

VOLUME SEVEN OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Few, Circuit Court Judge

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S.C. SUPREME COURT

JAMES D. ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 AS ONE OF THE PEOPLE YOU TALKED TO, AND OF
2 COURSE YOU EVEN TALKED TO JIMMY ABOUT THIS
3 ISSUE.

4 A. YES.

5 Q. DOES THAT HAVE A BEARING ON YOUR EVALUATION, THE
6 FACT THAT HE WAS STALKING A YOUNG LADY?

7 A. IN MY EVALUATION I WAS TALKING ABOUT THE FAMILY
8 CONDITIONS. I WASN'T NECESSARILY -- THE FAMILY
9 CONDITIONS THAT LED TO JIMMY'S PROBLEMS. I
10 WASN'T TALKING ABOUT JIMMY'S SPECIFIC INCIDENTS.
11 DO YOU UNDERSTAND WHAT I MEAN?

12 Q. YES, MA'AM, I THINK SO. BUT ULTIMATELY AT THE
13 END YOUR CONCLUSION IS THAT HE HAD NO
14 ALTERNATIVE BUT VIOLENCE. THAT'S BASED ON YOU
15 KIND OF GETTING IN HIS HEAD.

16 A. NO, I SAID ---

17 Q. AS HE SAW IT, I'M SORRY.

18 A. THAT THAT IS HOW HE SAW IT.

19 Q. OKAY. AND, OF COURSE, YOU'RE GETTING IN HIS
20 HEAD TO SAY HOW HE SAW IT, RIGHT?

21 A. THAT WAS HOW I ASSUMED HE SAW IT, YES.

22 Q. YOU ASSUMED THAT BUT IT WOULD CERTAINLY BE
23 SOMETHING YOU WOULD WANT TO CONSIDER, THAT HE
24 HAD THESE KIND OF ACTIONS, TOO; IS THAT CORRECT?

25 A. BUT I WAS TALKING ABOUT THE FAMILY CONDITIONS

1 THAT LED TO HIM BEING AT THIS POINT. I WASN'T
2 NECESSARILY LOOKING AT THAT HE DID THIS. DID I
3 MAKE MYSELF CLEAR?

4 Q. YES, MA'AM, I THINK SO. WHAT YOU'RE TELLING ME
5 IS THAT YOU DIDN'T TAKE THAT INTO CONSIDERATION.
6 IS THAT A FAIR STATEMENT?

7 A. I WAS LOOKING AT HIS FAMILY CONDITIONS; I WASN'T
8 LOOKING AT THIS INCIDENT.

9 Q. OKAY. AND AGAIN I'M NOT TRYING TO KEEP TWISTING
10 YOU, BUT YOU DIDN'T TAKE THAT INTO CONSIDERATION
11 IN MAKING YOUR DETERMINATION THAT YOU TOLD THEM
12 WHEN YOU GAVE THEM THE PICTURE OF THE FAMILY; IS
13 THAT CORRECT?

14 A. I DID NOT INCLUDE THIS IN MY REPORT, NO.

15 Q. ALL RIGHT, THANK YOU, MA'AM. OF COURSE, WHEN
16 JIMMY RELATES THAT INCIDENT TO YOU, HE TELLS YOU
17 THAT -- HE DOESN'T REALLY TELL YOU THE SAME
18 STORY, HE TELLS YOU THAT THEY MET AT A PARTY AND
19 HUNG OUT AND TALKED A WHILE AND TALKED -- WHAT
20 IS THAT?

21 A. ALL HOURS.

22 Q. HOURS, I'M SORRY. AND HE WAS TOLD TO STOP
23 CALLING BY THE POLICE, RIGHT?

24 A. YES.

25 Q. MA'AM, ALSO YOU GOT INFORMATION, ABOUT THREE

1 PAGES DOWN, ABOUT THE GOVERNOR'S SCHOOL. HE WAS
2 SMART ENOUGH, HE WENT TO THE GOVERNOR'S SCHOOL,
3 TOO; IS THAT CORRECT?

4 A. YES.

5 Q. AND HE HAD A SIMILAR INCIDENT IN WHICH HE WAS
6 TOLD TO STAY AWAY FROM A GIRL THERE, WAS HE NOT?

7 MR. BOYD: SAME OBJECTION, YOUR HONOR.

8 THE COURT: OVERRULED.

9 (AFTER A PAUSE.)

10 Q. DO YOU NEED SOME ASSISTANCE IN FINDING THAT?

11 A. NO, I'VE GOT IT, I WAS JUST TRYING TO READ THE
12 WHOLE PASSAGE.

13 Q. OH, OKAY.

14 (AFTER ANOTHER PAUSE.)

15 A. FROM THIS AND WHAT I RECALL, THEY HAD SOME KIND
16 OF ARGUMENT AND HE WAS TOLD TO STAY AWAY FROM
17 HER, BUT I HONESTLY DON'T REMEMBER IF IT WAS THE
18 EXACT SAME REASON.

19 Q. I UNDERSTAND. AND, AGAIN, YOU HAD THAT IN YOUR
20 NOTES AND DID YOU TAKE THAT INTO CONSIDERATION
21 OR DOES IT KIND OF FALL INTO THAT SAME CATEGORY
22 THAT YOU EXPLAINED BEFORE?

23 A. THE SAME CATEGORY.

24 Q. YOU KIND OF DISREGARDED THAT ASPECT OF IT, FOR
25 WHAT YOU'RE LOOKING AT.

1 A. IT WAS NOT WHAT I WAS LOOKING AT.

2 Q. OKAY. I'M GOING TO TURN YOU OVER NOW TO THE
3 PAGE THAT SAYS MOM AND DAD?

4 A. UH HUH.

5 Q. "MOM AND DAD GOT ALONG PRETTY WELL"?

6 A. UH HUH.

7 Q. OKAY. IT SAYS, "MOM AND DAD GOT ALONG PRETTY
8 WELL"?

9 A. UH HUH.

10 Q. OKAY. THERE WERE ARGUMENTS OVER JIM AND CHIP.
11 "MY MOM", AND I APOLOGIZE, I'M GOING IN REVERSE
12 ORDER. "MY MOM WALKED AND BREATHED FOR MY
13 FATHER, EVERYTHING WAS FOR HIM"?

14 A. UH HUH.

15 Q. NO MAJOR STUFF -- NOT MAJOR STUFF, NO VIOLENCE?

16 A. UH HUH.

17 Q. HE SAID "IT WAS A PRETTY GOOD MARRIAGE, LASTED
18 27 YEARS??

19 A. YES.

20 Q. OKAY. HE SAID "MOM DID NOT ASK" -- HE SAID "MOM
21 WENT OUT OF HER WAY FOR HIM". TALKING ABOUT
22 EARL OR FOR JIM?

23 A. EARL.

24 Q. OKAY. SAID "MOM DIDN'T HAVE TO ASK TO SPEND
25 MONEY"?

1 A. UH HUH.

2 Q. "DAD MADE THE MAJOR PURCHASES"?

3 A. UH HUH.

4 Q. "IF DAD GOT ANGRY, HE WOULD GO" -- IS THAT TO
5 THE LIBRARY?

6 A. YES.

7 Q. "AND IF MOM GOT ANGRY, SHE WOULD READ A BOOK".

8 A. UH HUH.

9 Q. AND HE SAID "DAD NEVER YELLED AT HER".

10 A. UH HUH.

11 Q. HE SAID DAD YELLED AT CHIP AND JIM, BUT NEVER AT
12 HER. IS THAT RIGHT?

13 A. YES.

14 Q. HE SAID HE BELIEVED HE STILL LOVED HER AS MUCH
15 AS WHEN HE MET HER?

16 A. UH HUH.

17 Q. THEY DEDICATED THEIR LIVES TO EACH OTHER.

18 A. YES.

19 Q. SO WHAT HE'S TELLING YOU IS NOT THE SAME FAMILY
20 THAT YOU'RE SEEING HERE; IS THAT CORRECT?

21 A. I THINK I SAW THINGS THAT HE MAY NOT HAVE SEEN.
22 AGAIN, JUST LIKE WITH PHYSICAL ABUSE, THINGS
23 HAPPEN IN FAMILIES THAT KIDS DON'T NECESSARILY
24 IDENTIFY AS VIOLENCE BECAUSE IT'S COMMONPLACE.

25 Q. SO, HE DOESN'T SEE THEM AND HE DOESN'T RECOGNIZE

1 THEM AND HE DOESN'T PERCEIVE THEM, BUT THEY ARE
2 ULTIMATELY GOING TO AFFECT HIS ACTIONS ON
3 NOVEMBER 25TH OF 1997. IS THAT RIGHT?

4 A. IT COULD BE, YES. YES, YOU CAN HAVE THINGS
5 HAPPEN AND NOT CONSCIOUSLY SAY, OH, THIS
6 CONTRIBUTED TO IT, BUT IT CAN STILL BE THERE,
7 YES.

8 Q. HE TALKED ABOUT TERRY A LITTLE BIT IN THAT
9 CONTEXT, TOO. HE SAID LIKE THE DAUGHTERS OF THE
10 WEAVERS, THAT TERRY WOULD TREAT THOSE GIRLS LIKE
11 THEY WERE HER OWN. IS THAT RIGHT?

12 A. YES, AND HE ALSO SAID THAT HE ALWAYS FELT LIKE
13 HIS MOTHER WOULD HAVE PREFERRED TO HAVE
14 DAUGHTERS.

15 Q. IT SEEMS LIKE ONE TIME HE SAID HIS MOTHER LIKED
16 TO TAKE HIM SHOPPING AND HE DIDN'T WANT TO GO
17 SHOPPING; ISN'T THAT RIGHT?

18 A. YES.

19 Q. ALL RIGHT, MA'AM, I'M GOING TO CALL YOUR
20 ATTENTION BACK IN YOUR NOTES NOW AND I THINK
21 WE'RE CLOSE TO FINISHING UP. I'LL CALL YOUR
22 ATTENTION TO YOUR INTERVIEW OF DECEMBER 7TH.

23 A. WASN'T THAT WHAT WE WERE JUST DOING?

24 Q. IF IT WAS, I APOLOGIZE. IF I WAS, I WAS AT THE
25 TAIL END OF IT; I HAD SKIPPED SOME OF IT.

1 A. OH, OKAY.

2 Q. I'LL CALL YOU BACK TO THE BEGINNING OF DECEMBER
3 7TH.

4 A. YES.

5 Q. ARE YOU WITH ME NOW WHERE IT SAYS 12-7?

6 A. YES.

7 Q. OKAY, AND THIS IS WHEN HE RELATED TO YOU THE
8 NIGHT OF THE CRIME?

9 A. YES.

10 Q. AND DID YOU TAKE THIS INTO CONSIDERATION IN
11 FORMING YOUR EVALUATION?

12 A. I WAS LOOKING AT EARLY CHILDHOOD HISTORY THAT
13 COULD HAVE LED HIM TO THAT POINT.

14 Q. OKAY. AND SO YOU EVEN DISCUSSED THAT POINT TO
15 MAKE SURE THAT YOUR ASSESSMENT, AND, MA'AM, I
16 APOLOGIZE, I KEEP MISCHARACTERIZING IT, THAT HE
17 MAY HAVE SEEN VIOLENCE IN THE HOME OR SOMETHING
18 OF THAT NATURE. IS THAT RIGHT?

19 A. YES.

20 Q. SO, YOU REVIEWED WHAT ACTUALLY HAPPENED AND YOU
21 FACTORED THAT INTO THE EQUATION?

22 A. YES.

23 Q. OKAY. TO GO THROUGH THAT, IT SAYS THAT HE HAD
24 JUST MOVED BACK HOME. IS THAT CORRECT?

25 A. ARE YOU STILL ON THE SAME PAGE?

1 Q. YES, MA'AM, I'M ABOUT THREE LINES DOWN.

2 A. YES.

3 Q. AND HE WAS TELLING YOU ABOUT, AND THIS IS THE
4 NIGHT PRECEDING INTO THE MORNING, WHEN HIS
5 PARENTS WERE KILLED; IS THAT RIGHT?

6 A. YES.

7 Q. AND HE TALKS ABOUT TAKING SOME RITALIN; IS THAT
8 RIGHT?

9 A. YES.

10 Q. OKAY. AND HE SAYS HOW MANY MILLIGRAMS OF
11 RITALIN HE TOOK; RIGHT?

12 A. YES.

13 Q. OKAY. DID HE SAY -- I'M SORRY, IN THE RECORDS
14 DID YOU INDEPENDENTLY VERIFY HOW MUCH RITALIN HE
15 TOOK THAT NIGHT?

16 A. WHAT DO YOU MEAN?

17 Q. HE SAID THAT HE TOOK ALL THIS GREAT QUANTITY OF
18 RITALIN.

19 A. YES.

20 Q. IS THERE ANY WHERE THAT YOU'VE SEEN IN ALL THE
21 RECORDS YOU'VE POURED THROUGH TO VERIFY THAT
22 THIS MAN TOOK AS MUCH RITALIN -- OF COURSE,
23 WE'RE TALKING ABOUT SUPPOSEDLY RITALIN
24 PSYCHOSIS, IS THAT RIGHT?

25 A. I DON'T KNOW IF THAT'S WHAT IS BEING SAID. I

1 MEAN THAT WASN'T WHAT I SAID.

2 Q. OH, I UNDERSTAND, BUT YOU SAID YOU ALSO REVIEWED
3 THE OTHER REPORTS AND THEN TALKED TO THE OTHER
4 EXPERTS; IS THAT CORRECT?

5 A. NO, I SAID I TALKED TO THE OTHER EXPERTS, I SAW
6 DR. PINCUS' REPORT; I DON'T RECALL THE TERM
7 RITALIN PSYCHOSIS.

8 Q. OKAY. DID YOU TALK TO DR. MORTON IN THIS CASE -
9 - I'M SORRY, THE PHARMACIST MORTON, DID YOU HAVE
10 A CHANCE TO TALK TO HIM?

11 A. NO, I DID NOT.

12 Q. AND SO THE WHOLE ASPECT OF ANY DRUG INVOLVEMENT,
13 YOU DIDN'T REALLY TAKE THAT INTO CONSIDERATION
14 IN YOUR EVALUATION?

15 A. I SAID THAT I FELT THAT THE FAMILY FACTORS AND
16 HIS HISTORY LED TO HIS DRUG INVOLVEMENT. I
17 DIDN'T SAY ANYTHING THAT HAD ANYTHING TO DO WITH
18 A SPECIFIC AMOUNT OR ANYTHING LIKE THAT.

19 Q. SO, AGAIN, WHERE WE'RE AT IS HIM RELATING WHAT
20 HE'S SAYING HE TOOK THAT NIGHT; IS THAT RIGHT?

21 A. YES.

22 Q. HE TALKS ABOUT ERIN AND MEREDITH COMING OVER.
23 IS THAT WHAT THE "E" AND THE "M" ARE?

24 A. YES.

25 Q. OKAY, THEY LEFT AND HE CONTINUED TO TAKE

1 RITALIN. AND HE SAID AT SOME POINT HE TALKED TO
2 CHIP; IS THAT RIGHT?

3 A. YES.

4 Q. OKAY. "FATHER WOULDN'T LET HIM TALK TO CHIP
5 WHEN HE WAS DRUNK". IS THIS TALKING ABOUT CHIP
6 BEING DRUNK?

7 A. I DON'T RECALL.

8 Q. OKAY. SO, AT 2:30 -- DO YOU KNOW IF THAT'S 2:30
9 A.M. OR 2:30 P.M.?

10 A. I BELIEVE IT WAS A.M.

11 Q. SO, AT 2:30 IN THE MORNING HE CALLED CHIP FOR A
12 HALF AN HOUR; IS THAT RIGHT?

13 A. YES.

14 Q. AND NOTHING WAS GOING THROUGH HIS HEAD -- AND HE
15 TALKED ABOUT CHIP COMING HOME FOR THANKSGIVING,
16 RIGHT?

17 A. YES.

18 Q. AND HE SAID -- AND AGAIN IS IT FAIR THAT THE
19 C'S, DOES THAT REPRESENT CHIP IN YOUR NOTES?

20 A. YES.

21 Q. "CHIP WAS GOING TO DROP OUT OF SCHOOL"?

22 A. YES.

23 Q. OKAY. SO THEN HE CALLED MEREDITH AND ASKED FOR
24 SEVENTY-FIVE DOLLARS TO GET CHIP HOME?

25 A. YES.

1 Q. OKAY. "HE TALKED TO HER TWO OR THREE TIMES AND
2 SHE OFFERED TO DRIVE AND GO GET CHIP". IS THAT
3 CORRECT; IS THAT WHAT HE SAID?

4 A. YES.

5 Q. AND THIS NEXT LINE, AGAIN I'M HAVING A LITTLE
6 TROUBLE WITH IT. READ TO THE JURY WHAT THAT
7 SAYS PLEASE, MA'AM.

8 A. "MEREDITH INFATUATED WITH JIMMY, WOULD HAVE DONE
9 ANYTHING FOR HIM".

10 Q. NOW, DID YOU GET THAT INDEPENDENTLY OUT OF THE
11 RECORDS?

12 A. THAT STATEMENT?

13 Q. YES, MA'AM.

14 A. THAT WAS FROM JIMMY.

15 Q. SO JIMMY SAYS THAT MEREDITH WAS INFATUATED AND
16 WOULD DO ANYTHING FOR HIM?

17 A. YES.

18 Q. OKAY. I CALL YOUR ATTENTION OVER TO YOUR NEXT
19 PAGE, BEGINS WITH TELLING.

20 A. UH HUH.

21 Q. MEREDITH COMES OVER AND HE'S TELLING HER ABOUT
22 THE PROBLEMS SURROUNDING CHIP COMING HOME?

23 A. YES.

24 Q. AND THAT STATEMENT IN QUOTES, THAT'S HIM AGAIN?

25 A. YES.

1 Q. WHAT DOES THAT SAY?

2 A. "SOMEHOW IT LED TO I'M GOING TO DO IT".

3 Q. OKAY. AND HE HAS A DISCUSSION WITH MEREDITH
4 CONCERNING WHETHER SHE'S GOING TO HELP HIM OR
5 NOT AND NEEDING ASSISTANCE, IS THAT CORRECT?

6 A. YES.

7 Q. AND COULD YOU TELL THE JURY PLEASE, MA'AM, WHERE
8 IT SAYS "DISCUSSED WHICH", IS THAT BAT?

9 A. BAT.

10 Q. OH, OKAY. WHAT DOES THAT SAY?

11 A. "DISCUSSED WHICH BAT TO USE".

12 Q. AND WHAT DOES THAT SAY IN PARENTHESES RIGHT
13 UNDER IT?

14 A. "NOT WOODEN, SIGNED AND AUTOGRAPHED, DIDN'T WANT
15 TO RUIN IT".

16 Q. I'M SORRY, MA'AM, I DIDN'T UNDERSTAND. NOT ---

17 A. "WOODEN, SIGNED AND AUTOGRAPHED".

18 Q. NOT -- OKAY. DISCUSSED WHICH BAT TO USE, NOT
19 THE WOODEN SIGNED AUTOGRAPHED BAT BECAUSE HE
20 DIDN'T WANT TO RUIN IT?

21 A. YES.

22 Q. OKAY. AND THEN IT SAYS "CONDENSED TWO BOTTLES
23 OF TILEX"?

24 A. UH HUH.

25 Q. "AND THEN SAT IN ROOM AND WAITED UNTIL FATHER

1 WENT TO SHOWER"?

2 A. YES.

3 Q. OKAY. AND HE INDICATED HIS INTENTIONS AT THAT
4 POINT WERE TO DO WHAT?

5 A. WHICH LINE ARE YOU ON?

6 Q. IT STARTS WITH KILL.

7 A. "KILL MOM WHILE DAD WAS IN THE SHOWER".

8 Q. AND WHY WAS THAT?

9 A. THERE WOULD BE NOISE.

10 Q. OKAY. WHAT DID HE DO NEXT?

11 A. "TOOK PHONE OFF HOOK; LAID ONE KNIFE IN
12 HALLWAY".

13 Q. WHY WAS THAT?

14 A. "IN CASE DAD CAME IN".

15 Q. OKAY AND WHERE DID HE GO NEXT?

16 A. "WENT IN BEDROOM".

17 Q. OKAY, AND DID WHAT?

18 A. "STRUGGLED WITH MOM FOR A FEW MINUTES".

19 Q. WHAT DID SHE START DOING?

20 A. "SCREAMING".

21 Q. OKAY, AND WHO WAS SHE SCREAMING FOR?

22 A. "EARL".

23 Q. OKAY. AND HE SAYS NEXT, "IT WAS GETTING AT ME
24 TO HEAR HER SCREAM"?

25 A. YES.

1 Q. AND NOW IT BOTHERS HIM THAT THAT WAS THE LAST
2 THING THEY SAW BEFORE THEY DIED?

3 A. YES.

4 Q. OKAY. AND THEN HE GOES AND SAYS -- AND HE'S
5 DESCRIBING THIS TO YOU AGAIN; IS THAT CORRECT?

6 A. YES.

7 Q. "HE WAS IN A RAGE LIKE A MANIAC"?

8 A. YES.

9 Q. AND WHEN HE'S IN THIS MANIACAL RAGE, WHAT DOES
10 HE DO THEN?

11 A. "CAME DOWNSTAIRS".

12 Q. AND WHAT DID HE SAY?

13 A. "ONE DOWN AND ONE TO GO".

14 Q. OKAY. AGAIN, I CAN'T READ THAT. "UNSURE WHAT
15 HAPPENED" -- IS THAT IN BETWEEN?

16 A. YES.

17 Q. AND WHAT DID HE DO WITH THE BAT?

18 A. "PUT IT AT THE TOP OF THE STAIRS".

19 Q. OKAY AND THEN WHEN HE PUT THE BAT AT THE TOP OF
20 THE STAIRS, WHAT DID HE DO?

21 A. "HE SAT AND WAITED".

22 Q. HE SAT AND WAITED WHAT?

23 A. "HE SAT AND WAITED WITH THE HAMMER LIKE I WAS
24 STANDING ON THE OTHER SIDE OF MYSELF WATCHING
25 ME".

1 Q. AND AGAIN HE TELLS YOU IT WAS LIKE SOMEONE ELSE
2 WAS COMMITTING THE CRIME AND HE WAS WATCHING?

3 A. YES.

4 Q. TELL THEM WHAT HE DID NEXT.

5 A. "SPRAYED TILEX IN HIS FATHER'S EYES AND HIT HIM
6 WITH THE CLAW HAMMER".

7 Q. MA'AM, IS THAT WHAT IT SAYS?

8 A. "SPRAYED TILEX IN EYES AND BURIED CLAW HAMMER IN
9 HEAD".

10 Q. AND WHAT DID HIS FATHER DO?

11 A. "FATHER PUT UP A FIGHT WITH THE HAMMER STUCK IN
12 HIS HEAD".

13 Q. AND WHAT HAPPENED NEXT?

14 A. "EVENTUALLY DAD FELL TO GROUND, HIT HIM 200
15 TIMES WITH HAMMER AND BASEBALL BAT".

16 Q. WHAT'S HIS NEXT STATEMENT?

17 A. "22 YEARS OF HATRED CAME OUT".

18 Q. "HE SAID IT WAS OVERKILL AND HE KEPT ON AND ON
19 AND ON AND ON"?

20 A. YES.

21 Q. "AND THEN HE WENT IN THE BEDROOM TO CHECK ON HIS
22 MOM"?

23 A. YES.

24 Q. AND WHAT DID HE DO TO HER?

25 A. "HE HIT HER WITH THE HAMMER TO MAKE SURE SHE WAS

1 DEAD".

2 Q. OKAY. "AND MEREDITH THOUGHT" -- "MER", IS THAT
3 MEREDITH?

4 A. YES.

5 Q. "MEREDITH THOUGHT HE WAS GOING TO KILL HER"?

6 A. YES.

7 Q. OKAY. AND THEN THIS ISN'T IN QUOTES, HE HEARD
8 NOISE UPSTAIRS. WHAT IS THAT?

9 A. HE WAS -- I DON'T KNOW WHAT WAS GOING ON, BUT HE
10 THOUGHT HE HEARD NOISES UPSTAIRS.

11 Q. AND WHAT DID HE INDICATE THAT WAS?

12 A. HE THOUGHT IT WAS HIS FATHER BREATHING INTO THE
13 CARPET.

14 Q. YOU SAY THOUGHT HE WAS, ACTUALLY WHAT DOES HE
15 SAY?

16 A. I'M SORRY. "IT WAS HIS FATHER BREATHING INTO
17 THE CARPET". THAT'S WHAT HE THOUGHT THE NOISE
18 WAS.

19 Q. OKAY. AND WHAT DOES HE SAY NEXT?

20 A. "HOW IS HE STILL LIVING?".

21 Q. IF YOU WOULD, TELL THIS JURY WHAT HE DID THEN?

22 A. "WENT TO FIND DRILL TO END THE MATTER".

23 Q. DID YOU SAY DRILL?

24 A. THAT'S WHAT IT SAYS, YES.

25 Q. AND YOU TOOK THIS FROM TALKING TO HIM?

1 A. YES.

2 Q. OKAY. AND SO WHAT DID HE DO NEXT?

3 A. "TOOK THE BAT UPSTAIRS TO BEAT ON HIM AGAIN".

4 Q. AND AFTER THAT?

5 A. "KICKED WITH TOE TO MAKE SURE HE WAS DEAD".

6 Q. AND SO THAT WAS THE INCIDENT OF THE VIOLENCE
7 THAT YOU PERCEIVED FROM THIS THAT HE SAW NO
8 OTHER ALTERNATIVE. AGAIN, I WANT TO MAKE SURE
9 I'M USING THE RIGHT WORDS, THAT HE SAW NO
10 ALTERNATIVE OTHER THAN THIS; IS THAT CORRECT?

11 A. THAT HE MIGHT HAVE; YES.

12 Q. SO, WE CAN'T SAY FOR SURE THAT THAT WAS HIS ONLY
13 ALTERNATIVE, JUST THAT HE MIGHT HAVE THOUGHT
14 THAT, RIGHT?

15 A. YES.

16 Q. OKAY. SO, AFTER HE DOES THAT AND AFTER HE
17 KICKED HIM, HE SAID, TO MAKE SURE HE'S DEAD,
18 TELL THE JURY WHAT HE DID NEXT.

19 A. "HE CLEANED UP, TOOK MONEY AND CAR KEYS AND
20 PACKED STUFF TO DUMP".

21 Q. AND WHAT WAS IT HE SAID NEXT?

22 A. "MEREDITH'S TESTIMONY NOT GOOD ENOUGH BY
23 ITSELF".

24 Q. YOU WERE TALKING TO HIM, WHAT DOES THAT MEAN?

25 A. HONESTLY I DON'T RECALL.

1 Q. YOU DON'T RECALL HIM TELLING YOU THAT?

2 A. I REMEMBER THE CONVERSATION; I DON'T REMEMBER
3 THIS PARTICULAR STATEMENT.

4 Q. OKAY. YOU'RE NOT DISPUTING THAT HE SAID IT
5 BECAUSE YOU WROTE IT, YOU JUST DON'T REMEMBER
6 IT.

7 A. YES.

8 Q. OKAY, COMING ON DOWN TO THE BOTTOM PARAGRAPH.
9 "HE BROKE THE WINDOW DOWNSTAIRS TO MAKE IT LOOK
10 LIKE A ROBBERY"?

11 A. UH HUH.

12 Q. OKAY. "AND THEN THE MAN ACROSS THE STREET
13 PULLED UP" -- I THINK THAT WAS MR. LANGLEY, IS
14 THAT RIGHT?

15 A. I BELIEVE IT WAS.

16 Q. DID YOU TALK TO HIM, TOO?

17 A. I SPOKE WITH SCOTT LANGLEY; I DID NOT SPEAK WITH
18 HIS FATHER.

19 Q. OKAY. AND SO "JIM WAVED AND GOT IN THE CAR AND
20 LEFT"; IS THAT RIGHT?

21 A. YES.

22 Q. OKAY. AND THEN HE EXPLAINS HOW HE USED THE
23 CREDIT CARD AND STOPPED AND GOT NEOSPORENE FOR
24 HIS FINGER AND THOSE THINGS; IS THAT CORRECT?

25 A. YES.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN COURT OF GENERAL SESSIONS

THE STATE,)

PLAINTIFF,)

VS.)

JAMES DEJARNETTE)
ROBERTSON,)

DEFENDANT.)

INDICTMENT NOS. 98-GS-46-1020
1021, 1022, 1023

TRANSCRIPT OF TRIAL AND
PRE-TRIAL MOTIONS (7-17-98,
9-22-98, 9-25-98, 11-2-98,
AND 12-4-98)
MARCH 15, 1999
YORK, SOUTH CAROLINA

VOLUME XIII

1 Q. HE SAID A SPEEDING TICKET WOULD HAVE LANDED HIM
2 IN JAIL?

3 A. YES.

4 Q. AND YOU'VE INTERVIEWED CHIP, TOO, IS THAT
5 CORRECT?

6 A. YES.

7 Q. OKAY. SO, HE WAS GOING UP THE ROAD TO CHIP AND
8 IT SAYS, "GET C, NO ONE WILL NOTICE PARENTS
9 MISSING"?

10 A. UH HUH.

11 Q. WHAT IS THAT, GET CHIP, NO ONE WILL NOTICE
12 PARENTS MISSING?

13 A. YES.

14 Q. WHAT WAS THAT ABOUT?

15 A. HE WAS GOING TO BRING CHIP BACK DOWN TO SOUTH
16 CAROLINA.

17 Q. WHAT WERE THEY GOING TO DO WHEN THEY GOT BACK?

18 A. I BELIEVE THEY WERE GOING TO GO BACK TO THE
19 HOUSE.

20 Q. AND DISCOVER THEIR PARENTS?

21 A. YES.

22 Q. OKAY. AND IT SAYS "NOT A SURPRISE TO HIS
23 BROTHER -- NOT A SURPRISE TO MY BROTHER". WHAT
24 DOES THAT MEAN?

25 A. I BELIEVE THAT REFERRED TO IT WASN'T A SURPRISE

1 WHAT HE HAD DONE, IT WOULDN'T SURPRISE HIS
2 BROTHER.

3 Q. IT WOULDN'T SURPRISE HIS BROTHER CHIP TO FIND
4 OUT WHAT HE'D DONE?

5 A. YES.

6 Q. OKAY. AND IT SAYS, "CALLED HOME" -- AND AGAIN
7 THIS IS HIM TALKING -- "CALLED HOME AND REALIZED
8 THAT SOMEONE FOUND BODIES AND PUT PHONE ON
9 HOOK".

10 A. YES.

11 Q. HOW DID HE CALL HOME AND FIND OUT SOMEBODY HAD
12 FOUND THE BODIES?

13 A. I DON'T KNOW WHERE HE CALLED HOME FROM; I DON'T
14 KNOW HOW THAT HAPPENED, BUT HE CALLED HOME AND
15 FOUND THAT THE PHONE WAS BACK ON THE HOOK.

16 Q. AS OPPOSED TO RINGING TO LIKE THE VOICE MAIL OR
17 WHATEVER THE CASE MAY BE?

18 A. YES.

19 Q. OKAY. AND THIS IS, MAYBE IF YOU CAN REMEMBER,
20 IF YOU DON'T -- RIGHT BELOW IT SAYS, "DIDN'T
21 CALL CHIP, WOULD HAVE BEEN IN EUROPE". WHAT IS
22 THAT ABOUT?

23 A. HONESTLY I DON'T RECALL; I DIDN'T WRITE ENOUGH
24 ON THAT.

25 Q. WHAT ABOUT "TOO SMART TO LET THIS HAPPEN"? WAS

1 HE TALKING ABOUT HIMSELF OR CHIP?

2 A. AGAIN I DIDN'T WRITE ENOUGH RIGHT AROUND HERE
3 FOR ME TO RECALL EXACTLY WHAT THAT MEANT.

4 Q. AND IN THE SAME REGARD, "COULD HAVE BEEN IN
5 EUROPE IN A MATTER OF HOURS"?

6 A. UH HUH.

7 Q. YOU DON'T KNOW IF THAT'S CHIP OR JIM OR WHAT
8 THAT RELATES TO?

9 A. NO, I'M SORRY. I KNOW THE NEXT ONE IS CHIP, BUT
10 I DON'T REMEMBER THAT.

11 Q. AND ULTIMATELY THEY GO TO PHILADELPHIA AND
12 THEY'RE CAUGHT; IS THAT RIGHT?

13 A. YES.

14 Q. AND DOWN NEXT TO THE BOTTOM OF THE PAGE, NOT THE
15 BOTTOM LINE BUT NEXT TO THE BOTTOM LINE HE SAID
16 "M", QUOTE, "RUNNING HER MOUTH"?

17 A. YES.

18 Q. SO, MEREDITH WAS RUNNING HER MOUTH?

19 A. YES.

20 Q. MA'AM, I THINK THAT'S JUST ABOUT IT. I THINK I
21 HAVE ONE FINAL QUESTION. I'M GOING TO REFER
22 YOU, THIS IS ON BACK TO THE PAGE THAT STARTS A
23 LOT OF LONG DISTANCE RELATIONSHIPS, COULD YOU
24 FIND THAT FOR ME PLEASE, MA'AM. I THINK IT'S
25 SEVERAL PAGES BACK IN THE SAME ---

1 A. IN THE SAME THING?

2 Q. YES, MA'AM, IT'S ABOUT A HALF A PAGE OF NOTES.
3 IT'S RIGHT BEFORE THE LITTLE DIAGRAM.

4 A. OKAY, YES.

5 Q. OKAY, YOU GO IT?

6 A. UH HUH.

7 Q. COULD YOU TELL THE JURY THE LAST SENTENCE YOU
8 HAVE ON THERE, WHAT THAT SAYS PLEASE, MA'AM?

9 A. "KILLED MOM BECAUSE HE COULDN'T LIVE WITH HER
10 KNOWING HE KILLED DAD OR LEAVING HER ALONE".

11 Q. SO, HE KILLED MOM SO MOM WOULDN'T HAVE TO LIVE
12 WITH KNOWING THAT JIMMY KILLED DAD; IS THAT
13 RIGHT?

14 A. YES.

15 Q. DOES ANY OF THAT HAVE ANY BEARING ON YOUR VIEWS
16 THAT THIS WAS HIS ONLY ALTERNATIVE?

17 A. I DID NOT SAY THAT IT WAS HIS ONLY ALTERNATIVE.
18 I'M SAYING THAT ALL OF THESE THINGS MIGHT HAVE
19 LED HIM TO FEEL LIKE IT WAS.

20 Q. MIGHT.

21 A. YES.

22 Q. THANK YOU.

23 REDIRECT EXAMINATION BY

24 MR. BOYD:

25 Q. WHEN MR. POPE WAS ASKING YOU A FEW MINUTES AGO

1 GOING THROUGH WHAT JIMMY ROBERTSON TOLD YOU
2 ABOUT THE INCIDENT, THE MURDERS?

3 A. YES.

4 Q. HE SKIPPED THE PART WHERE IT TALKED ABOUT GOING
5 TO PHILADELPHIA. I WANT TO REFER TO YOUR NOTES.
6 I THINK HE SAID ABOUT AFTER SPEEDING TICKET,
7 WHAT WERE THE THREE LINES HE TOLD YOU THERE?

8 A. "SHOOK FOR THE FIRST FIVE TO SIX HOURS, WHAT DID
9 I JUST DO, RITALIN WORE OFF, HADN'T SLEPT OR
10 EATEN IN 36 HOURS, THOUGHT IT WAS ALL A
11 NIGHTMARE, WOKE UP CRYING, CRYING FOR THREE
12 HOURS STRAIGHT".

13 Q. NOW, MR. POPE ASKED YOU SOMETHING FROM YOUR
14 REPORT ABOUT SEXUAL ABUSE.

15 A. YES.

16 Q. YOU DID NOT TESTIFY ON DIRECT EXAMINATION ABOUT
17 ANYTHING ABOUT SEXUAL ABUSE; IS THAT CORRECT?

18 A. NO, I DID NOT.

19 Q. WAS THAT IN A PRELIMINARY REPORT YOU MADE?

20 A. YES, IT WAS.

21 Q. AND THAT WASN'T A PART OF YOUR FINAL REPORT ---

22 A. NO, IT WAS NOT.

23 Q. --- OR FINAL DIAGNOSIS, NOT DIAGNOSIS BUT
24 FINDINGS, ASSESSMENT?

25 A. NO, IT WAS NOT.

1 Q. NOW, MR. POPE ASKED YOU SOME QUESTIONS ABOUT
2 HEAD BANGING AND WHETHER JIMMY, WHETHER THAT WAS
3 REPORTED. I'LL JUST SHOW YOU A COPY OF MR.
4 MEYER'S COUNSELING RECORDS. COULD YOU INDICATE
5 IN THERE WHAT SHE -- I'M SORRY, WHAT TERRY
6 ROBERTSON TOLD HIM ABOUT JIMMY'S HEAD BANGING?

7 A. "CAN'T STAND THE BICKERING; JIMMY USED TO BE A
8 SEVERE HEAD BANGER".

9 Q. WERE YOU RELYING ON HIS BEING A HEAD BANGER NOT
10 JUST FROM WHAT HE SAID?

11 A. NO, IT WAS IN THE NOTES.

12 Q. NOW, ALSO THERE WAS MENTIONED SOME REPORTS ABOUT
13 CONFLICT BETWEEN TERRY AND EARL; IS THAT
14 CORRECT?

15 A. YES.

16 Q. AND I THINK MR. POPE ASKED YOU ABOUT SOME OF
17 THEM?

18 A. YES.

19 Q. I'LL SHOW YOU ANOTHER RECORD FROM MR. MEYER. I
20 WANT TO REFER YOU TO THE 3-20-96, THE
21 HIGHLIGHTED PORTION, WHAT DOES SHE SAY REFERRING
22 TO EARL AT THAT TIME?

23 A. "I DON'T WANT TO BE SCARED OF HIM ALL THE TIME".

24 Q. AND MR. POPE ALSO ASKED YOU ABOUT THAT THERE WAS
25 ONLY ONE INCIDENT THAT YOU DOCUMENTED OF ACTUAL

1 PHYSICAL VIOLENCE BETWEEN TERRY AND EARL; IS
2 THAT CORRECT?

3 A. YES.

4 Q. I WANT TO REFER YOU TO MR. MEYER'S RECORDS OF 3-
5 5-96 AND ASK YOU IF YOU CAN LOOK AT THAT
6 HIGHLIGHTED PORTION AND READ THAT.

7 A. UP HERE?

8 Q. NO, RIGHT HERE.

9 A. "EARL AND I HAVE HAD TERRIBLE FIGHTS BEFORE,
10 PUSHING, SHOVING, CLAWING. EARL MOSTLY TRIES TO
11 KEEP ME OFF OF HIM INSTEAD OF HURTING ME, BUT IT
12 STILL SCARES ME".

13 Q. OKAY. SO, DOES SHE USE FIGHTS IN THE PLURAL?

14 A. YES, SHE DOES.

15 Q. MEANING MORE THAN ONE?

16 A. YES.

17 Q. AND AGAIN I WANT TO REFER YOU TO MR. MEYER'S
18 RECORDS OF FEBRUARY 27TH, 1996 AND I WOULD REFER
19 YOU TO THE HIGHLIGHTED PORTION RIGHT THERE.

20 WHAT DOES SHE SAY?

21 A. "I WOULD BEAT ON EARL ALL THE TIME".

22 Q. AGAIN, WHAT DOES ALL THE TIME MEAN TO YOU?

23 A. A LOT.

24 Q. THANK YOU; THAT'S ALL THE QUESTIONS I HAVE.

25 THE COURT: RECROSS?

RECROSS EXAMINATION BY

MR. POPE:

Q. MA'AM, MR. BOYD ASKED YOU THE PART ABOUT THE RITALIN, JIMMY COMING OFF RITALIN, CRYING AND GOING TO PHILADELPHIA. YOU INDICATED THAT YOU REVIEWED DR. PINCUS' REPORT THAT'S IN EVIDENCE, TOO; IS THAT CORRECT?

A. YES.

Q. AND YOU'RE AWARE THAT THAT DESCRIPTION ABOUT HIM SAYING AFTER HE LEFT, OH, WHAT HAVE I DONE AND CRYING AND ALL OF THAT, THAT'S IN DR. PINCUS' REPORT THAT'S ALREADY IN EVIDENCE. ARE YOU AWARE OF THAT OR WOULD YOU LIKE TO SEE A COPY?

A. I DON'T RECALL THE SPECIFICS OF THE REPORT.

Q. THIS IS DR. PINCUS' REPORT AND MR. BOYD WAS ASKING ABOUT AFTER LEAVING, THE RITALIN THING. DO YOU SEE WHERE I'M TALKING ABOUT?

A. THIS PARAGRAPH?

Q. YES, MA'AM.

A. OKAY.

Q. YOU WERE ASKED -- MR. BOYD WAS ASKING THAT I DIDN'T TELL YOU ABOUT THAT. YOU HAD DR. PINCUS' REPORT TO REVIEW ALSO; IS THAT CORRECT?

A. YES.

Q. AND THAT IS IN THERE IN THAT REPORT ALSO, IS IT

1 NOT?

2 A. YES, IT IS.

3 Q. ALL RIGHT, THANK YOU, MA'AM. ALSO MR. BOYD WAS
4 ASKING YOU AGAIN ABOUT THE DIFFERENT INCIDENTS.
5 AGAIN, THERE IS NO INDICATION OF WHETHER THE
6 KIDS WERE THERE OR NOT BASED ON THE THINGS HE
7 JUST ASKED YOU, IS THAT RIGHT? THERE IS NO
8 INDICATION WHETHER THE KIDS WERE THERE OR NOT.
9 IS THAT CORRECT?

10 A. IT DOES NOT SAY IN THE RECORD IF THEY WERE OR
11 NOT.

12 Q. AND THERE'S NO INDICATION HOW OLD THEY WERE IF
13 THEY WERE THERE; IS THAT CORRECT?

14 A. NO.

15 Q. SO AGAIN WE'RE FOCUSING ON THIS TIME PERIOD OF
16 '95, '96, '97; IS THAT CORRECT?

17 A. MY CONCLUSIONS WERE DRAWN FROM BEFORE THAT
18 PERIOD BASED ON WHAT WAS SAID IN SKIP MEYER'S
19 RECORDS, HER PERSONAL NOTES AND CONVERSATIONS
20 AND SOME OF THAT INFORMATION PRE-DATES THE 1995,
21 1996 PERIOD.

22 Q. YOUR INFORMATION WAS BASED ON THE TOTALITY --
23 THE VERY THING WE'VE BEEN TALKING ABOUT HERE FOR
24 THE LAST HOUR.

25 A. YES.

1 Q. SOME THINGS YOU CONSIDERED, SOME THINGS YOU
2 CHOSE NOT TO CONSIDER. IS THAT CORRECT?

3 A. SOME THINGS I FELT WERE MORE RELEVANT, YES.

4 Q. THANK YOU, MA'AM.

5 THE COURT: YOU CAN STEP DOWN. WE APPRECIATE
6 YOUR TIME. I UNDERSTAND YOU HAVE SOME, AGAIN USING A
7 LAWYER'S WORD, BRIEF WITNESSES?

8 MR. BOYD: WE DO, YOUR HONOR.

9 THE COURT: ALL RIGHT. IT'S A LITTLE AFTER 6:00
10 BUT I UNDERSTAND WE HAVE SOME BRIEF WITNESSES AND WE'LL GO
11 AHEAD FOR A LITTLE BIT LONGER. NOT A LOT. CALL YOUR NEXT
12 WITNESS.

13 MR. HANCOCK: WE CALL BUZZY HALL TO THE STAND,
14 YOUR HONOR.

15 HAROLD EVERETTE HALL, JR., BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY

18 MR. HANCOCK:

19 Q. PLEASE STATE YOUR FULL NAME FOR THE RECORD AND
20 SPELL YOUR LAST NAME.

21 A. HAROLD EVERETTE HALL, H-A-L-L, JUNIOR.

22 Q. AND DO YOU HAVE A NICKNAME?

23 A. BUZZY.

24 Q. AND DO I KNOW YOU BY THAT NICKNAME?

25 A. YES, YOU DO.

- 1 Q. DO YOU OBJECT TO ME CALLING YOU BY THAT NAME?
- 2 A. NO, SIR.
- 3 Q. BUZZY, WHERE DO YOU WORK?
- 4 A. I WORK FOR ALLISON FENCE IN CHARLOTTE.
- 5 Q. HOW LONG HAVE YOU WORKED THERE?
- 6 A. 22 YEARS.
- 7 Q. ARE YOU MARRIED?
- 8 A. YES.
- 9 Q. DO YOU HAVE ANY CHILDREN?
- 10 A. I HAVE TWO GIRLS, ALLISON AND LEE ANN.
- 11 Q. AND HOW OLD ARE THEY?
- 12 A. ALLISON IS 25 AND LEE ANN IS 23.
- 13 Q. AND ARE YOU FAMILIAR WITH THE FACTS OF THIS
- 14 CASE?
- 15 A. YES, SIR.
- 16 Q. AND DO YOU KNOW OR DID YOU KNOW EARL AND TERRY
- 17 ROBERTSON?
- 18 A. YES, I WAS IN A SUNDAY SCHOOL CLASS WITH THEM.
- 19 Q. AND HOW LONG DID YOU KNOW THEM?
- 20 A. PROBABLY 15 OR 20 YEARS.
- 21 Q. AND DID YOU GO OUT SOCIALLY WITH THEM?
- 22 A. JUST CHURCH THINGS, THAT'S ABOUT ALL.
- 23 Q. AND DID YOU KNOW JIMMY?
- 24 A. YES, I DID.
- 25 Q. AND HOW DID YOU KNOW JIMMY?

1 A. I WAS JIMMY'S CHURCH BASKETBALL COACH FROM LIKE
2 NINTH GRADE, TENTH GRADE, ELEVENTH GRADE.

3 Q. AND WHAT DID YOU NOTICE -- DID YOU NOTICE
4 ANYTHING UNUSUAL?

5 A. I'VE COACHED FOR LIKE, I THINK THIS IS MY
6 TWELFTH YEAR, AND JIMMY JUST SEEMED TO BE A
7 LITTLE BIT DIFFERENT FROM SOME OF THE REST OF
8 THE KIDS I HAD OVER ALL THESE YEARS.

9 Q. AND HOW IS THAT?

10 A. HE WAS KIND OF A LONER; HE WAS A LITTLE BIT
11 STANDOFFISH, HE WAS A LITTLE BIT OFF TO THE SIDE
12 FROM THE REST OF THE KIDS ON THE TEAM.

13 Q. FROM YOUR KNOWLEDGE OF JIMMY, EARL AND TERRY,
14 WHAT ARE YOU ASKING OF THIS JURY?

15 A. I'M ASKING FOR MERCY. I KNOW JIMMY IS A SMART
16 YOUNG MAN, VERY INTELLIGENT, AND I THINK JIMMY
17 COULD BE AN ASSET TO OTHER FOLKS WHO ARE
18 INCARCERATED AS FAR AS EDUCATIONAL ASSET,
19 TEACHING PEOPLE AND HELPING OTHERS. I'M ASKING
20 FOR MERCY.

21 Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

22 MR. POPE: NO QUESTIONS, YOUR HONOR.

23 THE COURT: THANK YOU. YOU CAN STEP DOWN AND BE
24 EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR NEXT WITNESS.

25 MR. HANCOCK: WE CALL REVEREND PENDER TO THE

1 STAND, YOUR HONOR.

2 WILLIAM CLARK PENDER, BEING FIRST DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY

5 MR. HANCOCK:

6 Q. PLEASE STATE YOUR FULL NAME FOR THE RECORD AND
7 SPELL YOUR LAST NAME.

8 A. WILLIAM CLARK PENDER, P-E-N-D-E-R.

9 Q. WHERE DO YOU LIVE?

10 A. 1941 WELLBORN STREET, ROCK HILL.

11 Q. ARE YOU MARRIED?

12 A. YES.

13 Q. ANY CHILDREN?

14 A. THREE CHILDREN.

15 Q. AND WHAT DO YOU DO FOR A LIVING, SIR?

16 A. I'M THE PASTOR OF OAKLAND AVENUE PRESBYTERIAN
17 CHURCH.

18 Q. IS THAT THE CHURCH WHERE EARL AND TERRY
19 ATTENDED?

20 A. YES, THEY WERE LONG TIME MEMBERS THERE.

21 Q. HOW LONG HAVE YOU BEEN THE PASTOR THERE?

22 A. NINE AND A HALF YEARS.

23 Q. AND DID YOU KNOW EARL AND TERRY WELL?

24 A. YES.

25 Q. AND HOW DID YOU KNOW THEM?

1 A. I KNEW THEM AS THEIR PASTOR; I KNEW THEM THROUGH
2 THE WORK THEY DID IN THE LIFE OF THE CHURCH; I
3 KNEW THEM THROUGH THEIR CHILDREN, BOTH CHIP AND
4 JIMMY.

5 Q. WERE YOU THE PERSON WHO DID THE EULOGY AT THE
6 FUNERAL?

7 A. I CONDUCTED THE SERVICE BOTH AT OAKLAND AVENUE
8 CHURCH AND THEN WE DID THE INTERNMENT IN
9 MILLEDGEVILLE, GEORGIA.

10 Q. DO YOU KNOW THE FACTS OF THIS CASE?

11 A. I KNOW THE FACTS AS THEY ARE PRINTED IN THE
12 NEWSPAPER AND READING FROM THAT. I WAS THERE
13 THE DAY THAT THE BODIES WERE DISCOVERED AND HAVE
14 BEEN FOLLOWING IT SINCE THAT TIME. SO, JUDGING
15 BY THE NEWSPAPER, I KNOW THOSE FACTS, THE
16 DETAILS THAT HAVE BEEN PRINTED THERE.

17 Q. AND ARE THOSE FACTS RATHER GRAPHIC?

18 A. EXTREMELY SO.

19 Q. KNOWING THOSE FACTS, KNOWING EARL AND TERRY,
20 KNOWING JIMMY AS PASTOR OF THEIR CHURCH, WHAT
21 ARE YOU ASKING OF THIS JURY?

22 A. I'VE COME TO ASK THAT JIMMY -- THAT MERCY BE
23 CONSIDERED FOR JIMMY IN THIS CASE. I AM -- MANY
24 FOLKS IN MY PROFESSION HAVE A PRINCIPLE
25 OBJECTION TO CAPITAL PUNISHMENT ---

1 MR. POPE: YOUR HONOR, I WOULD OBJECT. HE CAN
2 ASK FOR MERCY, BUT THAT'S INAPPROPRIATE.

3 THE COURT: I SUSTAIN THE OBJECTION.

4 Q. KNOWING ALL THE FACTS, KNOWING EARL AND TERRY,
5 AGAIN WHAT ARE YOU ASKING OF THIS JURY?

6 A. I'M ASKING THAT THIS JURY CONSIDER JIMMY
7 ROBERTSON FOR MERCY. I THINK HE HAS A LOT MORE
8 FOR LIFE TO GIVE, MANY GIFTS. I DON'T -- AGAIN,
9 THE DETAILS ARE HEINOUS, BUT THERE'S MORE TO IT
10 THAN THAT. AM I SAYING TOO MUCH?

11 THE COURT: I THINK THAT ANSWERS THE QUESTION.

12 A. ALL RIGHT.

13 Q. PLEASE ANSWER ANY QUESTIONS MR. POPE MIGHT HAVE.

14 MR. POPE: NO QUESTIONS, YOUR HONOR.

15 THE COURT: THANK YOU. YOU CAN STEP DOWN AND BE
16 EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR NEXT
17 WITNESS.

18 PAIGE M. MCRIGHT, BEING FIRST DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY

21 MR. HANCOCK:

22 Q. PLEASE STATE YOUR FULL NAME FOR THE COURT, AND
23 SPELL YOUR LAST NAME FOR THE COURT REPORTER.

24 A. I'LL BE GLAD TO. I AM PAIGE MAXWELL MCRIGHT,
25 AND MY LAST NAME IS M-C-R-I-G-H-T.

1 Q. ARE YOU MARRIED?

2 A. I'M DIVORCED.

3 Q. DO YOU HAVE CHILDREN?

4 A. I HAVE TWO SONS.

5 Q. AND HOW OLD ARE THEY?

6 A. THEY ARE 21 AND 16.

7 Q. AND WHAT IS YOUR PROFESSION?

8 A. I'M ASSOCIATE PASTOR AT OAKLAND AVENUE
9 PRESBYTERIAN CHURCH.

10 Q. AND HOW LONG HAVE YOU HELD THAT POSITION?

11 A. I HAVE BEEN AT OAKLAND AVENUE SINCE JULY OF
12 1997.

13 Q. AND ARE YOU FAMILIAR AT ALL WITH EARL AND TERRY
14 ROBERTSON?

15 A. I TALKED TO EARL ONE TIME ON THE TELEPHONE.
16 TERRY AND I WERE BOTH AT AGNES SCOTT FOR TWO
17 YEARS, AND I KNEW HER WHEN WE WERE THERE.

18 Q. AND DO YOU KNOW JIMMY ROBERTSON?

19 A. I'VE KNOWN JIMMY SINCE FEBRUARY OF 1998 WHEN I
20 BEGAN TO VISIT HIM WHEN HE CAME HERE FROM
21 PHILADELPHIA.

22 Q. WHEN YOU SAY YOU WENT TO VISIT HIM?

23 A. HERE AT MOSS JUSTICE CENTER.

24 Q. HOW MANY TIMES HAVE YOU VISITED JIMMY HERE AT
25 MOSS JUSTICE CENTER?

1 A. APPROXIMATELY FIVE TIMES HERE, I BELIEVE, AND
2 ONCE IN COLUMBIA AND WE'VE CORRESPONDED SOME AS
3 WELL.

4 Q. AND DO YOU FEEL YOU HAVE AT LEAST GOTTEN TO KNOW
5 HIM SOMEWHAT?

6 A. YES, I DO.

7 Q. AND ARE YOU AWARE OF THE FACTS OF THIS CASE,
8 MA'AM?

9 A. YES, I AM.

10 Q. HOW ARE YOU AWARE OF THE FACTS OF THIS CASE?

11 A. WELL, I'VE READ THE NEWSPAPER ACCOUNTS. I'VE HAD
12 CONVERSATIONS WITH MR. SULLIVAN AND WITH WILLIAM
13 PENDER ABOUT WHAT THEY FOUND AT THE HOUSE.

14 Q. KNOWING ALL THAT YOU KNOW, WHAT ARE YOU ASKING
15 THIS JURY TO DO FOR JIMMY ROBERTSON?

16 A. I'M ASKING THIS JURY TO SPARE JIMMY'S LIFE, TO
17 GRANT HIM MERCY. KNOWING WHAT I KNOW, KNOWING
18 WHAT I KNOW ABOUT HIS PARENTS AND THEIR HOPES
19 AND DREAMS FOR THEIR CHILDREN AND THEIR
20 DEDICATION TO THEM, KNOWING WHAT I KNOW ABOUT
21 HIS INTELLIGENCE, I THINK THEIR MEMORY, THEIR
22 LIVES, THEIR DREAMS CAN BE BETTER HONORED BY HIS
23 BEING IMPRISONED AND MAKING WHATEVER HE CAN OF
24 USE TO THE WORLD. I THINK TO PUT HIM TO DEATH
25 IS TO ---

1 MR. POPE: YOUR HONOR, I'VE TRIED TO GIVE SOME
2 LATITUDE, BUT I'M GOING TO OBJECT; THIS IS NOT TO TALK
3 ABOUT THE SENTENCE, IT'S JUST ABOUT MERCY.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 A. I BEG YOUR PARDON.

6 Q. KNOWING ALL THAT YOU KNOW, WHAT ARE YOU ASKING
7 THIS JURY FOR?

8 A. I'M ASKING THIS JURY FOR MERCY, TO SPARE HIS
9 LIFE.

10 Q. THANK YOU.

11 MR. POPE: NO QUESTIONS, YOUR HONOR.

12 THE COURT: THANK YOU; YOU CAN STEP DOWN AND BE
13 EXCUSED.

14 THE COURT: DO YOU HAVE ANYMORE WITNESSES FOR
15 THIS EVENING?

16 MR. HANCOCK: NOTHING FOR THIS EVENING, YOUR
17 HONOR.

18 THE COURT: WELL, IT'S 6:30; WE'LL STOP FOR THE
19 EVENING. I STILL THINK WE ARE STILL ON TRACK TO GET THE
20 CASE INTO YOUR HANDS SOMETIME MID TO EARLY AFTERNOON
21 TOMORROW. SO, I JUST WANT YOU TO BE AWARE OF THAT. WE'VE
22 WORKED A LITTLE LATER LAST NIGHT AND TONIGHT, BUT BASED ON
23 MY CONVERSATION WITH THE ATTORNEYS AND JUST MY KNOWLEDGE OF
24 HOW THINGS PROGRESS, THAT'S WHERE I SEE US. SO, HAVE A
25 PLEASANT EVENING AND WE'LL SEE YOU AT 9:30 IN THE MORNING.

1 IN CAMERA:

2 THE COURT: DOES THE DEFENSE HAVE ANYTHING ELSE?

3 MR. BOYD: NOT AT THIS TIME.

4 MR. POPE: YOUR HONOR, AS FAR AS SCHEDULING, IN
5 THE MORNING I KNOW WE START AT 9:30. IF POSSIBLE, I KNOW
6 AT SOME POINT, WE DIDN'T DO IT TODAY, WE DO HAVE SOME
7 ISSUES AS FAR AS YOUR CHARGE.

8 THE COURT: WE'LL HAVE TO MAKE TIME TO DO THAT.

9 MR. POPE: WOULD YOU LIKE TO MEET AT 9:00 IN THE
10 MORNING?

11 THE COURT: 9:00 IN THE MORNING WILL BE GOOD.

12 MR. POPE: MEET IN YOUR CHAMBERS AT 9:00?

13 THE COURT: YES. MR. ROBERTSON? I'M GOING TO
14 REMIND YOU, AS I TOLD YOU, THAT YOU HAVE A RIGHT TO TESTIFY
15 IF YOU WISH AND HAVE A RIGHT TO REMAIN SILENT AND YOU AND
16 YOUR ATTORNEY HAVE THE RIGHT TO MAKE THE LAST FINAL
17 ARGUMENT TO THE JURY.

18 I'M JUST REMINDING YOU OF THAT AT THIS TIME. AT
19 SOME POINT I AM GOING TO ASK YOU TO PUT ON THE RECORD
20 WHETHER OR NOT YOU WISH TO TESTIFY. YOU DON'T HAVE TO TELL
21 ME THAT TODAY, BUT I WILL TELL YOU THAT WE ARE NEARING THE
22 END OF THE PROCEEDINGS. SO, YOU CAN GET WHATEVER ADVICE
23 YOU WISH.

24 I DON'T KNOW IF YOUR ATTORNEYS PLAN TO PRESENT
25 ANY OTHER EVIDENCE BUT WHEN WE HAVE REACHED THE POINT WHERE

1 THEY HAVE PRESENTED WHAT THEY INTEND TO PRESENT, I WILL
2 INQUIRE OF THE DECISION YOU HAVE MADE. DO YOU UNDERSTAND
3 THAT?

4 MR. ROBERTSON: YES, YOUR HONOR.

5 THE COURT: DO YOU HAVE ANY QUESTIONS OF ME ABOUT
6 ANY OF THAT?

7 MR. ROBERTSON: NOT AT THIS TIME, YOUR HONOR.

8 THE COURT: MR. BOYD AND MR. HANCOCK, DO YOU
9 BELIEVE HE IS AWARE OF WHAT I HAVE DISCUSSED WITH HIM?

10 MR. BOYD: YES, SIR.

11 MR. HANCOCK: YES, SIR.

12 THE COURT: THANK YOU. WE WILL SEE Y'ALL AT 9:30
13 IN THE MORNING.

14 MARCH 26, 1999 IN CAMERA:

15 THE COURT: THE DEFENDANT AND COUNSEL ARE
16 PRESENT. IS THE STATE READY TO PROCEED?

17 MR. POPE: THE STATE'S READY, YOUR HONOR.

18 THE COURT: IS THE DEFENSE READY TO PROCEED?

19 MR. HANCOCK: THE DEFENSE IS READY, YOUR HONOR.

20 THE COURT: DO YOU HAVE ANY WITNESSES TO CALL?

21 MR. BOYD: THE DEFENSE RESTS, YOUR HONOR.

22 THE COURT: BEFORE YOU DO THAT. MR. ROBERTSON,
23 I HAVE DISCUSSED WITH YOU ON TWO OCCASIONS NOW, REALLY
24 THREE COUNTING THE GUILT PHASE, YOU HAVE A RIGHT TO TESTIFY
25 IF YOU WISH BEFORE THIS JURY. YOU ALSO HAVE THE RIGHT TO

1 REMAIN SILENT. OF COURSE, IF YOU TESTIFY, YOU WILL BE
2 SUBJECT TO BEING CROSS EXAMINED BY THE STATE AND YOUR PRIOR
3 OFFENSES WHICH HAVE ALREADY BEEN BROUGHT INTO THE RECORD,
4 THEY CAN ASK YOU ABOUT THOSE FOR PURPOSES OF IMPEACHING
5 YOUR CREDIBILITY BUT NOT FOR INDICATING ANYTHING REGARDING
6 THE SENTENCE.

7 NOW, THEY CAN USE CERTAIN THINGS REGARDING YOUR
8 PAST THAT ARE INDICATIVE OF YOUR CHARACTER, THEY CAN ARGUE
9 THOSE THINGS. BUT YOU HAVE THE RIGHT TO TESTIFY OR YOU
10 HAVE THE ABSOLUTE RIGHT TO REMAIN SILENT.

11 IF YOU CHOOSE TO EXERCISE THAT CONSTITUTIONAL
12 RIGHT TO REMAIN SILENT, I WILL AGAIN AS I DID IN THE GUILT
13 PHASE TELL THE JURY THEY CANNOT CONSIDER THAT, DISCUSS THAT
14 OR FACTOR THAT INTO THEIR DELIBERATION ON THE PUNISHMENT TO
15 BE IMPOSED IN ANY WAY WHATSOEVER. DO YOU UNDERSTAND THAT?

16 MR. ROBERTSON: YES, YOUR HONOR.

17 THE COURT: MR. BOYD, DO YOU BELIEVE HE
18 UNDERSTANDS IT?

19 MR. BOYD: I DO, YOUR HONOR.

20 THE COURT: MR. ROBERTSON, WHAT IS YOUR DECISION?

21 MR. ROBERTSON: I WAIVE MY RIGHT TO TESTIFY AT
22 THIS TIME.

23 THE COURT: YOU SAY AT THIS TIME, THIS IS THE
24 TIME.

25 MR. ROBERTSON: I WAIVE MY RIGHT TO TESTIFY.

1 THE COURT: ALL RIGHT, I FIND THAT IN BOTH THE
2 GUILT PHASE AND THE PENALTY PHASE THAT MR. ROBERTSON HAS
3 FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY,
4 UNDERSTANDING HIS RIGHT TO TESTIFY AND HIS RIGHT TO REMAIN
5 SILENT, WAIVES HIS RIGHT TO TESTIFY AND EXERCISED HIS
6 CONSTITUTIONAL RIGHT TO REMAIN SILENT.

7 I UNDERSTAND THE STATE HAS AT LEAST ONE REPLY
8 WITNESS AND I WILL WAIT UNTIL WE REACH THAT STAGE BEFORE I
9 DISCUSS WITH YOU WHETHER YOU INTEND TO MAKE A CLOSING
10 STATEMENT YOURSELF AS YOU HAVE AN ABSOLUTE RIGHT, ALONG
11 WITH YOUR COUNSEL, TO DO, FINAL STATEMENT. DO YOU
12 UNDERSTAND THAT?

13 MR. ROBERTSON: YES, YOUR HONOR.

14 THE COURT: DO YOU HAVE ANY QUESTION ABOUT THAT
15 AT THIS POINT?

16 MR. ROBERTSON: NO, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT. IS THE DEFENSE READY TO
18 PROCEED?

19 MR. BOYD: THE DEFENDANT IS READY.

20 THE COURT: THE STATE?

21 MR. POPE: YES, SIR, YOUR HONOR.

22 THE COURT: BRING IN THE JURY.

23 MR. BOYD: YOUR HONOR, WE DO HAVE SOME IN CAMERA
24 MATTERS BEFORE THE NEXT WITNESS IS CALLED.

25 THE COURT: WELL, YOU NEED TO TELL ME THAT QUICK.

1 MR. BOYD: WELL, I DIDN'T KNOW THAT IS WHO THEY
2 WERE CALLING.

3 THE COURT: WELL, SOMEBODY CATCH THEM AND TELL
4 THEM TO WAIT JUST A MINUTE. ALL RIGHT?

5 MR. BOYD: YOUR HONOR, THE STATE HAS INFORMED ME
6 JUST NOW THAT THE NEXT WITNESS THEY WILL CALL IS GEOFFREY
7 R. McKEE. MR. ROBERTSON WAS ORDERED TO UNDERGO A
8 PSYCHOLOGICAL EVALUATION BY MR. McKEE IN PREVIOUS ORDERS OF
9 THE COURT THAT WE HAVE ARGUED IN THE PAST.

10 AT THIS TIME I WANT TO RENEW OUR OBJECTION TO
11 THAT AND RENEW OUR OBJECTION TO THIS TESTIMONY BASED ON THE
12 ARGUMENTS THAT I MADE, THE BRIEF THAT WAS FILED PREVIOUSLY
13 CONCERNING THAT MATTER.

14 I WOULD ALSO, OF COURSE, YOUR HONOR, I DON'T KNOW
15 EXACTLY WHAT DR. McKEE IS GOING TO SAY BUT TO THE EXTENT --
16 IT IS MY UNDERSTANDING THAT IT WOULD HAVE TO BE LIMITED TO
17 ANY REBUTTAL -- TO ANYTHING THAT WAS PUT UP BY THE DEFENSE.
18 HE CAN'T JUST TAKE THE STAND AND GO INTO THE GENERAL
19 PSYCHOLOGICAL CONDITION OF MR. ROBERTSON; IT WOULD HAVE TO
20 BE SOMETHING IN REBUTTAL TO AN EXPERT WE PUT UP.

21 THE COURT: I AGREE WITH THAT. WHAT'S THE
22 STATE'S POSITION ABOUT WHETHER OR NOT DR. McKEE CAN TESTIFY
23 AT ALL?

24 MR. BRACKETT: YOUR HONOR, I BELIEVE THE DEFENSE
25 HAS INJECTED MENTAL ISSUES INTO THIS CASE THROUGH THE

1 TESTIMONY OF DR. PINCUS, DR. EVANS AND DR. MORTON. ALL OF
2 THEM TESTIFIED THAT THE DEFENDANT HAD A DRUG INDUCED
3 PSYCHOSIS.

4 IN DR. PINCUS' REPORT HE SAID THAT THE DEFENDANT
5 SAID HE DIDN'T KNOW WHETHER WHAT HE WAS DOING WAS RIGHT OR
6 WRONG. THAT GOES TO MCNAGHTEN AND DR. MCKEE IS PREPARED TO
7 TESTIFY TO THAT. ALSO THAT HE WAS UNDER THE INFLUENCE OF
8 A PSYCHOSIS, A DRUG INDUCED METHYLPHENIDATE PSYCHOSIS. DR.
9 MCKEE IS PREPARED TO RESPOND TO THAT.

10 HE IS PREPARED TO COMMENT ON THE GENERAL
11 PSYCHOLOGICAL CONDITION OF THE DEFENDANT AS THAT IS A
12 MITIGATING FACTOR THAT IS GOING TO BE PRESENTED TO THE
13 JURY, THAT THEY ARE ENTITLED TO CONSIDER HIS MENTAL STATE
14 AT THE TIME OF THE CRIME, SO HE WILL BE TESTIFYING TO THAT
15 AS WELL. ALL RESPONSIVE TO THE EVIDENCE THEY PRESENTED.

16 THE COURT: AS LONG AS IT'S RESPONSIVE TO
17 EVIDENCE PRESENTED BY THE DEFENSE IN THEIR DIRECT CASE.

18 MR. BOYD: WELL, YOUR HONOR, OF COURSE THERE'S
19 ANOTHER ISSUE, TOO. ONE OF THE THINGS, IF HE'S GOING TO
20 MAKE REFERENCE TO ANYTHING THAT MR. ROBERTSON TOLD HIM
21 DURING THE EVALUATION, OF COURSE, MR. ROBERTSON HAD TO BE
22 MIRANDIZED, SO I THINK THE COURT STILL HAS TO MAKE A
23 DETERMINATION AS TO WHETHER HIS MIRANDA RIGHTS WERE GIVEN
24 TO HIM AND UNDERSTOOD AT THAT TIME.

25 MR. BRACKETT: I'M PREPARED TO DO A DENNO

1 HEARING.

2 THE COURT: ALL RIGHT, LET'S BRING IN THE DOCTOR.
3 WHILE HE'S COMING IN, SINCE WE'VE GOT SOME TIME, WHEN WE
4 WERE GOING OVER THE MITIGATING CIRCUMSTANCES, ONE OF THE
5 ONES YOU SAID I HAD EXCLUDED, I THINK NUMBER SEVEN, AGE AND
6 MENTALITY, I HAD THAT INCLUDED BUT I BROKE IT UP INTO TWO
7 INSTEAD OF ONE.

8 MR. BRACKETT: I THINK WE SAID 6, YOUR HONOR,
9 MENTAL -- CAPACITY TO CONFORM, I'M NOT SURE, I DON'T HAVE
10 IT IN FRONT OF ME, BUT I THINK IT WAS NUMBER 6.

11 THE COURT: ALL RIGHT. COME ON UP, DOCTOR, PUT
12 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

13 DR. GEOFFREY R. MCKEE, BEING FIRST DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY

16 MR. BRACKETT:

17 Q. SIR, WOULD YOU PLEASE STATE YOUR FULL NAME AND
18 SPELL YOUR LAST FOR THE COURT REPORTER?

19 A. MY NAME IS GEOFFREY R. MCKEE, MY LAST NAME IS
20 SPELLED M-c CAPITAL K-E-E.

21 Q. YES, SIR, AND CAN YOU TELL THE JUDGE WHAT YOUR
22 OCCUPATION IS, WHAT YOU DO FOR A LIVING?

23 A. I'M A FORENSIC PSYCHOLOGIST AND HOLD THE RANK OF
24 CLINICAL PROFESSOR IN THE UNIVERSITY OF SOUTH
25 CAROLINA'S SCHOOL OF MEDICINE, DEPARTMENT OF

1 NEUROPSYCHIATRY AND BEHAVIORAL SCIENCE AND I
2 HAVE A PRIVATE PRACTICE IN FORENSIC PSYCHOLOGY.

3 MR. BRACKETT: YOUR HONOR, FOR PURPOSES OF THIS
4 HEARING I WILL, OF COURSE, RE-QUALIFY HIM IN FRONT OF THE
5 JURY, BUT FOR THE PURPOSES OF THIS HEARING I WOULD TENDER
6 DR. MCKEE AS AN EXPERT IN THE FIELD OF FORENSIC PSYCHOLOGY.

7 THE COURT: WELL, LET'S JUST GO OVER THE ISSUE --
8 -

9 MR. BOYD: WE'LL STIPULATE THAT, YOUR HONOR.

10 Q. DID YOU HAVE AN OCCASION TO EVALUATE THE
11 DEFENDANT IN THIS CASE, JAMES ROBERTSON?

12 A. I DID.

13 Q. WHEN WAS THAT?

14 A. I SAW MR. ROBERTSON ON TWO OCCASIONS ON 3-5-99
15 AND 3-10-99.

16 Q. ALL RIGHT, SIR, AND I BELIEVE -- WHICH ONE OF
17 THOSE EXAMINATIONS WAS IT THAT YOU WENT INTO THE
18 FACTS OF THE CASE AND DISCUSSED WHAT HAPPENED?

19 A. ON THE 3-10-99.

20 Q. OKAY, SIR. DID YOU HAVE OCCASION TO READ HIM
21 HIS MIRANDA WARNINGS?

22 A. I DID.

23 Q. OKAY, SIR. I'M SHOWING YOU -- I WOULD ASK THAT
24 THIS BE MARKED AS A STATE'S EXHIBIT, I'VE LOST
25 TRACK OF THE NUMBERS. 287 FOR IDENTIFICATION.

1 Q. SIR, I AM SHOWING YOU A DOCUMENT THAT'S BEEN
2 MARKED STATE'S 287 FOR IDENTIFICATION AND ASK IF
3 YOU RECOGNIZE THAT?

4 A. I DO.

5 Q. CAN YOU TELL THE COURT WHAT THAT IS?

6 A. THIS IS THE COMPREHENSION MIRANDA RIGHTS. IT'S
7 AN INSTRUMENT THAT WAS DEVELOPED BY DR. THOMAS
8 GRISSE WHO IS A FORENSIC PSYCHOLOGIST AND
9 PROFESSOR OF PSYCHOLOGY IN THE DEPARTMENT OF
10 PSYCHIATRY AT THE UNIVERSITY OF MASSACHUSETTS
11 MEDICAL SCHOOL AND IT IS AN INSTRUMENT THAT HE
12 HAS USED IN THE ASSESSMENT OF MIRANDA RIGHTS FOR
13 BOTH ADOLESCENTS AND ADULTS.

14 Q. YES, SIR. AND DID YOU HAVE OCCASION TO USE THAT
15 DOCUMENT IN ADVISING MR. ROBERTSON OF HIS
16 MIRANDA RIGHTS?

17 A. I DID.

18 Q. CAN YOU EXPLAIN TO THE COURT EXACTLY HOW YOU DO
19 THAT?

20 A. THE INSTRUMENT IS GIVEN IN AN ORAL FASHION WHICH
21 IS TO SAY THAT THE EXAMINER READS, AS INDICATED
22 HERE ON THE INSTRUMENT, READS A SERIES OF
23 STATEMENTS AND INSTRUCTIONS TO THE PATIENT
24 BEFORE ACTUALLY BEGINNING THE INSTRUMENT ITSELF.
25 BUT THE TEST IS GIVEN ORALLY; THE PATIENT

1 RESPONDS ORALLY, AND THE EXAMINER WRITES DOWN
2 HIS RESPONSES.

3 Q. SO, WHOSE HANDWRITING IS THAT ON THAT DOCUMENT?

4 A. THAT IS MY HANDWRITING.

5 Q. AND WHAT DID YOU BASE THAT WRITING ON?

6 A. ON WHAT HE TOLD ME.

7 Q. OKAY, SIR. CAN YOU GO THROUGH THE MIRANDA
8 WARNINGS THAT YOU GAVE AND HIS RESPONSE AS TO
9 HIS EXPLANATION FOR EACH OF THOSE?

10 A. YES. THE FIRST IS, AFTER GOING THROUGH THE
11 INSTRUCTIONS AND HAVING A SAMPLE ITEM TO MAKE
12 SURE THAT THE PATIENT UNDERSTANDS THE TASK ---

13 Q. IT MIGHT BE HELPFUL IF YOU READ THOSE TO THE
14 COURT AS WELL.

15 A. WELL, I'LL JUST READ THE ENTIRE INSTRUMENT THEN.
16 AND IT STARTS "I'M GOING TO READ YOU SOME
17 SENTENCES. I WANT YOU TO TELL ME WHAT EACH
18 SENTENCE MEANS IN YOUR OWN WORDS. TRY TO TELL
19 ME WHAT THE SENTENCE SAYS BUT IN DIFFERENT WORDS
20 THAN THE WORDS IN THE SENTENCE. NOW CAN YOU
21 EXPLAIN TO ME WHAT IT IS THAT I WOULD LIKE FOR
22 YOU TO DO?"

23 AND MR. ROBERTSON SAID "CONVEY MY THOUGHTS TO
24 YOU ABOUT WHAT YOU ASK ABOUT".

25 AND THEN THE INSTRUMENT GOES ON, "THIS FIRST

1 SENTENCE IS JUST FOR PRACTICE SO THAT YOU CAN
2 GET USED TO WHAT I WANT YOU TO DO. HERE'S THE
3 SENTENCE, QUOTE, I HAVE VOLUNTEERED FOR THIS
4 EVALUATION, CLOSE QUOTE. NOW TELL ME IN YOUR
5 OWN WORDS WHAT IS SAID IN THAT SENTENCE."

6 MR. ROBERTSON RESPONDED, "I HAVE COME HERE
7 FREELY UNDER MY OWN WILL, I HAVE NOT BEEN
8 FORCED."

9 THE INSTRUMENT CONTINUES, "NOW WHAT DOES THIS
10 SENTENCE MEAN IN YOUR OWN WORDS" AND HERE IS THE
11 FIRST MIRANDA RIGHT.

12 Q. YES, SIR.

13 A. "YOU DO NOT HAVE THE RIGHT -- EXCUSE ME. YOU DO
14 NOT HAVE TO MAKE A STATEMENT AND HAVE THE RIGHT
15 TO REMAIN SILENT."

16 MR. ROBERTSON'S RESPONSE WAS "I CAN CHOOSE NOT
17 TO SAY ANYTHING OR TELL YOU SOMETHING. I CAN
18 PICK AND CHOOSE WHAT I SAY".

19 Q. YES, SIR.

20 A. THE SECOND MIRANDA RIGHT IS, QUOTE, ANYTHING YOU
21 SAY CAN AND WILL BE USED AGAINST YOU IN COURT OF
22 LAW, CLOSED QUOTE.

23 MR. ROBERTSON'S RESPONSE TO THAT WAS "THAT
24 ANYTHING I DISCLOSE, I MAY HEAR AGAIN. IT MIGHT
25 HURT, IT MIGHT HELP. WHAT'S SAID IN COURT IS

1 YOUR CHOICE, NOT MINE".

2 THE THIRD RIGHT WAS, QUOTE, YOU ARE ENTITLED TO
3 CONSULT WITH AN ATTORNEY BEFORE INTERROGATION
4 AND HAVE AN ATTORNEY PRESENT AT THE TIME OF
5 INTERROGATION.

6 MR. ROBERTSON'S RESPONSE TO THAT WAS, "ARE WE
7 SPEAKING GENERALLY. I HAVE A RIGHT TO HAVE AN
8 ATTORNEY PRESENT TO SPEAK FOR ME, TO CONSULT
9 WITH ME DURING QUESTIONING BY LAW ENFORCEMENT".
10 AND MIRANDA RIGHT FOUR WAS, QUOTE, IF YOU CANNOT
11 AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR
12 YOU, CLOSED QUOTE.

13 MR. ROBERTSON'S RESPONSE WAS "IF I OR FAMILY
14 CANNOT PAY FOR LEGAL REPRESENTATION FOR ME, THE
15 COURT WILL SELECT AN ATTORNEY TO REPRESENT ME".

16 Q. ALL RIGHT, SIR. DID HE KNOW WHO YOU WERE
17 WORKING FOR?

18 A. YES.

19 Q. WHAT DID YOU TELL HIM IN THAT REGARD?

20 A. I TOLD HIM THAT I HAD BEEN RETAINED BY THE
21 PROSECUTION, BY THE SOLICITOR'S OFFICE TO
22 CONDUCT AN EXAMINATION AND THAT I WOULD BE
23 DRAFTING A REPORT FOR THE SOLICITOR THAT MIGHT
24 BE USED IN COURT.

25 Q. DID HE UNDERSTAND THAT WHAT HE WAS TELLING YOU

1 MIGHT BE USED IN COURT AGAINST HIM?

2 A. THAT WAS MY OPINION THAT HE UNDERSTOOD WHAT I
3 SAID.

4 Q. HIS ANSWERS TO YOU AT ANY TIME DURING THE
5 INTERVIEW, DID YOU THREATEN HIM IN ANY WAY?

6 A. NO.

7 Q. DID YOU PRESSURE HIM?

8 A. NO.

9 Q. COERCE HIM IN ANY FASHION?

10 A. NO.

11 Q. DID YOU MAKE HIM ANY PROMISES, THAT IF HE TOLD
12 YOU THINGS, THAT SOMETHING BENEFICIAL MIGHT COME
13 FOR HIM.

14 A. NO.

15 Q. DID YOU ASK HIM IF HE WISHED TO SPEAK WITH YOU
16 ON ANY OCCASION WHEN YOU SPOKE WITH HIM?

17 A. YES.

18 Q. AND WHAT DID HE INDICATE?

19 A. HE SAID THAT HE WAS WILLING TO SPEAK WITH ME.

20 MR. BRACKETT: YOUR HONOR, AT THIS TIME I WOULD
21 MOVE STATE'S EXHIBIT 287 INTO EVIDENCE.

22 MR. BOYD: NO OBJECTION.

23 THE COURT: ONCE IT'S MARKED, WOULD YOU HAND IT
24 TO ME?

25 MR. BRACKETT: YES, SIR.

1 (THE MIRANDA RIGHTS FORM WAS MARKED IN EVIDENCE AS STATE'S
2 EXHIBIT 287 WITHOUT OBJECTION.)

3 Q. FINALLY, DR. McKEE, DID HE HAVE AN OPPORTUNITY
4 TO CONSULT WITH HIS LAWYERS BEFORE HE SPOKE WITH
5 YOU?

6 A. THAT IS MY UNDERSTANDING, YES.

7 Q. AND WAS HIS DECISION TO SPEAK WITH YOU MADE
8 AFTER HE HAD SPOKEN WITH HIS ATTORNEYS?

9 A. THAT IS MY UNDERSTANDING, YES.

10 Q. NO FURTHER QUESTIONS FOR THIS HEARING.

11 CROSS EXAMINATION BY

12 MR. BOYD:

13 Q. ON THIS COMPREHENSION MIRANDA RIGHTS FORM I
14 BELIEVE YOU STATED THIS IS BASICALLY A TEST YOU
15 DO TO DETERMINE COMPETENCY; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. SO, THAT'S A TEST YOU GIVE EACH DEFENDANT, YOU
18 EVALUATE WHETHER OR NOT THEY ARE GOING TO TALK
19 TO YOU ABOUT THE UNDERLYING CRIME; IS THAT
20 CORRECT?

21 A. YES.

22 Q. AND DID YOU TELL JIMMY ROBERTSON THAT HE HAD
23 THESE PARTICULAR RIGHTS WHEN TALKING TO YOU?

24 A. YES.

25 Q. EACH ONE OF THESE YOU TOLD HIM THAT HE HAD THAT

1 RIGHT?

2 A. YES.

3 Q. OKAY. AND I WANT TO PARTICULARLY REFER YOU TO
4 NUMBER 3. DO YOU HAVE YOUR FORM BEFORE YOU?

5 A. NO, I DON'T.

6 Q. I CAN USE THIS COPY. I WANT TO SHOW YOU NUMBER
7 3, IS THAT AN ACCURATE COPY THAT WE HAVE?

8 A. YES.

9 Q. OKAY AND THIS STATES "YOU ARE ENTITLED TO
10 CONSULT WITH AN ATTORNEY BEFORE INTERROGATION
11 AND TO HAVE AN ATTORNEY PRESENT AT THE TIME OF
12 INTERROGATION", IS THAT CORRECT?

13 A. YES.

14 Q. SO, YOU TOLD HIM HE HAD THOSE RIGHTS?

15 A. YES.

16 Q. WERE YOU AWARE THAT IN FACT HE DID NOT HAVE THE
17 RIGHT TO HAVE AN ATTORNEY PRESENT WHEN HE TALKED
18 TO YOU?

19 MR. BRACKETT: OBJECTION, YOUR HONOR, RELEVANCE.
20 THE COURT TOOK THAT MATTER UP PRIOR TO THE EVALUATION AND
21 ORDERED THAT THEY DID NOT HAVE A RIGHT TO BE PRESENT AND
22 THAT HAS NO RELEVANCE IN THE DENNO HEARING.

23 THE COURT: I OVERRULE THE OBJECTION.

24 Q. DID YOU KNOW THAT WHEN YOU GAVE HIM THAT RIGHT?

25 A. NO, I DID NOT.

1 Q. DID YOU KNOW THERE WAS A COURT ORDER THAT SAID
2 HIS ATTORNEYS COULD NOT BE PRESENT DURING YOUR
3 EVALUATION?

4 A. I'M NOT SURE ABOUT THAT. THERE WAS A COURT
5 ORDER THAT MY EVALUATION WAS IN -- I DON'T HAVE
6 THAT COURT ORDER WITH ME AND I'M NOT SURE
7 WHETHER THAT ORDER HAD THAT CLAUSE IN IT.

8 Q. BUT IN ANY EVENT, THIS IS EXACTLY WHAT YOU TOLD
9 HIM AT THE TIME; IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. I HAVE NO FURTHER QUESTIONS.

12 MR. BRACKETT: NOTHING FURTHER ON THIS.

13 THE COURT: ALL RIGHT, AS TO THE STATEMENTS GIVEN
14 BY MR. ROBERTSON, I FIND THAT BEFORE HE GAVE THE
15 STATEMENTS, HE WAS ADVISED OF HIS RIGHTS UNDER THE FIFTH
16 AND SIXTH AMENDMENTS OF THE CONSTITUTION, ADVISED OF THE
17 CONSTITUTIONAL SAFEGUARDS PROVIDED BY MIRANDA VERSUS
18 ARIZONA.

19 I FIND THAT AS TO, AND I'M GOING TO GO OVER THEM
20 MORE PARTICULARLY, BUT AS TO THE NUMBER 3 THAT IS
21 INACCURATE IN THE WAY THAT'S SET OUT BECAUSE UNDER THIS
22 COURT'S EARLIER ORDER THAT WAS INACCURATE, HE DID NOT HAVE
23 A RIGHT TO HAVE AN ATTORNEY PRESENT AT THE TIME OF THE
24 INTERROGATION, I DO NOT FIND THAT LESSENS THE GIVING OF THE
25 RIGHTS AND THE VOLUNTARINESS OF THE STATEMENT BECAUSE OF

1 THE PRESENCE OF THE ORDER, THE FACT THAT MR. ROBERTSON WAS
2 AT THAT TIME APPOINTED BY COUNSEL. AND I DON'T HAVE A COPY
3 OF THE ORDER IN FRONT OF ME, BUT I BELIEVE IT REQUIRED
4 COUNSEL TO GO OVER WITH MR. ROBERTSON THOSE RIGHTS. IS
5 THAT CORRECT, MR. BOYD?

6 MR. BOYD: I DON'T REMEMBER IF THE ORDER SAID
7 THAT OR NOT. I DON'T HAVE THE ORDER IN FRONT OF ME.

8 THE COURT: WELL, LET'S PULL IT SO THAT WE CAN
9 PUT THAT ON THE RECORD. THAT'S MY RECOLLECTION.

10 WHILE WE'RE DOING THAT, I FIND THAT HE WAS
11 ADVISED THAT HE HAD THE RIGHT TO REMAIN SILENT. THAT IF HE
12 WAIVED THAT RIGHT TO REMAIN SILENT, THE STATEMENTS HE MADE
13 COULD AND WOULD BE USED AGAINST HIM IN A COURT OF LAW. I
14 FIND THAT HE DID HAVE AN ATTORNEY THAT HAD BEEN APPOINTED.
15 THAT HE HAD THE RIGHT TO CONSULT HIS COUNSEL BEFORE ANY
16 INTERROGATION AND IN FACT HE HAD BEEN UNDER REPRESENTATION
17 OF COUNSEL FOR QUITE A PERIOD OF TIME. AND THAT BEFORE THE
18 INTERROGATION TOOK PLACE, COUNSEL WAS AWARE OF THE
19 INTERROGATION, WAS AWARE OF THE NATURE OF THE INTERROGATION
20 AND WAS AWARE OF ITS POTENTIAL USE AT TRIAL -- MR.
21 BRACKETT, WHENEVER YOU'RE READY.

22 MR. BRACKETT: YES, SIR.

23 THE COURT: NO, I MEAN WHENEVER YOU'RE READY TO
24 LISTEN TO ME. I'M NOT THROUGH TALKING.

25 MR. BRACKETT: YES, SIR, I WAS GETTING A COPY OF

1 THE ORDER FOR YOU.

2 THE COURT: HAND IT UP.

3 (A COPY OF THE ORDER WAS GIVEN TO THE COURT.)

4 THE COURT: WITH SPECIFICITY FROM THE ARGUMENTS
5 THAT MR. ROBERTSON KNEW THAT THE COURT'S ORDER ALLOWING
6 THIS EVALUATION WAS FOR THE PURPOSE OF REBUTTAL AND
7 REBUTTAL ONLY AS TO ANY EVIDENCE PRESENTED BY THE DEFENSE
8 THROUGH EXPERT TESTIMONY REGARDING HIS MENTAL STATUS.

9 I FIND THAT HE KNEW HE HAD THE RIGHT TO REMAIN
10 SILENT; THAT HE KNEW ANYTHING HE SAID COULD AND WOULD BE
11 USED AGAINST HIM IN COURT. HE UNDERSTOOD HE HAD THE RIGHT
12 TO CONSULT WITH COUNSEL.

13 HE DID NOT HAVE THE RIGHT, THERE IS NO QUESTION
14 BY MY ORDER, TO HAVE COUNSEL PRESENT AT THE INTERROGATION.
15 AND HE HAD COUNSEL ALREADY APPOINTED.

16 I FIND THAT HE KNEW THOSE RIGHTS, HE
17 INTELLIGENTLY WAIVED THEM UNDER BOTH THE CONSTITUTIONAL
18 SAFEGUARDS, THE CONSTITUTION AND MIRANDA. AND THAT ANY
19 STATEMENTS OBTAINED BY DR. McKEE WERE GIVEN FREELY AND
20 VOLUNTARILY WITHOUT DURESS, COERCION OR UNDUE INFLUENCE,
21 WITHOUT COMPULSION OR INDUCEMENT OF ANY KIND AND WERE THE
22 VOLUNTARY PRODUCT OF THE FREE AND UNCONSTRAINED WILL OF THE
23 DEFENDANT AND, THEREFORE, CAN BE USED IN THIS REBUTTAL.

24 THE ORDER SPECIFICALLY SAID THAT THE
25 ADMISSIBILITY OF THIS TESTIMONY WAS PREDICATED ON THE

1 DEFENSE FIRST INTERJECTING THE MENTAL STATUS OF THE
2 DEFENDANT AS AN ISSUE AND ONLY TO REBUT TESTIMONY EVIDENCE
3 OFFERED BY THE DEFENDANT. AND I FIND THAT IS THE PURPOSE
4 FOR WHICH IT IS BEING OFFERED.

5 I THOUGHT THERE WAS A DIRECTION TO COUNSEL TO
6 INFORM THE DEFENDANT OF HIS RIGHT TO REMAIN SILENT. I DO
7 NOT SEE THAT; HOWEVER, THE LAST SENTENCE OF THE ORDER DATED
8 FEBRUARY 17TH, 1999 STATES "NOTHING IN THIS ORDER SHALL BE
9 CONSTRUED TO ABRIDGE THE DEFENDANT'S FIFTH AMENDMENT RIGHT
10 TO REMAIN SILENT".

11 SO, I FIND THAT THE STATEMENTS HE MADE CAN BE
12 USED AT THIS PHASE OF THE TRIAL BY DR. McKEE.

13 ANYTHING FURTHER?

14 MR. BOYD: YOUR HONOR, NOW THAT IT IS ADMISSIBLE,
15 I WOULD OBJECT TO IT BEING PRESENTED AS JUST A GENERAL
16 CONFESSION OF THE DEFENDANT BECAUSE THAT IS NOT IN RESPONSE
17 TO ANYTHING THAT WE HAVE PUT UP.

18 THE COURT: NO, IT'S GOT TO BE RESTRICTED TO HIS
19 MENTAL CONDITION AND CAN ONLY BE IN REBUTTAL TO THE MENTAL
20 STATUS OF THE DEFENDANT AS PRESENTED BY EXPERTS FOR THE
21 DEFENDANT. ARE YOU READY TO PROCEED?

22 MR. BRACKETT: YES, SIR.

23 THE COURT: YOU CAN STEP BACK DOWN FOR RIGHT NOW.
24 WE WILL RE-SWEAR YOU WHEN THE JURY COMES IN. BRING IN THE
25 JURY.

1 IN THE PRESENCE OF THE JURY:

2 THE COURT: WHILE YOU WERE OUT, THE DEFENSE HAS
3 RESTED. THE DEFENSE HAS NOW PRESENTED THE EVIDENCE IT
4 INTENDS TO PRESENT.

5 THE STATE HAS THE RIGHT, A LIMITED RIGHT TO
6 PRESENT REBUTTAL EVIDENCE AND I UNDERSTAND IT HAS ONE
7 WITNESS AND WILL CALL THAT WITNESS AT THIS TIME.

8 MR. BRACKETT: MAY IT PLEASE THE COURT, THE STATE
9 WILL CALL GEOFFREY McKEE, DR. GEOFFREY McKEE.

10 DR. GEOFFREY R. McKEE, BEING FIRST DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY

13 MR. BRACKETT:

14 Q. SIR, WOULD YOU PLEASE STATE YOUR FULL NAME FOR
15 THE JURY?

16 A. MY NAME IS GEOFFREY R. McKEE; MY LAST NAME IS
17 SPELLED M-c CAPITAL K-E-E.

18 Q. SIR, WHAT DO YOU DO FOR A LIVING?

19 A. I'M A FORENSIC PSYCHOLOGIST AND I HOLD THE RANK
20 OF CLINICAL PROFESSOR IN THE DEPARTMENT OF
21 NEUROPSYCHIATRY AND BEHAVIORAL SCIENCE IN THE
22 UNIVERSITY OF SOUTH CAROLINA SCHOOL OF MEDICINE.

23 MR. BOYD: YOUR HONOR, WE WILL STIPULATE HIS
24 QUALIFICATIONS.

25 THE COURT: I FIND HE IS QUALIFIED AND MAY GIVE

1 OPINIONS.

2 Q. CAN YOU TELL THE JURY SOMETHING ABOUT WHAT A
3 FORENSIC PSYCHOLOGIST IS?

4 A. A FORENSIC PSYCHOLOGIST IS FIRST OF ALL A
5 PSYCHOLOGIST WHO APPLIES THE THEORIES, METHODS
6 AND RESEARCH OF PSYCHOLOGY TO QUESTIONS OF LAW
7 SUCH AS COMPETENCY TO STAND TRIAL, CHILD CUSTODY
8 OR CIVIL MATTERS OF ONE SORT OR ANOTHER.

9 Q. AND HOW DO YOU GO ABOUT DOING THAT?

10 A. WELL, FIRST OF ALL A GOOD FORENSIC PSYCHOLOGIST
11 IS FIRST OF ALL A GOOD CLINICAL PSYCHOLOGIST.
12 SO, THE METHODS OF CLINICAL PSYCHOLOGIST IS
13 APPLIED TO A FORENSIC EVALUATION WHICH IS TO SAY
14 THAT BEFORE EVALUATING A PATIENT, THE
15 PSYCHOLOGIST COLLECTS INFORMATION FROM RECORDS,
16 REPORTS, HISTORICAL DOCUMENTS OF ONE SORT OR
17 ANOTHER AND REVIEWS THOSE AND THEN SEES THE
18 PATIENT FOR VARYING LENGTHS OF TIME, DEPENDING
19 ON WHAT THE QUESTION IS THAT THE PSYCHOLOGIST IS
20 ASKED BY THE COURT TO ADDRESS. AND THEN
21 CONDUCTS A CLINICAL INTERVIEW OR A SERIES OF
22 CLINICAL INTERVIEWS WITH THE PATIENT. AND THEN
23 ADMINISTERS A VARIETY OF PSYCHOLOGICAL TESTS TO
24 ASSESS THE PATIENT'S INTELLIGENCE AND COGNITIVE
25 INTELLECTUAL FUNCTIONING, TO ASSESS PERSONALITY

1 AND EMOTIONS AND FEELINGS AND BEHAVIORS AND THEN
2 BRINGS ALL OF THAT INFORMATION TOGETHER TO
3 FORMULATE OPINIONS ABOUT THE PATIENT'S EMOTIONAL
4 FUNCTIONING AND HOW THAT EMOTIONAL FUNCTIONING
5 RELATES TO THE QUESTIONS THAT THE PSYCHOLOGIST
6 HAS BEEN ASKED BY THE COURT OR ASKED BY AN
7 ATTORNEY.

8 Q. HOW LONG HAVE YOU BEEN DOING THIS AS A FORENSIC
9 PSYCHOLOGIST?

10 A. I'VE BEEN A FORENSIC PSYCHOLOGIST FOR NOW 23
11 YEARS.

12 Q. AND HOW MANY CRIMINAL DEFENDANTS HAVE YOU
13 EVALUATED AND EXAMINED PURSUANT TO COURT ORDER?

14 A. OVER THE COURSE OF THAT TIME PROBABLY CLOSE TO
15 TWO THOUSAND.

16 Q. HOW MANY TIMES HAVE YOU TESTIFIED AS AN EXPERT
17 IN VARIOUS COURTS?

18 A. PROBABLY OVER TWO HUNDRED TIMES.

19 Q. DID YOU HAVE OCCASION TO EVALUATE AND EXAMINE
20 THE DEFENDANT IN THIS CASE?

21 A. I DID.

22 Q. COULD YOU TELL THE JURY ---

23 THE COURT: DID WE MAKE A FINDING ON THE RECORD
24 WITH THE JURY PRESENT OF HIS QUALIFICATIONS?

25 MR. BRACKETT: I BELIEVE THEY STIPULATED ---

MR. BOYD: WE STIPULATED HIS QUALIFICATIONS, YES,
SIR.

THE COURT: GO AHEAD.

Q. COULD YOU TELL THE JURY WHAT YOU DID TO EXAMINE THIS DEFENDANT?

A. PRIOR TO SEEING MR. ROBERTSON I REVIEWED A NUMBER OF RECORDS AND DOCUMENTS SUPPLIED BY THE SOLICITOR'S OFFICE. IN PARTICULAR, WITNESS STATEMENTS, INCIDENT REPORTS, STATEMENTS BY PERSONS WHO WERE AT OR AROUND THE SCENE AT THE TIME OF THESE INCIDENTS IN QUESTION. I REVIEWED A NUMBER OF MEDICAL REPORTS AND RECORDS. IN PARTICULAR HIS MEDICAL RECORDS FROM HIS PEDIATRICIAN, THE PSYCHIATRIST THAT HE HAD SEEN, A PSYCHIATRIC HOSPITALIZATION THAT HE HAD HAD AT THE WILLIAM S. HALL PSYCHIATRIC INSTITUTE IN 1995 AND THEN ALSO RECORDS OF HIS MEDICAL AND PSYCHIATRIC TREATMENT WHEN HE WAS INCARCERATED FOR A PERIOD OF TIME.

I REVIEWED ALL OF THOSE RECORDS AND THEN SAW MR. ROBERTSON FOR A CLINICAL INTERVIEW AND ADMINISTRATION OF ONE PSYCHOLOGICAL TEST ON 3-5-99 AND THAT CONTACT WAS FOR ABOUT THREE HOURS. AND THEN I SUBSEQUENTLY SAW MR. ROBERTSON ON MARCH 10TH OF 1999, AGAIN FOR A CLINICAL

1 INTERVIEW, AN EXTENDED CLINICAL INTERVIEW AND
2 ADMINISTRATION OF THREE OTHER TESTS,
3 PSYCHOLOGICAL TESTS.

4 AND THEN SUBSEQUENT TO THAT, I DRAFTED A REPORT.

5 Q. HOW LONG WAS YOUR SECOND INTERVIEW?

6 A. MY SECOND INTERVIEW WITH THE INTERVIEW AND
7 TESTING TOOK ABOUT FOUR HOURS.

8 Q. PRIOR TO SPEAKING WITH MR. ROBERTSON, DID YOU
9 ADVISE HIM OF HIS RIGHTS?

10 A. I DID.

11 Q. AND DID HE UNDERSTAND HIS RIGHTS?

12 A. IT WAS MY OPINION THAT HE UNDERSTOOD HIS RIGHTS,
13 YES.

14 Q. WAS HE THREATENED OR COERCED IN ANY WAY IN
15 SPEAKING WITH YOU?

16 A. NO, SIR.

17 Q. DID YOU ISSUE A REPORT?

18 A. I DID.

19 Q. DO YOU HAVE THAT REPORT WITH YOU?

20 A. I DO.

21 Q. YOUR HONOR, I WOULD OFFER THIS REPORT OF DR.
22 MCKEE INTO EVIDENCE AS STATE'S EXHIBIT 288.

23 MR. BOYD: YOUR HONOR, I OBJECT.

24 THE COURT: I SUSTAIN THE OBJECTION.

25 Q. REFERRING TO YOUR REPORT, CAN YOU TELL THIS JURY

1 WHAT THE FINDINGS OF YOUR REPORT WERE?

2 A. THE FINDINGS OF MY REPORT IS THAT IT WAS MY
3 OPINION THAT MR. ROBERTSON, IN TERMS OF
4 DIAGNOSIS, SUFFERED FROM BIPOLAR DISORDER, MANIC
5 WITHOUT PSYCHOTIC FEATURES BUT THAT THAT
6 DISORDER WAS IN FULL REMISSION.

7 THAT HE ALSO SUFFERED FROM ALCOHOL DEPENDENCE
8 WHICH WAS ALSO IN REMISSION BECAUSE HE WAS IN A
9 CONTROLLED ENVIRONMENT.

10 HE HAD A HISTORY OF CANNABIS WHICH IS TO SAY
11 MARIJUANA AND AMPHETAMINE, IN PARTICULAR RITALIN
12 ABUSE PRIOR TO HIS ARREST FOR THE PRESENT
13 INCIDENT.

14 HE HAD A HISTORY OF POLYSUBSTANCE WHICH MEANS
15 MULTIPLE DIFFERENT DRUGS. POLYSUBSTANCE
16 INTOXICATION INCLUDING COCAINE AND LSD, XANAX
17 AND INHALANTS.

18 AND THEN HE HAD A HISTORY OF ATTENTION DEFICIT
19 HYPERACTIVITY DISORDER.

20 IT WAS ALSO MY OPINION THAT HE HAD FEATURES OF
21 BORDERLINE ANTISOCIAL PERSONALITY TRAITS.

22 MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO
23 THAT. THAT'S NOT IN REBUTTAL TO ANYTHING WE PUT UP.

24 THE COURT: I OVERRULE THE OBJECTION.

25 Q. ALL RIGHT, SIR, NOW GOING BACK TO THE FIRST

1 THING YOU SAID, BIPOLAR DISORDER, MANIC WITHOUT
2 PSYCHOTIC FEATURES. WHAT DOES PSYCHOTIC
3 FEATURES MEAN?

4 A. PSYCHOSIS IS THE PRESENCE OF SYMPTOMS OF
5 DELUSIONS. DELUSIONS ARE FIXED FALSE BELIEFS.
6 THESE ARE IDEAS THAT A PATIENT OR A PERSON WOULD
7 HAVE THAT ARE SO FIRMLY HELD THAT THEY WOULD
8 STAND ANY TEST OR CHALLENGE FROM REALITY.

9 FOR EXAMPLE, PERSONS WITH MANIC DISORDERS, THEY
10 CAN BELIEVE THAT THEY ARE THE SON OF GOD, THAT
11 THEY ARE CHRIST, THAT THEY ARE NAPOLEON, THAT
12 THEY ARE SOME VERY SPECIAL PERSON WHEN IN FACT
13 THEY ARE NOT. AND YET EVEN THOUGH YOU SHOW THEM
14 THAT THEY ARE NOT, THEY STILL BELIEVE THAT THEY
15 ARE.

16 A DELUSION COULD BE PERSECUTORY IN THE SENSE OF
17 BELIEVING THAT PEOPLE ARE OUT TO GET YOU AND ARE
18 OUT TO HARM YOU IN SOME PARTICULAR WAY. AND
19 EVEN THOUGH THERE IS NO ACTUAL EVIDENCE OF THAT,
20 THERE IS NO ONE THAT HAS BEEN FOLLOWING THEM OR
21 POISONING THEM OR ATTEMPTING TO DO THEM HARM,
22 THEY BELIEVE THAT THIS IS IN FACT REALITY FOR
23 THEM.

24 SO, DELUSIONS ARE A HALLMARK OF PSYCHOSIS.

25 THE SECOND MAJOR SYMPTOM IN A PSYCHOSIS IS

1 HALLUCINATIONS. AND HALLUCINATIONS ARE
2 TECHNICALLY FALSE SENSORY EXPERIENCES. HEARING
3 VOICES WHEN NOBODY IS AROUND; HEARING SOMEONE
4 TELL HIM OR HER SOMETHING TO DO OR SOMETHING TO
5 SAY WHEN THERE IS NO ONE AROUND; SEEING THINGS
6 THAT AREN'T ACTUALLY THERE; SMELLING THINGS THAT
7 AREN'T ACTUALLY THERE. THOSE KINDS OF THINGS.
8 AND HALLUCINATIONS, THESE DISTORTIONS OF
9 REALITY, THESE DISTORTIONS OF SENSORY
10 EXPERIENCES IS AGAIN A HALLMARK OF THE PSYCHOTIC
11 CONDITION.

12 Q. IS THERE A DIFFERENCE, DOCTOR, BETWEEN A REGULAR
13 PSYCHOTIC EPISODE OR PSYCHOSIS AND A DRUG
14 INDUCED PSYCHOSIS IN THE FEATURES THAT ARE
15 EXHIBITED?

16 A. THERE'S REALLY NO DIFFERENCE BETWEEN A PSYCHOSIS
17 THAT IS THE RESULT OF A SEVERE MENTAL ILLNESS
18 SUCH AS SCHIZOPHRENIA, POSSIBLY BIPOLAR DISORDER
19 OR A DRUG INDUCED PSYCHOSIS. THEIR PSYCHOSES
20 ARE SIMILAR TO THE EXTENT THAT THERE'S THE
21 PRESENCE OF DELUSIONS AND/OR HALLUCINATIONS.

22 Q. DO YOU HAVE AN OPINION AS TO WHETHER THE
23 DEFENDANT WAS UNDERGOING A PSYCHOTIC EPISODE ON
24 NOVEMBER 25TH, 1997?

25 A. IT IS MY OPINION THAT HE WAS NOT EXPERIENCING A

1 PSYCHOTIC EPISODE ON NOVEMBER 25TH, 1997.

2 Q. ALL RIGHT, SIR. AND AS REGARDS TO HIS BIPOLAR
3 DISORDER, WAS THAT IN EFFECT AT THE TIME, ON
4 NOVEMBER 25TH, 1997, WAS HE EXPERIENCING THE
5 SYMPTOMS OF HIS BIPOLAR DISORDER ON THAT DATE?

6 A. IT IS MY OPINION THAT HE WAS NOT EXPERIENCING
7 THE SYMPTOMS OF BIPOLAR DISORDER, THOUGH IT WAS
8 MY OPINION THAT HE HAD BIPOLAR DISORDER DURING
9 THAT TIME.

10 Q. ALL RIGHT, SIR. HAVE YOU HAD OCCASION TO REVIEW
11 THE NOTES OF DR. TONI CASCIO?

12 A. I HAVE.

13 Q. AND YOU, OF COURSE, HAVE SAID THAT YOU HAD AN
14 OPPORTUNITY TO INTERVIEW THE DEFENDANT?

15 A. THAT'S CORRECT.

16 Q. ARE THE COMMENTS IN DR. CASCIO'S NOTES
17 CONSISTENT WITH THE DETAILS RELATED TO YOU BY
18 THE DEFENDANT?

19 A. I REVIEWED -- WAS PRESENTED WITH A COPY OF HER
20 NOTES THIS MORNING AND I REVIEWED THOSE AND
21 THOSE ARE GENERALLY CONSISTENT WITH THE NOTES
22 THAT I HAD FROM MY INTERVIEW WITH MR. ROBERTSON.

23 Q. ALL RIGHT, SIR, AND WE'VE HEARD ALL OF THAT, SO
24 JUST FOCUSING BRIEFLY ON THE FACTS AS RELATED TO
25 YOU, CAN YOU TELL US WHAT IT IS ABOUT THIS CASE

1 THAT MAKES YOU THINK THAT THIS DEFENDANT KNEW
2 RIGHT FROM WRONG AT THE TIME THAT THE CRIME WAS
3 COMMITTED?

4 MR. BOYD: YOUR HONOR, I OBJECT. THERE IS NO
5 QUESTION OF RIGHT FROM WRONG THAT HAS BEEN ALLEGED.

6 MR. BRACKETT: IN DR. PINCUS' REPORT HE
7 SPECIFICALLY STATED THAT HE DIDN'T KNOW RIGHT FROM WRONG.
8 THEIR EXPERT WITNESS' REPORT RELATED THAT FACT TO THIS
9 JURY.

10 THE COURT: I OVERRULE THE OBJECTION.

11 Q. WHAT SPECIFICALLY ABOUT THE EVENTS OF THAT NIGHT
12 LEAD YOU TO THAT CONCLUSION, SIR?

13 A. WELL, WHEN A FORENSIC PSYCHOLOGIST DOES AN
14 ASSESSMENT OF A DEFENDANT'S RECOGNITION OR
15 CAPACITY TO DISTINGUISH RIGHT FROM WRONG, WE
16 LOOK AT THE BEHAVIOR THAT'S REPORTED OF THE
17 DEFENDANT, EITHER BY THE DEFENDANT OR BY
18 WITNESSES BEFORE THE PARTICULAR INCIDENT, DURING
19 THE PARTICULAR INCIDENT AND THEN FOLLOWING THE
20 PARTICULAR INCIDENT.

21 IN MY OPINION MR. ROBERTSON DID KNOW RIGHT FROM
22 WRONG IN THAT PRIOR TO THE INCIDENTS IN QUESTION
23 HE PUT SOCKS ON HIS HANDS TO COVER HIS
24 FINGERPRINTS THAT HE MAY ---

25 MR. BOYD: YOUR HONOR, I OBJECT TO HIM REVEALING

1 INFORMATION FROM HIS NOTES.

2 MR. BRACKETT: HE'S EXPLAINING THE BASIS OF HIS
3 OPINION; HE IS EXPLAINING WHY HE THINKS HE KNEW RIGHT FROM
4 WRONG BASED ON WHAT HE TOLD HIM. HOW CAN HE PROPERLY
5 EXPLAIN TO THE JURY WHY HE REACHED HIS OPINION IF HE CAN'T
6 SAY HOW HE REACHED IT.

7 THE COURT: I OVERRULE THE OBJECTION.

8 A. SECONDLY, HE WAITED UNTIL HIS FATHER WAS IN THE
9 SHOWER BEFORE ATTACKING HIS MOTHER. AND
10 THIRDLY, AGAIN BEFORE THE INCIDENTS, HE TOOK THE
11 PHONE OFF THE HOOK IN HIS MOTHER'S BEDROOM
12 BEFORE ATTACKING HIS MOTHER.

13 DURING THE INCIDENTS IN QUESTION IT IS MY
14 OPINION THAT HE KNEW RIGHT FROM WRONG IN THAT
15 DURING THE ATTACK ON HIS MOTHER, HE GOT UP AND
16 WENT TO CHECK TO SEE IF HIS FATHER WAS STILL IN
17 THE SHOWER ON TWO OCCASIONS. THAT HE WAITED
18 OUTSIDE HIS FATHER'S BATHROOM DOOR WITH A BOTTLE
19 OF TILEX AND WITH THE HAMMER TO USE WHEN HIS
20 FATHER CAME OUT OF THE SHOWER. THAT HE SPRAYED
21 HIS FATHER WITH TILEX BEFORE HITTING HIM WITH
22 THE HAMMER.

23 AFTER THE INCIDENT, HE TOLD MEREDITH MOON TO PUT
24 THE BLOODY CLOTHES AND SOCKS AND BAT AND KNIFE
25 IN A BAG. THAT HE SHOWERED FOR APPROXIMATELY 25

1 MINUTES TO REMOVE BLOOD THAT WAS ON HIM. THAT
2 HE CHECKED TO SEE WHETHER HIS NECK WAS SCRAPED
3 BECAUSE HE WAS CONCERNED THAT IF HIS FATHER HAD
4 SCRAPED HIS NECK THAT THERE MIGHT BE HIS BLOOD,
5 THAT IS TO SAY JAMES ROBERTSON'S BLOOD, UNDER
6 HIS FATHER'S FINGERNAILS. SO, HE WAS CONCERNED
7 ABOUT THAT AND CHECKED HIS NECK FOR THAT.

8 THAT AFTER THE INCIDENTS THAT HE DECIDED TO USE
9 HIS FATHER'S CREDIT CARD RATHER THAN WRITING
10 CHECKS BECAUSE HE WAS CONCERNED THAT HE AND MS.
11 MOON MIGHT BE OBSERVED ON BANK CAMERAS.
12 AND THEN FOLLOWING THE OFFENSE HE POKED A HOLE
13 IN THE GLASS NEAR THE DOOR OR ON THE DOOR TO
14 MAKE THE INCIDENT APPEAR AS IF IT WERE A
15 ROBBERY.

16 HE TOOK THE BAG OF CLOTHES AND BAT AND KNIFE
17 WITH HIM, PUT IT IN THE TRUNK OF THE CAR,
18 DISPOSED OF THE BAG IN A DUMPSTER IN MARYLAND.
19 AND THEN ONCE ON THE ROAD HE CALLED BACK TO HIS
20 HOUSE AND GOT THE ANSWERING MACHINE, INDICATING
21 TO HIM THAT SOMEONE HAD PLACED THE PHONE BACK ON
22 THE HOOK AND THAT MADE HIM QUITE ANXIOUS.

23 AND SO FOR THOSE REASONS, THOSE WERE TO ME
24 INDICATIONS THAT HE COULD DISTINGUISH RIGHT FROM
25 WRONG.

1 Q. YOU ALSO SAID YOU GAVE AN OPINION AS TO HIS
2 CAPACITY TO CONFORM HIS CONDUCT TO THE
3 REQUIREMENTS OF THE LAW?

4 A. YES.

5 Q. WHAT WERE THE SIGNIFICANT FACTORS IN YOUR
6 DETERMINATION OF THAT?

7 A. THERE IS SOME OVERLAP IN TERMS OF WHAT I HAVE
8 SAID PREVIOUSLY, BUT INDICATIONS OF THE CAPACITY
9 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF
10 THE LAW WERE THAT HE DISCUSSED HIS PLAN OR THE
11 PLAN WITH MS. MOON. THAT HE OBTAINED TWO
12 KNIVES, A HAMMER, A BASEBALL BAT AND TILEX
13 BEFORE THE INCIDENTS. THAT HE PUT SOCKS OVER
14 HIS HANDS. THAT HE WAITED UNTIL HIS FATHER WAS
15 OUT OF THE SHOWER. AGAIN, SHOWING A CAPACITY TO
16 CONTROL HIS BEHAVIOR, TO DELAY HIS IMPULSE. AND
17 TAKING THE PHONE OFF THE HOOK PRIOR TO THE
18 INCIDENTS INDICATES AGAIN A CAPACITY TO CONTROL
19 HIS BEHAVIOR.

20 AND DURING THE EPISODES, AGAIN HIS WAITING
21 OUTSIDE THE BATHROOM DOOR, WAITING FOR HIS
22 FATHER REFLECTS A CAPACITY TO CONTROL HIS
23 BEHAVIOR, TO CONTROL HIS IMPULSES.

24 FOLLOWING HIS ATTACK ON HIS FATHER BEFORE USING
25 THE BAT, HE HAD GONE AND CHECKED TO SEE IF HIS

1 MOTHER WAS STILL ALIVE. AND WHILE HE WAS
2 ASSAULTING HER, AGAIN HE HAD THE CAPACITY TO
3 STOP ASSAULTING HER, GET UP TWICE TO CHECK TO
4 SEE IF HIS FATHER WAS STILL IN THE SHOWER AND
5 THEN RETURN TO HIS MOTHER'S BEDROOM.

6 AND THEN AGAIN DURING THE EPISODE FOLLOWING HIS
7 ASSAULT ON HIS FATHER, HE RETURNED TWICE MORE TO
8 ASSAULT HIS FATHER AFTER HEARING HIS FATHER
9 BREATHING.

10 FOLLOWING THE INCIDENTS HE AGAIN COLLECTS THE
11 BAT AND THE CLOTHES AND THE SOCKS AND PUTS THEM
12 IN A BAG; SHOWERS FOR A PERIOD OF TIME, AND HAS
13 ENOUGH CONTROL TO CHECK HIS NECK TO SEE IF HE
14 HAS BEEN SCRATCHED; HAS ENOUGH CONTROL TO DECIDE
15 TO TAKE THE CREDIT CARD RATHER THAN USING THE
16 CHECKS; TO PUT THE BAG IN THE TRUNK; TO DRIVE
17 OFF WITH MS. MOON TO DISPOSE OF THE BAG AS WELL.
18 AND THEN AT ARREST ENOUGH CONTROL TO NOT MAKE A
19 STATEMENT DURING HIS INTERROGATION.

20 MR. BOYD: YOUR HONOR, I WOULD OBJECT TO THE LAST
21 COMMENT.

22 THE COURT: I WAS LOOKING DOWN AT SOMETHING, WHAT
23 WAS ---

24 MR. BOYD: I THINK I NEED TO BE HEARD.

25 THE COURT: ALL RIGHT, LET ME LET THE JURY GO TO

1 THE JURY ROOM.

2 IN CAMERA:

3 THE COURT: BEFORE I HEAR FROM YOU, FOR THE
4 RECORD, MY FINDING ON THE INTRODUCTION OF THE STATEMENT WAS
5 A FINDING BASED ON THE PREPONDERANCE OF THE EVIDENCE. ALL
6 RIGHT, GO AHEAD.

7 MR. BOYD: YOUR HONOR, THE LAST COMMENT WAS A
8 COMMENT ABOUT MR. ROBERTSON REMAINING SILENT WHEN HE WAS
9 ORIGINALLY CHARGED IN PHILADELPHIA. I THINK THAT'S CLEARLY
10 IMPROPER TO BRING OUT IN ANY CONTEXT. I WOULD ASK ---

11 THE COURT: I WILL GIVE A CURATIVE INSTRUCTION.

12 MR. BOYD: I WOULD ASK THAT THAT BE STRICKEN. I
13 WOULD ALSO MOVE FOR A MISTRIAL AS TO THIS PROCEEDING.

14 THE COURT: I WILL GIVE A CURATIVE INSTRUCTION.

15 MR. BRACKETT: YOUR HONOR, I HAVE NO OPPOSITION
16 TO A CURATIVE INSTRUCTION. I DIDN'T KNOW HE WAS GOING TO
17 SAY THAT BUT I WOULD SUBMIT THAT IT WOULD BE RELEVANT, BUT
18 I HAVE NO PROBLEM STRIKING IT AND GIVING A CURATIVE
19 INSTRUCTION.

20 THE COURT: ALL RIGHT, READ BACK FOR ME, MADAM
21 COURT REPORTER, EXACTLY WHAT WAS SAID.

22 (THE STATEMENT WAS READ BACK TO THE COURT.)

23 THE COURT: ANYTHING BEFORE I GET THE JURY BACK
24 IN?

25 MR. BOYD: YES, YOUR HONOR, HE APPEARS TO BE

1 TESTIFYING FROM MS. CASCIO'S NOTES AND I ALSO THINK THAT'S
2 IMPROPER FOR AN EXPERT TO TAKE UNDERLYING DATA FROM ANOTHER
3 EXPERT AND TESTIFY TO THAT, I BELIEVE IS INAPPROPRIATE.

4 THE COURT: DIDN'T WE LISTEN TO THAT ALL DAY
5 YESTERDAY?

6 MR. BOYD: WE DID, YOUR HONOR, BUT IT'S BEING
7 USED FOR ANOTHER USE NOW, THAT WAS FOR PURPOSES OF CROSS
8 EXAMINATION OF THAT EXPERT.

9 THE COURT: I MEAN DIDN'T ONE WITNESS PREDICATE
10 THEIR DECISION ON, I MEAN YOU HAD MS. CASCIO WHO CERTAINLY
11 COULDN'T MAKE A DIAGNOSIS OF BIPOLAR DISORDER.

12 MR. BOYD: HE'S NOT TESTIFYING IN REBUTTAL TO MS.
13 CASCIO.

14 THE COURT: WHAT'S YOUR MOTION?

15 MR. BOYD: MY MOTION IS THAT HE CANNOT USE MS.
16 CASCIO'S NOTES THAT WERE PROVIDED FOR A LIMITED PURPOSE;
17 THAT IS, SO THE STATE COULD CROSS EXAMINE HER UNDER THE
18 RULE TO BE GIVEN TO ANOTHER EXPERT TO BASE HIS FURTHER
19 OPINION ON. I THINK THAT'S IMPROPER.

20 MR. BRACKETT: YOUR HONOR, THE ONLY REASON I GAVE
21 HIM MS. CASCIO'S NOTE WAS SO THAT WE DIDN'T HAVE TO GO
22 THROUGH IN GRAPHIC DETAIL ALL OF THE THINGS THE DEFENDANT
23 RELATED TO HIM AGAIN. I JUST WANTED HIM TO BE ABLE TO SAY
24 THAT THEY WERE CONSISTENT, MORE TO SPARE THE DEFENSE GOING
25 THROUGH ALL OF THAT AGAIN JUST TO GET TO THE MEAT OF THE

1 MATTER SO THAT WE COULD MOVE ON.

2 I DON'T BELIEVE HE IS TESTIFYING FROM HER NOTES.
3 I BELIEVE HE HAS HIS OWN NOTES WHICH HAS BEEN GIVEN TO THE
4 DEFENSE WHICH IS SUBSTANTIALLY SIMILAR IN ALMOST EVERY
5 RESPECT WITH ONE OR TWO VARIANCES.

6 MR. BOYD: IF HE'S TESTIFYING FROM HIS OWN NOTES,
7 I WITHDRAW THAT OBJECTION. I THOUGHT HE WAS TESTIFYING
8 FROM HER NOTES.

9 THE COURT: THE MOTION FOR A MISTRIAL IS DENIED.
10 I WILL GIVE A CURATIVE INSTRUCTION.

11 MR. BRACKETT: I HAVE ONE MORE MATTER.
12 ANTICIPATING AN OBJECTION ON MY FINAL QUESTION TO DR. MCKEE
13 OR MY FINAL SERIES OF TWO QUESTIONS I INTENDED TO ASK HIM,
14 AND WE MIGHT AS WELL HANDLE IT WHILE THE JURY IS OUT.

15 CONTINUED DIRECT IN CAMERA:

16 Q. REGARDING THE GENERAL MENTALITY OF THE
17 DEFENDANT, DR. MCKEE, CAN YOU EXPLAIN TO THE
18 JURY WHAT A PSYCHOPATH IS.

19 MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT.
20 THERE HAS BEEN NO EVIDENCE ---

21 THE COURT: I SUSTAIN THE OBJECTION.

22 MR. BRACKETT: YOUR HONOR, THIS GOES TO THE
23 GENERAL MENTALITY OF THE DEFENDANT WHICH IS A MITIGATING
24 CIRCUMSTANCE THAT IS GOING TO BE ARGUED BY THEM BASED ON
25 THE PSYCHOLOGICAL EVIDENCE THAT THEY PUT IN.

1 THE COURT: THERE HAS BEEN NO EVIDENCE THAT HE
2 WAS A PSYCHOPATH.

3 MR. BRACKETT: NO, SIR, THAT'S WHAT I AM ABOUT TO
4 PROFFER.

5 THE COURT: WELL, I SUSTAIN THE OBJECTION.

6 MR. BRACKETT: MAY I PROFFER THE TESTIMONY?

7 THE COURT: CERTAINLY.

8 Q. SIR, CAN YOU TELL THE COURT WHAT A PSYCHOPATH
9 IS?

10 A. WELL, FIRST OF ALL A PSYCHOPATH IS NOT A
11 DIAGNOSIS, IT IS NOT A PSYCHIATRIC DIAGNOSIS.
12 IT IS A DESCRIPTIVE TERM THAT IS USED IN
13 PSYCHIATRY AND PSYCHOLOGY TO DESCRIBE
14 INDIVIDUALS WHO BY ATTITUDE AND BEHAVIOR
15 DEMONSTRATE A DIFFICULTY IN ADHERING TO THE
16 RULES AND REGULATIONS AND TO FULFILL THEIR
17 OBLIGATIONS AS CITIZENS, AS PERSONS, AS HUSBANDS
18 AND FATHERS ---

19 Q. I'M SORRY, DR. McKEE, BUT COULD YOU SPEAK UP?

20 A. CERTAINLY, CERTAINLY. THAT HAVE DIFFICULTY
21 FULFILLING THEIR OBLIGATIONS AND THEIR ROLES
22 WITHIN SOCIETY AS HUSBANDS OR FATHERS OR MOTHERS
23 AND WIVES. THEY ARE INDIVIDUALS WHO OFTEN HAVE
24 HISTORIES OF CRIMINAL ACTIVITY OF QUASI-CRIMINAL
25 ACTIVITY AND THEY OFTEN HAVE A HISTORY OF

1 MULTIPLE ARRESTS AND THEY ARE INDIVIDUALS WHO
2 FEEL ENTITLED TO ACT THE WAY IN WHICH THEY WANT
3 TO ACT AND THEY FEEL ENTITLED AND FEEL AS IF
4 THEY ARE ABOVE THE NORMAL RESTRAINTS OF SOCIETY.

5 Q. HOW DO THEY INTERACT WITH OTHER PEOPLE?

6 A. THEY CAN INTERACT WITH OTHER PEOPLE IN A VERY
7 WARM AND ENGAGING MANNER. THEY OFTEN ARE VERY
8 SMOOTH TALKING INDIVIDUALS WHO ARE VERY SMOOTH
9 IN THEIR CONVERSATIONS, CAN TALK ABOUT JUST
10 ABOUT ANYTHING AND DO IT VERY SWIFTLY AND
11 SMOOTHLY.

12 Q. DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THE
13 DEFENDANT IS A PSYCHOPATH?

14 A. I DO NOT; IT IS NOT A PSYCHIATRIC -- AGAIN, IT
15 IS NOT A PSYCHIATRIC DIAGNOSIS.

16 Q. IS IT A TERM OF ART USED WITHIN THE PSYCHIATRIC
17 FIELD?

18 A. IT IS.

19 Q. DO YOU HAVE AN OPINION AS TO WHETHER HIS
20 BEHAVIOR CONFORMS TO WHAT YOU KNOW TO BE THE
21 DEFINITION OF PSYCHOPATHIC?

22 A. IT WOULD BE CONSISTENT WITH THAT.

23 MR. BRACKETT: THAT WOULD BE MY PROFFER, YOUR
24 HONOR, AND I SUBMIT THAT GOES TO HIS GENERAL MENTALITY
25 WHICH IS A MITIGATING FACTOR SUBMITTED BY THE DEFENSE AND

1 WILL BE ARGUED BY THE DEFENSE. IT SPEAKS DIRECTLY TO THAT
2 MITIGATING FACTOR AND IS RELEVANT EVIDENCE AND COULD NOT
3 HAVE GONE TO THE JURY HAD THEY NOT PUT UP THE DEFENSE THEY
4 PUT UP. SO, IT WAS CLEARLY INJECTED INTO THIS CASE BY THE
5 DEFENSE AND IS PROPER REBUTTAL.

6 THE COURT: I SUSTAIN THE OBJECTION. ANYTHING
7 FURTHER?

8 MR. BRACKETT: NO, SIR.

9 THE COURT: BRING IN THE JURY. I BELIEVE I DID
10 PUT ON THE RECORD THAT THE MOTION FOR A MISTRIAL IS DENIED.

11 MR. BOYD: YES, SIR.

12 IN THE PRESENCE OF THE JURY:

13 THE COURT: RIGHT BEFORE YOU LEFT THE ROOM, THERE
14 WAS TESTIMONY REGARDING INCIDENTS INVOLVING POST EVENTS
15 FROM WHAT HAPPENED IN ROCK HILL ON THAT NIGHT, PARTICULARLY
16 IN REGARD TO MR. ROBERTSON BEING IN PHILADELPHIA AND THIS
17 WITNESS TESTIFIED MR. ROBERTSON HAD ENOUGH CONTROL TO NOT
18 MAKE A STATEMENT DURING HIS INTERROGATION. DISREGARD THAT.
19 MR. ROBERTSON, AS I HAVE TOLD YOU EARLIER, HAD AN ABSOLUTE
20 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE EXERCISE OF
21 THAT RIGHT CANNOT AND MUST NOT BE USED AGAINST HIM IN ANY
22 FASHION WHATSOEVER. SO, DISREGARD THAT STATEMENT.

23 YOU MAY PROCEED.

24 MR. BRACKETT: YES, SIR, YOUR HONOR. I HAVE NO
25 FURTHER QUESTIONS OF THIS WITNESS. DR. McKEE, PLEASE

1 ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY HAVE.

2 A. YES, SIR.

3 CROSS EXAMINATION BY

4 MR. BOYD:

5 Q. YOU WERE HIRED BY THE STATE IN THIS CASE; IS
6 THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND HOW MUCH ARE YOU CHARGING THE STATE FOR YOUR
9 WORK ON THIS?

10 A. A HUNDRED AND FIFTY DOLLARS AN HOUR.

11 Q. SO, FOR EACH HOUR YOU WORK YOU GET A HUNDRED AND
12 FIFTY DOLLARS; IS THAT CORRECT?

13 A. YES, SIR.

14 Q. OKAY. NOW, I WANT TO ASK YOU CONCERNING -- OF
15 COURSE, BIPOLAR DISORDER IS SOMETHING THAT IS
16 TREATED BY MEDICATION; IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND, OF COURSE, YOU ARE NOT A MEDICAL DOCTOR,
19 ARE YOU?

20 A. I AM NOT.

21 Q. AND ACTUALLY IT TAKES A PSYCHIATRIST OR SOMEBODY
22 WITH A MEDICAL DEGREE TO TREAT BIPOLAR DISORDER?

23 A. TO TREAT BIPOLAR DISORDER IN TERMS OF
24 PRESCRIBING THE MEDICATION, YES, BUT ---

25 Q. YES, SIR.

1 A. BUT PSYCHOLOGISTS DO TREAT BIPOLAR PATIENTS FOR
2 THE NON-MEDICAL ASPECTS OF THEIR TREATMENT.

3 Q. CORRECT, BUT TO TREAT THE ACTUAL MEDICAL
4 CONDITION IT TAKES A MEDICAL DOCTOR OR A
5 PSYCHIATRIST?

6 A. FOR THE MEDICATION, YES, SIR.

7 Q. SO, YOU CAN'T PRESCRIBE MEDICATION, CAN YOU?

8 A. I CANNOT.

9 Q. AND IF YOU FEEL LIKE THAT A PATIENT OF YOURS HAS
10 THAT, YOU HAVE TO REFER THEM OVER TO A
11 PSYCHIATRIST TO GET MEDICATION; IS THAT CORRECT?

12 A. THAT'S CORRECT.

13 Q. NOW, YOU HAVE -- OF COURSE YOU HAVE DEALT, I
14 GUESS, WITH A GREAT NUMBER OF PEOPLE WHO ARE
15 BIPOLAR; IS THAT CORRECT?

16 A. YES, SIR.

17 Q. AND WHEN SOMEONE IS MANIC, THEY WILL -- I GUESS
18 YOU'VE DEALT WITH A GREAT NUMBER OF PEOPLE WHO
19 ARE IN THE MANIC PHASE; IS THAT CORRECT?

20 A. I HAVE.

21 Q. AND IN A MANIC PHASE PEOPLE ARE ACTING -- THEY
22 DON'T SLEEP, IS THAT ONE SYMPTOM?

23 A. THAT CAN BE ONE SYMPTOM, YES.

24 Q. NOT SLEEPING, WORKING LONG HOURS, THAT TYPE OF
25 THING?

1 A. IT COULD BE, YES.

2 Q. AND AS FAR AS BIPOLAR DISORDER, OF COURSE, LIKE
3 OTHER ILLNESSES, SOME PEOPLE HAVE IT WORSE THAN
4 OTHERS; ISN'T THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. SO, I MEAN SOMEBODY IN A MANIC PHASE JUST MAY BE
7 WORKING HARDER; IS THAT CORRECT?

8 A. YES.

9 Q. WHILE SOMEONE ELSE MAY BE ACTING REALLY WHAT WE
10 LAYMEN WOULD CALL CRAZY; IS THAT CORRECT?

11 A. YES, I WOULDN'T DISAGREE WITH THAT.

12 Q. AND IN YOUR CONTACT WITH SOME PEOPLE MANIC, THEY
13 JUST BASICALLY THINK ALL -- WELL, LET ME
14 REPHRASE THAT. YOU'VE DEALT WITH PEOPLE WHO ARE
15 MANIC IN FRONT OF YOU WHO WERE DOWNRIGHT
16 FRIGHTENING, WOULDN'T THAT BE SAFE TO SAY?

17 A. YES.

18 Q. AND AFTER THESE SAME PEOPLE HAVE BEEN TREATED
19 WITH MEDICATION, SOME OF THEM ARE JUST THE
20 NICEST PEOPLE IN THE WORLD, AREN'T THEY?

21 A. WELL, THEIR SYMPTOMS ARE NO LONGER AS PROMINENT,
22 YES.

23 Q. OKAY. AND WHEN YOU TALKED TO JIMMY ROBERTSON,
24 AT THAT TIME HE WAS TAKING MEDICATION, WASN'T
25 HE?

1 A. THAT'S MY UNDERSTANDING, YES.

2 Q. SO, YOU HAVE NEVER ACTUALLY SEEN HIM WHEN HE WAS
3 IN A MANIC PHASE, HAVE YOU?

4 A. I HAVE NOT.

5 Q. OKAY. AND YOU CERTAINLY HAVEN'T SEEN HIM WHEN
6 HE WAS UNDER THE INFLUENCE OF ANY RITALIN, HAVE
7 YOU?

8 A. I HAVE NOT.

9 Q. AND, OF COURSE, YOU HAVEN'T SEEN HIM WHEN HE WAS
10 UNDER A COMBINATION OF THE TWO, HAVE YOU?

11 A. THAT'S CORRECT, I HAVE NOT.

12 Q. BUT WHAT HE WAS TAKING WHEN YOU SAW HIM -- OF
13 COURSE, HE WAS IN PRISON WHEN YOU SAW HIM OR
14 INCARCERATED HERE; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND WHEN YOU SAW HIM, WAS IT YOUR UNDERSTANDING
17 OR FROM YOUR REVIEW OF THE RECORDS THAT HE WAS
18 TAKING WHAT HAD BEEN PRESCRIBED BY A MEDICAL
19 DOCTOR FOR HIS BIPOLAR DISORDER?

20 A. YES.

21 Q. THANK YOU. THAT'S ALL I HAVE.

22 REDIRECT EXAMINATION BY

23 MR. BRACKETT:

24 Q. ONE BRIEF QUESTION, DOCTOR. WAS HE IN A MANIC
25 PHASE WHEN HE KILLED HIS PARENTS?

1 A. IN MY OPINION, NO.

2 Q. THANK YOU.

3 RE CROSS EXAMINATION BY

4 MR. BOYD:

5 Q. OF COURSE, YOU WEREN'T THERE, SO YOU CAN'T SAY
6 FOR SURE, CAN YOU?

7 A. I WAS NOT THERE.

8 Q. THANK YOU.

9 THE COURT: YOU MAY STEP DOWN. THANK YOU; WE
10 APPRECIATE YOUR TIME. ANYTHING FURTHER?

11 MR. POPE: THE STATE WOULD REST ITS CASE, YOUR
12 HONOR.

13 MR. BRACKETT: MEMBERS OF THE JURY PANEL, THE
14 STATE IS RESTING ITS CASE. WE HAVE A FEW LEGAL MATTERS TO
15 GO OVER. WHEN YOU COME BACK, THE ATTORNEYS WILL MAKE FOR
16 YOU THEIR CLOSING ARGUMENTS AND THEN I WILL CHARGE YOU THE
17 LAW WHICH YOU ARE TO APPLY. SO, I AM GOING TO LET YOU GO
18 TO THE JURY ROOM WHILE WE TAKE UP SOME LEGAL MATTERS.

19 IN CAMERA:

20 THE COURT: ANYTHING FROM THE STATE BEFORE WE GET
21 INTO CHARGES AND ALL?

22 MR. POPE: NO, SIR, YOUR HONOR.

23 THE COURT: ANYTHING FROM THE DEFENSE?

24 MR. BOYD: NOTHING, YOUR HONOR.

25 THE COURT: MR. ROBERTSON, WE ARE TO THE POINT

1 WHERE CLOSING ARGUMENTS WILL TAKE PLACE. I AM IN JUST A
2 MOMENT GOING OVER THE REQUESTS TO CHARGE, WHAT I WILL BE
3 CHARGING. YOUR ATTORNEYS PRETTY MUCH KNOW WHAT THAT WILL
4 BE AND THEY CAN GO OVER IT WITH YOU WHEN WE TAKE A BREAK.

5 I ADVISE YOU AGAIN THAT YOU HAVE A RIGHT, YOU AND
6 YOUR ATTORNEY HAVE A RIGHT TO MAKE CONCLUDING, FINAL
7 CLOSING STATEMENTS FOR THIS JURY TO HEAR REGARDING WHAT
8 SENTENCE TO IMPOSE. HAVE YOU DECIDED WHETHER OR NOT YOU
9 CHOOSE TO MAKE A STATEMENT ON YOUR OWN BEHALF OR WAIVE THAT
10 RIGHT?

11 MR. ROBERTSON: YES, YOUR HONOR, I HAVE.

12 THE COURT: AND WHAT IS THAT DECISION?

13 MR. ROBERTSON: I CHOOSE TO MAKE A FINAL
14 STATEMENT ON MY BEHALF.

15 THE COURT: ALL RIGHT, THANK YOU. YOU MAY BE
16 SEATED.

17 WE HAVE BEEN OVER IN CHAMBERS BRIEFLY MY CHARGE
18 AND FOR THE RECORD ---

19 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
20 I AM GOING TO GET MS. THOMAS WHO HAS BEEN ASSISTING MR.
21 BRACKETT ON IT AND IF IT PLEASE THE COURT, I WILL JUST STEP
22 OUT OF THE COURTROOM WHILE THEY WORK ON THAT SINCE I'VE GOT
23 TO DO CLOSING FIRST.

24 MR. BRACKETT: I DO HAVE A MATTER THAT WE CAN
25 TAKE UP IN THE INTERIM, YOUR HONOR.

1 THE COURT: WELL, THIS ISN'T ANY INTERIM, THIS IS
2 TIME TO WORK.

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

4 THE COURT: IF WE CAN GET MS. THOMAS HERE.

5 MR. BRACKETT: WHILE WE ARE WAITING FOR MS.
6 THOMAS.

7 THE COURT: ALL RIGHT, WHAT HAVE YOU GOT?

8 MR. BRACKETT: A MOTION TO PRECLUDE RELIGIOUS
9 ARGUMENTS TO THE JURY BY THE DEFENSE UNDER STATE VERSUS
10 BENNETT, BENNETT VERSUS ANGELONE.

11 THE COURT: WHAT PAGE OF THE BENNETT CASE ARE YOU
12 LOOKING AT.

13 MR. BRACKETT: YOUR HONOR, IT WOULD BE ON PAGE
14 24.

15 THE COURT: THAT JUST SIMPLY -- AS I READ IT, IT
16 SAYS DEFENDANT SAID HE WAS DEPRIVED OF MAKING A RELIGIOUS
17 ARGUMENT AND THE COURT SAID THEY DISAGREED, HE WASN'T
18 DEPRIVED OF IT.

19 MR. BRACKETT: YES, SIR. THE SIGNIFICANCE OF
20 BENNETT IS MORE IN THAT THE SUPREME COURT IN BENNETT
21 DECLINED TO DECIDE THE ISSUE AT THAT TIME BECAUSE THEY FELT
22 HE HAD BEEN AFFORDED HIS RIGHT AND, THEREFORE, THERE WAS NO
23 ISSUE FOR THEM TO DECIDE. HOWEVER, THEY REFERRED TO
24 BENNETT VERSUS ANGELONE, A COPY OF WHICH HAS ALSO BEEN
25 HANDED UP TO THE COURT. AND ON PAGE 15 OF THAT OPINION ---

1 THE COURT: ALL RIGHT.

2 MR. BRACKETT: YOUR HONOR, THIS CASE, FIRST
3 CITING BACK TO THE ORIGINAL BENNETT OPINION AND SAID BUT
4 SEE BENNETT VERSUS ANGELONE WHICH RECOGNIZES FEDERAL AND
5 STATE COURTS WHICH HAVE CONDEMNED SUCH ARGUMENTS -- I CAN'T
6 FIND THE EXACT QUOTE IN BENNETT VERSUS ANGELONE.

7 (AFTER A BRIEF PAUSE.)

8 MR. BOYD: YOUR HONOR, I'M SORRY, I'M NOT
9 FOLLOWING WHERE THIS IS.

10 THE COURT: HE HASN'T FOUND IT YET.

11 MR. BRACKETT: I APOLOGIZE, YOUR HONOR, MY COPY
12 THAT I HAD HIGHLIGHTED, I HAVE NOT GOT THAT. I DON'T KNOW
13 IF I HANDED IT TO YOU OR COUNSEL BY ACCIDENT. IF YOU WILL
14 GIVE ME JUST A MOMENT.

15 THE COURT: ON PAGE 12 UNDER HEADNOTE 8.
16 RELIGIOUSLY LOADED SENTENCING ARGUMENTS WERE INFLAMMATORY,
17 IRRELEVANT AND GROSSLY PREJUDICIAL.

18 MR. BRACKETT: YES, SIR. UNDER HEADNOTE 10. IN
19 THIS CASE THE ISSUE WAS ADDRESSED FROM THE STANDPOINT OF
20 THE PROSECUTOR MAKING REMARKS. UNDER HEADNOTE 10, FEDERAL
21 AND STATE COURTS HAVE UNIVERSALLY CONDEMNED SUCH
22 RELIGIOUSLY CHARGED ARGUMENTS AS CONFUSING, UNNECESSARY AND
23 INFLAMMATORY. AND THEN IT GOES ON TO CITE A VARIETY OF
24 CASES.

25 HERE THE COMMONWEALTH'S ATTORNEY, THE PROSECUTOR,

1 IMPROPERLY DREW ON HIS READING OF BIBLICAL LAW TO JUSTIFY
2 THE MORALITY OF THE STATE'S DEATH PENALTY LAW. SUCH
3 STATEMENTS HAVE NO CONTEXT IN OUR NONECCLESIASTICAL COURTS
4 AND MAY NOT BE TOLERATED.

5 YOUR HONOR, ESSENTIALLY WHAT THE STATE'S POSITION
6 IS, AND YOU WELL KNOW THAT THE BIBLE CAN BE CITED FOR BOTH
7 THE STATE OR THE DEFENSE DEPENDING ON WHETHER YOU'RE GOING
8 TO THE NEW TESTAMENT OR THE OLD TESTAMENT AND I CERTAINLY
9 DON'T MEAN TO DIMINISH THE SIGNIFICANCE OF THE BIBLE IN OUR
10 SOCIETY; HOWEVER, I DON'T BELIEVE THAT IT WILL BE OF ANY
11 ASSISTANCE TO THIS JURY IN FOLLOWING THE LAW AS PRESCRIBED
12 BY THIS STATE WHICH IS THE LAW OF MAN, THE LAW THAT THEY
13 ARE CHARGED TO FOLLOW, IN DECIDING WHETHER OR NOT UNDER THE
14 LAW THAT'S BEEN ESTABLISHED BY MAN, THIS DEFENDANT SHOULD
15 BE SENTENCED TO LIFE OR DEATH.

16 AND IT WOULD ONLY HAVE THE AFFECT OF CONFUSING,
17 AND IF THE STATE ARGUED IT, INFLAMING THE JURY. CERTAINLY
18 IF WE'RE NOT ALLOWED TO DO IT, AS THEY SUGGEST IN THIS
19 CASE, IT WOULD NOT BE FAIR TO PRECLUDE US FROM DOING IT,
20 YET ALLOW THEM TO DO IT.

21 THE COURT: WELL, THERE IS A FINE LINE BETWEEN
22 WHAT IS ACCEPTABLE. BAZAARE VERSUS LOCKHART WHICH IS ALSO
23 CITED STATES, QUOTING BIBLICAL -- QUOTING BIBLE ACCEPTABLE
24 WHERE IT IS MERELY FOR MORE POETIC BUT ACCURATE EXPLANATION
25 OF STATE LAW, DISTINGUISHING THEM FROM MISUSING BIBLE TO

1 INVOKE THE WRATH OF GOD OR SUGGEST THAT THE JURY APPLY
2 DIVINE LAW AS AN ALTERNATIVE TO THE LAW OF ARKANSAS.

3 MR. BRACKETT: YES, SIR, AND I HAVE NO OBJECTION
4 IF IT IS TRULY METAPHORICAL AND YOU ARE SIMPLY CITING TO A
5 PROVERB TO ILLUSTRATE A POINT OF LAW AND NOT TO DRAW
6 REFERENCE TO SOME BIBLICAL TEACHING OR SOME POSITION.
7 BECAUSE OBVIOUSLY DIFFERENT RELIGIONS HAVE DIFFERENT
8 POSITIONS ON THE DEATH PENALTY. IT WOULD JUST BE IMPROPER
9 TO GO TO THE BIBLE AND SAY YOU SHOULD GIVE DEATH AS IT'S
10 WRITTEN IN JOHN, YOU KNOW, AND RECOUNTING THE STORY OF
11 THROWING THE FIRST STONE. THAT HAS THE EFFECT OF --
12 BECAUSE THEN AGAIN I COULD GO TO THE OLD TESTAMENT AND TALK
13 ABOUT, YOU KNOW, THE RIGHT OF MAN TO ESTABLISH LAWS TO
14 GOVERN THEMSELVES AND WE COULD JUST GO ON AND ON.

15 METAPHORICALLY, I HAVE NO PROBLEM. POETICALLY,
16 NO PROBLEM. CITING TO IT IN SUPPORT OR TO CONTRADICT STATE
17 LAW, I HAVE A PROBLEM.

18 THE COURT: MR. HANCOCK?

19 MR. HANCOCK: YOUR HONOR, I HAVE A PROBLEM, ONE,
20 AGAIN AS I SAID, LEAVING RELIGION PER SE OUT OF THE
21 COURTROOM. AND IF WE ARE GOING TO DO THAT, THEN I WOULD
22 LIKE TO JUST GET A LIST OF THOSE RELIGIONS THAT WE ARE
23 LEAVING OUT OF THE COURTROOM AND THE GODS THAT WE ARE
24 LEAVING OUT OF THE COURTROOM THAT WE CANNOT REFER TO.

25 I UNDERSTAND WHAT HE IS SAYING CATEGORICALLY, BUT

1 WHEN HE ARGUES THAT THIS IS THE LAW, IT IS NOT IN ANY OF
2 THESE CASES, AND I BELIEVE THE CASES THAT HE WAS CITING,
3 AND HE WAS CITING ANGELONE, THEY REALLY -- THE TOTAL
4 AUTHORITY HAS BEEN NOT THAT RELIGIOUS ARGUMENTS ARE LEFT
5 OUT, IT HAS BEEN THAT THEY ARE LEFT IN.

6 I DON'T HAVE THE CASES BEFORE ME, BUT I READ FROM
7 -- THERE ARE CASES IN GEORGIA, THERE ARE CASES IN EVERY
8 STATE AND THEY ALLUDE TO PROSECUTION MAKING AN ARGUMENT OF
9 PRINCIPLES THAT OUR LAWS ARE BIBLICAL TEACHINGS. IT'S NOT
10 PRECLUDED.

11 AND IN GEORGIA THERE IS A CASE THAT STATES IT HAS
12 NEVER BEEN A PART OF THE LAW THAT STATES THAT RELIGION MAY
13 PLAY NO PART IN THE SENTENCING PHASE OF A DEATH PENALTY
14 TRIAL.

15 WE DON'T INTEND TO WAVE THE BIBLE, BUT I BELIEVE
16 -- I DON'T KNOW HOW FAR THAT GOES INTO ANY OF OUR TEACHINGS
17 THAT WE HAVE AND THAT WE CAN PRESENT TO THE JURY. IF THE
18 SOLICITOR ARGUES THE OLD TESTAMENT, THEN WE MAY ARGUE THE
19 NEW TESTAMENT, BUT WE DON'T PLAN TO AT THIS TIME. AND I
20 DON'T THINK THERE IS ANYTHING IN OUR LAW -- I WOULD HOPE
21 THAT THERE'S NOTHING IN OUR LAW THAT WOULD PRECLUDE US FROM
22 BRINGING AT LEAST SOME ELEMENT OF RELIGION IN FAIRNESS AND
23 JUSTICE INTO THE COURTROOM BECAUSE THAT'S WHERE IT ALL
24 STEMS FROM YOUR HONOR.

25 THE COURT: I'M NOT GOING TO MAKE A PERVASIVE

1 RULING; I'M GOING TO HAVE TO HEAR THE ARGUMENTS AND IF THE
2 STATE BELIEVES THERE IS SOMETHING THAT CROSSES THE LINE,
3 YOU'LL HAVE TO OBJECT TO IT AT THAT TIME.

4 MR. BRACKETT: YES, SIR.

5 THE COURT: ALL RIGHT, ANYTHING ELSE?

6 MR. BRACKETT: ONLY IN REGARD TO CHARGES, YOUR
7 HONOR, WHICH WE ARE PREPARED TO GO FORWARD WITH NOW.

8 MR. HANCOCK: I WOULD POINT OUT, YOUR HONOR -- AT
9 THIS PARTICULAR TIME I KNOW THAT WE ARE IN A DELICATE PHASE
10 OF THE TRIAL, A VERY DIFFICULT PHASE, BUT I WOULD ALSO
11 POINT OUT THAT BOTH MR. BOYD AND I ARE BASICALLY HELD DOWN
12 HERE WHILE THE SOLICITOR IS PREPARING HIS CLOSING ARGUMENT
13 SO WHEN WE ASK FOR A LITTLE TIME, THEN WE WOULD LIKE TO
14 HAVE THE SAME CONSIDERATION.

15 THE COURT: ALL RIGHT, WE WILL CERTAINLY DO THAT.
16 WE WILL TAKE A LITTLE TIME. LET'S START, NOT AT THE VERY
17 BEGINNING BUT SORT OF AT THE VERY END WITH DR. MCKEE. WHAT
18 IS THE STATE'S POSITION AND THE DEFENSE POSITION ABOUT ANY
19 CHARGE TO THE JURY THAT WE USUALLY GIVE IN A GUILT PHASE
20 ABOUT THE VOLUNTARINESS OF STATEMENTS. HE NEVER DID
21 TESTIFY AS TO ANY ACTUAL STATEMENT. THE QUESTION IS,
22 SHOULD THE JURY BE CHARGED ANYTHING REGARDING DR. MCKEE,
23 AND IT WOULD BE SOLELY DR. MCKEE AS TO WHETHER THEY MUST
24 EXAMINE THE VOLUNTARINESS, GIVE WEIGHT TO THE STATEMENTS
25 AND -- ACTUALLY THE SORT OF PRAGMATIC THING ABOUT IT WAS,

1 I'VE GOT THREE EXCEPTIONS. EVERYTHING THAT HE TESTIFIED TO
2 WAS IN THE RECORD ALREADY.

3 MR. BRACKETT: YES, SIR.

4 THE COURT: THOSE THREE THINGS THAT I DO NOT
5 RECALL, THE TESTIMONY THAT ON TWO OCCASIONS MR. ROBERTSON
6 CHECKED THE SHOWER TO MAKE SURE THAT HIS FATHER WASN'T
7 THROUGH SHOWERING WHILE HE WAS ASSAULTING HIS MOTHER. I
8 DON'T RECALL, AND IT MAY HAVE BEEN, THE TESTIMONY ABOUT HIM
9 CHECKING HIS NECK TO SEE IF THERE WAS ANY BLOOD ON HIS NECK
10 THAT MAY HAVE BEEN LEFT UNDER HIS FATHER'S FINGERNAILS.
11 AND I DON'T REMEMBER THAT THERE WAS ANY DISCUSSION ABOUT
12 USING CREDIT CARDS RATHER THAN CHECKS BECAUSE OF CAMERAS.
13 BUT OTHER THAN THAT, IT APPEARS TO ME THAT THE REST OF THE
14 TESTIMONY WAS ALREADY IN THE RECORD THROUGH OTHER SOURCES.
15 BUT I AM WONDERING, AND I WANT TO HEAR BOTH SIDES, AS TO
16 WHAT IF ANY CHARGE SHOULD BE GIVEN TO THE JURY INVOLVING
17 ANY ALLEGED STATEMENTS BY THE DEFENDANT TO MR. MCKEE.

18 MR. BRACKETT: I WOULD SUBMIT OUT OF AN ABUNDANCE
19 OF CAUTION THE COURT SHOULD CHARGE THE JURY THAT ANY
20 STATEMENTS THAT THEY FIND WERE MADE BY THE DEFENDANT TO DR.
21 MCKEE IN THE COURSE OF HIS EXAMINATION, AND LIMIT IT TO DR.
22 MCKEE BY EXPRESSLY IDENTIFYING HIM, SHOULD BE ONLY
23 CONSIDERED BY THE JURY IF THEY FIND BEYOND A REASONABLE
24 DOUBT THAT THEY WERE MADE BY THE UNCONSTRAINED AND
25 UNFETTERED WILL, VOLUNTARILY AND FREELY AFTER KNOWING THEIR

1 ADVICE OF RIGHTS AND SO FORTH.

2 THE COURT: WELL, BUT YOU DIDN'T ASK YOU ABOUT
3 THE MIRANDA RIGHTS IN FRONT OF THE JURY, SO THAT'S NOT IN
4 THE RECORD.

5 MR. BRACKETT: YES, SIR. THE STATEMENTS IN AND
6 OF THEMSELVES ARE NOT ---

7 THE COURT: WELL, THAT'S PART OF MY DIFFICULTY.
8 I'M LOOKING AT MY CHARGE AND MY CHARGE USUALLY HAS THEM
9 EXAMINE WHETHER HE HAD ALL OF HIS MIRANDA RIGHTS. AND I
10 MADE MY RULING BUT HE WAS NOT ASKED IN FRONT OF THE JURY A
11 SINGLE WORD ABOUT THAT.

12 MR. BRACKETT: YES, SIR, AND I HONESTLY DON'T
13 KNOW THAT AN EXPERT, SINCE THAT'S WHAT THE BASIS OF HIS
14 OPINION WAS, I MEAN HE CAN RELY ON HEARSAY TO FORM HIS
15 OPINION. I'M NOT REALLY SURE THAT -- MAYBE WHAT YOU CAN
16 CHARGE THE JURY IS THAT HIS STATEMENT SHOULDN'T BE TAKEN AS
17 SUBSTANTIVE EVIDENCE IN AGGRAVATION BUT ONLY TO ASSIST --
18 I BELIEVE THAT WOULD BE PROPER ANYWAY AS FOR THE BASIS OF
19 HIS OPINIONS AND THE JURY EVALUATING HIS OPINIONS.

20 THE COURT: WELL, I HONESTLY DON'T KNOW EITHER
21 AND THAT'S WHY I RAISED THE QUESTION.

22 MR. BRACKETT: YES, SIR. I DON'T KNOW.

23 THE COURT: WELL, LET ME HEAR FROM THE DEFENSE ON
24 THAT.

25 (AFTER A BRIEF PAUSE.)

1 MR. BRACKETT: MAY IT PLEASE THE COURT, ISN'T THE
2 ADVICE OF RIGHTS FORM IN EVIDENCE?

3 THE COURT: I DON'T THINK IT WAS EVER PUT INTO
4 EVIDENCE, NOT WHILE THE JURY WAS PRESENT.

5 MR. BOYD: YOUR HONOR, I AGREE WITH MR.
6 BRACKETT'S LAST PROPOSED CHARGE THAT IT CAN'T BE TAKEN AS
7 SUBSTANTIVE EVIDENCE, HOWEVER I WOULD LIKE TO GO FURTHER ON
8 THAT AND REQUEST A CHARGE -- WE DIDN'T PUT THIS IN OUR
9 REQUESTS TO CHARGE, BUT ANY EXPERT'S TESTIMONY CONCERNING
10 WHAT HE SAID COULD NOT BE TAKEN AS SUBSTANTIVE EVIDENCE BUT
11 ONLY AS THE BASIS OF THEIR OPINION.

12 THE COURT: WELL, OF COURSE, HE'S ALREADY BEEN
13 FOUND GUILTY. DRAFT UP ONE AND I'LL LOOK AT IT BECAUSE I
14 HADN'T EVEN THOUGHT ABOUT IT IN TERMS OF HIS OWN EXPERTS,
15 BUT I HAD THOUGHT ABOUT IT, OBVIOUSLY, WITH DR. MCKEE.

16 ALL RIGHT, I HAVE ADDED TO THE STATUTORY
17 INSTRUCTIONS ON TERRY ROBERTSON TWO AGGRAVATING
18 CIRCUMSTANCES THAT I HAD INITIALLY LEFT OFF, THAT BEING
19 MURDER COMMITTED WHILE IN THE COMMISSION OF A ROBBERY WHILE
20 ARMED WITH A DEADLY WEAPON, MURDER COMMITTED WHILE IN THE
21 COMMISSION OF LARCENY WITH THE USE OF A DEADLY WEAPON.

22 I HAD LEFT THEM OFF BECAUSE THE INDICTMENT
23 REGARDING THE TAKING OF THE CREDIT CARD RELATED SOLELY TO
24 TAKING PROPERTY OF EARL ROBERTSON. THE STATE, THROUGH A
25 SERIES OF CASES, HAS CONVINCED ME, PARTICULARLY HUMPHRIES

1 AND HUGGINS, THAT CRIMES COMMITTED IN A CONTINUOUS SERIES
2 OF ACTS MAY BE CONSIDERED AS A STATUTORY AGGRAVATING
3 CIRCUMSTANCE, REALIZING THAT THOSE CASES DEALT WITH POST
4 EVENTS SUBSEQUENT TO THE ARMED ROBBERY, I STILL THINK THE
5 ENTIRE CIRCUMSTANCES INVOLVING THE ENTIRE EVENTS WARRANT
6 THE SUBMISSION OF ALL FIVE STATUTORY INSTRUCTIONS THAT I
7 INTEND TO GIVE ON EARL ROBERTSON ALSO ON TERRY ROBERTSON.
8 THAT WOULD INCLUDE THE TWO THAT I JUST WENT OVER, PLUS THE
9 MURDER BEING COMMITTED WHILE IN THE COMMISSION OF PHYSICAL
10 TORTURE; THAT IT WAS DONE BY MR. ROBERTSON FOR HIMSELF OR
11 ANOTHER FOR THE PURPOSE OF RECEIVING MONEY OR A THING OF
12 MONETARY VALUE; AND FIFTH, THAT THE TWO PERSONS WERE
13 MURDERED BY ONE ACT OR PURSUANT TO ONE SCHEME OR COURSE OF
14 CONDUCT. THE DEFENSE?

15 MR. HANCOCK: YOUR HONOR, YOU HAVE OUR PREVIOUSLY
16 STATED OBJECTIONS TO THOSE.

17 THE COURT: WELL, THEY HAVE GOT TO BE ON THE
18 RECORD NOW.

19 MR. HANCOCK: YOUR HONOR, WE HAD OBJECTED
20 PREVIOUSLY THAT THOSE WERE CASES IN WHICH THE ACT OF THEFT
21 OCCURRED BEFORE THE MURDER AND IT CONTINUED THROUGH THE
22 MURDER AND THE THEFT WENT EVEN AFTER THE MURDER. IN THIS
23 CASE WE DON'T HAVE THAT.

24 ONE IS THAT THE ACTS THAT THEY ARE COMPLAINING OF
25 WERE CONTEMPORANEOUS WITH THE MURDER AND FOR THOSE REASONS,

1 WE ARE SAYING THAT THESE CASES DO NOT APPLY AS STATED IN
2 CHAMBERS, SIR, AND FOR THE RECORD WE STILL OBJECT.

3 THE COURT: WELL, LET'S DO IT THIS WAY ALSO JUST
4 TO BE REAL, REAL SURE. THE STATUTORY INSTRUCTIONS OF EARL
5 ROBERTSON. LET'S LOOK AT HIS FIRST. DO YOU HAVE A COPY?

6 MR. HANCOCK: YES, SIR.

7 THE COURT: THEY ARE LISTED ON THE FIRST PAGE
8 UNDER HEADNOTE 1; THEY ARE ALSO LISTED AS 1, 2, 3. I DID
9 THAT, PERHAPS NOT GRAMMATICALLY THE WAY IT SHOULD HAVE BEEN
10 DONE, BUT IT'S THE WAY IT IS DONE. WHICH OF THOSE FIVE, IF
11 ANY, DO YOU FIND THAT THE STATE HAS NOT SUBMITTED
12 SUFFICIENT EVIDENCE FOR THAT PARTICULAR AGGRAVATING
13 CIRCUMSTANCE TO GO TO THE JURY. ON EARL ROBERTSON, THOSE
14 FIVE.

15 MR. HANCOCK: YOUR HONOR, I BELIEVE WE WERE
16 OBJECTING TO THE PHYSICAL TORTURE PORTION, YOUR HONOR.
17 THAT THE TESTIMONY THAT HAS BEEN RECEIVED WOULD NOT WARRANT
18 THAT BEING SUBMITTED TO THE JURY. I BELIEVE THE ONLY
19 TESTIMONY THAT SAID THAT WAS ACTUALLY FROM TONI CASCIO'S
20 NOTES THAT HE WAS STRUGGLING AFTERWARDS. THE OTHER
21 TESTIMONY WAS THAT THEY DID NOT -- THAT THE FIRST BLOW
22 COULD HAVE RENDERED HIM UNCONSCIOUS, SO THAT THERE WAS
23 NONE. SO, I WOULD ASK THAT THAT BE OMITTED.

24 THE COURT: WELL, I DISAGREE. I THINK ABSENT MS.
25 CASCIO'S TESTIMONY, PARTICULARLY THAT OF, THE NAME ESCAPES

1 ME, THE GENTLEMAN THAT SHOWED THE VIDEO, BRETT ---

2 MR. HANCOCK: BRETT BAKER, YOUR HONOR.

3 THE COURT: HE HAD THE HEART PUMPING BLOOD AND
4 SQUIRTING IT ALL OVER THE PLACE. HAD MRS. ROBERTSON --
5 SEVERAL PLACES IN THE TESTIMONY MRS. ROBERTSON IS BEGGING
6 TO BE LEFT ALONE, HOLLERING NO, JIMMY, NO, CALLING FOR
7 EARL. THERE IS SOME EVIDENCE THAT ONE BLOW TO MR.
8 ROBERTSON COULD HAVE POSSIBLY BEEN A DEFENSIVE BLOW TO HIS
9 HAND. I THINK THERE WAS AMPLE EVIDENCE, ABSENT MS.
10 CASCIO'S, TO LET THAT GO TO THE JURY.

11 MR. HANCOCK: YES, SIR.

12 THE COURT: ALL RIGHT, NOW HOW ABOUT TERRY? ANY
13 OBJECTION TO NUMBER 1 AND 2, MURDER WHILE IN THE COMMISSION
14 OF ROBBERY; ARMED WITH A DEADLY WEAPON; AND THE MURDER
15 COMMITTED IN THE COMMISSION OF LARCENY WHILE WITH THE USE
16 OF A DEADLY WEAPON AND PHYSICAL TORTURE.

17 MR. HANCOCK: AGAIN, YOUR HONOR, THE SAME
18 OBJECTIONS ARE MADE TO THE COURT UNDER THE SAME REASONS,
19 ESPECIALLY MRS. ROBERTSON THAT THE ROBBERY COMPLAINED OF
20 WAS NOT OF HER OR HER PERSON, THERE WAS NOTHING TAKEN OFF
21 OF HER PERSON AND THAT IS THE ONE WHERE THERE IS SUPPOSEDLY
22 THE CONTINUING ACTS AND AS WE HAVE INDICATED, THEY DO NOT
23 UNDER THE CASE LAW APPLY TO TERRY. THEY MAY APPLY TO EARL,
24 BUT THEY DON'T APPLY TO TERRY'S.

25 THE COURT: I HAVE LISTED FIVE MITIGATING

1 CIRCUMSTANCES. THEY ARE: NO SIGNIFICANT HISTORY OF PRIOR
2 CONVICTIONS, NUMBER 1; NUMBER 2, MURDER COMMITTED WHILE
3 UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE;
4 NUMBER 3, THE AGE; NUMBER 4, THE MENTALITY; NUMBER 5, THE
5 CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT AND
6 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW BEING
7 SUBSTANTIALLY IMPAIRED.

8 MR. HANCOCK: YOUR HONOR, AS PART OF THAT WE
9 WOULD REQUEST THAT THERE BE A CHARGE, I'M NOT SURE THAT
10 WE'VE HANDED IT UP, A CHARGE THAT THE AGGRAVATING
11 CIRCUMSTANCE OF VOLUNTARY INTOXICATION CAN BE CONSIDERED IN
12 MITIGATING CIRCUMSTANCES.

13 THE COURT: IS THAT ONE OF THE STATUTORY ONES?

14 MR. HANCOCK: NO, SIR, IT'S NOT STATUTORY.

15 THE COURT: WELL, I CAN ONLY CHARGE THE STATUTORY
16 ONES.

17 MR. HANCOCK: YOUR HONOR, ARE YOU GOING TO CHARGE
18 ANY NON-STATUTORY OR THAT THEY CAN CONSIDER NON-STATUTORY
19 CIRCUMSTANCES ---

20 THE COURT: I'M GOING TO SAY THEY CAN CONSIDER
21 THEM, CERTAINLY.

22 MR. HANCOCK: AND ARE YOU GOING TO MENTION, SIR,
23 THAT THAT IS ONE OF THE NON-STATUTORY -- WE WOULD ASK THAT
24 YOU INDICATE THAT THAT IS A NON-STATUTORY BECAUSE THEY HAVE
25 BEEN PREVIOUSLY CHARGED, AND I WOULD LIKE FOR THEM NOT TO

1 BE CONFUSED, THEY HAVE BEEN CHARGED THAT THEY CANNOT USE IT
2 IN THE GUILT PHASE.

3 THE COURT: WELL, HAVE YOU GOT ANY LAW ON THAT?
4 I DON'T KNOW IF VOLUNTARY INTOXICATION IS A MITIGATING
5 CIRCUMSTANCE.

6 MR. HANCOCK: YOUR HONOR, I'LL FIND IT IN JUST A
7 MOMENT.

8 THE COURT: WELL, YOU CAN HAND THAT UP.

9 MR. HANCOCK: IT'S NOT STATUTORY, IT'S NON-
10 STATUTORY.

11 THE COURT: I KNOW THAT, BUT WHETHER IT'S EVEN A
12 MITIGATING CIRCUMSTANCE. GETTING DRUNK AND KILLING
13 SOMEBODY, I DON'T KNOW THAT THAT'S MITIGATING. YOU'RE
14 GOING TO HAVE TO SHOW ME SOMETHING ON THAT. YOU CAN ARGUE
15 IT; I MEAN I'M NOT GOING TO STOP YOU FROM ARGUING THAT HE
16 WAS UNDER THE INFLUENCE, BUT VOLUNTARILY GETTING UNDER THE
17 INFLUENCE I DON'T THINK IS A MITIGATING CIRCUMSTANCE.

18 MR. HANCOCK: I WILL PROVIDE THE COURT ---

19 THE COURT: IF THAT WERE THE CASE, THEN ALL
20 ANYBODY WOULD HAVE TO DO IF THEY WANTED TO DO PHYSICAL HARM
21 TO SOMEBODY IS TO GO GET JUST DRUNK ENOUGH NOT TO PASS OUT
22 AND THEN GO BEAT THE HECK OUT OF SOMEBODY AND SAY, WELL,
23 YOU SHOULDN'T BOTHER ME, I WAS DRUNK.

24 MR. HANCOCK: YOUR HONOR, IT'S A STRANGE
25 DISTINCTION BUT I THINK I CAN MAKE IT. I WILL ATTEMPT TO

1 DO THAT AND PLACE IT ON THE RECORD.

2 THE COURT: ALL RIGHT. NOW, YOU HAVE REVIEWED MY
3 STATUTORY INSTRUCTIONS AND ALSO THE JURY'S VERDICT ON PROOF
4 OF AGGRAVATING CIRCUMSTANCE AND ALSO THE SENTENCING SHEET
5 DETERMINATION. ANY PROBLEM FROM THE STATE WITH THOSE? I
6 HAVE FOUND ONE TYPO ON SOMETHING I'M GOING TO CHANGE.

7 MR. BRACKETT: NO, SIR, YOUR HONOR, I BELIEVE WE
8 HAVE USED THESE SAME ONES BEFORE.

9 THE COURT: ALL RIGHT. THE DEFENSE?

10 MR. BOYD: ONE SECOND, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 (AFTER A PAUSE.)

13 MR. BRACKETT: MAY IT PLEASE THE COURT, WAS THE
14 TYPO THE INDICTMENT NUMBER?

15 THE COURT: ARE YOU TALKING ABOUT ON TERRY'S,
16 LEAVING ONE OF THEM OFF?

17 MR. BRACKETT: YES, SIR, THE INDICTMENT NUMBERS
18 ARE THE SAME FOR BOTH TERRY AND EARL'S.

19 THE COURT: WELL, THEY WEREN'T ORIGINALLY BECAUSE
20 I DIDN'T 'HAVE THOSE OTHER TWO, SO I'M ADDING THAT.

21 MR. BRACKETT: YES, SIR.

22 THE COURT: BUT THE TYPO IS SOMEWHERE ELSE, BUT
23 WE ARE AWARE OF THAT.

24 MR. BRACKETT: YES, SIR.

25 THE COURT: AND THAT WILL BE CORRECTED. YES,

1 SIR?

2 MR. HANCOCK: WE HAVE NO PROBLEM WITH THEM, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT. GOING THROUGH MY CHARGE,
5 I HAVE ALLOWED, HANDED OUT COPIES OF ONE THAT I HAD USED
6 PREVIOUSLY THAT I'M GOING TO PATTERN MY CHARGE AFTER. IT'S
7 VERY, VERY SIMILAR EXCEPT THAT I AM GOING TO INCLUDE THE
8 AGGRAVATING CIRCUMSTANCE OF PHYSICAL TORTURE AS HANDED UP.
9 I AM GOING TO GIVE STATE'S REQUEST TO CHARGE NUMBER 2. I
10 AM GOING TO CHARGE ONLY THAT LAST SENTENCE, A CRIME
11 COMMITTED IN A CONTINUOUS SERIES OF ACTS MAY BE CONSIDERED
12 AS STATUTORY AGGRAVATING CIRCUMSTANCES.

13 IS THERE ANYTHING ELSE BEFORE I GET TO THE
14 REQUEST FROM THE DEFENSE, ANYTHING ELSE FROM THE STATE
15 REGARDING THE CHARGE AS PROPOSED?

16 MR. BRACKETT: NO, SIR.

17 THE COURT: THE DEFENSE?

18 MR. BOYD: YOU'RE GOING TO GO OVER OUR ---

19 THE COURT: I'M GOING OVER YOUR'S NOW, BUT WHAT
20 I HANDED YOU.

21 MR. BOYD: NOTHING FURTHER.

22 THE COURT: BUT YOU DO OBJECT TO THE PHYSICAL
23 TORTURE?

24 MR. BOYD: WE DO, YOUR HONOR.

25 THE COURT: AND HOW ABOUT THE SERIES OF

1 COMMISSIONS?

2 MR. BOYD: WE OBJECT TO THAT ALSO.

3 THE COURT: THAT'S WHAT I THOUGHT.

4 MR. BOYD: AS WELL AS, I THINK IT'S ALREADY BEEN
5 STATED BY MR. HANCOCK, THE ROBBERY AS IT APPLIES TO MRS.
6 ROBERTSON.

7 THE COURT: NOW, AS TO THE DEFENSE REQUESTS.
8 NUMBER 1 HAS TO DO WITH THE DETERRENT EFFECT OF A DEATH
9 SENTENCE. THAT'S NOT AN ISSUE, I DON'T BELIEVE, IS IT?

10 MR. BRACKETT: DETERRENCE?

11 THE COURT: YES.

12 MR. BRACKETT: THE STATE WOULD ARGUE GENERAL
13 DETERRENCE BUT NOT SPECIFIC DETERRENCE. WE WOULD ARGUE
14 GENERAL DETERRENCE UNDER, I BELIEVE IT'S TRUESDALE, STATE
15 VERSUS TRUESDALE WHICH ALLOWS THE STATE TO GO INTO GENERAL
16 DETERRENCE.

17 THE COURT: SHOW ME WHERE IN TRUESDALE, ALL I'VE
18 GOT IS A LITTLE BRIEF -- OH, THAT'S THE DISSENTING OPINION,
19 I'M SORRY.

20 MR. BRACKETT: YES, SIR. YOUR HONOR, STATE
21 VERSUS TRUESDALE CITED AT 393 SOUTHEAST 2D 168 HEADNOTE 3,
22 TRUESDALE CONTENDS THAT "THE SOLICITOR IMPROPERLY REFERRED
23 TO THE DETERRENT EFFECT OF CAPITAL PUNISHMENT. OUR
24 DECISIONS HOLD, HOWEVER, THAT A DETERRENCE ARGUMENT IS
25 PROPER IN THE SENTENCING PHASE OF A CAPITAL TRIAL". IT

1 DOESN'T MAKE SENSE THAT WE CAN ARGUE THAT BUT THEN GET A
2 CHARGE THAT THEY SHOULDN'T CONSIDER THAT.

3 MR. BOYD: YOUR HONOR, LET ME STATE FOR THE
4 RECORD WHY I THINK THAT IS APPROPRIATE. WE ARE FORBIDDEN
5 FROM PRESENTING ANY EVIDENCE TO THE JURY FROM AN EXPERT OR
6 ANYTHING CONCERNING DETERRENCE AND IF WE CAN'T -- I KNOW
7 THIS HAS BEEN RULED ON, BUT IF WE CAN'T PRESENT THAT
8 EVIDENCE, IT'S CERTAINLY UNFAIR TO ALLOW THE STATE TO GO
9 INTO DETERRENCE.

10 THE COURT: THAT'S EXACTLY WHAT JUSTICE FINNEY
11 SAYS, BUT I BELIEVE THE REST OF THE COURT SAYS OTHERWISE.
12 SO, WITHIN THE PARAMETERS OF TRUESDALE, I WILL ALLOW IT.

13 MR. BRACKETT: DO YOU WANT A COPY OF THIS, YOUR
14 HONOR?

15 THE COURT: YES, PLEASE. ALL RIGHT, INSTRUCTION
16 NUMBER 2. THIS IS VERY, VERY CONTROVERSIAL. THE STATE
17 OBJECTS TO IT?

18 MR. BRACKETT: YOUR HONOR, WE HAVE NO OBJECTION
19 TO EVERYTHING, READING THE STATUTE, UP TO THE POINT OF
20 WHERE IT SAYS THE TRIAL JUDGE MUST IMPOSE A SENTENCE OF
21 LIFE IMPRISONMENT. COURT'S INDULGENCE ONE MOMENT.
22 (AFTER A BRIEF PAUSE.)

23 MR. BRACKETT: AND WE DON'T HAVE ANY OBJECTION TO
24 THE NEXT SENTENCE, THE TERM LIFE IMPRISONMENT MEANS UNTIL
25 THE DEATH OF THE OFFENDER. THAT, I BELIEVE, IS A DIRECT

1 QUOTE FROM THE STATUTE.

2 HOWEVER, THE NEXT SECTION, NO PERSON SENTENCED TO
3 LIFE IMPRISONMENT, I BELIEVE, ENTERS INTO AN AREA THAT IN
4 THE PAST THE SUPREME COURT HAS HELD IS NOT A PROPER AREA OF
5 CONSIDERATION FOR THE JURY. THEY ARE NOT TO SPECULATE ON
6 ANY COLLATERAL EFFECTS OF THE SENTENCE. AND I DON'T
7 BELIEVE WE HAVE INJECTED FUTURE DANGEROUSNESS INTO THIS
8 CASE WHERE UNDER STATE VERSUS SIMMONS AND STATE VERSUS
9 SULLIVAN THE DEFENSE WOULD BE ENTITLED TO A NO PAROLE
10 CHARGE.

11 THE COURT: LET ME HEAR FROM YOU.

12 MR. HANCOCK: MAY IT PLEASE THE COURT, THE STATE
13 RELIES ON CASES THAT PRECLUDED THAT BEFORE IT WAS STATUTORY
14 LAW IN THE STATE OF SOUTH CAROLINA. IT SEEMS QUITE
15 INCONGRUOUS TO ME AND TOTALLY UNFAIR THAT IN ALL OTHER
16 CASES FROM MAGISTRATE'S COURT CASES TO HERE WE INSTRUCT THE
17 JURY AS TO THE LAW AND THEN WHEN WE GET TO THE DEATH OF
18 SOMEONE WE DECIDE THAT WE WILL NOT REVEAL TO THEM THE LAW
19 OF THE CASE AND PARTICULARLY, SIR, IN THAT THEY -- THIS IS
20 THE ONLY TIME THAT THEY ARE THE SENTENCING BODY AND
21 WITHHELD FROM THEM IS THEIR ACTUAL SENTENCE.

22 YOUR HONOR, ALSO IN -- I DON'T KNOW WHETHER THIS
23 HAS BEEN HANDED UP. WE NEED TO MARK THIS; THIS IS AN
24 AFFIDAVIT OF MR. BLUME THAT WE PRESENTED TO YOU AND WE
25 WOULD JUST LIKE TO MAKE IT A COURT'S EXHIBIT, SIR, THAT IN

1 OTHER JURISDICTIONS IT APPEARS FROM MR. BLUME WHO TRIES A
2 GREAT MANY DEATH PENALTY CASES THAT THERE HAS BEEN
3 INSTRUCTION IN DEATH PENALTY CASES TO THE JURY THAT THE
4 ACTUAL SENTENCE IS LIFE WITHOUT THE POSSIBILITY OF PAROLE.

5 FURTHER, YOUR HONOR, AND I BELIEVE WE -- IT HAS
6 BEEN A LONG TRIAL, I DON'T KNOW WHETHER WE HAVE INTERJECTED
7 THE SHAFER BRIEF, I KNOW THAT THAT'S THERE. I BELIEVE THAT
8 FUTURE DANGEROUSNESS HAS BEEN INTERJECTED INTO THIS TRIAL
9 JUST BY THE FACT OF, JUST THE FACTS OF THIS TRIAL BECAUSE
10 OF THE BRUTAL MURDER WITH NO ONE HAVING ANY WEAPONS, THE
11 BRUTAL ATTACK, THE BRUTALITY OF WHAT IS BEFORE THE JURY,
12 THE UNNECESSARY USE AND EMPLOYMENT OF DEADLY FORCE AND JUST
13 THE CIRCUMSTANCES OF THE CASE ITSELF ARE SUFFICIENT THAT IN
14 ANY LOGICAL AND REASONABLE MIND IT WOULD INTERJECT INTO THE
15 MIND OF THE JURY THAT THIS PERSON IS A DANGEROUS PERSON,
16 WILL BE DANGEROUS AND IF THEY ARE ARGUING DETERRENT EFFECT
17 ON TOP OF THAT, THEN THEY ARE SAYING HE'S DANGEROUS, DETER
18 HIM FROM EVER DOING IT AGAIN. AND THEN SAYING WELL, WE
19 CAN'T SAY HE WILL BE COMPLETELY DETERRED FROM DOING IT.

20 AND THEN THEY ALSO INTRODUCED HIS PRISON
21 INFRACTIONS TO INDICATE THAT HE HAD NO ADAPTABILITY TO
22 PRISON AND, THEREFORE, IN THIS MANNER THEY HAVE ALSO
23 INTERJECTED THAT HE WOULD BE A DANGER TO OTHERS IN THE
24 FUTURE BY THE INTRODUCTION OF THAT EVIDENCE.

25 SO, YOUR HONOR, WE CERTAINLY URGE THE COURT TO

1 TELL THE JURY BECAUSE THEY ARE THE SENTENCING BODY AND I
2 FEEL -- IT WOULD BE LIKE WHEN YOU SIT HERE AND I STAND
3 BEFORE YOU, JUDGE, THAT YOU WOULDN'T KNOW ANY SENTENCE.

4 THE COURT: ALL RIGHT, LET ME HEAR FROM THE
5 STATE.

6 MR. BRACKETT: YOUR HONOR, BRIEFLY IN RESPONSE.
7 FIRST OF ALL FOR MANY YEARS IN THIS STATE, AS YOUR HONOR IS
8 WELL AWARE IN CAPITAL CASES THE DEFENDANT WAS ENTITLED TO
9 A PAROLE ELIGIBILITY AFTER 30 YEARS AND FOR MANY YEARS THE
10 COURTS WERE INSTRUCTED, DON'T TELL THE JURIES THAT THEY ARE
11 ELIGIBLE IN 30 YEARS AND THESE PEOPLE MADE DECISIONS ON THE
12 SAME BASIS. NOW, WHEN IT WORKS TO -- DOES NOT WORK TO
13 THEIR BENEFIT, THEY WANT THE JURY TO KNOW THAT HE IS IN
14 FACT NOT ELIGIBLE FOR PAROLE.

15 THE SECOND THING, AS FAR AS MR. BLUME'S
16 AFFIDAVIT, EACH SOLICITOR HAS ---

17 THE COURT: I'M NOT GOING TO -- IN ALL DEFERENCE
18 TO MR. BLUME, I'M NOT GOING TO MAKE MY DECISION BASED ON
19 HIS AFFIDAVIT.

20 MR. BRACKETT: YES, SIR. FINALLY, YOUR HONOR, I
21 DON'T BELIEVE, AND I CAN TELL YOU AFFIRMATIVELY THAT WE DO
22 NOT INTEND TO ARGUE SPECIFIC DETERRENCE. WE DO NOT INTEND
23 TO ARGUE THAT HE WILL BE DETERRED FROM EVER DOING IT AGAIN
24 AND IF WE DON'T DO THIS, THEN HE'LL GO OUT AND KILL
25 SOMEBODY ELSE. THAT WOULD BE A FUTURE DANGEROUSNESS. WE

1 WILL NOT ARGUE THAT.

2 FINALLY, YOUR HONOR, EVEN IF, EVEN IF EVERYTHING,
3 EVEN IF YOU'RE NOT CERTAIN WHETHER YOU SHOULD GIVE IT OR
4 NOT, THIS ARGUMENT WOULD MORE PROPERLY BE RESERVED FOR WHEN
5 THE JURY INQUIRES ABOUT PAROLE ELIGIBILITY. I DON'T
6 BELIEVE IT WOULD BE PROPER TO CHARGE THEM ON THE FRONT END
7 AND INJECT THAT ISSUE INTO THE JURY BOX WHEN THEY HAVEN'T
8 EVEN ASKED ABOUT IT. IF THEY INQUIRE, THEN WE CAN REVISIT
9 THE SUBJECT.

10 THE COURT: IF I CAN TELL THEM LATER, WHY CAN'T
11 I TELL THEM NOW?

12 MR. BRACKETT: BECAUSE I DON'T BELIEVE THAT IT'S
13 ANY -- I DON'T BELIEVE IT IS ANY OF THEIR CONCERN TO BEGIN
14 WITH AND UNTIL THEY EXPRESS IT AS A CONCERN OF THEIR'S, IT
15 SHOULDN'T BE A CONCERN OF OUR'S.

16 THE COURT: CERTAINLY WHEN YOU SAY "OUR'S",
17 YOU'RE NOT INCLUDING THE DEFENDANT IN THAT?

18 MR. BRACKETT: OUR'S, THE STATE, THE DEFENSE, THE
19 COURT, EVERYBODY.

20 THE COURT: ARE YOU SAYING THE DEFENDANT
21 SHOULDN'T BE CONCERNED.

22 MR. BRACKETT: NO, OBVIOUSLY HE'S CONCERNED, BUT
23 WHAT I'M SAYING IS ---

24 THE COURT: BUT YOU SAID IT SHOULDN'T BE A
25 CONCERN OF OUR'S, I DON'T KNOW HOW YOU CAN ---

1 MR. BRACKETT: I MEAN IT SHOULD NOT BE DISCUSSED
2 NOW.

3 THE COURT: WHAT YOU'RE SAYING IS IT'S NOT A
4 CONCERN OF YOUR'S?

5 MR. BRACKETT: YES, SIR.

6 THE COURT: I'M GOING TO CHARGE NUMBER 1 IN ITS
7 ENTIRETY. ALL RIGHT, FUTURE DANGEROUSNESS, WHAT ABOUT
8 THAT? IS THE STATE GOING TO ARGUE FUTURE DANGEROUSNESS?

9 MR. BRACKETT: I BEG THE COURT'S INDULGENCE.
10 (AFTER A BRIEF PAUSE.)

11 MR. BRACKETT: YOU JUST SAID YOU WERE GOING TO
12 CHARGE NUMBER 1, DID YOU MEAN ---

13 THE COURT: WELL, IT'S NUMBER 2, HEADNOTE NUMBER
14 1; ROMAN NUMERAL I UNDER REQUEST NUMBER 2, I'M SORRY.

15 MR. BRACKETT: DO YOU INTEND TO ALSO CHARGE THAT
16 NO PERSON UNDER ---

17 THE COURT: I'M GOING TO CHARGE THE WHOLE THING,
18 THAT'S PART OF THE STATUTE. THIS HAS BOTHERED ME EVER
19 SINCE THE SHAFER TRIAL.

20 MR. BRACKETT: YES, SIR.

21 THE COURT: AND I THINK THE JURY OUGHT TO BE TOLD
22 THE LAW.

23 MR. BRACKETT: YES, SIR.

24 THE COURT: THE LEGISLATURE PASSED IT.

25 MR. BRACKETT: LET ME ASK THE MAN WHO IS ACTUALLY

1 MAKING THE ARGUMENT WHETHER IN LIGHT OF YOUR DECISION ON
2 NUMBER 2 HE INTENDS TO ARGUE FUTURE DANGEROUSNESS.

3 (AFTER A PAUSE.)

4 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
5 IT HAS NEVER BEEN MY INTENT IN CLOSING TO ARGUE FUTURE
6 DANGEROUSNESS. HOWEVER, IF I'M READING THE DEFENSE
7 REQUEST, THEY ARE NOW SAYING IN THIS CASE THE STATE HAS NOT
8 PRESENTED ANY EVIDENCE THAT THE DEFENDANT WILL BE A DANGER
9 IF HE DOES NOT RECEIVE THE DEATH PENALTY. IN THE ARGUMENT
10 THEY JUST HAD, I THINK I HEARD YOU SAY PREVIOUSLY THAT WE
11 HAD ALL INTERJECTED THAT JUST BY THE NATURE OF THE CRIME.

12 THE COURT: I DISAGREE WITH THAT. IF YOU ARGUE
13 FUTURE DANGEROUSNESS, I'LL GIVE A CHARGE ABOUT FUTURE
14 DANGEROUSNESS. IF YOU DON'T ARGUE IT, I'M NOT GOING TO
15 GIVE THEM THE CHARGE. I'M NOT GOING TO MAKE THAT LEAP ---

16 MR. POPE: WELL, IF I UNDERSTAND, IF WE'RE
17 TALKING ABOUT MAKING A LEAP, YOUR HONOR, MY UNDERSTANDING
18 IS THAT YOU'RE GOING TO INSTRUCT THEM NOT TO CONSIDER
19 FUTURE DANGEROUSNESS IF I ARGUE IT; IS THAT WHAT I'M
20 UNDERSTANDING YOU'RE SAYING? DO YOU SEE WHAT I'M SAYING?

21 THE COURT: WELL, I'M NOT GOING TO CHARGE NUMBER
22 3. ALL RIGHT, NUMBER 4 IS COVERED IN MY GENERAL
23 INSTRUCTIONS. WHAT DOES THE STATE SAY ABOUT NUMBER 5? I
24 BELIEVE THAT'S IN MY GENERAL INSTRUCTIONS ANYWAY.

25 MR. BRACKETT: YES, SIR, I BELIEVE ALL OF THIS IS

1 IN YOUR GENERAL INSTRUCTIONS.

2 THE COURT: ALL RIGHT. NUMBER 6, I BELIEVE ALL
3 OF THAT IS INCLUDED EXCEPT I HAVE SOME CONCERN ABOUT THAT
4 LAST PARAGRAPH ON THE FIRST PAGE.

5 MR. BRACKETT: YOUR HONOR, I BELIEVE THAT IS MORE
6 COMMENTARY.

7 THE COURT: I DO, TOO, AND I DON'T KNOW WHETHER
8 THAT'S A LONG HELD BELIEF, I DON'T KNOW BY WHOM IT'S HELD.
9 I'M NOT GOING TO CHARGE THAT LAST PARAGRAPH.

10 MR. BRACKETT: YOUR HONOR, IN THE FIRST SENTENCE
11 OF THAT, IT'S JUST BEEN POINTED OUT TO ME, IT SAYS YOU MUST
12 ALSO CONSIDER. I BELIEVE IT SHOULD BE YOU MAY ALSO
13 CONSIDER. I BELIEVE THAT'S PAGE 2239 OF YOUR GENERAL
14 CHARGE, LINES 6 AND 7.

15 MR. BOYD: YOUR HONOR, I BELIEVE THE STATUTE SAYS
16 MUST.

17 THE COURT: LET ME SEE THE STATUTE.
18 (AFTER A PAUSE.)

19 THE COURT: I'M LOOKING FOR IT, BUT SINCE YOU
20 KNOW WHERE IT IS, YOU CAN PROBABLY SHOW IT TO ME QUICKER.

21 MR. HANCOCK: WE'RE LOOKING HERE, YOUR HONOR. IT
22 SAYS THE JUDGE SHALL CONSIDER OR HE SHALL INCLUDE IN HIS
23 INSTRUCTIONS TO THE JURY FOR IT TO CONSIDER MITIGATING ---

24 THE COURT: NO, GO ON. THE JUDGE SHALL INCLUDE
25 IN HIS INSTRUCTIONS FOR IT TO CONSIDER MITIGATING

1 CIRCUMSTANCES OTHERWISE AUTHORIZED OR ALLOWED BY LAW AND
2 THE FOLLOWING STATUTORY AND MITIGATING CIRCUMSTANCES.

3 MR. HANCOCK: THE ARGUMENT WOULD BE THIS, JUDGE.
4 THE JUDGE IS THE SENTENCING BODY AT ONE POINT AND IT SAYS
5 THE JUDGE SHALL CONSIDER; IT WOULD BE AN ANTITHESIS TO SAY
6 THAT THE JUDGE IS THE SENTENCING BODY AND IT MAY CONSIDER
7 IT, SINCE IT IS TAKING THE PLACE AND STANDING IN THE PLACE
8 OF THE JUDGE IN THIS MATTER, THEN I WOULD SAY THAT THE
9 JUDGE, IN THIS CASE THE JURY, SHALL CONSIDER IT.

10 THE COURT: I AGREE WITH WHAT YOU'RE SAYING. BUT
11 IT'S TALKING ABOUT MITIGATING CIRCUMSTANCES OTHERWISE
12 AUTHORIZED OR ALLOWED BY LAW AND THE FOLLOWING. WHAT OTHER
13 MITIGATING CIRCUMSTANCES ARE AUTHORIZED OR ALLOWED BY LAW?

14 MR. HANCOCK: WELL, I THINK, JUDGE, WHAT THEY
15 WERE SAYING THERE IS THAT THEY HAVE A LIST OF THESE THERE
16 BUT THEN THEY SAY LATER AND ANY OTHER MITIGATING
17 CIRCUMSTANCES, DO THEY NOT, SIR, WHICH WOULD BE THEN
18 ALLOWED BY LAW -- ANY OTHER CIRCUMSTANCES WHICH THE JURY
19 MAY CONSIDER IN MITIGATION WOULD BE THOSE THAT ARE ALLOWED
20 BY LAW, NOT JUST BECAUSE YOU'VE GOT LISTED AND UNLISTED.
21 SO, I WOULD INDICATE THAT THAT'S WHAT THEY ARE SPEAKING OF
22 THERE, SIR.

23 AND HERE IT SAYS THE STATUTORY INSTRUCTIONS AS TO
24 STATUTORY AGGRAVATING AND MITIGATING CIRCUMSTANCES MUST BE
25 GIVEN IN CHARGE AND IN WRITING TO THE JURY FOR ITS

1 DELIBERATION.

2 WE ARE BOTH READING FROM THE SUPPLEMENT, THAT'S
3 ON PAGE 48 AT THE BOTTOM, SIR.

4 THE COURT: WELL, I INTEND TO DO THAT. I BELIEVE
5 MAY IS THE PROPER WORD. INSTRUCTION NUMBER 7 FROM THE
6 DEFENDANT, STANDARD OF PROOF OF MITIGATING CIRCUMSTANCES,
7 I BELIEVE THAT'S COVERED IN MY CHARGE BUT IT'S PROPER.

8 THE SAME WITH NUMBER 8. I DON'T BELIEVE NUMBER
9 9, THE PROPOSED CHARGE, I DON'T BELIEVE THAT'S SOUTH
10 CAROLINA LAW. IN FACT, I THINK THAT'S THE ANTITHESIS OF
11 SOUTH CAROLINA LAW. YOU DO NOT HAVE TO ALL AGREE IN ORDER
12 TO RECOMMEND A SENTENCE OF LIFE. THAT'S NOT THE LAW IN
13 SOUTH CAROLINA. HAVE WE DONE AWAY WITH UNANIMOUS VERDICTS?
14 IS THERE SOMETHING THAT I DON'T KNOW ABOUT?

15 MR. BOYD: NO, SIR, THAT'S CORRECT. WE ARE
16 BASICALLY ASKING THAT YOU INFORM THE JURY THAT IF THEY
17 DON'T UNANIMOUSLY AGREE, THAT HE WILL BE SENTENCED TO LIFE.

18 THE COURT: THAT'S NOT WHAT IT SAYS.

19 MR. BOYD: THAT IS NOT CLEAR ON THE INSTRUCTIONS.
20 WE WOULD MOVE TO AMEND TO CORRECTLY REFLECT THAT.

21 THE COURT: THE JURY SHOULD MAKE THE DECISION,
22 THAT'S WHAT THEY ARE HERE FOR. I DON'T THINK IT IS
23 INCUMBENT ON THE COURT TO GIVE THEM A BAIL OUT WHICH IS
24 WHAT YOU ARE ASKING FOR.

25 ALL RIGHT, ANYTHING ELSE BEFORE WE ARGUE AND

1 CHARGE?

2 MR. BOYD: YOUR HONOR, I HAVEN'T GOT IT TYPED,
3 BUT YOU TOLD ME TO DRAFT A PROPOSED ---

4 THE COURT: WE'RE GOING TO TAKE A SHORT BREAK.
5 IT'S 12:00 O'CLOCK. I DON'T KNOW WHETHER WE OUGHT TO GO
6 AHEAD AND TRY TO GET THE JURY FED AND START AFTER LUNCH
7 BECAUSE -- HOW LONG DOES THE STATE PLAN TO ARGUE?

8 MR. POPE: PROBABLY 45 MINUTES, YOUR HONOR.

9 THE COURT: THE DEFENSE AND MR. ROBERTSON, HOW
10 LONG DO YOU BELIEVE Y'ALL WILL TAKE?

11 MR. HANCOCK: APPROXIMATELY 30 MINUTES AND WHEN
12 I SAY APPROXIMATELY, THAT'S WITHIN OUR FIVE MINUTE LEEWAY,
13 YOUR HONOR.

14 MR. BOYD: I WILL PROBABLY ARGUE LESS THAN 30
15 MINUTES. MR. ROBERTSON'S PROBABLY WILL BE MUCH, MUCH
16 SHORTER. YOUR HONOR, FRANKLY I WOULD PREFER TO WAIT UNTIL
17 AFTER LUNCH TO ARGUE.

18 THE COURT: I THINK I WOULD, TOO. HOW MUCH
19 PROBLEM WOULD THAT BE?

20 A SLED AGENT: WE HAVE LUNCH SCHEDULED AT 12:45
21 TODAY, YOUR HONOR.

22 THE COURT: WELL, DO YOU OBJECT TO ME JUST HAVING
23 SLED OR THE BAILIFFS TO TELL THE JURY THAT WE ---

24 THE AGENT: 1:30?

25 THE COURT: YOU MEAN TO COME BACK?

1 THE AGENT: YES, SIR.

2 THE COURT: YES, THAT WE WILL RECONVENE AT 1:30
3 FOR ARGUMENTS AND CHARGE.

4 MR. POPE: NO OBJECTION, YOUR HONOR.

5 MR. BOYD: NO OBJECTION.

6 THE COURT: ALL RIGHT, WE WILL BE AT EASE UNTIL
7 1:30 THEN.

8 AFTER THE LUNCHEON RECESS IN CAMERA:

9 THE COURT: THE DEFENDANT IS PRESENT WITH
10 COUNSEL. IS THE DEFENSE READY TO PROCEED?

11 MR. HANCOCK: THE DEFENSE IS READY, YOUR HONOR.

12 THE COURT: MR. BRACKETT?

13 MR. BRACKETT: YES, SIR, YOUR HONOR. PRIOR TO
14 THE BREAK THERE HAD BEEN SOME DISCUSSION DURING THE CHARGE
15 CONFERENCE OR CHARGE DISCUSSION HERE IN COURT REGARDING
16 WHETHER OR NOT I HAD ASKED DR. MCKEE ABOUT THE RIGHTS AND
17 I HAVE SINCE ASKED THE COURT REPORTER TO GO BACK AND LISTEN
18 TO THAT AND THAT'S CUED TO THE RIGHT SPOT AND I WOULD ASK
19 THAT THAT BE PLAYED AT THIS TIME.

20 THE COURT: ALL RIGHT.

21 (THE TESTIMONY WAS PLAYED BACK FOR THE COURT.)

22 MR. BRACKETT: YOUR HONOR, OVER THE BREAK DEFENSE
23 COUNSEL DRAFTED A PROPOSED CHARGE REGARDING HEARSAY
24 STATEMENTS REFERRED TO BY THE EXPERTS AND STATEMENTS MADE
25 BY THE DEFENDANT TO THE EXPERTS CANNOT BE USED AS

1 SUBSTANTIVE EVIDENCE. AND, YOUR HONOR, AND I DON'T KNOW
2 WHY IT DIDN'T OCCUR TO ME BEFORE, BUT ALL THOSE STATEMENTS
3 WERE ADMISSIBLE AS STATEMENTS AGAINST INTEREST, REGARDLESS
4 OF WHETHER OR NOT THEY WERE USED AS THE BASIS OF ANY EXPERT
5 TESTIMONY OR ANYTHING.

6 SHE HAD KNOWLEDGE OF STATEMENTS MADE BY THE
7 DEFENDANT AGAINST HIS INTEREST AND THEY WERE ADMISSIBLE AND
8 CAN BE USED JUST LIKE ANY OTHER STATEMENT AGAINST INTEREST
9 MADE BY A DEFENDANT. SO, EVEN IF IT WASN'T USED
10 EXCLUSIVELY AS A BASIS OF THE EXPERT'S OPINIONS, EVEN IF IT
11 WASN'T USED FOR THAT PURPOSE, IT WAS IN FOR TWO DIFFERENT
12 REASONS AND WHILE THIS MAY HAVE MERIT UNDER THE USE FOR
13 CROSS EXAMINATION AS A BASIS OF THEIR OPINION, IT WAS ALSO
14 ADMISSIBLE -- THERE WAS NO OBJECTION AT THE TIME -- IT WAS
15 ALSO ADMISSIBLE AS A STATEMENT AGAINST INTEREST BY THE
16 DEFENDANT TO HER. AND HAD WE HAD NO NOTES, HAD SHE NOT
17 BEEN AN EXPERT, SHE COULD HAVE BEEN QUESTIONED ABOUT THOSE
18 STATEMENTS REGARDLESS.

19 THE COURT: DO YOU OBJECT TO THE CHARGE HANDED
20 UP?

21 MR. BRACKETT: YES, SIR, AS REGARDS TO HIS
22 STATEMENTS. THERE ARE TRUE HEARSAY STATEMENTS THAT SHE
23 USED. FOR EXAMPLE, SHE SPOKE TO SCOTT LANGLEY. THOSE, I
24 THINK THE CHARGE WOULD BE PROPER FOR. HOWEVER, THE
25 STATEMENTS BY THE DEFENDANT ARE IN UNDER TWO THEORIES, AND

1 UNDER THE THEORY THAT IT'S A STATEMENT AGAINST INTEREST, IT
2 WOULD BE PROPER FOR COUNSEL TO ARGUE TO THE JURY THOSE
3 FACTS AS SUBSTANTIVE EVIDENCE OF HIS CHARACTER AND IN
4 ARGUING THE PENALTY.

5 THE COURT: SUCH AS, GIVE ME AN EXAMPLE.

6 MR. BRACKETT: I'M SORRY, YOUR HONOR?

7 THE COURT: GIVE ME AN EXAMPLE.

8 MR. BRACKETT: SUCH AS "I SPRAYED TILEX IN MY
9 FATHER'S EYES AND THEN HIT HIM IN THE HEAD WITH A HAMMER".
10 THAT'S EXACTLY WHAT HAPPENED AT THE TIME OF THE CRIME.
11 THOSE ARE JUST CIRCUMSTANCES OF THE CRIME AND IT'S
12 ADMISSIBLE. EVEN IF IT WASN'T TO BUTTRESS HER OPINION OR
13 TO ESTABLISH HER OPINION OR TO IMPEACH HER OPINION. IF SHE
14 HAD JUST BEEN SOMEBODY WHO HAD BEEN TAKING CARE OF HIM AND
15 TALKED TO HIM AND HE TOLD HER THAT AND SHE WAS ON THE
16 STAND, WE COULD CROSS EXAMINE HER, HAS THE DEFENDANT EVER
17 TALKED TO YOU, WHAT DID HE SAY. HE TOLD ME HE SPRAYED HIS
18 FATHER IN THE EYES WITH TILEX AND HIT HIM IN THE HEAD WITH
19 A HAMMER. AND SOLICITOR POPE COULD ARGUE THAT TO THE JURY
20 AS EVIDENCE OF THE NATURE AND CIRCUMSTANCE OF THE CRIME.
21 THAT'S A HEARSAY STATEMENT AGAINST INTEREST.

22 MR. HANCOCK: MAY IT PLEASE THE COURT, MAYBE I'M
23 NOT CLEAR ON THIS, BUT IT APPEARS THAT THE SOLICITOR IS
24 SAYING -- AND THE FIRST TIME I HEARD THESE STATEMENTS ABOUT
25 TWO BOTTLES OF TILEX, THEY CAME FROM DR. MCKEE I BELIEVE.

1 DR. McKEE, AND I THOUGHT OUR RULING AT AN EARLIER DATE WAS
2 PRETTY SPECIFIC, THAT THEY COULD NOT USE ADMISSIONS TO DR.
3 McKEE BECAUSE OF THE NATURE OF US HAVING BEEN FORCED TO
4 TESTIFY AGAINST OURSELVES IN ORDER TO PRESENT A DEFENSE.
5 THAT HE CAN ONLY TESTIFY TO HIS FINDINGS.

6 THE COURT: I'M NOT GOING TO ALLOW YOU TO GO INTO
7 THE SUBSTANTIVE PART OF WHAT DR. McKEE SAID.

8 MR. BRACKETT: YES, SIR. YOUR HONOR, THIS WOULD
9 BE FROM DR. CASCIO, THE CROSS EXAMINATION OF THEIR WITNESS
10 WHO HAD KNOWLEDGE OF STATEMENTS AGAINST INTEREST MADE BY
11 THIS DEFENDANT. THE SUBSTANTIVE PART WERE VIRTUALLY THE
12 SAME EXCEPT FOR THOSE THREE ITEMS YOU POINTED OUT, BUT
13 OTHER THAN THAT ---

14 MR. HANCOCK: YOUR HONOR, IT WAS GIVEN TO HER --
15 I MEAN GIVEN TO THE STATE, AND SHE WAS CROSS EXAMINED
16 SOLELY ON THE BASIS OF HER OPINION. I DON'T SEE HOW WE CAN
17 JUMP TO NOW IF YOU HAVE THAT, THEN EVERYONE CAN USE IT AS
18 A BASIS FOR THEIR OPINION AND PARTICULARLY THIS PARTICULAR
19 WITNESS WHEN HE'S SITTING HERE AND WE ---

20 THE COURT: HE'S NOT TALKING ABOUT A WITNESS NOW,
21 HE'S TALKING ABOUT ARGUMENT. HE HAS CONCEDED ABOUT DR.
22 McKEE'S STATEMENTS. BUT WHAT ABOUT WHAT MR. ROBERTSON TOLD
23 MS. CASCIO?

24 MR. HANCOCK: YOUR HONOR, THAT WAS ONLY FOR A
25 BASIS OF CROSS EXAMINATION ---

1 THE COURT: NO, NO, THAT WASN'T A BASIS FOR CROSS
2 EXAMINATION, THAT WAS A BASIS FOR HER OPINION.

3 MR. HANCOCK: IT WAS A BASIS FOR HER OPINION BUT
4 IT WAS TURNED OVER TO THEM FOR CROSS EXAMINATION, YOUR
5 HONOR AND ONLY FOR THAT PURPOSE.

6 THE COURT: WELL, BUT STILL THAT DOESN'T MAKE IT
7 ANY LESS A STATEMENT BY HIM TO HER.

8 MR. HANCOCK: NO, SIR, BUT I DON'T THINK IT CAN
9 BE CONSIDERED. HOW ARE YOU CONSIDERING IT, AS A STATEMENT
10 AGAINST INTEREST?

11 THE COURT: WELL, IT'S A STATEMENT ---

12 MR. HANCOCK: IF IT'S CONSIDERED THAT THAT CAN BE
13 USED AS SUBSTANTIVE EVIDENCE, YOUR HONOR, WE'RE PUT IN THE
14 SITUATION THAT NO EXPERT THAT THE DEFENSE COULD EVER HIRE
15 COULD EVER TELL THEM THE FACTS OF THE CASE OR EVER HAVE
16 THEM WRITTEN DOWN OR IT'S A SUBJECT FOR SUBSTANTIVE
17 EVIDENCE AS A CONFESSION. AND THAT'S WHERE WE ARE I
18 BELIEVE, SIR.

19 THE COURT: WELL, THAT MAY BE. BUT WHEN YOU GET
20 INTO THE WORLD OF EXPERTS AND YOU BRING THEM IN AND THEY
21 TESTIFY, THEY ARE CALLED BY ONE SIDE, AND THE OTHER SIDE
22 HAS AN ABSOLUTE RIGHT TO KNOW EVERYTHING THEY CONSIDERED,
23 EVERYTHING THEY KNEW THAT THEY DIDN'T CONSIDER.

24 MR. HANCOCK: I UNDERSTAND, YOUR HONOR.

25 THE COURT: AND THEN IT BECOMES PART OF THE

1 RECORD. AND IF THEY USED IT -- YOU KNOW, YOU CAN CERTAINLY
2 ARGUE THAT YOUR CLIENT WASN'T TELLING THE TRUTH TO YOUR
3 EXPERT.

4 MR. HANCOCK: YOUR HONOR, I THINK IT GOES TO THE
5 CREDIBILITY OF THEIR OPINION, NOT FOR THE TRUTH THAT THE
6 PERSON SAID THIS IS A CONFESSION, THAT THESE FACTS HAPPENED
7 EXACTLY LIKE THIS BECAUSE AGAIN ---

8 MR. BRACKETT: IF HE WANTS TO ARGUE THAT IT'S NOT
9 TRUE, THEN I MEAN WE ---

10 THE COURT: THAT'S WHAT I'M WONDERING, IF HE'S
11 GOING TO ARGUE THAT HIS EXPERT'S OPINIONS ARE BASED ON
12 UNTRUE STATEMENTS, THAT'S GOING TO BE AN INTERESTING
13 ARGUMENT TO HERE, BUT I THINK AS LONG AS YOU KEEP IT IN THE
14 CONTEXT OF HOW IT WAS PRESENTED, I THINK YOU CAN ARGUE IT.

15 MR. BRACKETT: JUST AS A REGULAR STATEMENT
16 AGAINST INTEREST LIKE ANY OTHER.

17 THE COURT: WELL, I DON'T KNOW IF ALL OF THEM ARE
18 STATEMENTS AGAINST INTEREST, TECHNICALLY.

19 MR. BRACKETT: WELL, I WOULD SUBMIT THAT WE
20 WOULDN'T WANT TO USE IT IF IT WASN'T A STATEMENT AGAINST
21 INTEREST. FROM OUR PERSPECTIVE, IT'S HELPED OUR CASE,
22 THEREFORE IT'S AGAINST HIS INTEREST. BUT EVEN STATEMENTS
23 THAT WERE MADE ABOUT, YOU KNOW, I LIVED IN EUROPE AND I GOT
24 UPSET WHEN THEY BOUGHT A CONVERTIBLE, THAT'S A STATEMENT
25 AGAINST INTEREST. IT SHOWS LACK OF CHARACTER AND ---

1 THE COURT: IF IT'S IN THE RECORD, HE CAN ARGUE
2 IT.

3 MR. BRACKETT: YES, SIR.

4 THE COURT: EXCEPT FOR DR. MCKEE.

5 MR. BRACKETT: EXCEPT FOR THREE AND I WILL
6 ENUMERATE THOSE NOW AS I UNDERSTAND THEM. THE COURT
7 RECALLED THEM THE SAME AS I DID. THE SCRATCHING ON THE
8 NECK; THE VISA CARD INSTEAD OF THE CHECK BECAUSE HE DIDN'T
9 WANT TO BE ON THE BANK CAMERA; AND THEN RUNNING BACK DOWN
10 THE HALL TWO TIMES TO SEE IF DAD HAD GOTTEN OUT OF THE
11 SHOWER.

12 THE COURT: THOSE ARE THE ONLY ONES THAT I NOTED.

13 MR. BRACKETT: THE SAME ONES I RECALL.

14 THE COURT: ALL RIGHT, ANYTHING FURTHER?

15 MR. HANCOCK: THERE WAS THE VOLUNTARY
16 INTOXICATION MATTER.

17 THE COURT: OKAY. I'M NOT GOING TO CHARGE
18 VOLUNTARY INTOXICATION. THAT CAME OUT OF -- YOU PROVIDED
19 ME WITH THE PIERCE CASE AND THAT ONLY INDICATED THAT SINCE
20 THERE WAS EVIDENCE OF VOLUNTARY INTOXICATION, THAT THE
21 DEFENDANT AND LIKEWISE MR. ROBERTSON, WAS ENTITLED TO
22 MITIGATING CIRCUMSTANCES, I THINK IT WAS 2, 6 AND 7.
23 ANYWAY, THE ONES THAT IT REFERRED TO, WE ARE CHARGING.

24 SO, I'M NOT GOING TO START CARVING OUT AND
25 CHARGING EVERY POSSIBLE SUB-FACTOR OF THOSE. IN ESSENCE

1 THAT'S WHAT THEY ARE SAYING, IS THAT VOLUNTARY INTOXICATION
2 CREATES THESE AS STATUTORY MITIGATING CIRCUMSTANCES.

3 MR. HANCOCK: IT WOULD APPEAR THAT IF VOLUNTARY
4 INTOXICATION, AND I'M JUST GOING TO ARGUE THIS FOR THE
5 RECORD, YOUR HONOR, BUT IT WOULD APPEAR THAT IF VOLUNTARY
6 INTOXICATION CAN BE ENOUGH IN THE MINDS OF THE JURY TO
7 TRIGGER THE OTHER THREE, AND I BELIEVE IT'S 1, 2, AND 6
8 MITIGATING CIRCUMSTANCES OR 2 -- LET ME LOOK, HE'S GOT THEM
9 HERE. THAT WOULD BE 2 -- IN YOUR CHARGE IT'S 2 AND 4, THE
10 MENTALITY OF THE DEFENDANT ---

11 THE COURT: AND 5.

12 MR. HANCOCK: IF THAT IS ENOUGH TO TRIGGER THAT
13 THEY BE CHARGED, THEN IT WOULD APPEAR THAT THE JURY SHOULD
14 KNOW IF WE ARE SPECIFYING THAT AS A MITIGATING
15 CIRCUMSTANCE, THAT THEY SHOULD KNOW THAT THAT WAS A
16 MITIGATING CIRCUMSTANCE.

17 I FIND NOTHING THAT INDICATES THAT NON-STATUTORY
18 MITIGATING CIRCUMSTANCES ARE NOT AND CANNOT BE LISTED. WE
19 HAVE ASKED FOR THIS ONE SO THAT THE JURY KNOWS AT THIS TIME
20 SINCE THERE HAS BEEN AN INSTRUCTION WHICH CAN BE CONFUSING
21 TO THEM, I BELIEVE, THE INSTRUCTION HAS BEEN, IF I REMEMBER
22 CORRECTLY, THAT VOLUNTARY INTOXICATION CANNOT BE CONSIDERED
23 IN THE GUILT OF THE DEFENDANT. NOW WE'VE DONE A 90 DEGREE
24 TURN WHERE IT CAN BE CONSIDERED IN MITIGATION. I THINK THE
25 CHANCE FOR CONFUSION IS GREAT THERE, SIR. AND, AGAIN, I

1 FIND NOTHING IN OUR STATUTORY LAW OR OUR CASE LAW TO
2 INDICATE THAT NON-STATUTORY MITIGATING CIRCUMSTANCES SHOULD
3 NOT BE LISTED. AND I FEEL THAT THAT IS SOMETHING THAT THE
4 JURY SHOULD KNOW, AND SHOULD KNOW FROM THE BENCH SO THAT IT
5 CAN BE ARGUED EFFECTIVELY.

6 THE COURT: WHAT DOES THE STATE HAVE TO SAY ABOUT
7 THAT?

8 MR. BRACKETT: YOUR HONOR, I THINK 2, 6 AND 7
9 COVER THAT ISSUE. THEY CAN ARGUE THAT ISSUE IF THEY WANT
10 TO. PIERCE SAYS THAT DRUG INTOXICATION AND ALCOHOL
11 INTOXICATION OUGHT TO BE COVERED BY CHARGING 2, 6 AND 7.
12 IT'S NEVER PROPER TO CHARGE NON-STATUTORY MITIGATING
13 CIRCUMSTANCES. WE COULD BE HERE ALL DAY LONG.

14 MR. HANCOCK: WE'VE ONLY PUT UP ONE.

15 THE COURT: I UNDERSTAND YOU HAVE, BUT IN THEORY
16 IT COULD BE 40, YOU COULD ARGUE ALL SORTS OF NON-STATUTORY
17 AND ARGUE THAT THOSE OUGHT TO BE INCLUDED.

18 MR. HANCOCK: WELL, NONE OF THOSE HAVE BEEN THE
19 FOCUS OF THE DEFINITION AND AS PIERCE SAYS OF EVEN A
20 TRIGGER TO ARGUE STATUTORY. THAT'S WHAT I'M SAYING, THE
21 WEIGHT IS THERE BECAUSE THEY SAID IN PIERCE THAT BECAUSE
22 YOU DID NOT CONSIDER VOLUNTARY INTOXICATION AS A MITIGATING
23 CIRCUMSTANCE, THEN YOU ERRED BY NOT CHARGING THE OTHER
24 STATUTORY MITIGATING CIRCUMSTANCES.

25 SO, EVIDENTLY THE COURT GAVE IT GREAT WEIGHT.

1 AND I BELIEVE THAT THAT'S SOMETHING THAT COULD BE
2 DETERMINED ON AN INDIVIDUAL BASIS. I'M NOT GOING TO SIT
3 HERE AND SAY THAT THE WEATHER THAT DAY WAS A MITIGATING
4 CIRCUMSTANCE. BUT IF I WERE, I WOULD PRESENT IT TO THE
5 COURT AND SAY WOULD YOU CHARGE THAT WEATHER ON A CERTAIN
6 DAY WOULD CAUSE IT AND THE COURT COULD SAY NO.

7 THE COURT: BUT ISN'T THE TRUTH OF THE MATTER
8 THOUGH WHAT I AM CHARGING IS EXACTLY WHAT PIERCE SAID I WAS
9 SUPPOSED TO CHARGE?

10 MR. HANCOCK: YES, SIR. IT JUST SAID -- I
11 BELIEVE THE PIERCE CHARGE, I BELIEVE IT SAID, VERBATIM,
12 EVIDENCE OF VOLUNTARY INTOXICATION IS PROPER FOR
13 CONSIDERATION BY THE JURY IN MITIGATION OF PUNISHMENT.
14 THOSE ARE MY WORDS, I DON'T HAVE PIERCE BEFORE ME. AND, OF
15 COURSE, YOU HAVE THE PROPOSED CHARGE. IF YOU WISH FOR THE
16 EXACT LANGUAGE, YOUR HONOR, I'LL GET IT.

17 (AFTER A BRIEF PAUSE.)

18 MR. HANCOCK: I'LL READ FROM PIERCE, PAGE 710 AT
19 THE BOTTOM, YOUR HONOR, "EVIDENCE OF VOLUNTARY INTOXICATION
20 IS A PROPER MATTER FOR CONSIDERATION BY THE JURY IN
21 MITIGATION OF PUNISHMENT". AND THOSE ARE THE WORDS I JUST
22 READ TO YOU FROM MY CITE OF PIERCE IN OUR PROPOSED CHARGE.

23 MR. BRACKETT: AND THEN IT GOES ON TO SAY THAT
24 YOU SHOULD COVER THAT BY CHARGING THE STATUTORY MITIGATING
25 CIRCUMSTANCES ---

1 THE COURT: GO AHEAD AND READ THE NEXT SENTENCE.

2 MR. HANCOCK: YES, SIR. "PURSUANT TO SECTION 16-
3 3-20(C) THE TRIAL JUDGE SHALL INSTRUCT THE JURY AS TO THOSE
4 STATUTORY MITIGATING CIRCUMSTANCES WHICH MAY BE SUPPORTED
5 BY THE EVIDENCE". THAT'S STATUTORY.

6 THE COURT: LET ME HOLD THE CASE.

7 MR. HANCOCK: YES, SIR.

8 THE COURT: IN THIS CASE THE TRIAL JUDGE WAS
9 REQUIRED BY LAW TO INSTRUCT THE JURY ON STATUTORY
10 MITIGATING CIRCUMSTANCES 2, 6 AND 7, GIVEN THE EVIDENCE
11 SHOWING PIERCE WAS USING DRUGS AND EXTREMELY INTOXICATED
12 DURING THE COMMISSION OF THE CRIME. AND THAT'S WHAT I'M
13 DOING.

14 MR. HANCOCK: THANK YOU, SIR.

15 THE COURT: ANYTHING ELSE?

16 MR. BRACKETT: TWO MATTERS, YOUR HONOR. I
17 UNDERSTAND THAT THE DEFENDANT WILL GIVE A STATEMENT TO THE
18 JURY AND PURSUANT TO STATE VERSUS DAVIS AND STATE VERSUS
19 JOHNSON, WE WOULD JUST ASK THAT HE BE INSTRUCTED NOT TO
20 TESTIFY, HE CANNOT GIVE TESTIMONY; HE IS ALLOWED TO ARGUE
21 THE FACTS AND THE EVIDENCE IN THE SAME MANNER THAT HIS
22 ATTORNEYS ARE, BUT HE CANNOT INJECT NEW INFORMATION BECAUSE
23 HE'S NOT SWORN AND SUBJECT TO CROSS EXAMINATION.

24 THE COURT: DO YOU UNDERSTAND THAT, MR.
25 ROBERTSON?

1 MR. ROBERTSON: YES, YOUR HONOR.

2 THE COURT: OKAY.

3 MR. BRACKETT: AND LASTLY, YOUR HONOR, AND I
4 BELIEVE WE TOUCHED ON THIS BRIEFLY IN CHAMBERS, YOU
5 INDICATED THAT YOU WERE GOING TO CHARGE THE JURY TO RECALL
6 THE CHARGE ON CREDIBILITY AND SO FORTH AND THAT IF THEY
7 NEEDED ADDITIONAL INFORMATION, THEY COULD COME BACK. I
8 JUST WANTED TO CLARIFY, THIS SIMILAR PROBLEM REARED ITS
9 HEAD IN STATE VERSUS RIDDLE AND THEY WERE NOT CHARGED AS TO
10 THE ELEMENTS OF THE OFFENSE. IT'S BEEN A WEEK SINCE
11 THEY'VE HEARD THE ELEMENTS OF THE OFFENSE, COULD YOU JUST
12 REMIND THEM AGAIN IF THEY HAVE A QUESTION ABOUT THE
13 ELEMENTS OF THE OFFENSE THAT MAKE UP THE AGGRAVATING
14 CIRCUMSTANCES, THAT YOU WILL RECHARGE THEM AS TO THAT
15 AGAIN?

16 THE COURT: YES. IS THE STATE READY?

17 MR. BRACKETT: YES, SIR.

18 THE COURT: THE DEFENSE?

19 MR. BOYD: YOUR HONOR, JUST FOR THE COURT'S
20 INFORMATION, OUR ARGUMENTS ARE GOING TO GO MR. HANCOCK,
21 THEN MR. ROBERTSON AND THEN ME. I WOULD JUST LIKE TO
22 CLARIFY BEFORE MR. ROBERTSON ARGUES, OF COURSE HE WILL BE
23 STANDING IN FRONT OF THE JURY AND WHERE WILL THE DEPUTIES
24 BE?

25 THE COURT: THEY WILL BE SITTING RIGHT WHERE THEY

1 ARE NOW.

2 MR. BOYD: THANK YOU.

3 THE COURT: YOU DON'T HAVE A PROBLEM WITH THAT,
4 DO YOU?

5 A DEPUTY: NO, YOUR HONOR.

6 THE COURT: BRING IN THE JURY.

7 IN THE PRESENCE OF THE JURY:

8 THE COURT: MEMBERS OF THE JURY PANEL, WE HAVE
9 REACHED THE STAGE WHERE YOU WILL RECEIVE THE ARGUMENTS OF
10 THE ATTORNEYS. IT'S BEEN A LONG TRIAL, SO I'M NOT GOING TO
11 RESTRICT ANYONE TO TIME BUT I THINK FROM WHAT THEY HAVE
12 TOLD ME, THEY WILL BE REASONABLE WITH THEIR TIME.

13 THE STATE WILL PRESENT AN ARGUMENT, THEN THE
14 DEFENSE AND THE DEFENDANT WILL HAVE THE RIGHT TO MAKE
15 CLOSING ARGUMENTS FOR YOU.

16 WE WILL PROBABLY TAKE A SHORT BREAK BETWEEN THE
17 ARGUMENTS AND MY CHARGE. THE CHARGE IS NOT LENGTHY, BUT I
18 ANTICIPATE THAT WE MIGHT BE READY FOR A BREAK THEN.

19 SO, WE ARE JUST THAT SHORT AWAY FROM HAVING THE
20 CASE IN YOUR HANDS FOR YOUR CONSIDERATION. YOU HAVE BEEN
21 VERY ATTENTIVE. IT HAS BEEN A LONG TIME AND I ASK YOU TO
22 LISTEN VERY CAREFULLY AND CLOSELY AND ATTENTIVELY TO THE
23 REST OF THE PROCEEDINGS. THANK YOU.

24 ARGUMENT TO THE JURY BY MR. POPE:

25 THERE IS A THIRD TYPE OF JUROR. THERE IS ONE

1 THAT ALTHOUGH GUILT OF THE DEFENDANT HAS BEEN DETERMINED
2 WOULD NOT HAVE HIS OR HER MIND MADE UP IN ADVANCE
3 CONCERNING PUNISHMENT. THIS JUROR WOULD NEED TO HEAR THE
4 FACTS AND THE CIRCUMSTANCES IN AGGRAVATION AND IN
5 MITIGATION. HE WOULD WANT TO LISTEN TO AND FOLLOW THE LAW
6 AS THE JUDGE CHARGES THE JURY BEFORE HE OR SHE COULD MAKE
7 THE DECISION REGARDING PUNISHMENT. AND IF THE FACTS
8 PRESENTED SO WARRANTED, THIS JUROR COULD BRING IN A VERDICT
9 OF LIFE IMPRISONMENT. ALSO, IF THE FACTS PRESENTED SO
10 WARRANTED, THE JUROR COULD BRING IN A VERDICT FOR THE DEATH
11 PENALTY.

12 IT SEEMS LIKE NOW WEEKS AND WEEKS AND WEEKS AGO,
13 I KNOW FOR ALL OF YOU, BUT EACH ONE OF YOU SAT IN THAT
14 CHAIR AND YOU SAID THAT YOU WERE THE TYPE OF JUROR, YOU
15 WERE THAT THIRD CATEGORY OF JUROR, YOU'RE THE TYPE OF JUROR
16 THAT WOULDN'T RUN IN AND MAKE UP YOUR MIND, YOU'RE THE TYPE
17 OF THE JUROR THAT WOULD WANT TO HEAR THE FACTS. YOU'D HEAR
18 THE GOOD AND YOU'D HEAR THE BAD; YOU'D HEAR EVERYTHING
19 BEFORE YOU MAKE A DETERMINATION. AND EACH ONE OF YOU,
20 WHETHER IT WAS MR. BRACKETT OR MYSELF, WE LOOKED EACH ONE
21 OF YOU IN THE EYE. AND I KNOW YOU THOUGHT WHY ARE THEY
22 TAKING ME THROUGH THIS, WHY ARE THEY PUTTING ME THROUGH
23 THIS. BUT WE LOOKED EACH ONE OF YOU IN THE EYE AND SAID IF
24 THE FACTS AND THE EVIDENCE WARRANT IT, COULD YOU SIGN
25 GIVING A VERDICT OF DEATH. AND EACH ONE OF YOU LOOKED ME

1 IN THE EYE OR LOOKED MR. BRACKETT IN THE EYE AND SAID IF
2 THE CASE WAS BAD ENOUGH, IF THE FACTS WERE THERE, I COULD
3 SIGN GIVING A VERDICT OF DEATH.

4 LADIES AND GENTLEMEN, IT IS WITH SOME APOLOGY
5 THAT I TELL YOU, YOU ARE IN THAT CASE, AND IT IS ABOUT TO
6 BE LAID IN YOUR HANDS.

7 MADAM CLERK, COULD YOU GET THE LIGHTS?

8 YOU MIGHT REMEMBER WHEN WE STARTED OUT, AND I'M
9 GOING TO READ THESE TO YOU ALSO, BUT WHEN WE STARTED OUT
10 THAT FIRST DAY AND YOU WERE IN THERE WITH ALL THOSE JURORS
11 AND YOU REALLY DIDN'T KNOW WHAT WAS GOING ON. YOU KNOW, IT
12 WAS A BIG DEAL AND I STOOD UP AND I READ THE INDICTMENTS.
13 MAYBE YOU CAUGHT HALF OF IT, MAYBE YOU CAUGHT PART OF IT,
14 BUT PART OF IT WAS WHAT'S CALLED THE AGGRAVATING
15 CIRCUMSTANCES.

16 YOU KNOW WHEN YOU WERE UP HERE GETTING WHAT YOU
17 FELT LIKE WAS CROSS EXAMINED, YOU REALLY DIDN'T GET A TRUE
18 PICTURE. I THINK MR. HANCOCK EVEN ASKED YOU, WELL, YOU
19 DON'T REALLY KNOW WHAT THE AGGRAVATING CIRCUMSTANCES ARE,
20 YOU DON'T KNOW WHAT THE MITIGATING CIRCUMSTANCES ARE, HOW
21 CAN YOU DECIDE. AND, OF COURSE, EACH ONE OF YOU SAID I
22 DON'T KNOW, I DON'T KNOW ENOUGH ABOUT IT, BUT I WILL WHEN
23 IT'S OVER AND THEN I'LL MAKE MY DECISION.

24 WELL, I WANT TO TELL YOU, AND AGAIN THE JUDGE IS
25 GOING TO INSTRUCT YOU ON THIS BUT I WANT TO TELL YOU THAT

1 THE AGGRAVATING CIRCUMSTANCES THAT THE STATE IS PRECEDING
2 UNDER ARE AS FOLLOWS, AND BEFORE I TELL YOU THAT, THE JUDGE
3 WILL ALSO INSTRUCT YOU ABOUT THE MITIGATING CIRCUMSTANCES
4 AND HE'LL TELL YOU CERTAIN STATUTORY MITIGATING
5 CIRCUMSTANCES.

6 I IMAGINE AFTER THIS WEEK YOU'VE LEARNED MORE
7 ABOUT AGGRAVATION AND MORE ABOUT MITIGATION THAN YOU CARE
8 TO FOR THE REST OF YOUR LIVES.

9 BUT THE JUDGE WILL INSTRUCT YOU AS TO THE
10 MITIGATION AND I'LL TELL YOU RIGHT NOW, I HAVE TO PROVE
11 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT BEFORE
12 YOU AS A JURY CAN EVEN CONSIDER THE DEATH PENALTY.

13 THE DEFENSE HAS NO BURDEN AS TO THE MITIGATING
14 CIRCUMSTANCES. THE TRUTH OF THE MATTER IS YOU CAN GIVE
15 LIFE FOR ANY REASON OR FOR NO REASON AT ALL. BUT THE
16 BURDEN IS ON THE STATE AND WE HAVE TO PROVE THESE
17 AGGRAVATING CIRCUMSTANCES.

18 NOW IF YOU WILL RECALL WHEN WE FIRST STARTED OUT,
19 THE JUDGE TOLD YOU -- WHEN I SAY WE STARTED OUT, IN THIS
20 SECOND PHASE THE JUDGE TOLD YOU EVERYTHING FROM THE LAST
21 PHASE, YOU REMEMBER ALL THE FACTORS THAT YOU WENT BACK AND
22 CONSIDERED ON DETERMINING GUILT, THAT'S ALL EVIDENCE IN
23 THIS PHASE.

24 THE INDICTMENTS THAT YOU HANDED DOWN ARE NOT
25 EVIDENCE. HOWEVER, I WILL SUBMIT TO YOU THAT YOU HAVE MADE

1 THE DECISION ALREADY BEYOND A REASONABLE DOUBT ON A NUMBER
2 OF THESE AGGRAVATING CIRCUMSTANCES.

3 THE AGGRAVATING CIRCUMSTANCES THAT YOU WILL HAVE,
4 AND THE JUDGE WILL SEND BACK A FORM, WILL BE FIVE. THE
5 FIRST IS THAT THE MURDER WAS COMMITTED WHILE IN THE
6 COMMISSION OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON.

7 THE JUDGE WILL GIVE YOU AN EXPLANATION OF WHAT
8 WHILE IN THE COMMISSION OF IS, IT'S YOUR COMMON EVERY DAY
9 UNDERSTANDING OF IT, A CONTINUING SEQUENCE OF EVENTS. I'M
10 TELLING YOU THAT THE MURDER CAN TAKE PLACE FIRST AND THEN
11 YOU CAN HAVE ARMED ROBBERY. I CAN ARM ROB ONE INDIVIDUAL
12 AND MURDER ANOTHER AND IT TAKE PLACE. SO, WHAT I'M TELLING
13 YOU, THE ARMED ROBBERY THAT YOU BROUGHT BACK, AND IT WAS
14 ONLY AN INDICTMENT AGAINST EARL AT THAT TIME. THE ARMED
15 ROBBERY CONCERNING EARL WOULD ALSO APPLY TO TERRY IF YOU
16 MAKE THE DETERMINATION THAT WHILE IN THE COMMISSION OF
17 ROBBING EARL OF HIS CREDIT CARD, TERRY WAS ALSO KILLED IN
18 THAT SAME SEQUENCE OF EVENTS.

19 LIKewise, CONCERNING TERRY, AND THIS GOES TO THE
20 SECOND ONE, LARCENY WITH THE USE OF A DEADLY WEAPON.

21 DO YOU REMEMBER WHEN THE JUDGE INSTRUCTED YOU
22 ABOUT ARMED ROBBERY AND STARTED TALKING ABOUT WELL FIRST
23 I'VE GOT TO TELL YOU ABOUT LARCENY AND THEN I'VE GOT TO
24 TELL YOU ABOUT STRONG ARM ROBBERY AND THEN ARMED ROBBERY.
25 LARCENY IS THE STEALING FROM SOMEONE AND LARCENY WITH THE

1 USE OF A DEADLY WEAPON, YOU'VE SEEN THE DEADLY WEAPONS IN
2 THIS CASE. SO FOR EXAMPLE WHEN YOU BELIEVE OR YOU SEE THAT
3 TERRY'S POCKETBOOK HAS BEEN RUN THROUGH OR EARL'S CREDIT
4 CARD HAS BEEN TAKEN OUT OF HIS WALLET, YOU CAN CONSIDER
5 THAT AS A LARCENY WITH THE USE OF THE DEADLY WEAPONS ALSO.

6 THE POINT I'M MAKING IN BOTH OF THESE IS, ONE,
7 YOU HAVE DECIDED ALREADY THAT THIS MAN IS GUILTY OF ARMED
8 ROBBERY. AND YOU HAVE DECIDED THAT HE IS GUILTY OF THE
9 MURDERS. I WILL SUBMIT THAT AS SOON AS YOU GO IN THE JURY
10 ROOM, YOU CAN DETERMINE THAT ROBBERY WHILE ARMED WITH A
11 DEADLY WEAPON IS ONE OF THE AGGRAVATING CIRCUMSTANCES WHICH
12 THE STATE HAS PROVED BEYOND A REASONABLE DOUBT.

13 I WILL SUBMIT TO YOU THAT THE LARCENY HAS BEEN
14 PROVED. AND AGAIN IF YOU SAY, WELL, I DON'T BELIEVE HE
15 REALLY ARMED ROBBED TERRY, I THINK HE JUST STOLE IT OUT OF
16 HER POCKETBOOK, THEN AGAIN IF YOU BELIEVE, AS THE EVIDENCE
17 SHOWS, THAT IT IS A CONTINUING COURSE OF EVENTS, THEN THAT
18 WOULD BE LARCENY IN THAT REGARD, TOO.

19 THE THIRD IS PHYSICAL TORTURE. LADIES AND
20 GENTLEMEN, THE JUDGE WILL INSTRUCT YOU AS TO PHYSICAL
21 TORTURE AND I WANT YOU TO LISTEN CLOSELY TO HIS DEFINITION
22 OF IT AND WHAT THAT MEANS.

23 THE STATE HAS THE BURDEN OF PROOF IN THIS CASE.
24 I'VE THOUGHT ABOUT IT AND I'VE THOUGHT ABOUT THE THINGS
25 YOU'VE BEEN THROUGH THIS WEEK. I DON'T WANT YOU TO EVER

1 THINK THAT WHEN I'VE GOT THE PATHOLOGIST OR I'VE GOT THE
2 SLED AGENT AND I'M SITTING HERE DROPPING PICTURES AND
3 CALLING STATE NUMBERS ONE AFTER ANOTHER THAT WE DO IT JUST
4 FOR SHOW, OR THAT WE DO IT JUST FOR SHOCK VALUE, OR WE DO
5 IT JUST FOR AFFECT BECAUSE THAT'S NOT WHAT YOU'RE SUPPOSED
6 TO DECIDE THE DEATH PENALTY ON. YOU'RE SUPPOSED TO SET
7 PASSION AND PREJUDICE ASIDE. YOU DON'T HAVE ANY FRIENDS TO
8 REWARD, YOU DON'T HAVE ANY ENEMIES TO PUNISH. BUT I HAD A
9 DUTY, AN OBLIGATION TO BRING TO YOU THE HORROR OF WHAT
10 HAPPENED ON NOVEMBER 25TH, 1997 IN THAT HOUSE. AND I
11 SUBMIT TO YOU THAT YOU COULD NOT HAVE LEFT THIS COURTROOM
12 AND WHEN YOU GO AND DELIBERATE, THERE IS NO WAY THAT YOU
13 CAN'T SAY THAT TERRY WAS NOT PHYSICALLY TORTURED AND THAT
14 EARL WAS NOT PHYSICALLY TORTURED.

15 IT'S NOT THE TORTURE LIKE YOU SEE IN THE OLD DAYS
16 WHEN THEY'VE GOT THEM ON THE RACK AND THEY'RE BEATEN WITH
17 WHIPS AND ALL OF THAT. IN A LOT OF WAYS, I'D SAY THIS IS
18 MUCH MORE HORRIBLE. BUT WHEN YOU LISTEN TO THE JUDGE AND
19 YOU REMEMBER THE PATHOLOGIST'S TESTIMONY, YOU WILL KNOW
20 THAT THIS MAN AND THIS WOMAN, HIS PARENTS, DIDN'T DIE AN
21 EASY DEATH, DIDN'T DIE A QUICK DEATH, THEY DIED A TORTURED
22 DEATH.

23 AND SO I SUBMIT TO YOU THAT THAT IS ONE OF THE
24 AGGRAVATING CIRCUMSTANCES ALSO.

25 NEXT WE HAVE THE OFFENDER COMMITTED THE MURDER

1 FOR HIMSELF OR ANOTHER FOR THE PURPOSE OF RECEIVING MONEY
2 OR A THING OF MONETARY VALUE.

3 NOW AGAIN AT FIRST BLUSH YOU SAY WELL THAT'S THE
4 HIT MAN CASE, YOU KNOW, WHERE YOU PAY SOMEBODY TO KILL
5 SOMEBODY.

6 LADIES AND GENTLEMEN, YOU'VE BEEN IN THE SAME
7 COURTROOM I HAVE THESE LAST TWO WEEKS AND WHEN YOU REVIEW
8 THAT AGGRAVATING CIRCUMSTANCE IF YOU BELIEVE, TAKING THE
9 TOTALITY OF WHAT YOU'VE HEARD AND WHAT YOU'VE SEEN, THAT
10 THIS YOUNG MAN HAD A REASON FOR THIS KILLING, HE HAD A
11 MOTIVE FOR THAT, THAT IT WAS A MEANS TO AN END, THAT HE
12 WANTED TO GET THE INHERITANCE BEFORE DAD WENT AND BUILT A
13 GOLF COURSE AND SPENT IT ALL UP, IF YOU BELIEVE THAT'S THE
14 CASE, IF YOU BELIEVE THE STATE HAS CARRIED THAT BURDEN OF
15 PROOF, THEN I SUBMIT YOU WOULD HAVE THE AGGRAVATING
16 CIRCUMSTANCE OF THE MURDER COMMITTED FOR HIMSELF OR ANOTHER
17 FOR THE PURPOSE OF RECEIVING MONEY.

18 THE LAST ONE. TWO OR MORE PERSONS WERE MURDERED
19 BY THE DEFENDANT BY ONE ACT OR PURSUANT TO ONE SCHEME OR
20 COURSE OF CONDUCT.

21 LADIES AND GENTLEMEN, I DON'T NEED TO WASTE YOUR
22 TIME ON THAT. YOU HAVE FOUND THAT BEYOND A REASONABLE
23 DOUBT. WHEN YOU RETURNED YOUR VERDICTS LAST SATURDAY, YOU
24 FOUND THAT BEYOND A REASONABLE DOUBT.

25 YOU SAY, SOLICITOR, I FOUND THESE THINGS AND

1 WE'VE DETERMINED IT AND SO WE'VE NOW GOT BEYOND A
2 REASONABLE DOUBT, SO WHAT DO WE DO NOW? LADIES AND
3 GENTLEMEN, WHAT ONE OF THESE OR ALL OF THESE OR ANY
4 COMBINATION OF THESE DOES IS ALLOWS YOU TO GO TO THE NEXT
5 STEP. IF WE DON'T HAVE THESE, IF YOU DON'T FIND ONE OF
6 THESE, YOU DON'T HAVE A CHOICE IN WHAT THE PENALTY SHOULD
7 BE. I SUBMIT TO YOU, YOU'VE GOT ALL OF THEM. BUT IF YOU
8 FEEL THAT WE HAVEN'T PROVEN ANY OF THEM BEYOND A REASONABLE
9 DOUBT, THEN THERE IS ONLY ONE VERDICT THAT YOU CAN RETURN
10 BECAUSE THE STATE HASN'T CARRIED THEIR BURDEN.

11 BUT WHEN WE GET IN THE CASE, WHEN WE GET DOWN TO
12 WHAT YOU'VE HEARD THIS WEEK -- I KNOW IT'S BEEN A LONG WEEK
13 AND CANDIDLY I THOUGHT WE'D ALL BE HOME BY NOW. BUT WHEN
14 YOU HEARD DAYS OF AGGRAVATION, WHEN YOU HEARD DAYS OF
15 MITIGATION, IT COMES DOWN TO YOU AS FACT FINDERS, IT COMES
16 DOWN TO YOU AS CITIZENS OF THIS COMMUNITY TO DETERMINE THE
17 TRUTH IN THIS MATTER. YOU NOW HAVE ALL THE FACTS.

18 YOU KNOW WE HAD PEOPLE COME IN AND PEOPLE SAY,
19 WELL, I KNEW WHAT HAPPENED BECAUSE I READ IT IN THE PAPER.
20 SOME OF Y'ALL MAY HAVE SAID THAT WHEN YOU WERE QUESTIONED
21 THE FIRST TIME, AND I REMEMBER THE MEDIA WAS SITTING HERE
22 AND SOME PEOPLE EVEN KIND OF JOKED AND SAID I DON'T BELIEVE
23 WHAT I READ IN THE PAPER. WELL, YOU'VE SEEN THIS CASE, AND
24 YOU KNOW WHAT'S HAPPENED IN THIS COURTROOM AND IT'S NOT
25 LIKE WHAT'S GOING OUT IN THE REAL WORLD, THIS IS HAPPENING,

1 YOU'VE SEEN EVERY HORRID DETAIL OF IT, SO YOU ARE THE 12
2 BEST CITIZENS IN OUR COMMUNITY THAT CAN MAKE THE
3 DETERMINATION OF WHAT IS JUSTICE IN THIS CASE.

4 LADIES AND GENTLEMEN, I SAY THAT WHEN YOU GET
5 DOWN TO YOUR VERDICT IT'S ONE OF TWO THINGS, EITHER YOU BUY
6 THAT IT'S A COMBINATION OF RITALIN PSYCHOSIS, TERRY AND
7 EARL BEING BAD PARENTS, THEY DISCIPLINED THEIR KIDS TOO
8 MUCH OR DIDN'T DISCIPLINE THEM ENOUGH, A BAD FAMILY, HIM
9 NOT HAVING ANY BREAKS, HIM NOT HAVING ANY OPPORTUNITIES,
10 HIM GETTING THE SHORT END OF THE STICK ALL OF HIS LIFE FROM
11 THE TIME THAT HE CAN'T REMEMBER WHEN HE WAS BANGING HIS
12 HEAD ALL THE WAY THROUGH TO THE PRESENT, OR HE'S THE
13 SPOILED RICH KID WHO COULD NOT WAIT TO RECEIVE HIS
14 INHERITANCE.

15 LADIES AND GENTLEMEN, YOU HEARD THE EVIDENCE.
16 YOU HEARD THE TESTIMONY. YOU ARE THE CITIZENS OF THIS
17 COMMUNITY AND YOUR VOICE HAS GOT TO ANSWER THAT QUESTION.
18 TOMMY POPE IS NOT A JUROR. I DON'T SIT IN THAT BOX. I'M
19 GOING TO TELL YOU WHAT I THINK BASED ON THE EVIDENCE, BUT
20 WHEN IT FINALLY COMES DOWN TO IT, YOU'VE GOT TO SEPARATE
21 THE WHEAT FROM THE CHAFF. YOU'VE GOT TO TAKE YOUR LIFE
22 EXPERIENCES AND DECIDE WHO'S TELLING THE TRUTH, WHO'S NOT,
23 WHAT THEIR MOTIVATIONS ARE AND MAKE A DETERMINATION OF WHAT
24 THE RIGHT VERDICT IS IN THIS CASE.

25 I WOULD LIKE TO CALL YOUR ATTENTION EVER SO

1 BRIEFLY TO THE DEFENSE MITIGATIONS. AND AGAIN I'M NOT
2 MAKING LIGHT OF MITIGATION AND I'M NOT MAKING LIGHT OF THE
3 HORROR THAT THIS FAMILY SUFFERED. AND WHEN I SAY THIS
4 FAMILY, IN FAIRNESS I THINK TERRY AND EARL ARE THE ONES WHO
5 SUFFERED IN THIS CASE. YOU SAW ALL THE INFORMATION AND THE
6 DEFENSE BROUGHT IN ALL THE EXPERTS AND WHEN THE SMOKE
7 CLEARS WHAT DO THEY TELL YOU?

8 DR. PINCUS, YOU REMEMBER DR. PINCUS, HE WAS THE
9 NEUROLOGIST. HE TELLS US THAT THE MRI, WHICH HE EXPLAINED
10 WAS THE BRAIN SCAN ON JIMMY, WAS CLEAR. YOU KNOW, CLEAN
11 BILL OF HEALTH, THAT CHECKED OUT. BUT HE STILL THINKS HE
12 HAS SOME FRONTAL LOBE PROBLEMS. NOW, NOTHING SHOWS UP,
13 THERE'S NOTHING SCIENTIFIC. IT'S LIKE THE CHICKEN AND THE
14 EGG. IT'S LIKE, LOOK WHAT JIMMY DID. YOU KNOW, THAT'S THE
15 MAN THAT SAID EARL'S HEAD LOOKED LIKE IT HAD BEEN SMASHED
16 LIKE A TOMATO. HE SAID, OH, YES, IT'S A VERY BAD CASE.

17 JIMMY DID BAD, SO WE'VE GOT TO COME UP WITH
18 SOMETHING SAYING WHAT'S WRONG WITH HIM AND I KNOW THE MRI
19 SAYS HE'S OKAY, BUT YOU KNOW WE DID THIS THING AND HE KIND
20 OF DIDN'T DO AS GOOD ON THAT. HE SAID IT'S KIND OF LIKE THE
21 GUY SHOOTING THE IMPALA WITH THE BOW AND HE HAS TO USE
22 TRACKING AND ALL OF THIS AND IT SHOWS THAT IF YOU CAN'T DO
23 THAT, YOU DON'T HAVE A FRONTAL LOBE OR YOU HAVE FRONTAL
24 LOBE PROBLEMS.

25 DO YOU REMEMBER MR. BRACKETT GOT UP WITH THE BAT?

1 THINK ABOUT IT. LET'S FORGET EARL AND TERRY. THE CURVE
2 BALL COMING FROM THE PITCHER'S MOUND, YOU'VE GOT TO HAVE
3 HAND TO EYE COORDINATION, YOU'VE GOT TO HAVE SOME
4 COORDINATION. DR. PINCUS WASN'T HEARING OF THAT. THAT'S
5 NOT THE SAME THING.

6 I SUBMIT TO YOU, HE SEEMED LIKE A NICE ENOUGH
7 FELLOW, BUT HE WAS PAID HERE TO FIND A REASON TO EXPLAIN
8 THIS.

9 LADIES AND GENTLEMEN, WHAT I'VE SEEN IN THIS
10 COURTROOM THIS WEEK, SOME THINGS DON'T HAVE EXPLANATIONS.
11 WE CAN TRY TO FIT IT IN, WE CAN TRY TO TALK ABOUT MOTIVES,
12 WE CAN TRY TO TALK ABOUT MOTIVATIONS, BUT MAYBE SOMETIMES
13 PEOPLE ARE JUST GREEDY AND THEY ARE JUST EVIL.

14 DR. EVANS. DO YOU REMEMBER DR. EVANS? HE WAS
15 THE ONE THAT HAD THE LITTLE CAP THAT HAD ALL THE LITTLE
16 WIRES AND STUFF COMING OUT OF IT AND HE USED THE Q.E.E.G.
17 AND HE USED THE Q.E.E.G. AND SHOWED YOU ALL THE DIFFERENT
18 WAVES AND ALL THE DIFFERENT THINGS AND THIS MUST EXPLAIN
19 WHY JIMMY KILLED TERRY AND WHY JIMMY KILLED EARL.

20 AND AGAIN DO YOU REMEMBER MR. BRACKETT'S CROSS?
21 HE HAD A SCHOLARLY JOURNAL THAT HAD REVIEWED THE Q.E.E.G.
22 AND BASICALLY SAID THAT IT WASN'T FIT FOR BEING USED IN
23 COURT. AND HE ASKED HIM ABOUT THAT. AND, OH, NO, STILL
24 BASED ON THE TOTALITY, JIM HAD A FRONTAL LOBE PROBLEM.

25 AND YOU REMEMBER WE HEARD -- AND SO NOW WE'VE GOT

1 -- AND I THINK IT'S UNDISPUTED, LADIES AND GENTLEMEN, THAT
2 THIS MAN SUFFERS FROM MANIC DEPRESSION. THE KEY, AS YOU
3 HEARD FROM DR. McKEE IN THE END IS THAT IT'S A CYCLE.
4 PEOPLE EXIST WITH IT AND ARE ABLE TO FUNCTION, TO FUNCTION
5 NORMALLY. EVERYBODY WITH MANIC DEPRESSION DOESN'T GO OFF
6 AND KILL THEIR PARENTS OR ROB A BANK OR SHOOT SOMEBODY OR
7 ANYTHING OF THAT NATURE. SO, THAT IN AND OF ITSELF ISN'T
8 GOING TO CARRY THE DAY.

9 SO, HERE COMES DR. MORTON, THE PHARMACOLOGIST.
10 Y'ALL REMEMBER DR. MORTON, HE HAD THE SLIDES. AND AGAIN I
11 THINK I SAID IT REMINDED ME OF BEING IN COLLEGE. I TOOK
12 NOTES AS LONG AS I COULD AND I GAVE OUT. HE SPOKE ABOUT
13 THREE HOURS ABOUT THE EVILS, PRIMARILY OF COCAINE. AND I
14 DON'T WANT TO MAKE LIGHT OF THAT. WE'VE GOT PEOPLE
15 SUFFERING IN OUR COMMUNITIES, ADDICTED TO DRUGS, PEOPLE
16 THAT ARE TRYING TO HELP THEMSELVES. SO, I DON'T WANT TO
17 MAKE LIGHT OF HIS PRESENTATION OR THE FACTORS HE'S SAYING
18 OR THE THINGS THAT COULD BE HAPPENING HERE. THE PROBLEM I
19 HAVE WITH IT IS THAT THIS GUY DOESN'T FIT, HE'S A SQUARE
20 PEG IN A ROUND HOLE.

21 WELL, IT MUST HAVE BEEN DRUG PSYCHOSIS BECAUSE
22 LOOK WHAT HE DID; LOOK WHAT HE DID; LOOK HOW HORRIBLE IT
23 IS; LOOK WHAT HE DID. AND YOU REMEMBER HE STARTED TALKING
24 ABOUT ANIMALS AND ALL THE THINGS -- I APOLOGIZE, I MAY BE
25 GETTING IT MIXED UP A LITTLE BIT BUT SOMETHING ABOUT THE

1 APE THAT HAD THE NEEDLE IN ITS HEAD AND THEY KEEP WANTING
2 THE DRUGS AND KEEP WANTING THE DRUGS AND EVEN AFTER THE
3 DRUGS ARE CUT OFF THEY KEEP ON AND KEEP ON AND KEEP ON, AND
4 THAT'S WHAT HAPPENS WHEN YOU'RE ON DRUG PSYCHOSIS, YOU JUST
5 WANT IT MORE AND MORE AND IT JUST GNAWS AT YOU, AND IT JUST
6 DRAWS YOU AND YOU'LL DO -- WHAT WAS IT HE SAID? DO
7 ANYTHING FOR THE DRUGS. DO ANYTHING FOR THE DRUGS.

8 SO, I'M THINKING, OKAY, DRUG PSYCHOSIS. WHAT'S
9 HAPPENING HERE IS THAT HE'S KILLING EARL AND TERRY TO GET
10 MONEY FOR DRUGS AND THAT'S DRUG PSYCHOSIS AND I UNDERSTAND
11 BECAUSE THAT RITALIN HAS GOT HOLD OF HIM AND HE CAN'T LET
12 IT GO.

13 THAT'S NOT TRUE, LADIES AND GENTLEMEN, BECAUSE
14 I'LL TELL YOU WHAT HAPPENS WHEN JIM'S PACKING UP HIS GOODY
15 BAG FOR MARYLAND AND HE'S TAKING ALL THE THINGS HE'S GOING
16 TO THROW IN THE DUMPSTER AND THIS IS THE MONKEY WITH THE
17 NEEDLE IN HIS HEAD THAT'S GOT TO HAVE THE DOPE AND I'LL BE
18 DARNED IF HE DOESN'T THROW 15 RITALIN IN THE DUMPSTER ON
19 THE RIDE TO MARYLAND.

20 LADIES AND GENTLEMEN, I SUBMIT THERE ARE DRUG
21 PSYCHOSIS IN THIS WORLD; I SUBMIT THIS IS NOT ONE OF THEM.
22 THIS IS WHAT YOU CALL AN EXCUSE.

23 AND THEN HE KIND OF TURNED A LITTLE BIT AND HE
24 SAID, IF Y'ALL WILL JUST GIVE JIM A CHANCE, THEN HE CAN
25 HAVE TREATMENT.

1 AND I THINK THAT'S HUMAN NATURE BECAUSE, YOU
2 KNOW, WE WANT PEOPLE TO GET BETTER; WE WANT THINGS TO BE
3 BETTER FOR THEM. BUT I THINK HELP COMES TO THOSE THAT ARE
4 WILLING TO HELP THEMSELVES.

5 KIND OF LIKE THE FAMILY SITUATION. SPANK, BAD;
6 DON'T SPANK, BAD. THEY KIND OF WANT TO SAY, WELL, HE
7 HASN'T HAD A CHANCE. BUT BASED ON THE UNDERLYING DATA OF
8 MS. CASCIO WHEN SHE WAS FORMING HER OPINION ABOUT HOW
9 VIOLENCE WAS THE ONLY CHOICE, HE STARTS DRINKING AND
10 SMOKING AS SOON AS HE'S OUT OF PRISON AND ON PAROLE AND
11 HE'D HAD COUNSELING IN THERE.

12 YOU KNOW, HIS PARENTS WERE SO EXCITED. REMEMBER,
13 IT WAS A DREAM COME TRUE FOR THEM, HE SAYS, THAT HE QUIT
14 LSD AND HE QUIT CRACK. YOU TALK ABOUT A MORSEL, A PIECE OF
15 SOMETHING FOR TERRY AND EARL THAT FINALLY THEIR KID WHO
16 COULD HAVE DONE ANYTHING HE WANTED DECIDED HE'D CUT THEM A
17 BREAK AND HE'D QUIT SMOKING CRACK AND HE'D QUIT DOING ACID.
18 SO, OUT OF PRISON, ON PAROLE, YOU REMEMBER THE PAROLE
19 OFFICER TALKING ABOUT THE 16 THINGS HE PROMISED HE'D DO,
20 AND HE DECIDED THAT HE'D JUST STICK WITH A LITTLE, HE WAS
21 CONTENT WITH DRINKING A LITTLE BIT AND SMOKING A LITTLE
22 POT.

23 THEN THE INFORMATION CAME THROUGH THAT -- AGAIN,
24 ANY TIME THAT I SAY SOMETHING DIFFERENT THAN WHAT YOU HEARD
25 HERE, YOU REMEMBER IT THE WAY YOU HEARD IT BECAUSE AGAIN

1 WE'VE HAD SO MANY TIMES AND SO MANY THINGS GOING ON IN THE
2 COURTROOM, IF I SAY IT WRONG, YOU REMEMBER THE WAY THAT YOU
3 HEARD IT.

4 HE STARTS RITALIN AFTER PRISON. SEE, THE RITALIN
5 IS MAKING HIM MEAN; THE RITALIN IS MAKING HIM BAD. BUT YOU
6 REMEMBER HIS BUDDY, HIS BEST FRIEND, I THINK HIS NAME WAS
7 CLAY AND HE TALKED ABOUT JIMMY BEATING THE FOOL OUT OF CHIP
8 AT THE HOTEL ONE NIGHT. DO Y'ALL REMEMBER THAT? AND CLAY
9 SAID THERE WAS BLOOD ALL OVER THE WALL. HE SAID CHIP WAS
10 DOING RITALIN AND DRINKING. AND THEY ASKED HIM, THEY SAID
11 WAS JIM DOING RITALIN. OH, NO, JIM WASN'T DOING RITALIN.

12 ARE YOU VIOLENT WHEN YOU DO RITALIN, ARE YOU
13 VIOLENT WHEN YOU'RE NOT? HE'S JUST AS BAD WHEN HE'S NOT ON
14 RITALIN, LADIES AND GENTLEMEN. SO, AGAIN I SUBMIT THAT
15 THAT IS NOT A REASON, THAT IS NOT A PSYCHOSIS.

16 HE SAID HE DIDN'T WANT HELP FROM THE CHURCH. HE
17 EVEN WENT AS FAR -- DO YOU REMEMBER WHEN HE MADE HIS DEAL
18 AND GOT OUT OF THE STATE HOSPITAL? HE WAS MAD AT HIS MOM
19 AND HE WAS IN FOR THREATENING TO KILL HIS MOM OR
20 THREATENING TO INJURE HIMSELF SUPPOSEDLY AND HE FINALLY
21 REALIZED THAT HE WASN'T GETTING OUT UNTIL HE GOT SOME HELP,
22 SO HE MADE THEM A DEAL. HE'D SAY THREE MORE DAYS AND WHEN
23 HE GOT OUT HE WAS GOING TO BE ON THE RIGHT TRACK, HE WAS
24 GOING TO GET IT TOGETHER.

25 AND YOU REMEMBER WHEN I WAS CROSS EXAMINING MS.

1 CASCIO YESTERDAY AND I SAID WELL YOU LOOK AT THAT KEYSTONE
2 STUFF, DO YOU REMEMBER THAT DEAL? HE NEVER WENT TO
3 KEYSTONE. THEY SENT HIM TWO LETTERS AND ASKED HIM TO
4 PLEASE COME IN. AND JIM HAD SCAMED THEM AGAIN AND DIDN'T
5 GO BACK; NEVER WENT AS A MATTER OF FACT.

6 YOU HEARD HER TALKING ABOUT THERE WAS A
7 COUNSELOR, AND THIS THE FRIDAY BEFORE HE KILLED HIS PARENTS
8 ON MONDAY EVENING OR TUESDAY MORNING, HE WENT TO A
9 COUNSELOR AS PART OF HIS PROBATION AND PAROLE AND SHE NOTED
10 HE SAID HE HAD NO DESIRE TO STOP DRINKING.

11 YOU CAN ONLY HELP THOSE WHO ARE WILLING TO HELP
12 THEMSELVES.

13 AND THEN WE COME TO MS. CASCIO. THAT WAS THE
14 NICE LADY YESTERDAY THAT YOU HEARD THAT SPENT A GREAT DEAL
15 OF TIME BASICALLY BARING THE SOLE OF TERRY MORE THAN
16 ANYBODY I THINK. SHE TALKED ABOUT EARL AND TALKED ABOUT
17 TERRY.

18 YOU REMEMBER THEY BROUGHT THE DOCTOR IN THAT WAS
19 TERRY'S COUNSELOR AND MR. BRACKETT ASKED, SAID YOU'RE NOT
20 REALLY COMFORTABLE SAYING THIS, YOU KNOW, THIS KIND OF GOES
21 AGAINST THE WHOLE CONFIDENTIALITY THING BECAUSE I MEAN IT
22 WAS CLEAR THAT TERRY BASICALLY WENT THROUGH HELL DURING THE
23 LAST THREE YEARS OF HER LIFE.

24 YOU REMEMBER THE COUNSELOR SAID SHE WAS KIND OF
25 COMING OUT OF IT AND WAS STARTING TO MAKE SOME PLANS, THEY

1 WERE STARTING TO PUT SOME STRUCTURE ON THOSE KIDS; THEY
2 WERE STARTING TO SAY THEY'RE NOT GOING TO RUN THEIR LIFE;
3 THEY'RE GOING TO TAKE CHARGE AND THEY'RE GOING TO SET SOME
4 PARAMETERS.

5 BUT THIS LADY WANTED TO TALK ABOUT, YOU KNOW,
6 TERRY, SHE SELF-MUTILATED HERSELF. TERRY, SHE WAS
7 SUICIDAL. TERRY EVEN WENT SO FAR AS TO HAVE TO BE CHECKED
8 IN THE HOSPITAL. AND THEY DRAG TERRY THROUGH THE MUD AND
9 UP AND DOWN AND TALK ABOUT ALL THE MEDICATIONS, ALL THE
10 THINGS THAT ARE HAPPENING PILED TOGETHER, ALL THE
11 MEDICATIONS THAT CAME IN THE HOUSE. BUT WHEN YOU PULL THEM
12 APART, WHAT IS IT THAT YOU SEE. THREE YEARS. YES, SHE
13 LOST HER MOTHER; SHE LOST HER FATHER; SHE WAS GOING THROUGH
14 A TOUGH TIME. BUT IN THE MEANTIME SHE WAS HAVING TO DEAL
15 WITH HIM; SHE WAS HAVING TO DEAL WITH CHIP. AND IT WAS
16 CAVING IN ON HER.

17 MS. CASCIO SPENT A GREAT DEAL OF TIME GOING
18 THROUGH AND TELLING YOU BASICALLY WHAT A HORRIBLE SITUATION
19 WENT ON AT THE ROBERTSON'S HOUSE. AND NO FAMILY IS
20 PERFECT, AND I REALIZE THIS, AND THEY ALL HAVE PROBLEMS,
21 THEY ALL HAVE SITUATIONS. YOU ALL HAVE PRIVATE MATTERS
22 THAT YOU DON'T WISH TO BE PLAYED OUT IN THE COURTROOM. I
23 THINK HE SAID THAT TERRY WOULD HAVE BEEN HORRIFIED IF SHE
24 HAD KNOWN ALL OF HER PRIVATE THOUGHTS WERE LAID OUT HERE.

25 BUT FROM ALL THAT, WHERE DOES MS. CASCIO GO WITH

1 IT? BECAUSE OF ALL OF THAT AND BECAUSE OF THE PHYSICAL
2 ABUSE AND THE MENTAL ABUSE AND THE DETACHMENT AS A CHILD
3 AND ALL THESE DIFFERENT THINGS, VIOLENCE WAS HIS ONLY
4 ALTERNATIVE. AND I KEEP SAYING THAT WRONG. SHE SAID HE
5 PERCEIVED VIOLENCE AS HIS ONLY ALTERNATIVE. AND THEN I
6 THINK SHE SAID HE MAY PERCEIVE VIOLENCE AS HIS ONLY
7 ALTERNATIVE. BECAUSE THE TRUTH OF THE MATTER WAS WHEN I
8 STARTED QUESTIONING MS. CASCIO, AND I APOLOGIZE, I KNOW IT
9 TOOK A LONG TIME, BUT THERE WAS SO MUCH. WHEN YOU
10 SEPARATED THE WHEAT FROM THE CHAFF, IT WAS ONE INCIDENT,
11 ONE INCIDENT OF PHYSICAL ABUSE. TWO INCIDENTS OF FIGHTING
12 WITH THE BOYS. BUT FROM THAT, STUDIES SHOW AND IT'S CLEAR
13 THAT THAT MUST BE THE CASE.

14 SO EVERY TIME THEY FOUND ONE INCIDENT OR TWO
15 INCIDENTS OVER, WHAT, TWENTY-SOMETHING YEARS OF MARRIAGE,
16 TERRY WAS CRUCIFIED OR EARL WAS CRUCIFIED. THAT FAMILY,
17 THAT EXPLAINS IT. BECAUSE AGAIN THEY'RE STARTING AT THE
18 END, THEY'RE STARTING WITH THE BAT, THEY'RE STARTING WITH
19 THE CLAW HAMMER AND TRYING TO WORK BACK AND SAY WHY DID
20 THIS HAPPEN TO POOR JIMMY, WHY DID THIS HAPPEN TO HIM.

21 WELL, I'LL SUBMIT TO YOU AS I WENT THROUGH WITH
22 MS. CASCIO YOU SAW THAT EVERY SINGLE CARD SHE HAD STACKED
23 WAS JUST THAT, A HOUSE OF CARDS. AND AS I'D POINT OUT ONE,
24 IT WOULD FALL; I'D POINT OUT ANOTHER, IT WOULD FALL. AND
25 WE WENT THROUGH EVERYTHING SHE SAID THAT ULTIMATELY LEADS

1 TO THIS CONCLUSION THAT JIM ONLY HAD THE ALTERNATIVE FOR
2 VIOLENCE. IT'S JUST NOT THERE.

3 SO, I SUBMIT THAT ALL THAT REALLY HAPPENED -- YOU
4 KNOW, SHE TALKED ABOUT TERRY BEING SEXUALLY ABUSED. TERRY
5 HAS BEEN RAPED. SHE WAS RAPED IN THIS COURTROOM WHEN THEY
6 TAKE HER THROUGH THIS BASED ON HIS ACTIONS.

7 I'VE GOT AN ALTERNATIVE FOR VIOLENCE, I'VE GOT AN
8 ALTERNATIVE. WHY DOESN'T JIM GET OFF HIS REAR END AND GET
9 UP AND GET A JOB. HIS PARENTS DID EVERYTHING THEY COULD DO
10 FOR HIM. BUT IT WASN'T ENOUGH. HE WAS LIKE A LEECH. HE
11 DREW ON THEM -- YOU TALK ABOUT PHYSICAL ABUSE, YOU TALK
12 ABOUT MENTAL ABUSE. HE GOT TOUGH WHEN HE GOT OLDER, EARL
13 KNEW NOT TO LAY A HAND ON HIM. BUT THEY STILL LOVED HIM
14 AND THEY STILL TOOK CARE OF HIM. AND HE CONTINUED TO DRAIN
15 THEM. HE DRAINED THEM PHYSICALLY; HE DRAINED THEM
16 EMOTIONALLY. HE ULTIMATELY DRAINED EVERY DROP OF BLOOD OUT
17 OF THEIR BODY.

18 LADIES AND GENTLEMEN, THIS WAS REALLY A REFERENCE
19 AND AGAIN YOU ARE THE JURORS AND YOU MAKE OUT OF EACH
20 ASPECT OF THE CASE WHAT YOU DEEM IMPORTANT, BUT I THOUGHT
21 IT WAS IRONIC, AND YOU LOOK THROUGH AND WE PUT EVERYTHING
22 WE COULD BEFORE YOU TO TRY TO GIVE YOU A COMPLETE PICTURE
23 OF THIS YOUNG MAN, BUT WHEN YOU LOOK AT IT, IT WAS IRONIC,
24 ALL THESE DIFFERENT DOCTORS AND, YOU KNOW, WE GOT INTO
25 THINGS AS THE UNDERLYING BASIS, THEY TALKED ABOUT WHAT IT

1 WAS THAT JIM DID AND WHAT HE SAID AND THE CLASSIC IS
2 THERE'S SOME LITTLE PLANTS IN THERE CONCERNING LIKE, OH, HE
3 DID THESE THINGS BUT THERE WAS JIM OUTSIDE HIS BODY
4 WATCHING HIM DOING IT, KIND OF LIKE HALLUCINATION, KIND OF
5 LIKE WHAT HAPPENED TO TERRY.

6 AND THEN JIM RIDES AND IS GOING UP THE ROAD AND
7 THE RITALIN WEARS OFF AND IT'S IRONIC, YOU KNOW, HE'S SO
8 OUT OF IT BUT HE KNOWS THE EXACT DOSAGE HE TOOK. YOU
9 REMEMBER -- I CAN'T REMEMBER WHAT IT WAS 250 OR 300
10 MILLIGRAMS. THIS GUY KNEW EXACTLY HOW MUCH HE'D SNORTED,
11 AT LEAST HE DID BY THE TIME HE TALKED TO THE DOCTORS.

12 AND ONE THING I THOUGHT WAS INTERESTING AND IT
13 CAME OUT THROUGH MS. CASCIO WAS THAT JIM SAID HE'D BEEN
14 LEARNING A LOT FROM MS. DRUCIE GLASS, THE LADY FROM THE
15 CAPITAL LITIGATION CENTER. DID JIM COME UP WITH THIS OUT
16 OF BODY STUFF? DID JIM COME UP WITH THIS RITALIN STUFF
17 WEARING OFF? OR IS THAT NOW THE NEXT ALIBI, THE NEXT
18 EXPLANATION FOR WHAT HAPPENED THAT NIGHT?

19 LADIES AND GENTLEMEN, I KNOW TODAY WHEN YOU HEARD
20 THE DEFENSE RESTED AND YOU HEARD THE STATE WAS GOING TO
21 CALL MORE WITNESSES, I DIDN'T LOOK AT YOUR FACES BUT I KNOW
22 Y'ALL WERE GOING, WHEN IS IT GOING TO END, WHEN IS IT GOING
23 TO END. WE MADE A SPECIAL POINT OF MAKING SURE THAT YOU
24 KNEW THAT WE WERE GOING TO CALL ONE, AND WE TRIED TO MAKE
25 IT BRIEF.

1 THE POINT I WANT YOU TO TAKE OUT OF DR. McKEE
2 GOES REALLY BACK TO THE PSYCHOSIS. AND IT WAS IRONIC, MR.
3 BRACKETT HAD PREPARED THE TESTIMONY AND YOU'VE SEEN IT
4 TODAY AND I HAD MADE MY OWN LIST OF WHAT I THOUGHT -- YOU
5 KNOW, I DON'T KNOW ENOUGH TO CALL IT PSYCHOSIS, I WAS
6 TRYING TO EXPLAIN TO Y'ALL WHY IT WAS THAT JIM DID PLAN IT,
7 WHY IT WAS THAT JIM WASN'T THE WILD APE AS HE CALLS IN HIS
8 REPORT. BUT THE THINGS I WANT TO TELL YOU BEFORE I LEAVE
9 DR. McKEE IS HE MADE A LOT OF THE SAME POINTS. THE POINTS
10 OF HE KNEW RIGHT FROM WRONG.

11 AND AGAIN MR. BRACKETT TRIED TO ASK DR. PINCUS
12 AND HE KIND OF DANCED AROUND AND THIS IS IN HIS REPORT,
13 TOO, THAT HE DIDN'T KNOW RIGHT FROM WRONG -- THESE ARE
14 JIM'S WORDS NOW -- HE DIDN'T KNOW RIGHT FROM WRONG, BUT HE
15 THOUGHT HE'D GET AWAY WITH IT. AND DR. PINCUS SAID, YOU
16 KNOW, IT'S LIKE THIS WHEN YOU DO YOUR TAXES, YOU KNOW IT'S
17 WRONG, BUT YOU THINK YOU'LL GET AWAY - I'M NOT SURE I
18 UNDERSTOOD THAT. IF YOU'RE CHEATING ON YOUR TAXES AND THE
19 IRS PULLS UP IN FRONT OF YOUR HOUSE IN A BIG VAN AND COMES
20 AND KNOCKS ON THE DOOR, DOES YOUR STOMACH DROP A LITTLE
21 BIT? MAYBE THAT'S BECAUSE YOU KNOW IT'S WRONG. AND WHEN
22 THEY DRIVE OFF TO THE NEXT HOUSE BECAUSE THEY'VE GOT THE
23 WRONG ADDRESS, MAYBE YOU THINK YOU GOT AWAY WITH IT. I
24 DON'T KNOW.

25 LADIES AND GENTLEMEN, I SUBMIT THAT WHAT WE HAVE

1 SITTING RIGHT HERE IN THE COURTROOM, AND I'LL TELL YOU,
2 YOU'RE GOING TO HEAR FROM HIM BEFORE IT'S OVER. I'M THE
3 ONLY ONE THAT'S GOING TO SPEAK ON BEHALF OF THE STATE. I'M
4 THE ONLY ONE YOU'RE GOING TO HEAR CONCERNING TERRY AND
5 EARL. YOU'LL HEAR FROM MR. HANCOCK; YOU'LL HEAR FROM MR.
6 BOYD; AND YOU'LL HEAR FROM THE DEFENDANT. I SUBMIT THAT
7 THE YOUNG MAN THAT IS GOING TO COME STAND BEFORE YOU JUST
8 AS I'M STANDING BEFORE YOU MORE LIKELY FITS THE SOCIAL
9 CATEGORY OF AN ANTISOCIAL PERSONALITY.

10 YOU REMEMBER I ASKED MS. CASCIO, WE GOT ALL THESE
11 DEFINITIONS AND EVERYTHING WAS MAYBE AND PROBABLY AND
12 THINGS THAT WERE BAD FOR JIMMY, AND HE BANGED HIS HEAD AND
13 HE DID THIS. AND I ASKED HER, IS THERE NOT A
14 CLASSIFICATION, IS THERE NOT A DEFINITION OF JUST PLAIN
15 EVIL, JUST PLAIN BRUTAL.

16 BUT WE START OUT AND AGAIN THE EVIL, GREEDY THING
17 -- IF THE TRUTH OF THE MATTER IS YOU BELIEVE THAT HE'S JUST
18 PSYCHOTIC ON DRUGS AND DIDN'T KNOW RIGHT FROM WRONG AND WAS
19 HELL BENT ON RITALIN, IF THAT'S THE TRUTH OF THE MATTER,
20 THEN MAYBE YOUR DECISION OUGHT TO BE LIFE. IF THAT'S WHAT
21 YOU BELIEVE, IF THAT'S THE WHOLE EXPLANATION OF THIS, THEN
22 MAYBE YOUR DECISION OUGHT TO BE LIFE.

23 BUT I SUBMIT YOU'VE GOT THIS FELLOW TALKING ABOUT
24 KILLING HIS PARENTS WAY BEFORE THIS EVER GOES ON. AND MR.
25 HANCOCK ASKED TIME AND TIME AGAIN, DOES THAT NOT SOUND

1 STRANGE, DID THAT NOT SOUND BIZARRE? YES, SIR; YES, MA'AM,
2 THAT'S EXTREMELY BIZARRE. BUT IT'S HIS ATTITUDE AND HIS
3 DECISION. HE'S FLIPPANT ABOUT IT.

4 DR. PINCUS, THEIR DOCTOR, SAID THAT NIGHT JIMMY
5 WAS DOING SOMETHING HE HAD WANTED TO DO FOR A LONG TIME.
6 DO YOU REMEMBER WHEN HE SAID THAT KIND OF AT THE END OF HIS
7 TESTIMONY? SO NOW THE ANSWER IS, AND YOU'LL SEE THAT, I
8 THINK, IN PINCUS' REPORT, THAT JIMMY REALLY ONLY THOUGHT
9 ABOUT THESE CRAZY THOUGHTS ABOUT KILLING HIS PARENTS WHEN
10 HE WAS ON RITALIN. BUT WE KNOW HE DIDN'T GET ON RITALIN,
11 ACCORDING TO THE TESTIMONY, UNTIL AFTER HE GETS OUT OF
12 PRISON IN '97, SO WE'RE LOOKING AT LIKE AUGUST, SEPTEMBER,
13 OCTOBER, NOVEMBER. SO, THE RITALIN, KIND OF LIKE THE DEVIL
14 MADE ME DO IT, THE RITALIN MADE HIM DO IT.

15 HOWEVER, YOU HAD TIME AND TIME AGAIN WITNESSES
16 THAT COME IN HERE AND SAY HE TOLD ME WHEN HE WAS SOBER AND
17 HE TOLD ME WHEN HE WAS DRUNK; HE TALKED ABOUT IT OFTEN.

18 THE ROOMMATES, YOU REMEMBER THE ROOMMATES THAT
19 CAME IN AND HE ASKED ONE OF THEM, HE SAID DID YOU EVER WANT
20 TO KILL ANYBODY FOR THE INSURANCE. HE TOLD ANOTHER FELLOW,
21 I'VE GOT TWO SOMEBODIES I WANT TO KILL. TIME AND TIME
22 AGAIN.

23 OF COURSE, YOU KNOW, IT'S REALLY NOT JIMMY'S
24 FAULT BECAUSE PEOPLE FAILED JIMMY. THOSE FRIENDS SHOULD
25 HAVE RUN RIGHT OUT AND TOLD THE POLICE. THEY SHOULD HAVE

1 STOPPED THIS THING FROM HAPPENING BECAUSE JIMMY SAID IT.

2 AGAIN, EVERYBODY HAS GOT TO BE HELD ACCOUNTABLE
3 FOR JIMMY'S ACTIONS. I THINK IT WAS HIS FRIEND CLAY, HE
4 TALKED ABOUT DIFFERENT WAYS OF KILLING HIS PARENTS. HE
5 THOUGHT A GOOD WAY, WHAT IF YOU BURN DOWN THE HOUSE. BUT
6 WHERE WOULD CHIP AND I LIVE IF WE BURN DOWN THE HOUSE. SO,
7 MAYBE I'LL JUST HIRE SOMEONE. OR BETTER YET, I'LL DO IT
8 MYSELF AND GET CLAY TO PICK ME UP. BETTER YET, I'LL KILL
9 THEM AND MAKE IT LOOK LIKE A BURGLARY. I COULD GO UP AND
10 GET CHIP, LEAVE A NOTE, COME BACK AND FIND MAMA AND DADDY
11 AND ALL OF MY PROBLEMS WOULD BE TAKEN CARE OF.

12 YOU KNOW JIM HAD THAT FEAR OF DADDY SPENDING HIS
13 INHERITANCE. I THINK I SAID THIS EARLIER. I MEAN YOU KNOW
14 DAD, I MEAN HE CAME FROM THE MILL HILL -- I HOPE THAT
15 DOESN'T OFFEND ANYBODY, I GREW UP IN LESSLIE SO I GUESS I
16 CAN SAY MILL HILL IF I WANT TO, BUT, YOU KNOW, EARL WORKED
17 FOR EVERYTHING HE HAD AND THIS MAN USED HIS BRAIN AND HE
18 WAS WORKING AND HE WAS SAVING AND HE HAD TWO KIDS WHO WERE
19 SHARP AS TACKS, COULD DO ANYTHING THEY WANTED, AND HE WAS
20 GOING TO RETIRE AND BUILD HIM A GOLF COURSE. BUT THE
21 VULTURES STARTED CIRCLING. BECAUSE WHAT IF THAT GOLF
22 COURSE TAKES TOO MUCH MONEY.

23 AND THERE WAS SOME ISSUE MADE OF JIM KNOWING HOW
24 MUCH MONEY AND, OH, HE DIDN'T KNOW ABOUT THE WILL, HE
25 DIDN'T KNOW ABOUT THESE THINGS, BUT IT'S IRONIC MEREDITH

1 SAID ABOUT TWO MILLION. WHEN THE LADY FROM THE BANK CAME
2 WHAT WAS IT, WAS IT TWO POINT TWO MILLION? YOU'LL HAVE IT
3 IN EVIDENCE WITH YOU. BUT IT'S IRONIC THAT NOT TO KNOW
4 ANYTHING ABOUT IT, HE SURE BRAGGED ABOUT A PRETTY CLOSE
5 ESTIMATE TO IT.

6 HE TOLD MS. CASCIO WHEN SHE WAS BASING HER
7 OPINION THAT HE WAS NEVER FINANCIALLY SECURE ENOUGH TO
8 LEAVE ROCK HILL BECAUSE IF THAT HAD HAPPENED, EVERYTHING
9 WOULD HAVE BEEN OKAY.

10 BUT THEN HE TELLS, I THINK DR. PINCUS, THAT HE
11 MADE AS MUCH MONEY AS A BEGINNING ENGINEER, HE MADE FORTY
12 THOUSAND DOLLARS ONE YEAR. BUT, SEE, I GUESS FOR OLD
13 JIMBO, THAT'S NOT REALLY ENOUGH TO FLY THE COUP.

14 HE WENT TO EUROPE AT HIS PARENTS' EXPENSE AND
15 SAID THAT WAS THE BEST 12 MONTHS OF HIS LIFE. DO YOU
16 REMEMBER THAT, WHEN HE WAS IN HIGH SCHOOL OVER IN GERMANY,
17 BECAUSE HE HAD FREEDOM. THE BEST 12 MONTHS OF HIS LIFE.
18 HIS PARENTS LAID OUT, ALL EXPENSES PAID, HE SAW EUROPE, HE
19 DID ALL KIND OF NEAT THINGS. AND WHAT DO WE HAVE GOING ON
20 BACK IN THE STATES? HIS PARENTS HAD THE GALL TO BUY HIS
21 BROTHER A CAR WHILE HE WAS IN EUROPE. AND JIMMY NEVER
22 UNDERSTOOD IT AND HE NEVER FORGOT IT. THE WORLD CENTERS
23 AROUND OLD JIMBO AND IF HE'S NOT GETTING HIS SHARE, HE'S
24 GOING TO TAKE MATTERS INTO HIS OWN HANDS.

25 YOU KNOW ONE THING I THOUGHT ABOUT THAT WAS KIND

1 OF IRONIC, TOO, FROM THE MONEY STANDPOINT AND THIS KIND OF
2 GOES TO THE PSYCHOSIS, TOO, AND THIS CAME FROM MS. CASIO I
3 BELIEVE, TOO, AND I NEVER GOT THE CLEAR PICTURE, BUT WHEN
4 HE'S RIDING UP AND HE'S TALKING ABOUT GOING TO GET CHIP AND
5 ALL OF THIS STUFF AND HE SAID SOMETHING ABOUT YOU COULD BE
6 IN EUROPE IN AN HOUR OR SO. AND THAT'S WHERE HE GOT HIS
7 FREEDOM. IS THE PLAN TO GO TO EUROPE? OR WAS THE PLAN TO
8 BUY A CONDO ON THE LAKE OR IS THE PLAN TO RENOVATE A CLUB
9 DOWN IN ROCK HILL? THE TRUTH OF THE MATTER IS JIM WAS
10 SPENDING THAT INSURANCE MONEY; JIM WAS SPENDING THE
11 INHERITANCE MONEY BEFORE THEY EVER FOUND THE BODIES.

12 NOW, LADIES AND GENTLEMEN, I WANT TO GO NOW JUST
13 BRIEFLY INTO THE SCENE, INTO THE CRIME. IT'S LIKE I TOLD
14 Y'ALL WHEN I STARTED, YOU'VE SEEN THE EVIDENCE. YOU'LL
15 HAVE THE EVIDENCE IN THE JURY ROOM. I DON'T PUT PICTURES
16 UP HERE JUST TO ENTICE YOU OR EXCITE YOU OR UPSET YOU AND
17 THE TRUTH OF THE MATTER IS I'M NOT GOING TO GO THROUGH ALL
18 OF THE CRIME SCENE PICTURES. I'M GOING TO TALK ABOUT THE
19 CRIME SCENE.

20 BUT WHEN YOU CONSIDER THOSE AGGRAVATING
21 CIRCUMSTANCES, I WANT YOU TO CONSIDER THESE ITEMS AND
22 CONSIDER WHAT TOOK PLACE.

23 WE'RE NOW TRYING TO DECIDE DID THIS PSYCHOTICALLY
24 INDUCED BY RITALIN BIPOLAR MADMAN, TO USE HIS WORDS, WILD
25 APE, IS THAT WHO KILLED TERRY AND EARL OR WAS THERE A

1 METHOD THAT NIGHT TO HIS MADNESS.

2 I WANT TO GO CHRONOLOGICALLY WITH YOU A FEW
3 POINTS AND YOU TELL ME AND YOU'LL TELL ME BY YOUR VERDICT,
4 IS THIS A MAN THAT'S JUST HOPPED UP OUT OF HIS HEAD ON
5 DRUGS OR IS THIS A MAN WHO IS PLANNING, A MAN WHO IS
6 THINKING.

7 THE FIRST THING YOU HAVE TO DO IS YOU HAVE TO
8 CHOOSE A WEAPON BECAUSE IF YOU'RE GOING TO KILL BOTH OF
9 YOUR PARENTS, YOU'VE GOT TO DECIDE WHAT WILL BE THE BEST
10 IMPLEMENT OF DEATH. YOU KNOW, A PISTOL IS PRETTY QUICK.
11 POP MAMA IN THE HEAD, POP DADDY IN THE HEAD, IT'S OVER.

12 IT GOES RIGHT BACK TO THE PHYSICAL TORTURE THING.
13 IT GOES BACK TO HIM SAYING 22 YEARS OF HATRED COMING OUT,
14 22 YEARS OF ANGER. WELL, THIS SEEMS LIKE A PRETTY GOOD
15 IMPLEMENT. YOU KNOW, YOU'VE GOT TWO BATS TO CHOOSE FROM
16 BUT WE DON'T WANT TO USE THE WOODEN AUTOGRAPHED BAT. WHY
17 IS THAT, LADIES AND GENTLEMEN; WHY WOULDN'T HE USE THE
18 WOODEN AUTOGRAPHED ONE? BECAUSE IT MIGHT RUIN IT. AND, OF
19 COURSE, THE AUTOGRAPHED BAT MIGHT BE WORTH SOMETHING.

20 SO YOU'VE GOT TO THINK, EARL'S ABOUT MY SIZE.
21 THAT'S WHAT JIMMY'S THINKING. EARL'S ABOUT MY SIZE,
22 DADDY'S ABOUT MY SIZE AND I'VE GOT TO FIGURE OUT HOW TO
23 KILL MAMA AND DADDY. SO, I'LL GO IN AND KILL MAMA WHILE
24 DADDY IS IN THE SHOWER. IS THAT A MADMAN, IS THAT A WILD
25 MAN? HE'S THINKING, HE'S THINKING.

1 SO, WE'RE GOING TO GO IN, THE SHOWER STARTS
2 RUNNING, AND WE GO UPSTAIRS IN MAMA'S BEDROOM. IS THIS THE
3 ONLY IMPLEMENT HE'S GOT? NO. HE'S GOT A KNIFE; HE'S GOT
4 A HAMMER. AND THE SHOWER IS RUNNING AND HE GOES IN AND
5 MAMA, I ASSUME, AGAIN YOU DERIVE WHAT YOU DERIVE FROM THAT,
6 BUT SHE'S LAYING IN THE BED. YOU KNOW THE OLD THING, THE
7 ALARM GOES OFF IN THE MORNING AND YOU WANT TO CUT IT OFF
8 AND ONE OF THE TWO OF YOU HAS GOT TO GET UP AND GO AHEAD
9 AND GET IN THE SHOWER, SO EARL GOES ON DOWN ACTUALLY AND
10 GETS IN THE SHOWER AWAY FROM THE BEDROOM AND TERRY'S STILL
11 IN THE BED. THE SHOWER TURNS ON AND THEN JIM GOES UP THE
12 STAIRS.

13 AND THEY SAY WELL, REALLY, HE MAY STILL BE UPSET
14 AND THE SHOWER THING MIGHT BE JUST ONE LITTLE FLUKE. DOES
15 A WILD APE PUT SOCKS ON HIS HANDS TO MAKE SURE HE DOESN'T
16 LEAVE FINGERPRINTS OR IS THAT A SMART MAN, IS THAT A
17 THINKING MAN.

18 AND YOU SAY, WELL, SOLICITOR, YOU MIGHT BE MAKING
19 KIND OF A LEAP. I KNOW WE'VE GOT ALL THE BLOODY SOCKS AND
20 WE'VE GOT SOME SOCK PRINTS AND WE'VE GOT SOME DIFFERENT
21 THINGS THAT, YOU KNOW, MAY INDICATE THAT HE HAD SOCKS ON
22 HIS HANDS BUT I DON'T KNOW THAT WE REALLY HAVE THAT IN
23 EVIDENCE BEFORE US. I SUBMIT YOU DO RIGHT HERE.

24 DO YOU REMEMBER WHEN I BROUGHT THE OFFICER, AND
25 I APOLOGIZE, IT SEEMS A HUNDRED DAYS AGO NOW BUT THE

1 OFFICER WHO CAME IN TO TELL ABOUT WHEN HE BROKE INTO THE
2 NEXT DOOR NEIGHBOR'S HOUSE, AND DO YOU REMEMBER THE OFFICER
3 THAT GOT THE WRITTEN STATEMENT AND IT TOLD HOW HE BROKE IN.
4 AND, OF COURSE, THEN THEY ARE GOING TO SAY, YOU KNOW, HE
5 WAS ON CRACK THEN AND THAT'S WHY HE WAS STEALING. THAT'S
6 THE THING WHERE THEY KIND OF ALLEGED THAT CHIP MIGHT HAVE
7 BEEN INVOLVED AND THAT, YOU KNOW, JIMMY WAS GOING TO TAKE
8 THE HEAT FOR HIM.

9 EARLY SATURDAY MORNING I BROKE THE LATCH ON A
10 FRONT LIVING ROOM WINDOW. I ENTERED THE HOUSE AND STARTED
11 FROM THE REAR LOOKING THROUGH ROOMS FOR THINGS OF VALUE. I
12 FIRST SAW THE KEYBOARD AND THE JEWELRY BOX. I PUT SOCKS
13 OVER MY HANDS SO I DIDN'T LEAVE FINGERPRINTS. OLD JIM HAD
14 DONE THIS BEFORE. HE HAD THOUGHT ABOUT THIS BEFORE.

15 AND HE PUT THOSE SOCKS OVER HIS HANDS AND HE
16 CREEPS UP THAT STAIRS. AND THERE ARE TWO DIFFERENT WAYS TO
17 LOOK AT THE THING ABOUT THE PHONE OFF THE HOOK. YOU KNOW
18 ONE TIME WHEN HE TALKED TO MS. CASCIO I THINK HE SAID HE
19 TOOK THE PHONE OFF THE HOOK BEFORE HE GOES IN. I MEAN
20 HONESTLY IT'S ALMOST LIKE HE BRAGS ABOUT IT NOW. HE TOOK
21 THE PHONE OFF THE HOOK, OBVIOUSLY SO YOU CAN'T MAKE ANOTHER
22 CALL. BUT I BELIEVE, LADIES AND GENTLEMEN, THE EVIDENCE
23 MAY CLEARLY SAY THAT HE TOOK THE PHONE OFF THE HOOK AFTER
24 HE STARTED WORKING ON TERRY.

25 AND MAKE NO MISTAKE, YOU'VE GOT THE PICTURES IN

1 EVIDENCE. THIS IS THE PHONE THAT'S IN THE KITCHEN; THIS IS
2 THE PHONE THAT DEBBIE BRISSON WENT TO, DEBBIE WHO NEVER
3 EVEN SAW TERRY'S BODY. BUT WHEN YOU GET IN THERE AND YOU
4 LOOK, TERRY'S BLOOD. SLED TELLS YOU THAT'S TERRY'S BLOOD
5 ON THE PHONE.

6 WHILE WE'RE TALKING ABOUT BLOOD, ANOTHER THING
7 THAT I THINK IS OF INTEREST, "MOM AND DAD, GONE TO GET CHIP
8 IN HIS CAR. SORRY, BUT HE NEEDS ME RIGHT NOW. LOVE, JIM".

9 YOU REMEMBER SLED HAS ALREADY SAID THAT'S HIS
10 HANDWRITING. SLED HAS ALREADY SAID HIS FINGERPRINTS ARE ON
11 THERE. BUT YOU KNOW, I THINK IT WAS DR. PINCUS THAT WAS
12 TALKING ABOUT, OH, WELL HE LEFT THE NOTE AND EVERYTHING AND
13 MR. BRACKETT ASKED HIM, WELL, IF HE LEFT THE NOTE AND IT
14 WAS PREMEDITATED -- YOU KNOW, IF HE LEFT THE NOTE
15 BEFOREHAND OR SOMETHING, WOULD THAT MAKE A DIFFERENCE. AND
16 HE SAID OH, YES, WELL THAT MAY MAKE A DIFFERENCE, BUT
17 THAT'S NOT THE CASE.

18 YOU KNOW WHAT THEY DIDN'T FIND ON THAT NOTE?
19 ANYBODY'S BLOOD, ANYBODY'S BLOOD. WHEN JIM IS DOWN THERE
20 PICKING OUT BATS AND PICKING UP HAMMERS AND LOOKING AT
21 DIFFERENT ITEMS, HE THOUGHT HE'D JUST JOT A LITTLE NOTE
22 DOWN ON THE PAD AND KIND OF LAY OUT HIS ALIBI.

23 SO, HE GETS THE PHONE OFF THE HOOK; HE HAS HIS
24 NOTE LAYING UP THERE AND HE PUTS THE KNIFE IN THE HALL JUST
25 IN CASE DAD CAME AND HE GOES IN AND HE WORKS ON TERRY.

1 THIS IS THE ONE HE LOVED THE MOST. HE CUTS HER, HE BEATS
2 HER.

3 AND THEN HE GOES DOWNSTAIRS AGAIN, ONE DOWN AND
4 ONE TO GO. HE LAID THE BAT AT THE TOP OF THE STAIRS AND
5 SAT AND WAITED; HE SAT AND WAITED WITH THE HAMMER THERE.

6 SO, EARL HAS BEEN IN THE SHOWER WHILE TERRY IS
7 SCREAMING FOR HELP AND JIMMY IS BEATING HER AND BLUDGEONING
8 HER TO DEATH. HE GOES DOWNSTAIRS, ONE DOWN AND ONE TO GO.
9 AND HE GOES BACK UPSTAIRS AND HE SITS AND HE WAITS.

10 JIM'S NOT ENOUGH OF A MAN TO TAKE EARL STRAIGHT
11 ON. EARL IS IN THERE GETTING READY TO HEAD OUT TO WORK AND
12 JIM'S CATCHING HIM AS HE COMES RIGHT OUT OF THE BATHROOM IN
13 HIS UNDERWEAR HEADING BACK TOWARD THE BEDROOM AND HITS HIM
14 WITH THE TILEX. WILD APES; ANIMALS CAN DO A LOT OF AMAZING
15 THINGS, BUT I DON'T KNOW IF PREMEDITATION IS ONE OF THEM.
16 MAYBE A WILD APE IN A WILD RAVAGING ATTACK. BUT HE
17 DISABLED HIS OWN FATHER WITH TILEX BEFORE HE BURIED THE
18 HAMMER IN HIS HEAD.

19 DID EARL GO DOWN? NO; NO, SIR; NO, MA'AM. HE
20 BURIED THE HAMMER INTO EARL'S HEAD AND EARL FOUGHT, EARL
21 FOUGHT FOR LIFE. FINALLY, THEY KEEP STRUGGLING AND KEEP
22 FIGHTING AND HE PUTS EARL DOWN AND THEN HE BEATS EARL AND
23 HE BEATS HIM. 22 YEARS OF RAGE HE SAID COMING OUT; 22
24 YEARS FOR THE MAN THAT ALWAYS BAILED HIM OUT; FOR THE
25 MOTHER THAT ALWAYS TOOK CARE OF HIM. THIS IS WHAT HE DID

1 FOR THAT. AGAIN AND AGAIN AND AGAIN HE BEAT HIS FATHER'S
2 HEAD.

3 THAT WASN'T ENOUGH. HE GOES BACK AND GETS THE
4 BAT. DO YOU KNOW WHY, WHY HE TOOK THE BAT TO HIM AGAIN?
5 BECAUSE HE HEARD HIM BREATHING, HE HEARD HIM BREATHING INTO
6 THE CARPET DOWNSTAIRS. HE GOES UP AND HE BEATS HIM AGAIN,
7 AGAIN AND AGAIN. THE MAN AND WOMAN WHO BROUGHT HIM INTO
8 THIS WORLD. THE MAN AND WOMAN WHO HAD GIVEN HIM
9 EVERYTHING. THE MAN AND THE WOMAN WHO WERE SO PROUD, SO
10 PROUD OF THEIR SON.

11 AND THEN HE GOES IN THE BEDROOM TO CHECK ON MAMA
12 AND HE HITS HER WITH THE HAMMER TO MAKE SURE SHE'S DEAD.

13 WELL, THERE IS SOMETHING HE DIDN'T OBVIOUSLY TELL
14 US TOO THAT HE DID TO MOM, BUT DR. SEXTON TOLD US. HE GOES
15 BACK AND CUTS HER AGAIN AND AGAIN AND AGAIN. NOT SLASHING
16 CUTS, NOT WILD APE CUTS, BUT SLOW AND DELIBERATE CUTS. HE
17 CUTS ACROSS HERE; HE CUTS ACROSS THE HAND AND AGAIN AND
18 AGAIN, THE WOMAN THAT BROUGHT HIM INTO THIS WORLD.

19 WE DON'T HAVE ANY PHYSICAL EVIDENCE FROM THIS BUT
20 HE TELLS MS. CASCIO AND SHE USED THAT AS PART OF HER
21 OPINION AS TO WHY VIOLENCE WAS HIS ONLY ALTERNATIVE, BUT
22 ULTIMATELY HE THOUGHT ABOUT GOING TO GET A DRILL BECAUSE
23 EARL JUST WOULDN'T DIE. AND FINALLY HE KICKS EARL WITH HIS
24 TOE AND FINALLY EARL IS DEAD.

25 SO, HE GOES DOWNSTAIRS, THIS MADMAN, THIS WILD

1 APE, HE GOES DOWNSTAIRS AND TAKES A SHOWER AND WASHES THE
2 BLOOD OFF OF HIM. HE BAGS UP THE EVIDENCE AND HE MAKES
3 THAT GOODY BAG GO UP THE ROAD WITH ALL THE IMPLEMENTS OF
4 DEATH AND HIS CLOTHES AND HIS RITALIN.

5 I GOT TO THINKING ABOUT IT, AND I'VE MADE THE
6 POINT ABOUT THROWING THE RITALIN AWAY AND WONDERING WHY
7 THROW IT AWAY IF HE'S GOT GOOD PILLS. FOR ONE, OBVIOUSLY
8 AS I'VE SAID, I DON'T BELIEVE THAT MEANS HE NEEDS THEM.
9 WHAT WOULD ALL THIS MEAN IF IT WAS FOUND, REALLY NOT MUCH.
10 YOU KNOW, HE SAID HIMSELF NOBODY IS GOING TO BELIEVE
11 MEREDITH'S WORD ALONE AND THE ODDS OF FINDING SOMETHING IN
12 A DUMPSTER IN MARYLAND WERE PHENOMENAL.

13 THE OTHER THING IS, JUST ON THE OUTSIDE CHANCE
14 THAT SOMEHOW HE GETS CONNECTED BACK UP TO THIS STUFF, THAT
15 HE GETS CONNECTED TO HIS PANTS WITH HIS SOCK PRINTS ALL
16 AROUND AND MOM'S BLOOD ON THE FRONT AND DAD'S BLOOD ON THE
17 FRONT, JUST IN CASE HE GETS CONNECTED TO THAT, OH, THERE'S
18 RITALIN IN THERE. I MUST HAVE BEEN UNDER THE INFLUENCE OF
19 RITALIN.

20 LADIES AND GENTLEMEN, I PRAY THAT YOU ARE SMARTER
21 THAN THAT, TO BUY THAT ARGUMENT.

22 ANOTHER THING OF INTEREST WHEN YOU GO AND YOU
23 LOOK AND HE'S RIFLING THROUGH THE STUFF, WHAT ARE THE
24 DIFFERENT THINGS THAT WERE MOVED AND TURNED AROUND IN THE
25 HOUSE. DAD'S WALLET. AND YOU SAY, YOU KNOW, IF HE'S SO

1 HELL-BENT ON MONEY, WHY DOESN'T HE TAKE ALL THE STUFF. YOU
2 KNOW, MAMA'S CHECKBOOK. YOU LOOK AND YOU'LL HAVE THE
3 DIFFERENT CHECKS BACK THERE. IF YOU LOOK, THE ONE THAT WAS
4 IN THE BAG THAT WAS RECOVERED, THE DIFFERENT CHECKS THAT
5 WERE RECOVERED, HE WENT INTO MAMA'S CHECKBOOKS AND YOU HAVE
6 THEM; YOU DON'T HAVE ALL THE CONTENTS OF THE POCKETBOOK BUT
7 YOU HAVE THEM SEPARATELY AND IN THOSE CHECKBOOKS THERE ARE
8 CHECKS LIKE MISSING FROM THE BACK, FROM LIKE THE MIDDLE OF
9 THE STACK. IT WOULDN'T BE READILY APPARENT BUT IF YOU LOOK
10 AND IF YOU LOOK AT THE PICTURES YOU'LL HAVE BACK THERE, IF
11 YOU LOOK AT THESE ITEMS, THE CHECKS THAT WERE RECOVERED UP
12 IN MARYLAND AND THE CHECKS THAT WERE RECOVERED IN
13 PENNSYLVANIA, YOU'LL NOTICE THAT HE WENT IN MAMA'S
14 POCKETBOOK WHILE SHE'S LAYING THERE GURGLING IN HER OWN
15 BLOOD AND PULLS OUT A FEW CHECKS OUT OF THIS ONE AND ONE
16 OUT OF THAT ONE.

17 I GOT TO THINKING ABOUT IT. YOU KNOW, EARL'S
18 WALLET WAS SLAM FULL OF CREDIT CARDS; TERRY'S POCKETBOOK
19 HAD ALL KIND OF CHECKS. THERE WAS MAYBE A LITTLE MONEY OR
20 SOMETHING IN EARL'S WALLET, I DON'T KNOW, BUT WHY DIDN'T HE
21 TAKE IT ALL IF HE'S SO GREEDY, SOLICITOR. BECAUSE HE NEEDS
22 WHAT? JUST ENOUGH TO GET HIM TO HIS ALIBI BECAUSE WHEN HE
23 GETS BACK HOME, IT'S ALL HIS. THAT'S WHY YOU DON'T MESS UP
24 THE BAT; THAT'S WHY YOU DON'T BURN DOWN THE HOUSE BECAUSE
25 IF HE CAN GET AWAY WITH THIS, IT'S ALL HIS. AND OH, CHIP

1 WILL BE SO PROUD.

2 LADIES AND GENTLEMEN YOU CAN MAKE WHAT YOU WANT
3 OF IT BUT YOU REMEMBER THE SLED GUY SAID THE FILE BOX LIKE
4 YOU HAVE IN YOUR HOUSE, I DON'T KNOW IF THIS IS ONE OF
5 THOSE FIREPROOF ONES OR NOT, YOU'VE GOT IT IN EVIDENCE, IT
6 ENDS UP OUT IN THE END OF THE HALL WITH BLOOD ON TOP AND ON
7 BOTTOM AND UNDERNEATH. THE SLED AGENT SAID IT HAD TO BE
8 MOVED DURING ALL THE TIME THIS STUFF HAD HAPPENED, BETWEEN
9 THE BEATINGS UNDOUBTEDLY BECAUSE THERE'S BLOOD ON TOP AND
10 THEN THERE'S BLOOD SPATTER ON THE BOTTOM. AND YOU'VE GOT
11 THE TOWEL LAYING IN THE DEN RIGHT THERE AROUND THE CORNER
12 FROM EARL'S FEET.

13 AND YOU'VE GOT THE APPRAISAL, AND AGAIN Y'ALL
14 HAVE HAD IT BACK THERE, YOU'VE GOT IT IN EVIDENCE AND IT
15 SHOWS WHAT THE FAMILY JEWELS ARE. DID THIS COME OUT OF
16 THAT BOX? I CAN'T SAY THAT; I DON'T KNOW. IT'S IRONIC.
17 IT'S THE APPRAISAL OF, I ASSUME TERRY'S MOTHER'S JEWELS.
18 IT WAS LAYING RIGHT THERE NEXT TO THE BLOODY RAG.

19 SO, HE LEAVES THE HOUSE, BREAKS THE GLASS AND
20 HEADS UP THE ROAD. NOW STILL WE'VE GOT TO DECIDE, LADIES
21 AND GENTLEMEN, IS THIS THE PSYCHOTIC DRUG CRAZED GUY OR IS
22 THIS THE GREEDY SPOILED RICH KID.

23 SO LET'S LOOK AS HE TRAVELS UP THE ROAD AND LET'S
24 DECIDE WHAT IT IS THAT THIS YOUNG MAN IS DOING. HE HAS
25 JUST KILLED THEM; HE HAS JUST BEATEN THEM BOTH TO DEATH.

1 HE'S OUTSIDE PACKING UP THE CAR AND THERE'S MR. LANGLEY.
2 DOES HE RUN OFF IN THE WOODS; DOES HE RIP OFF HIS CLOTHES,
3 DOES HE START FREAKING OUT OR DOES HE GO, HI MR. LANGLEY,
4 AND SLIDE ON INTO THE CAR.

5 HE GOES UP THE ROAD AND, YOU KNOW, POOR JIM GOT
6 HURT IN THIS THING, TOO, YOU REMEMBER HE CUT HIS FINGER SO
7 HE HAD TO GO TO THE PEACH STAND AND GET HIM SOME NEOSPORENE
8 AND HE'S USING THAT CREDIT CARD AND YOU LOOK AT THAT VIDEO.
9 YOU'LL HAVE THE OPPORTUNITY IF YOU WANT TO, YOU'VE GOT
10 PRINTS FROM THE VIDEO, YOU JUDGE THEIR DEMEANOR WHEN THEY
11 ARE IN THE PEACH STAND. DID THAT LOOK LIKE A WILD MAN?
12 DID THAT LOOK LIKE A MAN THAT WAS SO OUT OF CONTROL THAT HE
13 COULDN'T CHAT AND TELL THEM -- HE WAS LAYING HIS ALIBI DOWN
14 THEN, HE WAS TELLING HER WE'RE GOING TO PICK UP CHIP.
15 WE'RE GOING ON A TRIP TO PHILADELPHIA. WE'RE BUYING A MAP,
16 WE'RE BUYING CHIPS, WE'RE GOING TO HAVE A BIG TIME.
17 BECAUSE THEN IF ANYBODY EVER ASKED, HE HAD TALKED TO THE
18 LADY IN THE PEACH STAND.

19 HE'S A SMART GUY. HE KNOWS THAT'S ON VIDEO. BUT
20 THAT'S FOR HIS ALIBI. THAT'S WHEN HE'S NOT CONNECTED BACK
21 TO THE HOUSE.

22 AND HE GOES ON UP THE ROAD AND YOU HEARD THEM
23 SAY, OH, HE BROKE DOWN CRYING, HE SHOOK FOR FIVE HOURS WHEN
24 THAT DEMON RITALIN GOT OUT OF HIM; HE CRIED BECAUSE HE
25 COULDN'T BELIEVE WHAT HE HAD DONE. WHERE IS THE EVIDENCE

1 OF THAT?

2 MEREDITH MOON WHO WAS RIDING IN THE CAR WITH HIM
3 AND SHE WAS ASKED WHAT WAS HE DOING, WHAT WAS GOING ON ON
4 THE TRIP, HE WAS BEE-BOPPING TO THE RADIO; HE WAS TALKING
5 ABOUT BUYING THAT PLACE OUT ON THE LAKE; HE WAS TALKING
6 ABOUT OPENING UP HIS CLUB, AND HOW PROUD CHIP WAS GOING TO
7 BE. HE TOLD HER HOW HE REMEMBERED BREAKING THE KNIFE OFF
8 IN MAMA'S NECK. AND THEN HE STOPS, HE'S OUT OF CONTROL
9 AGAIN, AND CALLS WORK TO TELL THEM THAT HE WON'T BE IN TO
10 WORK THAT DAY. IS THAT A CRAZY MAN, OR IS THAT A MAN
11 LAYING OUT HIS ALIBI?

12 OF COURSE THEN HE CALLS BACK TO THE HOUSE AND LOW
13 AND BEHOLD THE VOICE MAIL DOES NOT PICK UP ON THE FIRST
14 RING. IT RINGS BEFORE THE VOICE MAIL PICKS UP. HE'S A
15 SMART FELLOW, HE KNOWS THAT THE PHONE IS BACK ON THE HOOK.
16 AND HE KNOWS THEY'VE FOUND THE BODIES.

17 SO, THEY GO TO MARYLAND, THEY DUMP THE BAGS.
18 THEY MAKE IT ALL THE WAY UP TO PHILADELPHIA, THIS DRUG
19 CRAZED LUNATIC AND THEY DON'T GET A SPEEDING TICKET, THEY
20 DON'T RUN OFF THE ROAD, THEY DON'T WRECK, THEY DON'T HAVE
21 ANY PROBLEMS AT ALL. AND WHEN THEY GET TO PHILADELPHIA AND
22 OBVIOUSLY BY NOW IF THEY'RE IN PHILADELPHIA, IT'S A 10 HOUR
23 TRIP, BY NOW OLD JIMBO HE'S CRYING, HE'S UPSET, HE'S
24 QUIVERING AND HE'S SHAKING. BUT NOT SO BAD THAT THEY CAN'T
25 CRUISE AND GET SOME PIZZA AND A BEER, YOU KNOW, BEFORE CHIP

1 GETS HOME BEFORE THE POLICE ARREST HIM.

2 LADIES AND GENTLEMEN, I BEG OF YOU, DON'T FALL
3 FOR THIS CHARADE. DON'T FULFILL HIS PLAN THAT HE'S LAID
4 OUT THAT WILL ALLOW HIM IN EVEN ANY SMALL WAY TO GET AWAY
5 WITH IT.

6 THE JUDGE HAS TOLD YOU THAT YOU JUDGE THE
7 CREDIBILITY, YOU JUDGE THE BELIEVABILITY OF THE WITNESSES
8 AND YOU SAW MEREDITH MOON. YOU'VE GOT TO DECIDE WHAT YOU
9 TAKE FROM HER TESTIMONY AND WHAT YOU DON'T. SHOULD SHE
10 HAVE RUN AND SHOULD SHE HAVE NOT.

11 BUT I THOUGHT THE MOST TELLING THING WHEN I WAS
12 TALKING TO MS. CASCIO AND SHE WAS TALKING ABOUT HER
13 EVALUATION OF THE SITUATION AND JIM AND HOW HE WAS FORCED
14 TO VIOLENCE, YOU KNOW, HE ALMOST KIND OF BRAGGED ABOUT IT,
15 MEREDITH WAS INFATUATED WITH ME, SHE'D DO ANYTHING I WANTED
16 HER TO.

17 LADIES AND GENTLEMEN, THAT ONE SENTENCE PRESENTED
18 MEREDITH MOON'S PREDICAMENT BETTER THAN I EVER COULD. IT'S
19 CRAZY TO SAY RUN, MEREDITH, GET AWAY, GET OUT OF THE HOUSE,
20 DO SOMETHING; TELL THE LADY AT THE PEACH STAND TO HELP.
21 BUT HE HAD HER HOOKED. A GOOD LOOKING RICH KID; POOR OLD
22 OVERWEIGHT MEREDITH.

23 THEY MADE A BIG DEAL ABOUT HOW BIG SHE WAS. I
24 GUESS FIGURING MEREDITH HAD DONE IT. BUT SHE HAD HIM
25 HOOKED, OR HE HAD HER HOOKED. AND HE FELT YOU COULDN'T

1 CONVICT ON HER TESTIMONY ALONE.

2 MEREDITH MOON IS GOING TO PAY DEARLY, YOU'VE
3 HEARD THAT. MEREDITH MOON IS GOING TO PAY FOR HER BEING
4 FOOLISH. HER BEING A BIG GIRL IN LOVE OR WHATEVER YOU WANT
5 TO CALL IT. SHE MADE A MISTAKE, AND SHE WILL PAY.

6 LADIES AND GENTLEMEN, AS I SAID EARLIER, AND SO
7 MUCH FOR A LAWYER BEING BRIEF, I KNOW I'VE BEEN UP HERE
8 WITH YOU A GOOD WHILE. I SAID I ANTICIPATED THAT YOU'RE
9 GOING TO HEAR FROM THE DEFENDANT AND PART OF WHAT YOUR
10 OPPORTUNITY IS THROUGH THE TESTIMONY YOU'VE HEARD, I'M NOT
11 SURE WE'VE DONE AS GOOD A JOB AS WE COULD, BUT WE TRIED TO
12 PRESENT AS COMPLETE A PICTURE OF THIS DEFENDANT AS WE CAN,
13 ONE OF THE THINGS THAT YOU'RE GOING TO HAVE AN OPPORTUNITY
14 TO DO IS WHEN HE STANDS UP HERE, LOOK HIM IN THE EYE; YOU
15 LOOK INTO HIS SOUL JUST LIKE I TRY TO DO, I ATTEMPT TO DO
16 WHEN I TALK TO Y'ALL ON THE STAND AND I TALK ABOUT CAN YOU
17 SIGN FOR THE DEATH PENALTY, AND I LOOK YOU IN THE EYE AND
18 TRY TO SEE WHAT YOU'RE MADE OUT OF. YOU PUT HIM UNDER THE
19 SAME SCRUTINY THAT I PUT YOU THROUGH. AND YOU LOOK AT HIM
20 AND YOU CAN TAKE EVERYTHING YOU'VE HEARD IN THIS COURTROOM
21 ABOUT HIS CHARACTER AND WHAT TYPE INDIVIDUAL HE IS.

22 AND I SUBMIT MR. HANCOCK MIGHT HAVE SAID IT BEST.
23 HE WAS TALKING ABOUT THE ROBERTSONS EARLY ON AND HE SAID
24 THIS IS A BEAVER CLEAVER FAMILY, YOU KNOW, THE WHOLE
25 CLEAVER FAMILY, WARD AND JUNE AND BEAVER AND WALLY. BUT

1 DID ANYBODY WATCH IT -- WELL, MAYBE I'M SHOWING MY AGE NOW,
2 SOME OF YOU MAY NOT KNOW THEM, BUT DOES ANYBODY REMEMBER
3 EDDIE HASKELL? EDDIE HASKELL COMES OVER TO WARD AND JUNE'S
4 HOUSE AND IT WAS, YOU'RE LOOKING LOVELY TONIGHT MRS.
5 CLEAVER; HOW ARE YOU DOING, MRS. CLEAVER; AND THE BOYS ARE
6 UPSTAIRS. AND AS SOON AS HE GOT UPSTAIRS BEAVER AND WALLY
7 ARE GETTING IN TROUBLE WITH HIM ONE WAY OR ANOTHER. DO
8 Y'ALL REMEMBER THAT?

9 I WANT YOU TO WATCH EDDIE HASKELL WHEN HE STANDS
10 UP IN FRONT OF YOU AND I WANT YOU TO JUDGE HIM. THINKING
11 BACK ON IT, I THINK WARD AND JUNE KIND OF SAW THROUGH OLD
12 EDDIE, TOO. YOU KNOW, THEY ALWAYS KIND OF LAUGHED AFTER HE
13 WENT UPSTAIRS. I WANT YOU TO PUT THAT SCRUTINY ON HIM
14 BECAUSE YOU'RE DEALING WITH A MAN WHO'S SMART; HE'S
15 EXCEPTIONALLY SMART. HE MAY BE SMARTER INTELLECTUALLY THAN
16 ANY OF US IN HERE; HE PROBABLY IS THAN ME FOR SURE.

17 BUT HE IS GOING TO HAVE THE OPPORTUNITY TO STAND
18 HERE. AND I WOULD POINT OUT ONE THING THAT YOU MAY HAVE
19 CAUGHT WHEN IT CAME UP. HE UNDERSTANDS WHAT'S GOING ON.
20 HE'S GOT AN OPPORTUNITY TO GIVE THE PRESENTATION OF HIS
21 LIFETIME, LITERALLY. AND THIS IS THE SAME GUY WHO A COUPLE
22 OF DAYS AGO CALLED ERIN SAVAGE, DO YOU REMEMBER THE LADY
23 WHO TESTIFIED IN THE FIRST STAGE AND THEN TESTIFIED IN THE
24 SECOND STAGE AGAIN, ABOUT ONE OF THE FRIENDS THAT HAD HEARD
25 HIM, SHE WAS MEREDITH'S GOOD FRIEND AND HEARD HIM SAY THE

1 THINGS ABOUT KILLING HIS PARENTS, YOU REMEMBER THERE WAS
2 TESTIMONY THAT HE CALLED HER THIS WEEK AND TOLD HER NOT TO
3 COME TO COURT, KNOWING THAT WE -- NOW, GRANTED SHE CAME
4 ANYWAY, BUT YOU CAN TAKE THAT AND JUDGE THIS MAN, JUDGE HIS
5 TRUSTWORTHINESS, AND JUDGE HIS CREDIBILITY.

6 YOU HEARD FROM HIS EXPERTS, THIS MAN CAN FEEL HIS
7 PAIN, SO YOU MAY SEE SOME CROCODILE TEARS BECAUSE HE CAN
8 FEEL HIS PAIN. HE'S NOT HAPPY BECAUSE HE'S NOT LIVING IN
9 A CONDO; HE'S NOT GOING TO EUROPE; HE'S HERE IN THIS
10 COURTROOM TODAY. SO, YOU MAY SEE HIS TEARS, BUT I SUBMIT
11 TO YOU THEY ARE CROCODILE TEARS. AND I BEG YOU, I BEG YOU
12 NOT TO BE SWAYED. BECAUSE AFTER ALL, NOBODY IS THINKING OF
13 JIM, HE LOST TWO PARENTS, TOO.

14 THE MAN THAT WILL STAND BEFORE YOU IS THE SAME
15 MAN WHO MOST GRACIOUSLY KILLED MOM BECAUSE HE COULDN'T LIVE
16 WITH HER KNOWING THAT HE KILLED DAD, LEAVING HER ALL ALONE.
17 DOES IT NOT SICKEN YOU TO THE CORE? SO, I BEG YOU, DON'T
18 BE SWAYED BY HIM.

19 LADIES AND GENTLEMEN, THE TRUTH OF THE MATTER IS
20 JIMMY STARTED KILLING TERRY AND EARL LONG, LONG, LONG
21 BEFORE NOVEMBER, 1997. HE SAID FROM HIS OWN MOUTH TO MS.
22 CASCIO AGAIN, HE FAILED OUT OF SCHOOL, FAILED OUT OF
23 COLLEGE ON PURPOSE TO PROVE A POINT. HE USED THINGS TO
24 PROVOKE EARL LIKE, WELL WHAT IF I ROB A BANK. BECAUSE YOU
25 SEE HE KNEW -- NOW EVERY ONE OF US HAS GOT OUR WEAK SPOT,

1 EVERY ONE OF US HAS GOT OUR TENDER SPOT, AND WHERE WAS
2 THEIR WEAK SPOT, WHERE WAS THEIR TENDER SPOT? THEY WANTED
3 A FAMILY, THEY WANTED A FAMILY THAT COULD ACHIEVE THINGS
4 THAT THEY HADN'T ACHIEVED, THAT COULD DO THINGS THAT THEY
5 HADN'T DONE, TO HAVE A BETTER LIFE. THE SAME THING WE ALL
6 WANT, YOUR CHILDREN TO HAVE A BETTER LIFE, TO HAVE A BETTER
7 OPPORTUNITY THAN YOU HAD. AND HOW DID HE GET THEM BACK?
8 THE BEST WAY HE COULD. BY PURPOSELY -- IT WASN'T THAT HE
9 DIDN'T HAVE THE TOOLS NOW, DON'T FALL FOR THIS, HE HAD THE
10 TOOLS TO BE WHATEVER HE WANTED TO BE, BUT HE CHOSE TO
11 EMBARRASS HIM. HE SAID IT HURT HIS DAD'S IMAGE, THAT HIS
12 DAD COULDN'T BRAG ABOUT HIM.

13 THINK ABOUT YOUR PARENTS, THINK ABOUT HOW PROUD
14 THEY ARE OF THE THINGS YOU DO IN YOUR LIFE AND HOW HURTFUL
15 IT IS FOR THEM WHEN YOU DON'T SUCCEED BUT HOW THEY ARE
16 ALWAYS WORKING THERE TO HELP YOU. THAT'S ALL TERRY AND
17 EARL YEARNED FOR. THAT'S ALL THEY WANTED. AND HE NOT ONLY
18 DIDN'T MEET THEIR EXPECTATIONS, HE PURPOSELY DECIDED NOT TO
19 IN ORDER TO INFLICT MORE PAIN.

20 YOU HAVE TO WONDER SOMETIMES WHEN YOU'RE SITTING
21 BACK THERE LOOKING AT THE EVIDENCE, THESE PEOPLE DIED A
22 HORRIBLE, HORRIBLE DEATH. WHAT WOULD BE MORE PAINFUL,
23 PHYSICAL TORTURE OR MENTAL TORTURE. THE MENTAL TORTURE OF
24 KNOWING THAT SOMEONE WHO HAD SO MUCH POTENTIAL, SO MUCH
25 OPPORTUNITY WHO EVENTUALLY THWARTED IT JUST TO DELIVER PAIN

1 TO HIS PARENTS. HE STOLE FROM HIS PARENTS; HE BROKE INTO
2 THEIR NEIGHBOR'S HOUSE; HE STALKED THEIR FRIENDS'
3 DAUGHTERS; ALL THE THINGS HE DID BASICALLY WRAPPED TERRY UP
4 IN THAT HOUSE, BASICALLY KEPT TERRY FROM CIRCLING IN
5 SOCIETY LIKE SHE WANTED TO BECAUSE THEY WERE EMBARRASSED,
6 THEY WERE HUMILIATED.

7 LADIES AND GENTLEMEN, I HAVE TRIED AND I PROBABLY
8 CANNOT LOCATE IT NOW AND I'M NOT GOING TO WASTE YOUR TIME
9 DOING IT, BUT I SHOWED YOU AT THE BEGINNING TERRY AND
10 EARL'S WILL AND IT'S REALLY LOOKING BACK IN RETROSPECT,
11 IT'S REALLY KIND OF PATHETIC BECAUSE YOU LOOK AT IT, AGAIN
12 I APOLOGIZE I DIDN'T PULL IT OUT WHEN I PULLED ALL THIS
13 OTHER STUFF OUT, BUT IT HAS LANGUAGE -- WHEN THEY DRAFTED
14 THEIR WILL WHEN THEY HAD CHIP AND JIMMY AND BASICALLY IT'S
15 EXPLAINING THEIR ESTATE AND EXPLAINS WHAT WOULD HAPPEN TO
16 THEIR PROPERTY AND WHERE THERE PROPERTY SHOULD GO AND THEY
17 SET IT UP IN A TRUST FOR THE KIDS AND, YOU KNOW, ONCE THE
18 KIDS REACH A CERTAIN AGE THE MONEY WOULD COME TO THEM AND
19 IN THE LANGUAGE, LIKE I SAID IT'S ALMOST PITIFUL, IT
20 BASICALLY SAYS SOMETHING TO THE EFFECT THAT SHOULD I
21 PREDECEASE MY HUSBAND, THEN IT WOULD GO AND IF HE SHOULD
22 PREDECEASE ME AND SO ON AND SO FORTH AND IT SAYS WILL LEAVE
23 THE ESTATE AND MONEY TO THE BENEFIT OF MY TWO CHILDREN OF
24 WHOM I AM MOST PROUD.

25 IT'S REALLY KIND OF PATHETIC, ISN'T IT? YOU

1 KNOW, I THOUGHT ABOUT THIS TRIAL AND I THOUGHT ABOUT, YOU
2 KNOW, WE'VE BEEN HERE A LONG TIME TOGETHER AND I KNOW IT'S
3 WORN HEAVILY ON YOU AND I WAS RIDING HOME LAST NIGHT
4 THINKING ABOUT IT, THINKING ABOUT ALL I'D HEARD AND ALL I'D
5 HEARD PARTICULARLY FROM MS. CASCIO -- I'LL TELL YOU, MY DAD
6 IS A BIG MAN AND MY DAD USED TO TAN MY HIDE REGULARLY. ONE
7 TIME I THOUGHT I'D RUN FROM HIM. HE CAUGHT ME, WHIPPED ME
8 ALL THE WAY BACK TO THE HOUSE AND THEN WHIPPED ME AGAIN,
9 BUT I GUESS IF I'M EVER IN TROUBLE I'LL HAVE AN EXCUSE ON
10 THAT. BUT LAST NIGHT I WAS RIDING AND THINKING, THIS WHOLE
11 THING IS SO CONFUSING AND SO FRUSTRATING BECAUSE AS HUMANS
12 WE DON'T WANT TO THINK THE NEIGHBOR'S KID DOES THIS. WE
13 DON'T WANT TO THINK THAT FRIENDS OR PEOPLE LIKE US CAN EVER
14 DO THESE TYPE THINGS. AND SO IT REALLY JUST KIND OF ALMOST
15 PUTS YOU OFF KILTER, IT ALMOST PUTS YOU IN DISARRAY.

16 AND I WAS RIDING AND MY PARENTS, I FEEL, WERE
17 ALWAYS SUPPORTIVE OF ME. WE DIDN'T ALWAYS SEE EYE TO EYE,
18 BUT I LOST MY MOTHER RIGHT AFTER I GOT OUT OF LAW SCHOOL;
19 MY FATHER JUST TURNED 80. AND I THOUGHT ABOUT THINGS, THAT
20 MAN IS 80 YEARS OLD AND HE'S STILL TAKING CARE OF ME. I'M
21 MARRIED, I'VE GOT KIDS AND HE'LL BE CALLING ME TO TELL ME
22 HOW HE BOUGHT SOME FORMULA DOWN AT DELMAR FOR THE BABIES.
23 OR HE'LL CALL ME AND TELL ME HOW HE'S THINKING ABOUT THIS
24 OR WANTING TO DO THAT OR WE NEED TO PUT UP A FENCE. I'M
25 36, 37, I LONG AGO MADE MY OWN WAY IN LIFE, AND HE LOVES ME

1 SO MUCH THAT HE STILL TAKES CARE OF ME. AND WE'VE ALMOST
2 FIST FOUGHT BEFORE BUT I CALLED HIM LAST NIGHT AND I SAID
3 DADDY, I JUST WANT TO THANK YOU BECAUSE YOU DON'T OWE ME A
4 THING. AND HE SAID, SON, I DO IT BECAUSE I LOVE YOU.

5 YOU HAVE TO BELIEVE THAT TERRY AND EARL LOVED
6 THESE CHILDREN MORE THAN THEY LOVED THEIR LIFE.

7 YOU KNOW, FRIENDS HAVE COME IN, TERRY AND EARL'S,
8 ON BOTH SIDES OF THIS ISSUE. YOU NOTICE THEY ARE NOT
9 JURORS. AND THE REASON THEY ARE NOT JURORS IS BECAUSE THEY
10 CAN'T BE FAIR AND IMPARTIAL BECAUSE THEY FEEL ONE WAY OR
11 ANOTHER.

12 YOU KNOW PEOPLE SAID KNOWING TERRY AND EARL AND
13 BASED ON OUR RELATIONSHIP AND ASKING FOR MERCY. TERRY AND
14 EARL HAVE GIVEN TO THESE BOYS AND GIVEN AND GIVEN AND GIVEN
15 AND GIVEN THEIR LIFE'S BLOOD FOR THEM. AND NOW THEY HAVE
16 THE GALL TO COME INTO THIS COURTROOM AND ASK TERRY AND EARL
17 TO GIVE AGAIN, TO GIVE JIM LIFE.

18 WELL, JIM HAS MADE SURE THAT'S NOT IN TERRY AND
19 EARL'S POWER. THERE WON'T BE A MAMA IN HERE BEGGING FOR
20 JIM'S LIFE; THERE WON'T BE A DADDY BEGGING FOR JIM'S LIFE
21 BECAUSE JIM HAS TAKEN CARE OF THAT. AND I OFTEN SAY IF YOU
22 DON'T RETURN A DEATH VERDICT, THEN IT'S A MOCKERY TO THE
23 LIVES THAT WERE LOST. BUT I'M NOT GOING TO SAY THAT HERE
24 TODAY BECAUSE THE TRUTH OF THE MATTER IS THE MOCKERY BEGAN
25 LONG, LONG AGO WHEN THIS MAN DEFIED THEM AT EVERY TURN,

1 DESPISED THEM AT EVERY TURN. AND THE MOCKERY CARRIED ON --
2 TERRY WAS A PRIVATE PERSON, EARL WAS A PROUD MAN -- THE
3 MOCKERY CARRIED ON WHEN THEY TEAR THEM WIDE OPEN IN THIS
4 COURTROOM TO SOMEHOW EXCUSE WHAT THIS MAN HAS DONE.

5 LADIES AND GENTLEMEN, IT IS YOUR RESPONSIBILITY
6 AND I DON'T ENVY IT, BUT IT'S NOT ABOUT TERRY AND EARL
7 ANYMORE, IT'S ABOUT THIS COMMUNITY. AND YOU FROM ALL WALKS
8 OF LIFE ARE THE VOICE OF THIS COMMUNITY AND IT'S YOUR
9 DETERMINATION, NOT ON PASSION, NOT ON PREJUDICE, NO FRIENDS
10 TO REWARD, NO ENEMIES TO PUNISH, YOU DETERMINE WHAT PRICE
11 THIS CRIME BEARS IN YORK COUNTY. AND YOU DETERMINE WHAT
12 THE ULTIMATE PENALTY SHOULD BE.

13 BECAUSE I SUBMIT TO YOU IN THIS CASE IF THIS CASE
14 DOES NOT BEG FOR THE DEATH PENALTY, THERE IS NO CASE THAT
15 BEGS FOR THE DEATH PENALTY.

16 LADIES AND GENTLEMAN, TERRY BEGGED FOR HER LIFE,
17 SHE PLEADED FOR HER LIFE; EARL FOUGHT FOR HIS LIFE AND I
18 CAN'T HELP BUT THINK -- THE ALARM WENT OFF AT 6:00 THIS
19 MORNING, THE KIDS ARE STILL IN THE BED, THE HOUSE IS REAL
20 QUIET, AND I GO GET IN THE SHOWER, MY WIFE IS STILL IN THE
21 BED. WHEN I GET IN THE SHOWER I CAN'T TELL YOU IF I'M IN
22 THERE FIVE MINUTES OR 15, I'M THINKING ABOUT THIS TRIAL,
23 I'M THINKING ABOUT MY CLOTHES AND I'M THINKING ABOUT
24 EVERYTHING WE'VE GOT TO DO AND I CAN'T HEAR A THING IN THAT
25 SHOWER, I CAN'T HEAR A WORD IN THAT SHOWER WITH THE WATER

1 RUNNING AND MY OWN THOUGHTS IN MY HEAD.

2 WHAT WAS EARL THINKING ABOUT? ANOTHER DAY AT
3 WORK, WISHING HE COULD GO PLAY GOLF? AND TERRY'S LAYING IN
4 THE BED WHEN HER FLESH AND BLOOD, HER SON WHO SHE HAD GIVEN
5 EVERYTHING TO POUNCES ON HER AGAIN AND AGAIN. AND MEREDITH
6 MOON IS SITTING DOWNSTAIRS AND HEARD THE SILENCE, HEARD THE
7 WATER, HEARD THE FOOTSTEPS, HEARD HER YELL EARL, EARL, NO,
8 JIMMY, NO JIMMY. AND EARL WAS IN THE SHOWER. EARL DOESN'T
9 KNOW THAT JIMMY IS GOING TO SOON BE LAYING IN WAIT FOR HIM.

10 LADIES AND GENTLEMEN, THAT DAY TERRY'S SCREAMS
11 WENT UNHEARD BY THE LANGLEYS ACROSS THE STREET, BY THE
12 FRIENDS THAT LOVED HER SO AND BY HER HUSBAND. SHE SCREAMED
13 FOR HIM, HER PROTECTOR, AND HE COULDN'T HEAR HER. HER
14 SCREAMS WERE UNANSWERED.

15 LADIES AND GENTLEMEN, TODAY THIS CASE SCREAMS
16 OUT. THIS CASE SCREAMS OUT LIKE TERRY SCREAMED THAT DAY
17 AND I JUST BEG YOU TO HEAR IT, TO HEAR IT.

18 IT'S NOT AN EASY DECISION, I DON'T MAKE LIGHT OF
19 IT, BUT PLEASE SUMMON THE STRENGTH, SUMMON THE COURAGE TO
20 ANSWER THAT SCREAM WITH A VERDICT, A VERDICT THAT SPEAKS
21 THE TRUTH, THAT THIS MAN DESERVES DEATH.

22 THANK YOU FOR YOUR ATTENTION, AND THANK YOU FOR
23 YOUR OBLIGATION AS JURORS.

24 MR. HANCOCK: COULD WE TAKE A MOMENT, YOUR
25 HONOR? IT'S BEEN QUITE LONG.

1 THE COURT: ALL RIGHT. I'LL LET YOU GO TO THE
2 JURY ROOM FOR A SHORT BREAK.

3 AFTER THE RECESS IN CAMERA:

4 THE COURT: IS THE STATE READY?

5 MR. POPE: YES, SIR, YOUR HONOR.

6 THE COURT: IS THE DEFENSE READY?

7 MR. HANCOCK: THE DEFENSE IS READY, YOUR HONOR.

8 THE COURT: ALL RIGHT, BRING IN THE JURY.

9 IN THE PRESENCE OF THE JURY:

10 THE COURT: THE JURY IS PRESENT. YOU MAY
11 PROCEED.

12 ARGUMENT TO THE JURY BY MR. HANCOCK:

13 LADIES AND GENTLEMEN OF THE JURY, WE HAVE BEEN
14 TOGETHER ALMOST TWO WEEKS NOW AND WE HAVE REVIEWED ALL
15 ASPECTS OF THIS CASE. IT IS ONE OF THE MOST UNUSUAL CASES
16 THAT ANYONE PROBABLY IN THE UNITED STATES HAS EVER BEEN
17 INVOLVED IN. YOU CAN LOOK OVER THERE, YOU CAN TELL THERE
18 ARE CAMERAS, THERE ARE REPORTERS, EVERYBODY IS HERE
19 WATCHING US AND WHAT WE DO.

20 THE SOLICITOR HAS ASKED YOU DUE TO THE
21 CIRCUMSTANCES TO AUTHORIZE THE STATE TO KILL JIMMY
22 ROBERTSON IN THE MANNER WHICH IS CHOSEN.

23 HE TOLD YOU SOMETHING ELSE. HE TOLD YOU ABOUT
24 HIS DADDY. HE TOLD YOU, IF I HEARD IT RIGHT, THAT'S WHAT
25 PARENTS DO, THEY GIVE LIFE.

1 I WANT TO TELL YOU SOMETHING AND IT HAS BEEN
2 INTIMATED THAT IN A CASE OF THIS NATURE THAT WE SHOULD DO
3 LESS THAN OUR JOB AND I WANT TO REMIND YOU OF SOMETHING, OF
4 SOMETHING I SAID IN OPENING ARGUMENT. I TOLD YOU THAT I
5 DIDN'T REVEL IN THIS TASK. AND I KNEW WHAT WAS COMING.
6 AND I TOLD YOU THAT IT WAS NO FUN BUT IT HAD TO BE DONE
7 BECAUSE OF THE CIRCUMSTANCES OF THIS CASE BECAUSE YOU HAVE
8 THE DECISION TO PUT HIM TO DEATH.

9 I ALSO TOLD YOU, AND WE'RE TALKING ABOUT MR.
10 MEYER, SKIP MEYER, I HAD HIM RIGHT HERE ON THIS WITNESS
11 STAND AND I LOOKED AT HIM AND ONE OF THE LAST QUESTIONS I
12 ASKED, I SAID THAT DOESN'T MAKE EARL A BAD MAN, DOES IT.
13 THAT DOESN'T MAKE TERRY A BAD WOMAN, DOES IT. THEY WEREN'T
14 BAD PEOPLE. THEY CONTRIBUTED TO THEIR COMMUNITY. THEY DID
15 EVERYTHING THEY SHOULD DO. THEY COULD NOT CONTROL THE LOT
16 THE GOOD LORD GAVE THEM. THAT'S ALL IT IS TO IT. THEY
17 COULDN'T CONTROL IT.

18 THE SOLICITOR TALKED ABOUT HIS FATHER AND WHAT
19 HAD BEEN DONE, BUT HE -- MAYBE HIS FATHER DOESN'T HAVE
20 BIPOLAR MENTAL ILLNESS; MAYBE HIS MOTHER DIDN'T HAVE
21 MUTILATION INSTINCTS. THOSE ARE THINGS YOU'VE GOT TO
22 CONSIDER.

23 BUT HE TALKED ABOUT HIS DADDY AND ABOUT BEING
24 THERE, THEN I'LL TALK ABOUT MY MAMA. SHE IS JUST AS
25 IMPORTANT TO ME AND NO MATTER WHAT I MAY HAVE DONE, IF I

1 WAS SITTING WHERE JIMMY IS AND MY MAMA WAS SITTING THERE,
2 MY MAMA WOULD SAY GIVE BILLY A CHANCE.

3 THAT'S WHAT BILLY IS HERE TO DO AND THAT'S TO
4 GIVE JIMMY A CHANCE.

5 YOU'VE GOT TWO CHOICES; TWO AND ONLY TWO CHOICES
6 AS A JUROR. THIS IS A HORRIBLE CRIME. I CAN'T LOOK AT
7 THOSE PICTURES AND SIT THERE AND SAY THIS IS A RATIONAL,
8 SANE THING. THE SOLICITOR SAID, IT'S CONFUSING, IT'S
9 PATHETIC. GOOD GRACIOUS WHAT WAS DONE TO THESE PEOPLE
10 DEFIES THE IMAGINATION. THAT'S WHY WE ARE HERE. AND IF
11 YOU DON'T ASK WHY, YOU NEVER, YOU NEVER ARRIVE AT WHAT IS
12 A JUST CONCLUSION. YOU HAVE TO ASK WHY.

13 IF YOU LOOK AT THESE PICTURES THAT YOU WILL HAVE,
14 AND WE HAVE SEEN THEM OVER AND OVER AND OVER AGAIN. IN OUR
15 COMPLEX SOCIETY WITH EVERYTHING THAT'S GOING ON, WITH THE
16 INTERACTIONS WE SEE, WITH THE INCREASES IN VIOLENCE AND THE
17 REASONS WE LOOK FOR, IF YOU DON'T DO AS I DID WHEN I FIRST
18 WALKED INTO THIS CASE AND ASKED, MY GOSH, WHY? WHAT IN THE
19 WORLD LED UP TO THIS. THIS IS HORRIBLE.

20 I'VE WALKED DOWN THAT HALL, AND I'VE LOOKED AT
21 THOSE PICTURES JUST LIKE YOU HAVE. I'VE BEEN THERE. I'VE
22 GOT NEWS FOR YOU. THERE MAY NEVER BE A RATIONAL AND SANE
23 EXPLANATION FOR A CRIME OF THIS NATURE, BUT WE ATTEMPT AND
24 WE TRY AND WE BEG TO UNDERSTAND IT.

25 THE SOLICITOR IS BEGGING YOU; I'M NOT BEGGING

1 YOU, I'M BEGGING SOME WAY TO BE GIVEN OR TO FIND THE
2 ABILITY TO UNDERSTAND EVERYTHING IN THE HUMAN MIND. WE
3 CAN'T DO IT, AND THAT'S WHAT THIS CASE IS ABOUT. THAT'S
4 WHAT IT IS ABOUT AND TO DO IT YOU'VE GOT TO CONSIDER
5 CERTAIN THINGS.

6 AGAIN, YOU'VE GOT THE CHOICES, TWO CHOICES. YOUR
7 TWO CHOICES, UNANIMOUS VERDICT OF DEATH; AND THEN YOU HAVE
8 THE CHOICE OF LIFE IMPRISONMENT, THAT JIMMY ROBERTSON SPEND
9 LIFE IN PRISON WITHOUT ANY POSSIBILITY OF PAROLE.

10 YOU CAN FORGET ALL THE STUFF YOU'VE SEEN. YOU
11 CAN TELL BY THE PRISON RECORD THAT YOU'LL SEE THAT THAT'S
12 A DIFFICULT PLACE TO BE, ESPECIALLY WHERE JIMMY WILL BE;
13 IT'S A DIFFICULT PLACE TO BE. IT'S NOT LIKE A COUNTRY CLUB
14 OR ANYTHING ELSE.

15 AND OUR LAW GOES FURTHER. NO PERSON SENTENCED TO
16 LIFE IMPRISONMENT PURSUANT TO THIS SECTION, AND I BELIEVE
17 THE JUDGE WILL CHARGE YOU THIS -- AGAIN, IF I SAY ANYTHING
18 DIFFERENT THAN WHAT CAME OFF THE WITNESS STAND OR IN THESE
19 EXHIBITS THAT YOU HAVE OR WHAT THE JUDGE CHARGES YOU IS THE
20 LAW, YOU PLEASE, I'M NOT TRYING TO DECEIVE YOU, I HAVE
21 HEARD SOMETHING DIFFERENT OR I HAVE SEEN SOMETHING
22 DIFFERENT, AND PLEASE DO NOT HOLD IT AGAINST JIMMY
23 ROBERTSON IN YOUR DECISION AS TO WHETHER TO PUT HIM TO
24 DEATH OR NOT.

25 BUT THE LAW SAYS NO PERSON SENTENCED TO LIFE

1 IMPRISONMENT PURSUANT TO THIS SECTION IS ELIGIBLE FOR
2 PAROLE, COMMUNITY SUPERVISION OR ANY EARLY RELEASE PROGRAM,
3 NOR IS THE PERSON ELIGIBLE TO RECEIVE ANY WORK CREDITS,
4 EDUCATION CREDITS, GOOD CONDUCT CREDITS OR ANY OTHER
5 CREDITS THAT WOULD REDUCE THE MANDATORY LIFE IMPRISONMENT
6 REQUIRED BY THIS SECTION. HE'LL DIE IN PRISON. HE'LL DIE
7 IN PRISON.

8 I ALWAYS LOOK AT THE DEATH PENALTY -- I TRY TO
9 LOOK AT IT IN A MANNER OF HOPE. THAT WHEN WE LOSE ALL HOPE
10 AND ALL FAITH IN ANY CHARACTER, ANY PERSON AND WE DETERMINE
11 THAT THERE IS NO REDEEMING VALUE OR COULD BE NO REDEEMING
12 VALUE, THEN WE SAY LET'S KILL HIM. WE LOST OUR HOPE.

13 AND I HOPE THAT SOMETHING IS GOING TO BE BETTER,
14 SOMETHING IS GOING TO HAPPEN THAT IS INTEGRAL TO EACH OF US
15 IN THIS WORLD AND KEEPS US GOING.

16 NOW IN THIS PARTICULAR CASE YOU ARE TO CONSIDER
17 NOT ONLY THE AGGRAVATING CIRCUMSTANCES BUT THE JUDGE WILL
18 CHARGE YOU THAT THERE ARE MITIGATING CIRCUMSTANCES. HE
19 WILL CHARGE YOU THAT THE DEFENDANT, JAMES DEJARNETTE
20 ROBERTSON, HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL
21 CONVICTIONS INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER
22 PERSON. YOU MAY FIND THAT AND GIVE IT THE WEIGHT THAT YOU
23 WISH.

24 TO CONSIDER A MITIGATING CIRCUMSTANCE IN A CASE,
25 IN A DEATH PENALTY, YOU DO NOT HAVE TO BE PROVEN ANYTHING

1 BY THE DEFENSE IN THIS MATTER. YOU MAY TAKE THE MITIGATING
2 CIRCUMSTANCES AS YOU SEE THEM AND AS YOU PERCEIVE THEM AND
3 YOU MAY GIVE THEM WHATEVER APPROPRIATE WEIGHT YOU FEEL.
4 NONE OR ALL. THAT IS YOUR DECISION AND IT IS TO WEIGH
5 TOWARD WHETHER YOU GIVE THE DEATH PENALTY OR WHETHER YOU
6 GIVE LIFE IMPRISONMENT.

7 THE MURDER WAS COMMITTED WHILE THE DEFENDANT,
8 JAMES DEJARNETTE ROBERTSON, WAS UNDER THE INFLUENCE OF
9 MENTAL OR EMOTIONAL DISTURBANCE. THE AGE OF THE DEFENDANT
10 AT THE TIME OF THE CRIME. HE WAS AN ADULT, A YOUNG ADULT.
11 AS I AGE, THEY GET YOUNGER AND YOUNGER AND YOUNGER AT 24,
12 BUT HE'S A YOUNG MAN.

13 AND YOU MAY CONSIDER THE MENTALITY OF THE
14 DEFENDANT AT THE TIME OF THE CRIME.

15 AGAIN, PLEASE DO NOT THINK THAT IN ANY WAY I
16 DON'T HAVE THE GREATEST RESPECT FOR THE LIVES OF TERRY AND
17 EARL ROBERTSON. BUT WHEN WE BEGAN THIS AND YOU BEGAN, YOU
18 MUST LOOK AND YOU MUST THINK AND THAT QUESTION COMES UP,
19 WHY, WHY.

20 WITH THE BRUTALITY OF THIS YOU CAN EITHER BELIEVE
21 DR. PINCUS OR NOT. THE STATE HAS MADE A GREAT DEAL OVER
22 HE'S PAID. WELL, DR. MCKEE CAME OUT OF THEIR POCKETBOOK.
23 EVERY OFFICER THAT WALKED THROUGH THAT DOOR CAME OUT OF THE
24 STATE'S POCKETBOOK. EVERY SINGLE PERSON THAT WALKED IN
25 THIS COURTROOM EXCEPT THE PEOPLE THAT ARE STILL SEATED

1 HERE, THEY CAME ON HIS BEHALF VOLUNTARILY, THEY WERE PAID;
2 ALL THE EXPERT WITNESSES, THEY WERE PAID.

3 I DO NOT -- NOBODY CAN EXCUSE WHAT HAPPENED.
4 NOBODY CAN EXCUSE WHAT YOU HAVE HERE AND WHAT THE SOLICITOR
5 PUT BEFORE YOU HERE; NOBODY CAN EXCUSE IT. THERE'S A
6 DIFFERENCE IN EXCUSE AND MITIGATION, AND THERE'S A GREAT
7 DIFFERENCE BECAUSE NOBODY CAN EXCUSE IT. YOU AS JURORS
8 CANNOT EXCUSE IT; NOBODY THAT HAS SEEN WHAT HAS GONE ON IN
9 THIS COURTROOM IN THE LAST 12 TO 13 DAYS CAN EXCUSE THIS.
10 YOU CAN'T MAKE EXCUSES FOR WHAT YOU SAW. AND WE ARE NOT
11 MAKING EXCUSES FOR JIMMY.

12 WE'RE SITTING HERE, WE'VE GOT TO LOOK AT WHAT IN
13 THE WORLD WAS GOING ON AND WHAT LED TO ONE MOMENT. THE
14 SOLICITOR SAID IT WAS A WELL THOUGHT OUT MOMENT, SUCH A
15 PLANNED MOMENT THAT THIS YOUNG MAN, INTELLIGENCE QUOTIENT,
16 I BELIEVE THEY SAID THEY AVERAGED IT OUT AT 112 OR
17 SOMETHING LIKE THAT, UP ON THE UPPER SCALE, AND I JUST
18 LISTENED TO HIS ARGUMENT THAT THIS YOUNG MAN THAT
19 INTELLIGENT BROKE INTO A HOUSE WITH SOCKS ON HIS HANDS AND
20 THEN WHEN ALL THIS WAS COMMITTED WE KNOW THAT HE HAD SOCKS
21 ON HIS HANDS.

22 THAT THIS DIABOLICAL CRIMINAL SAT DOWN AND WROTE
23 NOTES AND EVEN AFTER HE REALIZED WHERE THAT ALL THIS -- HE
24 CALLED THE HOUSE AND THE PHONE WASN'T PICKED UP, THEN HE
25 WENT RIGHT WHERE THE NOTE SAID GO, SO THE COPS WOULD BE

1 SITTING THERE WAITING FOR HIM.

2 THAT'S NOT EXACTLY WHAT YOU WOULD CALL A
3 DIABOLICAL CRIMINAL. THERE'S A REASON BEHIND IT. AND WE
4 LOOKED FOR THOSE REASONS. WE SAID WHAT IN THE WORLD A
5 PERSON WITH THIS MUCH INTELLIGENCE, WHAT IN THE WORLD IS
6 GOING ON. AND IT ALL STARTED WITH THAT EXPRESSION, CHIP
7 WILL BE PROUD OF ME; CHIP WILL BE PROUD OF ME.

8 WHAT KIND OF PERSON, IN WHAT STATE OF MIND WOULD
9 BRUTALLY MURDER HIS PARENTS AND DRIVING UP THE ROAD WITH
10 HIS COHORT SAY HIS BROTHER WAS GOING TO BE PROUD OF HIM.
11 I'M GOING UP TO SEE MY BROTHER AND I'M GOING TO TELL HIM
12 ABOUT IT.

13 THE SAME BROTHER, AND THIS IS WHAT RAISED THE
14 FLAG, THE SAME BROTHER THAT AT SOME POINT IN TIME HAD
15 PLANNED WITH HIM TO KILL HIS MAMA AND DADDY. WHAT IN THE
16 WORLD. BASICALLY YOU HAVE TWO PEOPLE, AND THAT KID IS IN
17 JAIL NOW. I SAID KID, HE'S A YOUNG MAN. HE'S IN JAIL OVER
18 HERE. THE SAME CIRCUMSTANCES, RAISED IN THE SAME
19 HOUSEHOLD, IN THE SAME ENVIRONMENT, WITH THE SAME GENETIC
20 GENE POOL, WITH THE SAME INFLUENCES, WITH THE SAME MENTAL
21 DISEASES AS JIMMY AND HIS MAMA.

22 JIMMY DIDN'T LOOK UP ONE DAY AND SAY, I'M GOING
23 TO BE A BAD KID. I TELL YOU WHAT I'M GOING TO DO, IF I'M
24 GOING TO DO THE THINGS IN THE WORLD I WISH TO DO, I WILL
25 OPT, INSTEAD OF SCHIZOPHRENIA WHICH MAY THROW ME IN -- THAT

1 I'M GOING TO OPT FOR BIPOLAR MENTAL DISEASE.

2 JIMMY DIDN'T WAKE UP ONE DAY AND SAY COUPLED WITH
3 THAT, I'M GOING TO HAVE ATTENTION DEFICIT DISORDER. HE
4 DIDN'T WAKE UP ONE DAY AND DO THAT, BUT HE HAD IT. AND AS
5 YOU LISTENED, YOU PUT WHAT CREDIBILITY YOU WISH TO THE
6 EXPERTS, BUT THEY EXAMINED HIM AND THEY TOLD YOU AND YOU
7 LISTENED, AND SOME OF THE TESTIMONY WAS RIGHT LENGTHY, THAT
8 HE DID EVERYTHING THAT THOSE DISEASES LEAD YOU TO DO.

9 HE WENT TO THE STATE MENTAL HOSPITAL, HE'S NOT A
10 DUMMY, BUT HE GOT OUT OF THERE AND IT EVENTUALLY LED INTO
11 THE SPIRAL THAT CULMINATED IN THE DEATHS OF TERRY AND EARL
12 ROBERTSON WITH BIPOLAR MENTAL DISEASE THAT YOU HEARD THE
13 STATE'S DOCTOR THAT EXAMINED HIM SAY BIPOLAR MENTAL
14 DISEASE.

15 HE WENT TO THE STATE HOSPITAL AND THEN HE LEFT
16 THERE. YOU HEARD ALL OF YOUR EXPERTS AND THEY KNOW AND
17 THEY LISTEN AND THIS IS THEIR BUSINESS. AND THEY SAID THAT
18 IT WAS MORE LIKELY THAT A PERSON WITH BIPOLAR MENTAL
19 DISEASE WOULD NOT CONTINUE THEIR MEDICATION OR THEIR
20 TREATMENT PROGRAM FOR WHATEVER REASON OR PURPOSE, BUT
21 THAT'S IN HERE. IT'S LIKE DR. PINCUS SAID, THAT'S IN HERE.
22 BUT THAT'S A LIKELIHOOD WHEN HE BEGAN AND WHEN THIS ALL
23 STARTED SPIRALING TOWARD THEIR DEATH, THAT BIPOLAR MENTAL
24 DISEASE WAS TO BE TREATED; IT WAS NOT.

25 YOU ALSO HEARD FROM THESE SAME EXPERTS THAT THE

1 BIPOLAR MENTAL DISEASE, YOU ARE MORE LIKELY TO TRY TO GET
2 YOUR HIGHS AND LOWS BY WHAT? BY THE USE OF DRUGS AND/OR
3 ALCOHOL. AND IT WAS THERE. AND IT WAS PROVIDED. AND YOU
4 HEARD TESTIMONY, IT WAS PROVIDED EVEN AFTER IT WAS SAID
5 THAT THE FAMILY -- KNOWN THAT THE FAMILY WAS ABUSING
6 RITALIN, IT WAS STILL PROVIDED. NO ONE IS TO BLAME, BUT
7 THERE WERE HUNDREDS AND HUNDREDS AND HUNDREDS OF RITALIN
8 TABLETS IN THAT HOME ORDERED FROM A MAIL ORDER HOUSE.
9 HUNDREDS IN THAT HOME WITH THE KNOWLEDGE OF THOSE PEOPLE
10 THAT WERE CARING FOR THESE PEOPLE THAT THERE WAS ABUSE
11 TAKING PLACE.

12 YOU HAVE HEARD, AND WE'RE NOT SHIFTING THE BLAME
13 ANYWHERE, LADIES AND GENTLEMEN, THE BLAME LIES RIGHT HERE.
14 WE'RE TELLING YOU WHAT HAPPENED.

15 WE STARTED WITH THE BASIC PREMISES UPON TESTIMONY
16 OF WITNESSES THAT THE SOLICITOR PUT UP. I BELIEVE MRS.
17 GEORGE, MRS. CISSY GEORGE, WE STARTED WITH THAT TESTIMONY
18 AND I ASKED THEM QUESTIONS BECAUSE I KNEW WHAT WAS COMING.
19 WE ESTABLISHED THAT TERRY WAS DOING ALL OF THESE WONDERFUL
20 THINGS, AND SHE WAS. BUT SHE MIGHT NOT HAVE BEEN DOING
21 QUITE IN THE MANNER IN WHICH HER FRIENDS PERCEIVED THEM
22 BECAUSE I WILL TALK ABOUT MR. FAULKNER A LITTLE LATER.

23 SHE'S DOING THESE THINGS, YET THEY DON'T KNOW
24 WHAT'S GOING ON. BUT I ASKED THEM ONE THING. I SAID,
25 TERRY IS A TRUTHFUL PERSON, ISN'T SHE? I DIDN'T RELISH IN

1 PUTTING MR. MEYER UP HERE. I KNOW HE FELT UNCOMFORTABLE,
2 BUT MR. MEYER SAW TERRY 170 TIMES IN THREE YEARS.

3 WHEN WE GO TO LOOK AT WHAT WAS HAPPENING IN THE
4 FAMILY AND WITH WHAT WAS GOING ON BEHIND CLOSED DOORS, AND
5 I'M NOT SURE ANY OF US COULD SURVIVE THE SCRUTINY OF WHAT
6 GOES ON BEHIND CLOSED DOORS IN A COURTROOM OF THIS MANNER,
7 BUT HOPEFULLY WE WILL NEVER BE THE VICTIM, HOPEFULLY WE
8 WILL NEVER BE INVOLVED IN A MURDER THAT LOOKS TO THE DEATH
9 PENALTY.

10 SO, IT'S SOMETHING THAT WHILE I DID NOT RELISH,
11 YOU HAVE TO LOOK AT. YOU HEARD FROM MR. MEYER THAT TERRY
12 WAS A VERY PRIVATE PERSON. AND SO THIS IS NOT AN EASY TASK
13 FOR ANY OF US.

14 THE PERSON THAT SPEAKS TO US IN THIS ENTIRE
15 MATTER AND GIVES US SOME INSIGHT AS TO WHAT IS THERE IS
16 TERRY ROBERTSON. AND I ASK, AND I ASK THAT YOU LOOK AT
17 MORE THAN THE RECORDS THAT I SHOWED YOU. ALL OF MR.
18 MEYER'S RECORDS ARE IN EVIDENCE; THEY ARE IN EVIDENCE, SO
19 YOU DON'T HAVE TO JUST LOOK AT THE SELECTED THINGS THAT I
20 BROUGHT UP. BUT I THINK FROM THEM ---

21 THE COURT: MR. CLERK, WOULD YOU GET THE JUROR
22 SOME WATER?

23 (THERE WAS A BRIEF PAUSE WHILE A JUROR WAS GIVEN A CUP OF
24 WATER BECAUSE SHE WAS COUGHING.)

25 MR. HANCOCK: WHAT WE PRESENTED TO YOU IS THAT

1 THERE WAS INHERITED BIPOLAR MENTAL DISEASE WITH GENETIC OR
2 OTHERWISE -- THEY SAID MORE THAN LIKELY IS GENETIC, IF I
3 REMEMBER CORRECTLY.

4 WE ALSO PRESENTED TO YOU THE RECORDS OF DR. MEYER
5 THAT INDICATE THAT TERRY ROBERTSON HAD MANY, MANY PROBLEMS
6 BEFORE ALL OF THIS BEGAN.

7 IF YOU REMEMBER CORRECTLY, I ASKED ABOUT THE
8 RECORDS OF 8-8-95. MR. MEYER READ THAT RECORD AND SAID
9 THAT TERRY WAS DEPRESSED IN GRAND RAPIDS AND THAT SHE AT
10 THAT TIME THOUGHT THAT SHE HAD BAD CHILDREN.

11 I CAN'T INTERPRET ALL OF THAT. HE COULD NOT
12 INTERPRET ALL OF THAT OR WOULD NOT, I CAN'T TELL YOU. BUT
13 WE BEGAN TO FORM A PICTURE.

14 WE GO THROUGH HER CHILDHOOD, SHE HAD MANY, MANY
15 PROBLEMS IN CHILDHOOD AS WE ALL DO. BUT THEN AT EIGHT
16 YEARS OLD IT INDICATES THAT SHE MAY HAVE HAD PROBLEMS WITH
17 SELF-MUTILATION.

18 WE GO TO A NOTE, THAT'S NOT ALL, BUT WE GO TO 9-
19 19, "IT MAKES ME MAD AND SAD WHAT DADDY DID". WE DON'T
20 KNOW, I'M NOT SAYING THAT THAT'S SEXUAL ABUSE; I CAN'T TELL
21 YOU THAT, I DON'T KNOW. HE MIGHT HAVE LET THE DOG GO; I
22 DON'T KNOW. BUT AS MS. CASCIO SAID, AND SHE JUST SAT THERE
23 AND SAID YOU MUST LOOK, AND ALL WE CAN DO IS LOOK TO
24 INDICATORS. AND I DON'T KNOW THAT ABOUT TERRY'S LIFE, BUT
25 THERE ARE LATER INDICATORS THAT LEAD TO BEHAVIOR THAT MAKES

1 YOU THINK THAT THAT WAS THERE.

2 SHE SAYS SHE CAN'T COPE WITH CHILDHOOD; SHE CAN'T
3 DO THIS. SHE THEN SAYS IN A QUOTE THAT SHE WAS SELF-
4 MUTILATING HERSELF BECAUSE EARL THOUGHT HER BREASTS WERE
5 HIS AND SO SHE WAS DENYING THAT FROM HIM IN SOME MANNER.
6 AND THAT SHOWED MUCH OF THAT.

7 I ALSO WENT BACK TO HER RECORDS AND I KNOW THIS
8 WAS A DIFFICULT TIME FOR THE FAMILY, BUT I LISTENED TO
9 TERRY TO DETERMINE WHAT WAS GOING ON AND SHE SAID THAT EARL
10 CONTINUES TO BE A SOURCE OF HER INTENSE ANGER, ALMOST TO
11 THE POINT OF HATRED FEELING. SHE SAYS THAT EARL IS ALWAYS
12 RIGHT, EARL IS A BULLY.

13 YOU'VE HEARD TESTIMONY; YOU'VE HEARD TESTIMONY OF
14 YOUNG MEN AND YOU DO IT BY -- DON'T DO IT BY JUST WHAT YOU
15 HEARD ON THE WITNESS STAND. YOU'RE NOT HERE TO LOSE YOUR
16 COMMON SENSE. YOU DEFINE ABUSE, MENTAL OR PHYSICAL, EITHER
17 ONE. YOU DEFINE IT AND YOU LOOK AT IT BECAUSE YOU KNOW.
18 BUT IT SAYS, EARL IS A BULLY.

19 SHE THEN LATER SAID "I WOULD BEAT ON EARL ALL THE
20 TIME". WE DON'T KNOW WHETHER THAT WAS JUST IN 1996 OR WAS
21 IN 1992 OR 1994, AND WE DON'T KNOW EXACTLY IF THE CHILDREN
22 SAW IT.

23 THERE WAS ANOTHER ENTRY THAT WE DISCUSSED THAT
24 SAID EARL'S -- BELIEVES TERRY IS SORRY FOR HERSELF, ONE-
25 HALF HOUR OF SNUGLING TIME ANY TIME SHE CUTS HERSELF. AND

1 THAT'S WHERE SHE INDICATED THE OTHER.

2 ON 1-14-96 SHE SAYS, "I'M FURIOUS WITH EARL WHEN
3 I THINK OF WHAT HAS BEEN DONE TO THE KIDS". I DON'T KNOW,
4 LADIES AND GENTLEMEN; I DON'T KNOW WHETHER THAT'S JUST
5 CUTTING FINANCES OFF. I DON'T KNOW THAT THERE WAS ANY
6 EVIDENCE RIGHT THERE. BUT I LISTENED TO HER WHEN SHE'S
7 FURIOUS AT WHAT EARL HAS DONE TO THE KIDS AS THEIR MOTHER
8 BECAUSE WE DON'T KNOW, LADIES AND GENTLEMEN. WE DON'T
9 KNOW.

10 WHAT WE DO KNOW; WHAT WE DO KNOW IS THAT WE HAVE
11 A YOUNG MAN, JIMMY, WITH BIPOLAR MENTAL DISEASE TAKING
12 RITALIN, KNOWN TO BE TAKING RITALIN WITHIN THE FAMILY, HE'S
13 OUT OF CONTROL, HE'S TAKING AND DOING DRUGS, HE'S IN MANIC
14 DEPRESSION AT THIS TIME. AND DR. MCKEE, I BELIEVE, SAID HE
15 WASN'T MANIC. EVERYTHING YOU HEARD FROM THE STATE AND
16 EVERYWHERE ELSE SAYS THAT AT THAT TIME, AND THE DESCRIPTION
17 OF A MANIC PHASE IS YOU'RE WORKING EXTRA HOURS, YOU'RE
18 WORKING UNTIL YOU DROP; THEN HE'S TAKING RITALIN TO UP IT.
19 HE'S TAKING ALCOHOL TO MUTE THE FEELINGS OF THE RITALIN.
20 AND THE RITALIN, DR. MORTON, HE WAS LENGTHY, HE WAS TOO
21 LONG, BUT HE TOLD YOU AND HE SAT HERE AND EQUATED RITALIN
22 WITH COCAINE. THAT YOU WOULD DO ANYTHING TO GET IT AND
23 THAT IT IS A QUICK AND EASY METHOD.

24 YOU BASICALLY GO OUT OF YOUR MIND. YOU BASICALLY
25 PUT YOURSELF IN A SITUATION THAT YOU ARE SO HYPER INTENSE,

1 COUPLED WITH MANIC DISORDER, THE MANIC PHASE THAT YOU ARE
2 IN, SERIOUS EMOTIONAL DIFFICULTY. AND WE HAVE PROOF AND IF
3 DR. MCKEE OR ANYBODY ELSE SAYS THAT THAT WAS NOT TO GET
4 HIGH, THEN THE STATE'S WITNESS, MEREDITH MOON, SAID SHE
5 WENT IN THERE AND SNORTED RITALIN THAT NIGHT TO GET HIGH
6 AND JIMMY WAS SITTING THERE SNORTING LINES OF IT, LINES OF
7 IT, LINES OF IT UP TO 220 TO 270 MILLIGRAMS.

8 THE SOLICITOR IS GOING TO HAVE TO HAVE IT ONE WAY
9 OR THE OTHER HERE AND I ASK THAT YOU LET HIM HAVE IT ONE
10 WAY OR THE OTHER. WHEN JIMMY DESCRIBES WHAT HAPPENED TO
11 MS. CASCIO OR WHATEVER OR TO THE EXPERTS WHO BASE THEIR
12 OPINION, THEN IT MUST BE THE TRUTH. BUT WHEN HE SAYS I WAS
13 SHAKING, IT MUST BE A LIE. OR I SNORTED RITALIN WHICH IS
14 SUPPORTED BY HIS OWN WITNESS, THEN IT MUST BE A LIE. SO,
15 EITHER YOU TAKE IT ALL OR YOU TAKE NONE.

16 DR. PINCUS SAT AND TOLD YOU THAT YOU HAVE -- AND
17 I THINK YOU REMEMBER ABOUT MR. FINEOUS GAGE, THE FELLOW
18 THAT HAD A SPIKE DRIVEN THROUGH HIS HEAD, CAME OUT THE
19 OTHER SIDE. THEY TOOK HIM TO A TAVERN AND I IMAGINE THAT
20 WAS BECAUSE THAT'S WHERE THEY DID OPERATIONS AND EVERYTHING
21 AT THAT TIME. I DON'T KNOW WHY YOU WOULD TAKE HIM TO A
22 TAVERN. BUT IT WENT THROUGH HIS HEAD AND CAME OUT THE BACK
23 AND HE COULD WALK, HE COULD TALK, HE COULD SPEAK, HE WAS
24 INTELLIGENT. BUT A MAN THAT HAD BEEN A PILLAR OF THE
25 COMMUNITY THEN WAS A DRUNKARD, FOUL MOUTHED, ABUSED WOMEN.

1 AND THAT WAS THE BEGINNING OF WHAT IN THE WORLD
2 IS HAPPENING IN OUR BRAIN. BECAUSE HOW CAN THAT HAPPEN?
3 YOU THINK ABOUT IT. DRIVEN STRAIGHT THROUGH HERE, AND THE
4 PERSON DOESN'T DIE. THEY HAVE EVERY MOTOR FUNCTION; THEY
5 CAN DO EVERYTHING ELSE, BUT THEN THEIR ENTIRE PERSONALITY
6 CHANGES.

7 AND HE SAID, HE INDICATED THAT THROUGH HIS TESTS,
8 AND HE HAS BEEN A NEUROLOGIST AT GEORGETOWN UNIVERSITY,
9 HE'S ON THE BOARD THAT CERTIFIES PEOPLE TO EVEN GET INTO
10 HIS PROFESSION AND TO CERTIFY PSYCHIATRISTS TO GET INTO HIS
11 PROFESSION AND HAS WRITTEN ON THE CRIMINALITY OF IT AND
12 EVERY BIT OF IT THAT WAS BROUGHT OUT IN HIS CURRICULUM
13 VITAE. LOOK AT IT. THE GENTLEMAN KNOWS WHAT HE'S TALKING
14 ABOUT.

15 HE SAT DOWN WITH JIMMY; HE LOOKED AT HIM FOR A
16 LONG TIME AND HE SAYS THERE IS SOMETHING WRONG IN THE
17 FRONTAL LOBE OF THIS GENTLEMAN. WHAT THEY HONESTLY CONTROL
18 IS YOUR ABILITY TO CONTROL YOURSELF.

19 AND HE SAID, AND I QUOTE AND IT'S THERE, YOU TAKE
20 THE EXPERT'S OPINION AND GIVE IT THE WEIGHT THAT YOU WISH,
21 BUT HE SAID IT CONTROLS THAT URGE, THAT WHEN YOU WANT TO
22 HIT SOMEBODY, THAT YOU DON'T DO IT. BUT HE SAID THERE'S A
23 PROBLEM THERE.

24 DR. EVANS BACKED UP THAT OPINION AND HE SAID --
25 AND THEY CAN SAY THE Q.E.E.G. -- I ASKED DR. EVANS ON THREE

1 OR FOUR OCCASIONS, IS THAT THE TEST THAT TOLD YOU THAT THIS
2 FELLOW HAS A TOUGH TIME. HE SAID THERE WERE MANY; HE DID
3 A BATTERY OF THEM BECAUSE YOU CAN'T GO INTO THE BRAIN.

4 AND DR. PINCUS EXPLAINED TO YOU THAT YOU CANNOT
5 GO INTO THE BRAIN. THAT THESE ARE NEURONS AND THEY ARE
6 LIKE A TREE AND WHEN YOU DO AN AUTOPSY, BOOM, YOU CUT THAT
7 TREE DOWN. IT'S LIKE CLEAR CUTTING A FOREST.

8 HE ALSO TOLD YOU THAT THE MRI WHICH HAS BEEN
9 SPOKEN OF DOES NOT IN ANY WAY REVEAL THE BIPOLAR DISEASE;
10 IT DOESN'T REVEAL ALZHEIMER AND OTHER RELATED DISEASES.
11 BUT THEY AREN'T REVEALED BY MRI AND WE'RE ALL FAMILIAR WITH
12 THOSE DISEASES. WE'RE NOT FAMILIAR WITH BIPOLAR DISORDER.
13 UNTIL YOU CAME IN HERE TODAY YOU MAY NOT HAVE BEEN FAMILIAR
14 WITH IT -- UNTIL YOU CAME IN HERE TWO WEEKS AGO, BUT THERE
15 IT WAS; IT WAS ALL SITTING THERE. IT WAS ALL THERE.

16 IT WAS A DEADLY COCKTAIL; IT WAS A DEADLY MIX
17 WITH WHAT WAS HAPPENING, WITH WHAT HE HAD BEEN GIVEN, WITH
18 HOW HE FOULED UP, WITH THE CHOICES HE MADE WHICH WERE BAD
19 WITH ALCOHOL INDUCED WITH RITALIN AND A RITALIN MANIA.

20 DR. PINCUS TOLD YOU WHAT TRIGGERED IT, WE REALLY
21 DON'T KNOW. I CAN'T SPECULATE. ALL I KNOW IS THERE WAS A
22 PHONE CALL TO CHIP AT ABOUT 3:20 THAT MORNING AND IF
23 ANYTHING WAS STARTED, IT WAS STARTED THEN BECAUSE HE HAD
24 ALREADY STARTED HIS RITALIN, HE HAD STARTED HIS ALCOHOL AND
25 I CAN'T SAY WHERE YOUR TRIGGER IS BECAUSE NOBODY CAN, BUT

1 THE TRIGGER WAS THERE.

2 NOW IF THIS CRIME DOESN'T SHOW RAGE AND SOMEONE
3 OUT OF CONTROL AS YOU LOOK AT THESE PICTURES, THEN I'VE
4 LOST MY COMMON SENSE BECAUSE I'M JUST REFLECTING ON THE
5 EVIDENCE. BUT IF THAT DOESN'T SHOW INTENSE ANGER AND RAGE
6 THAT IS OF A TYPE THAT YOU CANNOT EXPLAIN IN A LOGICAL
7 MANNER -- LOOK AT IT. YOU KNOW, IT'S HORRIBLE TO LOOK AT,
8 BUT THAT'S NOT SOMEBODY THAT JUST SAID I WANT THE MONEY
9 BECAUSE THEN YOU SHOOT THROUGH A WINDOW. OR IF YOU ARE SO
10 DIABOLICAL THEN YOU SAY DADDY, COME ON, HIT ME AGAIN, BOOM,
11 SELF-DEFENSE, AND YOU'LL WALK OUT OF A COURTROOM. THAT'S
12 DIABOLICAL; THAT'S PLANNED; THAT'S TOWARD THE INHERITANCE
13 IF YOU WANT IT, THEN YOU CAN GET YOU A GOOD LAWYER. THIS
14 IS RAGE.

15 I ASKED, AND WE JUST MENTIONED HIS NAME AND I'VE
16 FORGOTTEN IT, IT'S THE SLED EXPERT, THE CRIME SCENE EXPERT
17 AND I TOLD HIM, I SAID AS YOU LOOK AT THIS IN YOUR
18 EXPERIENCE AS AN EXPERT, IT SHOWS RAGE. HE WAS RELUCTANT
19 -- I HAD TO ASK HIM, WHAT, ABOUT THREE TIMES BEFORE HE
20 WOULD ADMIT THAT WHAT YOU AND I KNOW BECAUSE WE WERE
21 SITTING HERE, IT SHOWS NOTHING BUT RAGE. THAT'S THE TRUTH.
22 AND SOMEWHERE ALONG THE LINE, WHERE DID 22 YEARS OF RAGE,
23 WHERE WAS IT ENGENDERED IN JIMMY'S MIND?

24 HE DIDN'T CHOOSE THE FACTORS THAT PUT HIM THERE;
25 IT WAS THERE. IT WAS THERE AND IT CAME OUT AND WE'RE HERE.

1 BUT THAT'S RAGE. IT'S IRRATIONAL; IT IS BIZARRE; IT'S
2 UNCONTROLLED; IT'S HORRIBLE. I CAN'T SIT HERE AND TELL YOU
3 THAT IT'S NOT.

4 AND I'LL TELL YOU, NOBODY IN THIS COURTROOM,
5 NOBODY, HAS AN EXPLANATION AND I'M NOT SURE WE EVER WILL
6 UNTIL WE CAN TAKE THE BRAIN APART AND SAY, OKAY, WHAT'S
7 HERE. BUT WE DON'T HAVE THAT ABILITY IN THIS COURTROOM
8 NOW.

9 YOU HAVE LOOKED AT THE FAMILY; YOU HAVE LOOKED AT
10 WHAT HAPPENED; YOU HAVE LISTENED TO IT ALL, AND YOU HAVE
11 DONE SO INTENTLY.

12 YOU HAD CERTAIN PEOPLE COME INTO THIS COURTROOM,
13 BUZZY HALL, YOU HAD LINDA HOOK, YOU HAD GEORGE HOOK, YOU
14 HAD PEOPLE THAT WERE VERY, VERY FAMILIAR WITH THIS FAMILY,
15 TO THE POINT THAT GEORGE WAS EARL'S GOLFING BUDDY AND KNOWS
16 THEM ALL, BEEN WITH THEIR FAMILY, AND THEY CAME IN HERE.
17 BUZZY WAS HIS FORMER BASKETBALL COACH AND SAID HE WAS
18 WEIRD, HE WAS ALWAYS DIFFERENT FROM THE OTHER KIDS.
19 THERE'S SOMETHING TO BE SAID THERE, TOO, BECAUSE THAT JUST
20 MANIFESTS WHAT IS HERE AND WHAT WE HAVE SEEN.

21 BUT GEORGE VERY EMOTIONALLY ASKED YOU FOR MERCY.
22 WE HAD REVEREND WILLIAM PENDER WHO IS IN THE COURTROOM
23 TODAY, HE KNEW THEM FOR NINE YEARS, INTIMATELY INVOLVED IN
24 THE CHURCH. HE SAID, YOU KNOW, I KNOW THE FAMILY, I KNOW
25 WHAT'S THERE, I'M AWARE OF THE ENORMITY OF THIS CRIME AND

1 I WANT YOU AS A JURY TO RENDER MERCY.

2 YOU HAD PAIGE McRIGHT AND SHE WALKED IN HERE
3 KNOWING THE FAMILY, KNOWING JIMMY AND SAID SHE WISHED FOR
4 MERCY.

5 YOU HAVE TWO CHOICES. DEATH OR LIFE IMPRISONMENT
6 WITHOUT THE POSSIBILITY OF PAROLE, NO WORK CREDITS, NO
7 EARLY RELEASE.

8 YOU HEARD OTHER PEOPLE, BUZZY SAID HE'S
9 INTELLIGENT, HE CAN CONTRIBUTE TO THIS LIFE IN SOME WAY,
10 BUT HE WILL CONTRIBUTE TO THIS LIFE IF YOU GIVE HIM THE
11 CHANCE BEHIND BARS UNTIL THEY ROLL HIM OUT TO A PAUPER'S
12 GRAVE. HE WILL NEVER SEE THE LIGHT OF DAY. BUT I CANNOT,
13 AND I ASK THAT YOU DO NOT LOSE YOUR HOPE BECAUSE SOMEWHERE
14 THERE IS HOPE. YOU CAN'T DETERMINE THE FUTURE, I CAN'T
15 EITHER. YOU JUST HAVE TO LOOK AT THE CRIME, LOOK AT THE
16 MITIGATING CIRCUMSTANCES THAT HAVE BEEN PRESENTED TO YOU,
17 LOOK AT THE ENTIRETY OF THE EXPERIENCE THAT WE HAVE GONE
18 THROUGH TODAY, AND YOU ADD YOUR LIFE'S EXPERIENCES AND IF
19 YOU FIND THAT ANYTHING MITIGATES THIS HORRIBLE CRIME, GIVE
20 JIMMY THE CHANCE UNDER THIS CONTROLLED ENVIRONMENT THAT DR.
21 McKEE SAID THAT HE WAS ON HIS MEDICINE, EVERYTHING HE
22 SHOULD. YOU'VE GOT THE RECORDS FROM THE DEPARTMENT OF
23 CORRECTIONS OF SOUTH CAROLINA.

24 IF YOU FIND ANY MITIGATION, IF YOU FIND IT IN
25 YOUR HEART, IF YOU HAVEN'T LOST HOPE, THEN GIVE JIMMY THAT

1 CHANCE.

2 THE COURT: MR. ROBERTSON?

3 ARGUMENT TO THE JURY BY MR. ROBERTSON:

4 IN NO WAY DO THE MITIGATING FACTORS THAT MY
5 ATTORNEYS HAVE PRESENTED FOR ME IN MY BEHALF EXCUSE WHAT
6 HAPPENED THAT EVENING.

7 I'M SORRY FOR WHAT HAPPENED IN THE EARLY MORNING
8 HOURS ABOUT 16 MONTHS AGO. I'M SORRY FOR MY BROTHER CHIP
9 WHO HAS LOST HIS PARENTS. I AM SORRY FOR MY GRANDMOTHER
10 WHO LOST HER ONLY SON. I AM SORRY FOR THE REST OF MY
11 FAMILY. I AM ALSO SORRY FOR ALL THE FRIENDS HERE AND ALL
12 THE PEOPLE IN SOCIETY THAT FEEL FOR THEM, THAT WERE FRIENDS
13 OF THEIR'S.

14 I MISS MY PARENTS. I MUST LIVE WITH THIS EVERY
15 DAY OF MY LIFE. WHAT HAPPENED THAT MORNING REMAINS STILL
16 VIVIDLY IN MY MIND.

17 (THE DEFENDANT STARTED SOBBING AT THIS POINT.)

18 I WILL NEVER BE ABLE TO EXPLAIN; I'LL NEVER KNOW
19 WHY OR HOW OR ANYTHING. I KNOW THAT IT HAPPENED. AND I
20 CAN'T EVEN EXPLAIN TO MY ATTORNEYS WHAT HAPPENED. I CAN'T
21 EVEN PUT IT INTO WORDS WHY OR HOW OR ANYTHING.

22 I REALIZE, ALTHOUGH I DON'T LOOK FORWARD TO IT,
23 I DO NOT LOOK FORWARD TO SPENDING THE REST OF MY LIFE IN
24 PRISON, BUT I REALIZE THAT THERE ARE CONSEQUENCES FOR MY
25 ACTIONS. I REALIZE THAT I MUST BE HELD ACCOUNTABLE FOR MY

1 ACTIONS. BUT I ASK YOU TO ALLOW ME THE CONTINUED
2 OPPORTUNITY TO HELP OTHERS IN PRISON, HELP OTHERS THAT WERE
3 LESS FORTUNATE, OTHERS THAT HAVE NOT HAD THE EDUCATIONAL
4 OPPORTUNITIES THAT I HAVE HAD. ALLOW ME TO REACH OUT TO
5 OTHERS SO THAT A SIMILAR THING LIKE THIS NEVER HAPPENS,
6 NEVER EVER HAPPENS TO ANYBODY AGAIN.

7 I ASK THAT YOU SPEND SOME TIME IN REACHING YOUR
8 VERDICT. I DON' BELIEVE THAT THERE IS ANY MORE IMPORTANT
9 DECISION THAT YOU ARE ABOUT TO MAKE THAN ONE REGARDING MY
10 LIFE. MY LIFE IS IN YOUR HANDS NOW. I ASK THAT YOU SPEND
11 SOME TIME WITH YOUR DECISION. THANK YOU.

12 THE COURT: MR. BOYD?

13 ARGUMENT TO THE JURY BY MR. BOYD:

14 LADIES AND GENTLEMEN, I WANT YOU TO UNDERSTAND
15 ONE THING. THE EVIDENCE THAT WE HAVE PRESENTED IN THE
16 DEFENSE OF THIS CASE IN THE PENALTY PHASE OF THIS TRIAL IN
17 NO WAY IS OFFERED AS AN EXCUSE FOR JIMMY ROBERTSON. IF
18 THERE WAS AN EXCUSE, IF THERE WAS ANY JUSTIFICATION, IT
19 WOULD HAVE BEEN PRESENTED AT THE OTHER PHASE OF THE TRIAL.

20 THERE IS NO EXCUSE, BUT WHAT WE DO HAVE AND WHAT
21 WE HAVE TRIED TO PRESENT TO YOU IS SOMETHING TO TRY TO SHOW
22 HOW IT CAME TO THIS POINT.

23 YOU HAVE A DECISION BETWEEN TWO PUNISHMENTS. YOU
24 HAVE A DECISION BETWEEN THE TWO WORST PUNISHMENTS THAT CAN
25 BE GIVEN IN OUR COUNTRY. YOU HAVE A CHOICE OF GIVING THE

1 ULTIMATE PENALTY, THE DEATH PENALTY. YOU HAVE ALSO THE
2 CHOICE OF GIVING THE NEXT TO THE WORST PENALTY AND THAT'S
3 LIFE IMPRISONMENT.

4 AS MR. HANCOCK TOLD YOU, AS THE JUDGE WILL TELL
5 YOU, LIFE IS EXACTLY WHAT IT SAYS. THERE IS NO PAROLE;
6 THERE IS NO WAY FOR HIM TO GET OUT OF PRISON EVER. HE WILL
7 BE IN PRISON, IF YOU GIVE HIM LIFE, FOR THE REST OF HIS
8 LIFE. SO, NO MATTER WHICH WAY YOU CHOOSE, ONE WAY OR THE
9 OTHER, HE'S GOING TO LEAVE PRISON DEAD.

10 DEATH IS THE ULTIMATE PENALTY. IT'S THE PENALTY
11 THAT IS RESERVED FOR THE WORST CRIMES. NOW THE LAW IN OUR
12 STATE, THE LAW OF SOUTH CAROLINA SAYS YOU NOT ONLY HAVE TO
13 LOOK AT THE CRIME BECAUSE I SUBMIT TO YOU IF YOU LOOK AT
14 THE CRIME, IF YOU LOOK AT THESE PICTURES, IF YOU LOOK AT
15 EVERYTHING, YOUR NATURAL INCLINATION IS TO SAY WELL WHOEVER
16 DID THIS DESERVES TO DIE, BUT THE LAW SAYS THAT YOU HAVE TO
17 NOT ONLY LOOK AT THE CRIME, YOU HAVE TO LOOK AT THE PERSON.

18 AND WHEN WE LOOKED AT THIS, WHEN WE WITH THE
19 DEFENSE LOOKED AT THIS AND WE WONDERED, WELL, WHY, HOW
20 COULD THIS HAPPEN. HOW COULD A YOUNG MAN END UP KILLING
21 HIS PARENTS. HOW CAN HE END UP KILLING HIS PARENTS IN SUCH
22 A BRUTAL MANNER. WE LOOKED AT THAT AND WE ASKED OURSELVES
23 WHY AND THEN TO TRY TO FIND AN EXPLANATION.

24 THE STATE HAS AN EXPLANATION THAT'S VERY SIMPLE,
25 THAT'S VERY SIMPLE. WELL, HE WANTED THE INHERITANCE, SO HE

1 KILLED HIS PARENTS FOR MONEY. HE'S, AS MR. BRACKETT
2 CHARACTERIZED HIM, A GREEDY LITTLE MAN.

3 WELL, LET'S BACK UP A MINUTE. EVEN IF THAT'S
4 TRUE, EVEN IF THAT'S TRUE, DOESN'T THAT GO AGAINST EVERY
5 HUMAN NATURE. WHO HAS A DESIRE TO KILL THEIR PARENTS, EVEN
6 FOR MONEY. IT'S NOT NATURAL. WHY? YOU STILL HAVE TO LOOK
7 AT WHY.

8 SO, WE TRIED TO FIND OUT WHY. WE TRIED TO FIND
9 OUT IF SOMETHING WAS WRONG WITH HIM. SO, WE GOT DR.
10 PINCUS, A NEUROLOGIST AT GEORGETOWN UNIVERSITY, FORMER
11 CHAIRMAN OF THE DEPARTMENT AT THAT PRESTIGIOUS UNIVERSITY,
12 A NEUROLOGIST WHO WROTE THE QUESTIONS THAT CERTIFIES OTHER
13 NEUROLOGISTS, TO EXAMINE HIM.

14 AND HIS OPINION, AND THE STATE CERTAINLY DIDN'T
15 INTRODUCE ANY TESTIMONY IN REBUTTAL FROM ANY NEUROLOGIST,
16 HE SAID IN HIS OPINION HIS FRONTAL LOBE DOESN'T WORK LIKE
17 OTHER PEOPLE'S. IT DOESN'T WORK LIKE OTHER PEOPLE'S.

18 NOW, MR. HANCOCK EXPLAINED TO YOU ABOUT THE
19 FRONTAL LOBE. WELL, IF IT DOESN'T WORK RIGHT, HE DOESN'T
20 HAVE THAT THING THAT YOU AND I HAVE, THAT NORMAL PEOPLE
21 HAVE THAT SAYS NO, THAT SAYS NO.

22 WE LOOKED -- WE HAD DR. EVANS, A
23 NEUROPSYCHOLOGIST, EXAMINE HIM. AND HE CAME UP IN HIS
24 FIELD WITH BASICALLY THE SAME CONCLUSIONS. HIS FRONTAL
25 LOBE DOESN'T WORK RIGHT. YOU HEARD NO EVIDENCE TO

1 CONTRADICT THAT FROM ANY EXPERT.

2 NOW, HE USED RITALIN AND IT'S EASY TO SAY, WELL,
3 BECAUSE HE USED DRUGS, HE MADE A CHOICE TO DO THAT. AND
4 THAT'S TRUE, HE MADE A CHOICE TO DO THAT BUT I'LL ASK YOU,
5 AS SMART AS HE IS, DOES HE HAVE THE SAME FREE WILL THAT A
6 NORMAL PERSON HAS? YES, HE HAS FREE WILL; HE HAS THE
7 ABILITY TO MAKE CHOICES, BUT THOSE OF US WHOSE MINDS WORK
8 RIGHT FIND IT HARD TO UNDERSTAND HOW SOMEBODY'S CANNOT.

9 THE MAN THAT MR. HANCOCK TALKED ABOUT WITH THE
10 METAL THROUGH HIS BRAIN, A FINE PERSON WHOSE PERSONALITY
11 TOTALLY CHANGES. WE CAN'T UNDERSTAND IT.

12 HE TURNED TO DRUGS, BUT DID HE HAVE THE SAME
13 ABILITY TO SAY NO THAT YOU AND I HAVE. THE MEDICAL
14 TESTIMONY SAYS THAT HE DID NOT.

15 WE PUT DR. MORTON UP TO EXPLAIN WHAT EFFECTS AND
16 HOW POWERFUL THE EFFECTS OF RITALIN IS, HOW POWERFUL THE
17 EFFECTS OF TAKING DRUGS ARE.

18 AGAIN, I AM NOT OFFERING THIS AS AN EXCUSE. I'M
19 OFFERING THIS AS AN EXPLANATION.

20 WE GOT DR. CASCIO TO LOOK INTO THE FAMILY, AND
21 THAT WASN'T PLEASANT. THERE WAS NO PLEASURE IN DOING THAT
22 BUT THE YOUNG MAN IS ON TRIAL FOR HIS LIFE. MR. POPE SAID
23 TERRY GOT RAPED IN THE COURTROOM. WE HAVE A DUTY TO LOOK
24 AT EVERY ASPECT OF HIS LIFE BEFORE WE TAKE HIS LIFE. AND
25 I GIVE NO APOLOGIES WHATSOEVER FOR DOING THAT.

1 BUT WE LOOKED AND WE FIND THAT TERRY ROBERTSON
2 HAS BIPOLAR DISORDER. SHE HAS THE SAME THING HE DID --
3 DOES. ALL OF THE EVIDENCE SHOWS, THE TESTIMONY FROM THE
4 EXPERTS, FROM EVERYWHERE SAYS BIPOLAR DISORDER IS
5 INHERITED.

6 NOW, IT'S CERTAINLY NOT TERRY'S FAULT THAT JIMMY
7 GOT BIPOLAR DISORDER. IT'S NOT HER FAULT THAT SHE HAS
8 BIPOLAR DISORDER. IT'S NO ONE'S FAULT; IT'S SOMETHING THAT
9 HAPPENED; IT'S SOMETHING THAT HAPPENED. BUT IT WAS PASSED
10 DOWN FROM HER AND HE GOT IT.

11 AND, LADIES AND GENTLEMEN, THIS IS NO EXCUSE FOR
12 MURDER, BUT HE CAN'T HELP IT THAT HE HAS BIPOLAR DISORDER.
13 THERE IS NOT A THING IN THE WORLD HE COULD DO ABOUT IT.
14 THE DAY HE WAS BORN, HE WAS GOING TO GET IT, AND THERE'S
15 NOTHING HE OR ANYONE ELSE COULD DO ABOUT THAT.

16 YOU SEE THE SAME SYMPTOMS IN JIMMY THAT TERRY HAD
17 AS A TEENAGER. SHE WOULD GO ON WILD SPENDING SPREES AND
18 SHE HAD THE RICH PARENTS THAT COULD BAIL HER OUT, JUST LIKE
19 HE. IT'S ALMOST AS IF HE FOLLOWS IN HIS MOTHER'S
20 FOOTSTEPS.

21 IS HE RESPONSIBLE FOR WHAT HE DID? YES. DOES HE
22 HAVE TO BE PUNISHED FOR WHAT HE DID? YES. DOES HE DESERVE
23 THE SAME KIND OF PUNISHMENT THAT I WOULD HAVE IF I DID
24 SOMETHING LIKE THIS? NO. HE MAY BE SMARTER THAN ME, BUT
25 HIS BRAIN DOESN'T WORK LIKE MINE. HIS BRAIN DOESN'T WORK

1 LIKE YOUR'S, AND HE CAN'T HELP THAT. HE IS MORALLY
2 RESPONSIBLE FOR WHAT HE DID. HE DESERVES PUNISHMENT FOR
3 IT, BUT DOES HE DESERVE THE ULTIMATE PENALTY OF DEATH? I
4 SUBMIT, NO.

5 MR. POPE ASKED YOU IF THIS DOESN'T CRY OUT FOR
6 THE DEATH PENALTY, WHAT DOES. WELL, LADIES AND GENTLEMEN,
7 I'VE SAT ON THE PROSECUTION SIDE BEFORE; I'VE BEEN IN THE
8 POSITION THEY ARE. YOU HAVE TO LOOK NOT ONLY AT THE CRIME,
9 YOU HAVE TO LOOK AT THE PERSON. THIS IS NOT SOMEONE WHO
10 COLD AND CALCULATED PLANTS A BOMB IN A BUILDING AND BLOWS
11 IT UP. THIS IS NOT SOMEONE LIKE THIS.

12 THIS CRIME, AS MR. HANCOCK SAYS, SHOWS RAGE. BUT
13 IT'S A CRAZY RAGE. WHY HAVE THAT RAGE AGAINST YOUR
14 PARENTS. I DON'T KNOW IF HE WAS MISTREATED WHEN HE WAS
15 GROWING UP OR NOT, THE INDICATORS ARE THERE, BUT SOMETHING
16 IS WRONG, AND IT'S A COMBINATION OF THINGS.

17 BUT IF YOU LOOK AT THE FAMILY, WHAT EARL HAD,
18 WHAT TERRY HAD, YOU KNOW, YOU COMBINE THESE GENES TOGETHER
19 AND THIS IS WHAT YOU COME OUT WITH. IT'S NOT JUST ONE CHILD
20 WHO HAS TURNED OUT BAD, BOTH CHILDREN HAVE. THERE HAS GOT
21 TO BE A REASON; THERE HAS GOT TO BE A REASON.

22 THE STATE IS ASKING YOU TO SIGN A DOCUMENT THAT
23 WILL PUT JIMMY TO DEATH. YOU KNOW, KILLING, WE ARE TAUGHT,
24 SHOULD BE NECESSARY. AND THERE ARE TIMES WHEN IT IS
25 NECESSARY TO KILL. OBVIOUSLY, IF YOU ARE DEFENDING

1 YOURSELF, YOU HAVE A RIGHT TO KILL IF NECESSARY TO PROTECT
2 YOURSELF AND YOUR FAMILY. IN TIMES OF WAR WE ASK SOLDIERS
3 TO KILL. AND SOMETIMES, I SUBMIT TO YOU, IT'S JUSTIFIED
4 AND NECESSARY TO KILL PEOPLE. BUT WHERE HAS THE STATE
5 SHOWN YOU THE NECESSITY TO KILL JIMMY ROBERTSON. HE'LL BE
6 FORCED TO BE IN PRISON FOR THE REST OF HIS LIFE. HE'LL BE
7 WHERE HE CAN'T SNORT RITALIN; WHERE HE CAN'T TAKE THE
8 ILLEGAL DRUGS; HE'LL BE WHERE HE HAS TO TAKE HIS
9 MEDICATION. IT'S NOT NECESSARY TO KILL HIM; IT'S JUST NOT
10 NECESSARY.

11 NOW EACH OF YOU AS JURORS ACT BECAUSE YOU SIGN
12 YOUR NAME TO THAT DOCUMENT, EACH OF YOU ACT AS AN
13 INDIVIDUAL JUDGE ON THE FATE OF JIMMY ROBERTSON. THE LAW
14 NEVER REQUIRES THAT ANYBODY SIGN THAT DOCUMENT. THE LAW
15 NEVER REQUIRES YOU TO GIVE THE DEATH PENALTY. THE LAW IS
16 ALWAYS TOTALLY SATISFIED WITH A LIFE SENTENCE.

17 WE HAVE SUBMITTED TO YOU CERTAIN MITIGATING
18 FACTORS AND YOU AS AN INDIVIDUAL JUROR HAVE THE RIGHT TO
19 ASSIGN WHATEVER WEIGHT YOU WANT TO ANY MITIGATING FACTOR
20 THAT'S BEEN PRESENTED. AND YOU HAVE A RIGHT TO DO THAT,
21 FREE FROM ANY CRITICISM OF ANYBODY IN THIS COURTROOM OR ANY
22 OTHER JUROR, YOU AS AN INDIVIDUAL.

23 YOU HAVE A RIGHT TO DECIDE FOR YOURSELF IF ANY
24 ONE MITIGATING FACTOR IS SUFFICIENT TO GIVE JIMMY LIFE.
25 AND YOU HAVE A RIGHT TO DO THAT REGARDLESS OF THE NUMBER OF

1 AGGRAVATING CIRCUMSTANCES YOU FIND OR HOW BAD THOSE
2 AGGRAVATING CIRCUMSTANCES ARE.

3 YOU HAVE A RIGHT TO FIND YOUR OWN MITIGATING
4 FACTOR. THERE MAY BE FACTORS THAT WE HAVEN'T BROUGHT UP
5 THAT YOU CAN CONSIDER AND YOU HAVE A RIGHT TO FIND THOSE
6 FOR YOURSELF AND GIVE THAT WHAT WEIGHT AS YOU THINK IS
7 PROPER.

8 AND YOU CAN VOTE FOR LIFE EVEN IF YOU FIND NO
9 MITIGATING FACTORS. YOU CAN VOTE FOR LIFE IF YOU AS AN
10 INDIVIDUAL FIND IT IN YOUR OWN CONSCIENCE TO DO SO.

11 AND YOU HAVE A RIGHT TO HAVE WHATEVER VOTE YOU
12 CAST RESPECTED BY THE COURT, BY THE PROSECUTION, BY ME AND
13 BY THE OTHER JURORS.

14 AND YOU HAVE A RIGHT FOR THAT RESPECT WHETHER
15 YOU'RE VOTING FOR LIFE OR WHETHER YOU'RE VOTING FOR DEATH,
16 YOU EACH HAVE THOSE RIGHTS.

17 AND FINALLY YOU CAN GIVE LIFE FOR BASICALLY NO
18 REASON AT ALL. YOU CAN GIVE LIFE JUST AS AN ACT OF MERCY.

19 THE FIRST MURDER THAT WAS EVER COMMITTED WAS CAIN
20 KILLING ABEL. AND HE WAS GIVEN AN ACT OF MERCY; HE WAS
21 PUNISHED, BUT HIS LIFE WASN'T TAKEN. IT WAS A FAMILY
22 MURDER LIKE WE HAVE HERE.

23 I WANT YOU TO THINK ABOUT THIS CASE, THINK ABOUT
24 THE ROBERTSON FAMILY. MR. POPE TALKED ABOUT HOW MUCH HIS
25 FATHER MEANS TO HIM. YOU KNOW ONE THING I'VE THOUGHT ABOUT

1 AS I'VE THOUGHT ABOUT THIS CASE, YOU KNOW, PARENTS ALWAYS
2 LOVE THEIR CHILDREN NO MATTER WHAT, NO MATTER WHAT. THERE
3 IS NOTHING LIKE THE LOVE A PARENT FEELS FOR THEIR CHILD.
4 AND THAT'S AN UNCONDITIONAL LOVE. IT DOESN'T MATTER IF THE
5 CHILD LOVES YOU BACK.

6 I DIDN'T REALLY UNDERSTAND THIS TOTALLY UNTIL I
7 HAD MY SON TWO YEARS AGO. I WAITED UNTIL MIDDLE AGE TO
8 START HAVING KIDS AND ABOUT TWO YEARS AGO WHEN I LOOKED IN
9 MY NEWBORN CHILD'S EYES IN THE HOSPITAL, AND I KNOW HE
10 COULDN'T SEE ME AT THAT TIME, BUT I MADE HIM A PROMISE THAT
11 I WOULD ALWAYS LOVE HIM, NO MATTER WHAT, NO MATTER WHAT.
12 IF HE BECOMES PRESIDENT OF THE UNITED STATES SOME DAY, I'LL
13 BE PROUD OF HIM, AND I HOPE I'M ALIVE TO BE THERE. BUT IF
14 IT GOES THE OTHER WAY, IF HE BECOMES A MASS MURDERER OR A
15 SERIAL KILLER, I'LL STILL LOVE HIM AND I'LL BE THERE FOR
16 HIM. AND IF HE KILLS ME, I'LL STILL LOVE HIM.

17 MR. POPE IMPLIES THAT HE SPEAKS FOR EARL AND
18 TERRY ROBERTSON. I SUBMIT TO YOU, HE DOES NOT. YOU HEARD
19 THE PREACHER WHO DID BOTH OF THEIR FUNERALS COME IN THE
20 COURTROOM AND ASK FOR MERCY. THIS IS A WOMAN WHO CLEANED
21 UP THE BATHROOM AT THE SCHOOL WHEN HER SON WAS BEING
22 PUNISHED. I DON'T THINK THAT WAS A GOOD IDEA, IT PROBABLY
23 WASN'T A GOOD IDEA, BUT IT DOES SHOW YOU WHAT SHE THOUGHT
24 OF HER CHILD.

25 IF JIMMY ROBERTSON HAD KILLED SOMEBODY ELSE, THEY

CHARGE TO THE JURY BY THE COURT

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1 WOULD BE SITTING RIGHT THERE BEHIND HIM. AND I SUBMIT TO
2 YOU, THAT THEIR SPIRIT IS GOING TO SIT BEHIND THAT TABLE.
3 I SUBMIT TO YOU THAT THE SPIRITS OF EARL AND TERRY
4 ROBERTSON CRY OUT TO YOU FOR LIFE. THANK YOU.

5 CHARGE TO THE JURY BY THE COURT:

6 MEMBERS OF THE JURY PANEL, DO YOU NEED A BREAK
7 BEFORE I GIVE YOU THE CHARGE? ALL RIGHT, I'LL GO AHEAD
8 THEN. I THINK THE CHARGE AT THIS STAGE IS NOT EXTREMELY
9 LENGTHY.

10 FIRST I WILL REMIND YOU, TELL YOU, NOT REMIND
11 YOU, I GUESS IT IS REMINDING YOU, JUST AS IN THE EARLIER
12 STAGE WHERE I TOLD YOU TO LOOK AT EACH INDICTMENT AS TO
13 EACH INDIVIDUAL AND AS TO EACH CHARGE SEPARATELY, I AM
14 REMINDING YOU THAT AS TO THESE TWO VERDICTS, ONE FOR TERRY
15 ROBERTSON AND ONE FOR EARL ROBERTSON, SENIOR, YOU ARE TO
16 LOOK AT THESE SEPARATELY. YOU DON'T HAVE TO FIND THE SAME
17 ON EACH. WHEN I TALK ABOUT AGGRAVATING AND MITIGATING
18 CIRCUMSTANCES, YOU DON'T HAVE TO FIND THE SAME AS TO EACH.
19 EACH IS TO BE CONSIDERED ON THEIR OWN SEPARATELY AND EACH
20 IS ENTITLED TO A SEPARATE VERDICT STANDING ON ITS OWN.

21 IN MY CHARGE I WILL PERHAPS REFER TO CERTAIN
22 THINGS THAT I CHARGED YOU AT THE GUILT PHASE, SUCH AS
23 CREDIBILITY, THOSE SORT OF THINGS, THE DEFINITIONS OF
24 CERTAIN OFFENSES. I'M NOT GOING TO RECHARGE THOSE BUT I AM
25 GOING TO INVITE YOU THAT IF DURING YOUR DELIBERATION YOU

CHARGE TO THE JURY BY THE COURT

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1 WANT ME TO RECHARGE MURDER, ARMED ROBBERY, LARCENY,
2 CREDIBILITY WHICH AGAIN IS BELIEVABILITY, OR THOSE FACTORS
3 THAT I INDICATED YOU MIGHT WANT TO LOOK AT, IF YOU WANT TO
4 HEAR THAT AGAIN, YOU LET ME KNOW AND I WILL BRING YOU BACK
5 IN HERE WITH NO QUESTIONS ASKED AND WE WILL GO OVER THOSE
6 IF YOU SO WISH.

7 IT IS NOW YOUR DUTY TO DECIDE WHAT SENTENCE YOU
8 WILL RECOMMEND THAT THIS COURT IMPOSE ON THE DEFENDANT,
9 JAMES DEJARNETTE ROBERTSON. AND JUST AS BEFORE, I TELL YOU
10 THAT IF I USE THE WORD DEFENDANT, THAT IS WHO I AM TALKING
11 ABOUT. I WILL TRY TO USE HIS NAME, BUT SOMETIMES I WILL
12 USE THE WORD DEFENDANT.

13 THERE ARE TWO RECOMMENDATIONS THAT YOU ARE TO
14 CONSIDER IN THIS CASE. ONE IS THE DEATH PENALTY WHICH IN
15 THIS STATE IS BY EITHER LETHAL INJECTION OR THE OPTION OF
16 THE PERSON IMPOSED WITH THAT PENALTY, ELECTROCUTION. THE
17 OTHER IS LIFE IMPRISONMENT.

18 IN ANALYZING YOUR DETERMINATION AS TO THE
19 SENTENCE YOU ARE TO RENDER, YOU ARE ASKED TO DETERMINE THE
20 EXISTENCE OR NONEXISTENCE OF STATUTORY AGGRAVATING
21 CIRCUMSTANCES AND I WILL EXPLAIN THAT TO YOU IN A MOMENT.

22 KEEP IN MIND, OF COURSE, THAT WE ARE IN THE
23 SECOND PART OF A TWO PART TRIAL. IN ESSENCE, THIS IS A
24 CONTINUATION OF THE TRIAL THAT TOOK PLACE LAST WEEK AND
25 ENDED UP WITH GUILTY VERDICTS ON SATURDAY NIGHT. THE

1 EVIDENCE THAT YOU HEARD IN THAT CASE HAS BEEN INCORPORATED
2 INTO THIS CASE AND MAY BE CONSIDERED BY YOU. AND THOSE
3 CHARGES THAT I GAVE YOU AT THAT TIME APPLY EQUALLY AND AS
4 I TOLD YOU A MINUTE AGO, I WILL RECHARGE YOU ON ANYTHING
5 YOU NEED TO HEAR FROM ME.

6 YOUR CONSIDERATION, OF COURSE, LAST WEEK WAS
7 GUILT; THIS WEEK IT IS WHAT PENALTY SHOULD BE IMPOSED FOR
8 THE GUILT THAT YOU HAVE FOUND.

9 AS I TOLD YOU EARLIER, I AM THE SOLE JUDGE OF THE
10 LAW AND YOU MUST TAKE, ACCEPT AND APPLY THE LAW AS I CHARGE
11 IT. EVEN IF YOU THINK I CHARGE YOU THE LAW IN ERROR OR
12 EVEN IF YOU THINK THE LAW SHOULD BE DIFFERENT. YOUR ROLE
13 AGAIN IS THE SOLE JUDGES OF THE FACTS AND BASED ON THOSE
14 FACTS AND YOUR DETERMINATIONS, YOU WILL MAKE YOUR
15 RECOMMENDATION.

16 I HAVE NO OPINION ON THE FACTS. THE LAW, AS I
17 TOLD YOU EARLIER, DOES NOT ALLOW ME TO FORMULATE OR EXPRESS
18 AN OPINION ABOUT THE FACTS. JUST AS BEFORE, DO NOT
19 INTIMATE OR INFER FROM ANYTHING THAT I SAY OR DO OR HAVE
20 SAID OR DONE AS BEING INDICATIVE OF AN OPINION OF MINE ON
21 THE FACTS OR AN OPINION OF MINE ON WHAT VERDICT YOU SHOULD
22 RETURN. YOU WOULD BE WRONG IN MAKING ANY SUCH INFERENCE.

23 AGAIN, I CHARGED YOU AT AN EARLIER TIME, A WEEK
24 AGO ALMOST, THE LAW OF MURDER, LARCENY, ARMED ROBBERY. I
25 DEFINED WHAT CONSTITUTED A DEADLY WEAPON. I TOLD YOU HOW

1 TO EVALUATE EXPERT TESTIMONY. ALL OF THESE THINGS STILL
2 APPLY. WHEN I USE THESE PHRASES, THE DEFINITIONS I HAVE
3 ALREADY GIVEN YOU ARE TO APPLY EQUALLY AT THIS TIME.

4 YOU WILL HEAR ME USE AN ADDITIONAL PHRASE WHERE
5 YOU WILL HEAR AGGRAVATING AND MITIGATING CIRCUMSTANCES. I
6 WILL TALK TO YOU ABOUT THAT, BUT YOU WILL ALSO AS ONE OF
7 THE STATUTORY AGGRAVATING CIRCUMSTANCES HEAR ME TALK ABOUT
8 PHYSICAL TORTURE, SO I NEED TO DEFINE THAT FOR YOU BECAUSE
9 I DID NOT LAST WEEK.

10 TORTURE OCCURS WHEN A VICTIM IS SUBJECT TO
11 SERIOUS PHYSICAL ABUSE BEFORE DEATH. TORTURE OCCURS WHEN
12 THE VICTIM IS SUBJECT TO AGGRAVATED BATTERY. WHAT IS AN
13 AGGRAVATED BATTERY? AN AGGRAVATED BATTERY IS AN UNLAWFUL
14 ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER ACCOMPANIED
15 BY CIRCUMSTANCES OF AGGRAVATION SUCH AS THE USE OF A DEADLY
16 OR DANGEROUS OBJECT, THE INFLECTION OF SERIOUS BODILY
17 INJURY WITH INTENT TO COMMIT A FELONY, A GREAT DISPARITY
18 BETWEEN THE AGES AND PHYSICAL CONDITIONS OF THE PARTIES, A
19 DIFFERENCE IN THE SEXES OF THE PARTIES.

20 PHYSICAL TORTURE IS THE INTENTIONAL INFLECTION OF
21 SERIOUS, VILE, HORRIBLE OR INHUMANE ABUSE UPON THE BODY OF
22 ANOTHER BEFORE DEATH. THE INSTANTANEOUS DEATH OF A VICTIM
23 DOES NOT CONSTITUTE TORTURE.

24 PHYSICAL TORTURE MAY INCLUDE THE MALICIOUS
25 INFLECTION OF BODILY HARM TO ANOTHER BY SERIOUSLY

1 DISFIGURING THE BODY OR A MEMBER OF THE BODY; OR THE
2 INTENTIONAL AND UNMERCIFUL PROLONGING OF SEVERE PAIN AND
3 ABUSE UPON A BODY; OR THE INTENTIONAL AND UNMERCIFUL
4 INFLECTION OF SERIOUS AND EXTENSIVE PHYSICAL PAIN AND ABUSE
5 TO THE BODY OF ANOTHER.

6 I WILL BE TALKING ABOUT ACTS THAT OCCURRED IN
7 CONNECTION WITH, AND THESE ARE THE FACTS FOR YOU TO
8 DETERMINE, BUT YOU HAVE TO DETERMINE WHETHER THEY WERE DONE
9 IN THE COMMISSION OF THE MURDER, BUT CRIMES COMMITTED IN A
10 CONTINUOUS SERIES OF ACTS MAY BE CONSIDERED AS STATUTORY
11 AGGRAVATING CIRCUMSTANCES.

12 I DEFINED FOR YOU LAST WEEK BEYOND A REASONABLE
13 DOUBT. THAT STANDARD STILL APPLIES WHEN I USE THAT TERM.
14 THAT STANDARD IS, A REASONABLE DOUBT BEING THE KIND OF
15 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
16 ACT.

17 CREDIBILITY OF THE WITNESSES IS FOR YOUR
18 CONSIDERATION AS I HAVE TOLD YOU, AND PLEASE CONTINUE TO
19 USE THOSE EVALUATORS THAT I HAVE DISCUSSED WITH YOU
20 EARLIER.

21 I HAVE TWO SETS OF STATUTORY INSTRUCTIONS. THEY
22 ARE BASICALLY IDENTICAL. ONE IS FOR TERRY ROBERTSON AND
23 ONE IS FOR EARL ROBERTSON, SENIOR. I HAVE ON EACH PLACED
24 THOSE NAMES. THE ONLY OTHER DIFFERENCE YOU MIGHT NOTICE
25 AND YOU PROBABLY WOULDN'T IF I DIDN'T POINT IT OUT IS THE

CHARGE TO THE JURY BY THE COURT

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1 DIFFERENT INDICTMENT NUMBERS. THEY BOTH HAVE THE
2 INDICTMENT NUMBER OF 1022, THAT WAS THE CHARGE OF ARMED
3 ROBBERY, AND I INCLUDED THOSE INDICTMENT NUMBERS; AND THE
4 OTHER INDICTMENT NUMBER IS THE INDICTMENT ON WHICH THE
5 CHARGE AND A VERDICT WAS RETURNED AS TO MURDER; THAT IS,
6 1021 FOR TERRY ROBERTSON, THAT IS 98-GS-46-1021, AND 98-GS-
7 46-1020 ON EARL ROBERTSON, SENIOR. EXCEPT FOR THOSE
8 DIFFERENCES THEY ARE IDENTICAL. SO, I AM NOT GOING TO GO
9 OVER EACH OF THEM IN THEIR ENTIRETY BECAUSE WHAT I SAY AS
10 TO ONE APPLIES TO BOTH.

11 YOU WILL HAVE THESE IN THE JURY ROOM WITH YOU.
12 THEY ARE CALLED STATUTORY INSTRUCTIONS AND I AM GOING TO GO
13 OVER THESE WITH YOU FOR YOUR CONSIDERATION.

14 THE FIRST PARAGRAPH THAT YOU WILL SEE IS
15 PARAGRAPH NUMBER 1 AND IT SAYS IN DETERMINING WHETHER THE
16 DEFENDANT, JAMES DEJARNETTE ROBERTSON, BE SENTENCED TO LIFE
17 IMPRISONMENT OR DEATH, YOU SHALL FIRST DETERMINE WHETHER
18 THE STATE HAS PROVEN THE EXISTENCE OF ONE OR MORE OF THE
19 FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES BEYOND A
20 REASONABLE DOUBT.

21 AS TO EACH OF THE VICTIMS, MR. ROBERTSON AND MRS.
22 ROBERTSON, THE STATUTORY AGGRAVATING CIRCUMSTANCES WHICH
23 ARE CIRCUMSTANCES -- WHEN I SAY STATUTORY, THEY ARE ENACTED
24 BY OUR LEGISLATURE, THEY ARE INCORPORATED IN OUR CODE OF
25 LAWS UNDER SECTION 16-3-20, THAT IS THE CODE SECTION THAT

1 DEALS WITH THE DEATH PENALTY. AND IT IS SAID THAT THESE
2 ARE THE STATUTORY AGGRAVATING CIRCUMSTANCES OUR LEGISLATURE
3 HAS PASSED AND THESE ONLY MAY BE CONSIDERED BY YOU IN
4 DETERMINING WHETHER TO IMPOSE THE PENALTY OF DEATH.

5 THE FIRST AGGRAVATING CIRCUMSTANCE THAT YOU WOULD
6 -- WELL, THEY ARE IN NO PARTICULAR ORDER, SO WHEN I SAY
7 FIRST, I DON'T MEAN THAT THAT'S THE FIRST ONE IN ANY
8 PARTICULAR REGARD OTHER THAN IT'S THE FIRST ONE ON THIS
9 LIST.

10 FIRST, I HAVE THAT THE MURDER WAS COMMITTED WHILE
11 IN THE COMMISSION OF A ROBBERY WHILE ARMED WITH A DEADLY
12 WEAPON.

13 SECOND, THAT THE MURDER WAS COMMITTED WHILE IN
14 THE COMMISSION OF A LARCENY WITH THE USE OF A DEADLY
15 WEAPON.

16 THIRD, THAT THE MURDER WAS COMMITTED WHILE IN THE
17 COMMISSION OF PHYSICAL TORTURE.

18 FOURTH, THE DEFENDANT, JAMES DEJARNETTE
19 ROBERTSON, COMMITTED THE MURDER FOR HIMSELF OR ANOTHER FOR
20 THE PURPOSE OF RECEIVING MONEY OR A THING OF MONETARY
21 VALUE.

22 AND, FIFTH, TWO PERSONS WERE MURDERED BY THE
23 DEFENDANT, JAMES DEJARNETTE ROBERTSON, BY ONE ACT OR
24 PURSUANT TO ONE SCHEME OR COURSE OF CONDUCT.

25 THESE ARE THE ONLY CIRCUMSTANCES THAT YOU MAY

1 CONSIDER AS AGGRAVATING CIRCUMSTANCES.

2 THESE INSTRUCTIONS THAT YOU WILL HAVE IN THE
3 SECOND PARAGRAPH INSTRUCT YOU THAT IF YOU DO NOT
4 UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE
5 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES LISTED ABOVE,
6 YOU SHALL SO INDICATE ON PART A OF THE SENTENCING VERDICT
7 FORM WHICH IS ENTITLED "JURY'S VERDICT ON PROOF ON
8 AGGRAVATING CIRCUMSTANCES".

9 ON THAT FORM REFERRED TO IT SAYS "JURY'S VERDICT
10 OF PROOF ON AGGRAVATING CIRCUMSTANCES". IF YOU DO NOT, AS
11 I SAY, FIND THE PRESENCE OF ANY STATUTORY AGGRAVATING
12 CIRCUMSTANCE BEYOND A REASONABLE DOUBT, MR. FOREMAN, YOU
13 WILL USE SECTION A ON THERE AND SIGN IT, AND YOU ALONE
14 WOULD SIGN IT.

15 THAT SAYS "WE, THE JURY IN THE ABOVE ENTITLED
16 CASE, DO NOT UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THE
17 EXISTENCE OF ANY STATUTORY AGGRAVATING CIRCUMSTANCE". IF
18 THAT IS YOUR DETERMINATION; THAT IS, THAT YOU UNANIMOUSLY
19 DETERMINE THERE ARE NO STATUTORY AGGRAVATING CIRCUMSTANCES,
20 THEN YOU WILL CEASE YOUR DELIBERATIONS AND RETURN TO THE
21 COURTROOM WITH YOUR VERDICT. IT NEEDS TO BE SIGNED ONLY BY
22 THE FOREMAN.

23 IF, AND THIS IS ALL ON THE INSTRUCTIONS, IF YOU
24 DO UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE
25 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES WHICH I HAVE

1 LISTED AND GONE OVER WITH YOU, YOU SHALL SO INDICATE ON
2 PART 1-B OF THE SENTENCING VERDICT FORM. AND THAT IS HERE
3 WHERE THERE ARE SEVERAL LINES DRAWN BELOW, MR. FOREMAN. IF
4 YOU UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE
5 ALLEGED AGGRAVATING CIRCUMSTANCES, YOU WOULD DESIGNATE THIS
6 BY WRITING IT ON THE FORM AND THEN YOU WOULD CONTINUE YOUR
7 DELIBERATIONS IN ORDER TO DETERMINE WHETHER YOU SHOULD
8 RECOMMEND THAT THE DEFENDANT, JAMES DEJARNETTE ROBERTSON,
9 BE SENTENCED TO LIFE IMPRISONMENT OR TO DEATH.

10 IF YOU FIND UNANIMOUSLY THE EXISTENCE OF ONE OR
11 MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES
12 THAT WERE LISTED ON THE INSTRUCTION SHEET THEN, AS I SAY
13 MR. FOREMAN, YOU WOULD FILL IN WHICHEVER ONES YOU FIND,
14 JUST WRITE THEM OUT ON THIS PART B.

15 HOWEVER, WHEREAS IF YOU DO NOT FIND ANY
16 AGGRAVATING CIRCUMSTANCES ONLY MR. GWINN AS FOREMAN WOULD
17 SIGN, IF YOU FIND AGGRAVATING CIRCUMSTANCES, ALL 12 OF YOU
18 WILL SIGN. AND THERE IS A PLACE FOR EACH OF YOU TO SIGN IF
19 YOU SO FIND.

20 AS I SAY, THIS FINDING OR THESE FINDINGS AS TO
21 STATUTORY AGGRAVATING CIRCUMSTANCES MUST BE UNANIMOUS AND
22 SIGNED BY EACH.

23 IT IS FURTHER STATED THAT IF YOU UNANIMOUSLY FIND
24 THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY
25 AGGRAVATING CIRCUMSTANCES AND IF YOU DO SET OUT THOSE

1 FINDINGS, YOU MUST THEN CONTINUE YOUR DELIBERATIONS IN
2 ORDER TO DETERMINE WHETHER YOU SHOULD RECOMMEND THAT JAMES
3 DEJARNETTE ROBERTSON BE SENTENCED TO LIFE IMPRISONMENT OR
4 DEATH.

5 SO, IF YOU FIND UNANIMOUSLY BEYOND A REASONABLE
6 DOUBT THE EXISTENCE OF ANY AGGRAVATING CIRCUMSTANCE, YOU
7 WOULD FILL THAT OUT AND ALL 12 OF YOU WOULD SIGN IT.

8 LET ME NOW DISCUSS WITH YOU WHAT I MEAN WHEN I
9 TALK ABOUT A STATUTORY AGGRAVATING CIRCUMSTANCE AND TELL
10 YOU HOW YOU EVALUATE THEM AND LIKEWISE WHAT CONSTITUTES A
11 MITIGATING CIRCUMSTANCE. I WILL GO OVER THAT MORE IN A
12 MOMENT.

13 A STATUTORY AGGRAVATING CIRCUMSTANCE IS A FACT,
14 AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH OUR GENERAL
15 ASSEMBLY, OUR LEGISLATURE IN COLUMBIA, HAS DECLARED BY
16 STATUTE WHICH WOULD MAKE WORSE, THAT IS AGGRAVATE THE
17 OFFENSE OF MURDER WHEN THE TWO OCCUR TOGETHER. IN OTHER
18 WORDS, IT IS SOMETHING WHICH INCREASES THE ENORMITY OR ADDS
19 TO THE INJURIOUS CONSEQUENCE OF THE OFFENSE.

20 IF YOU FIND THE EXISTENCE BEYOND A REASONABLE
21 DOUBT OF A STATUTORY AGGRAVATING CIRCUMSTANCE, THEN YOU ARE
22 PERMITTED, BUT NOT REQUIRED, TO RECOMMEND THE DEATH
23 PENALTY.

24 IF YOU FIND THE EXISTENCE OF A STATUTORY
25 AGGRAVATING CIRCUMSTANCE, THE LAW ALSO REQUIRES THAT YOU

1 CONSIDER ANY MITIGATING CIRCUMSTANCES THAT ARE SUPPORTED BY
2 THE EVIDENCE.

3 YOU MUST CONSIDER ALL MITIGATING CIRCUMSTANCES
4 BECAUSE IF YOU ARE TO MAKE AN INDIVIDUALIZED ASSESSMENT OF
5 THE APPROPRIATENESS OF THE DEATH PENALTY, THE LAW REQUIRES
6 THAT YOU REVIEW THE EVIDENCE OF THE DEFENDANT'S BACKGROUND,
7 CONSIDERING ALSO MITIGATING CIRCUMSTANCES, AND THESE ARE
8 CONSIDERED IMPORTANT CONSIDERATIONS BY YOU.

9 THERE ARE THREE CONDITIONS THAT YOU SHOULD
10 CONSIDER IN REACHING YOUR DECISION. FIRST, WHETHER AFTER
11 -- AND WE'VE ALREADY, OF COURSE, PASSED THE POINT WHERE YOU
12 FOUND AGGRAVATING CIRCUMSTANCES AND ARE CONSIDERING
13 MITIGATING. YOU WOULD CONSIDER FIRST WHETHER THE DEFENDANT
14 HAS PROVEN ANY EVIDENCE OF THE EXISTENCE OF A STATUTORY
15 MITIGATING CIRCUMSTANCE.

16 SECOND, YOU WOULD CONSIDER WHETHER THE DEFENDANT
17 HAS PROVEN BY ANY EVIDENCE THE EXISTENCE OF ANY OTHER NON-
18 STATUTORY MITIGATING CIRCUMSTANCE.

19 THIRD, WHETHER FOR ANY REASON YOU CAN THINK OF OR
20 FOR NO REASON AT ALL THE DEFENDANT SHOULD BE SENTENCED TO
21 LIFE IMPRISONMENT RATHER THAN DEATH.

22 A STATUTORY MITIGATING CIRCUMSTANCE IS A FACT,
23 INCIDENT, DETAIL OR OCCURRENCE WHICH OUR GENERAL ASSEMBLY
24 HAS DECLARED BY STATUTE WHICH REDUCES THE SEVERITY OF THE
25 OFFENSE OF MURDER.

1 IN OTHER WORDS, IT IS A CIRCUMSTANCE RECOGNIZED
2 BY STATUTE AND IS ONE WHICH IN FAIRNESS AND MERCY MAY BE
3 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF
4 MORAL CULPABILITY FOR THE COMMISSION OF THE CRIME OF
5 MURDER.

6 A MITIGATING CIRCUMSTANCE IS NEITHER
7 JUSTIFICATION NOR EXCUSE FOR THE MURDER, BUT SIMPLY LESSENS
8 THE DEGREE OF ONE'S GUILT; THAT IS, MAKES THAT PERSON LESS
9 BLAMEWORTHY OR LESS CULPABLE.

10 I HAVE ON THE STATUTORY INSTRUCTIONS, PARAGRAPH
11 4, SET FORTH THOSE STATUTORY MITIGATING CIRCUMSTANCES THAT
12 YOU CAN CONSIDER IN THIS CASE.

13 THAT PARAGRAPH SAYS IN DETERMINING WHETHER TO
14 RECOMMEND THAT THE DEFENDANT, JAMES DEJARNETTE ROBERTSON,
15 BE SENTENCED TO LIFE IMPRISONMENT OR TO DEATH, YOU MAY
16 CONSIDER ANY OF THE STATUTORY AGGRAVATING CIRCUMSTANCES
17 FOUND BY YOU TO EXIST BEYOND A REASONABLE DOUBT. YOU MAY
18 ALSO CONSIDER THE FOLLOWING STATUTORY MITIGATING
19 CIRCUMSTANCES:

20 YOU CAN CONSIDER THESE CIRCUMSTANCES AND AGAIN
21 THEY ARE IN NO -- THE ORDER THEY ARE IN IS OF NO
22 SIGNIFICANCE.

23 THE DEFENDANT, JAMES DEJARNETTE ROBERTSON, HAS NO
24 SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION INVOLVING
25 THE USE OF VIOLENCE AGAINST ANOTHER PERSON.

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1 THE MURDER WAS COMMITTED -- ADDITIONALLY, THE
2 MURDER WAS COMMITTED WHILE THE DEFENDANT, JAMES DEJARNETTE
3 ROBERTSON, WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
4 DISTURBANCE.

5 YOU MAY CONSIDER THE AGE OF THE DEFENDANT AT THE
6 TIME OF THE CRIME.

7 YOU MAY CONSIDER THE MENTALITY OF THE DEFENDANT,
8 JAMES DEJARNETTE ROBERTSON, AT THE TIME OF THE CRIME.

9 YOU CAN CONSIDER THE CAPACITY OF THE DEFENDANT,
10 JAMES DEJARNETTE ROBERTSON, TO APPRECIATE THE CRIMINALITY
11 OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE
12 REQUIREMENTS OF LAW, YOU CAN CONSIDER WHETHER THEY WERE
13 SUBSTANTIALLY IMPAIRED.

14 YOU FURTHER MAY CONSIDER ANY MITIGATING
15 CIRCUMSTANCE WHICH IS SUPPORTED BY THE EVIDENCE IN THE
16 CASE.

17 WHEN YOU HAVE DETERMINED THE SENTENCE TO BE
18 IMPOSED UPON THE DEFENDANT, YOU INDICATE YOUR VERDICT ON
19 THIS LAST FORM, MR. FOREMAN, THAT SAYS JURY'S DETERMINATION
20 OF THE SENTENCE TO BE IMPOSED.

21 THE FIRST OPTION, AND AGAIN THEY ARE IN NO
22 PARTICULAR ORDER, IS WE THE JURY IN THE ABOVE ENTITLED CASE
23 UNANIMOUSLY RECOMMEND THAT THE DEFENDANT, JAMES DEJARNETTE
24 ROBERTSON, BE IMPRISONED IN THE STATE PENITENTIARY FOR THE
25 BALANCE OF HIS NATURAL LIFE. IF THAT IS THE UNANIMOUS

1 FINDING OF THE JURY, MR. GWINN AS FOREMAN, YOU AND YOU
2 ALONE WILL SIGN IT.

3 THE SECOND OPTION IS WE THE JURY IN THE ABOVE
4 ENTITLED CASE UNANIMOUSLY RECOMMEND THAT THE DEFENDANT,
5 JAMES DEJARNETTE ROBERTSON, BE SENTENCED TO DEATH. IN THAT
6 EVENT, EACH JUROR MUST SIGN IT.

7 NOW, A NON-STATUTORY MITIGATING CIRCUMSTANCE IS
8 ONE WHICH IS NOT PROVIDED FOR BY OUR STATUTE BUT IS ONE THE
9 DEFENDANT CLAIMS AND SERVES THE SAME PURPOSE, THAT IS TO
10 REDUCE THE DEGREE OF HIS GUILT IN THE OFFENSE.

11 WHILE THERE MUST BE SOME EVIDENCE WHICH SUPPORTS
12 A FINDING BY YOU THAT A STATUTORY OR NON-STATUTORY
13 MITIGATING CIRCUMSTANCE EXISTS, YOU DO NOT NEED TO FIND THE
14 EXISTENCE OF SUCH CIRCUMSTANCE, THAT IS A MITIGATING
15 CIRCUMSTANCE, BEYOND A REASONABLE DOUBT.

16 IN REACHING YOUR DECISION AS TO WHICH SENTENCE TO
17 RECOMMEND, YOU WILL CONSIDER THE AGGRAVATING AND MITIGATING
18 CIRCUMSTANCES. WHILE AN AGGRAVATING CIRCUMSTANCE MUST BE
19 FOUND BEFORE YOU CAN EVEN CONSIDER RECOMMENDING THE DEATH
20 PENALTY, ONCE SUCH A FINDING IS MADE BEYOND A REASONABLE
21 DOUBT, YOU MAY RECOMMEND THE SENTENCE EVEN THOUGH YOU FIND
22 THE EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE.

23 IN OTHER WORDS, THE EXISTENCE OF AN ALLEGED
24 STATUTORY MITIGATING CIRCUMSTANCE IS NOT A BAR TO THE
25 IMPOSITION OF THE DEATH PENALTY.

1 THE THIRD ELEMENT YOU MAY CONSIDER IF YOU SHOULD
2 CONCLUDE THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTS,
3 IS WHETHER THE DEFENDANT SHOULD BE SENTENCED TO LIFE IN
4 PRISON FOR ANY REASON OR FOR NO REASON AT ALL. THIS IS
5 WHAT HAS BEEN TRADITIONALLY REFERRED TO AS A RECOMMENDATION
6 OF MERCY. AND SHOULD SUCH BE YOUR DECISION, YOU WOULD SO
7 INDICATE BY RETURNING TO THE COURT THE RECOMMENDATION OF
8 LIFE IMPRISONMENT ON THE FORM INDICATED AND THIS WOULD BE
9 SIGNED ONLY BY THE FOREMAN.

10 IN OTHER WORDS, YOU MAY CHOOSE TO RECOMMEND LIFE
11 IMPRISONMENT IF YOU FIND A STATUTORY OR NON-STATUTORY
12 MITIGATING CIRCUMSTANCE OR YOU MAY CONSIDER TO RECOMMEND
13 LIFE IMPRISONMENT SIMPLY AS AN ACT OF MERCY.

14 IN ANY INSTANCE, SHOULD YOU CHOOSE TO RECOMMEND
15 LIFE IMPRISONMENT, YOUR DECISION MUST BE UNANIMOUS AND THE
16 FOREMAN ALONE WOULD BE REQUIRED TO SIGN THE RECOMMENDED
17 FORM.

18 DURING THE COURSE OF THIS TRIAL THERE HAS BEEN
19 SOME DISCUSSION ABOUT WHAT MAY BE REFERRED TO AS PRIOR BAD
20 ACTS OF THE DEFENDANT; THINGS THAT JAMES ROBERTSON
21 ALLEGEDLY COMMITTED DURING HIS LIFETIME.

22 I FIRST INSTRUCT YOU THAT YOU ARE NOT TO CONSIDER
23 IN ANY WAY ANY BAD ACT FOR WHICH HE HAS NOT BEEN CONVICTED
24 AS EVIDENCE OF ANYTHING WITH WHICH HE IS CHARGED UNLESS YOU
25 FIRST FIND THAT THE STATE HAS PROVEN TO YOU THAT THE

1 DEFENDANT COMMITTED THESE ALLEGED CRIMES BEYOND A
2 REASONABLE DOUBT.

3 IF YOU FIND THAT YOU HAVE A REASONABLE DOUBT IN
4 YOUR MIND AS TO WHETHER HE ACTUALLY COMMITTED THESE ALLEGED
5 CRIMES, YOU WOULD IGNORE THEM COMPLETELY.

6 IF ON THE OTHER HAND YOU BELIEVE HE DID COMMIT
7 THESE ALLEGED CRIMES, YOU MAY CONSIDER THEM ONLY AS
8 EVIDENCE OF HIS CHARACTER IN GENERAL. YOU MAY NOT CONSIDER
9 THESE ALLEGED CRIMES IN ANY WAY AS EVIDENCE OF ANY
10 AGGRAVATING CIRCUMSTANCE CONNECTED WITH THE CRIME FOR WHICH
11 HE IS ON TRIAL TODAY.

12 TO THINK ABOUT THESE ALLEGED CRIMES WHILE
13 THINKING ABOUT THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE
14 WOULD BE WRONG. THESE ALLEGED CRIMES ARE ONLY CHARACTER
15 EVIDENCE, AND NOTHING MORE.

16 YOU MAY CONSIDER THE DEFENDANT'S PRIOR
17 CONVICTIONS ONLY AS CHARACTER EVIDENCE. YOU MAY NOT
18 CONSIDER ANY PRIOR CONVICTION IN ANY WAY AS EVIDENCE OF ANY
19 STATUTORY AGGRAVATING CIRCUMSTANCE THAT THE STATE IS TRYING
20 TO PROVE AT THIS SENTENCING HEARING. TO THINK ABOUT THESE,
21 AS I SAY, IN ANY OTHER WAY IS WRONG. THEY ARE CHARACTER
22 EVIDENCE AND CHARACTER EVIDENCE ONLY.

23 JUST AS I INSTRUCTED YOU IN THE GUILT PHASE, THE
24 DEFENDANT, JAMES DEJARNETTE ROBERTSON, HAS AN ABSOLUTE
25 RIGHT UNDER OUR CONSTITUTION TO REMAIN SILENT. HE NEED NOT

1 TESTIFY IN THIS CASE.

2 THE FACT THAT HE HAS CHOSEN TO EXERCISE HIS
3 CONSTITUTIONAL RIGHT TO REMAIN SILENT MAY NOT BE CONSIDERED
4 BY YOU IN ANY FASHION WHATSOEVER IN DETERMINING WHAT
5 PENALTY TO RECOMMEND. YOU CANNOT DISCUSS IT, YOU CANNOT
6 EVEN FACTOR IT INTO YOUR OWN CONSIDERATION. UNDER YOUR
7 OATH YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSION
8 WHATSOEVER FROM THE FACT THAT MR. ROBERTSON EXERCISED HIS
9 CONSTITUTIONAL RIGHT TO REMAIN SILENT.

10 THE BURDEN OF PROOF IS UPON THE STATE TO PROVE
11 BEYOND A REASONABLE DOUBT AN AGGRAVATING CIRCUMSTANCE AS
12 OUTLINED TO YOU. THE EXERCISE BY MR. ROBERTSON OF HIS
13 CONSTITUTIONAL RIGHT TO REMAIN SILENT IS NOT TO BE
14 CONSIDERED BY YOU IN DETERMINING THE QUESTION OF
15 SENTENCING.

16 IN DETERMINING YOUR SENTENCE RECOMMENDATION, YOU
17 MAY CONSIDER THE EVIDENCE OF THE VICTIMS' PERSONAL
18 CHARACTERISTICS. IN CONSIDERING SUCH EVIDENCE, YOU MAY
19 CONSIDER THE VICTIMS, AND WHEN I SAY VICTIMS I'M TALKING
20 ABOUT BOTH MR. AND MRS. EARL AND TERRY ROBERTSON, YOU MAY
21 CONSIDER SUCH EVIDENCE OF THE VICTIMS' UNIQUENESS AS
22 INDIVIDUAL HUMAN BEINGS.

23 IN DETERMINING JAMES ROBERTSON'S MORAL
24 CULPABILITY AND BLAMEWORTHINESS, YOU MAY CONSIDER THE
25 SPECIFIC HARM CAUSED BY THE MURDER, THE CONSEQUENCES OF HIS

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1 CRIMINAL ACT, PERSONAL CHARACTERISTICS OF THE VICTIMS,
2 INJURY DONE TO SOCIETY BY THE CRIMES. YOU MAY CONSIDER THE
3 UNIQUE LOSS TO SOCIETY, THE LOSS TO THE VICTIMS' FAMILY.
4 YOU MAY CONSIDER THE HUMAN COST OF THE CRIMES COMMITTED BY
5 THE DEFENDANT.

6 FOR YOUR DELIBERATIONS YOU SHOULD UNDERSTAND THAT
7 THE GENERAL ASSEMBLY HAS PROVIDED A PERSON WHO IS CONVICTED
8 OF OR PLEADS GUILTY TO MURDER MUST BE PUNISHED BY DEATH OR
9 BY IMPRISONMENT FOR LIFE. IF THE STATE SEEKS THE DEATH
10 PENALTY AND A STATUTORY AGGRAVATING CIRCUMSTANCE IS FOUND
11 BEYOND A REASONABLE DOUBT AND A RECOMMENDATION IS NOT MADE,
12 THE TRIAL JUDGE MUST IMPOSE A SENTENCE OF LIFE
13 IMPRISONMENT.

14 THE TERM LIFE IMPRISONMENT MEANS UNTIL THE DEATH
15 OF THE OFFENDER. NO PERSON SENTENCED TO LIFE IMPRISONMENT
16 PURSUANT TO THIS SECTION IS ELIGIBLE FOR PAROLE, COMMUNITY
17 SUPERVISION OR ANY EARLY RELEASE PROGRAMS. NOR IS THE
18 PERSON ELIGIBLE TO RECEIVE ANY WORK CREDITS, EDUCATION
19 CREDITS, GOOD CONDUCT CREDITS OR ANY OTHER CREDITS THAT
20 WOULD REDUCE THE MANDATORY LIFE IMPRISONMENT REQUIRED.

21 AS I HAVE TOLD YOU, A STATUTORY AGGRAVATING
22 CIRCUMSTANCE MUST BE PROVEN UNANIMOUSLY AND BEYOND A
23 REASONABLE DOUBT.

24 NO SUCH REQUIREMENT EXISTS FOR THE CONSIDERATION
25 OF A MITIGATING CIRCUMSTANCE. RATHER, IN DECIDING THE

1 APPROPRIATE SENTENCE IN THIS CASE, EACH INDIVIDUAL JUROR
2 MUST CONSIDER EACH MITIGATING CIRCUMSTANCE WHICH HE OR SHE
3 FINDS TO BE SUPPORTED BY THE EVIDENCE. IT IS NOT NECESSARY
4 THAT THE ENTIRE JURY UNANIMOUSLY AGREE ON THE EXISTENCE OF
5 ANY MITIGATING FACTOR BEFORE YOU AS A JUROR MAY CONSIDER
6 IT. RATHER, THE EXISTENCE OF MITIGATING CIRCUMSTANCES AND
7 THE WEIGHT TO BE ACCORDED TO ANY ARE MATTERS WHICH EACH OF
8 YOU MAY DETERMINE FOR HIS OR HER SELF.

9 IT IS NOT NECESSARY FOR THE EXISTENCE OF ANY
10 MITIGATING CIRCUMSTANCE TO BE PROVEN BEYOND A REASONABLE
11 DOUBT BEFORE ANY OR ALL OF YOU COULD CONSIDER IT. THE
12 DEFENDANT, MR. ROBERTSON, DOES NOT BEAR ANY SUCH BURDEN OF
13 PROVING THE EXISTENCE OF SUCH MITIGATING CIRCUMSTANCE.
14 RATHER, YOU ARE TO CONSIDER EACH AND EVERY MITIGATING
15 CIRCUMSTANCE WHICH YOU FIND TO BE SUPPORTED BY THE EVIDENCE
16 BEFORE YOU.

17 YOU MUST CONSIDER MITIGATING CIRCUMSTANCES
18 BECAUSE IF YOU ARE TO MAKE AN INDIVIDUALIZED ASSESSMENT OF
19 THE APPROPRIATENESS OF THE DEATH PENALTY IN THIS CASE WHICH
20 THE LAW REQUIRES YOU TO DO, EVIDENCE ABOUT MR. ROBERTSON'S
21 BACKGROUND AND CHARACTER IS RELEVANT, VERY RELEVANT.

22 MITIGATING CIRCUMSTANCES, AS I NOTED, WOULD NOT
23 BE JUSTIFICATION OR EXCUSE FOR THE EVENTS IN QUESTION,
24 RATHER A MITIGATING CIRCUMSTANCE SIMPLY LESSENS THE
25 DEFENDANT'S GUILT AND MAKES HIM LESS BLAMEWORTHY OR LESS

1 CULPABLE.

2 NOW BEFORE YOU CAN RECOMMEND THE IMPOSITION OF
3 THE LIFE SENTENCE, IT IS NOT NECESSARY THAT YOU FIND BEYOND
4 A REASONABLE DOUBT THE EXISTENCE OF THE ALLEGED STATUTORY
5 MITIGATING CIRCUMSTANCE OR ANY OTHER RELEVANT MITIGATING
6 CIRCUMSTANCE, WHILE IT IS NECESSARY FOR YOU TO FIND BEYOND
7 A REASONABLE DOUBT THE EXISTENCE OF AT LEAST ONE OF THE
8 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES BEFORE YOU
9 COULD RECOMMEND THE DEATH PENALTY FOR MR. ROBERTSON.

10 IT IS NOT REQUIRED THAT YOU FIND THE EXISTENCE OF
11 AT LEAST ONE ALLEGED MITIGATING CIRCUMSTANCE IN ORDER TO
12 RECOMMEND THE DEFENDANT RECEIVE A LIFE SENTENCE,
13 IRRESPECTIVE OF WHETHER YOU FIND THE EXISTENCE OF AN
14 ALLEGED MITIGATING CIRCUMSTANCE.

15 FURTHERMORE, EVEN IF YOU DO NOT FIND THE
16 EXISTENCE OF A MITIGATING CIRCUMSTANCE, YOU ARE STILL
17 PERMITTED TO SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.
18 YOU DO NOT HAVE TO FIND THAT A MITIGATING CIRCUMSTANCE
19 EXISTS BEFORE YOU CAN SENTENCE MR. ROBERTSON TO LIFE
20 IMPRISONMENT. RATHER, YOU MAY SENTENCE HIM TO LIFE
21 IMPRISONMENT FOR ANY REASON OR NO REASON AT ALL, AS I HAVE
22 SAID.

23 THE LAW OF THIS STATE PERMITS YOU AS JURORS IN A
24 CAPITAL CASE TO SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT
25 BECAUSE OF THE EXISTENCE OF MITIGATING CIRCUMSTANCES OR

1 PURELY AND SOLELY AS AN ACT OF MERCY.

2 NOW IN SUMMARY, YOU WILL HAVE WITH YOU IN THE
3 JURY ROOM THE STATUTORY INSTRUCTIONS, THE JURY'S VERDICT ON
4 PROOF OF AGGRAVATING CIRCUMSTANCES, AND THE JURY'S
5 DETERMINATION OF THE SENTENCE TO BE IMPOSED WHICH I HAVE
6 GONE OVER WITH YOU.

7 THESE STATUTORY INSTRUCTIONS, I REMIND YOU, SET
8 FORTH THE ONLY AGGRAVATING CIRCUMSTANCES YOU MAY CONSIDER.
9 SHOULD YOU FAIL TO FIND BEYOND A REASONABLE DOUBT THAT ONE
10 OF THESE CIRCUMSTANCES EXISTED AT THE TIME THE MURDER WAS
11 COMMITTED, THEN YOU WOULD GO NO FURTHER, YOUR
12 RECOMMENDATION MUST BE AT THAT POINT FOR LIFE IMPRISONMENT.
13 THAT IS, IF YOU DO NOT FIND BEYOND A REASONABLE DOUBT AT
14 LEAST ONE STATUTORY AGGRAVATING CIRCUMSTANCE, YOU MUST
15 RETURN A VERDICT OF LIFE IMPRISONMENT.

16 SHOULD YOU FIND BEYOND A REASONABLE DOUBT THE
17 EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES,
18 YOU WOULD THEN BE AUTHORIZED TO CONSIDER RECOMMENDING THE
19 DEATH PENALTY.

20 IN MAKING THAT DETERMINATION, YOU WOULD CONSIDER
21 ANY STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCES
22 WHATSOEVER WHICH ARE SUPPORTED BY THE EVIDENCE.

23 YOU MAY ALSO CONSIDER ANY OTHER FACTORS IN
24 MITIGATION AND YOU CAN RECOMMEND A SENTENCE OF LIFE FOR NO
25 REASON AT ALL.

1 AGAIN IF YOU DECIDE AND DETERMINE UNANIMOUSLY TO
2 RECOMMEND THE DEATH PENALTY, ALL 12 OF YOU MUST SIGN THIS
3 RECOMMENDATION.

4 IF THE RECOMMENDATION IS FOR LIFE IMPRISONMENT,
5 THEN ONLY YOUR FOREMAN NEED TO SIGN ON YOUR BEHALF.

6 WHATEVER YOUR RECOMMENDATION IS, IT MUST BE
7 UNANIMOUS; THAT IS, ALL 12 OF YOU MUST AGREE.

8 IN CONSIDERING WHETHER TO RECOMMEND A SENTENCE OF
9 DEATH OR LIFE IMPRISONMENT, I CHARGE YOU THAT AS JURORS YOU
10 MUST DECIDE THIS ISSUE WITHOUT BIAS, WITHOUT PREJUDICE;
11 YOUR VERDICT CANNOT BE BASED ON ANY ARBITRARY MATTER, NOR
12 CAN IT BE BASED ON SYMPATHY, PUBLIC FEELING, PUBLIC
13 OPINION, PASSION OR SENTIMENT.

14 THE STATE AND MR. ROBERTSON HAVE THE RIGHT TO
15 EXPECT THAT YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL
16 OF THE EVIDENCE IN THIS CASE AND FOLLOW THE LAW AS I HAVE
17 EXPLAINED IT TO YOU.

18 PLEASE BE ADVISED, AND I THINK I HAVE ALREADY
19 TOLD YOU THIS, WHILE I HAVE USED THE TERM RECOMMENDED, THE
20 SENTENCE THAT YOU RETURN TO THIS COURT WILL BE THE SENTENCE
21 THAT I AS TRIAL JUDGE WILL IMPOSE.

22 NOW, AS BEFORE, IF YOU HAVE ANY QUESTIONS WHILE
23 YOU ARE DELIBERATING, PLEASE WRITE THEM DOWN AND SEND THEM
24 OUT TO ME AND I WILL RESPOND, AS I SAID EARLIER, EITHER BY
25 RETURNING AN ANSWER ON THE NOTE AFTER CONSULTING WITH

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1 COUNSEL, OR BRINGING YOU BACK IN AND CHARGING YOU OR
2 ANSWERING WHATEVER QUESTION HERE IN THE COURTROOM. IF YOU
3 WISH TESTIMONY REPLAYED, LET US KNOW THAT AND WE WILL DO
4 THAT.

5 YOU WILL HAVE AGAIN WITH YOU IN THE JURY ROOM THE
6 EXHIBITS. IF YOU WISH TO TAKE A BREAK, JUST LET ME KNOW,
7 BUT ALL OF YOU TAKE A BREAK; YOU ARE EITHER ALL WORKING OR
8 YOU ARE ALL ON BREAK. YOU DON'T HAVE TO ASK MY PERMISSION
9 TO TAKE A BREAK, BUT I DO LIKE TO KNOW THAT YOU ARE ON
10 BREAK.

11 MS. WRIGHT AND MS. CHRISTENSEN WILL BE KEPT
12 SEPARATE, THE TWO ALTERNATES, BECAUSE YOU WILL NOT BE
13 PARTICIPATING IN THE DELIBERATION BUT I CAN'T LET YOU GO AT
14 THIS TIME.

15 BEFORE YOU START YOUR DELIBERATION, JUST LIKE
16 BEFORE, I AM GOING TO LET YOU GO INTO THE JURY ROOM. I AM
17 GOING TO ASK YOU NOT TO GET TOO COMFORTABLE OR TO START YET
18 BECAUSE I HAVE TO GO OVER WITH THE ATTORNEYS MY CHARGE. IF
19 I HAVE MADE AN ERROR, I WILL BRING YOU BACK IN AND CORRECT
20 IT. IF I DO NOT BRING YOU BACK IN, WE WILL SEND IN TO YOU
21 THE STATUTORY INSTRUCTIONS, THE FORMS THAT GO WITH THEM AND
22 THE EXHIBITS AND THE BAILIFF WILL TELL YOU TO START YOUR
23 DELIBERATIONS.

24 WE WILL LEAVE IT UP TO YOU TO LET US KNOW IF YOU
25 REACH A POINT WHERE YOU WANT US TO ORDER DINNER FOR YOU.

1 YOU WILL KNOW MORE ABOUT HOW YOUR TIME IS PROGRESSING. SO,
2 MR. GWINN, Y'ALL LET ME KNOW WHEN YOU THINK IT OUGHT TO BE
3 TIME TO ORDER YOU SOMETHING TO EAT IF WE REACH THAT POINT.

4 I AM GOING TO LET YOU GO NOW TO THE JURY ROOM AND
5 I WILL EITHER SEND FOR YOU OR SEND THE MATERIAL IN IN JUST
6 A MINUTE.

7 IN CAMERA:

8 THE COURT: ANY EXCEPTIONS BY THE STATE?

9 MR. POPE: YOUR HONOR, NOT AS TO THE INSTRUCTIONS
10 BUT ON THE VERDICT FORM, AND I KNOW WE'VE ALL GONE OVER IT
11 WITH A FINE TOOTH COMB, BUT I CALL THE COURT'S ATTENTION TO
12 THE SECOND PAGE UNDER ITEM 4 WHERE IT SAYS TO DETERMINE
13 WHETHER THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT AND
14 IT BEGINS TO LIST THE MITIGATING CIRCUMSTANCES?

15 THE COURT: RIGHT.

16 MR. POPE: IT SAYS "YOU MAY ALSO CONSIDER ANY ONE
17 OF THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCES" AND
18 THEN IT LISTS THOSE FOUR.

19 ON PAGE 2244 OF THE CHARGE YOU GAVE US, AND YOU
20 SAID IT IN YOUR CHARGE, "THAT YOU BELIEVE ARE SUPPORTED BY
21 THE EVIDENCE". MY CONCERN IS THE WAY IT IS STRUCTURED
22 THERE, IT APPEARS TO BE THE COURT'S COMMENTS, YOU KNOW, ON
23 THE FACTS AND I WOULD ASK THAT YOU STATE "YOU MAY ALSO
24 CONSIDER ANY OF THE FOLLOWING STATUTORY MITIGATING
25 CIRCUMSTANCES THAT YOU BELIEVE ARE SUPPORTED BY THE

1 EVIDENCE".

2 THE COURT: WELL, IF YOU LOOK AT THE LAST
3 SENTENCE. LOOK ON DOWN AT THE PARAGRAPH ON THE NEXT PAGE.

4 MR. POPE: YES, SIR. THAT'S DISCUSSING NON-
5 STATUTORY, I BELIEVE.

6 THE COURT: YES, YOU'RE RIGHT, YOU'RE RIGHT. I'M
7 NOT GOING TO CHANGE IT THOUGH. THIS IS A FORM I'VE USED
8 BEFORE AND I MAY HAVE SAID IT DIFFERENT, BUT I'M GOING TO
9 SEND IT BACK AS IT IS. ANYTHING FURTHER FROM THE STATE?

10 MR. POPE: YOUR HONOR, THE ONLY OTHER ISSUE WE
11 HAVE, I KNOW WE HAVE SOME ITEMS THAT WERE HELD OUT, AND
12 I'VE DISCUSSED THIS A LITTLE BIT WITH MR. BOYD, THERE WERE
13 A COUPLE OF ITEMS THAT WERE HELD OUT, I THINK THEY ACTUALLY
14 TOOK PART OF IT AND PUT IT INTO EVIDENCE AS ONE OF THEIR
15 EXHIBITS, BUT THE ITEMS THAT WERE HELD OUT THE FIRST TIME,
16 WE ARE GOING TO HAVE TO ADDRESS AS WE SORT THROUGH THE
17 EVIDENCE.

18 THE COURT: ALL RIGHT. ALSO THE ARTICLE THAT I
19 ALLOWED INTO EVIDENCE THAT I LATER DECIDED SHOULD NOT
20 ACTUALLY GO TO THE JURY, HAS THAT GOTTEN RETURNED BY ---

21 MR. POPE: IT HAS ARRIVED, YOUR HONOR.

22 THE COURT: ALL RIGHT. ANY EXCEPTIONS FROM THE
23 DEFENSE?

24 MR. BOYD: YOUR HONOR, OF COURSE, WE EXCEPT TO
25 NOT CHARGING THE INSTRUCTIONS THAT WE REQUESTED AND I WOULD

1 JUST ASK THE COURT TO MAKE THEM A PART OF THE RECORD.

2 THE COURT: I'M GOING TO ASK YOU TO HAND UP A
3 COPY, IF YOU WILL, BECAUSE MINE ARE ALL MARKED UP. YOU
4 DON'T HAVE TO DO IT RIGHT THIS MINUTE.

5 MR. BOYD: AND, YOUR HONOR, TWICE YOU DESCRIBED
6 THE MITIGATING CIRCUMSTANCES AS REDUCING THE DEGREE OF
7 GUILT AND I THINK THAT SHOULD HAVE SAID RESPONSIBILITY
8 INSTEAD OF GUILT BECAUSE EITHER YOU'RE GUILTY OR YOU'RE
9 NOT.

10 THE COURT: WELL, YOU'RE PROBABLY RIGHT AND I WAS
11 READING IT OFF THE WAY I HAVE USED IT BEFORE.

12 MR. BOYD: I KNOW, I WAS IN THAT CASE AND I
13 DIDN'T CATCH IT THAT TIME BUT IT JUST HIT ME WHILE YOU WERE
14 CHARGING IT.

15 THE COURT: WELL, I THINK LOOKING AT THE CHARGE
16 AS A WHOLE THOUGH -- WHEN I FIRST DEFINED IT, I TALKED
17 ABOUT IT EXTENUATING OR REDUCING THE DEGREE OF MORAL
18 CULPABILITY FOR THE COMMISSION, AND I DO SAY IT LESSENS THE
19 DEGREE OF ONE'S GUILT. BUT THEN I FOLLOWED IT UP BY
20 SAYING, THAT IS MAKES HIM LESS BLAMEWORTHY OR LESS
21 CULPABLE.

22 WHERE WAS THE OTHER PLACE I SAID IT?

23 MR. BOYD: YOUR HONOR, IF YOU'RE USING THAT
24 TRANSCRIPT, IT WAS PAGE 2245.

25 THE COURT: WELL, I SAID THE SAME THING. LESSENS

1 HIS GUILT AND MAKES HIM LESS BLAMEWORTHY OR LESS CULPABLE.
2 I THINK READING IT AS A WHOLE, I'M NOT GOING TO RECHARGE
3 THEM THAT.

4 MR. BOYD: YOUR HONOR, ONE OTHER EXCEPTION, AND
5 I KNOW YOU RULED ON THAT WHEN YOU RULED ON THE PAYNE
6 QUESTION, BUT WE WOULD EXCEPT TO THE CHARGE THAT YOU MAY
7 CONSIDER THE VICTIMS' UNIQUENESS AS AN INDIVIDUAL HUMAN
8 BEING AND YOU MAY CONSIDER THE CONSEQUENCES OF THE
9 DEFENDANT'S CRIMINAL ACT, THE PERSONAL CHARACTERISTICS OF
10 THE VICTIM AND THE INJURY DONE TO SOCIETY BY THE CRIME.

11 WE WOULD EXCEPT TO ALL OF THOSE THINGS.

12 THE COURT: ON WHAT GROUNDS?

13 MR. BOYD: BASICALLY, YOUR HONOR, THAT WAS PAYNE
14 EVIDENCE, WE HAD EXCEPTED TO THAT TO BEGIN WITH, THAT
15 COMING IN AT ALL, SO I THINK IT IS INCUMBENT ON US TO
16 EXCEPT TO THAT CHARGE ALSO.

17 THE COURT: ALL RIGHT. AND I WILL CALL YOUR
18 ATTENTION THAT ON PAGE 2243 I LEFT OUT AT LINE 22,
19 PARTICULARLY, WE'RE TALKING ABOUT THE UNIQUE LOSS TO
20 SOCIETY AND PARTICULARLY THE VICTIM'S FAMILY CAUSED BY THE
21 VICTIM'S DEATH. THERE REALLY WAS NO TESTIMONY -- I'M
22 SORRY, I PUT THAT IN, BUT I LEFT OUT AT LINE 19 THE IMPACT
23 OF THE MURDER UPON THE VICTIM'S FAMILY BECAUSE THERE WAS NO
24 EVIDENCE ---

25 MR. BOYD: I SAW THAT.

1 THE COURT: THERE WAS NO EVIDENCE OF THAT, BUT
2 THERE ARE STILL A PARENT AND A CHILD. AND SO WHILE THERE
3 WAS NO EVIDENCE PRESENTED, THEY CAN STILL CONSIDER THE
4 IMPACT. THAT'S WHY I DID THAT. ALL RIGHT, ANYTHING ELSE?

5 MR. BOYD: NO, SIR, THAT'S ALL.

6 THE COURT: ALL RIGHT, SEND THE EXHIBITS BACK AND
7 THE STATUTORY INSTRUCTIONS AND WE'LL BE AT EASE.

8 MR. POPE: YOUR HONOR, I THINK WE WILL PROBABLY
9 HAVE TO DO -- AS MANY TIMES AS THEY HAVE BEEN AROUND, DO
10 LIKE WE DID THE OTHER DAY, AND GO THROUGH THEM AND THEN WE
11 WILL COME TO THE COURT AND ADDRESS THE ONES THAT THERE ARE
12 ISSUES ABOUT.

13 THE COURT: ALL RIGHT. OF COURSE, THE ALTERNATES
14 ARE ALREADY SEGREGATED?

15 THE BAILIFF: YES, YOUR HONOR.

16 THE COURT: IF YOU WILL TELL THE OTHER 12 NOT TO
17 START DELIBERATING, THAT IT IS GOING TO TAKE US A MINUTE TO
18 SEND THE MATERIAL IN AND IF THEY WANT TO TAKE A SMOKE BREAK
19 OR TAKE A BREAK -- THEY DO NOT HAVE TO COME BACK IN THE
20 COURTROOM, BUT THEY ARE NOT TO START DELIBERATING.

21 ANY OBJECTION FROM THE STATE?

22 MR. POPE: NO, SIR, YOUR HONOR.

23 THE COURT: THE DEFENSE?

24 MR. BOYD: NONE, YOUR HONOR.

25 THE COURT: WE'LL BE AT EASE, AND WHEN YOU GET

1 THAT READY, I'LL BE IN CHAMBERS.

2 (THE EXHIBITS AND FORMS WERE GIVEN TO THE JURY AND THEY
3 BEGAN THEIR DELIBERATION AT 5:45 P.M.)

4 IN CAMERA:

5 MR. POPE: YOUR HONOR, FIRST AS TO THE EVIDENCE
6 THAT JUST WENT BACK, MR. BOYD AND I DISCUSSED, WE HAD A
7 NUMBER OF ITEMS THAT WE HAD HELD OUT DURING THE GUILT BY
8 MUTUAL CONSENT. THE ITEMS THAT ARE GOING BACK, IT'S ONE
9 ITEM THAT WAS OUT -- IT'S THE POCKETBOOK, MR. BOYD, OR THE
10 FILE BOX?

11 MR. BOYD: IT'S OUT OF THE FILE BOX.

12 MR. POPE: OKAY. ONE ITEM OUT OF THE FILE BOX IS
13 GOING BACK BY VIRTUE OF IT'S ONE OF THE DEFENDANT'S ACTUAL
14 EXHIBITS THAT THEY BLEW UP. ALSO ---

15 MR. HANCOCK: YOUR HONOR, WE MIGHT -- SINCE WE
16 ARE ON THE RECORD, WE MIGHT BETTER GET THE DEFENDANT IN
17 HERE.

18 THE COURT: OH, I'M SORRY; LET'S DO THAT. THANK
19 YOU.

20 (THE DEFENDANT CAME INTO THE COURTROOM.)

21 THE COURT: MR. ROBERTSON, WE BROUGHT YOU BACK
22 IN, WE ARE DISCUSSING CERTAIN MATTERS DEALING WITH SOME
23 EVIDENTIARY QUESTIONS.

24 MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR,
25 IT WAS EXHIBIT 76 THAT WAS A BOTTLE OF ZYDOT THAT WAS NOT

1 SENT BACK ORIGINALLY THAT WILL BE SENT BACK.

2 ALSO THERE WERE ITEMS THAT WERE HELD OUT FROM THE
3 FILE BOX AND, YOUR HONOR, I'LL SEE IF I CAN GET THAT IN
4 FRONT OF ME. A GRAY METAL BOX, EXHIBIT 22, THE CONTENTS
5 WERE REMOVED WHEN THEY WERE SENT BACK IN GUILT. ONLY ONE
6 ITEM WHICH I BELIEVE WAS LIKE A LETTER OR A NOTE FROM TERRY
7 ROBERTSON IS GOING BACK, BUT IT IS GOING BACK BY VIRTUE OF
8 ONE OF THE DEFENSE EXHIBITS.

9 THE COURT: ALL RIGHT.

10 THE CLERK: ALL OTHER ITEMS THAT WERE HELD OUT
11 WHICH INCLUDED THE LETTERS OF THE DEFENDANT THAT WERE ONLY
12 USED TO COMPARE HANDWRITING, MISCELLANEOUS CONTENTS OF THE
13 POCKETBOOK AND MISCELLANEOUS CONTENTS OF THE FILE BOX WILL
14 REMAIN WITH THE CLERK BUT ARE NOT GOING BACK ALSO BY MUTUAL
15 CONSENT.

16 MR. HANCOCK: AND THE ONE THING THAT IS GOING
17 BACK, I BELIEVE IS THE BLOW-UP OF HER NOTEBOOK.

18 MR. POPE: YES, SIR. I JUST WANTED TO PUT THAT ON
19 THE RECORD, YOUR HONOR. THAT WOULD BE IT, I BELIEVE.

20 MR. HANCOCK: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: ALL RIGHT. MR. ROBERTSON, YOU CAN GO
22 BACK IN THE HOLDING CELL.

23 (THE JURY NOTIFIED THE COURT THAT THEY HAD REACHED VERDICTS
24 AT 9:20 P.M.)

25 IN CAMERA:

1 THE COURT: LET THE RECORD SHOW THAT DEFENDANT
2 AND COUNSEL ARE PRESENT. I UNDERSTAND THE JURY HAS REACHED
3 VERDICTS. I WANT TO ADMONISH EVERYONE, I DON'T KNOW WHAT
4 THE VERDICT IS, OF COURSE, BUT WHATEVER THE VERDICT IS IF
5 YOU DO NOT THINK YOU CAN CONTROL YOUR EMOTIONS, PLEASE
6 LEAVE THE COURTROOM NOW. NO OUTBURSTS WILL BE TOLERATED.
7 ANY OUTBURST WILL BE CONSIDERED A CONTEMPTUOUS ACT,
8 SUBJECTING THAT PARTICULAR PERSON TO INCARCERATION OR A
9 FINE. SO, IF YOU CAN'T CONTROL YOUR EMOTIONS, DON'T REMAIN
10 IN THE COURTROOM.

11 ALL RIGHT, BRING IN THE JURY.

12 IN THE PRESENCE OF THE JURY:

13 THE COURT: MR. FOREMAN, I UNDERSTAND THE JURY
14 HAS REACHED VERDICTS?

15 THE FOREMAN: YES, SIR.

16 THE COURT: IF YOU WILL HAND THEM UP BY WAY OF
17 THE BAILIFF.

18 (THE VERDICT FORMS WERE GIVEN TO THE COURT.)

19 THE COURT: THE CASE OF THE STATE OF SOUTH
20 CAROLINA VERSUS JAMES DEJARNETTE ROBERTSON, AS TO EARL
21 ROBERTSON, SENIOR, INDICTMENTS 98-GS-46-1020 AND 1022, THE
22 JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES, "WE
23 THE JURY IN THE ABOVE ENTITLED CASE UNANIMOUSLY FIND BEYOND
24 A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING STATUTORY
25 AGGRAVATING CIRCUMSTANCES: 1, THE MURDER WAS COMMITTED

1 WHILE IN THE COMMISSION OF A ROBBERY WHILE ARMED WITH A
2 DEADLY WEAPON; 2, THE MURDER WAS COMMITTED WHILE IN THE
3 COMMISSION OF LARCENY WITH A DEADLY WEAPON; 3, THE MURDER
4 WAS COMMITTED WHILE IN THE COMMISSION OF PHYSICAL TORTURE;
5 4, THE DEFENDANT, JAMES DEJARNETTE ROBERTSON, COMMITTED THE
6 MURDER FOR HIMSELF OR ANOTHER FOR THE PURPOSE OF RECEIVING
7 MONEY OR A THING OF MONETARY VALUE; 5, TWO PERSONS WERE
8 MURDERED BY THE DEFENDANT, JAMES DEJARNETTE ROBERTSON, BY
9 ONE ACT PURSUANT TO ONE SCHEME OR COURSE OF CONDUCT".

10 SIGNED BY ALL 12. SIGNED BY JERRY GWINN, FOREMAN; MICHAEL
11 TERLINDE; I CAN'T READ THE THIRD -- WELL, BETTY ZAPATA;
12 KELLY HOPE; SUSAN COCHRAN; SUE MOORE; DONNA PARLER; ROBERT
13 LONCARIC; ROGER STIKELEATHER; LISA LILLY; AND THE OTHER TWO
14 ARE ROBERT THOMAS -- AND WHO AM I LEAVING OUT?

15 A JUROR: TORRENCE SMITH.

16 THE COURT: TORRENCE SMITH AND ---

17 A JUROR: THAT'S ROBERT THURMAN.

18 THE COURT: ROBERT THURMAN, I'M SORRY. TERRY
19 ROBERTSON. THE STATE OF SOUTH CAROLINA VERSUS JAMES
20 DEJARNETTE ROBERTSON, 98-GS-46-1021 AND 1022, THE JURY'S
21 DETERMINATION OF THE SENTENCE TO BE IMPOSED: "WE THE JURY
22 IN THE ABOVE ENTITLED CASE UNANIMOUSLY RECOMMEND THAT THE
23 DEFENDANT, JAMES DEJARNETTE ROBERTSON, BE SENTENCED TO
24 DEATH". SIGNED BY JERRY D. GWINN, ROGER STIKELEATHER.
25 SCOTT TERLINDE, SUSAN COCHRAN, KELLY HOPE, ROBERT LONCARIC,

1 LISA LILLY, DONNA PARLER, TORRENCE SMITH, BETTY ZAPATA, SUE
2 MOORE, AND I'M STILL -- WHAT'S THE OTHER NAME I'M MISSING
3 AGAIN?

4 A JUROR: ROBERT THURMAN.

5 THE COURT: ROBERT THURMAN. I'M SORRY. THE
6 STATE OF SOUTH CAROLINA VERSUS JAMES DEJARNETTE ROBERTSON,
7 THE JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES:
8 "WE THE JURY IN THE ABOVE ENTITLED CASE UNANIMOUSLY FIND
9 BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING
10 STATUTORY AGGRAVATING CIRCUMSTANCES:

11 1, THE MURDER WAS COMMITTED WHILE IN THE
12 COMMISSION OF A ROBBERY WHILE ARMED WITH A DEADLY WEAPON.

13 2, THE MURDER WAS COMMITTED WHILE IN THE
14 COMMISSION OF A LARCENY BY THE USE OF A DEADLY WEAPON.

15 3, THE MURDER WAS COMMITTED WHILE IN THE
16 COMMISSION OF PHYSICAL TORTURE.

17 4, THE DEFENDANT, JAMES DEJARNETTE ROBERTSON,
18 COMMITTED THE MURDER FOR HIMSELF OR ANOTHER FOR THE PURPOSE
19 OF RECEIVING MONEY OR A THING OF MONETARY VALUE.

20 5, TWO PERSONS WERE MURDERED BY THE DEFENDANT,
21 JAMES DEJARNETTE ROBERTSON BY ONE ACT OR PURSUANT TO ONE
22 SCHEME OR COURSE OF CONDUCT."

23 SIGNED BY JERRY GWINN, MICHAEL TERLINDE, TORRENCE
24 SMITH, BETTY ZAPATA, KELLY HOPE, SUSAN COCHRAN, SUE MOORE,
25 DONNA PARLER, ROGER STIKELEATHER, ROBERT THURMAN, ROBERT

1 LONCARIC, AND LISA LILLY.

2 THE JURY'S DETERMINATION OF THE SENTENCE TO BE
3 IMPOSED ON TERRY ROBERTSON, 98-GS-46-1021 AND 1022, "WE THE
4 JURY IN THE ABOVE ENTITLED CASE UNANIMOUSLY RECOMMEND THAT
5 THE DEFENDANT, JAMES DEJARNETTE ROBERTSON, BE SENTENCED TO
6 DEATH". SIGNED BY ALL 12, JERRY D. GWINN, SCOTT TERLINDE,
7 ROGER STIKELEATHER, ROBERT LONCARIC, SUSAN D. COCHRAN,
8 KELLY HOPE, LISA LILLY, DONNA PARLER, BETTY ZAPATA,
9 TORRENCE SMITH, SUE M. MOORE AND ROBERT THURMAN.

10 IF THIS BE YOUR VERDICT AS TO EARL ROBERTSON, SO
11 SAY YOU ALL BY RAISING YOUR RIGHT HAND. ALL 12 RAISE THEIR
12 RIGHT HAND.

13 IF THIS BE YOUR VERDICT REGARDING TERRY
14 ROBERTSON, SO SAY YOU ALL BY RAISING YOUR RIGHT HAND.

15 (ALL JURORS RAISED THEIR HANDS.)

16 THE COURT: ALL RIGHT, I'M GOING TO ASK THE CLERK
17 TO POLL THE JURY.

18 THE JURY WAS POLLED BY THE CLERK AS FOLLOWS:

19 Q. ALL JURORS PLEASE STAND AND AS YOUR NAME IS
20 CALLED, YOU MAY BE SEATED. JERRY GWINN, WOULD
21 YOU JUST STAND FOR A SECOND. ARE THESE YOUR
22 SIGNATURES ON THESE DOCUMENTS?

23 A. YES.

24 Q. AND DO YOU STILL AFFIRM THERETO?

25 A. YES.

1 Q. THANK YOU; YOU MAY BE SEATED. DONNA PARLER. ARE
2 THESE YOUR SIGNATURES ON THESE DOCUMENTS?

3 A. YES, MA'AM.

4 Q. AND DO YOU STILL AFFIRM THERETO?

5 A. YES.

6 Q. YOU MAY BE SEATED. ROBERT THURMAN; ARE THESE
7 YOUR SIGNATURES, MR. THURMAN?

8 A. YES, THEY ARE.

9 Q. AND YOU STILL AFFIRM THERETO?

10 A. YES.

11 Q. THANK YOU. SUE MOORE. MS. MOORE, ARE THESE
12 YOUR SIGNATURES ON THESE DOCUMENTS?

13 A. YES.

14 Q. AND DO YOU STILL AFFIRM THERETO?

15 A. YES.

16 Q. THANK YOU. MICHAEL TERLINDE. ARE THESE YOUR
17 SIGNATURES?

18 A. YES, MA'AM.

19 Q. AND YOU STILL AFFIRM THERETO?

20 A. YES.

21 Q. THANK YOU. BETTY ZAPATA; ARE THESE YOUR
22 SIGNATURES?

23 A. YES, MA'AM.

24 Q. AND YOU STILL AFFIRM THERETO?

25 A. YES, MA'AM.

1 Q. THANK YOU. SUSAN COCHRAN; ARE THESE YOUR
2 SIGNATURES ON THESE DOCUMENTS?

3 A. YES.

4 Q. AND YOU STILL AFFIRM THERETO?

5 A. YES.

6 Q. ROBERT LONCARIC; ARE THESE YOUR SIGNATURES?

7 A. YES.

8 Q. AND YOU STILL AFFIRM THERETO?

9 A. YES.

10 Q. LISA LILLY; ARE THESE YOUR SIGNATURES, MS.
11 LILLY?

12 A. YES, MA'AM.

13 Q. AND YOU STILL AFFIRM THERETO?

14 A. YES, MA'AM.

15 Q. THANK YOU. TORRENCE SMITH; ARE THESE YOUR
16 SIGNATURES, MR. SMITH?

17 A. YES.

18 Q. AND YOU STILL AFFIRM THERETO?

19 A. YES.

20 Q. THANK YOU. ROGER STIKELEATHER; ARE THESE YOUR
21 SIGNATURES?

22 A. YES.

23 Q. AND YOU STILL AFFIRM THERETO?

24 A. YES.

25 Q. AND KELLY HOPE; ARE THESE YOUR SIGNATURES?

1 A. YES.

2 Q. AND YOU STILL AFFIRM THERETO?

3 A. YES.

4 THE COURT: WILL YOU BRING IN THE TWO ALTERNATES?

5 THE COURT: I'LL KEEP YOU JUST ONE MORE MINUTE;
6 I HAVE SOME INSTRUCTIONS TO GIVE YOU AND THEN I'M GOING TO
7 LET YOU GO BACK TO THE JURY ASSEMBLY ROOM AND THEN I AM
8 GOING TO COME BACK THERE AND PERSONALLY THANK YOU FOR YOUR
9 WORK THIS WEEK IN JUST A FEW MINUTES.

10 (THE ALTERNATE JURORS WERE BROUGHT INTO THE COURTROOM.)

11 MS. CHRISTENSEN AND MS. WRIGHT, THE JURY HAS
12 REACHED VERDICTS AS TO BOTH; THE PENALTY OF DEATH HAS BEEN
13 IMPOSED.

14 I AM GOING TO GIVE YOU SOME INSTRUCTIONS THAT ARE
15 REQUIRED BY OUR LEGISLATURE AND THEN I AM GOING TO ASK YOU
16 TO GO BACK INTO THE JURY ROOM BECAUSE I WANT TO COME BACK
17 AND PERSONALLY THANK YOU FOR YOUR WORK.

18 OUR LEGISLATURE HAS DECREED THAT ANY JUROR
19 SERVING WITHIN A CRIMINAL CASE WHERE THE DEATH PENALTY IS
20 AN OPTION RECEIVE THESE INSTRUCTIONS, NOT ONLY ORALLY BUT
21 I WILL GIVE EACH OF YOU A COPY.

22 AFTER YOUR SERVICE IN THIS TRIAL IS CONCLUDED,
23 YOU HAVE THE RIGHT TO EITHER REFUSE TO DISCUSS THE VERDICT
24 THAT YOU HAVE RENDERED OR TO DISCUSS THE VERDICT TO THE
25 EXTENT YOU SO DESIRE.

1 IF YOU CHOOSE TO DISCUSS THE VERDICT, YOU ARE
2 FREE TO TERMINATE ANY SUCH DISCUSSION AT ANY POINT. IF THE
3 PERSON WITH WHOM YOU ARE SPEAKING CONTINUES TO PURSUE A
4 DISCUSSION OF THE VERDICT AFTER YOU HAVE COMMUNICATED A
5 DESIRE TO TERMINATE THE DISCUSSION OR IF A PERSON CONTINUES
6 TO HARASS YOU AFTER YOUR REFUSAL TO DISCUSS THE VERDICT,
7 YOU SHOULD REPORT THAT PERSON TO THE HONORABLE DAVID
8 HAMILTON, OFFICE OF THE CLERK OF COURT, MOSS JUSTICE
9 CENTER, 1675 YORK HIGHWAY, YORK, SOUTH CAROLINA 29745, 803-
10 628-3036. IT IS SIGNED BY ME, TODAY'S DATE.

11 ANYTHING FROM THE STATE BEFORE I LET THE JURY GO?

12 MR. POPE: NO, SIR, YOUR HONOR.

13 THE COURT: ANYTHING FROM THE DEFENSE?

14 MR. BOYD: NO, SIR.

15 THE COURT: ALL RIGHT, IF YOU WILL JUST HAND EACH
16 ONE A COPY OF THIS AND IF YOU DON'T MIND WAITING JUST A FEW
17 MORE MINUTES, I WANT TO COME AND PERSONALLY THANK YOU.

18 (THE JURY LEFT THE COURTROOM)

19 THE COURT: NOW THAT THE JURY HAS BEEN DISMISSED,
20 ANYTHING FROM THE STATE?

21 MR. POPE: NO, SIR, YOUR HONOR.

22 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

23 MR. BOYD: NO, SIR.

24 THE COURT: ALL RIGHT, BRING THE DEFENDANT AROUND
25 FOR SENTENCING.

1 (THE DEFENDANT AND HIS COUNSEL APPROACHED THE BENCH.)

2 THE COURT: MR. HANCOCK, ANYTHING YOU WISH TO SAY
3 AT THIS TIME?

4 MR. HANCOCK: THERE'S NOT MUCH TO SAY, JUDGE. I
5 THINK IT'S BEEN DECIDED FOR US.

6 THE COURT: MR. BOYD, ANYTHING YOU WANT TO SAY?

7 MR. POPE: NO, SIR.

8 THE COURT: FIRST, I FIND AS AN AFFIRMATIVE FACT
9 FOR THE RECORD THAT THE DEATH PENALTY IN THIS CASE WAS
10 WARRANTED UNDER THE EVIDENCE IN THIS CASE AND IS NOT A
11 RESULT OF PREJUDICE, PASSION OR ANY OTHER ARBITRARY FACTOR.

12 MR. ROBERTSON, I'LL BE GLAD TO -- YOU HAVE AN
13 ABSOLUTE RIGHT TO SAY ANYTHING YOU WISH AT THIS TIME. I'LL
14 BE GLAD TO HEAR FROM YOU.

15 (THE DEFENDANT WAS CRYING AT THIS POINT.)

16 MR. ROBERTSON: I PASS.

17 THE COURT: HE SAYS HE PASSES. MR. ROBERTSON, ON
18 THE FINANCIAL CARD TRANSACTION FRAUD, THE SENTENCE OF THE
19 COURT IS FOR ONE YEAR IN JAIL AND IT'S CONCURRENT.

20 ON THE ARMED ROBBERY, THE SENTENCE OF THE COURT
21 IS FOR THIRTY YEARS IN JAIL; THAT'S CONCURRENT.

22 ON INDICTMENT 98-GS-46-1020, DEALING WITH THE
23 DEATH OF EARL ROBERTSON, SENIOR, THE SENTENCE OF THE COURT
24 IS DEATH PURSUANT TO SECTION 16-3-20.

25 THE SENTENCE ON 98-GS-46-1021 ON THE DEATH OF

1 TERRY ROBERTSON, THE PENALTY IS DEATH PURSUANT TO SECTION
2 16-3-20.

3 IT IS THEREFORE ORDERED UNDER THIS SENTENCE THAT
4 YOU ARE TO BE TRANSPORTED TO THE YORK COUNTY JAIL AND KEPT
5 THERE IN CLOSE AND SAFE CONFINEMENT UNTIL YOU SHALL BE
6 TRANSPORTED TO THE STATE PENITENTIARY AS REQUIRED BY LAW,
7 THERE TO BE KEPT IN CLOSE AND SAFE CONFINEMENT UNTIL THE
8 1ST DAY OF JUNE, 1999 WHEN BETWEEN THE HOURS OF 6:00 A.M.
9 AND 6:00 P.M. YOU SHALL SUFFER DEATH BY LETHAL INJECTION OR
10 AT YOUR OPTION BY ELECTROCUTION.

11 DO YOU UNDERSTAND THAT?

12 MR. ROBERTSON: YES, SIR.

13 THE COURT: MR. ROBERTSON, AS YOUR COUNSEL WILL
14 TELL YOU I AM SURE, WHILE YOU HAVE A RIGHT TO APPEAL THIS
15 CASE WITHIN 10 DAYS, SINCE THE DEATH PENALTY WAS IMPOSED
16 YOUR CASE WILL BE APPEALED AUTOMATICALLY. I AM SURE
17 COUNSEL WILL DISCUSS THAT WITH YOU, WILL YOU NOT, MR. BOYD?

18 MR. BOYD: WE WILL, YOUR HONOR.

19 MR. HANCOCK: YES, SIR.

20 THE COURT: ANYTHING FURTHER, MR. ROBERTSON?

21 MR. ROBERTSON: NO, YOUR HONOR.

22 THE COURT: MR. HANCOCK?

23 MR. HANCOCK: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: THANK YOU.

25 (WHEREUPON THE CASE ENDED.)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

CERTIFICATE

I, Janet M. Fischer, the undersigned Reporter, hereby certify that the foregoing pages consisting of 3,242 pages, constitute a true record of the trial in The case of The State versus James DeJarnette Robertson, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of counsel for, related, or in the employ of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 27th day of September, 1999.

Janet M. Fischer
Janet M. Fischer, Court Reporter
Sixteenth Judicial Circuit
State of South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORKJAMES D. ROBERTSON
SCDC ID #00005067

v.

STATE OF SOUTH CAROLINA

FILED-RECEIVED
FORM 5
2006 MAR -1 AM 11:29
DAVID HAMILTON
C.C. CP. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

06-CX46-532
APPLICATION FOR
POST-CONVICTION RELIEFCERTIFIED TRUE COPY
2006 MAR -1 AM 10:26
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC**INSTRUCTIONS- READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the application and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of Detention: Lieber Correctional Institution
2. Name and Location of Court which imposed sentence: York County General Sessions

3. Name(s) of co-defendant(s) (if any): None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) Armed Robbery; 97-GS-461020
- (b) Credit Card Fraud; 97-GS-461021
- (c) Fraudulent Check; 97-GS-46-1022
- (d) Murder; 97-GS-461023
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 26, 1999, Death Sentence
6. Check whether a finding of guilty was made:
- (a) After a plea of not guilty ✓
- (b) After a plea of guilty _____
- (c) After a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) The name of each Court to which you appealed:
- i. South Carolina Supreme Court
- ii. _____
- iii. _____
- (b) The result in each such Court to which you appealed:
- i. The Defendant dropped the appeal

- ii. _____
- iii. _____

(c) The date of each such result:

- i. 2002
- ii. _____
- iii. _____

(d) If known, citations of any written opinion or orders entered pursuant to such results:

- i. Not Applicable
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel- specifics to be amended later.
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of counsel which resulted in an unjust conviction.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) Any Petition in a State Court under South Carolina Law? No

(b) Any Petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) Any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: Not Applicable

(a) The Specific nature thereof: _____

i. _____

ii. _____

iii. _____

iv. _____

(b) The name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(b) The disposition thereof:

i. _____

- ii. _____
- iii. _____
- iv. _____

(e) If known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented tot his or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. In you answered "yes" to (14) identify:

(a) Which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) The proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) Your arraignment and plea? Yes

(b) Your trial, if any? Yes

(c) Your sentencing? Yes

(d) Your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes until the Defendant dropped the appeal.

(e) Preparation, presentation, or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) The name and address of each attorney who represented you:

i. James Boyd, 1544 Ebenezer Road, PO Box 36425, Rock Hill, South Carolina 29732.

ii. James W. Hancock, PO Box 2851, Rock Hill, South Carolina 29732

iii. _____

(b) The proceedings at which each such attorney represented you:

i. At the trial of the above-referenced indictments.

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Overtum of my conviction and a new trial.

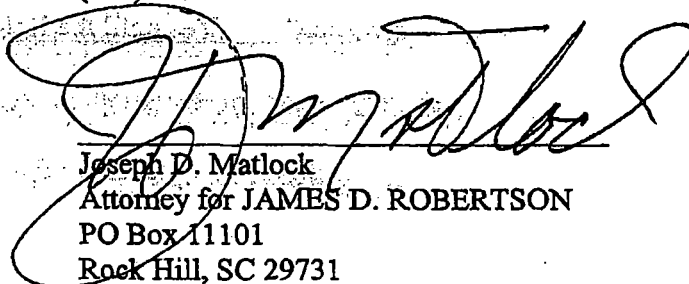
20. Are you now under sentence from any other court that you have not challenged?

No

Respectfully submitted,



Michael L. Brown, Jr.
Attorney for JAMES D. ROBERTSON
PO Box 1025
Rock Hill, SC 29731
(803) 328-8822 phone
(803) 328-0523 fax



Joseph D. Matlock
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FILED - RECEIVED

STATE OF SOUTH CAROLINA - 1 AM 11:30

COUNTY OF YORK

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

JAMES D. ROBERTSON

SCDC ID #00005067

06-CP46-532

v.

STATE OF SOUTH CAROLINA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Application for Post-Conviction Relief, regarding the above-referenced case, was placed in the United States Mail, postage prepaid, addressed to the following:

Tommy Pope
Solicitor
Moss Justice Center
1675 1-A York Hwy
York, South Carolina 29745

W. Edgar Salter, III
Attorney General
PO Box 11549
Columbia, SC 29211

DATED this 28th day of February, 2006.



MELANIE S. HOLLIMAN, Paralegal
LAW OFFICES OF MICHAEL L. BROWN, JR.
P.O. Box 1025
Rock Hill, South Carolina 29731
(803) 328-8822

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
2006 OCT 23 AM 9:32

IN THE COURT OF COMMON PLEAS

James D. Robertson, #5067,

DAVID H. HILTON
C.C.C.P. & GS
YORK COUNTY, SC

C. A. No. 06-CP-46-532

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent hereby makes Return to the Application for Post-Conviction Relief (PCR) filed on March 1, 2006. Respondent would show this Court that:

I. PROCEDURAL HISTORY

James D. Robertson (Applicant) presently is confined in the Lieber Correctional Institution of the South Carolina Department of Corrections (SCDC) pursuant to commitment orders from the York County Clerk of Court. The York County Grand Jury indicted Applicant on two counts of murder (98-GS-46-1020 & 1021), one count of armed robbery, (98-GS-46-1022), and one count of financial transaction card fraud (98-GS-46-1023). On April 30, 1998, the State served a Notice of Intent to seek the death penalty on Applicant, pursuant to S.C. Code Ann. § 16-3-20(A)(Supp. 2002). At that time, the State also gave notice that it would rely upon the aggravating circumstances that the murder was committed while in the commission of robbery while armed with a deadly weapon; larceny with the use of a deadly weapon; and physical torture. The State further gave notice that it intended to rely upon the aggravating circumstance that the offender committed the murder for himself or another for the purpose of receiving money or a thing of value and that two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.

See S.C. Code § 16-3-20(C)(a)(1)(d), (e), and (h); (4); and (9).

The South Carolina Supreme Court assigned the case to the Honorable John C. Hayes, III, and gave Judge Hayes exclusive jurisdiction over the case. James W. Hancock, Esquire, and James W. Boyd, Esquire, represented him. Sixteenth Circuit Solicitor Thomas E. Pope and Deputy Solicitor Kevin S. Brackett represented the State. Judge Hayes heard motion hearings on July 17, September 22 and 25, 1998; November 2 and 20, 1998; December 4 and 18, 1998; and on February 12 and 19, 1999.

Applicant's jury trial began on March 15, 1999. The jury found him guilty of each of the indicted offenses; and a sentencing phase was conducted following his exercise of the 24-hour statutory waiting period in § 16-3-20(B). In addition to the five statutory aggravating circumstances relied upon by the State, Judge Hayes instructed the jury on the statutory mitigating circumstances that Applicant did not have any prior convictions involving the use of violence against another person; that the murders were committed while he was under the influence of a mental or emotional disturbance; that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; and his age and mentality at the time of the crimes. § 16-3-20(C)(b)(1)-(2) and (6)(7).

The jury found each of the alleged statutory aggravating circumstances and sentenced Applicant to death for both murders. Judge Hayes affirmed their decision and impose the death sentence for murder.

Applicant did not file a timely Notice of Appeal but Judge Hayes entered a Consent Order granting relief pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). At various points on appeal, Applicant was represented before the South Carolina Supreme Court by Assistant Appellate

Defender Robert M. Dudek or Deputy Chief Appellate Defender Joseph L. Savitz, III.

On April 15, 2002, Mr. Savitz filed an Initial Brief of Appellant on Applicant's behalf, which presented three issues:

1. The judge erred by forcing appellant to submit to a state-sponsored psychological evaluation solely for the purpose of obtaining evidence to be used against him at sentencing, since neither competency to stand trial, guilty but mentally ill nor insanity were ever at issue in the case.
2. The judge erred by refusing to instruct the jury at sentencing that voluntary intoxication could be considered mitigating.
3. The judge erred by refusing to select an unbiased jury from another county, given the notoriety of the case and community sentiment against appellant.

4/15/02 Initial Brief of Appellant at p. 1.

However, Applicant wrote the South Carolina Supreme Court on June, 3, 2002, and asked the Court to relieve Mr. Savitz and allow him to proceed *pro se*. Both Mr. Savitz and the State responded to his request. The South Carolina Supreme Court filed an Order on June 26, 2002, in which it remanded the matter to Judge Hayes to hold a hearing on his competency to appear *pro se*. Judge Hayes held a hearing on his competency to appear *pro se* on October 10, 2002. Applicant was present at the hearing and Bruce M. Poore, Esquire, represented him. Senior Assistant General William Edgar Salter, III, represented the State.

On October 28, 2002, Judge Hayes signed a Report in the Supreme Court of South Carolina, in which Judge Hayes found that Applicant was competent to waive appellate counsel, and that his decision to waive counsel was knowing and voluntary. The South Carolina Supreme Court filed an Order on November 21, 2002, relieving Mr. Savitz and allowing him to appear *pro se*.

The *pro se* Initial Brief of Appellant, dated July 25, 2003, was filed by Applicant. He presented the following seven issues for appellate review:

1. The judge erred in denying 3 separate motions for a directed verdict based on insufficient evidence and State's failure to meet the burden of proof as to first element of corpus delicti of murder at the conclusion of State's case.
2. The judge erred by forcing appellant to submit to a state-sponsored psychological evaluation solely for the purpose of obtaining evidence to be used against him at sentencing, since neither competency to stand trial, guilty but mentally ill nor insanity were ever at issue in the case.
3. The judge erred by denying the jury's request to take notes while being recharged as to the law during guilt phase deliberations.
4. The judge erred in revealing the location where the jurors were sequestered thereby denying appellant his constitutional right to a fair and impartial jury.
5. The judge erred in not allowing defense to define "life imprisonment" as it appears in the state statute to potential jurors during voir dire, thereby denying appellant a fair and impartial jury.
6. The judge erred by refusing to select an unbiased jury from another county, given the notoriety of the case and community sentiment against appellant.
7. The judge erred in sentencing appellant to death.

Pro Se Initial Brief of Appellant at p. 2. The State filed the Initial Brief of Respondent on December 31, 2003.

However, Applicant subsequently indicated to the South Carolina Supreme Court that he wished to abandon his right to direct appeal. In an Order dated November 22, 2004, the South Carolina Supreme Court remanded the case to Judge Hayes for a full hearing on his competency to waive his right to direct appeal. The State submitted a Memorandum Regarding Petitioner's Right

to Waive Direct Appeal on February 14, 2005.

The hearing was held before Judge Hayes on February 22, 2005, at the Moss Justice Center in York, South Carolina. Applicant appeared *pro se* and testified at the hearing. Mr. Salter, again, represented the State. In a Report to the Supreme Court dated February 23, 2005, Judge Hayes found that Applicant was competent to waive his right to direct appeal. In an Order dated June 3, 2005, the Supreme Court of South Carolina agreed with Judge Hayes' finding that Applicant was competent to waive his right to appellate review. The Court also conducted the proportionality review required by S.C. Code Ann. § 16-3-25 (2003) and concluded

that the death penalty was not the result of passion, prejudice, or other arbitrary factors, and the evidence supports the jury's finding of aggravating circumstances. The death sentence is not excessive or disproportionate to the penalty imposed in similar cases. *See State v. Williams*, 321 S.C. 327, 468 S.E.2d 626, cert. denied, 519 U.S. 891 (1996); *State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997); *State v. Powers*, 331 S.C. 37, 501 S.E.2d 116, cert. denied, 525 U.S. 1043 (1998).

Therefore, the Court dismissed the appeal and directed the Clerk of that Court to issue an execution notice pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996).

On June 16, 2005, Applicant requested a Stay of Execution to file a Post Conviction Relief action. Respondent opposed the request by way of a June 21, 2005 letter; but the Supreme Court granted a stay pursuant to *In Re: Stays of Execution in Capital Cases*, in a July 7, 2005 Order. In the same Order, the Supreme Court appointed the Honorable John C. Few to preside over this case and directed Judge Few to hold a hearing to determine whether Mr. Robertson desired to have counsel appointed.

In accordance with *In Re: Stays of Execution*, the South Carolina Supreme Court's July 7,

2005 Order and S.C. Code Ann. § 17-27-160 (Supp. 2006), this Court held a hearing at the Greenville County Courthouse on September 23, 2005. Mr. Robertson was present at this hearing, as was Senior Assistant Attorney General Salter, who represented the State. This Court filed an Order Appointing Counsel For Post-Conviction Relief dated September 9, 2005, in which the Court appointed Michael Brown, Esquire, to represent Applicant. The PCR Application was filed on March 1, 2006.

Respondent incorporates the following documents by reference and will provide the Court with a copy of these documents at the time of any hearing:

1. The trial transcript (including pre-trial motions hearings);
2. The May 27, 1999, Consent Order;
3. The April 15, 2002, Initial Brief of Appellant;
4. The Applicant's June 3, 2002, letter to the South Carolina Supreme Court;
5. The informal response of appellate counsel to the Applicant's June 3, 2002, letter;
6. The informal response of the State to the Applicant's June 3, 2002, letter;
7. The June 26, 2002, Order of the SC Supreme Court;
8. The transcript of the October 10, 2002, competency hearing;
9. The October 20, 2002 Report to the Supreme Court;
10. The November 21, 2002 Order of the SC Supreme Court;
11. The July 25, 2003 *Pro Se* Initial Brief of Appellant;
12. The December 31, 2003 Initial Brief of Respondent;
13. The November 22, 2004 Order of the state supreme court;

14. The February 14, 2005, Memorandum Regarding Petitioner's Right to Waive Direct Appeal;
15. The February 23, 2005, Report to the Supreme Court of South Carolina;
16. The June 3, 2005 Order of the state supreme court finding Appellant competent to waive his right to direct appeal;
17. The June 16, 2005 letter request for a stay of execution;
18. Respondent's June 21, 2005 letter opposing the request for a stay of execution;
19. The July 7, 2005 Order of the state supreme court granting the stay;
20. The Order Appointing Counsel for post-conviction relief; and
21. The Post-Conviction Relief application.

II. STATEMENT OF FACTS

The direct and circumstantial evidence presented in the guilt phase of Applicant's trial, viewed in the light most favorable to the State, reasonably tended to prove that Applicant stabbed and cut his mother with a knife (State's Exhibits 23 and 27) and beat her in the head with the tines of a claw hammer (State's Exhibit 64). He killed his father in a similar fashion but also beat his father with an aluminum baseball bat and stabbed his father twice in the neck.

The primary evidence implicating him in this regard came from his co-defendant, Marilyn Moon (Tr. pp. 1575-1646), evidence which officers located in Lady Smith, Virginia, Philadelphia, Pennsylvania, and in a dumpster at the Chesapeake House exit off I-95 in Maryland as a result of Moon's statement (Tr. pp. 1442-98); the testimony of Dr. Sexton, who performed the autopsy (Tr. pp. 1784-1808); and DNA testing of the items recovered from the dumpster in Maryland. See Tr. pp. 1830-1873; 1876-84. There was, however, additional evidence which reasonably tended to

prove his guilt, such as his unauthorized use of his father's credit card at the Peach Stand to buy gasoline and the other items he discarded after he fled the jurisdiction, and his act of fleeing South Carolina.

Earl Robertson, Sr. and Terry Robertson lived at 2506 Westminister Drive. Applicant was staying there at the time of the crime. Moon testified that when she first went over to visit Applicant on the night of November 24, 1997, his parents were upstairs and she did not see them. Tr. pp. 1578-79.

When she returned to Applicant's residence some time after 5:00 a.m. on November 25, Applicant revealed his plans to kill his parents. He told her he was going to wait until his father's alarm clock rang and his father had gotten into the shower. He was then going to kill his mother. He had previously told her on many occasions that he planned to kill his parents, both when he was sober and when he was drunk. He also explained that his motive was the insurance money, which Moon said was "a couple of million" dollars. Tr. pp. 1584-97; p. 1624; pp. 1644-46.

Further, Moon testified that she heard a struggle commence several minutes after the alarm clock rang and the shower started. During the struggle, she heard Terry Richardson screaming for Earl, saying, "no, Jimmy; no, Jimmy." This lasted for about a minute or so. She later went upstairs at Applicant's direction and saw him covered with blood. Later in the attack and after the shower had stopped running, she heard a loud thumping noise for about a minute. Applicant then came downstairs and again was covered in blood. Tr. pp. 1597-1606; pp. 1615-16; pp. 1625-36; pp. 1634-35.

During their subsequent ten hour trip to Philadelphia, where he was arrested, Applicant repeatedly said that his brother, Chip (who was living in Philadelphia), was going to be proud of him

and he told her that he had broken off a knife blade in his mother's neck during the course killing her. He said that he was glad that it was over, and that he was planned to use the insurance money to buy a house on the lake and renovate a local club. Finally, he told her the plan was to pick up Chip, return home, discover the bodies and call 911. Tr. pp. 1609-16; pp. 1632-33; pp. 1641-42.

Pamela Carole testified that Nations Bank was the personal representative of the estates of Earl Robertson and Terry Robertson; that she had completed all the probate filings with the probate court; and that she had filed tax returns for the estate and income tax returns for both individuals. The combined gross worth of the estates was approximately \$2,200,000.00, and their children, Applicant and his brother Chip, were the beneficiaries. Tr. p. 1528. Tr. pp. 1527-28; p. 1533.

III. ALLEGATION

Applicant raises the following grounds for relief in his PCR Application:

1. Ineffective assistance of counsel - specifics to be amended later.

IV. DISCUSSION

Although he has indicated his intention to amend the Application in the future, Applicant's only allegation at present is that trial counsel were ineffective in his capital trial. He claims that counsel's ineffectiveness "resulted in an unjust conviction." Upon information and belief, Respondent submits that this allegation is without merit.

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his application. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish that he received ineffective assistance of counsel, an inmate must make a twofold showing. See *Wiggins v. Smith*, 539 U.S. 510 (2003). First, he must demonstrate that his attorneys' "representation fell below an objective standard of reasonableness."

Strickland, 466 U.S. at 688. “Judicial scrutiny of counsel’s performance must be highly deferential,” and “every effort [must] be made to eliminate the distorting effects of hindsight . . . and to evaluate the [challenged] conduct from counsel’s perspective as the time.” *Id.* at 689. *See also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight”).

Second, the applicant must also demonstrate that he was prejudiced by his attorneys’ ineffectiveness, *i.e.*, “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. *See also Florida v. Nixon*, 543 U.S. 175 (2004); *Palacio v. State*, 511 S.E.2d 62 (S.C. 1999). In the context of a capital sentencing proceeding, he must prove that “there is a reasonable probability that . . . the sentencer—including an appellate court, to the extent it independently reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.” *Strickland*, 466 U.S. at 695; *see also Wiggins*, 539 U.S. at 537; *Jones v. State*, 332 S.C. 329, 344-45, 504 S.E.2d 822, 829-30 (1998) (petitioner did not meet burden). Finally, the Court in *Strickland* held that “a court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies,” and “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed.” 466 U.S. at 687.

Respondents submit that Applicant cannot satisfy either requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing

to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

WHEREFORE, having made its Return, Respondent, therefore, requests a hearing limited to Applicant's request to withdraw his PCR Application.

Respectfully submitted,

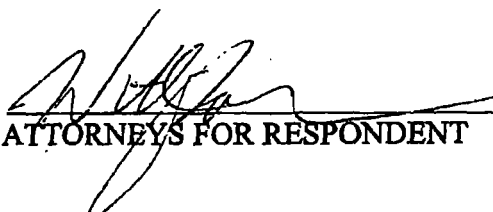
HENRY DARGAN MCMASTER
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P. O. Box 11549
Columbia, South Carolina 29211
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By: 

ATTORNEYS FOR RESPONDENT

October 20, 2006.

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

JAMES D. ROBERTSON,)

APPLICANT-PLAINTIFF,)

VERSUS)

STATE OF SOUTH CAROLINA,)

DEFENDANT.)

TRANSCRIPT OF RECORD

06-CP-46-00532
VOLUME I

MONDAY, JANUARY 29, 2007
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. FEW, JUDGE

APPEARANCES:

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

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

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

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JANUARY 30, 2006

JAMES W. HANCOCK

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MERRY C. COLLINS

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JANUARY 31, 2006

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

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

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

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

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

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

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

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

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

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

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

2 THE COURT: YES SIR.

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

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

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

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

18 MR. BROWN: YES SIR.

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

21 MR. BROWN: YES SIR.

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

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

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

4 THE COURT: ALL RIGHT.

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

9 THE COURT: ALL RIGHT. HOLD ON.

10 (PAUSE)

11 GO AHEAD.

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

15 THE COURT: OKAY.

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

18 THE COURT: ALL RIGHT, SIR.

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

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

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

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

6 THE COURT: K-I-N?

7 MR. BROWN: YES SIR.

8 THE COURT: OKAY.

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

13 THE COURT: OKAY.

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

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

17 (PAUSE)

18 ALL RIGHT.

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

20 THE COURT: OKAY.

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

24 THE COURT: OKAY.

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

1 THE COURT: OKAY.

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

4 THE COURT: IS HE THE BROTHER?

5 MR. BROWN: YES SIR.

6 THE COURT: OKAY.

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

9 THE COURT: OKAY.

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

11 (PAUSE)

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

17 THE COURT: SAY ALL THAT AGAIN, PLEASE.

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

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

23 MR. SALTER: NO, YOUR HONOR.

24 THE COURT: YOU CAN CALL YOUR FIRST WITNESS.

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

1 THE COURT: YOU CAN CALL YOUR FIRST WITNESS.

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

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

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

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

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

16 THE COURT: ARE THEY HERE?

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

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

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

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

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

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

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

3 THE COURT: IS MR. BOYD COMING TODAY?

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

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

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

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

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

14 MR. BROWN: CORRECT, YOUR HONOR.

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

17 MR. BROWN: YES SIR.

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

21 MR. BROWN: YES SIR.

22 THE COURT: OKAY. GO AHEAD.

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

24

25

1 JAMES ROBERTSON, DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY MR. MATLOCK:

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

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

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

11 A YES, I WAS CONVICTED.

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

14 A DEATH.

15 Q AND WHERE ARE YOU CURRENTLY HOUSED?

16 A DEATH ROW, SOUTH CAROLINA.

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

18 A YES, RIDGELAND, SOUTH CAROLINA.

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

21 A JIMMY, JIM.

22 Q DO YOU MIND IF I CALL YOU JIMMY?

23 A NOT AT ALL.

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

JAMES ROBERTSON - DIRECT EXAMINATION BY MR. MATLOCK

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

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

7 Q 1981? CALIFORNIA, HOW LONG WERE THERE?

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

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

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

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

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

19 A TENUOUS.

20 Q TENUOUS, WHY WAS THAT?

21 A (NO RESPONSE)

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

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

1 Q OKAY.

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

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

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

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

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

17 Q WHAT WAS HER RELATIONSHIP WITH YOUR FATHER?

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

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

1 Q OKAY. WHAT WAS YOUR RELATIONSHIP, AND YOUR BROTHER--
2 WELL, LET'S JUST STICK WITH YOUR RELATIONSHIP. WHAT WAS YOUR
3 RELATIONSHIP WITH YOUR FATHER?

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

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

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

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

15 A YES, FROM EARLY TEENS ON.

16 Q OKAY.

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

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

23 A IT DID, IN 1995.

24 Q HOW OLD WERE YOU THEN?

25 A TWENTY-ONE, TWENTY-TWO.

1 Q HOW LONG DID YOU STAY THERE?

2 A TEN DAYS.

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

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

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

11 A YES. I SMOKED MARIJUANA, I DRANK, ONE THING OR ANOTHER.

12 AND I GUESS AT SOME POINT IN MY LIFE I TRIED, DECIDED TO TRY
13 MAJOR DRUGS.

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

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

17 Q AND WHAT HAPPENED WITH YOUR COLLEGE?

18 A IT WAS A CHANGE FROM HIGH SCHOOL, WHERE HIGH SCHOOL I
19 DIDN'T HAVE TO DO ANYTHING. HIGH SCHOOL WAS JUST HIGH
20 SCHOOL. AND I GUESS I CAME TO EXPECT IT WOULD BE SO EASY AND
21 WENT SOMEWHERE WHERE I THOUGHT I WANTED TO GO, BUT REALLY
22 WHERE MY FATHER WANTED ME TO GO, AND MY FATHER HAD
23 GRADUATED.

24 Q FROM WHERE?

25 A GEORGIA TECH.

JAMES ROBERTSON - DIRECT EXAMINATION BY MR. MATLOCK

1 Q HOW LONG DID YOU STAY AT GEORGIA TECH?

2 A ON AND OFF, ABOUT TWO AND A HALF YEARS.

3 Q WHY DID YOU LEAVE?

4 A TECHNICALLY, I GUESS I FLUNKED OUT, BUT I FLUNKED OUT TO
5 SPITE MY FATHER.

6 Q OKAY.

7 A ON PURPOSE.

8 Q WHAT WAS YOUR FATHER'S REACTION TO YOUR LEAVING
9 COLLEGE, FOR WHATEVER REASON?

10 A LIKE THE WORLD HAD ENDED; LIKE, YOU KNOW, -- THE FACT
11 THAT I WANTED TO TAKE ONE QUARTER OFF AFTER THE FIRST YEAR
12 WAS LIKE THE WORLD HAD COME TO AN END.

13 Q SO, IT WOULD BE FAIR TO DESCRIBE THE SITUATION IN YOUR
14 HOME LIFE AS HAVING BEGUN A DOWNWARD SPIRAL?

15 A OH, STEADILY DETERIORATING. YOU KNOW, FROM THE FIRST
16 TIME I TOLD HIM THAT I DIDN'T WANT TO GO BACK TO SCHOOL AND
17 HE ASKED ME WHY. I TOLD HIM I DIDN'T WANT TO GO BACK; I JUST
18 PREFERRED TO WORK FOR A WHILE. YOU KNOW, HE JUST WENT--

19 I WAS EXPECTED TO DO THINGS THEIR WAY. I WAS EXPECTED
20 TO GO TO COLLEGE AND BE FINISHED IN A CERTAIN AMOUNT OF TIME,
21 BE MARRIED, HAVE CHILDREN, BLAH, BLAH, BLAH, YOU KNOW,
22 STRAIGHT DOWN THE LINE. AND WHAT I WANTED JUST DIDN'T
23 FOLLOW THAT LINE. THAT'S UNFORTUNATE, I GUESS. WE BUTTED
24 HEADS AND WE DID IT OFTEN.

1 Q WHAT WAS YOUR RELATIONSHIP WITH YOUR BROTHER AT THIS
2 PARTICULAR TIME, CHIP?

3 A MY RELATIONSHIP WITH MY BROTHER HAS ALWAYS BEEN VERY
4 CLOSE.

5 Q WHERE WAS HE DURING THIS SPECIFIC PERIOD OF YOUR
6 COLLEGE YEARS?

7 A MY FIRST-- WELL, '92 TO '94, HE WAS FINISHING HIGH SCHOOL IN
8 ROCK HILL. AND THEN IN '94, HE GRADUATED AND WENT TO THE
9 UNIVERSITY OF PENNSYLVANIA. AND THAT COINCIDED WITH MY
10 LAST LITTLE, YOU KNOW, SHINDIG AT GEORGIA TECH, MY LAST TWO
11 QUARTERS THERE. SO, THERE WAS A TIME THAT WE WERE BOTH IN
12 COLLEGE, BUT IT WAS VERY BRIEF.

13 Q IN YOUR ASSOCIATIONS WITH YOUR BROTHER, DID YOU USE
14 DRUGS OR ALCOHOL OR ANYTHING?

15 A YES. WE, YOU KNOW, IF WE WERE HOME TOGETHER ON A
16 BREAK OR DURING THE SUMMER, WE SHARED AN AFFINITY FOR
17 ALCOHOL AND MARIJUANA, MAINLY.

18 Q SPECIFICALLY, WAS THERE ANY OTHER DRUGS THAT YOU USED
19 WITH YOUR BROTHER, THAT MIGHT HAVE BEEN PRESCRIBED TO YOU?

20 A YES. LATER, RITALIN, HE WAS PRESCRIBED RITALIN FOR ADD
21 AND IT HELPED HIM WHEN HE TOOK IT, WHEN HE TOOK IT AS
22 PRESCRIBED. AND WE ENDED UP NOT TAKING IT AS PRESCRIBED AND
23 SO, IT'S A PRETTY NASTY DRUG WHEN YOU DON'T TAKE IT AS
24 PRESCRIBED.

1 Q WHEN YOU SAY YOU WERE NOT TAKING IT AS PRESCRIBED, HOW
2 WERE YOU INGESTING IT?

3 A WE WERE ELIMINATING THE TIME-RELEASED PART OF IT,
4 CRUSHING IT, SNORTING IT, LIKE YOU WOULD SNORT COCAINE.

5 Q OKAY. LET'S FAST FORWARD, THEN, TO THE ACTUAL DATE OF
6 YOUR TRIAL, WHICH WAS IN NOVEMBER OF 1997. IS THAT CORRECT?

7 A NO, THAT WOULD HAVE BEEN IN MARCH, 1998.

8 Q MARCH, OKAY. NOW DURING THE COURSE OF YOUR TRIAL DID
9 YOUR ATTORNEYS AT ANY TIME DISCUSS WITH YOU A PLEA BARGAIN
10 OF ANY TYPE THAT HE WOULD BE MAKING WITH THE STATE IN THIS
11 CASE?

12 A NO, I DON'T REMEMBER DISCUSSING ANYTHING. ALL I EVER
13 REMEMBER DISCUSSING IS WHEN WE WERE GOING TO TRIAL, WHAT
14 EXPERT I NEEDED TO TALK TO NEXT.

15 Q SPECIFICALLY, I'M REFERRING TO AN INCIDENT WHERE YOU
16 FOUND OUT THROUGH THE PAPER, THROUGH YOUR ATTORNEYS, THAT
17 MR. KEVIN BRACKETT, WHO WAS THE DEPUTY SOLICITOR AT THE
18 TIME, HAD A CONVERSATION WITH YOUR ATTORNEYS, REGARDING
19 SOME TYPE, REFERRING TO SOME TYPE OF PLEA BARGAIN.

20 A YES. I KNEW NOTHING ABOUT IT UNTIL I GOT ON DEATH ROW
21 AND READ A NEWSPAPER ARTICLE FROM A REPORTER. AND I WAS
22 SHOCKED. I MEAN, I KNEW ABSOLUTELY NOTHING ABOUT IT.
23 BASICALLY, THE ARTICLE SAID THAT BRACKETT, MR. BRACKETT, AND
24 MY BROTHER'S ATTORNEY HAD SPOKEN IN PASSING, OR PERHAPS HAD
25 BEEN WALKING DOWN THE HALLWAY OR SOMETHING, AND MR.

1 BRACKETT HAD SOMETHING TO THE EFFECT OF IF CHIP, - CHIP, MY
2 BROTHER - FORFEITS, THEN THE STATE WILL DROP THE DEATH
3 PENALTY ON HIS BROTHER. AND---

4 Q AND WHEN THEY SAY DROP THE DEATH PENALTY, WHAT
5 WOULD BE THE ALTERNATIVE?

6 A LIFE.

7 Q IT WOULD BE LIFE.

8 A AND ALLOW JIMMY TO PLEAD TO LIFE. AND THAT WAS THE
9 FIRST I HAD EVER READ OF IT; I MEAN, EVER EVEN HEARD OF IT. I
10 DIDN'T KNOW ANYTHING ABOUT IT UNTIL THEN. I DON'T EVEN-- THE
11 FIRST TIME I MENTIONED IT TO MR. HANCOCK BEFORE AND AFTER
12 THAT MAY VERY WELL HAVE BEEN A PHONE CALL A WEEK OR SO
13 LATER, OR A LETTER A WEEK OR SO LATER, IN PASSING, JUST
14 WANTING TO KNOW WHAT HAPPENED HERE, WHEN DID THIS HAPPEN;
15 YOU KNOW, WHAT WAS THE RESULT; DID YOU PURSUE THIS, YOU
16 KNOW.

17 THE ARTICLE DID STATE THAT MR. BRACKETT DID STATE TO HIM
18 THAT HE CONSIDERED IT A JOKE. THAT MY BROTHER'S ATTORNEY
19 COULDN'T CONSIDER IT A JOKE.

20 Q YOUR BROTHER'S ATTORNEY COULD NOT CONSIDER IT A JOKE?

21 A HE COULDN'T. HE HAD TO TAKE IT TO HIS CLIENT.

22 Q RIGHT.

23 A IT WAS HIS OBLIGATION TO TAKE IT TO HIS CLIENT.

24 Q HE TOOK IT TO HIS CLIENT AND THEN IN FACT DID
25 COMMUNICATE WITH YOUR ATTORNEY. IS THAT CORRECT?

JAMES ROBERTSON - DIRECT EXAMINATION BY MR. MATLOCK

1 A YEAH, AND THEN COMMUNICATED WITH MY ATTORNEY. IT WAS
2 APPARENTLY SERIOUS ENOUGH IN HIS EYES TO TAKE IT TO HIS CLIENT.

3 MR. SALTER: OBJECTION, YOUR HONOR, BOTH TO HEARSAY AND
4 SPECULATION.

5 THE COURT: I SUSTAIN THE OBJECTION.

6 Q SPECIFICALLY, THOUGH, YOUR ATTORNEY NEVER DISCUSSED
7 THIS INCIDENT WITH YOU. NOT THE INCIDENT, BUT NEVER DISCUSSED
8 THIS CONVERSATION UNTIL WHEN?

9 A AT LEAST A WEEK AFTER BEEN SENTENCED TO DEATH.

10 Q WERE THERE ANY OTHER DISCUSSIONS WITH REGARD TO PLEA
11 BARGAINS OR TRIAL TACTICS, OR WHATEVER? SPECIFICALLY, LET ME
12 DIRECT YOUR ATTENTION TO THESE PSYCHOLOGICAL EVALUATIONS
13 THAT YOU'D BEEN HAVING. WAS THERE ANY DISCUSSION ABOUT A
14 GUILTY BUT MENTALLY IMPAIRED, OR ANY INSANITY PLEAS, OR
15 ANYTHING ALONG THOSE LINES WITH YOUR ATTORNEYS?

16 A NO SIR. I WAS TOLD I WAS SEEING THESE EXPERTS
17 SPECIFICALLY TO GATHER INFORMATION AND EVIDENCE FOR TRIAL,
18 SPECIFICALLY FOR THE SENTENCING PHASE OF THE TRIAL,
19 SPECIFICALLY.

20 Q DID THEY EVER ASK YOUR ASSESSMENT OF THIS TACTIC? DID
21 YOU GIVE ANY INPUT? DID YOU ASSIST THEM IN YOUR OWN DEFENSE
22 WITH REGARD TO HOW THIS WAS GOING DOWN?

23 A YES. BUT, TO BE QUITE HONEST, I DON'T BELIEVE THAT I EVER
24 BROUGHT UP A PLEA. IT WASN'T MENTIONED TO ME, BUT I DON'T
25 BELIEVE THAT I WAS BEATING DOWN THE DOOR.

1 Q DID YOUR ATTORNEYS EVER EXPLAIN TO YOU YOUR OPTIONS IN
2 THAT REGARD?

3 A NO.

4 Q DID HE EVER EXPLAIN TO YOU THE GUILTY BUT MENTALLY
5 IMPAIRED POTENTIAL?

6 A NO. THERE ONLY SEEMED LIKE ONE OPTION: THEY WERE GOING
7 TO TRIAL.

8 Q YOU WERE GOING TO TRIAL. AND THE DECISION, I BELIEVE, WAS
9 TO NOT PRESENT ANY DEFENSE. IS THAT RIGHT?

10 A WE PRESENTED NO DEFENSE AT ALL.

11 Q DURING THE GUILTY PHASE, THERE WAS NOTHING PUT ON
12 RECORD BY YOUR ATTORNEYS IN ANY WAY TO PRESENT YOUR
13 POSITION AND YOUR DEFENSE IN THIS CASE?

14 A NO SIR.

15 Q DESPITE THE FACT THAT YOU HAD TESTIMONY, OR YOU HAD
16 EVALUATIONS BY SOME VERY, A NUMBER OF PSYCHOANALYSTS AND
17 PSYCHOLOGISTS AND PSYCHIATRISTS, NONE OF THAT WAS PRESENTED
18 DURING YOUR CASE IN CHIEF. IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q AND ONE OF THESE PSYCHOLOGISTS, OR, ACTUALLY THE
21 PROFESSOR OF NEUROSURGERY, OR NEUROLOGY, AND CHAIRMAN
22 EMERITUS AT GEORGETOWN UNIVERSITY, RENDERED A REPORT ON
23 YOUR CASE. ISN'T THAT RIGHT?

24 A YES, IT IS.

1 Q AND IN THAT REPORT BY THIS HIGHLY ACCLAIMED PHYSICIAN,
2 HE, IN FACT, STATED-- AND I'LL LET YOU REFER TO THIS SENTENCE
3 HERE, AND MAYBE YOU CAN JUST READ IT TO THE COURT.

4 MR. SALTER: YOUR HONOR, I HAVE AN OBJECTION TO READING
5 FROM THE REPORT. I BELIEVE DOCTOR PINCUS' TESTIMONY, IF THAT'S
6 THE DOCTOR TO WHOM HE'S REFERRING, DOCTOR PINCUS' TESTIMONY
7 IS IN THE RECORD. IN TERMS OF READING THIS REPORT, I OBJECT,
8 OBVIOUSLY.

9 THE COURT: IT SOUNDS TO ME AS THOUGH WHAT'S COMING
10 FROM THAT REPORT WOULD BE HEARSAY.

11 MR. MATLOCK: THAT'S CORRECT, YOUR HONOR. BUT WE'RE
12 HERE ON INEFFECTIVE ASSISTANCE OF COUNSEL, AND WHAT I'M JUST
13 TRYING TO DO IS JUST SHOW THAT THE TRIAL ATTORNEYS WERE
14 INEFFECTIVE IN NOT PRESENTING THIS WITNESS AT TRIAL, IN THE
15 GUILTY PHASE.

16 THE COURT: IN THAT CASE, THEN, IT'S NOT OFFERED TO PROVE
17 THE TRUTH OF THE MATTER ASSERTED.

18 MR. MATLOCK: THAT'S CORRECT.

19 THE COURT: IT'S OFFERED TO SHOW THAT THIS IS THE
20 EVIDENCE, THIS IS WHAT WAS BEFORE DEFENSE COUNSEL WHEN THEY
21 MADE CERTAIN DECISIONS. SO,...

22 MR. SALTER: JUST SO I'M CLEAR. DOCTOR PINCUS DID TESTIFY.
23 ARE YOU SAYING THAT HE, THAT HE TESTIFIED IN THE GUILT PHASE?

24 MR. MATLOCK: YES.

1 THE COURT: WELL, IF YOU'RE OFFERING THAT REPORT, YOU
2 DON'T HAVE TO GET HIM TO READ IT, FIRST OF ALL.

3 MR. MATLOCK: I WANT---

4 THE COURT: YOU CAN OFFER IT INTO EVIDENCE. I'LL ACTUALLY
5 PREFER TO LOOK AT IT MYSELF. BUT IF YOU'RE OFFERING IT TO SHOW
6 WHY YOU CLAIM THEY, THE DEFENSE LAWYERS, SHOULD HAVE MADE
7 A DIFFERENT DECISION IN PRESENTING DOCTOR PINCUS, THEN IT
8 WOULD NOT BE HEARSAY, AND I WOULD ADMIT IT.

9 YOU CAN DO IT IF YOU WANT TO, BUT YOU DON'T HAVE TO GET
10 HIM TO READ IT. I'LL LET YOU MAKE THAT CHOICE.

11 MR. MATLOCK: SO, IN OTHER WORDS, WHAT YOUR HONOR'S
12 SAYING IS I CAN JUST SUBMIT IT.

13 THE COURT: YOU CAN SUBMIT IT.

14 MR. MATLOCK: ALL RIGHT. THEN I'LL DO THAT, IN THE
15 INTEREST OF JUDICIAL ECONOMY.

16 Q AND THERE WERE A NUMBER OF OTHER PSYCHOLOGISTS AND
17 PSYCHIATRISTS THAT YOU SAW, IN PARTICULAR?

18 A YEAH, THERE WAS A STEADY STREAM OF THEM.

19 Q HOW MANY? DO YOU RECALL HOW MANY?

20 A NO. BUT I SPENT A GOOD PORTION OF A YEAR.

21 Q WELL, WAS IT MORE THAN TEN, FIVE, SOMEWHERE IN THAT
22 AREA?

23 A BETWEEN FIVE AND TEN.

24 Q OKAY.

25 A MULTIPLE TIMES WITH EACH.

1 Q ONE OF THOSE PSYCHOLOGISTS, I'LL USE FOR WANT OF A
2 BETTER TERM, WAS TONI CASCIO. IS THAT CORRECT?

3 A YEAH.

4 Q NOW, JUST TO CLARIFY, --

5 THE COURT: BEFORE WE MOVE ON, LET ME BACK UP JUST A
6 LITTLE BIT TO THAT REPORT.

7 MR. MATLOCK: YES SIR.

8 THE COURT: TO THAT REPORT. THERE ARE TWO COMPONENTS
9 TO YOUR BURDEN OF PROOF HERE. ONE IS THAT IT IS TO PROVE THAT
10 COUNSEL DID SOMETHING THAT WAS BELOW PROFESSIONAL NORMS.
11 AND THE SECOND WOULD BE THAT AS TO EACH OF THOSE POINTS
12 WHERE YOU MIGHT SUCCESSFULLY PROVE THAT COUNSEL'S
13 PERFORMANCE FELL BELOW PROFESSIONAL NORMS, THAT THERE IS A
14 REASONABLE PROBABILITY THAT THE OUTCOME OF THE CASE WOULD
15 HAVE BEEN DIFFERENT.

16 NOW, ON THAT FIRST PRONG, OFFERING THE REPORT OF THE, OF
17 DOCTOR PINCUS DOES NOT SEEM TO ME AS THOUGH IT WOULD BE
18 HEARSAY IN YOUR PROVING WHETHER OR NOT THE DECISION THAT
19 COUNSEL MADE WAS REASONABLE.

20 BUT, ON THE SECOND PRONG, IN TRYING TO PROVE THAT THE
21 TESTIMONY OF THE WITNESS WOULD HAVE MADE A DIFFERENCE,
22 THEN I THINK IT WOULD BE HEARSAY, DEPENDING ON WHAT IT IS.
23 BUT IF IT IS HIS CONCLUSIONS AND HIS OPINIONS, THEN I THINK IT
24 WOULD BE HEARSAY.

1 WELL, IT'S SORT OF AN ARTIFICIAL DISTINCTION THAT I HAVE TO
2 MAKE. BECAUSE IF I'M GOING TO HEAR THE TESTIMONY, I'M SAYING
3 THAT I THINK I CAN CONSIDER IT ON THE FIRST PRONG BECAUSE IT'S
4 NOT OFFERED FOR IT'S TRUTH. BUT IF IT'S ON THE SECOND PRONG, IF
5 YOU'RE SAYING THAT THIS PARTICULAR TESTIMONY MIGHT HAVE
6 CONVINCED THE JURY TO DO SOMETHING DIFFERENT, THEN I THINK
7 THAT WOULD BE HEARSAY.

8 SO, I WON'T BE ABLE TO CONSIDER THAT REPORT FOR ITS TRUTH
9 IN EVALUATING YOUR CLAIM ON THE SECOND PRONG OF STRICKLAND.
10 IF YOU DISAGREE WITH THAT, LET ME KNOW. BUT THAT'S MY
11 REACTION TO YOUR OFFERING THAT DOCUMENT INTO EVIDENCE.

12 MR. MATLOCK: THAT'S CORRECT, YOUR HONOR. AND IN
13 FURTHER TESTIMONY, AS THE HEARING UNFOLDS, THAT WILL BE
14 BROUGHT OUT IN A DIFFERENT WAY SO IT WON'T BE HEARSAY.

15 THE COURT: ALL RIGHT, SIR.

16 MR. MATLOCK: THANK YOU, YOUR HONOR.

17 Q NOW, TO GET BACK TO WHERE I WAS, JIMMY, IF YOU'RE
18 FOLLOWING ME SO FAR. WE WERE TALKING ABOUT DOCTOR CASCIO.

19 A YES.

20 Q AND SHE WAS CALLED, NOT DURING THE CASE IN CHIEF OR THE
21 GUILTY PHASE, BUT DURING THE SENTENCING PHASE. IS THAT RIGHT?

22 A YES, SHE WAS CALLED DURING THE SENTENCING PHASE.

23 Q AS PART OF HER TESTIMONY SHE SUBMITTED A REPORT. SHE
24 ALSO VOL-- YOUR ATTORNEYS VOLUNTARILY GAVE THE

1 PROSECUTION CERTAIN NOTES THAT SHE HAD MADE IN SUPPORT OF
2 THAT. IS THAT CORRECT?

3 A YES. BUT, IN A NUTSHELL, YES. I'M NOT SURE OF THE SPECIFIC
4 SURROUNDINGS HOW THAT PROCESS HAPPENED. BUT, YES, SOMEHOW
5 THE PROSECUTION WOUND UP WITH HER NOTES.

6 Q AND SHE WAS CROSS EXAMINED EXTENSIVELY ON THE NOTES
7 AND THE REPORT, AND THE NOTES, SPECIFICALLY, RIGHT, DURING
8 THE---

9 A YES, WORD FOR WORD.

10 Q ---TRIAL. NOW, AS A RESULT OF THAT CROSS EXAMINATION, DID
11 YOU HAVE A DISCUSSION WITH YOUR ATTORNEY THAT YOU WANTED
12 TO TESTIFY TO DO SOME - AGAIN, FOR WANT OF A BETTER TERM -
13 DAMAGE CONTROL IN THAT AREA?

14 A I DID. SHE WAS THE LAST-- I BELIEVE SHE WAS PRETTY CLOSE
15 TO ONE OF LAST WITNESSES. AND I REMEMBER GOING IN THE
16 CONFERENCE ROOM AND SITTING DOWN WITH BOTH MY ATTORNEYS
17 AND BEING UPSET BECAUSE WHAT SHE HAD DIVULGED TO THE COURT,
18 TO THE JURY WAS ABOUT THE SAME AS ME DIVULGING IT MYSELF. I
19 MIGHT AS WELL HAVE TESTIFIED, YOU KNOW.

20 AND I WAS UPSET. I WAS CLEARLY UPSET. I BELIEVE MY
21 ATTORNEYS WERE UPSET. I BELIEVE THAT THEY MAY HAVE MADE A
22 MIS-- I BELIEVE THAT THEY THOUGHT THEY MAY HAVE MADE A
23 MISTAKE.

24 Q MADE A MISTAKE HOW?

1 A BY PUTTING HER ON THE STAND, OR BY, OR SOME PROCESS
2 THAT ENDED UP WITH THE PROSECUTOR HAVING THESE NOTES. AS I
3 SAID, I DON'T UNDERSTAND THAT ENTIRE PROCESS OF HOW THE
4 INFORMATION GETS EXCHANGED.

5 I TOLD THEM, I SAID I WANT TO TESTIFY NOW BECAUSE THERE'S
6 NOTHING TO LOSE. THAT AT LEAST I COULD GET UP THERE AND LET
7 THE JURY HEAR IT OUT OF MY OWN MOUTH. THEY HAD BASICALLY
8 HEARD IT, BUT THEY HAD HEARD IT FROM A THIRD PARTY.

9 Q AND WHAT WAS YOUR ATTORNEYS' RESPONSE TO THAT?
10 SPECIFICALLY, WHO WAS YOUR ATTORNEY WHEN YOU WERE HAVING
11 THE MAJORITY OF THIS DISCUSSION?

12 A MR. HANCOCK.

13 Q OKAY.

14 A I WOULDN'T SAY IT WAS A HEATED ARGUMENT OR A
15 DISCUSSION. I MEAN, IT WAS EMOTIONAL. YOU KNOW, IT APPEARED
16 TO BE A PRETTY CRITICAL POINT AT THAT POINT. SHE SPENT ALL DAY
17 UP HERE AND BASICALLY JUST TOLD THE STORY. AND I WAS ADVISED
18 BY BOTH OF THEM NOT TO TESTIFY; THAT IF I DID I WOULD OPEN
19 MYSELF UP TO ALL KINDS OF AVENUES FOR THE PROSECUTOR TO
20 EXPLORE. I WANTED TO TESTIFY. I HEEDED MY ATTORNEY'S ADVICE.

21 Q NOW, WHEN THEY WERE ADVISING YOU, YOUR ATTORNEYS,
22 AGAIN, ON SPEAKING WITH THESE VARIOUS MENTAL HEALTH
23 OFFICIALS, PARTICULARLY CASCIO, WHAT DID THEY TELL YOU WITH
24 REGARD TO YOUR OPENNESS WITH THIS PRIVILEGED INFORMATION?
25 DO YOU SEE WHERE I'M GOING WITH THIS?

JAMES ROBERTSON - DIRECT EXAMINATION BY MR. MATLOCK

1 A YES. ON THE FIRST DAY I WAS TOLD, YOU KNOW, YOU NEED TO
2 TELL EVERYTHING. YOU KNOW, BASICALLY WE'RE TRYING. YOU
3 KNOW, WE CAN'T-- UNLESS WE KNOW EVERYTHING WE CAN'T BUILD,
4 WE CAN'T FIGURE OUT WE NEED TO BE ABLE TO FIGURE OUT. AND WE
5 NEED TO KNOW EVERYTHING THAT WE CAN KNOW.

6 AND THIS WAS FROM MY FIRST MEETING WITH THE SOCIAL
7 WORKER THAT WAS PUTTING TOGETHER A SOCIAL HISTORY OF THE
8 FAMILY, ALL THE WAY THROUGH THE STATE'S PSYCHIATRIST, WITH
9 TONI CASCIO. I WAS TOLD TO BE COMPLETELY OPEN AND HONEST. I
10 WAS TOLD TO SPEAK FRANKLY WITH RESPECT TO WHAT HAPPENED
11 THAT EVENING.

12 Q AND THESE WERE WITH YOUR PROSPECTIVE WITNESSES?

13 A YES.

14 Q DID THEY TELL YOU THAT ANYTHING YOU SAID TO THEM
15 COULD BE HELD BACK, OR THEY DIDN'T HAVE TO PRESENT THEM TO
16 THE COURT, AND THEREFORE YOU SHOULD-- IS THAT THE GIST OF
17 WHAT THEY WERE SAYING?

18 A THEY TOLD ME THAT THEIR REPORT WOULD BE OUR REPORT.

19 Q RIGHT.

20 A IT WAS GONNA BE THE DEFENSE'S REPORT. AND THAT, YOU
21 KNOW, I MEAN I INSTRUCTED MY ATTORNEYS THAT IF I'M TELLING
22 SOMEBODY-- THEY TOLD ME TO TELL THEM EVERYTHING, THAT IT'S
23 NOT GOING TO WIND UP IN THE WRONG HANDS.

24 Q OKAY.

1 A NOW, I WAS TOLD TO BE COMPLETELY HONEST ABOUT MY
2 FAMILY, MY FAMILY HISTORY, EVERYTHING GOING BACK THAT I
3 COULD REMEMBER AS A CHILD AS EARLY AS TWO TO THREE YEARS
4 OLD.

5 Q UH-HUH.

6 A AND WE WEREN'T JUST DISCUSSING CRIMINAL ACTIVITY. WE
7 WERE DISCUSSING VERY SENSITIVE, INTIMATE THINGS; THINGS THAT I
8 WOULD HAVE PREFERRED NOT TO HAVE DISCUSSED.

9 Q SO, YOU DID DISCUSS SOME OF THE CRIMINAL ASPECTS OF THE
10 TRIAL WITH THESE PEOPLE?

11 A YES. I TOLD THEM NO DIFFERENTLY THAN I TOLD MY
12 ATTORNEYS THE FIRST AND SECOND TIME THAT I MEET WITH THEM.

13 Q AND, OF COURSE, YOU WERE PRIVY TO THE-- YOU AND YOUR
14 ATTORNEYS WERE PRIVY TO THESE REPORTS AND ANY NOTES THAT
15 THE VARIOUS WITNESS MAY HAVE TAKEN?

16 A YES SIR.

17 Q AND, AGAIN, YOU WERE TOLD THAT ALL THIS WOULD BE
18 PRIVILEGED INFORMATION, A DECISION WOULD BE MADE LATER ON
19 WHETHER OR NOT TO ADMIT IT AT TRIAL. SO, YOU WERE PERFECTLY
20 FREE TO BE OPEN AND CANDID WITH THESE WITNESSES?

21 A YES. I WAS TO SPEAK WITH THEM AS IF I WAS SPEAKING WITH
22 MY ATTORNEYS.

23 Q NOW, FINALLY, JIMMY, YOU TERMINATED ALL AVENUES OF
24 DIRECT APPEAL. ISN'T THAT CORRECT?

25 A I DID.

1 Q AND THEN YOU DECIDED TO GO WITH THIS ACTION, WHICH WAS
2 A POST CONVICTION RELIEF CIVIL ACTION?

3 A I DID.

4 Q AND YOU UNDERSTAND THAT YOUR ONLY REDRESS AS A
5 RESULT OF THIS HEARING IS A NEW TRIAL?

6 A YES.

7 Q YOU UNDERSTAND THAT IT'S NOT AN APPEAL, OR NOT THE
8 APPELLATE PROCESS? WHAT WE'RE SEEKING TODAY IS NOT TO HAVE
9 A REVERSAL OR ANYTHING ALONG THOSE LINES; IT'S JUST TO
10 BASICALLY TO EFFECT A NEW HEARING IN THIS ACTION AND A NEW
11 JURY?

12 A A CIVIL ACTION, AND THE ONLY THING I CAN GAIN BY IT IS A
13 NEW TRIAL.

14 Q SO, YOU DON'T HAVE ANY QUESTIONS IN THAT REGARD?

15 A NO, I DO NOT.

16 MR. MATLOCK: YOUR HONOR, I HAVE NO FURTHER QUESTIONS
17 OF THIS WITNESS.

18 Q ANSWER ANY QUESTIONS THAT THE STATE HAS FOR YOU.

19 CROSS EXAMINATION BY MR. SALTER:

20 Q GOOD AFTERNOON, MR. ROBERTSON. AGAIN, MY NAME IS ED
21 SALTER. WE'VE HAD OCCASION TO TALK A COUPLE OF TIMES BEFORE.
22 LET ME ASK YOU A FEW QUESTIONS.

23 ONE OF THE FIRST THINGS YOU MENTIONED WAS THE TRIAL
24 DATE, AND IT WAS SAID WRONG. THE TRIAL WAS NOT IN 1997, WAS IT?

25 A IT WAS MARCH, 1999.

1 Q ALL RIGHT. YOU EARLIER SAID THAT ON DIRECT EXAMINATION
2 THAT MOST OF YOUR MOTHER'S PROBLEMS YOU THOUGHT BEGAN
3 AFTER THE DEATH OF HER FATHER?

4 A FROM A CHILD'S VIEWPOINT IT APPEARS THAT THINGS WENT
5 DOWNHILL FROM THAT POINT.

6 Q WHEN WAS HER FATHER'S DEATH? DO YOU REMEMBER?

7 A 1986.

8 Q 1986. DIDN'T YOUR PROBLEMS ACTUALLY BEGIN A FEW YEARS
9 LATER THAN THAT?

10 A WELL, AS I SAID, AS A CHILD, LIVING IN THE HOUSEHOLD IT
11 APPEARED THAT THINGS STARTED, YOU KNOW,... MORE OFTEN THAN
12 NOT, I FOUND MOM SITTING ALONE, CRYING. OR, YOU KNOW, THINGS
13 CHANGED THAN THEY HAD BEEN. SO, YES. THE MORE NOTICEABLE
14 PROBLEMS THAT YOU WOULD SEE IN PUBLIC OR THE PROBLEMS THAT
15 ENDED UP BEING TREATED BY VARIOUS DOCTORS, YES, THAT MAY
16 HAVE COME LATER.

17 Q THOSE CAME LATER BECAUSE YOU SAID, YOURSELF, THAT
18 MOST OF THE FAMILY'S PROBLEMS STEMMED FROM ACTIONS BY YOU
19 AND YOUR BROTHER. CORRECT?

20 A YES. AS WE GOT OLDER OUR DECISIONS TENDED TO BE WRONG.
21 AND THOSE WRONG DECISIONS TENDED TO CAUSE PROBLEMS IN THE
22 FAMILY, CAUSE PROBLEMS BETWEEN MOM AND DAD. AND, YOU
23 KNOW, I WOULDN'T SAY THAT WAS THE ROOT OF MY MOTHER'S
24 MENTAL ILLNESS. YES, IT OBVIOUSLY PLAYED A PART IN IT.

25 Q IT AGGRAVATED IT A GOOD DEAL, DIDN'T IT?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A I'M SURE IT DID.

2 Q YOU TALKED ABOUT YOU AND YOUR BROTHER BECOMING
3 INVOLVED IN CRIMINAL ACTIVITY, DID YOU NOT? A BURGLARY
4 CONVICTION?

5 A YES.

6 Q AND THE USE OF DRUGS ALSO. CORRECT?

7 A YES.

8 Q YOUR BAILING OUT OF SCHOOL, YOUR REFUSAL TO APPLY
9 YOURSELF. CORRECT?

10 A BAILING OUT OF SCHOOL, YES.

11 Q YOU SAID YOU DID THAT DELIBERATELY?

12 A YES.

13 Q TO SPITE YOUR DAD. RIGHT? WHY WAS IT IMPORTANT TO SPITE
14 YOUR FATHER?

15 A BECAUSE HE WAS THE ONE WHO FORCED ME INTO IT.

16 Q HE FORCED YOU TO GO TO SCHOOL?

17 A HE DIDN'T HOLD A GUN TO MY HEAD, BUT, IT WAS PRETTY
18 CLEAR I DIDN'T HAVE MUCH CHOICE IN THE MATTER.

19 Q DID HE PRESENT YOU WITH ANY OTHER CHOICE, LIKE, PERHAPS,
20 GET A JOB?

21 A THAT WAS THE CHOICE I PREFERRED AND THAT WAS THE
22 CHOICE THAT HE DIDN'T WANT.

23 Q YOU WOULD RATHER HAVE GOTTEN A JOB THAN GO TO
24 SCHOOL?

25 A I HAD A JOB. HE PREFERRED I GIVE THE JOB UP.

1 Q WHAT JOB WAS THAT?

2 A ANY NUMBER OF THINGS. WHERE SHALL WE START?

3 Q START WHEREVER YOU WOULD LIKE.

4 A WELL, WE COULD START, YOU KNOW, WE COULD START AT THE
5 BAGEL BAKERY, AND I REALLY ENJOYED WORKING AT IT.

6 Q WHAT WERE YOU DOING THERE?

7 A I WAS MANAGING THE NIGHT OPERATIONS AND ENJOYED IT. I
8 DIDN'T MIND BEING PAID SEVEN, EIGHT DOLLARS AN HOUR.

9 Q YOU WANTED A JOB PAYING SEVEN OR EIGHT DOLLARS
10 INSTEAD OF GOING TO COLLEGE?

11 A I DIDN'T NECESSARILY SAY I WANTED IT, BUT I WAS WORKING.
12 IT WASN'T A MATTER OF WORK OR SCHOOL. I CHOSE TO WORK. I
13 DIDN'T WANT TO GO BACK TO SCHOOL.

14 Q NOW, YOU MENTIONED THE 1995 INVOLUNTARY COMMITMENT.
15 YOU AGREED TO GO THROUGH THEIR PROGRAM, DID YOU NOT, IN
16 ORDER TO GET OUT?

17 A I AGREED TO STAY SEVEN DAYS. I AGREED TO STAY TEN DAYS,
18 BUT SEVEN OF IT VOLUNTARILY.

19 Q YOU ALSO AGREED TO TAKE MEDICATION THAT THEY
20 PRESCRIBED FOR YOU. CORRECT?

21 A YES.

22 Q AND YOU DIDN'T DO THAT, DID YOU?

23 A FOR AN EXTENDED PERIOD OF TIME, NO.

24 Q YOU'RE PRESENTLY BEING MEDICATED, THOUGH, WITHIN THE
25 DEPARTMENT OF CORRECTIONS, AREN'T YOU?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A YES.

2 Q SO, WHATEVER PROBLEMS YOU MAY HAVE HAD IN THE PAST
3 ARE GONE NOW?

4 A UNDER CONTROL, NO; MANAGED, YES.

5 Q YOU INDICATED THAT YOUR PARENTS WANTED YOU TO GO TO
6 COLLEGE, MARRY, AND HAVE CHILDREN. RIGHT?

7 A YES SIR.

8 Q AND I BELIEVE YOU INDICATED, YOUR TESTIMONY WAS, AND I
9 QUOTE, "WHAT I WANTED DIDN'T FOLLOW THAT LINE." THAT'S WHAT
10 YOUR RESPONSE WAS.

11 A YES SIR.

12 Q YOU'D RATHER-- AT THE TIME YOU WOULD RATHER DRINK
13 ALCOHOL AND SMOKE MARIJUANA, WOULDN'T YOU?

14 A AND THOSE WERE THINGS THAT I ENDED UP DOING, YES. WERE
15 THOSE THINGS THAT I PREFERRED TO DO RATHER THAN GO TO
16 COLLEGE, OR RATHER THAN LIVE THE AMERICAN DREAM OR
17 WHATEVER MY FATHER HAD HOPED FOR ME? NO, NOT NECESSARILY.

18 Q BUT YOU DIDN'T MIND DOING IT?

19 A YES, THAT IS SOME OF THE THINGS THAT I WOUND UP DOING,
20 YES.

21 Q WITH RESPECT TO THE PLEA OFFER, YOU SAID YOU READ ABOUT
22 A PLEA OFFER IN THE NEWSPAPER?

23 A I DIDN'T READ ABOUT A PLEA OFFER THAT WAS OFFERED TO ME,
24 NO. I READ ABOUT A CONVERSATION BETWEEN MR. BRACKETT AND
25 MR. GILLEN.

1 Q AND YOU READ ABOUT THAT IN THE NEWSPAPER. RIGHT?

2 A YES.

3 Q CHIP DIDN'T TELL YOU ABOUT IT, DID HE?

4 A CHIP COULDN'T TELL ME ABOUT IT.

5 Q HE COULDN'T? HOW WOULD YOU KNOW WHETHER OR NOT CHIP
6 COULD TELL YOU ABOUT IT?

7 A CHIP HAD NO WAY OF CONTACTING ME; I HAD NO WAY OF
8 CONTACTING CHIP.

9 Q YOU WERE REPRESENTED BY COUNSEL, WERE YOU NOT?

10 A YES SIR. WELL, NO. FIVE DAYS AFTER THE TRIAL I WASN'T
11 REPRESENTED BY ANYBODY.

12 Q YOU WERE STILL BEING REPRESENTED BY YOUR TRIAL
13 ATTORNEYS, WERE YOU NOT?

14 A BY WHO?

15 Q YOUR TRIAL ATTORNEYS, THEY WERE STILL REPRESENTING
16 YOU?

17 A I WOULDN'T KNOW.

18 Q YOU WOULDN'T KNOW?

19 A I WAS TOLD THAT I WAS-- IN FACT, I WAS RECENTLY TOLD THAT
20 THEIR REPRESENTATION ENDED AT THE TIME WE WALKED OUT OF THE
21 COURTROOM WITH THE DEATH SENTENCE. SO,... BUT I HAD NO
22 CONTACT WITH MY BROTHER, NO. I HAD NO WAY OF CONTACTING
23 HIM.

24 Q AND TO YOUR KNOWLEDGE, HE NEVER MADE ANY EFFORT TO
25 ACT ON ANY PLEA OFFER?

1 A WELL, OUT OF REVERENCE FOR THE COURT I WON'T TELL YOU
2 WHAT HE TOLD HIS ATTORNEY.

3 Q I'M NOT ASKING YOU WHAT HE TOLD YOUR ATTORNEY. I'M
4 ASKING YOU WHETHER OR NOT HE IN FACT MADE AN EFFORT TO
5 COMPLY WITH THIS SUPPOSED PLEA OFFER.

6 A WHY WOULD HE COMPLY? HE DIDN'T WANT IT. I'LL BE GLAD TO
7 TELL YOU WHAT HE REPLIED.

8 Q NO SIR. THAT'S NOT WHAT I ASKED YOU. THAT'S ALL RIGHT.
9 NOW, YOU COMPLAINED ABOUT THE WAY YOUR LAWYERS HANDLED
10 THE, TONI CASCIO. RIGHT? THE SOCIAL WORKER?

11 A YES.

12 Q YOU SAID THAT AFTER SHE HAD TESTIFIED YOU THOUGHT THAT
13 YOU MIGHT AS WELL TESTIFY YOURSELF. CORRECT?

14 A YES.

15 Q NOW, YOU'RE NOT SAYING WHAT SHE SAID WASN'T TRUE, ARE
16 YOU?

17 A I'M NOT MAKING ANY CLAIM AS TO WHAT SHE SAID WAS TRUE
18 OR NOT. I'M SIMPLY SAYING THAT AFTER SHE TESTIFIED I MADE IT
19 CLEAR THAT I WANTED TO TESTIFY.

20 Q NOW, THE JUDGE WENT OVER WITH YOU YOUR RIGHT TO
21 TESTIFY IN BOTH THE GUILT PHASE AND THE PENALTY PHASE, DID HE
22 NOT?

23 A I BELIEVE SO.

24 Q HE EXPLAINED TO YOU THAT THAT WAS YOUR RIGHT, DIDN'T
25 HE, AS WELL AS YOUR ATTORNEY'S?

1 A THAT'S CORRECT.

2 Q AND IN BOTH INSTANCES YOU DECLINED HIS OFFER TO TESTIFY.

3 A ON THE ADVICE OF MY ATTORNEY.

4 Q BUT YOU UNDERSTOOD THAT IT WAS YOUR RIGHT AND NOT
5 YOUR ATTORNEY'S RIGHT, AND YOU STILL DECIDED NOT TO TESTIFY.
6 CORRECT?

7 A TRUE.

8 Q YOU CLAIMED, I BELIEVE THAT TRIAL COUNSEL WAS
9 INEFFECTIVE FOR---

10 MR. BROWN: EXCUSE ME, YOUR HONOR. THERE'S SOMETHING
11 VIBRATING BACK HERE. I BELIEVE IT'S A CELL PHONE.

12 (WHEREUPON CELL PHONE ISSUE WAS ALLEVIATED)

13 Q YOU ARE CLAIMING THAT TRIAL COUNSEL WAS INEFFECTIVE
14 FOR FAILING TO PROVIDE EVIDENCE TO YOUR ADAPTABILITY TO
15 PRISON LIFE. NOW, SINCE YOU'VE BEEN INCARCERATED ON DEATH
16 ROW, HAVEN'T YOU BEEN ADJUDICATED-- OR, I SHOULD SAY, HASN'T
17 THERE BEEN A DISCIPLINARY ADJUDICATION OF A NUMBER OF
18 CONVICTIONS YOU'VE BEEN INVOLVED IN? OR INFRACTIONS?

19 A YES, OF MINOR THINGS, YES.

20 Q WHEN YOU SAY MINOR, WHAT ARE WE TALKING ABOUT?

21 A CONTRABAND POSSESSION, WINE MAKING. THEY RUN THE
22 GAMUT OF PRETTY PETTY THINGS WHEN YOU'RE SITTING ON DEATH
23 ROW.

24 THE COURT: DID YOU SAY WINE DRINKING?

25 A WINE MAKING AND DRINKING.

- 1 Q HOW ABOUT---
- 2 A ALCOHOLIC BEVERAGES.
- 3 Q HOW ABOUT USE AND POSSESSION OF NARCOTICS,
- 4 SPECIFICALLY MARIJUANA?
- 5 A YES.
- 6 Q HOW ABOUT LOAN SHARKING?
- 7 A NO.
- 8 Q YOU DIDN'T HAVE A LOAN SHARKING BUSINESS?
- 9 A LOAN SHARKING?
- 10 Q YES.
- 11 A NO.
- 12 Q HOW ABOUT GAMBLING OR LOAN SHARKING, TRYING TO STAB
- 13 WITH A FORK?
- 14 A NO.
- 15 Q IN FEBRUARY OF 2003, ABOUT REFUSING OR FAILING TO OBEY
- 16 AN OFFICER?
- 17 A YES. I WAS TOLD NOT TO WRITE SOMEBODY.
- 18 Q AND YOU WROTE THEM ANYHOW?
- 19 A I WROTE THEM ANYHOW.
- 20 Q BECAUSE THAT'S WHAT YOU WANTED TO DO. RIGHT?
- 21 A YEAH. IT WASN'T THAT WRITING WAS WRONG. IT WAS THAT I
- 22 DISOBEYED THEIR ORDER NOT TO WRITE THEM. WRITING THEM
- 23 WASN'T THE WRONG PART.
- 24 Q YOU ALSO HAVE A COUPLE OF INFRACTIONS OF EITHER BEING
- 25 UNDER THE INFLUENCE OR POSSESSING CONTRABAND. CORRECT? IS

1 THAT THE WINE YOU'RE TALKING ABOUT? WOULD THAT HAVE BEEN
2 WINE OR MARIJUANA OR BOTH?

3 A CONTRABAND?

4 Q YES.

5 A CONTRABAND FALLS-- I MEAN, WINE DRINKING, IT COULD BE.
6 IT COULD BE MARIJUANA. THEY COULD CHARGE YOU WITH
7 POSSESSION OF DRUGS. WINE MAKING WOULD BE CONTRABAND. IT'S
8 NO DIFFERENT THAN THE REGULAR JUSTICE SYSTEM. THINGS ARE
9 PLEADED DOWN.

10 Q THESE ALL OCCURRED-- THESE ITEMS THAT WE'RE TALKING
11 ABOUT HERE ALL OCCURRED AFTER YOU WERE ON DEATH ROW.

12 CORRECT?

13 A YES.

14 Q NOW, YOU KILLED BOTH YOUR MOTHER AND YOUR FATHER
15 BACK ON NOVEMBER 26, 1997, DID YOU NOT?

16 A (NO RESPONSE)

17 MR. MATLOCK: YOUR HONOR, I WOULD OBJECT TO THAT
18 QUESTION. THE ISSUE HERE IS INEFFECTIVE ASSISTANCE OF COUNSEL.
19 WE DON'T WANT TO GO BACK AND START TRYING THE WHOLE CASE
20 ALL OVER AGAIN. SO, I WOULD OBJECT ON THE GROUNDS OF
21 RELEVANCE AND ALSO IN THE INTEREST OF JUDICIAL ECONOMY.

22 THE COURT: DO YOU CONTEND-- ARE YOU CONTENDING THAT
23 YOU ARE ENTITLED TO A NEW TRIAL IN THE GUILT PHASE?

24 MR. MATLOCK: NO SIR.

1 THE COURT: ALL RIGHT, THEN. AS TO THE ISSUES WITH REGARD
2 TO THE PENALTY PHASE, WHAT IS THE, EXPLAIN TO ME THE BASIS FOR
3 RELEVANCE AND....

4 MR. SALTER: FIRST OFF, THE STRICKLAND STANDARD IS ONE OF
5 WHETHER OR NOT IT'S A REASONABLE POSSIBILITY OF A DIFFERENT
6 RESULT; I.E., WHETHER OR NOT THE FACT FINDER, INCLUDING THIS
7 COURT, I BELIEVE, TO DETERMINE IF THERE IS THE AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES WHICH REACHED A RESULT THAT
9 CONCLUDED THE MITIGATION OUTWEIGHS THE AGGRAVATION.
10 UNLIKE A CRIMINAL PROCEEDING, IN A CIVIL PROCEEDING, HE HAS
11 THE BURDEN OF PROOF. HE'S FILED HIS VERIFIED APPLICATION. IT'S
12 BEEN AMENDED TO INCLUDE ALL HIS VARIOUS ALLEGATIONS. THE
13 QUESTION IS WHETHER OR NOT WE HAVE THE RIGHT PERSON.

14 THE COURT: THE QUESTION IS WHETHER OR NOT WHAT?

15 MR. SALTER: WHETHER OR NOT WE HAVE THE RIGHT PERSON.
16 WHETHER OR NOT-- THE CONCLUSION IS WHETHER OR NOT WE HAVE
17 THE RIGHT PERSON.

18 I PLAN TO ASK HIM A SERIES OF QUESTIONS CONCERNING
19 STATEMENTS HE'S MADE TO OTHER PEOPLE, INCLUDING MS. CASCIO.
20 AS I UNDERSTAND IT, HE HAS THE RIGHT TO INVOKE THE FIFTH
21 AMENDMENT TO ESSENTIALLY JUST NOT OTHERWISE TALK ABOUT
22 THE CRIME. BUT THE COURT HAS THE RIGHT TO DRAW AN ADVERSE
23 CONCLUSION.

24 THE COURT: OKAY.

1 MR. BROWN: YOUR HONOR, CAN I BE HEARD ON THAT VERY
2 BRIEFLY?

3 THE COURT: YES SIR.

4 MR. BROWN: YOUR HONOR, WE'RE NOT CONTESTING THE GUILT
5 PHASE HERE. THAT'S NOT AT ISSUE. WE'RE CONTESTING THE
6 MITIGATION PHASE.

7 MR. SALTER: WITH ALL DUE RESPECT, YOUR HONOR, THERE IS
8 AN ALLEGATION THAT COUNSEL WAS INEFFECTIVE FOR FAILING TO
9 PURSUE A GUILTY BUT MENTALLY ILL VERDICT. AND GUILTY BUT
10 MENTALLY ILL SAYS I AM GUILTY BUT MENTALLY ILL.

11 MR. BROWN: YOUR HONOR, OUT OF AN ABUNDANCE OF
12 CAUTION, I WOULD ADVISE HIM TO TAKE THE FIFTH AMENDMENT,
13 ASSUMING, ARGUENDO, HE DOES-- IF THIS COURT GRANTS HIM RELIEF
14 IT WOULD BE HIGHLY PREJUDICIAL IN A SUBSEQUENT PROCEEDING. I
15 DON'T SEE THE RELEVANCE HERE. IT'S NOT AN ISSUE BEFORE THE
16 COURT.

17 THE COURT: THE ONLY-- LET'S CLEAR THIS UP. THE ONLY
18 CLAIM THAT YOU HAVE REGARDING THE GUILT PHASE IS FAILURE OF
19 COUNSEL TO PURSUE A VERDICT OF GUILTY BUT MENTALLY ILL.

20 MR. BROWN: NO SIR, THAT'S NOT CORRECT. WHAT I HAVE IS A
21 CONTINUATION OF THE WHOLE THING. I THINK CERTAIN THINGS
22 SHOULD HAVE BEEN DONE IN THE GUILT PHASE. HOWEVER, WE DON'T
23 CONTEST THE GUILT PHASE.

24 MY OPINION, FROM HAVING REVIEWED THE WHOLE
25 TRANSCRIPT, I THINK CERTAIN THINGS COULD HAVE BEEN DONE IN

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 THE GUILT PHASE TO LAY THE GROUNDWORK FOR THE SENTENCING
2 PHASE. AS FAR AS THE GUILT ITSELF, WE DON'T CONTEST THAT.

3 BASICALLY, OUR PREMISE WOULD BE TO ASK FOR A NEW TRIAL
4 IN THE SENTENCING PHASE. HOWEVER, I CAN'T TIE IT TO---

5 THE COURT: ALL RIGHT. LET ME ASK YOU THIS: ARE YOU
6 ASKING FOR A NEW TRIAL IN THE GUILT PHASE?

7 MR. BROWN: NO SIR. AS AN OFFICER OF THE COURT I WOULD BE
8 ERRONEOUS TO SIT HERE AND TELL YOU THAT I THINK WE'RE
9 ENTITLED TO THAT; I'M NOT.

10 BUT I HAVE TO TIE IT ALL TOGETHER, YOUR HONOR, AS A
11 CONTINUAL PROCESS BY COUNSEL, WHICH LED TO THE RESULTS. I
12 DON'T WANT TO BAR---

13 THE COURT: THE ANSWER THAT YOU JUST GAVE KNOCKS OUT
14 YOUR CLAIM THAT THEY SHOULD HAVE PURSUED GUILTY BUT
15 MENTALLY ILL.

16 MR. BROWN: YOUR HONOR, I DON'T WANT TO BAR MYSELF.

17 THE COURT: WELL, YOU JUST SAID THAT. THAT'S WHY I WANT
18 TO CLEAR IT UP. IF YOU'RE PURSUING YOUR CLAIM THAT THEY
19 SHOULD HAVE SOUGHT A VERDICT OF GUILTY BUT MENTALLY ILL,
20 THAT'S A GUILT PHASE-RELATED CLAIM. AND IF I GRANT IT, IT WOULD
21 RESULT IN A NEW TRIAL IN THE GUILT PHASE.

22 MR. BROWN: YOUR HONOR, MY UNDERSTANDING IS IF HE'S
23 PLEADING GUILTY BUT MENTALLY ILL HE GOES STRAIGHT TO THE
24 SENTENCING PHASE AND ALL PENALTIES ARE APPLICABLE, INCLUDING
25 DEATH.

1 THE COURT: WELL, WHAT....

2 MR. BROWN: THE COURT HAS TO MAKE A FINDING OF THE
3 MENTAL ILLNESS.

4 THE COURT: SO, YOUR CLAIM, THEN, ON THE GUILTY BUT
5 MENTALLY ILL IS THAT COUNSEL SHOULD HAVE ADVISED HIM TO
6 PLEAD GUILTY BUT MENTALLY ILL AND THEN MOVE ON INTO THE
7 SENTENCING PHASE?

8 MR. BROWN: THAT WOULD ENTITLE US TO THE OPTION
9 BECAUSE THE FACT IS THERE IS BASICALLY NO EVIDENCE ON CROSS
10 OR DIRECT IN THE GUILT PHASE.

11 THE COURT: ALL RIGHT. WELL,---

12 MR. BROWN: LET ME REPHRASE MY ANSWER, YOUR HONOR. I
13 DON'T THINK I'M ENTITLED OBJECTIVELY TO A NEW GUILT PHASE
14 TRIAL, YOUR HONOR. I DON'T REALLY WANT TO WAIVE THAT. I DON'T
15 WANT TO BE BARRED FROM GOING BACK IN THERE BECAUSE IT'S A
16 CONTINUATION OF EVENTS THAT LEADS UP TO THE MITIGATION
17 PHASE.

18 THE COURT: I'M NOT SAYING YOU CAN'T- I'M NOT SAYING
19 ANYTHING. I'M JUST ASKING WHAT YOUR POSITION IS. THE QUESTION
20 CAME UP IN THE COURSE OF THAT DISCUSSION.

21 MR. BROWN: MY POSITION---

22 THE COURT: I DON'T SEE ANY REASON WHY YOU CAN'T
23 EXPLORE WHAT HAPPENED IN THE GUILT PHASE.

24 MR. BROWN: YES SIR, THAT'S RIGHT.

1 THE COURT: BUT I THINK-- I WANT TO-- IF WE CAN, WE SHOULD
2 PIN HIM DOWN AND ANSWER THE QUESTION WHETHER OR NOT YOU
3 ARE SEEKING A NEW TRIAL IN THE GUILT PHASE, AND YOU'RE SAYING
4 NO.

5 MR. BROWN: YOUR HONOR, OF COURSE WE ASK FOR IT.
6 OBJECTIVELY, NO, WE'RE NOT. I DON'T WANT TO BAR MYSELF FROM
7 GOING INTO IT.

8 THE COURT: SO, THAT I CAN HELP MYSELF TO UNDERSTAND
9 YOUR PRESENTATION OF EVIDENCE, WHICH OF THESE CLAIMS THAT
10 WE DISCUSSED IN THE BEGINNING THAT YOU ARE GOING TO MAKE
11 DURING THE COURSE OF THIS TRIAL ABOUT THE INEFFECTIVENESS OF
12 COUNSEL, WHICH OF THOSE CLAIMS, IF GRANTED, WOULD RESULT IN A
13 NEW TRIAL IN THE GUILT PHASE?

14 MR. BROWN: PROBABLY NONE; OBJECTIVELY, PROBABLY NONE.

15 THE COURT: ALL RIGHT. SO, YOU'RE ADVISING HIM TO ASSERT
16 HIS RIGHT UNDER THE FIFTH AMENDMENT TO REMAIN SILENT?

17 MR. BROWN: OUT OF AN ABUNDANCE OF CAUTION, YOUR
18 HONOR. I DON'T SEE THE RELEVANCE---

19 THE COURT: DO YOU HAVE ANY RESPONSE TO THAT, MR.
20 SALTER?

21 MR. SALTER: YOUR HONOR, THE PROBLEM THAT I HAVE, AMONG
22 THE OTHER ALLEGATIONS, WHICH SHOULD HAVE BEEN POINTED OUT
23 TO YOU, BOTH, IN FACT, TWO OTHER ALLEGATIONS. ONE WHICH IS
24 CROSS EXAMINATION OF MEREDITH MOON. MEREDITH MOON WAS A
25 GUILT PHASE WITNESS. THE EXISTENCE OF A PROPOSED PLEA

1 BARGAIN WHICH HE READ ABOUT IN THE NEWSPAPER, THAT'S
2 OBVIOUSLY A GUILT OR INNOCENCE TYPE ISSUE.

3 THE COURT: WELL, THE PLEA BARGAIN, I DON'T BELIEVE,
4 WOULD BE BECAUSE THAT WOULD HAVE-- I THINK THEIR ARGUMENT
5 IS THAT IF HAD BEEN OFFERED THE PLEA BARGAIN, AND IF HE HAD
6 TAKEN IT, AND IF IT HAD EVEN EXISTED, HE WOULD HAVE GOTTEN A
7 LIFE SENTENCE FOR MURDER.

8 MR. BROWN: THAT'S CORRECT, YOUR HONOR. ASSUMING,
9 ARGUENDO, THAT SUCH A THING EXISTED AND WAS VALID.

10 THE COURT: AND AS FAR AS MEREDITH MOON IS CONCERNED, I
11 DON'T SEE ANY REASON WHY IN CONTESTING COUNSEL'S
12 PERFORMANCE REGARDING PENALTY THAT THEY CAN'T RAISE AND
13 DISCUSS SOMETHING THAT HAPPENED DURING THE GUILT PHASE. IF
14 COUNSEL DID SOMETHING THAT WAS JUST VERY UNWISE DURING THE
15 GUILT PHASE THAT IF THEY HADN'T HAVE DONE IT MIGHT HAVE MADE
16 A DIFFERENCE IN THE PENALTY PHASE, JUST SPEAKING
17 HYPOTHETICALLY. AND THAT COULD BE THE BASIS OF RELIEF AS FAR
18 AS THE PENALTY PHASE.

19 BUT MY QUESTION-- YOU JUST SAID THAT YOU THOUGHT THAT
20 IF HE ASSERTS HIS RIGHT UNDER THE FIFTH AMENDMENT HE'S
21 ENTITLED TO DO THAT.

22 MR. SALTER: HE'S ENTITLED TO AND YOU'RE ENTITLED TO
23 DRAW AN ADVERSE INFERENCE.

24 THE COURT: OKAY. WELL, WE'LL---

1 MR. SALTER: MY UNDERSTANDING OF THE LAW-- I'M SORRY
2 FOR INTERRUPTING.

3 THE COURT: THAT'S OKAY. NO, YOU GO AHEAD AND SAY WHAT
4 YOU WERE GOING TO SAY, PLEASE.

5 MR. SALTER: I WAS GOING TO SAY THAT FROM WHERE I STAND
6 UNDER THE LAW I WOULD HAVE TO ASK HIM-- I WOULD HAVE TO
7 PROFFER THE QUESTIONS I WANTED TO ASK AND HAVE HIM INVOKE
8 HIS PRIVILEGE.

9 THE COURT: OKAY. THEN, THAT'S DONE. YOU'VE ASKED THE
10 QUESTION. HE'S INVOKED THE PRIVILEGE AND WE'LL MOVE ON AND
11 WE'LL DISCUSS WHAT INFERENCES MIGHT BE DRAWN FROM THAT
12 WHEN WE GET AROUND TO WRAPPING IT UP.

13 MR. SALTER: ALL RIGHT, SIR.

14 MR. BROWN: YOUR HONOR, IF I MAY, WHILE WE'RE ON THE
15 RECORD, YOU ASKED MR. MATLOCK ABOUT HIS UNDERSTANDING OF
16 STRICKLAND V. WASHINGTON, WHEN YOU CONSIDERED THE SECOND
17 PRONG AND THE FIRST PRONG, AND YOU UNDERSTOOD THE FIRST
18 PRONG. STRICKLAND V. WASHINGTON, 466 US 668 104, SUPREME
19 COURT AT PAGE 2069, WHEN THE DEFENDANT CHALLENGED THE
20 DEATH SENTENCE SUCH AS THE ONE ISSUED IN THIS CASE, THE
21 QUESTION WAS, WHETHER THERE'S A REASONABLE PROBABILITY
22 THAT HAS TO BEAR THE SENTENCE OR INCLUDING AN APPELLATE
23 BOARD TO THE EXTENT THEY END UP INDEPENDENTLY WAIVING THE
24 EVIDENCE WOULD HAVE CONCLUDED THAT WITHOUT AGGRAVATING
25 AND MITIGATING CIRCUMSTANCES DID NOT WARRANT DEATH.

1 IN MAKING THIS DETERMINATION A COURT HEARING FOR AN
2 INEFFECTIVE ASSISTANCE CLAIM MUST CONSIDER THE TOTALITY OF
3 THE EVIDENCE BEFORE THE JUDGE AND JURY.

4 AND I THINK THAT'S WHAT WE'RE ASKING THE COURT TO DO, IS
5 TO CONSIDER THE TOTALITY HERE, YOUR HONOR.

6 THE COURT: ALL RIGHT MR. SALTER, UNLESS YOU'RE RIGHT ON
7 THE VERGE OF COMPLETING YOUR CROSS EXAMINATION, I'D LIKE TO
8 TAKE A SHORT BREAK.

9 MR. SALTER: THAT'S FINE, YOUR HONOR.

10 THE COURT: WE'LL TAKE A SHORT BREAK, ABOUT FIVE
11 MINUTES.

12 (WHEREUPON THE COURT WAS IN RECESS AT 2:25 P.M.)

13 COURT IN SESSION - 2:35 P.M.

14 RESUMPTION OF CROSS EXAMINATION OF WITNESS ROBERTSON BY MR.

15 SALTER:

16 Q MR. ROBERTSON, EARLIER ON DIRECT EXAMINATION YOU WERE
17 ASKED ABOUT DOCTOR PINCUS. AND DOCTOR PINCUS WAS A
18 NEUROLOGIST WHOM YOU SAW. CORRECT?

19 A YES.

20 Q NOW, HE WASN'T THE ONLY WITNESS TO TESTIFY IN THE
21 PENALTY PHASE, WAS HE? I'M SORRY. MENTAL HEALTH WITNESS TO
22 TESTIFY IN THE PENALTY PHASE, WAS HE?

23 A NO, I DON'T BELIEVE SO.

24 Q WHAT OTHER PEOPLE TESTIFIED CONCERNING YOUR MENTAL
25 HEALTH STATUS?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

- 1 A SPECIFICALLY, MINE?
- 2 Q YES.
- 3 A THE STATE'S EXPERT, MR. McKEE.
- 4 Q WHAT ABOUT JIM EVANS? REMEMBER HIM?
- 5 A I BELIEVE JIM EVANS.
- 6 Q HE WAS A PSYCHOLOGIST. RIGHT?
- 7 A I REMEMBER NAMES; I DON'T REMEMBER TITLES.
- 8 Q OKAY. DO YOU REMEMBER DOCTOR MORTON, ALEXANDER
- 9 MORTON, FROM DOWN IN CHARLESTON?
- 10 A YES SIR.
- 11 Q HE'S A PHARMACOLOGIST?
- 12 A YES SIR.
- 13 Q HE ALSO TESTIFIED. AND MS. CASCIO, THE SOCIAL WORKER.
- 14 AND THERE WERE A NUMBER OF OTHER PEOPLE WHO TESTIFIED
- 15 CONCERNING THEIR TREATMENT OF YOU PRIOR TO THE EVENTS FOR
- 16 WHICH YOU WERE ON TRIAL. RIGHT?
- 17 A YES.
- 18 Q EARLIER, I'D ASKED YOU ABOUT THE PLEA OFFER AND YOU
- 19 MENTIONED SOMETHING ABOUT WHAT CHIP HAD SAID TO YOU ABOUT
- 20 THE PLEA OFFER. I DIDN'T QUITE CATCH ALL YOUR ANSWER. WHAT
- 21 DID YOU SAY?
- 22 A YOU WANT TO KNOW WHAT CHIP TOLD HIS ATTORNEY?
- 23 Q I WANT TO KNOW WHAT CHIP TOLD YOU.
- 24 A WHAT CHIP TOLD ME IS WHAT HE TOLD HIS ATTORNEY.
- 25 Q WHAT DID HE TELL YOU?

1 A THAT HE TOLD HIS ATTORNEY THAT BASICALLY, HELL, NO.

2 Q SO, YOU'RE AWARE THAT YOUR BROTHER WAS NOT GONNA--
3 EVEN IF THE PLEA OFFER HAD BEEN SERIOUS, HE WAS NOT GONNA
4 HAVE ANY PART OF IT. CORRECT?

5 THE COURT: LET ME ASK THIS QUESTION.

6 A I--

7 THE COURT: I'M SORRY. YOU CAN GO AHEAD.

8 A I WASN'T GOING TO HAVE ANY PART OF IT. EVEN IF MY
9 BROTHER HAD SAID, HERE'S \$500,000,000, I WOULDN'T HAVE HAD ANY
10 PART OF IT. SO, IT DIDN'T MAKE ANY DIFFERENCE. THE FACT IS, I
11 DIDN'T KNOW ABOUT IT.

12 Q NOW, WITH RESPECT TO YOUR TESTIMONY CONCERNING TONI
13 CASCIO, YOU COMPLAINED AND SAID THAT YOUR LAWYERS TOLD
14 YOU TO BE TRUTHFUL AND FRANK WITH ALL YOUR EXPERTS. RIGHT?

15 A YES.

16 Q AND YOU WERE TRUTHFUL FRANK WITH HER AND YOU WERE
17 TRUTHFUL AND FRANK WITH EVERY OTHER EXPERT YOU TALKED TO.
18 CORRECT?

19 A TO THE BEST OF MY RECOLLECTION, YES.

20 Q NOW, DO YOU RECALL GIVING A STATEMENT CONCERNING
21 YOUR PARENTS' DEATH TO INVESTIGATORS FROM THE YORK COUNTY
22 SHERIFF'S DEPARTMENT BACK ON NOVEMBER 26, 1997?

23 A NO. I BELIEVE ON NOVEMBER 26, 1997, I WAS IN PHILADELPHIA.

1 Q CORRECT. DO YOU REMEMBER INVESTIGATOR RALPH MISLE
2 CAME UP THERE AND TALKED TO YOU? THEY WERE GONNA BRING
3 YOU BACK AND HE SPOKE TO YOU UP THERE?

4 A IT'S BEEN A WHILE. I SPOKE TO A BUNCH OF PEOPLE. AND I
5 BELIEVE I TOLD MR. POPE DURING THE TRIAL, I DON'T REMEMBER
6 NAMES OF THOSE PEOPLE I SAW, THAT WERE INTERVIEWED. I
7 INTERVIEWED-- YOU KNOW, I MUST HAVE HAD FIFTY DETECTIVES
8 WALK IN AND OUT OF THAT ROOM IN THE COURSE OF A DAY AND A
9 HALF. YES, I SUPPOSE SOME OF THEM WERE FROM SOUTH CAROLINA.

10 Q TWO OF THEM IN PARTICULAR, INVESTIGATOR MISLE AND
11 ANOTHER INVESTIGATOR. CORRECT?

12 A IF YOU SAY THERE'S TWO OF THEM FROM SOUTH CAROLINA,
13 THEN THAT MUST BE.

14 Q DIDN'T YOU TELL HIM THAT YOUR PARENTS WERE STILL ALIVE
15 WHEN YOU LEFT?

16 A AS FAR AS I KNEW, YES.

17 Q AND THEN ON MARCH 2, 1998, YOU HAD A CONVERSATION, BACK
18 HERE IN YORK COUNTY, YOU HAD A CONVERSATION AT THE
19 DETENTION CENTER WITH INVESTIGATOR MISLE AND TIM HAGER.
20 CORRECT? DO YOU REMEMBER THAT?

21 A YES.

22 Q NOW,--

23 A I BELIEVE I ASKED FOR COUNSEL AS WELL.

1 Q DO YOU REMEMBER TALKING TO THEM NOT ABOUT THE CRIME
2 ITSELF, BUT ABOUT YOUR FAMILY BACKGROUND AND ALL THAT,
3 BEFORE INVOKING YOUR RIGHT TO COUNSEL?

4 A WE MAY HAVE TALKED ABOUT SOME BRIEF, GENERAL STUFF,
5 YES.

6 Q DIDN'T YOU TELL THEM THAT YOUR MOTHER HAD VISITED YOU
7 WHEN YOU WERE PREVIOUSLY INCARCERATED?

8 A I MAY HAVE.

9 Q YOU SAID SHE MAILED THINGS TO YOU?

10 A THAT'S ALL A MATTER OF RECORD. THAT CAN ALL BE FOUND IN
11 THE RECORD. I'M NOT SURE WHETHER I SAID IT OR NOT.

12 Q YOU DON'T RECALL TELLING THEM YOUR RELATIONSHIP WITH
13 YOUR MOM WAS PRETTY GOOD?

14 A LIKE I SAY, IF I DID, OKAY, I DID. I'M NOT SAYING I DIDN'T. I
15 DON'T REMEMBER THE SPECIFICS OF THE CONVERSATION. I DO
16 REMEMBER THAT I ASKED FOR COUNSEL. WE TALKED ABOUT THIS
17 DURING THE TRIAL, ABOUT EIGHT YEARS AGO. I DID INVOKE THE
18 RIGHT, MY RIGHT TO COUNSEL AT THAT TIME.

19 Q BUT NOT AT FIRST IS WHAT YOU'RE SAYING. CORRECT?

20 A YES, AT SOME POINT PRIOR TO THAT I DID INVOKE MY RIGHT TO
21 COUNSEL.

22 Q NOW, EVEN THOUGH YOU DIDN'T TESTIFY AT TRIAL, YOU DID
23 STAND UP IN FRONT OF THE JURY, DIDN'T YOU, AND GIVE A
24 STATEMENT IN THE SENTENCING PHASE?

25 A I DID.

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 Q DID YOU TELL THE JURORS YOU WERE SORRY FOR WHAT
2 HAPPENED?

3 A I BELIEVE THOSE ARE PRETTY CLOSE TO THE WORDS.

4 Q AND THAT YOU WOULD NEVER BE ABLE TO EXPLAIN WHAT
5 HAPPENED?

6 A I GUESS SO.

7 Q DO YOU REMEMBER TALKING TO MS. CASCIO ON DECEMBER 7,
8 1998?

9 A THE SPECIFIC DAY, NO.

10 Q DO YOU RECALL TALKING TO HER?

11 A YES, MULTIPLE TIMES.

12 Q IN PREPARATION FOR THE TRIAL?

13 A YES.

14 Q AND ONE OCCASION, SPECIFICALLY, SHE WAS ASKED IF Y'ALL
15 DISCUSSED WHAT HAPPENED THE NIGHT OF THE CRIME. CORRECT?

16 A WE DISCUSSED WHAT HAPPENED ON NOVEMBER 25, 1997, THAT'S
17 CORRECT.

18 Q I BELIEVE YOU TOLD HER AT THAT TIME THAT YOU HAD TAKEN
19 SOME 250 TO 280 MILLIGRAMS OF RITALIN OVER THE COURSE OF THE
20 PREVIOUS EVENING AND THE MORNING OF THE MURDERS?

21 A YES.

22 Q YOU TOLD HER THAT MEREDITH MOON HAD BEEN THERE, HAD
23 COME OVER FOR APPROXIMATELY HALF AN HOUR?

24 A YES.

1 Q AND YOU TOLD HER THAT MEREDITH MOON HAD SCORED
2 RITALIN WHEN SHE WAS OVER THERE THE FIRST TIME?

3 A YES. THEY WEREN'T THERE THAT-- YES.

4 Q DID YOU TELL MS. CASCIO THAT YOU HAD SPOKEN TO CHIP FOR
5 ABOUT A HALF HOUR ABOUT COMING HOME FOR THANKSGIVING,
6 THAT HE WAS DROPPING OUT OF SCHOOL?

7 A YES. I SPOKE TO HIM SEVERAL TIMES THAT NIGHT.

8 Q THE FIRST CONVERSATION BEING APPROXIMATELY ABOUT A
9 HALF HOUR LONG?

10 A IF I TOLD YOU I COULD REMEMBER THE SEQUENCE EXACTLY, I
11 CANT. YEAH.

12 Q SO, WHAT'S YOUR RECOLLECTION?

13 A THAT EARLY IN THE EVENING-- I MEAN, AS IN EARLY, SEVEN,
14 EIGHT P.M.--

15 Q RIGHT.

16 A --THAT HE HAD CALLED. AND MY FATHER HAD INSTRUCTED ME
17 THAT WE DON'T TAKE PHONE CALLS FROM HIM AT THIS HOUSE
18 ANYMORE. AND SO, BASICALLY, I TOLD CHIP, I CAN'T TALK RIGHT
19 NOW. RIGHT NOW I'M LIVING UNDER HIS HOUSE AND HE PAYS THIS
20 PHONE BILL. I CAN'T TALK TO YOU RIGHT NOW. THAT I WOULD CALL
21 HIM BACK WHEN I COULD. I THINK I MAY HAVE CALLED BACK ONE-
22 THIRTY, TWO A.M., AFTER MOM AND DAD HAD GONE TO BED.

23 AND WE TALKED MOSTLY ABOUT WHAT HE WAS DOING AND,
24 YOU KNOW, HIM COMING HOME FOR THANKSGIVING, OR THE FACT
25 THAT MOM AND DAD, OR DAD WASN'T GONNA ALLOW HIM TO COME

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 HOME FOR THANKSGIVING; THAT I WAS GONNA FIND A WAY TO GET
2 HIM HOME FOR THANKSGIVING. BUT, YES, IT CENTERED AROUND
3 CHIP, THANKSGIVING, WHAT HE HAD DONE THE LAST WEEK AT
4 SCHOOL.

5 I BELIEVE OVER THAT NEXT HALF HOUR, WE MAY HAVE TALKED
6 FOR A MINUTE OR TWO HERE AND THERE. I BELIEVE THE BATTERY
7 WAS GOING DEAD ON THE PHONE AND IT WAS KINDA CHOPPY. I
8 WOULD TALK, IT WOULD KINDA GO OFF, AND I WOULD HANG IT UP
9 FOR A MINUTE, LET IT CHARGE FOR A SECOND, AND CALL RIGHT BACK
10 TO SAY SOMETHING.

11 I BELIEVE WE TALKED SEVERAL TIMES OVER THE COURSE OF
12 THAT NEXT HALF HOUR. BUT ULTIMATELY, I TOLD HIM THAT I WOULD
13 MAKE SURE HE WOULD HAVE A PLANE TICKET OR A BUS TICKET IN HIS
14 HAND, THAT TO HELL WITH MOM AND DAD, YOU WERE COMING HOME
15 FOR THANKSGIVING.

16 Q YOU LATER CALLED MEREDITH MOON AND SPOKE TO HER?

17 A I DID.

18 Q DO YOU RECALL WHAT THAT CONVERSATION WAS ABOUT?

19 A AT SOME POINT AFTERWARDS, YES.

20 Q DID YOU CALL HER ON MORE THAN ONE OCCASION?

21 A I BELIEVE I CALLED HER THE FIRST TIME AND ASKED HER IF SHE
22 WOULD PUT A BUS TICKET OR A PLANE TICKET ON HER CREDIT CARD
23 OR HER FATHER'S CREDIT CARD FOR CHIP. SHE WAS STILL AWAKE
24 BECAUSE SHE WAS STILL FLYING HIGH ON RITALIN.

1 I BELIEVE THAT I MADE ANOTHER PHONE CALL WHEN I ASKED
2 TO COME OVER SO WE COULD DRIVE TO PHILADELPHIA. IT MAY BE
3 THAT THAT WAS ALL IN ONE PHONE CALL. I CANNOT REMEMBER
4 NOW. OKAY? SOMEBODY WOULD HAVE TO REFRESH MY MEMORY.

5 IT MAY HAVE BEEN TWO SEPARATE PHONE CALLS TWENTY
6 MINUTES APART, OR IT MAY HAVE BEEN ONE PHONE CALL. I'M NOT
7 SURE. IN ANY CASE, SHE SAID NO TO THE CREDIT CARD, BUT YES, SHE
8 WOULD BE MORE THAN WILLING TO DRIVE WITH ME TO PHILADELPHIA
9 TO GET CHIP.

10 Q YOU TOLD MS. CASCIO, DID YOU NOT, THAT MEREDITH MOON
11 WAS INFATUATED WITH YOU AND WOULD HAVE DONE ANYTHING
12 THAT YOU ASKED HER TO?

13 A I GUESS I SAID THAT.

14 Q AND DIDN'T YOU TELL MS. CASCIO THAT AFTER MEREDITH
15 CAME TO YOUR HOUSE, THE TWO OF Y'ALL BEGAN TALKING ABOUT
16 THE PROBLEMS SURROUNDING CHIP COMING HOME. CORRECT?

17 A YES, AMONG OTHER THINGS.

18 Q AND THEN ULTIMATELY THIS CONVERSATION LED TO,
19 "SOMEHOW IT LED TO I'M GONNA DO IT." ?

20 A I TAKE THE FIFTH.

21 Q NOW, YOU TOLD MS. CASCIO, DID YOU NOT, THAT YOU AND
22 MEREDITH DID IT?

23 A I'M SORRY?

24 Q YOU TOLD MS. CASCIO THAT YOU HAD SAWED OFF THE BAT YOU
25 USED ON YOUR FATHER, DID YOU NOT?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

- 1 A I TAKE THE FIFTH.
- 2 Q DIDN'T YOU TELL HER YOU DECIDED NOT TO USE THE WOODEN
3 ONE BECAUSE IT WAS AUTOGRAPHED---
- 4 A I TAKE---
- 5 Q ---AND YOU DIDN'T WANT TO RUIN IT?
- 6 A YOUR HONOR, DO I NEED TO SAY SOMETHING OTHER THAN
7 TAKE THE FIFTH, OR IS THAT ENOUGH FOR YOU?
8 THE COURT: THAT'LL BE SUFFICIENT.
- 9 A I TAKE THE FIFTH.
- 10 Q DIDN'T YOU ALSO TELL MS. CASCIO THAT YOU HAD TAKEN TWO
11 BOTTLES OF TILEX?
- 12 A I TAKE THE FIFTH.
- 13 Q YOU ALSO TOLD HER THAT YOU THEN SAT IN YOUR ROOM AND
14 WAITED FOR YOUR FATHER TO GET IN THE SHOWER IN ORDER TO KILL
15 YOU MOTHER BECAUSE THERE WOULD BE NOISE?
- 16 A I TAKE THE FIFTH.
- 17 Q YOU TOLD MS. CASCIO THAT YOU TOOK THE PHONE OFF THE
18 HOOK AND YOU LAID A KNIFE IN THE HALLWAY IN CASE YOUR DAD
19 CAME IN. CORRECT?
- 20 A I TAKE THE FIFTH.
- 21 Q YOU TOLD DR. CASCIO YOU THEN WENT IN THE BEDROOM AND
22 STARTED FUCKING WITH YOUR MOTHER AND SHE BEGAN SCREAMING
23 FOR YOUR FATHER?
- 24 A I TAKE THE FIFTH.

1 Q DIDN'T YOU ALSO TELL HER THAT IT WAS "GETTING AT ME TO
2 HEAR HER SCREAMING"?

3 A I TAKE THE FIFTH.

4 Q YOU ALSO TOLD HER THAT YOU WERE "IN A RAGE", AND THAT
5 YOU WERE "LIKE A MANIAC"?

6 A I TAKE THE FIFTH.

7 Q DIDN'T YOU ALSO TELL HER THAT YOU LATER WENT
8 DOWNSTAIRS AND SAID, "ONE DOWN AND ONE TO GO"?

9 A I TAKE THE FIFTH.

10 Q DIDN'T YOU ALSO TELL HER THAT YOU LAID THE BAT DOWN AT
11 THE TOP OF THE STAIRS AND SAT AND WAITED WITH A HAMMER, "LIKE
12 I WAS STANDING ON THE OTHER SIDE OF MYSELF WATCHING ME"?

13 A I TAKE THE FIFTH.

14 Q YOU ALSO SAID IT WAS "LIKE SOMEONE ELSE COMMITTING THE
15 CRIME AND I WAS WATCHING IT TAKE PLACE"?

16 A I TAKE THE FIFTH.

17 Q DIDN'T YOU TELL HER THAT YOU SPRAYED TILEX IN YOUR
18 FATHER'S EYES AND BURIED THE HAMMER IN HIS HEAD?

19 A I TAKE THE FIFTH.

20 Q DIDN'T YOU ALSO TELL HER THAT YOUR FATHER "PUT UP A
21 FIGHT WITH THE HAMMER STUCK IN HIS HEAD"?

22 A I TAKE THE FIFTH.

23 Q AND DIDN'T YOU TELL HER THAT EVENTUALLY YOUR FATHER
24 FELL TO THE GROUND AND YOU HIT HIM SOME TWO HUNDRED TIMES
25 WITH THE BAT AND HAMMER?

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A I TAKE THE FIFTH.

2 Q AND YOU ALSO TOLD HER, DID YOU NOT, THAT THIS WAS
3 TWENTY YEARS OF HATRED COMING OUT?

4 A I TAKE THE FIFTH.

5 Q DID YOU TELL HER THAT "IT WAS OVERKILLING, IT WENT ON
6 AND ON AND ON AND ON"?

7 A I TAKE THE FIFTH.

8 Q YOU ALSO TOLD HER THAT YOU THEN WENT TO THE BEDROOM
9 TO CHECK ON YOUR MOTHER?

10 A I TAKE THE FIFTH.

11 Q DIDN'T YOU TELL HER AT THAT POINT THAT YOU HIT YOUR
12 MOTHER IN THE HEAD WITH A HAMMER JUST TO MAKE SURE SHE WAS
13 DEAD?

14 A I TAKE THE FIFTH.

15 Q YOU ALSO TOLD HER THAT YOU LATER HEARD NOISE UPSTAIRS
16 AND THOUGHT IT WAS YOUR FATHER "BREATHING INTO THE CARPET"?

17 A I TAKE THE FIFTH.

18 Q DIDN'T YOU ALSO TELL HER THAT YOU WENT TO FIND A DRILL
19 TO END THE MATTER?

20 A I TAKE THE FIFTH.

21 Q YOU TOLD HER THAT YOU LATER WENT WITH THE BAT
22 UPSTAIRS TO BEAT HIM AGAIN AND YOU KICKED YOUR FATHER WITH
23 YOUR TOE TO MAKE SURE HE WAS DEAD?

24 A I TAKE THE FIFTH.

1 Q YOU TOLD HER THAT YOU CLEANED UP, TOOK THE MONEY AND
2 CAR KEYS AND PACKED UP THE TRASH AND TOOK IT TO THE DUMP?

3 A I TAKE THE FIFTH.

4 Q DIDN'T YOU ALSO TELL HER THAT YOU DIDN'T THINK MEREDITH
5 MOON'S TESTIMONY WOULD BE ENOUGH BY ITSELF TO CONVICT YOU?

6 A I TAKE THE FIFTH.

7 Q YOU TOLD MS. CASCIO THAT YOU BROKE A WINDOW
8 DOWNSTAIRS TO MAKE IT LOOK LIKE A ROBBERY?

9 A I TAKE THE FIFTH.

10 Q YOU TOLD HER THAT THE VAN ACROSS THE STREET PULLED UP,
11 YOU WAVED AND THEN GOT IN YOUR CAR AND LEFT?

12 A I TAKE THE FIFTH.

13 Q DIDN'T YOU ALSO TELL HER THAT WHAT YOU HAD DONE
14 WOULD NOT BE A SURPRISE TO YOUR BROTHER?

15 A I TAKE THE FIFTH.

16 Q DIDN'T YOU ALSO TELL HER THAT YOU WERE GONNA GO UP THE
17 ROAD AND NO ONE WOULD KNOW THAT YOUR PARENTS WERE
18 MISSING?

19 A I TAKE THE FIFTH.

20 Q YOU ALSO TOLD HER THAT YOU CALLED HOME AND REALIZED
21 THAT SOMEONE HAD FOUND THE BODIES BECAUSE SOMEBODY PUT
22 THE PHONE ON THE HOOK?

23 A I TAKE THE FIFTH.

24 Q DIDN'T YOU TELL HER THAT YOU WERE JUST TOO SMART TO LET
25 THIS HAPPEN.

JAMES ROBERTSON -CROSS EXAMINATION BY MR. SALTER

1 A I TAKE THE FIFTH.

2 MR. SALTER: BEG THE COURT'S INDULGENCE.

3 (PAUSE)

4 I HAVE NOTHING FURTHER, YOUR HONOR.

5 THE COURT: NOW, LET ME RAISE THIS QUESTION: ONE OF YOUR
6 CLAIMS IS THAT THE DEFENDANT WANTED TO TESTIFY IN, AT SOME
7 PHASE OF THE TRIAL, IN ORDER TO RESPOND TO WHAT DOCTOR
8 CASCIO HAD SAID ABOUT CERTAIN THINGS?

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

10 THE COURT: NOW, IN ORDER, OBVIOUSLY, FOR HIM TO TESTIFY,
11 HE WOULD HAVE TO WAIVE HIS RIGHT TO REMAIN SILENT UNDER THE
12 FIFTH AMENDMENT.

13 HIS INVOKING THE RIGHT TO REMAIN SILENT UNDER THE FIFTH
14 AMENDMENT IS GOING TO EXTINGUISH YOUR CLAIM THAT HE SHOULD
15 HAVE BEEN ALLOWED TO TESTIFY TO RESPOND TO DOCTOR CASCIO.
16 BECAUSE THE ONLY WAY HE WOULD BE ABLE TO SATISFY THE
17 SECOND PRONG OF STRICKLAND WOULD BE FOR ME TO HEAR THAT
18 TESTIMONY.

19 MR. BROWN: AS WE DISCUSSED IN CHAMBERS, YOUR HONOR,
20 THAT'S ONE OF THE ISSUES THAT MR. ROBERTSON WANTED ME TO
21 RAISE IN COURT.

22 THE COURT: ALL RIGHT. ANY RE-DIRECT?

23 MR. MATLOCK: YES SIR. IF IT PLEASE THE COURT.

24

25

1 RE-DIRECT EXAMINATION BY MR. MATLOCK:

2 Q NOW, JIMMY, YOU SAID THAT-- WE'RE NOT ASSUMING IN ANY
3 WAY THAT YOU TOLD MS. CASCIO THAT, BECAUSE YOU WERE AT
4 TRIAL. AND THESE VARIOUS POINTS THAT MR. SALTER BROUGHT UP,
5 ISN'T THAT WHAT SHE SAID AT TRIAL?

6 A YES.

7 Q AND ISN'T IT FACT THAT YOUR ATTORNEYS KNEW IN ADVANCE
8 THAT THAT'S WHAT SHE WOULD TESTIFY?

9 A YES.

10 Q BECAUSE YOU WENT OVER HER REPORT AND HER NOTES WITH
11 THEM AND YOU KNEW THAT THAT WOULD BE HER TESTIMONY?

12 A I DIDN'T KNOW SHE WAS GOING TO TESTIFY TO WHAT SHE
13 TESTIFIED TO.

14 Q OKAY.

15 A I KNEW THAT SHE WAS GONNA TESTIFY, BUT I DIDN'T HAVE ANY
16 CLUE AS TO WHAT SHE TESTIFIED TO WAS WHAT SHE WOULD TESTIFY
17 TO.

18 Q IT CAME INTO EVIDENCE THAT THIS WOULD BE THE SUBSTANCE
19 OF HER TESTIMONY AND YOUR LAWYERS STILL PERSISTED IN
20 BRINGING HER ON AS A WITNESS IN YOUR BEHALF?

21 A YES.

22 Q AND, OF COURSE, THE OBVIOUS NEXT QUESTION, DO YOU THINK
23 THAT THIS HURT YOUR CASE IN MITIGATION?

24 A YEAH.

25 Q HOWEVER BRIEF?

JAMES ROBERTSON - RE-DIRECT EXAMINATION BY MR. MATLOCK

1 A FROM MY STANDPOINT, THAT DAY IT ESSENTIALLY WIPED OUT
2 EVERYTHING WE'D DONE BEFORE, ALL THE WORK WE'D PUT IN, HAD
3 PUT IN; ALL THE WORK THAT WE HAD PRESENTED TO MITIGATE WHAT
4 THE STATE HAD PUT UP AS AGGRAVATING CIRCUMSTANCES HAD BEEN
5 THROWN OUT THE DOOR IN A MATTER OF AN HOUR AND A HALF.

6 Q LET'S GO BACK TO---

7 THE COURT: CAN I ASK A QUESTION SO I MAKE SURE I
8 UNDERSTAND THIS?

9 MR. MATLOCK: SURE

10 THE COURT: WHEN DID DOCTOR CASCIO TESTIFY?

11 MR. MATLOCK: IN MITIGATION, SHE WAS ONE OF THE LAST
12 WITNESSES, YOUR HONOR.

13 THE COURT: AND SHE WAS CALLED BY THE DEFENSE?

14 MR. BROWN: SHE WAS THE LAST EXPERT, YOUR HONOR.

15 THE COURT: OKAY, THANK YOU.

16 Q JIMMY, GETTING BACK TO THE PLEA BARGAIN, IF YOU WILL,
17 WITH MR. GILLEN. MR. GILLEN WAS YOUR BROTHER'S ATTORNEY?

18 A THAT'S CORRECT.

19 Q THE POINT IS, AT NO TIME DURING THE COURSE OF THE TRIAL
20 DID YOUR ATTORNEYS IN ANY WAY DISCUSS THAT PLEA BARGAIN
21 WITH YOU. IS THAT CORRECT?

22 A RIGHT. I DIDN'T KNOW IT EXISTED.

23 Q YOU DIDN'T EVEN KNOW IT EXISTED. WHAT DO YOU MEAN BY
24 THAT?

1 A I DIDN'T KNOW THAT IT EXISTED. OKAY? AND THE ARTICLE IN
2 THE PAPER DOESN'T EVEN MENTION MY ATTORNEY.

3 Q RIGHT.

4 A I MEAN, I DIDN'T KNOW THAT MY ATTORNEYS KNEW ANYTHING
5 ABOUT IT, MUCH LESS KNEW ENOUGH ABOUT IT TO APPROACH ME
6 WITH IT.

7 Q OKAY. BUT YOU TALKED TO MR. BOYD. YOU SAID LATER ON
8 YOU WROTE HIM OR BY TELEPHONE OR SOMETHING LIKE THAT?

9 A YES.

10 Q AT THIS TIME, HE RELAYED THAT THIS HAD---

11 A YEAH, THIS HAD OCCURRED AND THAT HE DID KNOW ABOUT IT.
12 HE FOUND OUT AT THE LAST MINUTE BEFORE TRIAL OR MAYBE
13 DURING THE JURY SELECTION. BUT THAT HE WAS AWARE OF IT BY
14 ONE OR BOTH OF THE PARTIES.

15 Q THE POINT BEING THAT THEY KNEW ABOUT THIS ALL THROUGH
16 THE COURSE OF THE TRIAL, AND NEVER TALKED TO YOU ABOUT IT,
17 NEVER BROUGHT IT UP TO YOU.

18 A YES. THEY OBVIOUSLY KNEW ABOUT IT.

19 Q THEY KNEW. AND YOU COULDN'T HAVE KNOWN IF YOU HADN'T
20 HAD A DISCUSSION WITH YOUR BROTHER AT THAT TIME CONCERNING
21 THIS OFFER, OR WHATEVER, WHICH, OBVIOUSLY, HIS ATTORNEY
22 SPECIFICALLY DISCUSSED WITH HIM WHAT THE OUTCOME OF THAT
23 CONVERSATION WOULD BE. YOU WOULDN'T KNOW THAT?

24 A NO, I WOULDN'T.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q SO, YOUR BROTHER MAY HAVE SAID IN THE SPIRIT OF SAVING
2 YOU FROM THE DEATH PENALTY, HE WOULD FORFEIT HIS RIGHT TO
3 ANY INHERITANCE. IS THAT CORRECT?

4 A IT'S POSSIBLE.

5 Q DID YOU BROTHER GIVE YOU ANY MONEY WHILE YOU WERE
6 INCARCERATED ON DEATH ROW?

7 A YES.

8 Q APPROXIMATELY, HOW MUCH TOTAL MONEY DID HE SEND YOU
9 WHILE YOU'VE BEEN THERE? OVER THE COURSE OF YOUR EIGHT
10 YEARS THERE, SEVEN YEARS?

11 A \$45,000, MAYBE \$45,000, \$50,000.

12 MR. MATLOCK: I BELIEVE THAT'S ALL THE QUESTIONS I HAVE,
13 YOUR HONOR.

14 THE COURT: ANY RE-CROSS?

15 MR. SALTER: I DON'T BELIEVE SO, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN, MR. ROBERTSON.

17 MR. BROWN: THE PETITIONER WOULD CALL JAMES W. HANCOCK
18 TO THE STAND.

19 JAMES W. HANCOCK, DULY SWORN,

20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. BROWN:

22 Q YOU'RE BILL HANCOCK. IS THAT CORRECT?

23 A I AM.

24 Q AND MR. HANCOCK, TELL ME HOW YOU CAME TO REPRESENT
25 MR. ROBERTSON.

1 A WE HAD SEVEN PEOPLE ON THE DEATH PENALTY LIST AT THAT
2 TIME QUALIFIED TO TRY THE DEATH PENALTY. THERE HAD BEEN
3 ABOUT FIVE MURDERS THAT WERE CONNECTED WITH DRUGS AND
4 THIS SORT OF THING. AND SOMEONE WAS APPOINTED IN COLUMBIA
5 AND CALLED ME---

6 Q WOULD THAT BE SOMEBODY FROM THE ANDERS FIRM?

7 A YEAH, FROM THE ANDERS FIRM. AND I FIGURED THAT-- I WAS
8 SECOND COMING UP ON THE LIST. SO, I SAID I'LL GO AHEAD AND GET
9 THIS AND GET THIS OVER WITH SO I WON'T HAVE ANOTHER ONE IN
10 FIVE, SIX, SEVEN, EIGHT YEARS, I HOPE.

11 Q HOW DID YOU KNOW, IF YOU KNOW, THAT MR. BOYD WAS NEXT
12 ON THE LIST?

13 A HE MUST HAVE BEEN SOMEWHERE CLOSE BECAUSE HE GOT
14 APPOINTED ALSO.

15 Q AND YOU WERE COURT-APPOINTED TO REPRESENT MR.
16 ROBERTSON. IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q DO YOU RECALL TALKING TO HIM WHEN YOU RECEIVED THAT
19 APPOINTMENT?

20 A I DO NOT KNOW. HE WAS TRIED IN 1999. I WOULD SAY
21 SOMETIME IN '98.

22 Q WAS IT APPROXIMATELY MAY OR APRIL OF '98?

23 A I WOULD SAY SOMEWHERE AROUND THERE.

24 Q AS A MATTER OF FACT, YOU DIDN'T FILE THE INITIAL BRADY
25 MOTION, DID YOU?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A NO. THE OTHER FIRM, I THINK, HAD FILED IT. IF I MAY PREFACE
2 THIS, MR. BROWN: I DON'T HAVE MY FILE. IT WAS GIVEN TO MR.
3 ROBERTSON. I'M SPEAKING FROM MEMORY, FROM EIGHT YEARS AGO.
4 I HAVE NO NOTES. IT WOULD HAVE TO-- IT CAN ALL BE DONE IN THE
5 FILE.

6 Q DO YOU RECALL IF YOU REVIEWED THE BRADY MOTION AND
7 THE EXCULPATORY-- EXCUSE ME. THE BRADY MOTION AND RULE 5
8 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE, THE RULE
9 5 MOTION THEY FILED?

10 A I KNOW THAT I MUST HAVE GONE OVER IT, YOU KNOW. THIS
11 WAS A DEATH PENALTY CASE. I CAN'T TELL YOU. I DON'T HAVE MY
12 NOTES. BUT I WOULD HAVE GONE OVER IT.

13 Q WHAT WAS THE FIRST THING YOU DID IN YOUR
14 REPRESENTATION OF MR. ROBERTSON?

15 A MR. BROWN, I CAN'T TELL YOU, REALLY, BECAUSE I DON'T HAVE
16 MY FILE. BUT I WENT THROUGH THE PROCEDURES OF GETTING THE
17 DISCOVERY, TALKING TO MR. BOYD, JUST TRYING TO FIGURE OUT
18 WHAT WE HAD AS A MURDER CASE.

19 Q EVENTUALLY, IN YOUR CONVERSATION WITH MR. BOYD, DID
20 YOU AND HE COME UPON A TRIAL STRATEGY?

21 A WELL, AFTER WE REVIEWED EVERYTHING THE STATE HAD, IT
22 WAS-- I'VE ONLY BEEN TRIED OR BROUGHT TO TRIAL, UP TO TRIAL,
23 THREE OTHER DEATH PENALTY CASES. AND HE-- THE EVIDENCE HERE
24 WAS JUST TOTALLY OVERWHELMING. THE SITUATION WAS JUST--
25 THERE WAS JUST VOLUMINOUS EVIDENCE.

1 WHAT WE COULD KEEP OUT WOULD NOT IN ANY WAY LEAD TO
2 HIS HAVING A NOT GUILTY. AND WE DECIDED AT SOME POINT IN TIME
3 THAT WE HAD TO HAVE SOME CREDIBILITY WITH THE JURY. AND IF
4 WE FOUGHT ALL OF THAT, THEN WE WOULD HAVE NO CREDIBILITY
5 EXAMINING OUR WITNESSES, OTHERWISE, AT THE DEATH PENALTY
6 PHASE.

7 Q LET ME MAKE SURE I UNDERSTAND WHERE YOU ARE. YOU
8 EXAMINED ALL THE STATE'S EVIDENCE. THEY HAD BEEN
9 FORTHCOMING IN DISCOVERY. IS THAT CORRECT?

10 A AS FAR AS WE KNOW, WE GOT EVERYTHING THEY HAD. WE
11 WENT OVER IT FOR DAYS AND DAYS AND DAYS, NUMBERING IT,
12 SORTING IT, DETERMINING CHAINS OF CUSTODY. SO, WE HAD---

13 Q CHANGE OF CUSTODY, OR CHAIN?

14 A CHAIN OF CUSTODY. BECAUSE WE HAD SO MANY PEOPLE
15 INVOLVED FROM MARYLAND, FROM PENNSYLVANIA, FROM SOUTH
16 CAROLINA, BRINGING ALL THAT STUFF DOWN; THE STUFF THAT WAS
17 THROWN IN THE DUMPSTER; THE QUESTIONING AND EVERYTHING;
18 AND THE EVIDENCE GARNERED FROM THE CAR IN PENNSYLVANIA. WE
19 WENT OVER THAT EVIDENCE FOR DAYS AND DAYS AND DAYS, WITH
20 THE SOLICITOR. AND AS FAR AS WE KNOW, WE RECEIVED
21 EVERYTHING THEY HAD.

22 Q LET ME ASK YOU, THIS, SIR: DID MR. ROBERTSON AFTER HIS
23 ARREST EVER GIVE ANY STATEMENT OF A CONFESSIONARY NATURE
24 TO ANYBODY THAT YOU'RE AWARE OF?

25 A NOT THAT I'M AWARE OF.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q SO, HE NEVER DID CONFESS TO THIS CRIME, DID HE?

2 A NOT THAT I'M AWARE OF.

3 Q AND IN THE EVIDENCE YOU DISCOVERED THERE WAS
4 EXTENSIVE FORENSIC EVIDENCE IN THIS CASE, WAS THERE NOT?

5 A YES, EXTENSIVE FORENSIC EVIDENCE, EXTENSIVE DNA
6 EVIDENCE. IT WAS ALL THERE. AND HANDWRITING EXEMPLARS, I
7 BELIEVE, AND THE WHOLE WORKS. THEY HAD PUT TOGETHER A GOOD
8 CASE.

9 Q LET'S GO THROUGH IT TO THE BEST OF YOUR MEMORY. WE'LL
10 START WITH THE HANDWRITING. WE'LL START WITH THE LAST FIRST.
11 WHAT WAS THE HANDWRITING EXPERT ON? WAS IT ON THE NOTE HE
12 LEFT?

13 A ON THE NOTE.

14 Q AND THE NOTE BASICALLY SAID, "MOM AND DAD, GONE TO GET
15 CHIP, BE BACK SOON", OR WORDS TO THAT EFFECT?

16 A TO THAT EFFECT. "I LOVE YOU, JIM", WAS THE LAST THING.

17 Q THAT NOTE BY THE HANDWRITING EXPERT WAS DETERMINED
18 TO BE JIM. IS THAT CORRECT?

19 A YES.

20 Q WITHOUT BELABORING THE POINT, THE DNA EVIDENCE, WHAT
21 DID IT SHOW TO THE BEST OF YOUR RECOLLECTION?

22 A IT SHOWED EVERYTHING AND POINTED TO JIMMY, TO BLOOD,
23 TO EVERYTHING ELSE. WE WENT THROUGH THAT FOR A DAY ONE
24 SUNDAY AFTERNOON WITH-- AND I'M TRYING TO LOOK FOR MY
25 NAMES HERE. I THINK HIS NAME MAY HAVE BEEN OSTROWSKI. IT

1 WAS A DNA EVIDENCE EXPERT WE HIRED FROM NORTH CAROLINA
2 THAT CAME DOWN. AND ONE SUNDAY WE WENT AFTER ALL THE-- WE
3 WENT THROUGH ALL THE DNA EVIDENCE TO SEE IF IT COULD BE
4 CHALLENGED. AND THEN LATER, HE WAS---

5 Q WAIT A MINUTE. I HATE TO INTERRUPT YOU. YOU SAY YOU AND
6 THE EXPERT WENT THROUGH IT. DID YOU ACTUALLY GET SAMPLES
7 FROM SLED AND CONDUCT YOUR OWN TEST, OR DID YOU GO
8 THROUGH THE REPORT GENERATED BY SLED?

9 A TO MY RECOLLECTION, IT WAS THE REPORT GENERATED BY
10 SLED.

11 Q SO, YOU DIDN'T HAVE YOUR ACTUAL DNA TEST?

12 A NO, I DON'T BELIEVE SO.

13 Q NOW, LET ME ASK YOU THIS: DID YOU DEEM THAT NECESSARY
14 TO YOUR DEFENSE OF MR. ROBERTSON?

15 A I DID NOT. WHAT WE DID, WE HAD-- WE DIDN'T HAVE ANY
16 EVIDENCE THAT WOULD SHOW THAT THE DNA OR THE BLOOD OR
17 ANYTHING ELSE WOULD BE SOMEWHERE ELSE OTHER THAN HIS, HIS
18 MOM'S AND HIS DAD'S.

19 Q AND TO THE BEST OF YOUR MEMORY, WHAT DID THE DNA
20 RESULTS SHOW, IN A NUTSHELL, WITHOUT GETTING TOO LONG-
21 WINDED ON THAT?

22 A WELL, IT SHOWED THAT HIS DAD AND MOM, THEY WERE KILLED,
23 AND THE BAT KILLED THEM. AND THE SPLATTERS WERE CONSISTENT
24 WITH-- THE BLOOD SPLATTERS CONSISTENT-- THIS ISN'T DNA, BUT
25 PART OF IT. THAT THE BLOOD SPLATTERS WERE CONSISTENT WITH A

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 BAT COMING UP AND THROWN ON THE CEILING AND BACK TOWARD
2 HER BEDROOM. AND I CANNOT REMEMBER WHETHER HIS BLOOD WAS
3 FOUND THERE OR NOT.

4 Q WOULD IT REFRESH YOUR MEMORY IF I TOLD YOU HIS BLOOD
5 WAS NOT FOUND THERE?

6 A LIKE I SAID, I WOULD REMEMBER. I DON'T REMEMBER HIS
7 BLOOD BEING FOUND THERE SPECIFICALLY, NOR DO I REMEMBER
8 MEREDITH MOON'S BEING FOUND THERE TO CONNECT HIM TO THE
9 CRIME.

10 Q AND YOU ALSO HAD, I GUESS IT WOULD BE FORENSIC EVIDENCE
11 FROM THE BAGS DROPPED IN VIRGINIA AND MARYLAND. IS THAT
12 CORRECT?

13 A RIGHT. THAT IT WAS THEIR BLOOD AND THE CLOTHES WERE
14 JIMMY'S. THE BLOOD WAS THEIRS. I DON'T KNOW WHETHER THE BAT
15 WAS FOUND UP THERE OR NOT, BUT IT TIED EVERYTHING TOGETHER
16 THAT MR. ROBERTSON HAD BEEN IN THE HOUSE. AND TO OUR
17 KNOWLEDGE WE WERE-- YOU KNOW, WE WERE TRYING TO
18 CONSTRUCT A DEFENSE, BUT NOTHING WAS LEADING TO MEREDITH
19 MOON OR SOMEBODY ELSE DOING IT.

20 Q NOT TO BELABOR THE POINT, BUT FOR THE COURT'S
21 EXPLANATION, THE BAGS FOUND IN VIRGINIA AND MARYLAND
22 CONTAINED BAGS OF CLOTHING, VARIOUS AND SUNDRY ARTICLES
23 THAT WERE TIED BACK TO THE HOUSE. IS THAT CORRECT?

24 A YES. AND TIED BACK TO THEM THROWING THEM IN THE
25 DUMPSTER AND IT WAS CONSISTENT WITH A ROUTE TO

1 PENNSYLVANIA WHERE HE WAS GOING. IT WAS RIGHT OFF THE
2 INTERSTATE.

3 Q WHICH MEREDITH MOON LATER CONFIRMED WAS THE ROUTE
4 THEY TOOK AND WHERE THEY DROPPED IT. IS THAT CORRECT?

5 A I THINK SHE'S THE ONE WHO TOLD THEM EXACTLY WHERE THE
6 THINGS WERE AND THEY CAME DOWN VERY QUICKLY AND PICKED
7 ALL OF THAT UP AND TIED IT TO THEM VERY QUICKLY.

8 Q AND THERE WERE NO OTHER AVENUES TO POINT THE FINGER AT
9 ANYBODY ELSE. IS THAT CORRECT?

10 A WELL, WE LOOKED AT POINTING THE FINGER AT MEREDITH
11 MOON. WE WENT AS FAR AS TO GO TO THE HOUSE AND HAVE MY
12 INVESTIGATOR TALK IN THE UPSTAIRS, WHILE I STOOD DOWNSTAIRS
13 IN THE ROOM WHERE SHE WAS SUPPOSED TO BE MOST OF THE TIME. I
14 BELIEVE SHE TESTIFIED SHE CAME TO THE TOP OF THE STAIRS ONE
15 TIME. AND TO TALK SO THAT WE COULD DETERMINE WHAT SHE
16 HEARD, SHE COULD HEAR, AND NOT BEING THERE WITH A WEAPON IN
17 HER HAND OR OTHERWISE. AND WE DETERMINED THAT SHE COULD
18 PRETTY MUCH HEAR WHAT WAS GOING ON UP THERE AS EVENTUALLY
19 SHE TESTIFIED TO.

20 Q AS A RESULT OF YOUR EXPERT REVIEWING THE DNA-- WELL,
21 LET ME BACK UP A SECOND. DID YOUR EXPERT CONFIRM WHAT THE
22 SLED REPORT SHOWED?

23 A YES SIR. BASICALLY HE TOLD US THAT WE DIDN'T HAVE AN
24 AVENUE.

25 Q SO, YOU SAW REALLY NO WAY TO PURSUE THAT. CORRECT?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A WE DIDN'T.

2 Q AND BASED ON YOUR INVESTIGATION, ALL THE EVIDENCE
3 GIVEN TO YOU, ALL THE DISCOVERY REVEALED TO YOU, YOUR
4 EXPERTS, AS TO THE GUILT PHASE AND THE CRIME SCENE WHEN
5 MEREDITH MOON WAS THERE, THERE WAS REALLY NO WAY TO TIE
6 MEREDITH MOON TO THAT AT ALL?

7 A NO SIR.

8 Q SO, YOU WOULD AGREE WITH ME, TO POINT THE FINGER AT
9 MEREDITH MOON AS BEING INVOLVED IN THE ACTUAL KILLING - NOT
10 WHAT SHE DID BEFORE AND AFTER - BUT THE ACTUAL KILLING OF
11 BOTH ROBERTSONS WAS A TOTALLY FELONIOUS DEFENSE?

12 A AS FAR AS I WAS CONCERNED, YES.

13 Q SO, THAT WAS GOING NOWHERE?

14 A NOWHERE.

15 Q AND, WOULD IT BE SAFE TO SAY, BASED ON WHAT YOU HAD
16 BEFORE YOU, THAT THE EVIDENCE AS TO HIS GUILT WAS
17 OVERWHELMING?

18 A IT WAS.

19 Q AFTER YOU REVIEWED ALL THESE DOCUMENTS AND ALL THE
20 EVIDENCE, WHAT DECISION, OR WHAT STRATEGY DID YOU AND MR.
21 BOYD TAKE THEN?

22 A WELL, WE DECIDED THAT-- WE WENT BACK INTO AND TALKED
23 WITH JIMMY. AND WE GOT A HISTORY OF HIS FAMILY. WE GOT THE-- I
24 THINK WE GOT-- AND YOU MAY HAVE THEM OVER THERE. WE GOT

1 THE SCHOOL RECORDS FROM CALIFORNIA. WE GOT THE RECORDS
2 FROM THE JUVENILE AGENCIES. WE GOT---

3 Q WHEN YOU SAY CALIFORNIA, WAS THAT FROM ELEMENTARY
4 AND GRADE SCHOOL?

5 A I THINK IT WAS A GRADE SCHOOL THERE, OR SOMETHING OF
6 THAT NATURE. BUT WE WENT AFTER ALL THE RECORDS WE COULD
7 FIND TO DETERMINE WHAT WE COULD DO TO DEFENDING JIMMY IN
8 THE MATTER.

9 Q YOU GOT HIS SCHOOL RECORDS. WHAT ELSE DID YOU GET?

10 A OH, GRACIOUS.

11 Q TO THE BEST OF YOUR MEMORY.

12 A TO THE BEST OF MY MEMORY, I THINK HE HAD A YOA SENTENCE
13 THAT HE WAS INCARCERATED. I THINK WE GOT SOME RECORDS FROM
14 THERE.

15 Q DID HE HAVE-- LET ME SEE IF I CAN REFRESH YOUR MEMORY A
16 LITTLE BIT. I WAS AN ATTORNEY IN 1996. ARE WE TALKING ABOUT
17 THE YOA SENTENCE THAT HE GOT FOR THE BURGLARY, SECOND
18 DEGREE, ON THE NEXT-DOOR NEIGHBOR'S HOUSEHOLD?

19 A AND I PROBABLY TALKED TO YOU ABOUT IT. I DON'T
20 REMEMBER, BUT YES.

21 Q AND HE RECEIVED AN ACTIVE YOA, WITH A RECOMMENDATION
22 OF SHOCK. IS THAT CORRECT?

23 A YES, I THINK SO.

24 Q AND HE DIDN'T QUALIFY FOR SHOCK, SO HE WOUND UP DOING
25 TEN AND A HALF MONTHS, THE MINIMUM YOA. IS THAT CORRECT?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A YES SIR.

2 Q AND DID YOU GET THE RECORDS FROM HIS TENURE AT YOA?

3 A I BELIEVE SO.

4 Q DID YOU ALSO GET HIS RECORDS FROM WILLIAM S. HALL WHEN
5 HE WAS INVOLUNTARILY COMMITTED IN 1995?

6 A I BELIEVE SO.

7 Q AND DID YOU GET HIS COUNSELING RECORDS FROM DOCTOR
8 McMEEKIN?

9 A DOCTOR McMEEKIN, I THINK THEY WERE CONTAINED IN
10 DOCTOR, OR, SKIP MEYERS' RECORDS. I THINK THEY WERE ALL IN
11 ONE, BECAUSE OF THE FAMILY COUNSELING THEN. HER COUNSELING,
12 MRS. ROBERTSON'S COUNSELING, AND THEN MR. ROBERTSON'S
13 COUNSELING. SO, I THINK THEY CAME ALL IN A PACKAGE.

14 Q WOULD IT BE SAFE TO SAY THAT YOU DID NOT ISSUE A
15 SUBPOENA TO DOCTOR McMEEKIN, AS TO THE BEST OF YOUR
16 MEMORY?

17 A NO, WE DID NOT.

18 Q I'M COME BACK TO THIS. BUT WERE YOU AWARE THAT DOCTOR
19 McMEEKIN WAS, FOR LACK OF A BETTER TERM, THE FAMILY
20 PSYCHIATRIST IN THAT HE WAS SEEING EARL ROBERTSON, TERRY
21 ROBERTSON, JIMMY ROBERTSON, AND CHIP ROBERTSON?

22 A I THINK THAT IT WAS NOT McMEEKIN THAT WAS SEEING THEM
23 ALL. THE RECORDS THAT WERE SEEN WERE MEYERS' AND THAT'S
24 WHERE WE GOT ALL OF THOSE. NOW, IF DOCTOR McMEEKIN HAD

1 SOME RECORDS, THEN I DIDN'T SEE IT OR FIND IT NECESSARY TO
2 SUBPOENA THEM.

3 Q TO YOUR KNOWLEDGE, DID THE STATE HAVE THOSE RECORDS,
4 OR IF YOU KNOW?

5 A I DON'T REMEMBER.

6 Q OKAY. SO, YOU GO THROUGH THE EVIDENCE. YOU'RE AT THE
7 STAGE WHERE YOU'VE GOT TO MAKE A DECISION AND THE GUILT'S
8 OVERWHELMING. IS THAT CORRECT?

9 A YES, I'D SAY THAT.

10 Q WHO, IF ANYONE, DID YOU AND MR. BOYD CONSULT ABOUT, AS
11 FAR AS EXPERTS ON HOW TO PROCEED ON THIS CASE?

12 A WE WENT TO THE CAPITAL DEFENSE.

13 Q IT'S CHANGED NAMES NOW. WHAT'S IT NOW, CENTER FOR
14 CAPITAL LITIGATION?

15 A CENTER FOR CAPITAL LITIGATION. WE SPENT HOURS AND
16 HOURS WITH---

17 Q JEFF BLUME?

18 A JEFF BLUME, DRUCY GLASS AND JOHN - WHO IS IT? ANYWAY, A
19 GROUP OF ATTORNEYS THAT SPECIALIZE IN CAPITAL CASES. I THINK
20 FROM THE INVOICES AND EVERYTHING THEY WERE PAID, BECAUSE WE
21 ALMOST WEEKLY DURING THE LAST PHASE, WE WERE IN TOUCH WITH
22 THEM. WE WERE SEEKING THEIR ADVICE. WE WERE ASKING THEM
23 HOW TO MAKE SURE THAT WE HAD MATTER FOR APPEAL; TO MAKE
24 SURE THAT WE WERE TRYING TO GET THE PROPER PEOPLE IN THE

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 PROPER SEQUENCE. I THINK THAT THEY SENT US TO PINCUS; THEY
2 SENT UP TO EVANS BECAUSE THEY'D USED THEM BEFORE.

3 Q LET ME INTERRUPT YOU AGAIN.

4 A YES.

5 Q DOCTOR PINCUS WAS THE NEUROLOGIST FROM GEORGETOWN
6 UNIVERSITY. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q DOCTOR PINCUS AT THIS TIME WAS ALSO VICE-PRESIDENT OF
9 THE AMERICAN ASSOCIATION OF NEUROLOGISTS. IS THAT CORRECT?

10 A HE HAD TESTIFIED IN MANY TRIALS AND HE WAS VERY WELL-
11 QUALIFIED AFTER WE SOUGHT HIM OUT.

12 Q OUTSTANDING, WOULD THAT BE A CORRECT STATEMENT?

13 A I THOUGHT HE WAS VERY GOOD.

14 Q NOW, WHO WAS DOCTOR EVANS?

15 A DOCTOR EVANS WAS FROM COLUMBIA. HE WAS A
16 PSYCHOLOGIST, PSYCHIATRIST. AND WHAT HE HAD-- WE WERE
17 TRYING TO FIGURE OUT HOW WE COULD EXPLAIN TO A JURY WHY
18 THIS HAD HAPPENED. WE TIED IT TO RITALIN. WE BROUGHT DOCTOR
19 MORTON IN, THAT THAT HAD OVERTAKEN WHATEVER JUDGMENT HE
20 MAY HAVE.

21 Q DOCTOR MORTON WAS FROM THE MEDICAL UNIVERSITY OF
22 SOUTH CAROLINA, WAS HE NOT?

23 A YES. HE TESTIFIED TO THE EFFECTS OF RITALIN. HE WAS
24 TRYING TO---

25 Q HE WAS A PHARMACOLOGIST, WAS HE NOT?

1 A YES. AND WE WANTED HIM TO INDICATE THAT---

2 Q EXCUSE ME. I HATE TO INTERRUPT YOU.

3 A GO AHEAD.

4 Q DOCTOR EVANS WAS A CLINICAL PSYCHOLOGIST. IS THAT
5 CORRECT?

6 A YES. AND HE WAS TESTIFYING THAT THERE WERE ENOUGH
7 STUDIES AVAILABLE - AND THERE'S BEEN SOMETHING ELSE ON IT
8 SINCE - THAT ANYONE WHO, NUMEROUS INTERVIEWS WITH PEOPLE ON
9 DEATH ROW HAD SHOWN THAT THERE WAS AN ABNORMALITY OF
10 THAT PERSON IN THE RIGHT FRONTAL LOBE OF THE BRAIN.

11 Q SO, THE CENTER FOR DEATH PENALTY LITIGATION REFERRED TO
12 DOCTOR PINCUS, DOCTOR EVANS, DOCTOR MORTON?

13 A YES.

14 Q AND DOCTOR CASCIO?

15 A YES.

16 Q TELL ME WHO REFERRED YOU TO DOCTOR CASCIO?

17 A I THINK IT WAS DRUCY GLASS, FROM THE CENTER FOR CAPITAL
18 LITIGATION.

19 Q AND WHAT IS HER PARTICULAR POSITION THERE?

20 A MR. BROWN, I DON'T KNOW.

21 Q TO THE BEST OF YOUR MEMORY.

22 A I DON'T KNOW HER OFFICIAL TITLE. SHE WAS THERE WORKING
23 WITH THEM, WORKING WITH WITNESSES AND INDICATED THAT THIS
24 LADY COULD DO THE JOB. AND I WILL TELL YOU THE TRUTH, THERE
25 WAS ANOTHER LADY THAT HAD DONE THIS ON SEVERAL OCCASIONS

1 AND THAT WE WENT TO DOCTOR CASCIO AND INTERVIEWED HER TO
2 DETERMINE HER QUALIFICATIONS AND INDICATED THAT SHE WAS
3 QUALIFIED TO HELP US IN THIS MATTER.

4 Q AT WHAT POINT DID YOU AND MR. BOYD REACH THE
5 CONCLUSION THAT BASICALLY WE HAVE NO - FOR LACK OF A BETTER
6 TERM - GUILT PHASE DEFENSE HERE; ALL THE EVIDENCE IS PRETTY
7 MUCH OVERWHELMING POINTING TO THAT HE DID IT; AND WE NEED
8 TO GO BASICALLY WITH A MENTAL ILLNESS DEFENSE?

9 A I CAN'T TELL YOU AT WHAT POINT. BUT AS WE LOOKED AT IT
10 AND REVIEWED THE EVIDENCE AND WENT OVER EVERYTHING WE
11 WERE PRETTY SURE THAT HE WAS GOING TO BE CONVICTED, PERIOD.
12 SO, IT WAS AT SOME POINT. IT DIDN'T TAKE LONG.

13 Q WAS THE GUILTY BUT MENTALLY ILL STRATEGY EVER
14 DISCUSSED?

15 A WE WERE NEVER OFFERED A PLEA TO THAT. AND I BELIEVE
16 THAT WE DID DISCUSS IT. WE HAD RESEARCHED IT. AND I THINK
17 THAT THE WAY - THIS IS JUST MEMORY - THAT WE WOULD HAVE FIRED
18 ALL OUR GUNS AT THAT POINT AND THAT IT WOULD NOT REALLY
19 TREMENDOUSLY AFFECT THE TRIAL AT THAT POINT, OR THAT WE
20 EVEN COULD CARRY THAT FORWARD, BECAUSE WE COULDN'T PROVE
21 HE WAS MENTALLY ILL.

22 WE HAD ALL HIS RECORDS, BUT WE NEVER REALLY COULD
23 PROVE THAT HE WAS MENTALLY ILL. WE COULD PROVE THAT HE HAD
24 BI-POLAR DISORDER. BUT AS FAR AS MENTALLY ILL TO THE POINT

1 THAT WAS NECESSARY UNDER THE LAW, WE DIDN'T FEEL LIKE IT WAS
2 A PROPER DEFENSE.

3 Q YOU HAD TESTIMONY WHICH CAME OUT IN THE MITIGATION
4 PHASE FROM DOCTOR MORTON, DOCTOR PINCUS AND DOCTOR EVANS
5 THAT SAYS HE WAS MENTALLY ILL AND HAVING A BI-POLAR
6 REACTION, A MANIC EPISODE WHEN HE DID THIS. IS THAT CORRECT?

7 A I DON'T REMEMBER THEIR TESTIMONY THAT HE WAS MENTALLY
8 ILL.

9 Q NOT MENTALLY ILL, THAT HE WAS HAVING A MANIC EPISODE
10 DUE TO HIS BI-POLAR DISORDER.

11 A RIGHT. AND THE INGESTION OF RITALIN.

12 Q AND DO YOU RECALL THAT DOCTOR MORTON TESTIFIED THAT
13 THE RITALIN AMPLIFIED THE MANIA ASSOCIATED WITH BI-POLAR
14 DISORDER WHEN IT OCCURS?

15 A YES.

16 Q DID YOU RESEARCH WHETHER THAT WOULD QUALIFY AS
17 MENTALLY ILL?

18 A AS FAR AS-- YES, I DID. I WOULD HAVE RESEARCHED IT, BUT I
19 FIGURED WHAT I HAD WAS NOT SUFFICIENT OR THAT WAS NOT
20 PROPER TO DO AT THE END OF TRIAL, OR I WOULD HAVE PURSUED IT.

21 Q COULD YOU HAVE PROFFERED THAT TO PLEASE THE COURT,
22 KNOWING THE SOLE DEFENSE WAS BASED ON EXPERT WITNESS AND
23 MENTAL ILLNESS MITIGATION? I GUESS MY QUESTION BECOMES
24 COULD YOU NOT HAVE TAKEN WHAT THE STATE HAD IN THE GUILT

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 PHASE WITH ALL THIS EVIDENCE OF DNA AND SO FORTH AND TIE IT
2 TOGETHER BY DOING IT THAT WAY?

3 A IT WAS OUR DECISION THAT THAT WOULDN'T HAPPEN THAT
4 WAY, THAT WE NEEDED TO-- RATHER THAN TRY TO DO THAT-- IT
5 WOULD ADVERSELY AFFECT THE DEATH PENALTY PHASE WHICH WE
6 FIGURED WE KNEW WHAT WAS COMING.

7 Q DO YOU THINK IT WOULD HAVE HELPED IF YOU HAD
8 ESTABLISHED THAT MINDSET WITH THE JURY FROM DAY ONE THAT,
9 HEY, HE DID THIS, BUT HE WAS MENTALLY ILL, BECAUSE WE KNEW IT
10 WAS GONNA COME DOWN TO THAT ANYWAY, AS A TRIAL STRATEGY?

11 A IT MAY HAVE BEEN CONSIDERED. I DON'T REMEMBER WHETHER
12 IT WOULD HAVE BEEN CONSIDERED IN DISCUSSIONS WITH MR. BOYD
13 AND I, BUT WE REJECTED IT, EVIDENTLY, BECAUSE WE DIDN'T PUT IT
14 ON.

15 Q WAS THERE ANY PLEA BARGAINS DISCUSSED?

16 A NONE THAT I REMEMBER.

17 Q AND I HAVE TO ASK YOU THIS QUESTION: WERE YOU AWARE OF
18 ANY ALLEGED PLEA BARGAINS MADE TO CHIP ROBERTSON'S LAWYER,
19 MIKE GILLEN?

20 A YES, I SURE WAS. AND I HAD TALKED TO THE SOLICITOR ABOUT
21 IT. AND IT WAS DETERMINED THAT I BELIEVE IT WAS FRIVOLOUS. IT
22 WAS WHAT I CALL HALL TALK. DURING THE DEATH PENALTY TRIAL,
23 YOU GO BACK AND YOU TALK ABOUT ANYTHING. AND PEOPLE
24 WOULD CALL SOME OF THE HUMOR THAT WE HAVE BETWEEN THE
25 ATTORNEYS MACABRE. BUT IT WAS SOMETHING THAT WAS SAID--

1 Q NEEDLESS TO SAY, THAT WAS NOT A SERIOUS---

2 A IT WAS NOT A-- IT WAS NOT A SERIOUS OFFER. AND WHEN I
3 SAID TO GILLEN SOMETHING ABOUT THIS, IT WAS WE WERE JUST
4 TALKING. IT WAS NEVER A SERIOUS OFFER ON THE TABLE. IF THERE
5 HAD EVER BEEN A SERIOUS OFFER ON THE TABLE IN THIS CASE, I
6 CERTAINLY WOULD HAVE URGED MY CLIENT TO TAKE IT BECAUSE I
7 DIDN'T ENJOY TRYING THE CASE EITHER.

8 Q DID YOU OR MR. BOYD HIRE A JURY CONSULTANT?

9 A I DON'T REMEMBER.

10 Q DO YOU RECALL IF YOU HAD ANYBODY ASSISTING WHEN YOU
11 WERE STRUCK THE JURY?

12 A I REALLY DON'T REMEMBER.

13 Q IF I TOLD YOU YOU DIDN'T, WOULD YOU DISAGREE WITH ME?

14 A NO, I WOULDN'T.

15 Q WHAT RESEARCH, IF ANY, DID YOU DO ON THE JURORS?

16 A WE HAD PRETTY MUCH ALL THE RESEARCH NECESSARY
17 BECAUSE THE JURY QUESTIONNAIRE WAS REALLY EXTENSIVE AS TO
18 CHILDREN, EVERYTHING ELSE. THAT WAS A LATER CONCERN OF MINE
19 IN THE FILE AND EVERYTHING ELSE. BUT IT WAS FAIRLY EXTENSIVE. I
20 BELIEVE WE HAD MOTIONS EARLIER THAT ASKED FOR A CHANGE OF
21 VENUE. AND UNDER THE SYSTEM THAT WE HAVE NOW WE WERE
22 ALMOST CERTAIN THAT WE WERE GONNA GET A JURY IN YORK
23 COUNTY. WE EVALUATED IT AS WE COULD WITH MR. BOYD'S
24 EXPERIENCE IN DEATH PENALTY CASES AND MINE.

25 Q WERE YOU LEAD COUNSEL ON THIS?

1 A I GUESS YOU COULD SAY THAT I WAS. I DID A BUNCH OF IT. I
2 GUESS YOU COULD SAY THAT, BUT JIM AND I BOTH DIVIDED THINGS
3 UP AFTER WE AMASSED ALL THE RECORDS AND EVERYTHING ELSE.
4 AS FAR AS CROSS EXAMINATION, ARGUMENT, WE EACH TOOK
5 DIFFERENT WITNESSES THAT HE FELT COMFORTABLE WITH ONE
6 WITNESS AND I FELT MORE COMFORTABLE WITH ANOTHER.

7 I THINK THAT WAS DONE WITH DOCTOR PINCUS, I BELIEVE JIM
8 TOOK. AND I TOOK DOCTOR EVANS AND I MAY HAVE TAKEN DOCTOR
9 MORTON, TOO. I'M NOT SURE. WE JUST DIVIDED UP THE WITNESSES AS
10 WE FELT COMFORTABLE WITH THEM.

11 Q DID YOU TELL JUDGE HAYES AT THE START OF THE TRIAL THAT
12 YOU WOULD BE LEAD COUNSEL?

13 A I MAY HAVE.

14 Q OKAY.

15 A I HAVEN'T SEEN THE TRANSCRIPT EITHER.

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

17 (PAUSE)

18 Q JUST TO REFRESH YOUR MEMORY, PAGE 32 OF THE TRANSCRIPT,
19 LINES 19 THROUGH 25. "MR. HANCOCK:" IS THAT YOU?

20 A YES.

21 Q WERE YOU EVER AWARE OF A JUROR WHO TRIED TO TAINT--
22 NOT TAINT. EXCUSE ME, INCORRECT WORD. TRIED TO PERSUADE THE
23 REST OF THE JURORS TO VOTE FOR DEATH. DID YOU EVER BECOME
24 AWARE OF THAT, A GENTLEMAN IN A COWBOY HAT?

1 A AS FAR AS I KNOW, AND MY MEMORY, THE FIRST THING I HEARD
2 ANYTHING ABOUT THAT WAS SITTING BACK OVER HERE TODAY. AND
3 JUST FOR COUNSEL-- I TOOK SOME NOTES DURING MR. ROBERTSON'S
4 TESTIMONY, AND THAT'S WHY I'M LOOKING DOWN AT THE PAD, JUST A
5 FEW NOTES OF HIS TESTIMONY TO HOPEFULLY JOGGLE MY MEMORY.

6 Q HOW MUCH TIME DID YOU SPEND WITH JAMES ROBERTSON
7 PRIOR TO HIS TRIAL?

8 A NO IDEA.

9 Q MORE THAN TEN HOURS?

10 A IT MAY OR MAY NOT HAVE BEEN THAT MUCH; IT MAY HAVE
11 BEEN MORE THAN THAT. THE THING WAS, IS WE SAT DOWN WITH HIM,
12 ONCE WE DETERMINED THE FACTS AND EVERYTHING ELSE. AND
13 BASICALLY, WE WERE GOING ON EXPERTS TO TRY TO-- AND THEY
14 WERE OUR CONTACT SO THAT WE COULD REVIEW WHAT WAS THERE
15 AND TRY TO PUT IT INTO SOME KIND OF CONTEXT THAT WE COULD
16 SHOOT FOR NOT GETTING THE DEATH PENALTY. SO THAT WAS MUCH
17 OF THE CONTACT. BUT WE SAT DOWN WITH HIM LONG ENOUGH TO
18 LET HIM KNOW ABOUT THE TRIAL, ABOUT THE CASE AND WHAT WE
19 WERE DOING.

20 Q WAS IT EVER DISCUSSED WITH HIM THE OPTION, BASED ON
21 YOUR OR MR. BOYD'S CRITIQUE OF THE CASE, THAT THE GUILT PHASE
22 WAS BASICALLY A FOREGONE CONCLUSION AND THAT THE EFFORT
23 WOULD BE IN MITIGATION, THE PLEA OF GUILTY BUT MENTALLY ILL?

24 A I DON'T REMEMBER DISCUSSING WITH HIM THE PLEA OF GUILTY
25 BUT MENTALLY ILL. BUT IF OUR EVALUATION WAS THERE, IT'S

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1 PROBABLY SOMEWHERE IN MY NOTES, THAT WE DID, WE WOULD
2 HAVE GIVEN-- I BELIEVE WE WOULD HAVE GIVEN OUR CLIENT OR AT
3 LEAST TOLD HIM THAT THAT WAS OUR STRATEGY THAT WE HAD TO
4 GO SOLELY IN THE DEATH PENALTY PHASE.

5 Q WHAT, IF ANYTHING, DO YOU REMEMBER DISCUSSING WITH MR.
6 ROBERTSON ABOUT THE EXPERT WITNESSES AND HOW TO DEAL WITH
7 THEM, HOW TO TALK WITH THEM?

8 A I TALKED TO HIM TO DEAL WITH THEM WITH THE TRUTH. I
9 MEAN, WE COULDN'T TRY A CASE IF HE'S LYING TO THEM, THEN WE'RE
10 GONNA LIE TO THE JURY, AND THEY GONNA FIGURE THAT OUT
11 SOMEWHERE ALONG THE LINE. SO, YOU KNOW, WE TOLD HIM TO BE
12 HONEST.

13 Q WHEN DID DOCTOR McKEE, THE STATE'S EXPERT WITNESS,
14 EXAMINE MR. ROBERTSON?

15 A THAT I DON'T KNOW. I THINK IT WAS PRIOR TO-- I DON'T KNOW
16 EXACTLY WHEN IT WAS. IF I REMEMBER CORRECTLY, I THOUGHT WE
17 HAD SOME MOTION HEARINGS ON THAT, AS TO WHETHER HE COULD
18 EXAMINE HIM, AND IT WAS DETERMINED THAT HE COULD EXAMINE
19 HIM, IF I REMEMBER CORRECTLY.

20 Q WOULD YOU AGREE WITH ME THAT IT IS PRETTY CLEAR CUT IN
21 SOUTH CAROLINA THAT YOU CAN PRESENT A MENTALLY ILL DEFENSE,
22 THE STATE HAS THE RIGHT TO HAVE AN EXPERT EXAMINE HIM?

23 A THAT'S WHAT WE DETERMINED.

24 Q DID YOU DISCUSS THAT WITH MR. ROBERTSON?

25 A YES.

1 Q THAT YOU WERE GOING TO PUT UP ANY KIND OF A MENTAL
2 ILLNESS DEFENSE THAT THE STATE HAD A RIGHT TO HAVE THEIR
3 EXPERT EXAMINE HIM?

4 A YES.

5 Q AND HE CONSENTED TO THAT VOLUNTARILY?

6 A AS FAR AS I KNOW. I DON'T HAVE IT WRITTEN HERE. BUT HE
7 EVENTUALLY WENT DOWN THERE, SO THAT WOULD HAVE SHOWN HIS
8 CONSENT, I BELIEVE.

9 Q HIS RIGHT TO TESTIFY. AFTER DOCTOR CASCIO TESTIFIED, DO
10 YOU RECALL A CONVERSATION HE HAD WITH YOU AND MR. BOYD
11 WHERE HE WANTED TO TESTIFY TO CORRECT HER DEFICIENCIES, FOR
12 LACK OF A BETTER TERM. I MEAN LITTLE DEFICIENCIES WHERE HE
13 COULD SEE THE TRIAL DEFICIENCIES?

14 A MR. BROWN, IT WAS HEATED. I REMEMBER IT BECAUSE I
15 THOUGHT CASCIO HURT US.

16 Q IS IT SAFE TO SAY CASCIO BURIED YOU?

17 A I WOULD SAY NOT ALL THE WAY, BUT SHE SURE PUT, SHE PUT A
18 SPADE OF DIRT ON IT. HER TESTIMONY WAS WITH THEM HANDED THE
19 NOTES THAT THEY DID - AND I DON'T KNOW WHETHER IT MADE ANY
20 DIFFERENCE. HER TESTIMONY, I THOUGHT, WAS VERY DAMNING.
21 LET'S PUT IT THAT WAY. AND HARMFUL TO OUR---

22 Q I'M GOING TO COME BACK TO MS. CASCIO. I'M GOING TO COME
23 BACK TO THAT IN A MINUTE.

24 A OKAY.

1 Q THE CONVERSATION BETWEEN YOU AND MR. ROBERTSON, YOU
2 RECALL THAT. IT WAS VERY HEATED. CORRECT?

3 A I REMEMBER I WAS UPSET. I DON'T KNOW HOW UPSET JIM WAS.
4 JIM'S A VERY CALM PERSON. I'M NOT. JIMMY---

5 Q AS FAR AS YOU KNOW, WAS IT---

6 A JIMMY---

7 Q AS LONG AS YOU'VE KNOWN MR. BOYD, DID HE SEEM TO BE
8 UPSET?

9 A I WAS--

10 Q IT WAS ALL COMING OUT. RIGHT?

11 A RIGHT. BUT THE THING IS, WE DISCUSSED THAT WITH JIMMY
12 AND I ADVISED JIMMY THAT ALTHOUGH SHE WAS ONE OF THE LAST
13 WITNESSES, WE MIGHT COULD GET AROUND THAT, BUT WE WOULD
14 NEVER GET AROUND HIM GETTING ON THE WITNESS STAND.

15 Q SO, IT WAS YOUR ADVICE TO HIM NOT TO TESTIFY?

16 A YES SIR.

17 Q DID YOU THINK HE EVEN-- HE STILL UNDERSTOOD THAT IT WAS
18 HIS RIGHT. YES OR NO? CORRECT?

19 A I BELIEVE SO. I MEAN, THE JUDGE TOOK EXTENSIVE TESTIMONY
20 ON THAT, I BELIEVE. BUT THAT WAS MY ADVICE. I DID NOT THINK
21 HE'D MAKE A GOOD WITNESS. I'VE TRIED ANOTHER DEATH PENALTY
22 CASE WHERE WE PLEAD IT OUT BECAUSE I KNEW THE PERSON WAS
23 ONE OF THE WITNESSES I'D SEEN. I THOUGHT JIMMY WOULD BURY
24 HIMSELF ON THE WITNESS STAND FURTHER THAN TONI CASCIO HAD.

1 Q WHO DID THE EVALUATION ON MR. ROBERTSON, IF YOU RECALL,
2 AS TO THE McNAUGHTON RULE OR THE McNAUGHTON TEST?

3 A I DON'T RECALL.

4 Q WAS THAT DONE?

5 A AS FAR AS KNOWING THE DIFFERENCE BETWEEN RIGHT AND
6 WRONG, I DON'T THINK SO. I EVALUATED THAT IN THAT WE HAD NO
7 REAL BASIS FOR THAT. FROM THE NOTE AND EVERYTHING ELSE THAT
8 WAS DONE, IT PRETTY MUCH SHOWED THAT HE, YOU KNOW, HE KNEW
9 THE DIFFERENCE IN RIGHT AND WRONG. AND WE LOOKED AT THAT
10 VERY CLOSELY TO SEE.

11 BUT THAT WAS ANOTHER ONE OF THE THINGS THAT WE WOULD,
12 MIGHT OPEN UP EVEN WORSE TESTIMONY, TRYING TO DETERMINE
13 THAT. BUT WE CONSIDERED THAT, BUT THE EVIDENCE BASICALLY, AS
14 I VIEWED IT, WAS THAT THERE WAS NO, THERE WAS NO QUESTION OF
15 HIM KNOWING THE DIFFERENCE IN RIGHT AND WRONG.

16 Q CAN YOU TELL ME A SPECIFIC EXPERT TO DO THAT TEST FOR US?

17 A NO, HUH-UH.

18 Q CHIP ROBERTSON WAS NEVER CHARGED IN THIS THING, WAS HE?

19 A NO. THERE WERE RUMORS FLYING ABOUT EVERYWHERE, BUT
20 HE WAS NEVER CHARGED.

21 Q TO THE BEST OF YOUR MEMORY, WAS THAT DISCUSSED WITH
22 VARIOUS AND SUNDRY PARTIES INVOLVED IN THIS MATTER?

23 A YES.

1 Q DID YOU OR MR. BOYD OR ANYONE WORKING FOR YOU DURING
2 THIS PARTICULAR CASE ASK TO INTERVIEW, OR INTERVIEWED CHIP
3 ROBERTSON?

4 A I DON'T THINK WE DID BECAUSE MR. GILLEN WAS
5 REPRESENTING HIM AND WE WERE NOT ABLE TO-- YOU KNOW, HE
6 WAS REPRESENTING HIM ON THE POSSIBILITY OF CRIMINAL CHARGES
7 TO HIM AND THE POSSIBILITY OF THE DEATH PENALTY GOING
8 AGAINST HIM AS SOME KIND OF CONSPIRACY BECAUSE IT WAS
9 SUPPOSEDLY-- THE TELEPHONE CALLS, WE GOT RUMORS AND THINGS
10 THAT CHIP HAD TOLD HIM TO GO AHEAD AND GET IT DONE. ALL KIND
11 OF THINGS WERE FLYING AROUND. AND SO, NO, WE---

12 Q I WANT TO STOP YOU RIGHT THERE ONE SECOND. I DON'T MEAN
13 TO INTERRUPT.

14 A GO AHEAD.

15 Q APPROXIMATELY AN HOUR OR AN HOUR AND A HALF BEFORE
16 THE ALLEGED MURDERS, OR THE MURDERS THAT OCCURRED - OKAY -
17 IS THERE NOT TWO PHONE CALLS APPROXIMATELY FORTY-FIVE
18 MINUTES TOTAL, FROM JAMES TO CHIP IN PENNSYLVANIA?

19 A YES.

20 Q DID YOU FOLLOW UP OR INVESTIGATE THOSE LEADS THAT CHIP
21 TOLD JIMMY-- LET ME BACK UP A SECOND. NO QUESTION JIMMY WAS
22 DOING RITALIN THAT NIGHT? RIGHT?

23 A A MASSIVE AMOUNT.

24 Q IN YOUR OPINION, AFTER ALL YOUR INVESTIGATION, WOULD
25 YOU SAY HE WAS UNDER THE INFLUENCE OF RITALIN?

1 A I CERTAINLY WOULD.

2 Q YOU'VE STUDIED ALL THE PSYCHIATRIC AND PSYCHOLOGICAL
3 RECORDS?

4 A YES SIR.

5 Q IN YOUR OPINION, AFTER REVIEWING THOSE RECORDS, DO YOU
6 FEEL LIKE HE HAS A CLOSE BOND WITH HIS BROTHER? OR AT THAT
7 POINT IN TIME, DID. NOT NOW. BUT AT THAT POINT IN TIME.

8 A NO, I MIGHT HEDGE HERE, MR. BROWN.

9 Q THERE'S NO RIGHT OR WRONG ANSWER.

10 A OKAY.

11 Q I JUST WANT YOUR OPINION.

12 A THAT IT WAS-- THAT THEY WERE KINDA CLOSE, BUT THEY
13 WERE MORE LIKE PARTNERS IN CRIME, YOU KNOW, THIS AND THAT.
14 THEY WEREN'T JUST EVERY MINUTE WITH EACH OTHER, BUT THEY
15 WERE PARTNERS IN CRIME IN THEIR ATTITUDE AND THEIR ACTIONS
16 AND THEIR USE OF DRUGS AND THEIR-- WHAT-- THEIR RELATIONSHIP
17 WITH THEIR PARENTS.

18 Q AS A MATTER OF FACT, THE RITALIN JIMMY WAS TAKING THAT
19 NIGHT WAS FOR CHIP?

20 A IT WAS CHIP'S.

21 Q AND DID YOUR INVESTIGATION ALSO REVEAL THAT EARL
22 ROBERTSON HAD A PRESCRIPTION FOR RITALIN FROM DOCTOR
23 McMEEKIN?

24 A I DON'T REMEMBER THAT HE HAD ONE. I REMEMBER THAT HE
25 AND MRS. ROBERTSON WERE HAVING TREMENDOUS DIFFICULTIES

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1 THAT STARTED ABOUT THREE OR FOUR YEARS BEFORE THAT. MRS.
2 ROBERTSON HAD GAINED A GREAT DEAL OF WEIGHT. SHE WAS A
3 PETITE LADY. AND EARL HAD HAD PROBLEMS. AND MOST OF THAT
4 CAME OUT IN THE NOTES OF MR. MEYERS'.

5 A WHAT, IF ANY INVESTIGATION DID THE FOLLOW-UP, THOSE
6 PHONE CALLS, THAT SOMEWHERE OUT THERE WAS SOME ALLEGATION
7 OR SOME WORDS THAT CHIP TOLD JIMMY TO GO AHEAD AND DO IT,
8 BASICALLY MEANING TO KILL HIS PARENTS?

9 A I DON'T THINK WE WOULD HAVE DONE IT. I DON'T REMEMBER. I
10 THINK I ASKED. AND I SEEM TO REMEMBER SITTING HERE, IT KIND OF
11 CLICKED THAT THAT'S WHAT JIMMY HAD SAID. WHAT HE SAID TODAY
12 WAS ABOUT EXACTLY WHAT HE SAID AND TOLD US THAT HE TALKED
13 TO CHIP ABOUT.

14 Q WHEN YOU SAY TALKED ABOUT, DO YOU MEAN TALKED ABOUT
15 KILLING THEIR PARENTS?

16 A NO, NO.

17 Q OKAY.

18 A WHAT HE TESTIFIED TO ON THE STAND TODAY, ABOUT COMING
19 HOME FROM SCHOOL FOR THANKSGIVING, THAT HE WAS GONNA GET
20 HIM HOME FOR THANKSGIVING REGARDLESS OF WHAT HIS PARENTS
21 FELT OR THOUGHT. AND THAT JUST KIND OF CLICKED. AND SO, WE
22 HAD DISCUSSED IT SOME.

23 Q WOULD THAT BE-- WOULD YOUR MIND BE CHANGED
24 SOMEWHAT AFTER HEARING THE TESTIMONY TODAY THAT CHIP HAD
25 SENT JIMMY APPROXIMATELY \$50,000?

1 A I WAS SHOCKED AT THAT AMOUNT, HOW YOU CAN GET RID OF
2 IT ON DEATH ROW. BUT, NO-- I'M SHOCKED. BUT I HAD NEVER SEEN
3 THAT HAD INDICATED THAT THERE WAS A CONSPIRACY BETWEEN THE
4 BOYS.

5 Q WOULD IT BE SAFE TO ASSUME THAT SINCE CHIP HAD BEEN AT
6 SCHOOL UNTIL VERY RECENTLY THAT THE MONEY HAD TO BE
7 COMING FROM THE ESTATE?

8 A I WOULD IMAGINE SO.

9 Q WOULD THAT LEND CREDENCE TO ANY POSSIBLE
10 INVESTIGATION OR DISCOVERY ON YOUR BEHALF THAT CHIP WAS
11 SOMEHOW INVOLVED IN THIS AND MAYBE EGGING JIMMY ON TO DO
12 THIS?

13 A WE NEVER ARRIVED AT THAT. WE TALKED. THE THING IS, WE
14 TALKED TO SO MANY WITNESSES, AND THEY WERE YOUNG FOLKS,
15 THAT WERE CONTEMPORARIES OF JIMMY AND CHIP. AND THAT WE
16 NEVER FOUND ANYTHING THAT CHIP HAD INDICATED TO THEM OR IN
17 THEIR PRESENCE ANY HARM TO THE PARENTS.

18 Q AS A TRIAL STRATEGY DID YOU EVER THINK ABOUT CALLING
19 CHIP TO THE STAND AND ASK HIM THAT QUESTION POINT-BLANK?

20 A I DON'T KNOW THAT I ASKED JIMMY WHETHER WE SHOULD
21 CALL CHIP. BUT AS I RECALL, IF IT WAS EVER THOUGHT OF, IT WAS
22 NIXED, THAT HE COULD NOT HELP US. THAT WHAT WE COULD DO IS
23 WHAT WE MIGHT ELICIT FROM HIM. I DON'T THINK HE EVER REALLY
24 TALKED TO US, BUT WHAT WE WOULD ELICIT FROM HIM MIGHT BACK
25 UP WHAT SOME OF THE CONTEMPORARIES WERE SAYING. AND I DON'T

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1 THINK IT WOULD HAVE INVOLVED HIM IN A CONSPIRACY WHERE HE
2 WOULD HAVE BEEN THE HAND OF ONE, THE HAND OF ALL OR
3 ANYTHING LIKE THAT.

4 Q DID YOU--

5 A EXCUSE ME, IF I MAY INTERRUPT?

6 Q GO AHEAD.

7 A WE FELT HE COULD HAVE HURT US MORE THAN HE COULD HAVE
8 HELPED US.

9 Q BUT YOU DIDN'T KNOW?

10 A SURE, NO, SURE. JUST FROM MY INTERVIEW OF ALL OF THE
11 WITNESSES THAT HE HAD NEVER BEEN INVOLVED IN ANY
12 CONSPIRACY THAT WE HEARD OF.

13 Q DID YOU INVESTIGATE A PARTY THAT CHIP HAD AROUND
14 CHRISTMASTIME, RIGHT AFTER THESE MURDERS OCCURRED?

15 A WELL, YOU CAN'T SAY INVESTIGATE. AGAIN, IT JUST...

16 Q OR WHATEVER CAME TO YOUR ATTENTION?

17 A IT'S STRICTLY RUMOR.

18 Q AS A MATTER OF FACT, YOU ASKED A COUPLE OF THE STATE'S
19 WITNESSES ABOUT IT, DIDN'T YOU?

20 A I MAY HAVE.

21 Q AND THEY ADMITTED THE PARTY WENT ON?

22 A THE PARTY WENT ON. AND THE RUMOR WAS THAT HE WAS
23 CONDUCTING GUIDED TOURS OF THE HOUSE WHERE THE CARPET HAD
24 BEEN TORN UP AND EVERYTHING.

25 Q DID YOU SUBPOENA ANYTHING OF CHIP'S MEDICAL RECORDS?

1 A I DON'T REMEMBER SEEING ANY.

2 Q I'LL ASK YOU IF YOU'VE EVER SEEN THIS DOCUMENTS FROM
3 EASTOVER PSYCHOLOGICAL AND PSYCHIATRIC GROUP IN CHARLOTTE
4 CONCERNING CHIP ROBERTSON? AND IF YOU COULD, JUST TAKE A
5 FEW MINUTES TO REVIEW THEM.

6 A DID THEY COME OUT OF MY FILES? I KNOW I'M NOT SUPPOSED
7 TO ASK QUESTIONS.

8 Q MR. HANCOCK, I ASSUME THEY DID BECAUSE I'VE GOT YOUR
9 FILE.

10 A OKAY.

11 (PAUSE TO PERUSE RECORDS)

12 I HAVE SEEN THESE. I DON'T KNOW WHAT'S IN ALL OF THEM,
13 BUT I HAVE SEEN THESE BECAUSE I SPECIFICALLY REMEMBERED
14 WHERE IT SAYS THAT "HE MAY BE A BIT OBSESSIVE, OVERACTIVE
15 AND DRIVEN. AND HIS GENERAL ATTITUDE TOWARDS HIMSELF HAS
16 CONTRIBUTED TO MORALE." AND I TOLD SOMEBODY IT SOUNDED
17 LIKE A LAWYER.

18 Q IN THOSE RECORDS, DOES IT ALSO SAY HE IS BI-POLAR, ALSO?

19 A I BELIEVE SO.

20 Q OKAY.

21 A HE HAS THE SAME-- IT BASICALLY SAYS FITS OF DEPRESSION,
22 BOUTS OF DEPRESSION. I DID NOT PARTICULARLY SEE BI-POLAR. BUT
23 WHAT I SAW WAS...

24 Q WAS HE ON PROZAC ALSO, ACCORDING TO THOSE DOCUMENTS?

25 A YES SIR, I THINK SO.

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- 1 Q RITALIN, ALSO. IS THAT CORRECT?
- 2 A I BELIEVE SO. I CAN'T DENY THAT. I HAVEN'T SEEN IT IN THE
- 3 RECORD.
- 4 Q IF YOU NEED TIME TO REVIEW IT, TAKE YOUR TIME. THAT'S
- 5 ABOUT AS CONDENSED AS I CAN GET IT FOR YOU.
- 6 A OKAY. WELL, IF YOU'VE EVIDENTLY READ THEM, THEN YOU
- 7 KNOW ITS THERE. SO,...
- 8 Q WELL, I CAN'T TESTIFY FOR YOU.
- 9 A I KNOW. SO, I WILL NOT DENY THAT.
- 10 Q WELL, TAKE YOUR TIME AND VERIFY THAT WHAT I'M TELLING
- 11 YOU IS IN THERE.
- 12 A YOU'RE LOOKING FOR RITALIN?
- 13 Q RITALIN, PROZAC, BI-POLARITY.
- 14 A (PAUSE TO PERUSE RECORDS) I WOULD SAY RITALIN IS THERE
- 15 BECAUSE IT REFERS TO IT. I DON'T SEE... BUT IT REFERS TO
- 16 COUNSELING SESSIONS WHERE HE WAS... IT SAYS HE CONTINUED THE
- 17 PROZAC AND THE MOTHER OF PATIENT ACKNOWLEDGED HE WAS
- 18 USING ALCOHOL IN CONJUNCTION WITH THE RITALIN. SO, I WOULD
- 19 IMAGINE THE RITALIN IS THERE.
- 20 Q LOOK AT THE RECORD FROM 8/11 FROM PIEDMONT PSYCHIATRIC
- 21 ASSOCIATES.
- 22 A 8/11?
- 23 Q YES.
- 24 A OKAY.
- 25 Q UNDER MENTAL STATUS EXAMINATION, IT SHOULD BE THERE.

1 A IT SAYS HE SHOWED. IT DOESN'T SPECIFICALLY SAY THAT HE
2 HAD BI-POLAR, BUT HE SHOWED THE SYMPTOMS OF BI-POLAR. AND
3 THAT'S IN LAB RESPONSE, COLD HANDS AND FEET, TYPICAL
4 DISTRACTIBILITY, DIFFICULTY STAYING STILL THAT YOU SEE IN BI-
5 POLAR DISORDER.

6 Q YOU WOULD AGREE WITH ME IN THE GUILT PHRASE OF THIS
7 TRIAL I BELIEVE THE TERM WAS USED IN THE COURTROOM BY
8 SOMEONE THAT THE ROBERTSONS WERE THE "OZZIE AND HARRIET
9 NELSON FAMILY." IS THAT CORRECT?

10 A RIGHT, SIR.

11 Q IN YOUR INVESTIGATION, DID YOU DISCOVER THAT ALL FOUR
12 MEMBERS OF THE FAMILY WERE UNDER THE CARE OF A
13 PSYCHIATRIST, DOCTOR McMEEKIN?

14 A MY EVALUATION OF IT IS YES, THAT THE BOYS HAD BEEN
15 TAKEN DOWN THERE AND THEN THERE HAD BEEN FAMILY
16 COUNSELING AND THEY HAD ALL BEEN IN THERE TOGETHER. AND I
17 LOOKED AT THE PREVIOUS HISTORY, THE PREVIOUS HISTORY OF THE
18 MOM AND DAD, AND I WILL HAVE TO SAY THAT I DIDN'T KNOW
19 WHETHER A JURY WOULD DECIDE THAT THEY WERE ALL-- THAT THEY
20 HAD THEIR SPECIFIC PROBLEMS, OR THAT THE BOYS HAD CAUSED
21 THEM SUCH TREMENDOUS PROBLEMS OVER THE YEARS, IT WOULD
22 HAVE LED TO THAT. BECAUSE THEIR TREATMENT AND EVERYTHING
23 STARTED AT ABOUT THE TIME THAT THE BOYS WERE DOING WHAT
24 THEY WERE DOING IN HIGH SCHOOL. JIMMY WAS GOING OFF TO JAIL.

1 AND SO, I REALLY EVALUATED IT IN THAT WE WERE TRYING TO
2 SAY THAT THEY WERE DYSFUNCTIONAL; THAT IT MIGHT SOMEHOW
3 REFLECT ON THAT IF WE PUT THOSE RECORDS IN; THAT THE JURY
4 COULD ACTUALLY EVALUATE IT AS I DID.

5 Q IT IS NOWHERE IN HERE THAT SAYS THAT CHIP HAD ANY
6 PROBLEMS, OR IS CAUSING HIS PARENTS ANY PROBLEMS, DOES IT?

7 A NO, IT DOESN'T.

8 Q LET ME ASK YOU THIS: AS YOU GO THROUGH THE MITIGATION
9 PHASE, I NOTICE THAT YOU AND MR. BOYD SPENT TIME STUDYING
10 JIMMY'S PSYCHIATRIST RECORDS AND TERRY ROBERTSON'S
11 PSYCHIATRIC RECORDS, BUT YOU NEVER TOUCH ON EARL'S
12 PSYCHIATRIC RECORDS OR CHIP'S PSYCHIATRIC RECORDS. IS THAT
13 CORRECT?

14 A THAT'S CORRECT. I HAVEN'T SEEN THE TRANSCRIPT, BUT IF
15 MEMORY SERVES, IT WAS BASICALLY THAT WE HAD SAID THAT EARL
16 WAS THERE. EARL STARTED TREATMENT SO MUCH LATER THAN
17 EVERYBODY ELSE. HE WAS ONLY IN TREATMENT, IF I REMEMBER
18 CORRECTLY, FOR A VERY SHORT PERIOD OF TIME.

19 Q WOULD IT BE SAFE TO SAY THAT PART OF YOUR DEFENSE IN
20 MITIGATION WAS THE FACT THAT THE WHOLE FAMILY WAS IN
21 COUNSELING AND HAD THESE VARIOUS AND SUNDRY PSYCHIATRIC
22 PROBLEMS?

23 A AND I THINK WE GOT-- RATHER THAN BEING SO SPECIFIC, WE
24 WERE LOOKING AT THAT AS A GENERAL ARGUMENT TO THE JURY
25 THAT WE DIDN'T GET DOWN TO SPECIFICS WHERE WE WOULD TESTIFY

1 AND ANYBODY WOULD CROSS EXAMINE AND SAY WOULD IT BE SAFE
2 TO SAY THE QUESTION I JUST ASKED: WOULD THEIR PROBLEMS
3 RESULT FROM THE CHILDREN RATHER THAN FROM ANY PREVIOUS
4 PROBLEMS. BECAUSE I COULD NOT FIND WHERE-- A LOT--

5 AS I REMEMBER, WHERE MANY, MANY YEARS AGO THEY WERE
6 HAVING THESE PROBLEMS BEFORE MARRIAGE OR ANYTHING OF THAT
7 NATURE. I DON'T REMEMBER IT.

8 Q DO YOU THINK IT WOULD HAVE BEEN BENEFICIAL TO INSERT
9 CHIP'S PSYCHIATRIC PAST INTO THIS QUAGMIRE OF PSYCHIATRIC
10 RECORDS? THE BULK OF YOUR POSITION, IT'S NOT JUST JIMMY AND
11 IT'S NOT JUST TERRY; EARL AND CHIP ALSO?

12 A LET'S PUT IT THIS WAY: HINDSIGHT IS AN EXACT SCIENCE.
13 WHEN THE DECISION WAS MADE, THAT WAS THE TRIAL DECISION NOT
14 TO-- AND IT MAY HAVE BEEN-- AND I DON'T REMEMBER. IT MAY HAVE
15 BEEN JIMMY THAT DID NOT WANT CHIP TOTALLY INVOLVED IN IT.
16 AND IF I REMEMBER, I DON'T THINK HE WANTED CHIP RIGHT IN THE
17 MIDDLE OF IT AT THAT TIME.

18 Q I UNDERSTAND HE WANTED TO PROTECT HIS BROTHER. IS THAT
19 RIGHT?

20 A RIGHT.

21 Q WAS THAT A CURRENT THING WITH JIMMY THROUGHOUT THE
22 COURSE OF THE PROCEEDINGS?

23 A YES.

24 Q THESE ARE CHIP ROBERTSON'S RECORDS, ARE THEY NOT, THAT I
25 SHOWED YOU?

1 A IT SAYS EARL CHIP ROBERTSON, BORN 9/10/75. THAT WOULD BE
2 CHIP.

3 MR. BROWN: YOUR HONOR, WE MOVE TO ADMIT THESE
4 PSYCHIATRIC RECORDS FOR CHIP ROBERTSON IN EVIDENCE, NOT FOR
5 THE TRUTH OF THE MATTER ASSERTED, BUT FOR WHAT COULD BE
6 OFFERED TO THE COURT UNDER STRICKLAND.

7 MR. SALTER: WITHOUT OBJECTION.

8 MR. BROWN: AND MITIGATION.

9 THE COURT: THEY'RE ADMITTED.

10 (WHEREUPON APPLICANT'S EXHIBIT NUMBER ONE WAS ADMITTED
11 INTO EVIDENCE WITHOUT OBJECTION)

12 Q DID YOU REVIEW THE RECORDS FROM SKIP MEYERS
13 CONCERNING EARL ROBERTSON, SR.?

14 A YES.

15 Q IN YOUR REVIEW OF THOSE RECORDS, DO YOU RECALL THAT
16 MR. ROBERTSON SEEMS TO COMPLAIN ABOUT HIS WIFE GETTING
17 OVERWEIGHT, NOT KEEPING HOUSE, NOT COOKING, NOT DOING
18 ANYTHING?

19 A IT SEEMED LIKE SHE WAS DEPRESSED, FROM THE RECORDS I
20 SAW.

21 Q DOES HE COMPLAIN A LOT ABOUT MONEY IN THOSE RECORDS?

22 A I DON'T REMEMBER HIM COMPLAINING ABOUT MONEY. I KNOW
23 THAT AFTER REVIEWING EVERYTHING I WAS TOTALLY SURPRISED AT
24 THE SIZE OF THE ESTATE. BUT I DON'T REMEMBER HIM COMPLAINING
25 ABOUT MONEY AND NOT HAVING ANY.

1 Q LET ME ASK YOU IF YOU RECOGNIZE THESE?

2 A THESE ARE-- AGAIN, THESE ARE EASTOVER PSYCHOLOGICAL
3 AND PSYCHIATRIC GROUP.

4 Q ARE THOSE FOR EARL ROBERTSON, SR.?

5 A THEY ARE.

6 Q THEY ALSO INCLUDE COUNSELING SESSIONS WITH SKIP
7 MEYERS, I ASSUME?

8 A YES SIR.

9 Q NOW, SKIP MEYERS ON THE STAND, YOU DIDN'T CROSS EXAMINE
10 HIM ABOUT ANY OF THESE THINGS CONCERNING EARL ROBERTSON,
11 SR. YOU ACTUALLY CROSS EXAMINED HIM ABOUT TERRY
12 ROBERTSON. WHY IS THAT?

13 A AT THIS POINT IN TIME I HAVE NO MEMORY. THERE WOULD BE A
14 REASON THAT I BELIEVE-- I'M JUST SITTING HERE AND I'M LOOKING AT
15 THIS AND I'M JUST TAKING A QUICK GANDER.

16 SO MUCH OF HIS WAS INTER-RELATIONSHIP WITH HIS WIFE
17 RATHER THAN THE CHILDREN. BUT I WOULD THINK JUST SITTING
18 HERE NOW, AND I DON'T REMEMBER WHAT MY THOUGHT PROCESS
19 WAS THEN, THAT WE WERE GOING MORE TOWARD-- WE COULDN'T--
20 WE COULDN'T TOTALLY TRASH THE WHOLE FAMILY IN FRONT
21 OF THE JURY. THOSE TWO PEOPLE WHO HAD BEEN BEATEN AND CUT
22 UP, WE COULDN'T TRASH THEM TO SUCH AN EXTENT THAT WE WOULD
23 ALIENATE THE JURY, IS KIND OF WHAT I'M LOOKING AT. BUT I'M JUST
24 LOOKING TO SEE. AND THAT'S JUST TO QUALIFY AND SAY THAT
25 THERE WAS SOME THOUGHT PROCESS IN IT THAT WE DIDN'T DO THAT.

- 1 Q WOULD YOUR STRATEGY HAVE BEEN TO PUT THESE RECORDS
2 UP IN EVIDENCE, NOT TO TRASH THEM, BUT TO SHOW THAT ON
3 AUGUST 8, 1995, THAT MR. ROBERTSON SAYS THAT MY WIFE SAYS I'VE
4 NEVER BEEN A HAPPY PERSON; I AGREE WITH THAT. THE LAST TIME
5 WOULD HAVE BEEN IN HIGH SCHOOL?
- 6 A (NO RESPONSE)
- 7 Q I MEAN, YOU ATTACKED TERRY ROBERTSON WITH SKIP MEYERS,
8 DID YOU NOT? AND I TELL YOU, ATTACK IS PROBABLY A POOR CHOICE
9 OF WORDS. YOU BROUGHT OUT HER PSYCHOLOGICAL AND
10 PSYCHIATRIC PROBLEMS?
- 11 A YES SIR.
- 12 Q BUT YOU DIDN'T BRING OUT THE ONES IN CHIP, THE MENTAL
13 ILLNESS HE HAD AND THE MENTAL ILLNESS EARL HAD? IS THAT
14 CORRECT?
- 15 A THAT'S CORRECT.
- 16 Q BUT YOU BROUGHT OUT THE MENTAL ILLNESS TERRY HAD?
- 17 A RIGHT.
- 18 Q LOOKING BACK, REALIZING HINDSIGHT IS TWENTY-TWENTY, DO
19 YOU THINK THAT WOULD HAVE HELPED THE JURY AS TO MR.
20 ROBERTSON IN THE MITIGATION PHASE, OR THE SENTENCING PHASE?
- 21 A IT MAY HAVE. I CAN'T TELL YOU THAT. AGAIN, THAT WOULD
22 JUST BE SPECULATION ON MY PART.
- 23 Q AND, FOR THE RECORD, THESE ARE THE RECORDS THAT I GOT
24 FROM YOU. IS THAT CORRECT?
- 25 A YES SIR. YOU WOULD HAVE GOTTEN THEM FROM ME.

1 MR. BROWN: MOVE TO ADMIT, YOUR HONOR.

2 MR. SALTER: WITHOUT OBJECTION.

3 THE COURT: THEY'RE ADMITTED.

4 (WHEREUPON APPLICANT'S EXHIBIT NUMBER TWO WAS ADMITTED
5 INTO EVIDENCE WITHOUT OBJECTION)

6 Q YOU'RE AWARE THAT DOCTOR McMEEKIN WAS SEEING EVERY
7 MEMBER OF THIS FAMILY. IS THAT CORRECT?

8 A I...

9 Q LET ME BACK UP. WHO IS DOCTOR HAYNE McMEEKIN?

10 A DOCTOR McMEEKIN IS A PSYCHOLOGIST, PSYCHIATRIST. AND
11 DOCTOR MEYER WAS A PSYCHOLOGIST, I BELIEVE, IN HIS OFFICE WHO
12 HAD THE CONTACT WITH THE FAMILY.

13 Q AS A MATTER OF FACT, THOSE TWO ARE KIND OF SIDE BY SIDE
14 IN THIS MATTER? DOCTOR MEYER IS THE COUNSELOR AND DOCTOR
15 McMEEKIN IS THE MEDICAL DOCTOR WHO PRESCRIBED DRUGS?

16 A DESCRIBED A GREAT DEAL OF THEIR MEDICATION, YES. HE
17 WASN'T DOING A LOT OF THE COUNSELING. THE MEDICATION WAS
18 COMING FROM HIS PRESCRIPTIONS.

19 Q IN YOUR INVESTIGATION, DID YOU EVER CONSULT WITH
20 ANOTHER PSYCHIATRIST TO REVIEW HIS RECORDS ABOUT HIS OVER-
21 PRESCRIPTION OF RITALIN?

22 A NO, BECAUSE I WASN'T GOING AFTER HIM. AND IT WASN'T
23 JIMMY'S RITALIN; IT WAS HIS BROTHER'S RITALIN. AND I WASN'T
24 PARTICULARLY PURSUING ANYTHING AGAINST HIS MEDICAL DEGREE
25 OR HIS TREATMENT OF THESE FOLKS. AND IF I MAY CONTINUE THAT?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q GO AHEAD.

2 A IT'S ALSO HIS-- AT THAT POINT IN TIME WE WERE LOOKING AT
3 RITALIN AND TRYING TO AT LEAST PUT IT IN THERE. BUT I DON'T
4 BELIEVE AT THAT TIME THE ZOLOFT DEFENSE HAD EVER WORKED IN A
5 MURDER CASE OR A DEATH PENALTY CASE.

6 Q BUT YOU TRIED TO TIE THAT INTO DOCTOR MORTON, THE
7 PHARMACOLOGIST, DID YOU NOT?

8 A WE TRIED.

9 Q AS A MATTER OF FACT, HE MADE A GOOD WITNESS, DIDN'T HE?

10 A I THOUGHT HE WAS REAL GOOD. HE NEVER WOULD SAY THAT
11 RITALIN WAS THE SOLE CAUSE THAT WOULD CAUSE SOMEONE TO
12 ERUPT INTO THIS TYPE BEHAVIOR AND OVERRIDE EVERYTHING ELSE
13 THEY HAD ALREADY LEARNED. BUT WE GOT A PRETTY GOOD
14 WITNESS OUT OF HIM, I THOUGHT.

15 Q RITALIN WAS NOT A VERY ABUSIVE DRUG AT THAT POINT IN
16 TIME, WAS IT?

17 A AS I RECALL, RITALIN HAS ALWAYS BEEN PRETTY MUCH-- IT'S
18 AN UPPER AND IT'S ALWAYS-- IT OR A DERIVATIVE THEREOF,
19 AMPHETAMINES HAS ALWAYS BEEN SOMEWHAT ABUSED, IN MY
20 EXPERIENCE.

21 Q ARE THESE COPIES OF THE RECORDS THAT YOU HAD OF TERRY
22 ROBERTSON FROM PIEDMONT MEDICAL CENTER, DOCTOR McMEEKIN
23 AND SKIP MEYERS?

1 A IT MAY HAVE BEEN. IF YOU GAVE THEM TO ME-- I GAVE THEM
2 AND THEY'RE IN YOUR FILE. SO, I WOULD HAVE TO SAY THAT THEY
3 ARE THE RECORDS.

4 Q I'LL ASK YOU IF YOU GAVE DOCTOR McMEEKIN SOME NOTES IN
5 THOSE MEDICAL RECORDS?

6 A HIS NOTES IN THESE MEDICAL RECORDS?

7 Q YES SIR.

8 A I WOULD HAVE TO LOOK AND SEE.

9 (PAUSE TO GO THROUGH FILE)

10 IF YOU COULD ASK ME SPECIFICALLY, THEY MAY BE HERE. I
11 DON'T KNOW WHAT HIS HANDWRITING LOOKS LIKE. I'VE GOT NOTES
12 THAT MAY BE EITHER HIS OR....

13 YES, THERE ARE PROGRESS NOTES.

14 Q ON OCTOBER 6, 1995, DO YOU HAVE THE NOTES FROM THAT
15 DATE?

16 A OCTOBER 6, '95. (PAUSE TO GO THROUGH FILE) I'M TRYING TO
17 FIND IT, BUT I DON'T....

18 Q IT SHOULD BE IN CHRONOLOGICAL ORDER.

19 A (PAUSE TO GO THROUGH FILE) MR. BROWN, WHERE I START....
20 OCTOBER 6, '95?

21 Q YES.

22 A BECAUSE, WHAT I'VE GOT-- WHAT I'VE GOT IS STARTING WITH
23 12/95, 12/13/95. SO, THEN, THEY-- I'M GOING TO '96 AND '97.

24 Q DO YOU HAVE SEPTEMBER 6, '95?

1 A I DON'T AT THIS POINT, NO SIR. THAT'S '95, AND THEN I'VE GOT
2 '97.

3 Q THESE ARE THE NOTES OF DOCTOR McMEEKIN, THE
4 PSYCHIATRIST. IS THAT CORRECT?

5 A YES.

6 Q ON 10/06/95, HIS NOTES SAY THAT MRS. ROBERTSON HAS NOT
7 BEEN SLEEPING; THAT HER HUSBAND'S GONE OFF HIS MEDS, AND SHE
8 DENIES SUICIDE THOUGHTS. IS THAT CORRECT?

9 A YES.

10 Q NO MENTION OF THE CHILDREN BEING A PROBLEM. IS THAT
11 CORRECT?

12 A NO SIR.

13 Q ON 10/10/95, PATIENT PHONED AND DISCUSSED MEDICATION AS A
14 BRIBE, HADN'T TAKEN FOR THREE DAYS, AND SOUNDED CONFUSED
15 AND THERE WAS SOME CONFUSION AS TO WHETHER TO TAKE TWO OR
16 THREE ONE-HALF TABLETS PER DAY. AFTER QUESTIONING THE
17 PATIENT ABOUT THIS, NOTICED A CERTAIN LEVEL OF AGITATION;
18 PLEASE CALL PATIENT. IS THAT CORRECT?

19 A IT LOOKS LIKE 7/10/95.

20 Q YEAH. 10/10/95, SHOULD BE IN YOUR NOTES.

21 A I'VE GOT 10/06/95; LOOKS LIKE 7/10/95, 10/16/95.

22 Q NO MENTION OF THE CHILDREN IN THERE. CORRECT?

23 A RIGHT.

24 Q A DISCUSSION ABOUT HER PROBLEMS AND MEDICATION SHE'S
25 TAKING?

1 A YES.

2 Q 10/16/95, DISCUSSION OF MEDICATION.

3 A YES.

4 Q NO MENTION OF THE CHILDREN BEING A PROBLEM?

5 A RIGHT.

6 Q 10/19/95, SHE GOT HER LITHIUM.

7 A THAT'S CUT OFF AGAIN. THAT'S '97?

8 Q 12/1/95. DO YOU RECALL LINDA WEAVER TESTIFYING AT TRIAL?

9 A I DON'T RECALL HER TESTIFYING. DID WE CALL HER?

10 Q DO YOU RECALL THAT SHE WAS A VERY GOOD FRIEND, HER AND

11 BILL WEAVER WERE VERY GOOD FRIENDS OF EARL AND TERRY

12 ROBERTSON, SR.?

13 A YES.

14 Q AND THE STATE CALLED HER AND SHE TESTIFIED ABOUT WHAT

15 A GREAT PERSON SHE WAS AND HOW THE CHILDREN HAD DESTROYED

16 HER LIFE, IN A NUTSHELL?

17 A I THINK THERE WAS SOME OF THAT.

18 Q 11/1/95. DOCTOR McMEEKIN'S NOTES INDICATE LINDA WEAVER

19 CALLED HER; SEEMS TO THINK SHE IS PRESENTLY SUICIDAL,

20 WHEREABOUTS UNKNOWN; PATIENT PROMISED SKIP SHE WOULD

21 RETURN SKIP'S CALL, NOT LINDA WEAVER; TOLD HER TO TELL

22 HUSBAND TO GET A DETENTION ORDER SO THAT SHE MAY BE PICKED

23 UP AND CARRIED TO THE HOSPITAL AND BE ADMITTED.

24 A RIGHT.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

- 1 Q NO MENTION OF THE CHILDREN BEING A PROBLEM. IS THAT
2 CORRECT?
- 3 A THAT'S RIGHT.
- 4 Q SAME THING ON 12/4/95. A NOTE THAT THE PATIENT IS OCD,
5 OBSESSIVE COMPULSIVE DISORDER.
- 6 A I'VE GOT 12/14/95, WORK IN THROUGH SKIP, HOSPITAL,
7 SOMETHING OCD.
- 8 Q DOES THAT SAY OBSESSIVE COMPULSIVE DISORDER?
- 9 A I DON'T SEE THAT. I DON'T READ THAT.
- 10 Q LOOK ON FEBRUARY 15, FEBRUARY 29, 1996.
- 11 A RIGHT.
- 12 Q DIRECTING YOUR ATTENTION TO THE NOTES OF FEBRUARY 29,
13 1996, LINDA WEAVER HAS TALKED TO SKIP REGARDING TERRY
14 BEFORE. LEFT MESSAGE WITH SKIP SHE WAS SERIOUSLY REGARDED
15 SUICIDAL, MORE SERIOUS ABOUT IT NOW. SWEATING, SHAKING, DRY
16 MOUTH. DO YOU SEE THAT?
- 17 A WHAT DATE?
- 18 Q FEBRUARY 29, 1996?
- 19 A YES, OKAY. RIGHT.
- 20 Q IF YOU REVIEW THE NOTES, THERE'S NO MENTION OF THE
21 CHILDREN BEING INVOLVED IN THE PSYCHIATRIST'S NOTES
22 ANYWHERE, DOES IT?
- 23 A NO SIR. THERE'S A PLACE.
- 24 Q NOT SKIP MEYERS' NOTES; DOCTOR McMEEKIN, THE
25 PSYCHIATRIST'S NOTES.

1 A WELL, I'M JUST GIVEN NOTES HERE. I DON'T KNOW WHICH ONES
2 THEY ARE. WHERE IT-- AND I DON'T KNOW WHICH ONES THEY ARE,
3 WHETHER THEY ARE MEYERS' OR OTHERWISE THAT THEY MENTION IN
4 HERE WHERE SHE'S BEEN CONTEMPLATING SUICIDE BECAUSE HE WAS
5 COMING HOME FROM PRISON.

6 Q THAT WOULD BE SKIP MEYERS' NOTES.

7 A SKIP, OKAY.

8 Q LET ME CHECK THAT TO REFRESH YOUR MEMORY. HOLD ON
9 ONE SECOND.

10 A '97.

11 Q WOULD THAT BE JULY 29, 1997, THE NOTES OF SKIP MEYERS?

12 A IS IT MEYERS'? I DIDN'T KNOW WHICH NOTES IT WAS.

13 Q YOU WOULD AGREE WITH ME THAT A PSYCHIATRIST IS
14 PROBABLY A MORE CREDIBLE WITNESS THAN A PSYCHOLOGIST?
15 WOULD THAT BE A FAIR STATEMENT, BECAUSE OF BEING A MEDICAL
16 DOCTOR?

17 A I WOULD AGREE IN THEORY.

18 Q WE HAVE NOTES FROM HAYNE McMEEKIN WHERE HE SAW EARL
19 ROBERTSON, TERRY ROBERTSON, CHIP ROBERTSON, WHERE THERE
20 WAS NO MENTION OF CHILDREN BEING A PROBLEM. IS THAT
21 CORRECT?

22 A YES.

23 Q WOULD THAT NOT HAVE HELPED THE JURY IN MITIGATION
24 SENTENCING AS FAR AS JIMMY ROBERTSON GOES?

25 A I DO NOT KNOW HOW THEY WOULD HAVE TAKEN IT.

1 Q WELL, WE KNOW MR. MEYERS' NOTES SAY HE WAS A PROBLEM.
2 RIGHT?

3 A RIGHT.

4 Q AND WE KNOW MR. McMEEKIN'S NOTES DON'T MENTION THAT,
5 THAT EARL AND TERRY ARE SUICIDAL AT ALL. IS THAT CORRECT? WE
6 KNOW THAT NOW?

7 A YES.

8 Q WOULD YOU AGREE WITH ME THAT DOCTOR McMEEKIN WOULD
9 NOT HAVE BEEN A STATE OR A DEFENSE WITNESS INSOMUCH AS HE
10 WASN'T HIRED BY Y'ALL TO EVALUATE ANYBODY, AND THE STATE
11 DIDN'T USE HIM TO HIRE (SIC) ANYBODY IN PREPARATION FOR TRIAL.
12 IS THAT CORRECT?

13 A CORRECT.

14 Q AND THESE RECORDS WERE ALREADY IN EXISTENCE. IS THAT
15 CORRECT?

16 A YES.

17 Q I MAY HAVE ASKED YOU THIS ALREADY, BUT I WANT TO ASK
18 YOU AGAIN. IN YOUR CROSS EXAMINATION OF MR. MEYER, YOU WENT
19 THROUGH TERRY'S MEDICAL RECORDS WHICH ALLUDE TO THE FACT
20 THAT PART OF HER PROBLEM WAS WITH THE CHILDREN. YOU RECALL
21 THAT. CORRECT? I'M TALKING ABOUT SKIP MEYER, NOT McMEEKIN,
22 NOW.

23 A RIGHT. I DON'T REMEMBER. BUT, YES.

24 MR. BROWN: YOUR HONOR, I DON'T THINK WE'RE GOING TO GET
25 THROUGH THIS WITNESS TODAY.

1 Q BUT I WILL GIVE YOU THAT AND ASK THAT YOU REVIEW IT; IT'S
2 VERY BRIEF IF. I TOLD YOU FOR THE SAKE OF THIS NEXT QUESTION,
3 AND WE CAN SHORE IT UP TOMORROW, THAT YOU DIDN'T ASK AT ALL
4 ABOUT JIMMY'S MEDICAL RECORDS THROUGH SKIP MEYERS, OR
5 EARL'S MEDICAL RECORDS THROUGH SKIP MEYERS, OR CHIP'S
6 MEDICAL RECORDS THROUGH SKIP MEYERS. WHY WAS THAT?

7 A I DON'T KNOW AT THIS POINT. I CAN'T TELL YOU.

8 Q WAS PART OF YOUR PURPOSE, OR YOU AND MR. BOYD'S
9 PURPOSE IN SENTENCING TO SHOW THE MEDICAL PROBLEMS THIS
10 FAMILY HAD? THE PSYCHIATRIC AND PSYCHOLOGICAL PROBLEMS
11 THEY HAD?

12 A WE WERE TRYING TO FIND A REASON THAT JIMMY COULD DO
13 WHAT HE DID AND WE WENT TOWARD HIS PARENTS' PROBLEMS AS
14 BEING HIS PROBLEMS, BUT NEVER COULD FIND HIS PROBLEMS BEING
15 ENOUGH TO GO TO GUILTY BUT MENTALLY ILL BECAUSE THEY WERE
16 MENTALLY ILL.

17 THE COURT: DO YOU THINK YOU'RE GOING TO BE A LOT
18 LONGER ON DIRECT?

19 MR. BROWN: THIRTY, FORTY-FIVE MINUTES MAX, YOUR HONOR.

20 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK NOW AND
21 COME BACK.

22 (WHEREUPON COURT WAS IN RECESS AT 4:10 P.M.)

23

24

25

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

COURT IN SESSION - 4:20 P.M.

1
2 RESUMPTION OF DIRECT EXAMINATION OF WITNESS HANCOCK BY MR.
3 BROWN:

4 Q DO YOU RECALL AN EX-GIRLFRIEND OF JIMMY'S WHO TESTIFIED
5 NAMED ERIN?

6 A NO, I DON'T. REFRESH MY MEMORY.

7 Q SEE IF THAT WON'T REFRESH YOUR MEMORY. ERIN ELIZABETH
8 SAVAGE, WHO WAS AN EX-GIRLFRIEND OF JIMMY'S.

9 A I DON'T RECALL HER TESTIMONY.

10 Q DO YOU RECALL AN INCIDENT WHERE MR. BRACKETT WAS
11 ASKING HER ABOUT A PHONE CONVERSATION SHE HAD WITH JIMMY
12 DURING THE MIDDLE OF THE TRIAL WHERE HE HAD CALLED HER-- SEE
13 IF THIS WOULD REFRESH YOUR MEMORY: HE HAD CALLED HER AND
14 TOLD HER NOT TO BOTHER TO COME BACK THIS AFTERNOON BECAUSE
15 THEY PROBABLY WERE NOT GOING TO GET TO HER TODAY?

16 A I SURE DO BECAUSE IT GOT THE ATTENTION OF THE SHERIFF
17 AND EVERYTHING ELSE THAT HE HAD GOTTEN A HOLD OF A PHONE
18 BACK THERE, AND I THINK THERE WAS A BIG ROW ABOUT THAT.

19 Q WHERE'D HE GET THE PHONE FROM?

20 A I DON'T KNOW. IT MIGHT HAVE BEEN MY PARALEGAL. I'M NOT
21 SURE.

22 Q TO REFRESH YOUR MEMORY, YOU DIDN'T OBJECT TO THAT, DID
23 YOU. LET ME ASK THAT QUESTION.

24 A NO SIR. ALTHOUGH, IT'S IRRELEVANT. I SAW NO OBJECTION. IT
25 WASN'T HARMFUL OR HELPFUL THAT I COULD SEE.

1 Q DO YOU THINK IT MADE AN IMPRESSION JUST FOR THE JURY
2 THAT HE WAS TELLING A WITNESS, BABY, DON'T COME BACK UP HERE
3 TODAY.

4 A I DIDN'T THINK IT WAS CRITICAL FOR THE JURY, NO SIR.

5 Q IN THE SENTENCING PHASE-- WELL, LET ME BACK UP A SECOND.
6 YOU'RE FAMILIAR WITH SKIPPER V. SOUTH CAROLINA, AS TO
7 ADAPTABILITY AND SO FORTH. IS THAT CORRECT?

8 A YES SIR.

9 Q YOU AND MR. BOYD DID NOT PUT ANY ADAPTABILITY UP
10 EXCEPT FOR THE RECORDS THROUGH MR. STOBEE, THROUGH THE
11 STAFF AT THE DEPARTMENT OF CORRECTIONS. IS THAT CORRECT?

12 A I BELIEVE SO.

13 Q BUT YET, THERE WAS TESTIMONY IN THE RECORD, AND Y'ALL
14 MADE A GREAT DEAL OF POINTING OUT THE FACT THAT SINCE HE HAS
15 BEEN CORRECTLY DIAGNOSED AT SCDC, THAT HE'S GOTTEN A LOT
16 BETTER. THOSE WERE THE MEDICAL REPORTS. IS THAT CORRECT?

17 A I THINK SO.

18 Q DO YOU THINK THAT WOULD HAVE BEEN CRUCIAL TO
19 ADAPTABILITY IN THAT THE RECORDS FROM DOCTOR STOBEE AT
20 SCDC SAY THAT HE IS NOT, HE HAS NOT BEEN CORRECTLY DIAGNOSED
21 AND NOW HE'S GOTTEN A LOT BETTER SINCE WE GOT HIM ON
22 REGULAR MEDICATION?

23 A I DON'T KNOW WHETHER THOSE RECORDS CAME IN OR THEY
24 WERE EVEN COMMENTED ON IN THAT MANNER.

25 Q YOU RECALL THE RECORDS I'M TALKING ABOUT, DO YOU NOT?

1 A NOT SPECIFICALLY. I REMEMBER THAT WE REVIEWED SCDC
2 RECORDS. AND I THOUGHT WE PUT IN SOMETHING AS TO THE
3 ADAPTABILITY WITH THE SCDC RECORDS. THAT'S ALL I RECALL. AND
4 I DON'T RECALL WHO PUT THEM IN OR HOW THEY WERE PUT IN
5 EVIDENCE.

6 Q FOR THE SAKE OF THIS QUESTION, THE RECORD INDICATES,
7 WHICH, ASSUMING IT DOES, THAT THE DOCTOR AT SCDC SAYS HIS
8 MEDICATION MADE HIM DO BETTER, THAT HE BASICALLY HAS BI-
9 POLAR, HAS HIM UNDER CONTROL. DO YOU NOT THINK THAT WOULD
10 HAVE BEEN A SALIENT FACT ON THE ADAPTABILITY; I.E., HE'S NO
11 LONGER A THREAT TO SOCIETY SINCE HIS MANIA AND BI-POLARISM IS
12 UNDER CONTROL WITH THE DEPARTMENT'S MEDICATION?

13 A IT COULD HAVE BEEN, YES SIR.

14 Q YOU AND MR. BOYD DID NOT CALL THAT DOCTOR UP HERE. IS
15 THAT CORRECT?

16 A I DON'T REMEMBER. I DON'T REMEMBER CALLING HIM UP HERE.

17 Q DID YOU AND HE RESEARCH THE FACT OR EVER THINK ABOUT
18 CALLING AN ADAPTABILITY EXPERT?

19 A I DON'T REMEMBER WHETHER WE DID OR DID NOT. I CAN'T TELL
20 YOU THAT.

21 Q IN ANY EVENT, YOU DIDN'T PRESENT ANY EVIDENCE OF
22 ADAPTABILITY OTHER THAN THOSE RECORDS, DID YOU?

23 A NO.

24 Q YOU WILL AGREE WITH ME THE FACT THAT HIS MEDICAL
25 DIAGNOSIS HAD CHANGED THROUGH, UNDER SCDC, AND THAT THE

1 DOCTOR WROTE THAT HE'S DOING MUCH BETTER NOW WITH THE
2 PROPER MEDICATION. IS THAT CORRECT?

3 A I DON'T REMEMBER IT. THAT MAY BE IN THE RECORD.

4 Q ON DIRECT EXAMINATION OF MR. MICHAEL JOHN STOBEE BY
5 MR. BRACKETT, HE BRINGS OUT THE FACT OF THE INFRACTION SHEETS
6 THAT MR. ROBERTSON HAD. DO YOU REMEMBER THAT?

7 A I REMEMBER HE HAD SOME INFRACTIONS.

8 Q AND WAS ONE OF THEM FOR BANGING ON A CELL DOOR, IF YOU
9 REMEMBER?

10 A I CAN'T DENY THAT.

11 Q LET ME ASK YOU TO TAKE THE TIME TO LOOK AT THESE LAST
12 TWO PAGES, 2133 THROUGH 2137. IT'S YOUR CROSS-EXAMINATION OF
13 MR. STOBEE AS TO THE VIOLATIONS IN THE CENTRAL REGISTRY AT
14 SCDC.

15 A (PAUSE TO REVIEW TRANSCRIPT) YES SIR.

16 Q YOU WOULD AGREE WITH ME THAT THOSE VIOLATIONS, OR THE
17 INFRACTIONS THAT HE HAD WERE VERY MINOR. IS THAT CORRECT?

18 A I DO, AND I THINK THAT WAS THE POINT THAT WE WERE TRYING
19 TO REACH.

20 Q IF LIFE WITHOUT PAROLE WAS ONE OF THE OPTIONS FOR MR.
21 ROBERTSON, COULD IT HAVE BEEN POSSIBLE THAT A VIABILITY OR
22 ADAPTABILITY EXPERT, WITH THESE RECORDS, WITH THAT MEDICAL
23 DIAGNOSIS, WHICH IS VERY FAVORABLE TO HIM AT SCDC, WOULD
24 HAVE BEEN HELPFUL IN THE SENTENCING PHASE?

1 A IF IT HAD BEEN LIFE-- LET'S SEE, IF IT HAD BEEN LIFE WITHOUT
2 THE POSSIBILITY OF PAROLE AT THAT TIME, I---

3 Q IT WAS. IF I TOLD YOU IT WAS---

4 A I'M TRYING TO FIGURE OUT, WAS THAT IN THE CASE IN CHIEF OR
5 IN THE DEATH PENALTY PHASE?

6 Q THAT WAS IN THE CASE IN CHIEF.

7 A WE DIDN'T KNOW WHETHER WE HAD LIFE WITHOUT THE
8 POSSIBILITY OF PAROLE IN THE CASE IN CHIEF BECAUSE THE JUDGE
9 HAD NOT RULED ON IT. WE DID NOT GET THAT---

10 Q I'M NOT TALKING ABOUT THE CHARGE. I'M TALKING ABOUT,
11 THAT WAS THE LAW. IT'S NOT A QUESTION OF WHAT THE LAW WAS.
12 HE'D EITHER GOT DEATH OR LIFE WITHOUT PAROLE. IS THAT
13 CORRECT?

14 A YES.

15 Q AND WOULD NOT AN ADAPTABILITY EXPERT HELP THE
16 SENTENCING PHASE, BASED ON THESE CRITERIA WE HAVE?

17 A HE MAY HAVE. I DON'T KNOW. I CAN'T PREDICT THAT IN THE
18 JURY'S MIND.

19 Q WOULD YOU AGREE WITH ME THAT IN THE MITIGATION OR
20 SENTENCING PHASE THAT DOCTOR EVANS, DOCTOR MORTON AND
21 DOCTOR PINCUS WERE GOOD WITNESSES?

22 A IN THE...?

23 Q IN THE SENTENCING PHASE?

24 A YEAH, I THINK THEY WERE.

1 Q AS A MATTER OF FACT, Y'ALL DIDN'T PUT ON ANY EVIDENCE IN
2 THE GUILT PHASE, DID YOU?

3 A NO.

4 Q NOW, I WANT TO MOVE TO DOCTOR CASCIO, THE FOURTH
5 WITNESS YOU USED, OR, YOU AND MR. BOYD USED. I BELIEVE YOU
6 TESTIFIED EARLIER THAT YOU GOT HER FROM THE CENTER FOR
7 CAPITAL LITIGATION?

8 A YES.

9 Q AND I BELIEVE YOU SAID, WHAT WAS THE LADY'S NAME WHO
10 RECOMMENDED HER?

11 A DRUCY GLASS, I BELIEVE.

12 Q DID YOU DO ANY BACKGROUND ON MS. CASCIO PRIOR TO
13 EMPLOYING HER IN THIS MATTER?

14 A YES. SHE SENT US A CURRICULUM VITAE.

15 Q WOULD THIS BE A COPY OF THAT?

16 A THAT APPEARS TO BE HER CURRICULUM VITAE, YES.

17 MR. BROWN: MOVE TO ADMIT THIS INTO EVIDENCE, YOUR
18 HONOR.

19 MR. SALTER: WITHOUT OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON APPLICANT'S EXHIBIT NUMBER FOUR WAS ADMITTED
22 INTO EVIDENCE WITHOUT OBJECTION)

23 Q DOES IT SHOW THAT SHE FINALLY FINISHED HER ACADEMIC
24 WORK AT THE UNIVERSITY OF PENNSYLVANIA SCHOOL OF SOCIAL
25 WORK IN 1996?

1 A YES.

2 Q AND SHE BECAME EMPLOYED IN 1996, AS AN ASSISTANT
3 PROFESSOR AT THE UNIVERSITY OF SOUTH CAROLINA. IS THAT
4 CORRECT?

5 A YES.

6 Q IN 1997, SHE LISTED HER PRACTICAL EXPERIENCE IN EXPERT
7 WITNESS TESTIMONY IN CAPITAL LITIGATION CASES AT THE CENTER
8 FOR CAPITAL LITIGATION IN COLUMBIA, SOUTH CAROLINA. IS THAT
9 CORRECT?

10 A YES SIR.

11 Q YOU WILL AGREE WITH ME THAT THIS IS A DEATH PENALTY
12 CASE, AND THAT'S ABOUT AS SERIOUS AS IT GETS IN ANY LITIGATION
13 IN SOUTH CAROLINA. WOULD THAT BE A CORRECT STATEMENT?

14 A I'D SAY IT'S MOST SERIOUS.

15 Q WERE YOU AWARE BEFORE SHE TOOK THE STAND THAT SHE
16 HAD NEVER TESTIFIED IN COURT BEFORE?

17 A YES. WE HAD GONE OVER HER TESTIMONY QUITE A FEW TIMES,
18 TRYING TO DO WHAT WE COULD. YES, I WAS AWARE OF THAT.

19 Q IN A DEATH PENALTY CASE WOULD IT NOT BE BETTER TO GET
20 SOMEONE WITH THE BACKGROUND AND EXPERIENCE OF DOCTOR
21 PINCUS, DOCTOR EVANS AND DOCTOR MORTON HAD, WHERE THEY
22 HAD TESTIFIED HUNDREDS OF TIMES?

23 A WE HAD LOOKED FOR THAT. IN FACT, WE HAD A LADY THAT WE
24 TRIED TO EMPLOY. BUT IT WASN'T LIKE WE COULD PICK THESE
25 SOCIAL WORKERS OFF TREES. AND WE WAS ASSURED THAT SHE

1 WOULD DO A GOOD JOB. WE WORKED WITH HER FOR A YEAR TRYING
2 TO GET HER WHERE SHE NEEDED TO BE IN THE TESTIMONY. AND
3 THAT'S WHAT WE HAD CHOSE TO DO.

4 Q YOU WOULD AGREE WITH ME, AS WITH LAWYERS, YOUR FIRST
5 CASE SHOULDN'T BE A DEATH PENALTY CASE; WITH SOCIAL WORKERS
6 YOUR FIRST CASE SHOULDN'T BE A DEATH PENALTY CASE? I MEAN,
7 EXPERIENCE HAS GOT TO PLAY A FACTOR IN THAT. WOULD YOU
8 AGREE WITH ME?

9 A I WOULD AGREE WITH YOU TO A POINT, BUT I WAS IN THE
10 PRACTICE OF LAW ELEVEN MONTHS WHEN I TRIED MY FIRST DEATH
11 PENALTY CASE.

12 Q YOU CAN'T DO THAT ANYMORE, CAN YOU?

13 A YOU CAN'T DO IT ANYMORE.

14 Q DO YOU THINK, WOULD YOU AGREE WITH ME THAT HER
15 TESTIMONY WAS HORRENDOUS FOR THE DEFENSE?

16 A I WILL AGREE THAT IT WAS HARMFUL. AND THE ONE THING
17 THAT I HAVE SEEN IN THIS IS-- AND I HAVE LOOKED AND I CANNOT
18 REMEMBER WHETHER WE MADE MOTIONS AS TO THE STATE'S
19 OBTAINING HER NOTES.

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

21 (PAUSE)

22 Q DO YOU REMEMBER A HEARING SET BEFORE THE HONORABLE
23 JOHN C. HAYES ON FEBRUARY 19, 1998, DISCUSSING EXPERT
24 TESTIMONY AND WHO WAS ENTITLED TO WHAT?

1 A I DON'T REMEMBER WHAT HAPPENED IN THE HEARING. I
2 BELIEVE THAT WE HAD A HEARING TO DETERMINE WHAT WE HAD TO
3 TURN OVER. AND I DON'T KNOW WHETHER WE PROPERLY OBJECTED
4 TO TURNING OVER THE NOTES, TO TURNING OVER HER NOTES.
5 BECAUSE, IN HINDSIGHT AGAIN, I DON'T KNOW WHETHER THE JUDGE
6 EVER RULED WE HAD TO. BUT I DON'T KNOW WHY WE WOULD HAVE
7 HAD HER NOTES HERE, IF HE HAD NOT ORDERED US TO HAVE HER
8 NOTES.

9 Q I'M SHOWING YOU THE TRANSCRIPT FROM THAT FROM YOU AND
10 MR. BOYD. I'M ASKING YOU TO USE THIS TO REFRESH YOUR MEMORY,
11 PAGE 44, LINE 9.

12 "I WOULD JUST ASK YOU TO BE AVAILABLE MARCH 9. ALL
13 RIGHT. COMPEL DEFENDANTS TO BRING WITH THEM ALL DATA AND
14 FACTS. WHAT DO YOU HAVE TO SAY ABOUT THAT?"

15 "MR. BOYD: YOUR HONOR, MY UNDERSTANDING, THAT MOTION,
16 THE WITNESS IS COMING TO COURT TO TESTIFY. HE WILL BRING WITH
17 HIM THE DATA AND THE UNDERLYING FACTS."

18 "THE COURT: THAT'S WHAT THEY'RE ASKING. IT'S NOT
19 UNUSUAL FOR INDIVIDUALS' TESTIMONY TO BE ELICITED, AND THEN
20 ON CROSS EXAMINATION SOMEONE HAS SAID, HAVE YOU GOT THE
21 REPORT WITH YOU AND THEY SAY, NO, I DIDN'T BRING THAT. I RELIED
22 ON IT BUT I DIDN'T BRING IT. I DIDN'T THINK I NEEDED IT, ALL I'VE GOT
23 IS MY SUMMARY. THEY JUST WANT THE EXPERTS TO BRING THEIR
24 FILES."

1 "MR. BOYD:" PAGE 45, LINE 1. "WE HAVE NO OBJECTION TO
2 THAT."

3 A I DON'T REMEMBER THE HEARING.

4 Q IS THAT AN ACCURATE READING OF THE TRANSCRIPT?

5 A THAT IS AN ACCURATE READING OF THE TRANSCRIPT.

6 Q MR. BOYD CONSENTED TO TURNING OVER Y'ALL'S EXPERT'S
7 NOTES TO THE PROSECUTION.

8 A YES SIR.

9 Q YOU'RE FAMILIAR WITH RULE 5-B-1 OF THE SOUTH CAROLINA
10 RULES OF CRIMINAL PROCEDURE.

11 A YES.

12 Q 5-B-1, IT'S DISCOVERY.

13 A YES SIR.

14 Q DOES IT REGULATE WHAT THE DEFENSE HAS TO TURN OVER TO
15 THE STATE IF A RECIPROCAL DISCOVERY MOTION IS FILED?

16 A YES.

17 Q AND IN THAT RULE-- LET ME BACK UP. A RECIPROCAL MOTION
18 WAS OFFERED IN THIS CASE. CORRECT?

19 A YES.

20 Q AND IN THAT RULE, "REPORTS OF EXAMINATION AND TESTS, IF
21 THE DEFENDANT REQUESTS DISCLOSURE OF THIS SUBDIVISION OF
22 THIS RULE, UPON COMPLIANCE WITH SUCH REQUEST BY THE
23 PROSECUTION, DEFENDANT ON REQUEST OF PROSECUTION SHALL
24 PERMIT THE PROSECUTION TO INSPECT AND COPY ANY RESULTS OR

1 REPORTS OF PHYSICAL OR MENTAL EXAMINATION AND OF SCIENTIFIC
2 TESTS OR EXPERIMENTS, ET CETERA, ET AL." IS THAT CORRECT?

3 A YES.

4 Q NOWHERE IN THERE DOES IT REQUIRE THAT YOUR NOTES, OR
5 THE WITNESS' NOTES BE TURNED OVER. IS THAT CORRECT? IT'S SELF-
6 EVIDENT.

7 A WE FELT THE JUDGE HAD ALREADY DECIDED THAT. AND
8 THERE SHOULD HAVE BEEN A FURTHER-- AND I WILL SAY THAT I FEEL
9 IN HINDSIGHT, THERE SHOULD HAVE BEEN A FURTHER RULING AND A
10 FURTHER CHALLENGE TO THOSE NOTES COMING IN OF THOSE
11 EXPERTS.

12 Q YOU WOULD AGREE WITH ME THAT MR. BOYD HAD STATE'S 44-
13 FF-1, "WE HAVE NO OBJECTION TO THAT", MEANING GIVING THEM THE
14 NOTES FROM OUR EXPERTS?

15 A YES SIR. THAT WOULD HAVE BEEN IN CONSULTATION. IT
16 WOULD HAVE BEEN BOTH OF US, NOT JUST MR. BOYD.

17 Q I UNDERSTAND, I UNDERSTAND. BUT YOU FREELY ADMIT YOU
18 NOR HE OBJECTED TO TURNING OVER THE NOTES?

19 A THAT'S RIGHT.

20 Q FROM A STRATEGIC VIEWPOINT, THE STATE HAS ONE EXPERT
21 AND Y'ALL HAVE FOUR OR FIVE. IS THAT CORRECT?

22 A RIGHT.

23 Q YOU WOULD AGREE WITH ME THAT THAT WAS NOT A GOOD
24 GIVE-UP, FOR LACK OF A BETTER TERM, OR CONSENT TO?

25 A THAT TONI CASCIO BRING HER NOTES HERE AND---

1 Q EVERYBODY'S NOTES.

2 A WELL, THE QUESTION IS,--

3 Q Y'ALL HAD FOUR OR FIVE EXPERTS AND THEY HAD ONE.

4 A I DON'T THINK IT HURT US WITH THE OTHERS. I THOUGHT THAT
5 IT REALLY HURT WITH TONI CASCIO AND THAT THEY HAD THE NOTES
6 THAT WERE AVAILABLE. I DON'T REMEMBER JUST IN HINDSIGHT. I
7 CAN'T TELL YOU WHY THERE WAS NO FURTHER PURSUIT OF THE
8 EXPERTS' BRINGING THEIR NOTES.

9 Q AND YOU WOULD AGREE WITH ME THAT JUDGE HAYES DID NOT
10 ORDER Y'ALL TO DO THIS OVER OBJECTION; THAT JIM BOYD
11 CONSENTED TO IT?

12 A I AGREE THAT'S WHAT THE TRANSCRIPT SAID.

13 Q AND DO YOU KNOW OF ANY AUTHORITY IN THE STATE OF
14 SOUTH CAROLINA TO THE BEST OF YOUR KNOWLEDGE THAT
15 REQUIRES THE NOTES TO BE GIVEN?

16 A ONLY IF THAT'S THE WAY THE RULE IS READ, AND I KNOW OF
17 NONE OTHER. THAT'S IN THE DISCOVERY RULE. THAT'S HOW IT'S
18 INTERPRETED, PER MY OPINION.

19 Q DO YOU RECALL DURING THE COURSE OF THE TRIAL, MR.
20 BRACKETT THE DAY BEFORE MS. CASCIO WAS GOING TO TESTIFY,
21 THAT HE REQUESTED THE NOTES? DO YOU RECALL THAT?

22 A I DON'T KNOW.

23 MR. BROWN: IF YOUR HONOR WOULD BEAR WITH ME FOR JUST
24 A SECOND.

25 (PAUSE)

1 Q DO YOU RECALL WHEN THE NOTES WERE TURNED TO MR.
2 BRACKETT?

3 A I DO NOT.

4 Q IF I TELL YOU THAT IT'S THE RECORD THAT THEY WERE TURNED
5 OVER THE DAY BEFORE SHE TOOK THE STAND, WOULD YOU DISAGREE
6 WITH ME?

7 A I COULDN'T CONTEST THAT. HE ONLY GOT A HOLD OF THEM,
8 AND IT WAS SOMETIME BEFORE.

9 Q HAD YOU REVIEWED THE NOTES BEFORE THEY WERE GIVEN TO
10 HIM?

11 A I WOULD-- I SIT HERE AND I... I BELIEVE I DID, YES.

12 Q DID YOU OR MR. BOYD? BECAUSE MR. BOYD TOOK HER AS A
13 WITNESS. I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH.

14 A NO. I CAN'T TELL YOU WHETHER I REVIEWED THEM IN THEIR
15 ENTIRETY. IF MR. BOYD WAS DOING IT, I MAY HAVE REVIEWED THEM
16 AND I MAY NOT HAVE. THAT'S ALL I CAN TELL YOU.

17 Q I'M GOING TO ASK YOU IF YOU CAN IDENTIFY THIS DOCUMENT
18 OF HER REPORT AND ALSO A COPY OF HER NOTES GIVEN TO THE
19 PROSECUTION?

20 A THESE ARE-- THESE ARE NOTES. THEY'RE IDENTIFIED AS HER
21 NOTES, CASCIO AND PRELIMINARY REPORT, MARCH 1, 1999.

22 Q I'M ALSO GOING TO SHOW YOU A LETTER, A COPY OF A FAXED
23 LETTER TO YOURSELF DATED MARCH 1, 1999. IS THAT WHERE SHE
24 FIRST GIVES YOU THE REPORT AND THE NOTES?

1 A I BELIEVE WE HAD DISCUSSED THEM BUT THAT MAY BE THE
2 FIRST TIME I'VE SEEN THEM.

3 Q SO, SHE GOT THEM TO YOU TWO WEEKS BEFORE TRIAL. IS THAT
4 CORRECT?

5 A RIGHT.

6 MR. BROWN: MOVE TO ADMIT THE REPORT INTO EVIDENCE AND
7 THE NOTES, YOUR HONOR.

8 MR. SALTER: WITHOUT OBJECTION.

9 THE COURT: THEY'RE ADMITTED.

10 (WHEREUPON APPLICANT'S EXHIBIT NUMBER FIVE WAS ADMITTED
11 INTO EVIDENCE WITHOUT OBJECTION)

12 Q UP UNTIL THIS TIME OF TRIAL, THERE HAVE BEEN NO
13 STATEMENTS, INCULPATORY TOWARD MR. ROBERTSON INTRODUCED
14 INTO EVIDENCE, HAD THERE? OTHER THAN THE TESTIMONY OF
15 MEREDITH MOON?

16 A SURE. IT'S AS IF MR. ROBERTSON WAS TESTIFYING AGAINST
17 HIMSELF, WHEN THOSE NOTES WERE BROUGHT INTO TRIAL.

18 Q WHO MADE THE DECISION TO PUT HER ON THE STAND? WAS
19 THAT JOINT WITH MR. BOYD?

20 A I'M NOT GONNA-- I'M NOT GONNA SAY IT WAS SOLELY MR.
21 BOYD'S DECISION; I'M NOT GONNA SAY IT'S SOLELY MINE. I WOULD
22 SAY IT WOULD BE A MUTUAL DECISION; THAT WE DISCUSSED WHO
23 WERE GONNA PUT ON THE WITNESS STAND AND HOW WE WERE
24 GONNA DO IT BETWEEN US, AS I REMEMBER. I DON'T THINK I MADE
25 ALL THE DECISIONS AT THE TRIAL.

1 Q YOU WILL AGREE WITH ME, FROM YOUR RECOLLECTION AND
2 THE REPORT THAT WAS INTRODUCED INTO EVIDENCE, THAT HER
3 NOTES CONTRADICT HER REPORT?

4 A I DIDN'T SEE IT. I DON'T SEE IT IN THAT MANNER. THE
5 NECESSARY EVIDENCE IN HER NOTES-- I MEAN, IN THE NOTES THAT
6 WERE INCULPATORY TOWARD HIM HAD ALREADY BEEN INTRODUCED
7 INTO EVIDENCE AS TO WHAT WAS THERE. I REMEMBER THE THINGS,
8 WHAT HE SAID TO HER ABOUT BASEBALL BATS AND STUFF. SOME OF
9 THAT HAD NOT BEEN IN THERE AND THAT'S WHAT I FELT SHOULDN'T
10 BE IN THERE.

11 Q I'M GOING TO ASK YOU, BECAUSE THE REPORT'S ONLY TWO AND
12 A HALF PAGES LONG, ANYWHERE IN THERE IS ANY INCULPATORY
13 STATEMENTS, IN HER REPORT - NOT HER NOTES - IN HER REPORT BY
14 MR. ROBERTSON?

15 A NO SIR.

16 Q REALIZING HOW IT IS IN DEATH PENALTY CASES, COULD IT BE
17 POSSIBLE THAT YOU AND JIM JUST READ THE REPORT AND DIDN'T
18 BOTHER TO READ THE NOTES? I'M NOT SAYING THAT HAPPENED, BUT
19 COULD THAT HAPPEN?

20 A I DON'T THINK SO.

21 Q YOU WOULD AGREE WITH ME, AT THAT POINT IN TIME, YOU HAD
22 A GOOD MITIGATION CASE GOING ON WITH DOCTOR PINCUS, DOCTOR
23 EVANS AND DOCTOR MORTON?

24 A I CAN'T AGREE WITH YOU ON THAT.

25 Q WOULD YOU AGREE THEY WERE GOOD WITNESSES?

1 A I WOULD AGREE THEY WERE GOOD WITNESSES. I JUST---

2 Q CONSIDERING THE CARDS YOU WERE DEALT IN THIS CASE?

3 A WE WERE DEALING, AND WE WERE GRASPING FOR STRAWS AND
4 WE WERE LOOKING FOR A STRAW. I THOUGHT MAYBE ONE OF THEM
5 MIGHT HAVE BEEN THAT STRAW.

6 MR. BROWN: YOUR HONOR, I DON'T WANT TO BELABOR THE
7 COURT'S TIME. THIS REPORT'S VERY SHORT AND THE NOTES ARE VERY
8 SHORT. I WOULD JUST ASK THE COURT TO PLEASE REVIEW IT IN THE
9 CONTEXT.

10 THE COURT: THE REPORT AND THE NOTES?

11 MR. BROWN: YES SIR.

12 THE COURT: THE REPORT AND THE NOTES ARE ALL TOGETHER?

13 MR. BROWN: YES SIR.

14 THE COURT: AND THAT'S STATE'S EXHIBIT WHAT?

15 MR. BROWN: APPLICANT'S EXHIBIT NUMBER FIVE, YOUR HONOR.

16 THE COURT: APPLICANT'S EXHIBIT. OKAY. IF YOU'LL PASS THAT
17 UP TO ME.

18 MR. BROWN: YES SIR.

19 THE COURT: THANK YOU.

20 Q SHE TESTIFIED THAT HE WAS PHYSICALLY ABUSED, THAT HE
21 WAS A VICTIM OF DOMESTIC VIOLENCE IN THE HOUSEHOLD.

22 A UH-HUH.

23 Q CORRECT? THAT HE WAS BI-POLAR, CERTAIN MANIC EPISODES?

24 A YES.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q AND BASICALLY, IN A NUTSHELL, KIND OF BLAMED HIS
2 PARENTS IN A ROUNDABOUT WAY FOR WHAT HAPPENED, HOW HE WAS
3 BROUGHT UP?

4 A THAT'S KIND OF WHERE WE WERE GOING.

5 Q NOT ANYTHING TO WIND UP, WAS IT?

6 A WASN'T ANY WIND UP. THAT'S WHAT WE WERE DOING
7 BASICALLY WITH ALL THE WITNESSES.

8 Q AS A MATTER OF FACT, SHE TESTIFIED THAT VIOLENCE WAS HIS
9 ONLY ALTERNATIVE ON THE NIGHT OF THE MURDER. IS THAT
10 CORRECT?

11 A I DON'T REMEMBER THAT TESTIMONY, BUT IF IT'S IN THE
12 TRANSCRIPT, THEN I'M SURE NOT GOING TO DENY IT.

13 Q PRIOR TO THAT, ALSO, THE STATE, THROUGH MR. POPE AND MR.
14 BRACKETT, HAD INTRODUCED A PROFFER OF CERTAIN EVIDENCE OF
15 STALKING BY MR. ROBERTSON ON FOUR SEPARATE WOMEN. I
16 BELIEVE CATHY BIGHAM, ANN KATHRYN BOSDELL, AND TWO OTHER
17 WOMEN. DO YOU REMEMBER THAT?

18 A YES.

19 Q AND YOU AND MR. BOYD OBJECTED TO THAT TESTIMONY AND
20 JUDGE HAYES ULTIMATELY KEPT IT OUT OF EVIDENCE. IS THAT
21 CORRECT?

22 A I DON'T REMEMBER IT GOING INTO EVIDENCE.

23 Q JUST TO MAKE SURE THE RECORD IS COMPLETE HERE.

1 MR. BROWN: BEG THE COURT'S INDULGENCE. (PAUSE) LOOK
2 WITH ME ON PAGE 2007 OF THE TRANSCRIPT WHERE CATHY BIGHAM
3 TESTIFIED.

4 A IT'S KELLY BIGHAM.

5 Q KELLY BIGHAM. I APOLOGIZE. KELLY BIGHAM TESTIFIED AND
6 SHE WENT ON WITH THE TESTIMONY FOR A WHILE LONGER, NOT IN
7 FRONT OF THE JURY, OF KELLY BIGHAM, CHRISTINE ERMSEN
8 (PHONETIC), LESLIE HERRING, ANN KATHRYN KING, WILLIAM ANDREW
9 GEORGE. DID ALL THOSE RELATED TO STALKING INCIDENTS TO THE
10 BEST OF YOUR MEMORY?

11 LET ME SEE IF I CAN REFRESH YOUR MEMORY. KELLY BIGHAM
12 WAS THE YOUNG LADY WHO ALLEGEDLY PROFFERED HE KEPT
13 CALLING HER UP AND TELLING HER SHE WAS SOMEONE HE WANTED
14 TO HAVE SEX WITH. CHRISTINE ERMSEN, I BELIEVE WAS THE
15 BARTENDER AT THE SILVER DOLLAR SALOON WHERE HE WAS
16 STANDING OUTSIDE OF HER HOUSE ONE NIGHT.

17 A RIGHT. ANN KATHRYN KING....

18 Q WILLIAM ANDREW GEORGE WAS A FRIEND WHO WAS OVER
19 THERE WATCHING THAT. ANN KATHRYN KING WAS ANOTHER GIRL
20 THAT HE STALKED.

21 A THAT APPEARS TO BE WHAT'S HERE.

22 Q DO YOU RECALL THAT YOU AND MR. BOYD OBJECTED TO THAT
23 TESTIMONY AND JUDGE HAYES DID NOT LET IT IN?

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A I DON'T RECALL WHAT THE RULING WAS. IT WOULD BE PART OF
2 THE RECORD. BUT IF YOU SAY SO AND YOU'VE READ IT, THEN THAT
3 WOULD BE CORRECT.

4 Q ON PAGE 2055, AS TO THE STALKING INCIDENT AND OTHER
5 EVIDENCE OF BAD CONDUCT, WHICH WAS BREAKING INTO CARS AND
6 SO FORTH, WHAT WAS JUDGE HAYES' RULING ON THAT? LINE ONE.

7 A HE SUSTAINED THE OBJECTION AND DIDN'T ALLOW IT IN.

8 Q SO, NONE OF THE STALKING AND NONE OF THE BAD ACTS CAME
9 IN. IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q YOU AND MR. BOYD MANAGED TO KEEP THAT OUT OF
12 EVIDENCE?

13 A THAT'S CORRECT.

14 THE COURT: WHAT PHASE OF THE TRIAL WAS THAT?

15 MR. BROWN: SAY AGAIN, YOUR HONOR.

16 THE COURT: WHAT PHASE OF THE TRIAL WAS THAT?

17 MR. BROWN: 2055, LINE 1, YOUR HONOR.

18 THE COURT: GUILT PHASE OR SENTENCING PHASE?

19 MR. BROWN: THAT WOULD BE THE SEN---

20 MR. SALTER: IT WAS THE PENALTY PHASE, YOUR HONOR.

21 MR. BROWN: THAT WAS THE PENALTY PHASE. CORRECT. THE
22 PENALTY PHASE.

23 Q SO, AT THAT POINT IN TIME, THE JUDGE RULED IN THE PENALTY
24 PHASE NO EVIDENCE OF STALKING, THREE WOMEN WHO HAD BEEN
25 STALKED; NO EVIDENCE OF BREAKING INTO CARS AT SOME GOLF

1 CLUB OR COUNTRY CLUB; OR ANY OTHER BAD ACTS BY THIS
2 DEFENDANT COMING IN. IS THAT CORRECT?

3 A AS I RECALL, NO, IT WAS NOT COMING IN. AND THERE HAD BEEN
4 NO FURTHER EVIDENCE THAT I KNOW OF PRIOR TO THAT.

5 Q STARTING ON PAGE 2957, CROSS EXAMINATION BY MR. POPE OF
6 TONI CASCIO, AT THE TOP OF THE PAGE, DOES SHE ADMIT THAT ALL
7 HIS PARENTS WANTED FOR JIMMY WAS TO HAVE THE AMERICAN
8 DREAM OF KIDS AND A COLLEGE EDUCATION?

9 A YOU'RE TALKING ABOUT 2957?

10 Q YEAH, THE TOP OF THE PAGE.

11 A YEAH, THEY'RE JUST SAYING THAT THEY WANTED THE
12 AMERICAN PIE THING, COLLEGE, KIDS, GRANDKIDS, ET CETERA, ET
13 CETERA.

14 Q AND HER ANSWER'S YES?

15 A YES.

16 Q MS. CASCIO'S. 2957, BOTTOM OF THE PAGE, TOP OF PAGE 2958,
17 MR. POPE ASKED HER IF IT WAS IN HER REPORT OR NOTES THAT HE
18 FAILED IN COLLEGE TO PROVE A POINT TO HIS PARENTS?

19 A RIGHT.

20 Q 2959 AND 2960, SOME TESTIMONY THAT MOM PROTECTING HIM
21 AND GAVE HIM MONEY?

22 A RIGHT.

23 Q PAGE 2963, DOES MR. POPE BRING OUT THAT "...THERE WERE
24 PEOPLE AVAILABLE TO HELP HIM BUT HE DIDN'T WANT THEIR HELP.

1 IS THAT RIGHT?" "THAT'S WHAT IT SAYS.", THE ANSWER BY MS.

2 CASCIO.

3 A YES.

4 Q SO, IT'S SAFE TO SAY THAT HE DIDN'T WANT HELP. IS THAT

5 RIGHT?

6 A (NO RESPONSE)

7 Q NOW, ON PAGE 2962, SHE TESTIFIED THAT HE TOLD HER HIS

8 PARENTS WERE CLUELESS ABOUT HIS DRUG USE.

9 A I THINK WHAT HE WAS SAYING WAS MOST ADOLESCENTS DO IT

10 AT SOME POINT, TRY DRUGS. WHEN THEIR PARENTS FIND OUT THEY

11 OVERREACT BECAUSE THEY WERE SO CLUELESS.

12 Q IS THAT JIMMY TALKING ABOUT HIS PARENTS?

13 A RIGHT. THOSE WERE HIS WORDS, YES.

14 Q AND THAT'S MS. CASCIO'S TESTIMONY, QUOTING TO JIMMY?

15 A YES.

16 Q ON 2965, AND THEN ON CROSS EXAMINATION BY MR. POPE, DOES

17 SHE TESTIFY THAT THE DEFENDANT TOLD HER HE WAS CONTENT WITH

18 ALCOHOL AND WEED?

19 A YES.

20 Q ON 2970, AT THE BOTTOM OF PAGE 2969, AND TOP OF PAGE 2970,

21 DOES IT MAKE REFERENCE THAT THE DEFENDANT WAS GOING TO

22 PULL A KNIFE AND HAVE A SHOWDOWN WITH EARL?

23 A YES.

24 Q AND, AGAIN, THAT'S TESTIMONY THAT MS. CASCIO TESTIFIED ON

25 CROSS EXAMINATION THAT WERE STATEMENTS BY MR. ROBERTSON?

1 A RIGHT.

2 Q 2979 TO 2980, MS. CASCIO TESTIFIED ON CROSS EXAMINATION BY
3 MR. POPE THAT THE DEFENDANT, JIMMY ROBERTSON, STOLE MONEY
4 AND CREDIT CARDS FROM EARL. IS THAT CORRECT?

5 A GIVE ME A MOMENT. YEAH, IT SAYS HE STOLE SOME CREDIT
6 CARDS AND SAID IT WASN'T THE END OF THE WORLD, AND SHE SAID, I
7 BELIEVE SO, YES.

8 Q 2982 TO 2983, DOES IT GO THROUGH THIS DEFENDANT'S WORK
9 RECORDS, AND THAT HE HAD TEN JOBS AND A BAD WORK RECORD?

10 A IT APPEARS TO CHECK HOW MANY JOBS, HAD A FEW DIFFERENT
11 ONES, YES, CAME TO TEN. THAT SOUNDS ABOUT RIGHT.

12 Q NONE OF THIS IS IN EVIDENCE PRIOR TO THIS POINT IN TIME
13 THAT WE'RE GOING TO. IS THAT CORRECT?

14 A I DON'T BELIEVE SO. I HAVEN'T READ THE TRANSCRIPT, BUT I
15 DON'T BELIEVE SO.

16 Q DO PAGES 2985 AND 2988, CROSS EXAMINATION BY MR. POPE, ON
17 STATEMENTS THAT MR. ROBINSON MADE TO MS. CASCIO, DOES IT
18 DISCUSS THAT HE PROVOKED ARGUMENTS WITH HIS FATHER?

19 A YES, THAT WHAT HE DID, YES. IT SAYS, HE USED TO SAY WHAT'S
20 GONNA HAPPEN.

21 Q 2991 TO 2992, IT DISCUSSES THE TRIP THAT HE TOOK TO EUROPE
22 AND THAT WHEN HE CAME HOME HE WAS MAD BECAUSE CHIP GOT A
23 CONVERTIBLE CAR.

24 A YES. HE SAID HE KICKED ME IN THE TEETH WHEN I WENT OVER
25 THERE AND HE'D BOUGHT CHIP A CONVERTIBLE.

1 Q DID YOU EVER DISCUSS, ON THAT SUBJECT, VERY BRIEFLY, DID
2 HE EVER TELL YOU THAT THE TRIP TO EUROPE WAS AN ACADEMIC
3 AWARD FOR JIM AND HE WAS ONE OF TWO PEOPLE CHOSEN TO GO
4 FINISH HIS SENIOR YEAR IN HIGH SCHOOL IN GERMANY?

5 A YEAH.

6 Q WAS THAT EVER BROUGHT OUT WHEN MR. BRACKETT AND MR.
7 POPE WERE MAKING HAY OUT OF THE FACT THEY WERE SENDING HIM
8 A THOUSAND DOLLARS A MONTH TO LIVE THE HIGH LIFE IN
9 GERMANY?

10 A IF IT WAS, I DON'T SEE IT IN THE TRANSCRIPT.

11 Q 2995 TO 2997, DOES HE DISCUSS HIS MAMA'S FAMILY OR HIS
12 DADDY'S FAMILY?

13 A 29-WHAT?

14 Q 95 THROUGH 97.

15 A IF IT'S SOMEBODY WITH MORE CULTURE THAN SOMEBODY ELSE
16 AND THEY WERE ASKING GRANDPARENTS FOR MONEY, AND YEAH,
17 THEY DISCUSSED SOME INTERACTION WITH OTHER FAMILY.

18 Q ON 2999, DOES HE DISCUSS BEING DEFIANT WITH HIS PARENTS?

19 A YES. ANYTHING THEY WANTED I HAD TO DO.

20 Q ON PAGE 3000, DOES HE START DISCUSSING VARIOUS AND
21 SUNDRY STALKING INCIDENTS? IS THAT CORRECT?

22 A YES.

23 Q DOES THAT GO ON FOR THE NEXT SEVEN OR EIGHT PAGES,
24 APPROXIMATELY? IF YOU WOULD, JUST TAKE A FEW MINUTES TO

1 REVIEW THAT AND REFRESH YOUR MEMORY BECAUSE THERE'S A
2 QUESTION I WANT TO ASK YOU ABOUT SPECIFIC THINGS HE DID.

3 A WE OBJECTED TO THAT COMING IN OUT OF HER NOTES.

4 Q AND THE JUDGE OVERRULED YOUR OBJECTION, DID HE NOT?

5 A EVIDENTLY HE DID.

6 Q WAS THAT NOT BASED ON THE FACT THAT THESE WERE NOTES
7 THAT MS. CASCIO HAD USED TO FORM HER OPINION?

8 A YES. THE ARGUMENT WAS THAT THIS HAD ALREADY BEEN
9 RULED ON; THAT THESE STALKING INCIDENTS COULD NOT COME INTO
10 EVIDENCE. AND THEN HE OVER-- I FEEL HE OVERRULED HIMSELF BY
11 SAYING THAT THESE-- BECAUSE THE NOTES, THEY WERE HER NOTES,
12 THEN THEY COULD COME INTO EVIDENCE AT THAT TIME OVER THE
13 PRIOR OBJECTION.

14 Q COULD IT BE THAT YOU OR MR. BOYD - THIS IS MR. BOYD'S
15 WITNESS - OPENED THE DOOR WITH THOSE NOTES TO EVIDENCE THAT
16 HAD PREVIOUSLY BEEN KEPT OUT OF EVIDENCE? WOULD THAT BE
17 MORE PRECISELY JUDGE HAYES' RULING?

18 A THAT'S NOT WHAT HE SAID. HE RULED THAT THESE WERE
19 NOTES; THE NOTES WERE AVAILABLE TO BE CROSS EXAMINED ON,
20 AND THEREFORE THEY COULD ASK ABOUT WHAT WAS IN THE NOTES.
21 OUR OBJECTION WAS, HEY, THIS WAS RULED ON. THEY PUT UP A
22 PROFFER AND YOU SAID NO.

23 Q COULD IT BE POSSIBLE THE DOOR WAS OPENED UP?

1 A I DON'T KNOW THAT WE WOULD OPEN THE DOOR WITH THE
2 NOTES? I MEAN, I JUST GOT WHAT HE SAYS AND I DON'T REMEMBER
3 ANY OTHER GROUNDS. THAT'S WHAT I TEND TO READ HERE.

4 BUT, AGAIN, AS I'VE SAID, I DON'T KNOW WHETHER IT WAS IN
5 ANOTHER HEARING WHERE WE HAD DETERMINED THAT THE NOTES
6 WERE TO BE TURNED OVER DUE TO DISCOVERY OR NOT.

7 Q I'VE SHOWN YOU THE TRANSCRIPT---

8 A YES.

9 Q ---WHERE ON PAGE 45, LINE 1---

10 A RIGHT.

11 Q ---WHERE MR. BOYD CONSENTED TO THE NOTES BEING TURNED
12 OVER. CORRECT?

13 A YES.

14 Q AND YOU WOULD AGREE WITH ME THAT IF MS. CASCIO NEVER
15 TAKES THE STAND, NONE OF WHAT WE'VE COVERED SO FAR COMES
16 INTO EVIDENCE?

17 A I DON'T THINK IT WOULD, NO.

18 Q NOW, MOVING TO PAGE 3010, DO YOU HAVE THAT IN FRONT OF
19 YOU?

20 A YES, I'VE GOT 3010 RIGHT HERE.

21 Q STARTING ON PAGE 3010, DOES HE NOT DESCRIBE THE CRIME
22 EVENT?

23 A YES. YES, HE SURE DOES, UH-HUH. IT'S WHERE HE TALKS ABOUT
24 THE BAT AND ALL THAT.

1 Q DOES IT COME BEFORE THE JURY UNDER CROSS EXAMINATION
2 BY MR. POPE OF MS. CASCIO THAT THERE WERE NOTES THAT HE WAS
3 HAVING A MORAL DILEMMA OVER WHETHER TO USE A BASEBALL BAT
4 OR ALUMINUM BAT?

5 A YEAH.

6 Q YOU WILL AGREE WITH ME THAT'S PRETTY DAMNING EVIDENCE
7 IN THE SENTENCING PHASE OF A DEATH PENALTY TRIAL WHEN THE
8 DEFENDANT HAS A MORAL DILEMMA ON WHETHER TO USE A
9 BASEBALL BAT OR AN ALUMINUM BAT?

10 A I CAN'T TELL YOU. I'VE NEVER BEEN ON A DEATH PENALTY
11 CASE THAT---

12 Q IN YOUR EXPERIENCE OF THIRTY-PLUS PRACTICING LAW---

13 A MY EXPERIENCE IS THAT THIS COULD POSSIBLY SWAY AND
14 WOULD PREJUDICE THE DEFENDANT. BUT I CAN'T REMEMBER
15 WHETHER ANY OF THAT CAME OUT ON MEREDITH MOON'S
16 TESTIMONY.

17 Q IF I TOLD YOU FOR THE SAKE OF THAT QUESTION THAT IT DID
18 NOT, WOULD YOU BELIEVE ME?

19 A I DON'T REMEMBER WHETHER IT DID OR DID NOT.

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

21 (PAUSE)

22 Q THE AG HAS BEEN KIND ENOUGH TO LOAN ME HIS COPY OF THE
23 TRANSCRIPT FOR THE NEXT FEW QUESTIONS. WE'RE STARTING ON
24 PAGE 3022. ON PAGE 7, DOES MS. CASCIO TESTIFY UNDER CROSS

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 EXAMINATION BY MR. POPE THAT MR. ROBERTSON SAID GET, SEE, NO
2 ONE WILL KNOW HIS PARENTS ARE MISSING?

3 A WHERE ARE YOU REFERRING?

4 Q PAGE 3022, LINE 7.

5 A RIGHT.

6 Q QUESTION 17. EXCUSE ME. LINE 17:

7 "Q. WHAT WERE THEY GOING TO DO WHEN THEY GOT BACK?

8 A. I BELIEVE THEY WERE GOING BACK TO THE HOUSE.

9 Q. AND DISCOVER THEIR PARENTS?

10 A. YES."

11 A RIGHT.

12 Q OKAY. SO, IT SAYS, QUOTING HER NOTES AGAIN, QUOTING MR.
13 ROBERTSON IN CROSS EXAMINATION OF MS. CASCIO BY MR. POPE: "I'M
14 NOT SURPRISED THAT MY BROTHER." THEY'RE TALKING ABOUT CHIP
15 THERE. IS THAT CORRECT?

16 A YES.

17 Q LINE 25, THE TOP OF THE NEXT PAGE: "I BELIEVE IT REFERRED
18 TO HE WASN'T SURPRISED AT WHAT HE HAD DONE. IT WOULDN'T
19 SURPRISE HIS BROTHER." MAKING REFERENCE TO CHIP AGAIN. IS
20 THAT CORRECT?

21 A RIGHT.

22 Q LINE 6:

23 "Q. CALLED HOME AND REALIZED THAT SOMEONE FOUND
24 BODIES, PUT PHONE ON HOOK?

25 A. YES."

1 IS THAT CORRECT?

2 A UH-HUH.

3 Q IS THAT A YES?

4 A YES.

5 Q IS THAT INDICATIVE OF A PHONE CALL HE MADE, ALLEGEDLY

6 MADE GOING TO PHILADELPHIA AFTER THESE EVENTS HAD

7 OCCURRED?

8 A YES.

9 Q AND, AGAIN, NONE OF THIS IS IN EVIDENCE AT THIS POINT IN
10 TIME, PRIOR TO THIS? IS THAT CORRECT?

11 A CORRECT. I CAN'T SAY NONE OF IT BECAUSE I HAVEN'T READ

12 THE TRANSCRIPT.

13 Q YES SIR. TO THE BEST OF YOUR KNOWLEDGE?

14 A TO THE BEST OF MY KNOWLEDGE.

15 Q PAGE 3024:

16 "Q." LINE 14, AND DOWN NEXT TO THE BOTTOM OF THE
17 PAGE, NOT THE BOTTOM LINE, BUT NEXT TO THE BOTTOM LINE
18 HE SAID, "RUNNING HER MOUTH?"

19 A. YES. Q. SO, MEREDITH WAS RUNNING HER MOUTH? A.

20 YES."

21 IS THAT CORRECT?

22 A RIGHT.

23 Q PAGE 3025, LINE 9, AGAIN QUOTING MR. ROBERTSON UNDER

24 CROSS EXAMINATION OF TONI CASCIO BY MR. POPE: "KILL MOM

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 BECAUSE HE COULDN'T LIVE WITH HER KNOWING HE KILLED DAD,
2 LEAVING HER ALONE."

3 A RIGHT.

4 Q "SO, HE KILLED MOM SO MOM WOULDN'T HAVE TO LIVE
5 KNOWING THAT JIMMY KILLED DAD. IS THAT RIGHT?

6 A. YES."

7 A RIGHT.

8 Q I'M GOING TO SHOW 3042 OF THE TRANSCRIPT, STARTING ON
9 LINE 8. IT SAYS-- AND AGAIN, ALL THESE STATEMENTS I AM QUOTING
10 ARE STATEMENTS BY MR. ROBERTSON THAT MS. CASCIO TESTIFIED TO
11 UNDER CROSS EXAMINATION BY MR. POPE, THAT MR. ROBERTSON
12 MADE.

13 DOES IT NOT STATE THAT MEREDITH WAS INFATUATED WITH
14 THE DEFENDANT?

15 A RIGHT. IT GOES ON TO SAY THAT THAT WAS A STATEMENT,
16 SHE'D DO ANYTHING FOR HIM, AND THAT WAS A STATEMENT FROM
17 HIM.

18 Q PAGE 3015, LINE 11: DISCUSSED WHICH BAT TO USE. IS THAT
19 CORRECT?

20 A YES.

21 Q ANOTHER QUOTE BY MS. CASCIO OR MR. ROBERTSON: "NOT
22 WOOD, SIGNED AND AUTOGRAPHED, DIDN'T WANT TO USE." IS THAT
23 CORRECT?

24 A CORRECT.

1 Q LINE 22, QUOTING MR. ROBERTSON AGAIN, MS. CASCIO'S
2 TESTIMONY: "CONDENSE TWO BATTLES OF TILEX." IS THAT
3 CORRECT?

4 A CORRECT.

5 Q "AND THEN SAT IN ROOM AND WAITED TILL FATHER WENT IN
6 SHOWER." IS THAT CORRECT?

7 A CORRECT.

8 Q "KILLED MOM WHILE DAD WAS IN SHOWER." IS THAT CORRECT?

9 A YES.

10 Q "TOOK PHONE OFF THE HOOK, LEFT ONE KNIFE IN HALLWAY." IS
11 THAT CORRECT?

12 A CORRECT.

13 Q "IN CASE DAD CAME IN." IS THAT CORRECT?

14 A CORRECT.

15 Q "WENT TO BEDROOM." CORRECT?

16 A CORRECT.

17 Q "STRUGGLED WITH MOM FOR A FEW MINUTES." CORRECT?

18 A CORRECT.

19 Q "WHAT DID SHE START DOING? SCREAMING." IS THAT
20 CORRECT?

21 A CORRECT.

22 Q "WAS SHE SCREAMING FOR EARL? WHO WAS SHE SCREAMING
23 FOR?

24 A. EARL."

25 A YES.

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 Q AND IT SAYS NEXT, "IT WAS GETTING AT ME TO HEAR HER
2 SCREAM.

3 A. YES."

4 "Q. AND HE'S DESCRIBING THIS TO YOU AGAIN. IS THAT
5 CORRECT?

6 "A. YES." "HE WAS IN A RAGE LIKE A MANIAC."
7 IS THAT CORRECT?

8 A YES.

9 Q "Q. THEN HE'S IN A MANIACAL RAGE. WHAT DOES HE DO
10 THEN?

11 A. COME DOWNSTAIRS."

12 IS THAT CORRECT?

13 A CORRECT.

14 Q "Q. AND WHAT DOES HE SAY? ONE DOWN AND ONE TO GO."
15 IS THAT CORRECT?

16 A CORRECT.

17 Q "Q. WHAT DID HE DO WITH THE BAT?

18 A. PUT IT AT THE TOP OF THE STAIRS."

19 IS THAT CORRECT?

20 A CORRECT.

21 Q "Q. OKAY. THEN WHEN HE PUT THE BAT AT THE TOP OF THE
22 STAIRS, WHAT DID HE DO?

23 A. HE SAT AND WAITED." IS THAT CORRECT?

24 A CORRECT.

25 Q "Q. HE SAT AND WAITED FOR WHAT?

- 1 A. HE SAT AND WAITED FOR A HAMMER LIKE I WAS
2 STANDING ON THE OTHER SIDE OF MYSELF WATCHING ME."
3 IS THAT CORRECT?
- 4 A CORRECT.
- 5 Q "Q. TELL THEN WHAT HE DID NEXT.
6 A. SPRAYED TILEX IN HIS FATHER'S EYES AND HIT HIM WITH A
7 CLAW HAMMER."
8 A CORRECT.
- 9 Q "Q. WHAT DID HIS FATHER DO?
10 A. HIS FATHER PUT UP A FIGHT WITH A HAMMER STUCK IN HIS
11 HEAD."
12 IS THAT CORRECT?
- 13 A YES.
- 14 Q "AND WHAT HAPPENED NEXT?
15 A. IMMEDIATELY DAD FELL TO THE GROUND. HIT HIM TWO
16 HUNDRED TIMES WITH HAMMER AND BASEBALL BAT."
17 CORRECT?
- 18 A CORRECT.
- 19 Q "Q. WHAT WAS HIS NEXT STATEMENT?
20 A. TWENTY-TWO YEARS OF HATRED CAME OUT."
21 CORRECT?
- 22 A CORRECT.
- 23 Q "Q. HE SAID IT WAS OVERKILL AND HE KEPT ON AND ON AND
24 ON?
25 A. YES."

1 IS THAT CORRECT?

2 A CORRECT.

3 Q "Q. THEN HE WENT IN THE BEDROOM TO CHECK ON HIS MOM?

4 A. YES.

5 Q. WHAT DID HE DO TO HER?

6 A. HE HIT HER WITH A HAMMER TO MAKE SURE SHE WAS DEAD."

7 CORRECT?

8 A CORRECT.

9 Q "Q. MEREDITH THOUGHT HE WAS GOING TO KILL HER?

10 A. YES."

11 CORRECT?

12 A CORRECT.

13 Q "Q. HE HEARD NOISES UPSTAIRS. WHAT IS THAT?

14 A. HE WAS-- I DON'T KNOW WHAT WAS GOING ON, BUT HE
15 THOUGHT HE HEARD NOISES UPSTAIRS.

16 Q. AND WHAT DID HE INDICATE THAT WAS?

17 A. HE THOUGHT IT WAS HIS FATHER BREATHING INTO THE
18 CARPET."

19 CORRECT?

20 A CORRECT.

21 Q "Q. OKAY. WHAT DOES HE SAY NEXT?

22 A. HOW WAS HE STILL LIVING.

23 Q. IF YOU WOULD, TELL THE JURY WHAT HE DID THEN.

24 A. I WENT TO FIND A DRILL TO END THE MATTER."

25 CORRECT?

1 A CORRECT.

2 Q "Q. OKAY. SO WHAT DID HE DO NEXT?

3 A. TOOK THE BAT UPSTAIRS TO BEAT ON HIM AGAIN.

4 Q. AND AFTER THAT?

5 A. KICKED WITH TOE TO MAKE SURE HE WAS DEAD."

6 CORRECT?

7 A CORRECT.

8 Q "Q. OKAY. SO, AFTER HE DOES THAT, AFTER HE KICKED HIM, HE

9 SAID TO MAKE SURE HE WAS DEAD, TELL THE JURY WHAT HE DID

10 NEXT.

11 A. HE CLEANED UP, TOOK MONEY AND CAR KEYS AND PACKED

12 STUFF AND WAS GONE.

13 Q. WHAT WAS IT HE SAID NEXT?

14 A. MEREDITH'S TESTIMONY NOT GOOD ENOUGH BY ITSELF."

15 CORRECT?

16 A CORRECT.

17 Q "Q. OKAY. COMING ON DOWN TO THE BOTTOM PARAGRAPH. HE

18 BROKE THE WINDOW DOWNSTAIRS TO MAKE IT LOOK LIKE A

19 ROBBERY?

20 A. UH-HUH.

21 Q. AND THE MAN ACROSS THE STREET PULLING UP. I THINK IT

22 WAS MR. WHITEN. IS THAT RIGHT?

23 A. I BELIEVE IT WAS.

24 Q. DID YOU TALK TO HIM, TOO?

1 A. I SPOKE TO SCOTT BRADLEY. I DID NOT SPEAK WITH HIS
2 FATHER.

3 Q. OKAY. SO, JIM WADE GOT IN THE CAR AND LEFT. IS THAT
4 RIGHT.

5 A. YES."

6 IS THAT CORRECT?

7 A CORRECT.

8 Q PRIOR TO MS. CASCIO TAKING THE STAND, NONE OF THESE,
9 NONE OF THIS EVIDENCE OR STATEMENTS BY HIM WERE IN EVIDENCE,
10 WERE THEY?

11 A NOW, THAT I CAN'T TELL YOU, BECAUSE THEY HAD THE TILEX
12 BOTTLE, THEY HAD THE HAMMER, THEY HAD ALL OF THE FORENSIC
13 EVIDENCE DONE THERE; THAT IT WAS HIS HAIR ON THE HAMMER.
14 THEY HAD---

15 Q NONE OF THAT WAS CORROBO--

16 A ---THE BASEBALL BAT.

17 Q LET ME REPHRASE MY QUESTION. NO STATEMENTS OF
18 ADMISSION OR INCULPATORY STATEMENTS BY MR. ROBERTSON WERE
19 IN EVIDENCE PRIOR TO THIS, WERE THEY?

20 A NO.

21 Q NEVER WAS?

22 A NO.

23 Q THIS WAS THE LAST WITNESS, OR THE NEXT TO THE LAST
24 WITNESS THE STATE PRESENTED, WAS IT NOT?

25 A YES.

1 Q BEGS THIS QUESTION, THEN: CAN YOU SAY WITHIN A
2 REASONABLE CERTAINTY THAT IF THE JURY HAD NOT HAVE HEARD
3 THAT TESTIMONY WE MAY HAVE HAD A DIFFERENT OUTCOME ON THE
4 SENTENCING PHASE?

5 A I CAN'T, MR. BROWN.

6 Q POSSIBLY?

7 A THAT WOULD BE CONJECTURE. ANYTHING THAT WAS DONE OR
8 SAID---

9 Q COULD IT HAVE BEEN---

10 A --COULD---

11 Q --POSSIBLE---

12 A --POSSIBLY---

13 Q --THERE WOULD HAVE BEEN---

14 A --MADE A CHANGE--

15 Q --A DIFFERENT OUTCOME--

16 A --IN THE--

17 Q --BUT FOR THAT TESTIMONY?

18 A ANY OF IT CAN. YOU KNOW AND I KNOW THAT WE'VE TRIED
19 ENOUGH CASES THAT WE DON'T KNOW WHAT POSSIBLY THEY
20 CONSIDER. IT POSSIBLY COULD HAVE, YES SIR.

21 Q AND YOU WOULD AGREE WITH ME THAT WAS EXTREMELY
22 DAMNING TESTIMONY?

23 A I WAS NOT HAPPY WITH IT AT ALL, SIR.

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

25 (PAUSE)

JAMES HANCOCK - DIRECT EXAMINATION BY MR. BROWN

1 A IF I MAY REPHRASE THAT WHILE YOU'RE INDULGING. I WAS-- I
2 WAS NOT HAPPY WITH THAT COMING FROM THOSE NOTES BECAUSE I
3 DON'T THINK THEY COULD HAVE GOTTEN INTO ALL THAT WITHOUT
4 THOSE NOTES, AND I THOUGHT IT WAS DAMAGING.

5 Q Y'ALL PUT THAT WITNESS UP DESPITE THE NOTES. CORRECT?

6 A YES SIR.

7 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: WHAT'S YOUR ESTIMATE FOR HOW LONG YOUR
9 CROSS EXAMINATION IS GOING TO BE?

10 MR. SALTER: A LITTLE IN EXCESS OF AN HOUR, YOUR HONOR.

11 THE COURT: SIR?

12 MR. SALTER: I'M SORRY. A LITTLE IN EXCESS OF AN HOUR.

13 THE COURT: ALL RIGHT. LET'S GO AHEAD AND BREAK. DOES
14 THAT SUIT Y'ALL?

15 MR. BROWN: YES SIR.

16 MR. SALTER: THAT'S FINE, YOUR HONOR.

17 THE COURT: AND WE'LL START BACK, WHAT'D I SAY, TWO?

18 MR. BROWN: YES SIR.

19 THE COURT: AND THAT'S WHAT SUITS Y'ALL?

20 MR. BROWN: YES SIR, THAT'S FINE.

21 MR. SALTER: THAT'S FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. WE'LL SEE Y'ALL AT TWO O'CLOCK
23 TOMORROW.

24 (WHEREUPON COURT WAS ADJOURNED AT 5:20 P.M.)

25

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

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

TUESDAY, JANUARY 30, 2007
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. FEW, JUDGE

APPEARANCES:

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

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

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 TUESDAY, JANUARY 30, 2007 - COURT IN SESSION - 2:00 P.M.

2 THE COURT: MR. SALTER, ARE YOU READY TO DO YOUR CROSS
3 EXAMINATION?

4 MR. SALTER: YES SIR.

5 THE COURT: ALL RIGHT.

6 CROSS EXAMINATION OF WITNESS HANCOCK BY MR. SALTER:

7 Q I BELIEVE YOU INDICATED EARLIER YOU COULDN'T RECALL
8 EXACTLY WHEN YOU WERE APPOINTED. IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q SO, WAS IT A LONG TIME PRIOR TO TRIAL?

11 A IT WAS QUITE SOME TIME, AS I REMEMBER.

12 Q DO YOU RECALL-- EXCUSE ME. DESPITE THE FACT THAT YOU
13 WERE LEAD COUNSEL, AS YOU TESTIFIED ON DIRECT EXAMINATION,
14 Y'ALL PRETTY MUCH SEPARATED YOUR RESPONSIBILITIES MORE OR
15 LESS EVENLY?

16 A YES SIR. WE JUST AGREED, AS I SAID BEFORE ON YESTERDAY, I
17 BELIEVE, IF YOU FELT MORE COMFORTABLE WITH ONE WITNESS OR
18 THE FIELD OR AREA, THEN JIM WOULD TAKE IT OR I WOULD TAKE IT,
19 THE WITNESS.

20 Q RIGHT. AND Y'ALL SHARED MANY RESPONSIBILITIES PRE-TRIAL.
21 CORRECT?

22 A YES SIR. I MEAN, WE SHARED THE MOTIONS, PREPARING
23 EVERYTHING THAT WAS TO BE DONE PRIOR TO THE TRIAL. WE
24 PARTICIPATED IN GOING OVER ALL THE EVIDENCE, AS I SAID, THE

1 CHAINS OF CUSTODY, A COUPLE OR THREE DAYS, THAT I REMEMBER.
2 WE SHARED EVERYTHING.

3 Q GOING BACK TO WHEN YOU WERE APPOINTED, I'LL SHOW YOU
4 THE ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENCY. DO
5 YOU RECOGNIZE THAT?

6 A THIS SAYS 30 APRIL. THAT'S WHEN JIM WAS APPOINTED? IT
7 SAYS JAMES BOYD WAS APPOINTED. NOW, HE WAS APPOINTED 30
8 APRIL.

9 Q I'LL SHOW YOU ANOTHER, SEPARATE ORDER, A ONE-PAGE
10 ORDER.

11 A THAT LOOKS LIKE I WAS APPOINTED THE SAME TIME, ON 30
12 APRIL OF 1998.

13 Q SO, YOU WERE BOTH APPOINTED AT THE SAME TIME?

14 A IT APPEARS SO.

15 MR. BROWN: NO OBJECTION, YOUR HONOR.

16 MR. SALTER: YOUR HONOR, I WOULD MOVE TO INTRODUCE
17 THESE TWO ORDERS OF APPOINTMENT AS RESPONDENT'S EXHIBITS
18 ONE AND TWO.

19 THE COURT: THEY'RE ADMITTED.

20 (WHEREUPON DEFENDANT'S EXHIBITS ONE AND TWO WERE ADMITTED
21 INTO EVIDENCE WITHOUT OBJECTION)

22 Q IS IT FAIR TO SAY THAT BOTH YOU AND MR. BOYD HAVE FAIRLY
23 GOOD, A FAIRLY EXTENSIVE HISTORY OF TRYING CRIMINAL CASES?

24 A YES SIR.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q YOU TESTIFIED YESTERDAY, I BELIEVE, THAT YOU'D TRIED
2 THREE DEATH PENALTY CASES BEFORE THIS. IS THAT CORRECT?

3 A HAD TRIED TWO, PREPARED FOR ONE, AND RIGHT BEFORE TRIAL
4 HE PLEAD GUILTY TO MURDER.

5 Q DO YOU RECALL THOSE CASES?

6 A YES SIR.

7 Q WHAT WERE THEY?

8 A ONE WAS WARDELL PATTERSON. I REPRESENTED MICHELLE
9 PATTON. THE OTHER WAS RICKY TIM CALDWELL, THAT WAS THE
10 DEATH PENALTY PHASE. THE OTHER WAS ROY BUFF. AND LIKE I SAID,
11 WE WERE GOING TO THE DEATH PENALTY, BUT I WAS OFFERED A PLEA
12 OF MURDER AND HE TOOK IT.

13 Q HAD YOU TRIED ANY NON-CAPITAL MURDER CASES PRIOR TO
14 YOUR APPOINTMENT?

15 A YES SIR, I'D TRIED ABOUT EIGHT.

16 Q DO YOU RECALL THE RESULTS OF ANY OF THOSE CASES?

17 A WELL, IT'S ACCORDING TO WHAT YOU CALL WINNING OR
18 LOSING, BUT I GOT NOT GUILTY, I THINK, ON SIX, AND
19 MANSLAUGHTER ON TWO. AND THE TWO DEATH PENALTIES, HE WAS
20 NOT SENTENCED TO DEATH ON ONE, AND MY CLIENT WAS SENTENCED
21 TO LIFE IN THE OTHER. SO, I NEVER FELT THAT I'D LOST ONE TILL THIS
22 POINT.

23 Q DID YOU HAVE ANY OTHER EXPERIENCE TRYING MAJOR
24 FELONIES?

1 A YES SIR. I'VE TRIED ARMED ROBBERY; I'VE TRIED ASSAULT AND
2 BATTERY WITH INTENT TO KILL. YOU NAME IT, I'VE TRIED MOST OF
3 IT. I JUST FINISHED ABOUT SIX WEEKS AGO TRYING A CRIMINAL
4 SEXUAL CONDUCT WITH SIX COUNTS. SO, YES SIR, I'VE TRIED JUST
5 ABOUT ALL OF THEM.

6 Q SO, YOU KNEW YOUR WAY AROUND THE COURTROOM?

7 A SIR?

8 Q SO, YOU KNEW YOUR WAY AROUND THE COURTROOM?

9 A YES SIR, I FELT I DID.

10 Q IN TERMS OF YOUR PRE-TRIAL PREPARATION, I BELIEVE YOU
11 INDICATED YOU DID NOT RECALL SPECIFICALLY ABOUT HOW LONG
12 YOU SPENT WITH YOUR CLIENT BEFORE THE TRIAL?

13 A NO SIR, I DON'T. THAT WOULD BE IN MY NOTES, THAT WOULD
14 BE IN DEFENDANT'S STATEMENTS AND THAT SORT OF THING. I FELT
15 LIKE IT WAS ADEQUATE TIME.

16 Q DO YOU HAVE ANY IDEA HOW MANY TIMES YOU MAY HAVE
17 MET WITH HIM?

18 A NO SIR, I DON'T.

19 Q WOULD IT HAVE BEEN MORE THAN ONCE?

20 A OH, YES. I MEAN, HE WAS BROUGHT OVER HERE AND WE MET
21 DOWNSTAIRS IN THE JAIL QUITE A FEW TIMES.

22 Q WAS MR. ROBERTSON COOPERATIVE WITH YOU?

23 A YES, I FELT HE WAS COOPERATIVE.

24 Q IN YOUR VARIOUS CONVERSATIONS WITH HIM, DID HE EVER
25 ADMIT TO KILLING HIS PARENTS?

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 A I DON'T KNOW HOW FAR I CAN GO IN REVEALING THE
2 CONFIDENCES OF A CLIENT.

3 MR. BROWN: OBJECT, YOUR HONOR. WHAT'S THE RELEVANCE?

4 THE COURT: WHEN HE FILES A POST CONVICTION RELIEF
5 ACTION, HE WAIVES THE ATTORNEY CLIENT PRIVILEGE.

6 A THAT'S MY UNDERSTANDING, BUT, IF I MAY, YES SIR. I'M SORRY.

7 MR. BROWN: YOUR HONOR, I RENEW MY OBJECTIONS ON
8 RELEVANCE.

9 THE COURT: TELL ME THE QUESTION AGAIN, PLEASE.

10 MR. SALTER: WHETHER OR NOT MR. ROBERTSON ADMITTED HIS
11 GUILT TO COUNSEL DURING THEIR CONVERSATIONS.

12 MR. BROWN: I WOULD PROCEED PURSUANT TO STATUTE, YOUR
13 HONOR, BUT HE DOES WAIVE ATTORNEY-CLIENT PRIVILEGE. IN THIS
14 PROCEEDING, I RENEW MY OBJECTION AS TO RELEVANCE.

15 MR. SALTER: IT'S RELEVANT NOT ONLY TO THERE'S BEEN SOME
16 ALLEGATION AS TO WHETHER OR NOT COUNSEL WAS INEFFECTIVE IN
17 NOT PRESENTING HIM AS A WITNESS; BUT ALSO, I THINK IT'S
18 RELEVANT TO THE COURT'S DETERMINATION OF THE BALANCING OF
19 MITIGATING, AGGRAVATING FACTORS IN TERMS OF WHAT PREJUDICE
20 THERE IS UNDER STRICKLAND, AS WELL AS A DEFICIENCY PROBLEM IN
21 THAT, YOU KNOW, COUNSEL CANNOT KNOWINGLY PRESENT FALSE
22 TESTIMONY.

23 THE COURT: DO YOU-- WHEN YOU-- YOU HAVE MADE AN
24 ARGUMENT OF... AS I UNDERSTAND YOUR CLAIMS, THE ARGUMENT,
25 THE CLAIM THAT YOU'VE MADE REGARDING THE DEFENDANT'S

1 DECISION NOT TO TESTIFY IS THAT HE TOLD HIS LAWYERS THAT
2 AFTER DOCTOR CASCIO TESTIFIED IN THE PENALTY PHASE HE
3 WANTED TO GET ON THE STAND AND CLEAR UP SOME OF THOSE, SOME
4 OF THE THINGS SHE SAID.

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

6 THE COURT: I HAVEN'T READ THAT PORTION OF THE
7 TRANSCRIPT WHERE JUDGE HAYES WENT OVER WITH HIM HIS RIGHT
8 TO REMAIN SILENT AND HIS RIGHT TO TESTIFY IN ORDER TO MAKE
9 SURE THAT HE UNDERSTOOD ALL THAT, BUT I'M ASSUMING THAT IT
10 WAS FAIRLY WELL-DONE.

11 MR. BROWN: FOR THE PURPOSES OF THIS MOTION, YOUR
12 HONOR, THIS OBJECTION, YOUR HONOR, I WILL CONCEDE THAT IT WAS
13 WELL DONE AND PROPERLY DONE.

14 THE COURT: ALL RIGHT. THEN, THE DECISION, YOU WOULD
15 CONCEDE, TO TESTIFY OR NOT TESTIFY WAS ACTUALLY MADE BY THE
16 DEFENDANT. IS THAT RIGHT?

17 MR. BROWN: YES SIR.

18 THE COURT: AND SO, YOUR CLAIM IS THAT HE MADE THAT
19 DECISION BASED ON WHAT YOU CONTEND TO HAVE BEEN FAULTY
20 ADVICE BY HIS LAWYERS?

21 MR. BROWN: YES SIR. BUT, HONESTLY, IN ALL CANDOR, YOUR
22 HONOR, I THINK HE WAIVED THAT OBJECTION, OR THAT CLAIM OF
23 INEFFECTIVE ASSISTANCE OF COUNSEL YESTERDAY WHEN HE TOOK
24 THE FIFTH AMENDMENT. SO, I REALLY THINK THOSE HAVE JUST GONE
25 BY THE WAYSIDE.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 THE COURT: UNLESS YOU ACTUALLY WITHDRAW THAT CLAIM,
2 THEN I BELIEVE THAT IF THE DEFENDANT-- IF YOUR CLAIM IS THAT
3 HIS LAWYERS GAVE HIM BAD ADVICE IN ADVISING HIM NOT TO
4 TESTIFY, THEN WHETHER OR NOT THE LAWYER KNEW THAT THE
5 DEFENDANT WOULD HAVE TO ADMIT HIS GUILT IF ASKED ABOUT IT
6 ON THE STAND IS VERY RELEVANT.

7 MR. BROWN: YOUR HONOR, AGAIN, MR. ROBERTSON WANTED
8 ME TO RAISE THAT ISSUE.

9 THE COURT: I OVERRULE THE OBJECTION.

10 MR. BROWN: YES SIR.

11 MR. SALTER: THANK YOU, YOUR HONOR.

12 Q WOULD YOU PLEASE ANSWER THE QUESTION?

13 A YES SIR, HE DID ADMIT.

14 Q DO YOU RECALL WHAT HE TOLD YOU ABOUT THE CRIME?

15 A HE TOLD US MOST EVERYTHING THAT HAPPENED, HOW IT HAD
16 HAPPENED, WHY HE SELECTED THE BAT, WHY THIS HAD HAPPENED.
17 HE DISCUSSED WITH US MANY OF THE DETAILS. I DON'T REMEMBER
18 EACH AND EVERY ONE.

19 I PROBABLY WOULD HAVE WRITTEN THEM DOWN, BUT THEY
20 WERE REVELATIONS AND THERE WAS ENOUGH THERE THAT IF I PUT
21 HIM ON THE WITNESS STAND AT ANY TIME, THEN I WOULD NOT HAVE
22 BEEN ABLE TO DIRECT EXAMINE HIM ANYWAY, IF HE HAD SAID
23 ANYTHING THAT WAS CONTRARY TO WHAT I HAD LEARNED AND
24 WHAT HE HAD TOLD ME IN CONFIDENCE BEFORE THE TRIAL.

1 Q NOW, DID YOU AND CO-COUNSEL DISCUSS YOUR VARIOUS
2 STRATEGIC MATTERS, OVERALL STRATEGIC MATTERS WITH MR.
3 ROBERTSON?

4 A I CAN'T REMEMBER SPECIFIC CONVERSATIONS. I KNOW THAT AT
5 SOME POINT VERY EARLY AFTER WE HAD REVEALED AND HE WAS,
6 HAD SPOKEN TO ME AND MY INVESTIGATOR AND MY PARALEGAL, WE
7 WERE ALL PREPARING THE CASE, I'M NOT SURE THAT MR. BOYD WAS
8 THERE, BUT WE DISCUSSED THE FACT THAT WE HAD GIVEN UP THE
9 GUILT PHASE, AND THAT WE WERE GOING AFTER NOT, HIM NOT
10 RECEIVING THE DEATH PENALTY.

11 Q DID YOU EXPLAIN THAT TO HIM?

12 A YES SIR.

13 Q DID HE UNDERSTAND YOUR EXPLANATION?

14 A YES, I THINK-- I DON'T KNOW WHAT HIS IQ IS. IT'S SOMEWHERE
15 IN THE RECORDS. HE'S AN INTELLIGENT INDIVIDUAL. HE
16 UNDERSTOOD WHAT WAS GOING ON AND WHY IT WAS GOING ON. I
17 THINK WE DISCUSSED GUILTY BUT MENTALLY ILL BECAUSE I TOOK - I
18 CALL IT THE BOOK - THAT EXPLAINS THAT DEFENSE, CRIMINAL
19 DEFENSE IN SOUTH CAROLINA, I BELIEVE IT IS, AND I DIDN'T THINK IT
20 FELL INTO THAT. WE DISCUSSED THAT TYPE OF THING.

21 JMS WAS-- HE WAS THE CLIENT. HE WASN'T TRYING TO RUN
22 THE SHOW. WE TOLD HIM WHAT WE WERE DOING AND TRIED TO DO
23 THE BEST WE COULD IN THE DEATH PENALTY PHASE.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q YOU TOUCHED ON SOME OF THIS YESTERDAY. Y'ALL HAD
2 OTHER PEOPLE TO ASSIST YOU IN PREPARING FOR THE TRIAL, DID YOU
3 NOT?

4 A YES SIR, THAT WAS THE CENTER FOR CAPITAL DEFENSE DOWN
5 IN COLUMBIA. AND OF COURSE, ALL THE EXPERTS AND REALLY
6 ANYBODY ELSE WE COULD GATHER ANY EXPERIENCE ANY
7 KNOWLEDGE FROM; OTHER ATTORNEYS THAT HAD RECENTLY TRIED
8 DEATH PENALTY CASES, JUST IN GENERAL CONVERSATION. BUT WE
9 WENT DOWN TO THE CENTER FOR CAPITAL DEFENSE ON MANY
10 OCCASIONS.

11 Q DID YOU HAVE ANYONE WITHIN YOUR OWN OFFICE TO HELP
12 YOU PREPARE THIS CASE?

13 A NOT IN MY OFFICE. I HAD A LAW STUDENT AT THAT TIME WHO
14 WAS ASSISTING ME IN COLUMBIA AND KEPT ALMOST DAILY CONTACT
15 WITH THE CENTER FOR CAPITAL DEFENSE.

16 Q WOULD THAT HAVE BEEN KATHERINE SMITH?

17 A KATHERINE, YES.

18 Q DID YOU HAVE AN INVESTIGATOR?

19 A YES, WADE COMER.

20 Q DID EITHER OR YOU OR SOMEONE ACTING ON BEHALF OF THE
21 DEFENSE EVER SPEAK TO MEREDITH MOON?

22 A I DON'T THINK SO.

23 Q OKAY.

24 A I'VE FORGOTTEN WHO HER ATTORNEY WAS, BUT I DON'T THINK
25 WE SPOKE DIRECTLY WITH MEREDITH MOON.

1 Q WHY WOULD THAT HAVE BEEN?

2 A SHE WAS, I GUESS, A WITNESS, BUT SHE WAS REPRESENTED AND
3 WE-- I CAN'T-- I DON'T HAVE THE RECORD. AND I WOULD HAVE-- WE
4 PRETTY MUCH KNEW WHAT SHE WAS GONNA SAY. AND WE MAY
5 HAVE DISCUSSED IT WITH HER ATTORNEY WHETHER SHE WAS GONNA
6 TESTIFY, WAS SHE WAS GONNA BREAK A DEAL, WHAT WAS SHE
7 GONNA DO.

8 LIKE I SAID, I DON'T KNOW WHO HER ATTORNEY IS. BUT WE
9 WOULD HAVE TALKED WITH HIM, YOU KNOW, WAS SHE GONNA
10 TESTIFY TO WHAT HAPPENED.

11 Q YOU TESTIFIED ON DIRECT EXAMINATION YOU DON'T BELIEVE
12 ANYONE FROM THE DEFENSE EVER SPOKE TO CHIP ROBERTSON.
13 CORRECT?

14 A I DON'T THINK SO.

15 Q AND I--

16 A HE HAD AN ATTORNEY. HE WAS BEING INVESTIGATED FOR
17 CAPITAL MURDER. NO SIR, I DIDN'T EXPECT HIM TO TALK TO US AT
18 ALL.

19 Q DID THE DEFENSE HAD NOT BEEN ABLE TO DEVELOP ANY
20 INFORMATION SUGGESTING THAT CHIP AIDED HIS BROTHER IN ANY
21 WAY?

22 A THERE WERE THE PHONE CALLS. JIMMY-- AS I REMEMBER,
23 JIMMY DIDN'T WANT US TO GO AFTER CHIP. I THINK THAT WE
24 ACCEDDED TO HIS WISHES THERE, THAT WE WEREN'T GOING AFTER
25 CHIP, BECAUSE THEN, THAT WOULD JUST PUT-- YOU KNOW, I'M NOT

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 GONNA DO THE STATE'S JOB FOR THEM. NO OFFENSE, BUT I WASN'T
2 THERE TO TRY TO INVOLVE CHIP AND POINT THE FINGER AT HIM
3 WHEN HE WAS IN PHILADELPHIA AND THE ACT WAS DOWN HERE.

4 Q YOU TESTIFIED YESTERDAY AND REFERRED TO IT JUST A
5 MINUTE AGO, Y'ALL LOOKED INTO THE POSSIBILITY OF AN INSANITY
6 DEFENSE. CORRECT?

7 A YES SIR. JIMMY WASN'T INSANE.

8 Q WAS IT YOUR UNDERSTANDING THAT HE UNDERSTOOD RIGHT
9 FROM WRONG?

10 A OH, YES SIR.

11 Q AND YOU ALSO--

12 A IF I MAY INTERJECT. ALSO, ALL THE EVIDENCE SHOWED THAT,
13 FROM THE WAY WE WERE LOOKING AT THE EVIDENCE, THE BREAKING
14 OF THE WINDOW TO HIDE THE KILLING, MAKE IT LOOK LIKE A
15 BURGLARY, THE NOTE; EVERYTHING ELSE POINTED TO THE FACT THAT
16 WE COULDN'T COME UP HERE AND SAY HE DIDN'T KNOW RIGHT FROM
17 WRONG.

18 Q AND I BELIEVE YOU TESTIFIED YESTERDAY Y'ALL HAD A DNA
19 EXPERT TO ASSIST YOU IN PRE-TRIAL PREPARATION?

20 A YES SIR. WE LOOKED AT ALL THAT. WE LOOKED AT-- WE WERE
21 TRYING TO DEVELOP-- WE LOOKED AT THE-- EVEN AS FAR AS THE
22 HAIR THAT WAS IN EARL ROBERTSON'S HANDS, WE THOUGHT THAT
23 MAYBE THAT WAS SOMEBODY ELSE'S. THEY LOOKED AT THAT DNA; IT
24 WASN'T, IT WAS HIS. AND SO WE LOOKED AT JUST ABOUT
25 EVERYTHING WE COULD.

1 Q NOW, ON DIRECT EXAMINATION, YOU WERE ASKED ABOUT A
2 LETTER FOUND AT THE SCENE, A NOTE THAT WAS FOUND AT THE
3 SCENE, SIGNED, "LOVE, JIMMY"?

4 A YES.

5 Q IS THIS A NOTE WRITTEN BY YOUR CLIENT?

6 A YES.

7 Q WELL, THERE WAS ANOTHER NOTE, OR A TO-DO LIST FOUND
8 ALSO, WASN'T THERE?

9 A YES. THERE WAS A TO-DO LIST. WHAT THEY WERE SUPPOSED
10 TO WAS WASH OUT THE BATHROOM. JUST DIFFERENT THINGS. I CAN'T
11 REMEMBER WHAT WAS ON THE LIST. BUT IT WAS WHAT HE WAS TO
12 DO AFTER HE KILLED HIS PARENTS.

13 Q AND I BELIEVE THAT MEREDITH MOON TESTIFIED, DID SHE NOT,
14 THAT SHE WROTE THAT LIST?

15 A I BELIEVE SO.

16 Q BUT THE SLED AGENT TESTIFIED THAT THE HANDWRITING WAS
17 CONSISTENT WITH YOUR CLIENT. CORRECT?

18 A YES.

19 Q AND DIDN'T YOU MAKE A LITTLE BIT OF HAY WITH THAT IN
20 CLOSING ARGUMENT IN THE GUILT PHASE?

21 A I DON'T REMEMBER. IT MAY HAVE BEEN. I REALLY DON'T
22 REMEMBER OTHER THAN TO SAY THAT THE STATE COULD MAKE A
23 MISTAKE OR SOMETHING LIKE THAT. IT WAS JUST ONE PIECE OF
24 EVIDENCE OUT OF SOMETHING LIKE A HUNDRED TWENTY-THREE,

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 WASN'T IT? AND IT WAS KINDA LIKE THE STATE'S GOT A HUNDRED
2 AND TWENTY POINTS AND YOU GET TWO.

3 MR. SALTER: YOUR HONOR, THIS MAY BE SOMETHING THAT WE
4 MAY ARGUE ABOUT A LITTLE BIT. THE CLOSING ARGUMENT BEGINS
5 ON PAGE 1917, FOR THE RECORD.

6 THE COURT: OKAY.

7 Q MR. HANCOCK, IF I TOLD YOU THAT THE RECORD REFLECTED
8 THAT YOU TOLD YOUR CLIENT THAT YOU LIED ABOUT HAVING
9 WRITTEN THAT TO-DO LIST, AND IF YOU LIED ABOUT THAT, YOU'D LIE
10 ABOUT ANYTHING ELSE YOU'D TESTIFY TO. DOES THAT REFRESH
11 YOUR RECOLLECTION ON IT?

12 A I PROBABLY WOULD HAVE GONE THAT WAY. YES SIR. I CAN'T
13 DENY THAT.

14 Q ISN'T IT FAIR TO SAY THAT THE ONE PERSON Y'ALL DIDN'T WANT
15 TO DISCREDIT IN THE GUILT PHASE WAS MS. MOON?

16 A THERE WAS NO DISCREDITING OF HER. THAT WAS BASICALLY
17 WHAT I CALL LAWYERS FLAPPING YOUR WINGS. THE ONE THING WE
18 WANTED FROM MEREDITH MOON WE OBTAINED, AND THAT WAS
19 WHEN SHE TESTIFIED THAT SHE WAS AVOIDING EITHER THE DEATH
20 PENALTY OR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

21 Q YOU LATER GOT A CHARGE FOR LIFE?

22 A RIGHT. WE DIDN'T KNOW WE WERE GONNA GET THAT CHARGE.

23 Q NOW, ONE OF THE ITEMS OF EVIDENCE THAT WAS NOT
24 MENTIONED YESTERDAY, DO YOU RECALL A BLOODY TEE SHIRT THAT
25 WAS FOUND IN MARYLAND THAT HAD YOUR CLIENT'S PICTURE ON IT?

1 A I DON'T RECALL THAT.

2 Q YOU DON'T RECALL THAT?

3 A (NO RESPONSE)

4 Q NOW, YOU MENTIONED EARLIER THAT YOU GOT A LOT OF
5 ASSISTANCE FROM THE CENTER FOR CAPITAL LITIGATION DOWN IN
6 COLUMBIA?

7 A YES.

8 Q AND YOUR DEALINGS INCLUDED TALKING WITH JOHN BLUME,
9 DID IT NOT?

10 A WE SAT DOWN FOR HOURS OVER THE TABLE WITH JOHN, DRUCY,
11 AND OTHER PEOPLE, AND THEIR STAFF THAT WOULD COME IN. AND
12 WE SAT DOWN FOR HOURS TRYING TO GAIN SOME UNDERSTANDING
13 OF EXACTLY WHAT WE WERE DOING, WHAT EXPERTS WE COULD GO
14 TO AND TRY TO HELP IN SOME WAY.

15 Q NOW, DRUCY GLASS, THAT WOULD BE MR. BLUME'S WIFE?

16 A THAT'S JOHN'S WIFE, YES.

17 Q AND SHE'S ALSO A MITIGATION SPECIALIST. RIGHT?

18 A YES, SHE IS.

19 Q YOU RELIED ON HER EXPERTISE, DID YOU NOT?

20 A YES, WE DID.

21 Q YOU TESTIFIED YESTERDAY YOU COULDN'T RECALL WHETHER
22 OR NOT YOU HAD THE ASSISTANCE OF A JURY SELECTION EXPERT, OR
23 ANYONE TO ASSIST YOU IN JURY SELECTION. IS THAT CORRECT?

24 A I DON'T REMEMBER US HIRING ONE PRIOR TO TRIAL. I DON'T
25 REMEMBER ONE BEING SEATED HERE WHEN WE PICKED THE JURY.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q BUT YOU HAD MS. GLASS THERE DURING THE TRIAL, DID YOU
2 NOT?

3 A YES.

4 Q AT LEAST SHE WAS THERE TO PROVIDE Y'ALL WITH SOME HELP?

5 A AND IN FACT, NOW THAT YOU MENTIONED IT, DRUCY WAS HERE
6 FOR SEVERAL DAYS OF THE TRIAL, IF I REMEMBER. AND IT MIGHT
7 HAVE BEEN JURY SELECTION.

8 Q NOW, YOU TOLD US ONE OF THE EXPERTS, YOU HAD DOCTOR
9 PINCUS, A NEUROLOGIST. CORRECT?

10 A (NO RESPONSE)

11 Q AND YOU HAD JIM EVANS, A FORENSIC PSYCHOLOGIST?

12 A RIGHT.

13 Q YOU ALSO HAD DOCTOR MORTON WHO WAS A PSYCHO-
14 PHARMACOLOGIST?

15 A YES.

16 Q AND YOU HAD MS. CASCIO, THE SOCIAL WORKER?

17 A YES.

18 Q NOW, ALL THESE OTHER EXPERTS WERE CALLED TO TESTIFY,
19 BUT YOU ONLY USED MS. CASCIO IN THE PENALTY PHASE. CORRECT?

20 A YES, THEY ALL TESTIFIED. ALL OF OUR EXPERTS TESTIFIED AND
21 I THOUGHT THEY DID A PRETTY GOOD JOB.

22 Q DID YOU DEVELOP THESE EXPERTS THROUGH THE CENTER FOR
23 CAPITAL LITIGATION?

24 A YES. MOST OF THEM WERE DEVELOPED THROUGH THERE.

1 Q DID YOU, AS AN ATTORNEY WHO HAS HANDLED EACH OF THESE
2 EXPERTS, WOULD YOU HAVE FOCUSSED ON THAT INDIVIDUALLY WITH
3 THE EXPERT, OR WOULD YOU HAVE MET TOGETHER WITH THE EXPERT
4 OUTSIDE OF...?

5 A JIM AND I MET AT GEORGETOWN UNIVERSITY WITH DOCTOR
6 PINCUS. WE FLEW UP THERE. I MET INDIVIDUALLY WITH JIM EVANS, I
7 KNOW TWICE, THREE TIMES IN COLUMBIA. AS FAR AS MORTON-- WE
8 MET WITH THE DNA EXPERT. WE BOTH MET WITH HIM ON A SUNDAY
9 AFTERNOON. AND THEN DOCTOR MORTON-- DOCTOR MORTON, I
10 CAN'T SAY WHETHER WE MET TOGETHER OR SEPARATELY WITH
11 DOCTOR MORTON.

12 Q HOW ABOUT MS. CASCIO?

13 A MS. CASCIO, I DON'T KNOW WHETHER JIM WAS WITH US WHEN
14 WE MADE THE INITIAL CONTACT WITH MS. CASCIO DOWN IN
15 COLUMBIA. BUT I THINK IT WAS ME AND MY PARALEGAL. AND I
16 THINK THAT WE MET-- WE MET SEVERAL OTHER TIMES WITH HER.
17 AND I CAN'T REMEMBER WHETHER IT WAS JOINTLY OR JIM
18 DEVELOPING OR ME DEVELOPING AT THAT TIME.

19 Q BUT BOTH OF Y'ALL SAT DOWN AND TALKED ABOUT WHETHER
20 OR NOT YOU WANTED A PARTICULAR WITNESS?

21 A YES.

22 Q AN EXPERT. DO YOU RECALL THE STEPS THAT YOU TOOK TO
23 OBTAIN THE MENTAL HEALTH RECORDS OF YOUR CLIENT AND HIS
24 FAMILY?

25 A COULD YOU REPEAT THE QUESTION?

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q DO YOU RECALL THE STEPS THAT YOU TOOK TO OBTAIN THE
2 MENTAL HEALTH RECORDS OF YOUR CLIENT AND HIS FAMILY?

3 A WE SUBPOENAED MENTAL HEALTH RECORDS FROM
4 EVERYWHERE. I KNOW THAT WE HAD SKIP MEYER. HE OBJECTED TO--
5 NOT OBJECTED TO, HE HAD US HAVE A HEARING SO THAT THE COURT
6 COULD PROPERLY ORDER HIM TO TURN OVER RECORDS. WE WERE
7 SUBPOENAING RECORDS FROM EVERYWHERE THAT WE COULD FIND,
8 JUST TO FIND THEM.

9 Q I'D LIKE TO SHOW YOU TWO ONE-PAGE ORDERS AND ASK YOU
10 TO SEE IF YOU CAN RECALL THESE. WHAT IS THE FIRST ORDER?

11 A INSURANCE RECORDS.

12 Q FOR?

13 A FOR USE BY THE MITIGATION EXPERT, INVESTIGATOR, AND ANY
14 EXPERT WITNESS. THE SECOND IS MEDICAL RECORDS FROM
15 PIEDMONT MEDICAL CENTER. TO BE RELEASED ONLY TO, ONLY TO
16 PERSONS EMPLOYED BY THE DEFENSE AND FOR MITIGATION AND
17 INVESTIGATOR AND THE ASSESSMENT OF THE DEFENDANT.

18 MR. SALTER: YOUR HONOR, I WOULD ASK TO ADMIT THESE INTO
19 EVIDENCE AS RESPONDENT'S EXHIBITS THREE AND FOUR.

20 MR. BROWN: WITHOUT OBJECTION, YOUR HONOR.

21 THE COURT: THEY'RE ADMITTED.

22 (WHEREUPON DEFENDANT'S EXHIBITS THREE AND FOUR WERE
23 ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

24 Q NOW, DID EITHER YOU OR MR. BOYD WITHHOLD ANY
25 INFORMATION FROM ANY EXPERTS Y'ALL EMPLOYED?

- 1 A IF THEY REQUESTED IT, THEY GOT IT. THEY GOT WHAT WE HAD.
2 AND IF THEY TOLD US TO GO GET SOMETHING AND WE TRIED TO GET
3 IT AND SUBPOENA IN ORDER THAT THEY COULD PROPERLY TESTIFY,
4 SIR.
- 5 Q DID ANY EXPERT TELL YOU THAT HE OR SHE DIDN'T HAVE AN
6 ADEQUATE AMOUNT OF INFORMATION, OR DO YOU RECALL THAT?
- 7 A NOT THAT I RECALL.
- 8 Q I BELIEVE YOU INDICATED EARLIER THAT THE DEFENSE DURING
9 THE PENALTY PHASE HAD TRIED TO GET A JURY INSTRUCTION FOR
10 LIFE WITHOUT PAROLE?
- 11 A THAT'S WHAT IT MEANT, THAT HE WOULD BE IN JAIL FOR THE
12 REST OF HIS NATURAL LIFE WITHOUT POSSIBILITY OF PAROLE. AND
13 THAT WAS-- AS I SAID, THAT'S WHAT WE HAD MS. MOON. ALL THE
14 OTHER TESTIMONY WAS BASICALLY IRRELEVANT. WE WANTED THE
15 WORDS, LIFE WITHOUT POSSIBILITY OF PAROLE.
- 16 Q I BELIEVE YOUR TESTIMONY MOSTLY WAS YOU GOT AS MANY
17 RECORDS AS YOU COULD TO DETERMINE WHETHER OR NOT THERE
18 WAS ANY PHYSICAL OR SEXUAL ABUSE IN THE PAST?
- 19 A YES SIR. WE DIDN'T DETERMINE ANY REAL PHYSICAL ABUSE OR
20 RECORDS OF TREMENDOUS PHYSICAL ABUSE BY EARL. WE DID HAVE
21 SOME ISOLATED INCIDENTS OVER PERIODS OF TIME.
- 22 THE FAMILY, THEY WERE VERY CONFRONTATIONAL. WE DID
23 HAVE ONE TIME THAT SUPPOSEDLY EARL HELD JIMMY OUT OVER A
24 BALCONY IN THE HOUSE. WE WENT UP TO THE BALCONY TO SEE
25 WHAT PERIL THAT PUT HIM IN. I STOOD THERE. BUT AS FAR AS WHAT

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 I WOULD TERM PHYSICAL ABUSE, WE DIDN'T FIND ENOUGH, I DON'T
2 BELIEVE, TO PRESENT OTHER THAN THROUGH THE EXPERTS.

3 Q HOW ABOUT SEXUAL ABUSE?

4 A NEVER FOUND-- I NEVER FOUND ANYTHING OF THAT NATURE,
5 SIR, THAT I REMEMBER.

6 Q DID EITHER YOU OR CO-COUNSEL SPEAK WITH MR. MEYERS, OR
7 DID ANYONE ASSOCIATED WITH YOUR CASE REVIEW THE RECORDS
8 WITH MR. MEYERS?

9 A I DON'T KNOW. I REALLY DON'T. I DON'T KNOW WHETHER WE
10 TALKED TO SKIP MEYER BECAUSE-- WE WERE USING HIS RECORDS
11 COMPLETELY AND I'M NOT SURE HOW WE EVEN PRESENTED THEM.
12 BUT WE DID GO THROUGH IT. I KNOW THAT WE ASKED MR. MEYER
13 FOR THE RECORDS. WE SUBPOENAED THEM AND WE HAD TO COME TO
14 COURT FOR THE COURT TO RULE FOR HIM TO GIVE US HIS RECORDS.
15 BUT AS FAR AS SITTING DOWN AND SAYING, SKIP, IS THIS YOUR
16 HANDWRITING, WHAT DOES THIS MEAN, WHAT DOES THIS MEAN, I
17 DON'T REMEMBER SITTING DOWN WITH HIM FOR REVIEW OF HIS
18 RECORDS.

19 Q YOU PROVIDED HIS RECORDS OR ANY OF THE OTHER RECORDS
20 THAT YOU GOT TO YOUR EXPERTS. CORRECT?

21 A YES.

22 Q YOU TESTIFIED ON DIRECT EXAMINATION BY YOU NEVER
23 RETAINED A PSYCHIATRIST TO REVIEW WHETHER OR NOT DOCTOR
24 McMEEKIN HAD OVER-PRESCRIBED RITALIN. IS THAT CORRECT?

1 A YES SIR. AND I SAID I DIDN'T FEEL LIKE IT WAS MY-- HE
2 PRESCRIBED IT NOT FOR JIMMY, BUT FOR CHIP. AND SO, I DIDN'T FEEL
3 LIKE IT WAS MY JOB TO SET THE MEDICAL COMMUNITY STRAIGHT IN
4 THIS CASE.

5 Q WERE YOU AWARE OF ANY INFORMATION THAT THERE MAY
6 HAVE BEEN A DISCIPLINARY AGAINST DOCTOR McMEEKIN WITHIN
7 TWO YEARS OR SO OF THIS 1999 TRIAL?

8 A YES SIR, I BELIEVE I WAS.

9 Q HOW WOULD THAT IMPACT UPON YOUR DECISION TO PRESENT
10 HIM AS A POTENTIAL WITNESS?

11 A WELL, AGAIN, IT WASN'T DOCTOR McMEEKIN THAT WE WERE
12 LOOKING AT; IT WAS MR. MEYER AND WHAT HE HAD DONE WITH THE
13 FAMILY. HE HAD EVIDENTLY BEEN, WE FELT, THE PRIMARY
14 COUNSELOR AND THE PRIMARY SOURCE THAT COULD PROVE THE
15 DYSFUNCTION OF THE FAMILY.

16 Q AND Y'ALL WERE ABLE TO GET THAT THROUGH HIS RECORDS?

17 A YES.

18 Q Y'ALL ALSO MADE A DECISION TO EMPLOY DOCTOR MORTON,
19 THE PHARMACOLOGIST?

20 A YES.

21 Q DO YOU RECALL WHAT DOCTOR MORTON'S ASSESSMENT OF
22 HOW MR. ROBERTSON AND HIS FAMILY HAD BEEN TREATED WITH
23 RESPECT TO THEIR DRUG USAGE, PARTICULARLY YOUR CLIENT, HOW
24 HIS DRUG USE HAD BEEN TREATED?

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 A DOCTOR MORTON-- AND AS I REMEMBER IT, WHAT I WAS
2 LOOKING FOR WAS THAT DOCTOR MORTON COULD TESTIFY AS MUCH
3 TOWARD A ZOLOFT-TYPE DEFENSE. THAT, EXCEPT FOR THE RITALIN,
4 THAT WAS BEING HORRIBLY ABUSED, WHICH WAS PRESCRIBED TO
5 CHIP. THAT, EXCEPT FOR THAT, THEN THIS WOULD NOT HAVE
6 OCCURRED. THAT IT WAS A PRIMARY FACILITATING AGENT; THAT
7 JIMMY WOULD NOT HAVE DONE THIS EXCEPT FOR THE RITALIN. WE
8 NEVER GOT THAT OUT OF HIM, I DON'T THINK.

9 Q SPECIFICALLY, DO YOU RECALL INDICATING HE THOUGHT THAT
10 YOUR CLIENT DID NOT RECEIVE ADEQUATE TREATMENT FOR HIS
11 DRUG PROBLEM?

12 A I DON'T REMEMBER THAT.

13 Q I'LL SHOW YOU PAGE 2665, BEGINNING AT LINE 21. WOULD YOU
14 REVIEW THE QUESTION AND ANSWER?

15 A IT SAYS,

16 "Q. LET ME ASK YOU, YOU REVIEWED THE RECORDS OF JIMMY
17 AND HIS TREATMENT. IN YOUR OPINION, DID HE RECEIVE PROPER
18 TREATMENT FOR A DRUG PROBLEM?

19 A. I DON'T THINK HE EVER RECEIVED TREATMENT FOR HIS DRUG
20 PROBLEMS. I THINK IT WAS TALKED ABOUT THAT HE SHOULD QUIT
21 DRINKING WHEN HE CAME OUT OF THE STATE HOSPITAL. IT WAS
22 TALKED ABOUT VARIOUS THERAPISTS; THAT HE SHOULD STOP
23 DRINKING, HE SHOULD ATTEND AA MEETINGS. I DON'T KNOW THAT HE
24 WAS EVER GIVEN AN ULTIMATUM TO GO TO A TREATMENT PROGRAM.

1 I DON'T KNOW THAT HE WAS EVER FORCED INTO A TREATMENT
2 PROGRAM WITH CONSEQUENCES."

3 Q SO, DOCTOR MORTON DIDN'T THINK HE HAD GOTTEN ADEQUATE
4 TREATMENT?

5 A NO SIR.

6 Q WITH RESPECT TO YOU AND CO-COUNSEL PREPARING TO
7 PRESENT A GREAT DEAL OF INFORMATION CONCERNING THE MENTAL
8 HEALTH TREATMENT OF CHIP ROBERTSON AND EARL ROBERTSON,
9 WHAT WERE THE PRIMARY PREMISE WHICH Y'ALL WERE TRYING TO
10 DEVELOP DURING THE PENALTY PHASE?

11 A WE WERE TRYING TO INDICATE THAT THE PARENTS WERE THE
12 CAUSE AND THAT THEIR PREVIOUS PROBLEMS. I THINK WE HAD EARL
13 AND CHIP'S RECORDS. THERE WAS COUNSELING THERE. AND THAT
14 THE FAMILY WAS DYSFUNCTIONAL AND BECAUSE OF THAT, THAT
15 JIMMY HAD TURNED TO SOME ALCOHOL, DRUGS, RITALIN, AND THAT
16 IT WAS BASICALLY THE PARENTS' FAULT FOR JIMMY HAVING KILLED
17 THEM. I THINK THAT'S WHERE IT CAME OUT, IT FINALLY LANDED.

18 WE WERE TRYING TO BALANCE BETWEEN HAVING TOTALLY
19 TRASHED THE PARENTS AND SHOWING THAT THERE WAS SOME
20 SYMPATHETIC PROBLEMS THAT COULD BE ASSOCIATED WITH THE
21 FAMILY THAT THE JURY COULD FIND SOME SYMPATHY TOWARDS
22 JIMMY.

23 Q YOU INDICATED AGAIN, JUST NOW AND YESTERDAY, THAT YOU
24 WERE KIND OF CAREFUL ABOUT NOT WANTING TO COMPLETELY
25 TRASH THE VICTIMS IN THIS CASE.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 A YES SIR.

2 Q WHY WAS THAT?

3 A WELL, I MEAN, IT'S HIS MAMA AND DADDY. AND YOU CAN'T GO
4 BUT SO FAR IN SAYING THAT A MAMA AND DADDY HAD MADE A SON
5 KILL THEM. AND YOU'VE GOT TO BALANCE THAT PRETTY CLOSELY
6 BECAUSE THESE ARE TWELVE PEOPLE FROM YORK COUNTY, SOUTH
7 CAROLINA. WE'RE NOT IN LOS ANGELES AND OTHER PLACES. WE'VE
8 STILL GOT SOME CORE VALUES THAT ARE THERE AND THINGS THAT
9 PEOPLE WANT TO THINK ABOUT PARENTS AND WHAT THEIR ROLE IS.

10 AND SO, WE FELT LIKE WE WERE TALKING TO A YORK COUNTY
11 JURY AND THAT'S THE WAY WE OUGHT TO PRESENT IT.

12 Q YOU TESTIFIED EARLIER TODAY AND YESTERDAY THAT YOU
13 DIDN'T HAVE ENOUGH EVIDENCE TO MEET THE GUILTY BUT
14 MENTALLY ILL STANDARD.

15 A AND I BELIEVE I BROUGHT THE BOOK DOWN THERE AND
16 SHOWED IT. I DIDN'T THINK THE EVIDENCE FELL INTO THAT
17 CATEGORY. IT WAS A SHOT DEAL.

18 MY UNDERSTANDING, AND I MAY HAVE BEEN WRONG IN THE
19 LAW-- MY UNDERSTANDING IS IF HE GOT GUILTY BUT MENTALLY ILL
20 THEN WE STILL COULD HAVE GONE TO A DEATH PENALTY PHASE, I
21 BELIEVE. AND SO, WE WOULD SHOOT ALL OUR GUNS AT ONE SHOT
22 AND THEN SIT THERE AND TWIDDLE OUR THUMBS AFTER THEY GOT
23 THE SHOT AT THE DEATH PENALTY. SO, IT WAS A CHOICE.

24 Q AND A PLEA OF GUILTY BUT MENTALLY ILL WOULD OBVIOUSLY
25 REQUIRE A GUILTY PLEA. CORRECT?

1 A WE WERE NEVER OFFERED ANYTHING THAT I REMEMBER, ONE
2 HUNDRED PERCENT, OTHER THAN THAT FRIVOLOUS THING THAT WAS
3 TALKED ABOUT. THIS WAS A STRAIGHT-UP DEATH PENALTY CASE
4 FROM BEGINNING TO END.

5 Q DID EITHER YOU OR YOUR CLIENT WANT THE JUDGE TO
6 SENTENCE HIM?

7 A I DON'T REMEMBER. I DON'T REMEMBER SPEAKING WITH HIM,
8 BUT WE WOULD HAVE JUST TRIED IT, YOU KNOW, IN FRONT OF A
9 JUDGE. NO, WE FELT LIKE WE HAD-- WE ARE PRETTY FAMILIAR WITH
10 THE JUDGES AND WE PRETTY MUCH KNOW WHAT THEY'RE GOING TO
11 DO, AND WE FELT LIKE WE HAD A BETTER CHANCE IN FRONT OF
12 TWELVE PEOPLE. WE COULD GET ONE OF THOSE. WE DIDN'T THINK
13 WE COULD SWAY ONE JUDGE.

14 Q AND EXPLAINING TO YOUR CLIENT WHY YOU DIDN'T THINK HE
15 MET THE GUILTY BUT MENTALLY ILL STANDARD, WAS THAT BECAUSE
16 HE HAD THE ABILITY TO CONFORM HIS CONDUCT TO THE
17 REQUIREMENTS OF THE LAW?

18 A OH, YES SIR.

19 Q NOW, TONY CASCIO WAS ACTUALLY-- SHE WAS THE WITNESS
20 THAT ACTUALLY WAS EXAMINED BY MR. BOYD. CORRECT?

21 A I BELIEVE SO.

22 Q DID Y'ALL BOTH MAKE THE DECISION TO PUT HER UP? IS THAT
23 RIGHT?

24 A YES SIR. I WOULD HOPE THAT IT WAS BOTH OF OUR DECISIONS.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q AND Y'ALL DID THAT AFTER TALKING TO HER AND SITTING
2 DOWN AND WORKING WITH HER FOR AN EXTENDED PERIOD OF TIME.
3 IS THAT RIGHT?

4 A YES SIR. WE FIGURED WE COULD, WE MAY COULD OVERCOME
5 ANYTHING THAT WAS THERE AND IT WOULD AT LEAST BE SOMETHING
6 TO PUT BEFORE THE JURY, HOPEFULLY, FOR SOME TYPE OF SENTENCE;
7 THE SAME THING WE HAD BEEN DEVELOPING, A SOCIAL DYSFUNCTION
8 THAT MIGHT LEAD TO SOME SYMPATHETIC MEMBER OF THE JURY TO
9 NOT VOTE FOR THE DEATH PENALTY.

10 Q AND I BELIEVE THAT YOU INDICATED THAT Y'ALL HAD
11 CHECKED HER QUALIFICATIONS?

12 A YES SIR. WE HAD A CURRICULUM VITAE. WE HAD
13 RECOMMENDATIONS FROM DRUCY GLASS. WE KNEW THAT SHE HAD
14 NOT-- THAT SHE WAS COMPETENT. WE KNEW THAT SHE HAD NOT
15 TESTIFIED IN A CASE OF THIS NATURE AT THAT TIME, ALSO, THOUGH.

16 Q NOW, HAVING TRIED AS MANY CASES AS YOU HAVE, YOU'RE
17 OBVIOUSLY FAMILIAR WITH RULE 705 OF THE SOUTH CAROLINA RULES
18 OF EVIDENCE GOVERNING THE TESTIMONY OF AN EXPERT AND
19 HAVING TO DISCLOSE UNDERLYING DOUBT?

20 A YES SIR, I AM. AND I HAVE-- IF YOU WANT AN EXPLANATION,
21 I'LL GIVE YOU ONE.

22 Q PLEASE.

23 A I DON'T-- I DON'T SEE-- WE EVIDENTLY FELT THAT WE WERE
24 COMPLYING WITH RULE 5, AND WE DID SO WITHOUT OBJECTION, JIM
25 DID. BUT I DON'T KNOW WHETHER THIS HAD JUST COME TO MIND OR

1 WAS IN A PREVIOUS PROCEEDING, BUT I THOUGHT I REMEMBERED -
2 AND I MAY BE WRONG - THAT THE JUDGE ORDERED US TO TURN OVER
3 UNDERLYING DATA. I DON'T KNOW.

4 BECAUSE I SOMEWHERE, EITHER-- AND IT MAY NOT-- AND WHY
5 WE WERE NOT GONNA PUT IT ON THE RECORD, I DON'T KNOW. BUT
6 THAT I WAS THINKING THAT IT WAS BASICALLY CAUSING HIM TO
7 TESTIFY AGAINST HIMSELF WHEN HE INVOKED THE RIGHT NOT TO, IN
8 THOSE NOTES. BECAUSE WE HAD TO GIVE TRUTHFUL INFORMATION
9 TO OUR ASSESSORS, PSYCHOLOGIST, PSYCHIATRISTS AND OTHERS.
10 AND WERE THAT BROUGHT IN, BASICALLY, I FELT THAT THAT WAS
11 HIM BEING REQUIRED TO TESTIFY AGAINST HIMSELF.

12 I DON'T SEE THAT ON THE RECORD. AND ANY-- Y'ALL HAVE THE
13 RECORDS. I WOULD HAVE THOUGHT THAT WOULD HAVE BEEN
14 ORDERED BY THE JUDGE OR THAT WAS DISCUSSED AT SOME POINT.

15 Q DESPITE THE FACT THAT YOU WERE AWARE THAT HER NOTES
16 HAD TO BE DISCLOSED, Y'ALL DECIDED THAT IT WAS NECESSARY TO
17 PUT HER UP?

18 A YES SIR.

19 Q AND THAT'S BECAUSE SHE WAS ABLE TO TIE THINGS TOGETHER
20 FOR YOU, WASN'T SHE?

21 A WELL, YES. THE STATE AND MR. POPE AND MR. BRACKETT DID A
22 MASTERFUL JOB ON CROSS EXAMINATION OF HER. OF COURSE, THEY
23 HAD THE NOTES. BUT WE WERE TRYING TO LET HER TIE EVERYTHING
24 TOGETHER THAT WE HAD PUT UP FOR POSSIBLY SOME SYMPATHETIC
25 VOTE FROM ONE OF THE JURORS.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 Q AND THAT WAS NECESSARY BECAUSE WITHOUT THAT, A LOT OF
2 SPECULATION WOULD HAVE TO BE MADE BY THE EXPERT?

3 A YES.

4 Q WITHOUT GOING THROUGH EVERY ITEM THAT YOU WERE
5 EXAMINED ABOUT YESTERDAY, IS IT FAIR TO SAY THAT WHILE THERE
6 WERE NO INCULPATORY STATEMENTS BY YOUR CLIENT THAT WERE
7 ENTERED INTO EVIDENCE, THAT A LOT OF CIRCUMSTANTIAL
8 EVIDENCE WAS ENTERED BY THE STATE ELICITED MANY OF THE SAME
9 FACTS THAT WERE ELICITED THROUGH THOSE STATEMENTS BY HIM,
10 WERE THEY NOT?

11 A YES. I MEAN, YOU HAD EVERYTHING FROM THE CLAW HAMMER
12 TO THE BAT. YOU DIDN'T HAVE A REASON THE BAT WAS USED. BUT
13 YOU HAD ALL OF THAT. YOU HAD THE TILEX. YOU HAD THE KNIFE.
14 YOU HAD-- YOU HAD ALL OF IT.

15 AS I SAID, I THINK THERE WERE SOME HUNDRED AND TWENTY-
16 ODD PIECES OF EVIDENCE FROM WHICH THE JURY COULD DRAW
17 THOSE CONCLUSIONS. THEY DIDN'T KNOW EXACTLY HOW IT
18 HAPPENED.

19 Q THEY ALSO HAD MS. MOON'S TESTIMONY.

20 A THEY HAD MS. MOON'S TESTIMONY PRETTY MUCH OUTLINED
21 THE WAY EVERYTHING WAS. AND I THINK THAT WAS WITH THE TILEX
22 BOTTLE. AND EVEN SHE TESTIFIED SHE WENT UPSTAIRS AND LOOKED
23 AT SOMETHING. SHE WAS STANDING UP THERE, UP THE STAIRS.

24 LIKE I SAID, WE WENT AS FAR AS EVEN-- BECAUSE WE KNEW
25 THAT IT WAS COMING. WE WENT AS FAR TO GO INVESTIGATE AND SEE

1 IF SHE COULD HAVE HEARD WHAT SHE HAD, IF SHE COULD HAVE BEEN
2 WHERE SHE WAS. WE WENT INTO JIMMY'S ROOM. WE EXAMINED
3 EVERYTHING DOWN THERE. WE OPENED AND CLOSED DOORS JUST TO
4 FIND OUT IF MEREDITH MOON WOULD BE CREDIBLE TO A JURY.

5 Q NOW,---

6 A WHEN I SAY, WE, THOUGH, LET ME QUALIFY THAT. THAT WAS
7 MY INVESTIGATOR AND MYSELF BECAUSE MR. BOYD WASN'T WITH US
8 THAT DAY.

9 Q BUT YOU MADE THAT DETERMINATION---

10 A YES.

11 Q ---AND WERE ABLE TO PASS INFORMATION ALONG TO CO-

12 COUNSEL?

13 A YES.

14 Q WITH RESPECT TO YOUR ADVICE TO YOUR CLIENT AS TO
15 WHETHER OR NOT HE SHOULD TESTIFY IN LIGHT OF MS. CASCIO'S
16 STATEMENT, OR HER TESTIMONY, WOULD IT BE FAIR TO SAY THAT
17 WHAT YOU TALKED ABOUT EARLIER, IN TERMS OF WHAT YOU
18 PROVIDED, AND YOUR INABILITY TO EXAMINE HIM ON DIRECT
19 EXAMINATION, WOULD THAT BE ONE REASON WHY YOU FELT IT WAS
20 IMPORTANT TO NOT TESTIFY?

21 A I DON'T REMEMBER THE EXACT CONVERSATION, BUT I WILL
22 JUST HAVE TO SAY I HAVE TO EVALUATE WITNESSES. AND THAT'S
23 WHAT MY JOB IS AND HOW SOMEBODY'S GOING TO BE ON THE
24 WITNESS STAND.

JAMES HANCOCK - CROSS EXAMINATION BY MR. SALTER

1 I ALSO HAVE TO EVALUATE THE INFORMATION THAT'S BEEN PUT
2 BEFORE THE COURT TO THAT POINT AND I HAVE TO EVALUATE THE
3 PEOPLE THAT WERE CROSS EXAMINED.

4 IN MY OPINION, IF JIMMY HAD GOTTEN ON THE WITNESS STAND
5 WITH HIS DEMEANOR, WITH HIS - I CAN'T SAY - SOMEWHAT, HIS
6 ATTITUDE, WITH JUST KNOWING JIMMY, THAT THERE WOULD HAVE
7 BEEN NO REASON TO DO ANYTHING ELSE. HE WOULD HAVE-- HE
8 WOULD NOT HAVE MADE A GOOD WITNESS AND THE PROSECUTION
9 WAS PREPARED TO DO MORE DAMAGE THAN MS. CASCIO EVER DID.

10 Q ONE LAST THING I WOULD LIKE TO ASK YOU ABOUT, THE
11 STATE'S EVALUATION BY JEFFREY McKEE, DOCTOR JEFFREY McKEE.
12 NOW, PRIOR TO THAT EVALUATION I BELIEVE YOU SAT DOWN AND
13 DISCUSSED THAT WITH YOUR CLIENT?

14 A YES SIR.

15 Q AND EXPLAINED TO HIM WHY THE EVALUATION WAS
16 NECESSARY?

17 A THEY HAD THE RIGHT.

18 Q DID YOU ALSO EXPLAIN TO HIM THAT WITHOUT THAT
19 EVALUATION HE WOULDN'T BE ABLE TO GO TO A MENTAL HEALTH
20 DEFENSE?

21 A YES.

22 Q DID HE UNDERSTAND YOUR EXPLANATION?

23 A I BELIEVE HE DID, SIR. THAT WAS THE ONLY DEFENSE, WAS THE
24 MENTAL HEALTH DEFENSE.

25 Q AND HE CONSENTED TO THE EVALUATION?

1 A YES SIR. HE WENT DOWN THERE. I DIDN'T FORCE HIM AND I
2 DIDN'T DRIVE HIM.

3 Q NOW, WHEN DOCTOR McKEE TESTIFIED IN FRONT OF THE JURY
4 AND MENTIONED AN IMPLICATION OF YOUR CLIENT'S FIFTH
5 AMENDMENT RIGHTS, OR AN UNDERSTANDING OF HIS FIFTH
6 AMENDMENT RIGHTS, I BELIEVE Y'ALL OBJECTED AND MOVED FOR A
7 MISTRIAL?

8 A YES.

9 Q THAT MISTRIAL MOTION WAS DENIED. CORRECT?

10 A YES.

11 Q AND THE JURY NEVER HEARD FROM DOCTOR McKEE ANY OTHER
12 INFORMATION INVOLVING VIOLATION OF HIS FIFTH AMENDMENT
13 RIGHTS. IS THAT CORRECT?

14 A I DON'T THINK SO. I DON'T REMEMBER THE EXACT
15 INFORMATION HEARD AFTER THAT, BUT I DON'T THINK SO.

16 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: RE-DIRECT.

18 MR. BROWN: VERY BRIEFLY, YOUR HONOR.

19 RE-DIRECT EXAMINATION BY MR. BROWN:

20 Q MEREDITH MOON, YOU SAID, CORROBORATED A LOT OF
21 STATEMENTS MS. CASCIO SAID?

22 A AS I REMEMBER.

23 Q ISN'T IT TRUE THAT HER TESTIMONY ON PAGES 1596 THROUGH
24 1605, ---

25 A IF I MAY. THAT IS PER MY MEMORY.

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 Q OKAY.

2 A I HAVE NOT REVIEWED YOUR DOCUMENTS. I HAVE NOT
3 REVIEWED MY FILE. I'M JUST SAYING THAT THAT'S WHAT I
4 REMEMBER.

5 Q INSTEAD OF BELABORING THE COURT LIKE I DID YESTERDAY,
6 GOING THROUGH THE TRANSCRIPT, ARE THOSE THE PAGES, 1596
7 THROUGH 1605, WHERE SHE TESTIFIES AS TO THE EVENTS AND THE
8 STATEMENTS AND HE MADE THAT NIGHT.

9 THE COURT: CASCIO?

10 MR. BROWN: NO, MEREDITH MOON.

11 THE COURT: MOON, YEAH.

12 A YES.

13 MR. BROWN: I WON'T BORE THE COURT WITH THIS.

14 THE COURT: ALL RIGHT.

15 Q ON CROSS, MR. HANCOCK, YOU SAID THAT Y'ALL HAD
16 BASICALLY GIVEN UP ON THE GUILT PHASE AND WENT TOWARD THE
17 SENTENCING PHASE. IS THAT CORRECT?

18 A YES.

19 Q SO, THIS CASE CAME TO MENTAL ILLNESS. WOULD THAT BE
20 CORRECT?

21 A IT CAME DOWN, I BELIEVE, TO SYMPATHY.

22 Q IT WAS PUT UP ON MENTAL ILLNESS?

23 A IT'S A MENTAL ILLNESS DEFENSE, BUT IT'S A DEFENSE THAT WAS
24 PUT UP WITH SYMPATHY.

- 1 Q YOU'RE FAMILIAR WITH SECTION 17-24-20, SOUTH CAROLINA
2 CODE OF LAWS, GUILTY BUT MENTALLY ILL, GENERAL REQUIREMENTS
3 FOR VERDICTS?
- 4 A I'VE READ IT.
- 5 Q I'LL SHOW IT TO YOU.
- 6 A (PAUSE TO READ CODE SECTION) YES SIR. I'M JUST-- I JUST-- I
7 KNOW I WENT THROUGH IT AT THAT PARTICULAR TIME. GUILTY BUT
8 MENTALLY ILL, HE HAD THE CAPACITY TO DISTINGUISH RIGHT FROM
9 WRONG, TO RECOGNIZE HIS ACTIONS AS BEING WRONG.
- 10 Q WOULD YOU AGREE WITH ME, SIR, THAT THE FIRST PRONG IS
11 THE DEFENDANT IS GUILTY BUT MENTALLY ILL IF AT THE TIME OF THE
12 COMMISSION OF THE ACT, OR THE ACT CONSTITUTING THE DEFENSE,
13 HE HAD THE CAPACITY TO DISTINGUISH RIGHT FROM WRONG; I.E., TO
14 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW?
- 15 A YES, WE DISCUSSED THAT YESTERDAY.
- 16 Q BUT BECAUSE OF MENTAL DISEASE OR DEFECT, HE LACKS
17 SUFFICIENT CAPACITY TO CONFORM HIS CONDUCT TO THE
18 REQUIREMENTS OF THE LAW. CORRECT?
- 19 A RIGHT.
- 20 Q AND THE STATE HAS TO PROVE BEYOND A REASONABLE DOUBT
21 THAT HE COMMITTED THE CRIME AND YOU HAVE TO PROVE BY
22 PREPONDERANCE OF THE EVIDENCE THAT WHEN HE COMMITTED THE
23 CRIME HE WAS MENTALLY ILL, AS DEFINED IN SUBSECTION A?
- 24 A YES.

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 Q YOU HAVE THE REPORT FROM DOCTOR PINCUS. IS THAT
2 CORRECT?

3 A YES.

4 Q AND I'M QUOTING - I ONLY HAVE ONE COPY - "IN SUMMARY
5 THERE IS HISTORIC EVIDENCE, BOTH IN THE FAMILY HISTORY AND HIS
6 OWN THAT SUPPORTS VERY STRONGLY THAT DIAGNOSIS OF BI-POLAR,
7 EFFECTIVE DISORDER, AND OBSESSIVE COMPULSIVE DISORDER. IN
8 ADDITION, THERE IS DRUG INTOXICATION AT THE TIME OF THE
9 KILLING. HE WAS UNDER THE INFLUENCE OF RITALIN AND ALCOHOL.
10 ON NEUROLOGICAL EXAMINATION THERE IS EVIDENCE OF CORTICAL
11 AND SUB-CORTICAL DYSFUNCTION IN THE FRONTAL LOBE, AND OTHER
12 PORTIONS OF THE NERVOUS SYSTEM PRODUCING A SIGNIFICANT
13 DISCREPANCY BETWEEN THE STRENGTH IN HIS RIGHT AND LEFT
14 HANDS AND FROM BI-LATERAL WORK REFLEXES AND THE SNAP
15 REFLEX. THE NEUROLOGICAL ABNORMALITIES, LIKE THE EFFECTS OF
16 INTOXICATION, HAVE A DIS-INHIBITING EFFECT THAT PERMIT THE
17 EXPRESSION OF URGES THAT ARE ORDINARILY CONTROLLED BY THE
18 NORMAL BRAIN."

19 A YES.

20 Q THAT CERTAINLY QUALIFIES FOR MENTALLY ILL AT THE TIME
21 OF THE COMMISSION OF THE CRIME.

22 A NO SIR.

23 Q YOU DON'T THINK SO?

24 A NO SIR. I DIDN'T THINK SO THEN BECAUSE THAT'S WHY WE HAD
25 MORTON HERE TO SAY THAT THE RITALIN-- YOU COULDN'T SAY THAT

1 THE BI-POLAR HE WAS BEING TREATED FOR, THAT WOULD MAKE HIM
2 MENTALLY ILL TO THE POINT HE COULDN'T CONFORM. AND WE WERE
3 TRYING TO SAY THAT THE RITALIN WAS THERE AND THAT WOULD
4 CAUSE HIM TO LOOSE CONTROL TO THE POINT THAT HE COULD NOT
5 CONFORM, AND WE NEVER GOT THAT FROM DOCTOR MORTON THAT I
6 REMEMBER.

7 Q YOU WERE APPOINTED TO REPRESENT JIMMY ROBERTSON. IS
8 THAT CORRECT?

9 A I WHAT?

10 Q YOU WERE COURT APPOINTED TO REPRESENT JIMMY
11 ROBERTSON.

12 A YES, YES.

13 Q AND YOUR JOB WAS OBVIOUSLY TO ZEALOUSLY REPRESENT
14 HIM TO THE BEST OF YOUR ABILITY?

15 A THAT'S RIGHT.

16 Q EVEN THOUGH HE CLAIMED HIS BROTHER WAS NOT INVOLVED,
17 THERE WAS EVIDENCE POINTING TOWARD HIM. IS THAT CORRECT?

18 A YOU HAD A PHONE CALL, SOMETHING OF THAT NATURE. THERE
19 WERE RUMORS OUT THAT CHIP HAD DONE THIS OR THAT OR THE
20 OTHER. BUT WHEN WE INTERVIEWED ALL OF JIMMY'S FRIENDS, WHEN
21 HE WAS TALKING ABOUT, AND IT CAME ON AND SAID THAT HE WAS
22 GONNA KILL THEM FOR THE MONEY, CHIP MAY HAVE BEEN PRESENT A
23 COUPLE OF TIMES.

24 BUT THEN THERE WAS OTHER EVIDENCE FROM HIS FRIENDS
25 THAT CHIP HAD SAID, TOLD THEM THAT HE WANTED NOTHING TO DO

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 WITH ANYTHING LIKE THAT. AT LEAST AS I REMEMBER IN
2 INTERVIEWING MANY OF THEIR MUTUAL FRIENDS.

3 Q AS A MATTER OF FACT, YOUR OWN EXPERT GIVES YOU PROOF
4 THAT CHIP'S INVOLVED, WITH MS. CASCIO'S NOTES. AND CROSS
5 EXAMINATION WE WENT THROUGH YESTERDAY WITH MR. POPE
6 BROUGHT, ELICITED THAT CHIP, I'M IN EUROPE. CHIP'S GOING TO BE
7 PROUD OF ME. I'M GETTING CHIP AND I'M GONNA GET THIS THING
8 COVERED UP.

9 A FINE. TO ME, THAT'S NOT RELEVANT.

10 Q I UNDERSTAND. BUT YOU---

11 A YES. I DIDN'T SEE WHERE PUTTING CHIP IN FOR A CONVICTION
12 FOR THE DEATH PENALTY WOULD MITIGATE JIMMY'S ACTION WHEN
13 CHIP WAS STILL IN PHILADELPHIA.

14 THE COURT: NOW, LET ME MAKE SURE I HAVEN'T MISSED
15 SOMETHING. YOU HAVEN'T SAID ANYTHING TO ME, IN LISTING YOUR
16 CLAIMS ABOUT FAILURE TO PROVE THAT CHIP AS INVOLVED IN THE
17 CRIME.

18 MR. BROWN: CHIP'S MEDICAL RECORDS AND THE FAILURE TO
19 CALL HIM AS A WITNESS WAS ONE OF MY...

20 THE COURT: SO, THAT'S WHAT YOU MEAN BY FAILURE TO CALL
21 CHIP AS A WITNESS?

22 MR. BROWN: YES SIR.

23 THE COURT: I THOUGHT YOU WERE GETTING AT THAT FROM
24 THE STANDPOINT OF CHIP'S OWN MENTAL ILLNESS HISTORY.

1 MR. BROWN: THAT, AND HIS, WHATEVER POSSIBLE
2 INVOLVEMENT.

3 THE COURT: ALL RIGHT.

4 MR. BROWN: ANYTHING TO TAKE THE FOCUS OFF MR.
5 ROBERTSON, JAMES ROBERTSON, IN THIS TRIAL, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 Q YOU SAY MR. McMEEKIN, HAYNE McMEEKIN WAS NOT WORTH
8 PURSUING. ARE YOU, DID YOU DEEM---

9 A I DIDN'T SAY NOT WORTH PURSUING. I FELT THAT MR. MEYER
10 WAS GIVING US THE RECORDS THAT WE NEEDED AND WHAT WE
11 NEEDED IN ORDER TO PRESENT THE DEFENSE.

12 Q ON PAGES 2689 TO 2691, THIS IS YOUR OWN EXPERT, BASICALLY,
13 TESTIFYING, MR. MORTON, THAT MR. McMEEKIN WAS OVER-
14 MEDICATING THE WHOLE FAMILY?

15 A HE SAYS HERE CHIP, GIVE HIM TWENTY TO TWENTY-FIVE
16 MILLIGRAMS OF RITALIN. AGAIN, I DON'T BELIEVE THAT JIMMY WAS
17 TAKING RITALIN AT THAT TIME. HE WAS TAKING CHIP'S RITALIN.

18 Q AND IS NOT IN THERE ALSO THAT MR. MORTON TESTIFIED UPON
19 REVIEWING MR. McMEEKIN'S NOTE, THAT DOCTOR McMEEKIN KNEW
20 THAT CHIP WAS SELLING THE DRUG AND TAKING IT WITH ALCOHOL,
21 CRUSHING IT UP AND SNORTING IT, BUT HE CONTINUED TO PRESCRIBE
22 IT TO HIM?

23 A IF IT SAYS SO HERE, FINE.

24 Q IT'S IN HERE, TWO PAGES.

25 A RIGHT. I WON'T ARGUE WITH YOU.

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 Q AND DON'T YOU AGREE THAT PART OF THE CAUSE OF THIS
2 WHOLE MURDER WAS RITALIN?

3 A YES SIR, THAT'S WHY WE HAD DOCTOR MORTON.

4 Q BUT Y'ALL NEVER SUBPOENAED HIS RECORDS AND YOU NEVER
5 SENT ANYBODY TO INTERVIEW HIM OR DISCUSS THIS WITH HIM, EVEN
6 THOUGH YOU KNEW AT THAT TIME HE'D BEEN DISCIPLINED FOR OVER-
7 PRESCRIBING MEDICATION?

8 A NO SIR.

9 Q OKAY.

10 A BUT I THOUGHT WE'D GOTTEN HIS RECORDS.

11 Q I JUST WANT TO PUT UP ONE THING FOR THE RECORD. YOU SAID
12 YOU THOUGHT THE JUDGE ORDERED TO TURN THOSE NOTES OVER. I'M
13 GOING TO SHOW YOU THE TRANSCRIPT FROM THE HEARING ON
14 FEBRUARY 19, '98, WHEN THAT WAS DISCUSSED.

15 STARTING ON PAGE 44, LINE 17: "THE COURT: THAT'S WHAT
16 THEY'RE ASKING FOR. IT'S NOT BEEN UNUSUAL FOR INDIVIDUALS'
17 TESTIMONY TO BE ELICITED AND THEN ON CROSS-EXAMINATION
18 SOMEONE SAYS HAVE YOU GOT THAT REPORT WITH YOU AND THE
19 WITNESS SAYS, NO, I DIDN'T BRING THAT. I RELIED ON IT BUT I DIDN'T
20 BRING IT. I DIDN'T THINK I NEEDED IT. ALL I'VE GOT IS MY SUMMARY.
21 THEY JUST WANT THE EXPERT'S TO BRING THEIR FILE."

22 "MR. BOYD: WE HAVE NO OBJECTION TO THAT."

23 "MR. HANCOCK: IT GOES BOTH WAYS."

1 "MR. BRACKETT: THAT'S EXACTLY THE SCENARIO BECAUSE WE
2 HAVE TO STOP COURT AND WAIT FOR THEM TO GO BACK TO
3 COLUMBIA AND GET THAT STUFF."

4 A YES SIR.

5 Q SO, YOU AND MR. BOYD CONSENTED TO TURNING OVER THE
6 NOTES. IS THAT CORRECT?

7 A MR. BOYD DID. I MEAN, I'M IN THIS WITH HIM. SO, IT WOULD
8 HAVE BEEN BOTH OF OUR DECISIONS.

9 Q I UNDERSTAND. AND GIVING OVER THOSE NOTES, MS. CASCIO'S
10 NOTES?

11 A WHAT I THINK, MR. BROWN, IS THAT AT THIS TIME WE HAD FELT
12 THAT THE JUDGE RULED THAT THAT WAS WHAT WE WERE TO DO
13 UNDER THE PRESENT RULES OF DISCOVERY.

14 Q AND RULE 5 SPEAKS FOR ITSELF.

15 A YES.

16 Q OKAY. AND---

17 A I MEAN, IF IT'S NOT IN AN ORDER THAT Y'ALL HAVE FOUND AND
18 NOT IN A HEARING, THEN THAT WOULD BE OUR THINKING, I BELIEVE.

19 Q AND DESPITE MS. CASCIO'S NOTES AND THE DAMAGE MADE
20 FROM THOSE, Y'ALL CHOSE TO PUT HER ON THE STAND ANYWAY?

21 A YES SIR.

22 Q WHY?

23 A WELL, MR. BROWN, AT THAT TIME WE FELT LIKE SHE WAS
24 PULLING EVERYTHING TOGETHER. WE KNEW THAT WE WOULD BE
25 HURT BY CROSS EXAMINATION, BUT WE FELT LIKE SHE PUT ENOUGH

JAMES HANCOCK - RE-DIRECT EXAMINATION BY MR. BROWN

1 TOGETHER. AGAIN, WE'RE PLAYING TO ONE WITNESS. I MEAN, ONE
2 JUROR, THAT MAY BE A JUROR THAT SHE TIED TOGETHER THAT THEY
3 REALLY HAD SO MANY OF THE OPERATIVE FACTS ALREADY, THROUGH
4 THE TESTIMONY, THROUGH THE MASSIVE AMOUNT OF EVIDENCE
5 THAT WAS PUT THERE THAT EVIDENTLY WE MADE A DECISION THAT
6 WE WOULD, THAT THAT WOULD TIE IT TOGETHER ENOUGH OR GIVE US
7 SOME REASON OR SOMETHING TO ARGUE TO THAT ONE JUROR.

8 Q AT THAT TIME OF THE TRIAL THERE WERE NO INCULPATORY
9 STATEMENTS IN EVIDENCE MADE BY MR. ROBERTSON, OTHER THAN
10 MEREDITH MOON'S TESTIMONY?

11 A AND ANYTHING THAT COULD BE TAKEN FROM THE OTHER
12 EXPERTS. I DON'T KNOW WHAT---

13 Q IF I TELL YOU FOR THE RECORD IT WAS NO INCULPATORY
14 STATEMENTS FROM THE OTHER EXPERTS, WOULD YOU DISAGREE
15 WITH ME?

16 A NO, I WOULDN'T DISAGREE WITH YOU.

17 Q AND AS YOU TESTIFIED YESTERDAY, HER TESTIMONY, WITHOUT
18 IT, COULD HAVE MADE A DIFFERENCE IN THIS TRIAL, POSSIBLY MADE
19 A DIFFERENCE?

20 A THAT'S CONJECTURE, AS I SAID YESTERDAY. IT-- AGAIN, WE
21 WERE GRASPING AT STRAWS. WE HAD ONE OF THE WORST CASES I'VE
22 SEEN. AND SO, I'M NOT SURE WHAT THE JURY-- THEY HAD SUCH
23 MASSIVE EVIDENCE BEFORE THEM, I'M NOT SURE WHETHER NOT
24 PUTTING HER UP WOULD HAVE LEFT HIM NOT RECEIVING THE DEATH

1 PENALTY. IT'S JUST A CALL THAT YOU GO THROUGH AT THAT
2 PARTICULAR TIME.

3 Q WELL, YESTERDAY, DID YOU NOT SAY IT POSSIBLY COULD HAVE
4 CHANGED THE OUTCOME?

5 A ANYTHING THAT WAS PUT BEFORE THE JURY POSSIBLY COULD
6 HAVE CHANGED THE OUTCOME. WE JUST DIDN'T KNOW WHAT. WE
7 WERE TRYING TO FIND SOMETHING.

8 Q AND YOU WOULD AGREE WITH ME THAT SHE WAS A HORRIBLE
9 WITNESS?

10 A OH, YES.

11 MR. BROWN: BEG THE COURT'S INDULGENCE JUST A SECOND.

12 A CAN I QUALIFY THAT, MR. BROWN?

13 Q SURE.

14 A I CAN'T SAY HORRIBLE. SHE WAS A BAD WITNESS.

15 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

16 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: ALL RIGHT. I WANT TO ASK A COUPLE OF
18 QUESTIONS REGARDING THE DECISION TO CALL THIS DOCTOR CASCIO.
19 DID I PRONOUNCE IT CORRECTLY? CASCIO?

20 A CASCIO.

21 THE COURT: YOU AND MR. BOYD DID IN FACT KNOW ABOUT THE
22 NOTES WHEN YOU MADE THE DECISION TO CALL HER?

23 A WE HAD TO TURN THEM OVER, YES SIR.

24 THE COURT: BUT YOU PERSONALLY HAD READ THOSE NOTES?

25 A YES SIR.

JAMES HANCOCK - QUESTIONS BY THE COURT

1 THE COURT: AND YOU KNEW WHAT WAS IN THEM?

2 A YES SIR.

3 THE COURT: AND YOU REALIZED WHEN YOU PUT HER ON THE
4 STAND SHE WAS GOING TO BE CROSS EXAMINED ABOUT THE
5 CONTENTS OF THOSE NOTES?

6 A YES SIR, BECAUSE WE HAD THE DAY BEFORE, SHE HAD TO TURN
7 THEM OVER. SO, I KNEW THEY HAD THEM. NOW, AS FAR AS WHAT
8 DECISIONS WERE MADE AND HOW THEY WERE MADE, AS I SAID, I
9 DON'T REMEMBER. BUT WE REVIEWED EVERYTHING THAT THEY HAD
10 AND THEY---

11 THE COURT: NOW, MY QUESTION IS VERY SPECIFIC.

12 A YES SIR.

13 THE COURT: DID YOU ACTUALLY KNOW ABOUT THE NOTES
14 WHEN YOU MADE THE DECISION TO CALL THIS WITNESS TO TESTIFY?

15 A YES SIR, WE HAD TO, BECAUSE---

16 THE COURT: ALL RIGHT. I JUST WANT TO KNOW, YES OR NO.

17 A YES SIR.

18 THE COURT: AND THEN, SO YOU ACTUALLY HAD READ THE
19 NOTES?

20 A YES SIR.

21 THE COURT: AND THEN, IN MAKING THE DECISION TO CALL HER
22 TO TESTIFY DID YOU BALANCE WHAT YOU THOUGHT WOULD BE THE
23 BENEFIT FROM CALLING HER AGAINST THE OBVIOUS HARM THAT
24 WOULD COME FROM THE CONTENT OF THOSE NOTES COMING OUT?

25 A YES SIR, WE HAD TO DO THAT.

1 THE COURT: HOW FAR IN ADVANCE OF TRIAL DID YOU FIND OUT
2 ABOUT THESE NOTES?

3 A JUDGE, I CAN'T TELL YOU.

4 THE COURT: WELL, GIVE ME YOUR BEST ESTIMATE.

5 A MAYBE-- I WAS NOT DEALING WITH MS. CASCIO. JIM WAS
6 DEALING WITH HER. AND I DON'T EVEN HAVE-- IT WOULD HAVE ONLY
7 BEEN A WEEK OR SO AT THE MOST, PROBABLY. IT MIGHT HAVE BEEN
8 LONGER THAN THAT. BUT I CAN'T TELL YOU. I CAN'T EVEN-- I CAN'T
9 EVEN GIVE YOU A GOOD GUESS.

10 THE COURT: BUT YOU THINK IT WAS LESS, AROUND A WEEK?

11 A MAYBE A WEEK. THAT'S JUST A GUESS. AGAIN, I DO NOT
12 REMEMBER.

13 THE COURT: CAN I SEE THAT EXHIBIT, PLEASE?

14 MR. BROWN: YOUR HONOR, IF I MAY. AS TO PETITIONER'S
15 EXHIBIT NUMBER 5, I HAVE A COVER LETTER, THIS IS DATED MARCH 1,
16 1999. I HAVE A COVER LETTER SOMEWHERE THAT IS ADDRESSED TO
17 MR. HANCOCK WHERE THE PRELIMINARY REPORT AND NOTES WERE
18 MAILED MARCH 1. IF I CAN BEG THE COURT'S INDULGENCE JUST ONE
19 SECOND.

20 THE COURT: MARCH 1, 1999?

21 MR. BROWN: YES SIR. HERE IT IS.

22 THE COURT: AND THE TRIAL IS?

23 MR. BROWN: STARTED MARCH 15, YOUR HONOR. FOR THE
24 RECORD, I WOULD MOVE TO ADMIT THIS LETTER. IT'S THE COVER
25 LETTER THAT CAME WITH THE REPORT.

1 THE COURT: IS THERE ANY EVIDENCE THAT WE KNOW OF RIGHT
2 NOW AS TO WHEN THE NOTES WERE MADE, WHEN THE INTERVIEW
3 BETWEEN DOCTOR CASCIO AND THE DEFENDANT OCCURRED?

4 MR. BROWN: YES SIR. AND, BEGGING THE COURT'S
5 INDULGENCE, I CAN GIVE YOU THOSE DATES.

6 THE COURT: MADAM CLERK, WILL YOU GIVE THAT TO THE
7 COURT REPORTER OR WHOEVER IS KEEPING TRACK OF THE EXHIBITS.

8 (WHEREUPON LETTER DATED MARCH 1, 1999, WAS PASSED TO
9 THE COURT REPORTER AND MARKED AS APPLICANT'S EXHIBIT
10 NUMBER SIX.)

11 (PAUSE)

12 MR. BROWN: YOUR HONOR, AS IT IS RIGHT NOW, IT'S GOING TO
13 TAKE ME A COUPLE OF MINUTES TO FIND THEM. THERE WERE THREE
14 DATES, THREE OR FOUR TIMES SHE MAILED THEM IN '98.

15 THE COURT: ALL RIGHT. THOSE FACTS ARE GOING TO NEED TO
16 BE PROVEN BEFORE THE END OF THE TRIAL.

17 GO AHEAD. YOU CAN CALL YOUR NEXT WITNESS. COME ON
18 DOWN, SIR. THANK YOU. UNLESS EITHER OF YOU WISHES TO RESPOND
19 BY FOLLOW-UP TO MY QUESTIONS.

20 MR. SALTER: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

21 MR. BROWN: I JUST WANT TO MAKE THE POINT THAT THE
22 INFORMATION I HAVE IS IT WAS MAILED MARCH 1, 1999.

23 THE COURT: THANK YOU.

24 MR. SALTER: WE WOULD ASK THAT MR. HANCOCK BE EXCUSED.

25 MR. BROWN: WITHOUT OBJECTION.

1 THE COURT: HE'S EXCUSED.

2 MR. BROWN: YOUR HONOR, MAY WE APPROACH ONE SECOND?

3 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

4 THE COURT: I UNDERSTAND THAT THE STATE IS GOING TO CALL

5 A WITNESS OUT OF ORDER WITH THE CONSENT OF THE APPLICANT.

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

7 MR. SALTER: YES SIR, YOUR HONOR. THE STATE WOULD CALL

8 SOLICITOR POPE.

9 THOMAS E. POPE, DULY SWORN,

10 TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. SALTER:

12 Q MR. POPE, WOULD YOU STATE YOUR FULL NAME FOR THE
13 RECORD?

14 A THOMAS E. POPE, P-O-P-E.

15 Q WHERE AND HOW ARE YOU CURRENTLY EMPLOYED?

16 A I'M EMPLOYED AT THOMAS E. POPE AND ASSOCIATES IN ROCK
17 HILL, ACROSS THE STREET.

18 Q HOW LONG HAVE YOU BEEN IN PRIVATE PRACTICE?

19 A A MONTH AND A HALF, TWO MONTHS.

20 Q PRIOR TO THAT TIME YOU WERE THE SOLICITOR HERE?

21 A I HAVE, SIR. I'VE RETIRED AS THE SOLICITOR OF THE SIXTEENTH
22 CIRCUIT.

23 Q HOW LONG WERE YOU SOLICITOR?

24 A I GOT ELECTED IN '92; APPROXIMATELY FOURTEEN YEARS, I
25 BELIEVE.

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 Q AS PART OF YOUR DUTIES DID YOU HAVE OCCASION TO
2 PROSECUTE MR. JAMES ROBERTSON FOR MURDER OF HIS PARENTS?

3 A YES SIR.

4 Q DO YOU RECALL WHETHER OR NOT THE PROSECUTION ALSO
5 INVESTIGATED MR. ROBERTSON'S BROTHER, CHIP, AS A POSSIBLE
6 DEFENDANT?

7 A I KNOW AT THE BEGINNING, AND MR. HANCOCK HAD ELUDED TO
8 IT, THE POSSIBILITY OF HIM BEING INVOLVED. IT WAS PARTICULARLY
9 INTERESTING. AS I RECALL, THERE WERE PHONE CALLS. I THINK MR.
10 ROBERTSON HAS TESTIFIED TO THIS: PHONE CALLS AROUND TWO
11 O'CLOCK IN THE MORNING AND THEN A SHORT PHONE CALL RIGHT
12 PRIOR TO IT.

13 THERE WAS DIFFERENT CIRCUMSTANCES THAT POINTED IN
14 THAT DIRECTION, BUT ULTIMATELY NOTHING THAT WE COULD MAKE
15 A CASE ON, OR LAW ENFORCEMENT COULD MAKE A CASE ON.

16 Q DO YOU RECALL WHETHER OR NOT, AS PART OF YOUR DUTIES,
17 EITHER YOU OR-- DID YOU HAVE ANYONE ASSISTING YOU?

18 A WELL, WE HAD A LARGE STAFF IN THE OFFICE ASSISTING, DOING
19 VARIOUS DUTIES. AS FAR AS SECOND-SEATING THE CASE, MR.
20 BRACKETT, WHO IS THE CURRENT SOLICITOR, WAS ASSISTING ME IN
21 THAT PARTICULAR CASE. AND THEN IN ADDITION TO OUR
22 INVESTIGATIVE STAFF, IN PARTICULAR COMES TO MIND, MS. MERRY
23 COLLINS, WHO KIND OF WAS THE GATE KEEPER FOR OUR DISCOVERY
24 ISSUES.

1 Q DO YOU RECALL WHETHER OR NOT EITHER YOU OR MR.
2 BRACKETT ENTERED INTO ANY PLEA NEGOTIATIONS IN CONNECTION
3 WITH THIS CASE?

4 A WE DID NOT. WE ASSESS EVERY CASE ON WHETHER OR NOT IT
5 WILL BE A PLEA OR WHETHER THERE WILL BE A PLEA OFFERED. AS
6 YOU ARE AWARE, THERE ARE NUMBER OF DIFFERENT FACTS THAT
7 COME INTO PLAY. THE NATURE OF THIS CASE WAS SUCH THAT IT
8 REALLY LENT ITSELF TO ONLY ONE END RESULT.

9 THE ISSUE THAT'S BEEN REFERRED TO, AS I RECALL, CAME UP
10 WITH MR. BRACKETT. FOR LACK OF A BETTER TERM, MR. HANCOCK'S
11 BACK HALL TALK, AND I THINK ACTUALLY IT OCCURRED SOMEWHERE
12 RIGHT BEHIND WHERE I'M SITTING NOW. SOMETHING TO THE EFFECT
13 THAT MR. BRACKETT SAID WHAT HE WAS DOING AND I THINK MR.
14 GILLEN WAS REPRESENTING CHIP. AND, YOU KNOW, AGAIN, WE HAD
15 SOME BELIEF THAT CHIP WAS INVOLVED, BUT NOTHING THAT WE
16 COULD PROVE. SUPPOSEDLY, MR. BRACKETT MADE SOME
17 STATEMENT, YOU KNOW, IF CHIP'LL PONY UP ALL THE MONEY THAT
18 THEY GOT AS PART OF THIS PLAYING OUT, THAT THERE WOULD BE
19 SOME TYPE OF PLEA OFFER.

20 OF COURSE, ULTIMATELY, THE BUCK STOPS WITH ME. I DIDN'T--
21 WE NEVER TENDERED ANY OFFERS. MR. BRACKETT AS MY AGENT DID
22 NOT. AND ULTIMATELY, IT REALLY, AS I RECALL BACK THEN KIND OF
23 PLAYED OUT IN THE MEDIA THAT THERE WAS SOME BIG DEAL AND AN
24 ETHICAL ISSUE ABOUT MR. BRACKETT, YOU KNOW, BROKERING JIM

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 AGAINST HIS BROTHER, OR WHATEVER. BUT, I MEAN, AS HAS BEEN
2 INDICATED EARLIER, THERE WAS REALLY NO SUBSTANCE TO IT.

3 Q DO YOU RECALL SPEAKING TO EITHER OF MR. ROBERTSON'S
4 ATTORNEYS ABOUT THE SUPPOSED DEAL?

5 A IF WE DISCUSSED IT, IT WOULD BE AFTER IT FLARED UP, YOU
6 KNOW. NO REAL-- NOW, OPERATING THE TWO PARTS, AS FAR AS ANY
7 REAL OFFERS, YOU KNOW, AS FAR AS ANY PLEA OFFERS, THERE WERE
8 NEVER ANY PLEA OFFERS. BUT AS FAR AS DISCUSSING HOW IT
9 PLAYED OUT IN THE PAPER, OR YOU KNOW-- I THINK IT WAS MR.
10 McDOW AND MR. GILLEN AND IT PLAYED OUT IN THE PAPER, I RECALL,
11 YOU KNOW, MAKING GENERAL TALK IN THE HALL, LIKE DID YOU SEE
12 THE PAPER TODAY, AND YOU KNOW THERE'S NOT--

13 IT WAS ABUNDANTLY CLEAR AND MR. BOYD AND MR. HANCOCK
14 KNEW THAT WE NEVER TENDERED AN OFFER IN THIS CASE.

15 Q AND YOU INDICATED A FEW MINUTES AGO THAT THE BUCK
16 STOPPED WITH YOU, SO TO SPEAK.

17 A THAT'S WHY MY HAIR'S TURNING GRAY, YES.

18 Q AND YOU WOULD NOT HAVE ALLOWED ANY PLEA OFFER IN THIS
19 CASE?

20 A NO SIR. AND AGAIN, I UNDERSTAND MY RESPONSIBILITIES AND,
21 YOU KNOW, MR. BRACKETT BEING MY AGENT. BUT THIS JUST WASN'T
22 THE CASE. ANY PLEA OFFERS WE DO IN ANY OF THESE CASES, YOU
23 KNOW, NEVER COME FROM THE HIP. YOU KNOW, WE ALWAYS WORK
24 IT OUT. WE SIT DOWN, WE TALK IT AMONGST OURSELVES. YOU

1 KNOW, WE WEREN'T EVEN CLOSE IN THIS PARTICULAR SITUATION TO
2 ANY TYPE OF PLEA OFFER.

3 Q YOU WERE NEVER APPROACHED BY DEFENSE COUNSEL
4 CONCERNING A PLEA OF GUILTY BUT MENTALLY ILL?

5 A NO SIR. TO MY RECOLLECTION, WE WERE NOT. AND AS I
6 RECALL, YOU KNOW, THE WHOLE ISSUE, AND IT'S KIND OF
7 CONVENTIONAL DEATH PENALTY WISDOM THAT THE PROBLEM WITH
8 ENTERING A PLEA FOR MR. ROBERTSON IS THAT SUDDENLY THEN
9 YOU'RE MAKING THEIR APPEAL TO THE ONE JUDGE AS OPPOSED TO
10 THE TWELVE JURORS.

11 AND SO, AS I RECALL, THEY INTERJECTED MENTAL HEALTH
12 ISSUES THROUGHOUT THE CASE. BUT IT WAS NEVER AN ISSUE OF
13 THEM WANTING TO PLEAD GUILTY BECAUSE THEY WERE RELYING ON
14 PART OF THEIR OVERALL STRATEGY. AGAIN, I WASN'T PRIVY TO THEIR
15 STRATEGY, BUT JUST BASED ON MY EXPERIENCE, FROM THE OUTSIDE
16 LOOKING IN.

17 Q WOULD YOU AS THE SOLICITOR HAVE ENTERTAINED A PLEA OF
18 GUILTY BUT MENTALLY ILL CHARGE?

19 A I DIDN'T. IT WOULD HAVE BEEN DIFFICULT IN THIS CASE
20 BECAUSE THE EVIDENCE DID NOT SEEM TO SUPPORT THE MENTAL
21 EVALUATIONS. IT DID NOT SEEM TO SUPPORT THAT-- I MEAN,
22 CLEARLY, IT APPEARED THAT HE DID HAVE MANIC DEPRESSION, BUT I
23 DON'T THINK HE MET THE STATUTE.

24 Q YOU'VE BEEN PRESENT THROUGHOUT THE TESTIMONY THUS
25 FAR?

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 A YES SIR.

2 Q AND ONE OF THE ISSUES CONCERNS THE DISCLOSURE BY THE
3 DEFENSE OF MS. CASCIO'S NOTES.

4 A YES SIR.

5 Q WOULD YOU AGREE THAT ONE OF THE MOST HIGHLY
6 CONTESTED ISSUES AT THE TIME OF TRIAL, OR AT PRE-TRIAL, WAS THE
7 STATE'S DESIRE TO GET AN INDEPENDENT EVALUATION?

8 A YES SIR. YOU KNOW, WE PARTICULARLY HERE IN MY OFFICE
9 HAVE ALWAYS TAKEN THE TACTIC OF-- SOMETIMES IT WAS AN
10 UPHILL BATTLE. JUDGE COLE HAD HAD SOME CASES OVER IN
11 SPARTANBURG, I THINK. I THINK THE NAME MIGHT HAVE BEEN
12 PATTERSON OR SOMETHING. BUT THE WHOLE ISSUE OF WHEN THE
13 STATE'S ENTITLED FOR AN EVALUATION, AND YOU KNOW, THE
14 FUNDAMENTAL FAIRNESS OF IT.

15 THEY'RE GONNA PUT IN MENTAL HEALTH ISSUES AND WE DON'T
16 GET TO HAVE AN OPPORTUNITY TO ADDRESS THOSE ISSUES. SO, WE
17 HAD ALWAYS MADE THAT FIGHT AND DID SO IN THIS CASE. IN
18 CONJUNCTION WITH THAT, OF COURSE, IF WE'RE GONNA BE STUCK
19 WITH EITHER HAVING OR NOT HAVING, THEN WE AT LEAST WANT TO
20 TRY TO GET BEHIND THE UNDERLYING DATA. BECAUSE OTHERWISE,
21 WHAT HAPPENS, YOU KNOW, EXPERTS COME UP; THEY TALK ABOUT
22 ALL THESE THINGS THEY'VE CONSIDERED, BUT WE NEVER GET TO
23 REALLY HAVE AN EFFECTIVE CROSS OF THEM.

24 Q NOW, ULTIMATELY, THE TRIAL JUDGE ALLOWED THE STATE TO
25 HAVE A FULL AND INDEPENDENT EVALUATION. CORRECT?

1 A I RECALL THAT FROM DOCTOR McKEE'S INVOLVEMENT. I DON'T
2 RECALL THE SPECIFIC MECHANICS. YOU KNOW, I HAVEN'T REVIEWED,
3 LIKE, THE ORDERS AND STUFF. BUT I DO REMEMBER DOCTOR McKEE
4 BEING INVOLVED. AND I ASSUME IT WAS JEFF McKEE. PERHAPS THEY
5 USED SOMEBODY ELSE FROM THE STATE HOSPITAL. BUT, AGAIN, I
6 DON'T RECALL.

7 Q DO YOU RECALL WHETHER OR NOT THERE WAS A PROBLEM,
8 FROM THE STATE'S PERSPECTIVE, WHETHER OR NOT THERE WAS A
9 PROBLEM IN OBTAINING RECIPROCAL RULE FIVE DISCLOSURES?

10 A I KNOW WE HAVE ALWAYS BEEN AGGRESSIVE IN TRYING TO
11 MAKE SURE THE DEFENSE HAS BEEN FORTHCOMING. BECAUSE,
12 NORMALLY WHAT HAPPENS IN THESE ISSUES IS, OFTENTIMES WHEN
13 YOU HAVE THE EXPERTS: (A) YOU KNOW, IT'S A BURDEN FOR US TO
14 TRY TO DETERMINE WHO THE EXPERTS ARE; (B) TO GET ANY
15 MEANINGFUL REPORT; AND THEN (C) OBVIOUSLY, THE UNDERLYING
16 DATA.

17 AND SO, I RECALL THAT BATTLE, YOU KNOW, AGAIN, NO
18 DIFFERENT THAN THE STANDARD WE'VE HAD FROM THE DEATH
19 PENALTY RESOURCE CENTER, KIND OF THEIR TACK.

20 BUT I REMEMBER PARTICULARLY IN REGARDS TO MS. CASCIO'S
21 NOTES AND SOME OF THE OTHER INFORMATION THAT IT WAS KIND OF
22 AN ONGOING BATTLE TO GET IT. AND YOU KNOW, IN REVIEWING
23 SOME OF THE TRANSCRIPT IT APPEARED THAT ALMOST EACH DAY OR
24 EACH BREAK WHEN THE JUDGE WOULD BE ABOUT TO TAKE A BREAK,
25 WE WOULD KIND OF UPDATE HIM ON HERE'S WHERE WE'RE AT, HERE'S

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 WHERE THE NOTES ARE. AND I THINK ULTIMATELY WE RECEIVED
2 CASCIO'S, IN PARTICULAR, INFORMATION, IT MUST HAVE BEEN THE
3 NIGHT BEFORE SHE TESTIFIED. AND I THINK THAT'S REFLECTED IN THE
4 RECORD.

5 Q WHAT IS YOUR RECOLLECTION IN TERMS OF HOW, WHETHER OR
6 NOT THE DEFENSE DISCLOSED THESE NOTES UNDER COURT ORDER?

7 A AS I RECALL IT, MR. BOYD HAD OBJECTED. AND, AGAIN, I DON'T
8 REMEMBER THE ORDER OF IT PLAYING OUT. BUT AT SOME POINT, AND
9 I ASSUME THE TRANSCRIPT WOULD BEAR THIS OUT, WE WOULD BRING
10 IT TO JUDGE HAYES' ATTENTION THAT, YOU KNOW, TIME'S DRAWING
11 NIGH, IT'S GETTING CLOSER, YOU KNOW. BECAUSE THE JUDGE WAS
12 TRYING TO MOVE THE CASE FORWARD.

13 AND AS I RECALL, THE DEFENSE CONTINUED TO FIGHT IT UNTIL
14 IT WAS CLEAR THAT JUDGE HAYES WAS GOING TO ORDER IT.
15 BECAUSE OUR POINT FINALLY GOT, YOUR HONOR, I KNOW
16 TECHNICALLY THEY MAY BE ABLE TO HAND US THIS WHOLE STACK
17 OF NOTES RIGHT AFTER SHE TESTIFIES; THE PROBLEM BEING, YOUR
18 HONOR, THAT WE'RE GOING TO TAKE, REQUEST A CONTINUANCE TO
19 HAVE THE OPPORTUNITY TO REVIEW IT.

20 SO, I THINK BY THE END OF THE DAY, RIGHT BEFORE THAT, AT
21 SOME POINT JUDGE HAYES-- AND AGAIN, IT MIGHT BE FROM ONE OF
22 THE BREAKS. JUDGE HAYES HAD INDICATED THAT HE WAS GOING TO
23 ORDER IT. AND SO THERE WAS A SERIES OF CONVERSATIONS OR
24 DISCUSSIONS BEFORE THE COURT ON SHE NEEDS TO GET THE NOTES

1 HERE; SOME ARE IN COLUMBIA AND SOME ARE HERE. AND
2 ULTIMATELY THEY WERE BROUGHT.

3 SO, THEY FOUGHT IT INITIALLY, EVEN THOUGH, ULTIMATELY,
4 OUT OF RESPECT FOR THE COURT, ONCE THE COURT HAD INDICATED
5 THEY WERE COMING, THEN AT THAT POINT THEY ETHICALLY
6 COMPLIED. YOU KNOW, THEY TRIED TO BRING IT FORWARD.

7 Q WHAT IS YOUR UNDERSTANDING OF RULE 705 IN THE SOUTH
8 CAROLINA RULES OF EVIDENCE?

9 A I THINK THAT, AGAIN, WE HAVE AN OPPORTUNITY TO CROSS AS
10 FAR AS THE UNDERLYING DATA AND TO RECEIVE WHAT IT'S BASED
11 ON. AND THAT'S-- WE'VE WORKED HARD HERE IN THE SIXTEENTH
12 CIRCUIT FOR THE VERY REASON THAT OTHERWISE, AS ALL OF US
13 KNOW, ATTORNEYS IN OUR EXPERIENCE, AN EXPERT GETS HERE AND
14 TALKS ABOUT ALL THESE THINGS, PUTS ALL THESE THINGS BEFORE
15 THE JURY. I CAN ASK THEM QUESTIONS ALL DAY LONG, BUT IF IT'S
16 SOMETHING THEY'VE LOOKED AT OR READ ELSEWHERE OR--

17 AND I'VE HONED ON THIS THROUGHOUT THE TRIAL WITH ALL
18 THE WITNESSES. OFTENTIMES, WHAT THEY COME AND SAY, JIMMY
19 TOLD THEM, JIMMY TOLD THEM. NOT JUST MS. CASCIO, BUT THE
20 OTHERS. IT WAS ALWAYS JIMMY TOLD THEM.

21 AND SO, WHAT I WAS TRYING TO DO IN CROSS IN GETTING
22 THESE UNDERLYING RECORDS, IF YOU CAN DESTROY, YOU KNOW, THE
23 FOUNDATION OF THEIR PREMISE OR THEIR THEORY, THEN YOU CAN
24 DISCREDIT THAT WITNESS. SO, THAT'S WHAT I DID.

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 Q WITH RESPECT TO THE DEFENSE'S CASE IN MITIGATION, MS.

2 CASCIO WASN'T THE ONLY WITNESS PRESENTED, WAS SHE?

3 A NO. AGAIN, WHEN YOU LOOK AT THE CASE OVERALL, THEY
4 TOOK REALLY-- YOU KNOW, IF YOU WERE ANALYZING THE CASE
5 BEFORE THE ATTORNEYS EVER GOT INVOLVED AND LOOKED AT IT,
6 THEY TOOK THE ONLY REAL LEGITIMATE ROUTE THEY HAD TO TRY TO
7 SAVE THIS MAN'S LIFE.

8 AND THAT WAS KIND OF THE-- THE RITALIN DEFENSE WAS A
9 LITTLE BIT UNIQUE, YOU KNOW. AND I GUESS IT WAS LIKE THE
10 ZOLOFT APPROACH A LITTLE BIT. IT WAS A LITTLE BIT BEFORE IT'S
11 TIME, PERHAPS.

12 THE FAMILY SITUATION, YOU KNOW, I THINK TRADITIONALLY I
13 THINK EVERY DEATH PENALTY CASE I'VE BEEN INVOLVED IN, I'VE
14 SEEN SOME PSYCHO-SOCIAL DEVELOPMENTS SIDE, YOU KNOW, KIND
15 OF THE CASE WORKER COMPONENT.

16 AND MUCH LIKE IN THIS SITUATION, YOU KNOW, THEY HAD A
17 NEUROLOGIST; THEY HAD DOCTOR EVANS, DOCTOR PINCUS. THEY
18 HAD DOCTOR EVANS WHO DID THE QEEG. THEY HAD THE
19 PHARMACOLOGIST THAT TESTIFIED FOR A NUMBER OF HOURS ON
20 KIND OF THE RITALIN PSYCHOSIS.

21 AND THEN, HER JOB, AS I PERCEIVE IT, MS. CASCIO'S, WAS TO
22 KIND OF SEW ALL THESE PIECES TOGETHER. YOU KNOW, WE'VE
23 TALKED ABOUT HER BEING A GOOD OR BAD WITNESS. SHE DID A
24 GOOD JOB - AND I THINK THE RECORD WILL BEAR THIS OUT - OF
25 PULLING IT ALL TOGETHER.

1 AS I RECALL, BOTH SHE AND I BELIEVE THE PHARMACOLOGIST
2 REVIEWED EVERYTHING, YOU KNOW, ALL THE FAMILY RECORDS.
3 BECAUSE I REMEMBER THEY TALKED ABOUT CHIP; THEY TALKED
4 ABOUT THE DAD. AND YOU KNOW, THE PSYCHO-SOCIAL ISSUES AND
5 HOW THAT, YOU KNOW, THESE THINGS PLAYED IN.

6 AND HER JOB INITIALLY ON DIRECT WITH MR. BOYD WAS TO
7 BRING ALL OF THE PIECES TOGETHER FOR THE JURY. IN OTHER
8 WORDS, TO TAKE ALL KIND OF, I WON'T SAY SCATTERED
9 INFORMATION, BUT ALL THE DIFFERENT COMPONENTS THE DEFENSE
10 HAD GIVEN, TO THEN TRY TO SEW IT TOGETHER FOR THE JURY TO,
11 YOU KNOW, GIVE A CLEAR PICTURE OF MAYBE A REASON THAT JIM
12 DID THIS.

13 Q IS THAT WHY IN YOUR OBSERVATION IT'S IMPORTANT TO
14 UNDERMINE THE CREDIBILITY BEFORE THE JURY?

15 A YES SIR. YOU KNOW, I HAVE ETHICAL OBLIGATIONS, TOO. IF IT
16 WAS ALL VALID AND TRUTHFUL, THEN, YOU KNOW, I'VE GOT TO BE
17 CAREFUL THE WAY I CROSS THEM. BUT IT WAS DIFFICULT. I CAN
18 REMEMBER LOOKING AT THE RECORD. I SAID, YOUR HONOR, I OUGHT
19 TO BE ABOUT AN HOUR AND A HALF. AND I THINK, IF I RECALL, IT
20 WENT ON FOR HOURS.

21 AT SOME POINT I WENT THROUGH ALL THE UNDERLYING
22 MATTERS SHE HAD ADDRESSED BECAUSE SHE MADE SOME POINTS.
23 THE PROBLEM IS WHEN SHE GOT THROUGH SHE DID SAY THERE WERE
24 INDICATIONS OF SEXUAL ISSUES.

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 NOW, WHEN MR. HANCOCK WAS TALKING, I ASSUMED HE DIDN'T
2 HAVE ANY PHYSICAL EVIDENCE OF SEXUAL ISSUES. BUT SHE MADE
3 THE SUPPOSITION THAT THERE WAS PHYSICAL ABUSE; THAT THERE
4 WAS SEXUAL ABUSE, YOU KNOW, PAINTED THIS REALLY CLOUDY, OR,
5 DISTURBING PICTURE OF THAT FAMILY. AND SO, WHEN I CROSSED,
6 BASICALLY I HAD TO UNFOLD THE PIECES, SO TO SPEAK, AND TO GET
7 BACK TO, WERE YOU BASING IT ON THIS, WERE YOU BASING ON THAT.

8 SO, WE DID THAT ON THE FIRST PART. THEN THE SECOND PART
9 IS WHEN I SAID I WANT TO SHIFT GEARS AND I WANT TO LOOK AT
10 YOUR NOTES.

11 Q MUCH OF YOUR CROSS EXAMINATION CONCERNED THE NOTES
12 AND RELAYED MORE INFORMATION?

13 A YES SIR. AND I THINK AT THAT POINT IT WAS REALLY, YOU
14 KNOW, THAT WAS THE GUILT ISSUE. OF COURSE, HE WAS GUILTY AT
15 THAT POINT BECAUSE WE WERE IN THE SECOND PHASE OF THE TRIAL.
16 BUT MOST OF THE POINTS ABOUT THE NOTES WERE JUST THERE. YOU
17 KNOW, AT THAT POINT, TRUTHFULLY, I THINK THE CROSS DAMAGE
18 HAD BEEN DONE BECAUSE I'D UNDERMINED IT.

19 YOU KNOW, YOU REALLY GOT A HOUSE OF CARDS, I THINK I
20 SAID SOMETHING TO THAT EFFECT IN CLOSING.

21 YOU KNOW, THE ISSUES WITH WHAT JIM SAID JUST REALLY DID
22 NO MORE THAN CONFIRM WHAT THE PHYSICAL EVIDENCE SAID. YOU
23 KNOW, IF ANYTHING, IT SHORED THAT UP.

24 Q WAS THE PROSECUTION READY TO CROSS EXAMINE MR.
25 ROBERTSON, SHOULD HE HAVE TESTIFIED?

1 A YES SIR. I PERSONALLY WOULD HAVE CONDUCTED THAT CROSS
2 EXAMINATION.

3 Q AND YOU WERE PREPARED TO DO THAT?

4 A YOU HOPE. AS MUCH AS AN ATTORNEY CAN BE PREPARED. I
5 FELT LIKE I HAD A LOT OF MATERIAL TO WORK WITH. I FELT LIKE I
6 HAD A PRETTY GOOD GRASP ON MR. ROBERTSON. AND I FELT LIKE I
7 EXPECTED--

8 AGAIN, YOU KNOW, I DIDN'T TALK TO HIM EVERYDAY LIKE HIS
9 ATTORNEYS DID, BUT I FELT LIKE I KNEW WHAT I WOULD SEE FROM
10 THE STAND. AND I FELT I HAD THE ABILITY TO MEET THAT.

11 Q NOW, NEITHER THE STATE NOR THE DEFENSE PRESENTED
12 DOCTOR McMEEKIN?

13 A RIGHT.

14 Q DO YOU RECALL WHETHER OR NOT THE STATE HAD
15 INTERVIEWED HIM?

16 A I CAN'T REMEMBER IF LAW ENFORCEMENT DID OR NOT. I'M
17 GOING TO CHOOSE MY WORDS CAREFULLY HERE. I WOULD HAVE HAD
18 SOME CONCERNS WITH US PUTTING UP DOCTOR McMEEKIN FROM A
19 CREDIBILITY STANDPOINT. N I UNDERSTAND WHAT MR. BROWN WAS
20 SAYING EARLIER.

21 BUT THE ISSUE IS THE DEFENSE WAS ABLE TO GET THE GOOD OF
22 WHAT McMEEKIN'S INFORMATION BROUGHT WITHOUT GIVING ME A
23 CHANCE TO OBJECT TO---

24 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO THAT. HE
25 SAID HE DIDN'T INTERVIEW HIM AND DIDN'T KNOW IF LAW

THOMAS POPE - DIRECT EXAMINATION BY MR. SALTER

1 ENFORCEMENT HAD. HOW CAN HE KNOW WHAT GOOD MR.
2 McMEEKIN HAD? THERE'S NO BASIS FOR HIS OPINION, YOUR HONOR.
3 IF HE DIDN'T INTERVIEW HIS NOTES, DIDN'T INTERVIEW DOCTOR
4 McMEEKIN, AND DIDN'T REVIEW HIS NOTES, HOW CAN HE KNOW WHAT
5 HE WOULD HAVE SAID?

6 MR. SALTER: I'LL SEE IF I CAN'T ESTABLISH A BETTER
7 FOUNDATION.

8 THE COURT: ALL RIGHT.

9 Q WHETHER OR NOT HE WAS ACTUALLY INTERVIEWED, HAD THE
10 INVESTIGATION COVERED THE NOTES THAT WERE AVAILABLE FROM
11 HIM?

12 A RIGHT. AND I WAS AWARE-- AS I RECALL - AND AGAIN, THE
13 RECORD SHOULD BEAR THIS OUT - BUT I THINK IT CAME-- THE
14 McMEEKIN CONNECTION CAME FROM SKIP MEYERS, AS I RECALL. I
15 DID NOT INTERVIEW DOCTOR McMEEKIN, BUT I KNEW, ARGUABLY,
16 THE PART HE PLAYED IN THE FAMILY TREATMENT OR THE THINGS OF
17 THAT NATURE.

18 I ALSO KNEW THAT IF THEY BROUGHT HIM IN THAT I WOULD
19 HAVE SOME THINGS TO CROSS EXAMINE HIM ON. AND, AGAIN, LIKE
20 YOU HAD ALLUDED TO EARLIER, SOME DISCIPLINARY THINGS, AND
21 THINGS OF THAT NATURE.

22 SO, THAT WAS MY POINT IN THAT REGARD, THAT I FELT LIKE
23 (A) I WOULDN'T PUT HIM PUT HIM BECAUSE, (B) I WOULD BE IN A
24 BETTER POSITION, REALLY, TO CROSS HIM IF NEED BE.

1 BUT AGAIN, AS FAR AS THE INVESTIGATION, TO MY KNOWLEDGE
2 I DID NOT SPEAK TO DOCTOR McMEEKIN.

3 Q WOULD YOU HAVE SUBPOENAED, OR WOULD YOU HAVE SEEN
4 ANY NECESSITY TO DO SO?

5 A WELL, YOU KNOW, AS A PROSECUTOR YOU CAN NEVER TALK TO
6 TOO MANY PEOPLE IF THEY'RE WILLING TO TALK TO YOU. I THINK, IN
7 THE OVERALL ASSESSMENT IN THE CASE, WHERE WE WERE AT ON
8 THAT CASE, I DID NOT REALLY HAVE A NEED TO.

9 MR. SALTER: I DON'T BELIEVE I HAVE ANYTHING FURTHER AT
10 THIS POINT, YOUR HONOR.

11 MR. BROWN: IF IT PLEASE THE COURT.

12 **CROSS EXAMINATION BY MR. BROWN:**

13 Q MR. POPE, YOU WILL AGREE WITH ME THAT GUILTY BUT
14 MENTALLY ILL DOESN'T MEAN THE JUDGE MAKES THE DECISION; YOU
15 STILL EMPANEL A JURY AS TO THE SENTENCING PHASE. ISN'T THAT
16 CORRECT?

17 A I DON'T BELIEVE SO. NOW, I MAY BE INCORRECT ON THAT. BUT I
18 THINK IF YOU PLEAD, ONCE YOU ENTER A GUILTY PLEA IN A DEATH
19 PENALTY CASE, THE JUDGE DOES THE SENTENCING, IF THERE'S A PLEA.

20 Q ARE YOU FAMILIAR WITH THE CASE, STATE V. HORNSBY, WHERE
21 A JURY WAS EMPANELLED AFTER HE PLEAD GUILTY BUT MENTALLY
22 ILL, THE JUDGE FOUND GUILTY BUT MENTALLY ILL AND THEY WENT
23 TO THE SENTENCING PHASE WHERE A JURY WAS EMPANELLED?

24 A I'M NOT AWARE OF THAT CASE. I'M NOT SAYING IT DOESN'T
25 EXIST. I'M NOT AWARE OF IT.

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 Q ASSUMING, ARGUENDO, I'M CORRECT---

2 A SURE.

3 Q --YOU COULD STILL HAVE THE JURY?

4 A WELL, IF YOU'RE CORRECT, THEN YOU'RE CORRECT.

5 Q AND THEN HE COULD HAVE HAD A TRIAL ON THE GUILTY BUT

6 MENTALLY ILL PROPOSITION ON A PLEA BARGAIN, COULD HE NOT

7 HAVE?

8 A ASSUMING, ARGUENDO, IF YOU SAY THERE'S A CASE THAT SAYS

9 THAT, THEN THAT'S THE CASE.

10 Q AND HE DOESN'T HAVE TO HAVE YOUR CONSENT TO DO THAT,

11 DOES HE? HE CAN JUST COME UP HERE AND PLEAD GUILTY BUT

12 MENTALLY ILL, AND LET A JUDGE DECIDE? IF YOU'VE PROVED

13 BEYOND A REASONABLE DOUBT HE COMMITTED THE CRIME, LET THE

14 JUDGE DECIDE, OR A JURY DECIDE, OR A JURY DECIDE WHAT THEY'VE

15 SHOWN BY THE PREPONDERANCE OF THE EVIDENCE, HE'S MENTALLY

16 ILL?

17 A I DON'T KNOW. OVER THE YEARS WE'VE STRUGGLED WITH CAN

18 YOU COME UP HERE AND PLEAD ANYTHING OTHER THAN STRAIGHT

19 UP. SO, THAT MAY BE MORE A QUESTION OF LAW. I THINK,

20 ARGUABLY, THE JUDGE CAN TAKE JUDICIAL NOTICE OF WHETHER THE

21 CORRECT STATE OF LAW.

22 Q THAT WAS NEVER PROFFERED TO YOU OR ANYTHING? RIGHT?

23 A WHAT IS THAT?

24 Q THAT OFFER OF---

1 A FROM THE DEFENSE, LET US PLEAD GUILTY BUT MENTALLY ILL,
2 OR ANY VARIATION?

3 Q RIGHT.

4 A TO MY RECOLLECTION, NO.

5 Q SO, THEY NEVER CAME TO YOU WITH THAT OFFER OR
6 SUGGESTED THAT OR ANYTHING, TO THE BEST OF YOUR MEMORY?

7 A TO THE BEST OF MY MEMORY, WE WERE ALWAYS GOING TO
8 TRIAL.

9 Q DO YOU AGREE WITH MR. HANCOCK IN YOUR ASSESSMENT OF
10 THE FACTS OF THIS CASE, THAT THIS WASN'T A CASE WHERE IN
11 DEFENDING IT, THERE WAS SO MUCH CONCERN WITH THE GUILT
12 PHASE AS THE SENTENCING PHASE?

13 A I THINK, OVERALL, THAT'S ACCURATE. YOU KNOW, I ALWAYS
14 HAVE CITIZENS THAT SAY, WELL, THEY CONFESSED; WHY ARE YOU
15 EVEN HAVING TO TRY IT. SO I NEVER WANT TO TAKE IT FOR GRANTED.
16 I MEAN, YOU KNOW, SOME JUROR COULD HAVE BOUGHT THE BROKEN
17 GLASS OR THE NOTE LEFT.

18 BUT AS A PRACTICAL MATTER, WE HAVE TO PROVE OUR CASE
19 BEYOND A REASONABLE DOUBT. BUT WE WERE PREPARED-- TO
20 FAIRLY ANSWER YOUR QUESTION, I FELT LIKE WE WERE PREPARED
21 FOR A PENALTY PHASE ULTIMATELY.

22 Q AND YOU WOULD AGREE WITH ME THE EVIDENCE OF HIS GUILT
23 WAS OVERWHELMING, FROM FORENSICS, DNA, SEROLOGY, ET CETERA,
24 ET AL, MEREDITH MOON?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A WELL, AFTER THE PROSECUTION GOT THROUGH PRESENTING IT,
2 IT WAS.

3 Q AND THE JURY WAS ONLY OUT A HOUR AND FIFTEEN MINUTES
4 IN THE GUILT PHASE. RIGHT?

5 A IF YOU SAY SO. I DON'T RECALL.

6 Q A VERY SHORT PERIOD OF TIME FOR A MURDER CASE?

7 A I'M NOT BEING EVASIVE. I JUST DON'T REMEMBER. BUT IF IT
8 WAS, THAT WOULDN'T SURPRISE ME.

9 Q NOW, YOU TESTIFIED THAT YOU THOUGHT MR. BOYD FOUGHT
10 THE INTERDICTION OF THOSE NOTES?

11 A INITIALLY, I THINK. YOU KNOW, I SAY MR. BOYD, THE DEFENSE.

12 Q RIGHT.

13 THE COURT: LET ME BACK YOU UP JUST A MINUTE. I WANT TO
14 SEE IF I CAN GET YOU TO CLARIFY YOUR POSITION ON THIS GUILTY
15 BUT MENTALLY ILL.

16 THE STATE VERSUS HORNSBY WAS A CASE IN WHICH THE
17 DEFENDANT PLEAD NOT GUILTY BY REASON OF INSANITY AND IT
18 WENT TO THE JURY IN THE GUILT PHASE.

19 MR. BROWN: CORRECT.

20 THE COURT: AND THE JURY FOUND HIM GUILTY BUT MENTALLY
21 ILL.

22 MR. BROWN: CORRECT.

23 THE COURT: SO, IT WASN'T A SITUATION WHERE HE PLEAD
24 GUILTY BUT MENTALLY ILL.

1 MR. BROWN: I STILL THINK FROM THAT STATUTE, YOUR HONOR,
2 ON THAT CASE LAW, YOU CAN STILL EMPANEL A JURY TO MAKE THE
3 DETERMINATION WHETHER HE'S GUILTY BUT MENTALLY ILL BECAUSE
4 THE BURDEN OF PROOF IS THE SAME ON THE STATE AND THE SAME ON
5 THE DEFENSE UNDER STATUTE.

6 THE COURT: OKAY. BUT DO YOU TAKE THE POSITION THAT THE
7 DEFENDANT HAD THE RIGHT OVER THE STATE'S OBJECTION TO PLEAD
8 GUILTY BUT MENTALLY ILL?

9 MR. BROWN: I DON'T KNOW, YOUR HONOR. I CALLED THE
10 CENTER FOR DEATH PENALTY RESOURCE. THEY SAID THAT'S AN
11 INTERESTING QUESTION. THEY KNEW OF NO CASE IN SOUTH
12 CAROLINA.

13 BUT THE STATUTE, I GUESS MY POINT BEING, YOUR HONOR, IT
14 DOESN'T FORBID IT AND IT MAKES REFERENCE TO CASES.

15 THE COURT: WELL, THE STATUTE REQUIRES A FACTUAL
16 FINDING.

17 MR. BROWN: CORRECT.

18 THE COURT: BEFORE THERE CAN BE A PLEA---

19 MR. BROWN: CORRECT.

20 THE COURT: --OR A CONVICTION OF GUILTY BUT MENTALLY
21 ILL.

22 MR. BROWN: IT TAKES A FACTUAL FINDING AS I UNDERSTAND
23 IT, YOUR HONOR.

24 THE COURT: WOULDN'T THE STATE HAVE A RIGHT TO A TRIAL
25 BY JURY ON THAT FACTUAL FINDING?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 MR. BROWN: YES SIR. BOTH SIDES WOULD, I WOULD SUBMIT,
2 YOUR HONOR.

3 THE COURT: SO, IF THAT'S TRUE, THE DEFENDANT WOULD NOT
4 HAVE THE RIGHT TO PLEAD GUILTY BUT MENTALLY ILL OVER THE
5 STATE'S OBJECTION.

6 MR. BROWN: HE COULD PLEAD TO IT, YOUR HONOR. HE COULD
7 REQUEST THAT THAT BE ONE OF THE FORMS OF THE VERDICT. I GUESS
8 MY POINT BECOMES---

9 THE COURT: I JUST WANT TO MAKE SURE I UNDERSTAND YOUR
10 POSITION.

11 MR. BROWN: YES SIR.

12 THE COURT: SURE, THE DEFENDANT CAN ASK FOR IT.

13 MR. BROWN: YES SIR.

14 THE COURT: BUT WHEN THE DEFENDANT, YOU KNOW,
15 TECHNICALLY, WE USUALLY SKIP OVER THIS STAGE, BUT
16 TECHNICALLY, YOU'RE GETTING READY TO START A TRIAL YOU WANT
17 TO KNOW HOW THE DEFENDANT PLEADS. AND IF THE DEFENDANT
18 PLEADS GUILTY THEN YOU GO ONE WAY. IF THE DEFENDANT PLEADS
19 NOT GUILTY, YOU GO INTO TRIAL.

20 MR. BROWN: WELL, YOUR---

21 THE COURT: IF THE DEFENDANT PLEADS GUILTY BUT-- IF THE
22 DEFENDANT ASKS FOR A VERDICT OR A JUDGMENT OF GUILTY BUT
23 MENTALLY ILL AND THE STATE OBJECTS TO IT, THEN THERE'S NO
24 GUILTY PLEA, THERE IS A TRIAL.

25 MR. BROWN: YOUR HONOR, I GUESS---

1 THE COURT: LET ME ASK--

2 MR. BROWN: I GUESS I'M NOT MAKING MYSELF CLEAR. MY OWN
3 POSITION IS THAT THE DEFENSE IN THIS CASE COULD HAVE BROUGHT
4 IN EVIDENCE IN THE GUILT PHASE.

5 THE COURT: WELL, THAT'S WHAT I'M ASKING YOU. ARE YOU
6 TELLING-- DO YOU TAKE THE POSITION THAT DEFENSE COUNSEL AT
7 TRIAL SHOULD HAVE ENTERED A PLEA OF GUILTY BUT MENTALLY
8 ILL---

9 MR. BROWN: IF THAT---

10 THE COURT: --OR DO YOU TAKE THE POSITION THAT THEY
11 SHOULD HAVE OFFERED EVIDENCE OF GUILTY BUT MENTALLY ILL
12 AND ASK THE JURY TO FIND HIM GUILTY BUT MENTALLY ILL?

13 MR. BROWN: EITHER ONE, YOUR HONOR, BECAUSE THEY--

14 THE COURT: ALL RIGHT, THEN. TAKING THAT FIRST ONE: YOUR
15 POSITION THAT THE DEFENDANT, THE DEFENSE SHOULD HAVE PLEAD
16 HIM GUILTY BUT MENTALLY ILL, DO YOU BELIEVE THAT THE DEFENSE
17 HAD THE RIGHT TO DO THAT OVER THE STATE'S OBJECTION?

18 MR. BROWN: YES SIR.

19 THE COURT: ALL RIGHT.

20 MR. BROWN: YES SIR, I DO. AND TO ANSWER THE SECOND
21 PRONG OF YOUR ARGUMENT, YOUR HONOR. IF, AS MR. HANCOCK
22 ADMITTED, AND I ASSUME MR. BOYD IS GOING TO TESTIFY, TOO, THE
23 GUILT PHASE WAS GONE, THIS BECAME A QUESTION OF MENTAL
24 ILLNESS, I SUBMIT THAT THE BETTER STRATEGY WOULD HAVE BEEN
25 IN THE GUILT PHASE TO START BUILDING THAT CASE TOWARD

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 MENTAL ILLNESS AND AT LEAST REQUEST A CHARGE OF IT WHEN YOU
2 GET THE JURY OF GUILTY BUT MENTALLY ILL, WHICH WOULD HAVE
3 SET THE TONE FOR THE SENTENCING PHASE.

4 IT ALL GOES BACK TO STRATEGY, YOUR HONOR. I KNOW
5 HINDSIGHT IS TWENTY/TWENTY. IF THAT WAS THEIR TO STRATEGY AT
6 THE BEGINNING, YOUR HONOR, I THINK THEY SHOULD HAVE
7 FOLLOWED THE WHOLE WAY THROUGH.

8 THE COURT: ALL RIGHT.

9 Q YOU'RE FAMILIAR WITH THE HEARING FROM FEBRUARY 19, 1998?

10 A SURE.

11 Q I'M GOING TO ASK YOU IF YOU CAN READ LINE 17 THROUGH, I
12 GUESS IT WOULD BE LINE 9, ON THE NEXT PAGE, CONCERNING THE
13 NOTES AND SO FORTH.

14 A DO YOU WANT ME TO READ IT TO MYSELF?

15 Q YES SIR.

16 A OKAY.

17 Q SEE IF IT WILL REFRESH YOUR MEMORY.

18 A (PAUSE TO READ TRANSCRIPT) I'VE READ THAT. DO YOU MIND
19 IF I LOOK BACK?

20 Q YES SIR. FOR YOUR INFORMATION, MR. BRACKETT FILED THAT
21 MOTION---

22 A RIGHT.

23 Q ---AT YOUR REQUEST AND ON YOUR BEHALF. JUDGE HAYES IS
24 TALKING ABOUT THE NOTES FROM THE EXPERTS.

25 A (PAUSE TO READ TRANSCRIPT) ALL RIGHT.

1 Q REALIZING THIS CASE WAS TEN YEARS AGO, ---

2 A SURE.

3 Q ---AND YOU'VE HAD CASES IN BETWEEN, IS THAT TRANSCRIPT
4 INDICATIVE THAT MR. BOYD DID NOT OBJECT TO THE EXCHANGE OF
5 NOTES?

6 A IT APPEARS THAT HE AGREED TO WHAT THE COURT TOLD HIM,
7 TO COMPLY WITH THE RULE OR WHATEVER.

8 Q DOES MR. BOYD OBJECT, OR DOES HE SAY, WE HAVE NO
9 OBJECTION TO THAT? HE DOESN'T OBJECT TO IT, DOES HE?

10 A AT THIS TIME IT APPEARS THAT HE DIDN'T. LET ME MAKE SURE
11 IM... THE DISCUSSIONS CONCERNING WHETHER THE WITNESSES WILL
12 BRING THEIR NOTES AND UNDERLYING DATA, JUDGE HAYES SAYS,
13 "IT'S NOT UNUSUAL TO HAVE THEM SAY WHEN THEY GET HERE THAT
14 THEY DIDN'T HAVE IT; I RELIED ON IT, BUT I DIDN'T BRING IT; I DIDN'T
15 THINK I'D NEED IT; ALL I'VE GOT IS MY SUMMARY."

16 AND JUDGE HAYES SAYS TO MR. BOYD: "THEY JUST WANT THE
17 EXPERTS TO BRING THEIR FILE." AND MR. BOYD SAYS, WE HAVE NO
18 OBJECTION TO THEM BRINGING THEIR FILE.

19 Q SO, HE DIDN'T OBJECT TO TURNING OVER NOTES. IS THAT
20 CORRECT?

21 A AT THAT STAGE IN THAT HEARING IT APPEARS THAT HE AGREED
22 WITH WHAT THE COURT WAS SAYING.

23 Q CAN YOU SHOW ME ANYWHERE IN THE TRANSCRIPT WHERE HE
24 OBJECTED?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A I HAVE NOT REVIEWED THE WHOLE TRANSCRIPT. I KNOW IT
2 WAS A HARD FOUGHT CASE.

3 Q I UNDERSTAND.

4 A IF MR. BOYD WOULD COME IN TOMORROW AND SAY I NEVER
5 OBJECTED TO IT, I WOULD NOT DISPUTE THAT.

6 Q OKAY. AND IF HE DIDN'T OBJECT TO IT, AS THINGS STAND NOW
7 WITH MS. CASCIO, THAT WOULD BE A MISTAKE, WOULD IT NOT?

8 A I THINK IF HE DIDN'T OBJECT TO IT, HE WAS JUST AGREEING TO
9 COMPLY WITH THE RULE OF EVIDENCE THAT REQUIRES THAT TO BE
10 COMPLIED WITH.

11 Q LET'S DISCUSS RULE 705. ARE YOU FAMILIAR WITH IT?

12 A I'VE SEEN IT FROM TIME TO TIME. I PROBABLY COULD BE
13 REFRESHED.

14 THE COURT: YOU MIGHT CAN SAVE A LITTLE TIME BY---

15 MR. BROWN: THE RULE SPEAKS FOR ITSELF, YOUR HONOR.

16 THE COURT: WELL, BUT, MY RULING IS GOING TO BE IF THE
17 WITNESS TESTIFIES THE NOTES GET TURNED OVER, NO EXCEPTIONS.
18 AND THE SUPREME COURT CAN CHANGE MY MIND, BUT THAT WILL BE
19 MY RULE.

20 MR. BROWN: WHAT IF THE NOTES AREN'T HERE, OUT OF
21 CURIOSITY?

22 THE COURT: IF THE NOTES AREN'T HERE?

23 MR. BROWN: YES SIR. THAT WAS GOING TO BE MY NEXT STEP.

24 THE COURT: WELL, I DON'T KNOW. IF YOU WERE ABOUT TO
25 DEBATE THE LEGAL ISSUE, --

1 MR. BROWN: YES SIR, THE---

2 THE COURT: ---ABOUT WHETHER OR NOT THE---

3 MR. BROWN: ----RULE SPEAKS FOR ITSELF.

4 THE COURT: --SHOULD HAVE OBJECTED-- THE DECISION TO ME
5 IS WHETHER OR NOT TO CALL A WITNESS. IF YOU CALL THE WITNESS,
6 THE NOTES ARE GOING TO GET TURNED OVER.

7 MR. BROWN: YES SIR.

8 Q YOU GOT THE NOTES THE NIGHT BEFORE CROSS EXAMINATION
9 OF CASCIO. IS THAT HOW YOU REMEMBER IT?

10 A YES SIR. AND, AGAIN, BEING REFRESHED FROM THE RECORD,
11 THAT IS CORRECT.

12 Q DO YOU RECALL SUBSEQUENTLY DISCUSSING THESE NOTES
13 WITH LYNN RIDDLE?

14 A WHO IS-- THAT NAME SOUNDS FAMILIAR.

15 Q I BELIEVE SHE WROTE A BOOK ABOUT THIS MATTER CALLED
16 FAMILY BLOOD.

17 A IT SEEMS LIKE SHE CAME TO MY OFFICE. YOU'RE NOT TALKING
18 ABOUT DURING THE TRIAL?

19 Q AFTER THE TRIAL.

20 A RIGHT.

21 Q AND DID YOU TELL HER THAT YOU EAGERLY READ THROUGH
22 THOSE NOTES BECAUSE YOU COULDN'T BELIEVE WHAT YOU WERE
23 READING?

24 A THAT I COULDN'T BELIEVE WHAT I WAS READING IN THOSE
25 NOTES?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 Q THAT WAS SO GOOD FOR Y'ALL?

2 A OH, ABSOLUTELY.

3 Q THAT YOU AND MR. BRACKETT HIGHLIGHTED AND

4 HIGHLIGHTED ALL THE INFORMATION THAT YOU BELIEVED WOULD
5 HELP THEIR CASE?

6 A HELP OUR CASE?

7 Q YES SIR.

8 A ABSOLUTELY.

9 Q DID YOU LATER TELL HER IT WAS LIKE BEING A WIDE RECEIVER
10 ON A FOOTBALL FIELD IN THE END ZONE WIDE OPEN, JUST PRAYING
11 YOU DON'T DROP THE FOOTBALL, ONCE YOU GOT THOSE NOTES?

12 A I TELL YOU, WHEN I WAS DOING THE CROSS EXAMINATION, AS I
13 INDICATED EARLIER, I WENT THROUGH ALL THE UNDERLYING DATA
14 FIRST. AND JIM'S PART TYING IN TO SHORE THINGS UP WAS JUST A
15 COLLATERAL GIFT, YOU KNOW. AND I WAS JUST HOPING I DIDN'T
16 BLOW IT.

17 Q SO, THESE NOTES WERE VERY HELPFUL TO THE PROSECUTION IN
18 THIS CASE. IS THAT CORRECT?

19 A I WOULD SAY IT WAS A BONUS.

20 Q IT WAS A BONUS?

21 A A BONUS, A BENEFIT, A COLLATERAL BENEFIT. I THINK HAD WE
22 NOT HAD THEM-- I UNDERMINED-- AND AGAIN, IF YOU WOULD LOOK
23 AT THE TRANSCRIPT, IT'S KIND OF TWO-PART CROSS. THE FIRST PART
24 WAS DEALING WITH, WELL, WHAT YOU'RE SAYING IS THE DATA

1 REALLY, TOTALLY IT. AND THAT WAS SOMEWHAT EFFECTIVE. BUT,
2 YOU KNOW, COLLATERALLY, THIS WAS NICE.

3 Q SURE. AND YOU READ THE REPORT VERSUS THE NOTES. IS THAT
4 CORRECT?

5 A ABSOLUTELY.

6 Q AND THE REPORT DIDN'T MATCH THE NOTES, DID IT?

7 A WELL, I THINK THAT THE REPORT DREW HER VIEW OF
8 CONCLUSIONS FROM THE TOTALITY OF THE DATA. I JUST ARGUED
9 THAT THE DATA COULD ALSO SHOW DIFFERENT CONCLUSIONS.

10 Q AND SHE LEFT OUT THE DAMNING THINGS THAT WE WENT
11 THROUGH YESTERDAY. YOU WERE HERE YESTERDAY. I DON'T WANT
12 TO REHASH THAT TESTIMONY.

13 A SURE, SURE.

14 Q BUT SHE LEFT ALL THE DAMNING EVIDENCE OF THE REPORT. IS
15 THAT CORRECT?

16 A MY RECOLLECTION-- I MEAN, AGAIN, I HAVEN'T LOOKED AT THE
17 REPORT IN A LONG TIME, BUT IF YOU'VE GOT A COPY OF IT, I WON'T
18 WASTE THE COURT'S TIME. BUT I CAN ALMOST GUARANTEE YOU
19 WITHOUT EVER EVEN READING IT AGAIN THAT IT WAS NOT IN THERE.
20 YOU KNOW, THESE WERE THE THINGS THAT SHE CHOSE THAT, YOU
21 KNOW, THE MENTAL ILLNESS THINGS, THE THINGS THAT SHORED UP
22 HER DIRECT TESTIMONY. I READ IT AT THE TIME, BUT I WON'T WASTE
23 YOUR TIME READING UNLESS YOU NEED ME TO.

24 Q AND YOU WILL AGREE IT WAS A TACTICAL ERROR FOR THEM TO
25 CALL THAT WITNESS?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A I THINK IT WAS A JUDGMENT CALL THEY HAD TO MAKE.

2 BECAUSE, AGAIN, HAD THEY NOT PUT HER UP - AND I GUESS YOU'RE
3 ASKING MY OPINION - HAD THEY NOT PUT HER UP, THEY HAD KIND OF
4 A SHOTGUN MITIGATION. YOU KNOW, THROW IT AGAINST THE WALL
5 AND HOPE SOMETHING STICKS.

6 HER WHOLE ROLE AS THE PSYCHO-SOCIAL ANALYST, OR
7 WHATEVER YOU CALL THEM, CASEWORKERS, HAD BEEN IN THE PAST
8 IN THESE DEATH PENALTY CASES IS TO SEW ALL THESE PIECES
9 TOGETHER TO TRY TO PAINT THE PICTURE THAT WOULD GIVE ONE OR
10 MORE OF THESE JURORS A REASON TO, YOU KNOW, ANY REASON OR
11 NO REASON AT ALL, TO GIVE A LIFE SENTENCE.

12 SO, I CAN'T SAY THAT THAT ONE THING, YOU KNOW. I THINK WE
13 HAD A STRONG CASE THROUGHOUT. BUT I DON'T THINK THAT ONE
14 THING THREW IT.

15 Q THAT WAS THE LAST WITNESS THE DEFENSE PUT UP, WAS IT
16 NOT? THE LAST EXPERT WITNESS?

17 A YEAH. BECAUSE I WAS THINKING THERE WAS SOME FAMILY,
18 PEOPLE THAT SAID WHAT TERRY AND EARL WOULD HAVE WANTED OR
19 SOMETHING LIKE THAT.

20 Q YOU WOULD AGREE WITH ME THAT DOCTOR PINCUS MADE A
21 GOOD WITNESS FOR THE DEFENSE?

22 A THE BEST I RECALL. IT SOUNDS SELF-SERVING, BUT I THINK WE
23 MADE SOME HAY WITH EACH ONE OF THEM. BUT, YOU KNOW, ---

24 Q NO WHERE NEAR LIKE THE FIRE YOU MADE WITH MS. CASCIO,
25 WAS IT?

1 A I HAD A VERY GOOD CROSS EXAMINATION OF MS. CASCIO.

2 Q AS A MATTER OF FACT, THE CROSS EXAMINATION OF MS.
3 CASCIO BECAME A TEXT FILM FOR YOUR OFFICE FOR YOUR YOUNG
4 PROSECUTORS, DID IT NOT?

5 A I HAVE USED THAT CROSS NUMEROUS TIMES WITH
6 PROSECUTORS.

7 Q PRIOR TO THAT, OTHER THAN THE TESTIMONY OF MEREDITH
8 MOON, WHICH IS IN THE RECORD, THERE WERE NO INCULPATORY
9 STATEMENTS INTRODUCED INTO EVIDENCE BY MR. ROBERTSON, WERE
10 THEY, TO YOUR MEMORY, OTHER THAN THE TESTIMONY OF MEREDITH
11 MOON?

12 A RIGHT. I WAS GOING TO SAY, I CAN'T REMEMBER HOW IT
13 PLAYED OUT WITH-- I WAS TRYING TO REMEMBER WHEN YOU HAD
14 ASKED YESTERDAY ABOUT WHAT JIM HAD SAID OR NOT SAID. I KNOW
15 THERE WAS SOMETHING IN PHILADELPHIA THAT---

16 Q I'M SORRY. JIM?

17 A MR. ROBERTSON.

18 Q OKAY.

19 A I CAN'T REMEMBER WHAT IT WAS HE-- NOT JIM BOYD. WHAT
20 HE SAID OR DIDN'T SAY. IF THE RECORD BEARS OUT THAT THAT'S
21 WHAT CAME OUT, I WOULDN'T DISPUTE THAT. I CAN'T RECALL. BUT I
22 KNOW THERE WERE SOME THINGS THAT MAYBE HE SAID THAT HE
23 SAID HE INVOKED HIS RIGHTS AND JUDGE HAYES EXCLUDED.

24 Q YOU CHOSE NOT TO USE DOCTOR McMEEKIN. IS THAT CORRECT?

25 A THAT'S CORRECT.

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 Q AND THAT WAS BECAUSE OF HIS DISCIPLINARY PROBLEMS?

2 A IT WAS KIND OF A COMBINATION OF FACTORS, BUT THE GIST OF
3 IT IS WE HAD NOTHING TO GAIN FROM PUTTING HIM UP AND HE COULD
4 BE CROSS EXAMINED. AND IT WAS REALLY NOTHING THAT ADDED TO
5 OUR CASE.

6 Q DID YOU PERSONALLY REVIEW THOSE RECORDS, OR DID
7 SOMEONE IN YOUR INVESTIGATORY STAFF OR LAW ENFORCEMENT
8 REVIEW THEM?

9 A IF YOU SHOW ME A PARTICULAR DOCUMENT I MIGHT BE ABLE
10 TO TELL YOU. YOU KNOW, I'M NOT TRYING TO BELABOR THIS, BUT I
11 MAY BE ABLE TO TELL YOU IF I READ IT OR NOT. BECAUSE, YOU
12 KNOW, I WENT THROUGH A LARGE VOLUME OF STUFF. BUT IF MERRY
13 -- COLLINS TOLD ME, FOR EXAMPLE, THAT THIS IS THE SUMMARY, I
14 WOULDN'T DISPUTE THAT EITHER.

15 Q OF WHAT YOU REVIEWED, ARE YOU AWARE THAT IN DOCTOR
16 McMEEKIN'S RECORDS, NOWHERE DOES TERRY BLAME HER PROBLEMS
17 ON HER CHILDREN?

18 A I---

19 Q NOT DOCTOR MEYERS, BUT DOCTOR McMEEKIN.

20 A RIGHT, RIGHT. THAT WOULDN'T NECESSARILY SURPRISE ME.
21 YOU KNOW, IT'S ALMOST, LIKE I SAID, LIKE PIXELS. THERE ARE ALL
22 THESE SMALL PICTURES AND THEN YOU GET BACK AND SEE, OR
23 PIECES, AND YOU GET BACK AND YOU SEE THE BIGGER PICTURE. I
24 COULDN'T TELL YOU RIGHT NOW AND PROBABLY COULDN'T TELL YOU
25 THEN WHICH DOCTOR WAS SAYING THAT TERRY SAID THIS WAS A

1 PROBLEM. IT WAS JUST CLEAR, EARLIER, THAT JIM AND CHIP WERE
2 BRINGING SOME PROBLEMS TO THE FAMILY. NOT THAT THEY DIDN'T
3 HAVE THEIR OWN PROBLEMS INDEPENDENTLY.

4 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

5 MR. SALTER: YOUR HONOR, I DON'T THINK I HAVE ANY RE-
6 DIRECT.

7 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN. ARE YOU
8 READY TO CALL YOUR NEXT WITNESS.

9 MR. BROWN: YOUR HONOR, MR. BOYD IS GOING TO BE HERE
10 TOMORROW.

11 THE COURT: HE'S YOUR LAST WITNESS?

12 MR. BROWN: YES SIR.

13 MR. SALTER: YOUR HONOR, I COULD PUT UP A BRIEF WITNESS.
14 I'VE ALREADY DISCUSSED THIS WITH COUNSEL.

15 MR. BROWN: WITHOUT OBJECTION.

16 THE COURT: SO, YOU'RE JUST GONNA PUT UP ONE MORE
17 WITNESS AND YOU'LL BE DONE?

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

19 THE COURT: NOW, ISN'T MR. BOYD GONNA BE GONE? NO, HE'LL
20 BE HERE TOMORROW. IT'S MR. BRACKETT---

21 MR. BROWN: MR. BRACKETT.

22 THE COURT: ---WHO'S GOING TO BE HERE TOMORROW
23 AFTERNOON. MR. BOYD WILL BE HERE IN THE MORNING.

24 MR. BROWN: YES SIR.

25 THE COURT: ALL RIGHT. PUT UP WHOEVER YOU CAN PUT UP

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 TODAY.

2 MR. SALTER: ALL RIGHT, SIR. WE WOULD CALL MERRY
3 COLLINS.

4 MERRY A. COLLINS, WHO AFFIRMED,
5 TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. SALTER:

7 Q MS. COLLINS, PLEASE STATE YOUR FULL NAME FOR THE
8 RECORD, AND SPELL YOUR FIRST NAME.

9 A MERRY A. COLLINS, M-E-R-R-Y.

10 Q HOW YOU CURRENTLY EMPLOYED?

11 A I'M AN INVESTIGATOR WITH THE SOLICITOR, SIXTEENTH CIRCUIT
12 SOLICITOR'S OFFICE.

13 Q HOW LONG HAVE YOU BEEN THERE?

14 A TWELVE YEARS, TWELVE AND A HALF YEARS.

15 Q TWELVE AND A HALF YEARS. SO, YOU WERE THERE DURING THE
16 COURSE OF THE TRIAL OF MR. ROBERTSON?

17 A YES SIR, I WAS.

18 Q WHAT WERE YOUR DUTIES IN CONNECTION WITH THAT TRIAL?

19 A BASICALLY DISCOVERY AND HELPING CORRAL THE
20 PAPERWORK, MORE OR LESS, AND MAKING SURE THAT ALL THE
21 SOLICITORS HAD THEIR COPIES AND WHATNOT.

22 Q WHEN YOU SAY DISCOVERY, WHAT PRECISELY WERE YOUR
23 RESPONSIBILITIES?

24 A ANY DISCOVERY THAT WE HAD TO GIVE OUT, I GAVE TO THE
25 DEFENSE. AND AT THAT TIME I BELIEVE I WASN'T NUMBERING THE

1 PAGES MYSELF; I WAS HAVING THE DEFENSE SIGN THE BACK OF MY
2 DISCOVERY PAGE. I WOULD HAVE MY DISCOVERY COPY AND A COPY
3 FOR THEM. AND I WOULD FLIP OVER PAGE BY PAGE WITH THEM AND
4 THEY WOULD INITIAL MY COPY THAT THEY HAD RECEIVED THAT
5 PAGE OF DISCOVERY.

6 Q WERE YOU ALSO RESPONSIBLE FOR RECEIVING CERTAIN
7 DISCOVERY INFORMATION?

8 A SOMETIMES DISCOVERY WOULD EITHER BE GIVEN TO THE
9 SOLICITOR OR DIRECTLY TO ME, AND IT WAS MY RESPONSIBILITY TO
10 KEEP IT SEPARATE IN THAT I COULD SHOW THAT THAT'S WHAT THEY
11 GAVE US. AND THEN I WOULD MAKE COPIES FOR MY ATTORNEYS'
12 NOTEBOOKS IN THE OFFICE.

13 Q CAN YOU TELL THE COURT WHETHER OR NOT YOU RECALL
14 RECEIVING ANY DISCOVERY INFORMATION DURING THE COURSE OF
15 THE TRIAL?

16 A YES SIR. ACTUALLY, DURING THE TRIAL, I'M NOT SURE AT WHAT
17 POINT DURING THE TRIAL, BUT I REMEMBER IT BEING DURING THE
18 TRIAL ONE EVENING, WADE COMER KNOCKED AT OUR BACK DOOR
19 RIGHT AFTER WE RECESSED FOR THE DAY AND HANDED ME THIS BOX
20 OF DISCOVERY.

21 Q WHEN YOU SAY THIS BOX OF DISCOVERY, IS THIS THE BOX
22 SITTING HERE?

23 A YES SIR. IT WAS IN THIS KINKO'S BOX.

24 Q HAVE YOU REVIEWED THE DOCUMENTS THAT ARE IN THAT
25 BOX?

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 A I'VE ACTUALLY NOT LOOKED AT THEM PAGE BY PAGE, BUT I
2 HAVE FLIPPED THROUGH TO MAKE SURE THAT WAS WHAT WAS IN
3 THAT BOX.

4 Q SO, THIS IS IN FACT WHAT YOU RECEIVED FROM THE DEFENSE?

5 A YES SIR.

6 Q AND THAT PURPORTED TO BE THE MEDICAL RECORDS AND
7 MENTAL HEALTH RECORDS THAT THEY HAD THEY WERE DISCLOSING
8 TO THE STATE?

9 A YES SIR, IT APPEARS SO.

10 MR. SALTER: YOUR HONOR, I WOULD OFFER THIS AS A STATE'S
11 EXHIBIT. WE CAN MAKE A COPY OF THESE AND SUBSTITUTE THEM
12 FOR THE ORIGINALS LATER.

13 MR. BROWN: WITHOUT OBJECTION.

14 THE COURT: THAT'S FINE.

15 (WHEREUPON DEFENDANT'S EXHIBIT FIVE WAS ADMITTED INTO
16 EVIDENCE WITHOUT OBJECTION)

17 MR. SALTER: NOTHING FURTHER.

18 MR. BROWN: NO QUESTIONS, YOUR HONOR.

19 THE COURT: THANK YOU. YOU MAY STEP DOWN. IS THERE
20 ANYTHING ELSE THAT WE CAN TODAY?

21 MR. BROWN: I DON'T KNOW OF ANYTHING, YOUR HONOR.

22 MR. SALTER: NOTHING FROM THE STATE, YOUR HONOR.

23 THE COURT: ALL RIGHT. WE'LL ADJOURN AND RECONVENE AT
24 1:00 TOMORROW.

25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	:	
SIXTEENTH JUDICIAL CIRCUIT	)	SIXTEENTH JUDICIAL CIRCUIT
JAMES D. ROBERTSON,	)	
	:	
APPLICANT-PLAINTIFF,	)	
	:	
VERSUS	)	TRANSCRIPT OF RECORD
	:	
STATE OF SOUTH CAROLINA,	)	06-CP-46-00532
	:	VOLUME III
DEFENDANT.	)	

WEDNESDAY, JANUARY 31, 2007
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. FEW, JUDGE

APPEARANCES:

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

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

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1 WEDNESDAY, JANUARY 31, 2007 - COURT IN SESSION - 1:00 P.M.

2 MR. BROWN: YOUR HONOR, BEFORE WE BEGIN, BY AGREEMENT
3 WE HAVE STIPULATED-- AND I THINK IT WAS A BIT OF AN OVERSIGHT
4 ON MY BEHALF. I INTRODUCED A LETTER YESTERDAY AND YOU
5 INITIALLY REQUIRED, WHERE MR. HANCOCK GOT A PRELIMINARY
6 REPORT FROM MS. CASCIO. THE LETTER WAS MARKED MARCH 1, 1999.
7 BY AGREEMENT WE ARE MOVING THAT INTO EVIDENCE.

8 YOUR HONOR, I'VE ALSO GIVEN MR. SALTER A COPY OF THE
9 REMAINDER OF MS. CASCIO'S NOTES. THESE ARE THE ORIGINALS. I
10 HAVE A COPY. I WANT TO MOVE THE ORIGINALS INTO EVIDENCE BY
11 AGREEMENT.

12 MR. SALTER: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: DOES EVERYBODY HAVE COPIES OF THE FULL SET
14 OF NOTES?

15 MR. SALTER: YES SIR, YOUR HONOR.

16 MR. BROWN: YES SIR.

17 THE COURT: SO, THE FULL SET OF NOTES OBVIOUSLY IS A GOOD
18 BIT MORE THAN WHAT I HAVE REVIEWED---

19 MR. BROWN: THAT IS CORRECT, ---

20 THE COURT: ---AS APPLICANT'S EXHIBIT FIVE?

21 MR. BROWN: ---YOUR HONOR.

22 THE COURT: AND---

23 MR. BROWN: EVERYONE HAS A COPY, YOUR HONOR. THOSE ARE
24 THE ORIGINALS.

1 THE COURT: IS THIS THE-- IS THIS WHAT-- IS THIS THE ORIGINAL
2 OF WHAT SOLICITOR POPE WAS GIVEN THE NIGHT BEFORE DOCTOR
3 CASCIO TESTIFIED?

4 MR. BROWN: THAT'S WHAT I'M A LITTLE BIT CONFUSED, YOUR
5 HONOR. I'M GOING TO ASK MR. BOYD ABOUT THAT TODAY.

6 THE COURT: HERE, JUST SHOW HIM.

7 MR. BROWN: HE'S GOT A COPY, YOUR HONOR.

8 (WHEREUPON APPLICANT'S EXHIBITS SIX AND SEVEN WERE ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION)

10 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS WHENEVER
11 YOU'RE READY.

12 MR. BROWN: AND YOUR HONOR, ONE LAST THING, THE COURT
13 INQUIRED, AND WE AGREED UPON, THAT MS. CASCIO INTERVIEWED
14 MR. ROBERTSON ON THE FOLLOWING DAYS, AND THIS IS FROM THE
15 TRANSCRIPT: JULY 17, 1998, JULY 22, 1998. THERE'S A NOTATION THAT
16 ONE OCCURRED IN NOVEMBER OF 1998, IN HER NOTES, BUT THE
17 TRANSCRIPT REFLECTS IT WAS NOVEMBER 30, 1998. THERE'S ONE,
18 WHICH IS ALREADY IN EVIDENCE, OF DECEMBER 7, 1998.

19 THE COURT: REPEAT THOSE DATES AGAIN, PLEASE.

20 MR. BROWN: JULY 17, 1998, JULY 22, 1998, NOVEMBER 30, 1998,
21 DECEMBER 7, 1998.

22 THE COURT: THOSE ARE THE DATES THAT SHE MET WITH HIM?

23 MR. BROWN: YES SIR.

24 THE COURT: IS THERE EVIDENCE IN THE RECORD THAT
25 CORRELATES THOSE MEETING DATES WITH THESE NOTES?

1 MR. BROWN: YOUR HONOR, THE DATES IN THE RECORD ARE
2 JULY 17, 1998, JULY 22, 1998, NOVEMBER OF '98. BUT IN HER NOTES IT
3 REFLECTS THE DATE OF NOVEMBER 30, 1998.

4 THE COURT: SO, THE NOTES WERE MADE FROM THE FIRST
5 THREE MEETINGS?

6 MR. BROWN: AND DECEMBER 7, WHICH IS ALREADY IN THE
7 RECORD, YOUR HONOR. THAT'S WHAT YOU ALREADY READ AND WAS
8 ATTACHED TO THE MARCH 1, LETTER WITH THE PRELIMINARY
9 REPORT, NOTES FROM DECEMBER 7.

10 MR. SALTER: AND YOUR HONOR, IF I MIGHT ADD THAT ON
11 CROSS EXAMINATION SOLICITOR POPE ESTABLISHED THAT AT LEAST
12 TWO OF THOSE DATES WERE IN FACT ACCURATE, THE NOVEMBER 30
13 AND DECEMBER 7 DATES, WHICH SPECIFICALLY REFERS TO NOTES
14 FROM THOSE DAYS.

15 THE COURT: AND THE TRIAL WAS MARCH OF '99?

16 MR. BROWN: MARCH 15, 1999, YOUR HONOR.

17 THE COURT: OKAY.

18 MR. BROWN: WE CALL TO THE STAND JIM BOYD.

19 THE COURT: WELL, LET ME ASK ONE MORE QUESTION ABOUT
20 THE NOTES. THE PORTION OF THE-- THE NOTES OBVIOUSLY DEAL
21 WITH A LOT MORE THAN JUST WHAT ROBERTSON SAID ABOUT WHAT
22 HAPPENED AT THE TIME OF THE KILLINGS.

23 MR. BROWN: CORRECT, YOUR HONOR.

1 THE COURT: THE NOTES ABOUT WHAT HE SAID ABOUT WHAT
2 HAPPENED AT THE TIME OF THE KILLING, ARE THEY ALL FROM ONE
3 INTERVIEW?

4 MR. BROWN: NO SIR. TO THE BEST OF MY RECOLLECTION, NO
5 SIR.

6 THE COURT: WELL, WHICH INTERVIEW DID THOSE COME FROM?
7 IS THAT WHAT YOU WERE REFERRING TO A SECOND AGO?

8 MR. SALTER: TO GIVE SOME DIRECTION, ON CROSS
9 EXAMINATION THE RECORD REFLECTS THAT SOLICITOR POPE ASKED
10 HER A SERIES OF QUESTIONS NOT RELATED TO THE CRIME ITSELF, BUT
11 FROM THE NOVEMBER 30, NOTES. AND THE REMAINING QUESTIONS
12 DEAL WITH THE CRIME ITSELF. I THINK VIRTUALLY ALL THOSE CAME
13 FROM THE DECEMBER 7 INTERVIEW.

14 THE COURT: OKAY. SO,--

15 MR. SALTER: THOSE WERE THE NOTES THAT I HAD AND
16 PROVIDED A COPY TO OPPOSING COUNSEL.

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

18 THE COURT: OKAY, I'M READY.

19 MR. BROWN: WE CALL TO THE STAND, JIM BOYD.

20 JAMES W. BOYD, DULY SWORN, TESTIFIED AS
21 FOLLOWS:

22 DIRECT EXAMINATION BY MR. BROWN:

23 Q YOU'RE JAMES W. BOYD?

24 A THAT'S CORRECT.

25 Q HOW DID YOU BECOME INVOLVED IN THIS CASE?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q HOW DID YOU BECOME INVOLVED IN THIS CASE?

2 A I WAS APPOINTED TO REPRESENT MR. ROBERTSON.

3 Q AND THAT WAS, WHICH IS ALREADY IN THE RECORD, ON APRIL
4 30, OF '98?

5 A I BELIEVE THAT IS CORRECT.

6 Q WHEN DID YOU FIND OUT MR. HANCOCK WAS YOUR CO-
7 COUNSEL?

8 A I MAY HAVE ALREADY KNOWN. HE WAS APPOINTED PRIOR TO
9 ME, IF I RECOLLECT CORRECTLY. I THINK HE HAD BEEN ON THE CASE
10 FOR SOME TIME AND I THINK I ALREADY KNEW HE WAS
11 REPRESENTING MR. ROBERTSON.

12 Q DO YOU RECALL HOW HE BECAME INVOLVED IN THIS CASE?

13 A NO, I DON'T.

14 Q WHAT WAS THE FIRST THING YOU DID WHEN YOU BECAME
15 INVOLVED IN THIS CASE?

16 A IT'S HARD FOR ME TO REMEMBER AT THIS POINT IN TIME. I
17 THINK THE FIRST THING I DID, I BELIEVE, WAS SPEAK WITH MR.
18 HANCOCK. I KNOW AT ONE POINT EARLY ON I ASKED TO BE RELIEVED
19 OF REPRESENTING MR. ROBERTSON.

20 Q WHY?

21 A WELL, ONE THING, AT THAT TIME I WAS ON THE BOARD OF
22 DIRECTORS OF THE PUBLIC DEFENDER CORPORATION. AND I BELIEVE
23 MEREDITH MOON, THE CO-DEFENDANT, WAS BEING REPRESENTED BY
24 THE PUBLIC DEFENDER'S OFFICE. I POINTED OUT TO THE COURT, I
25 THINK, JUDGE RAWL, THAT THAT WAS A POTENTIAL CONFLICT.

1 AND ANOTHER THING, I THINK I SAID I FELT LIKE I HAD DONE
2 MY SHARE OF THESE CASES; THAT I HAD THE LAST BIG ONE, ONE NOT
3 TOO LONG BEFOREHAND.

4 Q WAS THAT THE SYLVESTER ADAMS' CASE?

5 A YES, IT WAS.

6 Q SPEAKING OF WHICH, HOW LONG HAVE YOU PRACTICED LAW?

7 A SINCE 1977.

8 Q AND YOUR FIRST JOB WAS THE PUBLIC DEFENDER, IS THAT
9 CORRECT, OF YORK COUNTY?

10 A NO. MY FIRST JOB WAS WITH MELVIN ROBERTS, AND THEN THE
11 PUBLIC DEFENDER.

12 Q IN YOUR EXPERIENCE, DID YOU ALSO SERVE AS SOLICITOR OR
13 ASSISTANT SOLICITOR?

14 A YES, PART-TIME, AFTER BEING WITH THE PUBLIC DEFENDER'S
15 OFFICE.

16 Q AND YOU'VE DONE CRIMINAL WORK FOR ALMOST THIRTY
17 YEARS. IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND IF YOU WOULD, JUST TELL THE COURT HOW MANY DEATH
20 PENALTY CASES YOU'VE BEEN INVOLVED IN.

21 A I HAVE REPRESENTED SIX CLIENTS WHO HAVE BEEN IN CAPITAL
22 MURDERS TRIALS NOW. ONE OF THOSE CASES WAS ACTUALLY TRIED
23 TWICE. SO, I'VE BEEN THROUGH MORE DEATH PENALTY CASES
24 THAN---

25 Q WAS THAT SYLVESTER ADAMS?

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 A SYLVESTER ADAMS WAS TRIED TWICE. I ALSO ASSISTED THE
2 STATE IN THE PROSECUTION OF ONE DEATH PENALTY CASE.

3 Q WOULD IT BE SAFE TO SAY THAT YOU HAD LOTS OF EXPERIENCE
4 AS A DEATH PENALTY LITIGATOR IN YORK COUNTY?

5 A I WOULD THINK THAT'S PROBABLY CORRECT.

6 Q AND YOU HAVE BEEN INVOLVED IN THE PROSECUTION AND
7 DEFENSE OF DEATH PENALTY CASES?

8 A I'VE DONE SIX DEFENSES AND I'VE DONE ONE PROSECUTION.

9 Q DO YOU RECALL WHEN YOU FIRST GOT ALL THE DISCOVERY IN
10 THIS CASE?

11 A NO, I DON'T RECALL WHEN AT THIS TIME. I THINK DISCOVERY
12 WAS BASICALLY AN ONGOING PROCESS. I BELIEVE MR. HANCOCK HAD
13 ALREADY RECEIVED A GOOD BIT OF THE DISCOVERY. AND SO,
14 BASICALLY IT WAS A MATTER OF SHARING THAT WITH---

15 Q DID YOU OFFER DISCOVER?

16 A --WITH ME.

17 Q I'M SORRY. I DIDN'T MEAN TO CUT YOU OFF.

18 A I'M SORRY. HE WAS SHARING IT WITH ME. HE ALREADY HAD A
19 GREAT DEAL OF IT.

20 Q DID YOU REVIEW ALL THE DISCOVERY?

21 A I BELIEVE SO. I BELIEVE I REVIEWED ALL THE DISCOVERY
22 PROVIDED BY THE STATE.

23 Q AND AFTER REVIEWING ALL THAT, DID YOU COME TO A
24 DECISION AS TO WHAT TACK OR WHAT STRATEGY YOU AND MR.
25 HANCOCK SHOULD TAKE IN THE DEFENSE OF MR. ROBERTSON?

1 A I THINK MR. HANCOCK HAD ALREADY BEEN IN TOUCH WITH THE
2 DEATH PENALTY RESOURCE CENTER AND HAD CONSULTED WITH
3 THEM. OR, IT WAS EARLY ON WE CONSULTED WITH THEM.

4 BASICALLY, IT WAS-- THEY-- OF COURSE, WE CONDUCTED A
5 BACKGROUND INVESTIGATION OF MR. ROBERTSON TO COME UP WITH
6 ANY MITIGATION THAT WE COULD, GO INTO HIS SOCIAL HISTORY, HIS
7 MENTAL HEALTH HISTORY, THAT TYPE OF THING, TRYING TO REASON
8 WHY HE WOULD HAVE DONE SOMETHING LIKE THIS.

9 THERE WAS ALSO A QUESTION EARLY ON ABOUT HOW MUCH TO
10 FIGHT THE ACTUAL-- OR, PLEAD NOT GUILTY AND FIGHT THE
11 CONVICTION ITSELF, THE GUILT OR INNOCENCE PHASE OF IT.

12 Q WHAT WAS YOUR OPINION ON THAT AS TO HOW TO HANDLE OR
13 LITIGATE OR DEFEND THE GUILT PHASE?

14 A WELL, BASICALLY, I THINK, BASICALLY CONCEDED GUILT WAS
15 PROBABLY THE BEST PHILOSOPHY ON THAT. HOWEVER, IF MY
16 RECOLLECTION'S RIGHT, MR. ROBERTSON, THOUGH HE RATIONALLY
17 UNDERSTOOD THAT HE WAS UNLIKELY TO BE ACQUITTED OF IT,
18 DIDN'T WANT TO ACTUALLY CONCEDE THAT POINT AND ACTUALLY
19 ADMIT GUILT.

20 Q HE DIDN'T WANT TO CONCEDE IT?

21 A THAT'S CORRECT.

22 Q IN YOUR TACTICAL JUDGMENT AND ALL YOUR EXPERIENCE
23 WITH DEATH PENALTY CASES, WOULD IT BE A FAIR STATEMENT TO
24 SAY THAT THE EVIDENCE OF GUILT WAS OVERWHELMING?

25 A I THINK SO, YES.

JAMES BOYD - DIRECT EXAMINATION BY MR. BROWN

1 Q AND WOULD THAT BE BASED ON THE FORENSIC EVIDENCE, THE
2 DNA, THE SEROLOGIST, THE TESTIMONY OF MEREDITH MOON, AND SO
3 FORTH?

4 A THAT'S CORRECT.

5 Q IN YOUR EXPERIENCE OF APPROXIMATELY THIRTY YEARS OF
6 CRIMINAL DEFENSE WORK, WOULD YOU AGREE THIS WAS NOT A
7 WELL-CONCEIVED OR WELL-THOUGHT OUT CRIME?

8 A WELL, NO, I WOULD AGREE WITH THAT.

9 Q WOULD YOU AGREE THAT IT WAS A SPUR OF THE MOMENT,
10 SPORADIC, ILL-THOUGHT OUT THING?

11 A I DON'T KNOW HOW SPUR OF THE MOMENT IT WAS.

12 Q I DON'T MEAN THAT HIS MIND WAS SPUR OF THE MOMENT, BUT
13 IT WAS NOT A WELL-PLANNED OUT PROCESS.

14 A NO, I DON'T THINK IT WAS A DETAILED, PLANNED OUT IN
15 ADVANCE, THE DETAILS, NO.

16 Q AND THEN THAT LEAVES THE OVERWHELMING FORENSIC
17 EVIDENCE POINTING TO HIS GUILT?

18 A I THINK THAT HAD SOMETHING TO DO WITH IT, YES.

19 Q NOW, MR. HANCOCK WAS LEAD COUNSEL ON THIS CASE. IS
20 THAT CORRECT?

21 A WELL, I DON'T- WE NEVER DISCUSSED WHO WAS ACTUALLY
22 THE LEAD COUNSEL. MR. HANCOCK HAD BEEN IN THE CASE BEFORE I
23 WAS. SO, HE HAD ALREADY LINED UP A LOT OF THE DEFENSE IN THE
24 CASE ALREADY. IT WAS HIS INVESTIGATOR THAT WAS ACTING AS
25 INVESTIGATOR. HIS PARALEGAL WAS DOING A LOT OF WORK ON IT. I

1 THINK HE HAD BEEN IN TOUCH WITH THE DEATH PENALTY CENTER.
2 SO, AS FAR AS LINING THAT UP, PROBABLY, YOU KNOW, DURING THE
3 TRIAL, I BELIEVE THAT EQUAL PARTIES HAD A HAND IN THE WEEKS
4 LEADING, AND MONTHS LEADING UP TO THE TRIAL.

5 Q IF I TOLD YOU IN THE TRANSCRIPT, AND THAT HE TESTIFIED
6 YESTERDAY THAT HE WAS AND TOLD JUDGE HAYES HE WAS LEAD
7 COUNSEL, WOULD YOU DISAGREE WITH THAT STATEMENT?

8 A YES.

9 THE COURT: ME?

10 MR. BROWN: I'M SORRY, YOUR HONOR. I WAS ASKING HIM IF HE
11 WOULD DISAGREE WITH THAT STATEMENT.

12 THE COURT: DID HE TELL ME THAT OR DID HE TELL JUDGE
13 HAYES THAT?

14 MR. BROWN: TOLD JUDGE HAYES THAT, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 Q FOR CLARIFICATION'S SAKE, HE TOLD JUDGE HAYES THAT IN
17 THE ACTUAL TRIAL. WOULD YOU DISAGREE WITH THAT STATEMENT?

18 A HE MAY HAVE. I DON'T RECALL THAT STATEMENT.

19 Q HAD HE MADE CERTAIN STRATEGIC DECISIONS BEFORE YOU
20 BECAME INVOLVED?

21 A HE HAD-- TO THE EXTENT THAT-- HE HAD LINED UP, I THINK,
22 WITH THE DEATH PENALTY RESOURCE CENTER AND I THINK THE
23 MITIGATION DEFENSE HAD BEEN STARTED IN PLAY AT THAT TIME,
24 YES.