

VOLUME SIXTEEN

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
James E. Lockemy, Circuit Court Judge

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213468

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

DAVID ALEXANDER
Appellate Defender

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

S. CREIGHTON WATERS
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General

MICHAEL J. ANZELMO

P. O. Box 11549
Columbia, SC 29211

NELSON MULLINS RILEY &
SCARBOROUGH, LLP
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
(803) 255-9589

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

PLAINTIFF'S EXHIBIT #72 (PHOTOGRAPH)
PLAINTIFF'S EXHIBIT #73 (PHOTOGRAPH)

1 MR. WATERS: Very quickly, Your Honor.
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25 | file, I have made a suggestion regarding copying of

1 the file and I don't know if it's indexed or not, I
2 only say this, I have never used this service, it
3 is my understanding, that is a voluminous file, I
4 understand there is a commercial outfit, I think
5 one of them is named ICON, which is a copier
6 company, they actually have a copy service, they
7 copy large volumes of documents and that has been
8 utilized in a death penalty case, in which Mr.
9 Waters and I both used it. I was not involved in
10 the actual copying of it but my co-counsel actually
11 was lead counsel.

12 THE COURT: Why are you telling me all this?

13 MR. BROWN: I would suggest we, whether it's
14 through us and request funding for that company to
15 come and copy the officer's file.

16 THE COURT: I have no problem with that
17 except I can respect the officer's concern that it
18 be in his presence.

19 MR. BROWN: I don't know I have a problem
20 with that. I don't know how they do it.

21 THE COURT: If they come to copy your file
22 you will be glad to let them copy it as long as you
23 are in the presence?

24 THE WITNESS: Yes, sir. I don't mind taking
25 it to them.

1 THE COURT: You don't want it out of your
2 presence, do you, you have the responsibility for
3 that file, don't you?

4 THE WITNESS: Yes, sir. If there is any
5 other court proceedings I'm going to need that
6 file. I don't have any objection, Your Honor, to
7 taking it nextdoor and copying it tonight.

8 THE COURT: We're not in a hurry, I can tell
9 you that, apparently. So, you can copy it. What
10 is wrong with him copying it? He said he will copy
11 it.

12 MR. BROWN: The only thing I would say is
13 that my copy, and I'm not saying he made my copies,
14 I sent a private investigator to make my copies, it
15 was done a long time ago and we appear to have the
16 file. My copies include, they are in plastic
17 sleeves like photos are placed in, very nice, by
18 the way, nicer than the way my copies are in my
19 books, a compliment to the detective. However, my
20 copies include the sleeve part, it clips the top
21 end of the document and we would just like a copy
22 that copies the entire document, and I'm not saying
23 it can't be done, I mean --

24 THE COURT: Over the next couple weeks see if
25 you can copy your file.

1 THE WITNESS: Yes, sir. Normally if I'm
2 going to copy it I would pull them out of the
3 sleeve to copy it, that way to prevent that from
4 happening.

5 THE COURT: He is going to do his best to
6 copy it for you, then you, Mr. Brown, or you, Mr.
7 Sinclaire, can check with what he has given you,
8 the copies, and make sure it is everything in the
9 file.

10 MR. BROWN: We appreciate it.

11 THE COURT: That will save everybody a lot of
12 money. I appreciate that.

13 MR. BROWN: Thank you, Your Honor.

14 (Witness excused).

15 THE COURT: All right, what do you all want
16 to do now?

17 MR. BROWN: I sent my doctor home.

18 THE COURT: I may need your doctor. No, he's
19 not a medical doctor.

20 MR. BROWN: Psychologist. No implication,
21 Your Honor.

22 THE COURT: Well, I think we're going to have
23 to see if we can find a place for the 29th. Now,
24 if you all, for example, your doctor, is he local?

25 MR. BROWN: He practices in Atlanta, Georgia

1 and lives across the creek from me.

2 THE COURT: I mean, do you want to bring him
3 here tomorrow morning or is he gone?

4 MR. BROWN: He stayed here 48 hours, two
5 nights in the hotel, we were going to put him up
6 Wednesday morning.

7 THE COURT: All I can ask you is --

8 MR. BROWN: He's gone.

9 THE COURT: I know. Do you all want to do
10 two hours tomorrow or would you rather we just go
11 ahead and start back on the 29th? Do you figure
12 you can get your case done in a day, a day and a
13 half?

14 MR. BROWN: Your Honor, here is what I have
15 left. I have mitigation witnesses that will
16 consist of a psychologist, that is no surprise, I
17 have showed them this.

18 THE COURT: Mr. Waters is always surprised.

19 MR. BROWN: I gave him a copy of my list,
20 Your Honor, as well as everybody else in the court
21 that asks for it. We have five mitigation
22 witnesses that will take less than a day. Then we
23 have, quite honestly, two trial lawyers. I like to
24 put them up in my case. And we have Solicitor
25 Bailey. I cannot tell you how long that is going

1 to run since almost every single issue, not to Mr.
2 Bailey, but almost every single issue goes to the
3 trial lawyers.

4 THE COURT: I think the trial lawyers are
5 probably going to take a day, I would think, just
6 them two alone, direct and cross.

7 MR. BROWN: Me, too.

8 THE COURT: Do you all want to just reconvene
9 on the 29th, then?

10 MR. WATERS: Your Honor, whatever is in your
11 discretion, we will do whatever you want to do.

12 THE COURT: By the way, why is it you feel
13 you cannot represent Mr. Bowman on the motion for a
14 new trial?

15 MR. BROWN: I'm not saying I can't. Here
16 is -- well, first of all I don't think OID would
17 pay me because that falls under the umbrella, by
18 the way it was filed, I sent a copy to the Attorney
19 General as a courtesy as well, it falls as
20 captioned under his direct trial level proceeding.

21 THE COURT: My concern is, I don't think I
22 have the authority to appoint anyone because I'm
23 not involved in the trial and I don't know if Judge
24 Goodstein knows you are waiting to appoint someone.

25 MR. BROWN: I agree with both those points.

1 I don't think you can appoint it either, I think it
2 is up to her. If she wants to appoint me, I did
3 put in a little note, I will say it is not going to
4 make the job easier, it is going to give me another
5 task. I understand it is kind of the same task but
6 it, I would ask for two, I think he is entitled to
7 two lawyers lawyers. I don't know Mr. Sinclaire is
8 volunteering to be co-counsel.

9 THE COURT: Why don't I suggest tomorrow to
10 let Judge Goodstein know you and Mr. Sinclaire are
11 ready to handle that motion. I think that motion
12 needs to be handled at some point in time because
13 obviously that motion could basically negate the
14 need for any further hearing here.

15 MR. BROWN: Yes, sir.

16 THE COURT: Theoretically.

17 MR. BROWN: May I suggest, and this, there is
18 a capital defender unit now, part of the indigent
19 defense, they do trial level work, Bill McGuire is
20 the attorney, I think if they could be appointed
21 and I would step in as co-counsel.

22 THE COURT: The concern I have with that is,
23 if you do all that it is probably going to take
24 weeks for someone to really get involved.

25 MR. BROWN: But I'm willing to stay on with

1 them.

2 THE COURT: I'm talking about before Judge
3 Goodstein can hear the motion, it might take weeks
4 or months before she could hear the motion if you
5 have to have lawyers, because then they are going
6 to probably look at the entire record to get
7 themselves up to date with how this motion affects
8 the whole record. You and Mr. Sinclair I am
9 confident have read the entire record and looked
10 over every little iota, every piece of material in
11 that record.

12 MR. BROWN: If I could make Mr. Sinclair
13 lead counsel on that.

14 MR. SINCLAIRE: It would be a big mistake,
15 Judge.

16 THE COURT: By whom?

17 MR. SINCLAIRE: I think it would be a big
18 mistake for Mr. Bowman, given the fact Mr. Brown
19 has been involved in the case for two years and is
20 way more involved with the legal ramifications.

21 THE COURT: Who has been involved more than
22 you have other than Mr. Brown? There you go. I
23 would suggest you all let Judge Goodstein know, I
24 have no authority to do it, but I just feel, I
25 assume you all are very sincere about your motion.

1 MR. BROWN: Yes, sir.

2 THE COURT: I think if you want your motion
3 heard somebody has got to go ahead and provide time
4 to do it and get it done.

5 MR. BROWN: Yes, sir.

6 THE COURT: I don't see any conflict of
7 interest as long as you all are qualified in death
8 penalty cases. I assume you are.

9 MR. BROWN: I am, Your Honor.

10 THE COURT: What about you, have you done one
11 in a trial situation, Mr. Sinclair?

12 MR. SINCLAIRE: I was second chair on one
13 case with Mr. Bailey.

14 THE COURT: On the other side of the aisle,
15 we might say, on the prosecution side?

16 MR. SINCLAIRE: Yes, Your Honor.

17 THE COURT: So, I would suggest you ask them
18 to appoint you all and let's set a time up for
19 that. It might be such that she may want to hear
20 that thing maybe on Monday the 29th on chambers
21 week two weeks from now and have it done and then
22 we can see whether we need to have further
23 proceedings in this case.

24 MR. BROWN: Your Honor, I don't mind
25 approaching the judge. Obviously I don't want to

1 do it in an exparte manner and I wrote, I filed the
2 motion with a letter that was done --

3 THE COURT: Do you want me to send an email
4 to her?

5 MR. BROWN: I would love that. If you want
6 to send it to everybody else, I say that because
7 there is a prosecutor that, I don't know if the
8 Attorney General, I don't know how it is going to
9 be handled from their end.

10 MR. WATERS: I'm sure the concern you were
11 just expressing, I would have to be involved in
12 some capacity but we wouldn't need to involve the
13 Solicitor's office.

14 THE COURT: But you might find very few
15 people, if any, in the First Circuit Solicitor's
16 office knows much about this case since Mr. Bailey
17 has left. I'm not sure who is still there.

18 MR. WATERS: That is what I said, I have no
19 doubt I would be there and probably be yakking in
20 court.

21 THE COURT: You don't get appointed, you get
22 drafted.

23 MR. WATERS: Yes, sir, that's correct. Your
24 Honor, if there is any saving grace, those three
25 days we have, you know, it is likely that after we

1 have Mr. Bailey and his trial attorneys --

2 THE COURT: We would have your witnesses.

3 MR. WATERS: Exactly. I would not have
4 anyone to call unless something came up, little
5 small stuff. There is a fair chance we can get
6 done in those three days, the past four days
7 notwithstanding.

8 THE COURT: All right. Let's adjourn for
9 now. I got another message about the fuel shortage
10 with the SCDC. If you all plan to recall anyone
11 how about giving me advance notice so we can
12 somehow work together to make sure that they can be
13 transported because you might be surprised if you
14 think they are going to be here and they're not
15 here.

16 MR. BROWN: Certainly.

17 THE COURT: I think we need to coordinate
18 that along. You have not only the gas cost but the
19 budget cuts that have been ordered across the board
20 and that's affected the Department of Corrections
21 doubly.

22 All right, right now let's tentatively say
23 that we're going to reconvene in this matter at
24 10:00 a.m. on the 29th of September in Dorchester
25 County courtroom. I'm going to have you all walk

1 back with my law clerk and email Judge Goodstein
2 after the hearing today that counsel for Mr. Bowman
3 said if she wishes they would agree to be appointed
4 on the motion for new trial, since I have no
5 authority to do so. If you all have copies of it.
6 I will let you all know if we have to change actual
7 location of the hearing. I would rather we do it
8 here because this is where all the records are and
9 everything else. If we have to go somewhere else
10 we'll go somewhere else. We all want to get
11 through the hearing part of this case by the first
12 day of October because I understand Mr. Sinclair
13 has paid vacation plans, so once we get started we
14 don't want to stop. We will have people sitting in
15 the back of the room with various outfits waiting
16 on him.

17 Anything else before we adjourn?

18 MR. BROWN: Your Honor, Mr. Waters and I have
19 received contact from another judge about another
20 death penalty matter, asking that we be present
21 before him on the 29th of September. That is a
22 more recent case.

23 MR. WATERS: We both advised through our
24 staff that we're --

25 THE COURT: You're in the middle of a trial.

1 MR. BROWN: We gave that advisement to Judge
2 Milling and we pass that on.

3 THE COURT: We can do it in Darlington. May
4 I suggest Darlington, that way you can do them
5 both, all right? You all know Judge Milling is
6 leaving in April. That is kind of interesting, if
7 his case is going to get started it is going to
8 beat your record. You think this one is --

9 MR. BROWN: I'm second chair, Your Honor, on
10 that one.

11 MR. WATERS: I have been push, push for that,
12 Your Honor.

13 MR. BROWN: That would be less than a year
14 from the time we started.

15 THE COURT: All right. Well, anyway, let
16 Judge Milling know you will be before me the 29th,
17 30th and the 1st of October and so after that
18 Thursday you will be available since Mr. Sinclair
19 is not going to be involved.

20 We are now in recess on this matter until
21 10:00 o'clock a.m. 29th of September. If you all
22 would step back with Mr. Daniel to email Judge
23 Goodstein.

24 We're in recess.

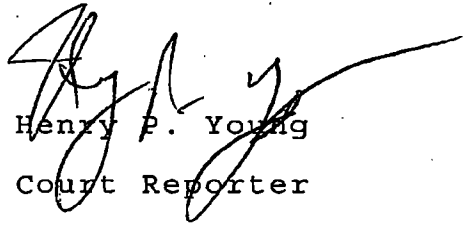
25 (Recessed at 5:25 p.m.).

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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Dorchester County, South Carolina, on the 18th day of September, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 3, 2008.



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2006-CP-18-569

COUNTY OF DORCHESTER

MARION BOWMAN,

-vs-

STATE OF SOUTH CAROLINA,

Defendant.

B E F O R E:

HONORABLE JAMES E. LOCKEMY

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

JAMES ARTHUR BROWN, JR., Esquire
JOHN SINCLAIRE, III., Esquire
Attorneys for the Plaintiff

SAMUEL C. WATERS, Esquire
ALPHONSO SIMON, JR., Esquire
Attorneys for the Defendant

Henry P. Young
Court Reporter

VOLUME V OF X
September 29, 2008

1 (Reconvened at 10:40 a.m.).

2 THE COURT: Before we came out we had a brief
3 meeting in chambers. The only thing we discussed
4 in chambers was the time we thought we would use
5 this week. The applicant's attorneys said they
6 thought maybe it would be over Wednesday at the
7 earliest, that they thought probably most of the
8 witnesses they would call would be probably the
9 witnesses that the respondent would have called
10 anyway but of course there is a chance of recalling
11 witnesses.

12 In addition, we discussed the fact that the
13 respondent, Mr. Waters, the respondent's attorney
14 mentioned in an email they sent to everyone that
15 although he was not going to discuss testimony
16 specifically with Mr. Bailey or with the Solicitor
17 at the time, or with the two defense attorneys,
18 Miss Smalls or Mr. Cummings, he was going to have
19 to be talking to them obviously getting prepared to
20 do his questions because he feels that new issues
21 have come up that the applicant has brought up in
22 the course of testimony and he obviously has a
23 right to look into those areas. His questioning of
24 the witnesses may be changed now since the
25 testimony that the petitioner has brought up.

1 That email came to me on like Wednesday, I
2 think. There was no reply from the applicant so I
3 assume there is no objection to that but he stated
4 he would not specifically tell anyone what the
5 testimony at the trial had been up until this
6 point.

7 Other than that, I don't know of anything
8 else, other than the fact I'm going to have to sign
9 another approval regarding the doctor. Was there
10 anything else, Mr. Waters and Mr. Brown?

11 MR. WATERS: Yes, sir. Again the State wants
12 to reiterate on the record, number one, our
13 objection that we have been raising throughout the
14 trial to any new issues, but also our request that
15 we made two weeks ago that the applicant be
16 required to disclose any new issues that they are
17 going to raise as soon as they feel they have
18 identified them. Otherwise the State is shooting
19 in the dark, and as I explained to Your Honor --

20 THE COURT: Mr. Waters, please understand I
21 agree with you there but I think Mr. Brown says he
22 has disclosed them all. That's the issue, about
23 whether you all agree that he has or has not. Mr.
24 Brown, are there issues that you plan to bring up
25 that you did not put in your third ammended

1 petition?

2 MR. BROWN: There are issues have come up at
3 this hearing, Your Honor, regarding the --

4 THE COURT: I know. Other than matters that
5 have evolved themselves that you say you only heard
6 about because of testimony as you mentioned two
7 weeks ago.

8 MR. BROWN: With one other exception. That
9 is as to the prosecutor's office file, Your Honor,
10 because we have found information regarding the
11 fact Tawain Gadson was threatened, things of that
12 nature.

13 THE COURT: That file, you all did not get,
14 you say, until about a week or ten days before we
15 began?

16 MR. BROWN: Yes, sir, after Labor Day, which
17 Labor Day itself was two weeks. It came after
18 Labor Day and we subpoenaed that file some good
19 eighteen months earlier. Well, we subpoenaed it,
20 it was served in March, we sent our investigator
21 out to get it at the very beginning of August of
22 this year to follow back up and for that month they
23 copied that file and they said they would copy it
24 for us.

25 THE COURT: Could you then tell me now what

1 issues you wish to seek relief for that are not on
2 your third amended application?

3 MR. BROWN: Well, Your Honor --

4 THE COURT: Mr. Waters has a right to know.

5 MR. BROWN: And be heard.

6 THE COURT: If you know them now --

7 MR. BROWN: The ones that were revealed at
8 that last hearing, and I'm going to kind of run
9 through it the best I can. We know that there is
10 the false testimony presented by Travis Felder at
11 trial. That is our interpretation of it. We know
12 that --

13 THE COURT: Are we talking about the gas
14 situation?

15 MR. BROWN: The gas situation. But we also
16 know that there was an indication from Darien
17 Williams that he had said Tawain was out there at
18 the scene. Detective Coker, who is still in the
19 courtroom with us, says that he believed that
20 Tawain had been back out there that night at the
21 burning of the car. That means Tawain Gadson
22 presented false testimony.

23 THE COURT: Well --

24 MR. BROWN: He says he wasn't.

25 THE COURT: But I'm trying to think what

1 Coker said and what evidence that he was.

2 MR. BROWN: Darien Williams, who Solicitor
3 Bailey, and again this is getting into some
4 speculative testimony --

5 THE COURT: Did Mr. Williams testify that Mr.
6 Gadson was there, back out there?

7 MR. BROWN: He gave a statement to law
8 enforcement said he was.

9 MR. WATERS: Which he refuted. I mean --

10 MR. BROWN: He has refuted more than one.

11 MR. WATERS: Are they raising it because
12 counsel was ineffective for failure to call Darien
13 Williams and have him give his statement where he
14 said he went back out there or call Detective Coker
15 and ask him what he believes?

16 MR. BROWN: Until I asked Norb Cummings --

17 THE COURT: Does it matter?

18 MR. WATERS: I don't know, that is my
19 problem.

20 MR. BROWN: It would go to impeach their case
21 a little bit. This here, the problem we have, we
22 have not yet talked to the attorneys about that
23 defense --

24 THE COURT: I know that, Mr. Brown. I'm
25 trying to learn, at this point in time I think Mr.

1 Waters has a right to know basically what you know
2 now are your issues other than what you have in
3 your third amended application.

4 MR. BROWN: Without the transcript from that
5 hearing, Your Honor, I can't raise every one of
6 them in front of Your Honor. I want to tell --
7 there is another one. Hiram Johnson had criminal
8 charges pending that don't appear to have been on
9 his rap sheet, that's clearly pending, that we're
10 dealing with the same prosecutor's office that he
11 was involved with at some point from before.

12 THE COURT: Is this the gentlemen that had
13 the civil suit?

14 MR. BROWN: Yes, and the criminal charges,
15 all involving the same law enforcement, state
16 executive branch. In fact we now know, I don't
17 know if it's in the record yet but we now know for
18 sure, we showed this to the Attorney General, that
19 in fact the suit was in state court, so we're
20 talking about in Circuit Court, in the First
21 Circuit, a suit against one of the investigative
22 agencies in this case and at the same time he is
23 charged with a crime which gets dismissed favorably
24 after this trial, after he testifies. There is no,
25 and this will come out when we talk to the

1 attorneys, there is no written plea deal. However,
2 Your Honor, there was a request for --

3 THE COURT: Hiram Johnson, what else that you
4 can think of at this time? Travis Felder, Gadson,
5 whether he was at the scene or not, Hiram Johnson's
6 pending charges?

7 MR. BROWN: Well, we have also elicited
8 information now that there was testimony changed
9 due to failed polygraph tests. We have no idea to
10 believe they are going to get up here and say,
11 "Yes, I failed the polygraph, I changed my story."

12 THE COURT: Anything else you can think
13 about?

14 MR. BROWN: Right now it's not in evidence
15 but we found out Sam in the prosecutor's office has
16 notes --

17 THE COURT: Who in the prosecutor's office?

18 MR. BROWN: A guy named Sam in the
19 prosecutor's office had notes to do with the
20 interview of Ricky Davis, indicated Ricky Davis
21 contacted not Marva Hardee Thomas but in fact
22 somebody from the prosecutor's office from the
23 State, giving his version of the confession of
24 Tawain Gadson.

25 Two, he dates that confession to a time where

1 he is in jail with Tawain, namely July, not August
2 6th. August 6 is the day he writes it down because
3 he tells Marion, Marion Bowman according to these
4 notes says, "Don't tell me, you write that down."
5 And he said, "Three weeks ago I heard --"

6 THE COURT: This is something you're
7 developing?

8 MR. BROWN: This is something we just got,
9 that is exactly right.

10 MR. WATERS: I have not seen anything on
11 that.

12 MR. BROWN: He just --

13 THE COURT: I'm talking about up to this
14 point. All right.

15 MR. WATERS: Your Honor, just very quickly,
16 again as I mentioned in chambers, I'm just trying
17 to struggle and identify anything they might be or
18 could be raising and I identified 31 separate new
19 issues that I think they might be trying to raise
20 from the testimony and I want to be clear, as I
21 think I have from the beginning of this trial, that
22 any sort of pleadings to conform the proof, it
23 talks about trying issues by consent and I think I
24 have been as clear as I can from day one, to the
25 point of making my amendment and relevance

1 objections over and over again in the prior
2 proceeding, that I am not trying anything by
3 consent. Mr. Brown mentioned the Keith Simpson
4 case. In that particular case I personally was
5 deemed to have tried something by consent, that was
6 a surprise to me. I was trying to be as clear as I
7 possibly can and any new issues remain over my
8 objection.

9 MR. BROWN: Your Honor the only thing I can
10 say in response, when somebody gets on the stand
11 and tells me something I have never heard before
12 and it raises an issue I can't turn a blind eye to
13 it. That is the only thing I can say back in
14 response, is that I understand, we didn't depose
15 every single witness. If we did it that way we
16 wouldn't need a trial. If everything was revealed
17 during the depositions there would be no need for
18 trials, and I try stuff on the criminal side, there
19 is no depositions and everything is live, runs live
20 the first time.

21 THE COURT: All right, anything else? Your
22 concern is noted, Mr. Waters. Anything else?

23 MR. WATERS: Thank you, Your Honor.

24 THE COURT: Anything else about the matters
25 in chambers? Mr. Brown, did we discuss anything

1 else in chambers?

2 MR. BROWN: No, sir, we did not. There was
3 one other thing I would be remiss if I left out.
4 Gadson confessed to firing that gun, we're going to
5 raise an issue with that.

6 THE COURT: What, now --

7 MR. SINCLAIRE: Not chambers.

8 THE COURT: All right. The record reflects I
9 never talked to Mr. Gadson in my chambers.

10 MR. BROWN: No, he confessed in court firing
11 the gun two weeks before the hearing, I apologize,
12 I confused what you said about chambers. We did
13 not discuss anything else in chambers. Tawain
14 Gadson during his trial testimony last week
15 confessed, or two weeks ago, confessed to firing a
16 gun that SLED says killed Kandee Martin, he fired
17 that gun within two weeks, we have linked it up
18 through some stuff that has come in, we were not
19 aware he was going to say that, because we did
20 depose that fellow and we didn't ask him
21 specifically about that, it had not come up yet.

22 MR. WATERS: He did not ask him -- of course
23 they did have the statement from, I forget her
24 name, Tiara, I forget, says Tawain pulled out the
25 gun and handed it to Gadson. I'm not sure that is

1 going to be anything of significance, I just want
2 to point that out to complete the story we have.

3 THE COURT: All right. Is everyone clear we
4 discussed nothing else in chambers this morning?

5 MR. WATERS: Yes, sir, Your Honor.

6 MR. BROWN: Yes.

7 THE COURT: I want to make sure there is no
8 question about what we discussed in chambers before
9 the start of this trial.

10 MR. WATERS: That's correct.

11 MR. BROWN: The only other thing, Your Honor,
12 we did not bring up yet, it has to do with more
13 scheduling issues outside your court. We received
14 notification, I say we, because it may just be me,
15 that there will be a hearing with Judge Goodstein
16 on Thursday. Of course Mr. Sinclair, technically
17 I have not been appointed in that matter, Mr.
18 Sinclair hasn't been appointed but he's not going
19 to be here on Thursday. We tried to call Blair
20 Jennings of the First Circuit Solicitor's office
21 and we have not been successful in reaching him.

22 MR. WATERS: I apparently was not copied on
23 that email because I didn't hear about it until
24 this morning. I had checked my email last night,
25 my work email, and I had not received any notice.

1 THE COURT: Do you plan to be involved in
2 this?

3 MR. WATERS: I think I would need to be since
4 I know the case probably better than anyone at this
5 particular point in time. I had planned to be
6 there. Unfortunately Thursday I have depositions
7 scheduled all day and so I don't know that I can on
8 such short notice, particularly being down here all
9 week, I need somebody to cover that.

10 THE COURT: By the way, that's one thing my
11 law clerk mentioned to me, you know you have the
12 statewide Solicitor's conference going on right
13 now?

14 MR. BROWN: Yes, sir.

15 THE COURT: They may not be prepared to go
16 Thursday.

17 MR. BROWN: They are the ones set it.

18 THE COURT: They set it or Judge Goodstein?

19 MR. BROWN: This set it with Judge Goodstein.

20 I say that, Your Honor, I got the email this
21 morning, I got it walking out of the hotel room to
22 come here, it may have come in to my law clerk's
23 email address which is the primary email address,
24 my law --

25 THE COURT: I think at some point in time,

1 maybe tomorrow while we're, I'm doing this other
2 matter I need to do, maybe then you all need to
3 make sure Judge Goodstein is aware of Mr.
4 Sinclair's problem about being here and all that.

5 MR. BROWN: Yes, sir. Because I don't know,
6 if we do work on that case I don't know if you
7 could sign payment for us to do it. On the other
8 hand --

9 THE COURT: I wouldn't think so.

10 MR. BROWN: -- I haven't been appointed to
11 represent him by her yet.

12 THE COURT: I think it is up to Judge
13 Goodstein to appoint you all. It obviously can't
14 be Mr. Cummings or Miss Smalls.

15 MR. BROWN: We agree, we're in agreement, we
16 want to make sure that's clear.

17 THE COURT: Although -- have they been
18 relieved?

19 MR. WATERS: They would have been relieved
20 once the case was on appeal.

21 THE COURT: All right. All right, Mr. Brown,
22 are you ready for your next witness?

23 MR. BROWN: We are, and I say that because I
24 don't know if the State wanted to deal with
25 anything with the file from Alvin Coker that was

1 copied?

2 MR. WATERS: Yes. Mr. Coker has made a copy
3 of the file as we had discussed at the hearing two
4 weeks ago and I certainly trust him and have no
5 problem just sticking the sticker on it. I don't
6 know what the applicant says about that, if they
7 want to do something to verify that it is complete.
8 Mr. Coker assured me that he was careful and that
9 it is the complete file.

10 MR. BROWN: And, Your Honor, for the purposes
11 of expediting this we would certainly have no
12 problems letting it in. We don't believe Detective
13 Coker would have done anything to not make it a
14 true and accurate copy.

15 THE COURT: Are you saying you all don't need
16 to call him back?

17 MR. BROWN: We don't need to call him back.

18 THE COURT: We all can accept, then, the
19 copies he submitted of his file?

20 MR. BROWN: That's correct, Your Honor.
21 There is another question about the tape because I
22 don't know that the first generation of that tape
23 was in evidence. We have listened to our copy to
24 try to hear what was reportedly heard by another
25 person overhearing people in the parking lot

1 talking about a gun, or killing a girl. There was
2 that testimony at the gas station, and we listened
3 to it, there is some discussion, it is very hard to
4 make out what they're saying.

5 THE COURT: There was a video at the station?
6 Is there a tape at the station also, audio?

7 MR. BROWN: It is audio.

8 THE COURT: All right.

9 MR. BROWN: Your Honor, we say that because
10 we would like the Court to have the best evidence
11 there is and our copy is not it and I don't know
12 what was introduced at the trial which is now part
13 of this record, I think it was Defendant's 19, and
14 we just don't know where the closest to the
15 original is and we would suggest that, we would
16 really like to find out how close we can get to
17 that original. Without putting Detective Coker's
18 in we're dealing with what is said on that tape.

19 MR. WATERS: We have no objection to that.
20 We can ask Mr. Coker what copy he has. This was
21 just raised this morning. I certainly haven't
22 tried to trace down the original.

23 THE COURT: Do you want to call Mr. Coker?

24 MR. BROWN: We would just like to ask him to
25 maybe --

1 THE COURT: It won't take but a minute, go
2 back and ask him off the the record. You all talk
3 about it.

4 MR. WATERS: Thank you.

5 THE COURT: All right, anything?

6 MR. WATERS: Judge, we just checked Sergeant
7 Coker's file that was proffered as Plaintiff's 2
8 and now is Court's -- excuse me, Plaintiff's 42 and
9 is Court's Exhibit Number 2. It is a complete file
10 as well as a CD or DVD containing photographs from
11 the scene like the other investigative photographs.
12 The other thing we have, without objection, at the
13 prior hearing I moved to admit Sergeant Coker's
14 complete investigative notes or the narrative as we
15 referred to it, and he has also made a clean copy
16 of that for admission as well, which will be the
17 next defense's exhibit.

18 THE COURT: The State is putting in his
19 investigative notes, the report is put in by, the
20 report is going to be a court exhibit?

21 MR. WATERS: That's actually Defendant's 10.
22 We had throughout his testimony --

23 THE COURT: Which is Defendant's 10?

24 MR. WATERS: Sergeant Coker's investigative
25 notes in their entirety, the typewritten narrative

1 of his activities in the case. And we just,
2 without objection at the prior hearing had admitted
3 those just to show what Sergeant Coker did in his
4 investigation, for that purpose.

5 MR. BROWN: That's right, for the limited
6 purpose.

7 THE COURT: But the report itself came in as
8 a court exhibit?

9 MR. WATERS: No, sir, in as Defendant's 10.
10 I had offered it straight up and Mr. Brown --

11 THE COURT: When you say notes you're talking
12 about his whole file?

13 MR. WATERS: No, sir. I will show it to you,
14 Your Honor.

15 THE COURT: What about his file?

16 MR. WATERS: His file is Court's 2.

17 THE COURT: That is what I want to know. It
18 is right there and also the CD ROM, that was also
19 proffered by Mr. Brown as Plaintiff's 42.

20 THE COURT: Okay.

21 MR. WATERS: And just the notes have been
22 admitted in evidence for purposes of showing the
23 investigation. That is Defendant's 10

24 (Investigative notes marked and received in
25 evidence as Defendant's Exhibit Number 10).

1 THE COURT: All right. Now are we ready for
2 your witness?

3 THE COURT: Come around.
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1 JEFF YUNGMAN,
2 after being first duly sworn, testified as follows:

3 THE CLERK: State your full name for the
4 record.

5 THE WITNESS: Jeff Yungman.

6 THE COURT: Come around this way, if you
7 would, please, sir.

8 MR. BROWN: Thank you, Your Honor. I'm
9 sorry, we have a witness that is in here, we just
10 realized it.

11 THE COURT: If you would, sir, make sure we
12 can hear you. Give me your full name, please, sir.

13 THE WITNESS: Jeff Yungman.

14 THE COURT: Is that Y-o-u-n-g-m-a-n?

15 THE WITNESS: No, sir, Y-u-n-g-m-a-n.

16 THE COURT: J-e-f-f?

17 THE WITNESS: Yes, sir.

18 THE COURT: And then Y-u-n-g-m-a-n?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay, your witness.

21 MR. BROWN: May it please the Court.

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. BROWN:

24 Q Jeff, would you tell the Court, Mr. Yungman,
25 a little bit about your involvement in the case

1 State versus Marion Bowman at the trial level?

2 A I was retained by the defense to do some
3 social work mitigation for the penalty phase of the
4 trial.

5 Q And in a general kind of concise statement
6 what does a testifying social worker do?

7 A Normally what we do is we do a, what is
8 called a psycho-social assessment. It goes back
9 and looks from, say, the moment of the crime,
10 backwards, to look at what happened in the
11 individual's life and what caused them to make the
12 decision they made at the time of the crime.

13 Q Now, one thing that I think you have to do in
14 capital cases, try to mesh theories between the
15 guilt/innocence phase and the penalty phase?

16 A Yes, sir.

17 Q All right. And what was your understanding,
18 first, of the theory of the defense in the first
19 phase of the case?

20 A Well, I'm not sure I can recall either
21 because I don't remember or because I really have
22 very little communication with the attorneys to
23 know exactly what was going on in that phase.

24 Q Let me show you what has been marked as
25 Plaintiff's Exhibit 51. Are you familiar with this

1 letter?

2 A Yes, sir.

3 Q And how would you describe your concerns from
4 this letter?

5 A Well, the Marion Bowman case was, if I
6 recall, the 26th death penalty case I had worked on
7 since I started doing them in 1997 and it was, some
8 of them go to trial or some of them I didn't have
9 any mitigation, but the ones that went to trial, I
10 think 12 to 15, I can't recall, I had the least
11 amount of communication with the attorneys as to
12 what their strategy was, what they wanted me to
13 present, how they wanted me to present it at the
14 penalty phase. Certainly what I found out I found
15 out, I couldn't change the facts but I could
16 present them in a way that where it would educate
17 the jury and explain the situation in some ways
18 better than others. I usually look to the
19 attorneys for some direction in that.

20 Q And do you recall getting information,
21 because in the letter it speaks for itself, you say
22 you have no idea what the strategy is for the
23 trial?

24 MR. WATERS: I object. That is not what the
25 letter says.

1 Q Would you read the last sentence -- excuse
2 me, the second paragraph.

3 THE COURT: I'm not ruling on that objection.
4 Your question was, again, I know he said he had had
5 the least communication he had with the attorneys
6 he had in any case. What was your question?

7 Q The letter says you had no idea what the
8 strategy is. My question is did you ever find it
9 out?

10 A Not that I recall.

11 THE COURT: Continue.

12 Q And just to kind of complete the context
13 here, is that part of the concern you had in this
14 letter?

15 A Yes, sir. In every other case I said went to
16 trial I at least had some idea what was going on so
17 that they are supposed to dovetail the guilt phase
18 and the penalty phase, and in this case I had no
19 idea.

20 Q Sure. And for instance, just as an example,
21 you may have a case where there is a he didn't do
22 it defense in the guilt phase, how does that
23 dovetail with he's sorry he did it in mitigation?

24 MR. WATERS: Your Honor, I object to that
25 question. I think this is getting into essentially

1 expert opinion on legal strategy which our Supreme
2 Court has said is not necessary. Obviously Your
3 Honor is a trained lawyer and judge and the --

4 THE COURT: I tend to agree with you, Mr.
5 Waters. I mean, you haven't even tried to get him
6 qualified as an expert, but are you just talking
7 about in general cases in his experience?

8 MR. BROWN: I'm trying to.

9 THE COURT: So, in his experience what does
10 he do comparing guilt phase to penalty phase and
11 does he have some where guilt phase their
12 communication is a big issue, others where guilt
13 phase is an issue at the penalty phase, something
14 like that, which is more his awareness more than
15 expert opinion?

16 MR. WATERS: He's a penalty phase witness.
17 As to what the lawyers' strategy in the guilt phase
18 is --

19 THE COURT: Let me do this. Your objection
20 is sustained. What is your next question? That
21 will do away with that.

22 MR. BROWN: All right.

23 BY MR. BROWN:

24 Q Let's talk about your training as a social
25 worker related to work in death penalty cases.

1 Tell the Court a little bit about your
2 qualifications.

3 A In 2002 I had been a social worker for 21
4 years, worked, at that point I was working as
5 clinical director of Crisis Ministries Shelter in
6 Charleston, where I still work. I worked seven
7 years with child abuse and neglect in New Orleans,
8 worked for the school district in New Orleans. At
9 that point I had 21 years of experience and, like I
10 say, it was the 26th death penalty case I had had.

11 Q Let's focus in a little bit on your work. As
12 a social worker in death penalty proceedings as a
13 mitigation, member of the mitigation team?

14 A Yes.

15 Q Tell me a little bit about your training and
16 experience in that regard.

17 A Well, as I said, it was, again, the 26th
18 case, plus I had gone to numerous trainings through
19 PLDA to learn more about how to do mitigation, what
20 the best practices are for mitigation, and at one
21 point I was certified as a forensic social worker
22 but I think it was probably after 2002. I'm not --
23 it was around that time, I don't know exactly.

24 Q Just for the record, what do you do now?

25 A I'm the director of the Crisis Ministries,

1 I'm the attorney for the folks who are at the
2 Shelter, providing them legal services.

3 Q Are you now a licensed member of the South
4 Carolina Bar?

5 A Yes, sir.

6 THE COURT: You're a licensed member of the
7 Bar now?

8 THE WITNESS: Yes, sir.

9 THE COURT: Of this state?

10 THE WITNESS: Yes, sir.

11 THE COURT: What state were you certified in
12 as a forensic social worker?

13 THE WITNESS: I was licensed in Louisiana,
14 then I'm licensed in South Carolina as a licensed
15 independent social worker.

16 THE COURT: You said you were qualified by a
17 court as a forensic social worker?

18 THE WITNESS: I received training at Tulane
19 University with my graduate studies.

20 THE COURT: Okay.

21 BY MR. BROWN:

22 Q And how many times roughly have you been
23 qualified in court, in 2002 how many times had you
24 been qualified in court to testify as a social
25 worker?

1 A Twelve to fifteen times. All the cases I
2 handled did not go to court.

3 Q Did part of that training deal with how to
4 convey a message that will be receptive to a jury?

5 A In that training, the training I got and from
6 training I still get sometimes is to present the
7 information to a jury in a way that they will
8 understand what happened to that individual's life,
9 in that individual's life that caused them to do
10 what they did.

11 Q Now, how were you trained to deal with cases
12 where there are claims that a person did not commit
13 the crime?

14 A Well, I guess the big difference is in cases
15 where I know they committed the crime or where
16 there seems to be very little question that the
17 crime was committed the mitigation focuses, say,
18 more on specific issues of the person's life
19 because we know the crime has been committed and we
20 know that person did the crime, so we look
21 specifically for areas where there have been family
22 dysfunction, child abuse, all the factors you look
23 for, substance abuse, mental illness, et cetera.
24 Where there is some question whether guilty or not
25 guilty it is a more broader, broader overview

1 because we're looking at --

2 MR. WATERS: Your Honor, I apologize. I have
3 to object at this point. I think again he is
4 getting into legal strategy. Although he is an
5 attorney now, again --

6 THE COURT: All I want to hear from you is
7 how you approach it as a social worker.

8 THE WITNESS: Yes.

9 THE COURT: How you did your job as a social
10 worker, okay?

11 THE WITNESS: Okay.

12 THE COURT: By the way, how long have you
13 been a lawyer now?

14 THE WITNESS: I graduated in 2007.

15 THE COURT: So, you have not been qualified
16 on death penalty cases yet, have you?

17 THE WITNESS: No, sir.

18 THE COURT: All right. So, anyway, your
19 question, his question, if you misunderstood, the
20 only thing I'm permitting is how you approached
21 doing your job as a social worker, to gather
22 information.

23 BY MR. BROWN:

24 Q That is exactly right. How have you been
25 trained either in school or in practice to deal

1 with cases, and the way I would ask it, a case
2 where or situation where the guilt of the person
3 that you are involved with is contested? I mean,
4 it may clearly be a murder but I'm talking about
5 where, even where there is a murder, there is an
6 issue regarding the identify of the perpetrator of
7 the crime. This is a case where guilt is
8 contested.

9 A I'm retained by the defense attorney for the
10 person who is on trial, so I don't concentrate on
11 anybody else other than the person who is on trial.
12 If there is other alleged accomplices, that is not
13 what I look into, only the background, the history
14 of the person who is on trial.

15 Q Okay. So, given that context, how have you
16 been trained to approach a case when it's not a
17 case where the person is conceding guilt? I don't
18 mean pleading guilty, I mean not conceding that
19 he's involved, how have you been trained to
20 approach those cases?

21 A Well, really not much different than any
22 cases, to look at the entire background of the
23 individual and to find, you want to find, to see if
24 there are factors that would cause a person to
25 behave in a way that most people would not behave.

1 Q Now, it would be different in some respects,
2 wouldn't it, if a person says, "I'm not the one who
3 misbehaved for this crime"?

4 A It would be but I still have, I mean, I'm
5 retained as a social work expert to provide
6 mitigation, so I still have to look into the
7 person's background.

8 Q Certainly. And the reason why I ask is, are
9 you familiar with the phrase residual doubt?

10 A Well, from my --

11 MR. WATERS: Your Honor, again I object. I
12 guess legal strategy, residual doubt is not a valid
13 defense in the sentencing phase.

14 THE COURT: I thought, I mean -- anyway, he
15 indicates he is apparently not familiar with it,
16 are you?

17 THE WITNESS: I am but not -- I don't think I
18 was at that time. Probably more from my law
19 school.

20 THE COURT: He was not at that time.

21 MR. BROWN: Okay.

22 THE COURT: The only way he knows about it is
23 because of going to law school.

24 THE WITNESS: Yes, sir

25 BY MR. BROWN:

1 Q so, you're not familiar with dealing with the
2 issue that there may be recurring or lingering
3 question in the jury's mind that, "We found guilt
4 beyond a reasonable doubt to convict but we may not
5 feel confident enough to execute a person." Are
6 you familiar with those type situations?

7 THE COURT: Are you asking him was he
8 familiar with it at that time?

9 Q At that time. All these questions are
10 dealing with 2002.

11 A Yes, I have to tell you I know about it but I
12 can't put my mind as to when I knew about it.

13 Q Well, would you feel comfortable saying, and
14 I'm going to turn the best way I can do this, is to
15 ask you to take a look at a copy of the transcript.

16 MR. WATERS: What page?

17 Q We're going to look at 4809. If you will
18 look at page 4809, line 15. Can you recall any of
19 that line of questioning, that colloquy?

20 A I see 4809, line 15.

21 Q Do you see the testimony that you provided
22 following that? You say, "It is not excuses, no
23 excuse for murdering another human being"?

24 A Yes, sir.

25 Q That is following the questioning from Mr.

1 Bowman's lawyer where he is asking you about the
2 mitigation evidence you presented?

3 A Yes, sir.

4 Q Now, how does that dovetail into a defense
5 that he didn't do it?

6 MR. WATERS: Your Honor, again I object.
7 That clearly goes to the legal strategy and is
8 beyond the scope. I mean --

9 MR. BROWN: It doesn't go into legal
10 strategy, it goes to why he testified this way.

11 MR. WATERS: He obviously --

12 THE COURT: Let me see. Is he talking about
13 his testimony?

14 MR. BROWN: I'm talking about his testimony,
15 I'm asking why he said those things.

16 THE COURT: Okay. Then therefore you didn't
17 ask him why he said that, you asked him how that
18 goes to some other type defense. What line are we
19 looking at?

20 MR. BROWN: Line 15, 4809.

21 THE COURT: So, your question, Mr. Brown, is
22 why did he answer or why did he say what he said on
23 lines 15 through 20?

24 MR. BROWN: Given the fact Marion Bowman from
25 the day of his arrest, through this trial and legal

1 proceedings, has denied his guilt.

2 THE COURT: So, given that as a fact, the
3 fact Mr. Bowman has denied his guilt, why did you
4 answer the question the way you did?

5 THE WITNESS: I answered the question the way
6 I did, and I don't know that it had to do with
7 that, I answered the question the way I did because
8 I needed to make the jury, as I do in every case, I
9 need to make the jury understand that I'm not up
10 here testifying to make excuses for the defendant,
11 I'm here to explain his behavior.

12 BY MR. BROWN:

13 Q And you're trying to explain his behavior,
14 you're not talking about behavior of killing
15 someone, are you?

16 THE COURT: This is in the penalty phase he's
17 testifying, right, after the jury has already made
18 the determination he did the act? So, your
19 question is what?

20 MR. BROWN: Why is he saying he killed
21 somebody? That is not exactly my question, but
22 that is my point.

23 THE COURT: Is the question, if the jury
24 determines he did it, ladies and gentlemen of the
25 jury, since you have determined he did it, they

1 have determined he did it, why do people do these
2 things?

3 MR. BROWN: Well, Your Honor, there is still,
4 and he can call it whatever he wants to but I'm
5 going to refer to it as an uncertainty that is less
6 than reasonable doubt and I don't know if I'm going
7 to get to finish before he's going to interject.
8 I'm sorry.

9 THE COURT: I'm trying to determine where
10 you're going. Are you trying to say Mr. Yungman
11 should be saying ladies and gentlemen of the jury
12 there is no just addressing this because he said he
13 didn't do it and that's it?

14 MR. BROWN: No. I must --

15 MR. WATERS: Go ahead.

16 MR. BROWN: I'm sorry.

17 THE COURT: I'm talking to you, Mr. Brown,
18 I'm talking to you.

19 MR. BROWN: There may be a level of
20 confidence in the conviction the jury has expressed
21 beyond a reasonable doubt for which there may be
22 enough doubt that they don't feel confident
23 executing a person.

24 THE COURT: Well, what about this gentleman?

25 MR. BROWN: Well --

1 THE COURT: Let's do this again. Ask your
2 question again.

3 MR. BROWN: You got it.

4 THE COURT: He has already said why he said
5 it, or have you said why you said it?

6 MR. BROWN: I don't think that was my
7 question.

8 THE COURT: Tell this Court, what did you
9 say?

10 MR. BROWN: Given the fact Marion Bowman
11 says, "I did not kill her, even if you found me
12 guilty I still didn't do it," why did you say it's
13 not an excuse for what he did?

14 MR. WATERS: Your Honor, I object to that
15 question. The premises are not in evidence or in
16 the record.

17 THE COURT: By the way, let me see that.

18 MR. WATERS: Not the guilty plea, but the
19 second half is not --

20 THE COURT: I'm trying to read, okay, the
21 last sentence. Anyway, why did you say, overruled,
22 why did you say that?

23 THE WITNESS: I said it because as I do in
24 every time I testify I try to make it clear to the
25 jury that I am not on the stand to make excuses for

1 the individual, I'm on the stand to explain his
2 behavior or what elements in his past life caused
3 behaviors that occurred later in his life.

4 BY MR. BROWN:

5 Q Would it have been, and if I'm following you
6 here, and what I'm trying to find out is would it
7 not have been a little more artful to say for other
8 bad behavior, because there is no question your
9 testimony follows evidence that's put before the
10 jury by others about other crimes he's committed?

11 MR. WATERS: Your Honor, I object to the form
12 of that question.

13 THE COURT: That's leading. Isn't that a
14 leading question? He's your witness.

15 MR. BROWN: I don't know, Your Honor. I will
16 make it as open -- I'm trying to focus his
17 testimony.

18 THE COURT: Don't you have a witness that is
19 going to come to the stand that is going to
20 disagree with what he said?

21 MR. BROWN: Yes, sir. I will have some other
22 information. When he says he didn't do it and
23 there is serious question, we think it was wrong to
24 go up there and say, well, it is not an excuse for
25 what he did, because he's never confessed.

1 THE COURT: Okay, but other than him
2 explaining why he said it, he said it. So --

3 MR. BROWN: Well, we're not quite there.

4 THE COURT: Are you trying to say in your
5 view wouldn't it be better if you had said this and
6 have him say yes or no?

7 MR. BROWN: I will ask it different.

8 BY MR. BROWN:

9 Q At this point in time there has already been
10 testimony about another conviction of Marion
11 Bowman. What other information about his bad acts
12 have been presented by the time you got up there?

13 A I'm not sure what you mean. I reviewed his
14 criminal record prior to testifying.

15 Q How about from other witnesses put up by the
16 State of South Carolina?

17 A I didn't hear any other witnesses.

18 Q But you were aware he had other bad acts?

19 A Yes, sir.

20 Q Okay. And, so, when you talked about these
21 things being an explanation of how he got to that
22 point, and what you are in part talking about is
23 how he got to the point of being involved with the
24 law and things of that nature, or what, when you
25 say he did, what is it that he did that you

1 reference on line 20?

2 A Well, I expect that is the murder he was
3 convicted of.

4 Q I'm sorry?

5 A I'm referring to the murder he was convicted
6 of.

7 Q Did he ever once tell you he killed this
8 girl?

9 A Not that I recall.

10 Q Did anybody else tell you he killed this
11 girl?

12 A No, nobody else did.

13 Q So, if he is still believing he's not guilty,
14 that is not really jiving with the first part of
15 the trial, is it?

16 MR. WATERS: Your Honor, I object to that
17 question.

18 Q How does it jive with the first part of the
19 trial?

20 MR. WATERS: Your Honor, I object to the
21 relevance.

22 MR. BROWN: I'll tell you exactly --

23 THE COURT: Overruled. Just answer the
24 question.

25 THE WITNESS: Well, it doesn't but I was

1 retained to provide information.

2 BY MR. BROWN:

3 Q Wouldn't it have helped if you had known what
4 the strategy was in the first phase? Let's go back
5 to the exhibit before you, your letter of May 9th,
6 2002.

7 A Well, sure, it would.

8 Q That way you all wouldn't have been going in
9 opposite directions?

10 MR. WATERS: Your Honor, I object to that
11 question. There has been no testimony of that and
12 it's leading.

13 THE COURT: Well, whatever the attorney says
14 is not evidence, so I am not going to make the
15 assumption that he said his testimony would go in
16 opposite directions. I will make that decision
17 based on the testimony of the witness. If you
18 remember the question you can answer it.

19 THE WITNESS: I don't know what, opposite
20 directions or same directions, because I didn't
21 know what the direction was.

22 BY MR. BROWN:

23 Q That is exactly my point, and that letter was
24 written less than two weeks from the time, it was
25 dated, written less than two weeks from the time

1 you took the stand?

2 A Yes, sir.

3 Q And how long were you involved in the case?

4 A I would have to look that up. I first
5 interviewed Mr. Bowman on 3/26/02. I probably
6 spoke to Dale Davis who contacted me about this
7 case prior to that at some point but at least
8 around that point of time.

9 Q And you weren't actually the mitigation
10 person?

11 A No, I was not. I was the social worker.

12 Q You take information -- explain what you do
13 with the information you're given.

14 A I take the information I was given and using
15 all I learned in social work school and I learned
16 as a social worker identify areas that caused
17 people to behave, well, in a criminal manner.

18 Q And when you came to this case it was before
19 there was a conviction for murder?

20 A Yes, sir.

21 Q You were there trying to deal with
22 information that you had at that time?

23 A Yes, sir.

24 Q Okay. And how would you characterize some of
25 that other information, from a social worker's

1 standpoint?

2 A Well, I guess it depends on who you're
3 talking about. With Miss Dale Davis, she gave me a
4 good deal of information.

5 Q How would you characterize the substance of
6 the information about Marion Bowman's upbringing?

7 A There is a lot of family dysfunction, there
8 was certainly some substance abuse that entered
9 into his life early, it was very chaotic, the
10 family was poor, there was some question of abuse
11 and neglect we weren't able to substantiate.

12 Q Now, which substance abuse are we dealing
13 with on Marion Bowman's part?

14 A By his own admittance he started drinking at
15 age 13.

16 Q So, it was alcohol?

17 A Alcohol, yes.

18 Q And, so, when we present Marion Bowman, a
19 holistic picture of him at the penalty phase, that
20 is what you get up there to do, to get this picture
21 that encapsulates that biosocial aspect, bio
22 meaning like his physical upbringing and social
23 meaning the dynamics with other people, when you go
24 there to give that holistic picture to the jury you
25 are trying to explain the situation involving not

1 necessarily what happened on February 16th, 2001,
2 are you?

3 A Well, for lack of a better word, I'm
4 explaining how a person evolved into the person
5 they ended up being.

6 Q And that is the same case whether or not he
7 is acquitted of killing Kandee Martin or convicted
8 of killing Kandee Martin, isn't it?

9 A The same things happened in his life, no
10 matter what case.

11 Q And he's in the same situation whatever any
12 one of those twelve jurors decide in that room?

13 A Correct.

14 Q And, so, did you ever hear the attorneys
15 mention or what recollection do you have of the
16 attorneys ever saying that they intended to argue
17 the evidence to suffice for a conviction was not
18 there?

19 A Again, I don't recall any communication that
20 I know that they said that to me or not.

21 Q Do you have any notes of conversations where
22 that topic was broached?

23 A No, I know I don't have any notes.

24 Q And did you meet with them anytime after
25 conviction but before your testimony?

- 1 A No, I'm fairly certain I did not.
- 2 Q Now, just at a matter -- we'll cover that
- 3 later. You talked about at 4810, but the next
- 4 page, line 2, some pictures of Marion Bowman. Do
- 5 you see where we're at?
- 6 A Yes, sir.
- 7 Q Do you recall those photos?
- 8 A Yes, I do. Not specifically but I recall we
- 9 had photos.
- 10 Q You mentioned, you testified they came from
- 11 his mother?
- 12 A Yes.
- 13 Q Why do you believe they came from his mother?
- 14 A I'm sorry?
- 15 Q Is it possible these photos came from a
- 16 yearbook obtained from the school and not his
- 17 mother?
- 18 A Possibly. As for as I can recall it, I
- 19 didn't gather the pictures, Dale Davis did, so --
- 20 Q Would it make a difference to you if his
- 21 mother actually had zero photos of him and no
- 22 yearbook, as opposed to photos out of a yearbook?
- 23 A Sure. That built up the dysfunction in the
- 24 family.
- 25 Q Even more so?

1 A Yes.

2 Q Did you ever have a case where there were no
3 family photos?

4 A I think I have had one in Beaufort but it was
5 a situation where the mother and the child were
6 alienated, so she didn't want any photos of him.
7 That is the only one I can recall.

8 Q That is not a normal social environment?

9 A Certainly not normal.

10 Q Now, who did you speak with when you
11 conducted your interviews? I will ask you some
12 more pointed questions. I don't want to lead you.

13 A I spoke to Dorothy Denise Bowman.

14 Q That is?

15 A Mr. Bowman's mother. Mary Ellen Gadson, who
16 was Mr. Bowman's grandmother. Kenya Bowman, his
17 sister. Loraine Johnson, his aunt. Mary Johnson,
18 aunt. Reverend Jean Lincoln, his aunt. Frances
19 Bruce, his aunt. William O'Guinn, a family doctor.
20 Thelma Young, a seventh grade teacher. Sidney
21 Zemp, the principal of Branchville High School, and
22 Jennifer Thompson, his sixth grade teacher.

23 Q Do you recall when you spoke with Dr.
24 O'Guinn?

25 A No, I don't see a date.

1 Q And were you able to review or have him
2 review his medical records regarding Marion's
3 broken arm?

4 A I know I had the records and I know that was
5 a concern of mine, as to what kind of fracture it
6 was.

7 Q And what did Dr. O'Guinn say?

8 A I don't know what he said.

9 Q Is there a chance maybe he didn't pull those
10 records?

11 MR. WATERS: Your Honor, at this point I want
12 to object again on the amendment and relevance
13 ground. This is the mitigation phase, there is
14 nothing regarding failure to have Dr. O'Guinn
15 pulling certain records or present it in a certain
16 fashion, so I just reserve my objection, I'm not
17 trying this by consent.

18 THE COURT: All right. But as for as the
19 objection about whether -- do you know why the
20 records were pulled, if there were or not?

21 THE WITNESS: I do not.

22 BY MR. BROWN:

23 Q I will just clarify. I'm not clear whether
24 or not you or the doctor ever saw the chart.

25 A I do not know whether Dr. O'Guinn saw the

1 chart. I know I have records in my file.

2 Q Regarding it?

3 A Regarding the break.

4 Q And do you have records or notes of your
5 discussions with Dr. O'Guinn about whether or not
6 the break was caused in an abusive situation?

7 A No, I do.

8 Q Do you know whether the attorneys ever sought
9 consult on that issue?

10 MR. WATERS: Your Honor, again the same
11 objection.

12 THE COURT: Okay. Noted.

13 A Well, no.

14 Q If you don't --

15 A No, for the same reason, because we didn't
16 discuss it.

17 Q You never talked to him?

18 A No.

19 Q Fair enough. Okay. Did you ever speak with
20 Marion Bowman's wife?

21 A No, I did not.

22 Q Did you --

23 A In my notes it doesn't appear I did.

24 Q Okay. And let's go back to that letter. One
25 concern you had, I will try not put words in your

1 mouth, you had two concerns, the letter says,
2 right?

3 A Yes, sir.

4 Q And one concern was that you didn't know the
5 strategy?

6 A Yes, sir.

7 Q What was the second concern?

8 A Well, as it says in the first part of that
9 paragraph, I have information, my goal, whatever I
10 testify is to transmit that information to the jury
11 in the best way possible but I need to know from
12 the attorneys the manner as to how they would best,
13 I could best use it. I don't make things up, I
14 can't create things, but if I got A, B, C and D,
15 should I present them, would it be best to present
16 them A, B, C, D, or A, D, C, B, whatever? I need
17 to know, I need some direction.

18 Q Did you ever get that direction?

19 A I never did.

20 Q And let's talk about it a little bit, because
21 one thing you want to do obviously if you can is
22 present some good character evidence, right?

23 A If it exists, yes.

24 Q Sure. How about work?

25 A Certainly one thing I always look at is work

1 history, if a person held a job for periods of time
2 and was able to hold a job for a period of time, a
3 number of different factors.

4 Q And tell me what records you have concerning
5 Marion Bowman's work history.

6 A I've got him working one, two, three, four,
7 five jobs, six jobs, excuse me, from 1994 through
8 1999.

9 Q And can you give us kind of an overview of
10 those different jobs?

11 A Except for the town of Branchville, which he
12 appeared to work two years '94, '95. The other
13 jobs were with construction or rebar companies.

14 Q And --

15 A And then I have a note here that he had been
16 doing some kind of work since '93, like cutting
17 grass, things like that.

18 Q Did you speak to a Rock Gadson, Robert Rock
19 Gadson?

20 A No. That is not, there is a list of people I
21 spoke with, I don't see a Robert or Rock.

22 Q Okay. Did you speak to Tom Brinkman
23 Contractears, that name?

24 A No, I didn't.

25 Q What were the, what were the names of the

1 companies that he did construction work with?

2 A Stacey Rebar, R and B Rebar, Hood
3 Construction, Cramer Construction, and Moody
4 Mechanical.

5 Q Okay.

6 A He did duct work there.

7 Q Did you speak with people to verify that he
8 actually did in fact work at Stacey's Rebar, Hood
9 Construction? What were the other ones you had,
10 I'm sorry?

11 A R and B rebar, Cramer Construction, Moody
12 Mechanical, and the town of Branchville.

13 Q Where did you get that information?

14 A Mr. Bowman.

15 Q And how about work done with the Navy Weapons
16 Station, anything regarding that?

17 A No, sir.

18 Q How about the shipyard while he was in the
19 restitution center?

20 A No, sir.

21 Q Are you aware he was at some point in time
22 sent to the South Carolina Department of Probation,
23 Pardon and Parole restitution center?

24 A I knew he had been incarcerated in the past,
25 yes, but whether he went to the restitution center,

1 I don't recall.

2 Q Are you familiar with the restitution center?

3 A I'm sorry?

4 Q Are you familiar with --

5 A Yes, I'm familiar.

6 Q People go there after they are actually
7 discharged and they live there and go to work?

8 A Yes, sir.

9 Q Okay. And, so, if you heard that he went to
10 the restitution center you would believe that there
11 would be some work related to that stay?

12 A That's the whole idea behind the restitution
13 center.

14 Q Otherwise they wouldn't have them there
15 anymore. And they have one actually in Charleston?

16 A Yes, they do.

17 Q And what did you find out about his
18 co-workers at Hood Construction?

19 A Nothing that I know of.

20 Q How about a Layne Martin, David Martin or
21 Hank Martin, the uncle, brother and father of the
22 deceased?

23 A No.

24 Q Would it have made some difference in your
25 bio-social assessment if you knew that he actually

1 worked with her family members?

2 A It may have although, again, I don't get into
3 whether he committed the crime or not, so --

4 Q And actually what I'm trying to find out is,
5 does it not change the dynamics of the situation
6 from one where a girl is killed and Marion Bowman
7 is convicted for it, or he knows her family, they
8 had worked together?

9 A Sure, it would change the dynamics.

10 Q That is a little different, isn't it?

11 A Yes, sir.

12 Q Did the attorneys ever tell you that?

13 A I have it nowhere in my notes so I assume
14 they did not.

15 Q Did they ever tell you about any of this
16 work?

17 A No.

18 Q You said you heard it from Mr. Bowman?

19 A I got it from Mr. Bowman.

20 Q Did they ever provide you any records of that
21 work?

22 A No.

23 Q And do you recall testifying about his work
24 at trial?

25 A No, I don't recall.

1 Q And do you know why you wouldn't have
2 testified about his good character of working?

3 A I don't know why other than I probably wasn't
4 asked.

5 Q So, no attorney asked you to talk about his
6 good work?

7 A Correct, if I didn't speak of it.

8 Q But you did talk about his work selling drugs
9 to pay for the family expenses?

10 A Yes.

11 Q Why did you talk about that bad work?

12 A Well, because that showed some of the
13 dysfunction in his family and the fact at an early
14 age he was forced to provide for the family even if
15 it wasn't through a legal means.

16 Q Would it have been at least nice to put in
17 the good work, too?

18 A It would be nice to show a full picture of
19 the individual.

20 Q Because otherwise we just find out this guy
21 is not working -- well, we have no evidence that
22 he's actually working except selling drugs?

23 A Yes.

24 Q Do you recall -- that is kind of -- is that a
25 proper characterization of your testimony?

1 A More or less.

2 Q But it would have been nice to have it?

3 A Sure.

4 Q What was your understanding -- let's go back.

5 You never spoke to his wife?

6 A No, sir.

7 Q Or Yolanda, his sister? He has two sisters.

8 A I only spoke to Kendra, I believe.

9 Q Do you know if that is related to the fact

10 they didn't give you enough money to do what you

11 needed -- gosh, I don't want to mischaracterize

12 this question. Because of the concern about money

13 that is expressed in your May 9th letter?

14 A No. I mean, I really don't do this for the

15 money, so I don't think it is a money issue. It

16 was probably more of a time issue. If I was

17 notified in March for a May hearing, that is not a

18 whole lot of time to get things done.

19 Q And this case was tried in this courtroom,

20 wasn't it?

21 A Yes, it was.

22 Q And Marion is from Branchville?

23 A Yes, sir.

24 Q And Branchville is, just for the record, not

25 very far away?

1 A No, it's not.

2 Q And where did he live with his wife, where
3 did she live?

4 A In Branchville. I don't recall where he
5 lived.

6 Q Estimate how far it is, time or miles.

7 A From the courthouse here to Branchville?

8 Q Just a ballpark?

9 A I just didn't know where we were going.

10 Q Sure.

11 A I don't know, a half hour.

12 Q We know at least in an hour you could be at
13 his wife's house?

14 A Yes, sir.

15 Q All right. I ask you to take a look at
16 Plaintiff's 52. Are you familiar with that?

17 A Yes, sir.

18 Q How would you describe that for the record?

19 A That was some feedback I guess I gave to Dale
20 who was doing the mitigation on the case, as to, as
21 of that date where I was and what I saw as possible
22 mitigation factors.

23 Q Now, this is more than a month before trial?

24 A Yes, sir.

25 Q What did you do to find out about Marion's

1 parenting?

2 Excuse me a moment.

3 A Are you ready?

4 Q Yes, sir.

5 A It appears at some point the decision was
6 made, probably by myself, that that issue was not a
7 strong factor and I concentrated more on the
8 negative factors in his life.

9 Q I show you what has been marked as
10 Plaintiff's Exhibit 53.

11 MR. WATERS: Your Honor, I would object to
12 questioning this witness from this affidavit that
13 was given on September 15th, 2008.

14 THE COURT: I don't know anything about the
15 affidavit.

16 MR. WATERS: It is an affidavit from Mr.
17 Bowman's sister. I think Mr. Brown also wants to
18 substantively enter it in evidence, which the State
19 objects to as well. It talks about a whole bunch
20 of stuff.

21 THE COURT: Can I see the affidavit?

22 MR. BROWN: Yes, sir. The original.

23 THE COURT: Are you handing him an affidavit
24 of Mr. Bowman's sister?

25 MR. BROWN: That's correct.

1 THE COURT: That was taken just recently?

2 MR. BROWN: That's correct.

3 THE COURT: And why do you wish him to review
4 that?

5 MR. BROWN: To see if it has bearing on the
6 existence of positive evidence of his good
7 parenting because he just said that he didn't
8 explore that because they didn't have any evidence
9 to support it.

10 MR. WATERS: The vast majority of this
11 affidavit deals with stuff that has happened since.

12 MR. BROWN: We would certainly agree that
13 would be discounted.

14 THE COURT: This information you see here in
15 this affidavit, have you had a chance to read it?

16 THE WITNESS: Yes.

17 THE COURT: Does it jell with the information
18 you have already had or is there something on there
19 you didn't have at the time of the trial that dealt
20 with things at the time of the trial, nothing
21 afterward, but at the time of trial?

22 THE WITNESS: I do have notes indicating that
23 he was, Mr. Bowman was good to his nephews. Other
24 than that --

25 BY MR. BROWN:

1 Q Okay. Since --

2 MR. BROWN: I'm sorry, Your Honor.

3 THE COURT: So, five deals with issues before
4 trial, number five. Is there anything in this
5 document that you feel you wish you would have had
6 before you testified, that you didn't have? I
7 mean, about matters that occurred up to the time of
8 trial, not afterwards.

9 THE WITNESS: Well, number five addresses
10 before the trial and in my notes it says he was
11 good to his nephews.

12 THE COURT: What's your question, Mr. Brown?

13 MR. BROWN: Thank you.

14 BY MR. BROWN:

15 Q Let me make sure I understand because we have
16 had a little break here, but I asked you about what
17 you did to develop the issue of his good parenting,
18 which is expressed in Plaintiff's 52, your memo to
19 Dale Davis?

20 A Uh-huh (Affirmative).

21 Q About six weeks before your testimony on the
22 second phase, before you testified, and you said
23 you all chose not to pursue that because there was
24 not any good information, and I'm not trying to put
25 words in your mouth. I will back up. Why did you

1 decide not to pursue the issue of his good
2 parenting?

3 A Because I think we didn't have enough
4 information and I can only guess it was my decision
5 to pursue things that were of a more negative
6 aspect of his life.

7 Q We also want to make the jury think he is not
8 a monster, correct?

9 A Correct.

10 Q I'm not trying to put words in your mouth,
11 I'm trying to ask you questions, I don't want it to
12 be like pulling teeth. I will say it again --

13 A Somebody has to decide, and because I was
14 getting no guidance from the attorneys, that was a
15 decision I made, I assume.

16 Q You made the decision not to pursue the
17 parenting?

18 A Either that or they decided not to ask the
19 questions in court about it.

20 Q Did you all sit down and go over your
21 proposed testimony?

22 A No.

23 Q Never one time?

24 A Never.

25 Q Did they ever prepare you to testify as a

1 witness?

2 A No, sir.

3 Q Were you qualified as an expert by them?

4 A Oh, I'm sure I was.

5 Q And were you paid as an expert witness?

6 A Yes, I know I was.

7 Q And they never once sat down and went over
8 your testimony as an expert witness?

9 A No, sir.

10 Q Where did you get the information about him
11 being the good uncle?

12 A I don't have it directly but I assume from
13 Kendra, who is his sister, would be the one who
14 would have his nephew.

15 Q So, you would have clearly had that
16 information back at the time of trial in 2002?

17 A I have it in my notes.

18 Q And those notes have not been augmented?

19 A No.

20 Q All right. And if you look at the affidavit,
21 Plaintiff's 53, would you look at paragraph nine in
22 that affidavit? It talks about Marion's treatment
23 of other children that are not in the family.
24 Would you assume that is also prior to his
25 incarceration?

1 MR. WATERS: Your Honor, I object to that
2 question.

3 MR. BROWN: I think it is obvious from the
4 record, withdraw it.

5 THE COURT: Okay.

6 BY MR. BROWN:

7 Q Just to clarify that, it doesn't have a date.
8 Mr. Bowman I think has undisputably been in prison
9 since February 16, 2001, until the current date.
10 So, that would be, and I'm going to use parenting
11 kind of broadly, but is that also not positive
12 information on that aspect of his life?

13 A Right. My notes also say he treated his
14 stepchildren well.

15 Q I'm sorry, I didn't hear that?

16 A My notes say, there is a note the mother said
17 he treated his stepchildren well.

18 Q Who said that?

19 A The family members.

20 Q Which ones?

21 A Well, the various aunts that I talked to.

22 Q Did you go right to the source and talk to
23 those kids?

24 A No, I didn't talk to the kids.

25 Q Would that be helpful?

1 A I guess it could have been.

2 Q On whether he was a good parent?

3 A I don't know. It didn't occur to me to talk
4 to the kids, I guess.

5 Q How about the wife, the mother of those
6 children?

7 A No, I know I didn't talk to her.

8 Q Would that have been helpful?

9 A That probably would have.

10 Q And would that have provided evidence of his
11 capacity to be of emotional value to others?

12 A Sure.

13 Q And would that be a reason to give a sentence
14 less than death?

15 A Sure.

16 Q That would have jived with any strategy in
17 the guilt phase, wouldn't it?

18 MR. WATERS: Objection, Your Honor, that is
19 asking about legal strategy.

20 THE COURT: I have to sustain, with the way
21 you asked the question.

22 Q What drawbacks would you see with presenting
23 the fact that Marion Bowman could be a good loving
24 person to his family if given a life in prison
25 sentence instead of death?

1 A There would be no drawback, that would be
2 good.

3 Q And that wasn't done, was it?

4 A No, it was not.

5 Q Were you ever asked to consult with a family
6 psychologist?

7 A No.

8 Q To help develop this aspect?

9 A No. I know there is some out there, I have
10 done it in other cases.

11 Q Explain --

12 A The last case I worked in Beaufort County we
13 retained somebody from the University of Maryland
14 at Baltimore to do expressly that, to talk about
15 the effect of a death sentence versus life sentence
16 on the children in the family.

17 Q How about the good character he had something
18 to give if left alive?

19 A Well, that is part of it, yes.

20 Q And that is the flip side of the coin, isn't
21 it?

22 A Yes.

23 Q So, it's not just the effect on third parties
24 of the execution, but it is also the positive
25 character trait that is exhibited by the, at that

1 point in time, the convicted person, the person in
2 the penalty phase?

3 A Yes, sir.

4 Q And I don't know if you have training but the
5 understanding is that any aspect that argues for
6 sentence less than death is something that you want
7 to put up?

8 MR. WATERS: Your Honor, again I object.
9 That relates to legal strategy.

10 MR. BROWN: It sure does, Your Honor,
11 withdraw it.

12 THE COURT: All right.

13 BY MR. BROWN:

14 Q Now, are you familiar with any letters that
15 were written by Mr. Bowman to his wife before this
16 trial?

17 MR. WATERS: Your Honor, again I have to
18 interpose an objection based on the amendment and
19 relevance issues I continue to raise. There is
20 nothing in here about failure to present letters
21 from Mr. Bowman's wife.

22 THE COURT: Noted but continue.

23 MR. BROWN: Your Honor, just for the record,
24 this --

25 THE COURT: Continue on, just ask your

1 question.

2 MR. BROWN: This will be part of the
3 testimony from our expert witness regarding our
4 claim of capacity to be of emotional value.

5 BY MR. BROWN:

6 Q I'm going to show you some letters that
7 appear in the transcript. This is actually volume
8 eleven. I'm going to switch volumes with you, but
9 I'm going to let you start on this one, if you will
10 look at the record, page 5376 to 5389.

11 Have you had a chance to look through those
12 letters?

13 A I can review them but I can tell you it --

14 Q It would take a little while?

15 A They are not listed in anything that I ever
16 reviewed and as my usual procedure, I make copy of
17 everything I reviewed and keep it in my notebook.
18 I don't have those in my notebook, so I don't
19 believe I ever saw these letters before in my life.

20 Q On the issue of his capacity to be of
21 emotional value to others, would it be helpful to
22 know that he expressed concern about his wife and
23 his stepchildren and his, some of these letters,
24 his unborn child and then his newly born child
25 while incarcerated?

1 A Certainly as for as it goes to his
2 stepchildren and his unborn and then born child,
3 yes. His wife, maybe. The children is what I
4 would have looked at.

5 Q As for as parenting goes, you would want to
6 know about those?

7 A Yes.

8 Q And it helps that these letters -- let me
9 back up. Is there any indication these letters
10 where written for the purpose of being brought into
11 litigation?

12 A Not that I can say.

13 Q He didn't prepare these letters for
14 litigation, he's writing them to his wife?

15 MR. WATERS: Your Honor, I object. He is
16 talking about what Marion Bowman intended.

17 THE COURT: You don't know that, do you, sir?

18 THE WITNESS: No.

19 THE COURT: He doesn't know.

20 BY MR. BROWN:

21 Q Did he describe the letters to you?

22 A No, he did not.

23 Q Did he write them to his attorneys, did they
24 appear to be that way?

25 A No, sir.

1 Q To the judge?

2 A No, sir.

3 Q Or the jury?

4 A No.

5 Q Did they appear to be genuine?

6 MR. WATERS: Your Honor, I object.

7 THE COURT: What does that mean? I mean, are
8 they authentic letters written by him?

9 MR. BROWN: Yes, sir, the feelings expressed
10 therein.

11 MR. WATERS: No way he can know that.

12 THE COURT: Are there feelings expressed
13 therein, do they say there are feelings expressed,
14 are there or are there not, not whether he thinks
15 they are genuine or not?

16 BY MR. BROWN:

17 Q As a social worker who testified as an expert
18 for purposes of providing a bio-social assessment
19 of Marion Bowman at trial do those appear to be
20 letters expressing genuine sentiment of concern for
21 the wellbeing of his step-children and his child
22 and his wife?

23 A Yes, they do.

24 Q And concern for the wife while she's carrying
25 his unborn child, is that not evidence he can be a

1 good parent?

2 A Yes. I mean, if that is his child, he's --

3 Q He wants to make sure she takes care of the
4 child?

5 THE COURT: Mr. Brown, the letters he has,
6 these are letters you did not have at trial or did
7 have at trial?

8 Q I'm sorry. Did you ever see these letters?

9 A I never saw these letters.

10 THE COURT: Those letters are letters
11 attached to the transcript.

12 MR. WATERS: Your Honor, this was part of the
13 Jackson v. Deno proceedings and Judge Goodstein
14 excluded the statement. Apparently these were
15 letters written by Mr. Bowman to his wife Dorothy
16 who of course testified against him at trial.
17 Apparently after that the Solicitor came, I guess,
18 when he got those letters from Dorothy he put them
19 before Judge Goodstein based on consideration,
20 based on the fact he can read and write, then he
21 was extensively trying to get her to say that that
22 is certainly reflected in attempts to cover up
23 evidence and the like.

24 MR. BROWN: That is not the way I would read
25 the letters but they are in the record and they

1 are, as Your Honor said, introduced at that point
2 in the trial.

3 MR. WATERS: They were not before the jury.

4 THE COURT: These are letters the Solicitor
5 obtained but then they did come into the trial so
6 the defense had access to them after the trial was
7 started?

8 MR. WATERS: Certainly. They came, the
9 Solicitor offered them again in support of
10 reconsideration to Judge Goodstein's pretrial
11 motion, or pretrial ruling excluding the statement.

12 MR. BROWN: You asked whether they had been
13 given to the attorney --

14 THE COURT: You were talking about whether it
15 would have helped him. The question is did he have
16 access to them, and apparently not until --

17 MR. BROWN: That's right.

18 THE COURT: -- until the trial started.

19 MR. BROWN: He didn't but the lawyers did.

20 THE COURT: We don't know if the defense
21 attorneys had them until the trial started.

22 MR. BROWN: He didn't testify for another
23 thirteen days.

24 THE COURT: Okay. I just wanted to find out
25 when the defense could have given them to him for

1 him to review for purposes of his testimony.

2 MR. BROWN: They could have interviewed his
3 wife for months.

4 MR. WATERS: Your Honor --

5 MR. BROWN: The prosecutor obviously did at
6 some point.

7 THE COURT: Let's proceed on.

8 BY MR. BROWN:

9 Q You testified, you mentioned, you testified
10 he wasn't violent to his wife?

11 A Correct.

12 Q Talking about capacity to be of emotional
13 value to her would be a positive aspect of his
14 character?

15 A Yes.

16 MR. BROWN: I beg the Court's indulgence, I
17 have one issue right now.

18 Q Now, you mentioned there was suspected abuse?

19 A Yes.

20 Q Was there ever an attempt to have -- you're
21 not a private investigator, are you?

22 A No, I'm not.

23 Q All right. So, you don't have a license to
24 go privately and investigate?

25 A No.

1 Q So, you're limited to interviewing for
2 purposes of social work?

3 A Correct.

4 Q The license that you have?

5 A Yes.

6 Q And are you aware of any effort to
7 investigate abuse, that was conducted by the
8 attorneys?

9 A Am I aware of any? I'm not aware of any.

10 Q They never came back and told you, "We're
11 working on it"?

12 A No.

13 Q You were only involved for a period of two
14 months, less than two months?

15 A About two months.

16 Q About two months?

17 MR. BROWN: Now, I would be neglecting my job
18 if I didn't move to introduce 51 and 52 into
19 evidence, which one is the letter he wrote May 9th,
20 2002, and one was the outline that he wrote to the
21 mitigation specialist.

22 MR. WATERS: I have no objection to either
23 one of those.

24 THE COURT: 51 and 52 are in evidence.

25 (Yungman to Cummings letter dated May 9,

1 2002, was Marked and received in evidence
2 as Plaintiff's Exhibit Number 51).

3 (Yungman to Dale Davis letter dated 4/2/02
4 was marked and received in evidence as
5 Plaintiff's Exhibit Number 52).

6 BY MR. BROWN:

7 Q Briefly I want to ask you about any
8 information you received, I may know the answer to
9 this from another answer but between the time of
10 Marion Bowman's conviction and the time you took
11 the stand what information did you get from the
12 defense team, the trial defense team?

13 A The only thing I can recall is the phone call
14 saying, "You need to be here this date and time to
15 testify."

16 Q Did you talk to a Dr. West?

17 A I don't have him listed, so I don't think I
18 did.

19 Q Did you get records from the Department of
20 Social Services?

21 A I do have some records from the Department of
22 Social Services.

23 Q And do they pertain to abuse and neglect
24 investigation or do they pertain to some type of
25 welfare services?

1 A Entitlement programs.

2 Q Did you get -- and when did you get that? Do
3 you have a note when you received those items?

4 A No. I got them from Dale. I don't know
5 when.

6 Q Did you get them -- you got it from Dale?
7 Was Dale Davis available during the penalty phase
8 of the trial?

9 A During the penalty phase?

10 Q Was she there to help you all during that
11 phase of the trial? Did you meet with her between
12 the time of his conviction and the time you took
13 the stand?

14 A No. I can't recall whether she was at trial
15 or not. I assume she was but I don't recall. I
16 didn't meet with her, I don't recall meeting with
17 anybody, I only recall getting a call saying come
18 to testify.

19 Q Did you sit in this little room in here?

20 A I think I sat in the hallway.

21 Q In the hallway? So, you didn't get DSS
22 records between approximately May --

23 A March and May.

24 Q -- 19, 20th, May 22nd?

25 A Yes.

1 Q You did?

2 A No. I got the records sometime between when
3 I was retained in March and the hearing, so I saw
4 the entitlement records sometime in that period of
5 time.

6 Q Okay. I want to make sure. I want to make
7 sure. Do you have a copy of those entitlement
8 records? Do you have any record of receiving DSS
9 information between May 20th and May 22nd?

10 A No, I have no record of that.

11 Q I ask you take a look at the transcript, I
12 think it will be volume ten, page 4547, line 21,
13 and it carries over to 4549, the bottom of that
14 page.

15 A Tell me the numbers again, I'm sorry.

16 Q 4547.

17 A 4547, okay.

18 Q Do you recall receiving anything related to
19 that order?

20 A No, I did not. I don't recall it.

21 Q You weren't there?

22 A I was not there.

23 Q And if it was true that was May 20th do you
24 have any record of receiving information after that
25 date?

1 A No, sir.

2 Q Now, end with this. If there were DSS abuse
3 and neglect information you would like to have had
4 that?

5 A Oh, shoot yes.

6 Q Okay. Now let me come back. In fact that is
7 exactly what you're looking for for that
8 dysfunctional family?

9 A Yes.

10 Q Any allegations of abuse or neglect?

11 A Yes, sir.

12 Q And to end on that, I want to refer you to
13 your testimony at trial, the same volume, Judge,
14 page 4794, line 21, and ask you if this refreshes
15 your recollection of the discussions with Dr.
16 O'Guinn?

17 A Okay.

18 Q Does that clarify things a little bit?

19 A Yes, sir.

20 Q Dr. O'Guinn, again he was the doctor that
21 treated Marion for a broken arm?

22 A For the arm and I believe a burn.

23 Q And did you speak to him twice?

24 A No, just apparently once.

25 Q Okay. And we mentioned, there was a

1 discussion about whether he reviewed the record or
2 not, and to put this in context, at the time of
3 your trial you said, "I spoke to him yesterday"?

4 A That would explain why it's not in my notes.

5 Q Okay. Now, is it possible that he would have
6 been able to, able to clarify whether the broken
7 arm would be, was abusive, or the result of abuse,
8 would there have been a conversation with him prior
9 to the date of your testimony?

10 MR. WATERS: Your Honor, I object to that.
11 There is no way he could answer that question.
12 Total speculation.

13 THE COURT: Do you know that or would you
14 just be guessing?

15 THE WITNESS: He could clarify what kind of
16 break it was.

17 BY MR. BROWN:

18 Q If you had talked to him more than the day
19 before your testimony?

20 A Yes, I would have known what kind of break it
21 was.

22 Q Because you wanted to know that and you asked
23 him that, didn't you?

24 A Difference between a spiral and a snap break.

25 Q Okay. Do you have the xray film in your

1 records?

2 A No, I do not.

3 Q So, you're talking about records, records
4 that say he had a broken arm?

5 A Correct.

6 Q Okay. And basically it's in the transcript,
7 it speaks for itself, but Dr. O'Guinn told you the
8 day before he testified he couldn't recall?

9 A That's right, that's in the transcript.

10 Q Why were you just speaking to him the day
11 before?

12 A I don't know.

13 MR. BROWN: Thank you. Answer any questions
14 the Attorney General may have.

15 MR. WATERS: Thank you, Your Honor. Your
16 Honor, do you want to take five minutes?

17 THE COURT: I was going to suggest that.
18 Let's just do it. If you would, Mr. Yungman,
19 counselor, if you would, please do not discuss your
20 testimony with anyone and we'll start back in a few
21 minutes. Okay?

22 We'll take a recess.

23 (Recessed at 12:15 p.m.).

24 (Reconvened at 12:35 p.m.).

25 THE COURT: Okay, cross examination. Are you

1 ready, Mr. Waters?

2 MR. WATERS: I am, Your Honor.

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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q Mr. Yungman, how are you doing?

4 A Fine, sir.

5 Q Congratulations on passing the Bar, welcome
6 aboard.

7 THE COURT: You passed the Bar?

8 A Yes, sir.

9 Q It has been six years since you were working
10 on this case, is that correct?

11 A That's correct.

12 Q Obviously your memory about everything was
13 better then than now?

14 A Oh, yes.

15 Q You are to some extent relying on your notes
16 and what you can kind of remember the best you can,
17 but it has been a long time, right?

18 A Correct.

19 Q I'm just obviously speaking about your duty
20 as a forensic social worker in 2002 at the time of
21 this testimony and not anything, as much as you can
22 separate it, not anything you subsequently learned
23 as an attorney and that sort of thing.24 But as a forensics social worker your job is
25 to, to find that social history and sort of

1 synthesize it into relevant themes, whether or not
2 the defendant is guilty, is that correct?

3 A That's correct, yes.

4 Q So, you are looking for that social history
5 regardless of guilt, correct?

6 A I don't know, I don't know whether they had
7 found guilt or not until the trial starts.

8 Q And as you said, the social history is the
9 social history, regardless of whatever the jury
10 ultimately determines as to the charges and issues,
11 correct?

12 A Right.

13 Q And in this case you testified that you in
14 preparing for this saw all the records that you
15 thought you needed, correct?

16 A I saw all the records, yes, that I thought
17 were available in the case.

18 Q All right. And at the time that you had done
19 this, how many of these death penalty cases had you
20 done at this time?

21 A I think 26, 26 or 27.

22 Q So, you are pretty well experienced at doing
23 this, correct?

24 A Yes, sir.

25 Q You knew what to look for and what was going

1 to, what were the issues of significance that you
2 needed to look for, correct?

3 A In broad terms, yes, I knew what, say, what
4 the red flags are in any person's history.

5 Q What are some of those?

6 A Well, certainly poverty, child abuse and
7 neglect, educational, say educational deprivation,
8 not getting proper education, substance abuse, head
9 trauma that could occur. I think that's generally
10 what I look at and anything else that should come
11 up.

12 Q That is your expertise, is knowing those sort
13 of things, those red flags that you're looking for
14 in the social history, correct?

15 A Yes, sir.

16 Q Okay. Then I guess also your expertise is in
17 taking those, what you find in that social history
18 and sort of synthesizing it into a coherent
19 presentation. Is that fair to say?

20 A That's fair.

21 Q And then identifying certain things in the
22 life that might have contributed or affected the
23 defendant's judgment or how he ended up in his
24 present situation. Is that fair to say?

25 A Fair enough.

1 Q Okay. All right. And in this particular
2 case, along those lines, you certainly, you talked
3 about how his functioning was affected by childhood
4 trama, correct?

5 A I did, yes.

6 Q And you talked about how his father was
7 abusive and would use brass knuckles. Did you
8 mention that?

9 A I think his father was abusive to his mother,
10 not so much to him.

11 Q Abusive to his mother, absolutely.

12 A Yes.

13 Q And this was when Mr. Bowman was at a very
14 young age, right?

15 A Correct.

16 Q And then ultimately he left the family and
17 kind of left them financially and emotionally
18 destitute at that point. Is that what you
19 testified to at trial?

20 A I believe so, yes.

21 Q And that this really affected Mr. Bowman
22 because he wanted a relationship with his father,
23 correct?

24 A That, I remember that part, yes.

25 Q Okay. And you talked about how they were

1 deprived and had no money. Do you recall that?

2 A Yes, sir.

3 Q And how Mr. Bowman's mother was strict and
4 would box him or beat him daily?

5 A Yes, there was some allegation of that, I
6 believe.

7 Q And then I think you did mention some things,
8 the broken hand, the broken arm at eighteen months,
9 there was an incident where he burned his hand on a
10 heater. Do you recall those?

11 A Yes.

12 Q There was an auto accident?

13 A Yes, I recall him being involved in some,
14 there was some question of head trauma during an
15 auto accident, yes, sir.

16 Q Okay. After that you moved into school
17 history, how initially he did good at school, then
18 he started to decline. Correct?

19 A His performance declined, yes.

20 Q And then you described one of them where a
21 teacher made him sit in his own waste for awhile
22 because she wouldn't let him go to the bathroom?

23 A Yes, I remember that.

24 Q And then from there you mentioned to the fact
25 his mother had gotten injured in her back and then

1 he had to sort of help out at home. Do you recall
2 that?

3 A Right. I think he and his sister were the
4 caretakers for her.

5 Q And then after you moved through a lot of the
6 family history, at an early age you started talking
7 about how he started to experiment with alcohol,
8 correct?

9 A Yes, sir.

10 Q And I think you say he started taking
11 substances at 13?

12 A I'm pretty sure 13 was the age.

13 Q And subsequent to that he started to sell
14 drugs to aid the family or to aid himself, is that
15 correct?

16 A The information I got was to provide support
17 to the family.

18 Q Okay. I think you mentioned some traumatic
19 event where some of his relatives were either
20 killed or one I think died playing Russian
21 roulette. Do you recall that?

22 A Right, yes, sir.

23 Q And that had significant effect on him?

24 A I'm sure it did, yes.

25 Q And you mentioned that he had a stepfather

1 for awhile, Joseph Sims, who was a positive
2 influence in his life but ultimately the
3 relationship with Mr. Bowman's mother dissolved and
4 he lost that fatherly figure. Do you recall that?

5 A. Yes, sir.

6 Q Okay. All right. So, ultimately, then, you
7 concluded that given all these factors, given the
8 deprivations in his life, the lack of a good
9 parental system, the lack of a father figure, the
10 pressures to sell drugs to aid the family, the lack
11 of educational opportunities, that this kind of led
12 him to be susceptible to making poor and impulsive
13 decisions. Is that a fair characterization of your
14 testimony?

15 A I believe so, the best I recall.

16 Q That was really the heart of your opinion
17 here, was that the social history, that the
18 negative aspects within it had affected his
19 development to the point where he would be more
20 likely to make poor and impulsive decisions without
21 a full ability to consider the consequences?

22 A I think poor. I'm not sure if I remember
23 impulsive, but poor decisions.

24 Q Okay, hold on a minute.

25 A If I said it --

1 Q I'm going to show you page 4808 of the
2 record, you already have a copy up there. That
3 would be in volume ten.

4 A Yes.

5 Q And have you look at lines 18 through, on the
6 next page, 4809, to line 9.

7 A Okay.

8 Q Does that refresh your recollection about
9 your ultimate conclusions in this case?

10 A Yes, sir.

11 Q What was that, again?

12 A Expected to make poorly thought out impulsive
13 decisions where the person in this case would not
14 consider the consequences of the action.

15 Q That was kind of a reason how his social
16 history might have had a factor in where he found
17 himself today, that was the opinion you were
18 offering?

19 A Yes.

20 Q Okay. And, so, I mean, that is what, that
21 was what you were here for to testify to, correct,
22 that was the significant meat of the opinion that
23 you gave in this case, correct?

24 A Yes.

25 Q Okay. So, part of it obviously is described

1 as bad social history but the main part is
2 describing how that social history affected his
3 decision making and led him to the predicament he
4 was in right then during the penalty phase of the
5 capital trial, is that correct?

6 A That's a good characterization.

7 Q That is the kind of thing you have been doing
8 for 26 different cases, that is pretty much the,
9 your main focus in engaging in the psycho-social
10 assessment in the context of the capital penalty
11 phase, correct?

12 A That is exactly what it is.

13 Q Psycho-social assessments are used for all
14 kind of things, for example, to provide information
15 to a psychiatrist who is trying to diagnose in a
16 clinical setting, things like that, correct?

17 A We do it at the homeless shelter to evaluate
18 why that person is homeless and what we can do to
19 help them.

20 Q It is kind of like a baseline thing before
21 you decide on, "What we need to do about this
22 individual? We need to first find out where he's
23 been." Is that fair to say?

24 A Correct.

25 Q So, in the forensic context you are looking

1 more at trying to look at how his life history had
2 led him, as I just said, into the predicament he is
3 in right now, correct?

4 A Yes, and into his criminal behavior, yes.

5 Q All right. And, so, there was no question
6 that you knew that is what you were hired to do,
7 was to engage in that particular analysis?

8 A That's what I was hired to do.

9 Q That is the common analysis you have done in
10 the cases, the capital cases you have been involved
11 in, correct?

12 A Yes, sir.

13 Q All right. Who exactly was Dale Davis, what
14 was her involvement in this case?

15 A Dale is what is known as a mitigation
16 specialist. In this case, I mean, it varies from
17 case to case but in general what a mitigation
18 specialist does is locate the material or locate
19 the individuals who I can go interview. She would
20 do preliminary interview and, say, find out where
21 they are located, find out, you know, home
22 Saturdays or whatever, just to help me do my job so
23 that I can interview the people I need to see and
24 to review the records I need to review.

25 Q Do mitigation specialists often have a social

1 work background as well?

2 A Some can, some don't.

3 Q So, their job is to start gathering the
4 evidence of that social history that they can, to
5 get records? Is that something they do?

6 A Correct, yes.

7 Q And they might make initial contact with
8 family and friends and other relevant people in the
9 person's life and have initial interviews with
10 those people. Is that correct?

11 A That's correct.

12 Q Okay. And what other things might they do?

13 A They sort of assist, they assist the defense,
14 whatever other areas the defense needs some help
15 in. It is usually in mitigation, that is why they
16 call them mitigation specialists.

17 Q Right.

18 A To help in whatever, look for other experts,
19 try to locate somebody who might be good in, say,
20 psycho-pharmacology, anything to help prepare the
21 mitigation phase.

22 Q As for as you're concerned, though, the main
23 thing for you is, I'm just saying the main thing
24 would be records and social witnesses, social
25 history witnesses, people to talk to?

1 A Yes, those are the two things I concentrate
2 on.

3 Q Okay. All right. So, she is doing that
4 initially I guess independently of you and then she
5 brings to you what she has and you determine what
6 is the most significant of that and concentrate
7 your effort on that. Is that fair to say how the
8 process works?

9 A That's it.

10 Q So, when you came in she was getting a lot of
11 information and providing it to you for you to use
12 in forming your opinion, correct?

13 A Yes.

14 Q Was a lot of that information in the process
15 of being gathered by the time you came in?

16 A I don't recall. I'm sure some of it had
17 already been gathered and some was in the process.
18 I couldn't tell you which was which.

19 Q So, when you were hired, though, you weren't
20 just hired totally cold, there was already a
21 process in place when you came in?

22 A Correct.

23 Q And again, your process is taking the
24 information that has been gathered and start to put
25 it together into a coherent form to present at

1 trial. Correct?

2 A Yes.

3 Q That is what they hired you to do in this
4 case?

5 A Yes, sir.

6 Q And that is what they relied upon you and
7 your expertise, is to look at these records and
8 determine what of significance to a criminal trial
9 there is in this social history, correct?

10 A Yes, sir.

11 Q That is your expertise as for as being a
12 social worker?

13 A Yes.

14 Q All right. So, I assume obviously that
15 during the course of this process you had a lot of
16 contact with Dale Davis, correct?

17 A With Dale, yes, sir.

18 Q So, you were going back and forth, maybe
19 emails or letters or things like that?

20 A Or phone calls, I think.

21 Q Phone calls, a lot of phone calls? And did
22 she in some respect function as a liason between
23 you and the trial attorneys?

24 A I think that is a role of mitigation
25 specialists. I'm not sure she did it because to be

1 honest I don't know how much contact she had with
2 the attorneys either.

3 Q Okay. All right. Well, let me get this
4 straight. You're saying you never had a talk with
5 Norb Cummings or Marla Hardee-Thomas ever?

6 A No, we had one meeting I can recall to
7 discuss what kind of experts could be used in this
8 trial.

9 Q When was that meeting, do you recall?

10 A Prior to trial but I don't --

11 Q Did you talk on the phone with them?

12 A I don't -- I assume I talked to them at the
13 beginning when I was hired but other than that I
14 don't recall.

15 Q Let's talk about this email right here or
16 memorandum from Dale Davis, or from Jeff Yungman to
17 Dale Davis on April 2nd.

18 A Okay.

19 Q All right. I think that is 52, is that
20 correct?

21 A Yes, sir.

22 Q All right. So, what was the purpose of that?
23 Was this a letter you sent to her or what?

24 A This was to Dale saying I was probably about,
25 less than a month into the process and I had come

1 up with some things and I was letting her know so
2 she could maybe find additional records or find
3 additional people for me to talk to.

4 Q Okay. And you don't know if the attorneys
5 were in the loop on that or if that was forwarded
6 to them or that Dale discussed that with them?

7 A Correct, I don't know.

8 Q You don't know, but you don't know it was
9 not?

10 A Right, I don't know either way.

11 Q All right. Now, ultimately you prepared an
12 eight page report, I believe. Is that correct?

13 A I prepared a report, yes.

14 Q Do you have a copy of that report?

15 A Yes, sir.

16 Q Okay. All right. That is the only copy you
17 have right there?

18 A Yes, sir.

19 Q Okay. So, you prepared that report and that
20 was submitted to who, or to whom, whichever way is
21 right?

22 A To the attorney. That is the only reason I
23 would do the report.

24 Q So, that report went to the attorney,
25 correct?

1 A Yes, sir.

2 Q All right. Now, what does that report
3 reflect in it? Just what is the main point of that
4 report?

5 A Well, what I found out and what conclusions I
6 can draw from the information I found out.

7 Q Okay.

8 MR. WATERS: Your Honor, at this time I would
9 like to introduce that report into evidence as
10 Defendant's 11 and I hope that we can substitute a
11 copy for his original, if that would be acceptable.

12 THE COURT: Is this your report?

13 THE WITNESS: Yes, sir.

14 THE COURT: Any objection?

15 MR. BROWN: No objection.

16 THE COURT: All right. Go ahead and have it
17 marked and we'll substitute, everyone agrees that
18 whatever substitution there is it's a true copy of
19 it. We'll get the original back to you.

20 There is handwritten comments on the
21 right-hand side. Are you aware of that?

22 MR. BROWN: No, sir.

23 MR. WATERS: I will let them review that
24 before I look at it.

25 (Jeff Yungman report marked and received

1 in evidence as Defendant's Exhibit 11).

2 THE COURT: Defendant's 11, Respondent's 11
3 is in evidence.

4 MR. WATERS: Thank you, Your Honor.

5 BY MR. WATERS:

6 Q All right, going back to Dale Davis, is it
7 fair to say you talked to her a lot as this case
8 was coming to trial? Is that fair to say?

9 A As I recall it.

10 Q And this is an example of that sort of thing?

11 A Yes, sir.

12 Q Then there would also be phone calls and
13 things like that?

14 A Right. I don't know that I had email
15 capacity then.

16 Q I understand, 2002 was a long time ago.

17 A Yes.

18 Q You were asked a little bit about whether or
19 not there were any photos of Marion Bowman. Do you
20 recall testifying about that at the penalty phase
21 hearing?

22 A I recall the photos, I don't recall
23 testifying about them. I think I was asked, I
24 mean, I guess the best answer is no, I don't recall
25 testifying. I recall the photos.

1 Q So, you don't recall testifying that it was
2 astounding to you there was really no photos of his
3 childhood life, which you found to be very unusual
4 and significant? If you don't recall --

5 A Yes.

6 Q Turn to page 4810 again, volume ten, and
7 starting at line 6, review your answer there.

8 A Okay.

9 Q All right. After you have had a chance to
10 refresh that, just advise us again what your
11 testimony was about the photographs.

12 A It seemed out of, out of the ordinary that
13 somebody would have only four photos of their
14 children, of their child. Even somebody who is
15 poor or indigent can come up with some photos, at
16 least school pictures.

17 Q But it was true, though, in this case that
18 the four photos were not childhood photos of the
19 family, there was no childhood photos, that was
20 your testimony?

21 A Right.

22 Q There was no childhood photos from the
23 family, correct?

24 A I think he was much older.

25 Q So, what was significant is most people have

1 baby pictures or toddler pictures, those young
2 pictures that you really were surprised that there
3 would be nothing of, correct?

4 A Yes, sir.

5 Q It was really the fact it was a lack of
6 pictures at that young age is more significant
7 than, say, later on, correct?

8 A Correct.

9 Q And your theory of that was that that
10 indicated sort of a lack of caring, a lack of
11 concern, not having that family documentation that
12 commonly occurs, particularly at a young age?

13 A It would be indicative of some family
14 dysfunction.

15 Q All right. Now, you had earlier been asked,
16 you read out a list of all the people you talked
17 to. Did Dale Davis talk to people that you didn't
18 talk to?

19 A I believe she probably did. I mean, it would
20 stand to reason that she would have talked to more
21 people than I would.

22 Q That is usually what happens, she sort of
23 gets the wheat and you get, or she gets the harvest
24 and you separate the wheat from the chaff, correct?

25 A Okay, that's fair.

1 Q Okay. And she's also the one who is
2 typically in the first instance, the one out there
3 getting records and that sort of thing. Correct?

4 A Right. I rarely get records, I usually got
5 them from somebody.

6 Q So, then, for the most part everything is
7 brought to you and you will identify the records
8 and the witnesses that are most important and then
9 you might make a follow-up contact to those
10 individuals personally, correct?

11 A Well, I would make a follow-up.

12 Q Sometimes you can't and you have to rely on
13 what the mitigation specialist says, right?

14 A Correct. I think there was, I believe it was
15 Mr. Sims I wanted to talk to but he was always on
16 the road, I never got a chance to talk to him.

17 Q Okay. That happens when you do these things
18 sometimes, or sometimes they just refuse, they say,
19 "I already talked to that one person, I'm not
20 talking again about it," correct?

21 A I have been turned down a few times.

22 Q All right. So, that is not unusual. Do you
23 recall any difficulties in trying to speak with
24 Dorothy Bowman, his wife, in this particular case?

25 A I don't, I don't recall for sure but I

1 thought she was testifying against him.

2 Q Okay.

3 A So, I think if that was the case, and again I
4 don't know, this is just my, going back in my mind,
5 I would think I probably wouldn't talk to her if
6 she was testifying against him.

7 Q Okay. So, if she had been charged in the,
8 related to the incident and was testifying as a
9 State's witness that might put a big barrier into
10 your being able to freely interview her?

11 A Correct.

12 Q The same I guess for the sisters as well?

13 A Well, I talked to the one sister Kendra, I
14 don't recall why I didn't talk to the other one.

15 Q It is up to them whether or not to talk to
16 you, correct?

17 A Sure.

18 Q You can't force them into it unless you had
19 some power of the court, right?

20 A I don't have it.

21 Q That is why you're saying sometimes you just
22 get turned down and you have to go with the best
23 you have?

24 A Yes.

25 Q You also have to rely on the family members

1 to give you a full, honest and open and complete
2 disclosure of all these issues that might be
3 important, otherwise you won't know about it,
4 correct?

5 A I preface everybody I talk to, saying I need
6 the best and most honest information I can get.

7 Q Obviously sometimes family members are not so
8 willing, so cooperative to give out dark family
9 secrets, is that fair to say?

10 A That's fair.

11 Q In fact that might be one of the biggest
12 difficulties in doing this particular job, is
13 getting family members to open up about these
14 things?

15 A That's why I try to speak to as many people
16 as I can, to see any discrepancies from what people
17 are telling me.

18 Q That is one of the biggest impediments in
19 doing this particular job, doing a psycho-social
20 assessment in a forensics capital setting?

21 A Well, I have to depend on people's honesty
22 and openness.

23 Q That is a difficulty, though?

24 A It is.

25 Q Now, you were asked a little bit about why

1 you did not testify as to Mr. Bowman's employment
2 history. You did have some information on his
3 employment history, correct?

4 A Yes, sir.

5 Q Why don't you take a look at page 4806. And
6 look at lines 13 and 16.

7 A Okay.

8 Q All right. Does that refresh your
9 recollection as to whether or not you did in fact
10 mention his employment history?

11 A Well, it appears I mentioned it.

12 Q So, you did mention it. You also knew he had
13 been a crack dealer, correct?

14 A I knew he dealt drugs. I don't know that we
15 got into specifics as to which drugs.

16 Q Okay. And you said you got the information
17 about his employment from Marion Bowman himself,
18 correct?

19 A Yes.

20 Q So, the extent of the employment history you
21 had came from the person's own mouth. Is that fair
22 to say?

23 A That's fair.

24 Q Okay. So, you relied on him to say where he
25 had worked in his life?

1 A Yes.

2 Q Do you recall Dale Davis got any employment
3 records or spoke to Rock whatever his name was or
4 some of the things Mr. Brown asked you about?

5 A I'm not aware.

6 Q Now, you were asked about Mr. Bowman working
7 with some of the victim's family members. Do you
8 recall Mr. Bowman telling you that?

9 A I don't recall.

10 Q Okay. Do your notes reflect him telling you
11 that?

12 A No, they don't.

13 Q Do your notes reflect him telling you that he
14 was working, did some work when he was at the
15 restitution center?

16 A No.

17 Q All right. Let's go back to State's 52 real
18 quick and look at number five. And in that second
19 sentence you state that using his alcoholism in
20 mitigation is risky. Why is that, in your
21 judgment, in this particular document?

22 A That's because jurors see that as, I don't
23 want to say crutch, but I guess excuse is better,
24 while he was drunk.

25 Q So -- I'm sorry.

1 A That he was drunk and didn't know what he was
2 doing, there is much more to the whole dynamics of
3 alcoholism and why people drink than just that.

4 But --

5 Q What's the risk to the defendant?

6 A The risk is that a jury will dismiss it
7 because they think he is just a drunk.

8 Q Okay.

9 MR. BROWN: Calls for speculation, Your
10 Honor.

11 MR. WATERS: He put an opinion in there. I'm
12 asking him what he advised.

13 THE COURT: Overruled.

14 MR. BROWN: He's not qualified.

15 THE COURT: Do you want to qualify him
16 further?

17 MR. BROWN: He hasn't been qualified as an
18 expert.

19 THE COURT: Isn't that in evidence, this
20 document?

21 MR. BROWN: The document itself. He is
22 asking him why.

23 THE COURT: What's your question?

24 MR. WATERS: My question was why he put in
25 this document that he submitted to Dale Davis that

1 it was potentially risky to use alcoholism as
2 mitigation.

3 THE COURT: This is your report and you wrote
4 those words?

5 THE WITNESS: Yes, sir.

6 THE COURT: Ask him why he wrote those words.

7 BY MR. WATERS:

8 Q Why is it risky?

9 THE COURT: I overrule the objection. Did he
10 already answer you?

11 MR. WATERS: He did.

12 Q Why don't you repeat the answer?

13 A If I can remember it. It was the jury would
14 dismiss it as somebody being a drunk.

15 Q Is it potentially a double edged sword?

16 A Yes.

17 Q Some jurors might consider it aggravating
18 rather than mitigating, correct?

19 A They could.

20 Q All right. Mr. Yungman, give us real quick
21 again your training and experience as a social
22 worker, with particular emphasis on forensic, your
23 forensic work.

24 A Well, as of 2002 I had been a graduate from
25 Tulane with an MSW, was licensed in Louisiana, then

1 moved to South Carolina, was licensed here, worked
2 as a social worker for 21 years, worked at child
3 abuse and neglect for seven years maybe, worked at
4 a runaway homeless shelter in New Orleans for the
5 School District in New Orleans, worked for DHEC
6 here and for Carolina Youth Development here. I
7 worked with a lot of abused and needy kids.

8 Q Okay. So, what is your education in social
9 work? Do you have a Master's?

10 A I have a Master's in social work and a
11 Master's in public health.

12 Q How long you have been practicing as a social
13 worker?

14 A Since '81.

15 Q Since '81, all right.

16 MR. WATERS: Your Honor, I don't think there
17 is any dispute, I think he is clearly an expert in
18 the field of social work, whether or not it is
19 necessary.

20 THE COURT: Do you have any questions,
21 objections in that regard?

22 MR. BROWN: He just hadn't been qualified to
23 this point.

24 THE COURT: Do you have any objection to him
25 being qualified?

1 MR. BROWN: No, sir.

2 THE COURT: I will let him give testimony in
3 the area of social work.

4 BY MR. WATERS:

5 Q We talked a little bit about using alcohol,
6 it is risky, look at number four on that document,
7 State's 52, I believe, and reviewing that, it seems
8 here that Mr. Bowman told you that he had just
9 learned how to read during his current
10 incarceration, is that correct?

11 A That's what it says.

12 Q Okay. That is what he told you?

13 A Yes, sir, or I wouldn't have wrote it
14 otherwise.

15 Q Do you, did you assess his reading
16 capability?

17 A No. That is not an area of expertise for me.

18 Q Do you recall a person named Sally Hayden
19 being involved in this case?

20 A No.

21 Q Okay. So, the person who -- he told you that
22 he couldn't read, he just learned how to read just
23 during his incarceration, correct?

24 A That's what my notes say, yes, sir.

25 Q Okay. And you reviewed those letters in

1 volume eleven earlier?

2 A Correct.

3 Q Take a look at page 5381.

4 A Okay.

5 Q All right. What's the date on that
6 particular letter?

7 A 3/26/01.

8 Q Okay. Now, obviously as part of doing these
9 psycho-social assessments you look at someone's
10 education history and their achievement or lack of
11 achievement therein, correct?

12 A Yes.

13 Q Is it your experience in reviewing those that
14 someone is able to write but not read? Do those
15 two go hand in hand?

16 A I have never encountered that phenomena.

17 Q All right. You were asked why you didn't
18 mention his parenting, I guess, of the nephew and
19 you said you just kind of made that decision on
20 your own. Correct?

21 A That's what I said.

22 Q Are you sure of that, is that something, or
23 is that just what you're concluding six years
24 later?

25 A It would be what I'm concluding six years

1 later.

2 Q Okay. So, why would you have decided, if
3 that's in fact the case, I know you are doing your
4 best to search your memory, it has been a long
5 time, we're all having to deal with that issue, but
6 why would you have decided not to go down that
7 particular road if that is in fact what happened?

8 A It's hard to say why I decided something six
9 years ago but from reviewing my notes it looks like
10 there was a number of suspected abuse, poor school
11 performance, there were other things that I thought
12 weighed, would carry more weight to the jury than
13 that.

14 Q So, in your expertise and synthesizing the
15 social history and presenting these coherent things
16 that might have affected his decision making,
17 that's how you felt it was best streamlined, is
18 that correct?

19 A Yes, as for as I can recall.

20 Q And this is something, you said this is your
21 26th one doing, correct?

22 A Correct. Well, not the 26th time testifying,
23 but --

24 Q The 26th --

25 A -- case I had.

1 Q You had done 26 psycho-social assessments in
2 the context of a case that was potentially capital
3 had it either went to trial or resolved some other
4 way?

5 A Yes, that's true.

6 Q And that is the kind of thing that is the
7 product of your training and experience in doing
8 these psycho-social assessments and identifying
9 these important things in a person's life, correct?

10 A That's true.

11 Q Now, you did of course talk to Kendra, you
12 said, the sister?

13 A Yes, I did.

14 Q Okay. And obviously again, as we have
15 already said, you're dependent upon what she
16 discloses to you, to what you would use, obviously?

17 A Correct.

18 Q And I just ask this question simply because
19 we have introduced the letter talking about the
20 \$2,500, but do you, does your case file reflect how
21 much you got paid in this particular case?

22 A Yes, sir.

23 Q Okay. What was that?

24 A \$4,522.90.

25 Q Okay. So, ultimately the defense attorneys

1 did get you additional funds in this case, correct?

2 A Yes, sir.

3 Q After that letter was issued?

4 A Yes, sir.

5 MR. WATERS: The Court's indulgence just one
6 moment, Your Honor.

7 THE COURT: Yes, sir.

8 Q You were asked a little bit about Dr. O'Guinn
9 and speaking to him, apparently the record reflects
10 the day prior to your testimony. Right?

11 A That's what the record shows.

12 Q Is that uncommon to sometimes be called to do
13 one of those follow-up interviews as you get closer
14 to trial?

15 MR. BROWN: Your Honor, I object to
16 characterization. He clearly said it was one time
17 he spoke to him. He said follow-up.

18 MR. WATERS: Well, I think --

19 THE COURT: Then ask your question again.

20 BY MR. WATERS:

21 Q You testified earlier that often the
22 mitigation specialist gathers these records or does
23 initial interviews with these witnesses and
24 provides that information to you, correct?

25 A Correct.

1 Q Subsequent to that in preparation for your
2 testimony you may do follow-up interviews or seek
3 additional information, as the case may be,
4 correct?

5 A Correct.

6 Q Okay. And is it uncommon, though, as you get
7 closer to trial that you're still sometimes in the
8 process of doing those interviews or new
9 information comes to light and you are trying to do
10 those even up to the day before testimony?

11 A I don't know if I would characterize it as
12 common but it happens.

13 Q That was not the first time that's ever
14 happened?

15 A No.

16 Q Okay. And you of course don't know what his
17 report, one way or the other, would have said about
18 the break?

19 A No, I don't.

20 Q Now, it's true as a forensic social worker
21 lots of times you're essentially able to give
22 hearsay, to relate what other people have told you
23 as part of this social history, just hearsay in the
24 classic sense?

25 A Yes, almost all the time.

1 Q Okay, right. And obviously sometimes you
2 might deal with, say, a particular report or
3 particular letter that might have some things
4 favorable to you and then has a bunch of
5 unfavorable stuff as well?

6 A It happens.

7 Q Okay. And, so, it's up to you to sort of
8 find a way, as you were saying earlier, to sort of
9 emphasize the good stuff and not the bad stuff?

10 A To present it in a way that I think will work
11 in mitigation, I guess, yes. I don't know good or
12 bad, I'm not sure. There are positive things and
13 negative things.

14 Q All right. And sometimes it may be that a
15 particular piece of information or something is
16 just something that you, that unless of course the
17 other side asks you about it, you just kind of stay
18 away from because you think it's just too much of a
19 hot potato? Is that the case or not? Explain it
20 to me.

21 A Yes, if you are asking about this case, I
22 don't recall anything, but in other cases I can
23 recall where we have decided not to pursue some
24 avenue because it didn't seem to be something that
25 would work with the presentation we were going to

1 give.

2 Q Okay. It could be a double edged sword or
3 might just as easily cause a jury to think against
4 the defendant as in favor of them, that sort of
5 thing, correct?

6 A Yes, and maybe somewhere I'm not the best one
7 to testify, it may be something some other expert
8 may be better equipped to handle.

9 MR. WATERS: Okay, I believe that's it, Your
10 Honor. Thank you.

11 THE COURT: Redirect?

12 MR. BROWN: May it please the Court.
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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN:

3 Q Let's go to that testimony where you talked
4 about, where the Attorney General asked whether you
5 had discussed Marion's employment. That's at 4810,
6 I believe. Excuse me, 4806.

7 A Okay.

8 Q All right. Now, and I've got to come back to
9 a question you were asked, sometimes there are
10 things that you stay away from unless asked about.
11 Does that sound right? Not in the transcript but
12 you say, he asked you sometimes there are things
13 you stay away from?

14 A Correct.

15 Q Bad things, you're not going to volunteer
16 them?

17 A Correct.

18 Q Would that be like Marion beating somebody
19 with a pine limb? Did you find any record of that?

20 A I remember getting that information, I don't
21 know that I saw any record of that.

22 Q Right. So, you testified about that on
23 direct examination, didn't you?

24 A Well, if you say. I don't recall testifying
25 that.

1 Q And, so, is it something you would like to
2 stay away from unless you are asked about it, if
3 there are no other written documents of Marion
4 beating another person with a limb?

5 A It would be something that --

6 Q Something --

7 A -- the jury would probably find distasteful,
8 so unless there was some overriding reason to put
9 that in.

10 Q Let's look at your testimony, 4798. Maybe
11 you can just take a look at that.

12 A Okay.

13 Q Your testimony on that paragraph --

14 A All right.

15 Q Is that something you would want to stay away
16 from, or volunteer?

17 A Well, in that context I was explaining why he
18 was being expelled. I don't know --

19 Q He didn't get expelled, did he?

20 A There was a hearing.

21 Q Right. Is that a good thing? Maybe I'm
22 wrong, but about stuff like the alcoholism, maybe
23 we want to stay away from it, it's double edged,
24 it's not good. I'm trying to find out why did we
25 go into that.

1 A Well, that part of my testimony, I was
2 testifying about the problems he had in school and
3 trying to bring across the point that had the
4 school intervened in his behavior or done something
5 to deal with his poor performance they should have
6 done it.

7 Q Okay. And performance means like academic
8 performance?

9 A There is, schools certainly get involved in
10 kid behavior a lot.

11 Q Okay. And how about the school's involvement
12 on his early use of alcohol?

13 A I mean, I don't know if the school had any
14 knowledge of his early use of alcohol.

15 Q But if they did they would want to look into
16 that, right?

17 A Sure.

18 Q And you even say in your testimony at trial
19 his use is not surprising?

20 A Okay, right.

21 Q I'm just curious, we talk about what appears
22 to be an undocumented report of him beating another
23 student with a pine limb, again I'm going to ask
24 you if it's documented somewhere?

25 A Not that I know of.

1 Q So, more or less you volunteered this
2 negative information but there was a fear about
3 using his alcoholism?

4 A Well, we ended up using his alcoholism.

5 Q I'm following up on his question, he asked
6 very pointedly about some reluctance because it
7 might be double edged, and again the positive edge
8 on this, beating him with a pine limb, is it that
9 the school wasn't helping him enough?

10 A Yes. Well, he was placed on probation for
11 the rest of the year for doing that.

12 Q That's positive. I mean, I'm trying to get
13 positive out of it. Don't get me wrong, you don't
14 want to hide anything from the jury, I mean, you
15 stay away from it unless asked about it, I put that
16 down in quotes, I tried to see how this is one of
17 those that goes in that cubbyhole.

18 A I don't think I can talk about his probation
19 from school without explaining why he was put on
20 probation and almost expelled.

21 Q On the previous page you talk about him being
22 suspended for chronic behavior, that's your phrase.
23 I guess I'm just trying to figure that out, and why
24 was it, what happened there, what was the exact
25 reason that he was suspended and they intervened?

1 A If I didn't say I don't know.

2 Q Could you have done it the same way on this
3 one?

4 A Possibly.

5 Q Stayed away from some of this bad stuff, so
6 we're not -- maybe I'm wrong because I think you
7 had mentioned that one of your things was to
8 emphasize the bad stuff and not emphasize the good
9 stuff about Marion. I'm just trying to make sure I
10 got this right on my direct.

11 A Well, you know, I think the whole problem is
12 the word bad. The negative aspects of his life is
13 what I'm talking about.

14 Q Okay.

15 THE COURT: Are you saying bad things that
16 happened to him during his life?

17 THE WITNESS: I'm not sure what --

18 MR. BROWN: I was asking about bad things,
19 emphasizing the bad stuff he has done.

20 BY MR. BROWN:

21 Q I'll give you another example. How about
22 mowing lawns to buy drugs to sell, did you find
23 that in a police report or anything, any
24 documentation?

25 A I think that was from his family.

1 Q His family? Is that one of the things you
2 want to stay away from unless asked about it, or is
3 that one of those things that we want to emphasize
4 the bad and not the good? I'm just confused in the
5 way this was kind of presented because we're not
6 presenting parenting because there was not enough
7 information about it, but we're presenting
8 basically historical information about his
9 entrepreneurship into the drug trade with about the
10 same level of basis that we're not presenting the
11 parenting, and I'm trying to figure out --

12 THE COURT: Mr. Yungman, why do you feel that
13 would be of assistance to Mr. Bowman?

14 A I was trying to show because of the
15 dysfunction of the family he was the one
16 responsible for raising money to support the
17 family.

18 Q Let's talk about the age 13. When did he
19 have record of him working for the city of
20 Branchville, information about him working for the
21 city of Branchville, what year was that?

22 A I believe it was in '92.

23 Q And he would have been twelve years old then?

24 A No, excuse me, '94 and '95.

25 Q Okay. So, before June 6th of 1994 he would

1 have been thirteen years old. And that's
2 legitimate work at the age of 13?

3 A That is what Mr. Bowman reported to me.

4 Q And. Where did you get the information about
5 Dorothy Bowman's testimony? Did you see her
6 testify?

7 A No, I did not see her.

8 Q Did anybody tell you about the substance of
9 her testimony?

10 A No, not that I know of.

11 Q And if there was a gun used in the killing
12 and that gun was found, is that against Marion or
13 just against the person who used it? Is that
14 necessarily against Marion?

15 A No, it is not necessarily against Marion.

16 Q If she says, "I found a gun," she never says
17 it came from Marion, that is not really testifying
18 against Marion, is it?

19 A No, I guess not.

20 Q So, she wouldn't have been a witness against
21 Marion, she would have been a witness for the State
22 of South Carolina?

23 A Yes, she was a witness for the State.

24 Q Okay. That means she's no more a witness
25 against Marion than if I called half the police

1 force of Dorchester County Sheriff's Department
2 here, they are not witnesses for Marion, they are
3 just witnesses I call?

4 A I didn't know what she was going to testify
5 to.

6 Q Nobody has said don't go talk to her, she's
7 testifying against Marion, did they? Or is that
8 the one meeting you had, is that what you were
9 told?

10 A I don't recall if I was told to not visit her
11 or not.

12 Q Because you, I'm just following up on
13 questions they asked, I mean, because she certainly
14 had information about him being a good parent?

15 A Right.

16 MR. WATERS: I object to that. He has no way
17 of knowing that.

18 THE COURT: Well, I think he's talking about
19 that number five thing about him taking care,
20 that's his sister.

21 MR. WATERS: Yes.

22 MR. BROWN: I'm talking about the letters.

23 THE COURT: Anyway, I overrule the objection.

24 BY MR. BROWN:

25 Q I'm talking about the letters. Dorothy

1 Bowman had information to help that parenting
2 aspect, because I think the reason that wasn't
3 presented was not because you didn't feel like
4 there was enough evidence, right?

5 A I didn't have the letters.

6 Q I understand that. And we didn't get -- but
7 Dorothy still knew the information, right?

8 A I suppose so.

9 Q Dorothy, the wife?

10 A Right, I would imagine she did.

11 Q Okay. And we have already heard the context
12 of these letters were turned over to the prosecutor
13 from her, so at some point she actually had the
14 letters?

15 A Uh-huh (Affirmative).

16 Q She could have said, "Yes, Mr. Yungman, these
17 are the letters he had written to me showing the
18 concern for our kids."

19 That would have supported that?

20 A Had she said that.

21 Q I mean, tell me, because I just want to make
22 it clear for the record because there is an
23 indication here that she was off limits. If she
24 was, I want to know if the prosecutor told you you
25 couldn't talk to her, the defense lawyers told you

1 you couldn't talk to her, she said she didn't want
2 to talk to you or you just assumed, I don't know?

3 A I don't either. I can't believe I would have
4 not talked to her unless somebody gave me a reason
5 not to.

6 Q And he's still married to her, in fact the
7 day of his arrest he was at her house. So, I mean,
8 he's at her house, they are having a child while
9 he's incarcerated pending trial and this is the
10 man's, usually after you grow up, the closest
11 person to you is your spouse, this is the man's own
12 spouse, still his wife today and that's the person
13 you might have wanted to talk to?

14 MR. WATERS: Your Honor, I object.

15 THE COURT: Overruled.

16 MR. BROWN: I'm just trying to find out. It
17 is going to become a point --

18 THE COURT: But he has already answered he
19 does not know why he didn't talk to her.

20 MR. BROWN: Okay. I wanted to make sure it
21 is not because somebody told you you couldn't talk
22 to her.

23 THE WITNESS: I don't know why.

24 THE COURT: He doesn't know why.

25 MR. BROWN: Okay.

1 THE COURT: But it is a fact you did not talk
2 to her?

3 THE WITNESS: That's correct.

4 BY MR. BROWN:

5 Q I'm going to show you part of what has been
6 marked Plaintiff's Exhibit 55. Are you familiar
7 with that document?

8 A No, sir.

9 Q And are you familiar with any of the
10 employment locations listed on that document?

11 A Well, it states Stacey's Rebar and Hood
12 Construction.

13 Q Right. There is a question, whose signature
14 is at the bottom of that, who signed that?

15 A Marion Bowman.

16 Q When did he write that?

17 MR. WATERS: I object at this point. He is
18 just having him read a document he doesn't
19 recognize. I object to that document. It is
20 hearsay and also no authentication inasmuch as it's
21 a record.

22 THE COURT: I thought you went into this on
23 direct about working and all that.

24 MR. BROWN: He has been impeached about the
25 fact the work record only came from Marion's mouth.

1 THE COURT: Okay. So, the purpose of this is
2 to show there were work records?

3 MR. BROWN: Yes, sir.

4 THE COURT: Did you ever see these records?

5 THE WITNESS: No, Your Honor.

6 THE COURT: He said he never saw the records.

7 MR. BROWN: We agree, we agree he has
8 probably never seen them.

9 THE COURT: All right.

10 MR. BROWN: We got them ourselves, we didn't
11 get them from the attorney.

12 THE COURT: Before we can publish something
13 off this document it needs to be in evidence.

14 MR. BROWN: I understand that.

15 THE COURT: You want him to publish the date
16 on it?

17 MR. BROWN: Actually all I'm trying to bring
18 out, there was information.

19 BY MR. BROWN:

20 Q Well, would you have liked to have known it
21 if you could get some hard data substantiating his
22 employment before your testimony?

23 A It would have helped.

24 Q And it would have allowed you to testify more
25 than the phrase on 4806 that he was able to

1 maintain employment?

2 A Yes.

3 Q That actually says in fact on this date he
4 worked for X or in fact on this date he work for Y,
5 because he was only 21 at the time of his arrest?

6 A Yes.

7 Q In fact he was only 20 at the time of his
8 arrest. He was 21 at the time of trial.

9 So, you had mentioned legal employment, as
10 for as being able to work on the job, having taxes
11 taken out, we're talking about just a couple years?

12 A True.

13 Q Okay. And wouldn't it show some good instead
14 of some bad that he's maintaining legal, lawful
15 employment?

16 A If he maintained employment it is a positive
17 aspect, yes.

18 Q Especially -- you see that everyday in the
19 homeless shelter work you do?

20 A Yes.

21 Q That is one of the things you try to find out
22 about, is somebody's ability to do work in a
23 certain area?

24 A Right.

25 Q Because that's part of that bio-social, this

1 guy can provide for himself and be productive?

2 A Well, in our case at the shelter, yes, we can
3 find them work so they can move out of the shelter.

4 Q In this case this man is a productive
5 citizen, that may be reason we'll keep him alive
6 instead of killing him, because that is a decision
7 they're making at the point you're testifying,
8 right?

9 A That's true.

10 Q And that would be a positive aspect?

11 A Right, correct.

12 Q And in this case he actually did focus in a
13 certain area, or does it appear?

14 A Well, I don't know what rebar means but I
15 assume that's the job he was doing.

16 Q Basically all of it was construction work?

17 A Right, looks like construction work.

18 Q Now briefly, the additional funds, it wasn't
19 going, the letter speaks for itself, but on 51, you
20 said in other cases you normally have \$7,500 to
21 \$8,000, sometimes as much as \$10,000. I want to
22 ask this question because this goes to some of the
23 other questions I have asked. You bill hourly?

24 A Yes, sir.

25 Q All right. So, the amount you were able to

1 receive as compensation was related to the amount
2 of work you actually did?

3 A Yes, sir.

4 Q All right. And in that respect, having more
5 money allows you to do more work. On the other
6 hand, billing more reflects you did more work, so
7 like doing the extra interview, whether it's coming
8 from Dale Davis or not coming from anyone, an
9 interview with Dorothy Mae Bowman, his wife, or the
10 search for the work records, and we do know, by the
11 way, we do know he had previously been
12 incarcerated, right?

13 A Yes.

14 Q And when you testified at 4806 about no prior
15 convictions that was not accurate, was it?

16 A I guess not.

17 Q In fact Walter Bailey really got into you
18 about that on cross, didn't he?

19 A Yes, he did.

20 Q In fact if we found out about that we might
21 have found out he went to the restitution center
22 and we could verify whether or not he did work
23 through the restitution center?

24 A Yes.

25 Q Which is not in this work here we're talking

1 about?

2 A No.

3 Q That is other work?

4 A Yes, sir.

5 Q And Kendra spoke with you?

6 A Yes, she did.

7 Q She was charged by the State, too, wasn't
8 she?

9 A I don't recall.

10 Q And Yolanda, did Yolanda's lawyer tell you
11 not to talk to her, or the defense attorney or
12 State's prosecutor?

13 A I don't remember why I didn't talk to
14 Yolanda.

15 Q And Marion, Sr., he was charged, too, wasn't
16 he, his father?

17 A I recall him being charged, yes.

18 Q You spoke to him?

19 A No, I don't think I listed him. No. I
20 listed eleven people that I spoke to and his name
21 is not on here.

22 Q Okay. At one point you said you wished you
23 had spoken to more folks?

24 A Yes. Oh each case I wish I spoke to more
25 folks.

1 Q You testified that -- is that one of the
2 things they asked you, that you were expecting to
3 be asked, or is that one of the things you
4 volunteered in this case?

5 A I have no idea.

6 Q Well, let's stay on that in every case
7 because there is last minute things, I know we all
8 do last minute work, but like follow up with the
9 doctor about whether he was abused, because if I'm
10 not mistaken, one of the things that, you may want
11 to downplay the alcoholism or some of those other
12 things because of factors like the abuse, that was
13 something that was hit on during the
14 cross-examination just a few minutes ago.

15 MR. WATERS: That's not a question, Your
16 Honor.

17 THE COURT: The report speaks for itself,
18 which I don't have copy of.

19 Go ahead.

20 Q One of the things you want to focus on is the
21 abuse in the household?

22 A True.

23 Q And downplay some of the other things for
24 whatever reason?

25 A Okay.

1 Q And what abuse of Marion were you able to
2 justify or corroborate?

3 A Well, as you recall, Marion denied any kind
4 of abuse by his mother. Other family members said
5 there was abuse by his mother but Marion never
6 admitted to it. And there were no DSS records to
7 substantiate it.

8 Q Can you show me where you testified about him
9 being abused?

10 A Can I? What do you mean, can I show you?

11 Q Tell me what the other family members said.

12 A Described Mrs. Bowman as real strict, she
13 beat them daily, Mrs. Bowman cut their behinds with
14 switches or belts. Mrs. Bowman doesn't drink but
15 she was convicted of possessing drugs and
16 possession of drugs with intent to distribute.

17 Q Now, you were asked on 4789 about the
18 opportunity, was there any record that you did not
19 review that you would have like to reviewed or any
20 people you would have liked to interview that you
21 did not or could not.

22 A Okay.

23 Q And your answer was?

24 A I think I got all the records I needed.

25 Q You skipped a line there.

1 A There was other people I would have -- well,
2 there was a number of people I would have.

3 Q And who were those people that you would have
4 interviewed if you, I want to get the sentence, the
5 question right, that you could not or did not
6 interview, because that was kind of left open for
7 the jury?

8 A I know I would have interviewed Joseph Sims,
9 I wanted to interview Marion's father and probably
10 the other sister, for three people. I guess his
11 wife as well.

12 Q And Joseph Sims is because he was driving a
13 truck?

14 A Yes, sir.

15 Q Did you ask them to subpoena him --

16 A No.

17 Q -- to come to court and have him testify so
18 you could hear the testimony and rely upon it?

19 A I never asked anybody to be subpoenaed in any
20 case.

21 Q I'm sorry?

22 A I have never asked anybody to be subpoenaed
23 in any case.

24 Q But that would be a way to hear what he was
25 going to say?

1 A I imagine, yes. It is not something I would
2 do.

3 Q He was available, and as an attorney -- you
4 weren't an attorney.

5 A I wasn't an attorney yet.

6 Q Sims' testimony was supposed to be positive?

7 A From what I recall, Mr. Sims had a good
8 relationship with Marion, so I don't know what it
9 would have been but I assumed it was going to be
10 positive.

11 Q He would have had positive information as for
12 as your bio-social, psycho-social assessment?

13 A Yes.

14 Q He's a working man but there is ways to get
15 him to court, there is a right to present a witness
16 on his behalf?

17 THE COURT: Are you asking him did he want to
18 call this witness or what?

19 MR. BROWN: He didn't have a chance to meet
20 with him. This man's life is on the line and he
21 didn't have a chance to meet with the witness.

22 THE COURT: Okay.

23 MR. BROWN: Because he was driving a truck.

24 THE COURT: Is that what you said, because
25 he's driving a truck?

1 THE WITNESS: Yes, I was never able to catch
2 up with him.

3 THE COURT: He couldn't catch up with him.

4 BY MR. BROWN:

5 Q I will just ask, was there a discussion --
6 okay. Did you ever tell Norb and Marva, "I need to
7 go speak to this person"?

8 THE COURT: Tell me who this person is again.

9 MR. BROWN: He was a stepfather to Marion

10 A I don't know that I told Norb or Marva, I may
11 have talked to Dale about trying to locate him.

12 Q So, people you wish you would have been able
13 to speak to but did not were Marion Bowman's
14 father, his stepfather, his sister, his wife?

15 A The best I can recall, that is who I might
16 have alluded to in that.

17 Q How about a half brother?

18 A I don't know. I don't know who else I would
19 have been referring to.

20 Q Are you aware of Marion's father's other
21 family?

22 A I guess. There is a Mario.

23 Q Stepsister, half brother and stepmother?

24 A I don't have those, it doesn't look like I
25 have those on the family tree I have.

1 Q And let me ask you about the alcoholism and
2 how would it help support a jury charge for
3 statutory mitigating circumstance that this
4 incident may have been committed while under the
5 influence.

6 MR. WATERS: Your Honor --

7 THE COURT: Sustained. Plus, I mean, that
8 was addressed in the opinion of the Supreme Court,
9 too, of course.

10 MR. BROWN: It wasn't developed at trial,
11 which it could have been. All the information he
12 was drinking that night, we have multiple witnesses
13 in support of that.

14 THE COURT: I know.

15 MR. BROWN: And they weren't asked at trial
16 and they have all testified, and here is how it
17 relates to this witness, the alcoholism was
18 something --

19 THE COURT: But the question you asked this
20 witness was a legal question. I know he is a
21 lawyer now. Just ask him the question you want to
22 ask him.

23 MR. BROWN: The reason why I ask, Your Honor,
24 they asked him about the double edged sword of
25 alcoholism.

1 BY MR. BROWN:

2 Q And when you wrote that in there about
3 questioning it, was there a discussion with the
4 attorneys about the fact that it may serve to
5 support a statutory mitigating circumstance?

6 A As I said before, I don't, I didn't have
7 enough conversation with the attorneys to know that
8 ever came up.

9 Q So, the strategy did not emphasize the
10 alcoholism or whether you wanted to or not was your
11 strategy, not trial strategy with the lawyers?

12 A Correct.

13 THE COURT: You know, it is right now 1:42.
14 Are we going to be a lot more time? I don't want
15 to hurry you. The court reporter and all need to
16 take a break before lunch. I would like to finish
17 the witness if possible. If we can't we can't.

18 MR. BROWN: No further questions.

19 MR. WATERS: I will be brief.
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1 RECROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q You started out the redirect on bad stuff and
4 I guess we really need to define what we're looking
5 at. You're looking at really two things, negative
6 stuff that may have happened to the defendant,
7 correct?

8 A Correct.

9 Q And then I guess the other aspect is the
10 negative stuff he may have done. Is that correct,
11 that is part of the social history as well?

12 A Yes, positive stuff that he's done as well.
13 There is two negatives and two positives.

14 Q Just talking about bad, we kept talking about
15 bad, the bad would be two things, really, negative
16 stuff that happened to him and negative stuff he
17 has done?

18 A Correct.

19 Q Okay. Sometimes the negative stuff he has
20 done is part and parcel of the whole story that
21 you're trying to present that is really kind of a
22 result of the negative stuff that happened to him,
23 correct?

24 A I believe so, yes.

25 Q Because that is really, sometimes that is

1 what it is, because of all the negative stuff that
2 happened to him when he was a kid he just kind of,
3 it is kind of a circle of violence or hell's
4 kitchen or whatever the case may be, he ends up
5 doing negative stuff as a result of that or that he
6 was forced into or that was all he ever knew,
7 correct?

8 A Correct.

9 Q That is often the kind of presentation
10 unfortunately that we see with these type cases,
11 correct?

12 A That's true.

13 MR. BROWN: Your Honor, he's asking for some
14 kind of expertise about the cycle --

15 THE COURT: I thought he was asking about
16 cases he handled, that he's personally done. What
17 other questions do you have on cross and re-cross?
18 You have asked him about as many questions as we
19 can ask him.

20 MR. WATERS: I'm almost done.

21 BY MR. WATERS:

22 Q I think you said, in this particular case you
23 were asked about the incident with the pine limb
24 and you said it was going to the fact that he was
25 having difficulties at school that were related to

1 his difficulties at home and the school didn't do
2 anything really to help correct that. Is that fair
3 to say?

4 A In looking back I think that is why I said it
5 the way I did, yes.

6 Q And they also pointed out, you had been going
7 on for about three or four pages without a
8 question, and often that is because you initially
9 give that social history narrative to start off
10 your testimony, essentially the life story,
11 correct?

12 A That's usually the way.

13 Q That is how it starts, correct?

14 A Yes, sir.

15 Q And this was part of that social history,
16 correct?

17 A Yes.

18 Q All right. Because it's true, I guess this
19 is part of something that you might present, you
20 know, that the first line of defense is the parents
21 but if they fail hopefully the school will step in,
22 if they fail then the individual is left with
23 nothing as they try to grow up in the world. Is
24 that --

25 A That is often the case, yes.

1 Q That is essentially what your testimony was
2 here in Mr. Bowman's case, right?

3 A In this case, yes.

4 Q Is a person's wife usually someone that you
5 would want to interview?

6 A In most cases I believe so. Well, in most
7 cases if they had information about their
8 background, that is what I concentrate on, but
9 then, yes, if there are no kids involved, just the
10 wife, I don't know, maybe or maybe not, depending
11 on the circumstances.

12 Q And you just don't remember now why there was
13 not an interview with Dorothy Bowman by you
14 personally, correct?

15 A Correct, I do not remember.

16 Q It could be any number of reasons from she
17 refused, to somebody told you not to, or whatever
18 the case, you just don't know, correct?

19 A I do not know.

20 THE COURT: Anything else?

21 Q A couple more. And the same goes for Yolanda
(22 as well, right, the sister?

23 A Correct.

24 Q All right. You were asked about your
25 testimony that he didn't have any criminal

1 convictions. You knew he had criminal convictions,
2 as part of your analysis, correct?

3 A I think so. Apparently what I said and what
4 was true is two different things.

5 Q Didn't you testify, I can show you if you
6 need to, didn't you testify, what you were saying,
7 he had no prior violent convictions?

8 A Yes. I can't tell you --

9 Q Let me just ask you this. Do your notes
10 reflect you knew he had prior convictions or do you
11 independently recall that you knew that prior to
12 testifying?

13 A No, he had no other prior violent
14 convictions.

15 Q Okay. Also going back to Mr. Bowman's
16 father, again you just don't have any independent
17 recollection why you were unable to speak with him?

18 A Correct.

19 MR. WATERS: Your Honor, that's it.

20 THE COURT: All right, step down -- yes, sir?

21 MR. BROWN: No, thank you. I was going to
22 say thank you.

23 THE COURT: Do you all have any need for him
24 to stay here?

25 MR. WATERS: No, sir.

1 MR. BROWN: No, sir.

2 THE COURT: Where do you practice?

3 THE WITNESS: Charleston.

4 THE COURT: Charleston, not very far to go,
5 good. Have a good day. You're released, we'll
6 call you if we need you.

7 Let's make sure he doesn't take any exhibits
8 with him.

9 This is the affidavit. Just step down and
10 show them what you've got. Can we get that
11 original back to you, sir?

12 THE WITNESS: Yes, that will be fine.

13 THE COURT: We'll get it copied and get it
14 back to you.

15 (Witness excused).

16 THE COURT: All right, let's reconvene here
17 at 3:00 o'clock, we'll see you all then.

18 MR. BROWN: Thank you, Your Honor.

19 (Recessed at 1:30 p.m.).

20 (Reconvened 3:10 p.m.).

21 THE COURT: We discussed in chambers a brief
22 chambers matter, about what was Mr. Brown's
23 availability with Judge Buckner down in a Colleton
24 County -- is it Colleton County or Beaufort County?

25 MR. BROWN: Beaufort County.

1 THE COURT: A Beaufort County case, and I let
2 Mr. Brown know I told Judge Buckner that really
3 after this week most or all -- I see two more
4 emails from you, Mr. Brown, did you send me two
5 emails?

6 Anyway, I'm going to let Judge Buckner know
7 really after this week we won't be in a tight
8 schedule. We concluded there shouldn't be that
9 much testimony left, so anytime in November Judge
10 Buckner feels necessary, that was up to Judge
11 Buckner about scheduling that trial. That is the
12 Alphonso Howard trial in Beaufort County?

13 MR. BROWN: Correct.

14 THE COURT: Okay.

15 MR. BROWN: Your Honor, to clarify, at one
16 point I had heard the end of November but they had
17 noticed me for the 10th, I wasn't privy on that
18 conversation.

19 THE COURT: I would suggest you go and
20 request from Judge Buckner to make it toward the
21 end of November. I'm sure they have other criminal
22 terms.

23 MR. BROWN: Yes, sir, they do.

24 THE COURT: I'm not going to control anything
25 after this week because I think most of the

1 testimony should be just about in by then.

2 MR. BROWN: I do agree with that, Your Honor.

3 THE COURT: We may have to go late tomorrow,
4 maybe.

5 All right, call your next witness, please.

6 MR. BROWN: Dr. Bill Kissiah.

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1 DR. CARL WILLIAM KISSIAH,
2 after being first duly sworn, testified as follows:

3 THE COURT: Come around this way, Doctor. If
4 you will, have a seat. Make sure we can hear you
5 and up give us your name.

6 THE WITNESS: Carl William Kissiah.

7 THE COURT: Give us the spelling for Kissiah.

8 THE WITNESS: K-i-s-s-i-a-h.

9 THE COURT: All right, your witness, sir.

10 MR. BROWN: Thank you, Your Honor. If it
11 please the Court?

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. BROWN:

14 Q Good afternoon, Dr. Kissiah.

15 A Good afternoon.

16 Q Let me just ask you a little bit about your
17 professional background. If you would, tell me
18 about your education and your work, your degrees.

19 A I graduated in 1966 from Wake Forest
20 University, then in 1968 with a Master's from
21 Virginia Commonwealth University. I then spent
22 three years working in a Veterans Administration
23 psychiatric hospital, '68 to '71. I then went to
24 the University of Georgia where I got my Doctorate
25 in psychology. Along the way I have done some

1 evaluations in prison after my Master's Degree. My
2 current practice from 1973 to present is
3 individuals, couples and family therapy, and that
4 is in Decatur, Georgia.

5 Q And your Master's Degree from Virginia
6 Commonwealth, was that in counseling?

7 A Master of Science in counseling.

8 Q Your Ph.D?

9 A Is in psychology.

10 Q Okay. And as for as the work you have done
11 as a family counselor, tell us a little bit about
12 that type work.

13 A I spent my, after my Doctorate I spent my
14 first three years in an internship experience
15 trying to be mentored and then learn the right way
16 to do it. Then after my full licensure, that is
17 all I have done, is independent work with
18 individuals. Probably a third of the practice has
19 been individuals but there has been a third has
20 been couples also and a third has been full
21 families and family systems work.

22 Q That is for how many years?

23 A Well, it's about 35.

24 Q About 35 years of practice in family
25 counseling?

1 A Yes.

2 Q Tell me a little bit about family counseling.
3 First of all, how many times have you been involved
4 in counseling in a family setting, roughly?

5 A It's got to be in the thousands by now.

6 Q And tell me what you do when you serve as a
7 family counselor.

8 A It's a matter of listening. Usually there is
9 one person who is presented as the complaint, and
10 one of the first thing you have to do is figure out
11 if that person indeed is the real problem or if
12 it's other members of the family. When there is
13 significant disruption or dysfunction in the
14 family, in one individual it affects the whole
15 family and so you hopefully end up getting the
16 opportunity to deal with the family as a system and
17 try to identify the interactions and dysfunctions
18 that exist from one to one and within the whole
19 family.

20 Q And let me ask you, when you look at a person
21 as a part of this family system do you deal in part
22 with their capacity to be of emotional value to
23 others?

24 A Yes.

25 Q Or can you tell me how that plays into the

1 familiy dynamics?

2 A Would you rephrase that? I'm not sure I
3 understand exactly what you mean.

4 Q How does a person's ability to offer
5 emotional value to the family affect your
6 counseling, how do you look at that?

7 A There is an interaction, there is an
8 emotional interaction between every member of the
9 family. Sometimes it's healthy, sometimes it's
10 unhealthy, often it's a mixture of the two. A lot
11 of families communicate, they just communicate
12 poorly, or they communicate in negative ways, and
13 it's a real challenge to sit down with more than
14 one person and try to figure out these interactions
15 and which ones are indeed positive, which ones are
16 indeed helpful and which ones can be enhanced.

17 Q And let me ask you, have you ever testified
18 in a death penalty case before?

19 A I have one other.

20 Q And tell me what phase you testified in.

21 A Pardon?

22 Q What part of that trial?

23 A It was the sentencng part.

24 Q Okay. And what were you qualified as at that
25 time?

1 A As an expert witness in psychology.

2 Q Okay. Did it involve the issue of a person's
3 capacity to be of emotional value to others?

4 A Yes, it did.

5 MR. BROWN: Your Honor, at this time we would
6 qualify or offer, excuse me, Dr. Kissiah as an
7 expert in family counseling with an emphasis on, at
8 this point, the ability to review a person's
9 emotional capacity to be of emotional value to
10 others.

11 THE COURT: Well, I think his opinion in
12 family counseling, I'm sure that within that there
13 are many questions, I hate to limit that at this
14 time, but any objections or questions concerning
15 his competency to give opinion testimony in that
16 area?

17 MR. WATERS: I agree with Your Honor. As
18 long as it's limited to family counseling the State
19 has no objection.

20 THE COURT: All right. Sir, what that means,
21 I will qualify you to give opinion testimony. You
22 have been qualified in court before, have you not?

23 THE WITNESS: Yes.

24 THE COURT: Then you know that means that
25 basically your opinion becomes evidence for the

1 trier, me in this case, to accept or reject or take
2 all of it or a little bit of it, some of it, none
3 of it. I will listen and consider it just like any
4 other evidence in the case.

5 THE WITNESS: I understand.

6 THE COURT: All right, he may give opinion
7 testimony in family counseling. You may proceed.

8 BY MR. BROWN:

9 Q Did you have opportunity to meet Marion
10 Bowman?

11 A I have. I had the opportunity to meet with
12 him, interview him a couple hours.

13 Q And tell me what else you have reviewed in
14 this case before you are testifying here today?

15 A I reviewed what I would call significant
16 amount of paperwork of the past, I think pretty
17 much everything up until this point. I have
18 reviewed the testimony, the testimony of the
19 proceedings, I have reviewed letters.

20 Q And let me break that down, if you would.
21 You reviewed the sentencing phase of the proceeding
22 in Marion's trial?

23 A Yes.

24 Q You read the opening statements and closings?

25 A Yes.

1 Q When you say letters, I ask you to look at
2 what are marked Plaintiff's Exhibit 56.

3 MR. BROWN: Your Honor, these are the pages
4 from the trial transcript that contain the letters
5 that were referenced earlier.

6 THE COURT: Were these letters referenced by
7 the last witness, the ones Mr. Bowman wrote to his
8 wife while he was incarcerated?

9 MR. BROWN: Yes, sir.

10 THE COURT: These were written before trial,
11 while he was incarcerated before the trial?

12 MR. BROWN: Yes, sir, that's exactly right.
13 They appear at 5375 through 5389. I just marked
14 them as that exhibit for ease of reference.

15 THE COURT: Okay.

16 BY MR. BROWN:

17 Q You have reviewed those letters?

18 A I have reviewed these.

19 Q Okay. And you also mentioned you interviewed
20 Marion Bowman?

21 A I did.

22 Q Did you interview his wife?

23 A I did.

24 Q Did you interview the children?

25 A No, I did not.

1 Q Where did you meet his wife?

2 A We found her, actually I think we found her
3 at the laundry, we chased her down trying to get an
4 interview.

5 Q Was she willing to sit down and meet with
6 you?

7 A She was absolutely willing, yes, she was.

8 Q Okay. And tell me, if you would, what
9 evidence you were able to gather about his interest
10 in parenting his children, and again we're focusing
11 on what would have been available in May of 2002 at
12 his trial and given the interview you had with her
13 and the letters?

14 A And these letters together?

15 Q Yes, sir.

16 A All right. Those two things coupled together
17 to me present a legitimate picture of a man who
18 wants to be a father, who is capable of being a
19 parent. I assume there has been significant
20 testimony as to the social background and family
21 background of Mr. Bowman. Here is a man who was
22 born in a significantly dysfunctional family, to a
23 father that was abusive, apparently both to his
24 mother and perhaps to him, left after three years,
25 he is fatherless entirely for six or seven years,

1 I'm not sure of the exact timeframe. He then has a
2 stepfather in the house for four or five years who
3 apparently was quite a significantly good role
4 model. Then that man left the family. His
5 grandfather died. There has been a succession of
6 losses. Most of them were men who were a negative
7 influence at best and neglectful probably in an
8 even more substantial fashion. I think that
9 absence in most of those years plus the presence
10 for a few years of a man who gained his respect
11 made him want to be a father, made him want to be a
12 good father, made him want to be somebody that his
13 kids could be proud of, made him want to be
14 involved.

15 These letters are interesting. Part of what
16 I saw in those letters were in the old days when
17 letters would take months to get there, you didn't
18 know what the circumstance was of the writer, the
19 writer would always initially say I'm fine, I'm in
20 good health. Marion has been in some of the same
21 situation, he is in a place they don't know and he
22 doesn't start off with I'm fine, I'm in good
23 health. He starts off with how are you, how are
24 the kids, how is the birthday party, how are the
25 boys, how are they doing in school. It's always

1 concern about those kids. He signs his letters
2 love daddy.

3 Here is a guy who draws stick figures of
4 families on the envelopes, and all this together to
5 me presents a man who wants, who is both capable
6 and who wants to be able to parent and influence
7 his children.

8 The interesting thing about it, perhaps this
9 is an elaboration somewhat of the interview with
10 Marion as well as his wife, I walked away thinking
11 Marion was something of a Pide Piper in the
12 neighborhood. I got the feeling that if you messed
13 with the kids Marion would find out about it and
14 Marion would fix it, that he wanted those kids to
15 respect their parents, he wanted them to respect
16 authority and he kind of looked after the kids in
17 the neighborhood, in the projects.

18 MR. BROWN: Your Honor, briefly on a legal
19 matter. We filed a notice of intent to introduce
20 an affidavit of Kendra Haigler, that is listed as
21 Plaintiff's Exhibit 53, that was filed before the
22 trial and I bring that up now because I desire to
23 show this to this witness.

24 THE COURT: Has he already reviewed the
25 affidavit?

1 MR. BROWN: This is an affidavit of the
2 sister Kendra Haigler.

3 THE WITNESS: I believe I have.

4 MR. WATERS: I mean, he can show it to him.
5 I think he's trying to introduce it.

6 THE COURT: He hasn't told me he wants to
7 introduce it.

8 MR. BROWN: Actually I would, Your Honor. He
9 has seen it.

10 MR. WATERS: Obviously --

11 THE COURT: Where is this witness? She
12 cannot be produced?

13 MR. BROWN: She probably is in Branchville
14 right now.

15 THE COURT: And so under what theory would
16 you introduce an affidavit --

17 MR. BROWN: Under the --

18 THE COURT: -- of a person who is available?

19 MR. BROWN: Under statute it's allowed, under
20 the PCR statute.

21 THE COURT: You're right about that, we're in
22 a PCR.

23 THE COURT: Do you object to that?

24 MR. WATERS: It doesn't require it to be
25 allowed and I think --

1 THE COURT: My concern is if she's here why
2 not just bring her?

3 MR. BROWN: And, Your Honor, we don't mind
4 bringing her.

5 THE COURT: Let me just make sure about this.
6 This person I have qualified to give opinion
7 testimony --

8 MR. BROWN: Yes, sir.

9 THE COURT: -- if he's going to base an
10 opinion on his reviewing this --

11 MR. BROWN: We agree.

12 THE COURT: -- then again, have you talked to
13 this lady?

14 THE WITNESS: No, sir.

15 THE COURT: Why didn't you just bring her in
16 to talk with him?

17 MR. BROWN: We did have him travel down here
18 but he lives near Atlanta and of course it costs
19 money to bring him down every time we bring him
20 down.

21 THE COURT: He's been here all day. If she's
22 in Branchville she could have talked to him today.

23 MR. BROWN: Your Honor, we do understand
24 that. Quite frankly, when we have been in trial it
25 is difficult for us to coordinate stuff outside of

1 trial.

2 THE COURT: I'm not sure I understand. Wait
3 a minute, let's just go and see what your questions
4 are going to be.

5 MR. BROWN: Sure.

6 THE COURT: You reviewed the affidavit
7 already?

8 THE WITNESS: Yes, sir

9 BY MR. BROWN:

10 Q And does that, how does that coincide with
11 the information you just provided about Marion's
12 feelings toward other children in the neighborhood?

13 MR. WATERS: Your Honor, at this point I
14 think this goes to the heart of my objection. Just
15 because a person is qualified as an expert does not
16 mean they can just simply read hearsay. The
17 hearsay needs to be, it needs to be related to the
18 opinion specifically but also not admitted for the
19 truth of the matter asserted.

20 THE COURT: Are you asking him now to make an
21 opinion based on the affidavit?

22 MR. BROWN: I tell you what, I'm going to
23 back up on that question. I'm going to ask for his
24 opinions.

25 BY MR. BROWN:

1 Q Do you have an opinion regarding Marion's
2 capacity to be of emotional value to others,
3 including his family, if he would have been given a
4 life sentence or if given a life sentence as in the
5 present tense, like it is now being determined? If
6 he got a life sentence, do you have an opinion
7 regarding that?

8 MR. WATERS: Your Honor, I object to that
9 question. Again that's speculation as to what
10 other people might think about Marion.

11 THE COURT: This gentleman is qualified as a
12 family counselor.

13 MR. BROWN: Yes, sir.

14 THE COURT: Let me hear your question again
15 to make sure it is in the realm of family
16 counseling.

17 BY MR. BROWN:

18 Q Do you have an opinion about Marion's
19 capacity to be of emotional value to family
20 members?

21 THE COURT: I'll permit him to answer that
22 question. The objection's overruled, go ahead.

23 A Yes, I do.

24 Q What is that opinion?

25 A My opinion is he has significant emotional

1 value both to his own family members -- well,
2 obviously to his daughter, he's carried that role
3 out with his stepsons from his wife's previous
4 marriage, he has carried that out with his
5 sisters', with his nieces and nephews, both family
6 members and kids in the neighborhood.

7 Q Does that affidavit support that opinion?

8 MR. WATERS: Your Honor --

9 THE COURT: Sustained.

10 Q Did you rely upon that affidavit to arrive at
11 that opinion?

12 A No, I did not.

13 Q Did you review it before you formed that
14 opinion?

15 A No, I did not.

16 Q Have you reviewed it since then?

17 A Yes, I have.

18 Q All right. If you would have been called to
19 testify in May of 2002 would you have testified --
20 how would you have testified in regards to that
21 same question?

22 A I would have testified exactly the same. I
23 see no difference in his motivation now than I
24 think I would have seen then. I think, I think he
25 wants to be a father, I think his desire for that

1 is no less now than it was then.

2 Q And do you draw that in part from the
3 letters?

4 A Yes.

5 Q And how sincere did you find the information
6 conveyed in those letters?

7 MR. WATERS: Your Honor, I object to that.

8 THE COURT: Wait a minute. Are you asking
9 him to look at words and determine whether they are
10 sincere or not?

11 MR. BROWN: Look at the actions of writing
12 those letters to his wife.

13 THE COURT: We're talking about the letters
14 that -- okay. Are you basing -- we're talking
15 about letters now, you're talking about the letters
16 that the applicant wrote. Can you, can you give an
17 opinion about that? To do that, must you consider
18 your interview with him in comparison with the
19 letters or do you just look at the letters
20 themselves?

21 THE WITNESS: I can look at the content of
22 those letters and I feel it corroborates my opinion
23 from my interview.

24 THE COURT: I'm going to permit him to answer
25 the question. You want to know how sincere do you

1 feel he was?

2 BY MR. BROWN:

3 Q The information he provided to his wife in
4 part about his own unborn child, stepchildren.

5 A I think they are absolutely sincere. I see
6 no manipulation, I see no attempts to manipulate in
7 those letters. I believe they are absolutely
8 sincere.

9 Q And anticipating the question that is going
10 to come up on cross, you are talking about no
11 manipulation, do you see no attempt to manipulate
12 your opinion on that emotional value to his family?

13 A That's correct.

14 Q What impact would a death sentence have upon
15 that relationship, his ability to be of capacity,
16 of that emotional capacity to his family?

17 MR. WATERS: Your Honor, I object to that
18 question. Again, I don't know how that is within
19 his -- obviously he's an expert in family
20 counseling, I don't see how he can answer --

21 THE COURT: I will let him answer the
22 question. Answer the question.

23 A I think here is a man who wants to and is
24 capable of providing a positive influence on his
25 family. I think a death sentence obviously takes

1 away the opportunity for that and casts a pall upon
2 his memory.

3 Q Would that have a negative impact?

4 A That would have a negative impact.

5 Q On the rest of the family?

6 A Yes. Violence answered with violence.

7 MR. WATERS: I object to that. It is clearly
8 not admissible.

9 THE COURT: I am capable of knowing what to
10 pay attention to and not in that regard.

11 MR. BROWN: Thank you.

12 THE COURT: Any other questions?

13 MR. BROWN: No other questions, Your Honor.

14 THE COURT: All right. Questions?
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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WATERS:

3 Q All right, Dr. Kissiah, how are you doing
4 today?

5 A Fine, sir.

6 Q You were asked about these letters and you
7 said these letters are not any evidence of
8 manipulation, in these letters right here?

9 A That's correct.

10 Q Okay. All right, let's start, and I don't
11 know if you have a copy of the transcript up there
12 but let's start with the one -- you have your
13 letters in front of you?

14 A Sure.

15 Q It starts at the top, it is like, "I love
16 you, write back, I need this information bad, very
17 important." Do you see that one?

18 MR. BROWN: What page?

19 Q 5376, at the top. Let me ask you a question
20 here. In dealing with families do you occasionally
21 deal with family members who are manipulative?

22 A I do.

23 Q Are sometimes those manipulated family
24 members made promises, given gifts, say the right
25 things when they are trying to get something or

1 manipulate the other person into doing something to
2 their benefit?

3 A They do.

4 Q Let's start at 5376 here. Do you have that
5 page there?

6 A The number is missing but it's the second
7 page, right?

8 MR. WATERS: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 Q All right. Now, you said you read these
12 letters, correct?

13 A Yes.

14 Q This letter starts, it starts out by saying,
15 "Write back, I need this information bad, very
16 important." Correct?

17 A Yes.

18 Q Okay. Then it goes on to say, "I need you to
19 tell your lawyer that you found that gun after
20 someone put the blood in the house." Correct?

21 A Huh?

22 Q He's asking her to say a certain thing to the
23 police or through her lawyer to the police to aid
24 his case, correct? Is that correct?

25 A That's correct.

1 Q Okay. And then he says, "Tell Hiram that if
2 the police asks him what kind of gun, it was a
3 revolver shaped like a .32 cal." Correct?

4 A Uh-huh (Affirmative).

5 Q Do you know what kind of murder weapon was
6 used in this case?

7 A No, I don't.

8 Q Okay. If I told you it was a .380 and he is
9 telling someone to tell a witness in the case to
10 say it was a .32 that would arguably be trying to
11 get someone to conceal evidence, would it not?

12 MR. BROWN: Objection.

13 THE COURT: Is that asking one to interpret
14 another?

15 Q Let me go through it. If someone was
16 attempting to get someone to tell another person to
17 essentially lie and impeded the investigation of
18 the case that is not a manipulation?

19 A I reviewed these letters as a view toward
20 reviewing his capacity, his ability to function as
21 a parent. I'm not the legal expert to determine if
22 he's trying to manipulate something via a direct
23 request.

24 Q All right. Let's move on in this letter.
25 The letter goes on to state that, "I need you to

1 call Travis and find out what he told the police
2 and then to tell him to tell, not to tell them
3 anything."

4 You don't think that's manipulation if he is
5 trying to get her to do that?

6 A A direct request.

7 Q All right. Well, let's go on, then, to 5377,
8 let's go on to the next one.

9 A Okay.

10 Q Do you have that one?

11 A I do.

12 Q And this is one, it starts out about, you
13 know, the family and the children and pretty much
14 the first probably ten or eleven lines are all about
15 that, correct?

16 A Uh-huh (Affirmative).

17 Q Okay. And then after that, though, he goes
18 on to say, "If the police ask you about me and a
19 knife tell them nothing." Correct?

20 A Yes.

21 Q Okay. So, you don't find that manipulative
22 if he starts out the letter with all these
23 wonderful things about how much I love you and the
24 kids and all that, then goes straight to the point
25 about tell the police nothing about the knife?

1 A As I said, I was looking at these letters to
2 see if I felt like he was manipulating in terms of
3 his role as a father or his interest in these
4 children, and I find no manipulation in that.

5 Q Okay. Let's go on to 5380. Do you have that
6 one?

7 A I do.

8 Q Okay. All right, this one, and correct me if
9 I'm wrong, it starts out where he denies messing
10 with another girl, with a lot of other girls, and
11 goes on to say, and I apologize for the language,
12 "But I have never messed with or got my dick sucked
13 by them." Do you see that?

14 A I do.

15 Q Okay. You said you reviewed some of the
16 evidence in this case, correct?

17 A Yes.

18 Q So, you're aware, then, that the victim's DNA
19 was found, I'm sorry the defendant's DNA was found
20 in the victim, correct?

21 A I don't know that I looked that closely.

22 Q If there was evidence that he had engaged in
23 sexual activity with another person you don't find
24 that manipulative if he is denying that he had sex
25 with any of these other women in the same letter

1 where he goes on to make requests also relating to
2 the evidence in the case?

3 A We may be engaged in semantics. 99 percent
4 of the people I see who have engaged in sex with
5 somebody else deny it.

6 Q Okay. But you don't see that manipulative,
7 to start off with a denial of that and then move on
8 to issues about the evidence in the case?

9 A I would have trouble deciding if that is the
10 truth or not. As I say, I didn't read the DNA
11 evidence. I see there a denial, yes, I see that.

12 MR. BROWN: For what it is worth, DNA
13 evidence is in the other phase of the case.

14 MR. WATERS: I don't think there is any
15 dispute.

16 MR. BROWN: No, I'm just trying to clarify.
17 You asked about the DNA evidence. It is not in the
18 part he was provided.

19 BY MR. WATERS:

20 Q How about going on, he later asked her to
21 mail him a money order, correct, in the jail?

22 A Pardon me?

23 Q He asked her to mail him a money order?

24 A Yes.

25 Q Okay. So, he is also asking for something,

1 for some money from her as well, correct?

2 A He is.

3 Q Okay. All right, let's go to 5381. Do you
4 have that one?

5 A I do.

6 Q Okay. Again this is one that starts off with
7 a lot of nice language about the family and his
8 love and then goes on to, "Do not do anything too
9 stupid to jail Dot, we don't need that." Correct?

10 A Yes.

11 Q Okay. So, again you don't find that
12 manipulative? I know we have a matter of semantics
13 but you don't find that manipulative when he starts
14 off with this language you find significant about
15 the family but then goes to a request at the heart
16 of his trial for capital murder?

17 A No, actually I do not. I find his questions
18 in the beginning genuine, his interest in the kids
19 and his interest in the family, the church, school,
20 what is going on. I don't see that as a setup to a
21 manipulative request.

22 Q You have read this letter right here,
23 correct?

24 A Yes.

25 Q All right. What is the date on this letter?

1 A 3/26/01.

2 Q Okay. Is someone writing this letter
3 consistent with someone who just learned to read in
4 the past month?

5 MR. BROWN: That is probably out of his
6 expertise but I think it speaks for itself.

7 THE COURT: When you do -- I'm going to
8 sustain the objection.

9 MR. WATERS: That's fine, Your Honor.

10 BY MR. WATERS:

11 Q Let's go on down to the bottom of that here.
12 He also in this letter requests her to buy him a
13 law book on statements and evidence suppression.
14 Correct?

15 A Correct.

16 Q Okay. So, I will ask you again, you don't
17 find that at all consistent with manipulation when
18 he starts off with this wonderful language about
19 the family and then goes straight to give me this,
20 give me that, don't say this, don't say that?

21 A I find it consistent with a guy in prison who
22 is trying to find a way to defend himself.

23 Q All right. Let's go to the letter, 5388.

24 A 88?

25 Q 5388.

1 A Okay.

2 Q Do you have that one?

3 A I do.

4 Q Okay. And this one also starts off with some
5 nice language about the family, "How you doing, I
6 love you, how are the kids," and all the rest of
7 it, correct?

8 A Hang on a second. Let me be sure I've got
9 the right one.

10 Q At the top it says, "PS: How is Shelton
11 doing?"

12 A Is this the one starts off, "Dear Boo, what's
13 going out out there?"

14 Q It says, "Dear Boo, I miss you."

15 Your Honor, may I approach the witness again?

16 A I can't find -- I don't have my glasses. Am
17 I missing it?

18 Q All right. So, this one again starts off
19 asking how are you, how was Tie's birthday and how
20 are the kids?

21 A Yes.

22 Q All the nice language that we have been
23 talking about, correct?

24 A Correct.

25 Q And then he goes on to say, "I need you to

1 say that you did not tell the police to search the
2 house and that the only thing they said was that
3 they had a warrant to arrest me for receiving
4 stolen goods." Do you see that part?

5 A I do.

6 Q Okay. If that was going to be a significant
7 issue in whether or not some evidence against Mr.
8 Bowman was admissible, you don't think it is
9 manipulative for him to start off with all that
10 language, you know, that nice language about the
11 family and then go straight to that request that
12 aids him in his trial for capital murder?

13 A I don't.

14 Q Okay. All right, you said that you thought
15 Mr. Bowman wanted to be, you know, a role model for
16 the children, for his children and the children in
17 the neighborhood, correct?

18 A I'm not sure if I used that word. I said
19 that he wanted them to learn respect, he wanted
20 them to stay out of trouble, to obey their parents.
21 I think those things are clear from my
22 communications with him, with his wife and with his
23 mother.

24 Q Didn't you say also that he wanted them to be
25 proud of him, correct?

1 A I didn't say that, I don't remember saying he
2 wanted them to be proud of him.

3 Q You didn't say that?

4 A If I did, then I did but I don't remember
5 saying that.

6 Q Okay. I'm pretty sure that you did.

7 A Okay.

8 Q I don't know if we want to go back and read
9 the testimony. But in any event, let me just do it
10 this way. If he wanted the kids to respect their
11 parents and be respectful and be good would it make
12 sense for him then to say, "I don't do, I don't
13 sell crack"?

14 A No, that's a bad example.

15 Q Would it make sense for him to threaten to
16 pistol whip some woman who owed him money for crack
17 because she hadn't paid him yet?

18 A No, that's not a good example.

19 Q Okay. Would it make sense for him to give
20 crack to a person who is addicted to crack, in
21 return for sex?

22 A I think what you're looking at are the kind
23 of conflicts that go on within all of us, it's the
24 good versus bad, it's the things we know we
25 shouldn't be doing versus the things we end up

1 doing.

2 Q How is that, if his motivation really is to
3 have the children learn to respect their parents
4 and to act right, how does any of that have even
5 the slightest relationship to that particular goal?

6 A I think we all are a mixture of good and
7 evil. I think it was a good idea and good purpose,
8 there were places he was trying to do the right
9 thing and there were places he was involved in
10 crime that obviously was not good.

11 Q Did you get any information at all about Mr.
12 Bowman's reputation in the community?

13 A Only relative to his desire to protect the
14 children and to be careful about the kids, to try
15 to teach them some of these respectful issues.

16 Q You didn't get any evidence that his
17 reputation in the community was pretty rough?

18 A No.

19 Q And you didn't mess with Marion Bowman if you
20 knew what was good for you?

21 A No.

22 Q He is liable to do anything?

23 A No.

24 Q And he would pull a lick, rob a house,
25 whatever, you didn't get that information?

1 A I did not.

2 Q Okay. Did you talk to any of the law
3 enforcement people who had arrested him in the
4 past?

5 A No, I did not.

6 Q Did you talk to any of the jailers that have
7 kept him?

8 A No.

9 Q Okay. So, you didn't review his disciplinary
10 record in Leiber?

11 A No.

12 Q You don't know what he may have done in
13 Leiber, what trouble he may have gotten into, what
14 threats he may have engaged in to officers in the
15 prison?

16 A I wish I could be more specific. I remember
17 reading a few things that were relative to, I
18 think, at that institution, that were not, that
19 were not negative, they were positive.

20 Q Okay. All right. I'm going to show you a
21 South Carolina Department --

22 MR. BROWN: Your Honor, I don't know if he's
23 going to mark it but there is an issue, this arises
24 after the date of his trial.

25 MR. WATERS: He's interviewed Dorothy after

1 the trial.

2 MR. BROWN: I couldn't make him interview her
3 beforehand. He is asking about whether, about an
4 act that occurred after the date of the trial. I
5 guess he is going to some way impeach the testimony
6 he would have offered in May of '02.

7 MR. WATERS: Not only that --

8 THE COURT: The trial occurred in, was it May
9 of '02?

10 MR. BROWN: Yes, sir.

11 THE COURT: This is something -- listen, I'm
12 going to sustain the objection, let's proceed.

13 MR. WATERS: Yes, sir, Your Honor. Your
14 Honor, just for the record, the only reason I would
15 offer that, again, if he is going to put up a
16 witness right now who interviewed Dorothy recently
17 and was given an affidavit where Kendra talked
18 about a bunch of stuff that happened since he was
19 incarcerated I need to do a cross examination.

20 THE COURT: I agree with you, Mr. Waters, but
21 my consideration of this witness is going to be had
22 this witness testified at trial what would this
23 witness have said. Anything this witness is
24 considering about things that occurred after trial,
25 to me, does not have an effect on me. My concern

1 is if he had testified at trial what would he have
2 said.

3 MR. WATERS: All right, with that caveat I
4 withdraw that objection, then.

5 THE COURT: I assume, Mr. Brown, that was
6 your purpose of putting him up?

7 MR. BROWN: That is exactly why we're putting
8 him up.

9 THE COURT: All right.

10 BY MR. WATERS:

11 Q Did you talk to Travis Felder at all?

12 A No, sir.

13 Q Hiram Johnson?

14 A No.

15 Q Okay. Did you review his school records?

16 A No.

17 Q About anything he might have done in school?

18 A No, not records. I know he dropped out, I
19 believe the tenth grade. I didn't review records.

20 Q Okay. Did you, did you review his prior
21 criminal record?

22 A No.

23 Q Okay. So, you're not aware that he had, that
24 he has a prior record for burglary?

25 A I believe I read that somewhere in a

1 transcript. I didn't look at the exact records.

2 Q Okay. None of that has any effect, all that
3 conduct we just went through has no effect on your
4 opinion about what you said, that he wants kids to
5 act right and respect their elders and obey their
6 parents?

7 A I stand by that testimony.

8 MR. WATERS: I have nothing further, Your
9 Honor.

10 THE COURT: Redirect?

11 MR. BROWN: Very briefly.

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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN:

3 Q Shelton that is listed on 5288, on that page,
4 do you know whether or not --

5 THE COURT: What page is he looking at?

6 MR. BROWN: 5388.

7 THE COURT: One of the letters again?

8 MR. BROWN: That is --

9 THE COURT: All right. Have you got it?

10 THE WITNESS: There it is.

11 THE COURT: All right.

12 BY MR. BROWN:

13 Q Do you know whether or not that Shelton is
14 his wife's, one of his wife's nephews?

15 A Pardon me?

16 Q Whether Shelton is one of his nephews?

17 A I don't remember.

18 Q On his wife's side?

19 A I don't remember the names.

20 Q If that would have been a nephew who died of
21 cancer and he was asking about would that show the
22 same concern?

23 A Absolutely.

24 Q Do you ever know of people who have been
25 convicted of crimes to be good parents and role

1 models?

2 A Yes.

3 Q People who drop out of school?

4 A Yes.

5 Q People who do things wrong and say, "I want
6 you to do better," is that a good role model, can
7 you be a good role model?

8 A Still can. He is a father, he's a father who
9 is incarcerated and he's a father who is in this
10 courtroom today but he is a father nonetheless. Of
11 the eleven and a half million kids in this country
12 who have parents incarcerated, 94 percent of them
13 are fathers and if something can be done to
14 maintain that kind of fatherly influence on a child
15 then I think it needs to be done.

16 MR. WATERS: Your Honor, I object. Again,
17 that is clearly inadmissible, that last comment, we
18 move to strike it.

19 THE COURT: What is your next question?
20 Overruled.

21 Q Would you have testified that way in May of
22 2002, or consistent with that opinion?

23 A I would have.

24 MR. BROWN: No further questions.

25 MR. WATERS: Nothing further, Your Honor.

1 THE COURT: You may step down, sir.

2 (Witness excused).

3 THE COURT: Okay, your next witness?

4 MR. BROWN: Dale Davis.

5 THE COURT: Any objection to his being
6 excused?

7 MR. WATERS: No objection.

8 THE COURT: Is your other witness in the
9 courtroom?

10 MR. BROWN: She's out here.

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1 DALE DAVIS,
2 after being first duly sworn, testified as follows:

3 THE CLERK: State your name for the record.

4 THE WITNESS: Dale Davis.

5 THE COURT: Could I see you all at the bench
6 while she's coming around?

7 MR. BROWN: Yes.

8 (Unrecorded bench conference).

9 THE COURT: Miss Davis, if you would, please,
10 so everybody can hear you, give us your full name,
11 please, ma'am.

12 THE WITNESS: My name is Dale McFaron Davis.

13 THE COURT: How do you spell that middle
14 name?

15 THE WITNESS: M-c-F-a-r-o-n.

16 THE COURT: All right, your witness.

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. BROWN:

19 Q Miss Davis, what is your current position of
20 employment?

21 A I am a mitigation investigator specialist in
22 private practice. Many people use those terms
23 interchangeably.

24 Q And on the investigative end of it tell me a
25 little bit about what you do, or just tell me the

1 role of a mitigation specialist or investigator.

2 A The mitigation specialist or investigator
3 gets involved in death penalty cases generally soon
4 after a death notice is served. The ABA guidelines
5 lays out what that role is. We coordinate the
6 background investigation of the client. As well as
7 doing that, we also help to identify issues that
8 may need further investigation or further
9 examination maybe by a psychologist or different
10 kind of doctors, depending on what they are, and
11 assist the attorneys with locating experts as well
12 as getting documentation to those experts, and my
13 role is collecting documents, putting them
14 together, making notebooks, putting time lines
15 together of the clients' lives based on documents
16 and interviews with family and all of those things.

17 Q As concise as we can, knowing the finder of
18 fact is also a judge, give us some idea why you
19 offer mitigation.

20 A Well, mitigation is offered to balance the
21 aggravation in a death penalty case. Once you get
22 to the sentencing phase the Solicitor offers
23 aggravation which essentially sort of demonizes the
24 client and says their life really has no value or
25 worth and that the best thing the jury can do is

1 sentence them to death.

2 So, the mitigation, the defense attorney with
3 that needs to balance that so that a jury who is
4 making really a rendering decision about whether
5 somebody needs to live or die needs to have all the
6 information they can get both good and bad, so we
7 do the investigation so that they have that. And
8 it is never offered as an excuse or anything like
9 that. If the person is actually guilty of the
10 crime, you are just simply trying to bring some
11 understanding to it that would give the jury a
12 basis for mercy or compassion or understanding and
13 able to return a life sentence.

14 Q You mentioned the part about never being
15 offered as an excuse. Now, how do you dovetail a
16 mitigation case with a guilt phase theory?

17 MR. WATERS: Your Honor, now I think we're
18 going outside, of course she hasn't been qualified
19 but that is not her job to do anything in the guilt
20 phase and that is a strategic matter.

21 THE COURT: Does the guilt phase come into
22 play in your work?

23 THE WITNESS: Yes, because the two phases,
24 you have to have consistent theories.

25 THE COURT: Well, whether it should or

1 shouldn't or whatever else she says it does in her
2 work, so we'll go on with it.

3 MR. WATERS: Thank you.

4 THE WITNESS: When you're preparing both
5 cases you have to have a consistency that runs
6 through the guilt phase into the penalty phase.
7 You can't --

8 BY MR. BROWN:

9 Q I was going to say --

10 A Go ahead.

11 Q -- do you find it consistent in a case where
12 the defense is he didn't do it, to offer reasons
13 that he did it in the penalty phase?

14 MR. WATERS: Your Honor, again I have to
15 object. That's a criticism of the legal strategy
16 and not only even if she were a lawyer and
17 qualified as an expert in death penalty.

18 THE COURT: What where you seeking here, Mr.
19 Brown, for her to say?

20 MR. BROWN: Well, if you want to know --

21 THE COURT: I'm not going to let her give me
22 opinions regarding the actions of lawyers.

23 MR. BROWN: I understand that. We'll try to
24 put the facts out because we already have one
25 witness who says, "When I went to present the

1 mitigation information in the penalty phase I had
2 no idea what the strategy was in the trial."

3 THE COURT: Right. That was his, that was
4 not giving an opinion, that is what he said, he had
5 no idea.

6 MR. BROWN: I understand that. I'm trying to
7 ask her how she gears -- we also know she's the one
8 primarily that got the information to Jeff Yungman.
9 I think the question is how do we gear what
10 information we are trying to put forth, how do you
11 want that to work in a --

12 THE COURT: Go ahead and ask your question so
13 as she is not going to be giving an opinion as to
14 the methods attorneys use. She can say whether or
15 not they contacted her, whether she wanted them to
16 contact her. Go ahead, ask your question.

17 BY MR. BROWN:

18 Q As a mitigation person do you look at the
19 strategy in the case and decide what information
20 you want to gather to present in the penalty phase?
21 How does that work?

22 A Yes. You gather all of the information. You
23 are not certain when you begin gathering that
24 information exactly where it's going to lead you
25 because you don't know what kind of life your

1 client has had. And while I'm not an expert, I
2 believe, in what you all are speaking of, I'm an
3 expert in mitigation and that is what I'm hired to
4 do by the attorney, is to lead the investigation
5 and coordinate the investigation and do that, and I
6 have done that in many cases.

7 Q And let me ask you this. You spoke to Marion
8 Bowman?

9 A Yes, a number of times.

10 Q Did he ever tell you he did this?

11 A No. He consistently said he did not do it.

12 Q So, you knew going in, regardless, because
13 obviously if he gets an acquittal you don't put up
14 mitigation?

15 A Right.

16 Q But you knew going in that he had not
17 conceded guilt anywhere down the line so if there
18 was a conviction that's the mitigation case you all
19 were going to have to deal with?

20 A Right.

21 Q There was no surprise on that?

22 A And the strategy with that is certainly you
23 accept the jury's opinion and you tell the jury
24 that we understand at this point you found him
25 guilty and we're going forward from that point but

1 while still not conceding guilt you put forth the
2 client's life and what you have found but in that
3 particular case you would not be explaining how
4 something, how something inexplicable happened on
5 such a date.

6 Q You wouldn't want to say something is meant
7 as a excuse for what he did, if you're not saying
8 he did it, are you?

9 A No, no.

10 Q And somewhere in that is the idea that there
11 may be a sufficient guilt beyond a reasonable doubt
12 but enough doubt to not feel confident in a death
13 sentence?

14 MR. WATERS: Your Honor, I have to object to
15 that. Not only is not residual doubt a legal
16 defense or legal issue to raise, but we're just
17 purely in a critique of legal strategy.

18 MR. BROWN: Your Honor, there are no legal or
19 illegal defenses. A jury can give life for any
20 reason or no reason at all anywhere in the United
21 States.

22 THE COURT: Thank you, sir. One thing I am
23 not going to accept her opinion on is any thoughts,
24 which she hasn't been qualified to give opinion
25 testimony, any thoughts she may have about whether

1 the lawyers made mistakes or didn't make mistakes.

2 MR. BROWN: I'm not going to ask her that
3 question because that is, we're putting that
4 forward to Your Honor.

5 THE COURT: Okay. I'm not looking to her
6 opinion of how they did their case, whether they
7 did their case right or wrong or if they approached
8 the jury in the wrong way or their strategy was
9 right or wrong. I will be glad to hear what she
10 does as a mitigation expert and how she does that
11 in matters.

12 BY MR. BROWN:

13 Q One thing we know, when we go into a case as
14 a mitigation person, you can take that and factor
15 that into your gathering of mitigation, right?

16 A Yes.

17 Q All right. Let's start with something very
18 specific. There were some photos of Marion Bowman.
19 Where did those photos come from?

20 A I went to the elementary school he attended,
21 I can't remember the name of it right now, but I
22 went to a school where he went as a child and got
23 them from a yearbook that was in the school.

24 Q Did you receive any photos from his mother?

25 A I did not receive any photos from his mother.

1 Q Were there any photos conveyed from his
2 mother to you to Jeff Yungman?

3 A No.

4 Q Were there any photos conveyed from you to
5 Jeff Yungman?

6 A The only photos that I'm aware of that may
7 have been conveyed were those I copied out of the
8 yearbook and the ones I took of his daughter.

9 Q Who did you speak with when you conducted
10 your mitigation investigation?

11 A I'm sorry?

12 Q What persons did you speak with in
13 investigating the mitigation for Marion Bowman?

14 A I interviewed about thirty people who were
15 teachers, brothers, sisters, cousins, aunts,
16 uncles, neighbors, guidance counselors. A large
17 number of people.

18 Q Did you speak to his wife?

19 A Yes, I spoke to his wife.

20 Q Did you find any difficulty in speaking to
21 his wife?

22 A The only problem with a few people was just
23 because there were so many charges out among family
24 members at that time that everyone was concerned
25 about how what they said to me or anybody on our

1 side, how it could affect them when they came to
2 court. That was, I can't remember now, but it was
3 a large number of family members that had charges
4 pending.

5 Q At some point were you able to sit down and
6 speak to his wife?

7 A I'm sorry?

8 Q Were you able to sit down and speak to his
9 wife?

10 A Yes, I talked to his wife several times.

11 Q Okay. Would Jeff Yungman have been able to
12 accompany you?

13 A He could have accompanied me. He did not. I
14 think he contacted her individually.

15 Q Would it surprise you to find out he never
16 spoke to his wife?

17 A No, I didn't know that.

18 Q Would that surprise, does that surprise you?

19 A It does surprise me.

20 Q And, so, obviously he never called you and
21 said, "Dale, I'm having problems reaching his
22 wife"?

23 A No. I knew where she was.

24 Q And how about difficulty speaking with
25 Yolanda, did you ever speak to Yolanda?

1 A His sister?

2 Q Yes.

3 A Yes.

4 Q And did Jeff Yungman ever call you and say,
5 "I'm having difficulties reaching Yolanda"?

6 A I don't recall Jeff ever telling me he had
7 any difficulty reaching anyone.

8 Q How about Mr. Sims?

9 A No.

10 Q What was your understanding about Marion's
11 parenting?

12 A When I spoke -- now, Marion's daughter was
13 born after he was incarcerated and he did see her
14 at one point because he was very excited after she
15 came to the jail, but my main comments on parenting
16 I got were from his wife Dorothy, talking about how
17 good he was with her boys, that he was very good to
18 them and that they really loved Marion, he looked
19 out for them.

20 Q Had she told you that information prior to
21 his trial?

22 A Yes.

23 Q I'm going to ask you to take a look at
24 Plaintiff's 22. Look at the seventh paragraph,
25 it's marked seventh.

1 A Okay.

2 Q And that shows the communication between you
3 and the testifying social worker about the
4 parenting issue?

5 A Right, exactly. Do you want me to read it?

6 Q It's in evidence. Thank you.

7 And let me ask you about the letters that
8 were written from Marion to his wife. Are you
9 aware of any of those?

10 A No, I don't believe that I'm aware of any
11 written to his wife.

12 Q So, your information about his good parenting
13 comes, irrespective of any letters he would have
14 written, his expressing concern about his family?

15 A Right, and separate from that, after Marion
16 got in -- well, that would be after the fact.

17 Q And let me just show you Plaintiff's Exhibit
18 56 to clarify whether or not you have seen those
19 letters?

20 A I have not.

21 Q Okay. So, when you talked about the
22 conversations with his wife and about the good
23 parenting she conveyed to you, that is irrespective
24 of those letters?

25 A Yes.

1 Q I will ask you to look at Plaintiff's 57 and
2 ask you if you know what that letter is?

3 A Yes. I refer to this as my panic memo.

4 Q This is a memo you wrote?

5 A Yes.

6 Q And tell me why you refer to this as a panic
7 memo.

8 A Because I started out saying that I feel
9 panic rising in me, I was beginning to panic, we
10 were very close to trial and didn't know what was
11 going on and I was working two other death penalty
12 cases at the same time I was working this one, so I
13 knew how it should be directed and operated but
14 those had very different outcomes from this. This
15 was not being done in the same manner.

16 Do you want me to read this?

17 Q Well, I'm going to ask you what other
18 concerns did you have about this case?

19 A I began to have concerns when I couldn't get
20 in touch with the attorneys to get discovery. When
21 I first was hired on with this case Marva
22 Hardee-Thomas was the attorney contacted me, Norb
23 Cummings came on after that but he was I believe
24 the first chair attorney.

25 And she, I was trying to get a copy of

1 discovery and I just simply couldn't get in touch
2 with him. I was calling his office, I was leaving
3 messages and I was going by there but I just
4 couldn't get any response. So, at some point, I
5 just had never had that happen before, I just began
6 making notes of my attempts to get in touch with
7 them and my inability to do that.

8 And without the notes that I did, I really, I
9 can't say exactly how long it was but it was just
10 almost impossible to get in touch with him
11 directly. Carol in his office seemed to intercept
12 everything. Originally I thought maybe he didn't
13 know it was going on but then --

14 THE COURT: What is it?

15 THE WITNESS: Well, I would call his office
16 and ask to speak with him and I would be put
17 through to this girl, woman, Carol, who would say
18 that he would call back or that he was too busy or
19 that -- any number of things. I just couldn't seem
20 to get past Carol to get to Mr. Cummings.

21 At one point I had taken a number of records
22 down to his office to deliver and she was standing
23 outside on the front walk when I brought them and
24 handed them to her and said, you know, please, I
25 just need fifteen minutes, I just need a few

1 minutes because, I mean, I work for the attorney,
2 he's the one that directs the case and without some
3 input from him I couldn't just go off on my own
4 doing a lot of things, I needed some input from
5 him. And she, I mean it almost evolved into --

6 THE COURT: Give me an example of the input
7 you needed from him.

8 THE WITNESS: I didn't know, I didn't know
9 what he had in mind, I didn't know how he wanted me
10 to proceed, I didn't know if there were certain
11 things that he wanted me to do. He had met with
12 the client, I'm assuming he and Marva were talking,
13 but it's just typical for an attorney to have a
14 meeting and an attorney to say, you know, "In
15 addition to while you're collecting these records I
16 would like you to do certain things," or he may
17 say, "Just go ahead and do what you usually do and
18 when we get back together next time we'll talk
19 about specifics." But it is just not normal for me
20 to be self directed completely without any input
21 from the attorney.

22 THE COURT: So, you had not met with Mr.
23 Cummings?

24 THE WITNESS: No. I finally was able to meet
25 with him in January and I began, I believe my first

1 contact with his office was, I believe in
2 September.

3 THE COURT: So, you first talked to him in
4 September of '01?

5 THE WITNESS: I didn't talk to him. That was
6 my first contact with the office trying -- is it
7 possible for me to get, to take notes out that I
8 did and I can be more specific?

9 THE COURT: Sure. Tell me when you first met
10 Mr. Cummings. You had already met Miss Smalls?

11 THE WITNESS: Miss Thomas?

12 THE COURT: Yes, Miss Thomas.

13 THE WITNESS: Yes, I did meet with her.

14 BY MR. BROWN:

15 Q If I can show you this memo?

16 A Okay.

17 Q Do you recognize Plaintiff's Exhibit 58?

18 A Yes.

19 Q What is Plaintiff's 58?

20 A That was a letter that I wrote on April 11th,
21 again after a meeting stressing my concern about
22 not having any direction in the case, of not
23 knowing what we were doing.

24 Q And you say that is, there is a line in there
25 regarding your understanding of the trial strategy

1 that you were supposed to be working under?

2 A Can you tell me what paragraph?

3 Q In the first paragraph, the last sentence.

4 A It was more of a presentation at a team
5 meeting. I came away with no more information than
6 when I had arrived. I still have no idea of
7 strategy or theory of the case.

8 Q Now, I have to ask this. It says there was a
9 team meeting on May 3rd.

10 THE COURT: Tell me what she just read. Was
11 that a letter to Mr. Cummings?

12 THE WITNESS: Yes, addressed to both
13 attorneys.

14 THE COURT: What was the date on the letter?

15 THE WITNESS: April the 11th.

16 BY MR. BROWN:

17 Q I do have to ask you about a discrepancy in
18 the date. It is dated April 11th?

19 A Uh-huh (Affirmative).

20 Q It discusses a May 3rd meeting?

21 A Okay. It must have been May 11th, then.

22 Q And is the date on the letter or the date of
23 the meeting, do you have some note which would
24 better reflect --

25 A Well, I don't have my time schedule with me,

1 which is probably the only thing that would tell me
2 for sure when I had a team, when we had a meeting
3 because, as well as it is dated May 3rd, the memo I
4 wrote when I said I woke up at 4:00 in the morning
5 with panic rising in me. "We have to get together
6 and soon. The trial starts a week from Monday and
7 I have no idea how you plan to present the penalty
8 phase. I don't know what expert witnesses are
9 being used or what they will be testifying to."

10 THE COURT: So, when you wrote that letter
11 your understanding was the trial was going to be
12 beginning a week from the Monday after the date you
13 wrote the letter?

14 THE WITNESS: Must be. This is the memo,
15 this is dated, a memo dated May 3rd.

16 THE COURT: Memo dated May 3rd?

17 THE WITNESS: The letter was a separate, and
18 what happens, may have happened with this, often
19 when I'm writing letters to the same person --

20 THE COURT: If the decision of the jury is
21 made on May 20 on guilt, when did the actual
22 beginning of the trial as for as qualifying the
23 jury, when did that begin? I thought it was around
24 May 3rd or so.

25 MR. BROWN: May 13, Your Honor. Excuse me,

1 Jackson v. Deno and stuff like that actually
2 started a little earlier than that, excuse me, some
3 of the beginning of the jury matters started as
4 early as --

5 MR. WATERS: Jury selection began on May
6 13th.

7 THE COURT: The jury reported on May 13th?

8 MR. WATERS: Right. There was some Jackson v.
9 Deno proceedings in April, in early April and on
10 May 2nd.

11 MR. BROWN: The transcript, I have the
12 reference from this transcript, there is jury
13 matters on May 9th and it has got a list, and maybe
14 that is a typo --

15 THE COURT: Well, one would assume, I may be
16 wrong, ma'am, but when you say trial is set to
17 begin you meant that is when the jury is supposed
18 to report?

19 THE WITNESS: Right.

20 THE COURT: You wouldn't be doing that about
21 hearings?

22 THE WITNESS: Right, "The trial is set to
23 start a week from Monday."

24 THE COURT: Okay.

25 THE WITNESS: I'm not sure what day of the

1 week.

2 MR. BROWN: Your Honor, could I move these
3 two items in evidence, 57 and 58?

4 MR. WATERS: No objection, Your Honor.

5 THE COURT: All right. Let's have them
6 marked, if you would. Are they already marked?
7 That will be 57 and 58 in evidence.

8 (Memo from Davis to Cummings and
9 Hardee-Thomas marked and received in
10 evidence as Plaintiff's Exhibit 57).

11 (April 11, 2002, letter from Davis to
12 Cummings and Hardee-Thomas was marked
13 and received in Evidence as Plaintiff's
14 Exhibit Number 58).

15 MR. BROWN: Thank you.

16 BY MR. BROWN:

17 Q I don't want to distract you from the
18 documentation that you were looking for about the
19 first meeting, the judge had asked you about that,
20 so if you want to look for that and answer that
21 question.

22 A Okay. Actually August 20th was the first
23 time I called and left a message that I needed
24 records. I called again on the 27th of August, on
25 the 24th of September, and that date whoever

1 answered said they didn't know anything about the
2 death penalty case and took the message. I had
3 left messages other times.

4 On the 26th I called Marva's office because I
5 couldn't get a response from Mr. Cummings' office
6 and that I was being denied access to the file.
7 She called, she said she would call his office.

8 On the 27th of September I got a call the
9 file was ready to be picked up and Carol said she
10 had copied it.

11 On October 24th I wrote and faxed a letter to
12 both attorneys about needing to meet with them
13 regarding this case, stating that we needed a
14 psychologist, I believe.

15 On the 25th I went to Mr. Cummings' office,
16 Carol told me she was sending me a letter about
17 coordinating schedules.

18 On October 27th I received the letter telling
19 me to call his office and that they would schedule
20 a convenient time.

21 On October 29th I got a call from his office.
22 I advised them I would be there anytime they wanted
23 me to, to let me know. She said she would contact
24 me later.

25 I got a letter on the 3rd of November

1 confirming what she told me on the 29th on the
2 phone.

3 On November 28 is what I was speaking of
4 before. I had collected quite a number of records
5 at that point, I was delivering those records to
6 his office and I spoke to her regarding arranging a
7 meeting. She told me he was out town until
8 December the 10th as if that was the only reason we
9 hadn't met yet. I advised that our contact was at
10 the beginning of November. She told me, she said,
11 "He can't close down this office to meet with you,"
12 and I told her I only needed 15 minutes, he doesn't
13 have to close down his office. I asked about
14 non-court weeks, and anyway, I sent a letter, I
15 called and checked for non-court weeks and sent a
16 letter on December 10th after checking with the
17 court about Christmas schedules.

18 Finally I sent another, there was another
19 letter on the 14th. Finally on January the 7th I
20 met with Marva and Norbert and Bobby Minter and Don
21 Girndt and myself, and that was the first time I
22 met.

23 Q I'm going to ask you to look at what has been
24 marked Plaintiff's 59. Does that look like a copy
25 of the same notes you're reading off of?

1 A It is, this is a copy of what I have been
2 reading off.

3 MR. WATERS: I object to this. It sounds
4 like it was prepared for purposes of this
5 particular proceeding. It is headed notes of --

6 THE COURT: What is that document, ma'am?

7 THE WITNESS: I had handwritten notes and I
8 made, I took my handwritten notes -- well, actually
9 I take that back. It was about the trial, the
10 handwritten notes. I started doing this as I was
11 going, which I was having trouble getting to them
12 and I just started the document and each time I
13 would have problems --

14 THE COURT: When was the last time you made
15 an entry on that document, you physically made an
16 entry?

17 THE WITNESS: I haven't made any entries on
18 it since when the trial was over, I guess.

19 THE COURT: So, that document --

20 THE WITNESS: Whatever the last date on it.

21 THE COURT: That document right there, no one
22 has typed on it since the date you have on there,
23 which would be sometime in May of '02?

24 THE WITNESS: May 13, '02, was the last date
25 on here.

1 THE COURT: Okay, ma'am, my question is this.

2 THE WITNESS: I have not --

3 THE COURT: Let me ask the question, ma'am.

4 Let me hold this document.

5 THE WITNESS: Okay.

6 THE COURT: I see this document right here.

7 THE WITNESS: Uh-huh. (Affirmative)

8 THE COURT: This document right here is a

9 document that was finalized May 13th, '02?

10 THE WITNESS: Yes, sir.

11 THE COURT: May 13th?

12 THE WITNESS: Well, the last date on it.

13 THE COURT: Is May 13?

14 THE WITNESS: Right.

15 THE COURT: Well, the trial was May 23rd, I
16 mean not the trial, but the finishing of the trial..

17 THE WITNESS: In truth I probably stopped
18 documenting my attempt to contact them because we
19 were up here every day.

20 THE COURT: So, this is not something you
21 just put together recently?

22 THE WITNESS: No, huh-uh (negative).

23 THE COURT: This right here, if I went to you
24 on May 14th, '02, could you have handed me this
25 sheet just like this?

1 THE WITNESS: Yes, sir, and at any point in
2 between here I could have handed it to you
3 partially finished because I was adding as it was
4 happening.

5 THE COURT: That is what it says, she said
6 it. All right.

7 MR. BROWN: Yes, sir. We now move that into
8 evidence.

9 MR. WATERS: Your Honor, I will still have an
10 objection because it looks like it is not complete
11 notes, it is just calls, so I object. She can sit
12 here and testify what she did.

13 THE COURT: I will let it in. If she says
14 it's summaries she herself typed in and she last
15 typed it in on May 13th, '02, for whatever purpose
16 it is admitted I will let it in. It is not marked.

17 MR. BROWN: It is on the back, Your Honor.

18 THE COURT: What number is it?

19 MR. BROWN: 59.

20 THE COURT: 59 is in evidence.

21 (Davis log marked and received in evidence
22 as Plaintiff's Exhibit Number 59).

23 MR. BROWN: Thank you.

24 BY MR. BROWN:

25 Q Is it usual, was it at the time usual for you

1 to compile this type information?

2 A I have never done that before.

3 Q Why did you do it in this case?

4 A Because it was the first time I had ever had
5 something like that happen in a case, I just did
6 not have any need to do it before.

7 Q Something like what?

8 A Like having such extraordinary difficulty
9 communicating with the attorney, and it disturbed
10 me.

11 Q Let me talk about Marion's work. Do you have
12 documentation regarding your effort to investigate
13 his work records?

14 A Yes. Although I could not locate records
15 that I show that I collected, I could not find some
16 of the records from some places, but his uncle that
17 did concrete, I think they call it rebar work,
18 Marion had worked quite a bit with his Uncle Robert
19 Gadson and I interviewed him about that.

20 Q Did you pass that information along to Jeff
21 Yungman?

22 A Yes.

23 Q And, so, Jeff would have known about
24 legitimate employment, not drug dealing, legitimate
25 employment at the time?

1 A Yes, and his uncle said he was a very good
2 worker and I think his uncle picked him up, that
3 was his only ride to work, and that Marion was
4 always dressed and ready and out there and on time
5 and when he told him to do something, you know, he
6 did whatever he was asked to do because his uncle
7 just sort of didn't have any patience with slackers
8 and said, "He wouldn't have been working with me if
9 he hadn't been willing to do what he was supposed
10 to do."

11 Q Did you meet with the Martin family?

12 A I met with Mrs. Martin.

13 Q Tell me about that meeting.

14 A I was up in that area one day and just
15 decided to stop by, not knowing really whether she
16 would meet with me or not, but she was very
17 gracious and did allow me to come in and talked to
18 me about Kandee, talked to me about the thing and
19 how she felt about it and while I was there
20 somebody in the family called and she told them I
21 was there and --

22 THE COURT: Don't tell us anything she said.

23 A Okay.

24 THE COURT: You know enough to know that
25 would be hearsay.

1 A Right. At any rate, she just shared some
2 things about Kandee and that they had known of each
3 other for years.

4 MR. WATERS: Again she's going into rank
5 hearsay.

6 THE COURT: I don't want to hear anything she
7 said.

8 A As a result of speaking with Miss Martin I
9 learned --

10 THE COURT: No, ma'am. What did you do, not
11 what you learned, what did you do? If you didn't
12 do anything, "I didn't do anything."

13 A I didn't do anything, I just talked to her
14 and she talked to me.

15 THE COURT: All right, they talked.

16 Q Did she know Marion?

17 A Yes, she knew Marion

18 MR. WATERS: Your Honor, that's hearsay.

19 THE COURT: That might be more of an action,
20 I will permit that.

21 Q How long did she know Marion?

22 MR. WATERS: Your Honor, I object.

23 THE COURT: Now we're getting into hearsay.

24 Q Did she seem familiar with Marion?

25 MR. WATERS: I object.

1 THE COURT: I will let her say that.

2 A Yes.

3 Q I'm going to show you what is marked
4 Plaintiff's Exhibit 60 and Plaintiff's Exhibit 61.
5 I want to kind of get some idea here. Where were
6 you during the trial, during the penalty phase,
7 your physical location?

8 A I was here during the penalty phase.

9 Q Was there a period of time you were not in
10 the court?

11 A There was a time during the guilt/innocence
12 that I was not. My brother had become very ill and
13 I had to go to Alabama.

14 Q Did you -- were you here when the verdict was
15 rendered in the first phase of the trial?

16 A Yes.

17 Q Okay. Did you provide any records to Jeff
18 Yungman in the time the verdict, or the jury was
19 deliberating, until the time that he testified?

20 A No. He had all the records I was aware of at
21 that point.

22 Q In that regard did you ever give him some DSS
23 records?

24 A It was food stamp type records that they had
25 given me from DSS.

1 Q So, you received welfare type service
2 records?

3 A Yes, right.

4 Q How about any records regarding any abuse or
5 neglect investigation of either Marion, his family
6 or Marion and Dorothy Mae and their family?

7 A No, they did not turn any over.

8 Q Tell me what those memos indicate and how
9 this relates to the search for DSS records, because
10 DSS is referenced in both 60 and 61.

11 A Okay. In 60 I spoke to, I was trying to get
12 records from Orangeburg related to Marion because I
13 thought maybe that is where they were, I wasn't
14 certain, and I learned apparently they had had
15 services there at some point but she told me the
16 last place they had services was in Dorchester
17 County. So I did a subpoena, actually the
18 information on 61 is where I was sending
19 information to someone in Norb Cummings' office to
20 prepare a subpoena for me to serve on DSS, and
21 Marva Hardee-Thomas, I believe was a friend of Mary
22 LeMatty, I'm not quite sure, but I know she talked
23 to Mary LeMatty and called me and told me that I
24 could pick up the records at the Dorchester office.
25 Q And were these food stamp records?

1 A It was several boxes of food stamp records?

2 THE COURT: Mary LeMatty is who?

3 A Mary LeMatty was the attorney for Dorchester
4 County DSS.

5 THE COURT: She's a lawyer?

6 A Yes.

7 Q And when did you receive those records?

8 A I'm not sure. I may can look at a release
9 tracking and find out, if you need me to.

10 Q Let me turn your attention to some, to a
11 portion of the trial transcript. If I can turn
12 your attention to page 4547. Were you allowed to
13 stay in the courtroom during the trial proceedings?

14 A Yes, I was.

15 Q And do you recall this portion of the trial?

16 A Starting on 4547?

17 Q That's correct.

18 A Can I have a minute to read it?

19 Q Please. It runs through 4559.

20 A Does this pick up again? I'm sorry, 4559,
21 that's the last of it?

22 Q Yes.

23 A Okay.

24 Q And were you there for that?

25 A I don't remember hearing this.

1 Q And let me ask you, did you receive any
2 records from Mary LeMatty after that point in the
3 trial, which is the jury deliberation portion?

4 A No. The only records we got from DSS were
5 those boxes of stuff that had to do with food
6 stamps.

7 Q Those were obtained before this part of the
8 trial?

9 A Yes.

10 Q Did you all have to have a court order to get
11 the food stamp records?

12 A I don't think so. I think she provided them.
13 After Marva Hardee-Thomas called Miss LeMatty. I
14 think they just provided them to us.

15 Q But obviously from this record there was a
16 hearing regarding other DSS records?

17 A Must have been.

18 Q And Miss LeMatty and Marva Hardee-Thomas,
19 they, I guess from your testimony, they had some --

20 A They knew of each other.

21 Q They knew of each other? There was some
22 communication lines there?

23 A Yes, uh-huh (Affirmative).

24 Q And is that related to 61 and 60, that
25 testimony?

1 A It sounds to me like it's related to 61 in
2 particular because we put, we didn't have, it
3 wasn't for just Marion, it was for the other
4 children as well.

5 Q And the other children are Marion's siblings?

6 A Right, sisters.

7 Q That would have been investigating DSS
8 records regarding the functionality or
9 dysfunctionality of Marion's family as a unit?

10 A Right. I mean, we were asking for everything
11 they had regardless of what they were, we wanted
12 every record they had on the family, he and his
13 siblings.

14 Q And this was May 16th and you all are in
15 trial?

16 A Yes, evidently.

17 Q Do you usually wait that late to deliver DSS
18 records?

19 A No.

20 Q Have you ever --

21 A The only thing I guess they told me, I
22 honestly can't say except for the date, was that
23 the other records I had already gotten, so after --
24 what's the date on this? I'm sorry, I don't know
25 what the date of this transcript is.

1 Q For the record that's May 20th, is the date
2 of that discussion in the transcript.

3 THE COURT: She said she doesn't remember
4 whether she was there or not, she doesn't remember
5 the testimony.

6 MR. BROWN: I understand that. She is
7 wanting to know the relationship.

8 BY MR. BROWN:

9 Q This memo is dated May 16th.

10 A So, that may have been the date that we
11 decided to do that and so I don't know whether
12 somebody else knew it or why it was at that point
13 that we, that it was that late, you're right,
14 normally we wouldn't be that late getting it.

15 Q These are clearly -- we're clearly not
16 talking about family services like welfare?

17 A No.

18 Q Welfare records?

19 A No. Although, I mean, since we're asking for
20 everything, I'm not surprised they turned those
21 over, but that is not what we were looking for.

22 Q You had already gotten those?

23 A Right, I had.

24 Q Would you usually have gone through this much
25 effort if there were no records?

1 MR. WATERS: Your Honor, I object to that.

2 She doesn't know if there were any records.

3 Q Do you know whether there were any records
4 that you all were going after?

5 A Apparently there were and I cannot say what.

6 THE COURT: Well, is that conjecture on your
7 part, ma'am?

8 THE WITNESS: At this point I would have to
9 say, I mean, I don't know.

10 THE COURT: She doesn't know.

11 THE WITNESS: I can't think of any reason I
12 would have written that memo if we weren't going
13 after DSS records and I was preparing that memo for
14 someone in his office to do a subpoena.

15 BY MR. BROWN:

16 Q Would the somebody be Carol?

17 A Yes.

18 MR. BROWN: Your Honor, at this time I move
19 61 into evidence, which is that memo she wrote to
20 Carol. She wrote it.

21 THE COURT: Any objection?

22 MR. WATERS: No objection, Your Honor.

23 THE COURT: It's in evidence.

24 (Dale to Carol memo dated May 16, 2002, was
25 marked and received in evidence as

1 Plaintiff's Exhibit Number 61).

2 BY MR. BROWN:

3 Q As an investigator you're looking for leads
4 for information?

5 A Yes.

6 Q In your investigation of this case what made
7 you believe there would be some non food stamp DSS
8 records?

9 A I believed that based on what other family
10 members had told me about there being abuse in the
11 family --

12 MR. WATERS: Your Honor, I object to the
13 hearsay.

14 THE COURT: What is your question to her,
15 again?

16 MR. BROWN: What information led her as an
17 investigator to believe there were DSS non food
18 stamp records to go after. This is as an
19 investigator.

20 THE COURT: All right, why did you feel --
21 did you feel there were non food stamp records
22 regarding Mr. Bowman?

23 MR. BROWN: And his family, his sisters.

24 THE COURT: Mr. Bowman's family?

25 THE WITNESS: I did believe there were.

1 THE COURT: I will let you answer. Why did
2 you think that?

3 THE WITNESS: I believed it because of the
4 background interviews I had done with a number of
5 people who talked about abuse in the family,
6 domestic abuse between the parents and abuse to the
7 children

8 BY MR. BROWN:

9 Q I want to be clear on that last part because
10 I don't want there to be a slip in the record.
11 Abuse of the children?

12 A Yes.

13 MR. WATERS: Your Honor, again that is my
14 hearsay objection.

15 THE COURT: I know. I think at trial during
16 the penalty phase some of this would be admitted.
17 I will permit her to testify about it.

18 MR. WATERS: Just for the record, it is
19 offered for the truth of the matter asserted;
20 that's the basis for my objection. Also it would
21 not be admissible to relate hearsay, it needs to be
22 specifically related to some expert opinion and
23 then is not offered for the truth of the matter
24 asserted.

25 THE COURT: I'm still going to permit it at

1 this time based on the nature of this hearing.

2 BY MR. BROWN:

3 Q Number 60, which I'm going to move into
4 evidence as well, there is no date on that and I'm
5 going to ask that you try to put that in
6 relationship to specifically 61.

7 A It was written before 61 because that was to
8 Orangeburg, is who referred me to Dorchester
9 County.

10 Q And what DSS records are we looking for in
11 60, and I'm going to categorize them in two ways,
12 abuse and neglect or the welfare food stamps, which
13 one of those two?

14 A Well, I was looking for anything they had,
15 really. What I cared about was the abuse and
16 neglect but I was looking for anything they had
17 because economic conditions in a family are
18 important as well but they had lived in Orangeburg
19 at times, in Orangeburg County at times and they
20 had lived in Dorchester County at times and so when
21 I looked at different kinds of records I looked at
22 them in both places.

23 Q And, so, this memo may have been, Number 60,
24 may well have been written prior to the receipt of
25 the food stamp records, or do you know?

1 A Yes, it would have been, because I got the
2 food stamp records from Dorchester County office.

3 MR. BROWN: Your Honor, we would move 60 into
4 evidence.

5 THE COURT: Any objection?

6 MR. BROWN: It is not dated.

7 MR. WATERS: No objection, Your Honor.

8 THE COURT: All right..

9 (Dale Davis memo to file marked and received
10 in evidence as Plaintiff's Exhibit 60).

11 THE COURT: How much longer do you plan to be
12 with this witness? Are we at a happy breaking
13 time?

14 THE COURT: Actually I have two more topics.
15 BY MR. BROWN:

16 Q I did want to clarify 61. 61 dealt with a
17 request for records after the food stamp records?

18 A Yes.

19 THE COURT: 61 is in evidence without
20 objection.

21 Q I'm going to show you what is marked
22 Plaintiff's 62, and did you write that memo to the
23 attorneys?

24 A Yes.

25 Q What does it say about Marion as a parent?

1 MR. WATERS: Your Honor, I object to hearsay.

2 THE COURT: What is that? Now, Mr. Brown,
3 this is the type information that she would not
4 have been permitted to testify to at trial in the
5 penalty phase if it is just saying what someone had
6 said because she was not giving any opinion, she is
7 going to give a specific instance that it says
8 happened here, what you want her to read. I know
9 she's gathering information to form her own
10 opinions as well as to help the attorneys in the
11 penalty phase but what would be your ground for
12 permitting her to read about what someone told her
13 about an incident Marion had a while before this?

14 MR. BROWN: Let me offer it for a different
15 purpose.

16 THE COURT: Okay.

17 BY MR. BROWN:

18 Q One thing that is referenced in an earlier
19 memo from Jeff Yungman to you is Marion's good
20 parenting?

21 A Yes.

22 Q Did you seek to gather that type information?

23 A Yes.

24 Q And what would you do with it when you
25 gathered it?

1 A Anytime, all of that information is passed
2 on. I'm not the expert that testifies, I pass that
3 information on to someone who has the expertise to
4 testify and with an opinion, so that would be my
5 role in that, would be do the interview, gather the
6 information and then, say, a social worker,
7 counselor, whoever would be the testifying witness,
8 this is the information I got and they would
9 generally go back and interview that person
10 separately.

11 Q And did you find that type information in
12 this case, about his good parenting?

13 A Yes.

14 MR. WATERS: Your Honor, again that's
15 hearsay.

16 THE COURT: I will let her answer it, did she
17 find good parenting information.

18 Q Is that an example of it?

19 MR. WATERS: Your Honor, that is clearly
20 hearsay.

21 THE COURT: I sustain that objection. Are
22 you talking about this thing here, 62?

23 MR. BROWN: Yes, sir.

24 THE COURT: Who is the Marion that they are
25 referring to here?

1 MR. BROWN: Marion Bowman.

2 THE COURT: Are you talking about this is
3 good parenting? It sounds like this happened to
4 him.

5 MR. BROWN: At the bottom, there is more than
6 one topic in that memo, Your Honor.

7 THE COURT: You mean just that last sentence?

8 MR. BROWN: There had been information --

9 THE COURT: I mean on this document, 62. Am
10 I missing something on 62 about good parenting,
11 other than the last sentence?

12 MR. BROWN: It came from his wife and not
13 from Marion Bowman.

14 THE COURT: What I'm asking you, is there
15 something in 62 that indicates Marion Bowman is a
16 good parent, other than the last sentence on the
17 document, that I'm missing?

18 MR. BROWN: No, sir. That is what, that is
19 exactly -- no, sir, there is not. The other
20 paragraph deals with a different issue.

21 THE COURT: Right. And, so, this is an
22 example of good parenting you are talking about
23 here? I don't mind putting it in the record, it
24 says Marion is good to her kids and they love him.

25 MR. BROWN: And it came from his wife and not

1 from Marion.

2 THE COURT: Right.

3 MR. BROWN: Because that is a question of an
4 earlier witness, about the good parenting
5 information.

6 THE COURT: I think there has been evidence
7 already put in that there was evidence of him being
8 good to the kids.

9 MR. BROWN: That's right.

10 THE COURT: But anyway, if that is all you're
11 looking for is the fact that Miss Dorothy -- is it
12 Dorothy Bowman?

13 MR. BROWN: Yes. There are two Dorothy
14 Bowmans.

15 THE COURT: This is Dorothy Williams Bowman,
16 his wife told him that Marion is good to her kids
17 and they love him?

18 MR. BROWN: That's correct, Your Honor.

19 THE COURT: What else? 62, you haven't
20 offered that in evidence, have you?

21 MR. BROWN: I hadn't yet. I was just asking
22 her whether she had passed the information along
23 from the wife that he was good to her kids. We
24 have the letters and other things like that. Mr.
25 Yungman hadn't seen the letters,.

1 THE COURT: Mr. Yungman testified he had
2 evidence he was good to the kids.

3 MR. WATERS: Only from Marion, he never
4 interviewed the wife.

5 THE COURT: Did he say he never interviewed
6 the wife?

7 MR. WATERS: That is not what he said, that
8 was the only evidence he had.

9 THE COURT: I know but he did say he didn't
10 interview the wife, he did testify to that.

11 BY MR. BROWN:

12 Q And who is Dr. Bryan West?

13 A Dr. West is a neuropsychologist in North
14 Charleston.

15 Q And what was his role in this case, in the
16 mitigation part?

17 A When I interviewed Marion and then confirmed
18 with some other sources and records Marion had had
19 two pretty bad head injuries where he was knocked
20 unconscious and anytime there is head injuries
21 involved you want a neuropsychologist who's not
22 like a psychologist who does the IQ sort of test,
23 but the kind of testing they do, they have specific
24 testing that relates to different parts of the
25 brain so you can separate areas of the brain to see

1 how they operate, so that if there were areas in
2 the frontal lobe or that sort of thing, by their
3 testing they would be able to determine whether
4 there were problems, if there were problems in the
5 injured area. So, that was the reason for Dr. West
6 seeing Marion.

7 Q And Dr. West did have a chance to see him?

8 A Yes, he did.

9 Q And Dr. West did not testify at trial?

10 A No, he didn't.

11 Q Do you know why?

12 A Dr. West --

13 THE COURT: Other than him telling you, any
14 other reasons other than him telling you?

15 THE WITNESS: Sir, other than him telling me?

16 THE COURT: Yes.

17 THE WITNESS: Yes. Dr. West arrived when it
18 was too late for him to testify because he had not
19 been notified with enough time to get here.

20 MR. WATERS: Your Honor, I object.

21 THE COURT: You know this is not by someone
22 telling you this, you know this without someone
23 telling you that?

24 THE WITNESS: No.

25 THE COURT: Then --

1 THE WITNESS: I know he arrived late, because
2 I saw him.

3 THE COURT: He arrived late, you saw him
4 arrive late.

5 BY MR. BROWN:

6 Q From your observation did he arrive in time
7 to testify at trial?

8 A No.

9 Q And he had conducted a neuropsychological
10 evaluation of Marion?

11 A Yes.

12 Q And I would be remiss if I didn't ask you, is
13 there anything else about your involvement in this
14 case, the mitigation case gathered and presented,
15 that you would like to tell His Honor?

16 MR. WATERS: Your Honor, I object to that
17 question.

18 THE COURT: I will let her start off.
19 Anything else?

20 THE WITNESS: I don't really know what I can
21 address other than one of the things that was
22 particularly important to me in making sure that
23 the jury heard the balance to aggravation and heard
24 Marion's story is because jurors, I have worked
25 with some juror studies, and they have done juror

1 studies, and the jurors themselves have problems
2 after they serve in a case like this. I mean, they
3 often have to get through those kind of things and
4 to be sure they have got everything they need so
5 that they are not second guessing themselves and
6 worrying and thinking and then way down the road
7 somebody in a PCR comes and interviews them and
8 they find out a whole bunch of information that
9 they didn't know at trial and it's upsetting to
10 them that they didn't have the whole story, and for
11 that reason it is just very, it was very difficult
12 in this case to work with a lawyer who just did not
13 seem to care, who made references to the victim as
14 Krispy Kreamer throughout the times we met.

15 MR. WATERS: Your Honor, I have to object.
16 Number one, all that stuff, that opinion stuff is
17 just clearly inadmissable. I let her finish
18 because you said you were going to let her testify.
19 Now we're going to this.

20 THE COURT: I'm overruling your objection
21 anyway. Go ahead. Anything else?

22 THE WITNESS: That's all.

23 THE COURT: That's it. Okay.

24 MR. BROWN: That's all the questions we have.

25 THE COURT: How long will your

1 cross-examination last?

2 MR. WATERS: A long time.

3 THE COURT: All right, ma'am, we're going to
4 need you tomorrow morning, okay?

5 THE WITNESS: I have got an appointment at
6 9:00 o'clock that I have not been able to cancel.
7 Can I come a little later?

8 THE COURT: That will be fine. We'll get
9 another witness and bring you later on.

10 THE WITNESS: I should be done by 10:00, I
11 will come directly from there.

12 MR. WATERS: I would ask her to make sure she
13 had all her notes she had in this case.

14 THE COURT: You said you had other notes some
15 other places?

16 THE WITNESS: I brought the whole bag with me
17 but, yes, and I will bring my time sheet because
18 that --

19 THE COURT: Bring everything with you you
20 have about the case, okay?

21 THE WITNESS: Okay.

22 THE COURT: We'll get to you as soon as we
23 can after you get here.

24 THE WITNESS: Thank you.

25 THE COURT: We will see you back there, I

1 will try to get you right after the witness is here
2 when you get here.

3 THE WITNESS: All right.

4 THE COURT: See you tomorrow morning. Don't
5 hurry, we have plenty of time for you to get here.
6 Just get here when you can.

7 THE WITNESS: Okay, thank you.

8 MR. BROWN: Your Honor, we wanted to make
9 sure --

10 THE COURT: By the way, Miss Davis, please do
11 not discuss your testimony with anyone, all right?

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 Now, just for planning purposes, tomorrow who
15 will be your first witness? Do you know yet?

16 MR. BROWN: Norb Cummings.

17 THE COURT: He knows to be here?

18 MR. BROWN: We told him last week, Mr.
19 Sinclair spoke to him.

20 MR. SINCLAIRE: Yes.

21 THE COURT: I will give you a chance to call
22 him tonight. Have him here by 9:30 tomorrow
23 morning.

24 How about let's make sure we have the
25 exhibits that have been thrown around here. 62 is

1 not in evidence. You need to come pick that up.

2 MR. BROWN: Your Honor, we're actually
3 anticipating her taking the stand at some point,
4 Miss Dorothy Mae Williams Bowman.

5 THE COURT: Okay. You know it is not in
6 evidence now?

7 MR. BROWN: I understand.

8 THE COURT: I'm just giving it back to you so
9 you have it.

10 MR. BROWN: I was going to leave it in the
11 stack.

12 THE COURT: I want to make sure the court
13 reporter has everything that is in evidence and
14 does not have things not in evidence because I
15 don't want him to get it confused.

16 He says he isn't. Good.

17 All right, we're adjourned at this time.

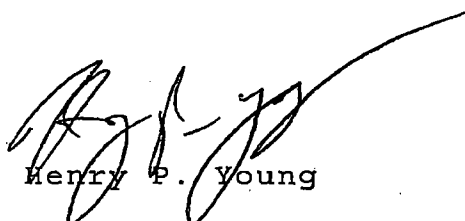
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Dorchester County, South Carolina, on the 18th day of September, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 2, 2008



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2006-CP-18-569

COUNTY OF DORCHESTER

MARION BOWMAN,

-vs-

STATE OF SOUTH CAROLINA,

Defendant.

B E F O R E:

HONORABLE JAMES E. LOCKEMY

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

JAMES ARTHUR BROWN, JR., Esquire
JOHN SINCLAIRE, III., Esquire
Attorneys for the Plaintiff

SAMUEL C. WATERS, Esquire
ALPHONSO SIMON, JR., Esquire
Attorneys for the Defendant

Henry P. Young
Court Reporter

VOLUME VI OF X
September 30, 2008

1 P-R-O-C-E-E-D-I-N-G-S

2 (Reconvened at 10:40 a.m.)

3 THE COURT: Yesterday as we finished up we
4 still had Miss Davis to testify on cross. She is
5 not here yet, I told her to get here when she
6 could, and so we'll call her when she gets back to
7 the courtroom.

8 And we discussed in chambers today before we
9 came out, sadly Mr. Brown reported that his uncle
10 had passed away and that the wake is tomorrow
11 night, that his mother who is his uncle's sister
12 assists them with the children and she is obviously
13 going down to Lake City, South Carolina to be with
14 the family and he has no one tomorrow to assist him
15 with his children, to get his children to and from
16 school. I think he said his wife leaves like 6:00
17 o'clock in the morning.

18 Anyway, it means we won't be here tomorrow.
19 We can't do it Thursday because I have already
20 given Mr. Sinclair protection because of paid
21 vacation plans to go to the best ocean resort in
22 America, Myrtle Beach. It has already been done.

23 So, we're going to do all we can do today and
24 get the testimony in we can get today and then
25 we'll see from there, at the end of the day we'll

1 try to decide when we'll try to reconvene at
2 another time.

3 Those are the only issues about this case
4 that were discussed. Mr. Waters said obviously he
5 agreed, he had no problem with Mr. Brown addressing
6 the needs of his family as he felt necessary. But
7 other than that, about this case, was there
8 anything else discussed in chambers, Mr. Waters,
9 Mr. Brown?

10 MR. WATERS: No, sir, Your Honor.

11 MR. BROWN: Nothing, Your Honor.

12 THE COURT: All right. Then we'll now
13 proceed. I will also let you all know I have this
14 other matter I had set for today at 2:00. Mr.
15 Daniel is going to try to contact them to see if we
16 can do it tomorrow and therefore we could try that
17 matter tomorrow. If not, it is probably going to
18 have to go at 2:00 today. It is a complex matter
19 that could take a little while.

20 Mr. Court Reporter, you're staying in a
21 hotel, obviously you didn't check out. Well, we
22 may need to give you time, in case we don't get the
23 matter rescheduled, to see if you want to check
24 out. We're probably going to go pretty late
25 tonight.

1 All right, Mr. Brown, Mr. Sinclair, are you
2 ready with your next witness?

3 MR. BROWN: We are, Your Honor.

4 THE COURT: All right.

5 MR. BROWN: We call Mr. Norbert Cummings.

6 THE COURT: Come around, Mr. Cummings.

7 THE CLERK: State your name for the record.

8 THE WITNESS: Norbert E. Cummings, Jr.

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1 NORBERT E. CUMMINGS, JR.,
2 after being first duly sworn, testified as follows:

3 THE COURT: Good morning, Mr. Cummings.

4 THE WITNESS: Good morning, Judge, how are
5 you, sir?

6 THE COURT: Fine. Have a seat there, relax.
7 This court reporter doesn't know you, so if you
8 would, how about telling him your name and spell
9 your first name and last name.

10 THE WITNESS: Yes, sir. Norbert,
11 N-o-r-b-e-r-t, E, Cummings, C-u-m-m-i-n-g-s,, Jr.

12 THE COURT: All right, your witness, Mr.
13 Brown.

14 MR. BROWN: May it please the Court?

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. BROWN:

17 Q Mr. Cummings, you were, I guess, lead counsel
18 for Mr. Bowman at the trial?

19 A Yes, sir.

20 Q And I don't know if you have the documents
21 with you but I'm going to ask you a couple things.
22 One, do you have an idea when you were appointed or
23 came onto the case?

24 A July 13, 2001, to the best of my
25 recollection, sir.

1 Q And do you recall the day that you were
2 relieved?

3 A Relieved of counsel, after I filed the notice
4 of intent to appeal after the trial, which was
5 after May 23rd, 2002, sir.

6 Q Do you know, and I understand you filed it,
7 I'm going to come up with it later, did you get a
8 letter back from Appellate Defense saying you had
9 been relieved?

10 A I think I got a letter from Appellate Defense
11 saying they had received our notice of intent to
12 appeal. The best of my recollection, that
13 concluded my representation.

14 Q Okay. And to kind of get into the case, what
15 was the defense's theory during the guilt phase? I
16 mean, what was the idea that you all were going to
17 try to get to the jury, besides not guilty, "This
18 is our approach," you know, "This is what we're
19 asserting"?

20 A I think you hit the nail right on the head,
21 that is the approach, not guilty. Marion declared
22 his innocence, wanted a trial, he was tried in this
23 room, and it was everybody including the State and
24 most of his family members for the State against
25 Marion.

1 Q And let me ask you. I mean, some of this
2 kind of goes without saying but there was no
3 question Kandee Martin had been murdered?

4 A Yes -- no, sir.

5 Q Given the murder charge, the question was
6 really who did it, right, an identity question?

7 A Correct.

8 Q And, so, I guess one thing, the State is
9 going to put forth as much information about
10 identity as they can?

11 A Oh, yes, including even from his own family
12 members, yes, sir.

13 Q And on the other side of the aisle you are
14 going to try to discredit or impugn the testimony
15 of identity?

16 A Yes, sir, to try to cross examine everybody
17 you can and as much as you can about everything,
18 but as an officer of the court I want to say this
19 outloud, there were five to six different
20 statements involved in this case. Some of them
21 were done even in State Hospital before I got court
22 appointed.

23 THE COURT: Some done where?

24 THE WITNESS: At the State Hospital before I
25 was court appointed to come in the case.

1 Q Are you talking about statements from Marion?

2 A Yes, sir.

3 Q Okay. And, so, to kind of follow up with
4 that, you kind of came into this case with some of
5 the issues kind of framed out, you having to deal
6 with these facts you can't really change?

7 A Yes, sir.

8 Q And we don't necessarily know whether the
9 statements, the facts contained or asserted in the
10 statements are true but there is the fact those
11 statements were made?

12 A Yes, sir.

13 Q All right. And I want to go to one point
14 kind of right off because it has become an issue as
15 we have developed through this litigation. Do you
16 remember a gentleman named Travis Felder?

17 A Yes, sir.

18 Q Do you remember when you found out that
19 Travis Felder bought the gasoline from the E-Z
20 Horizon Mart?

21 A We got the tape in discovery and again,
22 looking at this case in total, there was no
23 question that Travis had bought the gas later that
24 evening. Again looking at the facts now, looking
25 at reading all the transcript, coming back with the

1 trial testimony, meeting with our client, that
2 Travis went to the gas station, bought the gas and
3 was on that tape. But it also corroborated the
4 fact that, if you believed all the witnesses in
5 this case, that Marion was part of a plan to go
6 burn Kandee, burn the car, and I was very
7 frightened of that tape.

8 Q And let me ask you this. I mean, when Travis
9 takes the stand he says, in the first part of the
10 trial, he takes the stand, he gives a story, says,
11 "I was on that road when the car was burned and I
12 saw Marion burn that car"?

13 A Right, saw Marion burn the car.

14 Q Right.

15 A Right.

16 Q And the tape would be an example of, gosh,
17 I'm going to use, physical evidence, besides his
18 testimonial evidence?

19 A If you wanted to play it for the jury, again,
20 I wanted to save my client's life. That is the
21 first goal. I didn't want to lose that young man,
22 my God, he was 21 years ever of back then. As
23 Felder takes the stand, you know, I crossed him the
24 way I crossed him, you have read it now, you have
25 had it, it has been seven years, six years now.

1 What I was frightened of, there was no evidence
2 against Marion that he bought the gasoline, that he
3 poured the gasoline, that he did anything about
4 burning this young white female in Dorchester
5 County, and I attacked Travis the way I attacked
6 him. You read it. I have re-read it now preparing
7 for my testimony today, but I felt that if I played
8 that tape, Walter Bailey didn't play that tape and
9 for whatever reason the Solicitor didn't play it,
10 and so if the Solicitor is not trying to put the
11 tape in, I'm saying either Walter forgot it, didn't
12 use it, or I'm not going to play the tape to show
13 that it might corroborate my poor kid being
14 involved with this plan to murder, burn this little
15 girl and the car. That was my theory, Mr. Brown,
16 that was it.

17 Q And the theory was Travis lying?

18 A Everybody is a liar. I mean, I hate to say
19 that, sir, I know I'm an officer of the court here,
20 but everybody cut a deal except my poor kid.

21 Q Sure. And we're going to try to kind of go
22 into that. That is the next thing I was going to
23 ask you. Focusing on the buying the gas, Travis --

24 A Yes.

25 Q The idea that Travis is lying?

1 A Yes, sir.

2 Q Obviously he says Marion burned the car.

3 A Right. But buying the gas isn't burning the
4 car. That was another thing I had to deal with.

5 Q Sure. I'm sorry, I didn't mean to cut you
6 off. What I'm trying to find out, obviously you
7 need the jury to understand, to find him not guilty
8 of the arson, that Travis lied about Marion burning
9 the car?

10 A And I tried to walk that very gingerly on a
11 couple issues. One was all the statements about
12 whether or not Marion was there, whether Marion was
13 a principal or not, whether Marion was part of this
14 plan. There were statements, as you know, that
15 were suppressed, that I had to very gingerly worry
16 about because if I opened up the door it was coming
17 back in and I was warned of that and told about
18 that.

19 Q Let's talk a little bit about that. Evidence
20 that's involuntarily produced is generally not
21 allowed back in at all.

22 A I'm going to sit here and tell you normally
23 as a rule of evidence you're absolutely correct,
24 sir, but I also know if you make a mistake and open
25 the door that they got a right to bring it back up,

1 and I was cautioned by Judge Goodstein about that,
2 including about how I was going to prepare for a
3 mental expert later on, a mental health expert.

4 Q Now, tell me a little bit about the instances
5 that you believe involuntary evidence can come back
6 in.

7 A In the statement that was the most damaging,
8 that Sheriff Larry Williams slapped my client, as
9 testified to at the Jackson v. Deno. That the
10 police, and we found this, again, Mr. Brown, I know
11 you and Mr. Sinclair have done a great job going
12 through these records. Nobody, again I have known
13 this from prosecuting, nobody takes a guy out of
14 jail on Sunday night, no one.

15 So, Marion, when I met him and everything he
16 kept saying they took him out of jail. I had Bobby
17 Minter and the investigators go back and look, we
18 talked to our local Sheriff's Department and
19 couldn't get a straight answer from our local
20 Sheriff's Department about anything. I was
21 disappointed in that, sir.

22 So, we went back to the jail,
23 Orangeburg-Calhoun Regional Jail log, and Bobby
24 Minter went, a great job, went up there and got him
25 and we backtracked that Marion was taken out of

1 jail, out of that Orangeburg Regional, driven down
2 all the way here to Branchville and they had picked
3 up his spouse, had somebody watching the children,
4 they helped her even get the children to another
5 family member, and it was reported and I believe
6 proven that the statement was involuntary by Marion
7 based on coercion, duress and intimidation. There
8 wasn't really a lot of physical evidence to show.
9 There was one picture in the jail that he had a
10 puffy cheek, but my client stated he was beaten by
11 big Larry, Larry Williams, the sheriff, and Her
12 Honor ruled that the statements, two of them, were
13 inadmissible.

14 Q And I guess what I'm trying to find out is,
15 which occasions or which, what instances concerned
16 you about opening the door back to the statement
17 that was involuntarily produced?

18 A Some way on cross-examination, and I hit
19 something on it and all of a sudden Walter, Mr.
20 Bailey, would get a chance to stand up and say,
21 "Judge, he's opened up the door on whether or not
22 Marion shot her in the back, whether or not he
23 wanted to touch her body while it was still warm."
24 The State Hospital statement, that is absolutely
25 atrocious.

1 Every one of these co-defendant said Marion
2 did it, Marion did it, they were there, they were
3 only a small part of it, and I tried to make sure
4 that I did not in my focus on this case do any more
5 harm to my client. He was not going to take the
6 stand, you know, I didn't want anything about
7 Marion coming in, and I tried to keep that as calm
8 and as quiet as I could. Now, again, rules of
9 evidence, as we all know, Walter tried I don't know
10 how many times to get those statements back in,
11 even asked the judge to reconsider those
12 statements, Mr. Brown, and even the letters Marion
13 wrote to his wife and, I mean, I know it's
14 repugnant but --

15 THE COURT: Excuse me. Are you saying Mr.
16 Bailey tried to get in the letters that Mr. Bowman
17 wrote to his wife, or you did?

18 A No, sir, Mr. Bailey tried to show the jury
19 Marion Bowman could read better, he could write, he
20 could understand things and therefore when the
21 judge found that he was not, he was easily led or
22 he didn't understand everything, these letters
23 would prove he could. He was asking for, he was
24 asking for evidentiary items, sir.

25 THE COURT: Mr. Brown, to make sure we're on

1 the same page about that, the letters he is
2 referring to, would you all agree, are these the
3 letters referred to yesterday that you indicated he
4 said he had a concern for the family, the children,
5 is that what you're talking about?

6 MR. BROWN: Yes, sir. And those letters were
7 marked.

8 MR. WATERS: They were not entered into
9 evidence.

10 THE COURT: I want to make sure we identify
11 them. They are not in evidence?

12 MR. BROWN: They are in evidence because they
13 are in the transcript.

14 THE COURT: They're in the transcript.

15 MR. BROWN: I just pulled them out separately
16 for ease of reference.

17 THE COURT: All right, the letters are in the
18 transcript, of him writing to his wife Dorothy are
19 the ones Mr. Cummings is referring to he did his
20 best to try and keep from coming in.

21 BY MR. BROWN:

22 Q Are you talking about in the guilt phase?
23 What phase would be --

24 A Yes, sir. Mr. Bailey did not introduce them.

25 Q Right.

1 A And, again, I was shocked.

2 Q Right. You're talking about in the first
3 phase?

4 A Right.

5 Q Okay.

6 MR. BROWN: And for the record, they are
7 Plaintiff's Exhibit 56, they are Plaintiff's
8 Exhibit 56, which is found in the transcript at
9 5375 through 5389.

10 THE COURT: All right.

11 BY MR. BROWN:

12 Q And you obviously didn't want that
13 information coming in when there was a
14 determination about whether Marion Bowman had
15 killed Kandee Martin?

16 A Yes, sir.

17 Q Okay. Now let's go back a little bit to the
18 issue about Travis Felder's involvement. Travis
19 Felder bought that gasoline or do you believe that
20 makes him a principal to the arson?

21 A Yes, sir, if he bought that gasoline and he
22 used it to burn the car, right.

23 Q Is there any question that before, or, gosh,
24 it is hard for me to ask this question without
25 getting an objection but let me see, do you know

1 whether Walter Bailey knew Travis Felder had
2 purchased that gas before he testified at trial?

3 MR. WATERS: Your Honor, I would object to
4 that -- well, he can ask him if he does know that.

5 THE COURT: The answer to the question?

6 THE WITNESS: No, sir, I don't know Mr.
7 Bailey knew it, no, I don't.

8 BY MR. BROWN:

9 Q You told me there is no question, no question
10 Travis Felder was buying the gas, on that
11 videotape?

12 A Right.

13 THE COURT: Let me ask you this. Did you
14 know whether Mr. Bailey had the tape or not?

15 THE WITNESS: We got it from discovery.

16 THE COURT: From the State?

17 THE WITNESS: Yes, sir.

18 THE COURT: And you saw the tape?

19 THE WITNESS: Yes, sir.

20 THE COURT: In your view of the tape was it
21 clear Travis Felder was on the tape?

22 THE WITNESS: No, sir. It was hard to
23 identify who it was but also my client said that's
24 Felder, that's Travis

25 BY MR. BROWN:

1 Q And let me follow up on that. If I recall,
2 and there is actually a copy of the tape somewhere
3 in here, and a TV, I'm trying to just go back in
4 your memory, there is a point in time when Travis
5 Felder goes to the store about 2:58 in the morning
6 of the 17th of February?

7 A Early morning time, sir, I'm going to say.

8 Q He bought some chips and dip?

9 A I don't remember that but I remember that
10 gasoline being purchased after the murder.

11 Q Some of the statements were given that Travis
12 Felder is eating chips and dip over at an
13 apartment?

14 A Right. Marion goes over there and asks his
15 friend for help.

16 Q And there is questions back and forth, I
17 guess from Felder's attorney or Walter Bailey or
18 the other witnesses that Travis Felder bought chips
19 and dip at 2:58 on that video?

20 A I really don't recall that but on the
21 videotape it shows that. I don't remember the
22 time. The answer would be what that videotape
23 shows what it shows.

24 Q Bear with me. At 2:58 he buys the chips and
25 dip. I say that because I'm going to pull some

1 records out that you got a copy of the file from
2 the detective?

3 A Yes, sir. Of course it comes through the
4 State.

5 Q Okay.

6 MR. BROWN: And bear with me, Your Honor, I'm
7 going to look for an exhibit.

8 Q I'm going to ask you to take a look at
9 Plaintiff's Exhibit 50.

10 A Okay.

11 Q And this is the booking report of Travis
12 Felder?

13 A Yes, sir.

14 Q And at the bottom of that report, in the
15 middle of that report is a post-it note, sticky
16 note?

17 A Yes, sir, it is a post-it note on it says
18 something, in store, 2:56 point 27 in, 2:58 out.

19 Q Assuming you got that from the State --

20 A Assuming I got everything from the State.

21 Q -- and assuming that you, that this was in
22 the State's file, Detective Coker's file and that
23 note would have given you an indication that Travis
24 Felder was in the store at 2:56 and out at 2:58?

25 A The answer to your question, yes, sir, as

1 long as this post-it note belonged to this booking
2 report. The booking report normally wouldn't have
3 a post-it note on it.

4 Q I understand. Since the judge is the jury we
5 reference back to Detective Coker's testimony
6 regarding the introduction of that evidence.

7 THE COURT: Is that word in store 2:56 , 2:58
8 out?

9 MR. WATERS: That would have been the chips
10 and dip trip. We don't know when that post-it note
11 was put on there.

12 MR. BROWN: We do know Lieutenant Coker said
13 that was his post-it note and it was in his file,
14 on the document in his file.

15 THE COURT: As I recall the testimony, he got
16 that information from the tape or from Mr. Felder
17 telling him?

18 MR. WATERS: He didn't remember. I mean,
19 that is his post-it note, it has the times on there
20 and that is his writing.

21 MR. BROWN: The times correspond with the
22 little clicker on the convenience store tapes, 2:56
23 and 27 seconds.

24 THE COURT: Does the tape show him buying the
25 chips and dip?

1 MR. WATERS: Yes.

2 THE COURT: The tape has a time on it and the
3 time is about like that time?

4 MR. BROWN: Exactly.

5 MR. WATERS: 3:14 is when he subsequently
6 returned to get the gasoline. That was in the
7 penalty phase testimony.

8 THE COURT: Seventeen minutes later?

9 MR. WATERS: That's correct.

10 THE COURT: Okay.

11 THE COURT: The store is like a mile in the
12 projects, a mile and a half.

13 THE COURT: Okay.

14 BY MR. BROWN:

15 Q Now, assuming that you were provided that and
16 you would have read it because it was contained in
17 Detective Coker's file, does that give you an
18 indication that Travis Felder was in the store, at
19 these times?

20 A Yes, sir.

21 Q All right. And you see a figure wearing the
22 clothes that he's wearing come into the store at
23 2:56, leave at 2:58, then you see later on, the
24 next, not the very next purchase from that store at
25 3:15, ballpark, the same figure comes back and has

1 a conversation with the same clerk. If you knew it
2 was Travis Felder at 2:56 and 2:58, then you would
3 have known at 3:15 it was also Travis Felder buying
4 the gasoline?

5 A I knew it was Travis Felder buying the
6 gasoline.

7 Q And that was before he testified, before the
8 beginning of the trial?

9 A The case in chief.

10 Q Yes. There is no question you knew Travis
11 Felder bought that gasoline before he testified
12 during the case in chief?

13 A Right.

14 Q Okay. And to come back to the original
15 question I started this with --

16 THE COURT: How is that connected to the
17 post-it note? He said he knew it because Mr.
18 Bowman told him on the tape that was Travis. Is
19 that how you knew it?

20 THE WITNESS: Yes, sir.

21 MR. BROWN: That's fine, too. I mean, I will
22 try to link it up. We also have it in the file
23 from the State. I understand we don't know when
24 that post-it note was written on there, I
25 understand that.

1 THE COURT: Okay, but I mean, is there a
2 connection between the post-it note and the
3 gasoline, other than the time reference? As for as
4 with Mr. Cummings?

5 MR. BROWN: Assuming he also got it that way,
6 it makes no difference whether he heard it from my
7 client or got it from the post-it note. I'm just
8 trying to make it abundantly clear before the trial
9 starts we know Travis Felder bought this gasoline.

10 THE COURT: All right.

11 BY MR. BROWN:

12 Q My question is this. Did you have
13 conversations with Walter Bailey about the purchase
14 of the gasoline by Travis Felder?

15 A No, sir.

16 Q Did you have any other indications from
17 Walter Bailey that he knew that that gasoline was
18 purchased by Travis Felder?

19 A No, sir. I learned it after my client, Miss
20 Thomas and our investigator, we watched the tapes,
21 we got what we got.

22 Q Did you watch the tape with Marion?

23 A Yes. It was right over at the jail. I had a
24 disagreement in my case in chief whether or not I
25 was going to use that or not but I was again

1 worried about everybody corroborating that Marion
2 had a part of buying gasoline and burning this girl
3 in the car.

4 Q And I will stop you, I want to make it
5 crystal clear. You watched this tape with Marion
6 Bowman?

7 A I believe so, yes, sir, I watched it at the
8 jail.

9 Q Is there a chance you are mistaken about
10 watching it with him?

11 A I don't believe so, sir, because I think we
12 argued there at the end of the guilt phase, Marion
13 demanded the tape be put in and I called Travis
14 Felder back up there to have him identified as the
15 one buying the gasoline.

16 Q Let's follow up on that. You put Travis
17 Felder back up on the stand to bring out the fact
18 he bought the gasoline at the insistence of Marion
19 Bowman?

20 A That's correct, sir.

21 Q Okay. And that was done after he testified,
22 is when you all had this argument?

23 A Yes, sir, had to bring him back.

24 Q Okay. And while we're on this, when he was
25 brought back what kind of, if any, meeting was

1 there with Walter Bailey or with Charles Williams
2 regarding Travis Felder's need to come back and
3 testify in the sentencing phase?

4 A Right, sentencing. Of course Mr. Williams
5 was not happy about having to come back to court,
6 so I spoke to Charles, had the court order, this
7 man was still under subpoena, order Mr. Travis
8 Felder back and Mr. Bowman demanded that I do it
9 and I did it, I did it for my client.

10 We're in the penalty phase, I'm trying to
11 save his life, he wants that in there. I told him
12 because it is a double edged sword, it can cut both
13 ways, God bless him, I said this is your life,
14 strategy wise I was scared to death of that tape so
15 the jury would see one of his friends bought the
16 gasoline and of course Marion asked him to go buy
17 the gasoline, was Travis' testimony.

18 Q And let me ask you. It is the testimony of
19 Travis Felder that links Marion to the burning of
20 the car, right?

21 A Right, that and James, James Gadson.

22 Q How does James Gadson talk about the burning
23 of the car?

24 A I believe, without going back through the
25 statement about what everybody else did, not what

1 Marion -- Marion also gave a statement about what
2 had happened out there.

3 Q Did James Gadson talk about witnessing the
4 burning of the car?

5 A I'm trying to remember. The best of my
6 recollection, I'm not sure if James Gadson did it
7 or said that, but reading everything, I know some
8 of the co-defendants mentioned something about it.

9 Q Who else was out there at the burning of the
10 car?

11 A If you believe everybody, it was Marion,
12 Travis Felder and I don't know, I think Gap, James
13 Gadson.

14 Q So, the prime third-party suspect for the
15 shooting is also out there at the burning?

16 A Correct.

17 Q He didn't testify about that at trial, did
18 he?

19 A No.

20 Q And if he was never cross examined about his
21 presence at the arson scene, was it?

22 A I'm trying to remember. I did on cross, a
23 number of days, I crossed the way I crossed. Mr.
24 Brown, I'm trying to answer your question.
25 Whatever I cross examined him on, I did.

1 Q Okay. But that would have been important, to
2 put him, to put the suspect, in your opinion the
3 shooter, and I take it that was part of the theory,
4 that James Tawain Gadson shot him?

5 A Yes, sir.

6 Q So, it would be important to put the shooter
7 out at the scene of the buring, too, wouldn't it?

8 A Yes, sir.

9 Q Okay. Now, did you have a chance to read the
10 plea agreement signed by Travis Felder?

11 A I know Mr. Bailey made it available for me, I
12 know I remember reading it a long time ago. I
13 think I even made an objection throughout the trial
14 that every time Mr. Bailey called somebody up,
15 "You're up here to tell the truth," I objected as
16 witness bolstering and, you know, he just tried to
17 get it in so that the jury would think he would be,
18 everybody is telling the truth when they cut deals.

19 Q And let me, you thought it was bolstering to
20 allow Mr. Bailey to talk about truthful,
21 truthfulness in a plea agreement?

22 A Yes. I mean, it is, if they're not up here
23 to tell the truth they shouldn't be up here.

24 Q When you're asking them about tell the truth
25 that is kind of giving you some indication that the

1 prosecutor would know something the jury doesn't
2 know, that is outside the court, that's the
3 bolstering aspect, isn't it?

4 A That is speculation. I don't know what is
5 inside the prosecutor's head but I would say as an
6 officer of the court, trial lawyer, I better know
7 what you cut the deal on.

8 Q Now, how did you find out about Travis
9 Felder's plea agreement?

10 A A couple days before trial I get this
11 mystical magical phone call like we always do.

12 Q Okay.

13 A Okay, it's a State strategy, we all know
14 that. I get this mystical magic phone call and a
15 letter saying Mr. Felder now is going to cooperate
16 with the State.

17 Q And was that the result of a meeting between
18 Mr. Felder and the prosecutor's office?

19 A You are asking me to speculate. The answer
20 is that I'm sure something happened between Mr.
21 Felder, his lawyer Mr. Williams and Mr. Bailey.

22 Q Okay. And how did you receive the details of
23 that cooperation?

24 A I think we get the letter and I believe that
25 is all I got. I got a letter or fax or something

1 sent over to my office as we're getting ready for
2 trial that Travis Felder just cut a deal.

3 Q Okay. I'm going to show you what is marked
4 as, or entered in evidence as Plaintiff's 14.

5 A Yes, sir, I'm looking at Plaintiff's Exhibit
6 Number 14.

7 Q That's not signed until after the trial, is
8 it?

9 A May 23rd, right.

10 Q So, he strikes a deal but it is not put in
11 writing?

12 A Right. I believe there is something that
13 says he cut a deal.

14 Q Okay. And did you know at the time of the
15 trial that a mere omission of facts by Mr. Felder
16 violated his plea agreement?

17 A A mere omission, no, sir. Normally I used to
18 use the federal proffers or the other proffers we
19 use in court and it basically deals with you have
20 to basically lie or leave something out, and I
21 don't mean just omission, I mean material fact out
22 that would mean you reneged on the deal, depending
23 on what was written in there.

24 Q A material fact would be like I'm the one who
25 bought the gasoline used for this arson, in an

1 arson case?

2 A I would agree with you on that, yes.

3 Q Okay. And look at paragraph ten, read that.

4 A If it please the Court. "The defendant
5 Travis DeWitt Felder further understands and agrees
6 that any testimony given by him must be factual and
7 truthful and that he is not able to omit facts or
8 attempt in any way to give benefit while on the
9 witness stand to either the State of South Carolina
10 or to any defendant which he may testify about at
11 any future proceeding or trial."

12 Q Now let me ask you, if you knew that Travis
13 Felder omitted a fact and he did so because he was
14 scared, assumably for his own liability, if he
15 withholds those facts that he omitted he's changing
16 his testimony or altering it to benefit himself,
17 isn't he?

18 A Yes, sir.

19 Q That is something you kind of want to impeach
20 him with?

21 A I hope I done --

22 Q I didn't have that agreement because it
23 wasn't even signed yet?

24 A No, sir, it was after the trial.

25 Q Now, you filed a motion to reveal the deal?

1 A Everything, yes, sir, standard package. I'm
2 using all the death penalty trials I have done, and
3 I hope you find I did that.

4 Q We did. And part of that agreement was, or
5 part of that motion was you wanted written plea
6 agreements but you also wanted, I'm going to give
7 you a example, wink, wink deal?

8 A Yes, because that is what happened days
9 before the trial.

10 Q And that is why I asked. So --

11 THE COURT: Tell me what a wink deal means.

12 Q Please tell us what a wink deal is.

13 A They cut a sweet deal for a time served or
14 probation sentence to testify against a
15 co-defendant or a principal, sir.

16 Q And it is not put in writing?

17 A No, because it is either too short a time to
18 get it done or they just didn't do it. They are
19 just telling me they cut a deal.

20 Q That is what happened before the testimony of
21 Travis Felder?

22 A Yes, sir.

23 Q And that may not be the best example, like
24 wink, but it is not a written plea agreement, it is
25 what notice you got outside of that agreement

1 that's been introduced?

2 A That's correct.

3 Q Okay. Did you move in-camera to seal the
4 Solicitor's file?

5 A I asked Judge Goodstein to do that so
6 whatever was in that file should have been
7 preserved for everybody for the future.

8 Q Now --

9 A Not just for that, Mr. Brown, I do it in
10 every case.

11 Q Let me ask you, have you found out what
12 happened to Travis Felder after he, after Marion's
13 trial?

14 A After Marion's trial, no, sir.

15 Q Do you have any idea what happened?

16 A No, and I read the transcripts, I read
17 everything now that I have been requested to
18 prepare myself for my testimony here but, no, sir,
19 I did not know anything about the sentencing, and I
20 have read and relearned that Mr. Felder first had a
21 sentencing, then was brought back in front of the
22 judge for a recalculation or re-sentencing somehow.

23 Q I'm going to ask you to look at these two
24 items, Plaintiff's 43 and 44.

25 A Yes, sir.

1 Q I'm also going to ask you to take a look at
2 Plaintiff's 15, 17 and 18.

3 THE COURT: All right, 15, 17 and 18?

4 MR. BROWN: Yes, sir.

5 THE COURT: All right. Polygraph documents
6 and the other ones are affidavits that accompany
7 two warrants.

8 MR. BROWN: Excellent.

9 BY MR. BROWN:

10 Q That warrant for accessory, does it not
11 indicate Travis Felder is charged with accessory
12 and it gives the code section, accessory to murder?

13 A Yes, sir.

14 Q All right. You know, with reference to that
15 code section, accessory before the fact, that makes
16 him guilty --

17 A As guilty as the principal.

18 Q As guilty as the principal for murder?

19 A Except he was indicted for accessory after
20 the fact, the indictments supersedes the warrant,
21 as I understand it, but --

22 Q I'm going to agree with you on that but at
23 some point in time arguably he faces life or death
24 or thirty years or what murder carries?

25 A Yes, sir. I mean, the answer to your

1 question, yes.

2 Q Okay. Arguably when you show the jury what
3 deal he has gotten, Travis Felder never spent a day
4 in prison, did he?

5 A I have learned that now since I have read
6 this, he did not.

7 Q So he went from potentially death or life or
8 thirty years, to walk?

9 A That's what the Solicitor cut, sir.

10 Q And the jury would like to have known that
11 he's cutting that much of a deal?

12 A I know I crossed him on it, I read that, what
13 I have said, what questions I asked. If I didn't
14 hit the exact topics I apologize but I know I cross
15 examined him.

16 Q And I'm just trying to find out, factually
17 one of the things you try to do when impeaching
18 somebody is to show how much bias or favor they
19 curried with the State?

20 A Everybody who cut a deal in this case got a
21 great deal.

22 Q Sweetheart deals?

23 A Yes, sir.

24 Q We're talking about, is it one thing to say
25 somebody went from ten years probation or fifteen

1 years probation, 25 years for accessory after the
2 fact of murder, plus ten for arson third, you add
3 those together, 25 probation, that is one thing,
4 but going from 25 or life to probation surely is
5 something else, isn't it?

6 A Yes. The only thing, once again as an
7 officer of the court, I can see where they changed
8 numbers on the warrant and, you know, in meeting
9 with the policemen, the typographical errors, they
10 weren't prepared, they were all trying to get
11 warrants done quickly and it was just mistake after
12 mistake in this case.

13 Q And is it safe to say July 17th of 2002 you
14 were no longer Marion Bowman's lawyer?

15 A July 17th? I think right after the trial,
16 after filing the intent to appeal, as I understand
17 it, once I filed that notice of intent to appeal
18 that Indigent Defense would have taken over this
19 case, as I understand, sir. If in error, I
20 apologize.

21 Q I'm asking, but it's safe to say at least in
22 your mind you didn't consider yourself, whether the
23 Court ultimately finds one way or the other, you
24 didn't consider yourself to be his lawyer basically
25 two months later?

1 A No, sir, no.

2 Q Okay. Based on the fact you fulfilled your
3 court appointed obligation, you turned the case
4 over?

5 A Right.

6 Q Now, if you find out that despite an omission
7 of fact in violation of that plea agreement that
8 wasn't entered until after Marion Bowman's trial he
9 still get the benefit of that plea agreement is
10 that important?

11 A I think it is very important but again I did
12 not know about it, I did not know he pled about it
13 or what he got.

14 Q And it didn't come up until after the trial
15 anyway?

16 A No, sir.

17 THE COURT: Well, before the trial you knew
18 he got a deal.

19 A Yes, sir, I knew he cut a deal but not the
20 sentence, I apologize, Judge

21 Q And to follow up on that, you knew he had cut
22 a deal because you got that wink, wink revealed?

23 A I got notice that he was going to testify for
24 the State.

25 Q But in looking back at that plea agreement,

1 or the paragraph ten deals with the fact he is not
2 able to omit facts or any way give benefit to
3 himself --

4 A Excuse me, sir. That is the contract he
5 signed with the State.

6 Q That's right, and that didn't come out until
7 after the trial, did it?

8 A From what you showed me and what I have read
9 and what I have learned through this case, yes,
10 sir.

11 Q And then on July 17th of '02, that's the date
12 of his sentence, if he gets the benefit of the deal
13 despite that omission, then that is something of
14 interest?

15 A Yes, sir. It's unfair.

16 Q And it's unfair that -- it is unfair you
17 weren't able to reveal that to Marion Bowman's
18 jury, isn't it?

19 A It is unfair totally. I didn't want Marion
20 to ever face that, much less, you know, be to face
21 death, much less be sentenced to death. And I know
22 Mr. Bailey had offered life to us, Mr. Brown, and
23 even on the record gave him two weeks to reconsider
24 it. Life was offered seven times to my client and,
25 you know, begging, I begged him to take it and even

1 while we were waiting in between court appearances
2 we begged him to take it and the reason was
3 everybody was cutting deals, everybody wanted to
4 testify against him, everybody, even his own
5 family.

6 Q I'm going to ask you to take a look at
7 Plaintiff's Exhibit 63. We kind of covered this
8 ground. That document in fact says Travis Felder
9 did get the benefit of that plea agreement, didn't
10 he?

11 A Sentence date was 7/17/02, signed by Her
12 Honor Judge Goodstein, probation to be supervised
13 in Dorchester County.

14 MR. BROWN: Beg the Court's indulgence one
15 second.

16 Q Just in case I didn't touch this issue, when
17 you impeach somebody who has a bias, like a 608
18 type bias, one thing is to show not just a bias,
19 but the extent of the bias?

20 A Yes, sir.

21 Q And, so, if somebody faced twenty years but
22 got nineteen that's a little bias, but if somebody
23 faces life and got probation that's more bias,
24 isn't it?

25 A Yes, sir, to answer your question, yes, sir.

1 Q And, so, there is actually some expediential
2 gain to be had by showing the disparity in the deal
3 you're getting?

4 A Yes, sir.

5 Q Now, how many times did you think that Travis
6 Felder met with representatives from the State?

7 A I would assume when he was first arrested and
8 after we read the report of him being arrested, I
9 would think that as he goes through the process he
10 hires counsel, counsel will meet with the Solicitor
11 to get the discovery packages or go over discovery
12 issues, and I would think once the defendant
13 through counsel cuts a deal that the Solicitor
14 would meet with his witness at that point, with
15 counsel present, and discuss what truthful
16 testimony that person would give. So, I would at
17 least say at least once at the beginning and once
18 at the end.

19 Q Okay. So, we have at least two meetings you
20 think before they go to trial?

21 A Yes.

22 Q And do you recall Travis Felder being asked
23 how many times he had met with representatives from
24 the State?

25 A If I asked that question, which I hope I did,

1 I would expect an answer. If Mr. Bailey asked that
2 to try to show it was just going to be an
3 independent witness, then he would have given the
4 answer Mr. Bailey asked. I don't know how to
5 answer any other way, I'm trying to remember.

6 Q I'm going to ask you to take a look at 4107,
7 Travis Felder's testimony the first go around.

8 A The guilt phase?

9 Q That's correct. I will get my copy in front
10 of me.

11 A Yes, sir.

12 Q All right. Now, you go through on cross and
13 ask him about meeting with him, and that starts at
14 4107.

15 A Beg the Court's indulgence. 4107, yes, sir.

16 Q All right. And you see on the initial page,
17 "When did you enter the plea agreement?" He tells
18 you he entered it, "Sometime last week"?

19 A Yes, sir, line 22 on page 4107.

20 Q And that's correct, and then it spills over
21 to the next page a little bit.

22 A Yes, sir.

23 Q And then on the next page, 4109, you asked
24 the question, "How many times you met with anybody
25 to go over your testimony?"

1 A Yes, sir.

2 Q And his response was once. And you asked,
3 "With the State one time?"

4 A Yes, sir.

5 Q And he says yes. And then if you will notice
6 on 4110 there is redirect and the Solicitor asked
7 him, "Is it true we met in your lawyer's office a
8 couple weeks ago and we met again this morning,
9 too, didn't we, Travis?"

10 A Yes, sir.

11 Q That's two times, right?

12 A Correct.

13 Q Now, if in fact he met with law enforcement
14 before his arrest and met with law enforcement the
15 day of his arrest and was questioned on behalf of
16 the prosecutor the day of his polygraph in April of
17 '02 and then met with them at the plea agreement
18 that we know was reached right before trial, then
19 met with him the morning of his testimony, that's
20 five times, isn't it?

21 A As you stated, yes, sir.

22 Q And I'm going to ask you to take a look at
23 his polygraph report.

24 A Yes, sir.

25 Q And did you have a copy of that?

1 A I'm sure if it was provided in discovery I
2 would have it.

3 Q Okay. If he was asked a question regarding
4 his knowledge of Kandee Martin's burning and the
5 car's burning and whether he saw her placed in the
6 trunk of the car and he answered it no, that is an
7 inconsistent statement to his trial testimony,
8 isn't it?

9 A As you stated, yes, sir, that would be
10 correct.

11 Q Okay. One of the things we do on
12 cross-examination, particularly of a snitch's deal,
13 is to reveal all of the inconsistent statements
14 prior to making your client guilty, isn't it?

15 MR. WATERS: Your Honor, I know we're dealing
16 with a lawyer witness. Number one, I object to the
17 characterization of snitch. Number two, I would
18 request that counsel stop leading as much.

19 THE COURT: Number one, what is your standing
20 to object to the characterization of snitch?

21 MR. WATERS: I think that's inappropriate. I
22 don't think there is any testimony he's a snitch.
23 I think that that is a loaded word. I withdraw
24 that aspect of the objection. I would object to
25 the leading and ask counsel, or request the Court

1 to ask counsel not to lead as much.

2 THE COURT: I will be lenient in the leading
3 part since we're dealing with an attorney, plus one
4 could qualify him as, as an adverse witness, but I
5 will be a little lenient but not too much lenient.

6 Are you saying in the trial transcript Mr.
7 Felder doesn't mention he saw the body or he says
8 he didn't see the body?

9 MR. BROWN: He actually says, "I was there, I
10 saw Marion Bowman burn the body in the car."

11 THE COURT: All right. And what issue are
12 you going on about what he did not say, other than
13 the gas, I'm sorry, at the scene?

14 MR. BROWN: Well, what I'm trying to say is
15 we have already established these are witnesses
16 that put Marion at the scene.

17 THE COURT: All right.

18 MR. BROWN: And part of the job is to
19 discredit the identity.

20 THE COURT: I know, but this is at the scene
21 after the alleged murder, this is at the scene with
22 the car going there and bringing the body out of
23 the woods.

24 MR. BROWN: And we're trying, we're talking
25 about the examination to discredit Travis Felder's

1 testimony by showing his prior inconsistent
2 statement.

3 THE COURT: Okay. Which inconsistent
4 statement is that?

5 MR. BROWN: His statement given in April of
6 2002, because Travis Felder never gives a written
7 statement.

8 THE COURT: What does he say in April, 2002?

9 MR. BROWN: He wasn't there, never saw it.

10 THE COURT: Okay.

11 MR. WATERS: Your Honor, that's not correct.

12 He was asked, as we have the testimony from Mr.
13 Stephenson, he wasn't asked, not anything about
14 whether he was at the scene, he already admitted
15 being at the scene, he admitted going to the scene
16 but, "Did you when you were at the scene see the
17 body placed in the trunk?" He was polygraphed.

18 THE COURT: This is the polygraph response
19 the examiner says does not appear to be the truth.

20 MR. WATERS: Right, so he failed that. He
21 initially said, "I did not see the body put in the
22 trunk when I was at the scene with Marion Bowman,"
23 and he failed on that and that is, I guess, what
24 they are saying for some reason --

25 THE COURT: Then at the trial he testified he

1 did see the body, he said he was there because he
2 specifically said, "I saw the body go in the
3 trunk."

4 MR. WATERS: Correct.

5 THE COURT: At trial.

6 MR. WATERS: Right.

7 THE COURT: Mr. Brown?

8 MR. BROWN: Yes.

9 THE COURT: Okay.

10 MR. BROWN: Which makes this a classic prior
11 inconsistent statement.

12 THE COURT: I want to make sure I understand.

13 MR. BROWN: I'm sorry.

14 THE COURT: We have a polygraph exam where
15 the question is asked did you see the body go in
16 the trunk?

17 MR. WATERS: Right, he was cross examined, he
18 was polygraphed just on that point.

19 MR. BROWN: Yes, sir.

20 MR. WATERS: That was the sole purpose of the
21 polygraph, if you recall.

22 THE COURT: All right. The question was,
23 "Did you see Kandee Martin's body placed into the
24 trunk of a car?

25 ANSWER: No."

1 And the polygraph examiner checked the block
2 that says response is indicative of attempted
3 deception in answer to relevant question. That was
4 his polygraph response, he did not see it, but at
5 trial he point blank said he did see it.

6 MR. BROWN: Yes, sir.

7 BY MR. BROWN:

8 Q My question is, it's useful to impeach him
9 with a prior inconsistent statement, isn't it?

10 A Polygraph isn't admissible but I understand
11 you are saying it's a statement. I didn't find, I
12 will say this, here in Dorchester County I didn't
13 find Mr. Stephenson to be credible after what they
14 did to Marion and not tell the truth about bringing
15 him out of jail.

16 Q This is Van Doran?

17 A Mr. Van Doran had a change of conscience in
18 his testimony after an overnight of sleep and had
19 to come back in court and say, "Mr. Solicitor, I
20 need to say something." Again they put him back on
21 the stand the next day.

22 Q Let me make sure we understand. So, you may
23 not have impeached with this prior inconsistent
24 statement of Van Doran because you didn't believe
25 he told Van Doran what was written on here?

1 A It is typed --

2 Q I mean, I'm just trying to find out if you
3 believe this is a false document?

4 A I don't think it's a false document. I think
5 these polygraphs has been thrown around by Mr.
6 Stephenson, and Mr. Van Doran was used mostly like
7 a tool to get these kids to confess.

8 Q And we will get to whether some people had
9 polygraphs as part of their plea agreement and some
10 didn't. I want to come back to that.

11 THE COURT: I'm curious, what is it Van Doran
12 wanted to bring back up?

13 THE WITNESS: Van Doran had a change of
14 heart, sir, about taking Marion out of the jail.

15 THE COURT: This is regarding his statement
16 that you got suppressed?

17 THE WITNESS: Yes, sir. I mean, he is a
18 polygraph officer, these are kids here, they had
19 the chance to do an investigation and there was
20 conflicting testimony. I know by reading through
21 his transcript, about who did what and how.

22 BY MR. BROWN:

23 Q When you go, gosh, maybe I best not ask this
24 question but usually when you ask a question as a
25 lawyer during an examination there has to be some

1 basis for it, you can't just ask a question you
2 have no basis for, right?

3 A Yes, sir, and you also have to worry about
4 not asking questions that might sojourn perjury.

5 Q With that in mind was there a basis to
6 believe, was there any basis to believe Travis
7 Felder, on April 17, 2002, said no, he didn't see
8 Kandee Martin's car being placed in the trunk?

9 THE COURT: Body?

10 Q Body being placed in the trunk?

11 A I don't mean there is a basis no, sir.

12 Q No basis for asking that question?

13 A What I'm saying, this is a self serving
14 statement. Travis Felder, as we're finding out
15 now, lied about everything. I mean, whether you
16 believe Marion was involved based on what Travis
17 Felder says, they say he is not telling the truth.

18 Q I understand that. We do know that -- well,
19 I would assume that given the fact he says under
20 oath, "I saw her body placed in the trunk," and
21 that he tells Van Doran in April, just a month
22 before trial that, "I didn't see her body placed in
23 the trunk," somewhere he's a liar, I'm going to
24 agree with that.

25 A Yes, sir.

1 Q Isn't it pertinent to the jury's
2 determination of his credibility, that the jury
3 know he lied somewhere?

4 A If I didn't ask him on cross, sir, I
5 apologize, I'm sorry to Mr. Bowman.

6 Q Are you saying this is traditional
7 impeachment by prior inconsistent statement?

8 A The answer to your question, yes, sir.

9 Q All right. Okay.

10 A All right.

11 THE COURT: And did you say why you didn't
12 ask him, "Did you not tell Mr. Van Doran through a
13 prior interview that you didn't see the body placed
14 in the car?"

15 THE WITNESS: I did not, Your Honor.

16 THE COURT: I know the record didn't show you
17 did. Do you remember why you didn't?

18 THE WITNESS: No, sir, I don't.

19 THE COURT: Okay. Can you think of any
20 reason now why you wouldn't have?

21 THE WITNESS: No, sir, other than I sat down
22 before I asked another question. There wasn't any
23 strategy plan there, there wasn't anything that I,
24 you know, I didn't ask the question, sir, for
25 whatever reason.

1 BY MR. BROWN:

2 Q Now let me ask you this. You did receive,
3 I'm assuming, at least a sheet that said during an
4 oral interview, and we don't know exactly when that
5 is, but that orally he had stated that he had no
6 prior knowledge of the --

7 A I read through all the statements that were
8 done by law enforcement, yes, sir.

9 Q But obviously if he had made an oral
10 statement at some other time you would want to
11 bring out that fact, too, that he had also told
12 somebody else he didn't know about it?

13 A In the real world, yes.

14 Q Okay. I say that because, I mean, the more
15 times a guy says, "I don't know anything about it,"
16 if he says that over and over and over again, then
17 he cuts a sweetheart deal and comes in court and
18 says, "I was there and I saw your guy do it --"

19 MR. WATERS: I object to the leading.

20 THE COURT: Yes, I overrule it.

21 Q What use can you make of that, maybe that's
22 not lying?

23 A As much fodder as you can get out of it,
24 cross-examine as much as you can to show he got a
25 deal, he will say anything he wants to say.

1 Q Right.

2 A I think I objected, I said bolstering, and
3 Walter stands up and says it sure was, and that's
4 exactly what I wanted the jury to hear, he is just
5 there cutting a deal.

6 Q And did you know Travis Felder only changed
7 his statement after he failed, or he changes it
8 because of the polygraph failure?

9 MR. WATERS: Your Honor --

10 THE COURT: I sustain the objection. What do
11 you mean because? Is that conjecture? I know what
12 he said on the stand about that and the State tries
13 to question him about whether he did or didn't, but
14 in any event --

15 MR. BROWN: That is why, because we do know
16 now, the basis for my question, Travis Felder said,
17 "I changed my story because I failed the
18 polygraph."

19 THE COURT: I assume, Mr. Waters, your
20 position is that he made several statements about
21 why he did that on the stand?

22 MR. WATERS: Yes, sir, Your Honor.

23 THE COURT: And so, anyway, he made several
24 statements. I remember us discussing that two
25 weeks ago, about whether or not he was firmly

1 believing that one or whether he forgot or
2 whatever. But anyway, let's go ahead.

3 MR. BROWN: Yes, sir.

4 THE COURT: While we're doing this -- all
5 right, continue on, Mr. Brown.

6 BY MR. BROWN:

7 Q I'm going to ask you to take a look at
8 Plaintiff's Exhibit 64.

9 MR. BROWN: And while you're looking at that
10 I'm going to move to introduce 63 into evidence,
11 which is Travis Felder's sentencing sheet, stamped
12 original certified copy by the Clerk.

13 MR. WATERS: No objection.

14 THE COURT: All right, in evidence.

15 (Travis Felder sentencing marked and received
16 in evidence as Plaintiff's Exhibit 63).

17 THE COURT: Do you have other questions?

18 MR. BROWN: Yes, I'm sorry.

19 BY MR. BROWN:

20 Q Have you finished reviewing that, Exhibit 64?

21 A Yes.

22 Q That is a letter written in March, right?

23 A March 27th is the date of it and signed by
24 Mr. Charles Williams.

25 Q Okay.

1 A If that's his signature.

2 Q It details some information?

3 A Yes, sir.

4 MR. WATERS: I think he needs to ask if he
5 has seen the document before, not just publish it.

6 MR. BROWN: And I apologize.

7 THE COURT: We know he has seen it now, he's
8 read it.

9 BY MR. BROWN:

10 Q Have you seen that before I gave it to you?

11 A No, sir. I was looking at it carefully. It
12 looks like the staple marks are still in the same
13 holes and looks like a water mark paper that a law
14 firm would use but I don't remember ever seeing
15 this letter.

16 Q Okay. But you have never seen that before?

17 A I don't believe so.

18 Q You are not cc'd on it?

19 A No, sir.

20 Q Does it give, for lack of a better word, it
21 gives a proffer?

22 A It says at the top it's a proffer.

23 Q And is it Travis Felder?

24 A Yes, sir.

25 Q Proffering testimony, and does it mention

1 buying gas?

2 A Yes. He burned a car for insurance purposes,
3 the gist of the letter.

4 Q He's talking about burning a car?

5 A Yes, sir.

6 Q Was he talking about a body?

7 A No, sir, but again I have never seen this
8 letter.

9 Q I'm sorry, the letter speaks for itself, I'm
10 not trying to put words in the letter through you.

11 A No, sir. It says --

12 Q That is a little different than his trial
13 testimony, isn't it?

14 A Yes, sir. Yes. To answer your question,
15 absolutely, yes, sir.

16 THE COURT: Was this letter used on Mr.
17 Felder when he testified?

18 MR. BROWN: No, sir. It wasn't in his
19 possession.

20 THE COURT: All right.

21 MR. WATERS: Your Honor, that is of course a
22 proffer, it is not signed by Mr. Felder, it is a
23 letter from Attorney Williams to Mr. Bailey.

24 MR. BROWN: And we certainly understand that
25 proffers are usually a generality.

1 THE WITNESS: To answer your question, yes,
2 sir. I'm sorry, I didn't know if you were speaking
3 to His Honor or not.

4 MR. BROWN: And we agree with the Attorney
5 General's point they are making, it is not actually
6 a prior statement.

7 THE COURT: Okay.

8 BY MR. BROWN:

9 Q So, Mr. Cummings, it is indicative of the
10 fact that Felder is denying seeing the burning of
11 the body, I mean right on through from his arrest,
12 right on at least, because he is getting
13 polygraphs, we're talking about a month before his
14 trial testimony?

15 A From reading the letter from counsel Mr.
16 Williams it gives a different version of what has
17 been presented with the testimony and in the
18 transcript. That is the best I can answer that
19 question.

20 Q Now, if there was a plea agreement reached at
21 the time, I assume being it is after the polygraph,
22 because the polygraph he is saying, "I didn't see
23 the body go in the trunk."

24 MR. WATERS: Your Honor, I object to that.
25 There is no way he could know that. I think he

1 should be asked first. I object to the leading.

2 Q What is your understanding of when the plea
3 agreement was reached? Again it is not something
4 that, it is not a plea agreement in writing, so we
5 know that didn't occur until after the trial.

6 A Correct. The day before the trial. We got
7 the 30 day window that you do nothing else but work
8 on this case, we're getting ready, we're meeting
9 with Marion, I came up and told him Travis got a
10 deal.

11 Q Okay. That would have been after the April
12 17th polygraph?

13 A Yes, sir.

14 Q Okay. Even though that is right about the
15 thirty days?

16 A Yes, sir.

17 Q And so there is a deal cut after the
18 polygraph where he says, where the statement is
19 made at the polygraph exam, "I don't know anything
20 about her body being burned in the trunk"?

21 THE COURT: Well, now, I think the accurate
22 reflection would be that Mr. Cummings is aware of
23 the deal being made after the polygraph.

24 THE WITNESS: Correct.

25 MR. BROWN: All right. Okay.

1 BY MR. BROWN:

2 Q I guess what I'm trying to get at here is his
3 statement evolved to where he doesn't see the body
4 in the car, to where he sees the body in the car
5 being burned and there is no reference to his
6 purchase of the gas until finally he's brought back
7 in the penalty phase where he says, "I bought the
8 gas"?

9 A Yes, sir.

10 Q I mean, he is still coming clean after Marion
11 has been convicted.

12 A To answer your question as you stated, yes,
13 sir. You say come clean but it shows --

14 Q Okay. The videotape doesn't show Marion
15 Bowman buying gas, does it?

16 A No, sir.

17 Q Or anywhere at the gas station?

18 A No, sir.

19 Q And to move on -- before I move to another
20 issue here I want to ask you about a guy named
21 Bruce McLean. Do you know who Bruce McLean is?

22 A It doesn't ring a bell with me right now.

23 Q How about an Octavia LeGree?

24 A I have heard that name I believe from reading
25 the transcript and going through it, a lady at the

1 E-Z Mart.

2 Q She worked the cash register?

3 A Yes.

4 Q So, she sold the chips and dip to Travis
5 Felder, then the gas to Travis Felder?

6 A Yes, sir, on the tape.

7 Q Assuming she is the one working at the E-Z
8 Mart.

9 A Correct.

10 Q I'm going to ask you to take a look at
11 Plaintiff's 65 and Plaintiff's 66. See if you have
12 ever seen either of these two items?

13 A This number 65, sir, I don't recall seeing
14 number 65 at all. As to 66, I believe I have seen
15 66.

16 Q Okay. And 66 talks about Travis Felder
17 actually making another purchase of gas from E-Z
18 Horizon Mart, doesn't it, I mean a purchase of beer
19 at the E-Z Horizon Mart?

20 A Yes, sir.

21 Q He is purchasing Natural Light beer?

22 A Correct.

23 Q All right. And on Plaintiff's 65 --

24 (Short pause for train noise).

25 THE COURT: Were you involved with the trial

1 where I had them walk the train through here one
2 time? I had a civil case where the train accident
3 in question was can you hear the horn or not. So,
4 in the middle of the trial a train was scheduled to
5 come in one hour and pursuant to a motion we said,
6 and I was concerned that the defense was going to
7 have the train blow the horn real loud, or the
8 plaintiff wanted the train not blow loud.

9 Basically I said either the train is not coming
10 through here, I'm going to put a roadblock up and
11 it's not coming through or we're going to walk it
12 through, the men just walk it through the various
13 things. Someone said, "Judge, this is a federal
14 thing," and all that. I said, "Well, it's
15 Dorchester County, South Carolina, I'm the judge
16 and that's what we're going to do." Anyway, they
17 walked the train through.

18 Go ahead. The day the train walked through
19 Dorchester County.

20 BY MR. BROWN:

21 Q Do you know who Bruce McLean is now?

22 A I know who he is now, yes.

23 Q Have you ever heard of him before?

24 A Not to the best of my recollection, sir, no.
25 I don't think I did.

1 Q It's kind of interesting to note that
2 according to Detective Coker's notes there, report,
3 however you are going to reference it, that one
4 that is marked as 65?

5 A 65.

6 Q That he overhears somebody at the gas pump
7 talking about killing a girl, according to that
8 record there?

9 A Right, talks with a Jamaican accent,
10 according to this, Jamaican accent, sir.

11 Q And if in fact Detective Coker hears Bruce
12 McLean talking about, listening to the videotape
13 and hearing Bruce McLean's reference to people at
14 the gas pump discussing the killing of a girl,
15 that's a good lead in a murder case, isn't it?

16 A It's a lead, yes. Somebody is talking about
17 the death of a person, yes, sir.

18 Q And the information that we know is that, I
19 think it is uncontroverted, Travis Felder at some
20 point in time was at the gas pump at that gas
21 station?

22 A Yes, sir.

23 Q Okay. And ostensibly Travis Felder is at the
24 gas pump because Marion Bowman doesn't want to go
25 to the gas pump, according to what he said?

1 A Yes, sir.

2 Q According to Travis he is at the gas pump and
3 Marion wasn't at the gas pump?

4 A Marion was parked in the car around the
5 building, I guess, if you believe everything that
6 Travis --

7 Q Which is our current version of Travis'
8 truthful testimony?

9 A Yes, sir.

10 Q The latest version would be that Marion was
11 not at the gas pump but Travis was at some point at
12 the gas pump --

13 A Yes, sir.

14 Q -- at the E-Z Horizon?

15 Let me ask you about a gentleman named Ricky
16 Davis.

17 A Supposedly a jailhouse statement, jailhouse
18 commentary.

19 Q Did you all take the jailhouse statement
20 down, did you all go down and take it from Ricky
21 Davis?

22 A No, sir.

23 Q And how did you come about knowing of Ricky
24 Davis' statement?

25 A I have tried since I received the transcript

1 and was notified of the PCR hearing, tried to go
2 back and remember exactly how it happened. I don't
3 know if Miss Marva Hardee-Thomas got it as Public
4 Defender or one of the policemen gave it to her. I
5 know that we sent Mr. Walter Mitchell, our
6 investigator, to go talk to Ricky Davis about the
7 so called jailhouse statement or confession.

8 Q And let me show you Plaintiff's Exhibit 11.

9 A Yes, sir.

10 Q And that's the -- did you ever receive a copy
11 of that?

12 A Yes, sir, we have a copy of it in our file,
13 yes, sir.

14 Q Who did you get it from?

15 A That is, the best of my recollection I think
16 either Miss Thomas or one of the policemen gave it
17 to Miss Thomas, or might have come from one of the
18 policemen when we were at the jail. It might have
19 come from Marion. I really don't recall right now
20 where we got it from because it is not notarized
21 and I think we asked Marion in detail how he knew
22 about this, but he said Ricky Davis had written the
23 statement.

24 Q And who represented Ricky Davis?

25 A Reading the transcript now, sir, and reading

1 your issues dealing with the Court on post
2 conviction relief, I never knew that he was
3 represented by anybody before.

4 Q Marva never told you that she represented
5 Ricky Davis?

6 A No, sir.

7 MR. BROWN: I ask at this time if I can move
8 Detective Coker's page of his report and his
9 handwritten notes into evidence?

10 THE COURT: I thought we had all that in
11 evidence.

12 MR. BROWN: Not these two items, Your Honor.

13 THE COURT: Why not? I thought everybody
14 agreed to put his entire file in the record.

15 MR. BROWN: I proffered it.

16 MR. WATERS: No, the only things we have in
17 were just some handwritten, his handwritten
18 narrative, excuse me, his typed narrative.

19 THE COURT: All right. Anyway, then, what
20 numbers are those?

21 MR. BROWN: 65 and 66.

22 THE COURT: Any objection?

23 MR. WATERS: I apologize, Your Honor, could I
24 look at those?

25 THE COURT: All right. Any objection?

1 MR. WATERS: For showing what was in the
2 file, for purposes of investigation and things like
3 that, I have no objection.

4 THE COURT: All right. Well, it is in
5 evidence as evidence. 65 and 66 is in evidence.

6 (Investgative Report marked and received in
7 evidence as Plaintiff's Exhibit Number 65).

8 (Handwritten note marked and received in
9 evidence as Plaintiff's Exhibit Number 66).

10 MR. BROWN: Thank you, Your Honor.

11 BY MR. BROWN:

12 Q I'm going to ask you to take a look at
13 Plaintiff's Exhibit 67 and ask you if you have ever
14 seen that document?

15 MR. WATERS: Your Honor, just very quickly, I
16 think, I think Mr. Brown would agree that we have
17 agreed with respect to Mr. Coker's notes and things
18 like that, that it is offered for that purpose, to
19 show what was in the file for purposes of the
20 investigation and the like. That is why I said
21 that, I think that was how we admitted his prior
22 notes as well.

23 THE COURT: Well, these are documents within
24 his file, everyone agrees is documents within his
25 file?

1 MR. WATERS: Yes, sir, I certainly agree with
2 that. I guess what I'm saying is that we're not
3 admitting a whole bunch of hearsay that may be in
4 there for the truth of the matter asserted
5 throughout all this.

6 MR. BROWN: And to be quite honest with you,
7 the stuff about Mr. McLean hearing people at the
8 gas pump talking about killing a girl came out from
9 Detective Coker's own mouth on the stand last week.

10 THE COURT: By the way, any evidence comes in
11 doesn't mean I have to accept it. It just comes in
12 as evidence.

13 MR. WATERS: I understand. Our agreement
14 was, I think we said that on the record at the
15 time, it was offered solely for the purposes of
16 what was in the file and shows his investigation.

17 THE COURT: It is in evidence and it is
18 something was in his file. Now, the question is,
19 have you seen document number 61, which is an
20 interview with Mr. Ricky Davis by Sam?

21 THE WITNESS: 61 or 67?

22 THE COURT: I'm sorry, 67.

23 THE WITNESS: No, I have not. He was at
24 Leiber Correctional Institute, my client was at
25 Dorchester County Jail

1 BY MR. BROWN:

2 Q Do you know whether Ricky Davis was present?

3 A I don't know who that is.

4 Q Is there an investigator named Sam?

5 A There is an investigator at the Solicitor's
6 office, Sam, I'm trying to think of his last name.

7 Sam --

8 DEPUTY SHERIFF: Richardson.

9 A That's correct, Sam Richardson.

10 Q You never got this typed interview of Ricky
11 Davis?

12 A Everything we got had a Rule 5 stamp on it.

13 Q I got you.

14 A If you're asking about what I got in
15 discovery from the State, no, there is not a Rule 5
16 stamp on that.

17 Q It may have come from a stack that didn't
18 have it but I will ask a different way. Do you
19 recall ever learning about this interview of Ricky
20 Davis?

21 A No, sir. Just the one piece of paper we had
22 got from either Marion, Marva or somebody at the
23 jail that gave us the one thing that was
24 unnotarized, Plaintiff's Exhibit Number 11, sir.

25 Q Okay. And --

1 MR. BROWN: I beg the Court's indulgence, I'm
2 actually looking for something that the attorneys
3 passed back and forth last week.

4 THE COURT: All right, you're on 67. You
5 said you had never seen that document, today is the
6 first time you saw it?

7 THE WITNESS: Yes, sir.

8 BY MR. BROWN:

9 Q Now, just give me some idea of when that
10 Ricky Davis statement was written, according to --

11 MR. WATERS: I object. He has never seen it
12 before.

13 THE COURT: It is not in evidence.

14 MR. BROWN: I understand.

15 BY MR. BROWN:

16 Q All right. If you will look at the statement
17 written by Ricky Davis?

18 A If that's done by Ricky Davis, August 6, that
19 is all it says, it doesn't have a year.

20 Q I believe that is 11?

21 A Yes, sir, that is number 11.

22 Q All right, Plaintiff's 11. Look at
23 Plaintiff's 11, the date is August 6?

24 A Yes, sir.

25 Q July has 31 days?

1 A Yes, sir.

2 Q If we count back three weeks from that date
3 what date do we end up with?

4 THE COURT: Give us a suggestion.

5 Q About the 17th of July, don't we?

6 A Yes, sir.

7 Q It would be helpful to know from the 17th of
8 July Ricky Davis was in a cell with Tawain Gadson
9 at the Dorchester jail, and not Marion Bowman? And
10 I say that, is it helpful if you know that in an
11 interview conducted by the State they found out
12 that Ricky Davis tells them, "I heard this
13 statement from Tawain Gadson three weeks before I
14 wrote the letter"?

15 MR. WATERS: Your Honor, I would object to
16 that question.

17 THE COURT: Mr. Davis testified, did he not?

18 MR. WATERS: He did not testify.

19 THE COURT: No, he hadn't testified. Mr.
20 Williams testified.

21 MR. WATERS: No one has testified to that.
22 That is simply --

23 THE COURT: That is not in evidence. All
24 that is in evidence, Number 11 is in evidence,
25 right?

1 MR. BROWN: Yes, sir.

2 MR. WATERS: Ricky Davis' statement is. This
3 other thing that hasn't been authenticated, even
4 identified where it came from, I object to any
5 effort to try to backdoor publish it.

6 MR. BROWN: No, I'm not trying to backdoor
7 publish it. I'm trying to find out whether he
8 would like to have information that put Tawain
9 Gadson and Ricky Davis in the cell together at the
10 time the statement was allegedly overheard, as
11 corroborating the fact the statement was made.

12 BY MR. BROWN:

13 Q Is that helpful to you, Mr. Cummings?

14 THE COURT: If that were true would that be
15 helpful to you?

16 A Yes, sir.

17 Q Okay. So, it is one thing to get a statement
18 but it is something else to have it corroborated at
19 least by the fact they're together at a time the
20 statement is allegedly heard?

21 A Yes, sir. In furtherance, you know, Marion
22 knows this, we sent Mr. Walter Mitchell up there to
23 go check with Ricky Davis and Ricky Davis denied
24 his signature, denied giving the statement.

25 Q And does it help to find out that he asserted

1 at another point in time that he did hear it, to a
2 State's witness, would that be helpful?

3 A I don't know that, sir.

4 Q State's representative?

5 THE COURT: For supposition purposes?

6 MR. BROWN: For purposes of supposition.

7 THE COURT: If he said it 25 times would that
8 help you, for supposition purposes? We don't know
9 if he ever said it. Again, all we know is on
10 August 6 he wrote that statement reportedly signed
11 by Ricky Davis says that he was on A side with
12 Gadson and that he said, one assumes that means
13 Gadson, that he was the one that shot the girl and
14 gave Bowman back the gun. If he had said that also
15 before that would that be helpful to you?

16 THE WITNESS: Yes, sir. It might have helped
17 toward third-party guilt. Again, we know the
18 criteria you have to have for third-party guilt in
19 this state.

20 BY MR. BROWN:

21 Q In fact in this case we know who did it,
22 Tawain Gadson, that's the third party, and Ricky
23 Davis goes right to that defense, doesn't he?

24 A Ricky Davis says that and then he recanted,
25 saying he didn't say that on Plaintiff's 11, at

1 least to Mr. Mitchell, and I relied on that, sir.

2 Q Mr. Mitchell tells you that he recanted?

3 A Correct, that he didn't do it.

4 Q Did you -- he said he didn't write that
5 statement?

6 A Right.

7 Q He said he didn't even write the statement at
8 all?

9 A The best of my knowledge Mr. Mitchell says he
10 denied writing it, correct. That is the best of my
11 recollection.

12 Q Did you seek a handwriting analysis to see
13 whether he did in fact write it?

14 A No, sir, I did not employ a handwriting
15 expert, I did not.

16 Q It makes a difference if he does now say, "I
17 did write it, that is my handwriting"?

18 A Yes, sir. Again, if I had a handwriting
19 expert and he was willing to give an exemplar, but
20 again I did not employ that. If I made an error I
21 apologize.

22 THE COURT: In the transcript did Mr. Davis
23 testify?

24 MR. WATERS: No, he did not testify.

25 Q Did you bring him to court?

1 A I had him subpoenaed, yes.

2 Q Tell me why -- did you subpoena him?

3 A Because he told us he was not going to help
4 us in any way. He --

5 Q Why did you subpoena him?

6 A I did.

7 Q Why did you?

8 A Why did I?

9 Q Uh-huh (Affirmative)..

10 A I subpoenaed everybody and anybody who might
11 have anything that could help or so I get the true
12 picture as I go through trial. Trials are fluid,
13 as you know, like this morning, there is questions
14 and then you have to ask another question based on
15 what somebody says.

16 Q And on that note your investigator
17 interviewed him before you subpoenaed him?

18 A Yes.

19 Q Okay. So, you already had information he was
20 going to recant?

21 A Yes, sir. But again you hope and pray that
22 people will tell the truth, do the right thing and
23 a young man's life is at stake. Even our policemen
24 I was wanting to tell the truth.

25 Q Sure. On that note there was some inkling in

1 your mind that Ricky Davis could be helpful?

2 A Yes, but it also could backfire on me if he
3 took the stand and said, "No, I didn't do this,
4 Marion made me do it," and that was the inkling I
5 got back from Mr. Mitchell.

6 Q And on that note if he's given a consistent
7 statement that you're not involved with taking
8 that's helpful, isn't it?

9 A If I had known about the second interview by
10 law enforcement I would put Mr. Richardson up on
11 the stand if I had known about it.

12 MR. BROWN: Thank you. Your Honor, I ask I
13 be able to recall Mr. Cummings after we have
14 authenticated 67.

15 THE COURT: Why would I deny you that?

16 MR. BROWN: I only say because I tried to get
17 into it, you know, I agree Mr. Richardson hasn't
18 authenticated this statement but we think it will
19 be, based on the location where we found our copy
20 of that statement, and so we think that, we feel
21 like it is going to come to fruition and then
22 obviously, Mr. Cummings, we would like to ask him
23 about these questions later, but we can move on
24 from this point now.

25 THE COURT: Let's move on.

1 BY MR. BROWN:

2 Q Now, at some point Ricky Davis asked not
3 to -- you don't put him up. Now --

4 THE COURT: By the way, to make sure I'm
5 clear about something, at the time of the trial you
6 knew that at least someone had told you that Mr.
7 Davis had made a statement that Mr. Gadson had done
8 the shooting and he told him that while they were
9 in a cell?

10 THE WITNESS: Defendant's 11, Your Honor,
11 that is what I had, that's the only thing I had.

12 THE COURT: Did you ever talk to any officers
13 who said, "Mr. Davis told me that"?

14 THE WITNESS: No, sir.

15 THE COURT: So, the only reason you would
16 know that there is any thought of him saying that,
17 making that statement is from that sheet of paper,
18 Number 11?

19 THE WITNESS: That's correct, sir.

20 THE COURT: You talked to Mr. Davis?

21 THE WITNESS: I had my investigator talk to
22 him, yes, sir. I didn't want to be a witness on
23 that.

24 THE COURT: In talking with him what is your
25 understanding of what he told the investigator?

1 THE WITNESS: That he did not do this and
2 basically it was junk.

3 THE COURT: Did your investigator let you
4 know whether or not if he was on the stand he could
5 be a witness against Mr. Bowman in any way?

6 THE WITNESS: Yes, sir, that he would say
7 that Marion told him to do this, Marion had it
8 created.

9 THE COURT: So, your understanding was that
10 Mr. Davis was going to deny making the statement
11 and say that -- apparently he must be admitting he
12 make the statement if he's going to say Bowman made
13 him say it?

14 THE WITNESS: Right.

15 THE COURT: And, so, your information was he
16 was going to say, "I said it but Mr. Bowman made
17 me"?

18 THE WITNESS: Right, that would have been the
19 statement. It was proved he gave the statement but
20 Marion made him do it. Mr. Mitchell said he was
21 not going to be a helpful person at all to us, he
22 was facing time and Marion was trying to get him
23 involved in this.

24 THE COURT: So, you made a conscious decision
25 not to call him?

1 A Yes, sir. I mean, I have him subpoenaed,
2 Your Honor, I have the subpoenas in here, I made a
3 strategy decision not to put him on the stand, yes,
4 sir

5 Q Now, that decision was made without any
6 knowledge of any other interviews of Ricky Davis?

7 A That's correct, sir.

8 Q All right. And are you aware of Marion
9 Bowman ever being at Leiber Correctional
10 Institution before his trial, let me focus it,
11 after his arrest?

12 A Yes, sir.

13 Q Before his trial did he ever go to prison for
14 safekeeping purposes?

15 A I'm trying to remember. I apologize. I
16 would come up here and see Marion at the county
17 jail all the time. I'm trying to remember if it
18 was a disciplinary thing. They always try to do
19 that very close to trial, some infraction, some
20 argument. I don't remember Marion being at Leiber.
21 My record would show that. I did not see the
22 travel logs or anything when I get my file back, I
23 did not see the vouchers or anything, sir.

24 Q You don't have any knowledge of him being
25 with Ricky Davis at anytime at Leiber before the

1 trial?

2 A No, sir, I don't.

3 Q Okay. Do you recall getting any statement or
4 information or phone calls or messages or any type
5 communication regarding an interview of Ricky Davis
6 that was conducted, outside of that statement that
7 was written?

8 A As you just stated, sir, that is correct.

9 Q Okay. I'm going to -- I'm going to show you
10 what has been produced as Plaintiff's Exhibit 45.
11 Have you ever seen those notes before?

12 A I don't recall it, sir. It doesn't have Rule
13 5 stamped on it. I don't recall this, no.

14 Q Okay. Have you ever heard of a gentleman
15 named Wayne Mood?

16 A Wayne Mood, M-o-o-d?

17 Q Yes, sir.

18 A No, sir, not to the best of my recollection.

19 Q I'm going to show you what has been marked as
20 68, which is a four page fax, May 7th, 2002,
21 according to the fax header. Are you familiar with
22 that?

23 A Yes, sir.

24 Q And you did get this information?

25 A The best of my recollection, yes, sir.

1 Q Okay. And now do you recall who Wayne Mood
2 is?

3 MR. WATERS: Your Honor, at this time I would
4 object to any testimony or examination about Wayne
5 Mood, again based on the issue I have been raising,
6 since the beginning of this trial. There has been
7 no issue pled with regard to Wayne Mood, so based
8 on that issue, therefore it is lack of relevance to
9 the issues pled.

10 THE COURT: What is your answer? You say you
11 know Wayne Mood or don't?

12 THE WITNESS: I didn't recall his name when
13 just asked the question, sir. I have just been
14 shown a document that was sent to Mr. Bailey on the
15 7th day of May, shortly before the trial.

16 THE COURT: Well, do you know Wayne Mood?

17 THE WITNESS: I don't know him personally,
18 sir, but I have read now, it refreshes my memory I
19 received a note. You see the statement from the
20 State saying --

21 THE COURT: No, my only question, do you know
22 Wayne Mood?

23 THE WITNESS: No, sir.

24 THE COURT: All right. And looking at that
25 document, does it refresh your memory now that you

1 got the document?

2 THE WITNESS: That's correct.

3 THE COURT: What is your question?

4 BY MR. BROWN:

5 Q Do you know who Wayne Mood is?

6 A No, sir.

7 Q Do you recall him being of evidentiary value
8 or possibly of evidentiary value in this case?

9 MR. WATERS: Your Honor, that is where my
10 objection is based.

11 THE COURT: Overruled. Do you recall Wayne
12 Mood in any way?

13 A May I have just a moment to re-read this,
14 please?

15 THE COURT: I don't want you to publish the
16 document. I want to know if you recall, yourself?
17 You can read it.

18 A No, sir, I don't recall him as an officer of
19 the courts, sir. I'm reading this now. I'm trying
20 to use this to refresh my memory if I may be
21 allowed?

22 Q Yes, sir.

23 A Yes, sir, I remember him now. Part of this
24 came into play in the statement.

25 THE COURT: So, do you remember Wayne Mood?

1 THE WITNESS: I remember reading this
2 document where it purports to show --

3 THE COURT: The only question now is do you
4 know Wayne Mood? That is the only question.

5 THE WITNESS: No, sir, I do not know Wayne
6 Mood.

7 THE COURT: Do you remember Mr. Mood becoming
8 part of the trial?

9 THE WITNESS: I remember reading this, sir,
10 yes.

11 THE COURT: What's your next question?
12 BY MR. BROWN:

13 Q When did you first become aware of Wayne
14 Mood?

15 A 7 May, 2002, according to this letter.

16 Q A week before trial?

17 A Yes, sir.

18 Q What do you recall about any information the
19 State was negotiating with Wayne Mood for his
20 testimony?

21 A I don't remember about any negotiating. All
22 I remember is, if you look at the statement,
23 "Bowman shot her once and missed."

24 MR. WATERS: Your Honor, I object.

25 THE COURT: Yes, sir. Don't read the

1 statement. That is not in evidence.

2 THE WITNESS: I'm sorry.

3 THE COURT: What is your next question?

4 BY MR. BROWN:

5 Q Did you receive any information about the
6 State negotiating the purchase of Wayne Mood's
7 testimony, for leniency?

8 THE COURT: Did you say purchase?

9 Q Yes, bargain for his testimony with leniency?

10 A The best of recollection, no, sir, but if,
11 again, Mr. Mood is offering something to the State
12 obviously in the statement but there is --

13 THE COURT: He does not remember anything
14 going on. That is what you said, right?

15 A Yes, sir.

16 Q Do you remember whether Gadson had given a
17 statement to Wayne Mood?

18 MR. WATERS: Your Honor --

19 THE COURT: Do you remember?

20 A No, sir, not today.

21 Q Do you remember that Mr. Bailey is informing
22 you in this same letter that he had previously
23 given you the statement from Ricky Davis, that he
24 gave it to you, not Marva Hardee-Thomas?

25 THE COURT: Are you talking about the

1 handwritten document?

2 MR. BROWN: Yes, sir.

3 THE COURT: Number 11.

4 A I don't remember it from Walter. I remember
5 getting it. I don't see the Rule 5 stamp on there.
6 Everything we got from the State has Rule 5 on it.

7 Q Now, he states -- well, did you believe Mr.
8 Bailey is not being forthcoming when he says, "I
9 previously forwarded to each of you, including
10 Marva Hardee Thomas, a statement from Ricky Davis?"

11 A Again, sir, the best of my recollection I
12 testified that I got it either from Marion, the
13 investigator or from the jail somehow. If Mr.
14 Bailey put it in a package and later on I get the
15 letter of May 7th saying he sent it to me, I may
16 not have grasped it at that time.

17 Q Wait a second, I want to make sure I
18 understand this because the original statement
19 which I must indicate is no longer proffered
20 because we allowed a copy to be made, but the
21 original Ricky Davis statement is contained in
22 Alvin Coker's files which was proffered as Court's
23 2, I mean, excuse me, introduced as Court's 2 and
24 proffered as Plaintiff's 42. That is the original
25 yellow note from Ricky Davis.

1 THE COURT: The Exhibit 11 here?

2 MR. BROWN: That's correct.

3 THE COURT: A copy of it is Exhibit 11?

4 MR. BROWN: Eleven is a copy of the original
5 which is in Detective Coker's file.

6 BY MR. BROWN:

7 Q Okay. Now, to try to find out where this
8 statement, how it got to you, and you referenced
9 Marion Bowman. Now, you would have gotten an
10 original statement and given it to Detective Coker?

11 A No, sir, I would not have gotten the
12 original, can you tell, I didn't get an original, I
13 got a copy of a copy.

14 Q So, the fact Detective Coker has a copy of
15 it, excuse me, the original of it is some
16 indication it came from law enforcement?

17 MR. WATERS: Your Honor, I would object to
18 this. There is no way he could know. That is
19 beyond his knowledge.

20 Q I'm going to ask you consider that in light
21 of the May 7th letter to you from Walter Davis
22 referencing Ricky's statement.

23 THE COURT: Are we talking about Exhibit 67
24 that is not in evidence?

25 MR. BROWN: Yes.

1 THE COURT: It's not in evidence.

2 BY MR. BROWN:

3 Q Does that refresh your recollection of what
4 was provided by Walter Bailey?

5 THE COURT: Let me ask, this document is in
6 your file?

7 THE WITNESS: Yes, sir.

8 THE COURT: He says he has the document in
9 his file.

10 MR. BROWN: I would ask to introduce it,
11 then, that copy or the copy from his file.

12 MR. WATERS: I have no objection to the top
13 letter. I do object to the statement as hearsay,
14 double hearsay.

15 THE COURT: Well, did you have these four
16 pages in your file, this fax cover sheet, the
17 statement, these two pages here with typed material
18 and this letter, was all this in your file or not?

19 THE WITNESS: I believe so, sir. Again --

20 THE COURT: It is going to come in at this
21 time if it's in your file.

22 THE WITNESS: As an officer of the court, six
23 years ago --

24 THE COURT: You had your file?

25 THE WITNESS: I went through my file again.

1 THE COURT: Was that in your file? Do you
2 need time to look it over and see if it was in your
3 file?

4 THE WITNESS: Yes, sir. I would never want
5 to make a mistake.

6 THE COURT: Where did you get the document?

7 MR. BROWN: We got a copy from the
8 prosecutor's file.

9 THE COURT: Was the letter addressed to him?

10 MR. BROWN: Yes, sir.

11 THE COURT: And Miss Hardee-Thomas.

12 MR. BROWN: Yes, sir, that's right.

13 THE WITNESS: All correspondence would be.

14 THE COURT: Over the objection of the State I
15 will admit the document. Let's proceed on.

16 MR. BROWN: Okay.

17 THE COURT: It is something in the file, not
18 to admit the truth of any matters asserted but just
19 the fact it's in the defense attorney's file.

20 MR. BROWN: Thank you, Your Honor.

21 (Ricky Davis interview was marked and
22 received in evidence as Plaintiff's
23 Exhibit Number 67).

24 BY MR. BROWN:.

25 Q And according to the top page, which is page

1 2, not the cover sheet, but the letter, he has,
2 Walter Bailey is asserting he's provided you a
3 written statement from Ricky Davis?

4 A Yes, sir, that's correct.

5 Q Given the fact that Alvin Coker has the
6 original statement on the yellow legal pad in his
7 file --

8 THE COURT: How does he know that?

9 THE WITNESS: I did not know that.

10 MR. BROWN: Well, then we ask for that to be
11 brought back and not substituted.

12 THE COURT: I thought Mr. Coker said it was
13 there.

14 MR. BROWN: He did.

15 THE COURT: Then why do you have to ask him
16 that, we already know that.

17 BY MR. BROWN:

18 Q I'm saying given that fact isn't it more
19 likely you got it from Walter Bailey and not from
20 Marion Bowman?

21 MR. WATERS: He has already answered that
22 question.

23 A I may have.

24 MR. BROWN: He has answered it before he saw
25 this. That is what I'm trying to find out.

1 THE COURT: Does that change your answer,
2 looking at that document number 68, as for as where
3 you got Exhibit 11 from?

4 MR. BROWN: A copy of it.

5 BY MR. BROWN:

6 Q Marion didn't have access to a xerox machine,
7 did he?

8 A No, sir, but the people in the jail cared
9 about him, the lady in the jail, Lieutenant Green
10 and people like that, they would help us if he
11 needed to get to a phone, he would call me, they
12 would make -- you know, Marion was no trouble in
13 the jail. So, sometimes there would be copies of
14 stuff or sometimes I would make a copy of something
15 for Marion at the jail we were talking about when
16 we would meet up there. So, with the highest
17 respect and highest candor, Mr. Bailey might have
18 sent it to me. I know we got it, I know we
19 discussed it and I know we had Mr. Mitchell go get
20 it. How I got it exactly, sir, I don't want to
21 surmise or guess, I don't want to make a wrong
22 statement.

23 Q Correct. That's what I'm trying to find out.
24 We don't know how you got it but we do know that
25 Walter Bailey has documentation stating he gave you

1 a copy of it?

2 A On the 7th of May I got a letter sent to me
3 from Mr. Bailey, correct.

4 Q Okay. Now I'm going to ask you to take a
5 look at Plaintiff's Exhibit 69.

6 A Yes, sir. This is my letter of May 15th to
7 Investigator Walter Mitchell.

8 Q And it documents the referenced interview Mr.
9 Mitchell had with Ricky Davis?

10 A Yes, sir, that Ricky Davis gave a statement
11 regarding Marion Bowman, Jr., "I need to know
12 everything he knows about Marion."

13 Q Let me make sure I understand. The letter
14 says Gadson and Felder.

15 A It involves Marion Bowman, sir. I was trying
16 to get the letter out quickly, he's facing a
17 capital trial, I wanted to know everything.

18 Q Okay, sure..

19 MR. BROWN: I ask that be introduced in
20 evidence as Plaintiff's Exhibit 69.

21 MR. WATERS: No objection, Your Honor.

22 THE COURT: All right, in evidence, 69.

23 (May 15 Cummings to Mitchell letter marked
24 and received in evidence as Plaintiff's
25 Exhibit Number 69).

1 BY MR. BROWN:

2 Q And how contemporaneous with that interview
3 were those notes taken, if you can recall?

4 A I don't -- I mean, I get the information in,
5 I'm working on the file, I had the investigator go
6 out as soon, to go chase it down.

7 Q Okay. And we know you got a letter regarding
8 a statement about Ricky Davis, we have a May 7th
9 letter, it says previously provided, so at some
10 point prior to this May 7th letter you got a
11 statement of Ricky Davis from Walter Bailey?

12 A Yes, sir.

13 Q Then on the 15th you document an interview
14 with --

15 THE COURT: Where do you get about Walter
16 Bailey? He got a statement from Walter Bailey?

17 MR. BROWN: Exhibit 68, Your Honor.

18 THE COURT: Okay. Exhibit 68, Mr. Bailey
19 says to you and Miss Hardee-Thomas he had sent them
20 previously. Okay.

21 BY MR. BROWN:

22 Q And then roughly a week later we're
23 documenting an interview conducted by Walter
24 Mitchell?

25 A Right, sir.

1 Q Which you reference in your testimony?

2 A Yes, sir.

3 Q Okay. And I'm assuming that the salient
4 points of that interview are put into that, into
5 69, your memo?

6 A It was to get him up there, get him, you
7 know, find Ricky Davis, get up there, find out
8 exactly what happened.

9 Q And, so, explain to me, after you read that
10 to refresh your memory, what that memo documents.
11 Is that information you got from Walter Mitchell or
12 information or request given to Walter Mitchell?

13 A My letter reads, "Request for Walter to go up
14 there and meet this guy and go get every bit of
15 information you can from Mr. Davis." That is how I
16 know Walter went up there to go do it. I put it in
17 writing and called him and told him to get it done.

18 Q May 15th?

19 A Yes, sir, May 15th, the trial is coming.

20 Q How does that jive with the trial date?

21 A Like a week before.

22 Q He's convicted on May 20.

23 A I'm just saying as soon as I got it I send it
24 out. I'm up here probably, and again it is
25 triggering a memory of mine that one of the so

1 called words of Mr. Mood's is, one of the
2 statements that Mr. Bowman made that got suppressed
3 about whether or not Marion shot her in the back
4 and that statement was suppressed and here it comes
5 again through somebody else at this late date,
6 jailhouse confession.

7 Q And Mr. Mood's statement and Mr. Davis'
8 statement are not the same statement, are they?

9 A No sir.

10 Q Okay.

11 Q And the 17th of May, excuse me, correct me if
12 I'm wrong -- well, I don't want to get too much
13 into what Mood said. Are you sure Mood didn't say
14 Gadson was the one shot her in the back?

15 A He said --

16 MR. WATERS: Your Honor --

17 Q He referenced --

18 MR. WATERS: Hold on. I withdraw the
19 objection.

20 THE COURT: All right. I'm looking at
21 Exhibit Number 68 now as for as Mood, I'm not sure
22 if Mood's statement -- it just documents what Mr.
23 Bailey sent and it's titled interview with Wayne
24 Mood. Does it say who did the interview? I didn't
25 look.

1 Okay, go ahead.

2 BY MR. BROWN:

3 Q Now, you sent Walter Mitchell out roughly May
4 15th?

5 A Right.

6 Q Okay. And you're in jury selection at that
7 same time?

8 A Right. I'm trying to recall, we're in here
9 trying to pick a jury and I'm getting all this
10 information.

11 Q About a jailhouse confession of Tawain
12 Gadson?

13 A Yes, but it's trying to get that statement in
14 that we got suppressed, the two of them --

15 Q I'm talking about Wayne Mood, I'm asking
16 about Ricky Davis.

17 MR. WATERS: I ask he be allowed to answer
18 the question and ask counsel not to put up his hand
19 and stop the witness.

20 THE COURT: Mr. Cummings, you are an
21 attorney, I have been on that side, all sides. If
22 you have anything you wish to say, then you're
23 permitted to tell this attorney not to stop you and
24 you want to finish your statement, you can complete
25 your statement.

1 THE WITNESS: No, I did not take that as a
2 stop sign. I thought he was speaking with his
3 hands. I know I have a right to explain.

4 THE COURT: Go ahead, what would you like to
5 explain?

6 THE WITNESS: It appeared to me, again
7 reading these again today, this is why Walter, Mr.
8 Bailey, Solicitor, was trying to get those two
9 statements in that got suppressed and trying to
10 find a jailhouse guy, and in all the death penalty
11 cases I have done up here, from Gardner to all of
12 them, there has always been a snitch, we used to
13 call them Chicken George. George Snitch was the
14 pre-eminent one and every kind of deal in the world
15 was cut with Chicken George, but it seemed like
16 here we are trying to pick a jury and we got 400
17 people up here and I'm trying to concentrate on
18 that and we get this.

19 BY MR. BROWN:

20 Q Let me ask you if you could have cut a deal
21 to cut ten years off Ricky Davis' sentence for him
22 to testify on behalf of your client would you have
23 done so?

24 THE COURT: You said him cut ten years off
25 Ricky Davis' sentence?

1 MR. BROWN: Sure. We're talking about
2 cutting deals, I'm curious?

3 A I'm a defense attorney.

4 Q I know. I bet you as a defense attorney sure
5 would like to be able to have that power. I mean,
6 we obviously know it's not unethical or bribery to
7 cut time for testimony.

8 A To answer your question yes or no and then
9 explain it, yes, it would be nice if Ricky Davis
10 wanted to tell the truth and give the truthful
11 testimony to help exonerate a person, or give
12 exculpatory information, but again I don't have
13 that power, sir.

14 Q I'm going to ask you to take a look, I'm
15 going to come back to Ricky Davis, would you take a
16 look at Plaintiff's 67 and would you take a look at
17 the front page? It says interview with Wayne Mood.
18 That is the second page on 68.

19 THE COURT: You want him to look at 68?

20 MR. BROWN: I want him to look at the front
21 where it says interview with Wayne Mood, one says
22 Ricky Davis interview?

23 THE WITNESS: Yes, sir.

24 BY MR. BROWN:

25 Q Do you see any similarity to those

1 interviews? I don't mean content, but in the
2 formatting of it, does it look similar?

3 A It appears to be notes or words typed on a
4 piece of paper.

5 Q Is there any similarity in the font or the
6 heading or the way it's written? One says where it
7 came from, doesn't it?

8 A One says interview of Wayne Mood, the other
9 one Ricky Davis interview, one says conducted by
10 Sam at Lieber Correctional Institute, on
11 Plaintiff's Exhibit Number 67, on 68 it says he has
12 been talking with James Gadson and Marion Bowman.
13 Again I don't want to speculate, I mean, they both
14 probably came from somebody with the State.

15 Q Did you ever, let's stay on Ricky Davis, they
16 are two different people here, did you ever get,
17 similar to the May 7th letter referencing
18 Plaintiff's 68, did you ever get a corresponding
19 letter that goes along with that note 67? You
20 testified you didn't see it before?

21 A I haven't.

22 Q Okay. So, you never got a letter that
23 said --

24 A I don't believe I got it.

25 Q -- that said, "I interviewed Ricky Davis,"

1 or, "My office interviewed Ricky Davis," or
2 something like that, "And here is the notes"?

3 A I remember receiving Plaintiff's 11. That is
4 what I remember receiving from somebody somehow and
5 that is what tipped us off. Then on the 15th we're
6 getting this information in about what Mr. Bailey
7 faxed in, wrote in, whatever, while we're up here,
8 and --

9 Q And what I want to make clear, so having not
10 seen that, that's not the referenced statement,
11 written statement of Ricky Davis that had been
12 previously sent to you by Walter Bailey, is it?

13 A Correct, the best of my knowledge.

14 Q Okay. I ask you to take a look at
15 Plaintiff's 70.

16 A Yes, sir. This is my letter and I think it
17 asks the lawyer for that gentleman Mr. Mood, if we
18 can go speak to him.

19 MR. WATERS: Your Honor, at this time I need
20 to take up a matter. Again I want to reiterate the
21 objection I have been making from day one with
22 regard to properly notifying the State and pleading
23 the issues that were going to be in play in this
24 thing. That is obviously from Mr. Cummings' file,
25 they have known about it and here we are in the

1 sixth day of trial in the third week --

2 THE COURT: Did you notify him you were going
3 to contend Mr. Cummings should have called these
4 people as witnesses or impeached Davis, called him
5 and impeached him, or found Mr. Mood? Did you
6 notify him of that?

7 MR. BROWN: I will be quite honest with you,
8 my emphasis on this is to show that the Ricky Davis
9 statement was of importance and what he wasn't
10 provided in reference to what we know about Wayne
11 Mood.

12 THE COURT: Whenever, did you notify Mr.
13 Waters of all that?

14 MR. BROWN: The investigator's interview
15 notes weren't found until Friday.

16 THE COURT: Friday, last week?

17 MR. BROWN: We haven't had the prosecutor's
18 file for months.

19 MR. WATERS: This is part of my objection.
20 If they are going to be allowed to raise these
21 issues on the fly, then they should at least
22 disclose them when they find them so I at least
23 have a fair chance, late Friday, to do it over the
24 weekend or something.

25 MR. BROWN: Let me make sure you understand

1 I'm not raising an issue right now about Wayne
2 Mood, I'm showing what was done in regards to Wayne
3 Mood and the fact that obviously I don't even know
4 about the Sam the investigator notes regarding
5 Ricky Davis.

6 THE COURT: Hold on one second. Let's
7 continue on and we'll discuss it at the end of the
8 day, before we convene again.

9 MR. BROWN: Thank you.

10 BY MR. BROWN:

11 Q Now, I guess what I'm trying to show, and I
12 want to introduce 70 for purposes that I'm about to
13 ask this question for, but let me just start it
14 with you knew that you could go down and ask
15 somebody to speak with their client because it's
16 important to get the information about these
17 witnesses?

18 A Yes, sir.

19 Q And that indicates doing it in this other
20 instance?

21 A Yes, sir.

22 Q Okay. Would you have taken, and let me ask
23 you, when did you go interview Ricky Davis?

24 A I did not interview Ricky Davis.

25 Q And if you had known that there was a prior

1 consistent statement to 11 obtained in an interview
2 by the executive branch would you have felt that
3 maybe an interview by yourself personally would
4 have been something that should have happened?

5 A I would have brought an investigator with me
6 so I would not have become a witness.

7 Q But you would have followed back up?

8 A Yes, sir. You can see, I mean, as soon as I
9 learned of people or did something I wrote a
10 letter, got people going, I would beg to learn
11 things. I mean --

12 Q And I understand, that is what I'm asking,
13 and likewise you would send Walter Mitchell out on
14 the Ricky Davis matter?

15 A Yes, sir.

16 Q If you had gotten a prior consistent
17 statement from the State you might have gone out
18 and interviewed him yourself, I don't mean alone,
19 but in person?

20 A Sure.

21 Q Let me ask you about Hiram Johnson. Do you
22 remember Hiram?

23 A Yes, the kid got shot in the back of the
24 head, yes.

25 Q What do you know about his lawsuit?

1 A I just heard about it recently. I did not
2 know about a civil suit.

3 Q Okay.

4 A I don't know why it was brought, when it was
5 brought, if it was brought.

6 Q What do you know about the pendency of
7 criminal charges brought by the First Circuit
8 Solicitor's office during the time of his testimony
9 against Marion Bowman?

10 A We asked for rap sheets on everybody who had
11 ever testified, witnesses, family, we got it. If
12 they were coming in this courtroom I should have
13 had it.

14 Q Let me show you what has been introduced as
15 Defendant's 9.

16 MR. BROWN: While you're looking at that,
17 Your Honor, we would ask to move in the letter
18 documenting his investigative effort with regard to
19 Wayne Mood.

20 THE COURT: Are you talking about the letter
21 to Mr. Marshall?

22 MR. BROWN: Yes.

23 MR. WATERS: I object based on the notice
24 issue that I rose.

25 THE COURT: I'll overrule it. It's in.

1 (Cummings to Marshall letter dated May 8,
2 2002 was marked and received in evidence
3 as Plaintiff's Exhibit Number 70).

4 THE COURT: By the way, did you ever talk to
5 Mr. Marshall?

6 THE WITNESS: I think I wrote the letter and
7 we called Cam's office, sir, the best of my
8 knowledge.

9 THE COURT: Do you know Mr. Marshall?

10 THE WITNESS: Yes, I know him real well, a
11 former Assistant Solicitor.

12 THE COURT: Did you and he talk about Mr.
13 Mood?

14 THE WITNESS: I think he told me he was not
15 going to let his client speak to me until he talked
16 to Mr. Bailey.

17 THE COURT: You decided not to call Mr. Mood
18 as a --

19 THE WITNESS: Correct, sir.

20 THE COURT: Why is that?

21 THE WITNESS: Parts of what Mr. Mood was
22 saying about Mr. Gadson, parts of what he was
23 saying about Marion had to do with the shooting in
24 the back. Again I was concerned about the
25 statement that Marion gave to the Sheriff and

1 possibly open up that door and pitting one witness
2 against another and somehow Mr. Bailey being
3 allowed to use that statement that my client gave
4 under duress, I chose not to do that. I did not
5 want to put somebody up there that was going to
6 possibly implicate my client for any reason, even
7 put him there next to Gadson, shooting once in the
8 back, shooting twice or whatever, whoever did it,
9 so I chose not to do that, sir.

10 THE COURT: What about in the penalty phase,
11 because if Mood made a statement, if he did make a
12 statement and all that, it indicates that the
13 killing was done jointly by Mr. Gadson and Mr.
14 Bowman?

15 THE WITNESS: Yes, sir, and I did not do
16 that, Your Honor. Again, not wanting it to
17 backfire on my kid. The only thing they had at
18 that point was what the State introduced and at the
19 time of the trial I did everything I thought I
20 should have done. If I made an error, again I
21 apologize, I don't want this young man to die for
22 my mistake.

23 THE COURT: No, all I'm doing is asking the
24 questions.

25 THE WITNESS: I understand. I want to make

1 sure Marion knows I don't want to see him die.

2 BY MR. BROWN:

3 Q I'm going to ask you to take a look at the
4 rap sheet.

5 A Yes, sir.

6 Q Is that consistent with the type rap sheet
7 you would be provided?

8 A Yes, sir.

9 Q I asked you about any pending charges. Let
10 me ask you to take a look at Plaintiff's Exhibit
11 48.

12 A 48?

13 Q Do you recognize that document, set of
14 documents, excuse me?

15 A I'm looking at the three page document you
16 showed me, sir, on 48, the arrest warrant. It
17 appears 11/2/00 but I know the indictment, Court of
18 General Sessions, on April 14th, 2003, a year after
19 the trial almost.

20 Q Does it show the date of service of that
21 warrant?

22 A the date of service of the warrant, Hiram,
23 yes, sir, 5/29/01.

24 Q That was about a year before the trial?

25 A Yes, sir.

1 Q And that is in the First Circuit Solicitor's
2 office?

3 A Yes, sir.

4 Q Okay. So, he's not indicted until after
5 Marion's trial?

6 A Correct.

7 Q But he is under a pending warrant, according
8 to those documents, you correct me. What is your
9 understanding, then, reading those documents, of
10 the pendency of any charges within the First
11 Judicial Circuit against Hiram Johnson during the
12 time he testified against Marion Bowman?

13 A According to the rap sheet?

14 Q According to 48.

15 A According to 48?

16 Q At the time of his testimony does there
17 appear to be any pending charges in the First
18 Judicial Circuit?

19 A Yes, sir.

20 Q And that's inconsistent --

21 A A warrant.

22 Q It's a warrant for?

23 A The warrant says receiving stolen good less
24 than a thousand, warrant number G427828.

25 Q Explain the indictment part of that.

1 A Indicted by the grand jury of Orangeburg,
2 date, April 17, 2003. Arrested May 29th, '01.

3 Q And they indicted him? Indictment means it's
4 in court, right?

5 A Yes, sir.

6 Q Did they actually bring it up?

7 A Less than a thousand, you know.

8 Q But it's within the pervue of the
9 prosecutor?

10 A Yes, sir, up to the Solicitor to present
11 cases to the grand jury.

12 Q And at the time of the testimony in May the
13 prosecutor had that same, May of '02, he had that
14 same pending warrant that he later exercised?

15 A Solicitor of the First Circuit has the power
16 of the First Circuit, yes.

17 Q And does that present some bias regarding
18 Hiram Johnson's testimony against Marion Bowman and
19 on behalf of the First Circuit Solicitor's office?

20 A I can't speculate to that but I would say it
21 shows, all I have is the rap sheet, it shows that
22 he was, 12/19/97 he was convicted of unlawful
23 possession of pistol.

24 Q It doesn't show that warrant?

25 A No. As a matter of fact they didn't have the

1 warrant when they went to arrest Marion. As part
2 of the case in chief, whether they had the lawful
3 right to be there and arrest him, all that was done
4 at the suppression.

5 Q Let me make sure I understand on 48. There
6 is no question, according to the document, there
7 was actually a pending charge?

8 A Yes, sir.

9 Q And it was not just an unserved warrant at
10 the time Hiram Johnson testified, was it?

11 A I'm sorry, you asked me a question whether it
12 was unserved?

13 Q It was not just unserved at the time he
14 testified on behalf of the State?

15 A Served 5/29/01, if I'm correct.

16 Q So --

17 A Pending.

18 Q Served and pending?

19 A That would be the normal process on warrants,
20 yes, sir.

21 Q Now, Hiram Johnson testified that he
22 overheard a confession from Marion Bowman about
23 killing Kandee Martin?

24 A Yes, sir.

25 Q And so, then, one thing that would be of

1 interest is discrediting him, right?

2 A Again, under the rules of evidence for
3 impeachment purposes I think I impeached him based
4 on his injury to his head and cooperation with the
5 State, but not based on a misdemeanor warrant.

6 Q How about under a bias, under 608?

7 A All this was under bias, everybody cutting a
8 deal, it was under bias.

9 Q And I want to make sure, you didn't get
10 evidence --

11 A I don't remember, Mr. Brown, I say with all
12 candor I don't know if a warrant was held in the
13 Sheriff's Department, I don't know if it was held
14 by a policeman in a car. You know, I don't know
15 why he wasn't indicted until April. I know
16 Orangeburg has a busy case volume, I know that
17 personally, but respectfully, I don't know if
18 somebody cut him a deal where they held the warrant
19 until after his testimony or held the indictment.
20 I don't know that, sir.

21 THE COURT: Refresh me about the warrants in
22 Orangeburg that were pending, that were dismissed
23 years later.

24 THE WITNESS: It only shows the one
25 conviction.

1 MR. BROWN: 48, Your Honor.

2 THE COURT: What were the charges pending,
3 again?

4 MR. BROWN: That charge specifically is a
5 receiving stolen goods charge.

6 THE COURT: Okay.

7 MR. WATERS: Under a thousand.

8 MR. BROWN: Which was indicted by Mr. Bailey.

9 THE COURT: So, the charge Mr. Cummings
10 didn't have was the receiving stolen goods charge
11 that was pending, indicted and pending?

12 MR. BROWN: It had not been indicted until
13 after the trial.

14 MR. WATERS: It was not indicted until 2003.

15 THE COURT: April, 2003?

16 THE WITNESS: Yes, sir.

17 MR. WATERS: Yes, sir.

18 THE COURT: He had the receiving stolen goods
19 warrant out for him and that is the matter he
20 didn't have?

21 MR. BROWN: Yes, sir, that's our contention,
22 that he didn't have that information.

23 THE COURT: Well, he admits he --

24 MR. BROWN: I understand he didn't. We
25 agree.

1 THE COURT: All right.

2 MR. BROWN: I don't know it's a stipulation,
3 that that's an agreement.

4 THE COURT: He had a prior conviction of what
5 then?

6 THE WITNESS: Unlawful carrying a pistol in
7 '97.

8 THE COURT: Unlawful carrying a pistol, gets
9 a YOA sentence, convicted, he got one to six?

10 THE WITNESS: Uh-huh (Affirmative).

11 THE COURT: How do you get one to six for
12 unlawful carrying of a pistol?

13 THE WITNESS: I don't think you can,
14 personally, sir.

15 BY MR. BROWN:

16 Q If it carries that much time you could
17 impeach him with that, too, couldn't you?

18 THE COURT: He did, he had this.

19 A Yes, I had that, right. I don't remember if
20 I did. I'm trying to remember the cross. I have
21 read everything again, guys, gentlemen, excuse me,
22 I have done everything I can to be as honest and
23 open about what I did in this case or what I didn't
24 do, but I guess what I'm trying to say is I tried
25 to impeach Mr. Hiram the best I could.

1 Q Now, 5/29/01 is the magic date on the arrest
2 on that receiving stolen goods, isn't it? Exhibit
3 48.

4 THE COURT: As for as before trial?

5 Q A year before trial.

6 A I don't have 48, sir. Has somebody taken it
7 back?

8 Q I'm sorry. It is sitting right here.

9 THE COURT: He was arrested on 5/21/01 for
10 receiving stolen goods.

11 Q 5/29/01 is the magic day, isn't it?

12 A Yes, sir.

13 Q Now, would it have been important to find out
14 he was also arrested for grand larceny and burglary
15 second on that same date, within the First Judicial
16 Circuit?

17 A Yes, sir.

18 Q Because that's impeachable?

19 A Sure. Again arrest, not convicted, yes,
20 right.

21 Q How about currying favor with the party
22 calling him as a witness and he is also
23 simultaneously prosecuting him?

24 A I would have asked questions about don't you
25 have charges pending in Orangeburg or Dorchester

1 County and if her honor would have sustained the
2 objection, at least I would have had it on the
3 record. But I would have, I did it with other
4 people.

5 Q "Isn't it true you," this is a type of
6 cross-examination, "you face fifteen years for
7 burglary second"?

8 A Right.

9 Q Or five or ten years for grand larceny?

10 A I have had, again I say this with highest
11 candor to the judiciary, I have been yelled at for
12 doing that and I have been told you can't tell
13 about penalty, it's in the judge's province.

14 Q Sure, but --

15 A But I have been allowed to say, "Haven't you
16 been arrested for burglary, convicted of burglary?"

17 Q In this case they weren't convictions but ask
18 him, "Isn't it true that Solicitor Bailey is
19 prosecuting you and you have some bias to curry
20 favor with his office"?

21 A Yes, sir. I did that, and again with the
22 highest respect to you, sir, in the Gardner case I
23 had Judge Ralph King Anderson as the trial judge
24 and when George, Chicken George took the stand,
25 it's in the appellate record that he was afraid of

1 me because of my cross-examination, and why I say
2 that to you, that is all I did. They dropped a
3 safe cracking charge on him, they dropped a
4 burglary first charge on him to get him to testify
5 against Mr. Gardner. And that was done under Mr.
6 Bailey's province and Mr. Bailey is a very
7 dedicated and tough prosecutor.

8 Q Now, if you found out that Hiram Johnson was
9 represented at the time of his testimony and he was
10 represented by an attorney who was also suing one
11 of the investigating agencies in this case that
12 presents an even more complex set of biases,
13 doesn't it?

14 A I did not know about the lawsuit, sir, I did
15 not, okay? I understood he had an attorney and I
16 have learned now John O'Leary.

17 Q All right. And, so, if Mr. O'Leary is
18 representing him in the lawsuit there is a little
19 bias because he's suing an agency in state court in
20 the First Judicial Circuit?

21 A I don't want to crack a smile up here but I
22 don't know why he's suing in state court instead
23 of federal court. I don't know if the taxpayers
24 are going to give a verdict against the Sheriff's
25 Department, at least in my opinion. I don't know

1 when the suit was brought, when it was settled,
2 whatever.

3 Q We know he was shot at least before the
4 testimony?

5 A Yes, sir.

6 Q And, so, if the lawsuit involved the
7 shooting, then the cause of action, the incident
8 triggering the cause of action has already taken
9 place?

10 A Yes, sir.

11 Q So, he at least has a claim against them at
12 the time of his testimony in the Marion Bowman
13 case?

14 A Yes, sir, unless it was justifiable shooting
15 and it had no merit. Again I don't know that. I
16 know he was shot in the back of the head by the
17 police, Marion told me, Marion told me he wasn't
18 all that there and all that, and I remember, that
19 was one thing Marion knows, Marion knew him.

20 Q And did you receive any information regarding
21 the service of a burglary or grand larceny charge
22 against Hiram?

23 A No, sir, not to the best of my recollection.

24 Q I ask you to look at Plaintiff's Exhibit 71
25 which we offer in evidence, which is two

1 indictments, two warrants, no dispositional sheets,
2 and a Miranda form regarding Hiram Johnson,
3 obtained by counsel during the last hearing, by our
4 investigator following Hiram Johnson's testimony,
5 from the Orangeburg County Clerk of Court.

6 MR. WATERS: No objection, Your Honor.

7 THE COURT: No objection, in evidence.

8 (Hiram Johnson indictments, warrants and
9 Miranda form marked and received in evidence
10 as Plaintiff's Exhibit Number 71).

11 THE COURT: This is where the charges were
12 finally dismissed a year or so after all this?

13 MR. BROWN: It shows disposition, they are
14 actually dismissed. They speak for themselves. Of
15 course we discussed that when he testified they
16 were dismissed, we just didn't have the documents.
17 We didn't know what he was charged with, whether
18 they were pending.

19 THE WITNESS: Yes, sir, he did say the
20 charges were dismissed. I guess the only question
21 I can say, unless Your Honor doesn't want me to
22 answer, this was done April 14, 2003, signed by
23 Robbie Roberts, not Mr. Bailey. The disposition
24 sheet, 12/29/04.

25 BY MR. BROWN:

1 Q Right. So, his charges were dropped after he
2 testified?

3 A '04.

4 Q He was arrested before he testified?

5 A Yes, sir.

6 Q Okay, just to make clear.

7 A 5/29/01.

8 Q He was read his Miranda, he has a right to a
9 lawyer?

10 A Yes, sir.

11 Q And if his lawyer would have sent a Rule 5
12 discovery request or entered into plea negotiations
13 sometime in the twelve months after his arrest he
14 would have done so with the same prosecutor's
15 office over which Solicitor Bailey presided?

16 A Yes, sir. I don't know if Robbie had taken
17 over at that time, sir, if Mr. Bailey had resigned.
18 He did his time, I don't know --

19 Q I'm talking about between the time of the
20 arrest and the time of Marion Bowman's trial, that
21 twelve months pendency of these charges would have
22 been under the same office that Solicitor Bailey
23 ran?

24 A Yes, sir.

25 Q Okay. And is it usual a lawyer sends a Rule

1 5, won't wait twelve months? Maybe you don't know
2 the answer to that question but --

3 A It has been so long since I prosecuted in the
4 First Circuit and things were different back then,
5 we were part-time but, Mr. Brown, the one thing
6 that, again I did and I'm not trying to say this as
7 self serving but everybody give me the deals give
8 me the rap sheets, and that's a standard, I did it.

9 Q I understand and you would have loved to have
10 known if, "Hey, your guy testify favorably, we'll
11 dismiss this burglary and grand larceny charge
12 that's unrelated but pending in my office." You
13 would like to know that?

14 A Sure.

15 Q Okay.

16 THE COURT: Looking at my notes of Mr.
17 Johnson, did Mr. Johnson say there was any deal
18 about these pending charges? I know he had the
19 lawsuit and all that. I'm trying to remember. I
20 think I didn't say anything about any pending guilt
21 about these charges, and they were charges, they
22 were not convictions?

23 MR. WATERS: That's correct. He didn't even
24 remember them, as I recall the testimony.

25 THE COURT: In fact I thought he testified

1 they were over by the time of the trial of Marion
2 Bowman.

3 MR. WATERS: That is what he said, yes.

4 MR. BROWN: Your Honor, he has had charges
5 come and go before the trial and after the trial.

6 THE COURT: I know. I'm only saying that, as
7 Mr. Cummings said, he might have had a tough time
8 unless there was some evidence of some deal in
9 regard to that, but we'll find out later as we go
10 on.

11 BY MR. BROWN:

12 Q And let me make sure, make sure I'm asking
13 the right question here. We know as to the
14 convictions, on impeachment convictions are limited
15 to what the rules say.

16 A 608.

17 Q 609?

18 A 609.

19 Q On 608 we actually go into bias, 608(C), bias
20 or motive to misrepresent may be shown to impeach
21 by examination of the witness, right?

22 A I think the first thing I do when I got
23 somebody going to testify I say, "You cut a deal,"
24 you read my cross, the first thing I said, "You're
25 here today on a deal."

1 Q And at least you can say to this fellow, "You
2 have got reason to curry favor with Solicitor
3 Bailey, don't you," because that would be true,
4 wouldn't it, he had a reason to, I didn't say the
5 Solicitor had agreed with it, although we do know
6 later he had serious charges thrown out?

7 MR. WATERS: Your Honor, I object to the
8 leading and the statements, all.

9 THE COURT: I overrule your objection. I
10 mean, I know what Mr. Brown is getting at but as
11 Mr. Brown knows, all this would have been done
12 before a judge before any jury had a chance to hear
13 anything at all. There had to be some evidence of
14 some deal going on, it may or may not have worked.

15 THE WITNESS: And all I can say again, the
16 defense, as a defense attorney I would do
17 everything to get everything and do everything you
18 can do in a court, and I should, as we all know.

19 BY MR. BROWN:

20 Q And again we need to impeach Hiram Johnson
21 because he gives a statement that says, "I heard
22 him confess to killing Kandee"?

23 A Yes, sir. Yes.

24 Q Now, do you recall Hiram speaking with law
25 enforcement?

1 A I remember him, he talked to law enforcement,
2 yes, sir, but I remember everyone telling me he
3 wasn't all there, including Marion, yes.

4 Q And do you recall a pair of brown cotton
5 gloves?

6 A Yes, sir, the gloves that people wore inside
7 the car so they would not leave fingerprints, and
8 the pot, I remember that.

9 Q Let me make sure, I want to ask this. Now,
10 if Hiram Johnson is in a car he knows is stolen, he
11 is riding around in the middle of the night with
12 brown gloves on, does that sound like he's up to
13 some no good?

14 A If he knew it was stolen. Again, a lot of
15 the testimony was that Kandee was -- well, again,
16 this is part of our, my strategy with Marion, that
17 he cared about Kandee, he liked Kandee, Miss Martin
18 liked Marion, I think they were from the same
19 neighborhood, so it would not be out of the
20 ordinary that Mr. Bowman was in her car or had her
21 car. Again, as you said, sir, if they knew the car
22 was stolen, again, you can read his statement, and
23 I think I tried to impeach him with what I had in
24 his statement.

25 Q So, take a look at Plaintiff's 33.

1 A Yes, sir.

2 Q And in there he says, "Marion told me the car
3 was stolen." Then he is putting on these brown
4 gloves and riding around. This is in South
5 Carolina, now, not south Michigan, he is riding
6 around in February with brown cotton gloves on in a
7 stolen car, in fact he says it wasn't just him, it
8 was four of them riding around with brown gloves in
9 a car. I'm just trying to picture this.

10 A Yes. In this statement he says, "Junior
11 stole the car," then as you said, yes, sir.

12 Q Okay. And tell me where he says in that
13 statement that Marion told him he killed Kandee,
14 hee, hee, hee.

15 A It's not in his written statement.

16 Q Isn't that a prior inconsistent statement to
17 that --

18 A I won't characterize it as inconsistent. As
19 we all know, statements are sometimes a narrative
20 of what their longer testimony may be, but again if
21 you're saying it's consistent, he didn't say it.

22 Q Let me ask you. What is the worst things
23 that Hiram Johnson says about Marion Bowman?

24 A That's it right there, as you said, that he
25 laughed about the shooting and killing that little

1 girl.

2 Q That is the worst evidence offered against
3 him?

4 A That's the worst evidence in the world, yes.

5 Q And he does not ever reference that before he
6 comes to trial and testifies?

7 A No, but I darned sure didn't want him to ask
8 him twice "Did you run a redlight" on direct and
9 then cross him and get him to say he ran a redlight
10 again.

11 Q I understand that, but he does not say it in
12 his statement, does he?

13 A No, sir, he does not.

14 Q And you are never given that information
15 before trial, are you?

16 A Correct.

17 Q Okay.

18 THE COURT: The first time you heard it was
19 when he testified?

20 A Yes, sir, the best of my recollection.

21 Q Which puts his credibility really in play?

22 A His credibility was in play anyway with his
23 head injury, respectfully.

24 Q Sure.

25 A I tried to cross him on that. I didn't want

1 him to get back up there and say, "Yes, I heard him
2 say it," but poor Marion's sister said it.

3 Q Do you think he would be concerned about
4 possessing that stolen car?

5 A If law enforcement brings a charge it's their
6 province. I have argued that and I have been told
7 to get off that line of questions because it's
8 discretionary. Yes, it will show bias or
9 prejudice.

10 Q Discretionary with the Solicitor?

11 A The Solicitor, yes.

12 Q It's up to the Solicitor?

13 A The ultimate decider for bringing the
14 charges, correct.

15 Q Now, we have heard a lot about buying the
16 gas.

17 A Right.

18 Q You're familiar with Darien Williams?

19 A I remember he was in this case.

20 Q I'll show you Plaintiff's 35, 36, 37 and 40.

21 A Yes, sir, this yellow sheet is the original
22 37.

23 Q Now let me ask you this.

24 A 40 is the original of 37.

25 Q Tawain Gadson's the bad guy according to the

1 defense theory, right?

2 A Yes, sir.

3 Q All right. If Tawain Gadson is actually out
4 there buying the gas and burning --

5 A Felder bought the gas.

6 Q But if Tawain is buying the gas and burning
7 it, boy, it makes him look even worse, doesn't it?

8 A You're looking at a film of Travis Felder
9 buying the gas. I don't think I can risk a true
10 question to get something that is not correct.

11 Q Now, Darien Williams says that the gas was
12 put in a two liter coke jug by Tawain Gadson.
13 That's not inconsistent with Travis going to pay
14 for it, is it?

15 A It's not inconsistent if that's what
16 happened, sir, but I don't remember -- again, I'm
17 reading it from this guy who changed his statement
18 and then he is writing letters saying, "I'm sorry,
19 man, the police made me talk," you know.

20 Q The police forced him to change his
21 statement?

22 A Right, everybody was forced, right.

23 Q And we know in some cases that may be true?

24 A Yes, sir.

25 Q All right. You mentioned Kandee Martin. Did

1 you find it helpful in the penalty phase that
2 Kandee knew Marion?

3 A Yes, sir.

4 Q The families had been close together?

5 A Yes, sir.

6 Q Did you know Marion worked with Kandee's
7 brother and father and uncle?

8 A Yes, sir.

9 MR. WATERS: Your Honor, again I just want to
10 object to this being a new ground.

11 THE COURT: How do we know there is a ground?

12 MR. WATERS: That is my problem. They are
13 required to disclose all the new stuff they are
14 coming up with.

15 THE COURT: He is asking what he knew about
16 the relationship of Mr. Bowman and the victim, so
17 I'm going to permit it right now.

18 BY MR. BROWN:.

19 Q I think you already said this to one of my
20 questions, I will just ask it. Kandee's mother
21 knew Marion, she testified at trial?

22 A Yes.

23 Q Tell me about the issue of the drug use by
24 Kandee.

25 A There was cocaine found in her body by the

1 toxicologist, we know that. The question is when
2 the cocaine derivative or cocaine was in her body.
3 I did not want to portray my guy as a drug dealer.
4 The only way Kandee would have gotten the drugs, if
5 it was believed what was going on here, was from my
6 fellow.

7 Now, the other thing is, trade the watch for
8 drugs. The watch is found in his pocket. Gadson
9 said she wouldn't trick, that is why she was
10 killed. My guy, you know, alleged she had a wire
11 on, she was nancing for the cops. No matter what I
12 did on that to impeach that dead little girl in
13 this courtroom, Mr. Brown, and I say it with the
14 highest candor and respect, I think would have been
15 the most egregious error I could have made, because
16 she's dead and for what reason, okay, wearing a
17 wire? Oh, that's great. Because she bought dope?
18 Because who is giving her the dope? And I did not
19 want to attack the little girl's character, I will
20 say that. If that is a flaw or mistake I'm sorry.

21 Q Let me ask you a little bit about the drug
22 issue about Marion. What came out at trial had to
23 do with a wire?

24 A Yes, sir, that was motive, why she would be
25 killed.

1 Q Okay. And obviously it was a motive for
2 Marion to kill her?

3 A Right. Of course, as you know, sir, and
4 again with highest respect to Mrs. Bowman and
5 Marion, his own sisters, the statement was the B
6 word, be dead by dark, his own sister said that in
7 a car and testified to that, and the reason I'm
8 saying that is, the more you find out through this
9 trial, watch his whole family testify against him,
10 it hurt us, it hurt bad, and what bias, prejudice
11 or reason did she have to want to say that against
12 her own brother who she's supposed to love?

13 Q She was charged with a crime, too?

14 A Yes, getting rid of a gun, which opened up
15 another bad door. The whole family was charged
16 with getting rid of the gun.

17 Q We're going to come back to that.

18 A Yes, sir.

19 Q That is another issue I've got. Let me try
20 to stick on this.

21 THE COURT: About five minutes tie it up, as
22 for as a quitting point.

23 MR. BROWN: Yes, sir, that is what I'm trying
24 to do.

25 BY MR. BROWN:

1 Q The jury heard a possible motive from the
2 State, possible motive for Marion to kill her was
3 that she was wearing a wire?

4 A Yes, sir.

5 Q That implies Marion deals drugs?

6 A Yes, but no proof of it because he wasn't
7 taking the stand and they didn't have any drug
8 dealing until we got to the penalty phase, where I
9 asked Jeff Yungman to talk about his youth, he sold
10 drugs for his mama.

11 Q Let me ask you about that. Tell me about the
12 introduction of the drug use during the penalty
13 phase.

14 A The only introduction about that came in from
15 the sources -- I didn't hear anything about Marion
16 selling drugs or doing anything other than from our
17 guy about how he had to grow up and how he had to
18 make money to support his family. He supported his
19 mama when she was sick.

20 Q Right. What was the strategy about not
21 portraying the complete picture of Kandee and
22 Marion's involvement in the penalty phase?

23 A I think I portrayed what I needed to portray.
24 If I'm in error again I apologize, I apologize to
25 Marion. What I'm saying is, it does no good, I

1 tried that Gardner case up here where they tried to
2 portray that white girl being with five African
3 American men and, Mr. Brown, you slander a victim,
4 you know the little girl is dead, they got those
5 nasty pictures in there in this penalty phase with
6 her burned body, the statement allegedly, "Black,
7 please don't shoot me, I got a baby." Marion would
8 have known she had a child, he grew up with her. I
9 tried to stay away from hurting Miss Martin in any
10 way because all the evidence and all the facts show
11 she got shot in the back.

12 Q Let me ask you about Tawain discussing Kandee
13 smoking crack out on Nursery Road. Have you heard
14 that before?

15 A Yes.

16 Q Now, he didn't testify about that at the
17 trial?

18 A No, sir, and I didn't open up that door
19 because allegedly, again Mr. Brown, with highest
20 respect, they were out there to commit a burglary,
21 that's great, they paint a picture of my kid out
22 there to try and have a burglary, be a felon. Then
23 they paint a picture of they are going to do a job
24 on a house. That didn't get out.

25 Q Was Tawain given instructions?

1 A I don't know. It didn't come in.

2 Q Was he given instructions to stay away from
3 the drug use?

4 A You have to take that up with the people that
5 interviewed him other than when I got him on the
6 stand and what I did. I stayed away and I walked
7 that tight rope as tight as I could, but I have
8 learned something in these years, and again with
9 highest respect and candor, I'm not going to
10 portray my guy as the reason why she's dead, dope,
11 sex, drugs. I mean, I'm making the State prove
12 their case.

13 Q And I want to ask you about that. Tell me
14 about your understanding of the burglary and
15 Kandee.

16 A Well, the testimony was going to be that they
17 all went out there and cased the Nursery Road, go
18 out there and hit a house. A burglary in the
19 nighttime is one of the nastiest felonies we have
20 except for murder and CSC.

21 Q Sure.

22 A So, great, they're going to be out there
23 pulling a burglary.

24 Q How does that tie in with the aggravater of
25 the kidnapping?

1 A We have the broadest kidnapping statute in
2 this state in the union, as we all know, embagle,
3 convey, decoy, any of that. If she went with them
4 by trickery or deceit that could be kidnapping if
5 the jury were to find the elements of kidnapping as
6 given by our judges.

7 Q Is that your understanding of what the
8 allegation of aggravation was here?

9 A I want to say this outloud and with Marion,
10 what are you doing on Nursery Road at that time of
11 the morning with a white female and African
12 American males in Dorchester County? Really. This
13 is 2001 but what good are you doing out there on a
14 dirt road? Okay. And we have all the homeowners
15 calling us saying they heard shots, then they come
16 out and they find a burning car. So, that's the
17 way this thing portrayed. The fire department
18 comes out, as you know. I have read this file
19 backward and forward. If he's there he's a
20 principal, if he's in the car. If he's not there,
21 how does all these facts get known, how are all
22 these facts to be told?

23 Q What I'm trying to find out is first state of
24 mind.

25 A First state of mind she's dead.

1 Q At the time -- let's back up. The aggravater
2 of kidnapping said she was embagled?

3 A Obviously if they are taking somebody out to
4 kill them and the poor kid says, at least the
5 testimony at trial, that came up from Gadson and
6 the boys, said that, "I don't like this, I feel
7 nervous, there is something wrong out here," and of
8 course there was all this kind of stuff about
9 Marion saying, "She's wired, she burned me," and
10 that's the motive why he allegedly would have
11 killed her.

12 Q A motive?

13 A Well, yes.

14 Q Okay. I want to make sure I understand.
15 Tawain never testified that they went out there and
16 tricked her to go?

17 A Right, you're absolutely correct, sir.

18 Q There was no testimony from Tawain that
19 Kandee was tricked or embagled or decoyed to the
20 road?

21 A Well, I can grasp that from the testimony but
22 he used those words, no.

23 Q Tell me what about that testimony shows that.

24 A From that testimony what was the intent of
25 bringing her out here, go case a job, do a job, do

1 a burglary.

2 Q If Tawain believed that?

3 A If he believed it.

4 Q If he came in court and says he believed it?

5 A Then they are, they are all burglars,
6 attempted burglary or they are planning conspiracy
7 to commit a felony.

8 Q The difference is not whether a murder
9 happened, but whether a kidnapping murder happened,
10 right?

11 A Yes, sir.

12 Q Okay. I want to ask this one question on
13 this because you asked why would she be out there
14 in a desolate area, paraphrasing?

15 A Right.

16 Q Is that a place for somebody to go out there
17 and smoke crack?

18 A I wish they would have picked eight miles
19 difference, in Orangeburg County, we wouldn't be
20 here today.

21 Q But somebody who uses crack is not going to
22 go out and use it in a public place as much as a
23 private place, would they?

24 A To answer your question, that's up to the
25 people who want to do illegal drugs. I can't

1 answer that but I would say most people stay inside
2 and do it so they don't get arrested by the police.
3 A dirt road, a cop car comes down the road at that
4 time of the morning, they are going to stop to see
5 who is out there. But again, why people do things
6 that they do, we get the after effects.

7 Q But use of crack on that road by Kandee, is
8 that somewhat relevant to whether she felt embagled
9 or whether she felt she wasn't embagled?

10 A From reading all the statements and all the
11 worries that I had on this case, including I
12 believe my client's words were forced out of him,
13 it felt more like this was planned to bring this
14 girl out there and dispose of her.

15 Q And planned by who?

16 A If you believe the two statements that were
17 suppressed, by Marion and Gadson.

18 Q I want to make sure we understand. I'm going
19 to stop here, but you believe Gadson had something
20 to do with it?

21 A Yes.

22 MR. BROWN: This is kind of a stopping point.
23 That leads right into Gadson.

24 THE COURT: Okay. Now, as you know, Mr.
25 Cummings, please do not discuss your testimony,

1 okay?

2 THE WITNESS: Yes, sir.

3 THE COURT: Have a good lunch. You all be
4 back about 2:45, hopefully I will be close to being
5 finished with my other hearing.

6 (Recessed at 1:05 p.m.).

7 (Reconvened at 4:15 p.m.).

8 THE COURT: All right. Now, yesterday Miss
9 Davis was on the stand, and because the day ended
10 we were not able to have her cross-examination done
11 and so we'll now, as soon as I get my notes to
12 where we were at we will now go with Miss Dale
13 Davis, mitigation expert. I have my notes about
14 her direct testimony yesterday and my last note was
15 where she first met Mr. Cummings in January of '02.

16 All right, Mr. Waters.

17 MR. WATERS: Thank you, Your Honor. May it
18 please the Court.

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1 DALE DAVIS,
2 having been previously sworn, testified as follows:

3 CROSS EXAMINATION

4 QUESTIONS BY MR. WATERS:

5 Q Miss Davis, how are you this afternoon?

6 A Fine. I need to make a couple corrections
7 after looking back at my records from yesterday.
8 Do you want me to do that now?

9 Q Please, go ahead.

10 A Okay. I was asked if I was in the courtroom
11 when the verdict came in. I thought I was but I
12 guess I was thinking about the penalty phase,
13 because I was not, because I have got a note where
14 I got a phone call, I made a phone call.

15 Q Was that when you were away about the issue
16 with your family?

17 A No. I was out working, doing some work on
18 the case.

19 Q I got you.

20 A And the other was that the letter that had
21 the date mixed up in the body of the letter, it
22 said May 3rd and the body of the letter should have
23 said April 3rd.

24 Q That was the letter that was dated April
25 11th?

1 THE COURT: April 11th memo?

2 A This was a letter dated April 11th, and when
3 I went back, it should have been April the 3rd
4 instead of May 3rd in the body of the letter.

5 Q I'm going to show you what has been marked as
6 Plaintiff's 58 and Plaintiff's 57 and make sure
7 we're talking about that. Is that the letter
8 you're talking about there?

9 A Yes. This date should have been April 3rd
10 rather than May 3rd.

11 Q Okay. All right. And then what about the
12 May 3rd note right there?

13 A That's right, that was right.

14 THE COURT: So, the letter should be dated,
15 or reference a meeting on April the 3rd?

16 THE WITNESS: Right.

17 THE COURT: Okay.

18 BY MR. WATERS:

19 Q All right. The judge of course called you a
20 mitigation expert. I wanted to start out by asking
21 you what your education, experience and training in
22 the criminal law, justice system as a whole and
23 specifically as to mitigation investigation that's
24 led you to the present career that you have and the
25 expertise you have.

1 A Okay. I have a Bachelor's Degree in
2 sociology and criminal justice and Master's Degree
3 from USC in criminal justice, I worked at the
4 Public Defender's office in Charleston County for
5 about ten years.

6 Q Who did you work for there specifically?

7 A Ashley Pennington was who hired me. Actually
8 Michael Cobb hired me and Ashley Pennington is who
9 I worked for. Ashley did death penalty work and
10 was the one got me involved and interested in death
11 penalty work. I began going to training and
12 seminars in the mid '90's, '96.

13 Q What sort of training and seminars?

14 A Life in the balance is sort of the primary
15 training for mitigation specialists and that is a
16 yearly thing but there is also, capital defense
17 system in Georgia now, but prior to that it was
18 called multi-county public defender system, I
19 believe, and they yearly put on training sessions
20 in capital work in Jekyll Island each year. I have
21 worked in South Carolina, Georgia and North
22 Carolina and have been to multiple trainings. I
23 have been in practice since early 2000, private
24 practice.

25 Q All right.

1 THE COURT: By the way, when I used the term
2 mitigation expert, this is a fact witness. I used
3 that term in the vernacular when the request to pay
4 people and hire people in these type cases they
5 always refer to them as mitigation expert. Very
6 seldom do they testify, so you don't usually ask
7 them opinion testimony, so I referred to her as a
8 mitigation expert only in the sense of that is the
9 vernacular you use in capital cases when you
10 discuss someone who is going to do the background
11 information on the defendant, usually their
12 background and family, they report back to the
13 attorneys for their use in the trial.

14 MR. WATERS: I understand that, Your Honor.

15 THE COURT: That is the only reason I was
16 using mitigation expert.

17 MR. WATERS: I understand that. I'm familiar
18 with how that works. I was just prefacing my
19 remarks because I did want to get into her
20 qualification for being a mitigation specialist.

21 BY MR. WATERS:

22 Q Which is what you are, right?

23 A It is. And I have worked, I generally refer
24 to myself as a mitigation investigator, mitigation
25 specialist is used as well, but because

1 investigation is actually what I do, typically I
2 say mitigation investigator, and I have worked on
3 approximately thirty death penalty cases.

4 Q And that is since your time at the PD's
5 office or since private practice?

6 A About three of those, three or four of them
7 were in the PD office and the rest of them have
8 been private practice.

9 Q You didn't to that initially when you joined
10 the PD's office, it was something that you kind of
11 evolved to?

12 A It is.

13 Q And eventually Ashley Pennington thought you
14 had some aptitude for it and got you involved in
15 doing mitigation investigation, is that correct?

16 A Started sending me to training, yes.

17 Q Do you still go to those trainings? Is that
18 a yearly thing or --

19 A You can go to them as often as you want.
20 They do have, that particular one I mentioned is a
21 yearly thing but the National Legal Public
22 Defenders Association, they are all defense
23 attorney things or other kind of training, you can
24 find them in different parts of the country at
25 different times but I attend at least once a year,

1 one a year.

2 Q Okay. All right.

3 MR. WATERS: Your Honor, at this time I move
4 to qualify her as an expert in the field of
5 mitigation investigation as it relates to
6 preparation by the defense for a capital trial.

7 MR. BROWN: No objection.

8 THE COURT: I'm about to qualify her in that
9 regard but I'm trying to think, are you asking her
10 to give an opinion about her own work?

11 MR. WATERS: Just about the process in
12 general, and I think that --

13 THE COURT: With the caveat, if I recall the
14 objection to the social worker about giving
15 opinions about lawyers, although he was a lawyer at
16 this time, but I will permit her to give opinion
17 testimony in the area of mitigation specialist.

18 BY MR. WATERS:

19 Q All right. Just real quickly explain the
20 process, the judge kind of alluded to it, but
21 explain how you get involved in the capital case
22 and what your duties are. I know the judge knows a
23 lot of this but we're also speaking to potentially
24 beyond people, people beyond this particular
25 courtroom, so if you could just explain that.

1 THE COURT: Are you alleging they don't know
2 much about it?

3 MR. WATERS: I am not alleging. Maybe their
4 law clerks don't, I don't know.

5 THE COURT: All right.

6 MR. WATERS: I'm just trying to complete the
7 record here.

8 BY MR. WATERS:

9 Q Okay.

10 A Typically it's sort of a word of mouth kind
11 of thing, there aren't very many people who do
12 this. I generally get a call from lawyers at some
13 point after a death notice has been served.
14 Sometimes if they know that it's a potential death
15 penalty case I will be contacted beforehand to go
16 ahead and start that process, but I'm contacted by
17 the lawyer, meet with the lawyer. Once that's done
18 I usually go and meet with the client first and do
19 a very lengthy interview.

20 Q Okay. What are you looking for when you meet
21 with that client, what sorts of information?

22 A When I meet with them initially I'm getting
23 just a lot of data type things, their background
24 information, where they live, family members, where
25 family members live, how to get in touch with.

1 family members, the schools they have gone to, any
2 kind of hospitalizations they have had, medical
3 problems, medical problems in the family, if they
4 have been in prison, if they have had any kind of
5 head injuries. And then I usually, in the course
6 of doing that I'm also looking at at their patterns
7 of speech, sort of how they behave, because
8 sometimes those things will sort of signal mental
9 health problems that you might need to look at
10 later. But initially it is too early to delve into
11 very private issues, so I'm just spending a lot of
12 time getting comfortable with them, getting them
13 comfortable with me, getting information so I can
14 get in touch with the family. I take releases with
15 me so I get them to sign releases.

16 Q What's the purpose of the releases?

17 A The releases are so that I can get all of the
18 different places, institutions, whatever it might
19 be that they have been involved with, that I can
20 collect those records and I sort of, the release I
21 have sort of covers everything but incorporates the
22 name of the lawyer as well as my name to it so the
23 records are sent to me generally as opposed to
24 being sent to the lawyer.

25 Q That is kind of a HIPA release so you can get

1 medical records and the like?

2 A Yes. Even if records are being subpoenaed,
3 if it's medical records I still include the release
4 because of HIPA requirements.

5 Q So, that first interview I guess is
6 essentially to get your initial framework as to the
7 other information that you need to go pursue, for
8 example, the family members, you might need to go
9 talk to them, if there were some medical events you
10 would need to go find the records on that, if there
11 was, you know, school and other sorts of things
12 like that you need to go explore that. Is that
13 fair to say?

14 A It is, except knowing that I will be in touch
15 with family members and neighbors, teachers. I try
16 to collect all, anybody that's been involved with
17 their life up to that point and I'm looking for
18 good and bad, I'm not just looking for good things,
19 I'm looking for everything I can find out about
20 them and some of the time if they gave you,
21 sometimes I will get ten places where they lived,
22 they may not remember specific addresses but they
23 will say in some town, the blue house on the
24 corner, and that sort of is an indication, you
25 know, there is a lot of instability if they are

1 doing a lot of moving and that sort of thing. So,
2 you're getting clues, you are getting information
3 and you're getting some clues about other things as
4 well while you're doing it.

5 Q Okay. You mentioned that you're looking for
6 both good information and bad information because
7 you want, your idea is to get as complete a picture
8 as possible, correct?

9 A Yes.

10 Q And often good or bad information both can be
11 used in a mitigation case effectively. Is that
12 correct?

13 A Yes.

14 Q Now, as for as the records, or let me ask
15 this question. What sort of information are you
16 looking for that might be physical in nature? You
17 mentioned head injuries. Are there other things
18 that are important, that you're looking for in that
19 regard?

20 A Again, I'm looking for everything but if you
21 find, I mean if you're getting, if the person is
22 young enough you can often get records even back to
23 prenatal years, or their siblings that were
24 younger, if you are looking for child abuse or
25 things like that. I mean, you may find things in

1 medical records that would indicate that, although
2 it may not say it, but, yes, you're looking for any
3 kind of injuries there may be.

4 Q Chronic diseases?

5 A I'm sorry?

6 Q Chronic diseases?

7 A Yes. Those sorts of things, if there has
8 been lead exposure or chemical exposure.

9 Q Why would lead or chemical exposure be
10 important?

11 A Because kids who are exposed to lead earlier
12 tend to develop slower, they are lower IQ, they
13 have neurological problems, on disability. There
14 are a number of things like that that are
15 associated with lead exposure with young children,
16 and particularly living around Charleston that
17 comes up very often.

18 Q I guess also those records might reflect sort
19 of a deprived childhood if they were not being
20 properly nourished or things of that nature. Is
21 that something you would find significant in your
22 investigation?

23 A Yes.

24 Q What about mental or emotional issues, what
25 sort of places do you go in that regard and what

1 are you looking for?

2 A Well, often those are a little harder to come
3 by but sometimes it's through interviews and
4 antidotal things you find. It is very seldom -- I
5 shouldn't say that. If there are records available
6 for where someone has had treatment for medical
7 issues that were mental in nature or perhaps in
8 school they have been referred for things, I would
9 get those records and often within a set of records
10 you will find references to other institutions.

11 Q Right.

12 A And, so, then you would seek the records out
13 for the other institutions because it is not
14 uncommon for our clients, particularly when they
15 have been very deprived, to not have good memory
16 about things that have gone on, places they have
17 been treated, doctors they have seen, that sort of
18 things.

19 Q Okay. Now, you mentioned earlier you have
20 that initial interview with the client. I think
21 you said something about getting people to open up.
22 Do you meet with people once or does this sometimes
23 take more than once?

24 A No, I generally, particularly a client, I
25 meet with many times.

1 Q What's the purpose of that?

2 A Because people, very often there is family
3 secrets involved in this kind of thing, that kind
4 of things that families just don't tell everybody
5 and it's not something you are just going to sit
6 down on the bus bench and start talking to somebody
7 about, so you have to develop some kind of
8 relationship with people so that they trust you and
9 they can understand why you're asking those
10 questions to be able to get that kind of
11 information from them.

12 Q Essentially family secrets that they might
13 not want to give out, that sort of things?

14 A Right. Most people want to protect their
15 family, people don't want to say bad things about
16 their mothers, or very often siblings, it's where
17 the information may come from more easily than the
18 client to begin with but once, at least it has been
19 my experience that once somebody breaks that
20 barrier it's a little easier than when you're
21 talking to other people because they think you
22 already know something, that they will then open up
23 and begin to tell you more, but it's something that
24 happens over time, it's not, it's a slow process.

25 Q That is something you have had a lot of

1 experience doing, correct?

2 A I have had, yes.

3 Q Okay. And as for as what, what sorts of
4 things might be things you're looking for that
5 might come out of those interviews, as to sort of
6 dark family secrets or things like that that happen
7 behind closed doors, that might be relevant to
8 mitigation?

9 A Sometimes it's molestation within the family,
10 sometimes it's a child who has been molested by a
11 family member or by a friend or something like
12 that, or physical abuse or emotional abuse.

13 Q Poverty?

14 A Well, poverty is not, not as much an issue
15 because you can sort of tell from I guess the areas
16 that they have lived in, you can go back and look
17 at where they have lived or when you get their
18 school records, if they have gotten free lunches.
19 I mean, there are things like that, and that is one
20 of the questions I generally ask is, "When you went
21 to school did you get free lunches," and if the
22 person got free lunches that's an indicator. That
23 doesn't seem to be as big of an issue, poverty,
24 that people are prone to be concerned about
25 divulging as much as other things that are

1 embarrassing.

2 Q Sexual abuse, substance abuse, things of that
3 nature?

4 A Yes, and --

5 Q Okay. What about when you look at the
6 family, do you, is there, are there circumstances
7 or aspect or factors about the caregivers that are
8 important to you in doing this process?

9 A It's very, that is very important, young
10 children particularly.

11 Q What sort of factors are important to you?

12 A If they lived in a home where there was not a
13 lot of chaos and fighting and drinking and parents
14 fighting, where there was nurturing and somebody
15 paying attention to the child and loving them.

16 THE COURT: Now, when you say young children,
17 are you meaning when you're interviewing an adult,
18 an adult talking about their childhood or are you
19 actually interviewing young children?

20 THE WITNESS: No, I very seldom interview
21 young children.

22 THE COURT: Therefore are you talking about
23 normally the person charged with the crime who is
24 discussing things about their childhood or either
25 siblings talking about the childhood of that

1 person?

2 THE WITNESS: Right. Siblings, it is when
3 they are young children they really don't have an
4 awful lot of the memory. It is generally more
5 siblings, neighbors or aunts and uncles.

6 Q Or the parents themselves?

7 A Or the parents themselves but it is not real
8 common for a parent to just pop up and tell you how
9 they have beaten their kid. They are more prone to
10 minimize things that happen like that.

11 Q Right. What about things like, say, IQ or
12 school involvement or things like that, are those
13 important to your view?

14 A Yes.

15 Q How are they important, not only with the
16 defendant, but also with his caregivers or
17 siblings? Is it a larger thing or just the
18 defendant himself?

19 A Well, the defendant himself for one reason
20 but there is a large issue for the family because
21 that could be a genetic thing, to look at that if
22 you are doing a genogram of family members and you
23 see that three of the siblings have low IQ's than
24 the parent does. In doing these in family sort of
25 things like that, I establish a genogram and look

1 at if there are substance abuse or mental health
2 issues or those sorts of things, if they affected
3 other generations besides just that one.

4 Q I got you. We talked a little bit about
5 medical records and I think you said you wanted to
6 get all the medical records that were written about
7 the person if you can. Is that correct?

8 A I would like to do that, yes.

9 Q Okay. And I think you said that because
10 those things can reflect things like head injuries
11 or other conditions that might have affected that,
12 might be relevant to mitigation?

13 A I'm sorry, could you repeat that?

14 Q They might have injuries or other conditions
15 that might affect the mental function that might be
16 relevant, correct?

17 A Right. Typically I would be seeing, I
18 wouldn't find that, I would typically know that
19 ahead of time and seek the records because of the
20 injuries. I don't know that that matters.

21 Q Well, do you seek the records in every case
22 if they are out there?

23 A Right.

24 Q Or are you usually focused on finding out
25 about an incident and then going to try and find

1 the documentation to support it?

2 A No, I seek all of the records but for
3 instance, in Marion's case, when I sent for records
4 I sent for all his records because he had been at
5 that hospital because of a head injury, but in
6 those records I found out he had had, his arm was
7 broken when he was two years old, when he was six
8 years old he had been taken to the hospital with
9 blisters all over his hand where his hand had
10 touched the top of a heater. So, those were things
11 that nobody told me about and I didn't know and I
12 just discovered when I got the records.

13 Q So potentially they could lead you to other
14 things that might indicate physical or sexual abuse
15 or failure to provide basic needs or things like
16 that. Is that correct?

17 A Yes.

18 Q That is why they're important?

19 A Yes.

20 Q We talked about psychiatric or counseling
21 records. Obviously you want to get those because
22 those obviously go straight to the heart of any
23 sort of mental condition, correct?

24 A Yes.

25 Q Okay. What about school records, why are

1 they important?

2 A School records are very important because
3 they are one of the few things that go over a long
4 period of time and because of standardized testing
5 you can sort of, you can look at the child's grades
6 and of course there is differences in school
7 districts, from one to another, so while a child
8 may have, looked like he's got decent grades, you
9 can look at standardized testing and look at the
10 percentile where he is and he is making B's and C's
11 but when you look at the percentile ranking he's in
12 the fifth or sixth or seventh percentile, those two
13 things just don't jive together.

14 Q What does that indicate to you?

15 A It indicates that either he was in some kind
16 of special classes where they are being graded
17 easily but that percentile ranking overall is way
18 below the norm.

19 Q Or the school is just kind of rubber stamping
20 him through and not really giving him the help he
21 needs?

22 A Well, that may be it, or it could be that
23 he's, I mean, sometimes people are in special
24 classes or they are in level classes where there is
25 really not an indication until you go to school and

1 talk to somebody and get somebody at that school to
2 go through the records or somebody that knows them.
3 The standardized testing, you can look at that and
4 just know what it means, but the school records
5 themselves, I have gone and actually interviewed
6 somebody at the school, it is kind of hard to
7 understand.

8 Q So, that goes along with his school records
9 are indicative of his cognitive functions?

10 A These are the most consistent source, I'm
11 saying. There are really not medical records or
12 any other kind of thing. You have got a kid going
13 to school doing something every single day where
14 somebody is recording it periodically.

15 Q Right. Might they also reflect things like
16 the level of parental involvement or be indicative
17 of any sort of abuse or problems at home?

18 A Absolutely.

19 Q So, they are important in that regard as
20 well?

21 A Yes. And even if they don't reflect that,
22 when you go to school you will usually find it out.

23 Q Right. What about things like, you know,
24 employment or military records, are those important
25 in your analysis?

1 A Yes.

2 Q In what way?

3 A Again, because they show, if it's work
4 records, a consistency with what they do, whether
5 they are on time, whether they are dependable, the
6 level of jobs they are able to handle. Again
7 talking to the employer is important as well
8 because you find out additional things that just
9 aren't going to show up in records and military
10 records. The same sort of thing, that you are just
11 going to be able to see the testing when they went
12 in and because, I don't remember what it's called
13 but there is some sort of test they test you when
14 you get in that grade and I think that has
15 something to do with how you're placed as for as
16 jobs. Obviously I don't know much about the
17 military but --

18 Q Right. But if you knew that your defendant
19 had been in the military that is something you
20 would look at, correct?

21 A Yes, definitely.

22 Q Now, what about prior incarceration, any
23 records relating to that? Is that something you
24 would look at as a matter of course if you knew he
25 had been in jail?

1 A Yes, you would get their records.

2 Q Are those relevant?

3 A Because you see how well that person adapts
4 to incarceration, if they have got lots and lots of
5 disciplinaries in that system, they have not
6 adapted as well as somebody else. You look at the
7 degree, I mean, because sometimes you can get that
8 because you're not standing in line right, it would
9 be whether, you know, it was fighting sorts of
10 things or violent sort of things as opposed to just
11 not being in line right or those simpler sort of
12 things.

13 Q Right. And we talked a little bit already, I
14 guess, about DSS records, and are those important?

15 A Well, if there are DSS records other than
16 things related to welfare type records?

17 Q Right.

18 A It would indicate that someone had made a
19 report and DSS had checked up on it and if they
20 continued it they apparently had a founded case.

21 Q Right. As to maybe neglect or abuse?

22 A Well, neglect or abuse, the same thing, I
23 mean if it's a founded case.

24 Q Obviously being neglectful is abusive. I
25 guess my distinction between neglect and failure to

1 provide those needs, as to abuse would be sort of a
2 physical or sexual action?

3 A Yes.

4 Q In any event, are there any other records
5 that are important, that we hadn't talked about,
6 that you can think of right now?

7 A To a specific person there might be but just
8 generally those are the main records that you would
9 look for. Well, also if the person has had
10 criminal activity you would want police records,
11 incident reports, Clerk of Court, all those kind of
12 things. If they have been divorced, if there has
13 been any kind of restraining order in the family,
14 you would want that, you would want the divorce
15 records, those kind of things as well.

16 Q All right. And I guess we've got the records
17 aspects of it and then the other half would be sort
18 of the leg work interviewing people. Is that fair
19 to say?

20 A Yes. Well, and putting all that, you have to
21 put all that information together. That is what
22 makes mitigation effective or not effective, not
23 just having a bunch of facts and throwing them out
24 there somewhere.

25 Q Right.

1 A It doesn't really work. It is taking those
2 records and integrating them into time and
3 chronology and other things that were going on in
4 their life at the same time.

5 Q You don't just gather all the facts, you kind
6 of take them and synthesize them into coherent time
7 line or presentation to get an accurate view of the
8 defendant's life up until the point that he was
9 incarcerated?

10 A And then those interviews you do with the
11 family and if you know of events, records are
12 obviously the best documentation you can get but
13 sometimes there aren't any records, maybe they
14 didn't go to a hospital or that sort of thing, and
15 if they didn't, then you try to get the same
16 information from three separate people
17 independently because that's a good indicator. If
18 one person tells you something, you know, I mean,
19 I'm not saying it wouldn't be true but it's much
20 better if you can get that information from at
21 least two, preferably three people independently in
22 order to say this particular thing happened and we
23 feel certain that it happened.

24 Q Right. So, then, once you have kind of
25 gathered that information you synthesize it, at

1 that point you're kind of looking for those issues
2 of significance that might be things of importance
3 in the defendant's life, correct?

4 A For the trial, you mean?

5 Q Or just in mitigation, not in the trial, but
6 I mean you're kind of looking for those things that
7 might be important in this particular individual's
8 life, whether there was some sexual abuse, whether
9 there was, whether there was something indicating
10 adaptability in prison, things you have mentioned
11 over the course of the past few minute in your
12 testimony, correct?

13 A I guess significant things in their life
14 maybe would be how I would --

15 Q Would be what?

16 A Significant issues, significant events in
17 their life as opposed to things. I would look for
18 things that were significant or could have caused
19 them to change directions in the way they were
20 going, I guess, sort of looking at why somebody is
21 clicking along fine until something happens.

22 Q Right. I guess those could be either a
23 significant event that occurred or could kind of be
24 a things recurring sort of thing that was happening
25 in their life that causeed an effect open their

1 life, either positive or negative?

2 A It is rarely a single event but I suppose it
3 could be, but it is generally an accumulation of
4 several things maybe in close time frame.

5 Q Right. And I guess really there is kind of
6 two purposes, number one, if there is evidence of a
7 tough prior life, to kind of create a general
8 sympathy, and then the second purpose is to maybe
9 perhaps explain but not excuse how the individual
10 ended up in the circumstance they found themselves
11 in. Is that a fair characterization, or how would
12 you characterize it?

13 A Well, what you want to do with that
14 information is tell your client's life story. You
15 want to make the jury know that person, you want,
16 because often it is just a person sitting at the
17 table and the only thing they have heard during the
18 course of the entire trial is about the events that
19 happened. And, so, and I'm talking about this in
20 the case of where somebody says they did it and
21 very often death penalty cases are about, strictly
22 about mitigation, the person is not denying they
23 did it, everybody knows from the get go that they
24 did it, so you are working on mitigation and in
25 that case you want the jury to have some compassion

1 for your client, to look at that client, if they
2 perhaps have got children of their own, you know,
3 how would this have been different if this person
4 had had, was raised in a different way or that sort
5 of thing. It is just putting together a life story
6 of them and, I mean, there is good things, there is
7 not going to always just be bad things but you're
8 blending together the things that were difficult in
9 their life, that made their life difficult, but
10 you're also adding in the things that they did well
11 and people that love them and people that cared
12 about them and the good things that they did in the
13 lives of those people and what effect it had on
14 them.

15 Q Okay. Now, we talked about I guess kind of
16 how you coordinate and gather and synthesize this
17 background information and I think you also
18 mentioned yesterday about perhaps suggesting
19 another expert that might need to review the
20 defendant based on issues that you have identified
21 in his history. Is that something you do as well
22 as part of this process?

23 A Well, I define the issues that may need
24 further experts, that is what I was talking about.

25 Q Right.

1 A And then helping the attorneys locate those
2 experts and then once we do that, in getting
3 documentation that they need to them, but if when
4 I'm -- okay, that's it.

5 Q Okay.

6 A I was going to explain to you about the
7 situation. I mean, for instance, I had one case
8 where the family told me the fellow had been hit by
9 a car when he was seven and when I was talking to
10 him about it he said, well, yes, that had almost
11 happened but he saw the car coming down the street
12 and then he stepped in front of the car and
13 stretched out his arms and he stopped the car, so
14 it didn't really hit him. Now, you know, that is
15 sort of an indication that he probably needed to be
16 seen by some other expert, so in that case,
17 sometimes it is just loose talking or they are not
18 making sense in what they're saying, they jump from
19 one subject to another, that kind of thing.

20 Q And I guess then you provide all this
21 background information to any additional expert as
22 they may need it, that review the defendant's more
23 specialized issues, is that correct?

24 A Yes, and anything they would need.

25 Q I guess also with regard to a testifying

1 social worker, like Jeffrey Yungman was the one in
2 this case, correct?

3 A Yes.

4 Q You are going to provide that social history
5 that you started gathering to him and he's the one
6 who is ultimately going to testify to it at trial
7 after he has reviewed it as well and done any
8 follow-up that he wants to do. Is that correct?

9 A Yes, and normally the social worker, once
10 with the attorney, the social worker doesn't
11 generally get involved until later in the case but
12 once with the attorney, and this should be a team
13 effort, I mean the whole, this whole thing should
14 be a team effort with the attorney as the leader.

15 Q I understand.

16 A You have decided what the theme of the case
17 is, what your theories are, how this is going to
18 work, you have worked on that some, and then the
19 social worker, he would separately, because he's
20 going to testify about it, would contact those
21 people separate from me.

22 Q All right. But he does have the interview
23 that you have had?

24 A Right.

25 Q Sometimes he's unable to contact those

1 people. Is that correct?

2 A I don't know. I mean, I wouldn't know that.

3 Q I'm just talking in general. Sometimes for
4 whatever reason he has to rely on your initial
5 interview, or either they --

6 A They should not rely on my interview to
7 testify about it. They should not testify about
8 something that they haven't talked to the person
9 personally, at least that is my understanding from
10 social workers that I have worked with, they cannot
11 testify in court about something when they haven't
12 spoken to the person personally.

13 THE COURT: Hold on one second.

14 MR. WATERS: Yes, sir, Your Honor.

15 (Brief recess).

16 THE COURT: Okay, we'll go on with further
17 cross-examination.

18 MR. WATERS: Thank you, Your Honor. May it
19 please the Court.

20 BY MR. WATERS:

21 Q I guess we have gone through a lot of what
22 you do when you do these mitigation investigations.
23 I guess the bottom line is, based on the education,
24 training and experience you have doing this you
25 kind of know what to look for and the main thing is

1 to know where to get it, whether it's from people
2 or records, where and how to get that information.
3 Correct?

4 A That's a big part of it, yes.

5 Q Okay. And I guess that's when an attorney
6 hires you early in the case, that is what they're
7 looking for you to do is to go out and find this
8 information, the kinds of stuff we've discussed,
9 correct?

10 A Yes.

11 Q When did you get involved in this case
12 specifically?

13 A Sometime prior to July 30th, 2001. My first,
14 I went to Dorchester jail on July 30, 2001, and
15 that was the first, although I didn't get in to see
16 Marion that day because they had not sent the
17 authorization, that was the first time.

18 Q Are you reading off the document --

19 A This is my time, I just did my time log.

20 Q Okay.

21 THE COURT: Your question was when she first
22 got involved? You mean like when she first got
23 called by Mr. Cummings or Miss Hardee-Thomas?

24 MR. WATERS: When she first started working
25 on the case.

1 BY MR. WATERS:

2 Q The first call and when you first got
3 started?

4 A It must have been sometime in July of 2001.
5 I met with Marion the first time on August the 7th
6 of 2001.

7 Q Okay.

8 MR. WATERS: Your Honor, at this time I would
9 move her time log in as Defendant's 12, I believe,
10 and request we be able to substitute a copy for her
11 original if that's acceptable to the other side.

12 THE COURT: Any objection?

13 MR. BROWN: I haven't seen it. I don't
14 anticipate one.

15 THE WITNESS: I just went back on my computer
16 and took copies and placed all the bills into one
17 thing so I could see what I had done.

18 MR. WATERS: That's fine.

19 THE COURT: What are you looking for? Are
20 you looking for that?

21 MR. WATERS: Yes, sir. That's a fair
22 reflection of the time you spent on this particular
23 case, is that correct?

24 THE WITNESS: Yes, this is what I turned in
25 with bills but it was a number of different bills.

1 MR. WATERS: I understand.

2 THE COURT: Why don't we hand it to him
3 unless you need it during cross. I tell you what,
4 come on with the cross and then we'll copy it, it
5 is only a few pages, so we can give the original
6 back to her before she leaves.

7 MR. WATERS: Yes, sir, Your Honor.

8 THE COURT: Do you want to continue? In
9 evidence as Respondent's Exhibit Number 12.

10 (Dale Davis time log marked and received in
11 evidence as Defendant's Exhibit Number 12).

12 BY MR. WATERS:

13 Q You mentioned yesterday you interviewed, I
14 think you said about thirty people, is that
15 correct?

16 A Somewhere around that number.

17 Q Do you have a list of those people, can you
18 tell us who they were?

19 A Yes. There were probably more people than
20 this but they would be in the course of getting
21 records and things.

22 Q Some of them you interviewed more than once,
23 right?

24 A Some of them I interviewed more than once.
25 One person yesterday we spoke about was Yolanda

1 Bowman. When I looked back through here, she was
2 with a group of people on the front porch when I
3 interviewed them, I did not interview her
4 individually because when I called to interview her
5 I think she had some kind of charges and talked to
6 her lawyer and wasn't comfortable with the
7 interview but she was part of a group on the front
8 porch initially.

9 Q I understand.

10 A I have Marion Bowman, Dorothy, both his wife
11 and his mother's name are Dorothy but Dorothy
12 Denise Bowman is his mother, Dorothy Williams
13 Bowman is his wife. His grandmother Miss Gadson,
14 his dad Marion Bowman, Sr., his sister Kendra
15 Bowman, maternal aunt Frances Bruce, his maternal
16 aunt Jean Lincoln, his maternal aunt Mary Johnson,
17 maternal aunt Marie Gadson, maternal aunt Sara
18 West, maternal uncle Robert Gadson, Jr., a cousin
19 Katrina West, and I believe she was also a witness,
20 that is what I have got. A maternal cousin Kim
21 Washington, Joseph Sims, who was mom's former live
22 in boyfriend. Cynthia Sims, the mother of Joseph.
23 Trina Sims, sister of Joseph Sims. Jennifer
24 Thompson, teacher. Katherine Lee, teacher. Nancy
25 Hendrix, teacher. Mr. Busby, who was a former PE

1 teacher. Mr. Tyler DeFord, former principal.

2 Coach Jake Connor, Lockhart Elementary. Cynthia
3 Kemp, principal at Brancheville High School. And
4 total number, those numbers are 24.

5 Q You say there could be more that you don't
6 remember now?

7 A Right. These I wrote something about.

8 Q They were significant enough you decided to
9 document what you found out about them, correct?

10 A And Kandee's mother also.

11 Q Okay. All right. I guess ultimately you
12 provided all the information that you had gathered
13 to Jeffrey Yungman, is that correct?

14 A Yes.

15 Q Did you exclude any or you just gave him
16 pretty much the whole thing, copies of the whole
17 thing, or how does that work?

18 A I'm sure I gave him the whole thing. I had
19 worked one other case with Jeff before that and I
20 just turned over everything I had done to him.

21 Q All right. Now, I want to find out a little
22 bit about the DSS records and how that kind of
23 heated up and what happened with regard to those.
24 When did you first seek to get DSS records?

25 A While I don't have it on my time sheet but I

1 do have it on something else, on April the 4th I
2 called DSS and I realized in looking at this that
3 is one other thing I should have corrected, when I
4 got all those record, which are in the car if you
5 want them, all those records I got from DSS.

6 Q Those are the --

7 A The welfare.

8 Q The welfare stuff?

9 A Food stamp stuff.

10 Q Got you.

11 A But I contacted them on April the 2nd and
12 took a release over to their office and then I
13 didn't hear back and then at some point I began to
14 check back with them about the records. On April
15 3rd, the memo that was not dated --

16 Q Uh-huh (Affirmative)?

17 A -- by my time log that was April 3rd that I
18 had, because that was when I went to Orangeburg to
19 DSS and they referred me to Dorchester.

20 Q That is 2002, correct?

21 MR. BROWN: Your Honor, I'm a little
22 confused, I have contact date April 4th, checked
23 back April 3rd.

24 A Yes, this is 2002.

25 Q Okay. I don't mind asking Mr. Brown's

1 question. We had April 4th and April 3rd, so maybe
2 you could just check those dates for us real quick?

3 A Okay, April 3rd is when I -- I made an
4 initial call on April 2nd. Let me make sure about
5 that. I called Orangeburg DSS office April 2nd. I
6 went up there on April 3rd. On April 4th I went to
7 Dorchester DSS on Orangeburg Road with a release
8 and they referred me to Miss LeMatty. Is that her
9 name?

10 Q Yes.

11 A LeMatty. I didn't hear back from them, and
12 then when I began checking back trying to get the
13 DSS records, on May 15th I called there, and DSS
14 records belong to the State, they don't belong to
15 the person.

16 Now, yesterday somebody said something about
17 an order but I wasn't aware of an order for them to
18 turn over records. I had been trying to get them
19 with a release.

20 Q Right.

21 A But at that point when I called on the 15th,
22 I called again on the 16th and that, May 16th,
23 2002, and that is the day I have that I called to
24 Carol regarding faxing the subpoena and it was in
25 that time frame when Marva Hardee-Thomas called her

1 and they worked it out, I guess, because on May
2 21st I have got down that I went and picked up,
3 went to DSS offices and picked up the records and
4 reviewed them but it was only info related to
5 financial matters in 1985 to 1999.

6 Q Okay. Was that the first attempt you had
7 made in the course of your investigation in this
8 case, that I guess started in July, 2001, to get
9 DSS records?

10 A In April it was.

11 Q Okay. And I think you testified earlier that
12 is something that is usually the type of thing that
13 you usually want to look for. Is there any
14 particular reason why it was April that you first
15 made that effort?

16 A I should have done it sooner. I didn't know
17 for a fact that there was anything there but I
18 should have done it sooner.

19 Q Okay. I want to show you real quick page
20 4547 of the record, and this is when I think Mr.
21 Cummings first raised this issue at the penalty
22 phase, starts on line 21, and specifically there is
23 a reference to great reluctance of the family, and
24 I just wanted to see if you recalled exactly what
25 that was in relationship to DSS records?

1 THE COURT: Was this a hearing not in the
2 presence of the jury or what?

3 MR. WATERS: Yes, sir.

4 THE COURT: It shows Mr. Bowman wasn't there.

5 MR. WATERS: I believe this was just kind of
6 an in between things going on type of housekeeping.

7 MR. BROWN: I think it is during
8 deliberations in the first phase.

9 MR. WATERS: That's correct.

10 THE COURT: Okay.

11 MR. BROWN: Yes, sir.

12 THE WITNESS: That, again that probably -- do
13 you know what date this is?

14 MR. BROWN: The 20th of May.

15 MR. WATERS: That's correct.

16 THE WITNESS: The 14th of May.

17 MR. BROWN: 20th.

18 THE WITNESS: The 20th of May, okay. So,
19 that would coincide with the next day me being able
20 to pick up the records.

21 BY MR. WATERS:

22 Q Okay.

23 A Because we had done the subpoena on the 16th,
24 but whatever those records were that came up in the
25 course of the trial, that was mentioned yesterday,

1 I never saw those records and I don't know what it
2 was making reference to.

3 Q What about the reference to the great
4 reluctance of the family, I think Mr. Cummings
5 says, "As part of our investigation in the case
6 something has come to light most recently through
7 great reluctance of the family."

8 A I don't know what he was talking about, I
9 don't know if that was something to make it more
10 palatable to say, but I don't know why he would
11 have said that.

12 Q We talked a little bit yesterday, I think
13 when we broke yesterday I was curious about your
14 entire file in this matter and I think you had a
15 bag full of stuff?

16 A Yes.

17 Q Do you have that with you?

18 A I do.

19 Q Can you just pull that out? We have this
20 notebook right here, is that it?

21 A I have this file. I actually was given all
22 of the discovery in this case but it wasn't
23 anything that I needed and so I didn't keep it. I
24 mean, it was all the stuff about the guilt phase.

25 Q That is what I was going to ask. You did

1 ultimately receive all the discovery in this case?

2 A They copied the discovery and gave it to me
3 but these are the records that I collected,
4 delivered copies of those to his office as well.

5 Q So, we've got a large notebook binder, three
6 ring binder, how thick would you say?

7 A It's full.

8 Q It's full, this is a three inch binder and
9 it's full. You have, on top you have got your
10 table of contents there.

11 A And again I just, I had packed all this stuff
12 away in storage, I just did that last night but I
13 did, I had the same sort of things with the
14 dividers in between here before.

15 Q So, that accurately reflects what is in this
16 three inch binder, correct?

17 A Yes.

18 Q Would you quickly read off the categories you
19 had in that notebook?

20 A Life chronology, interviews, school records,
21 genogram, Department of Mental Health, Orangeburg
22 Regional Hospital delivery record, Dr. O'Guinn,
23 Orangeburg Hospital other than delivery,
24 Branchville Police Department, Orangeburg County
25 DJJ and Orangeburg County Sheriff's office,

1 Orangeburg County Jail, Dorchester County Jail
2 general population, Dorchester County Jail medical,
3 Orangeburg County Clerk of Court, parents' divorce,
4 SCDC general population and SCDC medical.

5 Q Okay. And then you had also a file folder.
6 What is in that?

7 A It is just other stuff that, notes where, the
8 original notes that I took in interviews, things
9 where I went to the jail to see him, time logs,
10 memos on things. There were some memos that
11 weren't interviews, that I sent to the attorney and
12 I didn't catalog those in here.

13 Q Correct.

14 A I just sent them to him because sometimes in
15 the course of doing interviews with the family I
16 would get information that really related more to
17 guilt/innocence than it did to anything I was doing
18 but I still passed that information on to them.

19 Q So, I guess over the course of this thing,
20 you talked about some difficulties you had in
21 communicating with counsel but at times you mailed
22 memos and the like to counsel, is that correct?

23 A I usually faxed. They must not, in looking
24 back, they must not have used email because I was
25 using email for everything else that I was doing at

1 the same time but I didn't have any emails to or
2 from them.

3 Q So, you faxed a number of communications to
4 counsel over the course of this case?

5 A I faxed whatever, if I thought it was
6 something they needed to know.

7 Q All right. About how thick do you think that
8 accordion folder is there?

9 A Well, maybe three inches.

10 Q And you mentioned a genogram. What is a
11 genogram?

12 A A genogram is a depiction of the family and
13 relatives in particular.

14 Q Kind of like a family tree?

15 A Just a diagram of a family, yes, a family
16 tree.

17 Q Then, could I see the one you did? And then,
18 keep that out just real quick, then on the genogram
19 it is often useful, is it often useful to sort of
20 look for patterns among his greater family, such
21 things as substance abuse or sexual abuse or things
22 like that that might be sort of an extended family
23 or community issue, is that correct?

24 A Yes, and it's a good thing if when you bring
25 in a social worker, typically they are maybe the

1 ones that would use it, if you are talking about
2 things that are generational, that if you give
3 colors to those things, I mean, most people aren't
4 used to looking at a genogram, so if you put colors
5 up and they see yellow and they know that
6 designates one thing and red something else it
7 makes a picture of it that is pretty easy to
8 understand without having to look at each
9 individual thing.

10 Q And what sorts of issues relative to
11 mitigation investigation are the kinds of things
12 that might be generational that might reoccur?

13 A Generations, from parent to child and the
14 like, aside from medical things like diabetes and
15 that.

16 Q More social issues?

17 A But often sexual abuse would run in families
18 especially if it's parent incest type molestation.
19 Mental illnesses, substance abuse, alcoholism,
20 those kind of things.

21 Q Do you recall if you were the one who
22 suggested Mr. Yungman in this case?

23 A I did.

24 THE COURT: What was that question again?

25 MR. WATERS: If she was the one who suggested

1 Mr. Yungman.

2 THE COURT: You were the one?

3 THE WITNESS: Yes, unfortunately I was.

4 BY MR. WATERS:

5 Q I'm sorry, what?

6 A I just said unfortunately I was.

7 Q Well, you say unfortunately. Why did you
8 suggest him to counsel?

9 A He had been, he had done a lot of this kind
10 of work, he had come, and I really like Jeff a lot
11 so I don't want this to sound bad but I think he
12 realized as much as I did that in this particular
13 case it was just not good.

14 Q In hindsight it didn't work very well in this
15 particular case is what you're saying?

16 A He didn't do a very good good job, but I
17 think part of that had to do with there was simply
18 no preparation, it was nothing. I mean, there was
19 no contact between he and the lawyer, there was no
20 theme, there was no -- we just sort of didn't know
21 where we were going or what we were doing and once
22 he was qualified it was sort of like -- it was just
23 awful, I just remember it being awful.

24 Q I'm curious about that because, you know, we
25 just went through I guess for probably half an hour

1 or however long it's been all these things that you
2 have had the training and the experience to do, you
3 know, you obviously didn't need an attorney to sit
4 next to you right now and explain to you what
5 records you needed to get and what interviews you
6 needed to do and what issues to look for, correct?

7 A Correct.

8 Q You knew how to do that yourself, right?

9 A Right.

10 Q In fact the attorneys were relying on you to
11 go look for that type stuff based on you expertise,
12 education and training, to go look for those sort
13 of things you need to get based on that expertise
14 and training, right?

15 A Well, it wasn't what wasn't gotten. It's the
16 presentation. The effective use of mitigation is
17 just as important, maybe more important than the
18 gathering of the information. It was, like I was
19 saying before, you just get a lot of facts and
20 throw them together but unless they are put
21 together in a certain way to tell a story that is a
22 compelling story about your client they can
23 actually hurt more than they can help.

24 Q But didn't you say that was part of your
25 expertise, I think you just testified to that, that

1 that was part of your expertise, in synthesizing
2 that, the time line and those sort of specific
3 issues? I think you just testified to that, right?

4 A That's right but I'm not the one that put Mr.
5 Yungman's stuff together. I mean, I didn't put his
6 testimony together or, I mean, I don't really have
7 anything to do with that. All I do is present the
8 information. Similar to the lawyer, I don't really
9 have any control over how it's used.

10 Q I'm talking about from your perspective.

11 A I gathered the information and presented the
12 information.

13 Q You synthesized it and identified important
14 issues as well, correct?

15 A Well, I did not. I mean, necessarily, I
16 didn't necessarily identify important issues. I
17 just gave everything that was there and there were
18 important issues and I just, from my perspective I
19 would have put it together differently, and there
20 is, there is just a way to tell a life story than
21 reading it off. Reading it off a paper does
22 nothing to help a jury get to know your client.

23 Q I understand. And you said Mr. Yungman, you
24 knew he had done a lot of these before, correct?

25 A Yes. I mean, he had worked a lot, not that I

1 personally had been involved in other than one, but
2 I knew he had a, his resume' had a lot of death
3 penalty cases on it.

4 Q I think you were asked yesterday about
5 Dorothy Bowman, the wife, correct, and you said you
6 had a conversation with her, correct?

7 A Yes, I met with her a couple times.

8 Q Do you recall when those were?

9 A I can tell you when at least one of them was,
10 August 15th, 2001. I met with her that day and
11 then I believe there was a different day when I
12 went up to, after she had moved to Orangeburg, and
13 took some pictures, interviewed her again and took
14 some pictures of her daughter.

15 Do you want me to find that date?

16 Q Take a quick look. We're not going to take
17 too much time for it but if you can put your finger
18 on it that would be great.

19 A I also spoke to her on April 14th, 2002. And
20 on April 17th, 2002, I went to her house in
21 Orangeburg and took some pictures of her and the
22 baby.

23 Q I'm sorry, you did what?

24 A I took pictures of the baby mostly but I also
25 took pictures of her.

1 Q Okay. The prior interview, what did you do,
2 the one on, the previous one?

3 A April 14th.

4 Q What did you do then?

5 A I evidently needed some information from her
6 because I have just got lengthy interview and
7 obtained info needed but at this point I don't know
8 what it was.

9 Q You don't remember the substance of that?

10 A I don't, unless --

11 Q We already discussed the fact that you
12 suggested a testifying social worker in this case
13 which turned out to be Jeffrey Yungman, correct?

14 A Yes.

15 Q Did you suggest any other experts to defense
16 counsel?

17 A Dr. West who was a neuropsychologist.

18 Q That was because of the head injury, you
19 wanted him evaluated for any sort of organic
20 damage, correct?

21 A Right.

22 Q And anything else?

23 A And Dr. Morgan, Dr. Harold Morgan is a
24 forensic psychiatrist.

25 Q That is just for sort of mental illnesses or

1 other psychiatric issues?

2 A Checking out, because I had been to Hall, to
3 double check him.

4 Q Those were the other two that you suggested,
5 correct?

6 A Yes.

7 Q And those are pretty typical ones that you
8 would do in virtually any one of these cases,
9 correct?

10 A Right.

11 Q Social worker, psychologist and psychiatrist,
12 correct?

13 A Yes.

14 Q I think, if you could just explain a little
15 bit about the family issue you had, I'm sorry to
16 bring that up but there was a period of time when
17 you were absent from the trial, correct, because of
18 a family issue?

19 A Right.

20 Q That was an illness or a death in the family
21 or something?

22 A My brother, he did not die but they thought
23 he was going to from a heart attack but --

24 Q I understand and certainly those things take
25 priority. Do you recall how long you were kind of

1 out of commission?

2 A I think I was gone three days.

3 Q Do you recall which days those were?

4 A I don't. Between May 8th and May 11th I
5 don't have any time in there, so possibly at that
6 time but I'm not, at this point -- I know I was
7 here when jury selection began, so I don't know
8 whether my brother had become ill just before that
9 or if it was actually during the course of the
10 trial. I just can't remember.

11 Q So, you had to fly somewhere or --

12 A No, it was just in Alabama, we drove. It was
13 two or three days.

14 Q When you returned you came right back to
15 court?

16 A Yes.

17 Q Could I see your notes again that we have
18 introduced as Defendant's 12?

19 The Court's indulgence one moment, Your
20 Honor?

21 THE COURT: Yes, sir.

22 MR. WATERS: Your Honor, that's it.

23 Thank you, Miss Davis.

24 MR. BROWN: I don't know if we want to go
25 ahead, if you want to do redirect now?

1 THE COURT: We're going to finish her out.

2 All right, Mr. Brown.

3 MR. BROWN: May it please the Court.

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1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. BROWN:

3 Q I'm going to show you what is marked
4 Plaintiff's Exhibits 72 and 73. Are those two of
5 the photos you took that day?

6 A Yes.

7 Q In April?

8 A Yes. This is Marion's baby.

9 Q Okay. Now --

10 THE COURT: Are these in evidence?

11 MR. BROWN: We would move them to be in
12 evidence.

13 MR. WATERS: No objection, Your Honor.

14 THE COURT: All right. Numbers?

15 MR. BROWN: 72 and 73.

16 THE COURT: In evidence.

17 (Photograph marked and received in evidence
18 as Plaintiff's Exhibit Number 72).

19 (Photograph marked and received in evidence
20 as Plaintiff's Exhibit 73).

21 BY MR. BROWN:

22 Q And you testified a little bit about Dr.

23 West, you testified about Dr. Morgan, and some of
24 this is just, Dr. Morgan you mentioned was kind of
25 a double check behind a Hall evaluation?

1 A Yes.

2 Q And obviously when you get this information
3 there is some decision, a team decision that there
4 is no reason to follow up on something or there may
5 be a reason to follow up?

6 A Yes.

7 Q Without getting into what Dr. West said, was
8 there a decision to bring him to the courthouse by
9 the defense team?

10 A That was my understanding.

11 Q Okay. You were here when he arrived?

12 A Yes.

13 Q I'm trying to, that was your testimony from
14 yesterday, I'm trying to put this back in context
15 but it was too late for his testimony to be
16 presented?

17 A Yes, that was my understanding.

18 Q But it is not because there wasn't a desire
19 to put his testimony up?

20 MR. WATERS: Your Honor, I object to that. I
21 think that that is beyond her knowledge.

22 THE COURT: Sustained. Let's move on.

23 Q Did you create a memo regarding your
24 interview with Dr. West?

25 A Yes.

1 Q I'm going to show you Plaintiff's Exhibit 74
2 and ask if that is an accurate depiction of your
3 memo?

4 A Yes.

5 Q And that includes some information that's
6 relevant to your work as a mitigation expert or as
7 looking for --

8 A Yes, this would be information that I would
9 see as important.

10 Q Important mitigation information?

11 A Yes.

12 Q All right.

13 MR. BROWN: Your Honor, we would move this in
14 as 74, information that was provided to the
15 attorneys.

16 MR. WATERS: No objection, Your Honor.

17 THE COURT: 74 is in evidence.

18 (Dale to Marva and Norb memo dated April 18,
19 2002, marked and received in evidence as
20 Plaintiff's Exhibit Number 74).

21 BY MR. BROWN:

22 Q I'm going to show you what has been marked as
23 Plaintiff's Exhibit 75. Is that like the genogram
24 that you referenced?

25 A This would not be a genogram, it was just

1 something demonstrative that Jeff was going to use.

2 Q And explain how that was compiled or what

3 does it depict, more accurate?

4 A It depicts events in his life, different

5 events in his life, and problems and difficulties.

6 Q And do you know whether Jeff ever used that?

7 A Yes, he did.

8 Q And he testified from it?

9 A Yes, he did.

10 Q Okay. And how about the -- do you know

11 whether the information that would have been

12 provided by Dr. West was ever presented?

13 A By Dr. West? You mean --

14 Q Well, or --

15 A The information in this memo?

16 Q Whether the jury ever heard that information.

17 A If it wasn't in Jeff's report they didn't

18 hear it. I can't recall off the top of my head.

19 Q And now that you have had a chance to look at

20 your file what do you know about the work records?

21 A There --

22 Q Sorry.

23 A Marion had employment at different places

24 along, he had worked at the school and again --

25 Q Which school?

1 A He worked -- I don't know.

2 Q At the school in Branchville?

3 A At a school, one of the schools in
4 Branchville, I think just sweeping or, I mean, it
5 wasn't any big job but a small job and that may
6 have been because the woman that he, that his dad
7 married was a custodian at the school, so she may
8 have helped with that. But he worked at a heating
9 and cooling, mechanical contracor, he worked for
10 his uncle. He had several paid type jobs.

11 Q That would be consistent with places like
12 Stacey's Rebar?

13 A Right, that is the work his uncle did, was
14 the rebar work.

15 Q That is the uncle you say would pick up
16 Marion and Marion was always ready to go?

17 A Yes. That was Robert Gadson.

18 MR. WATERS: Objection to hearsay.

19 THE COURT: Overruled.

20 Q You referenced some work testimony yesterday?

21 A Yes.

22 Q Did that information go to Jeff Yungman?

23 A Yes.

24 Q Did it go to the attorneys?

25 A Yes.

1 Q You referenced prior incarceration as a
2 general type of records that you look for?

3 A Yes.

4 Q If there were records of prior incarceration,
5 including a stay at the restitution center, is that
6 something you would have gathered?

7 A Yes. There was one other expert that I
8 recommended as well and that was Jim Aiken, who was
9 a prison adaptation expert. That just made me
10 think of that.

11 Q Do you know whether you found information on
12 Mr. Marion Bowman's stay at the restitution center?

13 A I don't think -- it seems like he didn't
14 because he had already made restitution by the time
15 he got there.

16 Q Would you have records in your file?

17 A Yes.

18 Q Because there is a question about versus
19 adaptability in prison. The fact he would be able
20 to work in a confined setting productively would be
21 important, wouldn't it?

22 A Right. And all of his jail records and
23 prison records, all of those things were sent to
24 Jim Aiken who reviewed them.

25 Q Did you keep a copy?

1 A Prior to his testimony?

2 Q Did you copy a copy of those?

3 A Yes, I did.

4 Q Would you look to see if there is information
5 about a stay at the restitution center?

6 A Is that going to be in the prison records or
7 court records?

8 Q It would actually be in the Department of
9 Probation, Parole and Pardon.

10 THE COURT: You asked her to look through her
11 file and she had to ask you where. You don't know
12 where it would be?

13 A Well, I think that, I was thinking that I saw
14 it in the Clerk of Court's Records because they
15 were showing the restitution was done.

16 Q Which would be consistent with going to the
17 restitution center and paying restitution?

18 THE COURT: Or paying it before he went, one
19 or the other.

20 A That is what I think -- hold on a minute.

21 THE COURT: I mean, we know whether he went
22 or not, I assume. It's not a test question.

23 Q Do you have a chronology?

24 A The source is in the Orangeburg Clerk of
25 Court's file, order deleting restitution center

1 requirement, monetary obligations have been paid in
2 full as of 12/8/98.

3 Q And on that note you had the date he was
4 released from jail?

5 A Yes.

6 Q Which year are we talking about on this?

7 A That was 1998. He was released from the
8 Department of Corrections on July 6th, 1998, and
9 that was December 10th, 1998.

10 Q He was released from prison in July of '98
11 and the restitution requirement is not eliminated
12 until December of '98, so if he is paying
13 restitution during that time period through the
14 restitution center, then they are going to
15 eliminate that when he is paid up?

16 A Right.

17 Q Even if he hadn't finished the maximum stay
18 there, so it didn't necessarily say he didn't go
19 there, it said at some point when he paid it all up
20 they discharged him?

21 A Right.

22 Q Okay. That is actually a Clerk of Court
23 document and not a document from Probation, Parole
24 and Parole? If you don't have it that's fine,
25 we're just trying to get that information.

1 A Okay.

2 A It's an order, I've got the order if you want
3 it.

4 Q That sent him there or the order --

5 A The order that says inasmuch as the monetary
6 obligation is paid in full and satisfied as of this
7 date the restitution center requirement is deleted
8 and the subject is continued on probation.

9 Q And is that -- that's after his release, four
10 months after his release?

11 A Yes. This was in December of 1998.

12 Q So, from the time of his release from prison,
13 for about four months he actually still had that
14 requirement at the restitution center?

15 A From July to December.

16 Q It would be consistent with --

17 A I guess what, I think what my take on it was
18 is the restitution center doesn't always have bed
19 and places as soon as somebody gets ordered to go
20 there, so --

21 Q I'm with you, but we don't know that he
22 didn't go there?

23 A No.

24 Q I want to ask you --

25 MR. WATERS: Excuse me, Your Honor, I would

1 ask that Mr. Brown not do a stop sign to the
2 witness, please.

3 MR. BROWN: I'm sorry, it's not a stop sign.

4 THE COURT: I know. Mr. Cummings said he
5 thought it was a wave.

6 MR. BROWN: I'm talking with my hand.

7 MR. WATERS: Every time, I know this happened
8 yesterday, a lot of times when he does that the
9 witness stops talking.

10 THE COURT: Does it bother you at all, Miss
11 Davis?

12 THE WITNESS: Well, I do stop talking because
13 I think that is what he means.

14 THE COURT: Well, ignore the hand signals.

15 THE WITNESS: Okay, ignore him, okay.

16 THE COURT: Or the hand signals.

17 BY MR. BROWN:

18 Q Let me ask you more properly, do you have any
19 proof he did not go to the restitution center?

20 A No, I do not.

21 Q And be a productive person while being
22 supervised in a penalty phase presentation?

23 A Yes.

24 Q Okay. And at any point did any information
25 go from you to Jeff Yungman or the attorneys

1 regarding a stay at the restitution center?

2 A I can't answer.

3 Q I will be more specific. Specifically the
4 restitution center in Charleston and doing work at
5 the shipyard in Charleston?

6 A I don't know if he did or not. I can't say
7 that he did or not.

8 Q And if there were in fact records documenting
9 productive work at the restitution center and those
10 weren't retrieved is that something that was --

11 A That would have been a failure on my part,
12 although Probation and Parole typically will not
13 turn over their records. I mean, you can subpoena
14 them but they say they are not obligated and they
15 give you some statute section that says they're not
16 obligated to turn over their records to you.

17 Q But if it's information that would urge the
18 jury to give a sentence less than death --

19 A Right.

20 Q -- That's something that as a mitigation
21 person you would want to turn over to the defense
22 team?

23 A Yes.

24 Q Okay. And would it actually be consistent
25 with the other employment information you obtained?

1 A Yes.

2 Q About him being a good worker?

3 A Yes.

4 Q And that kind of gets to the underlying, I
5 guess, final issue I want to get to. When you
6 present mitigation testimony or mitigation evidence
7 is it a decision, is it mutually exclusive to
8 present either all bad information like about a bad
9 upbringing, or all good information about a
10 person's good deeds? Are those mutually exclusive?

11 A No. You want, you want the story of their
12 life told, and we all have good and bad things in
13 our lives and that's how we get to know each other,
14 is by talking about it, with telling somebody else,
15 that is how you get to know somebody, and that is
16 what you would hope, that they would get to know
17 your client and like your client and care about
18 what happens to him.

19 Q And if there is testimony about a bad
20 upbringing or bad circumstances, coupled with some
21 good deeds or good work, is there not some
22 redemptive theme there?

23 A Yes. That is very important, about
24 circumstances, how people are able to do. One of
25 the things I thought was remarkable in Marion's

1 life, it really did not get stressed, was him at a
2 very young age taking care of his mother who was
3 completely bedridden. He and his sister, when she
4 had back problems and literally could not get out
5 of the bed, for a long time they cared for her
6 completely.

7 Q And we're talking about maybe some of this
8 employment, the odd job employment at the school,
9 too?

10 A Yes.

11 Q Okay. We're not talking about selling drugs
12 for the family, exclusively?

13 A No. And how those things came about,
14 sometimes people, telling how somebody would become
15 involved in criminal activity, not just because
16 they set out to be evil and that is what they
17 wanted to do, but the circumstances that surround
18 something like that can help people to understand
19 how something that you or I wouldn't do, maybe
20 somebody else would feel that they needed to do
21 that.

22 Q And have you ever used family psychologists
23 to discuss a person's parenting or their capacity
24 to be of emotional value to other family members,
25 especially children, given a life sentence, flip

1 side how a death sentence would be destructive to
2 that dynamic, are you familiar with that
3 mitigation?

4 A I'm familiar with it. I have not used it
5 personally but I'm familiar with it, yes, sir.

6 Q Is that something that could have been done
7 in this case?

8 A Yes. Something along those same lines is
9 that with the photographs that we had and the
10 things that his mother and his sister, for
11 instance, these photographs that I took were
12 intended for his mother, for them to be given to
13 his mother to talk about his child and the
14 importance of her, for the jury to be able to see
15 that, but they were given to his sister instead of
16 his mother and really not, not talked about at all.
17 His child was not discussed at all in the course of
18 the trial. And the photographs that I had copied
19 from the yearbook, the purpose of those weren't, I
20 mean, while it showed poverty, that was, saying
21 they couldn't afford them, that really wasn't the
22 purpose of them. It is regardless of the financial
23 circumstances, I have never been into a home where
24 they didn't have pictures of their children as
25 babies and to me it was an issue of caring, it was

1 a whole different issue that didn't have anything
2 to do with financial, that a child grows up in a
3 home and there is not a single solitary picture
4 that documents that child's life, and regardless of
5 poverty, I haven't seen that before.

6 Q Are you aware of any strategic reason that
7 his --

8 THE COURT: Before you ask that. When you
9 visited his home, are you saying there were no
10 pictures or that they weren't presented at trial?

11 THE WITNESS: There weren't any. That was
12 why I went and copied them out of the yearbook,
13 because his family had no pictures, there weren't
14 any pictures of him as a child.

15 THE COURT: Okay.

16 THE WITNESS: They didn't have any.

17 THE COURT: Help me with this. Where was Mr.
18 Bowman living at the time of his arrest, living
19 with his mother, his wife?

20 MR. BROWN: He was arrested at his wife's
21 house. He was not living there.

22 THE COURT: From your investigation, where
23 was he living?

24 THE WITNESS: It was my understanding he was
25 living with his wife but he also stayed some at his

1 mother's, so it was sort of --

2 THE COURT: His wife's home, were there
3 pictures in it?

4 THE WITNESS: Marion?

5 THE COURT: Where he lived with his wife.

6 THE WITNESS: Where he lived with his wife,
7 she moved out as soon as this happened and never
8 went back there, so I was never in there. It was a
9 trailer, I think, but I was never in that place.

10 THE COURT: What you saw of pictures of him
11 there, were there pictures at the home, just none
12 of him at his mother's home?

13 THE WITNESS: What I did was say, "Could you
14 give me pictures of Marion when he was growing up?"
15 I always ask for pictures. But, I mean, it wasn't
16 just that I didn't see them displayed. When I
17 asked for them they said they didn't have any,
18 there weren't any.

19 THE COURT: Are you saying there weren't any
20 family pictures around on the tables or anything?

21 THE WITNESS: There were some of some
22 grandchildren. It was his, I think his grandmother
23 lived there, too, if I'm not mistaken. There were
24 pictures around but it wasn't Marion, it was
25 younger kids.

1 THE COURT: No pictures of him in a group of
2 people?

3 THE WITNESS: No.

4 THE COURT: Okay.

5 THE WITNESS: I got his sister --

6 THE COURT: What did she say when you asked
7 his mother about it? She said what?

8 THE WITNESS: She just said they didn't have
9 any pictures of him.

10 THE COURT: Did you ask his wife if she had
11 pictures of him?

12 THE WITNESS: I don't think she knew him when
13 he was little.

14 THE COURT: I just asked if you asked his
15 wife.

16 THE WITNESS: I didn't ask her. His sister
17 did --

18 THE COURT: Okay.

19 THE WITNESS: His sister did provide me with
20 one picture when he was around thirteen or
21 something like that, a picture of him at that time,
22 but I just, that was just extraordinary to me.

23 THE COURT: Okay.

24 BY MR. BROWN:

25 Q Are you aware of any strategic reason that

1 the family dynamics, even with him incarcerated, is
2 concerned for his unborn child, or his born child,
3 is there any reason that you're aware of that that
4 was not developed?

5 MR. WATERS: Objection, Your Honor. He's
6 expressly asking for a strategic reason.

7 THE COURT: Did you make any suggestions in
8 that regard?

9 THE WITNESS: About?

10 THE COURT: About what, his family life?

11 MR. BROWN: She had referenced a little bit
12 earlier about a psychologist or an expert regarding
13 capacity to be of emotional value.

14 THE WITNESS: Well --

15 THE COURT: Wait, wait. What is your
16 question?

17 MR. BROWN: "Were you told a strategic reason
18 not to pursue that?"

19 THE COURT: Pursue what?

20 MR. BROWN: Either an expert psychologist to
21 discuss his parenting capacity while in prison, or
22 did she suggest a strategic reason.

23 THE COURT: Did any attorneys talk to you at
24 all?

25 THE WITNESS: That was never discussed at