/2004	13:30	REGULAR	EVANS, BARRY	VISITED
07/09/2004	08 46	07/09/2004	10 14	PROFESSIONAL	SUMNER, STEVE	VISITED
07/02/2004	09 30	07/02/2004	10 00	REGULAR	EVANS BARRY	VISITED
06/27/2004	13 00	06/27/2004	14:00	SPECIAL	LEE PAMELA, PAGE GREGORY	VISITED
06/27/2004	21 00	06/27/2004	21:30	REGULAR	GRANT-EVANS ROBYN	VISITED
06/23/2004	10:30	06/23/2004	11 00	REGULAR	EVANS, BARRY	VISITED
06/17/2004	14:00	06/17/2004	14 30	REGULAR	KENNEDY, LISA	VISITED
06/09/2004	14 00	06/09/2004	14:30	REGULAR	KENNEDY LISA	VISITED
06/06/2004	10 30	06/06/2004	11 00	REGULAR	EVANS, BARRY	VISITED
05/28/2004	10 30	05/28/2004	11 00	REGULAR	EVANS BARRY	VISITED
05/27/2004	09 30	05/27/2004	10 00	REGULAR	KENNEDY, LISA	VISITED
05/27/2004	13 38	05/27/2004	14 11	PROFESSIONAL	RICHEY RODNEY	VISITED
05/24/2004	10 40	05/24/2004	11 04	PROFESSIONAL	RICHEY, RODNEY	VISITED
05/24/2004	20 00	05/24/2004	20 30	REGULAR	EVANS BARRY	CANCELLED APP (PHONED)
05/19/2004	10 00	05/19/2004	10 30	REGULAR	KENNEDY, LISA	VISITED
05/16/2004	18 30	05/16/2004	19 00	REGULAR	EVANS, SHATIMA	VISITED

3485

PLAINTIFF'S
EXHIBIT

AJR004
01/23/08 16 07Greenville County Detention Center
Inmate Visits

Inmate 151664 EVANS KAMBLE DELSHAUN

Sex M Race B DOB [REDACTED]

Booked 04/02/2003 Cell

From Date	Time	To Date	Time	Type	Visitor Name	Status
05/10/2004	10 00	05/10/2004	10 30	REGULAR	EVANS SHATIMA	VISITED
05/05/2004	10 00	05/05/2004	10 30	REGULAR	EVANS BARRY	VISITED
04/29/2004	18 30	04/29/2004	19 00	REGULAR	KENNIDY, LISA	VISITED
04/22/2004	14 00	04/22/2004	14 30	REGULAR	KENNIDY, LISA	VISITED
04/17/2004	09 00	04/17/2004	09 30	REGULAR	EVANS BARRY	VISITED
04/13/2004	13 00	04/13/2004	13 30	REGULAR	KENNIDY LISA	VISITED
04/08/2004	10 00	04/08/2004	10 30	REGULAR	KENNIDY, LISA	VISITED
04/04/2004	19 49	04/04/2004	21 06	PROFESSIONAL	RICHEY RODNEY WADE	VISITED
03/28/2004	13 00	03/28/2004	13 30	REGULAR	EVANS BARRY	VISITED
03/28/2004	21 00	03/28/2004	21 30	REGULAR	EVANS SHATIMA	VISITED
03/14/2004	10 30	03/14/2004	11 00	REGULAR	EVANS BARRY	VISITED
03/06/2004	14 00	03/06/2004	14 30	REGULAR	EVANS BARRY	VISITED
03/03/2004	14 30	03/03/2004	15 00	REGULAR	BROOKINS TAMIKA SHANAY	VISITED
02/29/2004	19 00	02/29/2004	19 30	REGULAR	EVANS SHATIMA	VISITED
02/21/2004	14 30	02/21/2004	15 00	REGULAR	EVANS BARRY	VISITED
02/08/2004	10 30	02/08/2004	11 00	REGULAR	EVANS SHATIMA	VISITED
02/01/2004	10 30	02/01/2004	11 00	REGULAR	EVANS SHATIMA	VISITED
01/31/2004	13 00	01/31/2004	13 30	REGULAR	EVANS, BARRY	VISITED
01/25/2004	10 00	01/25/2004	10 30	REGULAR	EVANS SHATIMA	NO SHOW
01/25/2004	14 30	01/25/2004	15 00	REGULAR	EVANS, ROBYN AB	VISITED
01/18/2004	09 30	01/18/2004	10 00	REGULAR	EVANS SHATIMA	VISITED
01/18/2004	13 00	01/18/2004	13 30	REGULAR	EVANS, BARRY	VISITED
01/11/2004	13 00	01/11/2004	13 30	REGULAR	EVANS ROBYN AB	CANCELLED APP (PHONED)
01/11/2004	13 00	01/11/2004	13 30	REGULAR	EVANS SHATIMA	VISITED
01/04/2004	13 00	01/04/2004	13 30	REGULAR	EVANS SHATIMA	VISITED
01/01/2004	13 30	01/01/2004	14 00	REGULAR	EVANS BARRY	VISITED
12/21/2003	13 00	12/21/2003	13 30	REGULAR	EVANS SHATIMA	VISITED
12/21/2003	13 30	12/21/2003	14 00	REGULAR	EVANS SHATIMA	VISITED
12/14/2003	13 00	12/14/2003	13 30	REGULAR	BROOKINS TAMIKA M	NO SHOW
12/14/2003	13 30	12/14/2003	14 00	REGULAR	BROOKINS TAMIKA M	NO SHOW
12/12/2003	10 00	12/12/2003	10 30	REGULAR	EVANS SHATIMA	CANCELLED APP (PHONED)
12/04/2003	09 00	12/04/2003	09 30	REGULAR	EVANS BARRY	VISITED
11/30/2003	13 00	11/30/2003	13 30	REGULAR	EVANS SHATIMA	VISITED
11/30/2003	13 30	11/30/2003	14 00	REGULAR	EVANS SHATIMA	VISITED
11/23/2003	10 30	11/23/2003	11 00	REGULAR	EVANS BARRY	VISITED
11/23/2003	14 30	11/23/2003	15 00	REGULAR	EVANS, SHATIMA	VISITED
11/11/2003	09 20	11/11/2003	10 23	PROFESSIONAL	GOLDSMITH, SKIP	VISITED
11/09/2003	14 00	11/09/2003	14 30	REGULAR	EVANS, SHATIMA	NO SHOW
11/09/2003	14 30	11/09/2003	15 00	REGULAR	EVANS SHATIMA	NO SHOW
10/31/2003	14 00	10/31/2003	14 30	REGULAR	PAGE, WILMA	VISITED
10/31/2003	14 30	10/31/2003	15 00	REGULAR	NANCE SANDRA	VISITED
10/25/2003	14 00	10/25/2003	14 30	REGULAR	EVANS SHATIMA	VISITED
10/25/2003	14 30	10/25/2003	15 00	REGULAR	EVANS, SHATIMA	VISITED
10/13/2003	14 00	10/13/2003	14 30	REGULAR	EVANS SHATIMA	NO SHOW
10/13/2003	14 30	10/13/2003	15 00	REGULAR	EVANS SHATIMA	VISITED
10/12/2003	10 00	10/12/2003	10 30	REGULAR	EVANS SHATIMA	VISITED
10/12/2003	10 30	10/12/2003	11 00	REGULAR	EVANS SHATIMA	VISITED
10/12/2003	14 00	10/12/2003	14 30	REGULAR	EVANS, SHATIMA	CANCELLED APP (PHONED)
10/12/2003	14 30	10/12/2003	15 00	REGULAR	EVANS, SHATIMA	CANCELLED APP (PHONED)
10/05/2003	14 30	10/05/2003	15 00	REGULAR	EVANS SHATIMA	VISITED
10/04/2003	13 30	10/04/2003	14 00	REGULAR	EVANS BERRY	VISITED
09/28/2003	14 30	09/28/2003	15 00	REGULAR	EVANS SHATIMA	VISITED
09/27/2003	13 30	09/27/2003	14 00	REGULAR	ROBYN GRANT EVANS	VISITED
09/19/2003	10 00	09/19/2003	10 30	REGULAR	EVANS BERRY	VISITED

3486

JAV004
01/13/08 16 07

Greenville County Detention Center
Inmate Visits

Inmate 151664 EVANS KAMILL DELSHAUN Sex M Race B DOB [REDACTED] Booked 04/02/2003 Cell

PAGE 8

PUBLIC RECORDS GWL

864-467-5113

864-467-5113

From Date	Time	To Date	Time	Type	Visitor Name	Status
09/14/2003	13:30	09/14/2003	14:00	REGULAR	ROBYN GRANT EVANS	APPOINTMENT
09/09/2003	10:00	09/09/2003	10:30	REGULAR	EVANS, SHATIMA	VISITED
08/30/2003	14:30	08/30/2003	15:00	REGULAR	BROOKINS TAMIKA	VISITED
08/24/2003	14:00	08/24/2003	14:30	REGULAR	EVANS, SHATIMA	NO SHOW
08/24/2003	14:30	08/24/2003	15:00	REGULAR	EVANS, SHATIMA	NO SHOW
08/18/2003	14:30	08/18/2003	15:00	REGULAR	EVANS, SHATIMA	CANCELLED APP (PHONED)
08/17/2003	14:00	08/17/2003	14:30	REGULAR	EVANS, SHATIMA	VISITED
08/09/2003	14:30	08/09/2003	15:00	REGULAR	EVANS, SHATIMA	NO SHOW
08/04/2003	14:30	08/04/2003	15:00	REGULAR	EVANS, SHATIMA	VISITED
07/28/2003	14:00	07/28/2003	14:30	REGULAR	EVANS, SHATIMA	VISITED
07/20/2003	10:00	07/20/2003	10:30	REGULAR	EVANS, SHATIMA	VISITED
07/20/2003	10:30	07/20/2003	11:00	REGULAR	EVANS, SHATIMA	VISITED
07/13/2003	09:30	07/13/2003	10:00	REGULAR	EVANS, BERRY	VISITED
07/10/2003	14:30	07/10/2003	15:00	REGULAR	EVANS, SHATIMA	NO SHOW
07/06/2003	09:30	07/06/2003	10:00	REGULAR	EVANS, SHATIMA	VISITED
07/06/2003	10:00	07/06/2003	10:30	REGULAR	EVANS, SHATIMA	VISITED
06/30/2003	10:25	06/30/2003	11:55	PROFESSIONAL	RICHEY RODNEY	VISITED
06/29/2003	14:30	06/29/2003	15:00	REGULAR	EVANS, SHATIMA	VISITED
06/19/2003	10:00	06/19/2003	10:30	REGULAR	EVANS, BERRY	VISITED
06/18/2003	09:46	06/18/2003	11:30	PROFESSIONAL	GOLDSMITH, SKIP	VISITED
06/16/2003	14:30	06/16/2003	15:00	REGULAR	EVANS, SHATIMA	VISITED
06/16/2003	18:00	06/16/2003	18:30	PROFESSIONAL	ATTY RICHEY, ATTY	VISITED
06/15/2003	09:30	06/15/2003	10:00	REGULAR	EVANS, SHATIMA	VISITED
06/12/2003	09:30	06/12/2003	10:00	REGULAR	EVANS, SHATIMA	VISITED
06/07/2003	09:30	06/07/2003	10:00	REGULAR	EVANS, BERRY	VISITED
06/02/2003	09:00	06/02/2003	09:30	REGULAR	EVANS, RENEE	VISITED
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05/26/2003	13:30	05/26/2003	14:00	REGULAR	EVANS, RENEE	VISITED
05/24/2003	13:30	05/24/2003	14:00	REGULAR	EVANS, RENEE	NO SHOW
05/20/2003	09:37	05/20/2003	09:43	PROFESSIONAL	D CLYDE M GRAHAM, SOL OFFICE	VISITED
05/19/2003	14:30	05/19/2003	15:00	REGULAR	EVANS, SHATIMA	VISITED
05/12/2003	13:30	05/12/2003	14:00	REGULAR	EVANS, SHATIMA	VISITED
05/11/2003	10:30	05/11/2003	11:00	REGULAR	EVANS, BERRY	VISITED
05/05/2003	14:30	05/05/2003	15:00	REGULAR	EVANS, SHATIMA	VISITED
05/01/2003	13:30	05/01/2003	14:00	REGULAR	EVANS, BERRY	VISITED
04/28/2003	13:30	04/28/2003	14:00	REGULAR	EVANS, SHATIMA	VISITED
04/23/2003	13:30	04/23/2003	14:00	REGULAR	EVANS, SHATIMA	VISITED
04/21/2003	13:30	04/21/2003	14:00	REGULAR	EVANS, SHATIMA	VISITED
04/21/2003	14:15	04/21/2003	14:46	PROFESSIONAL	MAULDIN, JOHN	VISITED
04/18/2003	13:30	04/18/2003	14:00	REGULAR	EVANS, ROBIN	VISITED
04/17/2003	13:00	04/17/2003	14:00	SPECIAL	EVANS, RENEE	VISITED
04/14/2003	13:30	04/14/2003	14:00	REGULAR	EVANS, SHATIMA	VISITED
04/09/2003	13:30	04/09/2003	14:00	REGULAR	EVANS, BERRY	VISITED
04/08/2003	13:30	04/08/2003	14:00	REGULAR	EVANS, SHATIMA	VISITED
04/05/2003	14:30	04/05/2003	15:00	REGULAR	EVANS, SHATIMA	CANCELLED APP (PHONED)
04/04/2003	14:00	04/04/2003	14:30	REGULAR	EVANS, SHATIMA	VISITED
04/03/2003	07:30	04/03/2003	09:05	PROFESSIONAL	HYATT DANNY	VISITED
04/03/2003	09:50	04/03/2003	10:01	PROFESSIONAL	R KERNS J MAULDIN	VISITED

3487

Health Effects of Lead

*In the United States about 900 000 children ages 1 to 5 have a blood-lead level above the level of concern *

*Even children who appear healthy can have dangerous levels of lead in their bodies *

- People can get lead in their body if they
 - Put their hands or other objects covered with lead dust in their mouths
 - Eat paint chips or soil that contains lead
 - Breathe in lead dust (especially during renovations that disturb painted surfaces)
- Lead is even more dangerous to children than adults because
 - Babies and young children often put their hands and other objects in their mouths These objects can have lead dust on them
 - Children's growing bodies absorb more lead
 - Children's brains and nervous systems are more sensitive to the damaging effects of lead
- If not detected early children with high levels of lead in their bodies can suffer from
 - Damage to the brain and nervous system
 - Behavior and learning problems (such as hyperactivity)
 - Slowed growth
 - Hearing problems
 - Headaches
- Lead is also harmful to adults Adults can suffer from
 - Difficulties during pregnancy
 - Other reproductive problems (in both men and women)
 - High blood pressure
 - Digestive problems
 - Nerve disorders
 - Memory and concentration problems
 - Muscle and joint pain

Back to Top

Where Lead is Found

*In general, the older your home, the more likely it has lead-based paint *

- Paint Many homes built before 1978 have lead-based paint The federal government banned lead-based paint from housing in 1978 Some states stopped its use even earlier Lead can be found
 - In homes in the city country, or suburbs
 - In apartments, single-family homes and both private and public housing
 - Inside and outside of the house
- In soil around a home (Soil can pick up lead from exterior paint, or other sources such as past use of leaded gas in cars)
- Household dust (Dust can pick up lead from deteriorating lead-based paint or from soil tracked into a home)
- Drinking water Your home might have plumbing with lead or lead solder Call your local health department or water supplier to find out about testing your water You cannot see smell or taste



lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it

- Use only cold water for drinking and cooking
- Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours
- The job: If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.
- Old painted toys and furniture
- Food and liquids stored in lead crystal or lead-glazed pottery or porcelain
- Lead smelters or other industries that release lead into the air
- Hobbies that use lead, such as making pottery or stained glass, or refinishing furniture
- Folk remedies that contain lead, such as "greta" and "azarcon" used to treat an upset stomach

[Back to Top](#)

Where Lead is Likely to be a Hazard

Lead from paint chips, which you can see, and lead dust, which you can't always see, can be serious hazards.

- Peeling, chipping, chalking, or cracking lead-based paint is a hazard and needs immediate attention.
- Lead-based paint may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear. These areas include:
 - Windows and window sills
 - Doors and door frames
 - Stairs, railings, and banisters
 - Porches and fences

Note: Lead-based paint that is in good condition is usually not a hazard.

- Lead dust can form when lead-based paint is dry scraped, dry sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep, or walk through it.
- Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. Contact the National Lead Information Center (NLIC) to find out about testing soil for lead.

[Back to Top](#)

Checking Your Family and Home for Lead

Get your children and home tested if you think your home has high levels of lead.

*Just knowing that a home has lead-based paint may not tell you if there is a hazard *

To reduce your child's exposure to lead get your child checked have your home tested (especially if your home has paint in poor condition and was built before 1978) and fix any hazards you may have

- Your Family
 - Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age
 - Consult your doctor for advice on testing your children A simple blood test can detect high levels of lead Blood tests are important for
 - Children at ages 1 and 2
 - Children and other family members who have been exposed to high levels of lead
 - Children who should be tested under your state or local health screening plan
 - Your doctor can explain what the test results mean and if more testing will be needed
- Your Home
 - You can get your home checked in one of two ways or both
 - A paint inspection tells you the lead content of every different type of painted surface in your home It won't tell you whether the paint is a hazard or how you should deal with it
 - A risk assessment tells you if there are any sources of serious lead exposure (such as peeling paint and lead dust) It also tells you what actions to take to address these hazards
 - Have qualified professionals do the work There are standards in place for certifying lead-based paint professionals to ensure the work is done safely reliably, and effectively Contact the National Lead Information Center (NLIC) for a list of contacts in your area
 - Trained professionals use a range of methods when checking your home, including
 - Visual inspection of paint condition and location
 - A portable x-ray fluorescence (XRF) machine
 - Lab tests of paint samples
 - Surface dust tests

Note Home test kits for lead are available, but studies suggest that they are not always accurate Consumers should not rely on these tests before doing renovations or to assure safety

[Back to Top](#)

What You Can do to Protect Your Family

- If you suspect that your house has lead hazards you can take some immediate steps to reduce your family's risk
 - If you rent, notify your landlord of peeling or chipping paint
 - Clean up paint chips immediately
 - Clean floors, window frames window sills, and other surfaces weekly Use a mop sponge or paper towel with warm water and a general all-purpose cleaner or a cleaner made specifically for lead REMEMBER NEVER MIX AMMONIA AND BLEACH PRODUCTS TOGETHER SINCE THEY CAN FORM A DANGEROUS GAS
 - Thoroughly rinse sponges and mop heads after cleaning dirty or dusty areas
 - Wash children's hands often, especially before they eat and before nap time and bed time
 - Keep play areas clean Wash bottles, pacifiers, toys and stuffed animals regularly

- RENOVATORS have to give you a pamphlet titled "Protect Your Family from Lead in Your Home", before starting work
 - More information on the Pre-Renovation Education Program
- Take precautions before your contractor or you begin remodeling or renovations that disturb painted surfaces (such as scraping off paint or tearing out walls)
 - Have the area tested for lead-based paint
 - Do not use a belt-sander propane torch heat gun dry scraper, or dry sandpaper to remove lead-based paint. These actions create large amounts of lead dust and fumes
 - Lead dust can remain in your home long after the work is done
 - Temporarily move your family (especially children and pregnant women) out of the apartment or house until the work is done and the area is properly cleaned. If you can't move your family, at least completely seal off the work area
 - Follow other safety measures to reduce lead hazards. You can find out about other safety measures in the EPA brochure titled "Reducing Lead Hazards When Remodeling Your Home". This brochure explains what to do before during and after renovations
 - If you have already completed renovations or remodeling that could have released lead-based paint or dust get your young children tested and follow the steps outlined to protect your family

[Back to Top](#)

Additional Resources

- Documents and Brochures
 - [Lead in Your Home: A Parent's Reference Guide](#)
 - [Testing Your Home for Lead in Paint, Dust, and Soil](#)
 - [Finding a Qualified Lead Professional for Your Home](#)
 - [Lead Poisoning and Your Children \(English\)](#)
 - [Lead Poisoning and Your Children \(En Español\)](#)
 - [Protect Your Family From Lead in Your Home \(English\)](#)
 - [Protect Your Family From Lead in Your Home \(En Español\)](#)
 - [Reducing Lead Hazards When Remodeling Your Home \(English\)](#)
 - [Reducing Lead Hazards When Remodeling Your Home \(En Español\)](#)
 - [Ten Tips to Protect Children from Pesticide and Lead Poisonings around the Home](#)
 - [The Lead-Based Paint Pre-Renovation Education Rule: A Handbook for Contractors, Property Managers, and Maintenance Personnel](#)
 - [Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work](#)
- [Other Lead Resources](#)

[Back to Top](#)

CRIME TIMES

Linking Brain Dysfunction to
Disordered/Criminal/Psychopathic Behavior

Vol 2, No 2, 1996, Page 1

LEAD EXPOSURE LINKED TO DELINQUENT BEHAVIOR

Last year, Crime Times reported on the strong link between lead exposure and behavior problems in children (See *Crime Times*, Vol 1, No 3, Page 4) This February, researchers reported important new evidence that high lead levels contribute to the aberrant behaviors most strongly associated with crime and delinquency

The new study, published in the *Journal of the American Medical Association* by Crime Times Advisory Board member Herbert Needleman and colleagues, followed 212 boys in the Pittsburgh public schools from age 7 through age 11 None of the children had any overt signs of lead toxicity The researchers calculated the boys' bone lead concentrations using a technique called K x-ray fluorescence, which measures cumulative exposure to lead

During the four-year study, teachers and parents periodically filled out questionnaires evaluating the children for aggression, delinquency, and other behavioral problems In addition, the boys themselves were asked to report whether or not they had engaged in antisocial behavior

Only a slight association between lead levels and behavior was seen at age 7 But at age 11, the researchers report, the children with elevated lead levels were judged by both parents and teachers "to be more aggressive, have higher delinquent scores, and have more somatic complaints than their low-lead counterparts," and "the subjects themselves reported lead-related increases in antisocial acts " Other problems associated with high lead levels included anxiety, depression, social problems, attention deficits, and somatic complaints Needleman and colleagues say their findings agree with clinical observations linking lead poisoning to disturbed behavior, and "extend the relationship downward in dose to asymptomatic youths with elevated body burdens "

The researchers say their findings held true even when they controlled for nine different measures of maternal intelligence, socioeconomic status, and quality of child rearing "It is possible, of course, that some unmeasured socioeconomic factor is influencing outcome and is associated with lead," they say, "[but] it is unlikely that such a factor would not be correlated with any of the nine socioeconomic variates for which we controlled "

Needleman et al conclude that "lead exposure is associated with increased risk for antisocial and delinquent behavior, and the effect follows a developmental course " They add that "if [our] findings are found to extend to the population of US children, the contribution of lead to delinquent behavior would be substantial "



Needleman's study was praised as "ground-breaking" by lead expert Kim Dietrich, professor of environmental health at the University of Cincinnati, who says that it is "the first rigorous study to demonstrate a significant association between lead and antisocial behavior." And lead researcher David Bellinger of Boston Children's Hospital, while cautioning that "criminality and violence [are] a final pathway for many different processes," comments that the study "opens the possibility that some of the violence in our society could be the result of preventable environmental pollution."

"Bone lead levels and delinquent behavior," Herbert Needleman, Julie Riess, Michael Tobin, Gretchen Biesecker, and Joel Greenhouse, *Journal of the American Medical Association*, Vol 275, No 5, Feb 7, 1996. Address Herbert Needleman, University of Pittsburgh Medical Center, Suite 305, Iroquois Building, 3600 Forbes Ave, Pittsburgh, PA 15213.

Linking Brain Dysfunction to
Disordered/Criminal/Psychopathic Behavior
Vol 2, No 4, 1996, Page 7

MORE EVIDENCE LINKS LEAD, MISBEHAVIOR

Earlier this year, Herbert Needleman reported a strong link between elevated lead levels and delinquency (See *Crime Times*, Vol 2, No 2, Page 1). A new study by Robert Tuthill links even slightly elevated lead levels to attention deficit disorder, itself a strong risk factor for criminal behavior.

Tuthill analyzed lead levels in the hair of 277 first-graders from eight Massachusetts schools, and found a striking dose-response relationship between hair lead levels and symptoms of attention deficit disorder as reported by teachers. This relationship remained strong, he says, even after age, ethnicity, gender, and socioeconomic status were taken into account. "An even stronger relationship existed between physician-diagnosed attention-deficit hyperactivity disorder and hair lead in the same children," he adds.

Tuthill also found that "there was no apparent 'safe' threshold for lead," with even low exposure increasing the likelihood of attention deficits—a disturbing finding, since approximately three million children in the United States are estimated to have at least mildly elevated lead levels.

Diet linked to lead levels?

A separate study, by Susan Lucas et al , suggests that a low-fat diet can help prevent lead poisoning in high-risk children. The researchers, studying inner-city preschool children, found "a significant association between blood lead levels and both dietary fat and total calories." No association was seen between lead levels and protein or carbohydrate intake.

Lucas et al say the lead/fat connection may stem from the role of bile. The presence of bile, secreted when the body digests fats, leads to increased absorption of lead from the gastrointestinal tract.

Lucas et al also found higher lead levels in children eating more calories. Because many foods are slightly contaminated with lead, they say, increased food intake may naturally result in increased lead intake.

"The significant associations of total calories and dietary fat with [blood lead levels], independent of other key nutrients, are important findings that, if replicated, would further strengthen the recommendation of a low-fat diet as a healthy one for children," the researchers say.

"Hair lead levels related to children's classroom attention-deficit behavior," Robert Tuthill, *Archives of Environmental Health*, Vol 51, No 3, May-June 1996, pp 214-220. Address: Robert Tuthill, Box 30430, School of Public Health, Dept of Biostatistics/Epidemiology, Univ of Massachusetts, Amherst, MA 01003.

--and--

"Relationship between blood lead and nutritional factors in preschool children: a crosscultural study," Susan R. Lucas, Mary Sexton, and Patricia Langenberg, *Pediatrics*, Vol 97, No 1, January 1996, pp 74-79. Address: Susan Lucas, 13532 Huntley Place, Silverdale, WA 98383.

Related Articles [1997, Vol 4]

Linking Brain Dysfunction to
Disordered/Criminal/Psychopathic Behavior

Vol 3, No 4, 1997 Page 1&2&3

**ZEROING IN ON POLLUTION,
CRIMINALITY CONNECTION**

When different scientists using different approaches reach similar conclusions, it's called "converging evidence"-and it excites researchers, because it's the best confirmation of a scientific hypothesis. According to Roger Masters and colleagues, such a body of converging evidence implicates toxic heavy metals as culprits in America's epidemic of violent crime.

Masters and colleagues theorize that "environmental pollution interacts with poverty, poor diet, alcohol or drug use, and social stress to put some individuals at risk for sub-clinical toxicity, leading to a loss of impulse control and increased violent crime." Scientific support for the heavy metal/crime link, the researchers say, comes from five different types of research.

1 CORRELATION are violent criminals more likely to have high levels of toxic metals than non-criminals?

Masters and colleagues say seven studies of prison inmates all found that hair levels of either manganese or lead and cadmium were significantly higher in violent offenders than in non-violent offenders or controls. "Equally interesting," the researchers say, "is the fact that lithium, which has been found to detoxify manganese, was abnormally low in two of the seven samples."

Masters et al. add that research strongly links sub-clinical lead poisoning to learning disabilities and attention deficit disorder-both risk factors for deviant behavior (See related articles, *Crime Times*, Vol. 1, No. 3, Page 4, Vol. 2, No. 2, Page 1, Vol. 2, No. 4, Page 7). Furthermore, they say, "extreme concentrations of manganese have also been associated with violence in environments with mining operations or industrial exposure."

2 PREDICTION are children with high toxin levels at increased risk for criminal behavior in later life?

In two studies of lead, Masters et al. note, "lead uptake at age 7 was significantly predictive of juvenile delinquency or increased aggression in teenage years and early adulthood."

The largest and longest prospective study of toxins' effects on behavior, the researchers say, was a longitudinal study of 1,000 black Philadelphia residents, studied from birth to age 22. This study, Masters et al. say, found that "both lead intoxication and anemia at age 7 were significant predictors of the number of juvenile offenses, seriousness of juvenile offenses and number of adult offenses for males."

3 FUNCTION could toxins' biological effects lead to criminal behavior?

Masters et al. say studies show that toxins can affect both the structure of the developing brain, and the function of neurotransmitters-the brain's "messenger" chemicals. "Of particular importance," they say, "may be synergistic interactions between elements whose toxicity is greatly multiplied when they are combined." Among the many proven neurotoxic effects of heavy metals:

- Excess lead in the brain damages cells called glia, which help detoxify harmful substances and are critical in behavioral inhibition
- Excess copper in the neonatal brain is associated with abnormal development of the hippocampus, a brain structure that plays a critical role in learning

- Excess manganese reduces brain levels of the neurotransmitters serotonin and dopamine, while increasing serotonin concentrations elsewhere in the body. Both human and animal studies link low brain serotonin to impulsive violence, and altered dopamine levels are implicated in a wide range of aberrant behavior.

4 TRANSMISSION are criminals likely to be exposed to toxins?

Despite the bans on leaded gasoline and paint, studies reveal high levels of lead in the soil along heavily traveled urban automobile corridors. Additional sources of lead and other toxic heavy metals include industrial plants, aging public water systems, water pipes within homes, and leaded paint in older homes.

Children are particularly susceptible to these toxins, Masters et al. say, because they absorb up to 50% of the lead they ingest (as compared to 8% for adults), and because their brains are still developing. Infant formulas also affect manganese levels: laboratory studies show that cellular uptake of manganese from cow's-milk formula is five times greater than from mother's milk, and the uptake from soy formula is 20 times greater. Thus, the researchers say, the practice of bottle-feeding—much more popular among poor, uneducated mothers than among wealthier mothers—"greatly increases the infant's exposure to toxicity."

Research also shows that nutritional deficiencies exacerbate the effects of toxins. "For example," Masters et al. note, "laboratory animals whose diet included excess manganese did not absorb it when calcium levels were normal, whereas manganese uptake became significant when their diet was deficient in calcium." Studies show that black teenage males consume only about two-thirds as much calcium as whites, and that calcium intakes of Hispanics, and of black women of child-bearing age, also are far lower than the white average. "Given the increased uptake of neurotoxic metals associated with calcium deficiencies in laboratory studies," the researchers say, "calcium deficits among the poor may have particularly deleterious effects during infant development and childhood."

The effects of toxins, the researchers add, are magnified by alcohol. "As a result," the researchers say, "the combination of alcohol consumption and poor diets, often found in marginal young males, puts them at particular risk."

5 ECOLOGY do areas with high pollution levels have more crime?

If heavy metals and violent crime are associated, Masters et al. say, "ecological measures of environmental pollution, controlling for other variables, should correlate with higher rates of violent crime." And indeed, Masters' research shows a strong relationship.

Masters et al. created a dataset of all U.S. counties, integrating the U.S. Environmental Protection Agency's Toxic Release Inventory for lead and manganese, crime reports from the FBI, alcoholism statistics from the federal government, and socioeconomic and demographic data from the Census Bureau. "Controlling for such conventional factors as income, population density, and ethnic composition," the researchers say, "environmental pollution had an independent effect on rates of violent crime."

Furthermore, the researchers say, counties with industrial lead pollution, industrial manganese releases, and higher than average rates of alcoholism "have rates of violent crime over three times that of the national average "

The converging evidence linking heavy metal pollution to criminal behavior, Masters et al say, may point crime prevention efforts in new and more productive directions Among the approaches they suggest

- Give parents nutrition training, and encourage breast feeding
- Encourage vitamin supplementation for children, and particularly for those at serious risk of deficiency
- Ensure that preschool programs provide good diets in addition to good educational programs
- Identify the precise biochemical imbalances from which criminal offenders suffer, and treat these imbalances as part of their rehabilitation program
- Place greater emphasis on reducing existing pollution-and preventing future threats to the environment "One issue of immediate importance," they say, "is posed by MMT, the manganese-based gasoline additive," recently banned in Canada but still allowed for use in the United States (see related article, Crime Times, Vol 2, No 2, Page 3)

Masters et al stress that "neurotoxicity is only one cause among many, at most functioning as a catalyst which, in addition to poverty, social stress, alcohol or drug abuse, individual character, and other social factors, increases the likelihood that an individual will commit a violent crime " But reducing even this one risk among many is an important goal, they say, "given the extraordinary level of violence that persists in urban America and the failure of traditional policies to meet it "

Masters, Chair of the Executive Committee of the Gruter Institute for Law and Behavioral Research and Nelson A Rockefeller Professor of Government at Dartmouth College, is currently investigating possible relationships between lead, water fluoridation, and behavior Crime Times will inform readers about the results of this research as they become available

"Environmental pollution, neurotoxicity, and criminal violence," Roger D Masters, Brian Hone, and Anil Doshi, in *Environmental Toxicology*, J Rose, ed , Gordon and Breach, publishers, in press Address Roger Masters, Dartmouth College, Dept of Government, 6108 Silsby Hall, Hanover, NH 03755-3547

LEAD UPDATE

- In a study reported in May, Herbert Needleman evaluated 216 delinquents and 201 nondelinquent youths and found that convicted juveniles were nearly twice as likely as control subjects to have high bone-lead levels. The findings were true for both males and females, and for both African-American and Caucasian subjects. The findings support earlier research by Needleman and colleagues (see related article, *Crime Times*, 1996, Vol 2, No 2, Page 1) showing a correlation between lead levels and aberrant behavior.

"This study provides further evidence that delinquent behavior can be caused, in part, by childhood exposure to lead," says Needleman. "Of all the causes of juvenile delinquency, lead exposure is perhaps the most preventable."

- Bruce Lanphear has released a new report revealing that children's math and reading scores begin to decline at lead levels as low as 2.5 micrograms per deciliter. Saying that current lead limits are "inadequate to protect children," Lanphear called for a maximum threshold of half the current 10-microgram limit.
- Rick Nevin examined the association between blood lead levels in U.S. children and IQ changes over several decades. He concluded that "long-term trends in population exposure to gasoline lead were remarkably consistent with subsequent changes in violent crime and unwed pregnancy," and that paint and gasoline lead levels correlated with changes in murder rates. Improvements in children's IQ scores over several decades, as measured by the Cognitive Abilities Test, also showed a strong correlation with declining blood lead levels.

Research by Herbert Needleman and Bruce Lanphear was presented at the joint conference of the American Academy of Pediatrics and Pediatric Academic Societies, May 15, 2000.

--and--

"How lead exposure relates to temporal changes in IQ, violent crime, and unwed pregnancy," Rick Nevin, *Environmental Research* Vol 83, No 1, May 2000, pp 1-22.
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Very Low Lead Levels Linked with IQ Deficits, According to NEJM Study

A new study suggests that lead may be harmful even at very low blood concentrations. The study, funded by the National Institute of Environmental Health Sciences of the National Institutes of Health, will appear in the April 17 edition of The New England Journal of Medicine.

The five-year study found that children who have blood lead concentration lower than 10 micrograms per deciliter suffer intellectual impairment from the exposure. The researchers also discovered that the amount of impairment attributed to lead was most pronounced at lower levels. The study was carried out by researchers from Cornell University, Cincinnati Children's Hospital Medical Center, and the University of Rochester School of Medicine.

An important feature of this new study is its focus on children with blood lead levels below 10 micrograms per deciliter, a threshold currently used by the Centers for Disease Control and Prevention to define an elevated lead level. Previous research has been concerned primarily with lead's effects in the 10 to 30 micrograms per deciliter range, yet the new study finds lead-related impairments at lower levels.

"In this sample of children we find that most of the damage to intellectual functioning occurs at blood lead concentrations that are below 10 micrograms per deciliter," said Richard Canfield, Division of Nutritional Sciences at Cornell University and primary author on the study. The amount of impairment attributed to lead exposure was much greater than the researchers had expected. "We were surprised to find that in our study the IQ scores of children who had blood lead levels of 10 micrograms per deciliter were about 7 points lower than for children with levels of 1 microgram per deciliter," Canfield said.

At the same time, the study found that an increase in blood lead from 10 to 30 micrograms per deciliter is associated with only a small additional decline in IQ. "Because most prior research focused on children with higher exposures than in our sample, we suspected that those investigators could estimate only the amount of additional damage that occurs after blood lead has reached 10 micrograms per deciliter - unaware that more damage may occur at lower levels," said Charles Henderson, Department of Human Development at Cornell.

Deborah Cory-Slechta, director of the NIEHS Environmental Health Sciences Center at University of Rochester School of Medicine, said, "Our study also emphasizes the need to understand the behavioral deficits indicated by lower IQ scores "

Before 1970, childhood lead poisoning was defined by a blood lead concentration greater than 60 micrograms per deciliter. Since then, the threshold used to define an elevated blood lead level declined several times, before reaching the current value of 10 micrograms per deciliter. Under this definition, more than one in every 50 children in the United States between the ages of 1 and 5 years is adversely affected by lead, which has been linked to lowered intelligence, behavioral problems, and diminished school performance. Nearly 1 in 10 young children have a lead level above 5 micrograms per deciliter, according to CDC figures.

"Our study suggests that there is no discernable threshold for the adverse effects of lead exposure and that many more children than previously estimated are affected by this toxin," said Bruce Lanphear, Cincinnati Children's Hospital and director of the hospital's Children's Environmental Health Center. "Despite a dramatic decline over the last two decades in the prevalence of children who have blood lead concentrations above 10 micrograms per deciliter, these data underscore the increasing importance of prevention."

The study followed 172 children in the Rochester, N Y, area whose blood lead was assessed at 6, 12, 18, 24, 36, 48, and 60 months, and who were tested for IQ at both 3 and 5 years of age. The researchers controlled for many other factors that contribute to a child's intellectual functioning, such as birth weight, mother's intelligence, income, education, and amount of stimulation in the home.

"Any detectable effect occurring from such a widespread exposure is cause for concern," Walter J. Rogan, M.D., said. Rogan is a NIEHS researcher who has studied lead exposure in children but was not an author on the study.

"Relatively small changes in the mean IQ of a large number of children will dramatically increase the proportion of children below any fixed level of concern, such as an IQ of 80, and decrease the proportion above any 'gifted' level such as 120," Rogan said.

The authors of the study are Richard L. Canfield and Charles R. Henderson, Jr., Cornell University, Ithaca, N Y, Deborah A. Cory-Slechta, University of Rochester School of Medicine, Rochester, N Y, Christopher Cox, National Institute of Child Health and Human Development, NIH, DHHS, Bethesda, Md, Todd A. Jusko, University of Washington, Seattle, Wash, and Bruce P. Lanphear, Cincinnati Children's Hospital Medical Center. NIEHS funds centers for environmental and children's health at University of Rochester, University of