

VOLUME FIVE OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Larry R. Patterson, Circuit Court Judge

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S.C. Supreme Court

JOHN RICHARD WOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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MATTERS AND MOTIONS

1 UPON TO FORM HIS OPINION -- YOU KNOW, HIS OPINION IS A BIO-
2 SOCIAL ASSESSMENT. IT IS NOT A PSYCHIATRIC OR PSYCHOLOGICAL
3 ASSESSMENT. HE EVEN MADE THOSE LIMITATIONS.

4 SO I'M JUST TRYING -- YOU KNOW, WE HAVE WORKED HARD TO
5 GET TO THIS POINT AND MAKING SURE THAT THE JURY DOESN'T HEAR
6 SOMETHING THAT ALL OF A SUDDEN CAUSES US TO REFLOW AND TRY TO
7 FIGURE OUT WHERE WE ARE. I WAS JUST GOING TO BRING IT OUT
8 KIND OF ALMOST AS A THIS COULD BE A PRETTY CURVY ROAD.

9 AND NOW WITH REGARD TO THE HEARSAY, YOUR HONOR, I WOULD
10 SAY EVERY EXPERT RELIES UPON HEARSAY. I MEAN, THAT'S PART OF
11 THE OPPORTUNITY THAT WE HAVE TO ALLOW---

12 THE COURT: THAT'S WHY WE CALL THEM.

13 MR. MAULDIN: THAT'S RIGHT. THAT'S WHY WE HAVE THEM
14 AND THAT'S WHY HE'S GOT THEM.

15 BUT IF -- I BELIEVE MR. YOUNGMAN, FOR EXAMPLE, HAS
16 ALREADY SAID THAT HE DOESN'T NECESSARILY BELIEVE WHAT HE IS
17 TOLD AND -- UNLESS IT IS -- YOU KNOW, THERE ARE CONSISTENCIES
18 WITH INDEPENDENT REPORTS. THE MORE CONSISTENT -- IF HE GETS
19 THE SAME STORY FROM FOUR DIFFERENT PEOPLE, THEN HE DOES
20 ESSENTIALLY GIVE IT A HIGHER LEVEL OF RELIABILITY. I DON'T
21 KNOW WHAT KIND OF LIMITING INSTRUCTION THE COURT COULD GIVE
22 WITHOUT MOVING OVER LITERALLY INTO A FACTUAL COMMENT AT THIS
23 POINT. WE MIGHT DO IT IN TERMS OF A FINAL INSTRUCTION.

24 THE COURT: AND I'LL BE GLAD TO CONSIDER THAT.

25 MR. MAULDIN: YES, SIR.

MATTERS AND MOTIONS

1 **THE COURT:** BUT WHAT I HAVE NOW IS THE WITNESS
2 TESTIFYING THAT, YES, HE RELIED AND REVIEWED THE STATE REPORT
3 IN REACHING HIS OPINION. THAT'S WHAT I HAVE.

4 **MR. MAULDIN:** RIGHT. HE SAID THAT IT WAS AMONG -- HE
5 GAVE IT NO MORE OR LESS WEIGHT THAN OTHER MATERIAL. RIGHT.

6 **THE COURT:** YEAH.

7 **MR. MAULDIN:** AND PERHAPS IT'S SOMETHING WE SHOULD DO
8 OUT OF THE PRESENCE OF THE JURY. I REALLY DON'T KNOW WHERE
9 THE STATE IS GOING, BUT I CERTAINLY WOULD HATE TO HAVE THE
10 CASE---

11 **SOLICITOR ARIAIL:** I DON'T KNOW WHERE WE'RE GOING
12 EITHER BECAUSE I'VE BEEN TRYING FOR MONTHS TO GET IT, AND I
13 JUST WANT TO GET IT. THEN WE'LL SEE WHERE WE'RE GOING, I
14 GUESS, AND I'LL TELL THE COURT WHERE WE'RE GOING. I DON'T
15 WANT TO CREATE ANY UNNECESSARY PROBLEMS EITHER.

16 **THE COURT:** WHY DON'T WE -- MR. YOUNGMAN IS BACK IN THE
17 -- JUST WALKED IN THE COURTROOM. MR. YOUNGMAN, IF YOU WOULD,
18 COME BACK TO THE WITNESS STAND, PLEASE, SIR.

19 **WITNESS:** (COMPLIES)

20 **THE COURT:** AND, SOLICITOR, I DON'T MEAN TO BE
21 PRESUMPTUOUS, BUT THE REASON YOU WANTED TO SEE ALL OF THE
22 DOCUMENTS ON WHICH HE RELIED IN REACHING HIS OPINION IS YOU
23 WANT TO SEE IF THE STATE PSYCHIATRIST'S REPORT IS IN HIS
24 FILE? IS THAT THE PURPOSE?

25 **SOLICITOR ARIAIL:** HE SAID IT WAS.

MATTERS AND MOTIONS

1 **THE COURT:** RIGHT, THAT HE REVIEWED IT. ALL RIGHT.

2 SO, YOU HAVE BROUGHT THE FILE THAT CONTAINS THE
3 DOCUMENTS ON WHICH YOU RELIED---

4 **WITNESS:** YES, SIR.

5 **THE COURT:** ---THAT YOU HAVE IN YOUR FILE? AND IF YOU
6 WOULD, LOOK IN THERE, MR. YOUNGMAN, AND SEE IF YOU CAN FIND
7 THE REPORT FROM THE STATE HOSPITAL.

8 **WITNESS:** (COMPLIES) YEAH, RIGHT HERE.

9 **THE COURT:** ALL RIGHT. YOU ARE ENTITLED TO REVIEW IT.
10 BUT I AM GOING TO SEE WHERE WE GO OUTSIDE THE PRESENCE OF THE
11 JURY BEFORE WE BRING THE JURY BACK.

12 **SOLICITOR ARIAIL:** ALL RIGHT. I WANT TO SEE EVERYTHING
13 HE RELIED ON.

14 **THE COURT:** WELL, YOU'RE ENTITLED TO EVERYTHING. I'M
15 -- I THOUGHT YOU WERE CONCERNED ABOUT---

16 **SOLICITOR ARIAIL:** WELL, I AM SPECIFIC IN THAT REGARD.
17 IF WE COULD JUST TAKE A---

18 **THE COURT:** WOULD YOU LIKE TO TAKE A BREAK AND---

19 **SOLICITOR ARIAIL:** IF THAT WOULD BE OKAY.

20 **THE COURT:** SURE.

21 **SOLICITOR ARIAIL:** AND THIS MAY SOLVE A LOT OF PROBLEMS
22 AND WE CAN GET THIS OUT OF THE WAY.

23 **THE COURT:** OKAY. LET'S TAKE A TEN-MINUTE BREAK. I
24 WILL CHECK BACK IN TEN MINUTES. SOLICITOR, IF YOU NEED MORE
25 TIME, PLEASE LET ME KNOW AND I'LL GET DRINKS, ET CETERA TO

MATTERS AND MOTIONS

1 THE JURY.

2 (A RECESS WAS TAKEN FROM 3:36 TO 3:51 P.M.)

3 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. YES,
4 SIR?

5 SOLICITOR ARIAIL: WE HAVE REVIEWED WHAT IS IN THE
6 BOOK. AND THE ONLY THING THAT I DON'T SEE IN HERE IS THE
7 NOTES, INTERVIEW NOTES.

8 THE COURT: DO YOU HAVE YOUR NOTES, SIR?

9 WITNESS: NO. I HAVE MY NOTES AT HOME WHAT I USED TO
10 TYPE UP. I HAVE MY SUMMARY.

11 SOLICITOR ARIAIL: I'M SORRY?

12 THE COURT: HE SAYS HIS NOTES ARE AT HOME BUT HE HAS
13 HIS SUMMARY.

14 SOLICITOR ARIAIL: LET ME LOOK AT THE SUMMARY.

15 THE COURT: YES, SIR.

16 WITNESS: (PRESENTS DOCUMENTS TO SOLICITOR ARIAIL)

17 (SOLICITOR ARIAIL AND CO-COUNSEL REVIEW NOTES FROM 3:52
18 TO 3:57 P.M.)

19 QUESTIONS BY SOLICITOR ARIAIL:

20 Q MR. YOUNGMAN, YOU --

21 SOLICITOR ARIAIL: AND I'M PROCEEDING AS A PROFFER.

22 THE COURT: VERY GOOD, SIR.

23 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

24 Q MR. YOUNGMAN, YOU HAD SAID THAT AS PART OF YOUR REVIEW
25 OR EVALUATION YOU REVIEWED THE DOCUMENTS IN THIS FILE OR

JEFF YOUNGMAN -- QUESTIONS BY SOLICITOR ARIAIL
OUTSIDE THE PRESENCE OF THE JURY.

1 THIS NOTEBOOK, AND IN ADDITION TO THAT YOU HAD NOTES OF YOUR
2 CONVERSATIONS WITH THE SISTER, THE MOTHER, KAREN MCCALL AND
3 MR. WOOD. AND TO SUMMARIZE, WE CAN TALK ABOUT IT IF YOU WANT
4 TO, BUT SUMMARIZING IT, ESSENTIALLY 90 PERCENT OF THIS IS
5 FEDERAL PRISON, FEDERAL INDICTMENT, FEDERAL PROBATION
6 REPORTS, THAT SORT OF THING THAT APPLIES TO THE CONSPIRACY
7 CHARGES. THEN THERE IS A SECTION IN HERE THAT HAS THE JAIL,
8 GREENVILLE COUNTY DETENTION CENTER INFORMATION ABOUT JAIL
9 REQUESTS, MEDICAL REQUESTS, THAT SORT OF THING. AND THEN THE
10 LAST SECTION IS THE STATE HOSPITAL REPORT BY DR. NARAYAN.

11 A YES, SIR.

12 Q ALL RIGHT. OTHER THAN THAT THERE IS NOT ANYTHING HERE,
13 OTHER THAN THAT?

14 A NO, NOT THAT I KNOW OF.

15 Q NO MEDICAL RECORDS, NO SCHOOL RECORDS, NO HOSPITAL
16 RECORDS, NO COUNSELING RECORDS, NOTHING LIKE THAT?

17 A NO. WE COULDN'T GET THE SCHOOL RECORDS, AND TO MY
18 KNOWLEDGE THERE WERE NO COUNSELING RECORDS.

19 Q AND YOU STATED YOU CONSIDERED PART OF THE -- AS PART OF
20 YOUR EVALUATION YOU CONSIDERED THE STATE HOSPITAL REPORT?

21 A YES, SIR.

22 Q AND IN PARTICULAR IN EVALUATING MR. WOOD DID YOU
23 CONSIDER HIS STATEMENT TO THE PEOPLE AT THE STATE HOSPITAL
24 THAT ON THE DAY OF THE ALLEGED EVENTS HE KNEW THERE WAS A
25 POSSIBILITY OF A WARRANT OUT FOR HIS ARREST IN FLORIDA?

JEFF YOUNGMAN -- QUESTIONS BY SOLICITOR ARIAIL
OUTSIDE THE PRESENCE OF THE JURY

1 A I READ THE REPORT, SURE.

2 Q SO DID YOU CONSIDER THAT AS PART OF YOUR...

3 A WELL, THE PART I CONSIDERED MOST WAS THE SOCIAL WORK
4 HISTORY DONE AS PART OF THAT REPORT, ANY MATERIAL ABOUT HIS
5 LIFE PRIOR TO 12/6/2000 WAS WHAT I REALLY CONSIDERED.

6 Q THROUGH DECEMBER 6TH, 2000?

7 A RIGHT.

8 Q AND ON DECEMBER 6TH, 2000, HE SAID -- HE STATED ON THE
9 DAY OF THE ALLEGED OFFENSE THAT THERE WAS THE POSSIBILITY OF
10 A WARRANT OUT FOR HIS ARREST IN FLORIDA?

11 A IF THAT'S WHAT IT SAYS, YES, SIR.

12 Q AND MY QUESTION IS, DID YOU CONSIDER THAT AS PART OF
13 YOUR EVALUATION?

14 A YES.

15 SOLICITOR ARIAIL: ALL RIGHT. (PAUSE) THAT WOULD BE
16 IT.

17 THE COURT: ALL RIGHT. AND YOU WOULD SEEK TO FOLLOW
18 THAT SAME---

19 SOLICITOR ARIAIL: YES, SIR.

20 THE COURT: ---DIALOGUE IN THE PRESENCE OF THE JURY?

21 SOLICITOR ARIAIL: THAT WOULD BE THE CONCLUSION OF MY
22 QUESTIONING.

23 THE COURT: AND IF THERE IS---

24 SOLICITOR ARIAIL: WELL, I THINK THERE ARE TWO OTHER
25 MINOR ISSUES, JUST CLEAN UP. THEY DON'T RELATE TO ANYTHING

MATTERS AND MOTIONS

1 WE JUST---

2 THE COURT: ALL RIGHT. HUDDLE UP AND THEN LET ME KNOW
3 WHEN YOU'RE READY.

4 (SOLICITOR ARIAIL AND CO-COUNSEL OFF RECORD)

5 MR. MAULDIN: YOUR HONOR, IF YOU WOULD JUST GIVE ME ONE
6 MOMENT TO LOOK AT THE -- AND IT MIGHT SAVE -- IF BOB WOULD
7 JUST POINT TO THAT SENTENCE SO I WOULDN'T HAVE TO GO
8 SCRAMBLING AROUND.

9 SOLICITOR ARIAIL: PAGE 8. RIGHT HERE.

10 MR. MAULDIN: (INDICATING) WHEN WE MAKE REFERENCE TO
11 THAT SENTENCE IN THE REPORT, LET'S MAKE SURE AS TO WHETHER
12 IT'S ACTUALLY ADMISSIBLE, YOUR HONOR, BEFORE THE JURY HEARS
13 IT.

14 THE COURT: VERY GOOD, SIR.

15 MR. MAULDIN: (PAUSE) ALL RIGHT. HERE, THE REFERENCE
16 THAT I HAVE BEEN DIRECTED TO IS AS FOLLOWS, AND I'LL READ THE
17 SENTENCE BEFORE IN ORDER TO KIND OF PUT IT IN CONTEXT,
18 "DURING THE FIRST" -- AND THIS IS -- IF YOU HAVE IT IN FRONT
19 OF YOU, YOUR HONOR, IT'S PAGE 8, THE FOURTH LINE DOWN.

20 "DURING THE FIRST INTERVIEW HE REPORTED HAVING BLACKOUTS AND
21 EXPERIENCING PERIODS OF HOURS TO DAYS THAT HE COULD NOT
22 RECOLLECT ON DIFFERENT OCCASIONS. HE ALSO STATED THAT ON THE
23 DAY OF THE ALLEGED EVENTS HE KNEW THERE WAS A POSSIBILITY OF
24 A WARRANT OUT FOR HIS ARREST IN FLORIDA."

25 NOW -- WELL, I GUESS MAYBE MR. BANNISTER NEEDS TO BE

MATTERS AND MOTIONS

1 ARGUING THIS SINCE THIS IS HIS WITNESS. MAY I VIOLATE THAT
2 RULE?

3 THE COURT: GO AHEAD AND VIOLATE IT.

4 MR. MAULDIN: ALL RIGHT. THE OBJECTION TO IT IS THIS,
5 MY INFORMATION FROM THE FEDERAL FILE IS THAT THERE WAS NOT A
6 WARRANT. THIS STATEMENT AT THE TIME OF THIS INTERVIEW IS
7 THAT HE KNEW THERE WAS A POSSIBILITY OF A WARRANT. IF I
8 RECALL CORRECTLY, THE FEDERAL FILE THAT WE SUBPOENAED
9 INDICATED THAT A WARRANT WAS IN FACT ISSUED IMMEDIATELY
10 AFTER, I THINK, 12/7 OR 12/8 IS WHEN THEY ACTUALLY ISSUED
11 THAT WARRANT, AS SOON AS THEY HEARD ABOUT THIS INCIDENT THAT
12 WE'RE ON TRIAL HERE. SO THE QUESTION THEN BECOMES OF WHAT
13 REAL VALUE IS THE SOLICITOR SEEKING THAT STATEMENT WHEN IN
14 FACT THE DEFENDANT HIMSELF SAYS THERE WAS A POSSIBILITY. AND
15 THE FACT IS THAT THERE REALLY WASN'T. I MEAN, WHAT IS THE
16 PROBATIVE VALUE OF THAT STATEMENT TO BE BROUGHT OUT FOR THE
17 CONSIDERATION OF THIS JURY?

18 THE COURT: ALL RIGHT. I'LL GIVE YOU A CHANCE TO
19 RESPOND, SIR.

20 SOLICITOR ARIAIL: ALL RIGHT. LET ME -- LET ME -- THEN
21 I'LL EXPAND IT, BECAUSE THE PROBATIVE VALUE THAT I WANT TO GO
22 TO REALLY COVERS MORE THAN THAT STATEMENT, BUT I WANT TO MAKE
23 SURE YOU COVER THAT STATEMENT. WHAT I WANT TO PROBE IS THE
24 UNRELIABILITY, THE INCONSISTENCY NOTED BY THE STATE HOSPITAL
25 IN THE VERSION -- TWO VERSIONS OF EVENTS ON SEPARATE

MATTERS AND MOTIONS

1 INTERVIEWS THAT HAVE BEEN GIVEN BY THE DEFENDANT, AND I WANT
2 TO POINT OUT WHAT THOSE INCONSISTENCIES WERE AND THEN ASK HIM
3 DID HE TAKE THOSE INTO CONSIDERATION, THOSE INCONSISTENCIES,
4 IN DETERMINING THE RELIABILITY OF THE INFORMATION THAT HE
5 RECEIVED FROM THE DEFENDANT UPON WHICH HE BASED HIS
6 CONCLUSION.

7 MR. MAULDIN: DIFFERENT -- NOW, THAT IS A BIG
8 DIFFERENCE. I THOUGHT THAT WAS WHAT HE WAS GOING TO ASK HIM
9 IN FRONT OF THE JURY. IF HE'S GOING TO GO BEYOND THAT, THIS
10 WITNESS HAS ALREADY TESTIFIED, YOUR HONOR, THAT HIS -- HIS
11 OPINION IS---

12 THE COURT: UP TO DECEMBER 6TH.

13 MR. MAULDIN: ---UP TO DECEMBER 6TH. SO THAT'S REALLY
14 THE -- I MEAN, WHAT WE'RE DOING IS WE'RE TALKING DOES HE HAVE
15 AN OPINION NOW ABOUT SOMETHING THAT HE REALLY -- IT WAS NOT
16 PART OF HIS JOB. SO I WOULD THINK -- I DON'T UNDERSTAND
17 TAKING OUT OF CONTEXT THE SENTENCE THAT THE SOLICITOR POINTED
18 OUT. BUT IF HE'S GOING BEYOND THAT INTO INFORMATION
19 REGARDING DECEMBER THE 6TH, UNLESS HIS PREVIOUS TESTIMONY
20 SIMPLY IS INCORRECT, THEN I THINK IT'S BEYOND THIS WITNESS'
21 PURVIEW.

22 THE COURT: DO YOU WANT TO RESPOND?

23 SOLICITOR ARIAIL: WELL, I WANT TO MAKE SURE I DIDN'T
24 MISLEAD. THE PURPOSE IS -- HE SAID HE WANTED TO STOP AT
25 DECEMBER THE 6TH. I MEAN, JUST DRAW A LINE AND STOP THERE.

MATTERS AND MOTIONS

1 MY POINT IS HE RELIED ON THE DEFENDANT'S STATEMENT AND
2 HISTORY GIVEN TO HIM ABOUT THINGS THAT OCCURRED FROM DECEMBER
3 THE 6TH BACK. NOW, HE NOW HAS INFORMATION THAT HE HAS GOTTEN
4 AFTER DECEMBER THE 6TH, BECAUSE EVERYTHING HE'S GOT IS AFTER
5 DECEMBER THE 6TH. SO THEREFORE I WANT TO KNOW WHEN HE LOOKED
6 AT THIS AND SAW THAT THE STATE HOSPITAL PEOPLE HAD CONCLUDED
7 THERE WERE INCONSISTENCIES AND POINTED OUT SPECIFIC
8 INCONSISTENCIES, DID HE TAKE THAT INTO CONSIDERATION IN
9 REGARD TO THE RELIABILITY OF WHAT THE DEFENDANT HAD TOLD HIM
10 PREVIOUSLY? THAT'S -- IT'S A...

11 THE COURT: YES, SIR.

12 MR. MAULDIN: ONE MORE POINT, YOUR HONOR.

13 THE COURT: YES, SIR.

14 MR. MAULDIN: HE HAS DESCRIBED TO THE COURT THE METHOD
15 BY WHICH HE DETERMINES RELIABILITY. IF THE INFORMATION COMES
16 IN INDEPENDENTLY AND ENDS UP BEING CONSISTENT, THEN IT IS
17 MORE LIKELY TO BE RELIABLE. THAT'S JUST A PROFESSIONAL
18 METHOD OF RELIABILITY MEASURE. IF IT IS MERELY A QUESTION OF
19 WHETHER OR NOT HE CAN DEPEND UPON THE RELIABILITY OF CERTAIN
20 INFORMATION, THAT'S WHERE THE QUESTIONING SHOULD BE. TO THEN
21 ALLOW THE STATE TO PROBE INTO INFORMATION IN THIS REPORT
22 RELATING TO DATES EITHER ON OR SUBSEQUENT TO THE INCIDENT
23 SIMPLY TO GIVE EXAMPLES OF INCONSISTENCIES? THE PREJUDICE
24 FOR THAT FAR OUTWEIGHS THE PROBATIVE VALUE, AND SO WE DO
25 ENTER AN OBJECTION, YOUR HONOR.

MATTERS AND MOTIONS

1 THE COURT: . ALL RIGHT. IT SEEMS TO ME THAT THE PURPOSE
2 OF THIS WITNESS' TESTIMONY IS FOR THE DEFENDANT TO BE ABLE TO
3 POINT TO A MITIGATING CIRCUMSTANCE IN THE STATUTE OR OUTSIDE
4 OF THE STATUTE FROM WHICH THIS JURY CAN ASSIGN WEIGHT. HE
5 STARTED WITH HIS CONCLUSIONS, AND HE USED THE TERM MENTAL
6 ILLNESS. I'M NOT SURE WHAT THAT MEANS IN THE CONTEXT OF A
7 SOCIAL WORKER, BUT THAT DOVETAILS TO A PARTICULAR STATUTORY
8 MITIGATING CIRCUMSTANCE. THEN THE QUESTION IS, ON WHAT BASIS
9 DID THIS GENTLEMAN REACH THAT OPINION? AND IF SOMEONE IN HIS
10 AREA OF EXPERTISE CUSTOMARILY RELIES ON THAT TYPE OF
11 INFORMATION, THEN IT IS ADMISSIBLE AS A FOUNDATION FOR THE
12 OPINION, NOT FOR THE TRUTH OF THE MATTER CONTAINED THEREIN.

13 MR. YOUNGMAN HAS ACKNOWLEDGED THAT HE DID RELY ON THIS
14 PARTICULAR REPORT IN THE MATTER THAT'S PRESENTED TO THE COURT
15 AT THIS TIME IN FORMING HIS OPINION. I DO NOT BELIEVE IT IS
16 APPROPRIATE TO CROSS EXAMINE HIM ON THE PREMISE THAT THE
17 UNDERLYING ASSUMPTIONS ARE SUBSTANTIVE EVIDENCE. I KNOW
18 WE'RE SPLITTING HAIRS AS FAR AS JURY CONSIDERATION. I DO
19 BELIEVE IT'S PROPER FOR ANYTHING IN WHICH HE CLAIMED HE
20 RELIED ON IN FORMING HIS OPINION AS A SUBJECT FOR CROSS
21 EXAMINATION AND WHAT EFFECT IT HAS ON HIS OPINION, CERTAIN
22 THINGS WOULD CHANGE HIS MIND IN HOW HE EVALUATED CERTAIN
23 FACTORS IN ARRIVING AT HIS ULTIMATE CONCLUSION.

24 IF DEFENSE WANTS SOME LIMITING INSTRUCTION TO THE EFFECT
25 THAT AN EXPERT MAY RELY ON WHAT WOULD OTHERWISE BE

MATTERS AND MOTIONS

1 INADMISSIBLE IN FORMING HIS OR HER OPINION AND THAT
2 INFORMATION IS NOT ADMISSIBLE FOR THE TRUTH OF THE MATTER BUT
3 SIMPLY ON THE JURY'S ASSESSMENT OF THE OPINION OF THAT
4 EXPERT, I WILL TRY TO FORMULATE SUCH A LIMITING INSTRUCTION.
5 TECHNICALLY, THAT'S THE BASIS ON WHICH IT COMES IN, NOT ON A
6 PREMISE THAT THE UNDERLYING DATA IS SUBSTANTIVE EVIDENCE.

7 AND IF YOU STILL WANT TO HOLD OFF ON THE LIMITING
8 INSTRUCTION UNTIL THE FINAL CHARGE, I'LL BE GLAD TO DO SO,
9 SIR.

10 MR. MAULDIN: ONE MOMENT.

11 THE COURT: YES, SIR.

12 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) ONE
13 OTHER -- TO CONTINUE, AND I HATE TO CONTINUE TO DO THIS, BUT
14 LET ME MAKE -- SO MY OBJECTION IS THEN -- WOULD THEN BE
15 OVERRULED BUT THEN CURED, IS THAT...

16 THE COURT: WELL, I'M OVERRULING YOUR OBJECTION, BUT
17 I'M NOT PERMITTING THE STATE TO PREMISE THE CROSS EXAMINATION
18 ON THE TRUTH OF THE CONTENT IN THE DOCUMENT. THE ATTACK IS
19 ON THE OPINION -- OR CHALLENGE IS TO THE OPINION OF THE
20 EXPERT AND THE SOURCE AND FOUNDATION OF THAT OPINION.

21 MR. MAULDIN: WELL--

22 THE COURT: AND, YOU KNOW, FOR EXAMPLE, HE SAID HE
23 RELIED ON IT. WELL, WHAT WEIGHT DID YOU PUT ON IT? HOW IS
24 THAT CONSISTENT WITH WHAT YOU'VE SAID IS RELIABILITY AND
25 YET---

MATTERS AND MOTIONS

1 MR. MAULDIN: WELL, NOT KNOWING WHAT MR. YOUNGMAN IS
2 GOING TO SAY AND NOW KNOWING -- NOW NOT REALLY KNOWING WHAT
3 THE SOLICITOR IS GOING TO ASK, I'M GOING TO ASK THAT THE
4 COURT PROCEED -- CONTINUE TO PROCEED OUT OF THE PRESENCE JUST
5 TO BE ULTIMATELY ON THE SAFE SIDE. I MEAN, THE WITNESS, OF
6 COURSE, IS CONTAINED IN THE WITNESS BOX. HE'S NOT TALKING TO
7 ANYBODY. SO I DON'T THINK IT WOULD HURT FOR US TO PROCEED
8 AND SEE WHERE WE GO. BECAUSE IF CERTAIN QUESTIONS ARE
9 ASKED -- LET ME -- COULD I HAVE A SIDEBAR SO I WON'T BE
10 SPEAKING IN THE PRESENCE OF THE WITNESS?

11 (BENCH CONFERENCE OFF RECORD FROM 4:13 TO 4:16 P.M.)

12 (COUNSEL OFF RECORD FROM 4:16 TO 4:17 P.M.)

13 SOLICITOR ARIAIL: YOUR HONOR, FOR PURPOSE OF THE
14 RECORD, I'LL SHOW THIS TO MR. YOUNGMAN.

15 QUESTIONS OF MR. YOUNGMAN CONTINUE BY SOLICITOR ARIAIL:

16 Q WHAT WE'LL DO IS I'M GOING TO ASK YOU IF YOU HAVE READ
17 THIS PARTICULAR PORTION OF THE REPORT BEGINNING IN THE TWO
18 BRACKETED AREAS -- IN THE RED BRACKETED AREA?

19 A (REVIEWS DOCUMENT) YES, I READ THIS.

20 Q I'M SORRY?

21 A I READ THIS.

22 Q OKAY. AND DID THAT FORM A PART OF YOUR EVALUATION, AS
23 FAR AS HAVING READ THAT, NOT GIVING IT ANY GREATER WEIGHT
24 THAN YOU GAVE ANYTHING ELSE BUT AS AN OVERALL PART?

25 A AS AN OVERALL PART, I'D SAY YES.

JEFF YOUNGMAN -- QUESTIONS BY SOLICITOR ARIAIL
OUTSIDE THE PRESENCE OF THE JURY

1 **SOLICITOR ARIAIL:** AND THEN I WOULD PROCEED WITH OTHER
2 QUESTIONS.

3 **THE COURT:** AND I WILL -- YOU HAVE INDICATED AT SIDEBAR
4 YOU DO WANT A LIMITING INSTRUCTION. I'M GOING TO DO THAT
5 BEFORE WE BEGIN AND NOT LIMIT IT JUST TO THIS PARTICULAR
6 REFERENCE TO DRAW ATTENTION TO IT BUT AS THE OVERALL CONCEPT
7 OF AN EXPERT'S RELIANCE ON WHAT WOULD OTHERWISE BE HEARSAY.

8 **SOLICITOR ARIAIL:** AND, YOUR HONOR, I WOULD JUST --
9 WHAT I PLAN TO DO IS ASK HIM TO READ IT RATHER THAN PUTTING
10 IT UP ON THE PRESENTER OR---

11 **THE COURT:** RIGHT.

12 **SOLICITOR ARIAIL:** ---SO THEY UNDERSTAND WHAT IT IS.

13 **THE COURT:** YES, SIR. VERY GOOD, SIR.

14 **SOLICITOR ARIAIL:** THANK YOU.

15 **THE COURT:** BRING THE JURY, PLEASE.

16 **MR. MAULDIN:** AND WE ARE PROTECTED, YOUR HONOR, WITH
17 REGARD TO THE OBJECTION BEING MADE, OVERRULED WITH THE
18 FOLLOW-UP INSTRUCTION TO THE JURY AS TO LIMITATION?

19 **THE COURT:** AND IF YOU WOULD, SUCCINCTLY STATE EXACTLY
20 WHAT IS YOUR OBJECTION TO THE SOLICITOR CROSS EXAMINING THE
21 EXPERT ON THE MATERIALS UPON WHICH HE RELIED IN FORMING HIS
22 OPINION.

23 **MR. MAULDIN:** THE BRACKETED MATERIAL -- THE QUESTION IS
24 WHETHER OR NOT THE WITNESS RELIED -- RELATED TO THE MEASURE
25 OF CREDIBILITY OF THE SOURCES OF INFORMATION IS WHAT I KEEP

JEFF YOUNGMAN -- QUESTIONS BY SOLICITOR ARIAIL
OUTSIDE THE PRESENCE OF THE JURY

1 -- IS KIND OF A POINTED ISSUE. TAKING IT INTO CONSIDERATION
2 IN A GENERAL WAY THAT'S BEEN EXPRESSED IS REALLY NOT SUCCINCT
3 IN THAT IT'S NOT ON THE NUMBERS, AND IF THIS REALLY IS A
4 SEEKING OF WHETHER OR NOT MR. YOUNGMAN HAD CONCERNS ABOUT THE
5 CREDIBILITY OF THE SOURCES OF HIS INFORMATION VIS A VIS THE
6 DEFENDANT, THEN THAT REALLY NEEDS TO BE WHAT THE QUESTION IS.
7 SO THAT -- THAT'S NOT WHAT I ANTICIPATE THE QUESTION TO BE,
8 AND I'M TRYING TO MAKE SURE I GET MY OBJECTION ON THIS
9 RECORD.

10 THE COURT: VERY GOOD. THANK YOU, SIR.

11 (JURY REENTERS COURTROOM AT 4:20 P.M.)

12 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN,
13 SOMETIMES EVIDENCE IS RECEIVED FOR A LIMITED PURPOSE, AND
14 THAT TYPICALLY OCCURS DURING THE TESTIMONY OR OPINION
15 TESTIMONY OF A WITNESS DESIGNATED AS AN EXPERT. OFTENTIMES
16 EXPERTS WILL RELY ON LEARNED TREATISES, STATEMENTS, REPORTS
17 FROM OTHERS IN FORMING THE BASIS OF THEIR OPINIONS.

18 THOSE UNDERLYING SOURCES, THOSE STATEMENTS, THE CONTENTS
19 OF ANY SUCH REPORTS ARE ADMISSIBLE, BUT FOR A LIMITED
20 PURPOSE, FOR YOUR CONSIDERATION. YOU MAY CONSIDER SUCH
21 EVIDENCE ONLY AS IT BEARS UPON YOUR ASSESSMENT OF AND
22 CONSIDERATION OF A WITNESS' EXPERT OPINION AND NOT FOR THE
23 TRUTH OF THE MATTER CONTAINED IN ANY SUCH REPORT OR DOCUMENT.

24
25 WITH THAT LIMITING INSTRUCTION, SOLICITOR, YOU MAY

JEFF YOUNGMAN -- QUESTIONS BY SOLICITOR ARIAIL
OUTSIDE THE PRESENCE OF THE JURY

1 PROCEED.

2 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION CONTINUES BY SOLICITOR ARIAIL:

4 Q MR. YOUNGMAN, LET ME GO BACK TO WHERE WE WERE. I HAVE
5 NOW RECEIVED FROM YOU THE ENTIRE COMPILATION OF DOCUMENTS
6 THAT YOU REVIEWED?

7 A YES.

8 Q AND IS IT FAIR TO SAY AS A CHARACTERIZATION THAT THE
9 VAST MAJORITY OF THESE ARE DOCUMENTS AND FORMS FROM THE
10 UNITED STATES DISTRICT COURT REGARDING THE CONSPIRACY CHARGE
11 FOR DEFRAUDING OR UTTERING FRAUDULENT SECURITIES, THE PRISON
12 RECORDS REGARDING THE DEFENDANT AS HE WENT THROUGH THE PRISON
13 SYSTEM, AND THEN A FOLLOW-UP ON PROBATION REPORTS ON THE
14 FEDERAL SYSTEM, AND THEN FINALLY -- OR ALMOST FINALLY THE
15 RECORDS OF THE GREENVILLE COUNTY DETENTION CENTER AS TO
16 CERTAIN BEHAVIOR AND REQUESTS, THAT SORT OF THING, DURING HIS
17 CONFINEMENT HERE?

18 A YES, SIR, THAT'S WHAT'S IN THERE.

19 Q THEN THERE ARE NO MEDICAL RECORDS, NO SCHOOL RECORDS, NO
20 ANY KIND OF COUNSELING RECORDS OR ANYTHING DEALING WITH THE
21 PERSONAL HISTORY OF THE DEFENDANT IN THIS FOLDER?

22 A NO, SIR.

23 Q ALL RIGHT. NOW, THE LAST ITEM IN THIS FOLDER IS THE
24 REPORT OF THE WILLIAM S. HALL PSYCHIATRIC INSTITUTE,
25 OTHERWISE KNOWN AS THE STATE HOSPITAL, DEPARTMENT OF MENTAL

JEFF YOUNGMAN -- CROSS EXAMINATION CONTINUES BY SOLICITOR
ARIAIL

1 HEALTH, STATE OF SOUTH CAROLINA. AND YOU HAVE TESTIFIED THAT
2 YOU READ THE REPORT OF THE DEPARTMENT OF MENTAL HEALTH
3 REGARDING THIS DEFENDANT?2HIS SIS

4 A YES, I DID.

5 Q AND IT WAS PART OF YOUR EVALUATION AND ANALYSIS OF THIS
6 INDIVIDUAL?

7 A YES, IT WAS.

8 Q AND THAT EVALUATION AS STATED ON THE REPORT OCCURRED ON
9 SEPTEMBER THE 25TH, 2001 AND OCTOBER THE 29TH, 2001?

10 A AS I RECALL, YES, SIR.

11 Q ALL RIGHT. AND AS A RESULT OF THAT YOU STATED -- EXCUSE
12 ME. YOU STATED EARLIER THAT THE SOURCES OF YOUR INFORMATION
13 WERE THE DEFENDANT'S MOTHER AND ONE OF HIS SISTERS, HIMSELF
14 AND HIS GIRLFRIEND, AND THAT RELIABILITY OF THAT INFORMATION
15 WAS IMPORTANT FOR YOU TO -- ON WHICH TO BASE YOUR EVALUATION?

16 A I SAID CONSISTENCY WAS IMPORTANT---

17 Q CONSISTENCY.

18 A ---TO DETERMINE RELIABILITY.

19 Q YOU ARE LOOKING FOR CONSISTENCY?

20 A YES.

21 Q ALL RIGHT. I WANT TO ASK YOU SPECIFICALLY IF YOU READ
22 IN THE STATE HOSPITAL REPORT -- AND I'LL READ YOU THE
23 STATEMENT, "ADDITIONALLY THERE WERE SEVERAL INCONSISTENCIES
24 BETWEEN HIS," MEANING THE DEFENDANT, "STATEMENTS DURING THE
25 FIRST AND SECOND INTERVIEWS. DURING THE FIRST INTERVIEW HE

JEFF YOUNGMAN -- CROSS EXAMINATION CONTINUES BY SOLICITOR
ARIAIL

1 REPORTED HAVING BLACKOUTS AND EXPERIENCING PERIODS OF HOURS
2 OF THE DAY THAT HE COULD NOT RECOLLECT ON DIFFERENT
3 OCCASIONS. HE ALSO STATED THAT ON THE DAY OF THE ALLEGED
4 EVENTS HE KNEW THERE WAS A POSSIBILITY OF A WARRANT OUT FOR
5 HIS ARREST IN FLORIDA. HOWEVER, DURING THE SECOND FORENSIC
6 INTERVIEW, HE DENIED ANY PERIODS OF LOSING MEMORY AND SAID HE
7 ONLY HAD DIFFICULTY REMEMBERING NUMBERS AND THINGS. AND ALSO
8 DURING THE SECOND FORENSIC INTERVIEW HE STATED THAT HE HAD
9 NOT KNOWN ANYTHING ABOUT A WARRANT FROM FLORIDA AT THE TIME
10 OF THE ALLEGED INCIDENT."

11 DID YOU CONSIDER THE INCONSISTENCIES OF THE DEFENDANT IN
12 THE STATEMENTS HE MADE TO THE PEOPLE AT THE STATE HOSPITAL IN
13 CONSIDERING YOUR EVALUATION?

14 A I CONSIDERED THE WHOLE REPORT. I CONSIDERED THE
15 INCONSISTENCIES ABOUT HIS SOCIAL HISTORY IN THE STATE
16 HOSPITAL REPORT.

17 Q YOU DID NOT CONSIDER THE INCONSISTENCIES THAT HE MADE IN
18 REGARD TO THESE TWO STATEMENTS?

19 A AS A -- EXPLAIN ANYTHING THAT OCCURRED -- ANYTHING FROM
20 12/6 ON WAS NOT UNDER MY PURVIEW.

21 Q ALL RIGHT. WELL, THE EVENTS UPON WHICH HE IS BEING
22 INCONSISTENT WERE 12/6. I'M NOT FOLLOWING YOU. YOU TOOK THE
23 STATEMENTS OF KAREN MCCALL AND HIS MOTHER AND HIS SISTER.
24 THEY WERE MADE AFTER 12/6, RIGHT?

25 A NO. ANYTHING THAT OCCURRED FROM 12/6 ON IS NOT MY

JEFF YOUNGMAN -- CROSS EXAMINATION CONTINUES BY SOLICITOR
ARIAIL

1 SOCIAL HISTORY. ANYTHING BEFORE 12:00 MIDNIGHT ON 12/6 IS
2 WHAT I INCLUDE IN MY SOCIAL HISTORY. SO IN THAT MENTAL
3 HEALTH REPORT, ANYTHING REPORTED THAT OCCURRED TO HIM AS A
4 CHILD, GROWING UP, THAT STUFF I TOOK INTO -- INTO MY REPORT.
5 ANYTHING THAT HE SAYS HAPPENED FROM 12/6 ON IS NOT MY ISSUE.
6 IT'S NOT PART OF MY ROLE AS A SOCIAL WORKER. IT'S NOT PART
7 OF MY PSYCHOSOCIAL ASSESSMENT.

8 Q WELL, THEN LET ME ASK YOU IF YOU WOULD CONSIDER IT NOW,
9 AND IF YOU DID WOULD IT CHANGE YOUR OPINION THAT YOU HAVE
10 RENDERED TODAY?

11 A IT DOESN'T MATTER WHAT HAPPENED AFTER 12/6. WHATEVER
12 HAPPENED BEFORE 12/6 HAPPENED. HE WAS BORN IN 1967 NO MATTER
13 WHAT HE DID ON 12/6.

14 Q SO YOU DID NOT CONSIDER THE FACT THAT HE GAVE
15 INCONSISTENT STATEMENTS ABOUT THOSE EVENTS TO THE DEPARTMENT
16 OF MENTAL HEALTH?

17 A NO.

18 Q AND IN YOUR FILE THERE ARE NO MEDICAL RECORDS WHERE THE
19 DEFENDANT WAS EVER TREATED FOR ANY MENTAL HEALTH ISSUES PRIOR
20 TO HIS INCARCERATION?

21 A NONE COULD BE LOCATED.

22 Q NO COUNSELING RECORDS, NO HOSPITAL RECORDS, NO NOTHING?

23 A NO, NO ANYTHING.

24 Q EVEN WHILE HE IS INCARCERATED IN THE DEPARTMENT OF
25 CORRECTIONS, THERE IS NO EVIDENCE, THAT IS THE FEDERAL

JEFF YOUNGMAN -- CROSS EXAMINATION CONTINUES BY SOLICITOR
ARIAIL

1 DEPARTMENT OF CORRECTIONS, NO EVIDENCE OF MENTAL HEALTH
2 ISSUES?

3 A CORRECT. THERE IS NO EVIDENCE.

4 Q AND THE MITIGATION INVESTIGATOR THAT YOU TALKED TO
5 ABOUT, I WANT TO MAKE SURE WE'RE CLEAR ON THIS, AS I
6 UNDERSTAND THAT'S A PERSON THAT WORKS FOR MR. MAULDIN?

7 A YES, SIR.

8 Q DOESN'T WORK FOR YOU, DOESN'T WORK FOR THE COURT BUT
9 WORKS FOR MR. MAULDIN?

10 A GETS PAID BY MR. MAULDIN. BUT THE PERSON WORKS FOR ME
11 HELPING ME GATHER RECORDS.

12 Q OKAY. SO HE---

13 A HE ASSISTS ME, WORKS FOR MR. MAULDIN.

14 Q ALL RIGHT. HE---

15 A OR SHE DOES.

16 Q HE MADE THE CONTACT -- THE PERSON MADE THE CONTACT TO
17 THE DEFENDANT'S MOTHER AND THEN GAVE YOU THE INFORMATION?

18 A YES, SIR.

19 Q I'M GOING TO HAND YOU BACK YOUR EXHIBITS AND YOUR
20 SUMMARY. AND JUST FOR ONE CLARIFICATION, THERE ARE NO NOTES
21 PRESENT WITH YOU TODAY AS TO ANY OF THE INTERVIEWS THAT YOU
22 HAD WITH KAREN MCCALL, THE SISTER, THE MOTHER OR THE
23 DEFENDANT HIMSELF?

24 A NO, SIR.

25 Q THOSE NOTES YOU LEFT IN---

JEFF YOUNGMAN -- CROSS EXAMINATION CONTINUES BY SOLICITOR
ARIAIL

1 A MOUNT PLEASANT, SOUTH CAROLINA.

2 Q I'M SORRY?

3 A MOUNT PLEASANT, SOUTH CAROLINA, AFTER I TYPED THEM UP.

4 Q OKAY.

5 A AFTER I TYPED UP THE SUMMARY.

6 Q THEY ARE THERE BUT THEY'RE NOT HERE?

7 A CORRECT.

8 SOLICITOR ARIAIL: THANK YOU.

9 THE COURT: REDIRECT?

10 MR. BANNISTER: THANK YOU.

11 (PHOTOGRAPH OF DEFENDANT MARKED AS DEFENDANT'S EXHIBIT
12 NUMBER 13 FOR PURPOSES OF IDENTIFICATION ONLY)

13 REDIRECT EXAMINATION BY MR. BANNISTER:

14 Q MR. YOUNGMAN, IF YOU DON'T MIND, I'D LIKE TO TALK
15 BRIEFLY ABOUT THE RECORDS IN THIS CASE. BECAUSE OF THE
16 FREQUENCY OF THE MOVES OF MR. WOOD'S FAMILY, THE HOME
17 SCHOOLING THAT HE RECEIVED, THE BRIEF PERIOD OF TIME WITH
18 WHICH HE LIVED IN ANY ONE PLACE AND THE FACT THAT THERE
19 WEREN'T ANY MEANINGFUL RELATIONSHIPS AS YOU TESTIFIED TO, WAS
20 IT HARD TO OBTAIN DOCUMENTS AND TO FIND OTHER PEOPLE TO
21 INTERVIEW?

22 A TRUE. IT WAS VIRTUALLY IMPOSSIBLE.

23 Q ALL RIGHT. DESPITE THAT FACT ARE YOU STILL SATISFIED
24 WITH THE CONCLUSIONS THAT YOU HAVE REACHED AND THE
25 INFORMATION THAT YOU HAVE GIVEN THE JURY?

JEFF YOUNGMAN -- REDIRECT BY MR. BANNISTER

1 A I'M SATISFIED.

2 Q ALL RIGHT. OUT OF THE 24 CASES THAT YOU HAVE TESTIFIED
3 IN IN CAPITAL CASES HAVE THERE BEEN SOME OF THOSE CASES WHERE
4 YOU REPORTED THERE IS NO MITIGATION EVIDENCE?

5 A I WORKED 24. I'VE ONLY TESTIFIED IN NINE. SO THE OTHER
6 15 THERE WAS EITHER NO MITIGATION OR THERE WAS MITIGATION BUT
7 NOT IN MY AREA OF EXPERTISE. FOR EXAMPLE, THERE MAY HAVE
8 BEEN A HEAD TRAUMA, WHICH ISN'T SOMETHING I DEAL WITH. SO OF
9 THE 24, ONLY NINE THAT I'VE TESTIFIED IN.

10 Q ARE THERE OCCASIONS AFTER YOU HAVE CREATED THE
11 DEFENDANT'S BIOGRAPHY AND YOU'VE DONE YOUR SOCIAL ASSESSMENT
12 THAT YOU COME BACK TO THE PERSON YOU'RE WORKING FOR AND SAY,
13 "I DON'T HAVE ANY MITIGATION"?

14 A OH, SURE.

15 Q OKAY. ARE THERE TIMES -- I REALIZE THAT YOU HAVE NEVER
16 TESTIFIED FOR THE STATE IN A CAPITAL SENTENCING CASE, BUT
17 HAVE YOU EVER TESTIFIED AS A SOCIAL WORKER FOR THE STATE IN
18 OTHER PROCEEDINGS?

19 A WELL, CERTAINLY THE SEVEN YEARS I WAS IN CHILD
20 PROTECTION I TESTIFIED FOR THE STATE EVERY TIME. AND AS LATE
21 AS LAST FALL, FALL OF 2000, I TESTIFIED FOR THE STATE IN A
22 FEDERAL CASE IN WINSTON-SALEM INVOLVING CHILD PORNOGRAPHY.

23 Q WE'VE HEARD SOME TALK ABOUT THE INVESTIGATOR THAT YOU
24 USE. LET ME ASK YOU FIRST, IS IT CUSTOMARY TO USE A
25 MITIGATION INVESTIGATOR IN FORMING THE BIOGRAPHY YOU DO AND

JEFF YOUNGMAN -- REDIRECT BY MR. BANNISTER

1 GETTING A SOCIAL ASSESSMENT?

2 A ALMOST EVERY TIME I USE ONE.

3 Q ALL RIGHT. DOES IT HELP CUT DOWN ON COST?

4 A IT CERTAINLY DOES.

5 Q ALL RIGHT. WOULD AN EXAMPLE OF SOME OF THE DOCUMENTS
6 THAT ARE BROUGHT TO YOU BE LIKE PHOTOGRAPHS?

7 A RIGHT. PHOTOGRAPHS, A LOT OF RECORDS FROM HOSPITALS AND
8 THINGS THAT IT'S EASIER FOR THAT PERSON TO GET THAN ME, SURE.

9 Q ALL RIGHT. IN THIS CASE DID YOU RECEIVE A PHOTOGRAPH
10 FROM THE MITIGATION INVESTIGATOR?

11 A YES, I DID.

12 Q ALL RIGHT. DO YOU HAVE IT WITH YOU?

13 A YES, I DO.

14 Q WHAT IS IT A PHOTOGRAPH OF?

15 A IT'S A PICTURE OF JOHN WOOD IN FIRST GRADE.

16 Q ALL RIGHT. IS IT MARKED AS A DEFENDANT'S EXHIBIT?

17 A YES, IT IS. EXHIBIT, 13.

18 MR. BANNISTER: JUDGE, AT THIS TIME I'D LIKE TO
19 INTRODUCE THIS PHOTOGRAPH INTO EVIDENCE.

20 SOLICITOR ARIAIL: I WOULD HAVE TO OBJECT AT THIS TIME.
21 I DON'T THINK THAT'S PROPER REDIRECT.

22 THE COURT: SUSTAINED.

23 Q JEFF, JUST LEAVE IT THERE, IF YOU CAN.

24 MR. BANNISTER: I'LL NEED IT MARKED AS A COURT'S
25 EXHIBIT IF WE NEED ANOTHER WITNESS TO TESTIFY TO IT, THEN IT

JEFF YOUNGMAN -- REDIRECT BY MR. BANNISTER

1 WILL BE THERE.

2 THE COURT: YES, SIR.

3 MR. BANNISTER: THANK YOU, JUDGE.

4 Q YOU GOT THE INFORMATION FROM JOHN'S MOM FROM THE
5 MITIGATION INVESTIGATOR; WOULD THAT BE A FAIR STATEMENT?

6 A THAT'S A FAIR STATEMENT, YES, SIR.

7 Q WHY DID YOU HAVE TO RELY ON THE MITIGATION INVESTIGATOR?

8 A BECAUSE MOM WOULDN'T MAKE HERSELF AVAILABLE TO ME.

9 Q AND IS THAT CONSISTENT WITH WHAT YOU HAVE TESTIFIED TO
10 HERE TODAY REGARDING HIS BIOGRAPHY AND THE FACTORS THAT HAVE
11 AFFECTED HIS LIFE?

12 A CERTAINLY, IT SEEMED LIKELY THAT SHE WOULD COOPERATE
13 WITH ME.

14 Q ALL RIGHT. IS ONE OF THE SPECIFIC DOCUMENTS THAT YOU
15 RELIED ON THE PRESENTENCE INVESTIGATION REPORT FROM THE
16 PROBATION -- UNITED STATES PROBATION DEPARTMENT PRIOR TO
17 JOHN'S COMMITTAL TO FEDERAL PRISON?

18 A YES, IT WAS.

19 Q IS THERE A SPECIFIC PORTION OF THAT ENTITLED "BACKGROUND
20 INFORMATION OF THE DEFENDANT"?

21 A YES.

22 Q ALL RIGHT. DID YOU CREATE THAT DOCUMENT?

23 A NO, I DID NOT.

24 Q DO YOU KNOW WHO DID?

25 A FEDERAL PROBATION OFFICE PRESENTENCE OFFICE. I'M NOT

JEFF YOUNGMAN -- REDIRECT BY MR. BANNISTER

1 SURE WHO THE PERSON WAS.

2 Q IS THERE ANYTHING IN THAT BACKGROUND OF THE DEFENDANT
3 THAT YOU FOUND INCONSISTENT WITH WHAT YOU HAD HEARD FROM AND
4 THE DOCUMENTS THAT YOU GOT FROM OTHER SOURCES?

5 A I THINK IT WAS ALL CONSISTENT. MAYBE THE NUMBER OF
6 YEARS THE PARENTS WERE SEPARATED MIGHT HAVE BEEN NOT THE
7 SAME. BUT OTHER THAN THAT, YEAH, EVERYTHING WAS WHAT I HAD
8 HEARD FROM OTHERS.

9 MR. BANNISTER: JUDGE, IF I COULD HAVE JUST ONE MOMENT?

10 THE COURT: TAKE YOUR TIME, SIR.

11 (OFF RECORD WITH CO-COUNSEL)

12 MR. BANNISTER: I DON'T THINK WE HAVE ANY FURTHER
13 QUESTIONS, JUDGE.

14 THE COURT: ALL RIGHT. ANYTHING FURTHER?

15 SOLICITOR ARIAIL: NOTHING.

16 THE COURT: MR. YOUNGMAN, THANK YOU, SIR. APPRECIATE
17 YOU BEING HERE, MR. YOUNGMAN.

18 WITNESS: APPRECIATE IT.

19 THE COURT: JUST LEAVE THAT THERE. THAT'LL BE FINE.
20 THANK YOU, SIR.

21 WITNESS: YOU'RE WELCOME.

22 MR. BANNISTER: CAN THE WITNESS BE EXCUSED, JUDGE?

23 SOLICITOR ARIAIL: NO OBJECTION.

24 THE COURT: WITHOUT OBJECTION.

25 (WITNESS EXCUSED AT 4:34 P.M.)

JEFF YOUNGMAN -- REDIRECT BY MR. BANNISTER

1 **THE COURT:** NEXT WITNESS, PLEASE?

2 **MR. MAULDIN:** YOUR HONOR, WE HAVE ONE SHORT WITNESS,
3 TED KINSLER.

4 **TED KINSLER,** HAVING BEEN DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 **DIRECT EXAMINATION BY MR. MAULDIN:**

7 **Q** STATE YOUR NAME FOR THE RECORD, PLEASE, SIR.

8 **A** TED KINSLER.

9 **Q** WHOM ARE YOU EMPLOYED BY, MR. KINSLER?

10 **A** I'M A SERGEANT AT THE GREENVILLE COUNTY DETENTION
11 CENTER.

12 **Q** OKAY. AND I WANT TO ASK YOU IF YOU ARE PRESENT IN THE
13 COURTROOM IN RESPONSE TO THE SERVICE OF A SUBPOENA, THE
14 ACTUAL SERVICE OF THAT SUBPOENA BEING ON FEBRUARY THE 8TH OF
15 2002? IS THAT WHY YOU ARE HERE?

16 **A** YES, SIR.

17 **Q** WERE YOU DIRECTED TO BE RESPONSIVE TO THE SUBPOENA BY
18 YOUR SUPERIOR, CAPTAIN MELTON?

19 **A** YES, SIR.

20 **Q** ALL RIGHT. AND AS A RESULT OF THAT SUBPOENA, I WANT TO
21 ASK YOU WHAT YOU BROUGHT WITH YOU.

22 **A** I HAVE A BOX OF 23 VIDEOTAPES.

23 **Q** ALL RIGHT. AND THOSE 23 VIDEOTAPES REPRESENT -- I MEAN,
24 WHAT ARE THEY VIDEOTAPES OF?

25 **A** THE VIDEOTAPES ARE DOCUMENTATION OF ALL THE MOVEMENT OF

TED KINSLER -- DIRECT BY MR. MAULDIN

1 MR. WOOD WHILE HE'S HOUSED AT THE GREENVILLE COUNTY DETENTION
2 CENTER.

3 Q AND THOSE TAPES BEGAN ON THE 10TH DAY OF DECEMBER OF
4 2000; IS THAT CORRECT?

5 A YES, SIR.

6 Q AND THEY HAVE RUN UP TO THE PRESENT; IS THAT CORRECT?

7 A YES, SIR. THERE WAS A BRIEF STOPPING PERIOD ON MONDAY,
8 AND THEN WE RESUMED AGAIN TODAY.

9 Q ALL RIGHT. NOW, HAVE THE TAPES THAT YOU HAVE BROUGHT TO
10 THE COURTROOM THIS AFTERNOON BEEN PRODUCED BY AND IN THE
11 POSSESSION OF THE GREENVILLE COUNTY DETENTION CENTER
12 CONTINUOUSLY THROUGHOUT THE PERIOD OF TIME IDENTIFIED?

13 A YES, SIR

14 MR. MAULDIN: ALL RIGHT. YOUR HONOR, WE OFFER THIS BOX
15 OF TAPES THAT SERGEANT KINSLER HAS RESPONDED TO OUR SUBPOENA.

16 SOLICITOR ARIAIL: NO OBJECTION.

17 THE COURT: WITHOUT OBJECTION. SO ADMITTED. CAN WE
18 JUST MARK THEM COLLECTIVELY OR DO YOU WANT THEM INDIVIDUALLY?

19 MR. MAULDIN: YES, SIR, JUST COLLECTIVELY IF IT SUITS
20 THE STATE.

21 (BOX OF VIDEOTAPES MARKED AS DEFENDANT'S EXHIBIT NUMBER
22 14 AND MOVED INTO EVIDENCE)

23 MR. MAULDIN: YOUR HONOR, THIS IS MARKED AS DEFENDANT'S
24 EXHIBIT NUMBER 14.

25 NO FURTHER QUESTIONS. THANK YOU, SIR.

TED KINSLER -- CROSS BY SOLICITOR ARIAIL

1 CROSS EXAMINATION BY SOLICITOR ARIAIL:

2 Q JUST FOR THE JURY'S CLARIFICATION, EXPLAIN HOW THESE
3 VIDEOS ARE DONE.

4 A BASICALLY, WHAT WE DID IN THESE PARTICULAR VIDEOS IS WE
5 DOCUMENT ALL THE MOVEMENT AND THEN ANY INTERACTION THAT WE
6 MAY HAVE WITH MR. WOOD, BASICALLY MOVEMENT FROM HIS ROOM TO,
7 AN EXAMPLE WOULD BE, A VISIT OR SOMETHING OF THAT NATURE.

8 Q THESE ARE NOT -- YOU DON'T HAVE A VIDEO CAMERA IN HIS
9 CELL THAT'S MONITORING HIM 24 HOURS A DAY, THESE ARE
10 SELECTIVE VIDEOS OF HIS MOVEMENT AROUND THE COMPLEX?

11 A YES, SIR, THAT'S CORRECT. THEY ARE PRODUCED WITH A
12 HANDHELD VIDEO CAMERA.

13 Q SO THERE IS A GUARD ON THE HANDHELD VIDEO CAMERA?

14 A YES, SIR, THERE'S AN OFFICER RUNNING THAT CAMERA.

15 Q AND THEN HOW MANY OTHER OFFICERS ARE THERE THAT WOULD BE
16 WITH HIM DURING THESE VIDEOS?

17 A GENERALLY, THERE IS AT LEAST ONE SUPERVISOR AND ONE
18 ADDITIONAL OFFICER.

19 Q TOTAL OF THREE?

20 A YES, SIR.

21 Q SO WHEN HE LEAVES HIS CELL TO GO TO THE MEDICAL CLINIC,
22 THREE PEOPLE GO WITH HIM, ONE OF THEM IS FILMING?

23 A THAT'S CORRECT.

24 Q AND HAS THAT BEEN STANDARD OPERATING PROCEDURE WITH MR.
25 WOOD SINCE THE DAY HE ENTERED THE DETENTION CENTER?

TED KINSLER -- CROSS BY SOLICITOR ARIAIL

1 A YES, SIR, EXCEPT FOR A BRIEF PERIOD, WHICH I MENTIONED,
2 EARLIER ON MONDAY.

3 Q RIGHT. NOW, ARE ALL THE DETENTION OFFICERS DRESSED AS
4 YOU DO?

5 A YES, SIR.

6 Q WERE YOU EVER PART OF ANY OF THE DEALINGS WITH MR. WOOD?

7 A YES, SIR.

8 Q YOU'VE HAD DAILY -- I MEAN, FACE-TO-FACE DEALINGS WITH
9 HIM?

10 A YES, SIR, I HAVE.

11 Q AND AT ANY TIME DURING THAT HAS HE INDICATED THAT HE WAS
12 AFRAID OF YOU OR SCARED OF YOU OR...

13 A NO, SIR, NOT AT ALL.

14 Q DO YOU AND HE HAVE CONVERSATION OR -- TELL US WHAT YOU
15 DO.

16 A BASICALLY, MY INTERACTION WITH MR. WOOD IN THOSE
17 PARTICULAR SITUATIONS IS SUPERVISING THE STAFF THAT ARE
18 PRESENT, THE OFFICER THAT'S VIDEOTAPING THE INCIDENT, AND THE
19 ADDITIONAL OFFICER THAT'S THERE, AND SUPERVISING ANY TYPE
20 ACTIVITY THAT WE WERE DOING, SUCH AS GIVING HIM LINEN OR
21 JUMPSUIT EXCHANGE, TAKING HIM TO THE MEDICAL CLINIC, THINGS
22 OF THAT NATURE.

23 Q ARE YOU ARMED? DO YOU WEAR A FIREARM?

24 A NO, SIR.

25 Q YOU DON'T WEAR A FIREARM IN THE JAIL?

TED KINSLER -- CROSS BY SOLICITOR ARIAIL

1 A NO, SIR.

2 Q DETENTION OFFICERS DON'T WEAR A FIREARM?

3 A NO, SIR.

4 SOLICITOR ARIAIL: THAT'S ALL. THANK YOU.

5 THE COURT: REDIRECT?

6 MR. MAULDIN: NO FURTHER QUESTIONS. COME DOWN,
7 SERGEANT KINSLER. WE'D ASK THAT HE BE EXCUSED, YOUR HONOR.

8 THE COURT: THANK YOU, SIR. WITHOUT OBJECTION.

9 THANK YOU, SIR.

10 (WITNESS EXCUSED AT 4:40 P.M.)

11 MR. RICHEY: WE CALL JAMES AIKEN AT THIS TIME, YOUR
12 HONOR.

13 JAMES EVANS AIKEN, HAVING BEEN
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. RICHEY:

16 Q MR. AIKEN, WHAT IS YOUR CURRENT AGE?

17 A I AM 53 YEARS OLD.

18 Q OKAY. AND CAN YOU TELL ME WHERE DO YOU WORK RIGHT NOW?

19 A I RESIDE AND WORK IN BREVARD, NORTH CAROLINA,
20 TRANSYLVANIA COUNTY.

21 Q OKAY. AND WHAT TYPE OF WORK DO YOU DO?

22 A I HAVE A CORPORATION, JAMES E. AIKEN AND ASSOCIATES,
23 WHICH IS A CORRECTIONAL PRISON CONSULTING SERVICE.

24 Q AND WHAT TYPE OF EDUCATION DO YOU HAVE?

25 A I WAS BORN IN CAMDEN, SOUTH CAROLINA, AND RAISED IN

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 SOUTH CAROLINA AND EDUCATED IN THE SCHOOL SYSTEM THERE. I
2 HAVE AN UNDERGRADUATE DEGREE FROM BENEDICT COLLEGE, COLUMBIA,
3 SOUTH CAROLINA, AND I HAVE A MASTER'S DEGREE IN CRIMINAL
4 JUSTICE FROM THE UNIVERSITY OF SOUTH CAROLINA.

5 Q WHAT IS YOUR EMPLOYMENT HISTORY AND ASSOCIATED DUTIES OF
6 EACH POSITION?

7 A I STARTED MY PROFESSIONAL CAREER WITH THE SOUTH CAROLINA
8 DEPARTMENT OF CORRECTIONS, COLUMBIA, SOUTH CAROLINA, AT THE
9 MANNING CORRECTIONAL INSTITUTION AS A SOCIAL WORKER IN A
10 SUBSTANCE ABUSE PROGRAM. FROM THERE I BECAME ADMINISTRATIVE
11 ASSISTANT OF THE SAME INSTITUTION, MANNING CORRECTIONAL
12 INSTITUTION, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. FROM
13 THERE I BECAME DEPUTY WARDEN OF THAT SAME INSTITUTION IN
14 SOUTH CAROLINA. MANNING AT THAT PARTICULAR TIME WAS A MEDIUM
15 SECURITY PRISON LOCATED IN COLUMBIA AND HOUSED YOUNGER ADULTS
16 THAT HAVE VIOLATED RULES OF -- NOT RULES BUT CRIMINAL
17 VIOLATIONS WITHIN THE STATE OF SOUTH CAROLINA.

18 FROM THERE I BECAME DEPUTY WARDEN AT THE CENTRAL
19 CORRECTIONAL INSTITUTION, COLUMBIA, SOUTH CAROLINA, SOUTH
20 CAROLINA DEPARTMENT OF CORRECTIONS.

21 Q CENTRAL CORRECTIONAL, IS THAT CCI?

22 A BETTER KNOWN AS CCI OR THE STATE PENITENTIARY. IT WAS
23 THE LARGEST PRISON IN THE SOUTH CAROLINA SYSTEM. IT HOUSED
24 THE MOST DANGEROUS INMATE POPULATION, THE MOST PREDATORS IN
25 THE POPULATION AS WELL AS THE MOST HIGH PROFILE INMATE

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 POPULATION IN THE STATE.

2 Q CAN YOU CONTINUE ON FROM BEFORE I INTERRUPTED YOU?

3 A AND FROM THERE I BECAME THE WARDEN OF THE WOMEN'S PRISON
4 IN COLUMBIA, SOUTH CAROLINA, SOUTH CAROLINA DEPARTMENT OF
5 CORRECTIONS.

6 FROM THERE I WENT BACK TO CCI, OR THE STATE
7 PENITENTIARY, IN THE CAPACITY OF THE WARDEN. AS WARDEN OF
8 THAT FACILITY, WHICH WAS A MAXIMUM SECURITY PRISON THAT
9 HOUSED, AS I STATED BEFORE, THE MOST PREDATOR INMATE
10 POPULATION, I MANAGED DEATH ROW POPULATION. I PERFORMED
11 EXECUTIONS OF INMATES. I PERFORMED CLASSIFICATION SERVICES.
12 I HELPED DESIGN CLASSIFICATION, CLASSIFICATION BEING PLACING
13 THE RIGHT INMATE IN THE RIGHT PLACE WITH THE PROPER
14 SUPERVISION. AND I MANAGED, LITERALLY, THOUSANDS OF INMATES.

15 FROM THERE I BECAME DEPUTY REGIONAL ADMINISTRATOR FOR
16 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. AND WHAT THAT
17 ENTAILED WAS SUPERVISING WARDENS OF 16 FACILITIES THROUGHOUT
18 THE STATE, RANGING FROM WORK RELEASE CENTERS ALL THE WAY
19 THROUGH TO PLACES LIKE CCI, MAXIMUM SECURITY PRISONS.

20 AND FROM THERE I BECAME COMMISSIONER OF CORRECTIONS FOR
21 THE STATE OF INDIANA. I WAS THE CHIEF POLICY MAKER. I WAS
22 THE CHIEF EXECUTIVE OFFICER FOR THE ENTIRE DEPARTMENT OF
23 CORRECTIONS, WHICH, IF I'M NOT MISTAKEN, CONSISTED OF AT
24 LEAST 46 FACILITIES THROUGHOUT THE STATE OF INDIANA, JUVENILE
25 CORRECTIONS AS WELL AS ADULT CORRECTIONS, DEALING WITH

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 EVERYTHING FROM MINIMUM SECURITY, LOW SECURITY, ALL THE WAY
2 THROUGH TO THE MOST MAXIMUM SECURITY WITHIN THAT PRISON
3 SYSTEM.

4 AND FROM THERE I BECAME THE DIRECTOR OF CORRECTIONS FOR
5 THE BUREAU OF CORRECTIONS FOR THE UNITED STATES VIRGIN
6 ISLANDS. IN THAT CAPACITY I HANDLED JAIL POPULATION INTAKE,
7 THOSE INDIVIDUALS JUST BEING ARRESTED AND BEING BROUGHT INTO
8 THE SYSTEM. I ALSO WAS THE CHIEF ADMINISTRATOR AND POLICY
9 MAKER FOR THE CORRECTIONAL SYSTEM AND ALSO HOUSED INMATE
10 POPULATION THAT WERE LOW SECURITY ALL THE WAY THROUGH THE
11 MOST MAXIMUM SECURITY.

12 Q OKAY. COULD YOU PLEASE SHARE WITH THIS JURY YOUR
13 CONSULTING SERVICE HISTORY ON PRISONS?

14 A I STARTED MY CONSULTING SERVICES BACK IN 1986, IF I'M
15 NOT MISTAKEN, WITH THE U.S. DEPARTMENT OF JUSTICE, THAT IS,
16 THE FEDERAL JUSTICE DEPARTMENT, NATIONAL INSTITUTE OF
17 CORRECTIONS AS WELL AS THE NATIONAL ACADEMY OF CORRECTIONS OF
18 WASHINGTON, D.C. AS WELL AS COLORADO.

19 I PERFORMED SERVICES TO CORRECTIONAL AGENCIES THROUGHOUT
20 THE UNITED STATES, NOT ONLY WITH THE JUSTICE DEPARTMENT BUT
21 IN MY PRIVATE CAPACITY. I THEN IN -- I HAVE BEEN IN A NUMBER
22 OF STATES AS WELL AS TO PROVIDE ON-SITE TECHNICAL ASSISTANCE
23 TO VARIOUS JURISDICTIONS WITHIN THE UNITED STATES, AND THAT'S
24 INCLUSIVE OF HAWAII AS WELL AS ALASKA.

25 I TEACH WARDENS HOW TO BE WARDENS. I HELP DESIGN THE

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 CURRICULUM AND I HELP DELIVER THE CURRICULUM, HOW TO MANAGE
2 DISTURBANCES, HOW TO MANAGE GANGS AND SECURITY THREAT GROUPS
3 WITHIN PRISONS.

4 Q DURING THE COURSE OF YOUR EXPERIENCE HAVE YOU BEEN
5 CALLED UPON TO EVALUATE INMATE POPULATIONS AND TO EVALUATE
6 AND ASSESS THE POTENTIAL DANGEROUSNESS OF INMATES? HAVE YOU
7 BEEN CALLED UPON TO DO THAT?

8 A I HAD TO DO THAT CONTINUOUSLY, ESPECIALLY WITHIN THE
9 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, IN DETERMINING WHAT
10 AN INMATE DOES AND WHAT AN INMATE WILL POSSIBLY DO LATER,
11 THAT IS, FUTURE DANGEROUSNESS AS WELL AS A PERSON'S
12 ADAPTABILITY TO PRISON. YES, I HAVE DONE THIS ON THOUSANDS
13 OF OCCASIONS.

14 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT REGARDING FUTURE
15 PRISON ADAPTABILITY RISK ASSESSMENTS OF PRISONS? HAVE YOU
16 BEEN QUALIFIED AS AN EXPERT IN THAT FIELD?

17 A YES, I HAVE.

18 Q AND HAVE YOU BEEN QUALIFIED IN SOUTH CAROLINA?

19 A YES, I HAVE.

20 Q OKAY. AND WHAT OTHER STATES HAVE YOU BEEN QUALIFIED IN?

21 A SOUTH CAROLINA A NUMBER OF TIMES AS WELL AS GEORGIA,
22 MISSISSIPPI, ALABAMA, LOUISIANA, MISSOURI, VIRGINIA, THE
23 UNITED STATES DISTRICT COURT, I THINK I MENTIONED MISSOURI.

24 MR. RICHEY: AT THIS TIME, YOUR HONOR, WE OFFER MR.
25 AIKEN AS AN EXPERT REGARDING FUTURE PRISON ADAPTABILITY AND

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 RISK ASSESSMENT OF PRISONERS. WE'D LIKE TO OFFER HIM AS AN
2 EXPERT AT THIS TIME.

3 SOLICITOR ARIAIL: NO OBJECTION.

4 THE COURT: WITHOUT OBJECTION. AGAIN, MY EARLIER
5 INSTRUCTION TO YOU ON YOUR CONSIDERATION OF THE OPINION
6 TESTIMONY OF AN EXPERT.

7 WITNESS: THANK YOU, YOUR HONOR.

8 THE COURT: YES, SIR.

9 Q MR. AIKEN, WOULD IT BE SAFE TO SAY THAT YOU HAVE A KIND
10 OF ON THE JOB TRAINING, THAT YOUR TRAINING IS NOT TEXTBOOK
11 TRAINING IT'S ON THE JOB WITHIN THE FACILITIES?

12 A THAT'S CERTAINLY CORRECT. IN MY BUSINESS THE BUCK STOPS
13 WITH ME. I'M THE INDIVIDUAL THAT MAKES DECISIONS BASED ON
14 ALL THE SYSTEMS THAT ARE WITHIN A PRISON TO MAKE SURE THAT WE
15 DO EVERYTHING POSSIBLE TO INSURE THE PROTECTION OF THE
16 COMMUNITY, THE INMATES AS WELL AS THE STAFF WORKING AT THE
17 FACILITY. I AM THE PERSON THAT MAKES THE FINAL DECISIONS AS
18 THE ADMINISTRATOR, AND I SIGN MY NAME TO THOSE DECISIONS.

19 Q AND I THINK YOU MENTIONED THIS EARLIER, BUT HAVE YOU
20 EVER EXECUTED AN INMATE?

21 A I HAVE EXECUTED TWO INMATES PERSONALLY AS THE WARDEN OF
22 CCI HERE IN SOUTH CAROLINA.

23 Q WERE YOU ASKED -- WERE YOU ASKED BY ME, OR US, IN THIS
24 CASE TO CONDUCT AN ASSESSMENT ON JOHN WOOD?

25 A YES, I DID.

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 Q AND DID YOU DO THAT?

2 A YES, I DID.

3 Q WHAT WERE THE ACTIVITIES THAT YOU PERFORMED TO CONDUCT
4 THIS ASSESSMENT?

5 A I APPROACHED IT AS IF I WAS THE WARDEN, AND THAT IS
6 LOOKING AT THE OFFICIAL RECORDS THAT WAS PRESENTED TO ME BY
7 COUNSEL, TO INCLUDE HIS FEDERAL TIME THAT HE DID IN PRISON,
8 THE REPORT OF THE INCIDENT IN WHICH HE IS ACCUSED OF AND HAS
9 BEEN FOUND GUILTY AT THIS JUNCTURE. I HAVE LOOKED AT HIS
10 JAIL RECORD AND HIS ADJUSTMENT IN THE FACILITY, AS WELL AS TO
11 LOOK AT THE PROBATION DEPARTMENT'S DOCUMENTATION, PRE-
12 SENTENCE INVESTIGATION, ET CETERA. ALSO, I HAD THE
13 OPPORTUNITY TO CONDUCT AN INTERVIEW WITH HIM ONE ON ONE AS
14 WELL AS TO REVIEW A NUMBER OF VIDEOTAPES AS JUST DESCRIBED BY
15 PREVIOUS TESTIMONY.

16 Q WHAT IS YOUR IMPRESSION?

17 A WELL, MY GENERAL IMPRESSION OF THIS INDIVIDUAL IS THAT
18 HE IS COMPLIANT TO ORDERS AND THAT THIS INDIVIDUAL DOES NOT
19 PRESENT AS PHYSICALLY AT LEAST -- I CAN GO INTO FURTHER
20 DETAIL -- AS A PREDATOR. AND HE DOES NOT FIT -- HE DOES NOT
21 FIT THE CONCERNS THAT A PRISON ADMINISTRATOR WOULD HAVE IN
22 RELATIONSHIP TO SOME OTHER POPULATION THAT MAY BE HOUSED AT
23 THE PRISON.

24 Q WELL, LET ME, I THINK -- MR. AIKEN, LET ME CLEAR THE
25 POPULATION WE'RE TALKING ABOUT. WE'RE NOT TALKING ABOUT --

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 WE'RE TALKING ABOUT HE DOESN'T POSE A THREAT TO THE PRISON
2 POPULATION?

3 A YES, LET ME EXPLAIN THAT A LITTLE BIT FOR YOU. THERE IS
4 COMMUNITY BEHAVIOR, AND COMMUNITY BEHAVIOR IS DIFFERENT FROM
5 PRISON BEHAVIOR. A PERSON CAN DEMONSTRATE SOME OF THE MOST
6 CALLOUS, UNFORGIVABLE BEHAVIOR IN THE COMMUNITY AND CONFORM
7 TO THE RULES AND REGULATIONS WITHIN A PRISON. AND OF THE
8 THOUSANDS OF PEOPLE THAT I HAVE EVALUATED AS AN
9 ADMINISTRATOR, AS A PERSON WORKING IN A PRISON SYSTEM, I HAVE
10 FOUND THAT INSTITUTIONAL BEHAVIOR IS THE BETTER PREDICTOR OF
11 FUTURE PRISON BEHAVIOR.

12 Q SO YOU'RE SAYING YOU LOOK AT THE PERSON'S PAST STINT IN
13 PRISON AND YOU USE THAT TO DETERMINE WHAT IS -- TO PREDICT
14 HIS FUTURE PRISON BEHAVIOR?

15 A IT BETTER PREDICTS HIS ADAPTABILITY TO PRISON AS WELL AS
16 HIS FUTURE DANGEROUSNESS. AS IN MR. WOOD'S CASE, I FOUND NO
17 PRIOR VIOLENCE AGAINST PERSONS. ALSO, I FOUND NO VIOLENCE
18 AGAINST PERSONS WHILE BEING CONFINED. ALSO, I DID NOT FIND
19 WHERE HE IS A PART OF A SECURITY THREAT GROUP, OR WHERE HE
20 HAS ATTACKED STAFF, OR WHERE HE HAS INCITED RIOT, WHERE HE
21 HAS TAKEN HOSTAGES. I HAVE FOUND NOTHING OF THAT IN HIS
22 RECORD AS WELL AS CONTAINED IN THE INTERVIEW AS WELL AS THE
23 REVIEW OF THE VIDEOTAPES.

24 Q AND, MR. AIKEN, YOU TESTIFIED EARLIER THAT YOU HELP
25 FORMULATE THE CLASSIFICATION PROCESS IN THE DEPARTMENT OF

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 CORRECTIONS, LOW LEVEL, MEDIUM, HIGH. DID YOU PARTICIPATE IN
2 IMPLEMENTING THAT CLASSIFICATION?

3 A YES, I DID IN SOUTH CAROLINA AS WELL AS OTHER
4 JURISDICTIONS.

5 Q OKAY. CAN YOU -- AND MR. WOOD, WHAT CLASSIFICATION
6 WOULD HE BE IN WHEN HE WENT TO THE DEPARTMENT OF CORRECTIONS?

7 A MAXIMUM SECURITY.

8 Q OKAY. AND THERE HAS BEEN SOME TESTIMONY ABOUT THE
9 MAXIMUM SECURITY VERSUS DEATH ROW, A COMPARISON. CAN YOU
10 GIVE US A COMPARISON IN YOUR EXPERT OPINION ON DEATH ROW
11 VERSUS THIS HIGH SUPERVISION?

12 A WELL, LET ME ANSWER THE FIRST QUESTION FIRST.
13 CLASSIFICATION WOULD HAVE PLACED HIM IN MAXIMUM SECURITY, AND
14 THE REASON WHY IS BECAUSE OF HIS COMMUNITY BEHAVIOR. I MEAN,
15 THAT COVERS IT ALL. HE STAYS IN MAXIMUM SECURITY. THAT IS
16 THE CRIMINAL OFFENSE.

17 NOW, THE DIFFERENCE BETWEEN DEATH ROW AND BEING IN A
18 MAXIMUM SECURITY PRISON, THERE ARE A LOT OF MISCONCEPTIONS
19 ABOUT THAT. YOU SAY, WELL, YOU KNOW, YOU'RE ON DEATH ROW.
20 YOU ARE CONFINED TO A CELL, AND YOU STAY IN THAT CELL, AND
21 USUALLY THAT CELL IS SINGLE CELL, THAT IS, ONE PERSON PER
22 CELL. AND IF YOU ARE NOT ON DEATH ROW YOU CAN GO OUT IN THE
23 GENERAL POPULATION. YOU ARE IN THE PRISON. YOU CAN GO FROM
24 POINT "A" TO POINT "B" IN THE PRISON. YOU CAN WORK AND THOSE
25 TYPE OF THINGS.

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 TO THE LAYMAN, YOU WOULD OBVIOUSLY THINK THAT YOU WOULD
2 BE BETTER OFF IN GENERAL POPULATION. IN A PRISON ENVIRONMENT
3 AND ATMOSPHERE, THAT'S NOT NECESSARILY THE CASE. WHEN YOU
4 ARE LOCKED INTO A SINGLE CELL BY YOURSELF YOU GET PEACE AND
5 QUIET. WHEN YOU ARE IN A SINGLE CELL BY YOURSELF, YOU NEVER
6 HAVE TO WORRY ABOUT ANOTHER PREDATOR INMATE SLEEPING NEXT TO
7 YOU. WHEREAS IF YOU ARE IN SO-CALLED GENERAL POPULATION, YOU
8 ARE DEALING WITH THE SECURITY THREAT GROUPS. YOU ARE DEALING
9 WITH THAT INDIVIDUAL THAT IS TRYING TO TAKE ADVANTAGE OF YOU.
10 JUST BECAUSE A PERSON IS IN PRISON DOES NOT SAY THAT THAT
11 PERSON DOES NOT DEMONSTRATE THOSE PREDATOR, DANGEROUS
12 BEHAVIORS. YOU HAVE TO LEARN YOU HAVE TO BE VERY CAREFUL OF
13 THE PEOPLE THAT YOU HAVE TO DEAL WITH WITHIN THAT PRISON WHEN
14 YOU HAVE TO BE WITH THEM ALL THE TIME VERSUS IN A SINGLE CELL
15 BY ONE'S SELF.

16 ALSO, THERE IS A HIGH DEGREE OF CERTAINTY. WHEN I SAY
17 THAT, YOU KNOW ABOUT WHEN YOU ARE GOING TO GO ON DEATH ROW.
18 IN THE GENERAL POPULATION, YOU NEVER KNOW WHAT TOMORROW WILL
19 BRING.

20 Q AND WHEN YOU TALK ABOUT THE "PREDATOR GROUPS," WHAT ARE
21 YOU REFERRING TO? I JUST WANT TO GET THE TERMS OUT. WHEN
22 YOU SAY PREDATOR GROUPS, WHAT DO YOU MEAN BY THAT?

23 A THOSE ARE PEOPLE THAT ARE CONSTANTLY TRYING TO TAKE
24 CONTROL OF YOU AS WELL AS THE PRISON POPULATION. THEY ARE
25 PEOPLE THAT HAVE KILLED OVER AND OVER AND OVER AGAIN,

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 CONTINUOUSLY HAVING RECORDS OF VIOLENCE NOT ONLY IN THE
2 COMMUNITY BUT IN THE PRISON ITSELF. THEY ARE CONSTANTLY
3 TRYING TO FIND WAYS TO CONTROL AND TAKE POWER OVER THE
4 PRISON. THOSE ARE THE PEOPLE THAT ARE HIGHLY PRONE TO TAKE
5 HOSTAGES. THOSE ARE THE PEOPLE THAT HAVE ORGANIZED CRIME NOT
6 ONLY IN THE COMMUNITY BUT THEY TRY TO ESTABLISH IT IN THE
7 PRISON. THIS IS WHAT IS CALLED A PREDATOR. THIS PERSON IS
8 CONSTANTLY DISRUPTIVE. AND I'M NOT TALKING ABOUT JUST
9 TALKING LOUD. I'M TALKING ABOUT LIKE BEING IN A CELL IN
10 CONFINEMENT AND OFFICERS TELLING THE INDIVIDUAL TO BACK UP TO
11 BE HANDCUFFED AND, INSTEAD, WHEN THEY OPEN THE SLIT OF THE
12 DOOR TO HANDCUFF HIM, HERE COMES URINE AND FECES OUT IN THE
13 OFFICER'S FACE. THESE PEOPLE ARE CONSTANTLY DISRUPTIVE NOT
14 ONLY TO THEMSELVES BUT TO OTHER PEOPLE. NOW, THE DEPARTMENT
15 OF CORRECTIONS IN SOUTH CAROLINA AS WELL AS OTHER STATES HAVE
16 TECHNIQUES, STAFF, TRAINING, EQUIPMENT, DESIGN, EXPERTISE AND
17 EXPERIENCE IN DEALING WITH THESE TYPE OF POPULATIONS.

18 Q WOULD JOHN WOOD EVER BE EXPOSED TO SOME WORK RELEASE
19 PROJECT? I MEAN, WOULD HE EVER BE ABLE TO GO ON WORK
20 RELEASE?

21 A NO. AND THAT'S DUE TO THE FACT -- I DON'T CARE HOW GOOD
22 PEOPLE ACT IN PRISON, THE TYPE OF OFFENSE THAT HE HAS BEEN
23 FOUND GUILTY OF WOULD PROHIBIT HIM FROM EVER GETTING OUT OF
24 PRISON.

25 Q AND LET ME ASK YOU, MR. AIKEN, IN CLASSIFYING WOULD MR.

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 WOOD'S SIZE AND RACE POSE ANY CONCERNS TO YOU?

2 A YES, THEY WOULD. BECAUSE THE NATIONAL AVERAGE -- AND I
3 CAN GIVE YOU -- YOU KNOW, IT'S VERY HIGH THAT YOU HAVE
4 MINORITY GROUPS WITHIN THE PRISON SETTING. AND MOST OF YOUR
5 GANGS, A LOT OF YOUR GANGS ARE CONSISTING OF MINORITY GROUPS,
6 AND THERE IS AN INHERENT RACIAL CONFLICT. AND AS A RESULT,
7 HE IS MORE LIKELY TO BE SUBJECTED TO PERSONS INFLECTING
8 VIOLENCE UPON HIM, NOT ONLY INDIVIDUALLY BUT COLLECTIVELY.
9 CERTAINLY BECAUSE HE IS NOT 300 POUNDS AND HE IS NOT 6'7".
10 HE IS OF NORMAL SIZE AND WEIGHT, AND THEREFORE HE IS MUCH
11 MORE OF AN EASIER TARGET BEING IN GENERAL POPULATION TO BE
12 SUSCEPTED TO THIS TYPE OF PREDATOR ENVIRONMENT.

13 Q AND, MR. AIKEN, DO YOU HAVE AN EXPERT OPINION OF WHETHER
14 THE DEPARTMENT OF CORRECTIONS CAN HOUSE MR. WOOD FOR THE REST
15 OF HIS LIFE WITHOUT CAUSING UNDUE RISK OR HARM TO THE PRISON
16 STAFF, THE COMMUNITY AND OTHER INMATES? CAN HE BE HOUSED
17 WITHOUT DOING THAT?

18 A THE ANSWER TO THAT IS YES. MY OPINION IS THAT THIS
19 INDIVIDUAL CAN BE HOUSED IN THE SOUTH CAROLINA DEPARTMENT OF
20 CORRECTIONS FOR THE REMAINDER OF HIS LIFE WITHOUT CAUSING
21 UNDUE RISK OF HARM TO THE STAFF, COMMUNITY OR OTHER INMATES.
22 AND AS I STATED PREVIOUSLY, I HAVE MADE THOUSANDS OF
23 DECISIONS IN RELATIONSHIP TO MANAGING INMATE POPULATION.

24 Q WOULD HE HAVE THE ABILITY TO EARN MONEY IN THE
25 DEPARTMENT OF CORRECTIONS?

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 A WHATEVER MONEY HE WOULD EARN WOULD BE VERY, VERY
2 MINUSCULE, AND THIS INDIVIDUAL -- WHETHER IT'S TWO DOLLARS OR
3 FIVE DOLLARS A MONTH OR SOMETHING OF THAT NATURE.

4 Q AND WHEN YOU SAY -- I WANT TO MAKE SURE THIS IS CLEAR
5 ABOUT THIS CLASSIFICATION. WHAT TYPE OF PEOPLE ARE
6 CLASSIFIED IN HIS CLASSIFICATION?

7 A YOU HAVE PEOPLE THAT ARE VIOLENT NOT ONLY IN THE
8 COMMUNITY BUT IN PRISONS. YOU HAVE INDIVIDUALS THAT ARE
9 CONTINUOUSLY INVOLVED WITH SECURITY THREAT GROUPS ARE IN
10 CONTRABAND AND ATTACKING STAFF, AND YOU ALSO HAVE WHAT I CALL
11 A HIGH PROFILE OFFENDER, THAT OFFENDER THAT HAS INFLECTED
12 VIOLENCE IN THE COMMUNITY THAT CAUSES EXTREME CONCERN TO THAT
13 COMMUNITY.

14 Q THE SENTENCE, IS THIS GOING TO BE A BREEZE OR A WALK IN
15 THE PARK FOR HIM, IN YOUR OPINION, TO DO A LIFE SENTENCE
16 CONSIDERING HIS SIZE, HIS RACE AND HIS PRIOR PRISON RECORD?

17 A IT'S GOING TO BE VERY DIFFICULT FOR HIM, AND I WILL TELL
18 YOU WHY, A FEW EXAMPLES WHY. WE LOOK AT HIS AGE. HE IS
19 ABOVE 30 YEARS OLD. IN A PRISON SETTING THAT'S OLD. WHEN
20 YOU HAVE YOUNGER POPULATION THAT'S MORE OF A PREDATOR, WHEN
21 YOU HAVE A YOUNGER POPULATION THAT DON'T CARE, WHEN YOU HAVE
22 YOUNGER POPULATION THAT'S OUT THERE TO SHOW PEOPLE THAT THEY
23 ARE MORE VIOLENT THAN THE PEOPLE THAT THEY ARE TRYING TO
24 IMPRESS, IT'S VERY DANGEROUS. YES, THE DEPARTMENT OF
25 CORRECTIONS CAN MANAGE AND DOES AN EXCELLENT JOB OF MANAGING

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 THIS POPULATION. BUT THE POINT IS, IS THAT PRISONS ARE VERY
2 DANGEROUS PLACES.

3 Q YOU HAVE DESCRIBED PREDATOR GROUPS AND PREDATORS, IN
4 YOUR OPINION. IN YOUR OPINION, DOES MR. WOOD FIT WITHIN THE
5 PREDATOR PROFILE THAT YOU HAVE DESCRIBED, FROM A PRISON
6 STANDPOINT?

7 A FROM A PRISON STANDPOINT THE ANSWER IS NO. THE ANSWER
8 IS NO BECAUSE HE HAS NOT DEMONSTRATED THIS TYPE OF BEHAVIOR
9 IN PREVIOUS INCARCERATIONS, NOR HAS HE DEMONSTRATED THIS
10 BEHAVIOR DURING THIS LAST YEAR IN WHICH HE HAS BEEN
11 INCARCERATED. THERE IS NO INDICATION THAT HE HAS INFLICTED
12 VIOLENCE UPON OTHER INMATES, STAFF, AS WELL AS COMMUNITY
13 DURING HIS CONFINEMENT IN A PRISON SETTING.

14 Q AND IN TERMS -- THERE IS SOME HIERARCHY IN THE PRISON
15 SYSTEM AMONG THE INMATES, WOULD THAT BE A FAIR STATEMENT?

16 A WHEN YOU HAVE HUMAN BEINGS CONFINED, THERE IS A
17 HIERARCHY, YES.

18 Q AND IT DEPENDS UPON WHAT YOU BRING TO THE TABLE WHETHER
19 YOU ARE IN THE HIERARCHY OR NOT?

20 A THAT'S CORRECT.

21 Q AND BASED ON YOUR OBSERVATION AND YOUR ASSESSMENT OF MR.
22 WOOD, DOES HE BRING ANYTHING TO THE TABLE TO BE IN THE
23 HIERARCHY?

24 A THERE IS NOTHING THAT WOULD INDICATE THAT HE WOULD EVER
25 BE ALLOWED INTO AN UNOFFICIAL HIERARCHY IN A PRISON SETTING.

JAMES AIKEN -- DIRECT BY MR. RICHEY

1 MR. RICHEY: HOLD ON ONE SECOND, MR. AIKEN,
2 COURT'S INDULGENCE FOR A MOMENT, PLEASE?

3 THE COURT: YES, SIR.

4 MR. RICHEY: NO FURTHER QUESTIONS. ANSWER ANY
5 QUESTIONS THAT MR. ARIAIL, MS. STROM OR MS. HERVEY MAY HAVE.
6 THANK YOU.

7 WITNESS: THANK YOU, SIR.

8 (SOLICITOR ARIAIL AND CO-COUNSEL OFF RECORD)

9 SOLICITOR ARIAIL: I DON'T HAVE ANY QUESTIONS.

10 THE COURT: MR. AIKEN, THANK YOU, SIR. WE APPRECIATE
11 YOU BEING HERE.

12 WITNESS: THANK YOU, YOUR HONOR.

13 MR. RICHEY: CAN HE BE EXCUSED AT THIS TIME, YOUR
14 HONOR?

15 THE COURT: WITHOUT OBJECTION.

16 SOLICITOR ARIAIL: WITHOUT OBJECTION.

17 WITNESS: THANK YOU.

18 (WITNESS EXCUSED AT 5:06 P.M.)

19 MR. MAULDIN: MAY WE APPROACH?

20 THE COURT: RIGHT.

21 (BENCH CONFERENCE OFF RECORD FROM 5:07 TO 5:08 P.M.)

22 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO BREAK
23 FOR THE EVENING. I AM FAIRLY CONFIDENT WE WILL COMPLETE THE
24 TESTIMONY TOMORROW, CONCLUDE THE SENTENCING HEARING IN TERMS
25 OF TESTIMONY. WE MAY BE ABLE TO GET TO ARGUMENT, CHARGE AND

MATTERS AND MOTIONS

1 SOME DELIBERATION. I'M JUST TRYING TO GIVE YOU A BIG PICTURE
2 WHERE WE ARE AND WHERE WE'RE GOING. IF WE DON'T CONCLUDE
3 TOMORROW, I AM CONFIDENT WE WILL CONCLUDE FRIDAY.

4 SO THAT'S WHERE WE ARE. WE HAVE SOME MORE EVIDENCE TO
5 GO. WE SHOULD CONCLUDE ALL OF THAT TOMORROW, MAYBE GO BEYOND
6 THAT. IF NOT, WE'LL GET THE ARGUMENTS, CHARGE AND
7 DELIBERATIONS DONE ON FRIDAY, PERHAPS EARLIER.

8 I HOPE YOU HAVE A NICE EVENING. DURING THE EVENING
9 BREAK, DO NOT DISCUSS THE CASE. I WILL SEE YOU IN THE
10 MORNING AT 9:30. THANK YOU.

11 (JURY EXITS COURTROOM AT 5:10 P.M.)

12 THE COURT: ALL RIGHT. THE JURY HAS BEEN EXCUSED. I
13 HATE TO DO IT, BUT IF I COULD SEE THE ATTORNEYS ONE MORE TIME
14 UP HERE, I WANT TO ASK YOU SOMETHING.

15 WE'RE IN RECESS.

16 (A RECESS WAS TAKEN FROM 5:10 TO 5:15 P.M.)

17 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. YES,
18 SIR?

19 SOLICITOR ARIAIL: IN REGARD TO ONE OTHER MATTER, AND
20 THAT IS, I HAVE DR. NARAYAN HERE. I HAVE A COUPLE OF OTHER
21 -- DR. CRAWFORD IS HERE AND SOME OTHERS RELATED TO THE REPORT
22 FROM THE STATE HOSPITAL. NOW THAT I HAVE READ THAT REPORT
23 AND UNDERSTAND WHAT'S IN IT, NOT GOING TO THE ISSUE OF THE
24 ADMISSIBILITY OF ANY PART OF IT YET, I SIMPLY WANT TO ADVISE
25 THE COURT THAT IT WOULD BE MY INTENTION FOLLOWING THE RECESS

MATTERS AND MOTIONS

1 THAT I WOULD DISCUSS WITH THESE PEOPLE BEFORE THEY LEAVE TOWN
2 TODAY, ANTICIPATING THAT THEY COME BACK TOMORROW, MATTERS
3 WHICH MAY GO INTO THE AREA -- OR WILL GO INTO THE AREA OF THE
4 REPORT THAT HAD PREVIOUSLY BEEN REDACTED MY VIEW. SO AS A
5 RESULT, I WANTED TO ADVISE THE COURT OF THAT IN THE EVENT
6 THAT IF I WAS DOING ANYTHING THAT VIOLATED THE COURT'S
7 INTEREST -- I'M NOT SEEKING TO PUT IT IN. I'M JUST -- NOW
8 THAT I'M EDUCATED ABOUT IT, I WANT TO CONVERSE. I HAVE NOT
9 CONVERSED WITH THEM ABOUT IT.

10 THE COURT: ALL RIGHT. HERE IS WHAT I'M GOING TO DO IN
11 AN ABUNDANCE OF CAUTION. I'M GOING TO CONTINUE THE PRIOR
12 RULING TO REMAIN IN EFFECT. I WANT TO KNOW PRECISELY THE
13 PARAMETERS OF THE DEFENDANT'S EFFORT FOR MITIGATION,
14 STATUTORY OR OTHERWISE, AND WHEN THE DEFENSE HAS CONCLUDED
15 ITS PRESENTATION, THEN I WANT TO DISCUSS WITH DEFENSE COUNSEL
16 EXACTLY WHICH STATUTORY FACTORS THEY THINK ARE SUPPORTED.
17 FOR EXAMPLE, MR. YOUNGMAN, HE USES A GENERIC PHRASE, MENTAL
18 ILLNESS, ARGUABLY ENCOMPASSED IN ONE OF THE STATUTORY
19 FACTORS, MAYBE MORE. BUT I WANT TO FIND OUT EXACTLY WHERE
20 THE DEFENSE STANDS IN TERMS OF WHAT IT WANTS CHARGED TO THE
21 JURY. WHEN I KNOW PRECISELY THE PARAMETERS OF THE
22 DEFENDANT'S APPROACH TO MITIGATION, THEN WE'LL -- AND I WILL
23 TAKE AN EXTENDED BREAK TO ALLOW THE STATE TO CONFER WITH ITS
24 REPLY WITNESSES REGARDING THE REPORT AND REPLY LIMITED TO
25 THOSE MITIGATION FACTORS. AND THEY MAY HAVE RECEIVED

MATTERS AND MOTIONS

1 INFORMATION IN FORMING AN OPINION AS TO CRIMINAL
2 RESPONSIBILITY OR OTHERWISE. NOT THAT THEY WILL TESTIFY AS
3 TO THOSE CONCLUSIONS, BUT THE INFORMATION THAT CAME UNDER
4 THOSE HEADINGS MAY WELL BE RELEVANT IN REPLY TESTIMONY IN
5 ASSESSING THE MITIGATION FACTORS. BUT WE STILL HAVE WHAT I
6 THINK IS A MOVING TARGET, AND I KNOW YOU EXCEPT TO THAT AND I
7 KNOW -- AND I RESPECT YOUR POSITION EVERY TIME THAT YOU HAVE
8 PUSHED TO GET THAT REPORT AND HAVE ACCESS TO THE DOCTORS AND
9 I HAVE CLOSED TO DOOR, AND I---

10 SOLICITOR ARIAIL: I AM PERSISTENT.

11 THE COURT: YOU ARE. AND I RESPECT YOUR POSITION. BUT
12 I'M GOING TO CONTINUE WITH THE SAME RULING AND PREVENT
13 INQUIRY INTO THAT AREA UNTIL I KNOW WHAT THE DEFENDANT'S
14 POSITION IS.

15 SOLICITOR ARIAIL: COULD I JUST RAISE ONE ISSUE IN THAT
16 REGARD? AND THAT IS, THE CROSS EXAMINATION OF THEIR WITNESS
17 TOMORROW, I'M GOING TO BE REALLY HAMSTRUNG. BECAUSE I KNOW
18 -- I'VE GOT AN IDEA OF WHAT'S COMING TOMORROW. WE'RE DEALING
19 WITH A DIFFERENT SUBJECT MATTER THAN THE SOCIAL WORKER. AND
20 I'M GOING TO NEED -- I'M GOING TO NEED HELP. I'M GOING TO
21 NEED SOME -- ONCE SHE GETS INTO IT, I'M EXPECTING THE SAME
22 TYPE OF TESTIMONY THAT WE HAD TODAY OR SIMILAR TO IT. AND
23 I'M JUST KIND OF HAMSTRUNG.

24 THE COURT: AND TO THE EXTENT TIME IS NEEDED TO REMOVE
25 THAT IMPEDIMENT, I WILL GIVE IT AT THAT TIME.

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: OKAY.

2 MR. MAULDIN: YOUR HONOR, I THINK THAT -- AND OUR
3 OBJECTIONS THAT HAVE BEEN ALL ALONG, I BELIEVE, ARE ON THIS
4 RECORD, AND THE LAUNDRY LIST OF OBJECTIONS TO DISCLOSURE AND
5 EXPOSURE OF THIS INFORMATION CONTINUE. BUT I BELIEVE THAT
6 THE RULING IS RIGHT BECAUSE UNTIL THE EVIDENCE IS IN WE'RE
7 NOT GOING TO BE ABLE TO KNOW WHETHER WE CAN SUPPORT A REQUEST
8 FOR A STATUTORY MITIGATING CIRCUMSTANCE. IN OTHER WORDS, WE
9 HAVE TO PUT IT IN EVIDENCE AND THEN REQUEST IT. SO I THINK
10 THAT ORDER THAT YOU JUST -- OR THAT SEQUENCE IS EXACTLY THE
11 WAY YOU'VE GOT TO DO IT. YOU KNOW, I HAVE CERTAIN STATUTORY
12 MITIGATORS I KNOW I'M GOING TO ASK YOU.

13 THE COURT: THANK YOU.

14 MR. MAULDIN: THANK YOU, JUDGE.

15 SOLICITOR ARIAIL: AND I'LL SAY ONE OTHER -- THERE'S A
16 LOT OF OTHER STUFF IN THIS RECORD THAT'S GOING INTO THIS
17 JURY'S MIND THAT HAS NOTHING TO DO WITH STATUTORY MITIGATING
18 CIRCUMSTANCES THAT IS AIMED AT GETTING A SENTENCE OF LIFE IN
19 PRISON.

20 MR. MAULDIN: EVERYTHING I SAY IS AIMED AT---

21 THE COURT: RIGHT. I DON'T THINK THAT FACT ESCAPES
22 ANYBODY.

23 MR. MAULDIN: RIGHT.

24 THE COURT: AND THE QUESTION IS, DOES IT COME IN UNDER
25 ADMISSIBLE EVIDENCE?

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** I DON'T HAVE A PROBLEM WITH THAT. I
2 JUST DON'T WANT YOU TO LIMIT THE ADMISSIBLE EVIDENCE TO
3 STATUTORY MITIGATING CIRCUMSTANCES.

4 **THE COURT:** WELL, YOUR REPLY WILL BE TO THE DEFENDANT'S
5 EVIDENCE. I JUST WANT TO SEE WHAT IT IS PRECISELY---

6 **SOLICITOR ARIAIL:** OKAY. ALL RIGHT.

7 **THE COURT:** ---AND THAT SHORT LEASH IS GOING TO REMAIN
8 IN EFFECT. BUT I RESPECT YOUR POSITION.

9 **MR. MAULDIN:** THANK YOU, YOUR HONOR.

10 **THE COURT:** SEE Y'ALL AT 9:30. I'M GOING TO BE HERE
11 EARLY, AND I'M GOING TO ASK THE COURT STAFF TO BE HERE AT
12 9:00 JUST IN CASE SOMETHING COMES UP THAT WE NEED TO ADDRESS.
13 WE'LL HAVE THAT LUXURY TO DO IT WITHOUT IMPOSING ANY
14 INCONVENIENCE ON THE JURY.

15 **(COURT RECESSED FOR THE DAY AT 5:21 P.M.)**

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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF FEBRUARY, 2002.

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

MARCH 20, 2003



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF
GENERAL SESSIONS

THE STATE
OF SOUTH CAROLINA,

VOLUME IX

-vs-

01-GS-23-3106
TRANSCRIPT OF RECORD
TRIAL - PENALTY PHASE

JOHN RICHARD WOOD,

DAYS 2, 3 AND 4 (2/14-16/02)

DEFENDANT.

FEBRUARY 4-16, 2002
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

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

ROBERT M. ARIAIL, Esquire
Solicitor of the 13th Circuit
BETTY C. STROM, Esquire
Deputy Solicitor
MINDY HERVEY, Esquire
Assistant Solicitor

JOHN I. MAULDIN, Esquire
Public Defender
JAMES BANNISTER, Esquire
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RODNEY RICHEY, Esquire
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DAWN V. KOFFSKEY
Court Reporter

2050 A

MATTERS AND MOTIONS

1 (TRIAL RESUMED AT 9:47 A.M. ON 2/14/02)

2 THE COURT: ALL RIGHT. I MET WITH COUNSEL IN CHAMBERS
3 OVER A POTENTIAL EVIDENTIARY ISSUE THAT WILL PERHAPS, IF
4 NECESSARY, BE ADDRESSED ON THE RECORD FOLLOWING THE DIRECT
5 EXAMINATION OF THE NEXT WITNESS.

6 BEFORE WE PROCEED IN THAT REGARD, I JUST WANT TO MAKE
7 SURE -- MR. WOOD, IF YOU WOULD PLEASE STAND, SIR, AND DO YOU
8 STILL UNDERSTAND THAT YOU HAVE THE RIGHT TO TESTIFY IN THIS
9 PROCEEDING?

10 DEFENDANT: YES.

11 THE COURT: AND YOU FURTHER UNDERSTAND YOU HAVE THE
12 RIGHT NOT TO TESTIFY?

13 DEFENDANT: YES.

14 THE COURT: AND SHOULD YOU CHOOSE NOT TO TESTIFY I WILL
15 AGAIN INSTRUCT THE JURY THAT THE EXERCISE OF YOUR
16 CONSTITUTIONAL RIGHT CANNOT BE HELD AGAINST YOU. DO YOU
17 UNDERSTAND THAT, SIR?

18 DEFENDANT: YES.

19 THE COURT: THANK YOU VERY MUCH.

20 AND I DO WANT THE RECORD TO REFLECT, MR. WOOD, THAT YOU
21 ALSO HAVE THE RIGHT, ONCE AGAIN, TO MAKE THE FINAL ARGUMENT
22 TO THE JURY. AND IF YOU WISH TO PURSUE THAT, IF YOU WOULD
23 YOURSELF OR THROUGH COUNSEL, ADVISE ME OF YOUR DECISION AT
24 THE APPROPRIATE TIME. BUT I WANT THE RECORD TO REFLECT THAT
25 YOU ARE AWARE OF THAT PARTICULAR RIGHT AS WELL.

MATTERS AND MOTIONS

1 ANYTHING BEFORE WE BRING THE JURY?

2 SOLICITOR ARIAIL: NOTHING FROM THE STATE.

3 THE COURT: BRING THE JURY, PLEASE.

4 MR. MAULDIN: YOUR HONOR, THE FIRST WITNESS WILL BE A
5 VERY SHORT WITNESS REGARDING THAT PHOTO THAT WE---

6 THE COURT: UNRELATED TO THIS EVIDENTIARY ISSUE.

7 MR. MAULDIN: YES, SIR.

8 THE COURT: VERY GOOD.

9 MR. MAULDIN: THE SECOND WITNESS WILL RELATE TO THAT
10 EVIDENTIARY MATTER.

11 THE COURT: VERY GOOD. THANK YOU, SIR.

12 (JURY ENTERS COURTROOM AT 9:50 A.M.)

13 THE COURT: GOOD MORNING, MADAME FORELADY AND LADIES
14 AND GENTLEMEN. WE'RE READY TO PROCEED THIS MORNING.

15 NEXT WITNESS, PLEASE, SIR.

16 MR. MAULDIN: THE DEFENSE CALLS RICHARD KERNS.

17 RICHARD C. KERNS, JR., HAVING
18 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. MAULDIN:

20 Q WOULD YOU PLEASE STATE YOUR NAME?

21 A RICHARD C. KERNS, K-E-R-N-S-, JR.

22 Q AND, MR. KERNS, BY WHOM ARE YOU EMPLOYED?

23 A THE GREENVILLE COUNTY PUBLIC DEFENDER.

24 Q AND IS THAT MY OFFICE?

25 A YES, SIR.

RICHARD C. KERNS, JR. -- DIRECT BY MR. MAULDIN

1 Q ALL RIGHT. AND WHAT IS YOUR CAPACITY ON OUR STAFF?

2 A INVESTIGATOR.

3 Q ALL RIGHT. I WANT TO ASK YOU, MR. KERNS, IF YOU IN YOUR
4 CAPACITY AS AN INVESTIGATOR HAD A CONTACT WITH BETSY
5 MARTINEZ, WHO IS JOHN WOOD'S SISTER?

6 A YES, SIR.

7 Q I WANT TO ASK YOU IF YOU CAN IDENTIFY THIS?

8 A YES, SIR.

9 Q ALL RIGHT. WAS THAT PHOTOGRAPH DELIVERED TO YOU BY
10 BETSY MARTINEZ?

11 A YES.

12 Q AND DID SHE DELIVER IT TO YOU PURPORTING TO BE A
13 PHOTOGRAPH OF JOHN WOOD?

14 A YES.

15 Q WHEN HE WAS IN THE FIRST OR SECOND GRADE, I BELIEVE?

16 A YES, SIR.

17 MR. MAULDIN: YOUR HONOR, WE ASK THAT THIS BE
18 INTRODUCED.

19 SOLICITOR ARIAIL: YOUR HONOR, I THINK THIS TECHNICALLY
20 WOULD BE HEARSAY. THIS WITNESS CAN'T IDENTIFY THIS AS TO
21 WHEN THIS PICTURE WAS TAKEN OR WHAT IT IS A PICTURE OF. FOR
22 THE PURPOSES OF THIS PROCEEDING, I'M NOT GOING TO OBJECT TO
23 IT AT THIS TIME.

24 THE COURT: ALL RIGHT.

25 MR. MAULDIN: THANK YOU.

RICHARD C. KERNS, JR. -- CROSS BY SOLICITOR ARIAIL

1 **THE COURT:** IT WILL BE ADMITTED WITHOUT OBJECTION.
2 (DEFENDANT'S EXHIBIT NUMBER 13, PHOTOGRAPH, MOVED INTO
3 EVIDENCE)

4 **MR. MAULDIN:** NO FURTHER QUESTIONS.

5 **CROSS EXAMINATION BY SOLICITOR ARIAIL:**

6 **Q** THE SISTER BROUGHT IT TO YOU?

7 **A** YES, ELIZABETH MARTINEZ.

8 **Q** AND DO YOU KNOW WHERE DOES SHE LIVE?

9 **A** I'M NOT SURE.

10 **Q** DID YOU CALL HER OR DID SHE CALL YOU?

11 **A** NO, SHE JUST CAME TO OUR OFFICE YESTERDAY.

12 **Q** YESTERDAY?

13 **A** UH-HUH (AFFIRMATIVE).

14 **SOLICITOR ARIAIL:** THANK YOU.

15 **THE COURT:** THANK YOU, MR. KERNS.

16 **WITNESS:** THANK YOU.

17 (WITNESS STEPS DOWN AT 9:53 A.M.)

18 **THE COURT:** NEXT WITNESS, PLEASE.

19 **MR. MAULDIN:** DR. DONNA WATTS.

20 **DONNA MARIE SCHWARTZ-WATTS, M.D.,**

21 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

22 **DIRECT EXAMINATION BY MR. MAULDIN:**

23 **Q** DR. WATTS, I WANT YOU TO KEEP YOUR VOICE UP AND SPEAK SO
24 THAT THE LAST JUROR HERE IN THE COURTROOM CAN HAVE NO PROBLEM
25 HEARING YOU.

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 A OKAY.

2 Q WHERE ARE YOU EMPLOYED?

3 A I WORK AT THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF
4 MEDICINE IN COLUMBIA IN THE DEPARTMENT OF NEUROPSYCHIATRY.

5 Q WHAT IS YOUR TITLE, IF YOU HAVE ONE?

6 A YES, I HAVE TWO THERE. I'M AN ASSOCIATE PROFESSOR OF
7 PSYCHIATRY, AND MY OTHER TITLE IS DIRECTOR OF FORENSIC
8 SERVICES.

9 Q AND WHAT ARE YOUR JOB DUTIES UNDER EACH OF THOSE TWO
10 TITLES YOU DESCRIBED?

11 A MANY. OF COURSE, THE MEDICAL SCHOOL IS A TEACHING
12 INSTITUTION, SO MY MAIN RESPONSIBILITY IS TO TEACH AND TRAIN
13 OTHER DOCTORS AND MEDICAL STUDENTS, AND SPECIFICALLY I TRAIN
14 RESIDENTS IN CHILD PSYCHIATRY. THOSE ARE DOCTORS THAT HAVE
15 FINISHED THEIR TRAINING IN THE FIELD OF PSYCHIATRY AND
16 LEARNING ABOUT PSYCHIATRY. THEY HAVE FINISHED THEIR
17 PSYCHIATRIC TRAINING, AND THEY ARE PURSUING TRAINING IN CHILD
18 PSYCHIATRY. AND THE CHILD RESIDENTS SPEND HALF A DAY A WEEK
19 WITH ME LEARNING ABOUT COURT ISSUES THAT HAVE TO DO WITH
20 CHILDREN.

21 I ALSO TRAIN THE FORENSIC PSYCHIATRY RESIDENTS. AND
22 WHAT FORENSIC PSYCHIATRISTS ARE, THOSE ARE RESIDENTS THAT
23 HAVE FINISHED THEIR TRAINING IN PSYCHIATRY AND THEY ARE
24 SPENDING ANOTHER YEAR IN SPECIALIZED TRAINING LEARNING ABOUT
25 FORENSICS. AND THAT'S THE AREA THAT INVOLVES WHERE -- ANY

1 AREA WHERE PSYCHIATRY AND THE LAW MAY INTERFACE. FOR
2 EXAMPLE, A JUDGE OR AN ATTORNEY OR IN SOME KIND OF COURT
3 PROCEEDING THERE MAY BE A QUESTION ABOUT SOMEBODY'S MENTAL
4 STATE, HOW THEY THINK, HOW THEY FEEL, HOW THEY ACT. SO I
5 ALSO TRAIN THOSE RESIDENTS AS WELL.

6 I ALSO TRAIN THE GENERAL PSYCHIATRIC RESIDENTS. THEY DO
7 ROTATIONS WITH ME. THEY MIGHT SPEND TIME WITH ME WATCHING ME
8 DO MY WORK. I ALSO LECTURE TO THE RESIDENTS AS WELL.

9 AND THEN FINALLY I TEACH MEDICAL STUDENTS. SO THAT'S
10 ONE PART OF THE JOB.

11 THE SECOND PART OF THE JOB IS RESEARCH, AND I -- BECAUSE
12 I WORK AT THE UNIVERSITY I HAVE TO PUBLISH AND PRESENT PAPERS
13 AND THAT SORT OF THING. MY AREAS OF RESEARCH ARE IN
14 STALKING. I'VE WRITTEN SOME PAPERS AND PRESENTED NATIONALLY
15 IN THAT AREA. I HAVE ALSO PRESENTED NATIONALLY ON THE DEATH
16 PENALTY AND CERTAIN ASPECTS OF THAT.

17 AND THEN FINALLY I HAVE TO WORK FOR A LIVING AND EARN
18 MONEY TO GET MY SALARY, AND WHAT I DO THERE IS A NUMBER OF
19 THINGS. THE UNIVERSITY HAS A CONTRACT WITH THE DEPARTMENT OF
20 JUVENILE JUSTICE, SO I'VE BEEN OUT THERE ABOUT EIGHT YEARS
21 PERFORMING COURT EVALUATIONS FOR THE FAMILY COURT AND ALSO
22 TREATING SOME OF THE ADOLESCENTS IN THE DEPARTMENT OF
23 JUVENILE JUSTICE.

24 I ALSO HAVE A CONTRACT WITH THE DEPARTMENT OF MENTAL
25 HEALTH WHERE I AM A COURT EXAMINER FOR WHAT IS CALLED THE

1 SEXUALLY VIOLENT PREDATOR STATUTE. SOUTH CAROLINA HAS A
2 SPECIAL LAW WHERE THERE MAY BE TIMES THAT THE COURT WOULD ASK
3 ME TO EVALUATE SOMEONE TO SEE IF THEY HAVE A SEXUAL DISORDER
4 THAT WOULD MAKE THEM DANGEROUS.

5 AND THEN FINALLY, I ALSO HAVE A PRACTICE IN FORENSIC
6 PSYCHIATRY WHERE I CAN BE RETAINED BY DEFENSE, I CAN BE
7 RETAINED BY PROSECUTION OR ANY -- OR FAMILY COURT IN ANY AREA
8 TO DO THE WORK THAT I AM TRAINED TO DO.

9 Q AND WITH REGARD TO BEING RETAINED BY EITHER DEFENSE,
10 PROSECUTION OR IN CIVIL MATTERS, ARE YOU ALSO ON OCCASION
11 ASKED BY THE COURT TO BE AN INDEPENDENT EXAMINER OR EVALUATOR
12 OR HAVE YOU DONE THAT IN THE PAST?

13 A ABSOLUTELY. IN THE UNITED STATES DISTRICT COURT, THE
14 FEDERAL COURT IN COLUMBIA, SOUTH CAROLINA, I'M OFTEN ASKED BY
15 THE JUDGES THERE TO BE AN INDEPENDENT EXAMINER. THERE HAVE
16 BEEN OTHER CASES AS WELL. THE SUPREME COURT, THE STATE
17 SUPREME COURT, HAS ASKED ME TO EVALUATE INDIVIDUALS AS AN
18 INDEPENDENT EXAMINER.

19 Q DR. WATTS, WHERE DID YOU GO TO COLLEGE?

20 A I WENT TO FURMAN UNIVERSITY AND GRADUATED THERE IN 1985
21 WITH A BACHELOR OF ARTS IN PSYCHOLOGY.

22 Q AND THEN YOU WENT TO MEDICAL SCHOOL, OBVIOUSLY. WHERE
23 DID ATTEND MEDICAL SCHOOL?

24 A AT THE UNIVERSITY OF SOUTH CAROLINA IN COLUMBIA. I
25 GRADUATED THERE IN 1989.

1 Q AND IN 1989 WHEN YOU GRADUATED FROM MEDICAL SCHOOL WHAT
2 DEGREE, IN FACT, WAS BESTOWED ON YOU?

3 A A DOCTORATE OF MEDICINE. SO I'M LICENSED TO PRACTICE
4 MEDICINE IN THE STATE OF SOUTH CAROLINA.

5 Q NOW, BEYOND THAT DID YOU HAVE TO GO INTO ADDITIONAL
6 STUDIES OR EXPERIENCE OR WHATEVER TO BECOME -- TO GO INTO THE
7 PSYCHIATRIC AREA INSTEAD OF LIKE THE ORTHOPAEDIC AREA OF
8 WHATEVER?

9 A YES.

10 Q ALL RIGHT.

11 A TO BE A PSYCHIATRIST YOU HAVE TO COMPLETE A FOUR-YEAR
12 RESIDENCY, AND THE FIRST YEAR INVOLVES SPENDING SOME TIME IN
13 NEUROLOGY. I SPENT TWO MONTHS ON A NEUROLOGY SERVICE. I
14 ALSO SPENT FOUR MONTHS ON MEDICINE SERVICE AT THE V.A.
15 HOSPITAL WORKING AS AN INTERN AND TAKING CALL AND THAT SORT
16 OF THING. AND THEN THE REST OF THE TRAINING, THE THREE AND A
17 HALF YEARS, WOULD HAVE BEEN IN PSYCHIATRY.

18 AFTER COMPLETING THAT, BECAUSE I WANTED TO BE A FORENSIC
19 PSYCHIATRIST, I HAD TO SPEND ONE MORE YEAR AFTER THOSE FOUR
20 YEARS TRAINING SPECIFICALLY IN THE FIELD OF FORENSICS. IT'S
21 A SUBSPECIALTY OF MEDICINE. JUST LIKE CARDIOLOGY IS A
22 SUBSPECIALTY OF INTERNAL MEDICINE, FORENSIC PSYCHIATRY IS A
23 SUBSPECIALTY OF PSYCHIATRY.

24 Q AND FOR THE JURY'S CLARITY, WHEN YOU USE THE WORD
25 "FORENSICS," THAT IS WHERE SOMETHING IS CONNECTED WITH THE

1 COURT SYSTEM OR WITH THE LEGAL ARENA?

2 A THAT'S CORRECT. WHENEVER SOMEONE HAS A QUESTION ABOUT
3 SOMEBODY, HOW THEY THINK, HOW THEY FEEL, HOW THEY ACT AND HOW
4 THAT RELATES TO A LEGAL MATTER, THAT WOULD BE AN AREA WHERE I
5 COULD CONSULT.

6 Q AND THAT IS WHAT YOU MEAN BY "FORENSICS"?

7 A YES.

8 Q ALL RIGHT. NOW, ARE YOU BOARD CERTIFIED?

9 A YES.

10 Q DESCRIBE -- TELL THE BOARD WHAT BEING BOARD CERTIFIED --
11 WHAT YOU ARE BOARD CERTIFIED AS AND WHAT THAT MEANS.

12 A SURE. I'M BOARD CERTIFIED IN GENERAL PSYCHIATRY, AND I
13 HAVE ADDED QUALIFICATIONS IN FORENSIC PSYCHIATRY. I'LL
14 EXPLAIN WHAT THAT IS.

15 IN GENERAL PSYCHIATRY, YOU HAVE TO TAKE A WRITTEN TEST
16 AND YOU HAVE -- AFTER YOU PASS THIS TEST, THEN A FEW MONTHS
17 LATER YOU HAVE TO GO AND INTERVIEW A PATIENT AND ALSO WATCH A
18 VIDEOTAPE IN FRONT OF OTHER PSYCHIATRISTS THAT PRETTY MUCH
19 GRADE YOU WHETHER YOU PASS OR FAIL. SO IF YOU PASS THOSE TWO
20 TESTS, YOU ARE BOARD CERTIFIED IN GENERAL PSYCHIATRY.

21 AND IN FORENSIC PSYCHIATRY YOU HAVE TO BE BOARD
22 CERTIFIED IN GENERAL PSYCHIATRY FIRST, BUT THEN IT'S A
23 WRITTEN TEST, AND THAT MEANS THAT I PASSED THAT TEST AS WELL.
24 BUT IT'S GIVEN TO ALL FORENSIC PSYCHIATRISTS IN THE COUNTRY
25 THAT WOULD CHOOSE TO TAKE THAT TEST.

1 Q OKAY. IS THE AMERICAN BOARD OF PSYCHIATRY AND
2 NEUROLOGY, IS THAT -- ARE YOU FAMILIAR WITH THAT?

3 A VERY.

4 Q AND TELL ME WHAT YOUR ROLE WITH THAT ORGANIZATION IS.

5 A WELL, I'M NOW ONE OF THOSE BOARD EXAMINERS THAT EXAMINES
6 ALL OF THE PSYCHIATRISTS ACROSS THE COUNTRY. SO FOUR TIMES A
7 YEAR WE GO TO VARIOUS PLACES IN THE UNITED STATES AND EXAMINE
8 THE CANDIDATES.

9 AND ALSO, FOR THE FORENSIC PSYCHIATRY EXAM, I'M ON A
10 COMMITTEE. I'M ACTUALLY WRITING THE QUESTIONS, HELPING TO
11 WRITE THE QUESTIONS FOR WHAT'S CALLED THE RECERTIFICATION
12 EXAM. IN FORENSIC PSYCHIATRY YOU HAVE TO TAKE THE BOARDS
13 EVERY TEN YEARS. SO I'M ON A COMMITTEE MAKING THE QUESTIONS
14 FOR THE FORENSIC DOCTORS THAT ARE GOING TO HAVE TO REEXAMINE
15 AGAIN.

16 Q WHAT KIND OF COURTS -- OR CAN YOU GIVE THE JURY A
17 GENERAL SUMMARY OF THE COURTS IN WHICH YOU HAVE TESTIFIED IN
18 AS A FORENSIC PSYCHIATRIST?

19 A SURE.

20 Q IN SOUTH CAROLINA, COURTS OF GENERAL SESSIONS, WHICH
21 WOULD BASICALLY BE THE CRIMINAL COURTS, THE COURT OF COMMON
22 PLEAS OF SOUTH CAROLINA, WHICH ARE THE CIVIL COURTS, FAMILY
23 COURT IN SOUTH CAROLINA, PROBATE COURT IN SOUTH CAROLINA.
24 I'VE ALSO TESTIFIED IN THE SUPREME COURT IN SOUTH CAROLINA,
25 AND FINALLY IN THE UNITED STATES DISTRICT COURTS IN

1 CHARLESTON AND COLUMBIA.

2 Q WITH REGARD TO DEATH PENALTY OR CAPITAL LITIGATION, DR.
3 WATTS, HOW MANY OF THOSE TYPES OF CASES HAVE YOU BEEN
4 INVOLVED IN AT LEAST AT THE PRETRIAL LEVEL?

5 A WELL, ACTUALLY WHEN MR. ARIAIL WAS QUESTIONING ONE OF
6 THE WITNESSES YESTERDAY I MADE A LIST FOR MYSELF BECAUSE I
7 WAS NOT SURE HOW MANY AT THAT POINT. I TESTIFIED -- I'VE
8 BEEN RETAINED AT A PRETRIAL LEVEL ON 20 CASES. NINE I
9 TESTIFIED ON. NINE I DID NOT. ONE WAS I TESTIFIED FOR THE
10 PROSECUTION. BUT I WAS A COURT EXAMINER AT THE TIME. I WAS
11 NOT RETAINED. AND THEN TODAY'S CASE WOULD COUNT AS TEN.

12 Q HAVE YOU ALSO PARTICIPATED IN TRAINING PROGRAMS
13 REGARDING CAPITAL LITIGATION?

14 A YES. BUT I'VE DONE -- TWO DIFFERENT AREAS I'VE TRAINED.
15 I'VE TRAINED DEFENSE ATTORNEYS. IT'S CALLED -- I BELIEVE
16 THEY CALL IT HABEAS TRAINING. BUT THERE ARE ATTORNEYS
17 THROUGHOUT THE COUNTRY THAT NEED TO LEARN TO DO WHAT'S CALLED
18 POST-CONVICTION RELIEF PROCEEDINGS. BUT THE POINT OF IT IS I
19 SERVE AS AN EXAMINER. THEY HAVE CASES AND THEY GET TO
20 PRACTICE QUESTIONING EXPERTS, AND I SERVE AS A VOLUNTEER TO
21 DO THAT.

22 I ALSO TRAIN FEDERAL PROSECUTORS AS WELL. WE HAVE IN
23 COLUMBIA A CENTER CALLED THE NATIONAL ADVOCACY CENTER, THE
24 N.A.C., AND I HAVE VOLUNTEERED THERE ALSO AS AN EXPERT
25 WITNESS, AND I ACTUALLY HELP WRITE THE CASES THAT THEY HAVE

1 TO TRAIN WITH.

2 Q THIS IS A FEDERAL PROSECUTORS TRAINING PROGRAM IN
3 COLUMBIA?

4 A YES.

5 Q OTHER THAN THE AMERICAN BOARD OF PSYCHIATRY AND
6 NEUROLOGY THAT YOU EARLIER DESCRIBED TO THE JURY, ARE YOU A
7 MEMBER OF ANY OTHER SPECIFIC ORGANIZATIONS THAT RELATE TO
8 YOUR PROFESSIONAL RESPONSIBILITIES?

9 A YES. AND BASICALLY I'VE NARROWED THAT DOWN. IT'S ONE
10 THAT'S THE MOST SIGNIFICANT. IT'S CALLED THE AMERICAN
11 ACADEMY OF PSYCHIATRY AND THE LAW, AND THAT'S ALL A GROUP OF
12 FORENSIC PSYCHIATRISTS, MAINLY IN CANADA AND THE UNITED
13 STATES, AND I AM ACTUALLY WHAT'S CALLED A COUNSELOR THERE..
14 I'M ON A BOARD THAT HELPS MAKE DECISIONS ABOUT THE
15 ORGANIZATIONS. I'M ALSO THE CHAIR OF A COMMITTEE THAT GIVES
16 OUT SCHOLARSHIPS TO THE YOUNGER DOCTORS THAT SHOW PROMISE IN
17 THE FIELD OF FORENSIC PSYCHIATRY. I'M VERY ACTIVE. I
18 PRESENT THERE. I THINK I'VE PRESENTED ALMOST EVERY YEAR
19 SINCE I'VE BEEN A MEMBER.

20 Q YOU MENTIONED A FEW MOMENTS AGO REGARDING YOUR TEACHING
21 AND YOUR TRAINING AND YOUR RESEARCH EFFORTS. ARE YOU ALSO,
22 IN FACT, ACTUALLY LICENSED TO PRACTICE MEDICINE IN OUR STATE?

23 A YES.

24 Q HOW MANY TIMES, DR. WATTS, HAVE YOU BEEN QUALIFIED AS AN
25 EXPERT TO RENDER AN OPINION IN THE COURTS OF SOUTH CAROLINA?

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 A PROBABLY ABOUT 500 TIMES NOW.

2 MR. MAULDIN: YOUR HONOR, AT THIS TIME I'M GOING TO
3 MOVE THAT THE COURT DECLARE DR. WATTS AN EXPERT IN THE AREA
4 OF FORENSIC PSYCHIATRY AND BE ALLOWED TO RENDER AN OPINION.

5 THE COURT: DO YOU WISH TO VOIR DIRE THE WITNESS?

6 SOLICITOR ARIAIL: NO, YOUR HONOR.

7 THE COURT: VERY GOOD. THE WITNESS WILL BE RECEIVED AS
8 AN EXPERT. AGAIN, SAME INSTRUCTION I'VE GIVEN YOU THROUGHOUT
9 AS TO YOUR CONSIDERATION OF THE TESTIMONY OF AN EXPERT
10 WITNESS.

11 YOU MAY PROCEED.

12 Q DR. WATTS, I WANT TO ASK YOU IF SOMETIME DURING THE YEAR
13 2001 YOU WERE CONTACTED BY OUR OFFICE REGARDING A CLIENT
14 NAMED JOHN RICHARD WOOD?

15 A YES.

16 Q AND AS A RESULT OF THE CONTACT AND THE REQUEST BY OUR
17 OFFICE DID YOU, IN FACT, PROCEED WITH AN EXAMINATION OF JOHN
18 WOOD?

19 A YES, I DID.

20 Q ALL RIGHT. I WANT TO ASK YOU TO DESCRIBE TO THE JURY
21 AND EXPLAIN WHAT YOUR EXAMINATION OF JOHN WOOD CONSISTED OF
22 SO THEY'LL HAVE AN UNDERSTANDING OF WHAT A PSYCHIATRIC
23 EXAMINATION WOULD RELATE TO.

24 A CERTAINLY. FORENSICS IS A LITTLE BIT DIFFERENT THAN
25 JUST GENERAL PSYCHIATRY. IF A PATIENT CAME INTO AN OFFICE

1 WITH A PSYCHIATRIC COMPLAINT, THE GENERAL PSYCHIATRISTS
2 NORMALLY MEET WITH PATIENT AND TAKE A HISTORY AND TRY AND GET
3 AS MUCH INFORMATION ABOUT THAT PERSON AS POSSIBLE.

4 FORENSIC PSYCHIATRY IS THE SAME BUT IT REQUIRES A LITTLE
5 BIT MORE RESEARCH. AS YOU CAN IMAGINE, PEOPLE THAT HAVE
6 LEGAL CHARGES, THEY MAY NOT ALWAYS BE MOTIVATED TO TELL THE
7 TRUTH OR THERE COULD BE DIFFERENT REASONS THAT THEY MIGHT
8 PRESENT WITH PSYCHIATRIC COMPLAINTS. SO THE FIRST THING I
9 DID IS TO GET AS MANY RECORDS AS POSSIBLE. THAT'S ALWAYS THE
10 MOST IMPORTANT THING TO DO.

11 IF ANYONE HAS HAD A PRIOR HISTORY OF BEING TREATED, ANY
12 PRIOR HISTORY OF PSYCHIATRIC PROBLEMS, IT'S ALWAYS IMPORTANT
13 TO GET RECORDS. IT'S IMPORTANT TO TALK TO OTHER PEOPLE THAT
14 KNOW THAT PERSON VERY WELL. IT'S IMPORTANT TO CONSULT WITH
15 OTHER SPECIALISTS THAT MAY HAVE SEEN THAT PERSON, AND THEN
16 ALSO TO INTERVIEW THAT PERSON.

17 SO IN MR. WOOD'S CASE, SPECIFICALLY, I MET WITH HIM AT
18 LEAST, I BELIEVE IT WAS, FOUR TIMES. IT MAY HAVE BEEN FIVE.
19 I MET WITH HIM BRIEFLY YESTERDAY, SO TECHNICALLY FIVE TIMES.
20 AND I SPENT ABOUT TEN HOURS OF FACE-TO-FACE TIME INTERVIEWING
21 HIM OVER JULY, AND I DID THAT OVER A PERIOD OF TIME. I SAW
22 HIM IN JULY. I BELIEVE I SAW HIM AGAIN IN OCTOBER, A FEW
23 TIMES IN DECEMBER AND THEN IN JANUARY AS WELL. SO I'VE SEEN
24 HIM OVER A PERIOD OF FIVE OR SIX MONTHS.

25 I ALSO REVIEWED MANY, MANY RECORDS. HE HAD HOSPITAL

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1 RECORDS, AS YOU CAN IMAGINE. HE HAD BEEN SHOT AT THE TIME OF
2 THE CRIME, AND WE HAD MEDICAL RECORDS THERE TO LOOK AT. HE
3 HAD ALSO BEEN IN FEDERAL PRISON, AND I HAD THE UNITED STATES
4 DISTRICT COURT RECORDS ON HIM, WHICH SPECIFICALLY WAS VERY
5 HELPFUL THERE. THEY HAD WHAT'S CALLED A PRESENTENCING
6 EVALUATION, AND SO HE ACTUALLY HAD BEEN SEEN AT SOME TIME BY
7 AN INVESTIGATOR THAT PREPARES A VERY NICE REPORT FOR THE
8 COURT. I ALSO REVIEWED HIS DETENTION CENTER RECORDS TO SEE
9 HAD HE GOTTEN TREATMENT, HAD HE BEEN EVALUATED AT THE
10 DETENTION CENTER. I ALSO HAD ALL THE INCIDENT REPORTS,
11 EVERYTHING RELATED TO THIS CRIME, THE PEOPLE'S STATEMENTS,
12 THE AUTOPSY REPORT AND THAT SORT OF THING.

13 AND THEN FINALLY I HAD MANY CONSULTATIONS. YOU HEARD
14 FROM MR. YOUNGMAN YESTERDAY, WHO IS A SOCIAL WORKER THAT HAD
15 INTERVIEWED SOME OF THE FAMILY MEMBERS. I MET WITH HIM ON A
16 NUMBER OF OCCASIONS TO GET INFORMATION ABOUT HIS FAMILY. I
17 ALSO BY TELEPHONE DID AN INTERVIEW WITH DR. JIM EVANS, WHO IS
18 A PSYCHOLOGIST THAT HAD ADMINISTERED SOME PSYCHOLOGICAL TESTS
19 TO MR. WOODS (SIC). I ALSO SPOKE WITH DR. BRAD CLAYTON, WHO
20 IS A PHYSICIAN THAT WAS TREATING MR. WOOD WHILE HE WAS IN THE
21 DETENTION CENTER. I'M TRYING TO THINK. I THINK THERE IS
22 SOMEONE ELSE I MAY BE LEAVING OUT, BUT IF I DID, I APOLOGIZE.
23 I ALSO MET WITH MR. WOODS, AGAIN, THE FOUR TIMES.

24 AND THEN FINALLY, I ALSO HAD THE RECORDS. HE WAS
25 EVALUATED AT THE HALL INSTITUTE IN COLUMBIA, WHICH IS THE

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1 DEPARTMENT OF MENTAL HEALTH HOSPITAL, AND I ALSO REVIEWED
2 THEIR RECORDS AS WELL. AND THERE, IF I MAY, HE HAD A
3 NEUROLOGICAL EXAMINATION. HE WAS SEEN BY A NEUROLOGIST. I
4 RELIED UPON THAT REPORT. HE WAS SEEN BY A PSYCHOLOGIST AND A
5 FORENSIC PSYCHIATRIST THERE, AND I READ THE REPORTS, AND ALSO
6 A SOCIAL WORK REPORT.

7 Q WHEN YOU -- AND WITHOUT GETTING INTO EACH LITTLE
8 SPECIFIC DEFINITION, WHEN YOU SAY, FOR EXAMPLE, THAT HE HAD A
9 NEUROLOGICAL EXAM AND YOU CERTAINLY WOULD HAVE REVIEWED THAT,
10 JUST IN A VERY SMALL NUTSHELL, DR. WATTS, CAN YOU JUST GIVE
11 THE JURY AN IDEA OF WHAT IS A NEUROLOGICAL EXAM AND, YOU
12 KNOW, WHY WOULD YOU HAVE FELT THE NEED TO REVIEW IT AND TAKE
13 IT INTO CONSIDERATION?

14 A CERTAINLY. A NEUROLOGIST IS A DIFFERENT KIND OF
15 PHYSICIAN THAT'S TRAINED TO STUDY THE BRAIN AND THE NERVOUS
16 SYSTEM, AND IN FORENSICS CASES THAT'S ALWAYS HELPFUL. MR.
17 WOODS DID HAVE A HISTORY OF SOME MILD HEAD INJURIES WHEN HE
18 WAS A TODDLER. I BELIEVE WHEN HE WAS THREE YEARS OF AGE HE
19 GOT HIT BY A POOL CUE BALL, THAT SORT OF THING. SO IT'S
20 ALWAYS IMPORTANT TO HAVE A NEUROLOGIST EVALUATE SOMEONE WITH
21 A HISTORY OF HEAD INJURY. MR. WOODS' NEUROLOGICAL FINDINGS
22 WERE NORMAL. HE HAD HAD A SCAN OF HIS BRAIN TO MAKE SURE
23 THAT HE DIDN'T HAVE BRAIN TUMORS OR THAT SORT OF THING, AND
24 HIS NEUROLOGICAL EXAM WAS COMPLETELY NORMAL.

25 Q ALL RIGHT. SO JUST TO KIND OF GET AN IDEA THEN, A

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 NEUROLOGICAL -- A NEUROLOGICAL TYPE OF INFORMATION WOULD BE
2 LIKE WHAT AN X-RAY TYPE THING MIGHT SHOW TO YOU? IT'S LIKE A
3 PHYSICAL, IS THAT -- I MEAN, IT'S NOT -- LIKE THERE'S
4 PHYSICAL EVIDENCE OF SOMETHING, LIKE A TUMOR, FOR EXAMPLE,
5 WOULD BE THE RESULT OF A NEUROLOGICAL EXAM?

6 A CERTAINLY. YOU CAN TAKE A PICTURE OF IT.

7 Q ALL RIGHT. OKAY. NOW, CAN YOU -- AND WHILE WE'RE ON
8 THAT SUBJECT OF THE VARYING CONSULTS THAT YOU HAD, CAN YOU
9 RECALL ANY OTHER SPECIFICS -- AND IF NOT, FINE, WE'LL GO ON
10 TO THE REST -- ANY OTHER SPECIALTIES OR CONSULTATIONS YOU HAD
11 REGARDING DOCTOR -- REGARDING JOHN WOOD?

12 A YES, I DID REMEMBER TWO MORE. I SPOKE WITH A DR.
13 RICHARD ROGERS, WHO IS A PSYCHOLOGIST THAT DEVELOPED A
14 CERTAIN TEST THAT WAS ADMINISTERED TO MR. WOODS. I HAD SOME
15 QUESTIONS ABOUT THAT AND PHONED HIM DIRECTLY. AND I ALSO MET
16 WITH MR. WOODS' SISTER YESTERDAY, BETSY MARTINEZ.

17 Q IS THAT THE FIRST TIME YOU HAD TO MEET THEN WITH HIS
18 SISTER WAS JUST YESTERDAY?

19 A YES. I HAD LEFT A NUMBER OF PHONE MESSAGES WITH HER AND
20 YESTERDAY WAS THE FIRST TIME THAT I WAS ACTUALLY ABLE TO SEE
21 HER.

22 Q OKAY. DID YOU HAVE AN OPPORTUNITY TO TALK WITH KAREN
23 MCCALL ABOUT JOHN?

24 A YES. I WENT TO THE ANDERSON COUNTY DETENTION CENTER AND
25 SPENT TWO AND A HALF HOURS INTERVIEWING HER.

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 Q DID YOU -- AND YOU JUST A MOMENT AGO REFERRED TO BETSY
2 MARTINEZ. DID YOU HAVE THE OCCASION TO TALK TO EITHER OF
3 JOHN'S PARENTS?

4 A NO. I HAVE MADE NUMEROUS ATTEMPTS TO DO THAT. THE
5 MITIGATION SPECIALIST THAT WAS HIRED BY MR. MAULDIN EARLIER
6 IN THE CASE WAS ABLE TO SPEAK WITH MR. AND MRS. WOODS BOTH.
7 SHE SPOKE WITH MRS. WOODS IN PERSON AND MR. WOODS BY
8 TELEPHONE. BUT BY THE TIME I WAS INVOLVED IN THE CASE, THEIR
9 PHONE NUMBER HAD CHANGED AND I HAVE HAD NO CONTACT WITH THEM
10 AT ALL.

11 Q SO ANY INPUT THAT WOULD BE ATTRIBUTED TO EITHER OF
12 JOHN'S NATURAL PARENTS WOULD ACTUALLY HAVE HAD TO COME
13 THROUGH THAT MITIGATION INVESTIGATOR, YOU NEVER HAD ANY
14 DIRECT PERSONAL CONTACT EITHER BY PHONE OR IN PERSON WITH
15 EITHER OF THE PARENTS?

16 A THAT'S CORRECT.

17 Q TO THE EXTENT YOU WERE ABLE TO TAKE INTO CONSIDERATION
18 FAMILY INFORMATION, HOW THEN WOULD YOU HAVE BEEN ABLE TO PUT
19 TOGETHER PIECES OF THE FAMILY PUZZLE?

20 A WE'VE DONE THAT IN A NUMBER OF WAYS IN THIS CASE.
21 FIRST, THERE WAS THE MITIGATION SPECIALIST WHO WAS ABLE TO
22 INTERVIEW MANY OF THE FAMILY MEMBERS. AND THEN -- IT'S
23 COMMON IN THE PRACTICE OF FORENSIC PSYCHIATRY -- THERE WAS A
24 SOCIAL WORKER ON THIS CASE, SO A LOT OF THE INFORMATION I WAS
25 ABLE TO GET FROM THE SOCIAL WORKER AS WELL.

1 AND THEN ALSO IN THE FEDERAL AND THE PRESENTENCING
2 INVESTIGATION REPORT THERE WAS SOME MENTION OF SOME FACTS
3 ABOUT THE FAMILY MEMBERS.

4 Q DR. WATTS, AFTER HAVING REVIEWED THE RECORDS THAT YOU
5 REFERRED TO, MET WITH JOHN WOOD, MET EITHER DIRECTLY OR
6 INDIRECTLY, COMMUNICATED WITH VARIOUS PEOPLE INVOLVED, FAMILY
7 MEMBERS AND SO FORTH, CONSULTED WITH THE OTHER SPECIALISTS
8 INVOLVED, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY ARE YOU
9 ABLE TO IN FACT DIAGNOSE HIM WITH ANY ILLNESSES?

10 A YES.

11 Q ALL RIGHT. AND CAN YOU TELL THE JURY WHAT YOU HAVE --
12 WHAT YOUR DIAGNOSES HAVE BEEN AND EXPLAIN WHAT THOSE
13 DIAGNOSES MEAN BASICALLY?

14 A YES. IN PSYCHIATRY WE USED WHAT IS CALLED THE AXIAL
15 SYSTEM. THERE ARE FIVE DIFFERENT AXES THAT WE USE TO
16 DIAGNOSE PEOPLE WITH, AND THE REASON WE DO THAT IS WE USE A
17 BOOK CALLED THE DSM. AND I THINK WE'RE LIKE IN A REVISION OF
18 THE FOURTH EDITION, SO THE BOOK CHANGES OVER TIME. BUT THE
19 PURPOSE OF THAT IS IF I CALL A PSYCHIATRIST IN CALIFORNIA AND
20 SAY PATIENT JOE HAS A DEPRESSION, THAT WE UNDERSTAND WE'RE
21 TALKING ABOUT THE SAME SYMPTOMS AND THE SAME MEDICAL
22 DISORDER.

23 SO AXIS I, WHICH IS THE MAIN -- THAT'S THE AXIS THAT WE
24 USE FOR MAJOR MENTAL ILLNESS. SO IF SOMEONE HAS A SEVERE
25 MENTAL ILLNESS, THAT'S AN AXIS I DIAGNOSIS. OR IT CAN BE A

1 CONDITION SO BAD THAT ANYBODY WOULD HAVE SYMPTOMS. SO, FOR
2 EXAMPLE, IF SOMEONE'S HUSBAND DIED AND SOMEONE WAS DEPRESSED,
3 WE PSYCHIATRISTS RECOGNIZE THAT THERE'S MANY THINGS THAT CAN
4 HAPPEN IN SOMEONE'S LIFE THAT CAUSES THEM PROBLEMS BUT MAY
5 NOT BE MENTAL ILLNESS.

6 AXIS II IS FOR PERSONALITY DISORDERS AND ALSO PROBLEMS
7 WITH INTELLECTUAL FUNCTIONING.

8 AXIS III IS FOR MEDICAL ILLNESSES THAT MAY -- AS YOU CAN
9 IMAGINE, MANY TIMES WHEN YOU HAVE MEDICAL PROBLEMS THEY CAN
10 ALSO SOMETIMES PRESENT AS PSYCHIATRIC PROBLEMS OR YOU CAN
11 HAVE CHRONIC MEDICAL ILLNESSES THAT CAUSE PSYCHIATRIC
12 PROBLEMS. WE LOOK AT THE MEDICAL ILLNESSES AS WELL.

13 AXIS IV IS FOR THE CURRENT STRESSORS. IT'S BASICALLY A
14 PSYCHOSOCIAL ASSESSMENT. YOU KNOW, IS SOMEONE HAVING
15 FINANCIAL PROBLEMS, IF THEY HAVE LEGAL PROBLEMS, THAT SORT OF
16 THINGS.

17 AND THEN, FINALLY, THE FIFTH AXIS IS WE ASSIGN A
18 NUMERICAL VALUE TO HOW WELL SOMEBODY IS FUNCTIONING.

19 Q OKAY. I'D LIKE FOR YOU TO SPECIFY, IF YOU WILL, WHAT
20 YOU HAVE IDENTIFIED AS JOHN WOOD'S DIAGNOSES.

21 A HE HAS AN AXIS I ILLNESS AND AN AXIS II ILLNESS. THE
22 AXIS I ILLNESS IS CALLED BIPOLAR DISORDER NOT OTHERWISE
23 SPECIFIED. THE AXIS II ILLNESS IS CALLED PARANOID
24 PERSONALITY DISORDER.

25 Q WHAT BASIS DID YOU HAVE FOR YOUR DIAGNOSIS OF JOHN WOOD

1 WITH A BIPOLAR DISORDER NOT OTHERWISE SPECIFIED? AN WHEN YOU
2 SAY "BIPOLAR DISORDER" AND THEN YOU'RE FINISHING WITH THE
3 PHRASE "NOT OTHERWISE SPECIFIED," I'D LIKE FOR YOU ALSO TO
4 EXPLAIN WHAT THAT MEANS AS WELL. DESCRIBE THAT DIAGNOSIS AS
5 IT RELATES JOHN.

6 A CERTAINLY. A BIPOLAR DISORDER IS A MOOD DISORDER. THAT
7 MEANS IT'S A PROBLEM WITH THE WAY YOU FEEL. AND NORMALLY A
8 BIPOLAR DISORDER IS A MOOD DISORDER THAT CONSISTS OF BOTH
9 HIGHS AND LOWS. THERE CAN BE MANIC SPELLS WHERE SOMEBODY HAS
10 INCREASED PERIODS OF ENERGY, DOESN'T NEED TO SLEEP, CAN GET
11 LOTS OF THINGS DONE AND DOESN'T BASICALLY WANT TO SLOW DOWN,
12 HAS AN ELATED FEELING AND USES VERY POOR JUDGMENT. AND THEN
13 THE OTHER END OF THAT SPECTRUM IS SEVERE DEPRESSION. SO
14 BASICALLY WHAT A NORMAL BIPOLAR IS, THERE WILL BE SPELLS OF
15 BEING HYPER, SPELLS OF BEING NORMAL IN BETWEEN AND THEN
16 SPELLS OF HAVING DEPRESSION.

17 MR. WOOD'S CASE IS DIFFERENT. HE HAS MET THE CRITERIA
18 FOR BEING MANIC IN THE PAST, HAVING THE PERIODS OF THE HIGHS.
19 BUT IN TERMS OF EVALUATING HIM AND TRYING TO GET A HISTORY,
20 THERE HAS REALLY BEEN NO CLEAR CUT HISTORY THAT HE'S HAD
21 DEPRESSIONS, ALTHOUGH HE CERTAINLY HAS DEPRESSIVE SYMPTOMS,
22 BUT HE'S NEVER HAD ENOUGH DEPRESSIVE SYMPTOMS TO MEET THE
23 CRITERIA. SO "NOT OTHERWISE SPECIFIED" MEANS THAT HE HAS
24 SYMPTOMS BUT IT'S NOT ENOUGH TO SAY THAT HE HAS THE
25 DEPRESSIONS AS WELL.

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 Q ALL RIGHT. CAN YOU GIVE US -- BASED UPON YOUR RESEARCH
2 AND REVIEW OF MATERIALS AND INTERVIEWS, CAN YOU GIVE US
3 EXAMPLES OF TIMES WHEN JOHN HAS EXHIBITED THE SYMPTOMS THAT
4 YOU HAVE DESCRIBED REGARDING THE BIPOLAR DISORDER?

5 A ABSOLUTELY. THE MOST PREVALENT SYMPTOM THAT MR. WOOD
6 HAS IT IS WHAT'S CALLED GRANDIOSITY, BEING LARGER THAN LIFE.
7 HIS BELIEF IS THAT HE IS ABLE TO DO MANY, MANY, MANY THINGS.
8 AND I CAN GIVE YOU NUMEROUS EXAMPLES. HIS SISTER, BETSY,
9 REPORTS THAT WHEN MR. WOOD WAS 18 YEARS OLD HE HAD PLANS TO
10 DEVELOP AN ELECTRIC CAR---

11 SOLICITOR ARIAIL: COULD I INTERJECT? COULD I HAVE A
12 SIDEBAR, YOUR HONOR?

13 THE COURT: YES, SIR.

14 (BENCH CONFERENCE OFF RECORD FROM 10:16 TO 10:18 A.M.)

15 Q LET ME CLARIFY A POINT WITH REGARD TO THE GRANDIOSITY.
16 YOU A FEW MOMENTS AGO SAID THAT YOU HAD JUST HAD YOUR FIRST
17 OPPORTUNITY TO HAVE DIRECT CONTACT WITH BETSY YESTERDAY, AND
18 YOU HAVE MENTIONED TO THE JURY THAT AN EXAMPLE OF GRANDIOSITY
19 OF SOMETHING REPORTED BY BETSY. AND WHAT I WANT -- NOW, WITH
20 THAT HAVING BEEN SAID, I WANT TO ASK YOU IF, IN FACT, THE
21 SYMPTOM OF -- OR THE INFORMATION REGARDING GRANDIOSITY
22 EXISTED SIGNIFICANTLY BEFORE YESTERDAY?

23 A ABSOLUTELY. THE VALUE OF TALKING WITH BETSY YESTERDAY,
24 SHE WAS ABLE TO GIVE ME AN EXAMPLE OF BEHAVIOR EARLIER THAT
25 MR. WOOD EXHIBITED THAT HE HAD NOT TOLD ME ABOUT.

1 Q ALL RIGHT. SO THE QUESTION, I GUESS, WOULD BE WHEN --
2 OR IF YOU CAN, GIVE US A TIME FRAME OF WHEN YOU BEGAN TO PUT
3 THE PIECES TOGETHER REGARDING GRANDIOSITY SYMPTOMS.

4 A THE FIRST INTERVIEW WITH MR. WOOD.

5 Q ALL RIGHT.

6 A JULY OF 2001.

7 Q AND WITH SUBSEQUENT RECEIPT OF INFORMATION, HAVE YOU
8 BECOME EVEN -- OR HAS THE INFORMATION YOU HAVE OBTAINED ON AN
9 ONGOING BASIS WITH REGARD TO JOHN WOOD SUPPORTED WHAT YOU
10 HAVE FELT WERE PROPER DIAGNOSES?

11 A YES.

12 Q ALL RIGHT. NOW I WANT YOU TO DESCRIBE TO THE JURY THE
13 EXAMPLE THAT YOU WERE TALKING TO THEM ABOUT ABOUT
14 GRANDIOSITY.

15 A YES. MR. WOOD IN INTERVIEWING HIM OVER THE FOUR
16 DIFFERENT PERIODS WILL GIVE EXAMPLES AS WELL. BUT HIS
17 SISTER, I THINK, IS MORE IMPORTANT IN THE SENSE THAT SHE EVEN
18 GIVES AN EARLIER ONSET OF SOME OF THIS THINKING THAN WHAT I
19 WAS ABLE TO ASCERTAIN IN MY INTERVIEWS WITH MR. WOOD ALONE.
20 SHE REPORTS THAT WHEN HE WAS 18 HE HAD PLANS TO BUILD AN
21 ELECTRIC CAR, HAD DESIGNED THE CAR AND THAT SORT OF THING.
22 BUT WHEN IT CAME TO ACTUALLY BUILDING THE CAR, THAT NEVER
23 HAPPENED.

24 MR. WOOD'S LIFE HAS BEEN CHARACTERIZED BY MANY, MANY
25 PLANS. AND JUST TO GIVE YOU EXAMPLES, HIS GIRLFRIEND, KAREN

1 MCCALL, TALKED ABOUT HE HAD PLANS FOR CELL PHONE TOWERS, THAT
2 HE HAD SOME KIND OF ELABORATE PLAN WHERE HE WOULD BUY CELL
3 PHONE TOWERS AND MAKE MONEY AND GET RICH.

4 MR. WOOD TELLS ME ABOUT HE HAD A PLAN TO HAVE AN IMPORT-
5 EXPORT BUSINESS ACROSS MEXICO AND THE UNITED STATES WHERE HE
6 WOULD TAKE RUGS, TRINKETS FROM BASICALLY ASIA, HAVE THEM
7 MARKETED IN MEXICO, AND THEN SELL THEM IN THE UNITED STATES.

8 MR. WOOD DESCRIBED HIMSELF AS A SELF-MADE ENGINEER, A
9 SELF-MADE MECHANIC, MANY, MANY DIFFERENT JOBS, SELF-MADE
10 COMPUTER WIZARD, THAT SORT OF THING.

11 THE MOST RECENT PLAN THAT HE HAD, HE HAD DONE RESEARCH
12 AND KNEW ALL ABOUT A PLASTIC DERIVATIVE CALLED POLYSTYRENE.
13 AND WHAT HIS PLANS WERE IS TO BUILD THESE SPECIAL BLOCKS,
14 KIND OF LIKE -- HE DESCRIBED THEM AS A SORT OF STUCCO. AND
15 THE PLANS WERE HE WAS GOING TO BUILD A MOLD, LEARN HOW TO
16 MAKE THESE BLOCKS, HAVE THESE BLOCKS SENT TO BELIZE, AND WHAT
17 HIS PLAN WAS WAS TO BUILD HOUSES IN BELIZE FOR THE PEOPLE
18 THERE SO THAT THEY COULD AFFORD HOUSING THAT WAS DURABLE AND
19 AFFORDABLE. AND HIS PLAN WAS TO RESIDE IN BELIZE AND BUILD A
20 HOUSING DEVELOPMENT FOR PEOPLE THERE.

21 Q AND YOU REFER TO A LOCATION, BELIZE. I MEAN, I HAD NO
22 CLUE WHERE THAT WAS WHEN I FIRST HEARD IT. PERHAPS SOME OF
23 OUR JURORS FEEL THE SAME WAY. I MEAN, IS THAT A COUNTRY
24 OR...

25 A IT'S IN THE CARIBBEAN, I THINK. IT'S A COUNTRY I HAVE

1 HEARD OF AS WELL, BUT I DIDN'T ACTUALLY LOOK IT UP ON THE
2 MAP.

3 Q SO WE'RE TALKING ABOUT SOMEWHERE OTHER THAN GREENVILLE?

4 A YES.

5 Q ALL RIGHT. NOW, WITH REGARD TO THE EXAMPLES YOU'VE
6 GIVEN AND THE LABEL THAT YOU GIVE -- AND THAT IS THIS EXAMPLE
7 -- AND YOU SAY THESE ARE EXAMPLES OF GRANDIOSITY, BY
8 DEFINITION -- IF YOU WILL, DR. WATTS, BY DEFINITION, WHAT IS
9 THIS GRANDIOSITY SYMPTOM? WHAT DOES THAT ACTUALLY MEAN?
10 THAT A PERSON DOES OR IS WHAT?

11 A THEY HAVE A LARGER SENSE OF WHAT THEY ARE CAPABLE OF
12 THAN WHAT THEY ACTUALLY ARE CAPABLE OF.

13 Q THEY MAKE BIG PLANS BUT THEY CAN'T FOLLOW THROUGH, IS
14 THAT FAIR?

15 A THAT WOULD CERTAINLY BE ONE ASPECT OF IT, YES.

16 Q ONE ASPECT OF IT. WERE THE RECORDS THAT YOU REVIEWED
17 AND THE INTERVIEWS AND CONSULTATIONS THAT YOU WENT THROUGH IN
18 THIS DEVELOPMENT OF THESE OPINIONS CONSISTENT WITH OR
19 SUBSTANTIATING THAT PARTICULAR DIAGNOSIS REGARDING BIPOLAR
20 AND GRANDIOSITY?

21 A YES. IN ADDITION, THERE WAS ANOTHER ASPECT OF
22 GRANDIOSITY MR. WOOD HAD, AND THAT'S THAT HE BELIEVES HE HAS
23 A VERY SPECIAL RELATIONSHIP WITH GOD, AND HE'S BEEN CHOSEN BY
24 GOD TO DO THINGS SUCH AS BUILDING THE HOUSING DEVELOPMENTS IN
25 BELIZE TO HELP OTHER PEOPLE.

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 Q AND THIS IS WHAT HE REPORTS TO YOU AND---

2 A YES, AND IT'S CONFIRMED BY KAREN MCCALL AS WELL.

3 Q NOW, WITH REGARD TO THE STATE OF MIND THAT YOU HAVE JUST
4 DESCRIBED, CAN A PSYCHOTIC STATE BE A COMPLICATION TO A
5 PARTICULAR ILLNESS -- OR OF THIS PARTICULAR ILLNESS?

6 A YES. MANY TIMES PEOPLE WITH EITHER DEPRESSION OR
7 BIPOLAR DISORDER WITH THE MOOD SWINGS THERE ARE -- THERE IS A
8 PERCENTAGE -- I BELIEVE IT'S 15 TO 20 PERCENT -- THAT
9 ACTUALLY CAN DEVELOP COMPLICATIONS OF HEARING VOICES OR
10 PERHAPS BELIEVING THINGS THAT ARE NOT TRUE.

11 Q AND WHAT -- WHEN WE USE THE TERM "PSYCHOTIC," DOES THAT
12 HAVE A LAYMAN DEFINITION THAT WE IN THIS COURTROOM
13 UNDERSTAND? OR WHAT DOES -- WHAT DO YOU MEAN THAT A PERSON
14 DEMONSTRATES A "PSYCHOTIC" CONDITION OR WHATEVER?

15 SOLICITOR ARIAIL: I WOULD OBJECT TO HIM TALKING ABOUT
16 PSYCHOTIC UNTIL THE WITNESS HAS TESTIFIED THAT SHE DIAGNOSED
17 HIM PSYCHOTIC.

18 THE COURT: SUSTAINED. JUST REPHRASE IT.

19 MR. MAULDIN: YES, SIR.

20 Q DR. WATTS, YOU HAVE HEARD THE TERM PSYCHOTIC IN YOUR
21 BUSINESS?

22 A YES.

23 Q ALL RIGHT. WOULD YOU DEFINE THAT TERM FOR THE JURY.
24 PLEASE?

25 A SURE. PSYCHOSIS IS A THOUGHT DISORDER. THERE IS MOOD

- 1 DISORDERS, BEHAVIOR DISORDERS AND THOUGHT DISORDERS.
2 PSYCHOSIS IS A THOUGHT DISORDER, AND THERE IS BASICALLY TWO
3 MAIN SYMPTOMS THAT ARE SEEN IN THOSE FORMS OF DISORDERS. ONE
4 MAY HALLUCINATE, THAT IS, HEAR OR SEE THINGS THAT OTHER
5 PEOPLE DON'T HEAR OR SEE; OR THEY MAY HAVE WHAT IS CALLED A
6 DELUSIONAL BELIEF, THAT IS, A FIXED FALSE BELIEF, A BELIEF
7 THAT SOMETHING IS TRUE AND NO MATTER WHAT EVIDENCE YOU GIVE
8 THEM TO THE CONTRARY, THEY CONTINUE TO HOLD ON TO THAT
9 BELIEF.
- 10 Q DOES JOHN WOOD HAVE THIS PARTICULAR TYPE OF COMPLICATION
11 REGARDING HIS MENTAL CONDITION?
- 12 A HE HAS HAD THE HALLUCINATIONS, YES.
- 13 Q AND DOES JOHN HAVE ANY OTHER MENTAL CONDITIONS THAT YOU
14 HAVE, IN FACT, BEEN ABLE TO IDENTIFY AND DIAGNOSE?
- 15 A YES.
- 16 Q AND WHAT IS THAT?
- 17 A HE ALSO HAS A PARANOID PERSONALITY DISORDER.
- 18 Q ALL RIGHT. WHAT -- NOW, A PARANOID PERSONALITY DISORDER
19 IS THE AXIS II -- IS AN AXIS II AREA CONDITION?
- 20 A THAT'S CORRECT.
- 21 Q ALL RIGHT. I WOULD LIKE FOR YOU TO DESCRIBE WHAT THE
22 BASIS IS FOR YOUR FORMULATION OF THAT DIAGNOSIS FOR JOHN
23 WOOD. PARANOID PERSONALITY DISORDER.
- 24 A CERTAINLY. WE ALL -- EVERYONE HAS PERSONALITY TRAITS.
25 IN CERTAIN CIRCUMSTANCES PEOPLE MAY EXHIBIT THOSE TRAITS.

1 FOR EXAMPLE, IF YOU'RE SICK, SOME OF US BECOME A BABY AND WE
2 WANT TO BE HELPED AND THAT SORT OF THING. SO IT'S NORMAL TO
3 HAVE ALL KINDS OF PERSONALITY TRAITS. WHEN A PSYCHIATRIST
4 DIAGNOSES SOMEONE WITH A PERSONALITY DISORDER, THAT MEANS
5 IT'S A FIXED PATTERN, THAT THAT'S PRETTY MUCH THE WAY THEY
6 RELATE TO THE WORLD.

7 AND MR. WOODS DOES HAVE OTHER PERSONALITY TRAITS, BUT
8 THE MOST PREDOMINANT FEATURE OF HIM IS HIS PARANOIA. HE IS A
9 VERY AVOIDANT PERSON. HE HAS BEEN DESCRIBED AND DESCRIBES
10 HIMSELF AS HE'S BEEN RECLUSIVE. HE DOES NOT MAKE CONNECTIONS
11 WITH PEOPLE. HE HAS NOT HAD A LOT OF RELATIONSHIPS IN HIS
12 LIFE. HE IS EXTREMELY FEARFUL. HE ALWAYS EXPRESSES FEARS
13 THAT HE IS BEING WATCHED, HE'S BEING FOLLOWED. HE, AS YOU
14 HEARD TESTIMONY YESTERDAY, AND I'VE HEARD AS WELL FROM KAREN
15 MCCALL AND HIS SISTER BETSY, HE HAS AVOIDED GOING TO PLACES
16 LIKE WAL-MART. HE AVOIDS GOING TO RESTAURANTS. HE AVOIDS
17 LAW ENFORCEMENT. SO MANY DIFFERENT THINGS. BUT HE'S
18 EXTREMELY PARANOID.

19 SOLICITOR ARIAIL: I'M GOING TO OBJECT HERE, YOUR
20 HONOR. I'M NOT SURE HOW SHE KNOWS ABOUT TESTIMONY IF SHE'S
21 BEEN SEQUESTERED.

22 MR. MAULDIN: SHE HASN'T BEEN SEQUESTERED, YOUR HONOR.

23 SOLICITOR ARIAIL: SHE WAS SEQUESTERED WHEN KAREN
24 MCCALL WAS TESTIFYING. SO SOMEBODY TOLD HER WHAT SHE SAID.

25 MR. MAULDIN: I'LL BE GLAD TO SIDEBAR, YOUR HONOR.

1 THE COURT: PLEASE DO SO.

2 (BENCH CONFERENCE OFF RECORD FROM 10:26 TO 10:29 A.M.)

3 SOLICITOR ARIAIL: YOUR HONOR, I'LL WITHDRAW THAT AND
4 PURSUE IT ON CROSS.

5 THE COURT: YES, SIR.

6 Q DR. WATTS, WE WERE TALKING ABOUT THE PARANOID
7 PERSONALITY DISORDER AND THE INDICATORS OF OR THE EVIDENCE OF
8 -- I ASKED YOU IF YOU HAD OCCASION IN THIS EVALUATION OR
9 DETERMINATION OR OPINION AS TO DIAGNOSIS WHETHER OR NOT YOU
10 HAD THE OPPORTUNITY TO TALK TO KAREN MCCALL?

11 A YES, I DID.

12 Q AND ARE INDICATORS OF THIS PARANOID PERSONALITY DISORDER
13 -- WAS HER CONVERSATION WITH YOU RELEVANT OR SIGNIFICANT IN
14 TERMS OF SUPPORTING THAT DIAGNOSIS?

15 A ABSOLUTELY.

16 Q AND TO WHAT EXTENT?

17 A FOR EXAMPLE, MS. MCCALL MENTIONED THAT WHILE THEY WERE
18 IN GREENVILLE THEY WERE CHANGING HOTELS EVERY NIGHT AND --
19 AND SHE STATES THAT THAT'S BECAUSE JOHN DIDN'T WANT TO BE
20 WATCHED. HE WAS FEARFUL HE WOULD BE WATCHED, AND SO HE WOULD
21 CONSTANTLY MOVE. SO HE WAS ACTING ON BEHAVIORS THAT ARE
22 CONSISTENT WITH THAT PERSONALITY.

23 ALSO, THERE WERE PSYCHOLOGICAL TESTS THAT WERE GIVEN
24 THAT ALSO SHOW THAT HE IS QUITE PARANOID ON PAPER AND PENCIL
25 TESTS WHEN ONE IS LOOKING AT HIS PERSONALITY STRUCTURE.

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 Q DID MR. WOOD HAVE ANYTHING ELSE GOING ON THAT WOULD HAVE
2 NECESSARILY AFFECTED HIS MENTAL STATE? YOU DESCRIBED THE
3 PERSONALITY -- THE PARANOID PERSONALITY DISORDER AND THE
4 BIPOLAR DISORDER. WAS THERE ANYTHING ELSE THAT COULD HAVE
5 EITHER AFFECTED OR AGGRAVATED OR STIMULATED THESE CONDITIONS?

6 A YES.

7 Q ALL RIGHT. COULD YOU EXPLAIN TO THE JURY?

8 A PART OF WHAT PSYCHIATRISTS YOU ALSO HAVE TO DO IS RULE
9 OUT SUBSTANCE USE, DRUGS, ANY KINDS OF DRUGS. AND THERE WERE
10 TWO CHEMICALS THAT MR. WOOD WAS TAKING THAT ARE EXTREMELY
11 IMPORTANT IN UNDERSTANDING HIM.

12 I HAD TO LOOK THESE -- THERE ARE TWO THAT I HAD TO LOOK
13 UP ON THE INTERNET. IT'S ONE CALLED DNP AND ONE CALLED
14 VALERIAN ROOT, AND THESE ARE SUBSTANCES THAT YOU CAN GET AT
15 ANY GNC AND THAT SORT OF THING. THEY'RE NOT REGULATED BY THE
16 FDA, THE FEDERAL DRUG ADMINISTRATION, YET, SO IT'S --
17 PSYCHIATRISTS AND MEDICINE ARE LEARNING ABOUT THEM, BUT
18 THEY'RE NOT REGULATED, SO YOU CAN'T STUDY THEM IN A TEXT
19 BOOK. SO I GOT ON THE INTERNET AND LOOKED UP EVERYTHING I
20 COULD FIND ON DNP, AND I ALSO LOOKED UP EVERYTHING I COULD
21 FIND ON VALERIAN ROOT. ALSO, FOR THE VALERIAN ROOT I CALLED
22 GNC BECAUSE I WASN'T HAVING MUCH LUCK ON THE INTERNET. SO I
23 ACTUALLY CALLED OVER THERE AND ASKED SOMEONE TO DESCRIBE THAT
24 FOR ME.

25 WHAT DNP IS, IT'S A PILL, AND IT'S SUPPOSED TO BE

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 SIMILAR TO AN ANABOLIC STEROID, AND IT'S SOMETHING THAT BODY
2 BUILDERS USE SOMETIMES, AND PEOPLE ARE TAKING THIS PILL FOR
3 WEIGHT LOSS. AND ACTUALLY, IN RESEARCHING IT, THE INTERNET
4 SAYS THAT IT'S A DERIVATIVE OF TNT, WHICH WAS -- IT WAS USED
5 AS A DETONATING COMPOUND IN EXPLOSIVES. IT'S ALSO AN
6 INGREDIENT USED IN INSECTICIDES. AND THIS INTERNET SITE SAYS
7 THAT PEOPLE ARE TAKING IT BECAUSE IT INCREASES YOUR BODY
8 TEMPERATURE, AND THAT'S HOW IT HELPS TO PROMOTE WEIGHT LOSS.
9 IT RECOMMENDS THAT YOU TAKE IT A WEEK AT A TIME, AND THEN
10 YOU'RE OFF OF IT FOR A WEEK.

11 AND MR. WOOD HAD BEEN TAKING THIS PILL -- HE HAD LOST
12 SOME 50 POUNDS. HE WAS TRYING TO LOSE WEIGHT, AND HE HAD
13 BEEN ON THIS SUBSTANCE -- I DON'T KNOW WHAT TO CALL IT --
14 CHEMICAL FOR SOME PERIOD OF TIME. HE HAD JUST FINISHED -- HE
15 HAD BEEN ON IT A WEEK AND REPORTED TO ME THAT HE HAD STOPPED
16 THAT CYCLE BEFORE OFFICER NICHOLSON WAS KILLED.

17 THE OTHER SUBSTANCE IS CALLED VALERIAN ROOT, AND WHAT
18 THAT IS, ACCORDING TO THE GNC PEOPLE, IT'S A DERIVATIVE OF
19 VALIUM AND IT'S USED FOR -- THEY SAY IT'S USED TO HELP PEOPLE
20 SLEEP.

21 ONE OF THE SYMPTOMS MR. WOODS HAD, WHICH IS CONSISTENT
22 WITH BIPOLAR DISORDER, IS VERY LITTLE SLEEP, AND THAT'S
23 CONFIRMED BY BOTH HE AND MS. MCCALL AND HIS SISTER. HE
24 REPORTS THAT SOMETIMES HE WOULD ONLY SLEEP ONE TO TWO HOURS A
25 NIGHT. HE WOULD BE UP DOING ALL OF THESE PROJECTS. HE

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1 WORKED ON HOUSE BOATS. HE WORKED ON CAR MOTORS. HE
2 RENOVATED TRAILERS. AND HE WOULD BE UP ALL HOURS OF THE
3 NIGHT TRYING TO WORK ON THESE PROJECTS, WORK ON THESE PLANS,
4 AND HE HAD VERY LITTLE SLEEP.

5 HE REPORTS AND MS. MCCALL REPORTS THAT THIS MEDICATION
6 HELPED HIM REST SOME AND IT WOULD CALM HIM DOWN. AND IT IS
7 USED AS A SEDATIVE IN THE GNC MARKET.

8 Q IN A NUTSHELL THEN, IF A PERSON HAS A MENTAL HEALTH
9 IMPAIRMENT UNKNOWN TO THAT PERSON AND THAT PERSON THEN
10 TAKES -- AND THESE WOULD HAVE BEEN OVER-THE-COUNTER TYPE
11 MEDICATIONS OR WOULD THEY HAVE BEEN PRESCRIPTION MEDICATION
12 OR...

13 A WELL, THE VALERIAN ROOT YOU CAN PURCHASE AT GNC. THE
14 DNP YOU HAVE TO ORDER THROUGH THE INTERNET SOMEHOW, OR A
15 CHEMICAL COMPANY.

16 Q BUT IF A PERSON IS TAKING THAT TYPE OF MEDICATION NOT
17 REALIZING THAT THEY HAVE A MENTAL HEALTH IMPAIRMENT, CAN THAT
18 COMPLICATE OR AGGRAVATE THE UNKNOWN CONDITION---

19 SOLICITOR ARIAIL: I'M GOING TO OBJECT TO HIM LEADING.

20 THE COURT: OVERRULED.

21 Q CAN THAT -- CAN THAT, WHAT I'VE JUST DESCRIBED TO YOU,
22 COMPLICATE OR AGGRAVATE AN EXISTING CONDITION THAT A PERSON
23 DID NOT KNOW THEY EVEN HAD?

24 A ABSOLUTELY. IN MR. WOOD'S CASE, HE AGGRAVATED HIS
25 BIPOLAR DISORDER, THE MOOD DISORDER. HE WAS HAVING -- MS.

1 WOODS -- MS. MCCALL, EXCUSE ME, REPORTS THAT WHEN HE WAS
2 TAKING THIS DNP THAT ALL OF HIS SYMPTOMS WERE WORSE.

3 FOR EXAMPLE, IT'S NOT UNCOMMON FOR PEOPLE WITH BIPOLAR
4 DISORDER TO HAVE VERY HIGH SEX DRIVES, AND SHE REPORTED THAT
5 ON THE TIMES WHEN HE WOULD BE TAKING HIS MEDICATION THEY
6 WOULD HAVE SEX FOUR OR FIVE TIMES A DAY, EVEN WHEN SHE WAS
7 PREGNANT. SHE WAS ABOUT FIVE MONTHS PREGNANT DURING THIS
8 PERIOD OF TIME. AND SHE NOTICED THAT HE HAD INCREASED GOAL-
9 DIRECTED ACTIVITY, DECREASED NEED FOR SLEEP, VERY HIGH SEX
10 DRIVE, SPENDING MONEY AND THAT SORT OF THING. SO THE DNP
11 WORSENEDED THE MOOD DISORDER. THE VALERIAN ROOT ACTUALLY
12 HELPED IT. IT WAS A SEDATIVE AND IT PROBABLY DID HELP HIM
13 REST AT SOME POINT.

14 Q ARE PEOPLE WHO ARE PARANOID OR HAVE PARANOID PERSONALITY
15 DISORDER ARE THEY, I'LL USE THE TERM, AVOIDANT?

16 A YES.

17 Q AND I BELIEVE YOU WERE DESCRIBING THAT TYPE OF SYMPTOM
18 OR INDICATOR A FEW MOMENTS AGO?

19 A CERTAINLY THAT'S A BEHAVIOR YOU WOULD SEE WITH THAT
20 DISORDER. FOR EXAMPLE, IF YOU'RE PARANOID ABOUT SPIDERS, YOU
21 AVOID THEM WHEN YOU SEE THEM. YOU DON'T WANT TO BE AROUND
22 BUGS OR THAT SORT OF THING. BUT, YES, THAT'S A COMMON
23 BEHAVIOR SEEN WITH PARANOID PEOPLE.

24 Q WHAT ABOUT HYPERVIGILANCE?

25 A YES.

1 Q AND YOU'LL NEED TO GIVE THE JURY A LITTLE GUIDANCE ON
2 WHAT YOU MEAN BY THE TERM "HYPERVIGILANT."

3 A A HYPERVIGILANT PERSON, FOR EXAMPLE, WOULD BE THE ONE
4 THAT GOES INTO A RESTAURANT AND HAS HIS BACK TO THE WALL,
5 THAT KNOWS WHERE EVERYBODY IS, KNOWS WHEN EVERYBODY COMES IN
6 AND OUT. THEY ARE ACUTELY AWARE OF THEIR SURROUNDINGS.

7 AND WE DO KNOW FROM BOTH MR. WOODS' REPORT AND MS.
8 MCCALL'S REPORT AND MS. MARTINEZ'S REPORT THAT THERE HAD BEEN
9 OCCASIONS WHEN IF HE WAS IN A RESTAURANT AND A POLICEMAN
10 ENTERED THE RESTAURANT, HE WOULD LEAVE. THERE HAS ALSO BEEN
11 REPORTS AGAIN THAT HE WOULD AVOID GOING TO MOVIES IN THE
12 DAYTIME, AVOID GOING INTO GROCERY STORES IN THE DAYTIME. SO
13 HE WAS ALWAYS VIGILANT.

14 MR. WOOD TOLD ME HIMSELF THAT HE WOULDN'T EVEN STAY
15 PARKED IN A PARKING LOT. HE WOULD DRIVE AROUND THE PARKING
16 LOT, IF KAREN WAS IN SHOPPING, THAT HE WOULD CONTINUE TO
17 DRIVE AROUND AND WOULDN'T EVEN KEEP HIS CAR STILL.

18 Q CAN -- IS IT COMMON IF -- FOR PERSONS WITH THIS
19 COMBINATION OF MENTAL IMPAIRMENTS, IS IT COMMON FOR THESE
20 PEOPLE TO BECOME AGGRESSIVE UNDER CERTAIN CIRCUMSTANCES?

21 A THEY CAN.

22 Q LET ME ASK YOU A COUPLE OF OTHER QUESTIONS, DR. WATTS.
23 CAN YOU EXPLAIN TO THIS JURY WHAT THE TERM "ANTISOCIAL
24 PERSONALITY DISORDER" IS, WHAT THAT GENERAL TERM IS?

25 A CERTAINLY. AGAIN, THAT'S ONE OF THE AXIS II CONDITIONS,

1 AND THAT'S A PERSONALITY DISORDER THAT IS COMMONLY SEEN IN A
2 FORENSIC SETTING. AND WHAT THAT IS, THAT'S A PERSON THAT HAS
3 A HISTORY OF BREAKING THE LAW, BREAKING THE RULES, EXPLOITING
4 OTHER PEOPLE, BASICALLY HAS A DISRESPECT AND A DEFIANCE OF
5 AUTHORITY AND HAD A LIFELONG PATTERN OF DOING THAT.

6 Q IS PART OF THAT INFORMATION OR PATTERN IN REACHING THAT
7 TYPE OF DIAGNOSIS DEPENDENT UPON CHILDHOOD OR YOUNG AGE
8 INFORMATION?

9 A YES, IT IS. THAT'S CORRECT. FOR THIS DIAGNOSIS TO BE
10 MADE YOU HAVE TO SHOW THAT EVEN BEFORE YOU WERE 16 THAT THERE
11 WERE SOME PATTERNS THAT YOU WERE DOING SOME THINGS WRONG.
12 BECAUSE, FOR EXAMPLE, KIDS SOMETIMES DO THINGS, THEY CUT
13 SCHOOL AND THAT SORT OF THING, BUT THAT DOESN'T MEAN THAT
14 THEY GROW UP TO BE ANTISOCIAL. SO THERE ARE CERTAIN
15 QUALIFIERS THAT YOU LOOK FOR.

16 MR. WOODS DOES NOT MEET THIS CRITERIA. HE HAS NO
17 HISTORY BEFORE HE WAS 16 OF BEING IN ANY TROUBLE. THERE ARE
18 RECORDS THAT ALLUDE THAT HE WAS IN A BOYS' HOME. HE WAS NOT
19 IN A BOYS' HOME. HIS PARENTS WORKED IN A BOYS' HOME, AND HE
20 WAS OVER WITH HIS PARENTS WHILE THEY WORKED. HE HAD NEVER
21 BEEN CONFINED IN ANY KIND OF JUVENILE FACILITY.

22 THERE WERE RECORDS THAT HE MAY HAVE BEEN INVOLVED IN
23 FIGHTS. HIS SISTER TELLS ME THE ONLY FIGHT HE WAS INVOLVED
24 IN THAT SHE KNEW OF WAS AN OLDER BOY THAT HAD BEEN PICKING ON
25 HIM AND BEATING HIM, AND MS. MARTINEZ SAID SHE FINALLY HAD TO

1 TAKE UP FOR JOHN AND END THIS BATTLE.

2 SO HE CERTAINLY HAS -- HE HAS ANTISOCIAL TRAITS. HE HAS
3 HAD A PATTERN OF BREAKING THE LAW AS AN ADULT. HE HAS --
4 CERTAINLY, HE'S BEEN IN PRISON A FEW TIMES. HE'S BEEN A
5 THIEF. HE HAS DONE FRAUDULENT THINGS IN TERMS OF THE WAL-
6 MART CHECK SCAM AND THAT SORT OF THING. BUT HE DOES NOT MEET
7 THE CRITERIA.

8 Q CAN YOU EXPLAIN TO THIS JURY WHAT THE TERM "MALINGERING"
9 IS OR WHAT THAT TERM MEANS WITHIN THE CONFINES OF YOUR
10 PROFESSION?

11 A SURE. AGAIN, I ALLUDED TO THAT A LITTLE BIT EARLIER.
12 IN FORENSIC PSYCHIATRY IT'S NOT -- THERE'S DIFFERENT
13 SETTINGS. IN LEGAL SETTINGS PEOPLE MAY FAKE SYMPTOMS TO GET
14 AWAY WITH SOMETHING. IN THE MILITARY THAT'S COMMON. THERE
15 ARE CERTAIN SETTINGS WHERE PEOPLE MAY NOT ALWAYS BE HONEST
16 WITH THEIR SYMPTOMS BECAUSE THEY ARE TRYING TO AVOID
17 PUNISHMENT OR AVOID MILITARY SERVICE OR THAT SORT OF THING.
18 SO FORENSIC PSYCHIATRISTS ARE ALSO TRAINED TO ASSESS
19 MALINGERING.

20 AND IT'S MY OPINION AND I HAVE NO EVIDENCE TO INDICATE
21 OTHERWISE THAT HE HAD NOT MALINGERED ANY OF THE SYMPTOMS. IN
22 FACT, HE DOESN'T THINK HE'S ILL. HE MINIMIZES HIS SYMPTOMS.
23 MANY OF THE HISTORY I GOT HAD TO BE FROM KAREN MCCALL BECAUSE
24 HE WASN'T ALWAYS FORTHCOMING WITH THAT INFORMATION. AND IF
25 YOU ASK HIM TODAY IS HE ILL, AT SOME LEVEL HE DOESN'T BELIEVE

1 THAT HE HAS A MENTAL ILLNESS.

2 Q YOU HAVE TALKED AT LENGTH ABOUT TWO SPECIFIC DIAGNOSES
3 THAT YOU AS A FORENSIC PSYCHIATRIST HAVE IDENTIFIED AND
4 PLACED IN THE CASE OF JOHN WOOD. I WANT TO ASK YOU IF THERE
5 ARE TREATMENTS FOR THE CONDITIONS THAT YOU HAVE DESCRIBED.
6 ARE THERE, IN FACT, THINGS THAT CAN BE DONE?

7 A YES. BIPOLAR DISORDER IS A CHEMICAL IMBALANCE. IT'S
8 NOT SOMETHING THAT HIS PARENTS CAUSED OR IT'S NOT A WEAKNESS
9 IN HIS PERSONALITY OR THAT SORT OF THING. IT'S A PSYCHIATRIC
10 MEDICAL ILLNESS AND IT'S TREATED WITH MEDICATIONS.

11 MR. WOODS HAS BEEN ON MEDICATIONS, AND I SAW HIM
12 YESTERDAY AND HIS CONDITION IS STABILIZED. HE IS TREATED
13 RIGHT NOW. HIS MENTAL STATUS -- HE'S NOT HYPER. HE'S NOT
14 GRANDIOSE AT THIS POINT. HE'S MUCH MORE RELAXED. HE IS ABLE
15 TO PROCESS THINGS. HIS THOUGHTS ARE SLOWER. SO HE HAS BEEN
16 TREATED.

17 HE'S ON TWO MEDICATIONS. ONE IS CALLED DEPAKOTE, WHICH
18 IS A MOOD STABILIZER. AND HE IS ALSO ON A MEDICATION FOR
19 HEARING THOSE VOICES. IT'S CALLED RISPERIDONE. AND HE IS
20 MUCH BETTER.

21 Q ALL RIGHT. AND YOU SAID DEPAKOTE WAS ONE OF THE
22 MEDICATIONS?

23 A YES.

24 Q ALL RIGHT. WHAT WAS THE OTHER ONE?

25 A RISPERIDONE, R-I-S-P-E-R-I-D-O-N-E.

1 Q I CAN'T SPELL AS FAST AS YOU CAN TALK. BUT -- WELL, LET
2 ME ASK YOU, REGARDING THE TREATMENT, ARE YOU AWARE -- I THINK
3 YOU MENTIONED EARLY IN YOUR TESTIMONY THAT YOU HAD HAD
4 CERTAIN CONSULTS WITH DR. BRADLEY CLAYTON FROM COLUMBIA?

5 A THAT'S RIGHT.

6 Q AND ARE YOU AT LEAST INFORMED AND BELIEVE THAT JOHN WOOD
7 IS BEING TREATED BY BRADLEY CLAYTON, A PSYCHIATRIST?

8 A YES. I'VE TALKED WITH DR. CLAYTON. I'VE SEEN HIS
9 DETENTION CENTER NOTES. AND I ALSO -- YOU CAN CHECK BLOOD
10 LEVELS OF THESE MEDICATIONS, THE DEPAKOTE SPECIFICALLY, AND I
11 RECEIVED THE LAST SHEET THAT SHOWED THAT MR. WOOD'S DEPAKOTE
12 LEVEL -- THERE'S A WINDOW RANGE WHERE BASICALLY IT'S
13 EFFECTIVE AND HIS MEDICATION IS IN A THERAPEUTIC LEVEL AS OF
14 LAST WEEK.

15 Q A COUPLE OF FINAL QUESTIONS, DR. WATTS. THROUGH YOUR
16 INVESTIGATION OF THE MATERIALS PROVIDED TO YOU AND THE
17 CONSULTS AND THE INTERVIEWS, WERE YOU AWARE OF ANY FAMILY
18 HISTORY REGARDING THE EXISTENCE OF MENTAL ILLNESSES IN JOHN'S
19 FAMILY?

20 A YES.

21 Q ALL RIGHT. DESCRIBE TO THE JURY IF IT'S RELEVANT OR
22 IMPORTANT TO YOU.

23 A MANY OF THESE MOOD DISORDERS DO RUN IN FAMILIES, AND IN
24 TALKING WITH MS. MARTINEZ YESTERDAY SHE CONFIRMED WHAT I
25 ALREADY HAD RECORDS FROM THE MITIGATION---

1 SOLICITOR ARIAIL: SAME OBJECTION. SAME OBJECTION.

2 THE COURT: I'M GOING TO PERMIT IT. OVERRULED.

3 A WE PREVIOUSLY HAD INFORMATION FROM THE MITIGATION
4 SPECIALIST THAT BOTH MR. WOOD'S OLDER SISTER CONNIE AND ALSO
5 HIS FATHER IS ON DEPRESSION MEDICATION, AND THAT WAS
6 CONFIRMED YESTERDAY IN MY INTERVIEW WITH MS. MARTINEZ. THEY
7 ARE BOTH ON ANTIDEPRESSANT MEDICATIONS. MR. WOOD---

8 Q NOW, -- ALL RIGHT. AND JUST SO -- TO MAKE SURE I'VE
9 GOT THE SOURCES OF INFORMATION RIGHT, THROUGH THE MATERIAL
10 AND THE REPORTS AND THE CONSULTATION YOU HAVE DONE YOU HAVE
11 RECEIVED INFORMATION REGARDING FAMILY MENTAL ILLNESSES?

12 A THAT'S CORRECT.

13 Q YOU HAVE AS RECENTLY AS YESTERDAY IN YOUR MEETING WITH
14 BETSY MARTINEZ RECEIVED CONFIRMATION OF THAT?

15 A YES.

16 Q ALL RIGHT.

17 A AND THAT'S COMMONLY WHAT HAPPENS IN THE PROCESS OF
18 RELYING UPON INFORMATION FROM A SOCIAL WORKER THAT'S
19 GENERALLY ACCEPTABLE. BUT WHAT I DO IN THESE CASES IS WHEN I
20 GET THAT INFORMATION, IT'S ALWAYS HELPFUL TO -- I TRY TO GO
21 BACK TO THE SOURCE ALSO WHENEVER POSSIBLE AND SAY, "IS THIS
22 CORRECT?" TO VERIFY THAT. SO THAT'S WHAT MY INTERVIEW WITH
23 MS. MARTINEZ WAS YESTERDAY.

24 Q ALL RIGHT. NOW, DOES JOHN HAVE A HISTORY AT LEAST OF
25 SUBSTANCE DEPENDENCY?

1 A NOT SUBSTANCE DEPENDENCE. HE DID ABUSE MANY SUBSTANCES
2 BACK IN THE EARLY NINETIES AND HAS NOT USED, BY HIS REPORT,
3 ANYTHING SINCE 1993. NOW, HE DID ADMIT ON SOME OCCASIONS
4 FROM 1993 TO 2001 HE MAY HAVE USED MARIJUANA, BUT NOT ON A
5 REGULAR BASIS AND NOT TO THE POINT THAT HE MET THE DIAGNOSTIC
6 CRITERIA FOR ANY SUBSTANCE ABUSE DISORDER.

7 Q WITH REGARD TO YOUR MEDICAL OPINION, TO A REASONABLE
8 DEGREE OF MEDICAL CERTAINTY WAS JOHN WOOD SUFFERING FROM THE
9 MENTAL DISORDERS THAT YOU HAVE DESCRIBED TO THIS JURY THIS
10 MORNING AT THE TIME OF THE INCIDENT IN THIS MATTER?

11 A YES.

12 Q WAS HE SUFFERING FROM THOSE CONDITIONS PRIOR TO THE TIME
13 OF THE INCIDENT IN THIS MATTER?

14 A YES.

15 Q I WANT TO CONCLUDE, DR. WATTS, DESCRIBE TO THE JURY THE
16 CONNECTION, IF ANY, BETWEEN JOHN'S DESCRIBED MENTAL
17 IMPAIRMENTS AND THE EVENTS THAT OCCURRED ON DECEMBER THE 6TH.

18 A YES. TO DO THAT IT'S IMPORTANT TO GO BACK TO FLORIDA
19 WHERE HE MET KAREN MCCALL. MS. MCCALL IS THE FIRST PERSON HE
20 HAD LOVED AND THE ONLY PERSON THAT HE HAS LOVED. THEY
21 DEVELOPED A RELATIONSHIP, AND FOR THE FIRST TIME IN MR.
22 WOOD'S LIFE SOMEBODY BELIEVED SOME OF HIS PLANS. SHE WAS
23 WELL AWARE THAT THE PLAN WAS THEY WERE GOING TO GO TO BELIZE
24 AND THAT'S WHERE THEY WOULD LIVE.

25 MR. WOOD HAD MET SOME PEOPLE IN THE FEDERAL DEPARTMENT

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 OF CORRECTIONS AND ONE OF HIS FRIENDS, EVIDENTLY, HAD LAND IN
2 BELIZE AND OWNED A HOTEL THERE. AND MR. WOOD BELIEVED
3 BECAUSE HE SPOKE TO SOMEONE THAT SAID HE WAS AN ATTORNEY IN
4 BELIZE THAT INDEED THIS WAS TRUE AND THAT THIS FRIEND DID
5 HAVE THIS LAND AND THE HOTEL ON THE PROPERTY.

6 MR. WOOD'S PLAN WAS THAT HE AND KAREN WOULD GO TO
7 BELIZE. THEY WOULD FARM THE LAND. THEY WOULD CLEAR THE
8 LAND, GET THE HOTEL RUNNING AGAIN. THEY HAD EVEN PURCHASED A
9 CAMPER. THEY WERE GOING TO LIVE IN A CAMPER WHILE THEY
10 CLEARED THIS LAND. THAT'S WHEN THEY WOULD, QUOTE, LIVE
11 HAPPILY EVER AFTER.

12 THEY BEGAN DATING. SHE GOT PREGNANT. WHAT THE PLANS
13 WERE WAS THAT THEY WERE GOING TO ANDERSON TO SAY GOODBYE TO
14 HIS SISTER. HE HAD BEEN INCARCERATED PREVIOUSLY AND HAD NOT
15 SPENT A LOT OF TIME WITH HIS SISTER. THEY WERE GOING UP TO
16 ANDERSON TO VISIT WITH HER, AND THAT'S WHAT THEY WERE IN THE
17 PROCESS OF DOING. THEY WERE STAYING IN DIFFERENT HOTELS
18 EVERY NIGHT.

19 MS. MCCALL ALSO MENTIONED THAT HE HAD DEVELOPED A -- HIS
20 NEWEST OBSESSION WAS WITH THE SCI-FI CHANNEL, SO THAT THE
21 ONLY HOTEL THEY COULD STAY AT HAD TO HAVE THE SCI-FI CHANNEL.
22 SO THEY WOULD CHANGE HOTELS EVERY DAY AND WATCH THE SCI-FI
23 CHANNEL. HE WAS ALSO VISITING WITH HIS FAMILY.

24 THE PLAN WAS ON THAT DAY THEY WERE GOING TO LEAVE FOR
25 ALABAMA OR LOUISIANA. MS. MCCALL SAYS ALABAMA. MR. WOOD

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 SAYS LOUISIANA. MS. MCCALL HAD FAMILY IN ALABAMA. THEY WERE
2 GOING TO SPEND CHRISTMAS THERE WITH HER FAMILY. THEY HAD
3 PURCHASED COMPUTERS FOR MS. MCCALL'S NIECES AND NEPHEWS.
4 THEY WERE HOME SCHOOLED, AND MR. WOOD EVIDENTLY FELT THAT IT
5 WAS IMPORTANT THEY HAVE COMPUTERS. AND THEY SPENT, MS. WOOD
6 -- MS. MCCALL SAYS, I BELIEVE, \$8000 -- \$5000 TO \$8000, A LOT
7 OF MONEY ON COMPUTERS. THEY HAD A BIG COMPUTER SYSTEM, AND
8 HE ALSO WAS GOING TO HAVE TWO COMPUTER SYSTEMS FOR HER NIECES
9 AND NEPHEWS. THEY WERE GOING TO GO TO ALABAMA, SPEND
10 CHRISTMAS THERE AND THEN GO TO BELIZE.

11 HE SUPPOSEDLY, ALTHOUGH THERE IS -- I'VE NOT SEEN ANY
12 PROOF OF THIS, HAD THE PLAN TO HAVE POLYSTYRENE DELIVERED TO
13 BELIZE. HE WAS GOING TO PLAN TO BUILD A MOLD, SOME KIND OF
14 VAT THAT YOU COULD POUR THE POLYSTYRENE IN TO BUILD THE
15 BLOCKS, THAT SORT OF THING.

16 SO BASICALLY HE WAS ON HIS WAY TO -- THE FIRST TIME TO
17 FULFILLING ONE OF HIS DREAMS OF THE MANY SCAMS -- I DON'T
18 KNOW WHAT TO CALL THEM -- SCAMS, PLANS, IN TERMS OF THE CELL
19 PHONE TOWERS AND THE IMPORT-EXPORT BUSINESS. MS. MCCALL
20 BELIEVED IN HIM. SHE WAS HELPING HIM. SHE WAS HELPING PAY
21 FOR THE COMPUTERS. MR. WOODS DESCRIBED HER AS SHE HAD THE
22 SOCIAL SKILLS THAT HE DIDN'T HAVE, AND HE CALLED HER THE
23 BRAINS. BUT HE WAS RISKING EVERYTHING IN THE SENSE HE
24 FINALLY WAS MARRIED, COMMON LAW; HE HAD HIS FIRST CHILD ON
25 THE WAY; HE BELIEVED HE WAS DOING GOD'S PLAN. AND HE WAS ON

DONNA MARIE SCHWARTZ-WATTS -- DIRECT BY MR. MAULDIN

1 HIS WAY UNTIL HE GOT STOPPED, UNFORTUNATELY FOR EVERYONE.

2 MR. MAULDIN: ONE MOMENT, PLEASE, MA'AM. (OFF RECORD
3 WITH CO-COUNSEL)

4 Q A FOLLOW-UP TO THAT FINAL DESCRIPTION TO THE JURY, DR.
5 WATTS. THAT BEING THE CASE AND THAT INFORMATION BEING GIVEN,
6 DO YOU HAVE AN OPINION AS TO WHY HE REACTED AT THE TIME HE
7 WAS PULLED OVER? DO YOU HAVE AN OPINION AS TO WHY THAT
8 HAPPENED?

9 A I CAN CERTAINLY TELL YOU WHAT HIS EXPLANATION OF IT WAS.

10 SOLICITOR ARIAIL: YOUR HONOR, I'M GOING TO OBJECT.

11 MR. MAULDIN: AND IT---

12 THE COURT: OVERRULED.

13 SOLICITOR ARIAIL: I'M OBJECTING TO HER TELLING WHAT
14 HIS EXPLANATION WAS.

15 MR. MAULDIN: I'LL WITHDRAW IT.

16 THE COURT: ANYTHING FURTHER?

17 MR. MAULDIN: NO, SIR.

18 THE COURT: ARE YOU READY TO PROCEED OR DO WE NEED TO
19 TAKE A BREAK TO ADDRESS THAT OTHER ISSUE?

20 SOLICITOR ARIAIL: WELL, WE DON'T -- I'VE GOT A LOT
21 BEFORE THAT---

22 THE COURT: THAT'S ALL I NEED TO KNOW.

23 SOLICITOR ARIAIL: ---BEFORE WE GET TO THAT ISSUE.

24 THE COURT: OKAY.

25 SOLICITOR ARIAIL: I DIDN'T KNOW IF YOU WANTED TO---

MATTERS AND MOTIONS

1 **THE COURT:** WE'RE GOING TO TAKE A BREAK. WE NEED TO
2 CHANGE -- ALSO, I NEED YOU BACK IN THE JURY ROOM TO CHANGE
3 OUR LUNCH PLANS. WHERE Y'ALL WANTED TO ORDER FROM IS NOT
4 INTERESTED IN OUR BUSINESS. (LAUGHTER) SO WE'RE GOING TO
5 HAVE TO RETHINK THAT, AND WE'LL FIND OUT WHAT YOUR SECOND
6 CHOICE IS, AND WE'LL SEE IF THEY'RE INTERESTED IN IT.

7 DON'T DISCUSS THE CASE DURING THE BREAK. IT WILL
8 PROBABLY TAKE ABOUT 15 MINUTES. IF IT'S ANY LONGER THAN THAT
9 I'LL KEEP YOU ADVISED THROUGH THE COURT SECURITY OFFICER AND
10 THE BAILIFFS. THANK YOU.

11 (JURY EXITS COURTROOM AT 10:50 A.M.)

12 **THE COURT:** ALL RIGHT. THE JURY HAS BEEN EXCUSED. DO
13 YOU WANT TO ADDRESS SOME OF THESE ISSUES NOW OR TAKE A BREAK
14 AND COME BACK AND DO IT IN ABOUT FIVE MINUTES?

15 **SOLICITOR ARIAIL:** WELL, I CAN TELL YOU WHAT I -- YEAH,
16 I WANT TO---

17 **THE COURT:** IT'S WHATEVER YOUR PREFERENCE---

18 **SOLICITOR ARIAIL:** I'D LIKE TO DO IT OUT OF HER
19 PRESENCE. I DON'T WANT TO TELL HER WHAT I'M GOING TO ASK. I
20 WOULD PREFER TO DO IT THAT WAY. BUT I DO WANT TO GO THERE.

21 **THE COURT:** ALL RIGHT. I'LL TELL YOU WHAT, LET'S TAKE
22 A FIVE-MINUTE BREAK AND DR. SCHWARTZ-WATTS, IF YOU DON'T
23 MIND, DURING THE LEGAL DISCUSSION ON A MATTER OF EVIDENCE, IF
24 YOU WOULD, JUST WAIT OUTSIDE AND WE'LL GET YOU BACK IN HERE--

25 -

MATTERS AND MOTIONS

1 WITNESS: CERTAINLY. OUT THE FRONT?

2 THE COURT: SURE.

3 WITNESS: OKAY. THANK YOU.

4 THE COURT: THANK YOU, MA'AM.

5 SOLICITOR ARIAIL: DO YOU WANT TO DO IT NOW OR AFTER
6 THE BREAK?

7 THE COURT: LET'S TAKE A SHORT BREAK AND COME BACK.

8 SOLICITOR ARIAIL: I'M GOING TO NEED A COPY OF THE PAGE
9 THAT'S GOT THE QUOTES BECAUSE I DON'T HAVE THAT, THAT JOHN
10 HAD THIS MORNING.

11 (A RECESS WAS TAKEN FROM 10:51 TO 11:02 A.M.)

12 THE COURT: THE JURY HAS BEEN EXCUSED AND THE WITNESS
13 HAS EXITED THE COURTROOM.

14 SOLICITOR ARIAIL: I WANT TO BE ABLE TO ASK THE WITNESS
15 IF -- AND I'LL CONCEDE, ALTHOUGH I -- IT IS SUCH A HUGE
16 TEMPTATION -- FOR AN AGGRESSIVE PROSECUTOR IT IS VERY
17 DIFFICULT TO PASS UP, BUT I'LL CONCEDE THAT I WON'T GO TO
18 WHERE THE SPECIFICS ARE BROUGHT OUT ABOUT BOMBING THE
19 PENTAGON, BUT I WOULD WANT THE LEEWAY TO ASK IF THIS WITNESS
20 IS AWARE THAT MR. WOOD HAD TOLD OTHER PEOPLE ABOUT -- WELL,
21 OBVIOUSLY SHE'S AWARE OF OTHER INSTANCES OF HEARING VOICES IN
22 WHICH HE CHOSE NOT TO ACT, THAT HE MADE CHOICES BASED ON THE
23 VOICES HE HEARD.

24 SEE, SHE'S GOT IN THIS RECORD NOW THAT THE VOICES WERE
25 TALKING TO HIM ABOUT KILLING THE POLICEMAN OR THE VOICES. --

MATTERS AND MOTIONS

1 ABOUT HIM HEARING VOICES. SO, YOU KNOW, SOMEHOW THAT'S GOT
2 SOME MERIT. I WANT TO CROSS EXAMINE HER -- SHE HAD OTHER
3 INSTANCES OF HEARING VOICES IN WHICH HE DID NOT -- THAT HE
4 TOLD HER ABOUT THAT HE DID NOT -- OR SHE HAD AN EXPLANATION
5 ABOUT THAT HE DID NOT RESPOND TO.

6 THE COURT: SAY THAT AGAIN. YOU WANT TO ASK HER...

7 SOLICITOR ARIAIL: IF HER FILE CONTAINS---

8 MR. MAULDIN: IT NEEDS TO BE EDITED. THERE WERE TIMES
9 WHEN THERE WERE REFERENCES IN MATERIALS AND IN THE FILE THAT
10 INDICATE HEARING VOICES, HEARING VOICES. SOMETIMES -- OR
11 WELL, ACTUALLY, A GOOD BIT OF THE TIME HE DID NOT DO WHATEVER
12 IT WAS THE VOICES -- REGARDING THE VOICES. AND I THINK
13 THAT -- AREN'T YOU SAYING THAT'S A DISTINCTION YOU WANT TO
14 MAKE?

15 SOLICITOR ARIAIL: YEAH, I WANT TO---

16 MR. MAULDIN: WE HAVE NO OBJECTION TO THAT PART OF THE
17 PROBLEM, AS LONG AS THERE IS NO REFERENCE TO THE INFLAMMATORY
18 INFORMATION THAT WE HAVE CONSULTED WITH THE COURT ABOUT IN
19 CHAMBERS.

20 THE COURT: WHAT ABOUT THIS? SHE HAS CHOSEN -- WHEN
21 SHE TALKS ABOUT GRANDIOSITY AND HEARING VOICES, SHE CHOSE AS
22 EXAMPLES THINGS WHICH ARE ARGUABLY GOOD, YOU KNOW, GOING TO
23 BELIZE AND BUILDING SOMETHING, INVENTING SOMETHING, BEING ON
24 THE CUTTING EDGE OF THIS NEW SCIENCE AND HAVING NEW
25 BUSINESSES. YOU KNOW, THESE ARE NOT NECESSARILY BAD THINGS.

MATTERS AND MOTIONS

1 MR. MAULDIN: RIGHT.

2 THE COURT: WOULD IT BE PERMISSIBLE TO QUESTION THAT
3 GRANDIOSITY AND HALLUCINATIONS COULD ALSO BE THINGS THAT ARE
4 NOT GOOD, WITHOUT BEING SPECIFIC?

5 MR. MAULDIN: YES, SIR. I THINK THAT TO -- BECAUSE OF
6 AN EFFORT TO MAKE SURE THAT THIS IS A CLEAN -- THAT WE
7 PROCEED IN A CLEAN WAY, IT IS THE NATURE OF THE SPECIFICS
8 THAT WE HAVE BROUGHT TO THE COURT'S ATTENTION. AND I JUST --
9 SO THAT'S MY POSITION.

10 THE COURT: SO -- AND YOU'VE INDICATED YOU'RE NOT GOING
11 TO GO TO THE SPECIFICS?

12 SOLICITOR ARIAIL: I AM NOT.

13 THE COURT: OKAY.

14 SOLICITOR ARIAIL: I'M NOT INTERESTED IN THE SPECIFICS.

15 MR. MAULDIN: AND WE'RE NOT GOING TO OBJECT TO -- AND I
16 BELIEVE -- NOW, YOU MIGHT, YOUR HONOR, BEFORE DR. WATTS TOOK
17 THE WITNESS STAND -- AND I TOLD THE COURT I WOULD INSTRUCT MY
18 WITNESS TO AVOID -- YOU MIGHT -- WHEN SHE COMES IN, YOU MIGHT
19 GIVE HER JUST AT LEAST A TWO SENTENCE -- BECAUSE THIS IS A
20 FOLLOW-UP TO WHAT I HAVE ALREADY TOLD HER BEFORE SHE GOT ON
21 THE WITNESS STAND. I WANT TO MAKE SURE SHE UNDERSTANDS THE
22 LIMITATION.

23 WELL -- BUT HERE'S WHAT'S HAPPENED. I TOLD HER SHE
24 COULD NOT REFER TO IT. HE'S GOING TO -- HE IS NOW GOING TO
25 BE ALLOWED THE QUESTION HER, AND WE REALLY DON'T EVEN OBJECT

MATTERS AND MOTIONS

1 TO THE GENERALITY QUESTIONS. THAT'S REALLY -- SHE'S REALLY
2 IN A SERIOUS -- SHE'S AT A SERIOUS DISADVANTAGE HERE, YOUR
3 HONOR, AND IT'S NOT FAIR. THE COURT SHOULD AT LEAST TELL THE
4 WITNESS THAT THE MATTER OF THESE THINGS HIGHLIGHTED ON THAT
5 PAPER HAVE BEEN TAKEN UP AND CONSIDERED, AND THE STATE WILL
6 BE ALLOWED TO ASK GENERAL QUESTIONS WITH NO REFERENCES TO
7 SPECIFICS. AND THAT IS ONLY FAIR.

8 SOLICITOR ARIAIL: THAT'S MY CHOICE. THAT'S NOT THE --
9 YOUR ORDER. THAT'S MY CHOICE. I DON'T THINK THAT THIS
10 WITNESS SHOULD BE TOLD ANYTHING BY EITHER PARTY OR THE COURT
11 AT THIS POINT. I MEAN, SHE OUGHT TO JUST GET BACK ON THE
12 STAND AND -- THE ISSUE IS WHAT I WAS GOING INTO, AND I SAID
13 I'M NOT GOING INTO IT EXCEPT IN A GENERAL SENSE, AND WE DON'T
14 NEED TO BE TELLING HER WHAT AND WHAT NOT TO SAY.

15 THE COURT: IS YOUR QUESTION GOING TO BE TAILORED IN A
16 WAY THAT WILL DRAW ONLY THE GENERAL RESPONSE?

17 SOLICITOR ARIAIL: IT SHOULD BE. IT SHOULD BE. I
18 MEAN, YOU KNOW -- (LAUGHTER) -- I'M NOT GOING TO TELL YOU---

19 MR. MAULDIN: JUDGE---

20 SOLICITOR ARIAIL: ---WHEN I'M STANDING OVER THERE THAT
21 I -- THERE ARE A MILLION THINGS RUNNING THROUGH MY HEAD WHEN
22 I'M EXAMINING A WITNESS. I'M TRYING TO REMEMBER WHAT THEY
23 TOLD ME, WHY I DON'T BELIEVE IT'S TRUE, AND I'M LIABLE---

24 MR. MAULDIN: THE THING IS---

25 SOLICITOR ARIAIL: IF I DO, YOU JUST STAND UP AND JUMP

MATTERS AND MOTIONS

1 UP AND SAY, "I OBJECT."

2 MR. MAULDIN: THE THING IS SO MUCH MORE COMPLICATED
3 BECAUSE OF WHAT I DID TO MY OWN WITNESS AFTER OUR MEETING.
4 YOU KNOW, IT CAME UP LAST NIGHT. I BROUGHT IT TO EVERYONE'S
5 ATTENTION. AND THEN AFTER WE HAD OUR DISCUSSION IN CHAMBERS,
6 I WENT TO THE WITNESS AND SAID "NO, STAY AWAY FROM THAT.
7 THAT IS NOT PART OF THIS CASE." WELL, NOW SHE'S GOING TO
8 COME IN AND THERE ARE GOING TO BE SOME QUESTIONS AND I ---
9 SHE'S AT LEAST ENTITLED, I BELIEVE, TO AT LEAST BE AWARE OF
10 THE FACT THAT THERE'S BEEN SOME DECISION ABOUT IT.

11 SOLICITOR ARIAIL: IT DOESN'T MATTER. I---

12 THE COURT: I'M GOING TO TELL HER IN A GENERAL WAY.
13 AND IF WHAT I INSTRUCT TO THE WITNESS IS NOT SATISFACTORY,
14 I'M CONFIDENT NEITHER ONE OF YOU WILL HESITATE TO JERK ME
15 OVER TO THE SIDE.

16 SOLICITOR ARIAIL: RIGHT.

17 MR. MAULDIN: AND NOW -- YOUR HONOR, I'M GOING TO --
18 NOW, I DON'T KNOW WHETHER THE PROSECUTOR -- WHAT HE INTENDS
19 TO DO. BUT WITH REGARD TO THE SIDEBAR THAT INVOLVED THE
20 SEQUESTRATION ISSUE AND CERTAIN TESTIMONY, DOES THAT NEED TO
21 BE BROUGHT OUT IN THE ABSENCE OF THAT WITNESS BEFORE THE JURY
22 COMES BACK IN? I DON'T KNOW JUST -- WHILE WE'RE IN HERE,
23 I'LL BE GLAD TO ADDRESS IT TO THE EXTENT I CAN.

24 SOLICITOR ARIAIL: I THINK THAT'S FAIR GAME---

25 THE COURT: I DO. UNDER RULE 608 IT MAY IMPACT ON A

MATTERS AND MOTIONS

1 WITNESS' BIAS, PREJUDICE, AND I'M NOT GOING TO REQUIRE THAT
2 TO BE DONE OUTSIDE THE JURY'S PRESENCE. AND THERE MAY BE A
3 VERY INNOCUOUS RESPONSE THAT MOOTS THE ISSUE AND WE MOVE ON
4 QUICKLY. I DON'T KNOW. BUT I DO THINK THAT COULD
5 POTENTIALLY BE AN APPROPRIATE MATTER FOR THE JURY.

6 MR. MAULDIN: WELL, JUST TO PUT ON -- PUT THE COURT --
7 TO AT LEAST BRING YOU UP TO CURRENT AFTER HAVING MET WITH JIM
8 AND RODNEY, I -- KAREN MCCALL WAS RETAINED UNDER SUBPOENA.
9 REMEMBER, WHEN SHE FINISHED TESTIFYING, I ACTUALLY ASKED THAT
10 SHE BE RETAINED? AND THE PURPOSE OF DOING THAT, YOUR HONOR,
11 WAS BECAUSE WE INTENDED TO HAVE HER AS A WITNESS IN THIS
12 PHASE. I CHANGED MY MIND. I HAD REASONS TO CHANGE MY MIND.
13 BUT I'M NOT -- AND I KNOW I WAS TALKING WHEN THESE PEOPLE
14 WERE LISTENING TO ME, BUT WHETHER ANYBODY -- AND I KNOW THAT
15 WHAT -- I'M 95 PERCENT SURE THAT SHE WASN'T PRESENT WHEN I
16 TOLD CO-COUNSEL WHY I WASN'T CALLING KAREN MCCALL. THAT MAY
17 BE PART OF THAT -- WHAT SHE SAID. SO I -- TO THAT -- YOU
18 KNOW, THAT COULD HAVE FALLEN UPON HER EARS, BUT I CERTAINLY
19 DON'T REMEMBER HER BEING IN THE ROOM OR INVOLVED IN THAT AT
20 ALL. SO I JUST WANTED TO BRING YOU UP TO DATE.

21 THE COURT: OKAY. ASK DR. SCHWARTZ-WATTS TO COME BACK
22 IN THE COURTROOM, PLEASE.

23 (WITNESS REENTERS COURTROOM AT 11:12 A.M.)

24 THE COURT: THANK YOU FOR YOUR PATIENCE, DR. SCHWARTZ-
25 WATTS.

MATTERS AND MOTIONS

1 WITNESS: NO PROBLEM.

2 THE COURT: I'M GOING TO GIVE YOU A GENERAL STATEMENT
3 ABOUT SOME PARAMETERS OF YOUR TESTIMONY. AND IF I DON'T DO
4 IT RIGHT, THESE ATTORNEYS ARE GOING TO ASK ME TO STEP TO THE
5 SIDE, AND THEN I'M GOING TO GIVE IT ANOTHER EFFORT.

6 WITNESS: YES, SIR.

7 THE COURT: AND THE REASON I MENTION THIS TO YOU IS
8 BECAUSE PRIOR TO YOUR TESTIMONY, WHEN YOU COULD SPEAK TO THE
9 ATTORNEYS, MR. MAULDIN HAD GIVEN YOU SPECIFIC INSTRUCTIONS TO
10 NOT REFERENCE THE RECORD THAT YOU REVIEWED REGARDING AN
11 INTERVIEW WITH MS. MCCALL ABOUT DEFENDANT'S STATEMENT THAT
12 GOD TOLD HIM TO BLOW UP THE PENTAGON.

13 WITNESS: YES, SIR.

14 THE COURT: AND WE'RE STILL NOT ON CROSS EXAMINATION.
15 ABSENT SOME OTHER BREAK AND DISCUSSING THE ISSUE, WE'RE STILL
16 NOT GOING TO GO INTO THAT SPECIFICALLY. BUT THERE MAY BE
17 QUESTIONS OF A GENERAL NATURE THAT DEAL WITH GRANDIOSITY,
18 HALLUCINATIONS IN A GENERAL WAY, PERHAPS SOME THAT WERE ACTED
19 UPON AND SOME THAT WERE NOT ACTED UPON. SO UNTIL WE HAVE A
20 FURTHER DISCUSSION, ME WITH THE ATTORNEYS, ON A MATTER OF
21 EVIDENCE, IT'S MY UNDERSTANDING THAT YOU ARE NOT GOING TO BE
22 ASKED TO DISCLOSE SPECIFICALLY THIS HALLUCINATION OR
23 STATEMENT WHICH THE DEFENDANT ATTRIBUTES TO GOD.

24 WITNESS: YES, SIR.

25 THE COURT: OKAY.

MATTERS AND MOTIONS

1 WITNESS: I'M CLEAR.

2 MR. MAULDIN: AND, YOUR HONOR, FOR THE RECORD, THAT IS
3 DR. NARAYAN'S NOTES NOT DR. WATTS' NOTES.

4 THE COURT: RIGHT. DR. NARAYAN'S NOTES WITH THE
5 INTERVIEW WITH MS. MCCALL.

6 MR. MAULDIN: YES, SIR.

7 THE COURT: ALL RIGHT. BRING THE JURY.

8 (JURY REENTERS COURTROOM AT 11:16 A.M.)

9 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE'RE
10 READY TO PROCEED.

11 YOUR WITNESS, SOLICITOR.

12 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

13 CROSS EXAMINATION BY SOLICITOR ARIAIL:

14 Q DR. WATTS, IS IT SCHWARTZ-WATTS STILL?

15 A YES, SIR. BUT WATTS IS EASIER TO SAY AND I DON'T MIND.

16 Q THAT'S ALL RIGHT. I'M NOT GOING TO CALL YOUR NAME TOO
17 OFTEN. I'M JUST GOING TO TALK TO YOU A LITTLE BIT.

18 LET ME ASK YOU, YOU'VE BEEN ON THE WITNESS STAND NOW
19 SINCE SOME TIME AROUND 9:30, A LITTLE OVER AN HOUR NOW, AND I
20 HAVE NOT NOTED THAT YOU HAVE REFERRED TO ANY NOTES. DO YOU
21 HAVE ANY WRITTEN REPORT OR ANY WRITTEN NOTES AS TO YOUR
22 TESTIMONY HERE TODAY?

23 A NO. I HAVE HANDWRITTEN NOTES OF INTERVIEWS WITH MR.
24 WOOD AND HANDWRITTEN NOTES FROM MY INTERVIEW WITH MS. MCCALL,
25 BUT, IN TERMS, I HAVE NOT BEEN ASKED TO PREPARE A REPORT.

1 Q AND WHO DID -- WHO WOULD HAVE ASKED YOU TO PREPARE A
2 REPORT?

3 A MR. MAULDIN WOULD HAVE HAD TO. OR THERE'S BEEN SOME
4 CASES WHEN I'VE BEEN RETAINED BY DEFENSE THAT THE JUDGE HAS,
5 IN FACT, ORDERED A REPORT, BUT NONE WAS REQUESTED.

6 Q BUT I CAN'T ASK YOU TO PREPARE A REPORT, YOU'RE NOT
7 GOING TO PREPARE A REPORT WHEN I ASK YOU?

8 A NOT THAT I KNOW OF, UNLESS I WERE INSTRUCTED TO.

9 Q DO YOU HAVE ANY SUMMARY OR ANYTHING YOU FOLLOWED TODAY
10 OR DID YOU SIMPLY TESTIFY FOR THIS HOUR, HOUR AND A HALF
11 BASED ON MEMORY?

12 A MEMORY.

13 Q MEMORY. ALL RIGHT. NOW, WHEN YOU WERE PART -- IS THERE
14 A REASON YOU DON'T PREPARE A WRITTEN REPORT?

15 A YES. THERE CAN BE VARIOUS REASONS.

16 Q WHAT WOULD BE -- WELL, LET'S TALK ABOUT IN THIS CASE,
17 NOT VARIOUS REASONS. WHY DID YOU NOT PREPARE A WRITTEN
18 REPORT IN THIS CASE?

19 A BECAUSE I WASN'T ASKED TO. NORMALLY, WHEN WE DO COURT
20 EVALUATIONS WHEN THEY ARE IN RESPONSE TO A COURT ORDER, THE
21 COURT REQUESTS THAT A REPORT BE PREPARED, AND THOSE ARE THE
22 ONLY INSTANCES I PREPARE A REPORT UNLESS I AM INSTRUCTED. I
23 AM HERE TO TESTIFY TO ANY OF MY FINDINGS AND ANSWER ANY
24 QUESTIONS THAT YOU WOULD HAVE.

25 Q WELL, HOW DO YOU COMMUNICATE -- HOW DOES SOMEBODY ABSORB

1 ALL THAT YOU JUST TESTIFIED TO -- HOW DO YOU COMMUNICATE ALL
2 OF THAT?

3 A BY ANSWERING QUESTIONS. I PREFER TO PREPARE A REPORT.
4 IT'S EASIER FOR EVERYONE. BUT I'M HERE TO ANSWER THE
5 QUESTIONS AND THAT'S HOW I DO IT.

6 Q AND DID YOU ASK MR. MAULDIN IF HE WANTED YOU TO PREPARE
7 A REPORT?

8 A I DON'T KNOW IF I DID OR NOT. NORMALLY, IN THOSE CASES,
9 IF I'M INSTRUCTED TO PREPARE ONE, I'M GLAD TO DO IT.

10 Q AND IN YOUR WORK AT THE MEDICAL SCHOOL I ASSUME YOU
11 PREPARE WRITTEN REPORTS?

12 A SOMETIMES AND SOMETIMES NOT. WHENEVER I'M A COURT
13 APPOINTED EXAMINER, AS IN THE SEXUALLY VIOLENT PREDATOR CASES
14 OR FOR THE FAMILY COURT, THE COURT ORDER REQUESTS THAT I
15 PREPARE A REPORT. SO I WILL DO IT UPON A REQUEST.

16 Q ALL RIGHT. LET'S LOOK AT IT A LITTLE DIFFERENTLY. HOW
17 ABOUT A PATIENT? DON'T YOU WRITE DOWN THINGS ON CHARTS OR
18 MAKE MEMOS? AND WHEN YOU PRESCRIBE MEDICATIONS AND YOU MAKE
19 FINDINGS AND DIAGNOSES DON'T YOU WRITE THOSE DOWN?

20 A ABSOLUTELY. IT'S MALPRACTICE NOT TO BECAUSE YOU HAVE A
21 DUTY IN YOUR TREATING THAT PATIENT, AND THAT'S A MEDICAL
22 RECORD. THAT'S CORRECT.

23 Q BUT THERE IS NO WRITTEN REPORT IN THIS CASE?

24 A NO, SIR.

25 Q ALL RIGHT. SO YOU DO HAVE SOME NOTES OF INTERVIEWS THAT

1 YOU HAD WITH KAREN MCCALL?

2 A YES.

3 Q AND THOSE WERE AT THE ANDERSON COUNTY JAIL?

4 A YES.

5 Q WHEN WAS THAT?

6 A FEBRUARY OF THIS YEAR, IT WOULD HAVE BEEN EARLY
7 FEBRUARY.

8 Q WELL, THIS IS FEBRUARY THE 14TH, SO---

9 A YES. BUT---

10 Q ---WHAT DATE WOULD IT BE?

11 A THE BEGINNING OF FEBRUARY, PROBABLY FEBRUARY 2ND, 3RD,
12 SOMEWHERE AROUND THERE.

13 Q I'LL TELL YOU WHAT. JUST TAKE YOUR TIME AND FIND IT.

14 A (PAUSE) IT WOULD HAVE BEEN FEBRUARY 5TH.

15 Q ALL RIGHT. FEBRUARY 5TH. NOW, THAT WOULD HAVE BEEN
16 AFTER WE HAD ALREADY STARTED THIS CASE. SO I'M ASSUMING --
17 WE STARTED -- YOU MAY NOT KNOW THIS. WE STARTED THIS ON
18 FEBRUARY THE 4TH. SO I'M ASSUMING---

19 MR. MAULDIN: THE CASE DIDN'T START UNTIL THE JURY WAS
20 IMPANELED.

21 THE COURT: WE STARTED JURY SELECTION.

22 SOLICITOR ARIAIL: JURY SELECTION STARTED FEBRUARY THE
23 4TH.

24 MR. MAULDIN: YES, SIR.

25 Q AND I'M ASSUMING YOU MADE A CONCLUSION AND ADVISED MR.

1 MAULDIN PRIOR TO FEBRUARY THE 4TH?

2 A CERTAINLY.

3 Q SO WHAT KAREN MCCALL TOLD YOU DIDN'T HAVE ANYTHING TO DO
4 WITH THE BASIS OF THAT REPORT?

5 A NO. IT JUST CONFIRMED AGAIN -- THROUGH THE COURSE OF
6 THIS EVALUATION, I HAVE REPORTS FROM SOCIAL WORKERS AND THAT
7 SORT OF THING. SO THAT INTERVIEW WAS TO CONFIRM INFORMATION
8 THAT HAD BEEN GIVEN TO ME AND ALSO TO CONFIRM MY DIAGNOSIS,
9 WHICH IT DID.

10 Q ALL RIGHT. WELL, I DON'T WANT TO BELABOR THIS POINT,
11 BUT KAREN MCCALL HAS BEEN LOCKED IN THE ANDERSON COUNTY JAIL
12 FOR 14 MONTHS. AND IF SHE WAS IMPORTANT TO YOUR DIAGNOSIS TO
13 CONFIRM IT, WHY DID YOU NOT GO SEE HER BEFORE FEBRUARY THE
14 5TH?

15 A I TRIED. WE HAD TO MAKE ARRANGEMENTS WITH HER ATTORNEY
16 TO BE PRESENT. THERE WERE NUMEROUS OCCASIONS THAT I
17 REQUESTED TO TALK WITH HER BEFORE THEN.

18 Q AND DID YOU MAKE THESE TO HER ATTORNEY, MR. GAMBLE?

19 A NO. WE MADE THEM -- I REQUESTED THROUGH THE TEAM THAT I
20 -- IT WAS IMPORTANT THAT I MEET WITH HER AT SOME POINT.

21 Q THROUGH THE TEAM?

22 A YES.

23 Q SO YOU'RE SAYING THE REASON YOU DIDN'T MEET WITH KAREN
24 MCCALL UNTIL FEBRUARY THE 5TH IS BECAUSE THEY DIDN'T ARRANGE
25 FOR IT?

1 A IT WAS LOGISTICALLY HARD TO DO. THAT'S CORRECT. I
2 TRIED TO MAKE ATTEMPTS TO DO THIS THROUGH TELEPHONE
3 INTERVIEW, BUT THEN IT WAS WORKED OUT THROUGH MS. TARR, THE
4 MITIGATION SPECIALIST, THAT SHE HAD CONTACTED THE ATTORNEY
5 AND I COULD INDEED GO UP THERE AND INTERVIEW HER IN PERSON.

6 Q ALL RIGHT. SO KAREN MCCALL WAS FEBRUARY THE 5TH. WE
7 KNOW THAT THE SISTER WAS YESTERDAY---

8 A THAT'S CORRECT.

9 Q THAT'S FEBRUARY 14TH. SO SHE DIDN'T HAVE ANYTHING TO DO
10 WITH THE INITIAL CONCLUSIONS YOU MADE?

11 A THAT'S CORRECT.

12 Q ALL RIGHT.

13 A BUT IN A SENSE -- SPLITTING HAIRS. BUT WE DID HAVE THAT
14 INFORMATION EVEN WHILE I WAS FORMULATING A DIAGNOSIS, BUT IT
15 WOULD HAVE BEEN I WAS RELYING UPON A SOCIAL WORKER'S REPORT.
16 SO THOSE WERE JUST MERELY ATTEMPTS ON MY PART TO CONFIRM WHAT
17 THE SOCIAL WORKER WAS SAYING.

18 Q MR. YOUNGMAN?

19 A YES.

20 Q OKAY. HE HADN'T TALKED TO HER EITHER?

21 A NO. MR. YOUNGMAN HAD TALKED WITH HER.

22 Q IS THAT YOUR UNDERSTANDING, THAT MR. YOUNGMAN HAD TALKED
23 TO HER?

24 A YES.

25 Q IF I TOLD YOU MR. YOUNGMAN TESTIFIED YESTERDAY HE HAD

1 NOT TALKED TO HER BUT HAD RELIED UPON AN INTERMEDIARY?

2 A I WOULD BE SURPRISED. MR. YOUNGMAN TOLD ME DIRECTLY
3 THAT HE INTERVIEWED MS. MCCALL.

4 Q OH, YOU'RE TALKING ABOUT MS. MCCALL. I'M TALKING ABOUT
5 MS. MARTINEZ.

6 A THAT WOULD NOT BE INCONSISTENT WITH WHAT I LEARNED. I
7 THINK MY RECOLLECTION WAS THAT HE HAD TALKED WITH HER BY
8 TELEPHONE. THAT'S CORRECT.

9 Q ALL RIGHT. SO AT THE TIME YOU FORMULATED YOUR REPORT,
10 WHAT LIVE INDIVIDUALS -- NOT YOUR REPORT, EXCUSE ME -- YOUR
11 CONCLUSION, WHAT LIVE INDIVIDUALS HAD YOU TALKED TO?

12 A MR. JOHN WOOD.

13 Q MR. WHO?

14 A MR. JOHN WOOD.

15 Q JOHN RICHARD WOOD.

16 A DR. BRAD CLAYTON, MR. YOUNGMAN, DR. JIM EVANS I DIDN'T
17 TALK TO UNTIL LATER AS WELL. SO IT WOULD HAVE BEEN DR. BRAD
18 CLAYTON, MR. YOUNGMAN, MS. TARR IN THE EVENT OF MITIGATION
19 EVIDENCE, SINCE SHE HAD ALL THE RECORD REVIEWS, AND THEN THE
20 FOUR INTERVIEWS WITH MR. WOOD.

21 Q ALL RIGHT. FOUR INTERVIEWS WITH MR. WOOD. AND WHO IS
22 MS. TARR?

23 A THE MITIGATION SPECIALIST THAT IS WORKING FOR MR.
24 MAULDIN.

25 Q WHAT IS A MITIGATION SPECIALIST? I STARTED HEARING THAT

1 TERM IN THIS CASE. WHAT IS THAT?

2 A WELL, I'M NOT -- I DON'T KNOW IF I'M QUALIFIED TO GIVE
3 AN ANSWER. I CAN GIVE MY UNDERSTANDING OF IT.

4 Q SURE.

5 A A MITIGATION SPECIALIST IS SIMILAR TO AN INVESTIGATOR.
6 IT'S SOMEONE THAT CONDUCTS INTERVIEWS AND HELPS, I GUESS, THE
7 ATTORNEYS IN DEVELOPING THEIR CASE. AND IT'S SPECIAL JUST IN
8 TERMS OF DEATH PENALTY CASES. THEIR JOB IS TO FIND
9 WITNESSES, TO HELP, IF THERE'S RECORDS, TO OBTAIN THOSE AND
10 THAT SORT OF THING.

11 Q DO YOU KNOW THIS PERSON?

12 A YES.

13 Q ALL RIGHT. AND HOW LONG HAVE YOU KNOWN HER? IS THIS
14 SOMEBODY YOU HAVE WORKED WITH A LOT?

15 A I'VE WORKED WITH MS. TARR ON A NUMBER OF OCCASIONS. I
16 HAVE KNOWN HER ABOUT FIVE YEARS.

17 Q OKAY. SO SHE DOESN'T JUST WORK HERE ON THESE CASES, SHE
18 GOES EVERYWHERE?

19 A THAT'S CORRECT.

20 Q SHE'S A MITIGATION SPECIALIST STATEWIDE?

21 A NATIONAL.

22 Q NATIONAL.

23 A NATIONALLY.

24 Q ALL RIGHT. THANK YOU FOR THAT INFORMATION.

25 DID YOU TALK TO CARLA PITTMAN?

1 A NO.

2 Q DID YOU TALK TO DAVID PITTMAN?.

3 A NO.

4 Q DO YOU KNOW WHO THEY ARE?

5 A I BELIEVE THOSE WERE THE PEOPLE IN THE CAR THAT GOT --
6 THAT FOLLOWED MR. WOOD'S VEHICLE AND MS. MCCALL'S VEHICLE.

7 Q IF I TOLD YOU THAT CARLA PITTMAN AND DAVID PITTMAN WERE
8 THE BROTHER AND SISTER-IN-LAW OF KAREN MCCALL IN ALABAMA,
9 WITH WHOM MR. WOOD AND MS. MCCALL HAD LIVED FOR OVER A MONTH
10 RIGHT UP TO THANKSGIVING, DID YOU NOT READ THEIR STATEMENTS
11 AS TO WHAT MR. WOOD AND MS. MCCALL DID?

12 A I DON'T RECALL THOSE, BUT THAT CERTAINLY WOULD BE
13 IMPORTANT, AND I WOULD BE GLAD TO LOOK AT THOSE. THAT'S VERY
14 IMPORTANT.

15 Q I WOULD THINK, MS. WATTS -- TO TELL YOU THE TRUTH, I
16 WOULD HAVE THOUGHT SOMETHING THAT IMPORTANT, TO COME INTO A
17 COURT AND RENDER A PROFESSIONAL OPINION THAT YOU HAD THE FILE
18 THAT YOU WOULD HAVE READ IT.

19 A ABSOLUTELY. AND I MAY HAVE BUT I JUST DON'T HAVE A
20 RECOLLECTION OF IT.

21 Q WELL, THAT IS NOT PROFESSIONAL BEHAVIOR, IS IT?

22 MR. MAULDIN: YOUR HONOR, I OBJECT TO THAT AS
23 COMMENTARY AND EDITORIAL. IF HE'S GOT A QUESTION, HE CAN ASK
24 IT.

25 THE COURT: SUSTAINED, BUT IT IS CROSS EXAMINATION.

1 YOU CAN REPHRASE IT.

2 Q IS THAT A PROFESSIONAL WAY OF RENDERING A REPORT IN THIS
3 CASE?

4 A CERTAINLY. EVERYTHING I'VE DONE IS PROFESSIONAL. BUT
5 YOU CAN ALWAYS RELY UPON MORE INFORMATION OR NOT, AND THE
6 MORE INFORMATION YOU HAVE, ALWAYS THE BETTER.

7 Q WELL, LET ME -- LET ME GO A LITTLE FURTHER THEN. YOU
8 SAID YOU HAD THE ENTIRE CASE FILE OR ACCESS TO IT.

9 A I SAID I HAD THE DETENTION CENTER RECORDS, THE RECORDS
10 FROM THE FEDERAL BUREAU OF PRISONS IN TERMS OF THE
11 PRESENTENCING EVALUATION, HIS GREENVILLE HOSPITAL RECORDS,
12 AND I SAID I READ THE INCIDENT REPORTS RELATED TO THE EVENTS,
13 SAW THE AUTOPSY REPORTS, AND THEN THE INTERVIEWS AND
14 CONSULTATIONS I MENTIONED, AND THE HALL INSTITUTE RECORDS.

15 Q DID YOU ASK THE MITIGATION SPECIALIST IF THERE WERE ANY
16 OTHER WITNESSES IN THIS CASE WHO MAY COULD TELL YOU
17 INFORMATION ABOUT JOHN WOOD'S BEHAVIOR IN A CONCENTRATED FORM
18 PRIOR TO THIS EVENT?

19 A I'VE ALWAYS ASKED FOR ALL INFORMATION THAT'S AVAILABLE.
20 AND, AGAIN, I MAY HAVE SEEN IT. I JUST -- THOSE NAMES, I
21 DON'T RECOLLECT THAT AT THIS POINT.

22 Q BUT THAT WOULD BE -- DO YOU REMEMBER THE PEOPLE IN
23 ALABAMA, THE BROTHER AND THE SISTER---

24 A I CERTAINLY KNOW THAT MS. MCCALL WAS STAYING WITH HER
25 BROTHER AND SISTER, AND THAT'S INDEED WHO THEY WERE PLANNING

1 TO VISIT AFTER THEY HAD LEFT ANDERSON-GREENVILLE AREA. AND
2 THOSE WERE THEIR CHILDREN THEY HAD BOUGHT THE COMPUTERS FOR.

3 Q CORRECT. AND -- BUT THERE WAS NO TELEPHONE
4 COMMUNICATION BY EITHER YOU OR THE MITIGATION SPECIALIST AS
5 TO WHAT THOSE PEOPLE MAY HAVE OBSERVED REGARDING JOHN WOOD'S
6 BEHAVIOR---

7 A NO, THERE WAS NOT, NOT THAT I'M AWARE OF.

8 Q AND NO ATTEMPT BY YOU TO FIND IT?

9 A NO.

10 Q AND I ASSUME THAT IN THIS SITUATION YOU ARE NOT
11 TESTIFYING IN THE SENSE THAT -- OR IN YOUR CAPACITY AS THE
12 DIRECTOR OF THE FORENSICS UNIT AT THE DEPARTMENT -- MEDICAL
13 UNIVERSITY IN COLUMBIA AND THAT YOU'RE NOT TESTIFYING IN ANY
14 OTHER OFFICIAL CAPACITY, YOU'RE HERE AS A PRIVATE
15 PSYCHIATRIST ON YOUR PRIVATE BASIS?

16 A THAT'S NOT TRUE AT ALL. I'M ON SALARY AT THE UNIVERSITY
17 -- AT THE MEDICAL SCHOOL. MY PAY HAS NOTHING TO DO WHETHER
18 I'M IN COURT OR NOT. I'M A SALARIED DOCTOR THERE, AND ANY
19 BILLING THAT'S DONE THROUGH THE UNIVERSITY GOES TO THE
20 UNIVERSITY.

21 Q ALL RIGHT. SO WHAT -- WHAT YOU'RE HERE DOING TODAY IS
22 -- ARE YOU TESTIFYING AS A FACULTY MEMBER OF THE UNIVERSITY?

23 A YES, I AM. THAT'S MY JOB.

24 Q AND THIS EVALUATION IS AVAILABLE FOR YOU AS A -- AS
25 SOMETHING YOU CAN DO AS PART OF YOUR FACULTY MEMBER?

1 A THAT'S CORRECT.

2 Q OKAY. GOOD. I WASN'T CLEAR ON THAT. ALL RIGHT.

3 NOW, IF YOU WOULD, HAVE YOU GOT THE DOCUMENTS WITH YOU
4 THAT YOU REVIEWED, INCLUDING YOUR NOTES AND OTHER MATERIAL,
5 FOR MAKING YOUR -- BRINGING YOUR TESTIMONY HERE TODAY?

6 A YES, ALL THAT I'M AWARE OF THAT I HAVE IS HERE.

7 Q ALL RIGHT. AND THERE IS NOT SOMETHING YOU'RE NOT AWARE
8 OF THAT MIGHT HAVE GONE AWAY? THAT'S EVERYTHING YOU'VE GOT?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. AND HAVE YOU READ THINGS IN THE DEFENSE FILE
11 SUCH AS THE CASE FILE, THE INVESTIGATION FILE OR ALL THE
12 MYRIAD OF DOCUMENTS THAT ARE INVOLVED IN THE INVESTIGATION OF
13 THIS CASE?

14 A I WENT THROUGH THE DEFENSE FILE IN DECEMBER. SO
15 ANYTHING UP TILL DECEMBER I WOULD HAVE LOOKED THROUGH, AND I
16 BELIEVE THEY WERE -- AGAIN, THE AUTOPSY REPORTS AND THAT SORT
17 OF THING. I ALSO INTERVIEWED -- REVIEWED THE PARTS OF THE
18 HALL FILE, THE HALL RECORD THAT WAS SENT.

19 Q SO THE DEFENSE FILE WAS NOT PART OF THIS?

20 A NO.

21 Q THAT'S SOMETHING YOU READ THAT WOULD BE SEPARATE. ALL
22 RIGHT.

23 NOW---

24 MR. MAULDIN: ONE MOMENT, YOUR HONOR. IS HE TALKING
25 ABOUT MY FILE? I THINK HE -- WHEN HE SAYS THE "DEFENSE

DONNA MARIE SCHWARTZ-WATTS -- CROSS BY SOLICITOR ARIAIL

1 FILE" ---

2 SOLICITOR ARIAIL: I'LL GO BACK AND CLARIFY IT.

3 Q WHAT DID YOU READ THAT THE DEFENSE LAWYERS GAVE YOU TO
4 READ?

5 A THE AUTOPSY REPORTS, THE STATEMENT OF MS. WOODS -- I
6 MEAN, MS. MCCALL, EXCUSE ME. THERE WOULD HAVE BEEN INCIDENT
7 REPORTS RELATING TO THE OFFENSES AND THE WARRANTS, THE
8 CHARGES AND THAT SORT OF THING.

9 Q DID YOU READ ANY INVESTIGATION -- DID YOU READ ANY
10 SUPPLEMENTALS BY PAUL SILVAGGIO OR ANY OF THE OFFICERS WHO
11 TESTIFIED?

12 A I REVIEWED WHATEVER REPORTS -- YOU'RE WELCOME TO LOOK
13 THROUGH WHAT I'VE HAD. I'VE REVIEWED, AS FAR AS I KNOW, ALL
14 THE STATEMENTS THAT WERE PROVIDED TO ME.

15 Q ALL RIGHT. WOULD IT NOT BE IMPORTANT TO REVIEW A
16 SIGNIFICANT PORTION OF THE CASE FILE?

17 A CERTAINLY.

18 Q AND DID YOU REVIEW A SIGNIFICANT PORTION OF THE CASE
19 FILE?

20 A IN MY OPINION, YES.

21 Q LET ME JUST SHOW YOU WHAT -- LET ME JUST SHOW YOU WHAT
22 I'VE BEEN CARRYING AROUND. THIS IS MY TRIAL NOTEBOOK. THIS
23 IS AN EXTREMELY PARED DOWN VERSION. DID YOU---

24 MR. MAULDIN: I OBJECT TO THIS LINE OF QUESTIONING. HE
25 CAN ASK HER WHAT SHE REVIEWED AND HE COMPLAIN IF SHE DIDN'T

DONNA MARIE SCHWARTZ-WATTS -- CROSS BY SOLICITOR ARIAIL

1 REVIEW SOMETHING. BUT FOR HIM TO JUST DEMONSTRATE TO HER HIS
2 TRIAL NOTEBOOK IS OUT OF ORDER, AND I OBJECT TO IT.

3 SOLICITOR ARIAIL: I'M JUST TRYING TO FIND OUT THE
4 VOLUME OF WHAT SHE REVIEWED.

5 MR. MAULDIN: SHE'S ASKED AND ANSWERED TEN TIMES.

6 Q DID YOU REVIEW ANYTHING---

7 THE COURT: OVERRULED.

8 Q ---THIS BIG?

9 THE COURT: GO AHEAD.

10 A YES.

11 Q YOU DID?

12 A YES.

13 Q BIGGER THAN THIS?

14 A MY PILE'S BIGGER THAN YOURS.

15 Q WELL, NO. I'M TALKING ABOUT THAT -- MY PILE'S NOT IN
16 THAT PILE.

17 (LAUGHTER)

18 Q I'M TALKING ABOUT IN ADDITION TO YOUR PILE---

19 A I DON'T THINK IT WOULD HAVE BEEN THAT BIG.

20 MR. MAULDIN: YOUR HONOR, THIS IS WHAT I'M OBJECTING
21 TO: PILE HERE, PILE THERE.

22 (LAUGHTER)

23 MR. MAULDIN: SHE'S GOT IT RIGHT ON THAT DESK.

24 THE COURT: ALL RIGHT. OVERRULED.

25 SOLICITOR ARIAIL: I'LL CLARIFY IT JUST A LITTLE BIT.

1 Q TELL ME WHAT'S IN YOUR PILE.

2 A I'LL BE GLAD TO.

3 (LAUGHTER)

4 A MY PILE HAS THE RESEARCH ON THE DNP AND THE VALERIAN
5 ROOT THAT I GOT FROM THE INTERNET.

6 Q ALL RIGHT.

7 A AND I THINK ON THE BACK OF THAT IS THE NOTE FROM THE GNC
8 WORKER. I HAVE THE HALL INSTITUTE REPORT AND THE SOCIAL
9 WORKER -- NO, ACTUALLY I HAVE SOME NOTES HERE FROM THE HALL
10 INSTITUTE. I HAVE THE ANDERSON MEDICAL CENTER RECORDS ON MR.
11 WOODS.

12 Q WHEN HE GOT SHOT?

13 A YES.

14 Q OKAY.

15 A THE GREENVILLE MEMORIAL HOSPITAL RECORDS ON MR. WOODS.

16 Q WHEN THEY HAD HIM OVER HERE WHEN HE WAS BEING CONFINED
17 FOR THE GUNSHOT---

18 A YES, AND BEING TREATED FOR HIS EYE WOUND AND THAT SORT
19 OF THING.

20 Q ALL RIGHT.

21 A THE GREENVILLE HOSPITAL SYSTEM NOTES AGAIN AS WELL.
22 FROM THE DETENTION CENTER, I HAD ALL OF THE MEDICAL NOTES,
23 ALL THE NURSING NOTES AND MEDICATIONS THAT HE WAS RECEIVING
24 OVER THAT PERIOD OF TIME---

25 Q AT THE DETENTION CENTER?

1 A YES, SIR. I HAVE THE UNITED STATES DISTRICT COURT
2 RECORDS FROM FLORIDA.

3 Q WHEN HE WAS CONFINED IN PRISON THERE?

4 A THAT'S CORRECT.

5 Q AND PROBATION RECORDS ALSO?

6 A YES. WHAT I HAD THERE WOULD HAVE BEEN -- THAT I RELIED
7 UPON. I'VE REVIEWED MANY THINGS, BUT NOT ALL OF THEM I
8 RELIED UPON IN TERMS OF THE OPINION. BUT PARTICULARLY
9 HELPFUL WAS THE PRESENTENCING INVESTIGATION AND---

10 Q OKAY. ALL RIGHT.

11 A AND THESE ARE, I GUESS, DETENTION CENTER RECORDS THAT
12 KIND OF OUTLINE HIS MOVEMENTS AND THE OFFICER'S OBSERVATIONS
13 OF HIM.

14 Q OKAY.

15 A AND THEN THIS, I GUESS, ALSO IS PART OF THE FEDERAL
16 RECORDS THAT I REVIEWED.

17 Q OKAY. AND THEN THE NOTES -- I ASSUME THESE ARE YOUR
18 NOTES?

19 A YES.

20 Q IF YOU WOULD, IF YOU'D JUST INVENTORY THOSE FOR US AND
21 TELL US WHAT YOU REVIEWED THERE.

22 A THESE WOULD BE NOTES FROM VARIOUS INTERVIEWS FROM MR.
23 WOOD. (PAUSE) THIS PILE WOULD ALL BE NOTES OF INTERVIEWS
24 WITH MR. WOOD.

25 Q MR. WOOD IN THE MANILLA FOLDER?

DONNA MARIE SCHWARTZ-WATTS -- CROSS BY SOLICITOR ARIAIL

1 A YES. THIS IS NOTES AND INTERVIEW WITH MS. MCCALL.

2 Q ALL RIGHT. PUT THOSE BACK HERE.

3 A AND THEN THESE OTHER THREE PIECES ARE -- THIS ONE, I
4 BELIEVE, WAS JUST -- I DON'T KNOW IF I HAD THAT UP THERE OR
5 NOT. THAT'S DR. NARAYAN'S INTERVIEW NOTES WITH MS. MCCALL,
6 DR. NARAYAN'S INTERVIEW NOTES WITH CAPTAIN MELTON, AND DR.
7 NARAYAN'S INTERVIEW NOTES WITH SERGEANT TED KINSLER.

8 Q OKAY. NOW, DO WE HAVE ANY NOTES ON MS. MARTINEZ?

9 A NO.

10 Q ALL RIGHT. SO IT'S MR. MCCALL -- INTERVIEW WITH MR.
11 MCCALL -- I MEAN, MS. MCCALL AND MR. WOOD?

12 A YES, SIR.

13 Q OKAY. YOU SAID YOU REVIEWED THE STATE HOSPITAL REPORT?

14 A YES.

15 Q DR. NARAYAN'S REPORT. AND THAT WAS A COURT ORDERED --
16 BY JUDGE KITTREDGE -- A COURT ORDERED EVALUATION?

17 A THAT'S CORRECT.

18 Q AND A WRITTEN REPORT WAS PREPARED?

19 A YES.

20 Q AND DR. NARAYAN CONCLUDED -- OR THE STATE HOSPITAL GROUP
21 CONCLUDED THAT THE DEFENDANT WAS COMPETENT TO STAND TRIAL?

22 A YES.

23 Q DO YOU DISAGREE WITH THAT?

24 A NOT AT ALL.

25 Q ALL RIGHT. THEY FURTHER CONCLUDED THAT HE HAD, UNDER

DONNA MARIE SCHWARTZ-WATTS -- CROSS BY SOLICITOR ARIAIL

1 THE MCNAUGHTON STANDARD, THE ABILITY TO DIFFERENTIATE OR TELL
2 THE DIFFERENCE BETWEEN RIGHT AND WRONG ON DECEMBER THE 6TH OF
3 2000. DO YOU AGREE WITH THAT?

4 A ABSOLUTELY. HE CLEARLY -- EVEN THOUGH HE HAD THESE
5 ILLNESSES, HE KNOWS RIGHT FROM WRONG.

6 Q AND LASTLY THAT HE HAD ANOTHER LEGAL TEST TO REPORT TO
7 THE COURT THAT HE HAD THE CAPACITY ON DECEMBER THE 6TH OF THE
8 YEAR 2000 TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE
9 LAW?

10 A THAT'S CORRECT, AND I AGREE WITH THAT AS WELL.

11 Q SO IN REGARD TO THAT, TELL ME, WHEN YOU TESTIFY THAT HE
12 HAS THESE CONDITIONS, IF IT DOESN'T AFFECT HIS ABILITY TO BE
13 COMPETENT TO STAND TRIAL OR IT DOESN'T AFFECT HIS ABILITY TO
14 KNOW THE DIFFERENCE BETWEEN RIGHT AND WRONG AND IT DOESN'T
15 AFFECT HIS ABILITY TO CONFORM HIS BEHAVIOR TO THE
16 REQUIREMENTS OF LAW, WHAT DOES IT DO?

17 A THAT'S A LEGAL QUESTION, BUT I'LL BE GLAD TO ANSWER THAT
18 AS BEST I CAN. THE EVALUATION AT ALL -- AND FORENSIC
19 PSYCHIATRISTS ARE OFTEN ASKED TO ASSIST JUDGES OR COURTS OR
20 ATTORNEYS TO HELP THEM MAKE DETERMINATIONS ABOUT IF SOMEONE
21 HAS A MENTAL ILLNESS HOW DOES IT AFFECT THEIR CAPACITY TO
22 FUNCTION.

23 SO, FOR EXAMPLE, FOR SOMEONE TO BE COMPETENT TO STAND
24 TRIAL, YOU HAVE TO BE ABLE TO HELP YOUR LAWYER. YOU HAVE TO
25 BE ABLE TO FOLLOW TESTIMONY. YOU HAVE TO UNDERSTAND WHAT'S

1 HAPPENING. SO WHENEVER SOMEONE HAS A MENTAL ILLNESS, THAT'S
2 ALWAYS A RED FLAG, BECAUSE THERE ARE CERTAINLY ILLNESSES
3 WHERE PEOPLE AREN'T COMPETENT TO STAND TRIAL. IF YOU THOUGHT
4 YOUR LAWYER WAS SATAN -- OR, YOU KNOW, THERE'S DIFFERENT
5 MENTAL STATES THAT CAN AFFECT SOMEONE THAT WOULD AFFECT
6 SOMEBODY'S CAPACITY TO STAND TRIAL.

7 IN TERMS THERE'S ALSO ISSUES THAT GO BACK TO THE ACTUAL
8 TIME ITSELF. WE'RE ASKED SOMETIMES AS A FORENSIC
9 PSYCHIATRIST TO GO BACKWARDS IN TIME AND MAKE A DETERMINATION
10 DID SOMEONE KNOW WHAT THEY WERE DOING. AND SO WHENEVER
11 SOMEONE HAS A MENTAL ILLNESS, THAT'S ALWAYS THE AREA THAT
12 WE'RE ASKED TO HELP IN IF WE CAN. AND WHAT WE HAVE TO DO IS
13 GO BACK IN TIME, BECAUSE WE'RE NOT THERE. SO WE DO THAT BY
14 LOOKING AT RECORDS, BY INTERVIEWING PEOPLE AND TRYING AS BEST
15 AS WE'RE ABLE TO TO DETERMINE SOMEBODY'S MENTAL STATE.

16 SO THE FACT THAT HE HAD A MENTAL ILLNESS AT THE TIME OF
17 THIS OFFENSE, HE WAS SUFFERING FROM THE MENTAL ILLNESS, BUT
18 IN TERMS OF THE LEGAL ISSUES AT THE TRIAL LEVEL, HE KNEW
19 RIGHT FROM WRONG AND HE HAD THE CAPACITY TO CONFORM HIS
20 CONDUCT. HIS CAPACITY WAS IMPAIRED, BUT HE HAD THE CAPACITY
21 TO CONFORM HIS CONDUCT. SO THAT'S A DIFFERENT LEGAL --
22 THERE'S DIFFERENT ISSUES.

23 THERE ARE SOME ISSUES AT THE TRIAL LEVEL, AND THEN IN
24 TERMS OF DEATH PENALTY CASES I'M ASKED TO DO A DIFFERENT
25 THING. I'M ASKED TO LOOK AT HIS MENTAL STATE AND LOOK FOR

1 WHAT MITIGATION FACTORS EXIST. SO THAT'S A VERY DIFFERENT
2 EVALUATION, EVEN THOUGH I DID THAT ONE AS WELL FOR THIS CASE.

3 Q BUT YOU SAID, IN YOUR TESTIMONY, IN AN EVALUATION YOU
4 LOOK AND SEE IF HE KNEW WHAT HE WAS DOING. HE KNEW WHAT HE
5 WAS DOING?

6 A CERTAINLY.

7 Q OKAY.

8 A CERTAINLY. HE HAS NO DELUSIONS. HE UNDERSTANDS IT IS
9 WRONG TO KILL SOMEONE.

10 Q ALL RIGHT. AND THE GRANDIOSE IDEAS HE HAD, ALTHOUGH
11 THEY MAY TO SOME OF US SOUND LIKE AN ENTERPRISING
12 ENTREPRENEUR, YOU CONCLUDED THAT THEY WERE SOMEHOW---

13 A WELL, MOST ENTERPRISING ENTREPRENEURS MAKE MONEY AND
14 FINALLY MAKE A PROFIT INSTEAD OF HAVING JUST LOTS OF IDEAS
15 AND PLANS AND NEVER FOLLOWING THROUGH WITH ANY OF THEM.

16 Q WELL, BUT THERE ARE ALSO PEOPLE LIKE JIM HODGES WHO RAN
17 FOR GOVERNOR AND EVERYBODY TOLD HE WASN'T GOING TO MAKE IT,
18 BUT HE PERSISTED---

19 A AND HE MADE IT.

20 MR. MAULDIN: I DON'T KNOW WHETHER THAT'S OBJECTIONABLE
21 OR NOT.

22 (LAUGHTER)

23 THE COURT: ALL RIGHT. THEN YOU DIDN'T MAKE AN
24 OBJECTION.

25 (LAUGHTER)

1 MR. MAULDIN: I'LL WITHDRAW THE OBJECTION.

2 (LAUGHTER)

3 Q I'M JUST SIMPLY SAYING THERE ARE A LOT OF PEOPLE IN THIS
4 WORLD WHO YOU HEARD PEOPLE SAY ABOUT THEM, "HE'S CRAZY. HE
5 CAN'T DO THAT."

6 A YOU'RE CORRECT. BUT THERE'S A BIG DIFFERENCE HERE. YOU
7 HAVE TO LOOK AT THE BIG PICTURE. HE'S NOT SLEEPING. HE HAS
8 PERIODS OF VERY HIGH SEX DRIVE. HE HAS A SUPER
9 HYPERRELIGIOSITY. THERE'S NO PROBLEM -- PSYCHIATRISTS HAVE
10 NO PROBLEM WITH ANYONE BEING RELIGIOUS. BUT HIS IS MORE
11 INTENSE THAN WHAT WOULD BE SEEN IN ANY KIND OF CULTURAL
12 SITUATION, ANYTHING THAT'S NORMAL. SO YOU HAVE TO LOOK AT
13 ALL OF THOSE THINGS TOGETHER.

14 BUT YOU'RE CORRECT, THERE'S NOTHING WRONG WITH HAVING
15 DREAMS AND WANTING TO HAVE PLANS. BUT IN THIS CASE, WHEN YOU
16 PUT IT WITH THE TOTAL PICTURE, IT'S AN ILLNESS.

17 Q AND YOU SAY HE IS NOW OKAY?

18 A WELL, HE'S CONTROLLED. IT'S LIKE DIABETES. HE'S NEVER
19 GOING TO BE CURED. BUT MEDICATIONS WILL CONTROL HIS ILLNESS,
20 AND HE IS CONTROLLED AT THIS POINT.

21 Q I APPRECIATE THAT. BEING A DIABETIC, I CERTAINLY
22 UNDERSTAND THAT.

23 BUT IF HE IS ON MEDICATION AND HE IS -- EVERYTHING'S
24 BACK TO NORMAL THAT WAS EXISTING OR SOMEHOW EXISTED IN HIS
25 LIFE, THEN -- WHEN DID THE MEDICATION -- WHEN WAS IT FIRST

DONNA MARIE SCHWARTZ-WATTS -- CROSS BY SOLICITOR ARIAIL

1 APPLIED -- OR GIVEN TO HIM?

2 A IT WOULD HAVE BEEN -- I'LL CHECK ON THE RECORDS. IT WAS
3 CERTAINLY AFTER I HAD BEEN ASKED TO EVALUATE HIM.

4 Q AND YOU DIDN'T PRESCRIBE MEDICATION?

5 A NO. AND SPECIFICALLY, WHEN WE'RE ASKED TO DO
6 EVALUATIONS IN TERMS OF TESTIFYING, IT'S NOT GOOD TO TREAT AS
7 WELL, BECAUSE ONCE YOU TREAT A PATIENT YOU KIND OF TAKE ON A
8 DIFFERENT ROLE.

9 (PAUSE) MY RECOLLECTION -- I'LL BE GLAD TO CHECK THE
10 EXACT DATE -- IS IT WAS SOMETIME IN DECEMBER IS MY
11 UNDERSTANDING THAT HE WOULD HAVE GOTTEN HIS MEDICATION.

12 Q DECEMBER. ALL RIGHT.

13 A YES.

14 Q AND WE'RE TALKING DECEMBER OF 2001?

15 A YES.

16 Q WE'RE TALKING TWO MONTHS AGO?

17 A YES.

18 Q AND WHO PRESCRIBED THAT MEDICATION?

19 A WELL, THROUGH THE RECORDS, MY UNDERSTANDING IS DR. BRAD
20 CLAYTON.

21 Q AND DR. BRAD CLAYTON, HOW HE IS CONNECTED WITH YOU?

22 A HE WAS A FORMER STUDENT WHO HAS COMPLETED HIS FORENSIC
23 TRAINING AT THE DEPARTMENT OF MENTAL HEALTH, BUT HE IS NOT
24 CONNECTED IN ANY WAY, SHAPE OR FORM. HE IS A PRIVATE
25 PSYCHIATRIST IN COLUMBIA.

1 Q WELL, LET ME EXPLORE THAT CONNECTION JUST A MOMENT.
2 HOW DID MR. WOOD, AN INMATE IN THE DEPARTMENT OF -- THE
3 GREENVILLE COUNTY JAIL, GET A PSYCHIATRIST TO TREAT HIM OUT
4 OF COLUMBIA? DID YOU HAVE ANYTHING TO DO WITH THAT?

5 A YES.

6 Q YES. ALL RIGHT. AND HOW DID YOU DO THAT?

7 MR. MAULDIN: IF I MAY REQUEST A SIDEBAR, I'LL BE GLAD
8 TO PUT ANYTHING ON THE RECORD NECESSARY.

9 (BENCH CONFERENCE OFF RECORD FROM 11:41 TO 11:46 A.M.)

10 Q JUST ONE OTHER THING. I THOUGHT I WAS THROUGH. YOU
11 TALKED ABOUT MR. WOOD RELATING TO YOU THAT HE HEARD VOICES?

12 A YES.

13 Q DID HE ALSO RELATE TO YOU HEARING VOICES TELLING HIM TO
14 DO THINGS THAT HE DID NOT ACT UPON?

15 A YES.

16 Q SO IN HEARING VOICES, THAT DIDN'T MEAN HE HEARD VOICES
17 AND HE FOLLOWED THE COMMAND?

18 A NOT AT ALL. AND HE DID NOT REPORT TO ME THAT HE HEARD
19 VOICES AT THE TIME OF THE OFFENSE AS WELL.

20 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD LIKE FOR
21 PURPOSES OF POTENTIAL FURTHER TESTIMONY TO BE ABLE TO REVIEW
22 THOSE NOTES. I DON'T WANT TO DO IT RIGHT HERE WITH THE JURY
23 SITTING HERE AND BELABOR IT. BUT I WOULD LIKE TO HAVE THOSE
24 FOR US TO LOOK AT WHEN WE TAKE A BREAK. THEN IF WE HAVE---

25 THE COURT: YOU HAVE A RIGHT TO DO SO, SIR.

1 SOLICITOR ARIAIL: OKAY. AND COULD I RESERVE FURTHER
2 CROSS EXAMINATION OF THIS WITNESS IN THE EVENT THERE IS
3 ANYTHING IN IT?

4 THE COURT: YES.

5 SOLICITOR ARIAIL: THANK YOU.

6 MR. MAULDIN: JUST A COUPLE OF REDIRECT, YOUR HONOR.

7 THE COURT: YES, SIR.

8 REDIRECT EXAMINATION BY MR. MAULDIN:

9 Q DR. WATTS, THE PROSECUTOR TALKED AT LENGTH AND WENT
10 THROUGH EVERY PAGE IN YOUR REPORT OR IN YOUR MATERIAL. I
11 WANT TO ASK YOU, AS A FOLLOW UP TO THAT, HOW MANY TIMES DID
12 YOU MEET AND TALK TO THE SUBJECT OF THIS EVALUATION, JOHN
13 WOOD?

14 A ON FOUR DIFFERENT OCCASIONS. FIVE COUNTING YESTERDAY.

15 Q AND HOW MANY HOURS DID YOU SPEND WITH REGARD TO DIRECT
16 CONNECTION WITH THE SUBJECT OF THIS EVALUATION, JOHN WOOD?

17 A AT LEAST TEN HOURS OF FACE-TO-FACE INTERVIEW TIME.

18 Q DO YOU HAVE ONE OUNCE OF LACK OF CONFIDENCE REGARDING
19 YOUR DIAGNOSES THAT YOU TESTIFIED TO UNDER OATH, THAT IS
20 BIPOLAR DISORDER NOT OTHERWISE SPECIFIED AND PARANOID
21 PERSONALITY DISORDER? DO YOU HAVE ONE OUNCE OF HESITATION IN
22 ENDORSING THOSE DIAGNOSES TO THIS JURY?

23 A NOT AT ALL.

24 Q DO YOU COMMONLY RECEIVE INFORMATION FROM PEOPLE WHO
25 GATHER DATA FOR YOU TO DELIVER TO YOU? IS THAT COMMONLY DONE

1 IN YOUR BUSINESS?

2 A ABSOLUTELY, AND IT'S CRUCIAL. THAT'S A WHOLE DIFFERENT
3 SPECIALTY, AND I'M NOT TRAINED TO GATHER INFORMATION IN THAT
4 RESPECT. AND ALSO, WITH THE COST, IT WOULD BE AWFULLY
5 EXPENSIVE FOR ME TO DO THAT.

6 Q THE PROSECUTOR ASKED YOU ABOUT THE THREE SPECIFIC NARROW
7 QUESTIONS THAT WERE ADDRESSED IN THE STATE HOSPITAL
8 EVALUATION, THE COURT ORDERED STATE HOSPITAL EVALUATION?

9 A YES.

10 Q HE ASKED YOU ABOUT THREE SPECIFICS. I WANT TO ASK YOU
11 IN PARTICULAR ABOUT THE THIRD OF THE THREE, AND THAT IS, THE
12 CAPACITY OF THE PERSON BEING EVALUATED TO CONFORM THEIR
13 CONDUCT TO THE REQUIREMENTS OF THE LAW. I WANT TO ASK YOU
14 BECAUSE IF I UNDERSTOOD YOUR RESPONSE TO THE PROSECUTOR, YOU
15 SAID HE HAD THE CAPACITY BUT IT WAS IMPAIRED?

16 A THAT'S CORRECT.

17 Q DO YOU CONSIDER HAVING OBSERVED HIM FOR HOURS,
18 INTERVIEWED HIM FOR HOURS, DO YOU BELIEVE THAT HIS CAPACITY
19 TO CONFORM HIS CONDUCT TO THE LAW WAS SUBSTANTIALLY IMPAIRED?

20 A YES.

21 Q ALL RIGHT. NOW LET'S GET TO THIS QUESTION ABOUT THIS
22 TREATING PSYCHIATRIST, DR. CLAYTON. YOU KNOW DR. BRAD
23 CLAYTON, DO YOU NOT?

24 A YES.

25 Q HE IS SITTING IN THE COURTROOM, IS HE NOT?

1 A YES.

2 Q STAND UP, DR. CLAYTON. (DR. CLAYTON COMPLIES) IS THAT
3 DR. BRAD CLAYTON?

4 A YES.

5 Q ALL RIGHT. HAVE A SEAT, PLEASE. (DR. CLAYTON COMPLIES)
6 DO YOU HAVE ANY BUSINESS CONNECTION, FINANCIAL
7 CONNECTION OR ANY OTHER INTEREST IN HIS BUSINESS END OF HIS
8 PRACTICE?

9 A NOT AT ALL. AND I RECALL THAT I ALSO GAVE YOU THE NAMES
10 OF OTHER PSYCHIATRISTS.

11 Q ALL RIGHT. AND WITH REGARD TO WHAT YOU GAVE TO ME --
12 I'M GOING TO TALK A LITTLE BIT ABOUT THAT -- AFTER SOME
13 MONTHS OF EVALUATION OF JOHN WOOD, DID YOU -- AND I WAS THE
14 ONE THAT GOT YOU IN THIS CASE, DIDN'T I?

15 A YES.

16 Q ALL RIGHT. AND THE BILL THAT COMES FROM THE UNIVERSITY
17 OF SOUTH CAROLINA MEDICAL SCHOOL IS GOING TO COME TO JOHN
18 MAULDIN, ISN'T IT?

19 A YES.

20 Q NOW, WHEN YOU -- IN EVALUATING HIM, DID YOU MAKE A
21 DETERMINATION PROFESSIONALLY THAT IT WAS APPROPRIATE THAT
22 JOHN WOOD BE TREATED, JUST BE TREATED?

23 A ABSOLUTELY.

24 Q ALL RIGHT. WITH REGARD TO THAT, I WANT TO ASK YOU IF
25 THERE IS AN ETHICAL CONSIDERATION REGARDING WHETHER AN

DONNA MARIE SCHWARTZ-WATTS -- REDIRECT BY MR. MAULDIN

1 EVALUATING PSYCHIATRIST SHOULD ALSO SERVE AS A TREATING
2 PSYCHIATRIST?

3 A IT'S PART OF OUR TRAINING. SOMETIMES IN FORENSIC
4 PSYCHIATRY, UNFORTUNATELY, WE DO HAVE TO DO BOTH. THERE ARE
5 TIMES WHEN I WORKED AT THE DEPARTMENT OF MENTAL HEALTH WHERE
6 WE MIGHT BE PERFORMING COURT EVALUATIONS AND SOMEONE WAS ILL
7 AND WE HAD TO TREAT THEM TO GET THEM WELL ENOUGH TO GO BACK
8 TO COURT.

9 BUT WHENEVER POSSIBLE, OUR GUIDELINES RECOMMEND THAT WE
10 DON'T DO BOTH. AND IN THIS CASE, IN MY OPINION, IT WAS
11 POSSIBLE THAT I DIDN'T HAVE TO DO BOTH, SO I BROUGHT THAT TO
12 YOUR ATTENTION.

13 Q ALL RIGHT. SO THE NEED FOR TREATMENT OF JOHN WOOD WAS
14 BROUGHT TO JOHN MAULDIN'S ATTENTION, IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q AND THAT WAS DONE BY YOU?

17 A I TELEPHONED YOU AND MET WITH YOU.

18 Q AND THE FOLLOW UP REGARDING OBTAINING THE SERVICES OF
19 BRAD CLAYTON AND BEING ABLE TO PAY THE BILL WHEN I GET IT IS
20 MY BUSINESS, RIGHT?

21 A IT'S CERTAINLY NOT MINE.

22 Q ALL RIGHT. THANK YOU.

23 (LAUGHTER)

24 MR. MAULDIN: NO FURTHER QUESTIONS.

25 THE COURT: DR. SCHWARTZ-WATTS, THANK YOU SO MUCH FOR

1 BEING HERE. WE APPRECIATE IT.

2 WITNESS: THANK YOU.

3 MR. MAULDIN: SHE WILL STAY UNDER SUBPOENA, YOUR HONOR?

4 THE COURT: SHE'LL STAY, AND IT WON'T BE LONG. I MEAN,
5 WE'RE GOING TO REVIEW THE RECORDS AND WE'LL DETERMINE IN THE
6 CONTEXT OF REPLY OR OTHERWISE.

7 MR. MAULDIN: YOU MAY STEP DOWN, DR. WATTS.

8 WITNESS: THANK YOU.

9 (WITNESS STEPS DOWN AT 11:54 A.M.)

10 MR. MAULDIN: THAT IS THE DEFENSE PRESENTATION, YOUR
11 HONOR.

12 THE COURT: VERY GOOD. LADIES AND GENTLEMEN, AT THIS
13 POINT I AM REQUIRED TO TAKE A BREAK. AND SO I DON'T HAVE TO
14 BRING YOU BACK OUT HERE UNNECESSARILY, WE MAY BE ABLE AFTER A
15 SHORT PERIOD OF TRANSITION TO ANY REPLY EVIDENCE, IF THERE IS
16 ANY. ONCE WE CONCLUDE THE REPLY EVIDENCE, WE'LL THEN MOVE
17 FORWARD TO THE FINAL ARGUMENTS AND MY CHARGE ON THE LAW AND
18 YOU WILL BEGIN AT THAT POINT YOUR DELIBERATIONS IN THE
19 SENTENCING PROCESS.

20 IT MAY BE BECAUSE OF LEGAL ISSUES THAT NEED TO ADDRESSED
21 IT MAY BE SOME TIME BEFORE WE CAN DO THE REPLY EVIDENCE. SO
22 IT MAY BE YOU DON'T COME OUT HERE QUICKLY. IT MAY BE YOU
23 JUST GO AHEAD AND HAVE YOUR LUNCH BREAK NOW. I WILL SEND
24 WORD THROUGH A BAILIFF OR COURT SECURITY OFFICER AS TO WHAT
25 WE'RE DOING AND IF WE'RE ADDRESSING LEGAL ISSUES SO YOU CAN

MATTERS AND MOTIONS

1 GO AHEAD AND TAKE YOUR LUNCH BREAK. BUT I WILL ADVISE YOU OF
2 THAT IN ABOUT 10 OR 15 MINUTES.

3 DO NOT DISCUSS THE CASE. THANK YOU SO MUCH. RETIRE TO
4 THE JURY ROOM.

5 (JURY EXITS COURTROOM AT 11:55 A.M.)

6 THE COURT: THE JURY HAS BEEN EXCUSED. MR. WOOD, IF
7 YOU'D BE KIND ENOUGH, SIR, TO STAND AGAIN.

8 DEFENDANT: (COMPLIES)

9 THE COURT: YOU HAVE NOT TESTIFIED IN THE SENTENCING
10 PROCEEDING. WAS THAT YOUR CHOICE, SIR?

11 DEFENDANT: YES, SIR.

12 THE COURT: AND DID YOU MAKE THAT OF YOUR OWN FREE
13 WILL?

14 DEFENDANT: YES, SIR.

15 THE COURT: VERY GOOD. I JUST WANT THE RECORD TO
16 REFLECT THAT MR. WOOD WAS FULLY ADVISED OF HIS RIGHTS ONCE
17 AGAIN TO TESTIFY OR NOT TESTIFY AND HE OF HIS OWN VOLITION
18 HAS CHOSEN NOT TO TESTIFY. HE, OF COURSE, HAS THE REMAINING
19 RIGHT TO MAKE THE FINAL ARGUMENT TO THE JURY IF HE SO
20 DESIRES.

21 YES, SIR?

22 MR. MAULDIN: FOR THE RECORD, YOUR HONOR, ONCE AGAIN AS
23 I MENTIONED IN THE GUILT PHASE, THIS HAS BEEN A MATTER OF
24 CONTINUING SUBJECT MATTER WITH REGARD TO MY CLIENT AND I.
25 THIS HAS BEEN A CONSISTENT POSITION THROUGHOUT. IT IS A

MATTERS AND MOTIONS

1 DECISION THAT WE DO, IN FACT, AGREE WITH AND ENDORSE. I
2 APOLOGIZE FOR RESTING LIKE THAT WITHOUT THAT HAVING BEEN PUT
3 ON THE RECORD. I DIDN'T THINK ABOUT IT BECAUSE I KNEW WHAT
4 THE ANSWER WAS.

5 THE COURT: THAT'S FINE.

6 SOLICITOR, LET ME HEAR FROM YOU ON WHAT YOU WANT TO DO
7 IN TERMS OF REPLY AND WHAT YOU NEED IN TERMS OF TIME.

8 SOLICITOR ARIAIL: ALL RIGHT. I'D LIKE ABOUT -- HERE'S
9 WHAT IDEALLY I'D LIKE TO DO. I'D LIKE TO HAVE ABOUT 15
10 MINUTES TO LOOK AT THESE RECORDS REAL QUICK. AT THAT POINT I
11 THINK I CAN ADVISE YOU AS TO WHETHER OR NOT THERE IS GOING TO
12 BE ANY REPLY, AND I CAN ALSO ADVISE YOU AT THAT TIME, SHOULD
13 BE ABLE TO, AS TO WHETHER OR NOT THE REPLY WILL CONSUME MORE
14 THAN THE FOLLOWING 45 MINUTES THAT WOULD TAKE US UP TO ONE
15 O'CLOCK.

16 THE COURT: OKAY.

17 SOLICITOR ARIAIL: THE GOAL WOULD BE THAT WE WOULD
18 DECIDE---

19 THE COURT: SURE. I'LL ACCOMMODATE THAT REQUEST.

20 SOLICITOR ARIAIL: OKAY.

21 THE COURT: SO WE'LL BE IN RECESS FOR 15 MINUTES. IF I
22 COME BACK AND YOU NEED MORE TIME, JUST LET ME KNOW.

23 SOLICITOR ARIAIL: THANK YOU VERY MUCH.

24 (A RECESS WAS TAKEN FROM 11:56 A.M. TO 12:28 P.M.)

25 THE COURT: YES, SIR, SOLICITOR?

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** WE WOULD HAVE SOME BRIEF REPLY
2 TESTIMONY. AND I WOULDN'T THINK IT WOULD TAKE MORE THAN 30
3 MINUTES MAX. SO I DIDN'T KNOW WHEN YOU WANTED IT. MS.
4 PATTERSON ADVISED US THAT THE JURY WAS EATING. I ASSUME THEY
5 ARE OUT OR INDISPOSED OR...

6 **THE COURT:** THEY'RE HERE.

7 **SOLICITOR ARIAIL:** OKAY.

8 **THE COURT:** THEY BROUGHT LUNCH IN.

9 **SOLICITOR ARIAIL:** ALL RIGHT.

10 **THE COURT:** HOW MUCH TIME AFTER THE REPLY WOULD COUNSEL
11 LIKE BEFORE WE HAVE CLOSING ARGUMENTS?

12 **SOLICITOR ARIAIL:** THIRTY MINUTES.

13 **MR. MAULDIN:** I WOULD NEED CERTAINLY LONGER THAN 30
14 MINUTES. OR I WOULD ASK THAT I BE GIVEN MORE THAN 30
15 MINUTES.

16 **THE COURT:** ALL RIGHT. WELL, OBVIOUSLY YOU GENTLEMEN
17 HAVE THOUGHT ABOUT YOUR CLOSING STATEMENTS. YOU HAVE TIME
18 NOW BETWEEN THE TIME NOW AND WHEN WE RESUME, AND I WILL GIVE
19 ADDITIONAL TIME AFTER THE CLOSE OF THE REPLY.

20 IF YOU WANT TO DISCUSS AT THIS TIME ANY CHARGE ISSUE,
21 FORMS OF THE VERDICT, THINGS OF THAT NATURE, I'LL BE GLAD TO.
22 IF YOU'D RATHER WAIT UNTIL AFTER THE REPLY, I'LL DEFER.

23 **SOLICITOR ARIAIL:** IF YOU'RE TALKING ABOUT DOING THE
24 REPLY AND THEN GOING TO LUNCH OR GOING TO LUNCH AND THEN
25 DOING THE REPLY, 15 MINUTES WOULD BE ALL FROM REPLY TO ME

MATTERS AND MOTIONS

1 DOING MY CLOSING WOULD BE ALL I NEED IF I'M GOING TO GET A
2 LUNCH BREAK IN HERE SOMEWHERE. SO FROM THAT STANDPOINT, YOU
3 CAN CUT THAT DOWN. IT JUST DEPENDS ON THE SCHEDULE. IF
4 WE'RE GOING TO REPLY AND CLOSING WITHOUT LUNCH, THEN I NEED
5 TO -- A LITTLE TIME.

6 THE COURT: WELL, I MEAN, THE FORMS OF THE VERDICT,
7 CHARGE, DO YOU WANT TO ADDRESS THOSE ISSUES NOW OR DEFER?
8 THAT'S THE QUESTION.

9 MR. MAULDIN: WE'VE GOT REPLY. WE'VE GOT LUNCH. WE'VE
10 GOT SOME PREPARATION, AND THEN CLOSING IS KIND OF THE ORDER.

11 THE COURT: WELL, YOU'RE GETTING READY TO HAVE LUNCH.

12 MR. MAULDIN: ALL RIGHT. SO WE'RE GOING TO HAVE LUNCH
13 BEFORE REPLY?

14 THE COURT: YES.

15 MR. MAULDIN: ALL RIGHT, SIR. THEN IF WE HAVE A LUNCH
16 BREAK AND THEN IF WE HAVE REPLY TESTIMONY, THEN I CERTAINLY
17 AM GOING TO ASK FOR SOME PERIOD OF TIME FOR ME TO PUT MY
18 THOUGHTS TOGETHER AS I CLOSE.

19 THE COURT: I'LL GIVE YOU SOME TIME. BUT I'M TELLING
20 YOU, RIGHT NOW THROUGH LUNCH YOU OUGHT TO BE THINKING ABOUT
21 IT. AND I KNOW YOU ARE. BUT I'M NOT GOING TO -- AFTER THE
22 JURY HAS HEARD REPLY, WE'RE NOT GOING TO TAKE A TWO-HOUR
23 BREAK BECAUSE I KNOW YOU'RE NOT INVENTING THE WHEEL AT THAT
24 POINT. IT'S A WORK IN PROGRESS.

25 MR. MAULDIN: RIGHT. WELL, IF THE COURT INTENDS TO

MATTERS AND MOTIONS

1 SUSPEND AND THEN COME BACK AND COMMENCE THEIR REPLY, THEN I
2 WANT TO GO RUN AND HIDE SOMEWHERE SO I CAN TAKE ADVANTAGE OF
3 AT LEAST THAT PERIOD OF TIME.

4 THE COURT: ALL RIGHT, SIR.

5 MR. MAULDIN: HOWEVER MUCH TIME IT IS.

6 THE COURT: AND WE WILL NEED, I'M ESTIMATING, ABOUT 15
7 MINUTES JUST TO REVIEW THE FORMS OF THE VERDICT AND TALK
8 ABOUT THE CHARGE. THERE WAS ONE REMAINING ISSUE ON WHICH I
9 THINK THERE IS A DISPUTE ON THE CHARGE, AND I WANTED TO HEAR
10 FURTHER FROM THAT BEFORE I MADE A FINAL DECISION. I WANT
11 Y'ALL TO KNOW WHAT I'M GOING TO CHARGE PRIOR TO YOUR
12 ARGUMENTS.

13 THE JURY JUST STARTED EATING JUST A FEW MINUTES AGO.
14 WHY DON'T WE START BACK HERE FOR REPLY AT 1:15. WE'LL DO
15 REPLY. THEN WE'LL TALK ABOUT THE CHARGE AND THE FORMS OF THE
16 VERDICT, AND I'LL EXPLAIN TO THE JURY THAT THEY'RE GOING TO
17 HAVE TO BE PATIENT AND WAIT ON US. AND THEN WE'LL TAKE
18 ANOTHER BREAK TO FINALIZE THE THOUGHTS ON CLOSING ARGUMENTS.

19 SOLICITOR ARIAIL: SOUNDS GOOD. GOOD PLAN.

20 THE COURT: THANK YOU.

21 (A LUNCH RECESS WAS TAKEN FROM 12:35 TO 1:14 P.M.)

22 THE COURT: ALL RIGHT. IS COUNSEL READY TO PROCEED?

23 SOLICITOR ARIAIL: YES, YOUR HONOR.

24 THE COURT: ANY ISSUE WE NEED TO ADDRESS BEFORE WE
25 PROCEED FURTHER REGARDING REPLY?

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** I JUST HAVE ONE WITNESS TO CALL.
2 THAT'S ALL.

3 **THE COURT:** ALL RIGHT.

4 **SOLICITOR ARIAIL:** WE'RE NOT RECALLING DR. WATTS.

5 **THE COURT:** ALL RIGHT. SO CAN SHE BE EXCUSED?

6 **SOLICITOR ARIAIL:** YES. YOUR HONOR, WE NEED TO KEEP
7 THE RECORDS JUST IN CASE. THEY MAY BE THE SUBJECT OF SOME OF
8 THE REPLY.

9 **THE COURT:** DO YOU MIND WAITING?

10 **DR. SCHWARTZ-WATTS:** I'LL DO WHATEVER THE COURT NEEDS.

11 **THE COURT:** WE'RE NOT TALKING MORE THAN 30, 45 MINUTES?

12 **SOLICITOR ARIAIL:** NO.

13 **THE COURT:** OKAY. VERY GOOD.

14 JURY, PLEASE.

15 THANK YOU FOR WAITING, DR. SCHWARTZ-WATTS. APPRECIATE
16 IT.

17 **DR. SCHWARTZ-WATTS:** YOU'RE WELCOME.

18 (JURY REENTERS COURTROOM AT 1:20 P.M.)

19 **THE COURT:** LADIES AND GENTLEMEN, WE'RE GOING TO HEAR
20 BRIEF REPLY TESTIMONY OFFERED BY THE STATE. I ANTICIPATE THE
21 EVIDENCE WILL NOT TAKE MORE THAN AN HOUR, PERHAPS SHORTER.
22 ONCE WE DO THAT, I'M REQUIRED BY LAW TO TAKE UP AGAIN CERTAIN
23 ISSUES REGARDING THE CHARGE THAT WILL BE GIVEN TO YOU AND THE
24 FORMS OF THE VERDICT THAT WILL BE GIVEN TO YOU, SOME LEGAL
25 DISCUSSIONS THAT NEED TO BE DONE OUTSIDE YOUR PRESENCE. SO

MATTERS AND MOTIONS

1 THERE WILL BE AN EXTENDED BREAK AFTER WE CONCLUDE THE REPLY
2 BEFORE WE START THE CLOSING ARGUMENTS AND THE CHARGE. MY
3 SENSE IS PROBABLY ABOUT AN HOUR, JUST TO GIVE YOU A HEAD'S
4 UP. IF THE HOLDS TRUE, AROUND 3:00, 3:30 WE SHOULD BEGIN OUR
5 CLOSING ARGUMENTS. THANK YOU.

6 YOU MAY PROCEED, SIR.

7 SOLICITOR ARIAIL: WE CALL DR. NARAYAN.

8 PRATAP NARAYAN, M.D., HAVING
9 TAKEN AN OATH OF AFFIRMATION, TESTIFIED AS FOLLOWS:
10 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

11 Q STATE YOUR NAME FOR THE RECORD, PLEASE, SIR.

12 A PRATAP NARAYAN.

13 Q IF YOU WOULD, DR. NARAYAN, KEEP YOUR VOICE UP LIKE THAT
14 SO THESE LAST JURORS CAN HEAR YOU.

15 BY WHOM ARE YOU EMPLOYED?

16 A PERMANENTLY BY THE DEPARTMENT OF MENTAL HEALTH.

17 Q AND THAT IS A STATE AGENCY?

18 A YES, SIR.

19 Q ALSO KNOWN AS THE STATE HOSPITAL, THE STATE MENTAL
20 FACILITY?

21 A THAT IS ONE OF THE DIVISIONS OF THE DEPARTMENT OF MENTAL
22 HEALTH.

23 Q AND YOU ARE LOCATED IN COLUMBIA?

24 A THAT'S CORRECT.

25 Q WHAT IS YOUR CAPACITY OF EMPLOYMENT? WHAT ARE YOU

PRATAP NARAYAN, M.D. -- DIRECT BY SOLICITOR ARIAIL

1 EMPLOYED AS?

2 A I AM EMPLOYED AS A FORENSIC PSYCHIATRIST. THE
3 DESIGNATION IS SENIOR PHYSICIAN. AND PART OF MY JOB
4 RESPONSIBILITIES HAS TO DO WITH PERFORMING COURT-ORDERED
5 EVALUATIONS. SUCH EVALUATIONS ADDRESS THE ISSUES THAT THE
6 COURT WANTS ANSWERED. OUR AGENCY OR OUR INSTITUTION IS ALSO
7 THE CENTER FOR EDUCATION FOR THE -- OR ONE OF THE CENTERS OF
8 EDUCATION FOR THE DEPARTMENT OF NEUROPSYCHIATRY AT THE
9 UNIVERSITY SCHOOL OF MEDICINE, AND WE TRAIN FORENSIC
10 PSYCHIATRISTS, AND SO THE FELLOWS THAT TRAIN IN FORENSIC
11 PSYCHIATRY SPEND APPROXIMATELY HALF THEIR TIME AT OUR
12 FACILITY.

13 Q ALL RIGHT. LET ME ASK YOU, IF YOU WOULD, JUST TO PULL
14 UP JUST A LITTLE CLOSER TO THE MICROPHONE. IT MAY BE MY
15 HEARING, BUT I WANT TO MAKE SURE THAT -- IF I CAN HEAR, I
16 KNOW THEY CAN.

17 GIVE ME YOUR EDUCATION -- HOW LONG HAVE YOU BEEN AT THE
18 DEPARTMENT OF MENTAL HEALTH?

19 A SINCE MAY OF 2000.

20 Q AND GIVE ME YOUR EDUCATIONAL BACKGROUND AND TRAINING,
21 WHERE YOU WERE BEFORE YOU CAME TO THE DEPARTMENT OF MENTAL
22 HEALTH.

23 A I FIRST BEGAN -- I COMPLETED MEDICAL SCHOOL AND
24 GRADUATED IN 1983 IN INDIA. AND SUBSEQUENTLY I BEGAN
25 TRAINING IN PSYCHIATRY IN 1985 AFTER A YEAR OF INTERNSHIP. I

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1 WAS AT THE NATIONAL INSTITUTE OF MENTAL HEALTH IN INDIA AS A
2 RESIDENT AND OBTAINED MY DIPLOMA AND DOCTORAL DEGREES IN
3 PSYCHIATRY, AFTER WHICH I WAS ON THE STAFF AS A STAFF
4 PSYCHIATRIST INVOLVED IN RESIDENCY EDUCATION FOR A PERIOD OF
5 TWO YEARS. IN '92, I MOVED TO THE UNITED STATES AND AS
6 REQUIRED BY THE MEDICAL BOARD OF PSYCHIATRY AND NEUROLOGY I
7 DID A FURTHER YEAR OF INTERNSHIP AND FURTHER TWO YEARS OF
8 RESIDENCY AT THE MEDICAL COLLEGE OF VIRGINIA AND THE
9 UNIVERSITY OF FLORIDA.

10 Q SO THAT'S FOUR ADDITIONAL YEARS IN THE UNITED STATES?

11 A WELL, FIVE REALLY. AFTER THAT I TRAINED FOR ANOTHER
12 ADDITIONAL YEAR IN FORENSIC PSYCHIATRY AT THE UNIVERSITY OF
13 FLORIDA.

14 Q SO YOU HAD FOUR YEARS AT THE UNIVERSITY OF FLORIDA AND
15 ONE YEAR AT THE UNIVERSITY OF VIRGINIA?

16 A THAT'S CORRECT. THAT'S THE MEDICAL COLLEGE OF VIRGINIA,
17 NOT THE VIRGINIA COMMONWEALTH UNIVERSITY.

18 Q RIGHT. OKAY.

19 NOW, AS A RESULT OF THAT FINISHING AT THE UNIVERSITY OF
20 FLORIDA, WHEN YOU GRADUATED WHERE DID YOU BEGIN EMPLOYMENT?

21 A I BEGAN EMPLOYMENT WITH THE DEPARTMENT OF CORRECTIONS IN
22 THE STATE OF FLORIDA. I SUBSEQUENTLY MOVED TO A FORENSIC
23 PSYCHIATRIC FACILITY ALSO IN FLORIDA FOR A SHORT PERIOD OF
24 TIME. I THEN WORKED AT OHIO AT THE -- IN ONE OF THE
25 DIVISIONS OF THE DEPARTMENT OF MENTAL HEALTH IN OHIO, AND

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1 SUBSEQUENTLY MOVED BACK TO FLORIDA. I WAS THERE FOR A
2 FURTHER PERIOD OF TWO YEARS, AND THEN IN MAY OF 2000 I MOVED
3 TO SOUTH CAROLINA.

4 Q OKAY. I BELIEVE YOU HAVE ALREADY TOLD US WHAT YOUR
5 DUTIES ARE IN REGARD TO PERFORMING COURT-ORDERED EVALUATIONS?

6 A THAT'S CORRECT.

7 Q AND SO THE JURY WILL UNDERSTAND WHAT THAT MEANS YOU
8 RECEIVE AN ORDER FROM COURT TO EVALUATE AN INDIVIDUAL,
9 PARTICULARLY ONE CHARGED WITH A CRIMINAL ACT?

10 A THAT IS CORRECT, YES.

11 Q I MEAN, YOU DON'T EVALUATE EVERYBODY, JUST CERTAIN
12 PEOPLE THAT ARE ORDERED EVALUATED?

13 A THAT'S CORRECT.

14 Q HOW MANY COURT ORDERED MENTAL EVALUATIONS HAVE YOU
15 CONDUCTED?

16 A IN THE STATE OF SOUTH CAROLINA?

17 Q YES.

18 A PROBABLY OVER A HUNDRED.

19 Q HOW MANY TOTAL?

20 A I WOULD SAY ABOUT 200, 250.

21 Q AND HAVE YOU PREVIOUSLY QUALIFIED AS AN EXPERT WITNESS
22 IN THE FIELD OF PSYCHIATRY, PARTICULARLY IN REGARD TO MENTAL
23 EVALUATION OF CRIMINAL DEFENDANTS IN THIS STATE?

24 A YES, I HAVE.

25 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD SUBMIT HIM AS A

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1 QUALIFIED EXPERT IN THE FIELD OF PSYCHIATRY, PARTICULARLY AS
2 IT RELATES TO COURT-ORDERED MENTAL EVALUATIONS.

3 MR. BANNISTER: NO OBJECTION.

4 THE COURT: WITHOUT OBJECTION. SAME INSTRUCTION ABOUT
5 YOUR CONSIDERATION OF THE TESTIMONY OF AN EXPERT WITNESS.

6 Q IN ADDITION TO THE TRAINING YOU HAVE RECEIVED, YOU HAVE
7 INDICATED THAT YOU HAD RECEIVED A SPECIFIC ADDITIONAL YEAR AT
8 THE UNIVERSITY OF FLORIDA IN FORENSIC PSYCHIATRY?

9 A THAT'S CORRECT.

10 Q AND ARE YOU ALSO QUALIFIED TO CONDUCT EXAMINATIONS IN
11 REGARD TO FORENSIC PSYCHIATRY?

12 A YES, I AM.

13 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD SUBMIT HIM AS
14 AN EXPERT ALSO IN THAT FIELD.

15 THE COURT: ANY VOIR DIRE ON FORENSIC PSYCHIATRY?

16 MR. BANNISTER: NO, YOUR HONOR.

17 THE COURT: WITHOUT OBJECTION.

18 Q AS A PART OF YOUR DUTIES DID YOU HAVE OCCASION TO
19 CONDUCT A MENTAL EVALUATION ON THE DEFENDANT, JOHN RICHARD
20 WOOD, PURSUANT TO A COURT ORDER FROM JUDGE KITTREDGE?

21 A YES, I DID.

22 Q AND WHEN DID YOU FIRST COME IN CONTACT WITH MR. WOOD?

23 A THAT WAS ON THE 25TH OF SEPTEMBER, 2001.

24 Q AND THE EXAMINATION WAS ORDERED BY THE COURT?

25 A THAT'S CORRECT.

1 Q AND DID YOU PREPARE A WRITTEN REPORT?

2 A YES, I DID.

3 Q AND THE REPORT WAS SENT TO THE COURT?

4 A THAT'S CORRECT.

5 Q JUST SO IT'S CLEAR IN THE RECORD, YOU HAVE NOT BEEN
6 CONTACTED BY MY OFFICE OR BY THE STATE TO PERFORM ANY TYPE OF
7 EXAMINATION?

8 A NO, SIR.

9 Q THIS WAS COURT ORDERED?

10 A THAT'S CORRECT.

11 Q DID YOU CONDUCT A MENTAL EVALUATION STARTING IN
12 SEPTEMBER ON THE DEFENDANT?

13 A YES, WE DID.

14 Q TELL US -- WELL, SINCE THAT REPORT -- WELL, LET ME GO
15 BACK. SEPTEMBER -- HOW MANY TIMES DID YOU MEET WITH THE
16 DEFENDANT HIMSELF?

17 A I HAD THE OPPORTUNITY TO MEET WITH MR. WOOD AGAIN ON THE
18 29TH OF OCTOBER 2001 FOR A SECOND CLINICAL INTERVIEW, AND
19 HAVE HAD NO FURTHER CONTACT WITH HIM.

20 Q AND THAT WAS WHAT DATE?

21 A OCTOBER THE 29TH, 2001.

22 Q AND THE FIRST ONE WAS SEPTEMBER THE 25TH?

23 A THAT'S CORRECT.

24 Q SINCE THE OCTOBER 29TH HAVE YOU ATTEMPTED TO RECEIVE OR
25 GAIN ANY ADDITIONAL INFORMATION REGARDING THE DEFENDANT?

1 MR. MAULDIN: YOUR HONOR, I--

2 THE COURT: DO YOU OBJECT?

3 MR. MAULDIN: YES, SIR.

4 THE COURT: SUSTAINED.

5 SOLICITOR ARIAIL: ALL RIGHT.

6 Q WELL, LET ME PHRASE IT A LITTLE DIFFERENTLY.

7 MR. MAULDIN: MAY I HAVE A SIDEBAR, PLEASE, SIR?

8 THE COURT: YOU MAY.

9 (BENCH CONFERENCE OFF RECORD FROM 1:28 TO 1:30 P.M.)

10 THE COURT: DAWN, WILL YOU TURN AROUND, PLEASE?

11 (THE FOLLOWING TAKES PLACE AT THE BENCH OUTSIDE EARSHOT OF
12 THE JURY AND THE COURTROOM)

13 THE COURT: ONE SECOND. LET THE SOLICITOR BE PRESENT.

14 ALL RIGHT. MR. MAULDIN WANTS TO MAKE A MOTION.

15 MR. MAULDIN: THE OBJECTION WAS MADE AND SUSTAINED.

16 I'D NOW LIKE TO MAKE A MOTION. I'D REQUEST A CURATIVE
17 INSTRUCTION AND A MOTION FOR A MISTRIAL. I THINK IT'S THE
18 PROPER ORDER IN WHICH I HAVE TO DO IT.

19 THE COURT: I CERTAINLY WILL DO A CURATIVE INSTRUCTION.
20 TELL ME WHAT YOU WANT THE SUBSTANCE OF THE INSTRUCTION TO BE.
21 I MEAN, I'LL JUST THINK OUT LOUD WITH YOU. THE DEFENDANT HAS
22 RIGHT TO REMAIN SILENT. YOU WILL DRAW NO INFERENCE
23 WHATSOEVER FROM THE LACK OF SUBSEQUENT---

24 MR. MAULDIN: MAYBE REFERENCE BACK TO YOUR PREVIOUS
25 COMMENTS REGARDING A DEFENDANT'S RIGHT TO REMAIN SILENT.

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1 THE COURT: JUST GENERALLY IS THAT HOW YOU WANT IT
2 DONE?

3 MR. MAULDIN: WELL, THAT'S ALL I CAN---

4 THE COURT: I'LL DO IT. IF IT'S NOT SATISFACTORY, YOU
5 STAND AND ASK IF WE CAN APPROACH AGAIN AND I'LL MAKE ANOTHER
6 ATTEMPT.

7 MR. MAULDIN: ALL RIGHT, SIR.

8 THE COURT: MOTION FOR A MISTRIAL IS RESPECTFULLY
9 DENIED.

10 (DISCUSSIONS AT BENCH ENDS)

11 THE COURT: LADIES AND GENTLEMEN, BEFORE WE RESUME THE
12 EXAMINATION OF DR. NARAYAN, LET ME JUST GIVE YOU AN
13 INSTRUCTION THAT IS CONSISTENT WITH WHAT I HAVE TOLD YOU FROM
14 THE VERY BEGINNING. AN INDIVIDUAL ACCUSED OF A CRIMINAL
15 OFFENSE SUCH AS MR. WOOD IS ENTITLED UNDER THE CONSTITUTION
16 TO REMAIN SILENT, AND THE ASSERTION OF THAT RIGHT CANNOT
17 UNDER ANY CIRCUMSTANCES BE HELD AGAINST HIM. SO PLEASE DO
18 NOT CONSTRUE FROM ANY QUESTION ASKED OR RESPONSE ANYTHING TO
19 DRAW AN ADVERSE OR NEGATIVE INFERENCE FROM A QUESTION ASKED
20 OR A RESPONSE GIVEN IN THAT REGARD. PLEASE REMEMBER A
21 DEFENDANT HAS THE RIGHT TO REMAIN SILENT AND THAT IS AN
22 IMPORTANT AND VALUABLE CONSTITUTIONAL RIGHT TO WHICH ANY
23 ACCUSED IS ENTITLED, AND THE ASSERTION OF THAT RIGHT CANNOT
24 UNDER ANY CIRCUMSTANCES BE HELD AGAINST SUCH AN INDIVIDUAL.
25 YOU MAY PROCEED, SIR.

1 SOLICITOR ARIAIL: THANK YOU.

2 Q TELL US THE PROCESS THAT YOU USE TO CONDUCT COURT-
3 ORDERED EVALUATION OF A DEFENDANT.

4 A WELL, BASICALLY WHAT WE DO IS WE USE A TEAM APPROACH.
5 THERE IS USUALLY A PSYCHIATRIST AND A SOCIAL WORKER THAT
6 PRIMARILY GET INVOLVED IN OBTAINING INFORMATION, PUTTING
7 THINGS TOGETHER AND ALSO INTERVIEWING THE PERSON THAT IS
8 SUPPOSED TO BE EVALUATED. OCCASIONALLY WE ALSO GET A
9 PSYCHOLOGIST INVOLVED AND SOMETIMES A NEUROLOGIST.

10 IN THIS PARTICULAR SITUATION, ON THE FIRST OCCASION, MR.
11 TORRES, WHO IS A SOCIAL WORKER AT THE HALL INSTITUTE WHERE I
12 WORK, AND I INTERVIEWED MR. WOOD. ON THE SECOND OCCASION,
13 DR. TEZZA, WHO IS A CLINICAL PSYCHOLOGIST, AND I INTERVIEWED
14 MR. WOOD. AND WE SUBSEQUENTLY OBTAINED A NEUROLOGICAL
15 CONSULTATION FROM DR. STEEDMAN, WHO IS A NEUROLOGIST AT THE
16 INSTITUTION.

17 Q WHAT IS A NEUROLOGICAL CONSULTATION?

18 A A NEUROLOGICAL CONSULTATION IS A REQUEST BY THE
19 EVALUATING PERSON TO THE NEUROLOGIST TO GET THE NEUROLOGIST
20 TO ADDRESS SOME SPECIFIC QUESTIONS. IN THIS PARTICULAR CASE
21 WE ASKED FOR A NEUROLOGICAL CONSULTATION IN VIEW OF CERTAIN
22 SYMPTOMS THAT MR. WOOD REPORTED, CERTAIN STATEMENTS HE MADE
23 TO US AND THE FACT THAT HE WAS SHOT IN THE HEAD.

24 Q ALL RIGHT. AND DID YOU RECEIVE THE NEUROLOGICAL
25 CONSULTATION?

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1 A YES, WE DID.

2 Q WAS IT OF ANY SIGNIFICANCE?

3 A IT WAS OF SIGNIFICANCE NOT FROM A NEUROLOGICAL POINT OF
4 VIEW BUT FROM SOME OTHER INFORMATION THAT IT CONTAINED. THE
5 NEUROLOGICAL STATUS WAS APPARENTLY NORMAL.

6 Q AT THE FIRST MEETING HOW LONG DID YOU MEET WITH MR.
7 WOOD?

8 A APPROXIMATELY TWO AND A HALF HOURS.

9 Q AND THE SECOND MEETING?

10 A APPROXIMATELY THE SAME AMOUNT OF TIME.

11 Q AND WHAT OTHER INFORMATION OTHER THAN THE INTERVIEWS
12 WITH THE DEFENDANT DID YOU RECEIVE PRIOR TO CONDUCTING YOUR
13 EVALUATION?

14 A WE RECEIVED INFORMATION FROM THE SOLICITOR'S OFFICE
15 INCLUDING ARREST WARRANTS, INCIDENT REPORTS, WITNESS
16 STATEMENTS, SUPPLEMENTAL REPORTS, A CASE SUMMARY, ACTUALLY WE
17 RECEIVED TWO CASE SUMMARIES, AND INFORMATION FROM THE SOUTH
18 CAROLINA LAW ENFORCEMENT DEPARTMENT, S.L.E.D.

19 Q AND DID YOU ALSO RECEIVE THE MEDICAL RECORDS ON THE
20 DEFENDANT FROM THE ANDERSON HOSPITAL---

21 A YES, WE DID.

22 Q ---AND GREENVILLE HOSPITAL?

23 A WE DID.

24 Q ALL RIGHT. ON EACH OCCASION THAT YOU MET WITH THE
25 DEFENDANT WAS HE FORTHCOMING AND COOPERATIVE WITH YOU?

1 A ABSOLUTELY.

2 Q BASED ON THOSE INTERVIEWS AND THE OTHER INFORMATION THAT
3 YOU RECEIVED DID YOU FEEL THAT YOU HAD SUFFICIENT INFORMATION
4 TO MAKE A PROPER EVALUATION AND REPORT YOUR FINDINGS BACK TO
5 THE COURT?

6 A YES, WE DID.

7 Q AND DID YOU MAKE SUCH A REPORT?

8 A YES, WE DID.

9 Q AND WHAT IS THE DATE OF THAT REPORT?

10 A THE DATE IT WAS SENT OUT WAS DECEMBER THE 20TH, 2001,
11 AND THE SECOND INTERVIEW AND THE FINALIZATION REPORT HAD TO
12 DO WITH APPENDING FURTHER INFORMATION LIKE THE PSYCHOLOGICAL
13 EVALUATION AND THE NEUROLOGICAL CONSULTATION.

14 Q AND DURING THE COURSE OF YOUR EVALUATION DID -- WAS THE
15 DEFENDANT REQUESTED TO PERFORM OR TAKE ANY STANDARDIZED
16 TESTING, FOR LACK OF THE BETTER DESCRIPTION?

17 A THAT HAPPENED ON THE THIRD OCCASION WHEN I WAS NOT
18 PRESENT. THAT WAS CONDUCTED BY DR. TEZZA, THE CLINICAL
19 PSYCHOLOGIST I MENTIONED BEFORE. AND, YES, THAT WAS DONE THE
20 EARLY PART OF NOVEMBER.

21 Q AND WAS THAT INFORMATION AND HER REPORT FORWARDED TO
22 YOU?

23 A YES, IT WAS.

24 Q DID THAT FORM A BASIS OF YOUR CONCLUSIONS AND YOUR FINAL
25 REPORT?

1 A YES, SIR, IT DID.

2 Q AS A RESULT OF YOUR EVALUATION DID YOU REACH AN OPINION
3 TO A REASONABLE DEGREE OF PSYCHIATRIC CERTAINTY AS TO THE
4 DEFENDANT'S COMPETENCE TO STAND TRIAL?

5 A YES, I DID.

6 Q AND WHAT WAS YOUR OPINION? .

7 A THAT HE HAD THE MENTAL CAPACITY TO STAND TRIAL.

8 Q DID YOU REACH AN OPINION TO A REASONABLE DEGREE OF
9 MEDICAL CERTAINTY OF THE DEFENDANT'S ABILITY TO DIFFERENTIATE
10 RIGHT FROM WRONG AT THE TIME OF THIS EVENT ON DECEMBER THE
11 6TH OF 2000?

12 A YES. WE DETERMINED THAT HE DID HAVE THAT CAPACITY TO
13 DIFFERENTIATE RIGHT FROM WRONG.

14 Q AND DID YOU REACH AN OPINION TO A REASONABLE DEGREE OF
15 PSYCHIATRIC CERTAINTY AS TO THE DEFENDANT'S CAPACITY TO
16 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW?

17 A YES. WE DETERMINED THAT HE DID HAVE SUCH CAPACITY.

18 Q AND THAT HE COULD CONFORM TO THE REQUIREMENTS OF THE
19 LAW?

20 A THAT IS CORRECT.

21 Q DID YOU DETERMINE DURING YOUR EVALUATION ANY SIGNIFICANT
22 MENTAL HEALTH CONDITIONS OR MENTAL ILLNESSES?

23 A THE TERM MENTAL ILLNESS IS USED TO DENOTE SEVERAL
24 CONDITIONS, SOME OF WHICH MAY ACTUALLY BE ABERRATIONS OR KIND
25 OF DEVIATIONS FROM NORMAL. FOR EXAMPLE, CIGARETTE SMOKING IS

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1 LISTED IN THE DIAGNOSTIC AND STATISTICAL MANUAL AS A MENTAL
2 DISORDER. BUT TO ANSWER YOUR QUESTION, YES, WE DID IDENTIFY
3 THAT HE HAD MENTAL DISORDERS.

4 Q ALL RIGHT. AND WHAT WERE THEY?

5 A THE MENTAL DISORDERS WE IDENTIFIED WERE THAT HE HAD A
6 HISTORY OF ALCOHOL, COCAINE AND HALLUCINOGEN ABUSE, THAT HE
7 HAD POSSIBLY ONGOING CANNABIS ABUSE, WHICH WE GOT FROM
8 INFORMATION THAT HE PROVIDED TO US---

9 Q LET ME STOP YOU THERE. A HISTORY OF ALCOHOL,
10 HALLUCINOGEN ABUSE AND COCAINE ABUSE, THAT WAS A HISTORY?

11 A THAT'S CORRECT.

12 Q AND WAS THAT HISTORY PROVIDED BY HIM?

13 A THAT IS CORRECT. YES, IT WAS.

14 Q AND BASED ON HIS HISTORY THAT HAD CEASED?

15 A BASED ON INFORMATION HE GAVE TO US, YES, HE HAD STOPPED
16 USING THOSE.

17 Q ALL RIGHT. AND CANNABIS ABUSE, WHAT IS CANNABIS?

18 A CANNABIS IS THE CHEMICAL COMPONENT OF MARIJUANA. I'M
19 SORRY. IT IS THE PLANT, THE NAME OF THE PLANT THAT'S ALSO
20 COMMONLY KNOWN AS MARIJUANA.

21 Q WHAT OTHER DIAGNOSIS DID YOU MAKE?

22 A WE MADE A DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER.

23 Q WHAT DOES THAT MEAN?

24 A WELL, A PERSONALITY DISORDER IS A PERVASIVE PATTERN OF
25 MALADAPTIVE BEHAVIOR AND THINKING THAT DATES BACK TO THE

1 PERSON'S DEVELOPING YEARS. IT IS PRESENT IN MOST SITUATIONS
2 AND IT COMES TO THE SURFACE ON AN ONGOING BASIS IN DIFFERENT
3 TYPES OF SITUATIONS THAT THE PERSON IS IN.

4 NOW, THE TERM ANTISOCIAL PERSONALITY DISORDER DENOTES A
5 PARTICULAR TYPE OF PERSONALITY DISORDER WHERE AN INDIVIDUAL
6 IS PRIMARILY CHARACTERIZED BY THE LACK OF REGARD FOR THE
7 RIGHTS OF OTHERS, THE ABILITY TO FOLLOW LAWS, SPECIFICALLY
8 FAILURE TO CONFORM TO SOCIAL NORMS, A PATTERN OF
9 DECEITFULNESS, RECKLESS DISREGARD FOR THE SAFETY OF SELF OR
10 OTHERS, IRRESPONSIBILITY EVIDENCED BY A POORLY SUSTAINED WORK
11 BEHAVIOR AND LACK OF REMORSE.

12 Q THAT IS AN ANTISOCIAL PERSONALITY DISORDER?

13 A THOSE ARE THE CRITERIA FOR ANTISOCIAL PERSONALITY
14 DISORDER THAT MR. WOOD MET. THERE ARE A TOTAL OF SEVEN
15 CRITERIA IN THE DSM-IV THAT WAS MENTIONED BEFORE. THE TWO
16 CRITERIA THAT WE DID NOT THINK HE MET WAS IMPULSIVITY AND
17 IRRITABILITY AND AGGRESSIVENESS. IN ORDER FOR A PERSON TO
18 QUALIFY FOR A DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER,
19 WE NEED THREE OUT OF SEVEN CRITERIA TO BE MET. HE FULFILLED
20 FIVE OF THEM.

21 Q NOW, THE ANTISOCIAL PERSONALITY, WE'VE HEARD TESTIMONY
22 FROM DR. SCHWARTZ-WATTS ABOUT AXIS I, AXIS II, AXIS III. DID
23 YOU MAKE ANY DIAGNOSIS IN REGARD TO AXIS I?

24 A THAT WAS THE ALCOHOL, COCAINE, HALLUCINOGEN ABUSE BY
25 HISTORY AND THE CANNABIS ABUSE.

1 Q ALL RIGHT. AND DID YOU FIND ANY EVIDENCE OF BIPOLAR
2 DISORDER?

3 A NO, SIR.

4 Q ALL RIGHT. AS TO AXIS II, DID YOU FIND ANY -- DOES THAT
5 RELATE TO THE ANTISOCIAL PERSONALITY DISORDER?

6 A AXIS II -- WELL, AXIS II COMPRISES A LOT OF PERSONALITY
7 DISORDERS OF WHICH ANTISOCIAL PERSONALITY DISORDER IS ONE.
8 IT ALSO INCLUDES OTHER CONDITIONS WHICH ARE DEVELOPMENTAL
9 DISORDERS, THINGS LIKE MENTAL RETARDATION AND SUCH LIKE.

10 Q AND THE ONE ON AXIS II THAT YOU DIAGNOSED WOULD HAVE
11 BEEN THE ANTISOCIAL PERSONALITY DISORDER?

12 A THAT'S CORRECT.

13 Q DID YOU FIND ANY EVIDENCE OF PARANOID CONDITION THAT SHE
14 DESCRIBED?

15 A THE ONLY SYMPTOM THAT WE COULD POTENTIALLY IDENTIFY WAS
16 HIS OBJECTIVE REPORT THAT HE WAS SCARED OF LAW ENFORCEMENT
17 OFFICERS. NOW, ONCE AGAIN, IF YOU WERE TO LOOK AT THE
18 SPECIFIC DEFINITION OF THE PERSONALITY DISORDER, THE
19 DEVIATION MUST BE PERVASIVE. AND A PARANOID PERSONALITY
20 DISORDER IS TYPICALLY CHARACTERIZED BY A MISTRUST OF OTHERS,
21 A BELIEF THAT OTHER PEOPLE ARE GOING TO TAKE ADVANTAGE OF A
22 PERSON, AND IT DOES NOT CONFINE ITSELF TO ANY PARTICULAR
23 GROUP OF PEOPLE. IT WOULD NOT JUST BE A POLICE OFFICER OR A
24 UNIFORMED PERSON OR NURSE OR ANYONE PARTICULAR SET OF PEOPLE.

25 Q IT'S PERVASIVE?

1 A IT'S PERVASIVE. AND BASED ON THE INFORMATION THAT HE
2 WAS ABLE TO PROVIDE TO US WE ESTABLISHED THAT HE DID NOT
3 INDEED FULFILL THE DEFINITION OF PERVASIVENESS FOR THAT
4 DISORDER.

5 NOW, AGAIN, ACCORDING TO THE CRITERIA WE GO BY, PARANOID
6 PERSONALITY DISORDER ALSO NEEDS AT LEAST THREE OUT OF SEVERAL
7 CRITERIA. AND WE LOOKED THROUGH THE LIST AND WE FOUND OUT HE
8 COULD AT BEST POSSIBLY SATISFY ONE OF THE CRITERIA, AND NO
9 MORE THAN ONE. THEREFORE, WE DID NOT THINK HE HAD A
10 CLINICALLY DIAGNOSABLE PARANOID PERSONALITY DISORDER.

11 Q AND AT THE TIME THAT YOU EVALUATED HIM AND TALKED WITH
12 HIM AND MADE YOUR REPORT, AT ANY TIME DURING THAT COURSE OF
13 EVENTS DID YOU SEE ANY NEED TO PLACE HIM ON MEDICATION?

14 A ABSOLUTELY NOT.

15 Q NOW, TODAY HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
16 RECORDS THAT WERE SUBMITTED AS PART OF DR. SCHWARTZ-WATTS'
17 FILE?

18 A YES, I HAVE HAD THE OPPORTUNITY TO REVIEW SOME OF THAT.
19 YES, SIR.

20 Q WHAT IN PARTICULAR DID YOU HAVE AN OPPORTUNITY TO
21 REVIEW?

22 A PARTICULARLY I WAS INTERESTED IN FINDING OUT WHAT OTHER
23 PROFESSIONALS NOT EMPLOYED BY THE DEFENSE MIGHT HAVE THOUGHT
24 ABOUT MR. WOOD'S MENTAL CONDITION, AND I WAS LOOKING
25 SPECIFICALLY FOR AN EVALUATION BY A PSYCHIATRIST AT THE

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1 GREENVILLE COUNTY DETENTION CENTER. I FOUND SUCH A REPORT
2 DATED 12/11/2000, WHICH CLEARLY INDICATES THAT THE ONLY
3 DIAGNOSIS THAT HE WAS SUFFERING FROM AT THAT TIME OR THAT
4 THEY COULD GIVE HIM WAS A PERSONALITY DISORDER, AND THEY
5 SPECIFIED SOCIOPATH, WHICH IS PRETTY MUCH WHAT ANTISOCIAL
6 PERSONALITY DISORDER IS.

7 Q WHAT'S THE DATE OF THAT DIAGNOSIS?

8 A 12/11/2000. THAT WOULD BE FIVE DAYS AFTER THE ALLEGED
9 EVENTS.

10 Q THAT WOULD HAVE BEEN FIVE DAYS AFTER, YEAH, WHEN HE
11 ARRIVED AT THE JAIL?

12 A THAT'S CORRECT.

13 Q ALL RIGHT. WERE THERE ANY OTHER ITEMS OF SIGNIFICANCE
14 THAT YOU FOUND IN THE DETENTION CENTER RECORDS?

15 A WE ALSO FOUND SOME OF THEIR -- EVALUATIONS BY OTHER
16 PEOPLE, OTHER PROFESSIONALS, DATED 12/10/2000 AND 12/11/2000,
17 THAT ALSO INDICATED THERE WAS NO EVIDENCE OF EITHER A MOOD
18 DISORDER OR ANY SYMPTOMS INDICATIVE OF A MOOD DISORDER OR
19 OTHER PSYCHOTIC DISORDER AT THE TIME.

20 Q ANYTHING FURTHER?

21 A THERE WAS ALSO A SCREENING HISTORY, AND I BELIEVE THIS
22 WAS INPUT INTO A COMPUTER BY ONE OF THEIR STAFF, AND IT ALSO
23 HAS INFORMATION THAT INDICATES HE WAS NOT REPORTING ANY SUCH
24 SYMPTOMS AT THAT TIME.

25 Q THIS WAS INFORMATION THAT THEY ASKED HIM?

1 A THAT'S CORRECT.

2 Q AND HE DENIED THE PRESENCE OF ANY OF THOSE SYMPTOMS?

3 A ABSOLUTELY.

4 Q DID YOU ALSO HAVE THE OCCASION TO OBSERVE ANY RECORDS IN
5 REGARD TO THE DETENTION CENTER THAT FURTHER CONFIRMED YOUR
6 CONCLUSION THAT PARANOIA WAS NOT A PART OF THIS---

7 A THE OTHER ELEMENT OF INFORMATION WE WERE LOOKING FOR WAS
8 BEHAVIORAL DATA, MEANING WHAT PEOPLE THAT OBSERVED HIM
9 THOUGHT AND WHAT DID THEY SEE AND WHAT DID THEY DOCUMENT. TO
10 THAT EFFECT, WE REVIEWED THE ISOLATION CELL OBSERVATION
11 RECORDS THAT THE JAIL MAINTAINS, AND WE HAD THE OPPORTUNITY
12 TO SPEAK WITH SERGEANT KENNETH SMITH FROM THE GREENVILLE
13 COUNTY DETENTION CENTER APPROXIMATELY 12:30 TODAY.

14 THE INFORMATION OBTAINED FROM THESE SOURCES ALSO
15 INDICATE THAT THERE WAS AT NO TIME ANY ABNORMAL BEHAVIOR
16 DEMONSTRATED BY MR. WOOD. SPECIFICALLY, WE ASKED FOR
17 INFORMATION THAT WOULD INDICATE THINGS LIKE HALLUCINATORY
18 BEHAVIOR, FEARFULNESS, PARANOIA, OTHER MOOD SYMPTOMS SUCH AS
19 DEPRESSION, ANXIETY, WHAT THE DEFENSE EXPERT HAS SAID WAS
20 MANIA, WHICH WOULD BE CHARACTERIZED BY UNCHARACTERISTIC
21 CHEERFULNESS OR IRRITABILITY, AND WE DID NOT FIND ANY SUCH
22 INFORMATION. WE ALSO DID NOT GET INFORMATION INDICATIVE OF
23 THINGS LIKE PRESSURED SPEECH. AND MOST SIGNIFICANTLY, WE DID
24 NOT FIND ANY EVIDENCE TO SUPPORT THAT HE HAD ANY PATTERN OF
25 SLEEP THAT WAS DIFFERENT FROM MOST OTHER INMATES IN HIS

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1 SITUATION. AND HE WAS NOT ON ANY MENTAL HEALTH PLAN.

2 Q THE RECORDS THAT YOU ARE TALKING ABOUT, THESE 24-HOUR
3 OBSERVATION RECORDS?

4 A THAT'S CORRECT.

5 Q TELL US HOW THEY ARE COMPILED AND WHAT THE INFORMATION
6 ON THEM IS.

7 A MY UNDERSTANDING FROM---

8 MR. BANNISTER: OBJECTION, YOUR HONOR. UNLESS HE HAS
9 KNOWLEDGE OF HIS OWN ACCOUNT HOW THOSE WERE FILED, THEN I
10 WOULD OBJECT TO THAT QUESTION.

11 SOLICITOR ARIAIL: I'LL REPHRASE IT.

12 Q BASED ON YOUR REVIEW OF THE DOCUMENT -- THE DOCUMENTS,
13 WHAT DO THEY REFLECT IS THE MANNER IN WHICH THEY ARE
14 COMPILED?

15 MR. BANNISTER: JUDGE, I OBJECT. PURE SPECULATION.

16 THE COURT: OVERRULED. AND I WILL SEE WHAT THE
17 RESPONSE IS AS TO FOUNDATION. BUT IT'S OFFERED AS A BASIS
18 FOR HIS OPINION---

19 SOLICITOR ARIAIL: YES, SIR.

20 THE COURT: ---IN SUPPORTING HIS DIAGNOSIS OR OPINION?

21 SOLICITOR ARIAIL: CONFIRMING.

22 THE COURT: OKAY. IF -- AND JUST AS WE DID EARLIER
23 WITH AN EXPERT, IF THE INDIVIDUAL RELIES ON SUCH INFORMATION
24 AND IF SUCH INFORMATION IS OF THE TYPE TYPICALLY RELIED ON BY
25 THOSE IN THE PROFESSION IN RENDERING OPINIONS. SO THAT

1 FOUNDATION MUST BE ESTABLISHED.

2 Q IS THIS TYPE -- WERE YOU AWARE THAT THIS TYPE OF
3 INFORMATION EXISTED?

4 A YES, SIR. WE---

5 Q JUST YES. THAT'S GOOD.

6 NOW, AS TO THE FACT THAT IT EXISTED, DID YOU REVIEW IT
7 -- DID YOU HAVE CONVERSATIONS WITH SOMEONE AT THE DETENTION
8 CENTER ABOUT IT PREVIOUS TO TODAY?

9 A YES, SIR. WE HAVE.

10 Q DID YOU ALSO REVIEW THE DOCUMENTATION OF THOSE
11 OBSERVATIONS AFTER THE LUNCH BREAK OR DURING THE LUNCH BREAK?

12 A YES, SIR, I DID.

13 Q AND IS THAT TYPE OF INFORMATION IMPORTANT AND NORMALLY
14 RELIED UPON IN EVALUATING THE MENTAL CONDITION OF AN
15 INDIVIDUAL?

16 A YES, SIR, IT IS.

17 Q AND WHY IS IT SO GOOD?

18 A IT IS BECAUSE THERE IS AN ONGOING HOUR-BY-HOUR
19 OBSERVATION OF THE PERSON IN QUESTION. AND ESPECIALLY IF YOU
20 CAN GET THIS DATA PURPORTING TO BE FOR A PROLONGED PERIOD OF
21 TIME, WE GET A SENSE OF HOW THE PERSON WAS FUNCTIONING ON
22 VARIOUS LEVELS DURING THAT PERIOD OF TIME. AND THAT WOULD BE
23 ESSENTIAL TO SUPPORT OUR INITIAL DIAGNOSIS THAT HE DID NOT
24 SUFFER FROM ANY OTHER MENTAL DISORDER OR A MOOD DISORDER.

25 Q WHAT PERIOD OF TIME DID THESE RECORDS COVER?

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1 A I BELIEVE THEY COVERED FIRST TWO TO TWO AND A HALF
2 MONTHS OF MR. WOOD'S INCARCERATION AT THE DETENTION CENTER,
3 AND AGAIN PROBABLY THE LAST TWO WEEKS.

4 Q AND ARE THEY STANDARDIZED FORMS THAT ARE COMPLETED?

5 A YES, THEY ARE.

6 Q THEY HAVE CERTAIN REQUESTED INFORMATION ON THEM?

7 A YES, THEY HAVE.

8 Q AND WHO FILLS THEM OUT?

9 A ACCORDING TO SERGEANT SMITH, IT'S THE PERSON THAT'S
10 OBSERVING THE INMATE DURING THAT SHIFT?

11 Q AND THAT WOULD BE A GUARD?

12 A YES.

13 Q OR SOME PERSON AT THE DETENTION CENTER?

14 A THAT IS CORRECT.

15 Q BASED ON THAT TWO AND A HALF MONTH OBSERVATION PERIOD
16 DID YOU SEE ANY EVIDENCE TO SUPPORT A DIAGNOSIS OF PARANOIA?

17 A NOT AT ALL. IN FACT, SERGEANT SMITH TOLD US THAT MR.
18 WOOD AND HE HAD A CONVERSATION VERY EARLY DURING HIS
19 INCARCERATION WHEN MR. WOOD TOLD SERGEANT SMITH THAT HE
20 WASN'T SCARED OF HIM.

21 Q ALL RIGHT. NOW, WHY IS THAT SIGNIFICANT, THIS LONG
22 PERIOD OF TIME, REGARDING PARANOIA AND YOUR PREVIOUS
23 TESTIMONY ABOUT IT BEING PERVASIVE?

24 A WELL, THERE ARE SEVERAL REASONS. FIRST OF ALL, MR. WOOD
25 WAS, TO MY KNOWLEDGE, NOT ON ANY TREATMENT DURING THIS TIME.

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1 Q NO MEDICATION?

2 A NO MEDICATION. THAT IS CORRECT.

3 SECONDLY, IF THERE HAD BEEN A PREEXISTING CONDITION
4 PRIOR TO HIS INCARCERATION IT SHOULD HAVE BEEN MANIFEST
5 DURING THE TIME OF INCARCERATION BECAUSE OF THE PERVASIVENESS
6 OF THE CONDITION.

7 AND THREE, SPECIFICALLY BECAUSE MR. WOOD HAD REPORTED TO
8 US THIS FEAR OF POLICE OFFICERS OR LAW ENFORCEMENT OFFICERS,
9 IT WAS ESSENTIAL FOR US TO TRY TO GET THAT INFORMATION AS
10 WELL.

11 Q AND WAS THERE ANY EVIDENCE OF THAT EITHER IN YOUR
12 CONVERSATION WITH DETENTION OFFICER SMITH OR THE OBSERVATION
13 NOTES?

14 A NO, SIR. THERE WAS NOT.

15 Q LET'S GO -- I WANT TO ASK ONE QUESTION -- IN YOUR REPORT
16 YOU USE THE WORD OR PHRASE "OVERREPORTED"?

17 A THAT'S CORRECT.

18 Q IS THAT A CONCLUSION THAT YOU REACHED IN THIS CASE?

19 A WELL, IT IS A PHRASE THAT WE OFTEN USE TO DESCRIBE
20 INDIVIDUALS THAT ARE REPORTING SYMPTOMS THAT ARE CLINICALLY
21 ABSENT, IN OTHER WORDS, INDIVIDUALS THAT ARE FAKING.

22 Q INDIVIDUALS THAT ARE WHAT?

23 A THAT ARE FAKING.

24 Q AND DID YOU MAKE ANY OBJECTIVE OR CONDUCT ANY OBJECTIVE
25 TESTING TO DETERMINE IF OVERREPORTING EXISTED IN REGARD TO

1 MR. WOOD AND HIS SYMPTOMS?

2 A WELL, WE HAD THE SUSPICION OF POSSIBLE FAKING OF
3 SYMPTOMS, OR WHAT WE TERM MALINGERING, VERY EARLY ON DURING
4 THE SECOND INTERVIEW BECAUSE OF SEVERAL INCONSISTENCIES
5 BETWEEN MR. WOOD'S STATEMENTS TO US THE FIRST TIME PERTAINING
6 TO SYMPTOMS AND ON THE SECOND OCCASION. THAT INTERVIEW WAS
7 THEREFORE STRUCTURED IN A WAY THAT MR. WOOD WOULD BE UNABLE
8 TO DERIVE CLUES FROM OUR QUESTIONS AS TO HOW TO FASHION HIS
9 ANSWERS, WHICH IS A STANDARD WAY OF ASSESSMENT WHENEVER THERE
10 IS A PERSON THAT IS SUSPECTED OF MALINGERING.

11 Q AND DID YOU GET INCONSISTENT ANSWERS FROM THE FIRST
12 INTERVIEW TO THE SECOND?

13 A YES, SIR, WE DID.

14 Q AND IN REVIEWING DR. SCHWARTZ-WATTS' NOTES OF HER
15 INTERVIEWS WAS IT -- THE INFORMATION YOU GOT CONSISTENT OR
16 INCONSISTENT WITH THE INFORMATION GIVEN TO HER BY MR. WOOD?

17 A IT WAS INCONSISTENT THERE ALSO.

18 Q INCONSISTENT REPORTING AT ALL THREE?

19 A THAT'S CORRECT. AND AS A MEANS TO CONFIRM OUR
20 IMPRESSION THAT HE WAS POSSIBLY MALINGERING, WE REQUESTED
21 PSYCHOLOGICAL TESTING, BOTH TO ADDRESS THE ISSUE OF POSSIBLE
22 MEMORY DEFICITS THAT HE HAD REPORTED TO US AS WELL AS TO RULE
23 OUT THE PRESENCE OF ANY KIND OF MENTAL DISORDER AND TO ASSESS
24 FOR THE PRESENCE OF MALINGERING. THAT WAS DONE BY
25 PSYCHOLOGICAL TESTING, WHICH DR. TEZZA CONDUCTED.

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1 Q AND THAT REPORT WAS FORWARDED TO YOU?

2 A THAT IS CORRECT.

3 Q AND DID IT CONFIRM OR ELIMINATE YOUR SUSPICIONS OF
4 OVERREPORTING OR MALINGERING?

5 A I CONFIRMED OUR IMPRESSION ON ALL COUNTS.

6 SOLICITOR ARIAIL: THANK YOU. ANSWER ANY QUESTIONS
7 THAT DEFENSE COUNSEL MAY HAVE.

8 MR. BANNISTER: JUDGE, I'M GOING TO NEED A MOMENT.

9 THE COURT: SURE.

10 MR. BANNISTER: I'M CONFUSED BY WHAT I CAN AND CANNOT
11 DO, AND I'VE GOT TO TALK TO THE BOSS.

12 THE COURT: I THOUGHT YOU -- ARE YOU DOING THE
13 EXAMINATION? HE JUST DOES THE OBJECTIONS?

14 (LAUGHTER)

15 THE COURT: LADIES AND GENTLEMEN, LET'S TAKE A BRIEF
16 BREAK. WE'LL GET YOU BACK OUT HERE AS QUICKLY AS WE CAN.
17 PLEASE DO NOT DISCUSS THE CASE.

18 (JURY EXITS COURTROOM AT 2:02 P.M.)

19 THE COURT: THE JURY HAS BEEN EXCUSED. MR. BANNISTER,
20 ARE YOU DOING THE -- SERIOUSLY, ARE YOU DOING THE
21 EXAMINATION?

22 MR. BANNISTER: I THINK SO.

23 THE COURT: OKAY. I JUST WAS OPERATING WITH WHOEVER
24 STARTS OBJECTING---

25 MR. MAULDIN: YES, SIR.

MATTERS AND MOTIONS

1 THE COURT: ---USUALLY HAS THE WITNESS. BUT THAT'S
2 FINE. WE'LL---

3 MR. MAULDIN: THAT IS MY FAULT. I JUST COULDN'T SIT
4 STILL WHEN IT COMES TO THE MATTERS THAT CAME UP.

5 THE COURT: OKAY.

6 MR. MAULDIN: AND IT MAY VERY WELL BE THAT I WILL
7 CONDUCT THE EXAMINATION.

8 THE COURT: NO, I---

9 MR. MAULDIN: LET JIM AND I TALK FOR A MOMENT.

10 THE COURT: I'M GOING TO -- FORGET ABOUT THE RULES. HE
11 CAN DO IT.

12 MR. MAULDIN: YES, SIR.

13 THE COURT: WE'LL BE IN RECESS. LET'S TRY FIVE MINUTES
14 AND SEE IF THEY ARE READY TO GO. I'M GOING TO GIVE THEM
15 ADDITIONAL TIME. FOLKS, FEEL FREE TO TAKE A BREAK. YOU
16 DON'T HAVE TO SIT THERE.

17 (A RECESS WAS TAKEN FROM 1:55 TO 2:02 P.M.)

18 MR. MAULDIN: WE ARE LOOKING FOR A RECORD.

19 THE COURT: TAKE YOUR TIME. WE'LL JUST BE AT EASE
20 UNTIL Y'ALL ARE READY. (PAUSE)

21 MR. MAULDIN: PERHAPS, YOUR HONOR, IT MIGHT -- PERHAPS
22 IT MIGHT HELP, I WILL TELL THIS WITNESS, HE MIGHT BE ABLE TO
23 FIND THIS ENTRY QUICKER THAN US JUST SCRAMBLING THROUGH THESE
24 PAPERS, JUST IN TERMS OF SPEEDING THE PROCESS UP. (PAUSE)

25 THE COURT: CAN YOU TELL ME WHAT AREA IT IS AND SEE IF

MATTERS AND MOTIONS

1 HE HAS IT?

2 MR. MAULDIN: I WILL JUST SAY THAT THERE WERE ENTRIES
3 IN HIS NOTES REGARDING CONVERSATIONS WITH DETENTION CENTER
4 KINSLER AND DETENTION CENTER MELTON. THERE WERE TWO
5 HANDWRITTEN NOTES, AND THAT -- IF HE---

6 THE COURT: THAT'S WHAT YOU'RE LOOKING FOR?

7 MR. MAULDIN: YES, SIR. IF HE CAN ACTUALLY LOOK IN HIS
8 NOTES AND IDENTIFY THEM---

9 THE COURT: OKAY. DO YOU HAVE YOUR FILE WITH YOU?

10 MR. MAULDIN: ---I CAN USE HIS NOTES INSTEAD OF...

11 WITNESS: ACTUALLY, I DIDN'T HAVE ANY NOTES PERTAINING
12 TO THOSE PEOPLE IN MY NOTES BECAUSE I DID NOT SPEAK TO EITHER
13 OF THOSE PEOPLE. THAT WAS DR. TEZZA'S NOTES.

14 MR. MAULDIN: THOSE WERE ACTUALLY DOCTOR...

15 WITNESS: TEZZA'S. THAT'S RIGHT.

16 MR. MAULDIN: (PAUSE) I FOUND ONE OF THEM, YOUR HONOR.

17 THE COURT: OKAY.

18 MR. MAULDIN: (PAUSE) I THINK I'VE GOT IT, JUDGE.

19 (PAUSE) I'M READY, YOUR HONOR.

20 THE COURT: ALL RIGHT. BRING THE JURY.

21 MR. MAULDIN: (INDICATING)

22 THE COURT: EITHER ONE. WHATEVER Y'ALL WANT TO DO.

23 MS. HERVEY: JUST AS LONG AS IT'S NOT BOTH OF THEM.

24 (JURY REENTERS COURTROOM AT 2:07 P.M.)

25 THE COURT: LADIES AND GENTLEMEN, WE'RE READY TO

MATTERS AND MOTIONS

1 PROCEED.

2 DEFENSE COUNSEL MAY PROCEED.

3 MR. MAULDIN: THANK YOU, JUDGE.

4 CROSS EXAMINATION BY MR. MAULDIN:

5 Q DR. NARAYAN, I DON'T HAVE MANY QUESTIONS. I JUST HAVE A
6 FEW SPECIFIC ONES, PLEASE, SIR.

7 THE INVOLVEMENT OF YOUR EMPLOYER, THAT IS, THE STATE
8 HOSPITAL, IF I UNDERSTAND CORRECTLY, WAS AS A RESULT OF THREE
9 SPECIFIC QUESTIONS BEING REFERRED TO YOU FOR SPECIFIC
10 ANSWERS, IS THAT RIGHT, UNDER AN ORDER?

11 A FROM THE COURT. I BELIEVE THAT IS CORRECT.

12 Q RIGHT. IN OTHER WORDS, THE COURT ISSUED AN ORDER AND
13 HAD THREE QUESTIONS AND YOU HAVE TESTIFIED TODAY, THIS
14 AFTERNOON, THAT YOU CAME TO ANSWERS ON EACH ONE OF THOSE
15 QUESTIONS?

16 A THAT IS CORRECT.

17 Q THAT JOHN WAS COMPETENT TO STAND TRIAL?

18 A YES.

19 Q COMPETENT TO GO TO TRIAL AT ALL?

20 A THAT'S CORRECT.

21 Q THAT HE KNEW THE DIFFERENCE BETWEEN RIGHT AND WRONG AT
22 THE TIME OF THE INCIDENT?

23 A THAT'S CORRECT.

24 Q AND THE THIRD THING THAT YOU WERE CHARGED WITH DOING BY
25 COURT ORDER WAS TO DETERMINE WHETHER HE HAD THE CAPACITY TO

1 CONFORM HIS CONDUCT TO THE REQUIREMENT OF THE LAW?

2 A THAT'S CORRECT.

3 Q I MEAN, THAT'S HOW YOU GOT HERE?

4 A FOR THE MOST PART, YES, SIR.

5 Q ALL RIGHT. AND WHAT I THINK THE ARGUMENT WE GOT GOING
6 ON HERE, I MEAN, YOU HAVE DETERMINED, ACCORDING TO YOUR
7 TESTIMONY TO THE PROSECUTOR, YOU HAVE RECOGNIZED A MENTAL
8 ILLNESS?

9 A THAT'S CORRECT.

10 Q AND WE'VE JUST GOT A DIFFERENT OPINION OF WHICH ONE IT
11 IS?

12 A I DON'T THINK I HAVE A DIFFERENCE OF OPINION. YOU DO,
13 YES, SIR.

14 Q ALL RIGHT. YOU HAVE YOUR OPINION?

15 A THAT'S CORRECT.

16 Q THESE OTHER WITNESSES AND EXPERTS GOT THEIR OPINIONS?

17 A THAT'S RIGHT.

18 Q BUT WE -- WE'VE ALL GOT OPINIONS?

19 A ABSOLUTELY.

20 Q ALL RIGHT. BUT ALL OF US AGREE ON ONE THING, HE'S GOT A
21 MENTAL ILLNESS?

22 A HE'S GOT A MENTAL DISORDER.

23 Q MENTAL DISORDER.

24 A CORRECT.

25 Q ALL RIGHT. NOW---

1 A NOW, CAN I EXPAND ON THAT?

2 Q HE'S GOT -- I THINK THAT'S RESPONSIVE TO MY QUESTION. I
3 DON'T KNOW WHETHER YOU CAN EXPAND ON THAT OR NOT.

4 A YEAH. BUT IN THE INTEREST OF ETHICS I AM BOUND TO
5 EXPAND. THE DSM-IV HAS SOME CAUTIONARY STATEMENTS ABOUT THE
6 USE OF ALL OF THE CONTENTS OF THE DSM-IV FOR LEGAL PURPOSES.
7 SO THERE ARE CERTAIN DISORDERS THAT CAN BE DIAGNOSED
8 CLINICALLY THAT MAY OR MAY NOT BE RELEVANT IN A LEGAL
9 SITUATION, AND I AM BOUND TO EXPLAIN THAT.

10 Q AND I WON'T ASK YOU ABOUT THAT, BECAUSE I GUARANTEE YOU
11 I DON'T KNOW ABOUT IT.

12 A ALL RIGHT.

13 Q I'M GOING TO GO BACK DIRECTLY AS TO YOUR INVOLVEMENT AND
14 ASK YOU SPECIFIC QUESTIONS. YOU SAID YOU LOOKED AT JAIL
15 RECORDS?

16 A THAT'S CORRECT.

17 Q AND YOU SAID SOME JAIL DOCTOR HAD MADE NOTES REGARDING
18 HIS PSYCHOLOGICAL CONDITION?

19 A IT'S NOT SOME JAIL DOCTOR. I BELIEVE THE DOCTOR IN
20 QUESTION IS A PSYCHIATRIST. YES, SIR.

21 Q WELL, SOME JAIL PSYCHIATRIST?

22 A THAT'S CORRECT.

23 Q AND THAT NOTE WAS ENTERED WHAT DATE?

24 A ON THE -- I THINK IT WAS THE 11TH OF DECEMBER.

25 Q HOW ABOUT THE 10TH?

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1 A LET ME LOOK BACK. (PAUSE) IT WAS THE 11TH, SIR.

2 Q WAS IT THE 11TH?

3 A YES, IT WAS.

4 Q AND THAT ACCORDING TO MY RECOLLECTION WOULD BE THE DAY
5 AFTER MR. WOOD GOT THERE?

6 A I DON'T KNOW WHEN MR. WOOD GOT THERE.

7 Q YOU DON'T KNOW HOW LONG HE HAD BEEN THERE WHEN THIS JAIL
8 PSYCHIATRIST MADE THE NOTES YOU HAVE NOW REFERRED TO?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. DID IT SAY ANYTHING IN THERE ABOUT THE -- IN
11 THAT DOCTOR'S NOTE THAT YOU'RE REFERRING TO THAT HE HAD JUST
12 BEEN BROUGHT FROM GREENVILLE MEMORIAL HOSPITAL?

13 A (REVIEWS FILE) NO, SIR, I CAN'T FIND THAT STATEMENT.

14 Q ALL RIGHT. DID IT SAY ANYTHING ABOUT HIM BEING SHOT IN
15 THE HEAD?

16 A NO, IT DOESN'T SAY THAT EITHER.

17 Q ALL RIGHT. SO, NOW, THAT'S THE JAIL PSYCHIATRIST'S
18 RECORDS?

19 A THAT'S CORRECT.

20 Q THE -- I WANT TO FOLLOW UP ON THE TELEPHONE CONVERSATION
21 YOU HAD WITH AN EMPLOYEE AT THE JAIL NAMED MR. SMITH. I
22 THINK YOU SAID YOU HAD A TELEPHONE CONVERSATION WITH A -- AND
23 I CAN'T REMEMBER---

24 A NO. SORRY. IT WASN'T A TELEPHONE CONVERSATION. IT WAS
25 A FACE-TO-FACE CONVERSATION.

1 Q ALL RIGHT. SO YOU HAD A FACE-TO-FACE CONVERSATION WITH
2 SOMEBODY NAMED SMITH?

3 A THAT'S CORRECT.

4 Q ALL RIGHT. AND THIS PERSON IS---

5 A HE IS A SERGEANT.

6 Q HUH?

7 A HE'S A SERGEANT.

8 Q SERGEANT SMITH?

9 A THAT'S RIGHT.

10 Q ALL RIGHT. AND YOU HAD THAT CONVERSATION AT 12:30
11 TODAY?

12 A THAT'S CORRECT.

13 Q IS THAT RIGHT?

14 A YES, SIR.

15 Q SO WHATEVER TODAY IS -- I'VE LOST TRACK OF THE CALENDAR
16 IN THIS TRIAL. BUT WHATEVER TODAY IS, IS WHEN YOU HAD THE
17 CONVERSATION WITH A PERSON FROM THE JAIL?

18 A THAT IS CORRECT.

19 Q AND THAT CONVERSATION, ACCORDING TO YOUR TESTIMONY, WAS
20 THAT -- WELL, I'M LOOKING AT THE WRONG PAGE. -- NO ABNORMAL
21 BEHAVIOR?

22 A THAT'S CORRECT.

23 Q NOW?

24 A NO, SIR. IT WAS WHEN HE OBSERVED MR. WOOD. THAT WAS
25 THE FIRST TWO AND A HALF MONTHS OF HIS STAY AT THE DETENTION

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1 CENTER.

2 Q ALL RIGHT. YOU HAVE TESTIFIED THAT THE MATERIAL THAT
3 YOU -- YOU SAID THAT YOU ISSUED YOUR OPINION ON DECEMBER THE
4 20TH?

5 A THAT'S CORRECT.

6 Q AND AT THAT TIME---

7 A UH-HUH (AFFIRMATIVE).

8 Q ---AT THAT TIME YOU HAD THE FOLLOWING INFORMATION UPON
9 WHICH TO FORM THE CONCLUSIONS YOU HAVE TESTIFIED HERE TODAY
10 -- AND LET ME GO THROUGH WHAT I WROTE---

11 A RIGHT.

12 Q ---AND YOU TELL ME IF I'VE LEFT SOMETHING OFF. YOU HAD
13 JOHN WOOD -- TWO MEETINGS WITH JOHN WOOD?

14 A THAT'S CORRECT.

15 Q AND IN ADDITION TO THAT YOU HAD THE IN-HOUSE MATERIAL,
16 THE NEUROLOGY REPORT, THE PSYCHOLOGIST'S INFORMATION, THE
17 ASSESSMENT OR SOMETHING THAT HAD BEEN GENERATED BY YOUR
18 PLACE?

19 A YES, SIR, THAT'S CORRECT.

20 Q ALL RIGHT. AND YOU HAD THE INFORMATION PROVIDED TO YOU
21 BY THE SOLICITOR'S OFFICE?

22 A THAT IS CORRECT.

23 Q AND THAT INCLUDED THE WITNESS' STATEMENTS OF THE
24 OFFENSE, THE SUPPLEMENTAL POLICE REPORTS, TWO CASE SUMMARIES,
25 THE S.L.E.D. REPORTS. DID I MISS ANY?

1 A WITNESS STATEMENTS.

2 Q PARDON ME?

3 A WITNESS STATEMENTS.

4 Q YEAH, WITNESS STATEMENTS. WE ALREADY SAID THAT. AND IS
5 THAT WHAT YOU HAD THAT YOU USED TO FORM YOUR IMPRESSIONS THAT
6 WERE DATED DECEMBER THE 20TH?

7 A YES. I BELIEVE THE OTHER ASSESSMENT YOU TALKED ABOUT
8 WAS THE SOCIAL ASSESSMENT.

9 Q RIGHT. RIGHT. AND THAT'S THE IN-HOUSE STUFF?

10 A YES, SIR. THE SOCIAL WORKER SPOKE TO PEOPLE AT THE
11 DETENTION CENTER BEFORE HE PREPARED HIS ASSESSMENT.

12 Q AND I'M GOING TO ASK YOU ABOUT THAT, DR. NARAYAN.

13 A OKAY.

14 Q I'M GOING TO ASK YOU -- AND I'LL COME UP AND SHOW IT TO
15 YOU SO YOU CAN FIND IT IN YOUR STUFF. I'LL SHOW YOU THIS,
16 AND THE TOP IS DATED FEBRUARY THE 1ST OF '02?

17 A THAT'S CORRECT.

18 Q AND IT'S HANDWRITTEN NOTES?

19 A UH-HUH (AFFIRMATIVE).

20 Q IT HAS UP IN THE UPPER LEFT-HAND CORNER "CAPTAIN
21 MELTON"?

22 A UH-HUH (AFFIRMATIVE).

23 Q WOULD YOU -- DO YOU HAVE---

24 A NO, SIR, I DON'T HAVE THAT.

25 Q OH, YOU DON'T HAVE THAT?

- 1 A NO.
- 2 Q BUT THIS IS PART OF THE MATERIAL THAT YOU WOULD HAVE
3 USED TO---
- 4 A NO, IT WAS NOT BECAUSE THIS WAS LAST WEEK.
- 5 Q I MEAN, HAVE YOU READ THIS MATERIAL?
- 6 A I HAVE DISCUSSED IT WITH THE PERSON THAT WROTE IT, WHICH
7 WAS DR. TEZZA.
- 8 Q ALL RIGHT. YOU---
- 9 A BUT THE SOCIAL WORK ASSESSMENT I'M TALKING ABOUT IS
10 DATED 9/29 -- 9/25/2001.
- 11 Q OKAY. WHAT I'M ASKING YOU IS WHETHER OR NOT THERE WAS
12 CONVERSATION WITH A CAPTAIN MELTON AT THE JAIL REGARDING JOHN
13 WOOD'S CONFORMITY TO THE JAIL RULES?
- 14 A I BELIEVE DR. TEZZA TALKED TO HIM, YES, SIR.
- 15 Q AND THAT STATEMENT BY CAPTAIN MELTON IS REPORTED TO BE,
16 "HE IS A WELL-CONFORMED INMATE, ABIDES BY ALL THE RULES AND
17 PROCEDURES, AND IS QUIET"?
- 18 A THAT IS CORRECT.
- 19 Q AND THERE WAS AN ADDITIONAL NOTE REGARDING A
20 CONVERSATION WITH A SERGEANT TED KINSLER. NOW, DR. NARAYAN,
21 TED KINSLER IS THE GUY THAT BROUGHT THE VIDEOS IN HERE.
- 22 A THAT IS CORRECT.
- 23 Q ALL RIGHT. AND NOT -- AND TED KINSLER REPORTS REGARDING
24 JOHN WOOD AT THE JAIL, "MANNER GOOD. HAVE NEVER HAD A
25 PROBLEM. ALWAYS COOPERATIVE. DON'T WANT TO SAY HE'S A MODEL

1 INMATE, BUT HE IS. NOT AN OUNCE OF TROUBLE WITH HIM"?

2 A I BELIEVE SERGEANT KINSLER DID SAY THAT TO DR. TEZZA,
3 YES.

4 Q ALL RIGHT. SO THOSE ARE ACCURATE REFLECTIONS OF WHAT
5 WAS REPORTED BY THE JAIL TO THE STATE HOSPITAL?

6 A YES, SIR.

7 Q ALL RIGHT. HANG ON. I'VE GOT PEOPLE PASSING ME NOTES
8 NOW.

9 A THAT'S QUITE ALL RIGHT. TAKE YOUR TIME.

10 Q (PAUSE) I'VE GOT JUST ONE FINAL QUESTION, DR. NARAYAN.
11 NOW, WE CLEARLY HAVE A DISAGREEMENT AS TO WHAT THE MENTAL
12 ILLNESS IS?

13 A YES, SIR.

14 Q NOW, AND YOU HAVE CALLED IT ANTISOCIAL PERSONALITY
15 DISORDER IN THIS DSM-IV?

16 A THAT IS CORRECT.

17 Q NOW, ONE OF THE ABSOLUTE REQUIREMENTS -- AND THIS IS ON
18 PAGE 706.

19 A THANK YOU, SIR.

20 Q ONE OF THE ABSOLUTE NECESSITIES, IF I'M UNDERSTANDING
21 THIS BUSINESS RIGHT---

22 A YES, SIR.

23 Q ONE OF THE THINGS YOU HAVE TO HAVE IS NUMBER C IN YOUR
24 LITTLE CRITERIA THING?

25 A YES, SIR.

1 Q IT SAYS "THAT IS EVIDENCE OF CONDUCT DISORDER WITH ONSET
2 BEFORE AGE 15 YEARS"?

3 A THAT'S CORRECT.

4 Q ALL RIGHT. NOW, HERE IS MY QUESTION. THAT'S WHAT THIS
5 BOOK SAYS YOU HAVE TO HAVE---

6 A ABSOLUTELY.

7 Q HUH?

8 A ABSOLUTELY. IT DOES SAY THAT.

9 Q AND AT THE TIME YOU WROTE THE REPORT FORMING THAT
10 OPINION YOU HAD JOHN WOOD'S TWO MEETINGS WITH YOU?

11 A UH-HUH (AFFIRMATIVE).

12 Q AND THE SOLICITOR'S FILE?

13 A UH---

14 Q AT THE TIME YOU WROTE THE REPORT. WE'RE ONLY GOING DATE
15 OF REPORT EARLIER.

16 A RIGHT. I DON'T KNOW WHAT THE SOLICITOR HAS IN HIS FILE.
17 BUT I---

18 Q I MEAN---

19 A ---BUT THE DOCUMENTS THAT YOU READ OUT BEFORE, YES, SIR.

20 Q RIGHT. WHEN I SAY THE SOLICITOR'S MATERIAL, I'M TALKING
21 ABOUT THIS THAT WE TALKED ABOUT A FEW MINUTES AGO.

22 A THAT'S CORRECT.

23 Q ALL RIGHT. THAT'S WHAT YOU HAD IN YOUR FILE?

24 A UH-HUH (AFFIRMATIVE).

25 Q YOU MET WITH THE ACCUSED, JOHN WOOD, AND YOU SAID THAT

1 IT WAS ANTISOCIAL PERSONALITY DISORDER?

2 A I DO.

3 Q AND I JUST WANT TO ASK YOU, IS THERE INDICATION IN THAT
4 REGARDING A CONDUCT DISORDER PRIOR TO AGE 15 YEARS?

5 A YES, SIR, THERE IS.

6 Q THERE IS?

7 A YES. THERE IS EVIDENCE INDICATIVE OF SHOPLIFTING IN
8 CHILDHOOD, DESTROYING PROPERTY, WHICH MR. WOOD REPORTED TO
9 US.

10 Q SO YOU ARE SAYING THIS IS WHAT MR. WOOD TOLD YOU?

11 A ABSOLUTELY.

12 Q AND THIS IS THE SAME MR. WOOD THAT -- I MEAN, ONE MINUTE
13 HE IS UNRELIABLE, THE OTHER MINUTES HE'S RELIABLE, RIGHT?

14 A NOT NECESSARILY. WE ARE TALKING ABOUT HISTORY WHICH WAS
15 CONFIRMED BASED ON THE TESTIMONY WE HAVE HEARD TODAY AS WELL
16 AS YESTERDAY. AND WE HEARD THE SOCIAL WORKER TALK ABOUT MR.
17 WOOD'S PREVIOUS HISTORY. AND THEREFORE WE REALIZE THAT A LOT
18 OF HISTORY THAT MR. WOOD GAVE US IS ACTUALLY CONSISTENT WITH
19 WHAT OTHER PEOPLE HAVE GOT FROM HIM.

20 Q DR. NARAYAN?

21 A YES, SIR.

22 Q DO YOU HEAR -- YOU SAY YOU'VE BEEN SITTING IN HERE
23 LISTENING TO THESE WITNESSES TESTIFY?

24 A THAT'S CORRECT.

25 Q DID YOU HEAR THEM TESTIFY THAT HE HAD NO JUVENILE

PRATAP NARAYAN, M.D. -- CROSS BY MR. MAULDIN

1 RECORD?

2 A THAT'S CORRECT. HE TOLD---

3 Q WELL, HOW -- FIFTEEN YEARS OF AGE OR LESS IS JUVENILE.

4 A WELL, SIR, THE EVIDENCE OF CONDUCT DISORDER DOES NOT
5 HAVE TO HAVE ADJUDICATION, LEGAL CHARGES, ARRESTS OR ANY KIND
6 OF SENTENCING OF DISPOSITION LEGALLY.

7 Q YOU HAVEN'T GOTTEN JOHN WOOD MIXED UP WITH HIS MOMMA---

8 A NO, SIR.

9 Q -----WHO SHOPLIFTED IN THE PRESENCE OF THE CHILDREN, HAVE
10 YOU?

11 A NO, SIR, I HAVE NOT.

12 MR. MAULDIN: NO FURTHER QUESTIONS.

13 THE COURT: REDIRECT?

14 SOLICITOR ARIAIL: THERE WILL BE NOTHING FURTHER.

15 THE COURT: DR. NARAYAN, THANK YOU, SIR. APPRECIATE
16 YOU BEING HERE.

17 WITNESS: THANK YOU, YOUR HONOR.

18 THE COURT: ANY OBJECTION TO THE WITNESS AND THOSE
19 ASSOCIATED THAT REMAIN TO BEING EXCUSED?

20 SOLICITOR ARIAIL: NONE FROM THE STATE. WE WOULD URGE
21 IT.

22 THE COURT: ANY OBJECTION TO THOSE WITNESSES BEING
23 EXCUSED?

24 MR. MAULDIN: WHOEVER THOSE WITNESSES ARE, NO
25 OBJECTION, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. THANK YOU ALL FOR STAYING.
2 THANK YOU DR. NARAYAN.

3 **WITNESS:** THANK YOU, YOUR HONOR. LET ME JUST TAKE A
4 MINUTE.

5 **THE COURT:** TAKE YOUR TIME, SIR.

6 (WITNESS EXCUSED AT 2:20 P.M.)

7 **SOLICITOR ARIAIL:** THAT'S THE STATE'S CASE IN REPLY.

8 **THE COURT:** LADIES AND GENTLEMEN, THAT CONCLUDES ALL OF
9 THE EVIDENCE IN THE SENTENCING PROCEEDING. THERE ARE NOW A
10 VARIETY OF LEGAL ISSUES I MUST ADDRESS WITH THE ATTORNEYS.
11 DURING THIS BREAK THE COURT SECURITY OFFICERS AND THE
12 BAILIFFS WILL DEAL WITH YOU IN TERMS OF ORDERING DINNER FOR
13 THIS EVENING. IF THE BREAK IS GOING TO TAKE MORE THAN SAY AN
14 HOUR AND A HALF, I'LL LET YOU KNOW. IF IT'S GOING TO TAKE
15 LONGER THAN THAT, WE MAY REVISIT WHAT WE DO THIS AFTERNOON.
16 BUT WE WILL TRY TO MOVE FORWARD AND GIVE IT A GOOD FAITH
17 EFFORT TO DO SO AND BE SENSITIVE TO YOUR NEEDS AS WELL.

18 DURING THIS BREAK WE WILL KEEP YOU POSTED THROUGH THOSE
19 IN CHARGE. AND PLEASE DO NOT DISCUSS THE CASE DURING THIS
20 RECESS. THANK YOU.

21 (JURY EXITS COURTROOM AT 2:22 P.M.)

22 **THE COURT:** ALL RIGHT. THE JURY HAS BEEN EXCUSED. I
23 KNOW WE'RE AT THE POINT THAT WE'RE GOING TO BEGIN FINAL
24 ARGUMENTS AND CHARGE, AND I WANT TO KNOW FOR THE RECORD IF
25 THE DEFENDANT HAS MADE A DECISION WHETHER HE WOULD LIKE TO

MATTERS AND MOTIONS

1 ARGUE TO THE JURY OR MAKE A STATEMENT TO THE JURY. HAVE
2 Y'ALL -- HAS THAT BEEN DISCUSSED?

3 MR. MAULDIN: HE -- NOT IN THE LAST -- NOT SINCE THE
4 LAST TIME HE STOOD UP, YOUR HONOR. BUT WE HAVE TALKED ABOUT
5 IT ON OCCASION.

6 THE COURT: ALL RIGHT. MR. WOOD, WHAT IS YOUR DESIRE
7 IN THAT REGARD? WOULD YOU LIKE TO MAKE A FINAL ARGUMENT TO
8 THE JURY OR DO YOU WISH TO WAIVE THAT RIGHT?

9 DEFENDANT: NO, SIR.

10 THE COURT: I'M SORRY. I COULDN'T HEAR YOU.

11 DEFENDANT: I WOULD NOT LIKE TO.

12 THE COURT: YOU WOULD NOT LIKE TO DO THAT?

13 DEFENDANT: RIGHT.

14 THE COURT: OKAY. AND DO YOU GIVE UP OR WAIVE YOUR
15 RIGHT TO MAKE THE FINAL ARGUMENT TO THE JURY?

16 DEFENDANT: YES.

17 THE COURT: HAVE YOU MADE THAT OF YOUR OWN FREE CHOICE,
18 SIR?

19 DEFENDANT: YES.

20 THE COURT: THANK YOU, SIR.

21 AND LET ME JUST DEAL WITH THE FORM OF THE VERDICT, AND
22 THEN WHAT I WOULD LIKE TO DO IS JUST GO OFF THE RECORD
23 BRIEFLY TO DISCUSS THE CHARGE. WE WILL GO BACK ON THE RECORD
24 AND DO IT IN A FORMAT THAT IS EASIER FOR THE COURT REPORTER.

25 I UNDERSTAND WHAT THE ALLEGED AGGRAVATING CIRCUMSTANCE

MATTERS AND MOTIONS

1 IS. AND IF DEFENSE COUNSEL HAS A COPY OF THE CODE, I JUST
2 WANT TO SEE IF WE'RE ON THE SAME PAGE IN TERMS OF WHAT
3 COUNSEL BELIEVES ARE THE APPROPRIATE STATUTORY MITIGATING
4 CIRCUMSTANCES.

5 MR. MAULDIN: YES, SIR.

6 THE COURT: IF YOU HAVE A COPY OF THAT STATUTE---

7 MR. MAULDIN: YES, SIR.

8 THE COURT: ---I HAVE PREPARED A VERDICT FORM THAT
9 INCLUDES ONE, TWO, AND SIX, BASED ON THE TESTIMONY THAT'S
10 BEEN PRESENTED.

11 MR. MAULDIN: ONE, TWO, SIX AND SEVEN, YOUR HONOR?
12 NUMBER SEVEN IS THE AGE OR MENTALITY OF THE DEFENDANT AT THE
13 TIME OF THE CRIME.

14 THE COURT: OKAY.

15 MR. MAULDIN: SO I HAVE ONE, TWO, SIX AND SEVEN, YOUR
16 HONOR.

17 THE COURT: AND SEVEN. OKAY. IF THE STATE HAS A
18 POSITION WITH RESPECT TO THOSE STATUTORY FACTORS, I'LL BE
19 GLAD TO HEAR FROM YOU.

20 MS. STROM: NO, SIR. NO OBJECTION.

21 THE COURT: THERE IS EVIDENCE IN THE RECORD, AND THAT'S
22 -- WOULD BE A MATTER FOR THE JURY TO WEIGH. I'LL NEED TO ADD
23 ONE FACTOR, WHICH CAN BE DONE QUICKLY.

24 I HAVE A VERDICT FORM THAT IF THE JURY IS UNABLE TO
25 UNANIMOUSLY AGREE ON THE EXISTENCE OF AN AGGRAVATING

MATTERS AND MOTIONS

1 CIRCUMSTANCE.

2 I THEN HAVE A VERDICT FORM WHERE THE JURY FINDS THE
3 PRESENCE OF THE AGGRAVATING CIRCUMSTANCE AND MUST SET IT
4 FORTH FOR EACH JUROR TO SIGN:

5 I THEN HAVE A VERDICT FORM HAVING FOUND THE AGGRAVATING
6 CIRCUMSTANCE RECOMMENDING THAT DEFENDANT BE SENTENCED TO
7 LIFE.

8 I THEN HAVE A VERDICT FORM FINDING THE AGGRAVATING
9 CIRCUMSTANCE RECOMMEND THAT THE DEFENDANT BE SENTENCED TO
10 DEATH AND A PLACE FOR ALL JURORS TO SIGN.

11 ON THE STATUTORY INSTRUCTIONS I AM GOING TO ADD THE
12 SUBSECTION THAT WAS NOT IN MY ORIGINAL DRAFT, WHICH IS
13 SUBSECTION (7) OF 16-3-20, AND I WILL BE GLAD FOR COUNSEL TO
14 REVIEW IT SO IF THERE ARE OTHER CHANGES WE CAN MAKE IT IN ONE
15 FELL SWOOP. AND I WILL HAVE MS. MORRIS JUST PUT THIS UP HERE
16 ON THE LEDGE FOR COUNSEL TO REVIEW IT.

17 WE WILL BE OFF THE RECORD AND TAKE A BREAK TO DISCUSS
18 THE CHARGE. WE WILL GO BACK ON THE RECORD. WE WILL RESOLVE
19 THE CHARGE ISSUES. AND THEN WE'LL TAKE AN EXTENDED BREAK TO
20 ASSIST COUNSEL TO FORMULATE CLOSING ARGUMENTS.

21 WE'LL BE IN RECESS. AND THOSE IN THE COURTROOM, YOU'RE
22 WELCOME TO STAY. YOU'RE WELCOME TO LEAVE. WE'RE JUST GOING
23 TO DISCUSS THIS INFORMALLY BEFORE WE GO BACK ON THE RECORD.

24 (CHARGE CONFERENCE OFF RECORD FROM 2:29 TO 2:41 P.M.)

25 THE COURT: ALL RIGHT. LET'S GO BACK ON THE RECORD.

MATTERS AND MOTIONS

1 WE'RE BACK ON THE RECORD. WE'VE BEEN DISCUSSING THE CHARGE
2 FOR SOME TIME PRIOR TO THIS CHARGE CONFERENCE. I SUMMARIZED
3 THE CHARGE. I GAVE A DRAFT TO COUNSEL A COUPLE OF DAYS AGO,
4 I BELIEVE, AND HAVE RECEIVED A RESPONSE FROM BOTH.

5 WITHOUT OBJECTION I AM GOING TO CHARGE THAT THE BURDEN
6 OF PROOF IS ON THE STATE REGARDING THE IMPOSITION OF THE
7 DEATH PENALTY AND THAT STANDARD IS BEYOND A REASONABLE DOUBT,
8 AND THAT'S CONSISTENT WITH THE INITIAL DRAFT I GAVE TO BOTH
9 SIDES.

10 MR. MAULDIN AND DEFENSE TEAM HAVE SUBMITTED NUMEROUS
11 REQUESTS, MOST OF WHICH HAVE BEEN ADOPTED AND INCORPORATED.
12 MR. MAULDIN, IN AN ABUNDANCE OF CAUTION, WANTS TO SUBMIT HIS
13 LETTER TO ME WITH THE HANDWRITTEN NOTES ON MY INITIAL DRAFT,
14 AND THAT WILL BE DONE PRIOR TO THE -- AT SOME TIME IT WILL BE
15 DONE TO SUBMIT TO THE RECORD AS A COURT'S EXHIBIT.

16 OTHER THAN THAT, I BELIEVE WE ARE IN SUBSTANTIAL
17 AGREEMENT ON WHAT THE CHARGE SHOULD BE. IS THERE ANYTHING
18 ELSE REGARDING THE CHARGE, COUNSEL, AT THIS TIME? FROM THE
19 STATE?

20 MS. STROM: NONE FROM THE STATE.

21 THE COURT: FROM DEFENDANT?

22 MR. MAULDIN: NO, YOUR HONOR. I AM ASKING MY
23 INVESTIGATOR TO DELIVER A COPY OF THE MATERIAL TO YOUR
24 OFFICE.

25 THE COURT: THAT WILL BE FINE, AND I WILL HAVE MS.

MATTERS AND MOTIONS

1 KOFFSKEY MARK IT AS A COURT'S EXHIBIT.

2 MR. MAULDIN: THANK YOU, YOUR HONOR.

3 THE COURT: WHAT I WILL DO IS I WILL REFINE -- I'LL GET
4 THE ONE ADDITIONAL MITIGATING FACTOR ADDED TO THE STATUTORY
5 INSTRUCTIONS, AND I WILL HAVE IN THE NEXT LITTLE WHILE
6 DELIVERED TO YOUR OFFICES A COMPLETE SET OF THE FORMS SO YOU
7 CAN HAVE THAT FOR YOUR CLOSING ARGUMENTS.

8 LET'S GEAR BACK UP AT QUARTER TO 4:00, AN HOUR. IS THAT
9 OKAY?

10 SOLICITOR ARIAIL: I'M READY. YOU NEED TO ASK HIM.
11 I'M READY.

12 THE COURT: IS AN HOUR?

13 MR. MAULDIN: QUARTER TO 4:00 IS FINE, YOUR HONOR.

14 THE COURT: AND CAN Y'ALL GIVE ME SOME IDEA OF HOW LONG
15 YOU ANTICIPATE YOUR ARGUMENTS TO BE?

16 SOLICITOR ARIAIL: I WOULDN'T THINK OVER 30 MINUTES.

17 MR. MAULDIN: I DON'T KNOW. MY ARGUMENT IS USUALLY --
18 I DON'T KNOW. I LOSE TRACK OF TIME, YOUR HONOR, OBVIOUSLY.
19 FORTY MINUTES, FORTY-FIVE MINUTES, SOMEWHERE IN THERE.

20 THE COURT: OKAY. ALL RIGHT. SEE YOU IN ONE HOUR,
21 PLEASE.

22 SOLICITOR ARIAIL: AND I'M ASSUMING WE'RE GOING TO
23 ARGUE, AND IF WE'RE GOING TO CHARGE, WE'RE GOING FORWARD?

24 THE COURT: WE'RE GOING TO GO FORWARD. AND I'M GOING
25 TO TELL THE JURY THEY CAN TAKE WHATEVER TIME THEY WANT. I'M

MATTERS AND MOTIONS

1 GOING TO GIVE THEM AN EFFORT THIS EVENING. AND AFTER A
2 COUPLE HOURS OF DELIBERATION, I'M GOING TO SEND A NOTE BACK
3 LETTING THEM DECIDE WHETHER THEY WANT TO PRESS FORWARD THIS
4 EVENING OR STOP AT THAT POINT AND BEGIN FRESH IN THE MORNING.

5 SOLICITOR ARIAIL: THANK YOU.

6 THE COURT: THANK YOU, SIR.

7 (A RECESS WAS TAKEN FROM 2:45 TO 3:50 P.M.)

8 THE COURT: DAWN, IF YOU WOULD, MARK THIS AS A COURT'S
9 EXHIBIT, PLEASE.

10 (DEFENDANT'S REQUESTS TO CHARGE MARKED AS COURT'S
11 EXHIBIT NUMBER 22)

12 (DEFENDANT'S REQUEST TO CHARGE FOR OPEN AND FINAL
13 INSTRUCTIONS MARKED AS COURT'S EXHIBIT NUMBER 23)

14 THE COURT: ANYTHING FROM COUNSEL BEFORE I BRING THE
15 JURY?

16 SOLICITOR ARIAIL: NONE FROM THE STATE.

17 MR. MAULDIN: NONE, YOUR HONOR.

18 THE COURT: BRING THE JURY, PLEASE.

19 (JURY REENTERS COURTROOM AT 3:51 P.M.)

20 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN,
21 WE'RE READY TO PROCEED WITH CLOSING ARGUMENTS. WE WILL FIRST
22 HEAR FROM THE STATE, THEN WE'LL HEAR FROM DEFENDANT, BOTH BY
23 WAY OF COUNSEL, FOLLOWED BY MY INSTRUCTION TO YOU ON THE LAW.
24 WE WILL CERTAINLY TAKE A BREAK AFTER EITHER ARGUMENT OR BOTH,
25 IF NECESSARY.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 IN SPEAKING WITH THE ATTORNEYS, I ANTICIPATE THEIR
2 ARGUMENTS TO BE SOMEWHERE IN THE NEIGHBORHOOD OF 30 TO 45
3 MINUTES. MY CHARGE ON THE LAW WILL PROBABLY TAKE, 20, 25
4 MINUTES. AND, AGAIN, WE'LL TAKE A BREAK WHENEVER IT IS
5 NECESSARY.

6 I WANT TO EMPHASIZE TO YOU THAT ONCE YOU BEGIN YOUR
7 DELIBERATIONS LATER THIS AFTERNOON I WILL GIVE YOU A
8 REASONABLE TIME THIS EVENING TO DELIBERATE. YOU ARE UNDER NO
9 TIME CONSTRAINTS WHATSOEVER. THERE IS NO INTENT TO KEEP YOU
10 COOPED UP TILL MIDNIGHT. YOU WILL BE TAKEN CARE OF, MEALS
11 WILL BE PROVIDED TO YOU THIS EVENING. SAY, AFTER A COUPLE OF
12 HOURS, I'LL PROBABLY SEND YOU A NOTE AND JUST ASK IF YOU WANT
13 TO CONTINUE THIS EVENING. THAT'S YOUR CHOICE. IF YOU'D LIKE
14 TO STOP, GO BACK TO THE HOTEL AND RELAX THIS EVENING AND
15 START FRESH IN THE MORNING, I'LL CERTAINLY HONOR THAT REQUEST
16 AS WELL. SO THAT'S THE BIG PICTURE WHERE WE'RE GOING AND HOW
17 I'M GOING TO HANDLE YOUR RESPONSE AND FOLLOW YOUR LEAD IN HOW
18 YOU WANT TO CONDUCT DELIBERATIONS IN TERMS OF THE TIME. ALL
19 RIGHT?

20 WE'LL NOW PROCEED. SOLICITOR?

21 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

22 MADAME FORELADY AND LADIES AND GENTLEMEN OF THE JURY, I
23 GET BEHIND ONE OF THESE THINGS AND I FEEL LIKE I'M TRAPPED.
24 WHAT WE ARE DOING AT THIS POINT IS ENTERING ANOTHER PHASE OF
25 CLOSING ARGUMENT. YOU HEARD ONE SET OF CLOSING ARGUMENT.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 THIS ONE IS GOING TO BE SIMILAR IN THE SENSE THAT WE'RE GOING
2 TO TALK, BUT WE'RE GOING TO TALK ABOUT DIFFERENT ISSUES.
3 WE'RE NOT GOING TO TALK ABOUT SO MUCH FACTS AND THAT SORT OF
4 THING. WE'RE GOING TO TALK ABOUT PENALTY. AND LET ME JUST
5 GET A COUPLE OF HOUSECLEANING MATTERS.

6 FIRST IS I WANT YOU TO UNDERSTAND THAT YOU CAN CONSIDER
7 ALL OF THE EVIDENCE THAT WAS PRESENTED IN THE FIRST PHASE.
8 YOU'RE NOT LIMITED TO WHAT HAS JUST BEEN PRESENTED IN THE
9 SECOND PHASE. YOU CAN CONSIDER ALL OF THE EVIDENCE THAT'S
10 NOW IN THIS RECORD, INCLUDING THE FIRST PHASE. BECAUSE THE
11 FIRST ORDER OF BUSINESS THAT YOU WILL HAVE TO ADDRESS WHEN
12 YOU RETURN TO YOUR JURY ROOM IS HAS THE STATE PROVED AN
13 AGGRAVATING FACTOR BEYOND A REASONABLE DOUBT. AND THE SOLE
14 AGGRAVATING FACTOR IN THIS CASE THAT WE HAVE ALLEGED IS THAT
15 A LAW ENFORCEMENT OFFICER WAS KILLED IN THE LINE OF DUTY.

16 NOW, YOU MAY SAY, WE'VE ALREADY CONCLUDED THAT BY
17 FINDING THE DEFENDANT GUILTY, AND AS A PRACTICAL MATTER YOU
18 HAVE. BUT FOR LEGAL MATTERS, YOU MUST MAKE THAT CONCLUSION,
19 AND HIS HONOR WILL GIVE YOU A FORM AND YOU WILL HAVE TO SIGN
20 SAYING THAT YOU FOUND THAT AGGRAVATING FACTOR. IT IS ONLY
21 THEN THAT YOU PROCEED TO DISCUSS WHAT PENALTY IS APPROPRIATE.

22 BUT ASSUMING THAT THAT FACTOR WILL BE CONCLUDED BASED ON
23 YOUR EARLIER VERSION OF FINDING OF GUILT, I WANT TO TALK A
24 LITTLE BIT TO YOU, NOT FOR LONG BUT TALK A LITTLE BIT ABOUT
25 LIFE IMPRISONMENT AND THE DEATH SENTENCE. THOSE ARE THE TWO

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 OPTIONS YOU WOULD HAVE ONCE FINDING THAT.

2 THE STATE HAS ASKED FOR THE DEATH PENALTY, AND I WANT TO
3 TALK WITH YOU WHY WE BELIEVE IT'S APPROPRIATE IN THIS CASE.
4 YOU MAY HEAR ARGUMENTS FROM THE DEFENDANT THAT THE DEATH
5 PENALTY IS NOT APPROPRIATE IN THIS CASE OR THAT THE DEATH
6 PENALTY IS -- IMPOSING IT IS SOMETHING WRONG. YOU MAY HEAR
7 THE WORD USED "KILLING" SOMEONE OR SOMETHING ALONG THOSE
8 LINES TO PUT IT IN A VEIN THAT IS AS IF YOU ARE COMMITTING
9 SOME SORT OF WRONGFUL ACT. I DON'T KNOW WHAT YOU MIGHT HEAR.
10 I ONCE AGAIN DON'T HAVE A FINAL ARGUMENT AND CAN'T RESPOND,
11 AND I'LL HAVE TO RELY ON YOU AND TRY TO ANTICIPATE SOME OF
12 THE THINGS THAT I THINK YOU MAY HEAR.

13 BUT LET'S PUT THAT IN CONTEXT. NUMBER ONE, UNDER OUR
14 LAW, THE STATE CAN ASK FOR THE DEATH PENALTY, BUT THERE ARE
15 VERY LIMITED CIRCUMSTANCES IN WHICH WE CAN DO THAT, AND THE
16 LEGISLATURE HAS LIMITED THOSE CIRCUMSTANCES AND DEFINED THEM
17 VERY CLEARLY AS TO WHAT WE CAN DO AND WHAT WE CAN'T DO. AND
18 IT IS A LEGAL PROCESS WE GO THROUGH TO GET THERE. IT IS A
19 LEGAL PENALTY THAT YOU HAVE AN OPTION OF IMPOSING. IT IS A
20 FUNCTION OF OUR GOVERNMENT. IT IS A FUNCTION OF OUR
21 GOVERNMENT CARRIED OUT BY YOU AS CITIZENS. NOT OFFICERS OF
22 THE COURT, NOT THE JUDGE, BUT YOU AS CITIZENS ARE CARRYING
23 OUT THE SENTENCING FUNCTION THAT IS NORMALLY CARRIED OUT BY
24 THE COURT.

25 SO IT IS ESTABLISHED BY LEGISLATIVE PROCESS. IT IS

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 APPROVED BY THE COURTS. AND IT IS A FUNCTION OF YOU AS
2 CITIZENS TO CARRY OUT A FUNCTION OF OUR -- A PROCESS OF OUR
3 GOVERNMENT. AND WHAT YOU ARE DOING IS YOU ARE SHAPING A
4 LAWFUL PUNISHMENT TO FIT AN UNLAWFUL ACT. THAT IS THE
5 PURPOSE FOR WHICH WE ARE ENGAGED AT THIS POINT. AND IT IS
6 YOUR RESPONSIBILITY, IT'S GIVEN TO YOU UNDER THE LAW, AND YOU
7 ACCEPTED IT AS A PART OF YOUR OATH, TO CARRY IT OUT FAIRLY.
8 AND THAT'S PROCESS WE'RE GOING THROUGH, AND THERE IS NOTHING
9 WRONG WITH WHAT YOU ARE DOING, AND YOU SHOULD NOT RECEIVE OR
10 HAVE ANYTHING SUGGESTED TO YOU THAT IT IS.

11 NOW, I'M GOING TO TELL YOU AGAIN IT'S A TOUGH DECISION,
12 AND WE KNOW IT'S A TOUGH DECISION. IT WAS A TOUGH DECISION
13 -- IT'S A TOUGH DECISION FOR ME TO ASK YOU TO MAKE A TOUGH
14 DECISION. BUT RESPONSIBLE PEOPLE MAKE TOUGH DECISIONS. WE
15 MAKE TOUGH DECISIONS EVERY DAY IN OUR JOBS. WE MAKE THEM IN
16 OUR MARRIAGES. WE MAKE THEM WITH OUR FAMILIES. WE MAKE
17 TOUGH DECISIONS. THAT'S WHAT RESPONSIBLE PEOPLE DO. AND
18 THIS PROCESS MAKES YOU RESPONSIBLE FOR THAT TOUGH DECISION.

19 BUT JUST BECAUSE IT'S A TOUGH DECISION DOESN'T MEAN THAT
20 YOU RUN AND HIDE FROM IT OR YOU TAKE THE EASY WAY OUT. IT
21 MEANS THAT WE DEAL WITH IT LIKE EVERY OTHER TOUGH DECISION
22 YOU HAVE TO DEAL WITH IN YOUR LIFE, WHETHER IT DEALS WITH
23 YOUR JOB YOUR FAMILY, YOUR HEALTH OR WHATEVER. YOU CONSIDER
24 THE EVIDENCE. YOU CONSIDER THE ALTERNATIVE SOLUTIONS. AND
25 THEN YOU CHOOSE WHAT IS MOST APPROPRIATE TO RESOLVE THE

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 SITUATION.

2 SO YOU CAN SIMPLY IMAGINE YOURSELF AS MAKING A TOUGH
3 DECISION INVOLVING YOUR FAMILY OR SOMETHING PERSONAL TO YOU.
4 AND IF YOU APPLY THE SAME STANDARDS AS YOU DO IN YOUR
5 PERSONAL LIVES, THEN WE TRUST THAT YOU WILL REACH THAT
6 DECISION FAIRLY AND THAT YOU WILL REACH IT AND REACH THE
7 RIGHT RESULT. AND THAT'S ALL THAT WE CAN ASK OF YOU.

8 NOW, FIRST OFF YOU'RE GOING TO HEAR ABOUT MERCY.
9 SOMEWHERE IN HERE I ANTICIPATE YOU WILL HEAR ABOUT MERCY FOR
10 THE DEFENDANT. THEY WILL TALK ABOUT IT. IT'S A NATURAL
11 HUMAN TENDENCY. EVERYONE WANTS TO BE MERCIFUL TO THE LIVING.
12 EVERYONE WANTS TO BE MERCIFUL. IT'S A CHRISTIAN DOCTRINE.
13 IT'S WHAT WE'VE BEEN TAUGHT; MERCY IS SOMETHING THAT WE
14 SHOULD GIVE. BUT MERCY BELONGS TO THOSE WHO DESERVE IT. SO
15 WHEN YOU HEAR CONVERSATION OR SUGGESTION ABOUT MERCY, I WANT
16 YOU TO SAY TO YOURSELF, "DID THIS DEFENDANT WHO IS ASKING FOR
17 MY MERCY DESERVE IT? WHAT MERCY DID HE SHOW TO ERIC
18 NICHOLSON WHEN HE SHOT HIM -- SHOT AT HIM EIGHT TIMES, HIT
19 HIM FIVE TIMES, FOUR TIMES IN THE BACK AND KEPT PUMPING
20 BULLETS INTO HIM AS HE WAS A VULNERABLE, HELPLESS INDIVIDUAL?
21 AND WHAT MERCY DID HE SHOW TO THE OTHER LAW ENFORCEMENT
22 OFFICERS AS HE CONTINUED TO SHOOT AT THEM WHEN THEY ATTEMPTED
23 TO ARREST HIM?"

24 AND I'M SURE YOU'RE GOING TO HEAR SOMETHING ABOUT VIC
25 WOOTEN, BECAUSE VIC WOOTEN IS THE MAN WHO SHOT THE DEFENDANT.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 AND THEY ASKED HIM ON CROSS EXAMINATION IF HE WAS RELIEVED
2 THAT HE DIDN'T DIE, AND VIC WOOTEN SAID HE WAS. HE WAS
3 RELIVED THAT HE DIDN'T DIE BECAUSE VIC WOOTEN, AN OLD FRIEND
4 OF MINE -- HE'S A LONG TIME POLICE OFFICER. NO POLICE
5 OFFICER WANTS TO KILL A SUSPECT. THAT'S NOT WHY THEY ARE IN
6 LAW ENFORCEMENT. THEY ARE THERE TO APPREHEND THOSE AND TO
7 PROTECT THE REST OF US FROM THOSE WHO VIOLATE THE LAW. AND
8 VIC WOOTEN KNOWS THAT THE LEGAL PROCESS AND JURIES AND JUDGES
9 DECIDE THE APPROPRIATE PUNISHMENT, AND THAT'S WHY HE SAID HE
10 WAS RELIEVED, SO THAT THIS INDIVIDUAL CAN HAVE HIS DAY IN
11 COURT AND HAVE IT DETERMINED BY A JURY OF 12 PEOPLE WHO
12 FAIRLY CONSTITUTE WHAT IS THE PROPER PUNISHMENT.

13 NOW, WHY IS THE DEATH PENALTY APPROPRIATE IN THIS CASE?
14 THAT'S A FAIR QUESTION FOR YOU TO ASK ME, AND THAT'S A FAIR
15 QUESTION THAT YOU SHOULD ASK YOURSELVES. AND I'M GOING TO
16 TELL YOU WHY.

17 THERE ARE MEAN AND EVIL PEOPLE IN THIS WORLD WHO DO NOT
18 DESERVE TO CONTINUE TO LIVE WITH US REGARDLESS OF HOW WELL
19 CONFINED THEY ARE, AND THAT'S WHY THE DEATH PENALTY IS
20 APPROPRIATE. AND JOHN RICHARD WOOD IS SUCH A MEAN AND EVIL
21 PERSON. HE AMBUSHED A VULNERABLE AND HELPLESS, UNSUSPECTING
22 LAW ENFORCEMENT OFFICER, A MAN DOING A ROUTINE TRAFFIC STOP,
23 A MAN WHO TOTALLY WAS UNSUSPECTING OF WHAT WAS GOING TO
24 HAPPEN TO HIM AND END HIS LIFE THAT DAY.

25 AND THE LAW LIMITS THE RIGHT OF THE STATE TO SEEK THE

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 DEATH PENALTY. WE CAN'T SEEK IT IN EVERY MURDER. WE CAN
2 ONLY SEEK IT IN CERTAIN MURDERS. AND WE CAN ONLY SEEK IT IN
3 THOSE CASES WHERE THE MURDERERS ARE MEAN AND EVIL PEOPLE,
4 BASED ON THE CIRCUMSTANCES OF THE CRIME, AND THAT'S WHAT
5 WE'RE DOING IN THIS CASE. JOHN WOOD IS SUCH A PERSON.

6 JOHN WOOD HAD A CHOICE ON DECEMBER THE 6TH OF 2000, AND
7 HE MADE A CHOICE. BUT HE HAD CHOICES OTHER THAN THE ONE HE
8 MADE. HIS CHOICE WAS, "I CAN BE MEAN OR I CAN NOT BE MEAN.
9 I CAN GET MY TICKET OR I CAN KILL THE POLICEMAN. MAYBE I'LL
10 BE CITED FOR VIOLATING MY PROBATION." BUT JOHN WOOD MADE A
11 CHOICE, THE CHOICE WAS HIS. HE COULD HAVE CLEARLY KEPT THE
12 GUN IN HIS POCKET, BUT HE MADE THE CHOICE TO BRING IT OUT.
13 HE MADE THE CHOICE TO BE EVIL. AND HIS PUNISHMENT SHOULD
14 REFLECT THE DEGREE OF THE EVILNESS THAT RESULTED FROM THAT
15 CHOICE. AND BY THAT I MEAN SIMPLY, THIS KILLING WAS
16 ABSOLUTELY AND TRAGICALLY AN UNNECESSARY. WE'RE TALKING
17 ABOUT AN INDIVIDUAL WHO IS BEING STOPPED FOR SPEEDING OR
18 RIDING A MOTORCYCLE OR A MOTORSCOOTER OR SOME MINOR
19 VIOLATION, AND HE EXECUTED A DUTIFULLY, LAWFULLY ABIDING LAW
20 ENFORCEMENT OFFICER.

21 CHOICES EQUAL RESPONSIBILITY. YOU MAKE CHOICES. YOU'RE
22 ACCOUNTABLE FOR THE RESULTS OF YOUR ACT. AND YOU'VE GOT TO
23 BE HELD ACCOUNTABLE. PARTICULARLY EVIL PEOPLE WHO MAKE EVIL
24 CHOICES, THEY HAVE TO BE HELD ACCOUNTABLE UNDER OUR SYSTEM OF
25 LAW.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 AND YOU WILL HEAR EXCUSES FOR BAD CHOICES, AND I'M NOT
2 GOING TO BELABOR THAT POINT. BUT YOU HEARD MR. YOUNGMAN TALK
3 POOR NURTURING, POOR UPBRINGING, STRICT MOTHER, BAD EXAMPLE,
4 MOTHER WAS A STRICT -- OR NOT A GOOD ROLE MODEL. DR.
5 SCHWARTZ-WATTS SAID THAT HE HAD BIPOLAR AND HE WAS PARANOID.
6 WE TALKED ABOUT THAT. SHE DIDN'T CHECK WITH THE WITNESSES.
7 HER REPORT IS JUST NOT -- IT'S JUST NOT VALID.

8 BUT IN ANY EVENT, THEY ALL AGREE HE KNEW RIGHT FROM
9 WRONG ON DECEMBER THE 6TH. HE COULD HAVE CONFORMED HIS
10 BEHAVIOR TO THE LAW AND HE WAS COMPETENT TO STAND TRIAL. SO
11 WHAT WAS THE RELEVANCE OF HER TESTIMONY AND MR. YOUNGMAN?

12 AND I SUBMIT TO YOU IT'S THE OLD FLIP WILSON DEFENSE.
13 SOME OF YOU IN THE JURY ARE OLD ENOUGH THE REMEMBER THE REAL
14 FAMOUS COMEDIAN, FLIP WILSON. AND FLIP WILSON'S COMMENT
15 ALWAYS WAS THAT THE DEVIL MADE ME DO IT. AND I'LL TELL YOU A
16 LITTLE STORY ABOUT THE DEVIL THAT I THINK IS VERY APPROPRIATE
17 RIGHT HERE.

18 WHEN MY SON WHO IS NOW ABOUT 28 YEARS OLD NOW WAS ABOUT
19 SEVEN, I CAME HOME ONE DAY AND DISCOVERED THAT HE HAD A BIG
20 COLLECTION OF TOOLS, RATCHET WRENCHES AND THINGS OF THAT
21 NATURE, THAT I DIDN'T HAVE, AND I WONDERED WHERE HE GOT THEM
22 FROM. SO I ASKED HIM AND HE SAID HE HAD BEEN TAKING THEM OUT
23 OF PEOPLE'S GARAGES, WHICH CAME AS AN ABSOLUTE FLOORING
24 REVELATION TO HIS FATHER WHO WAS A RATHER HONEST LAW-ABIDING
25 CITIZEN.

CLOSING ARGUMENTS --- BY SOLICITOR ARIAIL

1 SO WE HAD THE DR. SPOCK TREATMENT. WE REASONED ABOUT IT
2 AND TALKED ABOUT HOW BAD THIS WAS AND YOU CAN'T DO THIS.
3 "YES, SIR. I'M NOT GOING TO DO IT ANYMORE." AND I SAID,
4 "YOU'RE GOING TO TAKE THEM ALL BACK." "YES, SIR, I WILL."
5 SO HE TOOK THEM ALL BACK AND PUT THEM BACK IN PEOPLE'S
6 GARAGES. AND I CAME HOME THE NEXT NIGHT AND ON THE BACK
7 PORCH WAS THIS HUGE MAGNET, A VERY NEAT LOOKING THING, ROUND,
8 LATHED AND VERY SMOOTH. SO I WENT IN THE HOUSE AND I SAID,
9 "WHERE DID THE MAGNET COME FROM?" AND HE SAID, "I TOOK THE
10 TOOLS BACK TO ALL THE PEOPLE. BUT THE LAST ONE I WAS
11 LEAVING, I SAW THAT MAGNET SITTING THERE AND IT LOOKED SO
12 PRETTY, DADDY, AND I BROUGHT IT HOME." AND I SAID, "SON, I
13 THOUGHT WE TALKED ABOUT THIS YESTERDAY." "WE DID, DADDY.
14 BUT THE DEVIL MADE ME DO IT." AND I SAID, "SON, WE'RE GOING
15 TO HAVE AN EXORCISM. WE'RE GOING TO REMOVE THAT SPIRIT.
16 WE'RE GOING TO PUT IN A FORM OF PUNISHMENT THAT MAKES YOU
17 UNDERSTAND AND SUFFER THE CONSEQUENCES OF YOUR ACT."

18 AND THAT IS WHAT WE'RE TALKING ABOUT HERE. THAT'S A
19 CUTE STORY, BUT IT'S SO APPROPRIATE TO WHAT WE'RE DOING HERE.
20 THE APPROPRIATE PUNISHMENT FOR AN INDIVIDUAL WHO HAS
21 COMMITTED A SERIOUS CRIME.

22 NOW, LET'S TALK A LITTLE BIT ABOUT LIFE IN PRISON,
23 BECAUSE WE BROUGHT SOME EVIDENCE TO YOU AND THEY DID TOO.
24 THEY BROUGHT MR. AIKENS. MR. AIKENS IS A LONG-TIME EMPLOYEE
25 OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND HE HAD A

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 LOT OF INTERESTING THINGS TO SAY.

2 THERE'S NO QUESTION IN MY MIND THAT JOHN RICHARD WOOD
3 CAN ADAPT TO PRISON. IT'S SORT OF LIKE ADAPTING TO THE ARMY.
4 THEY'RE GOING TO MAKE YOU ADAPT OR YOU'RE GOING TO BE IN
5 SERIOUS TROUBLE UNTIL YOU DO. HE'LL ADAPT OR HE'LL END UP
6 SPENDING 24 HOURS A DAY IN A MAXIMUM SECURITY PRISON WITH NO
7 RECREATION IN A CELL BY HIMSELF. I DON'T HAVE ANY DOUBT THAT
8 THEY WILL ADAPT HIM TO PRISON. THAT'S NOT AN ISSUE. THEY
9 COULD ADAPT ANYBODY TO PRISON THESE DAYS.

10 BUT TO ASSERT THAT AS AN ARGUMENT FOR LIFE IMPRISONMENT
11 MISSES THE POINT, BECAUSE WHAT WE'RE DOING IS WE'RE TRYING TO
12 CARVE OUT AN APPROPRIATE PUNISHMENT BASED ON THE NATURE OF
13 THE CRIME, NOT ON WHAT IS THE EASIEST AND SHORTCUT WAY TO
14 SOLVE THE PROBLEM. WE WANT TO LOOK FOR THE APPROPRIATE
15 SENTENCE, NOT THE EASIEST AND THE LEAST ACCESSIBLE.

16 AND LET ME REMIND YOU OF ONE OTHER THING TOO. THIS CAME
17 OUT IN THE TESTIMONY. THIS IS NOT SUSAN SMITH. THIS IS NOT
18 A MAN WHO IS GOING TO BE SITTING IN PRISON WORRYING ABOUT
19 HAVING KILLED HER TWO CHILDREN. THIS IS A MAN WHO IS GOING
20 TO BE IN PRISON FOR MURDERING A POLICE OFFICER. AND YOU
21 THINK HE'S GOING TO GIVE A RIP ABOUT ERIC NICHOLSON OR GIVE
22 HIM ANY FURTHER THOUGHT? HE TOLD -- HE TOLD HIS GIRLFRIEND,
23 KAREN MCCALL, HE CALLED HIM AN S.O.B. YOU THINK HE'S GOING
24 TO BE WORRYING ABOUT WHAT HE DID? HE'S NOT GOING TO BE
25 THINKING ABOUT IT.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 HE IS THE SAME GUY THAT TOLD DEPUTY BLACKBURN, "GETTING
2 SHOT WAS THE COOLEST FEELING." THIS MAN DOESN'T CARE ABOUT
3 THINGS THAT NORMAL PEOPLE CARE ABOUT. PUTTING HIM IN PRISON
4 ISN'T GOING TO MAKE HIM SUFFER BY THINKING ABOUT WHAT HE DID
5 EVERY DAY ALL DAY, BECAUSE HE'S THE SAME GUY THAT SHOT AT
6 EVERY DEPUTY THAT WAS CHASING HIM. HE HAS NO QUESTION ABOUT
7 THAT. THAT'S THE WAY HIS ATTITUDE IS.

8 IT'S ALL A GAME WITH HIM. IT'S ALL A GAME. IT'S ALL
9 WITHOUT CONSEQUENCE. IT'S A GAME. NOW THE GAME IS TO GET
10 AWAY FROM YOU. HE DIDN'T GET AWAY FROM THE DEPUTIES. HE
11 DIDN'T GET AWAY FROM THE TROOPERS. BUT HE WANTS TO GET AWAY
12 WITH YOU.

13 AND IF HE GOT AWAY AND HE WENT TO PRISON FOR LIFE, HE
14 WOULD BECOME A PART OF THAT HIERARCHY. AND THEY SAY WE
15 DIDN'T WANT TO BRING ANYTHING TO THE TABLE, BUT LET ME TELL
16 YOU WHAT HE WOULD BRING TO THE TABLE. WHAT IS THE MOST
17 DESPISED ASPECT THAT AN INMATE HAS? WHAT DOES HE DISLIKE THE
18 MOST? THE COP WHO PUT HIM THERE. AND YOU ARE SENDING A MAN
19 TO PRISON WHO IS A COP KILLER. HE'LL BE A KING. HE WILL
20 RISE IN THE HIERARCHY OF THE PRISON, AND HE WILL BE A LEADER.

21 NOW, YOU AND I MAY THINK GOING TO PRISON FOR LIFE IS
22 SERIOUS BUSINESS. BUT THAT'S NOT THE ISSUE. THE ISSUE IS,
23 IS GOING TO PRISON FOR LIFE SERIOUS BUSINESS FOR JOHN RICHARD
24 WOOD? ARE WE REALLY DOING ANYTHING TO JOHN RICHARD WOOD?

25 GOING TO PRISON IS LIKE BEING IN A BIG CITY -- IN A

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 LITTLE CITY. YOU'VE GOT A RESTAURANT. YOU'VE GOT A
2 CANTEEN. YOU'VE GOT A MEDICAL CENTER. YOU'VE GOT A
3 GYMNASIUM. YOU'VE GOT FIELDS TO WORK OUT IN. THEY GIVE YOU
4 CLOTHING. YOU GET CONTACT VISITS WITH YOUR FAMILY. YOU'VE
5 GOT T.V. YOU PLAY CARDS AND GAMES. YOU'VE GOT A SOCIAL
6 STRUCTURE. YOU'VE GOT FREEDOM OF MOVEMENT. IT MIGHT BE
7 LIMITED, BUT YOU'VE GOT FREEDOM OF MOVEMENT. THIRTY OR FORTY
8 ACRES TO LIVE IN. WATCH BALL GAMES ON THE T.V. YOU GO TO
9 SCHOOL. AND YOU DO ALL OF THOSE THINGS THAT YOU WANT TO.
10 YOU MAY NOT HAVE A CAR TO DRIVE AROUND, AND THEY MAY LIMIT
11 YOUR TRAVEL. AND YOUR STANDARDS MAY NOT BE AS HIGH AS WHAT
12 YOU'RE USED TO. BUT BASED ON WHAT JOHN RICHARD WOOD WAS
13 DOING, PRISON IS JUST ABOUT GOING TO BE A CHANGE OF ADDRESS
14 AND NOTHING MORE.

15 HE WILL SEE HIS BABY EVERY WEEKEND, AND THAT BABY WILL
16 SIT IN HIS LAP. BUT ERIC NICHOLSON AND MISTY NICHOLSON, THEY
17 WILL NEVER HAVE THAT.

18 BUT LASTLY LET ME POINT OUT WHAT IS MOST IMPORTANT ABOUT
19 WHY THE DEATH PENALTY IS APPROPRIATE, AND THAT IS BECAUSE IT
20 IS THE KILLING OF A POLICE OFFICER IN THE LINE OF DUTY. THIS
21 IS MORE THAN A REGULAR MURDER. THIS IS MORE THAN YOUR NORMAL
22 KILLING. AND THE LEGISLATURE RECOGNIZES THAT, NOT BECAUSE
23 THE LEGISLATURE PASSED THE LAW, BUT BECAUSE IT'S COMMON
24 SENSE. IT'S COMMON SENSE. NOT THAT ERIC'S LIFE WAS MORE
25 VALUABLE THAN ANY OTHER LIFE, IT WASN'T. ALL LIFE IS

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 VALUABLE, AND ERIC'S LIFE WAS JUST AS VALUABLE AS ANYONE
2 ELSE'S.

3 BUT ERIC WAS A LAW ENFORCEMENT OFFICER, AND A LAW
4 ENFORCEMENT OFFICER -- JUST LIKE A SOLDIER, JUST LIKE A
5 FIREMAN -- IN THE LINE OF DUTY, THAT'S A SPECIAL
6 CIRCUMSTANCE. THAT'S A UNIQUE CIRCUMSTANCE. AND THE REASON
7 IT IS UNIQUE IS BECAUSE LAW ENFORCEMENT IS THE BLUE LINE THAT
8 SEPARATES GOOD FROM EVIL IN OUR SOCIETY. THEY ARE ALL THAT
9 SEPARATES GOOD FROM EVIL.

10 WE HAVE LAWS ON THE BOOKS. . WE HAVE LEGISLATORS WHO PASS
11 LAWS, AND WE HAVE COURTS WHO ENFORCE THEM. BUT THE ONES WHO
12 DEAL WITH THE CRIMINALS, THE BAD AND MEAN AND EVIL PEOPLE OF
13 THIS WORLD, ARE THE LAW ENFORCEMENT OFFICERS. THEY ARE ON
14 DUTY TO PROTECT THE REST OF US AND TO PROTECT THE SOCIETY WE
15 COME TO KNOW.

16 THEY ARE THERE 365 DAYS A YEAR, 24 HOURS A DAY, 7 DAYS A
17 WEEK. THEY ARE THERE WHILE WE SLEEP. THEY ARE THERE WHILE
18 WE PLAY. THEY ARE THERE WHILE WE VACATION. THEY ARE THERE
19 WHILE WE'RE ON HOLIDAYS. THEY ARE ALWAYS THERE TO PROTECT
20 THE REST OF US. AND THEY ARE THE VERY ROCK AND FOUNDATION OF
21 CIVILIZED SOCIETY.

22 AND THAT'S WHY THE CIRCUMSTANCE IS SO IMPORTANT.
23 BECAUSE WITHOUT LAW ENFORCEMENT, REGARDLESS OF HOW MANY
24 PROSECUTORS YOU'VE GOT, REGARDLESS OF HOW MANY JUDGES YOU
25 HAVE, WITHOUT LAW ENFORCEMENT AND SERIOUS LAW ENFORCEMENT,

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 CRIME FLOURISHES AND EVIL PEOPLE COME OUT OF DARKNESS.
2 WITHOUT LAW ENFORCEMENT THERE IS ANARCHY. AND THAT'S WHY NOT
3 ERIC'S LIFE INDIVIDUALLY BUT A LAW ENFORCEMENT OFFICER.

4 SO ERIC'S DEATH IS A TRAGEDY ON A PERSONAL LEVEL, AND
5 IT'S A TRAGEDY POTENTIALLY, IF NOT PROPERLY ADDRESSED, ON A
6 MUCH GREATER LEVEL, AND THAT IS HOW IT AFFECTS LAW
7 ENFORCEMENT AND THE VERY FOUNDATION OF OUR FREE SOCIETY. AND
8 THIS WAS NOTHING MORE THAN A MAJOR ATTACK ON LAW ENFORCEMENT.

9 NOW, IN CLOSING, LET ME TELL YOU ONE OTHER THING. YOU
10 HAVE BEEN INTRUSTED BY SOCIETY, BY OUR SYSTEM, YOU TWELVE
11 HAVE BEEN INTRUSTED AS REPRESENTATIVES OF THE COMMUNITY TO
12 DETERMINE WHAT THE APPROPRIATE SENTENCE IS UNDER THE FACTS OF
13 THIS CASE. AND YOU KNOW THIS CASE NOW AS WELL AS ANYONE
14 INVOLVED IT AND ANYONE IN THE COMMUNITY. SO NO ONE CAN
15 QUESTION YOUR JUDGMENT BECAUSE YOU HAVE ALL THE FACTS. AND
16 IT IS YOUR DECISION AND IT WILL BE YOUR DECISION, AND YOU
17 WILL SPEAK FOR THE COMMUNITY WHEN YOU MAKE THAT DECISION.
18 AND WHATEVER DECISION YOU MAKE, IT WILL RING LIKE A BELL
19 OUTSIDE THIS COURTHOUSE. IT WILL RING LIKE A BELL TO ALL OF
20 THOSE WHO WILL LISTEN AND ALL OF THOSE WHO ARE LISTENING.
21 AND I URGE YOU ON BEHALF OF THE STATE OF SOUTH CAROLINA AND
22 THE PEOPLE OF THIS COMMUNITY TO LET THAT BELL RING, TO LET
23 THEM KNOW THAT ANYONE WHO IS INVOLVED IN THE KILLING OF A LAW
24 ENFORCEMENT OFFICER IN THE LINE OF DUTY WHO IS THERE TO
25 PROTECT THE REST OF US, THAT SUCH CONDUCT WILL NOT BE

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 TOLERATED AND WILL RECEIVE THE ULTIMATE PUNISHMENT UNDER OUR
2 LAW.

3 THANK YOU.

4 THE COURT: ANY MEMBER OF THE JURY LIKE TO TAKE A
5 BREAK? (NO RESPONSE)

6 ALL RIGHT. LET'S PROCEED. MR. MAULDIN?

7 MR. MAULDIN: THANK YOU, YOUR HONOR.

8 I'M GOING TO MOVE THIS BACK OVER HERE. (PAUSE)

9 ON DECEMBER THE 6TH OF 2000, I WAS HAVING LUNCH AT THE
10 HAM HOUSE ON RUTHERFORD ROAD AND I GOT A PHONE CALL. MY WIFE
11 CALLED ME TO TELL ME THAT A LAW ENFORCEMENT OFFICER HAD BEEN
12 KILLED. AND SHE CALLED ME BECAUSE SHE KNEW WHAT I WOULD NOW
13 BE DOING. AND I HEARD LATER DURING THAT DAY THAT THIS
14 SUSPECT HAD BEEN SHOT BETWEEN THE EYES, AND BY THE WILL OF
15 GOD HE SURVIVED. AND WHEN HE SURVIVED THAT SHOOTING, I KNEW
16 THAT AT SOME TIME IN THE FUTURE I WOULD STAND BEFORE TWELVE
17 UNKNOWN JURORS AND TALK ABOUT LIFE AND DEATH FOR THIS CLIENT.

18 YOU ARE THOSE JURORS. AND I QUITE FRANKLY BELIEVE IN MY
19 YEARS OF BEING A LAWYER THAT I COULDN'T BE MORE HONORED, THAT
20 THIS IS A HIGH CALLING FOR A LAWYER. TO HAVE TO SPEAK FOR A
21 LIFE IS A HIGH CALLING. TO BE RESPONSIBLE FOR SOMEONE'S LIFE
22 IS A HIGH CALLING, BUT IT'S NOT MY LIFE, IT'S SOMEBODY
23 ELSE'S.

24 SO I'M GOING TO TRY TO FIND THE STRENGTH AND THE COURAGE
25 TO SAY WHAT I CAN THAT WILL MAKE A DIFFERENCE TO YOU IN YOUR

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 DIFFICULT TIME OF MAKING A DECISION ON LIFE AND DEATH. I'M
2 GOING TO DO WHAT I CAN TO SAY THE RIGHT THING, BECAUSE I TOLD
3 YOU -- AND I'VE LOST COMPLETE TRACK OF TIME. BUT I TOLD YOU
4 EARLIER THAT I DON'T THINK THERE IS ANY QUESTION THAT
5 EVERYONE OF YOU, EVERYONE OF YOU, WANT TO DO THE RIGHT THING.
6 AND IF THERE IS ANYTHING I CAN SAY TO YOU TO HELP YOU DO THE
7 RIGHT THING -- BECAUSE THIS IS IMPORTANT FOR YOU AS WELL AS
8 THE REST OF THE PEOPLE IN THIS COURTROOM.

9 THE STATE ASKS YOU TO EXECUTE JOHN WOOD, AND THE
10 PROSECUTOR VERY SKILLFULLY SAID THAT SOMEHOW THAT MEANS NOT
11 KILLING SOMEBODY. I DON'T KNOW. YOU KNOW, I HAVE A HARD
12 TIME MAKING THOSE KIND OF DISTINCTIONS, QUITE FRANKLY. I
13 HAVE A HARD TIME MAKING THAT KIND OF DISTINCTION, THAT, WELL,
14 YOU KNOW, I'M NOT SIGNING MY NAME TO THIS DEATH WARRANT, YOU
15 KNOW, JOHN HANCOCK IS OR SOMETHING. I DON'T KNOW.

16 YOU KNOW, I THINK WE ALL KNOW THE PRACTICAL THING HERE.
17 I THINK WE ALL KNOW WHAT THE DEATH WARRANT WILL DO. SO YOU
18 CAN CALL IT ANY FANCY NAME YOU WANT TO, OR HE CAN INVITE YOU
19 TO HIDE BEHIND SOMETHING IF HE WANTS TO. BUT I THINK EACH
20 ONE OF YOU HAVE THROUGH YOUR INDIVIDUAL JURY SELECTION AND
21 THROUGH THESE AGONIZING DAYS OF BEING AWAY FROM YOUR FAMILIES
22 FIGURED OUT WHAT YOU'RE BEING CALLED UPON OR ASKED TO DO.

23 AT THIS POINT ONLY MY WORDS AND YOUR OWN INDIVIDUAL
24 MORAL CHOICE IS GOING TO PREVENT THE STATE FROM KILLING JOHN
25 WOOD. EXECUTING JOHN WOOD. GIVING HIM THE DEATH PENALTY. I

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 MEAN, I GUESS WE COULD MAKE IT SOMEHOW ISOLATED WHERE NOBODY
2 FEELS ANY PAIN. WHY DON'T WE EXECUTE HIM AT MIDNIGHT WHILE
3 EVERYBODY'S IN BED? YOU KNOW, THE POINT IS THAT THIS REALLY
4 IS A MATTER OF LIFE AND DEATH.

5 WHEN CAIN KILLED ABEL HE WAS BANISHED FROM EDEN. HE WAS
6 MARKED, AND THE MARK WAS TO SHOW THE WORLD, "LET NO MAN KILL
7 THIS MAN." THAT'S THE END OF THE STORY THAT JIM BANNISTER
8 MENTIONED TO YOU ABOUT CAIN AND ABEL.

9 SO THE PROSECUTOR CAN COME TO YOU AND TRY TO TAKE THE
10 LIFE RIGHT OUT OF MERCY, EXTRACT THE FORCE RIGHT OUT OF
11 GRACE, IF HE WISHES. BUT I QUITE FRANKLY HAVE MORE
12 CONFIDENCE IN PEOPLE THAN HE DOES.

13 EARLIER THIS WEEK I TOLD YOU THE IMPACT OF YOUR VERDICT,
14 AND I WANT TO TALK A LITTLE BIT ABOUT -- ABOUT THAT. YOU
15 KNOW, THE IMPACT WAS -- YOU KNOW, RINGING BELLS AND MAKING
16 YOU SOMEHOW RESPON-- I MEAN, HE WANTS TO MAKE YOU PERSONALLY
17 RESPONSIBLE TO THE COMMUNITY. I MEAN, THAT IS NOT RIGHT.
18 THAT'S NOT OUR LAW. THAT'S NOT WHAT THIS LAW DOES.

19 WHAT I TOLD YOU WAS THAT YOUR VERDICT HAD DONE TWO
20 THINGS. IT HAD, IN FACT, PROTECTED THE PUBLIC. PERIOD. AND
21 THE REASON WAS THERE WERE ONLY TWO SENTENCES AVAILABLE --
22 LIFE IN PRISON WITHOUT PAROLE OR DEATH. SO IT HAS PROTECTED
23 THE PUBLIC. THE COMMUNITY IS PROTECTED. AND THEN THE SECOND
24 THING IT DID WAS IT PUNISHED THE DEFENDANT.

25 NOW, I WILL SAY THAT -- I MEAN, -- WHEN WE WENT THROUGH

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 JURY SELECTION I ASKED, I SUSPECT, EVERY ONE OF YOU, I
2 BELIEVE I DID -- IF I DIDN'T, I THINK I ASKED ENOUGH OF YOU
3 -- TO BE PRETTY SATISFIED THAT THE WORLD OUTSIDE THIS
4 COURTHOUSE BELIEVES LIFE WITHOUT PAROLE IS A SERIOUS PENALTY.
5 I MEAN, I'VE NEVER HEARD SUCH TESTIMONY FROM THE GOVERNMENT.
6 IT ALMOST MADE ME WANT TO GO WRITE MY SENATOR AND SAY WHAT
7 THE HECK IS GOING ON HERE? BUT I'LL TALK TO YOU A MINUTE
8 ABOUT HOW DECEIVING THAT WAS.

9 A PLEA FOR LIFE IN PRISON IS NOT A PLEA FOR LENIENCY.
10 AND IF SOMEHOW OUT OF THIS RECORD OF THIS CASE YOU HAVE
11 SOMEHOW COME TO THAT CONCLUSION, THEN THERE IS NOTHING I'M
12 GOING TO BE ABLE TO DO TO CHANGE YOUR MIND. IT IS BEYOND MY
13 COMPREHENSION THAT THE GOVERNMENT IS NOW TELLING YOU AS
14 JURORS WHEN YOU ARE FACED WITH PERHAPS THE MOST IMPORTANT
15 DECISION YOU WILL EVER MAKE THAT LIFE IN PRISON WITHOUT
16 PAROLE IS NOT A SERIOUS PENALTY. IT'S -- THAT IS ALMOST
17 SCANDALOUS.

18 WE ARE DEALING, FOLKS, WITH THE MOST -- THE TWO MOST
19 SERIOUS PENALTIES THAT MANKIND KNOWS OF. BAR NONE. YOU
20 EXECUTE THEM OR YOU BANISH THEM FOREVER. I MEAN, THAT'S -- I
21 MEAN, WHAT ELSE ARE WE GOING TO DO? SO IF THEY'RE SAYING
22 WE'VE ONLY GOT ONE SERIOUS PENALTY AND THAT'S THE DEATH
23 PENALTY, THEN WE ARE REALLY IN SERIOUS TROUBLE. THAT IS REAL
24 SERIOUS. WE OUGHT TO GO DOWN TO COLUMBIA AND START POUNDING
25 THE DOORS IF THAT'S HOW BAD IT IS.

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 YOU KNOW, IF SENTENCING JOHN WOOD TO DEATH WOULD CHANGE
2 WHAT HAPPENED ON DECEMBER THE 6TH, THEN I'M WITH YOU. I'D
3 FLIP THE SWITCH MYSELF. BUT THAT'S NOT WHAT WE CAN DO. WE
4 CAN'T CHANGE WHAT HAPPENED. WE CAN'T BRING ERIC NICHOLSON
5 BACK. ERIC NICHOLSON WAS ABSOLUTELY INNOCENT. HE WAS
6 COMPLETELY FREE FROM FAULT. HE DIDN'T DESERVE WHAT HAPPENED
7 TO HIM. BUT WE CAN'T GO BACK AND TURN BACK THE HANDS OF TIME
8 AND REDO WHAT HAPPENED. IT HAPPENED.

9 AND NOW WE ARE FACED WITH, WHAT ARE WE GOING TO DO? AND
10 I BELIEVE THAT'S WHAT WE TRIED TO BRING TO YOU. BECAUSE IF
11 THE STATE OF SOUTH CAROLINA IS GOING TO ASK YOU TO HAVE
12 SOMEBODY EXECUTED, WE NEED TO HAVE AS MUCH INFORMATION AS
13 POSSIBLE BEFORE YOU ARE CALLED UPON TO GO INTO A ROOM AND
14 DECIDE THAT.

15 THE BLAME HAS BEEN PROPERLY LAID. THAT DECISION HAS IN
16 FACT BEEN MADE. AND I WANT TO POINT OUT ONE THING THE
17 PROSECUTOR SAID. I THOUGHT I HAD ALL THIS JUST PERFECT, BUT
18 I DID MAKE A NOTE OR TWO.

19 I BELIEVE, AND I BELIEVE WHAT YOU'LL HEAR THIS JUDGE
20 TELL YOU IS THAT THE SENTENCING PHASE IS AN INDIVIDUALIZED
21 ASSESSMENT OF WHAT THE PROPER PENALTY IS FOR THE PERSON WHO
22 HAS BEEN CONVICTED. IN OTHER WORDS, IT IS SUPPOSED TO BE
23 CRAFTED FOR THE INDIVIDUAL DEFENDANT. THAT'S WHAT THE LAW
24 SAYS ANYWAY. THAT'S WHY WE'VE HAD THIS HEARING. IF IT
25 WASN'T THAT WAY, IF IT REALLY WASN'T THAT WAY, THEN THE

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 KILLING OF A LAW ENFORCEMENT OFFICER WOULD BE AN AUTOMATIC --
2 THE PENALTY WOULD BE DEATH, IF WHAT HE IS SAYING IS THE LAW.
3 BUT THAT AIN'T THE LAW. THAT'S NOT THE WAY THE LAW WORKS,
4 AND HE KNOWS IT.

5 THE DEATH PENALTY IS NEVER REQUIRED. I TALKED TO YOU
6 ABOUT THAT AT JURY SELECTION. I REMIND YOU OF THAT NOW. YOU
7 NEED TO HAVE RESPECT FOR EACH OTHER'S VIEWS. I SUBMIT, IN
8 FACT -- LADIES AND GENTLEMEN, I SUBMIT, IN FACT, THAT THERE
9 IS SOMEWHAT AN INFERENCE TO THE VERY CONTRARY OF WHAT THE
10 GOVERNMENT IS NOW TELLING YOU, AND THAT IS A PRESUMPTION OF
11 LIFE. I WANT YOU TO -- DON'T LISTEN TO ME, AND DON'T LISTEN
12 TO HIM. BUT LISTEN TO THE JUDGE WHEN HE TELLS YOU WHAT THE
13 LAW IS.

14 TWO POINTS TO THAT INFERENCE THAT I'VE MENTIONED. TWO
15 THINGS HE'LL SAY WILL TELL YOU EXACTLY WHAT I'M SAYING. HE'S
16 NOT GOING TO SAY THERE IS A PRESUMPTION OF LIFE LIKE HE DID A
17 PRESUMPTION OF INNOCENCE IN THE FIRST TRIAL. BUT TWO AND TWO
18 EQUAL FOUR. AND, LISTEN. NUMBER ONE, THE GOVERNMENT MUST
19 PROVE THE APPROPRIATENESS OF THE DEATH PENALTY BEYOND A
20 REASONABLE DOUBT. THERE IS YOUR PRESUMPTION OF A LIFE
21 SENTENCE. THE BURDEN IS ON THE GOVERNMENT TO PROVE BEYOND A
22 REASONABLE DOUBT THAT THE DEATH PENALTY IS THE APPROPRIATE
23 PUNISHMENT. SO I ANSWER HIS BELL RINGING ARGUMENT.

24 THE SECOND THING THAT POINTS OUT THE PRESUMPTION OF LIFE
25 IS THAT ALL TWELVE HAVE TO SIGN IF YOU IMPOSE THE DEATH

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 PENALTY. WHEN WE LEAVE HERE, ALL TWELVE OF YOU WOULD HAVE
2 SIGNED THE DEATH PENALTY OR THE SENTENCE WILL BE LIFE IN
3 PRISON. I MEAN, THAT'S THE WAY THE LAW WORKS.

4 THE PROSECUTOR SAID MERCY. THE PROSECUTOR SAYS TO TAKE
5 MERCY AWAY FROM YOU. WELL, AS A CITIZEN AND AS A HUMAN BEING
6 YOU HAVE THE ABSOLUTE RIGHT TO APPLY MERCY ANYTIME YOU
7 CHOOSE. THE GOVERNMENT SAYS, BE -- HE SAYS HE DIDN'T SHOW
8 ERIC NICHOLSON MERCY; THEREFORE, THE GOVERNMENT SAYS, BE LIKE
9 THE PERSON YOU HAVE CONVICTED. WHAT KIND OF ANALYSIS IS
10 THAT?

11 THE EXERCISE OF MERCY IS THE EXERCISE OF THE MOST NOBLE
12 VIRTUE IN THE HUMAN SPIRIT. IT IS THE RECOGNITION OF HUMAN
13 FRAILTY IS WHAT IT IS. IT IS GIVEN DIVINELY TO US, AND THOU
14 WILL NOT ALLOW THE GOVERNMENT TO TAKE IT AWAY FROM YOU.

15 I ASK YOU -- I ASK YOU SIMPLY TO DO THIS -- AND I THINK
16 THE JUDGE WILL TELL YOU THAT YOU CAN IMPOSE A LIFE SENTENCE
17 JUST OUT OF AN ACT OF MERCY. SO THE FACT IS, IS HE'S TRYING
18 TO TAKE SOMETHING AWAY FROM YOU THAT THE LAW GIVES YOU. BUT
19 I'LL TELL YOU HOW I THINK YOU OUGHT TO ADDRESS THE MERCY
20 ISSUE. I WANT YOU TO JUST BE FAIR, AND DELIBERATE AND
21 INDIVIDUAL ABOUT AN EXERCISE OF YOUR MORAL CHOICE AND YOUR
22 MORAL CONSCIENCE ABOUT WHAT YOU THINK YOU SHOULD DO, WHAT YOU
23 THINK -- THE RIGHT THING FOR YOU TO DO. AND IF YOU CHOOSE
24 LIFE, EVEN IF IT IS ONLY FOR MERCY, THEN LET THAT BE YOUR
25 PERSONAL CHOICE, BECAUSE THAT REALLY IS WHAT YOU HAVE THE

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 RIGHT TO DO.

2 THE PROSECUTION SAYS, IF NOT IN THIS CASE, WHEN WOULD IT
3 BE? THE DEATH PENALTY DOES HAVE A PLACE IN OUR COMMUNITY.
4 IT IS ON OUR LAW BOOK. IT IS RESERVED FOR THE WORST OF THE
5 WORST CASES. I MEAN, IF YOU -- ALL RIGHT. TAKE A LOOK AT A
6 GUY LIKE TED BUNDY. SMART, ARTICULATE, EDUCATED, PREDATOR,
7 SERIAL KILLER. WE EXECUTED HIM. BECAUSE HE DID REPRESENT
8 EVIL. TIMOTHY MCVEIGH, SMART, ARTICULATE, EDUCATED. HE GOES
9 AND BOMBS A BUILDING AND KILLS 168 INNOCENT ADULTS AND
10 CHILDREN. WE EXECUTED TIMOTHY MCVEIGH. SO BE THAT. BECAUSE
11 THOSE ARE THE EVIL THAT WE GET OUT WITH THIS PENALTY.

12 I SAY TO YOU THAT THERE IS A DIFFERENCE BETWEEN A JOHN
13 WOOD AND A TED BUNDY. THERE IS A DIFFERENCE BETWEEN A JOHN
14 WOOD AND A TIMOTHY MCVEIGH. JOHN WOOD IS NO PREDATOR. HE --
15 THERE IS NO QUESTION, AND, IN FACT, THE TESTIMONY IS --- IT
16 MAY BE KIND OF SCREWED UP, BUT IT'S STILL THERE, THAT HE'S
17 GOT A MENTAL ILLNESS, AND IT'S BEEN CONFIRMED.

18 I WANT TO SPEND A FEW MOMENTS WITH YOU ON THE STATUTORY
19 AGGRAVATING/MITIGATING STUFF FOR JUST A MINUTE. YOU WILL BE
20 GIVEN WRITTEN INSTRUCTIONS FROM THE COURT, AND THOSE WRITTEN
21 INSTRUCTIONS WILL ITEMIZE THE AGGRAVATING CIRCUMSTANCE THAT'S
22 ALLEGED IN THIS CASE, AND IT WILL ALSO LIST FOUR WHAT THE
23 LEGISLATURE IN COLUMBIA HAS APPROVED OF AS STATUTORY
24 MITIGATING CIRCUMSTANCES.

25 NOW LET ME REFER YOU BACK -- AND I APOLOGIZE FOR THE

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 TIME I'M TAKING, BUT LET ME REFER YOU BACK TO THE
2 INSTRUCTIONS THAT THE JUDGE GAVE YOU DURING THE JURY
3 SELECTION. HE SAID YOU HAVE TO BE ABLE TO CONSIDER -- THESE
4 ARE THE MUST CONSIDER. NOW, HE'LL ALSO TELL YOU THAT YOU MAY
5 CONSIDER ANY OTHER INFORMATION. IT'S NOT JUST THE FOUR. YOU
6 CAN CONSIDER ANY OTHER INFORMATION YOU'VE HEARD IN THIS CASE
7 AT EITHER PHASE TO JUSTIFY THE IMPOSITION OF A LIFE SENTENCE,
8 OR YOU CAN DO IT OUT OF A SIMPLE ACT OF MERCY.

9 SO LET ME -- SO YOU'LL GET FOUR. AND THE FOUR WILL BE
10 -- AND I'M GOING TO PARAPHRASE THEM TO MOVE ON HERE -- THAT
11 THE PERSON THAT YOU HAVE CONVICTED OF MURDER HAS NO PRIOR
12 RECORD REGARDING VIOLENCE TOWARD A PERSON. AND YOU DON'T
13 EVEN NEED TO WRITE THIS DOWN. YOU'RE GOING TO HAVE IT IN THE
14 JURY BOX WITH YOU -- I MEAN, IN THE JURY ROOM WITH YOU. IT
15 WILL SAY TO YOU, NO PRIOR RECORD OF VIOLENCE.

16 IT WILL SAY THAT THE PERSON -- THE MURDER WAS COMMITTED
17 WHILE THE PERSON WHO HAS BEEN CONVICTED WAS UNDER THE
18 INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE. AND THAT'S
19 WHAT ALL THAT TESTIMONY WAS ABOUT.

20 IT WILL SAY THAT THE CAPACITY OF THE PERSON WHO HAS BEEN
21 CONVICTED TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR
22 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
23 SUBSTANTIALLY IMPAIRED. THE PROSECUTOR HAS COME UP AND SAID
24 HE HAD THE CAPACITY. HE HAD THE CAPACITY. YOU HEARD DR.
25 WATTS TESTIFY THAT HE HAS THE CAPACITY, BUT IT IS

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 SUBSTANTIALLY IMPAIRED. IT'S LIKE HAVING EYES BUT YOU CAN'T
2 SEE OUT OF THEM. IT'S LIKE, YOU KNOW, IT'S LIKE HAVING AN
3 EYE BUT NOT BEING ABLE TO READ. YOU'VE GOT THE EYE, BUT YOUR
4 ABILITY TO READ IS SUBSTANTIALLY IMPAIRED. THAT'S WHY I WEAR
5 GLASSES. SO THAT'S THE POINT.

6 AND THEN THE LAST ONE IS THE AGE OR MENTALITY OF THE
7 PERSON THAT'S BEEN CONVICTED.

8 THESE ARE CONSIDERATIONS THAT YOU MUST CONSIDER IN
9 EVALUATING WHICH PENALTY TO IMPOSE. THE ONLY AGGRAVATOR IS
10 THE LAW ENFORCEMENT OFFICER AGGRAVATOR, AND WE -- THE -- I
11 MEAN, LET'S FACE IT. THERE IS NO QUESTION THAT ERIC
12 NICHOLSON WAS IN THE LINE OF THE DUTY. THERE IS NO QUESTION
13 ABOUT THAT. WHAT THAT DOES -- AND YOU'LL HAVE A FORM THAT
14 REQUIRES ALL TWELVE OF YOU TO SIGN SAYING THAT YOU HAVE FOUND
15 THAT AGGRAVATOR TO EXIST. THERE'S NOT REALLY A QUESTION
16 ABOUT THAT. THERE'S NOT A QUESTION ABOUT THAT. SO I KNOW
17 YOU'RE GOING TO BE THE ONES SENTENCING MY CLIENT, AND THE
18 SENTENCE IS EITHER GOING TO BE DEATH OR LIFE IN PRISON
19 WITHOUT PAROLE.

20 WHY IS IT THAT EVIDENCE OF MENTAL IMPAIRMENT IS SO
21 IMPORTANT? WELL, I'LL GIVE YOU A PRACTICAL REASON AND A
22 LEGAL REASON. THE PRACTICAL REASON IS AT LEAST I KNOW WHEN
23 MY MAMA WOULD PUNISH ME AND RIGHT BEFORE SHE'D PUNISH ME
24 SHE'D SAY, "YOU KNEW BETTER. YOU KNOW BETTER THAN THAT,"
25 THEN I KNEW THE PUNISHMENT WAS GOING TO BE BAD. THAT'S THE

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 PRACTICAL POINT OF THE MENTAL IMPAIRMENT. I MEAN, BY GOD, IF
2 SHE FELT LIKE I KNEW BETTER AND IT WASN'T SOMETHING I JUST
3 DIDN'T UNDERSTAND, THEN SHE'D WHIP THE TAR OUT OF ME. SO THE
4 MORE MENTALLY RESPONSIBLE YOU ARE, THE MORE THE PENALTY GOES
5 UP, RIGHT? THAT'S THE PRACTICAL POINT.

6 THE LEGAL POINT'S A WHOLE LOT EASIER THAN THAT. THE
7 LEGAL POINT IS THAT THREE OF THE FOUR THINGS THAT WE ARE
8 SUBMITTING TO YOU FOR CONSIDERATION INVOLVE THE MENTALITY OF
9 THE PERSON THAT'S BEEN CONVICTED.

10 IT'S NOT JUST ME THAT SAYS THAT'S IMPORTANT. IT'S THE
11 GUYS DOWN IN COLUMBIA THAT SAY THAT'S IMPORTANT. WHEN THEY
12 PASSED THESE STATUTORY MITIGATORS, THEY ACKNOWLEDGED THE FACT
13 THAT THAT'S WHAT THE LAW IS. THEY ACKNOWLEDGED THE
14 IMPORTANCE OF THE MENTAL INCAPACITY OR THE MENTAL
15 DIFFICULTIES OR THE MENTAL DEFICIENCIES, MENTAL IMPAIRMENTS.

16 I WANT TO TAKE JUST A FEW MORE MINUTES WITH THE
17 WITNESSES AND THEN I WANT TO SUMMARIZE.

18 AND I KNOW I'VE PROBABLY GONE OVER MY TIME, YOUR HONOR.
19 I APOLOGIZE AND APPRECIATE THE COURT'S INDULGENCE.

20 WE HEARD WITNESSES, AND I WANT TO TALK FIRST ABOUT THIS
21 PRISON WITNESS, MR. SLIGH -- AND THAT'S A GOOD NAME FOR HIM
22 -- AND DR. NARAYAN. DR. NARAYAN AND MR. SLIGH.

23 WHEN MR. SLIGH CAME TO THE WITNESS STAND I WAS SITTING
24 THERE TRYING, SCRATCHING MY HEAD, WHY IN THE WORLD ARE THEY
25 BRINGING IN THE PRISON GUY? THAT'S KIND OF UNUSUAL. IT'S

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 KIND OF UNUSUAL FOR THE PROSECUTOR TO BE BRINGING IN SOMEBODY
2 FROM THE PRISON. THAT'D BE WHAT I'D DO. AND I DID. BUT I
3 FIGURED, THAT'S KIND OF A SURPRISE.

4 THEY CALLED HIM BECAUSE THEY KNEW THAT WE HAD THE JAIL
5 VIDEOS. THEY CALLED HIM BECAUSE THEY KNEW THAT JOHN WOOD HAD
6 COMPLIED AND DONE EVERYTHING HE WAS SUPPOSED TO DO WHILE HE
7 WAS IN JAIL. THAT'S WHY THEY CALLED THAT GUY. THAT'S WHY
8 THEY CALLED THAT WITNESS. THEY WANTED TO MAKE JAIL SOUND
9 SOFT.

10 THEY -- BUT I'LL TELL YOU A COUPLE OF THINGS THAT I
11 THOUGHT WERE IMPORTANT ABOUT HIS TESTIMONY, COME TO THINK OF
12 IT. HIS TESTIMONY WAS THAT IN THIS SOFT PRISON THAT THE
13 PROSECUTOR GIVES YOU, HIS TESTIMONY IS THAT THREE INMATES
14 WILL BE LIVING IN A SPACE HALF THE SIZE OF THAT JURY BOX.
15 THAT'S NOT MY WORDS. THOSE CAME FROM THE WITNESS STAND. HE
16 ALSO SAID THAT WHEN A PERSON IS CONVICTED OF MURDER AND
17 SENTENCED TO LIFE IN OUR STATE THEY GO INTO THE PRISON SYSTEM
18 CLASSIFIED A NUMBER THREE MAXIMUM SECURITY, WHICH IS THE
19 HIGHEST CLASSIFICATION FOR SECURITY PURPOSES THAT THERE IS,
20 AND THEY DIE IN PRISON WHEN CLASSIFIED A NUMBER THREE MAXIMUM
21 SECURITY. IT DON'T MATTER HOW GOOD HE IS. IT DON'T MATTER
22 HOW GOOD THEY BEHAVE OR WHAT THEY DO OR HOW MUCH THEY BEG.
23 THEIR SECURITY LEVEL NEVER CHANGES.

24 NOW, REGARDING DR. NARAYAN, I WANT TO BRING A COUPLE OF
25 POINTS TO YOUR ATTENTION. NUMBER ONE, HE FINALLY DID AGREE,

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 EVERYBODY AGREES, THAT JOHN WOOD HAS A MENTAL ILLNESS. YOU
2 KNOW, ONE SAYS ONE THING. ONE SAYS ANOTHER. IT'S LIKE
3 DUELING EXPERTS, YOU KNOW. WE GOT JUST EXPERTS IN HERE JUST
4 DOING LIKE THIS (GESTURE). BUT THE FACT IS, THEY ALL
5 ACTUALLY AGREE THE GUY'S GOT A MENTAL ILLNESS, WHICH WAS
6 INTERESTING.

7 THE OTHER THING I THOUGHT THAT WAS IMPORTANT ABOUT DR.
8 NARAYAN IS THAT HE BROUGHT OUT ALL THIS INFORMATION ABOUT THE
9 FACT THAT JOHN WOOD WAS A MODEL PRISONER. HIS NOTES. WE'RE
10 READING HIS -- WE'RE READING THE INFORMATION THAT HE IS
11 RELYING UPON WHERE THEY'RE INTERVIEWING PEOPLE AT THE JAIL
12 AND THEY SAY, "WELL, I WISH I DIDN'T HAVE TO SAY IT, BUT HE'S
13 A MODEL PRISONER. HE DOES EVERYTHING HE'S SUPPOSED TO DO. I
14 HATE TO SAY IT." THAT'S WHAT ONE OF THE GUYS SAID IN THEIR
15 NOTES. "I HATE TO SAY IT, BUT IT'S TRUE."

16 WE DIDN'T BRING TO YOU ANY EXCUSES BECAUSE THERE ARE
17 NONE. WE DID NOT BRING TO YOU ANY JUSTIFICATIONS BECAUSE
18 THERE ARE NONE. WHAT WE TRIED THROUGH OUR WITNESSES IN THIS
19 SECOND PHASE TO DO IS TO BRING TO YOU SOME SORT OF
20 EXPLANATION FOR HOW AND WHY AND WHAT TO DO NOW.

21 WE BROUGHT JEFF YOUNGMAN. I MEAN, ALL HE DID WAS HE
22 JUST TRIED TO GATHER THE MAN'S HISTORY. I MEAN, WHAT
23 WOULDN'T -- I MEAN, YOU NEED TO KNOW SOMETHING ABOUT THE
24 PERSON THAT THE GOVERNMENT IS TRYING TO GET YOU TO EXECUTE.
25 AND SO WE BROUGHT IT TO YOU. IT WAS HARD TO GET. A LOT OF

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 MOVING, VERY LITTLE SCHOOL RECORDS AND HEALTH RECORDS. SURE,
2 I MEAN, IT COULD HAVE BEEN BETTER.

3 WE BROUGHT JIM AIKEN TO YOU. AND I'LL TELL YOU WHAT --
4 THIS IS ONE OF THE LAST COMMENTS I WANT TO MAKE ABOUT THIS
5 JAIL BUSINESS -- JIM AIKEN, I THINK MR. ARIAIL SAID HE WAS A
6 VETERAN OF THE -- JIM AIKEN HAS AN IMPECCABLE REPUTATION, AN
7 ILLUSTRIOUS CAREER. IN FACT, WHEN I PUT -- WHEN RODNEY
8 RICHEY QUESTIONED JIM AIKEN AND SAID, "NO FURTHER QUESTIONS.
9 ANSWER ANY QUESTIONS THE PROSECUTOR HAS FOR YOU," NO
10 QUESTIONS.

11 MR. ARIAIL KNEW BETTER THAN TO QUESTION JIM AIKEN,
12 BECAUSE JIM AIKEN HAD CONCLUDED THE FOLLOWING THINGS THAT MR.
13 ARIAIL WAS NOT GOING TO BE ABLE TO ASSAULT. HE SAID THAT
14 JOHN WOOD COULD BE HOUSED IN THE PRISON WITHOUT CAUSING ANY
15 RISK OF ANY HARM TO ANY STAFF. HE SAID THAT THE PRISONS HAD
16 THE FACILITIES, THE STAFF, THE SECURITY SYSTEMS AND THE
17 AUTHORIZATION OF LAW TO CONTROL INMATES. HE SAID THAT JOHN
18 WOOD WOULD BE ASSIGNED TO A CELL, IN FACT, THE OTHER FELLOW
19 TOLD YOU ABOUT THAT TOO. HE SAID THAT PRISONS CONTAIN
20 VIOLENT, DANGEROUS PEOPLE FOR LONG PERIODS OF TIME. HE SAID
21 THAT JOHN WOOD COULD AND WOULD BE PLACED IN CLOSEST
22 CONFINEMENT IN MAXIMUM SECURITY BEHIND BARS AND FENCES WITH
23 GUNS ON THE CORNER REGARDLESS OF HOW HE ACTED. AND THE FINAL
24 THING WAS THAT JOHN WOOD HAD NO HISTORY OF VIOLENCE AGAINST
25 ANY PERSON IN PRISON IN HIS PRIOR -- THE FEDERAL TIME HE

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 SERVED OR IN THE COMMUNITY PRIOR TO DECEMBER THE 6TH.

2 AND, YOU KNOW, THAT BRINGS ME TO THE POINT, HOW DOES THE
3 PROSECUTOR RECONCILE HIS SPEECH TO YOU ABOUT AN INHERENTLY
4 EVIL PERSON AND THEN ALSO SAY THAT THIS PERSON IS ADAPTABLE
5 TO PRISON LIFE WITH NO QUESTIONS FOR THE WITNESS? I MEAN,
6 HOW DOES HE -- IS HE CLAIMING THIS PERSON HAS A -- IS A
7 FUTURE DANGER? BECAUSE IF HE IS, HE AIN'T SAYING IT.

8 DONNA SCHWARTZ-WATTS, IMPECCABLE CREDENTIALS, PROSECUTOR
9 -- IN FACT, TRAINS PROSECUTORS. THIS WITNESS OF OURS
10 ACTUALLY TRAINS FEDERAL PROSECUTORS, WRITES THE EXAMS FOR THE
11 RECERTIFICATION OF FORENSIC PSYCHIATRISTS ACROSS THE NATION.

12 THE PROSECUTOR STARTS COMPLAINING ABOUT HER ABOUT WHO
13 PAYS HER. WHO PAYS HER. WE'RE TALKING ABOUT A LIFE OR DEATH
14 TRIAL AND HE WANTS TO ARGUE WITH A WITNESS WHO HAS THE
15 REPUTATION A MILE HIGH ABOUT WHO IS GOING TO PAY HER. AND I
16 GOT UP THERE AND I SAID, "YOU'RE GOING TO SEND A BILL TO ME
17 AND I'M GOING TO PAY YOU, RIGHT?" I MEAN, THAT IS REALLY
18 CHICKEN.

19 HER CONNECTIONS WITH BRAD CLAYTON, DR. BRAD CLAYTON.
20 THIS, THAT AND THE OTHER.

21 HER PILE OF PAPERS. HER PILE OF PAPERS HE WANTS TO
22 COMPLAIN ABOUT. AND I'LL TELL YOU THE LAST COMMENT I'LL MAKE
23 ABOUT THAT PARTICULAR SITUATION IS WHEN HE HAD THESE THINGS
24 IN THE PLASTIC LINING AND HE'S STANDING UP AND SAYING, "WHAT
25 ABOUT THESE? DID YOU GET THESE STATEMENTS ABOUT THESE PEOPLE

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 FROM OUT -- THE PITTMANS?" THE PITTMAN PLOT IS WHAT I CALL
2 THAT. "DID YOU GET ALL THIS? DID YOU SEE ALL THIS?
3 WOULDN'T IT HAVE BEEN IMPORTANT?" AND SHE SAID, "WELL, IT
4 MIGHT HAVE BEEN IMPORTANT." GUESS WHAT HE DIDN'T DO? HE
5 DIDN'T EVEN HAND THEM TO HER. SHE DOESN'T KNOW WHETHER
6 THEY'RE IMPORTANT OR NOT. HE'S UP THERE STANDING BEHIND THAT
7 PODIUM WAIVING PAPERS AROUND. WHO ARE THESE PEOPLE? THEY
8 DIDN'T TESTIFY IN THIS TRIAL. HE TOLD YOU IN THE FIRST DAY
9 OF THIS TRIAL THAT -- MY -- AND I WROTE THE QUOTE -- "WE
10 BRING TO YOU EVERYTHING WE POSSIBLY HAVE." AND YET HE STANDS
11 OVER THERE AND STARTS WAVING SOMETHING THAT NOBODY KNOWS
12 ANYTHING ABOUT, INCLUDING THE WITNESS.

13 DR. WATTS SAID THAT THERE WAS EVIDENCE OF AND HER
14 DIAGNOSIS AFTER YEARS OF -- I MEAN, AFTER ALL THE CONTACTS
15 AND THE REVIEW OF THE FILES AND TALKING WITH WHOEVER SHE
16 COULD FIND WAS BIPOLAR DISORDER AND PARANOID PERSONALITY
17 DISORDER. SHE JUST IDENTIFIED THEM SPECIFICALLY AND
18 EXPLAINED TO YOU HOW THEY APPLIED.

19 AND I WANT TO TAKE A SECOND TO TELL YOU WHY I THINK
20 THAT'S RELEVANT. BECAUSE IF YOU HEARD THE DESCRIPTION WHERE
21 SHE WAS TALKING ABOUT HOW HE NEVER COULD ACCOMPLISH ANY OF
22 THIS GRANDIOSITY -- HE COULD NEVER ACCOMPLISH ANYTHING. HE'D
23 ALWAYS HAVE THESE BIG PLANS, MAKE ALL THESE BIG PLANS AND
24 THEN THEY'D KIND OF FLOP, KIND OF FLOP. AND SHE SAID THAT IN
25 HER INVESTIGATION AND DIAGNOSIS OF THE CASE WHAT HAD HAPPENED

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 WAS THAT JOHN WOOD HAD GOTTEN CLOSER TO SOMETHING THAT HE
2 THOUGHT HE WAS GOING TO SUCCEED AT THAN HE HAD EVER GOTTEN
3 BEFORE.

4 IT WAS LIKE THAT AIR IN THE BALLOON I TOLD YOU ABOUT IN
5 MY OPENING STATEMENT, AND ERIC NICHOLSON, AS HE SHOULD HAVE
6 AND WAS SUPPOSED TO, WAS THE PIN THAT PRICKED THAT BALLOON.

7 THE INCIDENT ON DECEMBER THE 6TH -- IT WAS LIKE HE WAS
8 SAYING -- HE WANTED TO GO TO BELIZE AND BUILD THESE HOMES
9 WITH THIS STUFF, THIS FOAM STUFF OR WHAT, BUILDING THESE
10 BRICKS OR BLOCKS.

11 THAT TESTIMONY IS IMPORTANT, LADIES AND GENTLEMEN,
12 BECAUSE I CAN'T -- I'M TRYING TO DO WHAT I CAN TO GIVE YOU
13 SOMETHING AS AN EXPLANATION FOR HOW AND WHY THIS THING
14 HAPPENED. EVERY LIFE IS SACRED. THAT IS THE VERY NATURE OF
15 OUR HISTORY. IF IT WERE NOT SO, THEN JOHN WOOD WOULD HAVE
16 DIED ON DECEMBER THE 6TH. HE WOULD HAVE BLED OUT, AS VIC
17 WOOTEN SAID FROM THE WITNESS STAND. BUT WHAT HAPPENED WAS
18 THE E.M.S., THE PUBLIC SERVANTS -- THE PEOPLE LIKE THE LAW
19 ENFORCEMENT, THE FIRE DEPARTMENT, E.M.S -- SAVED JOHN WOOD.
20 EVERY LIFE IS SACRED.

21 AND SPEAKING OF OFFICER WOOTEN, THE PROSECUTOR BRINGS
22 OUT VIC WOOTEN. VIC WOOTEN, OVER 25 YEARS IN LAW
23 ENFORCEMENT, TWO AND A HALF WEEKS PRIOR TO HIS RETIREMENT IS
24 WHEN THIS THING HAPPENED. WHEN HE WAS STANDING OVER JOHN
25 WOOD ON THAT ROAD IN ANDERSON, HE KNEW THAT ERIC NICHOLSON

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 HAD BEEN MURDERED IN GREENVILLE. HE KNEW THAT THIS PERSON
2 WHO HE WAS STANDING OVER HAD SHOT ALL OVER THE PLACE IN
3 ANDERSON. HE KNEW THAT MIKE GRANT HAD BEEN HIT BY A FRAGMENT
4 WHEN HIS WINDSHIELD SHATTERED. HE KNEW THAT HE HAD BEEN
5 SCARED TO DEATH. AND YET HE WAS RELIEVED WHEN JOHN WOOD
6 SURVIVED. GOD BLESS HIM. A HIGHER LAW IS THAT LIFE IS, IN
7 FACT, SACRED.

8 FINAL COMMENTS I WANT TO MAKE TO YOU, LADIES AND
9 GENTLEMEN, RELATE TO YOUR SERVICE AS JURORS AND JURY TRIALS.
10 YOU KNOW, A LOT OF COUNTRIES DON'T HAVE JURY TRIALS. YOU
11 KNOW, YOU DON'T HAVE IN IRAQ AND IRAN AND INDIA AND COMMUNIST
12 CHINA AND PLACES LIKE THAT, YOU DON'T HAVE A RIGHT TO A JURY
13 TRIAL. I'M REALLY THANKFUL TO BE HERE, AND I'M PROUD TO BE
14 HERE, AND I'M GLAD THAT WE LIVE IN A COMMUNITY WHERE YOUR
15 ACCUSER IS NOT ALSO YOUR JUDGE. AND I FEEL LIKE YOU JURORS
16 ARE THE JUDGE IN THIS CASE. YOU'RE THE JURY. YOU'RE THE
17 INDIVIDUAL JURORS WHO ARE GOING TO IMPOSE THIS SENTENCE.

18 BUT BEFORE YOU DO I WANT TO TALK TO JUST A FINAL FEW
19 MOMENTS ABOUT YOUR JURY SERVICE, RESPONSIBILITY KIND OF
20 THOUGHTS THAT I HAVE ON IT. BECAUSE THIS MATTER IS NOT JUST
21 IMPORTANT TO JOHN WOOD AND TO ME. IT'S NOT JUST IMPORTANT TO
22 BOB ARIAIL AND THE FAMILIES OF THESE AFFECTED PEOPLE. THIS
23 SITUATION IS CRITICAL AND CRUCIAL TO YOU.

24 AND THE BEST WAY I CAN DESCRIBE IT IS MY WIFE ALWAYS
25 SAYS TO ME -- BECAUSE I'M A LITTLE BIT FORGETFUL. AND I

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 ALWAYS KIND OF MAKE UP AN EXCUSE. I ALWAYS TELL HER THAT I
2 AIN'T GOT ROOM BUT JUST FOR SO MUCH, AND I KIND OF LIKE -- I
3 JUST PURGE OUT ANYTHING I DON'T FEEL LIKE I NEED TO REMEMBER.

4 I SAY THAT IN A JOKING WAY. BUT I SAY THIS TO YOU IN A
5 SERIOUS WAY. YOU'RE GOING TO REMEMBER WHAT HAPPENS IN THIS
6 CASE FOR THE REST OF YOUR LIFE. YOU'RE GOING TO REMEMBER
7 THIS. AND I GUESS THE QUESTION IS, WILL THAT MEMORY BE OF
8 DEATH OR OF LIFE? AND THAT'S WHY THIS JURY SERVICE IS
9 IMPORTANT TO YOU.

10 EACH ONE OF YOU DRINKS THE WINE OF THIS CASE, BUT YOU
11 DRINK IT OUT OF DIFFERENT CUPS. EACH ONE OF YOU HAS YOUR OWN
12 METHOD FOR MAKING INDIVIDUAL DECISIONS AND INDIVIDUAL
13 JUDGMENTS. EACH ONE OF YOU WILL HAVE MITIGATION INFORMATION
14 THAT MAY MEAN SOMETHING TO YOU AND MAY NOT MEAN SOMETHING TO
15 SOMEBODY ELSE. BUT YOU EACH HAVE YOUR OWN VALUES AND THE
16 RIGHT TO PUT VALUES ON THINGS. YOU ARE FROM DIFFERENT
17 BACKGROUNDS. YOU HAVE DIFFERENT LIFE EXPERIENCES.

18 THAT'S WHAT GREAT ABOUT A JURY. YOU HAVE THE ABSOLUTE
19 RIGHT TO FORM YOUR OWN DECISION USING WHATEVER CRITERIA YOU
20 MIGHT WANT. THE FOREMAN IS ONLY ONE OF TWELVE INDIVIDUAL
21 PEOPLE. THE LAW REQUIRES ALL TWELVE SIGNATURES FOR THE
22 AGGRAVATOR, AND THAT'S NOT REALLY, I DON'T THINK, A PROBLEM.
23 BUT I WANT YOU TO KNOW WHEN YOU GO IN THE JURY ROOM THAT
24 THERE IS A LEVEL OF RESPECT THAT I THINK YOU JUST SIMPLY --
25 AND WE TALKED ABOUT IT A LITTLE BIT IN JURY -- IN JURY

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 SELECTION -- YOU HAVEN'T KNOWN EACH OTHER VERY LONG AND YOU
2 DON'T KNOW A LOT ABOUT EACH OTHER. I WOULD SUSPECT YOU HAVE
3 HAD A COUPLE OF WEEKS NOW TO -- OR A WEEK NOW TO GET TO KNOW
4 EACH OTHER. BUT EACH ONE OF YOU HAS A RIGHT TO BRING WHAT
5 YOU THINK IS RIGHT BACK INTO THIS COURTROOM. EACH PERSON,
6 THE FOREMAN AND ELEVEN OTHER INDIVIDUAL PEOPLE HAVE THE RIGHT
7 TO HAVE YOUR OWN MORAL AND PERSONAL INDIVIDUAL CONSCIENCE
8 LEAD YOU TO WHAT YOU THINK YOU NEED TO DO.

9 AND I ASKED YOU ABOUT THAT IN JURY SELECTION, EACH ONE
10 WITH A TEN-TWO QUESTION. I ASKED YOU THOSE QUESTIONS ABOUT
11 RESPECTING EACH OTHER, ABOUT STICKING WITH YOUR VIEW. AND I
12 DIDN'T -- I WASN'T WASTING MY BREATH. IT'S KIND OF LIKE A
13 JUROR'S BILL OF RIGHTS KIND OF THING, YOU KNOW. WHAT DO YOU
14 HAVE? YOU HAVE THE RIGHT TO BE AN INDIVIDUAL JUROR. YOU
15 HAVE THE RIGHT TO HAVE AN OPINION. YOU HAVE THE RIGHT TO
16 HAVE YOUR OWN INDIVIDUAL OPINION. YOU HAVE THE RIGHT TO
17 RESPECT FROM OTHER JURORS. AND FINALLY, YOU HAVE THE RIGHT
18 TO BRING WHAT YOU THINK IS RIGHT BACK TO THIS COURTROOM. I
19 ENCOURAGE YOU TO BE FULLY RESPECTFUL OF EACH OTHER.

20 FINALLY, I ASK YOU JURORS, WHAT DO WE TEACH OUR
21 CHILDREN? DO WE TEACH OUR CHILDREN RETRIBUTION? OR DO WE
22 TEACH OUR CHILDREN COMPASSION? DO WE TEACH OUR CHILDREN
23 REVENGE? OR DO WE TEACH OUR CHILDREN MERCY? DO WE TURN A
24 DEAF EAR ON THE LEAST OF US? WHAT WE DO TO THE LEAST OF US
25 WE DO TO OURSELVES. AND THAT'S WHY I ASK YOU TO RETURN A

CLOSING ARGUMENTS -- BY MR. MAULDIN

1 SENTENCE OF LIFE IN PRISON WITHOUT PAROLE FOR JOHN RICHARD
2 WOOD.

3 THANK YOU.

4 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A
5 SHORT BREAK, FIVE TO TEN MINUTES, AND GET YOU BACK OUT HERE
6 AND THEN WE'LL HAVE THE CHARGE.

7 THANK YOU. PLEASE DO NOT DISCUSS THE CASE.

8 (JURY EXITS COURTROOM AT 4:58 P.M.)

9 THE COURT: THE JURY HAS BEEN EXCUSED. FIVE-MINUTE
10 RECESS, PLEASE.

11 (A RECESS WAS TAKEN FROM 4:59 TO 5:10 P.M.)

12 THE COURT: ANYTHING BEFORE WE BRING THE JURY?

13 MR. MAULDIN: (STANDING)

14 THE COURT: YES, SIR.

15 MR. MAULDIN: YOUR HONOR, THE STATUTORY INSTRUCTIONS
16 WERE DELIVERED TO US DURING THE BREAK BEFORE THE CLOSING
17 ARGUMENTS. I WILL CONFESS THAT I WAS VERY BUSY TRYING TO
18 PREPARE MY FINAL COMMENTS AND I DID NOT GET A CHANCE TO READ
19 THIS. IT -- AND YOU ARE AWARE OF THE ISSUE, THE ISSUE IS
20 WHETHER IT SHOULD BE YOU "MAY" ALSO CONSIDER THE FOLLOWING
21 STATUTORY MITIGATING CIRCUMSTANCES. I TAKE THE POSITION THAT
22 THE WORD IS YOU "MUST" ALSO CONSIDER THE FOLLOWING STATUTORY
23 MITIGATING CIRCUMSTANCES AND MOVE TO EXCHANGE THE WORD MUST
24 FOR MAY.

25 THE COURT: YOUR REQUEST IS RESPECTFULLY DENIED. THIS

MATTERS AND MOTIONS

1 IS THE SAME DOCUMENT THAT WAS REVIEWED DURING THE CHARGE
2 CONFERENCE TO WHICH NO OBJECTION WAS RAISED. IT'S THE SAME
3 WORD USED IN CONNECTION WITH THEIR CONSIDERATION OF THE
4 STATUTORY AGGRAVATING CIRCUMSTANCE. AND I'LL BE VERY CLEAR
5 IN THE INSTRUCTION THAT IF THEY FIND SUCH A CIRCUMSTANCE
6 ESTABLISHED BY THE EVIDENCE, THEY MUST CONSIDER IT. BUT I'M
7 NOT GOING TO SANCTION, THE COURT, THAT THESE FACTORS HAVE
8 BEEN ESTABLISHED. THERE IS SIMPLY SUFFICIENT EVIDENCE FROM
9 WHICH THE JURY CAN FIND THEY EXIST. AND IF THEY FIND THEY
10 EXIST, THEN THEY MUST CONSIDER THEM. BUT THE JURY IS
11 CERTAINLY WITHIN ITS PROVINCE TO FIND THAT THE TESTIMONY OF
12 THE DEFENSE EXPERTS IS NOT CREDIBLE. THAT'S SIMPLY THEIR
13 PREROGATIVE. AND I'M NOT GOING TO FORCE THEM TO CONSIDER A
14 MITIGATING CIRCUMSTANCE THAT IN THEIR PROVINCE THEY DON'T
15 BELIEVE EXISTS IN THE RECORD.

16 THE RECORD WILL REFLECT YOUR OBJECTION TO MY RULING. I
17 CERTAINLY UNDERSTAND YOUR POSITION.

18 BRING THE JURY.

19 (JURY REENTERS COURTROOM AT 5:15 P.M.)

20 THE COURT: LADIES AND GENTLEMEN, HAVING FOUND THE
21 DEFENDANT, JOHN RICHARD WOOD, GUILTY OF MURDER, IT IS NOW
22 YOUR DUTY TO DETERMINE WHICH SENTENCE TO IMPOSE UPON HIM. YOU
23 ARE CALLED UPON TO DECIDE WHETHER TO SENTENCE HIM TO LIFE
24 IMPRISONMENT OR DEATH.

25 IN THIS PROCEEDING AS IN THE PRECEDING PHASE OF THIS

JURY CHARGE

1 TRIAL, YOU ARE JUDGES OF THE FACTS. AS I HAVE INSTRUCTED
2 YOU, THE LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE
3 FACTS OF THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE
4 JURY, TO DETERMINE. AS PART OF YOUR FACT FINDING FUNCTION IT
5 IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT
6 AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS
7 PROCEEDING. IN THIS PROCEEDING YOU MAY CONSIDER THE
8 ADDITIONAL EVIDENCE RECEIVED DURING THE SENTENCING PHASE AS
9 WELL AS THE EVIDENCE RECEIVED DURING THE FIRST PHASE. YOU'RE
10 CALLED UPON TO ASSESS THE CREDIBILITY OR BELIEVABILITY OF THE
11 WITNESSES WHO HAVE TESTIFIED, AND YOU MUST EVALUATE AND
12 ANALYZE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES
13 YOU OF ITS TRUTH.

14 PLEASE RECALL FROM MY PREVIOUS INSTRUCTION
15 REGARDING YOUR CONSIDERATION OF THE TESTIMONY OF A WITNESS
16 QUALIFIED AS AN EXPERT WITNESS. THAT IS AN INDIVIDUAL WHO BY
17 WAY OF TRAINING, EDUCATION, EXPERIENCE ACQUIRES A CERTAIN
18 DEGREE OF SKILL IN A PARTICULAR AREA. THE LAW ALLOWS SUCH A
19 WITNESS TO BE DESIGNATED AS AN EXPERT AND TO GIVE OPINION
20 TESTIMONY IN HIS OR HER PARTICULAR FIELD. THESE OPINIONS
21 CONSTITUTE EVIDENCE TO BE CONSIDERED BY YOU IN CONNECTION
22 WITH ALL OF THE OTHER EVIDENCE IN THE CASE. YOU MAY CONSIDER
23 AN EXPERT'S OPINION JUST AS YOU WOULD ALL OF THE OTHER
24 EVIDENCE THAT HAS BEEN PRESENTED TO YOU. IT IS FOR YOU TO
25 GIVE THE EXPERT'S TESTIMONY SUCH WEIGHT, IF ANY, AS YOU MAY

JURY CHARGE

1 DETERMINE AND AS YOU CAN WEIGH SUCH AND YOU CAN ACCEPT IT,
2 YOU CAN REJECT IT IN THE SAME MANNER AS YOU TREAT ALL OF THE
3 OTHER EVIDENCE IN THE CASE.

4 IN EXERCISING YOUR MENTAL PROCESSES AND IN DETERMINING
5 WHAT YOU CONSIDER TO BE TRUE IN ASSESSING THE CREDIBILITY OF
6 WITNESSES, THE LAW REQUIRES THAT YOU EXERCISE YOUR GOOD
7 JUDGMENT, YOUR COMMON SENSE, AND YOUR SENSE OF LOGIC AND
8 REASON. YOU APPLY THESE ATTRIBUTES TO THE EVIDENCE AND
9 DETERMINE WHAT YOU CONSIDER TO BE THE TRUTHFUL EVIDENCE, AND
10 TO THESE TRUE STATEMENTS OF FACT YOU APPLY THE LAW, AND
11 THROUGH THAT PROCESS ARRIVE AT A VERDICT, AT A DECISION,
12 WHICH IS APPROPRIATE AND PROPER UNDER THE CIRCUMSTANCES OF
13 THIS CASE.

14 AS THE TRIAL JUDGE IT IS MY DUTY TO CHARGE YOU ON THE
15 LAW APPLICABLE TO THIS PARTICULAR MATTER. IT IS YOUR DUTY TO
16 ACCEPT AND APPLY THE LAW AS I STATE IT TO YOU.

17 YOU WILL HEAR A REFERENCE TO THE PHRASE "BEYOND A
18 REASONABLE DOUBT" ONCE AGAIN IN THIS PHASE AS YOU DID IN THE
19 GUILT PHASE. AND TO THE EXTENT ANY ISSUE OR MATTER IN THIS
20 SENTENCING PROCESS REQUIRES PROOF BEYOND A REASONABLE DOUBT,
21 PLEASE CONSIDER MY EARLIER INSTRUCTION. BEYOND A REASONABLE
22 DOUBT IS PROOF WHICH LEAVES YOU FIRMLY CONVINCED OF THE ISSUE
23 TO BE DECIDED.

24 BY YOUR VERDICT YOU HAVE NO FRIENDS TO REWARD AND NO
25 ENEMIES TO PUNISH. THE VERDICT SHOULD SPEAK THE TRUTH.

JURY CHARGE

1 LADIES AND GENTLEMEN, ANY DECISION YOU MAKE WITH REGARD
2 TO A SENTENCE FOR THIS DEFENDANT, IT MUST BE UNANIMOUS. ALL
3 TWELVE WHO DELIBERATE MUST AGREE. MOREOVER, A SENTENCE OF
4 DEATH MUST BE BASED ON PROOF, IN YOUR JUDGMENT AND
5 ASSESSMENT, BEYOND A REASONABLE DOUBT.

6 I ONCE AGAIN INSTRUCT YOU AND EMPHASIZE TO YOU THE FACT
7 THAT THIS DEFENDANT DID NOT TESTIFY DURING THIS PROCEEDING IS
8 NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY OR IN ANY
9 MANNER IN YOUR DELIBERATION WITH REGARD TO THE SENTENCE TO BE
10 IMPOSED UPON HIM. IT MUST NOT BE CONSIDERED BY YOU IN ANY
11 MANNER WHATSOEVER AGAINST THE DEFENDANT. A DEFENDANT HAS THE
12 CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF
13 SUCH CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERED
14 BY YOU IN YOUR DELIBERATIONS. YOU ARE TO REACH NO INFERENCE
15 THEN AND DRAW NO CONCLUSION WHATSOEVER ON THE FACT THAT THIS
16 DEFENDANT DID NOT TESTIFY DURING THIS SENTENCING PROCEEDING.
17 THIS FACT MUST NOT EVEN BE DISCUSSED OR MENTIONED BY YOU IN
18 THE JURY ROOM.

19 IN DETERMINING THE APPROPRIATE SENTENCE FOR THE
20 DEFENDANT, YOU MAY CONSIDER WHETHER A STATUTORY AGGRAVATING
21 CIRCUMSTANCE IS SUPPORTED BY THE EVIDENCE. YOU MAY ALSO
22 CONSIDER THE PARTICULAR NATURE OF THE CRIME AND THE
23 PARTICULAR CHARACTERISTICS OF THE DEFENDANT. YOU MAY ALSO
24 CONSIDER ANY EVIDENCE PRESENTED WITH REGARD TO THE
25 DEFENDANT'S PRIOR CRIMINAL RECORD AND ANY OTHER ALLEGED ACTS,

JURY CHARGE

1 ALTHOUGH SUCH EVIDENCE MUST NOT BE CONSIDERED AS EVIDENCE OF
2 ANY STATUTORY AGGRAVATING CIRCUMSTANCE. RATHER, THE
3 DEFENDANT'S PRIOR CRIMINAL RECORD, ALLEGED PRIOR ACTS MAY BE
4 CONSIDERED ONLY AS EVIDENCE OF DEFENDANT'S CHARACTER AND
5 CHARACTERISTICS.

6 DURING THE COURSE OF THIS TRIAL THERE HAS BEEN EVIDENCE
7 ABOUT CRIMES THAT JOHN RICHARD WOOD ALLEGEDLY COMMITTED IN
8 ANDERSON COUNTY. THESE ARE CRIMES OF WHICH JOHN RICHARD
9 WOULD HAS NOT BEEN CONVICTED. I INSTRUCT YOU THAT YOU MAY
10 ONLY CONSIDER THIS EVIDENCE AS EVIDENCE OF JOHN RICHARD
11 WOOD'S CHARACTER IN GENERAL. YOU MAY NOT CONSIDER THESE
12 ALLEGED CRIMES IN ANY WAY AS EVIDENCE OF A STATUTORY
13 AGGRAVATING CIRCUMSTANCE.

14 LADIES AND GENTLEMEN, IN ARRIVING AT YOUR DECISION YOU
15 MUST FIRST DETERMINE FROM THE EVIDENCE PRESENTED DURING THE
16 TRIAL AND DURING THIS SENTENCING PROCEEDING WHETHER THE
17 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED BEYOND A
18 REASONABLE DOUBT AT THE TIME THE VICTIM, ERIC NICHOLSON, WAS
19 MURDERED BY JOHN RICHARD WOOD.

20 THE STATUTORY AGGRAVATING CIRCUMSTANCE IS A FACT, AN
21 INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE GENERAL
22 ASSEMBLY OF THE STATE OF SOUTH CAROLINA HAS DECLARED BY
23 STATUTE TO AGGRAVATE OR TO MAKE WORSE THE OFFENSE OF MURDER
24 WHEN THAT FACT, THAT INCIDENT, THAT DETAIL OR THAT OCCURRENCE
25 ACCOMPANIES THE ACT OF MURDER. IN OTHER WORDS, A STATUTORY

JURY CHARGE

1 AGGRAVATING CIRCUMSTANCE INCREASES THE ENORMITY OF THE
2 OFFENSE AND ADDS TO THE INJURIOUS CONSEQUENCES OF THE
3 OFFENSE. BEFORE YOU CAN IMPOSE A DEATH SENTENCE ON
4 DEFENDANT, ALL TWELVE OF YOU MUST AGREE AND FIND BEYOND A
5 REASONABLE DOUBT THAT THE EVIDENCE IN THIS CASE ESTABLISHES
6 THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTS. UNLESS YOU
7 SO FIND, YOU CANNOT SENTENCE THE DEFENDANT TO DEATH OR LIFE
8 IMPRISONMENT.

9 THE STATUTORY AGGRAVATING CIRCUMSTANCE ALLEGED BY THE
10 STATE WILL BE SUBMITTED TO YOU IN WRITING IN A DOCUMENT
11 ENTITLED STATUTORY INSTRUCTIONS. AT THE END OF THIS PROCESS,
12 I'VE GOT FIFTEEN COPIES, AND I'M GOING TO HAND THEM OUT AND
13 LET YOU LOOK AT IT, SO AS WE REVIEW IT AT THE END I THINK
14 YOU'LL SEE HOW IT FLOWS AND IS CONSISTENT IN THE MANNER AND
15 ORDER IN WHICH I'VE GIVEN YOU THESE INSTRUCTIONS. YOU WILL
16 HAVE THESE INSTRUCTIONS WITH YOU IN THE JURY ROOM.

17 THE STATUTORY AGGRAVATING CIRCUMSTANCE ALLEGED BY THE
18 STATE IS THE MURDER OF A FEDERAL, STATE OR LOCAL LAW
19 ENFORCEMENT OFFICER -- AND THEN IT LISTS OTHER INDIVIDUALS --
20 PEACE OFFICER, FORMER PEACE OFFICER, CORRECTIONS EMPLOYEE,
21 FORMER CORRECTIONS EMPLOYEE, FIREMAN OR FORMER FIREMAN --
22 DURING OR BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES.
23 IN OTHER WORDS, THE ALLEGED STATUTORY AGGRAVATING
24 CIRCUMSTANCE FOUND IN OUR LAWS IS THE MURDER OF A LAW
25 ENFORCEMENT OFFICER DURING OR BECAUSE OF THE PERFORMANCE OF

JURY CHARGE

1 HIS OFFICIAL DUTIES.

2 IF ALL TWELVE OF YOU WHO DELIBERATE AGREE AND FIND
3 BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATUTORY
4 AGGRAVATING CIRCUMSTANCE EXISTED AT THE TIME THE VICTIM IN
5 THIS CASE WAS MURDERED, THEN YOU WOULD BE AUTHORIZED TO
6 IMPOSE EITHER A SENTENCE OF LIFE IMPRISONMENT OR A SENTENCE
7 OF DEATH.

8 IN THE EVENT YOU FIND BEYOND A REASONABLE DOUBT THE
9 EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE,
10 A SENTENCE OF LIFE IMPRISONMENT MEANS LIFE WITHOUT THE
11 POSSIBILITY OF PAROLE. IN THAT SITUATION, HAVING FOUND A
12 STATUTORY AGGRAVATING CIRCUMSTANCE, UNDER A SENTENCE OF LIFE
13 IMPRISONMENT DEFENDANT WOULD NEVER BE RELEASED FROM JAIL.

14 IF, HOWEVER, YOU DO NOT FIND BEYOND A REASONABLE DOUBT
15 THAT THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED
16 AT THE TIME MR. NICHOLSON WAS MURDERED, THEN YOU WOULD CEASE
17 YOUR DELIBERATIONS AND ADVISE THE COURT OF YOUR DECISION BY
18 HAVING THE FOREPERSON SIGN THE VERDICT FORM ENTITLED "NO
19 FINDING OF AGGRAVATING CIRCUMSTANCE."

20 IN ARRIVING AT YOUR DECISION, IF YOU FIND THE PRESENCE
21 BEYOND A REASONABLE DOUBT OF THE STATUTORY AGGRAVATING
22 CIRCUMSTANCE, YOU MUST ALSO CONSIDER IF YOU FIND FROM THE
23 EVIDENCE THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCES
24 WHICH THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA HAS
25 DECLARED BY STATUTE TO MITIGATE THE OFFENSE OF MURDER.

JURY CHARGE

1 NOW, I'M GOING TO READ THESE TO YOU, BUT THEY'LL BE ON A
2 FORM THAT WILL BE WITH YOU IN THE JURY ROOM. AND THE FORM
3 READ AS FOLLOWS: "YOU MAY ALSO CONSIDER THE FOLLOWING
4 STATUTORY MITIGATING CIRCUMSTANCES. IF YOU FIND THESE ARE
5 SUPPORTED IN THE RECORD, THEN YOU MUST GIVE THEM
6 CONSIDERATION. THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF
7 PRIOR CRIMINAL CONVICTION INVOLVING THE USE OF VIOLENCE
8 AGAINST ANOTHER PERSON." NEXT, "THE MURDER WAS COMMITTED
9 WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
10 EMOTIONAL DISTURBANCE." NEXT, "THE CAPACITY OF THE DEFENDANT
11 TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM
12 HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
13 IMPAIRED." AND FINALLY, "THE AGE OR MENTALITY OF THE
14 DEFENDANT AT THE TIME OF THE CRIME."

15 IN ADDITION, YOU MAY FIND MITIGATION EVIDENCE BEYOND
16 THOSE ENUMERATED BY THE GENERAL ASSEMBLY IN THE CODE OF LAWS.
17 YOU MUST CONSIDER AS A MITIGATING FACTOR ANY ASPECT OF
18 DEFENDANT'S CHARACTER OR RECORD AND ANY OF THE CIRCUMSTANCES
19 OF THE OFFENSE OR OTHERWISE FROM THIS RECORD OF EVIDENCE
20 WHICH YOU FIND OFFERS A BASIS FOR A SENTENCE OTHER THAN
21 DEATH.

22 IN OTHER WORDS, YOU MAY CONSIDER ANY RELEVANT,
23 MITIGATING FACTORS OR CIRCUMSTANCES ENUMERATED IN THE CODE
24 OF LAWS OR OTHERWISE AS YOU MAY FIND. A MITIGATING FACTOR IS
25 TREATED EQUALLY UNDER THE LAW WHETHER IT IS FOUND IN THE

JURY CHARGE

1 STATUTE OR SIMPLY FOUND BY YOU BASED ON THE EVIDENCE BEFORE
2 YOU.

3 MITIGATING CIRCUMSTANCES ARE FACTS, DETAILS, INCIDENTS
4 OR OCCURRENCES WHICH MITIGATE THE OFFENSE OF MURDER.
5 MITIGATING CIRCUMSTANCES ARE ANY FACTS WHICH IN FAIRNESS AND
6 MERCY MUST BE CONSIDERED AS EXTENUATING OR AS REDUCING THE
7 DEFENDANT'S CULPABILITY FOR THE COMMISSION OF THE ACT OF
8 MURDER OR THAT WEIGH IN FAVOR OF A LIFE SENTENCE FOR ANY
9 REASON. YOU MUST CONSIDER MITIGATING CIRCUMSTANCES IF YOU
10 FIND THEM IN THE RECORD, BECAUSE IF YOU ARE TO MAKE AN
11 INDIVIDUALIZED ASSESSMENT OF THIS PARTICULAR DEFENDANT, WHICH
12 THE LAW OF THE STATE REQUIRES YOU TO DO, EVIDENCE ABOUT THE
13 DEFENDANT'S BACKGROUND AND CHARACTER IS RELEVANT.

14 WHILE IT IS NECESSARY THAT YOU FIND BEYOND A REASONABLE
15 DOUBT THAT THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE
16 EXISTED AT THE TIME MR. NICHOLSON WAS MURDERED IN ORDER TO
17 IMPOSE A SENTENCE OF DEATH UPON THE DEFENDANT, IT IS NOT
18 NECESSARY THAT YOU FIND UNANIMOUSLY THAT ANY MITIGATING
19 CIRCUMSTANCE EXISTS IN ORDER TO IMPOSE A SENTENCE OF LIFE
20 IMPRISONMENT.

21 UNLIKE THE AGGRAVATING CIRCUMSTANCE, WHICH THE STATE
22 MUST PROVE BEYOND A REASONABLE DOUBT, THERE IS NO EVIDENTIARY
23 BURDEN PLACED ON DEFENDANT TO ESTABLISH MITIGATING FACTORS.
24 MOREOVER, YOU ARE AUTHORIZED TO IMPOSE A SENTENCE OF LIFE
25 IMPRISONMENT REGARDLESS OF WHETHER YOU FIND THAT ANY

JURY CHARGE

1 MITIGATING CIRCUMSTANCE EXISTS. SIMPLY STATED, YOU MAY
2 SENTENCE DEFENDANT TO LIFE IMPRISONMENT FOR ANY REASON OR NO
3 REASON AT ALL OR SIMPLY AS AN ACT OF MERCY. HOWEVER, A
4 DECISION TO IMPOSE A LIFE SENTENCE, LIKE A DECISION TO IMPOSE
5 ONE OF DEATH, MUST BE UNANIMOUS.

6 IF YOU FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF
7 THE STATUTORY AGGRAVATING CIRCUMSTANCE, AND IF YOU FURTHER
8 FIND ANY MITIGATING CIRCUMSTANCES IN THE RECORD OF EVIDENCE
9 IN THIS CASE, YOU MUST GIVE THOROUGH AND MEANINGFUL
10 CONSIDERATION TO ALL SUCH FACTORS BEFORE MAKING A DECISION.

11 IN ARRIVING AT YOUR DECISION, YOU ARE NOT TO ALLOW
12 PASSION, PREJUDICE OR ANY OTHER ARBITRARY FACTOR TO INFLUENCE
13 YOUR JUDGMENT. AS JURORS YOU MUST MAKE YOUR DECISION WITHOUT
14 BIAS TOWARD OR WITHOUT PREJUDICE AGAINST ANY PARTY. YOU MUST
15 NOT ALLOW YOURSELF TO BE GOVERNED BY PASSION OR SYMPATHY.
16 YOU ARE TO HONOR YOUR OATH AND, IN THAT REGARD, CAREFULLY AND
17 IMPARTIALLY CONSIDER ALL THE EVIDENCE IN THE CASE AND FOLLOW
18 THE LAW AS I HAVE EXPLAINED IT TO YOU.

19 NOW, AT THIS TIME MS. DAILEY IS GOING TO HAND OUT TO
20 EACH OF YOU, ALL FIFTEEN OF YOU, A COPY OF THE VARIOUS
21 VERDICT FORMS AND WE'RE GOING TO GO OVER THOSE. AND THEY ARE
22 IN A PARTICULAR ORDER AND WE'RE GOING TO LOOK AT THEM
23 TOGETHER. I HAVE THE ORIGINAL WHICH WILL BE GIVEN TO YOU IN
24 THE JURY ROOM, BUT I WANTED EACH OF YOU TO BE ABLE TO LOOK AT
25 ONE AS I WENT OVER IT. (PAUSE)

JURY CHARGE

1 ALL RIGHT. YOUR TOP DOCUMENT SHOULD SAY "STATUTORY
2 INSTRUCTIONS." AND YOU CAN SEE THE FIRST BIT OF INFORMATION
3 IS THE STATUTORY AGGRAVATING CIRCUMSTANCE. IN THIS CASE FROM
4 THE CODE OF LAWS THERE IS ONE. IT IS SET FORTH JUST AS I
5 HAVE CHARGED YOU. IT'S THE FULL CONTEXT OF THE CODE OF LAWS.

6 NOW, BELOW THE STATUTORY AGGRAVATING CIRCUMSTANCE ARE
7 THE STATUTORY MITIGATING CIRCUMSTANCES, WHICH YOU ARE TO
8 CONSIDER. AND IF YOU FIND EVIDENCE SUPPORTS THE EXISTENCE OF
9 ANY ONE OR ALL OF THESE, YOU MUST GIVE THOROUGH AND
10 MEANINGFUL CONSIDERATION TO EACH ONE OF THESE THAT YOU FIND
11 SUPPORTED IN THE EVIDENCE.

12 NOW, AT THE TOP OF THE NEXT PAGE -- UNFORTUNATELY I
13 COULDN'T PUT IT ALL ON ONE PAGE -- BUT THAT'S JUST THE
14 REMINDER, CONSISTENT WITH MY CHARGE, THAT YOU MAY ALSO
15 CONSIDER ANY NONSTATUTORY MITIGATING CIRCUMSTANCES. AND IF
16 YOU FIND ANY MITIGATION NOT ENUMERATED IN THE CODE OF LAWS,
17 THEN YOU MUST GIVE THOSE ITEMS, THAT MITIGATION, SERIOUS AND
18 MEANINGFUL CONSIDERATION AS WELL.

19 SO THAT'S AN OUTLINE OF THE AGGRAVATING CIRCUMSTANCE
20 THAT IS PRESENTED TO YOU, THE SET FORTH OF THE STATUTORY
21 MITIGATING CIRCUMSTANCES AS WELL AS LAW TO CONSIDER ANY
22 NONSTATUTORY MITIGATING CIRCUMSTANCES.

23 NOW LET'S LOOK AT THE NEXT DOCUMENT. AND THIS NEXT
24 DOCUMENT IS ENTITLED "NO FINDING OF AGGRAVATING
25 CIRCUMSTANCE." IF THE JURY IS UNABLE TO CONCLUDE BEYOND A

JURY CHARGE

1 REASONABLE DOUBT THE EXISTENCE OF THE ALLEGED AGGRAVATING
2 CIRCUMSTANCE, THEN, MADAME FORELADY, YOU WOULD SIGN THIS
3 PARTICULAR FORM, DATE IT AND THAT WOULD END YOUR
4 DELIBERATIONS.

5 NOW LET'S LOOK AT THE NEXT ONE. AND WE'RE GOING TO
6 REVIEW EACH OF THESE. AND IN REVIEWING EACH OF THEM, PLEASE
7 DON'T CONSTRUE THAT I AM SAYING ONE APPLIES OR ONE DOESN'T
8 APPLY. I'M JUST REVIEWING THEM ALL SO YOU'LL KNOW THE TOTAL
9 CHARGE AND THE TOTAL OPTIONS AVAILABLE TO YOU.

10 OKAY. THE NEXT ONE IS THE FINDING OF THE AGGRAVATING
11 CIRCUMSTANCE. IT SAYS, "WE, THE JURY, FIND BEYOND A
12 REASONABLE DOUBT THE FOLLOWING STATUTORY AGGRAVATING
13 CIRCUMSTANCE." YOU WRITE IN THE CIRCUMSTANCE, IF YOU FIND IT
14 EXISTS BEYOND A REASONABLE DOUBT, AND EACH JUROR THEN SIGNS
15 WHERE INDICATED AND IT IS DATED.

16 ALL RIGHT. LET'S GO TO THE NEXT ONE. NOW, THE NEXT ONE
17 IS THE UNANIMOUS RECOMMENDATION OF SENTENCE FOR LIFE
18 IMPRISONMENT. "HAVING FOUND BEYOND A REASONABLE DOUBT THE
19 EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING
20 CIRCUMSTANCE," AGAIN, WRITE IT OUT, AND THIS SAYS, "RECOMMEND
21 TO THE COURT THE DEFENDANT BE SENTENCED TO LIFE." IF THIS IS
22 ULTIMATELY YOUR DECISION AND ALL TWELVE AGREE, THEN, MADAME
23 FORELADY, YOU WOULD SIGN WHERE INDICATED AND DATE IT WITH THE
24 APPROPRIATE DATE.

25 NOW LET'S LOOK AT THE LAST ONE. THIS IS THE UNANIMOUS

JURY CHARGE

1 RECOMMENDATION FOR SENTENCE OF SENTENCE FOR DEATH PENALTY.
2 AGAIN, THE SAME LEAD IN, "HAVING FOUND THE AGGRAVATING
3 CIRCUMSTANCE," AND IT MUST BE LISTED, "NOW RECOMMEND TO THE
4 COURT THE DEFENDANT BE SENTENCED TO DEATH." AGAIN, A
5 SIGNATURE LINE FOR ALL TWELVE WHO ARE DELIBERATING AND THEN A
6 PLACE FOR THE DATE.

7 REGARDLESS OF THE SENTENCE YOU DECIDE TO IMPOSE YOU MUST
8 FIRST DETERMINE WHETHER THE STATE HAS PROVEN BEYOND A
9 REASONABLE DOUBT THE ALLEGED STATUTORY AGGRAVATING
10 CIRCUMSTANCE. ANY DECISION YOU MUST MAKE MUST BE UNANIMOUS.

11 IN SUMMARY, YOU MAY IMPOSE THE DEATH PENALTY ONLY IF YOU
12 UNANIMOUSLY FIRST FIND BEYOND A REASONABLE DOUBT THE
13 EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE
14 AND YOU FURTHER UNANIMOUSLY FIND AND AGREE BEYOND A
15 REASONABLE DOUBT THAT THE SENTENCE SHOULD BE DEATH. YOU MAY
16 IMPOSE A SENTENCE OF LIFE IMPRISONMENT ONLY IF YOU
17 UNANIMOUSLY FIRST FIND BEYOND A REASONABLE DOUBT THE
18 EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE
19 AND AGREE THAT THE SENTENCE SHOULD BE LIFE IMPRISONMENT. YOU
20 MAY SENTENCE DEFENDANT TO LIFE IMPRISONMENT REGARDLESS OF THE
21 PRESENCE OR ABSENCE OF MITIGATING CIRCUMSTANCES.

22 NOW, LADIES AND GENTLEMEN, WHEN YOU GO BACK TO THE JURY
23 ROOM I KNOW THAT MANY OF YOU HAVE TAKEN NOTES. YOU CAN HAVE
24 YOUR NOTES WITH YOU. PLEASE REMEMBER THE INSTRUCTION I GAVE
25 YOU EARLIER. IT APPLIES WITH EQUAL FORCE AT THE SENTENCING

JURY CHARGE

1 PROCEEDING. YOU MAY USE YOUR NOTES FOR YOUR INDIVIDUAL
2 BENEFIT. BUT IT IS NOT APPROPRIATE UNDER THE LAW TO USE YOUR
3 NOTES TO SWAY OR INFLUENCE THE OPINION OF ONE OF YOUR FELLOW
4 JURORS.

5 IF DURING YOUR DELIBERATIONS YOU HAVE A QUESTION OR
6 CONCERN, WOULD LIKE SOME CLARIFICATION, PLEASE DON'T HESITATE
7 TO REDUCE THAT TO WRITING. INDICATE THE AREA THAT YOU WANT
8 RECHARGED OR THE CONCERN YOU HAVE AND I WILL RESPOND TO YOU
9 TO THE EXTENT THE LAW PERMITS ME TO DO SO.

10 NOW, IN JUST A MOMENT, I'M GOING TO SEND ALL FIFTEEN OF
11 YOU BACK TO THE JURY ROOM. I'M GOING TO ASK THAT WHEN YOU
12 LEAVE, JUST LEAVE THE COPIES OF THE VERDICT FORMS IN YOUR
13 CHAIR OR ON THE FLOOR. WE'LL PICK THEM UP. I WILL HAVE THE
14 ORIGINAL SUBMITTED TO YOU IN THE JURY ROOM.

15 NOW, HAVING CHARGED YOU ON THIS LAW, I'M REQUIRED TO
16 TAKE UP MY CHARGE OUTSIDE YOUR PRESENCE WITH THESE ATTORNEYS.
17 AGAIN, IF I HAVE OVERLOOKED SOMETHING, THEY'RE GOING TO BRING
18 IT TO MY ATTENTION. AND IF THAT IS THE CASE, I'LL BRING YOU
19 BACK OUT HERE FOR FURTHER INSTRUCTION. BUT IT MAY BE THAT
20 YOU DON'T NEED TO COME BACK TO THE COURTROOM. AND AGAIN,
21 JUST AS WE DID PREVIOUSLY, WHEN THE BAILIFF PRESENTS THE
22 EVIDENCE TOGETHER WITH THE STATUTORY INSTRUCTIONS AND THE
23 VARIOUS VERDICT FORMS, THAT WILL BE THE SIGNAL TO BEGIN YOUR
24 DELIBERATIONS.

25 NOW WHAT WE'LL DO IS, I THINK, IN ABOUT AN HOUR SUPPER

JURY CHARGE

1 SHOULD BE HERE. MAYBE ABOUT TWO HOURS FROM NOW I'LL SEND A
2 NOTE BACK AND I'LL JUST SIMPLY LEAVE IT TO YOU, IF YOU WANT
3 TO SUSPEND FOR THE EVENING AND COME BACK IN THE MORNING OR IF
4 YOU WANT TO PRESS A LITTLE BIT FORWARD A LITTLE BIT LATER
5 THIS EVENING. I'LL LET THAT BE YOUR CALL.

6 ONCE WE BEGIN DELIBERATING, AS WE DID LAST TIME, THE
7 THREE ALTERNATES WILL HAVE TO BE REMOVED UNDER THE LAW. IF
8 IT WERE UP TO ME, I'D LET YOU STAY IN THERE BECAUSE YOU ALL
9 -- ALL FIFTEEN -- HAVE PAID SUCH GOOD, CAREFUL ATTENTION.
10 BUT THE LAW DOES NOT ALLOW THE ALTERNATES TO REMAIN IN THE
11 JURY ROOM DURING DELIBERATION. BUT STILL THEY ARE A VERY
12 VALUABLE PART OF THE PROCESS. AND SAME RULES AS LAST TIME,
13 YOU CANNOT DISCUSS THE CASE WHILE THE TWELVE-MEMBER JURY IS
14 DELIBERATING.

15 SO WITH THAT, I THANK YOU FOR YOUR KIND ATTENTION. IF
16 YOU WOULD, RETIRE TO THE JURY ROOM AND AWAIT FURTHER
17 INSTRUCTIONS.

18 (JURY EXITS COURTROOM AT 5:37 P.M.)

19 THE COURT: THE JURY HAS BEEN EXCUSED. I'D LIKE TO
20 HEAR EXCEPTIONS AND ADDITIONS. I'LL START WITH THE STATE.

21 MS. STROM: NONE FROM THE STATE.

22 MR. MAULDIN: YOUR HONOR, JUST -- WE DID HAVE THE
23 COURT EXHIBIT COME OVER.

24 THE COURT: IT'S IN THE RECORD.

25 MR. MAULDIN: YES, SIR. WE REASSERT THAT AND ALSO

MATTERS AND MOTIONS

1 REASSERT THE REQUEST REGARDING THE MAY/MUST ISSUE ON THE
2 WRITTEN INSTRUCTIONS.

3 THE COURT: THANK YOU.

4 IF NECESSARY, COUNSEL, IF YOU NEED TO REVIEW THE
5 EXHIBITS, I'M GOING TO HAVE THE ALTERNATES REMOVED AND
6 INSTRUCT THE JURY TO BEGIN THEIR DELIBERATIONS.

7 AND NOT TO KEEP Y'ALL COOPED UP, IF WE COULD HAVE, JUST
8 GIVE TO MS. MORRIS, FOR EXAMPLE, A CELL NUMBER IF Y'ALL WANT
9 TO GO OUT. JUST BE SOMEWHERE, YOU KNOW, LIKE 15 MINUTES AWAY
10 SO IF I GET A NOTE I CAN CALL YOU, OR IF YOU NEED TO COME
11 BACK FOR ANY FURTHER INSTRUCTION I CAN CALL YOU. I JUST
12 DON'T WANT YOU TO FEEL OBLIGATED THAT YOU'RE STUCK HERE FOR
13 THE DURATION. JUST GIVE US A MEANS WHERE WE CAN GET IN TOUCH
14 WITH YOU. THANK YOU.

15 (JURY DELIBERATIONS BEGIN AT 5:45 P.M.)

16 (AT EASE FROM 5:46 TO 8:13 P.M.)

17 THE COURT: THE JURY HAS INFORMED THE BAILIFFS THAT IT
18 WISHES TO ADJOURN FOR THE EVENING. I AM GOING TO BRING THE
19 TWELVE PERSON JURY TOGETHER WITH THE THREE ALTERNATES OUT AND
20 JUST INSTRUCT THEM AS TO THE PROCESS UNTIL THEY RESUME IN THE
21 MORNING. I HAVE SPOKEN WITH THE COURT SECURITY OFFICERS, AND
22 THE THREE ALTERNATES WILL TRAVEL SEPARATELY AND BE KEPT
23 SEPARATELY AND NOT PERMITTED TO USE THE SAME ROOM FOR PHONE
24 CALLS HOME, ET CETERA, THAT THE TWELVE PERSON JURY WILL. SO
25 THEY WILL REMAIN SEGREGATED UNTIL THEY ARE NEEDED FOR SERVICE

MATTERS AND MOTIONS

1 POSSIBLY.

2 MR. MAULDIN: I WOULD ASSUME YOU WOULD DO THIS, BUT
3 JUST TO MAKE SURE SO AFTER -- IT'S EASIER BEFORE THAN AFTER.
4 I ASSUME YOUR HONOR IS GOING TO BE VERY CLEAR WITH THEM THAT
5 FROM THE MOMENT THEY STOP -- THEY ADJOURN THE DELIBERATIONS
6 THEY ARE NOT TO TALK ABOUT THE CASE---

7 THE COURT: RIGHT.

8 MR. MAULDIN: VERY CLEARLY:

9 THE COURT: NO QUESTION ABOUT IT.

10 MR. MAULDIN: ALL RIGHT, SIR. ARE YOU GOING TO IN THE
11 MORNING WHEN THEY -- ARE YOU GOING TO BRING THEM IN?

12 THE COURT: NO.

13 MR. MAULDIN: OR ARE YOU JUST GOING TO HAVE THEM --
14 THERE IS GOING TO BE A TIME CLOCK THAT THAT'S WHEN IT STARTS?

15 THE COURT: THEY ARE GOING TO BE BROUGHT BACK AT 9:00.
16 THEY ARE GOING TO BE INSTRUCTED THAT THEY RESUME WHEN ALL
17 TWELVE ARE BACK IN THE ROOM AND THEY ARE REPRESENTED WITH THE
18 VERDICT FORMS---

19 MR. MAULDIN: OKAY.

20 THE COURT: ---AND THE EXHIBITS. I PREPARED A LARGE
21 LEGAL SIZE ENVELOPE, HAD THE COURT SECURITY OFFICER REQUEST
22 THAT THE FOREPERSON PUT THE VERDICT FORMS IN THE ENVELOPE AND
23 SEAL IT. WE WILL THEN TAPE IT. I WILL SIGN IT. IT WILL BE
24 SECURED WITH THE EXHIBITS. IT WILL BE UNSEALED ONLY BY THE
25 FOREPERSON TOMORROW MORNING WHEN THE DOCUMENT IS HANDED BACK

MATTERS AND MOTIONS

1 TO HER.

2 MR. MAULDIN: THANK YOU, YOUR HONOR.

3 THE COURT: BRING THE JURY WHEN THEY ARE READY.

4 (JURY REENTERS COURTROOM AT 8:16 P.M.)

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I HAVE
6 RECEIVED WORD FROM THE TWELVE-PERSON JURY THAT YOU WISH TO
7 STOP FOR THE EVENING, RESUME YOUR DELIBERATIONS IN THE
8 MORNING. I WILL HONOR THAT REQUEST.

9 ALL FIFTEEN ARE BACK IN THE COURTROOM, AND LET ME JUST
10 TELL YOU WHERE WE GO FROM HERE. WHEN YOU RETIRE, FROM THIS
11 POINT FORWARD DO NOT DISCUSS THE CASE. YOU ARE ONLY
12 PERMITTED TO DISCUSS THE CASE WHEN YOU ARE IN THE CONTEXT OF
13 YOUR DELIBERATIONS IN THE JURY ROOM AND ALL TWELVE ARE
14 PRESENT. SO FROM THIS POINT FORWARD, DO NOT DISCUSS THE CASE
15 DURING THE EVENING BREAK OR IN THE MORNING.

16 THE COURT SECURITY OFFICERS WILL BRING YOU BACK TO COURT
17 AT NINE O'CLOCK. WHEN THE TWELVE OF YOU WHO ARE DELIBERATING
18 ARE REASSEMBLED IN THE JURY DELIBERATION ROOM, YOU MAY BEGIN
19 YOUR DELIBERATIONS IN THE MORNING WHEN A COURT SECURITY
20 OFFICER OR A BAILIFF BRINGS TO YOU AND RE-PRESENTS TO YOU THE
21 EXHIBITS TOGETHER WITH THE VERDICT FORMS. THE VERDICT FORMS
22 HAVE BEEN PLACED BY THE FORELADY IN THIS ENVELOPE. IT HAS
23 BEEN SEALED AND I HAVE SIGNED IT ABOVE THE SEAL. IT WILL
24 REMAIN SEALED AND ONLY BE UNSEALED BY THE FOREPERSON TOMORROW
25 MORNING WHEN IT IS RE-PRESENTED TOGETHER WITH THE EXHIBITS.

MATTERS AND MOTIONS

1 THIS WILL BE SECURED OVER THE EVENING WITH THE EXHIBITS.

2 SO DO NOT DISCUSS THE CASE IN ANY FORM OR FASHION UNTIL
3 ALL TWELVE ARE BACK IN THE ROOM IN THE MORNING AND THE
4 VERDICT FORMS AND THE EXHIBITS ARE RE-PRESENTED TO YOU.
5 AGAIN, WE WILL HAVE TO FOLLOW THE SAME PROCESS WITH THE
6 ALTERNATES AS LONG AS THE CASE CONTINUES, THAT YOU WILL BE
7 SEGREGATED. AND YOUR INSTRUCTION WILL BE THROUGHOUT UNTIL
8 YOU ARE NEEDED FOR PART OF THE REGULAR JURY, IF NECESSARY, DO
9 NOT DISCUSS THE CASE.

10 I APPRECIATE YOUR UNDERSTANDING. I THANK YOU FOR YOUR
11 PATIENCE IN THAT REGARD VERY MUCH.

12 I HOPE YOU HAVE A PLEASANT EVENING. I WILL SEE YOU
13 TOMORROW MORNING AT NINE O'CLOCK. THANK YOU.

14 (JURY EXITS COURTROOM FOR THE DAY AT 8:19 P.M.)

15 THE COURT: ALL RIGHT. THE ENTIRE JURY HAS BEEN
16 EXCUSED FOR THE EVENING. WE WILL BE AVAILABLE AT 9:00. I
17 DON'T THINK IT'S NECESSARY FOR COUNSEL TO BE PRESENT IN THE
18 COURTROOM. WE HAVE YOUR OFFICE NUMBERS AND WE'LL CONTACT YOU
19 IN THE EVENT OF A NOTE OR ANY WORD FROM THE JURY.

20 IN ORDER TO MINIMIZE THE INCONVENIENCE TO THOSE WHO ARE
21 PRESENT WHO ARE INTERESTED IN THE CASE, ONCE WE RECEIVE WORD
22 FROM THE JURY OF ANY ADDITIONAL INSTRUCTION OR THE RECEIPT OF
23 A VERDICT, I WILL TRY TO GIVE A 30-MINUTE TIME PERIOD FOR
24 PEOPLE TO REPORT TO THE COURTROOM.

25 THANK YOU.

MATTERS AND MOTIONS

1 (COURT RECESSED FOR THE DAY AT 8:20 P.M.)
2 (DELIBERATIONS RESUMED AT 8:57 A.M. ON 2/15/02)
3 (AT EASE FROM 8:57 A.M. TO 1:55 P.M.)
4 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 24)

5 THE COURT: I RECEIVED A NOTE FROM THE JURY. THE JURY
6 WANTS TO HEAR THE EVIDENCE AGAIN AS TO THE MENTAL STATE OF
7 THE DEFENDANT. THEY HAVE IDENTIFIED THREE WITNESSES WHOSE
8 TESTIMONY THEY WANT REPLAYED -- MR. YOUNGMAN, DR. SCHWARTZ-
9 WATTS AND DR. NARAYAN. THAT COMPRISES APPROXIMATELY FOUR
10 HOURS OF TESTIMONY TO WHICH WE HAVE TO LISTEN.

11 FOR THOSE IN THE COURTROOM, YOU ARE WELCOMED TO STAY,
12 BUT IT WILL BE PAINFUL TO HAVE TO SIT THROUGH AND LISTEN
13 AGAIN. YOU ARE WELCOME TO STAY, BUT I JUST WANT TO FOREWARN
14 YOU, IT'S JUST SIMPLY PUTTING A TAPE ON AND PLAYING EVIDENCE
15 FOR HOURS OVER AGAIN. SO I WANTED TO BE HONEST WITH YOU UP
16 FRONT ABOUT EXACTLY WHAT'S ABOUT TO HAPPEN. SO YOU'RE
17 WELCOME TO STAY AND LISTEN, BUT YOU ARE NOT REQUIRED TO.
18 IT'S YOUR CHOICE.

19 AND I'LL TELL YOU WHAT I'LL DO DURING THIS SESSION,
20 SINCE EVERYONE HAS CONDUCTED THEMSELVES IN SUCH EXEMPLARY
21 FASHION IN TERMS OF LEAVING QUIETLY, IF ANYONE WOULD LIKE TO
22 LEAVE AND THEN REENTER, WE'LL PERMIT THAT. JUST RESPECT THE
23 FACT THE JURY WILL BE LISTENING TO THE EVIDENCE AGAIN, AND
24 PLEASE BE VERY QUIET AND RESPECTFUL OF THAT. SO YOU ARE
25 WELCOME TO STAY AND LEAVE AT YOUR PLEASURE, BUT PLEASE BE

MATTERS AND MOTIONS

1 VERY QUIET IN DOING SO.

2 THE COURT: BRING THE JURY.

3 MR. MAULDIN: ONE QUESTION, YOUR HONOR?

4 THE COURT: ALL RIGHT.

5 MR. MAULDIN: ARE YOU -- IS IT YOUR PLAN TO JUST PLAY
6 THE ENTIRE FOUR HOURS STRAIGHT OR ARE YOU GOING TO TAKE
7 BREAKS?

8 THE COURT: OH, WE'RE TAKING BREAKS.

9 MR. MAULDIN: ALL RIGHT, SIR. YES, SIR.

10 (PAUSE)

11 THE COURT: AS THE JURY WAS BEING LINED UP TO BE
12 BROUGHT INTO THE COURTROOM, THE FOREPERSON INDICATES THAT THE
13 JURY WANTED TO FIRST HEAR DR. SCHWARTZ-WATTS' TESTIMONY AND
14 THEN TAKE A BREAK AND DETERMINE WHAT ADDITIONAL EVIDENCE, IF
15 ANY, THEY DESIRE TO HEAR. SO WE HAVE REARRANGED THAT TO
16 ACCOMMODATE THEIR REQUEST.

17 IT'S APPROXIMATELY AN HOUR AND A HALF, I AM INFORMED.
18 WE WILL TRY TO GET THROUGH IT IN ONE SITTING AND THEN TAKE A
19 BREAK AND SEE WHAT ADDITIONAL EVIDENCE THE JURY WOULD LIKE TO
20 HEAR.

21 BRING THE JURY, PLEASE.

22 (JURY ENTERS COURTROOM AT 2:05 P.M.)

23 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN, I
24 HAVE RECEIVED YOUR NOTE, AND I RECEIVED WORD FROM THE
25 BAILIFFS THAT YOU PREFER TO HEAR THE TESTIMONY OF DR.

MATTERS AND MOTIONS

1 SCHWARTZ-WATTS. IT'S ABOUT AN HOUR AND A HALF. WE'LL SEE IF
2 WE CAN GET THROUGH IT IN ONE SITTING. IF NOT, IF YOU NEED TO
3 TAKE A BREAK, JUST RAISE YOUR HAND. AT THAT BREAK THEN YOU
4 CAN INDICATE WHAT ADDITIONAL EVIDENCE YOU WISH TO HEAR. OF
5 COURSE, YOU ARE NOT LIMITED TO YOUR PREVIOUS NOTE. ANY
6 ADDITIONAL EVIDENCE YOU WANT TO HEAR IS UP TO YOU.

7 WE HAVE FOUND THE PLACE ON THE TAPE WHERE HER TESTIMONY
8 STARTS. THERE WILL BE MOMENTS WHERE IT IS AWKWARD BECAUSE WE
9 TOOK BREAKS, WE HAD DISCUSSIONS OUTSIDE YOUR PRESENCE ABOUT
10 LEGAL ISSUES AND EVIDENCE WHICH WAS DEEMED INADMISSIBLE,
11 THINGS OF THAT NATURE, WHICH ARE TYPICAL IN ANY CASE.

12 MS. KOFFSKEY, THE COURT REPORTER, WILL MONITOR THAT. SO
13 DURING THE BREAKS OR WHEN DISCUSSIONS WERE MADE OUTSIDE YOUR
14 PRESENCE, THE EQUIPMENT WILL BE TURNED OFF. SHE'LL MONITOR
15 IT THROUGH HER EAR AND THEN SHE'LL TURN IT BACK ON FOR OUR
16 SOUND SYSTEM WHEN WE ARE BACK ON THE RECORD FOR PRESENTATION
17 TO YOU.

18 SO, WITH THAT, WE WILL HEAR AGAIN THE TESTIMONY OF DR.
19 SCHWARTZ-WATTS.

20 (TESTIMONY OF DR. SCHWARTZ-WATTS REPLAYED IN OPEN COURT
21 BEGINNING AT 2:06 P.M AND ENDING AT 3:34 P.M.)

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IF YOU
23 WOULD, RETIRE TO THE JURY ROOM. YOU MAY EITHER RESUME YOUR
24 DELIBERATIONS, OR IF YOU WANT TO HEAR ADDITIONAL TESTIMONY,
25 REDUCE THAT REQUEST TO WRITING AND I WILL BE GLAD TO RESPOND.

MATTERS AND MOTIONS

1 THANK YOU.

2 (JURY EXITS COURTROOM AT 3:34 P.M.)

3 (DELIBERATIONS RESUME AT 3:35 P.M.)

4 **THE COURT:** WE'LL BE IN RECESS PENDING WORD FROM THE
5 JURY.

6 (AT EASE FROM 3:35 TO 4:25 P.M.)

7 **THE COURT:** I RECEIVED A NOTE FROM THE JURY. IT WILL
8 BE MARKED AS A COURT'S EXHIBIT. THEY WANT TO HEAR THE
9 QUESTION AND ANSWER PART OF DR. NARAYAN'S TESTIMONY LIMITED
10 TO THE DISCUSSION OF MR. WOOD. I'M INSTRUCTING THE COURT
11 REPORTER TO BEGIN IMMEDIATELY FOLLOWING THE QUALIFICATION OF
12 DR. NARAYAN AS AN EXPERT. I WILL TELL THE JURY THAT THAT IS
13 MY INTERPRETATION OF THEIR NOTE, AND IF I AM INCORRECT,
14 FOLLOWING THIS PART OF HIS TESTIMONY IF THEY WANT TO HEAR
15 ADDITIONAL PORTIONS OR HIS QUALIFICATIONS, THEY CERTAINLY
16 HAVE A RIGHT TO DO SO.

17 BRING THE JURY.

18 **MR. MAULDIN:** WOULD THAT INCLUDE CROSS EXAMINATION,
19 JUDGE? IS THAT WHAT THAT MEANS?

20 **THE COURT:** YES, SIR.

21 DAWN, HERE.

22 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 25)

23 **THE COURT:** AGAIN, LADIES AND GENTLEMEN, WE'RE JUST
24 GOING TO LISTEN TO TESTIMONY. IT DOESN'T HURT MY FEELINGS IF
25 Y'ALL LEAVE. COME AND GO AS YOU PLEASE. JUST BE QUIET.

MATTERS AND MOTIONS

1 (JURY REENTERS COURTROOM AT 4:26 P.M.)

2 THE COURT: LADIES AND GENTLEMEN, I RECEIVED YOUR NOTE.
3 AND IF MY INTERPRETATION OF THE NOTE IS NOT CORRECT, DON'T
4 HESITATE TO ASK ME TO GO BACK AND REVISIT. I WILL BE GLAD TO
5 DO IT.

6 AS I INTERPRET THE NOTE, YOU WANT TO HEAR DR. NARAYAN'S
7 TESTIMONY LIMITED TO THE QUESTIONING, BOTH DIRECT AND CROSS
8 EXAMINATION, REGARDING THE DEFENDANT.

9 FORELADY: YES.

10 THE COURT: SO THAT'S WHAT I HAVE INSTRUCTED, TO BEGIN
11 IMMEDIATELY AT THE POINT WHERE THE WITNESS WAS QUALIFIED AND
12 IT GOES INTO THE SUBSTANCE OF HIS TESTIMONY. THIS IS THE
13 INDIVIDUAL WHO PERFORMED -- OR PARTICIPATED IN PERFORMING THE
14 COURT-ORDERED EVALUATION. BUT THE PRELIMINARY MATTER WILL
15 NOT BE PLAYED AS I READ YOUR NOTE. IF YOU WANT IT HEARD
16 SUBSEQUENTLY, JUST PUT THAT IN WRITING AND I'LL BRING YOU
17 BACK IN HERE AND WE CAN LISTEN TO HIS QUALIFICATIONS.

18 MS. KOFFSKEY, IF YOU WOULD, PLEASE PROCEED.

19 (TESTIMONY OF DR. NARAYAN REPLAYED IN OPEN COURT
20 BEGINNING AT 4:27 P.M. AND ENDING AT 5:09 P.M.)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU MAY
22 RETIRE TO THE JURY ROOM AND RESUME YOUR DELIBERATIONS. THANK
23 YOU.

24 (JURY EXITS COURTROOM AT 5:09 P.M.)

25 (DELIBERATIONS RESUME AT 5:10 P.M.)

MATTERS AND MOTIONS

1 **THE COURT:** WE'LL BE IN RECESS PENDING FURTHER WORD
2 FROM THE JURY.

3 **MR. MAULDIN:** YOUR HONOR, I THINK IN ORDER TO PROTECT
4 THE RECORD I WOULD HAVE TO AT THIS TIME REASSERT THE POSITION
5 I TOOK AT THE TIME THAT YOU GAVE THE LIMITING INSTRUCTION
6 REGARDING HIS FIFTH AMENDMENT. THAT CAME UP VERY EARLY IN
7 DR. NARAYAN'S TESTIMONY. AND EVEN THOUGH IT'S NOT LIVE NOW,
8 I THINK I HAVE TO REASSERT IT EVEN THOUGH THEY HEARD IT THE
9 SECOND TIME ON TAPE. I BELIEVE THAT WAS THE OCCASION WHEN I
10 WENT UP TO THE BENCH AND MADE THE REQUEST FOR A MISTRIAL. AND
11 I MAY -- IF IT ISN'T, I STAND CORRECTED. BUT IF IT IS---

12 **THE COURT:** IT IS.

13 **MR. MAULDIN:** YES, SIR. I WOULD ONCE AGAIN NOW -- AND
14 OF COURSE THE REMEDY NOW INSTEAD OF A MISTRIAL WOULD BE THE
15 IMPOSITION OF A LIFE SENTENCE. SO I MAKE THAT MOTION.

16 **THE COURT:** RESPECTFULLY DENIED. SO NOTED. THANK YOU.

17 **MR. MAULDIN:** THANK YOU, JUDGE.

18 (AT EASE FROM 5:11 TO 6:00 P.M.)

19 **THE COURT:** I HAVE RECEIVED A NOTE FROM THE JURY THAT
20 READS AS FOLLOWS. WE APPEAR TO HAVE AN ELEVEN TO ONE HUNG
21 JURY. PLEASE ADVISE WHAT AND HOW WE CAN RESOLVE THIS
22 SITUATION AND WHAT THIS WILL DO TO THE CASE IN THE FUTURE.
23 WILL MR. WOOD BE RETRIED? AND WHAT DOES THIS DO TO HIS
24 CHOICE -- OR CHANCE OF GOING FREE OR WILL YOU NOW SENTENCE
25 HIM? SIGNED BY THE FOREPERSON.

MATTERS AND MOTIONS

1 I AM GOING TO PROVIDE A MODIFIED ALLEN CHARGE TO THE
2 JURY, AND I WILL BE GLAD FOR EITHER SIDE TO PUT THEIR
3 OBJECTION ON THE RECORD AT THIS TIME.

4 SOLICITOR ARIAIL: NONE FROM THE STATE.

5 MR. MAULDIN: YOUR HONOR, WE DO OBJECT. OBVIOUSLY, WE
6 DON'T KNOW ANYTHING ABOUT HOW THIS DIVISION MIGHT BE. BUT WE
7 OBJECT TO AN ALLEN CHARGE. I ALSO REQUEST THAT THE JUDGE
8 INSTRUCT THE JURY THAT IN THE EVENT THE JURY IS UNABLE TO
9 REACH A VERDICT AND IN THE EVENT THE JURY HAS FOUND THE
10 EXISTENCE OF THE AGGRAVATING CIRCUMSTANCE, THEN THE SENTENCE
11 OF LIFE WITHOUT PAROLE WILL BE IMPOSED BY THE COURT.

12 THE COURT: I PLAN ON DOING THAT.

13 MR. MAULDIN: ALL RIGHT, SIR.

14 THE COURT: WHY DO YOU ACT SHOCKED THAT I'M GOING TO DO
15 WHAT YOU ASK?

16 MR. MAULDIN: BECAUSE I DON'T KNOW. I GUESS I'M JUST
17 SURPRISED. I DON'T KNOW WHAT YOU'RE GOING TO CHARGE. AND IF
18 I HAVE TO ENTER MY OBJECTION IN ADVANCE, I'M KIND OF
19 BLINDLY -- BUT PERHAPS I WOULD HAVE ADDITIONAL STATEMENTS FOR
20 THE RECORD AFTER THE INSTRUCTION.

21 THE COURT: SURE.

22 SOLICITOR ARIAIL: WE MAY HAVE AN OBJECTION.

23 THE COURT: PUT IT ON THE RECORD.

24 SOLICITOR ARIAIL: OKAY.

25 THE COURT: I'M READY.

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** YOUR HONOR, WE WOULD OBJECT TO YOU
2 ADVISING THEM ANY OF THE CONSEQUENCE. THAT -- WHAT THAT DOES
3 IS BY TELLING THEM WHAT THE CONSEQUENCE OF THEIR INABILITY TO
4 RESOLVE, GOING INTO -- YOU CAN'T GO INTO RETRIAL AGAIN. YOU
5 CAN'T GO INTO OTHER SORTS OF THINGS. YOU TELL THEM THAT THE
6 INABILITY TO PROCEED WITH FURTHER DELIBERATIONS IS GOING TO
7 RESULT IN THE SENTENCE BEING IMPOSED BY THE COURT OF LIFE IN
8 PRISON WITHOUT PAROLE, THEN YOU ARE REMOVING THE OBLIGATION
9 OR RESPONSIBILITY FROM THEM TO REACH A VERDICT. AND THE
10 PURPOSE OF THE ALLEN CHARGE IS TO URGE THEM TO CONTINUE TO
11 EXCHANGE INFORMATION, CONTINUE IN THERE TO REACH A FULL AND
12 FINAL DECISION AND NOT TO URGE ONE PERSON OR ANOTHER WITH
13 KNOWLEDGE THAT THEY DON'T KNOW ABOUT AT THIS POINT BECAUSE
14 THEY DON'T KNOW WHAT THE END RESULT WOULD BE.

15 AND LET ME GO BACK. THIS GOES BACK TO THE SAME PROBLEM
16 WE HAD IN THE JOSEPH SHEPPARD CASE WHEN YOU GET INTO THE
17 UNANIMOUS DECISION. WELL, I'M NOT GOING TO GO INTO THAT. WE
18 JUST OBJECT TO THAT.

19 **THE COURT:** THANK YOU. I HAVE READ A SERIES OF CASES
20 THAT DEAL WITH THE ALLEN CHARGE IN THE CONTEXT OF CAPITAL
21 LITIGATION. IT'S A DIFFERENT SITUATION WITH AN ALLEN CHARGE
22 IN A CAPITAL SENTENCING PROCEEDING. IT'S MY JUDGMENT AND
23 CONSISTENT WITH CASE LAW THAT IT MUST NOT BE COERCIVE IN ANY
24 FASHION, AND IN RESPONSE TO THE JURY'S QUESTION AND THE FACT
25 THAT SENTENCE IS THE ONLY ISSUE BEFORE THEM, THAT THEY SHOULD

MATTERS AND MOTIONS

1 BE APPRISED OF THE CONSEQUENCES OF THE FAILURE TO REACH A
2 DECISION, JUST AS BY ANALOGY IN A STANDARD TRIAL WE ADVISE
3 THEM OF THE CONSEQUENCE OF A NONDECISION, I.E., MISTRIAL.

4 BRING THE JURY.

5 WILL YOU PLEASE MARK THIS AS A COURT'S EXHIBIT?

6 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 26)

7 SOLICITOR ARIAIL: ARE YOU GOING TO INQUIRE IF THEY
8 FOUND AGGRAVATING? BECAUSE IF YOU DO AND THEY DIDN'T FIND
9 IT, THEN THERE'S A WHOLE DIFFERENT...

10 (JURY REENTERS COURTROOM AT 6:05 P.M.)

11 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN, I
12 HAVE RECEIVED YOUR QUESTION. I HAVE AN ADDITIONAL
13 INSTRUCTION I WILL GIVE TO YOU, THEN PERMIT YOU AN ADDITIONAL
14 OPPORTUNITY TO DELIBERATE IN THIS MATTER.

15 IN ORDER TO DETERMINE WHAT SENTENCE TO IMPOSE ON MR.
16 WOOD YOU MUST FIRST DETERMINE WHETHER THE STATE HAS PROVEN
17 THE EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING
18 CIRCUMSTANCE BEYOND A REASONABLE DOUBT. IF YOU ARE UNABLE TO
19 REACH THAT DECISION, PLEASE SIGN THE VERDICT FORM THAT
20 INDICATES YOU ARE UNABLE TO DETERMINE THE EXISTENCE OF THE
21 STATUTORY AGGRAVATING CIRCUMSTANCE. IF YOU HAVE MADE SUCH A
22 FINDING AS TO THE EXISTENCE OF THE STATUTORY AGGRAVATING
23 CIRCUMSTANCE, I WILL CHARGE YOU FURTHER.

24 IN ORDER TO RETURN A VERDICT IN THIS CASE AS TO A
25 SENTENCE OF LIFE IMPRISONMENT OR DEATH, EACH JUROR MUST AGREE

ALLEN CHARGE

1 THERE TO. YOUR VERDICT MUST BE UNANIMOUS.

2 IN YOUR DELIBERATIONS JURORS HAVE A DUTY TO CONSULT WITH
3 ONE ANOTHER IN GOOD FAITH AND TO DELIBERATE WITH A VIEW TO
4 REACHING AN AGREEMENT IF IT CAN BE DONE WITHOUT VIOLENCE TO
5 INDIVIDUAL JUDGMENT. ALTHOUGH EACH JUROR MUST DECIDE THE
6 CASE FOR HIMSELF OR HERSELF, THIS SHOULD ONLY BE DONE AFTER
7 AN IMPARTIAL CONSIDERATION OF THE EVIDENCE WITH HIS OR HER
8 FELLOW JURORS.

9 IN THE COURSE OF YOUR DELIBERATIONS A JUROR SHOULD NOT
10 HESITATE TO REEXAMINE HIS OR HER OWN VIEWS AND CHANGE HIS OR
11 HER OPINION IF CONVINCED IT IS ERRONEOUS. EACH JUROR WHO
12 FINDS HIMSELF OR HERSELF TO BE IN THE MINORITY SHOULD
13 RECONSIDER HIS OR HER VIEWS IN LIGHT OF THE OPINION OF THE
14 JURORS OF THE MAJORITY. CONVERSELY, EACH JUROR FINDING
15 HIMSELF OR HERSELF IN THE MAJORITY SHOULD GIVE EQUAL
16 CONSIDERATION TO THE VIEWS OF THE MINORITY. NO JUROR SHOULD
17 SURRENDER HIS OR HER HONEST CONVICTION AS TO THE WEIGHT OR
18 EFFECT OF THE EVIDENCE FOR HIS OR HER FELLOW JURORS OR FOR
19 THE PURPOSE MERELY OF REACHING A DECISION AS TO SENTENCE.

20 BUT REMEMBER ALSO THAT AFTER FULL DELIBERATION AND
21 CONSIDERATION OF ALL THE EVIDENCE YOU ARE REQUESTED TO AGREE
22 UPON A SENTENCE IF YOU CAN DO SO WITHOUT VIOLATING YOUR
23 INDIVIDUAL JUDGMENT AND CONSCIENCE. PLEASE MAKE NO DECISION
24 WHICH WOULD VIOLATE YOUR INDIVIDUAL JUDGMENT AND CONSCIENCE.

25 IF AFTER FURTHER DELIBERATIONS YOU NOTIFY ME THAT YOU

ALLEN CHARGE

SERTIFICATE

1 ARE HOPELESSLY UNBLOCKED, I WILL DISCHARGE YOU FROM YOUR
2 JURY SERVICE IN THIS CASE. IN THAT EVENT, DEFENDANT WILL BE
3 SENTENCED BY THE COURT. SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, IF YOU HAVE NOT DETERMINED THAT A STATUTORY AGGRAVATING
5 CIRCUMSTANCE HAS BEEN ESTABLISHED, THE LAW PERMITS ME TO
6 SENTENCE MR. WOOD TO 30 YEARS IN JAIL OR LIFE WITHOUT PAROLE.
7 IN THE EVENT YOU HAVE FOUND THE EXISTENCE OF THE STATUTORY
8 AGGRAVATING CIRCUMSTANCE, THE LAW MANDATES I IMPOSE A LIFE
9 SENTENCE WITHOUT PAROLE.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
11 IF YOU COMMUNICATE FURTHER WITH THE COURT BY WAY OF
12 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.
13 INABILITY TO REACH A DECISION AFTER CONTINUED FAIR, OPEN AND
14 HONEST DELIBERATION, PLEASE DO NOT INDICATE TO THE COURT THE
15 NUMERICAL BREAKDOWN OR DIVISION WITHIN THE JURY.

16 WITH THAT INSTRUCTION, I AM ^{MARCH 20, 2003} GOING TO ASK YOU TO RETURN
17 TO THE JURY ROOM. DO NOT RESUME YOUR DELIBERATIONS UNTIL YOU
18 RECEIVE WORD TO DO SO FROM THE BAILIFF OR THE COURT SECURITY
19 DAWN V. KOFFSKEY
20 OFFICER. THANK YOU. COURT REPORTER

21 (JURY EXITS COURTROOM AT 6:10 P.M.)

22 THE COURT: THE JURY HAS BEEN EXCUSED. PLEASE PUT YOUR
23 EXCEPTIONS OR ADDITIONS ON THE RECORD.

24 SOLICITOR ARIAIL: NONE FROM THE STATE.

25 MR. MAULDIN: YOUR HONOR, JUST SIMPLY TO PRESERVE THE
RECORD REGARDING A, WHAT I CONSIDER, ALLEN CHARGE IN A
SENTENCING PHASE. I DO ENTER AN OBJECTION TO THAT PROCESS.

THE COURT: THANK YOU, SIR.

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MATTERS AND MOTIONS

1 WE'LL BE IN RECESS PENDING WORD FROM THE JURY. THANK
2 YOU.

3 (DELIBERATIONS RESUME AT 6:11 P.M.)

4 (AT EASE FROM 6:11 TO 7:10 P.M.)

5 THE COURT: I HAVE RECEIVED A NOTE FROM THE JURY AS
6 FOLLOWS: "WE REQUEST HAVING ONE MORE TIME IN THE MORNING TO
7 RESOLVE. WE HAVE MADE PROGRESS." SIGNED BY THE FOREPERSON.

8 THIS WILL BE MARKED AS A COURT'S EXHIBIT.

9 I WILL FOLLOW THE SAME PROCEDURE I FOLLOWED LAST NIGHT.
10 WE WILL PREPARE AN ENVELOPE FOR THE FOREPERSON TO SEAL THE
11 VERDICT FORMS. WE WILL SEE TO THE EXHIBITS. I WILL HAVE THE
12 JURY RETURN IN THE MORNING AT TEN O'CLOCK WITH THE SAME
13 INSTRUCTIONS TO THE ALTERNATES AS WE DID LAST NIGHT.

14 ANYTHING FURTHER BEFORE I BRING THE JURY IN?

15 SOLICITOR ARIAIL: NOTHING FROM THE STATE.

16 THE COURT: YES, SIR?

17 MR. MAULDIN: YES, YOUR HONOR. I WOULD LIKE TO AT
18 LEAST PUT ON THE RECORD THE POSITION OF THE DEFENSE THAT THE
19 EXTENSIVE DELIBERATIONS THAT THE COURT REPORTER WOULD SHOW IN
20 TERMS OF ELAPSED TIME HAVE BEEN SUFFICIENT. THE JURY HAS HAD
21 SUFFICIENT TIME TO CONSIDER THE ISSUES. THEY HAVE HEARD
22 REPEATED TESTIMONY. AND WE ASK THE COURT TO SUSPEND THE JURY
23 AND IMPOSE A LIFE SENTENCE.

24 THE COURT: THANK YOU, SIR. THE JURY HAS EXPRESSED A
25 DESIRE TO CONTINUE. THEY HAVE BEEN DELIBERATING FOR

MATTERS AND MOTIONS

1 APPROXIMATELY TEN HOURS TODAY. IT IS THEIR WISH TO CONTINUE.
2 I WILL HONOR THAT REQUEST. YOUR EXCEPTION TO THAT IS SO
3 NOTED, SIR.

4 BRING THE JURY PLUS THE ALTERNATES.

5 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 27)

6 (JURY REENTERS COURTROOM AT 7:14 P.M.)

7 THE COURT: LADIES AND GENTLEMEN, I HAVE RECEIVED YOUR
8 NOTE. I WILL CERTAINLY HONOR THAT REQUEST. WE WILL BREAK
9 FOR THE EVENING. I WILL HAVE THE COURT SECURITY OFFICER
10 RETURN YOU IN THE MORNING AT TEN O'CLOCK.

11 SAME RULES WE HAD LAST NIGHT. SINCE WE HAVE CEASED
12 DELIBERATIONS FOR THE EVENING, PLEASE DO NOT DISCUSS THE CASE
13 AMONG YOURSELVES OR DELIBERATE ANY FURTHER UNTIL THE TWELVE
14 OF YOU HAVE RETURNED TO THE JURY ROOM AT 10:00 A.M.

15 AGAIN, IT WILL BE THE SAME PROCESS. THE EXHIBITS WILL
16 BE PRESENTED TO YOU TOGETHER WITH THE VERDICT FORMS IN THIS
17 ENVELOPE. I WILL SIGN IT AGAIN WITH A SEAL SO IT WILL BE
18 SEALED. AND, MADAME FORELADY, YOU WILL BE RESPONSIBLE FOR
19 UNSEALING THE VERDICT FORMS IN THE MORNING.

20 I WANT TO SAY A PARTICULAR THANK YOU TO THE ALTERNATES.
21 THE BURDEN THAT YOU ARE UNDER DOES NOT ESCAPE ME. I THANK
22 YOU FOR YOUR SERVICE, AND I WILL EXPRESS THAT PERSONALLY AT
23 THE END OF THE CASE. BUT YOUR CONTINUED SERVICE IS VALUABLE.
24 IT'S IMPORTANT. SO IT'S IMPORTANT THAT YOU REMAIN WITH US,
25 AND I WANT TO THANK YOU FOR THAT. AND YOUR PATIENCE

MATTERS AND MOTIONS

1 THROUGHOUT THE DAY HAS BEEN EXEMPLARY, AND I COMMEND YOU FOR
2 IT.

3 SO AT THIS TIME WE WILL ADJOURN FOR THE EVENING. I HOPE
4 YOU HAVE A PLEASANT EVENING. WE WILL SEE YOU AT TEN O'CLOCK
5 IN THE MORNING. RESUME WHEN THE EXHIBITS AND THE VERDICT
6 FORMS ARE PRESENTED TO YOU. THANK YOU SO MUCH.

7 (JURY EXITS COURTROOM FOR THE DAY AT 7:15 P.M.)

8 THE COURT: THE JURY HAS BEEN EXCUSED FOR THE EVENING.
9 WE WILL RESUME AT 10:00 A.M.

10 (COURT RECESSED FOR THE DAY AT 7:15 P.M.)

11 (TRIAL RESUMED AT 9:45 A.M. ON 2/16/02)

12 (DELIBERATIONS RESUMED AT 9:45 A.M.)

13 THE COURT: WE'RE ON THE RECORD AT THE REQUEST OF MR.
14 MAULDIN. YES, SIR?

15 MR. MAULDIN: I APPRECIATE THE OPPORTUNITY, YOUR HONOR.
16 I WANT TO PUT TWO THINGS ON THE RECORD DURING THE
17 DELIBERATIONS THIS MORNING.

18 THE FIRST THING IS THE JURY DELIBERATED FOR TWO AND HALF
19 OR THEREABOUTS HOURS ON THURSDAY AND THEN ALL DAY YESTERDAY,
20 AND NOW WE'RE BACK ON THE RECORD ON SATURDAY MORNING AND THEY
21 HAVE BEGUN THEIR DELIBERATION ONCE AGAIN. LATE YESTERDAY YOU
22 WERE ADVISED THAT THE JURY HAD -- WAS AT AN ELEVEN TO ONE
23 POSITION. AND AGAIN, I DON'T KNOW WHICH WAY THE ELEVEN TO
24 ONE IS BUT WE ARE GOING TO MAKE THE ASSUMPTION AT THIS POINT
25 FOR PURPOSES OF THIS PRESENTATION THAT THE ELEVEN TO ONE IS

MATTERS AND MOTIONS

1 IN FAVOR OF THE DEATH PENALTY. WE READ IT IN THE PAPER THIS
2 MORNING, AND I DON'T KNOW HOW THEY WOULD KNOW, BUT I'M JUST
3 FROM EXPERIENCE GOING TO EXPECT THAT TO BE WHAT IT IS.

4 YESTERDAY AFTERNOON, OVER OUR OBJECTION, YOU GAVE A
5 MODIFIED ALLEN CHARGE. SUBSEQUENTLY, WHEN THE JURY CAME BACK
6 INTO THE COURTROOM TO BE EXCUSED FOR THE NIGHT, AT LEAST
7 THREE OF THE JURORS WERE HOLDING HANDS. NOW, HERE'S -- AND I
8 THOUGHT ABOUT THIS OVERNIGHT, YOUR HONOR, AND TRIED TO MAKE A
9 RESPECTFUL POSITION ON THIS RECORD. WE RECOGNIZE THE
10 HARDSHIP AND THE EXTRAORDINARY EMOTIONAL EXPERIENCE THESE
11 JURORS ARE HAVING AND WE ACKNOWLEDGE IT. IN FACT, WE BELIEVE
12 THAT UNDER THESE CIRCUMSTANCES IT IS PERHAPS EVEN PROPER THAT
13 THEY BE STRUGGLING. THE PROBLEM IS -- AND THIS IS WHERE THE
14 LEGAL ISSUE COMES IN -- WE BELIEVE OR TAKE THE POSITION THAT
15 THE -- BY JURORS HOLDING HANDS IT IS A PUBLIC DISPLAY OF
16 UNITY CONTRARY TO THE OTHER JUROR, AND IT IS THEREFORE AN
17 EFFORT TO INTIMIDATE OR IMPOSE THE MAJORITY WILL UPON A LONE
18 DISSENTER IN THE JURY ROOM. WE DON'T KNOW WHAT GOES ON IN
19 THE JURY ROOM, BUT TO DISPLAY IT PUBLICLY, WE BELIEVE, IS AN
20 EFFORT TO INTIMIDATE THAT JUROR. THEREFORE, WE BELIEVE THAT
21 THAT ACTUALLY IS A VIOLATION OF THE ALLEN CHARGE THAT WE
22 OBJECTED TO.

23 THE COURT -- AND YOU HAVE THE TEXT OF THE ALLEN CHARGE,
24 SO YOU KNOW WHAT YOU SAID. UNDER THOSE CIRCUMSTANCES WE
25 BELIEVE THAT IT IS APPROPRIATE FOR THE COURT TO BRING THE

MATTERS AND MOTIONS

1 JURY IN, EXCUSE THEM AND IMPOSE A LIFE SENTENCE WITHOUT
2 PAROLE. THE JURY -- THE MAKING OF SUCH A PUBLIC DISPLAY CAN
3 HAVE NO OTHER EFFECT OTHER THAN TO BE A SIGN TO THEIR
4 DISSENTER THAT THEY ARE UNIFIED AGAINST HIM OR HER, AND THAT
5 OF COURSE IS WHERE THE DETERIORATION OF MEANINGFUL JURY
6 DELIBERATIONS CAN BE INTERPRETED. SO I DO RESPECTFULLY PUT
7 THAT ON THE RECORD, YOUR HONOR.

8 THE COURT: THE MOTION IS RESPECTFULLY DENIED. THE
9 JURORS WERE QUESTIONED ALMOST AD NAUSEAM AS TO THEIR APPROACH
10 IN THE VERY SETTING IN WHICH THEY NOW FIND THEMSELVES. THOSE
11 WHO WERE SELECTED TESTIFIED THAT IF THEY WERE IN THE MINORITY
12 THAT THEY WOULD, UNLESS PROPERLY PERSUADED WOULD, MAINTAIN
13 THE INTEGRITY OF THEIR POSITION IF CONVINCED IT WAS WRONG.
14 CONVERSELY, WITHOUT EXCEPTION, THEY RECOGNIZED IF THEY WERE
15 IN THE MAJORITY THEY WOULD GIVE RESPECT TO THOSE HOLDING
16 OPPOSING VIEWS.

17 THE FACT THAT TWO OR THREE JURORS BRIEFLY HELD HANDS AS
18 THEY WALKED IN THE COURTHOUSE -- COURTROOM DOES NOT RISE TO
19 THE LEVEL THAT YOU ASSIGN TO IT, AND I FIND BASED ON THAT
20 MERE BRIEF HOLDING OF HANDS BY TWO OR THREE JURORS NOT TO BE
21 EVIDENCE OF INTIMIDATION AGAINST WHOMEVER IS THE HOLD OUT FOR
22 LIFE OR DEATH.

23 MR. MAULDIN: YOUR HONOR, THE OTHER MOTION IN SUPPORT
24 OF THE SUSPENSION OF DELIBERATIONS, EXCUSING OF THE JURY AND
25 THE IMPOSITION OF A LIFE SENTENCE IS THIS, WE TAKE THE

MATTERS AND MOTIONS

1 POSITION ON THE RECORD THAT -- AND IF YOU'LL JUST FOLLOW AND
2 BEAR WITH ME JUST A SECOND -- THAT THE CONSENT OF THE
3 ANDERSON COUNSEL FOR THE STATE HOSPITAL EVALUATION, WHICH LED
4 THEN TO THE COURT CONSOLIDATING THE TWO CHARGES BOTH TO BE
5 EVALUATED JOINTLY AND THAT SECOND ONE BEING OVER OUR
6 OBJECTION, WE BELIEVE THAT THAT CONSENT IN ANDERSON COUNTY
7 WITHOUT EVEN THE FIRST CONTACT AS TO WHAT EFFECT IT MIGHT
8 HAVE ON MR. WOOD'S TRIAL IN GREENVILLE IS PER SE INEFFECTIVE
9 ASSISTANCE OF COUNSEL. HAD THAT NOT BEEN DONE, DR. NARAYAN
10 NEVER WOULD HAVE TESTIFIED. THE JURY REQUESTED TO HEAR DR.
11 NARAYAN'S TESTIMONY, AND THAT'S THE LAST TESTIMONY THEY HEARD
12 REPLAYED. SO I WANTED TO PUT ON THE RECORD OUR STERN
13 POSITION REGARDING THE OPINION THAT THAT ACT PER SE
14 CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

15 THE COURT: ALL RIGHT. THANK YOU, SIR. YOUR POSITIONS
16 ARE NOTED FOR THE RECORD. I DON'T WANT TO REPEAT EVERYTHING
17 THAT WE'VE ALREADY EXPLORED. BUT IT IS TRUE THAT MR. WOOD
18 WHILE INCARCERATED REQUESTED THROUGH ANDERSON COUNSEL THAT HE
19 BE EVALUATED, AND THAT STARTED THE PROCESS. AT DEFENDANT'S
20 REQUEST, THROUGH THE ANDERSON CASE, AN ORDER WAS DRAFTED THAT
21 DEALT WITH THE ANDERSON CHARGES.

22 AND THE ONLY THING THAT I WOULD REITERATE AT THIS POINT
23 IS AT THAT TIME, GIVEN MY DEALINGS WITH MR. WOOD AT THE
24 AUGUST 2000 HEARING, THE LETTERS THAT HE WROTE TO BOTH THE
25 ANDERSON CLERK'S OFFICE AND THE GREENVILLE CLERK'S OFFICE,

MATTERS AND MOTIONS

1 LETTERS THAT WERE WRITTEN TO COUNSEL WHICH WERE SUBMITTED TO
2 ME UNDER SEAL WHICH ARE PART OF THE RECORD UNDER SEAL OF
3 WHICH THE STATE IS UNAWARE, CONVINCED ME THAT ABSENT THE
4 INITIATION BY MR. WOOD HIMSELF I WOULD HAVE BEEN DUTY BOUND
5 TO REQUIRE A STATE EVALUATION AS TO COMPETENCY. THAT WAS
6 CONFIRMED SUBSEQUENTLY IN MEETINGS WITH COUNSEL REGARDING EX
7 PARTE FUNDING, AN EX PARTE FUNDING MEETING WITH COUNSEL AND
8 DR. SCHWARTZ-WATTS, AND THE NEED FOR MR. WOOD TO BE TREATED.
9 I FEEL A LITTLE MORE FREE TO SAY THAT AT THIS POINT GIVEN
10 THAT THE TRIAL IS OVER AND THERE IS NO ADDITIONAL RECEIPT OF
11 EVIDENCE.

12 I THINK IT WAS APPROPRIATE TO ORDER THE EVALUATION. AND
13 THE SUBSEQUENT EVENTS IN MY FIRM JUDGMENT CONVINCED ME IT WAS
14 THE APPROPRIATE THING TO DO. IN SUM, ABSENT ANDERSON
15 COUNSEL'S REQUEST IN ACQUIESCENCE TO MR. WOOD'S OWN REQUEST,
16 THE COURT WOULD HAVE SUA SPONTE ORDERED AN EVALUATION FOR
17 COMPETENCY. BUT YOUR POSITION IS APPRECIATED AND NOTED FOR
18 THE RECORD, SIR.

19 WE WILL BE AT EASE PENDING WORD FROM THE JURY. AND AS I
20 INDICATED YESTERDAY AND I TOLD THE JURY THAT IF I RECEIVE
21 ANOTHER NOTE THAT THEY REMAIN DEADLOCKED, I WILL, AS I
22 INSTRUCTED THEM, DISCHARGE THEM AT THAT POINT.

23 THANK YOU.

24 (AT EASE FROM 10:25 TO 10:51 A.M.)

25 THE COURT: I HAVE BEEN INFORMED THE JURY HAS REACHED A

VERDICT

1 VERDICT. IS THE STATE READY TO RECEIVE THE VERDICT?

2 SOLICITOR ARIAIL: YES, YOUR HONOR.

3 THE COURT: DEFENDANT READY TO RECEIVE THE VERDICT?

4 MR. MAULDIN: YES, SIR.

5 THE COURT: I WANT TO THANK ALL OF THOSE PRESENT. THE
6 COUNSEL, I'VE TOLD THEM PREVIOUSLY AND I REITERATE MY
7 APPRECIATION FOR THEIR DILIGENCE, PREPARATION AND ZEALOUS
8 REPRESENTATION OF THEIR RESPECTIVE SIDES. I APPRECIATE THOSE
9 WHO HAVE ATTENDED ON BOTH SIDES. I KNOW THAT MR. WOOD'S
10 SISTER HAS BEEN HERE FOR PARTS OF THE TRIAL. I KNOW MR.
11 NICHOLSON'S WIDOW AND FAMILY HAVE BEEN HERE. THE TROOPERS
12 HAVE BEEN HERE THROUGHOUT. AND I WANT TO COMMEND YOU ALL FOR
13 THE FINE MANNER IN WHICH YOU HAVE CONDUCTED YOURSELVES. AND
14 I WANT TO SAY A SPECIAL THANKS TO THE TROOPERS WHO HAVE BEEN
15 HERE THROUGHOUT, BECAUSE YOU ARE VICTIMS IN THIS CASE AS WELL
16 AS PART OF MR. NICHOLSON'S FAMILY. AND I JUST WANT TO
17 COMMEND THE TROOPERS FOR WHAT YOU STAND FOR AND WHAT YOU DO.

18 I WOULD IMPORE THE AUDIENCE TO PLEASE SHOW NO
19 EXPRESSION, AS BEST YOU CAN UNDER A VERY DIFFICULT SITUATION,
20 WITH THE JURY'S DECISION. WE SIMPLY DO NOT KNOW THE JURY'S
21 DECISION. I UNDERSTAND THE IMPORTANCE OF THE CASE TO BOTH
22 SIDES, AND I WOULD IMPORE YOU TO PLEASE REFRAIN FROM ANY
23 OUTWARD EXPRESSION OR DISPLAY WHEN THE VERDICT IS ANNOUNCED.

24 BRING THE JURY.

25 (JURY ENTERS COURTROOM AT 10:55 A.M.)

VERDICT

1 **THE COURT:** MADAME FORELADY, HAVE YOU AND THE LADIES
2 AND GENTLEMEN OF THE JURY REACHED A DECISION IN THIS MATTER?

3 **MADAME FORELADY:** WE HAVE, YOUR HONOR.

4 **THE COURT:** IF YOU WOULD, PLEASE HAND IT TO THE
5 BAILIFF.

6 **MADAME FORELADY:** (COMPLIES)

7 **BAILIFF:** (APPROACHES BENCH WITH VERDICT)

8 **THE COURT:** THE VERDICTS ARE IN PROPER FORM. MADAME
9 CLERK, PLEASE PUBLISH THE VERDICTS.

10 **MADAME CLERK:** YOUR HONOR, CASE NUMBER 2001-GS-23-3106,
11 THE STATE OF SOUTH CAROLINA VERSUS JOHN RICHARD WOOD,
12 DEFENDANT, UNANIMOUS FINDING OF AN AGGRAVATING CIRCUMSTANCE,
13 WE, THE JURY, FIND BEYOND A REASONABLE DOUBT THE FOLLOWING
14 STATUTORY AGGRAVATING CIRCUMSTANCE: THE MURDER OF A FEDERAL,
15 STATE OR LOCAL LAW ENFORCEMENT OFFICER, PEACE OFFICER OR
16 FORMER PEACE OFFICER, CORRECTIONS EMPLOYEE OR FORMER
17 CORRECTIONS EMPLOYEE, OR FIREMAN OR FORMER FIREMAN DURING OR
18 BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES. SIGNED:
19 NORMA B. PITTS, FOREPERSON. SIGNED: TERRY B. MARSHALL,
20 JUROR; PRACILLA A. GOODMAN, JUROR; LINDA D. PRESSLEY, JUROR;
21 STEPHANIE D. HASELWANDER, JUROR; PETRA M. LACKEY, JUROR; WILL
22 M. SHARPE, JUROR; ANNE CASEY SMITH, JUROR; WILLIAM E.
23 STARNES, JUROR; JACOB M. CAMPBELL, JUROR; JAMES R.
24 CHANCELLOR, JUROR; AND AMY J. KESSLER, JUROR.

25 UNANIMOUS RECOMMENDATION OF SENTENCE FOR DEATH PENALTY.

VERDICT

1 WE, THE JURY, HAVING FOUND BEYOND A REASONABLE DOUBT THE
2 EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING
3 CIRCUMSTANCE, TO WIT THE UNJUSTIFIED MURDER OF A SOUTH
4 CAROLINA STATE HIGHWAY PATROL OFFICER IN THE LINE OF HIS
5 DUTY, NOW RECOMMEND TO THE COURT THAT THE DEFENDANT BE
6 SENTENCED TO DEATH. SIGNED: NORMA B. PITTS, FOREPERSON;
7 TERRY B. MARSHALL, JUROR; PRACILLA A. GOODMAN, JUROR; LINDA
8 D. PRESSLEY, JUROR; STEPHANIE D. HASELWANDER, JUROR; PETRA M.
9 LACKEY, JUROR; WILL M. SHARPE, JUROR; ANNE CASEY SMITH,
10 JUROR; RAYMOND E. STARNES, JUROR; JACOB M. CAMPBELL, JUROR;
11 JAMES R. CHANCELLOR, JUROR; AND AMY J. KESSLER, JUROR.

12 THE COURT: LADIES AND GENTLEMEN, WE WILL NOW CONDUCT A
13 STANDARD PROCEDURE KNOWN AS POLLING. THIS WILL BE CONDUCTED
14 BY THE CLERK.

15 MADAME CLERK, YOU MAY PROCEED WITH POLLING OF THE JURY.

16 MADAME CLERK: THANK YOU, YOUR HONOR.

17 LADIES AND GENTLEMEN OF THE JURY, THE VERDICTS THAT I
18 HAVE JUST PUBLISHED WERE THE VERDICTS THAT YOU REACHED IN THE
19 JURY ROOM. I ASK YOU WERE THEY YOUR VERDICTS THEN AND ARE
20 THEY YOUR VERDICTS NOW? AS I CALL YOUR NAMES, PLEASE ANSWER
21 YES OR NO.

22 FOREPERSON, NORMA PITTS?

23 MS. PITTS: YES.

24 MADAME CLERK: JUROR TERRY MARSHALL?

25 MR. MARSHALL: YES.

VERDICT

1 MADAME CLERK: JUROR PRACILLA GOODMAN?
2 MS. GOODMAN: YES.
3 MADAME CLERK: JUROR LINDA PRESSLEY?
4 MS. PRESSLEY: YES.
5 MADAME CLERK: JUROR STEPHANIE D. HASELWANDER?
6 MS. HASELWANDER: YES.
7 MADAME CLERK: JUROR PETRA M. LACKEY?
8 MS. LACKEY: YES.
9 MADAME CLERK: JUROR WILLIAM SHARPE?
10 MR. SHARPE: YES.
11 MADAME CLERK: JUROR ANNE CASEY SMITH?
12 MS. SMITH: YES.
13 MADAME CLERK: JUROR RAYMOND E. STARNES?
14 MR. STARNES: YES.
15 MADAME CLERK: JUROR JACOB M. CAMPBELL?
16 MR. CAMPBELL: YES.
17 MADAME CLERK: JUROR JAMES R. CHANCELLOR?
18 MR. CHANCELLOR: YES.
19 MADAME CLERK: AND JUROR AMY J. KESSLER?
20 MS. KESSLER: YES.
21 THE COURT: ANYTHING PRIOR TO THE DISCHARGE OF THE JURY
22 FROM THE STATE?
23 SOLICITOR ARIAIL: NO.
24 THE COURT: FROM DEFENDANT?
25 MR. MAULDIN: NO, YOUR HONOR.

VERDICT

1 THE COURT: LADIES AND GENTLEMEN, I WANT TO THANK YOU
2 FOR YOUR CONSCIENTIOUS SERVICE IN THIS CASE. I'M GOING TO
3 DISCHARGE YOU AT THIS TIME AND EXCUSE YOU TO THE JURY ROOM.
4 I'LL BE BACK IN THE JURY ROOM IN JUST A FEW MOMENTS TO BID
5 YOU FAREWELL. THANK YOU.

6 (JURY EXITS COURTROOM AT 11:00 A.M.)

7 THE COURT: WE'RE GOING TO TAKE A BRIEF RECESS AS I
8 DISCHARGE THE JURY. WHEN I COME BACK, I'LL BE GLAD TO
9 RECEIVE ANY MOTIONS AT THAT TIME FOR THE RECORD. THEN, IF
10 APPROPRIATE, WE WILL PROCEED TO SENTENCING. AT THE
11 SENTENCING I'LL BE GLAD TO HEAR FURTHER FROM EITHER SIDE.
12 MS. NICHOLSON IS CERTAINLY WELCOME TO COME FORWARD WITH THE
13 NICHOLSON FAMILY. ANY STATE TROOPERS, ACTIVE OR RETIRED, ARE
14 WELCOME TO COME FORWARD AND STAND AS A VICTIM IN THE CASE IF
15 YOU SO DESIRE.

16 WE'RE IN RECESS.

17 (A RECESS WAS TAKEN FROM 11:01 TO 11:21 A.M.)

18 (VERDICT FORMS IN ENVELOPE MARKED AS COURT'S EXHIBIT
19 NUMBER 28)

20 THE COURT: WE'RE BACK ON THE RECORD. I'LL BE GLAD TO
21 HEAR ANY MOTIONS AT THIS TIME.

22 MR. MAULDIN: YOUR HONOR, WE WOULD LIKE TO RENEW THE
23 MOTIONS THAT WE MADE DURING THE TRIAL OF THE CASE REGARDING
24 THE DISPOSITION OF THE ORIGINAL CHARGES.

25 WE ALSO WOULD RENEW OUR MOTIONS THAT WERE MADE DURING

MATTERS AND MOTIONS

1 THE SENTENCING PHASE OF THE CASE SUBSEQUENT TO THE CONVICTION
2 OF THE DEFENDANT.

3 AND THEN FINALLY WE RENEW THE MOTIONS THAT WE MADE
4 DURING THE DELIBERATIONS WHEN WE WERE BACK ON THE RECORD AT
5 VARIOUS TIMES REGARDING OUR REQUEST FOR THE IMPOSITION -- FOR
6 THE RELEASE OF THE JURY AND THE IMPOSITION OF A LIFE SENTENCE
7 WITHOUT PAROLE.

8 WE WILL -- AS PROVIDED BY STATE LAW WE WILL BE FILING
9 MR. WOOD'S NOTICE TO THE APPELLATE COURT. IT IS AUTOMATIC,
10 BUT WE FILE IT ANYWAY, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. MAULDIN: AND WITH THAT -- AND WE ALSO HAVE ADVISED
13 MR. WOOD WITH REGARD TO HIS RIGHT TO MAKE ANY COMMENTS DURING
14 THE SENTENCING. WE HAVE ADVISED HIM AGAINST THAT. HE
15 UNDERSTANDS THAT ADVICE AND CHOOSES NOT TO SPEAK AT THIS
16 TIME, YOUR HONOR.

17 THE COURT: ALL RIGHT. AGAIN, MR. MAULDIN, TO YOU AND
18 MR. BANNISTER AND MR. RICHEY, A SUPERB JOB WITH
19 REPRESENTATION OF MR. WOOD. A SENTIMENT ECHOED BY THE JURY.
20 VERY IMPRESSED, AS THEIR FEELINGS TOWARD STATE COUNSEL AS
21 WELL.

22 I'D LIKE FOR COUNSEL AND MR. WOOD TO APPROACH THE BAR.
23 I'D LIKE FOR THE STATE TO APPROACH. AND IF ANY VICTIM, BE IT
24 MS. NICHOLSON, THE FAMILY OR ANY TROOPER WHO WOULD LIKE TO
25 COME FORWARD AND BE PRESENT DURING SENTENCING, YOU MAY COME

SENTENCING

1 FORWARD AT THIS TIME. (PAUSE)

2 AT THIS TIME I ISSUE TWO ORDERS. AS THE TRIAL JUDGE IN
3 THIS CASE, THE STATE VERSUS JOHN RICHARD WOOD, PRIOR TO THE
4 IMPOSITION OF A SENTENCE OF DEATH I FIND AS AN AFFIRMATIVE
5 FACT THAT THE EVIDENCE IN THIS CASE WARRANTS THE IMPOSITION
6 OF THE DEATH PENALTY AND ITS IMPOSITION IS NOT A RESULT OF
7 PREJUDICE, PASSION OR ANY OTHER ARBITRARY FACTOR.

8 I FURTHER FIND DEFENDANT HAS BEEN FOUND BY THE JURY TO
9 BE GUILTY OF THE OFFENSE OF MURDER. THE JURY HAS RECOMMENDED
10 THAT DEFENDANT BE SENTENCED TO DEATH.

11 MR. WOOD, IS THERE ANYTHING YOU WOULD LIKE TO SAY AT
12 THIS TIME, SIR?

13 DEFENDANT: NO, SIR.

14 THE COURT: IT IS THEREFORE THE JUDGMENT AND SENTENCE
15 OF THE COURT THAT DEFENDANT, JOHN RICHARD WOOD, BE TAKEN TO
16 THE GREENVILLE COUNTY DETENTION CENTER AND THENCE TO THE
17 STATE DEPARTMENT OF CORRECTIONS, HENCEFORTH TO BE KEPT IN
18 CLOSE AND SAFE CONFINEMENT UNTIL THE 15TH DAY OF AUGUST 2002
19 UPON WHICH DAY BETWEEN THE HOURS OF SIX O'CLOCK P.M. AND SIX
20 O'CLOCK A.M. ON AUGUST THE 16TH, 2002, OR UPON AN ORDER OF
21 EXECUTION ISSUED BY THE SOUTH CAROLINA SUPREME COURT
22 DEFENDANT JOHN RICHARD WOOD SHALL SUFFER DEATH IN THE MANNER
23 PROVIDED BY LAW. IT IS SO ORDERED.

24 THAT CONCLUDES THIS MATTER.

25 (TRIAL ENDED AT 11:26 A.M.)

SENTENCING

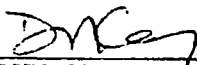
-----END OF REQUESTED TRANSCRIPT OF RECORD-----

SERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 13TH, 15TH AND 16TH DAYS OF FEBRUARY, 2002.

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

MARCH 20, 2003



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF COMMON PLEAS

The State of South Carolina,)

Plaintiff,)

VS)

John Richard Wood,)

Defendant.)

ORIGINAL

File No. G-453839

File No. G-453840

The Preliminary Hearing in the matter of the State of South Carolina versus John Richard Wood, was held before the HONORABLE DIANE E. CAGLE, Chief Magistrate, on the 13th day of February, 2001, commencing at the hour of 9:00 A.M, at the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina.

Reported by: Barbara A. Bostrom

APPEARANCES:

Robert M. Ariail, Esquire
 Circuit Court Solicitor
 305 East Main Street
 Greenville, South Carolina 29601

On Behalf of the People,

John I. Mauldin, Esquire
 Post Office Box 10264
 Greenville, South Carolina 29603

On Behalf of the Defendant.

STIPULATIONS:

This Hearing is being taken before the HONORABLE DIANE
 E. CAGLE, pursuant to South Carolina Rules of Criminal
 Procedure.

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1 **BY THE COURT:**

2 For the record we have requests from the Greenville
3 News, Mr. Bronowski, we had a request under Rule 605
4 for Rob Bollin and Brad Willis from Channel 4, and
5 also, from Channel 7 to be present at this hearing.
6 Mr. Ariail, is present for the Solicitor's office and
7 Mr. Mauldin is here for the defense. Any comments or
8 questions or whatever?

9 **BY MR. ARIAIL:**

10 Our position is we leave it in Your Honor's
11 discretion.

12 **BY THE COURT:**

13 Mr. Mauldin?

14 **BY MR. MAULDIN:**

15 Likewise for the defense, at this stage, Your Honor.

16 **BY THE COURT:**

17 Gentlemen, if you would refrain from filming either or
18 any of the victims, the family, or anybody that may be
19 present for this hearing and certainly the alleged
20 victims within the courtroom.

21 **BY MR. WILLIS:**

22 Yes, Your Honor.

23 **BY THE COURT:** Do we have the warrant number?

24 **BY MR. ARIAIL:**

25 Yes, I do, Your Honor.

PRELIMINARY HEARING - JOHN RICHARD WOOD

1 **BY THE COURT:**

2 If you want to publish those for the record.

3 **BY MR. MAULDIN:**

4 We don't have them and we waive publishing.

5 **BY MR. ARIALL:**

6 Thank you, Your Honor. We call Paul Silvaggio as our
7 witness.

8 **PAUL SILVAGGIO**, being first duly sworn, was
9 examined and testified as follows:

10 **EXAMINATION BY SOLICITOR ARIALL:**

11 Q. Mr. Silvaggio, would you state your name for
12 the record, please, sir.

13 A. Paul Andrew Silvaggio.

14 Q. By whom are you employed?

15 A. Employed by the Greenville County Sheriff's
16 Office.

17 Q. What capacity are you employed with the
18 Sheriff's Department?

19 A. Investigator, Violent Crimes Unit, Homicide.

20 Q. How long have you been so employed in the
21 Homicide Division?

22 A. Assigned to Homicide for two and a half
23 years, employed for sixteen.

24 Q. For a total of sixteen years?

25 A. Yes.

1 Q. Did you have an occasion as part of your
2 duties as a Homicide Investigator with the
3 Greenville County Sheriff's Office to respond
4 to a scene on December the 6th, at Frontage
5 Road and Woodruff Road and I-85, Greenville,
6 South Carolina?

7 A. Yes, I did, sir.

8 Q. What was the reason to your responding to that
9 location? What made you go there?

10 A. Officer involved shooting, that a trooper,
11 South Carolina Highway Patrol while on duty was
12 shot.

13 Q. When you arrived, approximately, what time was
14 it?

15 A. Approximately 12:12 is when I received the
16 call, and I arrived shortly thereafter.

17 Q. And just, generally, describe the scene as you
18 saw it when you arrived?

19 A. Upon my arrival to the scene, I noted several
20 law enforcement vehicles in the area, law
21 enforcement had placed crime scene tape around
22 the Frontage Road area for which Trooper
23 Nicholson's car was parked. I observed his
24 vehicle to be parked at an angle with the
25 front at a -- the front of his vehicle at a

PRELIMINARY HEARING - JOHN RICHARD WOOD

1 left angle. The driver's window of the
2 trooper's vehicle was broken out, and there
3 appeared to be several holes about the interior
4 and exterior of his vehicle.

5 Q. And was Trooper Nicholson still on the scene
6 when you arrived?

7 A. Yes, Trooper Nicholson was.

8 Q. Were you able to confirm his condition at that
9 time or subsequently through conversation with
10 the Coroner and Medical Examiner?

11 A. Yes, I was.

12 Q. And what was that condition?

13 A. Trooper Nicholson died as a result of a gun
14 shot wound upon his body.

15 Q. At that time, did you then assume the
16 responsibility for the investigation of this
17 case?

18 A. Yes, I did.

19 Q. And as part of those responsibilities did
20 you interview or take statements from various
21 witnesses who were on the scene?

22 A. Other law enforcement investigators did, yes.

23 Q. And did they as part of their chain of
24 command, did they deliver those to you and you
25 reviewed those?

1 A. Yes.

2 Q. Tell us, if you would, just at the scene, what
3 those witnesses described as the events that
4 occurred?

5 A. As witnesses were traveling down Woodruff Road,
6 approaching I-85 at the traffic light, they
7 observed highway patrol vehicles with lights
8 and sirens pursuing behind a scooter on the
9 off-ramp of I-85 onto Woodruff Road. As the
10 scooter turned right onto Woodruff Road, the
11 trooper followed in pursuit, turned onto
12 Frontage Road, at which time the witnesses
13 indicated that the scooter and trooper's
14 vehicle were pulled up next to each other with
15 the scooter at the trooper's driver's side
16 window. Further, the witnesses indicated that
17 they heard multiple gun shots coming from the
18 area of the scooter and the trooper's vehicle.
19 Further, witnesses indicated that they observed
20 the individual being a white male, dressed in a
21 beige coat, dark pants, wearing a black
22 motorcycle helmet, had his right arm extended
23 and thrusting it up and down at the trooper's
24 vehicle at the driver's door. The scooter then
25 backed up, made a U-turn onto Frontage Road and

1 aggressively went out onto the congested
2 traffic on Woodruff Road weaving in and out of
3 traffic. The trooper's vehicle was not moving.

4 Q. And were witnesses observing the movements of
5 the scooter?

6 A. Yes, they were.

7 Q. How far did they follow and observe the
8 scooter's movements?

9 A. Two of the witnesses followed the scooter down
10 Woodruff Road turning right. As the scooter
11 went to the gas station parking lot, the
12 witness turned right onto Miller Road and
13 pursued behind Greenville Gymnastics, which is
14 off Greenview Road to the right which they
15 observed activity at that point.

16 Q. Tell us what activity they observed at that
17 point?

18 A. The individual got off the scooter, entered
19 a Jeep Wagoneer which was occupied by a white
20 female, shoulder white hair. At which time,
21 the vehicle took off behind Greenville
22 Gymnastics and fled from the area.

23 Q. And this individual that got off of the
24 scooter, where was the scooter left?

25 A. The scooter was found behind Greenville

1 Gymnastics.

2 Q. And were the witnesses able to give you a tag
3 number for the vehicle into which the scooter
4 driver placed himself?

5 A. Yes, they were.

6 Q. All right. And did your investigation reveal
7 to whom that car was registered?

8 A. It was registered to Karen McCall.

9 Q. And did you also through your investigation
10 seize this scooter?

11 A. Yes, we did.

12 Q. And which side of the vehicle did the
13 scooter/driver get in, on the passenger or
14 driver's side?

15 A. The passenger's side.

16 Q. Right, according to the witness?

17 A. Yes.

18 Q. And, thereafter, during the course of the
19 day, was that vehicle, with those similar
20 occupants, later discovered?

21 A. Yes, it was.

22 Q. Where was it later discovered?

23 A. It was discovered in Anderson County as the
24 witness further provided to the dispatcher of
25 911 the tag number of the Jeep that pulled from

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1 the Greenville Gymnastics. After the National
2 Teletype was sent out to local law enforcement
3 and area law enforcement agencies, Anderson
4 County Sheriff's Office, along with the Highway
5 Patrol discovered the vehicle in Anderson
6 County and gave pursuit at that point.

7 Q. And just, generally, describe, based on what
8 you received, what occurred in Anderson County
9 and how it ended in Anderson County?

10 A. Subsequent to the pursuit and discovery of the
11 vehicle in Anderson County, law enforcement was
12 fired on by gun fire from the Jeep Wagoneer
13 that was described to law enforcement as being
14 at Greenville Gymnastics and pulling away with
15 the individual who shot -- it was believed to
16 have shot at Trooper Nicholson. Gun fire was
17 exchanged throughout Anderson County and
18 several areas within Anderson County.
19 Subsequent to that, the defendant, John Richard
20 Wood, and Karen McCall, were subsequently
21 arrested in Anderson County after a pursuit,
22 and the theft of the vehicle, further pursuit,
23 and additional gunfire resulting from the
24 defendant and by law enforcement, and he was
25 subsequently arrested.

1 Q. And, so, the Jeep was later discovered being
2 driven in Anderson County and had the same tag
3 number?

4 A. Yes.

5 Q. And the passengers in that vehicle, how
6 would you describe -- the driver was
7 described as what?

8 A. The driver was described as a white male,
9 wearing a beige coat, dark pants, same
10 description as was given by witnesses from
11 Frontage Road at Woodruff Road and I-85.

12 Q. Let me go back a second. The car first
13 discovered in Anderson County, who was the
14 driver at the beginning?

15 A. The driver at the beginning in Anderson County
16 was the white female.

17 Q. Then, subsequently, they left that jeep, the
18 white female and white male, and got into
19 another car?

20 A. Yes, they did.

21 Q. Then who was the driver of that second
22 vehicle?

23 A. I am not certain at that point.

24 Q. Now, in Anderson County or going back to the
25 beginning, the location of the highway patrol

1 trooper's vehicle, was that in Greenville
2 County?

3 A. Yes, it was, sir.

4 Q. And, now, in Anderson County, once the vehicles
5 were -- the vehicle was stopped, and there was
6 an arrest of the two individuals made, was one
7 of those individuals, Karen McCall, the same
8 individual to whom the car was registered?

9 A. Yes, it was, sir.

10 Q. Did the -- was a statement taken by law
11 enforcement officers from Ms. McCall?

12 A. Yes, it was, sir.

13 Q. And, generally, what did that statement relate
14 in regard to her involvement in this matter
15 and also the involvement of John Richard Wood?

16 A. She provided in part and, certainly, I don't
17 have the statement present with me.

18 Q. Correct.

19 A. She provided in part that she met John Richard
20 Wood behind the Greenville Gymnastics as they
21 came to Greenville to meet for lunch. Further,
22 she provided that when John Richard Wood
23 entered her vehicle and they were traveling up
24 I-85, Interstate 85, he said to her, quote, "I
25 killed the S-O-B", quote "We're going to

1 die today". I don't recall anything further in
2 her statement at this point.

3 Q. All right. Now, when the arrest was made in
4 Anderson County in the vehicle you previously
5 described, there was gunshots fired from the
6 vehicle with which Ms. McCall and Mr. Wood were
7 driving. Was a weapon subsequently recovered
8 from that vehicle?

9 A. Yes, it was, sir.

10 Q. And, also, did you recover shell casings from
11 the location of the trooper's shooting?

12 A. Yes, we did, sir.

13 Q. Without reviewing the statement, do you know or
14 do you recall into whose hands Ms. McCall's
15 statement placed the weapon, the gun that was
16 being fired?

17 A. John Richard Wood.

18 BY MR. ARIAIL:

19 That's all I have, thank you.

20 EXAMINATION BY MR. MAULDIN:

21 Q. Let me ask you just a follow-up to Mr.
22 Ariail's question, about that last question,
23 the question from the prosecutor was, in whose
24 hands was the weapon that was being fired and
25 you said John Richard Wood?

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1 A. Whose hand the weapon was fired?

2 Q. Yes, sir.

3 A. John Richard Wood.

4 Q. Now, are you leading the Court to believe that
5 Karen McCall was a witness to the shooting?

6 A. The exchange -- what shooting are you referring
7 to? I am sorry.

8 Q. The one we're here to talk about, the officer
9 being killed in Greenville County. The way I
10 understand the evidence thus far there was a
11 shooting near Frontage Road and Woodruff Road?

12 A. Yes.

13 Q. And then this person who did the shooting,
14 went to a location and got in a vehicle with
15 Karen McCall?

16 A. That is correct.

17 Q. So, it is not the State's position that Karen
18 McCall witnessed any shooting involving any
19 witness in this case, is it?

20 A. No, sir.

21 Q. The first call that you got, I believe, you
22 said was at 12:11 P.M.?

23 A. Approximately, at that time, 12:11, 12:15,
24 right in that area, sir, when the original call
25 came in. And Trooper Nicholson initiated the

1 traffic stop at 12:11, subsequent to that, area
2 law enforcement responded to the area within
3 minutes after the initial call.

4 Q. You say that the initial call was from Trooper
5 Nicholson about the stop, is that what you just
6 said?

7 A. Right, at approximately 12:11.

8 Q. So, the call that you refer to at 12:11 was not
9 the call to you?

10 A. No.

11 Q. It was a call from Trooper Nicholson that a
12 stop was being made?

13 A. That's correct.

14 Q. And that is essentially routine by highway
15 patrolman, right?

16 A. By law enforcement to call in a traffic stop,
17 yes.

18 Q. And subsequent to the 12:11 call, you then got
19 a call from who?

20 A. It was broadcasted on the radio, we were out on
21 the road conducting unrelated follow-ups and
22 heard our dispatcher relaying that there was
23 an officer involved in a shooting and an
24 officer down. Subsequent to that, our unit
25 investigates those types of crimes, those type

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1 incidents, and I, subsequently, along with
2 other members of the unit responded to the
3 scene.

4 Q. All right. And, so, it was some minutes after
5 12:11 when this general broadcast was
6 heard?

7 A. Very brief.

8 Q. And that led you to proceed to the scene?

9 A. That's correct.

10 Q. And where were you when you got that
11 information that would lead you to the scene?

12 A. From downtown Greenville coming past the
13 Bi-Lo Center approaching 385.

14 Q. So, you were eight minutes, six to eight
15 minutes from the scene?

16 A. Approximately.

17 Q. All right. And when you got to the scene,
18 other police officers were already present?

19 A. Yes, they were.

20 Q. Now, before, I asked you about the way that the
21 cars were positioned again, or the car of
22 Trooper Nicholson. Let me ask you about the
23 statements that the prosecutor has asked you to
24 relate. You say that a number of statements
25 were in fact given from witnesses to various

1 stages of this incident?

2 A. That is correct.

3 Q. Can you give me an idea without -- even though
4 this is being recorded -- just your best
5 estimate of how many statements we're talking
6 about? Are we talking about less than five, or
7 are we talking about more than twenty? Can you
8 give me some general idea of how many different
9 statements you paraphrased here today?

10 A. That would be very difficult without having the
11 information available to me at this time but,
12 if you want, you indicated less than twenty?
13 Less than twenty.

14 Q. Okay.

15 A. With the Greenville County Incident.

16 Q. For the Greenville County Incident? You're
17 testifying as to your recollection of having
18 reviewed statements that you would say would
19 be less than twenty?

20 A. I was provided by a number by you, and I
21 agreed that it is probably less than twenty.

22 Q. All right. Now, were these statements of
23 civilians only or statements of civilians and
24 law enforcement officers with regard to
25 observing the actual incident?

1 A. Civilians.

2 Q. So, the statements that you -- with regard to
3 where the scooter was parked in relationship to
4 the trooper's car, for example, those are
5 statements from civilian witnesses?

6 A. That is correct, sir.

7 Q. And these would have been people who were
8 operating automobiles, or passengers in
9 automobiles in that area at the time?

10 A. And/or working in this area.

11 Q. All right. So, they were people that were
12 actually on foot, to the best of your
13 recollection? And like I say, I mean, I am
14 just trying to get a general idea of how you
15 got this information?

16 A. That is correct.

17 Q. Now, the automobile had not been moved when you
18 got to the scene, Officer Nicholson's vehicle
19 had not been moved, is that your understanding?

20 A. That is correct.

21 Q. And you described what you saw about the
22 condition of the automobile. I want to ask you
23 the actual physical location of the automobile,
24 if I could? And if you will bear with me
25 just a minute. The Greenville Mall is on

1 Woodruff Road and from the front of Greenville
2 Mall, Woodruff Road proceeds out and then
3 crosses I-85 and then proceeds toward Miller
4 Road which turns to the right from Garrington
5 which turns to the left, is that correct so
6 far?

7 A. That is correct.

8 Q. All right. With regard to the position of
9 Officer Nicholson's car, was the front of his
10 car heading towards the Greenville Mall or
11 toward Miller Road?

12 A. More heading towards the direction of the area
13 of the Greenville Mall, on that side of I-85
14 versus towards Miller Road.

15 Q. All right. With regard to the actual position
16 of his vehicle where Woodruff Road crosses
17 I-85, was his car on the Miller Road side of
18 that intersection or the Greenville Mall side
19 of that intersection?

20 A. The Miller Road side of the interstate.

21 Q. Okay. And you say that his car, the front end
22 of his car was turned toward the left?

23 A. That is correct.

24 Q. What lane of traffic was his car actually in,
25 or was it off the side of the road; which one?

1 A. It was the Frontage Road, his car pretty much
2 dominated the left and right side, if you will,
3 or the lanes of traffic, the width of the
4 road, his vehicle somewhat dominated the left
5 side if you were traveling in the same
6 direction.

7 Q. All right. Well, then let me ask this, was his
8 car on Frontage Road or Woodruff Road?

9 A. Frontage Road.

10 Q. So, did it appear to you from the visual that
11 you observed and the statements that you
12 subsequently reviewed, that his car had turned
13 onto Frontage Road from Woodruff Road?

14 A. That is correct.

15 Q. When he, apparently, was on Woodruff Road,
16 which way did it appear that his vehicle had
17 been proceeding? Was it proceeding toward the
18 Greenville Mall or toward Miller Road.

19 A. Toward Miller Road.

20 Q. And it had taken then a right turn?

21 A. A right onto the Frontage Road.

22 Q. Onto Frontage? How far down Frontage Road
23 was the car from the intersection of Woodruff
24 and Frontage?

25 A. Approximately, a block and a half distance.

1 Q. A block and a half?

2 A. Correct.

3 Q. All right. So, it was further then from here
4 to Judge Cagle?

5 A. That is correct.

6 Q. Now, does Frontage Road have a painted line?

7 A. I don't recall at this time whether it does or
8 not.

9 Q. And what I am doing, I am trying to find out
10 where in the road his car actually was in
11 position. I got a little lost when you were
12 describing that. When you normally drive down
13 the road you drive down the right hand side,
14 right?

15 A. That is correct.

16 Q. And you said he was kind of leaning to the
17 left, was he crossed over into what would have
18 been oncoming traffic or is that one way or ---

19 A. Across the side of into what would be perceived
20 as a lane for oncoming traffic.

21 Q. All right. Now, according to these witnesses
22 that you reviewed their testimony of, or
23 statements, the trooper's car was pulled up
24 beside a person on a scooter? I mean, they
25 were actually side by side?

1 A. That is correct, onto Frontage Road.

2 Q. And do you recall how far in distance their
3 vehicles would have been from each other, were
4 they right side by side, or were they ten feet
5 or more, or can you recall that?

6 A. Approximately four to six feet apart.

7 Q. All right. Now, when you arrived you said that
8 there were bullet holes in the automobile?

9 A. That is correct.

10 Q. And this window was broken out. And for
11 purposes of this Hearing today, I am just
12 going to make a rash assumption that the window
13 was probably shot?

14 A. I think it is safe to make that assumption,
15 sir.

16 Q. And but there were also bullet holes in the
17 metal part of the vehicle?

18 A. That is correct.

19 Q. Were the bullet holes in the driver's side
20 of the vehicle?

21 A. Driver's side and other portions of the
22 vehicle.

23 Q. Were the bullet holes that you observed,
24 entrance bullet holes or exit bullet holes?

25 A. To some degree, yes.

1 Q. All right. How many, can you just describe for
2 the Judge, how many bullet holes were in the
3 driver's side of the car that you recall to
4 your memory?

5 A. It would be difficult to give an exact number
6 as to how many penetrated the glass, how many
7 penetrated the actual body of the vehicle.

8 Q. Well, I am just asking you for the body of the
9 vehicle at this point. Obviously, the glass is
10 broken out, we don't know how many penetrated
11 the glass, so, I am just talking about the
12 metal part.

13 A. One.

14 Q. All right. One bullet hole and that was an
15 entrance bullet hole?

16 A. Right.

17 Q. And where was that bullet hole located?

18 A. That was through the driver's left side
19 mirror from the exterior through the mirror
20 itself, and penetrating through the vehicle.

21 Q. All right. Now, and Officer Nicholson was
22 still in his vehicle when you got there or had
23 he been removed?

24 A. He had been removed from the vehicle.

25 Q. And was his service revolver, service weapon, I

1 think, still on him?

2 A. When I arrived on the scene, no, it was not.

3 Q. It had been removed?

4 A. By the supervision of highway patrol, yes.

5 Q. And did you take control of it?

6 A. Yes, I did.

7 Q. All right. And did you make a determination at
8 that time whether or not that weapon had been
9 fired?

10 A. Yes, I did.

11 Q. All right. And had it been fired?

12 A. No, it had not.

13 Q. Now, the scooter after the shooting, you say
14 there were witnesses who followed the scooter
15 on the road and they proceeded away from
16 the Greenville Mall down to Miller Road?

17 A. That is correct.

18 Q. And took a right?

19 A. That is correct.

20 Q. And then went down to the Greenville
21 Gymnastics?

22 A. That is correct.

23 Q. And the witnesses that you are referring to
24 were civilian witnesses?

25 A. Yes, they are.

1 Q. And they gave written statements?

2 A. Yes, they did.

3 Q. And do you recall whether at any time those
4 witnesses, those written statements, say that
5 they actually lost sight, that is; the person
6 was not in their vision at any particular
7 point?

8 A. Yes.

9 Q. All right. And when and where was that?

10 A. When the vehicle -- when the scooter rounded
11 the back side of the Greenville Gymnastics,
12 they lost sight of him at that point, they then
13 rounded the corner of Greenville Gymnastics and
14 observed an individual getting into the
15 passenger's side of the Wagoneer and climbing
16 into the back seat of the vehicle, with the
17 same description as the individual that was
18 driving the or operating the scooter.

19 Q. Did the witnesses actually say that they saw
20 the doors of this Wagoneer open?

21 A. I don't know that they specifically say that
22 without having it in front of me.

23 Q. And the point I am making here, Mr.
24 Silvaggio, did these witnesses actually say
25 they saw a person actually getting into a

1 Jeep Wagoneer or that the person had already
2 gotten into it?

3 A. Into the Wagoneer and climbing into the back
4 seat.

5 Q. All right. And were there other vehicles in
6 the area? You know, other cars parked in that
7 parking area?

8 A. I am not certain at this point if there were
9 or not, sir.

10 Q. Were photographs taken of that area?

11 A. Yes, they were.

12 Q. Behind this Gymnastics place?

13 A. Yes.

14 Q. And would those photographs have shown other
15 vehicles in that area if they had been there?

16 A. If the vehicles were there at the time the
17 photographs were taken, yes.

18 Q. And, so, you don't know and without
19 recollection of the statements, you don't
20 recall whether or not the witnesses said there
21 were other vehicles in that area where the
22 scooter was stopped or not?

23 A. That is correct.

24 Q. Where did you get the license tag number
25 regarding the Jeep, where did that come from?

1 A. From the witnesses. Some of the witnesses.

2 Q. From one or more of the witnesses who followed
3 around behind the Gymnastics?

4 A. That is correct.

5 Q. And that license tag number would have been
6 broadcasted over the radio?

7 A. That is correct, sir.

8 Q. And the radio transmissions that were made
9 during the process of this pursuit and this
10 investigation were maintained by the Greenville
11 County Sheriff's Department?

12 A. Yes, the Greenville County Sheriff's Office
13 would maintain the integrity of the tapes. The
14 highway patrol would initially maintain the
15 integrity of their original copies along with
16 other jurisdiction that would have been
17 involved.

18 Q. All right. So, we know, I assume that
19 the Greenville County Sheriff's Department was
20 -- it was an offense that was occurring and
21 being investigated in Greenville County?

22 A. Yes.

23 Q. So, radio transmissions would have been made
24 and recorded and preserved?

25 A. That is correct.

1 Q. By that agency?

2 A. That is correct.

3 Q. All right. And that would I think be Bruce
4 Cannon's (sic) responsibility to maintain
5 those, the integrity of those tapes?

6 A. No, the lead investigator is responsible to
7 ensure that they enter into the property and
8 evidence room.

9 Q. And that is you?

10 A. Yes, it is.

11 Q. And that would be the tapes from the time this
12 -- of the beginning of this incident all the
13 way until the actual arrest in Anderson County?
14 All those?

15 A. As the radio transmission and as the traffic
16 pertains to this specific incident.

17 Q. Right, right. That is what I mean.

18 In other words, when you said that the vehicle
19 was last seen in Anderson County that doesn't
20 mean there is not going to be any tapes of
21 transmissions saying, "Hey, Greenville County,
22 he is in Anderson County", that kind of stuff,
23 it is going to be on the tapes?

24 A. That is correct.

25 Q. All right. A couple of other questions, Mr.

1 Silvaggio. You said that Karen McCall who has
2 been described by the prosecutor as a co-
3 defendant -- as the co-defendant in this case,
4 he said that in her statement that she had come
5 to Greenville to meet John for lunch and that
6 they were supposed to meet behind the
7 Greenville Gymnastics or in that area, is that
8 what the statement said, to the best of your
9 recollection?

10 A. They were meeting for lunch, other than that, I
11 don't recall where the actual meeting place
12 was supposed to be. She knew, specifically,
13 and he knew, specifically, where to meet her
14 at.

15 Q. Well, I guess, the question is I think you said
16 they had come to Greenville to meet for
17 lunch?

18 A. Right.

19 Q. All right. And there was no question about
20 that being in her statement?

21 A. There is no question as to why they were coming
22 to Greenville.

23 Q. All right. Now, a weapon was recovered in
24 Anderson County. Tell me what kind of weapon
25 that would be, the weapon that was recovered

1 that is alleged to have been the weapon used in
2 this incident, what kind of weapon was that?

3 A. Nine Millimeter.

4 Q. And it was recovered by Anderson County
5 Authorities?

6 A. Yes, it was.

7 Q. And they've reported to you that they recovered
8 it from what location?

9 A. I recall I believe that they recovered it from
10 within the vehicle for which Mr. Wood was
11 arrested.

12 Q. All right. And then you said that there were
13 shell casings recovered at the scene of the
14 shooting in Greenville County?

15 A. Yes.

16 Q. And how many shell casings were recovered?

17 A. To my recollection, eight shell casings.

18 Q. Eight shell casings were recovered from the
19 scene?

20 A. Yes.

21 Q. Now, tell me a little bit about this, the
22 facts, and I know this is something you weren't
23 a witness to, but you weren't a witness to
24 anything you testified to so far that I can
25 tell. At some point, the two individuals who

1 had left in the Jeep Wagoneer got out of that
2 vehicle and got into another vehicle?

3 A. That's correct.

4 Q. Was the second vehicle the one from which
5 they were arrested?

6 A. That was the last vehicle that they were in
7 before their arrest.

8 Q. All right. So, the vehicles that I can
9 identify so far are a scooter, a Jeep
10 Wagoneer, and another vehicle from which the
11 persons charged in this case, were arrested, is
12 that right?

13 A. The scooter, the Wagoneer, and the other
14 vehicle.

15 Q. Right. And what kind of vehicle is the other
16 vehicle we're talking about?

17 A. To the best of my recollection it is a white
18 pickup truck, utility type vehicle, that was
19 parked on the side of the road.

20 Q. All right. Hold on one minute, please. It's
21 always nice to have somebody else here to
22 write down the real questions, so, I am going
23 to ask a few of these that he made note of, if
24 you don't mind, Officer Silvaggio. You made
25 reference to the scooter being followed around

1 the Greenville Gymnastics Building and
2 witnesses saying they saw a person get into
3 this Jeep, how many were there? Were there
4 more then one vehicle of witnesses who saw
5 this or are we talking about people all in the
6 same vehicle, two or three vehicles that were

7 ---

8 A. I recall four at this time, I recall two
9 witnesses actually observing the activity of
10 traveling behind Greenville Gymnastics.

11 Q. And were they in the same vehicle?

12 A. The two that I recall, yes.

13 Q. All right. Now, did you determine from the --
14 and I realize that at 12:11 there was a tape
15 saying that a stop was being made, is that
16 right?

17 A. That is correct.

18 Q. And that would have been a transmission by
19 Officer Nicholson?

20 A. That is correct.

21 Q. Could you determine prior to that transmission
22 whether or not a pursuit had actually taken
23 place or being taking place that led to the
24 stop or was that the first transmission
25 regarding that stop?

1 A. There was radio traffic to another trooper
2 asking if the scooter could operate on the
3 Interstate and then where Trooper Nicholson
4 is calling in the vehicle, the tag number, to
5 the scooter.

6 Q. Of the scooter?

7 A. Of the scooter.

8 Q. All right.

9 A. And then there is traffic indicating, providing
10 his location, then you hear a hesitation, if
11 you will, and he specifically says he is going
12 to stop the scooter. Sounded somewhat
13 embarrassed, if you will, to stop a scooter to
14 radio that into dispatch. And then the next
15 thing you hear is what I interpreted to be a
16 very distressed call in an inaudible voice of
17 Trooper Nicholson, a C-181, and then you hear
18 nothing further from that point.

19 Q. Now, what is you say a C-181?

20 A. Right. That is how we decide, how we identify
21 who the Trooper was on the radio traffic
22 through a unit number he used to communicate
23 with dispatch.

24 Q. And in the last transmission that you referred
25 to, was it your impression that that

1 transmission was made after the shooting?

2 A. That transmission was made sometime from the
3 first shot to the last shot.

4 Q. All right. So, essentially, a transmission was
5 being made during this incident?

6 A. Yes.

7 Q. And then after that, there was no further
8 transmission?

9 A. From Trooper Nicholson, that is correct.

10 Q. When the Jeep Cherokee left the scene of the
11 Greenville Gymnastics, was it being -- was it
12 under constant watch or was it just kind of a
13 certain period of time when no one knew where
14 it was until it was subsequently seen in
15 Anderson County?

16 A. As the witnesses provided to us, they followed
17 the vehicle for a very short period of time,
18 the vehicle left from behind the Greenville
19 Gymnastics, what they described as at a high
20 rate of speed. After the vehicle left, they
21 then made a U-turn and went back to the
22 location of Trooper Nicholson's vehicle where
23 they discovered law enforcement there, and
24 Trooper Nicholson had subsequently -- they
25 observed that he had been shot.

1 Q. So, at the time they made a U-turn and went
2 back the Jeep's location was officially unknown
3 for a while?

4 A. That is correct.

5 Q. And then it was subsequently transmitted that
6 it had been seen in Anderson County?

7 A. That is correct.

8 Q. Can you -- and I understand you don't have your
9 file in your hands -- can you tell me about
10 when the transmission would have come in that
11 it had been seen in Anderson County, so, we can
12 get an idea of the length of time?

13 A. Approximately two hours.

14 Q. All right.

15 A. After the last sight by the witnesses.

16 Q. So, from the last sight until being seen in
17 Anderson County, it was about a two hour
18 period?

19 A. To the best of my recollection, yes.

20 Q. Other than the Greenville County, Greenville
21 City, and Anderson County and the Highway
22 Patrol, are there any -- were there any other
23 agencies involved in the processing of the
24 scene or involved in the attempts to pursue the
25 accused?

1 **BY MR. ARIALL:**

2 Your Honor, I am going to object, I am going to let
3 him answer this one question.

4 **BY MR. MAULDIN:**

5 I will withdraw the question.

6 **BY MR. ARIALL:**

7 But this has got nothing to do with probable cause and
8 he is fishing around to find out who is involved and I
9 think it is time -- the State thinks it is time to put
10 a stop to it. We object but let him answer that one
11 question and we object to that.

12 **BY MR. MAULDIN:**

13 I have got one more question, I withdraw that. I
14 withdraw that question and I will ask another one. If
15 he is going to let me ask one more question, I will
16 ask another question.

17 **BY THE COURT:**

18 All right. One more Mr. Mauldin.

19 **BY MR. MAULDIN:**

20 Thank you, Judge.

21 **EXAMINATION CONTINUES BY MR. MAULDIN:**

22 Q. You made reference to a transmission made by
23 Trooper Nicholson?

24 A. Yes.

25 Q. Leading up to the stop? And then a

1 transmission where you say it's almost
2 inaudible, that in your opinion may very well
3 have taken place during the act?

4 A. Yes.

5 Q. All right. What could you pick up from that
6 transmission, any gunshots, noises, or similar
7 noises on that transmission?

8 A. Not that I recall. Very, very brief, slight
9 second type transmission.

10 Q. All right.

11 **BY MR. MAULDIN:**

12 One moment. That's all the questions I have, Your
13 Honor, thank you, for your patience.

14 **BY THE COURT:**

15 Anything else?

16 **BY MR. ARIALL:**

17 Nothing further, Your Honor. We ask that you send it
18 up and bind it over.

19 **BY THE COURT:**

20 Anything else from you, Mr. Mauldin?

21 **BY MR. MAULDIN:**

22 No, Ma'am.

23 **BY THE COURT:**

24 In the case of John R. Wood, Case Number
25 G-53839, in the charge of Murder of a Police Officer

1 in the Line of Duty, I bind this matter over for
2 trial. And in Case Number G-453840, Possession of a
3 Firearm During the Commission of a Crime, I also bind
4 that over for trial. Thank you.

5 BY MR. ARIALL:

6 Thank you, Judge.

7 (Whereupon, the Preliminary Hearing in the matter of
8 the State of South Carolina versus John Richard Wood,
9 was concluded at 10:30 A.M.)

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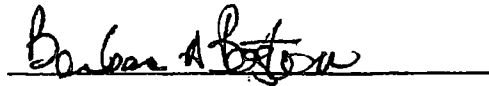
CERTIFICATE

I, the undersigned, Barbara A. Bostrom,
Notary Public in and for the State of South Carolina,
do hereby certify that the foregoing deposition was
taken on the 13th day of February, 2001;

That the within deponent was sworn to
tell the truth and that the foregoing is an accurate
transcription of the testimony taken under oath;

I further certify that I am neither
counsel nor solicitor to any of the parties in said
suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set
my hand and seal this 5th day of March, 2001.



Barbara A. Bostrom (Seal)
Notary Public for South Carolina
My Commission Expires:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

2001-GS-23-3106

-VS-)

TRANSCRIPT OF RECORD

JOHN RICHARD WOOD,)

FEBRUARY 28, 2001

DEFENDANT.)

BEFORE:

THE HONORABLE JOHN. W. KITTREDGE, JUDGE

APPEARANCES:

BOB ARIAIL, ESQUIRE
SOLICITOR FOR 13TH JUDICIAL CIRCUIT
ATTORNEY FOR THE STATEJOHN MAULDIN, ESQUIRE
PUBLIC DEFENDER
ATTORNEY FOR DEFENDANTRENEE H. TOLLISON
CIRCUIT COURT REPORTER

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EXHIBITS

No	DESCRIPTION	ID	EV
	NO EXHIBITS WERE PRESENTED DURING THE HEARING		

1 THE COURT: GOOD MORNING. THIS IS THE CASE OF THE
2 STATE VERSUS JOHN RICHARD WOOD. THE DEFENDANT IS PRESENT.
3 BOTH SIDES ARE REPRESENTED BY COUNSEL. THIS MATTER IS BEING
4 HEARD IN ANDERSON. IT'S A GREENVILLE COUNTY CASE. IT'S
5 BEEN ASSIGNED TO ME BY THE CHIEF JUSTICE, AND THIS IS OUR
6 INITIAL HEARING.

7 OUR PURPOSE THIS MORNING IS TO RESOLVE VARIOUS MOTIONS
8 WHICH HAVE BEEN FILED BY THE DEFENDANT. I HAVE REVIEWED
9 THOSE MOTIONS TOGETHER WITH THE STATE'S RESPONSE. I'LL BE
10 GLAD TO HEAR BRIEFLY FROM EACH SIDE. GIVEN THE FACT THAT
11 I'M FAMILIAR WITH THE CONTENT OF THE MOTION, IT'S NOT
12 NECESSARY FOR MY BENEFIT TO REPEAT THAT WHICH HAS ALREADY
13 BEEN PUT FORTH IN WRITING. IF THERE'S ANY ADDITIONAL
14 INFORMATION OR EMPHASIS THAT EITHER SIDE WOULD LIKE TO MAKE,
15 I'LL BE GLAD TO ENTERTAIN THAT. AND I'LL BE GLAD TO PROCEED
16 IN ANY ORDER YOU GENTLEMEN WISH TO PROCEED.

17 MR. MAULDIN: YOUR HONOR, YOU HAVE A COPY OF MY
18 LETTER OF FEBRUARY 19TH?

19 THE COURT: I DO, SIR.

20 MR. MAULDIN: I'M GOING TO JUST SUGGEST WE TAKE
21 THEM IN THE ORDER IN WHICH THEY ARE LISTED ON THAT LETTER,
22 IF IT SO PLEASE THE COURT.

23 THE COURT: ALL RIGHT, SIR.

24 MR. MAULDIN: ONE, WITH REGARD TO NUMBER ONE ON
25 THAT LIST, THE RESPONSE IN WRITING, I THINK THAT'S BEEN

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1 CONSENTED TO.

2 THE COURT: I THINK THEY PROPOSED IN THEIR
3 RESPONSE TWENTY DAYS IN WHICH TO RESPOND. IS THAT
4 SUFFICIENT? OR IS THAT AN ISSUE WE NEED TO ADDRESS?

5 MR. MAULDIN: NO OBJECTION.

6 THE COURT: OKAY. I'M GOING TO PUT -- AND I'LL
7 ISSUE A SHORT ORDER AT THE END OF THE DAY. IT WILL BE
8 TWENTY DAYS UNLESS THE TIME IS SHORTENED OR ENLARGED FOR
9 GOOD CAUSE AS DETERMINED BY THE COURT.

10 MR. MAULDIN: YES, SIR.

11 THE COURT: IS THAT SATISFACTORY, SOLICITOR?

12 MR. ARIAIL: YES, YOUR HONOR. THANK YOU VERY
13 MUCH.

14 MR. MAULDIN: WITH REGARD TO NUMBER TWO, YOUR
15 HONOR, WE UNDERSTAND THAT'S CONSENTED TO.

16 THE COURT: THAT'S CORRECT. THAT'S LIKEWISE
17 GRANTED WITH CONSENT.

18 MR. MAULDIN: WITH REGARD TO NUMBER THREE, YOUR
19 HONOR, THERE'S APPARENTLY AN OBJECTION TO THE DESIGNATION OF
20 MR. WOOD AS BEING WHAT I HAD CALLED IN MY MOTION CO-COUNSEL.
21 APPARENTLY, THE STATE TAKES THE POSITION THAT HE'S ONLY
22 ENTITLED TO TWO LAWYERS. I'M NOT ASKING THAT HE BE GRANTED
23 A LAW DEGREE OR ANYTHING. I'M SIMPLY ASKING THAT HE'D BE
24 GIVEN DESIGNATION AS CO-COUNSEL.

25 THE COURT: WHAT'S THE SIGNIFICANCE OF THAT

1 DESIGNATION? WHY IS THAT REQUEST BEING MADE?

2 MR. MAULDIN: IT'S BEING MADE BECAUSE IT IS
3 CONSISTENT WITH THE RIGHT OF THE CLIENT TO MAKE AN UNSWORN
4 STATEMENT IN ARGUMENT TO THE JURORS AT A CERTAIN POINT IN
5 THE PROCEEDING. IT DOESN'T ALLOW HIM TO QUESTION JURORS --
6 I MEAN, QUESTION WITNESSES OR IN ANY OTHER WAY PARTICIPATE
7 IN THE CASE AS AN ATTORNEY IN FACT, FOR EXAMPLE. IT SIMPLY
8 IS CONSISTENT WITH A PROVISION IN OUR STATUTE THAT ALLOWS
9 HIM TO MAKE AN UNSWORN STATEMENT.

10 THE COURT: AND I BELIEVE HE CAN MAKE THAT
11 STATEMENT IRRESPECTIVE OF THAT DESIGNATION. BUT IF IT GIVES
12 A COMFORT LEVEL, I DON'T SEE THE PREJUDICE IN GIVING THAT
13 DESIGNATION JUST TO MOVE THINGS ALONG. AND THE STATE MAY
14 PERSIST IN ITS OBJECTION. I'M INCLINED TO GRANT IT WITH THE
15 UNDERSTANDING THAT IF THERE'S SOME MOTIVE, NOT ON YOUR PART,
16 BUT ON THE DEFENDANT'S PART, THAT I WILL REVISIT THE ISSUE
17 IF NECESSARY.

18 MR. MAULDIN: YES, SIR. WE WOULD BE SUBJECT TO
19 ANY ABUSE OF THE RANGE OF YOUR ORDER, I'M SURE.

20 THE COURT: WELL, I'LL GRANT IT ON THE BASIS THAT
21 THE PURPOSE OF THE DESIGNATION IS TO SOMEHOW FACILITATE
22 DEFENDANT'S ABILITY UNDER THE STATUTE TO MAKE UNSWORN
23 STATEMENTS TO THE JURY AT DESIGNATED STAGES IN THE
24 PROCEEDING UNLESS THOSE RIGHTS ARE WAIVED. AND TO, OF
25 COURSE, AS ANY INDIVIDUAL ACCUSED, TO ASSIST COUNSEL. BUT

1 THE ORDER WILL REFLECT THAT THE ISSUE MAY BE REVISITED IF
2 NECESSARY.

3 MR. MAULDIN: YES, SIR. THE NEXT ITEM, NUMBER
4 FOUR, YOUR HONOR, IS OUR PROMOTION FOR THE PRODUCTION OF THE
5 INCIDENT REPORT AND SUPPLEMENTAL POLICE REPORTS. AND YOU
6 HAVE OBVIOUSLY HAD AN OPPORTUNITY TO REVIEW THE MOTION AND
7 THE RESPONSE. SO I'M GOING TO -- I'LL MAKE A BRIEF COMMENT.
8 ONCE AGAIN, AS IN PREVIOUS CASES OR IN PREVIOUS MATTERS, WE
9 ARE ASKING -- THERE ARE ACTUALLY TWO DISTINCT ISSUES. THERE
10 IS THE INCIDENT REPORT COMMONLY KNOWN AS THE CODE 5
11 PRODUCTION AND THE SUPPLEMENTAL REPORTS, WHICH WOULD MORE
12 LIKELY, I WOULD CONCEDE, BE THE SUBJECT OF A MORE EXPANSIVE
13 MOTION, EITHER UNDER A RULE 5 DISCOVERY OR SOME OTHER --
14 BRADY OR SOME OTHER AVENUE.

15 WE UNDERSTAND THE STATE'S RESISTANCE TO THE
16 SUPPLEMENTAL POLICE REPORT MATTERS. BUT WE DO NOT CONCEDE
17 THAT THEY ARE BLANKET OUT OF THE QUESTION BECAUSE TO THE
18 EXTENT THE SUPPLEMENTAL REPORTS CREATE THE INCIDENT REPORT.
19 IN PARTICULAR, WE BELIEVE THAT BOTH THE INCIDENT REPORT AND
20 ANY NECESSARY SUPPLEMENTALS THAT ARE PART AND PARCEL OF THE
21 INITIAL ACCIDENT REPORT SHOULD BE PROVIDED TO US. I FEEL
22 LIKE THE RECORD HAS GOT TO REFLECT MY POSITION ON IT EVEN
23 THOUGH PRIOR MATTERS ---

24 THE COURT: I KNOW THIS IS CONTESTED. SO WHATEVER
25 YOU NEED TO PUT ON THE RECORD, TAKE YOUR TIME.

1 MR. MAULDIN: YES, SIR. THERE IS NO QUESTION THAT
2 INCIDENT REPORTS HAVE HISTORICALLY AND ESSENTIALLY,
3 UNIVERSALLY, WITH THE EXCEPTION OF CAPITAL CASES, BEEN MADE
4 AVAILABLE TO THE DEFENSE. IN GREENVILLE COUNTY, AT LEAST
5 ANYWAY. WE GO TO THE LAW ENFORCEMENT CENTER. WE ASK FOR
6 THE INCIDENT REPORTS. THEY ARE GIVEN TO US. AT ONE TIME,
7 EVEN THERE WAS AN ATTEMPT TO CHARGE US MONEY FOR THEM. AND
8 THAT WAS FINALLY DROPPED. THEY DECIDED, WELL, WE CAN'T GET
9 MONEY FROM THE PUBLIC DEFENDER FOR A COPY OF THE INCIDENT
10 REPORT IN A CRIMINAL CASE.

11 SO IT'S NOT LIKE WE'RE ASKING FOR SOMETHING THAT IS NOT
12 IN GENERAL MADE AVAILABLE TO DEFENDANTS. NOW, WHETHER OR
13 NOT IT IS IN GENERAL MADE AVAILABLE JUST OUT OF THE
14 GRACIOUSNESS OF THE PROSECUTOR, I DON'T KNOW. BUT I DO KNOW
15 WHAT WE ARE ABLE TO GET WHEN WE GO DOWN THERE. IF THEY ARE
16 GOING TO DO THAT -- AND I DON'T WANT THIS CASE TO END UP
17 MESSING UP A GOOD THING IN EVERY OTHER CASE. I DON'T WANT
18 THE PROSECUTOR TO ALL OF A SUDDEN STAND UP AND SAY, WELL, I
19 GUESS I'LL JUST CHANGE MY POLICY, AND I WON'T GIVE ANYBODY
20 ANY INCIDENT REPORT EVEN IN A DISORDERLY CONDUCT CASE. I
21 DON'T WANT TO SET THAT KIND OF PROBLEM. BUT IF HE'S GOING
22 TO MAKE THEM AVAILABLE TO US IN ALL THE OTHER CASES, THEN IT
23 IS INAPPROPRIATE THAT HE'D PICK AND CHOOSE WHICH ONES HE'S
24 NOT GOING TO MAKE AVAILABLE. FURTHERMORE, WE TAKE THE
25 POSITION, YOUR HONOR, THAT IT IS NOT NECESSARILY HIS REPORT

1 TO CONTROL. WE TAKE THE POSITION THAT THAT INCIDENT REPORT
2 OR THAT CODE 5, IF YOU WILL, IS ESSENTIALLY AVAILABLE TO THE
3 PUBLIC TO GO BUY. IF I'M A BURGLAR VICTIM, IF MY HOUSE IS
4 BURGLARIZED, AND I WANT TO GO IN TO THE LAW ENFORCEMENT
5 CENTER AND PAY PER PAGE FOR A COPY OF THE INCIDENT REPORT
6 WHERE I'M THE VICTIM, I AM ENTITLED TO DO THAT, YOUR HONOR.
7 SO HE DOESN'T EVEN HAVE TO KNOW I'M DOWN THERE GETTING IT.
8 HE DOESN'T HAVE TO KNOW ANYTHING ABOUT THE CASE.

9 SO WHAT WE ARE SAYING, YOUR HONOR, IS IN THESE, IF YOU
10 CAN CALL THEM, MAJOR CASES, THE PROSECUTOR STANDS IN THE WAY
11 OF AND PREVENTS OUR ACCESS TO THE INCIDENT REPORTS COMMONLY
12 KNOWN AS CODE 5'S IN THESE CASES. AND WE'RE ASKING THAT THE
13 COURT INTERVENE AND REQUIRE THEM TO PROVIDE THAT TO US.

14 THE COURT: THANK YOU. I'LL BE GLAD TO HEAR FROM
15 THE SOLICITOR OR DEPUTY SOLICITOR.

16 MR. ARIAIL: THANK YOU, YOUR HONOR. LET ME
17 REASSURE THE COURT AND MR. MAULDIN I'M NOT GOING TO KILL A
18 GOOD THING. I DO BY CONSENT AND DIRECTION TELL THE PEOPLE
19 AT THE LAW ENFORCEMENT CENTER RECORDS DIVISION TO GIVE ALL
20 DEFENSE LAWYERS A COPY OF THE INCIDENT REPORT. THE SIMPLE
21 PURPOSE OF THAT IS FOR EDUCATIONAL PURPOSES, TO LET THEM
22 KNOW WHAT THE NATURE OF THE CASE IS AT AN EARLY DATE SO THAT
23 THE MASS OF THE CASES CAN BE MOVED. AND AS YOUR HONOR IS
24 WELL AWARE, THE VAST MAJORITY OF THOSE CASES ARE RESOLVED BY
25 WAY OF GUILTY PLEA BASED ON THE INFORMATION TRANSMITTED TO

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1 DEFENSE COUNSEL AS TO WHAT THE ACTUAL CASE IS ABOUT.

2 THAT'S NOT THE NATURE HERE. THE PURPOSE OF THIS CASE
3 FROM THE STATE WILL NEVER BE AN INTEREST IN A GUILTY PLEA.
4 THIS CASE IS GOING TO TRIAL. SO THE MOTIVATION FOR THAT
5 POLICY DOESN'T EXIST. THE SECOND IS THAT IN MY OPINION, MY
6 WILLINGNESS TO CONSENT TO THAT WAS SOMEWHAT ABUSED BY THE
7 DEFENSE IN THE MOST RECENT DEATH PENALTY CASE, MR. HARRIS,
8 IN WHICH I AGREED TO GIVE HIM A COPY OF THE INCIDENT REPORT.
9 AS A RESULT OF THAT, IT TRANSLATED INTO A SITUATION IN WHICH
10 THE COURT ACTUALLY REVIEWED THE ENTIRE STATE'S FILE TO SEEK
11 OUT SUPPLEMENTAL REPORTS THAT MAY FORM THE BASIS OF IT, OF
12 THE INCIDENT REPORT. SO WHAT HAPPENED WAS MY CONSENT
13 TRANSLATED INTO A MUCH BROADER DISCOVERY PROCESS THAN IS
14 PROVIDED BY LAW AND WAS INTENDED BY ME.

15 NOW, WHAT I DID DO BEFORE, I WROTE MR. MAULDIN AND SAID
16 I WOULD BE MORE THAN HAPPY TO GIVE HIM THE INCIDENT REPORT.
17 I WROTE HIM ON JANUARY 31ST, AND I SAID, AS LONG AS YOU
18 DON'T USE THAT CONSENT AS SOME BASIS TO GET ADDITIONAL
19 DOCUMENTATION THROUGH SUPPLEMENTALS. I SAID, AT THIS POINT,
20 I DON'T HAVE THE INCIDENT REPORT. I DON'T KNOW WHAT IT
21 INVOLVES. I DO KNOW IT DOESN'T INVOLVE A DEPUTY SHERIFF SO
22 WE CAN'T ARGUE AS THEY DID IN THE LAST CASE THAT THE
23 DEPUTIES TRIED TO HIDE EVERYTHING BY CONJURING UP THIS
24 INCIDENT REPORT. I HAVE SINCE GOT IT. I HAVE NOT HEARD
25 BACK FROM HIM. BUT I TOLD HIM I WOULD BE MORE THAN HAPPY TO

1 SEND IT TO HIM, BUT THAT COULD NOT BE IN SOME WAY USED TO
2 GET ADDITIONAL SUPPLEMENTAL REPORTS. BECAUSE AT THIS POINT,
3 I DON'T INTEND TO, AS YOU ARE AWARE UNDER HIS DISCOVERY
4 POSTURE THAT HE TAKES IS SOMEWHAT UNUSUAL IN THESE CASES.
5 AND I DON'T WANT TO GO TOO FAR. ALTHOUGH I WILL TELL THE
6 COURT IT IS OUR INTENTION IN THIS CASE TO HAVE A MUCH
7 BROADER OPEN DISCOVERY WITH THE DEFENSE ONCE THIS CASE --
8 ONCE WE GET OUR ARMS AROUND THIS CASE AND GET ALL THE
9 INFORMATION TOGETHER AND SEE WHERE IT IS. BUT I JUST DON'T
10 WANT TO GET MYSELF IN A POSITION BY CONSENT OF OPENING THE
11 DOOR TO HAVE AN ONGOING COLLOQUY ABOUT DISCOVERY.

12 I INTEND WHEN WE GET OUR FILE TOGETHER AND WE GET OUR
13 INFORMATION -- AS YOU MAY BE AWARE, THIS WAS INVESTIGATED BY
14 THE ANDERSON COUNTY SHERIFF'S OFFICE, GREENVILLE COUNTY
15 SHERIFF'S OFFICE, SLED, GREENVILLE COUNTY FORENSICS. THERE
16 ARE A NUMBER OF AGENCIES THAT WE'VE MET WITH, INCLUDING THE
17 HIGHWAY PATROL. AND THERE'S A LOT OF INFORMATION, INCLUDING
18 TAPE RECORDINGS FROM VARIOUS AGENCIES THAT WE'VE BEEN
19 BRINGING TOGETHER. AND I JUST DON'T WANT TO LET THAT GET
20 LOOSE PIECEMEAL AT THIS TIME. THAT'S WHY I'VE NOT -- I
21 APOLOGIZE TO THE COURT IF YOU THINK I'M TAKING A HARD-LINE.
22 BUT I JUST DECIDED I'M GOING TO TAKE A HARD-LINE ON THIS SO
23 I DON'T GET INTO THE SITUATION I WAS LAST TIME. AND THAT'S
24 OUR BASIC POSTURE AT THIS TIME.

25 THE COURT: YOU WANT TO RESPOND BRIEFLY?

1 MR. MAULDIN: YES, SIR. YOUR HONOR, WE DO
2 ACKNOWLEDGE A LETTER ESSENTIALLY SETTING THE PARAMETERS BY
3 WHICH WE WOULD APPROACH DISCOVERY IN THIS CASE. WE RESISTED
4 THAT PROPOSAL. WE RESIST HIS CONSENT IF IT IS SIMPLY TO
5 GIVE US WHAT HE GAVE US LAST TIME. HE CONSENTED TO GIVE US
6 NOTHING. IT SAID, DEATH INVESTIGATION. SEE SUPPLEMENTALS.
7 THAT WAS NOTHING. NOW, IF THAT'S WHAT HE'S CONSENTING TO
8 GIVE ME, NO, THANK YOU. I THINK I'M ENTITLED TO A
9 REASONABLE ACCESS TO THE INCIDENT REPORT OR ITS COMPONENT
10 PARTS. SO THANK YOU, YOUR HONOR.

11 THE COURT: I'LL GRANT THE MOTION IN PART. I WILL
12 REQUIRE THE STATE TO PRODUCE THE INCIDENT REPORT, ALSO
13 REFERRED TO AS THE CODE 5. AND IF WE NEED TO REVISIT THE
14 ISSUE AS TO ANY SUPPLEMENTAL REPORTS, WE'LL DO SO THAT AT
15 THAT TIME. THIS IS BEING DONE OVER THE OBJECTION OF THE
16 STATE. SO THERE'S NOTHING THAT WILL BE CONSTRUED AS ANY
17 CONSENT ON ITS PART TO ANY ADDITIONAL DISCOVERY. THAT'S MY
18 RULING ON THAT PARTICULAR MOTION.

19 THE NEXT ONE, I BELIEVE, IS YOUR PARTIAL RULE 5 MOTION?

20 MR. MAULDIN: YES, SIR. YOUR HONOR, I DON'T THINK
21 YOU NEED TO NECESSARILY DEAL WITH THAT EXCEPT TO THE EXTENT
22 -- AND I CAN'T REALLY TELL WHETHER THE STATE -- SOMETIMES I
23 HAVE TO READ THESE THINGS THREE OR FOUR TIMES TO MAKE SURE
24 I'M UNDERSTANDING WITH REGARD TO STATEMENTS OF THE DEFENDANT
25 OR REPORTEDLY MADE BY THE DEFENDANT. WE BELIEVE THAT THE

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1 TERMS OF RULE 5 ARE ON THEIR FACE CLEAR, AND THAT IF IN FACT
2 THE GOVERNMENT INTENDS TO USE PURPORTED STATEMENT OF THE
3 DEFENDANT, THEN WE CERTAINLY BELIEVE IT WOULD NEED TO BE
4 DISCLOSED TO US UNDER OUR LIMITED RULE 5. I BELIEVE THEY'RE
5 SAYING THAT THEY WOULD, BUT I JUST DON'T WANT TO GET INTO
6 SEMANTICS GYMNASTICS.

7 THE COURT: WELL, THE RULE IS SORT OF SELF-
8 ENFORCING. IT DOESN'T REQUIRE AN ORDER OF THE COURT TO
9 REQUIRE DISCLOSURE ONCE A MOTION HAS BEEN FILED. MY
10 INCLINATION IS SIMPLY TO GRANT THE MOTION IN ACCORDANCE WITH
11 THE RULE AND FOR THERE TO BE DISCLOSURE, IF REQUIRED, UNDER
12 THE RULE. SOLICITOR, IF THERE'S ANYTHING YOU OR MS. STRONG
13 WOULD ADD BEYOND THAT, I'LL BE GLAD TO HEAR FROM YOU.

14 MR. ARIAIL: NO. WE WILL CERTAINLY COMPLY WITH
15 THAT RULE. WE JUST WANTED TO MAKE IT CLEAR IN OUR RESPONSE
16 WHAT THE RULES ARE BY NOT SAYING CERTAIN STATEMENTS WERE OR
17 WERE NOT MADE. WE UNDERSTAND THE RULE, AND WE'LL COMPLY
18 PURSUANT TO THAT.

19 THE COURT: LET ME HEAR FROM YOU, MR. MAULDIN, ON
20 THE BRADY MOTION, SIR.

21 MR. MAULDIN: YES, SIR. YOUR HONOR, MR. ARIEL DID
22 TAKE A MOMENT WITH REGARD TO THE INCIDENT REPORT TO REFER TO
23 A PREVIOUS CASE. AND I'M GOING TO ALSO TAKE THAT LIBERTY IF
24 I CAN.

25 THIS COURT IS VERY WELL AWARE OF THE DISCOVERY

1 STRUGGLES WE HAD IN A PRIOR CASE BECAUSE YOU WERE THE
2 PRESIDING JUDGE ON IT. SO I DON'T NEED TO GO INTO DETAIL ON
3 THAT. BUT ONE COMMENT IN THEIR RESPONSE JUST MAKES MY SKIN
4 CRAWL. AND THAT IS THE STATE, IN PARAGRAPH 3, THEY SAY,
5 "THE STATE'S OBLIGATION UNDER BRADY IS FULLY UNDERSTOOD."
6 WELL, I THOUGHT THAT THE STATE'S RESPONSIBILITY UNDER BRADY
7 WAS QUOTE, "FULLY UNDERSTOOD," END QUOTE, IN THE OTHER CASE
8 UNTIL I WENT MOTION AFTER MOTION AFTER MOTION, INCH BY INCH
9 BY INCH AND DISCOVERED A TON OF STUFF BEFORE THAT CASE WAS
10 OVER.

11 NOW, THEY TOOK THE POSITION THAT THEY INTERPRETED BRADY
12 IN A COMPLETELY DIFFERENT LEGAL CONCEPT THAN I HAD EVER IN
13 TWENTY-SEVEN YEARS UNDERSTOOD BRADY TO BE. AND I BELIEVE
14 THAT THAT RECORD WOULD REFLECT THAT THE COURT DISAGREED WITH
15 THE STATE'S UNDERSTANDING OF BRADY IN THE HARRIS CASE.

16 HAVING SAID THAT, TO THE EXTENT THAT THE STATE
17 UNDERSTANDS BRADY I CAN'T MAKE THEM SHOW ME SOMETHING JUST
18 TO DECIDE IF I AGREE WITH THEIR UNDERSTANDING. THAT'S NOT
19 THE WAY BRADY WORKS. THE WAY BRADY WORKS IS THEY KNOW WHAT
20 BRADY SAYS. THEY ARE OBLIGATED TO PROVIDE IT EITHER TO ME,
21 AND IF THAT IS RESISTED, TO THE COURT FOR REVIEW. AND
22 THAT'S WHAT ACTUALLY HAPPENED IN THE LAST CASE. SO THE USE
23 OF THE LANGUAGE HAVE THEY UNDERSTOOD BRADY. I DON'T THINK
24 THEY UNDERSTAND BRADY. THEY CERTAINLY DIDN'T UNDERSTAND IT,
25 IN MY OPINION, LAST TIME. SO I PUT THAT ON THE RECORD.

1 THE PROSECUTION ALSO SAYS THAT WE HAVE PRESENTED NO
2 BASIS TO JUSTIFY THE COURT TO INTERVENE IN THE MONITORING OF
3 THIS FILE. THAT'S RIGHT. AND IT'S EARLY. WE CERTAINLY
4 PRODUCED IT IN A PREVIOUS CASE, AND THE COURT, IN FACT, HAD
5 TO DO THAT. THE COURT HAD TO DO IT BECAUSE THE STATE TOOK A
6 WRONG POSITION ON BRADY. AND SO I AM -- BRADY IS AN AREA
7 THAT I JUST THINK IS DUE PROCESS IN ITS FINEST HOUR. YOU
8 KNOW, IF THE GOVERNMENT HAS INFORMATION THAT COULD BE
9 INTERPRETED EITHER AT PENALTY OR GUILT AS EXCULPATORY TO
10 THIS CRIME, THEN THEY DON'T JUST SIMPLY HAVE A CHOICE OF
11 LETTING THAT INFORMATION LIE. THEY MUST -- THEY HAVE AN
12 AFFIRMATIVE DUTY TO DISCLOSE. AND I INSIST THAT THEY DO SO.

13 I CAN'T LOOK INTO A CRYSTAL BALL. I DON'T KNOW WHAT IS
14 IN HIS FILE AT THIS EARLY STAGE. BUT I BELIEVE THAT'S AN
15 ONGOING RESPONSIBILITY, AND IT HAS TO BE UNDERSTOOD. THANK
16 YOU, JUDGE.

17 THE COURT: I'LL GIVE YOU A CHANCE TO RESPOND, IF
18 YOU'D LIKE.

19 MR. ARIAIL: YOUR HONOR, I DON'T WANT TO TAKE THE
20 COURT'S TIME. BUT BECAUSE WE'VE GOT THE PRESS HERE AND
21 BECAUSE WE'RE SUPPOSED TO BE UNDER SOME COMMENT -- UNDER
22 EXTRAJUDICIAL ORDER NOT TO MAKE ANY COMMENTS. THERE AGAIN,
23 WE'RE GOING BACK. WE'RE ALREADY STARTED IN A HOSTILE
24 ATTITUDE. I THOUGHT PRESIDENT BUSH HAD CONVINCED THIS
25 COUNTRY THAT CIVILITY WAS A GOOD COURSE OF ACTION. BUT WE

1 DON'T HAVE TO DEAL WITH IT. OBVIOUSLY, YOU HAVE A CLEAR
2 RECOLLECTION OF THE LAST CASE. I TAKE THE POSITION THAT MY
3 OPINION IS WE DO FULLY UNDERSTAND BRADY AND WE DID FULLY
4 UNDERSTAND BRADY, EVEN TO THE EXTENT THAT WE THOUGHT THE
5 REST OF Y'ALL DIDN'T UNDERSTAND WHAT BRADY WAS ABOUT. WE
6 THOUGHT WE OUGHT TO GET OUT OF THE OPEN AS TO HOW WE WERE
7 INTERPRETING IT SO THAT IF WE WERE INTERPRETING IT WRONG,
8 EVERYBODY WOULD -- MY RECOLLECTION IS YOU WENT THROUGH THE
9 STATE'S FILE ON TWO OCCASIONS AND PROBABLY GENERATED FIVE
10 PIECES OF PAPER THAT YOU WANTED TO GIVE TO HIM. AND THAT
11 WAS A STATEMENT THAT WE HAD SOME NOTES ABOUT, WHICH WE
12 DIDN'T THINK HE WAS ENTITLED TO. BUT WE DON'T NEED TO GO
13 THERE. WE UNDERSTAND BRADY. WE COMPLY WITH BRADY. IF YOU
14 WANT TO GO THROUGH OUR FILES, WE'LL BE MORE THAN HAPPY TO
15 LET YOU GO THROUGH OUR FILE. AND WE'LL TELL YOU, IT'S A LOT
16 BIGGER THAN THE LAST ONE. AND IT WILL TAKE A LOT OF TIME.
17 BUT I WILL URGE THE COURT BEFORE YOU MAKE THAT DECISION TO
18 LET THIS CASE GO A LITTLE BIT. LET US FIND OUT HOW MUCH
19 INFORMATION WE'RE GOING TO RELEASE ON OUR OWN THAT'S NOT
20 BRADY. BRADY INCLUDED. AND THEN MAYBE THIS WILL ALL SIMMER
21 DOWN AND WE WON'T HAVE TO LISTEN TO THIS ARGUMENT OVER AND
22 OVER AGAIN.

23 MR. MAULDIN: AND WE HAVE NO OBJECTION TO THAT
24 SOLUTION AT THIS STAGE.

25 THE COURT: AND I CONCUR. THE BRADY MOTION, BY

1 ITS NATURE, WILL BE GRANTED, OF COURSE. IT'S MANDATED BY
2 LAW. AND THE COURT WILL CERTAINLY CONDUCT AN IN-CAMERA
3 REVIEW IF NECESSARY. I DO THINK IT WOULD BE PRUDENT AND
4 CONSISTENT WITH COUNSEL'S WISHES TO ALLOW THE CASE TO
5 DEVELOP FOR THERE TO BE VOLUNTARY COMPLIANCE WITH BRADY. IF
6 ISSUES ARISE THAT RAISE ADDITIONAL QUESTIONS, WE WILL
7 REVISIT BRADY IN THAT CONTEXT.

8 THE NEXT MOTION IS A MOTION PROHIBITING EXTRAJUDICIAL
9 STATEMENTS. I DON'T REALLY BELIEVE THERE'S ANY OBJECTION TO
10 THAT FROM EITHER SIDE.

11 MR. MAULDIN: I THINK THAT'S CONSENTED, YOUR
12 HONOR.

13 THE COURT: THE ONLY THING THAT I WANT TO ADD IS
14 THAT FILING OF MOTIONS AND RESPONDING TO MOTIONS ARE NOT
15 INSULATED FROM THE REACH OF THE ORDER. I WANT COUNSEL TO BE
16 FREE TO BRING ANY SALIENT, RELEVANT FACTS AND ARGUMENT TO MY
17 ATTENTION. AND I JUST WANT TO INDICATE THAT. BUT I WILL
18 ISSUE A SEPARATE ORDER CONSISTENT WITH THAT MOTION IN SHORT
19 ORDER.

20 THE NEXT MOTION TAKES US TO THE MOTION PROHIBITING THE
21 USE OF AN UNDERCOVER OPERATIVE. THE STATE HAS FILED A
22 RESPONSE. I DON'T KNOW IF THAT RESPONSE IS SUFFICIENT FOR
23 YOUR PURPOSES, MR. MAULDIN, OR NOT.

24 MR. ARIAIL: COULD I GO BACK TO THE LAST ONE, YOUR
25 HONOR, FOR JUST ONE POINT? AND URGE THE COURT, MAYBE NOT AT

1 THIS STAGE, BUT TO GIVE SOME CONSIDERATION BECAUSE WE WERE
2 CONCERNED AND ARE CONCERNED ABOUT THE -- I CAN'T DESCRIBE IT
3 ANY OTHER WAY. MAYBE I SHOULDN'T SAY IT. BUT THE BEATING
4 WE TOOK IN THE PRESS IS THE BASIS OF HIS MOTION. I MEAN, HE
5 WOULD FILE THESE MOTIONS AND HAVE ALL THESE RANTING
6 STATEMENTS IN THEM. NONE OF THEM WERE SUPPORTED BY FACT.
7 AND WE'D HAVE ALL THIS GOING ON. THE PRESS WOULD REPORT IT.
8 AND OF COURSE, WE'RE UNDER A GAG ORDER AND CAN'T SAY
9 ANYTHING. AND SO -- WELL, YOU UNDERSTAND. I SUGGESTED OR
10 WE SUGGESTED IN OUR MOTION IN RESPONSE THAT YOU MIGHT
11 CONSIDER ACTUALLY SEALING THE CLERK'S FILE. AND THAT HAS
12 BEEN DONE IN PREVIOUS CASES TO WHERE THE MOTIONS THEMSELVES
13 AND THEIR CONTENT ARE NOT AVAILABLE FOR PUBLIC VIEW TO BE
14 REPORTED IN THE PUBLIC UNTIL THEY'RE ALL RELEASED AT ONE
15 TIME. AND THEN, OF COURSE, THESE PROCEEDINGS ARE OPEN FOR
16 PUBLIC VIEW. BUT THE CONTENT AND THE ARGUMENTS CONTAINED IN
17 THE MOTIONS WOULD NOT BE AVAILABLE. AND THE REASON I WOULD
18 URGE THAT IT IS THAT I KNOW AS THIS CASE GETS CLOSER TO
19 TRIAL, THERE IS CORRESPONDINGLY MORE PUBLICITY THAT WILL BE
20 REGENERATED ABOUT IT. AND I WANT TO AVOID THE POTENTIAL
21 THAT SOME MOTION COULD BE MADE TO TRANSFER VENUE. AND
22 THAT'S MY ONLY INTEREST IN THAT.

23 THE COURT: ALL RIGHT. I DECLINE TO DO THAT AT
24 THIS STAGE. JUST AS MR. MAULDIN PERHAPS WANTS ME TO
25 INTERVENE UNDER THE AUSPICES OF BRADY EARLY ON, I'M NOT

1 WILLING TO DO SO. CONVERSELY, I'M NOT WILLING TO, ON THE
2 FRONT END, WITHOUT SOME BASIS IN THIS ACTION, SEAL ALL
3 MOTIONS IN THE CLERK'S FILE. I HAVE HIGH RESPECT FOR
4 COUNSEL ON BOTH SIDES. AND I BELIEVE ON THE FRONT END THAT
5 COUNSEL WILL USE DISCRETION APPROPRIATELY. AND IF COUNSEL,
6 EITHER IN FILING A MOTION OR RESPONDING TO A MOTION, FEELS
7 LIKE THAT MOTION OR CONTENTS OF IT OR RESPONSE TO IT MAY BE
8 SOMEWHAT OF A SENSITIVE NATURE THAT MAY RUN AFOUL OF THE GAG
9 ORDER, THEN PERHAPS THAT COULD BE PLACED BY THE COUNSEL
10 UNDER SEAL IN PROVIDING TO THE OTHER AND TO THE COURT. BUT
11 UNTIL I FIND SOME ABUSE, EITHER INTENTIONAL OR INADVERTENT,
12 I'M NOT GOING TO SEAL THE RECORD. BUT I, AGAIN, WOULD BE
13 WILLING TO REVISIT ON A GOOD CAUSE BASIS.

14 YOU MAY PROCEED, SIR.

15 MR. MAULDIN: YOUR HONOR, WITH REGARD TO THE
16 PROHIBITION OF PLANTING A POLICE OPERATIVE, THE ONLY -- I
17 UNDERSTAND THAT THEY ARE ESSENTIALLY CONSENTING. BUT I WANT
18 -- AGAIN, THE SEMANTICS MAKES ME NERVOUS. AND I REFER TO
19 PARAGRAPH 3 OF THEIR RESPONSE WHERE IT SAYS, "TO THE EXTENT
20 THE DEFENDANT INITIATES OR VOLUNTARILY TALKS TO," AND THEN
21 IT DESIGNATES "AN INMATE, A DETENTION PERSONNEL OR OTHER
22 PERSON REGARDING ANY ASPECT OF THE CASE." WHAT I'M ASKING
23 -- MY CLIENT KNOWS THAT IF HE STANDS AROUND AND TALKS ABOUT
24 SOMETHING THAT SOMEBODY MIGHT SAY SOMETHING ABOUT IT. AND
25 HE UNDERSTANDS THAT. AND IF HE DOESN'T, I'M GOING TO TELL

1 HIM. BUT THE POINT IS, I'M TRYING TO PREVENT THE GOVERNMENT
2 FROM PUTTING SOMEBODY IN A POSITION. FOR EXAMPLE, UNDER
3 THIS SCENARIO, UNDER THE RESPONSE OF THE GOVERNMENT, IF THEY
4 DECIDED, OKAY, WE'RE NOT GOING TO SEND SOMEBODY DOWN TO THE
5 JAIL AND TRY TO GET JOHN WOOD TO TALK. WE'RE GOING TO SEND
6 SOMEBODY DOWN TO THE JAIL TO SIT AROUND AND SIT AROUND AND
7 SIT AROUND AND WAIT UNTIL HE DOES TALK. EITHER WAY, IT'S
8 PLANTING A MOLE. EITHER WAY, IT'S PLANTING A MOLE. AND
9 THAT'S THE PURPOSE OF THIS MOTION. IT IS TO PREVENT THE
10 GOVERNMENT FROM ATTEMPTING TO OBTAIN INFORMATION FROM MY
11 CLIENT AFTER HE HAS HAD COUNSEL APPOINTED AND AFTER THE
12 PROCEEDINGS HAVE BEGUN TO MOVE FORWARD. IT'S NOT FAIR FOR
13 THE GOVERNMENT TO ATTEMPT TO GET ACCESS TO MY CLIENT. AND
14 I'M ASKING THAT THEY NOT BE ALLOWED TO DO SO.

15 THE COURT: MR. ARIEL, WOULD YOU OR MS. STRONG
16 LIKE TO RESPOND TO THAT, SIR?

17 MR. ARIAIL: WE AGREE TO THAT CONCEPT. THERE ARE
18 OTHER ASPECTS OF THAT CONCEPT WHERE INFORMATION MAY BE
19 COMMUNICATED TO PERSONS WHO AT THE TIME HAVE NO CONNECTION
20 TO THE STATE, BUT SUBSEQUENTLY BECOME CONNECTED. THAT'S ALL
21 WE WANT TO PROTECT AGAINST. AND YOU ARE WELL AWARE, WE'RE
22 NOT GOING TO SEND SOMEBODY DOWN AND PUT THEM IN THE CELL.
23 WE'RE NOT GOING TO SEND SOMEBODY DOWN THERE TO SIT OUTSIDE.
24 WE'RE NOT GOING TO BUG HIS CELL AND DO ALL THAT. BUT IF HE
25 CHOOSES TO WRITE OR TALK OR IN ANY WAY COMMUNICATE WITH

1 OTHER PEOPLE, THEN WE DON'T WANT TO GET INTO A SITUATION OF
2 BEING PROHIBITED FROM USING THAT ON THE THEORY THAT SOMEHOW
3 WE WILL WERE EARLIER PREVENTED. THAT'S THE ONLY THING WE
4 WANT TO KEEP OPEN.

5 MR. MAULDIN: WE AGREE TO THAT. IT'S THE PRE-
6 COMMUNICATION, NOT THE PAST ACTION THAT I'M INTERESTED IN.

7 THE COURT: IT'S THE INITIATION THAT'S THE
8 TROUBLESOME AREA. BY CONSENT, THE MOTION IS GRANTED. TO
9 THE EXTENT THE STATE MAY NOT INITIATE CONTACT OR PLACE AN
10 OPERATIVE OF ANY KIND IN THE VICINITY OF DEFENDANT FOR THE
11 PURPOSE OF OBTAINING INFORMATION FROM THE DEFENDANT. THIS
12 IN NO WAY PREVENTS PRECLUDES THE STATE FROM USING ANY
13 INFORMATION IT MAY OTHERWISE GAIN THROUGH INITIATED
14 CONVERSATION OR COMMUNICATION FROM THE DEFENDANT.

15 NEXT MOTION, PLEASE, SIR.

16 MR. MAULDIN: YOUR HONOR, THE NEXT MOTION IS THE
17 REVEAL THE DEAL ISSUE. IN A PREVIOUS MATTER WE HAD A --
18 AGAIN, AND I SAY THEY DON'T UNDERSTAND BRADY, AND THEY SAY I
19 DON'T UNDERSTAND THE DEAL. AND I GUESS TO SOME EXTENT I
20 HAVE TO ADMIT THAT I DID NOT AGREE WITH THE APPROACH IN A
21 PREVIOUS MATTER WITH REGARD TO WHETHER OR NOT A DEAL WAS
22 MADE. I DO NOT INTERPRET WHAT I'M ATTEMPTING TO DO IN THIS
23 MOTION AS BEING LIKE A LEGAL CONTRACT. YOU HAVE AN OFFER
24 AND THEN AN ACCEPTANCE, AND ALL RIGHT, NOW WE'VE GOT A DEAL.
25 THE QUESTION IS WHETHER OR NOT THE GOVERNMENT IS ATTEMPTING

1 TO EFFECT A WITNESS' LEVEL OF COOPERATION OR SUBSTANCE OF
2 TESTIMONY BY OFFERS CONCESSIONS OR REWARDS TO GET WHAT THEY
3 WANT.

4 ONE OF THE THINGS OF THE PRIOR CASE WAS THAT SOMETIMES
5 THE GOVERNMENT WILL JUST DO WHATEVER THEY CAN POSSIBLY DO TO
6 GET WHAT THEY WANT. RESULT ORIENTED JUSTICE IS WHAT I
7 SUSPECT I MIGHT HAVE CALLED IT A TIME OR TWO. WHAT I'M
8 TRYING TO DO IS SAY IF A WITNESS IS APPROACHED BY THE
9 GOVERNMENT AND OFFERED A DEAL, OFFERED A CONCESSION, THEN
10 THAT SHOULD BE DISCLOSED TO THE DEFENSE. THAT OFFER SHOULD
11 BE DISCLOSED TO THE DEFENSE. IF THE WITNESS RESISTED -- IF
12 THE WITNESS RESISTS THE OFFER, THEN WHEN THAT WITNESS TAKES
13 THE WITNESS STAND, WE SHOULD KNOW TO ASK THAT WITNESS, DID
14 THE GOVERNMENT OFFER YOU SO AND SO. YES, THEY DID. DID YOU
15 TURN THEM DOWN? YES, I DID. THAT IS JUST AS RELEVANT AS
16 THE OFFER AND ACCEPTANCE CONCEPT OF THE DEAL. I AM WILLING
17 AT THIS POINT TO HAVE THIS MATTER HELD IN ABEYANCE. I'D
18 RATHER YOU HOLD IT IN ABEYANCE THAN JUST SAY ALL RIGHT, IF
19 THE WITNESS REFUSES TO ACCEPT THEIR OFFER, YOU CAN GO OUT
20 AND OFFER ANYTHING YOU WANT TO TO THESE WITNESSES. BUT IF
21 THEY REFUSE TO ACCEPT, YOU DON'T HAVE TO TELL ANYBODY ABOUT
22 THE FAILURE OF THAT NEGOTIATION.

23 I THINK THAT THAT IS NOT REALLY THE ESSENCE OF MY
24 MOTION. MY MOTION IS THAT I HAVE A RIGHT TO KNOW IF THEY'RE
25 TRYING TO GET TESTIMONY THAT THEY WANT THROUGH CONCESSION.

1 THE COURT: IS THE PURPOSE OF BRINGING TO THE
2 FACT-FINDER'S ATTENTION A DEAL OR SOME CONCESSION TO
3 DISCREDIT AND IMPEACH THAT WITNESS' TESTIMONY? IS THAT THE
4 PURPOSE?

5 MR. MAULDIN: IT IS TO REFLECT ON THE CREDIBILITY.
6 I GAVE YOU AN EXAMPLE JUST A MOMENT AGO WHERE THE REFLECTION
7 COULD BE POSITIVE INSTEAD OF IMPEACHING. DOES THE COURT
8 FOLLOW THAT? IN OTHER WORDS, CERTAINLY IN THE CLASSIC AND
9 TRADITIONAL SENSE, THE DEAL BETWEEN, QUOTE, A CODEFENDANT OR
10 ACCOMPLICE OR SOME WITNESS HIDDEN OUT IN THE BASEMENT OF THE
11 JAIL, THE APPROACH HAS ALWAYS TRADITIONALLY BEEN THAT THAT
12 WITNESS IS, QUOTE, IMPEACHED BY THE EXISTENCE OF A DEAL THAT
13 HE'S GETTING FOR HIS TESTIMONY. WHAT I'M SAYING IS THAT
14 THIS MOTION EXTENDS TO THE WITNESS WHO DOES NOT ACCEPT THE
15 CONCESSION BECAUSE THAT MAY POSITIVELY REFLECT ON THAT
16 WITNESS' CREDIBILITY, OPPOSITE OF IMPEACHMENT.

17 THE COURT: I'M NOT CERTAIN THAT YOU CAN PURSUE A
18 WITNESS IN THAT WAY TO BOLSTER HIS OR HER TESTIMONY. I'LL
19 GIVE YOU ONE EXAMPLE. YOU CAN USE THE EXISTENCE OF CERTAIN
20 PRIOR CONVICTIONS UNDER RULE 609 FOR IMPEACHMENT.

21 MR. MAULDIN: YES, SIR.

22 THE COURT: BY THE SAME TOKEN, YOU CANNOT USE THE
23 ABSENCE OF A PRIOR CONVICTION TO ENHANCE A WITNESS'
24 CREDIBILITY..

25 MR. MAULDIN: I AGREE WITH THAT. I AGREE WITH

1 THAT. AND THAT'S VERY CLEAR. BUT I DON'T THINK THAT IS
2 QUITE ANALOGOUS TO WHAT I'M POSITIONING IN THIS MOTION.

3 THE COURT: TO ME, IT SEEMS LIKE YOU WOULD BE
4 TRYING TO ATTACK THE CREDIBILITY OF THE STATE THROUGH THE
5 BACK DOOR BY SHOWING AN OFFER WHICH WAS NOT ACCEPTED TO
6 DIMINISH THE STATE'S CASE IN SOME FASHION.

7 MR. MAULDIN: THAT IS ESSENTIALLY MY INTENTION, TO
8 DIMINISH THE STATE'S CASE. NO QUESTION ABOUT IT. THIS IS A
9 FLIGHT. BUT THE POINT IS THAT A WITNESS' CREDIBILITY, WHILE
10 YOU'RE RIGHT, A NON-CONVICTION OR LACK OF A PRIOR RECORD IS
11 NOT NECESSARILY ADMISSIBLE TO BOLSTER. THE QUESTION IS WHAT
12 CONDUCT DOES THE GOVERNMENT USE TO GET WHAT THEY WANT. IF
13 THEY MAKE AN OFFER OF A DEAL TO A WITNESS AND THE WITNESS
14 ACCEPTS THE DEAL AND HERE'S WHAT HE'S GETTING FOR HIS
15 TESTIMONY, THAT IS CLEARLY ESTABLISHED TO BE ADMISSIBLE AS
16 AN IMPEACHMENT TOOL. WHAT ABOUT THE WITNESS WHO THE
17 GOVERNMENT APPROACHES AND THE GOVERNMENT SAYS, LOOK, WE'LL
18 GIVE YOU A GOLD BULLION IF YOU'LL DO SO AND SO OR WE'LL GIVE
19 YOU A WEEKEND AT DISNEY WORLD IF YOU'LL DO SO AND SO. THESE
20 ARE OBVIOUSLY -- I FORGET ABOUT THE MEDIA SOMETIMES. THAT'S
21 RIDICULOUS EXAMPLES. THAT'S NOT REALLY TO BE TAKEN
22 LITERALLY. BUT MY POINT IS REWARDS OR CONCESSIONS. AND THE
23 WITNESS SAYS, I'M NOT GOING TO DO THAT. I'M NOT GOING TO
24 BELLY UP TO YOUR OFFERING OF GIFTS FOR MY TESTIMONY. WELL,
25 IF I DON'T KNOW THAT HE DONE THAT, THEN THAT WITNESS MAY

1 NEVER EVEN COME FORWARD. THAT WITNESS MAY NEVER EVEN BE
2 KNOWN. I THINK THE JURY HAS A RIGHT TO KNOW THAT THAT'S
3 WHAT THE GOVERNMENT MIGHT DO. AND I'M NOT ACCUSING THIS
4 PROSECUTOR IN THIS PARTICULAR CASE OF ANY PARTICULAR
5 ISOLATED INCIDENT. I'M SAYING FOR THE PURPOSE OF THE
6 CORNERS OF THIS MOTION, THAT IS, IN FACT, PART OF THE ISSUE.

7 THE COURT: WELL, I'M THE REFEREE IN THE FIGHT.
8 AND I JUST NEED TO MAKE SURE THE RULES ARE FOLLOWED. AND
9 SOLICITOR, I'LL BE GLAD TO HEAR FROM YOU IF YOU'D LIKE TO
10 RESPOND.

11 MR. ARIAIL: THE ONLY COMMENT I HAVE, YOU ARE WELL
12 FAMILIAR WITH THIS. WE WENT THROUGH IT THE LAST TIME. I
13 WOULD URGE YOU NOT TO HOLD IT IN ABEYANCE BECAUSE I NEED TO
14 KNOW WHAT THE RULES ARE SO THAT I KNOW -- IF YOU'RE GOING TO
15 CONSTRUE IT ONE WAY, I'M GOING TO FOLLOW YOUR ORDER. I
16 THINK THAT AS LONG AS I'M MAKING OFFERS AND NOBODY IS
17 EXCEPTING, THERE IS NO DEAL. AND I JUST DON'T THINK THAT'S
18 RELEVANT. AND I AGREE WITH YOU. I DON'T THINK YOU CAN
19 BOLSTER TESTIMONY OR PUT SOMEBODY UP JUST TO TESTIFY THAT
20 THEY OFFERED YOU A DEAL AND YOU DIDN'T TAKE IT. IF THE
21 WITNESS TESTIFIES THAT -- OBVIOUSLY, THE WITNESS CAN TESTIFY
22 WITHIN THE RULES. BUT I WOULD URGE YOU TO RULE ON IT. I
23 THINK YOUR PRIOR RULING IN THE LAST CASE WE HAD WAS CORRECT
24 LAW. AND THAT WOULD BE THE WAY I WOULD INTERPRET IT UNLESS
25 YOU INFORM ME DIFFERENTLY.

1 THE COURT: I GRANT THE MOTION INsofar AS IT
2 REQUIRES THE STATE TO DISCLOSE TO DEFENDANT THROUGH COUNSEL
3 ANY AGREEMENT OR CONCESSION WHICH IS ACCEPTED BY THE OTHER
4 PARTY.

5 I WILL FOR A BRIEF PERIOD HOLD IN ABEYANCE THE ISSUE OF
6 ITS OBLIGATION TO PRODUCE TO DEFENDANT THE MERE OFFER OF A
7 CONCESSION. AND WHAT I'D LIKE FROM YOU, MR. MAULDIN, SINCE
8 YOU ARE THE MOVING IN THIS PARTICULAR ISSUE IS TO PROVIDE
9 SOME LEGAL AUTHORITY. I APPRECIATE YOUR FINE ARGUMENT. BUT
10 IF THAT ARGUMENT IS VALID, IT WOULD SEEM TO ME LIKELY THAT
11 THERE'S A CASE SOMEWHERE TO SUPPORT THAT PROPOSITION. AND
12 I'D LIKE TO SEE THE LEGAL RESEARCH. AND I KNOW YOU HAVE A
13 LOT GOING ON. BUT I'D LIKE TO KNOW SORT OF A TIMETABLE WHEN
14 I COULD EXPECT THAT. AND I'LL GIVE YOU WHATEVER TIME THAT
15 YOU REASONABLY NEED, SIR.

16 MR. MAULDIN: SINCE YOU HAVE ASKED, THE MONTH OF
17 MARCH WILL BE REALLY HARD. IF I COULD HAVE MAYBE FORTY-FIVE
18 DAYS, THAT WOULD EXTEND OVER INTO APRIL, GIVE ME A COUPLE OF
19 WEEKS IN APRIL TO TRY TO FINISH IT UP, IF THAT WOULD SUIT
20 THE COURT. AND OBVIOUSLY, THE STATE IS RIGHT. THEY WANT TO
21 KNOW HOW TO PROCEED. I AM GOING TO TIMELY RESPOND. IF THEY
22 MAKE OFFERS, WHETHER OR NOT ACCEPTED, IN THE NEXT COUPLE OF
23 WEEKS, THEN I THINK THERE IS A LITTLE BIT OF A -- THEY'RE
24 HANGING YOU IT OUT A LITTLE BIT THERE. SO I UNDERSTAND
25 THEIR PREDICAMENT THAT THEY WOULD BE PLACED IN BY AN

1 EXTENDED PERIOD. FORTY-FIVE DAYS IS WHAT I WOULD REQUEST,
2 YOUR HONOR.

3 THE COURT: I'M GOING TO GIVE YOU TWENTY DAYS.
4 AND I DO NOT INTEND TO BURDEN YOU. BUT TO ME, IT'S NOT FAIR
5 TO THE STATE TO GIVE A MONTH AND A HALF AND WHAT THEY RISK
6 IN HOW THEY APPROACH THE CASE AND THEIR STRATEGY UNTIL THAT
7 ISSUE IS RESOLVED.

8 MR. MAULDIN: I UNDERSTAND THAT, YOUR HONOR.

9 THE COURT: THANK YOU, SIR.

10 MR. ARIAIL: COULD I GET ONE CLARIFICATION ON
11 THAT, ALSO?. ASSUMING WE MAKE AN OFFER OR HAVE DISCUSSIONS
12 OR WHATEVER WITH A WITNESS AND IT IS DISCLOSED -- AND THERE
13 ARE SOME CONCESSIONS GRANTED ON IMMUNITY OR WHATEVER, COULD
14 YOU GIVE US DIRECTION AS TO THE TIME TIMING OF THAT
15 DISCLOSURE? IS THAT SOMETHING THAT WOULD NEED TO BE DONE
16 IMMEDIATELY, OR IS IT SOMETHING THAT WOULD BE NECESSARY TO
17 BE DISCLOSED WHEN THE WITNESS TAKES THE WITNESS STAND?
18 EXACTLY WHAT TIMING ARE WE TALKING ABOUT? BECAUSE THERE ARE
19 SOME STRATEGY ISSUES THAT MAY BE AFFECTED BY THAT.

20 THE COURT: YES, SIR?

21 MR. MAULDIN: WE TAKE THE POSITION THAT AT THE
22 TIME THE WITNESS TAKES THE STAND IS WORTHLESS TO US. I
23 DON'T KNOW WHAT -- SO THAT'S THE ONLY REASON I FELT LIKE I
24 HAD TO RESPOND. I THINK DISCLOSURE OF THAT TYPE OF
25 INFORMATION, I DON'T KNOW WHY IT WOULD HAMPER THE GOVERNMENT

1 TO DISCLOSE IT WITHIN FIFTEEN DAYS OR THIRTY DAYS OR WHEN IT
2 ACTUALLY OCCURS. I DON'T SEE HOW -- THE ONLY STRATEGY,
3 QUOTE, UNQUOTE, OF WAITING TILL THE WITNESS TAKES THE
4 WITNESS STAND IS TO PREVENT ME FROM DOING ANYTHING ABOUT IT.
5 AND THAT'S TRIAL STRATEGY. I UNDERSTAND. BUT THAT'S NOT
6 FAIR.

7 THE COURT: I'LL ADDRESS THAT ISSUE WHEN I ADDRESS
8 THE ISSUE AS TO PROPOSED OFFERS WHICH ARE NOT ACCEPTED.

9 MR. ARIAIL: WE WOULD ALSO -- WE DID CONSENT TO
10 THE FIRST PART OF THE RULE. THAT'S NOT RIGHT. WE DID
11 CONSENT TO THAT.

12 THE COURT: AND THAT WAS IN YOUR RESPONSE.

13 MR. ARIAIL: YES, SIR.

14 THE COURT: MR. MAULDIN, THE NEXT MOTION IS TO
15 SEAL THE VISITORS' LOG AT THE JAIL. THE STATE CONSENTS TO
16 IT. EXCEPT THEY HAVE A CAVEAT TO PRODUCE THE LOG TO THE
17 COURT AT THE COMMENCEMENT OF TRIAL FOR THE STATED PURPOSE OF
18 ENSURING TRUTHFULNESS REGARDING A WITNESSES' VISITS AND
19 NUMBER OF VISITS IF THAT'S A RELEVANT ISSUE ON CROSS
20 EXAMINATION.

21 MR. MAULDIN: YES, SIR. I THINK THAT THAT'S FAIR.
22 I DO THINK THAT IT'S SOMETHING THAT WOULD BE A MATTER THAT
23 WOULD BE HELD VERY CONFIDENTIALLY BY THE COURT, THAT THE
24 COURT WOULD HEAR THE TESTIMONY OF THE WITNESS AND IF THROUGH
25 THE COURT'S JUST REVIEWING THE RECORD, IT IS CLEAR THAT THAT

1 WITNESS IS NOT SAYING WHAT IS IN FACT BLATANT IN THE RECORD,
2 THEN PERHAPS IT WOULD BE THEN SOMETHING THE STATE WOULD BE
3 -- HAVE BROUGHT TO THEIR ATTENTION. SO I DO NOT DISAGREE
4 WITH THAT. IT DOES CREATE AN ISSUE OF THE ACCURACY OF THAT
5 LOG. AND I ONLY MENTION THAT TO THE COURT IN PASSING. AND
6 I KNOW I GO DOWN TO THE JAIL A LOT. AND I DON'T SIGN IN
7 HARDLY EVER. SO I SOMETIMES KIND OF WONDER HOW THOSE LOGS
8 ARE KEPT. I KNOW THEY'RE KEEPING A SEPARATE BOOK FOR JOHN.
9 I KNOW THAT. I WOULD ASSUME THAT A PERSON -- AN UNUSUAL
10 VISITOR OR AN EXPERT, IF YOU WILL, IS REQUIRED TO GO THROUGH
11 A LITTLE MORE THAN I AM FOR PRACTICAL PURPOSES. BUT I WOULD
12 HATE TO GET INTO THE PROBLEM OF WHETHER OR NOT -- WE'D HAVE
13 TO GET THE LOG ATTENDANT TO THE WITNESS STAND TO SAY HOW
14 OFTEN DO Y'ALL -- YOU KNOW. SO IT COULD CREATE A PROBLEM.
15 BUT I THINK IN SPIRIT THAT IS A GOOD SUGGESTION.

16 MR. ARIAIL: COULD I HAVE JUST A MOMENT MORE? I
17 DON'T WANT TO DRAG THIS OUT.

18 THE COURT: SURE.

19 MR. ARIAIL: BUT IN REVIEWING OUR RESPONSE THIS
20 MORNING, I WANTED TO AMPLIFY THAT A LITTLE BIT AND ASK THE
21 COURT TO GO A LITTLE FURTHER. MR. MAULDIN'S RESPONSE ABOUT
22 REVEALING THE DEAL AT THE TIME THE WITNESS TAKES THE STAND
23 BEING TOTALLY INVALUABLE TO HIM IS THE SAME RESPONSE I HAVE.
24 IF I DON'T KNOW THIS INFORMATION BEFORE THAT WITNESS TAKES
25 THE STAND, IT'S INVALUABLE TO ME. IT'S OF NO VALUE TO ME.

1 I NEED TO KNOW -- I NEED TO HAVE THE JAIL LOG OF WITNESSES
2 HE INTENDS TO PRESENT BECAUSE AT THAT -- I DON'T NECESSARILY
3 NEED IT MUCH IN ADVANCE. BUT I NEED TO BE ABLE TO AT LEAST
4 BE FAMILIAR WITH HOW MANY TIMES A WITNESS HAS BEEN THERE,
5 HOW FEW TIMES THEY'VE BEEN THERE, WHEN THEY'VE BEEN THERE
6 AND THAT SORT OF THING BECAUSE THAT MAY RELATE TO AN ISSUE
7 AS TO CREDIBILITY, A NUMBER OF THINGS. BUT JUST FOR ME --
8 FOR YOU TO HAVE IT AND ME NOT KNOW WHAT'S IN IT AND THEN ME
9 TO HAVE TO IMPOSE UPON THE COURT SOME IDEA OF MY ENTITLEMENT
10 TO IT, I DON'T KNOW HOW TO PROVE THAT.

11 SO WHAT I'D LIKE TO DO IS TRY TO FASHION SOME WAY THAT
12 I WILL BE ABLE TO BE PROVIDED THAT. IT DOESN'T MATTER TO ME
13 IF YOU TAKE A BREAK AFTER THE DIRECT TESTIMONY OF THE
14 WITNESS AND PROVIDE ME A COPY AT THAT TIME JUST SHOWING WHEN
15 THAT WITNESS WENT TO THE JAIL IN PARTICULAR. THAT WOULD BE
16 FINE WITH ME. IT I JUST WANT TO HAVE IT BEFORE I'M IN THE
17 MIDDLE OF MY CROSS-EXAMINATION AND I'VE GOT TO JUMP THROUGH
18 A BUNCH OF HOOPS AT THAT TIME. THAT'S ALL I'M ASKING.

19 THE COURT: WELL, MR. MAULDIN HAS MADE A PROPOSAL
20 HOW HE WANTED IT. THAT DIDN'T SIT WELL. YOU'VE RESPONDED.
21 I'M NOT RULING TODAY WITH FINALITY AS TO THE MECHANICS OF
22 TIMING OF DISCLOSURE OF THAT INFORMATION. THAT'S SOMETHING
23 THAT WE HAVE PLENTY OF TIME TO RESOLVE.

24 MR. MAULDIN: AND SO THAT MY MOTION WILL NOT BE
25 SOMEHOW MISUNDERSTOOD OR HE SAYS HE THOUGHT ABOUT THAT

1 APPARENTLY LAST NIGHT OR ON THE WAY OVER HERE OR SOMETHING.
2 I RESIST ANY EFFORT THAT THE GOVERNMENT MIGHT DIRECTLY OR
3 INDIRECTLY TAKE TO DISCOVER WHO MY WITNESSES ARE. SO I
4 WOULD WITHDRAW MY MOTION TO SEAL THIS RECORD IF THE
5 RESULTING ORDER WOULD REQUIRE ME TO PRIOR TO TRIAL TO TELL
6 HIM WHO HAS BEEN VISITING MY CLIENT AT THE JAIL. THAT
7 DEFEATS MY WHOLE PURPOSE. SO TO THE EXTENT THAT THE COURT
8 WOULD ENVISION AN ORDER THAT SOMEHOW WOULD MAKE ME DO THAT,
9 I WOULD ASK THAT THIS MATTER BE HELD IN ABEYANCE UNTIL SUCH
10 TIME THAT I CAN FULLY RESPOND TO IT.

11 THE COURT: ALL RIGHT, SIR.

12 THE NEXT MOTION IS RECOGNIZING THE CASE AS ONE WITHOUT
13 PAROLE. IT'S MY INCLINATION -- I'M FAMILIAR WITH THE ISSUE.
14 I'M FAMILIAR WITH WHAT THE OPTIONS ARE IN THE PRESENCE OF A
15 DETERMINATION OF AN AGGRAVATED CIRCUMSTANCE. I WOULD LIKE
16 AT THIS POINT TO TAKE A WAIT AND SEE APPROACH, ALTHOUGH I'M
17 VERY AWARE THAT THE STATE'S RESPONSE WITH MINOR RESERVATION
18 IS TO CONCEDE THAT. AND THE STATE EVEN WENT SO FAR AS I
19 BELIEVE I RECALL IN ITS RESPONSE TO DISCLOSE THAT FACT TO
20 THE JURY DURING VOIR DIRE. BUT THE SHEAFFER CASE IS IN THE
21 SUPREME COURT'S. SO IT'S BEEN GRANTED. AND I THINK A
22 DECISION WILL BE RENDERED THIS TERM. SO WHILE I UNDERSTAND
23 BOTH SIDES' POSITION, I DON'T WANT TO ISSUE ANY ORDER WITH
24 FINALITY IN THAT REGARD. IF EITHER COUNSEL WANTS TO PLACE
25 ANYTHING FURTHER ON THE RECORD, YOU MAY DO SO.

1 MR. MAULDIN: YOUR HONOR, WITH ALL RESPECT, YOU
2 KNOW, IF WE MAKE A MOTION AND THEY CONSENT TO IT, I DON'T
3 THINK THAT NECESSARILY REQUIRES YOU TO DO ANYTHING. I THINK
4 THAT'S EXACTLY WHAT YOU'RE ACKNOWLEDGING BY YOUR STATEMENTS
5 FROM THE BENCH. WE DON'T KNOW HOW THAT SHEAFFER MATTER IS
6 GOING TO COME OUT. BUT WE DO KNOW FOR PRACTICAL PURPOSES,
7 THE CLARITY OF THIS ISSUE IS ONE THAT THE PUBLIC BEARS. I
8 READ IN ONE OF THE NEWS ARTICLES ABOUT SOME JUROR IN SOME
9 COUNTY SAYING THAT IF I HAD ONLY KNOWN THAT, I WOULD HAVE
10 GIVEN LIFE. SO IT'S AN ISSUE THAT REALLY NEEDS TO BE
11 CLARIFIED.

12 THE COURT: AND FOR PURPOSES OF THIS TRIAL, THAT
13 WOULD THAT WILL NOT BE A MYSTERY WITH THE STATE'S CONSENT.
14 THAT ISSUE WILL BE FULLY DISCLOSED TO THE JURY DURING VOIR
15 DIRE. AND I THINK THAT RESOLVES THE DILEMMA IN THIS CASE
16 THAT PROMPTED THIS MOTION.

17 MR. MAULDIN: YES, SIR.

18 THE COURT: THE NEXT MOTION IS ONE TO REQUIRE THE
19 STATE TO PRESERVE THE RADIO TRANSMISSIONS. I DON'T BELIEVE
20 THERE'S ANY OBJECTION TO THAT.

21 MR. MAULDIN: OUR MOTION WAS NOT FOR DISCLOSURE.
22 THIS IS ONE THAT IS SIMPLY TO REQUIRE THEM TO HOLD BECAUSE
23 OF THESE DEADLINES THAT THEY HAVE FOR ERASING TRANSMISSIONS.
24 WE JUST WANT TO MAKE SURE THAT ALL TRANSMISSIONS THAT RELATE
25 TO THIS CASE ARE BEING PRESERVED.

1 THE COURT: ANYTHING FURTHER FROM THE STATE ON
2 THAT ISSUE?

3 MR. ARIAIL: YOU KNOW, I JUST WANT TO MAKE SURE
4 THAT EVERYBODY UNDERSTANDS, WE'VE GOT ALL WE THOUGHT THERE
5 ARE. YOU KNOW, WE'RE NOT GUARANTEEING THAT THERE WASN'T
6 SOMETHING THAT WE DIDN'T THINK ABOUT OR SOME AGENCY OR SOME
7 HAM OPERATOR WAS OUT THERE DOING SOMETHING. WE GOT ALL THE
8 MAIN ONES. AND WE'VE GOT THOSE, SIR. YOU UNDERSTAND WHAT
9 I'M SAYING? THANK YOU.

10 THE COURT: AND THIS MAY BE PREMATURE. BUT I JUST
11 SORT OF WANT TO GET A HEADS-UP FROM BOTH SIDES IN TERMS OF
12 SCHEDULING THE TRIAL. I KNOW IT'S VERY EARLY. BUT
13 LOGISTICALLY, WE NEED TO KNOW FAIRLY WELL IN ADVANCE SO I
14 CAN COORDINATE WITH COURT ADMINISTRATION TO ALTER SCHEDULES.

15 MR. ARIAIL: I THINK WE'RE PREPARED TO DO THAT.
16 WE'VE ALREADY MET I THINK WE'RE PREPARED TO DO THAT. WE'VE
17 ALREADY MET -- JOHN AND I HAVE ALREADY MET WITH JUDGE FLOYD.
18 AS YOU KNOW, THERE ARE TWO OF THESE GOING AT THE SAME TIME.
19 WE'RE BOTH INVOLVED IN IT. AND WE HAD SORT OF AGREED UPON A
20 DATE IN FEBRUARY, MID FEBRUARY. THE OTHER DEATH PENALTY
21 CASE IN GREENVILLE WILL BE TRIED IN FRONT OF JUDGE FLOYD ON
22 OCTOBER THE EIGHTH. AND HE WAS SUPPOSED TO HAVE
23 COMMUNICATED WITH YOU. I APPEAR TO BE TELL YOU SOMETHING
24 YOU'RE NOT AWARE OF.

25 THE COURT: RIGHT.

1 MR. ARIAIL: I APOLOGIZE FOR THAT.

2 THE COURT: SO THAT CASE WOULD GO IN OCTOBER AND
3 THIS CASE WOULD GO WHEN?

4 MR. ARIAIL: THIS ONE WOULD GO IN FEBRUARY. THIS
5 CASE IS MUCH MORE RECENT. THE OTHER CASE HAPPENED IN
6 SEPTEMBER. THIS ONE HAPPENED IN DECEMBER. AND GOING WITH
7 THE ONE PREVIOUSLY -- HE ALSO INSISTED UPON THAT IN THAT HE
8 HAS ADVISED US -- AND CORRECT ME IF I'M WRONG, JOHN. BUT HE
9 ADVISED US HE WILL NOT BE IN THIS CIRCUIT OR ANYWHERE
10 AVAILABLE AFTER THE FIRST OF THE YEAR BECAUSE HE IS GOING TO
11 COLUMBIA TO DO SOMETHING IN PARTICULAR. SO WE SAID IT WAS
12 OUR INTENTION TO TRY THIS CASE FIRST BECAUSE OF ITS AGE AND
13 THE FACT IT WAS COMMITTED IN SEPTEMBER. SO HE WAS GOING TO
14 DISCUSS THAT WITH YOU. BUT WE CAME TODAY WITH AN ORDER
15 PREPARED TO FILL IN THE BLANKS FOR BOTH YOU AND JUDGE FLOYD
16 TO SIGN. I WAS GOING TO TAKE IT BACK BY PICKENS AND HAVE
17 HIM SIGN IT. WE HAD AGREED ON THE DATE OF OCTOBER 8 AND 15
18 FOR THAT CASE. AND THEN WE WERE LOOKING AT FEBRUARY, THE
19 MID PART OF FEBRUARY, FOR THIS ONE TO AVOID JUROR
20 QUESTIONNAIRES OVER CHRISTMAS, CHRISTMAS MAIL, AND THAT SORT
21 OF THING AND MOVE IT TO FEBRUARY. THAT WAS OUR PLAN. WE
22 ARE CERTAINLY OPEN FOR DISCUSSION WITH YOU. I THOUGHT YOU
23 WERE SORT OF TUNED IN ON THAT. I'M SORRY FOR THAT.

24 THE COURT: HE CAN SET HIS CASE. I'LL SET MY
25 CASE.

1 MR. ARIAIL: THAT'S RIGHT.

2 THE COURT: AND I, TOO, WILL BE ACROSS THE STATE
3 STARTING IN JANUARY. AND I NEED TO CONSIDER THAT IN THE
4 ANALYSIS. ANYTHING YOU WANT TO ADD ON THAT ISSUE?

5 MR. MAULDIN: YOUR HONOR, I DON'T KNOW -- IF
6 YOU'RE ASKING FOR INPUT, YES, SIR. THE SITUATION, OF
7 COURSE, -- OUR SITUATION IS VERY PRECARIOUS FOR A NUMBER OF
8 REASONS. NUMBER ONE, THESE CASES, AS YOU CERTAINLY HAVE
9 RECENTLY EXPERIENCED, ARE SOMEWHAT OVERWHELMING. AND THEY
10 ARE CERTAINLY OVERWHELMING TO THE DEFENSE SIDE. WE'RE GOING
11 TO ASK THAT THERE BE A NINETY TO A HUNDRED AND TWENTY DAY
12 BREAK BETWEEN THE TRIALS. WE CAN TRY TO PREPARE THE CASES
13 ON RELATIVELY PARALLEL TRACKS. BUT WHEN IT GETS TO WITHIN
14 ABOUT SIXTY DAYS OR LESS TO THE TRIAL OF THE FIRST ONE,
15 WE'RE GOING TO HAVE TO DROP THE OTHER. THEN WE'RE GOING TO
16 HAVE TO -- SO THIS ONE IS GOING TO LAY DORMANT. WHICHEVER
17 ONE IS THE SECOND CASE IS GOING TO LAY DORMANT. THEN THE
18 TRIAL WOULD OCCUR OF THE FIRST CASE. AND THEN WE'VE GOT TO
19 REINITIATED THE SECOND CASE. AND HOPEFULLY, WE WOULD HAVE
20 ABOUT THREE OR FOUR MONTHS BEFORE WE ENDED UP IN THE TRIAL
21 OF THE SECOND CASE. SO THAT'S KIND OF THE WAY WE THINK IN
22 TERMS OF THE OVERALL HANDLING TWO CASES AT ONE TIME. IT HAS
23 OBVIOUSLY BECOME EVEN MORE DIFFICULT FOR US BECAUSE OF WHAT
24 IS GOING ON IN COLUMBIA WITH REGARD TO THE BUDGETS FOR US
25 AND SO FORTH. IT'S GOING TO BE REAL TIGHT FOR US. AND I'M

1 GOING TO DO EVERYTHING THAT I CAN HUMANLY DO TO ABIDE BY
2 WHATEVER YOU AND ANY OTHER COURT WOULD ORDER ME TO DO. IT'S
3 JUST I AM ENVISIONING QUITE A DIFFICULT SECOND SIX MONTHS
4 AND THEREAFTER THIS YEAR. SO IN A NUTSHELL, YOUR HONOR, IF
5 THE OTHER CASE IS TRIED IN OCTOBER, I WOULD SAY TO THE COURT
6 ON THE RECORD, I CANNOT BE PREPARED TO TRY THIS CASE
7 THREE MONTHS PRIOR TO OCTOBER. THAT WOULD PUT IT TWO MONTHS
8 FROM NOW. I MEAN, IT WOULD BE IMPOSSIBLE FOR US. SO THE
9 OCTOBER THING HAS JUST CREATED A SITUATION. I WOULD LIKE TO
10 SEE US GO THREE TO FOUR MONTHS ON THE OTHER SIDE OF OCTOBER
11 IN ORDER FOR ME TO BE PREPARED, YOUR HONOR.

12 MR. ARIAIL: COULD I RESPOND JUST A MINUTE? AND I
13 APOLOGIZE TO THE COURT. I UNDERSTOOD JUDGE FLOYD HAD
14 COMMUNICATED WITH YOU AND THAT'S WHAT HE TOLD US. AND THIS
15 WAS SORT OF ALREADY DONE. I WILL BACK UP AND SAY THIS,
16 EXACTLY WHAT I TOLD JUDGE FLOYD. WE WILL TRY EITHER ONE OF
17 THESE CASES ANYTIME EITHER ONE OF THE JUDGES WANT TO TRY IT.
18 WE WILL BE READY AT THAT TIME. SO THE STATE HAS NO
19 PREFERENCE OTHER THAN WE WERE GOING TO TRY THIS ONE FIRST
20 BECAUSE OF THE AGE. BUT THAT WAS PRIMARILY BECAUSE FLOYD
21 SORT OF GOT INVOLVED WITH HIS CASE. I UNDERSTAND YOU'VE GOT
22 SCHEDULES. I GOT SCHEDULES. BUT WE ARE READY AND WILL BE
23 READY WHENEVER YOU TELL US. SO IF I CAN, I WILL EXTRICATE
24 MYSELF FROM THAT INITIAL STATEMENT AND JUST ADVISE YOU OF
25 THAT INFORMATION. YOU AND JUDGE FLOYD CAN DISCUSS IT. AND

STATE v. KENNETH GUY HENRY 2000-GS-37-1030
GUILTY PLEA HEARING (11/27/00)

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1 I WILL BE THERE WHEN YOU TELL US TO BE THERE.

2 THE COURT: THANK YOU. WE'LL BE IN RECESS.

3 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE OF REPORTER

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I, THE UNDERSIGNED RENEE H. TOLLISON, OFFICIAL COURT
REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR GREENVILLE, SOUTH CAROLINA, ON THE 28TH DAY OF
FEBRUARY, 2001.

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

APRIL 22, 2002

A handwritten signature in cursive script, reading "Renee H. Tollison", is written over a horizontal line.

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF COMMON PLEAS
2001-GS-23-3106

STATE OF SOUTH CAROLINA,)
VS.) COURT TRANSCRIPT
JOHN RICHARD WOOD.)
_____)

DATE: FRIDAY, JANUARY 18, 2002

LOCATION: GREENVILLE COUNTY COURTHOUSE
305 East North Street
Greenville, South Carolina 29601

PRESIDING JUDGE: THE HONORABLE LARRY R. PATTERSON

APPEARANCES: CHARLES H. RICHARDSON
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for the Plaintiff

SOUTH CAROLINA OFFICE OF
APPELLATE DEFENSE
1122 Lady Street #940
Columbia, South Carolina 2960229102
Attorney for the Defendant

REPORTED BY: DEBORAH SCHMIDT, CVR
Circuit Court Reporter

ORIGINAL

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E X H I B I T S

None marked or admitted.

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PROCEEDING

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THE COURT: The State versus Mr. Wood. All are present? There's a series of motions, a couple other issues, and, finally, I believe there are a number of issues regarding a juror's request to be excused that are not resolved that I want to review with counsel and make a decision so we can alert those jurors. Ms. Strom did you want to take the lead and say something?

MS. STROM: Yes, Your Honor. We have a certified copy of the indictments which we are required to serve upon the defendant at least three days prior to trial. I would like to do that at this time. He has not yet been formally arraigned on this indictment. We need to do that, if we can do that today.

THE COURT: Sure.

MS. STROM: This is a copy -- a certified copy of indictment number 2001-GS-23-3106, charging -- the State versus John Richard Wood, charging the violation 16310, murder, and 162349, possession of a weapon during the commission of or the attempt to commit a violent crime. I am hereby serving that on the Defendant.

THE COURT: All right. Let the record so reflect. I'd like to know of counsel their wishes to waive the reading of the indictment --

MR. MAULDIN: Yes.

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13th Judicial Circuit, Greenville County
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1 THE COURT: -- otherwise I'll publish it.

2 MR. MAULDIN: We waive the reading of the indictment.

3 THE COURT: And, a plea of not guilty is entered?

4 MR. MAULDIN: Yes, Sir.

5 THE COURT: Thank you, Sir. Mr. Mauldin, I'll look to
6 you as lead counsel. I have received numerous motions with
7 material in support of the motion and the State's response as
8 well. Your motion is part of the record.

9 There are a number of motions that I think warrant some
10 serious discussion. I think there are a number of motions,
11 quite frankly, that do not, and I know that many of these
12 motions are simply to protect certain issues. I'm not going
13 to foreclose you from making a brief argument on all motions,
14 but there are some that I don't want to get delayed on some of
15 these motions I think are well-settled in the law.

16 MR. MAULDIN: Yes, Sir.

17 THE COURT: And be foreclosed from having adequate time
18 from what I believe may be very substantive motions.

19 MR. MAULDIN: Yes, Sir. I have handed to the Court, and
20 a copy to the Solicitor, a three-page document that simply
21 provides to the Court motions that have been filed since our
22 last hearing that have not been addressed.

23 I'm going to simply go down that list and recognizing
24 that certain of these motions are either uncontested or
25 matters to preserve the record for our client. If I seem to

1 go afield of what you've just described, I certainly
2 understand that the Court will call me down.

3 THE COURT: Okay.

4 MR. MAULDIN: Your Honor, one thing for the record on --
5 I guess we got served with this order the day of the signing.
6 It's January the 15th, the order of sequestration of the jury.
7 I want to put on the record at least that we actually intended
8 and do, in fact, now move that the jury -- consider not
9 sequestering this jury.

10 This matter really was not a matter that was heard, and
11 we respect the order and it's contents. We simply bring to
12 the Court's attention that it was our intent to request that
13 the Court consider allowing this jury not to have to be
14 sequestered but simply to give them detailed instruction at
15 each break, including the end of the day, what they should or
16 should not be exposed to.

17 I would be more than happy to go into greater detail on
18 that subject. And, if the Court between now and the beginning
19 of this trial feels that you would like to have that matter,
20 at least more, explained in greater detail as far as the
21 defense position, we'll be glad to offer it at that time.

22 THE COURT: I'll certainly permit you to establish the
23 record if you want to go ahead and do it now. I'll let you do
24 it now. If you'd rather just hold back and submit something
25 in writing, you can do that as well. Whatever your pleasure

1 is.

2 MR. MAULDIN: Why don't I do that, Your Honor. I'm going
3 to ask for leave to have that motion -- that -- and I would
4 title it a motion to reconsider sequestering the jury.

5 THE COURT: All right.

6 MR. MAULDIN: All right, Sir. Thank you. Your Honor,
7 with regard to the motions currently pending in this matter,
8 the motion to require a more definite and certain statement as
9 to evidence of aggravation, I'd like to spend a moment on.

10 We did, by the way, get responses to our motions
11 yesterday afternoon and I have done the best I could over the
12 evening to be prepared to present our issues.

13 On the second page of our motion, Your Honor, to make
14 more definite a statement in aggravation, you will find the
15 list of items listed on the notice that we specifically object
16 to as being inadequate. Two, three, four, and five listed in
17 at the top of page two, if the Court's following me.

18 THE COURT: Yes, Sir.

19 MR. MAULDIN: I'll take those in the order they're
20 listed. The prior criminal history of the Defendant, Your
21 Honor, we have in process of preparing this case received what
22 has been identified under Rule 5a and b, notice of the
23 Defendant's prior criminal record and that, I think, is really
24 one of the issues I want addressed by the Court in this
25 particular motion.

1 We have received an N.C.I.C. report, and we are operating
2 on the assumption that when a wording in a -- in the notes of
3 aggravation comes out prior criminal history that what they
4 mean is the -- what they've given us in the form of the
5 N.C.I.C.

6 Now, if we're mistaken about that, then, we want
7 something more definite and serve him because prior criminal
8 history, they could be complaining about prior misconducts
9 that he was never charged with, prior acts that he was charged
10 with but never adjudicated, prior acts that were dismissed.
11 We have no clue what prior criminal, quote, history means
12 other than what we've been provided to in the N.C.I.C.

13 Now, the character -- and then number three in their
14 notice was character/characteristics of the defendant and the
15 circumstances of the crime. We consider those two different
16 areas, but they've worded them all in one. We believe that in
17 order to give the defense a fair opportunity to rebut, there
18 must be some indication of what the nature of the character or
19 characteristics evidence of the defendant is.

20 If we are given no idea what those terms encompass, then
21 we are not able to then respond or rebut evidence of
22 aggravation, and we believe the cases are clear that a
23 defendant must have an opportunity to make fair rebuttal on
24 evidence of aggravation in a sentencing hearing.

25 And so it is general terminology like that that since --

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1 the reason our statute has a notice requirement in it is
2 because the law says it must. We requested that the State be
3 required to give a little more notice than the statute
4 provided. And you ordered and I -- in fact, I believe they
5 may have even consented to a thirty-day notice. They filed
6 this notice on us on January the 4th, thirty days before the
7 trial. So, that has been complied with.

8 But the question is why would that even be a requirement
9 in the law. Well, the requirement in the law is in order to
10 give the other side some opportunity to do something about it.

11 Character and characteristics of the defendant are simply
12 not sufficient. We say that if they have in their -- see,
13 we've been told that they have given us their, quote, entire
14 file. We did not file a Rule 5. We filed Brady and 5a and b.
15 They chose to give their entire file and that's what they've
16 said in their pleadings and that's what they've projected to
17 the court all along.

18 Well, it may very well be that in that file is part of
19 the evidence that they would use for character of the
20 defendant but we don't -- we don't know that. We don't know
21 whether that's in there or not. We don't know whether they're
22 going to bring in something from the dark side of the moon
23 because this language is essentially a wide open field.

24 So we believe that they must, in fact, give some
25 indication of what type of character or characteristics of the

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1 defendant evidence they intend to use so that we can be
2 responsive to it if a response is appropriate and necessary.

3 Now -- and the kind of thing I'm talking about, Judge,
4 would be, for example, bad acts, some kind of specific bad
5 acts of the defendant that they allege have occurred previous.
6 Facts. Specific facts adverse to the defendant. They would
7 not necessarily have been contained in the case file. In
8 other words, it wouldn't have anything to do with this case.
9 So that's the type of information we're seeking relief on or
10 at least additional information.

11 Circumstances of the crime. I think to the extent that
12 the circumstances of the crime are based upon the factual
13 testimony and evidence that relate to the criminal conduct
14 that the defendant is charged with in this case, I'm going to
15 go out on a limb to some extent and candidly admit that we're
16 on notice. I mean, we've worked hard for the last year trying
17 to get a grip on the parameters of this case. But, if there's
18 some other, quote, circumstance of the crime that is floating
19 out there that we're unaware of, the State should disclose
20 that.

21 The victim impact testimony, we followed not only this
22 motion for a more definite answer, but we followed with a
23 number of motions that we have before the Court this morning
24 for consideration regarding additional insight or delineation
25 of what that kind of term means.

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1 The -- I have tried these cases before and I understand,
2 not withstanding my vigorous objections, some of the
3 parameters that we would face under our current state of our
4 law. If it is the usual thing then, alright, we're going to
5 work out way through that the best we can based upon your
6 rulings today on our other motions.

7 But, if there are unusual matters that relate to this
8 case specifically or unusual about this situation, what
9 happens in a victim impact presentation is that the courtroom
10 becomes unusually solemn, as it should, and it becomes --
11 there is a unique environment in the presentation of victim
12 impact testimony.

13 The last thing, and I say this on this record, that I
14 would ever want to do is to enter an objection to the
15 testimony, for example, of Eric Nicholson's wife. Now, I
16 don't want to do that. And, if it is the usual testimony, I'm
17 not going to. But, if it is unusual testimony, I don't really
18 have the choice of sitting here and making that kind of
19 judgment and allowing information that I believe to be
20 actually inappropriate to come into the record.

21 So, victim impact testimony is extraordinary with regard
22 to the challenges of both the Court and the litigants, and I
23 ask that the Court require the Government to disclose any
24 unusual type of victim impact testimony so that a hearing,
25 prior to its presentation, can be had without a jury being

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1 incredibly contaminated.

2 The other thing that I want you to keep in mind or be
3 specifically attentive to in this particular arena is the
4 timing that this comes out. We will endure voir dire and a
5 trial. Not only the participants but the juror and the
6 citizens in our community will endure this trial and over a
7 number of days away from their family if the sequestration
8 order remains in effect.

9 But the worst possible thing that could happen is at the
10 -- as we get to the twilight of the case, something happened
11 that kind of spoils the process. Now, what that will do is
12 that will make your deliberation on a mistrial motion
13 extraordinary difficult because you will be saying essentially
14 as any natural person would in the back of your mind, Oh, my
15 gosh, we've been here two weeks. These people have all made
16 extraordinary sacrifices, and now I've got this issue in front
17 of them.

18 Well, I think we ought to avoid that. And I think that
19 we avoid it by putting notice on the table so that this is not
20 sentencing by ambush.

21 The last issue, Your Honor, is the future dangerousness
22 of the defendant. Well, let me give -- in that particular
23 area, let me give the Court a couple of points from a
24 practical view. In a trial that we recently had, future
25 dangerousness of the defendant in that matter related to a

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1 prior criminal act involving a homicide that was very gruesome
2 and horrible, and we knew that that was coming. There was no
3 mention to the future dangerous nature of that evidence.

4 In this particular case, Your Honor, we have our client's
5 N.C.I.C. We know that our client has no prior acts of
6 violence against a person. We know that. We also know, Your
7 Honor, that because of the nature of the charge, that is, the
8 homicide of a law enforcement officer, that upon conviction,
9 there are only two sentences, life without parole or death.

10 And, in fact, if I'm not mistaken, I believe that the
11 State has essentially conceded that from the moment the jurors
12 come in from the street on their summons, they will be told
13 that. If I -- and I'll stand to be corrected if I've
14 misunderstood that, but I believe that's the law in this case.

15 If the law is in this case that it's life without parole,
16 realizing, Your Honor, I am arguing against a recent precedent
17 of our supreme court. I still want to put on the record that
18 we believe that evidence of future dangerousness is therefore
19 irrelevant. It is, in fact, irrelevant because the defendant
20 will never -- if, upon conviction, the defendant will never be
21 released from prison. He'll either be executed or he'll die
22 in jail.

23 Therefore, future dangerousness is a mute point. There
24 was a case, and I acknowledge the case that related to the
25 future dangerousness toward prison guards or prison personnel.

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1 We take vigorous objection to that. We don't believe that
2 that case is going to stand United --Federal Constitutional
3 muster. So we put on this record an objection to the use of
4 future dangerousness evidence in a life without parole case to
5 the extent that it is parallel to that case that our supreme
6 court has addressed.

7 Be that as it may, our additional argument is the word
8 future dangerousness of the defendant is beyond definition at
9 this point. I mean, we have no clue other than the acts which
10 are covered in circumstances of the crime, we have no clue
11 what they mean when they say, Well, Your Honor, we're
12 presenting -- we can present this because it's future
13 dangerousness of the defendant.

14 Once again, if we have no notice of what that means,
15 we're not going to be able to address it adequately to this
16 Court. This Court will not be able to make correct -- and
17 with all due respect, will not be able to make correct rulings
18 unless you've got both sides of the argument. We're not going
19 to be able to make the other side of the argument, if we don't
20 know what it is.

21 This Court, early in this case, ruled that the State
22 should be required to respond in writing to all of our
23 motions. That's a good ruling because what it does is it
24 gives the judge an opportunity to figure out what to do.

25 Well, if we don't have any idea what's coming, and we're

1 going to have to stand up and say, Judge, I know I'm
2 objecting, but I ain't real sure why. Would you give me a few
3 minutes? That's not really -- that's kind of not the way a
4 case of this nature ought to be handled, so we ask for a
5 statement of more definite and certain evidence of
6 aggravation, Your Honor.

7 THE COURT: Thank you, Sir. Who's going to argue this
8 motion?

9 MR. ARIAL: I would, Your Honor. I'll briefly have very
10 little to add other than what's in our response and that is we
11 have -- not only have we provided him what we believe is a
12 copy of every piece of paper we have in our file today, but we
13 have now specified, as the Court asked us to do, thirty days
14 ahead of time, exactly what we intend to do and the categories
15 in which we intend to introduce evidence.

16 We can sit here and argue obviously he doesn't -- he acts
17 like he doesn't know, and that's a good position for the
18 defendant to take. But, obviously, he knows what his prior --
19 client's prior criminal history is or he ought to know what it
20 is. He can ask him.

21 MR. MAULDIN: Is something different meant by the term
22 history?

23 MR. ARIAL: Don't know.

24 MR. MAULDIN: For the record?

25 MR. ARIAL: Don't know. Don't know.

1 MR. MAULDIN: Who could I ask to find the answer to that
2 question?

3 MR. ARIAL: You would ask me, but I'm not -- I'm not
4 prepared to commit to that at this point. In other words,
5 history may be more based on what happens. And, obviously,
6 before that was -- bridge was crossed, you would know what it
7 is.

8 We're not going into -- I mean, it's not like we don't
9 know what Lyle is and what these cases limit us from doing.
10 But prior criminal history, depending upon the circumstances
11 of how this case plays out and who testifies and what is said,
12 may be more than that. But that would be something that we
13 would, at that point, have to bring to your attention.

14 But I think it's grossly unfair for him to stand up here
15 and say we can't do that when the law allows us to do it
16 sometimes in regard to history. And, if we don't put it in
17 there, then the first thing we're going to hear is you can't
18 do it.

19 So, we put it in there in the broadest sense to let him
20 know record and history are something you need to be aware
21 that we're going to do. We've given you his record. He's
22 sitting there. You can ask him his history. He knows more
23 history than we do.

24 The character and characteristics, obviously -- and
25 that's pretty self-explanatory. And Mr. Mauldin argues that -

1 - first, let me point out. I don't know how many we've done
2 together. But he has never once -- talking about -- he has
3 never once objected to any victim impact that we've put up
4 because we know what our limitations are, and we know where
5 we're going.

6 The answer is not to give him everything. That's why the
7 law is structured the way it is. We shouldn't be required to
8 give him everything. The responsibility is on us to do it in
9 the proper fashion, and it will be done in the proper fashion.
10 It will be brief. It will be to the point, and it will be --
11 it will not be cumulative, and it will not be excessive, and
12 it will not be -- it won't be either one of those.

13 And our point is he is arguing that it shouldn't be
14 sentencing by ambush, and I agree with that. It shouldn't.
15 But, unfortunately, under the law, that's what it is. We have
16 no -- he talks about he has no clue. We have no clue. We
17 have no clue what's going to come in that penalty phase, and
18 we're sitting here blind, waiting.

19 Well, we do have a few limitations of what we don't have
20 to tell him, and we're -- we generally categorize those. Now,
21 for us to have to prepare for him our work product, I think is
22 going a little far. And, that's basically what he's asking
23 for. What do you specifically -- who do you intend to
24 specifically call? What do you have -- intend for them to
25 say?

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1 I think our response is we understand what the
2 limitations are and we know what your role is, and you will
3 hold us accountable to that. We don't want a mistrial any
4 more than anybody else does, and we won't get one based on
5 victim impact or anything.

6 The prior -- going back to the prior criminal history,
7 the only issue that I see there is, and I can only say based
8 on our understanding of how this may play out in a trial
9 situation, the history may be a little broader in the record.
10 And, at the time, if we intend to introduce any of that, we
11 will certainly lay that out for the court's review and abide
12 by whatever ruling is made.

13 So, without saying more, I'd end up going into our trial
14 strategy and work product is.

15 As to future dangerousness, I simply say at this point,
16 that's -- I think the court -- that's probably premature. At
17 the time, we -- if we get to that phase, you can certainly, at
18 least in a twenty-four hour week period or wherever, deal with
19 those issues. And we can be a little bit more specific based
20 on what has come out during the course of the trial. But we
21 do intend to get into some areas -- potentially, intend to get
22 into some areas of future dangerousness.

23 MR. MAULDIN: Your Honor, with regard to -- very briefly,
24 with regard to the twenty-four hour waiting period. I intend
25 to be very busy, and that's why we make pretrial motions.

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1 The circumstances of the crime are going to be matters of
2 record in evidence. They're either going to be admissible or
3 not. So, we -- I'm going to be able to hear the testimony.
4 So that's not really what this motion's all about.

5 So, I object to this idea of, well, let's just kind of
6 see what shakes out and then you all can decide. That really
7 is not the point.

8 The criminal history, criminal record is not rocket
9 science. Either if it's an -- let's take this example. Let's
10 say he had an unadjudicated act -- and this is going to have
11 to be hypothetical because it really doesn't apply to our
12 client. But let's say he had an unajudicated act. And let's
13 say that not only was it unajudicated it was dismissed because
14 someone else was convicted.

15 Let's say that he was acquitted. He was -- it was thrown
16 out because some of it got confessed. Well, he comes in here
17 and says, weren't you Jordan so and so? That's criminal
18 history, and that's the reason why you -- that you've got to
19 give me the record, not the history.

20 The last thing I would mention, Your Honor, is if it was
21 appropriate for us to wait, then the order requiring them to
22 disclose made no sense. And it's -- you know, this -- the
23 smoke and mirrors thing that the prosecutor's trying to
24 confuse me and, I believe, the Court on simply is
25 inappropriate.

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1 Clarity is the point, and we encourage the Court to
2 require clarity. There's a reason John Mauldin has never
3 objected to Bob Arial's victim impact evidence. It is because
4 John Mauldin has made this same motion every case, and we have
5 clarified it before the trial.

6 THE COURT: If the case proceeds to a sentencing phase
7 and if the State is aware or intends to introduce in the
8 sentencing phase of the trial evidence of specific instances
9 of uncharged crimes or charged crimes for which there have
10 been no conviction or unconvicted or bad acts or bad conduct,
11 404B, I am requiring the State to provide written notice to
12 defendant counsel of such evidence by January 30th.

13 It's not my intent to impose an unreasonable burden upon
14 the State. It's my desire to strike a fair balance that
15 comports with the requirements of due process in a case of
16 this nature. The notice, to be sufficient, should be such
17 that a reasonably prudent person would be able to discern the
18 nature of the evidence that the State intends to introduce.

19 While the State need not give chapter and verse, he
20 said/she said, just simply refer to the term criminal history
21 and to refer to the term character and characteristics. And
22 to the extent that those concepts were understood by specific
23 acts the notice simply should be sufficient to enable a
24 reasonably prudent person discern the nature of that evidence.

25 The motion to make the victim impact evidence more

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1 definitely certain is denied. There is case law that says
2 this type of evidence -- I do not feel that it has to be
3 included within the notice of aggravation. And I believe the
4 notice is sufficient in any event.

5 It is my intent to review, between the phases of the
6 trial, that evidence to diligently attempt on the front end to
7 ensure that only proper relevant evidence is admitted.

8 Likewise, with future dangerousness, I'm going to hold
9 that matter in abeyance and address between the phases of the
10 trial. I understand a certain amount of work needs to be done
11 between phases of the trial if the case proceeds to a
12 sentencing hearing. I'll be sensitive to that. It would not
13 be my intent do lock everybody down in the courtrooms
14 addressing these issues without giving counsel an adequate
15 break to catch their breath and to gear up for a sentencing
16 hearing.

17 And, if necessary to accomplish that, the delay between
18 the two phases of the trial may reasonably be extended beyond
19 twenty-four hours, whatever the time period that may be on the
20 circumstances then presented. That's my ruling on that one.

21 MR. MAULDIN: Your Honor, I'm going to suggest that we,
22 just for purposes of connection, skip number two and go to the
23 second page and do the victim impact issues now that we've got
24 that on our mind and then come back to number two, if it suits
25 the Court.

1 THE COURT: Let me get those in front of me. I know you
2 gave me a list, but I took your original list. And I have all
3 my notes --

4 MR. MAULDIN: Yes, Sir.

5 MR. ARIAL: You Honor, could I go back to just one point
6 on January 30th and the only issue I want to raise there is in
7 the event that evidence of a type is discovered after January
8 the 30th, and such has happened in the instance with Mr.
9 Owens.

10 THE COURT: Sure.

11 MR. ARIAL: Something of that -- I didn't want it to be --
12 -- we to be limited to that. Thank you.

13 THE COURT: I agree with that.

14 MR. MAULDIN: We understand that, Your Honor.

15 THE COURT: Thank you, Sir. We need not -- for my
16 benefit -- and this may be the area -- and I don't mean to
17 come across as rude, but this is an area where I think the
18 results are fairly self-evident.

19 MR. MAULDIN: Your Honor, if you'll give me one second.

20 THE COURT: Yes, Sir.

21 MR. MAULDIN: All right. Your Honor, we do refer to the
22 memorandum that more or less summarizes the position regarding
23 the limitations under the statute. We want, in each one of
24 these eight motions, to take this opportunity to renew them
25 specifically, reaffirm the contents of each of the written

1 motions.

2 And, finally, while we recognize the fact that a pretrial
3 review of victim impact has been held, not to be a required
4 matter, we understand that. And we do -- I don't know if I
5 have to ask permission to argue against precedent at the trial
6 level, but I do this respectfully --

7 THE COURT: Yes, sir.

8 MR. MAULDIN: -- with regard to the appellate court's
9 decisions. We do believe that that the very -- in absence,
10 what we have is we have a U.S. Supreme Court case and
11 subsequent cases, also, some South Carolina Supreme Court
12 cases that relate to victim impact where ten years has passed
13 since Payne. And our legislature simply has just decided not
14 to do anything about it.

15 And we say that -- and that is the point -- well, that's
16 one of the points we're making by this that Payne certainly
17 didn't just open the doors completely wide. They said that a
18 state has the right to make its own determinations. And we
19 believe that the failure of the legislature to act is, in
20 fact, action on that issue. And to that extent, we argue
21 against the decisions of the state supreme court.

22 Finally, with regard to this, Your Honor, I have said in
23 the past and I say again that the most extraordinary evidence
24 in any trial of any civil/criminal case -- I don't care where
25 you're trying it, family court, whatever. The most

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1 extraordinary evidence that I have ever had the occasion to
2 experience is victim impact. It's the type of evidence that
3 just can be completely overwhelming. It always has an impact
4 and the extent of that impact can override the stability of
5 the case before the court.

6 So, that's why we believe that these motions have to be -
7 - and we do appreciate the Court allowing us to preserve the
8 record on this. We hope that one day some decisions will be
9 made that will bring this type of evidence into a little more
10 of a controlled situation.

11 Finally, Your Honor, we understand that you have in the
12 ruling on the previous motion said that you will -- you intend
13 to review victim evidence between the phases in an attempt on
14 the front end to make sure that there's proper and relevant
15 material.

16 We don't like that timing because it is -- it doesn't
17 allow us much opportunity to respond, but we do believe that
18 that is the very least that should happen. Not that it's
19 going to cause us to respond in any way, but we hope and we
20 plead with the Court to at least stand by that minimal
21 position in order to prevent the -- and a moment ago, I did
22 mention the potential of a mistrial -- to prevent that from
23 happening in such a horrible way and under such circumstances.

24 With that, I close, Your Honor.

25 THE COURT: It's my intent to generally deny these

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1 motions with the understanding that I'm doing so without
2 prejudice and consistent with my earlier ruling. The review,
3 generally, of victim impact evidence that will be conducted
4 prior to the presentation in front of the jury. Many of these
5 issues are established by precedence which I am bound to
6 follow, and I do so.

7 But I'm not going to rule at this time and preclude live
8 testimony. I'm not going to set the number of witnesses with
9 finality. I'm simply not going to grant these motions with
10 the understanding they will be addressed as I have indicated.
11 There is one matter on which both sides agree in their written
12 material.

13 There is a suggestion that somehow the State's witnesses
14 would suggest to the jury the appropriate sentence. The State
15 concurs with that and requires -- requests that that be made
16 reciprocal that neither side suggest to the jury the
17 appropriate sentence.

18 That issue is well-established in the law. It would be
19 inappropriate. Both sides have recognized it. So neither
20 side will be permitted, through the testimony, to suggest to
21 the jury or offer an opinion as to what the sentence should
22 be.

23 Case law does specifically allow comments to be made that
24 arguably approach the line and make it clear what that witness
25 would prefer. That's been upheld in cases that I've read, but

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1 we'll deal with that with close scrutiny but at the bottom,
2 neither sides will be permitted to suggest an opinion as to
3 the sentence to be rendered.

4 If the State wants to argue these motions, you may do so.
5 But that's my intent. Is that sufficient?

6 MR. ARIAL: Yes. The only issue I have, and I was
7 talking to co-counsel, is I want to make sure that I'm clear,
8 for the record and the court, this victim impact -- pretrial
9 review of victim impact evidence, make sure I understand what
10 I understand.

11 THE COURT: I'm not doing a pretrial.

12 MR. ARIAL: Okay.

13 THE COURT: I'm pre-sentencing trial.

14 MR. ARIAL: Yeah. Pre-sentencing trial. I want to make
15 sure because I am going to vigorously oppose what he's asking
16 for. He -- what I anticipate and what I hear you say you're
17 talking in general.

18 THE COURT: Let me tell you --

19 MR. ARIAL: Okay.

20 THE COURT: -- because I think what I say may cut to the
21 quick here. We're not going to -- I'm not going to hear
22 witnesses.

23 Mr. ARIAL: That's all I need to know.

24 THE COURT: You're going to tell me that you're going to
25 have a witness that's going to speak on this particular area.

1 MR. ARIAL: Right.

2 THE COURT: It's going to be consistent with notices that
3 have been given by January 30th or otherwise. If there's
4 anything unusual, we're going to address it right then and
5 there. I want to hear from Mr. Mauldin and co-counsel, their
6 objections. So, there's really no surprises. And then you'll
7 go to the next witness --

8 MR. ARIAL: Right.

9 THE COURT: -- and tell me the next witness is so-and-so
10 and this is the area that we anticipate, that we expect the
11 following type of --

12 MR. ARIAL: Right. And, we'll be more than happy to do
13 that. I just didn't want to --

14 THE COURT: I'm not going to put either side or the Court
15 or the litigants involved through that process more than once.
16 I think that's a fair way to approach it --

17 MR. ARIAL: Sure.

18 THE COURT: -- to minimize the chance --

19 MR. ARIAL: I have no problems with that.

20 THE COURT: -- of improper evidence.

21 MR. ARIAL: We have no problems with that. I just
22 envisioned in this motion we're going to have this witness
23 being asked questions and the whole case is going to be
24 disclosed prior to me putting it up but that's -- with the
25 general --

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1 THE COURT: All right. Which ever motion you want to do
2 next.

3 MR. MAULDIN: Your Honor, if we could go back to number
4 two, if it suits the Court, regarding our request that this
5 Court consider excluding any, what I call, other crimes or
6 evidence. I think -- and I'm going -- because of the nature
7 of this information and the nature of this issue, I'm going to
8 respond to what the Court might ask. But I'm not going to go
9 into a lot of detail. The Summons for the jurors has already
10 been sent out and I'm sure they're just attentively listening
11 to everything we say.

12 So, I just want to make -- I'm going to deal with this in
13 general terms, reaffirm that which is in our motion and be
14 responsive to the Court to the issues.

15 Now, that having been said, the first thing I think that
16 comes to the issue of this Court is that this is an issue that
17 requires the State to carry a burden. The law is that this
18 type of evidence is, in fact, inadmissible. And it is
19 inadmissible unless the government establishes a reason under
20 our law for it to be otherwise. That is, it has to fall
21 within certain exceptions or it has to be appropriate under
22 certain interpretations of certain court rules.

23 So, let me say that our motion -- we're moving for
24 something that really the government ought to be moving to
25 allow. We're moving to exclude, so it's kind of a bizarre

1 position that we're arguing from.

2 I'm going to essentially refer to three things that have
3 been raised as a result of our motion, three things that have
4 been raised by what I would call the State's response, three
5 issues. And, if I sound like I'm speaking in tongues, Your
6 Honor, once again, I'm just simply trying to be a little bit
7 unclear.

8 THE COURT: Okay.

9 MR. MAULDIN: And I will be as clear as the Court will
10 require me to but I just don't want to -- we're trying to do
11 something to protect our client, but I don't want to spoil it
12 by --

13 THE COURT: I know what precisely the issue is. I know
14 your position. I know his position.

15 MR. MAULDIN: Yes, Sir. The three issues that I think
16 are raised by the response are flight, identity, and intent.
17 Now, there may be additional other ones but those are kind of
18 the ones that come off the page.

19 Regarding flight, they have it -- the -- they don't need
20 what they are requesting this Court to consider. The incident
21 information, the incident report, provides that an assailant,
22 upon commission of this act, left the location at high speed
23 on a motorcycle.

24 The assailant was visually observed during the incident.
25 The witnesses followed the assailant as he fled the scene. He

1 went down a road, down another road, around behind a building,
2 all the time being followed by a witness who will testify. He
3 then abandoned the motorcycle which has -- which was used to
4 make connection in this case, and entered a vehicle which was
5 used to make connection to individuals and identities and so
6 forth in this case, and flee once again. Then, being out of
7 sight, and disconnected from the witnesses.

8 So, there is no question there is flight evidence. To
9 the extent that flight evidence proves certain things which
10 are cited in the response by the government, there's no
11 question they have it. By the primary case gives them that.

12 The question then is do they need further flight? Do
13 they need more flight? Keeping in mind, Your Honor, that
14 there was a couple of hours where there was no contact.

15 So, it's like this happens. A couple of hours or so
16 passed and then pop, we have someone in a different location,
17 and we have flight. So, we don't argue that that was flight.

18 So, the point is is to the extent that our case -- is
19 allowed evidence of other crimes or evidence of flight to
20 relate to the primary charge, we concede that it does under
21 the cases but that this is not -- that the answer there is --
22 so, I mean, you have it. They have flight. So, they don't
23 need just -- flight.

24 It's like you know, you don't have to -- it's an
25 overdoing of an issue, and they're relying upon an overdo that

1 has extraordinary prejudice. So then, of course, you get into
2 the 403 thing. But the point is is that it's unnecessary to
3 prove that issue in this case.

4 The next item, Your Honor, is identity. And this, again
5 becomes exactly how much identity are we talking about. The
6 witnesses at the scene offer evidence of a description. The
7 person arrested is dressed in a certain way, having certain --
8 having a helmet. So, for example, that there is a connection
9 between the person arrested and the person described. You
10 know, description given, person arrested, either matches or
11 doesn't match, clothing, helmet, this, that and the other.

12 But the other thing that's real important here, Judge, is
13 we have reviewed the information to the extent we've been
14 capable of that has been provided to us in the State's file.
15 And one of the pieces of evidence is the question of
16 ballistics match, the issue of matching ballistics.

17 If certain evidence is left on the crime scene for which
18 the Defendant is on trial, for example, in a hypothetical
19 situation, a shell casing. And, if a person, hypothetically,
20 is subsequently arrested and a firearm is taken off of that
21 person, then it either matches or doesn't. If it matches,
22 then all of the other firings of the weapon during some gap in
23 time are simply cumulative to the match. And I -- and to the
24 extent -- if the Court doesn't follow me, please, I'm trying
25 to be as gentle here.

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1 THE COURT: I -- yes, Sir.

2 MR. MAULDIN: So, if a firearm is taken from a suspect at
3 location B, then that firearm can either be matched to the
4 evidence at location A or not. What happened at locations C,
5 D, E, F, and G don't really make it more of a match. So, from
6 an identity point of view, they either have it or they don't.
7 The ongoing situation doesn't create a greater amount of
8 evidence of identity. It either is identity or it isn't
9 identity.

10 THE COURT: Now, are you speaking -- when you say match
11 and --

12 MR. MAULDIN: Yeah. Ballistic.

13 THE COURT: -- identity, are you talking about physical
14 evidence or individual -- of a person?

15 MR. MAULDIN: Well, to some extent both. The physical
16 evidence is the ballistics matter that I was describing in my
17 hypothetical, Your Honor. The -- let's see. That's physical
18 but the other's physical, too. The eyewitness information, a
19 person looks over and sees a person and describes the person
20 but can't say it was John Mauldin. John -- that it was a guy
21 in a blue suit with a red tie, with a scraggly beard.

22 If he then -- if John Mauldin is then arrested in another
23 location, and but they didn't say that's who it was and they
24 can't actually -- and the witness can't actually look at him
25 and say, There he is, even in a lineup, for example. But if,

1 subsequently, John Mauldin is taken into the custody, and he's
2 wearing a blue suit and a red tie with a scraggly beard, then
3 that is evidence for the jury to weigh in terms of identity --
4 in terms of individual defendant identity.

5 Now, it is bolstered, if you will, by physical evidence.
6 The ballistics that I've just pointed out to the Court would
7 be the type of evidence that would -- the jury could rely upon
8 and say, Yeah, that was him. And, any other witness, for
9 example, a State's witness might say, Hey, I was with John
10 Mauldin when he tried to alter that lottery ticket. That was
11 John Mauldin that did that. Then, that all cumulatively would
12 be what you would rely upon for identity and that's in every
13 case, Your Honor. Every case, that's how you prove it.

14 In this particular case, what I'm trying to do though is
15 to show you how it would, in fact, be proved, based upon
16 what's been provided to us, without showing location C, D, E,
17 F, and G, along the way. It's unnecessary. It's not needed.
18 It is cumulative solely for the purpose of prejudicing and
19 overwhelming the case.

20 The third issue is intent. Now, I think the first point
21 there would be the method of the commission of the offense.
22 There's an inference from the use of deadly weapon and in
23 fact, he is charged with possession of a weapon during a
24 violent crime. So, there is certainly a -- they can rely upon
25 the inference there.

1 And, otherwise, with regard to intent, they say in their
2 response in paragraph number six, the circumstances and
3 actions in the other county are admissible under Lyle and Rule
4 404B. And then it says, period. And then it says, to show
5 intent, identity, absence of mistake or accident. Well, I
6 looked at Lyle, and I looked at 404B. And I'm a little bit
7 confused about whether they were picking certain things out of
8 these rules and not using the others. I don't know. I'm not
9 sure.

10 So, I'm a little confused about how if a person commits
11 an act and then is subsequently arrested and between them
12 certain acts occur, the question that I have, and I certainly
13 feel like this motion goes to in terms of whether the State
14 carries their burden of showing that this is evidence that
15 should be admissible, is how would intent or motive or common
16 scheme or anything have been proven by the use of this
17 subsequent criminal act to show what happened at location A.
18 I mean, how does that -- unless there was some sort of
19 additional evidence of it, and I'm not aware of the additional
20 evidence of it.

21 For example, Your Honor, we were -- as the Court will
22 recall, we were removed as counsel in the Anderson, case but
23 we spent a lot of time preparing that case. We're real
24 familiar with the acts charged in those offenses.

25 There were three specific, what you might call

1 confrontations during that -- from the time speaking, once
2 again, generally. There was a point in time where a vehicle
3 was spotted and a pursuit began in Anderson County. From that
4 moment until the apprehension and arrest, there were three
5 identifiable situations. And our review of the facts indicate
6 the nature of those confrontations.

7 In each one of those confrontations, there is a complete
8 separation and a completely different, whole different
9 situation than what happened in our case in Greenville County.
10 There are no similarities or parallels here that we're able to
11 identify.

12 And, the final thing, Your Honor, is are they making some
13 sort of distinction in their request that this Court -- by
14 response, they're making a request from this Court. Are they
15 making, for example, a distinction between what the State
16 versus Lyle in Rule 404B of our Rules deals with with regard
17 to intent, as opposed to motive for example. Are they saying,
18 Wait a minute. This is intent evidence but it's really not
19 motive evidence. Or is it identity as something they've put
20 in their response? Are they trying to distinguish between
21 identity and common scheme or plan or motive or common scheme
22 or plan, intent or common scheme or plan?

23 So, it's like they picked out certain teeth out of this
24 horse, and I'm trying to wiggle around and trying to figure
25 out, okay, what is their real position on the admissibility of

1 this evidence? We say it is clearly inadmissible and the
2 reason it's clearly inadmissible, bottom line, is that sure
3 there's evidence that flight evidence can be used but I hope
4 I've, to some extent, placed our position on the record on
5 that and identity, I think that I've also done that.

6 Intent becomes much more vague to me. I mean, it's real
7 cloudy as to exactly what they're trying to say about we're
8 going to prove intent by that. Well, are they trying to prove
9 intent to escape because he's not charged with escape. He's
10 not charged with escape in Greenville County. What is it they
11 intend to prove about intent by bringing in a bucket load of
12 charges from Anderson County with it.

13 And, Your Honor, we're talking here, just in terms of
14 case management. We're talking about a big deal. I mean,
15 we've got an entire case file. Even though we were removed,
16 we're ready to try that case in Greenville, I guess, is what
17 we think we might end up having to do here. So, unless
18 there's some actual what is the intent of the Government
19 clarified today then we're going to either be taking your
20 ruling and getting on with Greenville County or taking your
21 ruling and preparing to try twenty-five charges.

22 Finally Your Honor, in conclusion, even if the Court is
23 unsatisfied, even if the Court says, Okay. Mr. Mauldin, it
24 may be a close call. Maybe it isn't a close call. But I
25 think they -- it's admissible under some sort of

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1 interpretation to these Rules. Then we say that at that
2 point, the point it becomes a 403 product, if it is admissible
3 -- you know, Rule 403, although relevant, evidence may be
4 excluded if it's probative value and so forth and so on.

5 I mean, obviously this is a -- if we get to the 403
6 issue, then we believe that there is clearly an overwhelming
7 prejudicial effect as to probative value. Particularly in
8 light of the fact that they don't need it. In other words,
9 it's not something that they can't prove by other evidence.

10 And so we ask that the Court rule that evidence of acts
11 committed in the subsequent evidence -- in that angle -- fine.
12 I mean, my motion says that. We're not talking about prior
13 bad acts here.

14 We're not talking about -- and there was that robbery
15 case where a guy said, Hey, I was under duress. And all that
16 stuff but then later went in and he's swearing around and all
17 that and they said, Hey, you can use that to show that his
18 claim of duress earlier is a bunch of bull.

19 I agree with that case, but that is a very, very unusual
20 set facts. I think that was the Benjamin case, maybe. That
21 is a real clear and specific set of acts where there was a
22 clear -- there was a specific defense being alleged that was
23 specifically contradicted by subsequent conduct, specific
24 issues.

25 Thank you, Your Honor.

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1 THE COURT: Thank you, Sir. I'll be glad to hear from
2 the State.

3 MR. ARIAL: Just a couple of what I think may be
4 important points. Number one, and I do appreciate Mr.
5 Mauldin's characterization of what our case is, and what we
6 need. We do need it. And, as a twenty-seven-year prosecutor,
7 I know when I need evidence and when I don't need it.

8 And my analogy that I would point the Court to is if this
9 Defendant had been shot and left Greenville County and was
10 riding on the motor scooter dripping blood from here to
11 Anderson County leaving us a blood trail all the way along to
12 the point he was finally captured. Surely the argument would
13 not be we could not collect the blood as we go along to pursue
14 his continuing identity because the two-hour period is
15 extremely critical here.

16 It's not something that benefits or helps in excluding
17 this evidence. It's something that makes this evidence
18 admissible. And that is no one, other than him and his
19 girlfriend, can account for their whereabouts for two hours.
20 Therein lies the basis of reasonable doubt.

21 I can assure you that Mr. Mauldin is not going to concede
22 in front of this jury that this is a ballistics pattern. And
23 he is not going to concede that the person on the motor
24 scooter is the same person in the Jeep and in the utility
25 truck when he was arrested.

1 So, what he's really saying is Judge, they've got too
2 much evidence. Let's take a little bit away from them to give
3 me a little wiggle room here.

4 The point is we need to establish clearly and concisely
5 to this jury, to cover that two-hour break, that the person in
6 that car and in that Jeep is the same person who possessed the
7 murder weapon at the crime scene and intended to commit this
8 act.

9 So, our intent is -- the evidence of intent is to tie the
10 gun to the person who is free from view for two hours. And to
11 do that, we have got to -- because of the comings and the
12 goings and the changing of vehicles and who's getting in and
13 who's getting out, the location of that gun and the shells
14 that are dropped along the way in the roadway and the shells
15 that are collected in the vehicle are highly probative to the
16 identity of the individual who shot the trooper.

17 And there's just no way that you can say in the
18 beginning, yes, you can identify the shell casings found in
19 Greenville County beside the dead trooper's body, but you
20 can't show the same shell casings as he's firing going down
21 the road in a car that's similar and clothes that are similar
22 but no eyewitness identity here. No eyewitness identity in
23 this case and no concession.

24 If they want to concede it's him and they want to concede
25 the scooter's his and they want to concede it's a ballistics

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1 match, then we won't have all of this. But until that
2 concession comes, I got to prove that the person they pulled
3 out of that Jeep, when there are two of them in possession of
4 that gun, is it's the same gun that's tied to the trooper
5 killing ballistically, then we will present that.

6 But I want to show all along the way that that gun was
7 being fired. And those officers can testify to one cogent
8 point and that is that the Defendant, in the right hand
9 passenger's seat, a male, had a gun and was firing it out the
10 back window of this car. And that is critical evidence
11 because when we get to the end, there is -- there is the gun.

12 Now, I think it's clear it goes to identity because I
13 don't know any other way we can establish identity because
14 we've got a two-hour gap. He says, you know, we haven't got
15 him fleeing. Well, you -- the guy fleeing.

16 I also submit Your Honor, flight -- the degree of flight,
17 the degree of the evidence to flee, what this individual goes
18 to, the extent, is evidence that is probative of his identity
19 of the perpetrator of this crime. This is not somebody that
20 hopped in the car and drove home and went to his house and sat
21 down and turned the T.V. on and propped his feet up and had a
22 beer.

23 This is the Defendant who got into a car and to avoid
24 escape, tried to kill fifteen other cops. And that is all
25 this is about is identity to show the degree to which he was

1 going in his flight.

2 I think in the last part where he's talking about intent,
3 the idea that you can separate Greenville County from Anderson
4 County, it can't be separated. It just can't be separated
5 because the whole entire area of the Upstate was part of the
6 manhunt. Everybody was looking for this individual.

7 There is a tag number. We have a tag number. It's on
8 the vehicle, but for two hours nobody knows where he is or if
9 the individual in that Jeep when it stopped, the male, is the
10 same one that was on that scooter, fingerprints, that sort of
11 thing. We can't make that burden, Your Honor, without the
12 intervening acts.

13 It's unfortunate that that's where it is, and it's
14 unfortunate that he raises this issue as a legal issue in the
15 sense that it is a difficult -- I mean -- not difficult. But
16 it's got some basis in law under Lyle. But the point is,
17 that's the only evidence we've got. We didn't create it. He
18 created it. We take advantage of it, and we absolutely have
19 to have it. Otherwise, we're not going to be able to
20 establish. You're going to open a whole can of reasonable
21 doubt if we don't have this continuing pattern.

22 Thank you.

23 THE COURT: Let me ask you something, Sir. And, if this
24 is an improper question and I'm not entitled to know, it
25 doesn't hurt my feelings for you to tell me. And the reason I

1 ask this is based on the motions, the hearings in the various
2 counties, I think I have a pretty good understanding of what
3 the State contends the facts are.

4 But I have some reservation about my degree of knowledge
5 because in this case, unlike others, you've simply given the
6 case file to defense counsel. So, there's been nothing for me
7 to review to ensure that Grady's been complied with etcetera.
8 So, I'm out of the loop. I'm not asking to be in the loop,
9 and I preface my question with that fact.

10 MR. ARIAL: Sure.

11 THE COURT: The ballistics information that relates to
12 shell casings or otherwise that were seized at or near the
13 time, and I'm talking about the immediate, physical area of
14 the arrest of the defendant, do those -- do the scientific
15 testing, the ballistics information, does it show a match or
16 strong evidence from the State, vis a vie, the shell casings
17 next to the trooper's car? And, if I'm overstepping my
18 bounds, tell me.

19 MR. ARIAL: That's why I have orders. And for point,
20 should we be mindful of the fact that the press is here, but I
21 can -- I can lay the whole thing out for you. But it's going
22 to be read in the Greenville News in the morning and on every
23 other T.V.

24 THE COURT: That's a fair comment, and I think I've
25 allowed both of you a chance to respond.

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1 MR. ARIAL: I'd be more than happy to answer that, and I
2 can give you a very clear and concise answer.

3 MR. MAULDIN: Could you give me just one opportunity to
4 read this stuff I'm being handed before you rule?

5 THE COURT: I'm not going to rule. I'm going to ask you
6 something because I'm not ready to rule. This is an important
7 issue.

8 MR. MAULDIN: Yes, Sir.

9 THE COURT: Both sides, I think, make good compelling
10 arguments. It's a tough issue, and I want to think out loud
11 with you to get the benefit of your analysis on both sides.

12 MR. ARIAL: So, we're going to leave that question,
13 right?

14 THE COURT: I'm going to let him read that, and then I'm
15 going to go back to him.

16 MR. ARIAL: Okay.

17 THE COURT: And I understand perfectly your reasons not
18 to answer.

19 MR. ARIAL: Let me -- I will respond in this regard just
20 a little bit. We are keenly aware and have been since we
21 began preparation that there would be issues limiting the
22 conduct that would be appropriate. It is not our intent from
23 a -- and I am going too far here, but I'm going to do this for
24 the Court. But it is not our intent to belabor the Anderson
25 situation.

1 And, in fact, it is my concern, and I have expressed this
2 to my team in trial preparation, that the belaboring of that
3 is going to change where the focus is. The focus is here.
4 The crime is here. What takes place in Anderson -- we are not
5 interested in introducing a barrage of evidence from Anderson
6 County indicating crimes in that area. That's something to
7 deal with over there.

8 What we're interested in is only the very limited, and we
9 have culled and culled and culled the potential witnessed down
10 to a very few, but they are those necessary to keep a constant
11 vision of this vehicle and its activities. And that is what
12 we've cut it down to in the recognition of the fact that we're
13 not interested in presenting a whole overwhelming thing of
14 assaults and firing and that sort of thing.

15 But there is going to be that evidence presented, still
16 in what we have.

17 THE COURT: Mr. Mauldin, if you're dying to say
18 something, go ahead and say it and then I'll ask you.

19 MR. MAULDIN: Well, I would prefer to do that because I
20 think you're capable of remembering your question. I would
21 just lose it completely.

22 One thing of course that you have to remember, at least I
23 feel that this memorandum, I would hope has brought to the
24 Court's attention, is that Lyle essentially states that the
25 exception of these is -- requires that this be the only way.

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1 You know, that it's not like this well Lyle let's you do
2 this, and Lyle let's you do this. I think that Lyle
3 essentially stands for the idea that it's going to be a very
4 selective situation. It's going to be up to the government to
5 show that they must have it and that they're not other
6 alternative methods.

7 And, I think that's something I wanted to remind the
8 Court. That's the only -- the only way they could do this
9 would be by use of these other crimes or other evidence is the
10 only way they could carry their burden to make the exception
11 survive.

12 The other point that I'll make in general terms, Your
13 Honor, is regarding the -- this ballistics situation. Let's
14 take not this crime but some other offense. And let's say
15 that the period was not two hours but a month. And let's say
16 that the ballistics casings weren't spread over a twenty-five
17 mile area but a five hundred mile area, casings everywhere.
18 Let's assume for a moment for the purposes of this legal
19 question that we've just got this unbelievable sequence.

20 The match question is not whether the casings on Highway
21 187 at the intersection of such and such matched this gun and
22 matched the scene in Greenville or whether the casings at
23 Carey Lane where you turn in match or whether the casings in a
24 corn field match.

25 The question is whether the SLED agent or the forensic

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1 expert took the weapon and fired it into jelly. That's really
2 the -- it either matches or it doesn't match. It could be
3 matching all over the county, but the match is the match. And
4 so I encourage -- you know, I know what the file shows and
5 says, and it just is -- to say that it makes it more of a
6 match for it to be matching all the way down the highway is
7 just ludicrous and unnecessary under Lyle.

8 Now, whatever question, Your Honor.

9 THE COURT: Listen, both of you make good points. 404B
10 is a rule of exclusion, not inclusion and you are correct that
11 the State has a fairly heavy burden under our case law. I'm
12 not entirely convinced this is a State v. Lyle or 404B issue.

13 Mr. Mauldin, I agree with you as to the issue of flight
14 and intent, but I think the Solicitor makes a compelling
15 argument on the issue of identity, whereby pursuant to your
16 request we're going to dictate to the State the quantum of
17 evidence that it may introduce as to the issue of identity and
18 it may be the best way to handle this.

19 And I know the logistical problems because if I don't
20 rule in finality, which I don't like to do with a motion in
21 limine, and there may be logistical problems with having
22 witnesses change their lives to be available and end up not
23 being used. I know that's an inconvenience which I regret,
24 but it may be best to handle this once the jury is selected so
25 that we can hit the bull's eye with our comments.

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1 Beyond that, and I'll use your word, Mr. Mauldin, an
2 alternative. I gather that when a vehicle is seen in county B
3 that there's some similarity between the vehicle in county B
4 that was seen in county A. And in my mind, there's a nexus
5 between the two that relates to the issue of identity.

6 And without going into the blow-by-blow of what happened
7 and the number of intervening charges from that point of
8 contact initially in county B of the vehicle of a similar
9 description. I think it's a sufficient nexus what transpired
10 earlier, based upon what I'm told, to be relevant.

11 I also think it's relevant that without going into detail
12 as to specifics in the array of horrors that are alleged,
13 that very succinct testimony be offered that the individual or
14 individuals in that vehicle were later apprehended and that
15 vision was not lost and that certain items were found in the
16 physical proximity of the individual.

17 And, for lack of a better word, a very succinct and
18 sanitized presentation because if it's for the purpose of
19 identity that only that portion that relates to identity
20 should be admitted, and I do believe there is a substantial
21 403 issue if we go beyond that.

22 So, those are some general comments to hopefully give you
23 an idea of what my thoughts are. But to deal with it in more
24 specificity just prior to trial. If you want more
25 specificity, I'll be glad to share it with you. And I'm

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1 hesitant for several reasons which you have already indicated.
2 But my concern is I'm not on the learning curve of exactly
3 what happened like I have been on prior occasions when I have
4 poured through a case file.

5 Does counsel want any other clarification or pursue this
6 issue further?

7 MR. MAULDIN: A couple of things.

8 THE COURT: Yes, Sir.

9 MR. MAULDIN: Starting with your basis that you are not
10 up to speed, I would suggest and -- trust that I am up to
11 speed. And knowing that difference, I would like to suggest
12 to the Court that we be given the opportunity to submit to you
13 under seal not publicly, the reasons why and the evidence that
14 we believe clearly is admissible to show intent in this.

15 And, secondly, to ask because when you use the phrase,
16 "succinct and sanitized," those are obviously terms that are
17 directed at creating problems for me and because your version
18 of sanitized and mine are obviously going to be different.
19 I'm adamant. I've got a mission here. It's my job to do what
20 I think is right for the people of this county. Your job is
21 different.

22 So, my succinct and your succinct are going to be
23 different, and I don't want to be set up to already trip over
24 a hurdle that I believe -- if we don't -- if we allow this
25 sort of temporary thought exchange ruling to transpire, then

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1 I'm afraid we're getting -- we get stuck in a mode where you
2 might later, if you learn something, have a different view of
3 it.

4 So, what I'd like to do is be able to answer that
5 question under seal and submit other reasons prior to that or
6 prior to trial as to the issue of the intent aspect of this.

7 THE COURT: I'll be glad to consider that.

8 MR. ARIAL: Okay. And there was one other point. I
9 can't remember what it was right now.

10 THE COURT: But that deals with the purpose for which it
11 is admissible.

12 MR. ARIAL: Correct.

13 THE COURT: As to exactly what is admissible, I think
14 I've conveyed my thoughts, hopefully, sufficient enough to
15 give some guidance and something that we can deal with more
16 specificity before the jury is selected.

17 MR. ARIAL: All right. The other -- oh, I know the other
18 issue. I want to make -- just crossing that bridge one more
19 time at pretrial. It's not your anticipation that we would
20 have some sort of proffer in front of defense counsel?

21 MR. MAULDIN: No. I would analogize it to how we would
22 do the victim impact.

23 MR. ARIAL: Okay. That will be fine. And I assume that
24 what we --

25 MR. MAULDIN: You know -- well, Judge, witness fifteen

1 down in county B is going to say so and so.

2 MR. ARIAL: Right.

3 MR. MAULDIN: And, I think you understand perfectly, and
4 I appreciate your conservativeness. This case -- that is an
5 adjunct perhaps to establish an element in this case. If it
6 takes one day to try county A, and we'll put three days of
7 evidence on county B, that's --

8 MR. ARIAL: We don't want to go there, but where I don't
9 want to go -- and as an advocate -- where I don't want to go
10 is expanding because I know where they're going. And the less
11 of this I get in -- there's not going to be concessions at
12 trial. It's going to be reasonable doubt or you did not
13 prove.

14 And I've had this situation come up before you in another
15 very high profile case in which the defense lawyer took gross
16 disadvantage of the redactive portions of a statement and made
17 some arguments to the jury that were grossly unfair in his
18 representation because he knew, in the actual evidence, they
19 were there.

20 THE COURT: Was that me?

21 MR. ARIAL: I'm not saying -- no, not you.

22 MAULDIN: Was that me?

23 MR. ARIAL: No, no.

24 MR. MAULDIN: All right. I was feeling nervous.

25 MR. ARIAL: But, I just don't want to get there that I

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1 could -- you and your good intentions cut it out, and then I
2 hear it in closing arguments. So that's what I'm --

3 THE COURT: I understand you have to prove something.

4 MR. ARIAL: Yes.

5 THE COURT: And I want you to have the right to prove it.
6 And you to come at me as an advocate with everything that
7 you've got. Mr. Mauldin come at me as an advocate. And,
8 hopefully, I can find out what the law is on (inaudible) and
9 fulfill my mission.

10 MR. MAULDIN: We acknowledge, Your Honor, that with
11 regard to the evaluation of the merits and the positions that
12 the ability of the State to prove an element of their offense
13 is a critical point. And the question then becomes are they
14 proving it by other matters as well. And it's going to be
15 hard to -- we know how they can prove things because we got
16 the file.

17 And I know his other options, and so I do intend to
18 vigorously try the case. Now, the other point then, I believe
19 what Bob's asked for is an opportunity to present you with
20 something, a memorandum regarding the necessary elements of
21 the proof of the element intent as support for his ability to
22 bring in this other information, if I'm following right.

23 Is that -- but then we talk about before trial and after
24 the jury is sworn and all, we would want -- if there's
25 actually going to be an exchange of pleadings, we're operating

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1 on a short window.

2 I would think that really does need to move forward
3 because if we choose a jury, sequester the jury, and then he
4 is allowed to submit a memorandum, then I'm -- I have no -- I
5 have no ability to make response other than just to object.

6 THE COURT: Can you submit something next week or is that
7 doable?

8 MR. MAULDIN: At least by the Monday, whatever the --
9 that Monday before the -- that would be about the 27th or 28th
10 or something.

11 THE COURT: Let's see. I think that's the 28th.

12 MR. MAULDIN: All right. If it's the 28th, then if I've
13 got a real problem with it, Your Honor, I would have, you
14 know, four -- a couple of days to put my attention on it. I'd
15 be able to get out subpoenas or whatever. But if it's after
16 the jury's sworn, I'm going to be in this courtroom with you
17 and all these other folks. So it really does -- we do want
18 some opportunity to respond to such a memo.

19 MR. ARIAL: The only problem with the 28th is -- there --
20 it's physically unable -- I'm not going to be here. I'm not
21 going to be in town on those days. I'm going somewhere to get
22 -- finally prepared, and I'll be back on the 30th to review
23 and sign -- I mean, it can be done while I'm gone, but I want
24 to look at it. And I think it'd be -- can we say Wednesday?
25 I think that's the 30th? I don't think it's going to be --

1 THE COURT: Why couldn't something be faxed to you.

2 MR. ARIAL: Well, we can. But, I think it's going -- I
3 can tell you right now that we're not even going to look at
4 until -- we couldn't even start on it until Wednesday of next
5 week because every other day between here and Wednesday is,
6 including the weekend, is full.

7 And it's not going to be something -- you know, I don't
8 want to just throw you something together and throw it over
9 here like -- but, I mean, if you tell me to have it ready
10 Monday, we'll get it ready Monday.

11 MR. MAULDIN: We're talking Monday week, Your Honor, not
12 three days from now. We're talking ten days from now.

13 THE COURT: Well, let's go back. You volunteered ten
14 minutes ago to submit something and now we're talking about
15 something that I didn't even request.

16 MR. ARIAL: Right.

17 THE COURT: And I'm fighting a battle over something I
18 really don't even want to. I understand this issue, and I
19 understand, I believe, the law that deals with it. What you
20 want to submit is some writing that goes beyond the issue of
21 identity which I think there's a good deal of merit to and
22 which would render some evidence admissible. And you want
23 that same evidence, whatever it turns out to be, also be
24 admissible for intent.

25 MR. ARIAL: Well, there would be more evidence. It may

Hearing

1 not be just -- that's what I'm saying. There may be
2 additional evidence.

3 THE COURT: Well, I would think that you would have a
4 good idea right now because -- you've already told me. You
5 understand the purpose. we're here to try this case and not
6 the other county. And because of that your presentation is
7 just going to be right to it.

8 Well, I'm not asking for a treatise. If you want to put
9 something in writing, just do it. I'm more interested in what
10 you intend to present, not why you intend to present it. I
11 think you clearly have a right to present some evidence in
12 that regard as to the issue of identity.

13 The thing that I struggle with because both of you make a
14 good argument, it's a difficult legal issue presented as a
15 matter of evidence. I struggle with exactly where the
16 perimeters of what is admissible, not why it's admissible.
17 And --

18 MR. ARIAL: Yes.

19 THE COURT: It would be beneficial for me, and probably
20 Mr. Mauldin, just to get a sense of this is what I would
21 intend to present.

22 MR. ARIAL: Well -- and I'll try to do that. The problem
23 that you have is I know he thinks he knows what I'm doing, but
24 he might not. And the more I put it in writing and give it to
25 you and give it to him, the more he gets --

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1 THE COURT: Don't put anything in writing.

2 MR. ARIAL: No. I've got to put it in writing because I
3 want to do that because we are not going to sit here and
4 argue, but --

5 THE COURT: You do it for your benefit, you know. But
6 before we begin this trial, I'll understand the significance
7 of this issue and the very valid points, and the 403
8 substantial issue that is presented.

9 Conversely, I represent the need of the State to have the
10 ability to prove the issue of identity. I'm not going to
11 preclude you and make you put on a skeleton case that allows
12 them to argue we don't have the right guy.

13 MR. ARIAL: All right.

14 THE COURT: I understand that.

15 MR. ARIAL: We'll do --

16 THE COURT: We've been going since 9:00. I know we took
17 a ten minute break. I've got a jury that's got a verdict,
18 forty-five minutes ago. But, I want to finish issue right
19 because the rest of the motions, I think, will fall into
20 place.

21 MR. MAULDIN: Can I have fifteen seconds, please?

22 THE COURT: Yes, Sir.

23 MR. MAULDIN: I am -- if I am understanding, the Court is
24 inclined to allow information relating to the identity element
25 of this offense. And what Mr. Arial then -- I thought I

1 understood was he wanted to submit to you information that
2 will allow him to bring in information regarding the intent.
3 See there?

4 So, I want to make sure my wires aren't crossed when I'm
5 anticipating trying this case. I view the information out of
6 Anderson, if at all, is being considered to be allowed by you
7 as to the identity element.

8 And I'm going to tell you right on this record why I'm so
9 alarmed and nervous. We put in this and put in this and
10 Plaintiff's identity and then argue to that jury all this
11 intent business. Now that is not -- I'm going to try to not
12 let that happen to me. And so that's where I'm trying to go
13 in this motion.

14 Thank you, Your Honor.

15 THE COURT: I am most persuaded by Mr. Arial's argument
16 on the issue of identity. I am not foreclosing him to educate
17 me on why it is otherwise admissible.

18 MR. MAULDIN: Okay.

19 THE COURT: And I think I've made my positions and my
20 respect in regard to the merits of both sides on this
21 difficult issue, and that's why we spent so much time with the
22 other motions. We've obviously not taken --

23 MR. ARIAL: We did concede on the first half of that
24 motion because we -- if he didn't argue, it's just for the
25 record we conceded that we have not intent on bringing those

1 offenses in our case in-chief. That was part of this --
2 voluminous.

3 MR. MAULDIN: We have gotten their written response, Your
4 Honor.

5 MR. ARIAL: Right.

6 THE COURT: Let us take a break. If you all don't mind,
7 if we could have as long as twenty to thirty minutes. I've
8 got to receive a verdict. If there's a guilty verdict, I've
9 got to precede to sentencing, hear from both sides, etcetera.

10 MR. MAULDIN: Yes, Sir.

11 THE COURT: And then give us a chance to take a break.

12 MR. MAULDIN: Yes, Sir.

13 THE COURT: Thank you for your patience.

14 MR. MAULDIN: So, you wanted twenty to thirty, Judge, you
15 said.

16 THE COURT: Yes. I would say we won't start before
17 12:30. Is that okay?

18 MR. MAULDIN: Yes, Sir.

19 (BREAK)

20 THE COURT: We're back on the record. Thank you for your
21 patience. Mr. Mauldin, what I have next is a series of
22 motions that were filed on January the 14th.

23 MR. MAULDIN: Yes, Sir.

24 THE COURT: And some of these motions I view as motions
25 that can be handled summarily. So with that in mind, you may

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1 proceed.

2 MR. MAULDIN: Well I, would you like to proceed, Judge,
3 since summarily means you were getting ready to go ahead and
4 tell me which ones to mark off or --

5 THE COURT: Motion for reasonable trial schedule,
6 granted.

7 MR. MAULDIN: All right, Sir.

8 THE COURT: But that's just something that the Court does
9 in every case, and I hope I don't do anything that's
10 unreasonable in terms of the trial schedule. And I'm going to
11 do my best to ensure that a reasonable trial schedule is
12 followed. If you want me to go down the list and tell you --

13 MR. MAULDIN: Well, I just -- why don't I just go down
14 through and you can respond as I get to them if that suits
15 you. I promise I won't take up any more of the Court's time
16 than necessary.

17 THE COURT: I have a proposed ruling for everyone of
18 these except for one.

19 MR. MAULDIN: Yes, Sir. And I would -- perhaps I can
20 change your mind here and there.

21 THE COURT: Absolutely. And I give you that opportunity.

22 MR. MAULDIN: Your Honor, the next motion on the list, it
23 would be two on your list there on the January 24th motions,
24 to disqualify jurors that were acquainted with the victim or
25 his family or other persons that would -- that the State would

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1 know would be offered as witnesses particularly as to
2 witnesses of aggravation. We make that motion, Your Honor.

3 THE COURT: I understand the basis for the motion, I
4 think the State's response is technically correct. Motion is
5 denied. But through a very careful voir dire, if there is
6 anyone associated or acquainted in any fashion with any of the
7 participants, the Court will do its best to ensure that a
8 juror could serve in a fair and impartial manner, means
9 sensitive to the fact that the case may involve a sentencing
10 hearing. Next motion.

11 MR. MAULDIN: Your Honor, the motion regarding
12 relationships or prior associations with the Solicitor or
13 members of his staff, of course, that would apply as well. We
14 understand that that would be mutual if ruled at all, and we
15 certainly accept that.

16 But we want to -- and I gave you somewhat of a very quick
17 example. What I'm hoping would happen here is not that we
18 would wait until the juror comes into the courtroom,
19 necessarily. If it's somebody that we know on the list, it is
20 someone who has a direct association or connection with one of
21 the litigants, it seems like that would be part of what we're
22 getting ready to go through here shortly about these juror
23 qualifications.

24 We need to kind of bring that out as early as possible
25 and not withhold that while we're working up all these efforts

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1 to pick a fair and impartial jury.

2 THE COURT: We can discuss this, and let me tell you why
3 I would be inclined not to require that affirmative duty on
4 the front end. Just as the State, again, as correctly pointed
5 out, there are ethical duties that require Counsel to disclose
6 to the Court such relationships. But that's done in the
7 context of once a juror has been given the opportunity,
8 unequivocally, to respond to any such relationship.

9 It's been my experience that the failure of the juror to
10 respond is sometimes a telling thing if we give them the
11 opportunity in the first instance. And if we do a preemptive
12 strike in that regard we may be missing some hidden agenda on
13 the part of that juror. If you disagree with that, I'd be
14 glad to hear from you.

15 MR. MAULDIN: Well, I certainly see the strengths of that
16 position, Your Honor, regarding a hidden agenda, for example.
17 If a juror mislead the Court or litigants about their
18 association with one of the litigants, then that certainly
19 would be bad faith, to say the least. So I do think that
20 you're right there.

21 I just -- I'm not going to give up on my idea of
22 preemptive, but I do acknowledge the value of what you just
23 described.

24 THE COURT: And I thought about it in the context of
25 where I do know lawyers and don't know lawyers. If I had the

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1 slightest inkling that I was dealing with a lawyer who may
2 play that issue close to the vest to get an edge, I might put
3 an affirmative duty by way of court order in addition to an
4 ethical strength that already exists.

5 That issue doesn't exist in this case where I know
6 Counsel, have known them for a substantial period, and am
7 confident that they are very professional and ethical. So I
8 know on the back end that if a juror does not respond, I know
9 that Counsel in this case will.

10 Next motion, please.

11 MR. MAULDIN: The motion regarding Brady information
12 regarding the knowledge on behalf of the -- knowledge by the
13 State that would not necessarily be available to the Defense
14 regarding that type of information to jurors.

15 Obviously, we recognize our obligation to do whatever
16 investigation time and money would allow us to. I'm just
17 talking about information that they may have that would by
18 likely be unavailable or unknown to the Defendant.

19 THE COURT: This is one that I didn't write anything
20 down. I -- and maybe this has come up before. I'm not
21 familiar -- and the State sort of confirmed my suspicion. I'm
22 not familiar with application of Brady of some duty to
23 disclose about jurors.

24 MR. MAULDIN: Do I need a -- I understand, Your Honor.

25 THE COURT: I want to do what's right. And I just need

1 to be educated. I mean, I learn something new every day.

2 MR. MAULDIN: Well -- and I can't cite specific
3 controlling authority for this novel position that I sometimes
4 choose as I sit before by computer trying to figure out how to
5 save these peoples lives. So perhaps this is beyond the reach
6 and beyond the meaning of a true Brady.

7 I don't know if I actually -- yeah I did. I did cite
8 Brady in this motion. I was wondering whether I actually
9 cited it specifically. So, I can't support it anymore than
10 the four corners of the motion, Your Honor.

11 THE COURT: And I'm just not flippantly denying it. I
12 guess there could be some extreme example whereby information
13 about a juror is known and is directly related to the case or
14 an issue in the case. And there may be some due process
15 argument that requires disclosure. And I'm not going to just
16 tell the State to share with you what they may have heard or
17 know about a juror.

18 MR. MAULDIN: And the real far reach, the Prosecutor will
19 recall, that I know he didn't know anything about this because
20 he was surprised as I was when we had a juror on the panel who
21 came in and ended up being an eyewitness to the crime. And,
22 of course, that witness was excused and then subpoenaed by us
23 and actually called in the trial of the case.

24 So, obviously, we know those are the most extraordinary
25 circumstances, but I did feel like for the record the motion

1 should be filed and ruled on.

2 THE COURT: The motion is denied. But I don't want the
3 record to think that I'm not sensitive to the concerns raised
4 by the motion, concerns that I think can be elevated both by
5 ethical rules which these attorneys will comply with fully and
6 a proper and thorough voir dire process.

7 Next motion.

8 MR. MAULDIN: Next motion, Your Honor, is the motion to
9 prevent death qualification, and I'll consolidate both number
10 five and number six, the next one regarding qualifying
11 questions. I realize and acknowledge existing case authority
12 to the contrary on both these issue, but I wish only for the
13 record to make sure that the position of the Defendant in this
14 case is clear both under the South Carolina and United States
15 Constitutions.

16 THE COURT: Thank you, Sir. Those motions are denied.

17 MR. MAULDIN: All right. The next motion, Your Honor,
18 deals with prejudicial security measures. I don't know what
19 the Court already has in mind, but I'm sure you do have a plan
20 considering the fact that the victim in this case was a law
21 enforcement officer and that we have to take extraordinary
22 steps to make sure that there is not an air of law enforcement
23 dominance in the courtroom for one thing.

24 And then the other point that I may -- is the -- if the
25 State's position is -- for example, the future dangerousness

1 and the aggravating evidence. It is easy to convey in a
2 subliminal message to the jury about how, quote, dangerous,
3 end quote, the person might be by just surrounding him with
4 security. We request to be relieved of that. We request that
5 that not be used as a -- an effort to unreasonably influence
6 the trial fact and the case, Your Honor.

7 THE COURT: Well, let me tell you what I am proposing. I
8 have met with Sergeant McCall, head of security. And I would
9 on my own insure that appropriate but not unduly prejudicial
10 security would be available for multiple reasons. There will
11 be three uniform deputies which are typically present in every
12 trial.

13 Sergeant McCall or another supervisor may come through
14 the courtroom periodically but would not be permanently
15 stationed. There would be no uniformed officers behind the
16 Defendant or in the immediate area.

17 It would be a plain-clothes officer who would accompany
18 the Defendant and be in the area of the Defendant. There may
19 be other plain-clothed officers in the courtroom as well but
20 only three uniformed deputies which is the typical situation
21 in a trial.

22 MR. MAULDIN: All right, Your Honor. The next motion is
23 essentially a --

24 MR. ARIAL: May I address something there just for the
25 Court's edification and make sure there's no problem. You --

1 I noticed you had met with the SLED people who are responsible
2 for the jury. You need to also be aware that SLED agents who
3 are involved in the investigation and working in this case --
4 there needs to be some serious attention paid to make sure
5 there's no cross-contamination.

6 THE COURT: And I was aware of that and an agent who
7 typically works these will have no involvement whatsoever
8 because of that.

9 MR. ARIAL: Yes.

10 THE COURT: There are additional safeguards, and I have
11 already met with the lead agent --

12 MR. ARIAL: Okay.

13 THE COURT: -- as well as his supervisor. And they are
14 very familiar with the rules that apply in terms of
15 maintaining logs. No contact whatsoever or communication
16 regarding the case, any issue in the case, and I have worked
17 with most of the agents before and find them to be very
18 professional. If there's some other safeguard --

19 MR. ARIAL: Well, my only concern there is that they may
20 not know who worked this case. I think that I know who worked
21 it, but I'm not certain that I've got every agent who may or
22 may not have been called out there. That's my only concern
23 that halfway through the trial we find out that, well, one of
24 the officers -- just nobody asked.

25 So, I think just if you cross that bridge we're okay. I

1 think they ought to ask each one of them if they were in
2 Anderson County when this happened.

3 THE COURT: Well, I'll follow up on that. They
4 understand that SLED had a presence. I think at the time of
5 the arrest or thereabouts.

6 MR. ARIAL: All right.

7 THE COURT: No agent who had anything to do with that can
8 be associated with the security team.

9 MR. ARIAL: That's all I wanted.

10 THE COURT: But I'll follow up on that.

11 MR. ARIAL: No. If you've covered -- I just want to make
12 sure that you were aware of that.

13 MR. MAULDIN: And let me follow up, Judge, to the extend
14 appropriate. We do enter an objection to the use of --
15 identified use of SLED agents to manage the jury when SLED
16 agents are going to testify whether they're the same or not.
17 In other words, associates. So we do enter that objection.

18 We obviously object to any person, whether it's an agent
19 or not, who had any dealing direct or indirect with this case
20 being involved with this jury. So, that's a blanket across
21 the board.

22 THE COURT: I agree with that.

23 MR. MAULDIN: And I don't want to be viewed as having --
24 as offering the Court alternatives necessarily, but we believe
25 that the management of handling the jury should be independent

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1 of the case or witnesses in the case. Now, independent, I
2 guess, can be interrupted a couple of ways.

3 Number one, an independent SLED agent is, I guess, a
4 stretch. But the jury has got to not know that they are being
5 managed by the same agency that testifies in the case.
6 Whether they are given -- even to -- and I hope -- even if
7 they are given information that could be less than clear and
8 true, they need to not be given information that these are
9 members of the SLED department. So however the Court wants to
10 remedy it.

11 THE COURT: That's an idea.

12 MR. MAULDIN: Yes, Sir.

13 THE COURT: They could just be referred to as --

14 MR. MAULDIN: Independent agents.

15 THE COURT: Independent security. They could remove
16 their SLED lapels if necessary. I think they have these
17 little lapels they wear.

18 MR. MAULDIN: And they would be instructed not to
19 disclose to jurors or participants in the case they were
20 members of SLED. Now, I'm not offering that as an
21 alternative, Judge. I'm just saying we're sensitive to those
22 problems as part of this motion.

23 THE COURT: Thank you, Sir.

24 MR. MAULDIN: Next motion, Your Honor, is, again, as I
25 mentioned, a spinoff of this case. And that is the presence

1 of law enforcement in the courtroom.

2 We've dealt with the security measures in the courtroom.
3 This is as it relates to interested parties, witnesses,
4 associates, or otherwise that are not on official duty in the
5 courtroom as security or what have you. This is here in a
6 capacity as attending the trial, interested in the issues,
7 spectator, whatever, witness, whatever.

8 We do not take the position that a witness at the time
9 they testify must necessarily be out of uniform. I think
10 that's unreasonable for the Defense to try to take such an
11 extreme position. We do take the position that people who are
12 in the courtroom as observers or spectators should be allowed
13 to be in uniform. And so that's essentially the essence of
14 that motion.

15 THE COURT: I think the State consented to the motion.
16 Their only caveat was once the witness had concluded his or
17 her testimony for the witness to be able to stay and watch the
18 proceedings.

19 MR. MAULDIN: As long as that doesn't violate any
20 sequestration, recall of the witness, as long as the witness
21 is under subpoena that might be a problem, Your Honor, for
22 purposes of witness management to -- I haven't had that
23 problem in cases in Greenville County with this Solicitor.

24 But I made this motion as much for this record so that if
25 a problem comes up I can say to this Court, I told you so.

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1 And so I guess maybe that's all I'm going to be able to do.

2 THE COURT: All right.

3 MR. ARIAL: I'd like to put on the record that I
4 appreciate that compliment. They come very few and far
5 between, and I accept it.

6 THE COURT: I've also talked to Sergeant McCall, and I
7 think it would be entirely appropriate subject to the
8 Solicitor's discretion as to witnesses potential recall. But
9 once the witness is excused after testimony, if that witness
10 wants to stay and observe in uniform, I see no problem with
11 that whatsoever.

12 In fact, I'm going to designate a row, not the front row
13 in front of the jury but several rows back, probably midway
14 back for uniform officers in that situation to have a seat.

15 MR. MAULDIN: Your Honor, the next motion I understand is
16 by consent regarding jurors and bailiffs contact. The next
17 motion, Your Honor, relates to the management of the
18 courtroom.

19 In prior cases with this Court, we have had certain areas
20 that were to remain vacant. Certain areas for press or such,
21 and, for this record I reflect back to a case four or five
22 years ago where a quote in the paper -- after the jury had
23 been released, one of the jurors comment on the fact that they
24 sat four feet from the family of the victim during the entire
25 trial.

1 That obviously is something that we would never have
2 imagined would have had that big of an effect but came upon
3 the same in a flash. Might as well take care of it in
4 advance.

5 We are asking that certain areas between the jury -- for
6 example, in the courtroom eight there's space between the box
7 and the rails. It's very small. It's not nearly as big as
8 here. But that the first row be vacant on both sides of the
9 court room so that it doesn't appear that anything unusual has
10 been done, certain rows for law enforcement, certain rows for
11 families. So I think we can do that.

12 And if I have an objection as to how it is done at the
13 time of the trial, I will enter that objection at that time,
14 Sir.

15 THE COURT: Thank you.

16 MR. MAULDIN: The next motion, Your Honor, and, again,
17 with all due respect to all parties, I'm going to allow this
18 motion to speak for itself and pass to the next motion. I
19 would hope that all parties both on the Defense and the State
20 side will take the necessary steps to manage the issue of --
21 and, for this record, the issue of the issue of the demeanor
22 of spectators in the courtroom if I can use that term, Your
23 Honor.

24 THE COURT: Certainly.

25 MR. MAULDIN: And that each would be called upon and

1 directed by the Court to take such steps as to preserve the
2 dignity of the Court.

3 THE COURT: It's well said. Thank you.

4 MR. MAULDIN: Your Honor, the next motion relates to the
5 placing of responsibility elsewhere other than on the jury.
6 This motion is made routinely because the law in our State
7 simply is never -- unless I hadn't read the most recent
8 amendment, there's still this recommendation business and that
9 really is not -- we're not a state -- we're not a court
10 overruled state. We're not a recommendation state. We are --
11 you sentence them, and that's what he gets. And I want the
12 jury to believe that and know that.

13 THE COURT: I understand that, and the jury will
14 understand that. Even if the charge, the term recommendation
15 is made because the statute provides that. You're able to
16 understand fully well that it is their responsibility. The
17 Court will follow their recommendation, and there will be
18 nothing to diminish the responsibility of the jury for somehow
19 shifting the responsibility to someone other than the jury.

20 MR. MAULDIN: And that directive is to the litigants,
21 both the State and the Defense; is that correct, Your Honor?

22 THE COURT: Right. And their response -- they
23 acknowledge what the law is and they will follow the law. I
24 mean, I don't grant the motion thinking there's some nefarious
25 thing coming from the State because I've never seen anything

1 like that coming from the State.

2 MR. MAULDIN: All right, Sir. Your Honor, the --

3 THE COURT: I think they would do the right thing in that
4 regard, and they acknowledge that in their memo.

5 MR. MAULDIN: The next motion relates to -- and I'm going
6 to turn back and look at the response very quickly because
7 apparently my brain is starting to go on these -- what they
8 agreed to and what they hadn't. The motion is to restrict the
9 use of the word murder.

10 And for purposes of legal principal let me put on the
11 record the point. The charge by the State as a government
12 entity is the offense of murder that is in our law, and it has
13 elements. It is inappropriate for the Solicitor or the
14 Defense, anybody, to solicitor directly or indirectly from a
15 witness responses that would call for that witness to either
16 through the question being worded or the answer anticipating
17 the answer regarding murder because murder is the legal
18 concept.

19 The State's response in saying that I'm wrong here
20 relates to the pathologist. I don't -- I've never heard a
21 pathologist testify that the person they examined was
22 murdered, not to this very day. They have said that it was a
23 homicide. They have said it was a homicide this, homicide
24 that, but they never use the word murder. So that's just not
25 a good example.

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1 It is inappropriate for a witness to draw the legal
2 conclusion that a murder took place until the elements prove
3 beyond a reasonable doubt. And any effort to use that
4 terminology in the courtroom is prejudicial to the Defendant
5 and improper.

6 THE COURT: I agree with you, and I think other portions
7 of the State's response are also accurate. I'm not going to
8 prevent the word murder from being spoken in the courtroom.
9 By that same token, as the State acknowledged in their
10 response there's not desire on their part to overuse that term
11 to achieve the very prejudice you seek to avoid.

12 I'm very sensitive to that, and I agree with you. A
13 witness can't get up here and start talking about the term
14 murder, and that's the ultimate issue presented during the
15 guilt phase. And, if that occurs, it will be -- any objection
16 will be immediately sustained, juror instruction if necessary.

17 I just don't foresee that as a problem. But if it is a
18 problem and it effects the ability of a fair trial, I wouldn't
19 hesitate to grant a mistrial.

20 MR. MAULDIN: Thank you, Judge. The next one, Your
21 Honor, is again another spinoff regarding terms, and I've
22 captioned this as toxic terms that are just simply commonly
23 used in a trial of a capital case in our State just as a
24 matter of custom or course. Over the years we just somehow
25 desensitized ourselves into just allowing ourselves to kind of

1 go along with this. And I'm trying to increase my level of
2 sensitivity so I do a better job for my clients.

3 We ask that -- and the two terms that come most quickly
4 to mind are death penalty trial and guilt phase. Death
5 penalty trial, that's not what really this is. It is -- that
6 infers that the death penalty is perhaps appropriate. It's
7 like we're -- again -- and perhaps this is somewhat
8 presumptive on my part about the vulnerability of people in
9 deliberating but why use death penalty trial when you can say
10 capital trial, capital case.

11 Obviously, at the beginning, the jury would be told that
12 by capital you mean the State is seeking the imposition of the
13 death penalty and that creates the classification of a capital
14 cases or capital trials. So, we offer that as an alternative
15 to the use of death penalty trial.

16 And this is particularly appropriate in voir dire where
17 they're continuing to hear these definitions and these
18 examples and the three types of jurors and all. They go out
19 and they're saying, Hey, I'm in a death penalty trial, you
20 know, and just -- it's inappropriate.

21 The other one, Your Honor, is guilt phase. And what
22 comes to mind there is I have never -- the only time I ever
23 heard that is when we do death penalty cases. It's the trial
24 phase is what it is, and then it's the sentencing phase is
25 what it is. It's not the guilt phase. It's like there's this

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1 assumption this guys guilty. We've got to go through this
2 step-by-step process to get where we can start thinking about
3 the death penalty trial.

4 I'm asking you to consider taking those out of your
5 vocabulary. I'm going to do that best I can to take them out
6 of mine. And tell him he takes it out of his, too.

7 THE COURT: I view this similarly to the previous motion.
8 The term death penalty will not permeate the trial. But,
9 under the same token, if that phrase is used -- I don't see
10 how it rises to the level of some error or prejudice. The
11 repeated use of -- where it permeates the proceeding, in that
12 event, your motion would have substantial weight.

13 But I decline to issue some injunction that the State
14 could not use the term death penalty in some context or the
15 State cannot refer to the actual trial as the guilt phase.
16 And to the extend that I'm not issuing a blanket injunction,
17 the record will reflect your exception to my ruling.

18 MR. MAULDIN: Your Honor, the next motion is for daily
19 transcripts of the voir dire proceedings and the State, I see,
20 does not have an objection. So I'm going to just hope that
21 that means that I win this one.

22 THE COURT: I hate to disappoint you. I don't have any
23 problem with it. I don't know who is assigned. I image Ms.
24 Koffskey will be assigned, and I don't know whether her
25 equipment is such in realtime whether she can provide daily

1 transcripts.

2 That doesn't mean the parties don't have access to what
3 has been said by a witness or prior witnesses. And the
4 parties, of course, may reasonably require the court reporter
5 to examine the prior testimony when necessary. We'll pursue
6 that and see if there's some mechanism for daily
7 transcription.

8 Quite frankly, given what the budget allotment is to the
9 court reporters, I don't think that many have the -- they have
10 to buy their own equipment, and very few have the ability of
11 what we call realtime when they produce it almost immediately.

12 MR. MAULDIN: Your Honor, the next motion is a motion,
13 for the record, for additional peremptory challenges. I
14 acknowledge the existence of the case authority regarding
15 setting the Defendant's strikes at ten for a case of this
16 nature.

17 We could only hope under those -- that the court, I
18 imagine, being bound by those rulings that we would go to a --
19 go extensively through the voir dire to determine legitimate
20 and meaningful use of those ten.

21 I'm not withdrawing my motion for additional because I
22 think it's due to the publicity, the nature of the events, the
23 September 11th incidents and any number of other factors that
24 play into this case we believe we are entitled to additional.
25 But, if we're not going to get additional we're going to have

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1 to do a very meaningful voir dire examination of these
2 prospective jurors.

3 THE COURT: Thank you. The motion for additional
4 peremptory challenges is beyond that provided by the statute.
5 It is denied.

6 MR. MAULDIN: One moment, Your Honor.

7 THE COURT: Yes, Sir.

8 MR. MAULDIN: Your Honor, I believe that covers the
9 pending motions.

10 THE COURT: All right. One thing, I want Counsel to
11 think about and perhaps meet with me next week, and if you
12 want it on the record we'll put it on the record. I want to
13 get your various thoughts of how to conduct jury selection.

14 You all sent me some proposal that you all had done on
15 another case. I haven't read the material. I've been too
16 busy reading motions and responses. So, if you could all sort
17 of educate me, not today on that procedure, so I can
18 understand exactly what it is. I also want to know what your
19 position is on strike as you go.

20 I'm hoping we can meet next week, both sides, if you want
21 it on the record that can be accomplished as well.

22 Also, I received a letter from Mr. Arial, desire to
23 submit an issue under seal. I'm going to initially permit
24 that.

25 Mr. Arial, if you want to pursue that, whatever it is you

1 want to submit, submit it. Do not file it. Submit it to me
2 and Mr. Mauldin at the same time. I will then respond by way
3 of letter or memo to you gentlemen as to how to proceed. I
4 may file it under seal with a cover letter that is not to be
5 unsealed until the commencement of the trial. I may also
6 require Mr. Mauldin, I don't know what it is for him to have a
7 chance to respond to it.

8 And if it requires a hearing and if that hearing needs to
9 be sealed, so-to-speak, with the transcript not available
10 until once the jury is sworn, then I need to give notice to
11 the press and have an advance hearing of what's happening so
12 they can file an appeal if they choose to.

13 MR. MAULDIN: Your Honor, in reading his letter, wouldn't
14 it be accomplished by providing to you the original and a
15 copy, and then allow you to do the filing under seal if you
16 saw fit.

17 THE COURT: That's fine.

18 MR. MAULDIN: All right.

19 THE COURT: Whatever's presented -- whether -- I'll file
20 it if I deem appropriate. I just need to see what it is and
21 then proceed accordingly.

22 The final matter, I believe, are the issue of jury
23 requests to be excused. And as I understand there are ten
24 requests that are in dispute.

25 SOLICITOR'S OFFICE: Your Honor, just to bring you up to

1 date. Andrea called us this morning, and we're now down to
2 five. That may be of some benefit, but I've changed my mind
3 in order to expedite the process.

4 THE COURT: Okay. And there's also -- I'll tell you
5 what.

6 Ma'am just have a seat in the witness box.

7 SOLICITOR'S OFFICE: There's also two jurors, one who's
8 submitted a request that hasn't been brought. And Melita
9 Graham, our paralegal, actually in the jury pool, so she's
10 been excused according to Andrea. But I did want to go
11 ahead and put that on the record, the reason being she's, I
12 believe, she's under there as Emily Graham.

13 Also, Deputy Caldwell's wife is in the jury pool. She, I
14 think, just today submitted a request. She has -- they do
15 have a child under the age of seven that she's solely
16 responsible for, but nevertheless she would be excused for the
17 basis that he will probably be involved in this trial.

18 THE COURT: There's no objection to that?

19 MR. MAULDIN: No, Sir. And there was another one, Your
20 Honor, Captain Merck mentioned to me that his brother -- and I
21 just marked him off. I just figured -- I think, Captain Merck
22 had said he had talked to his brother and was going to take
23 care of getting him excused.

24 Did you know about that one Andrea?

25 ANDREA: Yes, Sir.

1 SOLICITOR'S OFFICE: I believe it was caused by
2 (inaudible), he had said that to us as well I believe. I
3 believe he's just (inaudible).

4 THE COURT: If he's over 65 --

5 SOLICITOR'S OFFICE: Yes, Your Honor.

6 THE COURT: -- and requesting to be excused, in any event

7 --

8 SOLICITOR'S OFFICE: Right, Your Honor.

9 THE COURT: -- Regardless of any relationship.

10 MR. MAULDIN: Right.

11 SOLICITOR'S OFFICE: Right. I just wanted to --

12 THE COURT: Let me just sort of on the record give you --

13 I want to thank Andrea, and I think Mattye's also worked with
14 Andrea on this, and both of them have done a superb job. And
15 I thank them very much.

16 The sheriff presently has 104 subpoenas for those who did
17 not respond, and we're in the process of trying to find these
18 people. We received I think 138 questionnaires. We have by
19 agreement by Counsel, 142 have been excused. Perhaps a few
20 more since you all whittled down this number that I had
21 earlier.

22 There are about five that claim to be in school, unable
23 because of medical reasons which have been held in abeyance
24 until they submit proof. Obviously, not excusing anyone based
25 on school or medical reasons without appropriate documentation

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1 both sides because what I have is the list of ten from this
2 morning.

3 SOLICITOR'S OFFICE: (Inaudible). We're down to forty-
4 nine, fifty. 338 I said to transfer. She's a nurse and the
5 other nurses are out. Mr. Mauldin I believe said to excuse
6 her. He said transferring her is fine. So I believe that's
7 what we're going to do with 338.

8 THE COURT: Hold on a second. Let me just -- I'm sorry.
9 forty-nine is an issue. Fifty is an issue. What was the next
10 one?

11 SOLICITOR'S OFFICE: The next one was the 338 transfer
12 issue.

13 MR. MAULDIN: And we've agreed to take her off.

14 THE COURT: All right. She's off, juror 338.

15 SOLICITOR'S OFFICE: 351, 366 and 389 remain in dispute.

16 THE COURT: 351, 366 and 389. All right. I'm going to
17 go back to the list I had earlier. One of them is juror 106.

18 SOLICITOR'S OFFICE: I consented to that person being
19 excused.

20 THE COURT: All right. And the note I have is the
21 Defendant had already consented to be so without objection
22 juror 106 is excused. Juror 114.

23 SOLICITOR'S OFFICE: We consented to being excused.

24 THE COURT: And the Defense has already consented. So,
25 both sides consent, 114 is hereby excused. Juror 134, is that

1 the same situation?

2 SOLICITOR'S OFFICE: Yes, Your Honor.

3 THE COURT: By consent juror 134 is excused. Juror 338
4 as you all had mentioned, agreed to transfer. So she's
5 excused from this term of court. Juror 348, same situation?

6 SOLICITOR'S OFFICE: Yes, Your Honor.

7 THE COURT: State now joins with the Defendant in
8 excusing that juror.

9 SOLICITOR'S OFFICE: And I guess before we go over this
10 other five, the growing concern of the State is that we're not
11 looking the numbers we usually are in terms of the initial
12 pool. And that's kind of why we tended to be a lot more -- I
13 don't know how to say -- reluctant to excuse people solely
14 based on -- for the most part -- and I gave Andrea and I
15 believe you got a copy of the letter that if it's based
16 because they're a student, if it's health care or travel, they
17 provide proof. We just cut them loose. You don't even have
18 to show them to us as long as we get an updated list.

19 Really the only thing that remains usually is hardship --
20 I mean, statutory child care. I mean, they can go. No
21 problem. They need that.

22 We're right now at 138 questionnaires. We're usually way
23 above that. So, if it comes to the question of discretion, it
24 does, and sometimes we have the luxury of kind of culling them
25 early on by reading their questionnaires and going, Well, you

1 from the school or physician as the case may be applicable.

2 There are also a series of jurors who have simply not
3 responded who are eighty years old or better, and I have
4 culled them out. Andrea's pulled their files out. One
5 gentlemen I think was born in 1902 or something. We have a
6 few in the nineties.

7 ANDREA: I think 1916 and 17.

8 THE COURT: Okay. 1916 and 17. So, okay. One that was
9 ninety. But, in any event, we've got several well over eighty
10 who didn't respond, no forwarding address. I can give these
11 to the sheriff and have them go out and try to find them.
12 They've got 104, they're going to get some more.

13 And if there's consent that juror's over eighty who are
14 not located the first time around, do you want those served
15 and put on the list or would you agree just to excuse them?

16 MR. MAULDIN: Excuse them, Your Honor. And if we could
17 just make sure that Andrea's given us the numbers of who they
18 are so we won't have to be guessing.

19 THE COURT: Absolutely. You'll have those numbers. And
20 if there's someone you look at and say, I want to go back, you
21 can come back to me and challenge it. And at the end of the
22 process, not today but when we resolve the jury issues all
23 these original documents can be made a court's exhibit.

24 Ms. Erby, if you're going to handle this maybe you could
25 tell me the five that are in dispute, and I could hear from

1 know, I kind of don't agree with this excuse question. But
2 that questionnaire, I don't want them anyways. So let's just
3 get rid of them and save us all a lot of trouble.

4 With 138 questionnaires only right now, you know, if we
5 get -- I think the last trial we did with you after I went
6 back and did the numbers we only got about thirty-five percent
7 of qualified jurors. The last one we did with Judge Floyd was
8 more up around the fifty, sixty mark. But still, if you say
9 with your last trial and, you know, be pessimistic, we're
10 looking at just barely cutting out the number we need to go
11 forward.

12 So the question becomes, as we proceed, do we bring them
13 in even it is hardship, and we hope that we can get them to
14 stay? Do we go get some more? Do we hope the Sheriff's
15 office comes up with that 104 that they're out there looking
16 for? Or, you know, what is, you know, the plan? I think that
17 was our concern in terms of these five.

18 THE COURT: I certainly understand you all's perspective.
19 Let's deal with number forty-nine. The Defense Counsel
20 indicates they would consent to the excusal, and the State
21 wishes for the juror to appear; is that correct?

22 SOLICITOR'S OFFICE: Yes, Your Honor.

23 THE COURT: Juror fifty, same situation?

24 SOLICITOR'S OFFICE: Yes, Your Honor.

25 THE COURT: Let the record reflect I'm reading the juror

Hearing

1 information card and the written request of each of these
2 jurors.

3 MR. MAULDIN: Do you want our input on them or are you
4 going to come back?

5 THE COURT: Well, if you consent to their excusal, you
6 just want to bolster why they shouldn't come?

7 MR. MAULDIN: Oh, no. I thought -- let's see. All
8 right. Go ahead. I'm --

9 THE COURT: Every one of these you consented to.

10 MR. MAULDIN: Right. Right.

11 THE COURT: On 351, 366 and 389. I've read those
12 reasons given by these potential jurors. Is there anything
13 else either side would like to put on the record before I
14 rule?

15 SOLICITOR'S OFFICE: No, Your Honor. I try to have just
16 kind of a blanket policy. If it's hardship, they'll come in.
17 If it's something else, they can get kicked. I really didn't
18 try to read too much in between it. It kind of came down to
19 that level just so it would be uniform across the board. And
20 that's how we came -- I mean, they're compelling. They're all
21 compelling if you go to that level, and we just tried to keep
22 some. That was kind of our policy.

23 THE COURT: Yes, Ma'am. Anything from the Defendant?

24 MR. MAULDIN: Well, one moment, Your Honor.

25 THE COURT: Take your time, Sir.

1 MR. MAULDIN: The only comment, Your Honor, I would make
2 is that -- and I'm going to go into number forty-nine. I
3 won't refer names. But go to forty-nine, for example. None
4 of these clearly fit an actual exemption status, and we
5 understand that. And they are more or less on the hardship
6 level.

7 But, you know, if you read these things with a little
8 common sense, if you look at how many children number forty --
9 this is apparently the bread winner in this family, and it
10 just -- if you look at that kind of additional insight, I
11 think some of these things are a little more compelling than
12 would first meet the eye. So, I ask for the Court's full
13 attention to the matter.

14 THE COURT: It's my inclination to grant the request of
15 juror number forty-nine. I believe his statement -- it might
16 just fit within Section 14-7-860 that provides in part that a
17 juror may be excused if the juror performs services for a
18 business and that juror services are so essential to the
19 operation of the business that the enterprise would close or
20 cease to function if the juror were required to perform jury
21 duty.

22 And this gentlemen runs a very small business, manages it
23 by himself and has no one else to rely on. I think that alone
24 fits exactly with the type of juror who is to be excused under
25 Section 14-7-860. Forty-nine is excused.

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1 Juror 50, 351, 366 and 389 present no legal basis to be
2 excused. There are varying degrees of hardship but not a
3 hardship that's recognized in our law as a basis for
4 disqualification. The requests of those perspective juror is
5 denied.

6 Anything further Counsel?

7 SOLICITOR'S OFFICE: I think -- what's the new one today?
8 The one I don't have a card? We both objected to him, so
9 he'll be staying.

10 MR. MAULDIN: Let's see. That's number forty-four, and
11 I'll pass.

12 THE COURT: Have you got forty-four so I can look at it
13 for a second. Can I look at your copy Mr. Mauldin?

14 MR. MAULDIN: Yes, Sir.

15 THE COURT: I understand -- certainly understand why the
16 request to be excused would be denied.

17 SOLICITOR'S OFFICE: She also -- and, just for the
18 record, we initially got three requests with the initial proof
19 that she doled out to us and said I have records. We sent a
20 letter to the court confirming that with a rap sheet. Our
21 office is run on most of the rap sheets under (inaudible)
22 you've got a return questionnaire. I kind of have to go
23 through and make sure they kind of all match up at the end of
24 the day because running rap sheets is an unexact science, if
25 you've ever done it.

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1 But, we'll try and get that to the Court Monday at the
2 latest so that you can forward them to Mr. Mauldin or we can
3 work at you just have a record at that level. So we're trying
4 to get back to those.

5 THE COURT: Let me mention something else that deals with
6 just a particular juror who I believe is sixty-five or older.
7 He's not one of these in their eighties. Did not respond, but
8 a neighbor went and got the summons and wrote a letter to the
9 court. You all may be familiar with this.

10 MR. MAULDIN: I'm not.

11 THE COURT: Which juror is this?

12 UNKNOWN SPEAKER: Juror number 370.

13 THE COURT: All right. 370. And I want you all to look
14 at this letter from the neighbor. And the juror is a
15 minister, who according to the neighbor, they went across the
16 way, took the summons, saw what it was, thought someone needs
17 to follow up on this. So, the neighbor wrote a letter on
18 behalf of his friend and minister.

19 Says, The minister is overseas doing missionary work, not
20 in the United States at this time. Now --

21 MR. MAULDIN: I don't need to see that letter.

22 UNKNOWN SPEAKER: I think we consent on that one.

23 THE COURT: We can indulge in the fiction. If this is a
24 lie, we're going to send the troopers out there to serve this
25 person. but --

1 MR. MAULDIN: We've got other people to be hunting for,
2 Your Honor.

3 THE COURT: Thank you very much. Juror 370 then, we
4 won't burden the sheriff's office to try and serve. I will
5 tell you unless you all -- you know, if you all want to by
6 agreement or otherwise, those over sixty-five that are less
7 than eighty that didn't respond, I'm sending -- they've been
8 sent to the sheriff's office.

9 MR. MAULDIN: If I understand correctly, if a juror over
10 sixty-five has asked to be excused, you're giving us that
11 information that they're off the list.

12 THE COURT: Right.

13 MR. MAULDIN: But, an unresponding sixty-five to eighty
14 is being searched for.

15 THE COURT: We're going for them.

16 MR. MAULDIN: Right.

17 THE COURT: Over eighty, we agreed earlier --

18 MR. MAULDIN: Right.

19 THE COURT: -- not to pursue. Anything further, Counsel?

20 MR. MAULDIN: The only other matter, Your Honor -- and I
21 am trying to keep it together. I'm obviously sitting at this
22 table, so I'm having a hard time putting this together. But I
23 am going to be asking for a finding moment, an ex-parte
24 finding issue. Are you going to be in Greenville next week?

25 THE COURT: Absolutely.

1 MR. MAULDIN: All right. I would prefer to maybe try to
2 get it finished over the weekend so it would be in more final
3 form.

4 THE COURT: Yes, Ma'am.

5 SOLICITOR'S OFFICE: I don't know. I know you're looking
6 for the 104. I don't know what kind of deadline we're looking
7 at. But, with 138 questionnaires just to start off with, I
8 don't know if there needs to be some deadline when we --

9 THE COURT: We have -- what cut-off -- we decided --

10 ANDREA: The Tuesday --

11 THE COURT: The Tuesday or Wednesday before. We've got
12 the sheriff's office --

13 ANDREA: It's the 29th.

14 THE COURT: Having to do everything by a certain date,
15 and they're out doing that right now..

16 SOLICITOR: Right. I -- trust me. I've heard all about
17 it from the wrong end of that rope, Judge.

18 THE COURT: I have too. Whatever the Tuesday, the 29th,
19 is when they're ordered to have it all done by then because we
20 obviously need a turnaround period so that we can respond to
21 certain issues.

22 MR. ARIAL: Just one other issue. Recognizing the number
23 being so borderline, and also recognizing that the jury
24 information card was sent out, already appeals to the jurors
25 that if they are disqualified or desire to be exempted or

1 excused from jury service, they are checked and do all that.

2 Then I would urge the court to -- I understand there's a
3 requirement to ask about hardship, but I would urge the Court
4 because they're all going to -- you know, you've been there
5 before. You know how many -- they all pop up.

6 So, I would urge us to be circumspect about asking in
7 such ways as to encourage a lot. I don't know how you do
8 that, but I'm just concerned that, with no picking an
9 additional panel, we'll end up with not enough. And that
10 would be my big concern at that point.

11 Of course, the other alternative I guess would be to pick
12 some more names.

13 THE COURT: Thank you, Sir. There's one additional
14 matter that I feel required to handle, and I must handle it in
15 an ex-parte, in camera fashion with Defense Counsel and the
16 Defendant.

17 Once that's done that would conclude all the matters
18 today. I would like for the attorneys to meet at some point
19 and see what time next week we could meet and discuss the jury
20 selection process and what their thoughts are.

21 But, at this time, the hearing is concluded except for
22 this one final matter that I need to address. Court personnel
23 is, obviously, entitled to stay. But law enforcement, I would
24 ask -- and we've done this already several times in this case.
25 If the deputies and the bailiffs would simply retreat behind

1 the doors and there is glass there which they can observe for
2 security purposes. Other than that, this hearing is
3 concluded.

4 (PROCEEDING WAS CONCLUDED)

CERTIFICATE OF REPORTER

2429

I, Deborah Schmidt, CVR, Official Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, and Notary Public for the State of South Carolina at Large, do hereby certify:

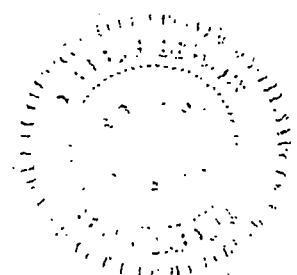
That the foregoing transcript is a true, accurate, and complete transcript of record in the trial/hearing of the herein captioned case, relative to appeal, in the Circuit Court for Greenville County, on the 18th day of January, 2002, to the best of my ability.

I further certify that I am neither related to nor counsel for any party to this case or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of December, 2002, at Greenville, Greenville County, South Carolina.



Deborah Schmidt, CVR
Official Circuit Court Reporter,
Notary Public in for the
State of South Carolina at Large
My Commission expires
January 20, 2008



DEBORAH SCHMIDT, CVR
13th Judicial Circuit, Greenville County
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2430

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2001-GS-23-3106

STATE OF SOUTH CAROLINA,
PLAINTIFF,

VS.

TRANSCRIPT OF RECORD

JOHN RICHARD WOOD,
DEFENDANT.

January 28, 2002
Greenville, South Carolina

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE, JUDGE.

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

ROBERT M. ARIAIL, ESQ.
Solicitor

BETTY STROM, ESQ.
Deputy Solicitor

MINDY HERVEY, ESQ.
Assistant Solicitor
Attorneys for the Plaintiff

JAMES I. MAULDIN, ESQ.
Public Defender

JAMES W. BANNISTER, ESQ.

RODNEY W. RICHEY, ESQ.
Attorneys for the Defendant

HOLLIE JENKINS
Official Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

1 THE COURT: This is a hearing in the case of State v.
2 Wood. Motions that are to be addressed have not been
3 filed, but submitted to counsel and the Court only. The
4 Court served notice on the public in general and the media
5 in particular by way of a written notice filed with the
6 Clerk last Monday.

7 There was a meeting with the media last Wednesday
8 conducted by the Court, at which most of the media was
9 represented. Again, at that meeting, notice was once again
10 given as to the closure of this hearing from the media.
11 And I mention this simply that we may have to adjourn the
12 hearing. One media outlet may have retained counsel to
13 challenge the closure of this hearing. And it may be
14 necessary for me to deal with that, if and when the issue
15 arises.

16 There was some question about the presence of the
17 victim's widow being in the courtroom. And I understand
18 that victims, under our state law, have a right to be
19 present at every hearing.

20 The purpose of the closure was to preclude the press.
21 And the primary objective to be achieved was to facilitate
22 in the selection of a fair juror and not have publicity
23 immediately prior to jury selection impair the ability of
24 the Court to select an impartial juror.

25 If there's any objection to the victim or the victims

1 being present for purposes of this hearing, I'll be glad
2 for either side to put that on the record at this time.

3 Anything from the State?

4 MR. ARIAIL: None, Your Honor.

5 THE COURT: From the Defendant?

6 MR. MAULDIN: No, Your Honor.

7 THE COURT: All right. The first order of business is
8 we'll deal with two motions dealing with the mental
9 evaluation report, one filed by the Defendant which was
10 filed first, and the other one on its heels filed by the
11 State.

12 And I'll hear from the Defendant first.

13 MR. BANNISTER: Thank you, Judge. Jim Bannister.

14 I'll be arguing this motion.

15 Judge, I think -- of course, our memorandum that we
16 submitted to the Court sets forth to a large extent our
17 legal position and our -- and the facts of the case that we
18 think are pertinent. But because this is such an important
19 issue, I'd like to run over a few of the facts that I think
20 bear repeating.

21 Obviously as you well know, John Mauldin and myself
22 were relieved as counsel for the Defendant in the Anderson
23 County charges on August the 6th. Shortly thereafter on
24 August the 9th, the Defendant was appointed Bruce Byrholdt
25 as new counsel.

2434

1 There is -- there was an order that came forward after
2 Mr. Byrholdt was appointed that apparently was filed on
3 September the 4th, although it's got a handwritten
4 signature of August the 4th is when it was signed. I think
5 that --

6 THE COURT: I'm going to recognize it was September.

7 MR. BANNISTER: Okay. Thank you, Judge. I just
8 wanted to make sure the record was clear on that.

9 So on September the 4th, there was an order signed
10 that ordered a mental examination of the Defendant for
11 criminal responsibility, competency to stand trial, and
12 guilty but mentally ill status.

13 Counsel for the Defendant present here today was
14 not -- had no notice of that hearing, or of that order
15 until we actually received it in a letter that came from
16 the Solicitor that -- Mr. Ariail dated September the 6th,
17 at which point the Solicitor was suggesting that the Court
18 expand the mental health evaluation to include the facts in
19 the Greenville case. We raised objection to that and asked
20 for a hearing. The hearing was held on September the 21st.

21 On September the 21st, it's important to note that the
22 trial dates had by and large been set for both the Anderson
23 County case and for the Greenville case. At the hearing,
24 everybody knew that the Anderson case was going to come
25 after the Greenville County case.

1 We objected to expanding the mental health evaluation
2 to include the Greenville County charges. The Solicitor
3 made a point of going on the record and saying although he
4 would like it and suggested it, that he was not making a
5 motion for it either. So it was ultimately something that
6 the Solicitor led the Court into, expanding this
7 evaluation.

8 December the 11th was when the Defendant had served
9 upon him a request for a notice of alibi, insanity, or
10 guilty but mentally ill plea. And, of course, according to
11 the rule, we had 10 days to respond. We did not respond.
12 And, therefore, we have not put insanity or guilty but
13 mentally ill as an issue into this trial.

14 On December the 27th, we got a note from Your Honor
15 that stated that you were inclined to disclose the mental
16 health report to both sides, absent some objection to which
17 we responded on the deadline given that it was our
18 understanding that the mental health evaluation had been
19 sent only to Your Honor, and was going to be held by the
20 Court until such time as you deemed it appropriate. And
21 part of our objection was: A) the disclosure; but B) we
22 were unaware of any reason that had changed to make
23 disclosure necessary at that point in time. That was on a
24 Friday.

25 The following Monday, January the 7th, we received an

1 order that a redacted version of the mental health
2 evaluation had been disclosed to the State, and that we had
3 been provided with both the redacted version and the full
4 version. That was what led to the motion that we filed and
5 ultimately the motion that the State filed.

6 Turning to our argument and the decision you've got to
7 make here today, Judge. I think you can compartmentalize
8 it into three main arguments that we have with several
9 subparts in each one. The first would be the Defendant
10 claims his Fifth Amendment privileges were denied. The
11 Defendant claims that his Sixth Amendment privileges were
12 denied. And he claims, furthermore, that his Fourth
13 Amendment right to due process has been abridged to such an
14 extent in this case that the fundamental fairness of what
15 has occurred has been called into question.

16 There are, in essence, a trilogy of maybe four cases
17 total that deal with the specific issue that we're talking
18 about that come from the United States Supreme Court. I've
19 listed those in the memo, but they are Estelle v. Smith,
20 Cannon v. Kentucky, Powell v. State, and Satterwhite v.
21 State. Those cases, I think, delineate pretty clearly
22 where this case falls.

23 Dealing with the Fifth Amendment, it's clear that the
24 Defendant has a right to be advised in a Miranda-type
25 statement, specifically, that any statements that he gives

1 may be used against him not only at the trial phase of the
2 case, the capital case, but also during the sentencing
3 phase of the case. At this point, we take the position
4 that the Defendant never was advised of his Fifth Amendment
5 right regarding the sentencing phase of the case, for
6 certain. But we don't know for sure either that he was
7 advised of his Fifth Amendment rights regarding the trial
8 phase of the case, in any event.

9 It's my understanding that the Department of Mental
10 Health may have a form or some sort of admonition that they
11 give each person that comes down for a state-ordered
12 evaluation. We subpoenaed Kay Inney (phonetic) to be here
13 this morning with those records and she apparently is not
14 present. So the definitive answer on that question,
15 unfortunately, we tried to have for you, but were unable to
16 do so.

17 As an aside, we have tried to seek those records but
18 have been unable with an authorization from our client,
19 pursuant to statute, to get those. We thought the subpoena
20 would work, but apparently that's not going to work either.

21 Judge, in addition to the denial of his Fifth
22 Amendment right, even if he had been told that anything you
23 say can and will be held against you in this evaluation --
24 assuming that that's the case and we certainly don't take
25 that position, but just assuming for the moment for our

1 argument -- he still has a separate Fifth Amendment right
2 that attaches to the sentencing phase.

3 And so what the case law will tell you is that unless
4 you have a specific statement to the Defendant that
5 whatever he says can be held against him in the sentencing
6 phase, i.e. when the jury determines whether or not they
7 will give him life imprisonment or sentence him to death,
8 that that is a very important thing that needs to be
9 explained to the Defendant. And without that, it is an
10 error and, therefore, disclosure and subsequent use of that
11 mental health evaluation is going to violate that
12 Constitutional right.

13 The Sixth Amendment right to counsel, which is
14 discussed in the latter cases of this -- these four cases
15 that I'm talking about, is also a Constitutional right that
16 apparently attaches at the trial phase and at the
17 sentencing phase. And the problem that arises is, as the
18 Court in Buchanan said, that you've got to have the guiding
19 hand of -- well, even counsel has a hard time making a
20 decision whether or not a mental health evaluation is in a
21 capital Defendant's best interest.

22 And there are a lot of different factors that have to
23 be taken into consideration, maybe even specific
24 psychiatrists that will be making the examination, and how
25 it could be used against the Defendant at both the trial

1 phase and the sentencing phase. And the problem that
2 Mr. Mauldin and I have in this case, with regard to the
3 Sixth Amendment violation that we're claiming, is that when
4 we were here at the hearing what we were talking about was
5 competency to stand trial, criminal responsibility, and
6 guilty but mentally ill status.

7 I think everybody would concede that those are all
8 trial phase issues. And while we were able to advise our
9 client to some extent of the risks that he ran going into a
10 mental health evaluation on those three issues, our
11 research and what we knew to be the case law out there led
12 us to believe -- and I think about it like this -- is that
13 when you ordered the report to come back to you, we felt
14 like that mental health evaluation had been put in a box
15 with a lock on it and that we were the only ones with the
16 key to it. And the only way we opened that lock is if we
17 brought up one of those issues during the trial phase.

18 And so it just -- it's not one of those -- I mean, we
19 also looked at the statutory requirements about disclosure
20 in the first place. I've raised some of those in the --
21 and it ties in with the procedural due process claim.

22 But Title 44 has got specific requirements and
23 findings that have to be made before those mental health
24 evaluations can be disclosed. I'm quoting a little loosely
25 here, but I think they have to be necessary to the

1 adjudication of the case.

2 So the situation we were in was we thought -- or we
3 knew that the way the law and the statutes worked at that
4 point was that unless we did something affirmative during
5 the trial phase, raised insanity, or competency, or guilt
6 but mental illness that it just wasn't going to be an
7 issue. And that was the way we had been preparing our case
8 up until January the 7th.

9 I think that was -- that that was certainly in my mind
10 one of the reasons that we brought it to the Court's
11 attention. We need to know why you're considering
12 disclosure of the mental health report. And, you know, I
13 think had we had a hearing, we might be in a different
14 situation. But be that as it may, we're where we are now.

15 And the Sixth Amendment problem that has arisen is
16 that we weren't able to tell Mr. Wood how this mental
17 health evaluation might effect his sentencing phase,
18 because frankly, it just wasn't going to be an issue in the
19 trial of the case -- or the sentencing phase of the case.
20 And we knew that it wouldn't be an issue in the trial of
21 the case unless we brought something affirmatively forward
22 to sort of open the door. There's nothing in this record
23 in this case that the Defendant has opened the door to any
24 of these issues, which brings me to the third issue that
25 we've raised.

1 And that is that in South Carolina, a Defendant has
2 certain rights in a criminal trial and the State has
3 certain rights in a criminal trial. We've gone through
4 most of the statutes that we could find dealing with this
5 issue in the case law. And there just doesn't -- there
6 just is not any statutory authority or case law to say that
7 we're going to disclose this information without certain
8 findings of fact.

9 You know, I know that the State has raised a good bit
10 of an issue about the Court's inherent authority and that
11 sort of thing. And I guess we ought to start from the very
12 beginning and that is, did the Court have the authority to
13 order guilty but mentally ill or criminal responsibility as
14 part of the overall mental health evaluation?

15 Our position would be that Title 44 doesn't give the
16 Court that authority. Section -- or Code 17 that deals
17 with the guilt but mental ill status certainly says that
18 you can raise that as an issue at trial since it's the
19 burden of proof, but doesn't give the Court the authority
20 to make that part of a mental health evaluation.

21 We're in a little bit of a different situation in
22 terms of what the State has termed the inherent authority
23 of the Court in that each of the cases that the State is
24 citing for the inherent authority of the Court to order an
25 expanded mental health evaluation, we're talking about an

1 issue upon which the State would have the burden of proof.

2 In our state, we don't have -- the State doesn't have
3 the burden of proof to prove beyond a reasonable doubt that
4 a Defendant was not guilty but mentally ill, or prove
5 beyond a reasonable doubt that he didn't have criminal
6 responsibility at the time the acts were committed. That
7 is a burden that's actually on the Defendant.

8 So the cases that they cite, A) are not dispositive as
9 to this issue, but they also are easily distinguished in
10 light of the difference in terms of the burden of proof
11 that's at issue.

12 On top of the fact that we take the position that the
13 Court didn't have the authority to order the evaluation,
14 the subsequent disclosure of the evaluation creates some
15 statutory concerns as well. Title 44 specifically says
16 that any disclosure of this type of mental health
17 evaluation has got to be a finding that is necessary for
18 proceeding forward with the case. Certainly, unless we've
19 raised the issue, it just -- the disclosure that was made
20 to the State was not necessary. There's some other
21 statutes that deal with that as well in Section 19, but I
22 think the primary one we're focusing on is Section 44.

23 Judge, in addition to statutory safeguards that are in
24 place that we contend prohibit disclosure without certain
25 findings, the statutes also tell you what can be in the

1 report. And frankly, the report that came back from the
2 Department of Mental Health went far beyond what the
3 statute requires them to give to you.

4 My reading of the statute is that once you get back a
5 very narrow report on the issue of competency to stand
6 trial, that later on you can order another examination to
7 go farther if it becomes an issue and if disclosure or
8 testimony is going to be sought from the individuals who
9 are making that evaluation. But that's sort of a two-step
10 process that has to go forward.

11 We also get into concerns about criminal procedure and
12 discovery in a capital case. I'm sure you're well familiar
13 with Rule 5. But the basis of our argument there, Judge,
14 is that in this state, there are very few advantages that
15 the Defendant has and one of them is that he doesn't have
16 to reveal all of his information.

17 And the situation that makes us different than what a
18 normal criminal case would be is that the State now has, by
19 leading you down this path, taken information from us that
20 they wouldn't otherwise be entitled to. And by doing that,
21 they have circumvented the statutes about disclosure and
22 Rule 5 in and of itself.

23 All of that leads to the ultimate conclusion that the
24 situation that we're in right now is simply not capable of
25 a cure. The State has information that ultimately will

1 pervade throughout the trial of the case. I mean, I can
2 imagine us in here trying this case and trying to preserve
3 this issue where you ruled against us, and we ultimately
4 will be objecting or have to object to anything that
5 remotely touches on this evaluation report. It may be
6 somewhat distracting during the trial phase, but it's going
7 to be awful during the sentencing phase.

8 Now, I throw that out not to say that, hey, if you
9 don't go our way, we're going to be a pain, but just to
10 say, Judge, that, you know, that's the position we are in
11 right now through no fault of our own. And, you know,
12 we've got a duty that we're going to have to follow through
13 with.

14 Furthermore, it shows how pervasive the whole -- the
15 error is in the trial phase, but especially in the
16 sentencing phase for us. I mean, the State knows where it
17 can go with its case-in-chief to sort of on the front
18 end -- the front load what they anticipate will be the
19 rebuttal when we raise mitigating factors. An evaluation
20 report goes that far so that virtually any mitigating
21 factor that conceivably could be an issue in this case is
22 going to be -- there's some rebuttal testimony contained in
23 that examination report.

24 So, Judge, the position we take is this: The
25 Solicitor has got information that he shouldn't have. He

1 gained that information through error on a number of
2 different ways -- or in a number of different ways. And it
3 is going to be impossible for the Solicitor to
4 compartmentalize the information that he shouldn't have and
5 go forward with the trial as if he hadn't gotten it.

6 We, as the attorneys representing the Defendant in
7 this case, are in a totally different situation than we
8 should be in at this stage of the proceedings. This is a
9 different case that we're going to be defending because of
10 this disclosure of the mental health evaluation than it
11 would be had the statutes and the rules been followed.

12 And so that is why we don't see any other way to cure
13 the error other than to either quash the notice of the
14 death penalty, or to recuse the Solicitor and let somebody
15 else, who has not been tainted with the information, come
16 in and try the case.

17 THE COURT: Thank you.

18 Solicitor.

19 MR. ARIAIL: Just a few -- and likewise, we rely
20 primarily on our written response. Let me go back to
21 address a couple of things and, 1) I like to take credit
22 for a lot of things, but leading this Court in making
23 decisions is certainly not one of them that I would take
24 credit for. This Court is obviously intelligent beyond the
25 means of this office in perceiving issues and ruling upon

1 them properly. So in an effort by the Defense to somehow
2 make this to be some sort of State action I think is --
3 obviously you can see through that.

4 Secondly, to argue to this Court with the experience
5 and the wealth of experience that exists on this defense
6 team that they did not perceive the possibility of the
7 State using this in a sentencing phase and that they
8 thought this was -- there were not going to be any mental
9 health issues after this Public Defender just got through
10 fighting me tooth and nail in the very aggressive posture
11 that we took in the Laney case to have an independent
12 examination and get the information that the State, we
13 felt, was entitled and that the Defendant knew was in the
14 record is to not state things accurately.

15 They knew what was potentially going to come from that
16 examination. We certainly knew what was going to come from
17 that examination. And we knew what they were going to put
18 up in mitigating circumstances. We didn't know the
19 specifics, but we know the general parameters that we're
20 going to be faced with.

21 This is not the first case I've tried with John
22 Mauldin. Hopefully, it will be one of the last. But at
23 this point, what they're going to put up is going to be --
24 and particularly when there is any form of mental health,
25 there are going to be certain issues that are raised. So

1 for them to stand up here and say to you that they didn't
2 perceive that, in an effort to make it look like at the end
3 of this case there's some sort of ineffective assistance of
4 counsel, I submit is not factually supported.

5 To begin with, we've just been through this. We've
6 litigated. We've argued. We've inched our way through a
7 proceeding involving the same issue and the same basis for
8 the issues, the same reports, and the same disclosures. So
9 I think that's not an appropriate basis from which this
10 Court could rule.

11 Let me go back and just point out one -- there are
12 several facts that stick in my mind, other than the fact
13 that the Defendant asked for this. Let's not overlook
14 that. He did it. We didn't do it. He did it. He did it
15 not through his attorney. He did it on his own. He asked
16 in a handwritten form to get a mental evaluation.

17 So we're not starting from the premise that the State
18 moved to have this individual confined and examined by
19 employees of the State mental facility to get information.
20 He asked for the evaluation. The man was to have five
21 lawyers. And surely to goodness one of them had the
22 foresight to tell him, this is not a good idea if they
23 didn't think it was a good idea. But apparently nobody
24 thought it was that bad of an idea.

25 So we go forward to the point that the second step is

1 the result of that and is that this Court has to have a
2 hearing. 44-23-430 uses the word "shall." "This Court
3 shall have a competency hearing."

4 So if the Court is going to have a competency hearing
5 and is required by law to do so before this trial goes
6 forward, surely the State is entitled to know what the
7 examiners said, and so is the Defense. I don't know how we
8 would have a hearing if you didn't tell us what the State
9 examiners found. Because that's the only basis we're going
10 to have to take the information, if we want to, and get an
11 independent examiner. They'd ask you for some independent
12 examiner and independent funding to deal with the issue of,
13 is he competent. He's raised the issue that I'm not
14 competent and I need a mental evaluation, send me to mental
15 health.

16 Now, we have to have a hearing. The statutory law
17 requires it before we can go forward. We have a right to
18 be able to cross-examine the State mental hospital, who are
19 the Court's witness not ours, to ask them questions in
20 regards to their findings and conclusions to make sure the
21 record is complete, and to make sure their information that
22 they're sharing with the Court is being adequately tested.
23 And likewise, the Defense should have that opportunity.

24 So once -- to me, once the request is made, it is not
25 a legal issue any longer that the parties are not entitled

1 to purport. What the Court did was redact certain portions
2 that we don't -- and I'll go back and state them and put
3 them in our memorandum. We have not read this report. So
4 we don't know, other than what John Mauldin has put in his
5 memorandum, what's even in there, other than we did read
6 the cover sheet where it said that he had passed all the 1,
7 2, 3 tests. And then we put it down, because it wasn't
8 that big of a deal at that time.

9 So we have not read the contents of what is said or
10 the things that he's raised. So from that standpoint, it's
11 not a part of our file and we have not been tainted by it,
12 other than they have concluded that he's competent.

13 Now, when we have this competency hearing, we fully
14 intend to dig into that and ask and make sure the record is
15 properly developed. But from the standpoint of logic, the
16 Defendant started this and asked for an evaluation. It
17 doesn't seem beyond the realm of common sense that if he is
18 mentally incompetent regarding the Anderson charges -- his
19 mental incompetence didn't start at the Saluda River.

20 And it would logically follow that if he on that day
21 were mentally -- or on any day or particularly ready for
22 trial on any of the charges that he would be incompetent.
23 The same issues would be on the Greenville charges. So
24 that's the basis of our suggestion to the Court for
25 judicial economy.

1 However, I wanted and clearly have since I took office
2 wanted to stay clear of any suggestion on behalf of the
3 State that there be a mental evaluation. And the reason is
4 exactly the situation we're in here. I think we're
5 entitled to the information. I do have some concerns that
6 we forced the issue and forced the Defendant to be analyzed
7 by the Court, but I think that somehow compromises our
8 position.

9 But when the Defense raises it and when the Court
10 raises it, I think we're entitled to it and all of them.
11 That's why I'm careful in that letter not to suggest that
12 we wanted it. We simply wanted to raise the issue for the
13 Court's consideration because we thought once it had been
14 raised that common sense would pass it along, which the
15 Court agreed with.

16 Not only in this case -- and I think it's a little
17 unique from Your Honor's standpoint also in this case in
18 that you had jurisdiction of all of the charges. This was
19 not two circuit judges in two different counties running
20 side by side that really didn't know what each other was
21 doing. This was a case -- when he made the motion in
22 Anderson, he made it to you. I just fail to see the logic
23 of how that didn't involve the Greenville charges.

24 And next, once the issue is raised by any Defense
25 lawyer or Defendant, you obviously have a matter of both

1 ethics and judicial authority to ensure the integrity of
2 this process. And Lord knows the last thing we need is to
3 have a Defendant who is tried by a prosecutor when the
4 prosecutor thinks he's mentally insane or has got an
5 incompetency issue and doesn't bring it to the Court's
6 attention. And that's what we did here. And you have the
7 inherent authority to ensure the integrity of the judicial
8 process. And surely that would include making sure the
9 Defendant who is being tried is properly before the Court
10 in a competent fashion, and that he is protected in all of
11 his rights in regard to that.

12 Now, from that basis, it seems to me pretty logical
13 that there can't be an objection to the fact that the Court
14 ordered the overall -- or the examination and the
15 combination as to competency. Where we seem to get off the
16 track a little bit is -- and this has always been a problem
17 and we dealt with it in the last case -- that the Defense
18 is attempting to make 44-23-410 an exclusive remedy.

19 44-23-410 is not an exclusive remedy. It is simply
20 one portion of the mental health chapter entitled in this
21 State. And it simply deals with the rights of the
22 confined, that is a mentally -- a person who may be
23 mentally incompetent who is confined in a jail and it gives
24 them specific rights to have hearings in regard to that
25 competency. It is not the exclusive remedy.

1 And to make that logical conclusion, simply imagine
2 the simple case of burglary in which the Defendant is --
3 raises the issue at trial through proper notice that he is
4 mentally insane, or was mentally insane at the time of
5 this, or is guilty but mentally ill. Under the Defendant's
6 logic, this Court could not order a mental evaluation of
7 that Defendant because there's no statutory authority for
8 it. The statutory authority only deals with competency.

9 The point they're missing is that 44-23-410 is a
10 mental health provision aimed at the people confined,
11 whereas the judicial integrity -- the integrity of the
12 judicial process and the overall criminal justice system,
13 due process, equal protection, and all of those
14 unenumerated -- specifically unenumerated rights are vested
15 in the Court to ensure the Defendant and the State receive
16 a fair trial.

17 Now, obviously it is not fair for the Court, the jury,
18 the Prosecution, or the Defendant to have a Defendant raise
19 the issue of his insanity and not allow the Prosecution
20 some means of analyzing that for the benefit of the jury,
21 and likewise for the Court. And that's why the inherent
22 authority of this Court applies not only to competency,
23 which you have by statutory authority, but you have the
24 inherent authority to ensure that the jury is given the
25 information necessary on all issues presented.

1 And the Defense is asserting, I say to you, that you
2 don't have the statutory authority, so, therefore, you
3 don't have any authority. The point is the statutory
4 authority is so very limited that it's not even really
5 important. What is important is the Court's inherent
6 authority to deal with the protection of the Defendant's
7 rights and the State's rights in a case involving the issue
8 of mental health.

9 The 410 section is a part of a greater overall
10 chapter. It puts a number of statutory schemes in place.
11 But I wanted to point out, and we pointed out in our memo
12 Section 420. And let me also give credit where credit is
13 due. I didn't do this memorandum. As you're well aware,
14 Ms. Hervey did.

15 And Section 420 -- Section 44-23-420 specifically
16 relates to the limitation and contradicts the Defense's
17 argument when it points out that, "The report of the
18 designated examiner shall not contain any finding, nor
19 shall the examiner testify on the question of insanity
20 should it be raised as a defense, unless further
21 examination on the question of insanity is ordered by the
22 Court."

23 The statutory scheme upon which they rely recognizes
24 that the right of the Court is to order an examination
25 based upon the inherent authority of the Court, not

1 anything that relates to the specific statutory authority.

2 So from that standpoint, I simply go back to the fact
3 that the disclosure of the report to us in redacted form --
4 and we're not arguing the redacted portion at this point.

5 I assume I'll argue that separately. But the redacted
6 portion is in our possession, has not been read, and it is
7 intended by us that when and if -- or when, not if, but
8 when this case is scheduled for a sanity hearing as
9 required under 44-23-430 that we will address that issue
10 and the Court has given us the ability to do so for the
11 benefit of the Court, for the benefit of the Defendant, and
12 for the benefit of the State so that we can properly
13 examine and cross-examine.

14 I will point out that it is our understanding that the
15 Miranda issue raised is one in which is a standard
16 operating procedure. It is not a form. And Mr. Mauldin
17 will recognize and we all know that this warning was
18 specifically given to Michael Laney to such an extent that
19 he contacted his attorney and refused to talk with them
20 until his attorney was present. As a result, his attorney
21 was summoned to the Department of Mental Health and sat
22 with him as they went through a portion of the examination.

23 So we know from past experience, at least, I do and I
24 assume Mr. Mauldin does also, that that warning is given
25 and it is given in such an extent that Michael James

1 Laney -- if he can understand it, about anybody can
2 understand it. And he was given that and called.

3 And I point out one other issue related to the Sixth
4 Amendment and the extension of specific warning. That
5 issue was specifically raised before our Supreme Court in
6 the case of State v. Freddie Owens and ruled against by our
7 Supreme Court. And that is that the argument being that
8 some specific warning has got to be given. And the
9 answer -- and the situation in that case, as Your Honor
10 will recall, after Mr. Owens had been convicted, he went
11 back for his 24-hour waiting period and killed his cell
12 mate. The following morning, he came out of his cell and
13 he told the guard, "I've killed my cell mate. You better
14 go check my cell."

15 So they go in there. Immediately, because it involves
16 the jail, they call SLED. SLED shows up and starts doing
17 an investigation and gives Mr. Owens his Miranda rights and
18 tells him, "This cannot be used against you in this
19 case" -- or doesn't even give specifics, it just can't be
20 used against you. His argument in that case was, they
21 didn't tell me that it couldn't be used in my sentencing
22 phase, which was going to take place the next day. The
23 Supreme Court dealt with that issue and said that such a
24 specific warning is properly required.

25 Thank you.

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1 THE COURT: Let me hear from you on your motion to get
2 the entire report and not just part of it.

3 I've read the memo, if you have anything you want to
4 add beyond that.

5 MR. ARIAIL: Well, I think Your Honor heard my
6 comments at the judicial thing on Friday. And I'm not much
7 of a legal scholar that gives these things, but I am very
8 practical.

9 And it seems to me that if I'm going to deal with, 1)
10 the issue of his competency, which I feel that we have to
11 deal with at some point, that I need to know what he said.
12 Because I need to know what the issues that relate to the
13 competency issue are and ask the appropriate experts, and
14 if I want to retain my own -- not specific examiner because
15 that crosses another line -- but a consultant who can deal
16 with me about that type of information and what it really
17 means and asking an expert to elaborate on it.

18 I don't know what other experts they may or may not
19 have in regard to the issue of competency. But that issue
20 is going to be -- if it is presented, I need somebody to
21 help me out. I don't think I can count on making the
22 expert from the state hospital an expert who is consulting
23 with me. They're the Court's expert. They're going to
24 tell me what I ask them. When I ask them, they'll give me
25 the answers. But I'd kind of like to know some other

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1 things to protect the interest of the people of this county
2 and the people of the State in representing them.

3 Secondly, as to the issue of its production. We
4 realize we cannot put this evidence in as part of our case
5 in chief. We realize we're restricted in that. We don't
6 intend to do that.

7 But we do also realize that we have an absolute right
8 to thorough cross-examination of the Defendant and any
9 witnesses he presents. And what we propose is that not
10 only are we entitled to cross-examine him in the event he
11 testifies -- testifies contrary after adequate warnings of
12 Miranda and otherwise to a story different than what he's
13 telling on the witness stand. We have a right to have that
14 information.

15 Well, obviously if we have a right to have it, we need
16 it early. And we need it so that we can prepare the
17 witnesses who are involved to be present, because we don't
18 know when the testimony may occur. And there's a long
19 period of time between now and then.

20 And we need to know who those people are so that we
21 can get them under subpoena to get them here or have them
22 available and protected in the event it takes place in the
23 guilt phase through the testimony of the Defendant, or any
24 of his other witnesses who may be testifying on his behalf
25 who we don't know about because they're not required to

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1 disclose it.

2 So we want to be able to ask people the subject of
3 what's in that report. And we're assuming there must be
4 something in there for two reasons: 1) you took it out
5 and, 2) their arguments are to keep it from us. So we
6 figure there's something in there that's going to relate to
7 a very important issue in this case. And we think that we
8 have the right to have it.

9 So from the standpoint of needing it for -- to protect
10 ourselves against what might be said, or what might be
11 intimated, or what might be argued by counsel in opening
12 statement or closing statement or wherever, we have the
13 right to have that information so that this jury that's
14 hearing this case is fully apprised. And we need to have
15 it early enough so that we can put these witnesses on
16 standby and we can meet with them. Obviously if we get it
17 on Monday the 4th, that means somebody is going to have to
18 spend time in Columbia working on it.

19 Thank you very much.

20 THE COURT: Do you want to respond?

21 MR. BANNISTER: Yes, Judge.

22 Judge, let me tell you that my intention at this point
23 is to go down some of the issues that the Solicitor has
24 raised and to address them point by point. But if you have
25 any specific areas that you want me to address, then I'll

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1 be happy to do that at this time as well.

2 THE COURT: No. I just don't want you to repeat what
3 you said during your initial argument.

4 MR. BANNISTER: I will try not to, Judge.

5 First off, the Solicitor has said the Defendant asked
6 for this and, therefore, somehow the analysis should be
7 different. If you will read the cases, you will see that
8 in several of those the Defendant did ask for it and then
9 changed the Fifth Amendment and the Sixth Amendment
10 analysis. But as Mark Twain said, get your facts right
11 first and then you can distort them.

12 The facts are that the Defendant -- or, at least, the
13 order that we have a copy of says that the mental health
14 evaluation in Anderson was pursuant to motion by the
15 Solicitor, Druanne White. I mean, we weren't there at that
16 hearing. We're going on what's in this record. If the
17 Solicitor was there, I think we need to know that as well.

18 But from what we know of the record, Druanne White
19 made the motion and Mr. Byrholdt consented, for whatever
20 reason. We were never informed. We never had any idea
21 that that was going on. And we didn't have the opportunity
22 to talk to our client prior to that decision being made.
23 That is a further basis of his Sixth Amendment violation is
24 that capital counsel wasn't down there to advise him before
25 he -- if that's considered an opening of the door -- before

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1 he did open the door.

2 In terms of this, we didn't read it and, therefore,
3 somehow that's okay, or there's not a problem, or it just
4 isn't a big deal. It's hard for me to understand exactly
5 which hypothetical we're talking about. I mean, if the
6 Solicitor is going to say, well, we haven't read it -- and
7 I'll point out that in their response, the Solicitor
8 specifically made an affirmation that the package that you
9 delivered -- or that was delivered to the Solicitor was in
10 the same condition as it was on -- is now on the day that
11 it was delivered to him. In other words, he hadn't opened
12 it. Apparently that's a little different today in that he
13 says he's, at least, read the cover letter and hasn't
14 looked at the rest of it.

15 So if we were hypothetically talking about a situation
16 where the Solicitor had not read the whole thing, then I
17 think we would need to go into, has anybody in their office
18 read it? Has any law enforcement personnel contacted
19 anybody at the Department of Mental Health? Has the
20 Department of Mental Health -- those that had some dealings
21 with Mr. Wood -- have they been contacted by anybody?

22 If all of those were answered in the negative, then
23 maybe we would be dealing with this hypothetical, but I
24 just don't think that that's the case. And it certainly is
25 an issue for the Court at this point without those

1 affirmations being made and, therefore, is sort of a red
2 herring that we really don't need to get into.

3 But even if the Solicitor could show that he had not
4 read it and nobody else had any access to it and nobody had
5 contacted the Department of Mental Health and no
6 information had leaked out that shouldn't have, then we
7 would still be at the point that we are now which is, are
8 you ever going to disclose it? Do you have the right to
9 disclose it to them? And these decisions that you're
10 making at this point are still pertinent to the case once
11 we get to the sentencing phase. And we're going to need to
12 know the answers to them, especially with regard to the
13 Fourth Amendment, the Fifth Amendment, and the Sixth
14 Amendment, in particular.

15 I can't understand -- and maybe it's just me -- but
16 why competency would even be -- and I'm talking about the
17 difference between competency to stand trial -- first,
18 there is criminal responsibility or guilty but mentally ill
19 status, three entirely separate legal principles, three
20 entirely separate legal analysis that are required. For
21 the Solicitor to stand up and say that, well, competency
22 this and competency that, that is missing the issue
23 entirely.

24 Certainly the Court, pursuant to statute, has got the
25 right to seek competency or to seek to find out whether or

1 not a Defendant is competent. But to go beyond that, it
2 is -- that doesn't seem to be what we're hearing is you've
3 got a competency hearing and you've got our statute that
4 says competency. But none of that deals with guilty but
5 mentally ill status or criminal responsibility.

6 And the fallback position that has been made in their
7 brief and in argument to you is the inherent authority of
8 the Court. And I love this argument that, you know, the
9 Defendant argues this exclusive remedy. Well, the
10 assumption that the Solicitor makes is that Defense Counsel
11 would be too inept to know when it was appropriate to raise
12 a guilty but mentally ill defense or a criminal
13 responsibility test.

14 I mean, the house of cards that's built is, oh, my
15 goodness, we're going to put somebody in jail who isn't
16 competent to -- or shouldn't be in jail because they're not
17 competent. But the truth of the matter is that that is
18 Defense Counsels ethical burden and obligation to the Court
19 and that that situation just isn't going to arise if you've
20 got somebody that knows what they're doing on the Defense
21 side.

22 And even if it did, that's what the Appellate Courts
23 and post-conviction relief are all about. They're there to
24 take care of those few situations that could possibly arise
25 where Defense Counsel just didn't know that his client

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1 needed to raise a guilty but mentally ill or a criminal
2 responsibility defense.

3 Judge, if I could have just a moment.

4 (Pause.)

5 Judge, if I don't stand down, Mr. Mauldin is going to
6 hurt himself physically. So I'm going to let him address
7 some of the issues that may have been raised.

8 THE COURT: I'll give you a couple minutes, but we've
9 been arguing for almost an hour.

10 MR. MAULDIN: Yes, sir.

11 I want to bring -- make reference to the following:

12 1) 16-320, as it relates to the listed mitigating
13 circumstances: "Statutory mitigating circumstances, many
14 of which apply directly to the state of the mind of the
15 Defendant and that relates to the appropriate sentence in a
16 case after the guilt phase has already concluded."

17 So I make reference to those and the predicament that
18 this situation has placed us in.

19 2) We submitted a motion pursuant to certain exhibits.
20 And I refer you to Exhibit No. D with regard to the letter
21 of Mr. Ariail. He says that he can't be accused of ever
22 trying to lead this Court into something, I make reference
23 to the letter dated September the 6th. And you can form
24 your own opinion about whether you were invited into a mine
25 field in this situation, Your Honor.

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1 Exhibit No. C, Your Honor, the first line in the order
2 out of Anderson is that the matter came before the Court on
3 motion of the Solicitor. So I don't think that it should
4 be inappropriately placed. Also on that subject, that was
5 a non-capital proceeding in a different county under this
6 same court.

7 You handle capital cases and non-capital cases in a
8 completely different fashion. Non-capital cases don't have
9 sentencing proceedings that have to be protected.

10 Inherent authority issue and the Laney issue, and then
11 I'll be through. The Laney issue, Your Honor, you weren't
12 the trial court. In that case, we asked the Court in that
13 case to have the Defendant evaluated. We actually filed
14 the motion with a 25-page memorandum that we were entitled
15 to have him evaluated. So that is a completely different
16 set of circumstances. We were the ones urging the Court.

17 Now, with regard to what is statutory authority and
18 what is inherent authority. The statutory authority
19 clearly is that if this Court is sitting in a case and
20 believes that a Defendant might not be competent to stand
21 trial, then he has the statutory authority to have that
22 Defendant evaluated over everybodys objection. And there's
23 no question about that in the statute.

24 What happens with regard to this inherent authority to
25 move into criminal responsibility and guilty but mentally

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1 ill is the following, Judge: Our legislature has enacted,
2 and our courts have placed into our law, Court rules and
3 statutes.

4 Court Rule Criminal Procedure No. 5 provides that in
5 the event the State requests notice of the Defendant's
6 intent to claim certain matters that are assumed going in,
7 sanity is assumed or presumed. But if the Defendant is
8 going to claim it, then surely the State has the right to
9 have rebuttal information. We don't question that. That's
10 what Rule 5 says.

11 If they ask notice and we respond, yeah, we intend to
12 claim that, then I guarantee you they are, in fact,
13 entitled to some sort of evaluation to rebut that
14 information. Guess what? They filed their notice. We did
15 not respond, therefore, the inherent authority of this
16 Court to oversee the trial of the case was not triggered.
17 It didn't get triggered.

18 And, therefore, the 420 and the 430 don't -- the 430
19 that he cites for this inherent authority, Judge, if you'll
20 read the statute, "hearing on fitness to stand trial."
21 That's what 430 is. It's not inherent authority. It's
22 actual authority, statutory authority on a stand trial
23 issue, not a guilty but mentally ill or criminal
24 responsibility issue.

25 So we rely upon the contents of our material, our oral

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1 argument, and remind the Court that the State's entire
2 argument is based upon competency, competency, competency.
3 And then he wants to spin in a little bit of criminal
4 responsibility at the end, and that's where this case went
5 wrong.

6 We ask for the remedies requested, Your Honor.

7 THE COURT: The lawyer -- I have a civil trial
8 starting at 11:00. And that was based on us starting at
9 9:00. And they've been peering in the door every 30
10 seconds. We're going to take a break. Let me deal with
11 them and bring them back later.

12 When we come back, I want to move to the question of
13 admissibility of the Anderson evidence to find out exactly
14 what the State intends. And I think this would be a good
15 format to address it, in light of the absence of the press.

16 We'll start back in ten minutes.

17 MR. MAULDIN: You wanted to go through a couple of
18 jury issues as well, Your Honor, at that time, just as a
19 reminder.

20 THE COURT: Well, I need a witness list from both of
21 you very quickly to my office so I can prepare that for
22 jury review.

23 And I don't know if we have any juror issues to
24 address today or not. We'll probably do that later in the
25 week.

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1 (WHEREUPON, a break was taken.)

2 THE COURT: Is the Solicitor going to argue this
3 particular one or is one of you all going to argue?

4 MS. STROM: He is preparing to argue why this evidence
5 should come in. But I can go ahead and get started and let
6 you know what we intend to introduce, if that would help
7 speed up matters.

8 THE COURT: Well, if you don't mind.

9 MS. STROM: I don't mind at all. He would not mind at
10 all.

11 THE COURT: All right. Give us a heads-up.

12 MS. STROM: Yes, Your Honor.

13 First of all, as Your Honor may or may not be aware,
14 there are potentially a lot of witnesses that could be --
15 that are available to be used regarding what happened in
16 Anderson. There were numerous officers involved in the
17 chase; civilians, who were either hijacked or had their
18 vehicle knocked off the road or even shot at. And the
19 State has really worked hard in order to cut a lot of that
20 out and just be very basic as far as what happened.

21 So just to sort of give you a heads-up as to the
22 witnesses we intend to call and what their testimony would
23 be.

24 We intend to call Robert Appell, who is an Anderson
25 County Sheriff's Office deputy. He was the first person --

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1 THE COURT: How do you spell his last name?

2 MS. STROM: I'm sorry. Your Honor, I have it as
3 A-P-P-E-L-L.

4 THE COURT: Okay. I'm sorry. Go ahead.

5 MS. STROM: That's quite all right.

6 He is the first officer to spot the Jeep Cherokee up
7 at Highway 24 and Interstate 85 and becomes the first --
8 for lack of a better term, the first chase car. He's the
9 first one that gets behind the Jeep Cherokee and proceeds
10 to follow the Jeep Cherokee, turns on the blue lights and
11 siren, and attempts to stop the vehicle. The vehicle
12 continues on down the road.

13 At one point, Your Honor, Officer Mike Grant gets in
14 front of Officer Appell. So you have Mike Grant as the
15 first chase car. However, Officer Appell does not lose
16 sight of the Jeep Cherokee and is able to see the Jeep
17 Cherokee continue on down the road until such point that
18 Mike Grant's rear window is shot out and Mike Grant pulls
19 off to the side of the road.

20 Robert Appell pulls off to the side of the road to
21 render aid and assistance to Mike Grant. I do not intend
22 to put up Mike Grant as to his injuries and conditions and
23 all that. I do intend -- or it is our intent to put up
24 Robert Appell that he was the first chase car and witnessed
25 the passenger of the blue Jeep firing out of the back

1 window of the blue Jeep Cherokee. And as a result of that,
2 the back windshield of Mike Grant's car was destroyed and
3 blown out and he pulls off to the side of the road to give
4 assistance.

5 Mike Jones is the officer who is behind Robert Appell.
6 When Robert Appell pulls off with Mike Grant, now Mike
7 Jones is the lead chase car and maintains contact or, at
8 least, eyesight of the Jeep Cherokee as it goes on down the
9 road to the point where Mike Jones sees that the tire --
10 one of the tires on the Jeep Cherokee is flaming and the
11 Jeep is having trouble continuing on down the road.

12 And at that point, a utility truck, a Blue Ridge
13 utility truck, is hijacked. Mike Jones actually sees the
14 passenger of the Jeep Cherokee get out of the vehicle, go
15 over to the utility truck, has a weapon in his possession
16 at the time. The utility truck driver gets out of the
17 utility truck. The passenger that had gotten out of the
18 Jeep Cherokee then begins firing at officers. He then gets
19 in as the driver of the utility truck where the female in
20 the Jeep then comes and gets in the passenger side of the
21 utility truck. The utility truck takes off at that time.

22 Again, Mike Jones is part of that pursuit. Also, Your
23 Honor, we plan to put up -- Mike Jones also goes down to
24 the area of Carrie Lane, which is the ultimate stopping
25 point and where the Defendants are actually taken into

1 custody. It's called Carrie Lane.

2 Mike Jones does go into that area, but is not always
3 the lead car and is not always -- has eyesight of the
4 utility truck. There are times when he loses sight of the
5 utility truck.

6 James Hamby, Your Honor, comes into the chase at the
7 time of the utility truck being hijacked, and is involved
8 in the chase and at many times is the lead car and is
9 also --

10 THE COURT: You said his name was "Hamby"?

11 MS. STROM: Yes, sir. Hamby, H-A-M-B-Y.

12 THE COURT: What was his first name?

13 MS. STROM: James.

14 THE COURT: All right. I'm sorry. Go ahead.

15 MS. STROM: That's all right.

16 He come into the chase at the utility truck scene,
17 which continues on down the road. The Defendant in the
18 utility truck -- actually the driver of the utility truck
19 actually fires at James Hamby and he returns fire.

20 And this all cumulates -- accumulates down to Carrie
21 Lane. And again, James Hamby is part of the incident at
22 the end of Carrie Lane, along with Vic Wooten, where the
23 utility truck has turned around in a dead end and is coming
24 back towards the officers at a high rate of speed.

25 And the officers return fire on to the utility truck.

1 The utility truck comes to a stop. The Defendants are then
2 taken into custody at that time.

3 THE COURT: Was James Hamby involved in that or was he
4 out of the picture at that point?

5 MS. STROM: He is involved in that, Your Honor.

6 He and Vic Wooten would be the two witnesses as to the
7 utility truck coming towards them and the firing of the
8 weapons at that time.

9 THE COURT: What would Vic Wooten offer that Mr. Hamby
10 would not?

11 MS. STROM: Vic Wooten would offer that he is in a --
12 they're in similar locations. Vic Wooten has positioned
13 his car in one area. James Hamby has positioned his car in
14 another area. Vic Wooten has clearer sight of the utility
15 truck and we believe is actually the one who fired -- who
16 shot the Defendant.

17 Your Honor, James Hamby comes up after Vic Wooten is
18 there. Vic Wooten is already set up when the truck is
19 coming at him and James Hamby then comes up and assists.
20 There is a point where it's not clear -- James Hamby -- Vic
21 Wooten went down to the end of the road earlier while James
22 Hamby had sight of the utility truck, saw that the end of
23 the road was a cul-de-sac, turns around, comes to a
24 different area trying to cut off the utility truck.

25 When he sees the utility truck headed down that same

1 area, he then sets up. Hamby has lost sight of him at this
2 time. Vic Wooten is set up. James Hamby comes and sets
3 up. And that's when the utility truck comes to a rest.

4 Your Honor, we would also intend to call Karen McCall,
5 who is in the Jeep Cherokee with the Defendant and can give
6 information as far as what transpired from the time that --
7 the time after Trooper Nicholson was shot until the time
8 that they were picked up in Anderson, and also what
9 occurred in Anderson during the chase. But her information
10 is limited in terms of she hears shots being fired, but she
11 would not be able to identify who was firing shots or where
12 they were intending to go or in which direction.

13 She is driving the vehicle. She does know that John
14 Richard Wood is firing shots, but doesn't know in what area
15 and is not as specific as the officers.

16 Your Honor, we do intend to put up other officers that
17 are primarily chain witnesses who get the Defendant out of
18 the car so we can secure his clothing. That would be
19 Officer --

20 THE COURT: Vic Wooten, was he involved in the arrest?

21 MS. STROM: He was involved in the --

22 THE COURT: Did he witness the arrest?

23 MS. STROM: -- takedown, but he would not be a
24 complete chain.

25 THE COURT: Did he witness the arrest?

1 MS. STROM: He witnessed the arrest, but he did not
2 stay there on the scene, which is where the Defendant's
3 clothes were taken, there at the scene. They were cut off
4 of him in order for the Defendant to be taken to the
5 hospital. So I need to secure the chain on those clothing.

6 Kenneth Brock --

7 THE COURT: I hate -- and maybe this is an
8 inappropriate question.

9 What's the relevance of the clothing?

10 MR. ARIAIL: Judge, I would have to say that is
11 inappropriate.

12 THE COURT: All right.

13 MR. ARIAIL: I hate to interrupt. I mean, that is
14 going far -- there are three of them over here taking
15 copious notes that we're going to put up. And I would
16 just -- if we could, avoid it. We have --

17 THE COURT: You need a witness for clothing, is that
18 what you're telling me?

19 MS. STROM: Yes, sir.

20 MR. ARIAIL: And other items.

21 MS. STROM: And, Your Honor, as far as -- Kenneth
22 Brock is the witness we would use to establish the chain of
23 the clothing.

24 Officer Creamer with the Anderson County forensics, he
25 arrives on the scene and secures the scene to include the

1 clothes until SLED forensics arrive on the scene.

2 The vehicles -- the vehicle of the utility truck is
3 photographed and then driven by wrecker to an impound lot
4 where it can be processed, because it was getting late,
5 dark, and they needed a better place to secure it. So I
6 would be putting up the people who actually secured that
7 vehicle until it comes to the impound lot and until it's
8 processed. And that would be Brad McGuire and Mark Orr.

9 Your Honor, Steve Reeves secures the scene of the Jeep
10 Cherokee, which was abandoned earlier in the chase. He
11 arrives on that scene, stays with the vehicle until SLED
12 forensics arrives at that scene, and stays with the vehicle
13 until it is towed -- for lack of a better term -- to the
14 impound lot. So there again, that is another chain witness
15 who will just establish the security of that scene.

16 Mr. Tommy Clamp secures the Defendant. He is there
17 after the Defendant is arrested, travels with him to the
18 Anderson County Hospital, and performs a gunshot residue
19 test on the Defendant in process.

20 The Court's indulgence for just one moment, Your
21 Honor.

22 (Pause.)

23 MS. STROM: We would also be presenting evidence from
24 Chris Bryan, who is a forensic technician with the
25 Greenville County Sheriff's Office -- excuse me, with the

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1 Community Services. It is not with the Sheriff's Office.
2 It's Community Services.

3 MR. ARIAIL: Not yet.

4 MS. STROM: He processed the vehicles.

5 Jeff Parrott with SLED and Brett Baker with SLED,
6 those are the two forensic officers from SLED who responded
7 to Anderson and collected certain items of evidence.

8 The Court's indulgence for one moment.

9 (Pause.)

10 MS. STROM: Your Honor, I have sort of set forth the
11 physical items of evidence we intend to introduce. And I
12 didn't know if you felt it appropriate to hear it.

13 Do you want to hear about that as opposed to just
14 the -- we intend to present the testimony of the witnesses
15 as to what happened, but also as to Brett Baker, and Jeff
16 Parrott, and Chris Bryan, and the factual physical evidence
17 that was collected.

18 THE COURT: Sure. Yes, ma'am.

19 MS. STROM: There were casings found inside the Jeep
20 Cherokee and inside the utility truck. And we intend to
21 introduce those.

22 There were casings found in the roadway where the Jeep
23 was abandoned and the utility truck was hijacked. We
24 intend to introduce those.

25 There was a weapon, a gun, found in the utility truck.

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1 We intend to introduce it.

2 The clothes of the Defendant we intend to introduce,
3 items taken from those clothes such as a magazine loader
4 and unfired cartridges. There was an empty magazine that
5 was found -- an empty magazine clip found in the utility
6 truck. We intend to introduce that.

7 Then from the Jeep Cherokee, we intend to introduce
8 the motorcycle helmet, an empty box of ammunition, and a
9 pair of gloves.

10 Your Honor, also if -- I don't remember if I mentioned
11 it, in the Defendant's clothes was a magazine loader, which
12 we intend to introduce.

13 We intend to introduce the gunshot residue test
14 performed on John Richard Wood and Karen McCall. That's
15 from Anderson. All that was taken from Anderson.

16 I believe that's it, Your Honor.

17 THE COURT: All right. Y'all had some desire to have
18 the issue of intent be a basis for admissibility of this
19 evidence, and if you want to share the reasons why that's
20 an additional basis for admissibility, I'd be glad to hear
21 from you.

22 MR. ARIAIL: All right. Thank you, Your Honor.

23 The first thing would be malice and intent. The
24 Court's previous inclination, as stated, was that under
25 identity, we were -- would be able to introduce certain

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1 pieces of evidence. We believe that under the -- in
2 relation to the issues of malice, intent, res gestae, and
3 common scheme and plan, all of these would be a permissible
4 basis for inclusion of this evidence.

5 And let me just reiterate from a practical standpoint
6 what we're talking about. Obviously from the identity
7 standpoint, we have 15 or so casings found in the Jeep
8 vehicle. We have three casings found -- or more found in
9 the Blue Ridge electric truck. We've got a weapon found
10 underneath on the floorboard of the driver's side.

11 And that's why when we're talking about who's driving
12 and who's the passenger and different -- all of these
13 things, of course, get into areas open for argument.

14 Clothing is another area. Is the clothing the same?
15 What did the witnesses see? What's the difference between
16 it? Why is there a difference, et cetera, and that sort of
17 thing?

18 From the malice and intent aspect, it's my position on
19 behalf of the State that firing a weapon at a uniformed
20 police officer in a marked vehicle is what happened to Eric
21 Nicholson. The inference that we're entitled to argue to
22 the jury is an inference only. There is no expressed
23 malice as to Officer Nicholson, Trooper Nicholson.

24 We believe that the second stage of the chase in which
25 officers were not randomly, but uniformly fired upon,

1 uniformed officers in marked police cars were uniformly
2 fired upon, is an indication of the willingness of the
3 Defendant to use deadly force against lawful authority,
4 particularly law enforcement officers, when he is in a
5 situation subject to arrest.

6 The similarities in the original crime against Trooper
7 Nicholson, who was a law enforcement officer in proper
8 dress on duty driving a marked vehicle, and the subsequent
9 shooting at law enforcement officers using the same deadly
10 weapon is simply more than a coincidence. It is an intent
11 to do wrong, a willfulness, an evil and malicious nature.

12 To limit us to the simple showing of an inference from
13 a weapon fired at a scene is not going to give this jury
14 the overall appreciation for the violent nature of this
15 individual, his absolute total lack of respect for law
16 enforcement, his willfulness and intent to murder and kill
17 for no other reason other than to either escape or conceal
18 his identity, and his malicious nature and his intent are
19 something that we think are critical elements to negate
20 accident, mistake, arguments of whatever may come of
21 voluntary manslaughter, or upset, or nerves, or whatever.
22 Because the condition that follows is clearly indicative of
23 the condition that existed at the time, mental state. And
24 that is a lawful authority in a marked car.

25 We're not talking about shooting somebody in an

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1 argument in a bar. We're talking about a uniformed police
2 officer in the middle of the day. And throughout the rest
3 of the day, he's firing his weapon indiscriminately. There
4 are 18 casings that we can put together that remained in
5 the two vehicles he was in with an empty box of shells and
6 still has got bullets in his pockets. This was an armed
7 assault. This was not an isolated event. This was an
8 attack on law enforcement. And the similarities of the two
9 crimes, we believe, are so similar as to indicate not only
10 his intent, but also to indicate the malicious nature.

11 His motive -- I want to talk a little bit about motive
12 because there's some reference in the case law.
13 Particularly I point to the case of State v. Johnson, which
14 is a 1991 case. And it's a -- it was a case that happened
15 on I-95 in which -- you probably remember it or you may
16 remember it, even though you're a bit younger than I am.
17 But I remember it because it was such a horrendous event.

18 A kidnaping occurred of a man driving a van or a
19 camper. And he was murdered by some hitchhikers. And as
20 they went down the road, the State highway patrolman pulled
21 them over. And they then murdered the highway patrolman.
22 As a result of that, they tried the Defendants for the
23 highway patrol trooper killed. And the State offered the
24 evidence of the prior events.

25 Now, in this case, we're a little bit different in

1 sequence. But what they talked about in the case was that
2 the testimony was relevant to the crime charged and
3 properly admitted. They analyzed the probative value and
4 found that it outweighed its prejudicial effect. The Court
5 concluded that the connection of those two crimes was such
6 that the evidence was part of the res gestae and it was
7 crucial before presentation of the State's case. We think
8 that what you have here is identical to that.

9 They went on to deal with the Lyle issues and found
10 that because it was part of the res gestae that it was
11 admissible. And if I could just read, Your Honor, one --
12 what I thought was -- now, we're talking about -- what
13 we're talking about now is actually the introduction of a
14 murder of an unrelated event that the Court finds forms the
15 motive or has the argument behind it to form a motive.

16 "In the case at bar, the evidence of Swanson's
17 murder" -- Swanson was the camper driver -- "forms part of
18 the res gestae. The fact that a dead body was concealed in
19 the back of the vehicle explains why Johnson would shoot
20 the trooper when he opened the door."

21 And he goes on and talks more about -- "Further, the
22 only crime in this case was directly related to the murder
23 of the trooper. The crimes were not totally unrelated as
24 in most other cases wherein such evidence is introduced."

25 And they're talking about Lyle when they're talking

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1 about totally unconnected. Here, you're talking about a
2 connected series of events. And Lyle deals with those
3 things, as Your Honor is well aware, that are
4 unconnected -- can be revoked, but particularly the case
5 law deals with the unconnected.

6 And it went on to talk about that, "The distinctions
7 of Brown's prior conviction" -- well, it goes on to prior
8 conviction. Our point in that is you've got a series of
9 events that bear on motive, they bear on res gestae, they
10 bear on his identity, they bear on the malice that he
11 possesses, which is an absolute essential element that we
12 possess. And without this testimony and without this
13 evidence, we're going to be left to making the jury infer
14 malice from the use of a deadly weapon. That's all we'll
15 get.

16 Now, we can argue it, you know. We've got a lot of
17 arguments that will overcome it. But the point is that
18 firing indiscriminately at a marked law enforcement vehicle
19 was not an isolated event. It was a plan, a common scheme
20 that carried throughout everything until and only until he
21 was shot and disabled. He would have continued. There
22 wasn't any basis for him to stop.

23 So we submit on all of those basis that we're entitled
24 to introduce all the evidence that she talked about. And
25 we would also submit to the Court that we have pared that

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1 down substantially in accordance with your previous
2 instructions.

3 Thank you.

4 THE COURT: Yes, sir.

5 MR. MAULDIN: Your Honor, I'm going to make reference,
6 first of all, to the intent issue first, if the Court would
7 address that. And then I'll go to what has now been
8 presented to you as potential identity issue and evidence.

9 When we got your -- we filed our motion to exclude
10 this other crimes evidence on January the 9th. On January
11 the 7th at 4:42, we were served with a response -- on
12 January 17th, we were served with a response. Now, I'm not
13 real sure of the date. I didn't write the date of the
14 hearing, but I think it was within maybe the next day, or a
15 day or two of that.

16 My understanding, as a result of that hearing -- and
17 you, I think, subsequently sent us a note of -- that your
18 oral rulings at that -- that a written motion or a written
19 order probably would not be forthcoming and that we
20 would -- could depend upon the oral order of the Court of
21 that day, if I'm correct. And I made notes with regard to
22 what I understood the ruling to be.

23 I am assuming that there is a --

24 THE COURT: You've lost me. A ruling on what?

25 MR. MAULDIN: On the admissibility of the Anderson

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1 evidence. My understanding --

2 THE COURT: No, I have not ruled. I indicated my
3 likely ruling was a motion in limine that I wanted to flush
4 it out further. The State wanted to come back at me with
5 an argument on intent. But to suggest that I have ruled
6 with finality is not correct.

7 MR. MAULDIN: No. I am addressing this as a -- my
8 understanding was that they were -- it was ruled that they
9 could use certain matters prereviewed by the Court, which
10 is what I was under the impression we were doing this
11 morning.

12 THE COURT: That's my inclination.

13 MR. MAULDIN: Right. But I did not realize that I
14 would be called upon to revisit the issue of intent. So
15 I'm a little bit --

16 THE COURT: You don't have to if you don't want to.

17 MR. MAULDIN: We'll I'm going to. But I want the
18 Court to take into consideration that I was not thinking
19 that that was what we would be hearing this morning.

20 Now, let me take their arguments -- the final part
21 first, this idea of the application of State v. Johnson. I
22 am very familiar with Johnson. And it is very clear from a
23 reading of Johnson that the Court said that the intent or
24 actually more of a motive consideration of the subsequent
25 incident that the presence of a dead body in that van did,

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1 in fact, lead it was legitimate evidentiary value with
2 regard to the motive of the Defendant in firing upon the
3 trooper. I mean, that just is -- absolutely makes as much
4 common sense as anything in the world. There's a dead body
5 in the car. The intent is to kill this guy before he finds
6 the dead body.

7 So that -- Johnson is clearly a subsequent crime
8 evidence of the prior crime case, the evidence of the body
9 of a prior victim in the van and the use at the trial on
10 the subsequent killing of the investigating officer. So
11 that is -- there's no question that that is appropriate in
12 a prior crime situation.

13 And Mr. Ariail, I felt like, made light of the fact
14 that we are exactly opposite here. This is the exact
15 opposite situation. He says that he is required -- that to
16 not allow him to do it would require the jury to infer
17 malice only. There was no other piece of evidence. He has
18 got in his file eyewitnesses showing a person firing into
19 the window of that trooper's car.

20 Now, we said at our previous argument, sure, the
21 inference of use of a deadly weapon is in our law and we
22 concede. But he's got an eyewitness that saw the shooting.
23 Now, I don't know -- I mean, that seems like evidence to
24 me, the description of the conduct of the person certainly
25 is evidence of intent. So I take issue with that. And I

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1 think that he is not necessarily being completely
2 forthright with the Court with regard to what he does or
3 doesn't have.

4 He says that the conduct of the Defendant, if proven,
5 with regard to proof of intent is that lawful authority in
6 marked cars were subsequently fired upon and that that is
7 probative value as to the intent hours before in a
8 different county of the intent to kill an officer in a
9 marked car. And that argument just gets away from that.
10 The fact is that there was an incident and a subsequent
11 chase.

12 Now, you could have been chased by unmarked cars,
13 helicopters and, in fact, you were. So this idea of
14 attempting to place this Court in a situation where
15 otherwise inadmissible evidence, otherwise inadmissible
16 evidence is being offered and to explain that that's the
17 key that opens that door and allows it to be admissible is
18 not, in fact, sound reasoning, Your Honor.

19 The -- and now let me -- so with regard to evidence
20 in addition to what we were operating under the
21 assumption -- and that is evidence of identity, we stand by
22 what was said at the hearing in this case. We stand by the
23 arguments that we presented at that time and, in addition,
24 what I've mentioned to you this morning.

25 The identity issues that the State has now presented

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1 to you, we object to it all. And we reaffirm our
2 objection. But we are respectfully moving forward with
3 regard to this issue of the admissibility of identity
4 evidence.

5 They have an officer, Officer Appell, who was the
6 officer who first spotted the Defendant in Anderson. They
7 have an Officer Jones, who separated from Officer Appell
8 when Officer Appell pulled over to assist Officer Grant.
9 And Officer Jones proceeded in pursuit of the Defendant to
10 the location of Carrie Lane.

11 Officer Wooten, by the way, was also involved in that,
12 in proceeding along this pursuit. Officer Jones takes the
13 Defendant or an alleged suspect from the location of the
14 hijacking of the utility truck to Carrie Lane, the location
15 of the arrest. Officer Wooten is the officer who shot the
16 Defendant and participated in his arrest.

17 Now, so those three -- you've got link one. And then
18 link one pulls over. And link two follows to Carrie Lane.
19 And link three is the one who took him into custody, for
20 all intense purposes, by firing a shot. So those are the
21 three identity witnesses, if any at all would be
22 admissible. Those are the three.

23 Now, we want to let the Court know that we are
24 objecting to the activities alleged to have been committed
25 by the Defendant if the issue is only as to the identity

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1 people, the linking of this person with that scene in
2 Greenville. The license plate number, for example, of the
3 Jeep, Greenville Gymnastics, Highway 27 or 28 or whatever
4 it was in Anderson where Officer Appell picked him up in
5 pursuit.

6 So there's no question that there is a logical way to
7 put this together. If on the other hand, this Court is
8 encouraged by the Government to allow all of this windows
9 going up and down, and shooting out here and shooting out
10 there, and returning fire, and pulling over, and tires
11 burning, then certainly we would need to know that as far
12 in advance as possible. That was the reason we filed our
13 motion back the first week of January was to prevent the
14 use of all of that type of other crimes -- subsequent
15 crimes evidence.

16 Now, the final comments, Your Honor, is they have also
17 advised the Court regarding a numerous list of witnesses
18 regarding -- for example, the taking into custody of the
19 utility van and all of the people that would have to
20 testify to that, and the taking into custody of the Jeep or
21 inventory of the Jeep.

22 If we're going to try the Anderson cases in total,
23 we'll go ahead and try over the next week to be ready to go
24 over our objection, of course. We intended to try to clean
25 up the case and try to make it as simple and, in fact, what

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1 we consider to be an appropriate interpretation of the case
2 law of this state. But that laundry list of witnesses
3 regarding all of this information simply is not for
4 purposes of identity. It is for purposes of prejudice.

5 Finally, Your Honor, they've advised the Court that
6 they intend to call Karen McCall. Well, guess what? The
7 issue is now moved with regard to identity. Karen McCall,
8 if the Court please, is the alleged co-defendant, who is
9 supposedly the person who picked up the Defendant behind
10 Greenville Gymnastics and was taken into custody with him
11 on Carrie Lane.

12 I now, therefore, say to this Court that they don't
13 need Appell, Mike Jones, Hamby, Wooten, Bryant, Clamp,
14 Brock, Creamer. They don't need any of them, because
15 they've got the person who's riding in the car with him.
16 And if that's what they're conceding that they're going to
17 put up, then smoke and mirrors in this case is not going to
18 work. They've told you what they're going to put up. That
19 will, in fact, establish identity and we don't -- and we
20 will now reaffirm our objection to the Anderson evidence,
21 in fact, and even more vigorously, Your Honor.

22 THE COURT: Any response from the State?

23 MR. ARIAIL: Just two things.

24 1) We'll be more than happy to admit all chain
25 witnesses, if they'll simply stipulate that point 1 went to

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1 point B, point B went to point C. But obviously we've got
2 to preserve the custody of the casings to match to the guns
3 to prove identity.

4 Secondly, as to Karen McCall, I wish it was that
5 simple. I wish the fact that the co-defendant testifies to
6 the jury would be enough to say, well, we believe her on
7 that and we'll just go home. But as Your Honor is well
8 aware, that's not necessarily going to happen. And we need
9 to corroborate her. And she is the co-defendant. And
10 she's got certain interests that she's protecting. And her
11 testimony is not going to necessarily be as forthcoming as
12 it should be, but it's all we have. And we're going to put
13 her up. But I can assure you that that does not mute the
14 issue of identity, particularly since there were two people
15 in the car at the time it was apprehended.

16 THE COURT: I need a witness list from both sides.
17 I'd like to have it by Wednesday.

18 Are there any other issues to address today that
19 either side is aware of?

20 MR. ARIAIL: You mentioned something about the juror.

21 THE COURT: Mr. Mauldin did.

22 MR. ARIAIL: Okay. You also mentioned something about
23 the jury selection.

24 THE COURT: Right. I want to know if either side, if
25 you want to put on the record opposition and the reasons

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1 for opposing strike as you go.

2 MR. ARIAIL: I will be -- I'll take the lead on that.
3 I originally thought that was a good idea. And then in the
4 last case, it was pointed out to me that the potential for
5 a Batson motion would have to be dealt with. And if we
6 ended up getting to the end and there was a Batson motion
7 that succeeded in some form, then we were somehow limited
8 or impaired, terminally impaired. That was Judge Floyd's
9 conclusion. We never went any further with that.

10 I don't have any inherent opposition to it, if that
11 can be -- if the Court is aware of the way that you feel
12 comfortable to deal with that. I'm not a Batson scholar.
13 I just know that's an issue out there and we try to avoid
14 it. But if there's something out there, I don't want to
15 create an issue.

16 But we don't have an inherent opposition to strike as
17 we go. It obviously speeds things up. And the result is
18 going to be pretty much the same, although there are some
19 differences. But you're going to have them in the same
20 order, regardless how you do them. So we -- if you can --
21 that would be the only issue we raise.

22 THE COURT: The Defendant, please.

23 MR. MAULDIN: With regard to being a scholar, I
24 guarantee you I'm not one of those. But I am trying to
25 learn how to do these things. And that Batson issue did --

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1 it gives reservations. But I figured it out, I think. If
2 we do it this way then we -- as the State have no objection
3 to strike it to go, we'll go strike it to go as well, Your
4 Honor.

5 And I'm going to make a suggestion as to handling a
6 Batson. Even though you probably don't need any help, I'm
7 going to offer it because I have -- this has kept me up at
8 night.

9 If we do it exactly the same as we have done in terms
10 of groups of panels, bring the juror in and then when you
11 would ordinarily send the juror out to the hallway for
12 whether they're qualified or not, we make our motions
13 regarding whether they're qualified. And then we have to
14 execute the strike. But when the juror is brought back --
15 let's say we exercised a strike and the juror was struck by
16 the Prosecution. In order to make sure we don't
17 essentially waive Batson, that juror would simply be told,
18 you have been ruled qualified. You'll remain in the pool
19 from which the jury is selected.

20 So you're not telling them anything that's not
21 correct. It's just then when you've got your 12th juror,
22 you go back and look at the ones that the State struck and
23 then you would know whether they had violated Batson.

24 In other words, even the jurors who are actually going
25 to be seated would not be told they were being seated.

1 They would just simply be told they would remain in the
2 pool of qualified jurors. Then you -- then at the point
3 where the 12th juror is, in fact, seated, you would ask if
4 there were any Batson challenges or any other challenges.

5 If the Defense had a Batson challenge or the State had
6 a Batson challenge, you would be able to evaluate it before
7 the jurors ever knew who was or wasn't on the jury. That
8 way you could literally -- the first 12 could end up on the
9 jury.

10 THE COURT: Assuming a Batson challenge --

11 MR. MAULDIN: Yes, sir.

12 THE COURT: -- the State strikes, why not address it
13 right there? The juror is out in the hallway.

14 MR. MAULDIN: Well, because you can't --

15 THE COURT: You can't do composition, but you can do
16 everything else.

17 MR. MAULDIN: You can't -- like let's say that they --
18 let's say it's the first juror and they exercise their
19 first strike, it's almost impossible, at least -- and I'll
20 go back and read Batson again, Your Honor. But I see a
21 Batson -- you can't determine whether or not the strikes
22 are systematic until they actually become systematic.

23 Now, they -- you can in a vacuum say, well, we'd like
24 to present them. If I said that was a violation of Batson,
25 you said, yeah, I struck that guy because he was black, or

1 I struck him because he was Hispanic or whatever. Then
2 you'd have an admission of a Batson strike.

3 But I think that it tests the limits of my ability to
4 figure out how to object to do it in an isolated only
5 one-on-one. I think the systematic thing is the thing that
6 rears its head to me. But whatever you want to do with
7 that.

8 MR. ARIAIL: It's a great idea. The problem is the
9 press is here. They're going to know who's picked.
10 They're going to print who's picked, unless you take some
11 way of stopping it. But those jurors are going to be
12 floating around out in Greenville County. And they're not
13 going to be sequestered unless you sequester them.

14 And that's the second issue that I forgot. I knew
15 there was a second issue and that's the sequestration
16 issue. What do you do with them once you pick them? And I
17 know not telling them might be part of an answer, but
18 they're still floating around.

19 THE COURT: Well, to think out loud with you, I've
20 instructed SLED that subject to bringing the issue up with
21 you folks, I was inclined to strike as you go. I was
22 further inclined to sequester the jury immediately upon
23 selection.

24 Now, at the end of the process if we've got 12 plus
25 three alternates, we could then, on the record, do a

1 Batson. We still will have, hopefully, plenty of panels
2 left.

3 Could we address the issue at that time?

4 MR. ARIAIL: The Batson issue?

5 THE COURT: Yes.

6 MR. MAULDIN: What would you do, Judge -- and you're
7 way ahead of me obviously on that. What would you do about
8 a juror who was qualified in terms of call strike, but one
9 or the other of us struck that juror like on a Monday or a
10 Tuesday morning and we're going over into Wednesday and
11 Thursday? Is that juror going to remain sequestered, even
12 though they actually have been struck? Because you're
13 going to --

14 THE COURT: No.

15 MR. MAULDIN: Well, because if you then release them,
16 then I do think you cause a risk of running into -- we
17 can't -- because if you do determine that Batson has been
18 violated, do we just start picking new people? Because I
19 think you have to bring the whole pool back if you have a
20 violation of Batson, don't you?

21 So with that in mind, Your Honor -- so what I'm
22 suggesting is that -- I don't know if the press is in here
23 or --

24 THE COURT: They're not in here.

25 MR. MAULDIN: All right. I think they ought to be

1 told, I'm going to let you sit in here while this voir dire
2 is going on, but if one word ends up in the press that
3 would identify either by sex, race, age, or any other way
4 that a juror could read in the paper that they had been
5 excluded or included, then they're out of here.

6 I think that you have the inherent authority to
7 protect this courtroom. And, in fact, I would so move to
8 have the press instructed of that. The reason they're
9 being allowed to sit in this courtroom during voir dire is
10 for public knowledge, not identity of jurors any more than
11 the identity of the jurors after they're seated is
12 appropriate. So I think that order could be enforced.

13 We believe strike as you go is okay as long as there's
14 a Batson shield. And with regard to the identity of jurors
15 and the press, you say, you violate it, you're out of here.

16 THE COURT: All right. We may address this further.

17 Let me first talk about the admissibility of the
18 Anderson evidence. And my view is substantially consistent
19 with that advocated by Mr. Mauldin.

20 First of all, I know that he took a preemptive strike
21 by filing a motion to try to classify this evidence as
22 404-B. Calling something is often dispositive of the
23 battle. I don't view this as 404-B material. I don't
24 believe it is State v. Lyle material.

25 To call it 404-B immediately raises a red flag,

1 because we're all well acquainted that the State rule,
2 unlike the federal counterpart, is a rule of exclusion, not
3 inclusion. And there are certain hurdles that must be met
4 for the admissibility of 404-B.

5 I believe that occurrences in Anderson County are
6 simply a continuation of the events in Greenville and that
7 the occurrences in Anderson fit very comfortably within the
8 concept of the res gestae of the underlying Greenville
9 offense.

10 State v. Adams has a discussion of res gestae in the
11 sense that one is inextricably connected to the other.
12 Having made that determination, however, does not dispose
13 of the ultimate issue of admissibility. I must first
14 determine the relevance of evidence, the degree of its
15 relevance, and contrast that with its prejudicial nature.

16 Evidence, although relevant, may be excluded under
17 Rule 403 if its probative value is substantially outweighed
18 by its prejudicial effect and otherwise. What is relevant
19 depends on what is in dispute.

20 I'm not sure at this point exactly what's going to be
21 disputed. I'm not sure at this point if the Defense is
22 going to, through cross-examination or presentation of
23 evidence, try to justify the charge on manslaughter, which
24 would indicate the presence or absence of malice.

25 I'm not going to foreclose the State, nor am I going

1 to rule with finality as to admissibility. This is a
2 motion in limine. And I can give you some guidelines as to
3 what I believe will be admissible subject, of course, as
4 the facts develop at trial. The relevance of an issue may
5 be very germane. It may be a matter which is at the center
6 of a particular issue. And my inclination will have to be
7 revisited at that time.

8 With that caveat and that understanding that this is
9 not a final ruling, based on what knowledge I have been
10 given thus far as to the facts of the case, I would permit
11 the State to offer a brief version of the Anderson events
12 for the purpose of identity. It appears identity is a
13 contested issue in the case. And, of course, with the
14 presumption of innocence, the State carries the burden of
15 proof and the State must prove the elements beyond a
16 reasonable doubt, one of which is that the alleged offense
17 was committed by this particular Defendant.

18 To that end, I would permit Officer Appell to identify
19 himself, to describe his identification of the so-called
20 Jeep vehicle with the same license number that was viewed
21 in Greenville County. I would permit him to testify that
22 he followed the Jeep and maintained contact with the Jeep
23 until Mr. Jones began following the Jeep.

24 Mr. Jones witnessed the transfer of a male and a
25 female from the Jeep to what's been described as a Blue

1 Ridge utility truck. Mr. Jones then continued following
2 the Blue Ridge utility truck with the two individuals who
3 exited the Jeep. He maintains constant contact with the
4 truck until the -- some area of a brief period where
5 apparently he lost contact near Carrie Lane.

6 I'm then informed that Mr. Hamby -- with Mr. Jones
7 present, Mr. Hamby was involved and maintained visual
8 contact with this same utility truck.

9 It appears that Officer Wooten was in a similar
10 situation as Mr. Hamby. But because of the physical
11 proximity of one to the other on the so-called Carrie Lane,
12 Mr. Hamby apparently lost visual contact briefly.

13 Mr. Wooten maintained contact at all times.
14 Mr. Wooten witnessed the arrest of the male Defendant.
15 Presumably Mr. Wooten will then identify the Defendant in
16 this trial as the same individual who was arrested in
17 Anderson.

18 It would not be my intent to reference any shooting in
19 Anderson, any of the burning tires, any of the so-called
20 hijacking, merely the transfer of the male and female from
21 one vehicle to another. That very limited and controlled
22 presentation, in my judgment, allows evidence to be
23 admitted for its intended purpose, i.e. identity, if that
24 indeed is the relevant issue. Again, I reiterate, this
25 could change depending on what is in controversy and what

1 is relevant and not relevant at trial.

2 The testimony proposed on behalf of the co-defendant,
3 Ms. McCall, is a relevant factor for me to consider on the
4 issue of admissibility, but by itself does not warrant me
5 excluding additional evidence at the outset.

6 If the clothing is somehow relevant to an issue in the
7 case, it would be permitted. I'm not sure whether it is or
8 not. I don't know what was found in the vehicles. I know
9 that the securing of the weapon and if that weapon, through
10 ballistics, turns out to be the same weapon that fired the
11 fatal shot on Trooper Nicholson, then that also is a nexus
12 to this case and butcheries the State's claim of identity
13 that this was indeed the same individual.

14 The series of casings found in the Jeep, found in the
15 utility truck, found on the roadway near where the two
16 individuals transfer from one vehicle to the next, I don't
17 see the relevance at this point. Again, things may change.
18 Absent something changing, I would not permit any reference
19 to casings, firing at officers, et cetera. I'm confident
20 that such evidence would be too prejudicial, based on what
21 I believe are the contested issues, i.e. what is relevant.

22 The motorcycle helmet may well indeed be an issue
23 that's admissible on the issue of identity. If there's
24 some witness that saw the Defendant or someone who shot
25 the trooper in Greenville wearing a similar type helmet, I